

Center for Oceans Law and Policy  
University of Virginia

UNITED NATIONS CONVENTION  
ON THE LAW OF THE SEA  
1982

A COMMENTARY

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**University of Virginia**

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1982**

**A COMMENTARY**

**Volume I**

**MYRON H. NORDQUIST**

**Editor-in-Chief**

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TYPESET IN THE USA AND MANUFACTURED IN THE NETHERLANDS

*This volume is respectfully dedicated to the memory of*

**HAMILTON SHIRLEY AMERASINGHE**

President, Third United Nations Conference on the  
Law of the Sea, 1973–1980

**CONSTANTIN A. STAVROPOULOS**

Under-Secretary-General and Special Representative  
of the Secretary-General to the Third United Nations  
Conference on the Law of the Sea, 1973–1974

*and*

**BERNARDO ZULETA**

Under-Secretary-General and Special Representative  
of the Secretary-General to the Third United Nations  
Conference on the Law of the Sea, 1974–1983

## INTRODUCTION

The law of the sea is one of the oldest branches of international law. For the modern international lawyer, however, the most important sources of codification and progressive development of this law are the three United Nations Conferences held in 1958, 1960 and from 1973 to 1982.

The first United Nations Conference on the Law of the Sea in 1958 was based on careful background work and drafts prepared over an extended period by the International Law Commission. The scholarly work of the Commission facilitated the rapid conclusion of a highly successful Conference that produced four keystone Conventions—the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the Continental Shelf, the Convention on the High Seas, and the Convention on Fishing and Conservation of the Living Resources of the High Seas, as well as an Optional Protocol on the Settlement of Disputes.

Agreement on the doctrine of the Continental Shelf was one of the most significant achievements of the Conference. This doctrine had been given strong impetus by United States' assertions of jurisdiction over the resources of the shelf in the Truman Proclamation in 1945.

Despite the success of the First United Nations Conference on the Law of the Sea (UNCLOS I) in producing four Conventions, it did not settle a maximum breadth for the territorial sea or the extent of coastal State fisheries jurisdiction. The Second United Nations Conference on the Law of the Sea (UNCLOS II) was held in 1960 to consider the unsettled issues of the territorial waters and fishery limits. UNCLOS II failed by one vote to achieve the two-thirds majority required for adoption of a joint Canadian-United States initiative for a maximum territorial sea breadth of six miles with an adjacent six-mile fisheries zone. Consequently, no agreement emerged from UNCLOS II.

During the 1960s, the unresolved territorial sea and fishery issues combined with newer issues, such as the legal régime for mineral resources of the deep ocean floor beyond areas of national jurisdiction and the world-wide movement for protection of the environment, to create a political climate for a Third United Nations Conference on the Law of the Sea (UNCLOS III). Some impetus came from the United States, the Soviet Union and other maritime States which had become acutely conscious of the need to protect transit passage through straits and to prevent the territorial sea from expanding even beyond twelve nautical miles. In addition, many coastal States had become highly sensitive to protecting fish stocks off their shores from technologically advanced distant water fleets with highly efficient new fishing methods.

But perhaps the most direct triggering event leading to a Third Conference was a statement made by Ambassador Arvid Pardo of Malta who captured the imagination of the United Nations General Assembly by calling for the mineral resources of the deep sea-bed to be declared the "common heritage of mankind." The Pardo speech on 1 November 1967 led quickly to the establishment by the General Assembly on 18 December 1967 of an Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction. A year later, on 21 December 1968, the Ad Hoc Committee became the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. This "Sea-Bed Committee," which met in several sessions each year over the next five years, effectively became the preparatory body for UNCLOS III.

As noted earlier, UNCLOS I had the benefit of scholarly draft articles prepared in advance over a period of years by the International Law Commission. In contrast, UNCLOS III began in December 1973 without a draft text. The five years of preliminary negotiations in the Sea-Bed Committee of the United Nations General Assembly had produced a plethora of serious proposals but no single draft capable of forming the basis for a multilateral diplomatic negotiation. Accordingly, after a two-week organizational session to establish the procedural framework for the Conference, the task of reconciling national substantive positions was begun in earnest in 1974 at the Caracas, Venezuela, session. There, some 115 delegations delivered political statements in the plenary of the Conference. Soon, however, the major work of the Conference shifted to three Main Committees—which largely reflected the division of work established earlier in the Sea-Bed Committee:

- First Committee — Dealing with the Sea-Bed and Ocean Floor, and Subsoil Thereof, Beyond the Limits of National Jurisdiction
- Second Committee — Dealing with the general Law of the Sea, including in particular the Territorial Sea, Straits, Economic Zone, Continental Shelf, High Seas, Land-Locked States' Access, Archipelagoes, Régime of Islands, Enclosed or Semi-Enclosed Seas
- Third Committee — Dealing with the Marine Environment, Marine Scientific Research and Transfer of Technology

In addition, an informal group on the settlement of disputes was formed. Later this formed the nucleus for the Informal Plenary which became in effect a fourth Main Committee of the Conference and dealt with

some other unallocated issues, above all the preamble, the general provisions and the final provisions and the reports of the Drafting Committee at its examination of the text. Toward the latter years of the Conference, the Drafting Committee also became active. The Final Act of the Conference (see p. 404 below) lists the Officers of the Conference as well as the membership and structure of the Main Committees and other negotiating groups established by the Conference.

The Law of the Sea negotiations were grouped around the efforts of the five substantive committees and working groups in which the level and pace of work varied considerably. At Caracas, the First and Third Committees proceeded rather quickly in informal meetings to reduce the number of alternative formulations in the draft texts inherited from the Sea-Bed Committee. The Second Committee, however, entered into laborious deliberations on the subjects and issues allocated to it. Finally, after two complete revisions, thirteen informal working papers were consolidated into a "Main Trends" document containing over 400 provisions on Second Committee topics, and many other alternatives.

At the March 1975 meeting in Geneva, the Conference decided that the Chairman of each Main Committee should prepare an informal "single negotiating text" (SNT) on the items before his committee. The SNT that emerged was circulated at the very end of the Geneva session, and in July 1975 the President of the Conference also presented an informal text on the settlement of disputes. The latter text was based on the work of the informal group that had prepared a draft on the subject during the Spring session in Geneva.

Since the four parts of the SNT were developed independently, the sources and degree of acceptance of their numerous provisions and annexes differed markedly. Accordingly, the procedures for handling each part were somewhat different. The first three parts of the SNT were opened to the detailed scrutiny of delegations at the Spring 1976 session of the conference in New York, mostly in informal meetings off the record. A general discussion on settlement of disputes took place in plenary. Despite procedural variations, the general approach was to analyze the SNT article-by-article in the three Main Committees. Afterwards, the SNT was revised by the Committee Chairman to form a "Revised Single Negotiating Text" or "RSNT." After an article-by-article discussion, Part IV (on dispute settlement) was also accorded the same status as Parts I, II, and III.

Most of the Summer 1976 negotiations focused on key unresolved issues in the three Main Committees. Few outstanding issues were settled, however, and the RSNT remained largely as issued, except for refinements in what was then Part IV, the settlement of disputes.

The Spring 1977 session, also held in New York, was likewise disappointing, with First Committee negotiations on the deep sea-bed virtually stalemated and little progress occurring on other issues. But the Summer 1977 session resulted in an Informal Composite Negotiating

Text (ICNT). During the 1978 session, efforts were concentrated in “negotiating groups” to attempt to resolve deep sea-bed issues and delicate questions of fishing rights. In 1979, deep sea-bed discussions continued and the first revision of the ICNT emerged. An “informal text” of the Draft Convention was produced in 1980. Finally, in 1981, an “official” Draft Convention was issued and the Conference formally opened the Convention for signature in December 1982 in Montego Bay, Jamaica. Attached as Appendix I to this Introduction is a “Chronology of Significant Law of the Sea Events” prepared by this Convention Commentary Project Editor-in-Chief, Myron H. Nordquist, which provides an overview of the work of UNCLOS III.

The new Convention on the Law of the Sea was immediately signed by 119 nations. Several developed nations, however, including the United States, the United Kingdom and the Federal Republic of Germany, did not sign due to dissatisfaction with the Convention’s deep sea-bed mining régime. Several other countries, including Israel, Turkey and Venezuela, did not sign as a result of other concerns—including the provisions on settlement of ocean boundary disputes between opposite and adjacent States. Details of signatures and ratifications of the Convention as of 9 December 1984, and of the Final Act (10 December 1982) are contained in Appendix II.

Despite the inability to reach universal agreement on a new régime and machinery for deep sea-bed mining, UNCLOS III and the resulting Convention have made an enduring contribution to the codification and progressive development of international law. Under generally accepted principles of international law, on its entry into force the Convention will establish binding legal obligations for ratifying or adhering States. Its effect and influence on the law of the sea, however, will certainly be much broader. Unquestionably, the careful negotiations and agreements embodied within the Convention will profoundly influence State practice. Scholars presently differ on which portions of the Convention may now be regarded as customary international law and thus binding law for all States, whether or not party to the Convention. But there is significant support for the proposition that all of the provisions of the Convention, with the exception of those concerning deep sea-bed mining, are at least the best evidence of customary international law in the absence of State practice to the contrary. The continuing disagreement between some of the most affected States and the supporters of the Convention, not only on deep sea-bed mining but also on certain dispute settlement provisions, is a serious problem. Nevertheless, principal elements of the non-sea-bed portions of the Convention reflect the extraordinary consensus with which these portions of the Convention were adopted as well as the rapid accommodations of State practice. It is, of course, always possible that the sea-bed mining problems will be resolved at some time in the future, permitting an even broader effect from the Convention.

Whatever the outcome of the debate about customary law and the continuing dispute about deep sea-bed mining, UNCLOS III—and associated State practice—have inextricably altered ocean law. New rules limit the maximum breadth of the territorial sea to twelve miles, coupled with clear recognition of transit passage rights through and overflight over straits used for international navigation and a comparable right of “archipelagic sealanes passage” through mid-ocean archipelagoes. Perhaps the most far-reaching rule is the establishment of the 200-mile exclusive economic zone which recognizes coastal State resource and economic interests within the zone while protecting high seas freedoms of navigation and communication. The new Convention also recognizes a carefully defined régime for mid-ocean archipelagoes, a variety of methods for delimiting the outer edge of coastal State continental margin rights, a strong and viable framework for the protection of the marine environment, and at least the principle that deep sea-bed resources should be developed as the common heritage of mankind, subject to agreement on appropriate treaty language to implement the principle.

Clearly the UNCLOS III negotiations with the resulting Convention on the Law of the Sea is a momentous event in the history of ocean law. It is our most earnest hope that the Project [Commentary on the 1982 United Nations Convention on the Law of the Sea] as a whole and the volumes that follow will help illuminate the negotiations and contribute to an even broader common understanding of the Convention.

Charlottesville, Virginia  
December 1984

John Norton Moore  
Project Director

## APPENDIX I

**Chronology of Significant Law of the Sea Events**

<b>Date/Place:</b>	<b>Event:</b>	<b>Significance:</b>
24 February- 27 April 1958; Geneva	First U.N. Conference on Law of the Sea	Produced four Conven- tions on Law of the Sea
17 March- 26 April 1960; Geneva	Second U.N. Confer- ence on Law of the Sea	Failed to reach agree- ment on breadth of ter- ritorial sea and extent of fisheries rights
18 December 1967	A/Res/2340 (XXII)	Established Ad Hoc Committee to study peaceful uses of sea- bed
18-27 March 1968; New York	1st Ad Hoc Committee Session	Ad Hoc Committee met in Economic/Tech- nical and Legal Work- ing Groups
17 June-9 July 1968; Geneva	2d Ad Hoc Committee Session	
19-30 August 1968; Rio de Janeiro	3d Ad Hoc Committee Session	
21 December 1968	A/Res/2467 (XXIII)	Established Committee on Peaceful Uses of Sea-Bed and Ocean Floor Beyond Limits of National Jurisdiction
15 December 1969	A/Res/2574 (XXIV)	General Assembly Adopted Moratorium Resolution on deep sea-bed exploitation
2-26 March 1970; New York	Spring Sea-Bed Com- mittee Session	Solicited views toward convening a conference on law of the sea
3-28 August 1970; Geneva	Summer Sea-Bed Com- mittee Session	
17 December 1970	A/Res/2749 (XXV)	Adopted Declaration of Principles governing sea-bed, ocean floor and subsoil beyond na- tional jurisdiction

<b>Date/Place:</b>	<b>Event:</b>	<b>Significance:</b>
17 December 1970	A/Res/2750 (XXV)	Convened Comprehensive Third Conference on Law of the Sea for 1973; enlarged Sea-Bed Committee to 86 members (later 91) and gave it Conference preparatory mandate
12-26 March 1971; Geneva	1st Preparatory Session	Formed three Sub-Committees and allocated subjects and functions
19 July-27 August 1971; Geneva	2d Preparatory Session	
21 December 1971	A/Res/2881 (XXVI)	Noted progress and authorized two more preparatory sessions
28 February-30 March 1972; New York	3d Preparatory Session	Agreed upon list of subjects and issues for the Conference
17 July-18 August 1972; Geneva	4th Preparatory Session	
18 December 1972	A/Res/3029 (XXVII)	Authorized convening of Conference in 1973
5 March-6 April 1973; New York	5th Preparatory Session	Prepared comparative texts of proposals
2 July-24 August 1973; Geneva	6th Preparatory Session	
16 November 1973	A/Res/3067 (XXVIII)	Authorized 1st and 2d Sessions, established Conference mandate, and dissolved Sea-Bed Committee
3-15 December 1973; New York	1st Session of Third Conference	Organized work of Conference
20 June-29 August 1974; Caracas	2d Session of Third Conference	Produced Main Trends papers

<b>Date/Place:</b>	<b>Event:</b>	<b>Significance:</b>
17 December 1974	A/Res/3334 (XXIX)	Authorized 3d Session
17 March-9 May 1975; Geneva	3d Session of Third Conference	Produced informal Single Negotiating Text (SNT)
12 December 1975	A/Res/3483 (XXX)	Authorized 4th Session and a possible 5th Session in 1976
15 March-7 May 1976; New York	4th Session of Third Conference	Produced Revised Single Negotiating Text (RSNT)
2 August-17 September 1976; New York	5th Session of Third Conference	Identified principal unresolved issues in RSNT
10 December 1976	A/Res/31/63	Authorized 6th Session
23 May-15 July 1977; New York	6th Session of Third Conference	Produced Informal Composite Negotiating Text (ICNT)
20 December 1977	A/Res/32/194	Authorized 7th Session
28 March-19 May 1978; Geneva	7th Session of Third Conference	Formed Negotiating Groups (NGs) on outstanding issues
1 August-15 September 1978; New York	Resumed 7th Session of Third Conference	NGs met
10 November 1978	A/Res/33/17	Authorized 8th Session
19 March-27 April 1979; Geneva	8th Session of Third Conference	Produced ICNT/Rev.1
19 July-24 August 1979; New York	Resumed 8th Session of Third Conference	Concentrated on deep sea-bed issues
9 November 1979	A/Res/34/20	Authorized 9th Session

<b>Date/Place:</b>	<b>Event:</b>	<b>Significance:</b>
3 March- 4 April 1980; Geneva	9th Session of Third Conference	Produced ICNT/Rev.2; Commenced detailed work on the final clauses
28 July- 29 August 1980; Geneva	Resumed 9th Session of Third Conference	Produced ICNT/Rev.3 (Draft Convention on the Law of the Sea (Informal Text))
10 December 1980	A/Res/35/116	Authorized 10th Session
9 March- 24 April 1981; New York	10th Session of Third Conference	Intensive Drafting Committee work
3-28 August 1981; Geneva	Resumed 10th Session of Third Conference	Focus on unresolved deep sea-bed issues; produced Draft Con- vention on the Law of the Sea
9 December 1981	A/Res/36/79	Authorized 11th Session
8 March- 30 April 1982; New York	11th Session of Third Conference	The Convention on the Law of the Sea adopted
22-24 Septem- ber 1982; New York	Resumed 11th Session of Third Conference	Final Drafting Commit- tee changes approved
3 December 1982	A/Res/37/66	Authorized Signing Session in Jamaica
6-10 December 1982; Montego Bay, Jamaica	Signing Session for the Convention on the Law of the Sea	119 delegations signed the Convention on the Law of the Sea

## APPENDIX II

**TABLE OF SIGNATURES AND RATIFICATIONS  
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA  
AND FINAL ACT  
AS OF 9 DECEMBER 1984**

<b>States</b>	<b>Final Act Signature</b>	<b>Convention Signature<sup>1</sup></b>	<b>Convention Ratification</b>
Afghanistan		18/3/83	
Albania			
Algeria* <sup>2</sup>	x	x	
Angola	x	x	
Antigua and Barbuda		7/2/83	
Argentina*		5/10/84	
Australia	x	x	
Austria	x	x	
Bahamas	x	x	29/7/83
Bahrain	x	x	
Bangladesh	x	x	
Barbados	x	x	
Belgium*	x	05/12/84	
Belize	x	x	13/8/83
Benin	x	30/8/83	
Bhutan	x	x	
Bolivia*		27/11/84	
Botswana	x	05/12/84	
Brazil*	x	x	
Brunei Darussalam <sup>3</sup>		05/12/84	
Bulgaria	x	x	
Burkina Faso <sup>4</sup>	x	x	
Burma	x	x	
Burundi	x	x	
Byelorussian SSR*	x	x	
Cameroon	x	x	
Canada	x	x	
Cape Verde*	x	x	
Central African Republic		04/12/84	
Chad	x	x	
Chile*	x	x	
China	x	x	
Colombia	x	x	
Comoros		06/12/84	
Congo	x	x	
Costa Rica*	x	x	

<b>States</b>	<b>Final Act Signature</b>	<b>Convention Signature<sup>1</sup></b>	<b>Convention Ratification</b>
Cuba* ** <sup>5</sup>	x	x	15/8/84
Cyprus	x	x	
Czechoslovakia	x	x	
Democratic Kampuchea		1/7/83	
Democratic People's Republic of Korea	x	x	
Democratic Yemen	x	x	
Denmark	x	x	
Djibouti	x	x	
Dominica		28/3/83	
Dominican Republic	x	x	
Ecuador	x		
Egypt**	x	x	26/8/83
El Salvador		05/12/84	
Equatorial Guinea	x	30/1/84	
Ethiopia	x	x	
Fiji	x	x	10/12/82
Finland*	x	x	
France*	x	x	
Gabon	x	x	
Gambia	x	x	22/5/84
German Democratic Republic*	x	x	
Germany, Federal Repub- lic of	x		
Ghana	x	x	7/6/83
Greece*	x	x	
Grenada	x	x	
Guatemala		8/7/83	
Guinea*		4/10/84	
Guinea-Bissau	x	x	
Guyana	x	x	
Haiti	x	x	
Holy See	x		
Honduras	x	x	
Hungary	x	x	
Iceland	x	x	
India	x	x	
Indonesia	x	x	
Iran, Islamic Republic of*	x	x	
Iraq*	x	x	
Ireland	x	x	

States	Final Act Signature	Convention Signature <sup>1</sup>	Convention Ratification
Israel	x		
Italy*	x	07/12/84	
Ivory Coast	x	x	26/3/84
Jamaica	x	x	21/3/83
Japan	x	7/2/83	
Jordan	x		
Kenya	x	x	
Kiribati			
Kuwait	x	x	
Lao People's Democratic Republic	x	x	
Lebanon		07/12/84	
Lesotho	x	x	
Liberia	x	x	
Libyan Arab Jamahiriya	x	3/12/84	
Liechtenstein		30/11/84	
Luxembourg*	x	05/12/84	
Madagascar		25/2/83	
Malawi		07/12/84	
Malaysia	x	x	
Maldives	x	x	
Mali*		19/10/83	
Malta	x	x	
Mauritania	x	x	
Mauritius	x	x	
Mexico	x	x	18/3/83
Monaco	x	x	
Mongolia	x	x	
Morocco	x	x	
Mozambique	x	x	
Nauru	x	x	
Nepal	x	x	
Netherlands	x	x	
New Zealand	x	x	
Nicaragua		09/12/84	
Niger	x	x	
Nigeria	x	x	
Norway	x	x	
Oman*	x	1/7/83	
Pakistan	x	x	
Panama	x	x	
Papua New Guinea	x	x	