

Volume 25, Number 1

February 1995

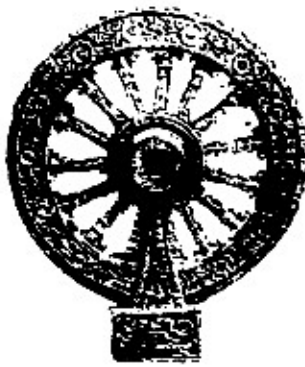
ISSN 0378-777X

# ENVIRONMENTAL POLICY AND LAW



IOS Press

AFRICAN  
DEVELOPMENT



# ENVIRONMENTAL POLICY AND LAW

Vol. 25, No. 1, 1995

## CONTENTS

<b>Editorial</b>	1	<b>WHO</b>	
<b>UNITED NATIONS ACTIVITIES</b>		- Environment and Health in Europe	42
<b>UN/GA</b>		<b>NATIONAL AFFAIRS</b>	
- Forty-ninth Session : First Part	2	<b>Kenya</b>	
<b>ECOSOC</b>		- Constitutional Approach to Sustainable	43
- Participation of EU in CSD	15	Environmental Management : Experience	
<b>ECE/CEP</b>		and Challenge	
- Special Session	15	(Kenneth K.Orie)	
- Preparations for the Sofia Conference	16	<b>Tanzania</b>	
<b>UN/ECE</b>		- Marine Pollution and the Legal Regime governing	52
- Pollution Threatens Eco-systems	17	the Protection and Preservation of Marine Environment	
<b>LOS</b>		(Aggrey K.L.J.Mlimuka)	
- 1982 Convention in Force	18	<b>Uruguay</b>	
<b>UNCTAD</b>		- The Law of Environmental Impact Assessment	73
- Trade, Environment and Development	20	(Margariños de Mello)	
<b>Ozone Protocol</b>		<b>Canada/USA</b>	
- Sixth Meeting of the Parties	21	- Oil Spill Prevention	75
<b>OTHER INTERNATIONAL DEVELOPMENTS</b>		<b>UK</b>	
<b>Antarctic Treaty</b>		- Oil Pollution Damage	75
- The Development of a Liability Annex to the	24	<b>Czech Republic</b>	
Madrid Protocol		- Environment Plan Rejected	76
(Sam Blay/Julia Green)		<b>New Zealand</b>	
<b>OECD</b>		- Costs of Compliance	76
- Siting of Nuclear Power Plants	38	<b>SELECTED DOCUMENTS</b>	
<b>Biological Diversity</b>		<b>ECOSOC</b>	
- First Meeting of the Conference of the Parties	38	- Full Participation by the European Community in	77
to the Rio Convention		the Commission on Sustainable Development	
<b>REGIONAL AFFAIRS</b>		<b>EU</b>	
<b>EU</b>		- The Environment Ministers of the EU States	77
- Driftnets : Controversy over Policy	40	and States of Central and Eastern Europe	
- Environment in Central and Eastern Europe	40	- Conclusions -	
- Nuclear Safety	41	<b>WHO</b>	
- Access to Environmental Information	41	- Helsinki Declaration	78
- Implementation and Experience with		<b>Ozone Protocol</b>	
Directive 90/313/EEC -		- Meeting of the Parties	81
(Thorsten Wäscher)		- Decisions -	

## LOS

## 1982 Convention in Force

**An Appreciation of the Ceremonies on November 16, 1994, in Kingston, Jamaica**

*The atmosphere*

There was a tangible feeling of gratification bordering on celebration in the Seabed Assembly Hall in Kingston when the Secretary-General of the United Nations opened the inaugural meeting of the International Seabed Authority by declaring that the Law of the Sea Convention was now in force. While some of the delegates may have been involved only in the recent Seabed Regime negotiations, many others, and nearly all the Special Guests of the Jamaican government, including the undersigned, were witnessing the culmination of over twelve years of complex and difficult negotiations leading to the signature of the Convention in Jamaica in 1982 by 159 states, the largest number of signatories to any international treaty to date.

*The UN perspective*

The opening statement by the Secretary-General referred to the Convention as "one of the greatest achievements of this century", not only because it comprises a comprehensive constitution of the oceans but because of its major contribution towards prevention and resolution of conflict and its potential in promoting international peace, security and sustainable development. He stressed that the Convention established rights and duties going hand in hand, under the rule of law, (the themes stressed by the Canadian delegation throughout the lengthy and arduous negotiations). He asserted also that the Convention rejects the notion that economic right can transcend national rights, and that it protects "the right of the small as well as the powerful". (The statement by former Secretary-General Pérez de Cuéllar, heralding the establishment of a "new legal order for ocean space" is set out in the preface to the Official Text of the United Nations Convention on the Law of the Sea, published by the UN, in 1983. The same document includes a lengthy introduction by Bernardo Zuleta, the late former Under-Secretary and Special Representative of the Secretary-General for the Law of the Sea, which summarises both the innovative substantive provisions of the Convention and the unique negotiating processes which had to be developed by the Conference in order to produce such results.)

*The Jamaican perspective*

The immediately succeeding statement by the Prime Minister of Jamaica stressed that the Convention established a "just and equitable regime", as a result of "visionary courage and legendary perseverance" by the negotiators; he paid special tribute to "the pioneers in this entire process", applauding them for their "skill and

dedication" and "energy and imagination", affirming that "never before had there been such extensive experimentation with the strategies of peaceful negotiation" in reconciling "the widely diversified, often conflicting interests of so many countries". His statement emphasised that "the common heritage cannot be subject to appropriation", and must be reserved for exclusively peaceful purposes". The Prime Minister added that "the entire process truly represents a high-water mark in the progressive development and codification of international law", which recognised that "rules of right can indeed and always ought to be made to triumph over the rule of might".

Understandably, the statement emphasised the importance of the Seabed Regime and the new institutions established to oversee it, particularly The International Seabed Authority, the first and only example of a UN institution with a clear mandate extending over a vast and vital part of the global commons - food for thought for those who think that the common heritage concept is dead.

*The perspective of the delegates*

While neither of the ceremonial opening statements attempted to analyse the many legal concepts of the Convention comprising bold and imaginative examples of progressive development of the law, many of the ensuing statements by delegates did so. The USA statement, not surprisingly, stressed the freedom of navigation rights enshrined in the Convention, together with its many free market elements, as well as protection of land-based producers. Interestingly, the Japanese delegate several times stressed the relevance of the "common heritage" concept. Others referred to the far reaching and comprehensive provisions on peaceful settlement of disputes, including the Seabed Tribunal.

*A personal perspective*

There was much said by delegates about the importance of the rules of law, both new and traditional, enshrined in the Convention. For those individuals (like the undersigned), involved in the negotiation of the Convention from start to finish, such references had a familiar and, ultimately, a satisfying resonance. The new rules, some already accepted now as customary law and some still in the process of evolution into binding customary law, did not just happen. In every case there was an often lengthy and always arduous negotiation between competing interest groups. The usual "geographic groups" (at the time) of East and West, developed and developing were frequently abandoned, as new alliances were formed cutting across traditional lines. There was fierce resistance by powerful states to coastal state claims to such

"radical new concepts" as the twelve-mile territorial sea and the two-hundred mile economic zone - including resources, environmental and scientific research jurisdiction; some coastal states resisted the new principle of freedom of transit through international straits, and the new claims of land-locked states; land-locked states fought against the extensions of jurisdiction by coastal states embodied in the exclusive economic zone, and in the newly elaborated definition of the outer edge of the continental margin, both of which were regarded by some as encroaching upon the common heritage; important high seas fishing states opposed new fisheries rules relating to anadromous species and straddling stocks, and even the whole 200 mile economic zone concept; others argued against acceptance of archipelagic states, semi enclosed seas or the new delimitation rules; major military powers resisted any encroachment upon freedom of navigation, accepting only reluctantly new environmental rights of coastal states, including port state jurisdiction, and the special regime for ice-covered waters; sharp differences of views surfaced over the "nickel production formula"; many states pursued a selective approach to the application of the straight baseline system; some countries regarded their straits as internal, while viewing other straits as international; and so on. Accommodations had to be hammered out on each of these issues within various formal or informal negotiating groups established for the particular purposes, and the results had to be woven together into an integrated whole, in accordance with the "package deal" approach agreed upon at the outset of the conference, together with the "gentlemen's agreement", pursuant to which the conference had agreed to reach all decisions by consensus. (It was almost 24 years ago, on December 15, 1970, that the undersigned introduced the resolution calling for the convening of a conference with a broad agenda; and shortly afterwards, on December 17, 1970, introduced the resolution stipulating the "understandings" upon which the resolution was based.) None of the substantive or even procedural accommodations could have been developed without the spirit of flexibility, goodwill and good faith which pertained throughout the conference. The feeling of camaraderie which resulted was a salient characteristic

of the conference.

As Chairman of this Conference Drafting Committee the undersigned experienced the kind of co-operation in all six language groups - an innovative process - which had to be experienced to be believed: the Drafting Committee continued its demanding work well after the negotiations were concluded and was ultimately successful in producing some 7000 drafting changes aimed at translating political principles into enforceable legal rules. While much of this work was painstakingly precise and detailed in nature, many changes were potentially controversial, requiring collective patience, perseverance and wisdom.

#### *The environmental impact*

The Convention, particularly Part XII has widespread and far reaching implications for the conservation and management of the marine environment. As pointed out in the Dalhousie Law School Chart commissioned by the IUCN, (circulated at the Kingston conference by the undersigned), it is essential that Parties to the Convention be made aware of the required initiatives and of their respective responsibilities under the Convention. The great hopes and important rights and duties embodied in the environmental provisions of the Convention will never be realised unless all parties work together to implement, apply and enforce the Convention, in the spirit of flexibility and co-operation permeating the conference which produced it. Indeed, there is a serious danger that euphoria over the Convention finally coming into force could divert attention away from the tremendous amount of individual and collective commitment required to make the Convention a meaningful reality.

#### *Concluding observation*

The meeting in Kingston was a truly "historic" event at which all participants were privileged to share a common sense of achievement. For those of us involved in the negotiations from start to finish, the ceremonies evoked an understandable sense of satisfaction, coupled, however, with feelings much more akin to humility than pride, at having been fortunate enough to have participated in such a great undertaking. (Alan Beesley)

In New York on 22 November, the Meeting of States Parties to the Convention decided as follows with regard to the International Tribunal for the Law of the Sea.

"1. Having regard to the recommendations of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, there will be a deferment of the first election of the Members of the Tribunal. The date of this first election of all 21 Members will be 1 August 1996. This will be a one-time deferment.

2. The nominations would open on 16 May 1995. A State in the process of becoming a Party to the Convention may nominate candidates. Such nominations shall remain

provisional and shall not be included in the list to be circulated by the Secretary-General of the United Nations in accordance with Article 4 (2) of Annex VI, unless the State concerned has deposited its instrument of ratification or accession before 1 July 1996.

3. The nominations will close on 17 June 1996.

4. The list of candidates will be circulated by the Secretary-General on 5 July 1996.

5. Subject to the above decisions all procedures relating to the election of the members of the Tribunal as provided for in the Convention shall apply.

6. No changes shall be made to this schedule unless the States Parties agree by consensus. ➤➤