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Economic Commission for Latin America and the Caribbean

ECLAC CONTRIBUTION TO A PRELIMINARY PROPOSAL FOR CO-OPERATION
IN THE LAW OF THE SEA AND MARINE AFFAIRS AMONG THE STATES OF
THE ZONE OF PEACE AND CO-OPERATION OF THE SOUTH ATLANTIC */

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SUMMARY

This document describes the main areas of concern for the Latin American countries as regards the Law of the Sea and Ocean affairs, bearing in mind the possibility of interregional co-operation with Africa in the context of the Zone of Peace and Co-operation in the South Atlantic.

It analyzes the existing schemes of consultation between the Economic Commission for Africa and the Economic Commission for Latin America and the Caribbean amidst which efforts concerning the Law of the Sea and ocean affairs could be situated.

The report also discusses the different areas for collaboration arrangements introduced by Resolution 41/11 and following resolutions on the issue adopted by the General Assembly.

Reference is also made to specific subjects of concern by the international community related directly or indirectly to ocean management, and which --through the framework of the United Nations Convention on the Law of the Sea-- could be proper areas for developing co-operation among the States members of the Zone.

It finally puts forward some practical courses of action to allow for the implementation of some concrete steps to start interregional co-operation.

I. THE INTERREGIONAL FRAMEWORK FOR CO-OPERATION

Before analyzing particular areas in which ECLAC's experience would indicate convenience of co-operation between Africa and Latin America in the field of the Law of the Sea, it is worth to note that there exists important background information on consultations between the Economic Commission for Africa and the Economic Commission for Latin America and the Caribbean, concerning the promotion of technical and economic co-operation between countries of both regions.

In June 1982 a Joint Meeting of Governmental Experts from Africa and Latin America held in Addis Ababa, Ethiopia and convened by the two Regional Commissions, identified a series of areas suitable for promoting interregional co-operation between Africa and Latin America, which included cooperation in the field of trade, science and technology, and human resources, which were not considered exhaustive and a recommendation was made to ECA and ECLAC for the identification of other fields of co-operation.^{1/}

The ECOSOC Resolution 1983/66 on promotion of interregional economic and technical co-operation among developing countries "reaffirms the important role of the regional commissions in the promotion of economic and technical co-operation among developing countries at the subregional, regional and interregional levels, including the identification of areas for practical co-operation and the initiation, co-ordination and implementation of co-operative programmes and projects as appropriate". It also recommended the General Assembly "to continue to provide appropriate resources to enable regional commissions to mobilize and to ensure their existing capability to meet effectively their responsibility for programme formulation, implementation and co-ordination in regard to

subregional, regional and interregional economic and technical co-operation among developing countries".

The resolution also requested the executive secretaries of the regional commissions to organize periodic consultations between their commissions and the organizations, entities and agencies of the United Nations which are active at the regional and interregional levels, in order to ensure the effective co-ordination of programmes and projects for promoting economic and technical co-operation among developing countries.

It would therefore be advisable to take into consideration previous contacts and consultations between ECA and ECLAC, in the efforts to promote co-operation Africa/Latin America in the context of the Zone of Peace and Cooperation of the South Atlantic.

In the resolution on technical co-operation among developing countries and regions, adopted at the Twenty-third Session of the Economic Commission for Latin America and the Caribbean, held in Caracas, Venezuela, between 3 and 11 May 1990, the Executive Secretary of ECLAC was requested to strengthen joint actions with other regional commissions in order to draft and implement projects to promote technical and economic co-operation among developing regions, through consultation and co-ordination with relevant organizations of the UN System.

II. THE GENERAL ASSEMBLY RESOLUTION 41/11

Considering the scope of resolution 41/11 of 27 October 1986, declaring a Zone of Peace and Co-operation of the South Atlantic some concepts must be underscored:

a) States of the zone area called upon to promote further regional co-operation, inter alia "for social and economic development, the protection of the environment, the conservation of living resources and the peace and security in the whole region".

In other parts of the resolution further consideration is given to the above areas.

b) Concerning peace and security the need to preserve the region from measures of militarization, the arms race, the presence of foreign military bases and, above all, nuclear weapons, is emphasized. In this connection, a request is made to States of other regions, particularly the military, significantly to respect the region of the South Atlantic "as a zone of peace and co-operation, especially through the reduction and eventual elimination of their military presence there, the non-introduction of nuclear weapons or other weapons of mass destruction and the non-extension into the region of rivalries and conflicts that are foreign to it".

c) In the following sessions of the General Assembly, other indications on the possible range of this interregional co-operation were given.

Resolution 44/20 of the forty-fourth session notes the importance that states of the region attach to the preservation of the region's environment and the threat that pollution from any source poses to the marine and coastal environment, its ecological balance and its resources. It similarly mentions "the imperative need to preserve the environment of the region, urging all States to take relevant

measures to ensure its protection from environmental damage and to abstain from transferring to and disposing in the region hazardous, toxic and nuclear wastes".

d) Furthermore, the first meeting of the States of the Zone of Peace and Co-operation of the South Atlantic refers to the objectives of the 1964 Declaration of the Organization of African Unity on the Denuclearization of Africa and of the 1967 Treaty on the Prohibition of Nuclear Weapons in Latin America and its Additional Protocols I and II.

Mention is made also in the final document issued after the meeting, of the importance that the enhancement of knowledge on the environment and resources of the South Atlantic ocean will be a factor for intensifying the economic and social development of the States of the Zone.

It also expresses the convenience of establishing mechanisms to study and adopt measures to prevent and control the dumping of hazardous, toxic and nuclear wastes in the maritime areas, including the high seas.

III. LATIN AMERICAN PRIORITIES AND POSSIBLE SCOPE OF CO-OPERATION

Concerning the needs of the Latin American states in regard to the development and management of ocean resources, a list of national priorities has been identified by ECLAC as follows:

- a) Fisheries management.
- b) Protection and preservation of the marine environment including measures to prevent and control the dumping and transport of hazardous, toxic and nuclear wastes, as well as the marine pollution from land-based sources.
- c) Climatic change and sea level rise.
- d) Sea-use planning and costal area management.
- e) International negotiations mainly through the Preparatory Commission for the International Sea-bed Authority and the International Tribunal for the Law of the Sea.
- f) Protected areas, endangered species of flora and fauna.

These are the areas in which the convenience to look for opportunities of interregional co-operation in the South Atlantic could be stressed.

a) Concerning fisheries management, mention has to be made of two issues which may certainly call for interregional consultations and possible co-operation mechanisms. One refers to the resolution adopted by the General Assembly concerning large-scale pelagic drifnet fishing and its impacts on the living marine resources of the world's oceans and seas (A/44/225) dated 22 December 1989.

The resolution notes that when living marine resources are overexploited in the high seas adjacent to the exclusive economic zones of coastal States, "this is likely to have adverse impacts on the same resources within such zones, and in this regard, the

responsibility for co-operation in accordance with the relevant articles of the Convention on the Law of the Sea". It also calls upon those countries involved in large-scale pelagic driftnet fishing to co-operate fully with the international community, and the relevant international and regional organizations, in the collection and sharing of statistically scientific data, in order to evaluate the impact of such fishing methods.

The second issue to which this first one is clearly linked, is that of implementation of articles 63 on stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it; 64, on highly migratory species, 67 on catadromous species and Section 2 of Part VII on conservation and management of the living resources of the high seas.

b) As regards protection and preservation of the marine environment it is interesting to note that the next United Nations Conference on Environment and Development could be an appropriate endeavour to merge efforts from developing countries of different regions and to devise collaboration mechanisms across the Zone of Peace and Co-operation. In that connection Working Group II of the future conference, would include protection of oceans, seas and coastal areas and their living resources; protection of fresh water resources; and environmentally sound management of waste and toxic chemicals as well as prevention of illegal international traffic in toxic and dangerous products and wastes. It would be useful to compare recommendations of both regional meetings in preparation of the 1992 Conference, so as to allow for the submission of certain interregional concerns.

In respect of toxic wastes and chemical products, it would seem advisable to analyze, in the context of the Zone of Peace and Co-operation in the South Atlantic, the existing international instruments and to search for common approaches among countries in both continents. The following could be taken into account.

- i) The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, of 22 March 1989.
- ii) The London Dumping Convention of 13 November 1972.

iii) Resolution LDC 29 (10) adopted by the Tenth Consultative Meeting of the Parties to the London Dumping Convention and related to the exports of wastes for its elimination at sea, of 17 October 1986.

iv) Resolution LDC 21 (9) adopted by the Nineth Consultative Meeting of the London Dumping Convention, asking contracting parties to stop dumping of nuclear wastes in the sea.

v) Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof, London, Moscow, Washington 1971.

Also, at the regional level studies could be undertaken on instruments such as the 1964 Declaration of the Organization of African Unity on the Denuclearization of Africa and the 1967 Treaty on the Prohibition of Nuclear Weapons in Latin America and its Additional Protocols I and II (Tlatelolco).

It should be noted that the Tenth General Conference of the Organization for the Proscription of Nuclear Weapons in Latin America (OPANAL), held in 1967 adopted a Resolution for the examination of a possible Protocol to Tlatelolco forbidding the deposit (either through dumping, burying or any other mean) of radioactive wastes and other materials, in the seas adjacent to the continental and island spaces of Latin America and the Caribbean.^{2/}

There is also a menace of marine pollution which greatly concerns the international community and it refers to that from land-based sources which is one of the worst current menaces to the ocean environment.

In the Latin American and Caribbean region, the Conventions of the UNEP Regional Action Plans, deal with this kind of pollution and in the case of the South-East Pacific, a specific Protocol on land-based sources of pollution has been adopted.^{3/}

The United Nations Convention on the Law of the Sea in its article 207 provides that States shall adopt measures to "prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures". In this

endeavour, the Convention also calls upon States to establish through competent international organizations or diplomatic conference global and regional rules, and practices to prevent, reduce and control pollution of the marine environment from land-based sources, "taking into account characteristic regional features, the economic capacity of developing States and their need for economic development".

This area seems also a fruitful field for joint work among States members of the Zone of Peace and Co-operation, specially considering some proposals tending to the expansion of the London Dumping Convention, among others, to this kind of marine pollution.^{4/}

In this connection, the United Nations Environment Programme has adopted some guidelines to support the efforts of States in order to enact legislation to measure, control and prevent this kind of pollution. This principle of environmental law could also serve as a basis for future interregional arrangements on the issue.^{5/}

c) Another area of concern for Latin America and the Caribbean is that of the climatic change and sea level rise. The study of the possible impact of these phenomena on the States members of the Zone of Peace and Co-operation in the South Atlantic could be another field for interregional dialogue.

In that respect a further study of the following international legal instruments could be carried out from the perspective of this African/Latin American co-operation scheme:

- i) Vienna Convention for the Protection of the Ozone Layer, 1985.
- ii) Montreal Protocol on Substances that deplete the Ozone Layer, 1987.
- iii) Declaration of Helsinki, adopted by the Parties to the Vienna Convention and the Montreal Protocol, in May 1989.

It has been pledged that the subject of the depletion of the ozone layer and the control of chlorofluorocarbons (CFC) is a strategy of developed countries which are really driving the attention from the actual problems of the international community and that the industrialized countries are the sole responsible for the solutions.

Although it is true that the main responsible for its alteration is the level of consumption by the industrialized countries of substances depleting the ozone layer, it cannot be ignored that its

consequences affect the whole community and that it is advisable for the developing countries to acquire the appropriate technology for producing substitutes to CFC.

The three instruments make special reference to the particular needs of developing countries, providing for mechanisms concerning transfer of technology to assist them in the development of substitutes without significant economic damage.

In different meetings on the subject several industrialized countries and the EEC submitted proposals to provide external assistance to finance environmental projects and share research on CFC substitutes in developing countries.

The signatories to the Helsinki Declaration agreed to facilitate the access of developing countries to the scientific information, the outcomes of research, the programmes of training and to elaborate financial schemes to foster transfer of technology and replacement of equipment at the minimal cost for them.

In that connection countries of Africa and Latin America members of the Zone could exchange information and views on the real dimension of the climatic change for the marine environment of the South-Atlantic, the relevance of the above instruments as a response for such problems, and the suitable mechanisms contained in the United Nations Convention on the Law of the Sea which would enhance mutual assistance.

Resolution 44/207 on protection of global climate for present and future generations of mankind, adopted by the General Assembly on 22 December 1989, reaffirms that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources, pursuant to their environmental policies, and also reaffirms their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction and the need to play their due role in preserving and protecting the global and regional environment in accordance with their capacities and specific responsibilities". It also expresses that "the concept of assured access to and transfer of environmentally sound technologies for developing countries on

favourable terms and its relation to intellectual property rights should be explored in the context of the elaboration of a framework convention on climate with a view to developing effective responses to the needs of developing countries in this area".

In this regard, reference could be made to the proposal of the Delegation of Malta to the Forty-Third session of the General Assembly in order to declare that the earth climate belongs to the Common Heritage of Mankind.

This approach of international solidarity typical of the Law of the Sea, might give place to study the application of similar concepts and institutions to the focus of climatic change through interregional endeavours such as the Zone of Peace and Co-operation.

d) An Expert Group Meeting in Sea Use Planning and Coastal Area Management in Latin America and the Caribbean met in Santiago, Chile, in December 1989. It was convened by the Office for Ocean Affairs and the Law of the Sea in co-operation with ECLAC. The main objective of the meeting was to identify --through the exchange of national experiences-- priority needs faced by the countries of the ECLAC's region in the field of sea use planning and coastal area management.

The Group identified seven main needs, without any claims of being exhaustive:^{6/}

- i) Raising awareness of the need to develop an integrated marine policy.
- ii) Information.
- iii) National Legislation.
- iv) Institutional aspects.
- v) Planning, development and implementation.
- vi) Co-operation.
- vii) Education, training and public awareness.

As to national legislation, the experts underscored that efficient sea-use planning at the national level requires an overall legislative framework, consisting of a system of measures that reflect the multidisciplinary nature of the problems related to ocean dimension.

In that respect, there was consensus that the United Nations Convention on the Law of the Sea, which provides a global framework for approaching the various issues concerning ocean management, represents a basic reference for the adoption of national legislation, giving adequate consideration to the complex nature of sea-use planning.

Many international agreements adopted by conferences convened by different UN components, also provide important guidelines for legislating at the national level. Besides, regional or subregional legal instruments adopted by various groups of states in Latin America and the Caribbean represent a valuable source for national legislation, and, owing to their general character, facilitate the consistency of the measures enacted by countries. Countries of the region show different degrees of development concerning the application of the new Law of the Sea, as also as regards the level of regulation required by the adoption of an ocean policy.

In many Latin American countries, beyond the legal gaps, it is usual to face problems concerning the need for harmonization among norms of different origin, enforced by several entities that in many cases possess no competence in ocean affairs, as is frequently the case with mining legislation.

Further, there is a need for the development of regional legislation and harmonization with public international law in a number of fields, not only in respect to the Law of the Sea, but also in other areas such as the Convention on International Trade in Endangered Species (CITES); the International Whaling Convention; the Convention on Wetlands of International Importance especially as waterfowl habitats (RAMSAR); the Convention on World Heritage Sites, as well as various international agreements adopted by the International Maritime Organization (IMO); the United Nations Environment Programme (UNEP), and others.

Similar circumstances could be met in African countries and therefore the comparative application of national legislations is another area in which co-operation should be seriously considered.

e) In relation to international negotiations and especially the Preparatory Commission for the International Sea-bed Authority and

for the International Tribunal for the Law of the Sea, the meeting of the ad-hoc advisory expert group of the Latin American Group in the Preparatory Commission, held at ECLAC's headquarter in Santiago in November 1988, agreed to request ECLAC to prepare, among other, studies on:^{7/}

i) An analysis of the Compensation Fund, starting from the proposal of the Group of 77 contained in the document "Proposal for the Establishment of the Compensation Fund" (LOS/PCN/SCN.1/1986/CRP.12), which would facilitate the task of the Latin American representatives at future meetings of the working group to examine a plan for the Compensation Fund.

ii) The design of an immediate strategy which, parallel with the negotiations on the Compensation Fund, would strengthen the land-based producing countries's response capacity prior to the Convention's entering into force.

iii) Follow-up of the Uruguay Round of the GATT Multilateral Trade Negotiations on subsidies, compensatory measures and products from the exploiting of natural resources.

iv) A survey on the international and regional technology transfer situation --whose regulation in the framework of the Convention should preserve the fundamental objective of contributing to the establishment of a just and equitable international economic order and safeguarding the common heritage-- with special attention being given to the requirements of the negotiations on this issue, both as regards the pioneer investors' compliance with their obligations and the draft regulations submitted by the Secretariat of Special Commission 3.

The advisability of analysing the specific instances of marine technology transfer was also emphasized, taking especially into account the practices with regard to contracts, joint agreements, patents, technology ownership and settlement of disputes.

v) Environmental considerations, both as regards the pioneer investors' fulfillment of their obligations and as regards the design of the provisions of the draft regulations on the prospecting, exploration and exploitation of polymetallic nodules in the Zone.

The meeting also decided to request the Latin American Group to ask UNEP to study the applicability of the "Guidelines and Principles of Environmental Law for Offshore Mining and Drilling" to the mining activities in the Zone and, if necessary, to prepare other proposed rules in this respect.

Considering negotiation developments after the above meeting of experts ^{8/} the following areas could be proper subjects for interregional consultations and also, reinforce the task of the African and the Latin American Group in the Group of 77 of the Preparatory Commission:

Special Commission 1: Strengthening both regions' inputs to the 66 Provisional Conclusions which will form the basis of the Commission's recommendations to the Authority and also to the negotiations concerning the system of compensation for developing land-based producer states, which would be adversely affected by deep-seabed mining and the question of subsidization of deep-seabed mining.

Special Commission 2: Interregional consultations on the best implementation of the training programme for the Enterprise.

Special Commission 3: The negotiation of provisions on transfer of technology and protection and preservation of the marine environment for the draft regulations on the prospecting, exploration and exploitation of polymetallic nodules in the Area.

Application of Resolution II: Interregional exchange on the implementation of obligations of the registered pioneer investors and their certifying states seems another suitable co-operation endeavour.

f) There exists great concern in Latin America as regards sensitive sea areas and endangered species of flora and fauna. This effort points ultimately to shelter the "biological diversity", that is all species of plants, animals and microorganisms, and the systems to which they belong.

The biological diversity comprises three different levels:

- i) Genetic diversity.
- ii) Species diversity.
- iii) Habitats diversity, that is the variety of habitats, communities and ecological processes of the biosphere.

The international community has adopted different legal instruments which have, in turn, inspired regional or subregional agreements.

Among them, the following conventions and treaties can be mentioned:

i) The Convention concerning the protection of the world cultural and natural heritage, 1972.

ii) The Convention on Wetlands of International Importance, especially as waterfowl habitat, 1971 and its 1982 Protocol.

iii) The Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington 1973.

iv) The International Convention for the Regulation of Whaling, as ammended, Washington 1946.

It is important to note that the United Nations Convention on the Law of the Sea, in its article 194 on measures to prevent, reduce and control pollution of the marine environment, states in paragraph 5 that States shall take measures to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

In Latin America the two UNEP Regional Action Plans (Pacific and Caribbean) have dealt with the subject.

The member countries of the UNEP Action Plans for the South-East Pacific adopted on September 1989 a Protocol to the Lima Convention, which refers to the preservation and management of protected areas in the South-East Pacific.^{9/}

Similarly member states of the UNEP's Caribbean Environment Programme adopted on 19 January 1990 a Protocol concerning specially protected areas and wildlife.^{10/}

It would be interesting to incorporate to the future schemes of co-operation in the Zone, a survey of national legislation and regional agreements on the subject, to facilitate an interregional approach on future international efforts as the proposed Convention on the Conservation of Biological Diversity.

Notes

1/ ECLAC, Report on the Joint Meeting of Governmental Experts from Africa and Latin America on Economic and Technical Cooperation (Addis Ababa, Ethiopia, 1-4 June 1982). (E/CEPAL/G.1212), 29 July 1982.

2/ Organismo para la Proscripción de las Armas Nucleares en América Latina (OPANAL), Conferencia General, Décimo Período Ordinario de Sesiones, Montevideo, Uruguay, 27-30 April 1987 (CG/Res.210 (X)).

3/ Protocolo para la protección del Pacífico Sudeste contra la contaminación proveniente de fuentes terrestres, adopted by the I Reunión de la Autoridad General del Plan de Acción PNUMA/CPPS para la Protección del Medio Marino y la Zona Costera del Pacífico Sudeste, Quito, Ecuador, July 1983.

4/ Policy principles and options for the expansion of the London Dumping Convention, submitted by Greenpeace International to the First Meeting of the Steering Group on a Long-Term Strategy for the London Dumping Convention, London, 17-20 April 1990.

5/ United Nations Environment Programme (UNEP), Marine Pollution from Land-based sources, Environmental Law Guidelines and Principles nr.7. Montreal Guidelines for the Protection of the Marine Environment Against Pollution from Land-based sources, 1985.

6/ ECLAC, Report of the Expert Group Meeting in Sea-use Planning and Coastal Area Management.

7/ ECLAC, Report of the Meeting of the Ad-hoc Advisory Expert Group of the Latin American Group in the Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea, (LC/G.1543 (Sem.45/3), 16 August 1989.

8/ United Nations General Assembly, Law of the Sea. Report of the Secretary General (A/44/650), 1 November 1990.

9/ Comisión Permanente del Pacífico Sur (CPPS), Programa de las Naciones Unidas para el Medio Ambiente (PNUMA), Protocolo para la Conservación y Administración de las Areas Protegidas del Pacífico Sudeste, Primera Reunión de las Altas Partes Contratantes del Convenio para la Protección del Medio Marino y Zona Costera del Pacífico Sudeste, Bogotá, Colombia, 21-22 September 1989.

10/ UNEP's Caribbean Environment Programme, Newsletter, Vol. 4, nr. 1, March 1990.