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DOCUMENT 1-234/81

Report

drawn up on behalf of the Committee on External Economic Relations

on the proposal from the Commission of the European Communities to the Council (Doc. 1-630/80) for a regulation on the definition of the customs territory of the Community

Rapporteur: Mrs M.-M. FOURCADE

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English Edition

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By letter of 19 November 1980 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 235 of the Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a regulation on the definition of the customs territory of the Community (Doc. 1-630/80).

On 9 December 1980 the President of the European Parliament referred this proposal to the Committee on External Economic Relations.

On 27 January 1981 the Committee on External Economic Relations appointed Mrs Fourcade rapporteur.

It considered this proposal at its meetings of 13 April and 13 May 1981.

At its meeting of 13 May 1981, the committee adopted the motion for a resolution (and the explanatory statement) by 20 votes to 0 with 1 abstention.

Present: Sir Frederick Catherwood, chairman; Mr van Aerssen, second vice-chairman; Dr Seal, third vice-chairman; Mrs Fourcade, rapporteur; Mrs Agnelli, Mrs Carettoni Romagnoli, Mr Cohen (deputizing for Mr Martinet), Mr Deschamps, Mr Filippi, Mr Hänsch, Mr Lemmer, Mrs Lenz, Mr Leonardi (deputizing for Mr Gremetz), Mr Majonica, Lord O'Hagan Mr Papaefstratiou (deputizing for Mr Pesmazoglou), Mr Pelikan, Mrs Pruvot (deputizing for Mr De Clercq), Mr Rieger, Mr Vandemeulebroucke and Mr Welsh.

C O N T E N T S

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The Committee on External Economic Relations hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation on the definition of the customs territory of the Community

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council[1],
- having been consulted by the Council pursuant to Article 235 of the Treaty (Doc. 1-630/80),
- having regard to the treaty establishing the European Community and in particular to Article 227 thereof,
- having regard to the report of the Committee on External Economic Relations (Doc. 1-234/81),

1. Notes that the political definition of the Community contained in Article 227 is inadequate as a definition of the customs territory, particularly in relation to sea and air space;
2. Stresses that in view of the rapid development of technology it is imperative that this deficiency be remedied as soon as possible;
3. Calls on the Commission to give thought to a definition of the European Community in its every dimension, i.e. land, sea and air, and in so doing to take into account the impact of such a redefinition on the economy and trade;
4. Calls for paragraph 4 of Council Regulation (EEC) No. 1496/68 of 27 September 1968 to be repealed;

Territorial waters

5. Calls for the territorial waters of the Community and their division into national waters to be clearly defined in order to remove distortions of and derogations from Community law arising from the non-inclusion of

[1] OJ No. C 305, 22.11.1980, p. 4

territorial waters in the customs territory of the Community;

6. Draws attention to the fact that islands which belong to the Member States, such as Corsica, Sicily, Sardinia and the Greek islands, must also be assigned territorial waters, a continental shelf and an economic zone;

7. Considers it indispensable that negotiations on the definition of the continental shelf take place between the Member States with the participation of the Community authorities and that the continental shelf thus defined be included in the maritime customs territory of the Community;

8. Believes that consideration ought to be given in the future to a definition of the continental shelf based not only on the depth of waters but also on their potential for exploitation, which has increased considerably in the last few years, and calls therefore for the words 'there is no justification for integrating the continental shelf adjacent to the Member States into the customs territory of the Community' to be deleted from the second recital;

Air space

9. Considers it necessary to define the air space of the Community and to include it in the customs territory of the Community;

10. Requests the Commission therefore to consider how legislation on air space can reconcile the major concerns of the security and defence of the territory with the obligations and constraints in the customs field arising from the incorporation of air space in the territory of the Community, particularly in matters relating to the determination of customs value and the refueling of aircraft;

11. Draws attention to the rapidly increasing exploitation of high-altitude air space for exploration, defence and, possibly, in the future, industrial purposes and calls on the Commission to take all due account of this aspect;

Free zones

12. Considers the problem of the free zones to have been solved by Council Directive No. 69/75 of 4 March 1969 and urges that this directive be retained in its present form.

EXPLANATORY STATEMENT

I. INTRODUCTION

1. Paragraph 11 of the Commission's general programme for 1981 presented to the European Parliament by Mr Gaston THORN, President of the Commission of the European Communities, states in relation to customs union that:

'Further steps to complete the customs union, which represents an important Community instrument in the implementation of external economic policy will be taken on the basis of the work programme which has already been drawn up for 1981'.

The customs union is the cornerstone in the construction of Europe. It has been achieved by stages and is now complete except in relation to trade with Greece which only recently became a Member State.

However, if the customs union is to have its full effect it will be necessary to make good an extremely important omission, namely the lack of a definition of the customs territory of the Community.

2. It is for this reason that by letter dated 19.11.1980 Mr Niels ERSBØLL, Secretary-General of the Council, informed Mrs Simone VEIL, President of the European Parliament, of the Council's decision of 18.11.1980 to consult the European Parliament on the proposal from the Commission of the European Communities for a regulation on the definition of the customs territory of the Community. The Council also decided to consult the Economic and Social Committee.

3. We therefore have to consider this proposal for a regulation (EEC) No. 1-630/80 of 3.11.1980.

Is the proposal in conformity with the EEC Treaty?

In our view, yes.

Article 2 of the Treaty of Rome establishing the European Economic Community provides that:

> 'The Community shall have as its task by establishing a common market and progressively approximating the economic policies of Member States to promote throughout the Community a harmonious development of economic activities, a continous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it'.

However, this definition is no longer appropriate to the circumstances or to the result which it envisaged.

4. The main reason for this is that the Treaty of Rome gives only a political definition of Europe and fails to provide a precise definition of Europe's customs territory. Article 227 of the Treaty confines itself to listing the Member States of the Community. It does not describe the Community in terms of its territory, merely stating (in paragraph 1) that the Treaty applies:

> 'to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland'.

Therefore although the political extent of the Community is defined this is not true of the Community as a physical entity or for customs purposes.

5. This omission was the subject of Council Regulation (EEC) No. 1496/68 of 27 September 1968. But although this Regulation prepares the way for a definition of the territory of the Community by using for the first time the term 'territory', it merely states the obvious and does not resolve any of the questions raised by such a definition.

In other words it dodges the extraterritorial question without even fully considering the territorial question (extent of land).

6. While leaving the door open for the future:

(the Regulation) 'shall not affect:

- the customs system applicable to the continental shelf or that applicable to the waters and foreshores situated between the coast or shore and the limit of territorial waters; or
- the provisions applicable in accordance with Community rules to be adopted with regard to free zones' (Article 4).

It should be pointed out in this connection that this Article 4 should have been deleted along time ago having regard to the Council Directive on 4 March 1969 which regarded the free zones as being in fact 'territories of the Community' but perhaps this was not done at the time because these zones were not defined with any precision.

7. This Directive refers to the free zones not in order to include them in customs territory of the Community, because they are already included, but in order to harmonize the provisions governing them according to whether they are French, Belgian, German or Dutch.

8. The free zones had been subject to a Council Regulation of 27 June 1968 (802/68) which in Article 4(h) provided that goods originating in a country were goods wholly obtained in that country such as

> 'products taken from the sea-bed or beneath the sea-bed outside territorial waters, if that country has, for the purposes of exploitation, exclusive rights to such soil or subsoil'.

9. Goods are taken as meaning those which originate in a coastal Member State as defined in Article 2 of the Geneva Convention on the Continental shelf:

> 'The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources'.

10. The customs system therefore laid down the rules on origin by a combination of the two texts quoted above. Thus fish caught on the high seas by a Member State becomes a Community product.

11. But while the customs union satisfies the requirements of Article 24 of the General Agreement on Tariffs and Trade, which for the purposes of the agreement defines customs union as follows:

> 'Substitution of a single customs territory for two or more customs territories so that duties and other restrictive regulations of commerce are eliminated substantially and so that substantially the same duties and other regulations of commerce are applied by each of the members of the union of the trade of territories not included in the union,'

it is still necessary to define what is now meant by customs territory.

12. As stated at the beginning of the explanatory memorandum to the proposal for a Council regulation (EEC) which we have been considering, the customs territory of the Community was defined by Council Regulation (EEC) No. 1496/68 of 27.9.1968 (OJ No. L 238, 28.9.1968, Customs Code, second part 1969 edition p. 223) - which entered into force on 1 July 1969 - along the lines of Article 24 GATT. However the Regulation does so merely by substituting that territory for the national customs territories as defined or delimited in national law or customs regulations in general.

13. The time now seems ripe, having first defined the Community in relation to the number of its members and then in relation to its territorial limits - the question of the rules applicable to free zones having been resolved by Council Directive No. 69/75 of 4 March 1969 whose provisions will be confirmed subsequently - to consider the European Community as a single entity embracing earth, sea and sky, to define it in terms of that space and to eliminate certain inconsistencies resulting from the failure to integrate territorial waters and the airspace above them into the customs territory of the Community, to specify the customs system applicable to national territorial waters and to the airspace above such waters, to bring into line the system already applied to the continental shelf and to the free zones and to consider the implications of such an enlargement of the area of the Community to embrace sea and airspace for the definition of value for customs purposes.

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II. THE INCLUSION OF THE TERRITORIAL WATERS OF THE MEMBER STATES IN THE CUSTOMS TERRITORY OF THE COMMUNITY

14. There is therefore a natural tendency to ask whether extending the initial territory to all the territorial waters of all the Member States deliberately left out of the scheme of Regulation (EEC) No. 1496/68, would involve simple substitution or on the other hand innovation or creation.

15. If the first part of this question is to be answered in the affirmative, these waters must be included in the national customs territory of all the Member States without exception.

16. This is the case with France as may be shown by reference to Article 1 of the Customs Code (Code des Douanes), which states that:

> 'The territories and territorial waters of mainland France, Corsica, the French inshore islands and the overseas departments, Martinique and Réunion, Guadeloupe and Guyane ..... shall be included in the customs territory'.

but it is not clear whether this is also the case for the other Member States.

17. If this is not true of them all, it explains why Article 4 has not so far been repealed since work on harmonization that was in progress but not yet completed at the time:

> 'did not make it possible to define precisely (in these fields) their relationship with the customs territory of the Community'.

18. Since then, the explanatory memorandum goes on to state, the situation has become clearer and the Commission which has already had occasion to express its interpretation states that in its view:

> 'a Member State's territorial waters are an integral part of its territory and consequently of the customs territory of the Community'.

This being so, the Commission in its explanatory statement goes on to say that for the sake of clarity it is advisable to eliminate Article 4 of Regulation No. 1496/68.

19. In the absence of precise information, it seems clear that the limited scope of this regulation as regards the territorial waters of the Member States should be laid at the door of international law which remains uncertain as to the limit of such waters.

This in our view is proven by the many conflicts (sometimes posing a threat to peace in general) that arise in this connection throughout the world.

20. Another argument which may also account for the degree of circumspection on this question in 1968 is that the national sovereignty of a coastal state over its territorial waters is subject to important exceptions such as the duty to allow the free movement or passage of commercial vessels irrespective of their nationality.

21. There is also the fact that even within the Community the Member States find difficulty in agreeing on quotas for catches of fish in Community waters, not to mention the snail's pace at which the discussions on 'blue Europe' or the Community fisheries policy are advancing.

22. For all these reasons and in view of the fact that the Commisssion does not mention any major practical difficulty as arising out of the present situation, one might be tempted to think that even more than 20 years after the entry into force of the Treaty of Rome and over six years after the implementation of Regulation (EEC) No. 1496/68, the proposal to amend that regulation might be somewhat premature, were it not for the Commission's concern to maintain progress towards customs unification.

23. Obviously we cannot blame the Commission for that and we are sympathetic to the argument developed by the Commission in the second paragraph of page 3 of the explanatory memorandum to the effect that the omission in the rules which it proposes to make good:

> 'suggests that the Member States are justified in applying different customs rules in this case not only varying from one another but also in relation to those applicable in the land customs territory of the Community'.

This view is entirely in conformity with the spirit and the letter of the customs union even though it may to some appear premature given the present state of the matter.

24. Therefore if one takes the view that even in this field of customs union the duty of those who govern is to plan ahead, the Commission's proposed amendment to Regulation (EEC) No. 1496/68 would, despite the reservations expressed, appear acceptable.

25. Its suitability may be seen in the fact that it does not rule out the possibility that the area covered by the territorial waters as an extension of the land territory of the Member State (where at present the Member States can do as they like) may in the near future become the site of various forms of production in addition to the products already extracted from its waters, its soil and its subsoil, whose simultaneously Community and national origin as far as we are aware poses no problem.

The territorial waters of a Member State are an integral part of its territory but since Article 4 of Regulation (EEC) No. 1496/68 excludes them from the Community arrangements, there is nothing to prevent the Member States from applying to them provisions forming exceptions to common systems of law whether Community or national.

26. This is the reason for the Commission's proposal to avoid possible distortions by including territorial waters in the Community's customs territory as defined in Article 1 of the new regulation. This would result in the uniform application to territorial waters - subject to special provisions in other texts - of the common system of customs rules.

27. It will still be necessary to iron out the difficulties that have arisen during discussions mainly as a result of the lack of harmonization with regard to the extent of these maritime zones[1] and because of the existence of certain national rules establishing special customs arrangements in favour of operations carried out in those zones. This is why at the last meeting of the working party on economic questions held in January, the chairman asked the various delegations to notify the Commission of the regulations presently in force and of derogations from national or Community customs law. The Commission, aware that the extent of territorial waters is a question of national sovereignty, does not intend itself to resolve this question.

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[1] Extent (in sea miles) of the territorial sea of the Member States:

Germany	3	Ireland	12
Belgium	3	Italy	12
Denmark	3	UK	3
France	12	Netherlands	3
Greece	6	Monaco	12

28. Nevertheless, although it has been twice examined by national experts, and even before it was submitted to the Council and the European Parliament the Commission's text was and still is the subject of serious reservations from certain Member States (Netherlands, Germany, United Kingdom, Italy).

29. They consider that there is no need for a new regulation as Regulation No. 1496/68 is 'satisfactory' and other Community provisions in the process of being drafted (specially in relation to ships' stores) will enable questions posed by the non-inclusion of territorial waters in the Community's customs territory to be resolved.

30. Account should also be taken of the fact that as the proposal for a regulation is based on Article 235 of the Treaty of Rome, the Council must adopt it unanimously after consulting the European Parliament.

This is a further reason for us forcefully to defend the arguments which bring us to support the view of the Commission. Nevertheless we remain convinced that enlarging the Community's customs territory as far as possible is not the only way to combat distortion in the treatment of goods, deflection of trade and abuses or fraud plain and simple (large scale trafficking in drugs or works of art).

But it is probably necessary to begin by introducing on a mandatory basis the necessary rules and to perfect those already in existence in the light of experience.

31. If we wish to be sincere, objective and realistic we must recognise that these rules will above all need to be applied uniformly thoughout the territory of the Community in the Community spirit in which they were conceived . Unfortunately, it would appear that this is not always the case from the sometimes bitter complaints and criticisms heaped on us by our electors of which epithets such as 'European colander' or 'European milk cow' are not the worst.

III. THE INCLUSION OF THE AIR SPACE OF THE MEMBER STATES IN THE CUSTOMS TERRITORY OF THE COMMUNITY

32. The French customs code's definition of the national customs territory makes no mention of the airspace above that territory and the same is probably true in all the other Member States of the Community.

33. On this particularly important second point the Commission's proposal therefore seeks to be innovative and creative in that it goes far beyond the provisions of Article 24 of GATT referred to above which speak only of:

> 'the substitution of a single customs territory for all the Member States of the customs union in the place of the national customs territories existing in those Member States'.

34. It is however conceded that the extension contemplated is not contrary to the spirit at least of the GATT agreement since all the other requirements which it implies would undoubtedly be met.

35. For all that it would be advisable to assess all the consequences and to see what new needs the proposed reform really meets.

Hitherto the national laws have dealt without difficulty with the omission which the Commission now seeks to make good. When the question arose of defining the rules for determining the percentage of air transport costs to be incorporated in the value for customs purposes on the entry of imported products into the Community's customs territory (Regulation (EEC) No. 1033/77 of 23 May 1977), the Commission was in no way concerned as to whether or not the airspace of the Member States (which space) should be included in the customs territory of the Community.

36. However, in order to appreciate and assess the consequences with any precision we must realize that the necessary documentation is generally lacking.

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37. The Chicago Convention on International Civil Aviation which was signed on 7.12.1944, replacing as between the contracting states the Convention of Paris (13.10.1919) on rules governing air traffic and the Convention of Havana (20.2.1928) on commercial aviation, is virtually the only document on this subject. Articles 1 and 2 provide that:

'.....every State has complete and exclusive sovereignty over the airspace above its territory - territory being deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State'.

38. In other words, the airspace 'belonging' to a state encompasses all the atmosphere vertically above its land and sea frontiers as extended by its territorial waters (law of 1971 on territorial waters).

39. Moreover, airspace and the use and crossing thereof are the subject of a great number of rules and national and international provisions with absolute prohibition in the case of certain areas or often closely defined classified or limited authorizations.

40. How far therefore can all these existing rules, largely inspired by concern for territorial security and defence, be reconciled with the customs obligations and duties which must result from the incorporation of airspace into the customs territory of the Community?

As matters stand at present it is difficult to say.

41. Nevertheless, we must realize that the reform conceived by the Commission would, if adopted, result in the paradox that in relation to a given Member State the Community's customs territory would be larger than that State's customs territory in the event of its remaining under national control. Indeed it would include the airspace of the territory of a state which its own law has never included hitherto!

42. However, the Commission has proposed by a declaration in the form of a report to the Council to define airspace as being that space in which the Member State exercises its sovereignty.

43. The areas in which the notion of airspace comes into play will essentially be the assessment of value for customs purposes and the rules applicable to aircraft stores.

In this connection the texts referred to above on stores, which are still under discussion in Brussels, are likely to resolve the particular problems that may arise.

44. However, the French delegation asked for consideration to be given to space 'in general terms' as being territory from which goods may be exported. Launch vehicles and satellites might benefit from the advantages associated with exports (exemption from duties and taxes and reinbursement of VAT).

The fact that the Commission saw no legal objection to such an exemption from duties and taxes for vehicles launched into space clearly shows the limits of its present ambitions in this connection.

45. The purpose of innovation is not to limit oneself in the present. If the idea of space factories, to take only one example, is no longer science fiction it is reasonable to concede the need for a serious (legal) study of the problem with a view to deciding what customs arrangements are to be applied to them and to settle the origin of their future production.

46. However that may be, as matters stand at present, it seems difficult to leave airspace aside for the moment even though it might seem a less pressing and obvious subject than the question of territorial waters.

47. The new regulation proposed by the Commission has the merit of being based on the old text as incompletely amended on numerous occasions to take account of the successive enlargements of the Community and of its real needs. This being so, we cannot recommend an attempt to hold up its progress.

We do however feel obliged to draw attention to certain imperfections in the hope that the subject of airspace will be dealt with in a more refined, detailed comprehensive and reasined manner before being submitted to the European Parliament

IV. THE NON-INCLUSION OF THE CONTINENTAL SHELF

48. After science fiction that has become reality we plunge into the depths of Atlantis or actually, for our purposes, to the continental shelf.

This geological concept has been current for about a century, the term continental shelf having been used for the first time in 1887 by H.R. MILL, and the legal concept was born after the Second World War as a by-product of the quest for oil under the sea.

The concept was further clarified in paragraph IV of the Geneva Convention of 28 April 1958 which entered into force on 10 June 1964.

49. Subsequently however, a number of states have in addition established their own laws regulating the search for and exploitation of mineral resources under the sea.

As a result, all the Member States of the European Economic Community (with the obvious exception of Luxembourg) have very different offshore laws: complete laws (Netherlands and Italy); broad principles (France and Belgium); provisional texts (Germany has signed but not ratified the Geneva Convention).

50. However, despite the fact that the International Law Commission drew the attention of governments to the question of the continental shelf, the Treaty of Rome makes no mention of it, which illustrates the complexity of the matters raised by this new problem.

Were there fears at that time of fettering the liberty of the Member States by limiting their sovereign rights in that connection? The fact remains that it was not until September 1970 after extensive delaying tactics (including the odd argument that the question was settled ipso facto by the Treaty of Rome) that an official answer was given affirming its applicability.

51. In reality, as has been pointed out by Mr P. MATHIJSEN, the exclusion of the continental shelf from the scope of application of the Treaty amounts to recognizing the existence beyond our shores of a separate economic zone not subject to the provisions of the Treaty and which should therefore be considered as a 'third country' for the purposes of the Treaty of Rome.

Further as Mr Alain Wenger wrote in 1971[1], 'if important finds were made on the shelf of a Member State, such a resource might make an essential contribution to the formulation of a genuine common energy policy.'

[1] Revue du Marché Commun No. 143

This demonstrates the importance of ascertaining whether the rules of the Treaty of Rome in fact apply to the continental shelf.

52. However, despite the obvious importance of this matter which was the subject of continual controversy between 1967 and 1970 over:

- fiscal arrangements on the introduction of VAT
- freedom of establishment and the freedom to provide services
- geographical scope
- aid to the oil industry etc....

Council Regulation 1496 of 27 July 1968 states in Article 4 that:

'this Regulation shall not affect the customs system applicable to the continental shelf'.

53. We now find that the new proposal for a regulation defining the Community's customs territory before us no longer contains any reference to the continental shelf of the Member States.

Article 4(2) of Council Regulation (EEC) No. 802/68 of 27 June 1968 on the common definition of the notion of origin of goods provides that goods shall be considered as 'originating' in a Member State if they are:

'products taken from the sea-bed or beneath the sea-bed outside territorial waters if that country has, for the purposes of exploitation, exclusive rights' as conferred on a sovereign state by the 1958 Geneva Convention on the continental shelf. It follows that all products extracted from the sea-bed or beneath the sea-bed of the continental shelf adjacent to a Member State are Community products.

54. As the customs system for the continental shelf is relevant only as regards products which may be extracted from it, it therefore becomes subsumed in the Community rules on origin and requires no further discussion in the (EEC) regulation defining the customs territory of the Community since - it is said in order to underline the point:

'there is no justification for integrating the continental shelf adjacent to the Member States into the customs territory of the Community'.

Thus as the customs system applicable to products taken from the continental shelf is settled (as is judiciously recalled) as far as customs union is concerned, that is what counts and it is advisable to call a halt there for the moment.

55. However that may be, the continental shelf remains a highly contentious subject despite the international Geneva Convention which purports to govern it and, as we know, any opportunity is taken to call it into question by reason of the understandable envy which it arouses.

Is there not a divergence of the opinions and degrees of concern of the Member States on this subject?

There is also some uncertainty as to the legal position.

One of the articles of the 1975 Luxembourg Convention on the Community patent specifies that for the purposes of the Convention the continental shelf shall be considered as being comprised in the territory of the Member States.

56. In a speech at the Poitiers colloquy Mr Delatte said:

> 'France considers that the Community rules should apply to the continental shelf, and has said so officially on several occasions at coordination meetings for the Conferences on the Law of the Sea. France put forward this point of view for example when there was a question of ascertaining whether the Nine as a whole would adopt a favourable attitude towards extending the continental shelf .... the position of France has always been quite clear. In our view the Community rules apply to the continental shelf and we have adapted our regulations on drilling platforms accordingly. We had accorded preferential rights to the French but we have now withdrawn those regulations in order to bring the matter within the compass of the Community.'

57. In 1974 a wide-ranging debate was held within the Community in the course of which Lord O'HAGAN posed a question in relation to the inconsistent and fluctuating attitude of the Community institutions. The Commission trotted out the conventional arguments and the Council found that after six months it was unable to reply.

58. On 17 March 1980 Mr zu SAYN-WITTGENSTEIN-BERLEBURG and others tabled Written Question No. 94/80 on the position of the Community on negotiations in connection with the third UN Conference on the Law of the Sea in the following terms[1] :

> '(paragraph 1) : What areas will each Member State gain from the extension of coastal waters, the establishment of an economic zone and the current plans for an extension of the Continental Shelf?'

[1] OJ No. C 140, 10.6.1980, p.27

The Commission's reply was :

'Of the Community acts which could have a particular bearing on the continental shelf, the Commission would like to draw attention to Council Regulation (EEC) No. 1496/68[1] of 27 September 1968 on the definition of the customs territory of the Community which defers to a subsequent act the definition of the customs system applicable to the continental shelf or that applicable to waters and foreshores situated between the coast or shore and the limit of territorial waters.'

59. It is well settled that the physical extent of the Community coincides with the territorial scope of Community law and that of the law of the Member States.

Article 227(1) of the Treaty of Rome should therefore logically be read to mean that the Treaty and secondary legislation apply not only to the territory of the Member States with its air, maritime, territorial and subsoil extensions but in addition wherever the Member States according to international law exercise certain 'sovereign rights' even if limited.

60. Turning to the continental shelf, it will be recalled that under Article 2 of the Geneva Convention of 29 April 1958:

> 'The coastal State exercises over the continental shelf "sovereign rights" for the purpose of exploring it and exploiting its natural resources'.

This definition is perfectly clear but quite uncertain insofar as the definition then adopted refers, beyond the depth of 200 metres, to the possibilities of technical exploitation which are continually developing at a fantastic rate.

61. Does not the official composite negotiating text under discussion at the Third Conference on the Law of the Sea now refer to the outer edge of the continental shelf as the maximum limit? This implies very great depths - which says enough about how far we are progressing with certainty.

62. In relation to Greece as a new Member of the Community, we should not lose sight of the fact that the Greek islands, like the Balearic Islands, Corsica, Sardinia, and Sicily, are indivisible parts of the mainland territories and on the basis of sovereignty can claim a territorial sea of 12 miles, an economic zone of 200 miles and a continental shelf.

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[1] OJ No. L 238, 28.9.1968

63. To the extent however that the Mediterranean islands cannot lay claim to such areas without infringing the rights of other coastal states, only the method of equidistance, which they therefore elevate to the level of an objective general principle, will enable a decision to be taken between the coastal claimants.

64. A different view however considers:

> 'that the future Convention must outline only the principles applicable to all but the methods by which necessary adaptations of those principles may be made'.

> 'The States therefore reject any unilateral delimitation on the basis of equidistance.' (Madjid Benchikh)

65. However, that which is true for the Mediterranean is also true for the Aegean Sea where the Greek islands should have a continental shelf subject to the method of equidistance, although this is contested by Turkey.

For the reasons set out above it seems to us that the continental shelf should figure in the regulation defining the Community's customs territory on the same basis as the land-sea-sky frontiers. What would be the verdict on a statue without a base? Quite simply that it would not stand up.

IVa. THE COROLLARY QUESTION OF THE FREE ZONES

66. The question of the rules applicable to the free zones was resolved by Council Directive No. 69/75 of 4 March 1969 defining the free zones as territorial enclaves which may be established by the competent authorities of the Member States in order for goods there located to be treated as not being within the customs territory of the Community for the purpose of customs duties and other measures. The new proposal for a regulation therefore deletes the provisions of Regulation No. 1496/68 concerning the free zones.

67. However, the Commission has proposed to the working party on economic questions at the request of the French delegation, that Article 4 of the draft regulation should contain a statement to the effect that the free zones of Gex and Haute Savoie[1] shall be subject to special arrangements approved by decision of the International Court of Justice of 7 June 1932 and arbitral award of 1 December 1933, and we would request that this proposal should not be passed over.

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1 Originating in the Treaties of Paris (20.11.1815) and Turin (16.3.1816).

V. GENERAL CONCLUSION

68. Despite a word of warning to the Committee on External Economic Relations which we feel sure will provide material for discussions, we favour the inclusion of the territorial waters of all the Member States without exception in the customs territory of the Community.

What finally secured our support for the draft regulation on this question was our concern, shared with the Commission, not to be caught napping by situations which might occur in these waters as a result of technical progress or in relation to the treatment of goods contrary to the customs rules of the Community.

69. As regards the extension of the Community's customs territory to include airspace, we have not yet reached a final conclusion.

On the one hand, airspace does not generally form part of the national customs territory of the Member States and it is ill-defined in the draft regulation.

On the other hand, it is already subject to a whole set of rules on air traffic, air safety and defence and we are not convinced that these rules would be compatible with the customs obligations that would flow from the solution proposed.

Lastly and above all it seems to us that there are problems here and now (not just in the future) concerning the treatment and origin of goods in airspace.

However that may be, since the customs territory is henceforth to form a coherent whole, we cannot object to its inclusion.

70. Finally on the question of the continental shelf, while appreciating the Commission's view that it should remain outside the Community's customs territory on the ground that Community rules already regulate to the satisfaction of the Member States the problem of the origin of products extracted therefrom (the only practical problem of immediate interest), it seems essential to us in order to provide a safeguard for the future for it to be included.