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10 DOWNING STREET

THE PRIME MINISTER

14 December 1982

Dear Admiral Irving,

Thank you for your letter of 19 November about the Law of the Sea Convention. I understand you also wrote to Geoffrey Howe, Michael Heseltine and Peter Walker. My answer will stand for all of us.

As you will have seen from the statement made by Malcolm Rifkind in the House of Commons on 2 December (copy enclosed), we appreciate that some of the provisions in the Convention, including those on pollution, are helpful. But the seabed mining provisions are not acceptable and would in our view set undesirable precedents e.g. as regards transfer of technology.

The Convention is open for signature for two years. We believe a further effort should be made to reach a general agreement on the seabed parts of the Convention, as has already been reached on the other parts. By virtue of signing the Final Act, we will be entitled to participate fully in the deliberations of the Preparatory Commission, although we will not have a vote.

Yours sincerely

Margaret Thatcher

Rear Admiral Sir Edmund Irving, K.B.E., C.B.

Surp

PARLIAMENTARY STATEMENT ON UNLOSC, 2 DECEMBER 1982

The UN Convention on the Law of the Sea will be opened for signature in Jamaica on 10 December, and will remain open for signature for 2 years thereafter. The Convention deals with many aspects of the Law of the Sea. Some provisions are a re-statement or codification of existing international law; some provisions seek to make new law. Parts of the Convention, for example, those relating to navigation, the continental shelf and pollution are helpful, but the provisions relating to deep seabed mining including the transfer of technology are not acceptable. They are based on undesirable regulatory principles and could constitute unsatisfactory precedents. A number of our friends and allies share our misgivings on these points. We need to obtain satisfactory improvements in the deep sea mining regime and will therefore explore the prospects with interested states. As the Convention is open for signature for 2 years, there is ample time for revision before taking a final decision. It is our wish that there should be generally agreed provisions for regulating marine matters and we wish to continue to work with the international community to achieve this.

I should emphasise to the House that we could not participate in a seabed regime on the present terms and for that reason, we could not ratify the Convention unless the provisions for the deep sea mining regime become satisfactory.

A copy of the Convention and relevant resolutions of the Conference will be placed in the Library of the House.

CONFIDENTIAL

GR
APS

Foreign and Commonwealth Office

London SW1A 2AH

10 December 1982

for the Prime Minister's signature

Dear Tim,

UNLOSC: Letter from ACOPS

Thank you for your letter of 25 November enclosing a letter to the Prime Minister from Admiral Sir Edward Irving, the Acting Chairman of the Advisory Committee on Pollution of the Sea. Admiral Irving has sent identical letters to the Chancellor of the Exchequer, the Secretary of State for the Environment and the Minister of Agriculture, Fisheries and Food.

/ As requested I attach a draft reply from the Prime Minister to Admiral Irving, which has been cleared with the other Departments concerned. It corrects the misleading impression in Admiral Irving's letter that we could only participate in further discussions if we signed the Convention.

/ I also enclose a copy of the record of the symposium about UNLOSC to which Admiral Irving's letter refers, together with a summary of the views expressed, which may be of interest to the Prime Minister.

We have agreed with the other departments concerned that they need take no further action, assuming that the Prime Minister replies on the lines of the enclosed draft.

I am copying this letter to the Private Secretaries to the Chancellor of the Exchequer, the Secretaries of State for Trade and for the Environment and to the Minister of Agriculture, Fisheries and Food.

Yours ever

John Holmes

(J E Holmes)
Private Secretary

T Flesher Esq
10 Downing Street

DSR 11 (Revised)

DRAFT , LETTER

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:

Rear Admiral Sir Edmund Irving KBE CB
Acting Chairman
Advisory Committee on Pollution
of the Sea
60 New Oxford Street
London WC1A 1ES

Your Reference

Copies to:

PRIVACY MARKING

.....In Confidence

CAVEAT.....

SUBJECT:

Thank you for your letter of 19 November about the Law of the Sea Convention. I understand you also wrote to Geoffrey Howe, Michael Heseltine and Peter Walker. My answer will stand for all of us.

As you will have seen from the statement made by Malcolm Rifkind in the House of Commons on 2 December (copy enclosed), we appreciate that some of the provisions in the Convention, including those on pollution, are helpful. But the seabed mining provisions are not acceptable and would in our view set undesirable precedents eg as regards transfer of technology.

The Convention is open for signature for two years. We believe a further effort should be made to reach a general agreement on the seabed parts of the Convention, as has already been reached on the other parts. By virtue of signing the Final Act, we will be entitled to participate fully in the deliberations of the Preparatory Commission, although we will not have a vote.

Enclosures—flag(s).....

SUMMARY OF VIEWS EXPRESSED AT SYMPOSIUM ON UNLOSC HELD ON 2 NOVEMBER AT LANCASTER HOUSE

1. General Council of British Shipping: Favoured early signature and ratification. Freedom of navigation important for British shipping. The extension of coastal states' claims was a real threat to merchant shipping. Convention law was needed to regulate matters. To rely on customary law was not enough. It would be too risky to hope to enjoy the benefits of the Convention without UK participation. The UK needed the Convention more than the United States, because we had a larger merchant fleet and were more dependent on international trade. UK opposition to the Convention could result in difficulties for British shipping around the world.

2. British Petroleum: Deep Sea Mining part of the Convention clearly unsatisfactory whereas the rest broadly acceptable. Favoured early signature but with the reservation that the UK would not ratify unless the seabed regime was improved. As a major shipowner and world trader, BP was concerned about the threat of unilateral maritime claims by Third World countries. Not good enough to assert that many provisions were already part of customary international law. Maritime law should be treaty law and the UK a party to the treaty. Desirable that Americans should be brought into the treaty as well.

3. Shell: Strongly in favour of UK and Netherlands signature. While expressing reservations about deep sea mining provisions, Shell saw advantages for off-shore oil and gas operations in Continental Shelf provisions. Innocent passage important for tanker trade. The Convention would enhance North/South relations to the benefit of international trade. Full UK membership of Prep Com important to help improve deep sea mining regime. Deep sea mining outside the Convention was not realistic and could be brought before the International Court of Justice. When signing Convention, UK should make a reservation about the deep sea mining provisions.

/4. British

4. British Steel: The seabed would probably be the main source of minerals for future generations but our knowledge is limited. The Convention proposed ''nationalisation'' of seabed resources on a world scale. This would lead to a cartel like OPEC. Government should not rush to embrace a Convention which might embarrass future generations. Its navigational parts were merely an attempt to codify accepted international practice. It was unlikely that Prep Com would be able to produce changes necessary to bring United States into Convention. It was possible that non-signatories could make arrangements for deep sea mining outside the Convention.

5. Rio Tinto Zinc (on behalf of UK members of the Kennecott Consortium - RTZ, BP Minerals, Consolidated Goldfields):
Because of the unsatisfactory nature of seabed provisions and non-signature by USA, deep sea mining under Convention unlikely to attract private investment. Other parts of Convention enjoyed consensus; the seabed provisions did not. Ideally negotiations should continue. Convention was objectionably regulatory and set an ominous precedent. Would stifle production. The international enterprise would predominate.

6. Review Conference jeopardized security of terms and financial terms were too tough. (Companies wanted HMG to agree to double taxation relief). Resulting package left too many uncertainties. UK could influence others and should seek improvements. Suggested two courses of action (not clear whether they were mutually exclusive): sign with reservation about ratification and press for improvements; establish a strong network of reciprocating states agreements and seek amendments to the Treaty. But unlikely Prep Com could alter the substance of the regime.

Royal Society

7./ Under Convention, marine scientific research would for first time be covered by international law. During past decade it had become increasingly difficult to obtain permission to work in the exclusive economic zones and on the continental shelves of some countries. Convention would provide framework for forward planning, although we would have to recognise wider claims and restrictions than hitherto.

/Marine ....

Marine scientific community on balance favoured signature. A vote in Prep Com could help ensure that the powers of the Authority were not unfavourable to research in the international Area.

8. UK Offshore Operators Association: Convention should be made acceptable to more countries including the United States. Welcomed the improvements to provisions covering the removal of platforms [Article 60.3].

9. Association of British Independent Exploration Companies (BRINDEX): Neutral on question of signature, but would welcome further clarification on removal of offshore platforms.

10. Advisory Committee on Pollution of the Sea (ACOPS):
As an island state, UK stands to gain much from claims to exclusive economic zone and continental shelf as defined under Convention. UK should sign and become full member of Prep Com. Convention for first time laid down international standards to prevent all sources of marine pollution (IMO provisions on vessel source pollution were only limited). Would strengthen enforcement against pollution. Not to sign would be major setback in Britain's international relations, and could lead to further conflicts of ''cod war'' kind.

11. Chartered Institute of Patent Agents: Opposed to signature of Convention because of mandatory transfer of technology provisions. If UK signed, we should protest at transfer of technology provisions and stress that they could not be accepted as a precedent for the future. Convention went further towards conceding what developing countries wanted than theyhad achieved in other negotiations.

12. Licensing Executives Society: Opposed signature of Convention because of transfer of technology provisions, which were unworkable. A system for compulsory transfer of technology would be a very dangerous precedent.

13. Royal Institute of Navigation: UK should sign the Convention and extend the territorial sea to 12 miles. Supported views expressed by General Council of British Shipping.

Record of UNLOSC Symposium (2 November 1982)

Mr Rifkind: (Chairman)

Could I begin by welcoming you all to Lancaster House; and say how grateful we are that you have taken the trouble to come this afternoon to give us your views on the Law of the Sea Convention. As some of you will know, we have during the proceedings of the Conference had regular contact with some of the bodies most interested in the outcome and this has been of very considerable value to the Government in understanding the views of the various interested parties. Of those who are represented this afternoon, you will see that there is no specific representation from those with either defence or fishing interests. Although these matters come under the Convention there are separate ways of consulting them and finding out their views on this particular subject.

Could I at this stage, if I may, introduce my Ministerial colleagues? On my immediate left Sir Michael Havers, the Attorney General; on his left Lord Mackay, the Lord Advocate; then Mr Iain Sproat, the Parliamentary Under Secretary at the Department of Trade; and Mr John Wakeham, the Minister of State at the Treasury; on my far right, Hamish Gray, the Minister of State, Department of Energy; John MacGregor, Parliamentary Under Secretary of State, Department of Industry; on my immediate right, Sir Ian Sinclair, the Chief Legal Adviser to the Foreign and Commonwealth Office.

The procedure this afternoon will be that I will be inviting each of the bodies represented to make a short presentation of the view of their organisation on the Law of the Sea Convention. In the letters of introduction we sent to you, we indicated the particular matters on which we hoped you would give us the benefit of your

views. At the end of each presentation I will then invite my Ministerial colleagues to ask any questions they would like, in order to elucidate the points that have been raised and then we will go on to the next organisation. I am sorry that there will not be a substantial amount of time for each presentation but you will appreciate that the numbers involved make that impossible... I would be grateful if the first contributor, Mr Tookey, could speak on behalf of the General Council of British Shipping. Thank you very much.

Mr Tookey: (GCBS) Thank you Minister. I represent the General Council for British Shipping: I am the current Vice President. May I reciprocate by saying thank you for giving us this opportunity to state our views ?

It would be a considerable overstatement to say that GCBS has always welcomed the concept of a Law of the Sea treaty and there are still a number of elements in it which we dislike. We do, however, consider that we now need it and in fact therefore now welcome it. When the three mile limit was the norm, ships could avoid countries likely to misbehave. With a twelve mile territorial limit and jurisdiction over a number of matters in a 200 mile zone, it is essential that the relationship between ships and the states in whose waters they trade be properly defined. Furthermore, if the UK does not sign, and I would say parenthetically that I wish we were talking of both signature and ratification, it will have little say in trying to protect the interests of the shipowner, the ship, the master or the crew.

Freedom of navigation is particularly important to British Shipping and we are grateful for the hard work which was put into the negotiations on Article 21 Para.2, which states that laws made by coastal states shall not apply to the design, construction, manning or equipment of foreign ships in innocent passage,unless they are giving effect to generally accepted international rules or standards. The very fact that this negotiation was so difficult leads us to believe that the benefit of this article might not be applied to ships from non-treaty countries, which might lead to widely differing national requirements being applied to a ship which traded past a number of countries. A ship trading from here to Japan might pass through the waters of eighteen states.

As you will be aware, more than a hundred waterways will now be straits. The new regime will, in all probability, eventually become customary international law but the knowledge that a shipowner may eventually be able to persuade his government to obtain a right of passage gives him little satisfaction. He prefers certainty. Events in the Middle East must have convinced everyone of the importance of keeping straits open.

We attach considerable importance to the safeguards which have been negotiated; in particular Article 230, although not giving everything we would wish, gives greater protection to our masters and crews than exists at present by providing that penalties for pollution shall, in the main, be monetary penalties. Imprisonment would be a totally inappropriate punishment. Also, the provisions on rapid release of both ship and crew are important.

Our recommendation that the UK should sign is not born of a wish to pander to the developing countries. Practically everything which happens in UNCTAD is in some way contrary to our interests as firm supporters of free trade in shipping. But we are also realists and we trade worldwide as does much of UK commerce. If the UK does not sign it is likely to be the only major maritime commercial power which does not sign. This will,in our view, simply not be understood and could have a detrimental impact on our shipping interests. The UK delegation played a prominent part in the negotiations on the freedom of navigation and pollution issues and indeed chaired the Maritime Group in the Third Committee. If we walk away from this treaty it will upset many of our friends and make it difficult for the UK to play a similar role in the future.

So much for our fears. To be positive, we feel that the time has come when a worldwide regime which will protect the freedom of navigation, one of our great invisible resources, is to be welcomed. Freedom of navigation, if it is not to be illusory, must include freedom from harassment. It is no longer wise to rely on the development of customary international law in an age when states are increasingly inclined to take unilateral action to "protect" what they perceive to be their economic and/or political interests.

We are aware of the problems the Treaty presents to another industry, and we have no wish to see it suffer any disadvantage. We have therefore carefully considered whether British shipping would get the benefits of the

Convention without UK involvement in the Convention, and we have come to the conclusion that the risk that we would not do so is too great.

We do not know the content of proposed interim measures with likeminded potential miners but it seems to GCBS that they would exacerbate the rift and be taken as a clear indication that the countries concerned would not sign or ratify. They would prolong the period of international discord.

It is clearly evident from what I have said that GCBS favour signature at an early stage. Postponement would have many of the disadvantages of non-signature. In our view, the UK should be seen as being unequivocally in favour of a world system on maritime matters and we do not see any realistic alternative to that contained in the treaty. A world system without the US is of course a flawed system but we have learnt to live with the US as a non-participant in many maritime conventions. Our view then is: Better with it than without it.

Mr Rifkind: There is one particular point I would like to ask about if I may. You have mentioned that you do not think that the United Kingdom would be able to get the benefit of the navigation provisions if it did not sign the Convention, yet you have also acknowledged that the United States is clearly not going to sign the Convention. Do you think there are going to be practical disadvantages that the United States are going to experience if other maritime countries do sign, and they do not?

Mr Tookey: I think the answer to that has to depend to some degree on how one judges the degree of importance of the United

States as a major maritime power. It obviously is a major power, a major commercial power. But you do not see the United States flag around the seas in anything like the strength of the Red Ensign. So I think we would as a major maritime nation be significantly worse off than the United States by non-signature. Also the United Kingdom depends to a far greater degree than the USA on foreign trade.

Mr Rifkind: Is your suggestion therefore that if other maritime countries do sign and the UK does not, that our Merchant Navy would be literally prevented or inhibited from passing through waters, or simply that we would have no legal basis on which to claim the rights that in practice we might continue to exercise?

Mr Tookey: I think that one could rely or hope to rely on customary international law. But I think the fact that the majority of the world at least sees the need for a new law on the sea would imply that they would look for support from the major developed countries and the UK is a major country and I think that our stand-offishness would be misinterpreted and could result in difficulties for British shipping around the world. There have been countries which have indicated that unless the developed world concedes something on the seabed, then there could be difficulties on the matters of navigation. And it is the matter of navigation of course which is our main concern.

Mr Rifkind: Thank you very much indeed. Could we then now go on to our next contributor, Mr Bentham?

Mr Bentham: (BP)

Thank you Minister for the opportunity of attending and speaking at this meeting today on behalf of BP.

At the outset I should make it clear that I am speaking today in respect of the overall interests of BP with regard to Law of the Sea matters, and not in respect of the narrower issue only of deep sea mining for manganese nodules. Mr Derek Rankin-Reid of RTZ will be dealing later with that specific matter, and my colleague Mr Tony Gorton of BP Minerals is also here and available to speak, or answer questions, in respect of deep sea mining, where, of course, BP has a substantial interest in the Kennecott Consortium.

I say that at the outset because Part XI of the Treaty text which deals with deep ocean mining is clearly unsatisfactory, whereas the rest of the Treaty text is, in our view, broadly acceptable, and here I refer to the provisions in respect of rights of passage through the Territorial Sea, Straits and Archipelagos, the freedom of the High Seas the exploitation of the Exclusive Economic Zone and the Continental Shelf, the Environment and Pollution.

When the movement for an overall Law of the Sea Treaty gained impetus in the late 1960's and 1970's, the western developed countries with strategic and commercial maritime interests were confronted with a number of threats:-

i) that States would extend their territorial seas unreasonably, for example to 200 miles - as some South American countries had already purported

to do - and thereafter would impose tolls for passage through those seas, or introduce unreasonable legislation in respect of traffic or in respect of the design, construction, operation and manning of ships.

ii) that the Third World countries would claim large portions of the continental margin - the shelf, the slope and the rise - as being part of the deep sea bed and therefore "the common heritage of mankind". This would have resulted in cutting back national jurisdiction, for example over the UK's continental shelf.

iii) a double standard would be introduced in respect of pollution from the land, from dumping or from ships. A stringent standard would be imposed for the developed world and its ships, and a much looser standard for the undeveloped countries.

Those were some of the dangers foreseen at the outset of the Law of the Sea negotiations and BP, as a ship owner and charterer, as a petroleum company and as a world trader was naturally disturbed at this type of prospect.

In the result, a package deal approach was adopted towards the new Law of the Sea - for good or ill - and the Western World in negotiation over the years 1974 - 1982 has in fact traded advantages in respect of the Territorial Sea, Straits, Archipelagos, the EEZ, the Continental Shelf, pollution and so on in exchange for meeting the Third World's aspirations in respect of the deep ocean, in particular the wish of the Group of 77 to have a U.N.

Authority control and carry out mining in the deep sea. The U.N. Authority, with its Assembly, Council, Special Committees and so on is unattractive. It has been described by one American authority, Mr Northcutt Ely as "a Chinese pagoda floating on its head", and that may be a fair description. Nevertheless, the Authority is now embedded in the Treaty text.

The problem now is how to balance the advantages won in respect of rights of passage, the continental shelf, pollution, etc., against the disadvantages of Part XI.

One argument against signing the Treaty, and one frequently put forward in the US, is that the Treaty's provisions concerning the territorial sea, straits, archipelagos, the EEZ, the continental shelf, the environment and pollution, are now already a part of customary international law. This argument is attractive, but I think it has a siren quality to it. If we wish to be certain that rights of passage are assured in international law and that the right to exploit the continental shelf extends to the foot of the rise and that pollution can be sensibly dealt with, then it is important that the UK should be a party to the new Treaty and in a position to assert that these rules are not just (arguably) customary law but (unarguably) Treaty law.

One possible approach to the dilemma of balancing the very real disadvantages of Part XI - and make no mistake, America's objections to it are real - on deep sea mining, against the real advantages of the rest of the Treaty

might be for HMG to sign the Treaty early next year but with the reservation - and this could be put in a variety of ways - that the UK would not ratify unless Part XI is improved, whether through amendment of the Treaty text or by the enactment of Rules and Regulations which will give an incentive - not a disincentive - to deep sea mining. If such an approach were to succeed, one could conceive of the US acceding to the Treaty in the fullness of time.

To sum up, Minister, as BP sees it, the provisions of Part XI are inadequate and undesirable, but there is much value in the rest of the Treaty to a commercial Group such as ours with a basic interest in international trading. Early signature of the Treaty, but with a reservation, would, we believe, protect our interests.

Mr Rifkind: Thank you very much. One brief question if I may. What would be the effect as far as BP's assessment is concerned, if some members of the European Community were to sign and others were not? Do you see any particular problems if there is a difference of view within the Community?

Mr Bentham: I think at first sight probably not.

Mr Gray: (DEn) You referred, Mr Bentham, to the attitude adopted by the United States, and you indicated in your remarks that you would be anxious that a way could be found so that they might be able to sign the Convention. Bearing that in mind, does the fact that the United States seems unlikely to sign the Convention at the moment, does that make any difference to your attitude to Continental Shelf matters?

Mr Bentham: I don't think it would on Continental Shelf matters, because I think as between ourselves and the States, we take very much the same view of customary international law. And I think most American lawyers and English lawyers would agree that one had jurisdiction down to the foot of the rise. And there is a pretty fair argument in customary international law that this should be the position. Under the Treaty it would be very nice to have it cut and dried, if that's the right expression to use in the case of the Continental Shelf. But there's no difference there, I think, between the American and the British approach.

Mr Gray: So this would not influence your attitude towards our signing, - the fact that the Americans were not signing?

Mr Bentham: Well, I think so. In fairness of course, like most people we would very much prefer to see the US in the Treaty. As a major world power, if not the major world power, it is highly desirable that they should be. But on the other hand, it's not unthinkable that we should have a treaty without America in the first instance. And if one can do something to make it more possible for them to join later, then perhaps that might be an advantage.

Mr Rifkind: Thank you very much indeed. Our next contributor is Mr Blair, on behalf of Shell.

Mr Blair:
(Shell)

I speak on behalf of Shell and start off by stating that Shell has expressed its view on the question whether HMG should sign the Convention in a letter which I sent to Mr Fifoot, the Deputy Leader of the UK Delegation on 2nd August on the basis of guidance which I had received, and I will quote from that letter: "We (and that is Shell at very senior level) have carefully reviewed the Convention and Resolutions adopted on 30th April and it remains our considered view that the speedy conclusion of the Convention and the implementation of the Resolutions are in the best interests of our industry and merit our support. We hope that a substantial number of countries will sign the Convention and that it will come into force in the course of this decade, after suitable rules and regulations have been drafted by the Preparatory Commission. We would hope and expect that the United Kingdom and the Netherlands will be among the signatories. We would regret any significant delay in signature."

A similar communication was made at that time to the Netherlands Government. We are, of course, aware of the shortcomings in Part XI and Annex III of the Convention (to which I shall refer later) but felt that the balance of advantages strongly favoured the recommendation which we made to both Governments. There is firstly the fact that the statement by President Reagan on 29th January 1982 made it clear that the United States had no difficulties with

sixteen Parts of the Convention on which agreement has been reached by consensus and which the statement described as acceptable and consistent with US interests, but only with some major elements of the deep sea mining regime (Part XI and its annexes) which the statement described as not acceptable. Amongst other factors which determined our view are: firstly, the definition of the Continental Shelf which extends jurisdiction to an extent which provides a viable basis for off-shore oil and gas operations; secondly, satisfactory provisions on transit passage through international straits and on innocent passage through the territorial sea and similar rights in respect of archipelagic waters (these affect navigation and are of particular importance to the tanker trade); and thirdly, in regard to the protection and preservation of the marine environment, the acceptance of port state jurisdiction as proposed by the oil industry some years ago, will help in combating pollution by tankers and furthermore, the treaty gives support to IMCO rules and regulations and may speed up their application. Captain Lawrence will elaborate on the last two points. Finally, I should mention that it is our view that the conclusion of the Convention is likely to have a favourable effect on the development of North/South relations on which the peaceful and orderly development of trade, investment and in particular energy matters depends; were the Convention to fail at this stage as a result of states deciding

not to sign it or for any other reason, the effect of this could seriously exacerbate North/South problems to the detriment of international industry.

I turn now to the shortcomings of Part XI and Annex III on deep sea mining. It is futile to speculate on how much better the treaty would be if the proposals by the eleven industrialised countries which include all Scandinavian countries as well as Canada, Australia and New Zealand, and originally also the Netherlands, had been accepted as basis for a compromise. As things are the only possibility we see in mitigating the shortcomings is via the rules and regulations which the Preparatory Commission is to draft. We believe a lot could be achieved through this route but membership of the Preparatory Commission is limited to states which have signed the Convention, and it seems to us important that as many of the industrialised countries as possible which can be expected to possess the technical knowledge, experience and drafting skills, should be members of the Preparatory Commission. This is another reason why we think that the United Kingdom should sign the Convention at an early date.

This leads me to the second option mentioned in the Background Note which seems to envisage the possibility of interim arrangements with the United States and certain other countries which go beyond the conflict

resolution agreement recently signed. We do not think that deep sea mining outside the Convention regime can in the long run be realistic. We would certainly place no reliance on such arrangements.

Finally, two purely personal observations which I have not discussed within Shell. It is sweepingly asserted in some circles that a Convention is not necessary since all or most of the matters of benefit to the industrialised countries contained in the Convention would become customary international law. This may be true for a few concepts but I strongly doubt the extensiveness of this bold assertion. It would certainly not apply to the Settlement of Disputes provisions. It is perhaps of interest that the United States Delegation when recently rebutting in Document A/Conf.62/L.158 the assertions by Chile, Colombia, Ecuador and Peru contained in A/Conf.62/L.143 on rights of sovereignty and jurisdiction within the 200 mile limit was relying in its rebuttal on the terms of the Convention and not on rules of customary international law.

My second personal recommendation concerns the possibility that the United Kingdom, when signing the Convention, might make a statement to the effect that it would make ratification dependent on satisfactory rules and regulations negotiated in the Preparatory Commission. I think that such an expression of

expectation would be helpful, particularly if similar declarations were made by other industrialised countries.

Mr Rifkind: Thank you very much indeed, Mr Blair.

Captain Lawrence: (Shell) Most of what I propose saying has already been said. Mr Blair has put forward the arguments supporting signing which we in the Shell group believe to be true. I wish to amplify purely on the marine considerations most of which have already been mentioned. The Convention has been so long under consideration and contains many fundamental improvements to the legal regime affecting shipping that are self-evident. The most important perhaps being the changes in the definition of territorial law, rights of free passage, archipelagic transit and the exploitation of the EEZ. All of these are desirable in the short term. The impact on other international conventions is also to be borne in mind. It is therefore perhaps to be regretted that the Convention as drafted also contains so many contentious issues which could have affect on its acceptance. There is a danger we believe that if acceptance is delayed too long that it will lead to a proliferation of unilateralism by coastal states, a process which had already started and which may start again and brings with it the danger of rigid implementation. I therefore suggest that it must be in this country's interests to be an early signatory of the Convention.

Mr Rifkind: Thank you very much indeed.

Mr MacGregor: (DOI) Mr Blair, you refer to the second option mentioned in the background note, and speak against that on the grounds that as you say we do not think that deep sea mining outside the Convention regime can in the long run be realistic. If the United States does not sign the Convention, would you feel that that statement would be correct, or put it another way would you feel that without the United States, deep sea mining inside the Convention regime could in the long run be realistic ?

Mr Blair: I don't think it would be realistic in either case outside the Convention. Quite frankly I am convinced that the matter would be taken up before the International Court of Justice and that the International Court exists whether we like it or not. I believe that judgement would go against whoever acts outside the framework of the Convention.

There is of course a further assumption in what I have just said. I believe the Convention will be signed by a substantial number of States at an early stage and I believe also that it will be ratified in due time. So all this convinces me that operation outside the four walls of the Convention would be an extremely precarious venture. And that's the reason why I would not recommend that in those circumstances deep sea mining could be a viable proposition.

Mr Rifkind: You mentioned that one of the benefits of signing would be that we could take part in the work of the Preparatory Commission and yet as I understand the Convention we could still take part in the work of the Commission without signing, although we could not vote in any decisions that took place. Would you see that as being a major disadvantage?

Mr Blair: Yes. Clearly, here it isn't a question of voting, it is the question of negotiating. And quite frankly the mere fact (and I mention this in some two places in my statement) that you need the drafting skills of British experts and experts from industrial countries generally, which can do a lot to produce rules and regulations, will to a large extent mitigate the shortcomings of Part XI.

Sir Michael Havers (Attorney General): Mr Blair, what you are really saying is that the International Court will find after a period of time that the rules of the Convention are now part of the rules of international law. Is that really what you are saying about why they will find against any State outside the Convention taking part in deep sea mining?

Mr Blair: No, I wouldn't say this. I wouldn't say that the rules of the Convention are part of international

law. And I would think that probably the judgement would be different, that acting outside the framework of the Convention is not sanctioned in any forum by an international regime having the approval of the community of States.

Sir Michael Havers: But if in fact they are to find against anybody not a signatory they would have to find that the international law went that far.

Mr Blair: Yes.

Sir Michael Havers: So my proposition you would agree with.

Mr Rifkind: Thank you very much. Mr Ian MacGregor on behalf of British Steel.

Mr Ian MacGregor: (British Steel)

Mr Minister, Chairman, I am here in part as British Steel is a consumer of minerals and also in my private capacity as a former member of that industry. And I feel that, while this proposed Convention has many attractive features particularly from the point of view of finally codifying what has become essentially the existing practice in law I believe in many areas, and as such has been enshrined in a Convention which was arrived at by consensus, I think that part of it is attractive. Professor Watt proposed that in a way this was perhaps redundant, the early part of the agreement, because he said that a good deal of the material included in the draft Treaty has already become part of conventional international practice, and thus assumed the status of customary law. And I think that the fact that in the part of the Convention which deals with navigation and property there is merely an attempt to codify what has already become accepted practice internationally. And I think that is further supported by the fact that that part of the Convention was arrived at by consensus.

The final part on minerals is one in which there is little understanding and I think that it would be improper for any Government to dash into embracing the conditions which are proposed without having the public more fully understand the implications of what they are being asked to have their Government approve.

The industrial countries over the last 2½ or 3 centuries have built their ability to produce products based on free access to the bountiful supply of minerals in the earth's surface. The interesting thing is that the earth's surface continues to have ample supplies.

The great question over the years has been the economic comparisons between one source of supply and another and we have seen the fortunes of the mineral companies and in fact countries rise and fall as the economics of the minerals available to them within their borders have become economically viable or less economically viable.

It seems to me that despite my good friend's concern about ocean mining we will be increasingly in generations ahead faced with the necessity for looking further afield for sources of minerals. We are at a very early stage in understanding the mineral deposits in the ocean and of course the more popular ones are the nodules which are easily recognised and which obviously attract public gaze because of the simplistic idea. The fact remains that the ocean bottoms may well be the future source of economic minerals in centuries ahead. We are probably fifty to a hundred years away from full exploitation of these occurrences and in fact our exploration of the ocean bottoms and our understanding of them is in a very very primitive state.

There is however, growing appreciation of the fact that thi huge surface which is greater than the land mass by an order of 7 to 10: 1 does indeed probably contain the

mineral requirements for future generations of people. And the difficulty that I have with this Treaty is that it essentially proposed the nationalisation of the mineral industries on a world scale.

I believe that is a concept that is unsound, and one which would by virtue of the conditions that are applied here mean that our industrial countries in the next century and in succeeding years find themselves as captives of a regime which is totally alien to our concept of free economic development.

I would find it very difficult to believe that with the present understanding, or lack of understanding of the implications of this that any government should proceed at this stage to embrace what is obviously a very dangerous precedent in the internationalisation of resources.

We already are concerned about one cartel in energy. And here there is blatantly put forward the concept of providing just that for all the basic minerals which I insist will increasingly be found in those parts of the earth's surface which are covered by water.

Mr Rifkind: Thank you very much.

Mr MacGregor: (DOI) Mr MacGregor, two speakers have already suggested that it might be helpful in getting the United States eventually to sign the Convention if the United Kingdom signed the Convention and then participated in the discussions on the Preparatory Commission. I wonder if you would like to comment on whether you think that it will be possible to get changes in the Preparatory Commission which would make it acceptable to the United States.

Mr MacGregor: (British Steel)

My understanding is that there has been an enormous resistance to the rationalisation of this particular non-consensus part of this Agreement and to the attempts that have been made at all levels to try to get a more rational approach to the thing.

Therefore I would feel that the prospects for such an arrangement are poor unless there is a dramatic change in attitudes on the part of some of the participants.

I can see well why they hate to give up this opportunity which has been granted to them.

Mr Rifkind:

Going on from that very question, given that the Americans are unlikely to sign, do you think that it is realistic to expect any deep sea mining to in fact take place if there are, as it were, two parallel systems, one under the Convention and one either of the United States by itself, or including other States operating with it?

Mr MacGregor:

First of all, let me make this comment. Even if you have a UN Convention, I am not impressed by past experience, as to whether that would provide you with a strong regime over anything. I think your Government certainly has been the victim of some of the events that I have talked about in the past. Therefore I am not sure, in fact I am concerne that we could assume that by attempting to get a Convention of this type that you are going to have an atmosphere in which intelligent agreements can be reached. Now, at the present moment there has been proposed a Reciprocating States Agreement and your Government is already supposed to

be a signatory to that, as well as the United States and France (although the French have some reservations about the methods of adjudicating certain parts of the Agreement), and the Germans. And I understand that the Soviets are quite attracted by the idea, as well as some of the satellites.

So I believe that the mechanisms do exist for the economic powers to be able to carry out whatever arrangements they wish to make.

Mr Sproat: (DoT) Can I just clear one point with Mr MacGregor? Am I right in understanding him to say that as far as the navigational parts are concerned, he thinks they are fine? But as they are customary international law already, we do not need them

Mr MacGregor: My implication is that, from Professor Watts' observation, that this is a helpful codification of what he thinks has become a body of law anyway.

Mr Sproat: And as far as the second part is concerned, the mining, you think that that is dangerous in itself, and sets a very dangerous precedent for the future?

Mr MacGregor: Yes.

Mr Sproat: Could I just ask, if that is a fair summary of what you say, it seems to me that what Mr Tookey of the GCBS said was that the navigation thing is fine but we <u>do</u> need it, because it is not yet strong enough as customary international law, and I would just like to know whether Mr MacGregor and Mr Tookey are disagreeing over that one point, and no other?

Mr Tookey: We do feel that we need the law. There is a feeling amongst many of what is today referred to as the Third World that the present law was created in a time when they had colonial status and therefore had no voice. And I think the mere fact that they are pressing themselves for the Law of the Sea implies that they are not satisfied with the present regime and want something to which they feel they have contributed. I think there is much more chance that they will accept a regime in which they have played a part in drawing up.

Mr Sproat: But as far as navigation is concerned, presumably because it is customary international law at the moment, these ex-colonial countries are satisfied with it. It is just that they want to get changes on the mining law and they are using the bargaining power of codification of navigation in order to get their hands on some of the benefits of the deep sea mining.

Mr Tookey: We have seen the three mile limit grow to six miles, to twelve miles, to two hundred. Which is customary, I ask?

Mr Sproat: Would it be possible to codify the navigational laws and get rid of the mining parts?

Mr MacGregor: (British Steel) I think that a former colonial power became over-anxious to do this codification in the early stages of the negotiations. That signal was misinterpreted in certain quarters. You have, shall I say, a little price attached to it.

Sir Ian Sinclair: (Chief Legal Adviser to the FCO) Just one question I wanted to put to Mr MacGregor arising out of his presentation. It is really a follow-up to the question that Mr Rifkind put . This is effectively, does Mr MacGregor feel that in the long term deep sea bed mining that is to say exploitation can take place outside the Convention regime in the context of Reciprocating States Agreements or otherwise, given the nature of what is supposed to be an exclusive regime within the Convention(and the States would become Parties to the Convention, and there will be a large number of them - let's not deny that -/who will accept an obligation not to recognise any claim, acquisition or exercise of rights to minerals on the sea bed outside the Convention system), -is it really going to be a viable proposition to engage in deep sea bed mining outside the Convention system? It goes back to the point made by Mr Blair.

Mr MacGregor: Well, I am not an expert on the international law involved. But I am impressed by the fact that one Government should be prepared to take that position. And that Government will be increasingly dependent on world supplies of minerals.

Sir Ian Sinclair: Could I ask a supplementary question? Do you think that the necessary finance to engage in these operations would be made available to the mining interests if they were operating outside the Convention system and the title to the minerals extracted would be precarious to say the least?

Mr MacGregor: I would say that the procedure in the Convention does not look like an attractive mechanism for financing mining,

and therefore I would venture that the suggestion by the non-signatories may probably be a better alternative.

Sir Michael Havers: I have listened with fascination to what you had to say. Can I put it this way? Are you saying that the proposals which you disagree with at the moment on deep sea mining are capable of amendment or that we are going about it entirely the wrong way?

Mr MacGregor: I hesitate to adjudicate these points, but I might have some opinions. I really think that so little is understood about the latter part of this Convention, and it is in such a controversial area, that it would be improper for any Government to impose on its citizens the limitations proposed here at this stage in the game, especially a Government that purports to believe in the survival of the economic system which has existed in this part of the world for quite some time.

Sir Michael Havers: Then what you are really saying is that, if we could separate all the navigational pluses and separate Part XI, you would be happy.

Mr MacGregor: I would say that we are probably in this pickle as a result of the over-haste on the part of a certain former colonial power to get the codification of the navigation rights because of its own particular interests. But it fell into a trap.

Mr Rifkind: The next contributor is Mr Rankin-Reid.

Mr Rankin-Reid

Whilst I am from Rio Tinto, I am joined by my colleagues, Mr Gavin Moncrieff from Gold Fields and Tony Gorton from BP. We together represent the UK members of the Kennecott Consortium.

We welcome this opportunity, only a few weeks before HMG must make a final decision on the proposed United Nations Convention on the Law of the Sea, to give you our views on the impact that the Convention will have on our deep sea mining activities. We thank you for the invitation to this meeting.

We are very conscious that deep sea mining is not the only issue at stake, although undoubtedly Part XI of the Convention has been the most difficult part to negotiate and has received far more publicity than the rest of the Convention. As potential sea bed producers we represent but one special interest. Others include those of military navigation, mineral consumers, shipping, fishing and oil producers . The task of Government is an extremely difficult one of balancing interests of which sea bed issues are but one. The relative weights to be attached to those interests and whether those interests can only be served by a comprehensive Treaty, are debatable, but not by us here. Others may not be so diffident (and there will be no shortage of advice to close your eyes to Part XI, think of England and to sign the Treaty.)

No shortage of advice at all, these siren voices will tell you that the Pacific is a far away area of which we know little and can expect to receive nothing for many years to come. And, of course, this is the very kernel of the problem, that it does not show an economically viable project at this particular moment. It is in the future and all that much more difficult to gauge, and this is one point which Mr MacGregor made which we would like to emphasise as well. We as potential sea bed miners can only assess that part which affects us and we hope that assessment is useful

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to you. The substitution of an international regime for the existing high seas freedom represents the most significant departure from customary international law. It was in the expectation of this universally acceptable treaty that we in the Kennecott Consortium invested nearly US $50 million in deep sea mining activities. But this hoped-for security has not arrived, and what we have at the moment is uncertainty not freedom. As a consequence, both HMG and our Consortium face difficult decisions made more complicated by the opaqueness of some of the alternatives.

The quandary which we both are in is in no small way due to the fact that the Law of the Sea has been negotiated as a "package" with the coastal states bargaining a lessening of their extensive territorial sea claims for industrialised countries' concessions on part XI. The result has been unfortunate, but highly predictable.

The texts on other areas command substantial consensus whilst the complex and controversial provisions on sea bed mining do not. The ideal solution from our point of view would be to continue negotiating part XI until a Treaty likely to attract investment emerged. Unfortunately HMG does not find itself in this position, and must decide whether the benefits of the Treaty on non sea bed issues can only be achieved by signing a Treaty which contains provisions regarding the sea bed likely to prove unworkable. We for our part have to decide whether to pursue our licence applications under Prep Comm or in the USA or another non treaty country. They are decisions which none of us relish.

Mr Chairman, in your letter of invitation you invited us among other things to address the range of options before the Government. Let us go straight to the heart of the matter: the unsatisfactory nature of part XI. We have to say that the Treaty in its present form and in the absence of the USA is unlikely to attract private sector investment. The legislative and fiscal regime can only be judged against that for land based mines. To the extent that the arrangements are more onerous

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or less certain than arrangements elsewhere, they will inhibit deep sea mining. In the sense Part XI is flawed by two factors: first in this fallacious assumption that it is immensely profitable, and the second is that it is possible at this stage to legislate for an industry not yet in existence.

This bleak prospect is not the result of any one or two stark deficiences, the removal of which would effect a miraculous cure. Rather it is the accumulation of uncertainties some of which are relatively small in themselves. And so an industry not yet in existence is saddled with an unworkable regime. This is not the place to reiterate the detail which we have regularly and fulsomely provided you. But it is the place and perhaps our last chance to remind you of some of the larger issues which seem important to us. First, the sea bed provisions have little to do with the efficient and timely development of resources to meet consumer needs; and a lot to do with the furthering of international regulation and the restriction or distortion of market forces. On the international level much of that regulation is objectionable in principle (for example production controls, the production policies of the Authority, the Authority's participation in commodity conferences and the narrow scope of judicial review). Most of it sets an ominous precedent. It is not surprising that it is regarded as the standard bearer for the New International Economic Order.

Secondly, the sea bed regime is not production orientated. Anyone coming to this text for the first time would assume that it had been written by land based producers with a specific aim of preventing sea bed mining, at least by private enterprise. Production controls affording indiscriminate protection to producers in developed countries, as well as those in developing countries more worthy of assistance, are but one example. We must ask ourselves whether a large and expensive international

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bureaucracy is likely to lead to an efficient transfer of scarce resources to developing countries.

Thirdly, the system of Enterprise preferences, such as site reservation and access to competitors data to name but a few make it extremely doubtful as to whether there will in fact be a "mixed system" of development, as opposed to a unitary system dominated by the Enterprise and a few state entities. There is no provision for example preventing the long term distortion of the system by requiring the Authority to release banked sites for private or State entity development.

Fourthly, the Review Conference's ability to amend the system of exploitation under article 155 by a two thirds majority casts a shadow over the security of access which was long the western countries' objective. It is the aim of many that the Enterprise end up the sole operator in the sea bed area.

Fifthly, the financial terms remain tough and any appeal they may have had once has diminished in the current economic climate. Their amelioration may well be necessary to counteract the disincentives provided by the high level of uncertainty. We are in favour of developing countries benefiting from sea bed revenue. But we have repeatedly warned HMG that deep sea mining cannot be taxed by both the Authority and H M Treasury if we are not to preclude sea bed mining by UK companies. To do otherwise would be to place sea bed mining in an impossible position regarding land based mining and add still further to the list of disincentives. We have had a long and occasionally entertaining correspondence with the Inland Revenue on this point, and we are still far from agreement on this elementary point of principle. This may be as good an occasion as any to appeal to Caesar for a happy issue from our afflictions. That the financial terms don't merit outright rejection is in no small way due to the Herculean efforts of the DOI in the negotiations, and they and the Foreign Office legal

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advisers deserve strong commendation for their efforts to make this Treaty workable. It is no fault of theirs that their efforts have failed.

Sixth: In many cases the problem lies not in the provisions which can be readily identified as positive disincentives such as production controls and the costs of exploration over reserved sites, but rather the "grey areas" of uncertainties regarding the Authority's discretions.

We are told to trust the Authority and that these discretions will be wisely and prudently exercised. I think a more cautious view is indicated, in view of the politicization of the debate which we have seen.

Seventh: It is fashionable to criticise the USA. Their tactics in the negotiation have presented their allies with great difficulties. And on occasions they have suceeded in confounding both their allies and enemies. But much of what they now say in respect of part XI is well founded and is the result of a reassessment of interests rather than lobbying by the American companies. It is always convenient to blame the mining lobby (as in a recent article by David Tonge in the Financial Times), but it is not the mining lobby which has hi-jacked the UNLOSC negotiations, it is in fact the international lawyers, it is they who are basking in the sun with their endless conferences. Some indication of the differences between the current text and a text having a better chance of achieving acceptability, is contained in the copious amendments co-sponsored by the UK at the last session.

Lastly, we would say that were deep sea mining the only interest of the British Government in the negotiations, it is difficult to see why its attitude should differ from British mining companies. Deep sea mining provides an additional potential source of world supply and it militates against the UK's interest as a consumer to constrain its development with unnecessarily complex

restrictions or adverse tax arrangements. The result is likely to be a less efficient and effective use of resources at a cost to UK consumers.

To sign or not to sign: Our decision may or may not be affected by yours, but our mutual dilemma is in no small way due to the relentless pursuit of a comprehensive Treaty. You have asked us to address ourselves to the range of options before HMG. We can try to assess their likely impact on our likely course of action. What we cannot do is render "political" advice on whether or not HMG should sign. We as potential sea bed miners can only assess that part which affects us and we hope that assessment is useful to you.

Your decision will be of great moment, as the resources of over one half of the world's surface which lies under the sea are involved, of which manganese nodules are merely the best known at this current stage. The ratification of a Treaty including an unworkable system of sea bed exploitation may be akin to locking those resources away in a safe and throwing away the key. The UK by its action on signature and ratification will undoubtedly influence others and may well affect the longevity of the current sea bed regime. Regardless of those decisions we hope that HMG will continually press for substantial improvements to the text of a nature that would enable the USA to accede to the Treaty and for us to operate under it. One possible path which might enable HMG to have its way on the other issues without being locked into the sea bed regime might be to sign the Treaty, with a qualifying statement to the effect that the UK intended to seek improvements to Part XI and its attitude to ratification would be affected by whether or not those improvements were forthcoming. Yet another path would be to forge a strong net-work of Reciprocating States Agreements and from that position seek further amendments to the Treaty.

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The first decision which we as a consortium will have to make is whether to apply under Prep Comm for registration as a "pioneer investor". At first sight the Prep Comm presents itself as a panacea for the Treaty's problems. Issues too technical and complicated for Committee One can be solved by the Prep Comm. But despite its crucial role in drafting regulations for Council approval, the Prep Comm cannot, by the terms of its mandate, alter the substance of the sea bed regime.

Even if it were otherwise, the history of Committee One negotiations offers little optimism for the UK alone or in concert influencing the outcome of those negotiations. So much for what Prep Comm is not. What it is is a limited licensing authority. Unfortunately, its licences are both limited and potentially expensive. It offers our consortium a place in the queue. Whether or not we would apply to Prep Comm depends on an assessment of a number of technical points. Our views are likely to differ from those of the four pioneer states which together would hold 75 percent of the Pioneers' resource area, but whose access to public funds and subjection to strategic fiats result in their investment decisions not being dominated by commercial considerations.

Our difficulties include, that we still have no guaranteed right to mine under Prep Comm; the fact that the USA lies outside the Law of the Sea Treaty regime means that any title deriving from Prep Comm and its successor, the Authority, could be challenged in American courts. Clearly, a similar consideration applies to foreign challenges to US derived rights. Clear title is of crucial importance to mining companies and their ability to finance projects. At the moment it is likely to be found under neither potential system. The annual fee of US$1 million per annum we regard as excessive. The work commitments and minimum expenditure levels are likely to force us to spend far more at an early stage then we would require. Will we apply to Prep Comm? For the reasons I have listed we think it unlikely that the Kennecott Consortium will apply for registration as a Pioneer Investor under Prep Comm, whether or not

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the UK signs the Convention. Much of course will depend on the attitude of the non-UK members of the Kennecott Consortium and whether improvements to Prep Comm are made. In any event, whether or not the UK signs the Treaty, we think that efforts should be made to obtain designation as a Reciprocating State by the USA and other States which have enacted domestic legislation. The existing CRA represents only a useful step in this direction. We are conscious of the difficulties contained in those negotiations and their presentation. But until a Treaty enters into force with effect for the UK, Government backing for mutual recognition of exploration coordinates is important, particularly in the light of two potentially competing licensing systems.

In conclusion, in Caracas almost a decade ago, we shared a vision of a global Treaty commanding universal acceptance. And it did seem possible then. As we approach Jamaica those hopes have become forebodings. We face the melancholy dilemma that none of the possible options present a clear way forward for us as a mining company. The basic lack of appeal of the Treaty for private enterprise is matched by title recognition and security problems associated with possible operation under domestic legislation even if strengthened by a Reciprocating States Agreement. We wish HMG success in producing a solution to our dilemma!

Mr Rifkind — Could I ask my colleagues if there are any questions to put to Mr Rankin-Reid?

Mr MacGregor: (DOI) — Mr Rankin-Reid referred to the fact that at the present time the consortium would not wish to register as pioneer investors under the Preparatory Commission. You would presumably regard it as necessary to have <u>major</u> improvements in the present situation under the Convention in order to enable you to sign. Can you say whether you feel that there are major improvements that are really necessary and how major; and secondly, what prospects you see of these being achieved?

Mr Rankin-Reid — May I defer to my colleague?

Mr Moncrieff: (Consolidated Gold Fields) — Personally I think that the alterations required are too fundamental to expect to be changed within a matter of months which is really what is required. So I can't foresee changes being brought about in that sort of time span, to enable us to apply to be registered with the Prep Com early next year. You have to start entering into compulsory arbitration on the 1st of March next year, four months away from now. We don't even know whether Russia or Japan are going to apply or where they are going to apply, let alone begin anything else. So the time is too limited to bring about anything further.

Mr Rifkind: — Leaving aside the question of ratification for a moment, did I understand you to say that there would be no particular objection if the United Kingdom found itself in a situation where it entered into a Reciprocating States Agreement with the United States and such other States as were willing to take part, and might also sign the Convention leaving open the issue of ratification?

Mr Rankin-Reid: — That is one alternative; but whether you would want to give that much weight to the existing sea bed regime is of course another question.

Mr Rifkind: — But from your point of view, would that particular kind of approach be of assistance to a consortium such as your own?

Mr Rankin-Reid: — As we don't intend to apply under PrepCom, we are not overly concerned with the promptitude from a strictly mining point of view.

Sir Michael Havers — Mr Rankin-Reid does realise that by <u>signing</u> it would enable HMG to take part in the negotiations without of course committing the Government in any way ultimately to ratify?

Mr Rankin-Reid: — We have been loyal members of the Delegation for many years, and can say that the amount of UK thinking that has found its way into the Treaty provisions is remarkably little. And we have no indication that the position will be any different in the PrepCom, - probably markedly worse, because the G77 will then have a full head of steam up.

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Mr Rifkind: Our next contributor is Dr Laughton.

Dr Laughton: (NERC) I am representing the interests of marine scientists both on behalf of the Royal Society and of the Natural Environment Research Council, part of the Department of Education and Science. These two bodies have both worked extremely closely together on examining the role of marine scientists, particularly the freedoms of marine scientific research within the draft Convention.

Marine scientific research has to some extent been the poor relation in the negotiations, and compromises have been made which will inevitably further curtail the freedom that we have enjoyed in the past, - a freedom which has, however, been progressively eroded over the last decade by the progressive claims for national sovereignty and the increases in the claims for 200 mile zones.

Under the Convention, marine scientific research will for the first time be explicitly embraced by international law. And to that extent of course marine scientists have to be extremely concerned about where the Convention or any Treaty arising out of it brings them.

Let me consider the effect of signature as opposed to ratification by the UK in terms of the two distinct areas in which marine scientific research is carried out. Firstly the areas of national jurisidiction, that is the Exclusive Economic Zone and the Continental Shelf.

Let us bear in mind that the Exclusive Economic Zone is about 32% of the ocean's surface and the Continental Shelf has been estimated beyond that to be another 8%. So something like 40% of the total oceans of the world will be subject to national jurisdiction in one form or another. During the last decade it has become increasingly difficult to obtain permission and to concede to the coastal State requirements to work in the EEZ and the Continental Shelf of some countries.

Procedures and claims have often been unclear, the demands sometimes quite arbitrary and excessive. As a result of this, research has tended to avoid potentially difficult areas. And I am quite convinced that the balance of where marine scientific research is taking place has shifted away from controversial regions.

The Convention if and when it is ratified will provide a known framework and a basis for scientific planning. But in anticipation of the Convention it seems likely that coastal States will use the draft Convention as a basis for action. And whereas this may curb some excessive claims, it may also increase others.

Whether we sign or not, marine scientific research will require the consent of coastal States probably working on the basis of clauses within the Convention. This consent will be easier to obtain in our view if a coastal State believes that the UK supports the principles and philosophy of the Convention and if good relations both scientifically and politically exist between countries.

Early signature will give some indication of intent to ratify although no commitment, and therefore may ease the negotiation of marine scientific research.

On the other hand signature may require us to recognise claims greater than we do at present. It may commit us to following procedures laid down in the Convention and hence make it more difficult to contest refusals or unacceptable constraints on marine scientific research by coastal States.

I could go into a whole collection of pros and cons on the Coastal States areas. But our view is that on

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balance the advantages and disadvantages about weigh equally and would not influence me one way or the other to saying yes we should sign at this stage.

The second area is the international area. For research into the water column of the high seas, there are no constraints on marine scientific research. And we are happy that the Convention expresses these and does not provide any threat.

However for research on or into the seabed in the Area, the freedom of marine scientific research is qualified by such phrases as 'for peaceful purposes', 'for the benefit of mankind as a whole' or 'States Parties shall promote international cooperation' and by the uncertain interpretation of the powers of the International Sea Bed Authority which will be responsible for organising, carrying out and controlling prospecting, exploration and exploitation in the Area. Marine scientists are concerned about how the Sea Bed Authority may interpret the words "research", "prospecting" and "exploration". And hence the degree of control which it may try to exert, bearing in mind that all the resources of the ocean floor have been discovered initially by the marine scientific research community. The nodules, the hydro-thermal deposits and so forth, - we would not be talking about them had marine scientific research not had free rein to explore and discover what was there.

Signature would perhaps enable the UK to be a member of the Preparatory Commission and hence possibly to influence the interpretation of the powers of the Sea-Bed Authority for the benefit of marine scientific research in the Area. It is perhaps wishful thinking that such issues would be dealt with at the Preparatory Commission stage. But insofar as the Sea-Bed Authority is going to have to declare its role and the limits of its power at some stage, the earlier we are in on such discussions or such influence, the better.

I conclude that therefore in respect to marine scientific research in the Area that there are marginal advantages to signature which would enable us to vote in the Preparatory Commission should it attempt to interpret the Convention unfavourably for marine scientific research.

I must emphasise however that by favouring on balance signature at this time, this does not imply that marine scientists will necessarily

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support the ratification of the Convention. To ratify or not to ratify raises issues different from the questions of to sign or not to sign at this stage. And the marine scientific community may well see that the disadvantages of ratification, of joining the Treaty,may outweigh those of joining and staying in.

Mr Rifkind — Thank you. Mr Williams.

Mr Williams (UK Offshore Operators Association) — Mr Chairman, I represent the UK Offshore Operators Association.

Representing an association of companies of diverse nationalities, it is clearly very difficult for me to make recommendations to the UK Government on the issues which we are discussing, other than the very general one that it is clearly desirable to have a Treaty acceptable to - if at all possible - more countries than it is at present acceptable to, and of course including the United States. This is a point that BP has already made. I just would make one comment and ask one question.

Based on the last drafts that we have seen there have been clearly improvements made covering the provisions for the removal of platforms, and we are certainly pleased about this. If we had to write them ourselves I think we would have written them differently, but in the form they are we consider they are acceptable. The question I would like to put is: are you able to confirm that the deep sea mining regime does not apply to exploration and production of hydrocarbons?

Sir Ian Sinclair — Certainly, as far as we are aware the regime for the deep sea bed does not relate to exploration and exploitation of hydrocarbons. That is certainly my understanding.

Mr Williams — We are very pleased to have that confirmation.

Mr Rifkind — Thank you very much. Mr Davidson-Kelly.

Mr Norman Davidson-Kelly — I represent BRINDEX, the Association of British Independent

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Exploration Companies, basically the smaller companies involved in UK North Sea and other UK offshore development. I would like to direct ourselves very briefly to a very narrow issue which Mr Williams touched on, the question of abandonment. I would outline very briefly our problem and to say that I am not sure that the Convention as it stands solves our problem in a way in which we would like it to be solved. Basically the problem in relation to abandonment is quite simply that as we view the investment opportunities in the North Sea and world-wide we must take into account a whole host of economic parameters, which include the oil price, the political regime, the geological and physical conditions surrounding particular investment. One of the aspects associated with the political regime is the concept of abandonment and cleaning up the site after we leave. It is very important, of course, that this liability is quantified in terms which make it possible for us to estimate the future expenditure which must be incurred on that behalf. To turn to the specific wording of the Convention, I would like to say that we believe the Department of Energy has done a terrific job in getting the wording to the state it now is over previous drafts of the text at such a late stage. And we fully endorse the sentiments behind the wording. But I would point out that we are still in a wait-and-see position. The detailed rules are awaiting formulation by some appropriate international authority and basically with the very important aspects of safety of navigation paramount in everybody's minds. So although we see an improvement in the position, we cannot yet quantify the extent of the improvement even signature of the Convention will not of itself solve the problem as to what the rules are that are to be adopted. And we would very politely and quietly suggest that possibly as we are making such good progress towards getting to a state in which these rules and parameters can be quantified, that possibly irrespective of the Convention there can be discussions between the Department of Energy and the relevant bodies in the industry who are interested in this problem to try and clarify the subject in greater detail.

/Mr Rifkind

Mr Rifkind — Thank you very much indeed. Are you basically saying that you are fairly neutral on the question of whether we should sign or not sign the Convention, but you would hope that further work would be done on the particular interests you have in this area?

Mr Davidson-Kelly — Indeed, from a practical point of view we cannot see that it makes a particular difference one way or the other; having said that, it might just tie the hands of the Department of Energy slightly, but I would certainly go along with this and say we would prefer to talk about it.

Mr Rifkind: — Thank you very much indeed. Dr Patricia Birnie.

Dr Birnie (ACOPS) — ACOPS has followed the United Nations Conference on the Law of the Sea (UNLOSC) since its inception, and discussed with Ministers the environmental protection aspects of the Convention especially, but not only, those in Part XII.

It has been stated that the USA and Argentina will not sign the Convention.

They are not, we suggest, a model for the UK. We are an island, with dependencies, unlike USA or Argentina neither of which is an island state. Moreover, we do not claim a 200 mile territorial sea like Argentina; we oppose it, as does the Law of the Sea Convention. We consider that the USA is misconceived in its view that the Law of the Sea (LOS) Convention is against its national interests and we would not want Britain simply to support an ally under these circumstances.

We support signing the Convention in December to express the strongest possible support for the Treaty's fundamental principles (especially the environmental principles) and to gain the advantage of being a member of the Preparatory Commission and playing a role in developing the rules for exploitation of the deep seabed, which inter alia include environmental rules.

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As an island we gain many advantages by the Treaty: we have a huge coastline in proportion to our size and population. Under the Treaty, this gives us great resource advantages in the 200 mile Exclusive Economic Zone (EEZ) and over the whole continental margin, advantages which we can claim also for our island dependencies unless they are uninhabitable rocklets or rocklets beyond the margin.

We are as an island disadvantaged without a Treaty particularl in relation to control and prevention of pollution. Our large coastline exposes us to marine pollution risks from several sources, and the huge EEZ and Continental Shelf generated, present great enforcement problems. The present / Continental Shelf regime was developed when knowledge was in a primitive state.

We, therefore in ACOPS, particularly welcome Part XII of the Treaty which greatly improves international rules and standards of pollution control and strengthens the opportunity for enforcement in coastal waters (the 12 mile territorial sea (TS), 200 mile EEZ,and the Continental Shelf) and on flag ships, for the following reasons:

(i) It lays down for the first time an international obligation to protect and preserve the marine environment as a whole;
(ii) It requires <u>all</u> States to take measures to this end.

It, for the first time in any global treaty requires national and international laws and standards to be developed to prevent or control all six sources of marine pollution, namely,:

(i) From deep Seabed activities: ACOPS has taken part in international workshops establishing the need for international standards in this area;
(ii) From continental shelf activities: There is neither a global nor a regional treaty laying down standards or controls for this source;
(iii) Ocean dumping: Enforcement under existing global and regional treaties is limited to flag ships and to territorial sea. The LOS Convention

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extends jurisdiction to the continental shelf, the TS and a 200 mile EEZ and the continental margi[redacted]

(iv) Atmosphere: There is no global treaty and only one regional one (the Economic Commission for Europe) but atmospheric pollution, which all eventually descends into the sea, cannot be confined to a region;

(v) Land-based: There is no global treaty, though this source constitutes up to 80% of marine pollution. Regional treaties are limited in scope because of interchange of waters.

(vi) Vessel source pollution: There are global treaties and regional measures (e.g. European Economic Community) but they do not provide, as does the LOS treaty, international standards for States not party to them; port state jurisdiction; bonding of arrested vessels to facilitate navigation and trade ; higher standards for special areas broadly identified (including ice-covered areas); recognition of the need to protect areas that are ecologically "fragile"; enforcement of international standards in the TS, the 200 mile EEZ, ports. These are a product of a negiotated balance proposed by the UK and others (while the UK was a leader of the "maritime group" at the conference).

We think that the International Maritime Organisation (IMO) and the United Nations Environment Programme (UNEP) have considerable limitations in this respect. Though they can do something:

International Maritime Organisation (IMO) is concerned mainly with vessel source pollution; not all states are members, still less party to its conventions; not all its conventions are in force; they are subject to revision; IMO has experienced difficulties in dealing with pollution from sources other than oil; its concept of special areas is more limited than the LOS Convention as is its provision for port state jurisdiction (which is not in force).

/United Nations

United Nations Environment Programme (UNEP): a small secretariat with limited staff funds. Its Regional Seas Programme is good but based on a framework system at present.

The UK has hitherto had a magnificient record in ratification of global and regional conventions in the LOS. It has always maintained respect for the rule of law and defended international standards not only in the Falklands Islands but during the so-called "cod wars", condemning unilateral and sectoral actions. It consistently in UNLOSC debates emphasised the need for international standards and an international approach to the solution of LOS problems; it considered an international approach contributed to international stability and the harmonious development of international law.

Not to sign the LOS Convention, we suggest, after years of negotiations and many compromises of interests by all parties would break with the long British tradition and long held values, a major setback in Britain's international relations and in its influence in international LOS councils, and in global interests, we think, leading to many conflicts of the "cod war" kind.

Mr Rifkind — Thank you very much indeed. Mr Lawrence.

Mr Lawrence: (Chartered Institute of Patent Agents) — I represent the Chartered Institute of Patent Agents and my members therefore act for inventors, and our interest in this is the very narrow one of investments in new technology. But unfortunately this has much broader implications than the Law of the Sea Treaty alone. In this country and in the world in general it is generally believed that new technology is essential and we hear regularly in this country how important it is here and now. New technology requires that investment shall be made, but investment only comes if the potential investors can make a financial estimate of the reward that might come from their investment, assuming it succeeds technically; and much investment in technology fails absolutely.

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But the requirement is that when you get something that succeeds you should be able to foresee a return that cancels out the losses on the failed investments and the costs of the one that succeeds. Investors therefore make their decision on whether or not to go in for new technology on commercial grounds and the investment, as we all know, is not always as forthcoming as it should be, which shows that the commercial grounds at present are only just sufficient to justify investment and it might be desirable in this country and elsewhere if they could be made more favourable towards investment in new technology. These commercial grounds are based on the expectation of a technical advantage over the competitors when the investment has succeeded. If you are not going to get a technical advantage, there is no point in making the investment in the first place; you might as well stay with your existing technology; so don't take the risks and don't spend the money; and then you will have no new technology. You get your technical advantage over the competitors from two sources, and only two sources. One is by keeping your new technology secret, maintaining everything is a trade secret. The other is to publish it but get a monopoly in the form of patent protection. British courts strongly uphold the right to maintain trade secrets and it is well established in the law that that is a perfectly proper and useful way of maintaining the competitive advantages you get from investing in new technology. There isn't at present any international patent system that is going to give patent protection on the high seas, and therefore patents don't come into the rewards very much in the context of the Law of the Sea Treaty. So primarily we have got to look at the trade secret rights that the investors are going to get. Now then they at present expect to be able to get their rewards either by using those trade secrets themselves or handing them over to others on a voluntary basis and negotiating on a normal arms-length basis. As I mentioned on that basis at present there is only just enough incentive for a lot of the investment that we require. And against this background one has got to realise that in recent years the developing countries have been pressing for different terms and basically they want more advantageous terms to themselves. If those terms are going to be more advantageous

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to the developing countries, it follows that they are going to be less advantageous to those who are doing the investment. The Law of the Sea Treaty contains the article on the transfer of technology, Article 5 in the Appendix on this subject, and this is the first article that has got so close to implementation of all the various articles and treaties that the developing countries have their eye on. Under this article, the people who devise the technology can only use it in undersea exploration if they agree to disclose it to the Enterprise and if they agree to give a licence for its use by the Enterprise or even by developing countries. They are liable to have to transfer their technology on terms which are unclear, to the developing countries who want to get hold of the technology without going through the expense and inconvenience of developing it themselves. Thus the investors have to do a lot of research, a lot of it will be a total failure and then as and when something succeeds they have to accept that developing countries and others are liable to walk in and just demand it as of right. This is appearing in the Law of the Sea Treaty; this is not the only instance where it has come up. There is a treaty which governs all the world patent systems, the Paris Convention. In a version of that which emerged from negotiations last year in Nairobi we were in the incredible situation that there was a serious proposal that countries could have the right to grant compulsory exclusive licences against a patent owner: the patent owner could go into a country and spend a million pounds building a plant there, upon which the local government could say that is not enough we are now going to stop you using your plant and we are going to stop you working in this country at all and we are going to grant somebody else a licence. This obviously has enormous ramifications for the transfer of technology world-wide. There are other treaties coming up I understand in international telecommunications, the exploration of the Antarctic and I am sure in plenty others, and whatever is agreed in the Law of the Sea is almost certainly going to be carried forward by the Group of 77 countries. They will say that what has been agreed for the Law of the Sea can be implemented in international communications, in exploration of the Antarctic, and wherever they want it. None of these

treaties have yet come into effect: the first will be a precedent, and my own Institute, aided by Government officials, have been fighting off this encroachment for many years. We have so far succeeded in avoiding it coming into effect anywhere and we want to prevent it coming into effect now. That I accept is a fairly narrow issue but I think it is one that affects the whole of British industry. From the point of view of my members and the inventors we represent, we think the Law of the Sea Treaty ought not to be signed because of this issue alone. We accept that this may be a rather narrow issue on which to reject it and we are not competent to comment on the questions of nationalisation of mineral rights and navigation and so forth, but we would urge that our point of view be listened to and that if signature is thought to be necessary for other reasons, then it should be done in such a way either so as to defer it for as long as possible, so as to put off the evil day when we have to be seen to live with this sort of regime; or that it be done with sufficient noises publicly to say that we protest absolutely and we are going to try and minimise the difficulties in the Preparatory Commission. I personally am very doubtful that those difficulties can be minimised. The wording of the relevant article seems, I fear, so clear that if the developing countries want to hold onto what they have got, they can do so and we are not going to be able to minimise it very much, but at least we might be able to try. But all I would say is, if we are going to sign, please do so while making as loud a statement as possible that we do not approve of this and we will not accept it as a precedent for the future.

Mr Rifkind — Thank you.

Mr Burnet-Hall: (Licensing Executive Society) — I am appearing on behalf of the Licensing Executive Society. We are a body of individuals who are concerned with the transfer of technology and which is in fact part of an international organisation, American in origin, but whose British chapter operates entirely independently of the Americans. So I am in effect speaking entirely in respect of

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of the UK organisation. We are equally concerned exclusively with Article 5 of Annex 3. The reason I am here primarily is to emphasise that our hostility to this, although it is identical I think with the views expressed by RTZ, Kennecott and some of the big companies, we do not particularly represent the big companies. We feel that as a matter of practice, this whole proposal is totally counter-productive and that it will be bad for everybody, not just for those who stand to make the most profit out of the immediate operations. I endorse entirely what has been said by Mr Lawrence. I perhaps might just add to what he said. Under the 1949 Patents Act which as you may know was repealed in 1977 by the 1977 Patents Act; under section 41 of the 1949 Act there were compulsory licence provisions in respect of pharmaceuticals and these were considered very carefully by the Banks Committee before the new legislation and it was held that such provisions were counter-productive and should be abolished and they were indeed abolished in the 1977 Patents Act. And I think exactly the same philosophy applies to the licensing proposals in this Annex. I would further add that I believe the proposals are virtually unworkable. The transfer of technology is not the same as compulsory licensing of a patent, but a patent can be licensed at the stroke of a pen by saying that it is no longer enforceable against the compulsory licensee. You cannot transfer technology in that way. You require days, weeks, years perhaps of collaboration between the licensor and the licensee. The definition of technology in paragraph 8 includes training and technical advice and assistance. This is just not going to happen in relation to an unwilling licensor and so I think this is a most unsatisfactory proposal in any event because it simply is not going to work.

Finally, on this particular issue, the question of royalties. What is going to be a fair and reasonable royalty? This could perhaps be treated quite differently by people from different jurisdictions even with the best will in the world. And one must doubt whether the best will in the world will be there. In the case of a patent infringement or for that matter a breach of confidence action in this country, I

believe

believe that the sort of royalty that might be awarded by way of damages could represent in the situation of an unwilling licensor who is forced out of the market, his total expected profits. Now this is not going to happen in a case like this. I am sure that those making up the body that would adjudicate on royalties will not be such as to allow the licensor a complete recovery of the profits he has lost.

And my final point I would just make as a matter of policy. Paragraph 5 refers to actions to be taken by States to ensure technology is made available to the Enterprise on fair and reasonable commercial terms. Now I must confess I don't understand exactly how this would be operated; but if the United Kingdom were to be one of such States, this would involve a total overthrow of its approach to private enterprise and the development of technology. There has never been any system for compulsory licensing of technology as such and, whatever the hue of this administration, whatever this administration might think about it, there are obviously others in the wings who would take a very different approach, and I believe it would be a very dangerous precedent to set.

Mr Rifkind: Thank you. The final contributor, Mr Hargreaves.

Mr Hargreaves: (Royal Institute of Navigation) Thank you, Mr Chairman. I represent the Royal Institute of Navigation, which is an institute concerned with the science and practice of navigation. Incidentally, it is not just marine navigation: we also deal with air and space navigation. And the Royal Institute has played a big part in the development, particularly in the IMO, of traffic routing, especially in the Dover Strait. And, like the General Council of British Shipping, we are extremely interested in the freedom of navigation. We would, therefore, welcome the extension of the territorial sea to 12 miles and would wish strongly to support the views which were so ably expressed by the GCBS at the beginning of the meeting. Briefly, we would hope that the tail which has been wagged so vigorously by the mining and commercial interests does not wag the dog, and would wish the United Kingdom to sign the Convention.

/Thank

Mr Rifkind: Thank you all very much indeed. I would repeat that if there are points which in the time available you have not felt able to expand in quite the way you would have liked, please do feel free to write to us. This is of course a private meeting and we would ask you to respect that. We will find your contributions extremely helpful indeed in analysing the advantages and disadvantages of what is obviously a very complex matter.

Sir Edmund IRVING MP

8/12

25 November 1982

I attach a copy of a letter the Prime Minister has received from Sir Edmund Irving, Acting Chairman of the Advisory Committee on Pollution of the Sea.

I should be grateful if you could provide a draft reply for the Prime Minister's signature, to reach me by Thursday 8 December.

TIM FLESHER

Chris Greenwood, Esq.,
Foreign and Commonwealth Office.

25 November 1982

I am writing on behalf of the Prime Minister to acknowledge your letter of her of 19 November. This is receiving attention and a reply will be sent to you as soon as possible.

TIMOTHY FLESHER

Rear Admiral Sir Edmund Irving, KBE, CB.

ADVISORY COMMITTEE ON POLLUTION OF THE SEA

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EI/EBMc

19 November 1982

CG (FCO) PM

Rt Hon Margaret Thatcher, MP
Prime Minister
House of Commons
LONDON
SW1A OAA

Dear Prime Minister,

At its meeting held on 17 November in the House of Lords, the Advisory Committee on Pollution of the Sea endorsed the opinion submitted by members of its Legal and Policy Sub-committee in the course of consultation with Ministers on the UN Convention on the Law of the Sea at Lancaster House on 2 November 1982.

Since then, the European Commission has proposed that the EEC's Council of Ministers and individual Member States sign both the Final Act and the United Nations Convention of the Law of the Sea. The Advisory Committee once again urges HMG to sign the Convention at the December meeting in Jamaica. The signature enables Britain to participate fully in further discussions on the Convention and to keep open the option to ratify.

Yours sincerely,

E.G. Irving

Rear Admiral Sir Edmund Irving KBE CB
Acting Chairman ACOPS

The following organisations are represented on the Committee

United Kingdom

Association of County Councils
Association of District Councils
Association of Metropolitan Authorities
Association of Sea Fisheries Committees of England & Wales
British Association for Shooting & Conservation
British Hotels, Restaurants and Caterers Association
British Ports Association
British Resorts Association
Convention of Scottish Local Authorities
Council for the Protection of Rural England
Council for the Protection of Rural Wales
Fauna Preservation Society
Field Studies Council
Fisheries Organisation Society
Friends of the Earth
General Council of British Shipping
International Council for Bird Preservation (British Section)
National Water Council
Royal Society for the Prevention of Cruelty to Animals
Royal Society for the Protection of Birds
Scottish River Purification Boards' Association
Universities Federation for Animal Welfare

Observers

BP Tanker Co Ltd
Esso Petroleum Co Ltd
Shell International Petroleum Ltd
United Kingdom Offshore Operators' Association

Overseas

European Environmental Bureau
International Association of Independent Tanker Owners
International Association of Ports and Harbours
International Cooperative Alliance
International Hotel Association
International Institute for Environment and Development
International Union of Local Authorities
Nordic Union for the Prevention of Oil Pollution of the Sea
Oil Industry International Exploration and Production Forum

we may know the position and decision taken by the Government on an issue that interests not just hon. Members but people throughout the country?

Mr. Biffen: The right hon. Gentleman raises a point which has excited deep feeling not just within the House but generally. I shall see that the point is brought to the attention of the appropriate Minister.

Mr. Robert Parry (Liverpool, Scotland Exchange): Is the Leader of the House aware of early-day motion 108 requesting a public inquiry into the use of CS gas cartridges in Liverpool last year?

[That this House calls upon the Secretary of State for the Home Department to institute a public inquiry into the use of Ferret CS gas cartridges in Liverpool, Toxteth during the disturbances in July 1981; notes that the support for a public inquiry comes from the Liverpool City Council, the Merseyside County Council, the Merseyside Police Committee, the Liverpool Trades Council, the National Council for Civil Liberties, the Transport and General Workers Union, the National Union of Public Employees, the National Graphical Association, the National Association of Local Government Officers and the Merseyside Community Relations Council; and feels that such an inquiry would allay public disquiet and remove any fears of a cover up into the use of such projectiles.]

The motion is supported by 125 right hon. and hon. Members and has the support of many national and regional organisations. As the Home Secretary has admitted to the House that the use of those cartridges at that time was a mistake, will the right hon. Gentleman ask the Home Secretary to reconsider his decision not to call for a public inquiry so that we can say that the House has not been party to a cover-up of the use of those projectiles?

Mr. Biffen: My right hon. Friend the Home Secretary is helpfully sitting alongside me, and I am certain that he will have noted the points made by the hon. Gentleman.

Mr. John Ryman (Blyth): Will the leader of the House consider initiating a debate on the Office of Fair Trading and references to the Monopolies and Mergers Commission because this subject has an important influence on unemployment? Is the leader of the House aware that last week the Director General of Fair Trading refused to refer to the Monopolies and Mergers Commission a bid by Alcan (UK) Limited for British Aluminium which will make it almost inevitable that there will be further large-scale unemployment in the aluminium industry?

Mr. Biffen: I understand the point made by the hon. Gentleman and know what it means for unemployment in the North-East in the aluminium industry. I cannot offer Government time for such a debate. It is a natural topic for an Adjournment debate.

Law of the Sea Convention

3.57 pm

The Under-Secretary of State for Foreign and Commonwealth Affairs (Mr. Malcolm Rifkind): The United Nations convention on the law of the sea will be opened for signature in Jamaica on 10 December, and will remain open for signature for two years thereafter. The convention deals with many aspects of the law of the sea. Some provisions are a re-statement or codification of existing international law; some provisions seek to make new law. Parts of the convention, for example, those relating to navigation, the Continental Shelf and pollution are helpful, but the provisions relating to deep seabed mining including the transfer of technology are not acceptable. They are based on undesirable regulatory principles and could constitute unsatisfactory precedents. A number of our friends and allies share our misgivings on those points. We need to obtain satisfactory improvements in the deep sea mining regime and will therefore explore the prospects with interested States. As the convention is open for signature for two years, there is ample time for revision before taking a final decision. It is our wish that there should be generally agreed provisions for regulating marine matters and we wish to continue to work with the international community to achieve that.

I should emphasise to the House that we could not participate in a seabed regime on the present terms, and for that reason we could not ratify the convention unless the provisions for the deep sea mining regime become satisfactory.

A copy of the convention and relevant resolutions of the conference have been placed in the Library of the House.

Mr. Denis Healey (Leeds, East): The Under-Secretary's statement is utterly unacceptable to the Opposition. It is one more example of the Government behaving as President Reagan's poodle. The Under-Secretary must be aware that this matter has been under negotiation for over 20 years. The convention was supported by 130 countries when it was presented earlier this year, including the overwhelming majority of European and Commonwealth countries. Only the United States of America and three other countries—for different reasons—opposed it. The Government's decision not to ratify the treaty will be regarded as contrary to international and British interests.

Does the Under-Secretary agree that, as a maritime seafaring country, Great Britain has an immense interest in finally deciding the law of the sea on all matters to do with the sailing of vessels, as the convention does, and that there is no chance of any commercial undertaking attempting to explore mineral rights on the seabed unless the legal position is clear?

If the convention is frustrated by the Government's actions, there will be little chance of action in that area, in which the Government are presumably interested, being pursued. Through what machinery does he hope to persuade the 130 countries which have already agreed the convention to change the position that they have taken on the mineral regime? In any case, does not the convention come into force once 60 countries have ratified it? I hope that he will not tell us that the Government will defy a convention once it has come into force.

Mr. Rifkind: The Government's objective throughout the discussions has been to achieve a convention acceptable to the world community as a whole. Not only the United States has expressed opposition to the convention; a number of other countries have grave anxieties, particularly about the mining provisions. For example, the West German Government have not so far expressed an intention to sign the convention; it is possible that they will not do so. The same applies to the Italian and a number of other Governments.

The right hon. Gentleman is incorrect to imply that 130 countries will ratify the convention. So far only the German Democratic Republic has expressed an intention both to sign and to ratify the convention. A number of countries that have expressed an intention to sign have given no assurance about ratification.

It is important that, if at all possible, the maritime provisions should be acceptable to the world community. Those parts of the convention that relate to the free passage of vessels, the Continental Shelf and pollution are acceptable to the Government. As the convention expressly allows two years for countries to decide whether to sign, if it is still the wish of the world community as a whole to have a convention acceptable to all, we hope that further thought will be given to the parts which not only are unacceptable to ourselves and the United States but which have been criticised by a significant number of other countries.

Mr. Healey: With respect, the Under-Secretary is far too intelligent to be unaware of the fact that he has not answered any of my questions.

Does the convention not enter into force if 60 countries ratify it? Can the hon. Gentleman confirm that the Government did not oppose the convention when it was discussed earlier this year and that we were one of a small number of countries that abstained? Is not the change in the Government's position, like that of the West German Government, due to excessive and intolerable pressure exerted by the United States Administration? Will not the hon. Gentleman stand up for Britain for a change? The matter is of immense importance to us as a seafaring nation.

Mr. Rifkind: I am afraid that the right hon. Gentleman is incorrect. The United Kingdom was one of a substantial number of countries that abstained when the convention was concluded. A small number of countries opposed and voted against the convention; a significantly greater number, including a substantial number of West European and Soviet Bloc countries, abstained.

The convention will come into effect if it is ratified by 60 countries. The United Kingdom will honour all conventions that it has ratified; that is what ratification is all about. If we have not ratified a convention, we shall be in the same position as any other country that does not ratify a convention: we shall not be bound by it.

Mr. Healey: The hon. Gentleman has made a serious statement. He is suggesting that a treaty which for the first time in human history regulates the law of the sea will come into force if ratified by 60 countries but that the Government reserve the right to defy its provisions. How will it help British mineral companies which want to explore the seabed to defy a convention that has entered into force as a result of ratification by the proper number of counties?

Mr. Rifkind: I cannot believe that the right hon. Gentleman does not appreciate the fact that for a country to be bound by an international treaty it has to take the decision to sign and subsequently to ratify it. If it declines to ratify a treaty, it is stating that it does not intend to be bound by it. It is a normal and acceptable part of international law that countries that do not ratify treaties are not bound by them.

Mr. Healey: The hon. Gentleman still has not answered the question. Does he believe that any mineral company will be prepared to invest the hundreds of millions of pounds required to suck up nodules from the seabed if the Government defy an international convention determining the legal regime under which the activities take place? Has he met any international company that would be prepared to take that risk?

Mr. Rifkind: A country is not defying an international convention if it declines to ratify it; it is simplu exercising its sovereign rights as a State.

One of our main anxieties about the present terminology of the convention is that the deep sea mining proposals would deter many international companies from contemplating the expensive investment required.

Mr. J. Grimond (Orkney and Shetland): Is the convention amendable, and, if so, how? Having been ratified, does the convention have to reconvene for amendments to be made? Will the hon. Gentleman tell us now or place in the Library the Government's objections to the convention as it stands?

Mr. Rifkind: The convention is open for signature but is unlikely to be ratified by the minimum requirement of 60 States for some time. Previous conventions have sometimes taken a number of years to be ratified. At the very least there will be a substantial gap before possible ratification. If there is sufficient will, there is the opportunity for changes to be made.

The Government's objections primarily concern the deep sea mining regime but also the compulsory requirements for transfer of technology and the limitations on production in deep sea mining which would be a substantial disincentive to mining. Those are the main areas of anxiety, although there are a number of other detailed points.

Sir John Biggs-Davison (Epping Forest): Is not the official Opposition's position that vital British interests should be subordinated to the views of a majority of powers whose interests may conflict with ours?

Mr. Rifkind: Anxiety is caused not only by the fact that the proposed regime could have that effect; there is also a provision that the terms of the convention and the regime can be reviewed after 15 years. If there was not unanimity after five years of further discussion, a majority could take a decision, for example, to exclude all commercial private exploitation of the deep seabed, which would certainly be contrary to our interests.

Mr. Ivor Stanbrook (Orpington): In order not to lose the benefit of the parts of the convention with which we agree and are prepared to accept, should we not consider at least signing or even ratifying the convention with reservations?

Mr. Rifkind: Under certain international conventions that is a possibility. Unfortunately, it is not an option under

this one. Party States have the option of signing the whole convention or declining to sign; they do not have the opportunity to accept only parts.

Mr. Tam Dalyell (West Lothian): May I say without bravado, as one who put parliamentary questions to Harold Macmillan 20 years ago on the subject and who has followed it ever since, that I am appalled at the Minister's attitude? Does he recollect he work of the late Lord Ritchie-Calder and the point that he often used to make about the extraction of manganese nodules from the seabed and the importance of getting the agreement of the riparian States in the Indian Ocean, the Pacific or elsewhere?

Mr. Rifkind: I do not dispute that, but I repeat that there is real reason to doubt whether the regime proposed would encourage companies which have the technology to invest the vast sums that would be required to extract the nodules from the deep seabed. It is in everyone's interest to have a regime acceptable to the world community as a whole and one that will encourage the private sector, which has the technology, to invest the vast sums required if the resources are to be utilised.

Mr. John H. Osborn (Sheffield, Hallam): will my hon. Friend bear in mind the fact that the Council of Europe and the European Parliament have looked into the matter? Does he recall that the Council has an excellent report prepared by my hon. and learned Friend the Member for Solihull (Mr. Grieve) and that there is an opinion by the European Economic Affairs and Development Committee, which I entered with the desire to support the United Nations convention but members of the committee found that the industrial and bureaucratic provisions were intolerable? What representations has my hon. Friend had from international mining companies and others to the effect that the agreement would be intolerable?

Mr. Rifkind: I am grateful to my hon. Friend for drawing the study to the attention of the House. I believe that the mining companies' anxiety is that the system adopted by the world community should be an incentive and not a disincentive to deep sea mining. The production controls, the transfer of technology requirements and other similar factors constitute a substantial disincentive.

We hope that there will still be opportunity, especially over the next two years, for further thought to be given to changes that will enable the world community to unite and endorse a regime that will encourage deep sea mining. If such changes can be contemplated, that is something that we shall welcome.

Mr. Dick Douglas (Dunfermline): Will the Minister concede that the objections are being promoted by a small group of companies, which are based mainly in the United States, which have the technology to exploit the resources lying on the deep sea bed? Is he asking the House and the British people to believe that these companies would go ahead, under the supervision of licences granted by the United States, in opposition to nearly all the countries in the world? Is he asking the House to believe that that is the main stumbling block? Is he suggesting that the United Kingdom has no interest in these affairs other than in consortia with United States' companies?

Will he accept that we are being dragged into international disrepute at the behest of Reagan economics in the international sphere? Will he concede that this attitude of mind undermines many areas of international co-operation which are essential if we are to get out of the slump?

Mr. Rifkind: American and British companies must speak for themselves. I am not aware of any public statements that they have made in the United States, in Europe or elsewhere in which they have called for the proposals of the law of the sea convention to be accepted by nation States. If they have great enthusiasm for the proposals, they have not given that indication.

Mr. T. H. H. Skeet (Bedford): Does my hon. Friend appreciate that there is no urgency in this matter because deep sea mining is unlikely to take place before 2000 AD? Is he aware of the danger of recognising an international seabed authority, which would lead to the conclusion that there would have to be an international Antarctic authority and an international space authority, too?

Mr. Rifkind: My hon. Friend is right to say that in any circumstances the prospects for mining on the deep sea bed are a good number of years ahead. It is a distant prospect rather than an immediate one irrespective of the attitudes that countries take to the convention. He is right also to say that our policy towards this convention could be used as a precedent in other discussions that might take place on other matters in future.

Mr. Tom McNally (Stockport, South): Is not the Minister aware of the high priority given by successive Governments to the law of the sea conference? It was one example where order could be brought where anarchy could reign. Does he accept that the low level or even casual way in which the Government have brought this announcement to the House could suggest that they are beginning to enter a conspiracy to wreck the whole process on behalf of narrow vested interests?

Mr. Rifkind: The hon. Gentleman is incorrect in making that suggestion. The Government do not desire to wreck international co-operation. We have said that there are large parts of the convention which we find acceptable, which are attractive and which are of interest to the international community. However, the deep sea mining provisions are not an incidental part of the convention. They form a major part of the convention, and one that has been most controversial in recent years. The British Government have never made any secret of their concern about and disagreement with these proposals. We did not endorse the convention when it was approved some months ago. We still hope to see sufficient changes made over the next two years by the international community, before a final decision on signature is required, to enable us to endorse it. We shall be delighted to do so, but only if the terms of the convention are consistent with British interests.

Mr. David Atkinson (Bournemouth, East): Does my hon. Friend accept that his statement will be warmly welcomed by all countries which have expertise in deep sea mining which are prepared to invest in it and to become involved in it? Of the many changes in the convention which I hope he will pursue, will he ensure that the membership of the executive council of the proposed authority will include countries that are involved in deep sea mining and will not be confined to countries which are land-locked and which do not even know how to deep sea mine?

Mr. Rifkind: My hon. Friend is correct to say that many of the countries that have indicated that they are likely to sign the convention are not involved in deep sea mining, and would be only beneficiaries to the convention and would not have only obligations under it. He is correct also to say that it is desirable that those involved in the international seabed authority, if it is set up, should be the countries most involved. The United Kingdom will be able to be involved in the debates at the preparatory commission. However, it will not have a vote at that commission unless it has signed the convention.

Several hon. Members *rose*——

Mr. Speaker: Order. I propose to call those hon. Members who have been rising in their places to ask questions and then to call the Opposition spokesman, the right hon. Member for Leeds, East (Mr. Healey), before ending questions on the statement.

Mr. Ioan Evans (Aberdare): Does the Minister agree that one of the problems that has faced mankind over the years has been conflicts about ownership of the earth's surface? The purpose of the law of the sea conference is to ensure that there are not the same conflicts in the development of the oceans' beds. If the Government are going along with the United States of America—the hon. Gentleman has not mentioned any other country that has seriously said that it is against the law of the sea proposals—will they introduce positive proposals with a view to seeking some international agreement? Is he aware that if there is a failure to do so there will be a danger of a serious conflict because of an inability to determine what areas should be developed by what countries?

Mr. Rifkind: I can assure the hon. Gentleman that the British Government are not against international co-operation on the exploitation of the deep seabed. That is a desirable principle. We take exception to particular proposals within the convention, which if imposed through the international seabed authority and the various other structural innovations that are proposed could result in an unwieldy, bureaucratic and possibly unworkable system which would deter rather than encourage the investment and co-operation that the hon. Gentleman seeks.

Mr. Keith Best (Anglesey): Is my hon. Friend aware that the only effective international law is that which is achieved through unanimity, which, of course, involves acceptance by other major countries as well as our own? His caution in safeguarding British interests will be welcomed widely—we must proceed carefully in these matters—but will he accept that many will be looking for the Government and the United Kingdom to take a major part in ensuring that a fundamental step in international law is not lost for ever?

Mr. Rifkind: My hon. Friend has raised a valuable point. It is a harsh fact of life that any convention bearing on deep sea mining that did not have the United states as a party would be of relatively little value in achieving international agreement. That is because of the overwhelming and predominant contribution that the United States makes to technology and possible developments in this area of activity. I agree with the objectives that my hon. Friend has mentioned.

Mr. John Ryman (Blyth): It is correct in law that there cannot be a breach of a convention unless there is prior ratification by the United Kingdom Government, but does the Minister agree that his nonchalant attitude to this issue will create the impression, however unwittingly, that Her Majesty's Government are adopting an insular attitude and shirking their responsibility to the Third world by appearing to obstruct a comprehensive international agreement to distribute the wealth of the world among those who most need it?

Mr. Rifkind: I am grateful to the hon. Gentleman for educating Members on the Opposition Front Bench. The United Kingdom cannot be bound by a convention that it has not ratified. It is not the desire of Her Majesty's Government to obstruct co-operation with the Third world. Much of the convention is acceptable. However, there is one major aspect of it which is unacceptable. It will come as no surprise to any Third world country that the United Kingdom disagrees with the parts of the convention to which I have referred. I hope that there will still be an opportunity for international discussion and co-operation that will lead to changes that will be acceptable to the United Kingdom and the world community.

Mr. Gary Waller (Brighouse and Spenborough): I accept that the convention as drafted is clearly flawed and in need of revision. However, does my hon. Friend agree that some form of treaty is necessary in future to give the world community, especially Third world developing countries, some hope that they can develop their own economic system and improve their performance? Will the Government work to achieve a more satisfactory solution that produces goods that are acceptable to all?

Mr. Rifkind: I can certainly give that assurance. It is undoubtedly in the interests of the world community that there should be an international convention that is acceptable to it as a whole. So far that has not proved possible with this convention but we shall do our best to see whether it can be made possible during the next two years.

Mr. Andrew Faulds (Warley, East): Is not the problem that the Prime Minister, who is so renownedly ignorant about foreign affairs and so pitifully tied to Reagan's coat tails, has personally intervened yet once again?

Mr. Rifkind: The hon. Gentleman's question is so absurd that it does not require a reply.

Mr. Healey: Will the hon. Gentleman accept that the exchanges in the past half hour demonstrate that it is the view of a large number of hon. Members that the Government's attitude is just one more example of their indifference to international order, their hostility to the interests of the Third world and their subservience to the temporary commercial interests of American companies? The House will wish to debate the matter, and I hope that the hon. Gentleman can assure us that the Government will give us an opportunity to do so.

Mr. Rifkind: The right hon. Gentleman will be aware that his latter point is a matter not for me but for my right hon. Friend the Leader of the House. No doubt my right hon. Friend has heard every word of the right hon. Gentleman's contribution.

The exchanges that we have had do not suggest that the House overwhelmingly takes a different view from the Government. Perhaps not surprisingly, the Opposition take a different view; but that is not unusual.