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CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

UNITED NATIONS LAW OF THE SEA CONFERENCE

Memorandum by the Secretary of State for Trade

1. I am circulating this paper in my capacity as Chairman of the Ministerial Group on Maritime Affairs (MISC 19).

2. The Ninth Session of the Third United Nations Law of the Sea Conference (UNLOSC) will resume in Geneva from 28 July to 29 August. Negotiations on a comprehensive Law of the Sea Convention have reached an advanced stage, and may be completed in the resumed Ninth Session of the Conference or at a further Session in 1981. Although a decision on whether the United Kingdom should accede to the Convention will not be called for until the text is complete, it will then be late to reopen matters of substance. The Ministerial Group on Maritime Affairs (MISC 19) has therefore reviewed the major questions already agreed informally at the Conference, and considered the main issues still outstanding. A paper by officials is attached which formed the background to the Group's discussion. Also attached is a memorandum by the Minister of State for Energy which was considered by the Group.

UNLOSC: QUESTIONS ALREADY AGREED

3. The major questions already agreed informally at UNLOSC are listed at Annex I to the note by officials. I and my MISC 19 colleagues are content that on each of these questions the draft Convention adequately reflects British interests. Together they represent a substantial achievement.

UNLOSC: OUTSTANDING ISSUES

4. The issues which remain to be decided are described in paragraphs 10-24 of the official paper. The key issues concern the continental shelf and the regime for deep sea mining.

5. The outstanding matters on the continental shelf have major energy and financial implications. The UK is one

of a small group of states with an interest in having the widest possible extension of their continental shelf, mainly because of the possible existence of recoverable hydrocarbon deposits. The Department of Energy estimate that up to 275 million tonnes of oil may eventually be recoverable from the Rockall area, the main area of concern to the UK whose status remains in doubt. At current oil prices these would be worth around £30,000 million. Under the draft Convention the outer limit to the continental shelf would be definitively fixed by the state concerned "on the basis of" recommendations of a Boundary Commission of international experts. There are fears that the Boundary Commission will not always act impartially. Thus the crux of the matter, leaving aside any wider considerations, is whether our interests in this field will be better served by acceptance of a Convention containing inadequate wording or by reliance on existing international law. The view of the Attorney General is that our position under existing law would be marginally weaker.

6. A second point in relation to the continental shelf is that, as a price for obtaining a definition of the continental shelf which could allow extension beyond 200 miles, the "wide margin" states have had to concede in negotiation the principle of revenue sharing in respect of oil produced beyond 200 miles. The beneficiaries would be the developing countries, to the tune of around 2.2 per cent of the gross revenue of a typical well (the detailed formulae and the potential cost to the UK are discussed in paras 10-15 of Annex II).

7. The question of seabed mining, beyond the limits of continental shelves, also presents substantial problems. These concern the security required to encourage companies to undertake such mining; and the costs to national governments of contributing to the expenses of an international enterprise, which would undertake mining on behalf of the proposed International Seabed Authority. These questions are discussed in greater detail in paragraphs 18-19 of the official paper and in Annexes III and IV. The negotiations have been carried out in close consultation with interested companies and in close support of the United States government, for whom this is a crucial aspect of the Convention. The outcome is, we believe, acceptable, provided that developed countries are assured of a sufficient proportion of the votes on the Council of the International Seabed Authority to prevent its hamstringing the activities of national mining companies. We also aim to obtain a reference in the Convention to the desirability of seabed mining, and to tighten the terms of the draft relating to the transfer of technology to developing countries.

8. Colleagues will also wish to take note of three other outstanding questions discussed in paragraphs 19-24 of the official paper. The first of these, the removal of abandoned installations, could entail a very large loss

of revenue: around £50-70 million for each fixed platform removed. However the obligation to remove such installations would not arise where a genuine alternative use could be found for them.

CONCLUSIONS

9. The MISC 19 Group recognised that in the negotiations major interests of the UK have been secured in relation to navigation, defence, fisheries, pollution, scientific research, the territorial sea, and the exclusive economic zone. They accepted that it will not be possible to obtain a partial Convention, and that the Government is likely to have to take a view on the balance of advantage of participating in a Convention containing unsatisfactory features. However, certain departments have strong reservations on the potential loss of hydrocarbon resources and the associated Government revenue. The Group itself was not therefore able to come to an agreed view of where the balance of advantage lies, on the basis of the present draft text of the Law of the Sea Convention. Nevertheless we considered that we could not afford to withdraw from the negotiations.

10. The forthcoming session may see a breakdown of the negotiations; and we may have some difficult decisions to take on the price we are ready to pay (insofar as the United Kingdom position is critical in the matter) to avoid a breakdown. Possibly the crunch will be delayed until a further session, with our delegation not needing to seek fresh instructions on major points during the coming round. But it is also possible that, given the pressure from the United States and the Soviet Union in particular for an early settlement, this session will require us to make a judgement on the acceptability of the draft Convention as a whole. This difficult moment could occur in late Autumn.

11. I therefore recommend that OD should

i. endorse the views of MISC 19 on the benefits to the UK of the issues already settled

ii. agree that the UK delegation should continue to participate in the UNLOSC on the basis of instructions which have been circulated for approval by the Ministers concerned

iii. take note of the issues on which changes in the draft UN Convention are desirable in order to meet UK objectives

iv. agree that, subject to further consideration of the final text, it is likely to be in the UK interest to adhere to a Law of the Sea Convention commanding general international acceptance.

UN LAW OF THE SEA CONFERENCE: ASSESSMENT OF PRESENT POSITION

PAPER BY THE FOREIGN AND COMMONWEALTH OFFICE

SUMMARY

1. Purpose of paper is to provide a basis for discussion by Ministers of the situation in the Conference. Its origins and agenda (paragraphs 1-8).

2. A number of questions have already been agreed informally (paragraph 9).

3. The continental shelf negotiation is of particular interest to the United Kingdom for the future of our oil supplies. A satisfactory conclusion is in sight but the subject remains controversial and delicate.

4. The international régime to control deep sea mining is proving difficult to negotiate. The system of voting is still unsettled (paragraphs 17-18).

5. Other outstanding questions include the status of certain islands (including Rockall), the removal of installations, delimitation and the participation in the treaty of the European Community (paragraphs 19-24).

6. The advantages for the United Kingdom of a Convention of the sort now in prospect are extensive and substantial. The possible alternatives have no attractions. The delegation should continue its efforts (paragraphs 25-31).

7. Annexes are attached on:-

(i) Questions already agreed.
(ii) Continental shelf.
(iii) Deep sea mining régime.
(iv) Financial aspects.

11 June 1980

UN LAW OF THE SEA CONFERENCE: ASSESSMENT OF PRESENT POSITION

PAPER BY THE FOREIGN AND COMMONWEALTH OFFICE

I. INTRODUCTION

1. The purpose of this paper is to assist Ministers to assess the balance of advantage for the United Kingdom in the comprehensive Law of the Sea Convention which is under negotiation in the Third UN Law of the Sea Conference.

2. The Conference will resume in Geneva from 28 July to 29 August with the intention of completing negotiations and adopting a Convention. It is likely that it will complete its work in 1981, if not this year. It is therefore timely to review the major questions already agreed informally and particularly to consider the main issues still outstanding. Although no final decision on whether the UK should accede to the Convention will be called for until the text is complete, it will then be late to reopen matters of substance.

II. BACKGROUND

3. The First UN Law of the Sea Conference in Geneva in 1958 drew up three successful Conventions, to which the UK is a party, concerning respectively the High Seas, the Territorial Sea and the Continental Shelf. But the Second Conference in 1960 failed to reach an agreed settlement on the breadth of the territorial sea.

4. The generally agreed rules on the Law of the Sea as it resulted from these Conventions did not deal effectively with three major questions:-

(i) The breadth of the territorial sea.

(ii) The outer limit of the continental shelf, over which the adjacent coastal states enjoy sovereign rights for the purpose of exploring and exploiting its natural resources.

(iii) The régime for exploitation of minerals beyond the outer limit of the continental shelf in the deep seabed.

5. In 1967 the United Nations, on a Maltese initiative, began a study of the régime which should apply to the deep seabed; this led to the adoption of a declaration in 1970 by the UN General Assembly designating the deep seabed beyond national jurisdiction as "the common heritage of mankind" and envisaging the establishment of an international régime for its exploitation.

6. Other developments at about that time which contributed to the general support for a Conference included an increasing awareness of the importance of marine living resources and of the dangers of marine pollution; the unilateral extensions by coastal states of their jurisdictions and the concern this aroused among maritime states at the threat to freedom of navigation; and

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the search by Third World countries for new resources to promote economic development. There was also concern about the danger of an increasingly chaotic situation as restraints broke down in the post-colonial period.

7. The Conference began in 1973. It has developed its own methods of work which include two important innovations: consensus has so far been accepted rather than voting as the basis for decisions; and the successive texts have been built up on the responsibility of the officers of the Conference on the basis of discussion in a multitude of special groups. Both have worked to our advantage and have enabled us and other countries in a minority position to obtain points essential to satisfy our requirements which we would never have gained by vote. Our interest is to maintain this situation to the end and settle the problems which remain outstanding without recourse to voting.

8. Considerable progress was made at the session in New York in March. A new text, the Informal Composite Negotiating Text, Revision 2, was produced. There is now a widespread desire, which is shared by the Soviet Union and the United States, to obtain a rapid settlement of the few outstanding questions. This would be in our own interest since many of our objectives are included in the new text but may be difficult to maintain if discussion is further prolonged.

III. QUESTIONS ALREADY AGREED

9. The ICNT contains provisions on many matters which are broadly supported in the Conference, and which reflect adequately the objectives which have been pursued by the UK. These include:-

(i) The 12 mile territorial sea.

(ii) The 200 mile exclusive economic zone.

(iii) Passage through straits and archipelagoes.

(iv) Fisheries.

(v) Pollution.

(vi) Scientific research.

(vii) Peaceful settlement of disputes.

Details of the position on each of these are given in Annex I.

IV. CONTINENTAL SHELF

10. Certain elements in the régime of the continental shelf are of special interest to the UK and are still the subject of controversy at the Conference. The details of this question are set out in Annex II, but the following paragraphs give the salient points.

The Substance of the Régime

11. Apart from the question of disused installations considered below, this is satisfactory.

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The Definition of the Limit

12. In 1958 the Continental Shelf Convention adopted a limit of 200 metres depth or so far beyond that depth as exploitation is possible. This rule became evidently unworkable as a limit as technology improved; at the same time, since 1967, the international community, and especially the developing countries, have claimed legitimate interest in resources of the seabed beyond the limits of national jurisdiction; and thus attention has focussed on the outer limit of the continental shelf as representing the seaward extension of valid claims to exercise national jurisdiction.

13. At the Conference, many countries have insisted that the outer limit of the shelf should be defined on the sole basis of distance or distance/depth criteria (which would be to the disadvantage of the UK); but the UK and other wide margin states, less than a dozen in number and mostly developed countries, have with great difficulty built up sufficient support to obtain the inclusion in the text of a geological formula which would give them resource rights over the whole of the continental margin, including, in particular, potential hydrocarbon areas. At the recent session in New York, the outstanding problem of oceanic ridges was settled satisfactorily. Certain delegations still actively resist the definition embodied in the text, notably the Arabs who, supported by a number of delegations from landlocked and geographically disadvantaged states, still favour a distance criterion.

14. Other points still at issue regarding the continental shelf are:-

(i) The Boundary Commission.

(ii) Revenue Sharing.

A Commission of 21 experts has been proposed in order to assist coastal states in defining the outer limit of the continental shelf in accordance with scientific criteria. At New York, an amendment was made in the text which would provide that the limits to be established by the coastal state are only final and binding if they are defined "on the basis of" recommendations of the Boundary Commission. In the previous text the words "taking into account" were used. The UK delegation entered a reservation on this change, which was pressed by the US and the USSR as the price for a settlement of the ocean ridges problem. It is true that "taking into account" leaves the coastal state with somewhat more flexibility in dealing with the initial recommendation of the Boundary Commission than the new "on the basis of" formula. On the other hand, the new formula may give the coastal state a better prospect that the final and binding nature of its determination will be respected. The difference between the two is unlikely in practice to amount to very much and the outcome in any particular case is likely to depend much more on how the coastal state plays its cards in preparing the data for the Commission. That the coastal state cannot in the final analysis unilaterally fix limits has been emphasised by the International Court of Justice

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in the following extract from its judgment on the Norwegian Fisheries case:-

> "The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal state as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal state is competent to undertake it, the validity of the delimitation with regard to other states depends upon international law."
> (ICJ Reports (1951), page 132.)

15. The principle that revenue from oil produced from the continental shelf beyond 200 miles should be shared between the coastal state and developing countries has been accepted for some years. Wide margin states have reluctantly recognised that this is a price which has to be paid if their rights beyond 200 miles are to obtain international recognition. According to the current text, contributions would after a grace period of five years start at 1% in the sixth year, increasing by 1% annually until the twelfth year and remaining at 7% thereafter. The UK is not committed to these figures, which compare favourably with various proposals put forward by Sri Lanka and other developing countries. It would however be a modest contribution by comparison with expected tax revenue and is a small price to pay for international recognition of the outer shelf limit we desire.

16. The eventual outcome on all these outstanding matters concerning the continental shelf is likely to be a package under which the wide margin states will secure the definition of the limit in the present text and in return will have to accept (a) the phrase "on the basis of" in respect of the Boundary Commission's recommendation and (b) revenue sharing percentages no lower than those in the present text and possibly slightly less favourable figures. Such an outcome would still mean that the UK with other wide margin states was a main beneficiary of the new continental shelf régime.

V. DEEP SEA MINING

17. Nodules which contain nickel, copper, cobalt and manganese are found in the deep seabed beyond the continental shelf. The nickel is particularly abundant and could prove an important source of supply for British industry by the end of the century. British companies (BP, RTZ and Consolidated Gold Fields) are in a US-led deep seabed mining consortium, and a Royal Dutch/Shell company is in another. The investment which will be needed is very large (perhaps $1.5 billion) and requires a secure legal framework. It has been the responsibility of the Conference to develop this framework, following the declaration by the General Assembly of the United Nations in 1970 that the resources of the seabed beyond national jurisdiction were "the common heritage of mankind" and that deep seabed mining should be governed by an international régime. The United Kingdom voted in favour of this declaration, while maintaining that deep seabed mining remains permissible under international law until an international régime

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enters into force for us. The Third World are violently opposed to any mining outside an international régime and approach the whole issue in the context of North-South relations.

18. The negotiations on this subject have proved extremely difficult. The potential seabed mining states, including the UK, are determined that the régime should ensure access and security sufficient to provide a favourable investment climate for their firms. The Group of 77 seek to obtain the maximum contribution from deep sea mining to their own development funds and wish to keep exploitation of the seabed in the hands of an international enterprise as far as possible. The land-based producers wish to minimise seabed production in order to protect their existing industries. Most of the difficulties in this part of the treaty have however now been overcome and it is generally accepted by the companies as well as by other governments that there is no secure future for seabed mining except within an international régime. The main problem outstanding is the voting system in the Council, on which an understanding now exists between the Soviet Union and the United States and associated Western states, including the UK. Details concerning the régime as so far agreed and some indication of the costs involved are given at Annexes III and IV.

VI. OTHER OUTSTANDING QUESTIONS

(a) The Status of Certain Islands

19. The ICNT contains in Article 121(3) a provision as follows:-

> "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

This text represents a compromise between those who wanted no special provision and those who wished to extend this restriction to a wider class of islands. The delegation has sought any opportunity to eliminate the clause without raising the risk of its being worsened. It is reasonably clear that a move to delete this provision at the Conference cannot succeed.

20. If this text is maintained, Rockall would remain UK territory and would have a 12 mile territorial sea around it. Our claim to the continental shelf on the Rockall plateau would continue to be sustainable on the basis of its relationship to Scotland. But it might be difficult to maintain our 200 mile fishing zone around Rockall, the lawfulness of which has already been challenged by the Soviet Union and Denmark and which may be challenged by other states if the matter becomes a question of public controversy. The fish stocks in the area are of limited value and mainly not for human consumption.

(b) Removal of Installations

21. The Continental Shelf Convention 1958 and the ICNT provide that artificial islands, installations and structures within the exclusive economic zone or on the continental shelf "which are abandoned or disused must be entirely removed".

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22. The cost in the Northern and Southern Basins of the North Sea is estimated at £2,500 million. (The calculation has been made by the Department of Energy from a study by Consultants: the cost of removal values according to type of platform but is often in the region of £50-70 million per platform.) This will through tax allowances cause a loss of tax revenue not far off these sums. But to demand in the Conference, after gaining a massive revenue out of these installations, the right not to remove them, to the detriment of other users of the superjacent waters (eg merchant vessels and fishing vessels) would be counter-productive. Our closest allies on the shelf have advised against re-opening this provision. If a genuine alternative use for such installations could be found the duty to remove would not of course arise.

(c) Delimitation

23. The provisions for the delimitation of the exclusive economic zone or the continental shelf between states with opposite or adjacent coasts have not been finally settled. The Conference remains divided between supporters of the median line and of equitable principles. A new compromise which has been included in the latest text and may well be the final solution is tolerable to the UK, though still capable of improvement. Other variants may yet emerge, but there is no likelihood of any outcome which would inhibit the arguments we would wish to deploy in the forthcoming UK/Irish arbitration or in other negotiations with neighbouring states.

(d) European Community

24. It has been agreed in the Council that the member states of the EC should endeavour to secure a clause which would permit the EC to be a party to the Convention. This is necessary because there are detailed provisions concerning the management of fisheries where the EC unquestionably has competence. The inclusion of a fully satisfactory EC clause is opposed by the Soviet Union and a number of other delegations. The outcome is not clear. But whether such a clause is inserted or not, the inclusion of substantial provisions on fisheries will make it very difficult for the UK to become a party to the Convention if the remainder of the EC do not and wish to prevent it. Equally, if the other members of the EC decide to become parties to the Convention and the way is open for the Community itself to become one, then the UK will come under strong pressure either to conform to the Convention in all matters within Community competence or to become a party itself.

VII. BALANCE OF ADVANTAGE

25. A Convention on the lines now in prospect would offer the following main advantages:-

(a) An orderly framework of international law which would reduce the danger of conflict.

(b) Security of navigation for our ships and aircraft.

(c) A reliable supply of nickel and other minerals with fair opportunities for participation by British firms in deep sea mining.

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(d) International recognition of the UK's continental shelf and of our exclusive right to its mineral exploitation.

(e) Adequate scope for British environmental protection and fishery management policies, including a 12 mile territorial sea.

26. The costs of a Convention as estimated in Annexes II and IV are substantial, arising mainly from the deep seabed régime. It has been suggested that it would suit us and other Western countries better to have a partial Convention which would secure us the navigational and other benefits and leave us a free hand in deep sea mining. This is not now a realistic possibility and would be spurned by the overwhelming majority of the Conference, who regard the Convention as a single package.

27. There exists also the theoretical possibility that the UK should withdraw its support from the negotiations, though it is difficult to suggest any advantage in a course which would cause dismay to our friends and probably cause the final text to be less favourable to our interests. If law-making treaties such as this are widely ratified they tend to be invoked as forming part of general international law and a dissent by the UK alone is unlikely to be effective. We therefore have little choice but to continue working to ensure that as satisfactory a text as we can obtain is eventually adopted.

28. We have to recognise however that the UK is normally in a minority position, as over the shelf, deep sea mining and the navigation provisions. It is therefore necessary to act circumspectly and try to keep the Conference within the consensus procedure which has so far served us well.

29. There remains a possibility that the Conference may fail to produce a Convention which is generally acceptable. This could have serious consequences for the UK. Unilateral claims to territorial sea and denial of passage through straits and facilities for research would increase and would pose difficult problems of resistance or compliance on our part. We would continue to insist on our claims concerning the outer limit of the continental shelf but could expect mounting pressure in the UN against them, possibly leading to a request for an advisory opinion from the International Court. The eventual outcome would be difficult to foresee.

30. It is relevant that the régimes for the territorial sea, high seas and continental shelf generally agreed in the Geneva Conferences in 1958 have worked out in general quite satisfactorily. On the other hand, where no generally agreed solution was then achieved, ie in relation to the breadth of the territorial sea, fishery régimes out to and beyond 12 miles and powers to control marine pollution outside the territorial sea, subsequent developments have been distinctly unfavourable. This suggests that the future situation, without a new Law of the Sea Convention but with the 1958 Conventions weakened by passage of time and by developments

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at the Conference, would not only be uncertain and possibly chaotic but might well develop in a way which would be damaging to UK interests.

VIII. CONCLUSION

31. The above analysis suggests that the balance of advantage lies in pursuing the negotiations for a Convention. A final decision on UK participation will be needed when the text is settled. The instructions to the delegation for the Geneva session should be prepared in accordance with this paper and circulated for approval by Ministers as in the past.

ANNEX I

QUESTIONS ALREADY AGREED

The final Convention is expected to include the following elements, with the consequences indicated:

(i) Territorial seas would be limited to 12 miles. This would create stability in an area where there has been increasing disagreement among states. It would ensure rights of navigation and overflight free of foreign control or military risk. Without a Convention, territorial seas would continue to be claimed beyond 12 miles, possibly towards the 200 miles limit already asserted by certain countries as the limit of their territorial sea. In the long term, this would have major defence implications and could add to the costs of commercial shipping and civil aviation.

(ii) A 200 mile economic zone, in which coastal states will have sovereign rights over the living and non-living resources, but within which other high seas rights will generally be preserved (except as specified in the Convention), would be internationally established. Such a balanced régime will serve our defence, commercial shipping and civil aviation interests as well as our energy and fisheries interests.

(iii) An acceptable régime would be created for passage through some 100 straits used for international shipping, including those which will be created by the extension of territorial seas to 12 miles. The entrances to the Persian Gulf and the Strait of Gibraltar are of special importance. The absence of such a régime would again have very serious implications for our defence interests. Somewhat similar considerations apply to our commercial shipping and civil aviation interests. If, as is quite possible, maritime states tried to ignore any new régimes unilaterally declared by straits states, this could lead to a series of costly and potentially dangerous confrontations. An acceptable régime for passage through archipelagoes, eg Indonesia and the Philippines, would be established.

(iv) The fisheries clauses of the Convention envisage a régime which gives wide powers to the coastal state for the administration and conservation of its 200 mile zone. While it recognises certain rights for the benefit of landlocked and geographically disadvantaged states (LLGDS) (ie those with limited or no offshore areas) in the same region, there are in a form which, if maintained, are judged to be satisfactory by ourselves and our EEC partners.

(v) The powers of coastal states to impose and enforce laws and regulations related to pollution on foreign ships in the territorial sea and in the economic zone will be

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extended to give jurisdiction over serious offences out to 200 miles. But the power will be circumscribed acceptably and will help to restrain more extravagant claims which have been made and which could have very adverse consequences for our commercial shipping interests.

(vi) A régime of scientific research is laid down which sets out the rights and obligations of coastal and researching states in respect of the exclusive economic zone and continental shelf. It will have some restrictive effect on our research interests but will provide a secure basis for their future activities.

(vii) An agreed procedure for the settlement of many types of disputes under the Convention through arbitration has been included. This should help to strengthen the defence of our rights under the treaty, though it opens the risk of adverse awards when the UK is a defendant. Deep sea disputes are entrusted to the Sea Bed Disputes Chamber of the Law of the Sea Tribunal which may be less satisfactory.

ANNEX II

THE CONTINENTAL SHELF

The Substance of the Régime

1. The provisions of the régime follow substantially those of the Continental Shelf Convention 1958 and, subject to what is said below concerning the obligation to remove disused installations, are satisfactory. They give us control over the means of exploitation of the resources, while accommodating interests of other states and our own in respect of rights of passage.

The Definition of the Limit

2. The 1958 Conference came close to adopting a limit consisting of a 200 or 500 metre isobath (a line linking points of equal depth). It eventually defined the limit of the continental shelf as 200 metres or, beyond that depth, as far as "the depth of the superjacent waters admits of the exploitation of the natural resources". The "exploitability test" of the 1958 Convention became unworkable as it became clear that exploitation would proceed into deeper waters until ultimately the deep seabed became exploitable for such resources as it may contain. Thus before the present Conference it became clear that a problem arose as to how far continental shelf jurisdiction should be allowed to extend. At the same time since at least 1967 political awareness has increased that there is an area beyond national jurisdiction, that rights to the resources in it should in some form be regarded as of public interest and for public exploitation by the international community. There was universal recognition that there was a limit to continental shelf jurisdiction and the main question was where it lay.

3. In the early stages of the Conference when it became clear that a 200 mile economic zone would be established, very many countries considered that there should not be a continental shelf régime beyond 200 miles. This remained the position of the Arab countries until the first part of the Ninth Session earlier this year. A small group of wide-margin countries, Australia, Argentina, Canada, India, Ireland, New Zealand, Norway, United Kingdom, later joined by the United States, and a short time ago by Uruguay, however pressed over the years for a geologically based formula which would in effect have given the coastal state resource rights not only over the continental shelf out to the "shelf-break" (which was the original basis of the doctrine) but down the steeper slope to the gently inclined outer edge of the continental margin. The geological formula would draw a line at the outer edge of the margin at the thickness of sediment which includes substantially all areas likely to contain hydrocarbons. In order to gain the acquiescence of the Soviet Union, which initially supported a distance criterion, the margineers had to accept an additional qualifying formula based on depth and distance. The outstanding

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question of ocean ridges was settled satisfactorily in March 1980. The formula now incorporated in the text would enable the UK to claim seabed areas out to some 500 miles from the Outer Hebrides, but countries with comparable claims are only four or five in number and are all developed or relatively wealthy countries.

4. The task has been greatly complicated by the complexity of offshore geology, including the presence of shallow oceanic ridge areas which are not structurally part of a continent and which run for many hundreds of miles in mid-ocean. A further complication in terms of UK interest is the fact that the Rockall Plateau is separated from Ireland and Scotland by a substantial trough and that some geologists consider that its continental history is not the same as that of the main continental block of Europe including the British Isles.

5. Nevertheless the wide-margin delegations have succeeded in attracting support for their formula with concessions which do not significantly affect the seaward extent of the limit. Opposition continues from the Arab group of 36 delegations; an additional 20 or 30 other countries in the landlocked and geographically disadvantaged states group, ie those with no or small offshore areas, also continue to regard the formula which is now in the ICNT as one which is very advantageous to the wide-margin states and look for compensation elsewhere if they decide to accept it.

The Boundary Commission

6. From an early stage in the negotiations it was recognised that, particularly in view of the geological complexities, the international community which had an interest in the deep seabed would not accept the unilateral imposition of limits by a coastal state. In order to justify claims beyond 200 miles, a geological criterion had to be invoked and as a boundary between two zones there was no logical reason why the line should be for the determination of the coastal state alone. Indeed, our adversaries could argue that the line should be decided by the international community as representing a wider group of states.

7. In order to obtain support for the necessarily complicated formula for the outer limit, Canada, with margineer support, put forward a Boundary Commission proposal in 1976. It was designed to ensure that the body which examined the limits put forward by the coastal state would be composed of scientific experts and thus would be qualified to see whether the technical aspects of the formula had been correctly applied. It did not give the Commission the power of binding adjudication over the limits, which is quite normal in boundary arbitrations, but left to the coastal state responsibility for providing information on the proposed limits and for their establishment. If the recommendation of the Boundary Commission was not accepted by the coastal state, it was open to the coastal state to put forward a further proposal for the boundary.

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8. In 1978 the Soviet Union put forward revised wording stating that the limits were final and binding if they were established "taking into account the recommendations of the Boundary Commission". This was opposed by the United States as too weak (and there may be a difference here between the strength of the Russian and the English corresponding wording). There were already proposals from previous sessions that the limits should be established only "in accordance with" the recommendations. The Chairman of the Second Committee, in making his latest proposals for Article 76, put forward a compromise concerning the question of ocean ridges in which he included the change of language regarding the Boundary Commission proposed by the United States and now by the Soviet Union. This was acquiesced in by all the margineers except the UK and Canada, so that the limits established by the coastal state would be final and binding only if they are "on the basis of" the recommendation of the Boundary Commission.

9. The Boundary Commission reflects the existence of two adjacent resource areas. By creating a technical body and by leaving the initiative to the coastal state to establish its boundary, the current text does what can be done to protect the position of the coastal state, given that the coastal state could not indefinitely maintain a limit which is not based on the Convention.

Revenue Sharing

10. A wide continental margin greatly diminishes the resources which many states regard as properly within the international domain. In order to obtain a favourable outer limit, the margineers in 1976 decided to accept that a contribution should be made to the International Seabed Authority from the production in areas beyond 200 miles. They proposed a scheme which would have allowed a five year grace period and a percentage of 1 to 5% in the fifth and tenth years of commercial production. When the Chairman of the Second Committee proposed for the ICNT a formula for the outer limit acceptable to the margineers, he accepted a Soviet amendment which continued the increase to 6% in the eleventh year and 7% in the twelfth and subsequent years.

11. These figures are substantially less than some of the figures which have been put forward in the Conference. Sri Lanka proposed a no grace period, a rate of 4% from the first to the sixth year, 8% from the sixth to the tenth year and 17% thereafter; the Seychelles proposed 10% for the sixth year and afterwards, and drew attention in a footnote to the link between the outer limit and revenue sharing. They also drew attention to the fact that 50% of the resource was extracted during the first five years.

12. Under the present revenue-sharing proposals (Article 82 of ICNT/Rev 2: five year grace period, then progressively increasing contributions of 1% in sixth year, rising to maximum 7% in twelfth year), the overall contribution from a typical well in the continental shelf beyond 200 miles would be about 2.2% of gross revenues.

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The grace period and the early low rates of payment much reduce the impact of the scheme. The contributions would be paid, in effect, to developing countries. Whether in cash or in kind it would represent a direct loss to the UK economy. And there would be a loss to HMG: given that our taxation system for petroleum revenue is designed to secure the most for HMG that the market will bear, there would probably need to be a corresponding reduction in Petroleum Revenue Tax. Even if there were only a partial offset, the operators' profits would be reduced by the revenue-sharing payments, and less Corporation Tax would be payable.

13. Estimates of possible UK reserves in the continental shelf beyond 200 miles have tentatively been put at 275 million tons, valued at about £30,000 million at current prices (and of which the UK tax take might be 70% or £21,000 million). Revenue-sharing payments might therefore tentatively be estimated at £660 million at current prices. The whole of this sum would be transferred out of the UK economy, and a substantial proportion (if not all) of it would represent potential lost tax revenue for HMG.

14. On the other hand, our opponents can argue how small a contribution is represented by 2.2% for the international community as compared with 70% for the national tax revenue, in an area which they have not accepted as being necessarily within the national jurisdiction of the coastal state.

15. This contribution was offered to secure a line for the outer limit of the shelf running in deep and distant waters, and this line is now in the ICNT. It might be regarded as a not unreasonable percentage to secure a contested title to all areas on the landward side of the line. And any discussion or comparison between the national tax revenue and the likely contribution can only be to our disadvantage.

Removal of Disused Installations

16. The Continental Shelf Convention 1958 provided that "any installations which are abandoned or disused must be entirely removed". This obligation has been repeated in the ICNT, and applies both within and outside 200 miles.

17. This is an onerous obligation, particularly where it concerns very large installations in deep waters. On the other hand, the removal of disused installations is clearly in the interests of ourselves and others who engage in navigation or fishing in these waters, and is in any event desirable for environmental reasons.

18. When during the last session we consulted other friendly delegations most closely interested in the outcome of the continental shelf negotiations, they were unanimously of the opinion that it was not desirable to re-open this question.

19. Almost the whole of this cost of removal will have to be covered by allowances to the companies exploiting the fields and will thus cause an equal loss of tax revenue.

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20. Complete removal of structures now in the Northern and Southern Basins of the North Sea has been tentatively estimated at £2,500 million. These costs fall primarily on the operators but can be offset at least partially against Petroleum Revenue Tax and Corporation Tax.

21. However, there seems very little prospect of securing any modification of this provision, which is generally regarded in the Conference as commendable and as being settled. We have in mind, however, to try a discreet effort in the Drafting Committee to obtain a small measure of flexibility by trying to delete the word "entirely".

22. If, of course, a genuine alternative use could be found for these installations for defence, fish breeding, fish catching, or some other purpose, they would not be disused and the duty to remove them would not arise.

ANNEX III

DEEP SEA MINING REGIME

The main feature of the international régime, as it is likely to emerge, are:

(i) An international organisation, the International Seabed Authority ("the Authority"), will draw up a detailed mining code regulating all aspects of deep sea mining. (This will in practice probably be done before the Convention comes into force by a Preparatory Commission).

(ii) The Authority will then award mining contracts to qualified applicants, who may be states or companies or an international Enterprise to be established as the mining arm of the Authority. The Authority's discretion in awarding contracts will be narrowly defined. Under these contracts deep sea miners will have to pay large contributions to the Authority which will be used mainly for development aid.

(iii) In order to protect land-based producers the Convention will lay down a "production ceiling" limiting the volume of production from the seabed.

(iv) In order to get the international Enterprise started it will be given a number of important advantages:

(a) States Parties to the Convention will make long-term interest-free loans covering half the cost of one mine site and guarantee loans for the other half.

(b) The Enterprise will not have to make payments to the Authority for an initial period of up to ten years.

(c) The Enterprise must negotiate for exemption from national taxation.

(d) Other deep sea miners must prospect one mine site for the Enterprise for each one which they have.

(e) Other deep sea miners must, during an initial period, be ready to make their technology available to the Enterprise on "fair and reasonable commercial terms and conditions". A similar obligation, to which the United Kingdom and other Western industrialised countries object strongly, would benefit developing countries.

(v) The Authority will be composed of a plenary Assembly, a restricted Council, a Secretariat, the Enterprise and other organs. The Council will have control over the exercise of most of the Authority's important functions, and the Western deep sea mining countries, acting together will be able to block decisions of the Council. They

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would therefore have negative control over the Authority but could not, of course, ensure positive action. This blocking power is the single most difficult outstanding issue at the Conference, and the US have so far maintained firmly that without such a blocking power they would not be ready to adhere to the Convention.

(vi) A review Conference will convene after twenty years, and may, by a two-thirds majority, change the system. (Dissatisfied parties could denounce the Convention).

ANNEX IV

DEEP SEABED MINING: FINANCIAL ASPECTS

1. DIRECT PAYMENTS BY HMG FOR THE INTERNATIONAL SEABED AUTHORITY, THE ENTERPRISE, ETC

(a) The Enterprise

Under the present proposals the UK would be liable for about 5% of the costs of the first Enterprise project. Any estimates of these costs are bound to be speculative: but using the UK companies' own estimates of costs of a similar project (about $1800m, or in the range of $1260-2340m) we estimate the liability to HMG as about £40m, half in long-term interest-free loans, half as guarantees for loans taken out elsewhere by the Authority.

(b) The Authority

The likely UK contribution to the administrative expenses of the Authority, until it becomes self-financing, is about £220,000 pa for 7-10 years.

(c) The Preparatory Commission

A Preparatory Commission is likely to be set up for the period before entry into force of a Convention, with similar costs for 3-5 years. Total likely contribution is therefore £220,000 pa for 10-15 years.

(d) The Law of the Sea Tribunal

The UK contribution to the expenses of a Law of the Sea Tribunal might be about £110,000 pa (5% of $5m pa).

(e) Training

There is also likely to be a Training Fund to which the UK and other industrialised countries would be expected (but not, under the terms of the Convention, obliged) to contribute.

2. LOSS OF TAX REVENUE

If, in some form, full tax credit were granted for payments to the Authority, as the companies request and as the governments of their competitors seem willing to grant, there could be a potential loss of tax revenue of £85 m on each of the 1 to 3 projects the consortium might undertake in the first 20-25 years of deep seabed mining. If tax reliefs short of full tax credits were given, the loss of tax revenue would be correspondingly lower.

It should be noted that the 'loss of tax revenue' referred to above is that compared with the hypothetical and 'ideal' case of a consortium mining under US or UK unilateral mining legislation, and paying national tax only. While mining under an international /regime

régime would have some profits 'taxed' by the Authority, other profits especially in the downstream activities of transport and processing would be subject to national tax. Thus despite tax credits or allowances HMG should get net tax revenue from participation by UK companies in deep seabed mining.

3. PAYMENTS BY UK COMPANIES TO THE AUTHORITY

The proposed payments by deep seabed mining companies to the Authority are related to profits and are difficult to estimate. However, in the 'baseline case' used as an example in the Conference, payments totalling $574m over 20 years accrue to the Authority from a single mining site. As UK companies have a 30-35% interest in the Kennecott mining consortium their share of the payments might therefore be about £85m per site over 20 years.

N LAW OF THE SEA CONFERENCE: ASSESSMENT OF PRESENT POSITION

Memorandum by the Minister of State for Energy

1. One of the advantages claimed in MISC 19(80)5, paragraph 25(d) for a Convention on the lines now in prospect is "international recognition of the UK's continental shelf and of our exclusive right to its mineral exploitation". But under the text now proposed our claims to those continental shelf areas beyond 200 miles from our shores would only be recognised internationally if they were based on the recommendations of a new international body, the Boundary Commission. This prospect gives me particular concern.

2. As originally conceived, the Boundary Commission was intended to reassure the international community that coastal states would not simply be able to extend their national jurisdiction indefinitely to the middle of the ocean. The Boundary Commission was envisaged as a body of technical experts that would assist and advise coastal states, particularly the developing ones, in the delineation according to scientific criteria of their outer continental shelf boundaries, but its recommendations would not be binding on the coastal states. However the present proposal is that coastal states should be obliged to establish their continental shelf areas "on the basis of" the Boundary Commission's recommendations, instead of simply "taking into account" those recommendations.

3. This strengthening of the Boundary Commission's status is potentially damaging to an important national interest and we should resist it:

(i) the Commission could become politically motivated (as indicated by the requirement that its membership has to reflect equitable geographical representation);

(ii)

Put simply, our task will be to persuade the Boundary Commission that the Rockall Plateau forms an integral part of the UK continental shelf and, not, as others have argued, a separate microcontinent, the eastern boundary of which is the Rockall Trough. If we were to fail in this task, then we stand to

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lose access to large quantities of oil, currently estimated as being up to 275 million tonnes valued at about £30,000 million at current prices. We should also have to cede to the International Seabed Authority (ISBA) areas of our outer continental shelf on the Rockall Plateau which we have already designated.

4. This issue is clearly among the most important facing the United Kingdom during the closing phases of the Conference. Its treatment in MISC 19(80)5, paragraph 14, glosses over the problem and understates the risk. Any strengthening of the Boundary Commission's status represents a corresponding weakening of the UK's position before it.

5. It should be noted moreover that the ISBA will undoubtedly work hard and persistently for an outcome on continental shelf difinitions, which will enlarge its area of jurisdiction and reduce that of member states. The Foreign & Commonwealth Office paper shows that the position in international law on limits is not wholly satisfactory from our point of view (paragraph 14).

6. For the above reasons, I hope that the Committee will agree that the Delegation's instructions for the Geneva Session should require them to oppose vigorously the proposed change in the Boundary Commission's status, and that they should not acquiesce in this or any other adverse changes to the continental shelf proposals (eg higher level of revenue payments) without our express instructions.

7. In my view our continental shelf interests need not be seriously jeopardised if there were no Convention; indeed they might be better served.

HG

Department of Energy

20 June 1980