

Dalhousie University

International Ocean Institute

FACSIMILE TRANSMISSION

TO:

VALERIE FACEY

KINGSTON, JAMAICA

FAX:

00 | (809) 931 1301

FROM:

ELISABETH MANN BORGESE

C/O THIRD INSTITUTE OF OCEANOGRAPHY

INTERNATIONAL OCEAN INSTITUTE TRAINING PROGRAMME

XIAMEN, PEOPLE'S REPUBLIC OF CHINA

FAX:

86 592 236666 (HOLIDAY INN XIAMEN)

DATE:

NOVEMBER 26, 1992

Dear Valarie:

I don't have Don Mill's Fax number here. Could you please get in touch with him--or with the P.M. directly--and let them know that MALTA is going to announce its ratification of the Law of the Sea Convention on December 10. This is Number 54. We only need 6 more!

I have some hope of Mauritius and the Comoros as well as Angola and Mozambique. If Jamaica could convince a few Caribbean States to join now, on the occasion of this Tenth Anniversary, that would be splendid.

Elizabel

Love,

Pearson Institute, 1321 Edward Street, Halifax, Nova Scotia, Canada, B3H 3H5 Telephone: (902) 494-2034, Telex: 019 21 863 DALUNIVLIB, Fax: 902 494 1216

9 March 1993

Dr. Carl-August Fleischhauer The Legal Counsel United Nations Secretariat 1 U.N. Plaza New York, N.Y. 10017 USA

Dear Carl,

I just received a letter from Dr. Mohamed Hassan of the Third World Academy of Sciences, asking me to represent his organisation at the forthcoming U.N. Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. I will be glad to do so, but, at the same time I have to represent the International Ocean Institute. Life is complicated.

But, at the same time, while depressing, not to sy, scary, in most areas, it is really exciting right now in our own area, the Law of the Sea. Four more ratifications to go -- and they are sure to come: Sooner rather than later, because now comes the game of wanting to be in the group of the first sixty, or wanting to be the sixtieth. Thus the next 12 months will be quite challenging.

Of course they will be particularly challenging for you. It is indeed an awesome task to prepare that "action-oriented" document for the April consultations! The related problems literally haunt me day and night.

I am asking myself two questions: What are the elements and agreements of the last ten years' work and experience that are worth saving for the next phase? And: What is the best strategy to save them?

One has to take a bird's- eye view to answer the first question:

1. The Arusha Agreement and subsequent site allocations.

- 2. The Pioneer Regime, and in particular
 - (a) the training programme
 - (b) the exploration programme
 - (c) the understanding that there will be R&D in connection with the training and the exploration (explicitly stated in the exploration programme, but yet to be developed);
- 3. The universal recognition that there will be no mining for the next 15 years or so and that, therefore, the functions/activities of the Authority/Enterprise will be limited to exploration/scientific research, environmental protection; economic forecasting; development of human resources, and technology assessment/development.
- 4. The universal recognition that the Enterprise must function as a joint venture; a joint venture limited to the activities listed under (3) above (thus eliminating, for the time being, the problems of "financial terms of contracts," "technology transfer," and "production policies" on which nothing more is needed than an "agreement on pricriples for the future," which you already have);
- Cost-effectiveness;
- 6. Structure to correspond to functions. If the "functions" are indeed very similar to those of the Preparatory Commission and its Pioneer regime, so should be the structure! To continue, for the period beween now and the beginning of commercial mining, the structure of the Prepcom./Pioneer regime would have the following advantages:
 - (a) simplicity and cost-effectiveness;
 - (b) continuity and benefitting from accumulated experience;
 - (c) avoidance, for the time being (with "general principles for the future" forwarded) of the issues of composition and decision-making in the Council. The General Committee, which would become the Council, is tried and trusted!

¹Actually, the functions of the interim regime, after the coming into force of the Convention, will be a little broader. As one delegation pointed out during the last Consultations, there will be scientific research, the protection of the environoment and of human lives; the harmonisation of seabed activities and other seas uses; the disposal of archeological objects; but these functions need not alter the structure.

That leaves the question of the Review Conference, which, would have to take place before commercial mining starts, rather than after. This is one of the adjustments to reality we have to make. I do have some suggestions in my "discussion paper" which you have; but I believe we would be quite safe in proposing that that Conference should take place "15 years aafter the coming into force of the Convention" rather thasn "after the beginning of commercial mining."

2. Strategy

I see four elements which can be strategically used:

- (a) We now have the kind of pressure we need. With 56 ratifications, everybody knows that decisions can no longer be postponed.
- (b) During the last Consultations, the French Delegation repeated its proposal for a Prepcom-like interim regime.
- (c) The U.S. hostility is gone. I don't think we can couont on full U.S. participation, or accession, during the near future, but we have passed from a stage of malevolent negligence to one of benevolent negligence. The U.S. will join after the European Community and Japan.
- (d) There is, and there must be a linkage between the UNCED and the UNCLOS processes. Chapter 17 of Agendsa 21 is the link-pin. It is entirely based on our Convention. This linkage must be reflected somehow in institutional terms. We have a Commission on Sustainable Development, responsible for the implementation of Agenda 21. Where are the oceans? Where is the Law of the Sea? The Sustainable Development Commmission needs the Law of the Sea to implement Chapter 17. The Sustainable Development momentum could be used to advance the cause of the Convention.

Based on these considerations, I think one could use the French proposal as a trigger mechanism, so to speak. The goal should be to get the Pioneers on board: and that means, the European Community and Japan.

As it is, the French proposal is meager. It is restrictive. It offers nothing to the "South." It needs to be fleshed out; it needs to be made a little more generous. There a many useful things this interim regime could do, and if it does not do anything useful — useful both to developed and developing countries, useful for the international community; useful for the advancement of sustainable development — we should not have it at all, then it is not costeffective, no matter how little we may spend on it. Whatever we spend, is wasted.

I do think there are some elements of my discussion paper which could be usesd to flesh out the French proposal and offer something to the developing countries. The German (Thetis) five-year project for environmental impact assessment/technology development is just excellent! and links the interim authority to the sustainable-development process!

Enough! Already far too long. I was carried away.

Looking forward to seeing you in Jamaica,

Yours as ever,

Elisabeth Mann Borgese



Dalhousie University

International Ocean Institute



FAXED

FACSIMILE TRANSMISSION

To:

Dr. Carl-August Fleischhauer

FAX No:

212 963 6430

From:

Elisabeth Mann Borgese

FAX No.:

1 902 868 2455

Date:

April 11, 1993

Subject:

Law of the Sea

6 pages, including cover page



International Ocean Institute



Ostersonntag

(Schreiben ist von den Klängen der Matthäus Passion begleitet!)

Lieber Gust/,

Here are some thoughts that crossed my mind, and to which I would love to have your reactions. Perhaps we can talk about these things when we meet.

Of course I have not yet seen your paper which I understand is ready, and I know Bhatwat Singh will fax it to me as soon as it is available.

I.

If I understood correctly, the Give-and-Take, in one scenario, might have the following components:

- 1. States which have not yet ratified the Convention may do so with some form of reservation with regard to Part XI.
- 2. In return: they must assume an obligation to cooperate fully with the "nucleus Authority" and the "nucleus enterprise;" they must recognize the principle of the common heritage of mankind, and they must cooperate in good faith in a Review Conference fifteen years down the road.
- 3. All this to be embodied in a GA Resolution.
- 4. No protocol to be ratified and to supersede the Convention
- 5. No changes in Part XI now.

Is that the gist of the most likely scenario?

Jesus (Dietrich Fischer-Diskau), in his closing address in Jamaica, referred to "a framework agreement") that should be arrived at through the Consultation.

Let me try to see how this one would balance.

Point 1: a Triple plus for the North: this is really what they always wanted; a triple minus for the South, which will have great difficulties in accepting it.

Points 3,4. and 5, can count for three pluses for the South, and will be hard to accept for the North.

Point 2: Ergo: the interim regime must offer something constructive and positive. both for the South and for the North. Evidently, the training programme as adopted, and already being implemented; the joint exploration adopted programme, starting in 1994 -- these are tangible benefits for the to be implemented South, without imposing undue burdens on the North. Joint technology development (rather than old-fashioned "technology transfer) could be highly beneficial both to the South and the North if it were to be carried out in connection with a desirable activity such as the 5-year environmental impact study proposed by Thetis.

I do think it could work out even though it may be extremely hard to negotiate.

II.

I see a sort of inverse relationship between the magnitude of the kind of "reservation" that may be permitted and the comprehensiveness of the interim regime to be established.

Take two extremes:

- (a) Part XI remains valid and comes into force. The "reservation" can apply only to
 - . anything that pertains to Production policy (since no production takes place) Including all of Annex III,
 - . anything that pertains to financing, in Part XI as well as in Annex 4.

This scenario effectively eliminates almost all of the disputed points; but even a mini-Authority implemented on this basis would have functions that include scientific research, protection of the marine environment, etc. This would not even have to be explicitly stated. We would simply implement the Convention.

(b) The "reservation" applies to the whole Part XI which is, so to speak, suspended. In this case, I think the functions of the interim regime would have to be defined much more precisely, in the applicable terms of the Convention, because otherwise we violate the spirit of the Convention and there is a gap between the Convention and the interim regime: a gap that cannot be justified. The Authority is more than a nodule mining business. It is the embodiment of the principle of the Common Heritage of Mankind, and it must remain that.

III.

The more like the Prepcom the Interim Authority is going to be, the better: for three reasons:

1. Financial

It is indeed most fortunate that the Prepcom has decided to "make provision every year for the United Nations servicing a two-week annual session of the Preparatory until the entry into force of the Convention..." and that "the General Committee, acting on behalf of the Preparatory Commission as its executive organ of resolution II, will meet for two or three days annually to for the implementation of resolution II and to continue the consider matters related to the implementation of the registered of the implementation of the obligations pioneer monitoring investors."

With this, and the Pioneer regime, and OALOS in place, we really have all we need, and to request that the UN continue to service this system even after the coming into force of the Convention, for the interim period up until the beginning of commercial mining, would be as simple as it would be logical. The simpler and the more logical, the more the "interim regime" resembles the present Prepcom regime.

I do believe it would be a very good thing if the United Nations -- which has an enormous stake in the success of the Interim Authority -- could continue to pay. It would remove the fears of many developing countries who previously had been told they would have to pay huge amounts of money if the Convention came into force (certainly one of the reasons for the slowness of the ratification process). And it really should not cost the "North" much either. That little bit of money (some four million dollars, I think!) could come out of the "restructuring dividend"-- i.e. from moneys saved through the current effort of rationalising and restructuring the system.

The interest of the U.N. in the success of the UNCLOS process is enormous. I still believe, this is the break-through: Here we can begin to transform the system and bring it into the next century.

2. The use of tried and trusted experts

the group of experts on the pioneer mining sites; the training panel. These of course must continue -- and they should serve as the interim technical commissions of the Council (General Committee).

3. The familiarity of the whole undertaking

Nothing new, really, nothing scary. Also, the question of the Headquarters could be postponed: We stay where we are in Kingston -- and the question of whether to be in Montego Bay or Kingston can wait for another 15-20 years! If, instead, we appear to be creating something new, an Authority that did not exist until now, there will be lots of long discussions -- within Jamaica, between the pro-Montego Bay and the pro-Kingston lobbies -- and between the Government of Jamaica and the U.N., because of the high cost of building a new facility!

I have tried to draw the attention of my Third-World friends to the importance of your Consultations at this point in time. I do hope we get better representation and participation from the South. The Foreign Minister of the Seychelles has indicated that she might attend; and I am attaching a fax just received from the Minister Advisor to the Crown Prince of Qatar. I am also trying hard to get another couple of ratifications before April 26, to "send the right signal" -- but this may be too

ambitious.

Looking forward to seeing you,

Yours as ever,

Elrally

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Lisbon, May 6, 1993

Dr. Carl-August Fleischhauer FAX No. 1 212 963 6430 Please forward

.

Sely lieker Gustel

I met with our mutual good friend Alexander Yankov here, and, of course, you can imagine what we talked about... Alexander liked what I proposed to you as an "emergency option" in my latest fax -- which, simply, is the best solution; and he had some interesting legal arguments in favour of this solution. I think it would be wonderful if you had an occasion to discuss this matter with him in Geneva!

With all good wishes,

Yours as ever.

Elisabeth Mann Borgese

P.S. in case my last fax did not reach you: The "emergency option" referred to was a joint GA/Prepcom Resolution deciding

- . to extend the mandate of the Preparatory Commission for the period from the coming into force of the Convention to the beginning of commercial sea-bed mining;
- to empower the Preparatory Commission to exercise all the initial functions of the Authority and the Enterprise in an evolutionary manner; [note: it has been doing this for some time!]
- to call, in accordance with the Convention, a Review Conference 15 years from the coming into force of the Convention or at the time when Commercial seabed mining is about to begin, whichever comes first.

States ratifying or acceding to the Convention may make a declaration that they reserve their right, in accordance with the Convention, to denounce the Convention if they are not satisfied with the results of the Review Conference.

I think an "emergency option," to fall back on, might be important in case we are overtaken by the sixtieth ratification. I fear it is most unlikely that States participating in the Consultations will agree on a new Authority and a new Enterprise before the end of this year and before we lose your leadership!

UNITED NATIONS



NATIONS UNIES 1268-2

PORTAL ADDRESS AUREDES POSIALE UNITED NATIONS, NY 10017 TABLE ADDRESS -ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE

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4 June 1993

sir,

At the informal consultations of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the UN Convention on the Law of the Sea held on 27 and 28 April last, it was felt that the next round of consultations should be of a longer duration. It was therefore decided that the next meeting will take place in New York from Monday, 2 August to Friday, 6 August 1993. It was also agreed that the first meeting should commence at 3 p.m. on Monday in order to give delegations an opportunity to meet in the morning.

I enclose herewith the Information Note prepared for this meeting. This Information Note is an updated version of the previous Note reflecting the interventions made during the last round of consultations.

I would be grateful for your early confirmation of attendance.

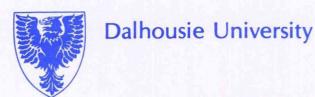
Please accept, Sir, the assurances of my highest consideration.

Lat. 40 Juil 1

Carl-August Fleischhauer Under-Secretary-General for Legal Affairs The Legal Counsel

H.E. Mr. Detley Graf zu Rantzau Permanent Regiseserstative of Germany to the United Nations New York

H. Verke hoff a. R. 1.2. I looke verde in Luitije 142 van en hur gujaspoolen





International Ocean Institute



August 8, 1993

Dr. Carl-August Fleischhauer The Legal Counsel FAX No. 963 6430

Sehr lieber Gustel,

Du hast es wieder so gut gemacht, wie Du es, unter den Umständen, machen konntest, aber die Lage ist schwer, sehr schwer.

Nichts ist dümmer als sich auf eine einzige Idee zu versteifan, und ich will es gewiss nicht tun. Nichts würde mich mehr freuen als ein Durchbruch zu einem Einvernehmem auf der Linie der Information Note, obwohl mir die Idee, die Konvention jetzt zu ändern noch immer völlig gegen den Strich geht.

Um aber alle Möglichkeiten im Auge zu behalten, möchte ich einen Zweifel äussern und eine Verbesserung vorschlagen:

CHAMBER VOTING

We heard a lot of good critical comments. One fundamental weakness of the system was more implied than expressed by Iceland, and that concerns "Chamber (v)." Here we have familiar Convention language which was meaningful in the context of Article 161 (a) dealing with the Council as a whole with the purpose of ensuring a fair regionl balance in the Council as a whole. If, for the purpose of decision making, we now divide the Council into "chambers"—what sense does it make to ensure a fair regional balance in one of five chambers??? It seems to me, the original author of this proposal just has not thought it through. The same deficiency is to be found in the not yet tabled "Nonpaper," "Resolution of Member States of the United Nations." The "Boat Paper," it seems, discovered the incongruity, and, in a way, is more logical, but it definitely upsets the balance between interest-group and regional representation in favour of the interest groups. Regional representation has no role to play in decision making.

I am afraid the whole idea is not very good, and no matter what you do about it, the fact is that, if you have a chamber system, you cannot maintain the balance between interest

group and regional representation that had been so painstakingly established by the Convention. The only possibility would be to have only three chambers, representing the three interest groups, and then elect 18 or 24 members on a regional basis, and distribute them in the three chambers in such a way that there is a fair regional distribution of seats in each chamber. But that really does not make any sense either, because it dilutes the interest groups. There simply is no way. If you have "chambers" for decision-making, you can have either interest groups or regional groups as a basis, not both.

My second point concerns

THE INITIAL FUNCTIONS OF THE ENTERPRISE.

I fully share the opinions expressed, that an "Enterprise," limited in its functions to monitoring and following trends, etc., will be totally unable to "evolve" from the pre-operational to the operational stage. The Enterprise, such as it is conceived here is a total waste, simply duplicating what OALOS can do without extra costs. A total waste, further discrediting the whole concept.

What is particularly tragic is that there is no linkage whatever between, on the one hand, what is really going on (or should, starting this year!), i.e., the joint exploration plan of the Pioneer Investors, the Training Programme of the Pioneer Investors, and the testing and upgrading of technology in connection with the Exploration programme, --and, on the other hand, this poor, impotent "Enterprise." The only real pre-operational function of the Enterprise should be a joint venture with the Pioneers for the conduct of their exploration of the mine site, including R&D and development of human resources. If the Enterprise is left out of that, it is left out of everything, and it is useless. If it is included in this process, it is a real Enterprise in the pre-operational, pre-investment phase of activities, and this joint venture will provide a realistic starting point for the joint venture described on p.19 - which otherwise is not likely to come about. The Pioneer joint venture is already there: We do not have to invent it. Why not use it and build on it?

I do not have in mind the kind of white-elephant Enterprise our Australian colleague described so eloquently: the kind of State Enterprise abhorred by the Reaganites and Thatcherites amongst us. What I have in mind is a legal/institutional mechanism for the genuine internationalisation of deep-sea research, development and production, enabling smaller and less developed countries to participate and benefit from the possibility of joint technology

development.

So much for that.

But to rewrite Part XI simply is not a promising approach. I fully share the preoccupations expressed so eloquently by Ambassador Djalal. It will take years to agree on a new Part XI, and in the meantime...In another year we will see the expansion of national jurisdiction to 350 n.miles to protect straddling and highly migratory stocks...

Thus the question of bringing the Convention into force is assuming a new urgency.

We know that there are at least six States who are ready to go. But they are waiting. They were awaiting the outcome of these latest Consultations. They will be awaiting the outcome of the Consultations in November, those of next year, those of the year after....UNLESS they get a clear signal from the Secretary General to go ahead and complete this agonizing process.

Is there anything we can do to convince the Secretary-General to act in this direction? The States in question, I think, would be particularly receptive to his advice.. 4-6 ratifications WILL GIVE US ONE YEAR TO COME UP WITH A REASONABLE AND "UNIVERSALLY ACCEPTABLE" INTERIM REGIME.

The Secretary-General wants this Convention to come into force. At this point, his initiative might be of decisive importance. Is there anything you can do? Is there anything we can do? A petition signed by important people? An NGO surge? Whatever. We must get it moving.

And now to my idée, pas telment fixe.

I talked to a number of the key people, among the G77. I also gave them my "personal letter." Djalal wants to get the 77 to endorse this approach. The time is ripe. Do we have to wait for the initiative of the G77? Even though many of them would be ready to join, they, as a group, are slow to take an initiative, for obvious reasons. Can we put out another "nonpaper" somehow? I do believe this alternative ought to be put forward at the beginning of the next session.

Ich sitze hier mit meinem computer im Newark Airport. Dies sind meine Gedanken, von den letzten Tagen angeregt.

Ich weiss, Du hast andere, entsetzlich wichtige Sorgen, und der Tag hat nun einmal nur 24 Stunden, aber was ich da in meinem "Letter to my colleagues" am Schluss zu sagen versucht habe, bleibt gültig: Diese Convention ist weit wichtiger als die Meere, die wahrhaftig an sich wichtig genug sind. Wenn wir diese Gelegenheit verpassen, verlieren wir viel, was nicht wieder einzuholen ist. Und so, wie die Dinge nun laufen, verlieren wir's.

Ich habe noch anderes, die Decade for International Law betreffend, auf dem Tapet, für den Abend des 30. August. Vergiss das Datum nicht! Ich freue mich darauf, wie immer.

Ecrahell

Stets Deine.

FAX

Dr. Cail-August Fleischhauer The Legal Counsel To:

Fax Nn. 1212 963 6430

From: Elisabeth Mann Bargese Fax Nr: 81-3-3586 4706

Date: 13 September 1993.

Gustel, Könntest Du so sehr lieb sein, diese message weiterguleiten? but habe die direkte Numer nicht!

you have wieder hold versucht, Dich augurufu, 1st aba his her Micht gelangen. Ich werde & Mhanse

Hier alles allerbesteus. Viele neue Frande. Ville nene turen geoffnet.

Auf hald. Stets Deine Ehrauly



Dalhousie University

International Ocean Institute



FAXED

FACSIMILE TRANSMISSION

To:

H.E. Dr. Carl-August Fleischhauer

FAX No:

212 963 6430

From:

Elisabeth Mann Borgese

FAX No.:

1 902 868 2455

Date:

October 7, 1993

Subject:

New York

Sehr lieber Gustel,

Du bist sehr schwer zu erreichen, was verständlich ist. Oder bist Du erzürnt, vielleicht wegen des Faxes an den SG?

Ich bin gerade aus Indien zurück, und muss nun eine entsetzliche Reise vorbereiten: Italien (Assisi un Rom)-Japan-China-Indien-New York-Fiji-Geneva-Milano-Hannover-Halifax. Mir wird schwindlich, wenn ich daran denke.

Ich hoffe sehr sehr, dass in New York noch einer von unseren schönen Abenden stattfinden kann. An sich komme ich in New York an 8 November an und bleibe bis zum 13. Aber ich könnte mir denken, dass Du während dieses meetings einfach keine Zeit hast. Daher möchte ich gern noch eine Alterntive voschlagen: Ich könnte in New York auf dem Wege nach Assisi halt machen, und wäre dann am Freitag Oktober 14 mittags oder abends (oder nachmittags) frei; aber mir kommt vor, Freitag passt Dir auch nicht gut. Lass mich wissen, so oder so.

Ich solltle auch Gus Speth sehen, und schlage ihm die selben Daten vor.

Alles Beste, und hoffentlich auf bald,

Stets Deine

1321 Edward Street, Halifax, Nova Scotia, Canada B3H 3H5
Telephone: (902)494-1737, Fax: (902)494-2034, Telex: 019 21863 DALUNIV

Convention on the L.D.S.



Dalhousie University

International Ocean Institute



FAXED

FACSIMILE TRANSMISSION

To:

Mr. Patrik Garnier

FAX No:

33 1 47 04 45 23

From:

Elisabeth Mann Borgese

FAX No.:

1 902 868 2455

Date:

June 18, 1993

Subject:

New York Times

Dear Mr. Garnier,

Here is the piece. I gave it to Betrand in Madrid. I really only ocnsidered it as as first draft and wanted his suggestions as to how to improve it for the purpose. He promised to fax his reactions, but he never did.

So I guess now you will have to send it as it is. The length is exactly right: 1,049 words.

The figure for the number of tourists, on the first page, may be as little too high, considering the Recession. I cannot check it until next week. Perhaps you could make a phone call to a tourist office and find out --or else draw the attention of the Times Editor to it, and they should be able to check it.

Do let me know how things are proceeding.

All the best,

Sincerely,

Elous Hem Borgere

Dalhousie University

International Ocean Institute



Summer is upon us, and, with it, the huge annual Völkerwanderung f to the seashore.

from the cities

Beaches have been cleaned, bathing establishments refurbished. The shutters are removed from the windows of the old Grand Hotel; carpets aired and sunned to rid them of winter muff; stores are filled with colourful ware; yachts emerge from storage and glide into the Marina; bars and night clubs open; and music resounds.

The tourists, this year, are expected to be about half a billion -- most of them heading for the beaches.

As they surf and sail, bathe and hike and dine and dance, how many of them think of the oceans as our "last frontier," a vast "aquitory" now being penetrated industrial revolution the way "territories" were, during the past 200 years? A rich source of food and fibre, of metals and minerals and renewable energy? How many think of the stress inflicted even on the vastest ocean by the sprawling metropoles and the pressure of growing populations along its shores? Are they aware that 60 percent of the population of our crowded planet now live within 60 miles from the sea shore, oozing toxic wastes and untreated sewerage into the sea? Are they aware that they themselves, the tourists, are a major burden on the environment, like the Mediterranean: around enclosed or semi-enclosed seas. that they resources, occupy space, demand facilities like Grand Beach Hotels overconsume and Yacht Marinas that may entail silting and erosion altering currents and that they generate disproportionate amounts of garbage and coastline: And yet, they depend on a clean environment. How many of them have thought about doing something to save our seas?

Gazing out on the horizon, where, so it seems, the sky meets the sea, how many realize that it is in this zone, where the atmosphere interacts with the sea water, that the world's climate is largely determined, through processes which contemporary science only partly understands?

Now the transistor blares the latest news into the ears of our comfortably resting tourists: the horrors of Bosnia or Somalia; the desperate attempts of the United Nations to find new solutions for the problems of this world which instead appears to be relapsing into the dark recesses of the past. The thought that it is here in the oceans that a new world order, a new system of governance for the 21st century, is being born, would come as an outright shock.

And yet, this may well be the case. For twenty-five years now the international community has been elaborating a new Law of the Sea: a Convention covering all major uses of the seas and oceans; a document so innovative that its adoption amounts to a peaceful revolution; a document that has been called a Constitution for the Oceans that may be presaging a Constitution for the World.

The historic significance of the Convention could be summarized under the following headings:

- . the most radical redistribution of ocean space through peaceful change, bringing about one third of ocean space under some form of national jurisdiction;
- . the replacement of a system of laissez-faire, threatening the world community with the extinction of living resources and the pollution of ocean space, with a system of management;
- the introduction of the principle of the Common Heritage of Mankind into international law, pointing in the direction of a new economic system transcending both the market and the centrally planned economic orders and integrating environment and development concerns into sustainable development;
- the recognition that "the problems of ocean space are closely interrelated and need to be considered as a whole, giving rise to "integrated coastal and marine management" with all its institutional implications, national, regional, global;
- . the reservation for peaceful purposes of the largest part of our planet: a concept to be elaborated during the coming decades;
- . the most comprehensive, binding and enforceable international environmental law;
- the most comprehensive, binding and enforceable system of peaceful settlement of disputes which, in the twenty-first century, might become the pattern for dispute settlement in the United Nations as a whole.

This Convention was signed, between 1982 and 1984, by 159 States and entities and has now been ratified by 56 States. Sixty ratifications are required for the Convention to come into force. It is expected that this number will be reached within

the next few months. Even before coming into force, the Convention great influence on ocean affairs. It has triggered changes in national it has given rise to infrastructure in many countries; legislation and institutional regional cooperation and development; it has strongly influenced decisions by the International Court of Justice. The coming into force of this Convention is of crucial importance for the implementation of the decisions adopted in Rio last year. It is basic for the on Environment and Development of sustainable development in general and the institutional changes implementation this concept introduces in the United Nations system as a whole.

countries had difficulties with one The United States, and some other industrialized dealing with ocean mining in the international seabed part of the Convention, Although most industrialized States have signed the Convention, they have not yet ratified it. During this last decade, however, the reasons for their objections by dramatic changes in the world situation as well as by the established as an integral part of the excellent work of the Preparatory Commission Convention system (in which all industrialized States, except the United States, are actively participating), and the untiring efforts of the Secretary-General of the United Nations to bring the Convention into force and have it universally accepted --efforts in which the United States now fully participates.

When the tourist flood ebbs back to the cities and the vacation mood yields to the spirit of concerned citizenship, let us all think about it. The time has come. Here is a new beginning. Let each one of us use the little influence he/she may have to get the job done, to have this Convention ratified. Is there not some poetic or immanent justice in the thought that, just as life on earth arose from the oceans, so a new world order is born there, in the ocean which has filled our summer with beauty and inspiration?

Elirahu Maun Bongere



Dalhousie University

International Ocean Institute





FACSIMILE TRANSMISSION

To:

Dr. Mate Granić

Minister for Foreign Affairs

FAX No:

38 41 451 795

From:

Elisabeth Mann Borgese

FAX No.: 1 902 868 2455

Date:

September 30, 1993

Subject: Law of the Sea

Mr. Minister.

Permit me to bring to your attention a matter which may not have a high priority on your very busy agenda, but which is actually quite acute, of very great importance to the progressive development of international law and the promotion of peace and security and which may offer to your country benefits not otherwise attainable.

I would like to outline, quite succinctly, the importance of the 1982 Convention on the Law of the Sea in general terms; then I would point out its special importance to Croatia; and finally I would like to indicate the critical situation in which the Convention finds itself today, and propose a strategy to come to a general agreement which we now urgently need.

I.

The importance of this Convention, for peace, peaceful cooperation, peaceful settlement of disputes, and as the lead sector of peaceful change, cannot be overrated.

As the Secretary-General of the United Nations said in 1982, when the Convention was opened for signature, it is the biggest achievement of the international community since the adoption of the United Nations Charter itself. The Secretary-General also said, "This Convention is like

a breath of fresh air at a time of serious crisis in international co-operation and of decline in the use of international machinery for the solution of world problems." He pointed out that through this Convention, "International Law is irrevocably transformed.

Consisting of 320 Articles and 9 technical annexes, and covering all major uses of the seas and oceans and their protection, it has been rightly called "a constitution for the oceans" (covering three quarters of the surface of our planet), containing the seed for a "constitution for the world. Based on two fundamental principles -- (1) that there is an "area," containing rich mineral resources, which has been declared to be the Common Heritage of Mankind, with all its legal and economic implications (adumbrated in the Convention, but to be developed further); (2) that the problems of ocean space are closely interrelated and need to be considered as a whole -- with all its institutional implications of vertical and horizontal integration -- the Convention is importance for implementation of crucial the everything that was decided at UNCED. The UNCED and the UNCLOS process now evolve together and have already started to impact on the restructuring of the United Nations.

The Law of the Sea Convention contains the only existing comprehensive, (covering pollution from land, atmosphere as well as the sea) binding, enforceable international environmental law.

The Law of the Sea Convention is the only existing legal instrument that effectively integrates environmental and developmental concerns.

The Law of the Sea Convention is the only existing legal instrument that provides for mandatory, binding, peaceful settlement of disputes.

The Law of the Sea Convention has effected the most radical peaceful redistribution of ocean space. It has replaced a system of laissez-faire (destructive of resources and environment) with a system of management.

It advances regional cooperation, both South-South and North South (as well, of course as East-West); it offers the most advanced framework for international cooperation in science and technology (and technology transfer); it reserves not only the international sea-bed, but ocean space as a whole (beyond the 12-mile limit of the territorial sea) for peaceful purposes -- a concept that will have to be elaborated during the next decades.

II.

- Croatia has a boundary delimitation conflict with (a) its neighbour Slovenia. The unsettled status of this conflict has severe economic consequences. As Parties to the Convention, both States could benefit from the elaborate dispute settlement system established by the Convention. Pending a final decision both States might, in accordance with Articles 74 and 83, "in a spirit of understanding and co-operation, make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement." Such provisional arrangements could lead to the establishment of a permanent joint development zone which might be beneficial to both countries. This is not to say that a development zone is the only solution. It is merely to illustrate how the Convention can assist States Parties in the constructive solution of boundary delimitation problems.
- (b) Considering the hydrology of the Mediterranean as a whole and of the Adriatic in particular, Croatia certainly must have some concern about the pollution of its coastal waters and the effects on fish stocks, aquaculture installations, and human health. There is no doubt that these problems, and any litigations that might arise therefrom, can best be settled in accordance with the provisions of the Convention which also provides the legal framework, including enforcement measures, for the implementation of Chapter 17 of Agenda 21 and of the Mediterranean Action Plan.

- (c) Croatia most certainly could benefit from the Convention's provisions for scientific and technological cooperation, both on a regional and global basis, to upgrade its marine technology and broaden its export markets through joint ventures.
- (d) As a country in the process of widening its participation in the international community, the early ratification of this Convention would give Croatia a great deal of visibility and strengthen its influence in world affairs.

III.

The Convention now has been ratified by 56 States. It is a foregone conclusion that the remaining four instruments of ratification will be deposited before the end of the current session of the General Assembly. Honduras and Costa Rica, and two Caribbean States are ready. Thus the Convention will enter into force before the end of 1994. It is well known, however, that, with the exception of Iceland, the ratifying States are all developing countries. If the industrialised countries, including the major maritime States, were to remain outside the Convention regime, this regime would be ineffective and bound to disintegrate. The problems of the ocean are indeed closely interrelated and need to be considered as a whole, and this requires the participation of all States, whether coastal or land-locked, developed or developing.

As is well known, the only obstacle in the way of universal acceptance of the Convention is Part XI with its Annexes III and IV.

Three years ago, the Undersecretary-General of the United Nations took the initiative of instituting a "dialogue" among a restricted number States, "to make the Convention universally acceptable," by rewriting Part XI and having a new text adopted in the form of a protocol. While the goal of "universal acceptance" was undoubtedly praiseworthy, the method was unacceptable in every way. To amend a Convention which has already been ratified by

numerous States but is not yet in force, is in conflict with international law. The dialogue has dragged on for three years without tangible results.

In the meantime, however, the Convention is coming into force, and there is no time to waste on an approach which has proven to be unproductive and which discussions without end. We have twelve months between the time of the sixtieth ratification and the coming into force of the Convention. It is during this time that a solution must be found, unless we want the international community to split into two parts over the Convention, the North pitted against the South, a situation which can only generate further, chaotic expansions of national claims, uninhibited exhaustion of living resources and pollution of the marine environment, and a quarter of a century of intensive and constructive work by the international community to create a new order for the world ocean, gone to waste. And all this over issues, related to commercial nodule mining -- which do not exist today, and we do not know when and how and where they will arise in the future.

IV.

Some "friends of the Convention" -- including myself, have been working for quite a while on a "fall-back position," an "emergency option" to save the integrity and the future of the Convention and yet to get a general consensus and wide-spread ratification now.

Our proposal is quite simple: Leave the Convention the way it is. Do not try to amend it at this time. Any such attempt is doomed to failure. Let us instead agree to postpone this issue and to solve it when the time comes. Make instead the best possible use of what we have already achieved to cope with the issues we have to deal with today and tomorrow.

We have the Preparatory Commission with its Pioneer regime. It has worked quite well. It can manage the activities conducted today and tomorrow: Exploration, development of human resources; technology development.

Our proposal, elaborated in the attached brief document is

- . to extend the mandate of the Preparatory Commission;
- . to authorize the Preparatory Commission to exercise all the initial functions of the Authority and the Enterprise in an evolutionary manner;
- . to convene a Review Conference at the time when commercial mining is about to begin, or fifteen years after the coming into force of the Convention.

The costs of the Prepcom would be carried, as heretofore, by the United Nations, and no extra costs would accrue to ratifying States. Ratifying States may make a declaration that they will denounce the Convention if they are not satisfied with the results of the Review Conference.

This is not an exception, which is not permitted under the Convention. It is a Declaration which is legitimate. Yet it clearly signifies that the State making this Declaration does not feel bound by all the articles of Part XI of the Convention as they now stand and whose implementation, due to the factual situation that there is no commercial seabed mining at this time, is postponed until after the Review Conference. This should give satisfaction to the industrialised States and enable them to ratify.

At the same time, the integrity of the Convention is assured. There is no tampering with the text, no opening of any Pandora's box. There are precedents in international law for the gradual implementation of Conventions.

This is an interim solution which does not cost anybody anything. Nobody has to give up anything. There is already general agreement that the Pioneer regime has to be continued after the coming into force of the Convention. It is, furthermore, a solution which allows development and evolution and offers new opportunities for international cooperation in the development of deep-

sea technology, exploration, environmental testing, and development of human resources.

An increasing number of Delegations are reacting quite favourably to this proposal. We are discussing it both with developing and industrialized countries. The proposal will be tabled on November 8 this year.

I would be most grateful if you could study the proposal and, if possible, support it. It also would be a great thing for Croatia and for the international community, if Croatia could ratify the Convention still among the first group, if this were technically possible, before November 8. Given that the former Yugoslavia had already ratified, the succession to this ratification should be a relatively simple process. The more ratifications we can gather before November 8 (beginning of the next round of the Secretary-General's Consultations), the better the conditions for speedy and conclusive negotiations.

I apologize for the length of this letter, but, as pointed out, this matter has become urgent now. I would be most happy to discuss it with you personally --perhaps on the occasion of my next trip to Europe in October, if you could find half an hour for me.

With all good wishes,

Respectfully yours,

Elisabeth Mann Borgese Professor



Dalhousie University

International Ocean Institute



FAXED

FACSIMILE TRANSMISSION

To:

Dr. Mate Grani c

Minister for Foreign Affairs

FAX No:

38 41 451 795

From: Elisabeth Mann Borgese FAX No.: 1 902 868 2455

Date: October 4, 1993

Subject: Law of the Sea

Mr. Minister,

Permit me to bring to your attention a matter which may not have a high priority on your very busy agenda, but which is actually quite acute, of very great importance to the progressive development of international law and the promotion of peace and security and which may offer to your country benefits not otherwise attainable.

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With all good wishes,

Respectfully yours,

Elisabeth Mann Borgese

Professor



Dalhousie University

International Ocean Institute



FAXED

FACSIMILE TRANSMISSION

To:

Dr. Mate Granic

Deputy Prime Minister and

Minister for Foreign Affairs

FAX No:

385 41 42 75 94

From:

Elisabeth Mann Borgese

FAX No.:

1 902 868 2455

Date:

October 16, 1993

Subject:

Law of the Sea

Your Excellency,

Thank you for your positive letter of October 12.

The first date that I have open is December 4-6. I would be coming from Hannover where the annual meeting of the Club of Rome ends on December 3. It would be wonderful if I could see you at that time.

It would have been so useful to get together before November 8, when the Secretary-General's Consultations are starting. Unfortunately this is impossible: I am leaving tomorrow for Italy, Japan, China, and India.

The question of the Interim Regime is becoming very urgent. We have now 59 ratifications, and it is quite likely that we have more than the required 60 by the time these consultations start. I am convinced that the Interim Regime proposal is the only one on which we can reach an agreement, let us say, between now and January when Dr. Fleischhauer intends to have the last of the Consultations directed by him. To have the agreement completed in January, we must start the discussion now. After January, there is the serious danger that things will fall apart.

With all good wishes,

Yours sincerely,

Eliang Man Corga

1226 Lemarchant Street, Halifax, N.S., Canada B3H 3P7
Telephone: (902)494-1737, Fax: (902)494-2034, Telex: 019 21863 DALUNIV



REPUBLIC OF CROATIA MINISTRY OF FOREIGN AFFAIRS 41000-ZAGREB, Visoka ulica 22 Phone: (041) 44 30 12 — Fax: (041) 42 75 94



Zagreb, October 12, 1993

Dear Ms. Borgese,

I quite agree with you on the significance of international law and promotion of peace and security in Europe, especially in the Balkans.

As a coastal state Croatia is interested in commercial exploitation and protection of marine resources, and thereby in the implementation of the Convention on the Law of the Sea (1982).

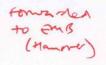
We shall be very pleased to discuss your proposal on establishment of an interim regime from the coming into force of the Convention to the time when commercial seabed mining becomes ecologically and economically feasible.

My assistant and associates in charge of international organizations will be delighted to discuss the matter with you during your European tour.

Kindly advise us at your earliest convenience on the timing of your visit. Depending on our respective schedules, I shall be glad to meet you.

Yours sincerely,

Dr. Mate Granic Deputy Prime Minister and Minister for Foreign Affairs



RECEIVED NOV 3 0 1993

Zagreb, November 9, 1993

COPY

Dear Ms. Borgese,

Regretfully we have not had an opportunity to discuss your proposal for the Interim Regime prior to the General Assembly consultations.

Please let us know about the date of your arrival and, depending on contingencies, I shall be glad to meet you.

Yours sincerely,

Dr. Mate Granić

Deputy Prime Minister and Minister for Foreign Affairs





FACSIMILE TRANSMISSION

To:

H.E. Dr. Mate Granić

FAX No:

385 41 42 75 94

From:

Elisabeth Mann Borgese

FAX No.:

1 902 868 2455

Date:

December 1, 1993

Subject: My visit to Croatia

Dear Dr. Granić:

First of all, let me apologize profoundly for being so late in answering your kind invitation. The fact is, I have been travelling incessantly during these last six weeks -- including two trips to India, two to Japan, besides, China, Fiji, New York, Geneva, Italy, etc.

Furthermore, I tried to coordinate my visit to Croatia with one to Slovenia, and, for some technical reasons, this has not worked out.

I therefore propose to postpone my visit to Zagreb to next February.

I do this reluctantly, because the need to discuss the interim regime has become even more urgent. As you know, on November 16, Guyana deposited the 60th instrument of ratification, which means, we have now less than a year to agree on a strategy for the next phase, which should bring as many countries as possible into the Convention regime -- most certainly the Pioneer Investors, which means, Europe and Japan.

The paper I sent you with my last letter was introduced officially (with some very minor changes) by Ambassador Koroma of Sierra Leone (just elected to the ICJ). We are going to prepare a revised version for the next round of the Secretary-General's Consultations which probably will take place during the week of January 30.

If you permit me, I will send you the revised version as soon as possible and remain in touch with you on this question.



We have no time to lose!

Thanking you very much for your interest and your great courtesy, and apologizing again for this delay,

With all good wishes,

Sincerely yours,

Elisabeth Mann Borgese



FACSIMILE TRANSMISSION

To:

Tom Harris

FAX No:

31 20 620 5825

From:

Elisabeth Mann Borgese

FAX No.:

1 902 868 2455

Date:

October 12, 1992

Subject:

Law of the Sea Convention

Dear Tom,

I still owe you an ansser to your fax of 09.10, regarding Malta's ratification of the Convention.

Yes, basically it probably is the EC membership - which they won't have in any case... More concretely, it is our friend David Attard who has been blocking ratification all this time.

I just sent a fax to a journalist in Malta who had asked some questions.

Love,

Elouls

you would not got anything done.

There is so much work to be done for PIM.



Dalhousie University

International Ocean Institute



FAXED

FACSIMILE TRANSMISSION

To:

Dr. Bohdan Hawrylyshyn

FAX No:

41 22 789 26 43

From:

Elisabeth Mann Borgese

FAX No.:

1 902 868 2455

Date:

June 17, 1993

Subject:

Ratification of the Law of the Sea Convention

Dear Bohdan,

It was really good to see you in Madrid, and the workshop was interesting --were it only because it was an occasion to meet old friends and make new ones!

I share your excitement about the work you are doing now. It is indeed a great challenge and a great opportunity.

I can assure you that the ratification of the Law of the Sea Convention (United Nations Convention on the Law of the Sea, 1982) cannot possibly do any harm, or cost any money, to the Ukraine, and, on the contrary, is very likely to be quite useful, from two points of view. The first is that it would put the Ukraine, this young member of the United Nations, "on the map" as the first Warsaw Pact successor State to look beyond "crisis management" and to manifest a spirit of international cooperation for the future of humankind. That is an important thing for a young State to do -- and it pays, in credibility and influence which may bring material benefits.

Second, if my information is correct, the Ukraine has not been in the past a very "marine-conscious" country, and has relied on the central government with regard to naval power and maritime trade. Now as an independent State it is bound to develop its marine interests: Shipping/maritime trade; defence; development of living and nonliving resources and, no less important, the conservation (or restoration) of

the environment. In all these activities it will be extremely useful to be a party to the Law of the Sea Convention as well as to the Regional Seas programme (Black Sea) the GEF for the and to benefit from the large funding available through of Chapter 17 of Agenda 21, which is entirely based on the Law of and can be effectively implemented only if that Convention the Sea Convention comes into force. The Convention also offers opportunities for international scientific which might be quite beneficial. E.g., The Ukraine cooperation and technological might become a party to Inter-ocean Metal, the Pioneer Investor joint undertaking of a number of Warsaw Pact successor States.

Since it has been quite a while since we last had an opportunity to talk about these matters, permit me first to indicate, albeit in telegraphic style, why I think it is so enormously important that the Convention should come into force now, and, in conclusion, give you a brief overview of where we now stand, and where we appear to be going, when the Convention comes into force.

1.

of the United Nations said in 1982, when the Convention As the Secretary-General for signature, it is the biggest achievement of the international community since the adoption of the United Nations Charter itself. Consisting of 320 and covering all major uses of the seas and Articles and 9 technical annexes, oceans and their protection, it has been rightly called "a constitution for the oceans" (covering three quarters of the surface of our planet), containing the seed for a "constitution for the world. Based on two fundamental principles --(1) that there is which has been declared an "area," containing rich mineral resources, Heritage of Mankind, with all its legal and economic Common implications in the Convention, but to be developed further); (2) that the problems of ocean space are closely interrelated and need to be considered as a whole --with all its institutional implications of vertical and horizontal integration -- the Convention is of crucial importance for the implementation of everything that was decided at UNCED. The UNCED and the UNCLOS process now evolve together already started to impact on the restructuring of the United Nations.

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These may be the most salient points. I am doing a paper for the Club of Rome now, showing how the Law of the Sea and ocean development is really the most advanced sector in the process of restructuring the international (and national and regional) system and offers a lead on practically all the issues we discussed in Madrid, including the development of human resources.

2.

I would say that it is a near-miracle that this Convention has been adopted, signed by 159 States, and ratified now by 56 States. It will come into force 12 months after the sixtieth ratification. In other words: we need only four more ratifications (already in the final stage of implementation, and to be deposited during the next couple of months.

The problem, as you probably are aware of, is that the States which have ratified thus far are, almost without exception (Iceland is the exception) developing States, while in agreement with practically all of the The industrialized Part XI of the Convention, refused to accept dealing with the Convention, of the international seabed: of the mineral resources the Common management

Heritage of Mankind. That very concept was anathema to the Reagan and Thatcher as was the whole emphasis on a new deal for the developing administrations, Not as though they did not have a point, or more than one point -- but that was not the points they were making! Undoubtedly that Part of the Convention - the most daring and innovative one -- is flawed and necessarily Because. in the 'seventies, when this Convention was elaborated, this part was with administrative and financial detail with regard to an industry that overburdened did not yet exist and nobody really knew when and how and where it would come All the articles spelling out these details are obsolete into existence. assumed that sea-bed mining would be a commercial in the seventies, reality by the time the Convention came into force. This is not the case now, and thus these articles simply cannot be applied today.

Three years ago, the Undersecretary-General of the United Nations, in charge of the Law of the Sea, launched a very unwise initiative: namely, to rewrite Part XI of the Convention so as to make it acceptable to Reagan administration. There was no legal, no political, and no practical basis for this initiative. It did not get anywhere, but it did undermine the work of the Preparatory Commission and paralysed ratification process. Middle countries now wanted to wait for the outcome of these ratifying. Developing were advised that, if the negotiations before countries were to come into force without the participation of the superpowers, they, the poor countries, would have to fork out huge amounts of money for the of the Seabed Authority. This worried a lot of developing establishment countries.

In the meantime, however, an alternative approach matured.

The Prep.Com in Jamaica has been extremely successful in establishing an interim and possible technology regime for exploration, development of human resources, This is the "Pioneer Investor regime" which is now in place and co-development. functions quite well: doing all the things that can be done at this stage, when there is no ocean mining. They have adopted a joint programme (joint venture!) for the of a first mine site of the future enterprise; they have adopted, and begun to implement, a joint training programme; and they are aware that the exploration programme implies testing and upgrading of technology. This last point is explicitly stated, although not yet developed in detail.

What we are proposing now is a very simple solution to a very complex problem. We are proposing

A consensus resolution, to be adopted both by the General Assembly and by the Prepcom, deciding

- (a) to extend the mandate of the Prepcom beyond the coming into force of the Convention, for an interim period which should last until the time when commercial sea-bed mining is about to begin;
- (b) to empower the Prepcom to exercise all the initial functions of the Authority and the enterprise in an evolutionary manner;
- (c) to call a Review Conference in accordance with Article 155 of the Convention at the time when commercial seabed mining is about to begin, or fifteen years after the coming into force of the Convention, whichever comes first.

If the States now ratifying are not satisfied with the results of the Review Conference, they may denounce the Convention in accordance with Article 317 and they could make a statement or declaration to this effect when ratifying, in accordance with Article 310.

This way, nobody has to give up anything. There are no extra costs. The Prepcom does not cost any more after the Convention comes into force than it did before, and the United Nations, which has a big stake in the success of the Convention, should continue to bear this very modest cost.

This solution is attractive to many States: I think this is the way things will be going at the next "Consultation" in New York in August. It is the only solution on which there can be universal agreement. It would be wonderful if your Government could give serious consideration to this alternative, support it in August -- and get ready for ratification, on this basis!

I have a lot more material, as you can imagine, and many ideas as to how to develop this interim regime in the most productive manner.

I am most grateful for your help!

All the very best, and give me a call or send me a fax, when you have some reaction!

Elirabel

With all good wishes,

Yours as ever,



Dalhousie University

International Ocean Institute



FAXED

FACSIMILE TRANSMISSION

To:

Dr. Bohdan Hawrylyshyn

FAX No:

41 22 789 2643

From:

Elisabeth Mann Borgese

FAX No.:

1 902 868 2455

Date:

June 26, 1993

Subject:

Ratification of the Law of the Sea Convention

Dear Bohdan,

Thanks a lot.

AAA I am waiting to hear from Mr Myron Wasylyk, and I hope and pray it will all work out. Some of the Warsaw Pact Successor States have recently ratified the old 1958 Law of the Sea Geneva Conventions, which are totally obsolete. That is a strange thing to do, and I hope the Ukraine will not follow that pattern!

BBB Please remember to send me that article by that French scholar on the evolution of Club of Rome thinking! I would like to start working on that paper.

All the very best,

Yours as ever,

Elizably

RECEIVED JUH 2 3 1993

The Office of Dr. Bohdan Hawrylyshyn

Postal address: CP 5, CH-1231 Geneva, Switzerland. (4, ch. de Conches) Phone: (622) 789 26 15 - Fax: (022) 789 26 43

June 22, 1993 BH/dw

BY FAX TO:

Elisabeth Mann Borgese

FAX No.:

001 902 494 2034

FROM:

B. Hawrylyshyn

CO

Myron Wasylyk

PAGES:

One

RF-

Ratification of the Law of the Sea Convention

Dear Elisabeth.

despite the victous travel schedule (I am in my office in Geneva just for this one day). It was very good to see you again, in such great form and still so committed to great causes.

I am sending a copy of your fax to Mr. Myron Wasylyk, who is Executive Secretary of the Council of Advisors to the Parliament of Ukraine. He is an American, of Ukrainian origin, has worked for a congressman and more recently in the State Department. He will review the document with Christina Maciw, a lawyer, Canadian of Ukrainian origin, who works with the Council of Advisors as a legal expert. Between them, they will know whether it would be possible to present the Law of the Sea Convention for ratification by the Parliament of Ukraine. Should they find that for some reason or other it is impossible to do or that it would have to be presented after the September 26 referendum (in which the confidence in the Parliament will have to be renewed), Myron Wasylyk will advise you.

I look forward to our future encounters, albeit infrequent.

on. Wites

With best regards.

B. Hawrylyshyn

Dictated but not read -Signed in his absence by Doris Witter, Secretary



P.O. Box 524 VALLETA, MALTA

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May 27, 1993

Professor Louis Henkin
Law School
Columbia University
New York City, N.Y.

Dear Louis,

We have been out of touch for too long.

I just read your statement in the ASIL Newsletter (March-May, 1993, and, of course, I agree with you that it is impossible to sever Part XI from the Convention. But I am quite sure it is equally impossible to change Part XI now. Here is a proposal for an alternative solution. It is meeting with wide-spread interest. What do you think about it? In practical terms, the U.S. would lose NOTHING, NOTHING WHATSOEVER if it consented to this solution --which, as far as I can see, is the only one that has any chances. I agree with you about the urgency of the situation. If the upcoming Highseas Fisheries Conference goes wrong, the Law of the Sea Convention is in serious trouble. We will have a slew of new national claims --led by Canada!

It would be lovely to head from you.

With all good wishes,

Yours as ever,

Elisabeth Mann Borgese

Encl: Report #1

"Making the Convention (L.O.S.)

Universally Acceptable"

Columbia University in the City of New York | New York, N.Y. 10027

435 West 116th Street

RECEIVED JUL 2 7 1993

July 8, 1993

Dear Elizabeth:

Your letter of May 27 came just as I was about to leave for extended travel abroad.

I do not have the ear of the Clinton Administration but I have sent your proposal to some who might find it interesting. I trust you are well, and all other good wishes.

Sincerely,

Louis Henkin

Ms. Elisabeth Mann Borgese International Ocean Institute Dalhousie University 1321 Edward Street Halifax, Nova Scotia CANADA B3H 3H5



RECEIVED/ DISPAT	er REF. 1132		
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14	JUL 1993		
INFO:			
FILE: EMB	June Pin XX L	11,	1993

Ms. Elisabeth Mann Borgese International Ocean Institute P.O. Box 524 Valleta, Malta

Dear Elizabeth:

We have forwarded your letters on to our members as you requested. Your Conference looks very good. I am putting a little note about it into "Oceans Policy News."

I think we are getting closer on the Law of the Sea Convention. I too want to see States cope with the reality of the present time which means somehow to get around the disagreements over Part XI. Your suggestions are fine for an ideal world, and I agree that the simpler and the less detailed the solution the better. However, I can not escape my legal background and doubt if the U.S.G. will agree to your proposals. I know they do not like the French proposal.

The first problem is the ending of the interim period. I doubt if it will ever end if there is no idea of what the future seabed mining regime might look like. In other words, I doubt if anybody will invest over a billion dollars so that seabed mining is about to begin until they know what the rules will be after they start mining. Thus, a vague interim seabed mining regime will set back rather than foster investment in seabed mining and delay the end of the interim period. I think some good lawyers can resolve this problem, but it will take some creative drafting.

Second, I do not see how you can avoid facing up to the representation on the Council and voting rules. To do away with the Council by using an amorphous group like the General Committee without any protection of any interest groups, I expect will not be acceptable.

Bernie Oxman has written a paper for the Henkin Panel which appeals to me. He reverses the process and exhorts States to determine what they want and then let the lawyers make it come to pass. Thus, he presses for States to consider further the solutions suggested by Ambassador Nandan as refined by Dr. Fleischhauer. See if there really is agreement as the SYG's consultations indicate.

My approach, and I emphasize my as distinct from any cleared position, would then try and put this agreement in writing and

refer to it in a simple resolution passed by the UNGA and the PrepCom. Most of the thinking around here concentrates on seabed mining and the need for some sort of a formal protocol.

The important thing is that the U.S. is back at the table and States will have a week in early August to sound each other out. If there is a new deadlock in August, then I want to utilize the other interests favoring a LOS Convention to make the seabed experts be reasonable or else force the issue with four more ratifications. I have hopes the U.S., under Senator Worth, will keep the overall Convention in mind.

I hope to see you at the UN Fisheries Conference. For me there is a real danger that this Conference will seek to rewrite the fishery provisions of the LOS Convention and then we are headed toward UNCLOS IV.

Sincerely,

Charles Higginson