



*Law of the Sea Negotiations: The
Crucial New York Sessions*

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LAW OF THE SEA NEGOTIATIONS: THE
CRUCIAL NEW YORK SESSIONS

Introduction

Although much work remains to be done, momentum is clearly building toward a comprehensive oceans treaty in the Law of the Sea (LOS) Conference. In an effort to capitalize on the significant progress made at the 15 March-7 May meeting in New York, the conference is to continue its discussions from 2 August to 17 September in that city. The accelerated pace of the current negotiations contrasts with that of the earlier single sessions held in 1974 in Caracas and 1975 in Geneva and reflects an awareness by the some 150 participating nations that the long deliberative process may finally be coming down to the wire, given resolution of a few major issues still outstanding and agreement in several areas of considerable controversy. The alternative -- unilateral preemption -- is at best unpalatable.

At the New York session a developing spirit of compromise enhanced prospects for the resolution of some key issues that have been persistent stumbling blocks to broad agreement on an international oceans treaty. A prime example is the tentative accommodation reached between the developed and developing countries on deep seabed mining. Although tenuous and still susceptible to challenge, it represents a significant breakthrough. On the other hand some topics that had seemed to be pretty well nailed down -- such as the 200-mile economic zone -- became embroiled in fresh controversy. This dispute emerged from a determined bid by landlocked and geographically disadvantaged states for special privileges in the economic zones of neighboring countries. Coastal states reacted by stiffening their demands for stronger jurisdictional

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rights in the economic zone -- in some cases to an extent tantamount to making the zone a virtual extension of territorial waters. Effecting a compromise between these two important groups will be one of the principal tasks of the upcoming New York session.

At the next session delegates are expected to tackle outstanding differences rather than resume their detailed discussions of individual articles as they did at the earlier New York meeting. Actually, each session of the Third United Nations Law of the Sea Conference to date has had its own unique style, and each has contributed in its way to a progression toward consensus that perhaps is most apparent in retrospect. The first substantive meeting in Caracas in 1974 was characterized by extensive statements of position offered in plenary session as the participants staked out their ideological and economic preferences for a new international order in ocean activities. By contrast, the meeting in Geneva was characterized by small working groups, whose work contributed to the informal single negotiating texts issued by the chairmen of the three main committees and by the conference president. Imperfect as the Geneva texts were -- being based on interpretations of the thrust of the discussions within the respective committees -- they nevertheless proved effective as a basis for negotiation in the subsequent New York meeting. The revised texts issued at the close of that session were again based on appraisals by the individual chairmen and by the conference president, but this time with the benefit of extensive review and discussion of the issues and articles in the committees.

Since the revised single negotiating texts were issued on the last day of the New York session, foreign reaction to them is still largely unknown. It is certain, however, that informal discussions in the current intersessional period will be especially important in determining the outcome of the next New York session. In addition to bilateral negotiations, important blocs such as the developing nations' Group of 77 and the industrialized nations' Group of 5 will be meeting to discuss various issues as suggested in the following analysis:

Deep Seabeds

The revised single negotiating text drafted in New York, unlike its Geneva predecessor, moves significantly in the direction of US

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interests on deep seabed mining. The negotiating progress was aided by the fact that developing land-based producers (principally copper producers) have concluded that a treaty which contains some protection for them from possible adverse effects from seabed mining is better than no treaty. These states, represented in the core negotiating group by Peru, Chile, and Brazil, held the initiative in New York and actively negotiated numerous compromise articles.

A major impetus to serious negotiation was the 8 April announcement by Secretary Kissinger that the United States could accept proposals to deal with the question of the effects of seabed mining on the economies of land-based producers of manganese, copper, nickel, and cobalt. Following the Secretary's intercession, US and LDC mineral producers agreed to a three-part compromise on economic implications which included: (1) a 20-year limitation on seabed production that prevents output from exceeding the cumulative growth in world nickel demand, with the rate of increase to be not less than 6% per annum; (2) participation by the proposed International Seabed Authority in any future commodity agreements subject to certain specified limitations; and (3) creation of an unspecified compensatory system of economic assistance in the event of a decline in the mineral export earnings of LDCs.

Tentative resolution of the economic implications issue allowed the core negotiating group to accept numerous changes in the texts favorable to the United States. The Seabed Authority's regulatory powers are now limited to activities relating to exploration and exploitation of seabed resources, thus precluding any control by the proposed international body over scientific research, navigation, and defense activities in the ocean areas beyond the limits of national jurisdiction. The new texts provide for a parallel system of exploitation by the Enterprise of the Authority, private firms, and state trusts. Mining applicants are assured access to the area by a near-automatic system of granting contracts, once objective criteria and conditions established in the treaty are met. A reserved areas, or "banking system," arrangement requires the Authority to set aside, for exploitation by the Enterprise or developing countries, half the area sought

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by a firm in its contract application. This provision would not necessarily deny access to the reserved areas, however, for private contractors would remain eligible to exploit them by forming "associations" with developing countries.

The revised text reflects a new distribution of power between the Authority's two principal organs -- the Assembly and the Council. The Assembly, which will include all members of the Authority, is now limited to prescribing general policies by adopting resolutions and making recommendations. The new texts establish the 36-member Council as the executive organ with the power to prescribe specific policies to be pursued by the Authority.

Changes were incorporated into the revised single negotiating text despite the strong efforts of Algeria to lead the Group of 77 to a consensus rejection of the core negotiating group's work, which it criticized as being a "sellout" to the industrialized nations. The Algerians feel that the Group of 77 should not enter into serious negotiations on seabeds until concrete results are obtained in the Paris meetings of the Conference on International Economic Cooperation. Ghana, India, and Mexico, also opponents of the new seabed texts, sought a strong Authority that, while allowing mining contracts with firms and states in the near future, would eventually establish a monopoly regime for the Enterprise. These states may continue their political and ideological offensive against the moderate deep seabed articles at the Group of 77 meeting on the eve of the 2 August resumption of the LOS Conference. In addition, Canada expressed great concern in regard to the formulation of the production limitation formula, fearing the formula may be prejudicial to land-based nickel mining. Ottawa has suggested a production limitation that would reserve half the growth segment of the market for existing land-based mines.

US initiatives for a permanent judicial body -- the Seabed Tribunal -- were opposed by France and other states opting for an ad hoc compulsory arbitration system. Paris apparently feels that a permanent Tribunal with comprehensive powers to interpret an

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LOS treaty would always favor the LDCs. The French prefer to submit cases requiring advisory opinions to the International Court of Justice.

The USSR, France, and Japan oppose the US proposal to permit the provisional application of a seabed regime prior to the entry into force of the treaty. Moscow notes that provisional application would preclude a state's right to ratify the treaty and it further objects to provisional application of only one part of an LOS convention.

Although the seabed articles are now considerably improved, several significant issues remain to be resolved. By agreement the negotiation of the composition of the executive organ of the Authority -- the Council -- and voting arrangements therein was deferred until the New York session in August. A Council that adequately represents the economic interests of the United States is fundamental to an acceptable treaty.

Also complicating deep seabed negotiations is the Soviet, French, and Japanese attempt to limit US mining contracts with the Authority. Fearing the US technological lead and the possibility of a consequent American seabed mining monopoly, these states propose various quota systems that either limit the number of mine sites or the proportion of seabed production available to one country and its nationals. Soviet support for a quota system reportedly originates at high levels and is apparently based, in part, on military and political fears that US domination of large seabed areas could be used for the deployment and protection of military systems. The USSR may also be concerned about the potential impact of seabed mining on its capacity to become a major exporter of nickel. The French desire to reserve a major role in nickel markets for its New Caledonia mines may explain Paris' position. Japanese support for quotas appears to be related more to ensuring their access to minerals than in restraining the United States.

Many LDCs seek a high level of revenue sharing between the ocean miners and the Authority, with the revenues being passed to the

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developing countries. Although alternative revenue sharing formulas appear in the revised text, payments to the Authority have not yet been negotiated.

Another major concern of the developing countries is the need for the creation of a functioning Enterprise to directly exploit the seabeds for the benefit of the Authority. Debate on the Enterprise was inconclusive at the first New York session, many details being left unresolved. Among them was the fundamental issue of financing the organ. Most developed states favor borrowing in capital markets and use of the Authority's revenue sharing funds for this purpose, while some LDCs urge that a mandatory fee be levied on all member states.

Territorial Sea

There continues to be broad agreement on a 12-mile maximum territorial sea. Little substantive change was made at the New York session in the existing draft articles on this subject. Some countries, however, attempted to use the discussions of these articles to prepare the way for changes sought by them in other fields. An example was India's futile attempt to limit the right of innocent passage in the territorial sea by proposing that warships, nuclear-powered ships, and ships carrying nuclear substances be subject to notification and/or consent requirements. Had this concept taken hold, it could have been used to support demands for like requirements on transit through international straits, most of which will come within territorial waters under a 12-mile limit. Efforts to modify the existing concept of innocent passage in territorial waters also failed. As in the 1958 Territorial Sea Convention, the single negotiating text defines passage as being "innocent" so long as it is not prejudicial to the "peace, good order, or security" of the coastal state, and it lists activities which will not be considered innocent. Finally, proposals by die-hard territorialists, led by Ecuador, to substitute 200 miles for the 12-mile limit, received no significant support. As a bargaining lever, however, some coastal states reserved their position on the breadth of the territorial sea pending clarification

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of their rights in the economic zone. Despite such maneuvering the 12-mile territorial sea remains one of the most assured aspects of an eventual LOS package.

International Straits

On the critical issue of passage through straits used for international navigation it appears that a substantial majority is prepared to acquiesce to the principle of unimpeded transit through, over, and under international straits. Despite objections by a small number of straits states, discussions at New York reflected a general willingness to retain in the revised single negotiating text the concept of unimpeded "transit passage." This concept is defined as the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one area of the high seas or an exclusive economic zone and another area of the high seas or an exclusive economic zone. Between one area of the high seas or an exclusive economic zone and the territorial sea of a foreign state, the non-suspendable right of innocent passage is to prevail.

A dwindling number of developing nations, although appreciating the value of freedom of navigation to their own economic interests, continue to be critical of the transit passage principle. In New York several of them, including China, Albania, Tanzania, Somalia, Yemen, Libya, and Oman, proposed restrictions on straits passage that drew little support. Nevertheless they continue their effort to place straits passage under controls no less stringent than those applying to innocent passage in territorial waters. They argue that no distinction should be made for straits that fall within territorial waters, should the 12-mile territorial sea be adopted. In addition to this ploy, the opponents of unimpeded transit passage also propose requirements that would necessitate notification or consent for transit through international straits by warships, nuclear-powered vessels, and vessels carrying nuclear substances.

In many cases resistance to the concept of unimpeded straits passage stems purely from local concerns rather than ideological bias. Greece is opposed, for example, because of possible

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prejudice to its island disputes with Turkey; several Arab states because of implications for their strategic struggle against Israel; the Philippines because it would impinge on transit rights through its own archipelagic waters; and Malaysia because of concern over the danger of pollution by oil tankers transiting the Strait of Malacca. Although various safeguards have been incorporated into the texts to help overcome such mixed concerns, they have not resolved all of the individual problems.

Archipelagic States

Discussions in New York resulted in little change in the existing articles on archipelagic states and the issue is not yet fully resolved. Existing draft articles confer special rights on island nations qualifying for archipelagic status (Philippines, Indonesia, Bahamas, Fiji, and Papua New Guinea) by granting to them sovereignty over waters enclosed by baselines drawn to connect the outermost points of the outermost islands. Sovereignty over such waters is additional to that enjoyed over the territorial sea, economic zone, and the continental shelf extending outward from the baseline. The special status of archipelagic waters also obligates concerned states to protect international navigation and traditional fishing rights therein. Transit through or overflight of archipelagic waters is for the most part by designated sealane under conditions resembling unimpeded transit in international straits; elsewhere in archipelagic waters international navigation is to be governed by the principle of innocent passage, as in territorial waters.

Controversy persists over the exact criteria for an archipelagic state and over the question of navigation through archipelagic waters. The Philippines has adamantly opposed the concept of archipelagic transit passage and overflight, insisting instead upon innocent passage; further, it has proposed special requirements for transit by warships and nuclear-powered vessels. Indonesia has also been balky and equivocal on the archipelagic issue; while indicating readiness to accept passage through and over its waters via designated sealanes, it seems intent upon severely limiting the width of such corridors. The maritime nations of the world look with concern

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on such views, and unless the issues of sovereignty and transit can be satisfactorily resolved, they may well withdraw their support of a special archipelagic status.

The Exclusive Economic Zone

Though the concept of a 200-mile economic zone adjacent to the coastal state had gained widespread acceptance in earlier sessions of the conference, defining the precise legal status of the zone proved to be a highly contentious issue in New York. Major maritime nations, with newly-generated support from the landlocked and geographically disadvantaged nations, attempted to have these waters designated as part of the high seas, with only prescribed coastal state jurisdiction over resources, scientific research, and marine pollution. Unless coastal state controls are carefully circumscribed, they reasoned, coastal state jurisdiction will grow, and over time the economic zone will become tantamount to a 200-mile territorial sea.

These views were frustrated by a strong and unified group of coastal states -- largely lesser developed countries -- led by extreme territorialists like Peru and Uruguay, and backed by China, whose delegates argued that imposition of high seas status for the waters of the economic zone would virtually destroy the concept of the economic zone, where the coastal states have acquired certain sovereign rights. Instead, they contended the economic zone was a zone sui generis, that is, neither high seas nor territorial seas. Compromise proposals, seeking in various ways to exclude from a high seas definition of the zone those coastal state's rights provided for in the treaty, did not attract much support from this group. The gravity of the resulting impasse was emphasized by a US pronouncement that any formula which made the economic zone a functional equivalent to the territorial sea was not acceptable, either in this convention or in any future development of customary international law.

Further complicating negotiations on the economic zone were demands by some 50 landlocked and geographically disadvantaged states for special access rights to its resources, particularly fish. This alliance of developed and developing countries of all political persuasions, which had emerged as a serious negotiating

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force at the Geneva session in 1975 and had some sympathy from the United States, the USSR, and East European countries, attacked any reference to the "exclusiveness" of the zone for coastal states, and made particular efforts to obtain rights to harvest an equitable share of the zone's living resources. They were strongly countered by a group of coastal state "territorialists" who argued that landlocked and geographically disadvantaged states should have access to only that portion of the fish stock that the coastal state did not take, and then only with the expressed permission of the coastal state.

LDC territorialists, with the help of China and India, attempted to woo the landlocked and geographically disadvantaged states away from possible alignment with the developed countries on economic zone issues by raising the question of military activity of the "superpowers" in the zone. Countries like Mexico, Brazil, Peru, and Pakistan proclaimed the necessity of having coastal state consent for the emplacement of foreign military installations, devices, etc. in the zone. Although the topic was not included in the negotiating text, it is troublesome and will most likely be brought up again in the next session.

The landlocked nations also made a strong attempt in New York to gain the right of free transit to the sea through the territories of their neighboring coastal states. Coastal states gave no ground whatsoever on this issue, and several countries suggested that such rights could only be concluded in separate bilateral negotiations on a quid pro quo basis.

Fishing

Despite the strong attack by landlocked and geographically disadvantaged states on the Geneva negotiating text articles that give coastal states sovereign rights to manage the conservation and exploitation of coastal fish species in the economic zone, no new consensus or direction emerged, and the articles were transferred unchanged into the revised text. The Geneva articles on tuna and other highly migratory fish also generated controversy, and discussions broke down early in the session. States through whose waters these fish sometimes migrate -- west coast Latin American, some coastal

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African, archipelagic, and island states -- continued their demands for exclusive coastal state management of the species within the economic zone, while distant states that harvest the species insisted upon international regulation of the fish throughout their range. Changes in the revised tuna text actually strengthened the concept of international regulation.

On the brighter side, there was continued broad agreement among the few interested states that management of anadromous species -- fish that inhabit fresh water only while spawning (largely salmon) -- should be by the country in whose waters they spawn. Hence, changes written into pertinent articles of the revised text amounted to only fine tuning.

Over all, the fishing issue is far from settled, and much needs to be accomplished through multilateral negotiation if it is to be resolved this year. Success would make the unilateral extensions of coastal state fishing zones that are likely to take place before a new treaty is signed more palatable to nations whose distant water fishing activities will be affected. Failure could lead to other Iceland/UK-like confrontations.

Delimitation of the Economic Zone and Island Jurisdiction

A particularly thorny issue is the method to be used in delimiting sea boundaries in the economic zone between opposite and adjacent states. In negotiating an agreed formula, two basic approaches prevail: one strictly applies median and equidistant principles in delimiting the sea boundary; the other uses equitable principles, taking into account special circumstances such as the length of coastline, natural prolongation of the land mass beneath the sea, and historic uses of the area. Countries that possess unusual coastline configurations or share economic interests in their coastal seas with others view these negotiations with particular concern because of the influence they will have in the settlement of sea boundary problems. Cases in point include the Norway-USSR boundary in the Barents Sea, and the US-Canada boundary in the Gulf of Maine. Thus far the negotiations have attempted to balance the two basic principles, although in New York there was a decided tilt toward "equity."

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Further complicating the sea boundary issue is the topic of islands and the vexing question of how much jurisdiction should be accorded them. The single negotiating text which evolved in Geneva afforded islands, with the exception of small uninhabitable rocks, all the rights enjoyed by continental coastal nations. Much of the island debate in New York focused on the small uninhabitable rocks, to which the text gives only a territorial sea jurisdiction. Island states like Tonga, Western Samoa, New Zealand, Mauritius, and Micronesia and continental states with island dependencies like Venezuela, Greece, UK, Norway, and Australia favor full territorial sea, economic zone, and continental shelf jurisdiction for such rocks. Continental states with foreign islands near their coasts and landlocked and geographically disadvantaged states that want as much of the sea as possible to remain under international jurisdiction favor limiting the maritime jurisdiction of the rocks to a territorial sea or even to a smaller maritime safety zone. Debate on the regime of islands produced nothing with broad enough appeal to cause the Geneva text to be revised.

It is becoming increasingly evident that solution of the vast array of complicated offshore boundary and island jurisdiction problems around the world by one tidy treaty may be quite impossible. Thus the aim of many negotiators appears to be the creation of a generally acceptable balanced framework of rules whose terms are purposely ambiguous or flexible. Later, it is felt, dispute settlement mechanisms, including the use of a boundary commission or tribunal, will develop more precise regulations and make the specific judgments that are required for settling unique boundary and island problems.

Continental Margin

In New York a substantial effort was made to reach agreement on the question of continental shelf jurisdiction beyond 200 miles, an issue that has seriously divided broad margin states and a number of LDCs. An Irish proposal would give coastal states seabed mineral jurisdiction to the full extent of the continental margin, whose limits would be determined by a formula criteria of distance and sediment depth. Though not yet incorporated into the text,

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the formula would provide a precise delimitation standard and preserve coastal state jurisdiction over areas most likely to contain valuable hydrocarbons without unduly extending national jurisdictions.

Not as acceptable in this proposal was the creation of an international boundary commission which would oversee the proper application of the margin's definition and assist states in formulating delimitation proposals. The USSR and a number of other countries rejected the commission as inconsistent with the concept of sovereignty. Interestingly, the Soviets would seem to gain more with such a commission determining the outer limits of their margin than in having an LDC-oriented deep seabed international authority getting involved with it.

Equally important in an overall compromise on the margin was a proposal by the United States, also a broad margin state, for revenue sharing based on exploitation of seabed mineral resources on the continental margin beyond 200 miles. This proposal would ease the financial burden of offshore oil companies by holding off payment of revenues for the first 5 years of production. Then payment, based on value of production at the wellhead, would increase from 1% in the sixth year to a maximum of 5% in the tenth year and thereafter, and would be distributed by international or regional development organizations. This proposal gained wide support, even among the landlocked and geographically disadvantaged states, who have most to gain by restricting the seaward limits of national jurisdiction. A number of coastal developing countries, however, are seeking special arrangements in which, under such a revenue-sharing system, they would make reduced royalty payments, or be entirely exempted from such payments, depending on the degree of their underdevelopment.

Marine Pollution

Discussion of the Geneva negotiating text on the protection of the marine environment in New York centered largely on standard setting and enforcement, particularly with respect to ocean dumping and vessel source pollution. A large part of the Geneva text -- dealing with obligations to prevent pollution, global and regional cooperation on pollution problems, technical assistance, monitoring, and environmental assessments -- was considered to have been already

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debated, and changes to these sections were restricted to nominal modifications made on the basis of intersessional work. Many environmentalists are unhappy, claiming the discussion barely touched on some of the more critical issues. As a result of a surprising show of unity between maritime and coastal states, however, the revised New York text on pollution control may be very close to final treaty language on most aspects.

With respect to ocean dumping, in which much interest was expressed, the will of a number of coastal states, including Turkey, Malta, Cameroon, Portugal, Senegal, and Mexico, held sway. In consequence the revised text calls for prior approval of the coastal state for the dumping of wastes and other matter within the territorial sea, economic zone, and the continental shelf. A US proposal to limit coastal state jurisdiction to 200 miles failed to elicit a favorable response, as did the Netherlands' proposal to prohibit dumping within an agreed distance of the coast of other states. Enforcement was generally perceived to be the mutual obligation of all concerned states.

Discussion of the vessel-source pollution issue was spirited, but a number of unresolved problems remain. One of these involves the territorial sea, wherein the coastal state has the right to establish its own pollution standards, provided the innocent passage of foreign vessels is not hampered or interrupted. Some powers have argued that within this zone the coastal state should be authorized to establish construction, design, equipment, and manning regulations more strict than international obligations, a position fortified, in the case of the United States, by domestic legislation in the form of the Ports and Waterways Safety Act. In opposition stand the USSR, Japan, Australia, the UK, most of the other maritime nations of Europe, and Cuba.

Most countries agree that there should be only generally applicable international regulations for vessel source pollution in the economic zone, with national standards conforming to international norms. Some countries, however, propose stricter discharge regulations in special or critical areas within this zone; thus at the insistence of Canada, the revised text recognizes

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the right of coastal states to set special standards in areas of severe climate and where an ice cover may prevail over much of the year. General unanimity appears to prevail with respect to standards on the seabeds, the coastal states being authorized to adopt such measures as may be necessary in areas under their jurisdiction; elsewhere the proposed seabed authority will be responsible for protecting the marine environment from any potential polluting effects of deep seabed mining.

The allocation of enforcement responsibility in the revised text has been criticized for bias in favor of the flag state, which retains the right -- under normal conditions -- to preempt the prosecution of vessels in its registry by other states. Environmentalists fear this provision will lead to laxity in enforcement, except in those instances where the flag state has lost its preemptive option because of previous disregard of enforcement obligations. The session has also given rise to speculation about the establishment of national regulations that are no less stringent than those generally accepted internationally. While many states may be willing to carry out obligations regarding vessels and the regulations contained in the 1973 IMCO Convention, their intent with regard to conditions governing the exploitation of resources on the continental shelf and ocean dumping is less certain. Critics point out that there is no international regulation on shelf pollution, and a number of nations do not consider the 1972 ocean dumping convention to contain obligatory international regulations.

Marine Scientific Research

Negotiations on marine science research in New York pitted a number of maritime states against a formidable segment of the Group of 77. At issue was the regime to control research in the economic zone and on the continental shelf. Maritime nations generally favored the proposals of the Geneva text, which distinguished between fundamental and resource-related research, and limited direct control of the coastal state to the latter.

LDC opposition to the distinction regime was couched in terms of state sovereignty and security. A number of nations, including India, Brazil, Colombia, and a few others, stated that science should be

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subordinated to political considerations, and Mexico, along with several Latin American countries, voiced concern over the conduct of marine research by satellite. Other nations also expressed apprehension over the use of scientific installations and equipment for purposes other than marine science, inferring that major powers could use research in the economic zone as a screen for resource exploitation or intelligence collection. The security consciousness of the LDCs was additionally exemplified by their stand on the publication of research findings, which in their view should take place only with the prior approval of the coastal state.

While protesting the distinction regime, several LDCs went on the offensive to promote the cause of consent. Research by states or organizations in the economic zone and on the continental shelf, they maintained, should be conducted only with the express consent and under conditions set forth by the coastal state. The least restrictive of the many proposals advanced was that suggested by Mexico; it softened the demand for total consent by restricting the conditions under which proposals could be denied.

The sensitivity of the coastal states to any weakening of the total consent concept was demonstrated near the end of the session when the Netherlands proposed exceptions that would favor lesser developed and geographically disadvantaged states. This proposal, which would have given such states the right to engage in research directly connected with resources -- and without benefit of consent --, was met with uniform resistance by Argentina, Brazil, Chile, Ecuador, India, Kenya, Morocco, Nigeria, Peru, and Somalia.

Contributing to the failure of the distinction regime to survive the New York negotiations was a lack of consensus, even among the maritime powers, on the parameters and composition of the categories proposed. Also important was the fact that these powers were not equally committed to the distinction concept. Early in the session a Canadian delegate declared a distinction regime to be neither feasible or advisable, and near its conclusion, the USSR opted to endorse coastal state control over all research in the economic zone by speaking favorably of the proposal made intersessionally by Peru.

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The revised text reflects the impact of the changed stand of the USSR as well as the effectiveness of LDC argumentation during the course of the New York session. It proposes a total consent regime, controlled by the coastal state, in the economic zone and on the continental shelf, with consent not to be withheld unless the research is resource oriented, involves drilling and the use of explosives, or the utilization of artificial islands or installations subject to coastal state jurisdiction. It further favors the coastal state by giving it authority to demand cessation of research in progress for cause and to monitor the publication of research findings bearing substantially on the exploration and exploitation of living and non-living resources.

The revised text may prove advantageous to developed maritime states in providing for the eventual referral of disputes over research to international arbitration procedures yet to be established. Furthermore, it drops provisions in the Geneva text which would have given a new international authority, dominated by developing nations, control over deep-ocean research beyond 200 miles. In the final analysis, however, the latest proposals favor the coastal states; should they prevail in their present form into treaty and law, marine science may well suffer.

Dispute Settlement

The dispute-settlement question is far from resolved although it received considerably more attention at New York than at Caracas or Geneva. At the two earlier conferences debate took place in a separate Working Group on the Settlement of Disputes and to some degree in the three main committees. At New York, however, the conference president allotted six days of plenary debate to the topic and a special Group of 77 "contact group" studied it for the first time.

Most of the 72 speakers during the plenary debate seemed to agree with Secretary Kissinger's earlier statement that "Establishment of a professional, impartial, and compulsory dispute settlement mechanism is necessary to insure that the oceans will be governed by the rule of law rather than the rule of force," but they differed widely on the type and scope of such mechanism. Some states seek a comprehensive system that would apply to all disputes while others want little or no jurisdiction in certain areas. Some believe

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arbitration is the only way to settle disputes; others favor or oppose use of the International Court of Justice or a new LOS Tribunal. The mix of nations that support or reject these ideas cuts across usual developed-state/LDC lines. While the United States and many other countries back an LOS Tribunal, for instance, other developed states like Canada, Japan, and France oppose it. And while some LDCs brand the International Court of Justice a big-power tool, other LDCs think only another large international legal body like an LOS Tribunal could best safeguard their interests. Some LDCs are concerned that, whatever the type of dispute-settlement mechanism finally decided on, they do not have the large and skilled legal staffs that will be required to handle long, drawn-out ocean cases.

The major dispute-settlement argument centers on the economic zone and particularly the single negotiating text's suggested exclusion of disputes on the "exercise of sovereign rights, exclusive rights or exclusive jurisdiction of a coastal state." While "certain exceptions" are made for navigation, overflight and environmental matters, nothing is said about the important areas of fishing and marine scientific research. Texts on those two points in the committees that deal with them do little more to solve the problem. The texts covering fisheries do not pin down any specific coastal-state or foreign rights and responsibilities in the economic zone. The texts covering marine scientific research simply suggest that "experts" aid disputing parties and, if they fail, that the problem be turned over to the still-undecided dispute-settlement machinery.

Those who want to see an LOS treaty effected in the reasonably foreseeable future concur that if the economic zone is not to become the functional equivalent of the territorial sea, the dispute-settlement system must accommodate both coastal-state interest in resource management discretion and the major rights and interests of other states in the economic zone. The success of the LOS conference may well hinge on the designing and acceptance of such a provision.

Outlook

The first New York session made vitally needed gains in refining the negotiating texts and in introducing a spirit of effective

compromise. The next session promises to be even more crucial. Not only must the critical gaps in the texts be filled and the controversial areas smoothed over, but the conference must guard against being pushed backwards in time and argument by a small number of frustrated extremists. The indications are that the majority of the nations realize that no one state can hope to satisfy all its claims and that a balance of national interests must be sought in an overall LOS Treaty. Many nations also seem to appreciate the fact that time is of the essence in concluding a comprehensive treaty because of increasing friction over competing ocean interests and the threat of ever greater unilateral actions. This sense of urgency lies behind proposals by the United States and others to make the LOS Treaty -- or at least parts of it -- provisionally applicable upon signature rather than waiting for the long process of ratification. This approach, however, is controversial and its adoption is problematical.

Even if spared deliberate efforts at retrogression, the upcoming New York session faces a strenuous challenge, given the number of issues that still must be resolved. Procedure will be especially important. Provided that broad substantive agreement on the contents of an acceptable treaty can be reached in this session, the articles can then be given to a drafting committee in the intersessional period for preparation of a final text. This would be followed by a further conference meeting for formal voting, and then a brief ceremonial session for signing the treaty in Caracas sometime in 1977.

If, in fact, the above scenarios prove illusionary, the question of where the LOS talks go next will depend on the nature and severity of the issues still outstanding. Having made this much progress in a very complex undertaking there is a strong inclination on the part of most participating nations to pursue the negotiations to a final conclusion, no matter what the timeframe. However, if the conference receives a serious setback on any of the major contentious issues and differences seem irreconcilable, the possibility cannot be excluded of an indefinite recession or of a splitting up of the whole endeavor into smaller, more manageable, and separate undertakings, perhaps less on the international level than on a regional basis or among nations having common ocean interests.