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

The British Maritime League

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FROM: The Director.

23rd November 1984.

MBFR.

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

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

Dear Mr. Redwood,

The United Nations Convention on the Law of the Sea

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

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

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

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

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

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

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

Best Regards
Yours sincerely
Michael Ranken

M.B.F. Ranken.

Encls.

THE TIMES 12 Nov. 84

T. 12.11.84

Time to clinch Law of the Sea pact?

From the Director of the British Maritime League

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

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

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

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

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

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

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

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

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

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

MBFR. 22nd November 1984.

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

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

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

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

To Date:

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

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

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

The United States have declared that they will not sign.

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

* * * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reclaiming our influence later would not be easy.

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