



From the Minister of State for Industry

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*NBLM
GJ 26/11*

26 November 1984

Dear Minister

with copy
Thank you for your letter of 22 November enclosing a draft paper on the advantages and disadvantages for the UK of the UN Law of the Sea Convention.

The passages relating to Part XI of the Convention and the prospects for improvements to the seabed mining regime are broadly acceptable. I have however suggested a formulation in the paragraph on prospects for Improvement to the Seabed Mining Regime on page 10 which I hope will be acceptable to the FCO.

*Yours sincerely
Edmund Hosker*

NORMAN LAMONT

*(approved by the minister
and signed in his absence)*

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compete with States or commercial operators. No activities may be undertaken except in conformity with a licence approved by the Authority, which is to be funded by states parties until it is self-financing through the payments made by operators. A Preparatory Commission is charged with preparing detailed rules for the implementation of the mining regime. This will be open to review at a Conference to be called 15 years after the commencement of commercial production. The Preparatory Commission would also administer a system of enabling entities which have already invested in deep sea mining to register claims to a particular mine site. There is also provision for the establishment of a seabed disputes chamber ~~to deal with disputes between states parties and the Authority, or parties to a contract and the Authority;~~ and for an International Tribunal for the Law of the Sea to deal with disputes relating to the Convention.

The provisions of part XI are generally agreed to be disadvantageous to the UK and to be unacceptable ~~unless~~ *to the UK unless* significant and wide ranging improvements are made. The UK objects in particular to:

- a) the cost to HMG of supporting an over-elaborate ^{regulatory} structure, for the International Seabed ^{including} Authority in the exercise of wide ranging regulatory powers based on central planning, ie. production limitation, provision for participation in commodity agreements, compensation for land-based producers; *and in particular the level of contributions required to support the Enterprise*
- b) the ^{operational} financial ^{and other} terms governing the participation of commercial operators, which ^{are} ~~are~~ ^{onerous} ~~are~~ and take insufficient account of long term risks the scale of development costs, and the fact that an operator is not assured of an authorisation to exploit even if he has appropriate financial and technical qualifications;
- c) the mandatory transfer of technology ~~to the Enterprise and to developing countries which,~~ is unacceptable to HMG as a precedent, and raises practical difficulties for commercial operators.
- d) the ^{the Enterprise} industrial arm of the Authority will ~~benefit~~ *benefit* ~~from more~~ *compete* favourable terms and conditions than with qualified commercial operators; ~~with whom it will be in competition;~~

on unfairly

/e)

e) the imposition of production controls, by the Authority, to protect the economies of mineral producing developing countries from the impact of deep sea mining, would distort the development of the industry;

f) the provision for a future Review Conference which could alter the mining regime, (though without prejudice to miners then operating) would create uncertainty, and could impose on the minority of industrial states taking part in such operations the views of the majority with which they disagree;

g) the decision-making machinery in the Authority does not necessarily give adequate weight to States which are major contributors.

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PART XII : (Articles 192-237) Protection and Preservation of the Marine Environment.

This is acceptable to the United Kingdom. It would be of benefit in helping to control marine pollution by implementing the provisions of other more detailed regional marine pollution Conventions to which the UK is already party. It would also set limits to wider claims to pollution jurisdiction by other countries.

PART XIII : (Articles 238-265) Marine Scientific Research.

The provisions for Marine Scientific research involve a great degree of control by coastal states. However, this control is already being exercised by coastal states without reference to the Convention. The Natural Environmental Research Council (NERC) believe that signature of the Convention should be of benefit in obtaining clearances for research cruises from countries critical of our policy, and in obtaining agreement on understandings designed to circumvent the increased amounts of bureaucracy presently being encountered. These advantages would be gained by signature without ratification.

PART XIV : (Articles 266-278) This deals with marine technology.

The UK is broadly in favour of the aims of this part. The section dealing with transfer of marine technology promotes, but does not compel transfer.

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2. Customary Law

The issue of whether the advantages to be found in the Convention described above are to be derived only from participation in the Convention or whether we can claim these as already forming part of international customary law is considered separately and in detail in the Paper from the Law Officers.

3. Prospects for Improvements to the Seabed Mining Regime

~~There are a number of predictions about how Part XI might develop which can be summarised as follows:~~

~~i. Part XI will be elaborated by the Preparatory Commission along the lines indicated by the Convention text within a relatively short period.~~

~~ii. Part XI will be modified or adapted.~~

~~iii. Part XI is totally unrealistic and will be shown to be unworkable which would require a new regime to be devised.~~

~~The most likely outcome probably lies between options ii) and iii). The Preparatory Commission has so far shown no disposition to contemplate changes to the fundamental principles on which Part XI is based and, initially, the scope for change will almost certainly be limited to achieving a greater realism about the manner in which the mining regime operates. The FCO believe that because of the ability to block proposals (through the need for consensus on important issues) signatories prevent unacceptable developments. It may also be possible over the next 5-10 years, working with other likeminded industrial states which are signatories, to get modifications which limit the operational role and functions of the seabed institutions and their cost. However, the Department of Trade and Industry remains sceptical about the prospects of an acceptable regime being negotiated until it is shown to be unworkable which, given the likely 10-15 years timescale for deep sea mining, may take 20 years.~~

*at the
Preparatory
Commission.*

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