



Dalhousie University

International Ocean
Institute



I.O.I. - Malta

FAXED

FACSIMILE TRANSMISSION

To: H.E. Ambassador Dr. Lucille Mair
Permanent Mission of Jamaica to the U.N.

FAX No: 212 308 3730

From: Elisabeth Mann Borgese

FAX No.: 1 902 868 2455

Date: October 6, 1993

Subject: Law of the Sea

My dear Lucille,

I fondly remember our nice conversation in the Delegates' Lounge --and this encourages me to get in touch with you in a matter which I now consider critically urgent.

As you know, we have 58 ratifications for our Law of the Sea Convention. It appears certain that we will have at least 60 by the time of the next Consultations, starting November 8. This is quite elating and exciting; but, at the same time, we have a crisis: That miserable "Boat Paper," concocted by Ambassador Nandan for Australia, has been officially sent around by the Secretariat: The Secretariat had no choice, since the paper was officially submitted by a couple of Delegations. That paper is really destructive. It sells down the river everything we ever stood for, everything the G77 had achieved in the long struggle for international economic justice. We cannot sit back and let it happen.

Now, as you know, we had worked out an alternative, which is simple, and nobody would have to give up anything. It is a "fall-back" solution, an "emergency option," --and that is what we now need. I do think this paper can achieve wide-spread agreement, and enable industrialised countries to ratify.

It would be tragic indeed if the coming into force of the Convention should split the international community, pitting the North against the South and leaving chaos in an area covering three-fourths of the surface of our planet -- with conflicting national claims expanding, overfishing and pollution going on unchecked, and 25 years of constructive and innovative work by the international community going down the drain. This is, alas, what might happen if we do not act now.

Another scenario would be that the G77, having ratified the Convention and brought it into force, will realise, some time next year, that have no desire at all to spend any money on the "nucleus Authority" and the "nucleus Enterprise" --which, indeed, would be a total waste, and they will come to the General Assembly and beg the U.N. to leave things as they are, i.e., keep the Prepcom and pay for it. At that time, however, the Prepcom regime would be made completely restrictive, with no "evolutionary approach," with no mention of the Common Heritage of Mankind! What we would do beautifully now, will come anyway, but with its wings clipped, and no basis on which to build further (sorry about my mixed metaphors!)

Abdul Koroma of Sierra Leone, with whom I worked a lot on the attached paper, had hoped to get the endorsement of the G77 in September. But he has been away, and extremely busy, and this did not get done. I know that the African group as a whole is in favour, but we may not have an official endorsement by the end of this week either.

We must have the paper officially transmitted to Dr. Fleischhauer this week. Otherwise it is too late to send it to all Delegations and to offset the ill effects of the Boat Paper. So we have, I think, only two options:

(a) to get it somehow on the agenda of the G77 Ministerial meeting this week and still get it --more or less --endorsed and send it on to Fleischhauer. It would be important in any case to get it discussed at that meeting, endorsement or no endorsement;

(b) to take two or three countries as sponsors, and send it out in their name. These might be: Sierra Leone and Jamaica, and whomever else you might choose or get (the Seychelles I am sure would be ready). It really does not matter too much. What matters is to get the paper out officially. The

"endorsement" of the Boat Paper, after all, is pretty flimsy and phoney.

So, I would be fervently grateful if you could help to solve this crisis and get the paper out.

Looking forward to seeing you in November,

Yours very cordially,

E. G. R. H.

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.]



Dalhousie University

COPY

sent with: 405
- copy of letter to Rattray (30th Dec.)
- Non-paper

International Ocean
Institute



December 30, 1993

Ambassador Don Mills
11 Lady Kay Drive
Kingston, Jamaica, W.I.

Dear Don,

Thanks a lot for your New Years wishes --and we have to congratulate each other on the 60 ratification! It is really a great thing. Now we have something to stand on, and to build on.

I am having a little problem with Ken Rattray. I certainly understand he wants to make sure to get the Seabed Authority to Jamaica, and right away. But what will he get?

I wrote him a long letter of which please find as copy enclosed. I am also enclosing our proposal for an "Interim Regime."

I do believe this issue should be discussed in Cabinet. Jamaica, being one of the earliest ratifying States and a developing country, cannot really be in favour of amending this Convention before it comes into force!

The "Boat Paper" really has been a very bad thing. Jamaica should get off it.

I guess I will be back in Jamaica soon now --Prepcom, meeting of States Parties: all very exciting.

Happy New Year to both of you, and let us hope for peace and the good things that go with it and cannot go without it!

Much love,

E. Rattray

**MINISTRY OF THE ENVIRONMENT, ECONOMIC
PLANNING AND EXTERNAL RELATIONS**

P.O. Box 656, Mont Fleuri, Victoria, Mahé, Republic of Seychelles
Telex: 2260 MINAE SZ Telephone 24688 Telefax: 24845



Please address all correspondence to the Director General

Your Ref:
Our Ref:
Enquiries To: *ER/7/2*
Telephone Ext:
Date:

15th January 1993

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

Dear Mrs Borgese,

I acknowledge receipt of your letter dated 10th November 1992, addressed to Minister ~~de~~ St. Jorre regarding the offer of services to Seychelles Government in the context of the Law of the Sea Convention.

Like you, I am of the opinion that more efforts should be done to bring this important Convention into force. Unfortunately, we are far from this objective due to legal or technical difficulties which you are so familiar with. As regards to the position of Seychelles Government, our ratification of the Law Sea has undoubtedly helped to pursue further negotiations with neighbouring states on the question of maritime delimitation. This year we intend to discuss with several neighbouring states the question of EEZ boundaries.

The suggestion that you made on the question of advising Seychelles Government in such matters is most welcome. I will take up the matter with the technical committee responsible for those negotiations and I shall advise you accordingly.

Once again, thank you for your kind initiative.

Yours sincerely,

*Claude Morel
Director General
External Relations*

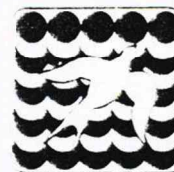
Encl: Doc #2 "L.O.S."
"Forthcoming U.N. Conference
on ... Stocks on High Seas"

File



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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

Elisabeth Mann Borgese

Encl. Statement
High-seas fisheries.



Dalhousie University

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STATEMENT

INTERNATIONAL OCEAN INSTITUTE

ELISABETH MANN BORGESE

THE COMMISSION FOR SUSTAINABLE DEVELOPMENT

UNITED NATIONS, NEW YORK

JUNE 24, 1993

Let me join the NGO representatives who spoke before me in expressing our satisfaction with the new opportunities given us by this Commission to make our contribution to the great work that lies ahead of us all. One of our tasks indeed is the establishment of new forms of cooperation between governmental and nongovernmental organisations, at national, regional, and global levels.

But the real purpose of this intervention is to draw the attention of this Commission to the almost total absence of sustainable ocean development from our discussions and agendas. We know that the implementation of Chapter 17 of Agenda 21, as well as the problems of straddling and highly migratory fish on the high seas -- although important sustainable-development issues, are covered by other fora in the United Nations system; we also realise that this Commission cannot do all things at the same time.

There are, however two aspects of this problem which I think we should not lose sight of.

First, the United Nations Convention on the Law of the Sea contains the only existing, comprehensive, mandatory, enforceable international environmental law, covering pollution from all sources, whether land-based, atmospheric or oceanic. It is, thus far, the only existing legal instrument that effectively integrates environment

and development concerns; and it is the only existing legal instrument that provides for mandatory, binding, peaceful settlement of disputes arising from environmental issues. This Commission would gain by building on this.

It is its unique and innovative comprehensiveness that makes the strength of the Law of the Sea Convention, based as it is on the awareness "that the problems of ocean space are closely interrelated and need to be considered as a whole. It would indeed be a pity if the still sectoral structure of the United Nations system were to break up this comprehensiveness and try to deal with the problems of ocean space in bits and pieces.

Chapter 17 of Agenda 21 is based entirely on the U.N. Convention on the Law of the Sea and needs that Convention as legal framework for the implementation and management of its seven programmes. Evidently, Chapter 17 is the link-pin between the UNCLOS and the UNCED processes, and we should not lose sight of this linkage. Somehow all this must be made an integral part of the responsibilities of this Commission, which is the only forum within the U.N. system that could deal with the issues in an integrated manner.

Mr. Chairman, my second point is that after 25 years of intensive work on the Law of the Sea and sustainable ocean development, the marine sector, in spite of a number of difficulties which we still have, and will always have, is today the lead sector in the United Nations system and in the restructuring of the international order. The developments triggered by the Law of the Sea Convention, at national, regional, and global levels, anticipate in many ways the tasks of this Commission.

Thus this Commission could save itself considerable time and effort if it could give careful consideration to the conceptual work that has been achieved by the United Nations in the marine sector, and the institutional and managerial framework that is beginning to emerge, and learn from it. The principles underlying the Law of the Sea Convention are fundamental for sustainable development in general and for the ongoing restructuring of the United Nations system. From now on, the UNCLOS and the UNCED processes must go forward together and reinforce each other. Here is the beginning of the new system of governance for the 21st century.

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To: Kaldone G. Nweihed
FAX No: 58 2 962 1695

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

Date: July 24, 1992

Subject: Your letter of June 4

Dear Kaldone,

Sorry to have been remiss in answering your letter of June 4. I was away from home all of June, am here briefly now, but leaving again tomorrow.

I don't have your book here --it is in my office, so right now I cannot send you any lines (it is probably too late already anyway), but I could do it on my return after August 4.

Instead I am attaching the u-to-date list of States that have ratified the Convention.

The Russian successor States, I am afraid, have so many other preoccupations and crises to face that it would be difficult to convince them. However the Baltic States are good candidates, so are Slovenia and Croatia --and I am working on all of them.

I tried to get in touch with Glasner in another context, but he is in Israel. I hope to be able to contact him in August.

Our President, Layachi Yaker, has just been appointed as Head of the Economic Commission for Africa, and I think he will be very helpful there. Together, we have just written a memo to Boutros-Ghali who, I think, will also be very helpful. He is much more interested than his predecessor.
In haste --and all the best, Ebru

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

- 7 -

B. Chronological order of ratifications of, and accessions to,
the Convention, giving each State's regional group 1/

| <u>Date</u> | <u>State</u> | <u>Regional group</u> |
|-----------------------|-----------------------------|--------------------------------------|
| 1. 10 December 1982 | Fiji | Asian |
| 2. 7 March 1983 | Zambia | African |
| 3. 18 March 1983 | Mexico | Latin Am./Carib. |
| 4. 21 March 1983 | Jamaica | Latin Am./Carib. |
| 5. 18 April 1983 | Namibia | African |
| 6. 7 June 1983 | Ghana | African |
| 7. 29 July 1983 | Bahamas | Latin Am./Carib. |
| 8. 13 August 1983 | Belize | Latin Am./Carib. |
| 9. 26 August 1983 | Egypt | African |
| 10. 26 March 1984 | Côte d'Ivoire | African |
| 11. 8 May 1984 | Philippines | Asian |
| 12. 22 May 1984 | Gambia | African |
| 13. 15 August 1984 | Cuba | Latin Am./Carib. |
| 14. 25 October 1984 | Senegal | African |
| 15. 23 January 1985 | Sudan | African |
| 16. 27 March 1985 | Saint Lucia | Latin Am./Carib. |
| 17. 16 April 1985 | Togo | African |
| 18. 24 April 1985 | Tunisia | African |
| 19. 30 May 1985 | Bahrain | Asian |
| 20. 21 June 1985 | Iceland | Western European and Other States |
| 21. 16 July 1985 | Mali | African |
| 22. 30 July 1985 | Iraq | Asian |
| 23. 6 September 1985 | Guinea | African |
| 24. 30 September 1985 | United Republic of Tanzania | African |
| 25. 19 November 1985 | Cameroon | African |
| 26. 3 February 1986 | Indonesia | Asian |
| 27. 25 April 1986 | Trinidad and Tobago | Latin Am./Carib. |
| 28. 2 May 1986 | Kuwait | Asian |
| 29. 5 May 1986 | Yugoslavia | Eastern European |
| 30. 14 August 1986 | Nigeria | African |
| 31. 25 August 1986 | Guinea-Bissau | African |
| 32. 26 September 1986 | Paraguay | Latin Am./Carib. |
| 33. 21 July 1987 | Yemen | Asian |
| 34. 10 August 1987 | Cape Verde | African |
| 35. 3 November 1987 | Sao Tome and Principe | African |
| 36. 12 December 1988 | Cyprus | Asian |
| 37. 22 December 1988 | Brazil | Latin Am./Carib. |
| 38. 2 February 1989 | Antigua and Barbuda | Latin Am./Carib. |
| 39. 17 February 1989 | Zaire | African |
| 40. 2 March 1989 | Kenya | African |

- 6 -

| <u>Date</u> | <u>State</u> | <u>Regional group</u> |
|-----------------------|-----------------------------------|-----------------------|
| 41. 24 July 1989 | Somalia | African |
| 42. 17 August 1989 | Oman | Asian |
| 43. 2 May 1990 | Botswana | African |
| 44. 9 November 1990 | Uganda | African |
| 45. 5 December 1990 | Angola | African |
| 46. 25 April 1991 | Grenada | Latin Am./Carib. |
| 47. 29 April 1991 | *Micronesia (Federated States of) | Asian |
| 48. 9 August 1991 | *Marshall Islands | Asian |
| 49. 16 September 1991 | Seychelles | African |
| 50. 8 October 1991 | Djibouti | African |
| 51. 24 October 1991 | Dominica | Latin Am./Carib. |

1/ States which have acceded to the Convention are indicated by an asterisk (*).

RECEIVED JUN 16 1992

SEI-N° 032

Caracas June 04 1992.

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

Dear Elisabeth:

In the first place, my heartfelt condolences for the passing away of your sister. Pérez Nieto saw it in a local newspaper. I have no more details but still, I wish to express my personal solidarity.

I am rushing amendments and changes for a second edition of my book **Frontera y Límite**. Maybe the editor would wish to include some comments on the first edition. If you wish to write a few short lines -two or three- I will greatly appreciate it.

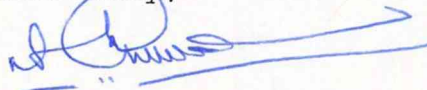
I should be able to include the latest list of States that are party to the Convention. As you know, our information here is always behind schedule. Can you spare a few minutes to ask somebody fax it to me please (58-2-9626915)

I was thinking of a way to see the Convention in force by the tenth anniversary of its signature. Noticing the relative acceptance by land-locked States, why not you -EMB- assume a crusade among the 9 - odd new ex Soviet Republics to get their adhesion. A marvellous chap like Martin I. Glassner (a thorough expert on landlockism) may help. I have not written to him before consulting you, but I think you will do the miracle. What about?

Anything positive, please write or fax.

May best, best wishes,

Sincerely,



Kaldone G. Nweihed

KGN/ema.-



Prime Minister

Li Peng

draft

Mr. Peng

Your Excellency

Sent Nov. 30, 1992

Let me begin by thanking you, and through you, your government for the great honor bestowed on me. We feel privileged to work with your great institutions of scholarship and research in China and with our Chinese course participants in other parts of the world -- in Canada, in India, in Africa. We ~~always have~~ are always aware that we are learning from our Chinese colleagues at least as much as we are able to give to them.

Mr. Prime Minister, as a token of my gratitude, I am sending you herewith a copy of my latest book, Ocean Frontier, which contains an important chapter on oceanography in China. Also this Chinese cooperation has been most fruitful.

I am also leaving for you a brief document which I drafted a year ago, but which is more pertinent today, as we are nearing the 60th ratification of the 1958 Convention, than it was a year ago.

The paper proposes a solution to the problem of

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BEIJING FRIENDSHIP HOTEL



"making the Convention universally acceptable" that might be acceptable to the Pioneer investors [I know it is acceptable to France] without betraying the interests of the developing countries and the fundamental, great and innovative concept of the Convention.

What we are proposing is an "Interim Regime" for Exploration, Training, Technology Development, and Economic/environmental assessment, which ^{could be achieved} ~~would mean~~ simply the extending of the existing "Pioneer Regime" beyond the coming into force of the Convention, and until the time when mining would become economically/environmentally viable. I have appended a proposal for

Obviously, to make this next great step forward in the implementation and development of the Convention, we have to bring it into force.

Mr. Prime Minister: On December 10, the U.N. General Assembly will celebrate the 10th Anniversary of the great day of Montego Bay, when this Convention was solemnly opened for signature. The S-C of the U.N. that day, said that was the greatest achievement since the creation of the U.N.

北京友誼賓館
BEIJING FRIENDSHIP HOTEL



~~an interest~~ by the German ocean-mining consortium "Thetis",
for an international joint undertaking in technology development
and environmental assessment: a perfect agenda for
the next 5 years of "interim regime!"



3

itself.

Mr. Prime Minister: It the Convention certainly is the best result the developing countries have ever achieved -- and were the Convention to be re-negotiated today, they most certainly would not achieve such a result today.

Mr. Prime Minister: On the 10. December 1992, Ambassador Arvid Pardo "the father of the Convention" has been specially invited ^{by us to} attend the ceremony. He will speak for the Delegation of his country and Annamie Malke's ratification on this solemn occasion. This will be the 54th ratification, after Costa Rica and Uruguay. Actually I hope there may be a couple or so more ratifications on that day, which would bring us very close to our goal.

Would it be possible for your great country, to ^{on Dec. 10,} Announce concrete plans for ratification? It would give such a moral boost to all who see in this Convention a piece of a truly new international order. It would be such a powerful sign of signal of solidarity with the developing countries who have to face such terrible hardships today!

Mr. Prime Minister, anything that you might do

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BEIJING FRIENDSHIP HOTEL

in this common cause will be most fervently appreciated by all

This, as it were, is my "birthday wish," on the great day on which you have decided to honour me so greatly.

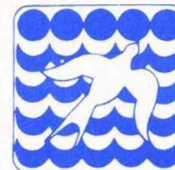
With all good wishes,

Sincerely yours,



Dalhousie University

International Ocean
Institute



I.O.I. - Malta

FACSIMILE TRANSMISSION

To: H.E. Dr. Christopher Pinto
FAX No: 31 70 350 2456

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

Date: April 22, 1993

Subject: Yours of April 6

Der Chris,

Thanks so much for your note and the offprint which is immensely interesting and timely. I was happy to see good old Elizabeth Young's quote there! She was indeed early with this sort of argument!

As to your question, yes, the programme in Malmö is on again. With Tom Mensah, this time, I think it is the first week of August, and I am perfectly delighted if you can make it again.

This is as big year for the Law of the Sea. We are going to have 60 ratifications. I am going to New York next week for the Secretary-General's consultations which are now focusing on the interim regime we need for the time between the coming into force of the Convention and the beginning of commercial mining. It has taken the "Secretary General" a long time to begin to understand that! The job now is to make that regime as good as possible.

We have to schedule a board meeting in Malta as soon as possible. Layashi has been very hard to reach because he is all over the place.

I am sorry I am late in sending you my congratulations for the marriage of your daughter. I have been quite hellishly busy.

All the very best and much love,

Elisabeth



Dalhousie University

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Institute



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FACSIMILE TRANSMISSION

To: Mr. Steve Polansky
FAX No: 202 224 5011

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

Date: November 11, 1993

Subject: Law of the Sea

Dear Mr. Polansky,

Another matter today on which I would be most grateful to have your help: I would like to submit to the Senator our ideas about the coming into force of the **Law of the Sea Convention**, and U.S. cooperation, which is so crucially important. I am attaching a letter, addressed to him personally. Maybe we can chat about it a little later.

I am going to be home for only one day, Saturday/Sunday; then off to Fiji, from there to Geneva and Germany. It is a very busy season! I shall call you from Switzerland.

Warmest regards,

Elisabeth Mann Borgese



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I.O.I. - Malta

November 11, 1993

The Hon. Senator Claiborne Pell
United States Senate
Washington, D.C.

Dear Clai,

First off all, I want to thank you for your great kindness in nominating us for the Blue Planet Prize. Your nomination will count a lot. We have also been nominated by the Rector of the United Nations University, by Maurice Strong, by the Minister for the Environment, Malta, and a few others. So there are some real chances that we get it!

Today I am turning to you in another matter, concerning our Law of the Sea Convention, and U.S. participation.

There has of course been a change for the better, with the new Administration taking over in Washington. I think a sincere effort is being made "to make the Convention universally acceptable."

The trouble is, I fear we are not getting anywhere. The whole approach is wrong, as inherited from the Reagan and Bush Administrations. The U.S. Delegation still intends to have the Convention changed, with Part XI rewritten, before its coming into force. This is totally unrealistic; also, it would not be desirable. It would open a Pandora's box and jeopardize the integrity of the whole Convention. Furthermore, we now have 59 ratifications, and the sixtieth is expected any day, and the Convention will come into force in 1994. Even if we thought it acceptable and useful to rewrite Part XI now, there would be no time.

I have worked with a group of developing countries, and we have prepared a "fall-back position."

The suggestion is very simple: Let us keep what we have and build on it, and that is the Preparatory Commission and its Pioneer Regime (which we must keep anyway). We have provided for "provisional membership"; we have also found a way of letting ratifying States make a declaration, clearly indicating that they do not feel bound by Part XI as it now stands; Also, there will be no costs to any State if we simply extend the mandate of the PrepCom, and let it be paid, as heretofore, by the U.N. Regular Budget.

I think it is a good, face-saving device; nobody has to give up anything, and we postpone changes in the Convention to the time when we can make them meaningfully.

I am attaching the document and the introduction, given by Ambassador Koroma of Sierra Leone (Just elected to the ICJ!).

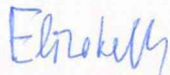
If there is anything you can do to induce the State Department to give up the unrealistic idea of rewriting the Convention now and to establish, instead, this sort of "interim regime," that would be quite splendid. We have another session of "the Secretary-General's Consultations early in January (after which date we are going to lose both Fleischhauer and Koroma to the ICJ!) -- and at that time,

we MUST have an agreement!

My der Clai, thanks for all your help.

With all good wishes,

Yours as ever,

A handwritten signature in blue ink, appearing to read 'Elisabeth', with a stylized flourish at the end.

Elisabeth Mann Borgese

NON-PAPER

**AGREEMENT ON THE IMPLEMENTATION OF PART XI
AND ANNEXES III AND IV OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA**

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;

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.

B. INSTITUTIONAL ARRANGEMENTS

Article 2 Participation

1. In order to give time to States and entities entitled to become parties to the Convention, such States and entities may, upon notification to the depository of the Convention, become parties to the Convention on a provisional basis for a period not exceeding three years. After three years, such States and entities shall ratify or accede to the Convention.
2. During this period, States and entities which have become parties on a provisional basis shall fulfil all duties and obligations, and enjoy all rights of Parties to the Convention, subject to the limitations inherent to the interim nature of the regime.

Article 3 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 4 Organs

1. For the duration of the interim period, the Plenary of the Commission shall perform the functions of the Assembly of the Authority. Each Party shall have one vote. The Rules of Procedure of the Commission shall continue to apply.
2. For the duration of the interim period, the General Committee of the Commission shall perform the functions of the Council of the Authority. Each party shall have one vote. The Rules of Procedure of the Commission shall continue to apply. Upon the coming into force of the Convention, the General Committee shall be renewed through election by the Assembly.
3. For the duration of the interim period, the Secretariat may be drawn initially from staff members of the Secretariat of the United Nations.
4. For the duration of the interim period, the Group of Technical Experts and the Training Panel established by the 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 Secretariat of the Authority shall perform the preparatory functions necessary for the commencement of the functioning of the Enterprise. These shall include the monitoring of developments in the deep seabed mining sector, in particular the prevailing conditions in the world metal market, developments in deep seabed mining technology, and data and information on the environmental impact of the activities in the Area.
6. As far as pioneer investors are concerned, their rights and obligations shall be governed by the provisions of Resolution II and the related understandings.
7. 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).
8. The requirements contained in Resolution II, paragraph 7(b) and 8, shall be waived with respect of any applicant for pioneer activities.

Article 5 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 6 Review Conference

1. Upon notification to the Commission from a pioneer investor of his intention to commence commercial exploitation within three years, a Review Conference shall 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.

Agreement on the establishment of an interim regime from the coming into force of the Convention to the time when seabed mining becomes feasible

The General Assembly has agreed as follows:

to extend the mandate of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as the Commission) for the interim period from the coming into force of the Convention to the time when commercial seabed mining becomes feasible;

to authorise the 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, should their rights not be properly protected when seabed exploitation will commence.

A. OBJECTIVES

Article 1

1. The present Agreement shall be based for the functioning of the operations by the Commission on cost-effectiveness, taking into account the needs to discharge effectively its responsibilities.
2. The present Agreement shall apply to the Area as defined in the Convention and shall translate into operational terms the principle of common heritage of mankind.
3. The present Agreement shall form an integral part of the Convention and is concluded in order to facilitate the implementation of Part XI and Annexes III and IV of the Convention. Subject to this agreement the provisions of Part XI and Annexes III and IV shall apply as appropriate.
4. The present Agreement and the provisions of the Convention shall be read and interpreted together as one single instrument.

Article 7

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 State Parties at the Meeting to be convened pursuant to Article 4 of Annex VI to the Convention.]



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*He used this to
introduce the paper!*

FACSIMILE TRANSMISSION

To: H.E. Ambassador Abdul Koroma
FAX No: 1 212 688 1656

From: Elisabeth Mann Borgese
FAX No.: 81 3 3586 4706

Date: November 11, 1993

Subject: Our paper

My dear Abdul,

I hear from Bhagwat Singh that our paper has gone the right way and has now the same status as the "Boat Paper." I congratulate you on this achievement!

I do think that it would be important to introduce the paper at the earliest possible moment -- if possible on November 8. Now, of course I do not know whether you got the endorsement of the G77 as a whole, or only of some Delegations: The only difference, I think, would be that if it is the G77 as a whole, it would have to be our Colombian colleague who would have to introduce it whereas otherwise you could introduce it yourself, which of course would be far more effective!

In any case, I would like to propose to you a few points which I think might be made in the introduction.

Let me explain that the phrase in para. 6, concerning the elaboration of some details with regard to provisional membership was inspired by our Japanese colleagues. Mr. Ito, it seems, will make some suggestions in this sense. The Japanese are already working on ratification. But it will take them quite some time because the domestic infrastructure is quite complex.

If it were to be the Colombian to make the introduction, you might remind him that this proposal is, in many ways, a re-incarnation of the "Colombian Working Papers, introduced in the Prepcom, I think in 1986 or thereabouts (I helped them on those).

So here are my suggestions:

1. The importance of the fact that we have now 60 ratifications and that the United Nations Convention on the Law of the Sea will enter into force less than 12 months from now, cannot be overrated. As stated in the Preamble to our proposal, we are convinced, 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; and that the unity of ocean space and the close interrelation of the problems of ocean space, which must be considered as a whole, necessarily requires the full participation of all

States whatever their stage of economic development.

2. There is now a time limit. The broadest possible participation must be achieved before the entry into force of the Convention, that is, less than 12 months from now.

3. To achieve consensus, within this time limit, both in these Consultations and in the Prepcom, on a long list of highly controversial issues, such as technology transfer, production policy, compensation, voting in the Council, etc. appears to be highly unrealistic. There is a high risk that the Convention comes into force with the issues of Part XI totally unresolved, with the consequence that there may emerge two conflicting regimes for ocean mining and that the Convention, instead of promoting harmony and sustainable development, will fatally split the world community, aligning the South against the North; the new order established by the Convention would quickly disintegrate.

4. Thus it is essential that we become realistic and simplify our procedure and tone down our goal. If it is not possible to achieve consensus on 8 controversial decisions concerning issues which we simply cannot resolve today, it may instead be quite realistic to aim at consensus on one simple decision, namely: Let us keep what we have: what we have built during the past ten years in response to real needs as they arose. Let us keep the Pioneer/Prepcom. regime. It is tried and trusted. It works fine. It is fully capable of handling all the activities that are likely to take place in the international seabed area until the time when commercial seabed mining is about to begin: Exploration, mapping, testing and upgrading of technology in the light of environmental and economic assessments, and the development of human resources. It can do that in an evolutionary manner, thus preparing for the effective functioning of the future enterprise starting on a joint-venture basis.

5. There is already a consensus emerging on the point that we must keep the Pioneer regime after the coming into force of the Convention. The logical next step along this train of thought is that we should keep the Prepcom, that is, the framework within which the Pioneer regime has evolved so successfully. Nothing else is needed at this time.

6. Our proposal provides for provisional membership in the interim regime, pending ratification of the Convention. Three years appears to be an adequate period. Article 1 may have to be further elaborated to harmonise it with requirements of national legislation, e.g., with regard to any financial obligations. We do not believe that this would constitute any difficulty, and as it is a purely technical matter, it probably could be handled by the Secretariat itself. We would like to stress that, while our proposal does not permit exceptions which would be contrary to the Convention, it does allow ratifying States to make it quite clear that they do not feel bound by Part XI as it now stands. This is the meaning of the paragraph, authorizing Ratifying States to 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. If, at that future time, they should decide to stay outside the regime, they would be in the same situation in which they would be now if they decided not to ratify. They would not have lost anything. They might have gained a lot from international cooperation during the interim period. It is indeed not likely that

no satisfactory solution could be found after a period of fruitful cooperation in the interim period. But all options remain open.

7. It should be noted that our proposal suggests new elections for the General Committee, which is going to act as the Council of the Interim Regime. We assume that there will be a large number of ratifications as well as applications for provisional membership during the next 12 months. These changes must be reflected in the composition of the Interim Council which, obviously is open to membership also by Provisional Members who share all the rights and duties of States Parties. Inasmuch as there is no mining during the Interim Period, which is a Pre-investment phase, The decision-making process of the Prepcom seems to be totally adequate. It has served us well to this date. It will continue to serve us well so long as the scope of the regime's activities remains the same.

8. A recent report, prepared by UNIDO Group of Experts (April, 1992) states:

The development of mining technology is highly cost intensive and involves enormous multi-discipline efforts in high-tech fields. Moreover, the technology so developed is not likely to find much repetitive use in other industries. It is, therefore, imperative and logical for all the actively participating countries/agencies to pool their resources and expertise at international level, for their mutual benefit.

Such collaborative arrangements would not only reduce the cost of development by avoiding duplication of efforts but also help to share risk and uncertainties inherent to the high-tech R&D. Only then the pace of progress in this field, which has rather been slowed down during the last few years, could be expected to get a boost.

We submit that the evolutionary development of the Pioneer/Prepcom regime provides the most promising, and most advanced framework for this kind of cooperation, which would be highly beneficial both to developing and to industrialised countries.

9. Another point that is worth underlining is that our proposal is the most cost-effective of all. As a matter of fact, no extra costs whatsoever would arise to ratifying States. Resolution 1, which is an integral part of the Convention system, establishes that 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. If it is decided that the Prepcom is to continue for the Interim period, this provision should simply be continued. If the costs for the Tribunal should turn out to be too high for States Parties, its establishment too could be postponed to the time when commercial mining is about to begin; alternatively, the establishment of the Seabed Dispute Chamber might be postponed. We suggest that a decision on this issue be left to the meeting of States Parties. The financing of the regime from the regular budget of the United Nations does not preclude the raising of additional funds by the Interim Enterprise, if the parties so decide: e.g., for the joint development of environmentally sustainable technology, which might be paid for by pooling Pioneer resources and supplementing them with grants, e.g., from the GEF which certainly must support efforts to make seabed mining environmentally and economically sustainable.

10. To sum up: What is needed at this time is simplicity: Our goal should be:

- . to maintain the integrity of the Convention;
- . to abstain from attempts to rewrite Part XI of the Convention. We do not have the mandate; we do not have the time, nor are we in a position to foresee the circumstances under which seabed mining will be undertaken in the future;
- . to leave to the future decisions which can only be taken in the future;
- . to keep what we have and build on it in an empirical and evolutionary manner, fully utilising all the experience and all the skills developed and accumulated during the past ten years;
- . to minimize costs;
- . to avoid confrontation and agree on a solution that is beneficial to all parties concerned.

We are convinced that our proposal meets these requirements.



Dalhousie University

International Ocean
Institute

FAXED



FACSIMILE TRANSMISSION

To: Minister Jan Pronk

FAX No: 31 70 348 6436

From: Elisabeth Mann Borgese

FAX No.: 1 902 868 2455

Date: December 29, 1993

Subject: Law of the Sea

My dear Jan,

Together with my most fervent wishes for 1994, for you and your family and the world, here is a request for help, if you can give it!

As you undoubtedly are aware, on November 16, the 60th instrument of ratification of the Law of the Sea Convention was deposited, which brings the Convention into force on November 16, 1994.

It is a landmark event; but the struggle for the integrity of the Convention has just begun.

Attempts to rewrite Part XI of the Convention have been afloat for the last three or four years. I have always adamantly opposed these attempts, and so have all our friends within the IOI. Now that the Convention has been duly ratified by 60 States and is coming into force, these attempts are more ludicrous than ever.

At the same time, I am of course fully aware that the situation has changed during the past 20 years; that Part XI had some defects from the beginning, and many articles (all those relating to mining production) are obsolete and not applicable today. Furthermore: We do need the participation of the "Pioneer Investors," which means, Europe and Japan.

This has been quite clear to me for the last three years, and all this time I have tried to push for an approach along the lines of the attached "Nonpaper" which, I think,



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would achieve this goal. It would maintain the integrity of the Convention which it would not touch; it would not cost anybody anything, and it would save everybody's face. It would be practical, because it would simply make the best use of what we already have in place, without creating anything new.

Now, during the last session of the Secretary-General's Consultations (November, 1993) Ambassador Koroma of Sierra Leone introduced the proposal. He presented it as a "fall-back position," if there is no agreement on the (to my mind, infamous) anonymous "Boat Paper," embodying the attempt of a few Delegates to rewrite Part XI at this time. We feel, that with the 60th ratification, the moment has come to fall back on that fall-back position. The paper will be re-introduced (we made some very minor changes, incorporating some of the less bad suggestions made during the last session) by Nigeria on January 31, during the next session of the SG's Consultations, and we need all the support we can get.

I would be most grateful if you could (a) take a few moments to study the proposal; (b) see whether you can get it considered by Cabinet and Parliament --before the end of January!

The IOI work is proceeding very well. The case of Tom Harris is still pending. I think it will go to court early in 1994. He refused to settle out of court. The lawyer your Ministry recommended to us seems to think our case is pretty solid.

Again: the very best, and I hope 1994 will bring an opportunity to see you again.

Yours as ever,

Elisabeth Mann Borgese