

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 20 final

Brussels, 27 February 1979

Recommendation for a
COUNCIL DECISION

authorizing the Commission to negotiate on behalf
of the Community for the establishment of a convention
on the conservation of antarctic marine living resources

(submitted to the Council by the Commission)

COM(79) 20 final

EXPLANATORY MEMORANDUM

I. Background

1. Since October 1977 the Consultative Parties to the Antarctic Treaty of 1959 (1) have been preparing a convention intended to establish a machinery for the conservation of living marine resources around Antarctica. A single draft (see annex) of this convention has emerged from meetings of the Consultative Parties held in Canberra, Buenos Aires and Washington during 1978, although the geographical application of the Convention is still in dispute.
2. Three Member States of the Community (Belgium, France and the United Kingdom) have taken part in these discussions, and have informed the other participants of the Community's power and jurisdiction in fisheries matters, pointing out that participation by the Community both in the negotiations and in the ensuing convention would be a prerequisite for a successful outcome of these discussions. Largely as a result of disagreement over the question of Community participation, a Diplomatic Conference which was to have been convened by the Australian Government in January 1979 has been postponed. The Australian authorities have recently proposed an informal meeting to discuss issues which remain unresolved and to negotiate definitely on the questions of Community participation at the Diplomatic Conference and the "EC relationship with the final document". It is also proposed that the Community be represented at this informal meeting.

II. The proposed Convention

3. The objective of the Convention is the conservation of Antarctic marine living resources (Article II), or more explicitly, the establishment of

./..

(1) Twelve countries, including three Community Member States (Belgium, France, and the United Kingdom) were original signatories of this Treaty, and under its Article IX are accorded the status of Consultative Parties responsible for considering and recommending measures in furtherance of the objectives of the Treaty. Two other Member States (Denmark, the Netherlands) have since acceded to the Treaty. The immediate purpose of the Treaty was to promote scientific research in Antarctica, but other important provisions include the banning of military activity, nuclear explosions, and disposal of radioactive waste material, as well as a moratorium on territorial claims in the area.

"suitable machinery for recommending, promoting, deciding upon and coordinating the measures and scientific studies needed to ensure the conservation of Antarctic marine living organisms" (preamble). The Contracting Parties agree to set up a Commission responsible for the adoption of conservation measures and the implementation of a system of observation and inspection, with the help of a Scientific Committee.

4. The objective of the draft convention namely the conservation of marine living resources falls clearly under Community competence by virtue of the powers given to the Community under the Treaty, as recently interpreted by the European Court of Justice (notably in the Kramer decision of 14.7.76), and of the decisions taken by the Council of Ministers on 3rd November 1976.

The draft convention does, however, also include certain provisions which have the purpose of binding the Contracting Parties to the Convention to certain articles contained in the Antarctic Treaty of 1959 dealing inter alia with military activity and territorial claims in the Antarctic.

These provisions referring to the Antarctic Treaty fall entirely outside the field of Community jurisdiction.

Moreover, some Member States exercise sovereignty or jurisdiction over territories whose surrounding waters fall within the area to which the proposed convention applies. These territories appear in Annex IV to the Treaty of Rome, and the Community is therefore not empowered to act on their behalf, although it should be noted that the activity of Community fishing vessels in the waters surrounding these areas would fall under Community jurisdiction.

III. Community objectives

5. Some Member States of the Community have an interest in activities related to the exploitation of living resources in the area covered by the draft convention as well as in the protection of the natural environment, and certain Member States play a particularly important role in this area.

In view of these existing interests, and of the potential importance of the fisheries resources which would be subject to control under the convention, it is in the Community's interests to participate in the negotiations about the establishment of such a convention.

6. Having regard to the particular provisions of the Convention falling outside the Community's power and jurisdiction and the particular interests and situations of some Member States, some or all of them may wish to sign the Convention in their own right. However, as the functions of the regulatory Commission to be set up under the proposed Convention fall entirely within the Community's power and jurisdiction, it would be appropriate that only the Community and those Member States exercising sovereignty or jurisdiction over the territories referred to in paragraph 4 above should become Members of the said Commission. Appropriate arrangements must be made, as in other conventions which involve the participation of the Community and its Member States, to make clear to the other parties that the matter gives rise to a division of powers between the Community and its Member States. The exact nature of that division is an internal question which the Community will decide upon in each case and in which the other parties to the Convention have no right to intervene.
7. In the opinion of the Commission, the substance of the attached convention is acceptable to the Community. The essential provisions, namely the establishment of a regulatory Commission and an advisory Scientific Committee, and agreed procedures to ensure that regulations are respected, are similar to those found in other international fisheries conventions. The Commission therefore proposes that the Community accept the main principles foreseen in the draft, subject to the necessary amendments to allow for the Community to become a signatory, while reserving the right to make proposals concerning any part of the draft convention in the light of the development of negotiations.
8. For the reasons set out above the Commission recommends that the Council adopt the attached decision authorizing the Commission to negotiate for the establishment of a convention on the conservation of Antarctic Marine Living Resources.

COUNCIL DECISION AUTHORISING THE COMMISSION TO NEGOTIATE ON BEHALF OF THE
COMMUNITY FOR THE ESTABLISHMENT OF A CONVENTION ON THE CONSERVATION OF
ANTARCTIC MARINE LIVING RESOURCES.

The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Recommendation from the Commission,

Whereas on 3 November 1976 the Council adopted a set of resolutions concerning certain external and internal aspects of the common fisheries policy;

Whereas it is necessary to preserve the ecological balance of the seas, and to this end it is appropriate to ensure the conservation of certain species of fish and marine mammals and in particular to prevent an excessive development of fishing effort;

Whereas the Consultative Parties of the Antarctic Treaty of 1959 have proposed that a Convention on the conservation of Antarctic Marine Living Resources should be established;

Whereas fishermen of the European Economic Community are already exploiting marine living resources of the area to be covered by the proposed convention;

Whereas the European Economic Community should therefore participate in international cooperation for the conservation and management of marine living resources in the area concerned;

Whereas it is therefore necessary to establish directives for Community participation in the forthcoming negotiations for the said convention;

HAS DECIDED AS FOLLOWS :

Sole Article

The Commission is hereby authorised to negotiate on behalf of the Community, in accordance with the directives annexed hereto, for the establishment of a Convention on the Conservation of Antarctic Marine Living Resources.

The Commission shall conduct the negotiations assisted by the representatives of the Member States.

Done at Brussels,

For the Council
The President

A N N E X

1. The main elements of the draft Convention on the Conservation of Antarctic Marine Living Resources established by the Consultative Parties to the Antarctic Treaty during their meetings in 1978, namely:

- the establishment of a regulatory authority (the Commission) and an advisory Scientific Committee
- procedures for reporting, surveillance, and control of fishing activity within the area covered by the Convention

are acceptable to the Community, provided that appropriate amendments are made in order to achieve the objective set out in paragraph 2 below.

2. The draft Convention should contain provisions which allow the European Economic Community to become a signatory of the Convention, in parallel with those Member States which wish to become Contracting Parties because of the relationship between the proposed Convention and the Antarctic Treaty of 1959. It shall be ensured in the negotiations that such participation in the Convention by Member States shall in no way limit the exercise by the Community of the powers and jurisdiction conferred upon it under Community law.

FINANCIAL IMPLICATIONS

The Community's participation in this convention would imply a yearly contribution to the operating expenses of the Commission which will be established under this Convention.

It is not possible at this stage to estimate the size of this contribution.

The Community budget already contains a line to provide for this kind of expenditure (Item 2987, "International Agreements on Fisheries").