COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 270 final.

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THIRD UNITED NATIONS CONFERENCE

ON THE LAW OF THE SEA

Communication from the Commission to the Council

COM(76) 270 final.

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL ON THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

The Third United Nations Conference on the Law of the Sea held its fourth session in New York from 15 March to 7 May 1976.

Definite progress was made during this session. Nevertheless, there are still considerable differences of opinion on quite a few important questions.

It is probable that the fifth session, which will be held in New York from 2 August to 17 September 1976, will determine the future of the Convention. The alternatives are clear: either the Conference must succeed during this session in drawing up an overall compromise on the most important outstanding problems, on the basis of a broad consensus or, failing this, a new session will have to be planned. In such an eventuality it is highly likely that certain countries will take unilateral measures with regard to the creation of 200 mile exclusive zones or the exploitation of the international sea-bed.

The questions under consideration at this Conference are of prime importance for the Community and its Member States. Our economic future will be particularly influenced by the rules adopted in respect of such important questions as fishing, the exploitation of the mineral and energy resources of the sea-bed and freedom of navigation. It is also a matter of preserving what the Community has already achieved and of not jeopardizing the future extension of its achievements.

Moreover, the positions adopted by the Member States at the Conference have a definite effect on their positions in the internal Community debate on the rules governing fishing in the 200 mile exclusive economic zone. and vice versa. This shows the need for the Council to keep a close watch on parallel developments in both these areas.

Although coordination of the positions of Member States (whether in regard to Community or other matters) has proved to be satisfactory on a number of subjects, its effectiveness has sometimes left a great deal to be desired, in view of the reluctance of some Member States to accept the obligations and Community procedures laid down in this respect. On other important subjects, it has sometimes not been possible to achieve joint positions or the effectiveness of coordination has suffered as a result of the fact that some Member States belong to other groups with common interests.

It is clear that it is in the Community's interest to avoid the unilateral measures mentioned above through the introduction of a Convention which the vast majority of delegations would accept, although not at any price. The Community and its Member States must adopt joint positions on the important outstanding economic questions, with a view both to fulfilling the obligations imposed on them in this respect by the Treaty and contributing to the successful outcome of the Conference. It should moreover be pointed out that the Chairman of the Conference, in his closing statement at the fourth session, proposed that henceforth negotiations should be carried out among the various groups.

It is recalled that the Community has been represented as an entity at a series of important international meetings since the Conference on the Law of the Sea began. In particular, one can cite the common actions undertaken by the Community and its member States at the 7th Special Session of the General Assembly of the United Nations, at the Conference on International Economic Cooperation and within the framework of the World Food Council. It cannot be envisaged that the European Community should slip back from these precedents in the Conference of the Law of the Sea.

Furthermore, the preservation of the present and future competence of the Community must be ensured by the inclusion of an "EEC clause" in the final provisions of the Convention, failing which neither the Community nor its Member States could become contracting parties to the future Convention. It is essential that the Council adopts the final wording of this clause before the beginning of the next session.

The Commission points out, moreover, that the Council has, at its meeting of 4 June 1974, already agreed that on matters for which the Community is competent, its position should be adopted in accordance with the usual procedure and that on matters of an economic nature or which are likely to have effect on common policies, the Member States should concert their positions in the presence of Commission representatives.

To implement this decision of principle, the Commission proposes that:

- a representative of the Community should point out at the opening of the Fifth Session of the Conference, that, taking into account the provisions of the Treaty establishing the European Economic Community, certain aspects of the Convention on the Law of the Sea are Community matters and that therefore the European Economic Community has adopted joint positions which will be presented in the course of the Conference;

- throughout the Conference, the representatives of the Member States and of the Commission shall so act as to ensure that, whatever the circumstances, a common or coordinated position can be adopted and stated in a Community manner;

- the delegations on the spot should judge whether the difficulties which are liable to arise should be notified to the Community institutions in Brussels.

The Commission requests the Council to adopt the proposals above-mentioned.

The Council will find in the Annex a description of the proceedings of the Fourth Session of the Conference and detailed guidelines put forward for the Fifth Session.

The Commission requests the Council to decide on these proposals before the end of July 1976, so that the Community and its Member States can present common or coordinated positions, as appropriate, at the Fifth Session of the Conference.

It will also find below a summary of the main decisions or guidelines submitted for its approval on each of the main questions. (The references in brackets relate to the more detailed descriptions given in the Annex.)

(i) Exclusive economic zone

- Acceptance of the principle of the creation of a 200 mile exclusive economic zone (see p. 16 and 17);

- Maintenance, at the present stage of work, of the amendments submitted with regard to the rules governing living resources within this zone (see p. 18, 19, 20 and 21);

- Acceptance of the provisions of the Revised Single Negotiating Text concerning the rights of land-locked or geographically disadvantaged countries (see p. 20 and 21);

- Examination of the advisability of maintaining the amendments put forward by the Community with regard to the provisions of the Revised Single Negotiating Text on the definition of closed and semi-closed seas (see p. 21 and 22);

- Translation of provisions relating to the exclusive economic zone in order to establish compulsory procedures for settling disputes (see p. 21).

(ii) Continental shelf

(see p. 27 and 28)

- Acceptance of the principle of the extension of the continental shelf beyond 200 miles (see p. 28);

- Adoption of a common position with regard to fixing the outer limit of the continental shelf (see p. 28);

- Adoption of a common position with regard to the introduction of a system for sharing the income accruing from the resources of the continental shelf beyond 200 miles (see p. 28);

- Adoption of a fairly open position on the possibility of allowing the International Authority to grant the developing countries exemptions from or reductions in contributions, and on the question of whether such contributions should be paid to the International Authority and/or to the development organisation recognised by the United Nations (see p. 28);

(iii) International sea-bed

(see p. 29 to 40)

- Acceptance of the principle of the creation of an Enterprise set up for operational purposes by the International Authority (see p.36);

- Restriction of the powers of the International Authority to exploration and exploitation activities (see p.35);

- Application of commercial principles to the operations of the Enterprise(see p. 36);

- Opposition to the idea that the Enterprise (or the Authority itself) should be authorised to practice discrimination in the selling price of minerals (see p.36);

- Acceptance of the principle of distribution to the benefit of the developing countries of the major part of the profits made by the Enterprise (see p. 36);

- Examination of other possibilities of taking into account special needs of the developing countries;

- Opposition to any exemption of the Authority and the Enterprise from taxation and customs duties exceeding that normally granted to international organisations (see p. 36 and 37);

- Granting to the Community a seat on the Council of the International Authority and of the Enterprise (see p. 37);

- Adoption of a common position with regard to the provisions concerning the financial arrangements of the International Authority and of the Enterprise (see p. 38);

- Search for a solution to prevent the creation of monopoly or dominant positions (see p. 39);

- Acceptance of the principle of the provisional application of the provisions of the future Convention concerning the sea-bed, provided that within two years of the date on which the Convention is opened for signature by the contracting parties, at least one-third of the potential signatories have notified their acceptance of this provisional application or provided that, irrespective of any time limit, such notification has been given by at least half the potential signatories (see p. 39 and 40);

- Accecptance of the general approach of the Revised Single Negotiating Text with regard to the arrangements for settling disputes connected with the sea-bed (see p. 40).

(iv) Protection of the marine environment (see pp. 41 to 49)

- Adoption of a common position with regard to the provisions on pollution from vessels on the basis of a system which would give priority to the exercise of the flag State's rights while granting to the coastal State the control of a specific 50 mile-wide zone where it would exercise precise and limited rights;

- Adoption of common positions in order to ensure the coherent implementation of commitments to be entered into in the future Convention and of those undertaken by the member Statesin the framework of the execution of the Community's environment programme.

(v) Scientific research (see pp. 50 to 52)

- Opposition to a generalized system whereby the consent of the coastal State has to be obtained for all scientific research in the economic zone, unless:

  (a) The conditions under which the coastal State can withhold its consent are more limited;

  (b) A disputes conciliation procedure is adopted;

  (c) The general system for settling disputes applies to scientific research.

(vi) Transfer of marine technology (see pp. 53 and 54)

Acceptance of the principle of the Revised Single Negotiating Text. (see p. 54)

(vii) **Settlement of disputes** (see pp. 55 to 59)

- Maintenance of a common position in favour of a compulsory system for **settling disputes, considered as an essential element of the future Convention;**

- **Application of the arbitration procedure, where one of the parties to the dispute has chosen this method of settlement;**

- **Restriction of the number of exceptions which may be invoked by the** coastal State in order to permit third States the better to defend their rights.

(viii) **Rules governing overseas countries and territories** (see pp. 59 to 61)

- **Opposition to the "transitional provision" of the Revised Single Negotiating Text (second part);** common position in favour of the **amendments to the original Article 136 put forward by France and the Netherlands.**

(ix) **EEC clause** (see pp. 10 to 15)

The Commission recommends that the Council adopt the decision the text of which is given below.

The Commission considers that if an EEC clause were not included in the future Convention, the Member States could neither approve nor sign this Convention insofar as it contained provisions relating to matters in respect of which the Community has competence.

Recommendation for a Council Decision

authorizing the Commission to enter into negotiations at the Third United Nations Conference on the Law of the Sea to enable the European Economic Community to become a contracting party to the International Convention on the Law of the Sea currently being drawn up by that Conference

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Recommendation of the Commission,

Whereas the International Convention on the Law of the Sea currently being drawn up by the Third United Nations Conference on the Law of the Sea will contain certain provisions which relate to matters in respect of which the Community is competent;

Whereas the commitments relating to these matters can be entered into only by the Community; whereas, therefore, it is necessary that the Community be able to become a contracting party to the said Convention and that the latter contain a clause making this possible,

HAS ADOPTED THIS DECISION:

Sole Article

The Commission is hereby authorized to enter into negotiations at the Third United Nations Conference on the Law of the Sea with a view to having inserted in the International Convention of the Law of the Sea currently being drawn up by that Conference a clause enabling the European Economic Community to become a contracting party to the said Convention.

The Commission shall conduct these negotiations in consultation with the representatives of the Member States.

List of main abbreviations used in the text

SNT - Single Negotiating Text

RSNT - Revised Single Negotiating Text

LL - Land-locked countries

GDS - Geographically Disadvantaged States

ISBA - International Sea-bed Authority

MSR - Marine Scientific Research

CONTENTS

A N N E X

REPORT OF THE COMMISSION TO THE COUNCIL ON THE FOURTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA AND PROPOSED GUIDELINES FOR THE FIFTH SESSION OF THE CONFERENCE

I. OVERALL SURVEY OF THE FOURTH SESSION

General proceedings

The Third United Nations Conference on the Law of the Sea held a new session in New York from 15 March to 7 May 1976.

The Community was represented at the Conference as an observer.

The previous session of the Conference, held in Geneva from 17 March to 9 May 1975, had led to the establishment, under the responsibility of the Chairman of the Conference and the Chairmen of the three main Committees, of a "single negotiating text" covering all the subjects on the Conference agenda.

This is an unofficial text which takes account of all the discussions which took place up to the end of the Geneva session. It is not an agreed compromise but purely and simply a working document intended to help future negotiations and to which the delegations are completely free to make any amendments.

The single negotiating text comprises four sections:

- the first section, prepared by the Chairman of the First Committee, deals with a regime for the sea-bed beyond the limits of national jurisdiction;

- the second section, presented by the Chairman of the Second Committee, deals with territorial seas, straits used for international navigation, the economic zone, the continental shelf, the high seas, land-locked countries, archipelagoes and the regime for islands and enclosed and semi-enclosed seas;

- the third section, presented by the Chairman of the Third Committee, deals with the protection and preservation of the marine environment, marine scientific research and the development and transfer of technology;

- the fourth part, presented by the Conference Chairman, deals with the settlement of disputes[1].

Most of the work at the New York session of the Conference was devoted to an article-by-article discussion of sections I, II and III of the Single Text and the presentation of delegations' amendments to that text.

Many unofficial meetings took place alongside the meetings of the full assembly and of the Conference committees, both as part of informal negotiating and consultation working groups set up on the initiative of the committee chairmen in order to bring the various viewpoints closer together and within the traditional regional political groupings and groups representing states with similar interests (e.g., a group of land-locked and geographically disadvantaged countries). The object of these group meetings was to establish a common position among their members vis-à-vis the single text.

[1]The first three sections of the single negotiating text were prepared on the basis of the results of the discussions held at the Conference itself. However, the fourth section (dealing with the settlement of disputes) was prepared before this subject had been discussed at the Conference.

The upshot of these discussions (both formal and informal) was the formulation, at the end of the session, of a revised version of the single text, responsibility for which would be borne by the Chairmen of the three committees[1]. This version, like the original version, reflects the views expressed by the delegations during the New York session and is of equal status. The articles of the single text which have been changed in the revised version are those for which amendments commanding a large measure of support within the Conference had been tabled. The unchanged articles are those in respect of which no amendments were proposed or where such amendments failed to attract sufficient support during the session, or again which dealt with subjects on which the antagonism of the positions expressed did not allow negotiations to be pursued.

The new single text will serve as a basis for the discussions due to take place at the next session of the Conference. This will be held once more in New York from 2 August to 17 September 1976. It will no doubt be followed by an additional session which, depending on whether or not the 1976 summer session produces general agreement, should either finalize the terms of this agreement or try to advance negotiations towards a conclusion. Should final agreement be possible on the establishment of an International Convention on the Law of the Sea, this will be signed at Caracas during a final session.

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[1] And also the Chairman of the Conference as far as the settlement of disputes was concerned.

II. PROSPECTS AND AIMS FOR THE NEXT SESSION

In spite of the apprehensions of a technical and political nature of the Group of 77, it was decided to call a new session very close to the end of the previous session. This was partly at the insistence of the United States Delegation which was anxious for the Conference to arrive at a general agreement before the entry into force (1 March 1977) of the legislation voted by Congress and approved by the President on fishing within the 200-mile economic zone and at a sufficiently early date in order to prevent Congress from also adopting national measures on the exploitation of the sea-bed. These internal pressures and threats of unilateral action were suggested in very strong terms by Dr Kissinger during his speech on the Law of the Sea in New York, outside the Conference, on 8th April 1976.

Other countries have already established exclusive fishing areas (e.g., Iceland) or are on the point of doing so very shortly (e.g., Norway and Canada).

If forthcoming sessions of the Conference do not achieve its designated aims, by establishing a general consensus on all main unresolved problems, it is likely that any attempt to establish a worldwide system will fail for a time and that there will be a multicplicity of unilateral measures of the type described above.

Such a situation would not be in the interests of the Community and its Member States. Even if the Community were unilaterally to establish a 200-mile economic zone, it would suffer serious negative consequences, particularly as regards freedom of navigation and exploitation of the international sea-bed. These negative effects would probably outweigh any advantages gained by the creation of such a zone (which, however, will become imperative.)

The Community therefore has an interest in supporting all efforts to ensure the speedy conclusion of the Conference, provided basic Community interests are satisfactorily upheld in the final text of the Convention.

Consequently, the Commission is convinced that it is essential for the Community institutions to reach agreement in the main areas where differences of opinion still exist between the Member States, before the beginning of the fifth session of the Conference on 2 August 1976.

Unless such a general consensus is reached, the Member States are likely to erode their own negotiating position by uncoordinated, and even contradictory, action. Moreover, the absence of any solution to some of the differences of opinion among the Nine will not improve the chances of the Conference achieving positive results.

General agreement on a number of major subjects would already seem to have been achieved, e.g., on the extent of territorial waters and the regime governing the latter and on freedom of navigation in straits (except for the divergent positions of some Member States regarding the demarcation of territorial waters)[1].

On other important subjects, the outline and even the details of a general consensus are beginning to emerge, in particular on the principle of the exclusive economic zone and on the creation of an International Sea-bed Authority.

As regards the exclusive economic zone (excluding questions concerned with pollution and navigation referred to above), the major remaining disagreements are concerned with the extent and exclusivity of the rights of coastal states which are contested by the land-locked and geographically-disadvantaged States.

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[1] Cf. Article 14 of the Second Part of the Revised Single Negotiating Text.

As regards the International Sea-bed Authority and the Enterprise, it is necessary to determine the conditions for the exploitation of deep-sea mineral resources beyond the exclusive economic zone or the continental shelf. Generally speaking, the conflict on this subject is between developed and developing countries.

The new text is some improvement on the old as far as the developed countries are concerned and, on this basis, it seems possible that common positions on the basic questions will be achieved.

However, serious differences of opinion exist on other major topics.

Some ambiguities still remain in the Single Negotiating Text with regard to freedom of navigation in the exclusive economic zone and this accounts for the desire of the maritime nations (including most of the Community's Member States) to do their utmost to preserve this freedom and for the very tough negotiating position of the developing countries which, while not necessarily attaching much importance to preventing pollution from shipping, insist on extensive rights for coastal states as regards navigation control. This standpoint has probably been adopted in order to obtain concessions as regards other parts of the Convention (with special reference to the International Authority and the Enterprise).

As far as the continental shelf is concerned, the question is whether or not the exclusive rights of coastal states should extend beyond the 200 mile limit (or beyond a certain depth, e.g., 500 metres) and whether the profits from exploitation of that part of the shelf should be shared between the coastal state and other countries. The land-locked or geographically disadvantaged countries have in general

been against such an extension. The coastal countries with a wide continental shelf have taken the opposite view.

As regards rights over resources in overseas countries and territories, the provisions to be applied in such cases revealed a clash of opinion between, on the one hand, many of the developing countries and socialist countries and, on the other, the developed countries concerned.

In the opinion of the Commission, this brief and necessarily simplified description of the current position on key questions highlights the general need for the Community and the Member States to decide together on clearly defined common positions.

III. GENERAL ASPECTS OF COMMUNITY COORDINATION AND THE ""EEC CLAUSE"

(a) General aspects

There was closer coordination among the positions of the Member States in New York than at previous sessions of the Conference, both as regards the range of subjects covered and the results achieved. Nevertheless, the common action of the Member States still had its negative sides.

On the positive aspects of Community coordination, it should be strongly emphasized that some important matters of Community interest, on which it had hitherto been impossible to achieve any real exchange of views between the delegations because of the attitude of some Member States, were discussed at coordination meetings in New York. This was the case, for example, with regard to problems connected with the continental shelf.

Secondly, the Community coordination work carried out both in Brussels prior to the New York session and during the session itself, enabled the Community or the Member States to adopt, according to the circumstances, common positions at the Conference on many points. These included the regime for fishing in the economic zone, the sea-bed regime, scientific research and transfer of technology. These common positions were expressed, either in the form of Commission declarations or as amendments to the Single Negotiating Text, as the situation required. In several cases, the written text of these declarations or common amendments was distributed to all delegations at the Conference, accompanied usually by a covering note clearly stating their origin.

These Community attitudes were perceived as such by the Conference and will, no doubt, facilitate the ultimate adoption of an "EEC clause" which shall be examined later in this document.

However, these positive aspects of Community coordination should not be allowed to mask the negative aspects.

First of all, some of the amendments were presented jointly at the Conference only at the cost of disguising certain differences of opinion as regards the basis and/or extent of the Community's competence. (We shall be returning to these problems in Part IV of this report.)

Secondly, as at previous sessions of the Conference, some Member States continued, albeit to a less disturbing degree, to participate individually in the work of some extra-Community pressure groups, without having ensured adequate coordination with delegations from other Member States. Thus certain delegations continued to participate actively in the work of the group of land-locked and geographically disadvantaged countries and underwrote some of the initiatives and texts put forward by the group. However, some of these texts covered subjects dealt with by other texts presented by the Nine.

Lastly, on several important topics (continental shelf, demarcation of the economic zone between adjacent states or states facing one another, marine pollution from navigation, cooperation between coastal states bordering on closed or semi-closed seas) the coordination meetings failed to produce common viewpoints and divergent opinions were expressed by the Member States at the Conference which basically reflected a split as between coastal States and geographically disadvantaged States.

The foregoing survey reveals that the main aim of the coordination work to be carried out prior to the next session or sessions of the Conference must be to reduce these differences by preparing common positions which will serve to assert the primacy of the links which unite the Member States within the Community as compared with those which tie them to outside interests.

(b) The EEC clause

With regard to this question, the importance of which was stressed in the communication from the Commission to the Council of 18 February 1976 (Doc. COM(76)59 final) on problems which the introduction of economic zones of 200 miles poses for the Community, and which has since been discussed on several occasions by the Permanent Representatives Committee and by the Council itself, the Commission would first of all briefly recall that when an international agreement deals in whole or in part with matters for which the Community has competence, the Community alone is competent by virtue of these matters to enter into commitments relating to the third States concerned.

This non-negotiable requirement of the Community itself signing an agreement in respect of certain matters is not only a reflection of the internal system of allocating competences between the Member States of the Community, but also meets the necessity that third States which are signatories to an international agreement should receive a legal guarantee that they have contracted with parties capable of honouring all the obligations laid down in the agreement.

In order that the Community may be able to sign an agreement dealing with matters for which it has competence, the agreement must include a clause entitling the Community to sign. In the absence of such a clause, the Member States are not entitled to sign the agreement in the Community's stead.

These principles and their consequences show why an EEC clause needs to be inserted in the future Convention on the Law of the Sea.

The Revised Single Negotiating Text, which is regarded at this stage as the blueprint of that Convention, contains a number of provisions relating to matters in which the Community is at present vested with its own exclusive powers.

These powers relate to the following matters[1]:

- Provisions governing the living resources of the economic zone.

  The Single Negotiating Text (Articles 50, 51, 59 and 60 of Part II) empowers coastal states to:

  - determine the permissible catches of living resources in their economic zone, taking account of conservation needs;

  - determine their capacity to harvest these resources;

  - grant to third States, on the basis of agreements, whether involving third States in general, or land-locked or geographically disadvantaged States, a right of access to, or a share in, the exploitation of a proportion of these resources.

The effect of the establishment of the common organization of the market in fishery products (see Regulation (EEC) No 100/76 of 19 January 1976, OJ No L 20 of 28 January 1976, p. 1) and of the common structural policy for the fishing industry (Regulation (EEC) No 101/76 of 19 January 1976, OJ No L 20 of 28 January, p. 19), has been to transfer to the Community the right to exercise the above-mentioned powers.

On the one hand, the Community is vested with its own exclusive powers on the basis of Article 43 of the EEC Treaty, Article 102 of the Act of Accession and Article 4 of Regulation (EEC) No 101/76 to take and enforce against third States conservation and management measures of the same nature as those laid down in Articles 50 and 51 of the Revised Single Negotiating Text.

On the other hand, the second subparagraph of Article 2(1) of Regulation (EEC) No 101/76 lays down that Member States shall ensure equal conditions of access to and use of the fishing grounds situated in the waters subject to their sovereignty or jurisdiction for all fishing vessels flying the flag of a Member State and registered in Community territory. This principle of equality of access, which also applies in all zones placed under the jurisdiction of a Member State, will consequently apply to their future economic zones. The result is that none of the Member States will be able to grant fishing rights in these zones to third States, since these rights are not vested in them but are indivisible between

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[1] A more detailed analysis of these conditions is contained in a Commission working paper of 20 May 1976 (Doc. COM(76) ...).

all the Member States. Any negotiations undertaken under Articles 51, 59 and 60 of the Revised Single Negotiating Text will thus be based on the powers of the Community itself, as embodied in the Directives to be adopted by the Council on a proposal from the Commission.

- Sea-bed

The powers of the Community in the field of commercial policy (Article 113 of the EEC Treaty) are partially affected by the provisions of the Revised Single Negotiating Text relating to the international sea-bed (Articles 9 and 60), which lay down that:

* activities carried out in the international sea-bed area should "foster the healthy development of the world economy and a balanced growth in international trade", an objective which accords very closely with the objectives of the common commercial policy set out in Article 110 of the EEC Treaty;

* the interests of developing countries which are producers of minerals or raw materials which will also be exploited in the international area should be protected by the conclusion of worldwide agreements designed to promote the efficiency and stability of markets for the categories of products originating in the area. It will be recalled in this connection that by virtue of its powers in the field of commercial policy the Community is, at this stage, a contracting party to a number of international commodity agreements (wheat, cocoa, coffee and tin).

* During a transitional period, a limit should be set on total production from the area "so as not to exceed the projected cumulative growth segment of the nickel market during that period". To the extent that it will affect the volume of international trade in the products in question, the Community's commercial policy may be implicated as a result of this limitation on production.

* The assets, property, operation and transactions of the International Sea-bed Authority and the Enterprise should be exempt from all customs duties. This exemption may not be granted in the Community except by the Community by virtue of its powers in the field of commercial policy. The Community will also have sole authority, by virtue of the same

powers, to lay down the customs treatment, including rules of origin, applicable to the products originating in the international area and imported into the Community. (See Appendix I).

- Preservation of the marine environment

The Single Negotiating Text (Part III) provides that the states shall lay down national laws and regulations to prevent, reduce and control pollution of the marine environment and urges them to lay down global and regional rules, standards and practices in this field.

The Community as such is already a contracting party to an international convention containing provisions similar to these in the Single Negotiating Text. This is the Convention on the Prevention of Marine Pollution from Land-based Sources, signed in Paris on 21 February 1974[1].

By concluding this Convention on its own behalf, the Community became vested with the necessary powers to take and apply in the Community appropriate measures to combat pollution, as provided for in that Convention. The measures to be taken by the Community correspond precisely to those laid down in Article 17 of the Single Negotiating Text (Part III).

Furthermore, the Council has recently adopted, in the form of a Directive, common rules relating to pollution caused by certain dangerous substances released into the marine environment of the Community[2]. This Directive applies in particular to the territorial waters of the Member States. It empowers the Council to adopt, on a proposal from the Commission and in respect of the various dangerous substances which it lists, limited amounts which may not be exceeded by the rules relating to emission. The Directive thus provides the Community with powers the nature and purpose of which are the same as those vested in states by the Revised Single Negotiating Text.

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[1] The Decision of 3 March 1975 whereby the Council concluded this Convention on behalf of the Community is published in OJ No L 194 of 25 July 1975, p. 5 et seq.

[2] This Directive, which has not yet been published, was adopted by the Council on 3 and 4 May 1976. The text of the Directive is contained in Document R/815/76 (ENV 33) of 9 April 1976 and Corr. 3 (F, N) of 3 May 1976.

Finally, it should be noted that the Convention on the Protection of the Mediterranean Sea against Pollution, signed in Barcelona on 16 February 1976, under the auspices of the United Nations, is open to signature or accession by the Community (Articles 24 and 26). This Convention, which deals in principle with all sources of pollution, is currently accompanied by two Protocols, one of which relates to pollution by dumping operations by vessels and aircraft.

On 6 May 1976, the Commission proposed to the Council that the Community sign the Barcelona Convention and the Protocol on pollution by dumping[1]. When the Community has become a contracting party to the Barcelona Convention and its Protocol, it will exercise in the maritime zone in question powers which are the same as those vested in the States by Article 20 of the Single Negotiating Text (Part III), relating to pollution caused by the dumping of waste and other substances.

Legal experts from the Member States and the Commission have prepared a draft of a Community participation clause for inclusion in the future Law of the Sea Convention which has up to now received the approval of eight delegations. The clause is worded as follows:

> "Customs unions, communities and other regional economic groupings exercising powers in the areas covered by this Convention may be parties to this Convention"[2].

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[1] See Doc. R/1146/76 (ENV 49) of 10 May 1976.

[2] In addition to this Community participation clause, the text drawn up by the legal experts from the Member States and the Commission contains a "safeguard" clause authorizing the Member States to retain or institute amongst themselves special rules derogating if necessary from that Convention. This safeguard clause is worded as follows: "Nothing in the present Convention shall prevent the Member States of such customs unions, communities or other regional economic groupings from implementing provisions relating, in accordance with the rules governing such customs unions, communities or other regional economic groupings, to the mutual granting to nationals of such states of national treatment or any other special treatment".

The Commission considers that such a clause would be useful, but that it could not be a substitute for the Community participation clause which is the only valid way of covering those areas for which the Community, as distinct from the Member States, is competent.

This wording, which refers only indirectly to the Community, has been designed in such a way as to seek to gain at the Conference the support, not only of the nine Member States, but of states engaged in a process of regional integration more or less comparable with that of the Community and, in consequence, to enlist "allies" for the Community cause.

For the moment, only informal approaches have been made to non-member countries on the subject of the EEC clause.

The Commission departments consider that such approaches must be followed up through the appropriate channels.

This period of unofficial approaches must, however, be terminated quickly since the next session of the Conference is to examine the draft final clauses which the Chairman of the Conference Drafting Committee has been instructed to draw up and it is among these final clauses that the EEC clause is to be placed. The Community ought therefore to be in a position to submit a formal proposal for the EEC clause at the summer 1976 session of the Conference. Accordingly, the Commission proposes that the Council reach a swift decision on this question. When the Council has taken its decision, the final text of the approved clause can be distributed (accompanied by suitable commentary) to all the delegations at the Conference.

IV. MAIN QUESTIONS DISCUSSED

The main questions under discussion at the Conference are the following:

1. the exclusive economic zone;
2. the continental shelf;
3. the international sea-bed;
4. protection of the marine environment;
5. marine scientific research;
6. the transfer of technology;
7. the settlement of disputes;
8. provisions relating to the overseas countries and territories.

The following comments relate to these various questions. Generally speaking, they contain a progress report on Community coordination, an analysis of the discussions at the Conference and of the Revised Single Negotiating Text and indicate what action the Community might take at forthcoming sessions of the Conference.

1. The exclusive economic zone

(a) Principle of the establishment of the economic zone and its general characteristics

The Single Negotiating Text establishes the principle of the introduction of economic zones of 200 miles measured from the base lines used to determine the width of territorial waters[1].

It lays down (Article 44) that in this zone the coastal states shall have "sovereign rights" in respect of exploration and exploitation of natural resources, "exclusive jurisdiction" as regards scientific research and "jurisdiction" as regards the preservation of the marine environment. Furthermore, all states, whether coastal states or not, shall have freedom of navigation and overflight and the freedom to lay underwater cables and pipelines in the economic zone and to use the sea for other internationally lawful purposes relating to navigation and communications (Article 46).

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[1] Thus, on the basis of territorial waters extending twelve miles, the economic zone would cover 188 miles. However, the economic zone is designated a 200 mile zone.

During the Conference debates which they prompted, these provisions have on the whole received the support of the coastal states. There are, however, reservations on the part of the land-locked and geographically disadvantaged states which, whilst not opposing the actual principle of the establishment of the zone, would like to reduce its extent and the exclusivity of the rights which the coastal states would exercise over it.

Community efforts to adopt a coordinated position vis-à-vis these provisions have been made difficult by the attitude of Belgium which has general reservations on the basic concept of an economic zone. The other Member States, acting in coordination, have therefore tabled amendments to the Single Negotiating Text with the aim of improving the cohesion between the general definition of the rights and obligations of the coastal state and the definition contained elsewhere in the Single Negotiating Text as regards the extent of rights and obligations in specific areas and of making it clearer that, insofar as the economic zone is not covered by special rules, it will remain an integral part of the high seas and will thus be subject to the corresponding provisions.

Although they were supported by other maritime powers (United States, Japan, USSR) anxious to safeguard the freedom of navigation in the economic zone, these amendments proposed by the Member States were not included in the Revised Single Negotiating Text which reproduces the original Single Text virtually unchanged and with the same ambiguities.

The Community should not relax its efforts to secure the acceptance of these amendments at the next session of the Conference, all the more so as it has the backing of other influential countries (in particular the United States and the USSR).

It goes without saying that this will only be possible if Belgium, which up to now has had general reservations on the economic zone question, accepts the principle of such a zone, thus enabling the Community to submit, on its own behalf, proposals on matters relating thereto.

(b) Rules concerning living resources in the economic zone

(i) Analysis of the Single Negotiating Text

The main provisions of the Single Negotiating Text discussed in New York (Articles 50, 51, 58 and 59) are as follows:

- the coastal state shall determine the authorized catch of living resources in its economic zone while ensuring that these resources are not jeopardized by over-fishing;

- the coastal state shall determine its capacity to harvest the living resources in its economic zone. If it does not possess the capacity to take the whole authorized catch, it shall reach agreement with other States granting them access to the surplus;

- when allocating this surplus, the coastal state shall take special account of the significance of the zone's renewable resources for its own economy and its other national interests, the provisions laid down on behalf of land-locked or geographically disadvantaged countries (see below), the needs of developing countries in the same region or subregion and the "need to reduce economic fluctuations in those States whose nationals have been regularly engaged in fishing in the zone or who have done a substantial amount of work in the field of research or the location of stocks";

- the State receiving part of a coastal state's surplus living resources shall comply with the regulations issued by that state;

- without interfering with the right of the coastal state to determine the volume of the authorized catch in its zone and the extent of its capacity to take this catch, land-locked states shall have the right to participate on an equal footing in exploiting the living resources of the economic zones of adjacent coastal states on the basis of bilateral subregional or regional agreements. However, developed land-locked states shall be allowed to exercise their rights only within the economic zones of neighbouring developed coastal states (Article 58 of the Single Negotiating Text). Similarly, the developing coastal states situated in a region or subregion

where geographical features make these states particularly dependent on fishing the living resources of the economic zones of adjacent States in order to satisfy the food requirements of the population, and the developing coastal states which cannot claim their own economic zone, shall have the right to participate on an equitable basis in exploiting the living resources in the economic zones of other states in the same region or subregion. (See Article 59)

(ii) Community coordination

The Member States have agreed on a series of amendments to the provisions of the Single Negotiating Text analysed above, with the aim of:

- eliminating as far as possible any arbitrariness in the decisions to be taken by the coastal states when determining the volume of the authorized catch and their harvesting capacity in the zone, so as to conserve living resources and safeguard third countries' fishing rights;

- obliging the coastal state allocating the surplus of the authorized catch which it is unable to harvest itself to consider the interests of the states which traditionally fish in its zone, to consult these states when wishing to extend its harvesting capacity substantially and, in such an eventuality, to lay down a reasonable period of adaptation;

- deleting from Article 51 of the Single Negotiating Text the indicative list of questions that may be governed by coastal states' regulations which third countries will have to respect when exercising fishing rights in these countries' zones. The wording of some of these questions suggests that the coastal state could restrict the scope of these rights in a more or less arbitrary fashion.

The Chair has tabled these various amendments at the Conference. Because of Belgium's opposition to the very concept of the economic zone and because of the United Kingdom's refusal to accept that the subjects covered by these amendments are at present subject to

Community jurisdiction at the current stage of the Council's discussions on the content of the common fisheries policy within the framework of the Community's future economic zone, it has not been possible to table these amendments specifically on behalf of the Community. These difficulties have had to be concealed by means of circumlocutions. However, the majority of delegations from non-member countries do not seem to doubt that the amendments forwarded are a fair reflection of the Community position.

The Community has tabled no amendments on the fishing rights of land-locked and geographically disadvantaged countries as they do not appear to pose any problems for the Community.

(iii) Conference deliberations and the Revised Single Negotiating Text

Several delegations (United States, Japan, USSR and other East European countries and Greece) supported the Community's amendments or put forward amendments along the same lines.

The most intransigent coastal states expressed views opposed to those of the Community and tabled amendments aimed at reducing still further third countries' fishing rights in the waters of coastal states.

Within both the official framework of the Conference and the informal discussion groups[1] the group of land-locked and geographically disadvantaged countries tabled amendments to the Single Negotiating Text aimed, on the one hand, at gaining recognition of their right to share in the decisions to be taken by neighbouring coastal states on determining the volume of the authorized catch and these states' harvesting capacity and, on the other hand, at obtaining their own fishing rights in the zones of these same states over and above the surplus reserved for third countries in general. Despite certain attempts at compromise, these demands by land-locked and geographically disadvantaged countries failed to secure the approval of the coastal states.

[1] In particular the Evensen group, named after its chairman, the Norwegian Minister.

The Revised Single Negotiating Text (Article 50 et seq.) and the original Single Negotiating Text are virtually identical. The Revised SNT has taken into consideration only a few minor points contained in the Community amendments and, in the absence of even a modicum of agreement on the rights of the land-locked and geographically disadvantaged countries, contains no new provisions on this point which is still negotiable.

(iv) Conclusions and proposed guidelines for the next session of the Conference

At the present stage and taking into account the considerable support for the solutions it put forward, the Community will continue its efforts to get these accepted. It also ought to continue to give its approval to the provisions of the Single Negotiating Text as it stands vis-à-vis the rights of land-locked or geographically disadvantaged countries. Furthermore, it should seek to obtain provisions resulting in obligatory dispute settlement procedures.

(c) The question of closed or semi-closed seas

Articles 133-135 of the Single Negotiating Text discussed at New York contain special provisions on those closed or semi-closed seas consisting largely of the territorial waters or economic zones of two or more coastal states. They lay down in particular that those states with a shoreline on these seas shall coordinate the management, conservation, exploration and exploitation of the marine living resources either directly or through an appropriate regional organization.

The Community coordination meetings held at Brussels and then at New York revealed that the Community would benefit from a strengthening of these provisions in order to prompt certain non-member Baltic and Mediterranean countries to negotiate agreements with the Community to solve the problems arising from the establishment of economic zones affecting traditional fishing areas. It appeared that the negotiation of agreements of this kind could bring certain advantages to the Community, as some of its Member States have traditionally fished in these seas. This consideration has led the Member

States to agree on the presentation of a text which, on the one hand, proposed a definition of closed or semi-closed seas covering the case of the Baltic or the Mediterranean though not of the North Sea (where the Community's interests are different) and, on the other hand, changed the obligation to cooperate laid down in the Single Negotiating Text into an obligation to negotiate agreements on traditional fishing rights.

However, in view of the scant support given to the Community amendment on the definition of closed and semi-closed seas, it appears that it would be better to abandon any desire to change the cooperation commitment in the Single Negotiating Text into a negotiation commitment.

The Revised Single Negotiating Text has not taken into account the Community amendment on the definition of closed and semi-closed seas and has adopted an amendment supported by the United Kingdom on cooperation between riparian states. It appears that the Community has relatively little chance of having its views on a restrictive definition of closed or semi-closed seas adopted at the next session. In these circumstances, it should examine the advisability of maintaining its amendments to the Single Negotiating Text.

2. The continental shelf

(i) Analysis of the Single Negotiating Text

The rights of states on the continental shelf adjacent to their coasts were laid down in the 1958 Geneva Convention. This stipulates that coastal states shall exercise "sovereign rights" on the continental shelf for the purpose of exploration and of exploiting their natural resources, i.e., mainly oil and gas deposits. However, the 1958 Convention did not define the outer limit of the continental shelf; it lays down that the rights of the coastal state shall extend to a depth of 200 isobathic metres or, beyond this limit, to the point permitted by technological development. This "open" definition and the exclusive nature of the guaranteed rights means that the only question really open to discussion relates to the establishment of an outer limit for the continental shelf. Those states possessing an extensive continental shelf, basing their claim

on a decision taken by the International Court of Justice in 1969[1], state that their rights should extend to the outermost edge of the continental shelf in accordance with the doctrine of vested rights. | In the case of the less well situated countries the continental shelf should on no account extend beyond the economic zone[2]. In a nutshell, therefore, the problem is to decide what system should be applied when the continental shelf extends beyond 200 miles.

The solution proposed in Articles 62 and 69 of the Single Negotiating Text consists in granting coastal states "sovereign rights" on the continental shelf up to a distance of 200 nautical miles[3] or, when the natural extension exceeds this limit, to the outer edge of the continental shelf. However, the coastal state would be obliged to make a payment or make contributions in kind in order to operate beyond 200 miles; the rate of payments or contributions would correspond to a percentage of the value or volume of production resulting from this exploitation. The International Authority (probably the same organization that will be responsible for the international sea-bed) would be responsible for collecting payments or contributions. It would be empowered to waive contributions from developing countries. It would allocate the sums received on the basis of impartial criteria bearing in mind the interests and needs of these countries.

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[1] Between the Federal Republic of Germany and, respectively, Denmark and the Netherlands.

[2] It should be pointed out that according to the doctrine of the economic zone the rights of the coastal state apply to the zone's underground resources as well as its water-column resources.

[3] Approximately 44 countries have a continental shelf extending beyond the limit of 200 nautical miles; only 16 of these countries derive any real profit from operations beyond this limit. The countries involved are relatively important (Canada, Australia, Madagascar, United Kingdom, Brazil, New Zealand, South Africa, Namibia, USSR, United States, France, Ghana, India, Ireland, Denmark, Portugal, Sri Lanka and Oman).

(ii) Community coordination

The questions relating to the continental shelf were discussed at a number of Community coordination meetings during the New York session; these meetings were the first held on this subject.

The Commission departments have sent the Member States a working document in which, after recalling the Community's dependence on the outside world for its energy supplies, it sets out the Council's[1] objectives aimed at reducing this dependence and examines the potential hydrocarbon resources of the sedimentary basins situated more than 200 miles from the Member States' European territories (notably in the vicinity of the Rockall basin). In the interests of the Community, it subsequently came out in favour of an extension of the continental shelf beyond 200 miles.

Taking as a basis the findings of the Evensen group (New York, December 1975) and the proposals drawn up by various countries (United States, New Zealand, Canada, Ireland), the Commission then examined the following problems:

- system for defining the outermost limit of the continental shelf[2];

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[1] Council Resolution of 17 September 1974 concerning a new energy policy strategy for the Community, Council Resolution of 17 December 1974 concerning Community energy policy objectives for 1985, Council Resolution of 13 February 1975 concerning measures to be implemented to achieve the Community energy policy objectives adopted by the Council on 17 September 1974 (OJ No C 153 of 9 July 1975, p. 1 et seq.).

[2] Two approaches have been suggested for this definition. The first consists in taking a series of fixed points at intervals of 60 nautical miles on the foot of the continental shelf, extending the straight lines by 60 nautical miles from these points towards the open sea and joining the edge of the straight lines by a second series of straight lines 60 miles long. The other method consists in establishing a ratio between the distance from the foot of the continental slope and the thickness of the subjacent sedimentary rocks and determining the points at which this thickness represents no more than 1 or 2%, for example, of the distance from that point to the foot of the slope. The coastal states could choose which of these systems they wished to apply.

- arrangements for sharing the resources or profits accruing from the exploitation of the continental shelf beyond 200 miles (payment in cash or in kind, payment calculated as a percentage of the value or volume of production at the place of exploitation or as a percentage of the difference between the value of production at the place of exploitation and the cost of exploitation);

- possibility of granting the developing countries a total or partial exemption in respect of these payments;

- destination of the contributions, i.e., whether the latter should be paid to the International Sea-bed Authority or to regional or international development organizations recognized by the United Nations.

The discussions which ensued on the basis of the working paper of the Commissions' departments failed to produce a joint position. Denmark, France, Ireland and the United Kingdom supported an extension of the continental shelf beyond 200 nautical miles, coupled with an appropriate income and profit-sharing system; the Netherlands and Belgium on the other hand were opposed to any such extension and remained committed to an income and profit-sharing system even within a 200 mile zone.

(iii) Conference deliberations and the Revised Single Negotiating Text

The land-locked and geographically disadvantaged countries, comprising Belgium, Japan, the USSR and the other East European countries opposed any extension of the continental shelf beyond a distance of 200 miles or a depth of 500 metres.

Those coastal states with a wide continental shelf (United States, Australia, Norway, Argentina, Brazil, New Zealand, Indonesia, France, United Kingdom, Denmark) took the opposite standpoint and supported a proposal made by Ireland in collaboration with Canada.

The Irish proposal would allow states with a continental shelf extending beyond 200 miles to fix the outer limit of this shelf on the basis of one or other of the systems described above (cf. p. 24, footnote 2). The proposal also stipulates that any limits imposed in this way by a

state should be notified by the latter to a boundaries commission for examination[1].

The United States put forward a specific proposal, which had been previously drafted, on the establishment of an income and profit-sharing system. This proposal lays down that exploitation of resources on the continental shelf beyond a 200 mile limit would involve the payment of a levy calculated as a percentage of the volume or value at the place of exploitation of the extracted products. The levy would only be imposed from the sixth year of exploitation. Its rate would be 1% from the sixth year, increasing by 1% until the tenth year and remaining fixed at 5% thereafter. The US proposal does not provide for any exemption in the case of the developing countries. Finally, these contributions would be transferred not to the International Authority but to regional or international development organizations recognized by the United Nations. The proceeds would be distributed by these organizations on an equitable basis, particular account being taken of the interests and the requirements of developing countries. The US proposal, supported by Sweden, Norway, Canada, India and New Zealand, failed to obtain the explicit backing of any Member State.

[1] This commission would consist of geologists, geophysicists or hydrographers. When the commission considered that the boundaries proposed conformed to the provisions of the Convention on the Law of the Sea, it would issue the state concerned with a certificate finalizing this demarcation and making it legally binding on third countries. Where this was not the case, the commission would forward its unfavourable opinion to the coastal state which would have six months to submit a new boundary plan. On no account would the commission deal with problems of demarcating the continental shelf between adjacent or opposite states.

On the other hand, the Netherlands and Belgium supported a proposal from Austria for an income-sharing system which would involve the collection of contributions based on the value or volume of production at the point of operation and would be applicable to all economic activities carried out beyond a distance of 50 miles or a depth of 200 metres. The International Authority would be the sole allottee of the payments and would be able to grant exemptions to developing countries.

Some states (Australia, USSR, Libya) expressed opposition to any income- or profit-sharing system.

The Revised Single Negotiating Text was no different from the original text as regards the determination of the outer limit of the continental shelf; nevertheless, the Chairman of the Second Committee suggested that this question be studied by a group of experts at the next session.

With regard to income- or profit-sharing, the Revised SNT incorporated the system proposed by the United States[1] but kept the monopoly of the International Authority as the receiver and distributor of the contributions. It also upheld the International Authority's power to grant exemptions to the developing countries and invited the Authority to take particular account, when apportioning the revenue accruing from the contributions, of the interests and needs of the least advanced developing countries.

(iv) Conclusions and proposed guidelines for the next session of the Conference

In the light of the foregoing, and taking into account the economic and political interests at stake and the fact that the Conference will probably accept an area extending as far as the geophysical limits of the continental shelf, it would seem that the Community should adopt the following guidelines:

[1] But it does not settle the question of the percentage of the contributions.

- EEC Member States hostile to the principle of extending the continental shelf beyond 200 miles should come round to this principle;

- the experts of the Commission and the Member States should examine more closely the technical aspects of the various systems which may be envisaged for determining the outer limit of the continental shelf, and should study the relevance of the Irish proposal in this connection;

- the US proposal for introducing an income-sharing system should be studied in greater detail, especially in order to determine whether the rates proposed as regards national contributions would be compatible with the prospect of profitable exploitation, by EEC firms, of the resources of the continental shelf located beyond the 200 mile limit and in particular those which may be contained on the continental shelf surrounding the European territories of the Member States (particularly the Rockall basin);

- a fairly open position could be adopted on the possibility of allowing the International Authority to grant the developing countries total or partial exemption from making contributions;

- a similar position could be adopted on the question as to whether the contributions should be paid to the International Authority and/or to development organizations recognized by the United Nations.

3. THE INTERNATIONAL SEA-BED AREA

One of the major tasks of the Conference is to establish an international régime, including an International Sea-Bed Authority, which will regulate the exploitation of the metallic nodules to be found on the oceanic sea-bed beyond the limits of national jurisdiction. These nodules, containing nickel, copper, cobalt and manganese, are expected to provide a considerable proportion of the future import demand of industrialized countries [1].

The division of opinion on the international sea-bed item has been primarily on North-South lines, with discussions being conducted chiefly between the major industrialized countries (with the United States playing very much a leading part) [2] on the one side, and the leaders of the Group of 77 on the other.

i) Analysis of the Revised Single Negotiating Text

The 1975 Single Negotiating Text contained serious deficiencies from the standpoint of the industrialized states. The right of access to the area in order to obtain minerals, a fundamental issue for the developed countries, was left at the discretion of the Authority. The Authority was granted wide powers over all aspects of sea-bed exploitation, including the processing and marketing of minerals, and a right itself to conduct direct operations, potentially on a monopoly basis.

Although a number of issues remain outstanding, the Text produced in the light of the negotiations at the New York session represents a considerable improvement over the earlier version. The main elements of the present Text are set out below.

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1) While it is difficult to forecast with certainty the rate and volume of sea-bed production, a recent United States Senate report estimated that by 1990 the United States would be able to replace entirely its present imports of nickel, copper and cobalt (now 82, 4.6 and 77 per cent respectively of US consumption), and reduce manganese imports from 82 per cent to 23 per cent. Report of the Senate Committee on Interior and Insular Affairs, No. 94-754, 14 April 1976, p. 7. Whatever the precise accuracy of these figures, they serve to indicate the potential scale of sea-bed production.

2) It may be pointed out that there is strong domestic pressure in the United States to adopt legislation whereby the US Secretary of the Interior would be authorized to license US operators, pending the entry into force of the treaty. Recognition would be given to licences issued by other states which adopted similar legislation.

(1) Categories of operators. Activities would be conducted either by the Authority directly, through an organ of the Authority itself ("the Enterprise"), or by operators acting in association with the Authority.

(a) Associated activities would be conducted under contracts with the Authority by States parties, state enterprises, by companies possessing the nationality of the sponsoring state, or by any group of these. It has been assumed that associated activities would be carried out largely by international consortia [3].

(b) Direct operations. Operations by the Authority would be conducted by a special organ, the Enterprise, which would be distinct from the rest of the Authority and have legal personality in its own right. All States parties to the Authority would automatically be parties to the Enterprise, which would be directed by a Governing Board. Contracts would be awarded by the Enterprise on a competitive basis in order to obtain the

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3) Three main consortia have been formed so far:

(1) Deepsea Ventures (a subsidiary of Tenneco), together with Japanese firms, United States Steel, and Union Minière of Belgium. The Japanese firms are reported to have dropped out and Union Minière has increased its interest. This is the only consortium planning to exploit manganese as well as the other metals, under a process developed by Union Minière.

(2) Kennecott Copper Corp., together with firms from Japan (Mitsubishi 10 per cent), United Kingdom (Rio Tinto Zinc 20 per cent, Consolidated Goldfields 10 per cent), and Canada (Novanda Mines 10 per cent). The British firms have received a government loan of £ 1.8 million.

(3) International Nickel Co. of Canada, with its US subsidiary, together with the AMR Group from the Federal Republic of Germany (Metallgesellschaft AG, Preussag, Rheinische Braunkohlenwerke, and Salzgitter), and a Japanese group from the Sumitomo companies. The three groups have an equal interest. The AMR Group has received financial help from the Federal Government.

goods and services necessary to exploit sites [4]. The Enterprise would have title to all minerals and processed substances it produced, which would be sold at international market prices; sales to developing countries, however, might be at below market prices [5].

(2) Conditions of access. Entities (other than the Enterprise) which apply for a contract for exploration and exploitation would be required to submit to the Authority either an area large enough for half of it to form a contract site, or two areas of equivalent size and value. The Authority chooses which half of the area (or which area) will be the subject of the contract awarded to the applicant and retains the other half (or area) [6].

The areas retained by the Authority are available solely to the Enterprise, or to developing countries or to entities sponsored by them and under their effective control.

(3) Basic conditions of prospecting, exploration and exploitation. Prospecting is allowed on a non-exclusive basis, subject to acceptance of the Authority's rules and regulations. A request for a contract for exploration and exploitation will normally be granted by the Authority, subject to compliance with the relevant procedures and negotiation of the financial terms. The contractor has security of exclusive tenure of his site and will enjoy a fair degree of assurance that the terms under which he operates will not be changed unreasonably during the period of contract. The industrialized countries have attached importance to the need that the basic operating conditions should be contained in the Convention or annexed to it [7].

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4) The principles to be applied by the Enterprise in awarding contracts are (a) non-discrimination as regards political considerations, (b) application of guidelines approved by the Council with regard to the preferences to be accorded to goods and services originating in developing countries. Annex II, Statute of the Enterprise, paragraph 7 (d), Part I, RSNT.

5) Annex II, paragraph 7 (e), Part I, RSNT.

6) Annex I, paragraph 8 (d), Part I, RSNT.

7) Proposals for basic conditions were made at the Caracas session by the United States, Japan and Community States (except Ireland), and in 1975 by the USSR, as well as by the Group of 77.

(4) Resource policy. Two interlocking issues were involved under this heading: the need to establish in the Convention the overall rate at which the area might be developed; and measures to protect the interests of developing countries which are land producers of the minerals. The solution proposed consists of these parts [8]:

(a) During an interim period of 20 years (possibly extended to 25 years) total production from the area is not to exceed the projected increase in demand for nickel, set at at least 6 per cent per annum.

(b) Efforts are to be made to conclude commodity arrangements or agreements for all four minerals and in which all affected parties participate. The Authority would be entitled to become a party to such arrangements or agreements in respect of production from the area. Production controls over contracts could only be exercised by the Authority pursuant to decisions taken within the framework of these arrangements or agreements.

(c) Compensatory financial adjustment assistance is to be provided in respect of developing producers which suffer a substantial decline in export earnings through sea-bed production. Although nickel and copper will be the main minerals for which nodules will be exploited, the quantities, as a percentage of world demand will be relatively small and no great effect on prices in respect of these two minerals is expected. It is generally agreed however that cobalt prices will be influenced by sea-bed production. This is, however, economically the least significant of the four minerals [9]. Manganese is an uncertain case since it is not clear what the volume of sea-bed production of this metal will be.

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8) Article 9, paragraph 4, Part I, RSNT.

9) Zaire is the main producer of cobalt (which is a byproduct of copper extraction from certain deposits) and would be the main developing country affected.

(5) Structure and decision-making processes of the Authority.

The International Sea-Bed Authority is envisaged as a body on a considerable scale, having an Assembly, a Council, a range of specialized commissions, the Enterprise, a secretariat and a Tribunal. The principal questions have been the distribution of powers between the Assembly and the Council, and the composition and decision-making process of the Council.

Under the Revised Single Negotiating Text the Assembly would be empowered to establish general policy. The Council, however, would also be authorized to take policy decisions (including the issuing of general policy directives to the Enterprise), and be responsible for the execution of the Authority's powers as regards the award of contracts and the adoption of rules and regulations.

As regards the composition of the Council, the developed states have pressed for a system whereby membership would be based on representation of interest groups (operator states, land producers, consumers, land-locked and geographically disadvantaged states etc.), a majority being required in each group for decisions. An approach on these lines, it was felt, would reduce the danger that the Council would adopt decisions tending to limit activities in the area. The 1975 Single Negotiating Text reflected the notion of interest groups, or 'colleges', at least in part, in providing for a Council of 36 members, 24 being elected on a basis of equitable geographical representation and twelve chosen according to 'interest group' criteria, six of these coming from developed states and six from developing countries [10]. Decisions would require a two-thirds plus one majority. Since there was insufficient time to discuss the matter, the 1976 Text reproduces the article put forward in 1975 without change.

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10) Article 27, Single Negotiating Text. The six developed countries would be chosen from those with substantial investment in, or possessing advanced technology used for, the exploration and exploitation of the area, and major mineral importers, provided at least one comes from the Eastern European region.

The six members from the developing countries would consist of one from each of the following categories: land-based mineral exporters; importers; states with a large population; land-locked states; geographically disadvantaged states; and least developed states.

ii) Community Coordination

For the first time during the Conference it proved possible for common statements to be made on behalf of Community States on a series of sea-bed issues: the categories of operators (article 22), resource policy (article 9), the powers and functions of the Council (article 28), and marine scientific research (article 10). In addition arrangements were made to coordinate views so far as possible and to avoid open disagreement where complete identity of opinions could not be reached; the Presidency became increasingly accepted as the "interlocuteur valable" and representative of the Community for the purposes of meetings held under the auspices of the Chairman.

That being said, the difficulties in making progress at Community level remain considerable. Those difficulties stem from a number of causes: a tendency for experts to be unable to get new instructions on the basis of Community discussions alone, which means that the Community is often unable to speak with a single voice at the outset of the discussions, and then, when new instructions have been obtained, for Community coordination to lag behind the speed of the Conference; reluctance on the part of Member States which have taken part in negotiations in restricted meetings to lose their special status by agreeing to Community statements; differences in emphasis among Member States (those for whom the topic has no direct implications have a more 'third world' approach than the others) and differences in interests between those whose companies have joined consortia and those which have not done so.

iii) Main Outstanding Issues and Proposed Orientations for the next Session of the Conference

The results achieved in the Revised Single Negotiating Text in defining the general provisions of the international régime (articles 1 - 19) in establishing the categories of operators and their operational conditions (annex I), the structure of the Authority, and the basic resource policy, seem acceptable, in broad terms at least, to the developed countries. While the developed countries should be prepared to resist attempts to move the Text back in the direction of the first version, there are various points where the industrialized countries, the Community States among them, will need to seek to clarify or improve the Revised Text.

Amongst such points may be noted the ambiguity of the definition of "activities in the Area". The existing definition [11] is an improvement over the 1975 Text in that it is limited to exploration for, and exploitation of, the resources of the area, a definition which, in the Committee's discussions, has normally been regarded as meaning that the powers of the Authority would not extend to the transport, processing and marketing of the four metals. The matter is nevertheless not entirely clear [12] and the draft statute of the Enterprise would allow that organ to conduct all operations, including processing and marketing. It is suggested that Member States should support the view that the direct control of the Authority over operators should not extend beyond physical activities conducted in the area, except insofar as the financial arrangements might involve later stages of operations. Special arrangements might, however, be envisaged for the Enterprise.

Attention at the next Session is likely to be concentrated on those issues which remain outstanding or which have not so far been closely examined; texts concerning the financial arrangements of operators, the statute of the Enterprise and the disputes-settlement procedure were indeed only put forward for the first time at the New York session. A summary of the main outstanding items and the approach to them which, it is suggested, should be followed, is set out below.

(1) The Enterprise. The notion of the Enterprise, namely an operational arm of the Authority, able to engage in exploitation activities, enjoys very widespread support at the Conference. The proposal itself was put forward by the Group of 77 and has been accepted by the United States, Japan and the USSR. It has not been possible for Community States to take a commun position on the issue however, owing to the views of one Member State which has argued that the establishment of the Enterprise as a separate organ is unnecessary, although other Member States are prepared to agree to an Enterprise.

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11) Article 1 (ii), Part I, RSNT.

12) See paragraphs 10 and 11 of the introductory note by the Chairman of the First Committee, Part I, RSNT.

In view of the support the Enterprise proposal has received at the Conference and the consideration that, if the Enterprise is not made a separate organ, with a distinct status, this may lead to pressure for it (or the Authority) to be given greater, if ill-defined, powers vis-à-vis other operators, it is recommended that Member States should agree to the principle of the Enterprise.

As regards the draft statute of the Enterprise (Annex I of Part I, RSNT), a detailed examination of the various points raised will be required at expert level. With respect to the proposals in the Statute that the developing countries should be given certain advantages by the Enterprise, it may be recalled that it is already suggested in the Revised Text that the developing countries should be in a privileged position as regards access to the areas reserved to the Authority, and the Enterprise would itself be established in response to the demands of such countries. It, therefore, appears unjustified that they should be specially favoured in the operation of the Enterprise; this organ should so far as possible conduct its activities on the same basis as other operators. It is proposed that the position to be taken vis-à-vis the operations of the Enterprise and the related problems should be governed by the following guidelines:

- The activities of the Enterprise should be conducted on commercial principles.
- The proposal that the Enterprise (or the Authority itself) should be permitted to sell minerals at discriminatory prices should be opposed. This issue raises a difficult question of principle which cannot be admitted.
- The developing countries should receive the preponderent share of the profits accruing to the Authority and to the Enterprise from sea-bed exploitation. Efforts should also be made to see what other possibilities could be found to take account of their special needs. The proposal that developing countries might be given advantage in the award of contracts by the Enterprise should, however, be treated with caution.

The proposed immunity of the Enterprise from taxation and customs duties (paragraph 9(i)), would provide the Enterprise with a considerable advantage over other operators and should accordingly be opposed. The Community would for its part also have to examine the issue in terms of its implications as regards the obligations and procedures of the General Agreement on Trade and Tariffs (GATT) as well as the operations of the Generalised System of Preferences. Although it is normal for intergovernmental bodies exercising public functions to be exempt from taxation and customs duties, the International Sea-Bed Authority, of which the Enterprise would be an organ, would have powers over the exploitation of a large area and might be directly responsible for the production of a considerable volume of minerals. The matter cannot be treated therefore solely as an issue relating to immunities in the

usual sense. The rules of origin with respect to sea-bed minerals would in any case have to be set by the Community and not by Member States. (See Appendix to this Annex).

(2) Composition of the Council (and of the Governing Board of the Enterprise, assuming that, as now proposed, the two bodies are composed according to the same criteria). The discussions so far have proceeded on the assumption that two or three Member States would be represented in the 'top' category as 'operator' or 'importer' States, and that others would have a chance of representation either as member of other interest groups (if other categories were introduced), or as members of the 'Western European and Others' Group.

An advantage attributed to this approach is that it could give Member States between three and five places out of a 36 Member Council. The disadvantage would be that Member States would be placed in different categories so that it would be difficult, particularly if further interest group representation were introduced, to ensure that the Community spoke as an entity and was thus able to make its influence felt. How, in any case, would it be decided which three or two Member States would be eligible for the 'top' category? Could they all be sure of holding their place over the long term? As regards the specific issue of voting, the Council, like other organs of the Authority, will in all probability endeavour to work by consensus. Even if there were to be a vote, a vote on behalf of the Community or of its Member States collectively would have more impact than a series of votes cast separately.

It would therefore be in the interests of the Community and its Member States to seek to provide that the category of major industrialized powers should include a member representing the European Economic Community . This would not only comply with the reference in the present text of article 27 to major importers of the four metals, but give the Community parity with the United States and the USSR (which the Member States, taken separately, cannot achieve). The way in which this Community seat would be organized would be an internal matter. In principle there would be one delegation in which all Member States would have the opportunity to be represented, statements being normally made by the State exercising the Presidency of the Council of Ministers. Individual Member States would

have the assurance that they could be represented at all times that on issues on which they had a particular interest their views would be given due attention by other parties to the Convention.

This proposal offers what is considered to be the best way of dealing with the particular problems posed, in a manner which would combine political weight for the views expressed and flexibility in organization at Community level.

(3) Financial Arrangements

(a) Finance of the Authority. The previous articles have been retained with little change (articles 46 - 51 Part I, RSNT). Member States should continue to advocate that the Authority should in principle be self-supporting, receiving obligatory contributions only in respect of administrative, non-operational, expenses during the initial period.

(b) Finance of the Enterprise. The general line supported by Member States, that contributions by States to the Enterprise should be voluntary, not obligatory, should be maintained. The Enterprise would be financed by funds made available by the Authority, as these accumulated, through raising loans, and by the amounts offered by contractors supplying goods and services.

(c) Financial arrangements with respect to contractors (annex I, paragraph 9 (d) and Special appendix to the RSNT).

The two approaches set out in the Special Appendix will need expert study in order to determine which system (or any further variant) would be in the best interest of Community operators. Under both systems the operator would be allowed to recover his costs and to retain a share of the profits.

(4) Anti-Monopoly or Anti-Dominant Position Clause. The Member States agreed during the Caracas session on the need for an anti-monopoly or anti-dominant position clause, the object of which would be to prevent any one state from gaining an undue advantage. The USSR and Japan took a similar line. The United States however has strongly opposed the inclusion of a clause of this type, arguing that, since there are hundreds of mining sites, no one state could exhaust them all, and that the clause, if inserted, could be used to limit production.

The matter is amongst the issues to be decided at the next session [13]. Assuming that it is impossible to resolve the question of the number of sites (on which experts hold different views) in a definitive way, it is recommended that Member States should seek to establish a means of preventing the creation of monopoly or dominant positions.

(5) Provisional application of the Convention (article 63) [14]. The United States has attached importance to the need that the Convention should enter into force provisionally, without waiting for the bulk of ratifications, in order to avoid a halt in the rhythm of investments.

The majority of states at the Conference appear to be prepared to accept provisional application, provided the terms of the Convention are satisfactory, but have stressed that the issue is bound up with the provisional application of the treaty as a whole (i.e. not only as regards the sea-bed but with regard to the economic zone also). Amongst Member States, some have drawn attention to constitutional problems which could arise if the Convention entered into force provisionally before their legislative body had approved the text.

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13) Annex I, paragraph 8 (e), Part I, RSNT.

14) This is amongst the articles continued unchanged from the 1975 Text.

So far as the international sea-bed area is concerned, it is recommended that, subject to constitutional considerations, Member States should agree in principle to provisional application. The number of notifications required of signatories willing to apply the Convention on a provisional basis should be increased however from 36, as now proposed, to one third of the potential signatories, and provisional application of the international sea-bed régime should not start until two years after the instrument had been opened for signature; or provisional application could start once half of the potential signatories have notified willingness without waiting two years.

(6) Dispute settlement procedures (annex III of Part I, RSNT). Member States should continue to support the approach taken in the present draft, whereby the possibility of proceedings before a permanent tribunal is combined with recourse to special chambers (in effect ad hoc arbitral bodies), at the choice of the parties involved in the dispute. Further attention should be given however at expert level to the problems posed by the existence of two sets of disputes settlement bodies and the powers of the tribunal to examine decisions given by special chambers.

4. Protection of the marine environment

a. Dumping of harmful substances

(i) Single Negotiating Text and discussion at the Conference

When the texts on dumping were examined, the developing countries gave evidence of minimalist attitudes, first of all by proposing that the coastal States with powers to lay down rules on this subject should not be required to comply with the rules and standards generally accepted at international level - i.e. those of the London Convention of 1972 on dumping - but should merely take them into account, which would give them much greater flexibility and enable them in particular to adopt less stringent regulations. Most of these States are not parties to the London Convention of 1972 nor to the regional Conventions of Oslo, Helsinki or Barcelona and wish to avoid being bound by these Conventions.

Certain developing countries and coastal States such as Canada and Australia wished moreover to grant to the coastal State powers not only in its 200 mile economic zone but also in the superjacent waters extending to the outer limit of the continental shelf where that limit went beyond 200 miles (which would imply a substantial extension of ocean areas for some countries).

Finally, the rest of the ocean covering the international sea-bed zone would, according to the developing countries proposal, be subject to the International sea-bed Authority as regards questions of dumping. (This proposal also raised a point of procedure : is the Third Committee, which is competent to deal with sources of pollution in any zone, nevertheless entitled to grant powers to the International sea-bed Authority which falls solely within the purview of the First Committee ?).

The plenary working group then examined a number of new texts drawn up as a compromise solution on the basis of consultations held by the Chairman in restricted working groups. It was not however possible to reach an agreement because of the position adopted by the developing countries, which demanded that no reference be made to international Conventions already drawn up (in this case the London Convention of 1972 on dumping) in the wording of the provision imposing on States the joint obligation of introducing international rules and standards. The desire of developing countries not to be bound individually by this Convention is reflected in their wish to establish new international rules which would be less stringent in their regard.

The working group also examined in plenary session the provisions of the Single Negotiating Text relating to the international responsibility of States. This matter posed no serious problems.

(ii) Community coordination

The Member States examined proposals to grant to the coastal State the power to lay down rules governing dumping and the power to control it (police powers) in the economic zone and on those parts of the continental shelf extending beyond the economic zone.

Some Member States wished to extend to the continental shelf all the rights exercised by coastal States in the economic zone; other Member States wished to limit such an extension merely to the right to lay down rules.

The Member States also examined the proposal of the Netherlands Delegation according to which coastal States must enter into consultation with other coastal States which, because of their geographical situation, might be affected by dumping.

(iii) Revised Single Negotiating text and proposed guidelines for the next session of the Conference

As regards dumping, the Revised Single Negotiating Text merely provides for general undertakings, particularly on the question of international coordination and entrusts the coastal State with the task of controlling pollution by dumping in its economic zone.

It is proposed that the Community and its Member States adopt common positions in order to ensure the coherent implementation of commitments to be entered into in the Convention and of those undertaken by the Member States in the framework of the execution of the Community's environment programme.

b. Pollution from shipping

(i) Single Negotiating Text and discussion at the Conference

The question of pollution from vessels was not a subject of discussion during previous sessions within the official organs of the Conference but was examined by parallel working groups. The Single Negotiating Text was drawn up largely on the basis of an unofficial document prepared by the French Delegation with the aim of reaching a compromise between the rights of coastal States and those of flag States.

In the general debate, the representatives of the developing countries and those of certain coastal States (e.g. Canada, Australia and New Zealand) were of the opinion that this text was not satisfactory and did not sufficiently take into account the interests of coastal States in safeguarding their environment. They emphasized the right of coastal States to apply in their territorial waters stricter national regulations than the generally accepted international standards and rules, even in respect of the design, construction, manning or equipment of vessels, whereas the delegations of the maritime powers, with the exception of the United States, considered that such rules did not fall within the competence of coastal States as regards foreign vessels in their territorial waters and that their application would interfere with the exercise of the right of innocent passage. The provision of Part II of the Single Negotiating Text which define this matter expressly exclude such national regulations.

The delegations of most of the maritime powers were somewhat cautious as regards the powers which might be granted to Member States in the economic zone beyond territorial waters. Some delegations of maritime powers felt that these powers should be exercised only in a 50 mile zone (corresponding to the area where any discharge of hydrocarbons is prohibited pursuant to the London Convention of 1973 on the prevention of pollution).

After this general debate, the plenary working group decided, on a proposal from its Chairman to adjourn to enable its Chairman to have informal talks. The Single Negotiating Text was still the basic document but it was agreed that other important problems could also be discussed.

As regards the coastal State's powers to apply regulations in territorial waters, the delegations of the maritime powers held that there must be a formal clause preventing the coastal State from imposing conditions governing design, construction, equipment and manning on foreign vessels moving through its territorial waters. The delegations of the coastal States emphatically refused to consider such a provision.

There was another difference of opinion between the delegations of the maritime powers and those of the coastal States, including the developing countries and States such as Canada, Australia, New Zealand and Spain, on the question of the coastal State's power to apply regulations in its economic zone. Whereas on the subject of pollution by vessels the delegations of the coastal States wanted the coastal State to have the power to apply regulations throughout its economic zone, the delegations of the maritime powers were prepared to grant such powers to the coastal State only within a fifty-mile zone. They also attempted to limit these powers to infringements relating to waste while the delegations of coastal States considered that a coastal State should be able to apply all the international regulations in its economic zone (even where that coastal State was not a party to the international Conventions in question) and that it should have the right to stop vessels in its economic zone and to board them in order to apply these rules. Nevertheless the coastal States conceded that this power should be exercised only in exceptional cases of serious infringements and extensive damage or risks of such damage.

The delegations of the maritime powers were unable to accept any such extension of authority. Some of these delegations recognized powers to institute legal proceedings only where the flag State had failed to take any action within several months of the date on which the offence was reported.

Nevertheless, most of the delegations of the maritime powers and the coastal States agreed that the coastal State of the port of destination (or port of call) of the vessel should have the power to carry out an

inspection at the request of the injured coastal State. The delegations of the United States, Canada and Australia declared themselves in favour of the power of the coastal State to institute legal proceedings in respect of infringements committed on the high seas, or in territorial waters or the economic zone of a coastal State.

Several delegations of maritime powers attempted to obtain a certain number of safeguards or guarantees in favour of the flag State (for example the right of priority in instituting proceedings, the right to have the vessel released immediately against a security, an assurance that only monetary penalties will be applied and that no action would be taken which could constitute a danger to shipping, (etc.).

It was generally conceded that the State in whose port a ship was lying could take measures to prevent that ship from leaving port or compel it to make the necessary repairs if it constituted a serious danger to navigation or the environment.

The delegations of the coastal States were opposed to the rights of the flag State to have priority in instituting proceedings in respect of infringements committed in the economic zone of a coastal State and so established by that State.

Most of the delegations of the maritime powers, with exception of the United States, were basically in favour of more extensive powers for the port State.

(ii) Community coordination

The Member States mainly discussed the problems relating to the Articles concerning pollution of the sea by vessels. They adopted the principle of a definition of special zones to be established at international level and also examined proposals from the United Kingdom Delegation.

This delegation proposed that the following powers be granted to the coastal State:

- as the port State, powers governing ships which enter voluntarily into one of its ports in respect of any waste dumped in its exclusive economic zone in violation of generally accepted international rules;

- as the coastal State, full power to stop, board, inspect, take into port and institute proceedings in respect of ships in an area of fifty miles;

  (i) if there has been a violation of international rules and if there is a threat of serious damage;

  (ii) if the violation was discovered immediately or shortly after being committed and if its discovery constitutes obvious proof of the violation.

The Danish Delegation, for its part, stated that it could not accept the application of design standards in its territorial waters nor the right of the coastal State to arrest ships in its economic zone. The Irish Delegation, however, was in favour of full powers of the coastal States with regard to the application of rules and regulations on the dumping of waste in the 200-mile zone. These powers would include the right to stop ships.

Nevertheless, all the Member States agreed on the need to limit the powers of the coastal State in the economic zone.

(iii) Revised Single Negotiating Text

It is clear from the Revised Single Negotiating Text that the regime applicable to the exclusive economic zone is neither that of the high seas nor that of the territorial sea, but relates to a zone sui generis. The present approach consists of defining this system in terms of "residual rights": the rights attaching to the resources of the zone belong to the coastal State and other States will enjoy the freedoms of navigation and communication, provided that this is without prejudice to such rights. This is apparent in general terms from Articles 44, 46 and 47 of Part II and was emphasized by the Chairman of the Second Committee in his introductory note to the revised text of Part II.

The difficulties created by certain provisions of Part III (revised) result from the delimitation of the jurisdiction granted to the coastal State and of the extent of the residual rights of the flag State.

Article 4 of Part III lays down as a general rule that the measures to be adopted to combat pollution caused by vessels should apply for example to the prevention of accidents, the safety of operations at sea, the control of discharges and the construction, equipment and operation of vessels.

It is therefore a question of an extremely wide range of potential interventions.

As regards the territorial sea, the coastal State will be able to establish national rules, without prejudice to the right of innocent passage provided for in Part II. As regards the exclusive economic zone, the coastal State will be able to enforce rules and standards drawn up on an international basis. It will also be able to establish special rules for the application of these rules and standards in special zones, provided that this is not opposed by the competent international organization (Article 21).

In Section VII on Enforcement, it is laid down that the flag State must ensure that international rules and standards for the prevention of pollution are complied with (Article 27). The provisions to the prerogatives of the port State (Articles 28, 29 and 30) are very broad and would allow the latter to exercise extensive and often undefined powers in respect of foreign vessels which had infringed national or international regulations relating to the prevention of pollution caused in the territorial sea or in the economic zone.

In Section VIII, extensive and often undefined powers are also granted to the coastal State with regard to the institution of proceedings against and the detention of foreign vessels The provisions relating to penalties which may be imposed upon foreign vessels are also lacking in clarity.

Finally, it is laid down that the provisions of Part III will be applied without prejudice to the right of free passage in international straits.

In conclusion, the Revised Single Negotiating Text lays down that the powers of the coastal State in respect of pollution would be extended throughout the economic zone and would relate to all international rules and standards, while allowing it to apply national rules in the territorial sea. The powers to institute legal proceedings appear to be very extensive but undefined, in the case of both flagrant breaches of international rules on the dumping of waste and other infringements causing or likely to cause serious damage to the coastal State. Powers to institute legal proceedings are also granted to the port State, either on its own initiative or at the request of another State (flag State or coastal State).

It may be said that the Revised Single Negotiating Text shows little evidence of the work of this Session and embodies a large proportion of the proposals of the Evensen Group. It is a text which cannot claim to be a "basis for negotiation" insofar as it adopts the arguments of only one of the groups present. This text could therefore impede the favourable course of the proceedings insofar as it veers away from a compromise position which could be negotiated between the two main bodies of opinion. Moreover, if negotiations were to get bogged down on this text, they could hold up work in general.

(iv) Conclusions and proposed guidelines for the next session of the Conference

The measures to be adopted with regard to protection against pollution from vessels are of considerable interest to the Community and its Member States from three aspects:

(i) the fight against pollution;

(ii) the preservation of the freedom of navigation;

(iii) its influence on the outcome of the Conference.

It is proposed that the Community and its Member States adopt a common position on this question. The Commission proposes that priority be given to the exercise of the rights of the flag State while granting the coastal State control over a specific 50 mile zone in which it would exercise precise and limited rights.

5. MARINE SCIENTIFIC RESEARCH

The principal issue has been that of determining the rights of the coastal State as regards the conduct of scientific research in the economic zone. The "Group of 77", together with Canada, have sought to make such research dependent on the unrestricted consent of the coastal State. The developed countries, on the other hand, have wished to maintain the existing freedom, subject to acceptance by researching States of obligations designed to protect specific coastal State interests.

i) Revised Single Negotiating Text

a) MSR in the territorial sea and in the economic zone

In the 1975 Single Negotiating Text the coastal State was given full control over MSR in the territorial sea; this was common ground from the outset. As regards the economic zone and continental shelf [1] there was an inconsistency between Parts II and III of the Text. Under Article 45, Part II, the coastal State was given "exclusive jurisdiction" with regard to scientific research in the zone. In Part III, however, a distinction was drawn between research related to resources in the zone and continental shelf, and fundamental research. The conditions to be met by the research State (e.g. as regards access to data and opportunities for participation) were made more stringent in the case of resource related research. A coastal State could only object to a fundamental research project if it considered that its rights over natural resources were infringed. Disputes were to be settled in accordance with the compulsory disputes settlement procedures.

At the New York session the approach based on the distinction between resource related and fundamental research was attacked by the "Group of 77" and Canada as not reflecting the views of the majority. Full coastal State control over all MSR was demanded.

It proved impossible to reach agreement during informal negotiations in closed groups owing to the emergence of an increased preoccupation on the part of some developing coastal States with national security interests, which effectively blocked progress towards a compromise.

The main feature of the Revised Single Negotiating Text is the replacement of the distinction based regime for MSR in the economic zone or continental shelf of a coastal State by a consent regime for all MSR, along the lines of the 1958 Geneva Continental Shelf Convention.

The coastal State shall not withhold its consent unless the project (a) relates substantially to the exploration and exploitation of resources; (b) involves drilling or the use of explosives; (c) interferes unduly with economic activities; (d) involves the construction or use of artifical islands and structures.

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[1] The Community States can accept a 'consent' regime for MSR on the continental shelf and in fact practise this regime as laid down in the 1958 Geneva Continental Shelf Convention.

The distinction between resource-related and fundamental research remains, however, in Article 60 (a) where research bearing upon resources is one of the categories of research for which a coastal State has the right to withhold its consent [1].

b) Marine Scientific Research in the International Sea-bed Area

The Revised Single Negotiating Text is an improvement on the 1975 Text and takes account of certain amendments presented by Member States.

In Part I of the present Text, MSR is no longer expressly mentioned as one of the "activities in the Area" in Article 1, and the exclusive role of the Authority to control and carry out MSR in the area has been modified. All reference to the Authority has been dropped in Part III, Article 68, and all States and competent organisations have the right, though in conformity with the provisions of Part I, to conduct MSR in the Area.

c) Disputes settlement

A more positive feature, from the point of view of Community and other research States, is the inclusion in the Revised Text of a compulsory conciliation procedure (Article 76) for the settlement of disputes, before reference to the general dispute settlement procedures of the Convention. The conciliation procedure laid down is largely based on a Community proposal and is designed to achieve rapid settlement of such problems as may arise. However, the value of this procedure must be closely examined to see how many research disputes can actually be brought before it.

The dispute settlement procedures in Part IV are confused and unsatisfactory with respect to MSR. Insofar as MSR falls under the "exclusive jurisdiction" of a coastal State in Part II, it is uncertain whether disputes regarding MSR would come under the compulsory system with respect to settlement, or be disputes under the "exceptions" listed in Article 18 of Part IV.

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[1] According to Article 64, this is the only category listed in Article 60 for which a coastal State must actively refuse its consent; if there is no reaction, consent is implied, whereas for the other categories b), c) and d) no reaction from the coastal State seems to imply refusal of consent. This gives the coastal State wide discretion, especially under category Article 60 (c), to refuse a project on the grounds that it "unduly interferes with economic activities performed by the coastal State in accordance with its jurisdiction" as provided for in the Convention, and the explicit consent required here makes putting into operation of the dispute-settlement procedures by a researching State very difficult. In addition to these extensive powers, the coastal State can require cessation of any project in its economic zone or on its continental shelf (Article 65) with seemingly complete discretion.

ii) Community co-ordination

Co-ordination meetings in order to achieve common positions were held throughout the session. Early on in the informal Third Committee discussions a statement was made by the Netherlands on behalf of the Community States supporting the SNT as a basis for compromise, and making it clear that the amendments presented from the floor by Member States were supported by the others. A common position had been achieved in Brussels on the substantive issues, and amendments had been drawn up for most Articles, largely in defense of the 1975 SNT.

The main purpose of Community amendments were:

- to clarify the distinction between different categories of MSR, in particular between MSR directly related to the exploration and exploitation of resources and MSR not so related;
- to include a compulsory procedure of conciliation for MSR disputes, before reference to the general dispute settlement procedures of the Convention.

It may be noted that the Netherlands and the Federal Republic of Germany co-sponsored the LL and GDR' amendments (which present considerable difficulties to the rest of the Nine). This illustrates the wider problem of participation of Member States in different informal groupings jeopardizing common EC positions.

iii) Proposed guidelines for next session of the Conference

The "consent" regime in the form now embodied in the Revised SNT for all MSR carried out in the economic zone is, from the point of view of the developed countries, a step backwards from the 1975 Text and should be opposed. The system could only be accepted only insofar as (a) the conditions under which the coastal State might refuse the consent were made more specific and more limited; (b) there is general acceptance at the Conference of an effective conciliation procedure; and (c) disputes concerning marine scientific research in the zone are subject to the general disputes settlement procedure of the Convention.

The remaining parts of the Text require careful examination at expert level prior to the next session.

6. TRANSFER OF MARINE TECHNOLOGY

i) Developments at Fourth Session and analysis of Revised Single Negotiating Text

The 1975 Text incorporated many of the demands of the "Group of 77" for aid in the development of their research and technological capacity, with provision of safeguards for holders and suppliers of technology as demanded by the developed States.

In particular it was proposed that States were required to "promote the establishment of universally accepted guidelines" for the transfer of marine technology, and that provision be made for the establishment of regional marine scientific and technological research centres.

With respect to the International Sea-bed Area, States were to cooperate with the Authority to encourage and facilitate transfer of marine technology and skills for exploration and exploitation of the International Sea-bed Area and the Authority itself was to be given an active role to ensure increased participation and training of nationals of developing States in the transfer process.

Debate at the New York Session was generalised with attention focused mainly on the role of the International Sea-bed Authority in the transfer process and the value and functions of regional marine scientific and technological centres.

As regards the role of the International Sea-Bed Authority in the 1975 SNT the ISBA was given considerable powers to transfer marine technology and was strongly defended by the "Group of 77". The EC Member States, together with other developed States, proposed deletion of all reference to the ISA in Part III and negotiation on this matter in the First Committee (Article II, Part I).

As regards Regional Marine Scientific and Technological Centres there was widespread criticism of the all-embracing role to be given to these centres. It was felt that the role of national centres could be undermined and the task of international organisations in this field could be unnecessarily complicated. The Nine objected to making these centres repositories for patented technology. A detailed proposal to set up a new International body to transfer marine technology was proposed by Equador but did not receive much support.

There is no substantive changes in the Revised SNT from the 1975 Geneva SNT. The "Group of 77" demands for more stringent obligations on developed States have not been included, but the provisions concerning transfer of non-proprietory technology have been increased. References to transfer of patented technology have been removed.

The article on transfer of marine technology in co-operation with the International Sea-Bed Authority has been modified to take account of the "legitimate Rights of holders and suppliers" of technology, and is subject to Article 10, Part I of the RSNT.

A proposal by Portugal for co-operation among International Organisations dealing with the transfer of marine technology received widespread support and appears in the Revised Single Negotiating Text.

ii) Community Co-ordination

The EC Member States co-ordinated their amendments (previously agreed on in Brussels) throughout the debates. The amendments were mainly intended to provide greater protection for holders and suppliers of technology and to attenuate the binding nature of the obligations incurred. The only substantive amendment proposed by the Nine was the deletion of all reference to the role of the International Sea-Bed Authority in the transfer process in Part III of the SNT and negotiation in Part I.

iii) Proposed orientations for the next session of the Conference

It is recommended that the main approach of the present Text should be accepted.

The full import of the detailed role to be given to the regional centres should, however, be analysed, particularly in light of developments on this question in UNCTAD IV.

The new text will also have to be examined to see if it accords with the Community's position on transfer of technology negotations elsewhere.

Finally, the utility of linking negotiation on transfer of technology with the negotiations on marine scientific research should perhaps be re-examined.

7. The Settlement of Disputes

i) Analysis of the Single Negotiating Text

The developed countries have attached importance to the inclusion in the Convention of a system for the compulsory settlement of disputes as an integral part of the future law of the sea system. The United States, together with Community States, has been particularly active in this regard. The motive behind these efforts has stemmed from a traditional attachment to legal modes of settlement, and a desire to provide a means of recourse against any abuse which might occur of the discretion given to coastal states as regards activities in the economic zone. The main difficulties in securing these objectives have been the habitual reluctance of the USSR to accept compulsory forms of international disputes settlement and the extreme sensibility of developing countries with respect to issues touching their "sovereign rights". Discussion on this item has proceeded more slowly than on other topics [1], and efforts will be made at the next session to give special attention to this aspect of the work of the Conference, so as to bring it up to the same stage as the items.

A wide measure of support for the principle that the Convention should include means of disputes settlement now exists at the Conference. The Text of Part IV of the Convention which has been drawn up is, however, extremely complex, so as to offer numerous possibilities for delays and procedural arguments before a settlement is reached. It is difficult furthermore to determine the range of rights which would be effectively protected under the system; this applies in particular as regards disputes concerning fishing and the conduct of scientific research in the economic zone.

The main lines of the system proposed are set out below.

In the opening section it is provided that parties may chose their own means for the settlement of disputes; the Convention system only comes into operation if such means have been exhausted or if the parties are unable to agree on the choice of procedure. If the parties have already agreed on a general, regional or special system for the settlement of disputes, that system is to apply.

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(1) In consequence the present Text is still at an "informal" and not yet at a "revised" stage.

(Thus, in the case of Member States and the Community, in the event of a dispute amongst them involving Community law and the law of the sea, the European Court of Justice would continue to be the appropriate forum). Special provision is made for the use of conciliation procedures, if the parties so decide.

Where recourse to means of the parties own chœsing does not provide a solution, the Convention system applies, offering parties to disputes a choice between four procedures :

- the Law of the Sea Tribunal (a permanent body of 15 members)
- the International Court of Justice
- arbitral proceedings (a statute is provided for ad hoc arbitral bodies)
- special procedures with respect to disputes concerning fisheries, pollution, scientific research and navigation (the use of expert bodies chosen from lists maintained by the specialized bodies of the UN).

Separate arrangements are envisaged as regards sea-bed disputes. Provision is also made for the possibility of the exercise of appellate jurisdiction.

Access to these procedures is open solely to contracting parties except in the case of actions arising out of the detention of vessels and (possibly) contractual disputes in respect of sea-bed operations.

Where the parties have not chosen the same means of settlement, the defendant would be able to chose the means which would be used. This would enable the defendant to chose the forum which would be most likely to find in his favour. In view of the element of uncertainty as to the range of rights which would be protected under the system, and the possibility that a body such as the Law of the Sea Tribunal might tend to give judgements supporting a wide interpretation of the rights of coastal states, it has been suggested that it would be preferable that arbitration should be taken as the common denominator of the system. Thus, in the event that the two parties had not chosen the same means of settlement and did not agree on an alternative, recourse would be had to arbitration as the means. This approach might also be more generally acceptable at the Conference than the system proposed in the present SNT.

The definition of exceptions to the procedures has been a controversial issue. Under the present text there is no obligation to submit for settlement disputes concerning the exercise by a coastal state of its sovereign of exclusive rights or of its exclusive jurisdiction (i.e. its rights in its territorial sea or economic zone), except :

(a) When it is claimed the coastal state has violated its obligations under the Convention by interfering with freedom of navigation or overflight, the freedom to lay submarine cables or pipelines, or by failing to give due regard to any substantive rights specifically established in favour of other states. It is not entirely clear from the present Text what the range of such substantive rights would be, in particular whether they relate to fish and the conduct of scientific research. The lack of precision with respect to this phrase will be amongst the matters to which further attention will need to be given at the next session.

(b) When it is claimed that another state has failed to respect the laws and regulations of the coastal state.

(c) When it is claimed that a coastal state has violated its obligations as regards the application of international standards and criteria relating to preservation of the marine environment.

Individual contracting parties may make declarations stating that they do not accept the settlement procedures in respect of disputes over sea boundary limitations, disputes concerning military activities, or disputes which are being dealt with by the Security Council.

ii) Community co-ordination

A number of Member States participated in the informal working group which met at Conference sessions in 1974 and 1975 and there were several expert meetings within the political cooperation framework without Commission representatives being invited. The Commission representatives pointed out that this was in contradiction with the transfer of competence to the Community, on the basis of which the Community would need to become a party to the Convention and would itself be a potential party to disputes. At the New York session there was a general discussion at heads of delegation level, together with the Commission, of the line to be taken during the general debate on disputes settlement.

iii) Proposed orientations for the next session of the Conference

It is recommended that Member States should continue to support the inclusion in the Convention of compulsory disputes settlement procedures as an integral part of the overall arrangements. The adoption of recourse to arbitration, in the event that the two parties have not chosen the same form of settlement, would appear desirable in view of the uncertainty which exists as regards the extent to which rights in the economic zone are protected under the system, and the possibility that the Law of the Sea Tribunal may tend to adopt decisions supporting wide interpretations of the rights of coastal states. An approach along these lines might also make the system more generally acceptable at the Conference.

Efforts should be made to enable the system to apply as widely as possible with respect to disputes regarding the exercise of coastal states' rights affecting those of other states.

The fact that the disputes settlement procedure will be applicable to disputes to which the Community itself may be a party should continue to be kept in view.

8. Provisions for overseas countries and territories

The SNT discussed in New York contains an article of a highly political nature (Part II, Article 136) on territories "under foreign occupation or colonial domination". It applies in particular to certain non-independent territories still administered by Member States of the Community: France, the United Kingdom and the Netherlands.

The Article contains three paragraphs:

1. The rights which shall be recognized or established by the future Convention over the resources of the territories in question shall apply to the inhabitants of those territories, who shall exercise them to their advantage and in accordance with their needs and necessities.

2. In the event of any dispute concerning the sovereignty of one of those territories, the rights concerning their resources shall not be exercised if the dispute has not been settled in accordance with the aims and principles of the Charter of the United Nations.

3. No metropolitan or foreign power which administers these same territories shall exercise rights over their resources, profit or benefit from them or prejudice them in any way whatsoever.

Article 136 is meeting with vigorous opposition from France and the United Kingdom, and to a lesser degree from the Netherlands. France, in particular, has let it be known on several occasions that if Article 136 were to be retained in its present form, she could not see her way to ratifying the future Convention on the Law of the Sea.

The concern of certain Member States over Article 136 has been voiced at several meetings on Community coordination in New York. At the meetings, all the Member States agreed that they would express their joint opposition to Article 136 at the Conference. For tactical reasons, it was agreed to take the line that the text should be amended to eliminate its unacceptable features instead of proposing that it be completely deleted.

Two texts have been submitted to this effect, one by France, the other by the Netherlands. Both texts proposed the deletion of paragraphs 2 and 3 and the rewording of paragraph 1. The French amendment was based largely on the idea that Article 136 would contravene the provisions of the United Nations Charter, which defines the responsibilities of powers administering non-independent territories. The basic justification for the Dutch amendment was the notion that the future Convention should not settle issues of sovereignty.

The two amendments, very much akin in spirit, were supported by all the other Member States. Similar amendments were tabled by Israel and the United States, which threatened not to sign the Convention if Article 136 was retained in its present form.

Like the attitude of the United States and Israel, the position of the Nine was opposed by a considerable number of delegations. Most of them wanted the Article to be retained and supplemented by an amendment tabled by the group of Arab states seeking to add to the territories listed in paragraph 1 of Article 136 those territories which are represented by recognized liberation movements, in their respective regions, by the Arab League or by the Organization for African Unity. A good number of delegations, largely from Commonwealth countries, joined with the Nine in calling for the deletion of paragraph 2.

The Revised SNT makes no major amendments to Article 136. It includes neither the French and Dutch amendments nor the Arab group's amendment and it retains paragraph 2, although the latter is couched in more subtle terms than the original text. Moreover, in his comments on the Revised SNT, the Chairman of the Second Commission, acknowledges that Article 136 deals with questions which lie outside the scope of the law of the sea. Lastly, the article has been included in the Revised SNT in the form of a transitional provision to make it quite clear that the issues it considers are in no sense hard and fast.

Even as amended, the wording and form of the article are still unacceptable to the Member States concerned. This throws doubt on whether certain of those Member States, and consequently the Community, will accede to the Convention. As matters stand, the question must be broached at high level with the other principal non-member countries involved.

ANNEX I (to the ANNEX)

SUMMARY ANALYSIS OF THE PROVISIONS CONCERNING TAX AND DUTY EXEMPTION FOR THE INTERNATIONAL SEA-BED AUTHORITY

1. Article 60 of the SNT stipulates that the ISBA shall be completely exempt from all duties and taxes in respect of its assets, its property, its income and operations.

Furthermore, Article 9 of the draft statutes of the ISBA stipulates the same exemption for the Enterprise.

2. At first sight, these clauses appear to be concerned mainly with the "privileges and immunities" aspect of the statutes of the Authority and its executive body, the Enterprise.

Actually, both Article 9 of the draft statutes of the Enterprise and Article 60 concerning the Authority are to be found in the section entitled "Privileges and Immunities".

It may be regarded as current and standard practice, whenever the "birth certificate" of a new international organization is issued, to provide for it the privileges and immunities under common law as it were, to enable it to function normally.

It is on this basis that such arrangements exist for the United Nations Organization, the specialized institutions and the institutions of the Community itself.

3. In the absence of more detailed information on the objectives and motives of those who drafted the texts, one may ask whether, beyond the normal and administrative operations of the Authority and the Enterprise, these provisions refer to the industrial activities of the Enterprise itself. At all events, that is a possible interpretation and it has been taken into account in this paper.

4. Taking the wide interpretation and allowing that customs exemption also covers the industrial activities of the Enterprise and the products of its activities, then Community competence is clearly involved.

For information purposes, the following points should also be noted:

(a) economically speaking, it is in the long-standing interests of the industrial countries to import duty-free the ores and metals necessary for their industries. This is the case with regard to the EEC tariff (consolidated exemption), the US tariff (non-consolidated exemption), the Canadian tariff (consolidated exemption), the Japanese tariff (exemption for ores only), etc.;

(b) from the legal point of view, however, these tariff concessions theoretically apply to the Contracting Parties to GATT (the EEC automatically applies the same tariff to the East European countries, even when they are not members of GATT), but the question may arise as to whether the ores or crude metals produced by the Enterprise are to be regarded as originating in a "new country"; a rider to this is the problem of defining, for customs purposes, the origin of these products;

(c) the situation is even more complicated if one considers not only ore or raw metal, but semi-finished products i.e., bars, sections, sheets, tubes, pipes, etc., for although these semi-finished products are usually liable for customs duty, a good many of those tariff headings are covered by the Generalized System of Preferences (GSP).

The GSP is obviously a Community instrument; but application of any exemption for products supplied by the Enterprise would probably raise problems which would impinge on management of the GSP (definition of eligible "countries", questions of origin, etc.).