

CONFIDENTIAL

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT

OD(80)52

COPY NO 45

18 August 1980

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

UNITED KINGDOM INTERIM DEEP SEABED MINING LEGISLATION

Memorandum by the Secretary of State for Trade

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

2. When the Committee discussed the United Nations Law of the Sea Conference (UNLOSC) at their meeting on 2 July (OD(80) 17th Meeting, Item 1) particular reference was made to the importance to some industrialised countries, including the United Kingdom, of the part of the negotiations concerned with the exploitation of mineral deposits on the seabed beyond areas of national jurisdiction in the Continental Shelf. Mining companies need a legal basis for eventual operations to justify their investment in research and development on deep seabed mining techniques. The Law of the Sea Convention currently under negotiation should in the fullness of time provide this legal cover. But progress on deep seabed mining techniques has reached the stage where the companies need some sort of interim legislative protection if they are to take the next steps forward, which will be costly; even if a Law of the Sea Convention were agreed in the current session of the Conference, it would be some years before it was ratified and its provisions came into effect generally. Interim protection can be provided by national legislation restricting deep seabed mining operations to licensed companies of the legislating country. The Americans have now enacted such legislation; the West Germans are also doing so; and the French are expected to follow suit. British mining companies are therefore pressing strongly for British legislation. The Law Officers are satisfied that neither seabed mining nor the enactment of legislation to

CONFIDENTIAL

145

53

65

54

66

55

67

56

68

57

69

58

70

71

59

72

60

73

61

74

62

75

63

76

64

77

regulate it are contrary to existing international law. The case for interim legislation is set out in detail in the attached memorandum by the Minister of State for Industry and the accompanying note by officials.

3. The content of the proposed Bill, for which the Secretary of State for Industry would be responsible, is listed in the Annex to the note by officials. The Bill would include in particular a revenue-sharing provision for the payment of certain sums into a fund which would be paid over to the International Seabed Authority when the latter is formally constituted on entry into force of a Law of the Sea Convention. MISC 19 are agreed that United Kingdom legislation is required, and that the Bill should include this and the other provisions listed. The Group also have under consideration a suggestion that the Bill should, like the United States legislation, prohibit the commencement of commercial operations until 1 January 1988. The purpose of such a provision would be to demonstrate that our legislation looked forward to its own replacement by the establishment of the international regime. But a conclusion on this point is not required immediately, and does not affect the need for legislation.

4. If the Committee approves these proposals it will be necessary in due course to make an announcement. But the timing of an announcement needs to be decided separately. In view of the sensitivity of the issue, at UNLOSS, our decision should remain confidential for the time being.

5. The 1980/81 legislative programme approved by the Cabinet in May included provision in the contingency category for a Bill on deep seabed mining. The only issue for immediate decision is whether this Bill should now be put into the essential category for the 1980/81 session. My MISC 19 colleagues and I are agreed that it must be. The American legislation enables the United States Government to issue exploration licences by July 1981. We must be able to do the same, if British mining companies are not to be put at a serious disadvantage vis-a-vis their competitors.

6. The Chancellor of the Duchy is naturally anxious to avoid another crowded session and has therefore asked if the Bill could possibly be postponed. For the reasons given above I should be grateful for OD colleagues' agreement to my assuring him that it cannot be.

7. In the hope of avoiding the need for a meeting of OD, I shall assume that the Committee agrees with me unless notified to the contrary by 12 September

J N

Department of Trade

18 August 1980

53

65

54

66

55

67

56

68

57

69

70

58

71

59

72

60

73

61

74

62

75

63

76

64

77

UK INTERIM DEEP SEABED MINING LEGISIATION

Memorandum by the Minister of State for Industry

1 Colleagues will be aware of our interest in deep seabed mining for which an international regime is being negotiated as part of the United Nations Law of the Sea Conference. Fostering a UK capability for seabed mining is important to the economy:-

- it should provide a supply of four critical metals, nickel, copper, cobalt and manganese;
- it should reduce the balance of payments burden of mineral imports;
- it should give UK manufacturing industry the opportunity to share in the development of sophisticated new technology; and
- it should increase tax revenues from the mining companies.

2 Discussions at UNLOSC have continued for six years and are not yet completed. Mining companies in developed countries need a legal basis for operations to justify the expenditure of large sums of money on research and development of mining techniques, and for this reason are anxious for an interim national basis pending agreement on an international regime. The US has now enacted interim national legislation; the West German Parliament has passed a similar Bill which is likely to become law within a few days; and France is expected to introduce a Bill shortly. We need to ensure that British mining companies are not at a disadvantage compared with their competitors through lack of a national regime in this country. We have therefore proposed a Bill with provisions similar to those enacted by the US; I attach a note by officials giving fuller details.

3 I submitted the case for UK legislation on seabed mining to colleagues most closely concerned in the FCC, Trade, Treasury, Environment and the Home Office as well as the CPRS in July last

53 65

54 66

55 67

56 68

57 69

58 70

59 71

60 72

61 73

62 74

63 75

64 76

65 77

66 78

year before MISC 19 was established, enclosing a note by officials similar to the one attached to this paper. Those Ministers agreed that a UK Bill would be needed if the US and others passed such legislation subject to one reservation of substance by the Minister of State to the Treasury.

4 The US and German legislation includes, and the French legislation almost certainly will include, a provision for a small levy on production under national licences, the proceeds of which would be handed over to the International Seabed Authority if it is established - the "revenue sharing provision". This provision is intended to moderate the hostility of the G77 to national licensing in anticipation of an international regime. The US had at first intended to make the recognition of licences under other national legislation dependent on those other countries collecting a corresponding levy. The Minister of State to the Treasury in agreeing to my proposal last year, said that his agreement to the provision for a revenue sharing fund in the proposed Bill was contingent on the inclusion of a similar provision in other countries' legislation and specifically that the US legislation made it a condition of reciprocity. In the event the US dropped the requirement that they would not recognise licences under other national legislation unless it included a revenue sharing provision. Nevertheless in my view our legislation should include a revenue sharing provision. I believe that a uniform approach among countries passing national seabed mining legislation is important. Without such a provision, the UK Bill will stand out and may well attract hostility in UNLOSC specifically against the UK and damage our many interests in the Conference.

5 My officials are pursuing the question of how the production charge would be levied and will have discussions with other countries about this over the next few weeks. Officials should also be able to resolve practical questions still outstanding including which department should collect the levy. In practice the collection of the levy should not be onerous or long-term. The levy would be related to production which will not start before 1988 when a Law of the Sea Convention may already be in force. The number of UK companies who might pay the levy is not likely to be greater than 3 or 4.

6 A deep seabed mining Bill was included in the programme for the coming session in the contingent category because the time when it would be needed depended on how fast similar legislation was enacted by other developed countries which wished to engage in deep seabed mining. Now that the United States have enacted their measure and the Germans are about to do so and the French are expected to follow in short order, our Bill and regulations under it are required urgently in time for our companies to apply for and receive exploration licences by 1 July 1981 when the US expect to be in a position to issue licences. My Secretary of State wrote to the Chancellor of the Duchy of Lancaster on 15 July seeking his agreement that the Bill should now be put into the essential category with a view to its early introduction.

7 I should be grateful for agreement by colleagues on MISC 19:

a Confirming the view of those colleagues consulted in August 1979, that a Bill on the lines proposed is required;

b that it should contain a provision on revenue sharing; and

c that it is needed as early as possible in the next session and therefore should be put into the essential category.

8 Unless there are comments by ~~Monday~~ ^{FRIDAY 8} August, I shall assume that colleagues agree with my proposals.

Department of Industry
29 July 1980

TT

INTERIM DEEP SEA MINING LEGISLATION - FUTURE ACTION

1 The Chancellor of the Duchy of Lancaster agreed on 3 March that Parliamentary Counsel should draft a Deep Sea Mining Bill and Counsel is making good progress. A place was secured for the Bill in the contingency category of the legislative programme. It is now sure that it is needed in the 1980-81 session. This paper explains the need for UK seabed mining legislation, sets out the timetable for its introduction and describes its proposed content.

Background

2 The question of an international regime to regulate seabed mining has been under discussion since 1968 and at the UN Law of the Sea Conference (UNLOS) since its inception in 1973, but the chances of a convention being adopted and entering into force for the UK are still uncertain because of the conflicting interests of the industrialised and developing countries. Seabed mining is now seen as the major outstanding issue of UNLOS. Although the current session (the Ninth) may be the last full negotiating session, even if agreement were reached soon, which is by no means assured, a Convention would not come into force for the UK and other countries for several years.

3 The lack of progress in UNLOS has led several industrialised countries to make preparations for domestic legislation to regulate seabed mining by their own nationals until such time as a treaty should come into force. The leader in this field has been the US, which enacted a law in June 1980. A Bill has also been passed in the German legislature and other countries (notably France) are known, on a confidential basis, to be preparing legislation. The Group of 77 (G77) in UNLOS have declared that unilateral seabed mining legislation is unlawful but our legal advice, and that of other developed countries, is that neither seabed mining nor the enactment of legislation to regulate it is contrary to existing international law.

4 There are 3 UK companies (British Petroleum (BP), Rio-Tinto Zinc (RTZ) and Consolidated Gold Fields (CGF) involved in research and development of seabed mining, as members of the US-led Kennecott consortium. Their participation was facilitated in 1973, by a Department of Industry grant/loan of £830,000 which enabled them to buy their way into the consortium. The money will be repaid with interest if the consortium proceeds to commercial development. In exchange for this assistance the companies undertook to offer their share of minerals produced from the consortium's first minesite to UK consumers.

Reason for UK Involvement in Seabed Mining

5 The minerals which are likely to be produced from the seabed are in the form of manganese nodules which contain, in commercially recoverable amounts, nickel, copper, cobalt and manganese. These metals are of critical importance to UK industry and at present

the UK is totally dependent on imports for its supply of all four. Moreover, cobalt comes almost entirely - and copper and manganese substantially - from countries which are potential unreliable sources of supply for political reasons in Southern Africa. Manganese nodules constitute an important alternative source of the minerals in the future and participation by UK companies in seabed mining will ensure greater security of supply to our consumers. In the long-term, as higher grade land-based sources of the minerals begin to be exhausted, the value of nodules as a source of supply will be even greater.

6 It is therefore important that the UK companies already involved in seabed mining should be encouraged to continue their involvement so that they can be in at the start of this new industry. Apart from supply of minerals there will be other benefits to the UK from their involvement: eg improvements in the balance of payments; increased fiscal revenues if seabed mining becomes profitable; and the opportunity for other UK sectors of industry to become involved in the development and manufacture of the highly sophisticated technology required.

The Need for UK Seabed Mining Legislation

7 We recognise that seabed mining by UK companies may take place ultimately under the aegis of an International Seabed Authority, set up under a UN Law of the Sea Convention. However, even if agreement is reached soon, this will not be operational for some years and it is important to safeguard the interests of the UK companies by enacting domestic seabed legislation to cover at least the interim period. The main reasons are:-

a Protection of UK interests cannot await implementation of a Law of the Sea Convention; companies (world-wide) have said that they will be unable to continue with the next stage of their research and development (which may cost as much as \$125m) unless they are given some form of legal backing to safeguard their investment, and in the absence of an International Convention they see this as possible only through domestic legislation.

b UK companies need to be able to apply for access to a seabed mining site at the same time as their foreign competitors and thus avoid missing out on the first (and probably best) round of exploitable sites. The US legislation sets 1 July 1981 as the date for issuing licences.

c The UK must remain a member of the 'club' of seabed mining countries and therefore be in a position to influence the US and members of the Nine on the form of their legislation, and to obtain with them interlocking reciprocal agreements on such matters as the rights of companies operating in consortia, particularly financial arrangements and the title to minerals. The UK cannot afford to be left behind in an industry of great potential growth.

d Legislation will be required in any case to cover the period before a Convention comes into force, or if the Conference breaks down, to regulate seabed mining until an international regime is eventually developed.

e Parallel legislation in other countries such as the UK will help to consolidate the political and legal position of the seabed mining countries in a way the US legislation alone could not do. It will also ensure that exploitation of seabed minerals is carried out in an orderly fashion and will make transition to an international regime smoother.

8 With reference to 7(a) and (b) above, 3 points should be made:

a it is true that, as members of a US consortium, the UK companies could in theory continue their operations under a US licence, but they have expressed extreme unwillingness to do so and RTZ whose legal status in the US is complicated by the uranium litigation have stated that they would have to withdraw from seabed mining altogether if that were the only option open to them;

b if the UK companies did choose to operate under a US licence, it is probable that the advantages to the UK (particularly security of supply) would be lost;

c we cannot assume that the consortia will maintain their existing structure: there has been speculation about the possibility of a British takeover of the Kennecott consortium or, alternatively, of the creation of a European consortium. Provision should be made to enable such a consortium to operate under a UK licence, should it choose to do so.

Timing

9 US and German legislation are already passed and France is likely to follow suit immediately. Because of the need for British companies to be able to apply for a minesite at the same time as their foreign counterparts it is important that UK legislation should be introduced in time for it to be implemented simultaneously with the US and other legislation. This would require introduction early in the forthcoming session to allow for regulations to be in force by 1 July 1981. The Bill should be ready to meet this timetable.

Content of the Bill

10 A summary of the proposed content of the Bill is at the Annex. A particular point to note is that the Bill is intended to be of only an interim nature to cover the period pending entry into force for the UK of a Convention establishing an international seabed regime. The UK will not be claiming to exercise sovereignty or sovereign rights over any area of the deep seabed: the Bill will simply prohibit exploration for and exploitation of hard mineral resources lying on or near the surface of any part of the seabed beyond the limits of national jurisdiction for nationals and residents of the United Kingdom, except subject to licences and permits to be granted by the Secretary of State for Industry or a reciprocating state. It will provide for the Secretary of State to make regulations governing, inter alia, protection of the marine environment, mineral processing on board ship and safety at sea.

Domestic Implications

11 While there is likely to be some opposition to a Deep Seabed Mining Bill from the domestic development lobby, who will point to its effect on general North/South dialogue issues the measures outlined in this paper seem unlikely to be controversial in other respects.

Conclusions

12 The UK remains firmly committed to working for a generally acceptable Law of the Sea Convention but implementation of such a Convention will take several years even if agreement can be reached on its terms at the next session of UNLOS. Legislation is needed to cover the interim period and to give UK seabed mining companies a stable legal environment within which to continue their research and development. It is now needed without delay. This will enable the UK to enter fully into discussions with other legislating countries (particularly the US) with a view to obtaining reciprocal arrangements for UK companies.

Department of Industry

July 1980

POSSIBLE CONTENT OF LEGISLATION

ANNEX

The main elements proposed for incorporation in such legislation, for which the Secretary of State for Industry would be responsible are:

- 1 Its interim nature pending the acceptance and ratification of a Law of the Sea Treaty.
- 2 Prohibition on exploration and exploitation of certain minerals in the deep seabed by UK nationals and residents except pursuant to a licence or permit.
- 3 Power for the Minister to license UK residents to explore for and exploit the mineral resources of the deep seabed until the UK ratifies a Convention establishing an international regime.
- 4 Power by Order in Council to repeal the whole or part of the enactment when adequate international arrangements for regulating deep sea mining are in force as part of the UNLOS Convention.
- 5 Power by Order in Council to recognise, as reciprocating states, other states which establish substantially similar systems and which by reciprocity recognise the UK legislation.
- 6 Provision for the payment of fees and levies.
- 7 Provision for payment of certain sums into a Revenue-Sharing Fund which would be paid over to the International Seabed Authority on entry into force of a Law of the Sea Convention.
- 8 Power for the Minister by regulation to lay down:
 - i Qualifications for licences or authorisations.
 - ii Minimum standards for mining and processing vessels and equipment used in seabed mining and processing.
 - iii Conditions of the licence applying during seabed mining and processing at sea, in particular:
 - a for the protection of the marine environment,
 - b for health and safety at work,
 - c for the observance of good mining practice,
 - d for ensuring respect for the interests of other users of the high seas.
 - iv Powers to vary licences.
- 9 Power to appoint ad hoc inspectors to ensure compliance with the regulations, and conferment of powers on the Inspectors.
- 10 Revocation of licences by the Minister for non-compliance and a procedure for appeal against such revocation.

53 65

54 66

55 67

56 68

57 69

58 70

59 71

60 72

61 73

62 74

63 75

64 76

65 77

66 78

67 79

68 80

69 81

70 82

71 83

72 84

- 11 Creation of offences in relation to deep sea mining and processing and the licensing system.
- 12 Jurisdiction of Courts.
- 13 Extension to Scotland, Northern Ireland, the Isle of Man, Channel Islands and dependent territories.