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C. Odidi Okidi*

The Role of the OAU Member
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Concept of the Exclusive
Economic Zone in the Law of
the Sea: The First Phase

I. Introduction

One of the main features of the Third United Nations Conference on the Law of the Sea (UNCLOS III) is the role played by the different regional and/or interest groups in the development of the various provisions of the Draft Convention, albeit "Informal" text, adopted at the end of the Resumed Ninth Session in August 1980.¹ The groups, sometimes dictated by geography such as Africa, Asia, Latin America, Western European and Eastern European, are amalgams of various interest groups which embody their own contradictions. For example, Canada and Russia have seen themselves in different categories vis-à-vis other industrialized countries. Countries like Brazil, India and Nigeria may at times perceive their lot as being among rich countries and not alongside the plainly poor and underdeveloped members of the Group of 77. The Group of 77 itself is actually an amalgam of about 120 States at different levels of development and resource endowment, some of them producing minerals such as copper, nickel, cobalt and manganese that may be obtained from the sea-bed and, therefore, might be willing to join with other land-based producers of such minerals to protect their interests under the new Convention. Similarly, some of them are land-locked and others are coastal, whether they are in Africa, Asia or Latin America.

Thus emphasis on particular interests by the negotiating states may differ at various stages of negotiations, depending on the

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1. The Draft Convention (Informal Text) UN Doc. A/CONF. 62/WP 10/Rev 3 September 22, 1980. The general discussion of the origins of the Conference is a rather tired subject having been overworked in several papers.

subject under review, but the crucial matter is that in the end product, the Draft Convention has had to balance the various economic, political, security and social interests delicately. And this is what makes the UNCLOS III unique in the history of multilateral treaty negotiation. Almost each and every provision is so delicately balanced against others that most observers believe that reactivating one or two issues may in fact lead to a chain reaction that may reduce the monumental draft convention to rubble.²

It is because of these constellations of interests and the role of the various groups in the negotiations that commentators have been interested in examining the contribution of such groups to the negotiations with a view toward discovering what activities related to Law of the Sea the countries are involved. Perhaps the largest body of literature in this regard has examined the contribution of Latin American countries. Among such specific studies are works by Garcia-Amador,³ Anguilar⁴ and Hjertossen.⁵ In a recent work, Ann Hollick began with a study of the "origins of the 200-mile off-shore zone" and ended up with a study of the role of Latin America in the development of that particular concept.⁶

The Asian scene has been examined largely in literature that focuses on problem or subject areas. Under this category are works

2. So many people are amazed that, after negotiations involving three administrations, two of them Republican, and twelve years of work with the great reservoir of talents, the US Government should suddenly decide that it did not like the package after all. See short comments "U.S. Hitch in the Law of the Sea", *The Christian Science Monitor*, March 8, 1981 at 24 and "Staking Claim to the Ocean's Bed" *id.*, April 9, 1981 at 12-13. See also some earlier thoughts by a former Deputy Head of the U.S. Delegation, Richard Darman, "The Law of the Sea: Re-thinking U.S. Interests" (1978), 57 *Foreign Affairs* 592.

3. Garcia-Amador, "The Latin American Contribution to the Development of International Law of the Sea" (1971), 68 *Am. J. Int. L.* 33.

4. Anguilar, A., "The Patrimonial Sea" in Alexander, ed., *The Law of the Sea: Needs and Interests of the Developing Countries* (Kingston, R.I.: University of Rhode Island, Law of the Sea Institute 1972). See also "The Montevideo Declaration" in Alexander, ed., *The United Nations and Ocean Management* (Kingston, R.I.: University of Rhode Island, L.O.S.I. 1971).

5. Hjertossen, *The Law of the Sea: Influence of the Latin American States in Recent Developments of the Law of the Sea* (Leiden: Sijthoff, 1973).

6. Hollick, A., "The Origins of 200-Mile Off-Shore Zones" (1977), 71 *Am. J. Int. L.* 494.

by Choon-ho Park,⁷ Judge Jorge Coquia,⁸ and Valencia.⁹ Lately, initiatives from East-West Environment and Policy Institute in Honolulu¹⁰ are focusing on, among other things, Shipping, Energy and Environment: South-East Asian Perspectives for the 1980's.

A recent study linking Asia and Latin America was done by Robert Krueger and Myron Nordquist, examining "The Evolution of the 200 Mile Exclusive Economic Zone" focusing on "State Practice in the Pacific Basin".¹¹

The African group has been given a careful study by Nasila Rembe who looked at the general contribution that African countries have made to UNCLOS III.¹² Africa as a continent has the largest representation in the Group of 77 and the land-locked and otherwise geographically disadvantaged States. The former has not only the largest array of membership but also is most influential in the new directions in UNCLOS III. However, literature analyzing them has concluded as follows:

The influence of the Group of 77 will continue to be felt, but its solidarity is being tested. The multipolar nature of our changing world is having unsettling effect on this block of nations because many issues and interests affect the Group of 77. The role of the Group of 77 probably will continue to change.¹³

The land-locked and other geographically disadvantaged countries are often considered the underdogs of UNCLOS III. One

7. Park, Choon-ho, "Fishing Under Troubled Waters: The Northeast Asia Fisheries Controversy" (1974), 2 *Ocean Dev. Int. Law* 93 and *Continental Shelf Issues in the Yellow Sea and the East China Sea* (Kingston, R.I.: Law of the Sea Institute Occasional Paper No. 5, 1972).

8. Coquia, J.R., "Development and Significance of the 200 Mile Exclusive Economic Zone" *The Philippine Law Journal* Vol. LIV Dec. 1979 at 440-448 which focuses on the views of the Asian countries as to the significance.

9. Valencia, "South China Sea: Present and Potential Coastal Area Resources and Conflict" 5 *Ocean Management* (July 1979) at 1-38.

10. The Institute is an affiliate of the East-West Center of Honolulu. They organized a Workshop on that theme co-sponsored with the Dalhousie Ocean Studies Programme of Dalhousie University, December 10-13, 1980. Further studies on these themes from the Center are under preparation.

11. Krueger R.B. and M.H. Nordquist, "The Evolution of the 200 Exclusive Economic Zone: State Practice in the Pacific Basin" *Virginia J. Int. L.* Vol. 19, No. 2 (Winter 1979).

12. Rembe, N.S., *Africa and The International Law of the Sea* (Alphen aan den Rijn, The Netherlands: 1980 as Sitjthoff Publications on Ocean Development Volume 6).

13. Friedman, A.G. and Williams C.A., "The Group of 77 and the United Nations: An Emergent Force in the Law of the Sea" (1979), 16 *San Diego Law Review* at 555.

commentator has noted that they lack political, economic and military leverage to lift their interests and ensure impact on the negotiations.¹⁴ On the other hand, some studies of the contribution of this group to the UNCLOS III also observe that it is the most disunited basically because, on a global scale, they have very little *interests* in common that they can collectively pursue.¹⁵ However, the fact of the matter is, that except for the land-locked States in Europe, which are the *developed* ones, the others have interests common with similarly underdeveloped countries.

Africa has fourteen land-locked countries among which are some of the least developed of the underdeveloped world. Therefore, here is the largest number of States with problems of transportation, access to sea, technology for fishing and mining, access to the resources themselves both juridically and physically and lack of capital for investment in related areas. Among African countries are also some of the leading exporters of land-based minerals similar to those likely to be recovered from the sea-bed. Some of those countries are particularly concerned about possible market disruption for their commodities by a glut of minerals from the oceans. The problems are complex.¹⁶

It is the admixture of problems and interests in Africa that makes it such an interesting group of countries to observe within the context of UNCLOS III. It is of interest to see what positions or provisions they support as a group but it is also interesting to ponder the intensity of their mutual interest or benefit over the particular provision.

In this paper we shall only focus on the evolution of the concept of the Exclusive Economic Zone, itself one of the most important outcomes of UNCLOS III. In that sense the paper will not be concerned with the general question of the 200 mile off-shore

14. Ferguson, S., "UNCLOS III: Last Chance for Land-locked States?" (1977), 14 *San Diego Law Review* at 637.

15. Povolny, J., "Land-locked States and the Law of the Sea" 2 *Marine Policy Reports* 2 (March 1980) University of Delaware).

16. Note that in 1975 the UN General Assembly adopted Resolution 3504 (XXX) which recommended the establishment of a special fund to compensate the land-locked States, for their burden in transport costs, including access to port facilities, highway and railroad construction and maintenance and river transport. But these do not go to the heart of the matters critical to the UNCLOS III. Rather the resolution addresses problems of transit which, though important, are also dealt with in other conventions. See Makil, "Transit Rights for Land-locked Countries" (1970), 4 *J. World Trade Law* 35.

jurisdiction which has emerged largely in Latin America as explained above. The Exclusive Economic Zone developed as a new concept in the lexicon of the United Nations diplomacy. This paper will trace its origin up to the point when it was established within UNCLOS III as the Conference commenced at Caracas in 1974.

The concept has sometimes been described as an African contribution to UNCLOS III. Be that as it may, the concern of this paper is to trace what role the African countries, largely within the ambit of the OAU, played in its evolution — and to take note of the fact that unlike Latin American countries, African States as a group are newcomers in their involvement in Law of the Sea issues. Granted, drawing conclusions as to role based on co-sponsorship of draft proposals is rather treacherous but that is the most overt form of recorded evidence of support, apart from the recorded statements made during the general debates on issues at the Conference. The paper will rely on the draft proposals submitted at the various regional or global forums on the subject.

II. *Early Developments*

The Charter creating the Organization of African Unity (OAU) was signed by independent African States at Addis Ababa on 25 May, 1963. Its goals were spelled out in Article II: to coordinate and harmonize policies of the contracting States on matters relating to political and diplomatic matters; economic cooperation including transport and communication; educational and cultural cooperation; health, sanitation and nutrition; scientific and technical cooperation; and defence matters. For the promotion of these goals, Article XX of the OAU Charter required the OAU Assembly to establish Specialized Commissions as might be necessary. Originally, the following five Specialized Commissions were established:

1. Economic and Social Commission
2. Educational and Cultural Commission
3. Health, Sanitation and Nutrition Commission
4. Defence Commission
5. Scientific, Technical and Research Commission¹⁷

Then Article XXI stipulated that the functions and duties of these

17. Two other Commissions, one on Mediation, Conciliation and Arbitration, and the other of Jurists were established later and under powers conferred on the Assembly by Article XX. See discussions in Elias, T.O., *Africa and the Development of International Law* (Leiden: Sijthoff 1972) at 121-178.

Commissions could be carried out by ministers or other designates of the member governments. But in any event their programme of work or resolutions would be subject to approval by the Council of Ministers.

In its actual operations the OAU concentrated its early works on problems of decolonization and self-determination, these being the costly, time-consuming and protracted problems for Africa. For that reason, the other Commissions existed largely in name or at best, with nominal staff of their own. There was only one exception. The Scientific, Technical and Research Commission, with headquarters in Lagos, Nigeria, had in 1965, absorbed an old Committee for Technical Co-operation in Africa, South of the Sahara (CCTA) with its staff numbering about one hundred.¹⁸ As one would expect, the staff, with that kind of background had been haunted by the climate of change in African politics allowing for minimal technical activity.

Within this context an issue such as Law of the Sea, which became a matter of global interest at the United Nations from 1968, could not necessarily be a priority for the OAU. It was one of those issues which concerned OAU members as individual States, not through the Secretariat or the Commissions. However, it was the Scientific Committee for Africa (SCA), a small group of experts within the Lagos-based Scientific, Technical and Research Commission which, in 1967 recommended that the OAU establish a special group of experts to advise the Organization on marine affairs.¹⁹ This recommendation was strongly supported by the African group at the U.N. which informed the OAU of the urgent need for its participation in the Law of the Sea meetings then being proposed at the U.N..

The SCA did not specify the terms of reference of the committee, they envisaged, and the African group at the U.N. did not suggest the ideal group of experts that would properly counsel the OAU on the matter. No specific committee or *ad hoc* group of experts was

18. *Id.*, at 20-21, explaining that CCTA had been established jointly by the Governments of U.K., France, Belgium, Portugal, South Africa and the now defunct Federation of Rhodesia and Nyasaland under an agreement signed in London on 18 January 1954, even though the framework had been under preparation since 1945. Its headquarters were in London. For other aspects of O.A.U. activities see Elais, T.O., "The Charter of the O.A.U." (1965), 59 *Am. J. Int. L.* 243 (1965) and Haskyns, C., "Trends and Developments in the Organisation of African Unity" (1967) 21 *Year Book of World Affairs* 164.

19. Rembe, *supra* note 12 at 118.

actually established for that purpose but the message was registered to the OAU members, even though the action was not immediate.

In the history of UNCLOS III, including preparatory committees, the year 1970 was a landmark. Several resolutions and declarations were passed by the UN General Assembly and the debates on these policy pronouncements were enough to stir the most lethargic of country groups. These included, *inter alia*, UN General Assembly Resolution 2750C (XXV) which convened UNCLOS III and Resolution 2749 (XXV), the Declaration of Principles governing the sea-bed and the ocean floor, and the sub-soil thereof beyond the limits of national jurisdiction, both adopted on 17 December, 1970.²⁰ These resolutions and all other discussions at that time focused on the sea-bed beyond national jurisdiction, wherever that might begin.

The concerns from these discussions and specifically the debate on the Declaration of Principles were often controversial. The actual legal significance of the Declaration bothered some countries, especially the old maritime and industrialized countries. An attempt to block its adoption made the subject one of concern in one forum which involved all O.A.U. Member States, and resulted in the first statement by that group on Law of the Sea, not the Exclusive Economic Zone.

The Conference of Non-Aligned nations met at Lusaka, Zambia, 8-10 September, 1970 and at the end of their session they issued "The 1970 Lusaka Statement on the Sea-bed by Non-Aligned Countries".²¹ The Statement contained three important features. First, the members expressed that they were aware of the negotiations on the Declaration of Principles [Res. 2749 (XXV)] at the Sea-Bed Committee and urged that it should be adopted before the end of the 25th anniversary of the General Assembly. Secondly, they highlighted the important points in the draft Declaration. Thirdly, they emphasized that the forthcoming Law of the Sea Conference should not confine itself to the sea-bed matters but should cover all issues dealt with at the 1958 and 1960 Conferences.

The nonaligned countries did not raise any matter regarding an expanded economic zone. The Statement was submitted to the United Nations General Assembly, through the UN Secretariat, in

20. For texts see Oda, S., *The International Law of the Sea: Basic Documents* (Leiden: Sijthoff 1972 Vol. I at 44-50.

21. NAC/CONF. 3/RES. 11. The Conference was attended by 53 member States of which 32 were African. *id.*, at 360-361.

the form of a *Note Verbale*, and this was the first input of African countries, as a group, albeit within a broader group, to the Law of the Sea debate.

The year 1971 was to have more activity in Africa, and this started with the meeting of a UN agency — the FAO Consultations in Africa at Casablanca 20-26 May, 1971.²² Among its many observations, it stated that fisheries were vital for nutrition and well-being of the African people and specifically urged OAU to take initiatives on matters relating to jurisdiction of its members over marine fisheries. But a small panel at the meeting had recommended that African coastal States should establish exclusive fisheries zones extending up to 600 meters isobath in instances where the territorial sea did not extend to that limit. The rationale for 600 meters isobath, and not more or less, is not clear. However, this was the first time that a decision on the extent of coastal State jurisdiction was taken by a group of official representatives of African governments, whatever the rank. It is sufficient only to observe at this point that the FAO Consultations must have been attended by representatives of governments, all hailing from departments of fisheries.

Their recommendations were forwarded to the OAU whose Council of Ministers was scheduled for a meeting in Addis Ababa the following month.

III. *The OAU Takes up Law of The Sea Actively*

The Casablanca FAO Consultations came at the right time for the organizers if indeed, they had not tactically arranged it. The O.A.U. Council of Ministers met in Addis Ababa and held two sessions in June, 1971. The Sixteenth session from June 11 to 14, 1971 adopted a resolution, 238 (XVI), on Problems of the Sea-Bed²³ and at the Seventeenth Session from June 15 to 19, it adopted two resolutions, one on Fisheries²⁴ and another on Permanent Sovereignty Over Natural Resources.²⁵ This was a remarkable stir for the OAU on the subject and the resolution deserves a substantive outline.

22. Rembe *supra*, note 12 at 119.

23. Document CM/Res. 238 (XVI) reproduced in Oda, Volume I, *supra*, note 21 at 213.

24. Document CM/Res. 250 (XVII) in Oda, Vol. I *id.*, at 362-363 and Rembe, *supra*, note 12 at 215-216.

25. Document CM/Res. 245 (XVII) in Oda Vol. I, *supra*, note 21 at 363-364 and Rembe, *supra*, note 12 at 214-215.

In the resolution on the Problems of Sea-Bed, the Council had the following recommendations. Paragraph (7) directed at the Assembly of Heads of State and Governments recommended that the Summit issue directives “on the vital and urgent problems of international regulation of exploration, exploitation and utilization of the natural resources of the sea and its subsoil, having particular regard to the legitimate interest of African countries . . .”. The second paragraph requested the SCA and the Legal Section of the OAU Secretariat to study the same aspects over which the directives of the OAU Summit were being awaited. Note now that the SCA was essentially assigned the task that it had suggested, that the OAU should find a group of experts, and the Committee took the request seriously as we shall see below.

The Resolution on Fisheries was broader in its content. Its preamble, recognized broad principles: first, that fishery resources in oceans around the African continent were largely exploited by non-African fleets. Secondly, that expanded exploitation of fishery resources would be important for the industrial development of African countries. Thirdly, it took account of the recommendations formulated earlier by the FAO Consultations held at Casablanca in May, especially the point that African coastal States should “extend their sovereignty over fishery resources along the whole of their continental shelf in order to secure better control over them and their rational conservation, on the one hand, and on the other, their exploitation for benefit of the African countries”. Fourthly, that international law recognized “the sovereignty of States over the natural resources of the sub-soil of the continental shelf and that the extension of such sovereignty to cover living resources constitutes a justifiable rectification of international law”. Finally, that they took into account that the U.N. General Assembly resolution on permanent sovereignty over natural resources required that exploitation and marketing of the natural resources should be arrived at securing the highest possible rate of growth of the developing countries.

Obviously, the recommendations of the FAO scientists from Casablanca and the definition of the continental shelf under Article 1 of the 1958 Geneva Convention of the Continental Shelf sufficiently impressed the OAU Ministers. Here they linked control of the continental shelf to the epicontinental waters. What then was to be the official OAU criteria for delimitation? The water overlying a depth of 600 meters as suggested from Casablanca? Was this the

criterion supported by the majority of OAU member States? Why? Let us look at the operative paragraphs of the resolution.

The four operative paragraphs dealt with the following matters. First: the resolution confirmed “the inalienable rights of African countries over fishery resources of the continental shelf surrounding Africa. . .”. The quick question one might raise here is: What exactly are fishery resources of the Continental Shelf — the sedentary species only? And could that be all that the Ministers had in mind? Second: the resolution urged African Governments to take the necessary legislative steps to extend their sovereignty over fishery resources in high seas adjacent to their territorial waters and up to the limits of their continental shelf. Strictly speaking, jurisdiction over fishery resources of the epicontinental waters or waters overlying the continental shelf does not mean the same thing as fishery resources of such shelf but then, the difference might arise from drafting or interpretation. Third: the resolution urged that exploitation of fishery resources within that area should be governed by national legislation of the coastal States. Fourth: the resolution urged African States to adopt policies of cooperation among themselves as a means of facilitating participation of all African countries in marine affairs. However, there was no attempt to spell out the guidelines or modalities for such a cooperation.

The second resolution, on Permanent Sovereignty Over Natural Resources of African Developing Countries, made no references to marine resources as such. It did, nevertheless, refer to the “inalienable right of all countries. . . to exercise permanent sovereignty over *their* natural resources in the interest of their national development. . .”, which can be understood in the context of any natural resources under national jurisdiction. That reference was clearly made on the two resolutions discussed above. Therefore, the resolution can be understood to apply to any natural resources of marine area properly under national jurisdiction.

The resolution on permanent sovereignty can be seen to have been reinforced by the United Nations General Assembly Resolution 3016 (XXVII) on Permanent Sovereignty Over Natural Resources of Developing Countries adopted on 18 December, 1972. Although this was a UN General Assembly and not an OAU resolution, its content is instructive in explaining the OAU resolution. In its preamble it recognized the five major General Assembly resolutions directly on permanent sovereignty over natural resources as well as the General Assembly resolution 2626

(XXV) on the UN Development Strategy for the Second Development Decade.²⁶ Then, in its first operative paragraph, the OAU resolution re-affirmed “the right of States to permanent sovereignty over all natural resources, on land within their international boundaries as well as those found in the seabed and the subsoil thereof within their national jurisdiction and the superjacent waters”. The fourth paragraph called on all States to continue their efforts towards implementation of the relevant resolutions of the General Assembly.

Thus, even though the OAU resolution preceded the above UN resolution in time and did not refer to them all, and specifically, except the resolution 2626 (XXV), it is in accord with the 1972 resolution and the latter simply promoted its goal.

It seems, then, that even though by June 1971 the OAU as a collective had not pronounced a concept of the Exclusive Economic Zone, various attributes of that concept had already emerged. At least what they had resolved up to that point linked the claim of jurisdiction beyond the territorial sea to the outer limit of the Continental Shelf within the 1958 Geneva Convention. But during this same season issues relating to the scope of coastal State jurisdiction over marine area were being raised elsewhere, and that line we shall pick up in a moment.

Meanwhile, recall that the OAU Council of Ministers had requested the SCA to work in collaboration with the Legal Section of O.A.U. to make recommendations on marine affairs. The SCA took up that challenge and met at Ibadan, Nigeria from 1st to 4th November the same year.²⁷ They prepared recommendations on the limits of territorial sea. The three main features of the recommendation are as follows:

1. That African countries should, where possible, extend the

26. U.N.G.A. Res. 626 (VII) of 21 December 1952; Res. 1803 (XVII) 14 Dec. 1962; Res. 2158 (XXI) 25 Nov. 1966; Res. 2386 (XXIII) 19 Dec. 1968; Res. 2692 (XXV) 11 Dec. 1970.

For discussions of the principles, the 1962 Declaration and the successor resolutions, see United Nations, *Exercise of Permanent Sovereignty Over Natural Resources and the Use of Foreign Capital and Technology for their Exploitation* A. 18058, September 14, 1970; Adede, A.O., “International Law and the Property of Aliens: The Old Order Changeth” (1977), 19 *Malayan Law Review* 175; Onejeme, “Legal Order of Natural Resources Development: Agreements Between Developing Countries and Foreign Investors” (1977), *Syracuse J. Int. L. and Commerce* 1.

27. Rembe, *supra*, note 12 at 120.

- limits of their *territorial waters* to a maximum of 200 nautical miles from the low water mark;
2. That beyond that 200 nautical mile limit, coastal States should have a contiguous zone of another 12 miles;
3. That the entire zone of 212 should also be declared a restricted fishery and pollution control zone;
4. That all African States should take the necessary legislative and other relevant measures to implement the foregoing recommendations once they have been adopted by the OAU Assembly.

The OAU's Educational, Scientific, Cultural and Health Commission met at its second ordinary session at Cairo from November 29 to December 4, 1971 and recalling resolution 238 (XVI) of the OAU Council of Ministers, adopted by way of a resolution, and forwarded it to the OAU. This, then, was to be the first time that limits of coastal state jurisdiction over marine area, outward to 200 miles (in fact, plus 12) was adopted by a group of African states or their official representatives. It is noted here too, that in the resolution the prior link of jurisdiction over epicontinental waters to the seaward limit of the continental shelf was abandoned. Apparently, the emphasis here was on the water column itself. But it is arguable that this did not necessarily affect the notion of sovereign rights over natural prolongation in Article 2 of the 1958 Geneva Convention on the Continental Shelf²⁸ and the 1969 North Sea Continental Shelf Cases.²⁹

28. Article 2 of the 1958 Geneva Convention on the Continental Shelf states as follows:

1. The coastal state exercises over the continental shelf sovereign rights for the purposes of exploring and exploiting its natural resources.
2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State doesn't explore the continental shelf or exploit its resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional or any express proclamation.
4. The natural resources referred to in these articles consist of the mineral and other nonliving resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immovable on or under the seabed or are unable to move except in a constant contact with the seabed or the subsoil.

29. In their judgement in *North Sea Continental Shelf Cases*, the I.C.J. observed that the "most fundamental of all rules of law relating to the continental shelf [are] enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it, — namely, that the rights of the coastal States in respect of the area of the

It now remains to be seen if, in subsequent developments, African countries within the framework of the OAU followed up the counsel of S.C.A. on the 200 nautical miles' territorial sea plus 12 miles' contiguous zone with the entire "margin" being a functional zone for fisheries and pollution control.

IV. *The Concept of EEZ Emerges*

Another forum comprising legal experts of African [and Asian] governments had taken over the matter of Law of the Sea. The Asian-African Legal Consultative Committee³⁰ held its twelfth session in Colombo from 18th to 27th January 1971, and spent considerable time on the issue of Law of the Sea,³¹ obviously picking up from the intense activities at the United Nations up to and including December 1970 as mentioned above. They also particularly, accepted presentations from non-member States interested in development in the law of the sea. Brazil, Ecuador, Peru, Argentina and the U.S.A. are among the countries that made presentations. Issues for discussion were broken under the following categories:

1. The extent of the territorial sea, including the matter of rights of coastal States in respect of fisheries beyond the territorial sea;
2. Exploration and exploitation of the sea-bed, including limits of national jurisdiction over the sea-bed and the continental margin and the type of regime to govern the sea-bed and the type of international machinery;

continental shelf that constitutes the natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of the sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the sea-bed and exploiting its natural resources. In short, there is here an inherent right. . . .

Its existence may be declared [and many States have done this] but does not need to be constituted." See Judgements in (1969) *I.C.J. Reports* at 3 and 22.

30. The original body was the Asian Legal Consultative Committee constituted on 15th November, 1956 by Governments of Burma, Ceylon, India, Indonesia, Iraq, Japan and Syria as a joint body to which they could refer matters of common legal problems and interest for advice. Its scope was expanded on the suggestion of Prime Minister Nehru and the body became Asian-African Legal Consultative Committee when its Statutes were amended on 19th April 1958. The headquarters is in New Delhi but the annual meetings rotate among capitals of the member States.

31. Asian-African Legal Consultative Committee, *Report of the Twelfth Session Held in Colombo, 18th to 27th January 1971* (New Delhi — 24, India. The Secretariat of the Committee) at 195-305, for the full report on Law of the Sea.

3. International straits;
4. Islands and the archipelago concept;
5. Preservation of the marine environment and other questions.

These issues were assigned to a special Sub-Committee chaired by T.O. Elias of Nigeria and C.W. Pinto of Sri Lanka as rapporteur.

On the first issue, the extent of coastal State jurisdiction, the Sub-Committee position was nearly unanimous, on the question of territorial waters and an adjacent functional zone. They wrote, in part:

The Sub-Committee with the exception of very few Delegations, considered that at the present time any State would be entitled under international law, to claim a territorial sea of twelve miles from the appropriate baseline. The majority of Delegations indicated that a State had the right to claim certain exclusive rights to economic exploitation of the resources in the waters adjacent to the territorial sea in a zone, the maximum breadth of which should be subject to negotiation. Most Delegations felt able to accept twelve miles as the breadth of the territorial sea while supporting, in principle, the right of a coastal state to claim exclusive jurisdiction over an adjacent zone for economic purposes.³²

But these Delegates from Asian and African countries also spelled out the pre-condition for their opting for limited coastal State jurisdiction. They based it on the structure and powers of the machinery for the control of the exploration and exploitation and marketing of resources of the sea-bed area to be left beyond national jurisdiction as expressed in the U.N. General Assembly Resolution 2749 (XXV) of 17 December, 1970. The position was stated as follows:

If agreement could be reached on a strong organization which offered a reasonable prospect of providing real benefits to the developing countries in accordance with a scheme which would fairly take into account the needs of those countries, there might be support for relatively narrow limits of national jurisdiction. On the other hand, if the machinery contemplated were to lack comprehensive powers or were for some reason unable to discharge such functions acceptably, then it might become necessary to consider recognizing much wider limits of national jurisdiction so as to allow coastal States themselves maximum opportunity for exploitation.³³

32. *Id.*, at 202-203.

33. *Id.*, at 204.

On these same pages some Delegates proposed that a limit of 200 nautical miles measured from the appropriate baseline, should be recognized as reasonable for protection of coastal State interests. But what is striking in the foregoing statement is that it actually had a balanced argument about a basis for limited or extended coastal State jurisdiction.

The official observer from Tanzania tabled before the Sub-Committee the national Draft Statute for the establishment of an Authority for the International Sea-bed Area, without specifying the limits of coastal State jurisdiction. This draft which was viewed rather favourably by the AALCC Sub-Committee was submitted to the UN Sea-Bed Committee³⁴ then considering background work before the Conference, but it never gained full support as such. The report of the AALCC was also submitted to the UN Sea-Bed Committee through the UN Secretariat,³⁵ so that the options offered by the legal experts representing African and Asian countries were deemed fully communicated.

The hostile views against a regulatory and operational International Authority for the Sea-Bed which have caused chaos lately at the tenth session of the UNCLOS III in March, 1981, were even stronger in 1971. Therefore, the Tanzanian suggestion in its vital aspects received a cool reception especially from the maritime States.

The Colombo notion of an extended jurisdiction "to allow coastal States themselves maximum opportunity for exploitation" of marine resources emerged that same year. During the summer session of the UN Sea-Bed Committee at Geneva, the Kenyan representative rose in an intervention and made points that were to be the basis of the on-going debate at the UNCLOS III over the regime of the Exclusive Economic Zone. His intervention can be summarized as follows:³⁶

1. All coastal States should claim economic zones extending outward to 200 nautical miles, measured from appropriate baseline. (His attempt to justify the choice of 200 miles by suggesting that it would coincide with the average extent of continental shelf was rather inadequate³⁷ but that is beside the point.)

34. U.N. Doc. A/AC. 138/33 of 24 March 1971.

35. U.N. Doc. A/AC. 138/34 (1971).

36. See U.N. Doc. A/AC. 138/SC. I/S.R. 8 July 27, 1971.

37. See some discussions in Okidi, "The Kenya Draft Articles on Exclusive

2. Within that zone, coastal States should have sovereign rights for the purposes of exploration, exploitation and utilization of living and nonliving resources.
3. The solution to the question of need and interests of the land-locked States should be resolved through bilateral and regional agreements.
4. The delegation of Kenya was prepared to negotiate with other delegates to find acceptable details for the regulation of the zone.
5. His own country was prepared to give nationals of any of the fourteen land-locked countries in Africa the same treatment given to Kenyan nationals within the said economic zone.

Presumably, this position was an expression of the view stated at the Colombo meeting of AALCC, namely, that an extended coastal State functional jurisdiction would enable developing countries to ensure control of coastal marine resources for the development of their national economies. The notion of extended jurisdiction was well received within the circle of developing countries and reinforced by a resolution of the Group of 77, where African countries are a relative majority. At their meeting at Lima from 28 October to 8 November, 1971, they resolved, "without prejudice to their future positions on the question of the limits of national jurisdiction" that "coastal states have the right to protect and exploit the resources of the sea adjacent to their coasts and the soil and sub-soil thereof, within their limits of national jurisdiction, the establishment of which must take account of the development and welfare needs of their peoples."³⁸

Yaounde Seminar Recommendations

A number of Africans, largely those that had been associated with the UN preparatory discussions on the Law of the Sea, met at a seminar at Yaounde, Cameroon from 20th to 30th June, 1972. The meeting was unofficial in that it was neither convened through formal government channels generally, nor through the framework of the OAU or any of the UN agencies. A number of "resource persons" from outside Africa also participated. At the end of the

Economic Zone Concept: Analysis and Comments on the Original Proposal" in *Management of Coastal and Offshore Resources in Eastern Africa* (University of Nairobi IDS Occasional Paper No. 28, 1978) at 63-85.

38. Oda, Vol. 1, *supra*, note 21 at 364-368.

discussions the Seminar adopted recommendations under the following four broad categories: (1) Territorial Sea and Contiguous Zone and the high seas, being a general category to deal with delimitation of coastal State jurisdiction. (2) Biological resources of the sea, fishing and maritime pollution. (3) Continental Shelf and the sea-bed. (4) Settlement of the Disputes.

By unanimous agreement, the participants resolved that their recommendations should be communicated to all African States and to the OAU, and a copy was forwarded to the UN Committee on the Sea-Bed.³⁹

Of particular interest to the present study is the first category, comprising seven recommendations, quoted here in part:

1. The African States have the right to determine the limits of their jurisdiction over the Seas adjacent to their coasts in accordance with reasonable criteria which particularly take into account their geographical, geological, biological and national security factors.
2. The Territorial Sea should not extend beyond a limit of 12 nautical miles.
3. The African States have equally a right to establish beyond the Territorial sea an Economic Zone over which they will have an exclusive jurisdiction for the purpose of control, regulation and national exploitation of the living resources of the Sea and their reservation for the primary benefit of their people and their respective economies, and for the purpose of prevention and control of pollution.

The establishment of such a zone shall be without prejudice to the following freedoms: freedom of navigation, freedom of overflight, freedom to lay submarine cables and pipeline.

4. The exploitation of the living resources within the economic zone should be open to all African States both land-locked and near land-locked, provided that the enterprises of these States desiring to exploit these resources and effectively controlled by African capital and personnel.

To be effective the rights of land-locked States shall be complemented by the right of transit.

This set of recommendations was adopted without any reservations and the clause relating to the establishment of

39. Reprinted in *Report of the Committee on Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, UNGAOR Twenty-Seventh Session, Supplement No. 21 (A/8721) 1972 or A/Ac. 138/79 (1972). See also (1973), *International Legal Materials*, Vol. 12 at 210-213.

economic zone was further reinforced by one under the second category dealing with living resources and pollution. In that category the Seminar participants recommended that "African States extend their sovereignty over all the resources of the high seas adjacent to their Territorial Sea within an economic zone to be established and which will include at least the continental shelf". Also without reservation, they called "upon all African States to uphold the principle of this extension at the next International Conference on the Law of the Sea."

These recommendations seem to have further crystallized the regime of economic zone as mooted at Colombo and articulated by the Kenya delegate at Geneva. It is curious, however, that the participants, even though bold enough to urge African States to support the establishment of such a zone at the Law of the Sea Conference, were reluctant to specify the precise numerical delimitation for it. The closest that the participants came to specifying the limits of the economic zone was in the fifth recommendation in the category dealing with Territorial Sea. They wrote that:

5. The limit of the economic zone shall be fixed in nautical miles in accordance with regional considerations taking duly into account the resources of the region and the rights and interests of the land-locked States without prejudice to limits already adopted by some States within the region.

What this recommendation actually says is not clear. It is axiomatic that any delimitation must take account of the regional factors such as the proximity of the adjacent or opposite coastline. Some countries would settle for less than, say 200 nautical miles, if that was to be the distance and to opt for a limited area depending on whether delimitation is based on equidistance, special geographical characteristics or other formula.⁴⁰ On the other hand, basing delimitation on resources of the region is not a clear notion. Perhaps the Seminar recommendation was to suggest that countries whose coastlines were not well endowed with resources should claim a wider area of the sea to get benefits while those with plenty of resources of their coasts should be content with small areas. At the same time, was the recommendation to suggest that the regions with a large number of land-locked countries within the region should

40. See discussion of these issues by A.O. Adede, "Toward the Formulation of the Rule of Delimitation of the Sea Boundaries Between States with adjacent or Opposite Coastlines" in (1979), *Virginia J. Int. Law* Vol. 19 at 207-255.

claim economic zones wider than in other regions where there are relatively fewer land-locked States? Some interpretations might lead to conclusions with absurd practical implications.

Perhaps that is the reason why, by way of observation, some participants suggested that on that recommendation, "the general principles of international law should be referred to in order to fix maritime limits."

Secondly, the recommendations seem to have brushed aside the matter of interests of land-locked countries too easily. Africa has fourteen land-locked States, the largest number of any continent. The recommendations, like the Kenyan intervention above, suggested that the land-locked States should be allowed access to the economic zone of coastal States on terms equal to those allowed to the nationals of the coastal States. Whether this is a reasonable and practical proposition depends on the final legal regime of that zone. It seems that the conditions relating to the level of control of the enterprises from the land-locked countries would be difficult to verify if it is a realistic expectation.⁴¹ In this whole context, the interesting point is that none of the fourteen land-locked countries in Africa attended the Yaounde Seminar!

Since the recommendations had been forwarded to OAU and the UN, the African countries would have further chances to veto or adopt its tenets. The next meeting of the O.A.U. Council of Ministers would be in May, 1973.

Kenyan Proposal

At the UN Sea-Bed Committee, Kenya, which had the previous year opened the campaign in favour of the economic zone submitted formally "Draft Articles on the Concept of An Exclusive Economic Zone Beyond the Territorial Sea" on August 7, 1972.⁴² Article I stated the right of coastal States to establish a territorial sea not to exceed 12 nautical miles but that they also had a right to determine limits of their jurisdiction over the seas beyond the territorial sea but adjacent to their coasts. The limits of that adjacency are expressed

41. See detailed comments in Okidi, *supra*, note 37.

42. Initially issued as A/AC. 138/SC II/L. 10 of August 7, 1972 then printed in *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, UNGA Official Records: Twenty-Seventh Session Supplement 21. (A/8721). See also (1973), *International Legal Materials*, Vol. 12 at 33-35.

in Article VII which, to some extent, echo what had been said at Geneva and by the Yaounde Seminar:

The limits of the Economic Zone shall be fixed in nautical miles in accordance with criteria in each region, which take into consideration the resources of the region and the rights and interests of the developing land-locked and near land-locked, shelf-locked States and States with narrow shelves and without prejudice to the limits adopted by any States in the region. The Economic Zone shall not in any case exceed 200 nautical miles, measured from the baselines for determining territorial sea.

But according to Article VIII, "the delineation of the Economic Zone between adjacent and opposite States shall be carried out in accordance with international law" and any disputes arising therefrom to be settled in conformity with the UN Charter and any other regional arrangements.

Jurisdiction of the coastal State over that Zone, according to Article IV, is to extend to all living and nonliving resources within the water column and on the sea-bed or sub-soil thereof. The scope of that jurisdiction is stipulated in Article II of the Draft, which states that the purpose is to primarily benefit the national peoples and economies of the coastal State, and that the coastal State "shall exercise sovereign rights over natural resources for the purpose of [their] exploration and exploitation." It adds that "within the zone they shall have exclusive jurisdiction for the purposes of control, regulation and exploitation of both living and non-living resources. . . and their preservation, and for purpose of prevention and control of pollution." The article adds a provision to the effect that any third States or their nationals operating in the zone would be responsible for any damage they cause. And Article III permits freedom of navigation, overflight and the laying of submarine cables and pipelines without any qualifications whatsoever.

Some qualifications may arguably be presumed from the provisions of Article V which empowers the coastal State to prescribe and enforce regulations relating to the exploration and exploitation of the resources, the protection and conservation of the marine environment and scientific research. The coastal States may also extend reciprocal and preferential treatments to neighbouring developing countries (Art. IX).

The last Article in the draft (Art. XI) prohibited territories under foreign domination and control from establishing an Economic Zone. This was later to be such a controversial issue at UNCLOS III

that it is probably the only major provision of the Kenya proposal that has been dropped from the Draft Convention.

A complete evaluation of this proposal, perhaps taking account of the fact that it was a draft, could be the subject of a separate complete paper.⁴³ However, the question raised above over the interests of land-locked States in the Yaounde recommendations is largely applicable in the Kenyan draft. For the present purposes, the next step is to assess the reaction in the OAU circles to this first complete proposal.

Declaration of the OAU Council of Ministers

Chronologically, the next important development was the meeting of the OAU Council of Ministers at its twenty-first ordinary session in Addis Ababa from 17 to 24 May, 1973. At the end of the Session they issued a Declaration on the Issues of the Law of the Sea.⁴⁴ The preamble to the resolution noted that the UNCLOS III was the first in the series in which the majority of African countries would participate, recalled the resolutions adopted by OAU at prior meetings, and re-affirmed their awareness of the fact that "Africa, on the basis of solidarity, needs to harmonize her position on various issues before the forthcoming" Conference. Thus, the Declaration was expected to convey principles over which there was at least, a general consensus among all African countries.

The Declaration dealt with the issues under nine different categories as follows:

- A. Territorial Sea and Straits
- B. Regime of Islands
- C. Exclusive Economic Zone including Exclusive Fishery Zone
- D. Regional Arrangements
- E. Fishing Activities in the High Seas
- F. Training and Transfer of Technology
- G. Scientific Research
- H. Preservation of Marine Environment
- I. International Regime and International Machinery for the Sea-bed and Ocean Floor beyond the Limits of National Jurisdiction.

43. That attempt is made in Okidi, *supra*, note 37.

44. OAU Document No. CN/Res. 289 (XIX) was forwarded and issued by the UN Committee on Sea-Bed as UN Doc. A/AC 138/89 of July 2, 1973. See it printed in (1973), *International legal Materials* Vol. 12 1200-1209. Of interest in the OAU document number is that even though it was true and the preamble confirms that the session was twenty-first (XXI) the document reference in Roman numerals is XIX; a reference which should be for the nineteenth session. An anomaly?

Of these categories, A and C are of particular interest for this enquiry.

The Declaration did not offer any numerical delimitation for the territorial sea, deferring it till "the successful negotiation and a general adoption of a new regime to be established" by the UNCLOS III. This was a rather curious position considering that the previous meetings of African government representatives had no problem in supporting the 12 mile limit to territorial sea. One possible explanation might be that there were sentiments in favour of a wider area of territorial sea, not a narrower one. That conclusion is justified by the fact that the Ministers easily resolved under C, "6. That the African States recognize the right of each coastal State to establish an exclusive economic zone beyond their territorial seas whose limits shall *not exceed* 200 nautical miles, measured from the baseline establishing their territorial seas." The implication here is that the OAU Ministers agreed that the territorial sea had to be less than 200 nautical miles in order for the Exclusive Economic Zone up to a maximum of 200 miles, could be established beyond it.

The regime of the Exclusive Economic Zone proposed in the Declaration will be familiar, in its similarity to the Draft Proposals already discussed above. Category C of the Declaration continues as follows:

7. That in such a zone the coastal States shall exercise permanent sovereignty over all the living and mineral resources and shall manage the Zone without undue interference with the legitimate uses of the sea: namely, freedom of navigation, overflight and laying of cables and pipelines;
8. That the African countries consider that scientific research and the coastal marine pollution in the Economic Zone shall be subject to the jurisdiction of the coastal State;
9. That the African countries recognize, in order that the resources of the region may benefit all people therein, that the land-locked and other disadvantaged countries are entitled to share in the exploitation of living resources of neighbouring economic zones on equal basis as nationals of coastal States on the basis of solidarity and under such regional and bilateral agreements as may be worked out;
10. That nothing in the propositions set herein should be construed as recognizing rights of territories under colonial, foreign or racist domination to the foregoing.

The provision on regional arrangements simply called on the

member States to cooperate in Management of the living resources and to establish institutions to enhance the benefits. No guidelines are provided for how bilateral or regional agreements could benefit the land-locked or other geographically disadvantaged countries. So the latter States agreed simply to ride on.

With this stage and package the OAU members considered their position adequately reconciled and according to the African solidarity. There was to be only one more discussion of the subject by the Council of Ministers, before the first substantive session of UNCLOS III commenced.

Meanwhile, Kenya was joined by thirteen her African countries: Algeria, Cameroon, Ghana, Ivory Coast, Liberia, Madagascar, Mauritius, Senegal, Sierra Leone, Somalia, Sudan, Tunisia and Tanzania, all coastal States. They packaged Draft Articles on Exclusive Economic Zone, identical in content to the earlier Kenyan one and the OAU Declaration. That was submitted to the UN Sea-Bed Committee on July 16, 1973,⁴⁵ almost as if it was to confirm the trend of the role of OAU member States in the development of the concept for the UNCLOS III.

Later that year, the 200 nautical mile Exclusive Economic Zone concept was carried, by the Fourth Summit Conference of Non-Aligned Countries, meeting in Algiers from 5th to 9th September, 1973.⁴⁶ In their resolution concerning the Law of the Sea they commenced with preambular statements that recognized, *inter alia*, the 1970 Lusaka Statement; Resolution 3106 (XXVII) on permanent sovereignty over natural resources, the recommendations of the Colombo Session of AALCC; the 1972 resolution by the Group of 77 and the OAU Declaration, all of which have been discussed above. On the question of the economic zone, their resolution was explicit in the operative paragraphs:

2. Supports the recognition of the rights of coastal States in seas adjacent to their coasts and in the soil and subsoil thereof, within zones of national jurisdiction not exceeding 200 miles measured from the baselines, for the purposes of exploiting natural resources and protecting the other connected interests of their peoples, without prejudice either to the freedom of

45. Issued as UN Doc. A/AC.138/SC. II/L. 40/Corr. 1-3 dated July 18, Aug. 1 and 17, 1973. Also reprinted in (1973), *International Legal Materials* Vol. 12 at 1246-1248.

46. The Resolution Concerning the Law of the Sea is reported in Oda, Vol. 2, *supra*, note 21 at 41-44.

navigation and overflight, where applicable, or to the regime relating to the continental shelf.

On the interest of the land-locked States, the nonaligned States were not as indulgent as the OAU States that provided that their nationals would get treatment equal to that of the coastal States as far as access to the Exclusive Economic Zone was concerned. The Non-Aligned States, for their part opted for some preferential treatment in their resolution:

3. Stresses the need to establish a preferential system for geographically handicapped developing countries, including land-locked countries in respect both of access to the sea and of the exploitation of living resources in zones of national jurisdiction.

This departure, from the notion of "equal treatment" in prior OAU resolutions to the "preferential" system enunciated at this meeting is certainly not accidental. The two have significant differences. No reservation was recorded by the OAU members that constitute continental relative majority at Non-Aligned States Summit.

The OAU Council of Ministers for its part held one more meeting before the beginning of the UNCLOS III in 1974. They met at Mogadishu, Somalia June 6 to 11, 1974, where, on Law of the Sea matters they pronounced again on the Declaration on Issues of the Law of the Sea that had been adopted in Addis Ababa in May 1973 and discussed above. The re-adopted Declaration was submitted to the UNCLOS III as the final position of the OAU members on the respective subjects.⁴⁷

V. POSITION OF THE LAND-LOCKED STATES

Land-locked States, fourteen of them in Africa, should be considered a distinct group as far as interest in marine resources are concerned. Therefore, it is in order to specify the main feature of the problem of their interest and thereafter, to outline what proposals African land-locked countries have submitted with respect to the regime of the economic zone.

47. Reproduced in Oda, *The International Law of the Ocean Development: Basic Documents* (Alphen aan den Rijn, The Netherlands: Sijthoff and Noordhoff 1979 Vol. I Loose Leaf series, No. III A4) and Rembe, *supra*, note 12 at 220-226. The Declaration was also issued as UNCLOS III Conference paper UN Doc. A/CONF. 62/33.

The problems or interests of the land-locked countries can be outlined as follows: first there is the question of transit interests dealt with in the 1921 Barcelona Convention and the 1965 New York Conventions, as mentioned at the beginning of this paper. This is a question of arrangement through which the transit State grants access to sea, subject only to conditions specified in above treaties or general international law. Secondly, there is the question of access to the resources once the distance to the shoreline is resolved. That is, the further into the sea the transit coastal State extends its sovereign or exclusive jurisdiction, the more difficult or expensive it is for the land-locked to reach the *res communis* or international area open to all States in accordance with international law. Therefore, the difficulties for the land-locked States may be ameliorated either by limiting to some narrow margin the extent to which coastal States may claim sovereign or exclusive jurisdiction, or provide an arrangement whereby the land-locked State may have legal right of access to the coastal area of national jurisdiction.

Different provisions have been made in the Draft Proposals analyzed so far, to overcome the difficulties under the second problem. Except in the last Non-Aligned Nations proposal, all the proposals by African countries said something to the effect that the land-locked State should be given access on terms equal to those granted to the nationals of the coastal State, as regards exploitation of resources of the Economic Zone. They add, however, that the precise details of those terms would be subject to bilateral or regional agreement.

The proposal by the Non-Aligned Nations did not opt for the idea of equal treatment or equal rights of access being given to nationals of the land-locked and coastal States. It opted for preferential treatment, which means that the developing land-locked States would be preferred States where a number apply for an agreement to have access to the resources of a coastal State. But again, the precise modalities would be first subject to the economic, geographical and economic circumstances of the particular region. They would wait until the Convention is adopted, agreeing to these terms, then they would seek regional or bilateral agreements that take into account the special circumstances of the area or region. Meanwhile, they would ride alongside other States, not sure what their actual benefits from the economic zone would be.

Up to this point the analysis in this paper has presented the main bandwagon of economic zone within the African context and as

developed and supported by the coastal States. Somehow, it seems that the land-locked States accepted the ride, because the resolutions did not contain any express reservations from the land-locked countries of Africa. It is, however, fair to look at the proposals prepared with the participation of some or all the land-locked countries of Africa specifically touching on the matter of limits of coastal State jurisdiction and problems of access outlined above.

The first such proposal was submitted to the UN Sea-Bed Committee in 1971 by Uganda and Zambia, together with eleven non-African land-locked countries.⁴⁸ The key element of the proposal was that the coastal States should be entitled to claim a distance not exceeding 40 nautical miles exclusive fishery zone to leave the rest of the ocean as an international area. The clear evidence is that the group objected to the reference to the Exclusive Economic Zone.

This reaction was clearly amplified in the reaction of some of the same countries to a draft "List of Subjects and Issues Relating to the Law of the Sea. . ." prepared by some fifty-five coastal States.⁴⁹ That list, which was a form of provisional substantive agenda for the envisaged Law of the Sea Conference entitled its paragraph 6 as "Exclusive Economic Zone beyond the Territorial Sea." Zambia and Mali, from Africa, together with three non-African land-locked countries submitted a proposal to amend the title to read, "6. Preferential of Exclusive Economic Zone beyond the Territorial Sea."⁵⁰ Under that paragraph, Zambia and the four colleagues inserted references to "preferential" treatment and "participation of the land-locked in the exploitation of natural resources" which were not in the original proposal. They also sought to replace "sovereign rights" to the resources of the area beyond territorial sea with "preferential rights".

A subsequent revised version of that coastal State's proposal came out in August 1972.⁵¹ Again it was sponsored only by coastal States, even though countries like Zaire and Ethiopia, which might be considered geographically disadvantaged, were parties. This

48. The proposal was ignored within the Sea-Bed Committee circles, as well as by scholars who have compiled documents on Sea Bed Committee affairs.

49. UN DOC. A.AC 138/66 of March 24, 1972.

50. Austria, Belgium, Bolivia, Mali and Zambia: amendment to the List of subjects and issues relating to the Law of the Sea to be submitted to the Conference of the Law of the Sea (A/AC. 138/66). UN Doc. A.AC. 138/72 of March 29, 1972.

51. UN Doc. A/AC. 138/66/Rev. 1 of August 16, 1972.

revision showed defiance of the call by the five land-locked States in that even though it included preferential rights of coastal States. Among the sub-items under the paragraph, the title remained "Exclusive Economic Zone beyond the Territorial Sea" as in the original version. The reference to sovereign rights over natural resources was also retained. All references to rights of land-locked countries or their participation under the paragraph on Exclusive Economic Zone were apparently rejected totally. On the other hand, in paragraphs 9 and 10 of the revised version were listed items to do with land-locked or other geographically disadvantaged countries and their "rights and interests." However, these dealt only with questions of rights of transit and interests in living and nonliving resources of the international area.

As if to underscore their point in the original draft proposal for a coastal State fishery zone of 40 miles as against more extravagant claims, and the merit, in terms of interests of the international community, Zambia and Zaire from Africa, together with nine non-African States submitted, in August 1972, a proposal to request the UN Secretary General to "prepare a study on economic implications for the area under the authority of international machinery as a result of various suggested limites of national jurisdiction", namely: (a) 200 metres isobath; (b) 3,000 metres isobath; (c) 40 nautical miles isobath; (d) 200 miles; and (e) edge of the continental margin.⁵² They added in an explanatory note that "several proposals have been presented, both formally and orally, by delegations on the question of limits of national jurisdiction. The economic significance and the extent of the international regime would vary according to the national limits adopted."

These States must have had in mind several developments especially on the 200 miles economic zone, that seemed to have earned broad support. The Yaounde Seminar recommendations had been in June; this was followed by the Kenyan formal draft articles and the draft proposal by fourteen African countries both presented in August, and all were submitted to and officially issued by the U.N. Committee on Sea-Bed.⁵³

52. UN Doc. A/AC. 138/81 of August 9, 1972.

53. Note that the Declaration on the Patrimonial Sea substantively similar to the Economic Zone was issued by the Caribbean States at the end of their Seminar at Santo Domingo de Guzman in June 1972. For the text see (1972), *International Legal Materials* Vol. II at 892-893.

The request for the comparative study was taken to the U.N. General Assembly and adopted in Resolution 3029 (XXVII) and the study completed and report issued in June 1973.⁵⁴ The study, whose details do not concern this study, indicated that relatively, the 200 mile limit would put the largest area under national jurisdiction, followed by a claim of a 3,000 meters depth criterion. The 40 miles claim of national jurisdiction would put the minimum area under national jurisdiction, suggesting that it should be the most preferred by those States that were in favour of the largest area under an international regime. But if this study had any influence at all, it might well be to reinforce the position of the delegations that supported 200 miles Exclusive Economic Zone. At least it never deterred the position taken by the OAU Council of Ministers in May 1973,⁵⁵ or in June 1974, or that of the Non-Aligned Countries at Algiers in September, 1973.⁵⁶

But in July 1973, two African land-locked States, Uganda and Zambia, submitted "Draft articles on the Proposed Economic Zone."⁵⁷ Their idea was *not* that of the coastal State's Exclusive Economic Zone. They accepted that coastal States should exercise sovereign rights only over the territorial sea, whose limits they did not specify. However, they proposed that there should be "Regional or Sub-Regional economic zones" whose limits they did not suggest. Article 4 of the draft deserves to be quoted in full:

1. Beyond the uniform limits of the territorial seas of all coastal states, there shall be established economic zones, the outer limit of which shall be a line every point of which shall not exceed nautical miles measured from the baselines, known as Regional or Sub-regional economic zones.
2. Fisheries within the Regional or Sub-regional economic zones shall be reserved for the exclusive use, exploration and exploitation by all the states within the relevant Region or Sub-region.
3. Relevant Regional or Sub-regional authorities shall have the exclusive right to explore, exploit and manage the nonliving resources of the Regional or Sub-regional economic zones on behalf of all States in the Region or Sub-region.
4. The regulation and supervision of activities within such Regional or Sub-regional Economic Zones shall be the

54. UN Doc. A/AC 138/87 of June 4, 1973.

55. Referenced in *supra*, note 47 respectively.

56. Referenced in *supra*, note 46.

57. UN Doc. A/AC. 138/SC. II/L. 42 of July 12, 1973.

responsibility of the relevant Regional or Sub-regional commissions.

5. The provisions of the preceding paragraphs of this Article shall not affect the freedoms of navigation, overflight and the laying of submarine cables and pipelines referred to in Article —, Which shall be applicable in the Region or Sub-region.

This certainly is a departure from the concept of an economic zone as had been proposed by or in groups involving, African countries. Apparently the notion of sovereign rights or any form of preferential status of coastal States over resources beyond the territorial sea is denied. According to this proposal, the control over fishery and nonliving resources is vested in "Regional or Sub-regional Commissions." The proposal did not, however, define what would constitute "Regional or Sub-regional", for purposes of regulation and supervision of activities of management of fishery and non-living resources.

Zambia, alongside Mali next joined five non-African land-locked States to submit a draft proposal which contained "in the form of guidelines, certain articles with regard to the participation of land-locked States in the exploration and exploitation of the sea-bed and its resources."⁵⁸ As that "explanatory note" suggests, the proposal did not concern itself with either the question of coastal State jurisdiction in general, or that of the economic zone, in particular. Rather, it focused on the traditional questions of transit rights for purposes of transport and extended that to access to and from the international sea-bed area.

If Uganda and Zambia were serious about their proposal for "Regional or Sub-regional economic zones" or if the countries did not intend to register a surrender, then the concepts would have found a place in the "Kampala Declaration" prepared by "The Conference of the Developing Land-locked and other Geographically Disadvantaged States" at the end of their meeting in Kampala, 20 to 22 March, 1974.⁵⁹ The meeting was convened to finally put together the important position of that group of States just before UNCLOS III commenced in Caracas in June of that year.

Out of the nine operative paragraphs of the Declaration, seven dealt with the traditional questions of transit for purposes of

58. The proposal, co-sponsored by Afghanistan, Bolivia, Czechoslovakia, Hungary and Nepal is UN Doc. A/AC. 138/93 of August 2, 1973.

59. Reproduced in Rembe, *supra*, note 13 at 226-228. The Declaration was also produced as UNCLOS III document A/CONF. 62/63 (1974).

transport to and from the sea. Paragraph 8 focused on their interest in the resources of the sea and sea-bed beyond territorial sea and declared that interests of all States coastal or land-locked, shall be taken into account and all rights of the land-locked or geographically disadvantaged States "shall be maintained" as recognized "under existing international law." What would encompass the economic zone is referred to rather obliquely in the operative paragraph 9, which states as follows:

With respect to the exercise of jurisdiction over resources in areas adjacent to the territorial sea, land-locked states and other geographically disadvantaged states shall have equal rights with other states without discrimination in the exercise of such jurisdiction, in accordance with the standard to be drawn up by the Third United Nations Conference on the Law of the Sea.

The notion of Regional or Sub-regional economic zone was apparently abandoned in favour of an equal rights proposal that left the special area adjacent to the territorial seas as a common fish pond or minefield open to all States on the basis of nondiscrimination. The standards, they hoped, would be prescribed by the UNCLOS III, which was to commence its first substantive session within about three months' time.

If the draft proposals for legal regimes on the Law of the Sea are anything to go by, then no more than five of the fourteen African land-locked countries have made major contributions to debate promoting any unique position or interests of the land-locked countries. These few land-locked States mostly focused on the traditional question of transit rights related to transport to and from the sea, with some extension to relate the same interests to access to the international sea-bed area. Questions relating to access or rights to resources of the economic zone seem to have been tackled rather incoherently. What seems clear is that within the formal OAU discussions, the land-locked countries agreed to ride alongside the wagon of the economic zone within which coastal States had sovereign rights over natural resources and exclusive jurisdiction for purposes of exploration and exploitation of such resources. In exchange, the land-locked countries were assured of bilateral or regional agreements which would permit nationals of the land-locked or other geographically disadvantaged States' rights of access equal to those granted to the nationals of the coastal State.

VI. THE FINAL OAU RESOLUTION

The last resolution on the Law of the Sea adopted by the OAU before the commencement of the first substantive session of the UNCLOS III at Caracas, was done at the Twenty-third Ordinary Session of OAU Council of Ministers, held in Mogadishu, Somalia, from 6 to 11 June, 1974. It was a two-tier resolution in the sense that it re-stated the OAU Declaration, originally adopted at the Twenty-first Ordinary Session in 1973.⁶⁰

VII. CONCLUSIONS

1. By the time the Caracas Session started, the concept of the Exclusive Economic Zone had taken its form. That was largely what we have traced here, from the AALCC recommendations to the Kenya Draft Articles, whose contents were ratified by other coastal members of the O.A.U. and the O.A.U. Council of Ministers. What happened in Caracas, is well illustrated by an account recorded by a delegate of a non-African country. At the end of that session, the leadership of the United States delegation wrote that "(t)he nature and content of the economic zone are in fact the central issue" and added:

Over 100 countries spoke in support of an economic zone extending to a limit of 200 nautical miles as part of an overall treaty settlement. With respect to the content of the zone, there is widespread support for the following:

- (a) Coastal state sovereign or exclusive rights for the purpose of exploration and exploitation of living and nonliving resources;
- (b) Exclusive coastal state rights over artificial island and most installations;
- (c) Exclusive coastal state rights over drilling for all purposes;
- (d) Coastal state rights and duties with respect to pollution and scientific research. . .

With a few exceptions, economic zone proposals have been proffered by all conference groups, including the United States.⁶¹

2. The question of needs and interests of the land-locked and other geographically disadvantaged countries is largely deferred

60. O.A.U. Doc. CM/Res. 289 (XIX). See reference in *supra*, note 44.

61. Stevenson, J.R. and B.H. Oxman, "The Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session" (1975), *American J. Int'l Law* Vol. 69 at 1 and 16. The statement has a final footnote referring to UN Doc. A/CONF. 62/C.2/L.47. (1974), the US' own proposal on economic zone.

bilateral, subregional or regional arrangements, presumably to be sorted out after the end of UNCLOS III. It seems that throughout the negotiations the land-locked and other geographically disadvantaged States in Africa (however those categories may be defined) agreed to ride the economic zone wagon on the promise of future bilateral or regional agreements for their access to the resources of the zone. A basic prerequisite to rational formulation of those modalities is a study of the management implications of the implementation of the terms of the Convention.⁶² Developing countries, and particularly in Africa, will need to conduct management studies at national, sub-regional and regional levels however defined, to ascertain the implications for them of implementation of the convention. That will aid not only in ascertaining the ideal modalities for utilization and sharing of the marine resources but will also aid toward a clear understanding as to whether they really want to be parties to the convention in the way it is packaged. Ratification or the signing of the treaty should be neither a ceremonial nor status affair, and that should apply to the coastal as well as land-locked and other geographically disadvantaged countries. The signing and/or ratification of the envisaged convention should be properly founded on substantive considerations relating to management objectives. The Exclusive Economic Zone is closest to the coast and it is the area that should be of priority management concern by the individual African countries.

3. Whether African coastal States will actually deliver on the commitment to allow access to the resources of the "Exclusive Economic Zone" and to what extent is a matter to be influenced by various political, economic, social, geographical, geological and other considerations outlined in Articles 69 and 70 and related provisions of the Draft Convention, among others. These will be clear only after management imperatives are fully assessed. However, political realities aside, one would assume that the countries in Africa agreed to support the provisions bearing in mind that good faith and *pacta sunt servanda* are rules that encourage States to enter into any treaty negotiation.

4. In the history of the Law of the Sea, the Latin American countries will get the credit they deserve for having invented 200 miles for one form or another, of coastal State jurisdiction, however

62. These questions are dealt with in articles 69 and 70 of the Draft Convention (Informal Text) UN Doc. A.CONF. 62/WP. 10/Rev. 3 Sept. 22, 1980.

fortuitous their basic choice of the number might have been.⁶³ They also gave their support to it in various forms pointed out at the beginning of this paper. However, this paper only seeks to trace the role members of the OAU played in the evolution of the specific concept of the Exclusive Economic Zone.

63. It is said that in 1947, Jerman Fischer, a Chilean Lawyer, was trying to prove that his country could legally claim territorial sea greater than 3 or 4 miles to enable them to keep foreign fleets from harvesting living resources off their coast and to protect their national interests. He found a rough sketch of the security map which US President F. D. Roosevelt had personally drawn around South America in 1939 at the beginning of W.W.II. Presumably using a wrong scale, Fischer estimated that security zone to be about 200 miles. Consequently, on June 23, 1947, Chile became the first country to declare 200 nautical miles territorial sea, and this was followed up by Peru and Ecuador. Other readings found later that Roosevelt's security zone actually measured 300 nautical miles in width. See Peter Grier, "Staking Claim to the Ocean's Bed" *Christian Science Monitor*, April 9, 1981 at 12-13.