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DATE: 1 SEPTEMBER 1994

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EUROPEAN ENERGY CHARTER CONFERENCE SECRETARIAT
DATE/Nº : 2 . 9 . 94 / 3456
ATTR. : ECT
FOR INFO : LKE / LW / VV / CR

SUBJECT: **ARTICLE 21(2) (SOVEREIGNTY OVER ENERGY
RESOURCES).**

Reference is made to Message No 259 L addressed to the European Union, Norway,
Russia and the United States.

Norway sees no reason to introduce any changes in the current text of Article 21(2). However, as the proposed changes in the text are of a purely linguistic nature, and does not entail any modifications in the substance of Article 21(2), we will not object to the proposed changes.

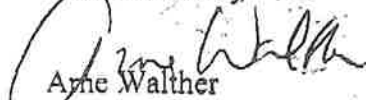
Norway cannot accept any declarations, understandings or decisions in the Final Act of the Conference that change the substance or affect the interpretation of Article 21(2). Consequently, Norway cannot accept the inclusion of any declaration or understanding based on the two alternative texts proposed by the Conference Chairman. Our view is based on general principles of treaty interpretation, and on the possible negative consequences of deviations from such generally recognized principles, and not on any assessment of the concrete texts suggested by the Conference Chairman.

It is the firm conviction of Norway that Article 21(2) should be interpreted in accordance with generally recognized rules of interpretation of international treaties. In this respect attention is drawn to Article 31(1) of the Vienna Convention on the Law of Treaties which reads: "A Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in the light of its objective and purpose". It is thus clear that the objective and purpose of the ECT will have to be taken into account in the interpretation of Article 21. The same goes for the context of Article 21, which in accordance with Article 31(2) of the Vienna Convention shall comprise the text of the ECT as a whole including its preamble and annexes. It is submitted that if interpreted in good faith in accordance with these general and broadly recognized rules of interpretation of international treaties, Article 21 does itself contain all the necessary limits on a Contracting Party's use of its rules.

Should it for political reasons be desirable to include in the Final Act a declaration with respect to Article 21, Norway would be ready to accept the following text:

"Together Article 21 and Part III of the ECT are intended to represent a balanced approach to the legal relationship between the host state and the investment of investors in the exploration and development of energy resources. The rights of the state as resource owner constitute an important element in this legal relationship, as do the protection granted to investors and their investments under Part III. Article 21(2) preserves the right of Contracting Parties to maintain rules governing the system of property ownership based on the principle of the state's ownership to its energy resources. Article 21 is intended to affect the interpretation and application of the rest of the ECT, including provisions of Part III. It is not intended to undermine the application of any provision of the ECT."

Yours sincerely,


Arne Walther
Ambassador