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Appendix VI

DRAFT AFRICAN MEMORANDUM ON TERRITORIAL SEA AND STRAITS

DRAFT AFRICAN MEMORANDUM
ON
TERRITORIAL SEA AND STRAITS.

Introduction:

If one often speaks of the failure of the Geneva Conferences of 1958 and 1960 on the Law of the Sea, it is mainly because those two Conferences did not succeed in reaching an agreement on the definition of a uniform limit to the breadth/the width of the Territorial Sea. The practice among States in this matter has subsequently varied, inasmuch as each State has considered itself enabled to fix the limit of its Territorial Sea unilaterally. As a result we have been witnessing a progressive extension of that limit which presently goes from 3 up to 200 nautical miles.

1. Principal Problems raised at the Seabed Committee:-

During the debate at the Committee on Territorial Sea and Straits numerous questions were raised and notably:

- the concept itself of the Territorial Sea, its regime, including the question of the uniformity or the plurality of regimes
- the protection of the interests and the security of coastal states, the right of innocent passage
- the question of the maximum breadth/width of the Territorial Sea and the criteria for defining such breadth.
- the definition of baselines, including archipelagoes.
- the concept and regime of zones of special jurisdiction and more specifically the exclusive economic zones and preferential zones,
- historical waters
- the question of Straits used for international navigation, innocent passage through such straits, interests of coastal states (security requirements, prevention of/against pollution risks and measures to be taken in order to fight pollution, etc.),

interests of international navigation. Equally stated were differences between straits, their relative importance for international navigation and the current regime of treaties on Straits, as well as the present regulations of Civil Aviation in relation with overflight of Straits.

11) Position of States and Groups of States:

I) Position of the Maritime Powers:

a) Territorial Sea: The Maritime Powers, Japan, U.S.S.R., U.S.A., Great Britain and their allies would rather choose a narrow territorial sea. According to those countries each state that fixes a very wide limit to its Territorial Sea necessarily infringes on the recognized freedom of navigation in the High Seas. Such a unilateral act is, in their opinion, contrary to the promotion of international trade, inasmuch as navigation at a great distance from coasts entails an increase in transportation expenditures or in freight charges with undoubted disadvantages for exporting as well as for importing countries, and the first victims of such an act would be the developing countries themselves.

Along this line of reasoning, they argue that if every State was to extend the width of its territorial sea up to the limit of 200 miles, that would amount to putting 40% of Ocean Space under national jurisdiction. The generous concept of Common Human Heritage applied to oceans would so lose all its significance, not to say anything about many land-locked countries which, in such a case, would find themselves put even more far away from the High Sea.

At the present time, there are about 109 states which have a limit to Territorial Sea ranging from 3 up to 12 miles. Among them 54 have a 12 miles limit, 46 of which are developing countries. Those States who claim a limit superior to 12 miles are, at the present time, no more

than 15. For all the reasons mentioned above the 12 miles limit appears to them to have the acceptance of the great majority of States. Consequently, those Maritime Powers - notably the United States - propose 12 miles to be a maximum limit.

b) Straits: The Maritime Powers and their allies consider that the eventual extension of the width of the Territorial Sea to 12 miles will have for a result the closing of about a hundred Straits to free navigation.

So that, according to them, all straits exceeding a width of 6 miles should be considered as international straits and, followingly, open to free navigation, for the application of the concept of the right of innocent passage in such straits could, in their opinion, entail an arbitrary decision from the part of the coastal state. It would be then, in their opinion, well advisable to have free passage guaranteed. And, as a matter of fact, draft articles in that sense have been already circulated in the Committee by certain Maritime Powers.

2) Position of other States

a) Territorial Sea

1) Within this group of States, the Latin American countries notably defend the concept of the plurality of regimes and are, in principle, opposed to the fixation of a uniform limit applicable to all countries. The criterion of delimitation should, in their view, take into account geographical, geological and security data proper to each State or region. On the other hand, the more the extent of the Territorial Sea is restricted, the more it would, as they say, open the way to the plunder of the fishery resources of these States by the Maritime Powers, not to say anything about the military and espionage activities which constitute a threat to the security and sovereignty of coastal States.

The extension of the Territorial sea beyond 12 miles permits them to contain the Maritime Powers which, because of their technological advance, potentially constitute a serious menace of competition in the exploitation of marine resources. In that way, developing coastal States reserve for themselves the exclusive right to exploit the resources of the Sea adjacent to their coast for the sole benefit of their nationals, and by a conservatory measure confound economical zone and territorial sea. Those are the reasons that justify the option for a Territorial Sea as wide as possible.

2) Landlocked countries, whether developing or developed, have nevertheless adopted a different position because of their special geographical situation. In effect, they are against the progressive extension of the width of the territorial sea which would deprive them of the right to exploit the fishery resources of a great part of the Sea. For those reasons, they consider that, in the case the transit country opts for a very extensive limit to its territorial sea, they are entitled to claim, beside the right of free access to and from the sea, the possibility of benefiting of preferential rights in the exploration of the riches of the zone under the jurisdiction of the coastal State .

b) <u>Straits</u>

Countries like Spain, Malaysia and other strait States consider that the application of the concept of free transit through Straits would be tantamount to a violation of the territorial sovereignty of the coastal State. Because of the immense progress achieved in recent years in the field of science and technology, the seas are teeming with nuclear submarines and giant oil-tankers. If an accident happened to such vessels it is easy to imagine the disastrous consequences this would have on the marine environment in general and for the coastal State of the strait in particular. As for the freedom of overflight over straits, it would be regulated under the regime defined in the Chicago Convention

which requires the prior consent of the coastal State concerned. According to such countries, those who claim free transit through straits do so only out of merely military or strategical motivations, and not in the interest of international commercial navigation. For all the reasons mentioned above, those States ask for the maintaining of the concept of innocent passage which remains the only weapon in their possession in order to combat the abuses of maritime powers and to protect the security of their coast.

111. Position of the African States.

Many African States, in principle, make theirs the views defended by the Latin-Americans. With the exception of landlocked African countries divergences between points of view are not, on the other hand, very apparent among them.

1) Common Position:

a) Territorial Sea: Many African States have generally inherited the legislation of former colonial powers as far as the delimitation of their territorial sea is concerned. As a result, most of them had a width of territorial sea ranging from 3 to 6 miles. Since independence, however, the general tendency has been to extend that limit to 12 miles and, in some cases to exceed it. As for the concept of plurality of regimes, African States have a tendency to dismiss it and to opt rather for a uniform limit applicable to all States. Out of the 27 independent African States, 22 have a territorial limit of 12 miles. It seems then that the African position would rather incline towards the choice of a limit of 12 miles or more. The option for such a reasonable distance will, however, be pre-conditioned by the acceptance of economic zone under national jurisdiction beyond that limit.

b) Straits: African States recognize, in general, the importance of maintaining the concept of innocent passage as it is stated in the current International Law.

2) Territorial Sea.

Strictly speaking, there is no disagreement in this field. There are only 9 African States having a Territorial Sea limit exceeding 12 miles. Those are Cameroun (18 miles), Gabon (25 miles), Guinea (130 miles), Mauritania (30 miles), Nigeria (30 miles), Senegal (110 miles), Ghana (30 miles), Sierra Leone (200 miles) and Morocco (70 miles). The fact that some African States have extended their limit beyond 12 miles is not then a sign of disagreement, but essentially the logical consequence of the gap of International Law in the matter. The concept of economic exclusive zone could be presented as a solution which would eliminate any misunderstanding in this matter. 14 out of the 41 African States are landlocked. It is then natural for them to adopt a different position from that of the coastal African States, for all the reasons explained above in this memorandum. So that, when a list of questions and subjects for the next Conference of the Law of the Sea was established by the Committee, they did not deem it adequate to co-sponsor, as did their other African sister states, which list was nonetheless, defended by almost all developing countries. In view of the number of concessions that were granted to them afterwards, they rallied the views of the other African countries.

b) Straits

Because of the special geographical position of some African countries which exclusively depend for their access to the High Seas on their passage through Straits, it is suggested that the concept of innocent passage be defined in such a way as to make its various elements more precise by the inclusion, notably, of objective criteria. All that in order to clarify the notion of innocent passage in positive International law.

IV. Recommendations:

As far as the Territorial Sea is concerned, it is suggested to opt for a uniform territorial limit of 12 miles under the condition that the right to fix an exclusive economic zone beyond that limit be guaranteed to each coastal State. A special treatment will be granted to landlocked countries in the zone by facilitating for them, inter alia, the transit and the access to and from the sea.

As for Straits, it is suggested to make a distinction between straits according to their respective importance for international navigation. In these conditions, African States may give their support to any draft articles tending to the development and the inclusion of much more precise criteria for the determination of the concept of innocent passage through the straits. Whatever the case, they should oppose any proposition aiming at the establishment of a right of total freedom of passage which would be against the major interests of States adjacent to Straits in our Continent.

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STAFED COMMITTEE

AFRICAN GROUP

DRAFT REPORT ON EXCLUSIVE ECONOMIC ZONE CONCEPT

Introduction

The basic problem faced by the African countries is how to ensure that the living and non-living resources in the area adjacent to the coast of the continent is exploited for the primary benefit of the African peoples, and thus contribute to their welfare and economic development. As the law of the sea is at present, the existing notions are heavily weighted in favour of rich industrialized nations to the detriment of the developing countries.

It is the developed countries which, through the so-called principles of "freedom of the seas", do benefit almost exclusively in the enjoyment of the sea. As many developing countries, particularly African countries, did not participate in the formulation of the existprinciples on the law of the sea, it is necessary that they evolve dynamic new concepts to safeguard their interests. The Exclusive Economic Zone concept is such an attempt which, if adopted by the African Governments, will ensure that a just and lasting solution is arrived at to ensure permanent sove- -gnty of the African countries over the resources in the adjacent sea around the African Continent.

EXCLUSIVE ECONOMIC ZONE

Basically the purpose of the Exclusive Economic Zone concept is to safeguard the economic interests of the coastal states in the waters and seabed and its sub-soil, adjacent to their coasts, without unduly interfering with other and universally recognised uses of the sea by other states. Specifically it is proposed that each coastal State

would adopt a relatively narrow territorial sea, say of 12 nautical miles, provided that beyond that belt there will be a relatively broad Economic Zone over which it will have sovereign rights over both living and non-living resources to be found in the waters, in the seabed and sub-soil over which it will exercise exclusive jurisdiction. The exact limit of the Economic Zone should be the subject of international agreement, but may not, in any case, exceed 200 miles.

Nevertheless, ships and aircraft of all states shall continue to enjoy within the Economic Zone the traditional freedom of navigation and overflight, and the right to lay submarine cables and pipelines shall continue to be recognized without restrictions, other than those necessary for the exercise, by the coastal state, of its rights over the resources within the area. The coastal state shall however have the right to regulate the conduct of scientific research within its Economic Zone so as to safeguard against illegal and clandestine exploitation of the resources. It shall have the right to participate in such scientific research as well as to receive the final reports, thus facilitating the transfer of technology. It shall also be entitled to exact and enforce. pollution control regulations so as to safeguard the marine environment within the Economic Zone as well as its shores. This will also entail international cooperation both at multilateral, regional and bilateral levels.

THE ATTITUDE OF OTHER GROUPS OF STATES TO THE CONCEPT OF THE EXCLUSIVE ECONOMIC ZONE

The Economic Zone Concept, which is an original creation of the African delegations to the Seabed Committee, with the active collaboration of the Asian colleagues, constitutes a major contribution to the development and codification of international law. At present, it is recognized as one of the main themes of the forthcoming Law of the Sea conference and it has full support of the developing countries' delegates from Asia, Africa and Latin America.

The Latin American countries of the Caribbean have indeed evolved a concept known as the "Patrimonial Sea" which is almost identical to the Exclusive Economic Zone Concept. In their Declaration of Santo Domingo of 7 June 1972, it is stated that:

> "The coastal state has sovereign rights over the renewable and non-renewable resources, which are found in the waters, the seabed and subsoil of an area adjacent to its territorial sea called the patrimonial sea."

This concept is further elaborated in a manner very similar to our Exclusive Economic Zone. There are however several significant differences. As we see it, the Economic Zone will replace the concept of the continental shelf in so far as the exploitation of the seabed resources within national jurisdiction is concerned, leaving the seabed area beyond the Zone to be regulated by the international machinery and regime to be established. The Santo Domingo Declaration however continues to recognize continental shelf within national jurisdiction beyond the patrimonial sea up to 200 miles "or beyond that limit, to where the depth of the superjacent waters admits the exploitation of the living resources of the said areas".

The second significant difference between the two concepts is the failure of the Declaration of Santo Domingo to address itself to the problem of disadvantaged states within the region, such as landlocked and shelf-locked countries, countries with small shelves and short coasts with respect to their rights and interests within the patrimonial sea of the neighbouring states. In contrast, the Economic Zone has always been associated with the right of such disadvantaged states to share in the exploitation of the living resources of the zone

of the adjoining states on the same basis as the latter's nationals, provided they do not hire foreigners to do the exploitation on their behalf. While the basic rights of such disadvantaged states can be embodied in the Convention, the details could be worked out on regional, multilateral or bilateral arrangements.

As for the major developed nations, particularly those with highly developed distant water fishing fleets, they have vigorously resisted the idea of an Exclusive Economic Zone which will no doubt seriously affect their hegemony over the living resources of the seas. In the process they have offered various objections to the concept which have however left us unconvinced as to the necessity of abandoning what to us seems a fair and equitable balancing of international interests. Below are some of the arguments:

a) It is argued that the establishment of such a zone might result in under-exploitation of living resources and consequently the loss of resources needed to satisfy the food needs of a growing world population. This is based on the correct assumption that many of the developing coastal states are not in a position to exploit by themselves the living resources of the Economic Zone. It is however envisaged that a coastal state may license or make other arrangements permitting exploitation by other states or their corporations of the resources within its zone if it is not in a position to do so itself. Logically it is in the interest of each state to ensure optimum exploitation of its resources on the best terms it can obtain and no state will capriciously refuse to grant licences.

b) It is also argued by these highly developed states that such extension of jurisdiction will be to the detriment of landlocked states and states with other natural handicaps. The African delegates to the Seabed Committee have always recognized the right of such states to share in the exploitation of the living resources of neighbouring

Economic Zones on equal basis as the nationals of the coastal states on the basis of African solidarity and under such multilateral, regional or bilateral agreements as shall be worked out.

(c) It is often argued by the major maritime powers that assertion of national resources jurisdiction and sovereignty will inevitably lead to "creeping jurisdiction" whereby ever-increasing jurisdiction may be asserted over other uses of the oceans, such as freedom of navigation and overflight. This should not happen however if these powers agree to negotiate into treaty provisions the Economic Zone concept which fully guarantees these freedoms.

(d) It is sometimes asserted that the adoption of such a zone will lead to higher freight charges which will affect developing countries most; but we fail to see how this can happen since freedom of navigation is not in any way affected, and hence navigation lanes need not change with the adoption of the Economic Zone.

(e) The distant water fishing nations argue that such a zone will exclude them from their traditional fishing areas to which they have acquired rights under existing international law.

To achieve equitable results, they argue that a developing country should only be entitled to preferential rights to fish in the seas adjacent to its territorial sea determined on the basis of its fishing capacity. The African States having asserted their rights to resources in the areas around their continent need not be concerned with the desire of other states to continue their exploitation and depredation of their resources. In any case to limit African States' rights on the basis of the fishing capacity criterion would result in perpetual maintenance of the present unjust state of affairs.

DRAFT PAPER ON FISHERIES FOR INCLUSION IN THE DOCUMENT TO BE SUBMITTED TO THE ORGANIZATION OF AFRICAN UNITY SECRETARIAT BY THE AFRICAN MEMBER STATES OF THE PREPARATORY COMMITTEE ON THE PROPOSED LAW OF THE SEA CONFERENCE GENEVA AUGUST 1972.

I. INTRODUCTION

1. From the records of the past sessions of the Preparatory Committee on the Law of the Sea Conference, it is evident that the fisheries issue is one of the most important subjects which will have to be discussed in the proposed Law of the Sea Conference. The fisheries issue has become important partly because there is a general consensus particularly among the developing countries, that the present international law of the sea on marine fisheries is not adequate. As is well known most of the developing states were not independent in 1958 and 1960 when the current Conventions on fishing were formulated. These states were, therefore, not directly represented. Furthermore, of all the economic resources of the sea so far known, fisheries is the only resource which practically all states, developed or developing, can exploit for direct human consumption or for direct source of income.

2. There has also been a growing awareness among most states, fishing or non-fishing, that the marine environment and all the living organisms it supports are of vital importance to humanity. All states have, therefore, a duty or interest to ensure that the marine environment is so managed that its quality of sustaining life is not impaired. This applies particularly to coastal states who have a special interest in the management of coastal living resources.

3. According to the 1970 FAO Yearbook of fishing statistics, the World catch of marine animals amounted to approximately 70 million tons. Out of this North and Central America caught about 5 million, South America 15 million, Europe 19 million, Asia 26 million, Africa 4 million and less than half a million by Oceania. The potential world catch is estimated at over 100 million tons.

4. Of the 70 million tons caught in 1970, 60% was caught by a few developed states with less than 1/3 of the world population to feed. Developing countries with more than 2/3 of the world population shared only 40% of the world catch of the marine animals.

II. AFRICA'S FISHERY PROBLEMS

5. It is quite evident from the above that in spite of the fact that Africa is almost wholly surrounded by expansive bodies of water, it lags far behind other regions in respect to marine fish catches. This is also in spite of the fact that Africa is a major consumer of fish and fish products and is constantly faced with serious malnutrition problems mainly due to lack of sufficient protein supply.

6. One of the main reasons why Africa lags behind other continents in respect to marine fishing is lack of efficient fishing technology. African fishermen continue to use traditional fishing gear whose returns are minimal. Capital investment in fishing throughout Africa is very low and consequently most fishing activity is confined to the inshore waters. Thus, practically all the waters adjacent to African coastal states territorial waters have been abandoned to be exploited by the distant water fishing states. Ironically, fish caught outside African coastal states territorial waters by foreign fishermen finally find their way to Africa mainly in processed form at exhorbitant prices. A way must be found either to enable Africans to fish more or to derive more economic benefits from the foreigners fishing in the waters adjacent to the African coastal state territorial waters.

7. The problem of enabling African nationals to fish more can be partly solved by encouraging the mechanization of the fishing industry through the introduction of modern fishing technology. This will, of course, require immense capital outlay and long and expensive training of personnel. Following this, African fishermen will require to be protected from cutthroat competition which is currently being exerted by foreign highly experienced and technically superior fishermen operating close to our coasts. The African fish market must also be protected for the African fishermen.

8. The problem of African coastal states deriving economic benefits from waters outside the limits of their territorial waters, whether or not they are fishing in that area, can be resolved by coastal states extending some form of jurisdiction over the living resources in the waters adjacent to their territorial limits. Thereafter, the coastal state may if it deems necessary permit other states to exploit waters adjacent to her territory under certain conditions such as licencing, payment of royalty etc

III. GROUP POSITIONS VIS-A-VIS EXISTING INTERNATIONAL CONVENTIONS ON FISHERIES

9. The present international conventions regarding the living resources of the seas i.e. the 1958 Geneva Conventions on the Territorial Sea and Contiguous Zone, the High Seas and on Fishing and Conservation of the Living Resources of the High Seas do not allow coastal states to take actions to protect their coastal fisheries and thus enhance the improvement of coastal states fishing capacities. These conventions were designed to protect the interests of developed fishing states fisheries. The proposed Law of the Sea Conference is intended to formulate new conventions which would ensure equitable exploitation and rational management of the living resources of the sea.

10. The Convention on the Territorial Sea and Contiguous Zone failed to agree on uniform territorial sea limits. Realizing that between 70 - 80% of the world fish catch comes from shore waters of coastal states, countries with developed distant water fishing capabilities, who in most cases are developed countries (notably Japan, USSR, United States, UK) would wish that the territorial sea limits remained as short as possible in order to allow them access to the coastal species of fish throughout the world. Most of these states have been insisting on the traditional three mile limit although a number have indicated that they would accept a twelve mile limit and a few have actually extended their territory to 12 nautical miles.

11. Most developing countries, however, have realized that a narrow territorial sea is of no economic interest to them. Consequently, developing states have been inclined to extending their territorial sea to wider

limits or to creating a wide resource zone beyond a narrow territorial sea. Most Latin American States have extended their territorial sea limits to 200 nautical miles thus including almost all their coastal fisheries within the coastal state's exclusive jurisdiction. In Asia there has been a general acceptance of wider territorial Sea. Similarly, in Africa coastal states have tended to extend their territorial sea and most states at present claim at least 12 nautical miles; one state has declared a 200 nautical miles territorial sea and a few claim more than 12 nautical miles.

12. Almost all developing states, members of the Preparatory Committee on the Law of the Sea Conference seem to favour the extension of the territorial sea limits to about 12 miles and a further resource or fisheries zone adjacent to the territorial sea of about 200 miles measured from the coastal baselines.

13. The Convention on the High Seas declares that the high seas belong to all nations and among the freedoms to be enjoyed by all nations in the high seas is the freedom of fishing. Noting that most developing states do not possess technical capabilities to exploit the resources of the High Seas, this area is today being almost wholly exploited by the developed states. Supplemented by the ambiguity of the Convention on the Territorial Sea and Contiguous Zone in regard to the limits, developed states would wish the coastal states to claim as short a territorial sea as possible so that the area of the High Seas, where the freedom of fishing can be exercised, is as large as possible. The developing states, however, finding that the freedom of fishing is of no economic interest to them, justifiably feel that unless a system is worked out whereby the resources of the High Seas could be equitably shared coastal states should extend their jurisdiction over the resources beyond their territorial sea of course taking into consideration the interests of landlocked and shelflocked countries.

Conservation & Management

The Convention on Fishing and Conservation of Living Resources of the High Seas states in article 6 that a coastal state has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea. In practice this means that a costal state should take necessary steps to ensure

that landbased pollutants do not reach the marine environment and that the coastal breeding grounds for fish and other marine animals are not unduly disturbed. In economic terms, coastal states are required to incur certain expenses to ensure that the marine environment remains productive and habitable for the living resources of the sea.

14. Having thus imposed a responsibility or a duty to the coastal states, the convention does not give corresponding rights to the coastal states on the living resources adjacent to the territorial sea. The convention appears, therefore, grossly unfair to the coastal states. Consequently most coastal states, and particularly the developing ones feel that since they are required to be responsible for maintaining the productivity of the seas, they should have corresponding special or exclusive rights over the living resources adjacent to their territorial seas.

In general, considering all the existing international conventions on the marine environment, developing states agree that all these conventions encourage inequality in favour of the developed states. Developed states in turn feel that the provisions of these conventions are adequate and that the concept of a short territorial sea, freedom of fishing and coastal states responsibility in the maintenance of the productivity of the living resources in any area of the sea should be maintained.

IV. RECOMMENDATIONS

15. As far as the African coastal states fisheries are concerned, we feel that at present it is premature and perhaps unnecessary to extend territorial seas to too wide limits such as is the case with most Latin American States. We recommend that a territorial sea of at least 12 nautical miles and an adjacent resource or fishing zone of not more than 200 nautical miles measured from the coastal baselines should enable African coastal states to solve the present fisheries probleme and to benefit their peoples.

16. With regard to management and conservation, we consider that even with a territorial sea and an economic or resource zone adjacent to it, the fishing activities in the rest of the seas, i.e. the high seas

will have direct effect on the living resources in both territorial sea and the economic zone. Activities in the high seas must therefore be regulated and especially in regard to the management of the highly migratory and anadromous fish species. We favour the setting up of an international sea Fisheries Regime or Authority with sufficient powers to make states comply to widely accepted fisheries management principles. Alternatively, the existing FAO Fisheries Commissions or other international fisheries regulatory bodies could be strengthened to enable them to formulate appropriate regulations applicable in all areas of the sea.

17. Attached are draft articles on marine fisheries for consideration. These articles embody positions that we recommend Africa should take at international conferences on the Law of the Sea. They take into consideration, the question of limits of the territorial sea, the economic zone concept, conservation and management of our fisheries resources, and the needs of not only coastal states but landlocked and shelflocked countries as well. Moreover as far as the African region is concerned, article X providing that neighbouring states shall recognize their existing historic rights, and shall give reciprocal preferential treatment to one another in the exploration of the living resources of their respective fishery zones, is of special importance as it ensures our regional co-operation and mutual preferential treatment in fisheries matters.

DRAFT ARTICLES ON FISHERIES

Article I

All states have a right to determine the limits of their jurisdiction over the seas adjacent to their coasts beyond a territorial sea of (12) miles in accordance with the criteria which take into account their geographical, ecological, biological and economic factors.

Article II

In accordance with the foregoing article, all states have the right to establish a fisheries zone beyond the territorial sea for the primary benefit of their peoples and their respective economies in which they will exercise sovereign rights over the fisheries resources for the purpose of conservation and exploitation. Within the fisheries zone, states will have exclusive jurisdiction for purposes of conservation, exploitation and management of the living resources of the zone.

The coastal state shall exercise jurisdiction over its fisheries zone and third states or their national shall bear responsibility for their activities in the zone.

Article III

The establishment of a fisheries zone shall be without prejudice to the exercise of freedom of Navigation, freedom of overflight and freedom to lay sub-marine cables and pipelines as recognized in international law.

Article IV

The exercise of jurisdiction over the fisheries zone shall encompass all the living resources of the area either on the water surface or within the water column or on the soil or sub-soil of the seabed and ocean floor below.

Article V

Without prejudice to the general jurisdictional competence conferred upon the coastal state by article II above the state may establish special regulations within its fisheries zone for:

(a) exclusive or preferential exploitation of the living resources.

(b) protection and conservation of the living resources.

(c) scientific research.

(d) control, prevention and elimination of pollution of the marine envirhnment.

Article VI

Any state may obtain permission from the coastal state to exploit the resources of the zone on such terms as may be laid down and in conformity with the fisheries laws of the coastal state. These terms may inter-alia relate to the.

(a) licencing of fishing vessels and equipment.

(b) limiting the number of vessels and number of units of gear that may be used.

(c) specifying fishing gear permitted to be used.

(d) fixing the periods during which the prescribed species of fish may be caught.

(e) fixing the size of fish that may be caught.

(f) fixing the quota of catch to be allowed.

Article VII

The regulations prescribed by the coastal state may permit the exploitation of the living resources within the zone by the neighbouring

developing landlocked and near landlocked countries provided the fishing enterprise of these states are effectively under the control of their national capital and personnel. These arrangements shall be embodied in multilateral, regional or bilateral agreements.

Article VIII

The limits of the fisheries zone shall be fixed in nautical miles in accordance with criteria in each region which take into consideration the fishery resources of the region and the (right) and interests of the developing landlocked,near-landlocked, shelflocked and states with narrow shelves and without prejudice to limits adopted by any state within the region. The fishery zone shall not in any case exceed 200 nautical miles measured from the baseline for determining territorial sea.

Article IX

Where the coasts of two or more states are opposite or adjacent to each other delimitation of the zone shall be carried out in accordance with international law. Disputes arising therefrom shall be settled in conformity with the Charter of the UN and any other relevant regional arrangements for settling disputes.

Article X

Neighbouring states shall mutually recognize their existing historic rights and they shall give reciprocal preferential treatment to one another in the exploitation of the living resources of their respective fishery zone.

Article XI

Each state shall ensure that any exploration and exploitation activity within its fishery zone shall be carried out exclusively for peaceful purposes and in such manner as not to interfere unduly with the legitimate interests of other states in the region or those of the international community.

Article XII

No territory under foreign dominion or control shall be entitled to establish a fishery zone.

Article XIII

A coastal state has a special duty and responsibility in the maintenance of the productivity of the living resources of the sea.

Article XIV

For the living resources within the territorial sea and within the fishery zone, the coastal states of the region may establish conservation management regulations either by entering into an agreement or convention or by requesting an appropriate regional or international fisheries regulatory body of the area to formulate appropriate regulations for the region subject to ratification by the coastal states.

Article XV

For the living resources outside the coastal states fishery zone regulations may be made for their exploration, conservation, development and exploitation by the states of the region concerned in consultation with appropriate international fishery regulatory body and shall apply in all areas of the sea.

Article XVI

In respect of fisheries of highly migratory and anadromous species, regulations for their conservation, development and exploitation shall be formulated by an appropriate International Fisheries Regulatory Body, and shall apply in all areas of the sea.

Article XVII

Conservation measures and their implementation shall not discriminate in form or fact between fishermen from different foreign countries.

Article XVIII

The coastal state shall give to all affected states adequate notice of the intention to establish a fishery zone.

Article XIX

The coastal state may inspect and arrest vessels in its fishery zone for fishing in violation of its regulations. The coastal state may try and punish vessels for fishing in violation of its regulations.

Article XX

Any vessel found outside coastal states fishery zone fishing in violation of the fishing regulations applicable to that area may be inspected and arrested by any state. If the state of nationality of the arrested vessel has not established procedures for trial and punishment in accordance with these articles, the arresting state may try and punish the vessel. If the state of nationality of the arrested vessel has established procedures for trial and punishment under these articles, the arrested vessel shall be delivered promptly to duly authorized officials of the state of nationality for trial and punishment. The official of the state of nationality shall notify the arresting state of the disposition of the case within six months.

Article XXI

Each state party to an international organization shall make it an offense for its flag vessels to violate regulations formulated by such organization and adopted or ratified by coastal states. Officials authorized by the appropriate international organization may inspect and arrest vessels for violating the fishery regulations adopted by such organization and applicable to the area outside coastal states fishery zones. The arrested vessel shall be delivered to the authorized officials of the flag state for trial and punishment.

Article XXII

Any dispute arising under this article concerning fishing activities outside coastal states fishing zones, either between states or between states and international organizations, shall, at the request of any of the parties to the dispute, be submitted to a special commission of five members unless the parties agree to seek solution by another method of peaceful settlement as provided for in article 33 of the Charter of the United Nations.

The members of the Commission, one of whom shall be the chairman shall be named by the parties in dispute within two months of the request for settlement in accordance with the provisions of this article. Failing agreement on membership, the Secretary-General of the United Nations, shall, upon request of any state party to the dispute, select the members of the commission in consultation with the states involved and with the Director of the FAO and the President of the International Court of Justice. Any state party to the dispute shall have the right to participate fully in the proceedings but without right to vote or to participate in the writing of the commission's decisions.

The special commission shall render its decision which shall be binding to all parties, within a period of five months from the time it is appointed unless in the case of extreme necessity it decides to extend the time limit for a period not exceeding two months.

In reaching its decision the commission shall adhere to this article and to any other agreement between the disputing parties implementing this article.

Decisions of the Commission shall be by majority vote.

Article XXIV

(Final clauses if necessary).

SEABED COMMITTEE
AFRICAN GROUP
DRAFT REPORT
ON SEABED REGIME

The regime of the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.

1. It should be noted that the regime of the sea-bed and ocean floor and the international machinery to govern the regime are related and should therefore be read together. The basis of the elaboration of the regime and the international machinery is the Declaration of Principles of the Sea-Bed and Ocean floor and subsoil thereof beyond the limits of national jurisdiction, adopted without a negative vote, by an overwhelming majority of the United Nations membership, including all the African countries, members of the O.A.U, on December 17, 1970, as resolution 2749 (XXV). Among those who abstained were mainly the East European socialist bloc.

2. Thus, as far as the general principles are concerned, the African states have accepted them with enthusiasm. This is also the case as far as the Asian and Latin American countries are concerned. While the Western countries on the whole support the principles, some of them differ on the degree and extent to which these principles should be adopted in a treaty, and in their interpretation. The details shall be brought out in the discussion of the issues below. The Eastern European states, on the other hand, coolly support the principles, and maintain they are vague in several respects This aspect will also be spelt out below. The People's Republic of China, which came into the U.N. after the adoption of the Declaration supports most of it, though some provisions need to be made explicit. For example, the implication of principle No. 8 on the peaceful uses for the sea-bed and its translation into an article or articles.

3. The Declaration, in principle I declares that "the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind," (emphasis added), while the ensuing 14 principles elaborate the content and the elements of the first principle. While all the elements are important, a few many be noted here: namely non-appropriation of the area by any means or anyone: state, person, natural or juridical (save as the treaty may later elaborate): (principles 2 and 3); the use of the area exclusively for peaceful purposes by all states, whether coastal or land-locked, without discrimination; (principle 5); the exploration and exploitation of the area and its resources to be carried out for the benefit of mankind as a whole, and taking into particular consideration the interests and needs of the developing countries: (principle 7); international co-operation in various activities, e.g. scientific research (principle 10); liability for damage: (principle 14), etc.

4. Principle 9 is particularly significant and underscores the role and purpose of the Declaration. It provides:

"On the basis of the principles of this Declaration, an international regime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon. The regime shall, inter alia, provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof, and ensure equitable sharing by states in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether landlocked or coastal."

5. As a developing continent, therefore, Africa has a vital interest in the elaboration of a treaty that concretises an international regime, applicable to the area and its resources, and an appropriate and effective international machinery to ensure that the promised benefits accrue to her. Failure to exercise vigilance during the preparatory and conference stages may, therefore, undermine the only opportunity and possibility of influencing the founding of a new law of the sea and the establishment of an equitable regime from whose benefits social and economic conditions of African peoples may improve.

Thus it is imperative for the African members of the Committee, and later all African members at the Conference, to ensure that the letter, spirit and intentions of the Declaration are faithfully translated into an international regime and international machinery in a treaty fully cognisant of the needs and interests of all developing countries, and in particular, the African countries. For this to be realised, however, solidarity of not only the African countries, but all developing countries cannot be overstressed.

6. Altogether 14 working papers on the international regime and/or the international machinery have been submitted by Governments to the Sea-Bed Committee, and though differing in philosophy and approach, many of these do make a laudable attempt to reflect the Declaration in their basic provisions on the regime. These papers have been submitted by the USA, U.K, France, USSR, Tanzania, Poland, 13 Powers (12 Latin American and Spain), Malta, 7 Powers (Netherlands, Belgium, Afghanistan, Nepal, Bolivia, Austria, Singapore), Canada, Japan, Italy and Greece, Save for the papers by Italy and Greece submitted in August 1972, the others have been put together in a comparative table by the U.N. Secretary-General in document A/AC.138/L.10 of January 28, 1972. It will be noted that from the third world two papers of those already submitted are faithful to the Declaration in its translation into treaty articles, namely those of the United Republic of Tanzania and the 13 Powers.

7. Issues on the regime:

a) Approach: Most of the papers submitted view the regime in terms of the sea-bed and ocean floor beyond the limits of national jurisdiction, or, as in the case of Malta, in terms of ocean space beyond a belt of ocean space adjacent to the coast. In other words, the former would regulate the regime of the sea-bed, while the latter would deal with the entire ocean space, sea-bed and superjacent waters. The latter approach has not commended itself so far to many representatives, and has been criticised as exceeding the scope envisaged by the Declaration.

Recommendation: The African states would have to choose the approach to adopt, and in view of the general lack of support of the Maltese approach, its modification of the Declaration, which is the basis of the regime, and the apparently mutually exclusive approach of the two approaches, the African countries may wish to adhere to a regime of the sea-bed other than the entire ocean space.

b) Limits of national jurisdiction: The Declaration of Principles resolution 2749 (XXV) left open the precise limits of national jurisdiction, and contented itself with the vague formulation setting the sea-bed area to be regulated by the international regime and the international machinery as "beyond the limits of national jurisdiction". Thus, the Committee of the Sea-Bed and ocean floor, and subsequently, the Conference on the Law of the Sea, has to precisely define the limits of national jurisdiction in order to determine the international sea-bed area subject to the international regime and international machinery.

The developed states whether from the Western bloc or Eastern bloc or Japan, have argued in favour of a large international sea-bed area and, consequently, a narrow area under national jurisdiction, so as to maximise likely exploitable resources and accruing benefits - say of hydro carbons - in the near future. But a contradiction is seen in this posture by the developing countries for the following reasons:

(i) While conceding a large area, so that realisable benefits can accrue in the near future, they nevertheless do not want to elaborate an international machinery with comprehensive powers and functions - such as exploiting and exploring the area on its own or in conjuction with others: marketing and processing of materials and controlled democratically. Rather, they want to explore and exploit on their own, and have a weak machinery acting as a registry - a fact unacceptable to all developing countries.

(ii) These powers envy a huge high seas area to maintain their fishing activities at the disadvantage of the developing countries, for whom the so-called freedom of fishing in the high seas is but a notional right, and

(iii) naval and military interests.

A number of landlocked countries and shelf-locked countries have argued in favour of limited area of national jurisdiction. In the 7 Power draft, 40 miles is mentioned. On the other hand, a large number of states await the elaboration of the regime and machinery before they determine the precise limits. If the powers and functions are such as to appear to guarantee effective control by the machinery, they could concede reasonably sized national jurisdictions. In a number of other situations, many states from all regions have called for the limits of national jurisdiction to be fixed at 200 miles. This position is supported by many Latin American countries, China and other Asian countries, France, Spain and many African countries. In draft articles on the concept of the Exclusive Economic Zone submitted by Kenya to the Asian-African Legal Consultative Committee, many states were of the view that the limits of the EEZ should not exceed 200 nautical miles measured from baselines from which the territorial sea is measured, and in an African seminar held at Yaounde, Cameroon, between 20 - 30 June 1972, the participants stated that the limits of the E.Z. should be without prejudice to the limits adopted in the region. In Africa, the largest territorial sea is said to be that of Sierra Leone at 200 miles.

Some drafts, like the Maltese one, fix limits at 200 miles. The Declaration of Santo Domingo adopted by Caribbean countries June 7, 1972, proclaims that the patrimonial sea (similar to E.Z.) "should not exceed a maximum of 200 nautical miles."

Some developed states propose that the limits should be set in terms of distance presented by the Continental Shelf Convention. They go to the extent of providing an intermediate zone (e.g. the U.S.), a concept unaccepted by many countries. However, many developing countries favour a distance criterion, and call for a reasonable zone to be under the coastal state.

Recommendation: In view of the rather widespread support and claims of 200 miles and other relatively wide areas, i.e. over 100 miles, as well as the fact that such an area offers cogent reasons for claims of acquired rights, the African states should, considering the circumstances of Africa, and taking cognisance of claims in other regions, and in order to at one time be able to recover from long-time effects of being exploited by others outside the region, endorse limits of national jurisdiction not exceeding 200 miles.

c) Inclusion of the phrase "beyond the limits of national jurisdiction" in the treaty articles.

Pending the definition of the Area the developing countries have emphasised that the above term should be reflected in the text of the treaty or draft articles in faithful adherence to Principle I of the Declaration. But others, namely the Soviet Union and its bloc, as well as the U.S. have difficulties with this formulation. Their reasons result from what they claim to be the imprecision of the phrase. This, however, is a mere excuse, as the inclusion of the phrase would not, in any way affect the outcome of the

discussion and recommendation in Sub-Committee II of the Committee of the Sea-Bed. The assertion by the U.S.S.R. of the position that national jurisdiction is at 12 miles does not have support beyond its camp and a few developed states. Other reasons given include fear of creeping jurisdictions by states. Without reference to "beyond the limits of national jurisdiction", however, the Committee would have tamprered substantially with its mandate to elaborate a regime beyond said limits, and not within those limits.

Recommendation: For the foregoing reasons, the phrase should appear in the text of the articles.

(d) Common heritage of mankind concept: Long after the Declaration was adopted, some representatives, e.g. those of the Soviet bloc, still maintain that this concept is vague: unknown to some legal systems, and as such should appear merely in the preamble and not in the body of the articles. They are joined in this by Japan. However, the indisputable view of the developing countries is that as the concept is the derivative basis of the elaboration of the regime and the international machinery, the concept should be boldly embodied in the treaty. African states, it is recommended, should further endorse this idea, and maintain it at the L.O.S. Conference.

(i) Resources as part of the Common heritage: The resources of the area, per Principle I of the Declaration have been rightly included as an integral part of the concept of common heritage of mankind. But the use of the resources, if in accordance with the provisions of the treaty is not affected. As such, the insistence by the Soviet Union and its bloc that resources be excluded from the common heritage concept would more than substantially tamper with the will of the overwhelming majority of states of the international community and render the concept devoid of content. Accordingly, the African States should adopt at the L.O.S. Conference, this unequivocal position and reject the the tilted argumentation of the Soviet bloc.

(ii) The scope of the resources in the area: Principle I does not qualify resources. But in the interpretation of this term, some countries, aside from the position of the Soviet bloc mentioned above, maintain that only mineral resources should actually be covered, and not living resources. This is the case with say, the U.S., Japan, etc. However, the vast majority of developing countries maintain that all resources are covered, not only minerals.

Recommendation: The African states should consider, at this stage, i.e. till the treaty as a whole is drafted, to reiterate that no differentiation between mineral and living resources should be made.

(iii) Should matter, e.g. minerals, in the water column be covered?

The developed states would hesitate to accord this aspect to the regime: for instance, the U.K. states that these belong to the high seas but some developing countries have argued this should also be covered. Since the area in question is internationally owned, there would appear to be merit in giving extended coverage to the regime and regulating it under the machinery in the treaty. However, this ought to be approached with quotion - particularly if the Maltaese Ocean space approach.

e) Activities to be covered: The scope and extent of activities to be covered in the regime and governed by the regime and international machinery has been criticised as not being precise enough. It is perhaps worth noting that the consideration of this aspect of the problem does not touch on the question of the powers and functi ns of the international machinery which is examined elsewhere in the memorandum. Suffice it to state at this juncture that the developing countries have consistently insisted that the regime and machinery must extend over all the activities on the sea-bed

and ocean floor, and have governing powers thereto. These activities should include: exploration and exploitation of the area and its resources: scientific research, preservation and control of marine pollution, arms control, etc.

In this regard the Declaration, Principle 4 should be noted. It reads:

> "All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the regime to be established."

Some states - even those who support a strong regime like Canada - have argued that this provision of the Declaration needs clarifying, as it has a bearing on the scope of resources (mineral and living resources) covered; limits of the area and the speed with which a regime is arrived at. The Soviet Union argues against the inclusion of scientific research in the activities to be covered on the basis that international law adequately provides for freedom of scientific research. This view is shared by other developed states. The developing countries do not agree. Certainly scientific research is a related activity to the exploration and exploitation of the area and its resources. What about the laying of cables and submarine pipelines? Because of the cardinal interest of the regime and machinery in the sea-bed area, regulatory role in a number of such matters would facilitate its functions.

Article 8 of the draft treaty, document A/AC. 138/33 submitted by Tanzania incorporates provision of the Declaration verbatim, while the Maltese draft Ocean Space Treaty, document A/AC. 138/53, article 70, states "all activities in international Ocean Space shall be governed by the activities to be covered on the basis by the international regime established by the present Convention." It is quite clear that the big

powers will resist an attempt to have the machinery regulate activities of a military character.

Recommendation: The African countries should consider ensuring that Principle 4 is not deprived of meaning by an unwarranted watering down so as to defeat its purpose, in the name of clarifying or interpreting activities and related activities.

(f) Who may explore and exploit the resources of the sea-bed area and ocean floor? Again, this question does touch on the powers, functions and competence of the international machinery. The Declaration does not expressly and unambiguously spell out who may explore and exploit the resources of the area. Nonetheless, a provision in the regime of this, leaving matters of detail or modalities of implementation to the international machinery section of the treaty, would not violate the spirit and intentions of the Declaration of Principles. But the question is one of the utmost controversy, particularly when it narrows down to whether or not the international machinery should be able to explore and exploit resources on its own, or in conjunction with others.

On the one hand, the developing countries insist that it should, whether or not it is in a position to do so immediately, on account of cost involved, and risks of investment. But on the other hand, key developed states - namely the U.S., U.K., France, U.S.S.R., resist giving the machinery such a power, or anything like ownership of the area. The draft treaties submitted by Tanzania, the 13 Powers and Malta envisage the possibility of the machinery being able to explore and exploit on its own, or jointly with others. See articles 13 of Tanzanian draft: article 75 of Maltese draft and articles 14 and 15 of the 13 Powers draft. A number of the other drafts, U.S. article 10, that of France, the Soviet Union (supported by the views of such states as Czechoslovakia) as well as the Tanzanian and Maltese draft

envisage states contracting parties. singly or jointly being in a position to exploit and explore, or natural or juridical persons authorised or sponsored by them. The modalities of doing this is the subject of the examination of the international machinery.

Recommendation: African States should affirm the endorsement of the regime and machinery with the power to exploit and explore resources of the Area when in a position to do so, whether on its own, or jointly with others - be they states, natural or juridical persons.

g) Exploration and exploitation of resources of the Area vis-a-vis the interests of developing countries:

It has been noted that the Declaration of principles endorses the vital proposition of these activities being conducted for the benefit of mankind as a whole, taking into account the particular interests of the developing countries. While the criteria for equitable sharing of the benefits has still to be studied in depth and provided in the international machinery, the criterion of need has to be underscored.

Besides the developing countries ought to be involved in all activities relating to the exploration and exploitation of the area: be these in scientific research, marine science and technology, etc. In this regard training of their personnel is vital.

CONCLUSION: The African members of the Committee, and later all African countries at the Law of the Sea Conference should ensure a faithful translation of the Declaration into treaty articles on the international regime and international machinery. As in all matters of the Law of the Sea, the African countries should act in unity. For in unity and regular consultations on all issues reside our strength and ability to put our mark on the new law and system.

ANNEX

ECONOMIC IMPLICATIONS RESULTING FROM MARINE MINERALS PRODUCTION FROM THE INTERNATIONAL SEA-BED AREA

1. General Assembly resolution 2749 and 2750 A (XXV) has affirmed that the Sea-bed and the Ocean floor and the Sub-soil hereof, beyond the limits of the national jurisdiction, and its resources are the common heritage of mankind, and as such, the exploration and the exploitation of the area and its resources should be carried out for the benefit of all mankind, taking into account the special interest and needs of the developing countries. Moreover, the resolutions affirm that the development of the area and its resources shall be undertaken in such manner as to foster the healthy development of the world economy and balanced growth of international trade, and to minize any adverse economic effects by the fluctuation of prices of raw materials resulting from such activities..

2. It can be concluded from the above mentioned resolutions that the developing countries should:

   a. benefit from the exploitation of the international Sea-bed area and its resources; and

   b. not to be affected from fluctuation of prices of raw materials resulting from activities undertaken in the said area.

3. It has been mentioned by many speakers in the General Assembly and Sea-bed Committee that the international Sea-bed area does contain remarkable resources which could be explored and some of it be exploited in the near future for the benefit of all mankind, and in particular the developing nations.

4. Explorations activities have been increased in the last few years, and as it has been mentioned in the Secretary-General's recent report (A/AC. 138/73) that "The rapid progress in Sea-bed mining technology and metallurgical processing in recent years indicates the possibility of substantial mineral production from the deep Sea-bed".

Concerning oil for example it has been mentioned in the report that "The steady progress in all areas of deep water petroleum technology indicates that oil production may be feasible in the outer Continental Shelf and upper slope".

The mineral more likely to be exploited commercially is manganese nodules of which cobalt would probably be the first to be exploited. It is expected that a single mining operation of cobalt might be able to supply about 8 percent of the the world requirements by 1980. It has been stated by a speaker in the Sea-bed Committee that some western [illegible] are exploring and beginning to exploit nodule deposits, particularly in the Pacific.

New systems and processes are under development by large enterprises from developed countries aimed to exploit Sea-bed resources commercially.

5. Speakers from developing countries participating in the discussion of this question in the Sea-bed Committee, have indicated that the exploitation of the Sea-bed resources will have effect on the economies of the less-developed countries.

Although this effect will vary among countries, it was clear from the discussion that all developing countries would benefit from such exploitation if it will be controlled by an international machinery to

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Although this effect will vary among countries, it was clear from the discussion that all developing countries would benefit from such exploitation if it will be controlled by an international machinery to

be established early. The more there will be delay in establishing this Authority, the more these countries will loose. But there are also some developing countries which produce particular minerals from land and depending heavily for their economic developments on exporting such minerals to world markets.

Undoubtedly, these countries will suffer an adverse economic effects from such exploitation.

Some developed countries in the Sea-bed Committee have tried to spread the idea that Sea-bed mineral exploitation appears completely unlikely to affect the economies of current mineral production and it is also hard to make an accurate evaluation or a precise estimate of the economic impact of Sea-bed mineral production. In other hand, it was clear from various statements that Sea-bed mineral exploitation will have negative impact on the prices of land based minerals, unless such production from Sea-bed would be controlled and regulated by strong international Authority.

Secretary General's report A/AC. 138/73 indicates that "The total earning of land producers from minerals concerned would decline or would grow less rapidly than they should have done otherwise, in any event, they would be smaller than in the absence of production from Sea-bed".

Because of their technical defeciency, and because of the high capital requirements, developing countries are likely to participate directly to only small degree in the production of minerals from Sea-bed area, consequently most, if not all, the benefits to be derived from the exploitation of the area will benefit only few developed countries. Furthermore, it has been

stated by some delegations that exploration and exploitation of Sea-bed mineral resources requires large amount of capital investments which, in turn, would affect the flow of private investments into similar activities in developing countries.

Some delegations from developed countries raised the question that the mineral exploitation of the international Sea-bed area would have its positive impact on world economy, and any measures to discourage mining activities in the area would harm the whole international Community.

African members of the Sea-bed Committee have recognized the idea that it is, indeed, necessary to develop the Sea-bed area beyond the limits of national jurisdiction in such . a manner as to foster the healthy development of the world economy and balanced growth of international trade and at the same time they have taken the position that such development should not be in such a manner as to benefit only certain countries whether they are developed or underdeveloped. It should be developed in such a way which should benefit all states and in particular the developing states.

From the discussion of this question in the Sea-bed Committee, it appears that:

a. The developed countries adhere to the thought that the Sea-bed mineral exploitation will not have an adverse effect on the economies of the of the developing countries, and it will benefit the whole international Community, any restrictions to the activities to develp the area and its resources would harm world economy.

b. Developing countries, including African States, adhere to the thought that it is in their benefit and to the benefit of world economy, to develop the area and its resources through establishing, as early as possible, an international machinery with full power to ensure the rational exploitation of the resources of the area in such a manner which will not have adverse economic effects on land-based minerals, especially in developing countries and will stabilize prices and ensure equitable sharing of benefits to be derived from the area. These views have been favoured by developing countries from Africa, Asia and Latin America.

Moreover, and in order to reserve the area and its resources for the benefit of all mankind and from being exploited by some highly developed States, some developing countries including some African States, have called upon all States engaged in activities in the Sea-bed area beyond the limits of national jurisdiction, to cease and desist from all activities aiming at commercial exploitation in the Sea-bed area and to refrain from engaging directly or through their nationals in any operation aimed at the commercial exploitation of the area before the establishment of the proposed international régime which will include an international machinery.

This trend has been strongly opposed by some highly developed states in the Committee.

Concerning the measures to be undertaken by the international machinery to ensure that the exploitation of the area's minerals will not harm the developing countries produces similar land based minerals. It has been stated by the Secretary-General in his report and by other speakers that there are different approaches to tackle this question:

a. There is the preventive approach, which consists of arrangements to deal with rate of production and the rate of disposal of the out-put, and the selling prices.

For example, the machinery could set a ceiling for the production of minerals of which a surplus existed in world markets, or to place restrictions on the granting of concessions, or to impose a stabilizing tax, it could also establish an appropriate pricing policy involving the setting of minimum selling prices for minerals produced from Sea-bed area. Another solution avocated by other Delegations is to conclude international Commodity Agreements.

b. There is compensatory approach under which compensation would be paid to developing exporting countries whose interests were adversely affected by production of minerals from the Sea-bed. This compensation would be paid to the extent possible out of the net revenues accruing to the international machinery from the exploitation of the Sea-bed.

Most of the developing countries participated in the discussion favoured the preventive approach.

The main criticism to the compensatory method was that by applying this method an appropriate proportion of the net receipts of the Sea-bed machinery would be utilized for the purpose of compensating developing producing countries, thus reducing the amount of income to be distributed to all nations. Another question related to this method is whether the net income of the Sea-bed machinery would be sufficient to implement a programme of compensation payments.

African Group might recommend applying the preventive approach. In any case the whole subject of arrangements has to be kept under constant review in the light of developments in the Sea-bed area and changing needs in world markets, before adopting final approach to the problem under consideration.

SEA-BED COMMITTEE

AFRICAN GROUP

DRAFT REPORT ON THE INTERNATIONAL MACHINERY.

The Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil thereof beyond the limits of National Jurisdiction adopted by the General Assembly in December 1970 under resolution 2749 (XXV) states in part in paragraph 9 that "an international regime applying to the area and its resources and including appropriate international machinery to give effect t. give effect to its provisons shall be established by an international treaty of auniversal character, generally agreed upon ...". Two elements can be detected in this statement. The first is that the machinery is intended to give effect to the provisions of the international regime. There has been no disagreement in principle on this in the discussions which have taken place both in the General Assembly and the Sea-Bed Committee. Secondly the machinery would be established by an international treaty (as part and parcel of the regime) of a universal character generally agreed upon. There has also been no disagreement on this both in the General Assembly and the Sea-Bed Committee.

In order to give effect to the relevant part of the Declaration of Priniciples the Sea-Bed Committee has conducted extensive discussion on the scope, status powers, structure and functions of the machinery. All the draft treaties and working papers submitted to the Sea-Bed Committee have included provisions on the machinery. The approach and content of the various proposals have however differed, in many cases fundamentally. The following is a brief examination of the issues, positions of states or group of states represented in the Seabed Committee and tentative suggestions for an African position.

SCOPE

According to may of the proposals submitted to the Sea-Bed Committee and in the opinion of the majority of States represented the competence of the machinery would only extend over the regime

of the Sea-Bed, the Ocean floor and the subsoil thereof. This means the competence of the machinery would cover exploration and exploitation of the resources of the regime, peaceful uses of the area, scientific research and the preservation of the marine environment and prevention of pollution resulting from exploration and exploitation of the resources of the area. It would also cover the sharing of the benefits derived from the area as a common heritage and deal with the economic effects resulting from exploitation of the resources of the area taking into consideration the particular interests of developing countries, whether coastal or landlocked.

A few countries however, particularly Malta, have given wider scope to the machinery. Malta has proposed in its draft treaty submitted to the Committee last year, that the machinery should have competence over the sea-bed and ocean floor as well as the superjacent waters on the ground that ocean space is one entity and the activies in one regime will affect other uses of the sea. Thus it is Malta's proposal that the machinery should harmonise all uses of ocean space beyond national jurisdiction, i.e. the machinery would be competent in such matters as scientific research, preservation of the marine environment, etc., not only on the sea-bed and ocean floor but also in the superjacent waters. Though the logic of Malta's argument has not been seriously challonged the majority of the members of the Sea Bed Committee prefer not to extend the competence of the machinary to the superjacent waters on the ground that the issues will become too complex. Generally speaking African members of the Committee have taken this position and it is suggested that the African States adopt the same position at the forthcoming law of the sea Conference.

Status

One can safely say there is a consensus in the Sea-bed Committee that the machinery would possess full legal personality with the necessary privileges and immunities. A clear opinion has not however emerged on the relationship of the machinery to the United Nations system. Some of the proposals have suggested some relationship and some members have also suggested a status similar to the specialised agencies. Some others have suggested an independent body which may have certain special arrangements with the United Nations system e.g. in matters of the maintenance of peace and order and marine matters (FAO, UNESCO, IMCO etc) On the whole however the problem is still moot. The African group might think of recommending a body with some amount of autonomy but with special working relationship with the United Nations system.

Powers

This is one of the most controversial issues in the Seabed Committee. On the one hand there is the opinion of the Socialist group which favours a loose supervisory body which would leave the actual implementation of the provisions of the treaty to the individual states. The argument is that a machinery with extensive powers would become supranational. Taking into account the different political, economic and social systems in the world, this machinery would become a vehicle for one system to impose its domination contrary to State Sovereignty. For this reason it is suggested that the machinery should have weak powers for purposes of supervision and harmonisation of state activity in the area. These views are reflected in the draft treaty submitted by the Soviet Union and a working paper by Poland.

The approach of most of the developed and technologically advanced countries of the Western group (and Japan) is slightly different from that of the Socialist group although they also prefer a weak regime. According to the draft submitted by the United States and working papers by France, United Kingdom, Canada and Japan the machinery would have administrative powers in allocation of licences for the exploration and exploitation of blocks in the area, will make rules of the game such as recommended standards and practices and will collect fees and royalties to defray its expenses and distribution to states. After licensing a country will be free to exploit the area allocated to it or sub-license it to other entities and it will be responsible to see that the provisions of the treaty are followed. These proposals are against direct exploration and exploitation by the machinery itself. The argument is that direct exploitation by the machinery will be a source of conflict between the interests of the international machinery and states. And strong powers of management and regulation will not provide the incentive to entities which have the capital and technological know-how and as a result the common heritage will not be realised. It is further argued that machinery with extensive powers will necessarily require a cumbersome bureaucracy which will consume a lot of money and bread inefficiency and the common heritage will become a common burden.

On the other side there is the view of most of the developing countries which seek to confer strong powers of management and regulation to the machinery. The draft treaty submitted by Tanzania and another by 13 Latin American countries have this approach. A proposal submitted by 7 landlocked countries of Asia and Europe have also adopted the same approach. These proposals would also confer the power of exploration and exploitation to the machinery.

Many of the members of the Committee from developing countries have favoured this approach. They have pointed out that to give full meaning to the concept of the common heritage the machinery which is the instrument of the international community should exercise the powers on its behalf. In this way the heritage will be realised in common and each state will have a full share in its management. All countries will share equitably; and peaceful uses, scientific research and the preservation of the marine environment will be better managed. The developing countries will also benefit from the experience of management, exploration and exploitation and transfer of marine technology will be facilitated. In addition a strong machinery will ensure a rational exploitation of the resources of the area and will also ensure that exploitation of the resources of the area will not have adverse economic effects on land based minerals, especially those from developing countries, and will stabilise prices. Last but not least a strong machinery will ensure equitable sharing of the benefits.

The Latin American proposal however goes further and reserves this power of exploration and expolitation exclusively to the machinery. In the view of the Latin American States the licence is an abdication of a substantial portion of the resources of the international property to individual enterprises in exchange for an almost insignificant payment, the fee and royalties. What is obvious if the system of licensing is adopted the participation in the activities of exploration and exploitation by the developing countries, the programmes for the transfer of technology to these countries and the determination and regulation of prices of the minerals from the international area will remain to a large extent at the mercy of the technologically developed countries, where most of the companies with the necessary technology will come from. The result will be that considerable benefits derived from

the licence system will be left to go to private interests in the developed countries rather than to mankind as a whole. To avoid these almost certain consequences the Latin American countries have proposed the establishment of an enterprise with an independent legal personality to undertake all the technical industrial or commerical activities relating to the exploration of the area and the exploitation of its resources. The enterprise may avail itself of the benefits of joint ventures or the services of juridical persons without alienating any part of the resources and yet ensuring at the same time that all the wealth and benefits of the activities over the resources in the international area will be distributed to mankind as envisaged by the Declaration.

The only other significant position is that of Malta. As it was earlier pointed out, Malta approaches ocean space as a single unit. Malta has therefore suggested an elaborate machinery which will have moderate powers over all activities in ocean space including maintenance of law and order in ocean space, issuance of licences for exploration and exploitation and harmonisation of state activities and management of the living resources.

The African members of the Seabed have adopted the position of the developing states explained above. The only point which is not very clear is whether the machinery should reserve exclusively for itself the right to explore and exploit the area or whether it should reserve a share to states too. The African States may consider adopting the latter. In other respects it is suggested that African States would adopt the position of the developing countries members of the Sea-Bed Committee.

Structure

This is another area where differences exist. There is general agreement in the Committee on the establishment of four main organs: an assembly of all members which will be the legislative arm, a council of limited membership which will exercise most of the powers of the machinery, a secretariat and a tribunal for dispute settlement. There is however considerable disagreement on the composition and procedure of the council.

On the one side there is the position reflected in the Soviet draft which stresses representation based on ideological considerations and a mode of decision making based on consensus. This position is supported by the Eastern group in conformity with their philosophy that the machinery should not be a supra-national body in prejudice to state sovereignty.

The approach of the capitalist and technological advanced countries is to have two categories of members, permanent and non-permanent. A specified number of the most advanced in marine technology would be designated and the rest would be elected reflecting equitable representation. The decisions would be taken in a manner similar to the Security Council.

Finally there is the position of most of the developing countries which would eliminate in form any special categories of membership. All members would be elected for a term and decisions would be taken by a specified majority. They do not dispute the importance of ensuring membership of certain categories of countries, e.g. the most advanced in marine technology, but it is their position that this could be ensured by some method and consideration other than rigid provisions in the treaty. Decision making would be by specified

majority and the power of veto or the requirement of consensus (unanimity) is rejected.

Each group of states is rigid in its position at present. A compromise might be worked out at a latter stage but it is suggested that the African states adopt the position of the developing states members of the Sea-Bed Committee.

There are also differences on the tribunal. Some suggest a permanent tribunal with compulsory jurisdiction, others prefer an ad hoc body, others would confer jurisdiction on the International Court of Justice and others would support the mode of settlement specified by article 33 of the Charter of the United Nations. There has not been sufficient discussion on this issue and it is not easy to define the position of the various groups of states and this is an area where further discussion is needed before an African position is suggested. However, it is possible to establish and set out some guide lines that should be considered in the establishment of whatever institution will be created. There are two principles that immediately present themselves:

1. The institution must be able to settle effectively and promptly the disputes that may arise in connection with the activities in the international area.

2. The institution must be able to dispense justice in accordance with the principles laid down in the Declaration.

In connection with the first principle the institution and the procedures to be followed by it should be such as will not only expedite decisions but also command the acceptance of the parties.

With regard to the second principle the institution should be able to act in fairness and apply faithfully the principles in the Declaration bearing in mind the purposes of the whole Declaration.

It may be suggested that the council which will wield the larger part of the powers to implement the Declaration should set up the institution from among its own members in such a manner that the various regional or other groups will be appropriately represented. The details of the composition and procedures will have to follow these objectives.

Many of the proposals submitted to the Committee suggest the creation of subsidiary organs for specialised functions. For example the United States proposal suggests the establishment of a Rules and Recommended Practices Review Commission and the Tanzania Draft suggests a Distribution Agency and a Stabilisation Board.

Without going into details the African States might possibly reflect on the desirability or otherwise of establishing these subsidiary organs by treaty. It might be best to give competence to the Assembly and the Council to establish these organs as they deem necessary.

Some proposals and particularly that of the United States have suggested elaborate provisions of a technical nature, e.g. rules and recommended practices. No substantial discussion has taken place on these suggestions. But it might be recommended that such technical matters should not be included in detail in the treaty. Progress in technology may very well overtake them and if they are embodied in the treaty it might sometime be difficult to amend them. In any case negotiations on such technical details in a conference of plenipotentiaries would take a long time and the coming into force of the treaty would be delayed.

Transitional Arrangments

Canada has suggested that pending the conclusion of the treaty and its coming into force a transitional machinery should be established to manage that part of the sea bed which is definitely beyond the limits of national jurisdiction. The reason given is that technology is moving ahead rapidly and it will not await the results of the conference. This suggestion has not received sufficient attention in the Sea Bed Committee. It is however recommended that it should not be supported. Negotiation on the transitional machinery will delay negotiations on the treaty. In addition the mandate of the transitional machinery will depend on agreement on matters of principle. For example, it must be resolved whether the machinery will have weak or strong powers. Any transitional arrangements must reflect the general nature of the body to be established and that cannot be determined until agreement is reached on the important principles.

RECOMMENDATIONS

1. SCOPE: The competence of the international machinery should extend over the sea bed and ocean floor and the subsoil thereof. It should not have competence over the superjacent waters and the surface.

2. STATUS: The machinery should possess full legal personality with privileges and immunity. It may have some working relationship with the United Nations system but it should maintain considerable political and financial independence.

3. POWERS: The machinery should be invested with strong and comprehensive powers. In particular it should have power to explore and exploit the area, to handle equitable distribution of benefits and price stabilisation.

4. STRUCTURE: There should be an assembly of all members which would be the repository of all powers and a council of limited membership which would exercise most of the functions of the machinery. There should also be a secretariat to service all the organs and a tribunal for the settlement of disputes. The Assembly and the Council would be competent, as appropriate, to establish subsidiary organs for specialised purposes. Provisions of a technical nature should be avoided in the treaty.

COMMITTEE ON THE SEA-BED

AFRICAN GROUP

DRAFT REPORT ON EQUITABLE ARRANGEMENTS FOR COUNTRIES WITH SPECIAL GEOGRAPHICAL POSITIONS

1. Statement of the problem and summary development of the matter at multilateral level.

The problem of reconciling the interests of coastal countries and the range of countries in special positions with regard to the sea, whether because they are land-locked or because they are semi-landlocked by reason of their extremely short coastlines of their narrow continental shelf, constitutes one of the major problems faced by the new law of the sea.

Until 1958, maritime conferences were very homogeneous in their make up, being formed only of maritime powers, all coastal and, furthermore, with a similar economic development. It was from about 1 & 21 during the conclusion or signing of the

- Convention and Statute on Freedom of Transit,
- Convention and Statute on the Regime of Navigable Waterways of International Concern, and above all

following the Declaration recognizing the right to a flag of States having no sea-coast - all instruments adopted by the General Conferences on Communications and Transit, held in Barcelona in 1921 and in Geneva in 1923 - that land-locked States were given full right to access to the sea.

The interests and special needs of land-locked countries were, indeed, only recognized in 1957, when, during the Eleventh Session of the General Assembly, the draft articles on the law of the sea drawn up by the Committee on International Law were

examined by the Sixth Committee, attention was drawn to the fact that these articles contained no provision applicable to land-locked countries.

In Resolution 1105 (XI) of 21 February 1972, the General Assembly recommended that an International Conference of Plenipotentiaries "study the question of free access to the sea of land-locked countries as established by international practice of treaties".

At the request of the General Assembly, the Secretary General on 14 January 1958 presented a memorandum entitled the "1958 study" which contained, among other things, the question of free access to the sea as examined by other bodies of the United Nations Organization, explained the theories that had served as a basis for various writers in drawing up solutions to the problem of the right of access to the sea, solutions to the problem of transit and access to the sea by bilateral agreements and by multilateral treaties.

The study indicated that it might be possible to draw up new provisions enabling land-locked States to possess and an "unquestioned right of access to ports and to the open sea".

The 1958 Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone codified a "few, but sufficiently clear rules", generally recognized at that time and of a fundamental character, relating to the right to access to the sea.

The Convention on Transit Trade of Land-locked States in 1965 completed efforts exerted since 1921. Besides the Convention alluded to the United Nations Conference on Transit Trade of Land-locked Countries adopted two resolutions, one of which was aimed at facilitating the maritime trade of land-locked countries.

The most recent action taken in this regard consists in the adoption of Resolution 2750 B (XXV) by the General Assembly on 17 December 1970. The right of land-locked countries to equality with other States as regards the use of the high seas and the development of the resources of the sea-bed beyond National Jurisdiction was generally recognized. The adoption of this resolution reveals the global extent of the problem arising from the synthesis of the interests of coastal countries with those of land-locked countries especially when both categories of countries are developing countries which, according to the economics of this resolution should enjoy preferential treatment.

Hitherto, relationships between the sea and land-locked countries had been dealt with in a fragmentary and theoretical manner. Resolution 2750 B, to which should be added the Declaration of Principles (Resolution 2749 (XXV), sets forth the problem as a whole and in a general manner; these problems had, moreover, as was pointed out earlier, been purely and simply overlooked by the International Law Commission in its preparations for the United Nations Conference on the Law of the Sea, held in 1958.

The Committee's discussions on the Sea Bed brought out slight differences between coastal countries and land-locked countries, with the emergence of countries with a short coastline, or almost no coastline, and shelf-locked countries and so on ... whose position resembles without, however, being identical to that of coastal countries.

The new law of the sea being evolved should take account of these different positions in accordance with the relevant provisions of resolution 2750 and of the Declaration of Principles.

II. Special conditions prevailing in Africa

It is necessary to take account of two factors to appreciate in their entirety the problems facing Africa as regards the new Law of the Sea being drawn up.

1. It goes without saying that the States which make up this continent are mostly, if not wholly, so-called developing countries. They have on this account common interests to defend vis-a-vis developed countries.

2. Africa is pre-eminently the continent where all the differences of geographical position with respect to the sea are to be met with. In it are to be found land-locked countries, shelf-locked countries and countries with a short coastline, or with almost no coastline.

Although the proportion of land-locked countries is about one third of UN member States, it comprises over a third of member States of the OAU, that is to say 14 African States are land-locked. There are also a small number of shelf-locked countries and one or two with almost no coastline.

The problem becomes ever more complex when one takes account of the coastal countries of the Mediterranean or the Red Sea which, in addition to the problems they have with our continent are faced with situations resulting from their being contiguous to countries of other continents. African, furthermore, happens to be one of the few continents where such a large number of geographically important countries, which are yet to be freed are to be found.

Finally, African States tend to be small, which sometimes results in the coasts of some States being adjacent to one another, making the problem of lateral delimitation of superjacent waters particularly delicate. Certain coastal countries of the Gulf of Guinea are in danger of finding themselves in this position.

Thus more than half the African States find themselves in a special position with regard to the sea.

PROBLEMS THAT REMAIN TO BE SETTLED

Since the 1958 study, which dealt mainly with the right of land-locked countries to transit and access to the sea, there have been numberous changes. "The major events which have occurred in the meantime as regards the exploration and exploitation of offshore minerals, have been twofold: the adoption of the 1958 Convention on the Continental Shelf and of various measures whereby coastal States have proclaimed jurisdiction over sea-bed areas off their coasts, and secondly, the development of technological means of exploitation of mineral resources, which raise the possibility that exploitation might come to take place at distances far from the shore, and indeed on the deep ocean floor". (DOC.A/AC.138/37).

The Declaration of Principles proclaimed the sea-bed and ocean floor .... beyond the limits of National Jurisdiction the common heritage of humanity, and the use of the International Zone situated beyond those limits open to "all States, whether coastal or land-locked", in accordance with the International regime to be established.

In this way, the right of all States, irrespective of their geographical position, to explore the zone extending beyond

the limit of National Jurisdiction and to exploit their resources was formally recognized.

Certain conclusions proceed logically from these different premises. We shall be leaving the part of the problem dealing with the participation of States with special geographical positions to the machinery of the international regime to be set up, as well as that of the equitable sharing of revenue from the zone, in order to devote ourselves solely to matters arising from access to the high seas, the zone coming under the international regime, and the extension, to 12 miles, of their National Jurisdiction beyond the territorial sea, in the form of an economic zone.

All the problems, however, are interdependent. Indeed, by virtue of the principle according to which the sea-bed and ocean floor and their resources are the "common heritage of humanity", land-locked countries, semi-landlocked countries and shelf-locked countries or those with other geographical peculiarities have equally with the others, the right to participate in the various activities taking place in the Zone. The right of access to the International Zone and to its resources must be formally granted them. Passage through the territorial sea and the economic zone should not normally give rise to any problem, being ensured by "innocent passage" as regards the territorial sea, and freedom of navigation as regards the Economic Zone as heretofore defined. The right of free access to the sea naturally brings up the whole complex matter relating to access to the sea, from free transit to the use of ports, in accordance with a regime ensuring equality of treatment between the transit State and Land-locked or semi-landlocked States. Reference should be made to the eight principles concerning the Transit Trade of Land-Locked States, which were

adopted on 15 June 1964 by the First UNCTAD, and which were incorporated into the Convention of the same name.

It might be objected that these matters could be effectively settled through bilateral agreements. Land-locked, semi-landlocked or shelf-locked countries retort that in order to ensure the effectivity of their rights, they should be based upon a international guarantee, on a generally-recognized universal international treaty, which should serve as the starting point to which regional or bilateral agreements could be subsequently added to settle the practical details. They say that the enjoyment of such rights should not be made to depend upon the conclusion of an agreement with a transit State, or the right to transit would become no more than an imperfect right, since they have always encountered difficulties in putting into practice the theoretical equality with coastal countries. The new Conference on the Law of the Sea should constitute progress in this connexion and ensure the application of rights of access and effective and immediate transit.

THE PROBLEM OF RECIPROCITY

Coastal countries agree in principle to grant free transit to land-locked or semi-landlocked countries, but on the basis of reciprocity. The 5th principle concerning the transit trade of land-locked countries, article 15 of the Convention of the same name, and article 3 of the Convention on the High Seas, affirm this condition.

Countries with special geographical peculiarities affirm that the idea of reciprocity does not apply to this situation since the exercise by countries of their right to access to the sea of

coastal States including rights of traffic in transit is not reciprocal. They should be accorded special treatment as a result of their special position. Furthermore, reciprocity would not be on the same terms, namely access to the sea.

The solution to this controversy might be to affirm that reciprocity bears on the right of access to the sea and that this right, with corollaries, should be granted to every State, whether land-locked or not, and in every conceivable sense. Thus, if a coastal country desires to have access to a sea with which it has no coast, it is by reason of that very fact considered, vis-a-vis this sea, as a land-locked country, and all rights attaching to land-locked countries apply to it in this case. Thus the concept of reciprocity would collapse and the right of transit would be granted in a functional manner to all States in connexion with their right to access to the sea wherever this may be.

COUNTRIES WITH SPECIAL GEOGRAPHICAL POSITIONS AND THE HYPOTHESIS OF THE ESTABLISHMENT OF AN ECONOMIC ZONE

It goes without saying that, for these countries, the larger the zone placed under the jurisdiction of the Coastal States the smaller the remaining Zone where they might have an equal part of the "Common Heritage of Humanity". If an exclusive Economic Zone beyond the territorial sea is created for a Coastal State, and in the measure in which this exclusiveness also applies to them, they will thus find themselves totally excluded from all participation in the living resources of the sea: the territorial seas come within the sovereignty of the Coastal State, as well as the continental shelf, "for the exploration of the latter and the exploitation of its natural resources". Article 2 of the Convention on the continental shelf, while reserving sovereign rights over the shelf to the Coastal State, also states that these rights should be without prejudice to the regime of superjacent waters as represented the high seas. The establishment of an exclusive Economic Zone

thus has the effect of depriving a part of the sea of the regime of freedom from which land-locked, semi-landlocked and shelf-locked countries could derive advantage.

For this reason the concept of the Economic Zone should be carefully defined so as not to result in wrangling within the African group. African countries with special geographical peculiarities should not be asked to make sacrifices without some return; in other words, if there is no compensation, the regime of freedom is more profitable to them, whether in the short or long term.

However, as developing countries, they are conscious of the dangers to coastal countries and in the long run, to themselves, inherent in activities near the Coasts of Africa by well-developed countries as regards fishing and security.

For this reason the concept of the Economic Zone emanating from the Seminar held in Yaounde from 20-30 June 1972 seems aptest to reconcile all shades of interest prevailing in Africa. The Economic Zone is there portrayed as a safety belt against incursions of foreign vessels, but constituting a sea space open to all States of the Continent - land-locked or semi-landlocked - as regards the exploitation of natural resources. Thus Yaounde made distinction between the resources of the continental shelf, which come under the sovereignty of the Coastal State and the living resources over which the Coastal State possesses "exclusive jurisdiction for the purpose of control regulation and national exploitation of the living resources of the sea their preservation, and for the purpose of the prevention and control of pollution".

It would therefore appear that what at first sight seems the divergent interests of coastal countries and landlocked countries finding themselves in a special position with regard to the sea, may be reconciled if a global view of the problems be taken and if too narrow a nationalistic view can be avoided.

SEA-BED COMMITTEE

AFRICAN GROUP

DRAFT REPORT ON REGIONAL ARRANGEMENTS

SEA-BED COMMITTEE

AFRICAN GROUP

DRAFT REPORT ON REGIONAL ARRANGEMENTS

The United Nations General Assembly in its twenty fifth session adopted Resolution 2749 entitled Declaration of Principles governing the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (designated as the area) - principle seven of which stated that the exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether landlocked or coastal, and taking into particular consideration the interests and needs of the developing countries. In furtherance of this objective, the Council of Ministers of the Organization of African Unity, meeting in its Nineteenth Ordinary Session in Rabat, Morocco, from 5 to 12 June 1972, considered that the exploitation of the maritime resources of the seas and oceans bordering on the African coasts constitutes for the African States a hope for future generations and a source of capital interest for their present-day economies. Bearing in mind that the realization of these objectives could be partly approached on a regional basis, the African States in the sea-bed committee proposed the inclusion of the item "Regional Arrangements" in the list of subjects and issues relating to the law of the sea.

In the views expressed by delegates in the sea-bed committee, various references were made to the use of regional organizations for the purpose of the international regime and in connection with the international machinery to be set up for the area and the resources of the sea-bed. Some delegations expressed the view that it would be unrealistic not to recognize the regional differences and particularities of a geographical, geological, social and economic nature. In this connection, the Latin American Declaration of Santiago, in 1952,

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and Montevideo and Lima, in 1970, and the agreements relating to North Sea and Adriatic Sea concluded by countries of those areas and that of the Baltic States were alluded to. Others, however, mostly from developed countries, expressed the concern that the exploitation of the sea-bed and ocean floor on regional basis would place different regions of the world on different footings and thus would undermine the international regime and consequently prevent the equitable sharing by all States in the benefits to be derived.

Africa has always been in favour of regional approaches to problems peculiar to it in economic, social and political fields and it is in this spirit that the item of "Regional Arrangements" was accepted by the African States in the sea-bed committee. Regional arrangement, however, is intended neither to substitute nor weaken the international machinery but rather to strengthen it and render it efficient.

Regional arrangements could be applied to the following fields related to

(a) Pollution of the marine environment

(b) Scientific research and personnal training

(c) The exclusive economic zone

(a) <u>Pollution of the marine environment</u>

If the whole marine environment is to be preserved and marine resources protected, we should not limit our attention to any specific area. Pollution due to its general character and being a world wide phenomenon on account of its mobility, cannot be limited to any specific area or areas. Thus a concerted action on a global scale designed to preserve the marine environment and to prevent and control marine pollution would have to be undertaken. While an international treaty would lay down general rules and standards universally accepted, regional arrangements would be necessary for the effective observance of such rules and standards. Moreover, these regional arrangements, for geographical and other reasons would be entrusted with the task of

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formulating more detailed rules and standards within the framework of the universally accepted rules. It is for this reason that many countries bordering certain seas - such as the North Sea, Baltic Sea, Mediterranean and Arctic basins-have concluded anti-pollution agreements on regional inter-governmental basis. Regional arrangements, however, should be well harmonized with national legislations and global conventions.

(b) Scientific research and personnel training

Principle 10 of the Declaration of Principles obliges States to promote international co-operation in scientific research by participation in international programmes and by co-operation in scientific research; through effective publication, dissemination of results and by strengthening research capabilities of developing countries. Inherent in this principle, though not explicit, is the question of training of personnel from developing countries. This is of paramount importance to us because unless personnel from developing countries are trained and educated in the various disciplines of sea-bed technology, they will neither be in a position to actively participate in international programmes nor to co-operate in scientific research ventures. Moreover, if promotion of scientific research through effective publication is to be helpful, and for dissemination of scientific research results to be fruitful, developing countries should have a sufficient number of trained personnel to understand and utilize the acquired information. Thus it would be necessary for States to promote international co-operation with the view of setting up training institutions. The establishing and funding of such institutions on a regional basis for Africa should be seriously considered and pursued further. The training to be provided should be aimed at narrowing down, if not eliminating, the existing inequalities between developed and developing countries, in the scientific and technological fields of the marine environment and sea-bed resources.

As regional co-operation could be supplementary to international co-operation, Africa should endeavour to promote regional co-operation in the field of scientific research, and the transfer of sea-bed technology between the developing countries of Africa should be encouraged.

(c) The exclusive economic zone

In connection with the economic zone, where coastal States' jurisdiction will extend over an extensive body of water adjacent to their territorial seas, the interests and needs of States, that are land-locked, shelf-locked and partially land-locked as well as States with short coast lines would have to be accommodated by regional arrangements.

APPENDIX XIII

AFRICAN GROUP

SCIENTIFIC RESEACH, PRESERVATION OF MARINE ENVIRONMENT AND TRANSFER OF TECHNOLOGY.

AFRICAN GROUP

SCIENTIFIC RESEARCH, PRESERVATION OF MARINE ENVIRONMENT AND TRANSFER OF TECHNOLOGY

In this document, our attention is seriously engaged by questions relating to the preservation of marine environment, scientific research and the transfer of sea-bed technology to the developing countries.

In fact, at the meetings of the Preparatory Committee, countries represented on Sub-committee III were supposed to have completed the preparation of draft articles of a treaty governing the preservation of marine environment based on the most advanced technology as an aspect of the global programme of the fight for environmental preservation.

1. Preservation of marine environment:

Though this question was considered, a priori, as the major preoccupation of only the industrialized countries, it became clear after the first deliberations of the Stockholm Conference that the problem of pollution in general and that of marine environment in particular were of equal concern to the developing countries.

It was thus realized that if pollution was caused by the developed countries, its effects were no less generally felt by the developing countries than the industrialized countries because no line of demarcation could be drawn in this respect between the two groups. This was the factor underlying the unanimous acknowledgement that the need for the fight against this scourge was urgent and imperative.

We shall however, not loose sight of the fact this general awareness was characterized by the coming into light of two clear tendencies during the deliberations of the Sub-committee.

A. The developed countries:

Until now, it can be affirmed that the developed countries have been the greatest users of the sea from which they have greatly benefited. Besides enjoying the freedom of navigation, they have also exploited the oceans' resources in terms of fishery, mineral resources and others.

Moreover, in the absence of any regulation governing the dumping of wastes, be they industrial wastes carried by rivers, running waters or the winds, be they accidental or deliberate disposal of hydrocarbon wastes by ships or aircrafts, noxious wastes such as chemical toxics and radio-active liquids, this abusive use of the sea has caused the dis-equilibrium that is today generally known to all the sundry.

In other words, the decisive cause of marine environmental deterioration is attributable to the anarchical growth of the developed countries and also, as was pointed out, to rapid technological advancement though the same can remedy the situation.

The industrialised countries and more precisely, the Western countries certainly advocate a concerted action at the international level though they show particular interest in action at the regional level.

This accounts for the signing of regional agreements of which the most quoted seems to be the Oslo Convention governing the dumping of dangerous wastes by ships and aircrafts into the sea.

Since this regional approach should be integrated in the international framework, the Oslo Convention was thus put together with the drafts submitted by Canada and the United States in producing a draft Convention on the same subject at an inter-governmental conference

in Reykjarik which was later remodeled in London and presented in Stockholm. This in fact, is what most of the developing countries are challenging. They maintain that the Reykjarik meeting could not be representative insofar as it was attended by only 29 countries. It should however, be noted that the text prepared in Reykjarik will be the subject for discussion at a meeting announced in London in November 1972.

It should also be noted that marine environment can be preserved with the application of the result of research work on pollution, sea-bed technology as well as the services of highly qualified personnel which only the doveloped countries can provide.

B. The developing countries:

It is obvious that the African countries fall within this second group. For the developing countries, the problem of pollution becomes, in a general way, clear because of their very state of under-development. Thus, as far as they are concerned, the question of resorting to a planned economic and social development policy already constitutes a form of fight against pollution.

With regard to marine environment, it is obvious that the developing countries are not the principal pollutants. Needless to say, wastes of any human activity which are carried to the seas are factors of pollution but of much limited scope than industrial wastes which are constantly discharged. These countries therefore, fall victims of the anarchical economic growth of the advanced countries and are compelled to protect themselves against this evil which is carried as far as to their shores to threaten the lives of their people.

However, what means have they to fight against pollution?

As pointed out, especially by the delegates from Chile and Peru, it is difficult for the developing countries to participate in

this international programme because of lack of economic and human means. It is thus for these reasons that the question of training nationals of these countries is of paramount necessity.

If their effective participation in this universal undertaking is required, then they should be provided with a highly supported technical and financial assistance team.

It is quite obvious that the question of the polluting States providing for and assuming responsibility of this will be cause for the biggest confrontations because the developing countries will not be satisfied with mere declarations of principle for aid and charity but will expect concrete offers as recalled by Mr. Manuel PEREZ-GUERRERO at the 48th meeting of Sub-Committee I that "It has already been fully recognized that the use of the abundant resources of the sea-bed and ocean floor beyond the limits of national jurisdiction should be made in the interest of mankind in general and the developing countries in particular irrespective of their geographical location...."

After becoming aware of this, they should be vigilant and avoid having to pay the costs of a new fight which the rich countries will necessarily have to wage against pollution. If they have realized the magnitude of the fight to be waged against pollution, so also are they aware that the measures to be taken in that regard should, in no respect, be detrimental to their economic and industrial development. What is more, they should benefit from the transfer of sea-bed technology which the developed countries would have to use and from the results of scientific research in which they should be interested.

Another aspect of the preservation of marine environment requires special mention here. This is in connexion with coastal States of certain closed for semi-closed seas like the Mediterranean which is of a different nature from the Atlantic or Pacific for instance. For the coastal States

of these particular seas, the measures to be taken should take another form. In their case, the imminence of the danger represented by pollution is due to the slow rate at which their seas flush out and renew their waters and if measures are not taken immediately, the process of biological degeneration of a sea like the Mediterranean is likely to be irreversible. It is in this context that it becomes necessary to advocate a regional approach to the problem along side with the action taken at the international level. Co-operation with all the coastal States will therefore, make it possible to pool every possible means for the fight.

- Such an action would fall within the general framework of the preservation of the Mediterranean against any form of threat of pollution. In fact, the persistent ploughing of this sea by war-ships constitutes a dangerous source which should be of constant concern to us.

RECOMMENDATIONS

As regards the African countries in particular, there is special need to recall under this heading, certain principles of specific interest to them which, undoubtedly, were established in Stockholm and to propose other recommendations. It should be recommended especially:

- to establish national legislations to protect coastal States from pollution,
- to promote the conclusion of regional agreements as a means of strengthening bonds of co-operation in respect of exchange of information and the fight against pollution,
- to ensure in such a way that regional approach to the preservation of marine environment conforms to the action taken at the international level in order to make it possible to

equip the African countries better with the technical and financial means necessary and to give their nationals full training to enable them participate in the international programme for the preservation of marine environment,

- to stress the need for African countries to participate effectively in the activities of the IMCO in order to preserve interests peculiar to them when Conventions of international bearing are being established,

- and to draw their attention, in this respect, to the Conventions prepared by the IMCO on the pollution of marine environment.

II. - SCIENTIFIC RESEARCH - TRANSFER OF TECHNOLOGY

PROBLEM OF SCIENTIFIC RESEARCH IN MARINE ENVIRONMENT:

Since the conclusion of the 1958 Geneva Convention on the continental shelf in which most African countries did not participate, new scientific information has been acquired, thus pointing to the need for all States to review the legal norms established previously. This is one of the objectives set for the forthcoming conference on the law of the sea.

What can be the nature and aims of scientific research in marine environment?

Where and how should this research work be carried out?

Despite the diversity of legal regimes being established for the oceans, States should ensure that scientific research is not abusively hampered or becomes an obstacle to the uses of the seas, taking into consideration the specific needs of the developing countries. In fact, the primary objective of scientific research should be to increase and broaden man's knowledge of marine environment independently of any practical uses. It should ensure the rational management of the resources

of marine environment in the interest of mankind as a whole.

To facilitate the development and promotion of this research and to foster international co-operation, it should immediately be pointed out that it would be desirable for specialized national or international Agencies to publish and disseminate the data acquired as soon as possible.

POINT OF VIEW OF THE AFRICAN GROUP:

It should be recalled in this respect that there is a similarity of views between the African Group and the rest of the developing countries. The position of the African countries is justified in Resolution 2750 C (XXV) of the United Nations General Assembly. It is doubtless that the African countries acknolwedge the right of every State, whether coastal or land-locked, to carry out scientific research but feel that freedom of researching in the oceans should not be an absolute principle without restrictions. Though the legitimate aspirations of researchers are acknowledged, their scope should be clearly defined because of the inalienable rights and interests of coastal States. Without prejudice to any decision that may be taken on the definition of the international area, the African countries, like certain more advanced States, feel that scientific research in the superjacent waters, internal waters, soil or sub-soil of the area falling under the juridiction of any coastal State should only be carried out with the prior consent of that State. In other words, coastal States should reserve the right to participate in the research work, use the samples collected, have access to the results of the research work and ensure that their personnel is trained under the best conditions possible. This position is further justified by the fact that it is difficult to establish any distinction between basic research and applied research since the oceanographic data acquired by the former can be used for commerical or military purposes. What is more, biological research on

marine species is often carried out by the special fishing vessels of the developed countries in the waters of developing coastal States in away as to ensure the considerable increase of the former's catch.

R E C O M M E N D A T I O N S.

Every State, whether coastal or land-locked, should have the right to participate in scientific research in the international zone. Scientific research should be carried out in a way as to further the knowledge of mankind on marine environment in order to preserve it more effectively and to intensify the fight against pollution;

Everything possible should be done to foster international and regional co-operation with a view to circulating and transferring scientific data acquired, taking into particular consideration, the interests of the developing countries;

Scientific research should conform to the laws and regulations of coastal States which should give their consent before research activities are carried out in areas falling within their sovereignty or under their jurisdiction and should be given the opportunity to participate in those activities,

States should attach the greatest importance to the training of their technical and scientific personnel;

In order to ensure for the international community, an equitable distribution of the results of any research work carried out beyond the limits of national jurisdiction, scientific research in the international zone should be done by an appropriate international Organ.

1973-05

Draft African Memorandum on territorial sea and straits

Organization of African Unity

Organization of African Unity