PRIME MINISTER

UK Law of the Sea Convention

Some time ago John Sparrow sent you a minute (Flag B) about a "Reciprocating States Agreement". The Foreign and Trade Secretaries also sent you minutes (Flags C and D) which I did not show you at the time because I thought it would be more convenient if I asked the Cabinet Office to produce a single (and rather more intelligible) document for you to read. This is now attached (Flag A). It sets out clearly what is meant by a "Reciprocating States Agreement" and shows that we are discussing the possible contents of one with the United States, France and Germany and are making efforts to include Japan and Italy. It also shows, as the previous papers did not, that no decisions are necessary now. We shall have to take a view later in the year but for the present you merely need to satisfy yourself that you are content with the way this is being handled.

If you want a discussion of the matter, this could be done on 3 March - but I doubt whether a discussion is necessary.

There is a separate issue on which decisions are needed. The attached minute (Flag E) by the Foreign Secretary recommends that, in order to improve our chances of changing the deep sea mining provisions of the Convention, we should participate, along with certain European countries and Japan, in the Preparatory Commission opening in Jamaica on 15 March - and that our negotiating position should be as at Annex A to Mr. Pym's minute.

Are you content with these recommendations, subject to the views of OD colleagues?

Alternatively, do you want a discussion on 3 March?

A.J.C.

I think a tutorial would be better than a discussion yet

23 February 1983

PRIME MINISTER

LAW OF THE SEA CONVENTION

This meeting will be attended by Mr. Rifkind and Mr. Fyfoot (Legal Adviser) from the FCO, Mr. Goodall from the Cabinet Office, Mrs. Jones from the DOI and John Sparrow.

It is, as you requested, a "tutorial". I have deliberately kept the meeting as small as possible. It would not be appropriate for decisions to be taken as a number of Departments who have an interest will not be present.

I have asked Malcolm Rifkind to introduce both items.

The first is the question of a reciprocating states agreement. The issues were described in the Cabinet Office paper at Flag A. No decisions are necessary from Ministers at the present time. You will merely wish to ensure that the background is fully explained to you.

The second question is whether we should participate in the preparatory commission opening in Jamaica on 15 March and, if so, what our negotiating position should be. The issues are set out in Mr. Pym's minute at Flag E. It will be necessary for you to take a decision on this after the meeting, and I shall put the papers to you again. Meanwhile, Malcolm Rifkind and others present can describe to you what is involved.

A.J.C.

2 March 1983

10 DOWNING STREET

From the Private Secretary

2 March, 1983

Law of the Sea Convention

As you know, the Prime Minister has decided that she does not want to hold an OD meeting tomorrow but has instead requested a small meeting in the nature of a "tutorial".

The meeting will deal not with the Law of the Sea Convention as a whole but with the two questions of a reciprocating states agreement and United Kingdom participation in the preparatory commission.

The Prime Minister would be grateful if Mr. Rifkind, Mr. Fifoot, Mr. Goodall, Mr. Sparrow and a DoI official could attend. Sir Anthony Parsons will also be present.

I think it would be helpful if Mr. Rifkind were able to introduce both subjects with an explanation of the issues involved.

I am copying this letter to Richard Hatfield (Cabinet Office), Gerry Spence (Central Policy Review Staff) and Jonathan Spencer (Department of Industry).

A. J. COLES

John Holmes, Esq.,
Foreign and Commonwealth Office

(1)

PRIME MINISTER

LAW OF THE SEA CONVENTION

You said that you did not want an OD meeting but, instead, a "tutorial" to deal with the questions of a "reciprocating States agreement" and whether we should participate in the preparatory Commission opening in Jamaica on 15 March.

Mrs Ewd Jones 216304

If you agree, I propose to ask Malcolm Rifkind, Mr. Fifoot (an FCO Legal Adviser), David Goodall, ~~John MacGregor plus one~~ a DOI official, and John Sparrow to brief you on these matters on Thursday 3 March. + Tony Parsons - Eva Jonathan Powell

They will be able to cover very adequately the two questions mentioned above.

I suggest that we do not try at this meeting to cover other aspects of the Convention which would mean widening the meeting very considerably and bringing in the DOT, the MOD etc.

Agree that I should arrange a meeting on these lines?

Yes

A.J.C.

1 March 1983

A

Ref. A083/0632

MR COLES

Law of the Sea: Reciprocating States Agreement

As requested in your minute of 28th January, I attach a note by the Cabinet Office on the various issues raised by a Reciprocating States Agreement (RSA). It reflects the views at official level of the Foreign and Commonwealth Office, the Department of Industry, the Department of Trade and the CPRS; and it has also been seen by officials in the Ministry of Defence.

2. In addition to the RSA paper, there is now the Foreign and Commonwealth Secretary's minute of 22nd February about United Kingdom participation in the Preparatory Commission. When this was considered in ODO(S) on 16th February, officials thought that this might not need discussion in OD. But the opportunity is there on 3rd March to discuss either or both papers, if the Prime Minister wishes.

3. I am copying this minute and the Cabinet Office paper to the recipients of your minute of 28th January.

RtA

ROBERT ARMSTRONG

23rd February 1983

UNITED NATIONS LAW OF THE SEA CONFERENCE:
RECIPROCATING STATES AGREEMENT (RSA)*

Note by the Cabinet Office

Introduction

The present policy of the British Government is "to press ahead with the negotiation of a Reciprocating States Agreement (RSA) with the United States and the Federal Republic of Germany and, if possible, with France. This seems the best way to protect the position of our deep-sea mining interests in the immediate period ahead" (extract from the Minister of Trade's minute of 16 November 1982 to the Prime Minister).

2. This paper explains what an RSA is and why it is held to be necessary, the timing considerations, the likely contents of an RSA, the likely reactions to an RSA, the views of other countries and the issues for decision.

What an RSA is and why it is held to be necessary

3. Six countries (United States, Federal Republic of Germany, United Kingdom, France, USSR and Japan) with potential deep-sea mining industries have enacted national legislation to enable them to grant licences to permit exploration and subsequent exploitation of the deep seabed beyond national jurisdiction. This legislation was originally intended to be temporary, pending the coming into force of the Convention. A list of the Western and Japanese consortia developing deep-sea mining techniques is annexed. The purpose of an RSA would be to secure the mutual recognition of these licences. Without an RSA, nothing would prevent other authorities (of, for example, the United States, France, FRG or Japan) from issuing licences for the same site that had been licenced by the United Kingdom authorities.

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* Note: Since the term Reciprocating States Agreement excites G77 hostility, a different title is under consideration.

4. The United Kingdom Deep Sea Mining (Temporary Provisions) Act (1981) provides that United Kingdom nationals may only operate under a licence issued by British authorities or those of a reciprocating state. The same is true of United States deep-sea mining law. A combined United Kingdom/United States operation would therefore be unable to operate under either law without an RSA between the United Kingdom and the United States. This is a matter of particular importance because British companies are engaged in a consortium that also includes United States interests. (NB the same is not true of France and Japan at least where part of Japan's interest is concerned, as both have consortia made up of solely national interests - see Annex.)

5. The most promising source of polymetallic nodules, on which the exploration activities of the consortia have been focussed, is an area of some 1 million square kilometres of the Pacific Ocean off the Southern California Coast, known as the Clarion Clipperton zone. This area is beyond national jurisdiction. It will accommodate six or seven exploration sites. The exploration sites claimed in all the Western licence applications overlap. These overlaps or conflicts need to be resolved because even at the exploration stage, the consortia require exclusive rights to an area if they are to continue investment.

6. Unless we have an RSA with the United States, the British companies concerned are likely to protect their interests by "going offshore" (ie ceasing to operate as British companies). Potential commercial, fiscal, technological and other benefits to the United Kingdom would thus be lost. Similarly, our access to the supply of the minerals would be dependent on the United States. Moreover, because of their technical and numerical dominance, United States companies, operating on the basis of the United States 1980 Deep Seabed Hard Mineral Resources Act, would be well placed to obtain the lion's share of the best sites. Our shipping interests might also be affected because the United States legislation stipulates that all nodules mined by United States companies must be carried in United States vessels and we should have no redress against this protectionist measure.

Timing considerations

7. To be effective, an RSA is necessary before the first state (likely to be the United States) issues the first licence. The present intention of the United States authorities (it tends to vary from time to time) is to issue exploration licences for the Clarion Clipperton zone in the late autumn 1983. There are three other considerations. First, the need to maintain the confidence of British companies that the Government are taking the necessary steps to safeguard their interests. Second, the need to encourage them to resolve possible conflicts on an inter-company basis before licences are issued. Third, the effect on negotiations in the Preparatory Commission and on our relations with those who have signed UNLOSC (see below).

8. Assuming that the United States stick to their intention to issue licences in the late autumn 1983, an RSA would need to be concluded by around September 1983 at the latest. But it is possible that the United States will invoke domestic political pressure as a reason for bringing this date forward.

Likely contents of an RSA

9. Hitherto, discussion of an RSA has been confined to the United Kingdom, United States, France and FRG and the current draft reflects only their interests. Amendments will be necessary to attract Japan and Italy. The main provisions of the present draft are as follows -

a. Procedures for the binding resolution of conflicts

The states parties agree that, in the absence of negotiated settlement of conflicts (ie overlaps), they would be bound by settlements arrived at through recognised international arbitration procedures.

b. Agreement not to issue licences in disputed areas: existing applicants

The first round of licences would be restricted to existing applicants (ie the first five consortia listed at Annex). Licences would be issued only for areas in which there were no overlapping claims.

c. Deferral of the issue of exploration licences to later applicants

This provision is a matter of dispute. France would prefer to make no provision at all for later applicants in order to make plain the limited nature of the agreement and to remain in harmony with the interim arrangements provided under UNLOSC which are confined to existing applicants. They and the other Europeans have two fears. First, that later (ie second round) applicants would be predominantly American, and would register further claims at the expense of their own companies. Second, that the early establishment of very extensive claims to wide areas of the deep seabed would appear to other states as greedy. The United States, on the other hand, assert that, under their laws, they must make provision for later applicants - if they fail to do so, they would lay themselves open to the charge of condoning cartelisation; furthermore, unless such provision is reflected in the agreement, they would be unable to recognise their partners' licences, which is the whole purpose of the agreement. Discussion continues in an attempt to defer the issue.

d. No exploitation licence to have effect before January 1988

Commercial operations are highly unlikely before 1988. Nevertheless the mining lobby in the United States may seek to bring the date forward to 1985 by a change in the United States law.

e. Requirement on the parties to take the necessary steps to recognise the licences of the other signatories

f. Harmonisation regulations

To ensure harmonisation between state practice in such areas as environment and safety.

g. Denunciation

Necessary for any signatory which decides to ratify the UNLOSC Convention or accede to it.

10. Provision for mutual recognition of licences is made in the 1981 United Kingdom Act; no further legislation would be required and there are no financial implications.

Likely reactions to an RSA

11. The possibility that the industrialised states would enter into an agreement for mutual recognition of national licences to exploit the deep sea bed beyond national jurisdiction has excited opposition and condemnation from the G77. It is seen by them as anti Convention (and of course current United States thinking sees it as an alternative to the Convention) and will probably be regarded as a first step towards exploitation outside the Convention and to the carving up of the only area so far explored with an abundance of polymetallic nodules. The Soviet Union will seek to encourage their resentment and hostility.

12. It is difficult to assess the consequences of such a reaction to the conclusion of an RSA. It is true that the 1982 Conflict Resolution Agreement, of which in some respects the RSA would be the logical extension, did not arouse much excitement among the G77. However at that time we had not declared our views on signature of the UNLOSC Convention and the Conflict Resolution Agreement did not involve mutual recognition of licenses for sites in the Clarion Clipperton zone. The President of the Conference (Mr Koh) has publicly threatened that, if the RSA is concluded and exploitation is commenced, he will make it his business to instigate an application for an advisory opinion from the International Court of Justice. The Law Officers have advised that signature of an RSA would not be inconsistent with the signature of UNLOSC (though it would be inconsistent with ratification) but, having regard to its present composition, that there can be no confidence that the ICJ would give a ruling to a similar effect. On the contrary, they may declare that mining outside the Convention is contrary to international law. This would inevitably prejudice the financing of such projects. It is also possible that some states might seek to retaliate against the operations of United Kingdom companies concerned or against our wider navigational interests. The issue is an emotional one, although as the proposed agreement is comparatively narrow in scope and is limited to exploration until 1988, it is difficult to see a rationale for early retaliatory action. There is also the consideration that on a number of United Nations issues, the United Kingdom needs to seek the support of the Third World (as over the Falklands); we cannot expect their willingness to support us to be unaffected by our acting,

as they see it, outside the UNLOS Convention. Commonwealth countries may link the issues and this is likely to come up at the Commonwealth Heads of Government meeting in New Delhi in November especially if we sign an RSA shortly beforehand. The fact that similar (if unsatisfactory) provision for the avoidance of overlaps is made within the Convention regime (Preliminary Investment Protection or PIP) does not help our case.

13. On the other hand, if there are sufficient signatories to an RSA to demonstrate the developed world's determination to give the mining consortia the necessary legal backing, this fact could, in the medium and longer term, add to pressures on the G77 to amend the present deep-sea mining provisions of the Convention or accept that other provisions need to be made. At the moment of actual exploitation, the G77 will come face to face with the prospect of gaining nothing from the provisions of the Convention as presently drafted. The greater the number of RSA signatories, the more effective such pressure should be; and vice versa. Nevertheless, it has to be recognised too that, among the G77, the land-based producers do not want to see seabed mining begin at all. Others probably accept that the international community can at best hope for only small profits but would prefer this to seeing the West scoop what there is.

Views of other countries

14. The United States attitude is clearly crucial. They claim to be bound by the first come, first served principle in their legislation and are under pressure from their industry to get on with granting licences.

15. France is concerned about the "monopoly" question (paragraph 9c. above), and also about the timing of an RSA in relation to the Preparatory Commission. The FRG wants an agreement but will wait until after the 6 March elections and may not decide quickly thereafter. Japan has entered a late claim for its national project (DORD) in the Clarion Clipperton zone but has so far been reluctant to accept that early exploration is an essential factor in determining priorities for licensing. The USSR and India are only interested in the Preliminary Investment Protection (PIP) approach (ie the analogue to the RSA within UNLOSC) and want to confine PIP to signatories. Italy is proposing to legislate and would be interested in an RSA, subject to timing problems; Belgium and the Netherlands are more hesitant.

Issues for decision

16. For the moment, no decisions are called for. Discussions on an RSA between the United Kingdom, United States, France and FRG are continuing and efforts are being made to include Japan and Italy.

17. When it comes, the essential issue will not be whether to sign but with whom, which will govern what is signed and when. Clearly, the more signatories, the better, both to make the RSA more presentable and to encourage the G77 to reconsider their position on the Convention. An RSA with only two signatories would be a sign of weakness. But the United States may insist that if no-one else comes in and we do not sign either, they will go ahead anyway and issue licences unilaterally. President Reagan may lobby the Prime Minister. So the question may need to be faced, possibly in September 1983 or earlier, whether the United Kingdom should sign an RSA with the United States alone.

Cabinet Office

22 February 1983

ANNEX

CONSORTIA DEVELOPING DEEP SEA MINING TECHNIQUES

		Per Cent Interest
Kennecott Group		
Kennecott Copper Co Inc (owned by Sohio, a US subsidiary of BP)	USA	40
Consolidated Gold Fields	UK	12
Rio Tinto Zinc	UK	12
BP	UK	12
Mitsubishi	Japan	12
Noranda Mines	Canada	12
Ocean Management Inc		
Inco (originally International Nickel)	Canada	25
Sedco	USA	25
AMR Group (Metallgesellschaft, Preussag Salzgitter, Deutsche Schachtbau und Tiefbohr)	FRG	25
Deep Ocean Mining Co (DOMCO, a Japanese group led by Sumitomo)	Japan	25
Ocean Mining Associates		
Essex Minerals (subsidiary of US Steel)	USA	25
Union Seas (subsidiary of Union Miniere)	Belgium	25
Sun Ocean (subsidiary of Sun Oil)	USA	25
ENI	Italy	25
Deep Sea Ventures (subsidiary of Tenneco), operator only	USA	
Ocean Minerals Co		
Lockheed Missiles and Space Co Inc	USA	40
Billiton International (subsidiary of Shell)	Netherlands/UK	25
AMOCO Ocea Minierals (subsidiary of Standard Oil of Indiana)	USA	25
Royal Bos Kalis Westminster Group	Netherlands	10
Afernod		
Centre National pour l'Exploitation des Oceans Bureau de Recherches Geologiques et Minieres Commissariat a l'Energie Atomique Societe Metallurgique Le Nickel Chantiers de France - Dunkerque	France	100
DORD (a group of 38 Japanese companies)	Japan	100