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EUROPEAN COUNCIL, VENICE

12/13 JUNE 1980

UN LAW OF THE SEA CONFERENCE (UNLOSC)

Brief by Foreign and Commonwealth

Office

OBJECTIVE

1. Defensive: against the possibility that Chancellor Schmidt will raise the subject, as a prelude to raising it at the Economic Summit.

POINTS TO MAKE

2. It is not yet finally clear whether a Convention will be in our interests overall; but a generally acceptable Convention would have strategic value to the West. And there can be no safe seabed mining without an international regime.

3. Deep seabed mining. Aim is assured access plus the conditions favourable to investment in a new industry. Text still needs improvement but we believe agreement is now within reach.

4. The Council. A blocking vote for the main producers/consumers essential.

5. Community accession. Conference generally not hostile. USSR opposed on principle. Community should therefore agree on a draft provision which our main potential allies, eg the US, could buy.

6. UK Continental Shelf. If Law of the Sea Conference is raised by Schmidt: express the hope that the FRG delegation will in future be more helpful than hitherto to the UK on the Shelf which is among our principal interests at the Conference.

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7. The Conference, which began its work in 1973 will resume in Geneva from 28 July to 29 August with the intention of completing negotiations and adopting a draft Convention if not this year, early in 1981. The Conference has developed its own methods of work which include two important innovations: consensus rather than voting has been the basis for decisions; and the use of a multitude of separate groups for negotiation. Both innovations have worked to our advantage and have enabled us and others in a minority position to obtain essential points we would never have gained by vote.

8. Community coordination for UNLOSC forms part of the Political Coordination machinery. Meetings at Heads of Delegation and expert level take place regularly during sessions and inter-sessional periods. Certain questions, in particular, Community adherence to an eventual LOS Treaty will have to be submitted to the Council in time. But there is no UK advantage in discussing UNLOSC at Council level at present. The Germans may, however, inform their colleagues that they intend to raise the subject at the Economic Summit.

(Not to be revealed.) Our main coordinating effort across negotiations as a whole takes place in the Group of Five (G5 - UK, US, USSR, France, Japan), and, on seabed mining, in the Coordinating Group (UK, US, FRG, France, Japan).

THE SCOPE OF NEGOTIATIONS AND PRESENT POSITION

9. The negotiations fall under the following headings:

- (a) Traditional Law of the Sea issues (freedom of navigation, territorial sea limits, archipelagic regimes, maritime delimitation, etc)
- (b) the 200 mile exclusive economic zone (EEZ);
- (c) Continental margin;
- (d) Deep seabed mining;
- (e) Protection and preservation of the marine environment

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(marine pollution);

(f) Marine scientific research (MSR);

(g) Legal issues (preamble and final clauses).

Of the above the texts of (a), (b), (e) and (f) are generally acceptable to the UK. Overall they provide us with guaranteed freedom of navigation worldwide, important for our defence interests; confirm the management and exploitation of our fish stocks within 200 miles; provide for more effective control of marine pollution and an acceptable degree of freedom of scientific research without prejudicing our navigation or offshore interests. The Continental Shelf texts contain a definition of the outer edge of the Continental margin which will confirm UK control of all exploitable offshore hydrocarbon reserves, including in the North West. The Deep Seabed Mining text, although not yet acceptable in all respects in general represents a balance between the need of the industrialised countries for secure access to strategically important deep seabed hard minerals (copper, nickel, manganese, cobalt) on terms conducive to investment by industry; and the G77's more restrictive aims. Details of the proposed regime are at Annex A. Nevertheless important questions remain to be resolved in both the Continental Shelf and Deep Seabed mining negotiations. In particular:

(a) Continental Shelf:

(i) The role of the proposed International Boundary Commission in determining the furthest limit of Continental Shelf rights.

(ii) Revenue Sharing: the amount of levy paid to developing countries from Continental Shelf exploitation beyond 200 miles.

(b) Deep Seabed Mining:

(i) Decision-making in the Council of the Authority,

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in particular the question of a blocking vote.

(ii) Production limitation: initiated by the land-based producers, led by Canada. At present, while providing a floor of 3% would limit deep sea production to 100% of growth in projects world demand.

10. A number of the provisions of a Convention could be expected to impose financial obligations on HMG and other governments in the event of signature and ratification. Details of the estimated cost to HMG are annexed (Annex B). No final decision on whether the UK should accede to the Convention will be called for until the negotiations have been completed. Ministers are however expected to take stock of the negotiations and UK objectives before the next session.

COMMUNITY PARTICIPATION

11. The Community has competence in respect of some of the subjects under negotiation eg the management of fisheries (the 200 mile EEZ). It has accordingly been agreed in the Council that the Member States should try to obtain a clause which would permit the EC to adhere to a Convention. Such a clause is opposed by the USSR. The US are anxious to prevent Member States not intending to accede from picking up some benefits of a Convention through Community accession while avoiding unwelcome obligations. We believe a formula can be found which will satisfy the US. The remainder of the Conference is not against EC accession though the Arabs have linked it with their proposal to allow liberation movements to participate.

FRG AND UK CONTINENTAL SHELF

12. The UK objective of confirming the exercise of our rights over the Continental Shelf beyond ^{the} 200 miles EEZ has been consistently opposed by the FRG, and to a lesser extent by Denmark and the Netherlands. Despite repeated representations, drawing attention to the importance of the question for the UK and the desirability of EC

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acquiescence, if not support, in difficult and delicate negotiations in which we and other Broad margin states are in a small minority, German opposition continues, though that of Denmark and the Netherlands has ceased. Various explanations have been aired: dissatisfaction with UK performance in the EC; pressure from the German fishing lobby; sour grapes (FRG has no Continental Shelf, and a short coast-line and stands to derive little direct benefit from a Convention) and the wish to apply an EC regime to the Continental Shelf. Herr Schmidt himself is said to have taken a direct interest in the question. It is not one on which we can afford to make concessions to German opinion.

Annexes

- A: Deep Seabed Mining Regime
- B: Financial Obligations

Maritime, Aviation and Environment Department
Foreign and Commonwealth Office
10 June 1980

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DEEP SEA MINING REGIME

The main feature of the international regime, 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.

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(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 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.)

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UNLOSC: 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 \$1260-234m) 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 £85m 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 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.

4. CONTINENTAL SHELF: REVENUE SHARING PAYMENTS FROM EXPLOITATION BEYOND 200 MILES

The estimate^{is} calculated on basis of present negotiating text figures of 1 per cent of the value of the volume of production at rate in the sixth year of production rising to 7 per cent in year

12 and thereafter. The estimates of possible UK reserves in the Continental Shelf beyond 200 miles have tentatively been put at 275 million tons, valued at £30,000 million at current prices, of which the UK tax take might be 70% or £21,000 million. Revenue sharing payments would therefore be about £660 million at current prices.

5. REMOVAL OF INSTALLATIONS

Article 30.3 and 80 require that all disused or abandoned offshore installations on the EEZ or Continental Shelf should be entirely removed. Complete removal of the structures now in the Northern and Southern Basins of the North Sea are estimated at £2,500 million. These costs fall primarily on the operators but can be offset partially against PRT and Corporation Tax and would thus cause an equal loss of tax revenue.