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THE LIMITS OF NATIONAL JURISDICTION

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INTERNATIONAL SEA BED REGIME:

UNITED KINGDOM PROPOSALS FOR ELEMENTS OF A CONVENTION

INTRODUCTION

The principal characteristics, and the main advantages, of the proposals in this paper are the following:

- (a) they not only provide the means for a fair distribution of sea bed revenues, but they also provide an equitable means of access to the resources of the sea bed. The system envisaged for the allocation of licences would offer fair opportunities to all States, whatever the stage of their development, while allowing production to be maximised.
- (b) Because of the nature of the proposed regime the international machinery required for its administration would be relatively simple. The proposals envisage an institutional structure which would be entirely adequate for the purposes of the regime but would not be so costly as to absorb a large part of the sea bed revenues or so complex as to become cumbersome in operation.

Under the trusteeship area concept put forward by the United States and supported by the United Kingdom, the arrangements suggested in this paper would be applicable mainly to the sea bed area beyond the trusteeship area. But they would also apply in certain respects to the trusteeship area.

FUNCTIONS OF THE AUTHORITY

2. The United Kingdom Government propose that the Convention should provide for the issue of non-exclusive prospecting licences and exclusive development licences. Under the trusteeship area concept the international Authority would issue licences beyond the trusteeship area to States parties who could then sub-license operators. Within the trusteeship area the power to issue licences to operators would be vested in the coastal State. The Authority would receive royalties on production from operations both within and beyond the trusteeship area. The Convention would have to provide that licences once issued could not be modified unilaterally and ensure that the rights of sub-licensees were fully protected.
3. The Convention should establish a system under which all States parties can obtain a fair share of exclusive licences in the international area beyond the trusteeship area. It should therefore impose a limit on the total area any one State may hold under licence at any one time.
4. The area to which individual licences would relate should be clearly and precisely defined. A grid system, defined by reference to coordinates of latitude and longitude and based on an internationally agreed geodetic datum, would be by far the most satisfactory.
5. The Convention would contain a formula for determining the total entitlement of each State party and within the quota thus made available a State would be free to apply for licences in any part of the area irrespective of geographical location. The Convention would also provide for a phased distribution of licences every so many years, when each State party could apply for exclusive development licences up to a specified percentage of its quota. This would ensure the orderly development of sea bed resources.
6. The Authority's functions in the issue of licences would thus be primarily administrative. The only occasion when the Authority would have to decide where a State was permitted to operate would be when two or more States applied for exclusive licences for the same area.
7. Under this system all States parties whether land-locked or coastal, developed or developing, would be provided with the opportunity to participate directly in the development of the resources of the sea bed beyond the trusteeship area. This would mean that as soon as the Convention came into force States would be presented with increased possibilities of developing the industrial and technological basis of their economies as well as deriving benefit from a share of sea bed revenues. A State might

decide to carry out exploration and production itself through a State agency or through a State-owned corporation. Alternatively, a State could sub-licence its area to third parties. It would be entirely for the State to decide whether such sub-licensees should be commercial enterprises or public corporations, which in either case might be constituted in its own or some other country. States would have complete discretion whether or not to employ foreign experts. Within certain limits prescribed by the Convention, the terms of the sub-licence would be a matter for free negotiation between the State and the sub-licensee concerned. Some States might issue sub-licences on more advantageous financial terms than provided in the licences issued to them by the Authority. Others might choose to impose more onerous terms. Operations under a sublicence would be governed by the fiscal law of the issuing State, subject to certain overriding provisions of the Convention. States could enter into arrangements with other States whereby their quotas would be pooled. In this case the Authority would have to be satisfied that the arrangements provided for an entity which was legally and administratively competent to deal with the Authority on behalf of the pooling States. All those alternatives available to States parties would be subject to the obligation of States to satisfy the Authority of their ability to meet their commitments under the Convention. Flexibility of this kind would ensure that no State, group of States or political or social system was at a disadvantage under the Convention, and that sea bed resources would be developed with maximum efficiency.

8. The provisions of the Convention dealing with licences would cover, inter alia, the following matters: the procedure for issue to States parties, duration of licences, work obligations, relinquishment, operating rules, liability for damage, and all financial matters such as licence fees and royalties.

Prospecting Licences

9. Prospecting licences would provide for broadly-based geological, geophysical and geochemical surveys over large areas excluding, however, any areas subject to exclusive development licences. Prospecting would be subject to certain technical conditions, and programmes of work would have to be filed with the Authority by the licensee State.

Development Licences

10. As regards hydro-carbons, the cost of operations in deeper waters will be high in relation to the cost of operations in shallower waters, which is itself high in relation to land-based operations. Because of this, small hydro-carbon reservoirs are unlikely to be economic. Holdings in deeper water would, therefore, have to be sufficiently

large to provide a reasonable chance of discovering a substantial reservoir. Because discovering and developing such a reservoir is likely to be a lengthy process, licences would also have to provide security of tenure over an extended period. A very similar consideration applies in the case of other minerals, where areas would need to be large enough to allow an operator a reasonable chance to prove sufficient reserves to justify commercial exploitation.

11. Exclusive licences for the exploitation of hydro-carbons (although not necessarily for other minerals) could, however, be subject to provision for substantial progressive relinquishment of areas which were not successfully brought into production. This would mean that many areas would become available for re-licensing from time to time and that eventually only those parts of each original licence area which were in production would remain under the control of a licensee for an extended period. It would be important, in order to avoid fragmentation of licence areas, that where licences for contiguous areas had been granted at any one time to one licensee, the relinquishment provisions of the Convention would apply to the whole area so held and not to individual licence areas.

12. Work obligations should be laid down in order to encourage sea bed exploration and development. They should be expressed in terms of minimum annual expenditure specified in the original licence. In the case of hydro-carbons these obligations ought to relate to the total expenditure on contiguous areas held by one licensee.

Royalties

13. Work obligations would cease to apply to areas in which production had been achieved, and royalty payments would be introduced. These would be payable on a scale related inter alia to the volume of minerals produced and conditions of production. They would be fixed at the time a licence was granted.

Fees

14. A licence fee would be payable by the State concerned upon issue of a licence. In order to provide a regular source of income for the administrative functioning of the Authority, continuing annual payments would be necessary throughout the period of a licence. As these payments would not, however, stand in direct connexion with sea bed development they should be kept as low as possible and could be offset against royalties as soon as production began.

Amendment to Terms of Licences

15. Because of the novelty of many of the problems involved in deep sea bed development, of which experience is limited, it would be impracticable at the outset, when the

Convention is negotiated, to lay down in it terms and conditions covering every necessary requirement of licence terms (including financial terms) and procedures. Once the Convention was in force the Authority would need to keep its licensing provisions under review and in the light of experience adopt suitable revisions and additions for application to licences to be issued thereafter. To facilitate the revision it would probably be convenient if the licensing provisions of the Convention, in view of their complexity, were contained in an Annex rather than in the body of the Convention.

THE STRUCTURE OF THE AUTHORITY

16. The institutions set up to administer such a regime under the Convention would be simple, reflecting existing institutions of a technical nature which have proved to work well. The Authority would have the following organs:-

- A. An Assembly consisting of all States parties to the Conventions;
- B. A Governing Council, the members of which would be elected by the Assembly;
- C. A Secretariat which would be headed by a Secretary-General appointed by the Assembly and which would include a Corps of Inspectors which could form the nucleus of Regional Offices of the Authority.

There would also be machinery for the settlement of disputes and might also be a Distribution Agency whose Board would be elected by the Assembly. The powers and functions envisaged for these organs are considered in more detail in the following paragraphs.

The Assembly

17. General supervision over the operation of the Authority would be exercised by an Assembly consisting of all parties to the Convention. The Assembly would meet in Plenary Session (say every two years) and in Extraordinary Session at the request of, say, one third of all States parties. It would elect its own President and determine its own rules of procedure. Amongst its responsibilities would be the approval of the Authority's budget; the election of the Council; the appointment of the Secretary-General; and the election of the Board of any Distribution Agency. The Assembly would also lay down the guide-lines which the Board of such an Agency would have to observe in the distribution of funds in excess of the administrative requirements of the Authority.

The Council

18. In the interests of efficiency and of economy immediate responsibility for the functioning of the Authority would be vested in a small body - the Council - meeting as often as might be required and at least once a year. An important function of the

Council would be the periodic review of the licensing and other technical provisions of the Convention with a view to ensuring that they reflected knowledge gained through experience and the development of technology. The Council would also have special responsibility in relation to conservation and to pollution caused by operations exploiting the sea bed, possibly with specific powers for dealing with an emergency, such as a blow-out. Within limits prescribed by the Convention it would be for the Council to determine what proportion of the quotas to which States parties would be entitled (see paragraph 5) would be made available for exclusive development licensing at any one distribution, and to decide upon the date of distribution and related procedural details.

19. The membership of the Council should reflect the diverse interests of States parties to the Convention, including those of the developing and landlocked countries. However, just as it would be appropriate to give developing States a special position on any institutions of the Authority which might be set up for the purpose of distributing sea bed benefits, so it would be necessary to make special provision on the Council for those States with an established sea bed technology, who have a special contribution to make in organising sea bed activity and without whose support no international regime in this field would be viable. This could be done by designating as members of the Council a limited number of industrialised countries which, either directly or through commercial enterprises based on their territory, have or develop a substantial sea bed technology. An important criterion in establishing a country's claim to be a designated member of the Council might be the extent to which it has an established tradition and expertise in the transfer of technological skills and abilities to developing countries.

20. The Council would have the responsibility for issuing licenses to States in respect of the area beyond the trusteeship area and determining their technical competence for this purpose. In general the Council would not exercise control over sub-licensees, which would be the responsibility of States. However, it might be thought appropriate to give the Council powers to require the revocation of a sub-licence in cases where a State could not show that its sub-licensee satisfied the technical and financial requirements of the sea bed regime. Where the Council had good grounds for doubt as to a State's ability to carry out its responsibilities under the Convention, it might be empowered as an alternative to withholding a licence, to require arrangements whereby the State concerned entered into an agency or partnership agreement with a regional organization, or perhaps with another contracting State if the arrangements were such as

to enable the two States in conjunction to satisfy the requirements of the Convention. While the primary obligation to meet the Authority's requirements would lie with States there might also be cases involving pollution or danger to life where immediate action was required. The Convention might therefore provide machinery enabling the Council to instigate and concert urgent action in these cases.

21. The Convention would make provision for the Council to delegate some of its functions (for example, in the field of issuing licences) to the Secretary-General. He would have to exercise these delegated functions in accordance with such directions as the Council might give him and subject to such conditions as the Council might impose, and he would be responsible for the proper discharge of these functions to the Council which would maintain a general supervision over them.

Distribution of Benefits

22. ISRA would be self-financing. Its administrative expenses would be the first call on all sea bed revenues. As these revenues grew there would be a surplus which would be available for distribution for the benefit of States parties. The Convention might provide for these to be paid automatically into an agreed United Nations fund.

Alternatively disbursements might be put under the control of a Distribution Agency with a board, elected by the Assembly, on which there would be a majority of members from developing countries. The principal criteria for disbursements would in this case be laid down in the Convention and the Assembly would provide any supplementary guide-lines which might be necessary. Within this framework the Board of the Distribution Agency would control disbursements in its discretion.

23. In laying down the principal criteria for disbursements, the Convention might reserve a proportion to projects which contribute to the development of the sea bed as the common heritage of mankind. The Board could have discretion to support a very broad range of projects under this heading, including technical assistance to enable States to enjoy their rights and to carry out their obligations under the Convention and a wide variety of research and development projects carried out by national or international organizations in the marine environment. Conservation schemes and projects sponsored by the Regional Offices of the Authority might also qualify.

Machinery for the Settlement of Disputes

24. However carefully and precisely the Convention is drafted disputes may arise either between States parties or between States parties and the Authority. While it is to be expected that these will in the normal course be settled through diplomatic channels or

through informal discussions under the auspices of the Authority, there will be occasions when special machinery may be required for this purpose. Existing arrangements, including the International Court of Justice, might have a role to play in this context. However, it could also be agreed that the Convention should provide for a Tribunal to which parties to a dispute could have recourse in the absence of a solution by other methods. The jurisdiction of the Tribunal would include, for example, disputes as to the interpretation of the Convention, disputes arising out of the terms of licences and disputes concerning boundaries of allocated areas. It might be possible to enable the Tribunal to settle disputes by a process of conciliation as well as by adjudication.

25. The Tribunal would have to be entirely independent. To this end the Convention would establish a panel of persons, nominated by the States parties, who would be either qualified jurists or persons specially qualified in sea bed operations, technology and allied sciences. Where a dispute came before the Tribunal, each of the parties would be entitled to designate one person from the panel and the persons so designated could then jointly select a further member of the panel (who would have to be legally qualified) to act as Chairman.

The Secretariat

26. There would be a Secretariat headed by a Secretary-General who would be appointed by the Assembly on the recommendation of the Council for a period of, say, six years. The Secretariat would be international in character, responsible solely to the Authority and would be funded from sea bed revenues. It should be kept as small and economical as possible.

27. The main functions of the Secretariat would be to service the institutions of the Authority and any subsidiary bodies they might establish. Apart from any authority delegated to him by the Council, the Secretary-General would be responsible inter alia for maintaining records, preparing the budget and circulating information to States parties. In discharging these functions the Secretariat would be answerable to the Council.

The Inspectorate

28. In order to ensure that technical standards were being observed the Secretariat would include a Corps of Inspectors. The Convention might provide for inspections to be carried out as a matter of routine, subject only to reasonable notice being given. Safeguards for the confidentiality of commercial information would also be required and States would have to retain the right to refuse inspection by individuals whom they regarded as unacceptable.

Regional Offices

29. The number of inspectors required by the Authority need not initially be large. Once activity had gathered momentum, the inspectorate might be deployed regionally to form the nucleus of Regional Offices of the Authority. These could undertake a variety of subsidiary activities in addition to their inspectorate functions provided these activities were kept separate from the inspectorate and were separately funded. For example, the Regional Offices could provide technical advice on such matters as the training of personnel required by States parties to administer sea bed operations. In this way, the Regional Offices might in due course have an important part to play in assisting States parties to take full advantage of their rights under the Convention.