



The Third United Nations Law of the Sea Conference: Caracas

by H. Gary Knight



VENEZUELA

The Caracas conference provided a forum for consideration of a wide range of social, economic, scientific, political, technological, and geographical elements involved not only in ocean space but the entire world. A "North-South" polarization overshadowed the "East-West" ideological split and together they prevented agreement on a single important issue.

[HGK-1-'74]

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THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE: CARACAS

by H. Gary Knight

October 1974

British historian Arnold Toynbee has predicted that world relations during the last quarter of the twentieth century will be based almost solely on national quests to maintain secure supplies of natural resources. The current world energy, food, and monetary problems provide ample evidence of the accuracy of this prediction. What may not yet be well perceived, however, is that the cutting edge of this new nationalism is operating in the world ocean as coastal nations and landlocked states alike seek to maximize their access to the living and nonliving resources of the sea and seabed.

Recent international incidents—among them the Chinese seizure of the Paracel Islands in the South China Sea, in order to secure jurisdiction over continental shelf oil and gas resources, and the recurrence of the British-Icelandic “cod war” in the North Atlantic—demonstrate that national interests in the ocean have moved beyond the stage of paper claims and into the realm of economic and military conflict. Such incidents are merely prelude to the violence and resource waste which may occur if the international community is unable to agree on a stable order for the use of ocean space and the exploitation of ocean resources.

It is, therefore, not surprising to find that in 1970 the United Nations sought to convene a new law of the sea conference in order to develop international agreements to govern the use of ocean space.¹ The first substantive session of the Third United Nations Conference on the Law of the Sea was held in Caracas, Venezuela, from June 20-August 29, 1974, and although widely heralded, appears to have served little purpose other than to demonstrate the apparent inability or unwillingness of the community of nations to come to grips with the issues and to negotiate acceptable solutions to the critical resource and national security problems spawned by recent technological developments related to the use of the ocean (see Table 1). The

importance of the Conference goes beyond law of the sea, however, for mankind is presently facing a number of problems which, like ocean resources, can seemingly only be resolved on the basis of global agreement. Thus the precedents set in Caracas may have significant implications for world energy, food, population, and environment issues.

TABLE I

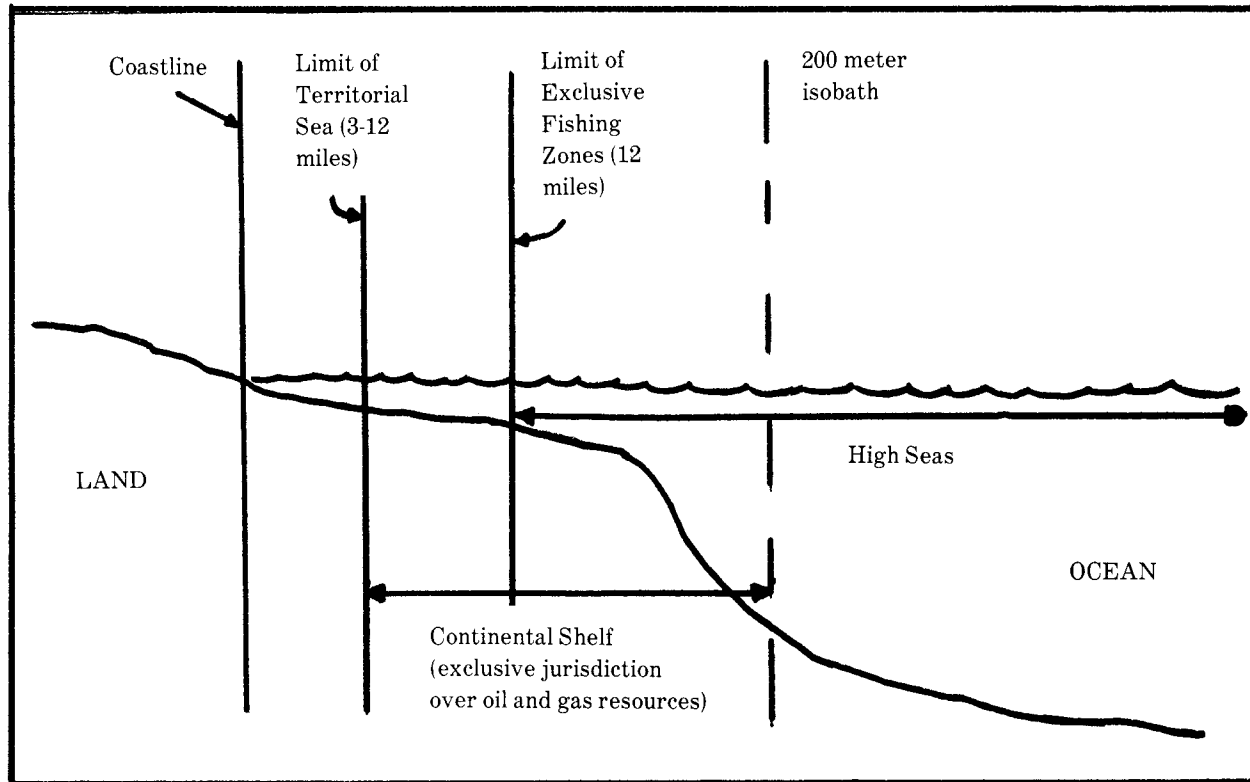
Uses of Ocean Space and Gross Values

Use	Gross Annual Value (Where Quantifiable; ca. 1970)
1. Transportation	\$20-30 billion
2. Fisheries	7-10 billion
3. Fossil fuels	5-6 billion
4. Recreation	---
5. Hard minerals	50 million
6. Waste disposal	---
7. Military	---
8. Scientific research	---
9. Water source	---
10. Futuristic concepts (weather modification, underwater hotels, floating cities, floating air- ports, superports, offshore power plants).	

Pre-Caracas Law of the Sea

As a result of an interest in breaking the Spanish-Portuguese monopoly on trade routes to the New World which had been allocated to them by Papal fiat and a self-serving bilateral treaty, the Dutch sought in the early seventeenth century, through a

Fig. 1. "Zones of Ocean Jurisdiction"



prize court proceeding, to assert their right to free navigation on the high seas. One of the Dutch advocates, a young lawyer named Hugo Grotius, later expanded his legal argument into a treatise, *Mare Liberum*,² in which he proposed that the high seas should be free and open to the use of all. Grotius' concept was predicated on the dual assumption that the resources of the sea were inexhaustible and that the ocean was not subject to appropriation by men or nations. The Grotian doctrine was ultimately accepted by the vast majority of nations and became a tenet of customary international law.

The steadily increasing intensity and diversity of ocean uses soon dictated that nations assert some form of jurisdiction over limited sea areas for national security, fisheries protection, and other purposes. Thus Grotius' doctrine was slowly eroded in favor of the creation of property rights, though freedom of the seas still constitutes the fundamental basis for the conduct of activities in the ocean (see Figure 1).

The law of the sea developed primarily through state action until 1958 when the United Nations convened the first conference on the law of the sea. That meeting produced four international agreements,³ but failed to resolve the critical question of

the maximum breadth of the territorial sea and the rights of coastal states in fishery resources beyond their territorial seas. A second conference, held in 1960, dealt exclusively with these two issues, but failed by a single vote to produce a compromise solution to the problem. From 1960 to the present time, the law of the sea has continued to evolve in response to unilateral claims by nations with respect to fisheries jurisdiction and a wide variety of other uses of the sea.

By the mid-1960s it was clear that the old law of the sea was rapidly outgrowing its usefulness in an age of rapid technological development and increasing demands on the ocean for food and energy resources. Oil and gas were being produced at steadily deeper depths and the 200 meter isobath limit of coastal state jurisdiction was about to be exceeded.⁴ The effectiveness of "factory ships" of the Soviet Union, Japan, and other nations had reached the stage of threatening the livelihood of coastal fishermen in many nations. The technology had also been developed to mine manganese nodules from the deep ocean floor, providing potential new sources of raw materials such as manganese, copper, nickel, and cobalt. Oceanographers were encountering increasing resistance

to their scientific research activities on and above the continental shelves of coastal states, particularly developing nations. Possibly most important of all, data were being developed which indicated that man's industrial activities were threatening the quality of the marine environment and possibly endangering the very existence of life on the planet.

These technological developments were accompanied by a rising tide of extended national claims over maritime areas. Table 2 reflects the change in breadth of territorial waters claimed between 1958, the date of the first law of the sea conference, and the present time. The shift away from the traditional three-mile limit, and toward 12 miles and more is evident. The United States had, of course, been the leader in establishing national jurisdiction over offshore oil and gas through its unilateral proclamation of 1945, though this, unlike the territorial sea and fishing zone claims, met with almost universal approbation. Fishery zones have been expanded at a rate and to distances much in excess of the claims for territorial waters, and such actions have been responsible for conflicts in the South Pacific, North Atlantic, and elsewhere. Recently, new issues have given impetus to still other types of unilateral action, evidenced by Canada's assertion of a 100-mile anti-pollution zone in 1970 and proposed United States legislation authorizing construction of deep water ports beyond the territorial water limit.

TABLE 2

**Breadth of Territorial Sea Claimed
From 1958 to the Present**

Breadth Claimed	States Claiming Breadth	
	1958	Present
3 or 4 miles	40	35
6 to 12 miles	22	67
over 12 miles	5	16

Sensing the tremendous conflict potential in the process of unilateral claims to ocean resources, as well as the great benefits which could be derived from an orderly development of ocean resources, Dr. Arvid Pardo, then Malta's UN Ambassador, introduced at the 1967 session of the United Nations an agenda item relating to the use of seabed resources. Discussion of the item resulted in

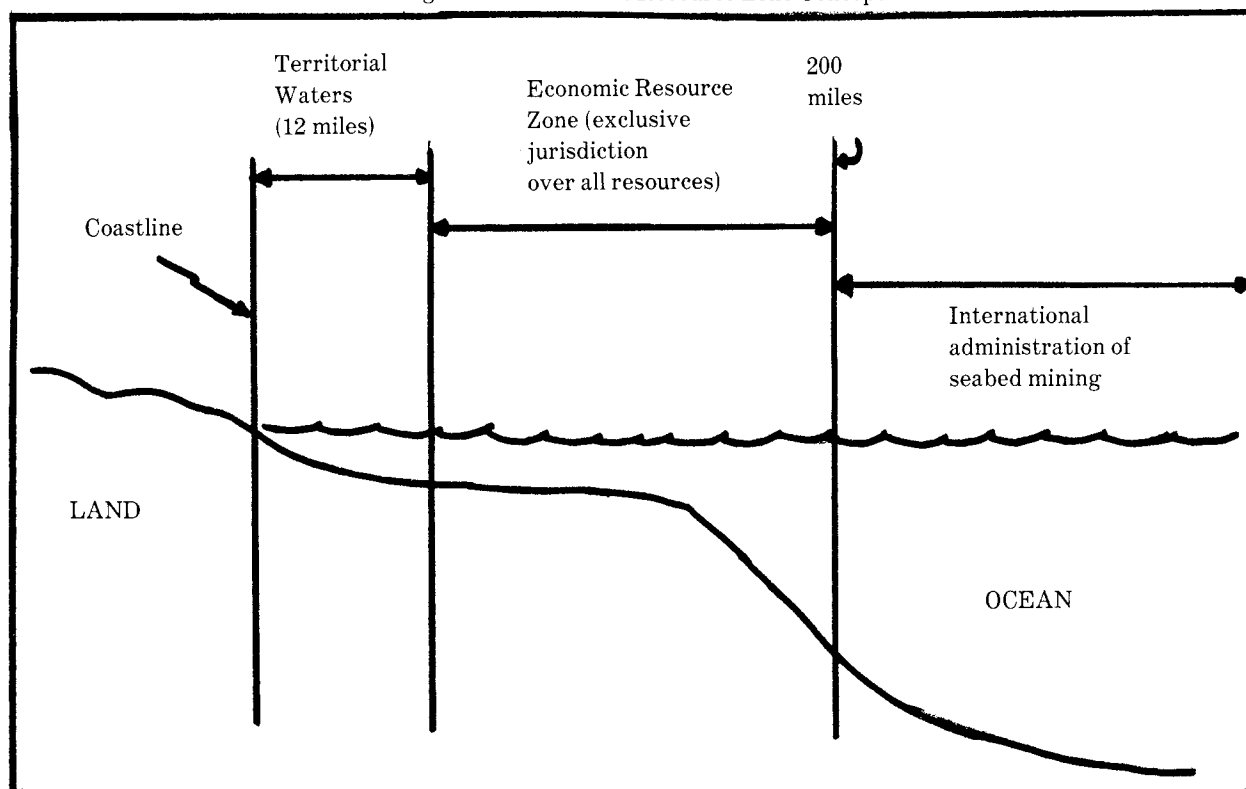


Arvid Pardo (l.), "father" of the Law of the Sea Conference, expressing his dissatisfaction with the proceedings to Lennox Ballah (Trinidad and Tobago), (top), and Alexander Yankov (Bulgaria; Chairman, Third Committee).

the formation of the United Nations Seabed Committee which deliberated the issue until 1970 when it was formally reconstituted as a preparatory group for the third law of the sea conference.

In his introductory speech concerning the agenda item, Dr. Pardo painted a picture of vast wealth to be derived from the mining of seabed minerals and suggested its use for the benefit of humankind, with special consideration to be given the needs of developing countries. This resulted in an initial trend favoring internationalization of ocean resources in order that these revenues be shared equitably. As the negotiations progressed through the late 1960s, however, it became increasingly evident that Pardo's estimations were somewhat overstated and, in fact, that the only

Fig. 2. "The Economic Resource Zone Concept"



significant resource development which could be expected in the near to medium term would occur quite close to shore. From economic and national security standpoints, therefore, states began to drift toward the notion that each coastal state ought to assert jurisdiction over the living and nonliving resources off its coast in order to maximize its own economic interests. Naturally, this met with some opposition from landlocked and geographically disadvantaged states which would stand to gain most from sharing seabed resource revenues even if the same were quite small. At the Caracas conference, the articulate representative of Singapore, Mr. Chao, was to describe the trend as "the greatest land grab in the history of the world." It also met with opposition from the United States and other maritime and military powers which feared curtailment of freedom of navigation on the high seas. These nations were especially concerned about restrictions on passage through international straits such as Gibraltar, Bab El Mandeb, Hormuz, and Malacca which, though now possessing corridors of high seas, would come under coastal state control with the expansion of the breadth of the territorial sea to 12 miles. Nonetheless, as the time approached for convening the Caracas conference, a clear trend had emerged favoring the 200-mile

"economic resource zone" concept under which coastal states would have jurisdiction over all living and nonliving resources to a maximum distance of 200 miles from their coasts (see Figure 2). Coupled with this were such other elements of the proposed "package settlement" as a 12-mile territorial sea breadth, an international regime to govern seabed mining beyond the economic zone, some renovation of the concept of "innocent passage" with respect to navigation in international straits, and revised systems concerning scientific research and pollution in the marine environment. This approach left very little of value to be distributed as the "common heritage of mankind," which was how the seabed resources beyond national jurisdiction had been characterized in a 1970 United Nations General Assembly resolution.⁵ In fact, *all* of the presently produced petroleum and natural gas and over *90 per cent* of the gross value of fisheries are taken within 200 miles of the coastline.

With discussions in the Seabed Committee completed, the conference agenda contained 25 items, 61 subitems, and 19 sub-subitems (see Annex A). The major areas for negotiation included the nature of coastal states' rights and duties with respect to resources off their coasts, the regime to



Four 40-story towers constituting the Parque Central complex; the towers contained apartments and offices, and common subterranean levels housed shops and services of every imaginable description.

govern seabed mining beyond the limits of national jurisdiction, freedom of navigation on the high seas and through international straits, freedom of scientific research, and pollution of the marine environment⁶(for an outline of the more significant problems involved in each of these subject matter areas, see Annex B).

Finally, in 1973 the General Assembly decreed (over some opposition) that preparations were sufficient for the conference to begin, and a preliminary session, for the purpose of adopting rules of procedure, was scheduled for New York from December 3-14, 1973.⁷ That meeting presaged the subsequent failure in Caracas by accomplishing little save the election of conference officers. Only after several intersessional meetings and a great personal diplomatic effort by conference President Hamilton Shirley Amerasinghe (Sri Lanka) was the conference able, seven days into the substantive session in Caracas, to adopt its rules of procedure.⁸

The Caracas Conference

Having observed or participated in six years of preparatory work, and sensing the tremendous opportunity for the international community to deal effectively with a major global problem, it was with no little excitement and anticipation that I joined the several thousand delegates and supporting cast in the brand new, ultramodern Parque Central

complex in Caracas. Disillusionment was quick in coming, however, and the conference was, as ocean law expert William T. Burke puts it, "about as exciting as watching paint dry."

No international agreements on law of the sea were negotiated in Caracas, nor was there any appreciable moderation of the polarized national positions on the many issues under consideration. Much time was spent in "general debate"—a euphemism for reiteration of national positions, most of which in this instance were already well known. Even after the plenary sessions gave way to committee work, such general debate continued until near the end of the Caracas meeting. Each of the three main committees (one dealing with the seabed mining questions, another with general law of the sea issues, and a third with scientific research and pollution) did produce some alternative treaty texts embodying in treaty language (albeit imprecise in many instances) the various national positions urged at the meeting. To that extent, the Caracas session can be said to have been a relatively successful *preparatory* conference. Insofar as substantive action was concerned, however, very little if anything was accomplished. The issues remain unresolved while technology and national food and energy crises continue to develop. Moreover, a look at the dynamics of the Caracas session suggests that future conferences may well be equally unrewarding.

Conference Dynamics

Two factors dominated the Caracas session: the political nature of the undertaking and the "North-South" ideological split.

The first two law of the sea conferences had been essentially legal-technical affairs. The International Law Commission, a body of juridical experts, had prepared a single text (reviewed beforehand on several occasions by members of the United Nations) for consideration by the first law of the sea conference. Thus the 1958 and 1960 meetings were devoted either to refining the preparatory drafts or to negotiating and voting on proposed amendments. From the outset in Caracas, however, it was obvious that the third conference would not be similar. For one thing, no single text awaited the 3,000-odd diplomats who gathered in Venezuela. Additionally, a number of politically sensitive nonocean issues were immediately thrust upon the



Plenary session of the Conference hearing still another "general debate."

delegates—e.g., China's challenge to the seating of representatives of the Khmer Republic (Cambodia),⁹ the constant exchange of polemics among China, Albania, and the Soviet Union, and the seating of representatives of national liberation movements as observers (including the Palestine Liberation Organization).¹⁰ But beyond these digressions it was apparent that Caracas provided a forum for the consideration of a whole range of social, economic, scientific, political, technological, and geographical elements involved not only in ocean space but the entire world. Seabed mining questions were related to prices for exports of minerals from land-based sources as well as the threat of OPEC-type action for hard minerals; navigation issues were identified with second-strike nuclear deterrence philosophies; fishing issues were tied to internal political situations in West Coast Latin American nations; freedom of oceanographic research was linked to lack of economic and educational development in developing nations; and so on.

Given this state of affairs, and only ten weeks for the session, it is not surprising that no agreements

were reached in Caracas. If that omission could be forgiven, however, the complete absence of serious negotiations could not. The Caracas session did not bring the parties any closer together. On a number of agenda items, the introduction of new positions and issues caused an actual regression from the state of affairs at the conclusion of the preparatory work of the Seabed Committee in 1973.¹¹

Second, with few exceptions, East-West ideological issues were replaced by a new polarization—the "North-South split." The nations of the North (Eastern and Western Europe, the Soviet Union, the United States, Canada, Japan, and Australia) have common views on most of the issues, if not identical approaches to their resolution. The nations of the South (the developing countries of Asia, Africa, and Latin America) likewise have similar perspectives, differing from those of the North, though without the homogeneity which some ascribe to the so-called "Group of 77."

Leaving aside the different technical approaches, the emphasis of the North is on *freedoms*—freedom of navigation (military and commercial), freedom



Delegates in the Second Committee pondering more rhetoric on the question of passage of merchant and military vessels through international straits.

of scientific research, freedom from pollution of the marine environment. The emphasis of the South is on *resources*—exclusive access to fish, oil, and gas off their coasts, and exclusive management authority within a broad coastal area. The North places high priority, for example, on securing a regime of unimpeded transit through international straits providing for submerged passage of nuclear submarines and overflight by military aircraft, rights not now recognized in international law. Equally great concern is evidenced for maintenance of free navigation in any extended resource zones, as well as for a regime which will enhance scientific research and permit international standards to guide pollution control measures. The North does not oppose broad coastal state jurisdiction *per se* (save for those involved in worldwide distant water fishing efforts) but wants to hedge that right by imposing obligations to protect the freedoms which they seek.

The South does not object *per se* to the freedoms, but wants to regulate them strictly, on a national basis, in order to ensure achievement of national objectives, including the avoidance of economic dominance by the technologically advanced nations. Establishment of “sovereignty” over offshore natural resources is a *sine qua non* to a treaty acceptable to the developing nations, and many feel that control over ancillary activities, such as scientific research, pollution, and even navigation is a necessary concomitant of that sovereignty.

Further, while the North seeks legal regimes which ensure economic efficiency in the exploitation of ocean resources, the South is much more



Thor Heyerdahl, scientist and author of “Kon-Tiki” and “The Ra Expeditions.” Heyerdahl highlighted environmentalists’ concerns by commenting that while the delegates were preoccupied with dividing up a bushel of apples, they ignored the fact that the apples were becoming rotten.

concerned with its own political participation in the new legal order, efficiency being a secondary consideration.

It does not require profound insight to understand the basic reasons for these positions. Technologically advanced nations have primary interests in national security (requiring maximum naval mobility) and in ensuring a steady flow of imported goods by sea (requiring guarantees of free navigation throughout the world ocean). Such nations also have an implicit faith in the scientific method, asserting that the more knowledge we have about the ocean and its resources, the better off we will all be. Finally, these nations are, by and large, sufficiently affluent to afford costly propositions such as maintenance of a high quality environment.

Developing nations, on the other hand, have economic growth and hungry populations to consider. If these problems can be solved by developing offshore oil and gas reserves, by building fishing industries to ply their own coastal waters, and by ensuring that their economic development is not impeded by activities of the major powers, then those become the overriding objectives. Such niceties as environmental protection and freedom of research are disregarded because of their potential interference with the achievement of resource-oriented objectives. Thus, we find developing states urging a “double standard” for marine pollution

laws and regulations in which they would be permitted more extensive polluting activities consistent with their economic development goals.

Why the Caracas Session was Unproductive

Had the Caracas session produced a law of the sea treaty, this section of the report would be devoted to an analysis of the new ocean regime and its impact on substantive problems of world order. Absent such a document, the critical question becomes "why was no agreement reached?" Since many observers feel that even subsequent sessions in 1975 will not bring the nations involved closer to agreement, and because of the precedential value of this conference for other global problems such as energy, food, population, and environment, a discussion of some possible causes for its failure is warranted.

First, the conference may simply have been too large, both in terms of the number of participants (138 states were registered in Caracas) and the agenda (over 100 items). One of Parkinson's less well-known laws posits that the maximum effective size of any committee is between 20 and 22¹²—but even giving Dr. Parkinson's semifacetious analysis a liberal construction, 138 nations is obviously far too many for an effective negotiation. Thus it was not surprising that there were attempts to break the negotiations down into smaller working groups, but even these failed to produce the desired accord. Some of the subgroups were themselves too large, such as the "Group of 77," which now numbers well over 100 developing nations. Others were so specialized that their mere existence was considered an affront to the excluded nations, diminishing if not eliminating their effectiveness.¹³ Similarly, coordination problems within and among caucuses such as the five regional groups which held regular meetings (Western Europe and Others, Eastern Europe, Latin America, Africa, Asia) presented obstacles to swift action. Logistical difficulties were also involved—like many delegates, I encountered serious obstacles in trying to contact delegates who were scattered about the Parque Central and Caracas under tight security arrangements, in attempting to cover subjects being discussed in concurrent committee meetings, and in amassing and reviewing each day the tremendous quantity of documentation issued by the Secretariat and our own delegation.



U.S. delegation leader John R. Stevenson (r.) consulting with adviser Tucker Scully outside meeting room.

Finally, the insistence of the major maritime powers that all of the outstanding issues be resolved in one gigantic "package deal" may reflect a failure to accept the virtual impossibility of steering over 100 issues and 138 nations to a successful conclusion. Taking the issues seriatim, however, provides no panacea for this weakness in the system, for without other issues to use as bargaining leverage, support would likely be insufficient on any single issue to ensure its adoption. It may, then, simply be the case that although issues such as the ocean, food, population, energy, and pollution *must* be dealt with on a global basis, the classical approach of treaty negotiation, with each national unit being represented equally, has reached a nonfunctioning stage because of the number of participants and complexity of the issues involved.

Second, it may have been that Parkinson's more well-known law ("work expands to fill the time available for its completion") was operating on the conference. The General Assembly resolution calling the meeting had clearly provided for a second and possibly even a third substantive session in 1975. There was no immediate pressure on the delegates to reach final conclusions in Caracas and, in fact, many may have been reluctant to show their "aces-in-the-hole," until the eleventh hour of the negotiation which, as everyone knew, would occur in the spring or summer, 1975.

Third, there may have been deliberate attempts to obstruct progress by a few developing countries



Conference leadership (r. to l.): David L.D. Hall, Executive Secretary; Hamilton S. Amerasinghe, President; Constantin A. Stavropoulos, Special Representative of the Secretary-General. At far left, Maurice Strong, Executive Director of the U.N. Environment Program, addressing the Conference.

on the theory that the major maritime powers were the only nations desperately in need of resolution of critical national security and economic questions and thus would make greater concessions if forced to the wall late in 1975. The theory may or may not be valid, but it is obvious that most nations feel little sense of urgency about these negotiations and would allow them to be protracted indefinitely were it not for the threat of unilateral action by major powers.¹⁴

Fourth, it may simply have been that an insufficient number of nations—if any at all—came to the conference with instructions from their governments reflecting the major political and national security decisions which have to be made at some stage. Questions of access to ocean space and the exploitation of ocean resources are matters of some importance to national security, and the necessary political commitment to a particular position is obviously going to require some delicate domestic negotiation.¹⁵ Since decisions by heads of state are usually postponed to the last possible moment, it is quite likely that these sorts of decisions have not yet been made and may not even be made by the end of 1975.

Fifth, it may have been necessary for the first session of the conference to be essentially a preparatory meeting because the Seabed Committee, which originally consisted of only 42 nations, and

never exceeded 91 in its membership, excluded a significant number of states from its six-year deliberations. Recognition of this fact was reflected in the conference structure permitting general debate with emphasis on the new participants. Although it was important that the new participants learn about the issues and positions from states which had previously participated in the Seabed Committee, and that they make their own positions and views known, the fact was that most nations which had *previously* participated in the Seabed Committee also availed themselves of the opportunity to reiterate their positions, thus turning a potential educational process into a boring, time consuming, and unproductive series of monologues.

Sixth, there was no single technical draft before the Seabed Committee. The negotiations had been political from the beginning. All attempts in the preparatory sessions to reduce draft treaty articles to a single version were thwarted by the insistence that each and every national position be reflected in alternative texts, even where the differences were minor and obviously negotiable. Clearly, the political process is a more ponderous one than the technical matter of polishing a set of predrafted treaty articles.

Seventh, and finally, although many nations (predominately those industrially advanced) regard law of the sea questions as being essentially scientific, technological, and economic, the vast majority of nations (predominately developing countries) regard law of the sea issues as essentially political. In that context, they see law of the sea as simply one among many elements in a continuing and constant struggle against the industrialized nations for their just share of the world's resources and their rightful place in its political organization. That being the case, there is no sense of immediacy nor is the conference viewed primarily in its technical sense.

For whatever reasons, the Caracas Conference was inconclusive and the negotiators must now proceed to Geneva.

Conclusion

The Third United Nations Conference on the Law of the Sea will reconvene in Geneva March 17-May 3, 1975. There is a serious question whether in the limited time available all of the major issues

can be successfully negotiated in an acceptable "package deal." If a treaty is negotiated, it is the intent of the negotiators to return to Caracas for a brief session at which the text of the treaty would be adopted and authenticated. If the Geneva session is unsuccessful, there will undoubtedly be a push for a further six to eight week session prior to the end of 1975. If such a meeting is also unsuccessful, it is likely that the developing nations will press at the subsequent General Assembly meeting for additional time in which to negotiate the treaty, perhaps extending as far as 1977 or 1978. If that is the case, it seems very unlikely that the law of the sea will be the product of international agreement, but rather that it will begin to develop once more through the customary international law process. United States negotiators, perhaps anticipating such an outcome, have indicated in appearances before Congressional committees concerned with various aspects of the law of the sea that they would not push their opposition to domestic legislation on fisheries and seabed mining laws beyond the end of 1975. In short, if international agreements have not been negotiated by that time the United States Congress is extremely likely to pass a 200-mile fishing zone bill as well as a deep seabed mining law which would permit United States nationals to acquire the requisite security of tenure in order to finance their mining operations. Deep water port and antipollution legislation is also likely to pass. If this occurs, the conference will be over for all practical purposes, because the United States will have lost any negotiating position it may have had with which to secure its navigation and other nonresource objectives. Thus the United States will simply be one among many nations engaging in unilateral actions in the sea, interactions among which will ultimately, one hopes without conflict, resolve into acceptable rules of customary international law.

The customary law development process, where it involves unilateral claims, is obviously fraught



Edgar Gold (l.), observer for the International Law Association, and Edward Miles (r.), observer for the International Council of Scientific Unions, lamenting the lack of progress in Caracas.

with conflict potential. The conflicts enumerated at the beginning of this monograph are probably just the tip of the iceberg. In a slower time, in an earlier day, the customary law process was an acceptable method of developing rules of international law. In this age of rapidly developing technology, high-speed delivery systems, and nuclear weapons, it becomes very nearly an unacceptable approach to international law-making. Thus the efforts at Geneva in the spring of 1975 to deal with problems of the exploitation of ocean resources and the use of ocean space may be of critical importance to the maintenance of the world economy and world political stability. Nonetheless, the prospects for agreement are dim at this time and the more likely probability is a decade of unilateral acts, conflicts escalating to violence, and the slow emergence of the new regime of the oceans the outlines of which can only be dimly perceived at this time.



NOTES

1. United Nations General Assembly Resolution 2750-C (XXV) (1970).

2. H. Grotius, *The Freedom of the Seas* (R. Magoffin, trans.) (1916).

3. Convention on the High Seas, 13 U.S.T. 2312 (1962); Convention on the Territorial Sea and the Contiguous Zone,

15 U.S.T. 1606 (1964); Convention on the Continental Shelf, 15 U.S.T. 471 (1964); and the Convention on Fishing and Conservation of the Living Resources of the High Seas, 17 U.S.T. 138 (1966).

4. Coastal state jurisdiction over offshore oil and gas extends, according to the Convention on the Continental Shelf, to "a depth of 200 metres or, beyond that limit, to

where the depth of the superjacent waters admits of the exploitation of the natural resources." See Figure 1.

5. United Nations General Assembly Resolution 2749 (XXV) (1970).

6. The issues involved in these agenda items are complex and interrelated. For a brief overview, see G. Knight, "Issues Before the Third United Nations Conference on the Law of the Sea," 34 *Louisiana Law Review* 155 (1974), and Stevenson and Oxman, "The Preparations for the Law of the Sea Conference," 68 *American Journal of International Law* 1 (1974). Regarding the United States position on these issues on the eve of the Caracas conference, see G. Knight, "United States Oceans Policy: Perspective 1974," 49 *Notre Dame Lawyer* 241 (1973).

7. United Nations General Assembly Resolutions 3029-A (XXVII) (1972) and 3067 (XXVIII) (1973).

8. The rules contain a unique voting formula for adoption of final treaty articles. A proposition must not only obtain a two-thirds majority of states present and voting at the session, but the number of affirmative votes must also exceed one-half the number of states formally registered at the particular session of the conference. This reflects a compromise between developed nations, which wanted high requisite majorities in order to ensure universality of the treaty, and developing nations, which wanted to be in a position to use their majority voting position effectively.

9. Among the more acerbic statements made by several delegates was the Chinese characterization of the Khmer Republic representatives as members of the "traitorous Lon Nol clique which is national scum of Cambodia," hardly auspicious language for a law of the sea conference.

10. In one of the few votes taken at the Caracas session, the liberation movements were seated by a majority of 88-2-35,

with only Israel and South Africa in opposition. The United States abstained.

11. For example, the proposed international seabed mining agency, which had always been contemplated as being limited in its function to the regulation of mining activities, became the object of an attempt to endow it with broad jurisdiction over ocean space beyond limits of national jurisdiction, including the right to regulate scientific research in the world ocean. This sort of "monkey wrench," repeated on other subjects, had the effect of complicating the preparatory work and stalling negotiating progress.

12. C. Northcote Parkinson, *Parkinson's Law*. Houghton Mifflin Company, Boston (1957), chapter 4.

13. One set of proposals drafted by a small working group of some 20 nations was never introduced at the conference because of the president's feeling that reaction would be adverse simply because of the source of the document. Another group, the so-called "coastal states group," nearly lost a procedural vote when it tried to introduce a comprehensive proposal in Plenary Session, an attempt to dismember its articles and allocate them to separate main committees being narrowly defeated.

14. For example, there is little developing nations can do if the United States adopts a domestic deep seabed mining law and proceeds to license U.S. citizens to mine manganese nodules; nor can most developing nations effectively enforce a 200-mile fishing zone against incursions by Japanese or Soviet factory ships and trawlers.

15. For an assessment of the bureaucratic machinations involved in the evolution of United States oceans policy, for example, see Hollick, "Seabeds Make Strange Politics," *Foreign Policy* (No. 9) Winter 1972-73 at 148, and Hollick, "United States Oceans Politics," 10 *San Diego Law Review* 467 (1973).



ANNEX A

“List of Subjects and Issues Relating to the Law of the Sea”

Agenda for the Third United Nations Conference on the Law of the Sea

1. International Regime for the Sea-Bed and the Ocean Floor Beyond National Jurisdiction
 - 1.1 Nature and Characteristics
 - 1.2 International Machinery: Structure, Functions, Powers
 - 1.3 Economic Implications
 - 1.4 Equitable Sharing of Benefits Bearing in Mind the Special Interests and Needs of the Developing Countries, Whether Coastal or Landlocked
 - 1.5 Definition and Limits of the Area
 - 1.6 Use Exclusively for Peaceful Purposes
2. Territorial Sea
 - 2.1 Nature and Characteristics, Including the Question of the Unity or Plurality of Regimes in the Territorial Sea
 - 2.2 Historic Waters
 - 2.3 Limits
 - 2.3.1 Question of the Delimitation of the Territorial Sea: Various Aspects Involved
 - 2.3.2 Breadth of the Territorial Sea, Global or Regional Criteria, Open Seas and Oceans, Semi-Enclosed Seas and Enclosed Seas
 - 2.4 Innocent Passage in the Territorial Sea
 - 2.5 Freedom of Navigation and Overflight Resulting from the Question of Plurality of Regimes in the Territorial Sea
3. Contiguous Zone
 - 3.1 Nature and Characteristics
 - 3.2 Limits
 - 3.3 Rights of Coastal States with Regard to National Security, Customs and Fiscal Control, Sanitation and Immigration Regulations
4. Straits Used for International Navigation
 - 4.1 Innocent Passage
- 4.2 Other Related Matters Including the Question of the Right of Transit
5. Continental Shelf
 - 5.1 Nature and Scope of the Sovereign Rights of Coastal States Over the Continental Shelf. Duties of States
 - 5.2 Outer Limit of the Continental Shelf: Applicable Criteria
 - 5.3 Question of the Delimitation Between States: Various Aspects Involved
 - 5.4 Natural Resources of the Continental Shelf
 - 5.5 Regime for Waters Superjacent to the Continental Shelf
 - 5.6 Scientific Research
6. Exclusive Economic Zone Beyond the Territorial Sea
 - 6.1 Nature and Characteristics, Including Rights and Jurisdiction of Coastal States in Relation to Resources, Pollution Control and Scientific Research in the Zone. Duties of States
 - 6.2 Resources of the Zone
 - 6.3 Freedom of Navigation and Overflight
 - 6.4 Regional Arrangements
 - 6.5 Limits: Applicable Criteria
 - 6.6 Fisheries
 - 6.6.1 Exclusive Fishery Zone
 - 6.6.2 Preferential Rights of Coastal States
 - 6.6.3 Management and Conservation
 - 6.6.4 Protection of Coastal States' Fisheries in Enclosed and Semi-Enclosed Seas
 - 6.6.5 Regime of Islands Under Foreign Domination and Control in Relation to Zones of Exclusive Fishing Jurisdiction
 - 6.7 Sea-Bed Within National Jurisdiction
 - 6.7.1 Nature and Characteristics
 - 6.7.2 Delineation Between Adjacent and Opposite States

- 6.7.3 Sovereign Rights Over Natural Resources
- 6.7.4 Limits: Applicable Criteria
- 6.8 Prevention and Control of Pollution and Other Hazards to the Marine Environment
 - 6.8.1 Rights and Responsibilities of Coastal States
- 6.9 Scientific Research
- 7. Coastal State Preferential Rights or Other Non-Exclusive Jurisdiction Over Resources Beyond the Territorial Sea
 - 7.1 Nature, Scope and Characteristics
 - 7.2 Sea-Bed Resources
 - 7.3 Fisheries
 - 7.4 Prevention and Control of Pollution and Other Hazards to the Marine Environment
 - 7.5 International Co-Operation in the Study and Rational Exploitation of Marine Resources
 - 7.6 Settlement of Disputes
 - 7.7 Other Rights and Obligations
- 8. High Seas
 - 8.1 Nature and Characteristics
 - 8.2 Rights and Duties of States
 - 8.3 Question of the Freedoms of the High Seas and Their Regulation
 - 8.4 Management and Conservation of Living Resources
 - 8.5 Slavery, Piracy, Drugs
 - 8.6 Hot Pursuit
- 9. Land-Locked Countries
 - 9.1 General Principles of the Law of the Sea Concerning the Land-Locked Countries
 - 9.2 Rights and Interests of Land-Locked Countries
 - 9.2.1 Free Access to and from the Sea: Freedom of Transit, Means and Facilities for Transport and Communications
 - 9.2.2 Equality of Treatment in the Ports of Transit States
 - 9.2.3 Free Access to the International Sea-Bed Area Beyond National Jurisdiction
 - 9.2.4 Participation in the International Regime, Including the Machinery and the Equitable Sharing in the Benefits of the Area
 - 9.3 Particular Interests and Needs of Developing Land-Locked Countries in the International Regime
 - 9.4 Rights and Interests of Land-Locked Countries in Regard to Living Resources of the Sea
- 10. Rights and Interests of Shelf-Locked States and States with Narrow Shelves or Short Coastlines
 - 10.1 International Regime
 - 10.2 Fisheries
 - 10.3 Special Interests and Needs of Developing Shelf-Locked States and States with Narrow Shelves or Short Coastlines
 - 10.4 Free Access to and from the High Seas
- 11. Rights and Interests of States with Broad Shelves
- 12. Preservation of the Marine Environment
 - 12.1 Sources of Pollution and Other Hazards and Measures to Combat Them
 - 12.2 Measures to Preserve the Ecological Balance of the Marine Environment
 - 12.3 Responsibility and Liability for Damage to the Marine Environment and to the Coastal State
 - 12.4 Rights and Duties of Coastal States
 - 12.5 International Co-Operation
- 13. Scientific Research
 - 13.1 Nature, Characteristics and Objectives of Scientific Research of the Oceans
 - 13.2 Access to Scientific Information
 - 13.3 International Co-Operation
- 14. Development of Transfer of Technology
 - 14.1 Development of Technological Capabilities of Developing Countries
 - 14.1.1 Sharing of Knowledge and Technology Between Developed and Developing Countries
 - 14.1.2 Training of Personnel From Developing Countries
 - 14.1.3 Transfer of Technology to Developing Countries

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| <ul style="list-style-type: none"> 15. Regional Arrangements 16. Archipelagos 17. Enclosed and Semi-Enclosed Seas 18. Artificial Islands and Installations 19. Regime of Islands: <ul style="list-style-type: none"> (A) Islands Under Colonial Dependence or Foreign Domination or Control; (B) Other Related Matters 20. Responsibility and Liability for Damage Resulting from the Use of the Marine Environment | <ul style="list-style-type: none"> 21. Settlement of Disputes 22. Peaceful Uses of the Ocean Space: Zones of Peace and Security 23. Archaeological and Historical Treasures on the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction 24. Transmission from the High Seas 25. Enhancing the Universal Participation of States in Multilateral Conventions Relating to the Law of the Sea |
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Annex B

Critical Questions Involved in the Major Issues for Negotiation at the Third United Nations Conference on the Law of the Sea

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| <ul style="list-style-type: none"> I. Coastal state jurisdiction over living and non-living resources in an economic resource zone (presumably extending 200 miles offshore). <ul style="list-style-type: none"> A. Nonliving resources. <ul style="list-style-type: none"> 1. Should jurisdiction extend <i>beyond</i> 200 miles where the natural prolongation of the physical continental shelf extends beyond 200 miles? 2. Should oil and gas revenues derived from all or a part of this area be shared with the international community? B. Living resources. <ul style="list-style-type: none"> 1. Should coastal states' rights to fishery resources in the economic zone be exclusive or preferential? <ul style="list-style-type: none"> a. Exclusive—other nations may fish in the area <i>only</i> with the express consent of the coastal state. b. Preferential—the coastal state is <i>obligated</i> to permit other nations to fish in its zone if it cannot utilize all of the allowable catch. | <ul style="list-style-type: none"> 2. Should special treatment be accorded to anadromous species (such as salmon), highly migratory species (such as tuna), and sedentary species (such as shellfish)? 3. Should landlocked states be given a right of access to fishery resources in neighboring coastal states' economic zones? If so, under what conditions? C. Other. <ul style="list-style-type: none"> 1. Should nations have the right to place antisubmarine warfare tracking and detection devices on other nations' continental shelves? 2. Should coastal states have control over scientific research, pollution, and navigation as a part of their economic resource jurisdiction? 3. Where should competence over unallocated rights lie—with the coastal state or with the international community? II. Seabed mining beyond limits of national jurisdiction. <ul style="list-style-type: none"> A. Who should be permitted to exploit these resources? |
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1. Private companies under a nondiscriminatory licensing system such as that used for development of oil and gas off the United States coast; or

2. An international seabed mining authority, with power to enter into joint ventures or development contracts in order to acquire the necessary capital and technology?

B. How should rules and regulations to govern seabed mining be developed?

1. By incorporating a detailed "mining code" in the seabed treaty; or

2. By allowing the seabed authority to promulgate regulations as necessary?

C. What are the economic implications of seabed mining?

1. Will mining of manganese nodules produce adverse economic consequences on present exporters of land-based copper, cobalt, nickel, and manganese and, if so,

2. Should the seabed authority be given power to limit production and fix or control prices for seabed mining activities?

D. Should the seabed authority be strictly limited to mining activities, or should it have broader powers over the use of ocean space?

III. Navigation issues.

A. How can freedom of navigation be guaranteed in economic resource zones?

B. How can unimpeded passage of merchant shipping be guaranteed where shipping routes pass through straits comprised entirely of territorial waters?

1. Should a regime of "free transit" be adopted to replace the traditional "innocent passage" regime?

2. Should a distinction be made between merchant vessels and military vessels in terms of their relative freedom of passage?

IV. Pollution.

A. Should minimum international standards governing marine-based activities in economic zones be established?

B. Should developing countries be allowed a "double standard" so that pollution control does not interfere with or impede their economic growth?

C. Should the law of the sea conference attempt to deal with land-based sources of pollution?

D. What regulations ought to attend the mining of deep seabed minerals?

E. Who should have authority to promulgate and enforce rules concerning *vessel source* pollution?

1. Should promulgation be by international agreement or an international agency?

2. Should enforcement be undertaken by coastal states with respect to vessels passing through their economic zones, or should the flag state be responsible for such enforcement measures?

V. Scientific research.

A. Should coastal state consent, secured in advance, be required for the conduct of any research in the economic zone?

B. Should only *notice* by the research institution be required, conditioned on compliance with certain specified obligations, including the right of the coastal state to participate in the expedition?

C. Should the price of admission to developing nations' economic zones for research purposes be the transfer of oceanographic research capabilities to such nations?

