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Condemned to success

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Condemned to Success

It may reasonably be assumed that the present fourth round of the Third United Nations Conference on the Law of the Sea will also fail to reach agreement on a new international maritime law. A decision has long been overdue on the question of whether the exploitation of the sea and its riches is to be subject to a world order guaranteeing some measure of fairness or whether, for two-thirds of the earth's surface, the law of the strongest should prevail as is already partly the case. The multitude of states concerned and the steadily growing conflicts of interests between them in the economic, political and strategic fields would seem to make it reasonable to await the eventual answer to this question with a good deal of pessimism.

Nor does the outlook become any brighter if one casts a look back at the third round in Geneva which many had hoped would produce a decisive break-through towards a new convention. Instead, all that the meeting achieved was to draw-up so-called "informal negotiating texts". These papers which are now being discussed have not yet been given any official status and are in no way binding on the delegates. For a mammoth conference lasting eight weeks, a meagre result indeed!

There is, to be fair, no lack of controversial matter. How, for instance, are the mineral resources at the bottom of the high seas to be distributed? Should they be distributed on the principle of "first come, first served" as some of the highly developed countries would prefer? This would plainly be detrimental to the interests of the

developing countries who do not possess the requisite technologies to raise any minerals from the sea bed and some of which, furthermore, fear that the prices of their own terrestrial minerals will fall. Even if an international authority were created for the specific purpose of dealing with the riches at the bottom of the sea, such a body could not solve the problem but would at best only shift it on to another plane. Then again: according to what formula are the votes on the board of such an authority to be distributed? Should the developing countries be given an automatic authority such as they command in the United Nations? This would hardly be acceptable to the industrialised countries. And what powers should the authority have? Is it to issue prospecting licenses (on what criteria?), is it to fix quotas and prices or perhaps even go itself into the mining business and who should be credited with the profits which are bound to accrue whichever scheme is adopted?

No less controversial would seem the complex of questions concerned with territorial waters and exclusive economic zones; here the opposing sides are arrayed in totally different battle order from what is usual at international conferences; here there has evolved a coalition of roughly 50 "long-coast states" which for understandable reasons are hoping for the creation of the largest possible economic zones, giving them exclusive rights in them over fishing, ocean mining and the exploitation of oil/gas deposits. Opposed to them is a roughly equal number of land- or shelf-locked states which are either entirely cut off from the sea or

whose short strip of coast gives them only a very small share of the continental shelf. These countries don't quite see why they should be excluded because of their geographically unfavourable situation from benefiting from "mankind's common inheritance", particularly as many of the "long-coast states" will, within the foreseeable future, hardly be able to administer and make reasonable use of a larger economic zone.

True, the extension of territorial waters from 3 to 12 miles has practically ceased to be a controversial matter; yet even here certain points still need clearing up. It is for instance still necessary to safeguard internationally the right of free peaceful passage through the extended territorial waters because many of the most important international shipping lanes go through them. Here once again the devil lurks in the details. How is it possible, for instance, to make sure that national anti-pollution regulations are not used as a pretext for refusing the right of passage to ships of other nations?

Will it be possible to forge out of the multitude of conflicting interests a new international law of the sea? The prospects of such a thing happening are certainly not rosy. And yet, the attempt is worth making; for time presses, for recently more and more states have lost patience and — like Iceland — have taken the law into their own hands. If chaos is to be avoided — and this should be in everyone's interest — the conference is condemned to an early success — and herein lies a glimmer of hope.

Claus Hamann