



Dalhousie University

International Ocean  
Institute



I.O.I. - Malta

**FAXED**

FACSIMILE TRANSMISSION

To: Dr. Carl August Fleischhauer  
FAX No: 212 963 6430

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

Date: July 13, 1993

Subject: Our appointment

*Sehr Lieber Gustel*

Happy to confirm our rendez-vous at the usual place on Tuesday July 20 t 20:15.

As ever,

*Elisabeth*



*Carl-August Fleischhauer*

*Under-Secretary General*

*The Legal Counsel*

RECEIVED JUL 2 1993

1 July 1993

*mein liebe Elisabeth*

On my return from a very restful vacation, I found your faxes of 8 and 26 June. I will be happy to see you in the week beginning 19 July and I propose that we have our evening together at "Le Perigord" on Tuesday 20 July at 8:15 p.m. (26 July being a date which continues to have a special meaning for me).

I am grateful for your understanding regarding August. Since I learned only after my return about my *strafaufgabe*, I have not written it. Furthermore, I must tell you that I am confronted here with such an avalanche of commitments and work that I will not be able to do it at all for the moment.

I think that we have a lot to talk about and look forward to 20 July.

With warmest regards,

Yours as ever,

*Carl*

Professor Elisabeth Mann Borgese  
c/o Dalhousie University  
1321 Edward Street  
Halifax, Nova Scotia  
Canada B3H 3E5

FAX NO. (902) 494 2034

File 1/4



Dalhousie University

International Ocean Institute



I.O.I. - Malta  
June 26, 1993

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

**FAXED**

§  
Mailed

*Sehr vielen Gustel*

I hope you had a nice and restful vacation.

Recently I had a friendly talk with Satya Nandan, and this is how it shaped up (See enclosed letter).

I attended two days of the CSD session, while you were away. There are some things that are good and encouraging; there is a lot to worry about...It will go its own way. There is no way back.

And now to the fisheries: We have a Board meeting in Malta on July 16-17, and I could come to New York the week of July 19 --either all five days, or the first three. Then I'll have to go back to Halifax, because we have an interesting symposium within our training programme, and everybody is coming --Kullenberg, Noel Brown, etc. They will all tell us what they are doing to implement Chapter 17, singly or jointly. It will be a rare occasion for our participants! That takes place on August 2; so I will have to miss the first day of your Consultations, but I will be there on August 3.

I am looking forward to our evening during the week of July 19. It would be great if your secretary could let me know as soon as possible, which evening it shall be.

All the best and much love,

*F. Kullenberg*

P.S. Did you write your *Strafaufrage*?



Dalhousie University

International Ocean  
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I.O.I. - Malta  
June 26, 1993

COPY

H.E. Ambassador Satya Nandan  
301 East 48th Street  
New York, N.Y. 10017  
USA

Dear Satya,

It was good to see you.

The more I think of the "emergency option" we discussed, the more I am convinced that it is the only option we have --unless we want these consultations to drag on *for years to come* --which would, once more, paralyse the ratification process, and, with the aftermath of the high-seas fisheries conference, we might really see the disintegration of our Convention.

But, yes, let me re-emphasis: Under my proposal,

- . *States have to ratify the Convention AS IT IS, integrally, INCLUDING PART XI, AS IT IS.*
- . *States cannot make ANY RESERVATION WHATSOEVER. Only a DECLARATION, IN ACCORDANCE WITH THE CONVENTION.*

I really think we could be satisfied with this. We do not need more. The Prepcom has been already functioning, and functioning well, as an "Interim Regime." If we empower it "to exercise all the initial functions of the Authority and the Enterprise in an evolutionary manner," it is in a position to do everything that can be done today.

Note also that, according to para.14 of Resolution I, "The expenses of the Commission shall be met from the regular budget of the United Nations, subject to the approval of the General Assembly of the United Nations," and this, too should be extended, together with the mandate of the Commission. This should be quite attractive to the G77.

If you help us to get this through, I do believe you would render a great service to

our common cause!

Coming now to another matter: I am enclosing a statement which I was not able to deliver because the Chairman scheduled it for the afternoon when I had to return to my training programme in Halifax, but both Desai and the Chairman do have a copy.

The way Chapter 17 is dealt with, or, rather, not dealt with, is indeed not satisfactory. We have to insist and insist again to have the Law of the Sea and sustainable ocean development properly inserted in the UNCED process, including the GEF which is all structured around the two RIO Conventions (Climate, Biodiversity), but does not mention the LOS Convention which is fundamental for the implementation of Chapter 17. We'll have to go after the GEF people too!

I am also disappointed that the High-seas Fisheries conference is disconnected from the CSD. After all if this is not a sustainable development issue, what is?

I am enclosing some thoughts on this as well.

The "High-Level Segment" of the CSD is the most promising aspect of the whole thing. I think one could develop this into a political, decision-making (binding decisions!) plenipotentiary body, somewhat analogous to the Conference of Ministers vis a vis the "Commission" in the European Community. Obviously there are differences, both with regard to the "Commission" (all they have in common is the name!) and in this meeting of Ministers, which, in our case, is not a separate body, but a "segment." Nevertheless, it is a meeting of Ministers who want to have a "high political profile," and they want to be in a position to take decisions. As I see it, the Commission as a whole would give the guidelines, and the decisions would be taken by the "segment", and the decisions would be binding.

And here we really could make a big step forward with regard to the fisheries on the High Seas! Codes of Conduct, FAO, etc. will not do. We need a body that can take binding management decisions.

Well, these are just some thoughts. And, alas, I know, at the moment, they are not realistic. But I think to try to go this way, which is "process oriented" is far more effective than to adopt another Convention, which we really do not need.

I'll be at the Conference, at least for a few days, and am looking forward to seeing you.

All the best and good luck!

Yours as ever,

Elisabeth Mann Borgese

Encl. Statement  
High-seas fisheries.



Dalhousie University

International Ocean  
Institute



I.O.I. - Malta

**FAXED**

FACSIMILE TRANSMISSION

To: **Dr. Carl-August Fleischhauer**  
Legal Counsel  
FAX No: 212 963 6430

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

Date: June 8, 1993

Subject: Your fax, just received

*Sein liebes Gastel,*

Sad news! But of course I fully understand. I have been thinking of you often, and the horrendously difficult tasks you are facing. To try to find new solutions for this world relapsing into the hoary past could cause one sleepless nights...

Particularly sad because, besides the honour and pleasure of having you here, it was the subject matter of your "key-note address" that was important to us. As you know, I have long been thinking about the Law-of-the sea/UNCED/Restructuring-of-the-United Nations nexus, but, on the whole, Academia has not yet arrived. When Ronald Macdonald received his Honourary Degree here the other day he stressed the need for such thinking here at Dalhousie, particularly in view of San Francisco II.

Now I had a new fiendish idea to plague you: Could you *write* a piece: a think piece, as short or as long as you would want to make it, which we could publish in *Ocean Yearbook 11?* (*Strafaufgabe!*).

I have just studied a long book, by an Israeli political scientist, Yehezkel Dror, a colleague in the Club of Rome, on "Governance for the 21st century" --an unusual, partly very brilliant but very frustrating text. We are going to have a seminar in Madrid this week (I am leaving today) on the basis of this book which is going to be a new "Report of the Club of Rome." My task in this seminar will be to stress the

seminal role of the Law of the Sea Convention in this process, and the more I study, the more I am convinced that the Convention indeed is playing this role.

If we could have your thoughts, maybe by the end of August, that would be the lead article for volume 11. It would be a great thing. We can discuss it when we meet next.

Yes, I am looking forward to seeing you soon. As a matter of fact, I will be in New York for a couple of days for the Sustainable Development Commission --between June 15 and 25. I'll call your secretary when I get back from Spain to hear which day would suit you best, and I can organise my trip around that.

Our training programme here starts on the 14th. Good old Arvid is arriving over the week-end.

*5/11/85*

*Dan Elzabeth*





RECEIVED JUN 7 1993

Carl August Fleischhauer  
Under-Secretary-General  
The Legal Counsel

New York, 4 June 1993

Professor Elisabeth Mann Borgese  
c/o Dalhousie University  
1321 Edward Street  
Halifax, Nova Scotia, Canada B3H 3H5

Fax no. (902) 949-2034

*Liba Elisabeth,*

I would like to thank you so very much for your fax message of 25 May and its attachments. I also would like to apologize for replying only now but I have been extremely busy here, in particular with the legal problems arising out of the protracted Bosnia situation and here foremost with the drawing up of the statute for an international Tribunal for the prosecution of grave violations of international humanitarian law in former Yugoslavia since 1991. Also we have completed the updating of the Information Note of 8 April in light of the last consultation round so that the updated version can serve as a basis for the consultations in August.

A propos August I have a very bad and frustrating news for you: there are two consecutive sets of negotiations under preparation here which are to take place after the Law of the Sea consultations in August and which both require my presence here. I am quite distressed about this but I think we have to count my visit in Nova Scotia out.

The upcoming 2nd session of the Fishery Conference will give us, at least I hope, occasion to have our next Perigord evening prior to the next consultations. So we will in addition to the pleasure that these evenings give me, have the opportunity to speak about the second attachment to your fax before the consultations start.

I am so sorry about August but I send you nevertheless my warm regards.

Sincerely yours, *atds Di**Paul*



RECEIVED JUN 15 1993

*Carl-August Fleischhauer*  
*Under-Secretary-General*  
*The Legal Counsel*

New York, 4 June 1993

Professor Elisabeth Mann Borgese  
c/o Dalhousie University  
1321 Edward Street  
Halifax, Nova Scotia, Canada B3H 3H5

Fax no. (902) 949-2034

*Liba Elisabeth,*

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I am so sorry about August but I send you nevertheless my warm regards.

Sincerely yours, *Carl-August*

*Carl-August*



# International Ocean Institute

P.O. Box 524  
VALLETA, MALTA

Telephone: 236596  
Telefax: 247594  
Cables: INTEROCEAN  
Telex: 1946 OCEANS MW  
Lisbon, May 6, 1993

COPY

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

*Sehr Lieber Gustel*

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

With all good wishes,

Yours as ever,

*Elisabeth Mann Borgese*

Elisabeth Mann Borgese

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

. to extend the mandate of the Preparatory Commission for the period from the coming into force of the Convention to the beginning of commercial sea-bed mining;

. to empower the Preparatory Commission to exercise all the initial functions of the Authority and the Enterprise in an evolutionary manner; [note: it has been doing this for some time!]

. to call, in accordance with the Convention, a Review Conference 15 years from the coming into force of the Convention or at the time when Commercial sea-bed mining is about to begin, whichever comes first.

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

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



# International Ocean Institute

P.O. Box 524  
VALLETA, MALTA

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April 29, 1993

**Dr. Carl-August Fleischhauer**  
Legal Counsel, United Nations  
FAX No.212 963 6430

*Sein lieber Gustel*

It was to be anticipated that these should have been difficult days! The shift from the Nandan approach, focusing on the rewriting of Part XI (on which he, as well as the USA, still so emphatically insist) to your own, focusing on the interim regime, could not pass unnoticed, and, as any change, was bound to meet with inertia. Paragraph 21 is hard to swallow. Also that was anticipated. The difficulties of establishing a new interim structure, departing from the Convention, are quite considerable. I am afraid it will take more time, much more time, than the 2 five-day periods, August and winter, that we may have at our disposal. Nevertheless, I think we turned the corner, and the world owes you a great debt of gratitude for having had the courage to lead us this way, and I want to extend to you my most heart-felt congratulations and to tell you how much I admire you!

Perhaps the time has come to slip into the document an *emergency option*, in case we are overtaken by the deposition of the 60th instrument of ratification!

We could decide, through a GA Resolution, supported by a Prepcom Resolution,

To extend the mandate of the Preparatory Commission and its Pioneer regime for the duration of the interim period, from the coming into force of the Convention to the beginning of commercial sea-bed mining, and to empower it to exercise the initial functions of the Authority during this interim period in an evolutionary manner; and

to call a Review Conference, in accordance with Art. 155 of the Convention, at the time the first Pioneer investor is ready to request a contract and plan of work.

The advantages of this emergency option, as I see it, are the following:

1. We need not create anything new but use what we already have agreed on:

an institutional framework that has already proved its capability of exercising all initial functions of the Authority in the interim period. These functions are:....

2. the Catch-2 situation projected by Ambassador Jesus will not arise. The extended Prepcom. regime is able to deal with new applications which will be processed in the same manner as Pioneer applications heretofore. The Pioneer regime remains in force during the interim period and, with it, the possibility of registering additional qualified candidates. (the potential Pioneer Investors, developing States).
3. Questions such as the composition and voting in the Council or the time of establishing or not establishing an Enterprise; or the linkages with the Secretariat; or the financing, simply do not arise. The Plenary acts for the Assembly; the General Committee acts for the Council; OALOS acts for the Secretariat; the joint activities of the Pioneers, in exploration, training, and technology development, represent the initial activities of the Enterprise as a joint venture; the all expertise required during the interim period is available in the Group of Experts, the Training Panel, and the Group of Advisers to the Chairman of SCNI; the costs are borne by the U.N., at a level not exceeding that of 1993 adjusted to inflation, and there is no need for a Financial Committee since the regime is administered by the UN.

Let me now come to paragraph 21.

States which have not yet ratified or acceded to the United Nations Convention on the Law of the Sea, as well as States having done so, agree to participate in the interim regime and the Review Conference, and this is a binding agreement. Whether they feel bound by Part XI or not is their own business, and they can explain their positions to their Parliaments. As far as international law is concerned, their reservation should remain implicit rather than explicit, since, in practical terms, the issue does not really arise but is postponed to a rather remote future. When ratifying the Convention, they make a declaration that they ratify the Convention to benefit from from the Convention as a whole and to be able to participate fully in the decision-making of the interim regime. They reserve their right to denounce the Convention in accordance with Art. 117 of the Convention, if the Review Conference fails to solve the problems they have with Part XI. They can also rest assured that any contracts they may have entered prior to denouncing the Convention will remain

valid until they expire, according to Art. 135 (5). So no investments should be endangered.

The one and only change, departing from the Convention we would have to make concerns the mechanism triggering the Review Conference. Under the Convention, this is 15 years from the beginning of commercial mining. Since, as it turned out, there is not going to be any commercial mining, this trigger mechanism has to be adjusted. The French Delegation had some good ideas about the trigger mechanism; we have made our own proposal in our "Discussion Paper." In any case, the important point is that here we are really faced with fundamentally changed circumstances which not only justify but necessitate an adjustment. The underlying assumption was that, after 15 years of commercial mining we would have sufficient experience to review and revise and adjust Part XI while maintaining its basic concepts. In the present, different, situation we can assume that, after x years of the interim regime, we will have sufficient experience in cooperation in exploration, training and technology development, etc. --we also will know when, where and how production will take place --to enable us to review, revise and adjust the text. Thus we would not change the spirit and intention of the provision for the trigger mechanism; we would merely adjust it to today's reality.

I have the feeling that such an "emergency option" which would not create anything new that needed extensive discussion, could be adopted during the next 5-day session, or at the latest, at the end of 1993, if States have the possibility of studying it in advance. It would be a logical next step following what you already have in the Information Note. It would be ideal if, by August 2, we had two or three more ratifications, heightening the feeling of urgency!

These are my thoughts that I wanted to share with you. And once more: My thanks and my love,

Eirik

Danke auch noch für den, wie immer so netten Abend!  
Und vergiss nicht, mir die Adresse und Telefon  
Deiner Mailänder Tochter zu schicken!



Dalhousie University

International Ocean  
Institute



I.O.I. - Malta

April 18, 1993

**FAXED**

**Dr. Carl-August Fleischhauer**  
Under-Secretary-General for  
Legal Affairs  
The Legal Counsel  
United Nations Secretariat  
1 U.N. Plaza  
New York, N.Y. 10017  
USA

*Sehr lieber ( ) ( ),*

Many thanks for your fax of April 15 which arrived here while I was in Washington.

I am glad to confirm our appointment on April 27 at 20:30 at "Le Perigord," and as always am much looking forward to that occasion.

Yours as ever,

*Elisabeth*

Elisabeth Mann Borgese

RECEIVED APR 16 1993

UNITED NATIONS  NATIONS UNIESPORTAL ADDRESS-----ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS-----ADRESSE TELEGRAPHIQUE: UNO NEWYORK

15 April 1993

REFERENCE:

*Libe Elisabeth,*

I would like to thank you for your faxed messages of 6 and 11 April.

As to your message of 6 April, I am looking forward very much to our usual evening at "Le Perigord" and I would suggest that we choose the evening of the 27th at 8:30. This is somewhat late but if I have to be in the Consultations all day, there may be matters in the Office which require my immediate attention, so this is a more realistic time. Would that suit you? We can then discuss a possible visit to Nova Scotia which seems to be possible, although 13 August does not sound so good since I have planned to be away on that weekend.

St. Matthew's Passion has inspired you to very interesting thoughts to which I would like to come back when we meet. We will then, of course, have the events of the first day of the Consultations to discuss also.

I am looking forward to seeing you in two week's time; in the meantime, I would like to present to you my very best and sincere wishes for a Happy 75th Birthday!

With warm greetings.

Yours sincerely,

*CA*  
*Carl (g-11)*

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

Mrs. Elisabeth Mann Borgese  
c/o Dalhousie University  
1321 Edward Street  
Halifax, Nova Scotia, Canada B3H 3H5



9 March 1993

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

COPY

Dear Carl,

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

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

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

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

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

1. The Arusha Agreement and subsequent site allocations.

2. The Pioneer Regime, and in particular
  - (a) the training programme
  - (b) the exploration programme
  - (c) the understanding that there will be R&D in connection with the training and the exploration (explicitly stated in the exploration programme, but yet to be developed);
3. The universal recognition that there will be no mining for the next 15 years or so and that, therefore, the functions/activities of the Authority/Enterprise will be limited to exploration/scientific research, environmental protection; economic forecasting; development of human resources, and technology assessment/development.
4. The universal recognition that the Enterprise must function as a joint venture; a joint venture limited to the activities listed under (3) above (thus eliminating, for the time being, the problems of "financial terms of contracts," "technology transfer," and "production policies" on which nothing more is needed than an "agreement on principles for the future," which you already have);
5. Cost-effectiveness;
6. Structure to correspond to functions. If the "functions" are indeed very similar to those of the Preparatory Commission and its Pioneer regime,<sup>1</sup> so should be the structure! To continue, for the period between now and the beginning of commercial mining, the structure of the Prepcom./Pioneer regime would have the following advantages:
  - (a) simplicity and cost-effectiveness;
  - (b) continuity and benefitting from accumulated experience;
  - (c) avoidance, for the time being (with "general principles for the future" forwarded) of the issues of composition and decision-making in the Council. The General Committee, which would become the Council, is tried and trusted!

---

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

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

## 2. Strategy

I see four elements which can be strategically used:

(a) We now have the kind of pressure we need. With 56 ratifications, everybody knows that decisions can no longer be postponed.

(b) During the last Consultations, the French Delegation repeated its proposal for a Prepcom-like interim regime.

(c) The U.S. hostility is gone. I don't think we can count on full U.S. participation, or accession, during the near future, but we have passed from a stage of malevolent negligence to one of benevolent negligence. The U.S. will join after the European Community and Japan.

(d) There is, and there must be a linkage between the UNCED and the UNCLOS processes. Chapter 17 of Agenda 21 is the link-pin. It is entirely based on our Convention. This linkage must be reflected somehow in institutional terms. We have a Commission on Sustainable Development, responsible for the implementation of Agenda 21. Where are the oceans? Where is the Law of the Sea? The Sustainable Development Commission needs the Law of the Sea to implement Chapter 17. The Sustainable Development momentum could be used to advance the cause of the Convention.

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

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

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

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

Looking forward to seeing you in Jamaica,

Yours as ever,

Elisabeth Mann Borgese



*Carl August Fleischhauer*

*Under-Secretary General  
The Legal Counsel*

RECEIVED JAN 27 1993

26 January 1993

Dear Elizabeth,

Please forgive me for reacting only now to your telefax of 10 January. In spite of the delay, I can entirely reciprocate your good wishes for a peaceful and productive 1993. I am looking forward very much to seeing you during your forthcoming visit to New York in connection with the next Law of the Sea consultation.

Like you, I have an engagement on Wednesday evening and two engagements in the early evening of Thursday, the 28th. Since you are leaving on Friday, the 29th, could we see each other for dinner at the usual place ("Le Perigord") at 8:45 on Thursday evening.

You can give me your answer when we see each other on the 28th. With my best personal regards,

Yours sincerely,

*Carl*

Mrs. Elizabeth Mann Borgese  
Dalhousie University, Pearson Institute  
1321 Edward Street  
Halifax, Nova Scotia  
Canada B3H 3H5

RECEIVED JAN 26 1993

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE

19 January 1993

Dear Elisabeth,

I wish to thank you for your letter of 17 December in which you informed me about the activities of IOI in the field of training, and in particular its cooperation with the Division for Ocean Affairs and the Law of the Sea in this field.

I welcome the effort to join our forces towards the most effective use of the training experience and capabilities of both our organizations. In fact, this new activity will expand and strengthen a record of close and long-standing cooperation between the IOI and the Division.

The course under preparation appears to be quite relevant in the light of recent developments, particularly UNCED, which highlighted the urgent need for capacity-building in the field of marine affairs. Training is an important component in this process and one of the vehicles for providing countries with the knowledge and skills necessary to give effect to sustainable ocean development schemes.

I look forward to our continuing cooperation and the successful implementation of the programme.

With best regards,

Yours sincerely,



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

Prof. Elisabeth Mann Borgese  
Honorary President  
Pearson Institute  
1321 Edward Street  
Halifax, Nova Scotia  
Canada, B3H 3H5



Dalhousie University

**FAXED**

International Ocean  
Institute



I.O.I. - Malta

FACSIMILE TRANSMISSION

To: Dr. Carl-August Fleischhauer

FAX No: 212 963 6430

From: Elisabeth Mann Borgese

FAX No.: 1 902 868 2455

Date: January 10, 1993

Subject: New York meeting

Dear Carl,

First of all, my most fervent wishes for a peaceful and productive 1993! It is going to be a very crucial year for all of us!

Secondly, I am coming to New York, next week, arriving on the 27th of January. I will be attending your Consultations, as member of the Delegation of the AALCC, and am much looking forward to this event.

I have to leave New York on the evening of the 29th, to proceed to Kampala, for the AALCC conference, and from there to Addis, to work for a week with the ECA on marine affairs.

I know you will be tremendously busy during these days, but if you can find half an hour, even late in the evening, or a business breakfast very early in the morning, that would be wonderful. There are lots of things to discuss. I have a tentative dinner date on the 27th, but I could change that if you still were to be free that evening.

All the best,

Yours as ever,

Copies to: Dr. Saigal  
Jean Pierre Levy  
Dr. Gunner Kullenberg

File Copy



Dalhousie University

International Ocean  
Institute



I.O.I. - Malta

December 17, 1992

COPY

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

Dear Dr. Fleischhauer,

I am happy to inform you that there has been a series of good and productive meetings between Dr. Jean-Pierre Levy and his staff and myself and IOI staff about the possibilities of cooperation on training programmes.

To start with, we have focused on an alumni "refresher" course of ten working days. We have conducted already one joint workshop to lay down the parameters for this programme. It will be an advanced course, intended for alumni of our ten-week programmes, who have returned to their jobs in Government or technical institutions or Universities where they now occupy decision-making, or near-decision-making, positions, as well as for other officials advanced in the field of integrated marine and coastal management. The programme builds on DOALOS's long experience in the conduct of short courses as well as on the 11-year IOI experience (over 40 ten-week intensive programmes; about 700 alumni; extensive lecturer- and alumni- network). There will, of course, be a strong emphasis on sustainable development and on the implementation of Chapter 17 of Agenda 21, and there will be innovative approaches to solutions of the problems arising.

Stella Vallejo is preparing an extensive background paper for the programme. A first draft will be completed by mid-January and it will be circulated at that time. We are planning a second workshop, involving IOI and DOALOS staff and a couple of consultants as well as the Directors of our new Operational Centres (India, Colombia, Fiji, Senegal) by mid-February. Case studies and exercises will be commissioned at that time, and the programme will be ready for running --in different, regionally adapted versions --by mid-summer 1993. I am sure it is going to be a great success and, hopefully, the first one in a series of joint DOALOS-IOI joint undertakings. Incidentally, a similar joint arrangement between IOI and IOC/TEMA is in the making.



I would be most grateful if you could return one copy of this letter with your signature. This will be sufficient to indicate your approval of this joint endeavour towards a common goal.

With all good wishes,

Yours sincerely,

Elisabeth Mann Borgese  
Hon. President

Carl-August Fleischhauer  
Legal Counsel

File



Dalhousie University

International Ocean  
Institute



I.O.I. - Malta

December 15, 1992

COPY

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

Lieber Carl,

Too bad there was no time to get together in New York, this time. There were a number of things I would have liked to discuss and have your guidance on!

Let me start with the Secretary-General's two reports, which I find excellent and most useful. I shall use them, of course, also in my classes at the University.

The Resolution is a bit tired, and, especially on the occasion of the 10th anniversary, it would have been great had the GA been able to come up with something a little stronger. There is in particular one point in the Resolution year after year, which I think merits discussion: and that is operational para.5 of the Resolution:

Recognizes that political and economic changes, including particularly a growing reliance on market principles, underscore the need to re-evaluate, in the light of the issues and concerns to some States, matters in the regime to be applied to the Areas and its resources, and that a productive dialogue on such issues involving all interested parties would facilitate the prospect of universal participation in the Convention, for the benefit of mankind as a whole;

First of all, it is not at all the alleged shift to the market forces --a shift that is ideological far more than real, and will be followed by another shift, in the wake of the change in Government in the U.S. What causes the problem with Part XI is that (1) there is no seabed mining for the next 10 years at least; (2) when it comes, it might come in areas under national jurisdiction; and (3) it may include resources other than manganese nodules. It is these scientific/technological/economic changes that have rendered certain Articles of Part XI obsolete.

This is an argument in favour of the dialogue that can be universally accepted, by industrialized as well as developing countries, whereas the argument that it is the shift to the market that is the reason for the changes that have to be made, and that it must be market forces, not equity, that will determine who mines and who profits, will be unacceptable to the majority of States --in so far as they are not totally broken in body and spirit and simply say "yes" to any thing Big Brother requests...

My second point is that this glorification of the "Market" is incompatible, not only with the concept of the Common Heritage of Mankind which we avow to conserve: it is incompatible also with the concept of sustainable development. To paraphrase my Club of Rome colleague, the economist Orio Giarini (I think I mentioned him to you before): the market is important, but the economic system is far bigger than the market. The market is driven only by monetarized, quantifiable inputs; it ignores the non-monetarized, non-quantifiable sector. which are of fundamental importance for sustainable development. The market must be complemented by Government action: national and international. The Brundtland Report knows that: the Law of the Sea must not forget it. The market cannot abolish poverty, nor can it solve environmental problems.

That operational para.5 needs rethinking and rewriting!

The next point I had hoped to discuss with you is the next phase of the Dialogue.

From all I hear in New York, it is time to shift to the idea of a productive interim regime. The concept of a "nuclear Authority," with as "nuclear Enterprise," as elaborated by your predecessors, with the sole function of "monitoring" developments, is a total waste. First of all, we must use all the expertise we have and build on all that has been achieved during the past ten years: and that is the Prep.Com. and the Pioneer Regime: really quite a unique achievement, if you think of it.

Not only must we utilize all we have got, we must make it productive: and it can be done, at low cost.

Jean-Pierre Levy thought that there was an error in my paper, on p. 12, where I suggest (c) that "costs for assisting the Continental Shelf Commission...are to be paid for by the coastal States involved." He pointed out that the costs of the CS Commission are paid by the U.N. and that the CS Commission was not to be "operational."

However, what I had in mind was that a developing country might ask for operational assistance: Measurements, to help determine its boundaries, and that the CS Commission might request the Interim Enterprise to do that work, since the Interim Enterprise does have the required technology. It is that work that, I think, the requesting State will have to pay for (of course, if it is a poor country, it may seek the assistance of UNDP. etc.). See Annex II, Art.2, para 5: "The coastal State concerned shall defray the expenses incurred in respect of the advice referred to in Article 3, paragraph a (b), of this Annex."

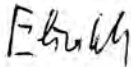
The chart in Annex 1 of my paper will have to be updated.

Perhaps it would help if a Delegation came forward with a suggestion along the lines of the Interim Regime --the French were perhaps too early, but now the time may have come!

My third, and last point: I would have loved to have your opinion on the potential of the Sustainable Development Commission, such as it has now been established. I personally am somewhat skeptical. I don't see the infrastructure, I don't see the means enabling this Commission to perform its extraordinarily complex and demanding task!

All the very best, and fröhliche Weihnachten!

Yours as ever,



Elisabeth Mann Borgese

File



Dalhousie University

International Ocean  
Institute



I.O.I. - Malta

October 21, 1992

copy COPY

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

Dear Carl,

here is my daily letter.

I find the enclosed material intensely interesting.

This is exactly what I have in mind for what the "interim regime" might do to really habilitate itself, so that, in due time, we can base the permanent Seabed Authority, and its mining code on realistic experience.

The total cost of \$300 million over 5 years should really not be a serious problem, if distributed between, let us say, UNDP or the World Bank on the one hand (50 percent) and the rest to be shared by the Pioneer investors, in proportions they might themselves establish.

Hans Amann, whom you probably know, is a first-rate person. I find it extremely interesting that the German industry would indeed be interested in joining an international venture of this kind.

But then --you know me enough by now. For me, this is not a pilot experiment in nodule mining: it is a pilot experiment in North-South technology development cooperation.

Warmest regards,

Elisabeth Mann Borgese



THETIS Technologie GmbH · ~~Gesellschaft~~ 3000 Hannover 1

**RECEIVED OCT 13 1992**

Frau Elisabeth Mann-Borgese  
c/o International Ocean Institute  
Dalhousie University  
1321 Edward Street  
Halifax, Nova Scotia  
CANADA B3H 3H5

1-10-92

Sehr geehrte Frau Mann-Borgese,

es war schön, Sie nach langer Zeit wieder zu treffen und Ihr Engagement für einen sozial und umweltverträglichen Tiefsee-Bergbau wie in alten Zeiten - die ja keineswegs nur die guten alten Zeiten waren! - zu sehen. Das Rohstoff-Interesse an den Manganknollen und die Erwartungen, damit Geld zu verdienen, sind längst erloschen. Es wird meines Erachtens lange dauern, bis sich Situationen entwickeln, die Unternehmer - und Banken! - zur Investition in der Tiefsee veranlassen könnte. Zu groß sind die Risiken, zu gering die Chancen.

Um hierfür und für viele andere potentielle Interessenten aus der Wissenschaft, der Wirtschaft und der Politik das Terrain vorzubereiten, erscheint mir eine international organisierte, finanzierte und zugängliche Pilotoperation sinnvoll. Viele offene Fragen der Technik, der Wirtschaftlichkeit und des notwendigen Umweltschutzes könnten geklärt werden. Eine international verfügbare Erfahrungs- und Datenbasis stünde für die internationale Weiterentwicklung des großen und qualitativ guten Rohstoffpotentials zur Verfügung. Regeln für Betriebspläne oder Umweltschutzmaßnahmen ("standards" im Sinne des Prepcom-Mining Code) könnten auf der Basis von Informationen erstellt werden. Investitionsmaßnahmen von privaten Kontraktoren oder des Enterprise wären auf der Grundlage von Kenntnissen und Daten möglich, die allen zur Verfügung stünden.

**NEUE ANSCHRIFT AB 29.05.1992**

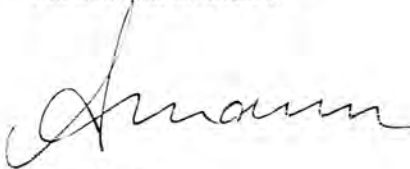
**Vahrenwalderstr.7 (TCH)  
3000 Hannover 1  
Tel. : 0511 - 9357 - 530  
Fax : 0511 - 9357 - 539**

Ich lege Ihnen, auch zum leichteren Weiterreichen oder zum leichteren weiteren Gebrauch, eine Skizze zum Programmvorschlag "Pilotoperation" in Englisch bei. Ich bin zuversichtlich, daß Sie sie gebrauchen können.

Natürlich verfolgen wir mit diesen Vorschlägen auch kommerzielle Interessen. THETIS lebt als kleines Ingenieur- und Entwicklungsunternehmen von den Einnahmen, die wir für unsere Ideen und unsere Arbeit bekommen. So könnte als erste Aktion eine detaillierte Ingenieursplanung einer Pilotoperation stehen. Es versteht sich von selbst, daß wir dabei auch umfangreich den Umweltschutz in der Tiefsee einbeziehen. Schließlich könnte eine Reihe von qualifizierten Ingenieuren aus den Ländern der Dritten Welt als Trainees und Mitarbeiter dabei sein.

Ich würde mich freuen, von Ihnen zu hören. Vielleicht finden diese Anregungen ja auch konkrete Aufmerksamkeit.

Mit freundlichen Grüßen



Dr. Hans Amann

Deep Sea Mining of Polymetallic Nodules  
Outline of a Large Scale International Pilot Mining Operation

1. The resource potential of mineable polymetallic nodules in the North East Pacific Clarion-Clipperton Zone had been estimated to range between 5 and 15 Billion tons by various independently working investigators (Kazmin, 1987; AMR/OMI, 1985). This vast resource potential could contribute significantly to supply the world markets of nickel, copper, cobalt, manganese and other metals. Further uses for environmental tasks such as flue gas purification, for agriculture and the construction industries seem possible.
2. The economic, technical, political and, last but not least, environmental problems and risks of deep sea mining and some methods for environmental control and protection have been demonstrated during the last fifteen years. Large scale, pre-industrial experience and knowledge are lacking, however. Costs and risks to obtain such large scale experience are too high for private entrepreneurs.
3. The common heritage of mankind should therefore be developed by an internationally organized and financed Pilot Operation. All results and data should be made available for the international community in order to establish decision criteria and planning guidelines on the basis of generally available information.
4. The Pilot Operation should take place at a scale of one third/fifth of the scale of the commercial operation. As the commercial operation for one mining unit is generally planned at 2.2 mio. tof nodules (wet) per annum, the pilot scale should be at 500,000 t per annum. Assuming 250 working days p. a. for a Pilot Operation, the daily rate should be at 100 tons. All deep sea mining equipment to perform this task could be developed on the basis of fairly well known subsystem specifications: mobile test platforms (dp-drill ship, dp-converted ship of opportunity), pipe string, pumps, air-lift-alternative, buffer stations, various collectors, power supply, instrumentation etc.
5. The period of a pilot operation should cover a one year cycle: 250 days of uninterrupted work, 100 days for call in port and repairs, resuming of work for at least 100 days. This is necessary to cover a yearly seasonal cycle and to obtain sufficient operational experience.



6. Planning, performance and evaluation should be managed by a highly efficient, motivated and professional General Contractor (teams of ~ 20 specialists). The General Contractor subcontracts technical and operational subprojects to equally efficient, motivated and professional specialists. The General Contractor and the subcontractors should have shown their professional experience in deep sea mining, offshore operation or the like. The General Contractor should be selected by an international tender.
7. The General Contractor and the subcontractors should include a sufficient number of trainee opportunities for qualified participants from Third World Countries in their tender offers.
8. Provision for environmental design of the subsystems, especially the deep sea collectors, are required. The Pilot Operation should serve to clarify eventual large-scale effects of disposal of mining residues at the sea surface and/or at various depths. Control and reduction of the collector sediment plume are to be studied. The effects of the collector on the deep sea sediment and its life forms are to be minimized and controlled. Recolonization of disturbed areas must be investigated. An environmental impact statement for deep sea mining, developed by a number of internationally qualified and independent experts, should be the final conclusion.
9. The time frame could look like this
  - two years of engineering specification and pretests
  - half a year of assembly, functional tests and mobilisation
  - one and a half year of the actual Pilot Mining Operation
  - one year of dismantling, evaluation and sale of equipment (to recover ~ 10-20 % of the hardware costs).

Including six months of reserve time, a total time frame of 5 years is suggested.

The Pilot Mining Operation should take place in the Clarion-Clipperton Zone.

10. The budget for the complete Pilot Operation including preparation, pre tests, the actual operation and the evaluation is estimated in the order for 300 Mio US\$ (at 1 \$ = 1.65 DM).



Dalhousie University

International Ocean  
Institute



I.O.I. - Malta

**FAXED**

FACSIMILE TRANSMISSION

To: Dr. Carl August Fleischhauer  
The Legal Counsel  
FAX No: *1-212-963-6430*

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

Date: September 8, 1992

Subject: Visit to New York

Dear Dr. Fleischhauer,

You were kind enough to ask me to let you know when I come back to New York next time.

It will be on September 25, on my return from Bonn, and I will stay over the week-end and have the following Monday in New York. I shall phone you Friday afternoon.

It would be lovely to see you again. I have done some more work!

With all good wishes,

Sehr herzlich,

UNITED NATIONS



NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE

5 August 1992

RECEIVED AUG 14 1992

Dear Professor Mann Borgese,

The Secretary-General has asked me to acknowledge on his behalf receipt of your letter of 24 July, 1992 and to express his appreciation for the documentation that you provided therewith, which will certainly be of use in the informal consultations on outstanding issues relating to deep seabed mining provisions of the Law of the Sea Convention.

Your continuing interest in and support for this endeavour and for others undertaken by the United Nations in the field of ocean affairs and the law of the sea are, as always, most gratefully received.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Carl-August Fleischhauer".

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

Professor Elisabeth Mann Borgese  
Department of Political Science  
Dalhousie University  
Halifax, Nova Scotia  
Canada B3H-4H6



RECEIVED AUG 6 1992

*Carl-August Fleischhauer*

27 July 1992

*Under-Secretary-General*

*The Legal Counsel*

963 5338

*Sehr dankbar, lieb. Frau Mann Borgese.*

I would like to thank you so very much for your kind and thoughtful letter of 28 May 1992 which reached me after a lengthy delay. It arrived here almost a month after it had been written and then I was away from New York, so that I found it only on my return in the middle of July.

I was touched by and grateful for the good wishes which you sent me for the consultations on 16 and 17 June. These good wishes must have helped because the consultations went on in a very open and professional atmosphere. There seemed to have been a common desire to try to overcome the difficulties in a mutually acceptable way. At the moment, I don't think that your fear of overly radical solutions is justified.

We will continue the consultations on 6 and 7 August, directly prior to the meeting of the PrepCom; during that time we will try to cover those points which could not be discussed on 16 and 17 June. You will have heard that on those days we addressed the subject of Costs to Member States, the Enterprise, Decision-making and Review Conference; now, on 6 and 7 August, we will address the Transfer of Technology, Production Limitations, Compensation Fund and Financial Terms of Contracts. We had the participation of some 70 delegations which, I hope, will help to prevent a falling apart between the consultations and the work of the PrepCom.

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

I hope to see you during the PrepCom meeting in August and I would like to announce already now an invitation for a repetition of our luncheon in April. I have, by the way, read very carefully and with profit, the papers which you gave to to me then.

For now, I remain,

mit warmen besten Grüßen  
Ihr Iwan Scherewitsch

Lead. 477 2/11/77



Dalhousie University

International Ocean  
Institute



FAXED + FAX TO  
GOERNER  
FROM  
FENNEY

FACSIMILE TRANSMISSION (12<sup>th</sup> JAN. 1999)

To: Judge Carl-August Fleischhauer  
Fax No 31 70 364 - 9928  
From: Elisabeth Mann Borgese  
Fax No. 1 902 868 2455  
Date: January 16, 1999  
Subject: Friedenspreis,

Sehr lieber Gustel,

Erstens, etwas verspaetet, aber herzlich, meine besten Wuensche, Dir und den Deinen, fuer ein gutes 1999!

Wir sind ganz besonders geschaeftig, dieses Jahr, mit der GSD Uebersicht von Oceans and Law of the Sea! Unser Vorschlag, fuer ein *GA Committee of the Whole on Oceans and Law of the Sea*, macht Fortschritte, da der diesjaehrige CSD Chairman, von New Zealand sehr daran interessiert ist! Das trifft sich gut.

Heute ein Anliegen, welches Du als selbstherrlich auslegen koenntest; dies ist es aber wahrlich nicht. Im Gegenteil, es kostet mich ein ziemliches Mass von Selbstueberwindung, es vorzubringen, und ich tu es nur, weil ich meine, es wuerde unsere Aktion, in der Welt und in der Bundesrepublik, stark foerdern.

Sonderbarer Weise bin ich fuer den 1999 Friedenspreis des Deutschen Buchhandels vorgeschlagen worden (Schumann, Goerner, *et al.*). Ich glaube zwar nicht, dass ich irgend eine Chance habe, gewaehlt zu werden, aber ganz unpersoendlich, und im Rahmen der von uns gewuenschten IOI Entwicklungen in der Bundesrepublik, waere es natuerlich prachttvoll. Es gaebe den Plaenen fuer IOI Bremen, und besonders Pacem in Maribus 2000 in Hamburg einen schoenen Auftrieb. Ich wuerde den Preis dafuer stiften, was weitere Beitrage ankurbeln koennte.

Wenn Du diesen Vorschlag mit Deiner Stimme unterstuetzen koenntest, dann waere das schon von grosser Wichtigkeit. Es muesste aber noch vor Ende des Monats geschehen. Waere das

machbar?

Alles Beste,

Stets Deine

*Ernst*



INTERNATIONAL  
OCEAN INSTITUTE  
CANADA

DALHOUSIE  
University



FAXED

FACSIMILE TRANSMISSION

To: HE Judge Carl-August Fleischhauer  
Fax No 31 70 3022 2409

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

Date: November 19, 2000

Sehr lieber Gustel,

Wie nett, dass Du Dich meiner erinnert hast, angelegentlich dieses schoenen Ereignisses, und wie gerne waere ich dabei. Leider, leider wird es nicht moeglich sein, was besonders schade ist, da ich um die Zeit garnicht weit von Dir bin: Pacem in Maribus, im Tribunal in Hamburg, geht am 6. Dezember zuende. Aber am 7. muss ich in Bremen sein, wo wir wahrscheinlich nun doch noch ein IOI Operational Centre auf die Beine stellen werden; am 7. abends in Zurich, und bis zum 10. habe ich eben in der Schweiz Verpflichtungen, aus denen ich nicht herauskann!

Also bleibt nur, Dir von ganzem Herzen zu diesem Tag zu gratulieren. Du kannst auf ein schoenes Stueck Leben und vollbrachter Arbeit zurueckschauen, das Dich mit Stolz, Zufriedenheit, wenn auch mit etwas Muedigkeit, erfuellen mag! Hast Du doch eine wunderbare Familie, und das Hoechste erreicht, was einem Juristen passieren kann! Auch das Seerecht hat Dir Etliches zu verdanken!

Oft und gern erinnere ich mich an unsere netten Abendessen in New York und hoffe es wird sich doch bald eine Gelegenheit fuer eine Wiederholung bieten!

Alles Liebe Dir und Liliane fuer diesen grossen Tag!

Sehr herzlich, stets Deine uralte

*Elisabeth*



ICJ / Fleischhauer  
RECEIVED - JAN 20 2000 Doc 1087

COUR INTERNATIONALE DE JUSTICE

INTERNATIONAL COURT OF JUSTICE

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TELEFAX: (070) 3649928

Richter  
Dr. Carl-August Fleischhauer

Den Haag, den 12. Januar 2000

*Meine liebe Elisabeth*

Zugleich im Namen meiner Enkelkinder möchte ich Dir vielmals für Deine Neujahrsgrüsse aus Marzipan danken, mit denen Du mich (und sie) auch dieses Jahr wieder verwöhnt hast. Wir hatten schöne und ruhige Weihnachts- und Neujahrstage in unserem Châlet in Vorarlberg, mit viel Schnee, aber auch mit Sonne. Ich hoffe, dass auch Du ruhige und schöne Tage hattest.

In der Hoffnung auf ein baldiges Wiedersehen, entweder auf dieser oder auf der anderen Seite des Atlantiks, bin ich mit meinen besten Grüßen,

*Diu sehr  
Dein großer*

Frau  
Professor Dr. Elisabeth Mann Borgese  
International Ocean Institute  
Dalhousie University  
1226 LeMarchant Street  
Halifax, Nova Scotia  
Canada

## COUR INTERNATIONALE DE JUSTICE

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 TELEPHONE: (070) 3022020 TELEX: 32929  
 CABLES: INTERCOURT THEHAGUE  
 TELEFAX: (070) 3049926

Richter  
 Dr. Carl-August Fleischhauer

Den Haag, den 13. Dezember 1999

Für : Fax Nr. 00 1 902 868 2455  
 Von : Fax Nr. 00 31 70 302 24 09

Liebe Elisabeth,

Herzlichen Dank für das Exemplar der deutschen Ausgabe Deines *The Oceanic Circle. Governing the seas as a global resource*. Dein Bericht an den *Club of Rome* ist wichtig, wie so viele Deiner Beiträge, und es ist richtig, daß Du ihn auf Deutsch veröffentlicht hast. Dein Vorwort zur deutschen Ausgabe berührt mich, weil der Text so persönlich gehalten ist und Dein Engagement deutlich werden läßt.

Ich benutze diese Gelegenheit um Dir meine besten Wünsche zu Weihnachten und für das Neue Jahr zu übersenden. Ich hoffe, daß es mir im Jahre 2000 besser gelingt, unsere persönlichen Kontakte fortzusetzen als dies 1999 der Fall war.

Mit meinen besten Grüßen,

Dei gmg

Frau  
 Professor Dr. Elisabeth Mann Borgese  
 International Ocean Institute  
 Dalhousie University  
 1226 LeMarchant Street  
 Halifax, Nova Scotia  
 Canada

COPY

Friday, May 07, 1999

Judge Carl-August Fleischhauer  
International Court of Justice  
Peace Palace  
2517 KJ The Hague  
Netherlands

Dear Judge Fleischhauer,

Please find enclosed a speech which Elisabeth Mann Borgese will be delivering in Tilburg, Netherlands on May 12th, 1999.

Yours sincerely,

Darlene Manning  
Administrator



Dalhousie University

International Ocean  
Institute



COPY

+ der Unsterbliche  
Fisch

H.E. Judge Carl-August Fleischhauer  
International Court of Justice  
Peace Palace  
The Hague, Netherlands

Sehr lieber Gustel,

Hoffentlich hast Du Dich vom Schrecken des Leseabends erholt! Ich schicke Dir hiermit das Baendchen, damit Du noch mehr erschreckest!

Im Ernst gesprochen: Es war sehr, sehr nett von Dir, dass Du zu dem Ereignis gekommen bist, und ich habe mich so gefreut, Dich, wenn auch zu kurz, zu sehen. Wir muessen unbedingt bald irgendwo irgendwann, ein schoenes, traditionsgetreues Abendessen arrangieren!

Alles ist weiter gut verlaufen, und ich bin, *all in one piece*, wenn auch zuerf zu kurze Zeit, nachhause zurueckgekehrt.

Mit allen guten Wuenschen,

Stets Deine

Eliza W

## COUR INTERNATIONALE DE JUSTICE

## INTERNATIONAL COURT OF JUSTICE

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TELEFAX: (070) 3649928

Richter

Dr. Carl-August Fleischhauer Den Haag, den 13.11.1998

RECEIVED NOV 13 1998

Für: Fax Nr. 00 1 902 494 2034

Von: Fax Nr. 31 70 302 24 09

*meine liebe Elisabeth,*

Es war ganz besonders nett von Dir, mir so kurz nach Deiner Rückkehr nach Halifax das Bändchen mit deinen Erzählungen zu zuschicken. Ich habe mich sehr darüber gefreut. Auch bin ich froh zu wissen, dass du *all in one piece* nach Halifax zurückgekommen bist. Der Leseabend war übrigens gar kein Schrecken für mich; du hast sehr schön gelesen.

Was mich sehr wenig befriedigt hat ist, dass wir uns nur zu kurz und nicht bei mir zu Hause gesehen haben. Ich war auf dem Wege nach Hamburg nur wenige Tage in Bonn und dauernd besetzt. Wir müssen das das nächste Mal besser planen und vor allen Dingen zu unserem traditionsgemässen Abendessen zurückkehren.

Der Vortrag in Hamburg ging übrigens sehr gut. (Tom Mensah war nicht da. Da der Vortrag auf Deutsch war, wäre es für ihn auch schwierig gewesen zu folgen.)

Mit allen meinen guten Wünschen,

*Di  
Dein Gustaf*

Professor Elisabeth Mann Borgese  
Dalhousie University  
International Ocean Institute  
1226 LeMarchant Street  
Halifax, Nova Scotia  
Canada, B3H.3P7



Dalhousie University

COPY

International Ocean  
Institute



October 26, 1996

H.E. Judge Carl-August Fleischhauer  
International Court of Justice  
Peace Palace  
The Hague, Netherlands

Lieber Gustel,

Zunächst einmal, nochmals herzlichen Dank für alle Deine Mühe und Hilfe. Ich habe alle Deine Korrekturen in Draft 3 der "Beijing Declaration on the Oceans" angebracht.

Heute schicke ich Dir, wie verabredet, eine Kopie des Planes für den Bericht der Weltkommission. Ich finde ihn unter jeder Kritik. Ich finde, das Sekretariat sollte sich schämen so etwas in Rotterdam vorzulegen.

Entschuldige das Gekritzel -- das sind Noten die ich mir gemacht hatte, für eine an Jean Pierre Levy gerichtete "konstruktive Kritik" -- die ich ebenfalls beilege.

So geht es nicht. Mir wird Angst und Bange um die Kommission...

Sonst geht alles bestens.

Auf Wiedersehen im Hague, und alles beste, und bitte grüsse mir Deine Gattin, und ich hoffe es geht ihr gut.

Stets Deine

COPY

**Preparation of the Final Report of the Commission**  
(Agenda item 5)

Note by the Secretariat

1. One of the major outputs of the Commission will consist of the issuance of its final report. This report is expected to be considered as a draft at the 5th session of the Commission in autumn 1997 in order to be ready in its final form at the last session of the Commission in Lisbon in summer 1998.
2. The conclusions and recommendations contained in the report may inspire a "Lisbon Declaration" and will form the basis of an "Executive Summary" to be submitted to the General Assembly of the United Nations in December 1998 when it will consider its item on the "Year of the Ocean".
3. The report will be based on the conclusions and recommendations which the Commission may derive from the reports of the study groups established by the Commission and consisting of some of its members as well as outside recognized experts. These study groups will have dealt with the major issues identified by the Commission as crucial for the future use and preservation of the oceans during the next century. It will also reflect the further discussions that will have taken place during the five sessions of the Commission as well as the individual contributions by some of its members.
4. In order to focus the discussion of members of the Commission in this regard and benefit from an early discussion of the possible content of such a report, the Secretariat has attempted to prepare a very preliminary outline based on the discussions which have taken place so far. In this connection, a tentative title to the report is also being suggested, namely :  
    " Ocean Governance in the Next Century:  
    " A call for worldwide Partnership " .
5. At this stage, it is felt that the report should at the outset consider briefly the resource base represented by the oceans and their present and foreseeable uses and, in light of this assessment, (provide an overview of the major programmes of a scientific nature being conducted within the international community). Such an approach may underscore the importance of the oceans and the imperative need to better understand

*in a box!*

ocean phenomena and their relationship to the preservation of the world ecosystem. A discussion of the promises of science and technology may, by contrast, underscore the existing gaps that have to be filled if equity is to prevail in the attempt to establish worldwide sustainable development.

Following the above examination, it will be necessary to consider in which legal and administrative environment the above-mentioned activities take place and identify shortcomings and weaknesses. Some suggestions of an innovative nature may be presented in this regard. Finally, it will be important to adopt a political focus in order to determine the prerequisite of a more equitable and peaceful use of the oceans, and promote the adoption of measures to this end.

This may lead to the concluding part of the report which may deal with some fundamental prerequisites for any world-wide effective action, including the need for a better awareness at all levels and the development of a sense of partnership and shared responsibility leading to better ocean governance.

6. Account must be taken of the fact that at this time only one study group has met (on legal and institutional aspects in October '96) and that there was no time available to take into account its conclusions and recommendations. Meetings of other study groups (already scheduled are those on ocean economics and on peaceful uses of the ocean) will provide substantive inputs to the preparation of the report. Some aspects of the issues have however already been subject of some written contribution by members of the Commission as well as preliminary discussions. These have been taken into account in the preliminary outline which is annexed to this note.

7. The tentative title given, as well as the preliminary outline are of a purely indicative nature and are submitted to provide a basis for an in-depth discussion by members of the Commission of the type and content of the report they would like to be prepared.

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## Annex

Tentative title and provisional outline  
of the final report of the Commission

**Ocean Governance in the Next Century:  
A call for worldwide Partnership**

Provisional Outline  
(table of content)

<u>Preface :</u>	(2 to 3 pages)
<u>Introduction:</u>	(5 to 8 pages)
<u>Executive summary:</u>	(10 to 15 pages)
<u>Chapter I Use of the Oceans in the context of Sustainability</u>	(20 to 30 pages)
<u>Chapter II Promises and Challenges of Science and Technology</u>	(20 to 30 pages)
<u>Chapter III The Legal and Institutional Framework</u>	(20 to 30 pages)
<u>Chapter IV Peaceful use, Sovereignty and Security</u>	(20 to 30 pages)
<u>Chapter V Awareness and Partnership for Ocean Governance</u>	(20 to 30 pages)
<u>Conclusion :</u>	( 5 to 10 pages)

Total = 122 to 186 pages

Possible Annexes = (?)

Ocean Governance in the Next Century :  
A call for worldwide Partnership

**Annotated provisional outline**

Preface: The report of the Commission should be prefaced by a short piece (2 to 3 pages) emanating from the Chairman, Dr. Mario Soares. This brief presentation of the report should be poetic, exciting and very inspiring.

Introduction: The introduction (5 to 8 pages) should provide a general overview of major changes that are taking place as the end of this century comes near. It should signal dangers but also emphasize opportunities for the future, in particular as far as the oceans are concerned. It is proposed to adopt a dialectic approach with reference to the following areas:

Political: End of bipolarity and cold war but increase in regional conflicts. *In the State with the increase violence "Sovereignty" change of political map. Break up of States "Regional" identity*

Legal : Expansion and diversification of normative activities *and* but shortcomings in implementation and enforcement.

Economic: Trend toward the generalization of free market approach but *we should* desire to preserve the "common" nature of the oceans. *is the one eq. by, reduce poverty and ensure environment*

Scientific : The tremendous increase of knowledge but the greater acceptance of theories of risks and uncertainties.

Technological: Realization of major technological advances but *lack of* absence of achievement in bridging the existing gaps. *understand*

Social: Worldwide trend toward regional/political and economic integration *social and economic issues of "ethnopolitics"* but resurgence of national and cultural ethnic identity.

Ethical:

It is against this background that the future use and preservation of the oceans and their resources have to be considered taking into account, among other recent developments the impact of the adoption of Agenda 21, the entry into force of the Convention on the Law of the Sea and the adoption of its two implementing agreements, as well as other binding and non binding instruments. *What is new in these approaches: Oceans force us*

*Contribution to world order*

*to think differently.*

01 77 263 6879

Kremer

Executive Summary :

This part of the report to be drafted at the end of the process of its preparation will summarize the main conclusions and recommendations of the Commission. It should be able to be read in isolation and form the basis of a submission to the General Assembly of the United Nations in December 1998 when it considers the item on "The Year of the Oceans".

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### Chapter I - The Use of the Ocean in the context of sustainability :

A study group on this subject is scheduled to meet in January 1997. It has been prepared by a "brainstorming session" held in London on 30 July 1996. At this stage some of the preliminary findings are as follows :

The contribution of the oceans to national and global wealth is probably far larger than generally assumed, i.e., a very large part of the world-economy is ocean-dependent, including trade and tourism. The largest part of ocean-dependent wealth however is not quantifiable (how can one quantify a live support system). It transcends the monetary system; it transcends the "market system."

While it must be acknowledged that there are special features relating to the economic aspects of the ocean, "ocean economics as such does not in fact exist." Much of what occurs in the oceans can be explained by classical economics but the latter has to date failed to adequately address ocean affairs due to an incorrect application of available economic theories / the absence of interest.

This absence of interest in the oceans has led to the present-day situation in which there is fear of extinction of some renewable resources. A framework based on scenario's of climate change and technological progress should originate in which ocean use will be characterized by sustainability. To this purpose, rethinking in the area of discount rates is necessary as this has not been well handled by classical economics.

The concept of Common Heritage of Mankind, as adapted by the United Nations Convention on the Law on the Sea, implies that oceans must be peacefully managed on behalf of humanity as a whole, necessitating benefit sharing with particular consideration of the needs of the poor countries.

Addressing the economics of the oceans cannot proceed without ample interaction with other related topics, dealt within other study groups on Science and Technology and on Legal and Institutional Affairs. Transfers of ocean-related technology from North to South and joint research projects should be intensified. Addressing the problem of sustainability must lead us to consider technology as a means of eradication of poverty. *Linkage w/ social summit, small islandy*

What has been missing in the reports of past world commissions addressing among others, sustainability, is the aspect of incentives, without which many agreements and conventions have failed to operate successfully. Such incentives should be structured on 'property rights', thereby eliminating the problems inherent to the common-property nature of much of oceans resources and subsequently on monitoring issues. At the same time, these economic incentives should also lead us to achieving equitable development of ocean resources.

*community economics  
cooperative "*

## Chapter II Promises and challenges of Science and Technology

As for the subject of chapter I a study group may be convened on this subject but preliminary discussion have already taken place within the Commission. On the basis of these discussions it is felt that it will be necessary in the first instance to briefly review the major international global and regional programmes being carried out. This review will provide a concise description of the programme, an analysis of the achievements and shortcomings and suggestions for enhancing the advantages which could be gained from them. It will focus on programmes whose primary aim is to provide the scientific rationale for sustainable management of oceans' living and non living resources and to protect and use the oceans and their resources. Proceeding from this review a number of issues of concern may be identified in various areas. It has already been noted that Science and Technology transcend all issues dealt with in the report as it is to be considered as a mean and not as an end in itself.

It will be necessary to focus on the gaps between North and South and sometimes within these regions and to endeavor to present innovative solutions . As was noted, Technology today cannot just be bought, it must be learned. 'Technology transfer' today is based on the development of human resources. The most effective means of "technology transfer" is joint research and development, i.e. capacity-building within a framework for regional and global, South/South and North/South cooperation. Despite legal provision and political commitments (art. 144 of the LOS Convention, Regional Sea Conventions, Agenda 21, etc.), gaps have failed to be filled.

Technological change and social change  
 social, cultural and environmental sustainability  
 need to indigenous technology co-development  
 4 Technology, at village level  
 fishing

### Chapter III The legal and institutional framework

This chapter will reflect the discussion, conclusions and recommendations of the study group which met from 9 to 11 October in Geneva.

It may include the following:

- Overview of the legal and institutional framework : (Are there any gaps, inconsistencies ?) *: definition of new trends, not principles of international law*
- Issues relating to implementation and enforcement : (in view of the great number of international legal instruments how can governments improve their monitoring implementation and enforcement capacity and commitments).
- Issues relating to international conflicts and dispute settlement : (this question is related to the question of peaceful uses of the Ocean).
- Institutional shortcomings : (at the national, regional and global level)

Within this chapter consideration may have to be given to a number of trends pointing towards a new "emerging institutional framework". It might be appropriate to look at structures involving the governmental as well as the non-governmental sectors at the local and national level, referring perhaps to some case studies.

From the national and regional level it will be necessary to move to the global level and consider possible improvements within the United Nations system taking into account the role of the General Assembly , the specialized Agencies and the Commission on Sustainable Development.

#### Chapter IV Peaceful Uses of the Oceans, Sovereignty and Security

Inputs to this chapter will be provided by the study group which is expected to meet in January 1997. However on the basis of preliminary discussions of the subject in a sessional working group of the Commission, the following ideas may have to be developed in this chapter :

*Not using a land lock also*  
 - the end of the cold war has created a new geopolitical setting with respect to the oceans, and is specially relevant in the transition from a bipolar to a multipolar security framework. The implications of this transition must be studied carefully including taking due account of the special role and responsibilities of leading states to provide generalized order for the oceans. *Agenda for Peace*

Beyond the concept of "security of states" it is necessary to take account of the "security of people" and "the security of the world community". With respect to the "security of people" of great concern are the transport of drugs and arms at sea, the transnationalisation of terrorist activities, the resurgence of piracy at sea, the migration of refugees by ship and the conflicts relating to marine resources. With respect to the "security of the world community" reference will be made to the carriage by sea of dangerous substance, blockades and sanctions interfering with international trade and investment. *Peace keep: Regional, Global, U.N. Naval force*

It will be important to emphasize conflict prevention and conflict resolution in ocean affairs. The present and foreseeable disputes are all related either to resources or to sovereignty and security.

The development of a sense of solidarity might encourage creative solutions to disputes among governments. Some of these solutions have already been used by States, namely the "freezing of claims" and the "shared use of resources".

Ways to promote these peaceful approaches to the resolution of conflicts should be found. Mention could be made of the possibility of establishing compulsory reference of disputes about ocean boundaries, sovereignty, and resource claims to settlement procedures, as well as of the possibility of a special regime of regional scope.

## Chapter V Awareness and Partnership for better Ocean Governance

This chapter should bring together all the major themes already dealt with (sustainable development, Science and Technology, North/South Gap, legal and institutional issues) and place them in the context of people and society. It should lead to an assessment of the major prerequisite for a better use and preservation of the ocean and their resources in the next century. This might well include a more general awareness of the issues at stake and a sense of partnership among people at all levels. This chapter will have to deal foremost with all actors namely : decision makers, non governmental organisation, public opinion leaders, indigenous people, etc and reflect social and cultural aspects. Special attention may be given to the case of indigenous people.

The examination of the issue of awareness including in particular the ways and means necessary to raise it to the level needed for proper action to the institutional set-up in which activities relating to the oceans are taking place.

The consideration of the issue of partnership and the need to generalize its use will similarly be related to the institutional framework in which it is taking place. It will be in the light of these two relationships that recommendations for a new ocean governance will be made.

Conclusions :

Annexes :



Der Dichter im Strandkorb:  
Thomas Mann und das Meer

Eckart Goebel (Berlin)

Das Meer wurde und blieb Lebensthema Thomas Manns <sup>vor allem</sup> zunächst aus biographischen Gründen. Thomas Mann stammte aus Lübeck und suchte Zeit seines Lebens die Verbindung zum Meer, trotz Übersiedlung nach München und Exil. Die vielen Urlaube mit der Familie an der See, Venedig, das Ferienhaus bei Nidden, schließlich Pacific Palisades an der Küste Kaliforniens. Kennzeichnend für die beiden berühmtesten Helden des Frühwerks, Hanno Buddenbrook und Tonio Kröger, ist ihre Liebe zum Meer:

Der vierzehnjährige Tonio liebt es, müßiggängerisch und verloren im Sand zu liegen und auf die „geheimnisvoll wechselnden Mienenspiele“ zu starren, „die über des Meeres Antlitz huschen.“ Der Urlaub des jungen Hanno in Travemünde wird zur Befreiung von der als Hölle erfahrenen Schule, zur vorweggenommenen Erlösung vom als beängstigende Qual erfahrenen Leben überhaupt:

„dieses zärtliche und träumerische Spielen mit dem weichen Sande, der nicht beschmutzt, dieses mühe- und schmerzlose Schweifen und Sichverlieren der Augen über die grüne und blaue Unendlichkeit hin, von welcher, frei und ohne Hindernis, mit sanftem Sausen ein starker, frisch, wild und herrlich duftender Hauch daherkam, der die Ohren umhüllte und einen angenehmen Schwindel hervorrief, eine gedämpfte Betäubung, in der das Bewußtsein von Zeit und Raum und allem Begrenzten still selig unterging...“

Die Stelle aus *Buddenbrooks* läßt hervortreten, warum das Meer bei Thomas Mann zum zentralen poetischen Bild weit über den biographischen Hintergrund hinaus werden konnte. Die Rede vom Meer ist Verführung und Einladung für den Leser zunächst einfach deshalb, weil für viele Urlaub damit verbunden ist, also die Erfahrung der Freiheit von Zwang: Durchatmenkönnen, Nacktheit, Baden, Körperlichkeit.

Mit dem Meer verbindet sich für nicht wenige die Erinnerung an Kindheitsferien im Strandkorb an Nord- oder Ostsee, an die Entdeckung des Körpers, Pubertätserotik, insgesamt die Erfahrung einer Lockerung der sonst in Konventionen eingeschnürten Persönlichkeit, an Barfußlaufen, wie es im *Zauberberg* heißt, „auf dem glatten, festen, gespülten und federn den Sandboden am Saume des Meeres.“

Bei Thomas Mann weitet sich diese Erfahrung des Urlaubs zur Erfahrung eines möglichen Urlaubs vom Leben überhaupt. Der Spaß am Baden wird als ein Flirt mit dem eigenen Untergang im Elementaren gedeutet, als „das Begeisterungsglück leichter Liebesberührungen mit Mächten, deren volle Umarmung vernichtend sein würde“.

Der Anblick des Meeres und seiner „Urmonotonie“ weckt die Sehnsucht nach einer Auflösung des Individuums in die elementare Gleichgültigkeit, nach einer Erlösung vom

Andere  
Einsparung

Schmerz der Individualität durch das Eingehen in das „Verheißungsvoll-Ungeheure“, auf das der am Strand stehende Tazio am Ende von *Der Tod in Venedig* vorausweist.

Das Leben ist Leiden und Schmerz, das Meer spendet Trost, weil es daran erinnert, daß das individuelle Sein nur eine Station ist zwischen dem Nichts das war, und dem Nichts, das kommt. Am Meer zu sein macht glücklich, weil es daran erinnert, daß das Leiden irgendwann aufhören wird. Urlaub am Meer, das ist bei Thomas Mann immer auch Urlaub von der eigenen Individualität in ihrer Begrenztheit.

Und eben weil das so ist, eignet sich die Szenerie der Küstenbäder so sehr zur Kulisse vieler Erzählwerke des Dichters. Die Todesnähe und Verträumtheit von Hanno Buddenbrook und Tonio Kröger läßt sich hier in einer Form sinnfällig machen, die vielen Lesern leicht nachvollziehbar wird, wesentlich leichter, als wenn Hanno und Tonio aus irgendeinem vielfach gestuften Binnenland stammten, das die Aussicht auf sich verwischende Horizonte nicht zuläßt. Im *Tod in Venedig* wird die Küste zur Mittlerin zwischen Kultur und Natur. Das Strandbild bietet den Anblick „sorglos sinnlich genießender Kultur am Rande des Elements“, und die Geschichte Gustav von Aschenbachs, der sich in den Jüngling Tazio verliebt, ist der Weg von der distanziert genießenden Kultur über die zunehmende Lockerung der Formen in die tödliche Auflösung, ein tragischer Weg ins Meer. 1-2

Das Meer ist Urlaub, Urlaub vom Leben zumal. Im späteren Werk Thomas Manns tritt der Aspekt der Todessehnsucht im Angesicht des Meeres jedoch zunehmend zurück.

Im Schneekapitel des *Zauberbergs*, das die Erfahrung von Meer und Schneegestöber übereinanderblendet, widersteht Hans Castorp dem Sog zur Auflösung. Seine „Sympathie mit den Elementen“ Meer und Schnee verführt ihn nicht zur Aufgabe seines Lebens. Er entwirft vielmehr „ein Traumgesicht vom Menschen“, das diesen als einen begreift, der standhält in der Welt der Formen und der Einzelnen. Castorp kehrt ins Leben zurück.

Ihren Höhepunkt erreicht die sich entwickelnde Kritik einer todesnahen Liebe zum Meer im späten Roman *Dr. Faustus*. Dort erzählt der Held und Teufelsbündner Adrian Leverkühn von einer Reise mit einer Taucherglocke in die schwarzen Tiefen des Elements. Die Tiefen des Meeres, dessen Anblick vom gesicherten Strand aus die Helden der frühen Werke zu träumerischer Todessehnsucht verführte, sind bevölkert von „abstrusen Kreaturen des Abgrunds“.

Auf dem Grund des Meeres wiederholt sich in schaurig kartierter Form das Leben der Oberfläche:

„unbeschreiblich, was da an tollen Geheimfratzen des Organischen, an räuberischen Mäulern, schamlosen Gebissen, Teleskopaugen, an Papierbootfischen, Silberbeilen mit aufwärts gerichteten Glotzern, Kiel- und Flossenfüßern, bis zwei Meter lang, vor den Fenstern der Gondel vorüberhuschte. Selbst die willenlos in der Flut schwebenden, fangarmigen Ungeheuer aus Schleim, die Staatsquallen, Polypen und Skyphomedusen, schienen von krampfhaft zappelnder Erregung ergriffen gewesen zu sein.“

Man kann die träumerische Liebe zum Meer als die Sehnsucht, das Bewußtsein zu verlieren, verstehen. Mit Bewußtsein ist Schmerz verbunden. Bewußtsein ist insbesondere Bewußtsein der Vereinzelung, der Einsamkeit. Im Sinne dieser Deutung wäre dann die Reise in der Taucherglocke aus dem *Faustus* als die Allegorie eines Abstiegs in das ersehnte Unbewußte deutbar. Die Reise hinab macht klar, daß von der Bewußtlosigkeit keine Erlösung zu erwarten ist, allenfalls die Entfesselung „krampfzig zappelnder Erregung“, nur eine Neuauflage des Lebens an der Oberfläche - ohne Hoffnung.

Die Vermittlung zwischen dem Recht auf Traum und Sehnsucht, die ihr Bild im Meer findet, einerseits, und der Einsicht, daß die Hingabe an diese Sehnsucht die Erlösung nicht bringt, andererseits, die Vermittlung zwischen dem Traum und Bewußtsein hat Thomas Mann zu leisten versucht. Diese Vermittlung zwischen Tod und Leben, Traum und Vernunft leistet bei ihm die Epik, der Vorgang des Erzählens selbst.

Nicht zufällig setzt der Essay über *Anna Karenina* mit einer Beschreibung des Meeres ein, an dem der Autor Thomas Mann im Strandkorb sitzt:

„Die flaschengrün-metallisch schimmernde Wand, sich steilend, sich höhlend, sich neigend und schaumgelöst niederprallend in immer wiederkehrendem Fall, dessen dumpfer Donner den Grundbaß bildet zu dem hellen Kochen und Rauschen der vorderen Brechungen und Ausläufer - nie sieht sich das Auge satt an diesem Schauspiel, wird das Ohr müde dieser Musik.“

Im Denken und Fühlen Thomas Manns bilden die Elementarerlebnisse des Meeres und des Erzählens eine seelische Einheit:

„Das Element der Epik mit seiner rollenden Weite, seinem Hauch von Anfänglichkeit und Lebenswürze, seinem breit anrauschenden Rhythmus, seiner beschäftigenden Monotonie - wie gleicht es dem Meere, wie gleicht ihm das Meer! Es ist das homerische Element.“

Um den Sinn dieser Ideenverbindung für das dichterische Schaffen erkennen zu können, muß man sehen, wo die Analogie zwischen Meer und Erzählen endet. Beides sind im Verständnis Thomas Manns Urkräfte. Das Meer ist unbeherrschbar und unbezwingbar, niemals zu formen und unter menschliche Verfügung zu bringen. Das Meer steht stellvertretend für die dem Menschen überlegenen Kräfte. Anders das Erzählen.

Auch das Erzählen ist Elementarkraft und als solches eine innere Verbindung des Menschen mit den ihn umgebenden Gewalten. Doch das Meer der Epik ist formbar, unterliegt dem Willen menschlicher Gestaltung. Die große Epik wird so zum Beispiel eines gelückten Ausgleichs zwischen Element und Kultur, zum Bild einer gelückten Verbindung von Mensch und Natur. Wenn man überhaupt so etwas wie einen utopischen Gedanken bei Thomas Mann ausmachen kann, dann hier, in der Form seines meerhaften Erzählens, das liebevoll-behutsame Auflösung der traditionellen Erzählweisen ist, aber in der Weise einer bewußten Formung des Stoffs.

## COUR INTERNATIONALE DE JUSTICE

## INTERNATIONAL COURT OF JUSTICE

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RECEIVED JAN 10 1996

Judge

Carl-August Fleischhauer

The Hague, 10-1-1996

COPY

Professor Elisabeth Mann Borgese  
International Ocean Institute  
Dalhousie University  
Halifax, Nova Scotia  
Canada  
Fax no. 00 1 902 494-2034

*my dear Elisabeth,*

I was so pleased to find, when I came back from New Year's break, your kind greetings from the Lubeck address, coming, as the accompanying note said, from the bottom of the Ocean and from the bottom of your heart. From the height of my Bench, but no less from the bottom of my heart, I sincerely reciprocate your wishes for a contended and happy 1996. Independently from how the developments on Law of the Sea and on the Ocean problems go, we should see to it that we meet again this year. I was was three times in New York last year, but my visits never coincided with one of yours. Should all other places fail, wouldn't Milano be a good place to meet, where we both have children to visit?

I continue to find my - no longer so new - life on this side of the Atlantic stimulating and fulfilling. A shadow fell upon it when Liliane had to undergo a very severe operation last fall. However, she is recovering well and I think we are entitled to trust that the thing will ultimately blow over entirely. On Law of the Sea matters, I am quite well informed as not only have I with Abdul Koroma a Law of the Sea-person as a colleague, but there is quite a number of people from the world of Law of the Sea in the Netherlands or coming through here.

Looking forward to see you again I remain with warmest regards

*Yours ever*

*g-inu*



Dalhousie University

COPY +  
copy of  
26<sup>th</sup> May  
letter  
for  
Jean-Pierre  
Lévy

International Ocean  
Institute



July 12, 1994

H.E. Judge Carl-August Fleischhauer  
International Court of Justice  
Peace Palace  
The Hague, Netherlands

Sehr lieber Gustl,

Ich hoffe Du fühlst Dich wohl, in Deiner neuen Incarnation! Und sicher bist Du froh, dass Du nicht in den 27. Juli verwickelt bist! Dies Boat Paper ist eine trübe Angelegenheit und wird uns noch verfolgen. Allzugern möchte ich, dass irgend ein passendes Forum vom ICJ eine Advisory Opinion sucht, über die Legalität des Vorgehens -- so gut wie die Advisory Opinion über die Legalität von Atomwaffen kann man die doch auch anfordern!

Ich hoffe we können uns über all diese Dinge bald einmal unterhalten!

Heute nun habe ich einen grossen neuen Plan vorzuschlagen: Wir sind drum und dran, eine Independent World Commission for the Seas and Oceans auf die Beine zu stellen. So eine Kommission braucht man heute wirklich. Ich lege Dir den Plan bei -- wie auch einen Brief vom guten Jean-Pierre, damit Du siehst, dass wir im Sinne der UNO handeln!.

Judge Bedjaoui, mit dem ich vor ein paar Wochen in einer anderen Sache korrespondierte, hat sich schon bereit erklärt, der Kommission beizutreten. Und so hoffe ich doch sehr, Du tust es auch. Ausser Bedjaoui und Dir, wollen wir noch Koroma, Oda und Aguilar einladen, weil das doch alte Law of the Sea Freunde sind.

Im übrigen wollen wir Dich ja im Dezember in unseren Board wählen, und dann wärest Du ohnehin Mitglied!

Ich glaube, wir können eine nützliche und notwendige Arbeit tun.

Geniesse Deinen Sommer, und lass bald von Dir hören.

Alles Beste,

Stets Deine alte

*El. Spilly*



*Carl August Fleischhauer*  
*Under-Secretary-General*  
*The Legal Counsel*

10 January 1994

COPY

*Dear Elisabeth,*

*I would like to reciprocate your good wishes for Christmas and the New Year and to express the hope that you spent the holidays in a pleasant way. I would also like to thank you for a wonderful box of Luebeck Marzipan which bore your address. It was very kind of you to send us such a wonderful gift.*

*We will see each other on 31 January because the Secretary-General has decided that I will still open the next round of consultations although the 31st is my last day in the Office here. Whether the Secretary-General himself is in a position to participate in the opening ceremony is not yet quite clear. I will then hand over the chairmanship to Jean-Pierre Lévy.*

*Unfortunately, I do not think that we will be able to have one last meeting at The Perigord because all my evenings are taken. We will have to find a new place to continue the habit in Europe.*

*With all my best wishes.*

*Yours sincerely,*

A handwritten signature in dark ink, appearing to read 'Carl'.

*Mrs. Elisabeth Mann Borgese*  
*Dalhousie University, International Ocean Institute*  
*1321 Edward Street*  
*Halifax, Nova Scotia*

FAX

COPY

To: Dr. Carl-August Fleischhauer  
The Legal Counsel

Fax Nr. 1 212 963 6438

From: Elisabeth Maria Hanousek

Fax Nr. 81-3-3586 4706

Date: 13 September 1995

Guten Tag, könntest Du so sehr lieb sein  
diese Message weiter zu leiten? Ich habe  
die direkte Nummer nicht!

Ich habe wiederholt versucht, Dich anzurufen,  
ist aber bisher nicht gelungen. Ich werde es  
weiterhin versuchen!

Hier alles allerbesten. Viele neue Freunde.  
Viele neue Türen geöffnet.

Auf bald stets Deine Elisabeth

COPY

PERSONAL AND STRICTLY CONFIDENTIAL

Tokyo September 11, 1993

H.E. Professor Guido De Marco  
Deputy Prime Minister and  
Minister for Foreign Affairs  
Government of Malta  
Valletta, Malta

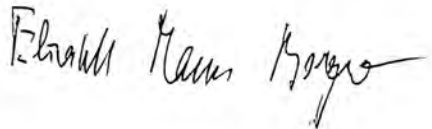
Dear Professor De Marco,

In the attached letter I mentioned our good friend Ambassador Koroma of Sierra Leone. As you know, he is a candidate for the ICJ. Ambassador Koroma has been a friend of the IOI and of Malta for as many years as I can think of. His qualifications as an expert in international law are beyond doubt, after all the years he has been a member, even the President, of the International Law Commission in Geneva. What I would like to stress even more, however -- because it is of utmost importance for an institution like the ICJ -- is his strength of character, moral integrity and spirit of commitment. Among all the African candidates, I would give him the top marks on these accounts.

You may have another candidate, and in this case, please ignore this letter. But if your policy on this point is still open, I would be grateful if you could take this information into account.

Thanking you again for your attention, with all good wishes,

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Ebrahim Karim". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.



COPY

Tokyo, September 11, 1993

H.E. Professor Guido De Marco  
Deputy Prime Minister and  
Minister for Foreign Affairs  
Government of Malta  
Valletta, Malta

Dear Professor De Marco,

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.

There is no possibility of agreement on either of the two documents now on the table. The scenario one could reasonably project, if our proposal were not acceptable either, is this: The Convention comes into force. The States Parties are all developing countries (plus Iceland). They now realise, they do not want to spend the money to establish the Authority and the Enterprise. In a state of disarray, they go to the General Assembly and beseech it, to leave things the way they are and to extend the Prepcom regime. The General Assembly would probably, grudgingly, do so; but there would be no "evolutionary approach," there would be no talk of the Common

Heritage of Mankind. The result we could achieve now with a sense of purpose and future, with an evolutionary view and confirming the principle of the Common Heritage of Mankind which will keep Malta's name honoured throughout the coming centuries, we will end up with the same result by default, as it were, but with its wings clipped, so to speak, looking backward, not forward.

We must act now. We have no choice.

The EC and Japan should have no reason to object to our 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 Busuttill 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.

With all good wishes,

Sincerely yours,

Erhard Nam Borgu



Dalhousie University

International Ocean  
Institute



**FAXED**

FACSIMILE TRANSMISSION

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

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

Date: January 12, 1994

Subject: New York

Sehr lieber Gustel,

Ein recht schönes Neues Jahr -- in dem sich sicher viel Neues bietet für Dein Denken und Wirken, und Du viel Altes los wirst, dem Du nicht nachtrauerst!

Dies nur um mitzuteilen, dass ich am 30. Januar in New York ankomme und die ganze Woche da bin.

Ich höre mit Freude, dass Du die Runde noch persönlich eröffnen wirst, aber es ist Dein letzter Tag.

Reisest Du sofort ab, am 1. Februar, oder bist Du noch ein paar Tage privat im Lande? Wenn dem so wäre, dann böte sich vielleicht noch die Gelegenheit zu einem Abschieds Perigor!

Lass mich wissen, durch Bhagwat oder direkt.

Stets Deine



Dalhousie University

International Ocean  
Institute



I.O.I. - Malta

August 8, 1993

FAXED

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

COPY

Sehr lieber Gustel,

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

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

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

#### CHAMBER VOTING

We heard a lot of good critical comments. One fundamental weakness of the system was more implied than expressed by Iceland, and that concerns "Chamber (v)." Here we have familiar Convention language which was meaningful in the context of Article 161 (a) dealing with *the Council as a whole with the purpose of ensuring a fair 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.*

So much for that.

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

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

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

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

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

And now to my *idée, pas telment fixe.*

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

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

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

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

Stets Deine.

F. Engels



Dalhousie University

International Ocean  
Institute



I.O.I. - Malta

**FAXED**

July 26, 1993

Dr. Carl-August Fleischhauer

Legal Counsel

FAX No. 212 963 6430

PERSONAL AND CONFIDENTIAL

*Sehr lieber Gustel*

Erstens, recht herzlichen Dank für den Abend, der, wie immer, so gemütlich wie anregend war. Der zweite Pear Williams war etwas zu viel. Ich hoffe, er ist Dir besser bekommen als mir...

Dies Schreiben, wegen meiner, wieder einmal, grossen Beunruhigung über die Weiterentwicklung unserer Convention.

Die Fischerei Conference ist ziellos und endlos, und kann in der Tat viel Schaden anrichten. Obwohl das Anfangspapier nicht so schlecht war wie es hätte sein können, sind die Verhandlungen trostlos, oder finden eigentlich überhaupt nicht statt. Die Küstenländer, deren straddling stocks, etc. doch gerade konserviert werden sollen, weigern sich strikt auch nur ihre data an eine regionale Institution abzugeben. Indien, zum Beispiel sagt, dies tun zu müssen, verletzt seine Souveränität; es stünde nicht in der Seerechts Konvention, und niemand könne verlangen, dass sie ihre data preisgeben... Man kann sich darauf verlassen, dass in den nächsten Jahren Staaten sich nicht davon zurückhalten lassen werden, ihre Grenzen einseitig zu erweitern. Wenn unsere Convention dann nicht in Kraft ist, dann ist sie verloren. Denn wenn, zusammen mit der Meeresbodenbehörde, auch noch die Wirtschaftzzone in die Brüche geht, was bleibt? Die Staaten, die ihre Grenzen erweitern -- mindestens 20, zum Anfang -- werden bestimmt nicht ratifizieren, und dann gibt es eine Sturmflut von Erweiterungen. Nicht als ob das irgend ein Problem lösen wird. Insofern sie die neuen Grenzen überhaupt anerkennen, werden die distant-water Fischer sich dann eben ausserhalb der 350 Meilen Grenze placieren, mit Fish congregation devices oder was sonst noch, und lustig weiter überfischen. Den Fischen ist das egal, wo die Grenze ist, und die moderne Technologie setzt sich genau so darüber hinweg...

Wir MÜSSEN dieses Jahr fertig werden: Du schuldest es Dir selber und der Welt. Der



Böse Feind soll Dich nicht daran hindern. Mit der Errichtung der Authority werden wir dieses Jahr nicht fertig --und schon gleich nicht nächstes Jahr, wenn Du nicht mehr da bist. Zu viele Punkte müssen verhandelt werden, und der Böse Feind hat es leicht, die Vereinbarung auf so vielen Punkten zu verhindern oder sine diem hinauszuziehen. Er selbst hat ja schliesslich Jahre gebraucht, um nichts zu erreichen, und es wurmt ihn, Dich schneller ans Ziel kommen zu sehen...

Wenn wir auf die "emergency option" zurückfallen, haben wir uns nur auf einem einzigen Punkt zu einigen: Tun wirs, oder tun wirs nicht! Wenn wir uns darauf einigen, es zu tun, ist einfach alles fix und fertig da. Das bringen wir bis Weihnachten hin. Etwas anderes bringen wir nicht hin.

Wir werden wohl die Alternativen erst ausspielen und verlieren müssen, und das dauert Zeit. Ich sollte denken, wenn Du sicher bist, im September und dann vielleicht noch im November, je noch eine Sitzung (je eine Woche, mindestens) einberufen zu können, dass dann die "emergency option" erst im September auf den Tisch gebracht werden sollte. Aber nicht später: Sonst geht auch das nicht mehr, und dann haben wir ein trübes Weihnachten...(Wenn es nur das wäre!)

Treu ergeben,

Deine  
Ehrlich