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CLOSING ADDRESS GIVEN BY MR NARJES

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to the Seminar on

THE NEW LAW OF THE SEA AND THE ENVIRONMENT IN A EUROPEAN CONTEXT

Mr Chairman, Your Excellency, Ladies and Gentlemen,

I am honoured and very pleased to be addressing this Seminar on the New Law of the Sea and the Environment in a European Context and to see present here today so many distinguished specialists in the law of the sea and environmental law. I welcome them all and I thank them for having shared with us the last three days the fruits of their wide experience. international negotiation and their extensive knowledge the law of the sea and of environmental law.

I would also like to thank the non-governmental organizations who conceived the idea of this Seminar: the European Environmental Bureau, the Advisory Committee on Pollution of the Sea, the European Council on Environmental Law, the Société belge pour le droit de l'environnement and the Belgische Vereniging voor Milieurecht.

The Commission of the European Communities is pleased to have been of assistance to these NGOs in making this Seminar possible. It hopes that, after these three days of debate, discussion and talks on such varied aspects of the Convention as the protection of marine mammals and habitats and specially protected areas and all the different sources of marine pollution, each one of you will have been left with much food for thought and many ideas about the future, so that, when you go back to your own organizations, you will be in a position to make the public more aware of the problems of the law of the sea and, when the time comes, can support the Community in the follow-up work.

I. GENERAL POLITICAL ASSESSMENT OF THE NEW LAW OF THE SEA

1. As you know, the Convention, the Final Act of which was signed by 119 delegations in Jamaica on 10 December 1982, is the result of nine years of negotiation, a period quite consistent with the political, economic and legal dimensions of the problem.

This Convention is in fact a quite unprecedented attempt to replace the principle of the freedom of the seas formulated by Hugo Grotius by a less liberal legal order and one which - by no means a minor consideration - applies to two thirds of the earth's surface.

2. The Community obtained the inclusion of a participation clause in the Convention and was - although only an "international organisation" in the inadequate terminology of the UN - because of the powers vested in it in some of the areas covered by the Convention, explicitly and rightly allowed to be a signatory of the Final Act of the Convention itself - whether you call us a federation in the making, a union in the making or otherwise, we are a unique phenomenon in international law and in international politics.

3. In October 1982, the Commission recommended that the Member States of the Community agree to have both the Final Act of the Conference and the Convention itself signed by the Community, jointly with the Member States. This signature was to have been accompanied by a political declaration defining the scope of accession to the Convention.

In fact, although on the whole the results of the Convention are positive, particularly as regards protection of the marine environment, fisheries and the recognition of the special legal status of the 200-mile exclusive economic zone, the same cannot be said for the International Seabed Authority Zone and the rules

governing its exploitation, which sets a very disturbing precedent for an interventionist and unworkable approach to the world economy. In this aspect, results do not correspond with the Community's objectives. Although it was possible in the spring of 1982 to obtain some amendments regarding mineral resource policy and the operational procedures of the Conference revising the Convention (although still on the basis of a three quarters majority rather than unanimity), it was - to mention some of the obstacles - not possible to amend the provisions of the compulsory transfer of technology, the financial clauses in contracts and the voting procedures in the Council. Because of this - and refusing the precedent for so-called New International Economic Order - several Member States are concerned as to whether it will be possible to exploit the seabed rationally unter this new system. This uncertainty may even in the long run affect supplies of the Community's raw materials and other consumer interests.

4. These objections to the new system for exploiting the seabed should nevertheless - on the other hand - be viewed in the context of the Convention as a whole when deciding whether or not the Community should sign the Convention.

(a) Signature of the Convention by the Community and its Member States will confirm the Community's desire to work together with its partners, within the United Nations, towards securing stability in international economic relations, in particular with the Third World.

(b) Signature of the Convention will mean legal certainty.

Most of the parties willing to sign the Convention have indicated that they would contest the enjoyment on the basis of customary law of the privileges embodied in the provisions of the Convention. This could have the result for those that did not sign that essential interests, such as fishing zones and the right of passage, would be called into question.

(c) Signature of the Convention will enable the Community and its Member States to join the Preparatory Commission and to influence work which will determine how the Convention is implemented. This Preparatory Commission will begin work in Kingston on 15 March.

The many questions which will have to be looked at by the Preparatory Commission include environmental and technical factors which must be taken into account before any exploitation of resources.

5. Signature of the Convention does not constitute ratification. A final judgment on the Convention cannot be made until the Preparatory Commission has adopted the implementing provisions on the exploitation of seabed resources; to do this it must make clarifications and find solutions to many questions, particularly those outlined above.

6. All the Member States of the Community signed the Final Act in Jamaica.

So far five Member States have signed the Convention: Denmark, France, Greece, Ireland and the Netherlands. The other Member States (Belgium, Federal Republic of Germany, Italy and the United Kingdom) have abstained. Consequently the Community has signed the Final Act but not the Convention.

It has not yet been possible to reach agreement within the Council on the content of the declaration to be made by the Community and the Member States on the exhaustive list of environmental regulations and directives nor have powers been transferred to the Community as such for the areas covered by the Law of the Sea.

The Commission's main concern now is to make chapter XI acceptable to all Member States and by doing so to convince the Council of the capital political importance of this matter for the future international relations in many fiedls of politics, economis and - hence - security. The Community has to work hard in order to reach a consensus in the face of such a challenge. Not only the next few weeks, but the next 24 months must therefore be spent in seeking to find such a consensus, to ensure that all Member States accept the Community's discipline when it comes to the certification of the Convention in two years.

7. The Convention has not been signed neither by other major powers such as the United States and Japan, mainly because of their dissatisfaction with chapter XI, too. This is a matter of the same concern we have inside the Community. All the more is the challenge to make the chapter XI acceptable. One of the objectives of the Conference was to draw up a Convention which would be universally acceptable and accepted and would provide a universally applicable legal order for the seas. A short time ago European Parliament called upon the Commission to initiate talks with our American and Japanese partners on this question.

II. ASSESSMENT OF PART XII (PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT)

8. I would like to move on to the second part of my exposé and concentrate on some of the Convention's provisions on the environment which, in the Commission's view represent a major contribution to international law on the environment.

9. Part XII with its 46 Articles is one of the especially positive achievements of the Conference, as is Annex VIII on arbitration - although this is optional - in the event of differences relating to the application of the Convention in the protection of the marine environment, fishing and pollution caused by shipping and by dumping at sea.

Cutting through the multitude of provisions, attention should first be concentrated on the underlying general rules or guiding principles. We in the Community should welcome the principles as they embody the ideas and initiatives forming the basis of the Community's environmental action programmes, its activities with regard to internal rules (Directives on the environment) and international cooperation on regional seas and, more specifically, the protection of fauna, flora and habitats (as reflected in our participation in various international agreements either as a full member or, where

this is not yet possible, as an observer (the Barcelona, Paris, Bonn, Oslo, Washington, Rhine and Caribbean Conventions, to mention but a few).

10. What, then, are these principles?

(1) First of all the Convention defines pollution of the marine environment (both the activity and the result). Since the Stockholm declaration on the environment and the definitions in the regional conventions on pollution (Paris and Helsinki), this is the first time an international treaty with universal application has given a detailed and comprehensive definition of pollution.

(2) Secondly, the Convention recognises the right as well as the obligation of States to protect and preserve the marine environment.

(3) A further major principle has a bearing on one of the principal problems requiring clarification in environmental law and politics, namely the conflict between developmental and environmental priorities. Here the Convention tells us that "States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment."

(4) The Convention stipulates that the measures to be taken must cover <u>all</u> sources of pollution (land-based, air-borne, dumping, shipping and sea-bed mining) and all types of pollution (whether accidental or deliberate).

(5) The Convention includes an obligation not to transfer pollution or the danger of pollution and not to substitute one form of pollution for another.

(6) The Convention enshrines the need for world-wide and regional cooperation with a view to:

- protecting and preserving the marine environment, as it puts it, in the light of regional characteristics;
- promoting studies, exchanging information and data on marine pollution and participating in regional and world-scale programmes in this field in a special effort to find remedies against pollution.

(7) The Convention enshrines the obligation to help developing countries to obtain control over marine pollution "in accordance with their capabilities" and requires the international organizations to give preferential treatment to developing countries, particularly as regards the allocation of funds.

(8) Finally the Convention enshrines various principles concerning continuous monitoring of pollution hazards and the effects of pollution.

11. I now come to two more key areas of the Convention in which more specific rules have been worked out. They are the questions of regulatory powers, and of powers for the enforcement of the current rules and standards on the preservation of the marine environment - or of penalizing non-compliance therewith.

Who may actually adopt the rules and what are the principles governing the relationship of the rules to each other?

The international organizations adopt the standards at world or regional level, and the individual States adopt them at national level. However, laws and regulations adopted by States must not - and this is a fundamental rule enshrined in the new law of the sea - be less effective than the international rules and standards or the recommended international practices and procedures.

12. I should also like to bring your attention to the provision[1] in Part XII concerning the creation of new "special areas" in the exclusive economic zone of a State where the international rules and standards are inadequate to deal with special environmental or maritime situations and the State is allowed to adopt for that area (in accordance with a predetermined procedure) additional laws and regulations which may contain rules banning discharges of harmful substances into the sea by vessels, or navigational practices.

This provision should certainly enable the Community and the Member States concerned to act, if necessary, in order to protect certain areas which are ecologically more vulnerable to pollution of the sea.

13. Adopting standards at international or national level will not suffice to eliminate pollution of the sea. Care must be taken to ensure that they are properly implemented and enforced.

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[1] Article 211(6) of the Convention.

However, it must be emphasized that prudence is called for and that it is necessary to prevent abuses the effects of which would ultimately render it impossible to make effective use of the many possibilities which the sea offers to us. Moreover, in the long run this would also clash with the environmental objectives.

Previous speakers will no doubt have mentioned the importance and the difficulty of enforcement where the vast marine environment is concerned, and in particular as regards pollution by vessels crossing the seas and visiting ports. The negotiations in Conference Committee III were no doubt very difficult where this point is concerned. However, an agreement was reached on the respective powers of the flag State, the coastal State and the port State; the powers of these States to investigate and impose penalties have been considerably increased, subject to the requisite guarantees (non-discrimination for example) for foreign ships.

I shall now turn to the regulatory powers and the powers concerning the enforcement of the anti-pollution rules in respect of activities connected with the exploration and exploitation of the international seabed and the continental shelves of the individual States, concerning which Professor Brown and Professor Forster have talked to you in depth.

Where the international seabed is concerned, regulatory powers and enforcement powers are vested in the Seabed Authority and its

subsidiary organs: the Council and the Legal and Technical Commission. Provision is made for a whole arsenal of measures[1] concerning prevention (assessing the environmental implications of mining activities in the area, objecting to the choice of a sector) and inspection (suspension or modification of operations; setting-up of a staff of inspectors responsible for inspecting activities in the area in order to determine whether the rules of the Convention and the other regulations adopted are being complied with).

For my part, I believe that the task devolved upon the Seabed Authority will be of vital importance in relation to pollution of the sea and in particular of the ocean depths where our environmental knowledge is very incomplete.

As regards the exploitation of the seabed within the limits of the jurisdiction of the individual States, it is the latter's responsibility to adopt and enforce regulations designed to preserve the marine environment.

14. The Commission is of the opinion that before adopting legislation in this sphere it is necessary to have a better understanding of the natural environment in question: oceanographic studies are under way with a view to acquiring more information about the sensitivity of marine ecosystems and the risks involved in exploiting polymetallic nodules, in particular in connection with the new equipment and the new technologies.

[1] Articles 145, 162 and 165 of the Convention.

These studies have been carried out primarily in the United States (at the NOAA[1]) and in France (at the CNEXO[2] and at the Centre océanologique de Bretagne). In September 1981 the NOAA published an environmental impact statement[3].

It might perhaps be appropriate to put research in this area on an international footing (as it is so very expensive) in the form of joint research and development ventures in cooperation with other international organizations such as the Intergovernmental Oceanographic Commission (IOC) and the Scientific Committee on Oceanic Research (SCOR) which also have a slight lead in this area.

III. CONCLUSION

15. Mr Chairman, Ladies and Gentlemen, I have attempted to give you a summary, where the environment is concerned, of the reasons that we have to be satisfied with the outcome of the Conference, and I have emphasized certain rules and guiding principles which, to my way of thinking, are of paramount importance in Part XII and meet with the Community's approval.

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[1] National Oceanic and Atmospheric Association.
[2] Centre national pour l'exploitation des océans.
[3] Final Programmatic Environmental Impact Statement.

However, the Convention on the Law of the Sea is a whole. This became clear in the course of the negotiations: the problems of ocean space are closely interrelated and need to be considered as a whole and in the context of the situation prevailing now and in the future which is and will be quite different from the situation in the 1970s and the dreams of that era.

Although the environment section and the section concerning fishing may seem to us to be satisfactory, the fact remains that the Community has serious objections to the regime adopted for the economic exploitation of the international seabed (Part XI). The rules in question should not be interpreted, developed, and compared with the facts of life of the 1980s, the 1990s or even of the year 2000. The role of the International Seabed Authority also needs to be adapted and adjusted in the light of the new situation.

I do hope that the Preparatory Committee will achieve such procedured interpretations of chapter XI making the new law of the sea workable. Perhaps then will the time have come to exploit together and in compliance with environmental constraints the mines that Neptune, the God of the Sea, concealed for so long from mankind.