



# Ocean Law Memo

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## INTERNATIONAL FISHERIES LAW DEBATED IN CARACAS

Caracas, Venezuela, is a long way from the Pacific Northwest (because of an airline strike and other delays, it took me three days and six airports to get down here), but what is happening here will have significant impact, in one way or another, on Northwest ocean fishing practices.

It is in this South American city, of course, that the first session of the international Law of the Sea Conference is now grinding down to completion. As I write this, I have been here ten days and have witnessed the important debate on the "economic zone" question: that is, whether a new ocean treaty should grant to coastal nations broad (up to 200 miles) offshore zones in which to control fishing and other ocean activities.

The delegates to the Conference, elegantly arguing their countries' positions in the Parque Central meeting hall, have split into several camps on this question. It now appears certain that there will be no agreement at the Caracas session.

The problem is not whether there ought to be 200-mile economic zones for coastal countries--nearly all nations, including the United States, have by this time expressed support for the basic idea--but is rather over the sort of controls the coastal nations will be allowed to exercise within the 200-mile limit.

Perhaps the primary question concerns fisheries. Should a seacoast country be allowed absolutely to exclude foreign fishermen from its economic zone, or should there be international treaty rules requiring the admission of foreign fishermen under some circumstances? Ninety-nine of the nearly 140 nations in attendance here expressed their views on this subject, and, in very general terms, they can be divided into the following groups (the labels are my own):

"Hardliners" want the 200-mile area to be exclusive and subject to the sovereignty of the coastal country, with some exceptions for such activities as shipping and overflight by aircraft. Under this view, the coastal country would have the sole right to decide whether to admit or to keep out foreign fishermen, and foreign miners and oceanographers as well. Activities with pollution potential would also be coastally regulated. This group is primarily made up of the poorer (or "developing") coastal nations represented at the Conference, and they are the majority here.

"Softliners" are essentially those nations who would just as soon see the whole 200-mile zones idea go away but who are forced to recognize it because of the nearly overwhelming support for the concept among the delegations. This group includes mostly wealthy, or "developed," countries with large navies or fishing fleets, such as the United States and the Soviet Union. Both have at the Conference expressed, for the first time, qualified approval of the 200-mile zone. However, they urge that the coastal nations be given only "preferential" rights to the fish in their zones. This argument would allow a coastal country's fishermen to fish to the extent of their capabilities but, in order that the resources will not be wasted, would require the coastal country to license foreign fishermen to take the excess up to the maximum sustainable yield. The "softliners" present various other limitations on the coastal countries' rights in the 200-mile zones; for example, oceanographers would be given nearly free access, and basic pollution rules for the zones would be made by international agreement, not by each coastal nation.

"Left-outers" generally tend to be developing nations who call themselves "geographically disadvantaged." For example, they either have no coastlines at all or their coastlines are very short. They feel that they, because they are poor and will not be made wealthy by a 200-mile zone treaty, ought to be allowed to share the riches in the 200-mile zones of their neighbors who are more fortunately situated on the sea. This means they would, to some uncertain extent, be allowed to fish and mine their neighbors' zones. Most nations here in Caracas have generally supported this notion.

"Left out left-outers"--Notice that the group just mentioned is made up of developing, or poor, nations. There are, of course, some developed nations who have no seacoast or have only a small coastline; Switzerland and Austria come to mind. They naturally feel that all "geographically disadvantaged" countries ought to be given access to their luckier neighbors' 200-mile zones.

"Neighborhood promoters" are a group of European Common Market countries who encourage the notion that countries in particular regions form international organizations to assist coastal countries in managing offshore resources. This group earned the wrath of the "hardliners" by suggesting that coastal nations recognize traditional or "habitual" foreign fishing in their 200-mile zones.

"Freedom riders"--This group, by now very small and consisting mainly of Japan, insists on continued freedom of the seas for fishing and still refuses to accept the whole idea of a 200-mile limit. It is generally agreed here that this group is just about dead.

It is clear from the briefest observation that the 200-mile zone is here to stay, in one form or another. But it is this uncertainty and disagreement over the definition of the zone that will prevent a treaty from being formed here in Caracas. Perhaps a treaty will be adopted at the second session of the Conference, to be held next year. Or perhaps the world's coastal nations will join the trend of individual claims to broad zones for fisheries control and regulation of other resources and activities. Many countries already claim 200-mile limits and others are expected to follow suit as a result of the failure of a Caracas treaty.

United States Senators Muskie (Maine) and Stevens (Alaska), down here for a short time to observe the goings-on, held a press conference the other day and indicated that the U.S. might just be one of those nations that proclaims, by Congressional legislation, its own 200-mile fisheries zone before long. This was somewhat puzzling for some of the Conference delegations, since the U.S. delegation here has been a consistent foot-dragger in the general move toward 200-mile zones. The U.S. Law of the Sea position is, of course, set essentially by the national-security-minded Executive branch of our federal government, who wants to preserve the widest possible "free" ocean for the U.S. Navy; the view of Congress, however, may now well be in favor of establishing for the U.S. a 200-mile fisheries zone, at least on a temporary basis.

Since the 200-mile zone is almost certain to be internationally approved eventually, either by a Law of the Sea treaty or by near-universal national claims, the U.S. delegation to this Conference was prompted to present, on August 5, new written proposals for fisheries management (among other things). Prior to the new proposals, the official position of the U.S. here was the "species approach"--that is, species of fish on the high seas would be managed by coastal nations or by international bodies, depending on their migratory habits. There would be no 200-mile zone. The August 5 document conceded an up-to-200 mile coastal economic zone. Yet the differences between this and the prior "species approach" are perhaps largely differences in the wording of the proposals. The species approach seems to be very much alive in the new U.S. proposals, though it is disguised somewhat in "economic zone" language. True, the document says that a coastal country is to have "exclusive rights" (a catch-phrase down here) to regulate fishing in its economic zone, but "subject to the provisions of these articles." The remainder of the fisheries proposals contains over four pages of "subject-to's." What it all adds up to is, again, separate treatment for coastal, anadromous, and highly migratory

species.

Importantly for the Northwest, anadromous species, basically salmon, come under the strictest control of the coastal country. The U.S. proposed treaty would prohibit fishing for salmon anywhere beyond the territorial sea, except as authorized by the country where the salmon spawn. Other provisions indicate, however, that the spawning country would be obliged to allow foreign fishermen to fish for that portion of the salmon, within conservation limits, that its own fishermen were unable to take.

"Highly migratory" species are also still specifically provided for in the U.S. proposals. Now, though, the proposals list the species considered to be "highly migratory."\* The management of these species is to be carried out by the coastal nations within their own economic zones and the flag-nations of the fishing vessels outside national zones--both in accordance with rules set down by "appropriate international or regional fishing organizations." Coastal nations and the nations whose vessels fish for these species would be required to participate in or form the "appropriate" organizations.

Species other than anadromous and highly migratory--essentially the old U.S. proposal's "coastal" species, though they are not so called in the current proposal--are to be regulated by the coastal nation within its up-to-200-mile zone. Even for these species, however, the coastal nation would be required to allow foreign fishing if the fish resources would otherwise be wasted. Priorities are then set up in favor of traditional foreign fishermen and fishermen of the same region, including those of nearby landlocked countries.

It is unlikely that the new U.S. proposal will experience a favorable reception among the "hardliners"--those nations that insist on nearly complete sovereign rights of coastal countries within the economic zone--even though the proposal is probably still a more rational approach to fisheries management than a patchwork of exclusive 200-mile zones. Certainly most hardliners are not expected to approve the U.S.'s proposal that foreign fishermen arrested for violation of fish management regulations be turned over to their own countries for trial and punishment.

There will not, then, be any new fisheries laws as a result of the Caracas meeting. The Conference is expected to re-convene next year in an as yet undetermined city, and the debate will grind on. What happens in the meantime, however, will have considerable impact on the negotiations. If, as some observers expect, several more countries--perhaps including the U.S.--claim 200-mile fisheries limits prior to the next session, the U.S. delegation's "softline"

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\*They are: albacore tuna; bluefin tuna; big-eye tuna; skipjack tuna; yellowfin tuna; pomfrets; marlin; sailfish; swordfish; sauries; dolphin (fish); and cetaceans (whales and porpoises).

position will be significantly weakened.

In one way or another, the 200-mile fishery zone is a concept that is here to stay.

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