

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(87) 403 final

Brussels, 24 November 1987

COMMISSION COMMUNICATION

concerning deposit by the Member States of the instruments of ratification of the Convention on the Law of the Sea

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EXPLANATORY MEMORANDUM

The Convention on the Law of the Sea is the first Convention elaborated in the framework of the United Nations, which contains an "EEC-clause", permitting the accession of international organizations to which its member States have transferred competence over matters governed by the Convention.

All member States, except the Federal Republic of Germany and the United Kingdom, as well as the Community have signed the Convention. However, those member States which are particularly interested in deep-seabed mining have indicated that they do not intend to ratify the Convention before its regime for the deep-seabed mining has been improved. On the other hand, other member States seem now to be ready to start the ratification procedures.

The services propose to the Commission to adopt the attached Communication in order to remind the member States that the deposition of their instruments of ratification without the simultaneous deposition of the instruments of ratification by the Community would be an infringement of the Community's law.

The Commission in its final report (Doc. COM(82) 669 of 13 October 1982) on the outcome of the Third UN Conference on the Law of the Sea, had recommended that the Community and its Member States should sign simultaneously both the Final Act of the conference and the Convention on the Law of the Sea.

The Commission would recall first that the Convention has been signed by all the Member States except Germany and the United Kingdom, and by the Community.

At the time of signing, the Member States and the Community, by virtue of Article 5(2) of Annex IX on the participation of international organizations, made a statement specifying the areas covered by the Convention where the Community has competence.

Under Articles 309 and 310 of the Convention no reservations or exceptions may be made when depositing instruments of ratification. The Member States may not, therefore, make any reservation concerning matters of Community competence when depositing the instrument of ratification.

The Community cannot deposit the instrument of "formal confirmation"¹ until the majority of Member States deposit or have deposited their instruments of ratification ((Annex IX, Article 3).

Hence ratification of the Convention on the Law of the Sea by a Member State without simultaneous ratification by the Community is incompatible with Community law because the Member State would be giving undertakings in areas where it has transferred competence to the Community. By undertaking commitments in areas of exclusive Community competence, it would be failing in its obligations under the EEC Treaty.

¹ Term used in the Convention for ratification by international organizations.

Nor may a Member State limit its ratification to areas of the Convention where it has not transferred competence to the Community. The Convention does not allow a State at the time of signing or ratifying the Convention to make statements that purport to exclude or modify the legal effect of the provisions of the Convention in their application to that State.

In view of the progress which has been made by the Preparatory Commission of the International Sea-bed Authority and the International Tribunal for the Law of the Sea, it is possible that the governments of some of the Member States signatory to the Convention may now want to initiate the ratification procedure.

The Commission would ask these governments not to deposit their instruments of ratification with the Secretary-General of the United Nations until simultaneous deposit by the Community and at least seven Member States is possible. At that time, the Commission will make a proposal concerning the Community's possible formal confirmation of the Convention. It would point out that a depositing of instruments of ratification not coordinated with the Community would be an infringement of Community law and reserves the right to take any appropriate measures.

The Commission believes there is a need for a working party of senior officials responsible for law of the sea to discuss in detail the provisions and procedures which, in the opinion of the member governments, could make Part XI of the Convention (exploitation of the sea-bed) acceptable to all parties.