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U.N. Law of the Sea Conference

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The Geneva session of the Third U.N. Law of the Sea Conference is over. After nearly six years of preparatory work and over twenty weeks of meeting after meeting in substantive session in Caracas and Geneva, this, the "largest and most important" conference yet held by the United Nations, has once again failed to achieve concensus on the basic elements of a new, comprehensive treaty governing ocean resources and use of ocean space. The outlook, unfortunately, is for more of the same: at least two more sessions before political compromise on all major issues is even likely. From here we go to New Delhi, or Nairobi, or possibly New York, and then back to Caracas.

It is generally agreed that the Caracas session of the Conference last summer made very little progress toward a final treaty. At least two reasons for this failure were identified by most observers. First, it was said that the workload was crushing (over 100 separate items on the agenda) and that, since the conference size is the largest ever (over 145 nations), well-considered agreement takes time. And second, also said to be missing in Caracas, was "sufficient political will to make hard negotiating choices."

Consequently, when the Geneva session got under way and more nations than ever appeared committed to obtaining a treaty, there was jubilation among some members of the U.S. delegation. Nonetheless, doubts continued to persist in Geneva because of the unwieldy size of the conference and the plethora of potentially divisive issues not yet widely debated. Most importantly, the philosophical gulf between the developed and developing nations on world politics generally continued to widen as evidenced by the failure of the Paris consumer-producer oil meeting. As long as this difference of views remains far apart, there seems to be little hope that a common understanding of the concept of "common heritage of mankind" can be achieved. Without common understanding, removing the equally great gulf between developed and developing nations on the issue of the management of the international seabed area will be extremely difficult, if not impossible.

By now it is clear that the early signs of hopefulness at Geneva this spring were somewhat premature. To be sure, issues of least contention were settled, but those in greatest dispute still remained as they were after Caracas. The biggest single stumbling block to agreement continues to be the issue of what to do with the international area – the deep seabed – and how to manage the so-called common heritage of mankind.

It would be unfair to conclude categorically that the Geneva session resulted in no progress whatever. On the contrary, one of our own delegation's progress indicators was actually put together at the end of the eight week meeting: a single negotiating text for the treaty. While a single text has been developed, the President of the Conference made very clear that it would serve as an informal "procedural device" and a "basis for negotiation" only. In short, all the disagreements are now contained in one piece of paper, but few have been settled.

Chances for the achievement of a comprehensive treaty on law of the sea are not good. Yet never before have the nations of the world understood so much about ocean legal rules and about their own interests in ocean space. In the past, the law of the sea was largely determined by the practice of maritime nations which knew quite well the value of freedom of the seas. This is exemplified by the fact that the previous law of the sea conferences were much more like technical drafting sessions than the political confabs which are now held. But even before that, the primary method of setting rules on ocean use was the process of claim and counterclaim. This process is still viable as an alternative to the treaty-making method. It is in conjunction with this process that the last several years of international debate will be of most benefit.

Under the process of claim and counterclaim, one nation takes an action (or makes a claim) to protect or advance what it believes to be its legitimate interests. The rest of the world community then evaluates the claim as to its reasonableness, then accepts or rejects it. This is especially important on matters which are either not the subject of a treaty or are the subject of a treaty to which the particular nation involved is not a signatory. A classic example occurred in March when the government of Finland ordered its vessel *Enskeri* not to dump 7,000 kilos of arsenic wastes into the South Atlantic because of the opposition of a number of Western Hemisphere nations, including the United States. Conversely, thirteen years after President Truman claimed jurisdiction over the continental shelf of the United States, the world community codified this claim in the Convention on the Continental Shelf.

Therefore, one option open to the United States is properly devised and reasonable unilateral action. Such action is now being seriously considered and bills on ocean mineral recovery and a 200-mile pollution control zone have also been introduced. If carefully drafted to be in tune with world thinking, unilateral legislation may very well serve to better define international law and may not be found objectionable by the world community.

Another available option is to seek appropriate bilateral and regional international agreements on various important ocean issues, or changes in existing ones. For example, the United States could request that all treaties regarding fishing within 200 nautical miles of its shores be amended to provide preferential rights for U.S. fishermen, or that U.S. officials be allowed to enforce existing treaty provisions within that same distance. Since most nations now better understand the issues involved, bilateral agreements with various nations may be a worthwhile avenue to settling contentious ocean issues and protecting U.S. interests.

These are the two most prominent alternatives to a treaty. In addition, it might be possible to ask for separate treaties on the less divisive issues, saving the more difficult problems – such as the deep seabed – for further Conference action.