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Economic Commission for Latin America and the Caribbean

ECLAC'S CONTRIBUTION TO PROPOSALS 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.
ANALYSIS OF SOME POLICY OPTIONS FOR LATIN AMERICAN
COUNTRIES MEMBERS OF THE ZONE */

*/ This paper has been prepared by the Division of Natural Resources and Energy of ECLAC. It merges ECLAC's contribution to the first and second meeting of experts on the Law of the Sea of the States Members of the Zone of Peace and Co-operation of the South Atlantic, held in Brazzaville, Congo, 1990 and Montevideo, Uruguay, 1991, respectively.

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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

On the occasion of the First Meeting of the Group of Experts on the Law of the Sea of the States Members of the Zone of Peace and Co-operation of the South Atlantic, held in Brazzaville, Congo in June 1990, ECLAC proposed 6 basic areas for co-operation 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 specifically 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.

IV. THE CHALLENGE OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT AND ITS PREPARATORY PROCESS

The analysis contained in Chapter III has been prepared from the experience gained by ECLAC after many years of work in the region and also bearing in mind the forthcoming challenge of the United Nations Conference on Environment and Development which would call for many responses from developing regions concerning, among others, sustainable development of coastal and marine areas and, specially, equitable allocation of world resources.

The preparatory process of the so called UNCED 92 has been demonstrating that a particular strong effort of consultation and possible co-ordination is being needed in order to foster a fair dialogue with the industrialized world.

In this connection the decision on the Protection of the Oceans and all kind of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources, 11/ adopted by the Preparatory Committee of the United Nations Conference on Environment and Development at its first session, provides a useful framework to spot priority areas. The resolution requests the Secretary-General of the Conference to submit to the second session of the Preparatory Committee, a comprehensive report on, among others, the following items:

- i) Establishment of mechanisms for endogenous capacity building and human resources development, including measures to support the strengthening of the institutional capacities of developing countries to address ocean and sea-related issues;

ii) Measures to strengthen technical co-operation, both between developed and developing countries, for the development and strengthening of capacities of developing countries for identifying, analyzing, monitoring, managing and preventing environmental problems and for developing their natural resources in the pursuit of sustainable development;

iii) Establishment, as appropriate, of early-warning systems for oil-spill and hazardous chemical substance emergencies and of mechanisms for notification and for mobilization of appropriate assistance on request in such cases;

iv) Measures to expand and strengthen national, regional and international data gathering, evaluation and monitoring systems and information exchange mechanisms;

v) Linkages between oceans and seas and the issues of possible climate change and biological diversity;

vi) The impact of possible climate change on small island ecosystems and vulnerable coastal areas;

vii) The impact of possible climate change on small island ecosystems and vulnerable coastal areas;

viii) Pollution-related problems and status of living marine resources in all marine regions, including specific seas and polar regions, as appropriate;

ix) The effectiveness of feasible strengthening of existing international institutions, the effectiveness and status of implementation of existing legal instruments and the identification of gaps in existing mechanisms for the protection of the marine environment;

x) Integrated management for the development of coastal areas and maritime zones under national jurisdiction, providing an appropriate balance between environmental and developmental requirements and, to this end, development of integrated management techniques, including environmental impact assessment;

xi) The effectiveness of existing international institutions, the effectiveness and status of implementation of existing legal instruments and the identification within appropriate forums of

gaps in existing mechanisms for the protection, rational use and development of living marine resources, including the living resources of the high seas, taking into account the results of the 1984 World Conference on Fisheries Management and Development as well as the Third United Nations Conference on the Law of the Sea;

xii) The impact of large-scale harvesting, new fishing technologies incompatible with the sustainable management of living marine resources, taking into account General Assembly resolution 44/225 of 22 December 1989 on large-scale pelagic drifnet fishing;

xiii) Appropriate measures for the conservation, rational use and sustainable development of the living resources of the high seas and the protection of their ecosystems;

xiv) Means of protecting or rehabilitating living marine resources and their habitats, including mangroves and coral reefs, taking into account the ongoing work of the United Nations Environment Programme towards a legal instrument on biological diversity and that of its Regional Seas Programme;

xv) Updating of studies on the status from 1972 onward, of whales, other marine mammals and any endangered marine species.

The Latin American regional preparatory meeting for the 1992 World Conference, was convened by the Economic Commission for Latin America and the Caribbean and held in Mexico City between 1 and 7 March 1991.

The meeting agreed on the so called Tlatelolco Platform on Environment and Development 12/ which contains a chapter on protection and management of oceans, seas and coastal zones which gives special importance to the following activities:

- Prepare an inventory of the region's living and non-living resources in order to assess their potential and their rate of extraction;

- Establish "special areas" on the basis of the characteristics of the resources they contain, the dynamics and sensitivity of those resources, the uses to which they can be put, and the degrees of dependence on them;

- Carry out a regional and international exchange of data on changes in the coastal dynamic from national systematic monitoring stations;

- Develop appropriate technologies between developed and developing countries in areas such as aquaculture, desalinization, sea-bed mining, etc.; including the application of the "precautionary principle" and "clean technologies approach";

- Increase the links and the relations conducted between regional and subregional bodies and programmes and develop sufficient scientific, technical and financial capacity to conduct research, follow-up, information exchange and technical assistance activities in order to ensure sound management of marine and coastal resources;

- Support the establishment of regional marine technology centres for the joint development of environmentally compatible technologies to ensure sustainable development in the region;

- Promote the use of integrated management approaches to marine and coastal areas and resources;

- Ban the discharge of toxic wastes into seas and oceans;

- Provide mechanisms for the protection of these resources against exploitation by third party states;

- Urge the international community to create co-operation mechanisms for the conservation and optimal use of the marine resources found within the zone of sovereignty of jurisdiction of two or more riparian states, or on the high seas;

- Promote awareness of the need for an international agreement on the protection of the marine environment against land-based sources of pollution.

V. POSSIBLE IMMEDIATE ACTIVITIES AND SPECIFIC RECOMMENDED COURSES OF ACTION

This is therefore the scenario amidst which concrete proposals must be put forward and in this regard the four areas identified in the first meeting of experts, will act as a helpful guide for the consideration of proposed activities. The areas are the following:

i) Marine legislation policy and planning. In this sense, the need to review the legal commitments of States both in relation to the Convention and to other conventions either adopted, signed or in force seems specially relevant.

In this regard, it is recommend that a comparative study be undertaken on present status of international and regional instruments as well as on national legislation concerning natural resources and environment in both regions, complementary to that referred to by the United Nations Convention on the Law of the Sea.

This seems specially relevant considering the present negotiations on draft conventions on climate change and biological diversity which will certainly call for certain decisions on the part of developing countries.

A first step to this end could be a survey of the degree of participation of African and Latin American countries in international and regional instruments linked to the protection of biological diversity and also of the national legislation on protected species and habitats. This would also facilitate the inclusion in the possible co-operation of the original item proposed by ECLAC on co-operation on protected areas and endangered species of flora and fauna.

ii) Ocean resource development and marine science and technology. In the context of this item emphasis should be placed on the concern related to the co-operation in the conservation and utilization of transboundary, straddling, marine mammals, anadromous stocks, highly migratory and catadromous species (articles 63, 64, 65, 66 and 67), as well as on the conservation and management of the living resources of the high seas.

It seems that the framework of the Zone of Peace and Co-operation of the South-Atlantic provides a helpful consultation scheme for these endeavours.

As noted in ECLAC's first proposal submitted to the meeting held in Brazzaville in June last year, the General Assembly Resolution on "Large-scale pelagic drifnet fishing and its impact on the living marine resources of the world's oceans and seas" is a helpful background for the consideration of this subject. 13/

The resolution notes that "large-scale pelagic drifnet fishing, a method of fishing with a net or a combination of nets intended to be held in a more or less vertical position by floats and weights, the purpose of which is to enmesh fish by drifting on the surface of or in the water, can be a highly indiscriminate and wasteful fishing method that is widely considered to threaten the effective conservation of living marine resources, such as highly migratory and anadromous species of fish, birds and marine mammals".

In this connection, special attention should be paid to the valuable report prepared by the Office of Ocean Affairs and the Law of the Sea and submitted by the Secretary General to the 45th session of the General Assembly on the subject 14/ which could, to a great extent, contribute to the proposed interregional dialogue. It would be helpful to decide on appropriate actions to strengthen the coastal states's national capacities in order to:

a) Be in a better position to agree on the measures for the conservation of stocks occurring both within the EEZ and in an area beyond and adjacent to it according to article 63.2 of the Convention on straddling stocks;

b) Enact proper conservation and management measures to ensure that the maintenance of the living resources of the EEZ is not endangered by overexploitation, as a way of supporting its capacity of protecting those straddling stocks;

c) Agree conservation measures and promote the objective of optimum utilization of highly migratory species with other states whose nationals fish in the region for the highly migratory species listed in Annex I of the Convention on the Law of the Sea;

d) Agree on measures for the conservation of marine mammals.

e) Establish, in consultation with other states fishing these stocks, total allowable catches for stocks originating in its rivers (anadromous stocks);

f) Allow coastal states in whose waters catadromous species spend the greater part of their life cycle, to manage these species and ensure the ingress and egress of migratory fish.

Furthermore, an ecosystem approach should be promoted for the evaluation of fishery resources within the Zone of Peace and Cooperation, to assessing the impact of high seas fisheries on the marine environment and a precautionary approach to the conservation and management of fishery resources. This would mean that fisheries resources would not be exploited unless the impact of this exploitation is scientifically known to have minimal impact on the integrity of the stock and surrounding ecosystem.

There is indeed a great need for international co-operation in ascertaining and insuring proper levels of fishing effort on the high seas.

Since a significant percentage of the world's fish resources are used for industrial or non-human consumption and considering the nutritional needs of the world's growing population specially in developing countries it should be beneficial to develop international standards for the appropriate utilization of

fisheries resources both within and beyond national EEZ.

iii) Protection and preservation of the marine environment. As suggested in the Background Note prepared for this meeting, it would be beneficial to examine the extent to which rules and regulations contained in existing conventions should be promoted on a regional basis and the ways of doing so.

It would be convenient to further analyze articles of the Convention dealing with protection and preservation of the marine environment as well as with sustainable development of ocean resources.

As suggested in the case of the protection of biological diversity, a thorough survey of different degrees of participation of member countries of the Zone in treaties and agreements dealing with protection and preservation of the marine environment seems a helpful initial step for consultations.

As tentatively proposed in the first meeting of experts there are two subjects which deserve special consideration. They are the measures to prevent and control the dumping and transboundary movements of hazardous, toxic and nuclear wastes as well as the marine pollution from land-based sources.

Concerning toxic wastes, as expressed before, the Platform of Tlatelolco on Environment and Development underlines the importance of the regional agreements aimed at the strengthening of the Basel Convention.

In this connection the Latin American countries could analyze the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, to consider the possibility of negotiating similar agreements and to start consultations on possibilities for interregional co-operation on the subject.

Further, responsibilities vested in the Regional Commissions by Resolution A/44/226 of the General Assembly on traffic in and disposal, control and transboundary movements of toxic and dangerous products and wastes, which request them to interact among themselves, and in co-operation with UNEP with a view to

maintaining efficient and co-ordinated monitoring and assessment of the illegal traffic in toxic and dangerous products and wastes, also give sound grounds for co-operation.

It is worth to note that the General Assembly Resolution adopted at its 45th session 15/ "urges all states to abstain from transferring into and disposing within the region hazardous, toxic and nuclear wastes, and notes the determination of the States of the Zone to establish a mechanism aimed at monitoring, collecting and disseminating information and data on the movements of hazardous, toxic and nuclear wastes within the region.

Concerning pollution from land-based sources, it must be borne in mind that it accounts for 70% of the substances and wastes contaminating the marine environment.

Thus, pollution from land-based sources is one of the greatest concerns in the preparatory process of the United Nations Conference on Environment and Development.

UNEP is presently preparing an evaluation of the 1985 Montreal Guidelines on land-based sources of marine pollution. In consultation with the other appropriate agencies, UNEP is also preparing a brief outline of strategy options or actions to reduce the effects of land-based sources of pollution and other activities threatening marine and coastal resources, ranging from better implementation of present arrangements, to national and regional actions, as well as international mechanisms for improving technical and financial support, preparation of more specific, updated and practical guidelines, and a possible international framework convention for the protection of the marine environment from all sources of pollution. Canada will host an Intergovernmental Meeting of Experts on Land-Based Sources of Marine Pollution, to be held in Halifax, between 6 and 10 May 1991, in co-operation with the UNCED Secretariat, UNEP, IOC, OALOS and other interested UN agencies. The expected outcomes of the meeting are:

- development of principles for the protection of the marine environment from land-based sources;
- study of the various scientific, social, economic and legal elements to be addressed if there is to be a concerted global attack on the problem; and
- development of a recommended strategy and action plan.

Another area that seems suitable for consultation as regards protection and preservation of the marine environment, is that related to the Preparatory Process of UNCED and the work being carried out by Working Group II.

ECLAC is convening a meeting of experts to further analyze the ocean issues of the so called Platform of Tlatelolco, adopted by the Regional Meeting preparatory to UNCED. An exchange of views on the results of this meeting and similar ones organized in Africa would support the negotiating position of developing countries before the World Conference.

iv) Development of skills and capabilities in the marine sector. Certainly, the strengthening of the national capacities in the ocean sector is one of the key actions which could be undertaken in the schemes of co-operation across the Zone and it may refer to any of the other three areas studied before.

Identification of opportunities for technical co-operation among states members of the Zone could be an essential step to foster efficient support mechanisms.

Any international approach to capacity building needs to be led by the following ideas:

- the capacity needs to be developed nationally and in the long-term, to become self-sustaining;
- it needs to be based, in the short-term on international, regional and bilateral collaboration to ensure accelerated development, technology transfer and economies of scale;

- it must be developed only as fast as it can be used effectively;

- it requires sustained action over a long period.

Participation in international and regional legal agreements and programmes can reinforce national capacities and strengthen co-operation among participants. Mechanisms need to be established to foster technical co-operation among developing countries in coastal and marine planning and management.

In this regard ECLAC would suggest the study of the document "Revised guide to technical co-operation among developing countries (TCDC): Supply and directory of institutions", to facilitate the spotting of opportunities for co-operation in the Zone. 16/

1. Specific recommended courses of action

In order to define proposals more specifically and considering the need to convey continuity to the efforts initiated with these two meetings of experts, the following activities should be put forward:

- i) Carry out a survey of the degree of participation of countries of the Zone in international and regional instruments relating to natural resources and the environment, with a view to maximizing opportunities for interregional co-operation and financial support;

- ii) Start informal consultations, through the technical support of FAO on the impact of high-seas fisheries in straddling and highly migratory stocks of economic importance to coastal States of the Zone, and to devise mechanisms for establishing negotiations with third states whose nationals exploit same living resources according to article 118 of the Convention. In this connection, the possibility of financial aid from interested donor countries should be explored.

- iii) Agree on preliminary steps to support Regional Commissions in the fulfilment of mandates contained in Resolution A/44/226 concerning monitoring and assessment of the illegal traffic in toxic and dangerous products and wastes, and in that regard bear

specially into account, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa and any other relevant documentation on the waste trade within the Zone;

iv) Exchange information on national legislation and possible regional agreements on land-based sources of pollution so as to analyze possible common approaches in future negotiations concerning a global instrument on this kind of pollution.

v) Explore immediate possibilities for technical co-operation among member countries of the Zone in the subjects related to the Law of the Sea and Ocean Affairs, with the support of the United Nations Office for Ocean Affairs and the Law of the Sea, the Regional Commissions and relevant specialized agencies, as appropriate. Financial facilities could be approached through UNDP, World Bank, regional financing institutions and donor countries.

Notes

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