

LAW AND CONTEMPORARY PROBLEMS

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FOREWORD

The conclusion of the final negotiating session of the Third United Nations Conference on the Law of the Sea (UNCLOS III) with the adoption of a United Nations Convention on the Law of the Sea at the March-April 1982 meeting of the Conference was anticipated by the international community as an event that would usher in a new era of stability and certainty for the law of the sea. This event culminated fifteen years of preparatory work and negotiation, first in the Seabeds Committee and then in the Third United Nations Conference. The publicly expressed hopes and aspirations of all participants in the Conference were that it would produce a comprehensive legal regime for the oceans that would be universally acceptable. The negotiating rules for the Conference—to proceed by consensus and to resort to voting only when all efforts to reach consensus had failed—were designed to produce this result. Unfortunately for these aspirations, the Conference did not achieve consensus, and at the last negotiating session it resorted to voting and gave final approval to the Treaty text by a record vote of 130 in favor and 4 against, with 17 abstentions.

The most significant aspect of this final outcome is that the United States cast one of the negative votes. Shortly thereafter, the President of the United States announced that the United States would not participate further in the Conference except at the technical level, would not sign the Convention when it was opened for signature in Jamaica in December 1982, and would not take part in nor support financially the work of the Preparatory Commission to be convened in March 1983.

The United States' total rejection of the Convention and its refusal to participate further in the Conference proceedings¹ came as a shock to other participants in the Conference as well as to a substantial segment of the domestic law of the sea constituency. From the beginning the United States had taken an active role in the Conference and had made major contributions to resolution of some of the more intractable problems the negotiators had faced. It had proposed the parallel

1. The United States representative on the Drafting Committee continued to serve until the final text was approved in September, and a United States representative did sign the Final Act of the Conference in December.

system of exploitation of the deep seabed which became the heart of the system finally adopted; it had originated the idea of the Review Conference, which in its finally adopted form proved to be one of the stumbling blocks for United States acceptance; and its delegation worked tirelessly for the complex sets of accommodations that are reflected in the final Treaty text governing navigation rights, fishing, protection of the marine environment, and scientific research.

The symposium, "The Law of the Sea—Where Now?", the proceedings of which are reported in this issue of *Law and Contemporary Problems*, was held at Duke University School of Law on October 29-30, 1982, in the interim between final approval of the text and formal signing of the Convention in December. The conveners believed that this schedule would permit retrospective assessments of the work of the Conference as well as prospective appraisals not only of the effect of the Conference and Convention on the development of the international law of the sea but also of the effect of nonparticipation in the Convention by major international actors such as the United States. With this dual purpose in mind, we assembled a group of speakers and commentators² that represented a diversity of nationalities, viewpoints, and professional backgrounds. Most of them had, at one time or another, been officially connected with the Conference or national delegations to it. Many of them occupied major leadership positions in the Conference. Some are both scholars and diplomats. The symposium attracted as additional attendees³ a number of academicians, government officials, and private persons who had been involved in one way or another as participants in or critics of the evolving law of the sea during the past two decades. The comments made by this group at the end of each formal presentation and the responses of the panelists are reproduced following the printed remarks of the named speakers.

The papers delivered at the symposium addressed six different topics. The first two, delivered by Ambassador Tommy T.B. Koh, President of UNCLOS III, and Ambassador James L. Malone, Chairman of the United States delegation, appraise the accomplishments of the Conference, the latter, of course, from the United States point of view. The remaining four papers are directed to functional areas dealt with by the Conference: the deep seabed, navigation, protection of the marine environment and scientific research, and dispute resolution. The principal speakers addressing these topics were persons that had had a major influence on the respective substantive areas at the Conference: Ambassador John Bailey of Australia (Rapporteur of Committee I), who spoke on the deep seabeds; Professor Thomas A. Clingan, Jr. (United States spokesman on Committee II), who spoke on navigation; Ambassador Jose Luis Vallarta of Mexico (Chairman of the Informal Consultation Group on the Protection and Preservation of the Marine Environment), who spoke on pollution and scientific research; and Professor Louis Sohn (Member of the United States delegation and a principal architect of the dispute resolution provisions of the Convention), who spoke on dispute resolution. In addition, at the symposium dinner and luncheon events, Dr. Arvid Pardo gave

2. The program of the symposium, listing the speakers and commentators and the topics of their papers, is reprinted as Appendix A.

3. A list of the participants in the symposium is printed in Appendix B.

his assessment of UNCLOS III in an address entitled "Before and After"; the Honorable Alvaro de Soto (former Representative of Peru to UNCLOS III and currently Special Assistant to the Secretary General of the United Nations) spoke informally concerning key events and decisions taken at the Conference; and Ambassador Alan Beesley of Canada (Chairman of the Drafting Committee as well as a participant in and leader of several informal negotiating groups at the Conference) spoke on the negotiating strategy of the Conference. The remarks of these key participants, as well as the comments on them by other attendees at the symposium, coming as they did in the immediate aftermath of the conclusion of the Conference, should add significantly to the growing body of literature concerning the Third United Nations Conference on the Law of the Sea.

It is important for the reader to bear in mind that the papers and comments reported in this issue were prepared and delivered at a particular point in time—October 29-30, 1982. A number of significant events affecting the law of sea have occurred during the period between their delivery and the editing and publishing of this issue. Among these events are the signing of the Convention at Jamaica by 117 states in December 1982, the proclamation of a United States exclusive economic zone in March 1983, and the convening of the Preparatory Commission, also in March 1983. The authors did not have the opportunity to revise their manuscripts to take account of these and other later events.

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