

Prelude to a finale provided by single negotiating text?

By Robert Auger

New concepts to accommodate contradictory interests

With a sense of realism rather than optimism, the world community assembled in Geneva from March 17 to May 9, 1975, for a third session of the Third United Nations Law of the Sea Conference. Its task was to elaborate a set of articles giving body to the outline of the future law of the sea treaty that had emerged from the preceding gathering in Caracas (June-August 1974). Discussions at the second session had made it amply clear that the Conference would, in the event, be successful in concluding a viable treaty only if the solutions arrived at were equitable and based on sound management principles. To obtain the needed accommodation between the numerous and often contradictory interests at the Conference, two new conceptions, departing drastically from traditional international law, were put forward: the "exclusive economic zone", applicable to the area of national maritime jurisdiction, and the "common heritage of mankind" for the international seabed area and its resources.

The idea of an exclusive economic zone implied that, in waters adjacent to the territorial sea, to a maximum distance of 200 miles, the coastal state would have title

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to extensive rights over the renewable and non-renewable resources for the protection of the marine environment and for the control of research activities. In Caracas, two diametrically-opposed views of the economic zone were in competition. A sizeable number of developing coastal states envisaged the zone as one of sovereignty, qualified only by the right of free passage for foreign vessels. Conversely, for the states assigning priority to their navigation or distant-fisheries interests, the zone was a special high-seas area in which the coastal state could exercise some preferential rights with respect to resources only. In Geneva there occurred a marked narrowing of these divergent theses through mutual concessions. As a result, the economic zone is now seen mainly as exclusive to the coastal state, which would, however, exercise its rights and jurisdiction therein only to the extent required to protect and safeguard its legitimate interests. This development is in line with the functional approach advocated by Canada over the years.

Common heritage

Likewise, the "common heritage of mankind" gave rise in Caracas to a serious ideological confrontation, this time between developing and industrialized nations. The states of the Third World, in their pursuit of a new and juster world economic order, want the international seabed area — the Area — and its resources, consisting mainly of the potato-shaped polymetallic nodules rich in copper, nickel, cobalt and manganese, to be explored and exploited for the primary benefit of the poorer nations. The richer nations, while willing to share with the international community revenues derived from their mining of Area resources, are mainly concerned with securing access to the minerals of the deep-ocean floor. Even though the eight weeks in Geneva were not sufficient to overcome ideological barriers, the seeds of a compromise might have been sown with the discussion of joint ventures as