

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 669 final

Brussels, 19th October 1982

FINAL COMMISSION REPORT ON THE RESULTS OF THE THIRD UNITED
NATIONS CONFERENCE ON THE LAW OF THE SEA AND COMMUNITY SIGNING
OF THE FINAL ACT OF THE CONFERENCE AND OF THE CONVENTION

(Commission communication to the Council)

COM(82) 669 final

COMMISSION COMMUNICATION TO THE COUNCIL

Final Commission report on the results of the Third United Nations Conference on the Law of the Sea and Community signing of the Final Act of the Conference and of the Convention

1. On 16 July 1982 the Commission forwarded a communication (COM(82)421 final) to the Council to report on the results of the Third United Nations Conference on the Law of the Sea. The Council is currently studying that communication.

This paper presents an overall evaluation of the Convention, on the basis of which the Commission recommends to the Council that the Community sign the Final Act of the Conference and the Convention.

2. The plenary session held in New York from 22 to 24 September 1982 was the final one, rounding off the work of the Third Conference on the Law of the Sea. At that session, following completion of the drafting committee's work, the texts of the Convention and the Final Act were adopted. It was decided at the Conference that the Final Act would be signed and the Convention would be open for signature from 6 to 10 December 1982 in Jamaica.

The Community is the only international organization which, by virtue of the competence transferred to it in certain areas covered by the Convention, has been expressly admitted as a signatory to the Final Act and the Convention itself.

3. The Commission wishes to confirm the assessment it made in its communication of July 1982.

The results obtained by the Community in the matters within its jurisdiction are positive on the whole as regards fisheries, the marine environment and the participation clause for international organizations. Of particular importance, the Commission feels, is international recognition of the validity of the Community's 200-mile exclusive economic zone.

On the other hand, the results as regards the exploration and exploitation of the seabed do not fully meet present objectives. The provisions adopted have aroused serious concern in the Community's industrial circles. Doubts persist as to whether exploitation of the seabed is possible under the present conditions. During the eleventh session it proved possible to have certain amendments made to the text as regards resources policy and the operational arrangements for the Review Conference; however, the arrangements for the compulsory transfer of technology, the financial clauses of contracts and voting procedure within the Council have not been amended.

4. Objections to the seabed regime as envisaged should, however, be assessed in the light of an overall evaluation of the Convention in order to weigh up the "pros" and "cons" of the Community's signing it.

(a) Signing of the Convention by the Community and its Member States will help reinforce the Community identity.

Also, the said signing will confirm the Community's desire to work with its partners, within the United Nations system, towards stabilizing international economic relations, particularly with the Third World countries.

(b) Signing of the Convention makes for legal certainty since:

- i. most of the parties in favour of signing have declared that they intend to contest any claim to the benefits of the Convention under customary law. This would mean, for those that had not signed, the essential interests such as fishery zones and right of passage would be called in question;
- ii. legal uncertainty would make itself felt in a situation where an exploration site was allocated under national legislation, since such allocation should really be made by the Preparatory Commission (Resolution II); such uncertainty could discourage firms from continuing their work despite the positive aspects of certain arrangements under Resolution II;
- iii. generally speaking, states non-signatory to the Convention will run the risk of conflicts with or retortion on the part of signatories.

(c) Signing of the Convention will entitle the Community and its Member States to speak and vote when work starts on implementing the Convention. It is the Preparatory Commission that will implement it and the work will probably start in spring 1983 (see Annex 1). It will be possible to make a final assessment only once the Preparatory Commission has adopted the implementing arrangements for exploitation of the seabed.

5. In these circumstances the Commission recommends that the Council decide that the Final Act of the Conference and the Convention itself should be signed by the Community and its Member States. For reasons referred to in its earlier communications the Commission is of the opinion that the said documents should be signed jointly by the Community and its Member States.

In view of its importance, the separate signing of this international act, would clearly put in doubt the Community's ability to take action at international level and would have adverse repercussions on some of its policies. Meanwhile, it should be noted that, from the legal viewpoint, joint and simultaneous participation by the Community and its Member States will be the only way to reconcile the rights and obligations incumbent upon them under the EEC Treaty and the Convention on the Law of the Sea.

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6. However, the objections referred to above concerning the seabed regime have led the Commission to propose that the Community and its Member States accompany their signature with a political declaration setting out the scope of their accession (see Annex 2).

7. Participation in the Convention by international organizations is subject to the deposit of declarations specifying the matters governed by the Convention in respect of which competence has been transferred to that organization. To this end the Commission proposes that the Council:
- adopt an internal Community procedure for the drafting of such declarations (see Annex 3).

Also, the Commission intends to forward to the Council a working paper giving the list of matters within Community jurisdiction, which the Community will have to present at the moment of signing by the Community, or by any Member State should the signing by the Community be jeopardized.

8. The Commission recommends that the Council:

- (a) decide on the joint and simultaneous signing by the Community and its Member States of the Final Act of the Conference;
- (b) decide on the joint and simultaneous signing by the Community and its Member States of the Convention;
- (c) decide that a political declaration should accompany the signing of the Convention by the Community and by each Member State;
- (d) authorize the President of the Council to designate the person empowered to sign the Final Act of the Conference and the Convention itself in order to bind the Community;

(e) adopt the proposal for a decision on the drafting and communication of the declarations on competence provided for in Articles 2 and 5 of Annex IX to the Convention.

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Inventory of the main tasks to be carried out by the Preparatory Commission¹ in connection with Part XI of the Convention

1. Draw up any such draft rules, regulations and procedures for the International Authority as the Preparatory Commission may consider necessary for the said Authority to fulfil its duties, namely:
 - (i) administrative and technical procedures relating to the prospecting, exploration and exploitation of the international zone, including environmental problems;
 - (ii) financial management and internal administration of the Authority (including rules on borrowing and on the transfer of funds from the Authority to the Enterprise);
 - (iii) decision-making procedures of the specialized commissions operating under the Council of the International Authority;
 - (iv) criteria for implementing procedures for the terms of sponsorship of seabed exploitation by one or more states party to the Convention;
 - (v) fixing of an amount to be placed at the disposal of the Enterprise by the party states and of the criteria and factors determining the adjustments required;
 - (vi) devising the statistical procedures governing selection of members of the Authority's Council.
2. Carry out studies, within a special commission, on the problems that may be encountered by developing land-based producer states.
3. Exercise the powers and duties assigned to it regarding the provisions governing preparatory investment (Resolution II).

¹The Preparatory Commission will start work early in 1983 provided that fifty states sign the Convention and that the United Nations General Assembly approves its budget in the autumn of 1982.

DRAFT POLITICAL DECLARATION

This declaration is to be made by the Community representative at the Convention signing ceremony. The Commission proposes that each Member State should refer to this declaration when it signs the Convention.

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The European Community has just signed the Convention on the Law of the Sea; the decision to sign was a difficult one. The Convention on the Law of the Sea is delicately balanced; the Community therefore wishes to declare to its partners that it cannot consider the principles of the Convention applicable beyond the strict confines of the Law of the Sea.

The Community is not convinced that the Convention provides the favourable conditions required for the development of the activities referred to in Part XI of the Convention. It realizes that there is a good deal of work yet to be done in order to implement the Convention; it will spare no effort in assisting the Preparatory Commission to fulfil its task, in the hope of achieving appropriate solutions. The Community's final verdict on the Convention will depend on the clarifications and progress made on this front.

The Community is fully aware of the amount of work that has gone into the negotiations right from the start and of the importance of the achievements; the state practices codified in the text of the Convention together with the innovations it contains have led to the establishment of a new legal order governing the seas.

The Community confidently offers to take part in this major undertaking directed at achieving jointly, under the aegis of the United Nations, stability and progress in international economic relations".

PROCEDURE FOR DRAFTING DECLARATIONS AND NOTIFICATIONS
REQUIRED UNDER ARTICLES 2 AND 5 OF ANNEX IX TO
THE DRAFT CONVENTION ON THE LAW OF THE SEA



Proposal for a Decision

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 116 thereof,

Having regard to the proposal from the Commission,

Whereas it is stipulated in Articles 2 and 5 of Annex IX to the
Convention on the Law of the Sea that participation in the Convention
by an international organization and its states members shall be subject
to the deposit of declarations specifying the matters governed by the
Convention in respect of which competence has been transferred to the
organization in question; whereas such declarations must be made at
various stages of the adoption and implementation of the Convention, in
particular at the time of ratification by the states members and at the
time of signing and depositing the instrument of formal confirmation or
accession by the organization; whereas it shall be the responsibility
of the organization itself or its states members, depending on the
circumstances, to make the declarations, acting on their own initiative
or at the request of a state party to the Convention;

Whereas the declarations, notifications and communications required
under the above arrangements must be coordinated in order to obviate any
risk that, within the organs or institutions of the Convention, the
distribution of competences between the Community and its Member States
may be contested;

Whereas to this end a procedure should be established in accordance with
which all declarations, notifications and communications made in application
of Articles 2 and 5 of Annex IX to the Convention shall be drafted and
adopted,

HAS ADOPTED THIS DECISION:

Article 1

The declarations, notifications and communications specifying the matters governed by the Convention on the Law of the Sea in respect of which competence has been transferred to the European Economic Community shall be adopted by the Council, acting by a qualified majority, on a proposal from the Commission.

Article 2

The procedure laid down in Article 1 shall apply to any declarations, notifications and communications which the Community or its Member States may, for whatever reason, be required to make by virtue of Annex IX to the Convention on the Law of the Sea.

Article 3

Any Member State of the Community party to the Convention on the Law of the Sea shall forward without delay to the Commission any requests it may receive from a state party to the Convention acting under Article 5(5) of Annex IX to the said Convention.

The Commission shall appraise the request and present the appropriate proposals to the Council.

Done at Brussels,