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**ORGANISATION DE L'UNITE
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THE UTILIZATION OF THE MARINE RESOURCES
OF AFRICA'S EXCLUSIVE ECONOMIC ZONE



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THE UTILIZATION OF THE MARINE RESOURCES OF AFRICA'S EXCLUSIVE ECONOMIC ZONE

The Oceans, which cover over two-thirds of our planet's surface, are not only a rich source of both hydrocarbons and other minerals, but they are a rich source of food resources. It is estimated that the fisheries resources, if properly managed and conserved, can provide an unexhaustive supply of at least a third of the world's protein requirements. Yet Africa, which is bathed by Atlantic Ocean, Indian Ocean, the Red Sea and the Mediterranean Sea, obtains only an infinitesimal harvest of these resources, which for centuries have benefitted long-distant fishing interests from foreign countries.

At a time when our Continent is facing acute economic crisis including widespread famine and malnutrition, it is incumbent on us to utilize all our resources, including our marine resources to save our peoples. And fortunately, through the concerted efforts of representatives of African States and the Organization of African Unity, in co-operation with other representatives of third-world countries, a favourable regime of the law of the sea has been created, which for once provides a fair and equitable basis on which the Continent can benefit from its marine resources. We refer here to the adoption of the United Nations Convention on the Law of the Sea, which was signed by 117 States in Montego Bay, Jamaica on December 10, 1982.

THE LEGAL NATURE OF THE EXCLUSIVE ECONOMIC ZONE

While quite a number of the provisions of the 1982 Convention represent customary international law as codified in the 1958 Law of the Sea Convention, prepared by the First United Nations Conference on the Law of the Sea, other provisions in the Convention represent novel innovations, mainly introduced by developing States, to ensure that their interests, which for centuries have simply been ignored, are protected and safeguarded. Thus the provisions on the territorial sea, high seas, contiguous zones could be said to constitute the codification of existing customary international law.² Other provisions represent far-reaching radical departure from the previous asserted law and constitute a genuine attempt at accommodating competing interests and thus ensure fair and equitable accommodation of uses of the oceans. Such include the provisions on transit passage through international Straits and regimes of archipelagic States. But the most far-reaching changes to the former legal regime are represented in the Exclusive Economic Zone Concept³ and the regime for the exploration and exploitation of the mineral resources in the area beyond national jurisdiction, which has been declared to constitute the Common Heritage of Mankind⁴ to be exploited under an International Authority established by the Convention.

1. See United Nations Publication, Sales No. E.83, V.5 of 1983.
2. J.K. Gamble & M. Frankowska - San Diego Law Review, Vol. 21, No. 3, pp.491-540.
3. See part V of the Convention: Articles 55 - 75.
4. See Part XI of the Convention: Articles 133-191 and Annex III and IV providing for Basic Conditions of Prospecting, Exploration and Exploitation and the Statute of the Enterprise, respectively.

The Convention will come into force when it is ratified by 60 States. As of now, the Convention has been ratified by Fiji, Belize, Egypt, Ghana, the Bahamas, Jamaica, Mexico, Zambia, UN Council for Namibia and Philippines, but it has already been signed by at least 129 States.⁵ The only dark cloud is the treacherous behaviour of some Western Countries, who after nine years of patient negotiations at the Conference during which the developing countries made numerous concessions to accommodate their interests particularly on sea-bed exploration and exploitation issues, refused to sign the Convention. These States led by the United States, and including Britain, Italy, Belgium, Luxemburg and West Germany, would only sign the Convention if the developing countries were prepared to make far-reaching concessions on the exploitation of the deep sea-bed resources which would have amounted to the total compromise of the common heritage concept. This the African representatives refused to do.

Pending the coming into force of the Conference after its ratification by the requisite number of States, the Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea was established by Resolution I of the Final Act of the Conference.⁶ This has already commenced its work under the very able Chairmanship of Mr. J.S. Warioba, the Attorney-General and Minister of Justice of the Republic of Tanzania, and the OAU and its Member States should give him all the support he requires, particularly in the face of obstructionist tactics of those Western States who do not want the Convention to see the light of day with respect to Sea-bed Authority. In this connection all the OAU Member States should hasten the ratification process in their respective jurisdictions so that the Convention shall soon come into force.

With respect to the exploration and exploitation of the resources of the Exclusive Economic Zone, particularly fisheries, nothing now stands in the way of Africa to prevent immediate concerted efforts to realize its potential to the full. Though the Convention is still to come into force, it is now generally recognized that its provisions dealing with Exclusive Economic Zone have now become part of customary international law.⁷ As some scholars have put it:

"..... As recently as five years ago, international legal scholars may have debated whether the concept of the EEZ was within the realm of customary law. That issue is much closer to resolution with the proclamation of the United States 200 miles EEZ.⁸"

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5. See J.E. Polhamus - Recent Development of the Law of the Sea, San Diego Law Review, Vol. 21, No.3, p.769, 1984.
 6. See Annex 1 of the United Nations publication, op. cit., p.175.
 7. One learned writer insists that the UN Law of the Sea Treaty has codified the whole customary law of the sea - See MacRae, Customary International Law and the United Nations Law of the Sea Treaty, 13 Cal. W. Internat' L.J. 181 (1983).
 8. See J.K. Gamble & M. Frankowska, op. cit., note 2 at p. 501.

To support this view, it should be pointed out that at the moment over 59 countries have already proclaimed Exclusive Economic Zones off their territory while 93 others claim 200 miles Fishery Zones.⁹ The following fifteen African coastal States are among those who have claimed Exclusive Economic Zone:-- Cameroon, Cape Verde, Djibouti, Guinea, Guinea Bissau, Ivory Coast, Kenya, Mauritania, Mauritius, Morocco, Mozambique, Nigeria, Sao Tomé and Príncipe, Seychelles and Togo.

This widespread State practice goes to prove, if any proof were needed, that the Exclusive Economic Zone as provided for in the 1982 UN Law of the Sea Convention has become part of customary international law. However, as we shall see, unlike Continental shelf which is ipso facto and ab initio part of the coastal State, constituting the natural prolongation of its land territory,¹⁰ Exclusive Economic Zone by its nature has to claim for the coastal State to exercise any rights therein. Whether or not the coastal State exercises its rights to explore and exploit the natural resources in the Continental shelf, its rights are:

"..... exclusive in the sense that if the coastal State does not explore or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State."¹¹

This is as it should be, for the natural resources of the Continental shelf are static in the case of minerals, or sedentary in the case of living resources which must be either immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the sub-soil.¹² The resources of the Exclusive Economic Zone being in the water column are highly mobile and cannot be confined to one jurisdictional zone indefinitely. Even more important, they are mostly living resources, fishes, and therefore perishable, and thus of no use to a State which either has no capacity or shows no indication either to utilize them itself or permit others to do so. As such, such claim, must be asserted before it can be respected.

CONTENT OF THE EXCLUSIVE ECONOMIC ZONE

The Exclusive Economic Zone is a resources zone for the coastal State beyond its territorial sea, to which the coastal State is assigned rights and responsibilities with respect to economic resources exploration and exploitation activities. However, the international community continues to enjoy specific rights with respect to navigation and communication, including the right to exploit surplus living resources which the coastal State is not in a position to harvest. According to the Convention, these rights, jurisdiction and duties are defined as follows:¹³

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9. See Limits in the Sea, National Claims to Maritime Jurisdiction, compiled by Smith, Office of the Geographer, Dept. of State, Washington, March 1, 1982.
 10. See Article 76 (1) on the Definition of the Continental Shelf in the Law of the Sea Convention.
 11. See Article 77 (2) of the Law of the Sea Convention.
 12. See Article 77 (2) of the Law of the Sea Convention.
 13. See Article 56 of the Convention.

1. In the Exclusive Economic Zone, the coastal State has:
 - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters subjacent to the sea-bed, and of the sea-bed and subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and wind;
 - (b) jurisdiction as provided in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
 - (c) other rights and duties provided for in this Convention.
2. In exercising its rights and performing its duties under this Convention, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
3. The rights set out in this Article with regard to the sea-bed and subsoil shall be exercised in accordance with Part IV (dealing with Continental Shelf).

What this provision clearly indicates is that the Exclusive Economic Zone, is a zone with a complex fabric of interaction of rights and duties and obligations not only of the coastal States but also of all other States in the international community, and which has implications beyond the 200 miles maximum limit of the zone. Nevertheless, the zone is neither territorial sea, nor high seas minus the rights to explore and exploit the economic resources. It is a zone sui generis. As Ambassador Andres Aguilar, the Chairman of the Committee II of the Conference charged with the formulation of the concept, put it:¹⁴

"..... As has often been pointed out, the matter should not be addressed in terms of "residual rights". In simple terms, the rights as to resources belong to the coastal State and, in so far as such rights are not infringed, all other States enjoy the freedoms of navigation and communication."

As one author has put it, the result of the negotiations on the Exclusive Economic Zone is:

14. See Revised Single Negotiating Text, Part II, V, Third United Nations Conference on the Law of the Sea: Official Records; UN Doc.A/CONF/62/WP.2/Rev.1/Part II (1976).

"..... an intricate web of relations between coastal States, other States and international institutions created by the Convention or recognized by the Convention as having competence over the subject matter."¹⁵

These interlocking relations are provided for in the Convention, not only in Part V (Exclusive Economic Zone) but also in Part VII High Seas, Part XII (Protection of Marine Environment), Part XIII (Marine Scientific Research) and Part XV (Settlement of Disputes).

It is therefore quite evident and indisputable, that the mere proclamation or declaration or claim of an Exclusive Economic Zone is quite inadequate to provide a machinery for effective management of such a zone. Detailed legislation dealing with all the related aspects has to be enacted before effective utilization of the zone can be accomplished.

As will be shown below, it is highly desirable, if not indispensable, that harmonious national legislations are enacted by African coastal States, if the full potential of the Exclusive Economic Zone is to be realized for the benefit of the African peoples. In this respect, the OAU should, and must, play an energetic and effective role.

MANAGEMENT OF AFRICAN EXCLUSIVE ECONOMIC ZONES

We shall concentrate here mainly with the management of fishery resources of the Exclusive Economic Zones which, as opposed to the largely static resources of the Continental shelf, mostly on the surface and in the sea-bed of the Zone, have characteristics which require concerted bilateral or regional efforts. It has been estimated that the Exclusive Economic Zone, which encompasses 35% of the surface of the Oceans, contains more than 95% of the living resources of the oceans under commercial exploitation.¹⁶ In fact, except for tuna and whales and anadromous species such as the Salmon, most of the other species under commercial exploitation are to be found within the Exclusive Economic Zone.

The fishery stocks in African Exclusive Economic Zones can be broadly classified in two categories:

- 1) Fish stocks that migrate along the coastlines and are found within the Exclusive Economic Zones of two or more States. You hardly find a species which is located entirely within one State's Exclusive Economic Zone. It is therefore necessary to agree bilaterally or through regional or sub-regional organizations on necessary measures to co-ordinate and ensure the development of the stocks as required in Article 63, Paragraph 1, of the Convention;

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15. H.B. Robertson, Navigation in the Exclusive Economic Zone - 24 Virginia Journal of International Law, Nov. 1984
 16. J.E. Carroz, Assistant Director-General (Fisheries Department), FAO: Institutional Aspects of Fishery Management under the New Regime of the Oceans - San Diego Law Review, Vol.21, No.3, p.513.

- 2) Highly migratory species and marine mammals such as tuna and whales. With respect to these, the coastal States and States fishing for such species are required to co-operate to ensure the conservation and optimum utilization of the species throughout the region - both within the Exclusive Economic Zone and the high-seas beyond. Again here African countries require a unified approach if they are to obtain maximum returns from the long-distant fishing countries exploiting these resources within their Exclusive Economic Zones.

Against this high mobility of fishery resources, one must consider the great diversity of the extent of African coastlines ranging from over a thousand kilometres to less than forty kilometres.¹⁷ This makes it imperative to have uniform regulations in the Exclusive Economic Zones if meaningful regimes for both national and foreign fishermen are to be established, given the characteristics of fisheries outlined above.

The need for co-operation to pool resources for exploitation and management of fishery resources has been recognized in various fora in Africa. Regional co-operation to pool resources for exploitation of fishery resources was one of the functions of the now, unfortunately defunct East African Community.¹⁸ This need has also been recognized in the agreement reached on policy of regional co-operation on fisheries at the first Southern African Development and Co-ordination Conference (SADCO 1) in Arusha, in July 1979 where it was agreed:

"..... Fishing requires joint action to create uniform economic zones, uniform regulations of foreign fleets and the establishment of a valid Convention covering Indian and Atlantic waters from equator south. Co-operation (especially if land-locked States want to participate), in joint research institutions, quota allocation, crew training, distribution systems and perhaps catching and processing firms are potentially significant and merit case-by-case study."¹⁹

There have also been some efforts towards regional co-operation efforts between Gambia, Guinea, Guinea Bissau and Senegal.²⁰

Mention should also be made of the Fishery Committee for Eastern Central Atlantic which was established by the Director-General of the FAO on September 19, 1967 under Article VI - 2 of FAO Constitution to manage marine fisheries from Morocco to Zaire.²¹ This Committee includes twenty coastal States - Benin,

17. See Table I annexed below.

18. See E. E. Mtango & Weiss: Exclusive Economic Zone and Tanzania - Consideration of a Developing Country - Ocean Development and International Law, Vol. 12, No. 1 (1984), pp. 1-54.

19. See Amon J. Hsekela: Towards Economic Liberation, Rex Rollings, 1981.

20. FAO Legislative Study, Series No. 21.

21. See J.E. Carroz, op. cit., note 16.

Cameroon, Cape Verde, Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mauritania, Morocco, Nigeria, Sao Tomé and Príncipe, Senegal, Sierra Leone, Togo and Zaire. It also includes ten long-distant fishing States involved in the area, i.e. Cuba, France, Greece, Japan, South Korea, Norway, Poland, Romania, Spain and United States. A "Sub-Committee on Management of Resources within the Limits of National Jurisdiction" composed only of the coastal States was established in 1972.²² This Sub-Committee may not only recommend appropriate management measures within national jurisdiction but may also advise on co-ordination of such measures with those in effect outside the national limits.

In this context it should also be mentioned that the West African Economic Community (ECOWAS) has for some time now been concerned with the establishment of a joint fishing and fish marketing company and the creation of a fishery science Institute. But ECOWAS is not yet involved with joint management of fisheries in the Exclusive Economic Zones of the region.

THE WAY AHEAD

From the foregoing it seems that the OAU has a vital role to play in the realization of the potential benefit from the exploitation of the Exclusive Economic Zone. This is not only justified by the preamble of the OAU Charter itself, which calls for the need to harness African resources to advance the welfare of the people, but also by the OAU Declaration²³ on the issues concerned with the law of the sea, which among other things calls for regional co-operation.

In this connection, the right of land-locked and geographically disadvantaged States in Africa with respect to fisheries, which were recognized in the above OAU Declaration, could be better catered for than they have been in the relevant provisions of the Law of the Sea Convention which only entitles them, along with other States, to "..... participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zone of coastal State of the same region or sub-region....."²⁴ These provisions offer a very restricted right to these countries, which in effect give them only illusory rights. However, there is a proviso which should be seriously considered in any future consultations within the OAU to give effect to the above-mentioned OAU Declaration on the matter. This states:-

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- 22. See Regional and Sub-regional Co-operation in Fisheries, 1-3 FAO Doc. CECAF/VII/61/9 of March 1981; 2-3 FAO Doc. CECAF/VIII/32/2 of July 1982.
 - 23. OAU Declaration A/CONF.62/33 - OAU Doc. CM/Res.289 (XIX).
 - 24. See Articles 69 and 70 of the Convention.

"The above provisions are without prejudice to arrangements agreed upon in sub-regions or regions, where coastal States may grant to land-locked States /geographically disadvantaged States/ of the same sub-region or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones."²⁵

What is now required is for the OAU to establish a multi-disciplinary Committee of Experts to formulate model legislation and regulations to be adopted by the African Coastal States in the implementation of their Exclusive Economic Zones. It is hoped that those States which have not yet done so will soon proclaim their Exclusive Economic Zones. Such a Committee should be open to all Member States including land-locked States. The urgency of completion of its work can hardly be over-emphasized in view of the need to make optimum use of our fishery resources.

The mandate of the Committee should be to formulate provisions, applicable in Africa or its regions or sub-regions, relating to the utilization of the living resources in the exclusive economic zone. These should, *inter-alia*, include the laws and regulations envisaged in Article 62 (4) of the Convention in relation to the following:

- (a) Licensing of fishermen, fishing vessels and equipment, including paying fees and other forms of remuneration which, in the case of a developing country, may consist of adequate compensation in the field of financing, equipment and technology relating to industry;
- (b) determining the species which may be caught, and fixing quota of catch whether in relation to particular stocks or groups of stocks or catch per vessel over a period;
- (c) regulating season and area of fishing, the type, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;
- (d) fixing the age and size of fish that may be caught;
- (e) specifying information required of fishing vessels, including catch efforts statistics and vessel position reports;
- (f) requiring, under the authorization and control of the coastal State, the conduct of specified research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;
- (g) the placement of observers or trainees on board such vessels by the coastal State;

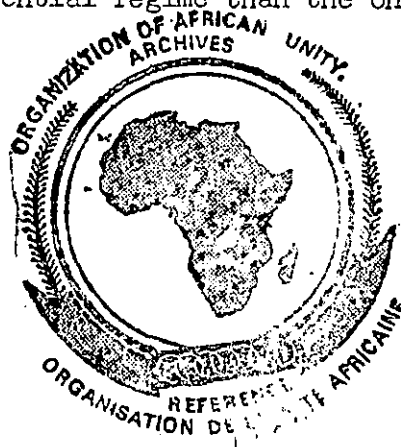
25. See Articles 69 and 70, Sections 5 and 6 respectively.

- (h) the landing of all or any part of the catch by such vessels in the ports of the coastal States;
- (i) terms and conditions relating to joint ventures or other co-operative arrangements;
- (j) the requirements of the training of personnel and transfer of fishery technology, including the enhancement of the coastal States' ability of undertaking fisheries research;
- (k) enforcement procedures."

In some of these fields, much can be gained from examining some of the Agreements entered into between developed and developing countries in Africa. Of these, mention could be made of the following:-

- Training of local fishermen - Guinea Bissau/USSR Agreement on Co-operation in the field of Fisheries - 11 April, 1975;
- Promotion of Financial and Technical Co-operation from long-distant fisheries interests [Art. 62 (4) (j)]
 - 1976 Agreement between Tunisia and Italy;
 - 1975 Agreement between Guinea Bissau and USSR;
 - 1977 Agreement between Morocco and Spain.
- Co-operation in Research [Art. 62 (4) (j)]
 - Art. III USSR/Sierra Leone Agreement on co-operation in the field of fisheries and research - 14 May, 1976.
- Joint Ventures [Article 62 (4) (i)] e.g. for catching, processing and marketing fishery products.
 - Senegal/Poland Convention concerning Marine Fisheries - 17 March, 1976.
- Surveillance and Enforcement
 - Tunisia/Italy Agreement which has requirement of prompt information.

Besides these provisions, the Committee of Experts should be entrusted with making provisions to enable land-locked and geographically disadvantaged States for a more liberal, equitable and preferential regime than the one contained in the 1982 Law of the Sea Convention.



Should the proposal to establish such a Committee of Experts be acceptable, the OAU Secretariat could be requested to prepare a working document on these issues. The Secretariat may, however, have to utilize the services of a Consultant to enable the work to be performed expeditiously. The working document would form the basic document for the Group of Experts, whose work would in turn be submitted to the Council of Ministers for approval and recommendation to Member States. In this exercise, the full co-operation of competent international organizations, particularly FAO, would be absolutely indispensable.

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