

B. THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF SEA (1973-1982)

1. Participants, Sessions

When in 1972 the UN General Assembly confirmed its decision to convene the Conference in 1973, it assumed the sessions would last through 1974, but finish no later than 1975. In the event, the first session of the Conference was opened on December 3, 1973, and the Conference concluded on September 24, 1982. During these nine years eleven sessions, including five resumed, sessions, were held, one in Caracas, five in Geneva, and ten in New York. With two exceptions, the sessions and resumed sessions lasted about one to two months each. A large number of the member states of the United Nations participated in the Conference: a total of 164 states were registered and an average of 140 delegations were represented at the sessions. More than one hundred observers from territories, organizations and specialized agencies of the United Nations, liberation movements, and other inter-governmental as well as non-governmental organizations also took part.

2. The Initial Problems

The Conference was confronted with a list of no fewer than twenty-five different topics, ranging from the broad areas discussed at the 1958 and 1960 conferences to a number of new fields such as land-locked states, shelf-locked states, marine environment, scientific research, archipelagoes, and a report of the Sea-Bed Committee consisting of six volumes, containing hundreds of individual proposals, but lacking a single negotiating text. The topics were often technical, of widely differing nature, and highly complex, such as the technical, commercial, scientific, and financial impact of deep sea mining. In addition, many specific national interests had to be considered, arising from reasons of security, strategy, and economic resources. The work was further hampered by the fact that many of the topics such as straits or the continental shelf were highly controversial or included novel concepts.

3. "Gentleman's Agreement" and "Package Deal"

Both the General Assembly and the Conference were well aware that the new Convention would be of value only if it found wide acceptance in the international community. In order to ensure such acceptance as far as humanly possible, the General Assembly approved a text which was later incorporated into a declaration appended to the Rules of Procedure of the Conference, adopted at the second session. According to this "Gentleman's Agreement,"

The Conference should make every effort to reach agreement on substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted.

The unique rules of procedure consequently contained special provisions to avoid or delay the taking of decisions on substantive matters by voting. Delaying a vote was introduced to provide a cooling-off period and to avoid hasty voting, a further step to achieve the greatest possible unity among the participants.

In addition, the Conference agreed to work on the basis of a "package deal." This concept assumed that the Convention should meet the minimum interests of the largest possible majority, while at the same time accommodating the essential interests of the major powers and the dominant interest groups. It was also implicit that there would be trade-offs and reciprocal support between various claims.

4. The Negotiating Process

The negotiations during the Conference were conducted in several different types of groups, according to the nature of the topic under discussion. General issues and the subjects of peaceful use of the oceans and enhancement of the universal participation of states were dealt with in the plenary. Other subjects were delegated to the Main Committees as follows:

First Committee: Regime of the sea-bed and ocean floor beyond national jurisdiction;

Second Committee: The common regime of the law of the sea and related topics;

Third Committee: Environment, scientific research and development, and transfer of technology.

There was also the General Committee, which acted as the Conference bureau, the Credentials Committee, and the Drafting Committee. The task of the latter was to formulate drafts and give advice on drafting upon request, without re-opening substantive discussion on any matter.

The Main Committees worked with various forms and methods of negotiations. There was a trend toward simplification of the negotiation process by reducing the number of delegations at times to even fewer than ten, while always taking care to include representation of divergent interests.