

NSC-D/LOS # 264

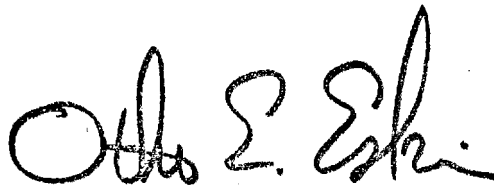
December 11, 1974

MEMORANDUM

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TO : Members of the LOS Executive Group
SUBJECT : Evensen Consultations

Attached for your information is a report on the Evensen Group consultations which took place in New York October 28 - November 6, 1974, prepared by Bernard Oxman.



Otho E. Eskin
Staff Director

Attachment:

As stated.

NSC & STATE review(s) completed.

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Report on Evensen Group Consultations
on Law of the Sea

New York, Oct. 28-Nov. 6, 1974

1. Summary: The meetings were well attended. Attention was devoted almost exclusively to the economic zone and the continental shelf. More flexibility was noticeable on specific issues, with a discernible trend toward acceptance of full utilization of fisheries in principle, and a more widely held feeling that resolution of the issue of the continental shelf limit would require agreement on coastal state jurisdiction and revenue-sharing beyond 200-miles. Peru at one extreme, and Japan at the other, were increasingly isolated. Attempts were made at drafting proposed single texts with varying degrees of success. The problem of dealing with the status of the economic zone is complicated by the absence of agreement on pollution, research, and to a lesser degree, installations. This report proceeds by issue, rather than chronologically. The Evensen Group will meet again in mid-February.

2. Economic Zone (Citations are to Rev. 2 document - attachment 2)

A. Article 11

Dr. Jagota (India) wondered if the term "economic zone" might be left open. Some kind of national jurisdiction concept might emerge to facilitate a reconciliation among territorial sea and economic zone advocates. Efforts should be made to merge alternatives A and B. Mr. de Soto (Peru) agreed. Amb. Beesely (Canada) agreed the zone was more than just a resource zone. Amb. Castaneda (Mexico), Amb. Stevenson (US), Amb. Koh (Singapore) and M. Jeannel (France) disagreed, noting that widespread support for 12-mile territorial sea and 200-mile economic zone framework was major accomplishment of Caracas. It was not a question of flexibility on terminology, but what was implied. Dr. Jagota noted his was a personal remark, and that the GOI supported the economic zone concept. If the contents are agreed, "economic zone" is an acceptable term.

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There was widespread support for the view that the language used should not require a positive act by a State to establish an economic zone. Thus, "the coastal State exercises" was preferred to "the coastal State has the right to establish."

Amb. Koh (Singapore) said the economic zone concept would only be acceptable if landlocked and geographically disadvantaged States participate in the exploration and exploitation of resources or, where there is no participation, the concept of global revenue sharing is accepted. Mr. Warioba (Tanzania) said the subalternative of Alternative A is what Africa means by an economic zone. Neither revenue sharing nor a regional economic zone was part of the original concept. The concept of the economic zone replaced the concept of a wide territorial sea.

The third revision article 11 text (attachment 4) was criticized by the US, UK, USSR, France and Japan, particularly as it related to pollution and research. An alternative article 11 text, based on document L. 47, was circulated by Amb. Stevenson (attachment 4a). Mr. Brennan (Australia) wondered if "jurisdiction to apply and enforce customs and fiscal regulations relating to economic activities in the zone" wasn't in fact subsumed within the resource rights.

Dr. Jagota (India) proposed a different enumeration based on the African economic zone proposal consisting of the following elements:

- (a) sovereign rights to explore, exploit conserve, and manage resources, and to establish and control artificial islands and installations,
- (b) exclusive rights and jurisdiction to apply and enforce customs and fiscal regulations relating to economic activities in the zone,
- (c) exclusive rights and jurisdiction for the purpose of protection of the marine environment and prevention of pollution,
- (d) exclusive rights and jurisdiction to control, regulate and authorize scientific research,

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(e) other rights and duties provided for in the Convention.

B. Article 12

Sir Roger Jackling (UK) submitted a technical amendment along the following lines that seemed generally acceptable: the outer limit of the economic zone shall not exceed 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

C. Articles 13, 14 and 16

Amb. Arias Schreiber (Peru) pressed consistently for an explanation and enumeration of the "other rights" or "other legitimate uses of the sea" in addition to navigation, overflight, and laying cables and pipelines. He wondered if this included military maneuvers and use of explosives. Amb. Koh said that if Singapore's Navy could not conduct maneuvers in neighboring economic zones, it would have to go enormous distances to do so. Amb. Beesely (Canada) said he thought the enumerative approach might work, and offered to work on it. He desisted after strong private objections from Mr. Oxman (US).

The philosophical discussion of the legal status of the economic zone was dominated by the view that it is neither territorial sea nor high seas (Amb. Cisse (Senegal), Mr. Warioba (Tanzania), Amb. Castaneda (Mexico), Amb. Beesely (Canada)).

Amb. Stevenson (US) objected to the third revision draft article 13 on the grounds that it did not include other uses, and that it implied a priority for coastal State rights. He circulated an alternative text based on document L. 47 (attachment 4b), which Amb. Beesely said he could live with if the detailed provisions of the treaty were satisfactory.

There was a long discussion in connection with accommodation of uses of the asymmetry between the coastal State duty to exercise its rights and duties without "unjustifiable" or "undue" interference and the requirement that the flag State "shall not interfere" with the exercise of coastal State rights. Broad sentiment was expressed for retaining the "unjustifiable interference" language of the Continental Shelf Convention as

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the coastal State duty, and against the implication that there might be "justifiable" interference by ships with oil rigs. Amb. Castaneda (Mexico) suggested a "due regard" rule for article 16, and Mr. Oxman (US) a "reasonable regard" rule. After circulation of the third revised text of article 14 (attachment 4), Mr. Oxman (US) said it did not reflect the emerging consensus, which was to use "unjustifiable interference" as the coastal State duty and "reasonable regard" as the flag State duty. Moreover, there was no need to repeat the "other uses" issue raised in article 13. No objection was raised to these suggestions, and a text was submitted to Minister Evensen reflecting them (attachment 4c).

D. Article 15

Amb. Arias Schreiber (Peru) kept asking if the maritime powers wanted the right to install military installations in the economic zone. He criticized the US formula in document L. 47 as leading to disputes. Knowledgeable Western members of the group tried to be helpful.

After the third revised text was presented, and objections were raised by Amb. Arias Schreiber and Dr. Jagota, Mr. Kovalev (USSR) suggested removing the words "in the economic zone" at the end of paragraph 1, since all coastal State rights were involved. The discussion was inconclusive, and two additional alternatives will be added: one giving coastal State rights over all artificial islands and installations, and another based on the text in document L. 47 (art. 3). Mr. Brennan (Australia) was prepared to suggest substituting the word "similar" for "other" after "islands", but did not make the suggestion since he felt it was premature, and the "ejusdem generis" idea could only be played once.

Amb. Beesely informed Mr. Oxman privately that Dr. Jagota was worried about missile launchers and other military installations, not just listening devices. Beesely said he had been arguing privately with others that listening devices are a good thing and serve peaceful ends by preventing miscalculation.

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E. Article 17

Amb. Arias Schreiber was concerned about the meaning of a "peaceful purposes" limitation on coastal State resource rights. Third States should be the object of the limitation. Mr. Thompson-Flores (Brazil) suggested a coastal State right to ensure that third State activities are exclusively for peaceful purposes. Amb. Beesely (Canada) said this was worth considering. Mr. Oxman said this was not the place to get into arms control issues. Using the phrase "peaceful purposes" in this connection would moreover have effects on its meaning in other contexts.

The third revised text does not contain an Article 17.

3. The Economic Zone: Fisheries (Citations are to rev. 2 document -(attachment 3); articles in rev. 3 document are 2 numbers lower, e.g. 18 is 16. There was insufficient time to begin detailed discussion of the fisheries articles in the rev. 3 document; there were general requests for revision and the inclusion of alternatives)).

Amb. Beesely circulated an August 28, 1974 informal draft of coastal State group articles on fisheries (attachment 6). Some of those named as participants (e.g. India and Peru) did not seem overly attached to the texts.

A. Article 18

Mr. Warioba (Tanzania) raised several detailed questions regarding alternative C, mainly who has legislative and enforcement powers, and what is the purpose of the limitations. He could agree to a duty to conserve, but the issue of who conserves would be resolved in different ways in different areas. Mr. Oxman and Amb. Ogiso responded. Dr. Jagota (India) said coastal State control over fishing in the economic zone would be the same as in the territorial sea. There should be no mandatory rules regarding conservation or allocation. If

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you put in priorities, the first priority must be for those who help develop the fisheries of the coastal State. Amb. Andersen (Iceland) distinguished between conservation and allocation, and the corresponding role of international and regional organizations. Mr. Brennan said there should be a duty to conserve, and this was summed up in alternative B. Amb. Zuleta (Colombia) consistently attacked the reference to scientific evidence, noting the practice of some States in using scientists as advocates.

In connection with the discussion of article 19 (full utilization), strong emphasis, led by Amb. Andersen, developed on the coastal State right to determine the allowable catch.

B. Article 19

Dr. Jagota (India) opposed a rigid obligation on full utilization. Amb. Arias Schreiber proposed substituting "rational utilization" for "full utilization". Amb. Cisse (Senegal) inquired if the US was prepared to accept elimination of the priorities and a distinction between developed and developing countries in connection with the operation of the full utilization principle. He said he raised the same questions with Mr. Nordquist in Dakar before leaving for New York.

Judge Okunribido (Nigeria) argued strongly against the list of priorities on security grounds. Mr. Oxman noted the flexibility the coastal State actually has under Alternative C, and said he personally understood the nature of the objections to the priorities. On the other hand, there was a practical traditional fishing problem. He had difficulty with distinguishing between developed and developing country legal rights except of course on questions of assistance, and wondered if Amb. Cisse's objectives might be met by specifying assistance provisions regarding developing coastal States that did not apply to developed coastal States. Mr. Mansfield (New Zealand) said some developed coastal States might be underdeveloped fishing states. Mr. Warioba (Tanzania) wondered if phase-out provisions weren't the real answer. Dr. Arioga (Chile) said the object should be a program of technology

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transfer and financial support to increase developing country fishing capacity, coupled with phase-out to the extent the coastal State increases its capacity. M. Jeannel (France) said the priorities could be eliminated.

Amb. Andersen (Iceland) emphasized that the determination of allowable catch and harvesting capacity must be made by the coastal State; the final determination cannot be made by a third party. Mr. Oxman noted that the purpose of dispute settlement was to prevent abuse, not to interfere with the normal range of regulatory discretion. Most countries had similar systems for judicial review of regulatory decisions, and the drafting should not be that difficult.

While there was considerable interest in the streamlined text submitted by Sir Roger Jackling (attachment 7), most developing countries also favored the enumeration of coastal State measures contained in Article 5 of the coastal State paper (attachment 6).

C. Article 20

Amb. Andersen objected to the reference to "allocation" in connection with global and regional standards. There were rather vague objections to paragraphs 2 and 3 of alternative C.

D. Article 21

The legal problem of assigning FAO functions in a separate treaty was raised. One idea was to use the term "appropriate international organization" and adopt a resolution requesting FAO to assume the functions. Another was to get FAO agreement in advance. (The time spent on the issue may suggest that the real problems related to the references to FAO in the Australian tuna text and to IMCO in US pollution texts).

E. Article 22

The underlying issues were: whether access of neighboring coastal States is limited by coastal State harvesting capacity; whether the access is mandatory or

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permissive; and whether the clause only applies to neighboring developing coastal States. The Africans and Asians tend to favor alternative A, while the Latins tend to favor alternative B.

F. Article 23

A very sharp confrontation developed on this issue between the Africans, led by Amb. Cisse, and Amb. Arias Schreiber. Arias said Africa could not impose its decisions on other regions. Amb. Cisse said there would be no LOS treaty unless landlocked States get equal access to fisheries, and if there were no treaty, African states would extend their territorial sea to 200 miles and give their landlocked neighbors equal access to fisheries. Amb. Arias Schreiber argued for priority for landlocked States, but no equal access.

Dr. Jagota (India) said the access should be limited to a specified neighboring area of the economic zone. Bhutan might have rights off northeastern India and off Bangladesh, but not on the other side.

Amb. Koh (Singapore) said geographically disadvantaged States should have the same rights of access. This led to a sharp negative reaction from Amb. Zuleta (Colombia). Amb. Castaneda proposed a text that provided for negotiation between landlocked and other geographically disadvantaged States and neighboring coastal States on a regional, subregional, or bilateral basis, taking into account all pertinent special circumstances and on an equitable basis.

M. Jeannel (France) proposed a definition of geographically disadvantaged States as developing countries which are landlocked, shelf-locked, or which due to the shape or length of their coast are disadvantaged vis-a-vis their neighbors.

The idea of specifying that landlocked rights are either equal or preferential was raised. Amb. Cisse deferred to Amb. Masaninga (Zambia), who did not give a positive response.

Amb. Cisse noted that the African idea of equal access was being developed to include landlocked sharing of management and conservation costs.

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G. Article 24

Amb. Cisse (Senegal) said two points were missing from Alternative B. First, the decisions of the organization should be taken by a majority of the coastal States, so as to prevent a distant-water imposed decision. Second, the coastal State allocation should be available for joint ventures with the coastal State; this was contemplated among African coastal States. Amb. Stevenson wondered if the coastal State majority shouldn't be added to the required overall majority, rather than substituted for it.

Amb. Arias Schreiber (Peru) said he could accept being members of the organization, but it depends on what the rules of the organization are. If they are as at present, then the answer is no. On the last day he circulated a draft text on highly migratory species, which was not discussed. (Attachment 8).

4. The Continental Shelf

Generally, positions were the same as before on whether there should be jurisdiction over the continental shelf beyond 200 miles. Amb. Ogiso (Japan) was more vocal than before in opposition. He was joined by M. Jeannel (France), who attacked the natural prolongation theory, and withdrew his favorable comments on the Soviet proposal (200 miles or 500 meters) once it was clear this meant jurisdiction beyond 200 miles to 500 meters depth. In response to Mr. Kovalev's (USSR) description of the Soviet idea as a compromise, Sir Roger Jackling (UK) called it a division of the baby reminiscent of Solomon.

Amb. Cisse (Senegal) indicated that his instructions were to support jurisdiction over the continental shelf beyond 200 miles in the African group, but that he did not believe this view would prevail in the African group unless (1) there was a precise indication of the extent of the continental margin to allay concerns that it would extend too far and (2) there was an accommodation such as revenue sharing in the area beyond 200 miles.

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He joined Dr. Jagota in opposing Amb. Koh's suggestion of revenue-sharing within 200-miles. The African group would consider the issue in January. Mr. Mansfield (New Zealand) said revenue sharing beyond 200 miles could be considered.

Amb. Koh (Singapore) circulated a brief paper (apparently under consideration by several delegations) providing for revenue-sharing from mineral resources under national jurisdiction seaward of 50 nautical miles of the coast, and containing a distribution formula (Attachment 9). While the contribution formula contained no distinction between developed and developing countries, Amb. Koh suggested a threshold for the contribution obligation so that the poorest coastal States would not have to contribute.

Mr. Brennan (Australia) outlined some of the economic difficulties in arriving at an appropriate revenue contribution formula.

Considerable time was devoted to discussion of the definition of the continental margin limit. Mr. Oxman indicated the desirability of precise criteria, to which Amb. Beesely (Canada) appeared to have some reservations. When asked by Amb. Cisse if by continental margin they meant the point where continental crust meets oceanic crust, Amb. Listre (Argentina) and Mr. Brennan (Australia) responded affirmatively. There was affirmative discussion of an international boundary review body independent of the Seabed Authority. Dr. Jagota wondered about applying such an idea unless substantive criteria were established.

In private discussions, Amb. Beesely felt that there were insufficient votes to achieve continental margin jurisdiction beyond 200-miles without revenue sharing; there would be a separate vote on the 200-mile economic zone, and it would be impossible to vote no. With respect to the limit of the continental margin, in private conversations Mr. Cooke (UK), Mr. Brennan (Australia), Mr. Mansfield (New Zealand), Mrs. Kelly deGuibourg (Argentina) and Mr. Oxman (US) agreed to inquire of their respective experts whether the criterion of the

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point where continental and oceanic crust meet is satisfactory, whether it can be located inexpensively and with a minimum of potential for dispute, and whether an arbitrary rule of thumb might be useful.

John R. Stevenson
Bernard H. Oxman

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11 (13)

ARGENTINA	Amb. Listre Ms. Elsa Kelly deGiboura
AUSTRALIA	Mr. K. C. Brennan
BRAZIL	Mr. Thompson Flores Mr. Araujo Castro
CANADA	Amb. Alan Beesley
CHILE	Mr. Orrega Vopima
COLOMBIA	Amb. Bernardo Zuelta
EGYPT	Mr. Hussein Abdel Khalek Hassouna
FRANCE	Mr. Roger Jeannel
ICELAND	Amb. Hans Andersen
INDIA	Mr. S. P. Jogota Mr. Ranjit Sethi Mr. Chandrasekhara Rao
INDONESIA	Mr. Noegroho Wisnoemoerti
JAPAN	Amb. Motoo Ogiso Mr. Kenzo Oshima
MEXICO	Amb. Jorge Castaneda Dr. Alicia Cabrera
NETHERLANDS	Mr. Riphagen
NEW ZEALAND	Mr. Michael Mansfield
NIGERIA	Mr. Okunribido Mr. Agoto
NORWAY	Mr. Hagnar Evensen Mr. Vindenes
PERU	Amb. alfonso Arias Schreiber
POLAND	Mr. Goralczyk Mr. Vonau
SENEGAL	Mr. Ibrahima Cisse Mr. Diatta
SINGAPORE	Amb. T. T. B. Koh

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SRI LANKA	Amb. Hamilton Amerasinghe Mr. P. H. Kurukulasuriya
TANZANIA	Mr. J. S. Warioba
UK	Mr. Jackling Mr. David Logan Mr. M. C. Wood
USSR	Mr. Kovalev
ZAMBIA	Mr. J. L. Masaninga
SECRETARIAT	Mr. David Hall Mr. Constantin Stavropoulos Mr. Fernando Labastida
ABSENT:	Bulgaria Venezuela Kenya
UNITED STATES	Amb. John R. Stevenson Mr. Bernard H. Oxman

ATTACHMENTS

1. List of participants in meeting.
2. Part V - The Economic Zone, 2d rev., 1 Aug 1974.
3. Fisheries, 2d rev., 19 Aug 1974.
4. Part V - The Economic Zone (including fisheries),
3d rev., 6 Nov 1974.
 - a. Alternative article 11.
 - b. Alternative article 13.
 - c. Potential consensus art. 14.
5. Part I - The Territorial Sea and Part VI -
Continental Shelf - 2d rev., 30 Oct 1974.
6. Coastal State Group Draft Articles on Fisheries,
Aug 28, 1974.
7. Fisheries - art. 19: UK Compromise draft on full
utilization.
8. Art. 24 (Highly Migratory Species) - Circulated
by Amb. Arias Schreiber of Peru.
9. Revenue Sharing formula circulated by Amb. Koh
of Singapore, probably reflecting landlocked -
geographically disadvantaged consultations.

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Second Revision
1 August 1974

Tentative draft articles for a Convention on the Law of the Sea.
(The chapters on the sea-bed and ocean floor beyond national
jurisdiction and on transfer of technology not included.)

PART V

THE ECONOMIC ZONE

Part V

Second Revision

THE ECONOMIC ZONE

General provisions

Article 11

Alternative A:

The coastal State has the right to establish an economic zone beyond the territorial sea for the benefit of its people and its economy, over which it shall have sovereign rights for the purposes of exploring and exploiting the natural resources, whether renewable or non-renewable, for the purposes of preservation of the marine environment and for the purposes of the conduct of scientific research.

Subalternative:

The coastal State exercises in and throughout an area beyond and adjacent to its territorial sea, known as the exclusive economic zone: (a) sovereign rights for the purpose of exploring and exploiting the natural resources whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters;

Alternative B:

The coastal State exercises in and throughout an area beyond and adjacent to its territorial sea, known as the exclusive economic zone: (a) sovereign rights for the purpose of exploring and exploiting the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters; (b) the other rights and duties specified in this Convention with regard to the protection and preservation of the marine environment and the conduct of scientific research.

The rights set out in this article shall be without prejudice to the provisions of article 24 of this Convention.

Alternative C:

The coastal State exercises in and throughout an area beyond and adjacent to its territorial sea, known as the economic zone (Economic Zone), exclusive rights for the purpose of exploring and exploiting the renewable and non-renewable natural resources of the sea-bed and subsoil and the superjacent waters, subject to the provisions of this Convention.

Subalternative:

1. The coastal State is entitled to exercise in and throughout an area beyond and adjacent to its territorial sea, known as the economic zone (Economic Zone), the rights set forth in this chapter for the purpose of exploring and exploiting the renewable and non-renewable natural resources of the sea-bed and subsoil and the superjacent waters.

2. Such rights shall be exercised in conformity with and subject to the provisions of this Convention and other rules of international law.

Subalternative to
alternative A (continued):

(b) jurisdiction for the purpose of preservation of the marine environment, control of scientific research and protection of other related interests as provided for in this Convention.

Article 12

The outer limit of the economic zone shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea.

Article 13

Alternative A:

1. In the economic zone, ships of all States, whether coastal or not, shall enjoy freedom of navigation so long as it is not prejudicial to the obligations of peaceful coexistence and good neighbourliness or to the laws and regulations of the coastal State in matters of exploration, conservation and exploitation of resources, preservation of the marine environment, scientific research, deployment of installations, and the safety of navigation and maritime transport.

Alternative B:

In the economic zone, ships and aircraft of all States, whether coastal or not, shall enjoy freedom of navigation and overflight subject to the exercise by the coastal State of its rights within the area, as provided for in this Convention.

Alternative C:

Nothing in this chapter shall affect the rights of freedom of navigation and overflight and other rights to carry on activities unrelated to resource exploration and exploitation in accordance with general principles of international law, except as otherwise specifically provided in this Convention.

Article 13 (continued)

Alternative A (continued):

2. In the discharge of the obligations referred to in paragraph 1 of this article, ships traversing the economic zone shall refrain from any activity that may be harmful to the coastal State, such as exercises or practices with weapons and explosives, the launching, landing or loading on board of military equipment the embarking and disembarking of persons in violation of customs, fiscal, immigration or sanitary regulations of the coastal State, acts of propaganda, espionage or interference with communications and other activities not directly related to transit.

3. The provisions of paragraphs 1 and 2 of this article shall also apply mutatis mutandis to transit by aircraft.

Article 14

Alternative A:

The coastal State shall exercise its rights and perform its duties in the economic zone without undue interference with navigation and other means of international communication, including the laying of cables and pipelines, subject to the provisions of this Convention.

Alternative B:

The coastal State shall exercise its rights and perform its duties in the economic zone without undue (unjustifiable) interference with other legitimate uses of the sea, including, subject to the provisions of this Convention, the laying of cables and pipelines.

Alternative C:

The coastal State shall exercise its rights and perform its duties set forth in this chapter without unjustifiable interference with navigation or other uses of the sea, and shall ensure compliance with applicable international standards established by the appropriate international organizations.

Article 14

Proposed single formula:

The coastal State shall exercise its rights and perform its duties in the economic zone without unjustifiable interference with navigation and other legitimate uses of the sea, including, subject to the provisions of this Convention, the laying of cables and pipelines. It shall to this end ensure compliance with applicable international standards established by the appropriate international organizations.

Article 15

Alternative A:

The coastal State shall have the exclusive right to authorize and regulate in the economic zone the emplacement and use of artificial islands and other installations on the surface of the sea, in the waters and on the sea-bed and in the subsoil thereof.

Alternative B:

1. The coastal State shall have the exclusive right to authorize and regulate in the economic zone the emplacement and use of artificial islands and other installations on the surface of the sea, in the waters and on the sea-bed and in the subsoil thereof. Such authorization shall not be unreasonably withheld.

Alternative C:

1. The coastal State shall have the exclusive right to authorize and regulate in the Economic Zone and (on the continental shelf) (in the Coastal State Sea-Bed Area) the construction, operation and use of offshore installations for the purpose of exploration or exploitation of natural resources or for other economic and similar purposes.

Article 15 (continued)

Alternative B (continued):

2. The coastal State may, where necessary, establish reasonable safety zones around such offshore installations.

3. The provisions of article 29 shall apply, mutatis mutandis, to such installation and to safety zones.

Article 16

Alternative A:

Alternative B:

In exercising their rights under this Convention, States shall not interfere with the exercise of the rights or the performance of the duties of the coastal State in the economic zone.

Alternative C (continued):

2. The coastal State may, where necessary, establish reasonable safety zones around such offshore installations.

3. The provisions of article 29 shall apply, mutatis mutandis, to such installation and to safety zones.

Alternative C:

In exercising their rights under this Convention, States shall not unjustifiably interfere with the exercise of the rights or the performance of the duties of the coastal State set forth in this chapter.

Subalternative:

In exercising their rights under this Convention States shall not act in any manner inconsistent with the exercise of the rights or performance of the duties of the coastal State in the Economic Zone.

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Article 16

Proposed single formula:

In exercising their rights under this Convention, States shall not unjustifiably interfere with the exercise of the rights or the performance of the duties of the coastal State in the Economic Zone.

Article 17

The coastal State shall ensure that any exploration and exploitation activity within its economic zone is carried out exclusively for peaceful purposes.

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Second Revision (continued)
19 August 1974

Tentative draft articles for a Convention on the Law of the Sea
(The chapters on the sea-bed and ocean floor beyond national
jurisdiction and on transfer of technology not included.)

FISHERIES

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FISHERIES

Second Revision (cont'd)
19 August 1974

Article 18

Alternative A:

1. In adopting measures to conserve resources in the economic zone, the coastal State shall endeavour to maintain the productivity of species and avoid harmful effects for the survival of living resources outside the said zone.

2. The coastal State shall, for the foregoing purposes, promote any necessary co-operation with other States and with competent international organizations.

Alternative B:

The coastal State shall in the exercise of its sovereign rights over the fisheries resources in the economic zone ensure by proper management and conservation measures that the maintenance of these resources is not endangered by over-exploitation. It shall co-operate with the appropriate regional and global organizations to this end.

For the purpose of the conservation of the renewable resources the coastal State shall apply the following principles:

(a) Allowable catch and other conservation measures shall be established which are designed, on the best evidence available to the coastal State, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, taking into account relevant environmental and economic factors, and any generally agreed global or regional minimum standards;

Alternative C

The coastal State shall, in the exercise of its rights with respect to renewable resources within the economic zone apply the following principles to ensure the conservation of such renewable resources:

(a) Allowable catch and other conservation measures shall be established which are designed, on the best evidence available to the coastal State, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, taking into account relevant environmental and economic factors, and any generally agreed global or regional minimum standards;

(b) Such measures shall take into account effects on species associated with or dependent upon harvested species and, at a minimum, shall be designed to maintain or restore populations of such associated or dependent species above levels at which they may become endangered with extinction;

Alternative B:

(b) Such measures shall take into account effects on species associated with or dependent upon harvested species and, at a minimum, shall be designed to maintain or restore populations of such associated or dependent species above levels at which they may become threatened with extinction;

(c) For this purpose, scientific information, catch and fishing efforts statistics, and other relevant data shall be contributed and exchanged on a regular basis;

Alternative C:

(c) For this purpose, scientific information, catch and fishing effort statistics, and other relevant data shall be contributed and exchanged on a regular basis;

(d) Conservation measures and their implementation shall not discriminate in form or fact against any fisherman /except as provided in article 19/. Conservation measures shall remain in force pending the settlement, in accordance with the relevant provisions of article ..., of any disagreement as to their validity.

Subalternative:

1. In the exercise of its rights over the living marine resources in the economic zone, the coastal State shall, through appropriate regulations, ensure the rational exploitation and preservation of such resources for the purpose of increasing the production of food-stuffs derived from such resources.

2. On the basis of appropriate scientific data and in accordance with the recommendations of the competent international fishery organizations consisting

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Alternative C:

of representatives of interested States in the region concerned and other States engaged in fishing in the region, the coastal State shall determine in the economic zone:

(a) The allowable annual catch of each species of fish or other living marine resources except highly migratory species of fish;

(b) Measures to regulate the exploitation of living marine resources;

(c) Measures to conserve and renew living marine resources;

(d) Regulations for monitoring the observance of the measures specified in subparagraphs (b) and (c).

3. Measures for the conservation, exploration and exploitation of living marine resources and for the monitoring of their observance may not discriminate in form or content against the fishermen of any other State.

Article 19

Alternative A:

The coastal State may reserve the exploitation of living resources in the economic zone ~~division~~ to itself or its nationals, having regard to the need to promote the efficient utilization of such resources, economic stability and maximum social benefits.

The coastal State may allow nationals of other States to fish in its economic zone, subject to such terms, conditions and regulations as it may from time to time prescribe. These may, inter alia, relate to the following:

(a) Licensing of fishing vessels and equipment, including payment of fees and other forms of remuneration;

(b) Limiting the number of vessels and the number of gear that may be used;

(c) Specifying the gear permitted to be used;

(d) Fixing the periods during which the prescribed species may be caught.

(e) Fixing the age and size of fish that may be caught;

Alternative B:

No such rule.

Alternative C:

Subalternative 1:

1. The coastal State shall ensure the full utilization of renewable resources within the economic zone.

2. For this purpose, the coastal State shall permit nationals of other States to fish for that portion of the allowable catch of the renewable resources not fully utilized by its nationals, subject to the conservation measures adopted pursuant to article 18 and on the basis of the following priorities:

(a) States that have traditionally fished for a resource, subject to the conditions of subparagraph 3;

(b) States in the region, particularly land-locked States and other States with limited access to the resources; and

(c) All other States without discrimination.

The coastal State may establish reasonable regulations and require the payment of reasonable fees for this purpose.

Alternative A:

(f) Fixing the quota of catch, whether in relation to particular species of fish or to catch per vessel over a period of time or to the total catch of nationals of one State during a prescribed period.

(g) Specifying the species that may be caught;

(h) Establishing prohibited areas for fishing and hunting.

Alternative B:

Alternative C:

3. The priority under paragraph 2 (a) above shall be reasonably related to the extent of traditional fishing by such State. Whenever necessary to reduce such fishing in order to accommodate an increase in the harvesting capacity of a coastal State, such reduction shall be without discrimination, and the coastal State shall enter into consultations for this purpose at the request of the State or States concerned with a view to minimizing adverse economic consequences of such reduction.

4. The coastal State may consider foreign vessels fishing pursuant to arrangements under articles 22 and 23 as vessels of the coastal State for purposes of paragraph 2 above.

Subalternative 2:

1. If a coastal State does not take 100 per cent of the allowable annual catch of any stocks of fish or other living marine resources in the economic zone, fishermen of other States shall be granted licences to fish for the unused part of such catch.

2. Permission for foreign fishermen to fish in the economic zone of a developed coastal State shall be granted on an equitable basis and in accordance with the provisions of articles ... of this Convention.

Alternative A:

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Alternative B:

Alternative C:

3. Foreign fishermen may be allowed to fish in the economic zone of a developing coastal State by the grant of a special licence and in accordance with the provisions of articles ... of this Convention.

4. When granting foreign vessels permission to fish in the economic zone and in order to ensure an equitable distribution of living resources, a coastal State shall observe, while respecting the priority of the States specified in articles ... and ... of this Convention, the following order:

(a) States which have borne considerable material and other costs of research, discovery, identification and exploitation of living resource stocks, or which have been fishing in the region involved;

(b) Developing countries, land-locked countries, countries with narrow access to the sea or with narrow continental shelves, and countries with very limited living marine resources;

(c) All other States without discrimination.

5. Any questions of payment for the grant of licences to foreign fishermen to fish in the economic zone of a developing coastal State shall be settled in accordance

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Alternative A:

Alternative B:

Alternative C:

with the provisions of this Convention and the recommendations of the competent international fishery organizations and by agreement between the States concerned.

Subalternative 3:

1. The coastal State shall have the right to fish that portion of the allowable catch of the renewable resources which it can harvest subject to the provisions of paragraphs 2 and 3.

2. The coastal State shall provide access by other States to that portion of the allowable catch of a renewable resource not utilized by its vessels.

3. Those States whose nationals have carried on fishing in the zone of a developed coastal State over a long period of time shall be entitled for their nationals to continue fishing in accordance with the measures for conservation and exploitation to be determined, by agreement between the States concerned or, should such be the case, by a competent regional fisheries organization.

If agreement cannot be reached within ... month(s), the matter shall be referred to the special commission provided for in

Article 20

Alternative A:

Alternative B:

States shall co-operate in the elaboration of global and regional standards and guidelines for the conservation, allocation, and rational management of living resources directly or within the framework of appropriate international and regional fisheries organizations.

Alternative C:

1. States shall co-operate in the elaboration of global and regional standards and guidelines for the conservation, allocation, and rational management of living resources directly or within the framework of appropriate international and regional fisheries organizations.

2. Coastal States of a region shall, with respect to fishing for identical or associated species, agree upon the measures necessary to co-ordinate and ensure the conservation and equitable allocation of such species.

3. Coastal States shall give to all affected States timely notice of any conservation, utilization and allocation regulations prior to their implementation, and shall consult with such States at their request.

Subalternative:

The coastal State shall co-operate with the appropriate regional and international organizations concerned with fishery matters when exercising its rights over living resources in the economic zone and, taking into account their recommendations, shall maintain the maximum allowable catch of fish and other living resources.

Article 21 1/

Alternative A:

Alternative B:

Alternative C:

An international register of independent fisheries experts shall be established and maintained by the Food and Agriculture Organization of the United Nations. Any developing State party to the Convention desiring assistance may select an appropriate number of such experts to serve as fishery management advisers to that State.

1/ The suggested articles 20 and 21 have as a matter of expediency been placed in the chapter on Economic Zones in spite of the fact that the provisions concerned are not in their scope limited to the Zone.

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Article 22

Alternative A:

Neighbouring developing coastal States shall allow each other's nationals the right to fish in a specified area of their respective economic zones on the basis of long and mutually recognized usage and economic dependence on exploitation of the resources of that area. The modalities of the exercise of this right shall be settled by agreement between the States concerned. This right will be available to the nationals of the States concerned and cannot be transferred to third parties by lease or licence, by establishing joint collaboration ventures, or by any other arrangement. Jurisdiction and control over the conservation, development and management of the resources of the specified area shall lie with the coastal State in whose zone that area is located.

Alternative B:

Neighbouring developing coastal States may allow each other's nationals the right to fish in a specified area of their economic zones on the basis of long and mutually recognized use. The conditions for the exercise of this right shall be established by agreement between the States concerned, and such right cannot be transferred to a third party.

Alternative C:

Neighbouring coastal States may allow each other's nationals the right to fish in a specified area of their respective economic zones on the basis of reciprocity, or long and mutually recognized usage, or economic dependence of a State or region thereof on exploitation of the resources of that area. The modalities of the exercise of this right shall be settled by agreement between the States concerned. Such right cannot be transferred to third parties.

Article 23

Alternative A:

Nationals of a developing land-locked State shall enjoy the privilege to fish in the neighbouring area of the economic zone of the adjoining coastal State on the basis of equality with the nationals of that State. 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. This privilege will be available to the nationals of the land-locked State concerned and cannot be transferred to third parties by lease or licence, by establishing joint collaboration ventures, or by any other arrangement. Jurisdiction and control over the conservation, development and management of the resources of the specified area shall lie with the coastal State in whose zone that area is located.

Alternative B:

Developing States which are land-locked, or which have a narrow outlet to the sea or a narrow continental shelf shall enjoy the privilege of fishing in the economic zone of a neighbouring coastal State on the basis of equality with the nationals of that State. The conditions governing the enjoyment of this privilege shall be worked out by agreement between the parties concerned.

Alternative C:

Nationals of a land-locked State shall enjoy the privilege to fish in the neighbouring area of the economic zone of the adjoining coastal State on the basis of equality with the nationals of that State. The modalities of the enjoyment of this privilege shall be settled by agreement between the parties concerned.

Subalternative:

Land-locked and other geographically disadvantaged States shall have the right to participate in the exploration and exploitation of the living resources of the economic zone of neighbouring coastal States on an equal and non-discriminatory basis. For the purpose of facilitating the orderly development and the rational exploitation of the living resources of the particular zone, the States concerned may decide upon appropriate arrangements to regulate the exploitation of the resources in those zones.

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Article ...

Suggested alternative to articles 19, 22 and 23

(a) The coastal State shall determine the allowable catch for the living resources of its economic zone, in accordance with the principles of conservation and rational utilization.

(b) The coastal State may reserve for itself that proportion of the allowable catch corresponding to its harvesting capacity.

(c) To the extent that the coastal State is unable to harvest the entire allowable catch, it shall, except in respect of sedentary species, grant other States access to the surplus.

(d) In granting access to the nationals of other States, the coastal State shall have regard to:

- (i) The requirement for equitable rights of access, on the basis of regional, subregional, or bilateral agreements, for land-locked and other geographically disadvantaged States, in accordance with their levels of development, to the living resources of the economic zones of neighbouring coastal States. Such access shall be granted only to the nationals of the land-locked or other geographically disadvantaged State concerned, and cannot be transferred to third parties by lease or licence, through joint collaboration ventures, or by any other arrangement.
- (ii) The need to minimize disruption of traditional fishing, whether by neighbouring States or by other States. Where it is necessary to reduce the level of fishing by such other States, this shall be done through reasonable phase-out arrangements.
- (e) The coastal State may prescribe reasonable terms, conditions, and regulations governing access to the living resources of its economic zone by the nationals of other States. The regulations may, inter alia, relate to the following:
 - (i) Licensing of fishing vessels and equipment, including payment of fees and other forms of remuneration;
 - (ii) Limiting the number of vessels and the number of units of gear that may be used;
 - (iii) Specifying the gear permitted to be used;
 - (iv) Fixing the periods during which fish or fish of a species or class may be taken;
 - (v) Fixing the size of fish that may be taken;

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- (vi) Specifying the method of fishing that may be used in a specified area or for taking a specified species or class of fish and prohibiting any other methods;
- (vii) Fixing the quota of catch, whether in relation to particular species or class of fish or to catch per vessel over a period of time or to the total catch of nationals of one State during a prescribed period.

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Alternative A:

No such rule.

Alternative B:

Highly migratory species, defined in Annex ...*, shall be regulated in accordance with the provisions of article ... in the same manner as other species of fish found or taken in the economic zone, except that in recognition of the greater likelihood that more States will be required in the case of highly migratory species to co-operate in the conservation, management and control of such species as well as in the rational utilization of such species, the following additional provisions shall apply:

1. Any coastal State in whose economic zone highly migratory species are found or taken and any State whose vessels take such species may request the opinion of the Director-General of FAO as to whether proper management of such species requires the setting up of an appropriate international or regional organization. The Director-General of FAO shall respond within 90 days of any such request, rendering his opinion, and if such opinion is positive, designating the members of the organization. All designated States shall have the obligation to take all actions necessary to establish the

Alternative C:

Fishing for highly migratory species shall be regulated in accordance with the following principles:

A. Management. Fishing for highly migratory species listed in Annex A within the economic zone shall be regulated by the coastal State, and beyond the economic zone by the State of nationality of the vessel, in accordance with regulations established by appropriate international or regional fishing organizations pursuant to this article.

(1) All coastal States in the region, and any other State whose flag vessels harvest a species subject to regulation by the organization, shall participate in the organization. If no such organization has been established, such States shall establish one.

(2) Regulations of the organization in accordance with this article shall apply to all vessels fishing the species regardless of their nationality.

B. Conservation. The organization shall, on the basis of the best scientific evidence available, establish allowable

* A flexible procedure for the amendment of such a technical annex will be required.

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Alternative A:

Alternative B:

organization within the shortest possible time.

2. All States shall co-operate fully with an appropriate international or regional organization (being either an organization which exists on the date of entry into force of this article or an organization set up pursuant to this article) established and empowered to issue regulations to conserve and manage the species concerned, including the allocation of national quotas.

3. In the absence of agreement to the contrary decisions of the organization shall require an affirmative vote of two thirds of its members.

4. The organization in formulating regulations shall take into account the following criteria:

A. The coastal State's right in preference to other States to harvest the regulated species within its economic zone to the extent of its harvesting capacity subject only to conservation measures necessary to maintain or restore the regulated species.

B. The rational utilization of such species and its maximum sustainable yield,

Alternative C:

catch and other conservation measures in accordance with the principles of article 18.

C. Allocation. Allocation regulations of the organization shall be designed to ensure full utilization of the allowable catch and equitable sharing by member States.

(1) Allocations shall take into account the special interests of the coastal State within whose economic zone highly migratory species are caught, and shall for this purpose apply the following principles within and beyond the economic zone: [insert appropriate principles].

(2) Allocations shall be designed to minimize adverse economic consequences in a State or region thereof.

D. Fees. The coastal State shall receive reasonable fees for fish caught by foreign vessels in its economic zone, with a view to making an effective contribution to coastal State fisheries management and development programmes. The organization shall establish rules for the collection and payment of such fees, and shall make appropriate arrangements with the coastal State for the establishment and application of such rules.

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Alternative A:

Alternative B:

based on the best available scientific evidence.

C. Traditional harvesting patterns both in the region and in the economic zone, taking into account the desirability of avoiding to the maximum extent possible severe economic dislocations in any State as a result of the application of this article.

D. The criteria applicable to other than highly migratory species, as set out in article

5. A. The organization shall fix a uniform fee for fish caught whether inside or outside an economic zone, provided that a coastal State shall be exempt from such fee in respect of fish caught by its vessels in its economic zone.

B. The uniform fee shall be fixed at a reasonable level, with a view to providing for:

1. The organization's administrative expenses.

2. Effective contribution to management and development programmes for the species concerned.

3. Enforcement.

Alternative C:

In addition, the organization may collect fees on a non-discriminatory basis based on fish caught both within and outside the economic zone for administrative and scientific research purposes.

E. Prevention of Interference. The organization shall establish fishing regulations for highly migratory species in such a way as to prevent unjustifiable interference with other uses of the sea, including coastal State fishing activities, and shall give due consideration to coastal State proposals in this regard.

F. Transition. Pending the establishment of an organization in accordance with this article, the provisions of this article shall be applied temporarily by agreement among the States concerned.

G. Interim Measures. If the organization or States concerned are unable to reach agreement on any of the matters specified in this article, any State party may request, on an urgent basis, pending resolution of the dispute, the establishment of interim measures applying the provisions of this article pursuant to the dispute settlement procedures specified in chapter The

Alternative A:

Alternative B:

4. Scientific research.

C. The coastal State shall receive the uniform fee paid in respect of fish caught by foreign vessels within its economic zone.

D. The organization shall establish rules for the collection and payment of the uniform fee, and shall make appropriate arrangements with the coastal State regarding the establishment and application of such rules.

E. The organization may require a member to make a minimum contribution to its budget, taking into account fees received by the organization in respect of fishing by the member's nationals.

6. Each State shall give effect to the regulations issued by the organization:

A. Within its economic zone it shall apply those regulations to all persons and vessels.

B. Outside its economic zone it shall apply those regulations to vessels flying its flag.

7. Further provisions dealing with enforcement outside the economic zone will be required.

Alternative C:

Immediately preceding agreed regulations shall continue to be observed until interim measures are established.

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Alternative A:

Alternative B:

Alternative C:

8. A State shall have the right to submit to the Disputes Tribunal any dispute relating to a regulation by either another State or by the organization. The Disputes Tribunal shall have jurisdiction to decide the matter and to modify or set aside any regulation from whatever source respecting the regulated species, including a regulation respecting fees, which it may find to be contrary to the provisions or principles of this article.

9. A. In disputes involving scientific and technical matters the Disputes Tribunal shall request the opinion of experts from FAO and from any other appropriate source.

B. The Disputes Tribunal shall have due regard to the desirability of avoiding a multiplicity of régimes or regulations within a single region of migration of a particular highly migratory species and to the interests both of coastal States and of distant water fishing States in the species.

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Article 25

Alternative A:

The coastal State may, within the limits of the maritime zone under its sovereignty and jurisdiction, board and inspect foreign-flag fishing or hunting vessels; if it finds evidence or indications of a breach of the legal provisions of the coastal State, it shall proceed to apprehend the vessel in question and take it to port for the corresponding proceedings.

Alternative B:

The coastal State, in the exercise of its rights with respect of the renewable natural resources in the Economic Zone, shall have jurisdiction to enforce its laws and regulations in respect of all vessels fishing in the zone. Enforcement measures may include boarding, inspection, arrest and detention, the institution of judicial proceedings, the imposition of penalties including seizure and forfeiture of catch, gear and vessels, cancellation of fishing licences, expulsion from the zone for such period as may be specified, and monetary fines in accordance with the laws of the coastal State.

Alternative C:

1. The coastal State may, in the exercise of its rights under this chapter with respect to the renewable natural resources, take such measures, including inspection and arrest, in the economic zone of the host State and other States, as may be necessary to ensure compliance with its laws and regulations, provided that when the State of nationality of a vessel has effective procedures for the punishment of vessels fishing in violation of such laws and regulations, such vessels shall be delivered promptly to duly authorized officials of the State of nationality of the vessel for legal proceedings, and may be prohibited by the coastal State from any fishing in the zone pending disposition of the case. The State of nationality shall within six months after such delivery notify the coastal State of the disposition of the case.

2. Regulations adopted by international organizations in accordance with article 19 shall be enforced as follows:

(a) Each State member of the organization shall make it known to the flag vessel to violate such regulations, and

Alternative A:

Alternative B:

Alternative C:

shall co-operate with other States in order to ensure compliance with such regulations.

(b) The coastal State may inspect and arrest foreign vessels in the economic zone for violating such regulations. The organization shall establish procedures for arrest and inspection by coastal and other States for violations of such regulations beyond the economic zone.

(c) An arrested vessel of a State member of the organization shall be promptly delivered to the duly authorized officials of the flag State for legal proceedings if requested by that State.

(d) The State of nationality of the vessel shall notify the organization and the arresting State of the disposition of the case within six months.

3. Arrested vessels and their crew shall be entitled to release upon the posting of reasonable bond or other security. Imprisonment or other forms of corporal punishment in respect of conviction for fishing violations may be imposed only by the State of nationality of the vessel or individual concerned.

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Part V

THE ECONOMIC ZONE

General provisions

Article 11

The coastal State exercises in and throughout an area beyond and adjacent to its territorial sea, known as the exclusive economic zone:

a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters;

b) Jurisdiction to apply and enforce customs and fiscal regulations relating to economic activities in the zone;

c) Jurisdiction for the purpose of preservation of the marine environment and control of scientific research, as provided for in this Convention;

d) Other rights and duties provided for in this Convention.

The rights set out in this article shall be without prejudice to the provisions of article of this Convention.

The outer limit of economic zone shall not exceed 200 nautical miles from the applicable baselines for measuring the territorial sea.

Article 13

In the economic zone, ships and aircraft of all States, whether coastal or not, shall enjoy the freedom of navigation and overflight and of laying submarine cables and pipelines, subject to the exercise by the coastal State of its rights within the area, as provided for in this Convention.

Article 14

1. The coastal State shall exercise its rights and perform its duties in the economic zone without unjustifiable interference with navigation and other legitimate uses of the sea, including subject to the provisions of this Convention, the laying of cables and pipelines.

2. In exercising their rights under this Convention, States shall not interfere with the exercise of the rights

1. The coastal State shall have the exclusive right to authorize and regulate in the economic zone the establishment, operation and use of artificial islands, other off-shore installations and any other installation which may affect the rights of the coastal State in the economic zone.
2. The coastal State may, where necessary, establish reasonable safety zones around artificial islands and other installations.
3. The provisions of article ... shall apply, mutatis mutandis, to such installations and to safety zones.

Fisheries

Article 16

The coastal State shall in the exercise of its sovereign rights over the fisheries resources in the economic zone ensure by proper management and conservation measures that the maintenance of these resources is not endangered by over-exploitation. It shall cooperate with the appropriate regional and global organizations to this end.

In the exercise of its right to determine the allowable catch for the living resources of the zone, the

coastal State shall take into account the need for conservation and rational utilization. The coastal State shall seek to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, taking into account the best evidence available to it and the recommendations of the appropriate regional and global organizations.

The measures adopted by the coastal State shall take into account effects on species associated with or dependent upon harvested species and the need to ensure that they are not threatened with extinction.

Article 17

1) The coastal State shall, in accordance with the provisions of these articles, promote the objective of full utilization of the renewable resources within the economic zone.

2) To the extent that the coastal State is unable to harvest the entire allowable catch, it should through agreements or other arrangements and pursuant to appropriate coastal State regulations, give other states access to the surplus. The terms and conditions of the coastal State may inter alia relate to the following:

a) Licensing of fishermen, fishing vessels and

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remuneration; developing states in particular may require adequate compensation in the field of fishing industry financing, equipment and fisheries technology;

b) Determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or complexes of stocks or catch per vessel over a period of time or to the catch by nationals of any state during a specified period;

c) Regulating times and areas of fishing, the types, sizes and amount of gear, and the numbers, sizes and types of fishing vessels that may be used;

d) Fixing the age and size of fish and other species that may be caught;

e) Specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;

f) Requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;

g) The placing of observers, trainees or crew members on board such vessels by the coastal State;

h) The landing of all or any part of the catch by such vessels in the ports of the coastal State;

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i) Terms and conditions relating to joint

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ventures or other cooperative arrangements;

j) Requirements for training of personnel and transfer of fisheries technology including enhancement of the coastal State's capability for undertaking fisheries research.

Article 18

States shall co-operate in the elaboration of global and regional standards and guidelines for the conservation and rational management of living resources directly or within the framework of appropriate international and regional fisheries organizations.

Where a stock occurs within the economic zones of two or more coastal States, these states shall consult either directly or through appropriate international organizations regarding the management and conservation of such stocks.

Article 19

An international register of independent fisheries experts shall be established and maintained by the appropriate international organization. Any developing State party to the Convention desiring assistance may select an appropriate number of such experts to serve as fishery management advisers to that State.

Neighbouring developing coastal States shall through agreements or other arrangements and pursuant to appropriate coastal State regulations, allow each other's nationals the right to fish in a specified area of their respective economic zones on the basis of long and mutually recognized usage and economic dependence on exploitation of the resources of that area. The coastal State may establish appropriate terms and conditions for the exercise of this right. The right will be available to the nationals of the States concerned and cannot without the consent of the coastal State concerned be transferred to third parties by lease or licence, by establishing joint collaboration ventures, or by any other arrangement. Jurisdiction and control over the conservation, development and management of the resources of the specified area shall lie with the coastal State in whose zone that area is located.

Article 21

1) Nationals of a land-locked developing state shall, in a specified area of the economic zone of neighbouring states, have the right to participate on an equal or preferential footing in the exploration and exploitation of the living resources, on the basis of regional, sub-regional or bilateral agreements. This

Article 20 cont.

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locked State concerned and cannot without the consent of the coastal State be transferred to third parties by lease or licence, by establishing joint collaboration ventures, or by any other arrangement. Jurisdiction and control over the conservation, development and management of the resources of the specified area shall lie with the coastal State in whose zone that area is located.

2) Relations between geographically disadvantaged developing states regarding the exploitation of living resources in the economic zone shall be negotiated on a regional, sub-regional or bilateral level, taking into account all pertinent special circumstances and on an equitable basis.

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ARTICLE 11

1. The coastal State exercises in and throughout an area beyond and adjacent to its territorial sea, known as the economic zone, the jurisdiction and the sovereign and exclusive rights set forth in this chapter for the purpose of exploring and exploiting the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters.
2. The coastal State exercises in the economic zone the other rights and duties specified in this Convention, including those with regard to the protection and preservation of the marine environment and the conduct of scientific research.
3. The exercise of these rights shall be in conformity with and subject to the provisions of this Convention, and shall be without prejudice to the provisions of Article _____.

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ARTICLE 13

Nothing in this chapter shall affect the rights of freedom of navigation and overflight, and other rights recognized by the general principles of international law, except as otherwise specifically provided in this Convention. The provisions of this article do not apply to activities for which the authorization of the coastal State is required pursuant to this Convention.

ARTICLE 14

L4c (5)

1. The coastal State shall exercise its rights and perform its duties in the economic zone without unjustifiable interference with the exercise of the rights referred to in Article 13. /It shall ensure compliance with applicable international standards established by the appropriate international organizations for this purpose./

2. In exercising their rights under this Convention, States shall have reasonable regard to the exercise of the rights and the performance of the duties of the coastal State in the economic zone.

TR $\frac{15}{624}$

Second Revision
30 October 1974

Tentative draft articles for a Convention on the Law of the Sea

PART I

THE TERRITORIAL SEA

Second revision
30 October 1974

PART I

THE TERRITORIAL SEA

(For each of the articles below, reference is given in parenthesis to corresponding provisions in document A/CONF.62/C.2/WP.1)

General provisions

Article 1

(Provision 1)

Alternative A

1. The sovereignty of a coastal State extends beyond its coast and internal or archipelagic waters to an adjacent zone described as the territorial sea. (1.B, para. 1)
2. The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil. (1.A, para. 2)
3. This sovereignty is exercised in accordance with the provisions of these articles and allows a plurality of régimes in the cases and for the purposes indicated hereinafter. (1.B, para. 3)

Alternative B

1. The sovereignty of a coastal State extends beyond its land territory and internal waters, and in the case of archipelagic States, their archipelagic waters, over an adjacent belt of sea defined as the territorial sea. (1.C, para. 1)
2. The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil. (1.A, para. 2)
3. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law. (1.A, para. 3)

Alternative C

1. The sovereignty of a State extends beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea. (1.A, para. 1)
2. The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil. (1.A, para. 2)
3. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law. (1.A, para. 3)

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Article 2

(Provisions 22 and 23)

Alternative A

Each State has the right to establish the breadth of its territorial sea up to a distance not exceeding 200 nautical miles, measured from the applicable baseline. (22.B)

Alternative B

Each State shall have the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines drawn in accordance with articles ... of this Convention. (22.A)

Alternative C

Identical with alternative B.

Subalternative

1. Each coastal States shall have the right to establish the limits of the adjacent sea subject to its sovereignty and jurisdiction, within the maximum distance referred to in paragraph 2 of this article, having regard to reasonable criteria which take into account the relevant geographical, geological, ecological, economic and social factors and interests relating to the preservation of the marine environment and national sovereignty. (23.B, para. 1)

2. In seas where the zone of sovereignty and jurisdiction of a coastal State can extend to a distance of 200 nautical miles, measured from the applicable baselines, without interfering with the zone of sovereignty and jurisdiction of another coastal State, that distance shall be recognized as the maximum outer limit applicable to the respective zones of sovereignty and juris-
(23.B, para. 2)

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Article 3

(Provision 4)

Alternative A

A coastal State may adopt its own method of drawing the baseline according to the topographical features of its coast. (4.B, para. 1)

In localities where the coastline is regular or the coast is low and flat, the method of natural baseline, i.e. taking the low-tide lines as the baselines, may be employed for measuring the breadth of the territorial sea (4.B, para. 2)

Alternative B

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State. (4.A)

Alternative C

Identical with alternative B.

Article 4

(Provision 5)

Alternative A

1. In localities where the coastline is indented or there are islands along the coast, the method of a series of straight baselines, i.e. taking the lines connecting the base-points on the coast and the outermost islands as the baselines, may be employed for measuring the breadth of the territorial sea. (5.B, para. 1)

Alternative B

In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured. (5.A)

Alternative C

Identical with alternative B.

2. A coastal State with coasts of great lengths and complicated topography may employ the method of mixed baselines, i.e. drawing the baseline in turn by the methods provided for in article and this article to suit different

Article 5

(Provision 6)

Suggested single formula

The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

Article 6

(Provision 7)

Alternative A

No such rule.

Alternative B

Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them, or except where States have historically and consistently applied low-tide elevations for the purpose of drawing straight baselines. (7.B)

Alternative C

Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them. (7.A)

15

Article 7

(Provision 8)

Alternative A

No such rule.

Alternative B

No such rule.

Alternative C

Where the method of straight baselines is applicable under the provisions of article ..., account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

15

Article 8

(Provision 10)

Suggested single formula

The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

Article 9

(Provision 11)

Suggested single formula

The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

Innocent passage

Article 10

(Provisions 24 and 47, para. 2)

Alternative A

Alternative B

Alternative C

1. In territorial seas whose breadth exceeds 12 nautical miles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage in the form prescribed in articles (...) with a limit of ... nautical miles measured from the applicable baselines. (24.B, para. 1)

Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea. (24.A)

Identical with alternative B.

2. Beyond this internal limit, ships shall enjoy freedom of passage subject to the duties of peaceful coexistence and good neighbourliness and also the provisions adopted by the coastal State with regard to the exploration, conservation and exploitation of resources, the



Article 10 (continued)

Alternative A

preservation of the marine environment, scientific research, the emplacement of installations and the security of navigation and maritime transport.

(47, para. 2)

Article 11

(Provision 25)

Suggested single formula

1. Innocent passage means navigation through the territorial sea for the purpose either of traversing that sea without entering any port or internal waters, or of proceeding to or from any port or internal waters. (25.B, para. 1)
2. For the purposes of these articles the term "port" includes any harbour or roadstead normally used for the loading, unloading or anchoring of ships. (25.B, para. 2)

Article 12

(Provisions 26 and 28)

Suggested single formula

1. Innocent passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress. (26)
2. Passage shall be continuous and expeditious. Passing ships shall refrain from manoeuvring unnecessarily, hovering or engaging in any activity other than mere passage. (28)

Article 13

(Provision 27)

Alternative A

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law. (27.A)

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State, if in the territorial sea it engages in any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of the coastal State or of any other State, or if it engages in any of the following activities: (27.B, para. 2)

- (i) any other warlike act against the coastal or any other State;
- (ii) any exercise or practice with weapons of any kind;
- (iii) the launching or taking on board of any aircraft;

Alternative B

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law. (27.A)

2. Passage of a foreign ship shall not be considered prejudicial to the peace, good order or security of the coastal State unless, in the territorial sea, it engages in any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of the coastal State, or without authorization from the coastal State or justification under international law in any of the following activities: (27.C, para.2)

- (a) any exercise or practice with weapons of any kind;
- (b) the launching or taking on board of any aircraft;
- (c) the launching, landing or taking on board of any military device;

Article 13 (continued)

Alternative A

- (iv) the launching, landing or taking on board of any military device;
- (v) the embarking or disembarking of any person or cargo;
- (vi) any act of espionage affecting the defence or security of the coastal State;
- (vii) any act of propaganda affecting the security of the coastal State;
- (viii) any act of interference with any systems of communication of the coastal or any other State;
- (ix) any act of interference with any other facility or installation of the coastal State;
- (x) any other activity not having a direct bearing on passage.

3. Passage shall not be considered prejudicial to the peace, good order or security of the coastal State if any such activity is carried out with the prior authorization of the coastal

Alternative B

contrary to the customs, fiscal, immigration or sanitary laws or regulations of the coastal State;

(e) any act aimed at interfering with any system of communication of the coastal State;

(f) any act aimed at interfering with any other facilities or installations of the coastal State.

3. Passage shall not be considered prejudicial to the peace, good order or security of the coastal State if any such activity is carried out with the prior authorization of the coastal State or as rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress, or as may be prudent for safe navigation. (27.B, para. 3)

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Article 13 (continued)

Alternative A

State or as rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger of distress, or as may be prudent for safe navigation. (27.B, para. 3)

Article 14

(Provision 29)

Alternative A

1. The coastal State may make laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, which laws and regulations may be in respect of all or any of the following: (29.B, para. 1)

(a) the safety of navigation and the regulation of marine traffic, including the designation of sealanes and the establishment of traffic separation schemes;

(b) the protection of navigational aids and facilities and other facilities or installations including those for exploration and exploitation of the marine resources

Alternative B

1. Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation. (29.A, para. 1)

2. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea. (29.A, para. 2)

Alternative C

Identical with alternative E.

Article 14 (continued)

Alternative A

of the territorial sea and the sea-bed and subsoil thereof;

(c) the protection of submarine or aerial cables and pipelines;

(d) the conservation of the living resources of the sea;

(e) the preservation of the environment of the coastal State, including the territorial sea, and the prevention of pollution thereto;

(f) research of the marine environment and hydrographic surveys;

(g) the prevention of infringement of the customs, fiscal, immigration, quarantine or sanitary or phytosanitary regulations of the coastal State;

(h) the prevention of infringement of the fisheries regulations of the coastal State, including inter alia those relating to the stowage of gear.

2. Such laws and regulations shall not (29.B, para. 2)

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Article 14 (continued)

Alternative A

(a) apply to or affect the design, construction, manning or equipment of foreign ships or matters regulated by generally accepted international rules unless specifically authorized by such rules; or

(b) impose requirements on foreign ships which have the practical effect of denying or prejudicing the right of innocent passage in accordance with this Convention.

3. The coastal State shall give due publicity to all laws and regulations made by it under the provisions of this article. (29.B, para. 3)

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations of the coastal State. (29.B, para. 4)

5. During their passage through the territorial sea, foreign ships, including marine research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the coastal State. (29.B, para. 5)

6. A coastal State may, where it considers it necessary having regard to the density or traffic concentration,

(165)

Article 14 (continued)

Alternative A

require foreign ships exercising the right of innocent passage through its territorial sea to use such sealanes and traffic separation schemes as may be designated or prescribed by the coastal State for the regulation of the passage of ships.
(29.B, para. 6)

7. A coastal State may from time to time, after giving due publicity thereto, substitute other sealanes for any sealanes previously designated by it under the provisions of this article.
(29.B, para. 7)

8. In the designation of sealanes and the prescription of traffic separation schemes under the provisions of this article a coastal State shall take into account: (29.B, para. 8)

(a) the recommendations of competent international organizations;

(b) any channels customarily used for international navigation;

(c) the special characteristics of particular channels; and

(d) the special characteristics of particular ships.

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Article 14 (continued)

Alternative A

9. The coastal State shall clearly demarcate all sealanes designated by it under the provisions of this article and indicate them on charts to which due publicity shall be given. (29.B, para. 9)

10. Foreign ships exercising the right of innocent passage through the territorial sea shall at all times, and particularly when using sealanes and traffic separation schemes, designated or prescribed by the coastal State under the provisions of this article, comply with all generally accepted international regulations relating to the prevention of collisions at sea. (29.B, para. 10)

11. If in the application of its laws and regulations, a coastal State acts in a manner contrary to the provisions of these articles and loss or damage results to any foreign ship exercising the right of innocent passage through the territorial sea, the coastal State shall compensate the owners of such ships for that loss or damage. (29.B, para. 11)

67

Article 15

(Provision 31)

Suggested single formula:

The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea and, in particular, it shall not, in the application of these articles or of any laws or regulations made under the provisions of these articles, discriminate in form or in fact against the ships of any particular State or against ships carrying cargoes to, from or on behalf of any particular State.

Article 16

(Provision 30)

Suggested single formula:

Submarines and other underwater vehicles are required to navigate on the surface and to show their flag. (30.A)

Article 17

(Provision 33)

Suggested single formula:

The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

Article 18

(Provision 34)

Suggested single formula:

In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject. (34.A)

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Article 19

(Provision 35)

Suggested single formula:

The coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

Article 20

(Provision 36)

Alternative A

1. Tankers and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to give prior notification of their passage to the coastal State and to confine their passage to such seelanes as may be designated for that purpose by the coastal State. (36.A, para. 1)

2. For the purpose of this article, the term "tanker" includes any ship used for the carriage in bulk in a liquid state of petroleum, natural gas or any other highly inflammable, explosive or pollutive substance. (36.A, para. 2)

3. In order to expedite the passage of ships through the territorial sea the coastal State shall ensure that the procedures for notification under the provisions of this

Alternative B

1. The coastal State may regulate the passage through its territorial sea of the following: (36.B, para. 1)

(a) nuclear-powered ships or ships carrying nuclear weapons;

(b) marine research and hydrographic survey ships;

(c) oil tankers and chemical tankers carrying harmful or noxious liquid substances in bulk;

(d) ships carrying nuclear substances or materials.

2. The coastal State may require prior notification to or authorization by its competent authorities for the passage through its territorial sea of foreign ships mentioned in subparagraph (a) of paragraph 1. (36.B, para. 2)

Alternative C

No such rule.

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Article 20 (continued)

Alternative A

article shall be such as not to cause any undue delay. (36.A, para. 3)

Alternative B

3. The coastal State may require prior notification to its competent authorities for the passage through its territorial sea, except along designated sealanes, of foreign ships mentioned in subparagraph (b) of paragraph 1. (36.B, para. 3)

Alternative C

4. The coastal State may require the passage through its territorial sea along designated sealanes of foreign ships mentioned in subparagraphs (c) and (d) of paragraph 1, in conformity with article ... (36.B, para. 4)

Article 21

(Provision 38)

Suggested single formula:

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.
2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article 22

(Provision 41)

Alternative A

The rules contained in articles ... shall apply to government ships operated for commercial purposes. (41.A)

Alternative B

Identical with alternative A.

Alternative C

Government ships operated for commercial purposes in territorial waters shall enjoy immunity, and

Article 22 (continued)

Alternative C

therefore the measures referred to in this provision may be applied to them only with the consent of the State whose flag the ship flies. (41.B)

Article 23

(Provision 42)

Suggested single formula:

1. The rules contained in articles ... shall apply to government ships operated for non-commercial purposes.
2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

Article 24

(Provision 44)

Alternative A

1. The coastal State may require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea, in conformity with regulations in force in such a State. (44.C, para. 1)

2. Foreign warships exercising the right of innocent passage shall not perform any activity which does not have a direct

Alternative B

1. Foreign warships exercising the right of innocent passage shall not, in the territorial sea, carry out any manoeuvres other than those having direct bearing on passage. (44.B, para. 1)

2. If any warship does not comply with the laws and regulations of the coastal State relating to passage through the territorial sea or fails to comply

Alternative C

If any warship does not comply with the regulations for the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea. (44.A)

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Article 24 (continued)

Alternative A

bearing on the passage, such as: (44.C, para. 2)

- (a) Carrying out any exercise or practice with weapons of any kind;
- (b) Assumption of combat position by the crew;
- (c) Flying their aircraft;
- (d) Intimidation or display of force;
- (e) Carrying out research operations of any kind.

Alternative B

with the requirements of paragraph ... of this article, and disregards any request for compliance which is made to it, the coastal State may suspend the right of passage of such warship and may require it to leave the territorial sea by such safe and expeditious route as may be directed by the coastal State. (44.B, para. 2)

3. If any warship does not comply with the regulations for the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea. (44.A)

(72)

Second revision
30 October 1974

PART VI

THE CONTINENTAL SHELF

(For each of the articles below, reference is given in parenthesis to corresponding provisions in document A/CONF.62/C.2/WP.1)

Article 26

(Provisions 68 and 81)

Alternative A

The Continental Shelf of a coastal State extends beyond its territorial sea to a distance of 200 miles from the applicable baselines and throughout the natural prolongation of its land territory where such natural prolongation extends beyond 200 miles, (to the outer limit of its continental margin). (68.B and C, first line)

Alternative B

(1) The outer limit of the Continental Shelf may be established by the coastal State within the 500 metre isobath. (81.G, para. 1)

(2) In areas where the 500 metre isobath is situated at a distance less than 200 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 a distance from the nearest point of the said baselines not exceeding 200 nautical miles. (81.G, para. 2)

Alternative C

The Continental Shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas adjacent to the State, but outside the area of the territorial sea. The outer limit of the Continental Shelf shall not exceed a maximum distance of 200 nautical miles from the baseline for measuring the breadth of the territorial sea. (68.D, first two lines, and 81.H)

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Article 27

(Provision 84)

Alternative A

The sovereignty of a coastal State extends to its Continental Shelf. (69.B)

Alternative B

The coastal State exercises over the Continental Shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. (69.A)

Proposed single formula:

The coastal State exercises over the Continental Shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. (69.A)

Article 28

(Provision 85)

Proposed single formula:

The natural resources referred to in these provisions consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Article 29

(Provision 86)

Alternative A

The rights of the coastal State over the Continental Shelf do not affect the legal régime of the superjacent waters or air space. (86.B)

Alternative B

The rights of the Coastal State over the Continental Shelf do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters. (86.A)

The normal navigation and overflight on and in the air space above the superjacent waters of the Continental Shelf by ships and aircraft of all States shall not be prejudiced. (86.B)

(74)

Article 29

(Provision 86)

Proposed single formula:

The rights of the coastal State over the Continental Shelf do not affect the legal régime of the superjacent waters or air space. (86.B, first paragraph)

Article 30

(Provision 73)

Alternative A

The coastal State shall exercise its rights and perform its duties without unjustifiable interference with navigation or other uses of the sea, and ensure compliance with applicable international standards established by the appropriate international organizations for this purpose. (73.C)

Alternative B

The exercise of the coastal State's rights over the Continental Shelf shall not result in any unjustifiable interference with the freedom of navigation in the superjacent waters and of overflight in the superjacent air space, nor shall it impede the use of recognized lanes essential to international navigation. (73.B)

Alternative C

The exploration of the Continental Shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sealanes essential to international navigation. (73.A)

Proposed single formula:

The coastal State shall exercise its rights and perform its duties on the Continental Shelf without unjustifiable interference with navigation and other legitimate uses of the sea. (73.C, first two lines)

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Article 31

(Provision 72)

Suggested single formula:

- (1) Subject to its right to take reasonable measures for the exploration of the Continental Shelf, the exploitation of its natural resources and the prevention of pollution, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on its Continental Shelf. (72.C)
- (2) The delineation of the course for laying submarine cables and pipelines on the Continental Shelf by a foreign State is subject to the consent of the coastal State. (72.B)
- (3) Nothing in this article shall affect the jurisdiction of the coastal State over cables and pipelines constructed or used in connexion with the exploration or exploitation of its Continental Shelf or the operations of an installation under its jurisdiction, or its right to establish conditions for cables or pipelines entering its territory or territorial sea. (72.C)
- (4) When laying submarine cables and pipelines due regard shall be paid to cables and pipelines already in position on the sea-bed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced. (72.C)

Article 32

(Provision 80)

Alternative A

No such rule.

Alternative B

The coastal State in the exercise of its rights with respect to the non-renewable natural resources of the Continental Shelf: shall pay, in respect of the exploitation of such non-renewable resources seaward of the territorial sea or the 200-metre isobath, whichever is further seaward (insert formula), to be used, as specified in article ..., for international community purposes, for the benefit of developing countries. (80.B)

Alternative C

1. A coastal State shall make contributions to the international authority out of the revenues derived from exploitation of the non-living resources of its Continental Shelf in accordance with the following paragraph. (80.A, para. 1)
2. The rate of contribution shall be ... per cent of the revenues from exploitation carried out within 40 miles or 200 metres isobath of the

Article 32 (continued)

Alternative C

Continental Shelf, whichever limit the coastal State may choose to adopt, and ... per cent of the revenues from exploitation carried out beyond 40 miles or 200 metres isobath within the Continental Shelf. (80.A, para. 2)

3. The international authority shall distribute these contributions on the basis of equitable sharing criteria. (80.A, para. 3)

Article 33

(Provisions 73 and 74)

Alternative A

Alternative B

1. The emplacement and use of installations on the Continental Shelf shall be subject to the authorization and regulation of the coastal State. Such authorization shall not be unreasonably withheld.

2. Subject to paragraphs 3-6 of this article and to the provisions of article ..., the coastal State is entitled to construct and maintain or operate on the Continental Shelf installations and other devices necessary for its exploration and the exploitation of its

The coastal State shall have the exclusive right to authorize and regulate on the Continental Shelf the construction, operation and use of artificial islands and installations for the purpose of exploration or exploitation of natural resources or for other economic purposes, and of any installations which may interfere with the exercise of the rights of the coastal State. (74.B, first para.)

The coastal State may, where necessary, establish reasonable safety zones around such off-shore

Article 33 (continued)

Alternative A

natural resources, and to establish safety zones around such installations, and devices and to take in those zones measures necessary for their protection. (74.A, first sentence)

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of ... metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation. (73, second para.)

Alternative B

installations in which it may take appropriate measures to ensure the safety both of the installations and of navigation. Such safety zones shall be designed to ensure that they are reasonably related to the nature and function of the installation. Ships of all nationalities must respect these safety zones. (74.B, second para.)

The breadth of the safety zones shall be determined by the coastal State and shall conform to applicable international standards in existence or to be established by the Inter-Governmental Marine Consultative Organization regarding the establishment and breadth of safety zones. In the absence of such additional standards, safety zones around installations for the exploration and exploitation of non-renewable resources of the sea-bed and subsoil may extend to a distance of 500 metres around the installations, measured from each point of their outer edge. (74.B, third para.)

States shall ensure compliance by vessels of their flag with applicable international

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Article 33 (continued)

Alternative B

outside the safety zones but in the vicinity of such off-shore installations. (74.B, fourth para.)

Installations and safety zones around them may not be established where interference may be caused to the use of recognized sea-lanes essential to international navigation. (74.B, last para.)

Article 34

(Provision 75)

Suggested single formula:

Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

Article 35

(Provision 76)

Alternative A

Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State. (76.A)

Alternative B

For the purpose of this section, the term "installations" refers to artificial off-shore islands, facilities, or similar devices, other than those which are mobile in their normal mode of operation at sea. Installations shall not afford a basis for a claim to a territorial sea or economic zone.

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Article 35 (continued)

Alternative B

and their presence does not affect the delimitation of the territorial sea or economic zone of the coastal State. (76.B)

Article 36

(Provision 77)

Alternative A

The establishment of any type of installation by third States or their nationals is subject to the permission of the coastal State. (77.A)

Alternative B

No State shall be entitled to construct, maintain, deploy or operate on the Continental Shelf of another State any military installations or devices or any other installations for whatever purposes without the consent of the coastal State. (77.B)

Article 37

Suggested single formula:

In exercising their rights under this Convention, States shall not interfere with the rights, or the performance of the duties, of the coastal State with respect to the Continental Shelf.

Article 38

Suggested single formula:

The coastal State shall ensure that any exploration and exploitation with regard to its Continental Shelf is carried out exclusively for peaceful purposes.

(20)

AUGUST 23, 1974.

ARTICLES 1 AND 2

[Provisions relating to nature and geographical extent of coastal state's rights over living resources, including fisheries, within its zone. Some delegations considered that special provisions may be required in subsequent articles in respect of certain species within the zone.]

ARTICLE 3

1. The coastal state shall manage the living resources within its zone in accordance with its economic needs and interests.

2. In the management of the living resources within its zone, the coastal state shall ensure that they are not endangered by over-exploitation, having regard to the interdependence of stocks.

The coastal state shall also take into account the desirability of avoiding waste to the extent practicable.

ARTICLE 4

1. A coastal state may allow nationals of another state to fish within its zone. In so doing, the coastal state may afford preferential treatment, inter alia, to any neighbouring coastal state.

[Possible provision regarding need to minimize disruption of traditional fishing and regarding phase-out arrangements.]

(82)

2. [Provision regarding the rights of neighbouring developing coastal states within the zone in regions to be specified.]

3. [Provision regarding fishing by land-locked and other (according to definitions to be elaborated) geographically-disadvantaged developing states in neighbouring areas within the zone.]

4. Rights or privileges granted pursuant to this article shall be available only to the nationals of the states concerned and cannot be transferred to third parties by lease or license, by establishing joint collaboration ventures, or by any other arrangement. Jurisdiction and control over the conservation, development and management of the living resources of the specified areas shall lie with the coastal state in whose zone such areas are located.

ARTICLE 5

In the exercise of its rights within its zone, the coastal state may prescribe terms, conditions and regulations governing all aspects of the management, conservation and harvest of the living resources of the zone. In particular, where fishing by foreign vessels is permitted by the coastal state within its zone, such terms, conditions, and regulations prescribed by the coastal state may relate, inter alia, to:

- (a) Determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or complexes of stocks or catch per vessel over a period of time or to the catch

(83)

- (b) Licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration;
- (c) Regulating times and areas of fishing, the types, sizes and amount of gear, and the numbers, sizes and types of fishing vessels that may be used;
- (d) Fixing the age and size of fish and other species that may be caught;
- (e) Specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;
- (f) Requiring, under the authorization and control of the coastal state, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;
- (g) The placing of observers, trainees or crew members on board such vessels, by the coastal state;
- (h) The landing of all or any part of the catch by such vessels in the ports of the coastal state;
- (i) Terms and conditions relating to joint ventures or other cooperative arrangements;
- (j) Requirements for training of personnel and transfer of fisheries technology including enhancement of the coastal state's capability for undertaking fisheries research;

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(k) Enforcement procedures as defined in Article 13.

ARTICLE 6

Where the coastal state allows nationals of other states to fish within its zone, the coastal state may, subject to Article 4, utilize regional fisheries organizations or enter into other arrangements to facilitate the allocation among interested states of that portion of the catch made available to foreign vessels by the coastal state.

ARTICLE 7

Where a stock occurs within the zones of two or more coastal states, these states shall consult either directly or through appropriate international organizations regarding the management and conservation of such stocks.

ARTICLE 8

Where the distribution of a stock normally includes part or all of the zone of a coastal state but also extends seaward beyond that zone, the coastal state has a special interest in the harvest and management of that stock in the area adjacent to its zone. The coastal state may enter into regional or sub-regional arrangements for the management of such stocks, and shall be entitled to take that portion of the allowable catch corresponding to its harvesting capacity.

85.

ARTICLE 9

Regulations may be made on a regional basis for the management and conservation of the living resources of the area of the sea outside the limits of the zone, where these resources are of limited migratory habits and breed, feed and survive on the resources of the region. The states of the region may establish these regulations by entering into an agreement between themselves or may request the appropriate international organization to formulate these regulations for the region subject to ratification by them. Regulations made under this paragraph shall be subject to the provisions of Article 3.

ARTICLE 10

1. The coastal state shall regulate fishing within its zone for stocks of oceanic species with highly migratory habits, taking into account conservation and management arrangements for these species in particular regions as agreed among interested states through the appropriate international or regional fisheries organizations.

2. [Possible provision regarding the particular interests of developing states in the establishment of regional regulations pursuant to paragraph 1 of this Article.]

ARTICLE 11

Subject to the provisions of this convention, states shall cooperate in respect of the conservation and management of fisheries beyond the limits of national jurisdiction, and may seek

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the advice of the Food and Agriculture Organization of the United Nations in this regard. Regional fisheries organizations shall cooperate, through the Food and Agriculture Organization, with a view to ensuring an adequate exchange of information regarding the conservation, management and development of the living resources of the sea. Where there exists no appropriate international organization for the purposes of Article 9 and 10, interested states shall, at the request of any one of them, consult directly or through the Food and Agriculture Organization with a view to establishing the appropriate organization.

ARTICLE 12

States shall promote, directly or through competent international organizations, technical assistance to developing countries for the purpose of improving conservation and management of fisheries and developing their harvesting and processing capacity, through:

- (a) training of scientific and technical personnel;
- (b) training in fishing and processing techniques;
- (c) provision of expert advice;
- (d) provision of equipment and facilities;
- (e) development and transfer of fisheries technology.

ARTICLE 13 (to be reviewed)

1. Fisheries for anadromous stocks shall be conducted only by coastal states and only in areas under their jurisdiction

[provided, however, that due account shall be taken of traditional fisheries and existing international arrangements.]

2. States have a special responsibility for the conservation of anadromous stocks originating in their rivers and have a special interest in their harvest. States fishing for anadromous stocks originating in another state, in accordance with paragraph 1, shall cooperate with the state of origin regarding the management of such fisheries, taking into account the conservation needs of the stocks and the special interest and responsibility of the state of origin. Such cooperation shall be ensured by appropriate international arrangements.

ARTICLE 14 (to be reviewed)

1. Fisheries for catadromous fish shall be conducted only within the zones of coastal states and subject to the terms, conditions and regulations that they may prescribe.

2. The coastal state in whose waters catadromous fish spend the greater part of their life cycle (hereinafter called the producing state) shall have the responsibility for the management of these stocks and their maintenance at optimum levels; in particular, the producing state shall ensure the ingress and egress of migrating fish. Such state shall have preferential rights in respect of the total harvest of the catadromous stocks concerned.

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3. In circumstances where catadromous fish migrate through the zone of another state or states, whether as juvenile or maturing fish, the management of such fisheries including harvesting shall be regulated by agreement between the producing state and the other state or states concerned, which agreement shall both ensure the maintenance of the stocks at their optimum levels, and take into account the preferential rights of the producing state and its responsibility for the maintenance of such stocks.

ARTICLE 15

The coastal state shall have jurisdiction to enforce its laws and regulations in respect of all vessels fishing in its zone. Enforcement measures may, in accordance with the laws and regulations of the coastal state, include, *inter alia*, boarding, inspection, arrest and detention, the institution of judicial proceedings, the imposition of sanctions including seizure and forfeiture of catch, gear and vessels, cancellation of fishing licenses, expulsion from the zone for such period as may be specified, and monetary penalties. Where a coastal state arrests or detains a foreign vessel, the coastal state shall promptly inform the state of registration of the action taken and any penalties subsequently imposed.

ARTICLE 16

[Possible provision regarding settlement of disputes.]

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Article 19

1. The coastal State shall promote the full utilization of renewable resources within the economic zone.

2. To the extent that the coastal State is unable to harvest the entire allowable catch, the coastal State shall, through agreements, other arrangements, or regulations, give vessels of other States access to the surplus. The coastal States may establish reasonable regulations and require the payment of reasonable fees for this purpose.

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Article 24 (Highly migratory species)

1. The coastal State, in the exercise of its sovereign rights to explore and exploit all living resources within its economic zone, shall regulate fisheries of oceanic species with highly migratory habits which are found in that zone.
2. In establishing its regulations, the coastal State shall take into account the results of scientific research and recommendations available with regard to conservation of the highly migratory species, as well as the effects of its exploitation on other living resources which exist within the economic zone.
3. For the purposes mentioned above, the coastal State shall cooperate with other States whose vessels have been fishing the same species in the region and with the appropriate international or regional fisheries organizations. Such cooperation shall include the exchange of data and the recommendation of measures intended to prevent the risk of extinction of the species resulting from abusive practices or over-exploitation by any State.
4. When local conditions call for it, coastal States in a region shall endeavour to create regional fishery organizations for the purpose of cooperating in the conservation and, if appropriate, in the exploitation of stocks and along which migrate off/the coasts of the States of that region. The regional fishery organizations shall be composed of the coastal States of the region in whose economic zones highly migratory species are found, as well as other States whose vessels have been fishing the same species in the region. In the absence of agreement, the recommendations of the organizations shall require an affirmative vote of the majority of the coastal States of the region.

5. In formulating their recommendations, the organizations shall take into account, inter alia, the factors which determine the migration of the species and its relation with other living resources existing in the economic zones of the region; the estimate of the stocks and of the degree of its exploitation; the harvesting capacity of the States engaged in its fishery; the needs and possibilities of development of that capacity by the respective coastal State or by joint ventures between States from the same region; and appropriate procedures to ensure a more rational, economic and equitable exploitation of those species.

6. The vessels of any State wishing to fish highly migratory species in the economic zone of a coastal State shall comply with the regulations of the latter and eventually with those agreed upon through special arrangements. In either case, the regulations shall take into account the conservation measures adopted or recommended in accordance with paragraphs 2 to 5; and shall include the determination of the allowable catch as well as the collection of fees for registration and fishing permits (licenses) within the economic zone,

7. The coastal States of a region shall endeavour to adopt uniform regulations for the fishing of highly migratory species in their respective economic zones, both with regard to conservation measures and collecting of fees.

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1. In the area between the outer limit of the territorial sea and the outer limits of national jurisdiction, coastal states shall have the right to explore and exploit the mineral resources.
2. Coastal states shall annually contribute to the international authority per cent of the value of mineral resources derived from the area between 50 miles and the outer limits of national jurisdiction.
3. The revenue derived from annual contributions shall be distributed annually by the international authority in accordance with a ratio based upon the following formula:

$$\frac{\text{population of state}}{\text{global population}} \quad X \quad \frac{\text{global per capita income}}{\text{per capita income of state}} \quad X 100$$