

PART A

Chapter 4: THE RULE OF LAW AND CONCEPTS OF RIGHTS

Law of the Sea Conference

The eighth session of the third United Nations Conference on the Law of the Sea convened in Geneva from March 19 to April 27, 1979 and in New York from July 19 to August 24, 1979.

The challenge facing delegates at Geneva was to make sufficient progress on the issues left outstanding at the end of the seventh session in 1978 to warrant the issuance of a revision of the Informal Composite Negotiating Text (ICNT), the basic negotiating document of the Conference. In the event, it proved possible to reach this critical benchmark of progress and the ICNT/Rev 1 of April 28, 1979, reflected additional areas of consensus on many issues.

The ICNT/Rev 1 incorporated new or amended articles which are key components of the prospective global oceans regime. These relate to sea-bed mining issues, the definition of the outer edge of the continental margin, rights of access by land-locked and geographically disadvantaged states to the living resources of economic zones in the same region or sub-region, settlement of disputes concerning the exercise of coastal state sovereign rights over fisheries in the economic zone, and protection of the marine environment.

The starting point for the second part of the eighth session in New York was the ICNT/Rev 1 and a determination to build on the substantive progress achieved at the Geneva session. The key objectives were to resolve all the outstanding issues relating to the non-sea-bed mining issues and to narrow the remaining differences regarding the sea-bed regime in order to prepare the way for concluding the Conference in 1980. While not all the outstanding non-sea-bed issues were resolved, some important ones were settled and the extent of differences was reduced on nearly all problems still before the Conference. Accordingly, it was decided that the Conference should move at its ninth session in 1980 into its final decision-making process.

The area in which the greatest amount of work remains to be done at the Conference is the creation of an international regime for the regulation of exploitation of the resources of the deep-sea-bed. 1979 saw a great deal of progress in this area, especially in the drafting of provisions concerning the transfer of technology, financial arrangements (financial terms of sea-bed mining contracts and the financing of the Enterprise, the "operating arm" of the proposed International Sea-Bed Authority) and the composition of and

voting in the Authority's Council. However, much work remains before these and other contentious issues can be fully resolved. Of particular importance to Canada was the inclusion in the ICNT/Rev 1 of a nickel production ceiling (based on the formulation agreed *ad referendum* by Canada and the U.S. in 1978). The ceiling is designed to relate future sea-bed mining to projected growth trends in nickel production. It is intended to protect land-based mineral producers against disruption of their mineral markets as a result of sea-bed mining production. Potential sea-bed producing states, however, have demanded that a provision guaranteeing a certain minimum amount of sea-bed production, irrespective of growth rates, be included in the ceiling formulation. Land-based mineral producing states (including Canada) continue to resist this proposal strongly.

Another major Canadian concern has been to secure recognition at the Conference of its sovereign rights (as a coastal state) over the resources of its continental shelf to the edge of the continental margin, including those areas where the margin extends beyond 200 miles. This objective was largely achieved in 1979 with the inclusion in the ICNT/Rev 1 of a compromise definition of the continental shelf based, in large part, on a proposal co-authored by Canada and Ireland. As part of the negotiating process at the Conference, it has been accepted that consensus on the continental shelf definition would require a system of payments and contributions to the international community equal to a certain percentage of revenues derived from the exploitation of non-living resources of the continental margin beyond 200 miles. Thus the inclusion of a revenue sharing provision in the ICNT/Rev 1 received a good measure of support at the beginning of the session in New York. However, several delegations recorded their views that the 7 per cent figure was too low (mainly the land-locked and geographically disadvantaged and developing states) or too high (Canada and other broad margin states). Some delegations (including Canada) also referred to the need for some kind of limitation to restrict the potential financial burden in respect of exploitation in very deep, distant and cold waters.

Another significant development at the eighth session was the inclusion in the ICNT/Rev 1 of a compromise text (negotiated at the seventh session) concerning the sharing by land-locked and geographically disadvantaged states of that part of the living resources of the exclusive economic zone of their regions and sub-regions surplus to the needs of