RGS/Law of Sea Conv
1994.

For Globe and Mail

1998: THE YEAR OF THE OCEAN!....BUT WITHOUT CANADA

The United Nations Convention on the Law of the Sea, ~~which~~ was adopted in 1982 and entered into force in 1994. It has been hailed as the most important international agreement since the establishment of the United Nations. This is an appeal to the Government of Canada to ratify this Convention. It is an appeal to the people of Canada to support this initiative.

One of the cornerstones of Canadian foreign policy has been Canada's support of the Third United Nations Conference on the Law of the Sea (UNCLOS III). Canadian involvement was extensive and was credited with being successful in achieving Canadian objectives and in providing support for a more equitable and progressive international order. Yet in 1998, Canada remains one of the few states not to have ratified the resulting Convention.

Canada's current position on ratification of the Convention

During the election campaign leading to its 1993 victory, the Liberal Party of Canada made it clear that they favoured the ratification of the Convention. In the "Red Book", they publicly stated their commitment to ratify the Convention. In Chapter 4, it was written that "[w]e will ratify the Law of the Sea Convention." They repeated this position when they identified the need for Canada to assist in the resolution of the "many emerging global issues". To do so, they promised that their government would foster "the development of such multilateral forums and agreement, including an improved Law of the Sea."

On March 15, 1994, in one of his first speeches on Canadian foreign policy, Foreign Minister, Andre Ouellet declared that Canada would soon ratify the Convention. His successor, Lloyd Axworthy also clearly stated his intention to have Canada ratify the Convention. Speaking in the House of Commons on February 29, 1996, he stated that the government was committed to "fulfil the mandate of the law of the Sea".

In addition to public statements of support, the intention to ratify is enunciated in the Government's official statement on Canada's role in the world: "The Government has already announced that we would ratify the UN Convention on the Law of the Sea soon, and is reviewing domestic legislation to bring it into conformity with the provisions of the Convention with a view to proceeding with ratification." This was reaffirmed in the 1996 throne speech when the government once again stated that "Legislation to ratify the UN Straddling Stocks Agreement and the Law of the Sea Convention will be presented to Parliament."

allowed to participate on the International Seabed Authority only on a provisional basis. Besides Canada, the current list of such states are: Bangladesh, Belarus, Belgium, Laos, Nepal, Poland, Qatar, Switzerland, Ukraine, United Arab Emirates and the United States. However, this status will be terminated on November 16, 1998. This means that Canada will not have a voice on any future deliberations of the Authority.

Canada has also already forfeited the opportunity to place a Canadian Judge in the International Tribunal on the Law of the Sea in Hamburg or Canadian representatives on many of the new institutions developed to support the Convention. For example, the Canadian Government could not nominate a candidate to the Commission for the Delimitation of the Continental Shelf. Given the size of Canada's Continental Shelf, having a Canadian voice on the Commission could have served Canadian interests.

Beyond the immediate costs caused by non-ratification, Canada will also pay a price in its foreign policy. The tradition of Canada as an active supporter of multilateralism in the conduct of its foreign policy has been a source of pride for Canadians and of admiration from other states. These traditions are so fully engrained in the action of Canadian diplomats that as recently as December 1997, Canada supported and was a co-sponsor of General Assembly Resolution A/52/L.26 regarding the Convention. What was somewhat bizarre was the fact that this resolution called on all states that have not yet done so to ratify it. Thus Canada co-sponsored and voted on a resolution that was directed against itself!

Canada now risks being shunted to the sidelines regarding international ocean relations. The Convention has achieved an acceptance that is unprecedented in the modern era. Thus the costs of not ratifying the Convention are severe.

Now is the time to ratify!

Signed by:

Elisabeth Mann Borgese

Elisabeth Mann Borgese International Ocean Institute

For Ministers.

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It is clear from the foregoing that the official position of the current Canadian Government is to ratify the Convention. Yet there is still no sign of when this will be undertaken. Through the Oceans Act, the Government has passed legislation that harmonizes Canadian maritime boundaries with the Convention, but the Act itself does not makes any reference to ratification.

Why has ratification not occurred?

To a large degree, Canadian attention to the Convention has been eclipsed by the ongoing East Coast fishery crisis. The Canadian government believes that if it ratifies the Convention, its case against Spain will be weakened. However, since the Estai was seized, the Convention on Straddling Stocks and Highly Migratory Stocks was successfully negotiated in August 1995. Among other important articles, this agreement provides for the management and control of the fisheries beyond the EEZ. As such, Canada now has a multilaterally accepted means for the protection of its fish stock beyond

Elizabeth Mann Borgese

Brian Flemming, Halifax

Bob Fournier, Dalhousie University

Johanne Gauthier,

Edgar Gold

Geoffry Holland IOC

Rob Huebert, Department of Political Science, University of Calgary

Barry Oland, President Canadian Maritime Law Association

Dawn Russell, Dean, Dalhousie Law School

Phil Saunders, Dalhousie Law School

Ian Towsend-Gault,

David VanderZwaag, Dalhousie Law School

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Series: United Nations
Sub-Series: UNCLoS III : publications, drafts, and speeches
File: Newspaper articles

Description of item:

File contains a copy of the following newspaper article:

Barlow, Doug. "Bury the Law of the Sea Treaty." *The Journal of Commerce*, February 27, 1994.

Reason for separation:

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To The Editor
The New York Times

Sir:

a couple of days ago I sent you a letter correcting some of the errors committed by Steven Greenhouse in his article "U.S. Aides Report Compromise on Sea Mining," New York Times, March 10, p. 10.

There is one more grave error in the very first paragraph which I did not correct. If I still could add this correction to my letter, I would be grateful.

Please insert the following paragraph after para.3 of my letter (ending "it was the sixtieth State to ratify.")

> Since the U.S. would have to accede to, not "sign" the Treaty or Convention, Mr. Greenhouse evidently is ill informed when he states that "Washington would probably sign the treaty this summer." Accession is equivalent to ratification. It requires the consent of the Senate, and it is indeed hard to imagine that the necessary legislation could be ready as quickly as that!

The following parragraph should then start, "An even more important error..."
Thanking you for your cooperation,

Sincerely yours,

Elisabeth Mann Borgese

Elisabeth Mann Borgese

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International Edition (Jon Fischer)
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Dalhousie University

International Ocean Institute

TO THE EDITOR
NEW YORK TIMES

Steven Greenhouse's article "U.S. Aides Report Compromise on Sea Mining, in the NEW YORK TIMES of Thursday, March 10, p. 10, is full of errors and is highly misleading.

Some of the errors are of a minor character. They are nevertheless indicative of the writer's lack of familiarity with the Law of the Sea.

To start with, the United States today could not "sign" the Treaty: it would have to "accede" to it, since, after December 10, 1984, the Convention was no longer open for signature. Guyana was not the 60th State to "sign" the Convention. It was the sixtieth State to ratify it.

A more important error is to describe Mr. Nandan of Fiji as "one of the United Nations negotiators." Mr. Nandan was relieved of his post as Undersecretary General of the United Nations a couple of years ago. It is not clear, on whose behalf and with whom is he supposed to be negotiating.

The "agreement" referred to is an anonymous paper without any legal standing which is presently being discussed, among other papers, at the informal consultations under the aegis of the Secretary-General of the United Nations. There is, as yet, no agreement on this document which has run into a number of problems, both procedural and substantive.

Even supposing that these Consultations result in the approval of this highly dubious document, it would then have to be formally adopted by the next session of the General Assembly.

States will think twice before adopting this document. No self-respecting Legal Counsel would recommend it to his/her Government. The document would result in the establishment of a dual ocean mining regime on the day (November 16, 1994) the Convention comes into force: Some States would be bound by the Convention as it was adopted in 1982 and rejected by the Reagan Administration; some would be bound by the "mini treaty" proposed in the Fijian document which would be applied provisionally by those States who would have voted in favour of its adoption. The "agreement" would come into force if and when 40 States have

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consented to be bound by it which is expected to happen within four years but actually may never happen, in which case the Convention remains in force as it is.

It is indeed without precedent that 40 States, which need not at all be among the 60 (or rather 61 by now) who have duly ratified this Convention should be able to fundamentally change it at this time, when it has received the required number of ratifications and is about to come into force. This cavalierly handling of international law would set a very dangerous precedent and could lead to the dismantling of the Convention as a whole. There are already signs that the Exclusive Economic Zone will be the next victim, as States (including my own, Canada) are preparing unilateral legislation to expand their jurisdiction beyond the 200 mile limit established by the Convention. -- and we will be back in 1958, when the First United Nations Conference on the Law of the Sea failed to agree on the limits of the territorial sea and of fisheries zones.

As one who has dedicated the last 25 years to the study and promotion of this Convention, or "Constitution for the Oceans," I am obviously overjoyed by the change of attitude of the United States and the prospects of its acceding to the Convention. But this consent cannot be bought at the price of dismantling the Convention and disregarding international law.

There will be no sea-bed mining for the next 20 years. There is plenty of time to review and revise the Convention in a legally acceptable manner when the time comes. What we should do is not to touch the Convention now, but to set the sea-bed mining part aside, so long as there is no sea-bed mining, and settle on a reasonable interim regime, without mining, acceptable both to the developing and the industrialised States. Such a regime already exists. It has evolved through the 10 years' work of the Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea, and of the "Pioneer Investors" (China, France, India, Japan, Russia, and a consortium of Eastern European States). Let us keep it, until the time when commercial mining will become economically, technologically, and environmentally, practical.

Elisabeth Mann Borgese
Professor of Political Science, Dalhousie University
Founder and Honourary Chair, International Ocean Institute.

Dalhousie University

International Ocean Institute

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Elisabeth Mann Borgese
Professor of Political Science, Dalhousie University
Founder and Honourary Chair, International Ocean Institute.

Subject:

Dear Phil,

Could you be so very kind as to fax me a copy of that article in the New York Times about the imminent U.S. ratification? I badly need it, and it is hard to find here.

Thanks a lot.

Love

COPY

Elizabeth

As requested. Regards

B Rymes

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"Fishing Fleet Trawling Seas that Yield Many Fewer Fish." *The New York Times,* March 7, 1994.

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TELEFAX MESSAGE

TO: Elisabeth Mann Borgese, Dalhoise University

FAX: 902 494 0234

FROM: Alicia Bárcena p/1688

DATE: July 13, 1994

THIS TELEFAX MESSAGE CONSISTS OF _2_ PAGE(S) INCLUDING THIS ONE

Dear Elisabeth,

Please find enclosed, for your information, copy of the article *U.S. Decides to Sign Sea Law Treaty* by George Gedda. I hope you find it of your interest.

Best regards,

DALHOUSIE UNIVERSITY

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