

European Communities

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DOCUMENT 1-869/80

## Report

drawn up on behalf of the Committee on Economic and Monetary Affairs

**on economic aspects of the exploitation of the seabed (Third UN  
Conference on the Law of the Sea)**

**Rapporteur: Mr G. WALTER**

Pages 11-15 of the original document are defective.

On 11 March 1980 the Committee on Economic and Monetary Affairs was authorized by the President of the European Parliament to draw up an own-initiative report on economic aspects of the exploitation of the seabed. The Committee on Agriculture and the Legal Affairs Committee were asked for their opinions. At its meeting of 19 March 1980 the Committee on Economic and Monetary Affairs appointed Mr Walter rapporteur.

On 13 March 1980 a motion for a resolution pursuant to Rule 25 of the Rules of Procedure (Doc. 1-14/80) on the economic aspects of the Third Conference on the Law of the Sea was referred to the Committee on Economic and Monetary Affairs as the committee responsible and to the Legal Affairs Committee for its opinion.

On 9 July 1980 a motion for a resolution pursuant to Rule 14 of the Rules of Procedure (Doc. 1-308/80) on the results of the Third Conference on the Law of the Sea was referred to the Committee on Economic and Monetary Affairs as the committee responsible and to the Legal Affairs Committee and the Committee on Transport for their opinions.

It was decided that the above two motions fell within the mandate of the previously chosen rapporteur, Mr Walter.

At its meeting of 29-30 January 1981 the Committee discussed and unanimously adopted the motion for a resolution.

Present: Mr Delors, chairman and deputizing for the rapporteur; Mr Macario and Mr Deleau, vice-chairmen; Mr Balfour, Mr Beumer, Mr von Bismarck, Mr Bonaccini, Mr Delorozoy, Miss Forster, Mrs Baduel Glorioso (deputizing for Mr Piquet), Mr Gouthier (deputizing for Mr Fernandez), Mr Herman, Mr Lange, Mr Leonardi, Mr Jaques Moreau, Mr Purvis (deputizing for Mr Hopper) and Mr von Wogau.

The explanatory statement will be given orally.

The opinions of the Committee on Agriculture, the Legal Affairs Committee and the Committee on Transport are attached.

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The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution:

MOTION FOR A RESOLUTION

on economic aspects of the exploitation of the seabed (Third UN Conference on the Law of the Sea)

The European Parliament,

- having regard to motions for resolutions Docs. 1-14/80 and 1-308/80,
- having regard to its previous resolutions on the Third UN Conference on the Law of the Sea,<sup>1</sup>
- whereas negotiations at the Third UN Conference on the Law of the Sea concerning the inclusion of the European Community in the organs of the convention are at a critical stage,
- having regard to the great economic importance of this Convention for the exploitation of the resources of the seas, and thus for Community and world supplies of food and raw materials, and for relations between raw material producer and consumer countries;
- whereas the Convention on the Law of the Sea with its arrangements for deep seabed mining may be regarded as a fundamental aspect of a new world economic order with an internationally agreed raw materials policy,
- whereas major decisions on the principles of the new law of the sea have already been taken, covering coastal zones, economic zones, and the continental shelf, the deep seabed mining system, marine environmental protection, marine research and freedom of navigation,
- whereas there has been as yet no political reply from the Community on the probable results of the Conference on the Law of the Sea, although parts of the new Convention fall within its purview,
- having regard to the report of the Committee on Economic and Monetary Affairs (Doc.1-869/80) and the opinions of the Legal Affairs Committee, the Committee on Agriculture, and the Committee on Transport,

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<sup>1</sup> 13.5.1977, OJ No. C 133 of 6.6.1977, p. 50, and 14.3.80, OJ No. C 85 of 8.4.1980, p.86.

### The present stage of negotiations

1. Welcomes the possible conclusion of a Convention on the Law of the Sea capable of limiting by binding international law the economic and political struggle for the exploitation of two thirds of the surface of our globe;
2. Regrets that the concept of the 'common heritage of mankind' has met only partial acceptance in the course of the conference; the allocation of exclusive economic zones to the coastal states is unfair, especially to geographically disadvantaged developing countries;
3. Welcomes nevertheless the fact that the European Parliament's previous demands are partially reflected in the probable results of the negotiations, in particular
  - the guarantee as a matter of principle of the right to innocent passage in navigation in coastal seas and in straits,
  - the acceptance on principle of freedom of navigation, overflight and to lay submarine cables or pipelines in the exclusive economic zones,
  - the acceptance on principle of the parallel exploitation system of deep seabed mining, representing a compromise between the interests of the developing countries and the industrialized countries interested in deep seabed mining,
  - the agreement on graduated decision-making procedures by the Council of the Seabed Authority,
  - the facilitation of marine research within the zones,
  - the arrangements for marine environmental protection;
4. Acknowledges that essential features of the new law of the sea have already been accepted by a majority at the Conference;
5. Calls nevertheless for use to be made of the remaining room for manoeuvre and especially for
  - the maintenance of the principle of the greatest possible freedom of navigation in the sea zones and straits
  - a clear definition of the limits of the continental shelf,
  - facilitation of marine research in the sea zones,
  - the greatest possible carry-over of the freedoms of the high seas into the exclusive economic zones;

- the logical implementation of the parallel system of exploitation in deep seabed mining (no elimination of deep seabed mining in favour of land-based producers, equal access by States and undertakings parallel to the Enterprise, long-term mining concessions);

#### The role of the Community

6. Requests once more that during the Tenth Session a clause be inserted in the draft convention enabling the European Community to become a contracting party to the Convention, this must entail the same rights and obligations for the Community as for the signatory States, in those areas where powers have been transferred to it;
7. Notes with concern the intention for vital matters affecting the future regulation of deep seabed mining and the work of the new International Seabed Authority to be discussed and decided by a preparatory commission, which might amount to a continuation of the Conference on the Law of the Sea;
8. Stresses the powers of the Community in respect of trade policy and its role as a contracting party in international raw materials agreements;
9. Calls therefore on the Governments of the Member States to make every effort to ensure that full participation of the Community as a member in the work of the preparatory commission, which is essential for its subsequent participation in the organs of the Seabed Authority;

#### Implications of the Conference for the Community

10. Is examining, giving due consideration to the relevant judgments of the European Court of Justice concerning the application of Community law in those areas where the Member States at least possess the right of exploitation<sup>1</sup> the attitude of the ten Member States and of certain of them individually to all matters relating to the sea;
11. Supports in this context the view expressed by the Commission in 1974 on the exploitation of offshore resources<sup>2</sup>;

<sup>1</sup>Cases Nos. 3,4 and 6/76 (validity of Community law in extended fishing zones)

<sup>2</sup>'More particularly the Commission considers that the provisions of the Treaty, and the acts of the Community pursuant to the Treaty, clearly specify the sovereign rights enjoyed by Member States over economic activities on the continental shelf, and in particular over the exploitation and exploration of oil resources... It follows that these natural resources belong entirely to the Member States concerned which may therefore derive the full economic advantages from them (for example, dues, taxation and balance of payments benefits). It is of course the case that in the exploitation of these resources, account must be given to the various provisions of the Treaty which apply to different aspects of industrial and commercial activity, particularly those governing the principles of freedom of movement of goods and of establishment...' (In its answer to a question in the European Parliament, OJ No. C 49, 27.4.1974)

12. Considers it its duty to devote particular attention to matters relating to the protection of raw material supplies, the utilization of the resources extracted, uses of the sea not connected with resources and pollution of the sea on the continental shelf situated off the coasts of the Member States;
13. Calls on the Commission and the Member States to ensure observance of the unequivocal provisions of the EEC Treaty in the Member States' marine zones, especially in respect of the rules on the freedom to provide services and the free movement of goods, freedom of establishment, the prohibition of discrimination and the free movement of persons, since the nationalization of offshore zones must not be misinterpreted as an invitation to the EEC Member States to pursue a protectionist policy against each other;
14. Calls on the Community to take the results of the Conference on the Law of the Sea as the basis for a common raw material and energy policy having regard to the importance of undersea deposits of oil, gas, all non-ferrous metals and rare earths;
15. Emphasizes in this context the need for a Community plan for economic and technical cooperation in deep seabed mining and in the economic zones of third countries;
16. Calls once again on the Member States to agree on a Community fisheries regime, which is the political prerequisite for agreements on Community fishing rights in the economic zones of non-member countries;
17. Calls on the Member States to co-operate in EEC waters, especially in prospecting for and exploiting natural resources, fisheries policy, environmental protection and marine research;
18. Calls on the Member States of the Community to coordinate their attitude on the continuation of private prospecting and development work in the transitional period (about six years) between now and the entry into force of the Convention;
19. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

MOTION FOR A RESOLUTION (DOCUMENT 1-14/80)

tabled by Prinz zu SAYN-WITTGENSTEIN-BERLEBURG, Mr JANSSEN VAN RAAY  
and Mr HOFFMANN

pursuant to Rule 25 of the Rules of Procedure on the economic aspects  
of the Third Conference on the Law of the Sea

The European Parliament,

- having regard to the special implications an agreement on an overall convention on the law of the sea would have for the exploitation of marine resources throughout the world,
- having regard to the Commission's responsibility to keep the Community's commercial policy under constant review,
- whereas Parliament, with the Legal Affairs Committee as the committee responsible, has, in a series of important documents, satisfactorily discharged its task of laying down clear policy guidelines for the fisheries, environmental protection and transport sectors,
- having regard to the primarily economic aspects of nationalizing coastal zones and setting up the international authority now under discussion,

## Instructs its appropriate committees :

1. to identify the Community's elementary interests as regards access to deep-sea resources, under sound economic conditions, in such a way as to ensure the further development of exploration and mining;
2. to examine the effects of generally establishing national economic zones on the economic activity of undertakings based in the Community;
3. to deliver an opinion in regard to the economic aspects on the current state of cooperation on the continental shelf shared by the countries of the European Community and on the economic activity arising out of it, on the basis of the Treaties of Rome and the obligations of national states under international agreements;
4. to submit proposals, to be forwarded to the Commission after discussion by the European Parliament, on measures to be taken within the Community to ensure Community participation in the use and exploitation of marine resources in order to cover the Community's demand, if industrial freedom of establishment is also to be assured in Community waters.

MOTION FOR A RESOLUTION (DOCUMENT 1-308/80)

tabled by Mr SAYN-WITTGENSTEIN, Mr KLEPSCH, Mr VAN AERSSSEN, Mr JANSSEN VAN RAAY, Mr GIAVAZZI, Mr FILIPPI and Mr HERMAN<sup>1</sup>

on behalf of the Group of the European People's Party (Christian-Democratic Group),

with request for urgent debate pursuant to Rule 14 of the Rules of Procedure on the results of the Third Conference on the Law of the Sea

The European Parliament,

- having regard to the consideration of Document No. 1-14/80 on the economic aspects of the Third Conference on the Law of the Sea,
  - considering that these economic aspects cannot be dissociated from matters of a general political nature and have moreover both external economic and intra-Community components,
  - recalling in particular the complex question of making a specific committee responsible for drawing up a report on the many difficult problems associated with the subject matter of the Third Conference on the Law of the Sea,
  - having regard, furthermore, to the current practice in several national parliaments of having a separate body to deal with items on the agenda of the Conference on the Law of the Sea,
1. Establishes the following principles to be observed by the Community and the Member States in the negotiations on the Third Conference on the Law of the Sea:

(A) National maritime boundaries12-mile territorial sea:

- (i) The European Parliament, while recognizing the extension of territorial waters to be common practice, points out that, where in the past maritime problems had perforce been solved by international agreement, this process has now been replaced by a dubious procedure of appropriation (a maritime version of land-grabbing).
- (ii) The European Parliament stresses the desirability of intra-Community cooperation in this area (utilization system).
- (iii) The European Parliament notes that the right of innocent passage may only be restricted in the event of a threat to external security, and is thus better guaranteed than it was in treaties in the past, but regrets the retention of general clauses permitting interruption of the right to innocent passage.

24-mile contiguous zone:

- (iv) The European Parliament regards the doubling of contiguous zones as a unilateral geographical extension of the coastal states' territorial zones.

It is unjustified, in view of the rights already announced for the economic zones.

<sup>1</sup>The request for urgent debate is signed by Mr SAYN-WITTGENSTEIN, Mr VERGEER, Mr KLEPSCH, Mr BARBI, Mr DIANA, Mr JONKER, Mr JANSSEN VAN RAAY, Mr HABSBURG, Mr Konrad SCHÖN, Mr d'ORMESSON, Mr DESCHAMPS, Mr GIAVAZZI, Mr FILIPPI, Mr VAN AERSSSEN, Mr CROUX, Mr MAJONICA, Mr LÜCKER, Mr LUSTER, Mr F. HERMAN, Mr BERSANI, Mr FISCHBEACH and Mr ADONNINO.

(v) The concept of a highly industrialized economic community like the EC is incompatible with privilege for some countries at the expense of the others, and demands that these areas be assigned to the European Community for all economic activities.

20. With exclusive economic zone/continental shelf:

(vi) The European Parliament is convinced that an extension - and especially an extension without any *quid pro quo* - of sovereignty in the form of economic zones and over wider continental shelf areas is an affront to geographically disadvantaged states.

(vii) It is, however, certain that a choice had to be made here between extending national sovereignty and handing over the previously open seas to the proposed International Seabed Authority. Parliament demands that disputes arising from nationalisation be settled by regional arrangement and makes this a condition for its support for the system of economic zones.

(viii) To that extent the European Parliament regards the legal system which the participants in the Convention are attempting to introduce as an opportunity for the Community to make progress by means of agreed guidelines towards the exploitation of maritime resources and the control of the activities of third countries - especially in respect of their catch quotas, in a way that is equitable and comprehensible to all its Member States. It is an essential feature of a community that its member governments should strive for coordination of effort in preparing for and exploiting natural resources, in particular to conserve fish stocks and in legislation on artificial islands, in respect of environmental protection and marine resources. In all these areas these endeavours should be reinforced by legal action of the Community.

(ix) The European Parliament endorses the view that the continental shelf adjacent to a coastal state, equal in terms of sediment potential to the mining activities of that state, is therefore of considerable importance as an objective definition of the limits of the continental shelf. It calls upon the Commission to submit proposals of possible maritime boundaries, respecting the geographical limits of Community jurisdiction.

(x) The European Parliament urges that agreement be reached on a distance from coastline to edge of continental shelf, on the basis of objective criteria.

(xi) The European Parliament criticizes the interim compromise formula arrived at by the Conference under which the International Seabed Authority would be involved in relations between national states, insofar as part of the revenue from the resources of the continental shelves situated outside the 200-mile zone would be shared out through that authority. It endorses the widely-held view that, while these levies might hamper necessary commercial exploitation of raw materials, they should be used to strengthen regional cooperation.

The European Parliament therefore sees opportunities for extending the scope of the Treaty of Rome to develop common policies covering economic zones and cooperation on the continental shelf.

(12) Straits

(xii) The European Parliament points out that with the extension of coastal states' sovereignty, the problem of straits has become a matter of worldwide concern to the shipping industry. It welcomes the fact that coastal states have been given no further executive powers other than in protection of the marine environment.

(13) Archipelagoes

(xiii) The European Parliament's fear that the convention, in defining territorial waters, would deviate from the principle of effective jurisdiction has been confirmed in the arrangements arrived at by the Convention for sovereignty in archipelagoes. The right to a maximum ratio of water to land of 9 : 1 on the assumption of correspondingly distant island areas is an indirect encroachment on the freedom of the seas which are open for all countries to use.

(14) High Seas

(xiv) Except in respect of navigation, the European Parliament regards the arrangements currently under discussion as a substantial restriction of the areas designated 'High seas'.

(xv) It is in favour of the proposal to increase the obligations of flag states (in countries with large merchant fleets) in respect of ship safety and protection of the marine environment. Too little attention has been paid to the conservation of living resources in the high seas.

(xvi) The European Parliament calls upon the Commission to propose rules on the fishing of particularly migratory species of fish within the EEZ zone.

(B) Protection of the marine environment

(xvi) The European Parliament welcomes the powers to be conferred on coastal states to police and penalize vessels flying foreign flags, varying according to the degree of sovereignty exercised in their territorial and contiguous waters, and economic zones. Nevertheless it assumes that internal disputes between Member States of the Community will be settled by mutual agreement.

(xvii) The European Parliament assumes that the Commission will be instructed by the Council to help IMCO (Intergovernmental Maritime Consultative Organization) issue international anti-pollution regulations for special areas.

(C) Marine research

(xix) The European Parliament notes with satisfaction that permission to conduct marine research within 200 mile zones may be refused only for a limited number of reasons. It regrets to note that marine scientific research conducted in other countries' economic zones will normally be subject to the jurisdiction of the coastal states via a bureaucratic approval procedure.

(xx) The European Parliament, in the nature of things, would be glad if it could be made easier for third countries to conduct marine research especially outside this zone.

(C) Deep-sea mining

(xxi) The European Parliament feels especially committed to two principles in assessing the question of deep-sea mining:

- Mining on the seabed means the production of raw materials;
- For the benefit of mankind as a whole, the international law of the sea must encourage all potential producer countries to have deep-sea mining carried out by their most efficient enterprises.

(xxii) The European Parliament recognizes the obligations of the industrialized countries towards the interests and needs of the developing countries. However, a responsible policy on resources should not be aimed at regulating and controlling the international raw material markets with the sole aim of equalizing or even eliminating competition for the benefit of land-based producers of the resources in question. A system in the form of an official monopoly would contradict the principle of the equality of nations and would hamstring efficient operations.

- (xxiii) The European Parliament supports efforts to achieve regulated competition between marine and land-based mining. A fair transfer of revenue from royalties would help here, so long as it did not impede exploitation.
- (xxiv) The European Parliament points out the advantages of allowing private firms as well as the official 'Enterprise' to engage in deep-sea mining. It supports any means of ensuring that exploitation by countries and companies to be allowed to engage in seabed mining according to objective criteria should begin no later than those of the Seabed Authority and its proposed 'Enterprise'.
- (xxv) The European Parliament emphasizes that all agreements with the authority should be on a long-term basis, in order to guarantee time for mining projects to be brought to fruition.
- (xxvi) The European Parliament warns the Member States of the Community against signing clauses making a transfer of mining and processing technology the basis for cooperation between commercial undertakings and the Seabed Authority and their 'Enterprise'. The European Parliament emphatically rejects any elimination of competition between commercially interested parties via a clause providing for direct compulsory transfers of technology. But even the indirect procedure of transferring knowhow via the Authority to third countries would hardly further the interests of the countries thus favoured without further aid through cooperation on the basis of trust with the industrialized countries.
- The European Parliament also points out that there has been no agreement on a code covering vital data, nor have any arrangements for their protection been made; serious legal problems and disputes must therefore be expected.
- (xxvii) The European Parliament also regrets to note that production ceilings are to be linked to the growth in world demand for a single metal (40% of nickel). Such restrictions fail to take into account the complexity of a raw materials policy which should be based on the interplay between the supply of various raw materials on an equal competitive footing, the necessity to hold stocks and the benefits of development.
- (xxviii) The European Parliament expressly rejects any future moratorium on the issue of mining licences to private undertakings, and will maintain this view in a review conference. As of now it invites the future executive body of the Seabed Authority to bona fide cooperation. Parliament regards the production

and use of a right of veto in the routine decision-making process of the institutions as a vital component of any review of the Convention.

(xxxix) The European Parliament calls upon the Commission to agree interim legislation with the Member States by concerted action pursuant to Article 116 in conjunction with Article 113(1) of the EEC Treaty, in accordance with the principles governing international exploitation of the seabed, as agreed jointly by the Members of the EEC, taking this present resolution into account, and, after referring it to Parliament, to submit it to the Council for adoption:

1. Decides to organize its own work on the Conference on the Law of the Sea as follows:

(xxxx) The European Parliament decides to set up a non-permanent committee to deal with the subject-matter of the Third Conference on the Law of the Sea.

(xxxi) It regards as having priority, on the basis of the provisional and final results of the Third Conference on the Law of the Sea, matters connected with introducing Community management of sea affairs;

(xxxii) In view of the importance for the European Community of the Conference on the Law of the Sea (Community clause), it authorizes its above-constituted committee to delegate expressly a number of Members of Parliament to attend the next session of the Conference in Geneva and requests it to establish itself before the summer recess with a view to examining the possibility of such a delegation.

2. Instructs its President to forward this resolution to the Council, the Commission and the governments of the Member States.

#### JUSTIFICATION

Urgency is justified by the impending resumption of the Conference on the Law of the Sea, at which it will be finally decided whether the European Community will be entitled to sign the Convention in its own right. The democratically elected Parliament of the European Community must therefore make its position on the present negotiating part of the Third Conference on the Law of the Sea.

OPINION OF THE COMMITTEE ON AGRICULTURE

Draftsman: Mrs E.CRESSON

At its meeting of 22 October 1980 the Committee on Agriculture appointed Mrs Cresson draftsman.

It considered the draft opinion at its meeting of 21 and 23 January 1981 and adopted it unanimously.

Present: Sir Henry Plumb, chairman; Mr Früh and Mr Caillavet, vice-chairmen; Mrs Cresson, draftsman; Mr Battersby, Mr Bocklet, Mr Clinton, Mr Dalsass, Mr Delatte, Mr Diana, Mr Goutier, Mr Helms, Mrs Herklotz, Mr Hord, Mr Key (deputizing for Mrs Castle), Mr Kirk, Mr Maffré-Baugé, Mr Maher, Mr Nielsen, Mr Papaefstratiou, Mr Provan, Mr Sutra, Mr Tolman, Mr Wettig and Mr Woltjer.

1. The aim of the Third United Nations Conference on the Law of the Sea, which began work in December 1973, is to establish a new legal framework for the sea, taking into account both the traditional principles of the law of the sea (freedom of navigation) and the legitimate economic interests of the states of the international community. The topics for discussion at this Conference are the legal status of the high seas, territorial waters, contiguous zone, exclusive economic zone and the continental shelf, the rights of coastal states as regards exploration and exploitation of the resources of the sea, the seabed and the subsoil thereof and also the conservation of living resources and the marine environment. The Third Conference is expected to complete its work in 1981.

2. At its sitting of 14 March 1980, the European Parliament delivered its opinion on the 'unofficial composite negotiating text' finalized by consensus of the delegations of the states taking part in the Third Conference<sup>1</sup>. It adopted an annex to its resolution on the problems relating to fisheries, the text of which was as follows:

#### The European Parliament

1. Points out that the Community has acquired the right to exercise jurisdiction on fisheries policy within the 200 mile exclusive economic zone;
2. Stresses at the same time the need to ensure that provisions of a future Convention should not undermine in any way the Community's ability to implement all fisheries management and conservation measures in the exclusive economic zone, including control of access of all fishing vessels, support vessels, vessels transshipping fish at sea and processing vessels;
3. Warns against any possible exclusion of Community fishermen from high seas fishing grounds resulting from claims to exercise jurisdiction of marine resources above the Continental Shelf beyond 200 miles;
4. Points out the mutual advantages which can accrue from fisheries cooperation policies, including access and technological transfer, with the developing countries; and calls, therefore for a greater understanding of the particular problems of the developing countries and especially their technological requirements.

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<sup>1</sup>OJ No. C 85, 8.4.1980, p.86 - Doc. 1-725/79

3. The principles adopted in March 1980 are still valid today and there is no reason to go over them again. However, the Committee on Agriculture would like to state its position as regards the motion for a resolution tabled by Mr Sayn-Wittenstein and others, which is the subject of this opinion, in the context of the common fisheries policy.

A. NEED FOR A COMMON POLICY FOR THE PROSPECTING AND EXPLOITATION OF MARINE RESOURCES

4. In paragraph 1(A)(viii) of the motion for a resolution, relating to the 200-mile economic zones, it is stated that: 'It is an essential feature of a community that its member governments should strive for coordination of effort in prospecting for and exploiting natural resources, introducing measures to conserve fish stocks and in legislation on artificial islands, in respect of environmental protection and marine research'.

5. The Community has had a fisheries management and conservation policy since 1976 and must introduce an overall common fisheries policy covering the structural, social, scientific and market aspects of this question.

As regards prospecting for and exploiting marine resources and the consequences of navigation on the other hand, no measures have been laid down at Community level. Yet the Community cannot remain indifferent on this matter, as any activity at sea could seriously affect fish stocks and therefore also employment in the fisheries sector. The disastrous effects on the ecology of a damaged well-head on an off-shore drilling rig or the sinking of a giant oil tanker (Torrey Canyon, Amoco-Cadiz) illustrate the dangers only too well. In this connection, reference should be made to the report by the Committee on the Environment on combating the effect of disasters where oil is released into the sea and reaches the shore<sup>1</sup>.

6. It is therefore important for the Community to enact legislation governing prospecting for and the exploitation of marine resources in the 200-mile zones of the Member States to ensure that:

- minimum safety miles are observed throughout the Community as regards both off-shore rigs and on vessels,
- certain marine zones, in particular fish-breeding grounds, are protected to form underwater 'nature reserves';
- fish-farming zones are protected,
- the abovementioned zones are reserved for biological research only.

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<sup>1</sup>Doc. 1-467/80 - Draftsman: Miss Quin

B. NEED FOR A COMMON POLICY FOR THE CONSERVATION OF LIVING RESOURCES IN THE HIGH SEAS

7. In paragraph 1(D)(xv) the authors of the motion for a resolution stress the fact that 'too little attention has been paid to the conservation of living resources in the high seas'.

The Committee on Agriculture agrees with this remark. It would like to stress the particular importance of phytoplankton, both as a source of food for a number of marine species and as an essential factor for maintaining life in the biosphere.

The Committee on Agriculture therefore stresses the need:

- for the oceans to be protected against pollution (hydrocarbons, dumping of effluent at sea, marine storage of radioactive materials, etc.), since the self-cleaning capacity of the sea is not unlimited, and for rules to be laid down on dumping at sea. It would be useful for the Community to undertake a joint study with other industrialized nations on the effects of dumping certain materials at the junction of two continental plates, in the light of recent discoveries in the field of plate tectonics,
- for the development of techniques to limit the damage to marine fauna and flora from the extraction of metallic nodules on the ocean-bed,
- for research into the cumulative effect of various forms of pollution on species of marine fauna.

8. Paragraph 1(D)(xvi) of the motion for a resolution calls upon the Commission 'to propose rules on the fishing of particularly migratory species of fish within the EEC zone'. The Community may indeed introduce rules on the fishing of particularly migratory species in its own waters, but its efforts would come to nothing unless similar measures were to be taken by other states in the international community, particularly as regards species passing through the high seas or seeking 'refuge' in waters belonging to another state.

The question of particularly migratory species cannot therefore be limited to the European Community alone. An EEC/third countries committee should be set up to draw up a migration chart and to study the cumulative effects of pollution on migration.

9. In paragraph 1(E)(xvii), the authors of the resolution refer to the problem of surveillance. Surveillance in both territorial waters and the exclusive economic zones is the responsibility of the states concerned. Nevertheless, where the proper application of the rules governing the fisheries management and conservation policy is concerned, surveillance is carried out (on behalf of the Community) in the section of the Community fisheries zone for which the Member States are responsible. It is clear that a minimum of coordination is required in respect of the inspection and surveillance activities of the Member States if the Community wishes to monitor its fishing zone effectively, since potential defrauders might be tempted to utilize the loopholes existing in the surveillance network of certain Member States to plunder the Community's fish stocks.

C. THE NEED FOR RULES, SURVEILLANCE, AND AGREEMENTS COVERING BOTH COMMUNITY AND THIRD COUNTRY VESSELS

10. Two principles deriving from the creation of the Community fishing zone must also be borne in mind:

- (a) the Community is entitled to impose on the Member States - with their agreement - the rules it intends to apply to Community vessels within its territorial waters;
- (b) with regard to vessels from third countries, the position of the Community as such is less clear. Nevertheless, the Community may impose on fishing vessels from third countries the surveillance procedures it intends to apply. If such vessels were to refuse to accept the surveillance measures laid down by the Community, the latter could withdraw their authorizations to fish in Community waters.

As regards other vessels (such as oil tankers), international regulations already exist. At present it is not the Community's task to monitor them. Nonetheless, if the Community becomes a signatory to the future Convention on the Law of the Sea, its legal position will be strengthened and it will certainly be able to lay down rules governing shipping specifically in order to prevent the maritime disasters which are threatening its fish stocks.

D. INDIVIDUAL CASES

11. **Firstly, as** to marine mammals and species of deep-sea fish, the Committee on Agriculture would point out that they must be protected by international agreements which must also regulate the fishing (or hunting) of these species so that they are not endangered. Nonetheless, the customs of certain groups of people whose traditional fishing (or hunting) activities only marginally affect existing stocks should be respected and not treated in the same way as industrial fishing (or hunting) carried out by fleets of vessels.

12. **The second** problem which needs to be dealt with concerns the Mediterranean Sea where a solution must be found to fisheries disputes. Three Member States (France, Greece and Italy) are Mediterranean countries, as is Spain, an applicant country. A conference should therefore be organized for the Mediterranean countries so that a separate fisheries policy for this enclosed sea may be laid down, one which respects the legitimate and traditional interests of the countries of the Mediterranean Basin. This would prevent those regrettable disputes which periodically involve Community fishermen and the authorities of a coastal state (for example, Italy and Tunisia).

#### E. THE METHOD PROPOSED BY THE COMMITTEE ON AGRICULTURE

13. Finally, the authors of the motion for a resolution recommend the formation of an ad hoc committee to deal with the subject-matter of the Third Conference on the Law of the Sea.

The Committee on Agriculture is in favour of the formation of such a committee as all matters relating to fisheries and the sea must be dealt with in a comprehensive way.

Indeed, both exploitation of marine resources (oil, gas, metallic nodules) and shipping could adversely affect the common fisheries policy unless certain precautions are taken.

It is for this reason, among others, that the Committee on Agriculture has been urging the Commission and the Council for a number of years to adopt the idea of a coherent policy in the fisheries and marine sector<sup>1</sup>. The Commission does seem to be coming round to this idea, as its preliminary draft budget for 1981 contains a Chapter 87 'Specific measures in the fisheries and marine sector'. The Council did not oppose it.

14. Given that the Community now has specific powers in regard to fisheries, the Working Party on Fisheries might perhaps form the nucleus of the future ad hoc committee on fisheries and marine affairs, which would be responsible, amongst other things, for following the work of the Third United Nations Conference on the Law of the Sea as well as its subsequent proceedings once the new Conventions on the Law of the Sea have been adopted. The other committees concerned (Political Affairs Committee, Legal Affairs Committee and the Committees on Budgets, Economic and Monetary Affairs, Energy and Research, Transport, the Environment, Public Health and Consumer Protection and Development and Cooperation) should delegate members to represent them on the new committee.

#### CONCLUSIONS

15. The Committee on Agriculture requests the committee responsible to include the following points in its motion for a resolution:

##### The Committee on Agriculture,

- (a) Draws attention to the annex to the resolution adopted by the European Parliament on 14 March 1980<sup>2</sup> on fisheries questions;
- (b) Stresses the need for a global approach to fisheries and marine problems; invites the Commission to propose overall fisheries and marine policy;
- (c) Believes that exploitation of marine resources (oil, gas, metallic nodules) must not jeopardize fish stocks and consequently the employment of people or regions dependent on fishing activities for their livelihood;

<sup>1</sup> Cf. Draft amendment by Mr Josselin - Doc. 1-465/168 (PE 68.667)

<sup>2</sup> OJ No. C 85, 8.4.1980, p.86 - Doc. 1-725/79

- (d) Feels it necessary to establish zones where all industrial exploitation would be prohibited, either to protect fish-farming facilities or to form underwater nature reserves;
- (e) Points out that the protection of particularly migratory species of fish, marine mammals and species of deep-sea fish requires action from the international community as a whole; that the fishing (and hunting) traditions of certain groups of people should be respected, provided that they do not endanger the species involved;
- (f) Points out that fisheries surveillance is carried out by the Member States on behalf of the Community and emphasizes the importance of the Community's accession to the future Convention on the Law of the Sea so that it may similarly possess its own responsibility for shipping;
- (g) Stresses that the Community must conclude a global agreement on fisheries with the coastal states of the Mediterranean, one which respects the legitimate and traditional interests of the states in the Mediterranean Basin;
- (h) Proposes that an ad hoc committee be formed on the basis of its Working Party on Fisheries to be responsible for following the work of the Third United Nations Conference on the Law of the Sea and its subsequent proceedings. Representatives of all the committees concerned should take part in the work of this committee.

Territorial sea (also known as territorial waters)

The zone within which coastal states have complete sovereignty, subject to the right of innocent passage by other countries' vessels. Fixed at twelve nautical miles by general agreement at the Third United Nations Conference on the Law of the Sea.

Contiguous zone

The zone between 12 and 24 n.m. within which coastal states exercise health and customs inspection powers.

Exclusive economic zone

The 200 n.m. zone within which coastal states exercise sovereignty in respect of the surveillance and exploitation of living resources (fisheries). This zone is divided up into national zones for the exploitation of natural resources.

Continental shelf

This concept dates back to 1958, and denotes a zone within which the coastal states have sovereign and exclusive rights of exploitation on and beneath the seabed.

The zone has been fixed at 200 n.m. in principle. However, at the Third Conference on the Law of the Sea, certain countries have advocated the extension of this limit. A consensus might emerge for exploitation on and beneath the seabed to continue to a distance of 350 n.m. from the coast of the coastal state or to a maximum depth of 2,500 m. Ireland, the United Kingdom, France, Canada, Australia, New Zealand, India, Sri Lanka, Brazil and Argentina are apparently interested in such an extension.

The high seas

That part of the sea not included in any of these zones where states exercise sovereignty or jurisdiction. Freedom of navigation on the high seas is completely unrestricted.

However, this zone is likely to come under the control of an international authority empowered to issue to interested countries, against payment of fees, licences for prospection and exploitation of resources on and under the seabed.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr VIE

On 2 October 1980, the Legal Affairs Committee appointed Mrs EWING draftsman of the opinion.

At its meeting of 17 February 1981, the Legal Affairs Committee appointed Mr Vie to replace Mrs EWING.

At its meeting of 26 February 1981, the Legal Affairs Committee considered and unanimously adopted the draft opinion.

Present:

Mr FERRI, chairman,

Mr VIE, draftsman of the opinion,

Mr DALZIEL, Mr FISCHBACH, Mr GIUMMARRA, (deputizing for Mr MODIANO),

Mr JANSSEN VAN RAAJ, Mr SIEGLERSCHMIDT, Mr TYRRELL and

Mr WELSH (deputizing for Mr TURNER).

## I. INTRODUCTORY

1. The motion for a resolution on the results of the Third Conference on the Law of the Sea (Doc. 1-308/80), on which the Legal Affairs Committee is to give its opinion, is concerned with matters of great importance which are the subject of negotiations at the Third Conference on the Law of the Sea. In discussing this question, the Legal Affairs Committee took into account the motion for a resolution (Doc. 1-14/80) on the economic aspects of the Third United Nations Conference on the Law of the Sea, which is also the subject of the report by the Committee on Economic and Monetary Affairs as the committee responsible.

2. These are the future international rules to govern maritime matters, to which the Community should give particular attention - especially now that the Third Conference on the Law of the Sea is drawing to a close. The Ninth Session of the Third United Nations Conference on the Law of the Sea ended in Geneva on 29 August 1980 with the decision to transform the revised 'Single informal composite negotiating text' into a 'Draft Convention on the Law of the Sea (Informal Text)'<sup>1</sup>.

3. This text is the result of the negotiations which have taken place within the Third Conference so far. The Tenth - and probably the final - session is scheduled to begin on 9 March 1981 and will last 6 or 7 weeks. If, in its course, it proves possible to draft a final version of the text of the Convention, the latter can be opened for signature by the Contracting Parties in September 1981 in Caracas.

## II. MAIN POINTS OF THE FUTURE CONVENTION

### (i) Territorial sea and contiguous zone

4. The draft Convention represents no change from the preceding text. Article 3 lays down the breadth of the territorial sea as 12 miles, but debates at the Ninth session of the Conference once more brought out the persisting divergences in respect of the criteria for determining the maritime boundaries between States with adjacent or opposite coasts.

5. Article 15 of the 'Negotiating Text', which is reproduced in the Draft Convention, lays down that where the coasts of two States are adjacent or opposite, those States cannot - save by contrary agreement - extend their territorial sea beyond the median line between the coasts concerned. This provision does not, however, apply to those cases where the boundaries of the territorial seas of the two States should be defined otherwise by reason

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<sup>1</sup>United Nations Document: A/Conf.62/WP. 10/Rev. 3, of 27 August 1980, revised for technical reasons on 22 September 1980

of historic title or other special circumstances.

6. The provisions concerning delimitation of the exclusive economic zone and delimitation of the continental shelf between States with opposite or adjacent coasts are contained in Art. 78 and Art. 89. On these matters there is conflict between delegations supporting the delimitation on the basis of the median line and those that would prefer a delimitation based on 'equitable principles' and on the 'significant circumstances' of each particular case.

7. The Community Member States are not unanimous on this question.

8. The concept of a contiguous zone, which is defined in Article 33 of the Draft Convention, is essentially intended to prevent and punish infringements of customs, fiscal, sanitary or immigration regulations in force in the coastal State. For these purposes such a State may exercise the necessary control within a sea area of a breadth double that of the territorial sea, i.e. 24 miles.

9. This is a concept that was already embodied in Article 24 of the Geneva Convention on the Territorial Sea and the contiguous zone of 29 April 1958. The contiguous zone could not, according to the 1958 convention extend beyond twelve miles from the territories along the coasts.

(ii) Exclusive economic zone and the continental shelf

10. The regime of the 200-mile exclusive economic zone - first introduced de facto by a number of coastal States and now endorsed by the Draft Convention - was examined by the Legal Affairs Committee on the basis of the report by Mr Gillot on the need for and definition of a common position for adoption by the Member States of the Community at the Third UN Conference (9th session) on the Law of the Sea and on the participation by the Community in its own right in the agreements to be concluded at the end of the Conference<sup>1</sup>. It should be noted that, as regards the Community, the exclusive economic zone was introduced for the purpose of regulating and exercising fishing activities<sup>2</sup>.

- The question of access by land-locked and geographically-disadvantaged States to the exploitation of the biological resources in exclusive economic zones has to a certain extent been settled by the Conference. At the Ninth session some land-locked or geographically-disadvantaged States restated their demands for provisions that would better safeguard their right to

<sup>1</sup>Doc. 1-725/79, 8 February 1980, p.15 et seq.

<sup>2</sup>Council Resolution of 3 November 1976.

access to the sea and to an adequate share in the exploitation of the living resources of the exclusive economic zones. In particular, these countries have asked for the establishment of a fund (the Common Heritage Fund), to be financed from part of the profits derived by the coastal States from the exploitation of their exclusive economic zones and their portions of the continental shelf.

- On the delimitation of the continental shelf and the rights of the coastal States embodied in the Draft Convention (Article 76 et seq.), reference should be made to the analysis contained in the Gillot report<sup>1</sup>. Article 76 of the Draft Convention, while reproducing paragraph 5 which already appeared in the 'Negotiating Text' adds a new paragraph 6 aimed at constraining the claims of coastal States which possess a very broad continental shelf (maximum breadth: 350 miles).

(c) The straits

11. The world-wide extension of the breadth of the territorial sea to 12 miles has brought within the jurisdiction of coastal States a large number of maritime straits used by international shipping, among them the particularly important straits of Gibraltar and Malacca.

12. Efforts are being made at the Third Conference to find solutions that would take account of the needs of States with important shipping interests, which in practice are the industrialized States of the West and East. Thus the Draft Convention maintains and confirms the right of 'innocent passage' through the territorial waters of coastal States (Article 17), together with the right of 'transit passage' through straits between one area of the high seas or an exclusive economic zone and another area of the high seas or an exclusive economic zone which are used for international navigation (Articles 37 et sq.).

(d) The archipelagic waters:

13. The proposed regime for archipelagos (Articles 46 et seq. of the Draft Convention) could be detrimental to the freedom of the seas which are open for all countries to use. In view of the powers accorded to archipelagic States over their waters and the adjacent territorial sea, it is necessary to safeguard full observance of the right of 'innocent passage'.

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<sup>1</sup> Doc. 1-725/79, cit., pp. 16-17

(e) The high seas:

14. The Geneva Convention on the High Seas of 29 April 1958 defines as 'high seas' all the marine waters that do not form part of a State's territorial sea or part of its internal waters. In the maritime area thus defined all the States enjoy freedom of navigation and of overflight, of fishing and of the laying of submarine cables and pipelines.

15. These freedoms are listed in Article 87 of the Draft Convention, with the added freedom to construct artificial islands and other installations permitted under international law, as well as the freedom to conduct scientific research. Further provisions concerning the right to conduct scientific research within the economic zone and on the continental shelf of a third State are contained in Part XIII (Articles 238 to 265) of the draft text. Pursuant to Article 86 of the Draft Convention, however, this provision does not apply to exclusive economic zones - which means that the ocean area in which the above-mentioned freedoms can be exercised is substantially reduced.

(f) Protection of the marine environment

16. Articles 92 et seq. of the Draft Convention deal with this problem

The Legal Affairs Committee examined the problems of marine environment protection in Mr Gillot's report<sup>1</sup>, drawing attention to the right of coastal States to adopt and enforce, even beyond their territorial waters, measures proportionate to the actual or threatened damage, in order to protect their coastline and their related interests, including fishing.

(g) Marine scientific research:

17. In the Draft Convention the coastal States are granted the power to regulate marine scientific research in their territorial waters, in their exclusive economic zone and on their continental shelf (Articles 245 and 246). It is, however, laid down that in normal circumstances the coastal States shall grant their consent for marine scientific research projects to be carried out by other States or competent international organizations in their exclusive economic zone or on their continental shelf for peaceful purposes and for the benefit of mankind.

18. The European Parliament in its resolution of 14 March 1980<sup>2</sup> has stressed the need to safeguard the freedom to carry out marine scientific research and industrial activities associated with the sea.

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<sup>1</sup>Doc. 1-725/79, cit. pp. 19-21

<sup>2</sup>OJ No. C 85, 8 April 1980, p.87

(h) Deep-sea mining:

19. The establishment of an International Seabed Authority, envisaged in the Draft Convention, represents one of the most important innovations for the future development of the law of the sea.

III. OPINION ON THREE FUNDAMENTAL LEGAL QUESTIONS

20. Having examined the present state of progress on the future convention, the Legal Affairs Committee is required to give its opinion on three legal questions raised by the motion for a resolution

- deep-sea mining and the establishment of an international seabed authority,
- the participation of the Community as a body in the Conference on the Law of the Sea,
- the request to the Commission to draw up interim legislation in accordance with the principles for the international exploitation of the seabed.

(a) International authority

21. The various problems relating to the establishment and organization of such a body have already been examined in Mr Bangemann's report on the Conference on the Law of the Sea as it affects the European Community<sup>1</sup>. More particularly, in the resolution<sup>2</sup> adopted on 13 May 1977 on the basis of this report, the European Parliament dealt with the question of participation by the Community as such in this International Seabed Authority:

'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'.

22. In the Draft Convention, Articles 158 et seq. deal with the organs of the International Seabed Authority (Assembly, Council, Secretariat and Enterprise). The exploitation of the mineral resources in the 'Area'<sup>3</sup> is to be conducted on a 'parallel system' whereby, for every site authorized for exploitation by a national undertaking, the Authority reserves to itself a similar site to be exploited through the Enterprise or in association with

<sup>1</sup> Doc. 82/77, 9 May 1977, cit. p.17 et seq.

<sup>2</sup> OJ No. C 133, 6 June 1977, p.50

<sup>3</sup> According to Article 1 of the Draft Convention 'Area' means the seabed and ocean floor beyond the limits of national jurisdiction.

developing States<sup>1</sup>. Under this system the International Authority's Enterprise would thus exploit on its own an ocean area equivalent to the total of the maritime sites awarded for exploitation to individual national undertakings.

23. In its resolution of 14 March 1980<sup>2</sup> the European Parliament had this to say on this problem:

'Considers that the International Seabed Authority will have to be constituted with a satisfactory form of participation by the Community and its Member States and that its powers have to be clearly defined and strictly limited, it being understood that the Enterprise, which will be responsible for the exploitation of the seabed, should under no circumstances occupy a position of privilege in relation to other operators and that access to exploitation must be available to all on fair non-discriminatory terms'.

24. The desiderata in the motion for a resolution, that access to exploitation should be available also to private undertakings and that the establishment of a monopoly system contrary to the principle of equality of nations should be prevented, are thus seen to be fully justified.

25. A problem closely related with the powers of the International Seabed Authority and with the activities of undertakings proposing to engage in deep-sea mining is that of the transfer of technology to the International Authority's Enterprise and to developing countries (Article 144 of the Draft Convention and Article 5 of Annex III). The motion for a resolution decidedly rejects the principle of compulsory direct transfer of technological know-how because of the deleterious effect this would have on the conditions of competition between undertakings. It should here be recalled that under the Lomé II Convention the Community is already committed to providing technological aid to many developing countries. Nevertheless, in view of the impact of technology transfer on the activities of undertakings operating in the particularly important sector of exploitation of the sea's mineral resources, both the Community and its Member States should take adequate account of undertakings' licence and patent rights.

(b) Participation of the Community in the conference

26. The Legal Affairs Committee reiterates its position which has already been stated twice.

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<sup>1</sup>See Annex III 'Basic conditions of prospecting, exploration and exploitation', Art. 8.

<sup>2</sup>OJ No. C 85, 8 April 1980, p. 87

The European Parliament, in the resolution adopted on 13 May 1977 on the basis of Mr Bangemann's report<sup>1</sup>, hoped that principles to be observed by the Community and by the Member States in negotiations at the Third Conference on the Law of the Sea would be established:

'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 Member States should act together on all outstanding issues'.

27. On 14 March 1980, in its resolution based on Mr Gillot's report<sup>2</sup>, the European Parliament, while stressing the legal distinction between the Community's powers and the powers of the Member States, reaffirmed:

'the need for the Community and its Member States to adopt a common position at each stage in the work of the Third UN Conference on the Law of the Sea'.

28. The need for a coordinated position is all the greater now that the conclusion of these prolonged and complex negotiations seems to be approaching.

(c) Interim legislation

29. Paragraph 29 of the motion for a resolution calls upon the Commission to draw up interim legislation in accordance with the principles governing international exploitation of the seabed. We believe it is premature to ask the Commission to propose legislation on exploitation of the seabed before the work of the Third United Nations Conference of the Law of the Sea has finished. However, if the Third Conference is unsuccessful, this solution should be given serious consideration.

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<sup>1</sup> OJ No. C 133, cit., p.50

<sup>2</sup> OJ No. C 85, cit., p.87

OPINION OF THE COMMITTEE ON TRANSPORT

Draftsman: Mr J. MOORHOUSE

On 29 October 1980 the Committee on Transport appointed Mr MOORHOUSE draftsman.

It considered the draft opinion at its meeting of 30 January 1981 and adopted it unanimously.

Present: Mr Seefeld, chairman; Mr Moorhouse, draftsman; Mr Buttafuoco, Mr Gabert, Mr Helms, Mr Janssen van Raay, Mr Key, Mr Moreland and Mr Voyadzis.

1. The Ninth Session of the Third United Nations Conference on the Law of the Sea, held from 28 July to 29 August 1980 in Geneva, did not consider shipping issues in detail, because broad agreement had already been reached in this field during earlier sessions.

2. The provisions dealing with sea transport, as laid down in the Draft Convention of the Law of the Sea,<sup>1</sup> can be summarised as follows:

(i) the territorial sea

3. The extension of the limit of the territorial waters, which are under the sovereign power of the coastal state, to twelve nautical miles (22.22 km) seems to be almost certain, although, with the exception of France and Italy, the Member States of the European Community preferred a 3-mile limit (5.5 km).

4. Article 17 of the Draft Convention provides for the "right of innocent passage" for vessels, by which is meant navigation that is not prejudicial to peace, good order or security of the coastal state. Article 21 enables the coastal state to adopt laws and regulations with a view to the preservation of the environment and the safety of navigation. Those measures, however, should be in accordance with the existing constitutional conventions of IMCO (Intergovernmental Maritime Consultative Organisation) and the adopted international standards.

(ii) the high seas

5. Vessels on the high seas enjoy freedom of navigation and are under the exclusive jurisdiction of the State whose flag they fly.

(iii) the exclusive economic zone

6. The coastal state benefits from very extensive rights in respect of fishing, living resources, exploration and exploitation of mineral resources in an area of 200 nautical miles (370 km).

Navigation in the exclusive economic zone is free. The Draft Convention, however, makes it possible to take measures in order to protect and preserve the marine environment.

Bearing in mind the fact that the universal implementation of

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1. Doc A/Conf.62/W.P.10/Rev.3 from 28.8.1980. This text is of course still to be considered unofficial.

such a zone "will result in approximately one-third of the world's oceans being appropriated to some extent by the coastal states", as Mr Klinkenberg has pointed out in his opinion on behalf of the Committee of Transport on the need for a definition of a common position for adoption by the Member States of the Conference<sup>1</sup>, it becomes essential that the protection and preservation of the marine environment do not lead to an unacceptable obstruction of international sea transport.

(iv) straits and archipelagos

7. The extension of the limit of territorial waters from 3 to 12 miles also means that, as Mr Klinkenberg has pointed out, some 116 straits will come under the sovereignty of one or more coastal states and therefore lose their high seas status (para 11).

For that reason the Committee on Transport emphasised the need to do everything possible to prevent coastal states from imposing restrictions on innocent passage or arbitrary actions, and also stressed the need for detailed provisions to that end.

8. It now seems that a number of maritime nations have insisted on the introduction of a special regime for straits which are (for international shipping) of particular importance, such as the Channel, the Oresund, Bab el Mandeb, Malacca, Hormuz etc., tending towards a diminution of the rights of the coastal states with regard to shipping.

The Draft Convention consequently contains a new notion, which is that of the "right of transit passage". Without going as far as the full freedom of navigation as on the high seas, it goes a lot further than the mere right of innocent passage.

9. As far as the archipelagoes are concerned the Draft Convention provides for a mixed solution:

- the right of innocent passage for the waters around the outermost islands;
- the right of transit passage on the routes through the isles normally used for merchant shipping.

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<sup>1</sup>. Opinion incorporated in Mr GILLOT's Report on behalf of the Legal Affairs Committee (Doc. 1-725/79 of 8.2.1980), p.51, para 10.

10. It should be noted that considerable progress has been achieved in the field of the protection and preservation of the marine environment. No less than 46 articles of the Draft Convention regulate the prevention of marine pollution from ships.

The Committee on Transport welcomes those provisions that correspond to a large extent to the recommendations as put forward in its report, drawn up by Mr Carossimo, on the proposed directive concerning the enforcement, in respect of shipping using the Community ports, of international standards for shipping safety and pollution prevention<sup>1</sup>; without restricting unnecessarily the freedom of navigation.

11. The Committee on Transport notes with satisfaction that its earlier demands regarding legitimate Community shipping interests, freedom of navigation and provisions for the prevention of marine pollution are to a large extent reflected in the latest Draft Convention on the Law of the Sea.

12. The Committee nevertheless urges the Committee on Economic and Monetary Affairs to stress in its motion for a resolution:

- (i) the need for the greatest possible freedom for merchant shipping, without, however, prejudicing safety and marine environment, especially in the exclusive economic zone, straits and archipelagoes;
- (ii) the need for the Community to become a part to the Convention, in order to ensure more effectively the defence of its legitimate shipping and trade interests in negotiations with third countries.

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<sup>1</sup>. Carossino Report, Doc. 1-708/80, adopted on 14.1.1981.