European Communities

EUROPEAN PARLIAMENT

Working Documents

1977 - 1978

9 May 1977 DOCUMENT 82/77

Report

drawn up on behalf of the Legal Affairs Committee

on the Conference on the Law of the Sea as it affects the European Community

Rapporteur: Mr M. BANGEMANN

PE 47.791/fin.

English Edition

By letter of 5 July 1976 the Secretary-General, on behalf of the President of the European Parliament, referred the motion for a resolution (Doc. 180/76), tabled by Mr Scott-Hopkins and Mr Spicer on behalf of the European Conservative Group, on proposals for a 200 mile marine economic zone to the Legal Affairs Committee as the committee responsible and to the Committee on Economic and Monetary Affairs and the Committee on Agriculture for their opinions.

At its meeting of 13 July 1976 the Legal Affairs Committee appointed Mr Bangemann rapporteur.

At its sitting of 15 September 1976 Parliament referred the motion for a resolution (Doc. 295/76), tabled by Mr Prescott, Mr Schmidt, Mr Leban, Mr Espersen and Mr Concas on behalf of the Socialist Group, on the extension of Community Member States' fishing zones to 200 miles by 1 January 1977 to the Legal Affairs Committee as the committee responsible and to the Committee on Economic and Monetary Affairs and the Committee on Agriculture for their opinions.

At its meeting of 20 September 1976 the Legal Affairs Committee appointed Mr Bangemann rapporteur.

At its meeting of 19 October 1976 the Legal Affairs Committee heard an introductory statement by Mr Bangemann and agreed that his report should cover all the matters discussed at the Third United Nations Conference on the Law of the Sea.

By letter of 27 October 1976 the chairman of the Legal Affairs Committee informed the President of the European Parliament, the chairman of the Committee on Regional Policy, Regional Planning and Transport and the chairman of the Committee on Energy and Research of this decision, as well as the chairmen of the two committees asked for their opinions on the two aforementioned motions for a resolution.

By letter of 19 November 1976 the President of the European Parliament informed the chairman of the Legal Affairs Committee that the Committee on Regional Policy, Regional Planning and Transport and the Committee on Energy and Research had been asked for their opinions.

At its meeting of 18 February 1977 the Legal Affairs Committee considered a working document (PE 47.237) drawn up by Mr Bangemann.

After this discussion and on a proposal from the rapporteur, the committee decided, mainly in view of the proximity of the next session of the United Nations Conference on the Law of the Sea, to confine its report to the principal matters to be discussed at that session.

The Legal Affairs Committee considered the draft report at its meetings of 29 March 1977 and 25 April 1977.

At the latter meeting it adopted the report unanimously with one abstention.

Present: Sir Derek Walker-Smith, chairman; Mr Bangemann, rapporteur; Lord Ardwick, Mr Calewaert, Mr Delmotte (deputizing for Mr Broeksz), Mr Fletcher-Cooke, Mr Kunz, Mr McDonald (deputizing for Mr Poher), Lord Murray of Gravesend, Mr Rivierez, Mr Scelba and Mrs Squarcialupi.

The opinions of the Committee on Agriculture, the Committee on Regional Policy, Regional Planning and Transport and the Committee on Energy and Research are attached.

The opinion of the Committee on Economic and Monetary Affairs will be presented orally in the Chamber.

CONTENTS

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the Conference on the Law of the Sea as it affects the European Community

The European Parliament,

- having regard to the work accomplished so far at the Third United Nations Conference on the Law of the Sea,
- having regard to the Sixth Session of the Conference, which will begin in May 1977,
- having regard to the report of the Legal Affairs Committee and the opinions of the Committee on Agriculture, the Committee on Regional Policy, Regional Planning and Transport , the Committee on Energy and Research and the Committee on Economic and Monetary Affairs (doc. 82/77),

I. GENERAL OBSERVATIONS

1. Recognizes the difficulties involved in finding answers to all the problems with which the Law of the Sea Conference is concerned, which has the ambitious task of seeking to establish, through negotiations on a world scale, a new legal framework for dealing with the varied and complex questions which arise from the increasing use of the seas and the exploitation of marine resources;
2. Regrets nevertheless that the Conference has not yet been able to complete its work;
3. Expresses its satisfaction at the fact that the Member States have, to an increasing extent, been able to present a common position at the Conference on many issues;
4. Considers it essential, however, for the Community as such to take an increasing part in the Conference, since the questions to be discussed concern in whole or in part sectors in which the Community has sole competence to draw up Community-wide regulations and to contract obligations vis-à-vis third countries;
5. Draws attention to the need for Member States to make all necessary efforts to ensure the adoption by the Conference of a provision, such as that proposed on behalf of the Community at the Fifth Session in September 1976, under which the Community as such would be able to become a party to the future Convention;

6. Considers it necessary, in view of the inter-related nature of the negotiations and the need to ensure adequate protection of Community interests, that the Community and the Member States should act together on all outstanding issues;

II. OBSERVATIONS ON PROCEDURE

7. Conscious of the fact that the large number of delegations participating in the Conference, the vast scope of the subjects under discussion, the different degrees of importance attached to individual topics by the various states or groups of states, as well as the need to follow a policy of obtaining the widest possible consensus before proceeding further, have in the past created procedural difficulties;

8. Suggests therefore that consideration should be given to the Conference adopting a new approach to its work, which could consist in drawing up and concluding separate conventions on subjects on which general consensus can be reached while continuing the negotiations on questions on which it does not at present seem possible to reach agreement;

III. OBSERVATIONS ON SUBSTANTIVE ISSUES WHICH COULD FORM THE SUBJECT OF SEPARATE CONVENTIONS

(a) The 200-mile economic zone and the outer limit of the continental shelf

9. Notes that there is now general acceptance of the principle of extending to 200 nautical miles from the baseline the zone in which coastal states have exclusive rights in respect of the exploitation and conservation of fish stocks as well as the extraction of minerals, petroleum and natural gas reserves from the seabed, and that this acceptance is already reflected in international practice;

10. Considers that it is nevertheless necessary that, in the interests of the legal security and the future development of the Law of the Sea, the Conference should complete its work through the adoptions of provisions which regulate all questions connected with the zone;

11. Considers, furthermore, that any agreement drawn up by the Conference should enable coastal states to extend their jurisdiction over the seabed beyond the 200 mile zone where the area of seabed concerned forms part of the natural prolongation of the state in question, subject to stipulations in the Convention as to the conditions under which such extension may take place;

(b) Exploitation of the international seabed

12. Endorses the principle that the international seabed and its resources should be regarded as the 'common heritage of mankind';

13. Believes that the exploitation of this 'common heritage' should benefit all mankind;

14. Considers therefore that an International Authority should be established having responsibility for the exploitation of the resources of the international seabed and operating under provisions which provide

- security of access for all countries, under agreed conditions and on a non-discriminatory basis;
- for the possibility of exploitation both by States and companies and by an operational arm of the Authority, in which the interests of the developing countries would be especially reflected;
- protection of the interests of developing countries which are producers of the minerals concerned;
- a system of decision-making within the International authority which takes account of the different interests involved, including those of consumer countries;

15. Considers that, in view of the long-term importance of the International Authority and the need of the Community to import the greater part of its requirements for the minerals concerned, it would be highly desirable for the Community as such to be represented on the Council of the Authority, thus enabling the Community to exert its full influence and to protect its interests in a body whose proceedings may be expected to have a significant impact on the policies and principles under which raw materials are exploited in the future;

(c) Settlement of disputes

16. Stresses that worldwide arrangements for settling disputes arising from exploitation of the seas and oceans are in the highest interests of all states;

17. Recommends the adoption at the Conference of a convention allowing recourse to arbitration proceedings in the event of disputes;

IV. OBSERVATIONS ON CERTAIN OTHER PROBLEMS CONNECTED WITH THE LAW OF THE SEA CONFERENCE

18. Reaffirms the principle of freedom of navigation, and in particular, the principle that within the territorial sea of 12 miles all vessels should retain the right of innocent passage and that within the 200-mile zone all states should enjoy freedom of navigation and of over-flight and freedom to lay underwater cables and pipelines;

19. Emphasizes, in view of the increasing pollution of the sea, the need to make rapid progress in the protection of the marine environment and draws attention to the effective steps that can be taken at regional level and through specialized United Nations bodies in this regard;

20. Welcomes the acceptance by the Conference of the principle that all states should be entitled to carry out marine scientific operations for peaceful purposes and in such a way as not to interfere with the legitimate use of the sea by other states;

21. Hopes, moreover, that any conditions applied to this principle will be strictly limited should marine scientific research be made subject, in the economic zone, to the consent of the coastal state;

22. Hopes that approval will be given at international level to the principle that the results of marine scientific research should be made available to all who have an interest therein and that all states will agree to the desirability of promoting the development of such research and of transferring marine technology to the developing countries while taking account of any rights deriving from patents;

23. Trusts that the agreements reached and the pursuit of negotiations on outstanding complex questions will lead to progressive international codification of the Law of the Sea, which will be of lasting benefit to all countries without exception;

24. Instructs its President to forward this resolution, together with the report of its committee, to the Council and Commission of the European Communities and to the parliaments and governments of the Member States.

B

EXPLANATORY STATEMENT

I. INTRODUCTION

1. The aim of the Third Conference on the Law of the Sea, convened on the basis of the United Nations General Assembly Resolution Number 2750 (XXV) of 17 December 1970 was

> 'the establishment of an equitable international regime - including an international machinery - for the area and resources of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues, including those concerning the regimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, inter alia, the prevention of pollution) and scientific research'.

2. At this Conference, which the Commission has so far attended as an observer, the basis for discussion is a Single Negotiating Text, drawn up during the third session held in Geneva from 17 March to 9 May 1975. The Single Text consists of four sections:

- the first section, prepared by the Chairman of the First Committee, deals with a regime for the seabed 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 technologies;

- the fourth section, presented by the Conference Chairman, deals with the settlement of disputes in regard to the interpretation and implementation of the future Convention.

3. At the fifth session of the Conference held in New York from 2 August to 17 September 1976 the Single Negotiating Text was re-drafted, on the basis of the positions adopted by the various delegations, as a Revised Single Negotiating Text.

II. THE PROSPECTS OF THE CONFERENCE ON THE LAW OF THE SEA AND COMMUNITY PARTICIPATION

A. The next session

4. The next session of the Conference on the Law of the Sea will be held in New York from 23 May to 8 or 15 July 1977.

A review of prospects for the work of the Committees that have parcelled out among themselves the task of drafting the different parts of the future Convention on the Law of the Sea, will help to give an overall picture of the Conference and of the likelihood of solutions, even if only partial ones, being achieved.

(a) The First Committee

5. In the First Committee, the basic task of which is to establish the regime for the international seabed area, i.e. the area beyond the 200-mile limit or the outer limit of the continental shelf, the discussion has frequently been of an ideological nature. This means a clash between the position of the Group of 77 and that of the major industrialized countries over arrangements for exploitation of the mineral resources of the international seabed.

6. The Group of 77 feels that the future International Seabed Authority, should enjoy wide discretionary powers over decisions on how the seabed is to be exploited. In particular, this exploitation should be entrusted to the 'Enterprise', which is the operational arm of the Authority. This would mean that ultimately the Seabed Authority would decide case by case on whether to grant other operators access to the international seabed area in order to conduct seabed exploitation operations.

7. In principle, the countries of the Group of 77 feel that other operators should be granted access only until such time as the Enterprise is able to proceed with the exploitation of the seabed on its own account.

8. The industrialized countries, on the other hand, take the opposite view. Since they themselves have the technological knowhow, they insist that a permanent right of access to the international seabed area should be guaranteed not only to the Enterprise but also to other operators. Furthermore, the conditions of access should be the same for the Enterprise and for the other operators.

9. The key point at issue in these two opposing positions is the two forms of access to exploitation of the seabed, the one based on 'discretionary' decisions and the other on the principle of 'parallel access' for the Enterprise and for other operators. In order to uphold the principle of parallel access, the major industrialized countries (USA, Japan and some European countries), are inclined to ask for guarantees of permanent access for their own operators.

(b) The Second Committee

10. The Second Committee is dealing with the widest range of questions: territorial seas, straits, the 200-mile exclusive economic zone, the continental shelf, enclosed and semi-enclosed seas, etc.

11. Amongst the most important questions awaiting a solution are the following:

- the recognition that the exclusive economic zone is still part of the high seas for the purpose of safeguarding freedom of navigation;
- concessions to be granted to land-locked or geographically disadvantaged countries in the matter of fishing rights in the exclusive economic zone;
- the definition of the outer limit of the continental shelf, where this extends beyond 200 miles, and the obligation to share with the international community the proceeds of any exploitation of resources in this area.

12. There is a real danger that the Conference will not succeed in reaching agreement on these questions and that coastal States will therefore be left free to establish whatever regime is most suitable for themselves.

In this connection it will be essential above all to preserve the right to freedom of navigation even within the economic zones established by the coastal States.

(c) The Third Committee

13. The Third Committee is studying the problems of protection of the marine environment, marine scientific research and the transfer of marine technologies.

These questions give rise to considerable difficulties, in view of the complex nature of the problems, (particularly with regard to the pollution of the seas), and of the fact that many decisions are closely connected with the solutions to the questions being discussed by the Second Committee, such as the status to be given to the exclusive economic zone, the rights to be accorded to coastal States, etc.

(d) The settlement of disputes

14. To the proceedings of the three above mentioned Committees must be added the documents drawn up by the Conference on the settlement of disputes. The problems in this sector tend to be mainly of a technical nature with at the same time a certain political element, as is also the case in regard to the subjects under discussion in the Second Committee.

15. In November 1976, after the fifth session had closed, the Chairman of the Conference submitted a revised version of Part IV of the Revised Single Negotiating Text. This new document represents a further stage in the attempt to reach a general agreement on the settlement of disputes.

o o

16. The tasks that lie ahead of the Conference may be briefly summarized as follows:

(1) questions on which the texts have been largely finalized and on which there is a broad measure of agreement (Second Committee and, to a lesser extent, Third Committee);

(2) questions which, for lack of time, have not been discussed at sufficient length but should not present insuperable problems (Third Committee, at least partly; settlement of disputes; preamble and final provisions);

(3) questions which give rise to serious difficulties and which will have to be resolved if further progress is to be made (First Committee).

17. This distinction between the various questions discussed by the Conference must be made, even though it had been decided from the very beginning that the Conference would have to lead up to the adoption of a General Convention acceptable to all the delegations taking part and even though this Convention has hitherto been regarded by many parties as a 'package deal' not admitting of partial solutions.

18. In reality, there is an increasingly urgent need to devise partial solutions as a first step towards a gradual general codification of the Law of the Sea should it not prove possible to reach an overall conclusion. There would be a real danger of total failure if, for example, no agreement can be reached on the problems being discussed by the First Committee, particularly with regard to the exploitation of the international seabed.

19. Following the unilateral declarations by many coastal states of 200-mile zones, the Community also decided to establish a Community fishing zone of 200 miles as from 1 January 1977. At the next session of the Conference, therefore, the idea of the maritime area of 200 miles will be a fait accompli, and it will be for the Conference to decide on the limits that all parties will accept to the rights which coastal States may exercise in these zones.

20. The Conference must therefore achieve at least partial successes, since complete failure would reduce the chances of setting clearly defined limits to the claims of the coastal states. Those states that have already extended their jurisdiction to a maritime area of 200 miles would be induced to go even further, with serious consequences for freedom of navigation, for the safety of trade and for freedom of movement for all kinds of shipping.

21. Furthermore, as far as the exploitation of the seabed is concerned, the existence, for example, of a deposit of manganese nodules at a distance of 250 miles from the coast would in all probability prompt the nearest state to take possession of it. The upshot of all this would be that international maritime relations would continue to be based on piecemeal and outdated agreements and would have to fall into line with the unilateral initiatives of the major maritime powers. Furthermore, there would be no universally accepted system for settling disputes, which would be extremely regrettable.

B. Community participation

22. On 10 September 1976, the chairman of the Netherlands delegation, on behalf of the Council of Ministers of the European Communities, wrote to the chairman of the Conference on the Law of the Sea explaining the need for participation by the Community as such in the drawing up of the future Convention on the Law of the Sea[1].

The letter makes the following points:

'The future Convention on the Law of the Sea being drawn up by the Conference contains both provisions which the Member States themselves are empowered to endorse and provisions on questions in respect of which the Member States have transferred their powers to the Community. Amongst these latter provisions are those relating to the conservation, management and exploitation of the biological resources of the economic zone. On this matter, the Community will shortly be entering into negotiations with a certain number of states with a view to concluding agreements on fisheries between each one of these States on the one hand and the Community as such on the other.

As a result of the fact that powers have been transferred, the Community Member States may not enter into commitments towards third countries in matters that pertain to the Community. It is essential therefore that these commitments be entered into by the Community, which implies that it must become a party to the future Convention simultaneously with its Member States'.

23. This demand that the Community be enabled to act independently in certain sectors clearly does not simply reflect internal arrangements for the division of powers between the Member States and the Community; it is also a response to the need to give third countries that are signatories to an international agreement a legal guarantee that they are dealing with an opposite number who is in a position to fulfill all commitments undertaken towards them.

24. Negotiations entered into with a number of third countries show that this capacity and authority on the part of the Community to enter into commitments in its own right has been recognized de facto by these countries.

---

1 Doc. A/CONF 62/48, 14.9.76

25. It is essential, however, that the Community's competence in this matter should be confirmed by an EEC clause inserted in the Convention. In the letter quoted above, the following wording is proposed for this clause:

> 'Customs unions, communities or other regional economic integration groupings exercising powers in the areas governed by this Convention may be parties to the Convention'.

26. This clause, drafted by legal experts from the Member States and the Commission, has been approved by the Council, which has instructed the Community representatives to the Third Conference on the Law of the Sea to ensure that it is inserted in the future Convention to be negotiated at the Conference. The clause in question refers only indirectly to the Community and is worded in such a way as to gain the support of third countries attending the Conference that may have embarked on a process of regional integration on similar lines to that of the Community.

III. THE EXCLUSIVE ECONOMIC ZONE

27. The principle of the establishment by coastal states of exclusive economic zones in a 200-mile maritime area is by now universally recognized and has become firmly entrenched in international maritime relations, independently of such relations as will result from the Third Conference on the Law of the Sea.

28. The text of the future Convention expressly lays down this principle in Part II, Chapter III of the Revised Single Negotiating Text. Article 45 defines the exclusive economic zone and the area over which coastal states shall exercise exclusive rights:

> 'Extent of the exclusive economic zone
>
> The exclusive economic zone shall not extend further than 200 nautical miles measured from the baselines used to determine the extent of territorial waters.'

29. With regard to the rights accorded to coastal states in the economic zone, the latest version of Article 44, which, moreover, is still the subject of much discussion and is not accepted by the Member States, provides as follows:

'Rights, jurisdiction and obligations of the coastal State in the exclusive economic zone

1. In the area beyond and adjacent to its territorial waters, which is known as the exclusive economic zone, the coastal State shall enjoy:

   (a) sovereign rights in respect of the exploration, exploitation, conservation and management of the natural resources, biological or non-biological, in the seabed and the subsoil thereof, as well as in the waters above it;

   (b) exclusive rights and jurisdiction in respect of the construction and use of artificial islands, installations and equipment;

   (c) exclusive jurisdiction in respect of:

      (1) other activities connected with the exploration and exploitation of the zone and its economic potential, such as the extraction of energy from water, tides or winds;

      (2) scientific research;

   (d) jurisdiction in respect of the protection of the marine environment, particularly activities designed to combat and reduce pollution;

   (e) other rights and obligations laid down by this Convention.

2. In exercising the rights accorded to it and the obligations imposed on it by this Convention in the exclusive economic zone, the coastal State shall pay due regard to the rights and obligations of other States.

3. The rights set out in this article in respect of the seabed and the subsoil thereof shall be exercised in conformity with the provisions of Chapter IV[1].'

30. The exclusive economic zone envisaged by the Revised Single Negotiating Text is clearly a very broad concept, which includes, apart from fishing, the exploitation of the mineral resources of the seabed in particular, as well as other activities pertaining to the exploration and exploitation of the zone for the purpose of producing energy and conserving the marine environment.

---

1 Chapter IV of Part II of the Single Text deals with the continental shelf.

The concept of the exclusive economic zone is so broad that the fishing carried out in it constitutes only one of the many ways in which an area of this kind may be exploited.

31. The Community fishing zone, which has been extended to 200 miles, differs therefore from the economic zone set up by other States with the intention of implementing all the provisions of Article 44.

From the point of view of size (200 miles), the Community fishing zone is identical with the exclusive economic zone envisaged by the Revised Single Negotiating Text. Within this limit of 200 miles, in fact, there is no difference between the rights exercised in the Community fishing zone, as far as fishing and the conservation and management of natural reserves are concerned, and the rights exercised by coastal states in regard to fishing within their own economic zones.

32. The most important feature of the concept of a maritime 'economic zone' is obviously the fact that the coastal state is accorded jurisdiction over natural resources. This is a revolutionary change, inasmuch as the traditional freedom to fish in waters outside the territorial waters would be abolished to make way for the concession of sovereign rights to the coastal state in regard to the exploitation, conservation and management of natural resources.

Closely connected with this problem are questions relating to prospecting, drilling, the exploitation of oil and natural gas deposits and scientific research in the continental shelf.

Furthermore, acceptance of this new principle gives rise to the problem of adequately defining the high seas, fishing rights and the conservation of biological resources.

IV. THE INTERNATIONAL SEABED AUTHORITY

33. Part I of the Revised Single Negotiating Text, which the Conference will have to discuss with a view to adopting a Convention, provides in Article 20 for the establishment of an International Seabed Authority.

Article 21 lays down that this Authority is to be the organization responsible for organizing and controlling activities in the International Seabed Area.

34. The functions of the Authority are set out in Articles 22 and 23 of the Revised Single Negotiating Text and may be summarized as follows:

- activities in the Area are conducted, under the control and direct responsibility of the Authority, by States party to the Convention, by State enterprise and by natural or juridical persons possessing the nationality of a State party to the Convention;
- the Authority will avoid any discrimination in the exercise of its powers and functions, including the granting of opportunities for activities in the Area.

35. With regard to the structure of the Authority, Article 24 of the Single Text provides that the principal organs through which the Authority will operate are the following: the Assembly, the Council, the Tribunal and the Secretariat. Furthermore, the Convention provides for the establishment of an Enterprise, through which the Authority will directly carry out activities in the Area.

(a) The Assembly (Articles 25 and 26)

36. The Assembly will consist of all the members of the Authority. It will meet in regular and special sessions, and each member will have one representative, each representative having one vote. A majority of the members will constitute a quorum.

37. As the supreme organ of the Authority, the Assembly has the power to prescribe the general policies to be pursued by the Authority on all questions within the competence of the Authority. The Assembly will adopt resolutions and make recommendations to the States.

38. The Assembly will also have the following powers:

- adoption of its rules of procedure;
- election of the members of the Council;
- appointment, on the Council's recommendation, of the Secretary-General, the members of the Tribunal and the members of the Governing Board of the Enterprise;
- establishment of such subsidiary organs as may be found necessary for the performance of its functions;
- assessment of the contributions to be made by States party to the Convention;
- adoption of the Authority's financial regulations;
- approval of the budget of the Authority on its submission by the Council;
- consideration of the reports submitted by the Council and other organs of the Authority.

- suspension of members of the Council's recommendation .

(b) The Council (Articles 27-32)

39. The Council is likely to consist of 6 members of the Authority elected by the Assembly, with membership of the Council distributed as follows :

- twenty-four members elected in accordance with the principle of equitable geographical representation. The geographical regions taken in consideration are Africa, Asia, Eastern Europe (Socialist countries), Latin America and Western Europe ;
- six members with substantial investment in, or possessing advanced technology which is being used for the exploration of the area and the exploitation of its resources, or members who are major importers of landbased minerals produced from the resources of the area;
- six members chosen from the developing countries, one being drawn from each of the following categories :

  (1) States which are exporters of landbased minerals which may also be produced from the resources of the area,
  (2) States which are importers of the minerals referred to in subparagraph 1 ,
  (3) States with large populations,
  (4) landlocked States,
  (5) geographically disadvantaged States,
  (6) least developed countries.

40. Members of the Council may be re-elected ; however, due regard should, as a rule, be paid to the desirability of rotating seats.

Each member of the Council has one vote. The Council will function at the seat of the Authority and meet as often as the business of the Authority may require, but in any case not less than three times a year.

41. Decisions on important questions will be made by a two-thirds plus one majority of the members present and voting. A procedure will have to be established whereby any member of the Authority not represented on the Council may send a representative if it so chooses. In such a case, this member may take part in the deliberations at Council meetings, but without the right to vote.

42. As the executive organ of the Authority, the Council has the power to prescribe the specific policies to be pursued on any question falling within the competence of the Authority and in a manner consistent with the general policies prescribed by the Assembly.

43. The powers and functions of the Council may be summarized as follows :

- adoption of its rules of procedure ;
- supervision and coordination of the implementation of those parts of the Convention relating to the Authority ;
- recommendation to the Assembly of candidates for appointment to the Tribunal and to the Governing Board of the Enterprise ;
- establishement of Commissions and of such subsidiary organs as may be found necessary for the performance of its functions ;
- conclusion of agreements with the United Nations Organization or other intergovernmental organizations on behalf of the Authority, subject to approval by the Assembly ;
- submission to the Assembly of special reports and the Enterprise's annual reports ;
- drawing up directives for the Enterprise ;
- exercising control over the activities carried out in the International Seabed Area ;
- adoption of measures, rules, regulations and procedures relating to all matters within the Authority's competence ;
- making recommendations to the Assembly concerning the suspension of members for gross and persistent violations of the provisions of the Convention relating to the Authority.

44. The Council will act through various organs, chief of which will be the Economic Planning Commission, the Technical Commission and the Rules and Regulations Commission.

(c) The Tribunal (Article 33)

45. The Tribunal would consist of eleven judges, seven of whom constitute a quorum. Its members are appointed by the Assembly on a recommendation from the Council from amongst the candidates nominated by States party to the Convention. They are appointed for a term of six years and may be reappointed.

46. The Tribunal of the Authority has jurisdiction with respect to :

- all disputes between States concerning those parts of the Convention relating to the Authority and its activities in the area ;

- all disputes between States Parties to this Convention, or between such States Parties and a national of another State Party, or between nationals of different States Parties;

- all disputes between a State Party or a national of a State Party and the Authority or the Enterprise in regard to the conclusion of contracts, their interpretation and application, as well as any other activity in the area;

- all disputes concerning the legitimacy of measures adopted by any organ of the Council or Assembly;

- all disputes relating to the keeping of industrial secrets and to the obligation not to disclose confidential information given to the Authority for the performance of its functions.

The Tribunal will also deliver advisory opinions at the request of any organ of the Authority or in all other cases specifically provided for by the Convention.

(d) The Enterprise (Article 41)

47. The Enterprise is the organ of the Authority which, subject to the general policy directives and control of the Council, directly conducts activities in the International Seabed Area.

The Convention lays down that the Enterprise shall have international legal personality and such legal capacity as may be necessary for the performance of its functions and the fulfilment of obligations undertaken by it.

48. The Enterprise will function in accordance with the Statute annexed to the part of the Convention relating to the Authority, and its seat will be that of the Authority.

The Statute of the Enterprise lays down arrangements for organization, administration and financing, as well as specifying the operations that the Enterprise is authorized to carry out. It also sets out the immunities and privileges enjoyed by the Enterprise. These privileges and immunities are conferred on the Enterprise to enable it to carry out its functions. In particular, it provides that the Enterprise, its property and revenues, as well as all operations and transactions carried out by it, shall be exempt from all taxes and customs duties.

(e) The Secretariat (Article 42-45)

49. The Secretariat of the Authority consists of a Secretary-General

and such staff as may be necessary to carry out the duties of the Authority. The Secretary-General will be appointed by the Assembly on a recommendation from the Council and will be the chief administrative officer of the Authority. He will submit an annual report to the Assembly on the work of the organization.

50. The staff of the Authority, which will be appointed by the Secretary-General, will consist of qualified scientific and technical personnel. Their recruitment will be governed by the rules laid down in Article 101 of the United Nations Charter, which will also govern the independence and freedom of action of the Secretary-General and the staff of the Authority in relation of the States party to the Convention.

(f) Finance (Article 46-51)

51. The Assembly will establish the General Fund of the Authority. All revenues derived by the Authority from activities in the area, including any excess of revenues of the Enterprise over its expenses and costs, will be paid into the General Fund in such proportions as the Council shall decide.

52. The Council will submit to the Assembly for its approval, an annual draft budget of the Authority's expenditure drawn up by the Secretary-General. The Authority's expenses will include:

- administrative expenses, that is, expenses for staff and meetings and expenditure incurred by reason of the functioning of the organs of the Authority;

- other expenses incurred by the Authority in carrying out the functions entrusted to it by the provisions of the Convention relating to the Authority.

53. All expenses will be met out of the General Fund to an extent to be determined by the Assembly on the recommendation of the Council. Provision is also made for a Special Fund, into which any excess of the Authority's revenues over its expenses and costs will be paid.

54. The Council is also authorized to contract loans on behalf of the Authority, but the members of the Authority will not be liable in respect of these transactions.

55. The records, books and accounts of the Authority, as well as its annual financial statements, will be audited annually by an independent auditor recognized by the States party to the Convention.

V. THE COMMUNITY'S PARTICIPATION IN THE INTERNATIONAL SEABED AUTHORITY

56. The letter sent on 10 September 1976 by the head of the Netherlands delegation, on behalf of the European Communities, to the chairman of the Conference on the Law of the Sea, requests that the Community should take part in the future Convention as a contracting party. This means that if such a Convention is concluded, the Community would be entitled to be a signatory thereto.

57. More particularly, as far as the Community's participation in the International Seabed Authority is concerned, the text adopted by the Council of Ministers of the European Communities on 20 July 1976[1] contained, inter alia, the following sentence:

> 'The Council has agreed that, in the light of the future development of negotiations, ways and means must be examined of ensuring that the Community as such is represented in the Assembly and in the Council of the International Seabed Authority, as indeed in all organs established by that Authority.

58. It must be admitted that the participation clause proposed by the Community at the fifth session of the Conference[2] does not expressly assimilate 'customs unions' communities and other regional economic groupings' with States for the purpose of the application of the Convention.

However, there are sufficient grounds for arguing that any reference in the Convention to 'States' must be regarded as applicable also, where this is advisable, to entities other than States that are, like these States, involved in the process of codifying the Law of the Sea.

It is clear, however, that any ambiguity on this matter must be eliminated in the final version of the text of the Convention.

59. On the matter of the Community's participation in the proceedings of the various organs of the Authority, the following hypotheses may be advanced.

---

[1] I/271/76 (Mare, Jur 17, Agri 12)

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

(a) The Assembly

60. Article 25 of the Revised Single Negotiating Text provides that the Assembly shall consist of all the members of the Authority. The Community would thus become a member of the Assembly and could take part in its proceedings. Since the present text of the Convention lays down that each member of the Assembly shall have one vote, the objection could be made by any other party to the Convention that the Community's participation in the Assembly's proceedings would give an extra vote to the Nine.

61. In order to counter this objection, the proposal might be made that a new paragraph be inserted in the text of Article 25, whereby contracting parties other than States would not have a vote of their own and their Members States would be permitted to cast a collective vote.

(b) The Council

62. There are various reasons for preferring Community representation on the Council to separate participation by the Member States.

63. First and foremost, if some of the Member States were to take part as individuals in the Council's proceedings, the Community could not take part as a regional entity and could not therefore exercise to the full the influence it acquires in this capacity.

64. As far as the decision-making procedure is concerned, the Council and other organs of the Authority could be persuaded to try first of all to arrive at a consensus. However, if a vote were to be taken, a Community vote would have greater weight than a number of votes cast separately.

65. If we suppose, on the basis of the present wording of Article 27, that at least three Community Member States will be elected to the Council[1], the Community's influence will not be diminished by accepting a single vote for itself in place of the three or more votes to which the Member States would be entitled. On the contrary, if we take into account the vote weighting formulae currently under consideration[2], the cumulative votes of a certain number of Member States would carry less weight than if the Community were to act as a single unit.

---

1 According to the system of representation at present envisaged by the Revised Single Negotiating Text, the group of six industrialized countries should include the United States, the European Economic Community, Japan, the Soviet Union, and two other countries.

2 Under an unofficial proposal from the United States, decisions would have to be taken by a majority representing 50% of both consumers and producers.

(c) The Enterprise

66. The considerations outlined above hold good also for Community representation on the Governing Board of the Enterprise, assuming that the same criteria are applied in the establishment of these two organs, as is envisaged in the present Revised Single Negotiating Text.

67. As far as exemption of the Enterprise from all taxes and customs duties[1] is concerned, there is a danger that this would give it a marked advantage over other operators. This is an aspect, therefore, which needs to be given the most careful consideration.

68. While Article 60 of the Single Negotiating Text, which accords the Authority complete exemption from taxation and customs duties, may be accepted, it does not seem advisable to confer the same status on the Enterprise. In the absence of more detailed information one may ask whether this exemption from taxation and customs duties extends not only to the routine administrative operations of the Enterprise but also to its industrial activities. In the latter case the Community alone would be empowered to grant the Enterprise exemption from customs duties.

69. Furthermore, the Community would have to examine the issue in terms of its implications as regards the obligations and procedures laid down in the General Agreement on Tariffa and Trade (GATT) as well as the system of generalized preferences. Although it is normal for intergovernmental bodies exercising public functions to be exempt from taxation and customs duties, the International Seabed 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 seabed minerals would in any case have to be laid down by the Community and not by Member States.

(d) Anti-Monopoly and Anti-Dominant Position Clause

70. It will be essential to consider embodying in the provisions of the Convention relating to the International Seabed Authority an anti-monopoly clause or a clause that will prevent dominant positions being formed. Only in this way will it be possible to prevent parties to the Convention gaining undue advantages to the detriment of the others.

---

[1] See paragraph 9 (i) of the draft Statute for the Enterprise.

(e) Financial Contributions

71. It will also be necessary to embody in the Single Text a provision relating to the financial contributions payable by contracting parties other than States. Consideration of the financial arrangements for the Authority have not as yet thrown up any generally acceptable solution, and it is difficult to formulate proposals at the present stage.

72. However, there are two principles that might be borne in mind with regard to the Community's participation in the International Seabed Authority. Firstly, any possibility of duplication of payments must be avoided, in the sense that contracting parties other than States must not be obliged to make contributions that are already being borne by the Member States[1]. Secondly, contributions from contracting parties other than States must be confined to a definite percentage of the administrative costs, without prejudice to the possibility of voluntary contributions being made.

VI. SETTLEMENT OF DISPUTES

73. The Community Member States have attached great importance to the inclusion in the Convention of a system for the compulsory settlement of disputes as an integral part of the future organized Law of the Sea. This special interest derives both from their traditional preference for legal methods for settling disputes and from their desire to devise in advance a means of countering any abuse by the coastal States of their powers in their respective economic zones and in the area of maritime law in general.

74. On 23 November 1976 the Chairman of the Conference submitted a revised text of Part IV relating to the settlement of disputes, which takes account of the views put forward by numerous delegations.

75. The first part of this text lays down that the parties may choose the means they consider most apt for the settlement of disputes; the system set out in the Convention comes into operation only when these means have been tried or when the parties fail to reach agreement on a general, regional or special system for settling disputes. Special rules are laid down for the use of conciliation procedures, in cases where the parties wish to avail of them.

76. When the means chosen by the parties do not lead to any solution the system set out in the Convention then comes into force and offers the

[1] Conversely, states must not be asked for contributions in cases where the Community or regional grouping to which they belong has already contributed.

parties a choice between the following four methods of settling their dispute :

- the Law of the Sea Tribunal (a permanent body consisting of 21 members);
- the International Court of Justice;
- an arbitration procedure (rules for which will be found in Annex III of Part IV);
- a special arbitration procedure for disputes involving the fishing industry, pollution, marine scientific research and navigation (recourse is had in these cases to specialized bodies to be chosen from lists drawn up by the United Nations).

77. Where the parties cannot agree on the means of settling the dispute, the choice will rest with the plaintiff, who may accept either the procedure chosen by the other party or arbitration, unless the two parties agree on another solution. There is however some uncertainty as to the exact scope and range of the rights that would be safeguarded by the proposed system, which is relatively complex.

78. As far as exceptions are concerned, under the present text[1] the coastal state is not obliged to submit for settlement disputes concerning the exercise of its soverign and exclusive rights or of its exclusive jurisdiction (e.e. its rights in its territorial sea or economic zone), except in the following cases.

- when the coastal state is accused of violating its obligations under the Convention by interfering with freedom of navigation or over-flight, the freedom to lay submarine cables or pipelines or the internationally permitted use of the sea for purposes related to navigation of communications ;
- when a state is accused of failing to observe the provisions of the Convention or laws and regulations of the coastal state which do not conflict with the Convention or with other provisions of international law:
- when a coastal state is accused of violating international standards or criteria relating to preservation of the marine environment or scientific research activities :
- when a coastal state has manifestly failed to comply with the conditions imposed by the Convention in respect of the exercise of its rights or the fulfilment of its duties in regard to biological resources, assuming that the soverign rights of this state are not impugned.

[1] See Article 17 of the new Part IV (23.11.76) of the Revised Single Negotiating Text.

79. The main difficulty with regard to the system to be established for the settlement of disputes is the likelihood that the responsible authority will have to act on the basis of excessively complex procedures which would lead to long drawn out legal actions. Nor can the possibility be excluded that a Law of the Sea Tribunal might be inclined to give a wide interpretation of the rights of coastal states.

80. The Community should therefore do its utmost to ensure that the arbitration system is accepted by all States party to the Convention as a common basis for the settlement of disputes. Consequently, whenever the parties involved have already chosen systems for settling their dispute, they should be able to have recourse to the arbitration procedure to settle the dispute in question.

VII. OTHER PROBLEMS TO BE DEALT WITH BY THE CONFERENCE

81. In the case of the problems outlined so far, it is to be hoped that the Conference will soon reach agreements permitting an initial codification to be made of international relations in maritime law. However, in the new context created by the establishment of maritime economic zones and the need for the setting up of an International Authority governing the exploitation of the ocean depths and for firm rules at international level for the settlement of disputes, etc., there are other questions that are certainly no less important, such as freedom of navigation, the protection of the marine environment, scientific research, etc.

82. It is equally urgent for these problems to be codified in a Convention, but it must be acknowleged that certain aspects require further thought. In view of the fact that more progress has been made towards finding adequate solutions in some areas than in others, it would be wiser to abandon the idea that has hitherto prevailed of a package deal and to tackle the various questions separately, thus achieving a progressive codification of the Law of the Sea.

(a) Freedom of Navigation

83. At the Third Conference on the Law of the Sea the principle has become firmly established that territorial waters extend for a distance of twelve miles from the coastal baselines.

84. The Single Text under discussion at the Conference takes account of the importance of freedom of navigation in the new context of the extension of coastal states' sovereign rights to a distance of twelve miles. Article 16 of Part II establishes the right of innocent passage:

- 'subject to the provisions of this Convention, vessels of all states, coastal or landlocked, enjoy the right of innocent passage in territorial waters.'

Under Article 23 of Part II of the Single Text, the coastal state must not hinder or obstruct the innocent passage of foreign vessels through its territorial waters, nor may it impose on foreign vessels such obligations as would in practice have the effect of denying or restricting this right of passage.

85. As far as the exclusive economic zone is concerned, Article 46 of Part II establishes the principle of freedom of navigation for all states, whether coastal or landlocked.

In paragraph two this article refers expressly to the regime for the high seas (Articles 77-103 of the Convention). This regime, however, applies only to the extent to which it is not incompatible with the regime for the exclusive economic zone. It must be concluded, therefore, that the regime within the exclusive economic zone is neither that for the high seas nor that for the territorial waters, but rather a 'sui generis' regime.

The present approach to the problem is to define this regime in terms of 'residual rights', which means that rights over the resources of the zone belong to the coastal state and, as long as these rights are not infringed in any way, all other states enjoy freedom of navigation and communication.

86. The principle of freedom of navigation must therefore be inferred from the provisions relating to the different regimes for the territorial sea, the exclusive economic zone and the high seas. It would be desirable for this principle to be set out in a single general provision which would underline the importance of freedom of navigation for all states and reduce to an absolute minimum the obstacles to the implementation of this principle.

(b) The protection of the marine environment

87. The protection of the marine environment is one of the central themes in the text of the Convention submitted to the Conference, being closely linked with the exercise of the right of freedom of navigation, the coastal state's police powers, the carrying out of activities in the exclusive economic zone, the exploitation of the continental shelf, etc.

It is one of those matters therefore that should be resolved with the greatest possible despatch but which, precisely because it is so very complex, needs to be further discussed in depth by all the parties to the Conference.

88. As far as the dumping of harmful substances in the sea is concerned, the Revised Single Text confines itself to laying down a series of general directives, mainly in the matter of International co-ordination, and entrusting the coastal states with control of the pollution caused by dumping of this kind.

89. 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. An extremely wide range of potential interventions are therefore involved.

90. Article 21 lays down that, in respect of its 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 regulations and standards in special zones, provided this is not opposed by the competent international organization.

91. In Section VII of Part III on enforcement, Article 27 lays down that the flag State must ensure compliance with international rules and standards for the prevention of pollution. The provisions relating to the prerogatives of the port State (Article 28, 29 and 30) are very broad and allow the latter to exercise extensive and often undefined powers in respect of foreign vessels having infringed national or international regulations relating to the prevention of pollution caused in the territorial sea or in the economic zone.

92. Section VII of Part III dealing with guarantees also grants the coastal state extensive and often undefined powers with regard to the institution of legal proceedings against and the detention of foreign vessels. The provision relating to penalties which may be imposed upon foreign vessels are also lacking in clarity.

The provisions of Part III of the Revised Single Text will be applied without prejudice to the right of free passage in international straits.

93. In conclusion, the Revised Single Negotiating Text lays down that the powers of the coastal state in respect of pollution will extend through the economic zone and 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 breeches 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).

94. In this context mention should also be made of the protection of the marine environment from pollution caused by exploration, drilling and the extraction of submarine deposits of natural gas, oil and minerals.

With regard to the future International Seabed Area, various provisions have been drawn up to regulate this matter. Thus Article 14, paragraph 2, of Part I of the Revised Single Text gives coastal states the right to take any measures they deem appropriate to prevent, reduce or eliminate serious and imminent danger threatening their coasts as a result of pollution caused by operations carried out in the Area.

Furthermore, the Technical Commission, as an organ of the Council of the International Seabed Authority, would have the power to suspend all operations in the area that might be liable to cause serious damage to the marine environment (Article 31).

Finally, the Tribunal of the Authority can authorize such measures as may be necessary to reduce to a minimum damage that may be caused to one of the parties or to prevent serious damage being done to the marine environment (Article 38).

95. Other aspects already outlined in Part III have still to be finalized so as to arrive at clear and general regulations governing rights and obligations in this sector.

(c) Closed and semi-closed seas

96. Chapter IX of Part II contains two articles relating to closed or semi-closed seas. Article 129 defines these seas as follows :

> 'For the purpose of this chapter, the expression "closed or semi-closed sea" shall be taken to mean a gulf, basin or sea surrounded by two or more states and linked with the high seas by a strait, or formed entirely or principally of the territorial seas and the exclusive economic zones of two or more coastal states.'

97. A large part of Community territory is bounded by semi-closed seas, in particular the Mediterranean and the Baltic.

Article 130 of the Revised Single Text provides for cooperation between the coastal states of a closed or semi-closed sea in the following sectors :

- coordination of the management, conservation, exploration and exploitation of marine biological resources;
- coordination of the exercise of their rights and the performance of their obligations in regard to the preservation of the marine environment.
- coordination of their scientific research policies and implementation of common research programmes;
- invitations, where opportune, to other states or international organizations concerned to cooperate with them in implementing the measures outlined above.

98. The problem of semi-closed seas clearly illustrates the need to negotiate agreements with third countries aimed at settling matters of common interest in the most appropriate manner.

This would enable the problem of fish conservation to be approached from the more rational point of view of the conservation of species: stocks would be protected whichever zone they were in and this procedure could be extended to include, whenever necessary, special responsibility for protecting stocks on the high seas.

(d) Marine Scientific Research

99. In its original form the Single Negotiating Text gave the coastal state full control over marine scientific research activities in its territorial waters. There was no agreement, however, on the exercise of control by the coastal state over marine scientific research in the economic zone and on the continental shelf.

100. The Revised Single Negotiating Text has replaced the distinction between the regimes for marine scientific research in the economic zone or on the continental shelf of a coastal state by a consent regime for all marine scientific research activities.

101. Notwithstanding this undeniable progress, questions relating to the conduct of marine scientific research will have to be further discussed with a view to overcoming resistance, mainly from the developing countries, to the idea of permitting a consent regime without any restrictions on the exercise of scientific research activities in the neighbourhood of their coasts.

102. With regard to marine scientific research in the International Area, the Revised Single Negotiating Text is an improvement on the 1975 Text and takes account of some amendments tabled by the Community Member States. In Article 10 of Part I of the present Text marine scientific research is expressly defined as an activity carried out in the interests of humanity and, in addition, the exclusive power of the Authority to control and carry out research activities in the Area itself is modified. Under the new text, all competent states and organizations have the right, subject to compliance with the provisions of the Convention, to carry out scientific research operations in the International Seabed Area.

(e) Transfer of Marine Technology

103. This subject must be considered in close conjunction with the Community's development policy. Since the entry into force of the Convention of Lomé between the Community and the 46 African, Carribean and Pacific States, it has become clear that this Convention sets out to be a new model for relations between developed and developing states, extending far beyond the geographical limits of the area it covers.

104. The Community's position is in broad accord with the schemes outlined in the Revised Single Text. Article 78 of Part III lays down that states shall cooperate, either directly or through the appropriate organizations, for the purpose of promoting the development and transfer of scientific and technical knowledge at fair prices to the developing countries.

105. Article 80 specifies the following actions which might be taken with this end in view:

- the acquisition, exploitation and dissemination of marine scientific and technological knowledge;
- the development of marine technologies applied to practical needs;
- the development of the technical infrastructure needed to facilitate the transfer of marine scientific technology;
- The deployment of human resources in the fields of education and instruction, mainly of citizens of least developed states;
- international cooperation in achieving these aims, particularly at regional, sub-regional and bi-lateral level.

106. At international level the Community has put forward views which go a long way towards meeting many of the developing countries' basic demands. Indeed, in recent years the Community has made a breakthrough from the development aid era to that of cooperation in the true sense of the term.

OPINION OF THE COMMITTEE ON AGRICULTURE

Draftsman : Mr M. HUGHES

On 20 January 1977 the Committee on Agriculture appointed Mr Hughes draftsman.

It considered the draft opinion at its meeting of 26 and 27 April 1977 and adopted it unanimously.

The following were present: Mr Houdet, chairman; Mr Laban and Mr Liogier, vice-chairmen; Mr Hughes, draftsman; Mr Albertini, Mr Corrie, Mrs Dunwoody, Mr De Keersmaeker (deputizing for Mr Creed), Mr Früh, Mr Gibbons, Mr Guerlin, Mr O. Hansen, Mr Kofoed, Mr de Koning, Mr Ney and Mr Pisoni.

Introduction

1. The United Nations Conference on the Law of the Sea, for which the preparations began in 1968 and of which the first session on questions of substance was in June 1974, has held five sessions up to the present date and a sixth session is scheduled for May 1977.

The aim of the Conference is the revision of the laws concerning the whole range of problems connected with the use of the sea and the sea bed so as to create 'an equitable international regime'[1].

The choice of the word 'equitable' indicates the ambition of the Conference to go beyond the existing concepts underlying international law, and create, at the same time, new principles and new instruments (such as the International Sea Bed Authority).

2. Justice and freedom have long been the two opposing poles around which has revolved the debate on the philosophy underlying the Law of the Sea.

On the one hand, natural law arguments have been used in an attempt to gain recognition for the right of states to control resources upon which they depend. Such arguments have been buttressed by reference to particular geographical factors of coastline configuration, continental shelves or even pecularities of marine geography such as the Humboldt current.

This position has been opposed by those arguing that the seas are res communis or res nullius, cannot be subjected to the sovereignty of any state and, in the interests of commerce between nations, must remain free to all.

The past developments in law reflect the changes in the interests of the major maritime powers which have not always been consistent. Britain, given as upholding the freedom of the seas since Elizabethan times, produced the best defence[2] of extended territorial waters when confronted, in the time of James I, by Dutch maritime efficiency. Grotius' magnum opus, Mare Liberum, similarly reflected the dominant maritime powers' interest in 'free seas'.

3. At the present time, given the integrated international economy, it is in the interest of no state to see freedom of commerce on the seas threatened. The pendulum is swinging back to interest in 'justice'. This reflects the growing technological mastery of the modern world which has led to :

---

[1] United Nations General Assembly Resolution Number 2750 (XXV) of 17.12.1970

[2] John Selden , Mare Clausum, 1635

- a growing realisation that the resources of the sea are not unlimited, and must be safeguarded in the interest of all nations against short-sighted over-exploitation;
- and concern over the distribution of resources in the sea and on the seabed which it is now within the capability of man to exploit.

The concept of freedom has been considerably eroded by the advance of the concept of the patrimonial sea and the demand for justice for those states not in a position to exploit the resources of the sea and the seabed, either through lack of technological capability or geographical disadvantages.

The latter group of states, while limited in resources, is considerable in its voting power at the U.N. This has led the Conference to approach problems of the Law of the Sea on an extremely broad front.

The ambitious nature of the Conference is demonstrated by the main questions being examined : the conditions for the examination of the seabed resources; the exploitation of biological resources; the passing of ships through waters within the jurisdiction of coastal states; the extent of the Continental shelf; marine pollution; and scientific research.

4. The area in which the greatest progress has been made, and the one of greatest immediate interest to the Committee on Agriculture, is the concept of the 'economic zone' extending 188 miles beyond the generally accepted 12 mile territorial waters. This is the key concept, but one on which a final decision is at risk, given the broad range of questions on which it is hoped a package deal can be reached.

5. The main problems with which the Community is confronted are :

- ensuring that clear principles regulating the 200 mile zone are agreed upon with the minimum of delay, so as to avoid disputes with Third Countries;
- ensuring that conventions adopted will be workable;
- ensuring that decisions do not contradict principles laid down in the emerging Community fisheries policy, and the authority of the Community to establish such a policy.

6. Faced with the deadlock in the Conference, the Community must :

- organise the management of its fishing resources;
- negotiate agreements with non-member states;
- state its position at the United Nations Conference.

The first two questions have been dealt with extensively in two reports, drawn up by Mr Hughes[1] and Mr Kofoed[2], in the Committee on Agriculture; this opinion will concentrate largely on the last issue : the Community's position at the Conference and its implications for the Common Fisheries Policy.

II. Problems concerning the role of the Community

Common negotiating position

7. The first difficulty which the Community has had to face is that of developing a common approach in the Conference, so as to better defend the interests of Member States.

This has not been without difficulties, given the divergences of interests of Member States, a reflection in part of differences in lengths of sea coasts and hence economic zones. For example, there were difficulties in Belgium accepting an amendment defended by the other Member States to improve the coherence between the general definition of the economic zone and definitions found elsewhere in the Single Negotiating Text.

It is clearly imperative that the Community adopt a common position and greater efforts should be made in the Council to develop a working relationship to that end. Beyond the immediate necessity, there is the related and more important issue of the future role of the Community once the Convention is to be implemented.

The EEC Clause

8. It is essential that a common approach be developed, and that the Community presence at the Conference be given a concrete expression, not merely for the reasons stated above, but also because the Conference is treating matters for which the competence has been transferred from the Member States to the Community. This implies that the Community must become a party to the Convention simultaneously with its Member States, as stated by the Chairman of the Netherlands delegation on 10 September 1976, on behalf of the Council of Ministers of the EEC.

The maritime zones of the Member States are to be considered a single zone. In order to draw up policies for that zone, which necessarily involves negotiations with Third Countries on reciprocal concessions within the Community zone and third waters, the Community must have the same rights and legal status as all other parties to the Convention, in order :

(a) to guarantee to Third Countries that they are dealing with an opposite number in a position to fulfil commitments;

---

[1] Doc. 66/75

[2] Doc. 474/76

(b) to allow the Community to become a party capable of entering into procedures established for the settlement of disputes arising from the Convention;

(c) and to ensure that the Community zone, and the preferential treatment which this implies for Member States, be recognised.

9. An EEC clause has been drafted for inclusion in the Convention to confirm the Community's competence :

'Customs unions, communities or other regional economic integration groupings exercising powers in the areas governed by this Convention may be parties to the Convention.'.

It is essential that such a clause be entered into the Convention.

This does, however, raise problems[1] concerning the necessity of determining more precisely the scope and competence of the Community in the 200 mile Community zone, to establish whether the Community will be granted the authority to regulate all the questions raised by the Geneva Conference.

III. Problems concerning the approach to revision of the Law of the Sea

Regional versus international approach

10. Before considering specific substantive issues of interest to Community policy, one should examine first the wider question of whether the Community interests can best be defended by the broad international approach represented by the Geneva Conference, or whether it would be more appropriate to seek agreement in regional groupings, for example in the North East Atlantic and the North Sea, with states adjacent to the Community. Clearly, at the international level, the divergence of interests is so great between the developed world, the developing countries, the Eastern bloc, and the landlocked countries, that an agreement, difficult to reach in itself, will result in principles being adopted that must represent the lowest common denominator. The danger exists that a compromise may lead to unworkable or meaningless principles.

It should be remembered that the Law of the Sea Conference seeks to minimise the necessity for voting, and, by the Gentleman's Agreement, seeks agreement on substantive issues by way of consensus.

This process is lengthy, while the search for consensus can lead to a sacrifice of precision. It can be argued that the Community should seek agreements with its immediate neighbours to regulate the pressing problems facing the conservation of marine resources, possibly within the framework of the Council of Europe.

---

[1] These are dealt with below in paragraph 35.

11. This approach, while undoubtedly attractive, has a number of drawbacks.

The Community should not be seen to be in the position of sabotaging the work of the Geneva Conference by advocating regional conventions as an alternative approach.

12. Moreover, it would not be in the interest of the Community to undermine the Geneva Conference : delay in the adoption of generally agreed principles would increase the possibility of disputes with those countries not a party to regional agreements. The Community needs both a regional approach and the global approach embodied in the Conference.

13. Given the possibility that few concrete results will emerge in the short term from the Law of the Sea Conference, the Community should proceed, in negotiations with Third Countries on matters of fishing, fishery stock conservation and pollution, with an approach taking into account regional interests and special needs, while ensuring that measures are without prejudice to and conform with such consensus as has emerged from the UN negotiations and so minimize as far as possible discrepancies with principles being developed in Geneva.

Progressive codification versus the package deal

14. The aim of the Conference to regulate all problems related to the Law of the Sea creates equally difficult issues. Considerably greater progress has been made in the Second Committee (dealing with territorial seas, economic zones, straits, etc.) and on settlement of disputes, than in the First Committee (regime for the International Seabed).

The most pressing issues involved in the elaboration of a Community fishing policy are those related to the rights and duties of states in their economic zones, and in particular measures which can be taken for conservation, the scope of coastal state jurisdiction and the rights of Third Countries (particularly historic rights).

Traditional concepts have been reversed and it is imperative that clearly defined principles accepted by the International Society are adopted to fill the vacuum if international disputes are to be avoided.

Yet the Conference has adopted so far the principle of the package deal in which all the diverse issues dealt with by the Convention are to be treated simultaneously. There is the evident danger that agreement on the legal status of the economic zone may be delayed because of the grave problems in reaching agreement on the more political issues, such as the future regime for the seabed.

15. The rapporteur for the Legal Affairs Committee, Mr Bangemann, proposes (para. 8) that the Conference should adopt a new approach to its work which should consist of drawing up separate conventions on subjects on which general consensus can be reached.

16. Your draftsman can endorse such an approach, particularly in respect of the economic zone and procedures for the settlement of disputes, while pointing out :

(a) the difficulties in obtaining the agreement to this procedure of states whose interests lie in the more contentious issues;

(b) the dangers in a breakdown in the coherence of the provisions of texts adopted separately, a problem which has already emerged in the Conference. Such a breakdown in coherence would greatly increase the possibility of future international disputes.

IV. Problems concerning substantive issues

17. Beyond this question of the role of the Community and the approach to the procedure of the Conference, lie more specific issues related to the commercial interests of the Community and the common fishing policy.

Freedom of navigation

18. Firstly, there still exists problems as to the definition of the coastal zones, as to whether it shall be considered as :

- territorial waters subject to restrictions to defend limited rights of Third Countries, such as freedom of navigation;
- the high seas subject to certain reserved rights to the coastal zone;
- or whether a new regime has been created intermediary between the high seas and territorial waters.

19. It is clearly essential that the Community defend the rights of passage through the coastal zone and the rights of innocent passage through straits. The first interpretation should be vigorously rejected.

It is clearly necessary at the same time to strike a balance between this freedom and the granting of powers to the coastal state of sufficient scope to effectively achieve the aim of marine conservation, particularly with respect to fishing and pollution control.

Powers of the coastal state to regulate fishing

20. The Third Session of the Law of the Sea Conference gave extensive recognition to the concept of a 200 mile economic zone in which, according to Article 44 of the Single Negotiating Text, the coastal state would have :

i) sovereign rights for the exploration and exploitation of natural resources;

ii) exclusive jurisdiction over scientific research;

iii) jurisdiction over the preservation of the marine environment;

iv) and a special interest and responsibility on the high seas of the coastal state of origin for anadromous species of fish (such as salmon).

Following the failure of the Fourth and Fifth Sessions of the Third Conference to reach final agreement, despite an emerging consensus, a number of states began to take unilateral decisions to create 200 mile economic zones (United States, Canada, Mexico, Morocco, Iceland, Norway, Russia and China), and more than a hundred nations have expressed their support for the concept.

Consequently, the Council agree that Member States should take concerted action to establish, from 1 January 1977, Community fishing zones of 200 miles in the North Sea and the Atlantic.

The Commission was instructed to open negotiations with Third Countries affected by this decision.

21. The central point to any definition of a coastal zone is the extent of jurisdiction of the coastal state, particularly in respect of violations of fishery conservation matters.

The Single Negotiating Text clearly lays down that the coastal state has sovereign rights and that third countries shall be subject to the jurisdiction and the regulating and management power of the coastal state.

Article 60 of the Text provides for comprehensive fisheries enforcement rights, including : boarding, inspection, arrest and judicial proceedings.

These are a basic minimum that must be defended in the Conference.

Conservation of marine resources and Third Countries

22. The problems arise when the Text seeks to go further, in the laudable aim of seeking to preserve man's common heritage, by imposing duties as well as rights upon the coastal state. At best such duties are meaningless since unenforcable; at worst they can create a source of dissention.

The Text, in providing for sovereign rights to regulate fishing, states that there is a duty for the coastal state to preserve resources, to determine an allowable catch and prevent over-exploitation.

23. This is theoretically admirable, but can give rise to considerable dispute, since there are problems of a tehhnical and political nature :

(a) there are considerable difficulties in determining the state of stocks;

(b) there are even greater difficulties in getting agreement between states on the state of stocks, particularly in view of the acute social problems created by the need to cut back fishing fleets.

24. The Text imposes a duty on the coastal state to harvest the marine living resources and, where it does not have the capacity to do so, to give other states access to the surplus above the allowable catch.

The Text further states that account should be taken of the need to minimise economic dislocation in states whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

25. It appears that the concept of historic rights of Third Countries is being modified and made subject to the proviso that such countries can be excluded where marine resources are fully exploited by the coastal state.

At the same time, a duty is imposed to allow entry to other states where stocks are not fully exploited or where serious problems are created for Third Countries.

These two principles can be seen to be contradictory and allow room for a multitude of interpretation and statistical argument.

26. It would seem advisable, if disputes are to be avoided, that the concept of historic rights, in whatever form, should be abandoned, and entry into the coastal waters made purely dependent upon negotiations. Fictitious rights and duties merely create faction.

The best approach would be that followed so far by the Community, with an institutionalisation of 'phasing out' negotiations, to provide for five year periods for the planned withdrawal of ships of Third Countries which have fished the grounds for more than ten years.

Regional agreements

27. These problems clearly indicate the need for regional agreements capable of regulating common stock problems, negotiated at a bilateral level.

28. Beyond the 200-mile zones, regional bodies may be required to regulate matters of common interest in the field of fish conservation and pollution control.

Such an approach would allow for a more rational species approach to the problem of fish conservation : stocks would be protected in whichever zone they were to be found; and such an approach could be extended to include special responsibility for protection of stocks on the high seas where necessary.

Pollution

29. The problem of pollution and its relationship to the provisions of the Single Negotiating Text are certainly some of the more difficult, particularly in respect of the rights of the coastal state over ships found guilty of pollution or suspected of being likely to create pollution.

Under Article 14(b) of Section III of the Geneva Convention on the Territorial Sea and the Contiguous Zone (Right of Innocent Passage) the coastal state was free to categorise a particular passage as non-innocent; for example oil tankers or nuclear-powered vessels.

The Simple Negotiating Text goes further in upholding the right of innocent passage.

Article 21 provides for coastal states to establish national rules in respect of its territorial sea without prejudice to the right of innocent passage, and to enforce rules and standards drawn up on an international basis within the economic zone. Much of the responsibility for the enforcement of standards has been placed upon the Flag state. This is likely to prove insufficient, though the difficulties of reconciling effective pollution control with freedom of navigation make it difficult to envisage acceptable solutions, and highlight the urgent need for effective regional or international authorities to regulate questions of pollution.

Settlement of disputes

30. The New York Conference has given rise to considerable expectations and has modified the traditional concepts of the Law of the Sea. The principle of a 200 mile economic zone is now generally accepted. At the same time, it is unlikely that the conference will bring about a successful conclusion to its negotiations. Consequently, a modification has been made to existing principles without any clearly defined codified text being established. The area for dispute between nations has been considerably enlarged.

Faced with this situation, it is imperative that there be adequate measures for bringing about the settlement of disputes.

31. An immediate problem is that the Community itself is now engaged in drawing up its internal fisheries policies and in making agreements with Third Countries; the Community should be recognised as a body able to take part in the judiciary process.

32. At present, the International Court of Justice cannot receive claims from individuals or international organisations. Tribunals established, or given a competence to hear claims, should be empowered to receive claims from the Community.

33. The Conference has indicated the need for flexibility in the settlement of disputes by enshrining the principle that local remedies should be exhausted. It would seem appropriate for the Community to include, with agreements presently being concluded with Third Countries, provisions for the settlement of disputes.

On the other hand, efforts must be made to ensure consistency of interpretation of provisions to avoid the gradual disintegration of conventions.

34. Beyond this is the question of whether the obligatory settlement of disputes should be an integral or optional part of the Convention. Your draftsman can endorse the recommendation of the Legal Affairs Committee (para. 17) for the adoption at the Conference of a convention allowing for recourse to arbitration in the event of disputes.

The EEC Zone

35. The zone established by the Community has been limited in competence so far strictly to matters relating to the regulation of fishing, with responsibility for negotiations with Third Countries given to the Commission.

The scope of the text being negotiated at New York, and to which it is intended that the EEC as such shall become a party, goes beyond fishing to deal with a variety of problems, including control of pollution, drilling and research.

The question therefore poses itself as to the scope of the Community's authority in the so-called Community zone. Is the Community to be given authority for all matters covered by the Convention or are Third Countries to deal with the Community in certain matters and with Member States individually in other matters. This is clearly a highly political question on which your draftsman will limit himself at this point to indicating the undefined nature of the 'Community' zone.

Lomé Agreement

36. Article 2 of the annex to the Lomé Convention, containing a joint declaration on fishing activities[1], states :

'The ACP States declare their willingness to negotiate with any Member State bilateral agreements likely to guarantee satisfactory conditions in the fishery activities in the sea waters within their jurisdiction. In the conclusion of such agreements the ACP States shall not, under equal conditions, discriminate between or against Member States of the Community.'.

The Commission clarify whether this provision will apply to the exclusive economic zones of the states in question.

Offshore installations and fish culture

37. The Committee on Agriculture would like to remind the Commission once more of the need for much greater attention to be given to drawing up rules to govern juridical problems arising from navigation rights, jurisdiction and ownership of offshore installations involved in fish culture[2].

Conclusions

38. The Law of the Sea Conference is unlikely to reach agreement within the near future on a Convention to regulate the exploitation of the seas and the seabed.

39. At the same time, it cannot be said that the Conference has failed to achieve any concrete results. There is now general acceptance of the principle of the 200 mile exclusive economic zone.

40. It must be recognised, however, that reasons for the acceptance of this principle, while facilitated by the Conference, are rooted in the desire of coastal states to seek greater control over adjacent marine resources and to prevent the shortsighted over-exploitation of fish stocks.

41. The very urgency of the need to introduce conservation measures poses clearly the principal problem raised by the Geneva Conference : should the conference continue with its ambitious aim of drawing up a convention to regulate the whole range of issues connected with the seas and the seabed, so delaying the adoption of generally accepted principles governing the exclusive economic zones? The Community's external and internal fisheries policies are being developed at this moment in a juridical vacuum.

---

1 Doc. 212/75, p. 245

2 See report by Mr Hughes on the restructuring of the non-industrial inshore fishing industry, Doc. 66/75, paras. 47 and 48

For these reasons the Committee on Agriculture can agree with the report of the Legal Affairs Committee when it states (para. 8 of the motion for a resolution) that the Conference should adopt a new approach to its work by drawing up separate conventions on subjects on which general consensus is now possible, while pointing out : the political difficulties in obtaining the agreement to this procedure of the geographically less-favoured and less-developed nations; and the dangers such a procedure poses to the coherence of texts adopted separately.

42. Satisfaction can be expressed that the Conference, in tackling the whole range of issues connected with the Law of the Sea, should seek to establish a system reflecting the interests of the international society as a whole and the less-developed nations in particular. Concern can be expressed, however, when abstract rights, difficult to implement, are imposed upon states particularly in granting to Third Countries access to fishing zones. The resulting increase in the possibility of disputes further underlines the importance of arrangements for the settlement of disputes, and the Committee can endorse the proposal of the Legal Affairs Committee (para. 17 of the motion for a resolution) that a convention be adopted allowing for arbitration proceedings.

43. The Committee on Agriculture also believes that much greater attention should be given, at the Conference, to effective regional bilateral agreements regulating fish conservation policies, and regional bodies controlling pollution and settling disputes between nations arising from the Convention.

44. The Committee would like to underline the importance of effective policies to control pollution, and expresses the fear that, in pursuit of the laudable aim of freedom of navigation, placing the greater part of the responsibility for enforcing anti-pollution measures with the flag state may weaken the effectiveness of such policies.

45. Finally, the Committee on Agriculture would like to stress the importance it attaches to the presence of the Commission at the Conference and the accession of the Community to the Convention by means of an 'EEC Clause'.

At the smae time, it must be pointed out, given the wide ranging aims of the Geneva Conference, that much thought will be required as to the exact nature and scope of the 188 mile 'Community' zone.

OPINION OF THE COMMITTEE ON REGIONAL POLICY, REGIONAL PLANNING AND TRANSPORT

Draftsman : Mr C. B. McDONALD

On 24 January 1977 the Committee on Regional Policy, Regional Planning and Transport appointed Mr C. B. McDonald draftsman.

It considered the draft opinion at its meeting of 30 March 1977 and adopted it unanimously.

Present: Mr Evans, chairman; Mr Nyborg, vice-chairman; Mr McDonald, draftsman; Mr Albers, Mr Brugger, Mr Corrie, Mr Fuchs, Mr Hoffmann, Mr Kavanagh, Mrs Kellett-Bowman, Mr Mascagni, Mr Osborn, Mr Seefeld and Mr Zywietz.

I. Introduction

1. The Fourth Session of the Third United Nations Conference on the Law of the Sea was held in New York from 15 March to 16 May 1976.

One of the basic aims of the Conference is to achieve international agreement on the following problems:

- the creation of an exclusive 200-mile economic zone;
- the definition of the 'Continental Shelf' and the international sea bed;
- the setting up of an international marine authority to regulate exploration and exploitation of the natural resources of the sea bed and subsoil;
- the conservation of the living resources of the high seas;
- the preservation of the marine environment;
- the transfer of marine technology.

2. The Fifth Session failed to reach decisions on these matters. There are still widespread differences of opinion on a number of fundamental problems.

Concrete solutions are nevertheless being achieved in certain areas.

A sixth session has been scheduled for May 1977.

Several countries, including the USA, Canada, Mexico, Iceland and the European Communities, have already introduced an exclusive 200-mile economic zone in anticipation of the decision of the Third UN Conference on the Law of the Sea.

3. It remains uncertain whether the Sixth Session will result in internationally binding decisions on the outstanding problems listed above.

If agreement is not achieved at UN level, independent action by individaul states or regions could create new precedents in the International Law of the Sea, which could possibly put international marine navigation in an ambiguous legal position.

4. Of the many problems discussed at previous sessions, the following areas are of particular importance as regards regional and transport policy:

- the effects of measures to conserve and increase fish stocks in the 200-mile economic zones on income and employment levels in certain coastal regions of the Community;

- the effects of the extension of territorial waters to 12 nautical miles and of the setting-up of the 200-mile economic zones on the freedom of marine navigation in these zones;

- the effects of measures to protect the marine environment, in particular those aimed at preventing pollution by shipping, on the freedom of marine navigation.

The opinion of the Committee on Regional Policy, Regional Planning and Transport will concentrate in what follows on these three particular aspects of the Third International Conference on the Law of the Sea.

II. Regional policy aspects

5. Measures to be taken to conserve fishing stocks will include regulations limiting catches both within the 200-mile and 12-mile zones. These regulations will involve at least temporary reductions in quantities landed by both deep-water and inshore craft.

This will have a particularly severe effect on the already disadvantaged marginal coastal regions of the European Community which are close to rich fishing grounds. This applies in particular to coastal regions where fishing is the main occupation. Alternative employment possibilities are in many cases inadequate.

6. The effects on employment and income levels in inshore fisheries (on which about 600,000 inhabitants of the European Communities depend) cannot be estimated at present because the scope of the conservation measures necessary for particular species is still disputed.

7. It is certain however that conservation measures will aggravate regional income disparities in the Community. The introduction of a Community quota system, however it is organized, giving preferential treatment to fishermen in the affected regions, will not be adequate to compensate for the expected loss of income in these regions. Intervention by the European Regional and Social Funds to create new employment opportunities, in conjunction with national structural aids, therefore seems justified. No action should be taken, however, until a thorough analysis of the probable regional structural changes has been made.

III. Transport policy aspects

8. The majority of the states participating in the Third Conference on the Law of the Sea, including the Member States of the European Community, are agreed that the creation of 200-mile economic zones must have no adverse effects on the freedom of navigation within these zones (see paragraph 15 of the motion for a resolution). Article 46 of the Single Negotiating Text reinforces this principle: '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'.

9. There has however been some criticism of the priority given to this fundamental principle of the freedom of navigation in the negotiating text; this is a by-product of efforts to reach agreement on the criteria to be applied to the 200-mile economic zone.

10. It has so far proved impossible to resolve the conflict between flag-of-convenience and coastal states with regard to the powers of the coastal states to act to combat environmental pollution by shipping.

In particular the flag-of-convenience states have rejected regulations that would empower the coastal states to impose standards for the design, construction, equipping and manning of foreign ships navigating their territorial waters. This view is, moreover, taken by the majority of the Member States.

The extent which the coastal states should be empowered to carry out controls and impose sanctions on foreign ships navigating their coastal waters and economic zones is also unresolved.

11. Your draftsman considers it essential for the Member States to adopt a common position on these issues that is consistent with the stricter standards for combatting pollution by shipping. However, adequate account must be taken of the principle of freedom of navigation.

IV. Conclusions

12. The draftsman is convinced of the need for a revised and expanded International Law of the Sea and considers it essential for the Member States to adopt a common position on the fundamental questions at the forthcoming negotiations.

13. The setting up of a 200-mile economic zone is the only result of the Conference that has been universally recognized hitherto. In the European Community and some other countries the principle of the economic zone has already become legally binding.

The management of the living resources of the sea and appropriate measures to conserve fish stocks in the economic zones are fundamental aspects of the process of revising the Law of the Sea.

14. The reduction in catches necessary to maintain fish stocks in the 200-mile zone and in coastal waters will lead to losses of income in particular coastal regions.

These regions are already deprived regions of the Community. Your draftsman therefore feels that timely disbursements from the Regional and Social Funds for the creation of alternative employment opportunities in the coastal regions affected is essential. No action should however be taken until a thorough analysis of the probable effects on the infrastructure of the coastal regions of fish conservation policy in the 200-mile zones has been carried out.

15. As regards the transport policy aspects of the Law of the Sea Conference, your draftsman considers the priority given in the Single Negotiating Text to the fundamental right of freedom of navigation unsatisfactory. The Community should use its influence to ensure that this fundamental principle of the Law of the Sea is included in the preamble to the convention in its final form.

16. Your draftsman accepts that stricter standards must be applied to prevent pollution of the sea and coasts by shipping. At the same time the necessary powers of control and sanction to be granted to the coastal states must be fairly balanced against the principle of freedom of navigation.

OPINION OF THE COMMITTEE ON ENERGY AND RESEARCH

Draftsman : Mr A. LIOGIER

On 17 February 1977 the Committee on Energy and Research appointed Mr Liogier draftsman.

It considered the draft opinion at its meetings of 18 February and 5 April 1977 and adopted it unanimously on 5 April.

Present: Mr Flämig, vice-chairman; Mr Liogier, draftsman; Lord Bessborough, Mr Dalyell, Mr Radoux (deputizing for Mr Lezzi), Mr K. Nielsen, Mr Spillecke, Mr Hougardy, Mr Klepsch (deputizing for Mrs Walz), Mr H.W. Müller and Mr Schwabe (deputizing for Mr Adams).

I. Introduction

1. The Third United Nations Conference on the Law of the Sea was convened on 17 December 1970 on the basis of a United Nations General Assembly Resolution. According to this resolution, the aim of the conference was 'the establishment of an equitable international régime - including an international machinery - for the area and resources of the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues, including those concerning the régimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, inter alia, the prevention of pollution) and scientific research'.

2. Since then the Conference has carried out its work in five separate sessions, the most recent of which was held from 2 August to 17 September 1976, without succeeding in achieving a final codification of international rules on the Law of the Sea. The questions under consideration at the Conference are of great importance for the Community and its Member States. The rules adopted on such important questions as fishing, exploitation of the mineral and energy resources of the sea-bed and freedom of navigation will have some influence on the Community's economic future.

3. The position adopted by the Community and its Member States in these difficult negotiations is clearly influenced by the Member States' decision to extend their fishing zones to 200 nautical miles, pursuant to a Council Resolution of 3 December 1976.

4. Furthermore, quite apart from these basic questions, the Conference raises a problem of competence for the Community. In conformity with the provisions of the Treaty establishing the European Economic Community, certain aspects of the future Convention on the Law of the Sea are Community matters and must therefore be negotiated by the Community as such (see EEC clause).

5. The following are the various aspects of the law of the sea being considered by the Third Conference:

- establishment of an exclusive economic zone,
- extension of the continental shelf,
- management of the international seabed by an Enterprise set up by the International Authority,
- protection of the marine environment,

- scientific research in the exclusive economic zone,
- transfer of marine technology,
- settlement of disputes,
- rules governing overseas countries and territories,
- adoption of an EEC clause enabling the Community as such to be a contracting party to the Convention in respect of matters falling within its competence.

II. Questions falling within the terms of reference of the Committee on Energy and Research

(a) Consequences for energy and research policy of the establishment of a 200 mile economic zone

6. The document submitted for negotiation lays down that in this zone coastal states will have sovereign rights in respect of exploration and exploitation of natural resources, as well as 'exclusive jurisdiction' as regards scientific research.

This document also lays down that all states, whether coastal states or not, will enjoy freedom of navigation and also to lay underwater cables and pipelines, in the economic zone.

7. According to the doctrine of the economic zone, the rights of the coastal state would apply to the resources of the seabed and its subsoil as well as resources in the superjacent waters. This means, first and foremost, that deposits of oil and natural gas within the economic zone would be subject to the sovereign rights of the coastal state.

Secondly, it would mean that within the economic zone the coastal state may exploit, particularly for the production of energy, the natural elements, such as wind, water, tides, waves etc.

8. It is clear that the sovereign rights of coastal states in respect of the exploitation of resources as well as in the scientific research sector will run counter to the interests of landlocked or geographically disadvantaged states. That is why it would be useful and of interest to know what measures the Commission of the European Communities contemplates to remedy these disparities within the Community.

Furthermore, the Commission of the Communities should explain precisely how it intends to reconcile the doctrine of the sovereign rights of the coastal state with a Community energy policy.

(b) Consequences for the Community energy and research policies of the extension of the continental shelf

9. 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' (mainly oil and natural gas deposits). However, the 1958 Convention did not define the outer limit of the continental shelf. The solution proposed by the Third Conference on the Law of the Sea consists in granting coastal states sovereign rights on the continental shelf up to a distance of 200 nautical miles or, when the natural extension exceeds this limit, to the outer edge of the continental shelf.

10. However, the coastal state would be obliged to make payments or contributions in kind in order to be allowed to operate beyond 200 miles. The rate of payments would correspond to a percentage of the value or volume of production resulting from this exploitation. The payments or contributions would be made to the International Authority (the same organization that would be responsible for the international seabed). The International Authority would be empowered to waive contributions from developing countries. In allocating the sums received account would be taken of the interests and needs of these countries.

11. The solution proposed by the Third Conference in the matter of exploiting hydrocarbon deposits is, as far as the Community is concerned, detrimental to the interests of the geographically disadvantaged Member States, something that we have already pointed out in the case of the economic zone.

12. A study would also have to be made to determine whether the payments or contributions demanded from the coastal state in respect of exploitation beyond the 200 mile limit will be such as to afford favourable prospects for profitable exploitation by the Member States' enterprises.

(c) Marine scientific research

13. The provisions currently being negotiated provide for a system in which the coastal state must give its consent for all marine scientific research activities on the continental shelf.

The coastal state may not withhold its consent unless the project:

- relates substantially to the exploration and exploitation of resources,
- involves drilling or the use of explosives,
- interferes unduly with economic activities,
- involves the construction or use of artificial islands and structures.

14. The Commission of the Communities should indicate what possible repercussions these provisions may have on its Community research policy in general and, in addition, on its policy of support for Community projects in the hydrocarbon sector.

III. Conclusions

15. In the light of the foregoing considerations, the Committee on Energy and Research, confining itself to those aspects that fall within its own terms of reference, agrees in principle with the proposals submitted by the Commission of the European Communities in connection with the Third Conference on the Law of the Sea. It feels, however, that at the present stage of the negotiations it is impossible to foresee all the consequences of the application of these proposals in the energy and research policy areas.

16. With regard to particular points, the Committee on Energy and Research considers

- that when the proper time comes, the Commission of the European Communities will have to make suitable proposals with a view to reconciling the principle of the sovereign jurisdiction of the coastal state in the 200-mile zone with the main planks of a Community energy policy,
- that the payments or contributions demanded from the coastal State for exploitation beyond the 200-mile limit must be such as to afford reasonable prospects of profitable exploitation for Member States' enterprises,
- that as far as marine scientific research is concerned, it should be carried out within the framework of a Community policy, particularly in view of the vast scope of the operations and the enormous investments that will be needed.