

LAW OF
THE SEA



Treaty Series No. 24 (1985)

Provisional Understanding
regarding Deep Seabed Matters
with
Memorandum on the Implementation
thereof

Geneva, 3 August 1984

[The Agreement entered into force on 2 September 1984]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
June 1985*

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PROVISIONAL UNDERSTANDING REGARDING DEEP SEABED MATTERS

1. (1) No Party shall issue an authorization in respect of an application, or seek registration, for an area included :

- (a) within an area which is covered in another application filed in conformity with the agreements for voluntary conflict resolution reached on 18 May 1983 and 15 December 1983 and being still under consideration by another Party;
- (b) within an area claimed in any other application which has been filed in conformity with national law and this Agreement,
 - (i) prior to the signature of this Agreement, or
 - (ii) earlier than the application or request for registration in question, and which is still under consideration by another Party; or
- (c) within an authorization granted by another Party in conformity with this Agreement.

(2) No Party shall itself engage in deep seabed operations in an area for which, in accordance with this paragraph, it shall not issue an authorization or seek registration.

2. The Parties shall, as far as possible, process applications without delay. To this end, each Party shall, with reasonable dispatch, make an initial examination of each application to determine whether it complies with requirements for minimum content of applications under its national law, and thereafter determine the applicant's eligibility for the issuance of an authorization.

3. Each Party shall immediately notify the other Parties of each application for an authorization which it accepts, including applications already received, and of each amendment to such an application. Each Party shall also immediately notify the other Parties after it has taken action subsequently with respect to an application or any action with respect to an authorization.

4. No Party shall authorize, or itself engage in, exploitation of the hard mineral resources of the deep seabed before 1 January 1988.

5. (1) The Parties shall consult together :

- (a) prior to the issuance of any authorization or before themselves engaging in deep seabed operations or seeking registration for an area;
- (b) with regard to any arrangements between one or more Parties and another State or States for the avoidance of overlapping in deep seabed operations;
- (c) with regard to relevant legal provisions and any modification thereof; and
- (d) generally with a view to co-ordinating and reviewing the implementation of this Agreement.

(2) The relevant Parties shall consult together in the event that two or more applications are filed simultaneously.

6. (1) To the extent permissible under national law, a Party shall maintain the confidentiality of the co-ordinates of application areas and other proprietary or confidential commercial information received in confidence from any other Party in pursuance of co-operation in regard to deep seabed operations. In particular:

(a) the confidentiality of the co-ordinates of application areas shall be maintained until any overlap involving such an area is resolved and the relevant authorization is issued; and

(b) the confidentiality of other proprietary or confidential commercial information shall be maintained in accordance with national law as long as such information retains its character as such.

(2) Denunciation or other action by a Party pursuant to paragraph 14 of this Agreement shall not affect the Parties' obligations under this paragraph.

7. (1) The rights and interests of an applicant or of the grantee of an authorization may be transferred, in whole or in part, consistent with national law. Subject to national law, the rights, interests, and obligations of the transferee shall be as set forth in an agreement between the transferor and the transferee.

(2) For the purposes of this Agreement, the transferee is deemed to stand in the same position as that of the transferor for his rights and interests including the right of priority to the extent those rights and interests represent in whole or in part the original rights and interests of the transferor.

8. The Parties shall seek consistency in their application requirements and operating standards.

9. The Parties shall implement this Agreement in accordance with relevant national laws and regulations.

10. The Parties shall settle any dispute arising from the interpretation or application of this Agreement by appropriate means. The Parties to the dispute shall consider the possibility of recourse to binding arbitration and, if they agree, shall have recourse to it.

11. This Agreement, which includes Appendices I and II, may be amended only by written agreement of all Parties.

12. (1) This Agreement shall enter into force 30 days after signature⁽¹⁾.

(2) A Party which has not adopted the necessary legal provisions for the issue of authorizations may, by a declaration relating to its signature of this Agreement, limit the application of this Agreement to the parts thereof other than those relating to the issue of authorizations. Where such a Party adopts

⁽¹⁾ The Agreement entered into force on 2 September 1984.

legal provisions which, in the view of the other Parties, are similar in aims and effects to their own legal provisions, the first mentioned Party shall notify all other Parties that it accepts fully the provisions of this Agreement. Such a Party may also declare, upon signature, that, for constitutional reasons, this Agreement shall become effective for it only after notification to all other Parties.

13. After entry into force of this Agreement, additional States may, with the consent of all Parties, be invited to accede to this Agreement.

14. (1) A Party may denounce this Agreement by written notice to all other Parties, subject to the provisions of paragraph 6. Such denunciation shall become effective 180 days from the date of the latest receipt of such notice.

(2) A Party may, for good cause related to the implementation of this Agreement, after consultation, serve written notice on another Party that, from a date not less than 90 days thereafter, it will cease to give effect to paragraph 1 of this Agreement in respect of such other Party. The rights and obligations of these two Parties towards the other Parties remain unaffected by such notice.

(3) Subsequent to such notice referred to in subparagraphs (1) and (2), the Parties concerned shall seek, to the extent possible, to mitigate adverse effects resulting therefrom.

15. This Agreement is without prejudice to, nor does it affect, the positions of the Parties, or any obligations assumed by any of the Parties, in respect of the United Nations Convention on the Law of the Sea.

Done at Geneva on 3 August 1984, in eight copies in the English, French, German, Italian, Japanese and Netherlands languages, each of which shall be equally authentic.

[Here follow the signatures on behalf of:

Belgium*

France

Germany, Federal Republic of*

Italy*

Japan

Netherlands*

United Kingdom

United States of America]

* For declarations see pages 8 and 9

APPENDIX I

Definitions

For the purposes of this Agreement :

“ Application filed in conformity with the agreements for voluntary conflict resolution reached on 18 May 1983 and 15 December 1983 ” as referred to in paragraph 1(1)(a) of this Agreement means the original application as amended as a consequence of, or in order to give effect to, those agreements; where identical applications have been filed with more than one Party, they shall, for the purpose of paragraph 1(1)(a) of this Agreement, be treated as a single application; applicant in relation to applications referred to in paragraph 1(1)(a) of this Agreement means the original applicant or applicants in respect of an application, or in his or their place the transferee or transferees of such applicant or applicants as provided in paragraph 7 of this Agreement, or the nominee or nominees who act on behalf of such applicant or applicants;

“ Agreements for voluntary conflict resolution ” as referred to in paragraph 1(1)(a) of this Agreement means the agreements between Association Francaise Pour l'Étude et la Recherche des Nodules (AFERNOD), Deep Ocean Resources Development Co., Ltd. (DORD), Kennecott Consortium (KCON), Ocean Mining Associates (OMA), Ocean Minerals Company (OMCO), Ocean Management, Inc. (OMI), or any of them;

“ Authorization ” means an authorization to engage in deep seabed operations;

“ Deep seabed operations ” means operations, other than prospecting, in relation to the hard mineral resources of the deep seabed in a specified area or areas;

“ Hard mineral resources ” means any deposit or accretion on or just below the surface of the deep seabed consisting of nodules which contain manganese, nickel, cobalt, or copper; and

“ Registration ” means any registration or other act by an authority which is recognized or accepted by the Party in question as conferring or confirming any right or authorization to engage in deep seabed operations.

APPENDIX II

Notification

A. A notice relating to an application or amendment, as provided by paragraph 3 of this Agreement shall include :

- (a) the identity of the applicant;
- (b) the co-ordinates of the area of the application or amendment;
- (c) the date and time the application or amendment was filed (expressed in Greenwich Mean Time to the nearest minute);
- (d) the type of authorization applied for;
- (e) a statement of the duration of activities applied for; and
- (f) such other information as the notifying Party considers appropriate.

B. A notice relating to subsequent action or to authorizations shall include all necessary data, a copy of the legal documentation effecting the action and the operative date.

C. Each notice concerning the co-ordinates of an area of the deep seabed shall define the boundary by the geodetic co-ordinates of the turning points in accordance with the World Geodetic System 1972 (WGS 72). Any line defining the boundary between turning points must be a geodesic.

DECLARATIONS

BELGIUM

Belgium is gratified by the conclusion of an arrangement under which the signatories undertake to act, in a very special and totally new area of endeavor, as States concerned with one another's rights, and under which they have also agreed to take appropriate measures to ensure, concretely, that such rights are respected.

In affixing its signature to the documents in which these measures are contained, Belgium must nonetheless declare, in accordance with paragraph 12(2) of the Provisional Understanding that, insofar as it is concerned, it can for the moment implement only those provisions of the Agreement that do not involve the issuance of permits. It is well known to all that Belgium has not thus far promulgated any law governing this subject. It must be added that should such a law be promulgated, Belgium would immediately consider itself to be morally bound by all the provisions of the Agreement.

Belgium also declares that, for constitutional reasons this Agreement will enter into force for Belgium only following notification to all other Parties, in accordance with paragraph 12 (2) of the Provisional Understanding.

3 August 1984

GERMANY, FEDERAL REPUBLIC OF

(Translation)

Geneva

3 August 1984

Excellency,

In connexion with today's signing of the Provisional Understanding regarding Deep Seabed Matters and the Memorandum related thereto, I have the honour to declare on behalf of the Government of the Federal Republic of Germany that the said Understanding and the Memorandum shall also apply to Land Berlin from the date on which they enter into force for the Federal Republic of Germany.

Accept, Excellency, the expression of my highest consideration.

HANS ARNOLD

Ambassador

Permanent Representative

ITALY

1. With reference to what is provided for under paragraph 12 (2) of the Provisional Understanding Regarding Deep Seabed Matters, Italy, upon signature of this Provisional Understanding, declares as follows:

A. Awaiting the adoption by the Parliament of the legal provisions regulating the activities of prospecting and mining of deep seabed mineral resources by Italian nationals, including provisions relating to the issue of authorizations, the Government of Italy will limit the application of this Agreement to the parts thereof other than those relating to the issue of authorizations.

B. Upon the adoption of the legal provisions regulating the prospecting and mining of deep seabed mineral resources by Italian nationals, the Italian Government will notify all other Parties that it accepts all the provisions of this Agreement.

2. Moreover, the Government of Italy declares that, upon the adoption of the legal provisions regulating the prospecting and mining activities of deep seabed mineral resources by Italian nationals, it will notify all other Parties that the Memorandum of Implementation annexed to the Provisional Understanding Regarding Deep Seabed Matters has become applicable to Italy.

EMILIO F. DESTEFANIS

NETHERLANDS

[Unofficial translation]

On the occasion of the signature for the Kingdom of the Netherlands of the Provisional Understanding regarding Deep Seabed Matters it is declared that the Kingdom of the Netherlands limits the application of this Agreement to the parts thereof other than those relating to the issue of authorizations.

Furthermore it is declared that, for constitutional reasons, this Agreement shall become effective for the Kingdom of the Netherlands only after notification to all other Parties.

Geneva, 3 August 1984

MEMORANDUM ON THE IMPLEMENTATION OF THE PROVISIONAL UNDERSTANDING REGARDING DEEP SEABED MATTERS

With respect to the implementation of the Provisional Understanding Regarding Deep Seabed Matters signed on 3 August 1984, the representatives of the Governments of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Belgium, the French Republic, the Federal Republic of Germany, the Italian Republic, Japan, the Kingdom of the Netherlands, and the United States of America have confirmed their intention to give effect to the following:

Eligibility

1. (1) Each Party will issue or transfer an authorization only to applicants:

- (a) which are financially and technologically qualified to conduct the proposed deep seabed operations;
- (b) which comply with all requirements of the Party's national law; and
- (c) whose deep seabed operations will be carried out in accordance with the standards prescribed below.

(2) The relevant Parties will consult prior to the issuance or transfer of an authorization to an applicant who has previously been denied an authorization or had an authorization revoked for the same area by another Party, or who has relinquished the same area under an authorization of another Party.

Size of Area

2. (1) Each Party will issue or transfer an authorization only for an area in which the deep seabed operations authorized can be conducted within the initial duration of the authorization in an efficient, economical and orderly manner with due regard for conservation and protection of the environment, taking into consideration, as appropriate, the resource data, other relevant physical and environmental characteristics and the state of the technology of the applicant, as set forth in the plan of operations.

(2) Upon request of any other Party, a Party will provide, within 30 days, a written statement of reasons why that Party has approved an application area of a particular size.

Standards

3. (1) Each Party will take all necessary measures so that deep seabed operations under its control:

- (a) are conducted with reasonable regard to the interests of other States in the exercise of the freedom of the high seas;
- (b) will include efforts to protect the quality of the environment and will not result in significant adverse effects on the environment;

- (c) have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the authorization area;
- (d) do not adversely affect the safety of life and property at sea in accordance with generally accepted international standards;
- (e) are conducted diligently by maintaining a reasonable level of operation based on the size of area and other relevant factors; and
- (f) are monitored for their effects on the environment.

(2) In accordance with its national law each Party will ensure that persons subject to its jurisdiction minimize interference with any activity authorized under an authorization issued by another Party.

(3) Each Party will co-operate in developing measures, consistent with its national law, needed to implement the provisions of the Agreement and of this Memorandum so that, in general function and effect, these measures are compatible with, comparable to, and as effective as those established by the other Parties.

Administrative Requirements

4. To enforce effectively the standards described in paragraph 3 of this Memorandum, each Party will employ, as appropriate, measures such as: imposing reasonable penalties for violation of requirements; placing observers on vessels to monitor compliance; suspending, revoking, or modifying authorizations; and, issuing orders in an emergency to prevent a significant adverse effect on the environment or to preserve the safety of life and property at sea.

[Here follow the signatures on behalf of :

Belgium

France

Germany, Federal Republic of

Italy

Japan

Netherlands

United Kingdom

United States of America]

3 August 1984, Geneva.

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