PREFACE

This book is an attempt to describe and explain the structure and dynamics of the decision process at the Third United Nations Conference on the Law of the Sea (UNCLOS III) from 1973 to 1982 and to show how the result, i.e., the UN Convention on the Law of the Sea of 1982, was determined by the process. Because the stakes were high and because UNCLOS III was both midwife to a large-scale transformation of the world ocean regime and a portent of global diplomacy in the 1980s, my aim has been to provide as close an account as possible of the entire process.

This account must remain less than definitive because there were of course a great many private negotiating sessions to which I had no access. In many cases, however, participants did inform me about what had taken place. The perspective adopted is therefore one of a participant observer, following the unfolding of a particular series of events over a ten-year period and trying to interpret their significance in terms of the changing configuration of the international system as a whole. Over time I had more than a hundred interlocutors and informants. I maintained an especially close relationship with about sixty delegates from what I and other participants judged to be the thirty most influential delegations at the conference.

There is no particular magic about these numbers. They are simply all that a single individual working alone had the time to pursue in depth while leaving some time in reserve to follow unexpected twists and turns in the conference. I am greatly indebted to my interlocutors over this ten year period. The relationship between us was essentially one of an exchange of analysis for information. Since each knew I was following the conference as a whole without any particular axe to grind and since each, in turn, was a major or minor protagonist with "interest-blinders" on, they brought me information about specific events as they occurred and expected in return analysis about how the conference was going. They found this analysis to be a useful check against their own views because they also knew that I maintained the same relationship with a fair number of delegates.

I acknowledge, with great respect for my interlocutors, that over all this period of time I never once received any direct or indirect queries about who specifically told me what. Discussion with me over the years continuously revolved around two questions, i.e., what had happened in the conference as a whole, and what did I think was going to happen. Up to 1977, the analysis that I provided was given in the form of draft articles which I first distributed for comment and correction to my interlocutors and then published. After 1978, my analysis was given either verbally or in draft form, but was not published until now.

A word should also be said about my fieldwork procedures. To record my observations, I kept a field journal in several volumes over the course of ten years. For every bit of information observed and/or provided I noted the date, place, and subject in addition to whether I observed it myself or was told it by someone else. Cross-checking of this information, if reports were provided, was also noted and discrepancies identified for later follow-up. Personal interpretations of events were noted separately and then checked in the course of conversations with informants and other delegates. Revisions were also later noted.

All reports were verified either through cross-checking or through my own observations. There was of course a problem with reports of ultrasecret meetings. Throughout the conference, I operated on the basis of two ethical rules: a) I would never reveal my sources; and b) I would never do anything likely to have an adverse impact on the unfolding negotiations. The second rule presented me with a dilemma in exchanging analysis for information with delegates who were not privy to the results of certain ultrasecret meetings. I resolved the dilemma by adopting the rule of never knowingly informing others of ultrasecret matters about which I had obtained knowledge while they were taking place. Since my own credibility with my sources would have suffered had I revealed such matters, utilitarian considerations assisted virtue in this case.

Another problem was the question of how to verify the reports of what had transpired in ultrasecret meetings. The method adopted was wherever possible to cross-check very carefully with other sources who I had been told had participated in these meetings. In cases where the issue was too sensitive even for this, I chose to accept or to discount the reports based on my judgment of the reliability of the informant over time. In most cases, later information as well as results permitted verification.

Part I (Chapters I-III) represents the thematic emphasis and is intended to orient the nonspecialist reader to the heart of the book contained in Parts II and III (Chapters IV-XI). Part II is a very detailed, complex analysis of the serial unfolding of the negotiations up to the point where the major outlines of the overall package were clear. This orientation should also be useful to any specialist who was not a participant in UNCLOS III. It, too, is followed by a thematic analysis guided by the issues and questions set out in Chapter III. Part III (Chapters VIII-X) represents the developmental analysis supplemented by a thematic evaluation. Part IV (Chapter XI) sets out the conclusions.

Chapter I locates UNCLOS III in the context of lawmaking international conferences in the twentieth century. It outlines the convention as a package deal; summarizes it; describes its procedures and explains its dynamics and group structure.

Chapter II provides a detailed analysis of the evolution of the issues at UNCLOS III and collapses the history of UNCLOS III into five phases. The discussion concludes with an analysis of the structure of influence within UNCLOS III from 1973-82 and an assessment of the structure of political behavior characterizing the conference.

Chapter III develops a set of questions and issues, derived from the literature on political process and negotiating behavior in multiparty conferences, which will be applied to the UNCLOS III experience. These questions and issues are grouped into ten themes.

Part II presents the detailed analysis of phases between 1973 and 1976. A serial perspective is necessary here because the conference was continually unfolding, becoming an entity never intended nor foreseen by the leadership. Sometimes it was out of control and in the best of times control was only partial. These characteristics must be understood by the reader and they would have been obscured in a thematic treatment. Because such a detailed analysis may make it difficult for the nonspecialist reader to keep the "big picture" in mind, at the end of Part II reflections on the state of play are provided along with an analysis guided by the ten themes outlined in Chapter III. These reflections are intended to locate the reader relative to what was at stake in the conference at that point.

Because UNCLOS III took a decade to unfold and because its issues are so complex, the author provides readers with Appendix A, which is a list of major events in the five phases of the conference. This appendix provides the reader with the capability of following the sequence of events and of locating himself/herself in it at any time.

The Plan of the Book

How best to describe and explain a sociopolitical phenomenon as large and complex as UNCLOS III is a difficult question. As indicated previously, one has a choice between a thematic approach, a sequential approach, or some combination of the two. A purely thematic approach would tend to smooth out the unruliness of the conference and give the reader an erroneous impression of continuous orderly development. On the other hand, a purely sequential approach is perforce too detailed for any but the experts to follow easily and, given the length of the conference, leads inevitably to an overly long treatment. The choice I have made is to seek a judicious blend between the thematic, the sequential, and the developmental approaches.

The thematic emphasis looks at the UNCLOS III experience through conceptual lenses derived essentially from the literatures on political process in international organizations and negotiating behavior in multiparty lawmaking conferences among nation-states. The sequential emphasis attempts to show the reader the unfolding of events from the perspective of a participant observer and, in the explanation of this behavior, to link the thematic emphasis to the sequential. However, these two emphases take us up only to the end of 1976 when most of the work on the package in Committees II and III was concluded, and when it became clear that the attempt at negotiating a resolution of the package in Committee I had failed and the conference had to begin again.

For the period 1977-82 we switch to a developmental approach using the outlines of the convention available in 1976 as a basis for portraying the evolution of the convention as it emerged in 1982. For reasons of analytic continuity and cumulative interpretation we also link the thematic emphasis to the explanation of how and why the final outcome emerged as it did. I have taken this distinction between the sequential (chronological) and the developmental approaches from the autobiography of Salvador Luria:

> Equally important, I believe, is to replace the chronological with the developmental mode. The growth of a person occurs at different rates and in different ways in different sectors of personality. The developmental process of the self is something different from a biological development process. The latter is the unfolding of a program intrinsic to an organism because it is inscribed in its genetic material. The instructions of the genes are obeyed according to a temporal and topographic schedule — make a brain here, then make a heart there — that can be modified only by major disruptions. The developmental instructions of the human self, on the contrary, come mostly from the outside world, from contacts with the social and physical environments. Filtered through the network of consciousness and language, these instructions are the raw materials of the self. Acting in response to these instructions, the individual functions in society and in so doing creates itself as a unique being, thereby also creating a personal world. In existential terms, we can say that the individual defines itself by existing in the world, not passively but actively, creatively — by acts of the will. The developmental process of self-definition is neither automatic nor smooth.[1]

Translated into the UNCLOS III context, I therefore take the outlines of the convention in 1976 as a core and show how each strand of the unfinished total package was interwoven to make the whole. Eschewing the completeness of the sequential approach, I focus instead on the critical determinants of overall outcome, both internal and external.

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1. S.E. Luria. *A Slot Machine, A Broken Test Tube*, (New York: Harper & Row, Publishers, 1984), p. 8.