COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(74) 862 final

Brussels, 20 March 1974

THIRD CONFERENCE ON THE LAW

OF THE SEA

- Communication from the Commission to the Council -

SUMMARY OF PROPOSALS

1. The UN Conference on the Law of the Sea will deal with issues of great political and economic importance: it is expected to set up a new international order concerning mineral and other resources of the seabed, fishing, marine pollution, the definition of national jurisdiction and so on. Many of these matters fall within the scope of the Treaties.

2. There must be a common position at the Conference if the Community is to play an effective role and secure the best result for the Community as a whole. This is an important opportunity for common action.

3. The common position must strike a balance between the interests of Member States, and take account of the Community's international responsibilities particularly in respect of the developing countries.

PROPOSED COMMUNITY POSITION

4. The maximum limit of 12 miles for territorial waters should be maintained.

5. Beyond this limit and possibly up to, say, 200 miles an adjacent zone should be defined, in which coastal States would have certain rights and obligations:

- over exploitation of oil, gas and minerals on the seabed - these rights to be exercised under certain conditions;
- over fishing - these rights to be subject to a certain degree of cooperation within the framework of regional fishing authorities, taking into account for each coastal State the existing and potential importance of fishing to its economy.

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6. An international authority should be set up to regulate, in a flexible way, the exploitation of minerals beyond the adjacent zone.

7. Marine pollution should be controlled in all areas of the sea by international convention, supported by regional conventions where necessary. Community research on sea pollution should be speeded up, and made available to other countries on a reciprocal basis.

8. Freedom of navigation should be not prejudiced by the foregoing arrangements.

COMMUNITY PROCEDURES

9. The Community as such will receive, upon request, an invitation to the Conference from the UN Secretariat.

10. At the Conference there should be coordination of the Community and of Member States; in matters within the Community's jurisdiction, the Commission should present the Community position.

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INTRODUCTION

On 17 December 1970 the General Assembly of the United Nations in Resolution 2750 C(XXV) decided to convene a Conference on the Law of the Sea which would deal with the establishment of an adequate international regime, including international machinery, applicable to the international seabed, its resources and the areas beneath the seabed beyond the limits of national jurisdiction. The Conference would also deal with a precise definition of the international seabed area and a wide selection of related matters including the regimes of the high seas, the continental shelf, the territorial sea (including its breadth and the international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the preferential rights of coastal States), the preservation of the marine environment (including the prevention of pollution) and scientific research.

The Conference is due to deal with the fundamental questions at its session in Caracas in June and August 1974, which may be followed by other sessions.

It is essential that the Community adopts its position on this question in time for opening of the Conference. Such is the aim of this Communication.

The decision to convene the Conference and the accompanying General Assembly decisions mark a considerable change in attitudes towards the law of the sea and, to a certain extent abandonment of the traditional interpretation of the seas and oceans as being res nullius.

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Many nations are becoming more and more anxious to appropriate for themselves all the various resources which are to be found in the seas and oceans and which are becoming technically less difficult to exploit since, in their view, these resources are a means of compensating for their limited land resources and of expanding their growth or development potential.

This trend towards an extension of national sovereignty to the seas is accompanied by the feeling that this heritage must be protected from any form of appropriation, waste and abuse and must be managed equitably and rationally in the common interest.

There are, however, conflicting schools of thought as regards implementation of these principles which result from the uneven distribution among nations of the natural and technological meansof access to the resources of the sea.

The Conference will be faced with the difficult task of reconciling these conflicting attitudes and interests and establishing a new international order designed to avoid any confrontations which might arise.

The Community and the Member States must ask themselves what is to be their role in this vast and complex matter.

It will have to defend its own interests and capabilities in its capacity as a large coastal area which imports a substantial quantity of energy and raw materials and which possesses advanced forms of technology.

It will, however, also have to take into consideration other essential factors such as the needs and fears of developing countries and the need to protect the resources of the sea on a lasting basis.

The problems which it will thereby have to face at international level are, none the less, far from being completely new to the Community, which has already worked out a number of solutions and is still considering others.

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In the Commission's view, the adoption and maintenance throughout the Conference of a common attitude towards the key problem of the nature and scope of the rights of States in respect of the sea cannot help but facilitate the consolidation of what the Community has already achieved in this field, the search for solutions acceptable to all Member States to matters which remain unresolved within the Community, the affirmation by the Community of international responsibilities commensurate with its economic and technical potential.

It is true that a number of matters to be dealt with during the Conference will not fall within the scope of the Treaties. Nevertheless, the Commission considers that the various elements of the law of the sea are so closely interdependent that the Community and the Member States must take them all into account in drawing up a common and coherent position.

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PART I

MATTERS FOR DISCUSSION AT THE CONFERENCE

The fact that the present international rules are incapable of providing satisfactory solutions, within a legal framework acceptable to all, to the problems of peace, the fair distribution of resources and their preservation for the future of humanity is causing more and more concern. The new awareness of the limited nature of the land resources available for an ever-increasing population, the demands made by newly formed States for sovereignty over their resources and the serious consequences which general pollution of the sea has on the ecological balance have brought these matters to the notice of large segments of the general public, which now feels directly involved by them.

The idea of a new legal order capable of resolving these problems is subject to by political and economic considerations which determine the possible lines of action.

I. POLITICAL CONSIDERATIONS

1. The breadth of the territorial sea, which is one of the main items to be discussed at the Conference, raises the problem of the limits of the national jurisdiction of coastal States and of the conditions governing the exercise of such jurisdiction with all its economic, legal and, of course, strategic implications.

The more extensive territorial waters are, the greater the pressure which a coastal State can exert when the organization and control of the right of innocent passage - particularly through straits and archipelagos which form an integral part of its territory - are being discussed, and the greater its potential for exploiting its own resources. On the other hand, the consequences for other States might include restrictions on the freedom of transit, the security of sea transport and the potential of resources which are considered to be part of the common heritage. The extent of exclusive sovereignty over territorial waters determines the amount of international responsibility which a coastal State has in respect of environmental protection.

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2. The concept and extent of an area falling under national jurisdiction which is contiguous to the territorial sea is another of the main themes to be discussed at the Conference. Under the 1958 Geneva Conventions coastal States may exercise certain rights beyond the territorial sea - including fishing rights (fishing grounds), policing rights as regards customs and health regulations (contiguous zone) and, above all, the right to exploit resources on the continental shelf to a depth of 200 metres.

This diversity of specific zones could, therefore, be replaced by a new economic zone involving rights of ownership and with a far more extensive geographical and legal framework, in which each coastal State would exercise up to a limit of 200 nautical miles, perhaps even more, exclusive or preferential rights of exploitation or exploration of the seabed and superjacent waters but not the full range of rights which they enjoy within the more limited range of the territorial sea.

3. Beyond this zone decisions relating to the exploration or exploitation of the sea and seabed and also the material conditions governing the use of the results of exploration would presumably no longer be determined solely by national decisions but would be taken at international level.

The problem then arises of achieving a balance between the twin trends towards nationalization and internationalization of the seas and oceans.

II. ECONOMIC CONSIDERATIONS

1. Available resources

The land above the sea covers less than one third of the globe and its resources are limited. The land beneath the sea, however, remains practically unexploited, and recent surveys indicate that it contains vast resources of raw materials.

The decisions taken at the Conference on the Law of the Sea will determine how undersea mineral and fossil matter will be exploited in the years ahead.

(i) The coastal zone and the continental shelf, which are limited to waters not exceeding 200 metres in depth, or beyond where the technical means of exploitation are available[1], consist of loose sediments (placer deposits) and contain, in addition to sand and gravel, tin, diamonds and, above all, iron sulphur, oil and gas; in 1970 industrial exploitation of these materials realized more than $ 6 500 million, of which 6 million were accounted for by oil and gas.

The continental shelf surrounding the continents and islands is supposed to contain more than one half of total world reserves of crude oil not yet discovered.

At present, offshore exploitation provides some 18% of world crude oil production and 10% of gas production.

(ii) The seabed beyond the continental shelf is composed mainly of concretions and and precipitates containing a high content of polymetallic nodules with a basis of manganese, cobalt, copper, nickel and also phosphorites and perhaps hydrocarbons These resources have not yet been commercially exploited.

The tremendous technical progress made during the last thirty to forty years has made practical exploitation of the seabed to depths of 200-500 metres possible; current research seems to indicate that in the medium term the exploitation of energy[2] and minerals at a depth of several thousand metres will cease to be experimental and will be run on industrial and commercial lines.

(iii) The superjacent waters constitute fishing grounds whose resources depend on the ecological and biological conditions obtaining there; the fishing grounds beyond the coastal zone provide the major part of total world catches.

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[1] See also the definition of the continental shelf, Article 1 of the Geneva Convention (footnote 2, p. 16).

[2] Part of the 25 million units of account allocated in the Community's 1974 Budget to projects of Community interest involving technological developments directly linked to exploration for and storage and transport of oil and gas will be devoted to deepwater research.

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2. Exploitation

The task of the Conference in this field will be to decide upon an international definition of the limits to national jurisdiction to control production and to secure supplies, the latter being one of the factors which go to make up the economic strategy of States.

(i) Recognition of the right of ownership of coastal States over a part of the seabed well beyond the continental shelf in the strict sense of the word would guarantee those States the right to exploit all offshore discoveries of oil and gas for many years to come until drilling at depths of a few thousand metres becomes profitable.

Information currently available indicates that this would give coastal States approximately one third of world production of oil and gas in 1980 and almost 20% of proven reserves.

If such a right were recognized, the coastal States would enjoy a monopoly position in fishing.

(ii) The exploitation of polymetallic nodules discovered on the seabed beyond the continental shelf in moderately deep and deep waters may affect the future exploitation of mineral resources on land in a number of countries which earn the major part of their revenue from this activity and may upset world markets in a number of metals*.

In both cases there is the problem of the rules to be laid down in respect of exploitation and the measures to be taken to ensure that the rules are implemented.

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* Experts have calculated that in the 1980s, assuming intensive exploitation of the seabed, the production of cobalt from this source will be equal to land-based production.

III. RESUME OF ARGUMENTS

Given what has been said above the arguments may be summarized as follows:

(i) Irrespective of their level of development, it is, generally speaking, in the interests of countries without direct access to the sea or whose continental shelf is landlocked to protect as far as possible their means of access to resources of the sea. This would be possible if the zone under national jurisdiction were kept within narrow confines and if the economic zone were administered by an international authority with extensive powers directly responsible for exploiting the seabed.

(ii) Developing countries are obliged to reserve for themselves the largest possible share of marine resources if they are to promote their growth.

In Africa and Asia, with the exception of Japan and the USSR, the area of the zone over which they had rights would be trebled - passing from 2.2 million to 6.9 million square nautical miles if the limits of the zone were determined by a distance of 200 nautical miles and not by a depth of 200 metres. For South American countries the corresponding increase would be 400%, with the area in question increasing from 0.6 million to 2.8 million square nautical miles. Their combined total would be twice that of the area surrouding the North American coast and almost a third of that surrounding Europe.

The countries in Asia, Africa and South America are therefore in favour of granting exclusive rights, which are an expression of sovereignty, over a zone that may be more than 200 nautical miles across[1].

(iii) As regards developed countries, two important points must be borne in mind: the need to safeguard freedom of navigation[2], to guarantee supply routes and to intensify experimental research and deepwater drilling on the seabed within a liberal framework and also the need to ensure effective protection of the natural environment. Consequently, any extension of the territorial sea beyond twelve miles seems unacceptable to them.

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[1] Account being taken of the depth aspect referred to below.

[2] And, by extension, freedom to fly over the high seas.

As regards the contiguous zone, they consider that a middle-of-the-road solution would be in their best interests: geographically, its limits would not be dissimilar to those of the continental shelf, which vary between 50 and 200 miles.

Their interests as regards exploitation of the superjacent waters vary with biological or ecological conditions and with their degree of economic or social dependence on inshore or deep-sea fishing. A number of States in Europe and Canada consider that the recognition of fishing rights over a large area is a determining factor in their economic development, while for others it is merely a subsidiary factor either because of the relative importance of fishing to their economies or because of the structure of their distant-water fishing fleets

PART II

GUIDELINES FOR A COMMUNITY POSITION

The position to be adopted by the Community with regard to the various issues on the agenda for the Conference must be worked out on the basis of a number of essential factors and general principles.

I. Essential factors and general principles for a Community position

1. Geographical factors

(a) The territory of the Community includes approximately 20 000 kilometres of coastline (of which about 8 000 kilometres for Greenland), compared with the coastlines of other large economic units, such as the United States (20 970 km), Latin America (24 997 km), Africa (29 808 km), and Australia (27 000 km).

The Community's continental shelf (depth of 200 metres) covers over one million square kilometres.[1] The undersea relief is such that, assuming a limit of 200 nautical miles, the area at the disposal of the Member States is three times as much as would be the case if the criterion were a depth of 200 metres.[2] Overall, the area belonging to the Community is less than 10% of the world total in the two cases under consideration, taking into account the area surrounding the Member States' overseas territories.

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[1] The area of Greenland's continental shelf is not included in this figure. Both the geographical conditions and the climate are such that it is not easy to determine this figure.

[2] In the case of Iceland, this area is seven times greater on the assumption of the 200-mile limit, and in that of Norway, twelve times greater on the same assumption. Sweden, Norway and Iceland together have a total sea area 25% greater than that of the Member States on the assumption of the 200-mile limit, but less than 50% of the Member States' area on the assumption of the 200-metre isobath.

The Community, therefore, has a fundamental interest in extending the rights of its coastal Member States, subject to the adoption of international rules which would give the Community access to areas covered by these rights outside its own territory.

(b) In the territory of the Member States of the Community as varied a geographical situation is reproduced as that found throughout the world. A number of them are flanked by open sea (Atlantic), others are partly closed seas (Mediterranean, North Sea). One of them has no coastline (Luxembourg) while others have a landlocked continental shelf. A number of them have straits and archipelagos.

In such a complex situation the general interest of the Member States necessitates the adoption of a united Community position.

2. Economic factors

(a) In the absence of other economic possibilities, certain regions of coastal Member States depend entirely or principally on fishing, inshore or deepsea according to the individual case.

When determining its position for the Conference the Community must take this important economic and social factor into consideration. Recently it had the opportunity to study problems of this kind to which its attention had been drawn by the Danish Government.

(b) All the countries of the Community depend on outside sources for supplies of raw materials and energy.

The estimated oil and natural gas reserves of the Community's continental shelf will make an ever larger contribution to the Community's supplies as a whole.

However, they will not make the Community self-sufficient in the future even if the Conference does decide to extend the limits of the continental shelf.

At the Conference, therefore, the Community must advocate a law of the sea which guarantees its supplies from outside sources.

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(c) The technologies available to Community firms could be exploited for the development of the Community's raw-material and energy reserves. All the countries taking part in the Conference, moreover, have an interest in benefiting from these technologies.

As a result the Community must defend the principle of freedom of research and reasonable conditions for exploiting deep-sea resources.

3. Ecological factors

In accordance with its programme of environmental action[1] the Community must support international rules which effectively guarantee the protection of the sea against pollution. This is essential if the sea is to be put to rational use.

This protection should extend to all seas - the territorial sea, the economic zone to which it may give way, or the high seas themselves.

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[1] This programme was adopted by the Council on 19 July 1973 (R/2255/73 ENV. 91).

4. Political factors

(a) Progress in adapting the law of the sea to new factors must not be made by abandoning certain basic international principles or ignoring the historical rights of coastal countries.

This would imply that a maximum limit of twelve nautical miles for all territorial waters should be maintained. This measure seems particularly necessary if sea transport is to be guaranteed.

(b) One of the basic factors for Community action at the Conference must be consideration of the interests and concerns of the developing countries, particularly those with which it has special relations. Consequently, this constitutes an additional reason why the Community must keep an open mind as regards the creation of an exclusively economic contiguous zone, to which the developing countries in fact attach great importance.

In the same way the Community and its Member States must be prepared to put their technology and research at the disposal of the developing countries.

5. Legal factors

Working out a new law of the sea will undoubtedly have repercussions on the various Community policies: the common agricultural policy (common fisheries policy: structures and markets), social and regional policy, common commercial policy, industrial and energy policy (supply of raw materials and energy), transport policy (freedom of navigation), science policy (marine research), association with the developing countries, environment policy (protection of the marine environment).

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The need for joint action at the Conference on the Law of the Sea is a direct consequence of these legal considerations. Only action of this kind can ensure the protection of Community mechanisms and achievements under a new international law.

Moreover, the solidarity of the Community and its Member States would be the best means of achieving a balance in the event of any divergence of Member States' interests which, if defended on an individual basis, would perhaps fail to be taken into consideration.

Finally, joint action of this kird, engendered by the desire for both coherence and effectiveness, could only be advantageous in solving outstanding Community problems and, in a general way, in giving further impetus to the building of Europe.

II. The Community's position with regard to the various subjects for discussion at the Conference

In the light of the foregoing, the main subjects to be discussed at the Conference which are of special interest to the Community are as follows:

(i) the breadth of the zone contiguous to the territorial sea, and definition of the rights and obligations of coastal States;

(ii) the management of resources beyond the zone by an international authority;

(iii) protection of the marine environment.

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A. Contiguous zone - rights and responsibilities of coastal States

1. Nature and breadth of the contiguous zone

In view of the considerations outlined above, the character of the zone must remain economic.

As regards the breadth of the zone, the following should be emphasized:

(i) Except in special geographical situations, the working hypotheses of the Conference will probably be accepted by the greater part of the international community, as for example the hypothesis of 200 nautical miles. It should however be adjusted if the criterion of depth (which could be as much as 3 000 metres) is adopted. Also, adoption of the notion of zone will probably have the effect of supplanting or extending (depending on whether the criterion of distance or of depth or both are taken into consideration) the notion of the continental shelf.

(ii) Community policy towards non-member countries, and particularly the developing countries, inclines it to be favourable to the notion of the contiguous zone.

(iii) Recognition of such a zone would enable the Community:

to increase its energy and mineral potential and reduce its dependence on outside sources;

in this context, to guarantee supplies through bilateral negotiations, particularly with countries with which it has developed close economic ties. This is a more fruitful prospect, despite the inherent risks and difficulties, than that of subjecting the exploitation of the potential of the contiguous zone to control by an international body.

to contribute to the solution of the specific problems of some regions with an inadequate economic structure.

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Furthermore it falls within the framework of future Community strategy with regard to supplies[1].

For all these reasons, after having studied the advantages as well as the possible disadvantages, the Community should in certain conditions favour the notion of a zone contiguous to the territorial sea. As a working assumption this zone could extend to 200 nautical miles.

In the context of the special interests of the Community, this cannot be appreciated in the abstract but should be seen in the light of the substance of the rights that could be exercised there, of the commitments undertaken by the parties concerned and the advantages accruing to the Community in zones located beyond its own shoreline.

2. Rights and responsibilities of coastal States in the zone

This problem should be considered, on the assumption of a 200-mile limit, with regard to resources situated in two well-defined sectors of the sea:

the seabed - oil and gas and certain minerals;

superjacent waters - fishing.

Preservation of the marine environment constitutes a problem that should be dealt with as a whole, covering both these sectors simultaneously.

(a) The seabed: oil and gas and minerals

1. The sovereign rights over the continental shelf to a depth of 200 metres[2] which the Geneva Convention of 1958 accorded to coastal States are exercised in the Community by Member States. Individual exercise of these States' rights is not excluded from application of the Treaty, however, where economic activities covered by the Treaty are concerned.

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[1] Participation of European knowhow and capital in the exploration and exploitation of mineral and energy resources in non-member countries.

[2] Or beyond, where the technical means of exploitation are available. See Article 1 of the Geneva Convention of 1958 on the continental shelf: "For the purpose of these Articles, the term 'continental shelf' is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond the limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar areas adjacent to the coast of islands".

Measures taken by the Community in implementation of the Treaty therefore apply to the continental shelf, unless there is provision to the contrary[1]. So far, in the preparatory work for the Conference, the present legal status of the continental shelf has not been much questioned: but the notion of "economic zone", based on the criteria of distance and depth mentioned above, could replace or extend the notion of continental shelf.

The Treaty would then apply to this zone by the same token whereby it applies to the continental shelf.

The rights of coastal States on the seabed in the zone should be the same as those enjoyed on the continental shelf, namely exclusive.

This is of course of direct concern to the Community, but above all it is bound up with its external relations, as was mentioned above.

2. A large part of Community territory is bounded by semi-enclosed seas which could be given special status. Establishment of such a status would be of particular interest to the Community, mainly with regard to the seas whose coastal States are nearly all Member States (North Sea, Irish Sea), but also to those seas where Member States are in a minority (Mediterranean, Baltic) in view of the Community's policy in these areas (Mediterranean policy, relations with countries of the East bloc).

The dual concept of the zone of 200 nautical miles (particularly as regards external supplies) and the special status of closed and semi-enclosed seas (specially for the internal production of energy) would therefore make it possible to improve supply conditions.

3. The question arises to what extent the recognition of exclusive rights - as described above with regard to the relationships within the Community and in the context of closed or semi-enclosed seas - should be accompanied by the definition of certain rules, conventions and elements of cooperation to be agreed by the signatories. In particular, the Commission reserves the right to refer once again to the recognition of these rights in connection with the question as to whether the management by the International Authority (see no B below) of the high seas resources through a system of concessions might include a system of dues, the product of which would go to the developing countries.

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1. Commission memorandum to the Council (SEC. 70/4255 final of 18.12.70).

(b) Superjacent waters: fishing

One of the objectives of the common fisheries policy, as regards both structures and markets, is to ensure rational use of the living resources of the sea. In this field, the Community is empowered to take appropriate measures, both as regards waters under the sovereignty or jurisdiction of Member States and for those which are outside it[1].

Several elements or goals of this policy could be directly affected by the establishment of a new régime of the sea.

This would apply in particular to:

the principle of free access of fishermen of Member States of the Community to waters under the sovereignty or jurisdiction of all the Member States[2], subject to derogations to this principle in the Act of Accession[3];

to develop regions in the Community where the fishing sector is of special importance;

action taken to reorganize the fleets of Community countries, particularly with regard to their profitability and social repercussions;

maintenance of the fishing activities of Community countries beyond the present coastal zones of Member States. For this reason, in view of the effects that the decisions of the Conference might have on the organization of markets and the structural policy, it is essential to make provisions to ensure that the régime in defining fishing rights in no way impedes the exercise of these rights in the Community context or the possibility for the Community of concluding bilateral and multilateral agreements, guaranteeing necessary access of these fishermen to their traditional fishing grounds.

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[1] Article 5 of Council Regulation 2141/70 and Article 102 of the Act of Accession.

[2] Article 2 of Council Regulation 2141/70.

[3] Articles 100 to 104 of the Act of Accession.

The Community is also confronted at the Conference with the following two problems:

(i) increasing impoverishment of resources, particularly as regards supplies of protein;

(ii) the diverse activities of the Community fleet (near-, middle- and distant-water fishing);

Further, in view of the complexity and specific nature of this type of problem, it would seem desirable that the role of the regional fisheries commission should be reinforced.

All these considerations in the present context justify the adoption of a specific approach to these problems. With this in view, in connection with the coordination of a Community approach which has been sought throughout the preparatory work[1], draft common articles relating to the fishing régime has been examined by the appropriate Council bodies.

Very broadly, this draft is based on the following principles:

(i) recognition of a zone beyond the territorial sea[1] and of special rights in this zone for coastal States under certain conditions;

(ii) limitation of the authority of the said States by the grant of regulatory and supervisory powers to regional fishing bodies[2] (already existing or to be set up), and if necessary to an international body;

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[1] Following a communication from the Commission to the Council dated 1 February 1972 (SEC 1972 284 final).

[2] The geographical area within the jurisdiction of these regional fishing organizations is not limited to the "zones", but applies to the high seas, where these organizations have regulatory powers.

(iii) practical application of these principles would vary with the geographical situation and economic development of the coastal State, bearing in mind the existing and potential importance of the fishing sector to its economy.

Such an approach, with the object of trying to define a moderate position which would make it possible to safeguard, as far as possible, the interests of the Community fleet, could form a basis for constructive discussion.

It should be noted that this approach, at least with regard to the first two aspects, would also be desirable with regard to preservation of the marine environment, both for the superjacent waters and for the seabed, as will be seen from the consideration set forth under C.

B. Management of mineral resources[1] beyond the contiguous zone: status and powers of an international Authority

Beyond the contiguous zone, the seabed is particularly rich because it contains the principal mineral resources, whose importance for the Community need not be stressed, such as submarine phosphorite and above all the polymetallic nodules for which there are great hopes. These nodules contain, in addition to manganese, variable amounts of minerals such as cobalt, nickel and copper. Some of the known very rich deposits reach a level of 40 to 48% manganese; others have a high concentration of cobalt, nickel or copper.

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[1] According to the working hypotheses of the Conference, fishing resources will be excluded from the jurisdiction of the Authority, mainly on account of the existence of regional organization, the nature of fishing activities and the already serious danger of overfishing. The draft common article on fishing mentioned above is in line with this approach.

The size of these resources, intensive exploitation of which would considerably alter world market structures, obviously whets the appetite, sometimes to a disproportionate extent. For this reason, the need to rationalize and make more equitable the exploitation of these resources is fundamental, and with this in view the Conference is to establish an international régime including international machinery: an International Seabed Authority with responsibility for the management of the seabed. For the Community, in the context of a rational supply policy, the numerous and complex problems entailed by the establishment of such an Authority relate essentially to:

Scope of the Authority's powers

The Community should advocate the view, shared by almost all the industrialized countries, that the only way to organize rapid and rational exploitation of the resources in question is to adopt a system of concessions, which may be granted direct to companies or through States (or regional groups). Consequently, it includes the formula of direct exploitation by the international Authority.

The last-mentioned formula comes up against a financial constraint in the first instance. In an area calling for large financial investment, the Authority would not be able to collect and dispose of sufficient capital to operate. In the present international context, it is difficult to imagine general agreement to entrust the management of vast resources to a world body*.

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* It should be borne in mind that the slightest operation in deep waters can easily run to hundreds of millions of dollars.

Some Member States have already entered the field of submarine geological research and mining techniques (CNEXO in France and certain firms in Germany and the United Kingdom), and the current shortage of supplies should foster a reasonable policy for the exploitation of the sea in this connection.

Further, over-rigid rules and procedures for exploration and exploitation, particularly as regards the granting of concessions, are likely to discourage development efforts in this area, as would the suspension of all exploration and exploitation operations pending the definition of a legal régime.

In principle, the rules governing the award of concessions by the international Authority should be based solely on considerations relating to the conservation of the marine environment.

It is clear that existing international agreements or arrangements, applying to products should also apply to resources extracted from the seabed. In the absence of any agreement, once mining has reached a certain percentage of world production and threatens to disturb the market, the Community could express willingness to accept the introduction of economic clauses including quantitative limitations.

Operation of such a system should entail international responsibility on the part of the State of origin of the concession holder.

At present research should not be subjected to any constraints, except perhaps that of prior disclosure. The Community is open to the idea that a system should be examined that would make the results of research available to all countries, through a system of royalties whereby the developing countries would be accorded special treatment.

The Authority should be organized in such a way that the Community can protect its interests.

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C. PRESERVATION OF THE MARINE ENVIRONMENT

1. Steadily increasing exploitation of the sea raises the immediate problem of how to preserve the marine environment. This is becoming an ever more fundamental and critical problem. The Programme of Action of the European Communities on the Environment states that:

> "marine pollution affects the whole Community, both because of the essential role played by the sea in the preservation and development of species and on account of the importance of sea transport for the harmonious economic development of the Community".

It further specifies that "Community action will consist in particular in:

- the approximation of rules on the application of international conventions, as far as necessary to the proper functioning of the common market and the implementation of this Programme,
- the carrying out of projects to help combat land-based marine pollution along the coastline of the Community as provided for in Chapter 6 Section 1 B, point 3 of the Programme.

Whether dealing with schemes or positions to be adopted in the course of a project, Member States will endeavour to adopt a joint position within the international organizations and conferences concerned, without prejudice to Community projects on subjects falling within its competence or joint projects undertaken by Member States within international organizations of an economic character on matters of particular interest to the common market."

2. This action by the Community and its Member States will concern the various sources of sea pollution, namely:

(1) discharge of effluents from land

(2) sea transport and navigation

(3) deliberate dumping of waste at sea

(4) exploitation of marine and submarine resources, especially exploitation of the seabed.

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The Community as such is concerned both when it comes to defining the responsibilities attached to the pursuit of economic activities which may impair the quality of the marine environment, such as fishing, shipping, exploitation of the seabed and any inland activities which cause pollution that eventually reaches the sea (land-based pollution), and when it comes to seeking the most effective institutional frameworks for taking action, in particular when a fair compromise must be found between the political concepts upheld by those States which advocate "nationalizing" zones beyond territorial waters and the views of those which favour an international régime guaranteeing free access to such zones.

3. The first three sources of pollution are now covered by international conventions which have been or are being drawn up for application on a regional or world scale.

The conventions are:

(a) for pollution caused by sea transport and navigation, conventions drawn up under the auspices of IMCO[1]

(b) for pollution resulting from deliberate dumping of waste at sea, the Convention of Oslo (February 1972) and the Convention of London (December 1972)

(c) for land-based pollution, the Convention of Paris, which covers the North-East Atlantic.

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[1] IMCO Convention, London 1954 (amended in 1962, 1969 and 1971)
Conventions of Brussels, 1969
Convention of London, 1971
Convention of London, 1973.

Critical scrutiny of the first two categories of convention reveals that, despite their substantial merits, they still leave certain gaps (particularly on the question of surveillance procedures and penalties to be applied in cases of violation). These could be filled by the adoption of general international legal principles and rules.

For land-based pollution, the Paris Convention could be proposed as a model applicable to other regions. On this point the Programme of Action of the European Communities on the Environment provides for a number of measures to be undertaken at Community level, in particular the assessment of certain types of pollution, the defining of objectives, the study of the requisite regulation or economic measures, the setting of standards[1], etc.

4. The fourth source of pollution, namely the exploitation of marine and submarine resources, particularly the exploitation of the seabed, has not yet been tackled at international level, altough some work has been initiated with this in view (London Conference in March 1953).

5. Consequently, bearing in mind the guiding principles already defined in the Programme, the Community's contribution could be as follows:

Since three of the four types of action described above have already been dealt with by international conventions, the Community should, in accordance with the Programme, "advocate certain general rules which could be solemnly recognised by the Conference and then embodied in specific clauses of the international convertions".

The action in question is that relating to "transport and navigation" (point 7.4 of the Programme) and "deliberate dumping of waste at sea" (point 7.5).

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[1] See Programme - Doc. R/2255/73 (ENV. 91), pp. 74 and 75.

In an annex to this communication, the Commission working paper suggests ways in which the definitions, criteria and procedures could be simplified and made more forceful. Without wishing to make any formal proposals, the Commission considers that these suggestions are sufficiently precise to permit effective joint action.

Pollution resulting from the exploitation of marine and submarine resources, in particular the exploitation of the seabed (point 7.6.1 of the Programme), is not yet covered by an international convention.

The Community could propose the terms of an outline-convention, which would not rule out the conclusion of regional conventions, particularly for the North Sea. The content of this convention should be founded on the principle that the recognition of extensive rights concerning the exploitation of the seabed by coastal States must not result in increased sea pollution. In this respect it would be conceivable to designate an international Authority to supervise the application of the principles best suited to preservation of the marine environment.

6. In the scientific and technological field, certain projects concerning sea pollution are already in hand under the Multi-annual Programme of Research and Education in the European Communities, particularly in that part of the programme devoted to the environment. Thus research work is planned in support of the establishment of qualitative targets, criteria, standards and mathematical models by the Community regarding land-based pollution of the sea.

Other important projects could be launched in the fairly near future when the Community programme of action in scientific and technological policy matters, adopted by the Council on 14 January 1974[1], gets off the ground.

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[1] For instance, an Oceanology Study Group, set up the PREST and now attached to the CREST (Committe for Scientific and Technological Research), has mapped out the following provisional guidelines for R&D action:

a) projects of general interest, in order to gain a better basic understanding of marine phenomena;

b) projects concerning the oceanological aspects of pollution and ecological disequilibria;

c) technological projects in preparation for the exploitation of natural resources (living matter, chemical compounds, ores an other submarine resources, etc.);

d) R&D concerning the protection of coastal areas, and shipping;

e) scientific and technical documentation relating to oceanology (oceanological data bank).

Furthermore, the Community is preparing for COST Project 43 ("Setting up of an oceanographic/meteorological buoy network in European waters"). The objective is to establish a regional network of operational buoys to form part of the world IGOSS network (Integrated Global Ocean Station System) which is developing under the guidance of the IOC (Intergovernmental Oceanolographic Commission), within the framework of UNESCO.

The results obtained in the course of almost all these projects can probably be made freely available to the countries represented at the Conference, particularly the developing countries, provided that the other industrialized countries commit themselves likewise.

In approving the conclusions reached in this document concerning participation in the Conference on the Law of the Sea, the Council and the Member States could show their interest in the R&D projects cited above by asking for the work to be speeded up.

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The Council could decide in principle that the results obtained could be circulated, on condition that the other industrialized countries agree to reciprocate, to the countries represented at the Conference, on the understanding that a royalty system should make particular allowance for the interests of the developing countries.

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III. Procedure for giving effect to the Community position

In view of the number and importance of the subjects of a Community nature or of Community concern which will be dealt with by the Conference on the Law of the Sea, provision must be made forthwith for the procedures whereby the Community and the Member States should express their views jointly and consistently.

To this end, the Commission proposes to the Council first of all that the Community inform the UN Secretariat immediately that it wishes to be invited to the Conference as an "interested intergovernmental organization", as provided in General Assembly Resolution 3067(XXVIII) of 16 November 1973.

An invitation of this kind would enable the Community to be present, with the right to speak, at discussions in the plenary session of the Conference, its committees and subsidiary bodies.

This type of Community participation in the Conference can be considered adequate for the time being. If it emerged that the Community, at a later stage, needed more than observer status at the Conference, notably so that it could sign, within the limits of its powers, the future Convention on the Law of the Sea as a contracting party, the Commission would propose that the Council take the necessary steps.

Secondly, the Commission proposes that the Council immediately adopt all the points set out above as constituting the main directives and guidelines which will inform the common stance which the Community and the Member States will adopt at the Conference.

These directives and guidelines will naturally have to be supplemented and clarified later, where necessary, as the Conference proceeds.

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Thirdly, the Commission proposes that the Council lay down the procedure for establishing and presenting the common position of the Community and the Member States.

The scheme proposed for this purpose, a traditional one, consists in holding working sessions on the spot where representatives of the Commission and the Member States would meet periodically. The purpose of these meetings will be to ensure the maintenance of a common standpoint in keeping with the Community's aims as set out in the Council's directives and guidelines. Any important problems which arose would naturally be brought to the attention of the Permanent Representatives Committee and, if need be, of the Council.

In matters within the Community's jurisdiction, the common position would be presented by the Commission, on the understanding that Member States could also make individual contributions provided the common guidelines previously established were followed.

Finally, the Commission proposes that in view of the complexity and probable length of the Conference it should from time to time report back to the Council on the progress and orientation of the work.

At the end of the Conference, the Commission will present to the Council proposals to adjust and supplement the provisions of Community law where this is made necessary by the entry into force of the Convention, and to work out the common position to be adopted by the Community and the Member States in the various bodies which may be set up under the Convention.

The Commission also feels that it should draw the Council's attention to the fact that various subjects having a bearing on those on the agenda of the Conference on the Law of the Sea are already being examined, under special aspects, in other international conferences (for example, World Food Conference,

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UNCTAD: preparation of a Charter of the economic rights and obligations of States).

Furthermore, certain aspects of the Conference on the Law of the Sea are being discussed within the framework of political cooperation. It is particulary desirable to ensure the consistency of all this work.

ANNEX

WORKING PAPER ON

PRESERVATION OF THE MARINE ENVIRONMENT

I. Critical scrutiny of international conventions concerning efforts to combat the main sources of marine pollution reveals various shortcomings which result from:

(i) the lack of absolute consistency between conventions dealing with the same subject but applying to different areas (e.g. the Conventions of Oslo and London concerning dumping);

(ii) the actual content of these conventions, particularly on the subject of surveillance and penalties.

Furthermore, certain sources of marine pollution are either not covered by any convention (pollution resulting from exploitation of the seabed) or are covered only locally by regional conventions (as in the case of land-based pollution).

II. Out of the four main sources of marine pollution, three have already been the subject of international or regional measures:

the discharge of effluents from land

pollution resulting from shipping

the deliberate dumping of waste at sea.

(1) Sea pollution from land-based sources was the subject of a Convention drawn up in Paris in February 1974. The Convention applies to the States bordering on the North-East Atlantic.

The effectiveness of this measure risks being reduced by the fact that the neighbouring regions (especially the North-West Atlantic) have not yet taken any similar steps to combat this - the principal - source of marine pollution.

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It is therefore to be hoped that the Conference on the Law of the Sea will advocate an international pledge against this type of pollution, by defining the general objectives, the nature of the commitments to be undertaken by the contracting parties, and various procedures. Such a step, which would require the other States to undertake jointly or severally similar commitments to those of the 1974 Paris Convention, should receive the Community's support.

(2) Sea pollution resulting from transport and shipping is the subject of measures proposed by IMCO.

These are world measures; they specify the obligations which henceforth attend the use of all vessels. The application of the measures, apart from inspection and surveillance, does not require any regional structures.

However, certain articles of the Convention, or the accompanying rules, deal inadequately with:

the vessels to which the preventive regulations apply;

the procedures for checking whether the convention regulations are being applied;

the penalties to be imposed when the regulations are violated.

Opposite the existing shortcomings, which are classified by source of pollution, are given the proposed rules and principles which the Community could submit to the Conference.

SHORTCOMINGS	PROPOSALS
Vessels to which the preventive regulations apply	
The term 'vessel' varies in concept from one convention to another.	The definition of a 'vessel' should be standardized, and the various conventio aligned on this point. It should be defined as a device suitable for sea navigation and used for carrying pollutant or noxious products.

State-owned vessels used for non-commercial purposes are generally excluded.	Each convention should carry an obligation for the States to see that international standards are respected by their publicly owned vessels, particularly those carrying pollutants in conditions identical to those of private vessels.
The State of registration has no effective control over a vessel if it is not a State signatory to the conventions or if the vessel carries a flag of convenience.	The States parties to the international conventions should be obliged to take steps to ensure that these conventions are applied on their internal and territorial waters to vessels carrying the flags of States not parties to the conventions in question.

Checking the application of the regulations

There is no formal recognition that the authorities of a State have power to make a physical inspection of the vessels of non-contracting States which enter or are moored in their internal waters.	The right to inspect the vessels of non-contracting States present in inland waters or offshore terminals, including the right to complete the inspection when vessels are on their way out through territorial waters, should be solemnly proclaimed.
The preventive measures which may be taken by a State with regard to vessels from non-contracting States passing through territorial waters are inadequate.	The right of a State to check on the vessels of non-contracting States passing through its territorial waters should be recognized (inspection of ship's papers).
A coastal State must wait until a shipping accident with a pollution risk has occurred before it can exercise its right to intervene on the high seas.	Coastal States should be granted a right of surveillance and inspection in the high-seas areas adjacent to their territorial waters (inspection of ship's papers). Coastal States should be obliged to apply the regulations or recommendations of the relevant international authorities in these areas.

Penalties to be applied for violation of rules

Flag State has sole power to penalize infringements of technical preventive	Coastal States should be granted the right to apply administrative penalties to foreign vessels present in their internal waters which fail to

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regulations (ship's papers or equipment), wherever the infringement is detected.

comply with technical regulations.

Coastal States should have the right to prohibit the passage of a vessel through their territorial waters in exceptional cases.

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	Flag States must be obliged to institute criminal proceedings against vessels which fail to comply with technical regulations.
Flag States have sole power to penalize pollution offences perpetrated on high seas.	States parties to the conventions should be obliged to institute international procedures of control on high seas.
States of registration are reluctant to initiate proceedings against offending vessels denounced by foreign States.	Notices of offence should be drawn up on high seas by authorized officers and carry the same legal force as if they came from the national authorities of the State of registration of the offending vessel.
	An international file of persistent offenders should be compiled and kept by IMCO.
	Flag States should be obliged to proceed against any vessel guilty of a pollution offence on high seas.
	Jurisdiction in respect of acts of pollution on high seas should be shared: primary jurisdiction to flag State and secondary jurisdiction to coastal State.
	Coastal States should exercise their residual criminal jurisdiction over vessels which have committed a pollution offence on high seas and are present in their internal waters within a certain time of the offence.
The penalties applicable and the persons criminally liable vary from one country to another.	A single scale of penalties applicable in cases of violation of international rules should be established.
	National laws concerning liability should be harmonized.

(3) Sea pollution resulting from the deliberate dumping of waste at sea was the subject of the regional Oslo Convention (February 1972), which led to the international London Convention (December 1972).

The underlying concept of these conventions, or certain rules therein, is open to criticism.

For instance:

(i) contrary to the other conventions, the commitment requested from the other parties does not concern the preservation of the marine environment;

(ii) the lists of prohibited or controlled products are different for the same place in the two conventions;

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(iii) the procedures permit the dumping of prohibited products;

(iv) the procedures for inspection and legal action are not sufficiently precise.

SHORTCOMINGS	PROPOSALS
The States merely undertake to take steps to prevent pollution resulting from dumping.	The principle of the prohibition of sea pollution should be solemnly proclaimed. The States should be obliged to adopt rules ensuring the application of this principle. The idea that there is no right to dump as one of the freedoms of the high seas must be resolutely affirmed.
A State may issue a licence for dumping products whose disposal in the sea is as a rule absolutely prohibited, provided that the State consults the international authority and later informs it of the measures taken.	A State wishing to dump materials whose disposal in the sea is expressly banned must refrain from dumping for a certain period, and take into consideration the recommendations made by the international authority. Another State which considers that it has suffered harm as a result of such dumping operations may sue the State which authorized or effected the operation for damages.
States undertake to establish inspection procedures at a later date.	States must be obliged to submit to an international dumping inspection procedure. The procedure for pollution offences committed by vessels on the high seas should be applied to violations of the anti-dumping regulations.