UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.138/86
16 March 1973

ORIGINAL: ENGLISH

COMMITTEE ON THE PEACEFUL USES
OF THE SEA-BED AND THE OCEAN FLOOR
BEYOND THE LIMITS OF NATIONAL
JURISDICTION

NETHERLANDS: WORKING PAPER CONCERNING THE CONCEPT OF AN INTERMEDIATE ZONE

1. The Netherlands delegation has submitted in Sub-Committee I a working document concerning the concept of an intermediate zone (A/AC.138/SC.I/L.9). Since this concept is of equal importance for the aspects under discussion in Sub-Committees II and III, the Netherlands delegation now submits a revised text of the above-mentioned document as a working document for the main Committee and its Sub-Committees.

2. The essence of the concept of an intermediate zone is the combination of the jurisdiction of coastal States and the jurisdiction of the international community. Since the functions and powers of both coastal States and the international community relate to ocean space, which, in fact, is a unity, some such combination would seem inevitable. This gains in force in proportion with the extent to which the interests of coastal States might be considered to extend further from their coastline. The more coastal States' rights are tended into ocean space, the greater the necessity to provide for international control over the exercise of such rights in order to safeguard the interests of the international community as a whole.

3. Accordingly, several proposals submitted to the Committee provide, in some way or another, for a combination of jurisdiction of both coastal States and the international community. Thus, for example, the Canadian proposals on management of the living resources of the sea (A/AC.138/SC.II/L.8) refer to the coastal State's authority to manage and preferential right to utilize adjacent living marine resources, subject to internationally agreed principles.

The United States proposal on fisheries (A/AC.138/SC.II/L.9), while providing in article III in principle that the conservation and equitable allocation of fisheries shall be regulated by appropriate international fisheries organizations, gives a sort of subsidiary power of regulation to the coastal State in case the international organization fails to take adequate protective measures.

Likewise, in the field of marine pollution, another Canadian proposal - recorded in paragraph 12 of the report of the Intergovernmental Working Group on Marine Pollution (A/Conf.48/IWGMP II/5) - seems to envisage such a subsidiary power of regulation by the coastal State in the absence of internationally agreed regulations.

This proposal is elaborated in the draft articles for a comprehensive marine pollution convention (A/AC.138/SC.III/L.28). In article II, paragraph 2, of that draft, it is stated that the coastal State shall take into account:

"(a) any international convention the purpose or effect of which is to protect and preserve the marine environment,

"(b) the relevant principles, standards, recommendations, procedures, guidelines, criteria, including water quality criteria, and action plans proposed by competent international organizations".

In all three examples just given the envisaged powers of the coastal State are subject to international rules and standards and to review before an appropriate international tribunal. This is another example of combining national and international jurisdiction.

The concept of combining the coastal State's rights and powers with the rights and powers of the organized international community is, of course, most characteristically reflected in the Malta draft treaty covering the whole of ocean space and all its uses. Indeed, as stated by the delegate of Malta in his statement before Sub-Committee I on 13 March 1972, one of the two basic concepts underlying the Maltese draft is "that the unfettered sovereignty of the State within national jurisdiction must, in the oceans, suffer from limitations in the general interest".

4. A combination of jurisdiction of both the coastal States and the international community may take the form of subjecting the coastal States' rights to:

(a) International rules and standards;

(b) Review by an appropriate international tribunal;

(c) Supervision by an international authority;

(d) Sharing of benefits with the international community.

5. More particularly - and within the framework of the items allocated to Sub-Committee I - there are several proposals which refer to the concept of an "intermediate zone" of the sea-bed area. It would seem useful to explore the possibility of reaching some sort of consensus on what could be a régime for an intermediate zone, in case such a zone were established. The present working paper is not meant to advocate any particular régime for an intermediate zone but only tries to analyse the concept of such a zone.

6. The intermediate zone is a zone wherein the coastal State's rights and powers are combined with the international authority's rights and powers; in other words: a zone where the national and the international jurisdiction overlap.

7. It would seem to be inherent in the concept of an intermediate zone, that, as a minimum:

(a) A substantial part of the financial benefits derived from the exploitation of the zone by a State should be transferred to the international authority;

(b) The exercise by a State of its jurisdiction over the zone should be subject to international rules and standards and to review before an appropriate international tribunal.

It may be recalled that the Netherlands is a sponsor of the seven-Power proposal (A/AC.138/55) which contains specific provisions both on the limits and on the régime of what is there called "the coastal State priority zone".

8. Subject to what is stated in paragraph 7 above, there are various possibilities for coastal States' special rights and powers in respect of the intermediate zone. One might distinguish:

(a) Powers to prevent activity in the zone prejudicial to the coastal State's interest;

(b) Rights to exploit the zone in the coastal State's interest.

9. If the activities in the intermediate zone are in any case (1) subject to the rules and standards laid down in the treaty establishing the international authority and those adopted by the authority pursuant to such treaty, (2) carried out by or under a licence from the international authority and (3) under supervision of the international authority, the powers of the coastal State to prevent activity prejudicial to its interests could be of an additional character.

As such, powers could be of any of the following types:

(a) Power to establish additional rules and standards;

(b) Power to object to a licence being given to a particular State or operator, as the case may be;

(c) Power to enforce the observance of the applicable rules and standards and the conditions of the licence.

10. If it is considered necessary in addition to grant to the coastal State special rights to exploit an intermediate zone, such rights could be (a) preferential or (b) exclusive. In both cases, consideration should be given to the sharing in the coastal State's special rights by States which, owing to their geographical location, cannot benefit from an intermediate zone.

11. As regards the management of the intermediate zone, in case special rights as indicated under paragraph 10 are provided for, either of two systems could be followed:

(a) The international authority decides whether or not, and to what extent, exploitation will take place and shall then grant licences to the operator in accordance with paragraph 10;

(b) The State or States having rights under paragraph 10, shall decide whether or not, and to what extent, exploitation will take place and shall then grant licences to the operator in accordance with paragraph 10; such operator shall then be deemed to be licenced by the international authority.

12. There are obviously many modalities of combining the jurisdiction of the coastal State and that of the international authority which are not dealt with in detail in the foregoing analysis, which is only a suggested basis for discussion.
