PM/84/178

PRIME MINISTER

Prime Minister
The Foreign Secretary recommends against UK signature, but in favour of allowing the Community to sign. This would bind us only in respect of matters within Community competence. These are very limited and would not harm our interests. Agree to Community signature? CDP 1/xii

UN Law of the Sea Convention

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

[attached]

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

No. I wish first to hear what the Treasury says about O.i. revenues [some tax is within competence of EEC and is North Sea O.i.] and also to receive advice from Treasury Solicitor [illegible]

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

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

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

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

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

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

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

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

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

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

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

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

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

G.

GEOFFREY HOWE

Foreign and Commonwealth Office
30 November, 1984

BG

CONFIDENTIAL

CCNO
PC
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DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

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

No pm DMS 17/12

17 December 1984

Dear Geoffrey,

UNITED NATIONS LAW OF THE SEA CONVENTION

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

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

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

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

cont/d...

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

Ewen.

Keith.

Foreign Pol 1 T 2

UNLOSC

17 DEC 1984

CENO

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

From the Minister of State for Industry

Norman Lamont MP

CONFIDENTIAL

Await FCO telegram

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

3 December 1984

Dear Geoffrey

UN LAW OF THE SEA CONVENTION

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

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

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

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

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

Yours ever

NL

NORMAN LAMONT

MO2ABP

DRAFT DECLARATION BY THE COUNCIL

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

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

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

FOR POL: Law of the Sea: Pt 2.

01 211 6402

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

3 December 1984

Dear Len

UNLOSC: COMMUNITY SIGNATURE

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

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

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

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

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

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

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

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

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

Yours sincerely
Michael Reidy

M F REIDY
Private Secretary

Please hold until we know whether the Foreign Secretary intends to pursue this. CDP 27/xi

UNLOSC

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

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

Private Secretary to
the Lord Advocate

27/11/84.

LAW OFFICERS DEPT
LORD ADVOCATES DEPT

27 November 1984

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

MEMORANDUM BY THE LAW OFFICERS

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

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

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

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

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

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

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

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27 November 1984

Law Officers' Department
Lord Advocate's Department.

UNITED NATIONS LAW OF THE SEA CONVENTION:

FUTURE OPTIONS : LEGAL ASPECTS

MEMORANDUM BY FOREIGN AND COMMONWEALTH OFFICE LEGAL ADVISERS

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

The Convention as emerging or customary international law

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

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

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

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

Other issues on the text of the Convention

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

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

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

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

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

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

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

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

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

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

/Signature

Signature of the Convention

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

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

Signature and ratification

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

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

Foreign and Commonwealth Office
London SW1

23 November 1984

Foreign Pol.
Law of Sea
Pt2

27 NOV 1984