PREM 19/1238

PART 2

MTT

CONFIDENTIAL FILING

LAW OF THE SEA (UNCLOS)

FOREIGN POLICY

PART 1 MAY 1980

PART 2 JAN 1983

PREM 19/1238

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~12.1.84~~		~~2.11.84~~					
~~28.1.83~~		8.11.84					
~~23.2.83~~		~~9.11.84~~					
~~24.2.83~~		~~14.11.84~~					
~~3.3.83~~		~~16.11.84~~					
~~7.3.83~~		~~23/11/84~~					
~~8.3.83~~		~~26.11.84~~					
~~10.3.83~~		~~5.12.84~~					
~~5.4.83~~		~~7.12.84~~					
~~12.9.83~~		~~10.12.84~~					
~~8.9.83~~		12.12.84					
~~13.1.84~~		~~17.12.84~~					
~~7.2.84~~		19.12.84					
~~30.4.84~~		31.12.84					
31.8.84							
~~24.10.84~~							
~~2.11.84~~							
27.11.84							

PART ENDS

PART 2 ends:-

DB to US. Ambassador 31/12/84

PART 3 begins:-

Taoiseach to PM 21/1/85.

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
OD(84) 12th Meeting, only item	07/11/1984
OD(84) 18	05/11/1984
CC(84) 17	01/11/1984

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed J. Gray Date 21/6/2013

PREM Records Team

10 DOWNING STREET

From the Private Secretary

31 December, 1984

Thank you very much for your letter of 31 December, with which you enclosed a message to the Prime Minister from President Reagan. I shall, of course, place President Reagan's message before the Prime Minister immediately.

(David Barclay)

His Excellency Mr. Charles H. Price II

FILE

10 DOWNING STREET

From the Private Secretary

31 December, 1984

I enclose a copy of a message to the Prime Minister from President Reagan, which was forwarded to us today by the American Ambassador. The message does not seem to call for any reply.

(David Barclay)

C.R. Budd, Esq.,
Foreign and Commonwealth Office.

CST.

① a/a
② file

EMBASSY OF THE UNITED STATES OF AMERICA
LONDON

December 31, 1984

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T 214/84

Prime Minister (2)

cc MASTER OPS

Dear Prime Minister:

I have been asked to deliver the attached message to you from President Reagan, which was received at the Embassy during the weekend.

Sincerely,

Charles H. Price II
Ambassador

Enclosure:

CONFIDENTIAL

The Rt. Hon. Margaret Thatcher, M.P.,
Prime Minister,
10 Downing Street,
London S.W.1.

CONFIDENTIAL

Dear Margaret:

I was most pleased to receive your letter confirming your government's decision not to sign the 1982 Law of the Sea Convention and I appreciate your personal initiative in maintaining this position. I am delighted by your strong stand on this matter.

Your decision on the Convention, in my view, marks a very positive step forward in applying market principles to the utilization of the ocean's vast resources. In addition, the Seabed Mining Agreement, which we signed last August, demonstrates the resolve of the industrialized nations to stand together on this matter of mutual interest.

As always, it was a pleasure meeting with you at Camp David. Nancy and I wish you and your family all the best during this holiday season.

Happy New Year.

Sincerely,

//S//

Ron

The Rt. Hon. Margaret Thatcher, M.P.,
Prime Minister,
10 Downing Street,
London, S.W.1.

CONFIDENTIAL

T214/84
31/12/84

007/106

CONFIDENTIAL

CC NO PC

Treasury Chambers, Parliament Street, SW1P 3AG

P F Ricketts Esq
Private Secretary to the
Foreign Secretary
Foreign & Commonwealth Office
Downing Street
London
SW1

19 December 1984

Dear Peter,

UN LAW OF THE SEA CONVENTION

I have seen a copy of your letter of 4 December recording the views of Revenue and Treasury as conveyed by this office. This letter confirms for the record that it was the view of officials in both departments, having consulted their opposite numbers in your department and the Department of Energy, that Community Signature of the Convention would not compromise in any way UKCS oil exploration or tax take. EC signature would only make it party in respect of matters in which it has competence, and they have to make an accompanying declaration of the areas in which they have competence. These do not include UKCS oil exporation or tax take. In the light of your department's advice on the areas of competence, officials' view was that signature would not affect any EC claims or competence in relation to the UKCS. I can also confirm that the Treasury had no other comments to offer on the Foreign Secretary's minute of 30 November to the Prime Minister.

These are, of course, certain ways in which the Convention, if eventually signed and ratified by the UK, could possibly affect UKCS tax, including the looser requirement on abandonment, and the extension of the UKCS beyond 200 miles. However, it is not certain what is the customary or emerging international law in these areas and hence what the effect of the Convention would be. There would also be costs in relation to the establishment of the International Sea Bed Authority. These however are matters bearing on the substance of the Treaty which were not relevant to the immediate issue of EC signature.

CONFIDENTIAL

I am copying this letter to Charles Powell, Michael Reidy and Callum McCarthy.

Yours sincerely,

Paul Pegler

PAUL PEGLER
Assistant Private Secretary

BG

CONFIDENTIAL

CC(84) 50
PC
1

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign
and Commonwealth Affairs
Foreign and Commonwealth Office
WHITEHALL SW1

17 December 1984

Dear Geoffrey,

UNITED NATIONS LAW OF THE SEA CONVENTION

I realise that events have moved on since your minute of 30 November to the Prime Minister and that the European Community has now signed the Convention while the UK has not signed. For the sake of completeness I am nevertheless letting you have my views, mainly for the record but also in case the question of the UK's acceding to the Convention should arise in future.

I am concerned to ensure that as few difficulties as possible are put in the way of the Natural Environment Research Council obtaining clearance for its research vessels to enter the territorial waters of coastal states for the purposes of marine scientific research. These vessels exist primarily as facilities for our university researchers in the fields of oceanography, marine biology, and the geology of the sea bed and below. Although they mainly carry out basic research, industrial and commercial applications may well flow from their work in due course.

I find it difficult to assess how, if at all, obtaining these clearances is likely to be affected by the fact that the UK has not signed the Convention (while the EC has). There has, certainly, been rather more difficulty obtaining clearances from certain Third World countries for NERC ships in the last couple of years than was the case formerly; I cannot say whether this increasing difficulty is attributable to the UK being seen even then as reluctant to sign the convention. Time will tell. I recognise that my concerns are less pressing than Peter Walker's or Michael Heseltine's but I should nevertheless regret any large-scale hampering of our research vessels' access to other coastal states' waters.

I regret that other pressing matters prevented my replying to your letter earlier.

cont/d...

I am copying this letter to the members of OD, the Attorney General, the Secretaries of State for Energy and Transport, Norman Lamont and Sir Robert Armstrong.

Yours.

Kevin.

Foreign Pol 1 T 2

UNLOSC

10 DOWNING STREET

THE PRIME MINISTER

12 December 1984

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T 210 66/84

a MASTER
OB

Dear Garret

Thank you for your letter of 12 November about the UN Law of the Sea Convention.

It was good of you to set out your views so fully. I can assure you that we thought very carefully about the points you made. But after full consideration we decided that we could not sign the Convention. This decision was announced in Parliament on 6 December. As you well know, we also decided that it would be right for us to clear the way for signature of the Community.

We have long considered that the deep seabed mining regime was unacceptable in its present form. We worked hard in the Preparatory Commission to secure improvements. But there has only been a limited response to a few of the technical proposals we put forward. In these circumstances it was not possible for us to sign the Convention.

We would, however, still like to see a maritime regime which could be accepted by consensus. We hope that as the difficulties of the mining regime become clear to a wider range of countries it may still be possible to achieve such

a Convention. In any case there remains a considerable amount of time for further negotiations before commercial deep seabed mining becomes viable. I hope that we can continue to work together, and through the Community to the extent that it has competence, to resolve the remaining problems.

Yours

Dr. Garret FitzGerald, TD.

T208A/84.

CONFIDENTIAL

6036 - 1

OO WASHINGTON
GRS 300
CONFIDENTIAL
FM FCO 121310Z DEC 84
TO IMMEDIATE WASHINGTON
TELEGRAM NUMBER 2126 OF 12 DECEMBER

UN LAW OF THE SEA CONVENTION : MESSAGE FROM THE PRIME MINISTER TO PRESIDENT REAGAN

1. FOLLOWING IS TEXT OF MESSAGE OF 10 DECEMBER TO PRESIDENT REAGAN IN REPLY TO HIS OF 14 NOVEMBER: BEGINS

DEAR RON,

THANK YOU FOR YOUR MESSAGE ABOUT THE UN LAW OF THE SEA CONVENTION. AS YOU KNOW, WE HAVE ALWAYS FOUND THE CONVENTION'S PROPOSED MINING REGIME UNACCEPTABLE AND HAVE CLEARLY INDICATED THAT, ALTHOUGH SOME OTHER PARTS MIGHT BE OF BENEFIT TO US, WE WOULD NOT BE ABLE TO RATIFY OR ACCEDE TO THE CONVENTION UNLESS THE MINING REGIME WERE CHANGED.

WE HAVE RECENTLY REVIEWED OUR POLICY AND HAVE FOUND NO REASON TO CHANGE OUR DECISION OF TWO YEARS AGO NOT TO SIGN. WE ACCORDINGLY ANNOUNCED IN PARLIAMENT ON 6 DECEMBER THAT THE UK WOULD NOT SIGN THE CONVENTION.

WE ALSO ANNOUNCED THAT WE WOULD NOT STAND IN THE WAY OF SIGNATURE OF THE CONVENTION BY THE EUROPEAN COMMUNITY, WHOSE COMPETENCE AS REGARDS THE CONVENTION IS VERY LIMITED. (WE HAVE NATURALLY INSISTED THAT THE LIMITS OF THIS COMPETENCE AND THEREFORE OF THE COMMUNITY'S ACCEPTANCE OF THE CONVENTION, SHOULD BE CAREFULLY SPELLED OUT IN DECLARATIONS ON SIGNATURE). AS YOU KNOW, THE FEDERAL REPUBLIC OF GERMANY TOOK A SIMILAR DECISION.

WE NOW HAVE A SITUATION IN WHICH THREE OF THE COUNTRIES MOST LIKELY TO BE INVOLVED IN DEEP SEABED MINING HAVE DECIDED NOT TO SIGN THE CONVENTION. OTHER INDUSTRIALISED COUNTRIES HAVE MADE THEIR RESERVATIONS CLEAR. THERE SHOULD THEREFORE BE A STRONG INCENTIVE FOR THE INTERNATIONAL COMMUNITY AS A WHOLE TO ACCEPT THE NEED FOR IMPROVEMENTS OF THE SORT BOTH OUR

COUNTRIES HAVE WORKED FOR IN THE PAST. I AGREE THAT WE SHOULD CONTINUE TO COOPERATE ON THIS SUBJECT IN THE FUTURE.
YOURS EVER, MARGARET' ENDS.
2. GRATEFUL IF THIS COULD BE PASSED TO PRESIDENT REAGAN.
THE LETTER ITSELF FOLLOWS BY BAG.

HOWE

NNNN

DIST: LIMITED
MAED
NAD
WED
ECD(E)
PS

PS/MR RIFKIND
PS/MR RENTON
MR O'NEILL
MR BRAITHWAITE
PS/PUS

COPIES TO: PS/NO 10
MR FIFOOT, LEGAL ADVISER
MR NUNN, DTI

MASTER
OPS
FOR POL: Law of the Sea: RLE

RLE

JCR

CC FCO

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T2096/84

10 DOWNING STREET

THE PRIME MINISTER

11 December 1984

My dear Prime Minister,

Thank you for your letter of 5 November about the UN Law of the Sea Convention.

It was good of you to set out your views so fully. I can assure you that we thought carefully about the points you made. But after full consideration, we decided that we could not sign the Convention. This decision was announced in Parliament on 6 December. As you will know, we also decided that it would be right for us to clear the way for signature of the Community.

We have long considered that the deep seabed mining regime was unacceptable in its present form. We worked hard in the Preparatory Commission to secure improvements. But there has only been a limited response to a few of the technical proposals we put forward. In these circumstances it was not possible for us to sign the Convention.

We would, however, still like to see a maritime regime which could be accepted by consensus. We hope that as the difficulties of the mining regime become clear to a wider range of countries, it may still be possible to achieve such a Convention. In any case, there remains a considerable

GCC

amount of time for further negotiations before commercial deep seabed mining becomes viable. I hope that we can continue to work together to resolve the remaining problems.

Yours sincerely

Jayantha Dhanapala

His Excellency Dr. Ruud F.M. Lubbers

MASTER
OPS
FOR BOL: Law of the Sea: Pt 2

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T209B/84

10 DOWNING STREET

THE PRIME MINISTER

11 December 1984

My dear Prime Minister.

In my letter of 2 November about the UN Law of the Sea Convention, I promised to let you know our decision.

I can assure you that we thought carefully about the points you made in your message of 24 October. But after full consideration we decided that we should not sign the Convention. This decision was announced in Parliament on 6 December. As you will know, we also decided that it would be right for us to clear the way for signature of the Community.

We have long considered that the deep seabed mining regime was unacceptable in its present form. We worked hard in the Preparatory Commission to secure improvements. But there has only been a limited response to a few of the technical proposals we put forward. In these circumstances it was not possible for us to sign the Convention.

We would, however, still like to see a maritime regime which could be accepted by consensus. We hope that as the difficulties of the mining regime become clear to a wider range of countries it may still be possible to achieve such a Convention. In any case there remains a considerable

amount of time for further negotiations before commercial deep seabed mining becomes viable. I hope that we can continue to work together to resolve the remaining problems.

Yours sincerely

Margaret Thatcher

The Honourable David Lange, MP.

MASTER
OPS
FOR POL: Law of the Sea: PE2.

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL NO. T 210/84

10 DOWNING STREET

THE PRIME MINISTER

12 December 1984

Dear Bob,

Thank you for your letter of 2 November about the UN Law of the Sea Convention.

We weighed the points you made very carefully. I agree with you about the importance of the provision of the Convention dealing with navigation.

Our main difficulty has, as you know, long been with the deep seabed mining regime. This was not acceptable to us in its present form. We went to considerable efforts at the Preparatory Commission to secure improvements. But there has only been a limited response to a few of the technical proposals we put forward.

In these circumstances we decided that we could not sign the Convention. This decision was announced to Parliament on 6 December. At the same time we made clear that we would agree to signature by the Community which only has limited competence in the subjects covered by the Convention.

We would still like to see a maritime regime which could be accepted by consensus. We hope that as the difficulties of the mining regime become clear to a wider range of countries it may still be possible to achieve such

a Convention. There remains a considerable amount of time for further negotiations before commercial deep seabed mining becomes viable. I hope that our two countries can continue to work together in pressing for the improvements we both consider necessary in the seabed mining regime.

With best wishes

Yours sincerely

Margaret Thatcher

The Honourable Mr. R.J.L. Hawke, AC, MP

CCPC

Foreign and Commonwealth Office

London SW1A 2AH

11 December 1984

Dear Charles,

UN Law of the Sea Convention

/// I now enclose draft replies from the Prime Minister to letters of 24 October from the New Zealand Prime Minister, 5 November from the Netherlands Prime Minister and 29 November from the Rt Hon James Callaghan MP.

attached

Yours ever,

Peter Ricketts

(P F Ricketts)
Private Secretary

C D Powell Esq
10 Downing Street

DSR 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM:
The Prime Minister

Reference

DEPARTMENT:

TEL. NO:

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

TO:
Prime Minister of New Zealand

Your Reference

Copies to:

APM

PRIVACY MARKING

.....In Confidence

CAVEAT.....

SUBJECT:

In my letter of 2 November about the UN Law of the Sea Convention, I promised to let you know our decision.

I can assure you that we thought ~~very~~ carefully about the points you made in your message of 24 October. But after full consideration we decided that we should not sign the Convention. This decision was announced in Parliament on 6 December. As you will know, we also decided that it would be right for us to clear the way for signature of the Community.

We have long considered that the deep seabed mining regime was unacceptable in its present form. We worked hard in the Preparatory Commission to secure improvements. But there has only been a limited response to a few of the technical proposals we put forward. In these circumstances it was not possible for us to sign the Convention.

We would, however, still like to see a maritime regime which could be accepted by consensus. We hope that

/as

Enclosures—flag(s).....

as the difficulties of the mining regime become clear to a wider range of countries it may still be possible to achieve such a Convention. In any case there remains a considerable amount of time for further negotiations before commercial deep seabed mining becomes viable. I hope that we can continue to work together to resolve the remaining problems.

CM

DSR 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM:

Prime Minister

DEPARTMENT:

TEL. NO:

Reference

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

TO:

Netherlands Prime Minister

Your Reference

Copies to:

APN

PRIVACY MARKING

.....In Confidence

CAVEAT.....

SUBJECT:

Thank you for your letter of 5 November about the UN Law of the Sea Convention.

It was good of you to set out your views so fully. I can assure you that we thought ~~very~~ carefully about the points you made. But after full consideration we decided that we could not sign the Convention. This decision was announced in Parliament on 6 December. As you will know, we also decided that it would be right for us to clear the way for signature of the Community.

We have long considered that the deep seabed mining regime was unacceptable in its present form. We worked hard in the Preparatory Commission to secure improvements. But there has only been a limited response to a few of the technical proposals we put forward. In these circumstances it was not possible for us to sign the Convention.

/We

Enclosures—flag(s).....

We would however, still like to see a maritime regime which could be accepted by consensus. We hope that as the difficulties of the mining regime become clear to a wider range of countries it may still be possible to achieve such a Convention. In any case there remains a considerable amount of time for further negotiations before commercial deep seabed mining becomes viable. I hope that we can continue to work together to resolve the remaining problems.

EDS

MASTER
OPS
POL: Land the Sea: Pt 2

RM

CC FCO.

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T.208/84

10 DOWNING STREET

THE PRIME MINISTER

10 December, 1984

US Declassified

Dear Ron.

Thank you for your message about the UN Law of the Sea Convention.

As you know, we have always found the Convention's proposed mining regime unacceptable and have clearly indicated that, although some other parts might be of benefit to us, we would not be able to ratify or accede to the Convention unless the mining regime were changed.

We have recently reviewed our policy and have found no reason to change our decision of two years ago not to sign. We accordingly announced in Parliament on 6 December that the UK would not sign the Convention.

We also announced that we would not stand in the way of signature of the Convention by the European Community, whose competence as regards the Convention is very limited. (We have naturally insisted that the limits of this competence and therefore of the Community's acceptance of the Convention, should be carefully spelled out in declarations on signature). As you know, the Federal Republic of Germany took a similar decision.

We now have a situation in which three of the countries most likely to be involved in deep sea bed mining have decided not to sign the Convention. Other industrialised

ECA

countries have made their reservations clear. There should therefore be a strong incentive for the international community as a whole to accept the need for improvements of the sort both our countries have worked for in the past. I agree that we should continue to co-operate on this subject in the future.

Yours sincerely,

Ronald Reagan

The President of the United States of America

Foreign and Commonwealth Office

London SW1A 2AH

10 December 1984

Dear Charles,

UN Law of Sea Convention

I enclose draft letters from the Prime Minister to the Irish and Australian Prime Ministers, who wrote on 12 and 8 November respectively in support of UK signature of the Convention.

Yours ever,

Peter Ricketts

(P F Ricketts)
Private Secretary

C D Powell Esq
10 Downing Street

DSR 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM

Prime Minister

DEPARTMENT:

TEL. NO:

Reference

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

TO:

Prime Minister

AUSTRALIA

Your Reference

Copies to:

PRIVACY MARKING

.....In Confidence

CAVEAT.....

Enclosures–flag(s).....

SUBJECT:

Thank you for your letter of 8 November about the UN Law of the Sea Convention.

We weighed the points you made very carefully. I agree with you about the importance of the provisions of the Convention dealing with navigation.

Our main difficulty has, as you know, long been with the deep seabed mining regime. This was not acceptable to us in its present form. We went to considerable efforts at the Preparatory Commission to secure improvements. But there has only been a limited response to a few of the technical proposals we put forward.

In these circumstances we decided that we could not sign the Convention. This decision was announced to Parliament on 6 December. At the same time we made clear that we would agree to signature by the Community which only has limited competence in the subjects covered by the Convention.

We would still like to see a maritime regime which could be accepted by consensus. We hope that as the difficulties of the mining regime become clear to a

/wider

wider range of countries it may still be possible to achieve such a Convention. There remains a considerable amount of time for further negotiations before commercial deep seabed mining becomes viable. I hope that our two countries can continue to work together in pressing for the improvements we both consider necessary in the seabed mining regime.

CM.

Printed in the UK for HMSO Dd 8422057 2/84 (28592)

DSR 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM

Prime Minister

DEPARTMENT:

TEL. NO:

Reference

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

TO:

Taoisieach

Your Reference

Copies to:

PRIVACY MARKING

.....In Confidence

CAVEAT.....

SUBJECT:

Thank you for your letter of 12 November about the UN Law of the Sea Convention.

It was good of you to set out your views so fully. I can assure you that we thought very carefully about the points you made. But after full consideration we decided that we could not sign the Convention. This decision was announced in Parliament on 6 December. As you well know, we also decided that it would be right for us to clear the way for signature of the Community.

We have long considered that the deep seabed mining regime was unacceptable in its present form. We worked hard in the Preparatory Commission to secure improvements. But there has only been a limited response to a few of the technical proposals we put forward. In these circumstances it was not possible for us to sign the Convention.

We would, however, still like to see a maritime regime which could be accepted by consensus. We hope that as the difficulties of the mining regime become clear to a wider range of countries it may still be possible to achieve such a Convention. In any case

/there

Enclosures—flag(s).....

there remains a considerable amount of time for further negotiations before commercial deep seabed mining becomes viable. I hope that we can continue to work together, and through the Community to the extent that it has competence, to resolve the remaining problems.

Printed in the UK for HMSO Dd 8422057 2/84 (28592)

FOR POL: LAW OF THE SEA: PT 2

CC PC

Foreign and Commonwealth Office

London SW1A 2AH

7 December 1984

Dear Charles,

UNLOSC

Now that we have taken and announced a decision on signature, I enclose a draft reply from the Prime Minister to President Reagan's message (your letter of 14 November).

The Foreign Secretary has not yet seen this draft; I will be showing him a copy overnight.

Yours ever,
Pete Ricketts

(P F Ricketts)
Private Secretary

C D Powell Esq
10 Downing Street

DSR 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM:

Prime Minister

DEPARTMENT: TEL. NO:

Reference

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

TO:

President Reagan

Your Reference

Copies to:

ABA

PRIVACY MARKING

.....In Confidence

CAVEAT.....

Please type
N 14;
hyphs.

SUBJECT:

Thank you for your message about the UN Law of the Sea Convention.

As you know, we have always found the Convention's proposed mining regime unacceptable and have clearly indicated that, although some other parts might be of benefit to us, we would not be able to ratify or accede to the Convention unless the mining regime were changed.

~~During the last few weeks~~ We have recently reviewed our policy and have found no reason to change our ~~earlier~~ decision (of two years ago) not to sign ~~two years ago~~. We accordingly announced in Parliament on 6 December that the UK would not sign the Convention.

~~At the same time,~~ We also announced that we would not stand in the way of signature of the Convention by the European Community, whose competence as regards the Convention is very limited. (We have naturally insisted that the limits of this competence and therefore of the Community's acceptance of the Convention, should be carefully spelled out in declarations on signature.) As you know, the Federal Republic of Germany took a similar decision.

Enclosures—flag(s).....

// We now have a situation in which ~~Now that~~ three of the countries most likely to be involved in deep sea mining have decided not to sign the Convention, ~~while~~ other industrialised countries have made their reservations clear. There should therefore be a strong incentive for the ~~we must hope that the~~ international community as a whole ~~will come~~ to accept the need for improvements of the sort both our countries have worked ~~pressed~~ for in the past. ~~The UK's objective remains the achievement of a universally accepted law of the sea regime.~~

~~I look forward to~~ continuing to work with you to achieve

I agree that we should continue to cooperate on this subject in the future.

We now have a situation in which three of the countries most likely to be involved in deep sea bed mining have decided not to sign the Convention. Other industrialised countries have made their reservations clear. There should therefore be a strong incentive for the international community as a whole to accept the need for improvements of the sort both our countries have worked for in the past. I agree that we should continue to cooperate on this subject in the future.

Printed in the UK for HMSO Dd 8422057 2/84 (28592)

CONFIDENTIAL

FILE

10 DOWNING STREET

cc: P.C

From the Private Secretary

5 December, 1984

UN LAW OF THE SEA CONVENTION (UNLOSC)

Thank you for your letter of 4 December about Community signature of the UN Law of the Sea Convention.

In the light of the comments in your letter, the Prime Minister is ready to acquiesce in Community signature of the Convention provided that the declarations to be made by the Community on signature are strengthened as proposed in your letter to bring out more clearly the limited nature of Community competence on the subjects covered by the Convention.

I am sending a copy of this letter to Michael Reidy (Department of Energy), Callum McCarthy (Department of Trade and Industry), Richard Broadbent (Chief Secretary's Office) and to Richard Hatfield (Cabinet Office).

(C.D. Powell)

P. Ricketts, Esq.,
Foreign and Commonwealth Office.

CONFIDENTIAL

(1)

10 DOWNING STREET

Prime Minister

This has now been gone into very thoroughly. Other departments, including Energy & Treasury, acquiesce in Community signature, provided that the accompanying declaration sets out even more clearly the limited nature of Community competence. This should be obtainable.

Agree to Community signature on this basis? (Deadline is tomorrow).

C.D.P. 6/xii.

Foreign and Commonwealth Office

London SW1A 2AH

4 December, 1984

Dear Charles,

UN Law of the Sea Convention (UNLOSC)

The Foreign Secretary minuted to the Prime Minister on this subject on 30 November. This letter summarises the responses we have had to that minute, and proposes a course of action.

The Prime Minister was, I understand, concerned about Community competence on taxation and on the continental shelf. On both these subjects the rules are not affected by Community signature of the Convention, and the Community would not by virtue of its signature be able to do anything which it cannot already do under the Treaty of Rome without signature.

The extent of Community competence in areas covered by the Convention would be clearly set out in one of two declarations to be made at the time of Community signature. Texts have been agreed among all the Member States. They do not assert any competence for the Community in connection with revenue contributions from the continental shelf.

On taxation, the Community's rules and powers at present cover discriminatory internal taxes, VAT harmonisation and certain forms of harmonisation of other indirect taxes. The provisions of the Convention relating to revenue-sharing are more akin to royalties than to taxation. There are no Community rules on royalties on production of minerals by the state or other persons. There is therefore no relevant Community competence in either of the two fields raised by the Prime Minister which affects our policy on signature.

The Chief Secretary's office have confirmed that it is also the view of the Treasury and Inland Revenue that Community signature would not change the present position on taxation. The Treasury have no other comments on the Foreign Secretary's minute.

Mr Walker and Mr Lamont have both indicated that they would not wish to stand in the way of Community signature, provided that the declarations to be made by the Community on signature indicated more clearly the limited nature of Community competence on the subjects covered by the Convention. Both have proposed limited drafting changes. The Foreign Secretary agrees that it would be right to require changes to the Community

declaration which would make more clear the limited competence of the Community in the Convention or the work of the Preparatory Commission.

Subject to the Prime Minister's views, the Foreign Secretary therefore proposes to instruct Sir Michael Butler in Brussels to seek amendments along the lines requested by Mr Walker and Mr Lamont, and provided that these are agreed, to indicate that the UK would not make objection to Community signature. The last occasion on which these changes could be negotiated would be at COREPER on the afternoon of 5 December. Formal confirmation of the Community's decision would be obtained at the Environment Council on 6 December, and announced to Parliament that afternoon.

I am copying this letter to Michael Reidy (DOE), Callum McCarthy (DTI) and Richard Broadbent (Chief Secretary's Office).

Yours ever,

Peter Ricketts

(P F Ricketts)
Private Secretary

C D Powell Esq
10 Downing Street

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FODEUB36/3

ZZ DUBLIN
GRS 319
CONFIDENTIAL
FM FCO Ø31Ø35Z DEC 84
TO FLASH DUBLIN
TELEGRAM NUMBER 377 OF 3 DECEMBER
FOLLOWING FROM PRIVATE OFFICE FOR PRIVATE SECRETARY
UN LAW OF THE SEA CONVENTION: MIPT
MIPT
FOLLOWING IS TEXT OF PROPOSED COMMUNITY POLITICAL DECLARATION ON SIGNATURE OF UN LAW OF THE SEA CONVENTION
1. BEGINS:
'ON SIGNING THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, THE EUROPEAN ECONOMIC COMMUNITY DECLARES IT CONSIDERS THE CONVENTION CONSTITUTES, WITHIN THE FRAMEWORK OF THE LAW OF THE SEA, A MAJOR EFFORT IN THE CODIFICATION AND PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW IN VARIOUS FIELDS. THE COMMUNITY WOULD LIKE TO EXPRESS THE HOPE THAT THIS DEVELOPMENT WILL BECOME A USEFUL MEANS FOR PROMOTING CO-OPERATION AND STABLE RELATIONS BETWEEN ALL COUNTRIES IN THESE FIELDS.
THE COMMUNITY, HOWEVER, CONSIDERS THAT SIGNIFICANT PROVISIONS OF PART XI OF THE CONVENTION ARE NOT CONDUCIVE TO THE DEVELOPMENT OF THE ACTIVITIES TO WHICH THAT PART REFERS IN VIEW OF THE FACT THAT SEVERAL MEMBER STATES OF THE COMMUNITY HAVE ALREADY EXPRESSED THEIR POSITION THAT THIS PART CONTAINS CONSIDERABLE DEFICIENCIES AND FLAWS WHICH REQUIRE RECTIFICATION.
THE COMMUNITY RECOGNIZES THE IMPORTANCE OF THE WORK WHICH REMAINS TO BE DONE AND HOPES THAT CONDITIONS FOR THE IMPLEMENTATION OF A SEA BED MINING REGIME, WHICH ARE GENERALLY ACCEPTABLE AND WHICH ARE THEREFORE LIKELY TO PROMOTE ACTIVITIES IN THE INTERNATIONAL SEA BED AREA, CAN BE AGREED. AS A MEMBER OF THE PREPARATORY COMMISSION THE COMMUNITY WILL SPARE NO EFFORTS IN CONTRIBUTING TO THIS WORK IN THE HOPE OF FINDING SATISFACTORY SOLUTIONS.
A SEPARATE DECISION ON FORMAL CONFIRMATION (1) WILL HAVE TO BE TAKEN AT A LATER STAGE. IT WILL BE TAKEN IN THE LIGHT OF THE RESULTS OF THE EFFORTS MADE TO ATTAIN A UNIVERSALLY ACCEPTABLE CONVENTION.'
ENDS
NOTE AT (1):
2. 'FORMAL CONFIRMATION' IS THE TERM USED IN THE CONVENTION FOR RATIFICATION BY INTERNATIONAL ORGANIZATIONS (SEE ARTICLE 3Ø6 AND ANNEX IX, ARTICLE 3).

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ZZ DUBLIN
GRS 535
CONFIDENTIAL
FM FCO 031545Z DEC 84
TO FLASH DUBLIN
TELEGRAM NUMBER 376 OF 3 DECEMBER
FOLLOWING FROM PRIVATE OFFICE FOR PRIVATE SECRETARY
REPT: UN LAW OF THE SEA CONVENTION
FOLLOWING IS TEXT OF MR WALKER'S LETTER:
1. BEGINS :
'MY SECRETARY OF STATE NOTES THAT IT IS NOT PROPOSED THAT THE UK SHOULD SIGN THE CONVENTION. HE HAS NOTED FURTHER THAT THE COMMUNITY HAS COMPETENCE ONLY IN A LIMITED NUMBER OF THE AREAS COVERED BY THE CONVENTION, AND THAT THE CONVENTION'S PROVISIONS IN THESE AREAS ARE NOT OBJECTIONABLE TO THE UK.
NEVERTHELESS HE STILL HAS RESERVATIONS ABOUT THE IDEA OF COMMUNITY SIGNATURE OF THE CONVENTION :
I) THE REST OF THE WORLD IS UNLIKELY TO UNDERSTAND HOW LIMITED IS THE AREA OF THE COMMUNITY'S COMPETENCE, AND COULD WELL REGARD COMMUNITY SIGNATURE AS IMPLYING THAT ALL EC MEMBER COUNTRIES SUPPORTED THE CONVENTION IN ALL ASPECTS OTHER THAN DEEP SEABED MINING WHERE A SPECIFIC RESERVATION IS PROPOSED. THE DRAFT POLITICAL DECLARATION BY THE COMMUNITY, ALTHOUGH NOT STRONGLY PHRASED, WOULD CERTAINLY BE SEEN AS CONFIRMING THE SUPPORT OF MEMBER STATES:
II) AS THE COMMISSION RECOMMENDATIONS IN THE COREPER REPORT TO THE COUNCIL (JUR153 MARE6) MAKE CLEAR, THE COMMISSION JUDGES THE CONVENTION TO BE 'SATISFACTORY OVERALL TO THE COMMUNITY', AND SEES COMMUNITY SIGNATURE AS 'REINFORCING THE COMMUNITY'S IDENTITY' AND AS 'A DECISIVE FACTOR IN THE CONVENTION'S IMPLEMENTATION'. IT IS CLEAR THAT THE COMMISSION PROPOSE TO SPEAK AND VOTE IN THE PREPARATORY COMMISSION ON ANY ASPECT OF THE CONVENTION DISCUSSED, AND NOT ONLY ON COMPETITION POLICY AND POLLUTION ASPECTS OF SEABED MINING:
III) SIGNATURE OF THE CONVENTION WILL ENCOURAGE THE COMMISSION'S EFFORTS TO EXTEND COMMUNITY COMPETENCE UNDESIRABLY IN A MOST SENSITIVE AREA. SHOULD THEY BE SUCCESSFUL, THE UK WOULD IN EFFECT HAVE TO ACCEPT THE PROVISIONS OF THE CONVENTION IN ANY NEW AREA INTO WHICH COMMUNITY COMPETENCE WAS EXTENDED, DESPITE THE FACT THAT WE WERE NOT OURSELVES SIGNATORIES.
IF DESPITE THESE RESERVATIONS THE FOREIGN SECRETARY CONCLUDES THAT THE BALANCE OF ADVANTAGE LIES WITH NOT BLOCKING COMMUNITY SIGNATURE, MY SECRETARY OF STATE WOULD BE READY TO ACCEPT THIS, PROVIDED CERTAIN CHANGES WERE MADE TO THE 'POLITICAL DECLARATION' (ANNEX II TO JUR153 MARE6) TO BE MADE BY THE COMMUNITY ON THE OCCASION OF SIGNATURE, IN ORDER TO RESTRICT THE IMPLIED COMMUNITY ENDORSEMENT OF THE CONVENTION TO THE AREA OF COMMUNITY COMPETENCE. THIS COULD BE DONE BY ADDING AFTER 'VARIOUS FIELDS' IN THE 5TH LINE OF THE FIRST PARAGRAPH, THE PHRASE 'IN WHICH THE COMMUNITY HAS COMPETENCE', AND BY ADDING AT THE END OF THE SECOND PARAGRAPH 'IN THE AREAS IN WHICH THE COMMUNITY HAS COMPETENCE'. THERE WOULD THEN BE NO SUGGESTION OF A GENERAL ENDORSEMENT OF THE PROVISIONS ON THE CONTINENTAL SHELF WHICH MY SECRETARY OF STATE REGARDS AS OBJECTIONABLE TO THE UK.
MY SECRETARY OF STATE HAS NOTED THE ASSURANCES WHICH HAVE BEEN GIVEN BY FCO LEGAL ADVISERS THAT COMMUNITY 'CONFIRMATION' OF THE CONVENTION WOULD REQUIRE THE UNANIMOUS AGREEMENT OF MEMBER STATES, AND THAT SUCH CONFIRMATION WOULD NOT IMPOSE ANY OBLIGATIONS ON THE UK IN AREAS OUTSIDE COMMUNITY COMPETENCE.'
ENDS
HOWE
DNNN

CCND

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215) 5186
GTN 215)
(Switchboard) 215 7877

From the Minister of State for Industry

Norman Lamont MP

Await FCO telegram

CONFIDENTIAL

The Rt Hon Sir Geoffrey Howe QC MP
Foreign and Commonwealth Secretary
Foreign and Commonwealth Office
Whitehall
LONDON SW1

3 December 1984

Dear Geoffrey

UN LAW OF THE SEA CONVENTION

You sent me a copy of your minute to the Prime Minister dated 30 November about signature of the UN Law of the Sea Convention.

I welcome your acceptance that the UK should not sign this Convention. I am less happy with your recommendation that we should be prepared to agree to Community signature of the Convention.

One of the main reasons why we will not ourselves sign the Convention is that the provisions of Part XI, relating to deep sea mining, are fundamentally unacceptable. These provisions cannot be made acceptable through negotiations in the Preparatory Commission, established to prepare for the implementation of Part XI. For the Community to continue to take part in the work of the Preparatory Commission, without acknowledging the fundamentally unsatisfactory nature of Part XI, would in my view be wrong.

I recognise that it would be difficult for the UK alone to stand in the way of Community signature of this Convention. But if we are, reluctantly, to agree to signature, I believe strongly that we should secure changes to the draft Council Declaration to accompany Community signature. The recent draft which I have seen makes no mention of the limitations on Community competence in the field of work covered by the Preparatory Commission, nor of the fact that the deep sea mining regime cannot be made satisfactory through negotiations in the Preparatory Commission. I attach a draft of the Declaration amended to meet the points of concern to the UK. The amendments to the earlier draft are underlined.

...

MO2ABP

I am sending a copy of this letter and attachment to members of OD, the Attorney General, the Secretaries of State for Energy, Education and Science, Transport and Sir Robert Armstrong.

Yours ever

Norman

NORMAN LAMONT

MO2ABP

DRAFT DECLARATION BY THE COUNCIL

On signing the United Nations Convention on the Law of the Sea, the European Economic Community declares it considers the Convention constitutes, within the framework of the Law of the Sea, a major effort in the codification and progressive development of international law in various fields. The Community would like to express the hope that this development will become a useful means for promoting cooperation and stable relations between all countries in these fields.

The Community, however, considers that significant provisions of Part XI of the Convention are not conducive to the development of the activities to which that Part refers in view of the fact that several member States of the Community have already expressed their position that this Part contains considerable deficiencies and flaws which require rectification. The Community recognises the importance of the work which remains to be done and hopes that conditions for the implementation of a Sea Bed mining regime, which are generally acceptable and which are therefore likely to promote activities in the international Sea Bed Area, can be agreed. To the extent that the necessary improvements can be achieved through the work of the Preparatory Commission, the Community will play a full part in contributing to the task of finding satisfactory solutions, within the limits of its competence.

A separate decision on formal confirmation will have to be taken at a later stage. It will be taken in the light of the results of the efforts made to attain a universally acceptable Convention.

FOR POL: Law of the Sea: R-2.

01 211 6402

Len Appleyard Esq
Private Secretary to the
Secretary of State for Foreign
and Commonwealth Affairs
Downing Street
London
SW1A 2AL

3 December 1984

Dear Len

UNLOSC: COMMUNITY SIGNATURE

My Secretary of State has now seen the Foreign Secretary's minute of 30 November about the outstanding question of the UK attitude to signature by the European Community of the UN Law of the Sea Convention.

My Secretary of State notes that it is not proposed that the UK should sign the Convention. He has noted further that the Community has competence only in a limited number of the areas covered by the Convention, and that the Convention's provisions in these areas are not objectionable to the UK.

Nevertheless he still has reservations about the idea of Community signature of the Convention:

i) the rest of the world is unlikely to understand how limited is the area of the Community's competence, and could well regard Community signature as implying that all EC member countries supported the Convention in all aspects other than deep seabed mining where a specific reservation is proposed. The draft political declaration by the Community, although not strongly phrased, would certainly be seen as confirming the support of member states;

ii) as the Commission recommendations in the Coreper Report to the Council (JUR153 MARE6) make clear, the Commission judges the Convention to be "satisfactory overall to the Community", and sees Community signature as "reinforcing the Community's identity" and as "a decisive factor in the Convention's implementation". It is clear that the Commission propose to speak and vote in the Preparatory Commission on any aspect of the Convention discussed, and not only on competition policy and pollution aspects of seabed mining;

iii) signature of the Convention will encourage the Commission's efforts to extend Community competence undesirably in a most sensitive area. Should they be successful, the UK would in effect have to accept the provisions of the Convention in any new area into which Community competence was extended, despite the fact that we were not ourselves signatories.

If despite these reservations the Foreign Secretary concludes that the balance of advantage lies with not blocking Community signature, my Secretary of State would be ready to accept this, provided certain changes were made to the "political declaration" (Annex II to JUR153 MARE 6) to be made by the Community on the occasion of signature, in order to restrict the implied Community endorsement of the convention to the area of Community competence. This could be done by adding after "various fields" in the 5th line of the first paragraph, the phrase "in which the Community has competence", and by adding at the end of the second paragraph "in the areas in which the Community has competence". There would then be no suggestion of a general endorsement of the provisions on the continental shelf which my Secretary of State regards as objectionable to the UK.

My Secretary of State has noted the assurances which have been given by FCO Legal Advisers that Community "confirmation" of the Convention would require the unanimous agreement of member states, and that such confirmation would not impose any obligations on the UK in areas outside Community competence.

I am copying this letter to the private secretaries to the Prime Minister, members of OD, the Secretaries of State for Education and Science and Transport, the Attorney General, Mr Norman Lamont and Sir Robert Armstrong.

Yours ever

M F REIDY
Private Secretary

PM/84/178

PRIME MINISTER

UN Law of the Sea Convention

1. Since our discussion in OD on 7 November, I have reflected further on what our policy should be on signature of the Convention. We need to decide (a) whether the UK should sign and (b) whether we should stand alone in blocking Community signature. Since the OD meeting, Germany has decided not to sign, but as we expected all the other Member States are likely to do so.

2. You will have seen the advice of the Law Officers, for which you asked at OD. I recognise that there is a difficult and uncertain balance to be struck and that the case for UK signature (like the case for non-signature) cannot be conclusive. I therefore accept that the UK should not sign the Convention. It will remain open to us to accede at any future time if we judge that adequate improvements have been made or that our interests require it. A decision to accede in that way would be the equivalent of simultaneous signature and ratification. In the meantime, we must work together with the United State and Germany to safeguard our position as non-signatories. We should also work to keep alongside those other industrial states who have indicated when signing that they take the same view as we do on the need to obtain changes in the deep sea mining provisions.

3. There remains the question of signature by the Community. Eight Member States have or are likely to sign in their own right and have come down in favour of Community signature (which requires unanimous agreement). The Germans have also made it plain that even though they will not themselves sign the Convention, they are quite content for the Community to sign. If we were unwilling to follow their example,

the Community would be unable to sign. We should need compelling reasons to stand out against the great majority if we are not to aggravate our relations with other Member States. After considering the matter carefully I have come to the plain conclusion that there is no reason for us to block Community signature.

4. Signature by the Community would relate only to matters within Community competence. The Convention itself requires that any international organisation signing the Convention must make a precise declaration regarding the competence transferred to it by its Member States. Such a declaration has been agreed by officials of all EC countries in Brussels, and has been cleared between our own officials in EQO. The Community does not have any competence in respect of those matters relating to the boundaries or exploitation of the outer margins of the Continental Shelf or abandonment of installations, which were the subject of contention when we were considering UK national signature of the Convention. Nor does the Community have competence in respect of other provisions of the Convention relating to the Shelf. The Community's competence in the Convention is strictly limited to sea fisheries, certain aspects of pollution, customs matters relating to landlocked states and commercial policy. Fisheries, pollution and landlocked states present us with no problems. — oil ?

5. That leaves commercial policy, which is relevant to the mining regime. Signature by the Community would not bind us in respect of this matter either. On the contrary, it would give us some opportunity of continuing to influence the future of these things. The Commission would be representing a group of industrialised countries whose interests in the matters

covered by commercial policy are the same as ours. The Community could not commit itself or its members to anything under this heading unless the Community "formally confirmed" (ie ratified) the Convention.

6. Moreover, Community signature will itself be accompanied by a declaration, which expresses firmly the view that the deep sea mining provisions of the Convention are not acceptable as they stand.

7. For the Community to become a Party to the Convention in respect of those aspects of the Convention for which, as between itself and Community Member States, it has competence would require "formal confirmation", the equivalent of ratification or accession by a State. This would also require unanimous agreement of the Member States; and I have no doubt that this would be a quite unjustifiable step so long as two member states have not even signed the Convention and four others, though they have signed, have made it clear that they have no present intention of ratifying.

8. Community signature would have no financial implications. The only practical implication of signature would be that the Commission could take part in the work of the Preparatory Commission. The Commission's role there will by definition be limited to its area of competence, and other Member States who have expressed reservations about the deep sea mining regime will have a clear interest in joining with us and Germany in keeping a close control on the Commission's activities through the existing and very effective Senior Officials Group.

9. There remains the question of whether it is legitimate for us to acquiesce in Community signature while not signing ourselves, and while the Community has no intention of ratifying the present text. Community

signature would only concern those parts of the Convention on which the Community has competence. Those areas are either favourable to our interests, or at the least our interests can be well protected. Moreover, the world will have been put on notice that signature is not unconditional and that Community ratification would not be considered in the absence of acceptable changes in the deep sea mining regime. Even in those circumstances, ratification would, as explained above, require unanimity. I therefore conclude that it would be legitimate for us to permit Community signature.

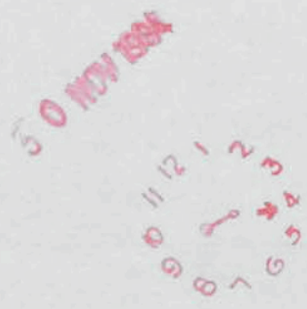
10. The last Community meeting at which a decision on Community signature could realistically be taken is the Environment Ministers' Council on 6 December. But there would be obvious advantage in our being able to announce our decision while we are at the European Council in Dublin on 3 December.

11. Despite the short notice, therefore, I propose that in the absence of objection from colleagues in OD by noon on 3 December, you should inform the European Council that we have no objection to Community signature on the understanding that the two declarations I have referred to are made as agreed, and that appropriate entries are made in the minutes of EC Council of Ministers.

12. I am copying this to members of OD, Attorney General, the Secretaries of State for Energy, Education and Science, Transport, Mr Norman Lamont and Sir Robert Armstrong.

GEOFFREY HOWE

Foreign and Commonwealth Office
30 November, 1984


30 NOV 1984

Please hold until we know whether the Foreign Secretary intends to pursue [illegible] 27/11

UNLOSC

The attached paper by the Attorney General and the Lord Advocate is circulated to OD members in response to the Prime Minister's request at the OD meeting on 7 November. It is sent also to the Chief Secretary, Financial Secretary, Mr Buchanan-Smith, Mr Lamont, Mr Mitchell, Mr Stanley and Sir Robert Armstrong.

The paper refers to a memorandum by the Legal Advisers to the Foreign and Commonwealth Office which is also circulated.

D.J.

Private Secretary to
the Lord Advocate

27/11/84.

LAW OFFICERS DEPT
LORD ADVOCATES DEPT

CONFIDENTIAL

27 November 1984

UNITED NATIONS LAW OF THE SEA CONVENTION:
FUTURE OPTIONS: LEGAL ASPECTS

MEMORANDUM BY THE LAW OFFICERS

1. The Prime Minister concluded OD(84)12th Meeting by inviting us to prepare detailed papers on the legal issues which had been identified in the course of that Meeting, if the Foreign and Commonwealth Secretary decided to bring the issue of signature of the United Nations Law of the Sea Convention to Cabinet. We asked the Foreign and Commonwealth Office Legal Advisers to prepare a Memorandum for our consideration. We received that Memorandum on Friday 23 November (copy attached). The Department of Energy Legal Advisers, with commendable alacrity, commented on the Memorandum on Monday 26 November. Their comments revealed a number of fundamental differences between Departmental Legal Advisers. We invited them to address us on these differences today.

2. We have identified three major areas of disagreement between the Departmental Legal Advisers. We give our views on these issues below. Subject to these views, we generally endorse the conclusions set out in the attached Memorandum. Before setting out our views on the three major areas of disagreement, we should emphasize that it is particularly difficult to give firm advice on the extent of, and possible future extension of, customary international law. We can state, however, with some certainty that the scope for extension of customary international law is constrained by the conclusion of new conventional texts.

3. The three major issues of disagreement are (i) whether, as regards removal of abandoned installations, we are bound by the provisions of the 1958 Convention requiring total removal (paragraph 4 of the attached Memorandum); (ii) whether outside the United Nations Law of the Sea Convention there is a right to exploit the Continental Shelf beyond 200 miles (see paragraph 7 of the attached Memorandum); and (iii) whether signature of the Convention would make any difference in respect of recommendations made by the Boundary Commission (see paragraph 6 of the attached Memorandum).

4. As regards the first issue (abandoned installations), there are arguments to be made that the requirement in the 1958 Convention providing for total removal is no longer applicable as it pre-dated the enormous technological developments that have taken place since that date. Moreover, we will probably have to take action on abandonment long before standards of abandonment are established under the Convention. We are of the view that there is reasonable chance that we will be able to assert customary international law to defend our practice of partial removal without signature of the Convention.

5. As regards the second issue (right to exploit the Continental Shelf beyond 200 miles), it is argued that we could rely on the provision in the 1958 Convention defining the Continental Shelf as "the seabed and subsoil of the submarine areas adjacent to the coast ... to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits to the exploitation of the natural resources of the said area". It is contended by the Department of Energy Legal Advisers that there is some practice to support a customary international law argument for a limit in excess of 200 miles (including our own designations) and that we should be able to rely on the definition in the 1958 Convention. We are not confident that that definition has become part of customary international law and, on balance, prefer the view expressed in the attached Memorandum.

6. As regards the third issue (the Boundary Commission), whilst we accept that the Commission's functions are confined to determining the outer limits of the Shelf and do not extend to disputes as between States as to the boundary between their respective Shelves, we consider that there is a risk that the Commission might make recommendations which would have an influence on delimitation, especially in circumstances where the claims to Continental Shelf

margins by one or more States overlap. It is possible, for example, that Iceland might ratify the Convention and seek the determination of the Commission as to the limits of its Shelf. If the United Kingdom had by that time signed the Convention, it would be more difficult for us to contest the jurisdiction of the Boundary Commission and the validity of its determination than if we had not signed, although we would of course only be bound by such determination if we ratified the Convention.

M H
C of L

27 November 1984

Law Officers' Department
Lord Advocate's Department.

UNITED NATIONS LAW OF THE SEA CONVENTION:

FUTURE OPTIONS : LEGAL ASPECTS

MEMORANDUM BY FOREIGN AND COMMONWEALTH OFFICE LEGAL ADVISERS

1. This memorandum considers the legal issues relating to the Law of the Sea Convention 1982 which were raised at the meeting of the Defence and Overseas Policy Committee on 7 November 1984.

The Convention as emerging or customary international law

2. The 1982 Convention comprises both restatements or codifications of existing conventional and customary law (some, such as the concept of the exclusion economic zone, of recent origin) and new legal provisions. To the extent that it is a reflection of existing law, states which do not become parties to the Convention (ie do not ratify or accede) can continue to rely upon the corresponding pre-existing rule both before and after the Convention comes into force. However, if the pre-existing law is to be found only in an earlier convention, states will only be able to claim rights (and will only be subject to obligations) as between

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the parties to that earlier convention. (This could be of significance in relation to the continental shelf since although Denmark, like the United Kingdom, is a party to the 1958 Continental Shelf Convention, Iceland and Ireland are not parties - see also paragraph 7 below.)

3. The question has been raised whether certain provisions of the 1982 Convention reflect existing or emerging law or are new. These relate to the right of transit passage in international straits, the corresponding right of sealanes passage through archipelagos, and the provisions relating to abandoned installations on the continental shelf. In our view all these three provisions would create new law. The right of transit passage is created by the Convention in recognition of the fact that the extension of the territorial sea to twelve miles (such an extension being itself first recognised in a general agreement by the 1982 Convention) could have the effect of bringing many straits totally within the territorial sea of the littoral states and thus exclude a high seas channel and right of passage. It would therefore be very difficult to attempt to show that this provision was a rule of existing customary law or to establish a present practice for such a right of transit passage. The same considerations apply to the right of sealanes passage through archipelagic waters.

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4. The provision relating to abandoned installations (Article 60.3) is not only new (it was inserted at the last stage of the negotiating process of the 1982 Convention as a result of a United Kingdom initiative), but was designed to change the existing law as set out in the 1958 Continental Shelf Convention. Article 6.5 of the 1958 Convention requires the total removal of abandoned installations on the continental shelf: the 1982 provision is designed to modify that obligation by permitting partial removal subject to satisfying safety conditons. There is as yet no documented practice in favour of the partial rather than the complete removal of gas or oil installations on the continental shelf; and in our view the UK could not simply initiate a practice which would constitute a violation of its obligations under the 1958 Convention (except in the context of an argument referring to the provisions of the 1982 Convention).

Other issues on the text of the Convention

5. Other matters in issue on provisions of the Convention relate to (i) the Commission on the limits of the Continental Shelf (Article 76 and Annex II), (ii) revenue sharing with respect to exploitation of the continental shelf beyond 200 miles (Article 82) and (iii) Rockall (Article 121.3).

/6.

6. The Commission. Article 76 provides that where states claim a continental shelf in excess of 200 miles, information on the limits shall be submitted to the Commission which "shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding". It is clear from this provision that the Commission's functions are confined to determining the outer limits of the shelf and do not extend to disputes as between States as to the boundary between their respective shelves. Nevertheless as the outer limit of the shelf will form the boundary of the deep seabed in respect of which the International Seabed Authority has jurisdiction, it cannot be excluded that that Authority may seek to appear before the Commission and argue for restrictive limits; there is no provision, however, which allows the Authority to establish the boundary of its own jurisdiction; only a State can establish that boundary at the outer limits of its continental shelf.

7. The cost of revenue sharing. The United Kingdom would not, by signing the Convention, become liable to make payments or contributions with respect to

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the exploitation of the continental shelf beyond 200 miles; under the Convention that liability is a consequence of ratification or accession. There is, however, an issue whether outside the Convention there is a right to exploit the continental shelf (ie whether coastal States have rights in the continental shelf) beyond 200 miles. The 1958 Continental Shelf Convention defines the shelf as the"seabed and subsoil of the submarine areas adjacent to the coast .... to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas". The International Court of Justice has held that the continental shelf area must be adjacent and did not envisage an unlimited extension. However, with the growth of technology that definition could extend beyond 200 miles and to the outer margins defined in the 1982 Convention. There are, nevertheless, two objections to that as a general proposition. First, the argument is based on a convention (the 1958 Convention) with limited parties (54 States); although the essential elements of the continental shelf may well have also become established in customary international law, customary law does not define the outer limits (it is implicit in the concept of the shelf that there must be some limit) and there would appear to be

/little

little or no practice to support a customary law argument for a limit in excess of 200 miles. More important, perhaps is that the right to exploit the outer margin of the shelf crystallized in the recent UN Conference on the Law of the Sea as part of a bargain in which not only was the quid pro quo a provision for revenue sharing but that that particular provision was one which was sponsored by the United Kingdom and other States with claims to wide continental shelves. In these circumstances, it must be doubtful whether, even if an argument could be adduced for a right under existing conventional or emerging customary law to exploit the outer margin of the shelf, we could sustain that argument in good faith without having to accept that it has a counterpart obligation to contribute by way of revenue sharing.

8. Rockall. Article 121.3 provides that "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. Rockall is such a rock. However, in their Joint Opinion of 17 December 1979, the English and Scottish Law Officers advised as follows:-

> "The maximum. We share the view expressed by our predecessors and in the Joint Study that Rockall is most unlikely to qualify as a

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generator of continental shelf in its own right. We also consider it very unlikely that a tribunal would attribute full weight to Rockall on the basis that its use as a point of measurement for the construction of an equidistance line is a legitimate method of correcting the inequitable result produced by a median line drawn on any other basis. The possibility of a tribunal awarding a boundary attributing considerably reduced effect to Rockall for this purpose cannot be wholly ruled out but we think it unlikely."

This advice, based on customary international law, is broadly consistent with Article 121.3.

9. Accordingly, in justifying the United Kingdom's designation of the area of its continental shelf to the west of Scotland in September 1974 and subsequently, reliance has not been placed on Rockall. Rather, the area has been described as a natural prolongation of Scotland. It is to be noted that in this respect Article 121.2 of the Convention (save as provided by Article 121.3, islands generate their own continental shelf etc) is a helpful provision. It makes clear that St Kilda is a valid basepoint for measuring the UK 200 mile zone. (The issues concerning the outer margin beyond 200 miles are examined in paragraph 7 above.)

/Signature

Signature of the Convention

10. As a matter of law the only consequence of signature (apart from qualifying the signatory for full membership of the Preparatory Commission and the capacity, which is irrelevant in present circumstances, to sponsor a pioneer investor) is the obligation to refrain from acts which would defeat the object and purpose of the Convention; and that obligation would cease at any time if the British Government expressed their intention not to become a party. (Article 18 of the Vienna Convention on the Law of Treaties.) Mere signature does not attract any obligation under the Convention, either before or after the Convention comes into force for other States; in particular, it does not render a State liable in respect of the revenue sharing provisions applicable to the exploitation of the continental shelf beyond 200 miles or require it to submit to the jurisdiction of the Boundary Commission. Nor does a signatory State become liable, either before or after the Convention comes into force for other States, for the financing of, or contributions towards, the institutions (International Seabed Authority and the Enterprise) of the deep seabed mining regime. The Preparatory Commission is financed from the regular budget of the United Nations to which the United Kingdom is under an obligation to contribute whatever its attitude to the Convention.

/11.

11. On the other hand, those provisions of the Convention which are advantageous or beneficial - such as the rights of transit passage - are not legally assured by signature; ratification or accession, and the coming into force of the Convention for the relevant States, would be necessary for that. Such rights might or might not be accorded to signatory States before and after the Convention comes into force; that would be a matter of practice not of law and a failure to sign would make it more difficult to refer to the appropriate wordings in the Convention in seeking to obtain recognition of the emergence of such a practice. Only in the course of time, and if it were not resisted, the practice might become customary law even for the benefit of States which are not parties to the Convention.

Signature and ratification

12. As we have noted in paragraph 10 above the only general consequence of signature is the obligation to refrain from acts which would defeat the object and purpose of the Convention. Article 18 of the Vienna Convention recognises that a State which signs the Convention may decide not to ratify it. In this connection it is to be noted that the deep seabed regime of the Convention is to be further elaborated in the Preparatory Commission. At the UN Conference on the Law of the Sea, it was recognised that the content

/of

of the rules, regulations and procedures of the deep sea mining regime to be worked out in the Preparatory Commission would be a crucial element for the deep sea mining States in deciding on ratification. The outcome of the work of the Preparatory Commission was an essential element in the package as a whole constituted by the Convention. Thus signature did not and could not in any way represent a commitment towards ratification since the Convention package was incomplete. Further, in the light of these considerations, other States (including France, Japan and the Netherlands) have, despite their objections to the deep seabed mining regime, signed the Convention, making it clear that ratification will depend on the overall acceptability of the regime in its final form. Having regard to these particular circumstances of the Convention it is our view that such a course (ie signature with a reservation on ratification) could be defended.

Foreign and Commonwealth Office
London SW1

23 November 1984

Foreign Pol.
Law of Sea
PKR

CCIK

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB
01-212 3434

My ref: M/PSO/12659/84

Your ref:

Alistair Harrison Esq
Private Secretary to the
Parliamentary Under Secretary
of State
Foreign and Commonwealth Office
Whitehall
LONDON
SW1A 2AL

MBPM
CDD
26/XI

26 November 1984

Dear Alistair,

I told you on Friday that our Ministers were content for the paper attached to Mr Renton's letter of 22nd November to go forward.

will request if required

They have now seen Sue Killen's letter of 23rd November with suggested amendments to the paper from the Department of Energy. Most of the amendments are acceptable, but not I am afraid the paragraph which deals with articles 2-33 of the Convention (limits of the territorial sea, innocent passage and the contiguous zone).

The suggested revision of this passage casts unreasonable doubt on the advantages to the UK of a provision which prohibits coastal states from seeking to prescribe construction or manning requirements on foreign vessels in their territorial sea. The fourth and fifth sentences should therefore read:

> "There are also advantages to British shipping, not provided elsewhere, in prohibiting coastal states from seeking to prescribe construction or manning requirements on foreign ships in the territorial sea (although it is perhaps debateable whether they would enforce such prescriptions under international law as it stands)."

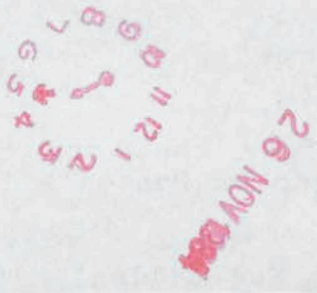
I am copying this to the Private Secretaries to the Chief Secretary, the Financial Secretary, the Attorney General, the Lord Advocate, Mr Lamont, Mr Buchanan-Smith, Mr Stanley and Sir Robert Armstrong; and to the Prime Minister's office.

Yours Sincerely,

A J POULTER
Private Secretary

foreign POL PT 2

law of the sea



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5186

From the Minister of State for Industry

Norman Lamont MP

NBPM
26/Xi

COVERING CONFIDENTIAL

Tim Renton Esq MP
Parliamentary Under Secretary
of State
Foreign and Commonwealth Office
LONDON
SW1A 2AH

26 November 1984

Dear Minister

with cor

Thank you for your letter of 22 November enclosing a draft paper on the advantages and disadvantages for the UK of the UN Law of the Sea Convention.

The passages relating to Part XI of the Convention and the prospects for improvements to the seabed mining regime are broadly acceptable. I have however suggested a formulation in the paragraph on prospects for Improvement to the Seabed Mining Regime on page 10 which I hope will be acceptable to the FCO.

Yours sincerely

Edmund Hosker

NORMAN LAMONT
(approved by the Minister
and signed in her absence)

1MOAIR

compete with States or commercial operators. No activities may be undertaken except in conformity with a licence approved by the Authority, which is to be funded by states parties until it is self-financing through the payments made by operators. A Preparatory Commission is charged with preparing detailed rules for the implementation of the mining regime. This will be open to review at a Conference to be called 15 years after the commencement of commercial production. The Preparatory Commission would also administer a system of enabling entities which have already invested in deep sea mining to register claims to a particular mine site. There is also provision for the establishment of a seabed disputes chamber ~~to deal with disputes between states parties and the Authority, or parties to a contract and the Authority~~; and for an International Tribunal for the Law of the Sea to deal with disputes relating to the Convention.

The provisions of part XI are generally agreed to be ~~disadvantageous to the UK and to be~~ unacceptable ~~unless~~ to the UK unless significant ~~and wide ranging~~ improvements are made. The UK objects in particular to:

a) the cost to HMG of supporting an over-elaborate structure, ~~for the International Seabed Authority in the exercise of wide ranging regulatory powers based on central planning, ie. production limitation~~, provision for ~~participation in commodity agreements~~, compensation for land-based producers; and in particular the level of contributions required to support the Enterprise

b) the financial terms governing the participation of commercial operators, ~~which are onerous and take insufficient account of long term risks the scale of development costs, and the fact that an operator is not assured of an authorisation to exploit even if he has appropriate financial and technical qualifications;~~

c) the mandatory transfer of technology ~~to the Enterprise and~~ to developing countries which, is unacceptable to HMG as a precedent, and raises practical difficulties for commercial operators.

d) ~~the industrial arm of the Authority~~ will ~~benefit from more~~ favourable terms ~~and conditions than~~ with qualified commercial operators, ~~with whom it will be in competition;~~ compete on unfairly

/e)

e) the imposition of production controls, ~~by the Authority, to protect the economies of mineral producing developing countries from the impact of deep sea mining, would distort the development of the industry;~~

f) the provision for a future Review Conference which could alter the mining regime, ~~(though without prejudice to miners then operating) would create uncertainty, and could impose on the minority of industrial states taking part in such operations the views of the majority with which they disagree;~~

g) the decision-making machinery in the Authority does not necessarily give adequate weight to States which are major financial contributors.

PART XII : (Articles 192-237) Protection and Preservation of the Marine Environment.

This is acceptable to the United Kingdom. It would be of benefit in helping to control marine pollution by implementing the provisions of other more detailed regional marine pollution Conventions to which the UK is already party. It would also set limits to wider claims to pollution jurisdiction by other countries.

PART XIII : (Articles 238-265) Marine Scientific Research.

The provisions for Marine Scientific research involve a great degree of control by coastal states. However, this control is already being exercised by coastal states without reference to the Convention. The Natural Environmental Research Council (NERC) believe that signature of the Convention should be of benefit in obtaining clearances for research cruises from countries critical of our policy, and in obtaining agreement on understandings designed to circumvent the increased amounts of bureaucracy presently being encountered. These advantages would be gained by signature without ratification.

PART XIV : (Articles 266-278) This deals with marine technology.

The UK is broadly in favour of the aims of this part. The section dealing with transfer of marine technology promotes, but does not compel transfer.

/PART XV

2. Customary Law

The issue of whether the advantages to be found in the Convention described above are to be derived only from participation in the Convention or whether we can claim these as already forming part of international customary law is considered separately and in detail in the Paper from the Law Officers.

3. Prospects for Improvements to the Seabed Mining Regime

~~There are a number of predictions about how Part XI might develop which can be summarised as follows:~~

~~i. Part XI will be elaborated by the Preparatory Commission along the lines indicated by the Convention text within a relatively short period.~~

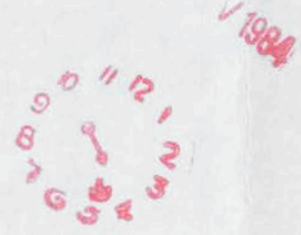
~~ii. Part XI will be modified or adapted.~~

~~iii. Part XI is totally unrealistic and will be shown to be unworkable which would require a new regime to be devised.~~

~~The most likely outcome probably lies between options ii) and iii).~~ The Preparatory Commission has so far shown no disposition to contemplate changes to the fundamental principles on which Part XI is based and, initially, the scope for change will almost certainly be limited to achieving a greater realism about the manner in which the mining regime operates. ~~The FCO believe that~~ However because of the ability to block proposals (through the need for consensus on important issues) signatories can prevent unacceptable developments. It may also be possible over the next 5-10 years, working with other likeminded industrial states which are signatories, to get modifications which limit the operational role and functions of the seabed institutions and their cost. However, ~~the Department of Trade and Industry~~ there remains ~~sceptical~~ scepticism about the prospects of an acceptable regime being negotiated until it is shown to be unworkable which, given the likely 10-15 years timescale for deep sea mining, may take 20 years.

in the Preparatory Commission.

/4.



C. Powell OK
(I 'phoned + gave them a cautious view as we discussed).
JR 4/12/84

The British Maritime League

19 Bevis Marks, London EC3A 7JB
Telephone: 01-621 1739 Telex: 885395 INCH GP

FROM: The Director.

23rd November 1984.

MBFR.

Ranken said 116 straits now within 12 mile limits under new convention could be difficult. May not all be covered by customs/international law with more than lose by signing. RTZ/Shell could live with it. Do not have to ratify immediately.

John Redwood, Esq.,
Prime Minister's Policy Unit,
10 Downing Street,
LONDON SW1.

Dear Mr. Redwood,

The United Nations Convention on the Law of the Sea

The United Kingdom has not so far signed the above Convention, which closes for signature on 9th December.

You may have seen my letter in 'The Times' on 12th November (enclosed), and possibly heard my interview the next day on the Today Programme, both just before this matter was discussed by the Parliamentary Maritime Group; it has also been aired at many meetings in recent months, including at Brighton during the Party Conference. Numerous representations have also been made to the Departments.

I have been in touch with a number of companies, organisations and individuals over the past few days, all of whom feel very strongly that we should sign, for reasons which are set out in some detail in the enclosed notes.

I am advised that it is now too near the deadline to risk trying to do more through the Departmental Ministers, so many of whom are involved anyway, that the issues tend to fall between far too many stools.

I am therefore writing to you, as I know you and your colleagues will give reasoned consideration to the long-term implications and to the pros and cons of signing.

I have no doubt that we should sign, observing that ratification can wait for several years during which improvements may well be achieved, not least with the aim of attracting the United States to reverse its decision not to sign, on extraordinarily flimsy grounds. The next administration may well revert to approval of the Convention, especially if the Democrats return to power. Four or five years is not long in the field of Treaty ratifications.

I hope we shall decide to sign, as I hear there are second thoughts on the issue.

Best Regards
Yours sincerely
Michael Ranken

M.B.F. Ranken.

Encls.

THE TIMES 12 Nov. 84

T. 12.11.84

Time to clinch Law of the Sea pact?

From the Director of the British Maritime League

Sir, The United Nations Convention on the Law of the Sea closes for signature on December 9. The United Kingdom is one of very few countries that have so far delayed signing, though the United States has declared that it will not sign because it objects only to part XI (out of XVII) dealing with what remains of "the common heritage of mankind" – "The Area" defined as "the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction," i.e., more than 200 nautical miles from any state's coastal baselines.

The area is principally of interest for the poly-metallic nodules that proliferate over major parts of the deep seabed; these are unlikely to be of much economic importance for 25 to 30 years or more, but the United States have enacted their Deep Seabed Hard Mineral Resources Act 1980 (PL 96-283) by which they propose to provide a number of United States-led seabed mining consortia with national licences that are presumably expected to be protected in international waters by the United States Government against the jurisdiction claimed by the vast majority of the United Nations community of nations that adhere to the new Convention.

Although untrue, the United States does not consider itself a maritime nation. But by no stretch of the imgaination can this be said of the United Kingdom, which is totally dependent on seaborne trade, with its vital merchant fleet, London as the world maritime centre, and the world's third largest Navy.

We have a substantial offshore industry and important fishing fleets, worldwide submarine cable responsibilities, major research and hydrographic interests. International shipping (and aviation) require freedom of navigation, security against piracy and the arbitrary interference of nearby coastal states or hostile warships.

The United Nations Convention codifies for the first time virtually every facet of maritime law in a period when the world community is extending its use, jurisdiction and authority over the 72 per cent of the earth's surface covered by seawater. Non-contracting parties may seek to rely on current customary law and hope that this will absorb most of those parts of the Convention that they accept. But there is no certainty of that.

Other major countries that have signed no doubt feel that they can live with the deep seabed provisions if and when they are implemented, or that they can work to improve them as signatories, in a way that would be impossible from outside the treaty.

Shipping will always be far more important to the world economy than the resources of the deep seabed. In the absence of the old "Pax Britannica," or any "Pax Americana" to replace it, an internationally-accepted rule of law will have immense benefits to every maritime state, not least by facilitating the elimination of sub-standard ships and the protection of the environment by improved international standards and better behaviour at sea.

Britain and remaining doubters in the Community should certainly sign now and not follow President Reagan's ill-considered refusal to do so for most doubtful reasons; any marginal electoral benefits to him of satisfying the mining industry have no relevance to Europe.

The rest of the Convention is far too important for us to seek to ignore what we did so much to draft to suit our own principal interests.

Yours faithfully,
MICHAEL RANKEN, Director,
The British Maritime League,
19 Bevis Marks, EC3.
November 5.

MBFR. 22nd November 1984.

WHY THE UNITED KINGDOM MUST SIGN THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Open for Signature from 10th December 1982 to 9th December 1984

** The United Kingdom has not signed the Convention **

(Full Text Miscellaneous No. 11 (1983) Cmnd. 8941)

To Date:

136 countries have signed including most of the Commonwealth (Australia, Canada, India, New Zealand amongst the) and half the EEC members (Denmark, France, Greece, Ireland, Netherlands).

37 countries have not signed, including half the EEC members (Belgium, Federal German Republic, Italy, Luxembourg, United Kingdom).

The EEC (which represents all its member states in certain international bodies, and for specific competencies under the Convention) is also entitled to sign, but is unlikely to do so until all or almost all its members have also done so.

The United States have declared that they will not sign.

'The Convention shall enter into force 12 months after the date of deposition of the 60th instrument of ratification or accession.'
'No reservations or exceptions may be made to this Convention ...'

* * * * * *

The Vienna Convention on Treaties makes it clear that signature does not bind a state to a treaty; the present Convention (UNCLOS) provides for signature without ratification. The only obligation is to refrain from acts that would defeat the objects and purposes of the Convention.

FCO Ministers have argued that we should not sign unless we intend to ratify it fairly soon, but the following precedents indicate that there is little urgency:

1. In 1971 we signed the IMO Convention on Liability for Carriage of Nuclear Material in Ships, but have not yet ratifed it.

2. In 1977 we signed the North West European Offshore Civil Liability Convention, but have not yet ratified it.

3. In 1977 we signed the Geneva Convention on the Laws of War, but have not yet ratified it.

4. In 1974 we signed the 1973 MARPOL Convention of IMO, but only ratified it in 1980, when a Protocol had been negotiated to amend it before entering into force, allowing ratification with acceptance of some, but not all of its annexes.

The UNCLOS does not in general permit reservations, but does allow for declarations on the harmonisation of a State's own laws at the time it signs the Convention.

We could by declaration make it clear that we do not intend to ratify unless modifications are made to the Convention's mining regime, eg. by a Protocol similar to 4. above.

The time needed for such Conventions to enter into force is seldom less than 5 years, eg. the 1958 Geneva Conventions took 6 years and IMO's much simpler ones have averaged 5 years.

/...

Our position is very different from that of the United States; they might be able to go it alone - we certainly could not, and our maritime interests and dependence on the sea are far greater.

The Law of the Sea Convention 1982 is the first and only comprehensive attempt to codify the whole spectrum of maritime law, whether customary or the subjects of earlier conventions, or not laid down at all. It goes far towards replacing anarchy by order in an interlocking framework covering virtually all maritime activites.

British legal, scientific and technical experts were in the forefront of drafting and negotiating the texts that have emerged, by compromise and give and take, and by consensus into an intricately linked package deal treaty, with many cross-referenced mini-packages within it.

The Convention comprises 320 Articles divided into XVII Parts, and there are also IX mainly lengthy Annexes.

XVI Parts and 262 Articles deal with many previously unsettled and contentious issues, some arising out of changing demands, vastly increased populations, and rapid advances in technology in fisheries, mining, oil exploitation, navigation (both merchant and warships and aircraft), research, and so on; Britain fought long and hard for the principle of innocent passage and its proper definition to suit today's conditions.

These Articles bring in the 1958 Conventions and revise them in line with the latest technology, and deal with coastal states' jurisdictions - the continental shelf, the 12 n.miles territorial sea and the 200 n.miles Exclusive Economic Zone; the 12 n.miles territorial sea is very important to the United Kingdom in the limitation of oil pollution and the enforcement of the IMO traffic separation schemes. Without the Convention, there would be creeping jurisdiction over the economic zones, leading to unilateral actions, eg. the fishing limits which led to the 'European fisheries pond' in 1977.

There is provision for the conservation of resources, restrictions on coastal states, international standards, enforcement of pollution standards, port-state jurisdiction, co-operation between states, rules for marine scientific research, artificial islands, other offshore activities, mini-packages within the Convention.

The new definition of the Continental Shelf and its deliniation are important to us, eg. off North West Scotland and Rockall.

The single most criticised section is Part XI and 58 Articles dealing with 'The Area' ie. 'the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction,' which extends to 200 n.miles and sometimes beyond but not exceeding 350 n.miles from coastal baselines, in cases where the continental margin extends beyond 200 n.miles; The Area thus embraces the deep ocean floor mostly beyond 2,500 m. (8,200 ft.) depth of water below the surface.

The Area thus becomes 'the common heritage of mankind' and a Seabed Authority and an Enterprise (neither of them UN bodies) will be established to administer and exploit the Area, with competent industrial mining companies. The United States accuse the Convention of being a 'thinly-disguised give-away,' but this is not so.

/...

Although potentially bureaucratic, the regime does provide security of title and tenure, which often do not exist on land in numerous developing countries. How the regime develops depends on the effort applied by the signatories to making it practical and effective.

National legislation is no substitute for an international regime, as it gives no security of title, eg. the United States Deep Seabed Hard Mineral Resources Act 1980 (PL 96-283), which may have to be backed up by force. Deepsea mining has not so far started because mining companies will require guarantees from their own governments before they begin any serious exploitation.

Seabed mining is in any case hypothetical for a long time ahead, when the depletion of land reserves, or restricted access to them, begin to make the far greater financial and technological risks attractive to mining companies' investors. But. Mr. Mark Littman , Chairman of RTZ Deep Sea Mining Enterprises, in a paper given at the Greenwich Forum IX Conference on 14th September 1983, stated that, although the nodules do represent a large potential source of important metals, "The world will not run out of land based reserves for many years; large sums of money need to be spent on research and development before full scale deepsea mining can take place; the existing legal climate for deepsea mining is both confused and unattractive; nodules represent an expensive source compared to existing land reserves; and there are no compelling political or strategic reasons for deepsea mining. ... A factory ship sucking up nodules in the middle of the Pacific does not seem to be a particularly secure source."

Polymetallic sulphides have been discovered as a new reserve which may well be more attractive than the nodules.

What makes signature of the Treaty before 9th December 1984 is the Preparatory Investment Protection (PIP) resolution under which mining companies can enjoy special status as 'pioneer investors,' which virtually guarantees access to future seabed mine sites offered under this resolution, truly a major concession to the industrialised countries by the 'Group of 77' developing countries.

If we stay outside the Convention, it is highly unlikely that legal title can be established that is not susceptible to threats of international litigation instigated by the 'Group of 77.'

Whatever the potential defects of Part IX, the Convention does provide a stable framework for deepsea mining.

Major companies with interests in deepsea mining, like Shell and BP, have indicated that they are in favour of signing the Convention. Every Department of State except Industry (or Energy?) is also understood to be in favour - FCO, Defence, MAFF, Transport, Environment, DES, Scotland amongst them.

Some countries, including the United States and the United Kingdom, are said to be in the process of setting up mini-treaties outside the Convention. This is dangerous as likely to lead to conflict with the majority who have signed it. There is provision for mini-treaties <u>within</u> the Convention.

/...

Reliance on previous customary law, and the hope that this will embrace most of what non-signatories like in the Convention, is a most uncertain assumption.

The United States have abdicated their leadership role. It is inconceivable that the United Kingdom should follow their example, not least as our Commonwealth partners want us to sign, and a lead from us will probably sway the remaining EEC member countries also, to the great benefit of European Community interests in shipping, fisheries, offshore, defence, the environment and much else.

Failure to sign will result in a loss of credibility and goodwill, and accusations of bad faith for ill-considered short-term reasons that ignore the long-term common good and the poorer nations' search for better world co-operation.

Reclaiming our influence later would not be easy.

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THE MINISTER OF STATE

Alistair Harrison Esq
Private Secretary to
Tim Renton Esq MP
Minister of State
Foreign and Commonwealth Office
Whitehall
LONDON
SW1A 2AL

CDP
23/11

23 November 1984

Dear Alistair.

UN LAW OF THE SEA CONVENTION

will request if required

The Minister has carefully considered the paper attached to Tim Renton's letter of 22 November. He did not feel that the paper gave a reasonable balanced view of the position. In particular it left the impression that all matters of concern to this Department were uncertain, rather than clearly disadvantageous, while all the rest of the text was advantageous, where we think it at best acceptable.

Accordingly I attach a revised version of substantial sections of it. For ease of reference I have sidelined the main changes.

Given the urgency and implications for other Departments I am copying this to the Private Secretaries to the Chief Secretary, Financial Secretary the Attorney General, Lord Advocate, Norman Lamont, David Mitchell, John Stanley, Sir Robert Armstrong, and to the Prime Minister's Office.

Yours Sincerely
Sue Killen

S A KILLEN
Private Secretary

UNLOSC: BALANCE OF ADVANTAGES AND DISADVANTAGES FOR UK: SUMMARY

Preamble: undesirably endorses the concepts of the new international economic order and the common heritage of mankind, neither of which is of benefit to the UK.

Part I: definition of various terms

No definition is disadvantageous.

Part II: the limits of the territorial sea

Innocent passage in the territorial sea and the contiguous zone. Advantageous.

Part III: straits used for international navigation and the question of transit passage

Advantageous, but question about the extent to which customary international law already provides for the rights embodied in the Convention.

Part IV: the (new) concept of the 'archipelagic' state

Same advantages to shipping and aircraft as in Part III but disadvantageous in that it could strengthen the claims of the Faroes in delimitation negotiations with the UK about the continental shelf.

Part V: Exclusive Economic Zone of 200 miles from baselines.
Already established as part of customary international law.
It is not clear how far the concept of partial abandonment of offshore installations can also be regarded as established customary law, but the UK will in any event have to act on this before the Convention comes into force.

Part VI: the continental shelf
Generally disadvantageous. This section includes three provisions which could prove very damaging to the UK: the definition of the extent of the continental shelf, the establishment of a Boundary Commission to advise on the outer limit of states' continental shelf (where Iceland and Denmark have already made claims which conflict with our own), and the sharing of oil revenues derived from the continental shelf beyond 200 miles. These are examined in this paper and in the paper by the Law Officers.

Part VII: the high seas.
Advantageous, notably in its provisions regarding unauthorised broadcasting.

Part VIII: regime of islands.
Disadvantageous, in that it weakens the UK's position on delimitation, especially with Ireland. The implications of the provision that rocks which cannot sustain human habitation or economic life (such as Rockall) shall have no continental shelf of their own is examined in the Law Officers' paper.

Part IX: gulfs and basins.

Of no interest to the United Kingdom.

Part X: right of land-locked states to access to and from the sea.

Of no interest to the United Kingdom.

Part XI: deep seabed mining.

The present provisions are objectionable to the United Kingdom.

Part XII: marine environment.

Acceptable.

Part XIII: marine scientific research.

Advantageous.

Part XIV: development of transfer of marine technology

Acceptable.

Part XV: settlement of disputes

Neither advantageous nor disadvantageous.

Part XVI: general provisions (peaceful uses of the seas, archipelagic and historical objects, responsibility and liability for damage)

Neither advantageous nor disadvantageous.

Part XVII: final provisions:

Signature, ratification, entry into force etc. Neither advantageous nor disadvantageous.

UN LAW OF THE SEA CONVENTION : BALANCE OF INTERESTS IN THE UNITED KINGDOM

This paper considers the various aspects of the Convention, and indicates whether they are advantageous or disadvantageous to the United Kingdom.

1. The Provisions of the Convention

THE PREAMBLE : This refers to the need to adopt a new and generally acceptable Convention on the Law of the Sea which will contribute to the realisation of a just and equitable international economic order which takes into account, the concept of the common heritage of mankind in the deep seabed.

The Preamble consists of recital; while it is not normative, it undesirably endorses the concepts of the new international economic order and the common heritage of mankind neither of which is of benefit to the UK and both of which benefit the developing countries at the expense of the UK and other industrialised countries. These concepts are also spilling over into other UK interests eg our claims in Antarctica.

PART 1 : (Article 1) This defines various terms. No definition is disadvantageous to the UK.

PART II : (Articles 2-33) This deals with the limits of the territorial sea, innocent passage in the territorial sea and the contiguous zone.

This part of the Convention is advantageous to the UK. It deals in a helpful way with the limits of the territorial sea and contiguous zone, the rights of the coastal state and the rights of innocent passage for third parties The UN Law of the Sea Convention has the first specific reference to a right to extend territorial seas to 12 miles (though it is probable that such extensions could be claimed as customary law). This reference is in our interests since it will inhibit claims to a territorial sea of greater extent (eg the 200 miles claimed by certain Latin American states). There are also argued to be advantages to British shipping, not provided elsewhere, which prohibit coastal states from seeking to prescribe construction or manning requirements on foreign ships in the territorial sea. Although it is doubtful whether they would enforce such prescription under international law as it stands. As with other benefits under the Convention we could not claim these as of right unless we ratified, but signature would enable us to quote the Convention in support of other arguments.

PART III : (Articles 34-45) This deals with straits used for international navigation and in particular with the question of transit passage.

This section is considered by the Whitehall Departments concerned to be particularly advantageous to the UK. The idea of transit passage was negotiated by the UK and other maritime states at the Law of the Sea Conference in order to assure continued and in some cases improved freedom of navigation through, and overflight of, international straits whose waters would be entirely taken up by the territorial sea of coastal states under extensions of the territorial sea to 12 miles. Transit passage permits submerged passage by submarine and allows ships to fly their aircraft. It also extends the right of transit passage to military aircraft which do not presently enjoy the right of innocent passage and must obtain diplomatic clearance.

The question of whether this aspect of the Convention is a new concept or can be argued as having become customary international law is considered separately in the Law Officers paper. In precise legal terms, the right of transit passage as defined in the Convention can only be assured by the Convention coming into force and our being a party to it by ratification or accession. Howvever UK maritime interests consider that the exercise in practice of these rights would be significantly facilitated if we signed. The provisions for military aircraft to claim overflight rights of transit passage through international straits are entirely new and thus cannot be considered as customary international law. Britain could, on political rather than narrow legal grounds, encounter difficulties after the signature period has ended as some coastal states (eg Iran and Indonesia) have already stated that the benefit of transit passage should be denied to non-signatories. The UK would be particularly vulnerable in that most other countries which have not signed are either (the US) in a position to obtain these rights by force, or do not have extensive maritime interests at risk.

PART 1V : (Articles 46-54) This deals with the new concept of the 'archipelagic state'. Under this, states (such as Indonesia) which consist of a number of islands are able to claim the waters within the island area as archipelagic seas, and to establish their territorial seas and therefore their claims to continental shelf areas from baselines drawn around the archipelagos as a whole. Thus in the case of the Faroes, this would enable them to claim a much larger area of territorial sea and continental shelf, the latter at the expense of the UK.

Within Part 1V, in order to compensate for the new concept of archipelagic states, the maritime nations negotiated a further concept of 'archipelagic sea lanes passage' which is similar to transit passage. Again, the objective is the establishment of an irrevocable right to free passage for the ships and aircraft of other nations.

Similar arguments to those discussed under transit passage apply in considering whether this concept derives from the Convention or can be considered as being customary law. This is again considered in the paper from the Law Officers. The proposition that it is customary law is likely to be strongly resisted by major archipelagic states such as Indonesia and the Philippines.

PART V : (Articles 55-75) This deals with the Exclusive Economic Zone, whereby states have certain limited rights as regards living resources in the oceans beyond the territorial seas and up to 200 miles from baselines.

The Exclusive Economic Zone concept is advantageous to the UK in that it comprises the right we claim to a 200 mile fishing zone. Such rights however have sufficiently developed in customary international law.

A particular provision of this Part however is new. The recognisition in Article 60.3, that complete removal of abandoned offshore (oil and gas) installations which is required by the 1958 Geneva Convention may not be necessary, is in principle advantageous to the UK since the costs of removal represent a resource loss to the UK. partial removal, compared with complete removal, could eventually save the Exchequer up to about £2000 million and UKCS licensees up to £1000 million. The question of whether one can present a case for this aspect of the Convention being considered as customary international law, or whether it can only be claimed as stemming from the Convention is discussed in the Law Officers paper. But it should be borne in mind that the UK is likely to have to take decisions on the extent of removal of installations before the Convention comes into force and before any internationally agreed criteria on partial removel can be established. Thus what the UK does in this area will contribute substantially to customary international law.

PART VI : (Articles 76-85) This deals with the continental shelf. There are three concepts contained within it which raise potential difficulties for the UK. These are: (a) definition of the continental shelf; (b) the Boundary Commission; and (c) payments and contributions with respect to exploitation beyond 200 nautical miles.

(a) Definition of the continental shelf. The definition of the margin of the continental shelf, although it consolidates the development of existing customary international law, which is generally advantageous to the UK, towards acceptance of the idea of natural prolongation of land-mass and that the continental shelf can extend beyond 200 miles at least to the foot of the continental slope (an important concept for the UK), does not provide a watertight defence of the UK position. In particular there would remain substantial scope for argument about the nature of the evidence we would adduce in support of our claims. The question of which aspects of the Convention definition of the continental shelf shall be considered as customary law and which as new legal concepts is discussed in the Law Officers paper.

(b) Article 76 of Part V1 provides for a Commission on the limits of the continental shelf to make recommendations to coastal states on the outer limits of their shelf, and for the limits established by a coastal state on the basis of these recommendations to be final and binding. The Commission would not judge bilateral disputes between nations, (and indeed the article relating to the Commission is expressly said not to prejudice delimitation between neighbouring states) but only advise on the outer limit of the continental shelf claimed by an individual country, participation or non-participation by the UK in the Convention would not affect the ability of another state to take the question of its outer limits to the commission. The question of where the outer limit of another country was established could have adverse implications in practice for the UK if the Commission recognise limits of another state inconsistent with our claims. The Commission would have a membership dominated by the G77 which would be unlikely to make it objective. By signing the Convention we would in effect be committing ourselves to accept the Commission's determination on the conflicting claims of Denmark and Iceland over a substantial part of our outer continental margins as well as probable claims by the International Seabed Authority to extensive areas of our Continental Shelf, including areas which we have already designated.

(c) Sharing of Oil Revenues from Exploration of the Continental Shelf beyond 200 nautical miles. The rapid development of deep water technology suggests that exploitation of parts of the outer continental shelf claimed by the UK and in part already designated for hydrocarbon exploration purposes could become a reality within the next 20 years. The sharing of revenue would require the UK to give up between 1-7% in the period following the first 5 years of commercial production. If as seems likely, this percentage was applied to the gross rather than the net revenues, this provision could be very onerous in the UK, since the costs of exploitation are likely to be very high. Since there are no provisions for changing this part of the Convention, signature implies acceptance of the financial obligation in respect of sharing oil revenue. These issues are examined further in the Treasury paper.

PART VII: (Articles 86-120) This deals with the high seas.

This part of the Convention is regarded as advantageous to the UK. It provides regulations which meet our needs. Much represents existing customary or conventional law. The Department of Trade and Industry regard Article 109 dealing with unauthorised broadcasting from the high seas as giving advantages not obtainable from other sources. Signature would enable the UK to refer to the inclusion of the concept in the Convention as part of justification of national action though only ratification would enable us to claim co-operation from other states on the basis of the Article. For the same reason, we cannot claim the benefit of Article 108 (Illicit Traffic in Narcotic Drugs).

PART VIII: (Article 121) (Regime of Islands) paragraph three of article 121 on the regime of island states that rocks which cannot sustain human habitation or economic life shall have no continental shelf of their own.

This provision is disadvantageous to the UK, since if we could claim a territorial sea and continental shelf in respect of Rockall, this would strengthen our position considerably in continental shelf delimitation negotiations, particularly with Ireland. In this respect Article 121(2) of the new convention is far more specifically unhelpful to us than customary international law or the 1958 Convention These issues are further discussed in the Law Officers paper. British Geological Survey (BGS) would like to emphasise the importance of making sure that no concession is made over the status of St Kilda or similar islands (eg North Rona) that do not at present have a population as part of national territory.

PART IX : (Article 122-123) This deals with gulfs, basins or seas surrounded by two or more states and connected to another sea or ocean by a narrow outlet.

This part is not of interest to the UK and carries no disadvantage or advantages for us.

PART X : (Articles 124-132) This deals with the right of access of land-locked states to and from the sea.

It is not of interest to the UK and carries no disadvantages or advantages.

PART XI : (Articles 133-191) (and Annexes III and IV) : These establish a regime to govern deep seabed mining of polymetallic nodules and any other resources (though not fish in the suprajacent waters) in the 'Area' ie the seabed and ocean floor beyond the limits of national jurisdiction, which is declared to be the common heritage of mankind. It envisages the creation of the International Seabed Authority to organise and control activities in the 'Area' in accordance with the parallel system which provides for an industrial arm of the Authority, ie the Enterprise, to

/compete

10 DOWNING STREET

From the Private Secretary

16 November 1984

UNLOSC

I enclose a copy of a message from the Taoiseach in which he urges the United Kingdom to sign the UN Convention on the Law of the Sea.

I should be grateful for a draft reply.

(C.D. POWELL)

C.R. Budd, Esq.,
Foreign and Commonwealth Office.

10 DOWNING STREET

From the Private Secretary

14 November 1984

UNLOSC

I enclose a copy of a message to the Prime Minister from President Reagan about signature of the United Nations Law of the Sea Convention. I should be grateful for a draft reply.

(C.D. POWELL)

L.V. Appelyard, Esq.,
Foreign and Commonwealth Office.

EMBASSY OF THE UNITED STATES OF AMERICA
LONDON

November 14, 1984

Dear Prime Minister:

I have been asked to deliver the attached message to you from President Reagan, which was received at the Embassy this morning.

Sincerely,

Charles H. Price II
Ambassador

Enclosure:

CONFIDENTIAL

The Rt. Hon. Margaret Thatcher, M.P.,
Prime Minister,
10 Downing Street,
London, S.W.1.

ENDASSY OF THE UNITED STATES OF AMERICA
LONDON

14 NOV 1984

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T189A/84

Oifig an Taoisigh
Office of the Taoiseach

12 November, 1984.

Prime Minister
He may raise
this with you
at the
week-end.
CJJ
16/xi

Rt. Honourable Margaret Thatcher, M.P.,
Prime Minister.

Dear Margaret,

No. 10

As you will be aware the closing date for signature of the UN Convention on the Law of the Sea, 9 December, 1984, is now very close.

The Irish Government see the Convention as probably the most significant achievement of the United Nations in recent years and one which should not be diminished by lack of support, in particular by the major industrialised countries.

The failure of the Convention for lack of support, because of present dissatisfaction with one aspect of what is a very comprehensive instrument, would have a disproportionate effect in relation to the benefits to the international community which support of the Convention could confer.

Apart from the benefits which will accrue particularly to coastal States, including the European Economic Community, there is the overall contribution towards a stable world order and a reduction of international tension which support for the Convention, which lays down generally acceptable rules for a large proportion of the world's surface, will provide. On the other hand action by some States to claim marine jurisdiction in excess of what is permitted under the Convention could adversely affect the major maritime and industrialised countries such as the United Kingdom. Similarly the uncertainty as to whether States would consider engaging in sea-bed mining outside the Convention regime could increase tension and adversely affect North/South relations.

Given that the crucial date falls within the term of the Irish Presidency of the Council of the Communities I am also concerned to ensure, if possible, that the European Economic Community should be in a position to sign this Convention. As you will know, the condition which would enable such signature is that a majority of the Member States should also be signatories. To date, only five Community Member States have signed the Convention.

I am aware of the United Kingdom's preoccupations regarding the Convention which relate in particular to some of the provisions covering the regime for the international sea-bed area. This regime is a new venture and one which, in my view, can only develop successfully as more information becomes available and as the countries most directly concerned contribute towards the working of the regime. In this context, it seems that the Preparatory Commission is the only appropriate forum in which to elaborate the procedures and provisions for implementation of the Convention and that it is therefore in the interest of the States concerned to be members of the Preparatory Commission and thus to participate in its decision making. It may be possible in this way to alleviate some of the fears which the mining industry now understandably has in relation to what is a new and developing aspect of their industry and to give it an opportunity, indirectly, to have a voice in how the regime will evolve.

In relation to the Community, I would stress that virtually all areas of the Convention where there is Community competence are considered totally satisfactory and it is appropriate in my view therefore that the Community should be in a position to sign before the closing date. In addition to being detrimental to the interests of those Member States which have signed the Convention and whose direct national interests are affected, non-signature prejudices the position of the Community itself which supports the majority of provisions in the Convention.

It does not appear that the interests of the United Kingdom would be damaged by the signature of the European Economic Community and in effect it could be helpful in the future work of the Preparatory Commission. Signature merely commits a signatory not to act against the objectives of the Convention. By not signing, the opportunity for showing support for the Convention, with a minimum of cost, will have been lost. Accession will then be the only avenue available to States.

Oifig an Taoisigh
Office of the Taoiseach

I would, therefore, urge your support for the Convention and for signature, subject to ratification, by the United Kingdom.

Finally, I would urge, whatever the decision taken with regard to signature by the United Kingdom, that your Government facilitate signature by the European Economic Community if one other Member State signs the Convention before the closing date.

I have also written to the Heads of Government of other Member States which have not signed the Convention.

Garret FitzGerald, T.D.,
Taoiseach.

For. Pol. Law of the Sea Pt 2

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T193/84

CONFIDENTIAL

SUBJECT
cc. Master
OPS

Prime Minister
Received this
evening.
CDP 14/11

Dear Margaret:

As you know, the deadline for signature of the Law of the Sea Convention is fast approaching, and as far as I am concerned, it is not soon enough.

In the remaining weeks, it is our aim to maintain as much Western solidarity as possible. Despite signature by France and Japan, I believe we must strenuously urge the FRG, Italy and Belgium not to sign. Arthur Burns has conveyed my views to Chancellor Kohl, and similar demarches are being made in Rome and Brussels. We believe appeals on your part would be very helpful in countering the increased pressure proponents of the "new international economic order" are exerting on those governments during this time. We must make it clear that signature of the Convention will undermine our ability to negotiate a seabed mining regime in the future, which will attract and protect investment by private industry when the market warrants. Signature would mislead the developing countries to believe that the industrialized countries must ultimately accept the Convention in its present form.

Thank you for your help. We look forward to continued cooperation with the United Kingdom especially as we begin implementation of the provisional understanding regarding deep seabed matters, signed in August of this year.

Sincerely,

//S//

Ron

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

9 November 1984

UNLOSC

Thank you for your letter of 9 November enclosing a draft reply to Mr. Hawke's letter to the Prime Minister about the signature of UNLOSC.

Since our decision is imminent, I think it would be better to wait and let Mr. Hawke have a substantive reply. I am therefore suspending your draft. I should be grateful for a further draft in due course.

(C.D. Powell)

Peter Ricketts, Esq.,
Foreign and Commonwealth Office

CONFIDENTIAL

CONFIDENTIAL

ccPR

Foreign and Commonwealth Office

London SW1A 2AH

9 November, 1984

Dear David,

Thank you for your letter of 2 November with which you enclosed a copy of a message to the Prime Minister received from the Australian Prime Minister, Mr Hawke.

I enclose a draft reply to Mr Hawke with a covering letter to the Australian High Commissioner.

Yours ever,

Peter Ricketts

(P F Ricketts)
Private Secretary

David Barclay Esq
10 Downing Street

CONFIDENTIAL

CONFIDENTIAL

DSR 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM: Private Secretary,
Number Ten, Downing St

Reference

DEPARTMENT:

TEL. NO:

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

TO: His Excellency
Mr A R Parsons
High Commissioner for Australia
Australia House
Strand
LONDON WC2 B4LA

Your Reference

Copies to:

PRIVACY MARKING

.....In Confidence

CAVEAT.....

SUBJECT:

Thank you for your letter of 2 November with which you passed to the Prime Minister a cabled message from the Prime Minister of Australia about the UN Law of the Sea Convention.

I should be most grateful if you would send to Mr Hawke the enclosed reply from Mrs Thatcher.

CDP

Enclosures—flag(s).....

CONFIDENTIAL

DSR 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM:

Prime Minister

DEPARTMENT:

TEL. NO:

Reference

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

TO:

Mr R Hawke
Prime Minister of Australia

Your Reference

Copies to:

PRIVACY MARKING

.....In Confidence

CAVEAT.....

SUBJECT:

Thank you for your message about the UN Law of the Sea Convention which your High Commissioner in London passed to me on 2 November.

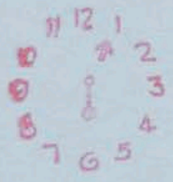
You urged that the UK should sign the Convention before the final date for signature. You draw attention to the advantages offered ~~by it~~ in areas other than deep seabed mining. We recognise that much in the Convention is helpful. But, as you noted, the regime presently envisaged for deep seabed mining causes us considerable concern.

We are aware of the significance of the final date for signature and are reviewing the work carried out by the Preparatory Commission during the last two years with its implications for the future. I shall take fully into account the points which you have made and your concerns and ~~will~~ let you know once we have made a decision.

Enclosures—flag(s).....

Foreign Pol: Laws of the Sea Pt 2.

9 NOV 1984



AUSTRALIAN HIGH COMMISSION

AUSTRALIA HOUSE
STRAND
LONDON WC2B 4LA
01-438 8000

THE HIGH COMMISSIONER

8 November 1984

See T184/84

2/11/84

Dear Mr Coles,

The attached envelope contains the original letter from Mr Hawke to Mrs Thatcher on the subject of signature of the Law of the Sea Convention, the text of which was conveyed in a letter from the High Commissioner on 2 November 1984.

Yours sincerely,

Patricia Paton

(Patricia Paton)

Mr A.J. Coles
Private Secretary to the
Prime Minister
10 Downing Street
LONDON SW1

I am against signature very strongly against. I don't like the agreement and I can't stand the proposed subterfuge

10 DOWNING STREET

From the Private Secretary

Prime Minister

UNLOSC

You have read the Foreign Secretary's paper recommending signature without a commitment to ratify.

You should see Mr. Walker's paper which recommends strongly against signature (Flag A).

You should also be aware that Lubbers has written to you strongly advising you to follow the Dutch example of signing without necessarily being ready to ratify.

C.D.P. 6/XI

B.06881

PRIME MINISTER

c Sir Robert Armstrong

United Nations Law of the Sea Convention: Future Options
(OD(84) 17 and 18)

BACKGROUND

Ministers decided in November 1982 that to sign the United Nations Law of the Sea Convention would, at that time, have been premature and tactically unwise, primarily because of the unacceptable features of its deep sea mining provisions.

2. Over the past two years, the strategy behind the 1982 decision to work with like-minded states through the Preparatory Commission for the necessary improvements to the deep sea bed regime has been pursued but with no useful result. The two year period during which the Convention remains open for signature expires on 9 December 1984: the question is whether United Kingdom interests would be better served, after that date, inside the Convention process as a signatory or outside it as a non-signatory.

3. Opinion in Whitehall is sharply divided. Some Departments (Ministry of Defence, Department of Transport, Department of Education and Science) favour signature because they see it as optimising the prospects of securing the important new benefits which the Convention confers. Others, notably the Department of Energy (who have set out their views in a separate memorandum (OD(84)18)) and the Department of Trade and Industry, regard the potential cost of signature as excessive, particularly as they believe that many of the new benefits of the Convention should accrue to us anyway under customary international law. A crucial factor in the

argument is the expert legal advice of the Foreign and Commonwealth Office: The Foreign and Commonwealth Secretary has concluded in his OD memorandum (OD(84)17) that on balance the advantages of signature, accompanied by a formal declaration of our reservations about ratification, outweigh the disadvantages.

4. OD has been expanded for this meeting. The Attorney General will be present. The Department of Energy will be represented by the Minister of State (Mr Buchanan-Smith), the Department of Trade and Industry by the Minister for Trade (Mr Channon), the Department of Education and Science by the Parliamentary Under-Secretary of State (Mr Dunn), and the Department of Transport by the Parliamentary Under-Secretary of State (Mr Mitchell). The Chief of the Naval Staff (Admiral Sir John Fieldhouse) and the Legal Adviser at the Foreign and Commonwealth Office (Sir John Freeland) have also been invited.

HANDLING

5. You will wish to invite the Secretary of State for Foreign and Commonwealth Affairs to introduce his memorandum and to explain why, in his view, the balance of advantage lies in favour of signature, accompanied by a declaration of reservation over ratification. To complete the case for signature, the Secretary of State for Defence, the Parliamentary Under-Secretary of State for Transport and the Parliamentary Under-Secretary of State for Education and Science might be invited to explain the position of their Departments.

6. You might then invite those opposed to signature, namely the Minister for Trade and the Minister of State, Department of Energy, to explain their views. Finally, the Chancellor of the Exchequer might comment on the financial implications.

7. In discussion, the following points will need to be addressed:

(a) Deep Sea Mining Provisions

There is no consensus among the potential United Kingdom operators (British Petroleum, Rio Tinto-Zinc and Consolidated Gold Fields) as to how their interests can best be protected against the possibility that deep sea mining might become a viable proposition around the year 2000. They regard the question of signature as one of political judgement. The Minister for Trade might explain why the position of the operators has changed since 1982 when they were strongly opposed to signature. Is there a real prospect of securing worthwhile changes to the deep sea mining provisions by participating as a signatory in the Preparatory Commission or is this an illusion?

(b) Rights of Transit Passage

There is no doubting the importance of the rights of transit passage in the Convention for ships and aircraft through international straits and archipelagic waters, both for defence and for commercial shipping interests. But are these likely to accrue in due course to signatories and non-signatories alike by becoming customary international law? If it is the case that we can expect to benefit, as non-signatories, from the favourable provisions of the Convention on the grounds that these have become part of customary international law, does it not follow that the unfavourable provisions - e.g. the mining regime - could also become customary international law unless we succeed, with others, in reforming them from within, as signatories, before they begin to operate? The Attorney General and the Foreign Office Legal Adviser should comment.

(c) Definition of Continental Margins and revenue sharing beyond the 200 mile outer limit

Is the risk to part of our outer Continental Shelf from the Boundary Commission a real one? Does it matter that uninhabitable islands (e.g. Rockall) are discounted under the Convention? How expensive might the commitment to share revenue from hydrocarbon exploitation beyond the 200 mile limit prove to be, granted that there would be a moratorium for the first five years of production at any site and a revenue sharing limitation of a maximum of 7 per cent? The Minister of State, Department of Energy and the Chancellor of the Exchequer should comment. Would this financial commitment only become operative after the United Kingdom has ratified, not signed? The Foreign Office Legal Adviser should comment.

(d) Diplomatic considerations

How likely is it that the Federal Republic of Germany will decide to sign? How would the United States react to signature by the United Kingdom? Would not non-signature increase our isolation? What are the prospects for securing a satisfactory common EC declaration of reservations about ratification before 9 December 1984? The Foreign and Commonwealth Secretary should comment.

CONCLUSION

8. Although the arguments are likely to be evenly balanced, there may be a slightly greater weight of opinion in favour of signature with a statement of reservations about ratification as the more prudent way of safeguarding United Kingdom interests in the long term. If this proves to be the case, the Committee might -

i. agree that the United Kingdom should sign the United Nations Law of the Sea Convention before 9 December 1984;

ii. invite the Foreign and Commonwealth Secretary to reflect, in a statement of reservations to be made on signature, the cautionary points made in the course of the discussion, and to clear the statement urgently with colleagues in draft;

iii. invite the Foreign and Commonwealth Secretary to seek maximum support for the statement of reservations from other industrialised countries, notably in the European Community, in advance of signature.

Bryan Cartledge.

B G Cartledge

5 November 1984

Foreign Pol Pt 2

Law of the Sea

CONFIDENTIAL

Mr. Boyd

7/i

5 November 1984

PRIME MINISTER

UNITED NATIONS LAW OF THE SEA CONVENTION

While you may find the recommendation of the Foreign and Commonwealth Office, together with the Cabinet Office, both forceful and persuasive to the effect that Britain should adopt the most unusual course of signing the above international Convention with no intention of ratifying it, this course has one risk that has not been set out clearly. We will be open to severe international criticism for this unless the reservations are exceptionally clear. If the reservation is not adequate, we will rightly be accused of double dealing. The principal reason for signing in this way - namely to maintain British influence on further negotiations - is a good one, provided the British signature to this convention is not a signal to other Western powers that we have capitulated over the main problems with the Treaty. The following matters should be made clear, in addition to, or together with, the matters set out in the Cabinet Office Annex, page 8. Accordingly, Britain must state that:

No - I remain against signature

1) It is not satisfied with the composition of the Council.

2) The powers given to the Council to control the production and the price of minerals in the sea bed are unacceptable. In particular, the power to govern production could, for example, allow the Council to ban

CONFIDENTIAL

the exploitation of manganese throwing Britain back on the only other Western producer - South Africa, a country uncontrolled by this Convention.

Conclusion

No

While signing this convention with clear reservations by 9 December must be right, the messages that go out at the time we sign must be carefully watched.

HARTLEY BOOTH

RESTRICTED

FILE

SH

c HMT DTI
LPO CAB
MOD LCO
LPSO
CO D/N

10 DOWNING STREET

From the Private Secretary

5 November, 1984

Dear Colin,

UNLOSC

The Netherlands Ambassador called this afternoon to deliver a message from Mr. Lubbers to the Prime Minister, urging that the United Kingdom sign the UN Convention on the Law of the Sea.

The Ambassador stressed particularly that in signing the Convention, the Netherlands Government had made an explicit statement that signature did not commit them to ratification. This was the first occasion on which they had made such a declaration.

The Ambassador also claimed that the Netherlands Government had good reason to think that the FRG would also decide to sign.

I am copying this letter to the Private Secretaries to members of OD, to Mike Reidy (Department of Energy) and to Richard Hatfield (Cabinet Office).

yours sincerely,

C. D. POWELL

Colin Budd, Esq.,
Foreign and Commonwealth Office

RESTRICTED

advance copy

Letter from Prime Minister Lubbers to Prime Minister Thatcher concerning the Law of the Sea.

The Hague, 5th November,1984

Dear Prime Minister,

As you will be aware, 9 December, 1984 is the deadline for signature of the UN convention on the Law of the Sea. Denmark, France, Greece, Ireland and the Netherlands have already signed the convention and there is a possibility that other EEC countries will follow suit before 9 December, 1984.

The Netherlands Government have strong objections to a number of the provisions relating to deep sea mining, such as the compulsory transfer of technology and the introduction of production ceilings, which could prevent deep seabed exploitation on a large enough scale and thus hamper commercial activities. Despite these objections the Netherlands Government decided to sign the convention in November, 1982.

One consideration which influenced the Netherlands' decision to sign was the fact that the convention is so comprehensive. As well as the seabed, it regulates for example the delimitation of maritime boundaries, innocent passage in the territorial sea and passage through straits, the regime of the exclusive economic zone and protection of the marine environment. There are important new rules which we believe will be beneficial to our trading and marine interests.

The Netherlands Government is also of the opinion that the improvements needed in the provisions relating to the deep sea mining regime can best be achieved through full and active participation in the work of the Preparatory Commission.

In a statement made on the occasion of the Netherlands becoming a signatory, and in a separate statement to the Netherlands Parliament, it was made clear that the decision to sign did not mean that the Government intended to ratify the convention, and that a separate decision in this matter would be taken subsequent to elaboration of the regime for deep sea mining and regulation of the financial burden to be borne by the parties after the convention enters into force.

../2

By signing the convention the United Kingdom would acquire a vote in the Preparatory Commission responsible for elaborating the rules laid down in the convention concerning the deep sea mining regime, this will increase the cohesion and negotiating strength in the Preparatory Commission of the group of six sea mining countries, namely the United Kingdom, Belgium, The Federal Republic of Germany, Italy, Japan and, in a coordinating role, the Netherlands. It is important that this group retain the maximum measure of influence in the negotiations in the preparatory commission so that it can work for an acceptable and realistic deep sea mining regime.

Signing the convention does not imply acceptance of the seabed regime. It does not for us. It is an indication of our country's willingness to conduct further negotiations in the Preparatory Commission and thus to seek to achieve a generally acceptable and practicable deep sea mining regime. In view of the above the Netherlands Government considers it to be of particular importance that the United Kingdom be among the signatories. The addition of the United Kingdom influence will improve the prospect of achieving a satisfactory amelioration of the deep sea mining regime.

Finally, I wish to inform you that I sent a letter of the same tenor to Federal Chancellor Kohl of the Federal Republic of Germany in view of the fact that in the Federal Republic a decision on the signing of the convention will be taken in due course.

Yours sincerely,

R.F.M. Lubbers

Subject

cPC

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T183/84

MINISTER-PRESIDENT

cc Master
OPS

No.:349949.

The Hague, 5th November, 1984.

Dear Prime Minister,

As you will be aware, 9 December, 1984 is the deadline for signature of the UN Convention on the Law of the Sea. Denmark, France, Greece, Ireland and The Netherlands have already signed the Convention and there is a possibility that other EEC countries will follow suit before 9 December, 1984.

The Netherlands Government have strong objections to a number of the provisions relating to deep sea mining, such as the compulsory transfer of technology and the introduction of production ceilings, which could prevent deep seabed exploitation on a large enough scale and thus hamper commercial activities. Despite these objections the Netherlands Government decided to sign the Convention in November, 1982.

One consideration which influenced the Netherlands decision to sign was the fact that the Convention is so comprehensive. As well as the seabed, it regulates for example the delimitation of maritime boundaries, innocent passage in the territorial sea and passage through straits, the regime of the exclusive economic zone and protection of the marine environment. There are important new rules which we believe will be beneficial to our trading and marine interests.

The Netherlands Government is also of the opinion that the improvements needed in the provisions relating to the deep sea mining regime can best be achieved through full and active participation in the work of the Preparatory Commission.

-In a statement.....-

The Right Honourable
Margaret Thatcher
Prime Minister
of the
United Kingdom.

Postbus 20001 - 2500 EA 's-Gravenhage - Kantooradres: Binnenhof 20 - Tel. 070 - 61 40 31

In a statement made on the occasion of the Netherlands becoming a signatory, and in a separate statement to the Netherlands Parliament, it was made clear that the decision to sign did not mean that the Government intended to ratify the Convention, and that a separate decision in this matter would be taken subsequent to elaboration of the regime for deep sea mining and regulation of the financial burden to be borne by the parties after the Convention enters into force.

By signing the Convention the United Kingdom would acquire a vote in the Preparatory Commission responsible for elaborating the rules laid down in the Convention concerning the deep sea mining regime. This will increase the cohesion and negotiating strength in the Preparatory Commission of the group of six deep sea mining countries, namely the United Kingdom, Belgium, the Federal Republic of Germany, Italy, Japan and, in a coordinating role, The Netherlands. It is important that this group retain the maximum measure of influence in the negotiations in the Preparatory Commission so that it can work for an acceptable and realistic deep sea mining regime.

Signing the Convention does not imply acceptance of the seabed regime. It does not for us. It is an indication of our country's willingness to conduct further negotiations in the Preparatory Commission and thus to seek to achieve a generally acceptable and practicable deep sea mining regime. In view of the above the Netherlands Government considers it to be of particular importance that the United Kingdom be among the signatories. The addition of the United Kingdom influence will improve the prospect of achieving a satisfactory amelioration of the deep sea mining regime.

Finally, I wish to inform you that I sent a letter of the same tenor to Federal Chancellor Kohl of the Federal Republic of Germany in view of the fact that in the Federal Republic a decision on the signing of the Convention will be taken in due course.

Yours sincerely,

(R.F.M. Lubbers)

Foreign Pol
Pt 2
Law of the Sea
BIUP 61.4

10 DOWNING STREET

From the Private Secretary

2 November 1984

I enclose a copy of a message which the Prime Minister has received from the Australian Prime Minister, Mr. Hawke.

I should be grateful for your advice and a draft reply for the Prime Minister's signature by Friday, 9 November.

(DAVID BARCLAY)

Peter Ricketts, Esq.,
Foreign and Commonwealth Office.

10 DOWNING STREET

From the Private Secretary

2 November 1984

In the Prime Minister's absence in India, I am writing to thank you for your letter of today's date, containing the text of a letter from Mr. Hawke.

I will, of course, place your letter before the Prime Minister immediately upon her return.

(DAVID BARCLAY)

His Excellency Mr. A.R. Parsons

CONFIDENTIAL

Subject

AUSTRALIAN HIGH COMMISSION

original attached

AUSTRALIA HOUSE
STRAND
LONDON WC2B 4LA
01-438 8000

THE HIGH COMMISSIONER

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T.189A/84

cc Mags
OPS

2 November 1984

My dear Prime Minister,

Mr Hawke has asked me to pass to you the following text of a letter concerning the Law of the Sea Convention.

Begins.

My dear Prime Minister,

I am writing to request that your Government reconsider its position on signature of the Law of the Sea Convention before that Convention closes for signature on 9 December 1984. In Australia there is bipartisan support for the Law of the Sea Convention and you may recall that previous Australian Governments have raised this matter with you.

Australia's decision to sign the Law of the Sea Convention was based on our assessment that a fair balance had been struck in the negotiations between the economic and strategic interests of all states, and that the Convention will provide a clear and agreed framework for all aspects of the Law of the Sea. It provides assured freedom of navigation, which is basic to the strategic mobility and trade of the western world, and provides agreed access to living and non-living resources.

We are aware that the United Kingdom and a number of other countries have not signed the Convention because of objections to its provisions for mining of the deep seabed. Australia, too, would have liked to have seen more practical provisions covering deep seabed mining, but we consider that the present Convention embodies the only package of measures likely to receive wide support in the foreseeable future. We believe that many of the details and practical workings of a deep seabed mining regime will evolve satisfactorily over the coming years through the Preparatory Commission for the Law of the Sea.

However, it is only by signing the Convention and participating fully in the work of the Preparatory Commission that western countries will be able to continue to influence the development of the Law of the Sea in a manner favourable to their interests. We believe that by signing the Convention the United Kingdom would be in a position to have the maximum influence upon the deep seabed mining regime, and ensure that it will be developed in the best way possible. If it were to sign the Convention, the prominent role that the United Kingdom would undoubtedly play in the development of the Law of the Sea through the Preparatory Commission, would also help to counteract the influence of the Soviet Union in this field.

Further, the Law of the Sea is seen by many developing countries as a test of western good faith in the equitable sharing of resources and in peaceful world development. We believe that it is most important that major western countries sign the Convention and thereby deny to the Soviet Union and its allies the opportunity to gain in political and strategic terms.

Australia sought a Comprehensive Treaty which covered all aspects of the Law of the Sea, and this has been attained. However, the participation of the United Kingdom, with its long historical maritime tradition and continuing economic and strategic interest in the peaceful use of the world's oceans and their resources, is very important if the Law of the Sea Convention is to develop into universally accepted international law.

I therefore very much hope that your Government, with its concern for the development of sound international relations, will give full weight to the above considerations and decide to join Australia and 137 other countries as signatories of the Law of the Sea Convention.

Yours sincerely

Bob Hawke

Ends.

.../3

The original copy of this letter will be sent on as soon as it is received.

Yours sincerely

A Parsons

A.R. Parsons

The Rt. Hon. Margaret Thatcher, MP
Prime Minister
10 Downing Street
LONDON SW1

MASTER
OBS
FOR. POL: Law of the Sea: Pt 2

T184/84

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T1834/84

PRIME MINISTER
CANBERRA

My dear Prime Minister,

2 NOV 1984

I am writing to request that your Government reconsider its position on signature of the Law of the Sea Convention before that Convention closes for signature on 9 December 1984. In Australia there is bipartisan support for the Law of the Sea Convention and you may recall that previous Australian Governments have raised this matter with you.

Australia's decision to sign the Law of the Sea Convention was based on our assessment that a fair balance had been struck in the negotiations between the economic and strategic interests of all States, and that the Convention will provide a clear and agreed framework for all aspects of the Law of the Sea. It provides assured freedom of navigation, which is basic to the strategic mobility and trade of the Western world, and provides agreed access to living and non-living resources.

We are aware that the United Kingdom and a number of other countries have not signed the Convention because of objections to its provisions for mining of the deep seabed. Australia, too, would have liked to have seen more practical provisions covering deep seabed mining, but we consider that the present Convention embodies the only package of measures likely to receive wide support in the foreseeable future. We believe that many of the details and practical workings of a deep seabed mining regime will evolve satisfactorily over the coming years through the Preparatory Commission for the Law of the Sea.

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prominent role that the United Kingdom would undoubtedly play in the development of the Law of the Sea through the Preparatory Commission, would also help to counteract the influence of the Soviet Union in this field.

Further, the Law of the Sea is seen by many developing countries as a test of Western good faith in the equitable sharing of resources and in peaceful world development. We believe that it is most important that major Western countries sign the Convention and thereby deny to the Soviet Union and its allies the opportunity to gain in political and strategic terms.

Australia sought a comprehensive treaty which covered all aspects of the Law of the Sea, and this has been attained. However, the participation of the United Kingdom, with its long historical maritime tradition and continuing economic and strategic interest in the peaceful use of the world's oceans and their resources, is very important if the Law of the Sea Convention is to develop into universally accepted international law.

I therefore very much hope that your Government, with its concern for the development of sound international relations, will give full weight to the above considerations and decide to join Australia and 137 other countries as signatories of the Law of the Sea Convention.

Yours Sincerely

Bob Hawke

The Rt. Hon. Margaret Thatcher, MP
Prime Minister and First Lord of
the Treasury
London
UNITED KINGDOM

Subject

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T183/84

10 DOWNING STREET

file Ko

a fro

cc Master
OPS

THE PRIME MINISTER

2 November 1984

Dear Prime Minister,

Thank you for your message about the UN Law of the Sea Convention which your High Commissioner in London passed to me on 24 October.

Your urged that the UK should sign the Convention before the final date for signature and draw attention to the advantages offered by it in areas other than seabed mining. We recognise that much in the Convention is helpful, particularly its provisions on navigation, pollution and the continental shelf. As you noted, however, the regime presently envisaged for seabed mining causes us considerable concern.

We are aware of the significance of the final date for signautre, and we are reviewing the work carried out by the Preparatory Commission during the last two years and its implications for the future. I shall take fully into account the points which you have made and will let you know once we have taken a decision.

Yours sincerely

Margaret Thatcher

The Honourable David Lange, M.P.

10 DOWNING STREET

From the Private Secretary

2 November 1984

Thank you for your letter of 24 October with which you passed to the Prime Minister a cabled message from the Prime Minister of New Zealand about the UN Law of the Sea Convention.

I should be most grateful if you would send to Mr. Lange the enclosed reply from Mrs. Thatcher.

CHARLES POWELL

His Excellency The Honourable W. L. Young.

10 DOWNING STREET

Prime Minister

UNLOSC

You wanted to refresh your memory on this. The paper is for discussion by OD on 7 November.

CDP

1/xi

ccpf

Foreign and Commonwealth Office

London SW1A 2AH

1 November 1984

Dear Charles,

Please refer to your letter of 24 October to Colin Budd about the message from the Prime Minister of New Zealand to the Prime Minister about the UN Law of the Sea Convention.

The question of whether the UK should sign the Convention is to be considered by Ministers at OD on 7 November, on the basis of a Memorandum from the Foreign Secretary. In view of this, we recommend a holding reply, offering to let Mr Lange know our decision once it has been made. I enclose a draft, which has been cleared with the DTI.

Yours ever,

Peter Ricketts

(P F Ricketts)
Private Secretary

C D Powell Esq
10 Downing Street

DSR 11 (Revised)

DRAFT: ~~minute/letter/teleletter/despatch/note~~ **TYPE:** Draft/Final 1+

FROM:
PS/No 10

Reference

LOABS

DEPARTMENT: TEL. NO:

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

PRIVACY MARKING

.....In Confidence

CAVEAT.....

Enclosures—flag(s).....

TO:

HE The Hon W L Young
High Commissioner
New Zealand High Commission
New Zealand House
Haymarket
LONDON
SW1Y 4TQ

Your Reference

Copies to:

SUBJECT:

1. Thank you for your letter of 24 October with which you passed to the Prime Minister a cabled message from the Prime Minister of New Zealand about the UN Law of the Sea Convention.

2. I should be most grateful if you would send to Mr Lange the enclosed reply from Mrs Thatcher.

CDP

DSR 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM:
The Prime Minister

LPOAST

DEPARTMENT:

TEL. NO:

Reference

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

TO:
The Hon David Lange MP
Prime Minister of New Zealand

Your Reference

Copies to:

PRIVACY MARKING

.....In Confidence

CAVEAT.....

SUBJECT:

Thank you for your message about the UN Law of the Sea Convention which your High Commissioner in London passed to me on 24 October.

You urged that the UK should sign the Convention before the final date for signature and draw attention to the advantages offered by it in areas other than sea-bed mining. We recognise that much in the Convention is helpful, particularly its provisions on navigation, pollution and the continental shelf. As you noted, however, the regime presently envisaged for seabed mining causes us considerable concern.

We are aware of the significance of the final date for signature, and we are reviewing the work carried out by the Preparatory Commission during the last two years and its implications for the future. I shall take fully into account the points which you have made and will let you know once we have taken a decision.

CDP

Enclosures—flag(s).....

Foreign Pol Pt 2
Law of the Sea

CCAC

NEW ZEALAND HIGH COMMISSION

NEW ZEALAND HOUSE · HAYMARKET · LONDON SW1Y 4TQ
Telephone: 01-930 8422 Telex: 24368

From the High Commissioner
H.E. The Hon. W. L. Young

31 October 1984

My Dear Prime Minister

See NZHC to PM 24/10

I refer to my letter of 24 October.

I now enclose the original of the letter from the Prime Minister, the Hon. David Lange, MP to you, the text of which was conveyed to you in my earlier letter.

Kindest Personal Regards
Yours Sincerely
Bill Young.

The Rt. Hon. Margaret Thatcher, FRS, MP
Prime Minister,
10 Downing Street,
LONDON SW1.

10 DOWNING STREET

From the Private Secretary

24 October 1984

I enclose a copy of a message to the Prime Minister from the Prime Minister of New Zealand about the Law of the Sea Convention. I should be grateful for an early draft reply.

(C.D. POWELL)

C.R. Budd, Esq.,
Foreign and Commonwealth Office.

original attached

NEW ZEALAND HIGH COMMISSION

NEW ZEALAND HOUSE · HAYMARKET · LONDON SW1Y 4TQ
Telephone: 01-930 8422 Telex: 24368

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T 177/84

From the High Commissioner
H.E. The Hon W. L. Young

24 October 1984

cc MASTER
OPS

Dear Prime Minister

I have been asked to pass to you the following cabled message from the Prime Minister, the Hon. David Lange, MP:

"Dear Prime Minister,

Given the very close cooperation between our countries on Law of the Sea matters I hope you will understand the spirit behind my writing to encourage British signature of the Convention on the Law of the Sea.

It is no secret that New Zealand attaches very considerable importance to the Convention. We hope that it will come to enjoy universal support. I know, however, that parts of the Convention dealing with deep seabed mining, and especially the aspects relating to finance, continue to cause your Government concern.

It is my hope, however, that your decision in 1982 to stand aside from the Convention is not irrevocable. I can understand your concern that signature might be seen as United Kingdom endorsement of a financial structure that you regard as prohibitive. However, signature binds the United Kingdom to nothing and it gives you an opportunity to play an effective role in changing what you do not like.

These questions are now being addressed in the Preparatory Commission which is considering measures to bring the institutions of the Convention into life. Our assessment, through our participation in the group of Western "Friends of the Convention" which has worked actively to ensure that British concerns receive a fair hearing, is that substantial progress can be made.

/The Group

The Rt. Hon. Margaret Thatcher, FRS, MP
Prime Minister,
10 Downing Street,
Whitehall,
LONDON SW1.

The Group of 77, which is now under new and moderate leadership, appear to accept the need to accommodate your interests. This improved negotiating climate would be enhanced if Britain were able to sign the Convention. Such a step would certainly deny the Soviet Union the propaganda advantage which they are seeking to achieve out of the recent signature of the Provisional Understanding on seabed mining by the Western highly industrialised countries.

Our assessment is that the Convention will become a reality, that it will enter into force relatively quickly and that the opportunities to modify the structures it establishes will diminish if the possibilities which are currently offered to the United Kingdom, at no cost, are let go. As you know, after the 9 December deadline participation can only be on the basis of full acceptance of the Treaty regime as legally binding.

But the Convention has more to it than the seabed mining provisions and I hope that you would also give real weight in your consideration of this question to the important new rules on maritime transit.

I would like to give you a practical example of the significance of these provisions of the Convention. As you know, New Zealand and the United Kingdom have joint responsibilities under the Five Power Defence Arrangements for the defence of Singapore and Malaysia. We recently had an incident, relating to the transit of one of our frigates through the Philippines Archipelago, which points out the significance of the transit provisions of the Convention. The fact is that there is not universal acceptance of the rules in the Convention as part of customary international law and until the Convention is widely accepted there is a serious risk that political and security interests which we share could be jeopardised.

In my view the advantages of agreed and stable rules on such important questions cannot be underestimated. For these reasons, New Zealand, the Pacific countries, and indeed the Commonwealth, attach a great deal of importance to the Convention. I know that you will be seriously considering your own Government's

position but I thought I should draw to your attention at this time the range of factors to which New Zealand attaches great importance.

Yours sincerely,

David Lange."

A copy of the text of this message has also been passed to the Secretary of State for Foreign and Commonwealth Affairs, the Rt. Hon. Sir Geoffrey Howe, QC, MP

The original of this letter will be sent to you as soon as it is received.

Kindest Personal Regards
Yours Sincerely
Bill Young

MASTER
OPS
FOR POL: Law of the Sea: Pt 2

T177/84

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. 177/84

Prime Minister
Wellington
New Zealand

24 October 1984

Rt Hon Margaret Thatcher
Prime Minister
LONDON

Dear Prime Minister

Given the very close cooperation between our countries on Law of the Sea matters I hope you will understand the spirit behind my writing to encourage British signature of the Convention on the Law of the Sea.

It is no secret that New Zealand attaches very considerable importance to the Convention. We hope that it will come to enjoy universal support. I know, however, that parts of the Convention dealing with deep seabed mining, and especially the aspects relating to finance, continue to cause your Government concern.

It is my hope, however, that your decision in 1982 to stand aside from the Convention is not irrevocable. I can understand your concern that signature might be seen as United Kingdom endorsement of a financial structure that you regard as prohibitive. However, signature binds the United Kingdom to nothing and it gives you an opportunity to play an effective role in changing what you do not like.

These questions are now being addressed in the Preparatory Commission which is considering measures to bring the institutions of the Convention into life. Our assessment, through our participation in the group of Western "Friends of the Convention" which has worked actively to ensure that British concerns receive a fair hearing, is that substantial progress can be made. The Group of 77 which is now under new and moderate leadership, appear to accept the need to accommodate your interests. This improved negotiating climate would be enhanced if Britain were able to sign the Convention. Such a step would certainly deny the Soviet Union the propaganda advantage they are seeking to achieve out of the recent signature of the Provisional Understanding on seabed mining by the Western highly industrialised countries.

/2

Our assessment is that the Convention will become a reality, that it will enter into force relatively quickly and that the opportunities to modify the structures it establishes will diminish if the possibilities which are currently offered to the United Kingdom, at no cost, are let go. As you know, after the 9 December deadline participation can only be on the basis of full acceptance of the Treaty regime as legally binding.

But the Convention has more to it than the seabed mining provisions and I hope that you would also give real weight in your consideration of this question, to the important new rules on maritime transit.

I would like to give you a practical example of the significance of these provisions of the Convention. As you know, New Zealand and the United Kingdom have joint responsibilities under the Five Power Defence Arrangements for the defence of Singapore and Malaysia. We recently had an incident, relating to the transit of one of our frigates through the Philippines archipelago, which points out the significance of the transit provisions of the Convention. The fact is that there is not universal acceptance of the rules in the Convention as part of customary international law and until the Convention is widely accepted there is a serious risk that political and security interests which we share could be jeopardised.

In my view the advantages of agreed and stable rules on such important questions cannot be underestimated. For these reasons, New Zealand, the Pacific countries and indeed the Commonwealth, attach a great deal of importance to the Convention. I know that you will be seriously considering your own Government's position but I thought I should draw to your attention at this time the range of factors to which New Zealand attaches great importance.

Yours sincerely

David Lange

foreign Pt 2

Law of the Sea

10 DOWNING STREET

From the Private Secretary

31 August 1984

I am writing to acknowledge receipt of the Secretary-General's letter of 20 August to the Prime Minister about the United Nations Convention on the Law of the Sea. The issues raised will be examined in the light of the work of the Preparatory Commission which is at present meeting in Geneva. The Prime Minister will send a considered reply to the Secretary-General as soon as possible.

Charles Powell

Mr Virendra Dayal

Foreign and Commonwealth Office

London SW1A 2AH

30 August 1984

Dear Charles,

UN Law of the Sea Convention

I enclose a letter dated 20 August from the UN Secretary-General to the Prime Minister urging that the United Kingdom should sign the UN Law of the Sea Convention before the last date for signature on 9 December 1984. We have not signed so far because of difficulties with the Convention's proposed regime for deep seabed mining.

In his letter the UN Secretary-General mentions the Preparatory Commission (set up to prepare a deep seabed mining regime) which is meeting in Geneva and will not complete its business until 5 September. Our delegation are seeking reactions to certain limited improvements in the mining regime. There is nothing urgent in the Secretary-General's letter and we would recommend deferring a substantive reply until after we have been able to assess the results of Geneva.

If the Prime Minister agreed with this advice, you might wish to acknowledge the letter on her behalf at this stage.

Yours ever,

Len Appleyard

(L V Appleyard)
Private Secretary

C D Powell Esq
10 Downing Street

UNITED NATIONS NATIONS UNIES

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

EXECUTIVE OFFICE OF THE SECRETARY-GENERAL
CABINET DU SECRETAIRE GENERAL

REFERENCE:

20 August 1984

Dear Mr. Ambassador,

The Secretary-General would appreciate it very much if you could forward the enclosed letter to Her Excellency The Rt. Hon. Margaret Thatcher, M.P., Prime Minister of the United Kingdom of Great Britain and Northern Ireland.

A copy of this letter is enclosed for your information.

Accept, Mr. Ambassador, the assurances of my highest consideration.

Virendra Dayal
Chef de Cabinet

His Excellency
Mr. J.W.D. Margetson, C.M.G.
Deputy Permanent Representative
of the United Kingdom of
Great Britain and
Northern Ireland
New York

Mr Fifoot
I have the original letter and will draft a reply for you to look at before returning to Geneva.

THE SECRETARY-GENERAL

20 August 1984

Excellency,

According to the provisions of the United Nations Convention on the Law of the Sea, that Convention will remain open for signature until 9 December 1984, after which date States which have not signed will have only the option of accession open to them. As the deadline for signing approaches, I should like to recall that all Governments which have not already signed still have the opportunity to do so. Signature of the Convention does not prejudge a future decision on its ratification; it offers, however, particular advantages such as full membership in the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, and more significantly the ability to benefit from the special régime established for protecting the investments of pioneers in deep sea-bed mining. It also provides States opportunities to guide and to influence the future course of the new régime in the oceans in an active manner. Accession, on the other hand, presupposes that the acceding State is in a position to give its final consent to be bound by the Convention and involves therefore a decision which your country may not be prepared to make for some time to come.

Her Excellency
The Rt. Hon. Margaret Thatcher, M.P.
Prime Minister of the
United Kingdom of
Great Britain and Northern Ireland
London

In signing the Convention, the United Kingdom, a major industrialized power which plays an important and most valued role in international cooperation, would join those of its friends, partners and close neighbours such as Austria, Denmark, Finland, France, Iceland, Ireland, Japan, the Netherlands and Sweden which have already signed the Convention and are participating in the work of the Preparatory Commission as full members.

I understand that the United Kingdom has particular difficulties with parts of the Convention dealing with deep sea-bed mining issues. As a full and active member of the Preparatory Commission, however, the United Kingdom would be in a far better position than as an observer to articulate its concerns and seek possible solutions for them in that technical forum. It is to be hoped that in the process of drafting the rules and regulations for the exploration and exploitation of deep sea-bed minerals many of the difficulties and uncertainties of the practical implementation of the Convention will be overcome or clarified.

In this connexion, I would like to recall that it was one of the important goals of the Third United Nations Conference on the Law of the Sea to adopt a Convention which would restore order and stability in the uses of the oceans and their resources which had been disturbed due to developments in the years after 1945.

The Convention adopted by the Conference has rationalized and checked the process of extension of national jurisdiction and has clarified, consolidated, adapted and developed much of the traditional law of the sea, notably that of navigation including transit, marine pollution and resource rights. The Convention has been signed so far by 134 States from all regions and from all economic and political groups and its effect on the conditions at sea are already noticeable. If important States which are known to be firmly committed to the rule of law do not support the Convention as a whole because of the difficulties that they perceive in certain of its parts, the possibility may well arise for other States to reject

other provisions of the Convention touching upon more fundamental and traditional uses of the ocean. This could well lead once again to the unravelling of the order of the oceans, a result which would be highly undesirable in terms of international relations.

I therefore wish to appeal to Your Excellency and the Government of the United Kingdom, in examining your Government's position regarding signature to the Convention, to take into account the considerations which I have set forth above.

Please accept, Excellency, the assurances of my highest consideration.

Javier Pérez de Cuéllar

CONFIDENTIAL

CC APR

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

Malcolm Rifkind Esq
Minister of State
Foreign and Commonwealth Office
Downing Street
LONDON SW1

30 April 1984

N.B.P.D.

A.S.C.3.

Dear Malcolm

PROVISIONAL UNDERSTANDING REGARDING DEEP SEABED MATTERS

You wrote to me on 26 March about UK signature of a provisional understanding regarding deep seabed matters. David Mitchell and David Trefgarne both commented on 12 April.

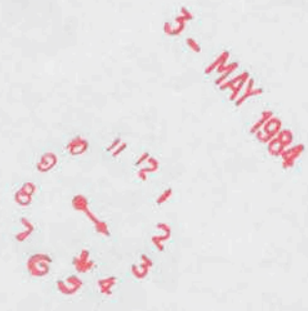
will forward if required

No difficulty has been expressed about the text of the Understanding, but there is anxiety about the number of other signatories; it would be desirable for at least one signatory to be also a signatory of the United Nations convention on the law of the sea. If it seems that no such signatory will join I think we should reconsider within MISC 19. Certainly we shall need to consider again carefully if the USA looks like being the only other signatory.

CONFIDENTIAL

I am copying this letter to the Prime Minister, the Attorney General, the Lord Advocate, the Lord Privy Seal, the Chief Secretary to the Treasury, Ministers of State in the Department of Energy, the Ministry of Defence, the Department of Trade and Industry, the Department of the Environment, the Ministry of Agriculture, Fisheries and Food, and to Sir Robert Armstrong.

NICHOLAS RIDLEY


3 - MAY 1984

CONFIDENTIAL

file 882

10 DOWNING STREET

From the Private Secretary

Mr Goodall

Provisional Understanding Regarding Deep Seabed Matters

The Prime Minister has seen your minute of 29 March and has noted that MISC 19 is about to decide whether the UK should sign the provisional understanding regarding deep seabed matters.

Mrs Thatcher has noted with approval the statement in Mr Rifkind's letter of 26 March that we wish to sign in company with at least one other country in addition to the United States.

A. J. COLES

2 April 1984

CONFIDENTIAL

882

(2)

Prime Minister

CONFIDENTIAL

To note that MISC 19 is now to decide whether the U.K. should sign the understanding.

A.J.C. 30/3.

B.06708

MR COLES

cc Sir Robert Armstrong
PS/Mr Rifkind

Provisional Understanding Regarding Deep Seabed Matters

1. You may recall that, in February 1983, we provided at your request a note on the various issues raised by a Reciprocating States Agreement (RSA) which was sent to you under cover of Sir Robert Armstrong's minute of 23 February 1983. In your letter of 3 March 1983 to Mr Holmes in the Foreign and Commonwealth Office, you said that the Prime Minister had read the Cabinet Office note and noted our approach to the question and the fact that no Ministerial decisions were then necessary.

2. Over the past year, matters have moved forward. As you will see from the attached letter of 26 March from the Minister of State, Foreign and Commonwealth Office (Mr Rifkind) to the Secretary of State for Transport (who is now Chairman of MISC 19), the United Kingdom has negotiated a Provisional Understanding on Deep Seabed Matters (the new name for a Reciprocating States Agreement) with a number of other countries with interests in deep seabed mining. Mr Rifkind has written to Mr Ridley and other members of MISC 19 to seek their agreement to United Kingdom signature of the Understanding, subject to certain conditions discussed in his letter.

Attached

3. An important point to note is that the new Understanding, unlike the earlier RSA, does not provide for the recognition of licences granted by other states but proceeds by way of a negative obligation not to grant licences in an area where, by agreement or earlier application, another participating state has priority. This change of approach should enable states which are UNLOSC signatories to assert (as the United Kingdom also maintains) that they will not be entering into obligations inconsistent with the Convention. Another important point is that Mr Rifkind expects a number of other states to sign the Understanding.

CONFIDENTIAL

Moreover, he says that he would not recommend that the United Kingdom should sign with the United States alone without further consideration of where the balance of advantage lies for the United Kingdom. This point, you will recall, was an essential factor identified by the Cabinet Office note (cf. paragraph 17 - "an RSA with only two signatories would be a sign of weakness").

4. In view of the Prime Minister's previous interest, you may wish to inform her that the moment for Ministerial decision has arrived. We will in any case ensure that she is informed of the outcome of MISC 19's consideration of Mr Rifkind's proposal.

David Goodall

A D S Goodall

29 March 1984

Foreign and Commonwealth Office

London SW1A 2AH

26 March 1984

447 *From The Minister of State*

Rt Hon Nicholas Ridley MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
LONDON SW1P

Mr Colvin

Dear Nicholas,

PROVISIONAL UNDERSTANDING REGARDING DEEP SEABED MATTERS

I am enclosing with this letter the text of a Provisional Understanding on Deep Seabed Matters (together with an explanatory memorandum) which the UK has negotiated with a number of other countries with interests in deep seabed mining. Despite this title, it is intended to be a legally binding agreement. Earlier texts have been discussed between officials of interested Departments. The present text does not differ in substance from those previously seen by officials. It has been amended to take account of problems which were caused for the FRG and Japan by earlier texts, but the alterations do not affect our interests. Subject to certain conditions which are discussed below, I am writing to request your agreement to UK signature of the Understanding. David Trippier, in the DTI, concurs with the recommendation to sign.

At the meeting of MISC 19 on 9 November 1982 which gave consideration to UK signature of the UN Law of the Sea Convention, Ministers agreed that the UK should negotiate a reciprocating states agreement. Earlier versions of proposed intergovernmental arrangements provided for recognition of licences granted by other states. The current version imposes a negative obligation not to grant licences in an area where, by agreement or earlier application, another participating state has priority. This change of emphasis has been made largely to attract states which are signatories to the UN Law of the Sea Convention in order that they can assert (as the UK also maintains) that they will not be entering into obligations inconsistent with the Convention. The immediate purpose of the Provisional Understanding is to assure the commercial seabed mining consortia and entities, which have now reached agreement amongst themselves to avoid overlapping of exploration and mining sites on the seabed, that their governments will not grant licences under

/national

national laws for seabed operations which would defeat those agreements. The Understanding would also prevent states granting other and later applicants authority under national laws to undertake seabed operations on sites which were the subject of earlier authorisations or applications. It is also seen by the US as part of the necessary basis for the designation of reciprocating states which is needed to allow the UK/US partners to proceed.

The Understanding has been negotiated with Belgium, France, FRG, Italy, Japan, the Netherlands and the USA. It is not as yet clear how many of these will decide to sign. (If not all are prepared to sign we will need to ensure that we do not protect companies from the non-signatory countries merely because they are parties to a commercial agreement on overlapping.) It is generally in the UK's interest to participate in this Understanding. While we remain outside the Convention this Understanding is the only security which we are able to provide to our companies. Our participation will mean that the recipient of a licence under the Deep Sea Mining (Temporary Provisions) Act 1981 - such as the Kennecott Consortium (in which RTZ, Consolidated Goldfields and BP have substantial interests) - will be assured that other licences will not be issued by interests from participating states in the same areas of exploration or mining. (This protection will have effect whether or not other participating countries are also seeking to operate under the Convention regime.)

Even if we should at a later stage sign or accede to the Convention, some form of additional agreement would be necessary with the US, which does not intend to participate in the Convention. The Understanding can do nothing, however, to provide protection for British licencees in respect of operators from countries which are working under the Convention arrangements but do not participate in the Understanding (for example the USSR is likely to operate under the Convention and its site could overlap the Kennecott site; but the USSR is unlikely to be willing to enter into a separate arrangement with the UK to avoid the overlap). Our companies have indicated to us that they do not wish to make applications under the Convention system because of the onerous conditions of registration. They have advised us that they definitely would wish us to enter into the Provisional Understanding, as it endorses their participation in the commercial agreement.

The usefulness of the Understanding will be dependent on the number of countries with deep seabed mining interests which take part in it and will be correspondingly diminished by each state (which intends to issue national licences) which does not in the event participate in the Understanding. I cannot forecast how

/many

many of the negotiating parties will be prepared to sign the agreement. Furthermore, the signing of the Understanding is likely to attract criticism from the G77 as being a 'Mini-Treaty' outside the Convention. As participants in the Preparatory Commission we are more exposed to criticism than the US, which has turned its back on the Convention process. Therefore, we would wish to sign in company with at least one other country in addition to the US, probably the FRG. I would not recommend that we should sign with the US alone without further consideration of where the balance of advantage lies for the UK.

Yes

There has been concern by some Departments that signing of the Understanding could lead to not only adverse criticism by the G77 but also retaliatory action against the navigational rights of British naval and merchant shipping. We believe that in the present form of negative obligations, the dangers of such difficulties will be minimised, particularly if we sign with sufficient company. This naturally enhanced the importance of at least a third signatory.

I am copying this letter to the Attorney General, the Lord Advocate, the Lord Privy Seal, the Chief Secretary to the Treasury, Ministers of State in the Department of Energy, the Ministry of Defence, the Department of Trade and Industry, the Department of the Environment, the Ministry of Agriculture, Fisheries and Food, and to Sir Robert Armstrong.

Yours ever,

Malcolm Rifkind

CONFIDENTIAL

27 February 1984

A PROVISIONAL UNDERSTANDING REGARDING DEEP SEABED MATTERS

1. (1) No Party shall issue an authorization in respect of an application, or seek registration, for an area included:

(a) within an area which is covered in another application filed in conformity with the agreements for voluntary conflict resolution reached on 18 May 1983 and 15 December 1983 and being still under consideration by another Party;

(b) within an area claimed in any other application which has been filed in conformity with national law and this Agreement,

(i) prior to the signature of this Agreement, or

(ii) earlier than the application or request for registration in question,

and which is still under consideration by another Party; or

(c) within an authorization granted by another Party in conformity with this Agreement.

(2) No Party shall itself engage in deep seabed operations in an area for which, in accordance with this paragraph, it shall not issue an authorization or seek registration.

2. The Parties shall, as far as possible, process applications without delay. To this end, each Party shall, with reasonable dispatch, make an initial examination of each application to determine whether it complies with requirements for minimum content of applications under its national law, and thereafter determine the applicant's eligibility for the issuance of an authorization.

CONFIDENTIAL

3. Each Party shall immediately notify the other Parties of each application for an authorization which it accepts, including applications already received, and of each amendment to such an application. Each Party shall also immediately notify the other Parties after it has taken action subsequently with respect to an application or any action with respect to an authorization.

4. No Party shall authorize, or itself engage in, exploitation of the hard mineral resources of the deep seabed before 1 January, 1988.

5. (1) The Parties shall consult together:

(a) prior to the issuance of any authorization or before themselves engaging in deep seabed operations or seeking registration for an area;

(b) with regard to any arrangements between one or more Parties and another State or States for the avoidance of overlapping in deep seabed operations;

(c) with regard to relevant legal provisions and any modification thereof; and

(d) generally with a view to coordinating and reviewing the implementation of this Agreement.

(2) The relevant Parties shall consult together in the event that two or more applications are filed simultaneously.

6. (1) To the extent permissible under national law, a Party shall maintain the confidentiality of the coordinates of application areas and other proprietary or confidential commercial information received in confidence from any other Party in pursuance of cooperation in regard to deep seabed operations. In particular:

(a) the confidentiality of the coordinates of application areas shall be maintained until any overlap involving such an area is resolved and the relevant authorization is issued; and

(b) the confidentiality of other proprietary or confidential commercial information shall be maintained in accordance with national law as long as such information retains its character as such.

(2) Denunciation or other action by a Party pursuant to paragraph 14 of this Agreement shall not affect the Parties' obligations under this paragraph.

7. (1) The rights and interests of an applicant or of the grantee of an authorization may be transferred, in whole or in part, consistent with national law. Subject to national law, the rights, interests, and obligations of the transferee shall be as set forth in an agreement between the transferor and the transferee.

(2) For the purposes of this Agreement, the transferee is deemed to stand in the same position as that of the transferor for his rights and interests including the right of priority to the extent those rights and interests represent in whole or in part the original rights and interests of the transferor.

8. The Parties shall seek consistency in their application requirements and operating standards.

9. The Parties shall implement this Agreement in accordance with relevant national laws and regulations.

10. The Parties shall settle any dispute arising from the interpretation or application of this Agreement by appropriate means. The Parties to the dispute shall consider the possibility of recourse to binding arbitration and, if they agree, shall have recourse to it.

11. This Agreement, which includes Appendices I and II, may be amended only by written agreement of all Parties.

12. (1) This Agreement shall enter into force 30 days after signature.

(2) A Party which has not adopted the necessary legal provisions for the issue of authorizations may, by a declaration relating to its signature of this Agreement, limit the application of this Agreement to the parts thereof other than those relating to the issue of authorizations. Where such a Party adopts legal provisions which, in the view of the other Parties, are similar in aims and effects to their own legal provisions, the first mentioned Party shall notify all other Parties that it accepts fully the provisions of this Agreement. Such a Party may also declare, upon signature, that, for constitutional reasons, this Agreement shall become effective for it only after notification to all other Parties.

13. After entry into force of this Agreement, additional States may, with the consent of all Parties, be invited to accede to this Agreement.

14. (1) A Party may denounce this Agreement by written notice to all other Parties, subject to the provisions of paragraph 6. Such denunciation shall become effective 180 days from the date of the latest receipt of such notice.

(2) A Party may, for good cause related to the implementation of this Agreement, after consultation, serve written notice on another Party that, from a date not less than 90 days thereafter, it will cease to give effect to paragraph 1 of this Agreement in respect of such other Party. The rights and obligations of these two Parties towards the other Parties remain unaffected by such notice.

(3) Subsequent to such notice referred to in subparagraphs (1) and (2), the Parties concerned shall seek, to the extent possible, to mitigate adverse effects resulting therefrom.

15. This Agreement is without prejudice to, nor does it affect, the positions of the Parties, or any obligations assumed by any of the Parties, in respect of the United Nations Convention on the Law of the Sea.

Done at Geneva on _____, 1984, in eight copies in the English, French, German, Italian, Japanese, and Netherlands languages, each of which shall be equally authentic.

_____ _____

_____ _____

_____ _____

_____ _____

APPENDIX I

Definitions

For the purposes of this Agreement:

"Application filed in conformity with the agreements for voluntary conflict resolution reached on 18 May 1983 and 15 December 1983" as referred to in paragraph 1(1)(a) of this Agreement means the original application as amended as a consequence of, or in order to give effect to, those agreements; where identical applications have been filed with more than one Party, they shall, for the purpose of paragraph 1(1)(a) of this Agreement, be treated as a single application; applicant in relation to applications referred to in paragraph 1(1)(a) of this Agreement means the original applicant or applicants in respect of an application, or in his or their place the transferee or transferees of such applicant or applicants as provided in paragraph 7 of this Agreement, or the nominee or nominees who act on behalf of such applicant or applicants;

"Agreements for voluntary conflict resolution" as referred to in paragraph 1(1)(a) of this Agreement means the agreements between Association Francaise Pour l'Etude et la Recherche des Nodules (AFERNOD), Deep Ocean Resources Development Co., Ltd. (DORD), Kennecott Consortium (KCON), Ocean Mining Associates (OMA), Ocean Minerals Company (OMCO), Ocean Management, Inc. (OMI), or any of them;

"Authorization" means an authorization to engage in deep seabed operations;

"Deep seabed operations" means operations, other than prospecting, in relation to the hard mineral resources of the deep seabed in a specified area or areas;

"Hard mineral resources" means any deposit or accretion on or just below the surface of the deep seabed consisting of nodules which contain manganese, nickel, cobalt, or copper; and

"Registration" means any registration or other act by an authority which is recognized or accepted by the Party in question as conferring or confirming any right or authorization to engage in deep seabed operations.

APPENDIX II

NOTIFICATION

A. A notice relating to an application or amendment, as provided by paragraph 3 of this Agreement shall include:

(a) the identity of the applicant;

(b) the coordinates of the area of the application or amendment;

(c) the date and time the application or amendment was filed (expressed in Greenwich Mean Time to the nearest minute);

(d) the type of authorization applied for;

(e) a statement of the duration of activities applied for; and

(f) such other information as the notifying Party considers appropriate.

B. A notice relating to subsequent action or to authorizations shall include all necessary data, a copy of the legal documentation effecting the action and the operative date.

C. Each notice concerning the coordinates of an area of the deep seabed shall define the boundary by the geodetic coordinates of the turning points in accordance with the World Geodetic System 1972 (WGS 72). Any line defining the boundary between turning points must be a geodesic.

MEMORANDUM ON THE IMPLEMENTATION OF THE PROVISIONAL UNDERSTANDING REGARDING DEEP SEABED MATTERS

With respect to the implementation of the Provisional Understanding Regarding Deep Seabed Matters signed on _____ 1984, the representatives of the Governments of _____, _____, _____, _____, _____, _____, _____, and _____ have confirmed their intention to give effect to the following:

Eligibility

1. (1) Each Party will issue or transfer an authorization only to applicants:

(a) which are financially and technologically qualified to conduct the proposed deep seabed operations;

(b) which comply with all requirements of the Party's national law; and

(c) whose deep seabed operations will be carried out in accordance with the standards prescribed below.

(2) The relevant Parties will consult prior to the issuance or transfer of an authorization to an applicant who has previously been denied an authorization or had an authorization revoked for the same area by another Party, or who has relinquished the same area under an authorization of another Party.

Size of Area

2. (1) Each Party will issue or transfer an authorization only for an area in which the deep seabed operations authorized can be conducted within the initial duration of the authorization in an efficient, economical and orderly manner with due regard for conservation and protection of the environment, taking into consideration, as appropriate, the resource data, other relevant physical and environmental characteristics and the state of the technology of the applicant, as set forth in the plan of operations.

(2) Upon request of any other Party, a Party will provide, within 30 days, a written statement of reasons why that Party has approved an application area of a particular size.

Standards

3. (1) Each Party will take all necessary measures so that deep seabed operations under its control:

(a) are conducted with reasonable regard to the interests of other States in the exercise of the freedom of the high seas;

(b) will include efforts to protect the quality of the environment and will not result in significant adverse effects on the environment;

(c) have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the authorization area;

(d) do not adversely affect the safety of life and property at sea in accordance with generally accepted international standards;

(e) are conducted diligently by maintaining a reasonable level of operation based on the size of area and other relevant factors; and

(f) are monitored for their effects on the environment.

(2) In accordance with its national law each Party will ensure that persons subject to its jurisdiction minimize interference with any activity authorized under an authorization issued by another Party.

(3) Each Party will cooperate in developing measures, consistent with its national law, needed to implement the provisions of the Agreement and of this Memorandum so that, in general function and effect, these measures are compatible with, comparable to, and as effective as those established by the other Parties.

Administrative Requirements

4. To enforce effectively the standards described in paragraph 3 of this Memorandum, each Party will employ, as appropriate, measures such as: imposing reasonable penalties for violation of requirements; placing observers on vessels to monitor compliance; suspending, revoking, or modifying authorizations; and, issuing orders in an emergency to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea.

_____ _____

_____ _____

_____ _____

_____ _____

___ _____ 1984, Geneva

JOINT RECORD

Following the signature of the Provisional Understanding Regarding Deep Seabed Matters, the Parties notified each other of the identities of the applicants and the dates of receipt of the applications already received. Having regard to the assurance of the representatives of the Federal Republic of Germany that the area of the application filed on their own behalf by Metallgesellschaft AG, Preussag AG, and Salzgitter AG, as partners of Arbeitsgemeinschaft Meerestechnisch gewinnbare Rohnstoffe (AMR) is outside the Clarion Clipperton Zone, the Parties to the Provisional Understanding noted that that application falls under paragraph 1(1)(b)(i) of the Provisional Understanding.

Wang:1594A:2/2/84:.

EXPLANATORY COMMENTARY ON THE DRAFT 'PROVISIONAL UNDERSTANDING REGARDING DEEP SEABED MATTERS'

Title

1. This vague and inaccurate title ('Agreement' is used elsewhere throughout the Agreement) has been adopted at the request of some countries on the grounds that it may lessen criticism of the Agreement as a 'mini-treaty' as an alternative to the UN Convention on the Law of the Sea.

Article 1

2. Article 1 (1) is the basic proposition. It is in the form of negative or self-denying undertakings not to grant an authorisation under national law for deep seabed operations (defined in Appendix I) over an area which would overlap (i) an area subject to an application made by one of the pioneer seabed explorers if, in accordance with an agreement between these pioneers it falls to another applicant, (ii) an area included in any prior application, or (iii) an area included in an authorisation already granted by another Party. Since the prospective parties to this Agreement are either presently or contingently entitled to the benefits of the Preparatory Investment Protection (PIP) Resolution of the UN Conference of the Law of the Sea (under which they may apply for registration of a site to the Preparatory Commission for the International Seabed Authority) it is also necessary to exclude application for registation of a site which would overlap such applications to a Party or authorisations by a Party. Registration is defined in Appendix I in a manner which it is hoped will not direct the eye too obviously to the PIP resolution; the definition would also include applications eventually made for a plan of work under the Convention itself.

3. The pioneer seabed explorers (which are multilateral consortia in which UK, American, German, Italian, Dutch, Belgian, Japanese and Canadian companies have a stake, and a French and Japanese national entity) have already made agreements to avoid overlapping and in connection with their applications for the necessary national authorisation, this Agreement (Provisional Understanding) will complement the industries' agreements.

4. Article 1(2) is a corollary to Article 1(1). The Parties cannot escape the obligation to avoid overlapping in the grant of authorisations by themselves undertaking deep seabed operations in an area which is the subject of a prior application or authorisation.

5. Section 3 of the Deep Sea Mining (Temporary Provisions Act 1981 enables us to give effect to an undertaking not to issue an authorisation granted by another Party. In order to implement the obligation not to grant an authorisation overlapping a site in an earlier application to another Party, it will be necessary to rely on the power of the Secretary of State in Section 2(2) to have regard to any relevant factors in determining whether to grant an application it being a relevant factor that it would not accord with an orderly regime for exploration and exploitation such as is envisaged by Section 3 of the Act to facilitate 'claim jumping'. A safeguard against tying up areas by multiple applications is to be found in the reasonable despatch requirement in Article 2 and in the power to denounce in Article 14.

Article 2

6. This article enjoins Parties to process applications within a reasonable time. It is designed to minimise the ability of one Party to hold up another Party's consideration of a later application which might overlap an earlier application.

rticle 3

7. Parties are to notify each other of applications and amendments as they are received. This is essential to a system where priority attaches to the time of receipt of applications. Parties are also required to notify each other regarding the processing of applications. The details are spelled out in Appendix II.

Article 4

8. This article imposes a deep seabed mining (as distinct from exploration) moratorium until 1 January 1988 on States Parties (all domestic seabed mining laws of countries involved in negotiating the Agreement contain the same moratorium). The original aim of this Article was to signal the intention of States Parties to the Agreement not to pre-empt arrangements for seabed mining under the UNLOS Convention. Presently it serves the purpose of providing a locus poenetentiae for a more generally agreed seabed regime. In practice, market forces are likely to preclude exploitation before this date.

Article 5

9. This article indicates various circumstances in which Parties to the Agreement should consult one another. Paragraph (2) also provides for consultation in case new applications are filed simultaneously.

Article 6

10. This article provides for confidentiality. Confidentiality is particularly necessary in respect of the co-ordinates of the areas applied for and in respect of confidential commercial information concerning mining techniques. Parties remain subject to confidentiality requirements even when they have (otherwise) denounced the Agreement.

Article 7

11. This article deals with the circumstances which may pertain after the break-up of a consortium, ie when the various components of an applicant change subsequent to the application or subsequent to receiving an authorisation. It gives recognition to transfers under domestic law, the transferee standing in the shoes of the transferor.

Article 8

12. This article seeks to ensure that the Parties will apply common standards with regard to qualifications of applicants (eg technical and financial) and the terms on which they shall operate. (The Memorandum to the Agreement - see paragraph 23 below - spells out the details). The obligation is limited to seeking consistency. Japan is unwilling to accept anything more positive.

Article 9

13. Obvious, but intended to demonstrate for various domestic opinions that the Agreement does not go beyond laws already enacted in those countries. It is not intended to, nor does it, modify the obligations assumed by the States Parties.

Article 10

14. Dispute settlement. This is more a nod in the direction of dispute settlement than the provision of machinery.

Article 11

15. Amendments.

Article 12

16. Entry into force will take place 30 days after signature. The

/Article

Article also provides for countries which have not enacted seabed mining legislation and therefore cannot enter into the substantive obligations in Articles 1 - 4 with regard to the issue of authorisations. When such a country enacts domestic seabed mining legislation (which the other Parties are satisfied is along the lines of their own legislation) that country may notify the other Parties concerned that it considers itself to be bound generally by the Agreement.

Article 13

17. Accession by other states, provided all Parties agree.

Article 14

18. In addition to a general denunciation (on six months written notice), this Article provides for denunciation vis-a-vis a particular Party. The object of this is to ensure that Party A may denounce against Part B (if for example it takes the view that Party B is granting too many licences) but retain its obligations and benefits vis-a-vis other Parties. Paragraph 3 is intended to give a denouncing Party the possibility of maintaining its obligations and the benefits in respect of authorisations granted before denunciation.

Article 15

19. This article was inserted at the request of countries (France, Japan and the Netherlands) which have already signed the UN Convention and which wish to demonstrate their contention (which the UK shares) that this Agreement is consistent with the UN Convention.

Final Clause

20. Since France insists on a French text, the FRG insists on a German text. If there is a German text, the Japanese Italians and Dutch are unwilling to be left out.

Appendix I (Definitions)

21. This Appendix identifies the industries agreements which are the subject of Article 1 (1)(a) and provides an expanded definition of an 'Applicant'. It also defines four other words or phrases. These are: 'authorisations' (some States' legislation refers to licences, some to permits), 'deep seabed operations', 'hard mineral resources' and 'registration'.

Appendix II

22. This Appendix sets out the details required for notification of applications etc referred to in Article 4 bis (paragraph above refers).

Memorandum

23. The Memorandum attached to the Agreement confirms the intention of the Parties to the Agreement to abide by common rules on the following: eligibility for licences; the size of the area for which licences are issued; the standards to which deep seabed operations should be subject. These provisions are made because the US legislation requires the US administration to be satisfied that 'reciprocating states' are subject to such provisions (by law or agreement) before the administration can enter into obligations to recognise (ie not to trespass on) sites subject to such other states' authorisation. Japan is unwilling to enter into an obligation to apply common standards. The compromise that has been agreed upon is in the form of a common statement of intention which will be made contemporaneously with the Agreement.

CONFIDENTIAL

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

NBPM

AT 17/1

D H Colvin Esq
Cabinet Office
Whitehall
LONDON SW1

13 January 1984

Dear Mr. Colvin,

MINISTERIAL GROUP ON MARITIME AFFAIRS

We spoke yesterday about the proposed reconstitution of MISC 19, and I believe you have also had words with Henry Derwent here.

As you know, the Secretary of State for Trade used to be the Chairman of this Committee because of his responsibility for shipping and marine matters. After the election these responsibilities were transferred to my Secretary of State.

I think that MISC 19 last met in 1982, when it considered the extension of UK territorial sea and the UN Law of the Sea Conference. I understand that its membership varies, but when it last met the Secretary of State for Trade, the Chief Secretary, the Attorney General, the Lord Advocate, Ministers of State from MAFF, Scottish Office and Energy, and Parliamentary Under Secretaries of State from FCO, MOD, DOI and DOT were present; the Department of Transport was not represented.

There are several items of business coming up in the near future which would be appropriate for consideration in a Ministerial Group on Maritime Affairs. Ministers will soon need to consider the UK's position at the next session of the Preparatory Commission for UNLOSC - an obvious subject for the Committee. The Committee also receives regular reports from the Official Working Group on wrecks about the dangerous wreck "Sir Richard Montgomery". Wrecks are now, of course, this Department's business. I gather that there may also soon be a need to consider the question of disused gas and oil installations.

My Secretary of State has therefore asked that the Committee should be reconstituted under his Chairmanship, to reflect the change in responsibilities. I would be grateful for your views.

I am copying this to the Private Secretaries of all members of the Cabinet and to Sir Robert Armstrong.

Yours sincerely, Diana Nichols

MISS D A NICHOLS
Private Secretary

CONFIDENTIAL

PRIME MINISTER'S PERSONAL MESSAGE SERIAL No. T130A/83

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GRS 482
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FM FCO 131454Z SEPT 83
TO IMMEDIATE BONN
TELEGRAM NUMBER 459 OF 13 SEPTEMBER
INFO PRIORITY KINGSTON, WASHINGTON, ROME, BRUSSELS, LUXEMBOURG
MIPT: UNLOSC CONVENTION: FRG

1. FOLLOWING IS TEXT OF MESSAGE REFERRED TO IN MIPT
BEGINS:

I AM WRITING TO YOU ABOUT THE UNITED NATIONS LAW OF THE SEA CONVENTION AS I UNDERSTAND THAT YOU AND YOUR COLLEAGUES MAY AT SOME TIME IN THE NEAR FUTURE BE GIVING CONSIDERATION TO THE POSSIBILITY OF SIGNATURE.

I KNOW THAT YOU ARE ALREADY AWARE OF THE BASIC ARGUMENTS AGAINST SIGNATURE OF THE CONVENTION AS IT STANDS AT PRESENT. ITS PROVISIONS RELATING TO DEEP SEABED MINING SET UNSATISFACTORY PRECEDENTS FOR COMPULSORY TRANSFER TO TECHNOLOGY AND LIMITATION OF PRODUCTION. THE STRUCTURE PROPOSED FOR THE INTERNATIONAL SEABED AUTHORITY IS DISPROPORTIONATELY ELABORATE FOR THE NATURE AND NUMBER OF OPERATIONS IT WOULD OVERSEE AND WOULD REQUIRE UNACCEPTABLY HIGH FINANCIAL CONTRIBUTIONS FROM STATES. FURTHERMORE, THE POWERS OF THE AUTHORITY GO BEYOND WHAT IS NEEDED FOR AN EFFICIENT LICENSING BODY AND WOULD IMPOSE UNDESIRABLE FEATURES OF CENTRAL PLANNING. THE EXCESSIVE FEES CHARGED BY THE AUTHORITY AND THE OBLIGATIONS FOR COMPULSORY TRANSFER OF TECHNOLOGY WOULD CONSTITUTE AN UNACCEPTABLE BURDEN ON THE MINING COMPANIES. THESE FACTORS AND THE GENERAL UNCERTAINTY ABOUT HOW THE REGIME WOULD FUNCTION IN PRACTICE WOULD DISCOURAGE PRIVATE ENTERPRISE FROM INVESTING IN THIS EXPENSIVE AND NEW AREA OF DEVELOPMENT. NEITHER THE INDUSTRIALISED NOR THE DEVELOPING COUNTRIES WOULD BE ABLE TO BENEFIT FROM THE POTENTIAL OFFERED BY THE DEEP SEABED. INDEED, WE MAY WELL FIND, WHEN THE AUTHORITY IS SET UP, THAT A MAJORITY OF ITS MEMBERS ARE HOSTILE TO PRIVATE ENTERPRISE.

THE ARGUMENT IS SOMETIMES MADE THAT WESTERN COUNTRIES

COULD ADVANCE THEIR VIEWS ON THE CONVENTION MORE EFFECTIVELY AFTER SIGNATURE. HOWEVER, WHILE WE CONTINUE STRONGLY TO DEFEND THE RIGHT OF OBSERVERS TO PARTICIPATE FULLY IN THE PREPARATORY COMMISSION, WE BELIEVE THAT IN THE LONG TERM MORE ACCOUNT WILL BE TAKEN OF OUR OBJECTIONS IF WE MAINTAIN OUR NON-SIGNATORY STATUS FOR THE TIME BEING. MOREOVER, THERE ARE SOME DEFECTS WHICH CANNOT BE REMEDIED BY THE COMMISSION, HOWEVER WELL IT WORKS. BUT MY FUNDAMENTAL CONCERN REMAINS THAT SIGNATURE BY THE FEDERAL REPUBLIC OF GERMANY, FAR FROM ENCOURAGING IMPROVEMENTS IN THE CONVENTION, WOULD BE TAKEN AS AN INDICATION THAT THE INDUSTRIALISED COUNTRIES WERE BEGINNING TO REDUCE THEIR OPPOSITION TO UNSATISFACTORY ASPECTS OF THE SEABED MINING REGIME.

I THEREFORE URGE THAT THE FEDERAL REPUBLIC SHOULD NOT TAKE A DECISION IN FAVOUR OF SIGNATURE OF THE CONVENTION SO LONG AS THE DIFFICULTIES OF THE MINING REGIME REMAIN.

I WAS GLAD TO HEAR THAT HANS-DIETRICH GENSCHER HAD TOLD GEOFFREY HOWE RECENTLY THAT NO DECISION ON THIS QUESTION WOULD BE TAKEN WITHOUT CONSULTING WITH US FIRST. WE ATTACH CONSIDERABLE IMPORTANCE TO WORKING TOGETHER ON THIS ISSUE IF AT ALL POSSIBLE.

HOWE

LAW OF THE SEA CONFERENCE (UNLOSC)

LIMITED
MAED
UND
ECD(E)
SPD(S) WED
LEGAL ADVISERS
NEWS DEPT
PS
PS/LADY YOUNG
PS/MR RIFKIND
PS/MR WHITNEY
PS/PUS
MR WRIGHT
MR EVANS
MR ADAMS

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From the Private Secretary

13 September 1983

UNLOSC: PRIME MINISTERIAL MESSAGE TO CHANCELLOR KOHL

Thank you for your letter of 5 September recommending that the Prime Minister should send a message to Chancellor Kohl on this subject. We have since discussed certain changes which Mrs. Thatcher wished to see made to the draft.

I now enclose the text of a message which has been approved by the Prime Minister and should be grateful if you would arrange for its transmission.

A. J. COLES

John Holmes Esq
Foreign and Commonwealth Office

MESSAGE TO CHANCELLOR KOHL FROM THE PRIME MINISTER

I am writing to you about the United Nations Law of the Sea Convention as I understand that you and your colleagues may at some time in the near future be giving consideration to the possibility of signature.

I know that you are already aware of the basic arguments against signature of the Convention as it stands at present. Its provisions relating to deep seabed mining set unsatisfactory precedents for compulsory transfer of technology and limitation of production. The structure proposed for the International Seabed Authority is disproportionately elaborate for the nature and number of operations it would oversee and would require unacceptably high financial contributions from States. Furthermore, the powers of the Authority go beyond what is needed for an efficient licensing body and would impose undesirable features of central planning. The excessive fees charged by the Authority and the obligations for compulsory transfer of technology would constitute an unacceptable burden on the mining companies. These factors and the general uncertainty about how the regime would function in practice would discourage private enterprise from investing in this expensive and new area of development. Neither the industrialised nor the developing countries would be able to benefit from the potential offered by the deep seabed. Indeed, we may well find, when the Authority is set up, that a majority of its members are hostile to private enterprise.

The argument is sometimes made that Western countries could advance their views on the Convention more effectively after signature. However, while we continue strongly to defend the right of observers to participate fully in the Preparatory Commission, we believe that in the long term more account will be taken of our objections if we maintain our non-signatory status for the time being. Moreover, there are some defects which cannot be remedied by the Commission, however well it works. But my fundamental concern remains that signature by the Federal Republic of Germany, far from encouraging improvements in the Convention, would be taken as an indication that the industrialised countries were beginning to reduce their opposition to unsatisfactory aspects of the seabed mining regime.

/I therefore

I therefore urge that the Federal Republic should not take a decision in favour of signature of the Convention so long as the difficulties of the mining regime remain.

I was glad to hear that Hans-Dietrich Genscher had told Geoffrey Howe recently that no decision on this question would be taken without consulting with us first. We attach considerable importance to working together on this issue if at all possible.

(1).

10 DOWNING STREET

Prime Minister

Law of the Sea

Your minute below.

The Seabed Authority has not yet been constituted.

I attach a note about it.

I have added a sentence which may cover what you have in mind.

Agree to despatch letter?

MS pp A. J. C. 13/9.

CONFIDENTIAL

SEOP

Foreign and Commonwealth Office

London SW1A 2AH

12 September, 1983

Dear John,

UNLOSC: Prime Ministerial Message to Chancellor Kohl

You asked for some background on the International Sea-Bed Authority.

The Authority would consist of an Assembly of representatives of all States which had ratified or acceded to the Convention and which would be required to meet at least once a year; a Council of representatives of 36 States which had ratified or acceded to the Convention, which would be required to meet at least three times a year; and an Economic Planning Commission, and Legal and Technical Commission, each of which would have fifteen members and meet when required. In addition there would be a Secretary-General and Secretariat.

Over the next 25 years or so it is unlikely that there will be more than between 10 and 15 exploration or mining operations. The structure of the Authority would seem to be overweighty and complicated (even taking into account that it will be necessary to make rules for such operations). The powers of the Authority to establish policies over a wide area, together with the role and functions established for the Economic Planning Commission, also envisage a more widespread and interventionist function than is necessary.

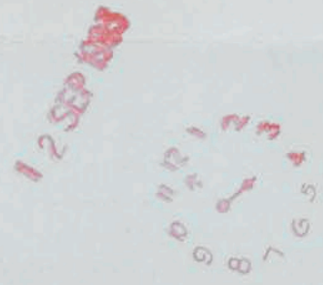
The cost to all States of this organisation, which it is tentatively estimated could range initially from £37 - 83 million in terms of fixed costs and £14-20 million in recurring costs, would be assessed on the basis of the UN scale for contributions to the Regular Budget (but if the US is not a Party, its 25% share would have to be made up by others).

Yours ever

(J E Holmes)
Private Secretary

A J Coles Esq
10 Downing Street

Foreign Pol
UNCLOSC
Pt 2



PRIME MINISTER

UN Law of the Sea Convention

You did not like the paragraph about the deep sea mining regime in the proposed letter to Chancellor Kohl.

I attach a revised version. Are you content that the message should be sent?

A.J.C.

It still isn't clear. Whether the Germans & the Int. Seabed Authority?

MD

7 September 1983

(1)

PRIME MINISTER

LAW OF THE SEA CONVENTION

The Germans may decide to sign the Convention in the near future. This would tend to isolate us and make it very difficult if not impossible to secure improvements to the deep sea mining provisions.

The Foreign and Commonwealth Secretary recommends that you send the message at Flag A to Chancellor Kohl. Agree to do so, deleting the last paragraph (which proposes that Malcolm Rifkind visits Bonn as your personal emissary to discuss this matter)?

A.J.C.

5 September 1983

The point about the Authority is just not clear. It is not only the expense & complexity but the nature of the Authority with central MT

MESSAGE TO CHANCELLOR KOHL

I am writing to you about the United Nations Law of the Sea Convention as I understand that you and your colleagues may at some time in the near future be giving consideration to the possibility of signature.

I know that you are already aware of the basic arguments against signature of the Convention as it stands at present. Its provisions relating to deep seabed mining set unsatisfactory precedents for compulsory transfer of technology and limitation of production. The structure proposed for the International Seabed Authority is disproportionately elaborate for the nature and number of operations it would oversee and would require unacceptably high financial contributions from States. Furthermore, the powers of the Authority go beyond what is needed for an efficient licensing body and would impose undesirable features of central planning. The excessive fees charged by the Authority and the obligations for compulsory transfer of technology would constitute an unacceptable burden on the mining companies. These factors and the general uncertainty about how the regime would function in practice would discourage private enterprise from investing in this expensive and new area of development. Neither the industrialists nor the developing countries would be able to benefit from the potential offered by the deep seabed.

The argument is sometimes made that Western countries could advance their views on the Convention more effectively after signature. However, while we continue strongly to defend the right of observers to participate fully in the Preparatory Commission, we believe that in the long term more account will be taken of our objections if we maintain our non-signatory status for the time being. Moreover, there are some defects which cannot be remedied by the Commission, however well it works. But my fundamental concern remains that signature by the Federal Republic of Germany, far from encouraging improvements in the Convention, would be taken as an indication that the industrialised countries were beginning to reduce their opposition to unsatisfactory aspects of the seabed mining regime.

/ I therefore

I therefore urge that the Federal Republic should not take a decision in favour of signature of the Convention so long as the difficulties of the mining regime remain.

I was glad to hear that Hans-Dietrich Genscher had told Geoffrey Howe recently that no decision on this question would be taken without consulting with us first. We attach considerable importance to working together on this issue if at all possible.

CONFIDENTIAL

Foreign and Commonwealth Office

London SW1A 2AH

5 September, 1983

Dear John,

United Nations Law of the Sea Convention: FRG Signature

German newspaper reports, and conversations with FRG officials, have led us to believe that the Germans might take a decision to sign the Convention some time during the next few weeks. This would be highly undesirable. German signature would mean that a sixth member of the Community had signed (the other remaining non-signatories are Italy, Belgium and Luxembourg). This, by creating a majority of signatory States, would raise the question as to whether the Community as such should sign the Convention, an action which we have of course opposed. German defection might quickly be followed by Belgian, Luxembourg and Italian signatures, and this would make HMG's position appear more isolated internationally, for example at the Commonwealth Heads of Government meeting in November. (Only six Commonwealth states (according to our latest information) all of them either landlocked or small, have not yet signed the Convention).

Signature of the Treaty by a major industrialised country such as Germany with deep sea mining interests would also, in our view, give precisely the wrong signal to the developing countries and to the rest of the international community (less the USA) now attending the UNLOS Preparatory Commission, set up to implement parts of the Convention particularly relating to deep sea mining. It is too early to say whether we shall be successful in achieving the improvements in the seabed mining provisions of the Convention which we are seeking at the Commission. In any case, it is likely to be a very long haul. But, in our view, the likelihood of our achieving our objections would be curtailed if more countries such as the FRG, who share our mining interests, join the signatories' camp.

Within the FRG, the Economic Ministry, which had been opposed to signature of the Convention, because of its objections to the mining provisions, is moving towards the acceptance of German signature as a quid pro quo for signature of the Exploration (ie the Reciprocating States) Agreement, which we with other like-minded countries (USA, FRG, France, Japan, Italy, the Netherlands and Belgium) with sea bed mining interests, are currently negotiating with a view to solving the problem of overlaps in mine sites. Against this background, Chancellor Kohl's attitude is crucial (and is itself a matter

for concern, as we know that Dr Teltschik, a senior official in his office, may also favour early signature).

We do not believe that the issue is likely to be formally decided in the FRG Cabinet until later this month, or early next month, after further consideration at State Secretary level. But Sir Geoffrey Howe believes that a message from the Prime Minister to Chancellor Kohl would be timely now, if we are to influence German decision-making. He is conscious of the need not to devalue messages at this level, but thinks that this is an issue which justifies such a message.

Sir Geoffrey Howe spoke himself to Herr Genscher on 30 August. He promised that we would be consulted before any final decision was taken. This is not entirely reassuring but we need to hold the Germans to this promise if at all possible. We have therefore considered whether we should propose in the message a high-level emissary (eg Mr Rifkind) with the idea of making sure the Chancellor focusses on this issue personally. On balance Sir Geoffrey Howe thinks this would be overdoing things, but the draft message contains a passage in square brackets which could be included if the Prime Minister thought an emissary worthwhile.

No

Italian Signature

The Italians have always been likely to sign the Convention eventually. This seems even more probable under a Government led by Signor Craxi, but he is unlikely to take a view until later in the year. We will in any case provide the Prime Minister with briefing on this question for any meeting she may have with Signor Craxi later this month. (German signature is of course likely to be more influential on the attitudes of other non-signatories than that of Italy).

I am copying this letter to Jonathan Spencer in Mr Parkinson's office.

Yours ever

(J E Holmes)
Private Secretary

A J Coles Esq
10 Downing Street

OUT TELEGRAM

		Classification and Caveats	Precedence/Deskby
		CONFIDENTIAL	IMMEDIATE

ZCZC	1	ZCZC
GRS	2	GRS
CLASS	3	CONFIDENTIAL
CAVEATS	4	
DESKBY	5	
FM FCO	6	FM FCO SEPT 83
PRE/ADD	7	TO IMMEDIATE BONN
TEL NO	8	AND TO IMMEDIATE KINGSTON
	9	INFO PRIORITY WASHINGTON, ROME, BRUSSELS, LUXEMBOURG
	10	UNLOSC CONVENTION: FRG POSITION
	11	1. MIFT contains text of the Prime Minister's message which
	12	should be delivered to Chancellor Kohl as soon as possible.
	13	2. When you have delivered the message, please report
	14	immediately any reaction copying your report immediate to
	15	Kingston. We agree that a call by you on Lambsdorff to draw
	16	attention to the message after delivery would be useful.
	17	3. For UNLOSC Delegation, Kingston. You have discretion
	18	to inform German delegation once Bonn reports delivery of
	19	message, but not repeat not to warn them in advance.
	20	
	21	HOWE
///	22	NNNN
//	23	
/	24	
	25	

NNNN ends telegram	BLANK	Catchword
File number	Dept: Private Office	Distribution
Drafted by (Block capitals): JOHN HOLMES		
Telephone number		
Authorised for despatch		
Comcen reference	Time of despatch	

YY 48

Classification and Caveats	Precedence/Deskby
CONFIDENTIAL	IMMEDIATE

ZCZC 1 ZCZC
GRS 2 GRS
CLASS 3 CONFIDENTIAL
CAVEATS 4
DESKBY 5
FM FCO 6 FM FCO SEPTEMBER 83
PRE/ADD 7 TO IMMEDIATE BONN
TEL NO 8 TELEGRAM NUMBER
9 INFO PRIORITY KINGSTON, WASHINGTON, ROME, BRUSSELS, LUXEMBOURG
10 MIPT: UNLOSC CONVENTION:FRG
11 1. Following is text of message referred to in MIPT
12 BEGINS:
13 I am writing to you about the United Nations Law of the
14 Sea Convention as I understand that you and your colleagues
15 may at some time in the near future be giving consideration to
16 the possibility of signature.
17 I know that you are already aware of the basic arguments
18 against signature of the Convention as it stands at present.
19 Its provisions relating to deep seabed mining set unsatisfactory
20 precedents for compulsory transfer of technology and limitation
21 of production; the authority which would adminster deep seabed
22 mining would be over-complex and over-expensive; and the
23 mining regime is highly interventionist, imposes excessive
24 fees and would thus discourage companies from involvement in
25 this expensive and new area of industrial development, so that

NNNN ends telegram	BLANK	Catchword neither
File number	Dept Private Office	Distribution
Drafted by (Block capitals) JOHN HOLMES		
Telephone number		
Authorised for despatch		
Comcen reference	Time of despatch	

XY 48

	Classification and Caveats		Page
	CONFIDENTIAL	IMMEDIATE	2

<<<<

neither the industrialised nor the developing countries would be able to benefit from the potential of the deep seabed.

The argument is sometimes made that Western countries could advance their views on the Convention more effectively after signature. However, while we continue strongly to defend the right of observers to participate fully in the Preparatory Commission, we believe that in the long term more account will be taken of our objections if we maintain our non-signatory status for the time being. Moreover, there are some defects which cannot be remedied by the Commission, however well it works. But my fundamental concern remains that signature by the Federal Republic of Germany, far from encouraging improvements in the Convention, would be taken as an indication that the industrialised countries were beginning to reduce their opposition to unsatisfactory aspects of the seabed mining regime.

I therefore urge that the Federal Republic should not ~~appeal to your Government not to~~ take a decision in favour of signature of the Convention so long as the difficulties of the mining regime remain.

I was glad to hear that Hans-Dietrich Genscher had told Geoffrey Howe recently that no decision on this question would be taken without consulting with us first. We attach considerable importance to working together on this issue if at all possible. ~~Open square brackets~~ [I would be very happy to send a personal emissary for discussions with you and your colleagues on this question if you felt that appropriate. I have in mind the Minister of State at the Foreign and Commonwealth Office, Malcolm Rifkind, who is responsible for Law of the Sea matters in my government. I should be grateful to learn whether this proposal is acceptable to you, and if so, when you think a visit by Mr Rifkind would most usefully contribute to the process of consultation~~ close square brackets~~.]

HOWE

NNNN ends telegram	BLANK	Catchword

XY 48 A

BGG

CONFIDENTIAL

FOR POL, cc RJ (2)

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref: K/PSO/11111/83
Your ref:

Prime Minister.

for information.

A.S.C. 11/3.

10 March 1983

Dear Francis

Thank you for copying to me your minute of 22 February to the Prime Minister about UNLOSC.

I am happy to agree the proposals contained in paragraph 6 of your letter, namely

(a) UK participation with like-minded European countries and Japan in the Preparatory Commission;

(b) acceptance of the points at Annex A as the basis of HMG's negotiating position,

I must however make it clear that this is on the understanding that there is no question of reopening negotiations on clauses relating to environmental matters. As you know, these are satisfactory to us and the interests of my Department would be well served if we were eventually able to sign UNLOSC.

I am copying this to recipients of your minute.

Yours

TOM KING

The Rt Hon Francis Pym MC MP

CONFIDENTIAL

7 March 1983

United Nations Law of the Sea Convention

The Prime Minister has noted the contents of the Chief Secretary's minute of 3 March.

A. J. COLES

John Gieve, Esq.,
Chief Secretary's Office,
HM Treasury

RESTRICTED

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB
Telephone 01-218 2111/3 (Direct Dialling)
01-218 9000 (Switchboard)

MO 12/3

4th March 1983

A.S.C. 4/3
h.a.

Dear John,

UNITED NATIONS LAW OF THE SEA CONVENTION

The Defence Secretary has seen the Foreign and Commonwealth Secretary's minute of 22 February. He has no objection to what is proposed.

I am copying this letter to the Private Secretaries to recipients of the earlier correspondence.

Yours ever,

(J E RIDLEY) (MISS)

A J Coles Esq

RESTRICTED

SUBJECT

CONFIDENTIAL

bc AP

10 DOWNING STREET

From the Private Secretary

3 March 1983

UNITED NATIONS LAW OF THE SEA CONVENTION

Following an informal briefing meeting here today, the Prime Minister has considered further the minute of 22 February by the Foreign and Commonwealth Secretary on the question of whether we should attend the preparatory commission opening in Jamaica on 15 March and, if so, what tactics we should employ there.

The Prime Minister agrees with Mr. Pym's recommendation that we should participate in the preparatory commission. She also agrees, broadly, that the basis of HMG's negotiating position should be as described in the minute under reference.

Further, the Prime Minister has read the Cabinet Office note, annexed to Sir Robert Armstrong's minute of 23 February, on a Reciprocating States Agreement and has noted our current approach to this question and the fact that no Ministerial decisions are at present necessary.

I am copying this letter to the Private Secretaries to members of OD, the Secretaries of State for Industry, Energy, the Environment, the Minister of Agriculture, the Attorney General and Sir Robert Armstrong.

JC

John Holmes, Esq.,
Foreign and Commonwealth Office.

(2)

2 PPS

Prime Minister

To note.

A.S.C.H. 13.

PRIME MINISTER

UNITED NATIONS LAW OF THE SEA CONVENTION

I have seen a copy of Francis Pym's minute to you of 22 February seeking agreement to UK participation in the Preparatory Commission and to the aims which would form the basis of our negotiating position.

2. We have said publicly that we need to obtain satisfactory improvements in the deep sea mining regime. It would look a little odd if we were now to turn away from an opportunity of exploring with G77 countries the extent to which improvements might be attainable. The report at Annex B to Francis Pym's minute, relating the outcome of the discussions with like-minded countries, demonstrates that we cannot rely on them to fight the battle for us with equal determination. Further, our absence would give hope to the G77 of completely isolating the US and the UK. I therefore agree the UK should be represented at Prep. Com. meetings. Our continued presence can of course be reviewed at any time during the course of Prep. Com. in the light of events.

3. I accept that obtaining satisfactory changes will, at best, be a long process; the G77 will be in no mood at the start of Prep. Com. deliberations to give anything away, but we should not dismiss too easily the power of the financial lever. Whether or not they have signed the Convention, those countries we have consulted accept that their ratification of, or accession to, the Convention depends on all the industrialised countries joining. The main burden of financing the Sea Bed Authority and the Enterprise would fall on them, the US and UK since, under the proposed system of assessments, between us we would fund 60% of the costs of those and other organisations.

4. I am satisfied that the points at Annex A cover all our main concerns, and I agree these should constitute the ultimate aim of the UK in negotiations. I also agree that bringing the Americans back into the Convention is not amongst our immediate aims - but clearly the more success we have in reaching our own aims, the more likely it is that the Americans might reconsider their own position. I am bound to point out, however, that UK participation in a Convention which does not include the Americans could, if the financing arrangements were to remain unchanged, involve a 33 per cent increase in the UK contributions, which on their own account would be considerable.

5. I am copying this minute to those who received a copy of Francis Pym's minute.

L.B.

LEON BRITTAN
3 MARCH 1983

PRIME MINISTER

LAW OF THE SEA CONVENTION

This meeting will be attended by Mr. Rifkind and Mr. Fyfoot (Legal Adviser) from the FCO, Mr. Goodall from the Cabinet Office, Mrs. Jones from the DOI and John Sparrow.

It is, as you requested, a "tutorial". I have deliberately kept the meeting as small as possible. It would not be appropriate for decisions to be taken as a number of Departments who have an interest will not be present.

I have asked Malcolm Rifkind to introduce both items.

The first is the question of a reciprocating states agreement. The issues were described in the Cabinet Office paper at Flag A. No decisions are necessary from Ministers at the present time. You will merely wish to ensure that the background is fully explained to you.

The second question is whether we should participate in the preparatory commission opening in Jamaica on 15 March and, if so, what our negotiating position should be. The issues are set out in Mr. Pym's minute at Flag E. It will be necessary for you to take a decision on this after the meeting, and I shall put the papers to you again. Meanwhile, Malcolm Rifkind and others present can describe to you what is involved.

A.J.C.

2 March 1983

10 DOWNING STREET

From the Private Secretary

2 March, 1983

Law of the Sea Convention

As you know, the Prime Minister has decided that she does not want to hold an OD meeting tomorrow but has instead requested a small meeting in the nature of a "tutorial".

The meeting will deal not with the Law of the Sea Convention as a whole but with the two questions of a reciprocating states agreement and United Kingdom participation in the preparatory commission.

The Prime Minister would be grateful if Mr. Rifkind, Mr. Fifoot, Mr. Goodall, Mr. Sparrow and a DoI official could attend. Sir Anthony Parsons will also be present.

I think it would be helpful if Mr. Rifkind were able to introduce both subjects with an explanation of the issues involved.

I am copying this letter to Richard Hatfield (Cabinet Office), Gerry Spence (Central Policy Review Staff) and Jonathan Spencer (Department of Industry).

A. J. COLES

John Holmes, Esq.,
Foreign and Commonwealth Office

(1)

PRIME MINISTER

LAW OF THE SEA CONVENTION

You said that you did not want an OD meeting but, instead, a "tutorial" to deal with the questions of a "reciprocating States agreement" and whether we should participate in the preparatory Commission opening in Jamaica on 15 March.

Mrs Ewd Jones 216304

If you agree, I propose to ask Malcolm Rifkind, Mr. Fifoot (an FCO Legal Adviser), David Goodall, ~~John MacGregor plus one~~ a DOI official, and John Sparrow to brief you on these matters on Thursday 3 March. + Tony Parsons - Eva Jonathan Powell

They will be able to cover very adequately the two questions mentioned above.

I suggest that we do not try at this meeting to cover other aspects of the Convention which would mean widening the meeting very considerably and bringing in the DOT, the MOD etc.

Agree that I should arrange a meeting on these lines?

Yes

A.J.C.

1 March 1983

CX RS

Foreign and Commonwealth Office

London SW1A 2AH

24 February 1983

Amendment made.

A.J.C. 1/3

Dear John,

UNLOSC

AJC?

Mr Pym's minute to the Prime Minister of 22 February contained a typing error in paragraph 3. The first sentence should read 'The outcome of our discussions, which included exchanges with the Japanese (who have now signed the Convention) and of talks of a rather different [not difficult] nature with the Americans, is summarised at Annex B.'

I am copying this letter to Private Secretaries to the recipients of the original minute.

Yours ever

John Holmes

(J E Holmes)
Private Secretary

A J Coles Esq
10 Downing Street

A

Ref. A083/0632

MR COLES

Law of the Sea: Reciprocating States Agreement

As requested in your minute of 28th January, I attach a note by the Cabinet Office on the various issues raised by a Reciprocating States Agreement (RSA). It reflects the views at official level of the Foreign and Commonwealth Office, the Department of Industry, the Department of Trade and the CPRS; and it has also been seen by officials in the Ministry of Defence.

2. In addition to the RSA paper, there is now the Foreign and Commonwealth Secretary's minute of 22nd February about United Kingdom participation in the Preparatory Commission. When this was considered in ODO(S) on 16th February, officials thought that this might not need discussion in OD. But the opportunity is there on 3rd March to discuss either or both papers, if the Prime Minister wishes.

3. I am copying this minute and the Cabinet Office paper to the recipients of your minute of 28th January.

RtA

ROBERT ARMSTRONG

23rd February 1983

UNITED NATIONS LAW OF THE SEA CONFERENCE:
RECIPROCATING STATES AGREEMENT (RSA)*

Note by the Cabinet Office

Introduction

The present policy of the British Government is "to press ahead with the negotiation of a Reciprocating States Agreement (RSA) with the United States and the Federal Republic of Germany and, if possible, with France. This seems the best way to protect the position of our deep-sea mining interests in the immediate period ahead" (extract from the Minister of Trade's minute of 16 November 1982 to the Prime Minister).

2. This paper explains what an RSA is and why it is held to be necessary, the timing considerations, the likely contents of an RSA, the likely reactions to an RSA, the views of other countries and the issues for decision.

What an RSA is and why it is held to be necessary

3. Six countries (United States, Federal Republic of Germany, United Kingdom, France, USSR and Japan) with potential deep-sea mining industries have enacted national legislation to enable them to grant licences to permit exploration and subsequent exploitation of the deep seabed beyond national jurisdiction. This legislation was originally intended to be temporary, pending the coming into force of the Convention. A list of the Western and Japanese consortia developing deep-sea mining techniques is annexed. The purpose of an RSA would be to secure the mutual recognition of these licences. Without an RSA, nothing would prevent other authorities (of, for example, the United States, France, FRG or Japan) from issuing licences for the same site that had been licenced by the United Kingdom authorities.

---

* Note: Since the term Reciprocating States Agreement excites G77 hostility, a different title is under consideration.

4. The United Kingdom Deep Sea Mining (Temporary Provisions) Act (1981) provides that United Kingdom nationals may only operate under a licence issued by British authorities or those of a reciprocating state. The same is true of United States deep-sea mining law. A combined United Kingdom/United States operation would therefore be unable to operate under either law without an RSA between the United Kingdom and the United States. This is a matter of particular importance because British companies are engaged in a consortium that also includes United States interests. (NB the same is not true of France and Japan at least where part of Japan's interest is concerned, as both have consortia made up of solely national interests - see Annex.)

5. The most promising source of polymetallic nodules, on which the exploration activities of the consortia have been focussed, is an area of some 1 million square kilometres of the Pacific Ocean off the Southern California Coast, known as the Clarion Clipperton zone. This area is beyond national jurisdiction. It will accommodate six or seven exploration sites. The exploration sites claimed in all the Western licence applications overlap. These overlaps or conflicts need to be resolved because even at the exploration stage, the consortia require exclusive rights to an area if they are to continue investment.

6. Unless we have an RSA with the United States, the British companies concerned are likely to protect their interests by "going offshore" (ie ceasing to operate as British companies). Potential commercial, fiscal, technological and other benefits to the United Kingdom would thus be lost. Similarly, our access to the supply of the minerals would be dependent on the United States. Moreover, because of their technical and numerical dominance, United States companies, operating on the basis of the United States 1980 Deep Seabed Hard Mineral Resources Act, would be well placed to obtain the lion's share of the best sites. Our shipping interests might also be affected because the United States legislation stipulates that all nodules mined by United States companies must be carried in United States vessels and we should have no redress against this protectionist measure.

Timing considerations

7. To be effective, an RSA is necessary before the first state (likely to be the United States) issues the first licence. The present intention of the United States authorities (it tends to vary from time to time) is to issue exploration licences for the Clarion Clipperton zone in the late autumn 1983. There are three other considerations. First, the need to maintain the confidence of British companies that the Government are taking the necessary steps to safeguard their interests. Second, the need to encourage them to resolve possible conflicts on an inter-company basis before licences are issued. Third, the effect on negotiations in the Preparatory Commission and on our relations with those who have signed UNLOSC (see below).

8. Assuming that the United States stick to their intention to issue licences in the late autumn 1983, an RSA would need to be concluded by around September 1983 at the latest. But it is possible that the United States will invoke domestic political pressure as a reason for bringing this date forward.

Likely contents of an RSA

9. Hitherto, discussion of an RSA has been confined to the United Kingdom, United States, France and FRG and the current draft reflects only their interests. Amendments will be necessary to attract Japan and Italy. The main provisions of the present draft are as follows -

a. Procedures for the binding resolution of conflicts

The states parties agree that, in the absence of negotiated settlement of conflicts (ie overlaps), they would be bound by settlements arrived at through recognised international arbitration procedures.

b. Agreement not to issue licences in disputed areas: existing applicants

The first round of licences would be restricted to existing applicants (ie the first five consortia listed at Annex). Licences would be issued only for areas in which there were no overlapping claims.

c. Deferral of the issue of exploration licences to later applicants

This provision is a matter of dispute. France would prefer to make no provision at all for later applicants in order to make plain the limited nature of the agreement and to remain in harmony with the interim arrangements provided under UNLOSC which are confined to existing applicants. They and the other Europeans have two fears. First, that later (ie second round) applicants would be predominantly American, and would register further claims at the expense of their own companies. Second, that the early establishment of very extensive claims to wide areas of the deep seabed would appear to other states as greedy. The United States, on the other hand, assert that, under their laws, they must make provision for later applicants - if they fail to do so, they would lay themselves open to the charge of condoning cartelisation; furthermore, unless such provision is reflected in the agreement, they would be unable to recognise their partners' licences, which is the whole purpose of the agreement. Discussion continues in an attempt to defer the issue.

d. No exploitation licence to have effect before January 1988

Commercial operations are highly unlikely before 1988. Nevertheless the mining lobby in the United States may seek to bring the date forward to 1985 by a change in the United States law.

e. Requirement on the parties to take the necessary steps to recognise the licences of the other signatories

f. Harmonisation regulations

To ensure harmonisation between state practice in such areas as environment and safety.

g. Denunciation

Necessary for any signatory which decides to ratify the UNLOSC Convention or accede to it.

10. Provision for mutual recognition of licences is made in the 1981 United Kingdom Act; no further legislation would be required and there are no financial implications.

Likely reactions to an RSA

11. The possibility that the industrialised states would enter into an agreement for mutual recognition of national licences to exploit the deep sea bed beyond national jurisdiction has excited opposition and condemnation from the G77. It is seen by them as anti Convention (and of course current United States thinking sees it as an alternative to the Convention) and will probably be regarded as a first step towards exploitation outside the Convention and to the carving up of the only area so far explored with an abundance of polymetallic nodules. The Soviet Union will seek to encourage their resentment and hostility.

12. It is difficult to assess the consequences of such a reaction to the conclusion of an RSA. It is true that the 1982 Conflict Resolution Agreement, of which in some respects the RSA would be the logical extension, did not arouse much excitement among the G77. However at that time we had not declared our views on signature of the UNLOSC Convention and the Conflict Resolution Agreement did not involve mutual recognition of licenses for sites in the Clarion Clipperton zone. The President of the Conference (Mr Koh) has publicly threatened that, if the RSA is concluded and exploitation is commenced, he will make it his business to instigate an application for an advisory opinion from the International Court of Justice. The Law Officers have advised that signature of an RSA would not be inconsistent with the signature of UNLOSC (though it would be inconsistent with ratification) but, having regard to its present composition, that there can be no confidence that the ICJ would give a ruling to a similar effect. On the contrary, they may declare that mining outside the Convention is contrary to international law. This would inevitably prejudice the financing of such projects. It is also possible that some states might seek to retaliate against the operations of United Kingdom companies concerned or against our wider navigational interests. The issue is an emotional one, although as the proposed agreement is comparatively narrow in scope and is limited to exploration until 1988, it is difficult to see a rationale for early retaliatory action. There is also the consideration that on a number of United Nations issues, the United Kingdom needs to seek the support of the Third World (as over the Falklands); we cannot expect their willingness to support us to be unaffected by our acting,

as they see it, outside the UNLOS Convention. Commonwealth countries may link the issues and this is likely to come up at the Commonwealth Heads of Government meeting in New Delhi in November especially if we sign an RSA shortly beforehand. The fact that similar (if unsatisfactory) provision for the avoidance of overlaps is made within the Convention regime (Preliminary Investment Protection or PIP) does not help our case.

13. On the other hand, if there are sufficient signatories to an RSA to demonstrate the developed world's determination to give the mining consortia the necessary legal backing, this fact could, in the medium and longer term, add to pressures on the G77 to amend the present deep-sea mining provisions of the Convention or accept that other provisions need to be made. At the moment of actual exploitation, the G77 will come face to face with the prospect of gaining nothing from the provisions of the Convention as presently drafted. The greater the number of RSA signatories, the more effective such pressure should be; and vice versa. Nevertheless, it has to be recognised too that, among the G77, the land-based producers do not want to see seabed mining begin at all. Others probably accept that the international community can at best hope for only small profits but would prefer this to seeing the West scoop what there is.

Views of other countries

14. The United States attitude is clearly crucial. They claim to be bound by the first come, first served principle in their legislation and are under pressure from their industry to get on with granting licences.

15. France is concerned about the "monopoly" question (paragraph 9c. above), and also about the timing of an RSA in relation to the Preparatory Commission. The FRG wants an agreement but will wait until after the 6 March elections and may not decide quickly thereafter. Japan has entered a late claim for its national project (DORD) in the Clarion Clipperton zone but has so far been reluctant to accept that early exploration is an essential factor in determining priorities for licensing. The USSR and India are only interested in the Preliminary Investment Protection (PIP) approach (ie the analogue to the RSA within UNLOSC) and want to confine PIP to signatories. Italy is proposing to legislate and would be interested in an RSA, subject to timing problems; Belgium and the Netherlands are more hesitant.

Issues for decision

16. For the moment, no decisions are called for. Discussions on an RSA between the United Kingdom, United States, France and FRG are continuing and efforts are being made to include Japan and Italy.

17. When it comes, the essential issue will not be whether to sign but with whom, which will govern what is signed and when. Clearly, the more signatories, the better, both to make the RSA more presentable and to encourage the G77 to reconsider their position on the Convention. An RSA with only two signatories would be a sign of weakness. But the United States may insist that if no-one else comes in and we do not sign either, they will go ahead anyway and issue licences unilaterally. President Reagan may lobby the Prime Minister. So the question may need to be faced, possibly in September 1983 or earlier, whether the United Kingdom should sign an RSA with the United States alone.

Cabinet Office

22 February 1983

ANNEX

CONSORTIA DEVELOPING DEEP SEA MINING TECHNIQUES

		Per Cent Interest
Kennecott Group		
Kennecott Copper Co Inc (owned by Sohio, a US subsidiary of BP)	USA	40
Consolidated Gold Fields	UK	12
Rio Tinto Zinc	UK	12
BP	UK	12
Mitsubishi	Japan	12
Noranda Mines	Canada	12
Ocean Management Inc		
Inco (originally International Nickel)	Canada	25
Sedco	USA	25
AMR Group (Metallgesellschaft, Preussag Salzgitter, Deutsche Schachtbau und Tiefbohr)	FRG	25
Deep Ocean Mining Co (DOMCO, a Japanese group led by Sumitomo)	Japan	25
Ocean Mining Associates		
Essex Minerals (subsidiary of US Steel)	USA	25
Union Seas (subsidiary of Union Miniere)	Belgium	25
Sun Ocean (subsidiary of Sun Oil)	USA	25
ENI	Italy	25
Deep Sea Ventures (subsidiary of Tenneco), operator only	USA	
Ocean Minerals Co		
Lockheed Missiles and Space Co Inc	USA	40
Billiton International (subsidiary of Shell)	Netherlands/UK	25
AMOCO Ocea Minierals (subsidiary of Standard Oil of Indiana)	USA	25
Royal Bos Kalis Westminster Group	Netherlands	10
Afernod		
Centre National pour l'Exploitation des Oceans Bureau de Recherches Geologiques et Minieres Commissariat a l'Energie Atomique Societe Metallurgique Le Nickel Chantiers de France - Dunkerque	France	100
DORD (a group of 38 Japanese companies)	Japan	100

PRIME MINISTER

UK Law of the Sea Convention

Some time ago John Sparrow sent you a minute (Flag B) about a "Reciprocating States Agreement". The Foreign and Trade Secretaries also sent you minutes (Flags C and D) which I did not show you at the time because I thought it would be more convenient if I asked the Cabinet Office to produce a single (and rather more intelligible) document for you to read. This is now attached (Flag A). It sets out clearly what is meant by a "Reciprocating States Agreement" and shows that we are discussing the possible contents of one with the United States, France and Germany and are making efforts to include Japan and Italy. It also shows, as the previous papers did not, that no decisions are necessary now. We shall have to take a view later in the year but for the present you merely need to satisfy yourself that you are content with the way this is being handled.

If you want a discussion of the matter, this could be done on 3 March - but I doubt whether a discussion is necessary.

There is a separate issue on which decisions are needed. The attached minute (Flag E) by the Foreign Secretary recommends that, in order to improve our chances of changing the deep sea mining provisions of the Convention, we should participate, along with certain European countries and Japan, in the Preparatory Commission opening in Jamaica on 15 March - and that our negotiating position should be as at Annex A to Mr. Pym's minute.

Are you content with these recommendations, subject to the views of OD colleagues?

Alternatively, do you want a discussion on 3 March?

A.J.C.

I think a tutorial would be better than a discussion yet

23 February 1983

CONFIDENTIAL

PM/83/18

PRIME MINISTER

United Nations Law of the Sea Convention

1. Following my minute of 23 December, officials from the FCO and DOI have had discussions with representatives of like-minded industrialised countries about the prospects for improving the deep sea mining provisions of the Convention. We need now to decide whether or not to attend the Preparatory Commission opening in Kingston, Jamaica, on 15 March and, if so, what tactics to adopt there.

2. For purposes of the discussions with our friends, a list of points was drawn up by FCO and DOI officials with the approval of Malcolm Rifkind and John MacGregor. These are set out at Annex A. They are more fundamental than our negotiating position at the later stages of the Conference when there was a prospect of the Convention being adopted by a consensus which included the USA.

3. The outcome of our discussions, which included exchanges with the Japanese (who have now signed the Convention), and of talks of a rather ~~difficult~~ different nature with the Americans, is summarised at Annex B. Our European friends and Japan (whether or not signatories) agreed, and some have said so publicly, that they wish to see improvements to the deep sea mining regime and that they will seek such improvements in the Preparatory Commission. But none of them is willing to adopt a position comparable to that implicit in the points in Annex A. Some have pointed out that such improvements are not obtainable in the Preparatory Commission but would require changes to the Convention itself, on which, as you

/know,

know, substantive negotiations have been formally concluded. Some have said that it would not be possible to negotiate improvements of such substance unless there is a change of heart among the G77 and that cannot be expected for some years.

4. I said in my earlier minute that the prospects of obtaining fundamental changes within the two year signature period are not good. We have to unravel significant elements in a package which has been adopted after ten years of negotiation, or seek to substitute different provisions. This, if possible at all, will be a long haul, certainly extending well beyond the closing date for signature. It is too early to say whether our European partners will stick with us in not signing the Convention without substantial improvements. That, however, may be less significant than whether any major country interested in deep sea mining is prepared to ratify or (after the signature period has closed) accede to the Convention unchanged. None of our partners has indicated a disposition to ratify. We should seek to keep them to that position which, over the long term, should increasingly bring home to the G77 the impracticality of the deep sea mining regime in the Convention.

5. We are committed by our Parliamentary statement to working in the international community in pursuit of generally agreed provisions for regulating marine matters. I believe we must continue to make this effort, even if the prospects of short term success are not at present promising. Turning our back on the Convention will not increase the chances of getting a generally agreed solution and could damage our maritime interests. The Preparatory Commission has relatively limited terms of reference, but it

/is the

is the sole post-UNLOSC forum - setting aside the General Assembly - in which we can seek to influence international opinion in pursuit of our policy. It is logical therefore to make a start there. Our European partners are anxious for us to participate and, apart from anything else, it may stiffen their resolve to seek improvements if we are present. The Americans are not participating, but they have not lobbied against our doing so (they have lobbied at a low level about the possibility of withholding financial contributions to the Commission, but we believe that such action would not be legal whether or not we attend: our contribution, through the UN regular budget, is likely to be of the order of £120,000 p.a.). I therefore believe we should attend the Commission. Although the first meeting is unlikely to get very far, it is important for our negotiators to try and influence its work programme at the outset.

6. Against this background, I therefore invite my colleagues to agree on:

(a) UK participation with like-minded European countries and with the Japanese in the Preparatory Commission;
(b) acceptance of the points at Annex A as the basis of HMG's negotiating position.

7. I should add that in my view our initial statements in the Commission, while making clear the importance we attach to changing the deep sea mining regime, should be relatively general and that our negotiators should only reveal the full details of our position if and when we succeed in engaging the rest of the United Nations in serious negotiations. This would both give the best chance of initiating such a negotiation and also make it easier to maintain unity with our partners. Finally, if our officials are to have any credibility with our European partners and with the Japanese,

/let alone

let alone with the Commonwealth and developing countries, we must not give the impression that our policy is ultimately dependent on the Americans joining the Convention.

8. If the approach described above can be approved, I suggest that detailed negotiating instructions for our officials at the Preparatory Commission be agreed inter-departmentally.

9. Discussions are continuing meanwhile on the Reciprocating States Agreement. Though important, I do not believe this affects the decisions needed now. A separate note on it is being prepared by the Cabinet Office.

10. I am copying this minute to OD colleagues, the Secretary of State for Industry, the Minister of Agriculture, Fisheries and Food, the Secretary of State for Energy, the Secretary of State for the Environment, the Attorney-General and Sir Robert Armstrong.

(FRANCIS PYM)

Foreign and Commonwealth Office
22 February 1983

ANNEX A

LIST OF POINTS FOR AMENDMENT

1. Regulation and licensing by an international body is not exceptionable in an international area. But the structure proposed (the International Sea-Bed Authority) is over-elaborate for the nature and number of operations it would oversee, and would require unacceptably high financial contributions from states. The powers and policies of the Authority go beyond what is required for an efficient licensing body and would impose undesirable precepts of central planning (e.g. through production control and provisions for participation in commodity arrangements). We would seek a simplified, less expensive licensing body with limited functions.

2. Compulsory transfer of technology either to an international body (the Enterprise) or to developing countries is unacceptable as a precedent that would harm many industrialised interests beside its immediate effects on deep sea mining. The concept of the common heritage does not in our view extend, as the Convention proposes, to providing opportunities for participation in deep sea mining by the Enterprise or developing countries on terms more favourable than those provided for qualified private operators (e.g. as regards technology). Participation by the G77 through distribution of profits from deep sea mining would be acceptable. Cooperation towards developing an international operation and/or joint ventures on <u>equal</u> terms with private operators is conceivable, but on a voluntary not mandatory basis.

3. Some provision for review is desirable but the provision should not impose on a minority (particularly one composed of industrialised states) the views of a majority.

4. The interim arrangements (Preparatory Investment Protection) are restrictive, limiting operators to exploration for an indefinite period and are costly in financial and other terms (e.g. exploration on behalf of the Enterprise). We would wish to secure automatic grant of licences to the recognised investors whose activities predate the Convention, whether or not they participate in the interim arrangements.

5. The licence terms, particularly financial arrangements and performance requirements, should take full account of the long term risk and development costs involved in order not to deter investors.

ANNEX B

CONSULTATIONS WITH INTERESTED COUNTRIES ON THE DEEP SEA MINING PROVISIONS OF THE UN CONVENTION ON THE LAW OF THE SEA

1. During January/February 1983 officials from the FCO and DOI held bilateral meetings with officials from the following countries which have not signed the Convention: FRG, USA, Italy, Belgium and Luxembourg. They also had preliminary discussions with officials from France and the Netherlands, both of whom signed the Convention at Montego Bay, and with the Japanese, who signed on 7 February. All these three countries have made clear their wish to obtain improvements to the deep sea mining provisions.

2. In these consultations, the FCO and DOI based themselves on the points in Annex A regarding our views on the Convention. (An earlier version was used in talking to the FRG.)

3. The results of these consultations were as follows:

FRG : had long expressed similar concerns to those now being raised by the UK, but somewhat taken aback by the depth of our objections and saw little likelihood of these being met. G77 considered common production as basis for the common heritage: would it be possible to change this view? (Foreign Ministry showed inclination to sign Convention and try to obtain improvements through Preparatory Commission (PrepCom); Economics Ministry more robust, but admitted that FRG position less radical than UK one.) FRG prepared to ratify Convention if some changes, e.g. on transfer of technology and review conference, made. But these not tantamount to changing the system. Would attend PrepCom and hoped UK do so too. (Agreed useful to establish a group of those wanting improvements.) Would support any UK statements and stress themselves the need for changes. But until German Cabinet have taken formal decision on signature (which could not happen until after the elections on 6 March) would not want to imply that signature was precluded. Hence would not ask for parallel system to be changed.

USA : Have turned back on Convention although domestic controversy continues and could be interested if President Reagan's six points capable of accommodation. Consider UK idea of getting amendments to the Convention unrealistic, but will not block our efforts. Will not attend PrepCom, but interested in its results.

Italy : Agreed with UK view on desirability of improvements, but doubted the scope for such activity. Vulnerable to pro-G77 pressure especially in Parliament. If they could get a few improvements, e.g. on transfer of technology, financial terms of contract and production policies, would sign - though not necessarily ratify. Will attend PrepCom and keen on idea of establishing group of industrialised states there.

Belgium : Ideological solidarity with UK objections to the Convention, but somewhat alarmed by radical nature of our proposals and pessimistic as regards chances of success. Will be represented at PrepCom and will support UK and others in urging need for major changes. Now reviewing advantages and disadvantages of signature. Likely their Ministers will postpone a decision until they can evaluate first phase of PrepCom. But Belgian Foreign Minister susceptible to Commission influence, which could result in Belgian signature at any time.

Luxembourg : Share our negative view of deep sea mining provisions and thought that Luxembourg decision on signature should be postponed until clear what PrepCom might yield. But warned that French and Commission putting pressure on Luxembourg Foreign Minister to sign.

France : Motivated by distaste for what the Americans have done and cynical wish to ride with the South. But would like to keep a foot in the American camp, e.g. by joining a reciprocating agreement, although if pressed would sacrifice latter for French image with G77. See themselves in PrepCom as playing leading role between G77 and those industrialised countries who will only be observers. But no expectation that PrepCom can achieve anything.

Netherlands : Interested in collaboration with us in trying to improve the Convention. (We have not yet had detailed discussions.)

Japan : See Convention as ''inevitable'' and while continuing to express dissatisfaction with its deep sea mining provisions as a reason for getting their implementation deferred for an undefined period, unlikely to be active in supporting moves for changes except on matters such as transfer of technology. Would like to reach agreement with non-signatory deep sea miners to avoid conflicts, but unlikely to sign a formal reciprocating agreement.

4. It is clear that significant differences remain among the industrialised countries in their approach to the Convention. There is a basic division between the USA, who see no further virtue in negotiations and the rest, who will all participate in PrepCom (except for Luxembourg, which is not doing so for practical reasons). The French (and European Commission) are still pressing the view that more concessions can be obtained in PrepCom if we (and the Community) sign. But they recognise the prospects for obtaining changes are limited. Most of our European partners would be willing to cooperate with us in PrepCom in seeking changes, but none of them are prepared to take as strong a line on the degree to which the system should be amended. The FRG and Belgium, who have in the past been the most opposed to the deep sea mining provisions, would not back a demand for elimination of the Enterprise and the parallel system. FRG, Italy and France are interested in a joint venture solution to the problem of how to exploit sea bed resources. Nevertheless, although none of our European partners see any prospect of major changes being obtainable within the signature period, they recognise that ratification will be very difficult for them unless all the industrialised countries join in the system.

5. All our European industrialised partners are keen to

keep a foot in the American camp outside the Convention, but not necessarily at the price of destroying their chances of obtaining reasonable opportunities to mine within it. None of them, however, would insist on US participation before signing the Convention, although they are likely to think twice about ratification without the US. Japan, though also keen to keep at least a toe in the American camp and sceptical about the viability of the deep sea mining provisions being implemented in the near future, is unlikely to stick out its neck very far in calling for changes to the text of the Convention itself.

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

21 February 1983

LAW OF THE SEA: MERCHANT SHIPPING

The Prime Minister has noted without comment your Secretary of State's minute of 17 February describing the anxieties of our shipping industry in relation to maritime issues which arise under the Law of the Sea Convention.

I am copying this letter to the Private Secretaries of the other Members of OD and also to Jonathan Spencer (Department of Industry), Richard Hatfield and John Sparrow (Cabinet Office).

A. J. COLES

John Rhodes, Esq.,
Department of Trade.

CONFIDENTIAL

fil. BPC

1. MR. COLES
2. MR. INGHAM

I attach a translation of an article that was written about the Prime Minister in an Italian Newspaper, Il Geornale.

As Signor Fanfani is coming next week you might like to glance at it.

CAROLINE STEPHENS

18 February 1983

18 February 1983

Very many thanks for so thoughtfully ringing yesterday and suggesting that you might send to us the article about the Prime Minister that appeared in Il Geornale.

As we are expecting Signor Fanfani next week it is useful to have it.

Miss Elizabeth Sturges-Jones

821-9030.
930-6913.

5. Washington Sq.
Selwyth S.W.1.

MISS ELIZABETH STURGES-JONES

My dear Caroline

Herewith the Italian
[illegible] from Il Giornale of Selwyth.
Translated - rather freely! by a friend,
Col d'Orlandi.
He asked me to impress on you that the
paper is the most highly respected in
Italy, & the writer a very respected Journalist.
They do not often write such glowing accounts
of politicians apparently!
Yrs affectly
Elizabeth

I don't want it back.

CONFIDENTIAL

D

cc PJ

(2)

Prime Minister

A.J.C. 17/2.

PRIME MINISTER

LAW OF THE SEA: MERCHANT SHIPPING

I note that you have asked the Cabinet Office for a paper on the question of a reciprocating states agreement with the United States. I agree with John Sparrow that it is very important to persuade other states to participate as well as the United States of America.

I remain of the view that we must get a satisfactory agreement on deep-sea mining. At the same time you should be aware of the strong anxieties being expressed by our shipping industry in relation to other maritime issues. The industry believe:-

(a) if the United Kingdom stands aside from the Convention, United Kingdom ships will be at a significantly higher risk of interference from other countries than if we adopt it;

(b) customary law and the 1958 Convention will not give merchant shipping the protection the new Convention will on such matters as the breadth of the territorial sea, the meaning of innocent passage through such seas, the regime for straits, limitation of penalties for oil pollution offences, quick release of arrested ships, and settlement of disputes;

(c) these risks will arise particularly for countries in South America and Africa ill-disposed to us, and countries bordering on straits, and will get worse as time goes on if hostile countries are seen to be getting away with it;

(d) the United Kingdom's position as a major force in the International Maritime Organisation will be undermined.

Our shipping industry is in the grip of the worst recession anyone can remember, and has fallen 34% in size in less than a decade. Now more than ever they look to HMG to maintain their access to world markets by all means in our power. These considerations should not deflect us from the path laid down in the Government's statement of 2 December: but we need to bear in mind the interests of shipping when we come to take further decisions.

Incidentally, John Coles in writing to Richard Mottram on 22 December makes the point that, without the Convention, our ships and aircraft are free to pass through straits and archipelagos. That is true, but the situation is far from secure. The rights of our merchant ships to innocent passage, conferred by customary law and the 1958 Convention on the Territorial Sea, are not as clear as they would be under the new Convention, which, for example, greatly limits the ability of signatories to apply laws or regulations to the design, certification, manning or equipment of foreign ships passing through their territorial waters. The consideration given to such uncertainties during the drafting of the Convention must have increased the risk that they will be exploited against states that do not join in.

I am copying this mintue to the other members of OD, the Secretary of State for Industry, Sir Robert Armstrong and to Mr Sparrow.

Arthur Cockfield

LORD COCKFIELD

Department of Trade
1 Victoria Street
London, SW1H OET

17 February 1983

File 2

10 DOWNING STREET

From the Private Secretary

SIR ROBERT ARMSTRONG

LAW OF THE SEA: RECIPROCATING AGREEMENT

The Prime Minister has recently received three papers on this subject - a minute of 12 January by the Head of the CPRS, a minute of 18 January by the Foreign and Commonwealth Secretary and a minute of 25 January by the Secretary of State for Industry.

When she saw the first of these papers the Prime Minister commented that she thought it might be necessary to hold a meeting to discuss the issue and that she needed fuller information.

It would be helpful if the Cabinet Office could prepare a short paper for the Prime Minister describing the significance and likely content of a reciprocating states agreement, the issues for decision and a summary of the views so far expressed. The Prime Minister would decide in the light of this paper whether she needs to hold a meeting on this subject.

I am sending a copy of this minute to Gerry Spence (CPRS), Brian Fall (Foreign and Commonwealth Office), Jonathan Spencer (Department of Industry) and John Rhodes (Department of Trade).

A J. COLES

28 January 1983

CONFIDENTIAL

JH 673

2 PP's.

PRIME MINISTER

Await minute from Cabinet Office

A.J.C. 29/1

LAW OF THE SEA

I have seen John Sparrow's minute to you of 12 January, and Francis Pym's minute of 18 January, concerning reciprocating arrangements for deep sea mining.

2 I take John Sparrow's point about the disadvantages in both substance and presentation for the UK if we concluded an agreement just with the US, based solely on the US deep sea mining law. But that is not what we have been seeking to achieve: France and FRG have participated with ourselves and the US in all the negotiations so far and I hope they will continue to do so. There has already been discussion about the desirability of broadening the discussion to include other deep sea mining states, especially Japan, and I trust progress will be made on this point in forthcoming meetings.

3 However, I agree with Francis Pym that we should not underestimate the difficulty of concluding an agreement in the next few months which will suit both the US who are firmly anti Convention and Japan and France who are disposed to work within it, at least for the time being. Nor should we rely on a helpful response from the US to a request to defer the issue of licences: there is still a strong US domestic lobby which favours rapid progress in this field.

4 I believe that we should do what we can to secure an early agreement which has as broad support as possible and which does not exclude the UK's objectives. But we should not forget that it is the US who have the most numerous deep sea mining operators and that agreement with them on the recognition of licences is the single most important element for the UK in these interim arrangements. Even if other states prove reluctant to agree to terms acceptable to us and to the US, we still need an agreement with the US.

5 I am copying this to recipients of John Sparrow's minute.

PJ

P J

25 January 1983

Department of Industry

C

PM/83/7

Minute from Cabinet Office AR 29.

PRIME MINISTER

Law of the Sea

1. John Sparrow has sent me a copy of his minute to you of 12 January about the desirability of a reciprocating agreement on deep sea mining with the USA.

2. I agree strongly with much that he has to say: we do need to bring in the Germans, preferably also the French; and in the longer run we should try to bring in the Japanese and others; and we should seek to ensure that the agreement is not harmful to our interests. If delay in concluding an agreement helped us achieve those objectives we should clearly support it providing that we did not thereby cause the Americans to abandon the idea of a reciprocating agreement altogether.

3. We must, I think, start from the premise that we need a reciprocating agreement in order to protect our companies against overlapping claims from companies registered under the laws of other countries and most notably the US. The deadline for concluding such an agreement is likely to be the date when the US is ready to issue its first national licences, probably in the autumn of this year. Thereafter our companies would lose priority against US companies so licensed.

4. John Sparrow implies that we should defer signature until we have a draft which is not based on the US 1980 Act. I agree that we should try to negotiate an agreement which meets our main concerns but the US Administration is bound by the 1980 Act and there seems little likelihood of our persuading them to seek early amendments to that law which would free their hands to meet our concerns.

5. Similar problems arise with John Sparrow's suggestion that we should seek an agreement which will later bring in others, especially the Japanese. The US, France and the FRG (with whom we are currently negotiating a reciprocating

agreement) would all welcome Japanese participation, but to bring the Japanese on board would probably also involve amendments to American legislation which the US would be reluctant to seek in the immediate future, though there are signs that they are beginning to realise the seriousness of this problem in the long term. It therefore seems unlikely that there is any realistic prospect of bringing in the Japanese and others before this autumn.

6. Finally, John Sparrow suggests that we should ask the Americans to defer the issue of their licences pending conclusion of a reciprocating agreement. I see advantage in pursuing this line over the next few months, but we must expect resistance from the US to any suggestion of deferral. They have consistently maintained that they have little administrative discretion under their law once the objective criteria for issuing licences are satisfied. At present they expect these critieria to be satisfied some time in the autumn.

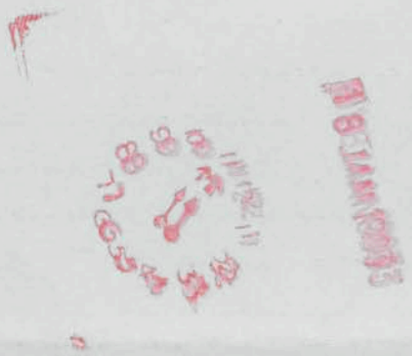
7. In conclusion, therefore, I do not think that we can decide now what our attitude would be if we found that our negotiators had not been able to meet all our objectives of substance, and that the Americans were ready to issue national licences with or without a reciprocating agreement. We would have to consider at that time, and in consultation with the companies concerned,where the balance of our interests lay.

8. I am copying this minute to the Secretaries of State for Industry and Trade, Sir Robert Armstrong and John Sparrow.

(FRANCIS PYM)

Foreign and Commonwealth Office
18 January, 1983

Foreign Rl
UNCLOSC. pt 2.



Prime Minister

B

The purpose of a Reciprocating States Agreement is to ensure that the signatories recognise the validity of the licences issued to their companies — and to ensure e.g. that we and the U.S. do not both allocate the same block of the sea-bed to our respective companies.

CONFIDENTIAL

Qa 06212

12 January 1983

To: PRIME MINISTER

From: JOHN SPARROW

2. The Foreign Secretary may wish to comment.

Note, pending Sir. Syms comments

A.J.C. 14/1

Law of the Sea

1. I am sure that we were right to decide not to go for early signing of the Law of the Sea Convention. At the time, it was suggested that we should however enter into early signature of a Reciprocal States Agreement (RSA) with the USA. I have doubts about the wisdom of this unless at least the Germans and preferably also the French do so as well.

2. There is a reasonable prospect of US, UK and German agreement on a reciprocal agreement before September 1983, the likely earliest date of issue of American licences to US companies and the date when the need for a reciprocal agreement becomes important. The French may also wish to join such an agreement to safeguard their own interests although they did sign the Law of the Sea Convention and will probably also want to register sites under the Convention arrangements.

3. We should also use the time before September to try to make the RSA acceptable to other industrial countries such as Belgium, Netherlands, Italy and Japan and thus make it a more effective lever on the G77 for revision of the deep sea mining part of the Convention along the lines we want. Indeed an RSA based solely on the US 1980 Deep Seabed Hard Mineral Resources Act would not necessarily be in the best long term interests of the UK even though it would grant our companies reciprocal access. The Act is strongly based on a first come, first served principle which, because of the extent of US resources, is likely to result in US companies obtaining a near monopoly of the best sites. The Act also discriminates against the use of foreign, including UK, ships for carrying nodules. Its use as the basis for any new reciprocal agreement is therefore likely to be against our interests, as well as strongly resented by the G77.

Foreign Pol. docs, Pt 2

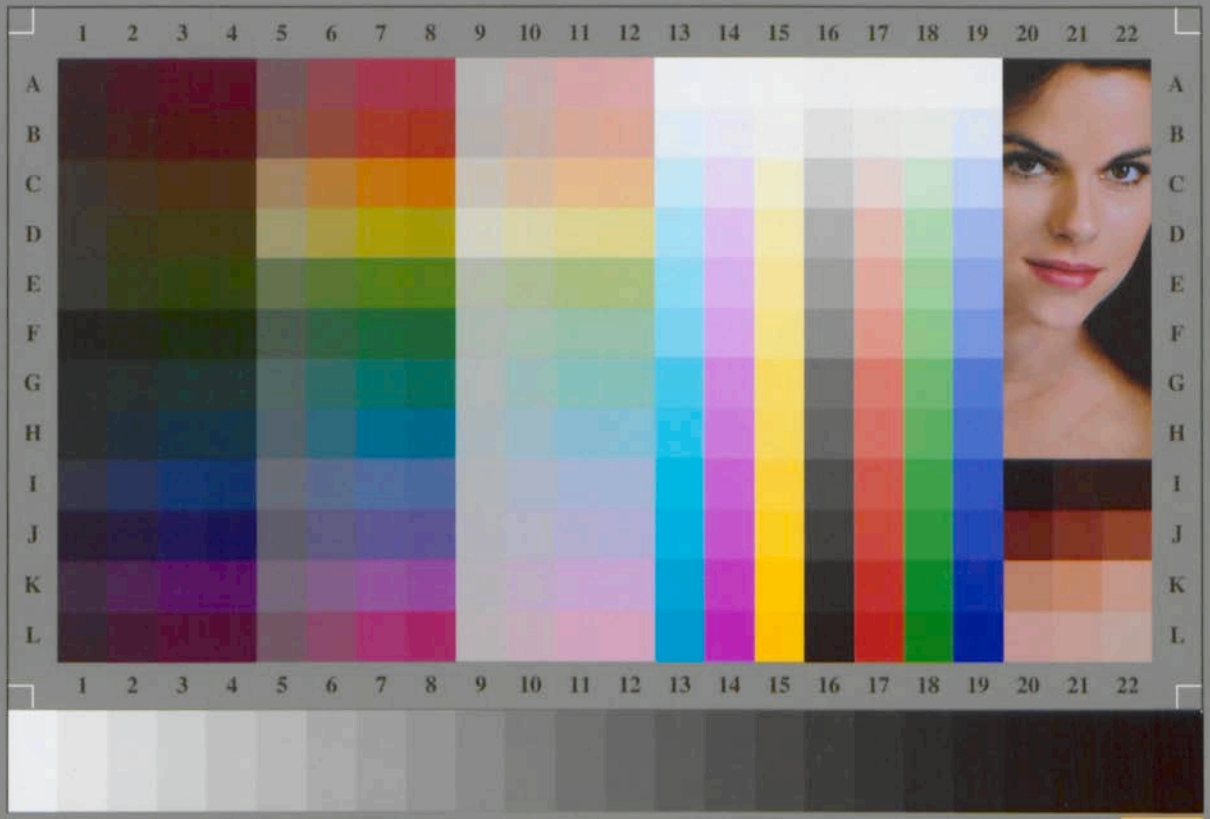
PART 1 ends:-

TF to FCO 24/12/82

PART 2 begins:-

Sparrow to PM Q4 06212 12/1

KODAK Q–60 Color Input Target



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FTP://FTP.KODAK.COM/GASTDS/Q60DATA

Q-60R2 Target for
KODAK
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