

**ORGANIZATION OF  
AFRICAN UNITY**  
SECRETARIAT  
P. O. Box 3243



ADDIS ABABA

**ORGANISATION DE L'UNITE  
AFRICAIN**  
SECRETARIAT  
B. P. 3243

COUNCIL OF MINISTERS  
Seventeenth Ordinary Session  
Addis Ababa, June 1971.

CM/381

MEMORANDUM OF THE AFRICAN GROUP ON THE PROBLEM  
OF SEA BED



MEMORANDUM OF THE AFRICAN GROUP ON THE PROBLEM  
OF SEA BED

LAW OF THE SEA PAPER FOR OAU COUNCIL OF MINISTERS

A. Breadth of Territorial Sea and Freedom of Transit  
Through and Over International Straits

There is today no general international agreement on the maximum permissible breadth of the territorial sea. Twenty-seven states claim 3 miles, 17 states, between 3 and 12 miles; 51 states, 12 miles; 6 states, between 12 and 200 miles, and 7 states claim 200 miles. The 12 mile limit has been adopted by the most countries; and most, if not all, countries which presently claim less than 12 miles (44 in all), would probably accept a 12 mile territorial sea providing there was assurance of freedom of transit through and over international straits.

As this group of countries includes 95 out of 127 UN members, it seems likely that the conference on the Law of the Sea which was called by the 25th General Assembly will agree to a limit of 12 miles, providing satisfactory arrangements can be negotiated which provide certain coastal state preferences for the high seas fisheries exploitation beyond 12 miles as well as certain controls with respect to the prevention of marine pollution. Such agreement would be further contingent upon the establishment of a satisfactory international regime to govern exploration and exploitation of sea bed resources beyond the limit of national jurisdiction. The regime should provide that developing countries in particular would have an important role to play in the development of the sea bed in addition to being recipients of the benefits to be derived therefrom.

If the foregoing can be agreed, there is no reason why

any country should insist on a territorial sea limit greater than 12 miles. If the major maritime powers agree to an equitable sharing of the resources of the oceans, taking into consideration the special position of coastal and developing states, there is no need to insist on jurisdictional claims over ocean space which would inhibit freedom of navigation.

International straits are not a matter of direct concern to many countries. However, the general extension of territorial seas to 12 miles will close over 100 straits which at present contain a high seas passage. In the absence of satisfactory arrangements for the free passage of ships and aircraft through or over these straits, traffic might have to be diverted; and, if this happens, freight costs could rise. This could affect the costs of imports and make exports less competitive. Thus, all nations have an indirect interest in insuring that a regime for international straits is negotiated which meets the needs of the maritime nations as well as coastal states.

## B. Fisheries

The basic conflict of interest on fisheries, which the 1973 Conference aims to resolve, is between countries which have important distant water fisheries and countries which fish only around their own coasts. Most, but not all, of the former group are developed countries, and most, but not all, of those with only coastal water interests are developing countries.

Major examples of countries with distant water interests are Japan and the USSR, whose expeditionary fleets now fish in all oceans. Opposed to them are countries like Iceland, Chile and Peru, which have very rich fisheries on their doorsteps - on which they rely very heavily for their economic well-being. They naturally want a Convention which will endorse their claims to exclusive jurisdiction over the resources within striking distance of their coasts (in the case of the South Americans 200 miles is claimed). The distant water states want endorsement

of their view that maximum fishery limits should be relatively narrow (say 12 miles) so that they can go on fishing close into the shores of these countries. The distant water states are, however, likely to concede a degree of preference to coastal states in the stocks on which they depend, as the price of agreement on the 12 mile maximum to exclusive jurisdiction.

The balance of advantage therefore seems to lie in supporting the distant water states in resisting the extreme claims of the Latin Americans and others, while seeking to extract from them the maximum in the way of preference for coastal states as well as technical assistance in the international exploitation of fisheries stocks beyond 12 miles exclusive jurisdiction.

Finally, fish are today the most valuable resource beyond the limit of national jurisdiction. Thus, they are important to all countries; It will be necessary to assure through international agreements that fishery stocks are exploited in a manner which will result in the maximum benefit to mankind as a whole. This means international management and conservation with appropriate standards to ensure efficient utilization of fish. This great source of protein must not be deplored, but harvested in ways that will result in its increase for the benefit of all mankind. Coastal nations have not been notably successful in their efforts to manage fisheries with an eye to the future as well as immediate profits. International controls are clearly required.

### C. Seabeds

Exploration and exploitation of the sea bed is a new concept. Most countries are only beginning to become aware of the technical possibilities in this respect. Further, most

of the capability to exploit sea bed resources resides in the developed countries and their industrial concerns. The growing need for energy resources such as oil and gas and other minerals such as copper will make the seabed ever more valuable. What is needed clearly is an international regime which will encourage exploration and exploitation and at the same time protect the interest of all nations in the international seabed area. The establishment of an international regime is of particular importance for land-locked states which would not otherwise be able to realize any benefit from the exploitation of seabed resources.

It must be recognized, nevertheless, that coastal states have a special interest in the sea bed resources off their shores. Accordingly, as the deep seabed has historically been regarded as an international area, a division must be made between that part of the seabed which would be subject to coastal state jurisdiction and that to be under international control.

The 1958 Geneva Convention on the Continental Shelf provides that the "continental shelf" over which a coastal state exercises sovereign rights for the purpose of exploring and exploiting its natural resources is the "sea bed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admit of the exploitation of the natural resources of the said areas". The advance of technology has made this definition inadequate; political disputes and possible international conflict could result over differences in its interpretation. Therefore, it is essential to define the limits of national jurisdiction over the seabed. Contrary to the assertions of certain countries (particularly some Latin American countries), one cannot adequately develop a regime for the exploration and exploitation of the sea bed beyond the limits

of national jurisdiction without defining the area to which it is to apply. Any regime will necessarily depend upon the area which it is to govern and the types of resources which will be exploited.

The sea bed has traditionally been described in terms of water depth, and the resources in and on the seabed are normally located in accordance with its geological contours. It has been noted that the 200 meter water depth is the average depth world-wide at which the continental shelf curves downward into the continental slope. All exploitation and most exploration of sea bed resources have occurred landward of 200 meters water depth to date. As the Geneva Convention on the Continental Shelf is considered to be declaratory of international law existing in 1958, it is likely that coastal state sea bed jurisdiction will extend at least to a water depth of 200 meters.

Beyond that depth, there is a question as to the extent of coastal state seabed jurisdiction. On the one hand, coastal states will want to obtain certain rights with respect to resources on the continental margin, where scientific evidence indicates most oil and gas reserves occur. On the other hand, the exploitation of these resources will probably produce in the near future the lion's share of revenue benefits accruing to the international community through an international regime. It is important, therefore, that any international sea bed regime provide for an equitable sharing of these resources between coastal states and the international community, whether by an intermediate zone arrangement or otherwise.

There is no dispute that the sea bed resources located beyond the continental margin are international. Any regime to be set up would have to deal with them. While these resources, particularly manganese nodules, have not yet been exploited, certain industrial concerns may be in a position to do so in the next few years. The international community, and developing countries in particular, will want to be assured that these resources are exploited for the benefit of all mankind.

Any regime to be agreed at the 1973 Conference must at the same time that it encourages sea bed exploitation assure maximum benefits therefrom for the international community as a whole, particularly for developing countries. It was agreed at the 25th U.N. General Assembly that the sea bed beyond the limits of national jurisdiction is the "common heritage of mankind". This is an important concept. No parochial interest of any nation or groups of nations can be permitted to interfere with the broad international approach implied in this concept.

The kinds of resources which can be expected to be found in and on the sea bed grow steadily more scarce. As developing countries build their industrial capacity, they too will have need of these resources. It is of importance to developing countries that the regime to be agreed provide for training of nationals from developing countries in the techniques of sea bed exploitation. In sum, it is in all our interests to assure the most orderly and rational development of sea bed resources.

D. Preservation of the Marine Environment (including the Prevention of Pollution.)

---

It is of utmost importance to coastal states that the oceans should not be abused by those who would seek to derive great profit from them. Such an approach would redound to the detriment of us all. Certain coastal states have claimed that the only way to assure the coastal state of the protection of its marine environment is to extend national jurisdiction for this purpose. In the absence of appropriate international controls, this is true. On the other hand, the Preparatory Committee to the LOS Conference has a mandate to prepare international agreements in this respect. Further, other international efforts such as the UN Human Environment Conference at Stockholm in 1972 and the IMCO Marine Pollution Conference in 1973 are aimed at resolving certain aspects of this problem. It will, nevertheless, be for the LOS Conference to assure that the overall problem of marine pollution is adequately dealt with. If such agreements can be achieved in the next few years, there will be no further need for coastal states unilaterally to extend their jurisdiction in this respect.

E. Scientific Research

One of the great problems with respect to developing the oceans as a major resource of all mankind is the lack of human knowledge of the oceans. This deficiency is a problem especially for developing countries. Developing countries will want to insist that the developed countries share with them their technological skills and knowledge. At the same time, however, scientific research in the oceans should not be inhibited, for such inhibition can only impede the acquisition of the knowledge to which we all aspire. We need to assure freedom of scientific research, but with appropriate provisions for the sharing of the knowledge gained therefrom. Provision for this sharing will be an important goal of the 1973 Law of the Sea Conference.



THE "JURISDICTIONIST" POSITION OF COASTAL STATES  
AROUND THE WORLD

It is possible to detect a clear tendency to the extension of national jurisdiction all over the world, which is promoted by:

- (a) interests in the resources adjacent to the coasts, which are becoming increasingly accessible;
- (b) measures to protect either the aforementioned resources, the beaches or the waters from excessive exploitation, pollution etc.;
- (c) security reasons, because of the growing arms race and increasing military uses of the ocean.

A world-wide view could be as follows:

I AMERICA (Continent)

(A) Regional arrangements

1. As it is well known, there is a Latin-American system of Law of the Sea, a practical regional arrangement which the Latin-Americans claim is a regional custom and could be considered international custom being today thirty years old and not strongly objected to. The common principle of this system, accepted by everybody since the Meeting of Jurists held at Mexico City in 1956 and reiterated in the so-called Lima Principles of 1970 is this: that the coastal state is entitled to determine, within reason, the limits of its own jurisdiction... (This principle follows from another previous one: that there is an inseparable link between man, earth and sea, between the land and the resources adjacent to it and that, therefore, the coastal state has an inherent right to the resources adjacent to its coast).

In the application of this principle, a number of Latin-American States claim an area of 200 miles, mainly for economic purposes, (resources): Argentina, Brazil, Chile, Ecuador, El Salvador, Peru, Panama, Nicaragua. Others (Mexico) claim economic rights beyond their territorial sea of 12 miles. The Caribbean States in general (Barbados, Trinidad, Jamaica, Haiti etc.) claim the Caribbean Sea to be a "closed Sea" for economic purposes, that is, an area where the coastal states distribute the existing resources.

From this perspective, there are no dissenting voices in Latin-America, a fact which is clearly perceptible in international forums (UN).

2. CANADA accepts the same principle, that is, the right of the coastal state to determine its own jurisdiction. In use of that principle, it has proclaimed the theory of the "specialized jurisdiction": one jurisdiction for conservation of fish, another for management of fish, a third for pollution etc. It has closed some bays, proclaimed some fishing areas and a pollution area in the Arctic of 100 miles.

3. The UNITED STATES established the practice of unilateral proclamation with the Truman Declaration (1945) which claimed the U.S. Continental Shelf. - By signing the treaties of Inter-American Reciprocal Assistance of Rio Treaty (1947) and the Tlatelolco Treaty which bans nuclear weapons from Latin-America, the US. has accepted security zones and denuclearized zones broader than 200 miles, claimed unilaterally or regionally by the coastal states.

(B) In conclusion, one can speak legitimately of an American Regional system or an American Law of the Sea, taking the term "American" as meaning belonging to the whole of the American continent.

## II WEST

(A) Regional agreements: There are three main regional agreements which tend to distribute the resources of certain maritime areas among the states whose coasts are open to those areas: The one on the North Sea, on the Adriatic and on the Baltic.

(B) Individual Countries:

ICELAND is likely to claim an exclusive fishing zone of at least 70 miles and an area of the sea-bed of 200 miles.

NORWAY favours a limit on the sea-bed of 200 miles or 500 meters depth.

SPAIN supports the Latin-American principles (right of the coastal state to determine its jurisdiction, 200 miles as economic zone).

FRANCE accepts "preferential rights" of the coastal state on the waters beyond the territorial sea and may prefer a distance criteria for determining the limit on the sea-bed.

CANADA (See above)

AUSTRALIA AND NEW ZEALAND. They tend to favour certain economic rights of the coastal state, both in the waters and the sea-beds.

DENMARK endorses the concept of "preferential rights" of the coastal state on fishing.

## III SOCIALISTS

In spite of their very conservative stand, the legal adviser of the USSR was the first Soviet delegate to speak of "preferential rights" of the coastal state on fishing, in the March meeting at Geneva.

## IV ASIA

Regional agreements: Four could be mentioned:

- (a) the 100 miles fishing zone claimed in the Indian Ocean by India, Ceylon and Pakistan;
- (b) the arrangements on the Continental Shelf arrived at by Indonesia and Malasia;
- (c) the agreement on the "archipelago principle" existing between Indonesia and the Philippines;
- (d) "last, but not least": the Afro-Asian Legal Consultative meeting held in Colombo last January, which recommended an economic zone beyond a Territorial Sea of 12 miles, and which considered a 200 mile zone for the sea-bed.

INDIA claims 100 miles on fish, strongly supports the idea of "preferential rights" and endorses the Colombo agreements as referred above.

PHILIPPINES AND INDONESIA the "archipelago principle" for practical purposes, is the same as the closed sea, all the resources of the archipelago area belong to the archipelago countries (and also-- they claim -- military jurisdiction, equivalent to interior waters, in the area).

INDONESIA AND MALASIA: They claim the whole of their Continental Shelf.

CONTINENTAL CHINA (a) claims "property rights" over the whole of the "Chinese Continental Shelf", concept in which is included the shelf of Taiwan;

(b) they support the fundamental Latin-American principle -- and their struggle for the 200 miles (Restated in Lima in a joint Chinese-Peruvian "communique" last week).

SOUTH KOREA has a fishing zone of 20 to 200 miles.

## V AFRICA

The agreements adopted by the Afro-Asian Legal Consultative meeting have also a great validity in Africa. They are essentially, two:

- (a) conditioning the acceptance of a limited Territorial sea of 12 miles to the concession of economic rights over an area beyond the Territorial Sea; and
- (b) consideration of a "distance" criteria for the determination of the limit on the sea-bed and, within that criteria, the possibility of 200 miles.

### INDIVIDUAL COUNTRIES

GHANA claims 100 miles for the conservation of fish.

GUINEA has a territorial sea of 130 miles.

CAMEROON Territorial Sea of 18 miles.

SENEGAL fishing zone of 18 miles. Was observer to the Lima meeting and manifested agreement with the Lima principles.

GABON 25 miles of Territorial Sea.

DAHOMY Jurisdiction over sea bed up to 100 miles.

ALGERIA AND MOROCCO manifested in Geneva (March) sympathy for extended economic jurisdiction.

SUDAN has expressed in the General Assembly sympathy for broad jurisdiction in General Assembly.

KENYA has expressed that the limit on the sea bed must respond to a distance criteria and consider the case of countries without a physical shelf. Has manifested sympathy for extended jurisdiction.



**AFRICAN UNION UNION AFRICAINE**

**African Union Common Repository**

**<http://archives.au.int>**

---

Organs

Council of Ministers & Executive Council Collection

---

1971-06

# Memorandum of the African Group on the problem of sea bed

Organization of African Union

---

<https://archives.au.int/handle/123456789/7602>

*Downloaded from African Union Common Repository*