



Ocean Law Memo

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THE THIRD LAW OF THE SEA CONFERENCE: A PESSIMISTIC PREVIEW OF THE UPCOMING GENEVA SESSION

On March 17, the Third U.N. Law of the Sea Conference (LOS 3) will re-convene for a second session in Geneva. It will continue the elusive quest for a set of treaty rules on uses of the ocean and seabed. Last summer's ten-week Caracas session can, in terms of the Conference's law-making goals, be viewed as a failure: No new treaty laws resulted.

The crucial question regarding the upcoming Geneva session is, therefore, not WHAT new ocean laws will be created there, but WHETHER the meeting will arrive at any agreed rules at all. Only an incurable optimist would, at this moment, predict that a Law of the Sea treaty will come out of the eight-week Geneva session. In fact, the subsequent session tentatively scheduled for later in 1975 in Caracas, originally viewed as merely a treaty-signing session, has begun taking on more substantive proportions in the minds of LOS 3 participants. Some even look to further periodic LOS 3 meetings into the indefinite future.

Whether any progress will be made in Geneva turns on an assessment of the reasons why the Caracas meeting failed to make law. These reasons are undoubtedly complicated, and close observers are divided on the question. It could be, as suggested by some, that many nations do not want agreement; they perhaps find it in their own interests to stall the Conference while favorable customary international law develops outside the meeting halls. Another explanation might be that the Conference is overcome by sheer numbers and complexity: Is it really possible for 140 nations to agree on 92 important agenda items? Closely related to this possible reason for the Caracas failure may have been the insistence by the United States and the Soviet Union that the LOS 3 treaty be negotiated as a "package deal," which allows for possible tradeoffs across the whole gamut of issues but which also mandates an almost hopelessly complex LOS 3 task. Certainly one reason for the lack of progress so far was the common knowledge in Caracas that at least one further meeting of the Conference would be held in 1975; Parkinson's Law and the poker rule that cards should be played close to the vest together ensured that the compromises necessary for success would wait at least one more Conference session. Or, the true optimists say, Caracas was a necessary educational session, where many nations learned for the first time about the ocean-law issues and their own stakes in the resolution of those issues. Now that they have been to school for ten weeks, and along

the way picked up some lessons on the mechanics of international politicking, Geneva will see real progress and agreement. Maybe.

If this last excuse is the real and only one, then Geneva will succeed and the treaty or treaties negotiated there will set the legal stage for man's ocean activities for decades to come. If, though, the other reasons are correct, the ocean is in for decades of trouble.

It is not even quite that simple, however. There are, after all, 92 items on the Conference agenda and agreement on some of these items by some nations might be obtained in Geneva, with the Conference continuing for subsequent sessions on other items. Or, failing agreement on some items, the Conference may by consensus resort to a declaration of general principles in lieu of agreement on those items. The possibilities, if not endless, are legion.

PREDICTIONS

In the circumstances, only a fool would attempt to forecast the outcome of the Geneva LOS 3 meeting. But, if for no other reason than to prove the point, here are a few predictions on a sampling of LOS 3 concerns:

Navigation and Straits. If there is any agreement in Geneva it will be that each coastal nation may claim a territorial sea twelve miles wide. However, the U.S. maintained in Caracas that it would not agree to twelve miles unless the treaty also allowed unimpeded vessel passage through the 100-plus international straits that would thereby be blanketed with one or more nations' territorial seas. There is so far every indication that the U.S. will continue this part of its "package deal" approach in Geneva. Since the rest of the world pretty much acknowledges 12-mile territorial seas anyhow, they are not likely to agree to unimpeded straits transit in return for the U.S. blessing--or, for that matter, in return for much of anything else. Unless the U.S. gets its way, any agreement on a 12-mile territorial sea will be without U.S. participation.

Fishing. In two or three years the United States and most other coastal nations will have 200-mile fishing zones, but not necessarily as a direct result of the Geneva meeting or any other LOS 3 session. While it is true that nearly all LOS 3 participants approve, in one way or another, broad (typically: "no more than 200 miles") offshore economic zones of one sort or

another, it is the argument on "ways" and "sorts" that will most likely continue to block agreement on this topic in Geneva. The Soviet bloc and the United States will again insist on the package approach, and Japan has yet to pay even such conditional respect to the 200-mile-zone notion. There is also a wide variety of disagreement among several LOS 3 proposers on the extent and kinds of authority a coastal nation would be allowed to exercise within its 200-mile zone. It is difficult to imagine that all the major disagreements will be resolved in Geneva and a uniform rule adopted. Nevertheless, if indeed no economic-zone law results from the Geneva session--certainly if no substantial progress is made there--the U.S. Congress is quite likely to act unilaterally to establish a U.S. 200-mile fishing zone. The U.S. precedent will probably be followed in rapid order by most other coastal nations, and an approving customary international law will be the eventual result. The territorial imperative is apparently an irresistible impulse.

Fishing for highly migratory, high seas species will be managed, if at all, only by separate agreement of the nations concerned.

CLOSE HARMONY

Seabed mining. The continental-margin has so far been tied to the economic-zone concept; but on this issue, unlike the fisheries question, almost all LOS 3 nations seem to be in close harmony. There is wide agreement that the mineral resources of the continental seabed and subsoil should be controlled by the nearest coastal nation. Of course, this is probably current international law under both the 1958 Continental Shelf Convention and international custom. There should therefore be no push for special agreement in Geneva on this question (even though ambiguities of present law are in some need of clarification).

Probably the toughest problem on the LOS 3 agenda is the original "Seabed Question": How should the coming deep seabed mining of manganese nodules be managed? The issue seems to spotlight and magnify the basic division between the developed and developing nations which unfortunately characterizes so much of the LOS 3 debate. The deep seabed is, and supposedly will remain, beyond national jurisdiction. It has been declared the "common heritage of mankind" by the U. N. General Assembly. A claim to a nodule-rich portion of the "common heritage" has already been "filed" by a U.S. mining company, Deepsea Ventures, Inc. Under these circumstances, the deep seabed debate, heated enough in Caracas, should set off fireworks in Geneva. The developing countries will continue to press for an international seabed agency with strong controls over ocean miners, and the developed nations - the homes of those miners - will continue to urge that the international legal framework for mining be favorable to the mining interests. Again, especially in view of the rancor displayed by both sides on this issue in Caracas, it is difficult to imagine a Geneva agreement. The "Seabed Question" may well continue to be the main concern of several

future LOS sessions. In the meantime, watch for a move by the mining nations to establish their own system of deep seabed mining rules outside the LOS Conference arena.

Other Issues. There are of course many other questions of great importance and concern that will be faced in Geneva. These include, especially, marine pollution and freedom of scientific research. In the absence of agreement on these problems in Geneva--and, again, comprehensive agreement is considered unlikely--several coastal countries might be expected to claim authority over research and pollution-potential activities in their unilaterally proclaimed 200-mile zones. Other issues--the status of islands and archipelagos, the definition of baselines, and many other questions--are likely to be left unresolved if, as predicted, the Conference session falters on the main areas of dispute.

In sum, it is here suggested, but certainly not hoped, that the whole LOS 3 effort is in imminent danger of collapse. If that effort is to be saved, substantial progress must occur at the Geneva meeting. Ideally, none of the predictions made here would come true, and the major problems of ocean use would be solved by harmonious accord in 1975 and 1976.

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INFORMATION ON THE LAW OF THE SEA

The Oregon State University Extension Service' Sea Grant Marine Advisory Program continues to receive requests for Professor Jacobson's advisory bulletin Ocean Zones and Boundaries: International Law and Oceans. This bulletin was published in 1973. Because the law of the sea has since taken so many new directions, Professor Jacobson considers SG 10 outdated. To learn more about international ocean law, he recommends two recent publications, available directly from the publishers:

The Third United Nations Law of the Sea Conference: Caracas, by H. Gary Knight.
Order from: American Universities Field Staff,
P.O. Box 150, Hanover, NH 03755. \$1.00

"UN and the Sea," Vol. 6, No. 1, UNITAR News.
Order from: Publications, UNITAR, 801 United Nations Plaza, New York, NY 10017. Single copy free.

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