

OPEN FORUM ON THE LAW OF THE SEA CONFERENCE

Friday, 3rd September 1982
at 2:30 p.m.

Chair: Ambassador J. Alan Beesley

Professor Cecil J. Olmstead

Explained the format of the Open Forum which was inaugurated as an experiment at the Belgrade Conference to deal with a topic of current importance in the field of international law. As opposed to the other working sessions of the Conference, the Open Forum is not the result of the work of a Committee. It carries no report; there is no transcription of the interventions in the proceedings; and no resolution endorsed by I.L.A. is taken. The topic of the Montreal Conference was proposed by Ambassador Beesley who chaired the Canadian delegation to the Law of the Sea Conference. It was enthusiastically accepted by the Director of Studies, Sir Robert Jennings, and the Conference organizers. Professor Olmstead introduced the Chairman.

Ambassador Beesley (Canada) stressed the importance of the topic, since after ten years of discussions, the Convention on the Law of the Sea will finally be signed in 1982 in Montego Bay (Jamaica). It is a major achievement in international law.

The first speaker was John Bailey, the Deputy High Commissioner of Australia to Canada, who was the rapporteur of the first Committee during the Law of the Sea Conference. Mr. Bailey expressed regret that the conclusion of the Treaty had been overshadowed by the controversy regarding the exploitation of the sea-bed. Some of the provisions which were made as a compromise by the developed nations emanated from the American delegation and Mr. Kissinger himself. He regretted that the American Administration declined signing the Treaty at this stage.

The next speaker was Sir Ian Sinclair, Legal Adviser to the Foreign and Commonwealth Office, United Kingdom, and member of the International Law Commission. The participants learned that on September 2nd, 1982, the governments of France, the Federal Republic of Germany, the United Kingdom and the United States of America signed a temporary agreement on the Mine Site Conflict Resolution with respect to the overlapping of areas for deep-sea mining operations. This kind of agreement appeared indispensable to facilitate exploitation pending the establishment of generally accepted principles on overlapping in mining areas. The arrangement was comparable to that provided for in the Law of the Sea Convention.

Mr. Dolliver Nelson, Secretary of the Drafting Committee, spoke on the procedure for the adoption of the recommendation of the Drafting Committee. There were 23 members working out authentic texts in six languages in two steps: first, harmonization of words, then an article by article review. The work of the translators was handed over to coordinators. This process placed a great demand on the human and financial resources of the United Nations organization.

Professor Tullio Treves of Italy, who was a language group coordinator, explained some of the problems and advantages of the procedure.

Judge Manner of the Supreme Court, Finland, addressed one of the major achievements of the Law of the Sea Convention, specifically the question of delimitation which was hardcore issue. This took into account the continental shelf, the exclusive economic zone and the territorial waters.

Ambassador Beesley stressed the personal contribution of Judge Manner to these questions. He then introduced Dr. A. Jalal, the Deputy Permanent Representative of Indonesia to the United Nations, who discussed the objectives of the Conference from the perspective of Indonesia: the creation of law and order; the promotion of justice, and the encouragement of growth and development.

Tom Clingdon, the Vice Chairman of the United States Delegation, and Coordinator of the English Language Group, presented the view of the United States Government which recognised that the Convention served the interests of most countries. Nevertheless, the provisions on deep-sea mining did not serve the interests of the United States. One of the most useful concepts in the new Convention was the exclusive economic zone.

L. Retiner, the Former Deputy Chairman of the United States Delegation, a partner in the firm of Dickstein, Shapiro and Warn (Washington), presented the United States point of view, especially as regards the determination of the companies entitled to exploit the sea-bed.

Abdul Koroma, from Sierra Leone, gave the viewpoint of the African countries.

Janice Schneider of the United States of America spoke on the environmental dimension of the Convention. On balance, provisions on the environment were progressive, especially article 235 on liability for marine pollution.

Ambassador Beesley introduced the last speaker, Professor Jaenicke, of the Federal Republic of Germany, and Legal Adviser of the Delegation of the Federal Republic of Germany, who discussed what could be done to overcome the impasse created by the non-signature by the United States and other states. He proposed a protocol of provisional applications for the principles which were acceptable and re-negotiation of the other parts in dispute.

The Chairman opened the question period, which saw the interventions of Professor Seyersted (Norway), Mr. Carlyle Maw (United States of America), the Professor Myres McDougal (United States of America). The Chairman then made some closing remarks about the Convention and noted that the interest of the audience was evidenced by the large audience throughout the three hours of the forum. It was a great opportunity to gather such high-level international law specialists and former participants to the Conference on the Law of the Sea.