



Treaty Series No. 46 (1982)

Agreement
concerning Interim Arrangements
relating to Polymetallic Nodules of the
Deep Sea Bed

Washington, 2 September 1982

[The Agreement entered into force on 2 September 1982]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
October 1982*

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**AGREEMENT CONCERNING
INTERIM ARRANGEMENTS RELATING TO
POLYMETALLIC NODULES OF THE DEEP SEA BED**

The Parties to this Agreement:

Having regard to investments made in exploration, research and other pioneer activities relating to the polymetallic nodules of the deep sea bed;

Noting the adoption by the Third United Nations Conference on the Law of the Sea of a Convention on the Law of the Sea and of a Resolution Governing Preparatory Investment in Pioneer Activities Relating to Polymetallic Nodules prior to the entry into force of the Convention on the Law of the Sea, and the provision of that Resolution concerning resolution of conflicts among pioneer operators;

Recalling the interim character of legislation with respect to deep sea bed operations enacted by certain Parties;

Desiring to make appropriate provisions for avoiding overlaps in the areas claimed for future pioneer activities in the deep sea bed and to ensure that, during the interim period, such activities are carried out in an orderly and peaceful manner;

Emphasizing that this Agreement is without prejudice to the decisions of the Parties with respect to the Convention on Law of the Sea adopted by the Third United Nations Conference on the Law of the Sea;

Desiring also to avoid any discrimination among Parties in the implementation of this Agreement;

Desiring further to insure that adequate areas containing polymetallic nodules remain available for operations by other states and entities in conformity with international law;

Have agreed as follows:

1. The object of the present Agreement is to facilitate the identification and resolution of conflicts which may arise from the filing and processing of applications for authorizations made by Pre-Enactment Explorers (PEEs) on or before March 12, 1982 under legislation in respect of deep sea bed operations enacted by any of the Parties.

2. In the case of a conflict between the areas claimed in such applications, the Parties shall afford the applicants adequate opportunity, and shall encourage them, to resolve such conflict in a timely manner by voluntary procedures.

3. The Parties with whom applications for authorizations have been made by PEEs on or before March 12, 1982 shall follow the procedures set out in Part I of the Schedule hereto in respect of such applications.

4. The Parties shall consult together:

- (a) with a view to coordinating and reviewing implementation of this Agreement;
- (b) before issuing any authorization under their respective laws relating to deep sea bed operations;

- (c) in regard to consideration of any arrangement to facilitate mutual recognitions of such authorizations it being understood that any such arrangement shall not enter into force before January 1, 1983;
- (d) before entering into any other bilateral or any multilateral arrangement between themselves or any arrangement with other States, with respect to deep sea bed operations.

5. In the event that any of the Parties with whom applications for authorizations have been made by PEEs on or before March 12, 1982 enter into an agreement for the mutual recognition of authorizations granted under their respective laws in respect of deep sea bed operations, the Parties concerned shall apply the procedures and impose the requirements set out in Part II of the Schedule hereto.

6. To the extent permissible under national law, a Party shall maintain the confidentiality of the coordinates of application areas and other proprietary or confidential commercial information received in confidence from any other Party in pursuance of cooperation under this Agreement in accordance with the principles set out in Part III of the Schedule hereto.

7. 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.

8. The Schedule hereto is an integral part of this Agreement and Part IV thereof shall apply for the interpretation of this Agreement.

9. The Parties shall not enter into any supplementary international agreement inconsistent with this Agreement.

10. This Agreement may be amended by written agreement of all the Parties.

11. This Agreement shall enter into force upon signature.

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

13. Any Party may denounce this Agreement on 30 days' notice to the Government of the United States of America, and in no case shall the denunciation have effect before January 3, 1983.

Done at Washington this second day of September, 1982, in the English, German and French languages, all texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the United States of America, which will transmit a duly certified copy to each of the other signatory Governments.

THE SCHEDULE

PART I

Application Procedures for Pre-Enactment Explorers

1. Each Party as provided in paragraph 3 of the Agreement shall forthwith inform the other Parties of entities which have filed applications with it.

2. Any application filed on or before March 12, 1982 shall be deemed to be filed on that date.

3. Each Party shall with all dispatch determine whether:

- (a) each application filed with it fulfills its domestic requirements;
- (b) the applicant is a PEE with respect to the area applied for (an applicant filing on behalf of a PEE shall itself be deemed a PEE for that application);
- (c) the area is bounded by a continuous boundary;
- (d) the area is reasonably compact.

4. Each Party shall:

- (a) notify the other Parties of the results of the initial processing under paragraph 3 above;
- (b) with the other Parties establish the final list of applications to which this Agreement applies;
- (c) inform the other Parties whether the applicant has applied for the same area, or substantially the same area, to one or more other Parties;
- (d) if the applicant agrees, inform the other Parties of the coordinates of the area specified in any application filed with it;
- (e) endeavor to determine the exact locations of any conflicts.

5. No Party shall issue any authorization before January 3, 1983.

6. Where it is informed of the relevant coordinates, each Party shall notify each of its applicants who is involved in a conflict that a conflict exists. Such notification shall include coordinates identifying the areas in conflict and the identity of each applicant with whom conflict has arisen.

7. Each Party shall ensure that domestic conflicts are resolved pursuant to its respective domestic requirements. Upon agreement of the applicants, domestic conflicts may be resolved in accordance with the international conflict resolution procedures specified in the Schedule. The Parties shall enter into consultations if it appears that the resolution of a domestic conflict might affect the international conflict resolution procedures, or *vice versa*.

8. (1) Each Party shall accept amendments to applications to which this Agreement applies only if they:

- (a) pertain to areas with respect to which the applicant is a PEE (the area applied for in an amendment need not be adjacent to the area applied for in the original application); and

- (b) are made in order to resolve an existing conflict with respect to that application.
- (2) Each Party shall process any amendment filed pursuant to this paragraph in accordance with the procedures described in the foregoing provisions of this Part except that paragraphs 2, 3(c), 3(d), and 4(c) shall not apply to amendments.
- (3) Amendments filed under paragraph 8 of the Schedule shall be eligible for mutual recognition in accordance with the terms of an agreement entered into by any of the Parties pursuant to paragraph 5 of the Agreement.

PART II

Conflict Resolution for Pre-Enactment Explorers

9. (1) Where there is an international conflict, the Parties shall use their good offices to assist the applicants to resolve the conflict by voluntary procedures.
- (2) If, within six months from the entry into force of an agreement between the Parties referred to in paragraph 5 of the Agreement, notwithstanding the good offices of the Parties, all applicants involved in an international conflict have not resolved that conflict, or are not parties to a written agreement submitting the conflict to a specified binding conflict resolution procedure, the conflict shall be resolved by binding arbitration in accordance with Appendices 1 and 2 if a Party so elects.
- (3) The procedures provided in the Appendices shall commence ten days after a Party notifies the other Party or Parties of the decision to elect arbitration.

PART III

Principles of Confidentiality

10. In implementing the provisions of paragraph 6 of the Agreement, Parties shall apply the following principles:
- (a) The confidentiality of the coordinates of application areas shall be maintained until any conflict involving such area is resolved and the relevant authorization is issued, except on the basis of a demonstrated need to know and adequate assurances that the confidentiality of the information shall be maintained by the recipient;
- (b) The confidentiality of other proprietary or confidential commercial information shall be maintained in accordance with domestic law as long as such information retains its character as such.

PART IV

Definitions

11. In this Agreement :

- (a) "activities" means the undertakings, commitments of resources, investigations, findings, research, engineering development, and other activities relevant to the identification, discovery, and systematic analysis and evaluation of polymetallic nodules and to the determination of the technical and economic feasibility of exploitation;
- (b) "authorization" means any license, permit, or other authorization issued under the national law of a Party which authorizes the holder to engage in deep sea bed operations in a specified area or areas;
- (c) "conflict" means the existence of more than one application or amendment covered by this Agreement submitted by different applicants:
 - (1) whether filed with the same Party or with more than one Party;
and
 - (2) in which the deep sea bed areas applied for overlap in whole or part, to the extent of the overlap;"international conflict" means a conflict arising from applications or amendments filed with more than one Party;
"domestic conflict" means any other conflict;
- (d) a "pre-enactment explorer" ("PEE") is an entity which was engaged, prior to the earliest date of enactment of domestic legislation by any Party, in deep sea bed polymetallic nodule exploration by substantial surveying activity with respect to the area applied for; and
- (e) "polymetallic nodules" means any deposit or accretion on or just below the surface of the deep sea bed consisting of nodules which contain manganese, nickel, cobalt, or copper.

APPENDIX 1

Arbitration Procedure

1. In this Appendix, "Party" means a Party to this Agreement which is also concerned in the arbitration, and "other Party" includes any such Party or Parties.

2. The parties presenting the case shall seek to agree in writing within sixty days after the expiry of the ten-day period provided by paragraph 9(3) of the Schedule on three arbitrators, or, if they agree to have only one arbitrator, on that one arbitrator.

3. Any Party may object to the choice of any arbitrator or arbitrators under paragraph 2, by written notice received by the other Party within thirty days after the expiry of the period provided by paragraph 2 above. Upon objection to any arbitrator by a Party, the other Party may, when three arbitrators have been chosen under paragraph 2, object to either or both of the other arbitrators by written notice received by the other Party within fifteen days after the expiry of the period provided by the immediately preceding sentence.

4. If a Party objects to the choice of any arbitrator in accordance with paragraph 3 or if an arbitrator becomes unable to act, the parties presenting the case shall seek to agree on a replacement in writing within sixty days after receipt of the notice of objection or after the date when the arbitrator becomes unable to act.

If agreement is reached, a Party may object to the choice of a replacement by written notice received by the other Party within thirty days. If the parties presenting the case have not reached agreement, or if a Party objects to the choice of a replacement in accordance with this paragraph, the Secretary-General of the Permanent Court of Arbitration shall appoint a replacement without delay.

5. If the parties presenting the case fail to agree on three arbitrators (or an arbitrator) within the period provided by paragraph 2, three arbitrators shall, on request of a Party, be appointed without delay by the Secretary-General of the Permanent Court of Arbitration.

6. Any arbitrator appointed by the Secretary-General of the Permanent Court of Arbitration shall not be a citizen of a Party, shall have international standing and expertise, and shall have personal characteristics which place him in a neutral position with respect to the subject of the dispute. The Secretary-General shall not be confined to any particular list of arbitrators in making this selection. Appointments by the Secretary-General shall not be open to challenge.

7. Insofar as any matter is not dealt with by Appendix 2 and other relevant provisions of this Agreement, the arbitrator or arbitrators shall, consistent with Appendix 2, be guided by the general principles of law as recognized by the Parties, which, where the case is presented by a Party or Parties means the general principles of public international law (*lex lata*) as recognized by the Parties.

8. The arbitrator or arbitrators shall decide where he or they shall sit and shall, in consultation with the parties presenting the case, adopt rules of procedure consistent with this Appendix.

9. The case will be presented by a Party or by its applicants involved in the conflict, at the option of the Party and each side of the case shall be represented as it sees fit.

10. A Party may intervene as of right.

11. An arbitrator may not abstain from voting on the award. If there are three arbitrators, their award shall be made by a majority vote.

12. The award of the arbitrator or arbitrators shall be rendered within one year from the date of the final appointment of the arbitrator or arbitrators unless all Parties or parties presenting the case otherwise agree or unless the arbitrator or arbitrators for good cause extend the deadline for the making of the award for one or more 30 day periods, in any case not to exceed 120 days.

The award shall be final and binding on the applicants involved in the conflict and on the Parties and shall be enforced by the Parties. The applicants involved in the conflict shall without delay file amendments to their applications consistent with the arbitral award. Within two months of the date of the award, a Party or any applicant represented in the arbitration may request an interpretation of the award. Such interpretation shall be provided within four months of the request.

13. The expense of the arbitration, including the remuneration of the arbitrators, shall be borne by the parties presenting the case. Unless the arbitrator or arbitrators determine otherwise because of the particular circumstances of the case, the parties presenting the case shall bear the expenses in equal shares.

14. If an applicant of a Party is involved in conflicts with two or more applicants of two or more States Parties to this Agreement, every effort shall be made to consolidate the arbitration proceedings.

APPENDIX 2

Principles for Resolution of Conflicts

1. In determining the issue as to which applicant involved in a conflict shall be awarded all or part of each area in conflict, the arbitral tribunal shall find a solution which is fair and equitable, having regard, with respect to each applicant involved in the conflict, to the following factors:

- (a) the continuity and extent of activities relevant to each area in conflict and the application area of which it is a part;
- (b) the date on which each applicant involved in the conflict or predecessor in interest or component organization thereof commenced activities at sea in the application area;
- (c) the financial cost of activities relevant to each area in conflict and to the application area of which it is a part, measured in constant terms;
- (d) the time when activities were carried out, and the quality of activities; and
- (e) such additional factors as the arbitral tribunal determines to be relevant, but excluding a consideration of the future plans of work of the applicants involved in the conflict.

2. When considering the factors specified in paragraph 1, the arbitral tribunal shall hear, and shall, except for purposes of apportionment pursuant to paragraph 3, limit its consideration to all evidence based on the activities specified in paragraph 1, which were conducted on or before January 1, 1982, provided, however, that an applicant must prove at-sea prospecting in the conflict area prior to June 28, 1980 as a pre-condition to presentation of further evidence to the arbitral tribunal regarding activities in the conflict area.

3. In making its determination, the arbitral tribunal may award the entire area in conflict to one applicant involved in the conflict, or the arbitral tribunal may apportion the area among any or all of the applicants involved in the conflict. If, after applying the provisions of paragraph 1 of this Appendix, the arbitral tribunal determines the area in conflict should be apportioned, then the arbitral tribunal shall, to the maximum extent practicable consistent with its application of those provisions, apportion the area in a manner designed to satisfy the plan of work set forth in the application of each applicant which is awarded part of the area.

SIGNATURES

<i>State</i>	<i>Date of signature</i>
France	} 2 Sept. 1982
Germany, Federal Republic of	
United Kingdom	
United States of America	

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