

UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA AT 30:
REFLECTIONS

30



UNITED NATIONS

**United Nations Convention
on the Law of the Sea
at Thirty
Reflections**

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Reflections



United Nations

**Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs**

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FOREWORD

The tenth day of December 1982 was a milestone for multilateralism. After years of detailed and delicate negotiations, the United Nations Convention on the Law of the Sea was opened for signature. That same day, an unprecedented 119 countries signed the treaty, a record that still stands. This achievement was made possible by the hard work and meticulous preparation of a diverse and committed group of women and men. This booklet tells their story.

For 30 years, the law of the sea has guided our management of the oceans and the activities that take place on and beneath them. The progressive development of the law of the sea through the Convention and related instruments has provided a flexible and evolving framework. It has guided us through the peaceful settlement of disputes, the delineation of the outer limits of the extended continental shelf, and the administration of the resources of the international seabed. It contributes to international peace and security and the equitable and sustainable use of the marine environment.

The primacy and relevance of the “constitution for the oceans” were most recently affirmed by the Rio+20 United Nations Conference on Sustainable Development, which emphasized that the law of the sea provides the legal framework for the conservation and sustainable use of the oceans and their resources. The law of the sea is also central to the Oceans Compact, which I launched in Yeosu, Republic of Korea, to provide a strategic vision for the United Nations system to deliver on its ocean-related mandates.

The peaceful management of our seas and oceans requires broad engagement. The authors of these personal recollections have played a major role. I urge all stakeholders to follow their lead. By working together we can achieve healthy oceans for prosperity and sustainable development for all.

BAN Ki-moon
Secretary-General

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THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

*Shunji Yanai**

Together with my colleagues from the International Tribunal for the Law of the Sea (the “Tribunal”), I am delighted to celebrate the Thirtieth Anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea (the “Convention”). Of the 21 judges of recognized competence in the field of the law of the sea composing the Tribunal, 11 participated in the Third United Nations Conference on the Law of the Sea and have been working ever since on law of the sea issues.

The Convention established an innovative, complex yet flexible system of dispute settlement to ensure the proper interpretation and efficient application of its provisions based on the delicate balancing of divergent interests of nations. Part XV of the Convention gives States Parties the choice of one or more compulsory procedures leading to binding decisions; these procedural settings include the Tribunal, the International Court of Justice and arbitration. The Tribunal is a new judicial institution specialized in the law of the sea and established under the Convention as a key element of its dispute settlement system.

Nineteen cases have been filed with the Tribunal since it began operation in 1996. These include cases involving prompt release of vessels and crews, provisional measures for preventing serious harm to the marine environment and cases on the merits. Recent matters decided by the Tribunal include the advisory opinion given last year by its Seabed Disputes Chamber (the “Chamber”) at the request of the Council of the International Seabed Authority (the “Authority”); and the judgment of 14 March 2012 on the dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal.

In 2010, the Council of the Authority requested the Chamber to render an advisory opinion on several questions regarding the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the International Seabed Area in accordance with the Convention and with the 1994 Agreement relating to the implementation of Part XI of the Convention. Fourteen States Parties to the Convention, the Authority and four other international organizations expressed their views by way of written or oral statements. The Chamber, after having examined these views, delivered its advisory opinion on 1 February 2011, a little less than nine months after the request was submitted. In its advisory opinion, the Chamber explained the nature and extent of the responsibilities and obligations of a sponsoring State and gave guidance as to the necessary and appropriate measures which a

* President, International Tribunal for the Law of the Sea.

sponsoring State must take. Thus the Chamber facilitated the work of the Authority by clarifying the relevant provisions of the Convention and related documents.

The dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal, submitted to the Tribunal on 14 December 2009, is the first maritime delimitation case to have come before the Tribunal. By the judgment rendered on 14 March 2012, the Tribunal delimited the territorial sea, the exclusive economic zone and the continental shelf within 200 nautical miles (“M”), as well as the continental shelf beyond 200 M between Bangladesh and Myanmar. With regard to the continental shelf beyond 200 M, the Commission on the Limits of the Continental Shelf (the “Commission”) established under the Convention decided, because of the dispute between Myanmar and Bangladesh, to defer consideration of the two States’ respective submissions on the limits of the continental shelf beyond 200 M. If the Tribunal declined to delimit the continental shelf beyond 200 M, the issue concerning the establishment of the outer limits of the continental shelf of these States might remain unresolved. The Tribunal concluded: “[I]n order to fulfil its responsibilities under [...] the Convention in the present case, it has an obligation to adjudicate the dispute and to delimit the continental shelf between the Parties beyond 200 M. Such delimitation is without prejudice to the establishment of the outer limits of the continental shelf in accordance with article 76, paragraph 8, of the Convention”. This is the first judgment of an international court or tribunal delimiting the continental shelf beyond 200 M.

The judgment also states: “The Convention sets up an institutional framework with a number of bodies to implement its provisions, including the Commission, the International Seabed Authority and this Tribunal. Activities of these bodies are complementary to each other so as to ensure coherent and efficient implementation of the Convention”. The advisory opinion of the Chamber referred to above is another example of the contribution made by the Tribunal to this end.

THE INTERNATIONAL SEABED AUTHORITY

*Allotey Odunton**

In mining, ore is the material that is identified as economically extractable. Ore is defined as a mineral assemblage that under existing legal, technical and political conditions can be mined at a profit. Deep seabed mining of polymetallic nodules in the Area is at best a nascent industry that requires that unique types of mineral occurrences/resources, namely polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts deposits which occur in relatively unknown environments be converted into sources of the valuable metals that contain in order for it to be considered established.

During the Third United Nations Conference on the Law of the Sea many of the political issues regarding these resources were resolved. These included who owned these resources (“the common heritage of mankind), how all members of the international community could participate in their equitable exploitation (the parallel system and the Enterprise),who would administer the resources (the International Seabed Authority), the requirement that the environment would have to be protected, how disputes would be settled (the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea) and how revenues earned from exploiting these resources would be shared. The Implementation Agreement fine-tuned some of these decisions, in particular those that sought to impose controls on the commercial nature of the undertaking.

Thirty years after the opening for signature of the United Nations Convention on the Law of the Sea, the International Seabed Authority, the body entrusted to administer the resources of marine areas beyond the limits of national jurisdiction, is engaged in the process by formulating rules, regulations and procedures to govern the various phases of exploiting these resources (prospecting, exploration and exploitation). The process includes the very important objective of protecting the flora and fauna of the marine environment from the impacts of the activities under each of the phases identified above, providing security of tenure for exploration and exploitation contractors with the Authority, and devising a system of payments that is both fair to the contractor and the Authority during the exploitation phase.

During the 18 years of its existence, the International Seabed Authority has adopted three codes for Prospecting and Exploration for polymetallic nodules, polymetallic sulphides and for cobalt-rich ferromanganese crusts deposits. It has entered into contracts for exploration with eleven contractors for polymetallic nodules and polymetallic sulphides, and by the end of the year would have entered into a total of 17 contracts including two for polymetallic

* Secretary-General of the International Seabed Authority since 1 January 2009.

sulphides, and three with developing State sponsors of activities in the Area. In the forthcoming biennium, it is also expected that a thorny problem in its efforts to protect the marine environment, namely the taxonomy of the fauna associated with polymetallic nodules will be addressed. In response to a request to formulate an exploitation code for polymetallic nodules, plans are afoot to meet this request in accordance with the Convention.

THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

*Galo Carrera**

This year we also celebrate an important landmark in the implementation of the Convention. We reach this year the fifteenth anniversary of the first election of the members of the Commission on the Limits of the Continental Shelf held by the Sixth Meeting of States Parties to the Convention on 13 March 1997.

These two periods of 30 and 15 years, respectively, provide us with sufficient hindsight to pause for careful thought and ask ourselves the question: What do we know now? In contrast with the information available to assess the potential impact of the provisions contained in article 76 to determine the outer limit of the continental shelf beyond 200 nautical miles during the Third United Nations Conference on the Law of the Sea.

In 1975, one of the most influential suggestions was made as a humble footnote in the single negotiating text, attached to paragraph 5 of Alternative A of the Evensen Proposal:

It is assumed that the Continental Shelf Boundary Commission is an independent organ, and that its composition would ensure that it dispose of the necessary technical and scientific expertise. The scope of powers of the Commission, and the questions of possible appeal procedures, of the participation of legal expertise of the Commission, and of the relationship with the proposed dispute settlement procedures under the new Convention, remain to be discussed.¹

It must be noted that a dual scope of work involving legal and technical expertise was originally contemplated. As we all know, only the technical part of this proposal survived. The CLCS was established as an Independent Treaty body of experts. Its mandate is established in article 76 of and Annex II to the Convention. The date of issue of the Scientific and Technical Guidelines in 1999 marked the initial recording of the 10 year deadline established in Annex II for the delivery of all Submissions as decided by Meeting of States parties to the Law of the Sea (MSPLOS). Sixty-one submissions have been made to the CLCS to date. Some large coastal States were not contemplated as early as 1978 to make submissions, whereas small-island States have made submissions and were not anticipated to do so either in 1978. Only eighteen recommendations have been issued. The lag is explained in part by:

- The large size and high scientific and technical complexity of submissions made by States, irrespective of submitted area. The CLCS Rules and the

* Chairperson of the Commission on the Limits of the Continental Shelf.

¹ Reproduced in XI Platzöder 501.

Guidelines ensure the examination of all data contained in submissions prepared by States over periods between 5 to 10 years or longer;

- The large amount of submissions delivered a few weeks prior to the deadline of 13 May 2009; and
- The bilateral schedule for work established between the CLCS and each submitting State according to Annex III of the Rules.

The total number of Submissions is now estimated to approach 120. Forty-four among the sixty-one Submissions received to this date benefited from advice given by former and current members of the CLCS.

What have we learned? The work to be conducted by States was underestimated in terms of its scientific and technical breadth and scope, cost and time:

- The amount of scientific and technical data contained in a single national submission surpasses the size of the full World data set used in 1978;
- The cost of a submission can range from hundreds of thousands of dollars to hundreds of millions of dollars. Training and Trust Funds have made an important contribution to assist developing States; and
- The preparation of a submission can range from 3 to 10 or more years.

The work to be conducted by the CLCS was underestimated:

- A preliminary estimate of a total of 33 submissions in 1978;
- Sixty Submissions and 1 revised submission at present going into a final total of nearly 120;
- Ten years for States? No deadline was specified in the Convention for the work of the CLCS; and
- The CLCS is the only UNCLOS body not dedicated full-time to fulfil its mandate.

The mandate of the CLCS is clearly established in article 76 and Annex II. Its mandate is essentially to conduct a scientific and technical task within the legal framework of the Convention. In an ideal world, there would be no land disputes, no maritime disputes, and no disputes over the interpretation of parts of the Convention among States. In the real world, however, the CLCS is likely to face a series of important questions and challenges during the delivery of its mandate.

As international tribunals proceed to consider an increasing number of cases relating to the delimitation of continental shelf boundaries beyond 200 M among States, the entitlement of States to extend that boundary may become a substantive aspect of those cases. For example, articles 77 and 84 of the rules of ITLOS establish the possibility to arrange for the attendance of a witness or expert to give evidence in the proceedings, and to request an appropriate

intergovernmental organization to furnish information relevant to it, respectively. The CLCS is not an intergovernmental organization.

As the heavy workload of the CLCS may impose delays in the determination of the outer limits of the continental shelf beyond 200 M next to the Area, submitting States may need to exercise now a certainly unforeseen degree of caution in awarding explorations licenses in certain regions. It is also important to highlight that the CLCS is not explicitly enabled by the Convention to request advisory opinions from ITLOS; it is not explicitly enabled to provide scientific opinions to ITLOS; and it is not explicitly enabled to provide information to the International Seabed Authority.

On the important occasion to commemorate the thirtieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea, I wish to make a special recognition of the crucial role played by Ambassador Arvid Pardo of Malta, and in particular his visionary speech delivered 1 November 1967 before the General Assembly to reflect his vision that what lied ahead of us was:

the unique opportunity to lay solid foundations for a peaceful and increasingly prosperous future for all peoples.

At this time, and always at the risk of inevitably leaving out key figures during the Conference, I want to express my deep appreciation for the crucial work done during the Third Conference by: Ambassadors Shirley Amerasinghe from Sri Lanka; Tommy Koh from Singapore; Jens Evensen from Norway; Jorge Castañeda from México; Bernardo Zuleta from Colombia; Satya Nandan from Fiji; and Chris Pinto from Sri Lanka.

And of course, I want to thank and convey a sincere apology to all those many other brilliant delegates, a list too long to be given in a brief presentation of this nature, for their vision and legacy. The implementation of the Convention is now mostly in the hands of generations which did not participate in the Third Conference. But we have the legacy of a magnificent vision and we have the 1982 United Nations Convention on the Law of the Sea.

ARGENTINA

*Oswaldo Pedro Astiz**

En los siguientes párrafos se trata de recapitular sobre algunos aspectos de la evolución desde la entrada en vigor de la Convención en 1994, desde un punto de vista muy personal.

Como es bien conocido, los negociadores de la Convención decidieron usar términos científicos en un contexto jurídico. Esto hace que la Convención a veces se aparte significativamente de las definiciones y terminología científica reconocida. “Plataforma continental” es un concepto morfológico, tanto como “talud continental”, aunque sean manifestaciones de procesos geológicos. “Margen continental” es un concepto geológico empleado en la Convención como si fuera morfológico (basado en el pié del talud continental, FOS). Las fórmulas son 60 M (millas náuticas) desde el pié del talud o donde el espesor de las rocas sedimentarias es al menos el 1% de la distancia entre ese punto y el pié del talud, lo que está relacionado con la morfología de la capa de sedimentos. El artículo 76 no utiliza ningún concepto geológico para la definición de los límites exteriores de la plataforma continental, sólo recurre a la morfología.

El párrafo 4 del artículo 76 define “el borde exterior del margen continental” y el párrafo 5 estipula las restricciones, el “no más allá” de las líneas. El párrafo 6 instala la gran excepción, la de las cordilleras submarinas, cuyos límites exteriores no pueden extenderse más allá de las 350 M. La Convención no dice que las cordilleras submarinas no sean componentes naturales del margen continental, más bien la excepción entre ellas –tales como las mesetas, emersiones, cimas, bancos y espolones de dicho margen- (respecto de los cuales puede aplicarse la restricción de la profundidad de 2500 m más 100 M). La base lógica de esta excepción es que las cordilleras pueden extenderse a muy largas distancias (cientos de millas) desde las masas terrestres y que, en algún sentido, pueden llegar a confundirse con las cordilleras oceánicas. Algunos entienden que si el origen geológico de una cordillera submarina es el mismo que el de la masa terrestre a la que está conectada, puede ser tomada como un componente natural del margen continental y ser considerada como elevación submarina. El hecho es que, sin embargo, sigue siendo una “cordillera”.

Otra cuestión interesante es el de las líneas rectas que conectan o puentean puntos de diferente naturaleza para establecer el límite exterior del margen continental. Hay puntos de las líneas de 60 M medidas desde el pié del talud continental, los puntos del 1% del espesor sedimentario, las intersecciones con

* Hidrógrafo, Miembro Argentino de la CLPC 1997-2012. Miembro del grupo que preparó la Ley 23.968 (Espacios marítimos, 1991). Asesor del Departamento de Límites y Fronteras, Ministerio de Relaciones Exteriores de la República Argentina.

las líneas de las restricciones y con la de las 200 M, donde esté en el presente. Tomando en consideración los párrafos 1 y 2 del artículo 76, la plataforma continental puede extenderse hasta el borde exterior de su margen continental o hasta 200 M, no más allá de ambas. El párrafo 2 declara que los párrafos sustantivos son del 4 al 6 (el 4, las fórmulas, el 5, las restricciones y el 6 las cordilleras submarinas y las elevaciones submarinas). El párrafo 7 tiene una naturaleza de apoyo o instrumental, puramente técnica, que establece la forma de trazar el límite exterior de la plataforma continental donde se extienda más allá de las 200 M, que es usando líneas rectas que no excedan 60 M en longitud, conectando puntos fijos, definidos por coordenadas. Lo que quiere decir no usando arcos de círculos ni otras curvas ni usando las coordenadas del centro de un círculo ni líneas rectas de 100 M de longitud. No sería difícil cometer el error de entender el párrafo 7 como sustancial – en el mismo nivel que los párrafos 4 a 6- y, por lo tanto, tratando de usar segmentos de líneas rectas de 60 M para enlazar, puentear o conectar cualquier punto de las fórmulas atribuidas a diferentes territorios o territorios pertenecientes a diferentes estructuras geológicas o morfológicas, y a líneas de las 200 M desde las líneas de base. El trazado es, por supuesto, en máximo beneficio para el Estado ribereño. Algunos entienden que, en caso de duda, o en cualquier caso, el beneficio debería ser para el Estado ribereño. Por el contrario, otros argumentan que el beneficio debería ser para la comunidad internacional o “el patrimonio común de la humanidad”. En algún lugar, entre medio, está el actuar dentro del marco de la Convención.

El párrafo 4.b) establece que “Salvo prueba en contrario, el pie del talud continental se determinará como el punto de máximo cambio de gradiente en su base.” El origen de la idea de una prueba (evidence, en inglés) surgió en algunas propuestas hechas en la Tercera Conferencia alrededor de 1975. Cuando sólo se consideraba la fórmula de Hedberg (60 M desde el pie del talud), significaba dejar al Estado ribereño la posibilidad de algo como En ausencia de evidencia científica satisfactoria (que puede incluir evidencia geológica o geomorfológica) que el margen continental se extiende hasta un límite diferente de esa fórmula. Cuando se incorporó la fórmula de Gardiner (1% de espesor sedimentario), ninguna otra alternativa de evidencia fue dejada al Estado ribereño. Nada más que el 1%. Finalmente, surgió la posibilidad de la prueba en contrario para el pie del talud. Parece que la voluntad de los negociadores de la Convención fue dejar a los Estados ribereños algún grado de libertad en cuestiones científicas relativas a la plataforma continental. Teniendo las posibilidades de prueba en contrario y de máximo cambio de gradiente en la base (donde el concepto clave es la base), se puede pensar que la idea es que se puede elegir entre los dos: uno o el otro. Realmente, hay infinitas posibilidades entre ambos extremos. Entonces surge el concepto de máximo cambio de gradiente en la base con apoyo geológico y geofísico. La determinación de la base y del máximo cambio de gradiente por medio de batimetría y morfología es, en general, muy simple, y deja poco espacio para dudas. En su lugar, el

concepto de prueba (evidence) no es tan fácil de comprender o aplicar. ¿Primero, qué se puede entender por prueba o evidencia científica? ¿Significa que es algo “obvio para los ojos o la mente”? ¿O significa “indicación, señal, proposición, suposición, prueba o hipótesis”? En todo caso, evidencia o prueba científica es absolutamente válido para identificar la ubicación de la base y del pie del talud continental. Sólo en su ausencia la regla general del máximo cambio de gradiente debe ser aplicada.

Estas son algunas de las cuestiones que surgen en la aplicación de la Convención en relación con los límites de la plataforma continental más allá de las 200 M. Con el avance de la ciencia y el desarrollo de técnicas, tanto como el mejor conocimiento de la Tierra, surgirán más cuestiones.

*Translated from Spanish**

The following paragraphs intend to recap on some aspects of the evolution since the entry into force of the Convention in 1994, from a very personal point of view.

As it is well known, the negotiators of UNCLOS decided to use scientific terms in a legal context. This makes the Convention sometimes depart significantly from accepted scientific definitions and terminology. “Continental shelf” is a morphological concept, as well as “continental slope”, although they are the “expressions of geological processes”. “Continental margin” is a geological concept used in the Convention as a morphological one (based on the foot of the continental slope, FOS). The formulas are 60 M (nautical miles) from the FOS or where the thickness of sedimentary rocks is at least 1% of the shortest distance from such point to the FOS, which is related to the morphology of the sedimentary layer. Article 76 does not use any geological concept for the definition of the outer limit of the continental shelf, it recurses only to morphology.

Paragraph 4 of article 76 defines the “outer edge of the continental margin” and paragraph 5 stipulates the constraints, the non plus ultra lines. Paragraph 6 provides the big exception, that of submarine ridges, whose outer limits cannot go beyond 350 M. UNCLOS does not stipulate that submarine ridges are not natural components of the continental margin, but rather an exception among them – such as plateaux, rises, caps, banks and spurs – (regarding which the constraint of 2500 m depth plus 100 M can be applied). The rationale of this exception is that ridges can take place at extremely long distances (even hundreds of miles) far from land masses and in some way they can be confused with oceanic ridges. Some understand that if the geological origin of a ridge is the same of that of the land mass to which is connected, the ridge is to be taken as a natural component of the continental margin and can be regarded as a submarine elevation. The fact is that, nevertheless, it is still “a ridge”.

* Hydrographer, Argentine Member of the CLCS 1997-2012. Member of the team in charge of drawing Law 23,968 (Maritime Areas, 1991). Currently Adviser to the Department of Frontiers and Limits, Ministry of Foreign Affairs of Argentina.

Another interesting issue is that of straight lines connecting or bridging points of different nature for establishing the outer limit of the continental shelf. There are the points on lines of 60 M from the FOS, the points of 1% sediment thickness, the intersections with the constraint lines and with the 200 M lines, where it is at the present time. Taking into consideration paragraphs 1 and 2 of article 76, the continental shelf can extend up to the outer edge of the continental margin or to 200 M, not beyond both. Paragraph 2 states that paragraphs 4 to 6 are the substantive ones (para. 4 the formulae, para. 5 the constraints, and para. 6 the submarine ridges and submarine elevations). Paragraph 7 has a supportive or instrumental nature, being purely technical, and establishes the form to delineate the outer limits of the continental shelf where that shelf extends beyond 200 M, that is using straight lines not exceeding 60 M in length, connecting fixed points, defined by coordinates. That is to say neither using arcs of circles nor any curves, neither using the coordinates of the centre of a circle nor using straight lines of 100 M in length. It would not be difficult to commit the mistake of understanding paragraph 7 as one of substance –i.e. at the same level to paragraphs 4 to 6- and therefore trying to use segments of straight lines of 60 M to link, bridge or connect any points on the lines of the formulas entitled to different lands or lands pertaining to distinct geological or morphological structures, and to the lines of 200 M from the baselines. That delineation is, of course, in the maximum benefit for the coastal State. Some understand that, in case of doubt, or in any case, the benefit should be for the coastal State. Others, on the contrary, argue that the benefit should be for the international community or the “common heritage of mankind”. Somewhere in the middle is action within the framework the Convention.

Paragraph 4 (b) states that “In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base”. The origin of the idea of some evidence arose in some proposals made at the Third UN Conference around 1975. When only the Hedberg formula (60 M from the FOS) was considered, it meant leaving to the coastal State the possibility of applying something so in the absence of satisfactory scientific evidence (which may include geological and geomorphological evidence) that the continental margin extends to a different limit in place of that formula. When Gardiner formula (1% sediment thickness) was incorporated, no other alternative of evidence seemed to be left to the coastal State. Nothing more than the 1%. Ultimately, the possibility of evidence to the contrary for the FOS arose. It looks like the will of the negotiators of UNCLOS was to leave to coastal States some degree of freedom in scientific matters related to continental shelf. Having the possibilities of the evidence to the contrary and of the maximum change in the gradient at the base (the key concept being the base), one could think that the idea is to choose between them, i.e. one or the other. Actually, there are infinite possibilities between both extremes. Then, the concept of the maximum change in the

gradient at the base geological and geophysical supported arises. The determination of the base of the slope and the maximum change in the gradient by means of bathymetry and morphology is in general very simple, and leaves small room for doubt. In its place, the concept of evidence is not so easily understandable and applicable. First, what can be understood to be scientific evidence? Does it mean "obvious to the eye or mind"? Or does it mean "indication, sign, suggestion, supposition, proof or hypothesis"? In any case, scientific evidence is absolutely valid to identify the location of the base and the foot of the continental slope. Only in its absence the general rule of the maximum change in the gradient must be applied.

These are some of the issues that arose in the application of the Convention regarding the limits of the continental shelf beyond 200 M. With the progress of science and the development of techniques, as well as improved knowledge of the Earth more issues will arise.

AUSTRALIA

*Charles Mott**

So it is almost 30 years since the United Nations Convention on the Law of the Sea opened for signature. That event is surely worth commemorating.

UNCLOS is the centre of an ever-growing network of legal systems and other arrangements regulating the conduct of states and people in the world's marine space. It is the most important treaty negotiated under the United Nations, up there with the Charter itself, reflects credit on the organisation and brings benefits to participating states. My country, Australia, is a major beneficiary and the convention is a substantial, positive influence on our prosperity, trade, security and environment. No doubt many other countries would make the same assessment. No other UN negotiation ranks with UNCLOS, although if and when it comes, a global legal instrument on climate change will do so.

When Arvid Pardo made his landmark speech in 1967 we did not know that it would lead to this, but as time went on we realised, however dimly, what the outcome needed to be. This became clearer as the seabed committee commuted to the preparatory committee for the conference, and then the conference itself in 1973.

The non-exhaustive list of delegates attached to the letter of the Legal Counsel brought a host of faces, feelings and emotions flooding from the past – Shirley Amerasinghe and his daily buttonholes, Paul Engo and his accident in Geneva, delegates from all parts of the earth, each with their own personal and national characteristics, and national preoccupations as well, ministers in governments, home-based officials, scientists, lawyers and our excellent group of New-York based diplomats, plus the industrious secretariat staff with my friend David Hall. We were out to push the interests of our governments, even when our governments did not fully realise what these were, and on the way we became friends, colleagues and I think global citizens too. This comradeship promoted the ultimate achievement.

I suppose some on the USG's list¹ are no longer with us, but I hope most are, and I send greetings and personal good wishes from my location at the bottom of the world. I hope you're travelling well and will go on doing so.

The negotiation of UNCLOS was amazingly complex and difficult. Some of us joked that we should enrol our children in the delegations of the future – the job would be lengthy, secure and enjoyable. Of course producing a

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¹ See Annexe A in Proceedings of the Twentieth Anniversary Commemoration of the opening for signature of the United Nations Convention on the Law of the Sea, New York, 9 and 10 December 2002. United Nations, 2003.

convention through a procedure of consensus cannot be anything but a difficult and daunting task. Given the number of states involved, the sets and sub-sets of interests (sometimes involving strife within delegations), and the relativities of power, it could not be any other way. Consensus of course produces unsatisfactory low common denominators sometimes, but at least it ensures that participants stay on board, and we all knew that failure was unthinkable.

And let us agree that we enjoyed ourselves along the way. For one thing we were privileged to be part of the negotiation of this historic convention. As we gradually defined our different and competing interests, formed groups and sub-groups, we gained a better understanding of ourselves, our countries and our partners, and in the process developed sophisticated knowledge of how to work in complex and subjective situations and put it all together. Early on some of us who shared a broad-shelf interest agreed to draft an article on the continental shelf and margin helpful to our purposes. We were lucky enough to assemble in the Bahamas for the job. We met in the hotel lounge to start drafting and, looking out, saw our Canadian sponsor swimming happily in the tropical sea. It was not a good start for the broad-shelf interest, but coming from Ottawa he knew what his priority for the day was.

In this new century, no-one can pretend that the convention solves or can solve all problems in marine space. There is plenty more to do as developments in technology and the forces of advancing human activity have demonstrated, particularly perhaps in regard to the marine environment, optimal and safe use of technology, demarcation of marine spaces, resolution of disputes and the ever-problematic interface between coastal states' interests with those of other users and uses of the seas, and of the world community. But perhaps the big issue is the linkages between the law of the sea, health of the oceans and the evolving work of limiting the harmful effects of climate change. The work may never be complete, but we can say that we were there at the beginning, and we launched a great project, of benefit to humanity. This is a claim not many can make.

*Philip Symonds**

I am very grateful for this opportunity to reflect on the Convention in the lead up to its 30th anniversary and to pen some of my memories and thoughts about its achievements, and its influence on my own career as a marine geoscientist. This is particularly so at this time as I round off more than 40 years with my Australian work place, Geoscience Australia, and in June this year will complete two terms and 10 years as a member of the Commission on the Limits of the Continental Shelf.

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My interactions with and thoughts about the Convention, and its implementation and interpretation, come not from being a diplomat or international lawyer, but as a working scientist whose day-to-day activities were never far from the ideals, principles and goals embodied in the Convention with respect to such matters as national and international jurisdiction, resources, environmental management, and scientific research within the oceans.

I first crossed paths with the Convention during its negotiation phase in the late 1970s. Then a young, early-career scientist, I was asked to contribute to responses to “cables” from Australia’s negotiating team in New York on how certain formulae being proposed to delineate the outer limits of the continental shelf regime would apply to Australia. Not an easy thing to do without computers, geographic information systems or even the most rudimentary idea of what the seafloor around Australia actually looked like. However, this was the start of a long, interesting, at times difficult, but always fulfilling relationship that has continued until today.

Once the Convention had been adopted in 1982, I was involved throughout the 1980s in a “first look” at what areas of the continental margins of Australia and its territories could lie within its continental shelf beyond 200 nautical miles – its extended continental shelf (ECS). This involved the application of the new and complex, science-based formulae contained within the Convention to delineate the various areas of Australia’s ECS, and then an assessment (or perhaps guess) of what resources could lie within them.

With the entry into force of the Convention on 16 November 1994, my relationship with the Convention really started to blossom, and in fact totally took over my work. I was privileged to become the leader of Geoscience Australia’s Law of the Sea Project in charge of all technical aspects in the preparation of Australia’s continental shelf submission to the Commission on the Limits of the Continental Shelf. This submission, the third to be lodged, was made on 15 November 2004 – one day before the original 10-year deadline for Australia. Recommendations were received from the Commission in April 2008 and marked the culmination of 15 years of intensive scientific, legal and diplomatic work and commitment from a number of Australian Government agencies, particularly through a close partnership between Geoscience Australia and the Department of Foreign Affairs and Trade and the Attorney-General’s Department.

The international side of my Convention affair started in 1993 and continued in 1995 when I was part of a small group of UN technical experts that assisted the UN Division for Ocean Affairs and Law of the Sea (DOALOS) in preparing for the establishment of the Commission. I was then elected to the Commission for five-year terms in 2002 and 2007. This fascinating and challenging part of the relationship will finish in June 2012 when my current term ends. Another very satisfying international aspect of my Convention relationship has involved the provision of ongoing assistance to

small island and coastal developing states through collaboration with the SOPAC Division of the Secretariat of the Pacific Community and other international organisations, funded by the Australian Agency for International Development (AusAID).

During my time on the Commission I have seen its workload rapidly increase. To date 61 ECS submissions (one being a revised submission) have been made, and 18 recommendations have been adopted by the Commission, 17 in the last five years. These recommendations relate to 17 separate coastal States, and six of these are either developing, or small islands developing States. The Commission's recommendations to date confirm national jurisdiction over about 7.3 million square km of seafloor beyond 200 M – approximately 28% of the area covered by submissions to date, and about 23% of the likely total area of ECS. This has all happened in a peaceful and ordered way consistent with the ideals embodied in the Convention. It has opened up expanded resource opportunities for the 17 States involved. What better evidence could there be from the number of States making submissions, and the number of recommendations adopted, that this part of the Convention at least is alive and well, is strongly supported and embraced by its States Parties, and is working effectively to promote the peaceful use of the oceans. Yes, there are issues associated with the future workload and functioning of the Commission, but with States Parties and UN support these challenges can be met.

The Convention has been a catalyst for activity related to national and international marine jurisdictions throughout the world's oceans. The preparation of ECS submissions in particular has stimulated the acquisition of large amounts of new data that are providing significant new insights into the geological evolution and resource potential of continental margins, as well as important information to support resource and environmental management of the oceans.

As a scientist, I have found my involvement with the implementation and interpretation of the Convention to be extremely fascinating, stimulating and rewarding. Amazingly, the major part of my work has only involved the 630 words of article 76 and the 840 words of Annex II to the Convention - about 2% of the total words contained within it. However, that 2% has kept me happily busy for much of my career. Perhaps that says more about me than the Convention. I'm sure others are keeping an eye on the other 98% of the words.

The Convention has allowed me to meet and work with a wide variety of great professionals over the last 30 years or so – diplomats, lawyers, scientists and technicians – within the Commission, UN DOALOS, State delegations to the Commission, UN missions, international bodies and of course, back home in various Australian departments and agencies, in particular my own, Geoscience Australia. A number of these colleagues remain good friends.

I wish the Convention well for its 30th anniversary and particular in the future as it faces the enormous challenges associated with the increasing

utilisation of the oceans, and the need for legal and regulatory frameworks that can only exist within secure marine jurisdictions. Like all worthwhile relationships there have been good times and tough times – I'll fondly and long remember all of them.

AUSTRIA

Gerhard Hafner

Some reflections regarding the Third Conference and the United Nations Convention on the Law of the Sea.

As member of the Austrian delegation to the Seabed Committee and the Third Conference, I had the opportunity to participate in the law of the sea negotiations from 1972 to 1982, a unique effort of the community of States, which is certainly unlikely to be repeated. The thirty years anniversary of the opening of the signature of United Nations Convention on the Law of the Sea (Convention) incites a retrospective look at these deliberations, which permit also some conclusions that could be applied to other negotiations. The attendance of the many sessions of this Committee and Conference offered ample opportunity to ponder about certain major and general features of the negotiations and the results ensuing therefrom.

Any international negotiations are influenced by, and subject to, the political environment existing at the relevant time. Delegates to the Third Conference, who combined theoretical with practical approaches, saw this conclusion applied also to the law of the sea negotiations that lasted fifteen years, from 1967 when the Ambassador of Malta, Arvid Pardo, raised this issue in a remarkable intervention in the General Assembly to December 1982 when the Convention was finally adopted. These negotiations took place in a period when international relations were governed in particular by two major conflict areas: the East - West conflict and the North - South conflict. Whereas the former had no decisive influence on the negotiations themselves, the latter set the framework for these negotiations. The discussions between North and South and their outcome in the New International Economic Order as manifested in the Charter of Economic Rights and Duties of States served as the motivation and backbone of a number of proposals of the developing countries in the law of the sea negotiations. The different proposals regarding the regime for the Seabed and Ocean floor reflected this conflict since the spectrum ranged from very centralistic regimes with strong central institutions to rather liberal ones, all of them with the common purpose to overcome the tragedy of the commons. Free access to resources without major restrictive obligations being imposed on the participating States as it was significant for the traditional law of the sea regime was no longer seen as generating an efficient result. It was under these circumstances that the law of the sea negotiations were conducted aiming at distributing the wealth of the oceans among the States.

This distribution that encompassed all items under discussion, from the internal waters to the Area, from scientific information, transfer of technologies

to access to the maritime values, such as transit rights in favor of landlocked countries, required new approaches and new legal devices so that these negotiations became a breeding nest for new legal institutions. The Exclusive Economic Zone, the regulation of maritime scientific research or the legal regime of the Area based on the concept of the common heritage of mankind belong to such new institutions that could be a model also for other international distributive regimes.

Particular emphasis was put on enforcement and implementation mechanisms of the different new regimes and solutions were found in different ways. The flexibility of the dispute settlement procedure with the Tribunal of the Law of the Sea in its center overcame the stalemate position that formerly had hampered any progress in a universal system of dispute settlement. The protection of the marine environment that had become a major issue in the discussions on the Human Environment at the Stockholm Conference 1972 required a specific mechanism that obliged not only the flag State to take the necessary measures, but also entitled port States to take necessary measures, a novelty in international law.

A novelty in reaction to the growing importance of international economic integration organizations such as the European Union was created by Annex IX to the Convention. The necessity of this solution, but also the problems entailed by it, were confirmed by the MOX Arbitration that had to deal with the relation between the Convention and the European Community in the light of this Annex as well as with the relation between the two dispute settlement systems, that of the Convention and the European Court.

Despite these new and imaginative solutions the Convention does not constitute the end of the codification of the law of the sea. Growing maritime activities and the result thereof such as climate change and ocean acidification create new challenges that have to be addressed by legal regulations. These activities create permanent threats to the marine environment and several attempts have been made in the meantime to elaborate appropriate instruments for the protection of this fragile area. Since the entry into force of this Convention the right of the port State was converted into a duty to control foreign vessels; the precautionary approach that has not been explicitly referred to in the Convention remains a continuing concern of the community of States in the interests of the protection of the marine environment. The protection of marine biodiversity is presently widely discussed, including the establishment of marine protected areas. Other challenges result inter alia from increasing piracy activities in various maritime areas, which create a growing danger to human lives and safety as well as to international navigation, and from the continuing danger of the depletion of marine ecosystems.

Despite the need of new instruments to cope with these various threats, it is the Convention that serves as the appropriate basis and framework even for these new fields of regulation. This new legal regime is not only of maritime concern, but is interrelated with all other areas of international regulations,

from sustainable development to good governance. Even if one or the other issue did not find a precise regulation in the Convention, is subject to divergent interpretations or to overcomplicated solutions, it must be recognized that these few “constructive ambiguities” or deficiencies do not count in view of the enormous effort that has been made in order to establish a universal legal order for the largest parts of the earth, a constitution of the oceans as some call it. Any further attempt to remove also these uncertainties would have jeopardized the whole effort. At the same time, the negotiations that led to the Convention substantially influenced not only the further development of international law, but, due to its length, also the personal and professional life of a number of persons acting as delegates to these negotiations whose duty is now to share the experiences they gained in the negotiation process with the future generations.

*Helmut Tuerk**

The thirtieth anniversary of the signing of the 1982 United Nations Convention on the Law of the Sea is a most propitious moment for looking back at past achievements as well as reflecting on the future evolution of the law of the sea.

The elaboration of the Convention by the Third United Nations Conference on the Law of the Sea was a monumental undertaking in which I had the privilege of participating as a delegate of Austria from 1973 onwards. I vividly recall the great enthusiasm with which the delegates tackled the daunting task of building a new law of the sea which would reflect the interests and needs of all segments of the international community and constitute a firm legal basis for all ocean activities. We were particularly inspired by the challenge of implementing the noble idea that the seabed and the ocean floor beyond the limits of national jurisdiction are “the common heritage of mankind”.

Although the concept of the common heritage gained general acceptance at the Conference, it eventually had to face political and economic realities. On the one hand, the agreed expansion of coastal state jurisdiction greatly diminished the potential international seabed area, on the other legal rules too much advanced for the prevailing economic conditions were laid down, as predictions of the enormous riches to be obtained from the seabed in a relatively near future proved vastly overoptimistic, to say the least.

From the very start of the negotiations Austria had the honour to chair the Group of Landlocked and Geographically Disadvantaged States, which numbered 54 countries at the end of the Conference and was marked by a true spirit of solidarity between its developing and developed members. Although some of the hopes and expectations of the Group remained unfulfilled, the provisions of the Convention nevertheless represent a common denominator for the divergent interests of all States with respect to the seas. In particular, the

* Judge and former Vice-President of the International Tribunal for the Law of the Sea, former Ambassador of Austria.

Convention tries to strike a careful balance between the rights of coastal States and the freedoms enjoyed by all States, whether coastal or landlocked.

It has rightly been called the most significant legal instrument of the twentieth century. By its very nature, the Convention could only be a framework treaty to be implemented in several areas at the national as well as international level, a process that has been continuing for many years. In addition, gaps in the Convention have been and will be filled by jurisprudence and this is facilitated by a comprehensive and innovative system for the settlement of disputes. The creation of the International Tribunal for the Law of the Sea constitutes an important and promising aspect of that system.

The process of elaborating the United Nations Convention on the Law of the Sea has shaped a whole generation of diplomats and international lawyers. The Conference on the Law of the Sea has thus had an important influence on international diplomacy far beyond its purview. It also provided an excellent opportunity for delegates to strike a friendship with colleagues from many countries, notwithstanding the often divergent positions on substance they took in defending national interests. Many of these friendships continue to this very day.

Three decades after the signing of the Convention it has become obvious that the legal system governing the oceans and seas enshrined therein needs to be further developed in order to meet new challenges facing the international community. A major question is to what extent the traditional freedoms of the seas, which while limited by the Convention nevertheless constitute one of its major features, can be maintained in the future. For it should be borne in mind that coping with contemporary challenges with respect to the existing law of the sea, such as the need for enhanced protection of the environment, better conservation of resources, the safeguarding of marine biodiversity and increased security from violence at sea, is in the interest of humankind as a whole. Necessary measures taken in these areas as a result of multilateral negotiations and based upon the consensus of the international community would certainly seem to justify further limitations of these freedoms, gradually transforming the seas beyond the limits of national jurisdiction into a genuine *res communis* for the benefit of all nations.

BAHAMAS

Patricia Rodgers, Marilyn Zonicle, Charice Rolle

The islands of the Commonwealth of The Bahamas (The Bahamas) constitute one of the most extensive archipelagoes of the world, comprising a chain of more than 700 islands, cays, rocks and reefs, spread over approximately 100,000 miles of the Atlantic Ocean. With virtually the entire population of the Bahamian Nation living within the coastal zone, the Archipelago is also home to multiple and multifaceted marine and terrestrial fauna and flora, making it a significant, rich, biological reserve. The coralline substratum of the Archipelago, the world's third largest barrier reef, endows each island with beautiful sandy beaches and clear, shallow, sheltered waters. Geography also defines the Archipelago as strategically situated astride important sealanes and straits for international marine transportation and commerce.

The White Paper, 'Independence for the Commonwealth of The Bahamas,' presented to The Bahamas Parliament in 1972, stated that matters relating to the law of the sea: "were among those issues commanding attention immediately following independence." It was not surprising, therefore, that the adoption of a new international law that would define the rights and responsibilities of nations in their use of the world's oceans, and in the management of marine resources, became a major Foreign Policy priority for the new Bahamian Nation.

The United Nations negotiations on the Law of the Sea provided the newly-independent Bahamas with one of her first, major Foreign Policy achievements when, alongside like-minded particularly mid-ocean archipelagic Nations, it spearheaded international acceptance of the novel concept of the Archipelagic Principle, whereby imaginary baselines could connect an archipelagic State, with the result that all waters enclosed, irrespective of their previous status, except for international straits, would become sovereign, territorial waters, and regarded as terra firma. The Bahamas delegation, led by the then Minister of External Affairs, the Honourable Paul L. Adderley, and including the late George Stewart of the Ministry of External Affairs, distinguished expert in matters pertaining to the law of the sea, was among those states which trailblazed this historic development during the Second Session of the Conference, convened 20 June to 29 August 1974, in Caracas, Venezuela.

The legal argument of The Bahamas delegation was derived from the following key points:

- the Bahama Banks presented a special problem of delimitation as they could not be regarded as high seas, in either the nautical or legal sense;

- the Archipelago was comprised of predominantly shallow waters, largely non-navigable except by vessels of the shallowest draught;
- the formulation of internationally acceptable norms for the drawing of baselines had to be expanded beyond the fixed baseline formula; to do otherwise would mean that the application of the normal baseline in the case of a group of islands, such as The Bahamas, would result in a complex pattern of territorial waters, characterised by an untidy mosaic of arcs and circles, which would complicate The Bahamas delimiting her maritime boundaries with neighbouring states and challenge the political and economic integrity of The Bahamas, with serious implications for the country's security, preservation of the marine environment, national development and the psychological well-being of the Bahamian people.

Recognition by the Conference of the special status of archipelagic waters as being indispensable for the preservation of the security, integrity and unity of an archipelago was of great import for the Bahamas. We were delighted when the essential elements of the legal regime that constitutes an archipelagic state were enshrined in Part IV, Articles 46-48 of the United Nations Convention on the Law of The Sea, which opened for signature during the Eleventh Session of the Conference held in Montego Bay, Jamaica, 6-10 December, 1982.

The gratitude of the Bahamian delegation to the Eleventh Session was expressed thusly to the Conference:

...To our mind, the provisions of the Convention relevant to archipelagic states strike a just balance between competing interests, in that on one hand, accommodation is provided for the legitimate aspirations of archipelagos to be regarded as a single entity and on the other, the interest of the international community in the free and unobstructed movement of legitimate international maritime traffic is guaranteed. In Caracas ... I referred to the uniqueness of the geography of the Bahamas ... the Convention now recognizes the legal status of the Bahama Banks.

For the Bahamas then, a State Party to the UNCLOS since 29 July 1983, the opening for Signature of the UNCLOS was a red-letter Day. The Bahamas was proud and honoured to participate in the negotiations leading to the adoption of the UNCLOS.

As the United Nations celebrates the Thirtieth Anniversary of the Law of the Sea Conference, The Bahamas wishes to highlight that the Seas and Oceans, of which a great expanse and depth remain unexplored, are indispensable and the patrimony for all Mankind.

The Bahamas salutes the United Nations and the UNCLOS on Thirty Years of effective functioning!

BELGIUM

*Philippe Gautier**

Le 10 décembre 1982, jour de l'ouverture à la signature de la Convention, j'étais à milles lieues de penser que le droit de la mer allait occuper une grande partie de mes activités professionnelles. C'est en 1989 que j'eus pour la première fois l'occasion de participer aux réunions de la Commission préparatoire de l'Autorité internationale des fonds marins et du Tribunal international du droit de la mer (Prepcom), qui se tenaient alternativement à Kingston et à New York. Je venais de rejoindre, au sein du Ministère des affaires étrangères du Royaume de Belgique, le service droit de la mer/Antarctique tout en poursuivant une carrière académique. Ce premier contact avec la « communauté du droit de la mer » fut pour moi, comme sans doute pour nombre d'autres jeunes juristes, une expérience irremplaçable. Le but de ces brèves lignes est de livrer les quelques impressions que suscite l'anniversaire qui est ici célébré.

Le droit de la mer - on ne l'apprend pas dans les manuels – est avant tout façonné par des personnes ; en particulier celles qui jouèrent un rôle de premier plan dans la négociation d'une conférence majeure dans l'histoire du droit international. C'est à eux essentiellement qu'est dédié cet anniversaire. J'ai eu la chance de rencontrer plusieurs d'entre eux lors des réunions de la Prepcom et ces contacts furent toujours enrichissants. J'ajouterai que, s'agissant de la Belgique, j'ai pu me rendre compte, au gré de mes contacts, du rôle apprécié qu'avait joué M. Alfred van der Essen lors de la troisième conférence sur le droit de la mer.

L'on ne soulignera jamais assez combien une conférence multilatérale longue et ardue, comme le fut la troisième conférence, a du mettre en place des mécanismes complexes d'élaboration des décisions, en tenant compte du caractère multiple des intérêts en présence (facteurs géographiques, économiques, groupes régionaux, opposition entre Etats en développement et Etats industrialisés...). Le consensus, la nécessité de bâtir peu à peu une majorité, les négociations entre groupes régionaux constituent alors des notions pratiques qui n'ont rien de poussiéreux et représentent une formidable école pour tous ceux qui y participent. C'est dans ce contexte qu'il faut ici saluer l'habileté, l'opiniâtreté et l'ingéniosité des négociateurs qui ont participé à la conférence.

La célébration des 30 années qui se sont écoulées depuis l'ouverture à la signature de la Convention constitue en soi un fait marquant. Cela dit, il importe sans doute moins de commémorer un fait historique que de rappeler sa signification pour l'avenir. En effet, la Convention représente le succès d'un

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projet herculéen consistant à réunir un consensus global sur des questions importantes traversées par des intérêts opposés. Si ce projet est devenu réalité, il reste encore inachevé puisque son universalité n'est pas encore atteinte, malgré l'accord intervenu en 1994 sur la partie XI de la Convention. Par ailleurs, de nouvelles questions surgissent dans le cadre du droit de la mer (surexploitation des ressources halieutiques, pollution marine, piraterie, extension du plateau continental,...) et la Convention des Nations Unies sur le droit de la mer est et reste le seul cadre général permettant d'affronter celles-ci. En célébrant le présent anniversaire, l'on exprime ainsi sa confiance dans la capacité des négociateurs, guidés par l'exemple de leurs aînés, d'œuvrer inlassablement à la recherche de solutions pour faire face aux défis du futur.

*Translated from French **

Not for one moment did I imagine, back when the United Nations Convention on the Law of the Sea was opened for signature on 10 December 1982, that so much of my professional career would be dedicated to the law of the sea. My first opportunity to participate in the meetings of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea (Prepcom), which alternated between Kingston and New York, came in 1989. I had just taken up an appointment at the Law of the Sea/Antarctica Desk in the Ministry of Foreign Affairs of the Kingdom of Belgium while, at the same time, I pursued a career in academia. This initial contact with the "law of the sea community" was for me, as it probably was for other young jurists, an invaluable experience. My purpose in penning these few lines is to share some of the musings that this anniversary celebration summons to mind.

They don't tell you this in school, but the law of the sea is shaped, first and foremost, by people, and, in particular, by those people who played a leading role in the negotiations at a seminal conference in the history of international law. It is to those people that this anniversary is primarily dedicated. I had the good fortune to meet some of them at the Prepcom meetings, and these contacts were always enriching. I would add that, insofar as Belgium was concerned, I became aware, through my contacts, of the valuable role which Mr. Alfred van der Essen had played during the third United Nations Conference on the Law of the Sea (UNCLOS III).

The challenge faced by a long and arduous multilateral conference such as UNCLOS III in establishing sophisticated decision-making mechanisms, taking into account the vast numbers of interests involved (geographical and economic factors, regional groups, the divisions between developing and industrialized nations), cannot be overemphasized. In this process, consensus, the need to build a majority gradually and negotiations among regional groups, are entirely practical concepts. There is nothing dry or academic about them, and they

* Counsellor, Ministry of Foreign Affairs of the Kingdom of Belgium 1984–1997, currently Registrar of the International Tribunal for the Law of the Sea.

provide excellent training ground for everyone who participates in them. In this context, the negotiators' skill, tenacity and ingenuity are deserving of our commendation.

The fact that 30 years have elapsed since the Convention was opened for signature is noteworthy in and of itself. That said, it is probably less important to commemorate this historic fact than it is to ponder its significance for the future. What the Convention embodies is its success in the Herculean endeavour to achieve global consensus on important questions driven by opposing interests. While this project has become a reality, it remains incomplete because it has yet to achieve universality, despite the agreement reached in 1994 on Part XI of the Convention. Moreover, new questions are arising in the context of the law of the sea (such as overfishing, marine pollution, piracy and extension of the continental shelf) and the United Nations Convention on the Law of the Sea remains the only general framework for addressing these issues. As we celebrate this anniversary, we are also expressing our confidence in the capacity of the negotiators, guided by the example of those who have gone before them, to work tirelessly, seeking solutions that will enable us to face the challenges of the future.

*Herman Portocarero**

I have vivid memories of the UNCLOS signing ceremony in Montego Bay. For one thing, I had just taken up my first posting in Kingston, Jamaica, and this was my first trip to the island's north coast.

Having written our national statement on a borrowed typewriter in the office space of my hotel- those were pre-computer and pre-word-processing days! - I took up my seat as a delegate from Belgium in the ball room of the Rose Hall Hotel, where the signing ceremony was under way.

There was electricity in the air. Understandably so. The negotiating process had been a long and arduous one. The codification of established practices and customary law regarding the oceans was one thing; but UNCLOS was, of course, far more ambitious than that. The innovative concepts were bold, even revolutionary. Universal acceptance of those was the goal, but it was a thorny political question whether and how that could be achieved. Like other ambitious UN treaties before and after, UNCLOS was not beyond the grasp of changing political winds in some of the world's important capitals. The early 1980s saw a strong trend of neo-liberalism and reaffirmation of private-sector policies, whereas important aspects of UNCLOS were based on public oversight and multilateral political controls. The exploration and exploitation of the deep seabed was also an ideological battlefield.

Let's also not forget that this was 1982 in many other respects. The innovative concepts enshrined in UNCLOS were fruits of the 1970s, inspired

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by specific ideals and specific preoccupations. If we compare them with today's priorities, it strikes us that the ideas of a global economic re-ordering provided the strongest urges- even in Law of the Sea matters- far outdoing preoccupations of sustainability and respect for the environment of the Oceans which are now so high on our agenda's. Already at Montego Bay, there were those who called the innovative concepts – especially the entire part XI of UNCLOS - too utopian.

All of the above was present in the atmosphere in the room. It came out in the national statements, of course, but even in the body language and the behaviour of delegates- idealist sitting next to skeptic, satisfied legal expert next to more than one delegate confessing that the parts regarding the Enterprise - the public entity set up by UNCLOS to exploit the Common Heritage of the deep seabed- were science fiction to them.

But there was also great enthusiasm to make UNCLOS work. Decisions regarding the future headquarters of ISA were in progress. Jamaica was the prime candidate for the location, and the cities of Kingston and Montego Bay were lobbying for the final choice. As it happened, the site eventually chosen in Kingston was also part of an ambitious plan to redevelop the capital's waterfront.

During the labors of the Prepcom, many outstanding colleagues made a great impression on the young diplomat I was. I will only mention, on the Secretariat side, Sr. Bernardo Zuleta, whose untimely passing in 1983 deprived us of his enormous talents; and Mr. Joseph Warioba of Tanzania as President of the Prepcom, whose infinite patience and subtle sense of humor guided us through many a month-long session in Kingston. I also made very good friends among other young delegates. Given the complexity and the length of the negotiations, the 'UNCLOS people' gradually became an international fraternity, often observed as somewhat alien even by other UN diplomats, and speaking our own language which could be obscure even to those versed in UN jargon and more generic 'legalese'. Some have passed on, others I still meet as judges in Hamburg or otherwise.

After the signing of the Convention and the work of the Prepcom, it would take till 1995-'96 till we could put all the agreements in place, including the even more complex arrangements to have a workable compromise regarding Part XI of UNCLOS, which safeguarded the innovative Common Heritage principle while taking into account a series of vested interests of the private sector, and allowing for important non-signatories of UNCLOS to become active observers in the follow-up.

These parallel negotiations had moved to New York, where in the meantime I had taken up a position at the Permanent Representation as of 1985. It was in August 1987 at the Canadian Mission in New York that we signed the mysteriously labelled 'Midnight Agreement', completing the interim régime. The signing really took place at midnight NY time, because we wanted and needed real-time connections with all interested capitals.

With the advantages of hindsight, UNCLOS still stands as a legal monument. We may have underestimated certain economic realities regarding the exploitation of the Common Heritage. We certainly were not ahead of our times regarding sustainability and the ocean's environment; but - truth be told - the scientific progress regarding the deep seas was not to be foreseen. We probably did not give all the adequate attention to Continental Shelf issues. All of those aspects, though, are being addressed by the State Parties and the GA, and have not diminished the status of UNCLOS. I had the privilege of negotiating the annual Oceans and Law of the Sea omnibus resolution for the European Union during the 65th session of the General Assembly. The discussions were lively, the opposing political and economic interests still very real - a living proof of the relevance of Law of the Sea issues and of the importance of DOALOS and its work not just within the New York Secretariat but for many cross-cutting issues regarding the Oceans and of high interest to other UN and regional bodies.

If the UN is above all the great norm-setter of our planet- which I for one see as the primary function of our organization- then UNCLOS, creating law for the vastest expanses on Earth, remains a tremendous achievement. Now that we are more aware of so many aspects of the seas and oceans - their economic importance as much as their vulnerability, the wonderful newly discovered ecosystems, the changing realities of commodity markets, the unexplored genetic riches of the high seas - UNCLOS and a new generation of negotiators are facing exciting new challenges.

BRAZIL

Vicente Marotta Rangel

For centuries, it was assumed that the sheer vastness of the oceans, in their apparently inexhaustible productivity, exceeds human capacity for use and abuse. However, the absence of formal rules concerning the delimitation and other issues on maritime spaces, on the course of years, has also contributed to raise controversies at the international level.

On 10 December 1982 the United Nations Convention on the Law of the Sea was opened for signature in Montego Bay, Jamaica. The formal event requires now to be celebrated since it was the culmination of a long historic process and at the same time the beginning of a period designed to consolidate and develop the rules contained in the new treaty, which forms the basis of the legal framework for ocean governance, in time of peace. Truly, in listing the issues for the Third United Nations Conference on the Law of the Sea, the Preparatory Committee left out not only the law of naval warfare, but also the issues concerning disarmament and denuclearization of the ocean space.

As stated by the President of the Third United Nations Conference on the Law of the Sea in his final report to the United Nations General Assembly, "Never in the annals of international law had a Convention been signed by 119 countries on the very first day on which it was opened for signatory. Not only was the number of signatories a remarkable fact but just as important was the fact that the Convention had been signed by States from every region of the world, from the North and from the South, from the East and from the West, by coasted States as well as land-locked and geographically disadvantaged States". The Convention is indeed recognized as the first comprehensive constitution for the oceans.

At the formal signature of the Convention and in accordance with the Preamble of the new treaty, the States Parties signified that they were prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of the Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world. They also mentioned that a legal order of the seas and oceans would "promote the peaceful use of the oceans, the equitable and efficient civilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment". The States Parties expressed also, in the Preamble, the desire "to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared inter alia that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall

be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States”.

In the current legal framework for ocean governance, mention should be made to the contribution given by the three institutions set up by the Convention. The International Seabed Authority has approved several applications for a plan of work for exploration and exploitation of polymetallic nodules in the Area. Almost 50% of the earth’s surface comes indeed under its jurisdiction insofar as seabed resources are concerned. In this regard the recent advisory opinion on responsibility and liability requested by the Council of the International Seabed Authority and delivered on 1 February 2011 by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea should be mentioned. The Commission on the Limits of the Continental Shelf is also seeing its work at a rapid pace.

Indeed, the Chamber was required to give an advisory opinion on the limits of the State liability when a contractor by a State to explore or exploit the seabed in areas beyond national jurisdiction causes damage or harm. In providing this advice, the Chamber was also requested to opine on the primary international obligations of sponsoring State under the Convention, the breach of which would give rise to responsibility. The advisory opinion was received as a useful guidance to the international community.

CYPRUS

Andrew Jacovides

I consider it a privilege to participate in this worthy endeavour and I commend the U.N. Secretariat for its initiative to undertake it.

A multitude of issues were dealt with and indeed regulated by UNCLOS, this veritable constitution of the seas and oceans, consisting of 320 Articles and 9 Annexes. One hundred and sixty-one States and the European Union are parties to the Convention, thus conferring to it the status of customary law. The Third UN Conference on the Law of the Sea aimed at re-examining and, where appropriate, recasting virtually all aspects of the Law of the Sea. It has combined the element of codification with that of progressive development, with emphasis on the latter, owing to the participation of many new states which had not been parties to the formulation of the traditional rules.

In significant respects, new and revolutionary concepts such as the Exclusive Economic Zone (EEZ) and that of the Common Heritage of Mankind were introduced and elaborated. On the other hand, it has been found that other aspects of the law have stood the test of time and should remain as before, or with minor modifications to adjust them to the overall scheme (e.g. the Regime of Islands and the Freedom of the High Seas.) On the whole, UNCLOS was characterized by a judicious blending of elements of progressive and even revolutionary change with those of stability and continuity, thus preserving a balance between conflicting claims and interests. In my considered opinion, despite imperfections which were the price for achieving consensus, UNCLOS is a significant achievement in multilateral law making and, as such, deserves general support.

For my country, Cyprus, UNCLOS is of great significance and an area where Cyprus made a major contribution as an island state in the Eastern Mediterranean. Through its active participation in the Conference, Cyprus played a key role in the formulation and adoption of such issues as the full entitlement of islands to all zones of maritime jurisdiction (Art 121), enclosed and semi enclosed seas (Arts 122-3), the median line as a starting point of delimitation of the EEZ between the coasts of adjacent or opposite states and third party dispute settlement provisions (Ch. XV). All of these are essential in safeguarding the interests of Cyprus, and have found practical application in the EEZ Delimitation Agreements with Egypt (2003), Lebanon (2007), and Israel (2010) on the basis of the median line and with arbitration as the means of solving disputes. As already stressed, the very concept of the EEZ and its significant legal consequences were the creation of UNCLOS.

My own active involvement in Law of the Sea matters extends to more than four decades. I had the honour to represent Cyprus in the Sea-Bed Committee (1970-3); the Third UN Conference (1973-82) where I signed the

Convention; was present at the coming into force of the Convention (1994); took an active role as Permanent Representative to the U.N. (1992) and later as delegate to the 20th Anniversary event (2002). I lectured and wrote on the subject at the Rhodes Academy and elsewhere and, in my recently published book ("International Law and Diplomacy" 2011), 6 Chapters are devoted to Law of the Sea issues.

The Third UN Conference, in Caracas, New York, Geneva and Montego Bay, was where alliances and friendships were formed among the Law of the Sea "mafia", as reading through the names listed in the Secretariat paper reminded me with some nostalgia. Many of "graduated" to top positions in their respective Governments, others became judges of the ICJ and ITLOS, and members of the ILC. As for anecdotes, there are too many to recount: I remember Galindo Pohl, Chairman of the Sea-Bed Committee dealing with the issue of straits, giving the floor to "the representative of the Soviet Union to express the position of the United States and others" (despite being the height of the Cold War, the Soviets and the Americans had the same stand on submarines passing submerged through international straits). Robert Marschik, representing land-locked Austria, mockingly expressed gratitude for my agreeing, in a provision on the distribution of the common heritage of mankind, to "including the land-locked states" ("thank you" he said "for including us among mankind!"). Henry Darwin, of the U.K., asking me in Caracas, soon after the coup of the Greek Junta in Cyprus, "how do you operate, who gives you your instructions" to which I replied "during normal times very rarely do I receive instructions from Nicosia and I certainly don't expect to receive any now!". Tony Small, from New Zealand I labelled, only half in jest, as Antonio Piccolo Machiavelli when New Zealand which had fought with us on islands' rights changed sides when it came to the median line on delimitation. "Geographically disadvantaged states" is a term used for states with very narrow exposure to the sea, e.g. Iraq. At some point I suggested to a colleague, tongue in cheek, that Cyprus might be considered a geographically disadvantaged state. Told that this was impossible since Cyprus is an island with sea all around it, I retorted that we could be so described considering the neighbourhood we were located in!

One could go on, but my allotment of space has run out. So let me conclude, by stating with conviction that the Convention which we signed 30 years ago in Montego Bay was a very significant achievement in multilateral law making - for the world, for Cyprus and for me personally.

CZECH REPUBLIC

Vladimir Kopal

Dear Colleagues and Friends in the United Nations,

The invitation to send some thoughts on the 1982 UN Convention on the Law of the Sea on the occasion of the thirtieth anniversary of its opening for signature encouraged me to write a modest contribution on the work of the Third UN Conference on the Law of the Sea and its outcome. As a delegate of Czechoslovakia I had the opportunity to participate in the discussions and negotiations on this subject for about ten years. The experience gained in this field much influenced my orientation in the studies and teaching of international law.

Up to now, the 1982 UN Convention has been the biggest codification instrument in international law. It required the regulation of a great many legal problems and also the reconciliation of strongly opposing views of different groups of States guided by their vital interests. Therefore the establishment of a special body - the Sea-bed Committee - which grew up later on into a UN Codification Conference with a direct participation of all nations, was probably the most appropriate way how to deal with that task. Its outcome was a "package deal" the parts of which brought compromise resolutions of many individual issues and sets thereof.

The Conference bore some outstanding innovative features:

The aim to reach universality in the attendance of the Conference led to inviting all States and competent international organizations, and also the recognized national liberation movements. The Conference was entrusted not only to discuss and agree on draft articles that would be prepared by a specialized codification body, but it was mandated to work out and adopt its own Draft Convention. In its deliberations the method of consensus had to be primarily applied when deciding on substantive issues of the new codification.

The first UN Conference on the Law of the Sea held in 1958 substantially contributed to strengthening the legality on the seas. Nevertheless, that codification enacted in four Conventions did not achieve the settlement of all issues and was not generally adopted. The Third UN Conference, however, accomplished its task. It not only filled the gaps surviving after the 1958 codification in traditional regimes of the sea law, but it also established a number of new international regimes. Certainly the most complex and innovatory one was the regime for the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, which was incorporated in Part XI of the Convention and its relevant Annexes. Though it became necessary to review the original Part XI by the 1994 Agreement, in order to make it more viable and attractive for further nations, it has become an essential part of the new codification.

As a participant in the codification process, who was delegated by a land-locked country, I wish to emphasize another innovation made by the 1982 Convention, namely the inclusion of Part X dealing with the "Right of Access of Land-Locked States to and from the Sea and Freedom of Transit". Though it was one of the shortest chapters of the new Convention, it brought an important outcome for the land-locked countries in their long struggle for equality with coastal nations in the possibility to use the seas for communications and access to their resources.

In order to be more effective, 29 land-locked countries found it useful to closely cooperate with geographically disadvantaged States and to establish a joint interest group. It was composed of 53 members, States with different political and economic systems and various degrees of development. Due to this cooperation, it was possible to also reach a number of other positive results reflected particularly in Parts V, XI and XIII of the Convention.

One of the characteristic features of the 1982 UN Convention has been a comprehensive system for the settlement of disputes concerning the interpretation or application of the Convention, This system does not derogate the traditional right of States to settle the disputes by any peaceful means of their own choice. For this end, however, specific procedures have also been provided and new judicial bodies, including a special International Tribunal for the Law of the Sea, established. This system, which entailed binding decisions when no settlement could be reached by other methods, has been a major contribution to the codification of the law of the sea and also to the progressive development of international law as a whole.

It should be recognized that the 1982 UN Convention achieved a great success by codifying a complete system of the present law of the sea. Though not fully demilitarized, the peaceful uses of the seas and oceans, as well as the peaceful exploration and exploitation of their resources, have been enacted and a wide ground for international cooperation, including its institutional structure, has been laid down.

On the other hand, some important problems persist. For example, despite the adherence of a great number of States to the Convention, the universality in its adoption has not been reached up to now.

When evaluating the character and effects of the new codification of the law of the sea, some authors correctly observed that besides positive results it also brought a division of the world seas and oceans. During the period of its elaboration, it was probably not possible to avoid such risk. Therefore, it will depend on new generations to strive for strengthening international cooperation in this important field and adopt further appropriate instruments for maintaining the major part of our planet for the benefits of all mankind.

I wish them full success in such endeavours.

Prague, 22 February 2012

EL SALVADOR

*Alfredo Martinez-Moreno**

It is a proven fact that the law of the sea not only has a high importance for the maintenance of peace and security in the world, but also for the promotion of navigation and fishing, for pollution control, and fundamentally for the utilization of the mineral resources that exist in the seabed and on the ocean floor.

Science has demonstrated that oceans cover 72 percent of the surface of the earth, that most of the natural resources of mankind are found in the seabed, on its floor, and in the subsoil of the submarine areas, that almost 90 percent of the world trade is sea-based, that a large part of the exploitation of oil and gas is made outside the emerged land, and finally, that life itself as it is generally recognized surged from the oceans.

It was then logical, that during several decades, statesman, jurists, scientists, military experts, and other professionals, people of good will, put their main efforts in drafting the United Nations Convention “The law of the Sea”, which has appropriately been named “the constitution of the oceans”, one of the admirable juridical international instruments that the world has ever known, and which in spite of the enormous differences of national positions, and the huge conflicts of economic or military interests, was approved as a worldwide consensus.

Even for the people who have participated in its drafting and negotiations, it is really incredible that such balanced and visionary charter could have been approved. It is consequently justified and proper to commemorate the thirtieth anniversary of the opening for signature of such monumental international document, which has also prevented a breakdown of law and order on the oceans, and has determined an “effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction”. Everything in the Convention was a product of collective wisdom, a balanced transaction based on science and rationality.

In the section regarding the maritime spaces under the sovereignty and jurisdiction of States, a matter in which there was international chaos, one has to recognize the leadership of a distinguished Salvadoran jurist, Dr. Reynaldo Galindo Pohl, who advanced serious proposals, which after long deliberations were approved, and which in a certain sense constitute the basis for the limits and contents of the territorial sea, the contiguous zone, the exclusive economic zone, and the continental and insular shelf.

In the section related to a very difficult matter, the straits used for international navigation over which there was a long confrontation between the

* Chairman of the Salvadorian delegation to the First and Second Conference and participant in several sessions of the Sea-Bed Commission.

coastal states, which due to natural security and ecology, supported the traditional concept of “innocent passage” and the big naval powers which wanted to change that concept for the “free transit” in order to facilitate the freedom of navigation for their warships, after lengthy efforts of transaction, the new concept of “right of transit passage” was approved and developed.

The Convention not only strengthened recognized principles of customary law, but also gave a great impulse to the progressive development of international law and its codification.

In other important matters like the conservation and management of the living resources of the sea, the reduction and control of pollution of the marine environment, the settlement of disputes, the promotion of marine scientific research, and other, the convention was the architect of a fair juridical regime of the seas.

But one must emphasize as one of the main advancements of this instrument, the recognition that “the area”, which is the seabed, the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, is, together with its huge resources, the common heritage of mankind. This recognition previously approved by the General Assembly of the United Nations, is one of the most important gains obtained by the international community in the last centuries.

This means that all mineral resources in situ, in the sea, at or beneath the seabed, including polymetallic nodules, all kinds of minerals, belong to humanity itself, and not to any power which may exploit them.

But this is up to now, a pending matter although the International Seabed Authority in charge of the management of those resources has been created and is doing a good job, the “enterprise” which may engage in prospecting and mining of its own for the benefit of mankind, including the developing nations, does not exist. On the contrary, there is a “parallel system” under which “the area” can be exploited by commercial operators.

I perfectly understand that the exploration and exploitation of those minerals require huge amounts of money, but I would like to repeat that mankind as a whole is still waiting to obtain any benefits from those operations.

At this moment when all nations are commemorating the thirtieth anniversary of the opening for signature of the Convention, it is fitting and proper to remember that this is a pending matter. I sincerely think that this transcendental point has to be taken into account when all nations rejoice in commemorating the signature of the constitution of the oceans.

FINLAND

*Kari Hakapää**

It all started at Caracas. For me, it also meant the start of a lifetime relationship with the Law of the Sea. A young lawyer felt strongly the spirit of a common will to produce something new to secure just and fair use of the seas and their resources. But one also learnt that it was a diverse world that had to agree on individual interests to adjust to a common good. The spirit to reach the common goal did not fade away but carried us through the challenge of protracted negotiations to adopt the Law of the Sea Convention about a decade later.

It was, of course, the Governments that adopted the Convention but their delegates that made it. For a junior member of a delegation, the Conference process offered a priceless chance to learn from the more experienced. Throughout the delegations there were representatives whose skills, expertise and personality came to decisive use in tackling the many issues to solve. The Convention has well prevailed the test of time. The balance achieved remains viable thirty years after the Convention's adoption. As of today, much of the Convention can also be seen as generally accepted customary law.

On a personal note, some particular memories go to the delimitation of maritime zones between States with opposite or adjacent coasts. The work of Negotiating Group 7 under the Chairmanship of Judge Manner (Finland) amounted to a thriller of international negotiations. The search for a compromise between those arguing for delimitation in accordance with equitable principles and those preferring the use of the median or equidistance line as the basis of delimitation was complex and time-consuming. It was a unique experience to serve as assistant to the Chair throughout the Group's discussions. Final result on the criteria of delimitation was reached only after the conclusion of the Group's work, and remained general in nature. For the crucial case of the delimitation of the exclusive economic zone or the continental shelf between opposite or adjacent States, it is "an equitable solution" that should be achieved. At the time, one could wonder whether such vague language was worth all the trouble taken. Yet, the subsequent years may have proven otherwise. The language used offers a legal frame for delimitation duly to take into account the special characteristics of each particular case. This underlines the role of the various means of peaceful settlement of disputes in the application of general rules to particular situations.

One major achievement of the Law of the Sea Convention is Part XII on the Protection and Preservation of the Marine Environment. The Law the Sea Conference brought environmental issues to the forefront of law of the sea

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negotiations. While addressing all the various sources of marine pollution, negotiations, in particular, focused on providing a balance of flag State, coastal State and port State powers to offer a workable framework for regulation of vessel-source pollution. The compromise achieved has proven successful with special weight placed to port State enforcement in recent State practice.

Past decades have expanded human knowledge of the threats to the marine environment. Today, it is well-established that regulation of each pollution source separately is not enough but one should cope with the effects of pollution as a whole, wherever their origin may be. This highlights the concept of a marine ecosystem as the overall approach to regulation. The ecosystem approach is not foreign to the Law of the Sea Convention but, at the time of the Law of the Sea Conference, did not have the same influence on lawmaking as it now has. Nevertheless, the Convention regime is broad enough to offer a valid basis for the implementation of the ecosystem approach.

Loss of marine biodiversity is a concern of more recent recognition. The United Nations General Assembly has drawn particular attention to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. The Law of the Sea Convention was concluded before global realization of the threats to marine biodiversity due to climate change or otherwise. Accordingly, response to the new challenges is needed in the implementation of the objects and purposes of the Law of the Sea Convention.

The special interests and needs of developing countries are at the core of the Convention regime. Efforts in capacity-building are of obvious importance for successful management and conservation of the ocean environment. Not least does this apply to the exploration and exploitation of the resources of the deep seabed in true realization of the principle of the common heritage of mankind. The work of the International Seabed Authority deserves every support of the States Parties in living up to the expectations placed on it by the Convention.

Caracas and beyond remains to be remembered. For the international community, the Law of the Sea Convention is still going strong. For a delegate to the Law of the Sea Conference, its negotiating process was a unique experience never to forget.

GERMANY

Eitel (Antonius) Tono

Two German States participated in the Third UN Law of the Sea Conference: the (West German) Federal Republic of Germany (FRG), Member of the European Communities and NATO, and the (East) German Democratic Republic (GDR), Member of Comecon and the Warsaw Pact. 1990 the GDR joined the FRG, thereby reuniting Germany. I was member, later Head, of the West German and the German delegation, my colleague and friend Gunter Goerner was Head of the East German delegation; upon reunification the former Chairman of the “Special Commission for the International Tribunal for the Law of the Sea” became special advisor in the German Delegation.

For the FRG there was no dead wood on the Conference’s agenda. We participated with sometimes more than 50 delegates, among them the experienced Günther Jaenicke who had been Agent in our Continental Shelf Cases with the Netherlands and Denmark (ICJ Reports 1969 3, 37) and our Legal Adviser Carl-August Fleischhauer who later become the UN Legal Counsel and thereafter ICJ Judge.

We were actively interested in everything, from the Territorial Sea to the Settlement of Disputes, but mostly in defence of what we believed was the *lex lata*: the overriding Freedom of the High Seas. We wanted to defend it against attempts of coastal States to annex vast aquatories, thereby excluding our shipping, our fishermen (cf. our litigation with Iceland, ICJ Rep. 1974, 175), our oil interests etc. We feared attempts of Warsaw Pact Countries to turn the Baltic Sea into a *mare sovieticum* and the West German territory into a freeway to the Sea for land-locked Warsaw Pact states. We were also afraid of attempts of Third World Countries to introduce a New Economic World Order, sequestering marine technology and introducing the Common Heritage of Mankind concept for deep sea mining. We thought that the Freedom of the High Seas covered also the bottom of the sea and that deep sea mining in national claims was just around the corner.

German past had taught us that disputes should be settled peacefully. Based on this experience we wanted to bring the Tribunal to Germany and, competing with Lisbon and Dubrovnik/ Split, offered a well suited site in Hamburg. The Conference finally decided for Hamburg under the condition that the FRG had acceded to the Convention at the time of its entry into force – quite an incentive!

The diverse topics of the Conference called for diverse alliances. With our short and concave coasts we joined the Group of Land-locked and Geographically Disadvantaged States (LLGDS), a front of states with fishing, shipping and oil drilling interests including the GDR and other Warsaw Pact members, against the “sea claiming” coastal states including the Soviet Union

and some NATO partners like USA, UK, Italy and France. For our shipping interests, however, we needed the support of the USA and other prominent seafaring nations. As a potential transit state we opposed our land-locked Warsaw Pact neighbours. For deep sea mining and technology transfer we joined other industrialized “Pioneer Investors”, mostly coastal states, against leading Third World countries. And for the Tribunal’s seat we tried to resist pressure, at the same time canvassing across all groups. From topic to topic allies turned into opponents, and vice versa. For me, that was a unique experience!

During the long years of the Conference and the Preparatory Commission our negotiating posture changed considerably. We saw fit to accommodate moderate requests from our Eastern neighbours, already on their way to Gorbachev’s perestroika, regarding Land Transit and the status of the Baltic Sea. Within the LLGDS group we became more and more reserved, since the European Economic Community extended its organisation to national maritime zones to which all members could expect access for fishing. Our shipping interests were taken care of by the different transit regimes. Our deep sea mining plans (which in the meantime appear to have lost their urgency) seemed to become realizable thanks to the 1994 Agreement on the implementation of the Convention’s deep sea mining part, and the New Economic World Order had lost its extreme features. Thus, we could accede to the Convention just in time and the Free and Hanseatic City of Hamburg is now proud host to the Tribunal.

All in all, the Conference seems to have brought peace to the seas, *pacem in maribus*, as persistently promoted in and outside the Conference by our former compatriot *Elisabeth Mann-Borgese*.

Günter Görner

The Third United Nations Conference on the Law of the Sea was the first worldwide gathering of States I was able to attend after the German Democratic Republic had become a member of the United Nations a few months earlier and therefore, I have fond memories of that event. As newcomers to the on-going negotiating process, my delegation first had to establish a rapport with the other participants in the Conference. Its President Amerasinghe quickly gained our trust thanks to the effective way in which he conducted the negotiations and the friendly, comprehending attitude he exhibited in one-on-one conversations. When substantive talks began in Caracas, I was relieved to note that the Conference was not dominated by the East-West conflict, but that the participating States determined their positions in a pragmatic manner as a function of their maritime interests. The coastline of the GDR was short and its sea area was small. Therefore my delegation became a member of the Group of Land-Locked and Geographically Disadvantaged States, chaired for many years with great dedication by Karl Wolf (Austria). In

the meetings, I came to appreciate the imaginative and well-founded contributions to the Group's position by Tommy Koh (Singapore), who later became President of the Conference, Lucius Caflisch (Switzerland), Janusz Symonides (Poland), Karl Hermann Knoke (Federal Republic of Germany) and Arpad Prandler (Hungary).

Commencing at the Caracas session, fruitful co-operation developed between the two German delegations, since the interests pursued by the two German States were the same or largely similar in regard to most of the issues to be dealt with. This resulted mainly from their disadvantaged geographical situation as countries, bordering on enclosed and/or semi-enclosed seas. The two German States had been conducting major marine scientific research and their fishery companies had been involved in extensive long-distance fisheries, so that they were both interested in maintaining the freedom of the high seas. Both NATO and Warsaw Pact States viewed the maintenance of the freedom of navigation for all vessels, including warships, as one of their most important conference goals.

The two German States continued their constructive collaboration in law of the sea matters up to Germany's reunification. Together with Austria and Switzerland, they produced the official German translation of the Convention, for example.

The festivities marking the signing of the Convention in Montego Bay and the relaxed atmosphere rank among my most pleasant conference experiences. All the parties involved were relieved and happy that the complex and lengthy negotiations had finally been brought to a successful conclusion. We hoped that the Convention might soon be applied the world over. This hope was not betrayed. The Convention has stood the test of time and become a solid foundation for the progressive development of international maritime law.

The Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea entrusted me with a new, intriguing task: the chairmanship of the Special Commission charged with working out the practical arrangements for the establishment of the International Tribunal for the Law of the Sea in Hamburg. In its work, the Special Commission could rely on the detailed provisions of the Convention concerning the Tribunal, which had been drawn up by eminent lawyers, among whom Günther Jaenicke and Tono Eitel (Federal Republic of Germany), Louis B. Sohn (United States), Shabtai Rosenne (Israel) and the member of my delegation, Harry Wünsche, will always remain foremost in my memory.

The Special Commission's agenda did not only comprise a multitude of legal issues, but also practical matters relating, among other things, to the property on which the building of the Tribunal was to be erected, as well as the construction requirements. During a visit by the Bureau of the Special Commission to Hamburg and Bonn in August 1987, we received comprehensive first-hand information about the practical preparations undertaken for the future site of the Tribunal. When I attended the official

opening of the newly built Tribunal headquarters in Hamburg on 3 July 2000, I was impressed by its state-of-the-art architecture and the functional interior.

I served as Chairman of the Special Commission until Germany's reunification. To all my colleagues who supported me in the performance of my duties, I owe a large debt of gratitude, notably to my deputy, Theodore Halkiopoulos (Greece), as well as to Gritakumar E. Chitty (Sri Lanka), the Special Commission's Secretary.

Today, the Tribunal has made a name for itself through its excellent judicial work. It has become the globally recognized authority for the settlement of disputes concerning the interpretation and application of the Convention and a protector of its integrity.

GRENADA

*Dolliver Nelson**

I was Secretary of the Drafting Committee of the Third United Nations Conference on the Law of the Sea. I am delighted and honoured to be requested to participate in the commemoration of the 30th anniversary of the United Nations Convention on the Law of the Sea which stands as a twentieth century monument to international cooperation.

I take this opportunity to make some brief observations on the following topics: (i) the so-called “Main Trends”, (ii) the role of the collegium and (iii) the work of the Drafting Committee – all related to the making of the Convention.

The Main Trends

The Conference, unlike the 1958 Geneva Conference, lacked a basic text around which negotiations could be centred. The first step in the production of such a document took place at the second session of the Conference (1974) when the Second Committee produced the Main Trends paper. (A/CONF.62/C.2/WP.1) The purpose of this document was to reflect the main trends which had emerged from the proposals submitted either to the Seabed Committee or to the Conference on the Law of the Sea. It may be usefully remarked that the 1958 Geneva Conventions provided the sources of several proposals found in the Main Trends. This ensured that many of the rules found in the 1958 Conventions were incorporated in the 1982 Convention.

The Collegium

The third session of the Conference (1975) endorsed the President’s proposal that a single negotiating text should be prepared by the Chairmen of the three Committees, taking account of all the formal and informal discussions held so far.

At its sixth session (1977) the Conference decided to consolidate the various parts of the revised single negotiating text (R.S.N.T.) The President, as leader of the “team” (the collegium) undertook, jointly with the Chairmen of the three Committees, in association with the Chairman of the Drafting Committee and the Rapporteur-General, the preparation of this consolidated text – the Informal Composite Negotiating Text (I.C.N.T.) In putting the text together each Chairman bore full responsibility for the portions of the text which were the concern of his Committee and for the adoption of any changes in the text which reflected the progress achieved in the negotiations. “This is not an enunciation of a new doctrine of collective irresponsibility”. This latter sentence was a fine example of the irreverent wit of President Amerasinghe. (A/Conf.62/WP.10)

* Judge and former President of the International Tribunal for the Law of the Sea.

The mechanism, utilized for the subsequent revisions of the I.C.N.T., was significant. “Any modifications or revisions to be made in the I.C.N.T. should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a Chairman of a committee unless presented to the Plenary and found, from the widespread and substantial support prevailing in Plenary, to offer a substantially improved prospect of a consensus”.

“The revision of the I.C.N.T. should be the collective responsibility of the President and the Chairmen of the main committees, acting together as a team headed by the President. The Chairman of the Drafting Committee and the Rapporteur-General should be associated with the team . . .”.

The I.C.N.T. was thus first revised in 1979. A second and third revision was made in 1980. A further revision took place in 1981. On this occasion the text lost its informal character and became a document of the Conference – the official Draft Convention. (A/CONF.62/L.78)

The collegium played a major role in the various revisions of the informal texts. This author well remembers the occasion when an amendment to article 76 – the pivotal article in the development of the outer continental shelf - was being discussed in the collegium. The decision to amend the text was the result of a long and heated debate.

The Drafting Committee

The Drafting Committee had an immense task to perform especially during the last years of the Conference. The Chairman put this graphically in his 1981 Report at the tenth session. He noted that the Committee was obliged to maintain an intensive schedule of meetings in the early morning hours, evenings, weekends, holidays and luncheon periods in addition to the regular meetings during United Nations working hours. This observation was far from being an exaggeration. A striking example of the nature and volume of the task which the Drafting Committee encountered related to Annex III, article 13, to the Convention. In the words of the Chairman “Annex III, article 13, offers a representative example of the type of problem which the Drafting Committee dealt with during that session. The language groups’ proposals on that highly technical article amounted to some 366 pages, including proposals correcting translation errors, as well as recommendations clarifying, refining and lightening the text or seeking to ensure linguistic concordance. All those proposals had to be reviewed carefully . . . before being considered by the Drafting Committee as a whole”. (A/CONF.62/L.152) There is some irony in the fact that this provision was dismantled by the Implementation Agreement of 1984 and now no longer applies.

The task of making this remarkable Convention was indeed a laborious one – *Tantae molis erat Romanam condere gentem.*

INDONESIA

*Hasjim Djalal**

UNCLOS has contributed very substantially to the development of peace, stability, environment, and economic needs of the world community, despite some of the unsettled issues. UNCLOS has been able to assure the relative balance of the interests of coastal States as well as the user States and maritime powers. Equally, it has also balanced the interests of the developing and the developed countries. In fact, it has even the provisions dealing with the rights and interests of landlocked as well as the geographically disadvantaged States. It has also assured the national unity of archipelagic States, although it is understood that not all archipelagos are regarded as having the same rights and obligations as archipelagic States. It has also dealt with various other issues, such as navigation rights and obligations, the enclosed and semi-enclosed seas, the regime for straits used for international navigation, the protection of marine environment, the conduct of marine scientific research, as well as the dispute settlement mechanism to deal with the disputes on the application of the UNCLOS provisions.

Most of the provisions relating to the establishment of mechanisms to implement the various provisions have been established and have been working diligently within the last couple of years, particularly the International Seabed Authority (ISA) in Jamaica dealing with the International Seabed area resources, the Tribunal for the Law of the Sea in Hamburg dealing with settlement of disputes between States in implementing the provisions of UNCLOS, and the Continental Shelf Commission in New York dealing with the issue of the extended continental shelf beyond the 200 miles EEZ to the outer edge of the continental margin. The International Seabed Authority in Jamaica has formulated rules and regulations dealing with exploration of polymetallic nodules in the International Seabed area, the polymetallic sulfide, and the metal crust at sea mounts in the oceans. In fact, various exploration areas have been contracted to various parties, such as to the companies of Japan, South Korea, China, France, Germany, Russia, a consortium of Eastern European companies/Poland, Tonga and Nauru, all in the Clarion-Clipperton zone in the Pacific Ocean. India has also obtained exploration rights in the central plain of the Indian Ocean for polymetallic nodules, China in the

* Indonesian Ambassador to the UN (1981 – 1983), Canada (1993 – 1995), Germany (1990 – 1993) and Ambassador at Large for the Law of the Sea and Maritime Affairs (1994 – 1996). He was a member and later Vice Chairman of the Indonesian Delegation to the Law of the Sea Conference and its preparations as well as to the implementation of the UNCLOS later on. He was the First President of the International Seabed Authority (1995, 1996) and later became Chairman of the Finance Committee of the International Seabed Authority in Jamaica. Currently, he is a member of Indonesian Maritime Council, and Advisor to the Minister of Marine Affairs and Fisheries, and lecturer in various Indonesian high learning Institutions.

Southwestern Indian Ocean for sea mount metal crust, and Russia for metallic sulfide in the central Atlantic Ocean. In addition, various consultations in New York and other places have taken place in order to make the provisions of UNCLOS more effective, such as the Meetings of States Parties annually and the Informal Consultative Process to discuss the implementation of UNCLOS. Moreover, numerous international scientific and academic discussions with regard to UNCLOS and its implications have taken place all over the world. At the same time, the Implementing Agreement (1994) dealing with the seabed mining issues as well as the Implementing Agreement (1995) dealing with the management of straddling fish stocks as well as the highly migratory fish species are also being implemented worldwide. One of them is the Honolulu Convention 2000 dealing with the management of straddling and highly migratory fish stocks in the West and Central Pacific Ocean (WCPFC). Other similar institutions have also been established and are operational in various other Oceans.

There are of course some issues which have not been clearly regulated and therefore would have to be developed through general practices of States, for instance, the roles of tiny islands, rocks, and other features in claiming maritime zones and within the context of maritime delimitation between adjacent and opposite States. Also the application of “straight archipelagic baselines” for archipelagos which are not archipelagic States, as well as other issues of “equitable” solution in delimitation matters. In recent years, the issues of military exercises and intelligence gathering activities in the EEZ of other countries have also surfaced without clear solution, thus may create tension and potential conflicts between the relevant States.

Fifty-four years since the adoption of the four Geneva Conventions on the Law of the Sea in 1958, 45 years since the adoption of the UN Declaration on “common heritage of mankind” of the ocean resources beyond the limits of national jurisdiction, 30 years after the adoption of the UN Convention on the Law of the Sea in 1982, and 18 years after its entry into force in 1994, the Convention has generally been respected by more than 160 ratifiers. Even the minority of states that has not ratified the Convention, including the United States, have generally adopted and applied the provisions of the Convention in practice.

In the end, I wish to express my respect, admiration as well as appreciation to those academics, experts, government officials, and diplomats, as well as the relevant UN institutions which have been contributing toward the achievement of UNCLOS, hoping that more states around the world would ratify the Convention as well as its Implementing Agreements, and continue to contribute to its implementation through the various institutions, such as the ISBA, the ITLOS, the CSC and other institutions. Whatever lacunae that may have been discovered since its adoption in 1982, hopefully could be solved through states practices or through the various Institutions that it has created.

I am confident that the UNCLOS 1982 has contributed very substantially to the development of peace, stability, marine scientific research, and the sustainable use of maritime resources and their environment.

Jakarta, 2 March 2012

*Nugroho Wisnumurti**

The commemoration of the thirtieth anniversary of the 1982 UN Convention on the Law of the Sea is an important international event, as the Convention, a constitution for the oceans, represents one of the major achievements of the international community. Thirty years on, it continues to serve as an important legal foundation in the relations among States in the pursuit of international peace and security, conflict prevention and settlement of disputes, prosperity and sustainable development. The Conference that produced the 1982 Convention is an example of how international cooperation and negotiations on difficult and complex issues could yield monumental results that are beneficial for mankind.

For Indonesia, one of the most significant results gained from the Third UN Conference on the Law of the Sea is the acceptance of the legal regime on archipelagic States as contained in Chapter IV of the 1982 Convention. This has been achieved through a long and arduous struggle involving intensive multiple negotiations and coordination in the Conference as well as in other forums. In this context, I could not resist the temptation to reflect on Indonesia's efforts that had led to the international recognition of the archipelagic States regime.

It all began when the Indonesian Government issued in 1957 a declaration, the Djuanda Declaration, basically declaring Indonesia as an archipelagic State with territorial sea straight baselines that were drawn from the outermost points of the outermost islands of the archipelago. This declaration, that was subsequently followed by the relevant legislation, was strongly opposed especially by major maritime countries, which were primarily concerned over its impact on freedom of navigation.

Indonesia started its struggle to gain support from the international community in the First UN Conference on the Law of the Sea 1958 and continued to pursue the efforts in the Second Conference in 1960. We coordinated closely with the Philippines in the two conferences, although these efforts had failed.

The third UN Conference on the Law of the Sea and its preparatory committee or the Seabed Committee provided another opportunity for Indonesia to continue its efforts to gain international recognition of the

* Former member of the Indonesian Delegation to the UN Third Conference on the Law of the Sea, and former Indonesian Ambassador/Permanent Representative to the United Nations in New York and in Geneva.

archipelagic State principles. Our efforts involved series of consultations and negotiations in the Seabed Committee, in the Conference itself and in bilateral, regional as well as multilateral negotiations.

In March 1971, Indonesia brought the issue of the archipelagic State principles to the Seabed Committee after it became a member. To promote a common position and coordination among the archipelagic States, a meeting was held in New York by Indonesia, the Philippines, Fiji and Mauritius in March 1972, which was followed by another meeting in Manila in May 1972. The outcome of these meetings was a definition of archipelagic State that basically covers three major elements: (1) method of drawing straight baselines; (2) sovereignty over the waters, seabed and subsoil thereof and the superjacent airspace; and (3) innocent passage of foreign vessels through its waters through the designated sealanes. The archipelagic State principles were further developed in the Second Committee of the Conference through series of consultations and negotiations organized by its Chairman.

Following that, Indonesia continued its efforts to gain wider support for the archipelagic State principles by negotiating with its neighbours, Malaysia (on direct access and communications between Malaysia's East and West and on its existing rights in the archipelagic waters), Singapore and Thailand (on traditional fishing and their right of navigation through the archipelagic waters) and the major maritime powers (on their right of navigation through the archipelagic waters). The results of the negotiations were incorporated in the negotiating text of the Conference as a part of the text on archipelagic the state. Before the adoption of the Convention in December 1982, Indonesia and Malaysia concluded a treaty in July 1982, under which Malaysia officially declared its recognition of Indonesia's archipelagic State regime and Indonesia declared its recognition of Malaysia's existing rights and legitimate interests in the territorial sea and archipelagic waters and the airspace thereabove.

Series of intense negotiations between Indonesia, representing the Archipelagic State Group and the US and the Soviet Union, representing the major maritime powers, were held to solve the issue of navigation through the archipelagic waters and overflight above such waters. Among the crucial issues being negotiated were the concept of "axis" for the determination of archipelagic sea lanes, safeguard clauses to protect the interests of the archipelagic States, and the definition of archipelagic sea lanes passage. The final stage of the negotiations on the archipelagic State regime was a meeting between the Indonesian Delegation led by Foreign Minister Mochtar Kusumaatmaja and the US Delegation led by Ambassador E.L. Richardson, which produced a final text that was agreed by all concerned as now appears in Part IV of the 1982 Convention on the Law of the Sea.

While the 1982 Convention had reached its goal of being the constitution for the oceans, there are in practice some inherent problems as regards its implementation that remain to be resolved, such as the provisions on maritime delimitations that are too broad and therefore subject to different interpretations. I however believe that State practice and international judicial decisions setting precedents on the implementation of the 1982 Convention will, along with the subsequent agreements, further strengthen the Convention and the Convention will thereby serve as a better basis for promoting international order in the oceans.

Jakarta, 27 February 2012

IRAQ

*Mohammed Al-Hajj Hamoud**

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بعض الملاحظات على مؤتمر الامم المتحدة الثالث لقانون البحار

اشارة الى مذكرة الامانة العامة للأمم المتحدة/قسم شؤون المحيطات وقانون البحار في ٢١ كانون الاول ٢٠١١، نقدم الورقة التالية:

كان لي شرف تمثيل بلادي (العراق) في مؤتمر الامم المتحدة الثالث لقانون البحار وحتى الدورة الاخيرة التي عُقدت عام ١٩٨٢. وكان لي شرف توقيع الاتفاقية التي توصل اليها المؤتمر نيابة عن العراق في مونتيجوباي(جامايكا).

من الخواطر التي ترد في ذهني بعد مرور ثلاثين عاماً على اختتام المؤتمر ان ما توصل اليه هذا المؤتمر يُعتبر حدثاً قانونياً وسياسياً في غاية الاهمية في تاريخ البشرية. فقد استطاع ان يضع قانوناً لتنظيم كافة المواضيع المتعلقة بالبحار والمحيطات. فبالرغم من ان بعض قواعد قانون البحار كانت قد بدأت وتطورت خلال القرون الماضية، الا ان تلك القواعد كانت مشتتة في عدد من الوثائق القانونية الهامة، كأتفاقيات جنيف لعام ١٩٥٨، وفي عدد من القواعد العرفية، الا ان اتفاقية قانون البحار لعام ١٩٨٢ كانت تمثل مرحلة حاسمة في تطور هذا الفرع الهام من فروع القانون الدولي العام. وبذلك قدم المؤتمر نتاجاً قانونياً تاريخياً يُعتبر طفرة مهمة في هذا الميدان.

تأتي اهمية الاتفاقية من اهمية البحار في الحضارات الانسانية وفي تطوير العلاقات بين الدول. وأن الحياة على الكرة الارضية بدأت في البحر، كما ورد في المكتشفات الاتارية في بلاد ما بين النهرين. اذ كان في عقيدة السومريين والاكديين والبابليين والاشوريين وفي حضارات وادي النيل، ان الحياة في الكرة الارضية بدأت في البحر، وان الحيوانات المتطورة اليوم تجد اصولها في فترات ما قبل التاريخ في البحار. وان دم الاسماك والزواحف والطيور والثدييات والانسان نفسه يحتوي على

* Ambassador of Iraq.



تشابه كبير مع مياه البحر . كانت البحار الوسيلة الاولى لتبادل التجارة بين الدول منذ القدم. وعن طريق البحار انتقلت الحضارات بين وادي الرافدين ووادي النيل والصين والهند، ثم من اوربا الى بقية ارجاء المعمورة.

ويمكن اعتبار المؤتمر الثالث لقانون البحار بمثابة برلمان عالمي حر . فقد شاركت جميع الدول الموجودة في تلك الفترة في اجتماعات المؤتمر . وكانت حرة في تقديم ما تشاء من مقترحات منفردة او مع عدد اخر من الدول بهدف حماية مصالحها الوطنية. تكوّن المؤتمر من عدة لجان رئيسية حسب المواضيع، وبالإضافة الى تلك اللجان تشكلت في المؤتمر مجموعات جغرافية ومجموعات مصالح متعددة. وكانت الدول تنتقل من مجموعة مصالح الى مجموعة اخرى، وفقاً لما تقتضيه مصالحها الوطنية ووفقاً لموقعها الجغرافي، فالعراق مثلاً كان عضو في المجموعة العربية وفي مجموعة الدول النامية وفي نفس الوقت كان يشترك في مجموعة الدول المتقدمة عند بحث موضوع المضائق الدولية، وذلك بسبب موقعه الجغرافي الكائن في نهاية الخليج العربي وانه يحتاج الى استعمال مضيق هرمز بحرية. وكذلك الامر بالنسبة لمجموعة الدول المتضررة بسبب موقعها الجغرافي ومجموعة الدول عديمة السواحل. فالموقع الجغرافي للدول يجعلها في موقع مختلف على البحار . فهذا الموقع الجغرافي يحرم بعض الدول من البحار كلياً الامر الذي يدفعها الى تقديم مقترحات معينة. في حين ان هناك دول اخرى يُمكنها موقعها الجغرافي من الحصول على مساحات واسعة من البحار وما فيها من ثروات هائلة وما يُمكنها من حرية المواصلات البحرية. وبالتأكيد فان موقع هاتين المجموعتين يدفعهما الى اتخاذ مواقف متباينة واحياناً متعارضة.

لقد بذلت جهود مضمّنية في المؤتمر للتوصل الى حلول توفيقية ترضي

الجميع. وكان لرئاسة المؤتمر ولرؤساء اللجان الدور المتميز للوصول الى تلك

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الحلول. ولا بد لي ان اذكر بشكل خاص الرئيس الاول للمؤتمر السفير هاملتون أميراسنغ والرئيس الثاني السفير تومي كو والسفير أكيلاز، رئيس اللجنة الثانية، والسفير يانكوف، رئيس اللجنة الثالثة، والسفير پول أنغو، رئيس اللجنة الرابعة، لما قاموا به من ادوار رائعة وجهود مضيئة للتوصل الى الحلول التوفيقية، بالاضافة الى شخصيات مرموقة اخرى.

كما لا يفوتني ان اشير الى لجنة الصياغة في المؤتمر التي كان يترأسها السفير بيسلي والمكونة من منسقي اللغات الرسمية الست للمؤتمر. فقد بذلت هذه اللجنة جهوداً تاريخية ومتميزة في جعل نصوص الاتفاقية في جميع تلك اللغات متسقة وموحدة المعاني الى حد كبير. ولقد كان لي شرف أن اكون منسق اللغة العربية خلفاً للمرحوم مصطفى كامل ياسين الذي وافاه الاجل في بداية اعمال اللجنة.

ويمكن القول ان نصف الاحكام الواردة في الاتفاقية هي عبارة عن تقنين وتطوير للقانون الدولي للبحار الموجود قبلها، كما انها ساهمت في انشاء قانون عرفي جديد قبل ان تُنشئ قانوناً اتفاقياً يتمثل في مد البحر الاقليمي لأكثر من ثلاثة اميال بحرية وفي انشاء المنطقة الاقتصادية الخالصة حتى ٢٠٠ ميل بحري. بالاضافة الى اخذها بفكرة جوهرية جديدة هي فكرة ((التراث المشترك للإنسانية)). الا ان تأثير مبدأ الاثر النسبي للمعاهدات على موضوع عرض البحر الاقليمي مختلفاً عن تأثيره على نظام استثمار المنطقة الدولية الجديد. فالأول يكاد يكون مستقراً في تعامل الدول، لذا يكون تأثير هذا المبدأ عليه محدوداً، بينما الثاني يُعتبر موضوعاً جديداً الا ان محدودية فاعلية الاثر النسبي تأتي من النظام القانوني الذي تحتويه الاتفاقية والذي يدعو الى الشعور بأن واضعي هذا البناء كانوا يرغبون في تجنب وجود دولة، عند عدم مشاركتها في الاتفاقية، يمكن ان تدعي الاستناد الى مبدأ الاثر

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النسبي للمعاهدات. فالامر لا يتعلق بتفاصيل هذا البناء وإنما بالمبدأ الذي يحكم هذا النظام والوارد في اعلان المبادئ الذي سبق للمجتمع الدولي ان اقره واكد على التزامته وسموه الى مصاف القواعد الأمرة.

والخلاصة، انه يمكن القول ان احكام اتفاقية ١٩٨٢ تمثل في الوقت الحاضر، وبعد ان دخلت حيز التنفيذ، القانون الوضعي للبحار الذي يرسم للدول كيفية ادارة علاقاتها البحرية مع الدول الاخرى ومع المجتمع الدولي.

السفير

الدكتور محمد الحاج حمود

(العراق)

Translated from Arabic

I had the honour to represent my country, Iraq, at the Third United Nations Conference on the Law of the Sea, until the last session was held in 1982. I had the further honour of signing on behalf of Iraq the Convention that was concluded by the Conference in Montego Bay, Jamaica.

Thirty years after the conclusion of the Conference, it seems to me that what was achieved by the Conference may be considered as one of the most significant legal and political events in human history, in that it formulated a law that regulates all issues relating to the seas and oceans. While the origin of certain rules pertaining to the law of the sea lies many centuries in the past, those rules were scattered over a number of customary rules and important legal instruments, including the Geneva Conventions of 1958, and the United Nations Law of the Sea Convention of 1982 represented a critical stage in the development of this important branch of public international law. The legal and historical outcome of the Conference may therefore be considered a successful step in respect of this field.

The Convention is important because seas have played such an important role in human civilization and in the development of relationships between States. As the archaeological discoveries in Mesopotamia show, and as the Sumerians, Accadians, Babylonians, Assyrians and the people of the Nile civilizations believed, life on this planet began in the sea, just as the origins of the highly-developed animals of today lie in the seas of prehistoric times: the blood of fish, reptiles, birds, mammals, and human beings themselves greatly resembles sea water. Since the most ancient times, the sea was the primary means by which nations conducted commercial exchanges, and it was by sea that civilizations moved between Mesopotamia, the Nile valley, China and India and then between Europe and the rest of the world.

The Third UN Conference on the Law of the Sea may be regarded as tantamount to an international free parliament: all the States in existence at that time participated in Conference meetings and were free to present whatever proposals they wished, either individually or with other States, in order to protect their national interests. The Conference comprised several main committees, devoted to particular issues. In addition, a number of geographical and interest blocs were formed, between which States moved in accordance with national interests and geographical location. Iraq, for example, was a member of the Arab group and of the developing countries group; at the same time, it participated in the developed States group when international straits were discussed, because of its geographical location at the head of the Arabian Gulf and its need to use the Straits of Hormuz. The same applied to other groups of countries, including those adversely affected by their geographic location and land-locked States. The geographic location of each State determines its relationship with the sea: those which have no access to the sea are impelled to put forward certain proposals, while others, with long coastlines, have access to the riches of the sea and unfettered maritime

communications. The location of each State in those two groups impels them to adopt very different, and sometimes contradictory, stances.

Great efforts were exerted in the Conference to reach consensus solutions that satisfied all States. The Presidents of the Conference and the chairmen of the committees played distinguished roles in producing those solutions. I should like to mention, in particular, the first President of the Conference, Mr. Hamilton Amerasinghe; the second President, Mr. Tommy Koh; the Chairman of the Second Committee, Mr. Aguilar; Chairman of the Third Committee, Mr. Alexander Yancov; and the Chairman of the Fourth Committee, Mr. Paul Engo, and to pay tribute to them and other notable personalities for their contributions in that regard.

I should also mention the Drafting Committee of the Conference, which was chaired by Mr. Beesley and included the coordinators of the six official Conference languages. The Committee exerted outstanding, historical efforts to ensure that the text of the Convention was equally authentic in all those languages, and largely consistent in terms of meaning. I had the honour to succeed to the position of Arabic language coordinator after the death of Mr. Mustafa Kamil Yasseen early in the course of the Committee's duties.

Half of the provisions of the Convention may be said to codify and develop the previously extant international law of the sea. The Convention also helped to establish a new customary law before establishing agreement on extending territorial waters beyond three nautical miles and setting the exclusive economic zone as 200 nautical miles. Furthermore, it adopted a fundamental new idea, namely, the common heritage of humanity. However, the impact of the principle of the relative effect of treaties on the issue of the width of the territorial sea is different from its impact on the investment regime for the new international zone. The first issue is more or less unvarying in terms of the treatment of States, and the impact on it of this principle is therefore limited, while the second is regarded as new. However, the limited impact of the relative effect derives from the legal system contained in the Convention. That system gives the impression that those who formulated it wanted to avoid the possibility that any State that did not become a Party to the Convention could base a claim on to the principle of the relative effect of treaties. There are no issues with the details of this system, only with the principle that governs the system as it is set forth in the Declaration of Principles, which has already been endorsed, confirmed as mandatory and described as *jus cogens* by the international community.

In short, it may be said that the provisions of the 1982 Convention, after coming into force, currently represent the positive law of the sea that prescribes State management of maritime relationships with other States and with the international community.

IRELAND

*Francis Mayon Hayes**

The Third United Nations Conference on the Law of the Sea was a conference of huge consequence to all states, not only because of the very important national interests involved, but also as a world forum for international cooperation, implementing one of the main functions of its parent body, the United Nations.

The Conference achieved a reform of the law of the sea which would otherwise have taken many decades to achieve, if indeed it were achieved at all. The most significant innovations it realised were probably (1) the establishment of an international regime covering the international seabed area outside national jurisdiction (a radical measure which placed a significant part of the planet's natural resources under the control of an international organization whose membership is open to all states); (2) establishment of the exclusive economic zone (EEZ) of coastal state jurisdiction; and (3) clarification and development of jurisdictional rules concerning the protection of the marine environment.

A significant factor which contributed to the success of the Conference was the employment of some unprecedented procedural devices, particularly those designed to overcome the absence of a preparatory negotiating text as a principal working document. This obstacle was surmounted by conferring on the Committee Chairmen the authority to prepare single negotiating texts; the acceptance of those texts by the participants as the basis for negotiations; and the subsequent revisions of the texts, seven in all, firstly of each Chairman's text by himself, afterwards of the whole text by the Collegium (each revision deriving from debates in the Plenary on proposals for revision), with steps also along the way to formalisation of the text into a Draft Convention before the final revisions and submission to formal adoption. That this ambitious innovation succeeded was a tribute to the Conference participants, especially its officers, as was the fact that the Conference objective of decision making, as far as possible, by consensus was achieved in regard to most of the issues.

The dissatisfaction of the United States with Part XI of the Convention on the Area was shared, at least partially, by some other industrialised countries, particularly those having deep seabed mining capacity. This meant realistically that the Convention would not be accepted universally until some adaptations in respect of this Part of the Convention were made. That this came about in later years, fortunately without threatening the agreements reached in the other

* 1930 – 2011, former ambassador, member of the International Law Commission, head of the Irish delegation to the Third United Nations Conference on the Law of the Sea. First published in: *The Law of the Sea; the Role of the Irish Delegation in the Third UN Conference*, (2011). Reprinted with the kind permission of the Royal Irish Academy.

Parts, is another story. In the meantime a large number of States, including Ireland, had signed the Convention and quite a few had ratified it. Many others also accepted its provisions and implemented them. As to Part XI, the Preparatory Commission to prepare for the establishment of the International Seabed Authority was set up and went about its preparatory work, which was eventually fully accepted when Part XI was subsequently adapted.

The Convention entered into force on 16 November 1994 and its provisions are widely observed. Thus the main objective of the Conference, a generally accepted law of the sea, was realised. This was so virtually immediately in regard to a large part of the Convention (other than Part XI), to the advantage of the international community as a whole. Ireland warmly subscribed to this objective and shared in the advantage of its achievement.

The Convention also saw significant advancement of Ireland's interests in regard to an extended coastal state fishery zone; measures in regard to anadromous species (salmon) recognising the special interest of the state of origin; a wide area of continental shelf jurisdiction; provisions on delimitation of areas of continental shelf jurisdiction, and also of the EEZ, between neighbouring states, which preserved the advantages Ireland derived from the ICJ decision in the North Sea cases; improvements in control, including enhancement of coastal state powers, in regard to marine scientific research (MSR), environmental protection and conservation; and all without unduly restricting freedom of navigation. A comparison with the pre-Conference summarisation of Ireland's interests, seven in number, confirmed that all had fared well.

A further considerable achievement was the adoption of the "Community clause", a provision enabling the European Union to become a party to the Convention. This was a very significant breakthrough for the then European Economic Community (EEC), not only in the immediate context but also in establishing its world-wide international legal status for all time. In this context the "Community clause" served as a most useful precedent in many international negotiations in the following years. It was an achievement in which the Irish delegation played no small part. Apart from fulfilling its EEC presidency role in this respect during the Third and Eighth Sessions of managing the preparations and pursuing the objective at the Conference, it was active in other Sessions in helping to adapt the draft clause, in making supporting statements in the discussions and in lobbying delegations.

The Conference made relatively little impact on Irish national public consciousness, due at least partly to the technical nature and complexity of many of the issues involved and the length of the negotiations. Nevertheless, it ranks among the most important and successful negotiations undertaken up to then by the comparatively young Irish state. In brief, the Irish delegation had the considerable satisfaction of having achieved most of what it sought, including all that was essential.

JAMAICA

*Allan G. Kirton**

As you are aware, the Third United Nations Conference on the Law of the Sea was preceded by the work of the Seabed Committee. The Seabed Committee's mandate was particularly interesting and informative to me as a scientifically trained delegate. Specialists on various aspects of marine geology, marine biology, marine pollution and marine scientific research and shipping, as well as seabed mining appeared before the various Committees and gave rather detailed expositions on the above-mentioned topics. This was intended to make the subject matter relating to activities as up-to-date as possible so that all delegations were familiarized with the current scientific and technological state of play. Many delegations, including lawyers were being introduced to these topics in some detail for the first time in preparation for the exercise of drafting the complex concepts into the proposed Convention.

An excellent assessment of the success of the Third UN Conference could be gleaned from this extract from the statement made by President Tommy Koh on 10 December 1982 at the final session of the Conference at Montego Bay:

When we set out on the long and arduous journey to secure a new Convention on the Law of the Sea, covering 25 subjects and issues, there were many who told us that our goal was too ambitious and not attainable. We proved the skeptics wrong, and we succeeded in adopting a Convention covering every aspect of the uses and resources of the sea. The question is whether we achieved our fundamental objective of producing a comprehensive constitution for the oceans which will stand the test of time. My answer is in the affirmative.

Although most areas of the Convention were widely accepted from 1982, Part XI, which sought to reconcile the divergent positions of developing and developed States with respect to seabed mining, remained controversial. The developing countries advocated solutions in keeping with the proposed New International Economic Order, while developed countries preferred solutions that would broadly acknowledge their financial and technological advantages. Subsequently, Part XI was amended by the 1994 Implementation Agreement, which, in the main, has sought to balance the perspectives of both developing and developed countries. Today, I am heartened to note that the Authority has entered into contracts concerning the exploration of polymetallic nodules and polymetallic sulphides of the deep seabed.

I must pay tribute to the late Dr. Kenneth Rattray, brilliant international/commercial lawyer and Rapporteur General at the Law of the Sea

* Ambassador to the Law of the Sea Conference and former Permanent Secretary, Office of the Prime Minister.

Conference. He was ubiquitous. Although mainly on Committee I, his influence was widespread and he constantly lobbied for Jamaica as the site for the Seabed Authority. I must also pay tribute to Patrick Robinson, also an international lawyer (recently, President of the International Criminal Tribunal for the Former Yugoslavia), for his hard work, especially in the Second Committee and also his effective lobbying for Jamaica as the seat of the Authority.

I operated mainly in the Third Committee, but roamed the Conference as necessary and supplied or sought scientific and technical advice on behalf of the delegation as far as I could. My lobbying was also constant. Messrs. Hugh Bonnick and Jeffrey Mordecai were also instrumental in all our efforts, especially as regards the seat of the Authority in Jamaica.

Support from the Political Directorate was significant. At the first session of the Third UN Conference in Caracas, the late Ambassador Dudley Thompson (who was then a Minister in the Ministry of Foreign Affairs) spent a long time with the delegation at the Conference and helped to cement our relationship with the African delegation, especially those from Kenya and Tanzania. Many other African delegations were anxious to meet the Jamaican Lawyer that defended Jomo Kenyatta. The Hon. P.J. Patterson as Minister of Foreign Affairs and Deputy Prime Minister was also very active in this Conference.

In 1980, the Hon. Hugh Shearer, then Deputy Prime Minister and Minister of Foreign Affairs took over leadership of the delegation and along with Prime Minister Edward Seaga, officiated at the signing ceremony in Montego Bay, Jamaica. In that year, the Government of Jamaica ensured the construction of the Conference Centre in Kingston, which now houses the headquarters of the Authority.

Throughout the Conference, the Ministry of Foreign Affairs and Foreign Trade played a crucial part in approaching foreign capitals for support for Jamaica as the seat of the Authority. The United Nations Missions in Geneva and in New York were also critical.

For its work at the Third UN Conference, the Jamaican delegation received the Gleaner newspaper's Honour Award for 1982. This was a fitting tribute to a team which combined hard work with innovative diplomacy. Interestingly, Jamaican music, a la Bob Marley and Peter Tosh, together with very potent Jamaican rum punch/brew played a role in facilitating international discourse. At least on one occasion, in Geneva, one such party prompted official notice and mild intervention (which led to an earlier closure of proceedings).

Thirty years have passed, but pleasant memories of a mission successfully accomplished remain.

Patrick Robinson

The first Law of the Sea meeting I attended actually pre-dated the opening of the Third United Nations Conference on the Law of the Sea in 1974. It was a meeting of the Preparatory Committee in Geneva in 1973 and it had the very useful purpose of introducing me to the issues and personalities that were to dominate the Conference from 1974-1982.

From fairly early in the Conference Jamaica indicated that it was a candidate for the site of the International Seabed Authority that was to be established after the conclusion of the Conference. The problem faced by the Jamaican Delegation, which was usually comprised of Dr. Ken Rattray, Dr. Allan Kirton and myself, was that it had no resources to carry out the conventional lobbying necessary to achieve this goal. However the members of the Delegation decided to use our own funds, and with the help of some loyal and patriotic Jamaicans in Geneva, we were able to host at each session a rum-punch and reggae party to which all the delegates were invited. This party became so popular that at the beginning of each session the first question asked by delegates was not one that related to the very difficult issues faced by the Conference, but "When is the Jamaican party"? That Jamaica did secure the site of the International Seabed Authority was due in no small measure to this sessional Jamaican event. In the result the Convention was signed in Montego Bay, Jamaica on 10 December 1982.

It is right to recall the leadership role in the Conference played by the late Ken Rattray, who was the leader of the Jamaican Delegation and the Conference's Special Rapporteur. The late Lennox Ballah of Trinidad & Tobago and the late Paul Bamela Engo of Cameroon – the latter an imposing figure always splendidly attired in national dress and whom we called "The King" – were great Conference personalities, who contributed significantly to the work of the Conference and who later became members of the International Tribunal for the Law of the Sea.

I also recall the very powerful Singaporean delegation that included Ambassador Tommy Koh, the President of the Conference, Professor Shunmugam Jayakumar, who was to become his country's Minister of Foreign Affairs, and Mr. Chao Hick Tin who later became his country's Attorney General and who was my colleague in the Second Committee that dealt with the Limits of National Jurisdiction. And we must also recall the Latin Americans, very strong in their claims for an extended jurisdictional zone; among them was the very formidable Ambassador Arias Schreiber of Peru.

It is fitting to celebrate the 30th anniversary of the Montego Bay Convention on the Law of the Sea because it is arguably the most significant and far-reaching treaty ever adopted; and its greatest contribution to international law and affairs is the proclamation in Article 136 that the Area (meaning the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction) and its resources are the common heritage of mankind.

One must hope that the parties to the Convention will find the will and the resolve to implement this great and noble legacy of the Conference and Convention.

JAPAN

*Moritaka Hayashi**

On the occasion of the 30th anniversary of the opening for signature of the United Nations Convention on the Law of the Sea, I wish to pay tribute to all those who contributed in various capacities to the historic endeavor of producing this great “constitution for the oceans”. The Convention has proved to be an indispensable instrument for not only keeping law and order at sea, but also for promoting peace, security, cooperation and friendly relations among nations, and will certainly continue to be so for a long time to come.

The Convention, and the law of the sea in general, has played a central role throughout the four decades of my own professional career. I wish to highlight the main points in order to illustrate how much my life owes to this document and this particular branch of international law, and at the same time to record my deep appreciation to the various bodies and institutions concerned for providing me with the precious opportunities. The law of the sea gave me the chances first for learning various aspects of multilateral treaty-making processes and diplomatic negotiations; secondly, for devoting myself to works for implementing Convention provisions; and thirdly, for teaching university students.

Indeed the first serious subject area of my research soon after I started my academic career was the law of the sea. When I was granted a fellowship at the Woodrow Wilson International Center for Scholars in Washington, D.C., to do research-work in that field, the United Nations had just started to prepare for the convening of the Third Conference on the Law of the Sea. When the Conference started, I had the opportunities to participate first as a Secretariat member and then as a member of the Japanese Delegation. The huge-scaled Conference was a great learning process for me on the dynamics and intricacies of diplomatic negotiations, particularly in contrast to the traditional treaty-making process involving the International Law Commission. Similar learning process continued when I moved to the Japanese Mission to the United Nations and participated in the early sessions of the Preparatory Commission as a delegate.

I went back to the United Nations Secretariat in late 1988, and my main task at that time was to assist in the wider appreciation and implementation of Convention provisions, mostly through the daily work at the Division for Ocean Affairs and the Law of the Sea (DOALOS). In the late 1980s, when the preparatory process for the United Nations Conference on Environment and Development started, several United Nations bodies and Specialized Agencies involved in marine affairs were represented on the secretariat team which was

* Professor Emeritus, Waseda University, Tokyo.

set up for preparing the initial draft of Agenda 21. Representing DOALOS, my principal concern was to ensure that the contents of the draft Agenda 21 be in conformity with the Convention. It was also around that time that the process for drafting a convention on biological diversity began. In one of the earliest preparatory meetings on the subject convened by the United Nations Environment Programme, where the discussion was focused on the preservation of only terrestrial biodiversity, I was the first to remind the meeting of the need to expand the scope of the discussion and any future instrument to cover the maritime areas under national jurisdiction.

It was also during my service at DOALOS that opportunities were provided for me to be involved in the strengthening and wider implementation of the Convention by helping the adoption of the Part XI Implementation Agreement and the Fish Stocks Agreement. The last important works of mine at DOALOS were to assist in the practical arrangements for the setting up of the International Seabed Authority and the International Tribunal for the Law of the Sea. My only regret was that I missed the chance as DOALOS Director to attend the opening ceremony of the Tribunal at Hamburg because of my new appointment as the Assistant Director-General of the Food and Agriculture Organization of the United Nations (FAO) in charge of its Fisheries Department. After my transfer to FAO, naturally, I firmly kept my determination to ensure that all relevant provisions of the Convention be closely followed in the fisheries-related work of FAO.

Lastly, after the three decades of my service within the United Nations System and the Foreign Ministry of Japan, I was given the chance of giving back what I had learned to university students for around a decade thereafter. This was done mainly at Waseda University in Tokyo, where I taught the law of the sea and co-authored a text book for students. Additionally, during the same decade, I had further chance to serve, on an individual capacity, on two independent international bodies of experts where I made my best efforts to ensure the consistency of the bodies' work with the Convention. These were the International Commission on Shipping to investigate the practice of sub-standard shipping, and the team of experts to conduct a performance review of the International Commission for the Conservation of Atlantic Tunas.

*Takeo Iguchi**

I participated from the preparatory stage of the Third United Nations Conference on the Law of the Sea from 1971 to the final stage in 1981 serving under ambassador M. Ogiso and ambassador T. Nakagawa and had the privilege of becoming the longest-served member in the Japanese delegation and it was an honor to have worked closely with such outstanding figure as

* Former Director-General of the Law of the Sea Office, Ministry of Foreign Affairs of Japan. Former Ambassador to New Zealand, Bangladesh, Dominican Republic and Jamaica.

Elliot Richardson of the United States and Tommy Koh of Singapore. I was inspired to write numerous articles in Japan to promote support and understanding for the epoch-making rules of international law of the ocean. It was an exciting experience to be actively involved with the whole process of formulating a comprehensive constitution for the ocean in the United Nations where member states were dramatically increased by the beginning of the seventies. I was also associated with the enactment of domestic law on 12-mile territorial sea and 200-mile fishery zone. Recalling fondly those 10 years of marathon sessions through which numerous encounters developed in official or informal meetings and other forums of negotiations, inter alia, the group of five highly developed states, Evensen group and various informal talks, it passes in my minds a panorama of distinguished diplomats, lawyers, scholars and scientists who shared sense of friendship to search for a delicate compromise to harmonize national and regional rivalries in order to create a lasting order of ocean, in view of accelerating depletion of living resources and deterioration of marine environment. Aiming at consensus, we had to find ways to balance conflicting interests between coastal and non-coastal states on protection of coastal resources and prevention of marine pollution, while preserving as much as possible freedom of navigation and rational utilization of resources. In those days, Japan was the only highly developed country in the Asian group and responded positively to assist the less-developed states to benefit from increasing use of ocean resources for their economic advancement. Japan had to endure the transformation of high sea freedom crystallizing over centuries on unimpeded fishing and navigation rights and sacrificed its distant-water fishing fleets to phase out from many rich areas enclosed by coastal states' economic zones and archipelagic waters. Since Japan was not endowed with rich mineral resources and was one of the largest importers of oil and other minerals, Japanese economy has to increasingly depend on mineral deposits in the seabeds so that the regimes of continental shelf and international seabed are of vital interest to Japan's future prosperity. Our original position preferred to limit the extension of coastal states' exclusive control over the continental shelf resources only up to 200-miles to be co-terminus with the limit of exclusive economic zone. However, an aggressive demand of states with huge continental shelves reduced the international sea-bed area under the International Seabed Authority. Nevertheless, I am hoping that the broad concept of "common heritage of mankind" be more refined to be given practical significance in the future with the development of technology and effective exploitation of various resources in the deep sea-beds which are truly the last hope of mankind for satisfying the expanding needs of our descending generations for their survival.

The Convention resolved many pressing issues which emerged by 1970 which were caused by the increasing utilization of ocean resources and excessive marine pollution endangering marine environment of the whole globe. However, some difficult issues emerging in the horizon had to be left for

future codification and state practices and therefore further supplementary agreements were made by interested states for high sea fishery conservation. Perhaps the Convention failed to formulate a more precise criteria on such sensitive issues as a definition of islands and a demarcation of continental shelf among adjacent or opposite states. Fortunately, some neighboring states had resolved such a problem by agreement or by accepting the rulings of arbitration, the International Court of Justice or the International Tribunal for the Law of the Sea. I firmly believe that all disputes arising from the law of the sea should be settled amicably by dispute-settlement machinery or by mutual agreement. The adoption of the Convention signified the triumph of the rule of law in the whole ocean space including the sea-bed for the succeeding generations so much so that we must all oppose the use of force involving any disputes relating to the sea whether on navigation, resource exploitation or status of islands.

The only effective way for the world community to benefit from growing dependence on oceanic resources in waters and sea-beds whether in national jurisdiction or in international areas should be through peaceful negotiation and by regional and international cooperation for the sake of global peace and prosperity. Japanese nation learned positively from the invaluable experience of the Third Conference which produced an international treaty second in importance to the Charter of the United Nations, which succeeded in preventing potential conflicts to explode over the intensifying use of sea and its resources.

*Shigeru Oda**

The United Nations Convention on the Law of the Sea was adopted on 24 September 1982 at the 11th session of the Third United Nations Conference on the Law of the Sea, and the final signing session was opened on 6 December for a few days at Montego Bay, Jamaica. As a member of the International Court of Justice (ICJ) since 1976, at the unofficial invitation of the UN Secretary-General, I arrived in this resort city after a long journey by air from The Hague to Kingston, and then by car across the island.

The President of the meeting, attended by the delegations of 145 States, was Tommy Koh of Singapore, one of my oldest and dearest friends. During my short stay at Montego Bay, we enjoyed swimming together at the beach every morning.

Koh showed outstanding skill as the President of the signing session. Having declared the opening of the Convention for signature, he invited a group of people, including Evensen of Norway, Mochtar of Indonesia, Stavropoulos of Greece and me, to join him on the podium and introduced us

* Member of the Japan Academy, Membre honoraire de l'Institut de Droit International, Former Judge of the International Court of Justice.

as the “New Fathers of the Law of the Sea” making the comparison with Grotius, which triggered thunderous applause from the audience.

Back in 1950s, I had been a professor of international law at a national university in Japan. At the invitation of the Government of Japan, I attended the First United Nations Conference on the Law of the Sea in the spring of 1958 as a member of its delegation. It is well known that the 1958 Geneva Conventions were adopted at this conference, but the States could not come to agreement on the matter of the breadth of territorial waters. For the sake of resolving this single remaining issue, the Second United Nations Conference on the Law of the Sea was held in the spring of 1960 in Geneva for five weeks, but ended without any substantive outcome. I was again a member of the Japanese delegation. I believe I may now be the last living person on earth who attended both of these conferences of more than half a century ago.

After the First and Second Conference, we had a short period of calm in the history of law of the sea. However, during this period, the development of seabed resources, in particular, of manganese nodules on the deep seabed beyond the continental shelf had been initiated, which triggered the establishment of the Seabed Committee under the UN General Assembly in 1968. More than 10 sessions were held over five to six years, during which I spent about a year in total in New York and Geneva as the alternate representative of Japan. The Committee ultimately developed into the Third United Nations Conference on the Law of the Sea.

The Third UN Conference began in 1973 in Caracas and continued for about 10 years. I attended the opening session as one of the representatives of the Japanese delegation. However, I had to leave that position upon being elected a Judge of the ICJ in the fall of 1975. Nonetheless, while being present neither as a delegate of Japan nor as a UN staff member but simply as an interested observer, I attended the sessions of the Third UN Conference, and spent time with my old friends, who had come to be known as the “Mafiosos of the law of the sea”.

I managed to travel from The Hague to attend the Convention signing session at Montego Bay, Jamaica on 10 December 1982. A quarter of a century had passed since the First Conference. Warmly welcomed by my friends and colleagues, I was filled with deep emotion at the realization that no one had been so deeply connected with the law of the sea as I had, in my capacity as an international law scholar.

Twenty years later, I was invited to the meeting to commemorate the 20th anniversary of the opening for signature of the Convention at UN Headquarters on 10 December 2002. A few weeks after that event, I had completed my third term as Judge of the ICJ and returned to Japan. To mark the end of 27 years of my life at the ICJ, I wrote “Fifty Years of the Law of the Sea” (2003, 832 pp.), summarizing my studies of the law of the sea over half a century. The book was published by Kluwer Law International (The Hague, Netherlands), with

the support and encouragement of the then editor of the publisher, Ms. Annebeth Rosenboom.

The UN General Assembly will commemorate the 30th anniversary of the opening for signature of the Convention this December. It has been almost 60 years since I obtained the J.S.D. at Yale Law School in 1953 with a thesis entitled, "Riches of the Sea and International Law", which is regarded as the first thesis on the law of the sea following the Second World War.

*Hisashi Owada**

The adoption of the United Nations Convention on the Law of the Sea (UNCLOS) on 10 December 1982 was truly a landmark event of great significance in the history of international law. Setting aside the legendary role that Hugo Grotius, the father of international law, played through his magisterial work "Mare Liberum", the issue of the regime of the sea had long been at the centre of controversy and conflict in international politics and law. National interests in defence and security (the regimes of the territorial sea and of the contiguous zone); local and regional interests in natural resources (the regimes of fisheries jurisdiction and of the continental shelf); and, more recently, community interests in resources on the deep seabed and ocean floor (the regime of the seabed and ocean floor) have all played their part through the process of formation and development of the law. The historical significance of the 1982 Convention lies in the fact that the international community, building on the past legacy of evolution of the law through centuries, finally succeeded in consolidating the law on the comprehensive regime of the sea at the universal level in the form of one unified code of law.

The serious effort for the comprehensive codification of the law of the sea started already at the codification conference of 1930, which focused mainly on the issue of the breadth of the territorial sea. This effort was continued after the Second World War by the United Nations, which entrusted this gigantic task to a newly created body of experts, the International Law Commission (ILC) of the United Nations. The ILC took upon itself the work of the codification in this field as a matter of priority. Strenuous efforts on codification began during the period 1949 to 1958. This work reflected the new developments in the doctrine of the continental shelf emanating from the Truman Declaration of 1945, as well as in the practice of the high sea fisheries in the post-World War II era. As a result of this work, the First United Nations Conference on the Law of the Sea was held in Geneva, and succeeded in adopting the four Geneva Conventions on the Territorial Sea and Contiguous Zone, on the High Seas, on the Fishing and Conservation of Living Resources, and on the Continental Shelf. What was left unsettled at this First Geneva Conference in 1958, the issue of the breadth of the territorial sea

* Judge and former President, International Court of Justice.

linked with the issue of the extent of the fisheries jurisdiction of the coastal State against the background of the emerging claims of “patrimonial sea” by some Latin American countries, became the subject of intense negotiations at the Second Geneva Conference in 1960. This Second Geneva Conference, however, ended in a failure, narrowly missing the adoption of a compromise formula of 6 miles for the territorial sea plus 6 additional miles for the exclusive fishing zone assigned to the coastal jurisdiction.¹

After the failure of the Second Geneva Conference a period of confusion ensued, in which the regime of the sea had to go through unprecedented turbulence, threatening the stability of the international order of the sea. I personally was witness to this remarkable historic process, through which the new regime of the law of the sea eventually came to emerge, working as I was at the Legal Department of the Foreign Ministry of a country to whom the consolidation of a stable regime of the sea was almost a matter of life and death.²

Japan’s efforts to maintain a viable environment for a healthy development of the regime of the sea focussed, on the bilateral front, on creating viable arrangements for high sea fisheries with its nearby countries (e.g., with the Republic of Korea in 1965; with New Zealand in 1968; with the People’s Republic of China in 1970; with the Soviet Union through the 1970’s and with the United States in 1976) and on securing freedom of navigation particularly with archipelagic States in the region.

Parallel with this development, however, another new major evolution was looming large on the multilateral front to affect the situation relating to the natural resources of the seabed beyond national jurisdiction. This was triggered by a dramatic proposal made by Ambassador Pardo of Malta to the United Nations General Assembly in 1967 to proclaim the natural resources of the deep seabed and ocean floor beyond national jurisdiction as “the common heritage of mankind”, to be placed under the control of an international regime. This proposal was taken up in the newly created Special Committee for the Peaceful Uses of the Deep Seabed and Ocean Floor. It soon came to be mingled together with another growing claim for extension of the limits of national jurisdiction to a wider area of the sea, in relation to both high seas fisheries and continental shelf resources, combined with the initiative of the United States to consolidate the international regime of the sea through

¹ The ultimate compromise formula to accommodate diverse national interests of States (the so-called “6 + 6” formula) was rejected by 54 in favour, 20 against and 5 abstentions in the final vote. The delegation of Japan, of which I was the most junior member, abstained in the final voting upon the instruction from the capital, thus materially contributing to this failure.

² In his statement for Japan at the Second Law of the Sea Conference in Geneva, the Representative of Japan stated that “As is well known, Japan is a leading fishing country of the world, with an annual catch of about five million tons. This constitutes an important source of nourishment for the Japanese people as they get almost 70 per cent of their animal protein requirements from the fish.” *Official Records of the Second United Nations conference on the Law of the Sea (Committee of the Whole — Verbatim Records of the General Debate) 9th Meeting, 30 March 1960*, p. 169.

reviving the failed attempt of the 1960 Conference in Geneva, through a new formula to link the issue of the breadth of the territorial sea with freedom of navigation (a major concern of the United States military for ensuring the unhindered passage of warships through the sea) with the issue of extension of national jurisdiction over resources (a major interest of many coastal nations). As legal advisor at the Japanese Mission to the United Nations during that period, I immediately became engulfed in the whirlwind of all these new developments.

Eventually all these tumultuous torrents of new developments were merged together to form a gigantic confluence that culminated in the new undertaking by the United Nations for another major conference on the Law of the Sea. This fresh start for the creation of a new regime of the law of the sea officially came about in 1976 and held its inaugural session in Caracas, Venezuela, in the following year. I became involved in this new undertaking as the Legal Advisor and Director of the Law of the Sea Office at the Ministry of Foreign Affairs of Japan. Being in a position of responsibility for the policy direction of Japan in these negotiations, a major concern throughout my tenure of this office was that Japan should not repeat the same strategic misjudgment that it committed in 1960 at the Second Geneva Conference.³

The rest is history on which much has been written. I do not feel like joining my former colleagues and comrades-in-arms in spilling much ink to retrace this remarkable but sometimes painful process. Through the protracted and tortuous negotiations, it was the almost superhuman leadership of Ambassador Amerasinghe of Sri Lanka and Ambassador Tommy Koh of Singapore who, as chairmen, led the Third Conference on the Law of the Sea to its historic achievement in 1982.

Looking back over this memorable period of history in my present capacity as Judge at the International Court of Justice, which is so frequently faced with disputes relating to the provisions of the UNCLOS, I recall with a strong sense of nostalgia and satisfaction the experiences of those bygone years spent in negotiating and drafting those provisions which I am now in a position to interpret and apply.

³ See footnote 2 above.

MALTA

*David Joseph Attard**

On November 1, 1967 the Permanent Representative of Malta, Dr Arvid Pardo, was invited to address the first Committee of the United Nations General Assembly. He commenced his intervention by referring to the fact that Malta's proposal relating to the seabed and the ocean floor had aroused astonishment if not suspicion. In fact he then went on to quote a statement made by a member of the House of Representatives of the United States:

The United States as a member – and I might add a paying member – of the United Nations is entitled to know: First, why did the Maltese Ambassador Arvid Pardo make this premature proposal? Second, who put the Maltese Government up to the proposal? Are they perhaps the sounding board of the British? Third and most of all, why the rush?

It is my conviction that there is no rush; it is my conviction that the presently agreed international law is reasonable and substantive. There is little reason to set up additional unknowns and additional legal barriers which will impair and deter investment and exploration in the depths of the sea even before capabilities and resources are developed.¹

So commenced the Maltese initiative which led to the convening of the Third United Nations Conference on the Law of the Sea, possibly the largest and longest diplomatic conference in the history of humankind. Malta, a small island State, had only gained Independence on the 21 September 1964 and had joined the United Nations a few weeks later. It is therefore perhaps not surprising to read the sentiments expressed by the US Congressman. However, as Dr Arvid Pardo so masterly explained in his speech:

The Maltese Islands are situated in the centre of the Mediterranean. We are naturally vitally interested in the sea that surrounds us and through which we live and breathe Our proposal was formulated entirely without the benefit of advice from other countries and I can categorically state that we are not the sounding board of any State and that nobody 'put the Maltese Government up to it'.²

He then embarked on a learned and brilliant speech which lasted over three hours! A long time by any standards. Nonetheless the response of the delegations was enthusiastic.

As one diplomatic commentator observed:

* Judge of the International Tribunal for the Law of the Sea and Director at the IMO International Maritime Law Institute. The views expressed herein are purely those of the writer.

¹ Congressional Record, September 28, 1967, H12681

² IOI: *The Common Heritage*, IOI Occasional Papers, 1975, pp 1-2.

There is no doubt that the Maltese initiative, and Dr Pardo's speech in particular, made a profound impact on the Assembly. In the delegates' lounge, the spacious bar and smoking room where the delegates congregate between meetings, conversation tended to centre on the Maltese initiative. In the innumerable and interminable cocktail parties, representatives would ask one another how their governments would react to Dr Pardo's proposals. There was a general feeling that the UN had here become involved in a new subject, of profound importance but great complexity and fascination, which would command the attention of delegates and officials for many years to come.³

For over fourteen years, over a hundred and fifty States negotiated a comprehensive legal regime which recognized that the problems of 'ocean space'⁴ are closely interrelated and need to be considered as a whole. This approach differed from that adopted at the First United Nations Conference on the Law of the Sea held in Geneva in 1958. The Maltese proposal's catalytic effect led to the adoption of the 1982 United Nations Convention on the Law of the Sea which can be described as a constitution regulating humankind's activities over the oceans. It is probably no exaggeration to state that the Maltese initiative brought about a dramatic change in the law of the sea last seen since Hugo Grotius wrote his *Mare Liberum*.

With respect to the 1982 Convention, Malta's main contribution is its efforts to elaborate the regime of the common heritage of mankind which is now reflected in Part XI of the Convention. These efforts were motivated by the desire to protect humanity's interests in the international sea-bed area and its resources. This commitment to the global communal interest is reflected in another Maltese initiative taken on 22 August 1988 when the question of climate change was put for the first time on the agenda of the United Nations General Assembly. The Maltese inspired Resolution 43/53 of the General Assembly entitled 'Protection of Global Climate for Present and Future Generations of Mankind' received unanimous support and characterized climate as a common concern of humankind since climate is an essential condition which sustains life on earth. Once more, Malta's diplomatic efforts led to another international process which culminated in the 1992 United Nations Framework Convention on Climate Change.

³ Evan Luard: *The Control of the Seabed*, 1977, p 87.

⁴ A term devised by Dr Arvid Pardo which is referred to in the Preamble of the 1982 United Nations Convention on the Law of the Sea.

MEXICO

*Alberto Székely**

Two generations of diplomats, international lawyers and various kinds of ocean affairs specialists, joined for more than a decade in preparing, drafting and negotiating this historic Convention, under the leadership of personalities to whom a great deal of gratitude and recognition is owed, for having built a legal regime that has brought the promise of peace and security to almost two-thirds of the World's surface.

The challenge for this generation, today, is to do the same for the rest of the Earth. This would be possible following the example of the likes of Jens Evensen, Hans Andersen, Arvid Pardo, Jorge Castañeda, Alan Beasley, Elliot Richardson, Andrés Aguilar, Bernardo Zuleta, Alfonso Arias Schreiber, Alexander Yankov, Milton S. Amerasinghe, Tommy Kohn, S. P. Jagota and Francis Njenga, to name a few, who headed delegations and conducted a Secretariat and various Commissions in such an ambitious endeavor, with imagination and commitment to the highest ideals of the United Nations.

For anyone who was a part of this unforgettable experience, the Third UN Conference on the Law of the Sea became the best imaginable school, for the arts of diplomacy and for the progressive development of international law, which should inspire many generations and negotiations to come.

*José Luis Vallarta Marrón***

En Grupo de América Latina y el Caribe se reunió para determinar cuál sería la posición del Grupo. Pronto surgió la idea de establecer una Autoridad y una Empresa internacionales que tuvieran capacidad para establecer empresas conjuntas con Estados y empresas privadas patrocinadas por Estados. La idea fue apoyada por África y Asia. Los grandes, capitalistas y comunistas pretendían que los recursos de los fondos marinos fueran *res nullius*.

Prematuramente se convocó la Tercera Conferencia de las Naciones Unidas sobre el Derecho del Mar en 1973, en Caracas.

La Conferencia se dividió en tres Comisiones. La Primera se encargaría de los fondos marinos y oceánicos fuera de la jurisdicción nacional; la Segunda de todos los temas restantes, la Tercera de los derechos y deberes de los Estados respecto de la preservación del medio marino, de la investigación científica y de la transferencia de la tecnología.

* Ambassador.

** Miembro de la Delegación de México.

La Delegación de México en Tercera Comisión, me fue encomendada. El Presidente de la Tercera Comisión, Embajador Alexander Yankov (Bulgaria) propuso la creación de dos Grupos de Trabajo.

Para presidir el grupo encargado de negociar lo relativo al régimen jurídico de la preservación del medio marino, el Embajador Yankov propuso mi nombre.

La Conferencia entró en un impasse. La Conferencia, sólo contaba con una amorfa e imprecisa lista de temas y cuestiones. Llovieron propuestas parciales, documentos de trabajo, enmiendas y sub-enmiendas que, al igual que la lista de temas y cuestiones sólo sirvieron para provocar un debate sin resultados concretos.

El Presidente de la Conferencia propuso que los Presidentes de las Comisiones prepararan respectivos textos únicos de negociación, con base en los debates y en las principales tendencias de las diversas delegaciones.

El Presidente de la Tercera Comisión preparó el texto único de negociación, en lo que se refiere a la preservación del medio marino. Surgió a la luz un texto único de negociación sobre el tema, que fue dura y adversamente criticado prácticamente por todas las delegaciones. El texto no seguía las principales y mayoritarias tendencias y confundía términos y expresiones como para parecer que tomaba en cuenta todas las posiciones, cuando que en realidad favorecía a los grandes. Después de ese fracaso, el Presidente Yankov me pidió que preparara una revisión del texto.

Por lo que se refiere al Grupo de Trabajo por mí presidido, no se dio un problema jurídico mayor sobre las fuentes de contaminación terrestres.

El problema eran los buques, entidades sometidas a la jurisdicción del Estado del pabellón y a las de los Estados ribereños, según las distintas jurisdicciones por las que naveguen.

Se dieron dos posiciones extremas. La de los Estados con grandes flotas de buques mercantes que aseguraban que era suficiente reconocer la jurisdicción exclusiva del Estado del pabellón. La otra posición era representada por los Estados con grandes litorales y recursos que proteger, que después se identificaron como “costeros”.

En la Conferencia surgió un grupo informal, a iniciativa del jefe de la delegación de Noruega, el Ministro sin cartera, Embajador Jens Evensen. Ese grupo fue el gran negociador de la Conferencia.

Cuando se convocó una reunión para tratar los temas pendientes en la cuestión de la preservación del medio marino, fui invitado en mi carácter de Presidente del Grupo de Trabajo. Informé sobre el progreso logrado y, sobre el gran problema pendiente de la contaminación por buques. Sugerí que los “Estados costeros” renunciaran a sus pretensiones de legislar en la zona económica exclusiva. A los “Estados del pabellón” pedí que aceptaran que en la futura zona económica exclusiva se reconocieran a los Estados ribereños atribuciones para hacer cumplir las normas y estándares internacionalmente acordados y también facultades para sancionar infracciones de buques extranjeros, en la zona económica exclusiva.

Al final de la reunión del Grupo Evensen, vinieron varios representantes a felicitar me. Percibí que habíamos resuelto el problema pendiente. El Embajador Evensen incluyó mi sugerencia en su informe y la misma fue aceptada. La incorporamos, con éxito, en la revisión del texto único de negociación. Esa propuesta puede leerse en la Parte XII de la Convención, relativa a la preservación del medio marino. La fórmula fue conocida por breve tiempo en la Tercera Comisión como la fórmula Vallarta.

No tuve el privilegio de asistir a la aprobación de la Convención en 1982, porque mi trabajo en la Tercera Comisión había ya terminado y ya no fui incluido en la Delegación de México. Lo sentí pero comprendí la lógica de mis superiores.

México, D.F. febrero de 2012

*Translated from Spanish**

The Group of Latin American and Caribbean States held a meeting to establish the Group's position. A proposal was made to establish an international authority and corporate entity with the capacity to set up joint companies with States and private, State-sponsored companies. The proposal was supported by Africa and Asia. The large capitalist and communist countries claimed that seabed resources were res nullius.

The Third United Nations Conference on the Law of the Sea was convened prematurely, in 1973, in Caracas.

The Conference established three Main Committees. The First Committee considered items relating to the seabed and ocean floor beyond national jurisdiction; the Second Committee, items relating to issues within national jurisdiction; and the Third Committee, items relating to the rights and duties of States relating to the preservation of the marine environment, scientific research and the transfer of technology.

I was assigned to represent the delegation of Mexico in the Third Committee. The Chairman of the Third Committee, Ambassador Alexander Yankov (Bulgaria), suggested the establishment of two working groups.

Ambassador Yankov nominated me to chair the working group responsible for negotiating a legal framework for the preservation of the marine environment.

The Conference reached an impasse. Its rudimentary and vague list of subjects and issues, together with a deluge of partial proposals, working papers, amendments and sub-amendments, served to provoke debate but failed to produce any tangible results.

The President of the Conference suggested that the Chairmen of the Main Committees should each prepare a single negotiating text on the basis of their Committee's deliberations and general trends among delegations.

* Member of the delegation of Mexico.

The Chairman of the Third Committee prepared a single negotiating text on the preservation of the marine environment. The proposed text was harshly criticized by virtually all delegations. It did not reflect general or majority trends and employed confusing terminology and expressions in such a way that seemed to account for all positions, but that in reality favoured the most powerful States. Following this failure, Chairman Yankov asked me to prepare a revised text.

The working group I chaired did not encounter major legal issues regarding land-based sources of pollution.

The problem was ships, as entities subject to the jurisdiction of the flag State or of the coastal States, depending on the particular jurisdictions through which they passed.

Two extreme positions emerged. One - backed by States with large merchant fleets - was that it was sufficient to recognize the exclusive jurisdiction of the flag State. The other was argued by States with long coastlines and resources to protect, which subsequently identified themselves as "coastal States".

An informal group was formed at the Conference on the initiative of the head of the delegation of Norway - Ambassador Jens Evensen, a minister without portfolio. This informal group became the lead negotiator at the Conference.

When a meeting was convened to discuss outstanding issues concerning the preservation of the marine environment, I was invited to attend in my capacity as Chairman of the working group. I reported on the progress made thus far and on the major outstanding issue of pollution from ships. I suggested that coastal States should renounce their claims to legislate in the exclusive economic zone. I asked flag States to agree to recognize, in respect of the future exclusive economic zone, the authority of coastal States to enforce internationally agreed norms and standards and the authority to punish violations by foreign ships in the exclusive economic zone.

Various representatives congratulated me at the conclusion of the meeting of the Evensen group. It was clear that we had resolved the outstanding issue. Ambassador Evensen included my suggestion in his report and it was subsequently approved. We successfully incorporated the suggestion into the revised single negotiating text. The proposal can be found in Part XII of the Convention, on the preservation of the marine environment. The formula was briefly known as the "Vallarta formula" within the Third Committee.

I did not have the privilege of attending the adoption of the Convention in 1982, as my work on the Third Committee had come to an end and I was no longer a member of the delegation of Mexico. It was regrettable, but I understood my supervisors' reasons.

Mexico City, February 2012

NETHERLANDS

Adriaan Bos

On the occasion of the 30th anniversary of the Convention on the Law of the Sea, we have been asked by the UN secretariat to share some personal reflections on the negotiation and adoption of the third Convention on the Law of the Sea.

Let me start by saying that the Netherlands has always had a close relationship with the sea and that the regime governing the use of the sea is therefore of utmost importance to us. This explains why we have always actively participated in efforts to codify and develop the rules concerning the different uses of the sea.

The 20th century is marked by fundamental changes with important consequences for the law of the sea. First, the codification efforts that had started in The Hague in 1930, where the parties failed to reach agreement on the breadth of territorial waters, were brought to a conclusion during two UN Conferences in 1958 and 1960. Four Conventions were elaborated, plus a protocol with regard to dispute settlement. Although these Conventions contained deficiencies, such as disagreement on the breadth of territorial waters and the absence of binding settlement proceedings, they were nevertheless an important step forward. The Netherlands signed and ratified these so-called Geneva Conventions.

In 1945 President Truman declared that the US had jurisdiction over the economic zone up to 200 miles from the shore. Similar unilateral extensions followed. Interest in the economic and military uses of the sea grew. These developments made agreement on the breadth of territorial waters very difficult. Another crucial factor was decolonisation. The new states were very suspicious about what they saw as 'Western' international law.

In 1967 Arvid Pardo, Permanent Representative of Malta to the United Nations, proposed the drafting of a treaty focusing on the seabed and ocean floor beyond the limits of national jurisdiction. His intention was to create a new law of the sea based on the principle that the marine environment and its resources are the common heritage of mankind and should be managed in the interests of all through cooperation between national authorities and international institutions.

Pardo's initiative led to the establishment of the Seabed Committee to study the question of the exclusive use of the seabed for peaceful purposes and the use of resources in the interests of mankind. One of the most substantial contributions made by the Committee was a declaration of principles concerning the seabed beyond national jurisdiction.

In 1970 it became clear that a conference exclusively concerned with revision of the existing law of the sea would no longer meet the international

needs. The Netherlands was not opposed to broadening the scope of a new conference, provided that the principles of the 1958 Geneva Conventions were upheld. In a General Assembly session in November 1973, the last stumbling blocks were removed and a resolution convening a third Law of the Sea Conference was adopted.

At the time these negotiations were characterised as the most important event in the history of the UN. This was also the biggest conference ever held. In his opening speech, the Secretary-General of the UN emphasised the political importance of the Conference. If it failed he foresaw an increase of conflicts between states, since they were already anticipating the results by taking unilateral measures. Being responsible for the maintenance of peace and security and thus for preventing conflicts, the UN had a major interest in a successful outcome.

My dealings with the conferences on the law of the sea and the preparatory work for the Third UN Conference on the Law of the Sea go back to the 1960s. As a junior staff member in the office of the Netherlands' Legal Adviser and head of delegation, Professor Willem Riphagen, I was selected to assist him in his work on the law of the sea. From then on, a substantial part of my work was devoted to questions related to the law of the sea.

There is one specific feat which may be specifically attributed to the Netherlands, or rather to Professor Riphagen. As was the case in 1958, the dispute settlement clauses became, once again, a topic of disagreement. One object of discussion was the choice of tribunals. As is known far and wide, solutions to problems during treaty negotiations are not always born during the well-organized but also rather stilted formal process. It was during a dinner in Montreux that professor Riphagen suggested that the choice of tribunals would follow the defendant. This principle, which is known as the "Montreux Compromise" became the basis of what has become article 287 of UNCLOS.

Participating in the Conference was a good experience for me since the organisation of such a huge conference was in many respects something new.

NEW ZEALAND

*William R. Mansfield**

I am honoured to have been asked to provide some brief thoughts, memories, reflections and ideas for the future on the occasion of the thirtieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea.

The celebration of this occasion is very appropriate. The seminal importance of the Convention was widely recognised at the time of its adoption but looking back after 30 years there can now be no doubt it was an extraordinary achievement and one of the ongoing major contributions to international peace and security accomplished last century.

As a relatively young and inexperienced lawyer/negotiator at the outset, I was privileged to be a member of the New Zealand delegation to the last meeting of the “Sea-Bed Committee” and all the negotiating sessions of the Conference from 1973 to 1982. I learnt an enormous amount through that period, particularly from the senior members of my own and other delegations and from the leaders of the Conference. Many of those lessons have proved very helpful at different points throughout my working life, often in quite different contexts.

They are too many to list in detail but some of the more important include the following:

- (i) effective solutions can be negotiated only when real interests are directly involved and doctrinal positions are left aside;
- (ii) small informal groups of those with the most direct interest in an issue are the best way to find solutions but the right mechanism has to be found to ensure the results gain the support of the wider group of participants;
- (iii) the technique of entrusting a Chair with the task of producing a negotiating text that evolves through discussions can greatly facilitate negotiations;
- (iv) the goal of consensus is an important tool, especially when the issues are many and complex and no-one is likely to achieve all they want on all issues, but it must be backed by the possibility of voting to ensure a good outcome for the wider community is not blocked by a self interested minority;
- (v) in any important negotiation there may be periods when agreement seems impossible and the negotiations must collapse and at such points the

* Barrister.

fate of the negotiations are likely to rest on the experience and personal commitment of the conference leaders and their willingness to explore procedural and/or substantive solutions that are beyond their instructions.

I would particularly like to take this opportunity to honour the leaders of the law of the sea negotiations throughout the 1970s and early 1980s. Time and again when negotiations were at a standstill and collapse seemed inevitable they found a way forward, recognising that for the sake of the wider international community the negotiations were a moment in history that must not be lost. One can only hope for a similar breadth of vision and commitment on the part of the leaders engaged in climate change negotiations in the present era.

From the perspective of a small ocean locked country at the bottom of the Pacific the Convention has proved to be remarkably successful. The clarity of the rules it embodies, particularly on the fundamental issues of jurisdiction, have stood the test of time. Those rules protect our essential interest in sending and receiving goods by ships that for parts of their journey must travel close to the coasts of other countries. But they also provide us with the opportunity to manage the resources in the seas around us in a sustainable and responsible manner. For the small island countries of the Pacific with very limited land areas this opportunity to manage and benefit from the fisheries resources in their EEZs has been, and continues to be, of special importance. Small countries are dependent upon an international system that is rules based rather than power based and in relation to the oceans the Law of the Sea Convention is the cornerstone of that system.

As to the future my hopes include the following:

- (i) ratification of the Convention by the USA; (The intellectual leadership provided throughout the negotiations by the US delegation, including some of the world's finest legal minds, was outstanding and it is tragic and inexplicable to me that despite support from successive administrations the US Senate has still not approved ratification.)
- (ii) recognition in the actions of governments and people that in regard to fisheries the oceans resources are not limitless and in regard to land based sources of pollution they are not a bottomless sink;
- (iii) improvement in the monitoring of the performance of flag state responsibilities particularly by open registries; (There may be no greater threat to the long-term stability of the UNCLOS regime than the failure of some flag states to ensure that vessels flying their flags comply with their obligations on the high seas.)
- (iv) designation of some special areas in EEZs and high seas as deserving of protection equivalent to national parks in land territory;

(v) Further coordination of the institutional arrangements at the national, regional and global levels to respond more effectively to the cross cutting nature of oceans issues.

NORWAY

Per Tresselt and Rolf Einar Fife**

The United Nations Convention on the Law of the Sea provides a modern, comprehensive legal framework for the peaceful uses of the seas and largely reflects customary international law. Among its stated aims is to make “an important contribution to the maintenance of peace, justice and progress for all peoples of the world”.

The thirtieth anniversary of the Convention provides an opportunity to reflect on its background and take stock of the advances made to fulfil its aims. In the following, the particular perspective of Norway will be outlined briefly from the combined vantage points of a former legal adviser who participated in the negotiations on the Convention and the present legal adviser who has been involved in the Convention’s most recent implementation.

Norway is a coastal State with lengthy and complex coastlines. It also shares key interests in the high seas freedoms and the protection and preservation of the marine environment, as well as a consistent commitment to international development issues. One of the primary aims at the Third United Nations Conference on the Law of the Sea (1973-1982) was to reconcile seemingly conflicting but interrelated interests into a coherent and fair “package” that would make a significant contribution to the international legal order. It certainly was a key objective of the Norwegian negotiators, under the leadership of Jens Evensen. Other important contributions include those made by Helge Vindenes, together with Ambassador Jorge Castañeda of Mexico, to the conceptual underpinnings relating to the very concept of the exclusive economic zone.

Norway has lengthy coastlines. For more than a century and a half, its merchant fleet has played an important part in world trade. In the past 40 years, Norway has developed a profitable offshore petroleum industry and a significant fisheries and aquaculture sector. Norway is actively engaged in

* Per Tresselt, Member of the Norwegian Delegation to the Third Law of the Sea Conference; Director General for Legal Affairs at the Royal Norwegian Ministry of Foreign Affairs (1983-1989). Mr Tresselt thus held the latter position in the years immediately following the signing of the Convention. He was subsequently co-agent for Norway in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen* (Denmark v. Norway) before the International Court of Justice (1993), Ambassador to the Russian Federation (1994-1999) and Judge at the EFTA Court in Luxembourg (2000-2005).

* Rolf Einar Fife, Director General for Legal Affairs at the Royal Norwegian Ministry of Foreign Affairs since 2002. He headed the Norwegian teams before the Commission on the Limits of the Continental Shelf, whose final recommendations for the Kingdom of Norway were issued in 2009, and in maritime delimitation negotiations with Denmark (with Greenland and the Faroes), Iceland and the Russian Federation, that resulted in several agreements, including the Treaty between Norway and the Russian Federation on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, done at Murmansk, 15 September 2010.

efforts to provide technical assistance to developing countries, including as regards the determination of the outer limits of the continental shelf.

From early history, harvesting of marine resources, then shipping, and lastly exploitation of shelf resources explain why the law of the sea has consistently been a vital national interest for Norway. This interest also explains why, under varying political circumstances, the territorial waters were steadfastly maintained at four nautical miles from the baselines. Moreover, as foreign competitors sought to participate in coastal fisheries, Norway established in 1869 its first closing lines for selected fjords to exclude fishing by foreigners. Further closing lines were established across fjords and bays and, eventually, straight baselines. These measures were contested by flag States, sometimes in quite emphatic terms. Ultimately, a long-standing dispute between Norway and the United Kingdom on this issue was settled by the International Court of Justice in the Fisheries Case in 1951. The judgment and the related State practice played a seminal role as regards the formulation of rules that were included in the Convention.

Subsequent developments in the legal regulation of ocean affairs took their cue from the Truman Proclamation of 28 September 1945. The International Law Commission was mandated to consider issues of the law of the sea. The First and Second United Nations Conferences on the Law of the Sea led to results that both sustained traditional ideas of customary international law, and sketched approaches to new concepts. The crucial issue of the maximum breadth of the territorial sea was left uncertain, and a compromise on the extent of coastal State fisheries jurisdiction was left hanging in the air in 1960. State practice soon accepted the idea of coastal State fisheries jurisdiction within a limit of 12 nautical miles. Norway followed this nascent practice, allowing generous transitional periods for fishermen who had traditionally fished in the area.

The following period was characterised by the transition of a great number of former colonial territories to statehood and membership of the United Nations, and the advent of various claims to extended coastal State jurisdiction.

At the same time, expectations arose that the areas of deep seabed would contain mineral riches of substantial value. One of the authors was present in the room in 1967 when Arvid Pardo of Malta proposed that the resources of the deep seabed beyond the limits of national jurisdiction should be recognised as the common heritage of mankind.

From that moment, a process started that would involve an unprecedented confrontation of conflicting analyses of real differences of interest, involving strategic and military perspectives, as well as differing economic and societal views of what would be just and fair for the participating States, as well as for the international community as a whole.

As negotiations progressed in the mid-seventies, the necessity of allowing coastal States to exercise sovereign rights with regard to the exploitation of natural resources in a much broader area adjacent to coasts than the territorial

waters was accepted. Economic Zones (or fishery zones of varying descriptions) extending up to 200 nautical miles from coasts were established by most coastal States. In so doing, draft Articles establishing specific limitations on the exercise of newly acquired jurisdictional rights by coastal States were generally observed.

In 1982, it was agreed to proceed to the formal adoption of the draft Convention. Nevertheless, it was clear that the necessary acceptance from States representing major interests in seabed mining was lacking. It was not until 1990 that negotiations on a resolution of outstanding issues regarding deep seabed mining were engaged, leading to an Implementation Agreement in 1994. This time it worked, and the ratifications kept coming.

In the years since the entry into force of the Convention in 1994, a number of momentous developments have objectively highlighted the wisdom of various elements of the “package” solution that was adopted, while not excluding further international regulations consistent with the requirements of Article 311 of the Convention or other legal developments.

This may be illustrated by one of the more contentious issues, namely the delimitation of economic zones and of the continental shelf between States with opposite or adjacent coasts. The relatively open texture of law chosen in the formulation of Articles 74 and 83 of the Convention also allowed the International Court of Justice to gradually clarify the applicable legal principles and rules, while weighing the relevant circumstances from case to case. Consolidating the law governing maritime delimitation eventually led to the emergence of a settled jurisprudence, as recently also illustrated by the judgment of the International Tribunal for the Law of the Sea on 14 March 2012 in the *Dispute concerning Delimitation of the Boundary between Bangladesh and Myanmar in the Bay of Bengal* (Bangladesh/Myanmar) (paragraphs 225-240). Norway has made contributions to this consolidation of the law, particularly in the context of the Greenland-Jan Mayen judgment of the Court (1993) and a significant State practice, including maritime delimitation treaties between the Kingdom of Norway and all its neighbouring States. These comprise the *Treaty with the Russian Federation on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean*, that was signed in Murmansk on 15 September 2011 and entered into force in July 2011.

Looking back at the long-drawn-out process of negotiation of the Convention, what lessons have we learned?

For a start, it was probably a good thing to entrust the drafting of preliminary texts to the Seabed Committee. While the process leading to the 1958 Conference involved no small measure of codification, the questions raised in 1967 were directly political, and the issues fraught with serious difficulties. The working methods developed in the course of the process were flexible and productive. A series of informal groups was established to work in close contact with officers of the Conference and members of the Secretariat,

and this had the effect of distributing the work load. The quality of the resulting texts was also consistently high.

Where are the main gaps and needs that must be addressed today in order to fulfil the aims of the Convention? We believe that one of the main challenges facing the international community today has to do with lack of compliance and implementation, much more so than any remaining normative gaps. This is why Norway has devoted considerable resources to technical assistance to developing countries as regards the determination of the outer limits of the continental shelf, fisheries and integrated marine management planning. As recognised by the Convention in its preamble, not only are the problems of ocean space closely interrelated and must be considered as a whole, but we should also bear in mind the need to take into account the interests and needs of the international community as a whole and, in particular, the special interests and needs of developing countries. All States should, moreover, ensure effective compliance through appropriate legislation and enforcement in conformity with the Convention.

OMAN

*Rua Al-Zadjali**

The United Nations Convention on the Law of the Sea is considered as the most comprehensive and global agreement. In December 1982, when the convention was adopted, it was signed by 119 delegations on the first day of the opening for signature. The Sultanate of Oman signed this convention on 1 July 1983 and ratified it on 17 August 1989. Today, there are 161 States parties plus the European Union.

The General Assembly has played a vital role in guiding the development of the Law of the Sea when it was mandated by the International Law Commission in 1947 to prepare draft articles to regulate the regime of the high seas and territorial waters. These draft articles became the basis of the work of the first U.N. Conference on the Law of the Sea convened in 1958. The second conference was convened in 1960 but without an agreement on the breadth of the Territorial sea and a fishery zone.

The Third UN Conference, which was convened in 1973, concluded its work in 1982 with the adoption of the 1982 UN Convention on the Law of the Sea. As a coastal state, the Sultanate of Oman attaches great importance to this convention, particularly with regard to the policy of the demarcation of maritime boundaries and the work of the commission on the limits of the continental shelf in which Oman and many other countries look forward to upgrade its role in assisting states wishing to submit their applications to extend the limit of their continental shelf and to the protection of the marine environment and marine resources as well as to resolve problems related to ocean and seas in the deteriorating state of marine living resources, which is mainly due to over-exploitation of fisheries. Additional steps to stop this overexploitation of endangered fish stocks are necessary to combat illegal and reported fishing activities in the high seas. Oman strongly believes that all states should apply an effective precautionary approach to the conservation, management and exploitation of fish stocks in order to protect living marine resources.

The Sultanate of Oman was keen to contribute in the entering of the convention into force through the participation in most of its work and signing and ratifying the Convention in its early stages considering it as a great achievement serving the common heritage of humanity.

The UN Convention on the Law of the Sea is a great achievement because it addresses all aspects of human activity relating to oceans: navigation and overflights, conservation and pollution, fishing and shipping, resource exploitation and exploration, scientific research and the settlement of disputes.

* First Secretary of the Permanent Mission of the Sultanate of Oman to the United Nations.

Over the past 30 years, the purposes of convention have in large been fulfilled, where coastal states are delimiting their marine zones, freedom of navigation has been assured, ocean activities are governed by law.

As we celebrate the 30th anniversary of the opening for signature of 1982 UN Convention on the Law of the Sea, the Sultanate of Oman is pleased to pay special tribute and express its admiration and gratitude to all those who helped to build an international and a modern, universal law of the sea with particular mention of certain personalities that have contributed to this matter, including the late Ambassador's Shirley Amerasinghe, Arvid Paro, who was the first who raised the question of the mineral resource in the seabed beyond the limits of national jurisdiction, Bernardo Zuleka, Elizabeth Mann Borgese, Ambassador Tommy Koh, president of the third UN Conference on the Law of the Sea, Mustafa Kamil Yasin, Elliot Richardson, Alfonso Arias Schneider and Bernardo Zuleta. Our tribute to all of them and to others for their role in adopting this historic and international legal order that defines the rights and responsibilities of nations in their use of the world's oceans.

PERU

*Eduardo Ferrero Costa**

On the occasion of the 30th Anniversary of the opening for signature of the Law of the Sea Convention, I would like to comment briefly on the Peruvian involvement in the Conference and its contribution to the Law of the Sea Convention. As it is well known, the Peruvian participation was especially important in the development of two key institutions recognized in the Convention, which are now international customary law and a common place among the international legal community.

The first main involvement in the negotiating process is related with the shaping and establishment of the Exclusive Economic Zone of 200 Miles with sovereignty of the coastal state for the exploration, exploitation, conservation and administration of the natural resources and other activities for the economic exploitation of the zone, and with jurisdiction for the establishment of artificial islands, scientific research and protection and preservation of the marine environment. The second contribution has to do with the recognition of the sovereignty of the coastal state over the continental shelf for economic purposes up to 200 miles, establishing that the coastal state has sovereign and exclusive rights for exploring and exploiting “the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance”.

The background of these two key concepts of the New Law of the Sea, with its essential elements of sovereignty and jurisdiction for economic and other related purposes within 200 miles, together with freedom of navigation in the zone, is found in the 1947 Chilean and Peruvian proclamations, in which both countries introduced a revolutionary concept that would change the Law of the Sea. After the precedents of the 1945 Truman Proclamations, the 1945 Mexican Declaration and the 1946 Argentinean Declaration, Peru and Chile claimed with different instruments of diverse juridical nature, sovereignty and jurisdiction over the Continental Shelf and over the waters and all living resources within the 200 miles of their coasts, regardless of the geographical extension of the continental shelf and the depth of the sea.

* Doctor in Law, Professor of International Law and Member of the Permanent Court of Arbitration, who participated as legal counsel of the Peruvian Delegation to the last seven years of the Third United Nations Conference of the Law of the Sea. He has been Minister of Foreign Affairs and Ambassador of Peru to the United States and to the Organization of American States.

The 1947 Peruvian Supreme Decree declared that “national sovereignty and jurisdiction are extended to the submerged continental or insular shelf adjacent to the continental or insular shores of national territory, whatever the depth and extension of this shelf may be”, as well “over the sea adjoining the shores of national territory whatever its depth” and in the extension necessary to protect and utilize the natural resources which may be found in those waters. After declaring in the next article that Peru would exercise control and protection on the seas adjacent to the Peruvian coast up to a distance of two hundred (200) nautical miles, finally in the last article the same Supreme Decree added that the Declaration “does not affect the right to free navigation of ships of all nations according to International Law”.

Few years later, in 1952 Chile, Ecuador and Peru signed a tripartite political declaration seeking for the international recognition of their revolutionary thesis and to defend their 200 miles maritime zone in a jointly manner against the opposition of the world’s naval powers, as Great Britain and the United States, which only accepted the three miles territorial sea. In the Santiago Declaration the three Governments proclaimed “as a norm of their international maritime policy that they each possess exclusive sovereignty and jurisdiction over the sea along the coasts of their respective countries to a minimum distance of 200 nautical miles from these coasts”, adding in the next paragraph of the Declaration that “the exclusive jurisdiction and sovereignty over this maritime zone shall also encompass exclusive sovereignty and jurisdiction over the sea bed and the subsoil thereof.”

Since then a long historical process followed in which Peru and its two other partners of the South Pacific created a special sub regional organization and defended their original thesis of 200 miles of maritime sovereignty and jurisdiction, for the conservation and exploitation of their natural resources. This was their concern and they challenged the international community which was still based mainly in an Old Law of the Sea, as it was seen at the First and Second United Nations Conferences on the Law of the Sea held in Geneva in 1958 and 1960. During the next decade Peru continued promoting his position, first within the other Latin American countries and then with developing countries from other regions of the world.

During the preparatory sessions between 1971 and 1972 and the eleven sessions of the Conference held since 1973 until the approval and signature of the Convention in 1982, the Latin American influence was decisive. Moreover, within this regional group, in the Group of 77 and at the whole global process of the negotiations, the Peruvian involvement was intense with leadership in certain issues of special concern (including the International Sea Bed Area) and with our delegation proposing several drafts which were relevant for some articles of the Convention adopted by consensus. In this regard, I would like to remember the active participation of Ambassador Alfonso Arias Schreiber, President of the Peruvian Delegation, for the approval of article 301 of the Convention on the use of the oceans for peaceful purposes, applicable to all the

areas of the sea, particularly thought with reference to the economic zone and the interpretation that military exercises or maneuvers cannot be carried out in this zone.

I would like to finish these short remarks restating the importance of the Law of the Sea Convention for the world order, ocean governance and the development of International Law. As Ambassador Javier Perez de Cuellar said in a Conference to the International Law Association, in Montreal in August 1982, acting as the United Nations Secretary General few months after the Convention was opened for signature: (The Convention) “maybe could be considered the most significant international legal instrument of this century”.

1.03.2012.

POLAND

Janusz Symonides

The Third United Nations Conference on the Law of the Sea was exceptional on many counts. There was no draft text prepared by the International Law Commission to work upon at the very outset of the Conference - a significant departure from general practice. A novelty was the adoption of the principle of consensus. Pursuant to the Rules of Procedure adopted at the Second Session (Caracas, June 27, 1974) a matter of substance could not be put to vote unless all efforts to arrive at general agreement have been exhausted. The adoption of consensus prompted a consistent search for compromise solutions; this, in turn led to the so-called package deals meaning that a concession over some issue was made in the expectation of a concession over another problem. The package deal solution that linked various questions was a response to a necessity to work out a single convention for the entire field of the law of the sea.

It was interesting how States sided with each other. Besides regional groups which long have existed within the UN system and the group of 77 (the developing countries) two other groups firmly established their presence at the Conference: geographically disadvantaged States (the group of 54) and a group of territorialists that is coastal States with claims to a 200-mile territorial sea. In fact every major issue commanded groups with a uniform stance. Mention is due here to groups of archipelagic States, straits States, or shelf States. Needless to say there were opposition groups as well e.g., discussing delimitation: the group of 22 advocated the median or equidistance line, while the group of 29 raised the principle of equity.

Poland actively participated in the work of the group of geographically disadvantaged States. The origin of the group dates back to the Sea-Bed Committee. In 1971 four land-locked countries (Afghanistan, Austria, Nepal and Hungary) were joined by three shelf-locked States (Belgium, Netherlands and Singapore). On 19 August 1971 seven members of the group presented the first working document in the Sea-Bed Committee. During the Third Conference the membership of the group increased progressively. At the Second Session in Caracas (1974) the group numbered 42 members, in 1975 it grew to 49 and in 1976 to 51. During the Eighth Session in 1979 the membership in the group reached 54. In 1981 Zimbabwe joined the group bringing the total number to 55. However, in spite of this fact, an alternative denomination of the group of geographically disadvantaged States remained unchanged, "the group of 54". The group was composed of 29 land-locked and of 26 geographically disadvantaged countries. In discussions held in connection with the admission of new members, it was emphasized that a State can be recognized as geographically disadvantaged if it is shelf-locked, if it has no

possibility of establishing a 200-mile economic zone, or if it has a very short coastline.

A closer look at the membership of the group leads to the obvious conclusion that on many grounds members differed greatly among themselves. Politically some countries were non-aligned, whereas others belonged to NATO or the Warsaw Pact. Two-thirds of the group was developing countries and one-third was composed of developed ones. In spite of all these disruptive elements the group of geographically disadvantaged States maintained a high degree of solidarity and cooperation throughout the Conference and stood firmly by its cause notwithstanding apparent political, economic or ideological differences.

The problems dealt with by all three main committees of the Third Conference were the subject of the attention of geographically disadvantaged States. The group of 54 was very articulate in its positions and presenting its claims and proposals in all the negotiating fora. In Committee II, which was the most important for the group, it devoted particular attention to the question of the legal status of the economic zone; the right of participation in the exploitation of the living resources of the economic zone; the definition of the continental shelf; and transit rights for land-locked States. In Committee III, the group defended the freedom of scientific research. Geographically disadvantaged States also claimed preferential treatment and special rights in matters of scientific research conducted within the region or subregion in which they are located.

The group of 54 had a chance to influence the course of the Third Conference for at least four reasons. First, there was the numerical strength of the group. With 55 members it accounted for 36 per cent of the total participation in the Conference. Thus, the group could be regarded as a blocking minority possessing more than one-third of the votes. Second, the existence of various interest groups and flexibility of procedure allowed the creation of various alliances and different package deals. Third, Austria provided the group with very consistent, able and strong leadership. Fourth, last but not least, the majority of the members of the so-called Collegium happened to be from geographically disadvantaged States. The Chairman of Committee I, P. Engo, was from Cameroon, the Chairman of Committee III, A. Yankov from Bulgaria, Rapporteur-General of the Conference, K. Rattray, from Jamaica and after the untimely death, of the President, H. Amerasinghe, a new President, T. B. Koh was from Singapore.

Although one may argue over the extent to which the Convention effectively recognized the special claims of geographically disadvantaged States, nevertheless the term is used in many Articles: 69, 70, 160, 161, 254, 266, 272 and 274. Though today, thirty years after the adoption of UNCLOS, these articles are far from being fully implemented and observed in practice - in fact they are partially "forgotten". Nevertheless, the role played by this group during the Third Conference should be remembered. The very existence of the

group of geographically disadvantaged States played an important role in mitigating the extreme claims presented by the territorialists in halting “the creeping jurisdiction over seas”, and the rejection of unilateral acts. The group, in conjunction with other allies, was quite successful in the defense of freedom of navigation and freedom of scientific research.

PORTUGAL

*Pedro Côrte-Real Pinto**

La commémoration de la signature de la Convention de Montego Bay sur le droit de la mer est un juste hommage à tous ceux qui, pendant beaucoup d'années, ont travaillé pour conclure un accord qui est un vrai monument juridique. Ce fut un grand honneur de faire partie de ce grand défi, avec des difficultés immenses que les délégations ont heureusement réussi à surmonter. L'importance de cette Convention et le considérable pas en avant dans la résolution des divers problèmes que l'ordre juridique de la mer a représenté, justifient bien les années passées en négociation pour trouver un consensus entre les intérêts maritimes de chaque pays.

Naturellement, on ne peut pas dire que l'actuelle Convention ait résolu, une fois pour toutes, les diverses contradictions en droit de la mer bien qu'elle constitue une avance considérable dans l'objectif d'élaborer un système juridique de la mer qui soit accepté par la grande majorité des pays.

Le Portugal est un des pays pour lequel la mer assume une importance vitale. La possibilité d'étendre le plateau continental prévue par la Convention est centrale pour mon pays. Une autre conséquence bénéfique de la Convention pour le Portugal a été celle de mettre en évidence la similitude d'intérêts entre le Portugal et les autres pays lusophones en matière maritime. La traduction commune en Portugais de la Convention peut être considérée comme le premier exemple d'un rapprochement juridique entre les pays de langue portugaise.

On doit considérer que le futur de l'humanité dépend de la mer et de l'espace et, de ce fait dérive, en certaine mesure, l'importance considérable de la Convention. À ce propos, on ne doit pas oublier le rôle important de l'Organisation des Nations Unies qui a permis la réalisation de la Conférence et le suivi, pendant de longues années, des travaux nécessaires à la réussite des négociations relatives à cette Convention. De ce fait, la gratitude de tous ceux qui ont bénéficié des grands avantages de l'élaboration de la Convention.

Personnellement, je désire souligner la mémoire de moments intenses, quelques fois difficiles mais toujours stimulants, au service de mon pays et de l'intérêt commun; et les amitiés fortes nées pendant les négociations et qui restent bien vivantes.

Lisbonne, février 2012

* Ambassadeur du Portugal, Chef de la Délégation Portugaise à la Conférence des Nations Unies sur le Droit de la Mer, 1979-1982.

*Translated from French**

The commemoration of the signing of the Montego Bay Convention on the Law of the Sea is a fitting tribute to all those who, for many years, worked to conclude an agreement that stands as a true legal monument. It was a tremendous honour to participate in that major challenge, with immense difficulties that, fortunately, the delegations were able to overcome. The importance of this Convention and the considerable progress made in resolving the various legal problems relating to the sea are ample justification for the years of negotiation leading to consensus among the maritime interests of each country.

Naturally, while it cannot be said that the current Convention has settled the various contradictions in the law of the sea once and for all, it represented considerable progress towards the goal of devising a maritime legal system accepted by a large majority of countries.

Portugal is among those countries for which the sea is of vital importance. The possibility of extending the continental shelf, as provided for in the Convention, is key for my country. Another benefit of the Convention for Portugal was that it highlighted the similar maritime interests that Portugal shares with other Portuguese-speaking countries. The translation of the Convention into Portuguese can be seen as the first example of legal rapprochement among lusophone countries.

It must be borne in mind that the future of humanity depends on the sea and space; therein lies, in part, the great importance of the Convention. In this connection, we should not forget the key role of the United Nations, which made the Conference a reality and, over many years, provided the follow-up for the work that made the negotiations a success. It therefore deserves the gratitude of all those who have gained from the major advances afforded by the Convention.

On a personal note, I would like to highlight my memories of those intense times that were sometimes difficult but always stimulating, in the service of my country and the greater good; and the strong friendships forged during the negotiation process that live on.

Lisbon, February 2012

* Ambassador of Portugal, Head of the Portuguese delegation at the United Nations Conference on the Law of the Sea, 1979-1982.

Jose Luís Rodrigues Portero

When I came to be a part of the Portuguese delegation to the Third United Nations Conference on the Law of the Sea, the text which would become the basic structure of the Convention had already been agreed upon. However, some important concepts and newly created structures still lacked legal definition. Unlike the content of previous conventions, these concepts and structures were not based on that important source of international law which is international custom. What was truly at stake then was the creation of a new instrument in International Maritime Law, which would establish a contemporary balance of interests and not just codify existing customary norms.

I recall, more than three decades later, the lively discussions regarding some topics which I will exemplify but which should not be taken to underestimate the amplitude of a text with seventeen parts, nine annexes, and more than four-hundred articles (many of which are considerably longer than what is common for normative texts). Firstly, I'd like to mention the provisions of Part XI regarding the implementation of the innovative principle of the "*common heritage of mankind*", especially article 161 which establishes the composition, process, and voting of the Council of the International Seabed Authority, cornerstone of the practical implementation of that principle.

Also, in what regards traditional maritime areas (a topic which I followed more closely in the Second Commission) I would underline, among other subjects: the definition of the new concept "*exclusive economic zone*", encompassing two-hundred nautical miles, particularly its legal framework which was conceived as a compromise solution between the economic interests of coastal States and the fundamental principle of freedom of navigation; the definition of the limits of the territorial sea (open to debate since the Geneva Conventions of 1958) and the clarification of the norms regarding "*innocent passage*"; the enlargement of the contiguous zone to twenty-four nautical miles, as a consequence of the new width of the territorial sea, as well as the innovative provision of the coastal State's rights to archeological and historical objects in that area; the new definition of the continental shelf based on scientific criteria and enabling its extension beyond two-hundred nautical miles; and the establishment of differentiated criteria for the delimitation of maritime boundaries, foreseeing compromise solutions between the principles of "*median line*" and "*equity*".

The disparity among subjects which were dealt with, and especially the controversy that surrounded many of them, complicated the negotiations and the agreement among the more than one-hundred and sixty participating States was, naturally, difficult. This justifies the lengthiness of the negotiations, which went on for about nine years.

However, it was understood from early on that the various matters in question were a "*package deal*" and that solutions should be found through

consensus and not by voting. It was only during the final days of the Conference that the consensus rule was broken, due to deadlock, with the submission of the current text of the Convention to a vote. The same text would then be approved by an overwhelming majority of countries on April 30, 1982 at UN headquarters in New York.

Without doubt, the approval of the new Convention represented a significant step forward in the evolution in Maritime Law fostered by the International Community. After thirty years, I am proud to have had the opportunity to participate actively in the work of the United Nations that led to the creation of this important international legal instrument, thus contributing not only to defend the interests of my country, but also to construct forward-looking International Law based on the recognition of the importance of the sea as a factor for cohesion among Peoples and for the development of all Humanity.

Lisboa, February 2012

*Mário Ruivo**

I have been lucky enough to be directly involved in the UNCLOS negotiations from 1974 to 1979 as Head of the Delegation of Portugal. Later on, I was associated, in different capacities, both domestic and international, to the implementation and development of the new ocean regime and its interactions with environmental policies and management, accentuated by the process of globalisation and concerns about the capacity of our planet to accommodate humankind.

In the eighties, as Secretary of the Intergovernmental Oceanographic Commission of UNESCO, I had the opportunity to take advantage from the stimulus brought about by the new ocean regime to enhance international scientific cooperation and to promote the launching of a major programme for capacity building following up from Parts XIII and XIV of UNCLOS.

UNCLOS has been an extraordinary source of inspiration and guidance for international, regional and national policies throughout. The vision behind the recognition that “the problems of ocean space are closely interrelated and need to be considered as a whole”, affirmed in the preamble of UNCLOS, paved the way for more integrated, critical approaches to ocean affairs at all levels. It also encouraged innovative readings of some of the provisions of the Convention, for example on the management of living resources in ecosystemic frameworks.

I was particularly confident with the outcome of the 1992 Rio Conference, particularly Chapter 14 on the oceans and seas, which lay the integrated management of the coastal zone in the international agenda; and the far-

* Head of the Delegation of Portugal to the Third UN Conference on the Law of the Sea (1974-1979), Chairman of the Portuguese Council for Environment and Sustainable Development.

reaching principle of sustainable development adopted in Rio is now complementing and shaping the implementation of UNCLOS.

It is worth noting that in this dynamic process, considerable progress has been achieved in adjusting existing institutions and practices to the new challenges faced by humanity. Yet, not all the expectations on the capacity of the UN system to respond to the requirements of globalization of human affairs have been met despite broad awareness of the issues at stake mostly for lack of political will of governments and other actors.

Indeed, UNCLOS as well as its unforgettable inspiring debates left their imprint in all those who participated. Ground-breaking ideas born there also guided thought and action at non-governmental level. I am tempted to recall the 1998 Lisbon Declaration on “Ocean Governance in the 21st Century: Democracy, Equity and Peace in the Ocean” and the proposals of the Report of the Independent World Commission on the Ocean (IWCO), chaired by President Mário Soares, in which I have been actively involved. One key issue, according to this Report, is how “to transform an aggregate of sectorial institutions existing at the national and international levels into a flexible and dynamic network that is responsive to the goals of solidarity and sustainability into our growing knowledge of ecological linkage”. This is particularly relevant, when the role of humankind as a key planetary agent is noticeably behind the great climatic and related ocean changes.

IWCO worked in conjunction with EXPO’98 on “The Ocean, a Heritage for the future”, held in Lisbon. Both these events offered the chance for some of our friends from UNCLOS to reassemble: Alexander Yankov, René-Jean Dupuy, Elisabeth Mann Borgese, Mohammed Bedjaoui, Lucius Caflisch, Tommy Koh, Luis Macedo Soares, Jean-Pierre Levy and Sidney Holt. Manifestly, the spirit of UNCLOS was present in our conversations and our arguments.

EXPO’98 provided the launching pad for the proposal submitted by Portugal to the UN General Assembly for recognising 1998 as International Year of the Ocean, opening up a world-wide reflection on the importance for mankind of a sustainable development of the Ocean.

In my country in particular, EXPO’98 generated a wave of public awareness on the importance of the Ocean. Against this background, new governance arrangements were established better mirroring the requirements of the new law of the sea and of a sustainable ocean development, including a High Level Interdepartmental Commission on Ocean Affairs for guidance and coordination of a national strategy for the ocean. The current Integrated Marine Policy of the European Union has not been alien to developments such as these in some of its Member States.

Having been involved in UNCLOS negotiations, it has been quite rewarding for me also to follow the application of Article 76 of UNCLOS on the extension of the limits of the continental shelf and the submission to the UN

Commission on the Limits of the Continental Shelf, to extend Portugal's Continental Shelf.

At this final stage of the preparations for the Rio+20 Conference, I must say that the recommendation made by IWCO in 1998 looks more pertinent than ever when it calls for "consideration to be given to the unfinished agenda of the Convention". In my view, attention given to ocean affairs in submissions made until now does not adequately reflect the recognised key role of the Oceans in the human welfare and the health of our Planet. Progress made since the signature and entry into force of UNCLOS is no doubt remarkable, but its entire agenda still remains to be achieved and in some cases upgraded in the framework of the UN system and the General Assembly.

Manuel Primo de Brito Limpo Serra

At the first Preparatory Conference that took place during the three years that preceded the Third United Nations Conference on Law of the Sea (planned to be held in Caracas in 1974), it seemed it would be impossible to find solutions acceptable to all States, given the great diversity of contradictory and even directly opposed interests among so many countries.

It was the persistence of those who led the negotiations, their intelligent conduct of its work (particularly by reducing the number of States participating in informal Working Groups which included only those most interested in each issue and those which adopted a conciliatory attitude), and the adoption of an ingenious system of consensus, which allowed the construction of solutions that now constitute the 1982 United Nations Convention on the Law of the Sea.

During those nine years of exhaustive negotiations, a substantial change in the way international law looked at the sea began to develop. Beginning with the historic intervention of Ambassador Arvid Pardo, of the Maltese delegation to the United Nations, there was a clear shift in the legal situation of the maritime spaces, with the appropriation by States of larger spaces of sovereignty or jurisdiction, and the tendency (consolidated in what concerned the seabed) to transform the high seas from a space that was no one's (*res nullius*) into a space that was everyone's (common heritage of mankind).
Lisboa, February 2012

RUSSIAN FEDERATION

*Ivan F. Glumov, Vladimir S. Kotlya**

The signature ceremony of the United Nations Convention on the Law of the Sea (UNCLOS) on the 10 December 1982 signified the end of a mammoth job, namely of the work on the text of one of the most comprehensive international treaties, containing 320 articles and 9 annexes and covering literally all the spheres of human activities on the World Ocean. It took the international community 10 years of hard work to finalize the text of UNCLOS and another 12 years for it to collect the necessary number of ratifications, so that on 16 November 1994 it could at last come into force. Thus, there is indeed full reason to celebrate this jubilee.

It so happened that the two co-authors of this article had dealt primarily with one of the most complicated problems covered by UNCLOS – with its Part XI on the regulation of activities in the deep sea-bed Area beyond the outer limit of the continental shelf of coastal states. The complexity of this job is best explained not only by the fact that we are talking about the development of mineral resources at the depth of up to 5000 meters where the strongest steel cable breaks under its own weight. But, in addition to that, if our colleagues working with the problems of territorial waters, straits, continental shelf etc., at least had good precedents provided by two previous Geneva conventions on the law of the sea, the work on Part XI, however, had to be improvised from the very beginning and wholly represented the progressive development of the law. Yet, due to the cooperative spirit during the Third UN Conference and in the Preparatory Commission for the International Sea-bed Authority and the International Tribunal for the Law of the Sea (of course, that spirit had first to be “worked at” by the delegations) all the problems, even the most difficult ones, were finally settled.

And then it turned out so that this was not the end of the job but just the beginning of its next stage, for it appeared that some claims of the pioneer investors for deep sea-bed sites overlapped. An additional difficulty was that not all the states where the pioneer investors had been registered, had signed UNCLOS. And we feel a bit proud that during the negotiations on the delimitations of the sites in 1985-87 it was the USSR delegation which had proposed a procedural solution that was then agreed upon by all the pioneer investors and allowed to settle this issue.

But the longer engineers and economists worked on the technology of deep sea-bed mining at the depth of 3000-5000 meters, the more expensive and unfeasible the practical implementation of certain provisions of Part XI became, which obviously needed to be changed to allow moving forward with

* Members of the USSR/Russia delegations at the sessions of the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea.

the implementation of UNCLOS. Since the Convention was adopted as a single package, it was not easy for the participants, especially from developing countries, to adjust their position to this new situation. But finally the common understanding of the importance of UNCLOS for global stability and economic development had prevailed, and on 10 December 1982 an agreement on the implementation of Part XI was adopted and later was approved by the UN General Assembly (A/RES/48/263 of 17 August 1994).

The specific nature of Part XI demanded joint efforts of experts on the law of the sea and on deep sea-bed geology which even bigger states had just a handful of. And as those “handfuls” had to work together and to cooperate closely two-three months a year for over a decade, it was inevitable that we all learned to respect the professionalism and purely human qualities of our colleagues, and many of us became friends at the end. So when our less fortunate colleagues who were working in other fields of the international law, referred to us jokingly, as to “the law of the sea mafia”, there might be really something to it, or what do you think?

*Alexander Makovsky**

The offer made by the Ministry of Foreign Affairs in 1974 to become a member of the Soviet delegation to the Third United Nations Conference on the Law of the Sea was unexpected, but it was very close to my main sphere of professional interests – civil and private international law. The reason for that offer possibly related to my taking part in 1968 - 1973 in the work on the preparation by the International Maritime Organization (initially IMCO – the Inter-Governmental Maritime Consultative Organization) of several conventions for the prevention and consequences of pollution of the sea by oil that was initiated following the sinking of the oil tanker *Torrey Canyon* (1967). Starting from the Third Session of the Conference (Geneva, 1975) I took part in the work of all its sessions, including the Ninth (New York, 1980).

For those who got used to quiet work of international organizations and the calm routine of diplomatic conferences, the United Nations Conference on the Law of the Sea produced an unexpected impression of complete chaos destined to failure.

Each session implied the arrival of 3000 participants from approximately 150 countries, and together with translators, assistants and typists each session involved almost 5000 people taking part in its work. It is also noteworthy that there was no full alignment of territorial, political, economic or military interests of the States that took part in the work of the Conference. Various combinations of such interests formed a complex knot the untwisting of which seemed almost impossible. Yet the Conference, the competence of which by

* Professor, First deputy head of the Research Center for Private Law under the President of the Russian Federation, Associate Member of the Institute of International Law, Advisor to the USSR Delegation at the Third United Nations Conference on the Law of the Sea (1975 – 1980).

the decision of the United Nations related to “all the issues of public maritime law” (GA Res. 3067), started its work “from scratch”, there being no draft of even a single provision of the future Convention, and at the same time it was understood that decisions had to be adopted on the basis of a full consensus!

Nothing similar ever happened in the history of international relations both before and after the work of the Conference in question.

The success of the Conference may be explained by, firstly, the desire of participating states to achieve a concrete result and, secondly, the wisdom, talent and patience of those professionals to which the respective task was entrusted. Of the most prominent participants in the work of the Conference I first of all remember I. Evensen, a heavy-set Norwegian who was an extremely talented negotiator. In my Third Committee the success was mostly due to the efforts of its chairman, a talented Bulgarian diplomat, fine lawyer and a very open person Aleksander Yankov, whom I knew quite well, and his right-hand man José Valiarta from Mexico.

With their constant work, through compromise, endless jungles of “preliminary”, “single”, “revised” and “unified” texts we were persistently moving towards the draft text of the Convention on the law of the sea. At this point I would like to remember with very kind words my colleagues from the Soviet delegation – professional diplomats Feliks Kovalev, Eugenii Nasinovsky, Valentin Romanov, as well as marine experts from various fields of the profession – Andrey Zhudro (maritime law), Jury Kazmin (marine geology), Anatoly Movchan (international law), Valerii Kniازهv (military marine navigation), Konstantin Fedorov (oceanology). We were all very different, but there were no other interests behind us except the concern to safeguard the interests of our country.

The necessity to reach a consensus resulted in the particular importance of such a method of work at the Conference as constant negotiations in numerous informal groups – “the Group of 17”, which comprised the leading ship-owning countries, the influential “Leopard’s group” being called this way following the name of the restaurant in which the Group conducted its meetings. Years later I was very pleased to meet in various parts of the world the participants to this complicated work – Per Tresselt, who was a close assistant to I. Evensen and who later became an ambassador of Norway in Russia, the Canadian expert – a professor of McGill University Faculty of Law, whom I had the pleasure to meet in Canada.

Those permanently working at the Conference spent together at least one year-and-a-half in an intensive effort to prepare the text of the Convention. We jointly lived through noticeable events – the US President Ronald Reagan assassination attempt, the death of the leader of the Chinese revolution Mao Zedong, the famous New York City blackout of 1977, and others. While this was approximately only thirty years ago, this was a very different time: without computers and internet, without mobile phones and even without piracy and terrorism. One could freely enter the building of the former League of Nations

as well as the UN headquarters on East River, and one was even allowed to smoke in the conference room of the Security Council. We could not foresee the future, but we worked for it. And it seems to me that something has indeed been achieved.

April 2012, Moscow

SAUDI ARABIA

*Abdallah Y. Al-Mouallimi**

As a long standing State Party to the UN Convention on the Law of the Sea, with two large bodies of water, the Arabian Gulf and the Red Sea, bordering its land, Saudi Arabia understands its strategic interest as a nation as well as the interest it shares with other Law of the Sea Convention signatories. Sixteen years after Saudi Arabia's signature joined the numerous State Parties in the legal recognition of the Convention, the sentiment and support the Kingdom demonstrated on 24 April 1996 at the signing still holds strong. Saudi Arabia believes that the Oceans and Seas are an integral part of our world, without these bodies of water the vast resources we have all enjoyed would not exist. Additionally, these waterways serve as a bridge between countries bringing together different societies, cultures, and traditions to learn and grow with the help of one another. The framework and the decisions provided by the Convention and the Ad Hoc Working Group of the Whole of the Regular Process provide a structure that creates equality in a system with a sometimes overbearing number of interests.

Saudi Arabia has worked hard over the last sixteen years to be an innovator in the implementation of the Convention. The Khaled bin Sultan Living Oceans Foundation with its *Science Without Borders* program has provided resources to marine conservation programs and scientific research as a way to promote public awareness of the need to preserve, protect and restore the world's oceans and aquatic resources. The King Abdulaziz University in Jeddah has also been an invaluable resource to the fields of Marine Biology, Marine Geology, Marine Physics, and Marine Chemistry.

These programs excel not only in the classroom but include hands on experience for their students in the "Jeddah Transect Project," a multidisciplinary marine research program off the coast of the Saudi-Arabian port of Jeddah. The University also publishes the Journal of King Abdulaziz University - *Marine Sciences*, an annual periodical published by the KAU Scientific Publishing Center (SPC). In addition, the newly opened King Abdullah University of Science and Technology introduced their "Marine Biology and Conservation Track" and "Ocean Physics and Modeling Track".

The Convention has also been a useful tool in dealing with one of Saudi Arabia's main challenges, maritime piracy. While the Convention provides a legal scaffold to begin combating piracy both on land and at sea, this challenge also requires persevering efforts from Member Countries. One of the most significant steps taken by the Kingdom was signing of the "Djibouti Code of Conduct" on 10 March 2010 at the International Maritime Organization in

* Permanent Representative.

London. Another was the recent case of a piracy trader sentenced in Saudi Arabia in a landmark judgment by the Board of Grievances on 28 February 2012. In an interview, Dr. Jubarah Bin Eid Alsuraisry, the Saudi Minister of Transportation was quoted stating,

“The Kingdom of Saudi Arabia, following the instructions of King Abdullah, exerts every effort to build bridges of co-operation with countries all over the world, especially by taking initiatives and participating in an effective way in order to achieve stability and world security, whether through the United Nations and its specialized agencies, or through continuous co-operation with all countries in this field.”

Saudi Arabia has a great interest when it comes to the Convention on the Law of the Sea and greatly supports the implementation of decisions taken by the States Parties. As a member of the GCC and G-77, we also take into consideration our group’s strategic interest in decisions. Our hope for the future is that the Parties to the Convention continue to work together to bring about a more peaceful and secure maritime environment by working to implement the Convention and resolving issues that arise from the implementation forthwith. By doing so, we are ensuring for future for generations this bounty and beauty that we have been blessed with and can ensure the welfare of our seafarers, merchants and citizens as they voyage by way of our oceans and seas.

SINGAPORE

*Tommy Koh**

I have vivid memories of the year 1982. I remember the high emotion in the conference room, at the UN in New York, on 20 April 1982, when I put the UN Convention on the Law of the Sea, to the vote. The vote was 130 in favour, 4 against with 17 abstentions. I also remember the final session of the conference, held in the Montego Bay, Jamaica, from the 6th to the 10th of December 1982. When the Convention was opened for signature, on the 11th December, it was signed by 119 States. Let me share a few thoughts and reflections with colleagues.

First, I mourn the passing of so many of our dear friends and colleagues. Those who played a leadership role in the negotiations include Andres Aguilar, Shirley Amerasinghe, Hans Anderson, Alfonso Arias-Schreiber, Christopher Beeby, Alan Beesley, Keith Brennan, Jorge Castañeda, Tom Clingan, Paul Engo, Jens Evensen, Reynaldo Galindo Pohl, S.P. Jagota, Elizabeth Mann Borgese, Arvid Pado, Elliot Richardson, Willem Riphagen and Shabtai Rosenne.

Second, I am gratified that the Convention has enjoyed universal support. The Convention has 162 Parties (161 States plus the European Union). The few States, such as, the United States of America, which have not yet acceded to the Convention, have accepted the Convention as the applicable law. I would discourage the efforts of some of our friends who wish to revise the Convention or to convene a new conference to negotiate a new treaty on the high sea. The Convention has served us well and it would be extremely unwise to undermine its integrity and effectiveness.

Third, my dream that the Convention will become the “constitution” of the world’s oceans has come to pass. It is the constitution of the oceans because it treats the oceans in a holistic manner. It seeks to govern all aspects of the resources and uses of the oceans. In its 320 articles, and 9 annexes, as supplemented by the 1994 General Assembly Resolution 48/263 relating to Part XI of the convention and the 1995 Agreement relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, the Convention is both comprehensive and authoritative.

Fourth, in recent years, some environmentalists have expressed the view that the Convention gives too much weight to navigational rights and too little to protecting the marine environment. This view is mistaken. When I was chairing the negotiations at the Earth Summit, I included chapter 17 in Agenda 21, in order to harmonise UNCLOS and UNCED. Over the past three decades, the IMO has, in conformity with UNCLOS, enacted new treaties, rules and

* President, Third United Nations Conference on the Law of the Sea, Professor.

procedures to protect the marine environment from ship-based pollution. What is not generally known is that 80 percent of marine pollution is caused by land-based pollution. It is much harder to stop land-based marine pollution because states hide behind their sovereignty.

Fifth, FAO has repeatedly called the world's attention to the crisis in fisheries. The crisis is being caused by over-fishing, by illegal, unreported and unregulated fishing, by the ineffectiveness of the regional fishery management organizations and by the use of destructive and unsustainable methods of fishing, such as, bottom trawling and dredge fishing. Urgent action is needed to tackle these problems. The world can learn from the successful experiences of Iceland and New Zealand in the management of their fisheries. The IMO should consider requiring all commercial fishing boats to be licensed and to carry transponders. We should also consider eco-labelling for fish. Regional fishery management organisations should be established in all regions, and they should be allowed to make their decisions by majority votes rather than by consensus. Certain destructive methods of fishing should be banned.

Sixth, the nexus between climate change and the oceans is insufficiently understood. People generally do not know that the oceans serve as the blue lungs of the planet, absorbing CO₂ for the atmosphere and returning oxygen to the atmosphere. The oceans also play a positive role in regulating the world's climate system. One impact of global warming on the oceans is that the oceans are getting warmer and more acidic. This will have a deleterious effect on our coral reefs. In view of the symbiotic relationship between land and sea, the world should pay more attention to the health of our oceans.

Seventh, I wish to express a serious concern about the tendency by some coastal states to expand their jurisdictions and their rights in violation of the Convention. Some states have drawn straight baselines when they are not so entitled. Other states have enacted laws and regulations governing activities in the Exclusive Economic Zones even though they have no jurisdiction over such activities under the Convention. Some states have acted in contravention of the regime of transit passage. States have shown very little integrity and fidelity to law when it comes to deciding whether a feature is a rock or an island. I think states should be less reluctant to protest against such actions by other states and be more willing to refer such disputes to dispute settlement.

SLOVENIA

*Anton Vratuša**

It is my pleasure to cooperate in the noble initiative to commemorate the historical event at Montego Bay, Jamaica. On that occasion, December 10, 1982, I had the honour to append my signature, in the name of the Government of the Socialist Federative Republic of Yugoslavia to that UN document of political wisdom and science of international law.

I was leading the Yugoslav delegation to the Third UN Conference on the LOS from the very beginning to the end of negotiations. However my personal involvement in the negotiations was bound only to Conference sessions when issues of major importance were on the agenda. Every day coordination of work with the delegation was in the hands of Dr. Zvonko Perišić, head deputy and an experienced expert. During my short stay in Geneva where the Conference was taking place, I usually met with leading personalities, for getting closer insight into the work of the Conference and was deeply impressed by the unique working method adopted by the Conference – a method of consensus. According to that method debates especially on key issues were spread over several sessions with prolonged discussions, resulting in valuable negotiated texts which took account of the legitimate concerns and interests of all states¹. Thanks to such a procedure the Conference produced the Document of universal character and of a lasting value acceptable to the largest majority of people and states. I believe that many armed conflicts in the world would be avoided if the method of consensus would be applied consistently in international relations.

With some of my acquaintances I had made during the Third Conference I continued personal cooperation also after the closure of the Conference. I have in mind above all the untiring researcher Elisabeth Mann Borgese, accommodated in the delegation of Austria, Dr. Arvid Pardo of Malta, who put the name of his home island on the globe by introducing Ocean affairs on the agenda of the UN General Assembly and Joseph S. Warioba, a distinguished lawyer of the United Republic of Tanzania. For several years we remained cooperating in scientific research and other activities, related to the UNCLOS and UNCED, be at the International Ocean Institute (IOI), a non-governmental research institution founded by Elisabeth Mann Borgese at the University of Malta be at several Pacem in Maribus Conferences, organized annually by IOI, or at the UN supported International Center for Public Enterprises (ICPE), in public enterprises, founded by SFRY in 1974, Ljubljana, Slovenia as an intergovernmental non-profit organization for developing countries to conduct

* Honorary president of the ICPE COUNCIL.

¹ Elisabeth Mann Borgese, *The Law of the Sea in the Twenty-first Century*, p. 4.

research, training, consultancy on participative management in public enterprises and post-graduate studies.

It is well known that during the last thirty years hundreds of books dealing with the important work performed by UNCLOS have been published. Having in view the limitation of room it would not be fit to open a dialogue on the matter in this letter. Nevertheless I cannot resist mentioning at least two fundamentally important Parts of the Convention. I have in mind Part XII and Part XV of UNCLOS.

Part XII of the Convention “represents the only existing, comprehensive, universal, binding and enforceable international environmental law, covering the ocean environment globally. It deals with pollution from all sources, whether oceanic, atmospheric, or land-based, and it includes pollution of all kind, whether oil or industrial or agricultural wastes, chemicals and other hazardous substances. Enforcement is the responsibility of Coastal states, Flag states and Port states”.² As a matter of fact, the Part XII of the Convention was the “mother” of the UN Conference on Environment and Development (UNCED) in Rio de Janeiro, 1992. Actually, all Conventions, Agreements and Programmes, including Agenda 21 emerging from UNCED interact with the provisions of UNCLOS. If used in such a manner that they reinforce one another in the process of solving problems and combating increasing threats to the mankind through climate change, natural disasters and poverty, they become mightiest instruments in the struggle for reaching the goal of sustainable development.

Part XV of the Convention and annexes contain the system of peaceful settlement of disputes. They represent the most comprehensible and most binding system existing and functioning in the contemporary international community. Therefore the application of Part XV provisions deserves to be strongly recommended on all levels of local, national, international and global relations in protecting peace, security and human rights in the world as well as in the efforts to oppose efficiently to any policy from the position of force.

Ljubljana, 27th February 2012

² The same source, p. 5.

SPAIN

*José Manuel Lacleta Muñoz**

Me es muy grato corresponder a la invitación que me ha dirigido la Sra. Patricia O'Brien, para hacer algunos comentarios con motivo del 30 aniversario de la firma del Acta final de la III Conferencia de las Naciones Unidas sobre el Derecho del Mar, en Montego Bay en diciembre de 1982.

Personalmente tengo un grato recuerdo y para mí fue un gran honor el participar en aquella ceremonia que ponía fin a nueve años de trabajo en el campo del Derecho del Mar. Para mí en realidad era una continuación, puesto que a lo largo de mi carrera en la diplomacia ya tuve ocasión de participar en la I y en la II de las Conferencias de Naciones Unidas sobre el Derecho del Mar. Cuando tuvo lugar la I Conferencia en 1958 yo era un joven Secretario de Embajada destinado en la Asesoría Jurídica Internacional del Ministerio de Asuntos Exteriores, donde había comenzado a trabajar en 1956. A pesar de mi juventud y por azares en la formación de la Delegación Española de la que formaba parte, yo tuve ocasión de ser miembro del Comité de Redacción que redactó las cuatro Convenciones que salieron de aquella Conferencia ¡grato recuerdo también!

En 1960 fui también miembro de la delegación española que participó en la II Conferencia. Posteriormente he tenido ocasión de participar en Comisiones de Delimitación de las aguas españolas con Francia, Portugal y, por último, Marruecos.

Pero la III Conferencia fue una culminación y un hito importante. Como afirmó en su momento el Secretario General, el Sr. Pérez de Cuellar, esta Convención de Naciones Unidas, como instrumento jurídico, solo cede en importancia ante la propia Carta de la Organización. Fue un trabajo de larga duración y constituye un código completo del Derecho del Mar que, aunque no lograra el consenso final, constituye una parte fundamental del derecho internacional positivo.

La delegación española que tuve el privilegio de presidir durante los dos últimos años de la Conferencia, pero de la que fui miembro durante los nueve años de duración de la misma, participó en todas las negociaciones fundamentales. Por cierto que no tuvo éxito en su posición inicial respecto a la creación de las zonas económicas exclusivas, pero finalmente las aceptó y aun antes de la terminación de la Conferencia, por ley de 1978, se creó la zona económica española considerando que ya era una cuestión de derecho consuetudinario.

La delegación española tuvo una posición particular en el tema de los estrechos puesto que se negaba a aceptar el sistema de libre tránsito apoyado

* Embajador de España.

por la gran mayoría de las delegaciones, incluidas las grandes potencias marítimas. En una posición jurídicamente fuerte pero políticamente desfasada pretendía que se mantuviera el sistema del paso inocente no suspendible. En esta oportunidad quiero recordar que yo mismo, que en aquellos tiempos era también Jefe de la Asesoría Jurídica Internacional, personalmente no era partidario de esa actitud pero en las reuniones de la comisión que preparaba las instrucciones para la Conferencia no conseguí cambiar la actitud de la mayoría y España persistió en su actitud y presentó enmiendas al Proyecto de Convención. Recuerdo que en 1981, siendo ya Jefe de la Delegación, mi amigo el Presidente Tommy Koh me pidió en sesión pública que retirase las enmiendas, a lo que, contra mi convicción pero por disciplina diplomática, hube de responder “lo siento, Sr. Presidente, mis instrucciones no me los permiten”. Por tanto, España no participó en aquel consenso sobre los estrechos, pero debo señalar que finalmente acabaría firmando y ratificando la Convención aunque muchos años más tarde.

Pero la cuestión que personalmente más me ocupó durante toda la Conferencia, y muy en especial en su fase final, fue el problema de la delimitación de los espacios marinos, especialmente la de la plataforma continental y la zona económica exclusiva. Como todos los lectores recordarán, en este tema se enfrentaban dos posiciones, una basada en la aplicación de principios equitativos, que no eran enumerados, y la otra en la aplicación del principio de equidistancia. La Delegación Española desempeñó un papel importante como coordinadora y portavoz de todo el grupo de países que eran partidarios del principio de equidistancia y ello le hizo participar en numerosas discusiones y negociaciones hasta que se llegó a los textos que finalmente recoge la Convención. No puedo menos de mostrar satisfacción al comprobar que en la jurisprudencia internacional, y no puedo dejar de mencionar la sentencia de la Corte Internacional de Justicia en el asunto entre Dinamarca y Noruega relativo a la delimitación entre Groenlandia y Jan Mayen, y en numerosas declaraciones de miembros del Tribunal se interpretan esos textos en el sentido de una aplicación equitativa de la equidistancia. El factor equitativo deriva de tener en cuenta que no exista una desproporción excesiva entre longitudes costeras y superficies y que se evite asignar en su totalidad las áreas económicamente interesantes a un solo país. Personalmente creo que es una solución suficientemente equitativa y suficientemente objetiva.

No voy a extenderme más en los recuerdos de la Conferencia, pero sí debo subrayar la satisfacción personal que me produce el haber contribuido a generar un texto tan importante que resuelve casi completamente todos los problemas internacionales del mar. Probablemente el único que no ha sido resuelto es el del control de la pesca en alta mar. Aunque existen ya numerosas Convenciones multilaterales en la materia, no solo hay algún espacio no sometido a regulación, sino que además los buques de pesca que no sean del pabellón de los Estados Miembros de esas Convenciones, no están jurídicamente obligados a respetarlas.

Y por añadir un último detalle, hay alguna disposición de la Convención cuya justicia es discutible: No puedo dejar de mencionar el problema de las aguas archipelágicas, estatuto que se reserva a los archipiélagos que son Estados y se niega a los que forman parte de un Estado continental. Surge un sentimiento de justicia que no deja de ser objeto de discusión.

No puedo terminar sin subrayar una vez más el orgullo y la satisfacción de haber participado en una obra tan importante de las Naciones Unidas.

Madrid, 15 de febrero de 2012

*Translated from Spanish**

It gives me great pleasure to respond to the invitation addressed to me by Ms. Patricia O'Brien to write some comments on the occasion of the thirtieth anniversary of the signing of the Final Act of the Third United Nations Conference on the Law of the Sea in Montego Bay in December 1982.

I have great memories of the event and it was a great honour to take part in the ceremony, which marked the culmination of nine years of work on the law of the sea. For me it was more of a continuation of work in this field, since I had the opportunity to participate in the First and Second Conferences on the Law of the Sea. When the First Conference took place in 1958, I was a young embassy secretary assigned to the International Legal Advisory Department of the Ministry of Foreign Affairs, where I had worked since 1956. Despite my youth and because of how the Spanish delegation happened to be organized, I had the chance to work on the Drafting Committee which prepared the four Conventions resulting from that Conference - more great memories for me!

In 1960 I was also a member of the Spanish delegation which took part in the Second Conference. Subsequently I participated in committees on the delimitation of Spanish waters with France, Portugal and, lastly, Morocco.

But the Third UN Conference was a true high point and an important milestone. The former Secretary-General, Mr. Pérez de Cuellar, affirmed that, as a legal instrument, only the Charter of the United Nations itself was of greater importance than the Convention. The Convention involved a long period of work and represents a comprehensive code of the law of the sea. Although consensus was not reached, it is a fundamental part of international positive law.

The Spanish delegation took part in all the important negotiations; I had the privilege of heading the delegation during the final two years of the Conference and I had also been a member of it for the full nine-year duration of the Conference. Of course, my delegation did not succeed with regard to its initial stance on the recognition of exclusive economic zones. It did, however, finally agree to accept them and, even before the conclusion of the Conference, under

* Ambassador of Spain.

the Act of 1978, the Spanish economic zone was established, since this was considered to be a matter of customary law.

The Spanish delegation had a unique standpoint on the issue of straits, for it refused to accept the system of free transit passage supported by the vast majority of the delegations, including the great maritime Powers. From a position that was legally sound but politically anomalous, the Spanish delegation sought to maintain the system of non-suspendable innocent passage. I would like to point out that I myself, at the time head of the International Legal Advisory Department, was not in favour of this approach. However, I did not succeed in changing the majority opinion during the meetings of the committee which prepared the instructions on the delegation's position for the Conference; Spain remained resolute and submitted amendments to the draft Convention. I recall that in 1981 when I was head of the delegation, my friend Tommy Koh, President of the Third United Nations Conference on the Law of the Sea, asked me in an open meeting to withdraw the amendments; going against my own conviction, but acting within the rules of diplomacy, I had to reply by saying "I apologize, Mr. President, but my instructions do not allow me to do so". Spain, therefore, did not join the consensus on straits. Nevertheless, I must stress that it did eventually sign and ratify the Convention, albeit many years later.

The issue with which I was most involved for the entirety of the Conference, and especially in its final phase, was the question of the delimitation of ocean space, especially the delimitation of the continental shelf and the exclusive economic zone. As all my readers will recall, there were two opposing positions on this matter: one based on the application of equitable principles, which were not actually listed, and the other on the principle of equidistance. The Spanish delegation played an important role as coordinator and spokesperson for the group of countries that were in favour of the principle of equidistance and, for this reason, it was directly involved in numerous debates and negotiations until the texts which became part of the Convention were finalized. I am only too pleased to see that in international jurisprudence – and here I must mention the judgment of the International Court of Justice in *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)* – and also in numerous declarations by members of the International Tribunal for the Law of the Sea, these texts are interpreted in terms of the equitable application of equidistance. The equitable aspect of this originates from the idea that coastal lengths and maritime areas should not be excessively disproportionate to one another and that economically profitable zones should not be allocated to only one country. I personally believe that this is a sufficiently fair and objective solution.

I am not going to elaborate any further on my memories of the Conference, but I must stress my personal satisfaction at having contributed to the creation of such an important text, which resolves almost all of the international issues of the sea. Perhaps the only matter which has not been resolved is that of

controlling fishing on the high seas. Although a number of multilateral conventions on this topic already exist, there is still an area of ocean space which is not subject to regulation and, moreover, fishing vessels which are not under the flag of the States parties to these conventions are not legally bound to respect them.

One final thought to add is that there is a provision of the Convention whose justice is debatable: I cannot avoid mentioning the issue of archipelagic waters, a status which is given only to those archipelagos that are States and denied to those archipelagos that are part of a continental State. This is mainly a question of justice and it remains a topic for debate.

I must finish by stating once more how proud and pleased I am to have been a part of such an important United Nations endeavour.

Madrid, 15 February 2012

*José Antonio Pastor Ridruejo**

Uno de los recuerdos más importantes que guardo de mi participación, como miembro de la delegación de España, en la III Conferencia de las Naciones Unidas sobre el Derecho del Mar, es la fe que teníamos la gran mayoría de los delegados en el éxito final de las labores. Fe que era necesaria, pues iniciadas las negociaciones a finales de 1973, muchos pensábamos entonces que en uno o quizá dos periodos de sesiones, podríamos adoptar la ansiada Convención. Pero no fue así porque las negociaciones necesitaron once periodos de sesiones más alguna reunión intersesional. Sin embargo, la creencia en la importancia de lo que hacíamos y la conciencia de que estábamos progresando y de que se acercaba el momento final de la tarea nos hizo conservar la fe inicial. Y recuerdo muy especialmente en este orden de ideas la emoción con la que los delegados aplaudimos, el 30 de abril de 1982, la adopción de la Convención. Nuestros esfuerzos habían sido felizmente recompensados. No habíamos trabajado en vano.

Viene también a mi memoria la amistad que trabé con miembros de muchas otras delegaciones, diplomáticos, profesores como yo, y también con funcionarios de la Secretaría de las Naciones Unidas. Amistad lógica, pues el hecho de vernos y trabajar juntos varias largas semanas fuera de nuestras casas, en Nueva York o en Ginebra, una o dos veces al año durante nueve años, no podía sino hacer nacer entre la mayoría de nosotros vivos sentimientos de afecto mutuo. Y ello incluso si nuestras respectivas delegaciones mantenían posiciones discrepantes en temas concretos. La verdad es que con muchos representantes de otros países he seguido manteniendo relaciones de viva e intensa amistad.

* Catedrático de Derecho Internacional.

En los últimos periodos de sesiones de la Conferencia, me cupo el honor de coordinar el grupo español del Comité de Redacción. Obviamente, los otros componentes del grupo pertenecían a delegaciones iberoamericanas, y en nuestros trabajos pudimos percibir el sentido de unidad y camaradería que procura el hecho de hablar y defender la misma lengua. Y nuestra preocupación fundamental fue la de velar por la pureza del idioma al traducir textos negociados y escritos en inglés, que inevitablemente fue la lengua de las negociaciones.

Iniciada la Conferencia en 1973 (la Comisión preparatoria en 1971) y finalizada, como he dicho, en la primavera de 1982, durante ese periodo de tiempo se produjeron en España acontecimientos de capital importancia política: el tránsito de un régimen dictatorial a otro de democracia parlamentaria y representativa. Y este tránsito repercutió en la consideración que muchas delegaciones, sobre todo las de países europeos integrantes entonces de las Comunidades Europeas, tenían de la española. Antes del advenimiento del régimen democrático se nos trataba, ciertamente, con corrección - con corrección diplomática, podría decirse- y esto lo percibíamos muy bien los integrantes de la delegación española. Consolidada la democracia en las elecciones de la primavera de 1977, cambió nuestra percepción de cómo se nos consideraba. Nos parecía que ya se nos trataba como representantes de un país que había encontrado el régimen político que sin duda merecía. En este orden de consideraciones cito la invitación a una cena que nos hizo la delegación de México en el periodo de sesiones de 1977, país con el que España pasó a tener relaciones diplomáticas plenas. La cena transcurrió por supuesto en una atmósfera de gran cordialidad. Claro que la nueva imagen de España no fue óbice para que la delegación siguiera discrepando con otras delegaciones allá donde la defensa de nuestros intereses en el mar y los océanos lo exigía.

De tantos largos años de conferencia guardo, obviamente, muchos más recuerdos, profesionales y personales, todos ellos gratos. No los puedo recoger en unas notas escritas para cuya redacción se nos ha recomendado brevedad. Creo que será este el caso de la mayoría de delegados.

Madrid, 6 febrero 2012

*Translated from Spanish**

One of the most important memories I have of my experience as a member of the Spanish delegation to the Third United Nations Conference on the Law of the Sea is the faith that the vast majority of the delegates had in the successful conclusion of its work. Such faith was necessary, since many of us presumed, back when the negotiations began in late 1973, that after one or maybe two sessions we could adopt the eagerly awaited Convention. But this was not the case because the negotiations took 11 sessions, as well as a number of resumed

* Professor of International Law.

sessions. However, the belief in the importance of what we were doing and the awareness that we were making progress and nearing the end helped us keep that original faith. And I remember in particular the emotion with which the delegates applauded the adoption of the Convention on 30 April 1982. Our efforts, thankfully, had been rewarded. We had not been working in vain.

What also comes to mind are the friendships that I formed with members of many other delegations, diplomats, professors like myself and members of the United Nations Secretariat. These friendships arose naturally, as we spent long periods of time together away from our homes, in either New York or Geneva once or twice a year for nine years; this could only give rise to strong feelings of mutual respect among most of us. This was the case even if our respective delegations held differing positions on specific topics. The truth is that I have maintained strong and lasting friendships with many representatives of other countries.

In the final sessions of the Conference I had the honour of coordinating the Spanish-speaking group of the Drafting Committee. Obviously the other members of the group belonged to Latin American delegations and in our work we could feel the sense of unity and camaraderie that came from speaking and defending the same language. Our fundamental priority was to ensure the purity of the language when translating negotiated texts drafted in English, which was inevitably the language used for negotiations.

The Conference began in 1973 (the preparatory Committee in 1971) and was concluded, as I said, in the spring of 1982, during which time political events of utmost importance were occurring in Spain: the transition from a dictatorial regime to a parliamentary and representative democracy. This transition affected the opinion that many delegations had of the Spanish delegation, particularly delegations of the European countries which were then members of the European Communities.

Before the democratic regime came in, we were treated with courtesy — diplomatic courtesy, it could be said — and we members of the Spanish delegation were very aware of this. Once democracy was consolidated in the spring elections of 1977, our perception of how we were viewed changed. It seemed to us that we were being treated as representatives of a country that had found the political regime that without doubt it deserved. For example, I recall an invitation to a dinner at the 1977 session from the delegation of Mexico, a country with which Spain came to have full diplomatic relations. The dinner, of course, took place in a very cordial atmosphere. Spain's new image naturally did not prevent the delegation from continuing to disagree with other delegations when the defence of our maritime interests so demanded.

Obviously I have many more professional and personal memories from my many long years at the Conference, all pleasant. I cannot possibly recount them all in these few notes, which we have been asked to keep brief. I am sure that most of the delegates will feel the same.

Madrid, 6 February 2012

SWITZERLAND

Lucius Caflisch

L'invitation d'évoquer des souvenirs de la Troisième Conférence des Nations Unies sur le droit de la mer et de formuler quelques idées relatives à cet événement a provoqué en moi des réactions contradictoires: le sentiment du devoir accompli, d'une part, et, de l'autre, celui de la déception due au fait qu'une superpuissance, tout en revendiquant la plupart des droits créés ou constatés par la Convention, n'a pas cru pouvoir honorer ce texte par sa ratification. Sur un plan plus personnel, l'invitation adressée par les Nations Unies aux participants à la Troisième Conférence et la liste de noms qu'elle renferme ont réveillé le souvenir d'amitiés avec des personnalités qui nous ont quittés ou dont le chemin n'a plus croisé le nôtre.

Quand j'avais reçu, en 1972, l'invitation de passer une année sabbatique au Woodrow Wilson International Center for Scholars à Washington, D.C., on attendait de moi des travaux sur la pollution des espaces marins. Ces travaux m'ont conduit vers des recherches dans le domaine général du droit international de la mer, alors en pleine mutation. Quand a débuté en 1974, à Caracas, la phase matérielle de la Conférence, Jean Monnier, chef de la délégation suisse, m'a invité à rejoindre celle-ci en précisant: "Si tu dis oui, c'est pour toute la durée." Il ne croyait pas si bien dire: au-delà de la Conférence proprement dite, les travaux se sont poursuivis jusqu'en 1994, date de la conclusion de l'Accord sur l'application de la partie XI de la Convention de 1982.

La Troisième Conférence des Nations Unies sur le droit de la mer était certainement une des réunions internationales les plus importantes et aussi les plus longues de l'histoire diplomatique contemporaine. Il s'agissait d'une négociation multilatérale atypique: éclipse quasi-totale du conflit Est-Ouest, importance réduite des tensions Nord-Sud, formation de coalitions entre pays sur la base de leurs intérêts géographiques plutôt que de leurs affinités politiques: Etats "territorialistes" revendiquant des espaces maritimes nationaux s'étendant jusqu'à la limite des 200 milles, voire plus loin encore; Etats maritimes dont la principale préoccupation était le maintien de la libre navigation; pays sans littoral ou "géographiquement désavantagés" qui cherchaient à contenir les ambitions des territorialistes et à obtenir un accès à la mer, pour ne citer que les alliances les plus importantes. En marge de ces entités évoluaient des groupes à composition mixte qui prétendaient rechercher des solutions transactionnelles (groupes Evensen et Castañeda).

L'essentiel des négociations a eu lieu, hors des enceintes officielles (Plénière et trois commissions principales), au sein de groupes réunissant les pays les plus intéressés par telle ou telle question (exemples: les groupes de négociation sur les délimitations maritimes ou sur les détroits). Le même

phénomène de décentralisation a pu être observé à propos du Comité de rédaction qui, en fait, a été largement court-circuité par les "groupes linguistiques" et leurs coordinateurs. Cette procédure en marge des institutions officielles avait été choisie pour faciliter les pourparlers en excluant la publicité qui entoure habituellement les négociations diplomatiques. Elle comportait toutefois l'inconvénient de réduire au minimum les procès-verbaux, c'est-à-dire les travaux préparatoires permettant d'interpréter la Convention.

Il y avait également l'idée de la prise de décisions prioritairement par consensus, associée à celle du "package deal": le résultat global des négociations serait bâti sur l'accumulation d'accords partiels successifs portant sur des domaines de plus en plus étendus, la somme de ces accords devant former une pyramide de règles adoptées par consensus. En fin de compte, ce scénario a échoué, car la Convention a finalement dû faire l'objet d'un vote. Malgré cette imperfection, la conclusion de la Convention représente un succès appréciable. Ce texte a été accepté à ce jour par 162 Etats; il a apporté un apaisement considérable dans le domaine réglé par lui; il a largement résisté au danger d'érosion qui guette parfois les grands accords multilatéraux, s'avérant bien plus résistante que les Conventions de Genève de 1958. Même si elle est loin d'être parfaite, elle a atteint son but principal, qui était d'établir un ordre public régissant l'ensemble de la communauté des Etats. De ce fait, elle constitue un facteur important de maintien de la paix et de la sécurité internationales.

En ce qui me concerne personnellement, la Troisième Conférence des Nations Unies sur le droit de la mer m'a offert un apprentissage complet dans les domaines du droit international appliqué et de la diplomatie multilatérale. Cet apprentissage a eu lieu dans une enceinte où, malgré les intérêts divergents, régnait une atmosphère de camaraderie et d'amitié. C'est ce qu'on a pu appeler, avec un brin d'envie, la "mafia" du droit de la mer.

Translated from French

When I was asked to reminisce about the Third United Nations Conference on the Law of the Sea and to suggest some ideas with regard to that event, I had mixed feelings: a feeling of accomplishment, on the one hand, and one of disappointment, on the other, because one super-Power, while claiming most of the rights created or recognized by the Convention, could not bring itself to ratify the text. On a more personal note, the invitation from the United Nations to participants at the Third UN Conference and the names listed on it brought back memories of friendship with people who have left us or whose paths have no longer crossed ours.

When I received the invitation, in 1972, to spend a sabbatical year at the Woodrow Wilson International Center for Scholars in Washington, D.C., I was expected to work on the pollution of ocean space. That work led me to conduct research in the general area of the international law of the sea, which was then in a state of flux. When the Conference started its substantive work in Caracas

in 1974, Jean Monnier, head of the Swiss delegation, asked me to join his team, adding that: "If you say 'yes', it's for the long haul". He did not know how right he was, because the work continued well after the Conference, until 1994, when the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 1982 was concluded.

The Third United Nations Conference on the Law of the Sea was clearly one of the most important and longest international meetings in contemporary diplomatic history. It was an atypical multilateral negotiation: near-total eclipse of the East-West conflict, reduced importance of North-South tensions, and formation of coalitions between countries based on geographic interests rather than political affinities: "territorialist" States claiming national maritime spaces extending all the way to the 200-mile limit and even beyond; maritime States concerned mainly with the maintenance of free navigation; landlocked or "geographically disadvantaged" countries seeking to contain the ambitions of territorialist States and to obtain access to the sea, to name but the largest alliances. Alongside these entities were mixed groups claiming to seek transactional solutions, such as the Evensen and Castañeda groups.

Most of the negotiations were undertaken in the margins of the official meetings (the plenary and the three main committees), in groups composed of countries that were most interested in any of the topics under discussion, such as the negotiating groups on maritime delimitations and straits. The same phenomenon of decentralization could be seen with the Drafting Committee, which was largely circumvented by the "language groups" and their coordinators. This procedure of working in the margins of official institutions had been adopted in order to facilitate the talks by shielding them from the publicity that usually surrounds diplomatic negotiations. However, it also had the disadvantage of minimizing the formal records, representing the travaux préparatoires that may be used to interpret the Convention.

There was also the idea of taking decisions primarily by consensus, associated with that of the "package deal": the overall result of the negotiations would be based on the accumulation of successive partial agreements dealing with increasingly broad topics, with the sum of those agreements forming a pyramid of rules adopted by consensus. That scenario ultimately failed, because the Convention had to be put to a vote.

Despite this shortcoming, the conclusion of the Convention represents a significant achievement. To date, the text has been accepted by 162 States. It has eased tensions considerably in the area under its purview, and has largely withstood the risk of erosion that major multilateral agreements sometimes face, proving to be even more resilient than the 1958 Geneva Conventions. Although far from perfect, the Convention has achieved its primary goal, which was to establish a public order governing the entire community of States. In this regard, it constitutes a major factor in international peacekeeping and security.

For me personally, the Third United Nations Conference on the Law of the Sea represented a rich learning experience in the fields of applied international law and multilateral diplomacy. That experience was acquired in an atmosphere of camaraderie and friendship, despite divergent interests. This is what has been referred to, with a touch of envy, as the law of the sea "mafia".

THAILAND

*Kriangsak Kittichaisaree**



Royal Thai Embassy
Canberra, ACT.

Dear Distinguished Colleagues,

Thirty years have now passed since the opening for signature of the 1982 United Nations Convention on the Law of the Sea. I did not participate in the negotiation for the Convention, but I played an active role in the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea in the late 1980's and early 1990's.

There were always heated discussions in the PrepCom on how to implement Part XI (The Area) and Annex III (Basic Conditions of Prospecting, Exploration and Exploitation) of the Convention so as to realize the Common Heritage of Mankind (CHM) principle that was the main *raison d'être* for convening the Third United Nations Conference on the Law of the Sea (UNCLOS III). Developing States wanted contractors sponsored by developed States interested in deep sea-bed mining (DSM) to: (a) proceed with full-scale exploration and commercial exploitation of the polymetallic nodules in the Area as soon as practicable; (b) transfer DSM technology to the Enterprise; (c) train personnel from developing States who would staff the Enterprise; and (d) generate income for the benefit of developing States, including the provision of adequate compensation to developing land-based producers whose economies were significantly affected by the DSM. Developed States, on the other hand, contended that the DSM was still not yet feasible in view of the then prevailing global demand and market price for the minerals found in the Area, and that, consequently, it was not able to adequately develop DSM technology at costs that could compete with land-based production. Therefore, developed States demanded relaxation of the terms and conditions stipulated in Part XI and Annex III. Such demand made the Group of 77 become suspicious that developed States were endeavouring to re-open the already concluded package deal at UNCLOS III and negate the CHM principle. The compromise eventually reached was in the form of the Agreement Relating to the Implementation of Part XI of the Convention, adopted on 28 July 1994 and in force 2 years later. Even before then, the PrepCom had already registered Pioneer Investors in the Area from India and China, among others.

* Member of the International Law Commission of the United Nations and Chairman of the Group of 77 of the Whole, 9th Session of the PrepCom for the ISA and for the International Tribunal for the Law of the Sea.

Is the realization of Ambassador Arvid Pardo's CHM principle still an impossible dream? Only time will tell as to whether the Agreement of 28 July 1994 is the right and wise solution taken by the international community to safeguard the CHM principle in the circumstances unforeseen at UNCLOS III. In any case, it is heartening to learn that the DSM is now accessible to contractors from all States, big and small, developed and developing. On 20 July 2011, the ISA approved the plans of work submitted by Nauru Ocean Resources Inc. (NORI), sponsored by Nauru, and Tonga Offshore Mining Limited (TOML), sponsored by Tonga, for exploration for polymetallic nodules and polymetallic sulphides in the Clarion-Clipperton Fractured Zone lying in the Area, after more than 3 years of applications by these two entities.

The 1982 Convention continues to be the main Constitution for the Oceans in all maritime-related fields. Most of the substantive, as opposed to procedural, provisions of the Convention have become rules of customary international law. The International Tribunal for the Law of the Sea (ITLOS) has become more active in recent years, with an increasing number of States resorting to it to settle their maritime disputes.

All these accomplishments of the 1982 Convention would not have been possible without the hard work and negotiating skill of the participants at UNCLOS III. I myself have been guided in my law of the sea work by the following UNCLOS III negotiators, to whom I am always beholden: Lennox Ballah, Lucius Cafilisch, Hasjim Djalal, Paul Bamela Engo ("The King"), Günther Goerner, James Kateka, Tommy T.B. Koh, Abdul G. Koroma, Mochtar Kusumaatmadja, Elisabeth Mann Borgese, William R. Mansfield, Jamshid Momtaz, John Norton Moore, Satya N. Nandan, Francis X. Njenga, Shigeru Oda, Christopher W. Pinto, Ken Rattray, Patrick Robinson, Budislav Vukas, Tieya Wang, and Joseph S. Warioba. While I attended the PrepCom for the ISA & for the ITLOS, the following members of the UNCLOS III secretariat continued to serve us with great distinction: Gritakumar E. Chitty, Jean-Pierre Lévy, L. Dolliver M. Nelson, and Ismat Steiner. They must never be forgotten, be it on this 30th Anniversary or on the centennial of the 1982 Convention in the year 2082.

With my best wishes for the continued success of the Convention, I remain

Yours sincerely,
(Signed)

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

*David Anderson**

An anniversary is a time for looking back. Fifty years ago, in 1962, none of the Geneva Conventions on the Law of the Sea of 1958 had entered into force and customary international law still applied worldwide. Forty years ago, in 1972, the Third UN Conference on the Law of the Sea was just beginning its work, but it had a comprehensive agenda and no basic text. While the first substantive session held in Caracas witnessed a buzz of excitement, it took place during a period of great legal uncertainty. Against this background, the adoption and opening for signature of the Convention ten years later in 1982 were clearly significant events in the historical development of the law of the sea.

Some guiding aims of the negotiators during the 1970s are worth recalling. There was general acceptance that the many problems of the world's seas and oceans, being closely related, needed to be addressed as a whole in a single instrument – one that could attract universal support. It was also agreed that a future Convention should regulate all issues in the law of the sea, including the vexed question of the maximum limits of national jurisdiction which had not been dealt with satisfactorily at the Geneva Conferences of 1958 and 1960 and which had led to “Cod wars” and other international disputes. Bearing in mind the change in the composition of the international community, it was clear that this Convention should respect the principles of justice and equal rights and promote economic advance across the world. Following the adoption of the Stockholm Declaration on the Human Environment, concerns for the protection of the marine environment were much in mind, as was the need to take account of recent advances in marine science and technology. Some emerging concepts, such as the Common Heritage of Mankind, the Exclusive Economic Zone, the right of transit passage through straits used for international navigation and the Archipelagic State, needed to be articulated in a global, legally-binding instrument. Organizationally, additional institutions such as the International Sea-bed Authority and the International Tribunal for the Law of the Sea would be required, and the existing arrangements for addressing maritime issues in the UN and its Specialized Agencies, especially the International Maritime Organization and the Food and Agriculture Organization, would need to be modernized. Finally, there was a strong current of opinion that any future differences over the interpretation or application of particular provisions should be settled by recourse to a range of specified peaceful means, in accordance with the principles of the UN Charter. In that way, the Convention would serve to strengthen international peace and security. In short, the Conference's task

* Formerly UK Delegation to the LOS Conference, etc. and judge of the International Tribunal for the Law of the Sea. Listed Arbitrator, Annex VII of the Convention.

was one not only of codification and progressive development but also, unusually, one of law reform.

An anniversary is also a time for taking stock. The negotiators' guiding aims can now be seen to have been substantially achieved. Together with its Implementation Agreements of 1994 and 1995, the Convention as a whole now represents a comprehensive and balanced framework for the modern law of the sea and for the conduct of international relations across 70% of the Earth's surface. Since 1994, the role of customary international law in maritime relations has diminished significantly as the seas and oceans of the world have acquired their constitutional texts. The new institutional arrangements appear to be working as intended: a recent example is provided by the Advisory Opinion given by the Tribunal's Seabed Disputes Chamber to the Authority. In short, the rule of law in international relations has been advanced on the basis of global treaties in force. While the ideal of universal participation has not yet been achieved, it is apparent that substantial progress towards universality has been made: there are today as many as 161 States Parties, plus the European Union, and efforts to widen participation yet further are continuing; clearly additional ratifications and accessions would strengthen the Convention and the institutions it constituted.

Looking ahead, the uncertain legal situation prevailing in 1970 has been replaced by a framework of generally agreed arrangements. Of course, many existing problems of concern to present and future generations (notably illegal, unreported and unregulated fishing) remain unresolved; and new challenges, often arising from scientific and technological advances, will no doubt have to be faced in the future. In regard to both existing problems and future challenges, the principles and rules in the Convention are firm, yet they have sufficient flexibility to allow for adaptation and development. The Convention, operating within the UN system, should serve the international community for decades to come.

Great credit is due to all the many delegates who devoted a significant part of their professional lives to the lengthy negotiations, sometimes at great cost to their family life. Particular mention should be made of the two Presidents of the Conference, Ambassador Hamilton Shirley Amerasinghe and Ambassador Tommy Koh, the members of the Collegium, and the other officers of the Conference. Without their efforts in producing documents such as the Informal Single Negotiating Text and its later equivalents, the ultimate success of the negotiating process may not have been achieved. Their decision to adopt the Convention and open it for signature in 1982, despite the controversies that persisted at that juncture, was eventually vindicated in 1994 upon the entry into force of the Convention and its Implementation Agreement.

Finally, at this time, it is appropriate to remember the all too many former colleagues and former delegates who have passed away in the years since 1982: they and their contributions to the Conference will not be forgotten.

28 February 2012

UNITED REPUBLIC OF TANZANIA

James L. Kateka

I was a young legal officer in the Tanzania Foreign Ministry when I first participated in the UN Seabed Committee in 1971. At that time I did not know that my career would be associated with the law of the sea for many years. Subsequently I took part in the Third UN Conference negotiations from 1973 to 1982; later I was a delegate to the Prepcom for the International Seabed Authority; and to cap it all I was elected ITLOS Judge.

During the UN Seabed Committee and the Third UN Conference, the Tanzania delegation comprised Joseph Warioba, Asterius Hyera and I. This small delegation was to have an impact and influence on the Third UN Conference negotiations beyond anybody's expectation. Indeed, to paraphrase the saying of the founding father of Tanzania, Mwalimu Julius Nyerere, Tanzania was like a mouse that roared like a lion.

When we embarked on the mammoth task of negotiating what became the 1982 Convention on the Law of the Sea or UNCLOS, there were sceptics who said that the international community was undertaking 'mission impossible'. Unlike for the 1958 conference, there were no draft articles by the ILC for the conference to consider. The Seabed Committee acted as the preparatory body for the Third UN Conference. It was a legal cum political forum which had to deal with many sensitive issues.

UNCLOS III also took place during the Cold War days. Interestingly, in spite of the east-west rivalry, the major maritime powers of both camps managed to cooperate on issues of strategic interest such as straits used for international navigation.

For their part, developing countries worked together in defending their interests. The Group of 77 and the Non-aligned Movement were at that time active and effective and acted as counterbalances to the great power rivalry.

The African Group of the Third UN Conference operated in harmony. It made a major contribution to the development of the concept of the exclusive economic zone (EEZ). The Group was more willing to accommodate the interests of landlocked countries of which there are many on the continent. It also acted in solidarity with land based producers of minerals that were likely to be adversely affected by deep seabed mining.

During the Third UN Conference, there were many eminent jurists and personalities that played a crucial role. The chairmen of the three main committees produced texts that formed the ISNT, the RSNT and the ICNT. I recall that the chairman of the First Committee was blamed by the Group of 77 and the major maritime powers at different times depending on the content of his text. The first president of the Conference, Shirley Amerasinghe facilitated the adoption of innovative procedures such as decision making by consensus.

This procedure has now become part of the UN conference diplomacy. Amerasinghe's successor, Tommy Koh took the bold decision to force a vote on the draft Convention (in April 1982) when a deadlock developed and the effort at consensus had been exhausted.

How has UNCLOS fared so far? I think it has worked reasonably well. Many States are parties to the Convention. Nevertheless the universality goal has not been realised. A few major powers have not yet acceded to the Convention. The judicial and arbitral bodies that are called upon to interpret and apply the Convention have played their part well.

There are a few drawbacks, however. The principle of the common heritage of mankind that was at the centre of the Third UN Conference negotiations has been truncated by the 1994 Implementation Agreement. The Enterprise has been sidelined. It is hoped that the recent advisory opinion by ITLOS' Seabed Disputes Chamber will encourage developing countries to sponsor entities wishing to undertake deep seabed mining. The idealism of Arvid Pardo on the common heritage of mankind has been checked by the economic and technological reality of today.

In hindsight, there are a few issues that could have been handled differently at UNCLOS. For example, the landlocked developing countries should have followed economics rather than geography by avoiding linking up with developed landlocked countries which were interested in access to marine resources whereas developing landlocked countries were concerned with access to the sea for trade and transport.

Another matter concerns Part XII of UNCLOS. I remember my participation in the Third Committee of the Third UN Conference. We spent a lot of time on vessel source pollution which is only a fifth of marine pollution. May be we should have devoted more time to other sources of marine pollution. Climate change and global warming were not topical matters then.

In terms of its achievement, the 1982 Convention compares with other monumental international treaties such as the UN Charter, the 1969 Vienna Convention on the Law of Treaties and the Rome Statute of the International Criminal Court. Its place in history and the future are assured.

Joseph Sinde Warioba *

The signing of the United Nations Law of the Sea Convention in Montego Bay, Jamaica, thirty years ago was the climax of fourteen years of an absorbing and difficult process of negotiations.

Five years of negotiations in the Seabed Committee could not produce a single negotiating text. The Third United Nations Conference on the Law of

* Judge, Former Prime Minister of Tanzania and leader of the Tanzania Delegation to the Third United Nations Conference on the Law of the Sea.

The Sea started with a mass of documentation on each major and minor issue, mostly with sharp differences.

The normal geopolitical groupings in international consultations and negotiations could not work. There were in reality no groups of developed and developing states, and no geographical groupings. The groups that emerged were purely interest groups such as coastal states, landlocked states, geographically disadvantaged states, island states etc. Even these groupings were not harmonious; they were fluid depending on the particular interest of a state.

At the beginning, starting with the rules of procedure, the negotiations were intense and more often acrimonious. As time went on however, the Conference evolved a life of its own. The intense negotiations transformed the various national delegations into an international mentality. Success became the overriding objective, not the total achievement of national goals. Each state became willing to give up something important in order to reach overall agreement.

When the Conference was in session delegates spent all the time in negotiations. I still vividly remember the negotiations in formal sessions, informal sessions, working groups, contact groups etc and consultations in small crowded and smoky rooms, at luncheon, dinner and over a cup of tea or coffee. At times exhaustion had to be suspended somehow!!

In the end agreement was reached. The signing ceremony on December 10, 1982 was a day of celebration. Although most states were unhappy with some aspect or other of the Convention each delegation waited happily to sign.

Looking back thirty years after the Convention was signed we can see the great success that was achieved. Order in the oceans has been established. All states, even those which have not ratified or acceded to the Convention, do observe its provisions.

There is clarity on the regimes of the territorial sea, straits used for international navigation, continental shelf etc. The regime of exclusive economic zone has almost become customary international law. The rules for the delimitation of ocean space and settlement of disputes are clear and have stemmed conflicts. The Convention has provisions on international cooperation in the exploitation of natural resources, both living and non-living, peaceful marine scientific research and the preservation of the marine environment.

The majority of states, both developed and developing, were not satisfied with the provisions governing the seabed beyond the limit of national jurisdiction. But the scramble for deep ocean space has been averted and it is now assumed that when serious economic activities are undertaken on the seabed it will be under an orderly international regime.

The institutions created under the Convention have been established. They have experienced problems, which is normal, especially in the early stages. The important thing is that these institutions are in place and they are doing important work. The work of the Seabed Authority is for now both preparatory

and refinement. The International Tribunal for the Law of the Sea has done some sixteen years and it is doing important work in enforcement and clarification of the rules. The Commissions are in place and have become a very important mechanism which has prevented serious conflicts in the oceans.

I was a participant in the process for fifteen years, including the work of the Preparatory Commission. I can remember the frustration at times, of my country and mine personally that certain targets were not achieved. But seeing the overall achievement I feel contented, happy and little proud that I was part of the team that drafted the Convention. All states played a part, none of them got all they wanted but mankind as a whole won. The future of ocean governance is bright. It is a very happy thirtieth anniversary.

UNITED STATES OF AMERICA

B.H. Oxman

The thirtieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea is a good occasion to reflect on the importance of its dispute settlement provisions. Especially article 286.

The classic residual rule of international law with respect to the arbitration or adjudication of disputes is that a state is not subject to the jurisdiction of an international tribunal absent consent. Not even the UN Charter provides otherwise.

But the UN Convention on the Law of the Sea does. Pursuant to article 286, its parties consent to arbitration or adjudication of all disputes concerning the interpretation or application of the Convention, absent derogation from that obligation by agreement or pursuant to the limitations and exceptions contained in the Convention itself.

The significance of article 286 should not be underestimated. The Convention is the basic instrument for governance of two-thirds of the planet. It addresses the rights and duties of states with respect to a very wide range of matters, including important security, economic, and environmental interests. Major global law-making treaties often contained no reference to arbitration or adjudication or very restricted reference, and frequently made such procedures optional. The 1958 conventions on the law of the sea are but one example.

Reversing this was by no means an obvious objective or one easily attained. Two factors made the difference.

The first was a vision of the purpose of a new convention on the law of the sea that incorporated compulsory arbitration and adjudication. Of the contributions to the new convention that it was my privilege to make at the U.S. Department of State, as U.S. Representative and Vice-Chairman of the U.S. delegation to the Third UN Conference on the Law of the Sea, and as chair of the English Language Group of the Conference Drafting Committee, the most important may well be the view that John Stevenson and I first outlined at an early stage of a convention whose object of promoting stability and discouraging unilateralism required compulsory and binding dispute settlement procedures an essential and integral part.

The second factor was a critical mass of individuals who shared that vision and had the determination and skill necessary to make it a reality. We may begin with John Stevenson himself who, as Legal Adviser of the Department of State and then as Special Representative of the President, understood that he represented a country which traditionally, but not always, favored compulsory jurisdiction. That understanding strengthened his determination and his effectiveness. Both he and his successors were supported by the inimitable

Louis Sohn, who worked tirelessly at the Conference on what became Part XV of the Convention.

The first president of the Conference, Hamilton Shirley Amerasinghe, quickly grasped the significance of compulsory dispute settlement to the project, and maintained tight control of the issue from the outset. The fact that he came from Asia, a region comprised of many developing countries that were uneasy with compulsory dispute settlement procedures, unquestionably contributed to his success. Relying on an extraordinary group of accomplished experts in dispute settlement from a wide range of delegations, he concentrated on the major political issues and made ample use of his considerable acumen and experience in that regard. His support for reversing the traditional residual rule was both strategically and tactically critical. It shifted the burden to those who wished to limit the scope of the dispute settlement obligation. They did indeed carry that burden in important respects, but the text of the Convention itself is evidence of the impact of Amerasinghe's basic decision.

The number of people who contributed to the dispute settlement project is too great to be mentioned. But one might recall a few who came from countries or regions that were skeptical, and who could easily have retreated into totally negative positions.

- It became apparent in early meetings that John Stevenson's counterpart in Moscow at the time, Oleg Khlestov, understood that there was a tension between expanding global maritime interests and the traditional Soviet reluctance to embrace binding third-party dispute settlement procedures. The stage was thus set for his delegation to play a more balanced role on the issue.

- France was still chafing from its experience in the Nuclear Tests cases. But the leader of its delegation, Guy Ladreit de Lacharriere, was able to channel that into a preference for arbitration and support for the optional exceptions that ultimately emerged in article 298, rather than opposition to compulsory jurisdiction as such.

- Like many African countries, Tanzania was deeply troubled by the outcome in the Southwest Africa cases that was only later ameliorated by the Namibia advisory opinion. But the leader of its delegation, Joseph Warioba, seized on the opportunity afforded by the U.S. proposal for a new standing tribunal as a means of deflecting those concerns in a positive way.

- Reynaldo Galindo-Pohl of El Salvador joined with Ralph Harry of Australia to shepherd the dispute settlement negotiations to a successful outcome. To achieve this, they nurtured the emergence of limitations on challenges to coastal states that were particularly important in Latin America, including those found in the crucial first and third paragraphs of article 297.

We owe these people, and many others, a debt of gratitude. They helped usher in important changes in our perception of compulsory jurisdiction. But we still have difficulty matching their accomplishment. And the temptation to succumb in other contexts to the seductive expedient of bypassing treaty

negotiation altogether in the codification and law-making effort guarantees the absence of consent to jurisdiction as part of that process.

The *droit acquis* should not be taken for granted.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'B. H. Gorman', is written over the closing text.

18 February 2012

URUGUAY

*Carlos Mata Prates**

-I-

This year the Convention on the Law of the Sea commemorates its thirtieth anniversary. This commemoration is not only necessary but also well deserved on account that throughout the development of the International Law, the approval of the Convention represents a historical milestone.

Uruguay has participated in the discussion and drafting of such text, during the Third UN Conference on the Law of the Sea through its Delegation and in particular, through the outstanding performance of the president of the Delegation, Dr. Julio César Lupinacci, who participated in several Working Groups, such as the Groups of the Exclusive Economic Zone and the Continental Shelf¹. In turn, it is worth reminding, as well, the contribution of another outstanding compatriot, Dr. Felipe Paolillo, who was member of the Secretariat of the Convention², and through them, the other compatriots who also contributed to such negotiation.

-II-

Negotiations on the Conference lasted nine years and ended with the approval of the Convention on the Law of the Sea on June 30, 1982 in Montego Bay (Jamaica).

The Convention is composed of 320 articles and several annexes which constitute a real Code on the Law of the Sea. The Convention sets forth, conceptualizes and delimits the legal regimes of the different sea spaces related to still waters and water volumes as well as to the seabed and subsoil. As regards still waters and water volumes, the following classification was made: internal waters, territorial sea, contiguous zone, exclusive economic zone and high sea. In turn, in the seabed and subsoil the respective territorial sea, continental shelf and zone are delimited.

It is worth noting that the Convention, even now, is an example in several aspects as a result of the criterion used to reach the agreements –consensus-, taking into account common law rules, materializing others and setting forth novel concepts – *“The area and its resources are common heritage of*

* President of the Advisory Committee of the Executive for the determination of the outer border of the continental shelf (COALEP) Republic of Uruguay

¹ Dr. Julio César Lupinacci demonstrated his performance at various conferences and in his book “La Plataforma Continental en el Nuevo Derecho del Mar (The continental Shelf in the new Law of the Sea) (Montevideo, FCU 1993)

² Both jurists, deceased, are mentioned in the Annex to the list of leading figures who participated at the Third UN Conference of the Law of the Sea.

mankind" (article 136), etc. Likewise, it was not careless about the organic issues, necessary to make the Convention provisions efficient and effective, creating systems and entities such as the International Seabed Authority with its different organs (Assembly, Council, Committees, Secretariat, Corporation) the International Tribunal for the Law of the Sea and the Commission on the limits of the Continental Shelf.

The mere fact of enunciating the objectives, concepts and institutes set forth under the Convention clearly show its importance as well as the impact that the aprovement of this institute has caused on the international community.

-III-

Another aspect that should be pointed out is that the Convention not only established a ruling system, but it also introduced criteria to determine certain sea spaces, resources exploitation or settlement of disputes that might arise from time to time among the States. As a result, through the organs established to such effects, the Convention is still a decisive factor for the progressive development of the Law of the Sea.

One of the present paradigmatic examples refers to the work that is being carried out by the Commission on the Limits of the Continental Shelf. The coastal states submitted to such Commission, information on the limits of the continental shelf beyond 200 nautical miles and the Commission is entitled to make recommendations to such states on the establishment of the outer border of its shelf. It should be pointed out that – even though the coastal state is in charge of determining the outer limit of its respective continental shelf- the Commission must cooperate with the States, and certain legal effects are granted to its recommendation as regards third parties. These actions are being carried out at present and are likely to continue during many years, thus showing the applicability of the Convention.

Finally, the scope, contents and acceptance of this Convention meant and mean a superlative contribution to the development of the International Law and the peace among the nations, this fact constitutes a sufficient reason to commemorate its first thirty years.

EPILOGUE

Thirty years have elapsed since the opening for signature of the United Nations Convention on the Law of the Sea in Montego Bay, Jamaica, on 10 December 1982. The Third United Nations Conference on the Law of the Sea was over, but the memories of that intense, nine-year long diplomatic event continue to live on.

Many of the authors who contributed to this commemorative booklet started their professional careers during the Conference and subsequently remained committed to the field of ocean affairs and the law of the sea. Their work and their dedication to the cause of oceans are commendable. They continue to inspire those who currently carry on the challenging task of implementing the comprehensive regime for the oceans.

In this sense, 2012 was not only a year of commemoration but also a year of renewed commitments. Earlier this year, the Secretary-General, in a letter to the Heads of State and Government, reiterated the appeal of the General Assembly and invited all States which had not already done so to become parties to this important international legal instrument in order to achieve the goal of universal participation.

The commemorative dimension started with the adoption of a declaration by the twenty-second Meeting of States Parties to UNCLOS in June 2012. This declaration, attached as an Annex to this publication, demonstrates the importance which States Parties attach to that treaty thirty years after its opening for signature. The commemorative dimension will culminate in a meeting of the General Assembly at the highest possible level in December 2012 in the context of the annual deliberations of the item on oceans and the law of the sea.

Those who were present at the Third United Nations Conference which adopted UNCLOS, as well as the current generation of professionals working in these areas, should be proud of their achievement. The framework of the treaty offers ample guidance for further progressive development of the law of the sea. It is for this and future generations to make the most of this possibility which has been provided to us.

Patricia O'Brien
Under-Secretary-General for Legal Affairs
The Legal Counsel

AFTERWORD

At the end of 2011, paragraphs 245 to 248 of resolution 66/231 of the General Assembly were dedicated to the commemoration of the thirtieth anniversary of the opening for signature of the Convention. In particular, the Secretary-General was requested to organize, as appropriate, activities to mark this occasion and States were invited to support these activities. Following the adoption of the resolution on 24 December 2011, the entire Division enthusiastically engaged in planning and organizing the commemoration.

2012 was a year of commemoration, which started during the twenty-second Meeting of States Parties to the Convention in June and ended with the high-level meeting of the General Assembly. The Division issued mugs, pins and posters.¹ With financial assistance of the International Seabed Authority and the International Tribunal for the Law of the Sea a video was prepared and published on the website of the Division.² A customized stamp sheet was issued in cooperation with the United Nations Postal Administration, for sale exclusively at meetings serviced by the Division throughout 2012.

A round-table panel discussion was held on World Oceans Day, 8 June, devoted to UNCLOS at 30. The Secretary-General made welcoming remarks. Opening remarks were made by the Legal Counsel. Mr. Yohei Sasakawa of the NIPPON Foundation of Japan gave a statement on the importance of human capacity in the implementation of the Convention. The three panellists, H.E. Mr. Shunji Yanai, H.E. Mr. Nii Odunton and Mr. Galo Carrera, represented the three institutions established by UNCLOS, the International Tribunal for the Law of the Sea, the International Seabed Authority and the Commission on the Limits of the Continental Shelf, respectively. The presentations and questions and answers thereafter led to an interesting debate.

The twenty-second Meeting of States Parties issued a declaration commemorating the 30th anniversary, which is reproduced in an Annex to this booklet and in the evening of 8 June, a reception was held in the Visitors' Lobby of the United Nations.

In July, the Assembly of the International Seabed Authority met in Kingston, Jamaica, in a special session to commemorate the anniversary and pay tribute to those who worked for the successful adoption of UNCLOS.

In August, an international conference was organized in Yeosu, the Republic of Korea. The Conference was co-sponsored by the Division, the Ministry of Foreign Affairs and Trade of the Republic of Korea and the Korea

¹ The mugs and pins were issued with the gracious financial and in-kind contributions of the Permanent Mission of Argentina.

² [Http://www.un.org/Depts/los/index.htm](http://www.un.org/Depts/los/index.htm). On the work of the Division, *see also* S. Tarasenko, I Tani, 'The Functions and Role of the United Nations Secretariat in Ocean Affairs and the Law of the Sea' (2012) 27 *The International Journal of Marine and Coastal Law*, pp. 683-699.

Maritime Institute in cooperation with the Organizing Committee for the Expo 2012 Yeosu Korea. Its theme was “Commemorating the 30th Anniversary of the Opening for Signature of the United Nations Convention on the Law of the Sea”.

At the time of writing, we are looking forward to the commemorative high-level meeting of the General Assembly on 10 and 11 December, when this booklet will be launched. At the same time, the Division will issue a pamphlet on UNCLOS.³

All activities carried out would not have been possible without the generous financial and in-kind contributions of the many Permanent Missions, also referred to as “Friends of DOALOS”. Additional sponsors were the Rhodes Academy of Oceans Law and Policy⁴ and Martinus Nijhoff Publishers / Brill.

This booklet could not have been published without the assistance of the Permanent Missions in New York who contacted their delegates to the Third United Nations Conference and others to write about their personal experiences. The letter sent by the Legal Counsel on 21 December 2011 had asked for their thoughts, memories of the meetings, reflections, ideas about the future and celebratory remarks, in the form of a letter of 400 – 800 words.

The contributions are published in this booklet as they were received with very minor or no editing. When received in another language, they were translated into English and published next to the original contribution. Throughout this booklet, the abbreviations UNCLOS and the Convention are both used for the 1982 United Nations Convention on the Law of the Sea.

We trust that this booklet will bring fond memories to those who attended the Third Conference and an insider’s view into the negotiating process to those who are currently working in the law of the sea area. The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations.

Sergey Tarasenko
Director
Division for Ocean Affairs and the Law of the Sea

³ The pamphlet was issued with the gracious financial contribution of the Permanent Mission of New Zealand.

⁴ The activities were made possible by the gracious financial contributions of the Permanent Mission of the Kingdom of the Netherlands, New Zealand, Norway and Singapore and the in-kind contributions by the Permanent Missions of Argentina, Australia, Belgium, Brazil, Chile, China, France, Italy, Jamaica, Japan, Lebanon, Monaco, the Russian Federation, Slovenia, South Africa, Sri Lanka, Thailand and the United States of America. The Center for Oceans Law and Policy and the Law of the Sea Institute of Iceland made generous financial contributions on behalf of the Rhodes Academy of Oceans Law and Policy.

ANNEX

Declaration on the thirtieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea

The Meeting of States Parties,

Recalling that the States that negotiated the United Nations Convention on the Law of the Sea were prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and by their awareness of the historic significance of the Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,

Recalling also the crucial role played by Ambassador Arvid Pardo of Malta and, in particular, his visionary speech delivered on 1 November 1967 before the General Assembly, leading to the adoption of the Convention,

Recognizing the pre-eminent contribution provided by the Convention to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and to the promotion of the economic and social advancement of all peoples of the world, in accordance with the purposes and principles of the United Nations as set forth in the Charter of the United Nations, as well as to the sustainable development of the oceans and seas,

Recalling the universal and unified character of the Convention and that it sets out the legal framework within which all activities in the oceans and seas must be carried out,

1. *Welcomes* the upcoming thirtieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea on 10 December 1982 at Montego Bay, Jamaica;

2. *Pays tribute* to the negotiators of the Convention from all States that participated in the Third United Nations Conference on the Law of the Sea, and to all those who contributed to its adoption, entry into force, and universality;

3. *Commends* the progress in the work of the International Seabed Authority, the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf, the three organs established by the Convention;

4. *Welcomes* the decision of the Assembly of the International Seabed Authority to convene a special meeting during its eighteenth session to commemorate the thirtieth anniversary of the opening for signature of the Convention;

5. *Also welcomes* the decision of the General Assembly to devote two days of plenary meetings at its sixty-seventh session, on 10 and 11 December

2012, to the consideration of the item entitled “Oceans and the law of the sea” and the commemoration of the thirtieth anniversary of the opening for signature of the Convention;¹

6. *Further welcomes* the activities to commemorate the thirtieth anniversary of the opening for signature of the Convention by the Secretary-General, States, specialized agencies of the United Nations system and intergovernmental and non-governmental organizations and other relevant bodies;

7. *Invites* States Parties to make contributions to the established trust funds related to the law of the sea,² and encourages continued capacity-building initiatives in support of the implementation of the Convention;

8. *Expresses* its appreciation to the Secretary-General for his annual reports on oceans and the law of the sea and for the high standard of the support provided by the Division for Ocean Affairs and the Law of the Sea to the work of the Meeting of States Parties and the Commission on the Limits of the Continental Shelf;

9. *Calls upon States* that have not yet done so to become parties to the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

Twenty-second Meeting

New York, 4-11 June 2012

¹ Resolution 66/231, para. 245.

² Voluntary Trust Fund for the purpose of facilitating the preparation of submissions to the Commission on the Limits of the Continental Shelf for developing States, in particular the least developed countries and small island developing States, in compliance with article 76 of the United Nations Convention on the Law of the Sea (fund code: KUA); Voluntary Trust Fund for the purpose of defraying the cost of participation of the members of the Commission on the Limits of the Continental Shelf from developing States in the meetings of the Commission (fund code: KJA); Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea (fund code: TLA/Project No. 9681); Voluntary Trust Fund to assist States in the settlement of disputes through the International Tribunal for the Law of the Sea (fund code: KFA); International Seabed Authority Endowment Fund; and International Seabed Authority Voluntary Trust Fund.

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