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B.06881

PRIME MINISTER

c Sir Robert Armstrong

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

*with CDP*

BACKGROUND

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

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

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



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

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

#### HANDLING

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

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



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

(a) Deep Sea Mining Provisions

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

(b) Rights of Transit Passage

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



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

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

(d) Diplomatic considerations

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

CONCLUSION

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



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

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

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

*Bryan Cartledge*

B G Cartledge

5 November 1984

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