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# The Exclusive Economic Zone - The Elusive Consensus

DUKE E. POLLARD\*

## I. INTRODUCTION

Convening at a time when the existing crisis in the law of the sea is viewed by many Third World decision-makers as only one symptom of a more far-reaching convulsion in the structure of international economic relationships, the Third United Nations Conference on the Law of the Sea underscored the necessity of examining different objectives and approaches and translating such into enduring legal norms. In the characterization of many Third World decision-makers this Conference constitutes a significant development in their efforts to humanize and rationalize the prevailing structures of international economic relationships by making a traditionally obsolescent and intransigent jurisprudence, which determines both their parameters and content, more responsive to the needs and aspirations of the world's deprived nations. To a considerable extent this task has been expressed to be defined, on the one hand, by the Declaration of Principles embodied in General Assembly Resolution 2749 (XXV) and in various other resolutions of

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the United Nations concerning the inherent right of all States to the exercise of permanent sovereignty over their natural resources. On the other hand this task is likely to be informed by the objective conditions of disarray currently manifesting themselves in the international legal order—a disarray which has invariably accompanied any period of transition of a nature and magnitude to which present developments in international relations bear witness.

This transition in the structuring of international relationships has been characterized by insistent demands for a movement away from elitism in the institutional processes of normative decision-making and has in large measure been occasioned by the phenomenal enlargement of the international community within recent times and the consequent augmentation of claims demanding recognition and status in the emerging legal order. Undoubtedly, efforts in this direction are made extremely difficult by simultaneous developments of a revolutionary nature in several areas of human endeavour. For whether or not one is prepared to recognize it, the fact is that modern man stands at the point of convergence of several revolutionary developments. Energizing this process of radical transformation is the ongoing revolution in science and technology, which, in addition to bringing about drastic changes in man's self-concept has revolutionized his relationship to the universe. By revolutionizing systems of communication in spatial and temporal terms it has occasioned a revolution of rising expectations among the world's deprived nations and, more so, among the deprived of those nations themselves. By enhancing man's capacity to explore and exploit his immediate surroundings it has operated to make scarcity and the degradation of the environment a general attribute of human endeavour while accelerating the drive of Third World decision-makers towards a more meaningful participation in the management and allocation of the world's resources. By intensifying man's exploitive drive towards outer space it has revolutionized concepts of military strategy and dramatically underscored the significance of inner space as a critical dimension in strategic planning. And it is against this background of developments that objectives sought to be secured must be analyzed.

In attempting to determine developments in the law of the sea, good sense would appear to advise that competent decision-makers should seek to ensure that the legal order likely to emerge from

the continuing dialogue between advocates of various conflicting claims respond to the demands of inclusive and exclusive interests. As such, even though attempts to have recognition and preferment of exclusive claims are to be expected, the temptation must be resisted to espouse extreme particularistic interests which may only complicate the process of parametric adjustment of interests on which all enduring law must ultimately be predicated. Above all, attempts must be made to temper idealism with realism in the candid recognition that perfection is an attribute of divinity and that, as is often the case with ordinary mortals, human expectations ignore at their peril the reality of constraints which often operate to emasculate desired objectives. On the other hand, as experience has shown, an inordinately positivistic approach may induce an unwarranted tendency to designate attempts to restructure the prevailing system of international relationships in ocean space as both a disingenuous exercise in radical economic opportunism and a simplistic approach to the problems of collective security through reliance on generally accepted notions of fairness, equity and respect for divergent national value systems, rather than on the employment of sophisticated technologies of violence.

For some modern disciples of Metternich<sup>1</sup> the Third United Nations Conference on the Law of the Sea marks a critical stage in modern multilateral diplomacy—not so much for the definitive resolution of fundamental issues of substance uniting or dividing participants irrespective of historical alliances or ideological predispositions, but because this Conference, by its near-universality in terms of national participation, is expressed to be decisive in determining the modalities on international decision-making in the future. Failure by this Conference to accommodate the legitimate interests of all States as well as those of the international community (conceived in a highly subjectivist sense) by reference to current realities and, in particular, the inescapable fact of power differentials, would signal the end of attempts by the older members of the international community to seek accommodation of competing exclusive and inclusive claims by the conference approach. More damaging, it is being urged, such failure would assist the petrification of disquieting trends towards elitism and corridor diplomacy in international decision-making. In the present submis-

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1. Consider the reaction of Prince Metternich of Austria to the proposal of Czar Alexander VI of Russia during the early 19th century to establish an orderly European state system based on an appeal to love rather than on an arbitrary, intermittent resort to violence in E. LIPSON, *EUROPE IN THE 19TH CENTURY* 16 (2d ed. 1948); also D. THOMPSON, *EUROPE SINCE NAPOLEAN* 76 (2d ed. 1962).

sion, however, this argument ignores one basic reality and eschews coming to grips with one salient sociological fact. The reality which appears to be ignored is the need on the part of the technologically-advanced countries to recognize the growing sophistication of developing countries in identifying and evaluating events of global significance by reference to their own systems of values. The sociological fact eschewed is the increasing demands normally placed on the capacity and ability of competent decision-makers in any given socio-political context in terms of analyzing, evaluating and determining preferred objectives in an optional situation whenever the level of rival decision-makers rises quantitatively or qualitatively, or both, or whenever the competing claims seeking recognition and preferment increase in diversity or complexity. To take up one's marbles and go home in such a situation is tantamount to conceding defeat before the battle is fully joined—a concession which, at worst, suggests recognition of an incapacity or inability to perform, and at best, an unwillingness to test the extreme limits of that capacity or ability, as the case may be, in a competitive/problematic situation.

In the context of the current deliberations at the Third United Nations Conference on the Law of the Sea decisions may be expected to materialize only after painstaking and enervating endeavours. Instant accommodation of conflicting interests is as likely to be an unwarranted expectation as it is likely to be ephemeral in results if it is in fact achieved. The outer limit of plausible expectations may be unsatisfactory compromises reflecting a tolerable mix of achievement and failure on the part of any interest group—and the prospect of total failure to reach accommodation on any or all of the issues of vital national and international concern must always remain a viable reality. This is so because of the context in which the present deliberations are being conducted—the known resource potential of the oceans in a planet of dwindling and imminently exhaustible land-based resources; the apparently irreconcilable claims of technological advancement and environmental integrity; the challenge presented to the traditional hegemonistic system based on the arbitrary and sometimes indiscriminate employment of force by current demands for a rationally structured world economic order and the attendant difficulties experienced by affluent State systems in adjusting to the emergent economic nationalism of deprived nations; the intransigence of the applicable norma-

tive system in the face of the increasing assertiveness by the advocates of a more responsive and relevant jurisprudence; apprehensions born of constraints sought to be imposed on ocean-going military vessels at a time when naval strategy is expressed to be a critical dimension in maintaining the so-called nuclear deterrent balance.

Indeed, the problems posed by the foregoing considerations are not likely to be attenuated by the prevailing energy crisis, persistent instability in the international monetary system and an impending food crisis coincident with vertiginous increases in world population and intractable poverty in the territories of many Third World decision-makers. And even though the clairvoyance of hindsight does appear to advise circumspection in assessing the prospects of accommodating the conflicting economic, political, military/strategic and ecological interests of States, both individually and collectively, the experience of the first substantive session of the Third United Nations Conference on the Law of the Sea leaves some room for cautious optimism that consensus would emerge on the major issues requiring examination and determination. In the present submission the concept of the economic zone of exclusive coastal State jurisdiction appears to offer the most realistic option around which to build that much-to-be-desired consensus.<sup>2</sup>

## II. THE CONCEPT OF THE EXCLUSIVE ECONOMIC ZONE

Despite bold assertions to the contrary<sup>3</sup> the concept of an economic zone of exclusive coastal State jurisdiction is not unknown to modern international law of the sea. What is new is the choice of terminology employed to describe the concept and its identification with the countries of the Third World. As with the development of other norms relating to State interaction in ocean space, the concept of the exclusive economic zone reflects the "interplay of economic, political and strategic interests which characterizes the problems of the law of the sea in the twentieth century."<sup>4</sup> This concept as it was originally enunciated defined the considered response of competent decision-makers in the United States to the

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2. See the Statement of the Representative of Guyana U.N. Doc. A/CONF.62/C.2/SR.26, at 21 (1974).

3. See the Statement of the Representative of Trinidad & Tobago at the Law of the Sea Conference in Caracas, U.N. Doc. A/CONF.62/C.11/SR.22, at 28 (1974); also the United States, U.N. Doc. A/CONF.62/C.2/SR.24, at 12 (1974); Zaire, U.N. Doc. A/CONF.62C.2/SR.22, at 15 (1974); Congo, U.N. Doc. A/CONF.62/C.2/SR.22, at 17 (1974); Barbados, U.N. Doc. A/CONF.62/C.2/SR.22, at 19 (1974); Ukrainian S.S.R., U.N. Doc. A/CONF.62/C.2/SR.25, at 21 (1974); Haiti, U.N. Doc. A/CONF.62/C.2/SR.27, at 14 (1974).

4. See D.W. BOWETT, *LAW OF THE SEA* 1 (1967).

challenge presented by the economic and strategic significance of hydrocarbons as vindicated in the second World War as well as by an advancing technology which made their exploitation on the continental shelf both desirable and feasible. In articulating this response the third preambular paragraph of the Truman Declaration (1945) asserted that "jurisdiction over these resources (petroleum and other minerals) is required in the interest of their conservation and prudent utilization when and as development is undertaken."<sup>5</sup> The dispositive paragraph of this Declaration, in unilaterally asserting a claim to "the natural resources of the subsoil and seabed of the continental shelf," made it quite clear that there was no intention on the part of the United States to affect "the character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation . . . ." By any criterion of assessment it would be difficult to deny that the claim advanced by President Truman on behalf of the Government of the United States in respect of the non-living resources of the continental shelf (subsequently defined as encompassing submerged land areas up to a maximum depth of 200 metres) *was a claim to an economic zone of exclusive coastal State jurisdiction.*

In point of fact article 2 of the Geneva Convention on the Continental Shelf (1958) which belatedly extended juridical validity to what was originally an arbitrary and exaggerated unilateral claim to jurisdiction over vast expanses of ocean space adjacent to the coasts of the United States, expressly recognizes the exclusivity of the coastal State's *economic rights* on the continental shelf by providing that

[t]he rights referred to in paragraph 1 of this *article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its national resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.*<sup>6</sup>

Notwithstanding the foregoing, however, it is fair to say that the doctrine of the economic zone of exclusive coastal State jurisdiction found its most articulate and definitive expression for the first time in the Declaration of Santo Domingo (1972).<sup>7</sup> At the time of its

5. NORMAN J. PADEFORD, *PUBLIC POLICY FOR THE SEAS 75-76* (Massachusetts Institute of Technology revised ed. 1969).

6. Convention on the Continental Shelf, 499 U.N.T.S. 312.

7. The text of this Declaration approved by the Meeting of Ministers of the Specialized Conference of the Caribbean Countries on problems of

enunciation the Latin American States were hopelessly split among moderates and extremists, the one advocating a territorial sea of 12 nautical miles and the other a territorial sea of 200 nautical miles as measured from the applicable baselines.<sup>8</sup> During the period immediately following the Santo Domingo Declaration it was somewhat difficult to distinguish with certainty the substantive positions of the moderates and extremists of Latin America. For, whereas the former claimed a territorial sea of only 12 nautical miles, they insisted on exercising exclusive economic jurisdiction in an area beyond the territorial sea up to an outer limit of 200 nautical miles. On the other hand, although the extremists insisted on a territorial sea of 200 miles it was not a territorial sea conceptualized in the traditional sense. It was in fact a territorial sea with a differential juridical content, the first twelve miles of which were assimilated to the territorial sea in the traditional sense and the remaining one hundred and eighty-eight virtually indistinguishable in juridical configuration from the corresponding area in the patrimonial sea. It is believed in some quarters that the designation "patrimonial sea" which was employed in the Santo Domingo Declaration as well as the content of this concept were intended to afford the extremists of Latin America a plausible opportunity to abandon their verbal extremism and to embrace the language of moderation without significantly compromising positions of principle or policy. The debates at the first substantive session of the Conference in Caracas revealed, however, that the differences between the moderates and extremists of Latin America were more substantive than terminological or methodological.

It was therefore left to the Third World countries of Africa, spearheaded by Kenya and Tanzania, to embrace and adopt the terms "economic zone of exclusive coastal State jurisdiction" or "exclusive economic zone"<sup>9</sup> to describe the area beyond the territorial sea as enunciated in the Santo Domingo Declaration.<sup>10</sup> The term gained wider currency on the African continent after the Organization of African Unity endorsed it and made its substantive content the

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the Sea which convened on June 7, 1972, in Santo Domingo may be found in 27 U.N. GAOR, Supp. 21, at 70, U.N. Doc. A/8721 (1972).

8. The main advocates of a territorial sea of 200 miles are Brazil, Uruguay, El Salvador, Peru and Ecuador. A discernible shift in position has occurred in the case of Panama, Argentina and Chile.

9. See, e.g., the Kenyan proposal on the exclusive economic zone contained in 27 U.N. GAOR, Supp. 21, at 180, U.N. Doc. A/AC.138/SC.11/L.10 (1972); also the Conclusions of the Regional Seminar on the Law of the Sea held in Yaounde from June 20-30, 1972 in U.N. Doc. A/AC.138/79 (1972).

10. See section entitled "Patrimonial Sea" of the Declaration. See also the 14 power proposal introduced during the debates of the Seahed Committee, U.N. Doc. A/AC.135/5c 11/L.40,



principal objective to be achieved by its members at the current negotiations on the law of the sea.<sup>11</sup> In Asia its growing acceptance was in greater evidence after the fifteenth session of the Asian-African Legal Consultative Committee which convened in Tokyo (1974).

An examination of the records of the debates at the recently concluded session of the Third United Nations Conference on the Law of the Sea in Caracas, and in particular those of Committee 11,<sup>12</sup> would show that a significant majority of participants endorsed the concept of an economic zone of exclusive coastal State jurisdiction.<sup>13</sup> These endorsements are no clear indication, however, that the concept is likely to gain general acceptance and find expression as a positive norm in a general multilateral convention on the law of the sea. In the first place, many participants have endorsed the concept subject to qualifications which its principal advocates find unacceptable; secondly, and even more important, is the fact that there is still no agreement on the definitive juridical content of the concept among those States' representatives which have endorsed it.

Adverting now to the qualifications attaching to the acceptance of the doctrine of the exclusive economic zone, it is important to note that several delegates expressly recognized an inseparable connection between a territorial sea of 12 nautical miles and an exclusive economic zone contiguous thereto and extending to a seaward limit of 200 nautical miles.<sup>14</sup> In short, their acceptance of a terri-

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11. See Draft Declaration adopted by the Council of Ministers of the OAU in U.N. Doc. A/CONF.62/33 (1974).

12. The Conference set up three committees of the whole—Committee I to deal with the regime and international machinery to be applied in the areas of ocean space beyond national jurisdiction. Committee II to deal with questions related to the structure of the regime within national jurisdiction, and Committee III to deal with the questions of relating to the presentation of the marine environment, scientific research and the transfer of technology.

13. It has been estimated that more than 100 states out of a total of 149 represented at the Conference had openly endorsed the concept subject.

14. Consider, for example, the Guyana proposal contained in U.N. Doc. A/CONF.62/C.2/25 (1974) and the statements of that representative in U.N. Doc. A/CONF.62/C.2/SR.2, at 2 (1974) and U.N. Doc. A/CONF.62/C.2/SR.3, at 13 and 14 (1974). See also the statements of the following representatives: Honduras, U.N. Doc. A/CONF.62/C.2/SR.3 (1974); Pakistan, U.N. Doc. A/CONF.62/C.2/SR.4, at 7 (1974); Guatemala, U.N. Doc. A/CONF.62/C.2/SR.4, at 10 (1974); Tonga, U.N. Doc. A/CONF.62/SR.4, at 12 (1974); Mexico, U.N. Doc. A/CONF.62/C.2/SR.22, at 6 (1974); Congo, U.N. Doc. A/

torial sea of 12 nautical miles is expressed not to be in the nature of an *opinio juris* but rather as an attempt to accommodate particularistic interests in national security, economic development, environmental integrity and inclusive community interests in unimpeded passage of commercial vessels on the world's oceans. The powerful maritime nations for their part would recognize the concept of an economic zone conditional on the acceptance of a narrow territorial sea, freedom of navigation and overflight through and over straits used for international navigation, "freedom of scientific research, determination of the outer limits of the continental shelf, the seabed regime and the prevention of pollution of the sea environment." Postulated in other terms, these issues are conceived as constituting "a package deal" that must be resolved altogether.<sup>15</sup> In addition, it is urged that any satisfactory solution to the whole range of issues relating to the law of the sea must provide for compulsory third party adjudication of disputes arising from the interpretation and application of any instrument to be elaborated. For some of the so-called geographically disadvantaged States,<sup>16</sup> although the doctrine of the exclusive economic zone left much to be desired in terms of a satisfactory resolution of the problems attending the exploitation of living resources in ocean space beyond the territorial seas, it could, however, be rendered palatable by the recognition of a right of access by States whose adjacent ocean spaces are generously endowed with living resources to geographically disadvantaged States within a given region.<sup>17</sup> Other States would only accept the doctrine subject to the proviso that nationals of foreign States would be recognized as having a right to exploit the living resources of the zone in cases where the coastal State concerned is incapable of fully exploiting those resources<sup>18</sup> or provided that the exclusive economic zone would not be so extensive

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CONF.62/C.2/SR.22, at 17 (1974); Kenya, U.N. Doc. A/CONF.62/SR.23, at 6 (1974). See also the Spanish proposal, U.N. Doc. A/CONF.62/C.2/L.6 (1974); and the Nicaraguan proposal, U.N. Doc. A/CONF.62/C.2/L.17 (1974).

15. Consider, for example, the six-power proposal in U.N. Doc. A/CONF.62/C.2/L.38 (1974); also the statements of the following representatives: Trinidad & Tobago, U.N. Doc. A/CONF.62/C.2/SR.22, at 28 (1974); Finland, U.N. A/CONF.62/SR.22, at 34 (1974); Mexico, U.N. Doc. A/CONF.62/C.2/SR.22 at 6 (1974); United Kingdom, U.N. Doc. A/CONF.72/C.2/SR.25, at 19 *et seq.* (1974); Guatemala, U.N. Doc. A/CONF.62/C.2/SR.27, at 20 (1974).

16. For a definition of this concept, see the Jamaican proposal contained in U.N. Doc. A/CONF.62/C.2/L.30 (1974).

17. See Statements of the Representatives of Jamaica, U.N. Doc. A/CONF.62/C.2/SR.28, at 6 (1974); Cuba, U.N. Doc. A/CONF.62/C.2/SR.24, at 17, 18 (1974); Trinidad & Tobago, U.N. Doc. A/CONF.62/C.2/SR.22, at 28 (1974); Barbados, U.N. Doc. A/CONF.62/C.2/SR.22, at 20 (1974).

18. See Statement of the Representatives of Australia, U.N. Doc. A/CONF.62/C.2/SR.26, at 11; the United Kingdom, U.N. Doc. A/CONF.62/C.2/SR.22, at 19; Spain, U.N. Doc. A/CONF.62/C.2/SR.27, at 19; Ireland, U.N.

as to render the international area economically unviable.<sup>19</sup> Some land-locked States expressed reservations about the doctrine but intimated their readiness to accept it provided that transit coastal States were prepared to guarantee them access to the sea and to the living resources of their exclusive economic zones.<sup>20</sup>

In terms of the juridical content of the doctrine of the exclusive economic zone one need only remark on the relevance of the aphorism *quot homines tot sententiae* in the present context.<sup>21</sup> As far as the resources of the zone are concerned, the main advocates of the doctrine seem to be agreed that the coastal State must be recognized as enjoying sovereign rights for the purposes of their exploration and exploitation.<sup>22</sup> It does appear to follow, too, that these rights are to be exclusive in the sense that if the coastal State does not exploit the resources of this zone no other State can, except with the express prior consent of the coastal State.<sup>23</sup> Within the

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Doc. A/CONF.62/SR.22, at 32 (1974); and generally the U.S. proposal, U.N. Doc. A/CONF.62/C.2/L.47 (1974), and the six-power proposal, *supra* note 15.

19. See Statement of the Representative of Singapore, U.N. Doc. A/CONF.62/SR.27, at 2 (1974); and Bhutan, U.N. Doc. A/CONF.62/C.2//SR.25, at 23 (1974).

20. Consider, for example, the proposal co-sponsored by Afghanistan, Austria, Belgium, Bhutan, Bolivia, Botswana, Finland, Iraq, Laos, Lesotho, Luxembourg, Nepal, Netherland, Paraguay, Singapore, Swaziland, Sweden, Switzerland, Uganda, Upper Volta and Zambia contained in U.N. Doc. A/CONF.62/C.2/L.39 (1974); see also the Statements of the Representatives of Upper Volta, U.N. Doc. A/CONF.62/C.2/SR.22, at 10 (1974); Uganda, U.N. Doc. A/CONF.62/C.2/SR.25, at 11 (1974); Bolivia, U.N. Doc. A/CONF.62/C.2/SR.25, at 14 (1974);

21. See Statements of Representatives of Uruguay, U.N. Doc. A/CONF.62/C.2/SR.26, at 23 (1974); Ecuador, U.N. Doc. A/CONF.62/C.2/SR.27, at 13 (1974).

22. See the Santo Domingo Declaration; also the proposal in U.N. Doc. A/CONF.62/L.4 (1974); and the Statement of the Representatives of Yugoslavia, U.N. Doc. A/CONF.62/C.2/SR.22, at 9 (1974); Kenya, U.N. Doc. A/CONF.62/C.2/SR.23, at 5 (1974); Peru, U.N. Doc. A/CONF.62/C.2/SR.24, at 21 (1974).

23. See, e.g., the Kenyan proposal in 27 U.N. GAOR, Supp. 21, at 170, U.N. Doc. A/8721 (1972), and the 14 power proposal in U.N. Doc. A/AC.138/SC.11/L.40 (1972) which were introduced in the Seabed Committee and the Nigerian proposal contained in U.N. Doc. A/CONF.62/C.2/L.21 (1974) (art. 1). In introducing his proposal the Nigerian Representative communicated his willingness to agree to an additional provision in the text that would allow access under license to the living resources of the economic zone where these resources were not fully utilized. See also Statements of the Representatives of Senegal, U.N. Doc. A/CONF.62/C.2/SR.25, at 17 (1974); Pakistan, U.N. Doc. A/CONF.62/C.2/SR.25, at 3 (1974); Rep. of Korea, U.N. Doc. A/CONF.62/C.2/SR.25, at 16 (1974); United Kingdom, U.N. Doc. A/CONF.62/C.2/SR.22, at 19 (1974).

exclusive economic zone the coastal State would have the right to regulate scientific research<sup>24</sup> and to take measures to prevent pollution of the marine environment. In the exclusive economic zone there would be freedom of navigation and overflight as well as freedom to lay pipelines and submarine cables. Some uncertainty appears to exist, however, regarding the other rights which the coastal State is to be recognized as enjoying in the exclusive economic zone.<sup>25</sup> Thus article 1(d) of the Nigerian proposal would also recognize the coastal State as having "exclusive jurisdiction for the purpose of protection, prevention and regulation of other matters ancillary to the rights and competences aforesaid and, in particular, the prevention and punishment of infringement of its customs, fiscal, immigration or sanitary regulations within its territorial sea and economic zone." In short, the Nigerian proposal would recognize the coastal State as enjoying within the exclusive economic zone those competences which it enjoys in the contiguous zone under traditional international law.<sup>26</sup> The Santo Domingo Declaration does not match the Nigerian proposal in terms of specificity in this regard but it does provide that those international freedoms which are exercisable by other States shall be subject to restrictions "resulting from the exercise by the coastal State of its rights within the area." The principal advocates of the doctrine of the exclusive economic zone also maintain that this area falls within national jurisdiction and must not be regarded as high seas which by definition are beyond national jurisdiction. Thus the Santo Domingo Declaration expressly provides that "waters situated beyond the outer limits of the patrimonial sea constitutes an international area designated as high seas . . . ."

States which had earlier shown resistance to the doctrine of an exclusive economic zone in the debates in the United Nations Sea-

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24. See generally the Santo Domingo Declaration, and the Statements of the Representatives of Malaysia, U.N. Doc. A/CONF.62/C.2/SR.25, at 12 (1974); Senegal, U.N. Doc. A/CONF.62/C.2/SR.25, at 18 (1974).

25. Consider the Statement of the Representative of Honduras who maintained that the disappearance of the concept of the contiguous zone should not entail the disappearance of certain traditionally related competences which were complementary to the competence of states in the economic zone. U.N. Doc. A/CONF.62/C.2/SR.22, at 3 (1974); also the Statements of the Representatives of Mauritania, U.N. Doc. A/CONF.62/C.2/SR.22, at 23 (1974); Upper Volta, U.N. Doc. A/CONF.62/C.2/SR.22, at 10; Nigeria, U.N. Doc. A/CONF.62/C.2/SR.9, at 5 (1974). But contrast the Statements of the Representatives of Portugal, U.N. Doc. A/CONF.62/C.2/SR.22 at 6 (1974); and Switzerland, U.N. Doc. A/CONF.62/C.2/SR.22, at 10 (1974).

26. Compare also the Statements of the Representatives of Zaire, U.N. Doc. A/CONF.62/C.2/SR.22, at 15; (1974); Finland, U.N. Doc. A/CONF.62/C.2/SR.22, at 35 (1974); United Kingdom, U.N. Doc. A/CONF.62/C.2/SR.25, at 18 (1974); Senegal, U.N. Doc. A/CONF.62/C.2/SR.25, at 18 (1974); Italy, U.N. Doc. A/CONF.62/C.2/SR.25, at 5 (1974); Democratic People's Republic of Korea, U.N. Doc. A/CONF.62/C.2/SR.27, at 16 (1974).

bed Committee, but which expressly endorsed it at the Caracas Conference<sup>27</sup> appear on close examination, to have done no more than adopt the terminology associated with the doctrine while still maintaining the substance of their old positions. Thus, whereas the principal advocates of the doctrine of the exclusive economic zone would insist on the coastal State enjoying sovereign and exclusive rights in relation to the exploration and exploitation of the natural resources of the exclusive economic zone, the new converts would neither grant genuine exclusivity to those rights nor recognize them as being sovereign except in a very limited sense.<sup>28</sup> This group of States which has been aptly described as the "neo-traditionalists"<sup>29</sup> is drawn from both developed and developing countries.

An outstanding case in point is to be found in the position of the United States. Thus, the American proposal on the economic zone and the continental shelf, although providing in paragraph 1 of article I that "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 seabed and subsoil and the superjacent waters," proceeds to emasculate the juridical content of the doctrine as conceptualized and espoused by its principal advocates.<sup>30</sup> For example, articles 3 and 28 of the American proposal are so formulated as to suggest the existence of a rule of international law which gives foreign States the right to erect installations or place objects on the continental shelf of a coastal State even without that State's express consent for military and non-economic purposes. At this point it would be convenient to advert to the similarity of content of article 7 of the six-power proposal.<sup>31</sup> It is clear from the record of debates

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27. See, e.g., the Statement of the Representative of the United Kingdom, U.N. Doc. A/CONF.62/C.2/SR.25, at 19 (1974).

28. See, e.g., the Statement of the Representative of Byelorussian S.S.R., U.N. Doc. A/CONF.62/C.2/SR.26, at 13 (1974).

29. See Statement of the Representative of Barbados, U.N. Doc. A/CONF.62/C.2/SR.22, at 19 (1974).

30. Consider in this context the Statement of the Representative of Madagascar, U.N. Doc. A/CONF.62/C.2/SR.22, at 12 (1974).

31. See U.N. Doc. A/CONF.62/C.2/L.38 (1974) co-sponsored by six Eastern European States, viz: Byelorussian S.S.R.; People's Republic of Bulgaria, German Democratic Republic, Polish People's Republic, Ukrainian S.S.R. and the U.S.S.R.

in Committee II, however, that a significant number of States in the international community do not recognize the existence of any such rule.<sup>32</sup> In point of fact the Guyana representative advanced the argument that in as much as the erection of installations or the emplacement of objects on the continental shelf was the exploitation of a spatial resource, article 2 of the Continental Shelf Convention (1958) would outlaw any such activity in the absence of the express prior consent of the coastal State concerned. On the question of pollution control, articles 5 and 8 of the American proposal would restrict the coastal State's competence to establishing "standards" and to taking "all appropriate measures in the economic zone for the protection of the marine environment from pollution and (ensuring) compliance with international minimum standards for this purpose." It is necessary to note only in passing that several developing countries are likely to construe these provisions as incorporating unacceptable biases in favor of the technologically-advanced countries. In the conception of the former, since the current threat to the ocean environment caused by pollution is a function of indiscriminate industrial development in the technologically-advanced countries, the applicable international standards should have a variable content designed to reduce significantly pollution emanating from the industrialized countries and to encourage industrial development in the developing countries.<sup>33</sup>

Part II of the American proposal which deals with the question of fisheries appears to underscore *aequo vigore* the illusory nature of the sovereign and exclusive rights allegedly recognized as inhering in the coastal State in the economic zone. In this context it is significant to note that the exclusivity of the rights recognized goes expressly to the *regulation* and not to the *exploitation* of the fisheries within the economic zone.<sup>34</sup> More important is the fact that such regulatory powers as are recognized as falling within the competence of the coastal State are hedged with qualifications of an obligatory nature and which are predicated on inordinately subjective self-serving notions about ecological interactions in ocean space. Thus article 12 seeks to impose an obligation on the coastal State for the purpose of conserving renewable (living) resources within the economic zone and to establish the principles to be ap-

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32. See the Mexican proposal, U.N. Doc. A/CONF.62/C.2/L.42 (1974) which was subsequently co-sponsored by a large number of States.

33. The Statement of the United Kingdom Representative on the question of agreed international standards of pollution control appears to confirm the worse suspicions of developing countries in this context; see U.N. Doc. A/CONF.62/SR.25, at 20 (1974).

34. See article 11 of the U.S. proposal and Statement of the U.S. Representative, U.N. Doc. A/CONF.62/C.2/SR.24, at 13 (1974).

plied in this regard. Article 13 imposes an obligation on the coastal State to ensure the full utilization of (living) renewable resources within the zone and to permit nationals of other States to "fish for that portion of the allowable catch of the renewable resources not fully utilized by its nationals."<sup>35</sup> In the discharge of the latter obligation the coastal State would be obliged to be guided by an order of priorities established for the purpose. Article 18 would prohibit the coastal State from catching fish of the anadromous species seaward of the territorial sea except as authorized by the State of origin. With respect to highly migratory species, fishing for these in the economic zone would be subject to regulations established by appropriate international or regional organizations (article 19).

Before terminating this cursory examination of the provisions of the American proposal which deal with the question of fisheries, it may be appropriate at this stage to remark on an apparent inconsistency in the text. It does appear from the above examination that the main thrust of the American proposal regarding the exploitation of living resources in the economic zone is in the direction of recognizing no more than a preferential right on the part of the coastal State. Yet part III of this proposal, which is concerned with the continental shelf, recognizes the coastal State as enjoying sovereign rights over the continental shelf for the purpose of exploring and exploiting its natural resources, defined in article 24 as *including certain living organisms*. This contradiction is, however, more apparent than real since the American proposal does not attempt to assimilate the juridical status of the continental shelf to that of the economic zone but keeps them separate and distinct. In particular, this proposal does not envisage the continental shelf as necessarily coextensive with the outer limits of an economic zone and in this regard is more in keeping with the position advanced by several representatives.<sup>36</sup>

### III. EMERGENT, ELUSIVE OR VANISHING CONSENSUS

Against the background of the foregoing observations on the cur-

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35. Compare this six-power proposal in U.N. Doc. A/CONF.62/C.2/L.38, at § 11 (1974).

36. See Statements of Representatives of New Zealand, U.N. Doc. A/CONF.62/C.2/SR.21, at 3 (1974); Mexico, U.N. Doc. A/CONF.62/C.2/SR. at 7 (1974); United Kingdom, U.N. Doc. A/CONF.62/C.2/SR.25, at 18 (1974). *But cf.* Statement of the Representative of Khmer Republic, U.N. Doc. A/CONF.62/C.2/SR.27, at 6 (1974).

rent debates on the law of the sea, several tenable inferences may be drawn concerning the concept of the exclusive economic zone. In the first place, it may be argued that there was never really any genuine consensus on the concept of an exclusive economic zone; alternatively, it may be said that even if, at a given stage of the debates, there was a fragile consensus it vanished in a paroxysm of controversy generated by an enhanced awareness of divergent particularistic interests; more optimistically, however, it may be argued that there is an emergent consensus of a somewhat fragile nature and which, if carefully nurtured in an atmosphere of mutual accommodation, could develop into a viable understanding.

Adverting now to the first inference, it does not appear on a careful examination of the relevant debates that there is sufficient evidence to support this proposition. Consensus, in the normal signification of the term, does not mean unanimity. Indeed, in the context of United Nations forums the term is employed to describe positive endorsement by an overriding majority accompanied by the absence of unqualified rejection by the minority which may decide to preserve the integrity of their own positions by entering appropriate reservations. Viewed in this light it cannot be denied that there is still a genuine consensus on the concept of the exclusive economic zone. Even the advocates of a two hundred mile territorial sea have not rejected the concept outright even though they continue to maintain that their own position is "the most logical expression of an irreversible trend" towards the enlargement of coastal State jurisdiction in the adjacent ocean space.<sup>37</sup> Some other territorialists have expressed an intention to insist on a territorial sea of 200 nautical miles for the coastal State. This statement of position, however, is informed by the apprehension that the neo-traditionalists are not really prepared to compromise on the question of the exclusive economic zone except to the extent of endorsing the terminology while embracing the substance of their old positions.<sup>38</sup> It does appear to be the subject of a reasonable inference, however, that given a willingness on the part of the neo-traditionalists to accept the concept of the exclusive economic zone in its original signification, the reservations entered by these territorialists would be abandoned.

But while conceding the existence of a genuine consensus on the

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37. See the Statement of the Representative of Brazil, U.N. Doc. A/CONF.62/C.2/SR.26, at 3 (1974).

38. See the Statement of the Representatives of Guinea, U.N. Doc. A/CONF.62/C.2/SR.28, at 9 (1974); Ecuador, U.N. Doc. A/CONF.62/C.2/SR.27, at 14 (1974); and Somalia, U.N. Doc. A/CONF.62/C.2/SR. (1974).



concept of the exclusive economic zone it is not intended to deny that that consensus is in danger of being eroded to a vanishing point. Many patrimonialists and zonalists are on record as being prepared to reconsider their own positions in the light of an apparent intransigence on the part of the neo-traditionalists to respond to the demands of current international realities. Some of them represent states which have expressed their willingness to roll back their jurisdictions in adjacent ocean space conditional on the general acceptance of the exclusive economic zone concept.<sup>39</sup> In the upshot there is some indication of an inclination towards the territorialists' position—an inclination which could be transformed into a deluge of support if the neo-traditionalists maintain their present position.

The foregoing observations would appear, therefore, to support a finding for the third inference, namely, that there is an emergent consensus in favor of the exclusive economic zone. What appears to be necessary, however, is a determination of the precise parameters of that consensus and an examination of the possibilities of its consolidation and enlargement. Concerning the first aspect of the problem, two issues appear to be involved. The first goes to the discovery of the least common denominator in terms of assessing the measure of agreement on the substantive aspects of the exclusive economic zone concept while the second goes to the qualifications expressed to be attaching to any agreement on substance that may be identified.

In the context of the first issue there seems to be universal agreement that developments generally, and in particular the application of science and technology to the exploration and utilization of values issuing from the ocean environment, have operated to dramatize the irrelevance of much of the traditional law of the sea in terms of the many demands of multiple uses and growing interaction in ocean space, and argue persuasively for the augmentation of coastal State jurisdiction in adjacent ocean space. There is also general agreement that the seaward limit of that jurisdiction should be no more than 200 nautical miles as measured from the applicable baselines for measuring the outer limit of the territorial sea.

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39. See the Statements of the Representatives of Panama, U.N. Doc. A/CONF.62/C.2/SR.27, at 7 (1974); and Tanzania, U.N. Doc. A/CONF.62/C.2/SR.23 at 3 (1974).

Within the economic zone, but outside the territorial sea, the coastal State would recognize freedom of navigation as well as the freedom of other States to lay submarine cables and pipelines. There is also formal agreement that within the economic zone the coastal States would have jurisdiction over fisheries and pollution. This summation appears to exhaust the constituent elements of the emergent consensus on the exclusive economic zone.

A close examination of that consensus would show, however, that its parameters are much more restrictive than they appear at first blush. In the first place, there is no agreement on the extent of the jurisdiction which the coastal State is to be recognized as competent to exercise in relation to fisheries and pollution control.<sup>40</sup> Secondly, there is no agreement on the extent, if any, to which the coastal State is to be recognized as having control over scientific research. More important, is the absence of agreement on the status in law of the economic zone. Would the zone continue to be regarded as high seas or would it be regarded as falling under the national maritime jurisdiction of the coastal State? A resolution of this issue is crucial in determining what residual competences, if any, the coastal State is to be regarded as enjoying within the economic zone. If, for example, the coastal State is to be regarded as having only those competences which have been expressly conferred upon it under any new regime to emerge, any residual competences would be recognized as inhering in the international community and not in the coastal State. The question now to be considered is whether such agreement as identified in the context of the coastal State's competence within the economic zone could be consolidated and enlarged upon or whether disagreement on the issue of residual competences poses a real threat to the survival of that fragile consensus.

In the present submission the resolution of this issue in a manner satisfactory to all would depend on the degree of goodwill and mutual trust which the current deliberations can generate and the credibility of any system of disputes settlement which may be incorporated within the emerging regime. For the basic issue involved here is the reality of the rights which the coastal State is to be recognized as enjoying in the economic zone. Put another way, the patrimonialists and zonalists will be satisfied with nothing less than bankable guarantees that the rights recognized as falling to the coastal State within the economic zone will be respected. This would involve recognition of contingent competences indispensable

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40. *See, e.g.*, the Statement of the Representative of Lebanon in U.N. Doc. A/CONF.62/C.2/SR.28, at 18 (1974).

to ensure the enjoyment of those rights. On the other hand, the neo-traditionalists could have their worst apprehensions regarding creeping jurisdiction allayed if given plausible assurances that such augmentation of competences as may be recognized are both necessary and reasonable, and that they would not be employed, as expedient, to transform the exclusive economic zone into a territorial sea in the traditional sense. Thus, the issue as joined appears to resolve itself by inference into the advocacy of extreme positions—high seas versus ocean space within national jurisdiction. In the present submission, this inferred statement of extreme positions is both unnecessary and unwarranted and should not be construed as inadmissible of a viable compromise along lines suggested above.

Turning now to the more important qualifications expressed to be conditions precedent to the acceptance of the concept of the exclusive economic zone, it is submitted that the main thrust of these qualifications can be accommodated within stated positions without necessarily jeopardizing the fragile consensus which appears to have emerged or precluding its consolidation and enlargement. For such an accommodation to be achieved, however, it would not only be necessary to have mutual confidence in the integrity of positions espoused and plausible guarantees to ensure continuing respect for those positions, but also a quality of pragmatism that is responsive to the genuine apprehensions of the advocates of certain stated positions. In general terms these qualifications relate to access to the resources of ocean space and to the utilization of some of its more important intangible values.

With respect to the first category of values, the enjoyment of the renewable living resources of ocean space constitutes the most immediate preoccupation. Thus, the neo-traditionalists are wont to predicate their acceptance of the economic zone concept on a right of access to the unutilized portion of the allowable catch or maximum sustainable yield of the living resources of the economic zone of the coastal State, subject only to identification of permissible ceilings by regional or subregional regulatory fisheries commissions. To many patrimonialists and zonalists this qualification is unreasonable and unwarranted. First, it is expressed to be based on pseudo-scientific notions which can hardly bear scrutiny in the light of current research into the behaviour of living organisms of ocean space. In support of this position it is maintained that, given

the present stage of fisheries research, too little credible information exists about the bio-dynamics of ocean space or about the ecological interaction of species to validate dogmatic assertions about optimum catch, maximum sustainable yield and the like.<sup>41</sup> Secondly, in view of the fact that regional fisheries commissions have to rely on data provided by nationals of countries seeking access to the living resources of the economic zone in order to arrive at estimates relating to optimum catch and maximum scientific yield, such estimates are as vulnerable to self-serving distortions as previous and current computations whose unreliability is only belatedly recognized at the point of extinction or near extinction of particular species. It is urged further that since the continued existence of living resources in the economic zone of a coastal State is often bound up with the conscious incurring of opportunity costs, that State should be regarded as the determinant of access to those resources and of the conditions under which such access is to be granted. In strictly dispassionate terms these submissions do appear to be sound. Equity and good sense would appear to demand, therefore, that a solution be sought along the lines advanced by the patrimonialists and zonalists leaving it open to enlightened self-interest to prescribe responses that would not result in depriving the international community of much needed ocean-based supplies of protein.<sup>42</sup> Already such enlightened self-interest has persuaded the States of Asia, Africa and Latin American to make concessions to the land-locked and geographically disadvantaged States of their regions in terms of access to living resources in the exclusive economic zone. And whether current demands by some of the land-locked and geographically disadvantaged States of these regions for access to the non-living resources of the economic zone would persist could very well depend on arrangements devised for sharing the proceeds of exploration and exploitation of the resources in the international area.

From the viewpoint of the principal maritime nations one important qualification to the acceptance of the exclusive economic zone concept is general agreement on a territorial sea of not more than twelve nautical miles as measured from the applicable baselines. This qualification is, however, expressed to be inseparable from the condition relating to innocent passage through the territorial sea as well as free passage through straits used for international navi-

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41. See, e.g., the Statement of the Representative of Guyana in U.N. Doc. A/CONF.62/C.2/SR.26, at 21-22 (1974).

42. Compare, e.g., the Statement of the Representative of the Ukrainian S.S.R. in U.N. Doc. A/CONF.62/C.2/SR.25, at 22 (1974).

gation.<sup>43</sup> Generally speaking, the first of these stated conditions does not appear to present insurmountable problems. Difficulties do arise, however, in connection with the juridical content of innocent passage. In the first place the relevant provisions of the Convention on the Territorial Sea and Contiguous Zone (Geneva 1958) leave much to be desired in terms of definition. In the result there is no general agreement on the scope of the concept of innocent passage from the viewpoint of the coastal State's rights and obligations.<sup>44</sup> The extent of such disagreement as exists may be gleaned from the reaction of States to the British proposal which was tabled in Committee II at the Caracas session of the Conference.<sup>45</sup> One intractable issue to be resolved in this context concerns the spatial application of this concept where progressive development as distinct from codification of the law is generally acknowledged to be involved. If, for example, elements generally acknowledged to constitute progressive development of the relevant law are involved, should these elements have general application throughout a territorial sea of twelve nautical miles irrespective of their effects on the coastal State in terms of enlarging or contracting that State's existing rights and obligations in respect of foreign vessels?<sup>46</sup>

Even more important from the viewpoint of the patrimonialists and zonalists, should the regime of passage through the territorial sea be assimilated to that of passage through straits and if not, why not? In the submission of this group of countries no justification exists for establishing a regime of free passage and overflight through straits whose waters are comprehended by the territorial sea and which are used for international navigation.<sup>47</sup> The status of the territorial sea in their submission should be the same regardless as to whether or not the waters in question comprehended straits used for international navigation. What is said to be impor-

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43. See the Statement of the United Kingdom Representative, U.N. Doc. A/CONF.62/C.2/SR.2, at 8 (1974).

44. See, e.g., the debates in Committee II on agenda item entitled the Territorial Sea in U.N. Doc. A/CONF.62/C.2/SR.2-9 (1974).

45. This proposal is contained in U.N. Doc. A/CONF.62/C.2/L.3 (1974).

46. See Statement of the Representative of Sweden, U.N. Doc. A/CONF.62/C.2/SR.12, at 9 (1974).

47. See the Statements of the following representatives: Democratic Yemen, U.N. Doc. A/CONF.62/C.2/SR.15, at 2 (1974); Kuwait, U.N. Doc. A/CONF.62/C.2/SR.14, at 13 (1974); Algeria, U.N. Doc. A/CONF.62/C.2/SR.14, at 8 (1974); Nigeria, U.N. Doc. A/CONF.62/C.2/SR.14, at 11 (1974); India, U.N. Doc. A/CONF.62/C.2/SR.14, at 19 (1974); also the proposal of Oman in U.N. Doc. A/CONF.62/C.2/L.16 (1974).

tant is that the regime established for navigation through straits accommodated the legitimate interests of the international community in expeditious and unimpeded navigation and this objective could be effectively achieved by the regime of innocent passage.

The critical issue involved here turns on a credible evaluation of community interests, and, in the absence of a highly organized international community with an effective sanctioning process, such an evaluation is more likely than not to be subjective. At present, the maintenance of the tenuous nuclear deterrent balance is expressed to be based primarily on the swift and undetectable movement and deployment of nuclear-bearing nuclear-powered submarines given the sophistication of satellite surveillance in detecting land-based nuclear installations. This circumstance explains the demands of certain major maritime powers for free navigation through straits used for international navigation.<sup>48</sup> But despite the universally expressed interest in peace, differences concerning the most efficacious method of securing this objective would continue to persist and particularistic positions would always continue to be espoused with considerable persuasive force. A pragmatic approach to this problem would appear to require recognition of the fact that a neurotic preoccupation with national security is a general characteristic of all States; each of which will employ solutions subjectively conceived as best suited to achieve this objective irrespective of the disposition of States whose situations are considered as not easily assimilable to its own. Such a pragmatic approach would also recognize that the requirements of national security, whether expressed in economic or military terms, have equal validity irrespective of the national conditions which prescribe the terms of their expression. Granted the relevance of these perspectives, it does not seem unreasonable to expect that negotiations conducted in a spirit of give and take would assist the emergence of political accommodations and that appropriate legal language could be devised to give expression to them.

Another important qualification adduced by some principal maritime powers to be an indispensable condition for accepting the concept of the exclusive economic zone relates to the incorporation of provisions for a viable dispute settlement procedure. In the present submission, this qualification should not present insuperable problems in terms of accommodation. Undoubtedly, the Eastern European countries have shown a traditional reluctance to accept provi-

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48. Consider, for example, the Statement of the Representative of the U.S.S.R., U.N. Doc. A/CONF.62/C.2/SR.12, at 2 (1974); and the proposals contained in U.N. Doc. A/CONF.62/C.2 (1974), U.N. Doc. A/CONF.62/C.2 L.11 (1974) and U.N. Doc. A/CONF.62/C.2/L.15 (1974).

sions relating to the settlement of disputes that go beyond the provisions of article 33 of the Charter of the United Nations. Equally true is the current reluctance of Third World countries to have international disputes referred to international tribunals which are committed to applying traditional interpretations of obsolescent norms and composed of individuals whose orientation exhibits unacceptable biases in favor of traditional law. But in view of incontrovertible evidence tending to support a growing assimilation of economic and political views of Eastern and Western Europe in a context of detente and increasing collaboration between these groups there is reason to surmise that the reluctance of socialist countries to submit to third party adjudication of disputes has been considerably eroded. Similarly, the erosion of the credibility of the World Court within recent years and the increasing responsiveness of the modern international law of the sea to the interests of new States in the international community could operate to restore the confidence of developing countries in other forms of compulsory third party adjudication of disputes.

Addressing now the freedom of scientific research which has been postulated as another condition precedent to the acceptance of the concept of the exclusive economic zone, it does appear that difficulties persist in terms of accommodating this requirement within the emerging regime of the sea. The point is generally taken that scientific research in ocean space is desirable and probably necessary for man's survival on the planet. What is in dispute are the conditions under which such scientific research should be conducted. Stated in its simplest terms, the problem as it has been presented so far appears to resolve itself into a choice between restricted and unrestricted scientific research in ocean space. In this connection, persuasive arguments have been advanced in favor of both positions. On the one hand, excessive or unreasonable restrictions on scientific research in ocean space could frustrate the development of ocean sciences to the detriment of human survival, but, on the other, unrestricted scientific research in the oceans could be destructive of the very conditions of survival. The solution to this dilemma would appear to lie in avoiding either extreme by opting for regulated scientific research. This appears to be the approach contemplated by the patrimonialists who would recognize the coastal State as competent to control scientific research in the economic zone but would also place on the coastal State an obliga-

tion not to withhold consent unreasonably. It does appear that the approach endorsed by the patrimonialists affords the coastal State plausible assurances that industrial research would not be undertaken in the absence of its express consent and on terms and conditions established by it. On the other hand, the scientific community could be assured that no malevolent attempts are being made to obstruct the progress of science. That unrestricted scientific research is socially undesirable in the light of our own experience can hardly be contested. For even though it may be recognized that scientific research is valuationally neutral *per se* and that its valuational significance is almost entirely a function of the application of such research, one is still confronted with the problem of determining the most effective intervention point for the purpose of establishing credible controls. And it is the subject of a reasonable inference from the stated positions of the patrimonialists and zonalists that their own preference in terms of an intervention point is at the stage of conducting such research rather than at the application stage. Given a successful accommodation of the issue discussed above, there is room for optimism regarding the satisfactory resolution of the remaining outstanding issues which touch on pollution control, the extent of the continental shelf, the spatial relationship of the economic zone to archipelagic waters and the structure of the regime and machinery for the international area. On the question of pollution, accommodation will have to be reached on the establishment of permissible levels of pollution (probably incorporating differential criteria based on the stage of development of states), enforcement jurisdiction, state responsibility and compensation for damage. A solution to the problems relating to the spatial extent of the continental shelf and the economic zones of archipelagic States may be found in the sanctioning of differential enjoyment of access to and sharing in the proceeds of the resources of the international area. And finally, acceptance of the concept of an exclusive economic zone in the sense of the patrimonialist or zonalist approach could very well enhance the prospects of accommodation of issues touching on the structure of the regime and international machinery for the area beyond national jurisdiction.

In the present submission, agreement on the economic zone appears to be critical in determining the overall success of the conference.<sup>49</sup> For, rightly or wrongly this concept in its original formulation is viewed by the overriding majority of States in the inter-

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49. See the Statement of the Representative of the Ivory Coast, U.N. Doc. A/CONF.62/C.2/SR.25, at 19 (1974),



national community as constituting the point of departure for the elaboration of a new regime for the oceans that would accommodate its multiple uses while achieving that balance of conflicting interests best calculated to preserve the integrity of the ocean environment on which so many life-supporting systems of the planet depend. What now remains to be done is to consolidate and enlarge the area of consensus on the exclusive economic zone concept in order to establish a solid foundation on which to build the new law of the sea.