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PROTECTION OF THE MARINE ENVIRONMENT AGAINST ~~POLLUTION~~^{SPRINGS UNIT} RESULTING FROM
EXPLORATION AND EXPLOITATION OF THE SEA-BED AND OCEAN-FLOOR

Information memo from the Commission to the Council concerning action
which should be taken by the European Communities in
connection with the prevention of sea pollution resulting from
the exploration and
exploitation of the sea-bed and ocean floor.

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I. INTRODUCTION

As known reserves of hydrocarbons and certain raw materials diminish, and as the economic and political consequences of their geographical location make themselves felt, particularly in the matter of supplies, there is every reason to step up the search for new resources, preferably in the geographical areas least likely to be affected by short-term political trends. Accordingly, prospection and drilling for oil in the high seas is increasing very appreciably, and will inevitably continue to do so, while interest is also being shown in the extraction of certain ores from the sea-bed.

This increase in drilling and production entails a proportional increase in the pollution hazards which could result from accidents or from the pursuit of such work without adequate precautions.

On the other hand, the present lack of adequate rules and regulations governing these activities and of international authorities to control them means that such operations are themselves subject to certain hazards. Sea-bed operators remain at the mercy of public or private initiatives which are liable to put unexpected and arbitrary difficulties in the way of current work or future plans.

The Commission is anxious to encourage any activities which might improve the Community's supplies of raw materials from the sea-bed and feels that, in order to provide sea-bed operators with some security, to protect the environment and to ensure the smooth operation of the common market,

accompanying measures should be taken at Community level to harmonize the protection of the surrounding seas against the pollution hazards which such activities create.

These measures should reconcile the need for a common framework of legislation with the need to take into account the particular characteristics of each operating zone. In view of the latter requirement, it should be possible for the Community Member States to apply the measures in association with neighbouring non-member States whose coasts border the same seas or oceans.

II. PRESENT SITUATION

1) Measures to protect the marine environment are generally taken at international or regional level. For instance, pollution caused by shipping is covered by the international conventions of the IMCO ; the international convention of London (1972) and the regional convention of Oslo (1972) lay down a framework for anti-dumping measures ; the Paris Convention provides a similar framework for dealing with pollution from land-based sources.

However, measures to protect the marine environment against pollution created by exploration or industrial exploitation of the sea-bed have not yet been incorporated in equivalent legal or organic frameworks and are only partially or inadequately covered by conventions on other sources of pollution or by national regimes which apply solely to the marine areas coming under the jurisdiction of the coastal States.

Thus, as far as exploitation of the sea-bed is concerned, there is a marked lack of active endeavour to establish an international or legal framework on which measures to protect the marine environment should be based.

2) Theoretically, this problem should be tackled at the Conference on the Law of the Sea (1) which started in New York in December 1973 and will be continued in Caracas.

(1) of the Communication from the Commission to the Council on this subject (doc. SEC (74) 862/2).

The purpose of this Conference is threefold :

- to reach international consensus on the delimitation of the zones for which different authorities have jurisdiction ;
- to define the rules and regulations applicable to the various marine activities, such as shipping, fishing, sea-bed exploitation, and in particular the rights of the persons (public or private) concerned in these activities ;
- to lay down guidelines for measures to protect the marine environment and for research activities, and in particular the responsibilities of public or private bodies concerned by the preservation of this environment.

In connection with the last point, the Conference will modify endorse and add to existing international initiatives, or adopt them in their present form. It must also fill in the gaps relating to protection against pollution from exploitation of the sea-bed.

However, judging from the preparatory work for the Conference (1), there is reason to fear that too much time may elapse before solutions are found to the problems of sea pollution caused by exploitation of the sea-bed.

Furthermore, it is possible that the Conference will be dominated by each State's anxiety (be it a coastal State or not) to assert its rights or its interests in various zones (2) located outside territorial waters.

(1) Committee on Peaceful Uses of the Sea-Bed and Ocean-Floor beyond the Limits of National Jurisdiction (Sea-Bed Committee) Proceedings between 1971 and 1973

(2) There was opposition between certain industrialized States which wanted to define the terms on which they could develop new industrial activities and between other States which, since they could not finance or exploit the sea-bed themselves, wanted to reserve the sole right to exploit it if the case ever arose. There is reason to fear, therefore, that the preservation of the marine environment may be used as an argument by one party or another, to the detriment of the environment itself.

- 3) It is also relevant to mention the work of the Conference held in London in March 1973 on the problems of safety and pollution control during research and production of marine mineral resources in north-west Europe.

This Conference set up four working parties to deal respectively with oceanology, technical problems relating to the construction and use of equipment to be operated at sea, legal problems relating to working safety, health and working conditions at sea, and problems of civil liability in the event of damage or loss.

The Conference is due to continue its work in 1975 and, in the more or less distant future, to define what is needed before practical measures can be drawn up. This Conference, which concerns only the maritime zones in north-west Europe, has devoted its main attention to the questions of safe working conditions and liability. Since it will not resume its work until 1975, it would undoubtedly benefit from a Community initiative of a general nature in the meantime.

III. PROPOSALS FOR A EUROPEAN SOLUTION BASED ON COMMUNITY INITIATIVE

Bearing in mind the situation described above, Community action to combat sea pollution caused by exploration and exploitation of the sea-bed should consist in :

- 1) proposing general principles, especially in the framework of the preparatory work for the 3rd. Law of the Sea-Conference, which could be taken up subsequently in framework-conventions elaborated at the global as well as the regional level ;
- 2) drawing up an outline convention whose provisions should then be taken over and amplified in regional conventions applicable to "homogeneous sectors of the sea-bed" which take into account the particular characteristics of these areas ;
- 3) forwarding this outline convention, once it is adopted by the Council, to the Conference of the Law of the sea and to non-member States which are likely to exploit certain areas of the sea-bed in association with Member-States ;
- 4) inviting the Member States and non-member States which took part in the London Conference on problems of safety and pollution control during research and production of marine mineral resources in north-west Europe to establish, on the basis of the outline convention, a regional convention

applicable to the North Sea. The next session of the London Conference could be brought forward and the Community should be invited to take part ;

- 5) encouraging the organization of other regional Conferences and, where appropriate, taking the initiative in this respect for other "homogeneous sectors of the sea-bed", such as the English Channel, the North-East Atlantic and the Mediterranean.

These measures would help to fill a considerable gap in the law of the sea, and would prevent the development of economic and legal barriers which would inevitably result from the conclusion of divergent multilateral agreements, causing prejudice both to the environment and to Europe's independence in the energy sector.

IV. BROAD LINES OF THE OUTLINE CONVENTION

The preliminary draft of a European Convention for the prevention of pollution resulting from exploration and exploitation of the sea-bed will be presented by the Commission in the near future. In its broad lines it should provide a legal and institutional framework which can serve as a basis for bilateral or multilateral cooperative agreements ensuring optimum exploitation of the sea-bed around the Community, on which Europe must rely heavily for her independence in the energy sector.

The Convention, which the Member States and interested non-member States would be invited to sign, would embody certain principles ensuring that, with appropriate cooperation, exploitation of the sea-bed gave a maximum yield in quantity and quality with a minimum amount of pollution.

The Preamble to the Convention would establish the indissoluble link between energy and environment, production and protection, the rights of States in their "economic zones" of the sea-bed and the duties of those States in the same zones. The Parties to the Convention would state their grave concern at the growing risk which technological progress in the exploitation of sea-bed resources presents both for the human and natural environment and for the continuous development of production.

They would assert the need to establish, for preventive purposes, close international cooperation in the areas concerned, reflected in a realistic set of mandatory rules devised and kept up to date for each "homogeneous sector of the sea-bed" ; this implies the existence in each sector of an Authority in which two or more States would work in cooperation, and of a coordinating body to link the various sector Authorities. The Community could be responsible for this coordination. It would also be necessary to set up a Tribunal to apply the Convention and the cooperative agreements, to penalize violations and to get any loss or damage made good in accordance with the principles of absolute liability ("responsabilité objective").

Under the first heading, and to the extent that they are not already defined by the Geneva Convention of 1958 on the continental shelf, the Convention would define the nature and extent of the sovereign rights exercised by the States in their respective zones of the sea-bed. It would define the procedure for obtaining the signature of agreements on zone delimitation (1) and cooperation, and would establish the system whereby the Sea-Bed Authorities would give their consent to licences, concessions and authorizations issued in their respective sectors by the States parties to the cooperative agreements applying to these sectors.

Under a second heading, the Convention would define the concept of a homogeneous sector of the sea-bed, and would spell out, for the purposes of subsequent cooperative agreements and their aims, the political, administrative and financial structure of the Authorities, their regulative function and the means which they have to exercise it (powers and means of control, of establishing violations and conducting inquiries, power to refer persons responsible for damage or violation of rules to the European Tribunal for the Sea-Bed).

(1) It is especially a question of defining procedures necessary for the respect of obligations under Article 6 of the Geneva Convention of 1958 on the continental shelf .
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The Tribunal itself would be dealt with under the third heading of the Convention (2)

Under a fourth heading, the Convention would impose the obligation on States acting together in the framework of the Authorities or on the Authorities acting in the name of States, to coordinate their actions (fixing quality objectives, norms, programmes, etc..) while participating in the appropriate coordinating organ.

V. CONCLUSION

The Commission informs the Council of its intention :

- to purpose, in the framework of the preparatory work for the Law of the Sea Conference, discussion with the Member States about the general principles relating to the protection of the seas against pollution resulting from exploitation of the sea-bed ;
- to forward to it, at the earliest opportunity, a proposal for an outline convention incorporating, only in greater detail, the essential points set out in paragraph IV above ;
- to recommend that the Council should approve the outline convention, forward it to the relevant international and regional authorities, and take the necessary steps to implement it by concluding regional agreements in previously delimited homogeneous sectors of the sea-bed.

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- (2) It is especially a question of defining procedures necessary for the respect of obligations under article 24 of the Geneva Convention of 1958 on the continental shelf, where the responsibility of States would be expressed by an Authority and by an adequate structure for coordination.

