

## PART A

### Chapter 4: INTERNATIONAL LAW AND CONCEPTS OF RIGHTS

#### Law of the sea

The ninth session of the UN Conference on the Law of the Sea (LOS) which took place in New York in March and in Geneva in August 1980, was generally thought to be one of the conference's most productive. The session saw the resolution of two long-standing issues: the limits of the continental shelf and the voting system for the Council of the International Seabed Authority (ISA). Both questions had been vigorously debated over a number of previous sessions and their resolution paved the way for agreement to end negotiations at the tenth session in the spring of 1981 and to adopt the convention in the fall. With this prospect in mind, the conference agreed to call its third revision of the Informal Composite Negotiating Text (ICNT) the *Draft convention on the law of the sea* (informal text).

A great deal of progress was made during the ninth session in developing an agreed on regime to mine the seabed, despite strong criticism directed at the USA for its passage, in June, of unilateral seabed mining legislation. Much of the debate during the session centred around the seabed nickel production regulation formula, which was designed to phase in seabed mining with minimum disruption to existing land-based producers of the minerals found on the seabed (nickel, copper, cobalt, and manganese). At the ninth session, a group of mineral consuming countries, which will also be the leading seabed mining states, pressed to have the formula altered in order to guarantee seabed miners a minimum level of production. The revised formula was included in the text over the objections of Canada and land-based producers from Asia, Africa and Central America. Following the plenary debate in which 22 countries expressed their dissatisfaction with the revised formula, the Philippines, supported by Canada, proposed that the UN Secretariat prepare a study on the effects of the formula for presentation at the tenth session. The question therefore remains open for further consideration.

Another item of general concern, the question of voting in the ISA Council, had a more satisfactory result. This matter had long been a contentious issue, with the "Group of 77" maintaining that no one country or group of countries should have a veto over Council decisions, and the USA, the EC, Japan and the USSR insisting that they must have a major role in making Council decisions in order to protect their seabed investments. The question was resolved during the August session as a result of private negotiations between the USA and the leaders of the "Group of 77" which led the LOS conference to accept an innovative, three-tiered voting system for the Council. Seabed mining policy questions will be settled by

two-thirds, three-quarters or consensus votes in the Council, depending on the importance and sensitivity of the particular issue.

The LOS conference achieved one of its most significant accomplishments at the ninth session by finally reaching agreement on the outer limits of the continental shelf insofar as coastal state sovereign rights are concerned. This matter had been under discussion since the start of the conference in 1973 and, by the ninth session, the basic limits formula, favourable to wide margin states such as Canada, was already in place. The questions which had not been resolved concerned the limits to be put on ridges on the shelf, some of which run many hundreds of miles on the ocean floor, and the terms of reference for an international commission on the limits of the continental shelf to assist a coastal state in determining its continental shelf limits. These two matters were resolved, although Canada was not happy with the terms of reference for the limits commission since the commission could interfere with the exercise of a coastal state's sovereign rights over the shelf.

On fisheries questions, Canada joined forces with Argentina to attempt once again to have the text changed to take into account the need for specific conservation measures for fish stocks which straddle the 200-mile economic zone. The Canada-Argentina proposal, while supported by some 30 delegations, was opposed by a number of distant-water fishing states, particularly the USSR. The matter was not resolved and the question thus remains open for consideration at the tenth session.

The issue of devising a boundary delimitation formula for the economic zone and continental shelf between adjacent and opposite states was given a great deal of attention. A compromise formula was included in the text which tries to meet the concerns of the two opposing groups on the issue, one which favours the equidistance method and the other which favours the equitable principles method. The formula, which provides that delimitation shall be "in conformity with international law" and refers to both equitable principles and equidistance, appears to represent the best basis for achieving consensus on this question. The matter was not settled and remains on the LOS conference agenda.

Debate on questions involving the marine environment and marine scientific research had largely been concluded by the beginning of the ninth session, but the USA continued to press to have some of the existing provisions on marine scientific research on the continental shelf beyond 200 miles altered in favour of the researching state. The compromise solution was