

July 12, 1977.

To: Ambassador Karl Wolf

From: Elisabeth Mann Borgese.

Subject: Informal meeting, called by the Chairman of the Delegation of Portugal, July 8, 1977, at 9:30 A.M.

There were 28 participants in the meeting, including delegates from Angola, Australia, Austria, Brazil, Canada, France, India, Japan, Kenya, U.K., U.S.A., Yugoslavia.

The U.S.A. suggested some clarification in Paragraph A of the proposed Resolution. In particular, he suggested that paragraphs A(2) and A(3) be made subparagraphs of A(1). He had some reservations with regard to the proposal for an ad hoc group. According to him it was too early to make such a proposal. On the whole, however, he thought the Resolution was most useful and constructive; that action of the kind it recommended was indeed needed, and that the U.S. would endorse and welcome the initiative.

Australia, which had expressed its support at the previous meeting, suggested an addition to the first preambular paragraph as amended by Algeria. The words "and to discharge their increased responsibilities" should be added at the end of (1) a). Since the paragraph concerning the ad hoc group was the only one that was controversial, not so much with regard to its substance as with regard to its timing, the Delegate of Australia suggested that it be, temporarily, deleted. It might be reinserted at a later time.

France, likewise, expressed doubts as to the timing of paragraph B (2) proposing the establishment of an ad hoc group. Instead of deleting it, however, the Delegate of France suggested that it should be put in square brackets. She agreed with the amendments proposed by the U.S.A., Australia, and the Soviet Union, but had some reservation with regard to the Algerian amendment: The singling out of the issue of technology transfer would create an imbalance. A broader wording would be needed to include this concept, but not to the detriment of others which are not mentioned.

Kenya expressed its full support for the Resolution, but reserved its agreement to co-sponsor it until a later date. The Delegate of Kenya supported the amendments of the U.S.A. and Australia. He supported the idea of an ad hoc group even though it was controversial, but he found that the qualifications of the prospective participants in the Group were too limiting. Scientists of the Third World might be excluded.

The Chairman explained that "scientists" was not to be understood in the sense of oceanographers, of which Third

World Countries might be lacking if they had to be "of highest international reputation," but that the term included economists, political scientists, legal experts in international ocean affairs as well as specialists in international organization, who should also be represented in the Group.

Canada agreed with the amendment proposed by Australia. Paragraph B(2), according to the Delegate of Canada, was very important; but more clarity was needed as to the character and scope of the proposed ad hoc Group. Until such clarity could be provided, he thought the French proposal to bracket the paragraph was the most fruitful.

India was pleased to note that this morning's contributions had been most useful. On B (2) the Delegate of India commented that the idea of an ad hoc group was interesting and that his Delegation would like to study it further. At any rate it should be made clear that the conclusions of the work of this group would have to be in the form of recommendations, and that they could not be binding on anybody. If this were clear, he saw no problem with the proposal which, however, should be studied further. He suggested that the words "under the Convention at the end of paragraph A (2)" be replaced with "in the light of the Convention."

The U.K. felt encouraged by the progress of the discussions and the useful suggestions made this morning. In particular the U.K. agreed with the French suggestion that it might be unfair to highlight technology transfer to the detriment of other issues; he noted that the Australian suggestion to refer to the new responsibilities of States was very useful; he stated that he had some problems with paragraph B (2), which he thought was premature as long as one did not know what the Convention would look like, and he supported the French proposal for bracketing the paragraph; he also agreed with the American proposal to make of paragraphs A (2) and (3) subparagraphs of A(1).

Brazil expressed its indebtedness to the Chairman, stressed the importance of institutional arrangements, and noted that the 5th Draft constituted a great improvement. The Delegate of Brazil had some reservations with regard to paragraph B (2), not because it was controversial, but because it left some uncertainty. He felt a proposal of this sort might be very useful, but that this could not be decided before the last session. He would refer it to his Government during the intersessional period.

The Chairman said that the Resolution would be redrafted, and that the preambular paragraph would be rephrased in terms that should be broad enough to include both the concepts of technology transfer and of the new responsibilities, without

causing any imbalance. He noted that the amendment proposed by the U.S.A. was very useful. He pointed out that the ad hoc Group proposed in paragraph B (2) was to be appointed after the adoption of the Convention, and that its function be limited to a gradual and realistic adjustment of the institutional arrangements to the new requirements arising under the Convention. The objective of the Group would be by an analysis of institutional arrangements to identify eventual institutional gaps or duplications, and to suggest corrections. The ultimate goal would be to provide a comprehensive review and recommendations to the General Assembly which correspond to the new needs of the new ocean regime. He envisaged that the Group would have 10 to 15 members, selected and appointed by the Secretary General, and that membership should be balanced both with regard to fields of expertise and to geographical distribution. The work of the Group would last two years, including a preparatory period of six months; one year of work, and six months of drafting. The chairman of the Group might be appointed either by the Group or by the Secretary General. The first meeting of the Group would establish small task groups; these may have to spend some time at the headquarters of the Agencies and institutions. Questionnaires might be used as an instrument of work. The documentation need not be very large and consist mostly of available documents of the Secretariat. A small, special secretariat should be provided by the Secretary General and the Specialized Agencies. Total financing, to be provided by the Secretariat, would not exceed \$150,000 a year.

France repeated that there could be no serious detailed discussion about the proposal until it was known what the Convention would look like.

In conclusion of this part of the discussion, the Chairman suggested that, if sufficient progress was made early during the next session, the Resolution should be brought to the attention of the various working groups and interest groups. This kind of preparation must be very thorough. The Resolution would only be useful if it were adopted by consensus.

The last few minutes were spent on a brief discussion of the proposed Draft Article on the review of the Convention.

The U.S.A. expressed the view that, once a satisfactory Treaty had been concluded it was best to leave it undisturbed for a while so that it could grow and take roots. The U.S. Delegation would have great difficulty if this proposed article saw the light of day. There was no way in which this draft article could even be improved or modified. The U.S. would feel very strongly opposed to it and suggested its abandonment.

The meeting rose at 11 A.M.

5/7/77

AMMENDMENTS TO THE 5TH DRAFT: DRAFT RESOLUTION ON IMPRO-
VEMENT OF INTERNACIONAL INSTITUTIONAL ARRANGEMENTS RELATING TO
THE CONVENTION ON THE LAW OF THE SEA.

Taking into account the views expressed at the last informal consultations held on the 23rd June 1977, it is proposed to include the following new paragraphs:

(1) In the Preamble:

a) between the present 2nd and 3rd para.:

Having in mind that the implementation of the Convention calls for increased cooperation amongst States and an expanded role by the appropriate international organizations referred to in the Convention, in the development and transfer of technology to countries which may need it, particularly the developing ones, so as to allow them to benefit fully from the new opportunities for economic and social progress offered by the new ocean regime;

b) Add a last para.:

Recognising further that the appropriate international organizations referred to in the Convention can facilitate the dialogue amongst States on matters of common concern, and, thus, contribute to prevent ^{disputes} and ^{overcome} ~~reduce~~ difficulties which might arise from the implementation of the Convention;

(2) In the operative part:

a) Insert after the words "aimed at improving", in the operative paragraph B.2 (line 10) the following words: "... where appropriate".

5th Draft

DRAFT RESOLUTION ON IMPROVEMENT OF INTERNATIONAL INSTITUTIONAL
ARRANGEMENTS RELATING TO THE CONVENTION ON THE LAW OF THE SEA

Portugal

Noting that the III Conference of the United Nations on the Law of the Sea has offered an opportunity to consider the interaction between the multiple uses of the oceans and their implications at the international level and to formulate provisions for co-operation among States, directly or through appropriate international organizations;

Considering that the implementation of the Convention on the Law of the Sea calls for an active role of the appropriate international organizations referred to in the Convention;

Recognising the need to improve the structure and functioning of such international organizations, specially those which are part of the United Nations system and have competence in ocean affairs;

A. The Conference recommends to States participating in the Conference to:

1. Endeavour to join and participate actively in the work of the appropriate international organizations with competence in ocean affairs, of direct interest to them at the global, regional and subregional levels.

2. Promote action aimed at reviewing the structure, functions, powers and means of the appropriate international organizations with competence in ocean affairs, particularly those which are part of the United Nations system, with a view to improve their effectiveness and to enable them to perform the functions referred to under the Convention.

3. To consider ways and means of rationalizing further the work of the appropriate international organizations which are part of the United Nations system and have competence in ocean affairs, through the strengthening of coordinating mechanisms so as to improve their effectiveness and to enable them to perform the functions referred to under the Convention

B. The Conference recommends to the Secretary-General of the United Nations to:

1. Take in close co-operation with the specialized agencies and other organizations concerned which are part of the United Nations system the necessary measures to up-date at regular intervals and to circulate to States, the "Annotated Directory of Intergovernmental Organizations concerned with Ocean Affairs" (Document A/CONF.62/L.14; 10 August 1976) submitted to the Conference. The future issues of the Directory should also include information of a factual nature on institutional changes programmes and activities of those organizations, particularly those relating to the implementation of the Convention in their respective field of competence.

2. Appoint an ad hoc Group of independent individuals, to be selected in a private capacity from among persons enjoying the highest reputation and competence in international ocean affairs, taking also into account that the composition of such Group should be balanced both in terms of major fields and disciplines and of geographical representation. The ad hoc Group will analyse present institutional arrangements and report to the General Assembly, through the Secretary-General, on their appraisal of the implications resulting from the implementation of the Convention and on proposals aimed at improving the effectiveness of the United Nations system in the sector of ocean affairs, and, where

necessary, on its gradual adjustments to the functions referred to in the Convention.

C. The Conference recommends to the Executive Heads of the Specialized Agencies and Other United Nations Organizations with competence in ocean affairs to:

1. Bring to the attention of the Governing bodies of their respective organizations any matter regarding structures, functions, and programmes which may need to be considered in order to facilitate the implementation of the Convention.
2. Collaborate actively and take appropriate measures, within their sphere of competence, to improve inter-agency coordinating mechanisms with particular regard to need for rationalizing the discharge of the functions of the organizations which are part of the United Nations system and have competence in ocean affairs.
3. Co-operate with the Secretary-General of the United Nations in the updating of the "Annotated Directory of Intergovernmental Organizations concerned with Ocean Affairs" (See B.1) and in servicing the ad hoc Group of independent individuals (See B.2).

To: Ambassador Karl Wolf

From: E.M. Borgese

Subject: Report on a meeting called by the Chairman of the Delegation of Portugal on June 23, 1977, at 9:30 A.M.

Even in the best of hypotheses, the Law of the Sea Conference will leave a great deal of unfinished business which will have to be followed up over the next years and decades. Problems and new situations may arise, to which the new Law of the Sea may have to be adjusted, generating the need for some kind of continuing mechanism; the new Law of the Sea and the establishment of a new type of international organization, such as the International Seabed Authority, will impose new requirements on the other, existing international organizations dealing with ocean space and resources and accelerate a process of restructuring and integration.

The Delegation of Portugal has made a special study of these medium- and long-range problems and prepared a set of resolutions to deal with them. To discuss these resolutions was the purpose of the meeting, which came in the wake of other such meetings held during the 4th and 5th sessions of the Conference. It is the intention of the Delegation of Portugal to further discuss and improve these draft resolutions and to introduce them in the final session of the Conference, under the co-sponsorship of at least ten or fifteen Delegations. In my opinion this is one of the most positive and constructive developments at the LoS Conference.

The reactions to the proposal were very positive. The meeting was attended by Australia, Netherlands, Algeria, Japan, Brazil, U.K., U.S.S.R., Austria, Yugoslavia, Romania, Canada, Cuba, Nepal, and France, and I think I am missing one or two others.

The draft resolutions were discussed paragraph by paragraph. Canada pointed out that a restructuring of the ocean-oriented U.N. institutions was in fact already in course and that this process must be unified and coordinated. The new draft constituted a great improvement over the former one and could serve well as a basis for discussion.

Yugoslavia asked for some clarification with regard to the proposed ad hoc group of experts. The Chairman explained that, in his view, the group should be appointed by the Secretary-General, that it should consist of 15-18 experts

in different aspects of ocean affairs, that it should work for a period of two years following the conclusion of the LoS Conference, and that the annual cost to the Secretariat would be of the order of \$150,000 a year.

The USSR noted that the new draft provided a good basis, that section A.2. might be amended with regard to the effectiveness of international organizations with competence in ocean affairs, which might be improved "where necessary," since some of them, as, e.g., IMCO were rather effective now. The USSR shared the doubts expressed by Yugoslavia with regard to the need for an ad hoc committee of experts.

Algeria found itself in agreement with the letter and spirit of the resolutions. It suggested that a reference should be added to the needs of developing countries under the new law of the sea. Perhaps the functional and structural changes required in the U.N. ocean institutions could be described already at this point with somewhat greater precision.

Australia had some reservations with regard to the timing of the resolutions. It also expressed some doubts as to the need for a group of experts; action by ICSPRO or through the General Assembly might be considered as an alternative to the establishment of an ad hoc group or committee. The Delegate of Australia supported the Algerian proposal that something be inserted regarding the needs of developing countries: the Convention is producing a new regime for ocean matters; it is imposing new responsibilities in new areas on developing countries, and they must be given assistance in exercising these new responsibilities.

France was totally favorable to the new draft. A great deal of coordination will have to be done on the new Convention. The Delegate of France stated that his Delegation will warmly support the Portuguese initiative. The draft provided a very good basis for discussion. Perhaps the establishment of an ad hoc group of experts was somewhat premature although, eventually, such a group would undoubtedly be needed. At the present time, he thought it was most useful to concentrate on the need for co-ordination.

The Netherlands whole-heartedly endorsed the resolutions and the ideas behind them. Certainly there was a need for co-ordination. Perhaps one could have certain reservations about paragraph B.2. proposing the establishment of an ad hoc group of experts. The Delegate of the Netherlands was grateful for the Chairman's clarifications, but still thought it might be premature to propose the establishment of such a group.

Summing up the discussion, the Chairman stated that it would be advisable to keep discussion on the "Draft Article on Periodic Review Conferences" (last page of the Portuguese document) separate from the discussion of the draft resolutions; that the proposal for the establishment of a group of experts may be premature, and that alternative proposals might be considered. He invited all participating Delegations to submit written suggestions for amendments and suggested that a free discussion, without any commitment, should continue. A further meeting would be called before the end of the Sixth Session of the Conference.