

LAW OF THE SEA

IFLOS Summer Academy 2019
Professor Gudmundur Eiriksson

INTRODUCTION

- **Introduction**

- After 1982 Convention, history not as relevant
 - Interpretation of treaties (*travaux préparatoires*)
 - Negotiating methods
 - International Criminal Court

- **Framework**

- 1958 Conference / 1960 Conference

- 1958 Geneva Conventions on the Law of the Sea

- Convention on the Territorial Sea and the Contiguous Zone

- Convention on the High Seas

- Convention on Fishing and Conservation of the Living Resources of the High Seas

- Convention on the Continental Shelf

INTRODUCTION

No agreement on the breadth of the territorial sea

‘Loose’ definition of the continental shelf

- exploitability

- adjacency

New pressures

Navigation through straits (US/USSR)

Fisheries (Iceland since 1948)

North Sea Continental Shelf cases: ‘natural prolongation’

Continental shelf ‘exploitability’ criterion no longer a limitation

‘Common Heritage of Mankind’ Arvind Pardo (Malta)

‘New International Economic Order’

Expropriations following breakup of colonial and neo colonial regimes

‘Moratorium Resolution’

Binding nature of UN resolutions?

INTRODUCTION

- **Stage**

- Growth in UN Membership

- 1958 from 51 original Members to 82

- 1973 from 82 to 144 (all but FRG and GDR (1973)
developing States

- Suspicion vis-à-vis international law, but new
players

- No other major negotiations

- Coming of age of (idealistic) 'UN Charter generation'

- Legal experts but with political savvy

- e.g. comprehensive compulsory dispute settlement
mechanism

- Not the International Law Commission

- Too political?

- Too technical?

- Too slow?

- But International Criminal Court (ICC)??

INTRODUCTION

- **Introductory negotiating process**

Perennial question: when to proceed past the preparatory stage
(Same in ICC negotiations)

- **Conference convened**

Consensus Procedure

Large numbers

‘Automatic majority’ of developing (Group of 77)

‘Gentlemen’s Agreement’ incorporated in Rules of Procedures

‘All efforts to reach a consensus have been exhausted’

In fact, no substantive votes until very end (venue and site of
ITLOS and ISBA)

INTRODUCTION

Conference Structure

Three Committees

First Seabed

Second “traditional”

Third environment, scientific research, transfer of technology

President on settlement of disputes

‘Package deal’

INTRODUCTION

- **First attempts**

- Traditional procedure

- Tabled proposals, introduced, discussed

- ‘Subjects and Issues’

- 1000 proposals

- Agreement to pass to Chairmen’s texts

- (ICC followed this model)

- Role of Secretariat

- Special Office of the Law of the Sea

- General ‘speak for no-one or for everyone’

INTRODUCTION

- **Single negotiating texts**

Second Committee (and partly Third Committee) progression

First Committee: 'flip flop'

- **Group structures**

Interest

Subject matter

Non-Conference

Evensen Group

EGALITARIAN

- **Amendment Procedure**

 - First round: written amendments allowed

 - Psychology

 - Clean up later

 - Working groups set up

 - Outstanding Issue Groups ('Negotiating Groups')

 - Open-ended membership

 - 'Core members'

 - Various permutations

- **Closure procedure**

 - No further amendments allowed

- **US reconsideration**

- **Adoption of 1982 Convention by vote**

- **Renegotiation of Part XI**

 - Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 28 July 1994

SETTLEMENT OF DISPUTES

Settlement of disputes under general international law 'CONSENT, CONSENT, CONSENT'

- Jurisdiction
 - Ad hoc* (Agrément)
 - Treaty
 - General on settlement of disputes (e.g. Pact of Bogotá)
 - Bilateral on settlement of disputes (Iran/US)
 - Interpretation or application of specific treaty
 - 'Optional Clause' (ICJ Statute art. 36, para. 2)
- Inter-State Arbitration v. Standing Court
 - Judges chosen by parties
 - Control of procedure, including timing
 - Expenses
- International Court of Justice
 - Organ of UN
 - Composition/election (compared to International Tribunal for the Law of the Sea)
- 'Dispute'
 - Admissibility ('on the interpretation or application of the Convention' (e.g. land sovereignty?))
- Non-appearing parties
- Proliferation of Courts ('fragmentation')
- Binding force of decisions

SETTLEMENT OF DISPUTES



SETTLEMENT OF DISPUTES

Settlement of disputes under the Law of the Sea Convention

- International Tribunal for the Law of the Sea (ITLOS)
 - Why a new court?
 - Specialized, non-State Parties (International Seabed Authority), disaffection with the International Court of Justice (ICJ)
- Consensual settlement (Section 1 of Part XV)
 - Obligation to exchange views (art. 281)
 - Other agreements in lieu of Convention (art. 282)
 - Conciliation (but see: 'compulsory conciliation')
- The scope of compulsory settlement obligations (Section 2 of Part XV)
 - Forums for compulsory dispute settlement
 - ITLOS
 - ICJ
 - Annex VII arbitral tribunal
 - Annex VIII special arbitral tribunal
 - Fisheries
 - Environment
 - Marine scientific research
 - Navigation
 - (Arbitration default procedure)



SETTLEMENT OF DISPUTES

- *The scope of compulsory settlement obligations (Section 2 of Part XV) (continued)*

Provisional measures: art. 290, paras. 1 and 5

Prompt release: article 292

Limitations: article 297

marine scientific research

fisheries

But see: compulsory conciliation

Optional exceptions: article 298

delimitation

But see: compulsory conciliation (Timor Leste-Australia)

military activities

United Nations Security Council

- Advisory jurisdiction
 - Seabed Disputes Chamber
 - Tribunal advisory opinion (SRFC)



THANK YOU