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Law of the sea advanced but much remains to be done

New conference rules emerge

By P. A. Lapointe

The third United Nations Conference on the Law of the Sea, which had been more than six years in preparation in the United Nations Seabed Committee, held its first substantive session in Caracas, Venezuela, from June 20 to August 29, 1974. By any definition, be it the number of participating states (148), the number of delegates (well over 2,000), the number of issues or sub-issues (literally hundreds) or its very purpose (the revamping of the whole legal system applying to 70 per cent of the earth's surface, the oceans), this gathering is the most important international conference ever to be convened under the aegis of the United Nations since the United Nations charter conference in San Francisco in 1945. At stake are the rights and obligations of states, singly and jointly, over the immense mineral and living resources of the sea, the preservation of the planet's marine environment, without which life is impossible, and the maintenance and development, through appropriate regulation, of the sea as the most important highway for transport, communication, trade and strategic deployment. Irrespective of its geographical circumstances, of its economic development, of its power, of its alliances, every state has a fundamental interest in the future law of the sea. Were the conference to fail, the world would, at best, be faced with the chaos of competing jurisdictions for many years to come and, at worst, with serious confrontations between users of the sea. Success will mean peace and order on the oceans for generations.

Some observers have claimed, in the light of the conference's inability to adopt a single text, that the Caracas session was a failure. This writer, however, holds the view that the progress that was made in this initial phase was sufficient to warrant optimism regarding the ultimate success of the conference. The following is an attempt to summarize developments at Caracas that support this contention.

The organizational session of the conference, held in New York City in December 1973, had been unsuccessful in reaching agreement on rules of procedure. The main stumbling-block had been the sharp disagreement between, roughly, the developing and the developed countries as to the desirability of retaining the traditional rules for voting, i.e. a simple majority of those present and voting at the committee level and a two-thirds majority of those present and voting at the plenary level. The major maritime powers, as well as minority groupings such as the land-locked and shelf-locked states, were fearful that majorities could too easily and too rapidly be formed around certain sweeping conceptions, such as the 200-mile economic zone, without due account being taken of their important interests in related areas. They insisted, therefore, that, before any voting could take place, all efforts at reaching consensus should have been exhausted.

Mr. Lapointe joined the Department of External Affairs as a foreign service officer in June 1960. Since then, he has served abroad on the Canadian delegation to the International Commission for Supervision and Control, in Vietnam and Laos (1961-62), on the Permanent Mission to the North Atlantic Council (Paris, 1962-64) and on the Permanent Mission to the European Office of the United Nations (Geneva, 1968-72). He has served, while in Ottawa, in several divisions of the Department of External Affairs, especially the Legal Bureau, where he is at present Deputy Director of the Legal Operations Division and Co-ordinator for the Law of the Sea. His direct involvement with Law of the Sea matters dates back to 1965. He was Alternate Deputy Representative on the Canadian delegation to the recent Caracas session of the third UN Conference on the Law of the Sea. The views expressed in the accompanying article are those of the author.