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The Patrimonial Sea or Economic Zone Concept*

DR. ANDRÉS AGUILAR M.*

On June 20th, 1974, the Third United Nations Conference on the Law of the Sea will open its second session at Caracas, Venezuela, for the purpose of dealing with the substantive work of the Conference, as stipulated in paragraph 4 of resolution 3067 (XXVIII), adopted by the General Assembly of the United Nations on November 16, 1973.

It is worth recalling, briefly, that the decision to convene this Conference was adopted by the United Nations General Assembly on December 17, 1970, in resolution 2750 C (XXV), from which it is clearly apparent:

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This article expresses the view of the author and does not necessarily reflect the position of the Government of Venezuela on this subject.
1) that this is to be a general Conference on the Law of the Sea; as one of the preambular paragraphs of this resolution expresses it very aptly, "... the problems of ocean space are closely interrelated and need to be considered as a whole;"

2) that the purpose of the Conference is the progressive development of the law of the sea with due regard to the fact, as stated in another of the preambular paragraphs of the same resolution, "that the political and economic realities, scientific development and rapid technological advances of the last decade have accentuated the need" to carry out this work;

3) that agreements on the questions to be considered at the Conference should seek to accommodate the interests and needs of all States, whether land-locked or coastal, taking into account the special interests and needs of the developing countries, whether land-locked or coastal.

This Conference is, therefore, a fundamentally political exercise and for this reason, no doubt, the General Assembly decided, in the same resolution 2750 C (XXV), to assign the work of its preparation to a political rather than a technical body.

The preparatory work done by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction served to determine the positions of the various States members of the Committee and to lay the groundwork for the negotiation which will have to be undertaken at the Conference.

It became apparent to many delegations from the very outset of the work that, before proceeding to prepare a single draft convention or even projects with alternative formulations, it was necessary to consider the bases or general lines of a political agreement which would lead to effective solutions for the main problems of the law of the sea.

The results of the work of the Committee, which shall henceforth be referred to by the shorter title of "United Nations Sea-Bed Committee"\(^1\), confirmed this view. At the six sessions of the Committee, with the enlarged terms of reference assigned to it by the General Assembly in resolution 2750 C (XXV), the Committee was unable to produce either a comprehensive set of draft articles for a treaty or to reduce the variants of substantially identical proposals to two or three alternatives on which States could decide

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1. This follows established practice, even though this title is really not appropriate.
at the Conference. On the other hand, more headway was made towards finding a general political agreement than is apparent in the official records of the Committee.

Actually, significant progress was made both formally within the Committee itself and, in particular, at formal and informal meetings held outside the Committee. A very important contribution to this process of crystallization and convergence of positions was made by the governmental meetings, both regional and subregional, such as the Specialized Conference of the Caribbean Countries on Problems of the Sea, held in Santo Domingo, in the Dominican Republic, in June 1972; the meetings held within the framework of the Organization of African Unity at Addis Ababa in 1973; the Fourth Conference of Heads of State and Government of Non-Aligned Countries, held at Algiers in September 1973; and seminars and other similar activities organized by universities and private organizations.

It is obvious from all this preparatory work that one of the key-stones of a possible general agreement is the new juridical concept of the patrimonial sea or economic zone, which has the backing of many countries in different continents and at various levels of development.

It is for that reason that this new concept is presented in this article, in the light of the proposals formally submitted to the United Nations Sea-Bed Committee, and consideration is given to the implications it would have, if accepted, for the juridical regime of other sea areas recognized in existing international law: the territorial sea, the contiguous zone, the continental shelf and the high seas.

The various proposals on the patrimonial sea or economic zone differ in presentation and in the extent to which this concept is developed. They all coincide, however, in some fundamental aspects.

First of all, the patrimonial sea or economic zone would include the waters, bed and subsoil of a belt or strip of sea, beyond the territorial sea, in which the coastal State would have exclusive rights over all the resources, whether renewable or nonrenewable, existing therein and other competences deriving from, or complimentary to, these rights. In addition, the freedoms of navigation,
overflight and the laying of submarine cables and pipelines would be maintained, the only restrictions being those that may derive from the exercise by the coastal State of its rights in the zone.

Secondly, according to almost all the proposals, the maximum breadth of this zone would be 200 nautical miles, calculated from the baselines from which the territorial sea is measured. In other words, the breadth of the territorial sea and of the patrimonial sea or economic zone could not exceed a maximum of 200 nautical miles.

There is, therefore, agreement on two fundamental aspects: precise delimitation of the zone and the general lines of its juridical regime.

Let us now consider the main differences between the various proposals submitted on this subject.

**Rights of Coastal States**

As far as the nature of the rights of coastal States is concerned, the wording of almost all the proposals brings out very clearly the idea that these rights would relate to the resources of the zone and not to the zone itself.

In the draft articles submitted by Colombia, Mexico and Venezuela, article 4 provides that:

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

The working paper of Australia and Norway speaks of "sovereign rights" and, in the draft articles of Algeria and other African countries, article II refers to "sovereignty over the renewable and non-renewable natural resources for the purpose of exploration and exploitation."

In other proposals, for example, in the working paper of Iceland, the reference is not to "sovereignty" but to "jurisdiction and control," or wording is used which implies the right of ownership, as does the working paper of the People's Republic of China. According to section 2, paragraph (2), of the latter paper: "All natural

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3. Id. at 77 et seq.
4. Id. at 87 et seq.
5. Id. at 23 et seq.
6. Id. at 71 et seq.
resources within the economic zone of a coastal State, . . . are owned by the coastal State,” although the text goes on to say that: “A coastal State exercises exclusive jurisdiction over its economic zone for the purpose of protecting, using, exploring and exploiting the resources . . . .” It should be noted that the concept of the right of ownership, implicit in the wording of the first subparagraph of paragraph (2), is specifically mentioned in paragraph (3) which states that:

A coastal State shall, in principle, grant to the land-locked and shelf-locked States adjacent to its territory common enjoyment of a certain proportion of the rights of ownership in its economic zone. (emphasis added).

The draft articles of Argentina⁷ differ considerably from those quoted above on this matter, as article 4 clearly states:

A coastal State has sovereign rights over an area of sea adjacent to its territorial sea up to a distance of 200 nautical miles measured from the baseline from which the breadth of the territorial sea is measured or up to a greater distance coincident with the epicontinental sea. (emphasis added).

However, article 7 of the same text provides that: “A coastal State has sovereign rights over the renewable and non-renewable natural resources, living and non-living, which are to be found in the said area.”

It is interesting to note that the terms “rights of sovereignty” and “sovereign rights,” used in most of the proposals, come from the text of the first paragraph of article 2 of the Geneva Convention on the Continental Shelf (article 2.1),⁸ but unlike this Convention, most of the proposals on the economic zone or patrimonial sea deliberately avoid any expression which may give grounds for claiming sovereignty over the zone itself.

The reason is obvious. The patrimonial sea or economic zone includes not only the sea-bed and subsoil thereof—like the continental shelf—but the superjacent waters as well. There is no difficulty in admitting the exercise of sovereign rights, limited by their purpose, over the continental shelf, but to recognize these same rights in respect of the column of water, might serve as a basis for

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⁷. Id. at 78 et seq.
⁸. “The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.”
subsequent extensions of the power of the coastal State, which might jeopardize the freedoms of communication.

Evidently, the concept of the patrimonial sea or economic zone is developed from the concept of the continental shelf, both of which have many points of contact. Both zones coincide, at least in part, in space; both meet the need to regulate the utilization of resources; in both the coastal State would have rights over resources; and in both the coastal State would have rights, limited by their purpose or, if one prefers, limited powers.

As for the extension of the rights of the coastal State, the first and most important is the right which such a State would have over the resources of the zone. This right is, in fact, the distinctive, essential feature of this new juridical concept.

In principle, this right is exclusive, but some proposals visualize limitations designed to favour adjoining States, or States belonging to the same region or subregion which are land-locked or which have some other geographical disadvantage.

In the working papers of the People's Republic of China, for example, it is stated\(^9\) that:

A coastal State shall, in principle, grant to the land-locked and shelf-locked States adjacent to its territory common enjoyment of a certain proportion of the rights of ownership in its economic zone. The coastal State and its adjacent land-locked and shelf-locked States shall, through consultations on the basis of equality and mutual respect for sovereignty, conclude bilateral or regional agreements on the relevant matters.

Article 8 of the draft articles of Argentina\(^10\) also provides that:

States in a particular region or subregion which for geographical or economic reasons do not see fit to extend their sovereign rights to an exclusive maritime area adjacent to their territorial sea shall enjoy a preferential régime for purposes of fishing in the exclusive maritime areas of other States belonging to the region or subregion, such régime to be determined by bilateral agreements providing for a fair adjustment of their mutual interests.

And article 14 of the same draft states that:

Through bilateral and, where appropriate, subregional agreements, a coastal State shall facilitate for neighbouring States having no sea-coast the right of access to the sea and of transit. In the same way agreement shall be reached with States having no sea-coast on an equitable régime for the exercise in the maritime area of fishing rights which shall be preferential in relation to third States. The said preferential rights shall be granted provided that the enterprises of the State which wishes to exploit the resources

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\(^9\) Report of the Committee on the Peaceful Uses of the Seabed, supra note 2, Sect. 2, para. 3 at 71 et seq.

\(^10\) Id. at 78 et seq.
in question are effectively controlled by capital and nationals of that State and that the ships which operate in the area fly the flag of that State.

Finally, article III of the draft articles of Algeria and other African States\textsuperscript{11} provides, \textit{inter alia}, that:

The limits of the economic zone shall be fixed in nautical miles in accordance with criteria in each region, which take into consideration the resources of the region and the rights and interests of developing land-locked, near land-locked, shelf-locked States and States with narrow shelves and without prejudice to limits adopted by any State within the region.

Moreover, article VIII reads as follows:

Nationals of a developing land-locked State and other geographically disadvantaged States shall enjoy the privilege to fish in the exclusive economic zones of the adjoining neighbouring coastal States. The modalities of the enjoyment of this privilege and the area to which they relate shall be settled by agreement between the coastal State and the land-locked State concerned. The right to prescribe and enforce management measures in the area shall be with the coastal State.

The draft of Jamaica\textsuperscript{12} on regional facilities in favour of developing geographically disadvantaged coastal States follows the same line of reasoning. The two key articles of this draft are the first and second. According to the first,

1. In any region where there are geographically disadvantaged coastal States, the nationals of such States shall have the right to exploit, on a reciprocal and preferential basis, the renewable resources, within maritime zones beyond 12 miles from the coasts of the States of the region for the purpose of fostering the economic development of their fishing industry and satisfy the nutritional needs of the population. 2. The procedures regulating the preferential régime referred to in paragraph 1 above shall be determined by regional, subregional and bilateral agreements.

Article 2, on the other hand, provides that:

Where by reason of the geography of the region or subregion the maritime zones beyond 12 miles from the coasts of States bordering on that region or subregion converge into each other and within the zone of convergence there are geographically disadvantaged coastal States, the nationals of such States shall have a right of equal access to the living resources of the maritime zones in these convergent areas.\textsuperscript{13}

\textsuperscript{11} \textit{Id. at 87 et seq.}
\textsuperscript{12} \textit{Id. at 110 et seq.}
\textsuperscript{13} It is worth noting \textit{en passant} that this project does not prejudge
In addition to the right to the resources of the zone, the proposals on the patrimonial sea or economic zone confer other competences on the coastal State. Almost all, with slight variations in wording, confer upon the coastal State competences in respect to the protection of the marine environment, conservation and scientific research. Moreover, the draft articles of Colombia, Mexico and Venezuela\textsuperscript{14} give the coastal State competence to authorize and regulate the emplacement and use of artificial islands and any kind of facilities on the surface of the sea, in the water column and on the sea-bed and subsoil of the patrimonial sea.

With regard to the protection of the marine environment, article 5 of the draft articles of Colombia, Mexico and Venezuela states that: "The coastal State has the right to adopt the necessary measures to ensure its sovereignty over the resources and prevent marine pollution of its patrimonial sea."

According to the second subparagraph of paragraph (2) in section 2 of the working paper submitted by the People's Republic of China:\textsuperscript{15} "A coastal State exercises exclusive jurisdiction over its economic zone for the purpose of protecting, using, exploring and exploiting the resources . . . " of that zone, and paragraph (6) declares that: "A coastal State may enact necessary laws and regulations for the effective regulation of its economic zone."

Article 11 of the draft articles of Argentina reads as follows:\textsuperscript{16}

A coastal State shall also have jurisdiction to enforce in the maritime area adjacent to its territorial sea such measures as it may enact in order to prevent, mitigate or eliminate pollution damage and risks and other effects harmful or dangerous to the ecosystem of the marine environment, the quality and use of water, living resources, human health and the recreation of its people, taking into account cooperation with other States and in accordance with internationally agreed principles and standards.

Article II of the draft articles of Algeria and other African States\textsuperscript{17} provides that, within that zone, States . . . shall have exclusive jurisdiction for the purpose of control, regulation and exploitation of both living and non-living resources of the zone and their preservation, and for the purpose of prevention and control of pollution.

the nature of the rights which the coastal States would have beyond a territorial sea of 12 miles. In other words, Jamaica did not want to take sides with regard to the different positions held on this matter by the Latin American countries.

14. Report of the Committee on the Peaceful Uses of the Seabed, supra note 2, art. 7 at 19 et seq.
15. Id. at 73 et seq.
16. Id. at 78 et seq.
17. Id. at 87 et seq.
And article VII of the same draft goes on to say:

Without prejudice to the general jurisdictional competence conferred upon the coastal States by article II above, the State may establish special regulations within its economic zone for: . . . (b) Protection and conservation of the renewable resources; (c) Control, prevention and elimination of pollution of the marine environment. . . .

The other proposals on the economic zone (Iceland, Australia, Norway, and Pakistan) do not deal with these competences.

As far as scientific research is concerned, according to article 6 of the draft of Colombia, Mexico and Venezuela: 18 "The coastal State has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea."

The working paper of the People's Republic of China 19 does not refer specifically to scientific research, but the second subparagraph of paragraph (6) in section 2 states, in general terms, that: "Other States, in carrying out any activities in the economic zone of a coastal State, are required to observe the relevant laws and regulations of the coastal State."

According to article 12 of the draft articles of Argentina, 20 on the other hand,

It is also for the coastal State to authorize such scientific research activities as are carried on in the area; it is entitled to participate in them and to receive the results obtained. In such regulations as the coastal State may issue on the matter, the desirability of promoting and facilitating such activities shall be taken especially into account.

Lastly, in the above-mentioned article VII of the draft articles of Algeria and other African States, 21 reference is made, especially in subparagraph (d), to the competence conferred upon the coastal State to establish special regulations within its economic zone for scientific research.

**FREEDOMS**

Another characteristic feature of the patrimonial sea or economic zone concept is maintenance of the freedoms of communication;

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18. Id. at 19 et seq.
19. Id. at 71 et seq.
20. Id. at 78 et seq.
21. Id. at 87 et seq.
navigation, overflight and the laying of submarine cables and pipelines, subject only to any restrictions which may derive from the exercise of the rights of the coastal State in the zone. This is expressly set forth in articles 9 and 10 of the draft articles of Colombia, Mexico and Venezuela,\textsuperscript{22} which also include two supplementary provisions designed to establish the principles for governing the conduct of the coastal State in the zone \textit{vis-a-vis} the other States and that of the latter \textit{vis-a-vis} the former. This is covered in articles 11 and 12 which read as follows:

11. 1. The coastal State shall exercise jurisdiction and supervision over the exploration and exploitation of the renewable and non-renewable resources of the patrimonial sea and over allied activities. 2. In exercising such powers, the coastal State shall take appropriate measures to ensure that such activities are carried out with due consideration for other legitimate uses of the sea by other States.

12. In exercising the freedoms and rights this Convention confers on other States, the latter shall not interfere in the activities referred to in the preceding article.

These freedoms are also expressly included in the working paper of Australia and Norway (section 1 (d)), in the draft articles of Argentina (article 13), and in the draft of Algeria and other African states (article 4).

The working paper of the People's Republic of China\textsuperscript{23} uses very interesting language in this connection. Paragraph (4) of section 2 states, first of all, that “The normal navigation and overflight on the water surface of and in the air space above the economic zone by ships and aircraft of all States shall not be prejudiced.” It will be noted that this wording precludes the free navigation of submarines submerged in the zone.

Moreover, unlike other proposals, the last sentence of paragraph (4) in section 2 of the working paper of the People's Republic of China, states that: “The delineation of the course for laying cables and pipelines in the sea-bed of the economic zone is subject to the consent of the coastal State.” This wording is very different from that used in article 4 of the Geneva Convention of 1958 concerning the continental shelf:

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

\textbf{Extent of the Zone}

As previously mentioned, most of the proposals on the patrimo-
nial sea or economic zone agree that this zone includes both the waters and the sea-bed and subsoil of the zone. They also agree that the outer limit of this zone should not be more than 200 nautical miles measured from the baselines from which the territorial sea is measured. The first of these points needs no explanation. The second, on the other hand, calls for some comment.

First of all, let us examine how this second rule is worded in the various proposals. Article 8 of the draft articles of Colombia, Mexico and Venezuela says that: "The outer limit of the patrimonial sea shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea." More or less the same wording is used in the working paper of the People's Republic of China and the draft articles of Algeria and other African States.

On the other hand, the working paper of Australia and Norway and the draft articles of Argentina introduce new elements. Paragraph (c) of section 1 of the working paper of Australia and Norway reads as follows: "The coastal State has the right to determine the outer limit of the (economic zone-patrimonial sea) up to a maximum distance of 200 nautical miles from the applicable baselines for measuring the territorial sea," but then goes on to say:

However, the coastal State has the right to retain, where the natural prolongation of its land mass extends beyond the (economic zone—patrimonial sea), the sovereign rights with respect to that area of the sea-bed and the subsoil thereof which it had under international law before the entry into force of this convention: such rights to not extend beyond the outer edge of the continental margin.

The continental shelf would thus become part of the economic zone. This, and other similar proposals, will be commented on when the relationship between these two concepts are later discussed.

24. Id. at 19 et seq.
25. "The outer limit of the economic zone may not, in maximum, exceed 200 nautical miles measured from the baseline of the territorial sea." Id., Sect. 2, para. 1, sub. 2, at 78 et seq.
26. "The economic zone shall not in any case exceed 200 nautical miles, measured from the baselines for determining territorial sea." Id., art. III, at 87 et seq.
27. Id. at 77 et seq.
The draft articles of Argentina,\textsuperscript{28} for their part, introduce the idea of the "epicontinental sea" in connection with the extent of the economic zone. Article 4 of this draft actually states that:

A coastal State has sovereign rights over an area of sea adjacent to its territorial sea up to a distance of 200 nautical miles measured from the baseline from which the breadth of the territorial sea is measured or up to a greater distance coincident with the epicontinental sea. For the purposes of this and the succeeding articles, the term 'epicontinental sea' means the column of water covering the sea-bed and subsoil which are situated at an average depth of 200 metres. The scope of the above-mentioned rights is laid down in the succeeding articles.

The question now arises as to the criterion or criteria on which this limit of 200 miles, mentioned in all the proposals concerning this zone, is based. Why 200 and not 100 or 150 or 300? The truth of the matter is that this figure is not related to any geographical, geological or, more generally, any universally accepted scientific datum whatsoever.

The reason why this figure was chosen is essentially political. For one reason or another, a number of countries had claimed different forms of sovereignty or special competences in zones up to 200 miles from the coast. Actually, this is the maximum limit of national claims over maritime resources.

It is also a figure which has, in a way, a magical power, fraught with political implications of national assertion for some States, especially for some States of Latin America. The patrimonial sea or economic zone concept, formulated for the purpose of serving as a compromise solution, necessarily had to take this political reality into account. Quite clearly the 200 miles is a symbol which must be borne in mind in any solution that aims at enlisting the support of the majority.

It might be said that these reasons are not sufficient and that, in any case, this figure is an arbitrary or capricious one, but so also is the figure of 12 miles for the breadth of the territorial sea on which general agreement seems to have been reached.

\textbf{Justification}

The new concept of the patrimonial sea or economic zone is, as its name indicates, a reflection of essentially economic needs and interests.

In the working paper submitted by the delegations of Australia

\textsuperscript{28} \textit{Id.} at 78 et seq.
and Norway\textsuperscript{29} it is stated that the coastal State has the right to establish this zone "for the primary benefit of its people and its economy," and almost the same language is used in article II of the draft of Algeria and other African States\textsuperscript{30} which provides that States have the right to establish these zones "for the benefit of their peoples and their respective economies."

The same idea appears in the working paper of the People's Republic of China\textsuperscript{31} which refers to the "needs of national economic development" as one of the factors to be taken into account by a coastal State in defining its economic zone.

This solution enjoys the support of a great many developing countries in several continents for the very simple reason that it reserves for the nationals of these countries the exploitation of the living resources of a zone adjacent to their coasts which are used today mainly for the benefit of the great fishing powers.

But some developed countries, including some of the fishing powers such as Norway, also support the establishment of this zone, considering that this is the best way of accommodating the interests of the great majority of States which are, precisely, the developing States, without thereby affecting the fundamental interests of the maritime powers which would also have their economic zones.

Furthermore, the establishment of the patrimonial sea or exclusive economic zone reflects a political will to compromise. This solution is actually a compromise between the argument of those who maintain that the coastal State should have no right whatsoever over the living resources of the sea beyond a territorial sea of 12 nautical miles, on the one hand, and the argument advanced by other States that the coastal State should have full or limited sovereignty over the sea and its resources up to a maximum distance of 200 miles.

\textbf{Criticism}

The first comment that can be made concerning the patrimonial sea or economic zone concept is that the establishment of this new

\textsuperscript{29} Id. at 77 et seq.
\textsuperscript{30} Id. at 87 et seq.
\textsuperscript{31} Id. at 71 et seq.
zone affects the rights and interests of all States to the extent that rights over the living resources of a part of the high seas, in which all at present enjoy the freedom to fish, are conferred upon the coastal States.

To this it can be replied that all States with seaboardswould, in principle, be placed on the same footing, because all would have the possibility of having a patrimonial sea or economic zone. Certainly, owing to their geographical situation, not all would be able in practice to extend their patrimonial sea or economic zone to the maximum limit of 200 miles, but this also happens in the case of the territorial sea and the continental shelf, and no one has argued that these concepts should be dispensed with because all States are not, in fact, in the same situation.

The case of the land-locked States, whose rights to fish in the high seas would be limited, in principle, by the reduction in size which this sea space would undergo, is different. This special situation has been carefully taken into account by the advocates of the patrimonial sea or economic zone, as was seen above. In many of the proposals on this subject there are provisions in favour of the land-locked countries and, if they are not included in all of them, this is not because of a lack of interest in the problem but because the co-sponsors of some of them did not agree on the details of this special treatment. This is probably the case of the countries which signed the Declaration of Santo Domingo and for this reason the proposal in the draft articles of Colombia, Mexico and Venezuela, which is based on that Declaration, includes no provisions to that effect.

In this connection, it is very interesting to note that at least some of the land-locked countries have, in principle, accepted the establishment of this new zone. In the draft articles concerning the jurisdiction of coastal States over the resources situated outside the territorial sea, submitted by Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore we read, in article 1, that

1. Coastal States shall have the right to establish, adjacent to the territorial sea, a zone which may not extend beyond nautical miles from the baselines from which the breadth of the territorial sea is measured. 2. Coastal States shall have, subject to the provisions of articles II and III, jurisdiction over the ...

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32. I am referring to fishing and living resources in general, because the coastal States already have rights over the resources of the sea-bed and subsoil of all or part of the patrimonial sea by virtue of the continental shelf concept.

33. Report of the Committee on the Peaceful Uses of the Seabed, supra note 2, at 85 et seq.
zone and the right to explore and exploit all living and non-living resources therein.

Article II of the same draft lays down the rights which, according to the proposal, would be enjoyed by land-locked and coastal States which cannot or do not declare a zone, subsequently referred to as the “disadvantaged States.”

According to this article II, these disadvantaged States as well as natural or juridical persons under their control, shall have the right to participate in the exploration and exploitation of the living resources of the zone of neighbouring coastal States on an equal and non-discriminatory basis.

Paragraph 1 of the same article II goes on to say that:

For the purpose of facilitating the orderly development and the rational management and exploitation of the living resources of particular zones, the States concerned may decide upon appropriate arrangements to regulate the exploitation of the resources in that zone.

Although the drafting of that part of article II raises some doubt, it would appear that both the coastal State and the neighboring disadvantaged States would have to reach agreement on the adoption of these provisions. This impression is borne out by the text of paragraph 2 of the same article II which reads:

In the zone the coastal State may annually reserve for itself and such other disadvantaged States as may be exercising the right under the preceding paragraph, that part of the maximum allowable yield, as determined by the relevant international fisheries organization, which corresponds to the harvesting capacity and needs of these States.

Further on, in paragraph 4 of article II, it is stated that

Disadvantaged States shall not transfer the right conferred upon them in paragraph 1 to third parties. However, this provision shall not preclude the disadvantaged States from entering into arrangements with third parties for the purpose of enabling them to develop viable fishing industries of their own.

So far the draft makes no distinction between the geographically disadvantaged countries in terms of their level of development. Under article II, the countries, thus disadvantaged, whether developing or developed, have the same rights. But this distinction is made in respect of the obligation set forth in paragraph 5 of the same article II, which states that:

A developed coastal State which establishes a...
nues derived from the exploitation of the living resources in that zone to the international authority. Such contributions shall be distributed by the international authority on the basis of equitable sharing criteria.

Hence, not only must the coastal States permit, on equal terms and without discrimination, the exploitation of the living resources of the zone by neighbouring geographically disadvantaged States, but they must also pay a contribution to the international authority.

In article III, the draft also imposes the obligation on the coastal State to pay a contribution to the international authority out of the revenues derived from the exploitation of the non-living resources of its zone. The rate of contribution would be determined on the basis of criteria of distance and depth combined and it is understood that different percentages would be applied to developed and to developing countries.34

It is also interesting to comment on the draft articles concerning the economic zones submitted by two African land-locked countries: Uganda and Zambia.35 According to this draft, the economic zones would not be allocated to States considered individually, but to regions or subregions. Article 4, paragraph 1, provides that these zones would be known as regional or subregional economic zones, and paragraph 2 that “[F]isheries within the regional or subregional economic zones shall be reserved for the exclusive use, exploration and exploitation by all the States within the relevant region or subregion.”

According to paragraph 3 of this article 4,

Relevant regional or subregional authorities shall have the exclusive right to explore, exploit and manage the non-living resources of the regional or subregional economic zones on behalf of all States in the region or subregion.

Another criticism that has been directed against the patrimonial

34. The text of article III, which lays down this obligation, reads as follows: “1. A coastal State shall make contributions to the international authority out of the revenues a) derived from exploitation of the non-living resources of its ... zone in accordance with the following paragraph. 2. The rate of contribution shall ... per cent b) of the revenues from exploitation carried out within 40 miles or 200 metres isobath of the ... zone, whichever limit the coastal State may choose to adopt, and ... per cent b) of the revenues from exploitation carried out beyond 40 miles or 200 metres isobath within the ... zone. 3. The international authority shall distribute these contributions on the basis of equitable sharing criteria. a) The word ‘revenues’ will have to be defined. b) It is understood that different rates should apply to developed and developing countries.”

Id. at 85 et seq.

35. Id. at 89 et seq.
sea or economic zone concept is that conferring exclusive rights upon the coastal States over the living resources of this zone might lead to the inadequate utilization of these resources which are so necessary for feeding mankind, owing to the fact that a number of coastal States do not have the capability to exploit these resources efficiently.

Quite clearly some developing countries do not, at present, have either the capital or the facilities and techniques needed for this exploitation, and this situation may continue for some time. But there is every indication that, in their own interest, these States would allow other States or individuals to exploit the living resources of their economic zones under a system of licenses or joint enterprises.

It has also been said that this solution does not take into account the unequal distribution of living resources in the different seas and oceans. Actually, there are economic zones which would have more such resources than others would, but these inequalities can be corrected in a regional or subregional context. Article 8 of the draft articles of Algeria and other African States,36 article 2 of the draft articles of Afghanistan and other States,37 and especially the draft articles of Jamaica on regional facilities in favour of the geographically disadvantaged developing coastal States38 should be borne in mind in this connection.

Another argument adduced against the patrimonial sea or economic zone concept is that it may serve as a basis or pretext for the coastal State to claim greater rights in the future, including actual sovereignty over the zone.

It could be said, in fact, that the economic zone is intrinsically an extension of the continental shelf and that it would be easy to pass on from a limited right over resources to a right over the zone itself. But the only way to avoid this danger is, precisely, through a convention closely defining the rights of the coastal State of the zone and specifying the freedoms which all other States have in this same zone. It might be added that these extensions of jurisdiction would be unlikely to occur, because it is

36. Id. at 87 et seq.
37. Id. at 85 et seq.
38. Id. at 110 et seq.
in the interest of the great majority of States to maintain the freedom of communication.

It has also been asserted that the establishment of the patrimonial sea or economic zone would create thorny problems of delimitation and would thus become a new source of conflict. To this it can be replied that, in most cases, these problems would easily be solved by agreements between the States concerned. Moreover, the same or greater difficulties arise in connection with the territorial sea and, especially, the continental shelf.

**Relationship Between the Concept of the Patrimonial Sea-Economic Zone and the Concepts of the Territorial Sea, Contiguous Zone, Continental Shelf and High Seas**

It is now necessary to consider how the concept of the patrimonial sea-economic zone fits into the framework of existing international law or, in other words, what the implications of the acceptance of this new concept would be for the juridical regime of the entities recognized by existing international law: the territorial sea, contiguous zone, continental shelf and high seas.

**Territorial Sea**

The concept of the patrimonial sea or economic zone is the key to a general compromise solution—a package deal—the parts of which form an indivisible whole.

For the proposers of this solution, acceptance of a narrow territorial sea implies acceptance of a wide economic zone. In other words, the agreement to set the width of the territorial sea at 12 miles is conditional on the acceptance of an economic zone with a width of no less than 200 miles from the baselines from which the territorial sea is measured. In this connection the slogan: "There will be no 12 without 200" has been coined.39

Although an economic zone of 200 miles is frequently mentioned, as is apparent from the foregoing, this width clearly refers to both spaces. In the proposals on the economic zone the criterion followed has been that of indicating the maximum limits of the territorial sea and of this zone not only so as to take into account the impossibility, in some cases, of reaching these limits for geographical or other reasons, but also so as to leave the coastal States

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39. The proposal of Algeria and other African States is very significant in this connection. Article I of this draft deliberately leaves a blank space for the width of the territorial sea.
free to extend, or not to extend, their territorial seas and economic zones up to the permissible limit. What is involved is an option, not an obligation. Thus, the coastal State could theoretically set the width of its territorial sea at one mile, for example, and declare an economic zone of 199 miles. Given the juridical regime of these spaces it is, of course, to be anticipated that those States which have no obstacles impeding them from doing so would establish a territorial sea of 12 miles and an economic zone of 188 miles.

Contiguous Zone

If the solution of fixing the maximum width of the territorial sea at 12 miles and of authorizing the coastal States to establish a patrimonial sea or economic zone with the above-mentioned characteristics is accepted, the concept of a contiguous zone, as defined in article 24 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, could well be dispensed with. This seems to be the general opinion, because there is no reference to this zone in any of the proposals on the patrimonial sea or economic zone and, according to the statements made by the sponsors of some of these proposals, the omission is intentional.

Continental Shelf

On the other hand, there are differences of opinion among the supporters of the new concept of the patrimonial sea or economic zone concerning the advisability of retaining the concept of the continental shelf.

For some, this concept should disappear in view of the fact that the patrimonial sea or economic zone, with the proposed maximum width of 200 miles, would include most of the continental shelf and confer upon the coastal States rights virtually identical to those they now enjoy over the sea-bed and subsoil of this zone by reason of the 1958 Geneva Convention on the Continental Shelf and international custom. This is the argument advanced by a number of African States, as is apparent from the draft articles submitted by Algeria and other States,40 which contain no references to the continental shelf.

40. Report of the Committee on the Peaceful Uses of the Seabed, supra note 2 at 87 et seq.
But other States are in favour of retaining the concept of the continental shelf with some modifications, or of formulating a new definition of the patrimonial sea or economic zone which would take this geographical and geological reality duly into account. It is justifiably alleged, in support of this argument, that the coastal States have acquired rights over their respective continental shelves. Attention has been drawn to the fact, in this connection, that 49 States, in other words almost half of the States with a seaboard, are parties to the 1958 Geneva Convention on the subject, and that others which, for some reason or other, have not ratified it or acceded to it, have provisions to this effect in their domestic legislation.

Attention has also been drawn to the fact that the continental shelf of some States extends further than 200 miles from the coast and would not be covered by the patrimonial sea or economic zone of these States. Moreover, it has been said that, even in those cases where the continental shelf would be completely covered by the patrimonial sea or economic zone, it is important to retain the concept of the continental shelf in order to maintain the unity of this sea-bed zone, a unity which might be jeopardized by the application of delimitation criteria unconnected with the reality of things.

Of course, the coexistence of the two concepts—the patrimonial sea or economic zone and the continental shelf—raises inter alia the problem of determining the juridical régime applicable to the part of the continental shelf which is covered by the patrimonial sea or economic zone.

As this author stated as Head of the Delegation of Venezuela on August 14th, 1973 in Sub-Committee II of the United Nations Sea-Bed Committee, there are various possible solutions to this problem:

1. A single régime could be applied in the patrimonial sea or economic zone and a different régime, based on the law in force, could be applied only to the part of the continental shelf in excess of 200 miles. This is clearly the solution adopted in the Santo Domingo Declaration and in the joint proposal of Colombia, Mexico and Venezuela. This solution has the disadvantage, pointed out by some delegations, of establishing a variety of régimes for the continental shelf.

2. A régime identical with that established under existing law for the continental shelf could be applied to the sea-bed covered by the patrimonial sea or economic zone. This solution certainly
has the merit of enabling the unity of the continental shelf régime to be maintained.

3. Different régimes could be established in the patrimonial sea or economic zone for the sea-bed and for the superjacent waters, a formula whose merits are more than offset by the complexity which would result from this dual régime.

Lastly, some thought should be given to a formula advanced informally by some delegations, namely, that of including the concept of the continental shelf in a broad interpretation of the patrimonial sea or economic zone.

According to this formula, the patrimonial sea or economic zone would consist (a) of the continental shelf up to the outer edge of the continental rise and the sea-bed and subsoil thereof up to a distance of 200 miles from the baselines used for measuring the territorial sea, wherever the outer edge of the continental rise is less than the distance from such baselines, and (b) of the superjacent waters up to a distance of 200 miles nautical from the baselines used for measuring the territorial sea. According to this suggestion, the continental shelf does not disappear; it becomes an integral part of the economic zone.

Another question that has to be solved is the outer limit of the continental shelf. There seems to be general agreement that the exploitability criterion, established in the 1958 Geneva Convention on the subject, should be replaced by another criterion, or other criteria, which would allow a precise demarcation to be made between the continental shelf and the international sea-bed zone. Criteria of distance, criteria of depth, mixed criteria based on both of these elements and geomorphological criteria have been proposed in the United Nations Sea-Bed Committee.

A geomorphological criterion was adopted in the draft articles presented by Colombia, Mexico and Venezuela. Article 13 of this draft reads as follows:

The term 'continental shelf' means:

(a) The sea-bed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to the outer limits of the continental rise bordering on the ocean basin or abyssal floor;

41. Id. at 19 et seq.
(b) The sea-bed and subsoil of analogous submarine regions adjacent to the coasts of islands.

The draft articles of Argentina\(^42\) are based on the same criterion but in combination with a distance criterion. According to article 15 of this draft

The continental shelf comprises the bed and subsoil of the submarine areas adjacent to the territory of the State but outside the area of the territorial sea up to the outer lower edge of the continental margin which adjoins the abyssal plains or, where that edge is at a distance of less than 200 miles from the coast, up to that distance.

In the rough draft of the Soviet Union on this subject\(^43\) a mixed criterion of depth and distance is proposed. To quote this text:

(1) The outer limit of the continental shelf may be established by the coastal State within the 500-metre isobath. (2) In areas where the 500-metre isobath . . . is situated at a distance less than 100 nautical miles measured from the baselines from which the territorial sea is measured, the outer limit of the continental shelf may be established by the coastal State by a line every point of which is at a distance from the nearest point of the said baselines not exceeding 100 nautical miles. (3) In areas where there is no continental shelf, the coastal State may have the same rights in respect of the sea-bed as in respect of the continental shelf, within the limits provided for in paragraph 2 hereof.

According to the Netherlands proposal\(^44\) the coastal States could choose between a depth criterion and a distance criterion. This proposal states that:

The continental shelf is understood here as the sea-bed and subsoil adjacent to the coast, not exceeding the 200 metres isobath or underlying a belt of sea the breadth of which is 40 nautical miles measured from the baselines of the territorial sea, according to the choice between the two methods of delimitation to be made by the State concerned at the moment of ratification. Such choice shall be final and the method of delimitation shall apply to the whole of the coastline of the State concerned.

The People's Republic of China proposes another solution in its working paper.\(^45\) According to section 3, paragraph (1) of this paper:

By virtue of the principle that the continental shelf is the natural prolongation of the continental territory, a coastal State may reasonably define, according to its specific geographical conditions, the limits of the continental shelf under its exclusive jurisdiction beyond its territorial sea or economic zone. The maximum limits of such continental shelf may be determined among States through consultations.

\(^{42}\) Id. at 78 et seq.
\(^{43}\) Id. at 29.
\(^{44}\) Id. at 111 et seq.; see e.g. footnote at 112.
\(^{45}\) Id. at 71 et seq.
Of all these criteria the geomorphological one is preferred because it is most consistently in line with the origin and evolution of the concept of the continental shelf in international law.

It is an undeniable fact that the juridical concept of the continental shelf derives from a geographical and geological reality. The basis of the coastal State's rights over the resources of the continental shelf is essentially the fact that this shelf constitutes the prolongation in the sea, or rather under the waters of the sea, of its continental or island territory. It is this close physical relationship which led to the application of the juridical theory of appurtenance. On the other hand, the application of different criteria of depth and distance leads to exceedingly variable results owing to the diversity of the continental shelves.

Naturally, even the criteria based on the geographical and geological concept of the continental shelf allow room for intermediate solutions. The jurisdiction of the coastal State can be limited to only a part of the margin, but this limitation should be the subject of an agreement with the coastal States if their participation in the future convention is to be obtained.

Another possibility is a system whereby the international seabed authority would share in the benefits derived from exploitation of the resources of part of the margin, for example, at the base of the slope in shelves which extend beyond 200 miles. Under this scheme, the States concerned could be offered the choice of keeping part of the margin without any commitment whatsoever vis-a-vis the international authority, or of retaining the whole margin with the obligation, in this case, to pay a contribution to the international authority.

**High Seas**

The juridical régime of the high seas would, broadly speaking, be the same as it is at present but it would be based on the premise that the living resources of the sea are not inexhaustible, as people thought until quite recently.

The time has come to set limits on the traditional freedom to fish in this zone. Article 16 of the draft of Colombia, Mexico and Venezuela, which is taken verbatim from the

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46. Id. at 19 et seq.
Santo Domingo Declaration, says that: "Fishing in this zone shall be neither unrestricted nor indiscriminate." This idea, of course, needs to be developed further, but at this preparatory stage the sponsors of this proposal did not want to go beyond a simple statement of the principle.

There are various ways of developing this principle. One might be to empower the same international authority as has to be set up for the sea-bed beyond the limits of national jurisdiction to regulate fishing in the high seas. Some thought might also be given to regional or subregional agreements based on certain universally accepted principles concerning the conservation of the living resources of the sea.