

# POLICY BRIEF

April 18, 2019

Dr. Monika Chansoria is a Tokyo-based Senior Fellow at The Japan Institute of International Affairs. Previously, she has held appointments at the Sandia National Laboratories (U.S.), Hokkaido University (Sapporo, Japan), and Fondation Maison des Sciences de l'Homme (Paris). Dr. Chansoria has authored five books including her latest work, *China, Japan, and Senkaku Islands: Conflict in the East China Sea Amid an American Shadow* (Routledge © 2018).

## Third UN Conference on Law of the Sea (1973–1982): Promoting Peace, Security, Law, and Order in the Oceans

*Dr. Monika Chansoria*

The Third UN Conference on the Law of the Sea spanning between 1973 and 1982 remains engraved as an exceptional event in the pages of history of international relations, being one of the most ambitious projects of the United Nations, represented with nearly all of the international community. The Conference was viewed as a test of constructive international cooperation in an increasingly interdependent system where such cooperation was extremely vital.<sup>1</sup> By means of Resolution 2750C(XXV), the UN General Assembly on December 17, 1970, decided to convene the Third Conference on the Law of the Sea in 1973, and instructed the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction to act as a preparatory body for this conference. The Committee held six sessions and a number of additional meetings in New York and Geneva between 1971 and 1973 following which the UN General Assembly requested the UN Secretary-General to convene the first session of the Third UN Conference on the Law of the Sea in 1973 in New York to deal with organizational matters, and a second session in 1974, as well as subsequent sessions if necessary, to deal with substantive work (as per Resolution 3029 (XXVII)).

The Conference faced an enormous task of not just rearranging and codifying existing legal norms concerning the Law of the Sea, but also arriving on an agreement upon new rules which were certain to have had considerable economic and political consequences for every nation. A positive outcome of the Conference was expected to remove several sources of potential international conflicts and secure a more equitable use of resources decisively contributing towards a better

---

*Disclaimer:*

The views expressed in this publication are those of the author and do not necessarily reflect the policy or position of The Japan Institute of International Affairs or any other organization with which the author is affiliated.

---

<sup>1</sup> Charles Bulmer, "The Third United Nations Conference on the Law of the Sea: Some Problems in the Seabed Negotiations," *World Affairs*, vol. 141, no. 4, Spring 1979, p. 345.

future.<sup>2</sup> By underlining the close connection and interrelationships between the aims of the Law of the Sea Conferences and other measures undertaken by the United Nations with regard to creating a new global strategy based on all elements essential for the survival of mankind, then UN Secretary General, Kurt Waldheim, pointed to the many important factors that made this intricate task imperative.

With a total 160 participating nation-states and eleven sessions held between 1973 and 1982, this conference went on to becoming the first ever comprehensive convention covering all aspects of the uses and resources of the sea. It is often referred to as one of the most significant and far-reaching of all United Nations undertakings considering the political and economic questions for the Conference to settle before reaching agreement on a new Convention on the Law of the Sea. And in this respect, it became very different from the Geneva Conventions of 1958,<sup>3</sup> which dealt with only limited aspects of the law of the sea. This Conference not only codified the existing international law, but contained many new and innovative concepts of international law that were created in response to the advance of technology, and the demands of the developing countries for greater international equity.<sup>4</sup> A relevant example over the advance in technology was the one pertaining to offshore exploration of oil and gas. As a result, coastal states demanded an extension of the rights beyond the continental shelf to the continental slope, to the continental rise, and even to the ridges beyond the rise.<sup>5</sup>

The Third UN Conference determined the competence of the three main Committees by allocating to the plenary, subjects and issues on the list prepared in accordance with General Assembly Resolution 2750C(XXV) (A/CONF.62/29).

- The First Committee was allocated the topic of international regime of the sea-bed and ocean floor beyond national jurisdiction;
- The Second Committee was given the subjects of the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone, the high seas, land-locked countries, shelf-locked States and States with narrow shelves or short coastlines and the transmission from the high seas;
- The Third Committee was allocated the topic of the preservation of marine environment

**Rules of Procedure**

The Third UN Conference on the Law of the Sea began its substantive work in Caracas, Venezuela, and laboriously reached upon a consensus agreement on the rules of procedure.<sup>6</sup> With regard to the many different interlinked conflicts of interests, the result achieved at the Caracas session was quite substantial in that it was able to provide at least draft alternative texts for most of the unsettled questions, which reflected the differing viewpoints of the various interest groups.<sup>7</sup> The differing viewpoints between poor and rich states were clearly brought into the open without any settlement. Swedish writer, Rolf Edberg made a pertinent

2 Holger Rotkirch, "The UN Law of the Sea Conference After Caracas," *Instant Research on Peace and Violence*, vol. 4, no. 4, 1974, Tampere Peace Research Institute, University of Tampere, p. 174.

3 1958 Geneva Convention on the Territorial Sea and Contiguous Zones, 15 U.S.T. 1606, T.I.No. 5639, 516 U.N.T.S. 205.

4 Tommy T. B. Koh, "The Third United Nations Conference on the Law of the Sea: What Was Accomplished?" *Law and Contemporary Problems*, vol. 46, no. 2, *The Law of the Sea: Where Now?* Spring 1983, Duke University School of Law, p. 6.

5 Ibid.

6 Rotkirch, n. 2, p. 173.

7 Ibid., pp. 183-84.

remark that as land creatures drawing principal nourishment from the islands of the world oceans, we have been inclined to overestimate the importance of the land territory. As the only water planet in the solar system the name of our planet according to Edberg, should have been Ocean, rather than Earth, as we have named it. The sea, the cradle of life, is, and will always be, the basis for our existence on Earth.<sup>8</sup>

Decisions of the Conference on all matters of substance, including adoption of the text of the Convention on the Law of the Sea as a whole, were to be made by a two-thirds majority of the representatives present and voting, provided that such a majority included at least a majority of states participating in that particular session of the Conference. Accordingly, the rules of procedure also provided for a ‘cooling-off period’ prior to any vote on a substantive matter. Only after such a ‘cooling-off period’ and after a two-thirds vote of those present and voting in plenary session decided that all efforts reaching general agreement were exhausted that a vote on the substantive issue could take place.<sup>9</sup> The Conference held a general debate during which 110 states and eight international organizations addressed the Conference with the majority of participating states being in favor of a maximum breadth of the territorial sea of 12 nautical miles, although many had various additional requirements.<sup>10</sup>

The Conference also saw a unique process by which this Convention was adopted. Although the rules of procedure of the Conference did

envisage voting,<sup>11</sup> it was a remarkable feature of the Conference that not until the last day did the Conference ever resort to voting on any substantive matter. The majority of the participants in the Conference from the very beginning realized that the interests of the participating countries at stake are so serious, so substantial, and in some cases, so irreducible, that however difficult, however intractable, negotiations should continue until an acceptable mutual accommodation for all competing interests was found. Hence, adoption of the method of consensus for decision-making was paramount.<sup>12</sup> At its first organizational session in New York in December 1973 the Conference had not been able to reach an agreement, the most difficult issue being voting requirements. Ironically, it was on the last day of the Conference that the United States of America asked for a vote.<sup>13</sup>

### ***The Sixth Session, New York, 1977***

The sixth session of the Third UN Conference on the Law of the Sea was held in New York from May 23 to July 15, 1977. Following the conclusion of the session, a new Informal Composite Negotiating Text (ICNT) was released that recognized all the material in earlier texts into a comprehensive draft treaty form with certain significant and substantive changes.<sup>14</sup> In general, the provision of the ICNT regarding the regimes of internal waters, the territorial sea, and the contiguous zone were not markedly different from those in the Convention on the Territorial Sea and the Contiguous Zone

8 Rolf Edberg cited in Rotkirch, n. 2, p. 173.

9 Ibid., p. 174.

10 Ibid., p. 175

11 See Rules of Procedure of the Third UN Conference on the Law of the Sea, rule 37, reprinted in VI New Directions on the Law of the Sea, 1977, p. 572.

12 Koh, n. 4

13 Ibid., p. 9.

14 UN Doc. A/CONF.62/WP.10, July 15, 1977, reprinted at 16 ILM 1108 (1977) hereafter cited as ICNT.

of 1958.<sup>15</sup> The ICNT contained four new major elements<sup>16</sup> :

- First, the maximum permissible breadth of the territorial sea was fixed at 12 nautical miles. [ICNT, Art. 3.]
- Second, the regime of passage of straits used for international navigation was dealt with as a separate and distinct matter. [ICNT, Part III] It was not, except for specified types of straits [ICNT, Art. 45.], the same as the regime of innocent passage applicable to territorial seas and certain internal waters outside straits.<sup>17</sup> The pollution chapter also dealt separately with the two regimes. A similar distinction between passage regimes applied to archipelagic waters and their adjacent territorial seas.
- Third, the meaning of innocent passage and the regulatory rights of the coastal state and the duties of the flag state regarding innocent passage were elaborated in greater detail, both in general, and with specific reference to the prevention of pollution. As a result of continuing conversations on the pollution issues among interested states, the ICNT reduced restrictions on coastal state anti-pollution measures applicable to foreign vessels in innocent passage in the territorial sea as compared with the Informal Single Negotiating Text (SNT) and the Revised Single Negotiating Text (RSNT)<sup>18</sup> but continued with the prohibition on construction, manning, equipment, and design standards not giving effect to generally accepted rules or standards for

foreign vessels that were not proceeding to a port of the coastal state.

- Fourth, the maximum permissible breadth of the contiguous zone for customs, fiscal, immigration, or sanitary purposes was extended from 12 to 24 nautical miles from the baseline.

Moreover, a new technical correction was made clarifying the point that the coastal state was not prevented from taking enforcement actions in its territorial sea that it may take in its economic zone simply because the offensive was committed in the economic zone rather than in the territorial sea. [ICNT Art. 27 (5); Art. 221, paras 3, 5 & 6]The changes introduced into the ICNT on the status of the economic zone were the result of long and arduous informal work among states representing all shades of opinion. There had been a long general agreement, reflected in Article 46, paragraph 1, of the RSNT and Article 58, paragraph 1, of the ICNT that the rights of all states to be preserved in the zone would include “freedom of navigation and overflight and of the laying of submarine cables and pipelines,” and that these did not exhaust the class of freedoms preserved.<sup>19</sup>

### ***Milestones Achieved***

It should be recalled that the two previous UN Law of the Sea Conferences held in Geneva in 1958 and 1960 were unable to agree on the maximum breadth of the territorial sea as well as on the right to establish fishery zones outside the territorial sea. While these conflicts of interest led coastal states to extend their

15 Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 15 UST 1606, TIAS No. 5639, 516 UNTS 205, 52 AJIL 851, 1958.

16 Bernard H. Oxman, “The Third United Nations Conference on the Law of the Sea: The 1977 New York Session” *The American Journal of International Law*, vol. 72, no. 1, Jan 1978, pp. 62-63.

17 Compare ICNT, Arts. 34-44 with ICNT, Arts 8 (2) and 17-32.

18 Revised Single Negotiating Text, Part II, Art. 20 (2). Parts I, II, III OF THE TEXT APPEAR AT 5 UNCLOS, OFF. RECS. 125, UN Doc. A/CONF.62/WP.8/Rev. 1, 1975.

19 Ibid., p. 68.

sovereignty and economic jurisdiction further than was considered acceptable previously, on the other hand they resulted in efforts to avoid encroachment of the freedom of the high seas by those states that held an interest in freedom of navigation, fisheries on the high seas and marine strategy.<sup>20</sup>

A major accomplishment of the Third Conference was that it was able to agree upon many important limits on the different maritime zones of coastal states, such as the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf.<sup>21</sup> The rounds of negotiations of the Third UN Conference dealt with complex issues.<sup>22</sup> A consensus seemingly emerged that concerned problems related to the territorial sea, the contiguous zone, and the exclusive economic zone.<sup>23</sup> While all the details were not settled, most participants seemed ready to agree on a territorial sea of 12 nautical miles, and an exclusive economic zone of 200 nautical miles from the baseline.<sup>24</sup> Establishing a 200 nautical miles economic zone and providing for coastal state jurisdiction over the continental margin beyond 200 miles, decreed a vast partition of most significant economic rights in the oceans among coastal states, and sought to insulate other traditional non-resource uses (e.g.,

navigation) from the effects of such partition and reserved them to all states. It appeared to be taking an uncertain step into a dimly perceived “law of economic interdependence” by requiring optimum utilization of economic zone fisheries and by providing for some revenue sharing from mineral exploration of the continental margin beyond 200 nautical miles.<sup>25</sup> Section 2, Article 3 of the present negotiating text provided for limitations on the territorial sea: “Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with the present Convention.”<sup>26</sup> In addition, there was an agreement upon regimes of passage of ships through and of aircraft over the critical sea-lanes of the world.<sup>27</sup> And, clearly establish the rights and obligations of the coastal states on the one hand, and of the international community on the other.<sup>28</sup> Unlike most other treaties under which there were no mandatory provisions on the settlement of disputes, a very unique feature of the new Convention was that it did contain mandatory provisions on the settlement of disputes.<sup>29</sup>

In the contentious area of the mining of the mineral resources of the international

20 Rotkirch, n. 2, p. 175.

21 See *Convention on the Law of the Sea*, opened for signature Dec. 10, 1982, U.N. Doc. A/CONF.62/122 (1982), pts. II, V-VI, reprinted in 21 *International Legal Materials (ILM)* 1261.

22 For additional background see, John P. Stevenson and Bernard H. Oxman, “The Preparations for the Law of the Sea Conference,” *American Journal of International Law*, no. 68, January 1974, pp. 1-32; Evan Luard, *The Control of the Seabed: A New International Issue* (London: Heinemann, 1974); and George T. Yates III and John Hardin Young, eds., *Limits to National Jurisdiction over the Sea*, (Charlottesville: University Press of Virginia, 1974).

23 For more details see, A.O. Adede, “Law of the Sea-Developing Countries’ Contribution to the Development of the International Arrangements for the International Sea-Bed Authority,” *Brooklyn Journal of International Law*, no. 4, Fall 1977, pp. 1-42.

24 Oxman, n. 16.

25 *Ibid.*, p. 82.

26 See U.S. Department of State, *Office of the Law of the Sea Negotiations, Informal Composite Negotiating Text*, July 20, 1977 (Part II through Part III); also see, Bulmer, n. 1, p. 338.

27 For more details see, *Convention on the Law of the Sea* opened for signature December 10, 1982, U.N. Doc. A/CONF.62/122 (1982), part III, cited in Koh, n. 4, p. 7.

28 *Ibid.*, part IV.

29 *Ibid.*, part XV.

areas of the seabed and ocean floor, a fair and workable regime was negotiated.<sup>30</sup> Noteworthy in this reference were provisions in Part XI of the Convention, and Resolution II, which was adopted by the Conference thereby forming an integral and inseparable whole with the Convention. Under Resolution II the consortia states, which had already invested research and development funds in the exploration of specific mine sites, were recognized.<sup>31</sup> If the state to which a consortium belongs signs the Convention, the consortium may be registered as a pioneer investor. In case of a consortium which remained unincorporated, and which consists of partners from a number of different countries, the consortium may be registered as a pioneer investor if only one of the countries to which the consortium partners belong, signs the Treaty. Upon being registered as a pioneer investor, the consortium *acquires the exclusive right to explore its specific mine site in the deep seabed and ocean floor.*<sup>32</sup> [Emphasis Added]

Besides, this Conference made a very significant change in the high seas regime, by reducing the area in which all classic high seas freedoms obtain by at least one-third. It also provided for unimpeded transit through, over, and under, routes used for international navigation connecting points outside coastal state “sovereign” waters, irrespective of the extension of coastal state internal waters, territorial sea, or archipelagic waters to embrace such routes. It accordingly, rejected the notion that such extensions, if lawful, automatically subject all other states to innocent passage and the attendant coastal state powers.<sup>33</sup> Despite the many positive and encouraging outcomes

of the Convention, few questions continued to loom large – two of them being, how far did the Convention contribute in ensuring international peace and security, and in narrowing the gap between developed and developing countries globally?

### ***Birth of UNCLOS***

It was a considered opinion that by and large, the Third UN Convention significantly contributed to the cause of peace in general, and towards the strengthening of the principles of the peaceful settlement of disputes between states and non-resort to force in the settlement of disputes between states in particular.<sup>34</sup> During the final lap of the Conference, the United Nations Convention on the Law of the Sea together with resolution I to IV, forming an integral whole, was provisionally adopted, subject to drafting changes during the 182<sup>nd</sup> plenary meeting on April 30, 1982, by a recorded vote taken at the request of the delegation from the United States of America. On December 10, 1982, the Conference adopted the United Nations Convention on the Law of the Sea (UNCLOS) containing 320 articles and nine annexes. The Convention was opened for signature, until the 9<sup>th</sup> of December, first at the Ministry of Foreign Affairs of Jamaica (from December 10, 1982) and then at the United Nations Headquarters in New York (from July 01, 1983).<sup>35</sup> The United Nations Convention on the Law of the Sea entered into force 12 after the deposit of the 60<sup>th</sup> instrument of ratification, on November 16, 1994. The Agreement relating to the implementation of Part XI of the Convention entered into force on July 28, 1996, thirty days

30 For more details see, *Third United Nations Conference on the Law of the Sea*, adopted April 30, 1982, resolution II, U.N. Doc. A/CONF. 62/121, 1982.

31 Koh, n. 4.

32 *Ibid.*, pp. 5-9.

33 Oxman, n. 16, p. 82.

34 Koh, n. 4.

35 *Third United Nations Conference on the Law of the Sea*, 1973–1982, Diplomatic Conferences, Codification Division Publications, Office of Legal Affairs, United Nations.

following the deposit of the 40<sup>th</sup> instrument of ratification. Important to note was the affirmation that matters not regulated by this Convention will continue to be governed by the rules and principles of general international law.

reflected notably in the UNCLOS, which has institutionalized the international legal order for the seas and oceans.

The States Parties to UNCLOS acknowledged that all developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 accentuated the need for a new and generally acceptable Convention on the Law of the Sea. Through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans shall facilitate international communication, and promote the peaceful uses of the seas and oceans, equitable and efficient utilization of their resources, conservation of their living resources, and study, protect and preserve the marine environment.<sup>36</sup> The UNCLOS was brought to fruition bearing in mind that the achievement of the above-mentioned goals would contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked.<sup>37</sup> The belief also was that the codification and progressive development of the law of the sea achieved by the means of this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights – thus promoting the economic and social advancement of all peoples of the world, in accordance with the very fundamental Purposes and Principles of the United Nations as set forth in its Charter.<sup>38</sup> The free and democratic world needs to re-emphasize its commitment towards respecting freedom of navigation and over flight, and unimpeded lawful commerce, based on the principles of international law, as

36 Preamble, United Nations Convention on the Law of the Sea, 1982, Conventions-Agreements Texts, United Nations.

37 Ibid.

38 Ibid.