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FACSIMILE TRANSMISSION

To: H.E. Dr. Najeeb Al Nuimi
Minister Adviser to HH the Crown Prince
Qatar
FAX No: 974 419 431

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

Date: April 1, 1993

Subject: Law of the Sea

Your Excellency,

First of all, I want to thank you again for the most pleasant and inspiring evening. It was indeed fascinating to hear you talk about your country, and I am looking forward with the greatest pleasure and anticipation to my visit next March.

In the meantime, things are being concluded here in Jamaica. The next, crucially important event, I think, is the Secretary-General's consultation of April 26-27. I have the greatest confidence and complete faith in Dr. Fleischhauer. He will never betray the developing countries. I believe that two tactical steps are necessary if we want to move forward.

1. We should make sure that the South is represented at its best during these forthcoming consultations. In the past, they have been very poorly attended by developing countries, and nothing was lost, because, until now, these consultations did not amount to much, or were even harmful. But now we have reached a quite different stage. As you know, Dr. Fleischhauer has the mandate to prepare an "action-oriented" discussion paper for the April 26-27 session, and this, I believe, will be of decisive importance for the future of the Convention. It will aim at an interim regime acceptable to the South as well as to the Pioneer Investors, and that means, Europe and Japan. We must have our best people there to negotiate that. E.g., It would be splendid if you yourself, Excellency, could attend. It also would be quite splendid if your Government could assist some of the poorer countries which, however, have first-rate representatives, to send their best person rather than



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sending, for financial reasons, just some one from the Mission in New York, who is not their best spokesman. In any case, we should do all we can to ensure that the South is there in full force.

- 2. It would be important to strengthen our bargaining position to have at least two more ratifications before April 26. There must be some among your member States who could complete ratification without delay. Would it be possible, your Excellency, for you to help mobilize such ratifications. That would send the right signal to the consultation.**

Whatever you will do in this common cause, will be most fervently appreciated.

With all good wishes,

Sincerely yours,

**Elisabeth Mann Borgese
Professor**



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FACSIMILE TRANSMISSION

To: H.E. Dr. Najeeb Bin Mohd Al-Nauimi
FAX No: 974 419 431

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

Date: April 11, 1993

Subject: Your fax, just received

Your Excellency,

I want to thank you for your kind and positive reply, and I am much looking forward to seeing you on April 26 in New York.

With all good wishes,

Yours sincerely,

Elisabeth Mann Borgese

The Minister Legal Adviser



REF : 30/93/168

DATE : 10 April 1993

FAX MESSAGE

To: H.E. Dr. Elisabeth Mann Borgese .

Fax No: 01-902-8682455

Total No. of Pages: (1)

Subject: Law of the Sea

Your Excellency,

Thank you very much for your fax dated 1/4/1993 which my office received during my absence from Qatar for an official trip to Paris. I would like to confirm my participation in the Secretary General's Consultation of April 26-27, 1993 and I am pleased to advise you that the Government of Qatar will sponsor Mr. Frank Njenga, the Secretary General of AALCC to attend the Consultation to represent the AALCC countries.

In the meantime I am very happy to have your confirmation to participate in the Conference of the International Law which will be held in Qatar next March 1994.

Concerning the ratification of the convention of the law of the sea, I will, in this short notice, try my best to do what I can do in this regard.

With my best wishes and kind regards.

Dr. Najeeb Bin Mohd Al-Nauimi
Minister Adviser



International Ocean Institute

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FACSIMILE TRANSMISSION

To: H.E. Dr. Najeeb al Nuimi
Minister Adviser to HH the Crown Prince
FAX No: 974 419 431

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

Date: July 1, 1993

Subject: United Nations Convention on the Law of the Sea

Your Excellency,

The time for the next consultations of the Secretary-General is approaching fast, and I do believe we must make every effort to come to a positive conclusion during the five days at our disposal.

I am firmly convinced that the only approach on which we could possibly agree during the time at our disposal, is the "emergency option" I have already described to you and which I have reformulated in the attached little paper. I have brought this also to the attention of the U.S. Government which, as you know, now looks very favourably at our Convention.

I would like to add three points:

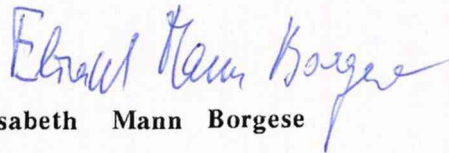
1. Any other solution, implying the establishment of a nuclear Authority, would take us years to negotiate as it would require agreement on at least some of the "core issues" such as composition and voting in the Council and the establishment of a finance committee. In the meantime, we would most certainly be overtaken by the 60th ratification. On the other hand, there exists the danger that there will be unilateral extensions of the EEZ, in the wake of the High-Seas Fisheries Conference, which would undermine the Convention. We must consolidate as quickly as we can, and build on what we have.
2. As you remember, para. 14 of Resolution 1 provides that the expenses of the

Commission shall be met from the regular budget of the United Nations. This provision should be extended, together with the mandate of the Commission. I think this should be particularly attractive to the G77.

3. When we last met, you expressed the hope to get a certain number of ratifications from Arabic States in the near future. With the ratification of Malta, we now are at 56. It would be so effective if, before August 2, we could have two or three more. It would heighten the feeling of urgency and induce the parties to negotiate in earnest. Do you see any possibility of getting this done?

I m always deeply grateful for your interest and cooperation.

Sincerely yours,

A handwritten signature in blue ink, reading "Elisabeth Mann Borgese". The signature is fluid and cursive, with the first name "Elisabeth" being the most prominent part.

Elisabeth Mann Borgese



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MAKING THE CONVENTION "UNIVERSALLY ACCEPTABLE"

With the conclusion of the "preparatory" phase of the work of the Prepcom, the rapid approach of the time when the Convention will come into force -- Malta's being the fifty-sixth ratification -- and, in particular, with the discussions at the April S-G Consultations, we have reached a turning point. The Consultations, clearly, have moved from the unfortunate attempt to rewrite part XI, to an attempt to cope with the reality of the present time, that is, to put into place an interim regime which should last from the coming into force of the Convention to the time when commercial sea-bed mining is about to begin.

There are still many questions about this interim regime. To establish now an Authority and an Enterprise which, essentially, have nothing to do that is not already being done by the U.N. Secretariat, would be sheer waste and would only serve to discredit the whole concept of the institutional implementation of the Common Heritage of Mankind in the eyes of those who do not like it anyway.

Ever since 1984 I have advocated, in various ways, the idea that we should extend the mandate of the Prepcom for the interim period. A couple of years ago, the French Delegation picked up this idea, but I do not think that the procedures they attached to it would be universally acceptable. They are indeed quite cumbersome.

To my own great surprise, the Russian Federation suggested the idea of extending the mandate of the Prepcom, *passim*, so to speak --so much so that most Delegates did not even hear it.

The formula I would like to propose for discussion is very simple, and yet it seems to me it is such that nobody really has to give up anything. It would be as follows:

By a consensus Resolution, both in the Prepcom and in the General Assembly, it is decided

to extend the mandate of the Preparatory Commission for the interim period lasting from the coming into force of the Convention to the time when commercial sea-bed mining is about to begin;

- . to empower the Preparatory Commission to exercise all the initial functions of the Authority and the Enterprise in an evolutionary manner during this interim period;
- . to call a review conference, in accordance with Article 155 at the time when commercial seabed mining is about to begin.

Ratifying States may make a declaration, in accordance with Article 310 that they reserve their right to denounce the Convention in accordance with Article 317, in case they are not satisfied with the results of the Review Conference.

Comments

It seems to me, this is a face-saving formula which obliges none of the parties -- States having ratified, States which have not yet ratified; developing countries, industrialized countries -- to give up anything. E.g., in the non-signatory States (Germany, U.K. U.S.A.) Parliament/Senate, etc. can tell themselves, that they have won a total victory because Part XI has been suspended and, as they all agree, the rest of the Convention is wholly beneficial to them. Without an explicit "Reservation," which would be unacceptable to the States having ratified, they make it clear that they do not feel bound by Part XI as it now stands. The European Community of which they (UK FRG) are part and which is a signatory to the Convention, has lived happily with the Prepcom for the last 10 years, and there is no reason why they should not continue to do so after the Convention comes into force. The USA has already officially announced that it is reconsidering its position.

On the other hand, developing countries and countries having ratified the Convention can point out that the integrity of the Convention is intact. They all have agreed to the formulae "the initial functions of the Authority and the Enterprise" and "in an evolutionary manner" have been generally accepted both by the Prepcom and by the S-G's Consultations. These are the formulae clearly preferred to the term "the initial Authority" which had been proposed by the Secretariat. It should also be kept in mind that Resolutions I and II, form "an integral whole" with the Convention (Final Act, paragraph 42) and that there are precedents of the gradual implementation of Conventions.

Now, as demonstrated by the factual situation, the Prepcom -- which even in its structure has all the features of a rudimentary Authority (Plenum = Assembly; General Committee of 36 members = Council; Group of Experts, Training Panel = Commissions; DOALOS = Secretariat; Pioneer system = Joint-Venture Enterprise) - - can exercise the initial functions of the Authority and Enterprise as it has done during the past years (exploration, through the joint exploration plan; training, through the Training Panel; technology development, the need for which is recognized in the Plan for the Exploration of First Mine Site for the Enterprise, will have to be developed, "in an evolutionary manner").

To use the Prepcom, instead of trying to establish an "initial authority" has a number of very great advantages: Full utilization of accumulated expertise; there would be no need to negotiate points like "voting in the Council;" no need for the establishment of a "finance committee" since the Prepcom is administered by the U.N., and would not cost any more than it has cost in the past. A recommendation by the Prepcom, to continue to budget for an annual meeting of the Prepcom as long as it exists is already before the GA.

Exercising the initial functions of the Authority and of the Enterprise in an evolutionary manner, the Prepcom, between now and the time when commercial mining is about to begin, will acquire and demonstrate the experience necessary to adjust parts of Part XI as will be required by the situation as it may exist 15 or 20 years down the line, and which it is impossible for us to anticipate today.

One adjustment is dictated by reality and must be accepted, and that concerns the "trigger mechanism" for the convening of the Review Conference. The Convention establishes that this Review Conference is to be convened "Fifteen years from 1 January of the year in which the earliest commercial production commences under an approved plan of work." This was based on the assumption that commercial seabed mining would begin at the time the Convention comes into force. Since this assumption turned out to be wrong, the "trigger mechanism" will have to be adjusted to the needs of the Pioneer regime now in place. The French proposal contained some interesting ideas on this point; the IOI has worked on a possible formula: This, in any case, is a point that will have to be negotiated.

Another point that should be raised is that if, as is indeed to be hoped, there will be

a large number of ratifications on the basis of an agreement such as the one we are proposing, there would have to be a new election of the membership of the General Committee upon the coming into force of the Convention.

It is indeed highly unlikely that an agreement on any other solution, such as "the initial authority" could be reached this year -- at most, two or three weeks of negotiations --during which time we most certainly would be overtaken by the 60th ratification as well as by new changes in the Secretariat. The assurance of continuity and the lack of pressure to agree on anything new now, and the simplicity of the formula proposed should make it possible to reach an agreement during the five days of the next Consultation.

Developing countries have everything to gain, and nothing to lose, from such a solution.



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FACSIMILE TRANSMISSION

To: H.E. Dr. Najeeb Al Nuimi
Minister Adviser to HH the Crown Prince
FAX No: 974'419 431
From: Elisabeth Mana Borgese
FAX No.: 1 902 868 2455
Date: August 18, 1993

Subject: Pacem in Maribus XXI and other matters

Excellency,

I understand that Japan Air Line has been in touch with your office regarding our forthcoming conference Pacem in Maribus XXI in Japan.

As I have previously indicated in my fax of April 27, we would be most happy if you could attend this conference or part thereof, and make a statement on regional development and cooperation in the Gulf region. It is going to be an important conference, cosponsored by the United Nations University (The Rector, Gurgulino de Souza, will come and address the inaugural session; and there will be a concluding session at the UNU in Tokyo), as well as by UNESCO/IOC and UNEP. The Honourary President of the Conference is Prince Tomohito of Mikasa. The subject of the conference is the next stage of regional development, moving it from the sectoral approach of the Seventies to the comprehensive approach required by sustainable development, of the next century.

You would of course be our Honoured Guest while in Japan. It would give us also an occasion to discuss the results of the latest SG Consultations on the Law of the Sea (quite unsatisfactory) and next steps to be taken. I am in touch with the leading G77 friends, and we want to prepare a "Nonpaper" for the coming session (November 8-12).

Looking forward to hearing from you as soon as possible,

With all good wishes,

Yours sincerely,

1321 Edward Street, Halifax, Nova Scotia, Canada B3H 3H5
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FACSIMILE TRANSMISSION

To: H.E. Dr. Najeeb Al Nuimi
Minister Adviser to HH the Crown Prince

FAX No: 974 419 431

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

Date: April 27, 1993

Subject: Pacem in Maribus XXI.

Excellency,

This is to extend to you our most cordial invitation to participate in our forthcoming Conference, Pacem in Maribus XXI, which will be held in Takaoka, Toyama Prefecture, Japan, from September 6-9 this year. There will be a concluding session at the United Nations University in Tokyo on September 10.

The Conference is co-sponsored by the United Nations University, UNESCO/IOC, as well as UNEP. The Honourary President of the Conference is H.I.M. Prince Tomohito of Mikasa.

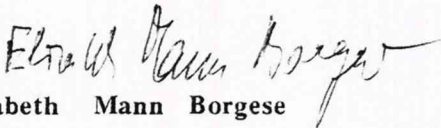
The subject of the Conference is future-oriented: We want to look at the next phase of development of the Regional Seas Programmes, bringing them from "Stockholm" to "post-Rio," and into line with the requirements of "sustainable development."

Regional cooperation and development, we are convinced, will play a crucially important role in global governance, intermediate between national governments and the global organisations.

Your experience in the Gulf region would make an invaluable contribution to the Conference. We fervently hope you will be able to accept our invitation.

With all good wishes,

Sincerely yours,


Elisabeth Mann Borgese
Chair

ENCL
Non-paper



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FACSIMILE TRANSMISSION

To: H.E. Dr. Najeeb Al-Nauimi
The Minister Legal Adviser
FAX No: 974 419 431

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

Date: December 13, 1993

Subject: Law of the Sea

Excellency,

How thoughtful of you to remember me on the occasion of the 60th ratification of our Convention! I found your message here on my return from an extended trip (IOI South Pacific, IOI India are doing extremely well; IOI Japan and IOI China are being established).

It was indeed a joyful occasion. We have put into place a very important building block for the new international order we all need.

The next 12 months will be of crucial importance for the further development of this effort. We now need the cooperation of Europe and Japan. The United States will come later, in due time. And I understand that Australia will have completed its ratification process next Spring. I am quite confident that also Canada will ratify at that time.

The "Secretary-General's Consultations" are not in the best of shapes. The effort of a few delegates to rewrite Part XI continues. In view of the coming into force of the Convention less than a year from now, this effort is more futile than ever. I strongly feel that, in view of the new situation created by the 60th ratification, these "Consultations" should be terminated and negotiations should be returned to the Prepcom. which in any case will meet in February in Jamaica.

Our proposal for an "interim regime," in the form of simply continuing the Prepcom/Pioneer regime until the beginning of commercial mining --was introduced by H.E. Ambassador Abdul Koroma of Sierra Leone, and it was well received.. I do believe its time has come now. We have made some very minor revisions, incorporating some of the better suggestions made during the November Consultations. I am attaching a copy.

I would be most grateful if you could examine this proposal and, if possible, give it your support during the January Consultations which, hopefully, will be the last.

Let me use this occasion to send you my warmest wishes for the forthcoming holiday season and a peaceful and prosperous 1994.

Yours very sincerely,



Dr. Elisabeth Mann Borgese
Professor



The Minister Legal Adviser

COPY

Ref : 30/93/399

Date : 29 November 1993

FAX MESSAGE

To: Dr. Elisabeth Mann Borgese

Fax No: 01-902-8682455

Total No. of Pages: (1)

Excellency,

I have the pleasure to update you with the latest information I received on the **Law of the Sea**. It has been informed that the 60 States have ratified the Law of the Sea 1982 Convention and so, I hope that we can continue supporting for the development of international law.

With the assurances of my highest consideration.

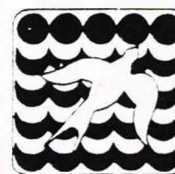
Best regards.

NAJEEB

Dr. Najeeb Al-Nauimi
Minister Legal Adviser



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July 23, 1992

Dr. Lennox F. Ballah
Institute of Marine Affairs
P.O. Box 3160, Carenage Post Office
Trinidad & Tobago, W.I.

COPY

My dear Lennox,

Thanks for your letter of June 29 which I found here on my return from as long trip.

I was in Rio, for the Earth Summit, and we had some developments there with regard to the Regional Centre: Perez Nieto took the initiative of calling a meeting. Some one from UNIDO was there, Salvino Busuttil for UNEP, Some one for IOC, and a couple of other people. A new meeting was to be called by the Government of Venezuela, etc. However, we had a talk with the Venezuelan Minister for the Environment, and he was not optimistic at all. The internal political situation in Venezuela being what it is, we cannot expect any action.

In the meantime we opened IOI-Colombia, with some solemnity. If Venezuela does not act, we will now act through Colombia: a new start which should take relations with the Institute of Marine Affairs into due account. I should think that new plans should mature this autumn. A full-fledged feasibility study is on the research agenda of IOI-Colombia.

So much for that, and, of course, we'll keep you fully involved.

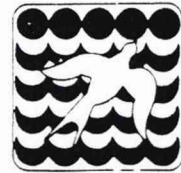
As for the Convention: Fleischhauer is 1000 times better than Nandan; so from that point of view, the demotion was ~~as~~ promotion! Also, Boutros Ghali is much more committed to the Convention than his predecessor ever was. In a recent conversation with our Layachi Yaker, he promised to be very active in encouraging States to ratify! It would be a great thing, and it would take so little now: At least half a dozen States have completed their internal procedures and could ratify tomorrow, given some encouragement. I am continuing my campaign and, next week, shall be going to Lithuania.

But what can one do! The general situation is so hopeless that I find it difficult to keep trying. Just look what happened to UNCTAD at Cartagena! If I were Dadzie, I would have resigned!. It is ignominious. And the 77 do not exist any more. They accept everything, without even as much as a protest. Where are the hopes and aspirations of yesteryear! gone



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with the snows...

The one person at UNCED in Rio who was absolutely marvellous, and the success of the week (he earned more applause than any other Head of State: practically an ovation!) was good old Fidel Castro! It was quite a performance!

We'll miss you in New York. All the very best, and I am sure we'll get together before long.

Yours as ever,

Elisabeth Mann Borgese

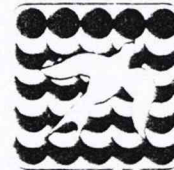
*Do you have one or even two candidates for
Madras Training Programme on sustainable development of
mineral resources August 17 - September 18, this year.
We have Commonwealth Scholarships, covering everything!
Let me know ASAP!*



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FACSIMILE TRANSMISSION

To: Dr. Lennox Ballah
FAX No: 809 634 4433

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

Date: August 12, 1993

Subject: various

My dear Lennox,

I have not heard from you, but I have ordered your air ticket to Japan!
So I hope to see you there on September 5!

We have to discuss many things: a training programme which we would like to organize with you in Trinidad, on sustainable development of small islands, hopefully next Spring; but, then, even more importantly, what to do about our Law of the Sea Convention which, I think, is in a really critical situation right now. Either we make it this year, or it will be lost. During the next two years we certainly will have expansions of national claims, because of the straddling and highly migratory stocks; and that might be the death-blow to the Convention.

I would like to discuss on three levels: the last session of the SG's "Consultations" which I thought were quite bad and not leading anywhere. So there are two points I would like to raise in this connection: the Chamber voting system, and the Enterprise. And then I would like to propose some action to get over this crisis, at two levels.

First of all, here is a better explanation of what I meant with my criticism of the Chamber Voting System:

We heard quite a bit 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 regional 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.*

Now, I have discussed this within the terms of the SG's Consultations. My real point, however, is that we must absolutely refuse to make any changes in Part XI of the Convention now. It just does not make any sense from any point of view. We cannot reach an agreement on such changes either this year or next year or the year after. In the meantime, the Convention is dismantled. We must come up with something now, and the strategy that I envisage has two elements:

1. We must put pressure on the Secretary-General himself to induce him to take an initiative to mobilize ratifications. He fundamentally agrees with that, but the issue now has become critical. Many States think they do him a favour if they await the outcome of his Consultations before ratifying. *The Secretary General should let them know that this is not the case any more.* He wants the Convention to come into force, and we need those ratifications now. I think as many States as possible should let the Secretary-General know that they would like him to take this initiative. Could Trinidad do that? After we have these few additional ratifications, *we do have 12 months after all to come to a reasonable agreement with the industrialized States.* That is reasonable time frame. If we do not set this goal to ourselves, things will drag *ad calendas grecas!*
2. The G77 have to get their act together and take the offensive. We cannot sit back and watch the dismantling of the Convention. The other side is putting out nonpaper after nonpaper --all totally unacceptable --and we do nothing.

We must, by November, have a nonpaper on which the G77 agrees. And that paper *must be very simple and pragmatic so that we can get an almost universal agreement during the November consultations.* This is what I would like to discuss with you in Japan. If Australia, the UK, the US, and Mr. Nandan can pull it off -- why can't we??

Enough for today. We'll be in touch.

Much love

Ehall



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FACSIMILE TRANSMISSION

To: Dr. Lennox Ballah
FAX No: 809 634 4433

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

Date: August 19, 1993

Subject: SG Consultations

My dear Lennox,

Since our last telephone conversation, I had a most interesting talk with Jean Pierre Lévy. My impression is that, at the Secretariat, they are not at all happy with the idea to use the "Boat Paper" as basis for discussion at the next consultations. It tends to derail the Secretariat's own effort. Jean Pierre was delighted and relieved when I told him that we wanted to prepare a G77 Nonpaper. That idea really came as a relief to him. He insisted that the G77 should agree on such a paper *before November*. He is right. But this means, we really have to start working on it *Now*.

We should start with just some of us: You, Ken --if he has time; he is so terribly busy with other things --certainly Djalal; Senegal; Koroma of Sierra Leone. That would be a good start.

Just to have something to shoot at, I have prepared a first draft which I am attaching. It is in line with my previous suggestions. Let me explain again why I feel so strongly that we should extend the mandate of the Prepcom rather than establish the Authority now.

I would love to set up the Authority, but the way things have been going, that necessarily and inevitably means that we have to agree on the Chamber voting, which is badly flawed as I pointed out earlier, or, in any case, we have to re-open the whole question of decision making, as well as the finance committee, the Enterprise or whether to have one at all!!!, and the other "issues. We will never solve these problems this year, or the next...

If we decide to extend the mandate of the Prepcom, this is one and only one decision we have to take. And we can do that in November --if we have a G77 paper to this effect. This is an emergency option: It is the only agreement we can reach this year.

Within the next two years we will see a number of expansions of national claims, in connection with the straddling and highly migratory stocks. That is the end of our Convention --if it is not in force. We simply cannot lose time if we want to save this Convention.

I have two excellent new channels to Vice President Gore which I will pursue now. I am also trying to work on the Canadian Foreign Minister. But things may change here by the end of this year.

I have followed the format of Gautier's "nonpaper" which I got from Jean-Pierre. That paper is a little better than the "Boat Paper" but it does not solve our problems either, and it gives away far too much. No Enterprise, until the Council so decides, and in the Council, there is the veto of the chambers! We cannot accept that!

Do let me have your reaction quickly and let me know how you think we could proceed best. Use the AALCC? Organise a meeting in New York, during the General Assembly? We must be ready and well prepared in November!

Another issue that Jean-Pierre raised is: We need a new President for the Prepcom, if Jesus is elected to the ICJ. Since it has got to be an African, I suggested Abdul Koroma, since he is back in New York now. He is very good. Jean-Pierre agrees. If instead Abdul is elected to the ICJ, we will remain with Jesus.

It is really a pity you cannot come to Japan! But let us stay in touch on this question of the Consultations.

With all good wishes,

Affectionately,

Elisabeth

THE GENERAL ASSEMBLY

Recognizing the historic significance of the United Nations Convention on the Law of the Sea, 1982 (hereinafter referred to as "the Convention") as a unique contribution to the maintenance of peace, justice and progress for all peoples of the world;

Reaffirming the principle of the Common Heritage of Mankind codified in that Convention as a principle of international law;

Noting that the Convention contains, *inter alia*, the only existing comprehensive, mandatory, enforceable international environmental law;

Noting, therefore, that the implementation and progressive development of the Law of the Sea as embodied in the Convention is essential for the attainment of Sustainable Development envisaged by the United Nations Conference on Environment and Development and its follow-up activities;

Aware that the problems of ocean space are closely interrelated and must be considered as a whole, and that this requires the full participation of all States whatever their stage of economic development or ideological orientation;

Bearing in mind that the prospects of commercial exploitation of deep seabed mineral resources have receded into the next century, generating an *interim period* between the coming into force of the Convention and the beginning of commercial seabed mining;

To this end desiring to embody the results of the consultations and negotiations organized by the Secretary-General of the United Nations in order to promote the universal acceptance of the Convention in accordance with the mandate given by the General Assembly of the United Nations;

Has expressed its consent by the present resolution, to adopt the Agreement contained in the Annex attached to the present Resolution.

NON-PAPER

**AGREEMENT ON THE ESTABLISHMENT OF AN INTERIM REGIME FROM
THE COMING INTO FORCE OF THE CONVENTION
TO THE TIME WHEN COMMERCIAL SEABED MINING BECOMES
ECONOMICALLY AND ECOLOGICALLY FEASIBLE**

AGREEMENT ON THE ESTABLISHMENT OF AN INTERIM REGIME FROM THE
COMING INTO FORCE OF THE CONVENTION TO THE TIME WHEN SEABED
MINING BECOMES ECONOMICALLY AND ECOLOGICALLY FEASIBLE

THE GENERAL ASSEMBLY HAS AGREED AS FOLLOWS:

- . to extend the mandate of the Preparatory Commission for the interim period lasting from the coming into force of the Convention to the time when commercial sea-bed mining becomes economically and ecologically feasible;
- . to empower the Preparatory Commission to exercise all the initial functions of the Authority and the Enterprise in accordance with the Convention, in an evolutionary manner, during this interim period;
- . to convene a review conference at the time when commercial seabed mining is about to begin.

Ratifying States may make a declaration, in accordance with Article 310 of the Convention, that they reserve their right to denounce the Convention in accordance with Article 317, in case they are not satisfied with the results of the Review Conference.

A. INSTITUTIONAL ARRANGEMENTS

Article 1

Membership

1. In order to give time to States and entities entitled to become parties to the Convention, such States and entities may, upon notification given to the Depositary of the Convention, become Provisional Parties to the Convention and its Interim Regime.
2. Provisional membership shall not exceed 3 years after the date of entry into force of the Convention.
3. During this period, Provisional Parties shall fulfil all duties and obligations, and enjoy all rights of Parties to the Convention.

Article 2

Powers and Functions

In accordance with Paragraph 6 of Resolution I, the Commission shall continue to have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes as adjusted to this interim regime.

Article 3

Organs

1. For the duration of the Interim Period, the Plenary of the Preparatory Commission shall perform the functions of the Assembly of the Authority. Each Party and each Provisional Party shall have one vote. The Rules of Procedure of the Preparatory Commission shall continue to apply.
2. For the duration of the Interim Period, the General Committee of the Preparatory Commission shall perform the functions of the Council of the Authority. Each party and each Provisional Party shall have one vote. The Rules of Procedure of the Preparatory Commission shall continue to apply. Upon the coming into force of the Convention, the Membership of the General Committee shall be renewed through election by the Assembly.
3. For the duration of the Interim Period, the Division for Ocean Affairs and the Law of the Sea shall perform the functions of the Secretariat. The Undersecretary-General of the United Nations, in charge of Legal Affairs, shall perform the functions of the Secretary-General of the Authority.
4. For the duration of the Interim Period, the Group of Technical Experts and the Training Panel established by the Preparatory Commission, shall perform the functions of the Economic Planning Commission and the Legal and Technical Commission, with such adjustments as may be considered necessary.
5. For the duration of the Interim Period, the Enterprise shall be constituted as a joint undertaking on the basis of the MOU on the Obligations of Pioneer Investors and the Plan for the Exploration of the First Mine Site for the Enterprise, adopted by the Preparatory Commission in 1990, as well as the Training Programme, adopted by the Preparatory Commission in 1989. A Governing Board, consisting of Members appointed by the Pioneer Investors and by the Commission, shall be responsible for its activities. The functions of this

joint undertaking shall be carried out in an evolutionary manner. They shall include joint exploration, the testing, and upgrading, and environmental impact assessment of technologies used in the exploration of the mine site, development of human resources and economic feasibility studies.

6. As far as the applicants referred to in Resolution II, paragraph 1,a),ii) are concerned, approval of an application for pioneer activities shall be facilitated provided that they assume the same obligations than those of the applicants referred to in the understanding on the implementation of Resolution II contained in LOS/PCN/L.41/Rev. 1 (Annex of 11 September 1986).

Article 4

Financial Arrangements

1. In accordance with paragraph 14 of Resolution I, the expenses of the Commission shall continue to be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations.

2. The Commission may raise additional funds for specified activities as they may evolve.

Article 5

Review Conference

1. Upon the first application for Approval of Plan of Work for Exploration and Exploitation by a Pioneer Investor or by the Joint Exploration Enterprise, a Review Conference should be convened.

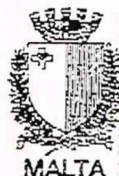
2. The Review Conference shall review those provisions of Part XI and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area in the light of the scientific, technological, and economic reality of that future time and in consideration of the experience, the methodologies developed, and the activities conducted in an evolutionary manner during the interim regime, as well as the outcome of the of the Secretary-General's Consultations, 1990-1993.

[Article 6

Dispute Settlement

The question of adjustment of the Seabed Dispute Chamber of the International Tribunal for the Law of the Sea, during the Interim Regime, pending the feasibility of commercial seabed mining, should be determined by the States Parties at the meeting to be convened pursuant to Article 4 of Annex VI to the Convention.]

MINISTERU
TA' L-AFFARIJJIET BARRANIN



MINISTRY
OF FOREIGN AFFAIRS

COPY

30th July, 1993

RECEIVED AUG 4 1993

Mme. Elizabeth Mami Borgese
International Ocean Institute
P.O. Box 524
Valletta. CMR 01

RECEIVED/DISPATCH	REF: 1222
ACTION: <i>Elisabeth</i>	ACTION TAKEN:
4 AUG 1993	
INFO:	
FILE: <i>EMB</i>	

I have been directed by the Deputy Prime Minister and Minister of Foreign Affairs to convey his thanks to you and to the International Ocean Institute for your fax message of the 19th May 1993 expressing your congratulations and best wishes to the Government of Malta for the ratification of the Law of the Sea Convention.

Prof. de Marco has noted with satisfaction your continued interest in the law of the Sea Convention and the role which Malta can play in the promotion of international support for this most important international legislation. Your initiative to contact Fr. Peter, Salvino Busuttil and David Attard and to discuss with them ways how to facilitate the participation of the European Community, Japan and the United States, especially in view of the Secretary General's consultations on this matter, is very much appreciated.

The Deputy Prime Minister hopes that it will be possible for Malta to make a positive contribution to induce the countries in question to ratify the Law of the Sea Convention. The ratification of the Convention by the E.C., Japan and the United States will greatly enhance its effectiveness.

Prof. de Marco shares your view that Dr. Pardo must have been particularly happy to see the Government of Malta ratifying this convention. The Government of Malta has already expressed its appreciation to Dr. Pardo for his role in promoting the Law of the Sea Convention, by inviting him to join the Malta Delegation to the U.N. and announce, in the 47th Session of the General Assembly, Malta's intention to ratify the law of the Sea Convention.

May I assure you that Prof. de Marco looks forward to meeting you in Malta in the near future.

Yours sincerely,

W. Balzan
Personal Assistant

FACSIMILE TRANSMISSION

To: Mr. W. Balzan
Personal Assistant to the Minister
FAX No: 356 237 822

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

Date: September 11, 1993

Subject: Law of the Sea

I thank you very much for your kind letter, received August 4. Permit me today to bring you up to date on more recent developments.

When I was recently in New York, I had occasion for a long and informal conversation with the Legal Counsel, Dr. Fleischhauer who, as you know, is in charge of the Secretary-General's Consultations. The Secretary-General and the Legal Counsel share our disappointment with the slow pace of progress of the negotiations. They share our conviction that things cannot go on this way. Evidently we will be overtaken by the coming into force of the Convention, and we simply must be ready for this imminent event.

I also had occasion to discuss the situation with several of our friends who are leaders among the G77, in particular with Ambassador Koroma of Sierra Leone. We have drafted what we consider an "emergency option," a paper which, if all goes well, and probably with some changes, will be tabled by the G77 in November. For this was another point we agreed on in our discussions: The G77 must have a firm position and a paper. Or else they will lose everything they have gained in all these years of Law of the Sea negotiations. We also agreed that the proposal we want to put forward must be simple, practical, and cost-effective.

Ambassador Koroma is presently negotiating an agreement on this paper with the G77. We hope to have it in place before November.

The EC and Japan should have no reason to object to this plan, since they are already fully participating in the Prepcom and the

Pioneer Regime. The US, as is well known, has a bias against the Prepcom. This, however, is a left-over from the previous Administration. We are now making efforts to have the issue reconsidered at the highest level. In Canada we may have a new situation by next November.

I would be most grateful if the Government of Malta could give some consideration to our proposal to overcome the deadlock. If the Government of Malta could agree with this solution (which is really just another formulation of the one we discussed with Father Peter, Salvino Busuttil and David Attard), it would be quite splendid if Malta could, so to speak, be the bridge between the EC and the G77 which would lead to the universal acceptance of the Convention.

Thank you very much for your attention.

I am attaching a letter to Professor De Marco, expressing these same thoughts.

With all good wishes,

Yours sincerely,

Elizabeth Mann Borgese



Dalhousie University

FACSIMILE TRANSMISSION

International Ocean
Institute



I.O.I. - Malta

TO: THE HONOURABLE PAUL BERENGER
MINISTER OF FOREIGN AFFAIRS
PORT LOUIS, MAURITIUS

FAX: 230 208-8087

FROM: ELISABETH MANN BORGESE
C/O THIRD INSTITUTE OF OCEANOGRAPHY
INTERNATIONAL OCEAN INSTITUTE TRAINING PROGRAMME
XIAMEN, PEOPLE'S REPUBLIC OF CHINA

FAX: HOLIDAY INN XIAMEN 86 592 236666

DATE: NOVEMBER 26, 1992

Dear Minister Berenger:

When I had the great pleasure of meeting you in Mauritius last year, we discussed the question of the ratification of the Law of the Sea Convention. I think ~~you~~ gave some convincing reasons why this ratification was urgent. These reasons are still valid today. I would even say, it is more important than ever that this Convention should come into force.

On December 10, the United Nations General Assembly will celebrate the Tenth Anniversary of the day at Montego Bay, when the Convention was opened for signature. The Secretary-General of the United Nations was sent a special invitation to Ambassador Arvid Pardo of Malta, the "Father of the Convention," to attend. Pardo will speak for the Delegation of Malta, and announce the Ratification of Malta. This will be the 54th ratification.

It would splendid if Mauritius, too, could announce its ratification on that date. If, as you indicated to me, you could also convince the Comoros Islands to join, we would come really close to our goal. Perhaps there may be a couple of others.

It would be of great symbolic value to complete the ratification process on December 10, 1992. But even more important would be the practical aspect of having the integrity of the Convention safeguarded. It is the best result developing countries have ever reached: Were this Convention to be renegotiated today, we would never reach the same results!

Whatever you can do in this important matter and common cause, will be most fervently appreciated.

With all good wishes.

Sincerely yours,

Elisabeth Mann Borge



Dalhousie University

International Ocean
Institute



I.O.I. - Malta

FACSIMILE TRANSMISSION

To: Martin Blakeway
FAX No: 5472 6091

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

Date: November 1, 1993

Subject: Tonga

Dear Martin,

Thanks so much for your two splendid faxes!

I would call you, but am afraid that at this godless hour (not yet 09:00!!!) you are still schlaffing wohl, and I don't want to disturb you!

Indeed there should be a covering note to the Crown Prince. As a matter of fact, I thought the fax should simply come from you yourself. You might say that you were advised by the prestigious International Ocean Institute to bring these things to H.R. H.'s attention. He will undoubtedly hear more about the IOI since it has just started a permanent programme in the South Pacific, in cooperation with the USP.

If the message is more impressive if it is bulkier (since they do like bulk!) You might add the attached document which developing countries have proposed as a basis for discussion on November 8, to facilitate universal participation in the Convention. The Kingdom's Delegation should please support this approach...

Just great.

Yes, the week-end was really perfect.

And we are looking forward to the Kabuki adventure.

Much love,

1226 LeMarchant Street, Halifax, N.S., Canada B3H 3P7

Telephone: (902)494-1737, Fax: (902)494-2034, Telex: 019 21863 DALUNIV

Elisabeth

'93-11- 2 (火) 15:30

P. 01

To PROF ELISABETH MANN BORGESE, President Hotel Rm 908. Fx 3401-4816

3 pages

2nd November 93

Dear Elisabeth
↑
✓

COPY

I have sent HRH the six pages you faxed me plus these two covering letters. I would have liked to have you OK the text first, but I thought that since you were not in the hotel (I had you paged in case you were roaming around outside your room) it was most important to get the fax on its way.

I hope you are having a jolly and fruitful day.

Martin

Shiroganedai 1-1-21-108, Minato-ku, Tokyo 108, Japan
Tel (81-3) 3445-4124 Fax (81-3) 3443-9504

2nd November 1993

URGENT

KINDLY PASS TO HIS ROYAL HIGHNESS PRINCE TUPOUTO'A
WITHOUT DELAY

Personal

My dear Tupouto'a,

I hope this finds you and your respected parents and all the members of the royal family in the very best of health and the kingdom prospering. I also hope very much that it finds you there, as I have something important to share with you that I believe you will want to know about--if you don't already.

Jiko and I have just spent an instructive and delightful weekend up at Yatsugatake, which you will probably remember with a mixture of pain and pleasure, with one of our favourite and most admirable friends, Elisabeth Mann Borgese, who is the inspiration and Chairman (/person) of the Governing Board of the International Ocean Institute (IOI). The accompanying formal letter will explain.

The United Nations Convention on the Law of the Sea is of particular significance to smaller nations with extensive economic zones, and I believe very much in the interest of Tonga to support. Have a good shufti at the enclosed material (sorry if the six-page attachment does not come out very clearly, as it is a fax of a fax), and see if you can get your ratification in in time to ensure the necessary score of 60.

Prince Tomohito and Princess Nobuko are coming to my small informal Umpteenth Birthday dinner at home on 19th November (we couldn't manage the 12th). It would be a nice opportunity for you to meet your old friend again. Do come.

Then if you have time, we can spend the weekend in our dacha at Yatsugatake. The flat is warm and comfortable, Jiko is a great cook, and I promise not to take you on gruelling hikes.

Best personal wishes and affectionate respects from us both,

Martin

Martin Blakeway

Shiroganedai 1-1-21-108, Minato-ku, Tokyo 108, Japan
Tel (81-3) 3445-4124 Fax (81-3) 3443-9504

2nd November 1993

MOST URGENT

His Royal Highness Prince Tupouto'a
Minister for Foreign Affairs and Minister of Defence
The Foreign Ministry
Nuku'alofa
KINGDOM OF TONGA

Facsimile # (676) 23-360

8 pages in all

Concerning THE LAW OF THE SEA CONVENTION

Your Royal Highness,

On behalf of Professor Elisabeth Mann Borgese, Chairperson of the Governing Board of the International Ocean Institute, I have the honour to convey the following message, which as an old friend of your country and Your Royal Highness I strongly endorse and commend to your urgent and positive attention.

As His Majesty and Your Royal Highness are undoubtedly aware, the United Nations Convention on the Law of the Sea is about to come into force. Given the fundamental importance of this instrument for the future of sustainable development, comprehensive security and the restructuring of the United Nations, this is an historic milestone. It is also a milestone in the history of the developing countries that have contributed so much to the making of this Convention and which are to benefit greatly from its implementation.

Important consultations will take place from November 8th to 12th under the aegis of the Secretary-General of the United Nations. To ensure the most favourable negotiating climate, it is important that the sixty ratifications required for the coming into force of the Convention should be officially deposited by the commencement of these consultations.

Fifty-nine ratifications have now been received, with the sixtieth (Guyana) expected to come through at any time. It is possible, however, that there might be some procedural delay in Guyana's ratification, in which case negotiations would have to be initiated on November 8 one short of the needed number.

Would it be possible for Your Royal Highness to arrange to have the instrument of ratification of your Kingdom deposited in New York by Tonga's delegation to the United Nations by November 8th? I am sure it would be a great service to all developing countries and to the world community at large.

With deepest personal respects to His Majesty and to Your Royal Highness,

I remain, your faithful friend,

Martin Blakeway

Martin Blakeway



International Ocean Institute

P.O. Box 524
VALLETA, MALTA

Telephone: 236596
Telefax: 247594
Cables: INTEROCEAN
Telex: 1946 OCEANS MW

FAXED

to Layachi

To: H.E. Dr. Boutros Boutros-Ghali
Secretary-General of the United Nations

From: H.E. Ambassador Layachi Yaker
President, International Ocean Institute

Dr. Elisabeth Mann Borgese
Chairman, International Ocean Institute

Date: July 24, 1992

Subject: Status of the United Nations Convention on the Law of the Sea

I.

Ten years ago, when the United Nations Convention on the Law of the Sea was opened for signature in Montego Bay, the Secretary-General of the United Nations described that event as the most important since the adoption of the United Nations Charter itself. The Convention has retained this importance. In particular, it reflects not only the interests of the great maritime powers, but balances these most successfully with the aspirations of the developing countries. It is, in fact the most balanced and best result the developing countries have ever reached on any forum, and were this Convention to be renegotiated in today's political and economic climate, they never would reach the same result again.

The Convention has acquired even greater importance in the context of the UNCED process for which it constitutes a basis and a framework. The Law of the Sea Convention in fact contains the only existing, comprehensive, binding and enforceable international environmental law, covering pollution from land-based and atmospheric as well as from oceanic sources. It is the only existing legal instrument that effectively integrates environment and development: development of living and nonliving resources, of science and technology, and of human resources. It is the only existing legal instrument that provides for mandatory, binding and enforceable settlement of disputes arising from environmental issues.

Beyond that, the Convention designs a regime for the sustainable management of a global resource which may become a paradigm for the governance of sustainable development in a much broader sense. The International Ocean Institute is doing a great

deal of policy research in this new field in the context of its forthcoming conference Pacem in Maribus XX.

II.

The undersigned are happy with the progress made during the June "dialogue" under your guidance on advancing the "universal acceptance" of the Convention. The consensus that appears to be emerging on planning the first mining project of the Enterprise as a Joint Venture, financed by the Joint Venture partners without imposing unrealistic payments on States Parties is encouraging.

The International Ocean Institute has advocated such a solution since 1983, in a series of working papers for the Delegation of Austria, the Delegation of Columbia, the Asian African Legal Consultative Committee, and in a "Discussion Paper" intended as a basis for discussion at forthcoming IOI seminars.

This series of papers will be forwarded to your office for examination as it might contain a number of practical ideas that might be applicable today.

While thus fully sharing the conviction that Part XI, such as it is, is not fully applicable today and that there is a need for an interim regime, bridging the time between the coming into force of the Convention and the time when commercial seabed mining becomes economically and environmentally practicable, we would like to stress the following points, intended to maintain the fair balance of interests indicated above and the integrity of the Convention as a whole.

The needed "interim regime" in reality exists already: in the form of the Pioneer regime established by the Preparatory Commission. This regime covers

Exploration

Development of human resources

Technology development

and should remain in force until the time when commercial seabed mining will begin.

All that is needed is to **continue the Preparatory Commission**, giving it the status of

Interim Authority upon the coming into force of the Convention. The existing joint arrangement between the Pioneer Investors and the Prep.Com. should be considered as the **Interim Enterprise**.

This strategy, advocated by the IOI since 1983, has recently been adopted by the Delegation of France. While many technical details remain to be discussed, it offers, we are convinced, the only practical solution.

It would be extremely harmful to the integrity of the Convention, and totally unjustifiable, to "freeze" the entire Part XI. The International Sea-bed Authority is far more than a nodule mining business. It is an intergovernmental, political institution with a wide range of responsibilities, from the protection of the seabed environment to the conduct of marine scientific research, from the disposal of archaeological treasures to the harmonization of seabed mining activities with other ocean uses. The International Seabed Authority represents the first and only attempt to embody the principle of the common heritage of mankind in an institutional framework. If this were to be reneged or put on ice sine diem, the concept of the common heritage of mankind would fall back to the status of pious wishes or rhetorical flourishes in which it was prior to UNCLOS III. Part XI of the Convention must remain an integral part of the whole. It is sufficient (a) to create a viable interim regime; (b) to agree not to use the articles that cannot be used or are in contradiction with the interim regime, i.e., all articles concerned with production and financial arrangements.

To safeguard the integrity of the Convention and to enhance its role in the UNCED process it would be highly desirable that it should be ratified without further delays. Only 9 more ratifications are needed. At least half a dozen countries have completed their internal procedures and could deposit their instruments of ratification immediately. Also a number of the new States could notify succession very quickly. A turning point could be reached if India and China could be convinced to ratify. Your influence, Mr. Secretary General, on such a development could be very decisive.

Even though it is necessitated by real changes in the scientific, technological, and economic situation, the Interim Regime might appear to impose a new round of concessions on the part of the developing States. Are they not to give up the right of the Enterprise to an initial financing of its first full mining project, which would have been, above all, a contribution of the industrialized countries? To maintain a fair balance between the interests and aspirations of a groups, the Interim Regime should make provisions for the immediate

implementation of Article 162, 2, (o) (ii), concerning rules and regulations for the exploration (not exploitation) of resources other than polymetallic nodules. In view of the same changes that have taken place in the scientific situation, a restriction of the Interim Authority to manganese nodules would be totally unrealistic today and leave the Interim Authority hopelessly behind in current scientific and technological developments. Both the Pioneer Investors and the developing countries would benefit from scientific and technological cooperation in the exploration of cobalt crusts and polymetallic sulphides which are abundant not only in areas under national jurisdiction but in the international area as well.

Elisabeth Nam Berger

105
FAXED

PERSONAL AND CONFIDENTIAL

FACSIMILE TRANSMISSION

To: H.E. Dr. Boutros Boutros-Ghali
Secretary-General of the United Nations
FAX No: 1 212 963 6430

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

Date: November 20, 1993

Subject: Your letter of 2 November

Mr. Secretary-General,

I thank you most warmly for your kind reply to my outcry. Of course I know that you share our agonizing over the misuse of violence and killing in peace-keeping operations, and I am fully aware of the tremendous complexity of the issues involved.

But please permit me to draw your attention to another issue which I know is as close to your heart and mind as it is to ours: the next stage of the implementation of the Law of the Sea Convention.

We have less than a year now for an agreement on a transitional stage, to last from the coming into force of the Convention to the beginning of commercial seabed mining, which should be such that the Pioneer Investors will stay aboard and seriously initiate their ratification process. This would imply the acceptance of the Convention by the European Community and Japan. This is not at all an unmanageable task. The accession of the United States would come subsequently, after the change, which has already taken place, from malevolent to benign neglect.

Now we have one substantive and one procedural problem: both very grave, endangering the future of the Convention.

On the substantive side, it is most unfortunate that the efforts of a few delegates (not Delegations, let alone, Governments!) to change the Convention before it comes into force, have somehow managed to "high-jack" the Secretary-General's Consultations.

I am fully aware that you, Mr. Secretary-General, share our conviction that the Convention must not be changed before it comes into force. There is no legal basis, there is no political basis, there is no practical basis for attempting such changes, which among other things, would be unfair towards the sixty States which have, in good faith, ratified the Convention and are bringing it into force.

The "Boat-Paper" fundamentally changes the Convention. For all practical purposes, it abolishes the Enterprise, and it falsifies the decision-making process through the so-called "chamber voting" whose only purpose is to give a veto to the industrialized States. It uselessly tries to solve problems which we cannot solve today. It rather makes a farce of Part XI of the Convention. Farcical also is the suggestion that States Parties should agree to consider Part XI and the Boat-Paper as one single instrument, and where there is a conflict between the two -- they clash on practically every major issue! -- it is the Boat-Paper that is to prevail.

The "Boat-Paper" has derailed the Consultations and put them on the slippery track of changing the Convention.

Apart from any other, more principled reasoning, the fact is that there simply is no time to change the Convention and to come to an agreement on a number of very complex and fundamental issues on which it is in any case futile to try to legislate today as we do not know when, and under what circumstances, commercial seabed mining will eventually take place.

On the procedural side, I was quite shocked to see with what brutality one Delegate brushed aside Dr. Fleischhauer's services and manipulated, for the next Consultations, the adoption of a date on which Dr. Fleischhauer will no longer be available.

Considering this combination of substantive and procedural difficulties, I am deeply concerned about the outcome of the next Consultation (January 31-February 4). If some technical reason could be found to anticipate the date to January 17-21, or to cancel this meeting altogether, I think the Convention would be served better.

Everything considered, I think it would probably be more constructive at this stage to terminate the Consultations as quickly as possible and to turn things back to the Prepcom. Of course the U.S. should be encouraged to join the Prepcom. Why not, after all?

So here is another "outcry." Mr. Secretary-General, I certainly do not expect another personal letter from you, and I know that you will do what is best for the future of the Convention.

With all good wishes,

Yours sincerely



Elisabeth Mann Borgese

FACSIMILE TRANSMISSION

To: Dr Carl-August Fleischhauer
FAX No: 1 212 963 6430

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

Date: November 20, 1993

Subject: SG

Sehr lieber Gustel,

Wie ich nachhause kam, fand ich den Brief vom Boutros. Also doch! Vielleicht hast Du eine Kopie bekommen; hier, jedenfalls, ist eine. Und jetzt habe ich ihm noch meine neuen Sorgen nahegelegt. Könntest Du so freundlich sein, dies auch wieder weiterzuleiten?

Du bist im Hag. Ich komme gerade aus Fiji. Wir hatten ein interessantes "leadership seminar" dort. Mit permanent secretaries von allen Ministerien, die etwas mit dem Meer zu tun haben. Die Regierung möchte eine "national maritime authority" auf die Beine stellen, für alle Meeresangelegenheiten, und das war das Thema unseres Seminars; auch, wie sich solche neuen Institutionen auf die regionalen Organisationen auswirken.

Wie doch alles so seinen Lauf nimmt...

Übrigens fand ich es lustig herauszufinden, dass das Aussenministerium vom Boat Paper überhaupt nichts weiss...Ist ja auch nicht unbedingt in Fiji's bestem Interesse...

Ich faxe aus Genf (oder nahe daran), wo wir ein IOI/UNDP/UNCTAD Seminar über training haben. Dann, nach Milano übers Wochenende (werde versuchen, mich mit Deiner Tochter in Verbindung zu setzen); dann nach Hannover, für den Club of Rome.

Jetzt musst Du im Hag einen "Perigore" entdecken, wo wir dann unser nächstes Abendessen feiern können!

Alles Beste,

Immerdar

Deine Elzav



Dalhousie University

International Ocean
Institute



FAXED + 2 pp. letter from
EMB to N.Y. Times
(i-205 file)

March 12, 1994

H.E. Dr. Boutros Boutros-Ghali
Secretary-General of the United Nations
United Nations Secretariat
1 U.N. Plaza
New York, N.Y. 10017
USA

Mr. Secretary-General,

I would like to draw your attention to a letter I have just sent to the New York Times. Mr. Greenhouse's article evidently was "planted" to put pressure on the upcoming Consultations to approve the Fijian paper. I really think we have reached a quite critical point, and this manoeuvre is extremely dangerous for the future of our Convention.

With all good wishes,

Sincerely yours,

Elisabeth Mann Borgese
Professor



International
Ocean
Institute

COPY

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FAXED

to Malta (instead of Greece).

FACSIMILE TRANSMISSION

To: Professor Salvino Busuttil
FAX No: 301 7291 100

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

Date: March 14, 1993

Subject: Your fax of February 23

My dear Salvino,

Thanks very much for your fax -- especially for the *dulcis in fundo*! I am leaving for Japan (Takaoka and Tokyo, tomorrow; then, from there, directly, to Jamaica (Law of the Sea) and hope to be back home on April 1.

Thanks for the Labour MP's intervention in the Parliamentary Debate. The idea of a "Mediterranean EEZ" is of course excellent, forward looking, and in line with the way things should be going in general, in the post-UNCED era! On the other hand, the poor man obviously got mixed up with regard to the International Tribunal for the Law of the Sea. I don't know where he got the notion that this should go to Malta!

I am afraid Malta is really and totally losing its credibility: On December 10, on the tenth anniversary of Montego Bay, Arvid was instructed to announce officially that Malta was ratifying the Convention. As we know, Malta has not done so. It is really disgraceful. I wish it could happen before March 22, when the Prepcom meets again in Jamaica; because the poor Maltese representative will have to hide his face if it has not happened.

As you know, we now are at 55 (Zimbabwe is No. 55). With Malta it would be 56, with four more to go. The process will be completed within the next few months, with or without Malta!

All the very best, and much love,

Elisabeth