

Lecture for the UN Library

The Negotiating Process of UNCLOS III

Outline

1. Longest treaty-making conference: 1973 to 1982.
2. Preparatory work was not entrusted to the International Law Commission or to another expert or specialised group of limited size. Instead, it was entrusted to the 91 member UN Seabed Committee! Worse, the meetings were open-ended.
3. UNCLOS III began without the benefit of a single preparatory document.
4. Decision-making at the conference was governed by a “Gentlemen’s Agreement” (16 Nov 1973).
5. Wide scope of the agenda and the theory of the inter-relatedness between agenda items.
Agenda had 25 items. This is one reason for length of conference.
Large number of participating States = 164.
Theory of inter-relatedness of different agenda items means adopting 1 convention and not several conventions. This is another reason for the length of conference.

6. Emergence and formation of new interest groups, eg,
 - (i) Coastal States group;
 - (ii) Group of LL and GDS;
 - (iii) The territorialist group;
 - (iv) Group of straits States;
 - (v) Group of archipelagic States;
 - (vi) Broad shelf States or margineers;
 - (vii) Oceania group;
 - (viii) Group of EEC countries;
 - (ix) Medium line/equidistance ppl group;
 - (x) Equitable ppl group;
 - (xi) Land-based producers;
 - (xii) Group of 5: USA, USSR, UK, France, Japan;
 - (xiii) Coordinating Group of 5: USA, UK, France, FRG, Japan.

7. Unprecedented degree of authority was vested in 4 conference leaders: the President and Chairman of the 3 main committees. Other influential individuals: chair of drafting committee (Beesley), chair of formal and informal negotiating groups, eg, Evensen of Norway, Castaneda of Mexico, Nandan of Fiji.

8. Role of secretariat.

9. Role of collegium.
President + 3 chairmen + chairman of drafting committee and rapporteur-general.
In 1981 and 1982, collegium met weekly and took all decisions collectively and by consensus.

10. Role of NGOs.

What did they contribute?

- (i) Brought independent experts to meet delegates;
- (ii) Helped developing countries to close the knowledge gap;
- (iii) Afforded delegates opportunities to meet outside conference;
- (iv) Influenced domestic positions of countries concerned.

11. Challenge of miniaturising the size of the meetings.

Difficult, if not impossible, to negotiate in a forum of 164 States.

Conference opposed to creating smaller negotiating groups.

Solution: use of informal, private negotiating groups.

Chairman of negotiating group 2 (TK) managed a 3-stage process:

- (i) Plenary of about 140 delegations;
- (ii) Expert group of about 30;
- (iii) Final negotiating group of 4: 3 representing G77 (Argentina, Mauritius, Pakistan) and USA.

12. Gentlemen's Agreement on Decision-Making

- (i) Before taking a vote, conference must decide that all efforts at reaching agreement have been exhausted;
- (ii) Cooling off period;
- (iii) President will try, with help by General Committee, to achieve an agreement;
- (iv) Two days notice before voting.

13. Eleventh and final session of UNCLOS III
US asked for a recorded vote on draft convention.
Voting was: 130 Yes, 4 No, 17 Abstentions.

14. Some final reflections.

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