

## Editorial

“... we often lack the vision to differentiate between short-term advantage and long-term progress, between politically expedient positions and the indispensable objective of creating a civilized and peaceful world order.”

WITH THESE WORDS addressed to governments in his Report on the Work of the Organization, Mr. Perez de Cuellar, the Secretary-General of the United Nations, has spoken out bravely on behalf of humanity as a whole.

Only too often governments tend to regard themselves exclusively as a front for their commercial clients. But governments are more than mere departments of commerce and represent the whole of their population, however silent. It is not the intention to debate here whether it is true that “the greatest happiness of the greatest number is the foundation of morals and legislation”, but it is unacceptable that no regard should be paid to the general interest of mankind for a stable and ordered world.

An example of this is the Convention on the Law of the Sea, where the United States and a number of other western governments have refused to sign. While the text as now agreed may not be to the liking of western mining consortia, nevertheless the Convention as a whole presents such an advance in the development of the international rule of law that this should be the predominant concern of all responsible governments. The Convention is only at its beginning and opportunities will surely arise later for readjustment of offending or unworkable commercial arrangements which in any event do not seem likely to become effective within the next fifty years.

The immediate reaction to the refusal of the United States to sign the Convention is that the Soviet Union has entered the arena as its defender, already putting the United States at a disadvantage in obtaining any renegotiation of the mining provisions. If, as seems probable, the United States will in the end be alone in rejecting the Convention, this may not, however, be without advantage for the rest of the world. In the early stages a number of fundamental issues may have to be resolved, and the decision-making process may be facilitated by the absence of the United States. It will furthermore be a useful test of whether it is practicable for a major international institution to be established without U.S. participation.

However ungracious it may have been for President Reagan to disown the considerable achievement of the U.S. delegation under Elliot Richardson, it was at least a frank repudiation of the policies of the previous administrations. In the case of the other countries that have

refused to sign, it is difficult to see why they, too, without repudiating their delegations, have now found the mining clauses unacceptable. If their decision is based on solidarity with the United States, then they have not even managed to do the wrong thing for the right reason. For it is surely an important NATO interest that there should be a stable international regime for the oceans, rather than creating the danger of dragging the seabed into the East-West conflict.

During the final stages of the Conference a last effort was made by a dozen countries to bridge the gap between the developing countries and the United States and her allies. They were Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, the Netherlands, New Zealand, Norway, Sweden and Switzerland—three from the European Community, three from the Commonwealth and four neutrals—and they won for themselves the title of “the good Samaritans”. To them the world is indebted.

It is also worthy of note that in a report on the ninth session of UNCLOS, before the defection of the United States, Professor Bernard H. Oxman, Vice-Chairman of the U.S. delegation, and Chairman of the English Language Drafting Group, has stated:<sup>1</sup>

Perhaps the most important clause in the Preamble [to the Convention] is the reminder that the underlying purpose of a convention setting forth basic rules of law and dispute settlement mechanisms binding on all is to “contribute to the strengthening of peace, security, co-operation and friendly relations among all nations”.

Members of the legal profession, particularly those learned in the history and philosophy of law, might well regard such a statement as obvious and trite. Yet the debate on the Convention, even in the United States and some Western European countries, is so barren of reference to the values inherent in law and order as to raise disquieting doubts about the commitment to these traditional Western values. Public order is a basic requirement, even (or perhaps especially) for rational economic man.

<sup>1</sup> *American Journal of International Law* (April 1981) at p. 250.