5-1-1975

Foreword

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The seventh annual issue of the San Diego Law Review's symposium on the law of the sea is appearing at a particularly timely moment in history—between the first substantive session of the Third Law of the Sea Conference in Caracas in the summer of 1974 and the second substantive session in Geneva in the Spring of 1975. Moreover, the articles in this issue afford an excellent basis for understanding the course of the negotiations in Geneva and the problems of governments in reaching an accommodation on the critical issues remaining to be resolved if there is to be general agreement.

The most dramatic and encouraging result of the Caracas session was the very general agreement on the broad outlines of an overall political settlement. As a number of the contributors have pointed out, this was manifested most strikingly by the explicit endorsement, by over 100 of the 138 States represented, of a twelve-mile territorial sea combined with a 188-mile economic zone out to 200 miles as the keystone of an overall "package" settlement. There had previously been general agreement—in a 1970 U.N. General Assembly Declaration of Principles1—that there should be an interna-

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* Ambassador, Special Representative of the President for the Law of the Sea Conference and Chief of the United States Delegation. The views expressed are those of the author and do not necessarily represent the views of the Department of State or the United States Government.
tional regime and an international authority in respect of the explo-

tion of the deep seabed beyond national jurisdiction.

The main task of the Geneva session will be to transform that emerging and highly generalized consensus into specific treaty ar-
ticles which can achieve very wide acceptance. In the multilateral law making treaty area—where a legal regime of universal application is contemplated—it will not be sufficient to rely simply on the size of the majority by which the Conference adopts a particular text. The basic rule of the international law-making process is that a State cannot be bound without its consent. If a number of States which are important users of the oceans or control important coastal areas are not satisfied and are unwilling to become bound, the voting majorities by which specific texts are adopted by the Confer-
ence may well prove illusory.

What then are the critical issues to be resolved at Geneva and how will the various articles in this issue contribute to our under-
standing?

In the first place, there is the question of the content of this 188-
mile economic zone which (together with the 12-mile territorial sea) will, as Alexander and Hodgson point out, comprise almost 36% of the world's oceans. This involves, in the first place, a determination of whether there will be any international standards limiting coastal States' control over the fisheries and hydrocarbon resources of the zone—such as an obligation to conserve and fully utilize the fisheries stocks and, in petroleum production, to observe minimal environmental standards and share some of the revenues. It in-
volves, secondly, the question of coastal State rights and duties with respect to non-resource uses of the economic zone—most controver-
sially vessel-source pollution and scientific research. Thirdly, there is the more conceptual question of whether the bundle of coastal State rights and duties are so great as to approximate a territorial sea or so scant as to approximate a preferential rights regime?

These issues so central to the progress of negotiations, are dealt with from varying perspectives in the papers by Alexander and Hodgson, Kury, Danzig, Lowe and Janis. Alexander's and Hodgson's article is a most comprehensive statement of the issues and the potential impact of a 200-mile economic zone on the various present uses of the area, while the approaches of Kury, Lowe, Danzig and Janis are more specialized, dealing principally with fishing, pollution, revenue sharing and regional arrangements. I think for read-
ers in the United States, Pollard's perceptive analysis is particularly important in understanding the negotiations. It is itself very con-
vincing proof of what Pollard characterizes as the "growing sophistication of developing countries in identifying and evaluating events of global significance by reference to their own systems of values." While I do not agree with all of his preferred solutions to the outstanding issues, he certainly demonstrates a command of the various interests to be accommodated and awareness of the importance of mutual accommodation "conducted in a spirit of give and take" leading to a viable understanding. He stresses "agreement on the economic zone" as "critical in determining the overall success of the conference."

Danzig expresses his considerable amazement and concern that the developing countries of the world have agreed to "join a stampede" to give the coastal states the exclusive jurisdiction and control over the ninety per cent of the oceans' oil lying within the 200-mile economic zones. He expresses the hope that the disadvantaged countries will fight for revenue sharing in respect of seabed petroleum exploitation in the 200-mile economic zone.

Janis reviews the role of regional law of the sea (1) in promoting shared legal claims, notably Latin American and African claims to control resources out to 200 miles; (2) as a means of providing for the efficient use of regional waters (most successfully in his view in the Common Market's common fisheries policy); and (3) for assuring regional land-locked and shelf-locked states a share of regional resources within the 200-mile economic zone (with the most advanced proposals coming from the African land-locked States).

Lowe analyzes the advantages of port State, as opposed to flag State or coastal State enforcement of marine pollution regulations, and stresses the importance of agreement on internationally prescribed regulations which port States can enforce.

All the above papers concentrate in greater or lesser degree on the critical problem of the content of coastal State jurisdiction within the 200-mile economic zone, and deal only glancingly with the two other principal areas of problems with which the Geneva session will deal: unimpeded transit through international straits overlapped by a 12-mile territorial sea (Alexander and Hodgson and Pollard) and the regime for the international area beyond coastal State jurisdiction (Kury in respect of fisheries, Lowe in respect of pollution and Danzig in respect of an international authority with
jurisdiction over the exploitation of the manganese nodules of the deep seabed).

Sohn describes the work of an informal group of States from all regions of the world in developing a working paper on settlement of law of the sea disputes and summarizes the important reasons for including effective dispute settlement procedures in the Law of the Sea Convention. His account does not give adequate recognition to his own constructive role as Rapporteur of this group.

Hollick's study of the contrasts in United States and Canadian policy-making in the law of the sea illuminates yet another dimension in the conduct of these negotiations: the development of national positions and instructions to Delegations may in the final analysis determine the success or failure of the Geneva session even more than the skills or deficiencies of the negotiators.

The editors of the San Diego Law Review are to be congratulated on a very timely and useful symposium on the law of the sea.