Law of the Sea

Law of the Sea

Australian areas of jurisdiction in coastal waters.

Following is the text of a note setting out Australia's position as at August 1976:[44]

> Recent press speculation that Australia is considering legislation to declare unilaterally a 200-mile resource or economic zone makes it timely to set out clearly what jurisdiction Australia now exercises over its adjacent sea and seabed.
>
> *Territorial Sea of Three Miles*
>
> Australia has tradionally claimed a three-mile territorial sea. The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone (to which Australia is party) enshrined the rules of customary international law relating to the territorial sea, but left open the question of its width. Partly as a result, countries have claimed territorial seas of widths ranging from three to 200 miles.
>
> In the current Law of the Sea negotiations Australia, together with a large number of states, is supporting the negotiation of a 'package' which would include a 12-mile territorial sea. Under the Seas and Submerged Lands Act, it is the Commonwealth Government, rather than the States, that exercises sovereignty over the territorial sea.
>
> *Contiguous Zone of 12 Miles*
>
> Pursuant to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, Commonwealth and State legislation provides for the exercise of the control necessary to prevent infringements of customs, fiscal, immigration and sanitary regulations within a 12-mile 'contiguous zone' adjacent to the coast.
>
> *Sovereign Rights over Continental Shelf*
>
> In accordance with international law and domestic legislation, Australia has sovereign rights over its continental shelf for the purpose of exploring and exploiting the natural resources. Under the Seas and Submerged Lands Act, which implements the 1958 Geneva Convention on the Continental Shelf, these sovereign rights are exercisable by the Commonwealth Government.
>
> The Commonwealth has not enacted any legislation relating to the exploration and exploitation of the non-living resources of the continental shelf except for the Petroleum (Submerged Lands) Acts which, with the similar State legislation, establish administrative procedures for exploration and exploitation for oil in designated areas adjacent to the coasts.
>
> The Continental Shelf (Living Natural Resources) Act regulates the

44. *Backgrounder*, 20 August 1976.

taking of the living natural resources of Australia's continental shelf beyond the territorial sea.

The Law of the Sea negotiations have indicated widespread support for coastal states sovereign rights to natural resources extending to the edge of the continental shelf.

Declared Fisheries Zone of 12 Miles

Commonwealth and State fisheries legislation provides for the control of commercial fishing by Australian and foreign fishermen in the declared fishing zones, which extend to a distance of 12 miles from the territorial sea baselines.

In the Law of the Sea negotiations, Australia considers that the 'package' should also include a 200-mile economic zone which, inter alia, would make the coastal state exclusively responsible for the management and conservation of fisheries resources in that zone, subject to the obligation to grant access to others to catch surplus stocks.

Future Action

Australia is committed to work for a successful outcome to the Conference on the Law of the Sea, in the form of a comprehensive, multilateral convention, which meets Australia's essential interests, and the interests of a vast majority of states. Such a convention would include the 200-mile exclusive economic zone in which coastal states would have, in addition to the rights over fisheries resources referred to above, rights over non-living resources, as well as specific rights and obligations with respect to scientific research and the protection and preservation of the marine environment.

The Fifth Session of the Conference is currently meeting in New York. Australia is hoping that it will result in agreement in the form of a convention. However, Australia is aware that the process of negotiation has been going on for a long time, and that there is a strong feeling in some countries that if agreement is not achieved in 1976, further unilateral action to safeguard important national interests will be unavoidable. Some countries, additional to those that have traditionally claimed jurisdiction over resources out to 200 miles, have already moved or have indicated that they will move in that direction in the near future if their interests are not recognised in an agreed convention. They include the United States, Canada, Iceland, France, Mexico, countries of the European Communities and South Pacific countries.

The Government is watching closely developments at the Law of the Sea Conference and, like other countries, will be reviewing its position as a matter of high priority at the end of the present session. Australia hopes strongly for a successful result, but if this does not eventuate, one of the options before Australia would be to take unilateral action to declare Australian jurisdiction over resources out to 200 miles. Any such action would only be taken in consultation

with friendly and like-minded countries, including those of the South Pacific.

Law of the Sea

Marine pollution. Convention on. Failure to ratify. Voluntary observance of terms.

On 26 April 1977 in the House of Representatives the Minister for Foreign Affairs, Mr Peacock, was asked whether his Government intended to ratify the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

He replied as follows:[45]

> Australia is not a party to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.[46] However, Australia is a signatory to the Convention, having signed it in October 1973. It is also observing the terms of the Convention under a voluntary scheme administered by the Minister for Environment, Housing and Community Development in conjunction with the State governments and industry. This Government is currently conducting negotiations with the relevant State authorities with a view to preparing suitable legislation which will enable Australia to ratify the Convention.

Law of the Sea

Straits. Right of innocent passage.

Following is the text of a note which provides a description of a 'Strait' in international law and the rights and obligations therewith associated:[47]

> A strait has been defined as a passage between two portions of land connecting two parts of the high seas. The waters of a strait may fall within the territorial sea of one or more of the States bordering on it and in that case the right which vessels exercise to pass through the strait is known as the right of 'innocent passage'.
>
> The right of innocent passage through the territorial sea in straits used in international navigation has come to be recognised over the years through the practice of states. For example, in 1879 the United States declared that it would not tolerate exclusive claims to the Straits of Magellan, and in 1881 Chile and Argentina, the two states whose territorial seas encompassed the straits, concluded a treaty which declared the Straits of Magellan to be neutralised in perpetuity and guaranteed freedom of navigation. Similarly, in 1936, parties to the Montreux Convention agreed to recognise and affirm the principle of freedom of transit and navigation through the Straits of the Dardanelles, the Sea of Marmara and the Bosphorus.
>
> This practice of states was recognised in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, Article 16(4) of which states that 'there shall be no suspension of the innocent

45. HR Deb 1977, vol 105, 1202.
46. (1972) 11 ILM 1291.
47. *Backgrounder*, 25 February 1977.

passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state'.

The right of innocent passage through straits is one of the aspects of law of the sea which is under consideration at the United Nations Conference on the Law of the Sea. There has been a broad measure of agreement at the Conference that the territorial sea of states should extend up to twelve nautical miles. Such an extension of the territorial sea would subject more than one hundred straits used for international navigation to the regime of innocent passage. This would require submarines to operate on the surface and would remove the right of over-flight by aircraft—unless a special regime were to apply through such straits.

The Revised Single Negotiating Text (RSNT) of the Law of the Sea Conference contains provisions for 'transit passage' which it defines as the exercise of the freedom of navigation and over-flight through a strait solely for the purpose of continuous and expeditious transit. The RSNT further provides that transit passage is not to be impeded, and aircraft exercising this right should be confined to lanes and not be allowed to carry out any activities other than those incident to their normal modes of operation. However, a number of states bordering important international straits and some of the states seeking strong coastal states rights have objected to the concept of a special regime of 'transit passage' applying to straits.

Somewhat similar questions arise with respect to the new concept of passage through archipelagos being discussed in the Law of the Sea Conference. Under the RSNT it is envisaged that archipelagic states could draw baselines around the outermost points of the archipelago so that the waters within the baselines become 'archipelagic waters' and subject to a special status. Passage through archipelagic waters would be subject to a regime of archipelagic sea lane passage similar to the right of 'transit passage' through straits. The concept enjoys general support in the Law of the Sea Conference, although agreement has still to be reached on some details. The Australian position is basically one of support for a regime of passage through archipelagos corresponding to that of transit passage through straits outlined in the RSNT.

The major maritime powers have indicated that they will not accede to a Law of the Sea Convention which does not give them satisfactory rights of transit through and over straits, so it is important that the regime of transit passage satisfy their interests and, as far as possible, satisfy the major concern of the straits states. Under the RSNT, ships and aircraft exercising the right of transit passage are required, among other things, to proceed without delay through or over the strait and to refrain from the threat or use of force or any activities other than those incident to their normal modes of continuous and expeditious transit, unless rendered necessary by *force*

majeure or by distress. In particular, ships are required to comply with generally accepted international regulations, procedures and practices for safety at sea and for the prevention and control of pollution. States bordering straits are given certain powers to designate sea-lanes, and provide traffic separation schemes for navigation in straits where these are necessary to promote the safe passage of ships. States bordering straits are also given certain powers with respect to such subjects as safety in navigation, prevention of pollution, prevention and control of fishing and usual customs and health controls. States bordering straits are required under the RSNT not to hamper transit passage and to give appropriate publicity to any danger to navigation or over-flight within or over the strait of which it has knowledge. The RSNT provides that there shall be no suspension of transit passage.

A particular problem arose at the Fifth Session of the Law of the Sea Conference as a result of Malaysia's insistence that the strait states should be given greater jurisdiction over pollution, traffic management and related matters which would allow them to apply special measures in straits with special peculiarities. Malaysia's concerns were particularly related to the problems of the Malacca Straits. There appears to be some willingness on the part of at least some of the major maritime states to approach these particular problems with sympathy. Malaysia has indicated that it would be prepared to recognise the concept of transit passage provided that there was a better balance established between the interests of user and straits states.

Law of the Sea

200-mile exclusive economic zone. Method of establishment. Multilateral convention.

On 19 October 1976 in the House of Representatives the Minister for Foreign Affairs, Mr Peacock, was asked:

> At the recent South Pacific Forum meeting did all countries agree to the establishment of a 200-mile exclusive economic zone? Will Australia act unilaterally before the next conference on the Law of the Sea Convention?

Mr Peacock answered, in part, as follows:[48]

> The short answer to the first part of the honourable member's question is yes. . . . All Forum countries agreed to the concept of a 200-mile exclusive economic zone. All countries, including Australia, also agreed not to act on this until after the sixth session of the Law of the Sea Conference is convened in May of next year. I regard this consensus as a very important development as progress at the last Law of the Sea Conference was, to put it mildly, disappointingly slow. It is therefore of the utmost importance to those who are interested in seeing a convention adopted that the negotiating

48. HR Deb 1976 vol 101, 1940.

momentum be not lost during the period between now and May of next year, for there is a distinct need for states to bring about the development of a political will and to influence others if there is to be a successful negotiation of the Law of the Sea Convention.

The Government therefore believes that a multilateral convention providing for, among other things, a 200-mile exclusive economic zone is preferable to a unilateral declaration at this time. However, I should state that should the session in May of next year not succeed the Government will feel bound to consider acting unilaterally in regard to a 200-mile exclusive economic zone. I repeat, however, our earnest desire for a widely supported multilateral convention and say that a series of unilateral declarations before the conference could pre-empt the possibility of a successful outcome of the sixth session of the Law of the Sea Conference.

Law of the Sea

Fourth Session of UNCLOS 3. Report.

The Fourth Session of UNCLOS 3 was held in New York, 15 March to 7 May 1976. Following is a report on the Session:[49]

The Third United Nations Conference on the Law of the Sea, currently underway, has been charged by the General Assembly of the United Nations with the revision of the international Law of the Sea, involving a comprehensive definition and reallocation of rights to the resources of the sea and of rights to use it for navigation and communications. The existing Law of the Sea has evolved out of state practice, including treaties, dating back to the early seventeenth century.

Because of the political, economic and security interests involved, the Conference on the Law of the Sea, unlike most diplomatic conferences, did not receive from a preparatory committee or the International Law Commission a single text on which to base negotiations. At the Second Session of the Conference in Caracas, a general debate was held which identified the main trends on the various issues but did not produce a basic text for discussion. During the Third Session in Geneva general discussion was avoided, while debate was concentrated on specific issues, and differences in some important areas were narrowed.

The major achievement of the Third Session, from March to May last year, was the production by the Chairmen of the three main Committees of the Informal Single Negotiating Text (SNT) as a basis for further negotiation. The Fourth Session of the Conference, held in New York from 15 March to 7 May this year, had before it for the first time a comprehensive text containing articles dealing with all topics under consideration. The purpose of the Fourth Session was to further review issues which were not satisfactorily dealt with in the SNT and so enable the Chairmen to produce a revised SNT with

49. Aust FA Rec, June 1976, 331.

the objective of building up wider support for what will be in effect a draft treaty.

The formal organisational structure of the Fourth Session was unchanged from previous Sessions, consisting of a General Committee, a Drafting Committee and a Credentials Committee. However, a number of official and unofficial informal negotiating and drafting groups met frequently during the Session. The SNT was considered in the respective Committees and the part of the SNT on Peaceful Settlement of Disputes was discussed in the Plenary. Because consideration of the four parts was at different stages and different problems were involved, each of the main Committees adopted a different approach for dealing with its part.

Any new convention on the Law of the Sea, to be effective, will need to command support approaching universal acceptance. The technique of revising the SNT is being employed as a device to create a working majority in the Conference, so that progress can be made either by consensus or, if necessary, by voting. The Rules of Procedure adopted in Caracas and amended in Geneva by the addition of Arabic as an official language, remained unchanged for the Fourth Session. They are designed to avoid voting and provide that no vote shall be taken until all efforts at consensus have been exhausted. (The rules relating to voting were not invoked at New York.) The ideal result would be for the SNT to be adopted eventually by consensus, but it is likely that on certain key issues some delegations may ask for a vote.

The Chairmen's revised SNT's were distributed on the last day of the Session. They were not discussed, will undoubtedly not satisfy all states and will provoke complaints that certain approaches have not been adopted. Nevertheless, they are likely to facilitate the work of the Conference by adopting a middle-of-the-road or consensus position with the aim of building up the working majority referred to in the preceding paragraph.

The Conference has recommended that a Fifth Session of seven weeks should be held in New York from 2 August to 17 September 1976. The President proposed and the Conference agreed that the first two or three weeks of that Session should be devoted to a consideration of the major issues on which general agreement must be reached if there is to be a final and satisfactory convention.

Issues to be resolved

The revised SNT provides a more detailed framework within which a satisfactory solution to certain issues must be found if there is to be a generally acceptable convention on the Law of the Sea. The most important issues to be resolved are:

(i) Who shall have rights to exploit the deep seabed beyond national jurisdiction and what should be the terms and conditions of exploitation?

(ii) The question of passage through straits used for international navigation;
(iii) The balance of rights and duties in the 200-mile exclusive economic zone, with particular reference to living resources, the marine environment, scientific research and freedom of navigation;
(iv) Rights of the coastal state with respect to the continental shelf;
(v) The maritime spaces pertaining to islands;
(vi) The need for an adequate disputes settlement system.

Progress was made on all of these issues at this Session. Discussion in the First Committee indicated a more realistic approach on the part of most states to reach an accommodation of views between the industrialised countries on the one hand and the developing countries on the other hand with regard to the question of who shall have rights to exploit the deep seabed beyond national jurisdiction and what should be the terms and conditions of exploitation.

Discussion of the question of passage through straits used for international navigation in the Second Committee revealed that there was a substantial majority in favour of the provisions in the SNT.

There was a clear majority in the Second Committee in favour of the establishment of an exclusive economic zone (EEZ) distinct from both the territorial sea and the high seas. However, difficulties remain with respect to the balance of rights and duties in the EEZ, including in particular the question whether residual rights belong to the coastal state or to the international community.

A difficult question requiring solution in relation to the EEZ is that of the access to be given to the landlocked and geographically disadvantaged states (LLGDS) to the living resources of the EEZ's of coastal states.

On the question of the preservation of the marine environment, the most controversial issue to be resolved concerns the control of pollution from ships. The point at issue is not simply the control of pollution but the much wider question of the extent of control coastal states should have over foreign ships in their offshore areas, especially in the waters of the EEZ. Notwithstanding the complexities of the issue, useful progress was made. There is a wider acceptance of the view that rules for the control of pollution, even when embodied in the laws of the coastal state, should be harmonized internationally, and a widening area of agreement on the circumstances in which such laws should be enforced by the coastal state or by the flag state or by the state of the port of arrival.

Opinion is still sharply divided on the question of the conduct of scientific research by foreign states in the EEZ. It is accepted that the coastal state should have the right to veto projects which are related to the resources of the zone or which involve drilling in the seabed; but agreement beyond this point has still to be achieved. Essentially, the issue is one of juridical concepts: should the control of scientific

research be a function of the coastal state subject to certain agreed derogations, or should scientific research on the EEZ be free subject only to such limitations as might be agreed in the interests of the coastal state.

The question of the rights of the coastal state with respect to the continental shelf was also discussed in the Second Committee. There is substantial support for maintaining the existing sovereign rights of the coastal state over the continental shelf to the outer edge of the margin. However, there is still opposition to the concept from the LLGDS. The LLGDS and some coastal states propose revenue sharing of the non-living resources of the continental shelf, particularly beyond 200 miles.

There is a good chance that a solution satisfactory to the great majority of participants can be worked out with respect to question (v). However, there remain difficulties with respect to question (vi) and it is not yet clear whether it will be possible to incorporate a general system of disputes settlement or whether only special procedures of compulsory settlement for certain issues will prove acceptable.

Law of the Sea

Fifth Session of UNCLOS 3. Report.

The Fifth Session of UNCLOS 3 was held in New York from 2 August to 17 September 1976. Following is a report on the Session:[50]

The Fifth Session of the Third United Nations Conference on the Law of the Sea, held in New York from 2 August to 17 September 1976, was not as successful as hoped but was not wholly unrewarding. It had been hoped that the Conference could resolve, during the first four weeks of the Session, the key outstanding issues upon which agreement is required if a widely accepted multilateral Law of the Sea Convention is to be achieved.

In the event the entire Session was devoted to these issues but no significant progress was achieved. No concrete product akin to the Revised Single Negotiating Text (RSNT) of the Fourth Session or the Single Negotiating Text (SNT) of the Third Session was produced although the President of the Conference is expected to issue soon a Revised Single Negotiating Text of the Dispute Settlement provisions.

Taken overall, however, the results of the Conference up to the end of the Fifth Session are not unsatisfactory from Australia's point of view, assuming that they are to be followed by further steps towards the conclusion of a comprehensive Law of the Sea Convention. The Fifth Session has served to consolidate work done at the previous sessions. At the Second Session in Caracas general discussion took place and the main trends on various issues were identified. At the Third Session in Geneva debate was concentrated on specific issues,

50. Aust FA Rec, December 1976, 648.

differences in some important areas were narrowed, and the Informal Single Negotiating Text was produced as a basis for further negotiation. The Fourth Session in New York further reviewed the issues not satisfactorily dealt with in the SNT and produced the Revised SNT which represented a very satisfactory document for discussion. The technique of seeking to progressively refine the Text by discussion and by introducing modifications at the initiative of Committee Chairmen or the President of the Conference has been slowly developed to build up the wide support which is essential for the success of the Conference. The differences which existed at the Fifth Session should not disguise the fact that large areas of the Revised Single Negotiating Text now enjoy a broad measure of support at the Conference.

In retrospect, the Fifth Session suffered noticeably from the lack of time governments had to prepare for it. The Fourth Session, which finished only in May 1976, was the first to have before it a comprehensive, though informal, text which contained the broad outline of a possible Law of the Sea Convention. In an effort to break the back of the negotiation the Conference departed from its usual practice and scheduled a second meeting during 1976. As a result governments had less than three months to examine the Revised Single Negotiating Text and carry out the necessary consultations before the opening of the Fifth Session.

A notable feature of the Fifth Session was the polarisation of views between the advanced industrial countries and the developing countries over the exploitation of the resources of the seabed beyond national jurisdiction. If anything, there seemed to be a hardening of attitudes towards the vexed question of who should exploit the area beyond national jurisdiction and the associated questions of the powers of the proposed 'international seabed authority' to control exploration and exploitation and to grant access to the 'area'.

A substantial difference of view remains on the meaning and application of the 'common heritage of mankind' principle. Developed and socialist states interpret the principle as meaning that every state and its nationals have equal rights to explore and exploit the 'area'. They have consequently sought to establish in the Convention provisions which give an assured right of access to the 'area' by states, entities sponsored by states, as well as by the proposed 'enterprise'. This has become known as the 'parallel' system. Such bodies should, having satisfied the 'authority' of their financial and technical standing, have the right to conclude a contract with the 'authority' to undertake activities in the 'area'. They accept that the 'authority' should have effective financial and administrative control but are not prepared to accept that it should have discretionary power to preclude access.

Developing countries on the other hand argue that the 'common heritage' principle dictates a predominant role for the 'authority'

since only it would represent the interests of all mankind. They therefore support the establishment of an authority which has full and effective control over activities in the 'area'. All activities should be conducted exclusively by the 'authority' directly through the 'enterprise' or as determined by the 'authority' and the 'authority' should have the right to refuse access.

During the Session neither the developed nor the developing countries were prepared to concede previously stated positions. As a result no substantive progress was made. The issues have, however, become clearly defined and it has become obvious to all delegations that unless there is a general political willingness by governments to agree on the system of exploitation the Committee can make no further progress towards a comprehensive convention. In this connection the United States Secretary of State, Dr H Kissinger, indicated on 1 September that although the United States insisted on a system of exploitation which would provide an assured right of access to the 'area' to states, companies and the proposed 'enterprise', his country would consider arrangements to finance the 'enterprise' and would be prepared to participate in the transfer of technology to it and would agree to a review of the system of exploitation after a period of twenty-five years. These proposals were not elaborated further at the Session but if developed further before the next Session, they may facilitate more effective negotiations in the First Committee.

The deadlock in the First Committee was probably at the root of the reluctance of many delegations, particularly developing country delegations, to see a final resolution on other important issues before the Conference. The Second Committee, which is charged with the task of determining the area of national jurisdiction and elaborating the rights and duties of states in that area, concentrated on a number of priority issues:

(i) The legal status of the exclusive economic zone (EEZ), the rights of coastal states in the EEZ and the rights and interests of third parties and other states in the EEZ.
(ii) Right of access to and from the sea and freedom of access for land-locked countries.
(iii) Revenue sharing on the continental shelf beyond 200 miles.
(iv) The definition of the outer edge of the continental margin.

On the important question of the legal status of the exclusive economic zone the central issue was whether the EEZ is a zone of the high seas in which the coastal state has certain functional rights, whether it is more akin to the territorial sea or whether (as the Chairman of the Second Committee had proposed) it is a zone *sui generis* being neither territorial sea nor high seas. There was movement towards a solution of this issue on the basis that it is neither territorial sea nor high seas. Several formulations have been presented which could provide the basis for an eventual compromise.

Some progress was made in informal negotiations on the demand by the land-locked and geographically disadvantaged states to access to the living resources of the EEZ's of other countries and for right of access to and from the sea and freedom of transit. However, there is as yet no resolution of this issue.

There was a strong trend to confirm the sovereign rights of states over their continental shelves to the outer edge of the margin provided there is provision for the international community generally to derive some benefit from the exploitation of the resources of the shelf beyond 200 miles. This concept of 'revenue sharing' is one that has been opposed by Australia.

The question of straits used for international navigation was also briefly considered. The concept of 'transit passage' (the exercise of the freedom of navigation and overflight through the strait solely for the purpose of continuous and expeditious transit) embodied in the Revised Single Negotiating Text appeared to provide an acceptable solution for a wide majority of delegations.

In the Third Committee discussion of marine scientific research centred on the question of whether the consent of the coastal state should be required before research could be undertaken in the EEZ. Researching states maintained firmly that research (other than certain clearly defined categories such as research concerning resources) should not be subject to the consent of the coastal state. Developing countries resisted this stand and sought provision for the requirement of consent for all scientific research in the EEZ. This reflected a concern that coastal states should have the right to exclude from their economic zones any activities which might affect their national security or economic interests. Part of the problem is one of differing conceptions of the nature of the EEZ. But the differences also reflect the demand of some coastal states for greater control over scientific research activities in off-shore areas.

Discussion of the question of vessel-sourced pollution tended to assume something of the character of a debate on the extent of coastal state sovereignty in the territorial sea. There was also extensive debate concerning the powers of the coastal state with respect to vessel-sourced pollution in the EEZ. Notwithstanding differences on a number of issues, the debate appeared to suggest that generally the provisions of this section of the RSNT enjoyed broad support in the Conference.

Discussion on the role of the 'international seabed authority' in the transfer of marine technology was inconclusive.

The Disputes Settlement provisions of the Revised Single Negotiating Text were considered for the first time by the Plenary of the Conference. It was apparent at the outset that most states had come to accept the concept of compulsory jurisdiction. There were, however, differences of views as to whether provision should exist for the compulsory settlement of disputes arising in the EEZ. There

were also differences concerning the question of access to dispute settlement machinery. The President of the Conference has let it be known that he would prepare a revision of Part IV of the Text to stand with the other three Parts of the Revised Single Negotiating Text.

It is too early to say whether the Conference will succeed or fail. But it cannot be said that attitudes are so widely separated or so deeply entrenched that agreement is impossible. The work of the Fifth Session demonstrated that with some significant exceptions, the Revised Single Negotiating Text, at least as far as the Second and Third Committees were concerned, had a wide measure of acceptability. It is in the area of the seabed beyond national jurisdiction that the differences between delegations have been most pronounced. A major effort of political will is needed if there is to be a resolution of issues which have emerged as the major obstacle to further progress at the Conference. The Sixth Session of the Conference will be held in New York for seven or eight weeks commencing on 23 May 1977. In the first two or three weeks of the Session there will be a concentration on matters being dealt with by the First Committee.

Law of the Sea

Sixth Session of UNCLOS 3. Report.

The Sixth Session of UNCLOS was held in New York in June-July 1977. Following is a report on the meeting:[51]

The Sixth Session of the United Nations Law of the Sea Conference ended in New York on 15 July 1977. Whilst no final judgment about the progress achieved can be made until general reactions to the composite negotiating text which emerged from the Session are known, there is reason for optimism that this Session opened up better possibilities of progress towards consensus than have hitherto existed. A further Session is scheduled in 1978.

In the Conference's First Committee (which deals with the regime to govern the seabed beyond national jurisdiction), discussions were orderly and productive. Much difficult work was undertaken in a frank and constructive atmosphere. The pace of negotiations was unusually rapid and intense, and covered important issues which have received only preliminary treatment at past sessions of the Conference.

In the Second and Third Committees (whose subjects include the status of the exclusive economic zone, rights to the continental shelf, passage through straits and archipelagos, the marine environment and marine scientific research), attention was focussed on discussions in an informal negotiating group set up during the Session. The work of this group may point the way towards a resolution of differences on the complex of issues which go to make up the

51. Text supplied by the Department of Foreign Affairs, Canberra.

definition of the legal status of the exclusive economic zone (EEZ). These issues include the rights of coastal states and of other states in the EEZ, the definition of the high seas, conditions governing the conduct of marine scientific research in the EEZ and the question of peaceful settlement of disputes relating to coastal state jurisdiction over marine scientific research and fisheries. Resolution of these issues would represent a major step forward.

An important issue still requiring solution is that of access by land-locked and geographically disadvantaged states to the living resources of the EEZ. There were last-minute attempts in the Second Committee to formulate more acceptable texts than those presently part of the Revised Single Negotiating Text (RSNT) but, owing to the limited time available, these attempts were not successful. The failure to resolve this issue affected negotiations on other subjects including the continental shelf. A further complex issue which could affect the acceptability of a compromise in the First Committee, and which remains to be resolved, is the question of the financial terms of contracts between states and other entities (eg companies) on the one hand, and the proposed International Seabed Authority on the other.

The production of a single informal composite negotiating text, which replaces the RSNT, represents a significant advance. The Law of the Sea Conference has so far employed the technique of progressively revising texts in a continuing effort to produce a text which can be adopted by consensus. Although the new text will remain informal (that is, will continue to provide a basis of discussion rather than of formal decision), it represents substantial progress towards the completion of a draft treaty. The final test of the success of the Sixth Session will, of course, be measured by the extent to which the composite text is found acceptable by the major states and groupings.

The Seventh Session of the Law of the Sea Conference will begin in Geneva on 28 March 1978.