

A Fisherman's View of the Law of the Sea

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Two hundred miles is a major Law of the Sea issue for fish people. But whether or not the United States will have a 200-mile economic zone doesn't seem to be the question now. Ambassador Stevenson has said in recent Congressional oversight hearings that over 100 (of a possible 138) countries at the Third United Nations Law of the Sea Conference support an economic zone extending to a maximum limit of 200 nautical miles. He also said he would like to see implemented the provisions of the Magnuson/Studds bill; his concern was only for the timing of that implementation. Furthermore, the articles on the economic zone and the continental shelf which the U.S. submitted to the Conference this August afford more protection to coastal fishermen and distant water fishermen than the Magnuson/Studds bill does. Therefore it would seem that now U.S. policy clearly supports both a 200-mile economic zone and protection for its salmon and its distant water shrimp and tuna fishermen.

The Conference recessed in Caracas with little more than broad agreement on a few of the issues that are before the Conference and a meeting date to recommend to the General Assembly for its approval.

John Norton Moore is very optimistic that the Conference will produce a treaty by the end of 1975. Ambassador Stevenson seems somewhat less so. But I am pessimistic and I am not alone in this in the U.S. delegation. Nor is this pessimism limited to fish people.

Although there is broad—that is, not specific—agreement on a 12-mile territorial sea and a maximum 200-nautical-mile economic zone, the details of the coastal state's rights and responsibilities in the economic zone remain unresolved. For example, there is what Ambassador Stevenson calls the "very strong territorial element" in the proposal for the economic zone which several African states put forward near the end of the Caracas session. This proposal is especially unsettling for the U.S. because, earlier in the summer session, a number of the same states indicated they would welcome a new U.S. proposal on the coastal state's rights and responsibilities in the economic zone as a step toward moving the negotiations forward.

Too, the U.S. draft articles on the economic zone and the continental shelf are far more conservative than are other proposals which have a chance of selling during this Conference. And, as you know, the territorial sea, the economic zone, and fisheries are only three of the 25 complicated and interrelated major issues with which the Conference is dealing.

This is one reason for my pessimism.

A second reason is the Conference schedule as it now stands: 8 weeks in Geneva, only 6½ months after nothing more than “broad agreement” in Caracas, and up to 3 weeks back in Caracas “to tie up the loose ends”—whatever those might be at that point. I haven’t looked closely at the extremely complex voting procedure because it is so difficult to sort out and I don’t really believe we’re going to get around to using it immediately. Far from it. Near the end of Caracas, one State Department type commented to me that even if things moved rapidly and we were to be in a position to vote in Geneva, to begin to vote and follow the procedure the Conference has accepted—and it is a reasonable procedure to protect all the interests involved—would take at least 6 weeks. That, on the present schedule, gives 2 weeks in Geneva for serious negotiating. Ambassador Stevenson has said, “governments must begin serious negotiation the first day at Geneva; and to prepare for that, they must during the intersessional period appraise the alternatives, meet informally to explore possible accommodations that go beyond stated positions, and supply their delegates with instructions that permit a successful negotiation.”

Even if we add the 3 weeks maximum which now seems scheduled for Caracas, that means only 5 weeks for Conference negotiating. From my experience, I’d say it takes these guys at least 2 weeks just to shake hands.

The UN General Assembly is now scheduled to deal with the Conference’s recommendation for the 8-week Geneva session and the 3-week Caracas session either this week or by the end of the month, after it considers the Palestinian question. Although last year’s General Assembly resolution on the Conference “contemplated”—in Ambassador Stevenson’s phrase—a comprehensive treaty by the end of 1975, there is now a paragraph in draft at the UN which would allow the Conference to “take the necessary steps to conclude the work of the Conference.” This might mean a second 8-week session, perhaps in Caracas; it might also mean additional substantive sessions in 1976. If the General Assembly were to accept this, the Conference could have the authority to extend itself beyond the end of 1975.

Thus, the General Assembly may vote to increase the amount of time the Conference can have and the dollars it can spend, either in 1975 or beyond. But if it does, we’ll encounter problems with nations which refuse to negotiate until the very last session (this problem also weakens the idea of particularly productive intersessional bargaining). We’ll also have to deal with nations which, for a wide variety of reasons among them, appear not to want a treaty, as well as with those nations that are beginning to suggest privately that this may be a futile exercise at this time—even if no treaty in 1975 means no treaty for many years to come.

Assuming, therefore, that the end of 1975 (as I recall, until Ambassador Stevenson and Mr. Moore testified before Congress in oversight hearings, the end of summer 1975 was the season for an LOS treaty) will not see the comprehensive treaty the U.S. now seeks, what are the alternatives?

I see three.

First, the Conference will not take any real action, whereupon a lot of states will take unilateral action, followed, perhaps, eventually, by regional multilateral agreements.

Or second, the Conference, in an effort to produce something concrete, will sign a limited treaty, saying only that there will be a 12-mile territorial sea and a 200-mile economic zone, without spelling out the rights and responsibilities involved in that zone. For obvious reasons, this might appeal to several of the developing coastal states, but for the U.S. it could have severe limitations. For example, if distant water tuna and shrimp don't have as a part of a treaty, full utilization and compulsory dispute settlement, that might well justify the distant water people's fears of gloom, despair, and destruction that preceded and now follow the U.S. move to a 200-mile economic zone position.

Or third, the Conference might actually settle down, do the necessary serious negotiating, and make the progress necessary to build up momentum to carry it to a more comprehensive treaty in 1976—despite several nations' unilateral actions—if there is not a treaty by the end of 1975.

I'm inclined to think we'll see the first alternative.