

DECLASSIFIED

E.O. 12958, as amended, Sect 3.5

NSC/subers to Smith 09/06/2002

By WAL Date 02/14/07

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

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May 29, 1972

National Security Decision Memorandum 169

TO: The Secretary of State
 The Secretary of Defense

SUBJECT: International Environmental Negotiations

The President has reviewed the positions set forth in the Memoranda from the Under Secretary of State of May 29, 1972 and from the Deputy Secretary of Defense of May 26, 1972. He has decided that the following positions shall be taken by the United States Delegation to the May 30 London meeting of legal experts to prepare an Ocean Dumping Convention:

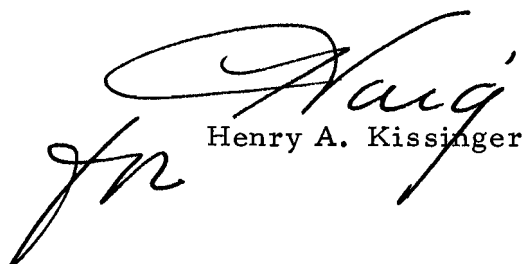
-- The Delegation should make every effort to gain support for a clause explicitly exempting military vessels and aircraft from the provisions of the Ocean Dumping Convention. In seeking this support the Delegation will advance alternative formulations such as alternative U.S. positions 1-5 at Tab B of the Deputy Secretary of Defense's memorandum of May 26, 1972.

-- Should reactions of other delegations to the tabling of this U.S. position make it clear in the unanimous judgment of the Delegation that agreement on such a clause will be impossible, and that therefore the effort to produce a draft convention at the London meeting for further consideration at a plenipotentiary conference later this year will fail, the Delegation is authorized to agree to a sovereign immunity clause, but only by reserving for the United States the right to raise with participating governments issues that may be raised by other parts of the Convention, after a further study of the national security implications of the draft convention containing a sovereign immunity clause. In this event the Delegation will state that this right will be exercised within thirty days.

-- The Delegation will support a procedure for amending annexes to the Convention, under which amendments will enter into force for parties ratifying the amendments, after two-thirds of the parties to the Convention have done so. As an alternative, the Delegation may accept a procedure under which amendments enter into force after ratification by two-thirds of the parties to the Convention for all parties except those which declare non-acceptance within a specified time.

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Should the Delegation accept a sovereign immunity clause with the qualification set forth above, the President instructs the Under Secretaries Committee to report no later than June 10 on whether acceptance of other provisions in the draft Convention pose national security problems. Any such problems should be clearly and specifically identified, together with recommendations. Differing agency views, if any should be clearly identified.

 Henry A. Kissinger

CC: The Chairman, Under Secretaries Committee
The Chairman, Council on Environmental Quality
The Administrator, Environmental Protection Agency