

Dr. T. Eitel

53113 Bonn 1, den 18.06.93
Auswärtiges Amt/Abt. 5
Adenauerallee 86

RECEIVED JUL 13 1993

An
Frau
Prof. Elisabeth Mann Borgese
International Ocean Institute
P.O. Box 524
Valletta, Malta

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ACTION: ENA	ACTION TIME:
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Meine liebe Elisabeth,

ich habe Dir für vieles zu danken.

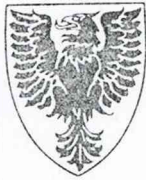
Zunächst hat mich Dein Papier über die universelle Akzeptanz unserer Konvention natürlich sehr interessiert. Es sind nur zum Teil "Alte Bekannte" und die Kleider sind meines Erachtens nicht geflickt, sondern auf das ansehnlichste herausgeputzt. Wie schon häufiger, kommt es aber, fürchte ich, nicht auf die Qualität einer Idee oder eines Papieres an, sondern darauf, wie in dem Clockwork Orange eines verzweigten Konsultationsmechanismus' die Aufnahmebereitschaft wichtiger Teilnehmer ist: Es scheint, daß die nicht zuletzt von den Franzosen befürwortete Idee einer Verlängerung der Vorbereitungskommission in den New Yorker Konsultationen bislang noch nicht hat Fuß fassen können. Sie bleibt möglicherweise hinter den Erwartungen einiger industriestaatlicher Protagonisten zurück. Wenn das jüngste Papier unseres gemeinsamen Freundes "Gustus" in der dritten Alternative umgesetzt würde, würde das den Industriestaaten sicherlich besser gefallen. Du siehst im übrigen, daß Dein approach auf S. 7/8 behandelt wurde.

Zum zweiten hat mir Deine "enge Freundin und Fachkollegin", Renate Platzöder, gestern "Die Meer-Frau" geschenkt. Ich habe ja den größeren Teil am Fernsehen verfolgen können und finde es sehr eindrucklich, wie das Jahrhundert durch Deine Zeugenschaft Gestalt gewinnt.

Ich wünsche Dir für das training programme den üblichen und wohlverdienten Erfolg und hoffe sehr, Dir in dieser oder der westlichen Hemisphäre in nicht zu ferner Zukunft über den Weg zu laufen. Ich werde voraussichtlich im September zu den Rechtsberatungskonsultationen wieder in New York sein.

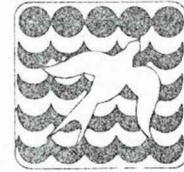
Ganz herzliche Grüße,
stets Dein Tora

File



Dalhousie University

International Ocean
Institute



I.O.I. - Malta
October 12, 1992

COPY

The Hon Charles Caccia
House of Commons
Ottawa, Ont. K1A 0A6

Dear Charles,

Thanks for your letter of August 31, and the excellent statement on Rio. You are 100 percent right!

As to the previous statement on the Law of the Sea, I don't have it here right now, and I can't get at my files because we are in the process of moving our offices at the University. If my memory is correct, the number of ratifications was not exact: They are now 52, they were 51 at the time you made your statement. But there were another couple of minor inexactitudes. I will identify them for you as soon as possible!

With all good wishes,

Yours as ever,

Elzbieta
* If you could send me another
copy, I could clean it up for you
very quickly!

CHARLES CACCIA, M.P.
PARLIAMENTARY
HOUSE OF COMMONS
OTTAWA, ONTARIO
K1A 0A6
TEL. (613) 995-8202
FAX (613) 995-8202



HOUSE OF COMMONS
CHAMBRE DES COMMUNES

TRADING OFFICE
1000A DUFFERIN STREET
TORONTO, ONTARIO
M5E 3L9
TEL. (416) 594-5049
FAX (416) 594-5049

Date:

To: *Mrs. P. G. G. G.*

.....
.....

Fax Number: *902-868-2455*

From: Charles Caccia, M.P.
House of Commons, Ottawa
FAX Number: (613) 995-8202

Number of pages (including cover): *2*

Comments:

*Please comment
ASAP on draft*

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Atul
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**COMMUNIQUE**CHARLES L. CACCIA
M.P. FOR DAVENPORTHOUSE OF COMMONS
OTTAWA K1A 0A6
Tel (613) 992 26781689A DUFFERIN STREET
TORONTO M6E 3N9
Tel (416) 564-8048**THE GOVERNMENT OF CANADA SAYS "NO"
TO THE LAW OF THE SEA CONVENTION**

Today the House of Commons voted down a motion by Liberal MP Charles Caccia urging the government to ratify the Law of the Sea Convention. To date, 56 nations have ratified the Convention. Sixty nations are required for the Convention to enter into force.

"How can Canada maintain credibility at the International High Seas Fishing Conference to be held in April in New York if it refuses to ratify a Convention which would provide substantial protection for Canadian fisheries?" asked Caccia. "Why not ratify the Convention if the government proposes using the Law of the Sea rules?"

The Law of the Sea Convention provides for the acquisition of a 200-mile Exclusive Economic Zone (EEZ) which gives the coastal State all the economic rights to the area. The Convention also provides the legal basis for resolving the issue of straddling and highly migratory fish stocks in the high seas fisheries.

Strangely enough, Canada was amongst the first countries which signed the Law of the Sea Convention on December 10, 1982, after years of intensive international negotiations during which Canada played a leading role. Since 1984 Canada has refused to ratify the Convention, siding with the Reagan and Bush administrations in their opposition to the International Seabed Authority - an institution which became key in securing developing country participation in the Law of the Sea Convention.

"It is most distressing to hear this government make great declarations abroad in support of the environment and sustainable development while failing to act when it comes to the crunch. To vote against ratification does not make sense," says Caccia.

- 30 -

For further information, please contact 416/992 2632



Dalhousie University

sent

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I.O.I. - Malta

FAXED

FACSIMILE TRANSMISSION

To: Mr. Richard C. Caruana
FAX No: 356 24 33 03

From: Elisabeth Mann Borgese
FAX No.: 1 902 868 2818

Date: July 11, 1992

Subject: Ratification

Dear Richard,

I see, our matters in Malta are progressing very well, and I am happy about that.

I was told that you would like an up-to-date list of States that have ratified the Law of the Sea Convention. Here it is.

Officially, they are still 51, and nothing has moved since October of last year. This is most unfortunate, and I am beginning to fear for the future of the Convention. While there are positive developments: The new Under-Secretary General in charge of the Law of the Sea, Dr. Fleischhauer is a first-rate person and wants the Convention to come into force, and, there is a strong movement now in Europe to go ahead without the United States, there are new dangers of disintegration. Part XI has been in danger for some time, but now also the EEZ is under discussion. New theories, like "large eco-systems" or the "presential sea" --which do not coincide with the EEZ --are cropping up, and if the Convention is not ratified when the new U.N. Conference on fisheries on the High Seas meets next year, I am afraid that Conference will turn itself into UNCLOS IV, and we will lose our Convention. The Common Heritage of Mankind will recede into the limbo of rhetorics and pious phrases from which Arvid Pardo had rescued it. We will be back in 1958.

Well, it fits into the general picture. We seem to be moving rapidly back to 1914, generally speaking...

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

I should add, on the positive side, that there are at least 6 States that have completed the ratification process internally and could deposit their instruments any day: Costa Rica, Uruguay, Mauritius, Slovenia, Croatia (in the case of the latter two, it is simply "notification of succession")-- and, I should say, Malta. Also the Baltic States are having ratification under consideration at present (I am going to Lithuania next month).

I am still campaigning as hard as I can, but feeling increasingly Donquixotic in this fight with the various windmills...

If you can do anything to move things in Malta, it would be great. I need not stress to you the unique importance of this Convention, in the context of the UNCED process, in the wider context of the restructuring of the United Nations system.

Warmest regards,


Elisabeth Mann Borgese

JAN 15 1991

The Rt. Hon. Joe Clark, P.C., M.P.
Secretary of State for External Affairs



Le très hon. Joe Clark, C.P., député
Secrétaire d'Etat aux Affaires extérieures

Canada

OTTAWA, Ontario
K1A 0G2

January 10, 1991

Dear Dr. Mann Borgese:

Thank you for your facsimile of November 6, 1990, concerning the 1982 United Nations Law of the Sea Convention. I welcome the opportunity to exchange views on this subject, and to assure you that the early, universal acceptance of this Convention remains a major objective of the Canadian Government.

I fully agree with your assessment of the importance of the Convention as a legal framework for the prevention, reduction and control of pollution of the seas. In addition, in setting out a comprehensive regime for the regulation of the world's oceans, the Convention makes a major contribution to world peace and security by reducing the potential for conflict in the competing uses of the oceans.

As you know, while some parts of the Convention reflect generally accepted principles of international law, other aspects represent new law. Failure of the Convention could risk a return to the uncertainties that existed before the Convention was negotiated. The question of how best to ensure the success of the Convention thus continues to be one of Canada's foremost concerns.

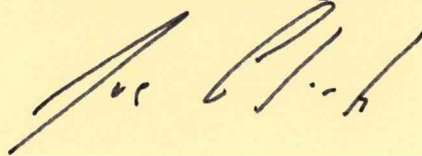
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Dr. Elisabeth Mann Borgese
International Ocean Institute
Dalhousie University
1321 Edward Street
Halifax, Nova Scotia
B3H 3H5

Since the signing of the Convention in 1982, Canada has sought to achieve universal acceptance of the Convention and thus enshrine it as a corner-stone of international law. Our perseverance in this regard has recently been rewarded by the initiative of the United Nations Secretary-General in convening informal consultations aimed at paving the way for universal participation in the Convention. This initiative is based on the Secretary-General's judgement, shared by most experts, that there now exists a general willingness amongst all interested parties to discuss and seek solutions to the problems that many states have with some aspects of the deep seabed mining provisions of the Convention. These problems have inhibited them from ratifying or acceding to the Convention. Canada has worked hard to facilitate the establishment of such a dialogue and intends to participate actively in it.

We share a common goal. We both want the 1982 Law of the Sea Convention to be a solid, binding force in international environmental law, to support our current and future efforts in this field. We are working to achieve this, by attempting to bring about a Convention whose integrity is beyond question. The outcome of our endeavours in this regard, as well as the results of the work of the UN Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, inter alia on draft rules, regulations and procedures for seabed mining, will be important considerations in Canada's decision on ratification of the Convention.

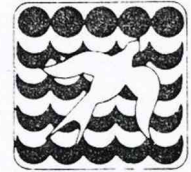
Yours sincerely,

A handwritten signature in dark ink, appearing to be 'A. P. H.', written in a cursive style.



Dalhousie University

International Ocean
Institute



I.O.I. - Malta

December 5, 1993

Professor Harlan Cleveland
H.H. Humphrey Institute of Public Affairs
University of Minnesota
909 Social Sciences
601, 19th Ave South
Minneapolis, Minn. 55455
USA

COPY

Dear Harlan:

It was lovely to see you and to see you in such good shape!

Here, as promised is the "Boat Paper." The authors are Satya Nandan of Fiji (although the Fijian Ministry of Foreign Affairs does not seem aware of it); Wes Sholtz of the United States (a left-over from the Bush Administration), Anderson of the U.K., and Dr. French of the Australian Delegation.

You will note that this paper changes Part XI of the Convention and Annexes 3 and 4 on every important point. Among other things, it is also very poorly drafted. You will note, e.g., that the "chamber voting" trying to accommodate interest-group based voting, regional representation, and chamber voting all into one system, simply does not make any sense, except for the thinly veiled intention to give to the industrialised States a veto!

There are a lot of other things, but we really do not need to go into them at all. This is just an example how poorly the thing is done, even if we accepted the idea of amending the Convention before it comes into force. It has been suggested that this paper be considered "an integral part of the Convention, and where it conflicts with the text of the Convention, it is this paper that is to prevail!" I think this is fairly absurd, in terms of international law!

The important facts are:

1. We cannot, and do not want to, change the Convention before it comes into force:

(a) because it is against international law;

(b) because we don't know when, where, and under what circumstances commercial seabed mining will start and what we would decide today would be as obsolete in 2010 as what we did in 1974 is in 1994;

(c) because the Convention is coming into force on November 16, 1994, and we simply have no time to renegotiate what has taken us 14 years to negotiate in the first place.

Certainly, the situation has changed, and many articles of Part XI and Annexes 3 and 4 cannot be applied today. We all know that. What we propose therefore is to establish an interim regime --which we already have, and which is working just fine --and leave to posterity what only posterity can decide.

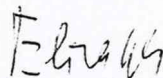
It would be great if the State Department could give serious consideration to the alternative (which was introduced by Ambassador Koroma of Sierra Leone. It is simple, straight-forward, and avoids all the pitfalls of the other approach. Nobody really has to give up anything --and the US maintains its option not to be bound by Part XI as it now stands. "Provisional Membership," which has been generally accepted, really does not cost anything!

A decision, of course, would have to be taken before the next S-G's Consultations which have been scheduled for the end of January.

Whatever you can move in this direction, will be most fervently appreciated!

Please keep me posted.

Warm regards,



Elisabeth Mann Borgese



International Ocean Institute

RES/LOS-Prep.Com.
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VALLETTA, MALTA

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Telex: 1946 OCEANS MW

New Year's Eve, 1987

Professor Thomas A. Clingan, Jr.
School of Law
University of Miami
P.O. Box 248087
Coral Gables, Florida 33124-8087

Dear Tom:

My warmest wishes for the New Year. It is going to be an interesting one, I am sure!

And thanks for your letter which I find very encouraging.

Now we have reached a new stage, with the Registration of all the four pioneer investors. Much will depend on what the Prep.Com. will be able to make of this new phase.

I am doing a lot of work on the implementation of Art. 276 and 277 (Regional Centres on Marine Science and Technology): Work that closely relates to the kind of structure the Enterprise ought to assume. I really think we can do a lot of innovative work in the interstices of the Convention, without, at this time, suggesting changes, which undoubtedly will come: at a later time.

It would be nice to see you in Jamaica!

All the best,

Yours very cordially,

Elisabeth Mann Borgese
Professor

UNIVERSITY OF MIAMI
CORAL GABLES, FLORIDA 33124-8087

SCHOOL OF LAW
P. O. BOX 248087

November 18, 1987

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

Dear Elizabeth:

Thank you very much for sending me a copy of your letter to Louis Henkin. I do not think that the approach suggested by us in our recent policy statement is necessarily incompatible with your own. We were clearly aware of the limitations placed upon Prepcom by its charter, and we were not suggesting that the changes we might envisage because of perceived changed circumstances should necessarily be addressed there. We were instead suggesting that it is time to begin dialogue anew to identify changed conditions and the corresponding sections of the present text that might need to be addressed in an appropriate forum at an appropriate time.

You have asked for comments on the proposal for an internationalized R & D venture. While I certainly see genuine benefits to such a proposal, I remain a skeptic as to its acceptability by the various consortia. If they could be persuaded to accept the concept, I for one, would not oppose. It certainly could do much to demonstrate the feasibility or lack of some of the structure now incorporated into the treaty, thus it could act as a catalyst to dialogue.

I share your view that it would be wonderful if the U.S. would participate in discussions of the issue, but I do not see that happening at present. I am encouraged by some small signs that the U.S. government has not entirely slammed the door on some future participation of some nature. In response to a recent inquiry from Senator Claiborne Pell concerning the intentions of the U.S. with respect to Prepcom, for example, the Secretary of

State indicated that it was not appropriate for the U.S. to play a role "at this time". That is the first time that I have noted any such hint by a government official at his level. I have no idea what he meant by the phrase, and he did not elaborate. But the mere mention of future possibilities, I think, is interesting.

I think, however, that it will be some time before we could expect any movement on the part of the U.S.. Certainly, the future of mining would have to be more clearly defined.

I do believe, however, that if a dialogue would be renewed, it could only achieve success if there were hope of change.

I thank you, again, for sending me a copy of your letter. On another subject, the Law of the Sea Institute is considering requesting observer status at Prepcom. If the board should so decide, and if such status is forthcoming, I may be seeing you in the not too distant future, and we can chat about some of these subjects.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom".

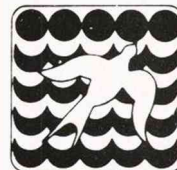
Thomas A. Clingan, Jr.
Professor of Law



Dalhousie University

FAX

International Ocean
Institute



I.O.I. - Malta

To: Professor Umberto Colombo

Fax No. 39 6 8528 2591

From: Elisabeth Mann Borgese

Fax No. 1-902-494 1216

Date: 5 March, 1992.

Carissimo,

Ti scrivo a mano, perché il mio computer
è guasto. Spero che potrai leggere la mia
scrittura!

Si tratta di un problema delicato.

Negotiations concerning the Law of the Sea Conventions
have reached a critical point. The taking over of the
new Secretary-General of the U.N., and the dismissal
of Undersecretary-General Satya Nandan, until now
in charge of the Law of the Sea, provide an occasion for
a fresh start.

Satya Nandan had initiated, 2 years ago, a
so-called "informal dialogue," to make the Convention
"Universally acceptable" -- i.e. to rewrite Part XI in

such a way as to make it acceptable to the U.S.A.
This initiative is totally futile. To wait, at this
stage, for the U.S.A. means to give up the Convention.
The "Secretary General's initiative," playing into
the hands of those who do not want the Convention to
come into force, has paralysed the ratification
process and frustrated the work of the Preparatory
Commission. This opinion is shared by the Prep. Com.
President, Ambassador Jesus of Cape Verde.

Another school of thinking, led by the French
Delegation, strongly favours an alternative approach,
i.e. to move ahead without the U.S.A. and to
prepare, through the Prep. Com., an interim regime
acceptable to the Europeans, Japan, India, China,
and the other developing countries. And this is the
way we must go.

The Italian Delegation, led by Minister Plenipotentiary
Ramino Ruggiero, sticks to the pro U.S. alternative,
which is dead. I understand, the Italian Ambassador
will meet with Boutros Ghali next week to reinforce
this line.

I do not think this necessarily reflects
Italian over-all policy and interests. It would
be far more constructive if the "dialogue"
were de-emphasized and phased out -- it

is futile and dangerous to try to ~~to~~ rewrite
the Convention before it comes into force! --

If it were possible to convince the Ministry
of Foreign Affairs of this, and suggest they study the
French alternative and go along with Europe, but
without waiting for the U.S. -- the time is now!

Whatever you can do in this matter will
be fervently appreciated.

Ti abbraccio,

Edoardo



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 Busuttil and David Attard), it would be quite splendid if Malta could, so to speak, be the bridge between the EC and the G77 which would lead to the universal acceptance of the Convention.

Thank you very much for your attention.

With all good wishes,

Sincerely yours,

Elzabek Nam Borgu



Dalhousie University

International Ocean
Institute



I.O.I. - Malta

FACSIMILE TRANSMISSION

To: H.E. Ambassador Hasjim Djalal
Embassy of Indonesia
Bonn, Germany

FAX No: 49-228-31-13-93

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

FAXED

Date: August 21, 1993

Subject: SG Consultations

My dear Hasjim,

This is to continue our discussions in New York

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

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

Just to have something to shoot at, I have prepared a first draft which I am attaching. It is in line with my previous suggestions. We have carefully examined it with Jagota and Koroma. Their suggestions have been incorporated.

Let me explain again why I feel so strongly that we should extend the mandate of the Prepcom rather than establish the Authority now.



Dalhousie University

International Ocean
Institute



I.O.I. - Malta

I would love to set up the Authority, but the way things have been going, that necessarily and inevitably means that we have to agree on the Chamber voting, which is badly flawed as I pointed out earlier (see attached letter to Fleischhauer), or, in any case, we have to re-open the whole question of decision making, as well as the finance committee, the Enterprise or whether to have one at all!!!, and the other "issues." We will never solve these problems this year, or the next...Besides, we really should insist that the Convention is not to be touched.

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

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

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

I have followed the format of Gautier's "nonpaper" which I got from Jean-Pierre. That paper is a little better than the "Boat Paper" but it does not solve our problems either, and it gives away far too much. No Enterprise, until the Council so decides, and in the Council, there is the veto of the chambers! We cannot accept that! I have *omitted* the references everybody loves to make today to the "changed economic situation" and the great "reliance on market forces." In plain English all that that means is: NO ENTERPRISE!

Do let me have your reaction quickly and let me know how you think we could proceed best. We must be ready and well prepared in November!

Koroma is getting this paper translated into French. And he will get an informal G-77 meeting together in New York in September. He will be in touch with you.

With all good wishes,

Affectionately,



Dalhousie University

International Ocean
Institute



I.O.I. - Malta

September 18, 1993

FAXED

Mrs. Akiko Domoto
FAX 81 3 3506 8085

Dear Mrs. Domoto,

It was a great pleasure to meet with you and to have the opportunity to discuss so many matters of common concern. I am mailing a copy of my little book for children about the oceans, called *Chairworm and Supershark*.

Allow me to summarize here my thoughts on the present status of the **Law of the Sea Convention** and on the urgency of Japanese ratification, at the earliest possible date.

First of all: the importance of this Convention to the international community as a whole, and to Japan in particular.

The Convention contains the only existing, binding, enforceable, comprehensive international environmental law, covering pollution from landbased and atmospheric as well as from oceanic sources. It is the only existing legal instrument that provides for mandatory, binding, enforceable settlement of disputes arising, among other things, from environmental problems; it is the only existing legal instrument that effectively integrates environment and development concerns: the protection of the marine environment, and the development of living and nonliving resources, of science and technology, and of human resources. The Convention is therefore of fundamental importance to the success of the entire UNCED process. The UNCED and the UNCLOS process will succeed or fail together. Chapter 17 of Agenda 21 is the link pin, linking both processes.

A lot more should be said, but let me stop here.

As far as Japan is concerned, this country too stands to benefit from the environmental provisions contained in the Convention. If Japan is a party to the Convention, its hand will be strengthened, and its credibility enhanced, in dealing with the terrible problem of nuclear pollution in the Sea of Japan and the Sea of Okhosh.

Under the Convention, Japan has been recognized as a Pioneer Investor in deep seabed mining, and it has been granted exclusive rights in the exploration of its mine site in the Clarion-Clipperton Fracture Zone. In return, Japan has assumed certain obligations with

regard to the exploration of a mine site for the future Seabed Authority, for the training of personnel for the Authority, and for technology transfer to the Authority, so that the future Enterprise can keep pace with contracting States and companies. Although Japan has not ratified the Convention, it is faithfully fulfilling all its obligations.

When I left New York three weeks ago, the Convention had gathered 56 ratifications, of the sixty it needs to come into force. It is generally assumed that the remaining 4 will come in well before the end of this year, and that the Convention will come into force in 1994 (twelve months after the sixtieth ratification).

The Seabed mining regime, as articulated in Part XI of the Convention has caused considerable difficulties. Three major maritime powers, the U.K. under Prime Minister Thatcher; the Federal Republic of Germany, under Chancellor Kohl, and the United States, under the Reagan and Bush Administrations, refused to even sign the Convention, let alone ratify it. The Reagan and Bush Administrations went as far as to boycott the work of the Preparatory Commission that was established to prepare for the implementation of the Convention once it would come into force. The United States and the U.K. also devoted a lot of activity to dissuading other States from ratifying. The other industrialised States, including Japan, did not follow the United States in this radically negative attitude. They all joined the Prepcom and contributed very actively to its work.

During the past ten years there have been dramatic changes, some of which specifically affect the future of the Law of the Sea Convention. In particular, the changed economic situation, coupled with environmental concerns, has had the effect that commercial seabed mining has receded into some time in the next century, and many of the provisions of Part XI have become obsolete and inapplicable. It would, however, be difficult, and hard to reconcile with international law, to amend Part XI of the Convention before it comes into force and after it has already been ratified by a great number of States. Nor would it be practical: Provisions we might rewrite today might be as obsolete twenty years from now, when commercial seabed mining will become possible, as the provisions we wrote in the 1970s are today. We still know far too little about the future of seabed mining and the economic, environmental, and technological circumstances in which it will be carried out. Lastly, the political difficulties of renegotiating Part XI today are unsurmountable.

Four years ago, the Secretary General of the United Nations initiated a "dialogue" among a small, restricted number of States, "to make the Convention universally acceptable." He focused on all the issues that the Reagan Administration had listed in its "Green Book" in 1981 and tried to reach an agreement on rewriting the respective Articles (composition and

voting in the Council; technology transfer; production limitation; Compensation Fund; the Enterprise; Review Conference;etc.) It would mean practically to rewrite the whole Part XI.

We are no nearer to an agreement than we were when we started. To try to rewrite these Articles today is to open a Pandora's box and might lead to the total dismemberment of the Convention.

The Secretary-General himself is deeply concerned about the lack of progress.

We have developed an alternative strategy, "to make the Convention universally acceptable." Quite simply, this would amount to postponing the implementation of Part XI (there are precedents for the gradual implementation of Conventions), and to extend the mandate of the Prepcom and the Pioneer Regime for the interim period from the coming into force of the Convention to the beginning to commercial seabed mining. At that time, there should be a review conference, and Part XI should be revised on the basis of the reality that will exist at that time.

A similar proposal was introduced a couple of years ago by the Delegation of France, but it was not well formulated and did not gather much support. Today it seems to us the only solution on which everybody can agree without endless negotiations of numerous highly controversial --and unreal! --issues. Japan is a successful Pioneer Investor. It has, for all these years, cooperated constructively with the Prepcom. and I can see no reason why this cooperation should not continue after the Convention comes into force.

We have elaborated this proposal in cooperation with some of the leaders of the G77 and hope to table it at the beginning of the next SG Consultation in New York (November 8-12).

It would be path-breaking if Japan could associate itself with this solution --and ratify the Convention as soon as possible. It would make of Japan a leader in the progressive development of international law, and the unquestioned leader in seabed mining.

Please find attached a copy of the proposal.

Whatever you can do in this matter will be most fervently appreciated.

With all good wishes, and my thanks again,

Yours sincerely,

Ebrahim Elam Horgas

3/10

Elisabeth Mann Borgese
Professor

THE GENERAL ASSEMBLY

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

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

Noting that the Convention provides the most comprehensive framework for the regulation and management of ocean space, its resources and related services;

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

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

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

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

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

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

DRAFT PAPER

BY G-77

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

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

THE GENERAL ASSEMBLY HAS AGREED AS FOLLOWS:

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

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

A. INSTITUTIONAL ARRANGEMENTS

Article 1

Membership

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

Article 2

Powers and Functions

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

Article 3

Organs

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

Programme, adopted by the Preparatory Commission in 1989. A Governing Board, consisting of Members appointed by the Pioneer Investors and by the Commission, shall be responsible for its activities. The functions of this joint undertaking shall be carried out in an evolutionary manner. They shall include joint exploration, the testing, and upgrading, and environmental impact assessment of technologies used in the exploration of the mine site, development of human resources and economic feasibility studies.

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

Article 4

Financial Arrangements

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

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

Article 5

Review Conference

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

2. The Review Conference shall review those provisions of Part XI and the relevant Annexes which govern the system of exploration and exploitation of the resources of the Area in the light of the scientific, technological, and economic reality of that future time

and in consideration of the experience, the methodologies developed, and the activities conducted in an evolutionary manner during the interim regime, as well as the outcome of the of the Secretary-General's Consultations, 1990-1993.

[Article 6

Dispute Settlement

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