STAT

NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA

NSC-D/LOS # 532

MEMORANDUM

February 19, 1976

UNCLASSIFIED

TO: MEMBERS OF THE LOS EXECUTIVE GROUP

SUBJECT: TESTIMONY

Attached for your comments and clearance is draft testimony of Under Secretary Carlyle E. Maw and Leigh Ratiner for the Oceanography Subcommittee, House Merchant Marine and Fisheries Committee on Monday, February 23, 1976.

Please phone clearance to me (632-8232) by noon Friday, February 20.

Otho E. Eskin
Staff Director

Attachment

As stated

State Department review completed. Referral to NSC not required.

On file DOI release instructions apply.

DRAFT

2/18/76

TESTIMONY OF CARLYLE E. MAW
UNDER SECRETARY FOR SECURITY ASSISTANCE
DEPARTMENT OF STATE
BEFORE THE
OCEANOGRAPHY SUBCOMMITTEE
HOUSE MERCHANT MARINE AND FISHERIES COMITTEE
MONDAY, FEBRUARY 23, 1976

MR. CHAIRMAN, I AM PLEASED TO APPEAR BEFORE THIS COMMITTEE TODAY TO EXPLAIN THE VIEWS OF THE ADMINISTRATION CONCERNING INTERIM POLICY FOR DEEP SEABED MINERALS DEVELOPMENT. AMBASSADOR LEARSON HAS ASKED ME TO EXPRESS HIS REGRETS THAT A PREVIOUSLY SCHEDULED COMMITMENT OUT OF THE COUNTRY PREVENTS HIM FROM BEING HERE TODAY.

I AM ACCOMPANIED BY LEIGH S. RATINER, ADMINISTRATOR, OCEAN MINING ADMINISTRATION, DEPARTMENT OF THE INTERIOR.

MR. CHAIRMAN, THE ADMINISTRATION HAS BEEN CAREFULLY REVIEWING ITS INTERIM POLICY WITH RESPECT TO OCEAN MINING. AT THE CONCLUSION OF THE GENEVA SESSION OF THE LAW OF THE SEA CONFERENCE LAST MAY, IT BECAME EVIDENT THAT THE ISSUE OF THE DEEP SEABED REGIME AND MACHINERY WAS A MAJOR OBSTACLE TO A SUCCESSFUL CONCLUSION OF THE LAW OF THE SEA NEGOTIATIONS. IN MOST OTHER AREAS WE HAD MADE SUBSTANTIAL PROGRESS TOWARD A TREATY WHICH THE UNITED STATES AND A MAJORITY OF OTHER COUNTRIES WOULD PROBABLY BE ABLE TO AGREE UPON. THIS PROGRESS IS REFLECTED TO A LARGE EXTENT IN THE SINGLE NEGOTIATING TEXT WHICH WAS PRODUCED AT THE END OF THE GENEVA SESSION. ALTHOUGH THERE WERE A NUMBER OF PROBLEMS

REMAINING TO BE SOLVED, WE FELT OPTIMISTIC THAT THE BASIC ELEMENTS OF A SATISFACTORY, COMPREHENSIVE LAW OF THE SEA PACKAGE COULD BE AGREED UPON IN THE RELATIVELY NEAR FUTURE, SUBJECT TO ARRIVING AT AN ACCEPTABLE SOLUTION WITH RESPECT TO DEEP SEABED MINING.

IN ADDITION TO OUR CONSIDERATION OF THE STATUS OF THE DEEP SEABED NEGOTIATION, IN ARRIVING AT OUR INTERIM POLICY, WE ALSO TOOK INTO ACCOUNT THE CURRENT STAGE OF DEVELOPMENT OF UNITED STATES OCEAN MINING COMPANIES. WE ARE ADVISED THAT AMERICAN OCEAN MINING FIRMS HAVE LARGELY COMPLETED THE RESEARCH AND DEVELOPMENT PHASE OF THEIR WORK AND WILL BEGIN THIS YEAR THE EXPENSIVE DEVELOPMENT WORK WHICH PRECEDES COMMERCIAL RECOVERY OF RESOURCES. UNCERTAINTY ABOUT THE TIMING AND CONTENTS OF A FUTURE TREATY MAY IMPEDE COMMITMENTS FOR THE SUBSTANTIAL CAPITAL OUTLAYS NECESSARY FOR THIS NEW LEVEL OF ACTIVITY.

IN OUR POLICY REVIEW WE EXPLORED WHETHER WE COULD REDUCE THESE INVESTMENT UNCERTAINTIES THROUGH SOME FORM OF DOMESTIC LEGISLATION WITHOUT DAMAGING THE LAW OF THE SEA NEGOTIATIONS. THE LATTER POINT IS PARTICULARLY IMPORTANT IN LIGHT OF OUR DECIDED PREFERENCE TO SEE THE DEVELOPMENT OF THE RESOURCES OF THE SEABED UNDER A WIDELY ACCEPTED INTERNATIONAL AGREEMENT. THE LAW OF THE SEA CONFERENCE PROVIDES US WITH AN OPPORTUNITY - POSSIBLY OUR LAST - TO DEVELOP A SYSTEM WHICH WOULD SUBJECT DEEP SEABED

MINING TO WIDELY ACCEPTABLE INTERNATIONAL RULES EMBODIED IN A TREATY AND RELATED REGULATIONS. SUCH A SOLUTION CAN CONTRIBUTE TO THE RATIONAL AND EFFICIENT USE OF RESOURCES AND CAN SET A PRECEDENT FOR NEW FORMS OF COOPERATION BETWEEN THE DEVELOPING AND DEVELOPED NATIONS.

MR. CHAIRMAN, THE ADMINISTRATION HAS NOT AT THIS TIME REACHED ANY DEFINITIVE CONCLUSIONS ON THE QUESTION OF AN APPROPRIATE LEGISLATIVE PROPOSAL FOR OCEAN MINING. IN MY OWN VIEW, I SEE NO REASON WHY SUCH A PROPOSAL CANNOT BE FORMULATED RELATIVELY QUICKLY, ONCE WE CAN PROJECT THE RESULT OF THE ONGOING DEEP SEABED NEGOTIATIONS IN THE LAW OF THE SEA CONFERENCE. SOME OF US HAVE DESPAIRED AT THE COMMITTEE I
/STALEMATE APPARENT IN GENEVA AND HAVE EVINCED DOUBTS THAT AN ACCEPTABLE RESULT COULD BE ACHIEVED IN THESE NEGOTIATIONS WITHIN A REASONABLE TIME. HOWEVER, RECENT DEVELOPMENTS IN THE INTERSESSIONAL WORK OF COMMITTEE I GIVE SOME HOPE, IF NOT PROMISE, THAT EARLY AND SATISFACTORY ACCOMMODATIONS CAN BE FOUND WHICH WILL MEET THE BASIC OBJECTIVES OF ALL INTERESTED NATIONS AND GROUPS OF NATIONS.

TWO INFORMAL MEETINGS OF COMMITTEE I REPRESENTATIVES WERE HELD DURING THE INTERSESSIONAL PERIOD WHICH PROVIDED AN OPPORTUNITY FOR A USEFUL EXCHANGE OF VIEWS ON THE MAJOR ISSUES IN THE DEEP SEABED NEGOTIATION AND ON THE SINGLE

NEGOTIATING TEXT. IN ADDITION, OUR REPRESENTATIVES HAVE BEEN CONSULTING WITH A NUMBER OF KEY FIGURES IN THE NEGOTIATIONS. IN THESE DISCUSSIONS WE DISCOVERED A GREATER WILLINGNESS ON THE PART OF SOME DEVELOPING COUNTRIES TO EXPLORE REASONABLE SOLUTIONS TO THE PROBLEMS IN COMMITTEE I. THERE WAS SOME RECOGNITION BY DEVELOPING COUNTRIES THAT THE SINGLE NEGOTIATING TEXT DOES NOT REFLECT THE INTERESTS OF BOTH INDUSTRIALIZED AND DEVELOPING COUNTRIES IN THE NEGOTIATIONS. IN HIS STATEMENT, MR. RATINER WILL ELABORATE FOR THE COMMITTEE THESE NEW DEVELOPMENTS.

THE NEXT SESSION OF THE LAW OF THE SEA CONFERENCE BEGINS IN NEW YORK THREE WEEKS FROM TODAY. THE IMMINENCE OF THE NEXT SESSION AND THE PRELIMINARY INDICATIONS THAT A NEW NEGOTIATING CLIMATE MAY EMERGE IN COMMITTEE I LEADS US TO THE CONCLUSION THAT WE SHOULD NOT SUPPORT ANY OCEAN MINING LEGISLATION AT THIS TIME.

I CAN ASSURE YOU, MR. CHAIRMAN, THAT THE QUESTION OF INTERIM LEGISLATION IN THE EVENT THAT THIS SESSION FAILS TO MOVE TOWARDS SATISFACTORY RESOLUTION OF THE MAJOR DISPUTES IN COMMITTEE I HAS A HIGH PRIORITY ON OUR AGENDA. WE WILL CONTINUE TO GIVE THE MATTER OUR SERIOUS CONSIDERATION AND HOPE TO CONSULT WITH YOU AND OTHER MEMBERS OF CONGRESS DURING THE COURSE OF THE NEGOTIATIONS TO SHARE OUR ASSESSMENT OF THE LIKELIHOOD OF CONCLUDING A SATISFACTORY TREATY.

THANK YOU, MR. CHAIRMAN.

TESTIMONY OF LEIGH S. RATINER
ADMINISTRATOR, OCEAN MINING ADMINISTRATION
DEPARTMENT OF THE INTERIOR
BEFORE THE
OCEANOGRAPHY SUBCOMMITTEE
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE
MONDAY, FEBRUARY 23, 1976

Mr. Chairman, It is always a pleasure to appear before this Committee, and I am appreciative of the opportunity you have provided today for the Administration to share with you its thinking on the desirability of interim ocean mining legislation.

As Under Secretary Maw has explained, we have not had adequate time to review in detail the new bill which you, Mr. Chairman, have recently introduced. On a variety of occasions, however, the Administration has provided comments on the technical aspects of H.R. 1270 and similar bills that have been before the Congress. I do not believe it is necessary at this time to summarize our objections to the approaches contained in these bills.

Last May, I testified before this Committee on the results of the Geneva session of the Conference in Committee I. At that time, the United States was greatly disappointed that the Single Negotiating Text introduced by the Chairman of Committee I at the end of the Geneva session did not reflect many of the results which had been reached in private negotiations on issues of importance to United States interests in the deep seabed. I described those

areas where we believed progress had been made in private consultations, but indicated that serious dispute remained on several of the most fundamental issues in the Committee I negotiation. Because of the apparent intransigence of the developing countries on the basic questions of State access to deep seabed minerals, the need for price and production controls and the structure and powers of the international machinery, we had grave reservations that a law of the sea treaty satisfactory to U.S. interests in the deep seabed could be concluded.

Following the Geneva session, the Interagency Task Force on the Law of the Sea conducted a comprehensive analysis of the Committee I Single Negotiating Text. We concluded that the draft text required extensive revision in order to protect basic U.S. requirements of guaranteed access for States and their nationals to deep seabed mineral resources, under reasonable terms and conditions and through an international organization with adequately circumscribed powers and decision-making procedures. In light of this review, we have also been carefully examining the need for and content of possible interim legislative measures for ocean mining.

Our assessment of the need for interim deep seabed legislation has been strongly affected by developments in the Committee I negotiation since the Geneva session of the LOS Conference. During the intersessional period, those

delegations most active in Committee I expressed an interest in continuing negotiations with a view towards advancing the Committee's work prior to the commencement of the next session. Thus, in November, and again in the first two weeks of February, informal meetings of Committee I were held in New York. In addition, extensive private consultations on deep seabed issues have been held with key leaders in the Committee.

The results of these consultations are by no means dramatic, but they do offer some hope that the more extreme positions of developing countries in Committee I could conceivably be modified at the next session of the Conference. If this recent tendency to moderate developing country demands in the negotiation were accelerated during the March session, I believe it could alter our previous assessment that an early and acceptable resolution of the major deep seabed issues is not possible. The evidence which might be interpreted as signs of emerging flexibility on the part of the developing country leadership can be characterized in the following manner:

--First, there was a new willingness to confront squarely many of the principal, most divisive issues in the Single Negotiating Text and to explore viable compromises acceptable to both the developing and developed countries. In the past, the developing countries had maintained extreme positions both privately and publicly on the basic access system, the question of economic implications and the powers

and decision-making procedures of the Authority. Their readiness to show flexibility on certain aspects of these key obstacles to progress in the negotiation may indicate that they are prepared to work towards an early settlement in Committee I. As we have repeatedly stated, many of the important details of the Single Negotiating Text can be expeditiously resolved, if there is the will to seek political accommodation.

--Second, there was a willingness to explore potential compromises in the context of formulating precise amendments to the Single Negotiating Text.

--Third, the Chairman of Committee I, Paul Engo, has devised a procedure for preparing on a personal basis revised draft articles attempting to reflect the main trends in these informal discussions. This procedure sharply contrasts with the preparation of the Single Negotiating Text, which did not reflect consultations.

Thus, the New York meeting just concluded resulted in the formulation by the Chairman of six new, revised articles for the Single Negotiating Text. With your permission, Mr. Chairman, I would like to submit these draft articles for the record.

Mr. Chairman, it is necessary to emphasize clearly at this juncture that these texts have no official status whatsoever. They are only the attempt of the Chairman to reflect the main themes emerging in the discussion on basic issues. Moreover, I do not in any way intend to give the impression that the U.S. finds these draft articles acceptable as final treaty provisions. We do not believe they are, not only because of their content, but also because of their inevitable dependence on a host of other important amendments which were not discussed in the New York meetings.

What these draft articles appear to represent is an attempt by some, although by no means all, of the members of the Group of 77 to remove from the Single Negotiating Text some of the more extreme elements of previous developing country positions. Whereas the original versions of these articles in the Single Negotiating Text manifested a one-sided and essentially biased approach to the issues, these new draft articles at least embody a more realistic view of potential area for compromise.

For example, the revised Article 22, which sets forth the basic access system for ocean mining now recognizes the right of States and private parties to undertake directly exploration and exploitation under the same basic terms and conditions applied to the Authority's operational arm, the Enterprise. Another revised text dealing with the general economic principles to be applied to ocean mining under the treaty, Article 9, now contains certain new approaches to protecting developing country producers from the economic effects of ocean mining and does not refer to the Authority's exercise of direct price and production controls. Given the highly tentative and informal nature of these draft articles, it would not appear necessary to analyze them in detail today.

It would in all candor be very difficult to predict with any confidence whether these first glimmerings of moderation on the part of the Group of 77 leadership and a readiness to expedite the Committee I negotiation will be borne out in the upcoming March session. At virtually any time in the next few months, the situation could change radically and prospects for a successful settlement could vanish.

The Group of 77 convenes at the beginning of March to develop its position for the Conference and will most

certainly review the Committee I intersessional work. A rejection of the results of the recent New York session which reflect an attempt by some to take into account the interests of the industrialized countries, as well as of the developing countries, would be a major set-back. It would be a signal that there is little hope for progress in the negotiation.

If the substantive negotiation is to be completed this year, significant progress in Committee I in resolving the chief obstacles impeding an overall settlement will have to be made early in the March session. Unless the basic political accommodation on the key outlines of the total package can be tied down rapidly to the satisfaction of both the developing and industrialized States, insufficient time would remain to negotiate the host of subsidiary issues in the Single Negotiating Text which will be determinative of the treaty's acceptability to the United States.

On the eve of the third substantive session of the Law of the Sea Conference, there appears to be a genuine recognition among many nations that 1976 is the final opportunity for serious negotiation. Whether a comprehensive law of the sea treaty is concluded will largely depend on the political will of the Conference participants.

The Administration will have to keep the question of the desirability of deep seabed mining legislation under constant review, particularly in light of what happens at the next session of the LOS Conference. The most recent developments in the Committee I negotiation reported to you today lead us to believe that we should not put forward the Administration position on legislation at this time. We would prefer to suspend the debate on whether or not there should be legislation if it is not possible to conclude an early and satisfactory resolution of the deep seabed negotiation. Instead, we intend to devote our efforts to pursuing the chances of success at the Conference in the next few months.

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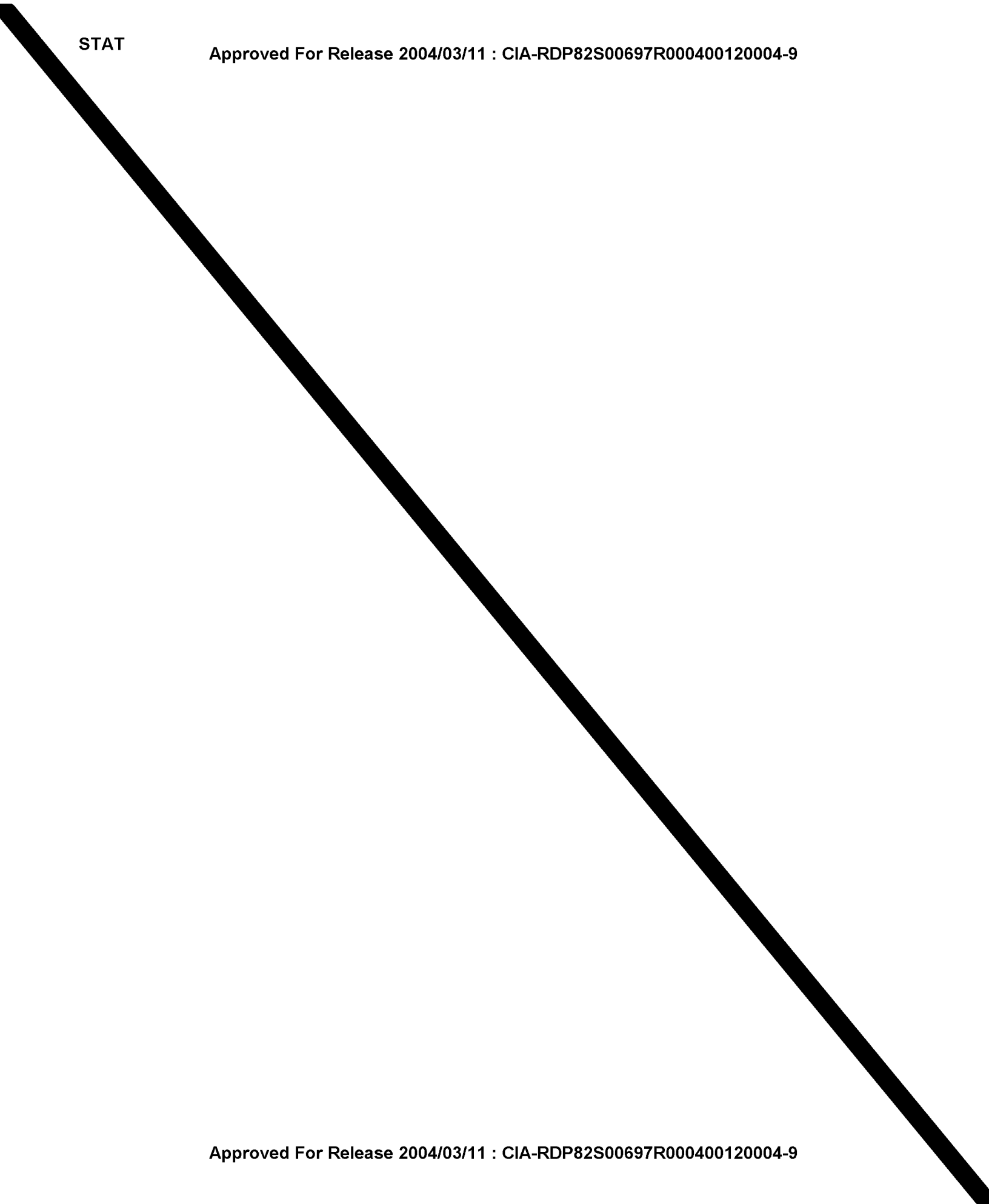

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