

international news

THE community of nations has gathered for the third time to develop a new order in the sea. What in 1967 started as a limited exercise to establish a regime for the seabed and the ocean floor beyond the limits of national jurisdiction, has developed into a formidable project whose objectives are to revise the whole philosophy of the law of the sea in an attempt to redress the balance between developing and developed countries. It is 15 years since the completion of the four 1958 Geneva Conventions which tried to establish rules for the use of the seas and now, after a very short interval, even their essential postulates are in question.

The old principle of the freedom of the seas which basically asserts that all States have equal rights to use the seas and which stood solid as a rock for more than 350 years is the object of serious attacks—the most dramatic change taking place is in the breadth of the coastal area over which various States claim sovereignty or jurisdiction; this may extend to 200 nautical miles (370 km) or to the outer edge of the continental rise if this feature goes beyond the 200 nautical miles. If this claim is accepted, more than 30 per cent of what today is high seas and which enjoys the freedom established in the 1958 Geneva Convention on the High Seas will come under the jurisdiction of coastal States—foreign vessels will have only the right of “innocent passage”. The other rights, including the one to conduct scientific research will disappear under this new concept.

The main battle at the Caracas Conference is being fought in the Second Committee where the right of coastal States to establish an exclusive “economic zone” or “patrimonial sea” beyond its territorial sea is under consideration. At the time of writing, about 20 days from the end of the Conference, there are the following tendencies on this matter:

(1) Territorial sea

- States which claim 12 nautical miles. The great majority of countries support this, but only if an economic zone of 200 nautical miles is accepted. This territorial sea of 12 miles, say the major maritime powers, may not impede transit through straits used for international navigation;

- States which claim 200 nautical miles; Brazil, Ecuador, Panama, Peru, Somalia, Uruguay.

(2) Economic zone or patrimonial sea

- States which claim an economic zone beyond the 12 miles’ territorial sea

Report from Caracas

extending to 200 nautical miles enjoying exclusive rights on exploration, exploitation and management of living and non-living resources; on prescribing standards for the preservation of the marine environment; and on the regulation of scientific research: Argentina, Australia, Canada, India, Kenya, Mexico, Tanzania, Venezuela and many others.

- States which accept 200 nautical miles economic zone but with certain conditions: (1) the coastal State will not necessarily have exclusive rights to living resources; that in order to ensure the full utilisation of living resources an obligation must be put on the coastal State to allow other States access to the resources which they do not utilise; (2) that the coastal State may enforce pollution standards agreed upon internationally but may not itself prescribe those standards unilaterally; (3) that the consent of a coastal State is not required to conduct scientific research once the vessels of other countries meet certain specified obligations.

(3) Definition and delimitation of continental shelf

The difference is between those States wishing to include the continental shelf in an economic zone of 200 nautical miles and those States like Argentina, Australia, Canada, which will prefer to go beyond 200 miles to the outer edge of the continental rise if this is larger than 200 miles.

(4) High seas and international seabed area

The need for a Seabed Authority is being accepted by the majority of States but they differ on the role to be assigned to such an Authority. A great number of developing States want to empower it with the management of living and non-living resources as well as the protection of the marine environment and regulation of scientific research. The great maritime countries want to endow the Seabed Authority with responsibility for the administration of the exploitation of the Seabed resources only. The system of exploitation, conditions of exploitation, machinery, and economic implications of exploitation remain to be solved.

The specific problem of marine scientific research and transfer of tech-

nology is being dealt with in Committee III. Here the discussions have concentrated on the definitions and objectives of marine scientific research, and the conduct and promotion of marine scientific research, including the right to conduct, granting of consent, participation and obligation of coastal States, and the general conditions for the conduct of marine research.

It is generally accepted that the proper management of the marine environment and its resources depends upon knowledge of the sea—however, management-orientated research is generally considered to be applied in nature; consequently the developing countries feel very strongly about the need to regulate such research, not only in the economic zone but also in the international sea. They feel less strongly about pure scientific research; but it is very difficult, if not impossible, to distinguish between pure research and economic or military research.

The general tendency (particularly within the developing countries) is to regulate scientific research in the territorial sea and economic zone. Consent can be refused in the territorial sea but in the economic zone “shall not” or “may not” be withheld if some specified conditions are met. The stronger “shall not” is proposed by Ireland and “may not” by Mexico. These conditions are very similar to those recommended by the International Council of Scientific Unions (ICSU) in its statement on freedom of scientific research and also the conditions being met within the International Decade of Ocean Exploration of the Intergovernmental Oceanographic Commission.

The conditions to be met can be summarised as follows:

- (a) Participation by developing countries in all phases of the work (from planning to the final results). This condition is directly related to the problem of development and transfer of technology, about which developing countries feel strongly.
- (b) Collected data and samples, as well as written up results, be made available as soon as possible to the coastal State.
- (c) That the research is being conducted for peaceful purposes.

The present discussions seem to indicate that there is complete agreement on the need to establish a viable framework for the conduct of marine scientific research. □