European Communities

EUROPEAN PARLIAMENT

Working Documents

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8 February 1980 DOCUMENT 1-725/79

Report

drawn up on behalf of the Legal Affairs Committee

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

Rapporteur: Mr A. GILLOT

English Edition PE 62.034

EUROPEAN PARLIAMENT

CORRIGENDUM

to the report by Mr GILLOT
on behalf of the Legal Affairs Committee

(Doc. 1-725/79)

The second subparagraph of paragraph 20(iii) of the opinion of the Committee on Transport should read as follows:

'Efforts must be made to have the Community become a party to the future International Convention on the Law of the Sea in addition to the Member States.'

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13 February 1980

At its sitting of 26 October 1979, Parliament referred the motion for a resolution (Doc. 1-434/79) tabled by Mr Hoffmann, Mr Vergeer, Mr van Aerssen, Mr Klepsch, Mr Helms, Mr Pürsten, Mr Giavazzi and Mr Jonker on behalf of the Group of the European People's Party (Christian Democrat Group) pursuant to Article 25 of the Rules of Procedure on the adoption of a common position by the European Community at the Third UN Conference on the Law of the Sea to the Legal Affairs Committee as the committee responsible and to the Committee on Economic and Monetary Affairs, the Committee on Agriculture and the Committee on Transport for their opinions.

At its meeting of 20 November 1979, the Legal Affairs Committee appointed Mr Gillot rapporteur.

At its meeting of 19 December 1979, the Legal Affairs Committee heard an introductory statement by its rapporteur. This was followed by an exchange of views which made it clear that Parliament would be required to take a decision on this matter during its February 1980 part-session as the Conference on the Law of the Sea was scheduled to resume on 3 March 1980 - which fact was notified to the President of Parliament - and that the Legal Affairs Committee's report should be centred on the need for and on the definition of a common position 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 agreements to be concluded at the end of the Conference.

At its meeting of 28 January 1980, the Legal Affairs Committee considered a draft report by Mr Gillot and adopted it unanimously.

Present: Mr Ferri, Chairman; Mr Luster and Mr Turner, Vice-Chairmen; Mr Gillot, rapporteur; Mrs van den Heuvel (deputizing for Mrs Vayssade), Mr Gonella, Mr Janssen van Raay, Mrs Macciocchi, Mr Malangré, Mr Megahy, Mr Pelikan, Mr Pöttering, (deputizing for Mr Modiano), Mr Prout and Mr Sieglerschmidt.

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

C O N T E N T S

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The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on the need for and on the definition of a common position by the Member States of the Community at the Third UN Conference (9th session) on the Law of the Sea and on the participation of the Community in its own right in the agreements to be concluded at the end of the conference

The European Parliament,

- having regard to its resolution of 13 May 1977[1] on the Conference on the Law of the Sea as it affects the European Community,

- having regard to the Treaty establishing the EEC and in particular Articles 38, 43, 113, 116, 228 (1) and 235,

- having regard to the opinions of the Court of Justice of the European Communities Nos. 1/75, 1/76 and 1/78,

- having regard to the decision of the Court of Justice of the European Communities of 14 July 1976[2],

- having regard to the guidelines dated 20 and 27 July 1976 drawn up by the Council for the Commission,

- having regard to the motion for a resolution (Doc. 1-434/79) tabled on behalf of the Group of the European People's Party on the adoption of a common position by the European Community at the Third UN Conference on the Law of the Sea,

- having regard to the report of the Legal Affairs Committee and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Agriculture and the Committee on Transport (Doc. 1-725/79),

- considering that the object of the Third UN Conference on the Law of the Sea is to establish a new world-wide legal framework defining with regard to sea areas a new economic order and esuring that due account is taken of the traditional principle of freedom of the seas and the new concepts of appropriation and protection,

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[1] OJ C 133, 6 June 1977, p. 50

[2] Cases 3, 4 and 6-76, Kramer (CJEC Reports 1976, p. 1279)

- considering that the prospective agreement must take account of the legitimate interests both of the industrialized countries and the countries of the third world, particularly those with which the Community is associated through the Lomé II Convention, and also of the interests of the Member States of the Community and of the Community itself,

1. Reaffirms 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;

2. Invites the Member States to coordinate their positions on all matters considered at the conference even if outside the scope of the EEC Treaty;

3. Asks the Commission and the Member States to continue their efforts to enable the Community to be a party to the future convention in its own right with the same rights and obligations as the States for the purposes of such matters as fall within Community competence;

4. Notes that the progress made in the work of the conference gives hope that a global agreement may soon be reached and stresses that the Community and its Member States must contribute actively to the reaching of such an agreement;

5. Affirms that the appropriation of sea areas resulting from the extension of the territorial sea, from the definition of an exclusive economic zone and from that envisaged for the continental shelf must be accompanied by safeguards in respect of freedom of navigation and in particular of free passage through straits, freedom to lay submarine cables and pipelines, freedom of overflight, which safeguards have already been broadly accepted by the States attending the conference;

6. Stresses the need to safeguard the freedom to carry out marine research and industrial activities associated with the sea;

7. Considers that the International Sea-Bed Authority will have to be constituted with a satisfactory form of participation by the Community and its Member States and that its powers will 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;

8. Emphasizes the importance of the provisions for the adequate control of pollution at sea, particularly by hydrocarbons, by the control, piloting and policing of oil tanker traffic;

9. Recommends that disputes be settled by means of an arbitration procedure that ensures both a prompt hearing and due confidence in the judicial process.

10. Asks to be kept informed on a regular basis of the work of the Conference and instructs its President to forward this resolution together with the annex hereto and the report of its committee to the Council and Commission of the European Communities, to the parliaments and governments of the Member States and to the chairman of the Third UN Conference on the Law of the Sea.

ANNEX on fisheries questions:

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 transhipping 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;

B

EXPLANATORY STATEMENT

1. The importance of the problem on which, at the instance of the Group of the European People's Party[1], Parliament is called upon to deliberate, does not need to be emphasized. The experts agree that the food, mineral and energy resources contained in the sea and its subsoil are considerable, although not inexhaustible, and that the rational exploitation of those resources can make a significant contribution to reducing or even eliminating undernourishment in much of the world's population and to providing new sources of energy and raw materials.

The purpose of the law of the sea is to lay down rules for the sea areas which cover 73% of the Earth's surface (60% in the northern hemisphere and 83% in the southern hemisphere). The various uses to which the sea is put can be divided into three categories:

- navigation and transport - the major traditional use,
- exploitation of biological wealth - a traditional use with a huge development potential,
- exploitation of mineral wealth - this is a relatively new use and one which with suitable technology could be capable of enormous growth.

I. THE HISTORICAL BACKGROUND

2. For a long time, the law of the sea was based essentially on custom, supplemented by fragmentary intergovernmental conventions. This position underwent a profound change following the first two UN Conferences on the Law of the Sea in 1958 and 1960. These Conferences were held in response to the need to codify custom and to add to the existing rules. Four Conventions resulted from that work, relating to the territorial sea and the contiguous zone, the continental shelf, the high seas, fishing and conservation of the biological resources of the high seas.

3. The fragmentary character of the solutions devised at these first two conferences and the rapid evolution of exploitation and research techniques, necessitated the holding of a third conference called on the basis of Resolution No. 2750 (XXV) of the UN General Assembly adopted on 17 December 1970 whose object was 'the establishment of an equitable

[1] Motion for a resolution dated 27 October 1979 - Doc. 1-434/79

international regime including an international machinery for the area and resources of the seabed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, a precise definition of the area and a broad range of related issues, including those concerning the régime of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal states), the preservation of the marine environment (including inter alia the prevention of pollution) and scientific research'.

4. This third Conference has already held eight sessions and is to meet again between 3 March and 5 April 1980 in New York. The present state of progress of its work is recorded in the 'informal composite negotiating text/revision 1'[1]. The Conference is still anxious to reach a global agreement and the Legal Affairs Committee, having heard the representatives of the Commission of the European Communities considers that, notwithstanding the difficulties still to be overcome, it would be preferable to conclude a global agreement rather than a number of separate conventions as was proposed by Parliament in paragraph 8 of its resolution of 13 May 1977 (OJ C 113 6 June 1977).

5. As stated above, Parliament has already given its view - on the eve of the sixth session of the Conference - on the problems considered by the Conference as they affect the European Community, on the basis of a comprehensive report presented by Mr Bangemann on behalf of the Legal Affairs Committee. This report remains an essential reference document. The resolution adopted by Parliament is attached to this report.

6. It should be noted that negotiations have now reached a stage where a move is being made to seek a reversal of the fundamental concept on which the law of the sea has been based - namely that the seas were not capable of appropriation.

Indeed, successive conferences have shown a rapid and significant trend away from a régime based on the concept of freedom of the seas to a system which owes much to the new concepts of appropriation and protection of sea areas, either on a national or collective basis. This means that the Conference must seek a balanced solution which does not call into question the established principles of freedom. It is in this spirit that this report has been compiled to guide and support the negotiators.

[1] Hereinafter referred to as 'Revised negotiating text'

II. THE COMMUNITY AND ITS MEMBER STATES - LEGAL BASIS FOR AND THE DETAILS OF COMMUNITY PARTICIPATION

A. Sovereignty of Member States and powers transferred to the Community

7. The questions considered by the Conferences (cf. paragraph 3 above) affect both the Member States and the Community and are governed by two jurisdictions which, depending upon the particular subject, may be mutually exclusive or concurrent.

Certain areas over which sovereignty has been transferred by reason of the ratification of the EEC Treaty are primarily the responsibility of the Community. This is true of fisheries policy (Article 38 EEC Treaty) and also of pollution prevention (see the Barcelona Agreement on the protection of the Mediterranean and the Paris Agreement on the protection of the Atlantic). It is also true of transport policy following the decision of the Court of Justice of the European Communities of 4 April 1974 - Reports 1974, pages 359 et seq). Thus, if it were necessary to conclude Conventions on certain minerals (e.g. manganese in polymetallic nodules) following the example of international agreements on certain commodities, such Conventions would come under commercial policy which is the responsibility of the Community (Article 113 EEC Treaty).

Areas in relation to which powers have not been transferred to the Community obviously remain under the sovereignty of the various Member States.

8. Insofar as any area dealt with by the Conference falls, whether exclusively or not, within the responsibilities of the Community, the Member States cannot on their own assume the rights and obligations flowing from the future Convention. In such a case, the Member States could neither approve nor be contracting parties without the Community being a party to any such future Convention as its own right (see below, Section C).

9. Parliament has clearly expressed its views on the basis of a report (Doc. 567/77) by Mr JOZEAU-MARIGNE on the position of the European Communities in public international law. In its resolution adopted on 12 September 1978[1], Parliament gave expression to the principle set out and affirmed in the opinions of the Court of Justice of the European Communities that 'the power of the Communities to enter into commitments with third countries derives implicitly from provisions of the Treaties granting the Communities powers over internal matters provided that aim is the achievement of one of the objectives of the Communities' and invited 'the Council and the Commission therefore to use the instruments

[1] OJ No. C 239 of 9.10.1978, p.16

available to the Communities in such a way that the Communities' international relations further the achievement of the objectives laid down in the Tre ties of Paris and Rome.'

10. The Member States obviously retain sovereignty in areas on which they have not transferred their powers to the Community. It is however desirable that the Member States should be able to act together at the Conference having regard to the interests and capabilities of the Community to which they belong. To do this, the Member States should confer in order to seek a common position reflecting the spirit of Article 116(1) of the EEC Treaty which provides:

> 'From the end of the transitional period onwards, Member States shall in respect of all matters of particular interest to the Common Market proceed within the framework of international organizations of an economic character only by common action. To this end the Commission shall submit to the Council, which shall act by qualified majority, proposals concerning the scope and implementation of such common action'.

11. It was in this spirit and with the Third Conference on the Law of the Sea in mind that the Council of the European Communities on 4 June 197/ adopted a decision on procedure which it supplemented by a declaration on 20 July 1976. These texts together indicate the importance which the Community should attach to the search for a common position. Here are some extracts:

> 'The Council, anxious to present a common front at the Third Conference on the Law of the Sea agrees as follows:
>
> - on questions for which the Community is responsible, it will determine its position according to the usual procedure;
> - on economic matters or matters which may affect common policies, the Member States will confer together in the presence of the representatives of the Commission - both in Brussels and elsewhere'.
>
> 'In addition, the Council had decided that all economic questions or questions likely to affect common policies shall be considered from a Community point of view'.

12. That position was recently reiterated by the Council in its reply to a written question[1] in the following terms:

> 'The representatives of the Member States regularly coordinate

[1] Written Question No. 438/79 by Mr Müller-Hermann to the Council of the European Communities dated 6 September 1979 OJ C 7, 9 January 1980, p.8

their positions during sessions of the Conference on the Law of the Sea and between sessions also hold a number of preparatory meetings in Brussels. In addition, as regards all matters which come under the Community's jurisdiction, it is the delegation of the Member State holding the Presidency of the Council which puts forward previously adopted joint positions on behalf of the Community, although this does not prevent representatives of the other Member States from speaking on occasion in support of these joint positions'.

B. Adoption of a common position by the Member States of the Community at the 1980 negotiations for the signature of a UN Convention on the Law of the Sea

13. The need for the Member States of the Community to adopt a common position is supported by the fact that although they may have their own national interests, the Member States must act with the solidarity required by their membership of an entity with common objectives recognized under international law. A common position is all the more necessary in that - as stated earlier - it is an essential prerequisite for the participation of the Community in the signature of the future Convention.

14. As early as 19 July 1976 the Council drew up a number of guidelines for the Commission on the opening of negotiations at the Third Conference on the Law of the Sea in relation to coordinating the work of the delegations from the Member States[1]. The common positions of the Member States at the conference related essentially to the acceptance of the principle of creating an economic zone of 200 miles, the extension of the continental shelf beyond 200 miles, the operations of the International Sea-bed Authority and the representation of the Community in its organs, together with the system for settling disputes.

15. In addition, the Council arranged for a representative of the Community after conferring with representatives of the Member States, to make a statement indicating that since some of the matters covered by the future Convention came under the jurisdiction of the Community, it had adopted common positions which it would outline in due course.

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[1] Doc. Council I/271/76 (MARE-JUR 17 - AGRI 12)

16. The Commission has hitherto attended the Conference merely in an observer capacity and has supervised the coordination of the Member States' positions particularly on subjects within the Community's jurisdiction. However, in its reply to Written Question No. 564/78 by Mr DAMSEAUX[1], the Commission stated that it will take an active part with the Member States in the Conference negotiations.

C. Participation of the Community in its own right in the future Convention on the Law of the Sea

17. Resolution No. 2750 (XXV) of the UN General Assembly, adopted on 17 December 1970, called upon the member states of the UN to attend the Third Conference on the Law of the Sea. However, the Member States of the Community have no power to sign separate undertakings in areas where they have transferred their powers to the Community[2]. Therefore, the Community should be a party to the Convention at the same time as its Member States.

As early as 1976, the President-in-office of the Council wrote to the chairman of the Conference on the Law of the Sea stressing the need for the Community to be a party to the future Convention in its own right and proposing a suitable clause for insertion into the text of that Convention[3].

18. In the meantime, the question of the Community's participation in the future Convention has evolved. Thus, during the eighth session in New York in August 1979, the Member States of the Community tabled an informal proposal to add to the 'Revised Negotiating Text' a new Article 300A opening the future Convention to signature, approval or accession by customs unions, communities or other regional economic integration groupings constituted by sovereign states and exercising powers in the areas governed by the Convention.

19. As regards the signature of the Convention, the Community must be a party to the Convention within the scope of its attributions for the simple reason that the Member States cannot enter into commitments on matters within the jurisdiction of the Community. The conference must therefore accept the inclusion of an ad hoc clause in the Convention.

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1 OJ C 28, 31 January 1979, p. 5

2 Cf. Opinion No. 1/75 of the Court of Justice of the European Communities (OJ C 268, 22 November 1975, P. 18), Opinion No. 1/76 (OJ C 107, 3 May 1977, p. 4) and Opinion No. 1/78 (OJ C 279 8 November 1979, p. 3), and Decision of 14 July 1976 in cases 3, 4 and 6-76, KRAMER (Reports 1976, p. 1279).

3 Cf. Doc. 82/77

20. Article 228 (1) of the EEC Treaty lays down the general procedure for the conclusion of agreements and provides that such agreements shall be signed by the Council. The words 'subject to the powers vested in the Commission in this field' merely refer to that institution's negotiating powers. This being so, it is for the Council to conclude the future Convention since it is the institution empowered to perform such acts on behalf of the Community.

D. Remarks on the conduct of negotiations

21. One of the major economic reasons behind the Conference on the Law of the Sea is the need to protect resources and lay down certain rules on their allocation. Although the need to protect these resources has been readily acknowledged by those taking part, nevertheless it is clear that the question of laying down rules governing the management and allocation of resources is a far more sensitive issue and that - however desirable it may be, overall agreement depends on difficult compromises being reached and that stage is not necessarily close at hand, even though the present form of the informal single negotiating text shows that some progress has been made.

22. As long as it is not accepted by the States attending the Conference, the need for the Community to be a party in its own right represents an obstacle to the achievement of the necessary consensus. If the formula proposed to the Conference by the representatives of the Community[1] does in fact attract the support of other regional organizations faced with the same problems, the Commission and Member States will have to continue exercising their powers of persuasion on the parties to the Conference, since the inclusion of such a clause is necessary for the proper implementation of the prospective Convention.

23. The Community can point to precedents such as the inclusion of a similar clause in the draft convention on atmospheric pollution, concluded under the auspices of the UN Economic Commission for Europe, which was accomplished with the help of the United States. More generally, as in all negotiations, it will be a matter of making the most of those cases where there is already a similarity of views and drawing attention to others, still not recognized, where common or complementary interests dictate a rapprochement.

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[1] Article 300A introduced by the nine Member States in agreement with the Commission (cf. paragraph 18 above).

III. PROBLEMS POSED BY THE CONFERENCE BOTH FOR THE COMMUNITY AND FOR ITS MEMBER STATES

These problems arise principally in connection with two new concepts (Section A) and the traditional principle (Section B). The prevention and settlement of disputes will also be discussed (Section C).

A. New concepts: appropriation of sea areas and protection of the marine environment

24. As has been stated, the three conferences on the Law of the Sea have seen the emergence of new concepts concerning the appropriation of sea areas and the protection of the marine environment. These concepts feature prominently in the provisions envisaged by the draft of the future Convention in connection with the following points:

(a) Exclusive economic zone

25. The principle of coastal states setting up exclusive economic zones of 200 miles is now universally recognized. The legal régime of the exclusive economic zone involves the attribution to the coastal State of sovereign rights over the conservation and management of biological or non-biological natural resources and over the production of energy from water, tide or wind[1].

However, the coastal State must take due account of the rights and obligations of other States and act in a manner consistent with the provisions of the future Convention.

26. As regards the rights and obligations of other States in the exclusive economic zone, such other States, whether coastal or land-locked, will, subject to the adoption of the provisions presently contained in the Revised negotiating text, enjoy the freedoms of navigation and over flight and freedom to lay submarine cables and pipelines. In exercising these freedoms they may use the sea in accordance with internationally accepted usages consistent with the other provisions of the future Convention[2].

The other States must in every case respect the rights and obligations of the coastal State and also any laws and regulations enacted by that coastal State in accordance with the provisions of the future Convention and with the rules of international law.

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[1] cf. Article 56 of the 'Revised negotiating text'

[2] cf. Article 58 of the 'Revised negotiating text'

In this connection it is useful to recall that in its exclusive economic zone the coastal State may take all measures including boarding, inspection, seizure and legal proceedings which it deems necessary to ensure compliance with laws and regulations which it enacts in accordance with the future Convention[1].

27. The creation of a fishing zone within the Community was the result of a 'declaration' by the Council on 27 July 1976[2] and of a resolution of 3 November 1976[3]. The breadth of this fishing zone corresponds to those established by a number of countries in unilaterally extending their fishing zones to 200 miles. The Community fishing zone was set up from 1 January 1977 off the coasts bordering the North Sea and North Atlantic and without prejudice to any similar action in connection with other fishing zones such as the Mediterranean Sea.

28. The Revised negotiating text contains express terms governing the conservation and exploitation of biological resources in the exclusive economic zone. This is a topic reserved by Article 38(1) of the EEC Treaty to the exclusive competence of the Community.

The European Parliament in a resolution of 14 October 1976[4] expressed its view on the need to extend to 200 miles the fishing zones of the Member States of the Community.

(b) Delimitation of the continental shelf

29. The delimitation of the continental shelf reflects the new concepts which have gained ground progressively in that the 'continental shelf' régime of the Geneva Convention of 1958 has now been joined by the régime of an 'exclusive economic zone' of 200 miles. One of the most thorny problems is to define the new limits of the continental shelf and to draw the necessary conclusions as to the régime to be applied to the continental shelf beyond the 200 mile limit where it extends beyond that limit.

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1 cf. Article 73 of the 'Revised negotiating text'

2 Doc. I/271 f/76 (MARE-JUR 17 - AGRI 12)

3 cf. 11th General Report on the activities of the European Communities page 190

4 OJ C 259 4 November 1979, page 26

30. The revised negotiating text drawn up at the eighth session of the Conference seeks to propose a solution representing a compromise between the different concepts. This text provides that in principle the continental shelf of a coastal State comprises the seabed and subsoil of the submarine zones extending beyond its territorial sea over the whole extent of the natural continuation of the territory of that State up to the outer edge of the continental terrace or up to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental terrace does not extend to that distance[1].

If it is accepted that these two régimes - the continental shelf and the exclusive economic zone - are to coexist, it can be expected that the rights exercised by the States on the continental shelf within the 200 mile limit overlap with those which they may exercise over the seabed in their exclusive economic zone. The Revised negotiating text submitted to the Conference was drafted with that in mind. However, in cases where the continental shelf extends beyond the limits of the exclusive economic zone, the coastal State may only exercise beyond that limit rights accruing to it on the continental shelf and will not in that zone enjoy preferential fishing rights, nor exclusive jurisdiction over the conservation of the marine environment, these being rights attaching to the exclusive economic zone.

31. As regards the question of the need for the Community to be a party to the future Convention, it should be pointed out that the Community cannot remain outside the legal régime governing the activities of the Member States on the continental shelf, since the Treaty provisions on freedom of movement, freedom to provide services and competition, etc., apply equally to these activities[2].

(c) International Sea-Bed Authority

32. The future Convention on the Law of the Sea provides for the creation of an International Sea-Bed Authority which would include as members ipso facto all the States Parties and through it the States Parties would organize and control activities in the international sea-bed zone[3].

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1 Cf. Article 76 of the Revised negotiating text

2 See the answer of the Commission to Written Question No. 280/77 by Mr Van der Heck on the restrictive practices of the British Offshore Supplies Office (OJ C 277, 17.11.77, p. 1)

3 Cf. Article 156 of the Revised negotiating text

The institutional structure of the Authority was considered in the report of Mr BANGEMANN[1].

This authority, founded on the principle of the sovereign equality of all its members, is to operate in the zone which together with its resources constitutes 'the common heritage of mankind'[2].

33. The zone's resources have been defined as follows:[3]

- liquid or gaseous substances such as petroleum, gas, condensate, helium, nitrogen, carbon dioxide, water, steam, hot water and also sulphur and salts extracted in liquid form in solution;
- useful minerals occurring on the surface of the sea-bed or at depths of less than three metres beneath the surface and also concretions of phosporites and other minerals;
- solid minerals in the ocean floor at depths of more than three metres from the surface;
- ore-bearing silt and brine.

34. The main problem for the Community in relation to the proposed International Authority is exactly how it would participate in the institutions of the Authority and its operational organ, the 'Enterprise'.

The Council decided in favour of such participation on 20 July 1976[4]. That position was confirmed on 24 January 1977 in a document on problems posed by the Community's participation in the principal organs of the Authority[5].

In its resolution of 13 May 1977[6], the European Parliament affirmed that it would be highly desirable for the Community to be represented in its own right on the Council of the Authority, since this would allow it to exercise its influence fully and protect its interests in an organ whose activities are likely to have a considerable effect on the policies and principles which will in future govern the exploitation of raw materials.

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1 Doc. 82/77, p. 17 et seq

2 Cf. Article 136 of the Revised negotiating text

3 Cf. Article 133 of the Revised negotiating text

4 Cf. Doc. Council L/271/76 (MARE, JURE 17, AGRI 12)

5 Cf. Doc. Council S/144/77 (JUR 3, MARE 2)

6 OJ C 133, 6.6.77, p. 50

35. While accepting the advisability of giving wide powers to the Authority whose work is to be conducted in the interests of all mankind,[1] it should not be allowed to enjoy privileged treatment and there must be a guarantee of acceptable economic conditions for all undertakings whether private enterprise or State owned[2].

(d) Protection of the marine environment[3]

36. A large part of the Revised negotiating text concerns the protection and preservation of the marine environment. Having regard to the general obligation to the effect that 'States have the obligation to protect and preserve the marine environment'[4], cooperation on a worldwide or regional basis is anticipated to achieve that end[5]. Various forms of pollution are considered:

- pollution from land-based sources;
- pollution from sea-bed activities;
- pollution from activities in the area;
- dumping;
- pollution from vessels;
- pollution from or through the atmosphere.

37. The States will be required to ensure that vessels flying their flag or registered in their territory comply with the applicable international rules and standards. Furthermore, they shall adopt legislative, administrative or other measures necessary for the enforcement of such standards. Penalities specified under the legislations of flag States for their own vessels shall be adequate in severity to discourage violations wherever committed[6].

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1 See Article 140 of the Revised negotiating text

2 See guidelines of the Council on the operational activity of the Council Doc. Council I/271/ f/76

3 Parliament has already expressed its view on this question on the basis of the report by Lord BRUCE of DONINGTON (Doc. 555/78) on
I. the best means of preventing accidents to shipping and consequential marine and coastal pollution
and
II. shipping regulations
Resolution of 14 February 1979 (OJ C 67 12.3.1979 p.22)

4 See Article 192 of the Revised negotiating text

5 See Article 197 of the Revised negotiating text

6 See Article 217 of the Revised negotiating text

38. The Revised negotiating text also invests the coastal State with powers of policing and pursuit in cases where the coastal State has serious reason to believe that a vessel sailing through its territorial see has in its transit violated national laws and regulations established in accordance with the Convention or applicable international rules and standards for the prevention, reduction or control of pollution from vessels. In such cases the coastal State may undertake physical inspection of the vessel relating to the violation and where warranted by the evidence cause proceedings including the detention of the vessel to be taken in accordance with its laws[1].

Similar measures are provided for violations within the exclusive economic zone.

39. In addition, the States shall retain their right to adopt and enforce beyond the territorial sea measures proportionate to the actual or threatened damage to protect their coastline and related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences[2].

40. It should, however, be noted that legal proceedings shall be subject to certain 'guarantees' to facilitate the hearing of witnesses and the production of evidence. In particular, States may not detain a foreign vessel longer than necessary for the purposes of the investigation. If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the preservation of the marine environment, release shall be made promptly subject to reasonable procedures, such as bonding or other appropriate financial security[3].

41. At its summit meeting of 7 and 8 April 1978 in Copenhagen, the European Council considered that the Community must give priority to the prevention of and struggle against the pollution of the sea by hydrocarbons.

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[1] See Article 220 of the Revised negotiating text

[2] See Article 221 of the Revised negotiating text

[3] See Article 226 of the Revised negotiating text

42. The Amoco-Cadiz disaster underlined the urgent need for the Community to take appropriate measures to help prevent such accidents. In two memoranda in 1975 and 1977 the French Government also demanded common action in the field of transport by sea[1].

In addition, the Council of 26 June 1978 adopted a resolution on a programme of Community action for the control and reduction of pollution caused by hydrocarbons discharged at sea[2].

However, it is essential to strike a balance between the need to preserve freedom of navigation and the need to combat effectively the risk of coastal pollution. This must be done through the control and piloting of oil tanker traffic and through action against pollution by coastal states. It would however be advisable to avoid an excessive extension of coastal States' legislative and policing powers in the economic zone in connection with the campaign against pollution. Indeed, the exercise by certain third countries of very wide powers in this field could create an unwarranted obstacle to the freedom of navigation[3].

(e) Transfer of marine technologies

43. The Revised negotiating text provides that the States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States including landlocked or geographically disadvantaged States, with regard to the exploration, exploitation, conservation and management of marine resources, the preservation of the marine environment, marine scientific research and other uses of the marine environment compatible with this Convention, with a view to accelerating the social and economic development of the developing States[4].

In promoting such cooperation, the States shall have proper regard for all legitimate interests including inter alia the rights and duties of holders, suppliers and recipients of marine technology[5].

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1 See Doc. 121/78, page 1

2 OJ C 162 8.7.1978, page 1

3 See Doc. 121/78, page 15

4 See Article 266(2) of the Revised negotiating text

5 See Article 267 of the Revised negotiating text

44. As far as the future International Sea-Bed Authority is concerned it must take measures:[1]

- to acquire technology and scientific knowledge relating to activities in the Area;
- to promote and encourage the transfer to developing countries of such technology and scientific knowledge so that all States Parties benefit therefrom.

To achieve this end, the States shall co-operate actively with the competent international organizations and with the Authority in order to encourage and facilitate the transfer to developing States, their nationals and the Enterprise of skills and technology with regard to the exploration of the Area, the exploitation of its resources and other related activities[2].

45. The Lomé Convention II concluded on 31 October 1979 between the Community and 57 States in Africa, the Caribbean and the Pacific also provides for industrial cooperation and more specifically for cooperation in the exploitation of mineral resources. The Community therefore already has a commitment to a number of developing countries to grant technical assistance involving certain forms of technology transfer.

In its resolution of 14 December 1978 on the negotiations for the renewal of the Lomé Convention[3], the European Parliament stressed the importance of making an effective contribution to settling the new problems posed by international cooperation particularly in the fields of energy, technology, scientific research, investment and raw materials.

B. Traditional principle: freedom of the seas

46. The new concepts of appropriation and protection have now been added - albeit at the risk of undermining it - to the conventional idea of freedom. Two topics merit special attention.

(a) Freedom of navigation

47. The Third Conference on the law of the sea recognized the universality of the principle that the territorial sea of coastal States extends twelve

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[1] See Article 144 of the Revised negotiating text

[2] See Article 273 of the Revised negotiating text

[3] OJ C 6 8.1.1979, page 56

miles from the baselines[1]. Therefore the Commission of the European Communities wished all the Member States of the Community to extend the limits of their territorial sea to twelve miles to bring their ability to control vessels using that sea space into line with the new international order[2].

This new dimension of the territorial sea and the introduction of the idea of an exclusive economic zone make it necessary to state clearly in the future Convention that the international regime does not affect the question of the freedom of navigation of all countries, whether coastal or landlocked. Indeed, as a result of the introduction of the concept of an exclusive economic zone, the high seas regime defined by the Geneva Convention of 1958 henceforth applies to these zones only insofar as it is not inconsistent with the regime of the exclusive economic zone. If the Conference approves this principle, the regime in force in the exclusive economic zone will therefore no longer be that which was previously in force for the high seas nor that applying to the territorial sea but a regime 'sui generis'.

It will be seen that the principle of freedom of navigation will in future depend on the provisions relating to the various regimes governing the territorial sea, the exclusive economic zone and the high seas.

The regime of the exclusive economic zone has already been considered (cf. paragraphs 25 to 28).

48. As far as the territorial sea is concerned, the coastal State will under the future Convention exercise its sovereignty but subject to the other provisions of the Convention and to the other rules of international law[3], notably the right of innocent passage[4] for commercial vessels and warships.

49. On the question of freedom of navigation on the high seas, the Revised negotiating text provides that every State, whether coastal or landlocked, shall have the right to sail ships under its flag on the high seas[5]. It should however be stressed that the regime of the high seas will not apply immediately on leaving the territorial sea. The coastal State will be able to exercise the control necessary to prevent or punish infringements of its customs, fiscal immigration or sanitary regulations

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1 See Article 3 of the Revised negotiating text

2 See Doc 121/78, page 18

3 See Article 2(3) of the Revised negotiating text

4 See Article 17 et seq. of the Revised negotiating text

5 See Article 90 of the Revised negotiating text

over a 'contiguous zone', which may not extend beyond 24 miles from the base lines from which the breadth of the territorial sea is measured[1].

50. The problem of freedom of navigation is particularly acute in the case of straits used for international navigation. The Revised negotiating text governs - with due regard to developments in maritime law - the right of transit passage through straits used for international navigation between a zone of the high seas or an exclusive economic zone and another zone of the high seas or an exclusive economic zone[2].

In such cases the proposed provisions affirm the freedom of navigation for all vessels without restriction subject only to the observance of certain conditions contained in the Convention.

51. The Community cannot remain indifferent to the solution of the problem of freedom of navigation. Those States which originally established the principle or which have since accepted it are sea-going nations of very long standing. Moreover, account must be taken of the imminent accession of new States which have always shown considerable interest in the maritime sector and particularly maritime transport. It will also be noted that this topic falls within the specific competence of the Community following the Decision of the Court of Justice of the European Communities[3] of April 1974, which states that the general provisions of the EEC Treaty apply to transport by sea and air in the same way as to transport by land and plainly also to the rest of the economy[4].

(b) Marine scientific research

52. On marine scientific research, the Revised negotiating text affirms that each State will have the right to carry out scientific research. The general principles applicable to the conduct of research are as follows[5]:

- it shall be conducted exclusively for peaceful purposes;
- the scientific methods and means used must be compatible with the provisions of the Convention;
- such research must not unjustifiably interfere with other legitimate uses of the sea compatible with the provisions of the Convention which must be duly respected in the course of such use;

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1 See Article 33 of the Revised negotiating text

2 See Article 37 et seq. of the Revised negotiating text

3 Case 167/73, Commission v. French Republic, Decision of 4 April 1974, Reports 1974, I, pages 359 et seq.

4 See also the answer of the Commission to Written Question No 563/78 by Mr ALBERS, (OJ C 32, 3 February 1979, p.5)

5 See Article 240 of the Revised negotiating text

- such research activities shall comply with all relevant regulations established in conformity with the Convention including those for the preservation of the marine environment.

53. The coastal States will in the exercise of their sovereignty have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Thus research carried out in the territorial sea, the exclusive economic zone and on the continental shelf will however require the consent of the coastal State[1].

C. Prevention and settlement of disputes

54. Only if a clear Convention is adopted can disputes be prevented. This must be the aim of all negotiators, although it will be difficult to achieve because agreement will only arise out of the many compromises which will be necessary to strike a suitable balance.

The multiplicity of interests at stake is likely to give rise to much conflict. For this reason the Convention will have to provide for a number of ways of settling disputes and in particular arbitration procedures which, leaving aside their advantages of flexibility and speed, are by their nature such as to enable allowance to be made for the division of powers between the Community and its Member States.

55. The Revised negotiating text requires the States Parties to settle any disputes which may arise between them on the interpretation and application of the Convention by peaceful means[2].

The States Parties will have a choice between a conciliation procedure[3] and the submission of the dispute to the following bodies :

- The Law of the Sea Tribunal constituted in accordance with Annex V of the Convention;
- The International Court of Justice;
- An arbitral tribunal constituted in accordance with Annex VI of the Convention;
- A special arbitral tribunal constituted in accordance with Annex VII of the Convention for one or more categories of dispute listed there.

The text states that any dispute between the States Parties on the interpretation or application of the Convention may only be dealt with by the specified procedures after exhaustion of all local remedies as required by international law[4].

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1 See Articles 245 and 246 of the Revised negotiating text

2 See Article 279 of the Revised negotiating text

3 See Article 284 of the Revised negotiating text and Annex IV thereto

4 See Article 294 of the Revised negotiating text

56. As regards the binding force of the decisions or orders of a Court or Tribunal having jurisdiction by reason of the Convention, such decisions or orders shall be final and all the parties to the dispute must comply with them[1].

As a contracting party to the future Convention, it is essential that the Community should for the purposes of such matters as fall within its competence be able to participate in its own right in the procedures for settling disputes which the Convention provides.

57. As far as the choice of procedure is concerned, the Community cannot choose the international Court of Justice because that course is only open to States. It could in an appropriate case choose the Law of the Sea Tribunal, but it should be noted that as the Text presently stands, access to the Tribunal is reserved to the States Parties. There would therefore be a risk of the Tribunal refusing to recognize the Community.

The Community would therefore be advised to choose arbitration. Annexes VI and VII of the Revised negotiating text provide expressly that parties to a dispute may be of the same interest.

Since the Community may have to act in the same interest as Member States it will be necessary in the fields where such joint action might be taken for the Member States to choose the same method of settling disputes as the Community. The final apportionment of liability will be effected according to the rules of Community law.

Conversely, in non-Community matters, the Member States would retain their freedom of choice, although they could, of course, subsequently adjust their position as and when the Community's powers developed.

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[1] See Article 295 of the Revised negotiating text

IV. OBSERVATIONS ON THE OPINIONS OF THE COMMITTEES ASKED FOR THEIR OPINIONS

58. At a meeting on 28 and 29 January 1980, Mr NYBORG, draftsman of an opinion for the Committee on Economic and Monetary Affairs presented orally to the Legal Affairs Committee the conclusions contained in that opinion (PE 61.544/fin) which his committee had adopted on 24 January 1980.

59. During that same meeting, your rapporteur brought to the attention of the Legal Affairs Committee - by reference to the text of the draft opinion (PE 62.074) - the conclusions of the opinion adopted by the Committee on Agriculture at its meeting on 23 and 24 January 1980 (draftsman: Mr BATTERSBY). The Legal Affairs Committee agreed to the following proposals made by your rapporteur :

- that paragraphs 1 and 7 of the Committee on Agriculture's conclusions were adequately covered by the wording of the motion for a resolution contained in the Legal Affairs Committee's draft report,
- that a slightly amended version of paragraph 4 of the conclusions of the Committee on Agriculture's opinion be incorporated as paragraph 8 of the motion for a resolution contained in this report[1],
- to annex to the motion for a resolution contained in this report the text of paragraphs 2, 3, 5 and 6 of the conclusions of the Committee on Agriculture's opinion having regard to the distinctiveness of the matters they covered[2].

60. Because of the need to adopt this report in good time to request its inclusion on the agenda for the February 1980 part-session, the Legal Affairs Committee has been unable to consider the opinion of the Committee on Transport (draftsman: Mr KLINKENBORG) which is due to take a decision on this matter at its meeting on 31 January and 1 February 1980. The text of the Committee on Transport's opinion is however attached for Members' convenience.

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1 The final text adopted by the Committee on Agriculture also refers in point 4 to pollution from oil drilling installations. As this document was not available to the Legal Affairs Committee at its meeting of 28 and 29 January 1980, it was unable to reach any conclusion on this subject.

2 The first paragraph of the annex to the motion for a resolution was adopted with two abstentions. Paragraphs 2, 3 and 4 were adopted with three abstentions.

ANNEX 1

Motion for a resolution (Doc. 1-434/79) on behalf of the Group of the European People's Party (Christian-Democratic Group) on a common position for the European Community at the Third UN Conference of the Law of the Sea

The European Parliament,

- having regard to its reports on the Conference on the Law of the Sea as it affects the European Community (Doc. 82/77) and on the EEC's relations with the COMECON countries in the field of maritime shipping (Doc. 51/79),

- in view of the imminent threat to the Community's maritime shipping interests by the unfair practices of a number of maritime shipping nations,

1. Points out that it is of vital importance to the Community's maritime shipping industry that the Member States should take up a common position during the negotiations in 1980 leading up to the conclusion of a UN Convention on the Law of the Sea;

2. Recommends that the Member States give the Commission of the European Community a joint negotiating mandate for the ninth plenary session of the Third UN Conference on the Law of the Sea in New York and allow the Commission to sign the Convention on behalf of the Community;

3. Emphasizes the need for close cooperation between the delegations of the European Community and the United States at the negotiations;

4. Advocates a demarcation of the continental shelf to create exclusive economic zones for the exploitation of natural resources by coastal states without such measures implying any limitation of the freedom of the seas;

5. Demands that the right of transit through straits of an international nature be assured;

6. Emphasizes the need to protect the free exploration of the sea and the marine industry in general;

7. Considers that there must be uniform application of the minimum working standards laid down by the International Labour Organization in all areas falling within the competence of the Seabed Authority;

8. Recommends that an arbitration body be set up to deal with disputes, the ships and crews concerned being subject to no further hindrance once they have deposited a security.

ANNEX 2

Resolution adopted on 13 May 1977 by the European Parliament [1] based on the report presented by Mr BANGEMANN, on behalf of the Legal Affairs Committee, and related to the Conference on the Law of the Sea as it affects the European Community

RESOLUTION

on the Conference on the Law of the Sea as it affects the European Community

The European Parliament,

— having regard to the work accomplished so far at the Third United Nations Conference on the Law of the Sea,

— having regard to the Sixth Session of the Conference, which will open in May 1977,

— having regard to the report of the Legal Affairs Committee and the opinions of the Committee on Agriculture, the Committee on Regional Policy, Regional Planning and Transport, the Committee on Energy and Research and the Committee on Economic and Monetary Affairs (Doc. 82/77),

I. GENERAL OBSERVATIONS

1. Recognizes the difficulties involved in finding answers to all the problems with which the Law of the Sea Conference is concerned, which has the ambitious task of seeking to establish, through negotiations on a world scale, a new legal framework for dealing with the varied and complex questions which arise from the increasing use of the seas and the exploitation of marine resources;

2. Regrets nevertheless that the Conference has not yet been able to complete its work;

3. Expresses its satisfaction at the fact that the Member States have, to an increasing extent, been able to present a common position at the Conference on many issues;

4. Considers it essential, however, for the Community as such to take an increasing part in the Conference, since the questions to be discussed concern in whole or in part sectors in which the Community has sole competence to draw up Community-wide regulations and to contract obligations *vis-à-vis* third countries;

5. Draws attention to the need for Member States to make all necessary efforts to ensure the adoption by the Conference of a provision, such as that proposed on behalf of the Community at the Fifth Session in September 1976, under which the Community as such would be able to become a party to the future Convention;

6. 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 the Member States should act together on all outstanding issues;

7. Calls on the Council and Commission to make renewed efforts to work out common rules for fishing zones in the Community;

II. OBSERVATIONS ON PROCEDURE

8. Conscious of the fact that the large number of delegations participating in the Conference, the vast scope of the subjects under discussion, the different degrees of importance attached to individual topics by the various States or groups or States, as well as the need to follow a policy of obtaining the widest possible consensus before proceeding further, have in the past created procedural difficulties;

9. Suggests therefore that consideration should be given to the Conference adopting a new approach to its work, which could consist in drawing up and concluding separate Conventions on subjects on which general consensus can be reached while continuing the negotiations on questions on which it does not at present seem possible to reach agreement;

III. OBSERVATIONS ON SUBSTANTIVE ISSUES WHICH COULD FORM THE SUBJECT OF SEPARATE CONVENTIONS

(a) *The 200-mile economic zone and the outer limit of the continental shelf*

10. Notes that there is now general acceptance of the principle of extending to 200 nautical miles from the baseline the zone in which coastal States have exclusive rights in respect of the exploitation and conservation of fish stocks as well as the extraction of minerals, petroleum and natural gas reserves from the seabed, and that this acceptance is already reflected in international practice;

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[1] OJ No. C.133 of 6 June 1977, page 50

11. Considers that it is nevertheless necessary that, in the interests of the legal security and the future development of the Law of the Sea, the Conference should complete its work through the adoption of provisions which regulate all questions connected with the zone;

12. Considers, furthermore, that any agreement drawn up by the Conference should enable coastal States to extend their juridisdiction over the seabed beyond the 200-mile zone where the area of seabed concerned forms part of the natural prolongation of the State in question, subject to stipulations in the Convention as to the conditions under which such extension may take place;

(b) *Exploitation of the international seabed*

13. Endorses the principle that the international seabed and its resources should be regarded as the 'common heritage of mankind';

14. Believes that the exploitation of this 'common heritage' should benefit all mankind;

15. Considers therefore that an international authority should be established having responsibility for the exploitation of the resources of the international seabed and operating under provisions which provide:

— security of access for all countries, under agreed conditions and on a non-discriminatory basis,

— for the possibility of exploitation both by States and companies and by an operational arm of the authority, in which the interests of the developing countries would be especially reflected,

— protection of the interests of developing countries which are producers of the minerals concerned,

— a system of decision-making within the international authority which takes account of the different interests involved, including those of consumer countries;

16. 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;

(c) *Settlement of disputes*

17. Stresses that worldwide arrangements for settling disputes arising from exploitation of the seas and oceans are in the highest interests of all States;

18. Recommends the adoption at the Conference of a Convention allowing recourse to arbitration proceedings in the event of disputes;

IV. OBSERVATIONS ON CERTAIN OTHER PROBLEMS CONNECTED WITH THE LAW OF THE SEA CONFERENCE

19. Reaffirms the principle of freedom of navigation, and in particular, the principle that within the territorial sea of 12 miles all vessels should retain the right of innocent passage and that within the 200-mile zone all States should enjoy freedom of navigation and of over-flight and freedom to lay underwater cables and pipelines;

20. Emphasizes, in view of the increasing pollution of the sea, the need to make rapid progress in the protection of the marine environment and draws attention to the effective steps that can be taken at regional level and through specialized United Nations bodies in this regard;

21. Welcomes the acceptance by the Conference of the principle that all States should be entitled to carry out marine scientific operations for peaceful purposes and in such a way as not to interfere with the legitimate use of the sea by other States;

22. Hopes, moreover, that any conditions applied to this principle will be strictly limited should marine scientific research be made subject, in the economic zone, to the consent of the coastal State;

23. Hopes that approval will be given at international level to the principle that the results of marine scientific research should be made available to all who have an interest therein and that all States will agree to the desirability of promoting the development of such research and of transferring marine technology to the developing countries while taking account of any rights deriving from patents;

24. Trusts that the agreements reached and the pursuit of negotiations on outstanding complex questions will lead to progressive international codification of the Law of the Sea, which will be of lasting benefit to all countries without exception;

25. Instructs its President to forward this resolution, together with the report of its committee, to the Council and Commission and to the Parliaments and Governments of the Member States.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman : Mr NYBORG

On 28 November 1979 the Committee on Economic and Monetary Affairs appointed Mr K. NYBORG draftsman of an opinion.

The committee adopted the opinion unanimously at its meeting of 24 January 1979.

Present: Mr Delors, chairman; Mr Nyborg, draftsman; Mr Beazley (deputizing for Mr Balfour), Mr Beumer, Mr von Bismarck, Mr Bonaccini, Mr Lange (deputizing for Mr Caborn), Mr Leonardi, Sir David Nicolson, Mr Petronio, Sir Brandon Rhys Williams, Mr Sayn-Wittgenstein, Mr Schinzel and Mr von Wogau.

1. In previous discussions of fishery zones and the freedom of the seas, the Committee on Economic and Monetary Affairs decided that these matters clearly lay within the terms of reference of other committees; only in specific cases where competition or industrial aspects were relatively important (e.g. the code of conduct for liner conferences) has the Committee on Economic and Monetary Affairs become involved in detailed consideration.

When a motion for a resolution calling on the Commission to put forward proposals for a 200-mile marine economic zone was referred to it, the Committee on Economic and Monetary Affairs accordingly decided in September 1976 that the matter related to the international law of the sea and that it was for the Legal Affairs Committee to decide whether this request should be put to the Commission. However, if the Commission were to submit a proposal of this kind, the Committee on Economic and Monetary Affairs would have the opportunity of delivering an opinion on the economic aspects of the matter.

2. The main objective of the present motion for a resolution is to call on the Member States to:

(1) take up a common position during the negotiations for a convention on the Law of the Sea,

(2) to give the Commission a negotiating mandate, and

(3) to allow the Commission to sign the Convention on behalf of the Community.

3. The matters dealt with in paragraphs 3 to 8 of the motion for a resolution are an incomplete - but important - selection of the problems to be considered in relation to the possible content of a future convention on the law of the sea.

The committee wishes to point out that these many and various aspects are raised in the European Parliament's Resolution of 13 May 1977[1] (See Annex (a)) and in the working document attached as an Annex.

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[1] OJ No C 133, 6 June 1977, pp. 50-52 (See Annex 2)

The Committee would also point out that, in the Commission's view, Community responsibility is involved in only certain of these fields, while others are still the responsibility of the Member States.

4. The Committee on Economic and Monetary Affairs leaves it to the Legal Affairs Committee to adopt a standpoint on the questions of a common position, the EEC's jurisdiction, a negotiating mandate, etc. At the same time, however, it stresses that paragraphs 3 - 8 of the motion for a resolution cover an important but incomplete selection of the problems to be considered in relation to a future international convention on the law of the sea.

WORKING DOCUMENT

Observations for a resolution on a common position for the European Community at the third UN Conference on the Law of the Sea (Doc. 1-431/79)

The Third UN Conference on the Law of the Sea meets for its 9th working session in New York in March 1980.

The motion for a resolution covers only some of the key issues at stake in the Conference, from either a legal or economic point of view. It has too strong an emphasis on issues of maritime transport, going, in this area, rather beyond anything which has been discussed in the Conference, while not mentioning some of the other issues which have been of vital importance in the discussions.

1. Economic interests at stake

General considerations

One central set of economic issues is at stake throughout most of the areas in dispute at the Conference. How can differing economic interests best be reconciled between, on the one hand, (i) those who want to maximise their jurisdiction over shipping, environmental protection, marine research, etc. (coastal states) and to exploit offshore mineral and fish resources (coastal states, mineral producers possessing advanced technology), and (ii), on the other hand, those who might be affected by such claims (maritime shipping, defence interests, marine scientists, developing country mineral producers, countries without a coastline, fishing interests who have traditionally fished off other countries' coasts etc.)

A subsidiary element has been that of developed against developing countries; the developing countries have often displayed a surprising unity at the Conference in their determination to get the new ground rules on the Law of the Sea weighted more in their favour. However, although a good deal of the rhetoric at the Conference is put in terms of the North/South conflict, it is far more complex than that: developing countries are themselves split on many issues, especially between coastal and inland states and the Community countries as well consist of coastal and non-coastal states and have a number of conflicting economic interests. They have their own coastal interests and yet are active off the coasts of third countries as well.

Key issues from an economic standpoint

(i) Deep sea-bed:

The European Community countries are major potential producers of deep sea-bed minerals on which they are currently almost entirely import dependent. Will the proposed new international regime achieve a balance between protecting onshore producers of minerals and the interests of developing countries in particular, and yet also permit orderly exploitation of deep sea-bed resources to go ahead without undue delay?

(ii) Territorial sea:

How will international straits, and hence Community maritime transport, be affected by the proposed harmonization of the width of the territorial sea at 12 nautical miles?

(iii) 200 mile economic zones:

What balance will be found between the newly acquired rights of coastal states in these zones, and the maintenance of traditional high seas freedoms of transit, marine research, etc.?

(iv) Continental shelf:

Several Community countries have broad continental margins, extending well beyond the 200 mile economic zones. Extensive oil and other resources could be found beyond 200 miles: what decisions will the Conference make as to the exact outer limit of the continental shelf and to what extent will the Community countries have to share what could turn out to be substantial revenues from such regions?

2. Deep sea-bed

Consistently, this has been the issue on which it has been most difficult to achieve agreement during the Conference. At stake has been the scope and powers of the proposed International Sea-bed Authority (and of its operational arm 'The Enterprise') and the definition of its role vis-à-vis that of the private sector and national enterprises.

On the one hand, a number of consortia from developed countries are perfecting the technology to exploit mineral resources from the deep sea-bed. On the other, is the concern, most marked among developing countries, that this will result in a free-for-all in the area currently beyond national sovereignty that will deprive them of the benefits of such

exploitation. These general concerns are re-enforced by more specific ones of the disruption of individual mineral markets, in which a number of developing countries, particularly in Africa, play a leading role, which sea-bed exploitation would threaten. Hence the move to declare such resources the 'common heritage of mankind' and to seek regulation of sea-bed production by an international Sea-bed Authority in which they would play a major part.

Developed countries fear that the speed of development of these resources could be impeded.

The Community clearly has an important stake in ensuring that these resources be exploited. The only ones likely to be developed in the short and medium term are manganese nodules containing a number of other mineral deposits besides manganese, and in particular, copper, nickel and cobalt.

The Community's import dependence on these minerals is extremely high, 100% for manganese and (if scrap is excluded) for cobalt and nickel and 81% for copper. The cost of importing these materials is also extremely high, estimated recently at $3,100 million for copper, $700 million for nickel, $340 million for manganese (including ferro) and $130 million for cobalt. Other factors are perhaps even more important, such as whether these minerals are susceptible to substitution and the security of the sources of supply, or vulnerability to cartel formation. (Copper is the most used of these minerals. The European Community imports heavily from a number of developing countries and a producer association exists. On the other hand there are many producers outside the association and copper is susceptible to substitution.

Manganese, on the other hand, while vital for steel production, has no real substitute at present and is chiefly imported from Africa, over half the imports coming from South Africa. Cobalt too is overwhelmingly imported from a few African countries. Nickel is very costly to substitute and Canada is the dominant producer).

The technology for exploiting the nodules is in an advanced, if still unproven, state of development. European firms are among those most involved in deep sea-bed manning consortia. It is important that they be given a chance to prove these technologies and hence to reduce European import dependence.

The terms under which they be permitted to operate by the Sea-bed Authority should be such as not to discourage such development. A parallel system should be maintained in which private firms and state enterprises

should have access to ocean resources, along with the 'Enterprise' itself, which, as an 'internationalized production unit', is an important but untried concept. Efficiency should be an important criterion of any new regime. On the other hand, the legitimate concerns of countries not directly involved in production, and most particularly of developing countries, and of land based producers of such minerals, must be respected. The existing market structure should not be artificially frozen but should not be too suddenly disrupted.

3. Territorial sea

It is important for maritime transport that the rights of innocent passage in the territorial sea-bed are emphasized. In particular the status of international straits, such as Gibraltar, should be upheld, since they would otherwise become part of individual or overlapping territorial seas.

4. Economic Zones

Under Treaty law there are two separate zones where the coastal state has either total or partial sovereignty, the territorial sea (where it has full rights) and the continental shelf, where it has sovereign rights over the resources of the sea-bed and subsoil but not over the waters above, which remain as high seas.

As a result of development in the Conference, a third concept has emerged, that of the 200 mile economic zone, where the coastal state seems likely to have sovereign rights over exploiting the resources not just of the sea-bed and subsoil but also of the waters above, exclusive jurisdiction over scientific research, and jurisdiction over the preservation of the marine environment.

The precise scope of this zone needs to be clearly spelt out, as well as the respective rights of the coastal state and of other states. Otherwise the possibility exists of interference with traditional freedoms such as the freedom of navigation. The coastal state should be permitted to take effective measures to protect its marine environment but should not use these as an excuse to exercise arbitrary control over maritime shipping.

The need to achieve this balance between coastal state and third country rights is of great economic significance for the European Community countries since they have important resource interests within their own economic zones but are also extremely active (Community shippers,

marine scientists etc.) in the economic zones of third countries. Even fishing interests are divided between those of coastal fishermen, who want a more protective regime, and those who fish away from their own coasts, who seek the maintenance of traditional freedoms.

5. Continental Shelf

The issue of the status of the continental shelf beyond the 200 mile economic zones is an extremely important one for the Community, especially if a longer term perspective is adopted. Several Community countries have continental margins extending well beyond this limit and it is certainly possible that significant oil and other sea-bed resources will be discovered and be capable of exploitation within the not too distant future.

There seems to be agreement at the Conference that the continental shelf can be extended beyond the economic zones but only if there is some measure of sharing of revenues (with the poorest developing countries particularly in mind) arising out of any exploitation beyond the 200 mile limit. There is no such revenue sharing requirement in the existing regime for the continental shelf. Furthermore, the existing legal definition of the outer limit of the shelf is an extremely vague one, '200 metres or the limit of exploitability'.

Two issues therefore need to be emphasized. There must firstly be a clear definition of the outer limit of the continental shelf and, secondly, the exact amount of revenue sharing needs to be established.

6. Other points

The protection of the marine environment, marine scientific research and the transfer of marine technology to developing countries are important subsidiary themes of the Conference. The need for effective guidelines to be established on these issues should be strongly reaffirmed.

7. Final considerations

It is important that a new regime for the Law of the Sea should not be drawn up with only short-term considerations in mind. The convening of a third Law of the Sea Conference within a decade of the previous two conferences was largely due to the previous law becoming obsolete as a result of new resource considerations and technological development. For instance, in the deep sea-bed negotiations, manganese nodules are the focus of attention, but other resources whether known (such as mineral rich brines) or

unknown, or other factors, may become more important in the future. The vague 1958 definition of the outer limit of the continental shelf is an illustration of the inadequacy of a short term compromise. Longer term considerations must be borne in mind in drawing up new guidelines for the Law of the Sea.

OPINION OF THE COMMITTEE ON AGRICULTURE

Draftsman : Mr BATTERSBY

On 29 November 1979, the Committee on Agriculture appointed Mr Battersby, rapporteur.

It considered the draft opinion at its meeting of the 23 and 24 January 1980 and adopted it unanimously.

There were present: Mr Früh, Vice-Chairman and acting Chairman, Mr Ligios, Vice-Chairman; Mr Battersby, draftsman; Mr Bocklet, Mr Clinton, Mr Colleselli, Mr Dalsass, Mr Davern, Mr Diana, Mr Gatto, Mr Helms, Mrs Herklotz, Mr Maher, Mr Nielsen Brøndlund, Mr d'Ormesson, Mr Provan, Miss Quin, Mr Sutra, Mr Tolman, Mr Vernimmen.

Introduction

1. The United Nations General Assembly, in Resolution No. 1105 (XI) of 21 February 1957 called for an examination of the Law of the Sea that went beyond codification of the existing mixture of treaty and customary law, and examined the technical, biological, economic and political aspects.

The First and Second Conference of the Law of the Sea resulted in a number of conventions and a much deeper understanding of the requirements of a wider international agreement. The Third Conference of the Law of the Sea sought to take into account the new political balance arising from the emergence of the developing countries, and also to anticipate the problems arising from new technology. Its aims were as follows:

> 'The establishment of an equitable international regime - including an international machinery - for the area and resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues, including those concerning the régimes of the high seas, the Continental Shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, inter alia, the prevention of pollution) and scientific research'. 1

2. Given the importance of the issues considered and the divergence of interests of the participants, the process of reaching agreement is, inevitably, a lengthy one.

3. The first session of the Third United Nations Conference on the Law of the Sea met in December 1973, the first session on questions of substance being held in June 1974.

4. Considerable progress has been made, particularly on territorial seas, economic zones, straits. But certain questions, and in particular the exploitation of the sea bed, have been deadlocked, preventing formal agreement on matters directly relating to fisheries management, even though the general principles have been broadly established.

Freedom of the seas v. the demand for greater equity

5. The background of the discussions and divergences in the Conference has been the conflict of interest between the developed strong maritime powers and the less developed and weaker maritime states.

Since the emergence of the strong nation state in Europe, the original Roman governing the law of the sea (Res Communis, Res Publicae and Res nullius) have been interpreted and reinterpreted according to the maritime strength and interests of the particular state.

1 United Nations General Assembly resolution no 2750(XXV) of 17 December 1970

The strong trading and maritime powers defended the thesis that any state, group of states or even the international society itself could not impose any form of jurisdiction on the high seas which in any way infringed freedom of the seas and the interests of commerce between nations. Naval strength ensured that these powers exercised effective jurisdiction on the high seas.

6. The weaker nations, however, sought in legal precepts to make up what they lacked in naval strength. Natural justice was involved in arguing for a greater role on the high seas and to defend claims to extended territorial waters.

7. Similar arguments were developed by states particularly dependent on a single maritime resource (for example Peru) and were buttressed by reference to particular geographical factors, such as coastline configuration, continental shelves or even such peculiarities of marine geography as the Humboldt current.

The need to protect the marine environment : the move to coastal state management

8. These arguments have been strengthened considerably in recent years by the growing realisation that the resources of the sea are not unlimited, but must be safeguarded in the interests of nations particularly dependent on them against short-sighted over-exploitation.

9. This has led to claims by particular groups of nations to be the guardians of a marine resource (and in particular fish) which they have habitually exploited by reason of geographical proximity.

For example, in the North Atlantic, regional fisheries organizations were established which went some way to laying down the principle that states concerned could exercise in common management rights, though without transforming declared principles into concrete measures.

This weakness is the main reason why the regional approach has been dropped in favour of management authority operated in 200 miles by the coastal state.

10. This essential right of the coastal state to manage fishery resources within the 188 exclusive economic zoneshas passed into customary law, so deciding the main issue as far as the Committee on Agriculture is concerned: the Community has acquired the right to conserve and manage fish stocks within its own exclusive economic zone.

At the same time, however, there remains a number of issues directly or indirectly related to fisheries questions.

These issues are directly related to the age old conflict of interests referred to above between those nations wishing to extend their rights on the high seas, and these nations, and in general the more advanced maritime powers unwilling to see their technological advantages impeded by the demands for a more 'equitable' international regime.

The significance and delimitation of the Continental Shelf

11. The exploitation of the Continental Shelf is largely outside the field of interest of the Committee on Agriculture, but the manner in which this question is raised in the Resolution by Mr HOFFMANN and others can lead indirectly to concern.

12. The existing revised text of a future Convention does not provide for any rights of the coastal state in waters above the Continental Shelf beyond 200 miles: such rights are limited to the exploitation of the sea bed.

13. Problems have arisen, however, from the de facto existence of exclusive economic zones and the new importance in discussions given to the Continental Shelf. It is in the interest of certain States that a certain confusion of these two questions should develop, so that those States acquire certain management rights beyond 200 miles. Canada, in whose water and contiguous zones Community fishermen have a particular interest, has taken such a line in respect of the Grand Banks - Flemish Cap area seaward of Canadian fisheries waters.

If such a principle were to be accepted, Community fishermen, already excluded from a number of their traditional fishing grounds, would find further zones closed.

14. Therefore, phrases in the Motion for a Resolution by Mr HOFFMANN and others which advocates a demarcation of the Continental Shelf to create exclusive economic zones for the exploitation of natural resources by coastal states[1] need to be more precisely worded so it is clear that they refer to non-animal sea bed resources.

The Community, the developing countries and exploitation of the sea bed

15. The Resolution under consideration appears to call for the maximum of freedom of action to be given to those who wish to exploit the sea bed. This is a natural position for a developed economic region such as the Community to take.

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[1] Doc. 1-434/79, paragraph 4.

It is equally natural, as has been emphasised above, that the less developed and weaker nations seek in a new regime governing marine resources that international law ensures them a greater benefit from the exploitation of the sea bed that the level of their technology would otherwise allow.

16. The diverging calls for freedom of action or for greater equity on the part of the developed and developing countries is understandable.

At the same time, there might exist a conflict of interest within the Community itself. While certain European interests wish to exploit the sea bed, there are fishermen who wish to maintain or acquire access to the rich fishing grounds of the developing countries. Negotiations, some of which are still continuing with those countries, have been long and laborious.

17. If the Community were to appear unsympathetic to the interests of the developing nations in matters concerning the exploitation of the sea bed, the objectives of the Community in seeking greater access to fishing grounds could be compromised.

In this context, one should underline the emphasis placed in revised text upon the developed states aiding the technical marine capacity of the developing nations, including the transfer of marine technology.

18. The need for such cooperation has been enshrined in the Lomé II Convention concluded 31 October 1979 and emphasised by the Parliament in its Resolution of 14 December 1978.

19. Such cooperation would prove of mutual value, allowing an outlet for certain human, material and technical Community fishing resources under utilized as a result of fisheries management measures introduced in Community waters.

These benefits should not be placed at risk by differences in policy adopted by the Community at the Lomé Convention and in negotiations on the Law of the Sea.

Marine pollution

20. The Resolution tabled by Mr HOFFMANN and others makes no reference to one of the most critical problems for the fishing industry, namely, control of marine pollution, particularly by hydrocarbons. The Council on 7 and 8 April 1978 stressed the importance of effective prevention measures. The Parliament equally has stressed, and in particular following the Amoco-Cadiz desaster, the necessity for effective instruments rather than ad hoc

measures[1]. In particular the Parliament called for Community agencies able to regulate oil tanker traffic through Community waters, including the movements of foreign vessels.

It is essential that the Community ensure provision for such powers at the Law of the Sea Conference.

21. The revised negotiating text provides for States to ensure that vessels of their flag respect international regulations, for policing action by the coastal State and for measures to be applied beyond territorial waters in proportion to actual or potential damage in order to protect the coast and fisheries. At the same time 'guarantees' are provided for vessels subject to policing measures[2].

22. The problem, of course, is to ensure a proper balance between effective pollution prevention measures and the necessity to uphold freedom of the seas. while establishing provisions which are sufficiently clear and enforceable, and do not lead simply to disputes before courts rather than effective measures.

Fisheries management measures

23. The same remarks apply to fisheries management. Adequate powers are required to police third country fishing vessels and equipment and catches, together with support vessels and mother ships used for transferring fish at sea. The Community must be empowered explicitly in the final text to exclude any non-licenced vessels from catching, transferring or processing at sea in Community waters, if it so wiches.

Settlement of disputes

24. Fishing rights are not to be covered by the system for obligatory conciliation of international disputes. However , in the Fisheries Agreements concluded, bilaterally or multi-laterally, with third countries provision has been made for settlement of disputes. It should be decided whether this is the more appropriate method for the fisheries sector.

A common position for the Community

25. So far your draftsman has considered the content of a common position for the Community at the Law of the Sea Concerence. The legal basis for such a common position is vital and falls, of course, more correctly within the competence of the Legal Affairs Committe.

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[1] Doc. 37/78/rev. and Doc. 555/78.

[2] Articles 220-227 of the 'Revised Negotiating Text'.

26. Your draftsman would like to point out, at the same time, that:

(a) the Community has external authority by virtue of Article 3(d), 39, 43(2) of the Treaty and Article 102 of the Treaty of Accession, with respect to marine fisheries[1];

(b) at the Law of the Sea Conference, the Community is considered, in relation to non-member countries, as a single coastal state, and the Member States have requested that the Community be given the right to become a party to the Convention;

(c) the role of the Commission in coordinating the positions of the Member States at the Conference has become increasingly important;

(d) the accession of the Community to the Convention is essential for the exercise of the Community's external authority in respect of marine fisheries:

- in order to provide the necessary legal, and even moral, authority to the Community;
- at a purely practical level to enable future negotiations on matters relating to the Convention to be conducted by the Commission; and
- in view of the fact in a number of areas, competence has been transferred from Member States to the Community.

Conclusions

27. Since the mid- 1979's, that is with the generalized extension of 200 mile exclusive economic zones, fisheries management has become largely a matter for the coastal state, and for bilateral agreements between coastal states and countries wishing to fish their waters. The Community has no surplus stocks so that the obligation to grant access to foreign fishermen will not apply (and it is unlikely that any country will accept this obligation in practice). Multi-lateral agreements will be largely restricted to ensuring cooperation to manage the limited stocks beyond 200 miles, encouraging marine research and facilitating management of certain migratory stocks (tuna and salmon).

28. Although Member States now participate at the negotiations on the Law of the Sea Conference, the Community will be considered as a single coastal state when it comes to implementing the decisions taken at the Conference.

Moreover, it is accepted that the future Convention cannot be used to prejudice the rights of Member States under the principle of equal access in Community waters.

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[1] See the Judgment Court of Justice in re ERTA case, case 22/70, March 31, 1971, 17 Recueil 1971, ground 14.

29. At the same time, the Law of the Sea Conference raises a number of important questions for the fisheries sector, and in particular: the future access of Community fishermen to certain of their traditional fishing waters outside the Community's 200 mile zone: and the powers required by the Community to manage properly its own fish stocks and to control pollution.

Therefore, the Committee on Agriculture requests that the Committee on Legal Affairs, when considering its draft report, incorporate the following paragraphs into the Motion for a Resolution:

1. Emphasises the importance of accession by the Community as such if the Community is to exercise its external authority in respect of marine fisheries vis-à-vis non-member countries;

2. Points out that the Community has acquired the right to exercise jurisdiction on fisheries policy within the 200 mile exclusive economic zone;

3. 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 transhipping fish at sea and processing vessels.

4. Emphasises the importance of provisions for the adequate control of pollution at sea, particularly by hydrocarbons, including control of tanker traffic and oil rig pollution and policing;

5. 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;

6. 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;

7. Points out the importance of international scientific research to the future of the fishing industry worldwide.

OPINION OF THE COMMITTEE ON TRANSPORT

Draftsman: Mr J. KLINKENBORG

On 27 November 1979 the Committee on Transport appointed Mr Klinkenborg draftsman of an opinion.

The Committee considered the motion for a resolution at its meetings on 20 December 1979, 31 January and 1 February 1980 and on 1 February 1980 adopted the draft opinion unanimously with two abstentions.

Present: Mr Seefeld, Chairman; Mr Carossino and Mr de Keersmaeker, Vice-Chairmen; Mr Klinkenborg, draftsman; Mr Albers, Mr Baudis, Mr Buttafuoco, Mr Cardia, Mr Cariglia, (deputizing for Mr Loo), Mr Cottrell, Mr Gabert, Mr Gatto (deputizing for Mr Craxi), Mr Gendebien, Mr Hutton (deputizing for Lord Harmar-Nicholls), Mr Janssen van Raay (deputizing for Mr Schnitker), Mr Hoffmann, Mr Key, Mr Moorhouse, Mr Moreland, Miss Roberts (deputizing for Mr Jakobsen), Mr Travaglini (deputizing for Mr Zaccagnini).

I. INTRODUCTION

1. The ninth session of the Third United Nations Conference on the Law of the Sea will open on 3 March 1980 in New York.

The aim of this Conference, which began work in December 1973[1], is the establishment of an equitable and appropriate international legal framework for the sea. Among the subjects to be considered are: the legal status of the high seas, territorial waters and contiguous zone, the 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 the conservation of biological resources and the marine environment.

2. With regard to transport, it is, of course, extremely important to ensure that an international revision of the Law of the Sea does not result in a violation of the principle of the freedom of navigation which would jeopardize the Community's shipping interests.

3. It is equally essential for the Member States of the European Community to adopt a common position on this occasion and for the Community as such to become a party to the future international Convention on the Law of the Sea.

II. FREEDOM OF NAVIGATION

4. The principle of the freedom of the seas has always found universal acceptance. The principle of the 'Mare Liberum' was formulated early in the 17th century by the Dutch jurist Hugo de Groot; the only exception to this principle was that each coastal state enjoyed sovereign rights over its coastal waters to a distance of three nautical miles (5.5 km). Shortly after the Second World War, the United States of America claimed exclusive rights to the continental shelf, and certain other countries, particularly in South America, claimed sovereignty over a 200-mile zone.

The increasing awareness of the importance of marine resources, the decolonization process, the increase in the number of national claims and the danger of legal uncertainty arising from unilateral measures or bilateral agreements resulted in a situation where an international Conference to revise the Law of the Sea became not only desirable but absolutely essential.

5. On the eve of the ninth session of the Third Conference on the Law of the Sea, a number of new principles have been put forward and to some extent been broadly accepted. Your draftsman believes that these principles should be considered from the angle of freedom of navigation and bases his considerations on the 'Revised Single Negotiating Text' which will be dealt with shortly.

[1] The two previous Conferences were held in 1958 and 1960

6. With regard to maritime navigation, an immediate distinction must be drawn between the high seas, the territorial sea, the contiguous zone and the economic zone.

(i) the high seas

7. Vessels of all countries, whether coastal states or not, enjoy freedom of navigation on the high seas.

(ii) the territorial sea

8. Territorial waters are under the sovereign power of the coastal state and in a way represent an extension of its territory. The state is, however, required to respect the provisions of the future Convention and international legislation currently in force and thereby respect the right of innocent passage for merchant vessels.

In addition, the coastal state must not hinder or obstruct the innocent passage of foreign vessels through territorial waters, nor may it impose on foreign vessels such obligations as would in practice have the effect of denying or restricting this right of passage[1].

As already mentioned, territorial waters have been extended from three to twelve nautical miles (22.22 km). Although the 12-mile limit must still be ratified, broad agreement has been reached on this matter, and there is little doubt that it will eventually be implemented.

(iii) the contiguous zone

9. At the First Conference on the Law of the Sea, held in Geneva in 1958, it was decided that the zone contiguous with the territorial sea should extend no further than 12 nautical miles. Given the introduction of a territorial sea extending 12 nautical miles, the contiguous zone may therefore not extend further than 24 nautical miles from the coastline.

The coastal state may exercise certain surveillance rights in the contiguous zone, for example preventive measures relating to customs, taxation, immigration and health. With those exceptions, freedom of navigation is guaranteed in the contiguous zone.

(iv) exclusive economic zone

10. Although an exclusive economic zone of 200 nautical miles (370 km)[2] is a new concept, it is now being generally adopted and has even had certain practical consequences. In concrete terms this concept means that the coastal state enjoys exclusive rights within an area of 200 nautical miles:

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1 See Mr Bangemann's report on The Conference on the Law of the Sea as it affects the European Community, Doc. 82/77, point 84, para. 3

2 200 nautical miles measured from the baseline of the coast, or 188 nautical miles from the territorial sea, or 176 nautical miles from the contiguous zone

(a) in respect of fishing and the conservation of living resources;
(b) in respect of the exploration and exploitation of the mineral resources of the seabed and the subsoil thereof; and
(c) in respect of everything connected with such activities, including pollution control measures.

The exclusive rights enjoyed by the coastal state in its economic zone are undoubtedly very extensive. In practice, the legal status of the exclusive economic zone lies between that of the high seas and that of territorial waters. As Mr Bangemann stated in the report referred to above, it is 'necessary that, in the interests of the legal security and the future development of the Law of the Sea, the Conference should complete its work through the adoption of provisions which regulate all questions connected with the zone'[1]. That clearly includes freedom of navigation. In the future Convention on the Law of the Sea, therefore, the right of innocent passage for all nations should be unequivocally laid down.

The universal implementation of exclusive economic zones will result in approximately one-third of the world's oceans (which themselves cover two-thirds of the earth's surface) being appropriated to some extent by the coastal states[2]. It is, therefore, important for maritime navigation that to all intents and purposes the legal system applying to the high seas should also apply to the economic zone.

11. In paragraph 5 of the resolution under consideration, the authors expressly demand that: 'the right of transit through straits of an international nature be assured'.

If, as is to be expected, the limit of territorial waters is definitively established at 12 nautical miles in the Convention to be concluded, some 116 straits will come under the sovereignty of one or more coastal states and lose their high seas status.

It is a truism that certain straits such as the English Channel, the Öresund, the Straits of Bab el Mandeb and the Straits of Hormuz are vital to international shipping and trade and that everything must be done to prevent a coastal state or states from imposing unacceptable restrictions on innocent passage or acting arbitrarily. That, too, must be laid down in detail in the future Convention on the Law of the Sea.

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1 Bangemann report, Doc. 82/77, para. 10 of the resolution

2 See The Economist of 13 May 1978

12. In the 'Revised Single Negotiating Text', the right of transit is laid down for straits linking one high seas zone or one economic zone with another high seas or economic zone, subject to conditions to be laid down in the future Convention.

The Committee on Transport wishes to emphasize that these conditions to be laid down must not result in international shipping being unnecessarily hindered or Community shipping interests being unnecessarily curtailed.

The simple right of innocent passage, as in territorial waters, is inadequate in straits. We therefore advocate the basic principle of the absolute right of passage for merchant vessels, or what is called the 'right of transit'[1].

13. One restriction on the principle of freedom of navigation stems from the vital measures which must be taken to prevent marine and coastal pollution and to improve safety at sea.

Since the Amoco Cadiz disaster in 1978 there has been an appreciable improvement in this sector. Not only have a number of countries ratified international Conventions which they had initialled several years previously, but in addition, new international Conventions have been signed and a series of Community-wide directives adopted, such as the Council Directive concerning minimum requirements for certain tankers entering or leaving Community ports[2].

14. The complex problem of combating and preventing marine pollution cannot be considered in detail in this opinion[3]. Suffice it to say that the fight against marine pollution requires international and Community action and that - as Mr McDonald said in the opinion of the former Committee on Regional Policy, Regional Planning and Transport attached to the Bangemann report[4] - the necessary powers of control and sanction to be granted to the coastal states on environmental and safety grounds must be fairly balanced against the principle of freedom of navigation. Under no circumstances, however, must such measures result in disguised protectionism or distortion of competition.

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1 See the article in the Deutsche Verkehrs-Zeitung (DVZ) of 23 February 1978

2 Directive No. 79/116/EEC of 21 December 1978, OJ No. L 33, 8.2.1979, p. 33

3 For more details see Lord Bruce of Donington's report (Doc. 555/78) drawn up following a public hearing on this subject held on 20, 21 and 22 June 1978 in Paris (full report - PE 55.599/fin.)

4 Point 16 of the opinion

III. COMMUNITY SHIPPING INTERESTS

15. The Community accounts for almost 20% of the world's merchant fleet (calculated according to tonnage), and will have a considerably greater share following Greece's accession. It therefore has a duty to protect its shipping interests not only for the benefit of its shipping itself but also with a view to its extensive international trade.

16. This requirement is all the more urgent in view of the fact that the European Community's maritime interests have never before been threatened to such an extent by the 'unfair practices of a number of maritime shipping nations' (to quote the authors of the motion for a resolution). Community shipowners are having to cope increasingly with numerous instances of dumping by merchant fleets sailing under flags of convenience or those of the state-trading countries.

17. The European Parliament is sufficently aware of this problem: that is demonstrated by the numerous reports it has drawn up in the past in which aspects of the problem have been dealt with.

Among the most significant of those reports are the report by Mr Prescott, on behalf of the Committee on Economic and Monetary Affairs, on the Community shipping industry (Doc. 479/76), Mr Seefeld's interim report on Sea transport problems in the Community (Doc. 5/77) and Mr Jung's own-initiative report - referred to in the resolution - on the EEC's relations with the COMECON countries in the field of maritime shipping (Doc. 51/79).

18. It is unnecessary to go over this subject again in detail within the limits of this opinion, especially since the members of the Committee on Transport attached high priority to this matter during a discussion on their work programme for the coming months at their meeting of 30 October 1979, and since a report on this subject will be drawn up in the near future.

19. We must ensure that the Community's shipping interests are safeguarded at the Third Conference on the Law of the Sea.

20. The first condition, however, is that the Member States of the Community demonstrate greater solidarity.

If the negotiations are not to be conducted by the Commission, this presupposes in practice that:

(i) the Member States hold regular consultations and coordinate their positions on this subject;

(ii) they reach agreement on a common position on the various controversial negotiating points[1];

[1] According to the Council's answer to a written question by Mr Müller-Hermann (No. 438/79), these two conditions have already been met. See OJ No. C 7, 9.1.1980, p. 8

(iii) they speak with one voice at the Conference and give the Commission a mandate to negotiate on behalf of the Community;

Our aim must be for the Member States of the Community to be parties to the future international Convention on the Law of the Sea.

This approach is, moreover, not only desirable in connection with promoting European integration but equally necessary to prevent what slight progress the Community has made from being jeopardized. The legal form to be taken by the procedure outlined naturally falls within the Legal Affairs Committee's terms of reference.

21. For the sake of the Community's shipping interests it is vitally important that in the future Convention on the Law of the Sea:

(i) freedom of navigation is not restricted,

(ii) an exhaustive list of unavoidable restrictions is included and defined and codified in detail in order to prevent any unilateral abuses such as cabotage or flag protectionism. With this in mind the Committee on Transport endorses in particular the need for close cooperation between the delegations of the European Community and states with similar aims.

22. Finally, it should be noted that restrictions on international shipping will necessarily result in an increase in costs, and that cannot be desirable in a period when maritime shipping is undergoing a crisis.

IV. CONCLUSIONS

23. The Committee on Transport considers that an international Conference designed to establish a new legal framework for the high seas and oceans and aiming at better utilization of marine resources without causing legal uncertainty is absolutely essential.

The Committee on Transport would, however, warn against adopting any international maritime regulations which sacrifice the interests of maritime shipping to the exploitation of marine resources.

24. Accordingly, the Committee on Transport advocates:

(i) freedom of navigation

(ii) the minimum possible restriction on freedom of navigation in territorial waters and contiguous zones, exclusive economic zones and, in particular, in straits;

(iii) the adoption of a common position by the Member States at the Third Conference on the Law of the Sea so as to afford maximum protection to the appreciable interests of Community shipping and the Community's external trade;

(iv) the adoption of rules providing for a system of maritime shipping which is free yet safe, environmentally acceptable and energy-saving.