



Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs
United Nations



Proceedings of the
Twentieth Anniversary Commemoration
of the opening for signature of
the United Nations
Convention on the Law of the Sea



International Seabed Authority

Proceedings of the Twentieth
Anniversary Commemoration of
the Opening for Signature of the
United Nations Convention on the
Law of the Sea

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Foreword

The United Nations Convention on the Law of the Sea: Historical background

By the mid-1950s, it had become increasingly clear that prevailing international principles governing ocean affairs were no longer capable of effectively guiding conduct on and use of the seas. The oceans had long been subject to the freedom-of-the-seas doctrine – a seventeenth century principle that limited national rights and jurisdiction over the oceans to a narrow belt of sea off a nation’s coastline. The rest of the sea was regarded as free to all and belonging to none.

However, technological innovations, coupled with the global population explosion, had drastically changed peoples’ relationship to the oceans. Larger and more advanced fishing fleets were endangering the sustainability of fish stocks, the marine environment was increasingly threatened by pollution caused by industrial and other human activity, and tensions between States over conflicting claims to the oceans and their vast resources were intensifying.

In this atmosphere, the United Nations convened the first of three conferences on the law of the sea in Geneva in 1958. The Conference produced four conventions, dealing respectively with the territorial sea and contiguous zone, the high seas, fishing and conservation of the living resources of the high seas, and the continental shelf.¹

¹ Convention on the Territorial Sea and the Contiguous Zone, Convention on the High Seas, Convention on Fishing and Conservation of the Living

Two years later, the United Nations convened the Second Conference on the Law of the Sea which, in spite of intensive efforts, failed to produce an agreement on the breadth of the territorial sea and on fishing zones.

While the first two conferences recorded agreement on a number of issues concerning international ocean affairs, many others remained unresolved. The creation of a comprehensive international treaty was to become the legacy of the Third United Nations Conference on the Law of the Sea.

A speech to the United Nations General Assembly by Malta's Ambassador to the United Nations, Arvid Pardo, on 1 November 1967, has often been credited with setting in motion a process that spanned 15 years and culminated in the adoption of the Convention on the Law of the Sea in 1982. In his speech,² Ambassador Pardo urged the international community to take immediate action to prevent a breakdown of law and order on the oceans, a disaster that many saw looming on the horizon. He called for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction".

Ambassador Pardo's call to action came at the right time. In the next five years, the international community took several major steps that proved crucial in setting the stage for a comprehensive treaty. In 1968, the General Assembly established a Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction, which began work on a statement of legal principles to govern the uses of the

Resources of the High Seas, Convention on the Continental Shelf. Annex C below contains bibliographical information on all international instruments cited in this publication.

² Official Records of the General Assembly, Twenty-second Session, First Committee, 1515th meeting [verbatim record], 1 November 1967 (A/C.1/PV.1515).

seabed and its resources. In 1970, the Assembly unanimously adopted the Committee's Declaration of Principles, which declared the seabed and ocean floor beyond the limits of national jurisdiction to be the common heritage of mankind.³ That same year, the Assembly decided to convene the Third United Nations Conference on the Law of the Sea to write a comprehensive international treaty that would govern all ocean affairs.

The Third United Nations Conference on the Law of the Sea opened in 1973 with a brief organizational session, followed in 1974 by a second session held in Caracas, Venezuela. In Caracas, delegates announced that they would approach the new treaty as a “package deal”, to be accepted as a whole in all its parts without reservation on any aspect. This decision proved instrumental to the successful conclusion of the treaty.

A first draft was submitted to delegates in 1975. Over the next seven years, the text underwent several major revisions. But, despite all efforts over the years to reach a consensus, it was decided in 1982 to conclude the negotiations and put the draft convention to a vote. The vote, which took place at United Nations Headquarters in New York on 30 April 1982, marked the end of more than a decade of intense and often contentious negotiations, involving the participation of more than 160 countries from all regions of the world and all legal and political systems.

The Convention was adopted with 130 States voting in favour, 4 against and 17 abstaining. Later that year, on 10 December 1982, the Convention was opened for signature at Montego Bay, Jamaica, receiving a record number of signatures – 119 – on the first day.

³ Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction.

The United Nations Convention on the Law of the Sea entered into force on 16 November 1994, one year after the sixtieth instrument of ratification, accession or formal confirmation was deposited – a condition set out in the treaty. Today, the Convention is approaching universal participation, with 145 States and the European Union having become parties as of 20 December 2003 (listed in annex B below).

The Convention has been supplemented by two agreements dealing, respectively, with seabed mining, and straddling and highly migratory fish stocks.

The Agreement on seabed mining⁴ was negotiated to resolve a number of problems that prevented several industrialized nations, notably the United States, from adhering to the Convention. The result of consultations held from 1990 to 1994, the Agreement clarified, interpreted and modified provisions in the Convention concerning the innovative legal regime being established to control mining operations in the international seabed area.

The Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea was established, prior to the entry into force of the Convention, to prepare for the setting up of both institutions. Having declared the seabed beyond the limits of national jurisdiction (the “Area”) to be the “common heritage of mankind”, the Convention established the International Seabed Authority to organize and control activities in the Area, particularly with a view to administering its resources. The Authority, which has its headquarters in Kingston, Jamaica,

⁴ Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

came into existence in 1994 when the Convention entered into force, and became fully operational as an autonomous international organization in June 1996.

International disputes that may arise over seabed activities are to be adjudicated by an 11-member Seabed Disputes Chamber set up by the International Tribunal for the Law of the Sea. This Tribunal was created by the Convention to settle disputes that arise out of its interpretation or application. The Tribunal, which has its headquarters in Hamburg, Germany, became operational in October 1996, two years after the Convention came into force.

A third international body established by the Convention, the Commission on the Limits of the Continental Shelf, held its first session in June 1997. The purpose of the Commission is to facilitate the implementation of the Convention with respect to the establishment of the outer limits of this zone of national jurisdiction in cases where it extends beyond the standard limit of 200 nautical miles from coastal baselines. The Commission makes recommendations to coastal States on matters related to the establishment of these limits.

The United Nations Convention on the Law of the Sea – more than 10 years in the making, now 20 years old and approaching universal participation – is one of the most significant yet less recognized accomplishments of the twentieth century in the arena of international law. It establishes for the first time a common set of rules for the oceans, bringing order to a system fraught with potential conflict. Its scope is vast: it covers all ocean space, with all its uses, including navigation and overflight; all uses of all its resources, living and non-living, on the high seas, on the ocean floor and beneath, on the continental shelf and in the territorial sea; protection of the marine environment; and basic law and order.

The Convention, often referred to as “a constitution for the oceans”, is based on the all-important idea that the problems of the oceans are closely interrelated and must be addressed as a whole. Early in the negotiating process, and possibly key to its success, it was agreed that the treaty must be accepted as a whole, not as a basket from which individual States could select what they liked and reject what displeased them. With this understanding it was adopted on 30 April 1982. Today it is one of the few international agreements that almost all countries abide by in practice, even those that are not States parties. Several States that had initially found some provisions problematic are now taking steps for future ratification or accession. The United States has publicly stated its intention of joining the Convention as soon as possible.

Salient features of the Convention, and some subsequent developments

Ocean zones and basic rights

Territorial seas—Coastal States have sovereignty over their territorial sea, which they can establish up to a limit of 12 nautical miles out from baselines running along their shores. Foreign vessels are allowed “innocent passage” through those waters.

Exclusive economic zones—Coastal States have sovereign rights in a 200-nautical-mile exclusive economic zone (EEZ) for the use of living and non-living natural resources. (Ninety per cent of the world’s fisheries fall within coastal State jurisdictions.) Coastal States are responsible for managing living resources and for protecting the marine environment.

Continental shelves—Coastal States have sovereign rights over their continental shelf, their national area of the seabed, for exploring and exploiting its non-living resources. The shelf extends at least 200 nautical miles from the shore. States may claim more under certain circumstances. Where the shelf extends beyond 200 miles, coastal States are to share with the international community part of the revenue they may derive from its resources.

Rights of navigation, passage, overflight and freedom of the seas—In addition to the right of innocent passage in the territorial sea, ships and aircraft of all countries are allowed “transit passage” through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage.

Land-locked States have the right of access to and from the sea and enjoy freedom of transit through the territory of transit States.

In EEZs, all States have freedom of navigation and overflight, as well as freedom to lay submarine cables and pipelines.

On the high seas, all States enjoy the traditional freedoms of navigation, overflight, scientific research and fishing. They are obliged to adopt, or cooperate with other States in adopting, measures to manage and conserve living resources.

Settlement of disputes—A binding and comprehensive system is established for the settlement of disputes, offering a choice of means, including the International Tribunal for the Law of the Sea, the International Court of Justice and arbitral tribunals.

Marine environment

The Convention assigns to States the fundamental obligation and responsibility for protecting and preserving the marine environment, and requires them to adopt and enforce national laws and international standards to prevent, reduce and control ocean pollution.

Under the unifying framework of the Convention, a growing number of detailed international instruments, some binding and others voluntary, have been adopted on protection of the marine environment, as well as the utilization, conservation and management of marine resources. One of the most significant voluntary instruments is chapter 17 of Agenda 21, negotiated during the 1992 United Nations Conference on Environment and Development (Earth Summit) as a complement to the Convention. Chapter 17 contains a programme of action for the “protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources”.

Both the Convention and Agenda 21 embody a new understanding, recognizing that the problems facing the marine environment are closely interrelated and cannot be tackled in isolation, but must be resolved through integrated management of resources and environmentally sound economic development.

Some regional and subregional programmes have led to significant progress in the protection and preservation of the marine environment. The regional approach is particularly effective, as exemplified by the Regional Seas Programme and action plans devised by the United Nations Environment Programme (UNEP), as well as other regional programmes.

Marine resources

Fisheries—Responsibility for ensuring the long-term sustainability of fish stocks within the 200-nautical-mile economic zone, according to the Convention, rests with coastal States, under whose jurisdiction about 90 per cent of the world's fisheries fall. Over the past 20 years, the Convention, along with a number of complementary international instruments, has been an effective vehicle for focusing attention on the issue of responsible fisheries. But there is still considerable room for improvement, as many States lack adequate enforcement mechanisms to ensure effective compliance with their conservation and management measures.

While the Convention on the Law of the Sea has been the centrepiece in focusing attention on the need for responsible fishing practices, other international legal instruments aimed at ensuring the long-term sustainability of fishery resources also play an important role. These include the 1995 United Nations Fish Stocks Agreement,⁵ the 1993 FAO Compliance Agreement,⁶ and the 1995 FAO Code of Conduct for Responsible Fisheries and its related international plans of action. The plans of action address the management of fishing capacity; the prevention of illegal, unregulated and unreported fishing; the reduction of incidental catch of seabirds in longline fisheries, and the conservation and management of shark populations.⁷

⁵ United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995).

⁶ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993).

⁷ International Plan of Action for the Management of Fishing Capacity (1999); International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (1999); International Plan of Action for the Conservation

Seabed minerals—The Convention on the Law of the Sea designated marine minerals on the seabed beyond national jurisdiction as the common heritage of mankind, to be explored and exploited for the benefit of humanity as a whole. These mineral resources are administered by the International Seabed Authority, an international organization established under the Convention, which allows both public and private enterprises, as well as collective mining consortia, to apply for permission to mine the seabed.

Deep-seabed mining, while holding enormous promise, is extremely challenging. Mining takes place at a depth of more than 15,000 feet in the open ocean, thousands of miles from land, making it a risky and extremely expensive endeavour. Keeping a steady ship position, since a vessel cannot anchor five kilometres above the sea floor, and making sure that the pipe used for extracting the minerals does not snap or that the recovery vehicle is not lost or permanently stuck on the ocean floor, are among the many difficulties involved in developing the technology for commercial exploitation.

Today, 20 years after the adoption of the Convention, contracts regulating exploration for polymetallic nodules – which contain a number of valuable metals such as nickel, copper and cobalt – in the international seabed Area have been issued to seven pioneer investors. This activity is governed by Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, adopted by the Authority in 2000 as its first piece of international legislation.

and Management of Sharks (1999); International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2001).

Consideration is being given to authorizing the exploration and exploitation of two other types of mineral resources – polymetallic sulphides and cobalt-rich crusts. In this context, the International Seabed Authority is taking into consideration the environmental concerns arising from the growing interest in developing marine mineral resources in the international seabed area.

Fighting crime at sea

In the 20 years since the adoption of the Convention, crimes at sea have become more prevalent and are increasing. The framers of the Convention never envisaged many of the crimes that exist today, and as a result included only a general provision regarding their suppression.

Since 1982, several conventions have been adopted in order to strengthen international cooperation in the suppression of criminal activities at sea. For example, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances builds upon the general requirement in the Convention that nations cooperate in the suppression of illicit drug trafficking on the seas by allowing a State other than the flag State of a ship suspected of illicit trafficking to intercept that ship.

Similar rights of interception with regard to a ship suspected of smuggling migrants are provided for in the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

Furthermore, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation requires States to prosecute acts of armed robbery against ships

or any other unlawful act not covered by the definition of piracy in the Convention. Specifically, it requires a State to prosecute a criminal act if it is committed against or on board a ship that is either flying its flag or is in its territory, including its territorial sea, or if the crime is committed by one of its nationals.

Commemorative activities

The General Assembly decided, in resolution 56/12 of 28 November 2001, to devote two days of plenary meetings at its fifty-seventh session, on 9 and 10 December 2002, to the commemoration of the twentieth anniversary of the opening for signature of the Convention, during its annual consideration of the agenda item entitled “Oceans and the law of the sea”. Member States and official observers were encouraged to be represented at the highest possible level.

Accordingly, the Division for Ocean Affairs and the Law of the Sea in the Office of Legal Affairs, together with the High-Level Committee of Ambassadors⁸ formed to oversee preparations for the commemoration, organized a number of activities to mark the occasion. The Committee was chaired by the President of the Twelfth Meeting of States Parties (2002), Ambassador Don MacKay of New Zealand.

On the morning of 9 December, a treaty ceremony was organized for those States, responding to the call for universal participation, wishing to deposit instruments of ratification or accession to the Convention. Qatar and Tuvalu availed themselves of the occasion to deposit instruments of ratification

⁸ The High-Level Committee consisted of the permanent representatives of Chile, Cyprus, Jamaica, Malta, Morocco, New Zealand, Papua New Guinea, Samoa and Uruguay.

and Armenia deposited its instrument of accession. States wishing to do so could also deposit charts showing the outer limits of their territorial sea, exclusive economic zone or continental shelf, and/or lists of geographical coordinates of points specifying the respective geodetic data. Only one State, Madagascar, deposited a list of geographical coordinates of points for the drawing of straight baselines from which the breadth of the territorial sea of Madagascar is measured, with an illustrative map, in accordance with article 16, paragraph 2 of the Convention.

There was also a commemorative meeting in the General Assembly Hall.⁹ Statements were made on behalf of the President of the fifty-seventh session of the General Assembly and by the Secretary-General of the United Nations, a former President of Malta and the chairmen of the five regional groups. Additional remarks were made by the final President of the Third United Nations Conference on the Law of the Sea, as well as by officers of the Twelfth Meeting of States Parties to the United Nations Convention on the Law of the Sea, the Assembly of the International Seabed Authority, the International Court of Justice and the International Tribunal for the Law of the Sea, and by the Secretary-General of the International Seabed Authority and the Chairman of the Commission on the Limits of the Continental Shelf. (These statements are reproduced in sections I and II of this publication.)

During the afternoon of 9 December, two activities took place. First, at the Dag Hammarskjöld Library Auditorium there were scientific presentations on new discoveries in the oceans, in particular on hydrothermal vent ecosystems and on the latest developments on marine minerals, made by two distinguished

⁹ *Official Records of the General Assembly, Fifty-seventh Session, 70th plenary meeting [verbatim record], 9 December 2002 (A/57/PV.70).*

professors, experts in their respective fields (see section IV below). Then, two informal panel discussions were held in parallel in the Economic and Social Council and Trusteeship Council chambers on "The dynamism of the Convention: Challenges for the present and solutions for the future" (see section III below). Six topics under this heading were taken up by the two panels, covering such areas as the International Seabed Authority, maritime boundaries, settlement of disputes, implementation of the Convention, emerging concepts for strengthening the legal regime for the oceans, and the amendment procedure. Each panel was composed of a moderator and three panelists, selected by the High-Level Committee of Ambassadors on the basis of their expertise or their involvement in the negotiations leading up to the Convention.

As its contribution to the twentieth anniversary celebration, the Center for Oceans Law and Policy at the University of Virginia School of Law, Charlottesville, a United States non-governmental organization having consultative status with the Economic and Social Council, presented to the Secretary-General the six-volume commentary it had co-published on the Convention.¹⁰ Of particular interest was the recently completed volume VI of the series, on the regime for deep seabed mining, co-edited by the Secretary-General of the International Seabed Authority. The Commentary series is a comprehensive, objective and authoritative analysis of each of the 320 articles and 9 annexes of the Convention and its implementing agreements.

In the evening, a reception was held in the Visitor's Lobby of the General Assembly building. The reception was

¹⁰ *United Nations Convention on the Law of the Sea 1982: A Commentary* (ed. Myron H. Nordquist et al.; Dordrecht, Netherlands and Boston, Mass.: Martinus Nijhoff Publishers, with Center for Oceans Law and Policy of the University of Virginia), vols. I-VI (1985-2002).

made possible thanks to the generous financial and in-kind contributions of delegations as well as private donors. An exhibition on oceans and the law of the sea, organized for the occasion, was set up near the reception area. The United Nations Legal Counsel, Mr. Hans Corell, officially opened the exhibition. During the reception a tribute was paid to the personalities who had worked with determination to formulate a balanced convention acceptable to all nations. As presiding officers, participants or senior staff members, they were honoured for their contributions to the success of the Third United Nations Conference on the Law of the Sea.

Four book publishers – Kluwer Law International, Oxford University Press, Cambridge University Press and Editions A. Pedone – were invited to display their latest books on international law and topics relating to oceans and the law of the sea.

The Division for Ocean Affairs and the Law of the Sea, with the assistance of the Department of Public Information, prepared for distribution and circulation worldwide, through United Nations information centres, a brochure entitled *Oceans: The source of life – United Nations Convention on the Law of the Sea, 20th anniversary (1982-2002)*¹¹ and a booklet entitled *Constitution of the Sea Brings Order to the Oceans*. Each publication covered different aspects of ocean and law of the sea issues and targeted different audiences. A 35-year select bibliography on the law of the sea, compiled by the Division on a compact disc (CD-ROM), was handed out to delegates.

Lastly, the second President of the Third United Nations Conference on the Law of the Sea, Ambassador Tommy T.B. Koh

¹¹ DPI/2290 (2002). Available on www.un.org/Depts/los/convention_agreements/convention_20years/oceanssourceoflife.pdf.

of Singapore, prepared an article on the merits and usefulness of the Convention 20 years after its adoption, which appeared in newspapers and magazines in a number of countries.¹²

On 10 December, the General Assembly devoted its two plenary meetings to a discussion of agenda item 25, “ Oceans and the law of the sea”.¹³ In addition, two side events were organized in the early afternoon. One was the viewing of the Discovery Channel television film “The Blue Planet”, and the other was a non-governmental organization discussion panel on “New issues and challenges for the implementation of the United Nations Convention on the Law of the Sea in the light of the adoption of the activities, targets and deadlines of the 2002 Plan of Implementation of the World Summit on Sustainable Development”. The discussion panel was co-sponsored by the Global Forum on Oceans, Coasts and Islands; the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO); the International Coastal and Ocean Organization (ICO); the Center for the Study of Marine Policy (CSMP); Oceana; the Wildlife Conservation Society, and the United Nations Division for Ocean Affairs and the Law of the Sea.

¹² Tommy T.B. Koh, "Law of the Sea still useful after 20 years", *The Straits Times*, 10 December 2002. Available on www.ips.org.sg/pub/pa_tk_st101202.pdf.

¹³ *Official Records of the General Assembly, Fifty-seventh Session*, 71st and 72nd plenary meetings [verbatim records], 10 December 2002 (A/57/PV.71 and 72). Available on <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/7291/16/PDF/N0272916.pdf> and ods-dds-ny.un.org/doc/UNDOC/GEN/N02/729/22/PDF/N0272922.pdf.

**I. OPENING OF THE
COMMEMORATIVE MEETING* BY
AMBASSADOR CLIFFORD S.
MAMBA (SWAZILAND), VICE-
PRESIDENT OF THE GENERAL
ASSEMBLY, ON BEHALF OF THE
PRESIDENT OF THE FIFTY-
SEVENTH SESSION OF THE
GENERAL ASSEMBLY, HIS
EXCELLENCY MR. JAN KAVAN**

It is a great honour and pleasure for me to open this commemorative meeting.

We must remind ourselves that life itself arose from the oceans. Oceans cover 72 per cent of the earth's surface. Since ancient times, domination of the sea and maritime trade has symbolized and attributed power and prosperity. From the fifteenth century onwards, great discoveries gave further importance to domination of the sea, as well as an extraordinary impetus to seafaring. Modern technologies of the last century offered the opportunity to exploit the mineral resources of the sea and speeded industrial and economic development. The use of oceans has evolved from basic provision of food and as a

* Source (sections I and II), except as noted: *Official Records of the General Assembly, Fifty-seventh Session, 70th plenary meeting* [verbatim record], 9 December 2002 (A/57/PV.70).

medium of transportation, to the provision of resources for energy and minerals. The great importance of the ocean remains. Thus it is no surprise that the supremacy over the oceans has also been a source of conflict; for many years it was law of the strongest that ruled.

Tomorrow, 10 December, it will be 20 years since the United Nations Convention on the Law of the Sea was opened for signature as a result of the Third United Nations Conference on the Law of the Sea, which took place from 1973 until 1982. Aware of the extreme importance of elaborating a new and comprehensive regime for the law of the sea, the international community worked together and mutual cooperation overcame the numerous conflicting interests of various countries. More than 150 participating delegations representing all regions and all legal and political systems, and representing coastal countries, island States and landlocked countries, made great efforts. The text of the Convention was adopted by consensus, having in mind, (let me quote the preamble of the Convention):

“... the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world, [and]

*“... **Believing** that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter.”*

The elaboration of the Convention represented an attempt to establish true universality in an effort to achieve a “just and equitable international economic order” governing

ocean space. For the first time, the Convention offered a universal and complex legal framework for sharing the oceans as a common heritage of mankind. The text of the Convention is not only the result of the codification of customary law, but it also embodies the progressive development of international law, and establishes the International Seabed Authority and the International Tribunal for the Law of the Sea. The high number of States parties to the Convention is the best proof of the magnificent success of all those who participated in the work.

I should like to take this opportunity to commemorate the eminent persons who created the Convention, some of whom, regrettably, are no longer with us to participate in today's meeting. We are grateful to them and their presence is ensured through the fruits of their work.

The new law of the sea established by the Convention is based on the idea of the oceans as a common heritage. This concept must be understood not only as sharing the benefits offered by the sea, but above all as sharing the responsibility for its protection and conservation in order to preserve the ecological balance of our planet for the future generations to maintain and enjoy.

II. STATEMENTS

1. Mr. Kofi Annan, Secretary-General of the United Nations

We have come together today to celebrate the twentieth anniversary of the 1982 United Nations Convention on the Law of the Sea. The Convention was a milestone for the rule of law and for the United Nations. Ambitious in scope and comprehensive in purpose, the Convention was designed to allocate among States and organizations rights and responsibilities with respect to the oceans.

Known to many as the constitution for the oceans, the Convention was established as a legal framework of general principles and rules governing the division of ocean space and regulating all activities within it. Like a constitution, it is a firm foundation – a permanent document providing order, stability, predictability and security – all based on the rule of law. In a world of uncertainty and insecurity, it is indeed a great achievement to have established this Convention and to ensure the rule of law in an element where human beings from different nations have interacted through the centuries.

In each of the main areas addressed by the Convention – the peaceful uses of the sea, navigation and communication, the equitable and efficient use of the oceans' resources, and the preservation of the marine environment – new challenges have emerged requiring new thinking and vigorous action. The Convention is a living document, adaptable to change. Indeed,

much has changed since its adoption and new developments will emerge in future. Old problems have become more serious and new problems have arisen.

The framers of the Convention knew that all the problems and uses of the ocean were interrelated and that a piecemeal approach to regulation would no longer suffice. Hence, they elaborated a Convention that attempted to address, at least at the level of general principles, all problems, all activities, all resources, all uses of the oceans. They also sought to take into account, and to balance, the rights and interests of all groups of States.

In doing so, they created a Convention which provides for the rational exploitation of both living and non-living resources of the sea, and for the conservation of the living resources. It establishes a comprehensive and forward-looking framework for the protection of the marine environment, a regime for marine scientific research, principles for the transfer of technology and, finally, a binding and comprehensive system for the settlement of disputes.

Over the last 20 years, the purposes of the Convention have in large measure been fulfilled: coastal States are delimiting their maritime zones in accordance with the Convention; freedom of navigation has been assured; ocean activities are governed by law; many conflicts have been avoided; and many problems have been addressed.

On the other hand, implementation of certain aspects has been inadequate. As highlighted by the recent World Summit on Sustainable Development, the world's fisheries are becoming increasingly depleted and the marine environment is becoming seriously degraded.

These are threats not only to food security and to the livelihoods of many coastal communities, but also to human health and to life itself. The oceans were the source of life and continue to sustain it. The oceans and the seas are vitally important for the Earth's ecosystem. They provide vital resources for food security, and without them economic prosperity and the well-being of present and future generations could not be sustained.

If the Convention is to succeed in meeting these threats, cooperation and coordination between States must be improved. Because ocean-related issues are dealt with in many different organizations – at the national, subregional, regional and global levels – constant communication and coordination are necessary for effective governance. Let me therefore close by appealing to all States that have not yet done so to ratify the Convention. There could be no bigger tribute to its success and importance than to see it become truly universal. Peace and security, development and trade, cooperation and the rule of law would be strengthened by that achievement.

2. His Excellency Dr. Ugo Mifsud Bonnici, former President of Malta, paying tribute to Arvid Pardo (1914-1999)

Our globalized times cannot perhaps be best described as the result of the work contributed jointly and severally by a handful of visionaries. Millions upon millions of workers; hundreds of thousands of businessmen, managers and operators; an imprecise number of criminals also; thousands of politicians, functionaries, officials and diplomats have been, ant-like, constructing and deconstructing the present state of our planet, which is not the realization of a plan. We do not have a new world order. We have a state of fact – with some logic perhaps, some justice, continuous progress in some quarters, marvelous

scientific discoveries and new miraculous technological applications, some spread of democracy and some respect for human rights and the rule of law, mostly the result of the exertions of men and women of vision.

This state of fact contains in addition, however, a more than tolerable dose of illogic, injustice, waste, hunger and disease, neglect, strife and destruction, mostly the work of confusion, inaction, ignorance, greed, craft and sheer ill-will. We need visionaries to lead peoples out of labyrinths, to inject reason, to work day in and day out for justice, and to enlighten us about the ways of avoiding waste, neglect and the exhaustion of resources, of achieving a better distribution of wealth, of the availability of cure and care, of the solution of conflicts and of the curbing of madness in government. We need visionaries to continue to inspire hope – and also to give an example of love.

We will not, however, be satisfied with visionaries who will merely inspire hope and charity. We will not even be satisfied with visionaries who are merely fired by faith. We now require men and women who are not only endowed with prophetic vision; our visionaries must provide concrete answers. Our visionaries must now be persuaders, men and women who not only possess insight but are also good conductors of their institutions. Their talents must include competence in their field, in addition to intuition. Our visionaries have a greater task to perform than the prophets of previous centuries.

We need visionaries with determination and patience, as the world has become too complex for simple, immediate, easily implemented solutions. Education and knowledge have spread, but invincible ignorance as well as self-beguiling, too-little knowledge still bedevils the judgment of whole masses of people.

We need visionaries *in loco*; we cannot afford to have them preaching in the deserts. We need visionaries in the

universities as well as in the corridors of power. We need visionaries in diplomacy, in international organizations, in the boardrooms of international corporations, in parliaments, in government.

Arvid Pardo was such a visionary. His great competence as a jurist and as an international diplomat was combined with a very wide human and work experience. He was of Maltese and Swedish parentage, and was brought up in the Rome of the 1930s. While he cherished his Maltese nationality and identity, he felt that he was also a citizen of the world. He studied law at Rome University and considered himself fundamentally moulded by the legal discipline. But he was also a man of the physical and human sciences, and the future of man and of our natural environment were foremost in his anxieties and hopes. Perhaps I should have used the singular, as indeed he saw the fate of coming generations and of our planet's physical well-being as one and the same. The vicissitudes of the 1939-1945 war in Italy and his own precarious peregrinations and survival endowed him with indomitable perseverance in the face of all kinds of adversity and the unpredictable turns of the wheel of fortune. His service with the United Nations provided him with inside knowledge of the workings of the system and made him very much aware of the feelings within the milieu of international diplomacy. As a visionary he was extremely well prepared by his family history, working life and academic background.

The United Nations was, of course, by no means a desert. But it was his appointment in the mid-1960s as Ambassador Extraordinary by newly independent Malta that provided him with the *loco* through which he could exercise his visionary function of trying to bring about more logic, more justice, more legal order in a particular area of man's dealings and interchange with nature, as well as in the generational succession.

Pardo saw his opportunity, as Malta's seat at the United Nations provided him with the first pulpit from which to proclaim his vision of a new law of the sea and a new way of exploiting the natural riches of the ocean bed. It was Pardo who proposed to the then Prime Minister of my country, Giorgio Borg Olivera, that Malta should take the initiative and propose the adoption of certain principles with regard to the exploitation of the ocean floor and its subsoil beyond the limit of national jurisdiction. Some doubt was expressed about the wisdom of trying to get the limelight so early in our post-independence debut in the international congress of nations. The Government of Malta, however, saw the objective need and wholeheartedly embraced it. Pardo proceeded to deliver his memorable speech to the twenty-second session of the General Assembly in the autumn of 1967.

His ardour was not dampened by the initial negative reactions of some representatives of major Powers. He continued to pursue his proposal through the adoption of resolutions by the General Assembly in December 1967, 1968 and 1969 reserving the ocean floor and its subsoil for purely peaceful purposes. The *Ad Hoc* Committee¹ was established in 1967 and confirmed and enlarged in 1968. Finally, on 17 December 1970, the General Assembly approved not only resolution 2749 (XXV) incorporating the principles, but also resolution 2750 (XXV) convening in 1973 a Law of the Sea Conference. The 35-, then 41- and finally 91-member-strong Committee was entrusted with the task of preparing drafts of the Convention. Pardo took part in various *Pacem in Maribus* convocations, together with the late Elisabeth Mann Borgese, and Pardo provided much of the juridical raw material.

¹ *Ad Hoc* Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction.

I recall visiting his home in Washington in September 1970, where I had long discussions with him concerning the prospect of realization of his initiative. Even though he was totally engrossed in what he considered was his most important mission, his interest in the future was not limited to the sea and its seabed. From the angle of a seer he was reflecting on the great technological changes, the bioethical challenges, the geopolitical rearrangements that mankind would have to face in the twenty-first century, still 30 years away but substantially already with him in his mind's eye. Then, lowering his gaze to the present and very mundane particular circumstances, he made me promise to suggest to the Finance Ministry when I returned that they should provide some money for the repair of the roof of the Ambassador's residence.

There was however a change of Government in Malta in 1971 and Pardo had to contend with a diminished enthusiasm on the part of his home country. His determination was put to the test as he was removed from his ambassador's pulpit. Thereafter he could serve the cause laterally through his influence with the experts, fellow diplomats and academics. Even when the new Government eventually appointed him special envoy for the purpose, he no longer had the clout he had enjoyed with the former Government of Malta and Malta's interest flagged. Pardo, however, continued to prod, to encourage, and to suggest alternatives and formulations.

Pardo's grand design included aspects which were considered too daring at the time and perhaps even today. The commonality of the heritage of man could be accepted readily in the flourish of declarations but when the logical conclusions are drawn amounting to the setting up of an international organization for the exploration of seabed resources for the benefit of all, using the technical means available only to the richest and most advanced of nations, the project encountered

major obstacles. These were surmounted only by a substantial compromise, redimensioning most of the original proposals.

Pardo soldiered on and was happy to see the conclusion of the exercise in the final act, the opening for signature of the Convention in Montego Bay, Jamaica, on 10 December 1982. He was not of course completely satisfied with the outcome but continued to work for the acceptance of the concepts embodied in the text of the Convention on the Law of the Sea, and for further progress in the study of this area of international law as well as in the science and technology connected with the protection of the seas, the seabed and the marine environment, and their exploitation for exclusively peaceful purposes. The last time I met him, in 1997, when I was then President of the Republic, he had come to Malta to attend the formal grant of a post-graduate scholarship to an academic from a developing country in this field of study.

No one of us lives and dies as if he had never been born. We however have a debt of gratitude towards people of vision who see a civilizing project to its conclusion. It would have made a great difference to all humanity if visionaries had never been born, or had succumbed to the fatigue of indifference, incomprehension and inertia. I pay tribute to a great man from a small nation who contributed a part of the mosaic which makes sense in the great mural of our civilization – in large part, alas, still unfinished or scrambled.

**3. Ambassador Tommy T.B. Koh of Singapore,
President of the Third United Nations
Conference on the Law of the Sea during its last
two sessions (1981-1982)**

In accordance with the Acting President's exhortation to limit our statements to 10 minutes, and more importantly, in accordance with my wife's standing instruction, I shall make only three points. Let me explain my reference to my wife. My wife and I have spent 13 happy years of our lives in this house. However, in those years my wife had to endure the agony of listening to too many seemingly interminable speeches. As a result of that unhappy experience my wife has advised me to speak briefly and never to make more than three points.

As my first point I want to ask the question, has the 1982 Convention lived up to our hopes and aspirations? I hope I do not sound boastful when I say that the Convention has achieved our shared vision. The Convention has made a modest contribution to international peace and security by, for example, replacing a plethora of conflicting national claims with internationally agreed limits on the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. The world community's important interest in the freedom of navigation has been well served by the delicate compromises contained in the Convention on the status of the exclusive economic zone, the regime of innocent passage through the territorial sea, the regime of transit passage through straits used for international navigation and the regime of archipelagic sea lanes passage.

The Convention has also made a contribution to the peaceful settlement of disputes by having a mandatory, not an optional, system for settling disputes between and among States. I am very pleased to inform the Assembly that in the past 20

years I can think of no single instance in which a dispute involving the interpretation of the Convention has led to the use of force. Instead, such disputes have regularly been referred to the International Tribunal for the Law of the Sea, established by this Convention and flourishing in the Hanseatic City of Hamburg, or to the International Court of Justice, or to arbitration or conciliation.

The Convention is like a constitution which seeks to regulate all aspects of the uses and resources of the world's seas and oceans. The underlying philosophy of the Convention is that we must treat the ocean space as an ecological whole.

The importance of the seas and oceans is brought home visually to us when we look at pictures of the Earth taken from space and realize once more that two thirds of the Earth's surface is covered by the seas and oceans. Ninety per cent of world trade is seaborne. Fish is still our most important source of protein and every year we harvest from the seas 90 million tons of fish, valued at \$50 billion, and employing 36 million people in the fishing and aquaculture industries. The seas are also an important source of our fossil fuel. About 30 per cent of the production of oil and gas is derived offshore. The ocean also provides us with fresh water and is an important stabilizer of the world's climate.

It is therefore not an exaggeration to say that life on Earth is to some extent dependent upon the health of our seas and our oceans. We should therefore not only not pollute our ocean space but should keep it clean and healthy. We should enjoy the bountiful resources of our ocean space but should do it in a sustainable way.

I go now to my second point, which is that the process of achieving the Convention is almost as important as the Convention itself. I wish to argue that the Conference was probably the first truly global effort of mankind to work

collaboratively and inclusively in the development of international law. It developed, tested and refined diplomatic techniques and processes which live on today in the United Nations and in many multilateral conferences. I have in mind such things as the practice of arriving at substantive agreements by consensus; the concept of the package deal; the evolution of interest groups; the progressive miniaturization of the negotiating process; the use of formal, informal and even privately convened groups; the roles of the Conference leaders and the secretariat; and the important contributions made by non-governmental organizations such as the Neptune Group. Through the Conference, we have built a global community of lawyers, diplomats, political leaders, scholars, business people, military personnel, scientists, representatives of the non-governmental organizations and the media.

I regret to inform the Assembly that many of these good people are no longer with us. In addition to the inspirational Arvid Pardo, I wish also to use this occasion to pay a brief tribute to my predecessor as President of the Conference, Hamilton Shirley Amerasinghe of Sri Lanka; Andrés Aguilar of Venezuela; Hans G. Anderson of Iceland; Alfonso Arias-Schreiber of Peru; Chris Beeby of New Zealand; Jorge Castañeda of Mexico; Jean Dupuy of France; Ernesto de la Guardia of Argentina; Roger Jackling of the United Kingdom; Karl Hermann Knoke of Germany; Guy de Lacharrière of France; Elisabeth Mann Borgese of Germany, Austria and Canada, truly a global citizen; Jean Monnier of Switzerland; Blaise Rabetafika of Madagascar; Elliot Richardson of the United States; Willem Riphagen of the Netherlands; John Stevenson of the United States; Alfred van der Essen of Belgium, and Mustafa Kamil Yasseen of the United Arab Emirates.

I should also like to refer to two beloved brothers of the secretariat who have left us, Constantin Stavropoulos of Greece

and Bernardo Zuleta of Venezuela. Finally, from the non-governmental organizations, I should like to very sincerely remember Sam and Miriam Levering of the Neptune Group.

Those of us who are veterans of the Third United Nations Conference are growing old, and the next time we have a reunion like this I do not know how many members of the club will still be here. With your permission, Mr. President, and with the permission of representatives, I would just ask all these wonderful people to stand so that we can acknowledge their presence this morning.

I come now to my third and final point. I have been asked whether it is time to review the Convention. My answer is that there is no apparent need to review the Convention. The Convention has stood the test of time well. We have also been able, by pragmatic processes, to resolve the Convention's imperfections and provide solutions to problems that were left unresolved by the Convention. For example, the Assembly adopted a resolution (resolution 48/263) containing an Implementation Agreement on Part XI of the Convention. The effect of the Agreement was to amend that part of the Convention dealing with deep seabed mining. As a result, countries that had opposed the Convention in 1982 are now able to support it.

Again, in 1992, the United Nations Conference on Environment and Development called for a conference to deal with the problem of deep sea fisheries, singling out in particular the two problems of straddling fish stocks and highly migratory species of fish. The United Nations convened a conference in 1993 and adopted an Agreement to deal with the problem in 1995. I want to pay a special tribute to my brother from Fiji, Ambassador Satya Nandan, who chaired both negotiations.

Recently, the European Commission has called attention to the alarming depletion of the stock of cod in the Atlantic. This is an example of a problem which cannot be fixed at the global level but has to be solved at the regional or subregional level through cooperation by the various stakeholders. The Food and Agriculture Organization of the United Nations (FAO) has played a very constructive and pro-active role in this respect.

The Convention contains a framework of rules which require the implementing actions of States and competent authorities. For example, the Convention requires countries to cooperate in order to prevent or suppress acts of piracy, drug trafficking and migrant smuggling. In the post-9/11 world there is a danger that the terrorists will link up with the pirates to attack ships in port and at sea. It is therefore timely for the International Maritime Organization (IMO) to convene a diplomatic conference on maritime security. I hope that the Conference being held right now in London² will succeed in arriving at a consensus, which can then be incorporated into the International Convention for the Safety of Life at Sea.

The recent accidents involving the oil tankers *Erika*, off the coast of France, and *Prestige*, off the coast of Spain, have called the urgent attention of the world to the danger of single-hull oil tankers. I urge the IMO to consider phasing out such tankers earlier than the agreed date of 2015. Failure to act collectively may tempt some States to act unilaterally. I also urge the IMO to look into how to curb the abuses of the regime of flags of convenience.

² 2002 Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, London.

I wish to conclude by quoting a sentence from our beloved Secretary-General, Mr. Kofi Annan, who has said that the Law of the Sea Convention is one of the greatest achievements of the United Nations. On behalf of all my colleagues who spent more than a decade in this effort I wish to say, "Thank you, Secretary-General". I am sure I speak for all of them when I say that our ambition was to make a modest contribution to the rule of law and to help the United Nations to build a more peaceful and more equitable world. Our dream is that one day we shall live in a world in which differences between and among States are settled peacefully and in accordance with the rule of law. Thank you, Mr. Secretary-General, for sharing our dream.

4. Chairmen of the five regional groups

A. His Excellency Mr. Denis Dangué Réwaka, representative of Gabon, on behalf of the African States

Africa is pleased to participate in the commemoration of the twentieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea. The adoption of that Convention was a major turning point in the history of the international cooperation that has developed in the last few years under the dual impact of the integration and globalization processes. The United Nations Convention on the Law of the Sea is a legal framework which regulates all maritime environments, and in particular regulates the delimitation of maritime areas, environmental protection, marine scientific research, economic and commercial activities, technology transfer and ocean-related dispute settlement.

Since its entry into force on 16 November 1994 the Convention on the Law of the Sea has allowed many coastal countries, including many African countries, to resolve some problems related to the protection and management of their maritime territories.

Given the progress made in implementing the Convention, Africa reiterates its support for the strengthening of this most useful instrument. However, given the profound changes and evolution in the world in the past two decades, the Convention needs to be more in line with the tenor of the times. It is for this reason that Africa supported General Assembly resolution 54/33 dated 24 November 1999, which established an Open-ended Informal Consultative Process designed to facilitate the reconsideration of the Convention by the United Nations General Assembly.³ Africa is pleased with the report which has sanctioned the work of the Consultative Process, document A/57/80, dated 2 July 2002. This is the place to pay a well-deserved tribute to the two Co-Chairpersons, Mr. Tuiloma Neroni Slade and Mr. Alan Simcock, for the efforts they made to help us to achieve the results of which members are all aware.

At the same time, Africa wishes to state that the thinking about a review of the Convention must focus on the management and rational utilization of marine resources and must also take into account the results and commitments coming out of major international conferences, such as the World Summit on Sustainable Development in Johannesburg. In fact, there is an obvious link between oceans, seas and sustainable

³ United Nations Open-ended Informal Consultative Process established by the General Assembly in its resolution 54/33 in order to facilitate the annual review by the Assembly of developments in ocean affairs.

development. The decline of resources and the deterioration of marine environments constitute a credible threat to the environments, especially since the sea is an important link in the chain of life. We therefore have the obligation to use oceans and seas in conformity with the agreements in place in this area.

The process of adapting and strengthening the Convention should also take into account the economic situation in Africa, whose countries, including those with a sea coast, are at present marginalized within the world economy. The new provisions should provide means that will allow Africa to implement this instrument effectively. The same holds true for preventing, reducing and combating the pollution of waterways, which are very important areas, and which therefore should be a major focus of the Convention. All States must cooperate and make a commitment to take the measures necessary for this purpose at the highest political level.

The problems of seas and oceans must, because of their diversity and complexity, come under a global and integrated management. It is essential, therefore, for international organizations, which play a critical role in the implementation of the United Nations Convention on the Law of the Sea, to coordinate and harmonize their actions. The new mechanism proposed in the reports on the Informal Consultative Process seems to meet the need for harmonization and coordination. To achieve that objective, this mechanism will need to extend to all countries, including developing countries, and to regional African organizations that are affected by maritime issues. Africa, fully cognizant of the contribution of seas and oceans to its development, is hoping for appropriate international aid that would help us to participate fully in meetings of the mechanism.

**B. His Excellency Mr. Koichi Haraguchi,
representative of Japan, on behalf of the
Asian States**

At the outset I should like to express my appreciation to the High-Level Committee of Ambassadors which has overseen the preparations for this event. My thanks go as well to the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations for its contributions to the convening of this special meeting. It is my great honour to speak on behalf of the 53 members in the Asian Group at this ceremony commemorating the twentieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea.

All those who participated in the Third United Nations Conference on the Law of the Sea, and who contributed to the formulation of the text of the Convention, deserve our profound gratitude. In particular, I should like to pay tribute to the late Ambassador Arvid Pardo, who proposed the issue of the peaceful uses of the seabed and ocean floor for inclusion on the agenda of the twenty-second session of the General Assembly in 1967 with his famous speech expressing the concept of the “common heritage of mankind”. His words led to the establishment of the Committee on the Peaceful Uses of the Seabed, which in turn led to the convening of the Conference. At the same time we should never forget the contribution of Ambassador Tommy Koh who, as President of the Conference, worked tirelessly for the finalization of the text of the Convention. Some distinguished guests and representatives present at this ceremony I believe also participated in the Conference and contributed to the formulation of the text of the Convention.

As we all well know, after nine years of very tough negotiations from 1973 to 1982, the Convention was finally adopted on 30

April 1982 and opened for signature in Montego Bay, Jamaica, on 10 December, precisely 20 years ago. Since the Convention entered into force in 1994, the number of States parties has grown to 138. The Convention covers a whole range of areas and issues, including international navigation, ocean transportation, the equitable and efficient utilization of ocean resources, the conservation and management of living marine resources, the protection and preservation of the marine environment, and the right of access of land-locked States to and from the sea.

The adoption of the Convention was followed by the adoption of two documents that are now of importance in this area, that is, the Agreement relating to the implementation of Part XI of the Convention, and the Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks. It should also be noted that the three international bodies established under the Convention, namely, the International Tribunal for the Law of the Sea, the International Seabed Authority and the Commission on the Limits of the Continental Shelf, have all been playing important roles in the implementation of the provisions of the Convention and the Agreements.

In the Asian region, as well as in every other region of the world, along with fishing and navigation as the oldest uses of the sea, trade via sea routes has brought wealth since ancient times. In addition, the sea has been a door to different cultures, providing for interaction and communication between countries. However, we should not close our eyes to the ways in which the seas have been abused. I refer, for example, to piracy, armed robbery against ships, and smuggling of drugs and illegal substances.

I also wish to draw attention to the fact that since the adoption of the Convention, the discussion on global environmental issues has made dramatic progress through the Earth Summit in Rio de Janeiro in 1992 and the 2002 World Summit on Sustainable Development in Johannesburg. By means of these conferences, the people in Asia have also become increasingly aware of the importance of global marine environment issues.

In order to deal with these issues, we will continue to make the utmost effort to further strengthen cooperation, not only regionally but also globally. The Convention serves as an important and useful legal framework for cooperation in this area. Out of the total of 54 Asian Group members, 37 are now States parties to the Convention.

A visitor to the American Museum of Natural History here in New York will find a darkened corner in front of the planetarium where several dozen video screens are installed. On the screens visitors find a series of questions about stars, planets and the Earth. Among the questions, one remains vivid in my mind: "Which is indispensable for life: (a) air, (b) light or (c) water?" The correct answer, I was told, is (c) water. The video programme then proceeds to suggest that although there seems to be no planet in the solar system other than the Earth that maintains such a vast volume of water on its surface, if there are planets or stars in other parts of space that are endowed with water then there would be a possibility of life there.

In other words, the video programme reminds us that water is the source of life and that our planet Earth is uniquely fortunate in being endowed with the vast expanse of the sea. By thinking in this way it is incumbent upon us to make sure that the sea is kept and used as a means of enhancing peace and prosperity, the very basis of our life. That is very much the line

taken by the Convention, which says of itself in its preamble that it has "historic significance ... as an important contribution to the maintenance of peace, justice and progress for all peoples of the world".

The Convention has served the goal of ocean use by humankind over the past 20 years. On behalf of the 53 members of the Asian Group, I am pleased to express my belief that the prominent role the Convention has played to date will continue to grow.

**C. His Excellency Mr. Movses Abelian,
representative of Armenia, on behalf of the
Eastern European States**

I have the honour to address the General Assembly in my capacity as Chairman of the Group of Eastern European States on this remarkable occasion of the commemoration of the twentieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea.

The significance of the 1982 Convention is hardly possible to overestimate. Throughout history, the sea and its enormous wealth have become an indispensable part of human life by providing rich resources for nourishment, promoting trade and sustaining economic prosperity, as well as encouraging scientific discovery and artistic inspiration. As an essential part of the biosphere, the world's oceans are also a crucial element for sustainable development.

Until 20 years ago, however, there was no single international legal framework to govern relations between nations in the seas and oceans and to regulate the use and conservation of marine resources, the protection of the environment and the encouragement of scientific research.

Moreover, the advance of technological progress in the twentieth century seriously challenged the existing traditional sea-law arrangements, proving their inadequacy to meet the new challenges.

It is against this background that one should evaluate the merits and significance of the Convention. It is indeed a unique international legal instrument, which combines traditional rules and well-established norms with the introduction of new legal concepts in order to address the whole spectrum of issues relating to the seas and oceans in a comprehensive and consistent manner, and thus to ensure the peaceful use of the seas, facilitate international cooperation and promote stability.

The Convention for the first time lays down a universal international regime that covers all areas of the use of the oceans and seas, based on the notion that all problems of the world's oceans are interrelated and need to be addressed as a whole.

The Convention legally defines and regulates such contentious issues as territorial sea limits, navigational rights and the passage of ships through straits, sovereign rights and legal status in respect of resources of the seabed within and beyond the limits of national jurisdiction. More importantly, it also provides for an equitable use of the oceans and seas by all States, including landlocked countries, and for a binding procedure for the peaceful settlement of disputes between States.

The 20 years following the signature of the Convention have yielded some significant results. The Convention has proved to be not a static but rather a dynamic and evolving body of law.

International instruments emanating from the Convention are entering into force. In particular two agreements directly related to the implementation of the Convention are already in

operation: the Agreement relating to the implementation of Part XI of the Convention and the Agreement on the implementation of the Convention's provisions relating to the conservation and management of fish stocks. Three institutions have been created in order to regulate specific aspects of the regime –the International Seabed Authority, the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf. All these are evidence of the successful functioning of the Convention that has led to its wide ratification since its entry into force in 1994.

The elaboration of the Convention on the Law of the Sea has provided one of the best examples of the international law making by the United Nations, a function entrusted to it by the Charter. However, the role of the United Nations in maritime affairs does not stop with the adoption of the Convention.

Today, 20 years after the adoption of this important legal instrument, the issues of its universal ratification and full implementation are gaining increasing importance. Political commitment and practical actions are necessary at all global, regional and national levels in order to realize fully the promise of the Convention, maximize the benefits from the world's oceans and seas and, at the same time, minimize the risks that have arisen, especially the risk of the degradation of the marine environment and resources.

This is where the United Nations can play a very important role. With the entry into force of the Convention, the Secretary-General has assumed the role of overseeing developments relating to the Convention, the law of the sea and ocean affairs in general.

The Eastern European Group is pleased to note that the United Nations is fulfilling efficiently the responsibilities entrusted to it by the Convention and is confident that it will

promote the proper implementation of the Convention to the benefit of the whole international community.

In conclusion, we would like to join all previous speakers in paying a special tribute to the late Ambassador Arvid Pardo of Malta. Indeed, today's event would have been incomplete without commending his notable role in the adoption of the Convention, in particular, and his remarkable contribution to the development of the law of the sea in general.

**D. His Excellency Mr. Milos Alcalay,
representative of Venezuela, on behalf of the
Latin American and Caribbean States**

It is a great honour for me to speak on behalf of the members of the Latin American and Caribbean Group in this meeting that commemorates the twentieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea.

It is also an immense privilege to recall on this occasion the role that the Latin American and Caribbean region played in the long process that led to the adoption of this vitally important instrument, whose initial negotiation took place in Caracas, in my own country Venezuela, and whose opening for signature was also in our region, in Montego Bay, Jamaica. Our part of the world enthusiastically welcomed and saw the development of this important instrument and will therefore always be associated with it. This was undoubtedly an action of great importance in which the members of our region have always been, and still are, ready to participate in a constructive spirit, and they have made significant contributions to the development of the present law of the sea.

If I might mention just a few of the main participants from our region who from different posts as Conference authorities, as heads of delegation or as high-level United Nations staff, had special responsibilities. Tribute has already been paid to them this morning and I want to associate myself with that tribute by recalling names such as those of my compatriot Andrés Aguilar, who was head of the Venezuelan delegation and who presided over the Second Committee of the Conference at almost all of its sessions. Likewise, I should like to recall Ambassador Reynaldo Galindo Pohl of El Salvador; Ambassador Bernardo Zuleta of Colombia, who was the Special Representative of the Secretary-General to the Conference; and Ambassadors Jorge Castañeda of Mexico and Alfonso Arias-Schreiber of Peru, who had the responsibility of coordinating the substantive position of our region, particularly as regards the exclusive economic zone.

I should also like to recall Ambassador Alvaro de Soto of Peru who, as Chairman and negotiator of the Group of 77 – over which my country now has the honour to preside – played a very important role, as did Ambassador Kenneth Rattray of Jamaica, who was Rapporteur of the Conference; Dolliver Nelson of Grenada, who is President of the International Tribunal for the Law of the Sea; and so many others whose names have been mentioned during this ceremony. I pay a heartfelt tribute to all of them on behalf of my region. It would take too long to list all the representatives from our region who played an active and important role in the various negotiations during the many years of work on the Convention. Nonetheless, it would be impossible to fail to mention at least some of the names of these significant persons as I have done, since the Latin American and Caribbean region has done so much work to produce this law of the sea and to continue to adapt it to emerging realities.

The participation of representatives of the region was active and very positive during the preparatory stages in which all the parties to the Montego Bay Convention worked so hard. But undoubtedly the most important contribution of our region relates to two specific areas which happen to be the most innovative parts of the Convention. These two sections are – and I have already referred to these in mentioning the names of participants from our region – Part V, on the exclusive economic zone, and Part XI, relating to the regime for the seabed and ocean floor beyond the limits of national jurisdiction.

The importance of these developments can be understood only if we bear in mind the fact that the establishment of the exclusive economic zone was one concept within a broader negotiation, or a negotiating package, including the setting of a maximum outer limit for the territorial sea, the adoption of a regime for straits used for international navigation, and a special regime for archipelagic States.

Likewise, the new concepts of the exclusive economic zone and the international Area composed of the seabed and ocean floor beyond the limits of national jurisdiction also required a more specific determination of the outer limit of the continental shelf under the sovereignty of coastal States.

The Latin American and Caribbean countries were fully aware of the importance of the sea for purposes of communications, navigation, overflight, and for the laying of cables and pipelines. But their main interests were the resources that are in the marine spaces, given their growing importance both for the well-being of their populations and for their development. That has been underscored this year as one of the main objectives of the United Nations – in other words, the challenge of development as our main priority.

We must bear in mind the confrontation that existed over the traditional law of the sea, which recognized ownership only of the resources located within a three-mile fringe which was then accepted as the outer limit of the territorial sea. With the development of the concept of the continental shelf and its wide acceptance at that time, there was a solid legal basis for the claims of coastal States regarding oil and most of the minerals that are normally found on the continental shelf and in its subsoil. Nonetheless, the definition of rights over the living resources of the ocean remained pending.

Those were some of the reasons why the countries of Latin America adopted initiatives through statements of a unilateral and multilateral nature in the decade of the 1950s and also in the years that preceded the beginning of the Third United Nations Conference on the Law of the Sea that led to the Convention which we now commemorate. All these statements called for the establishment of new rules for marine spaces and their resources, laying the groundwork for the positions that were later put forward at the Conference itself.

In addition, the countries of Latin America and the Caribbean gave their full support to the proposal made by Ambassador Arvid Pardo, Permanent Representative of Malta to the United Nations, to whom we pay tribute today in this commemorative ceremony, as was recognized by the former President of Malta, His Excellency Mr. Bonnici, in the statement made here this morning, a statement that I welcome and commend.

His proposal to declare the seabed as the common heritage of mankind was an initiative to which the countries of Latin America made important contributions through the drafting and preparation of a legal regime for the seabed and its subsoil beyond the limits of national jurisdiction.

The countries of Latin America and the Caribbean, acting collectively within the Group of 77, and also individually, contributed substantially to the drafting of the Declaration of Principles that would govern the area, and that was adopted by the General Assembly on the recommendation of the Seabed Committee.

I should like to highlight a few additional elements. I will circulate them in writing because I do not want to speak beyond the 10-minute limit, although I did not get any direct instructions to that effect from my wife this morning. However, I do want to follow the limits of this important commemoration, so I shall request that my further comments be circulated to members.

I want to conclude by saying that many countries of the Latin American and Caribbean region have already ratified this important instrument. Others in our region have not yet been able to do so, but that may be because they are awaiting better conditions that will allow them to join the Convention, although they have incorporated in their legislation or explicitly accepted most of the provisions of the Convention. That illustrates the achievements of the Convention on the Law of the Sea, and also the challenges that lie ahead in a changing world, a world that needs such a Convention to make us move towards the main objectives of this great United Nations. On behalf of Latin America and the Caribbean, may I express our admiration for this Convention and the most important work within it.

**E. His Excellency Mr. Pierre Schori,
representative of Sweden, on behalf of the
Western European and Other States**

I have the honour to make this statement on behalf of the Western European and Other States Group. One member State, however, is not associated with the statement.

At the outset let me join Mr. Ugo Mifsud Bonnici in paying tribute to the late Ambassador Arvid Pardo, founding father of ideas leading up to the Third United Nations Conference of the Law of the Sea and the Convention which we celebrate today on the twentieth anniversary of its opening for signature. Furthermore, let me pay tribute to the late Hamilton Shirley Amerasinghe of Sri Lanka, who served as President of the Conference from its first to its ninth session. Let me also join others to convey our thanks to distinguished Ambassador Tommy “three-points” Koh of Singapore, whose outstanding skills and guidance as President of the Conference were crucial for the coming into being of the Convention. Let me also convey my gratitude to the United Nations Secretariat, in particular the Division for Ocean Affairs and the Law of the Sea, for their dedicated efforts throughout the years and whose expertise and competence have been manifested in various meetings they have organized and in studies and reports they have produced.

This is an historic moment. Tomorrow is the twentieth anniversary of the opening for signature of the United Nations Convention of the Law of the Sea, one of the greatest achievements in international legal cooperation of the last century.

At the commemoration 10 years ago, the Convention had not yet entered into force and its organs had not yet been established. The situation today is very different. The Law of the

Sea Convention entered into force on 16 November 1994 and now more than 130 States are parties to the Convention. The organs provided for in the Convention are now established and well in function. There is the International Seabed Authority, which is successfully preparing the ground for future activities in the Area. There is the International Tribunal for the Law of the Sea, at Hamburg, Germany, which has begun to adjudicate disputes within the domain of the law of the sea. There is the Commission on the Limits of the Continental Shelf, which has now received its first application, thus beginning its complicated work aimed at the final determination of the outer limits of the continental shelves beyond 200 nautical miles from the baselines. It is highly satisfactory that the whole system created through the Law of the Sea Convention now is up and running.

The adoption in 1982 of the Law of the Sea Convention stands out as a major legal and political achievement for the international community. In important matters, the Convention codified rules and principles already existing, but it also implied considerable progressive development of international law. The Convention has, since its adoption, exercised a dominant influence on the conduct of States in maritime matters and is a primary source of the international law of the sea. The Convention forms the legal framework within which all activities in the oceans and seas must be carried out and is of fundamental importance for the maintenance and strengthening of international peace and security, as well as for the sustainable development of the oceans and seas.

**5. Ambassador Don Mackay (New Zealand),
President of the Twelfth Meeting of States
Parties to the United Nations Convention on the
Law of the Sea**

Today we commemorate the achievement represented by the adoption of the 1982 United Nations Convention on the Law of the Sea. To do so in the presence of so many distinguished individuals who contributed to the development of the Convention is a particular honour. Let me join all others in conveying thanks and congratulations to Ambassador Tommy Koh of Singapore, who guided us so successfully through the last sessions of the Conference, and to His Excellency Ambassador Javier Pérez de Cuéllar who, as Secretary-General, addressed the final session of the Conference in Montego Bay and so rightly noted that with the adoption of the Convention international law had been irrevocably transformed.

Twenty years after the adoption of the Convention, the transformation it brought about has been so complete that to a generation of new international lawyers, the principles of the Convention represent the unexceptional status quo. The Convention is fast approaching universal participation. With the three latest States to have joined the Convention – Tuvalu, Qatar and Armenia – the Convention will now have 141 States parties, both coastal and landlocked States, from every region of the world. The almost universal acceptance of the legal regime established by the Convention is evidenced not only by the number of its States parties, but also by the widespread application and implementation of its principles in domestic law and practice, by States parties and by many non-parties alike.

The Convention has a unique place in international law from a number of perspectives. Procedurally, it represents a success of the international legal process of the highest order.

Doctrinally, it provides the cornerstone of all modern efforts to develop and implement the legal framework for the oceans and seas and their resources. And practically, it has secured rights and benefits for all States, coastal and landlocked, and played a critical role in contributing to international peace and security.

The States parties to the Convention have, of course, a particular role in relation to it. Twelve Meetings of States Parties to the Convention have been held since it entered into force. These meetings have had an important part in constructing the machinery provided for in the Convention. The Meeting of States Parties has particular responsibility for the election of members of two of the Convention's bodies: the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf. Both of these bodies have now been established, the necessary rules and guidelines for their operation have been adopted, and both are carrying out substantive work in accordance with their mandates.

The Meetings of States Parties have also provided an opportunity for those States which have assumed the obligations and responsibilities of the Convention to consider particular issues relating to the application of the Convention as may arise from time to time. The Eleventh Meeting of States Parties, for instance, conscious in particular of the situation of developing States, adjusted the date of commencement of the 10-year time period for making submissions to the Commission on the Continental Shelf to reflect the date of the establishment of the Commission itself.

The work of the Meetings of States Parties, and indeed the implementation of the Convention generally, have been greatly assisted over the years by the staff of the Division for Ocean Affairs and the Law of the Sea, who represent a repository of knowledge and experience on issues of both law and practice

relating to the Convention. It is fitting I think that as we pay tribute to those delegations who worked to bring the Convention about, we should remember also those members of the Secretariat who contributed to the Third Conference and those who continue to service the Convention today.

The active engagement of delegations in the annual Meetings of States Parties confirms the continued relevance of the Convention, as does the General Assembly's decision to commemorate the Convention in this way today. The goal of universal participation by States parties in the annual meeting was met this year, and we can hope that the broader goal of universal participation in the Convention itself will be met well before we gather to celebrate its next anniversary.

Finally, may I acknowledge and thank the Division for Ocean Affairs and the Law of the Sea for their superb efforts in putting in place the arrangements for today and tomorrow, and also my colleagues who have helped guide this process. I should also like to thank New York missions, the Institute of Oceans Policy and Law at the University of Virginia and the International Seabed Authority, which have so generously assisted with the costs of associated events.

**6. Ambassador Martin Belinga-Eboutou
(Cameroon), President of the Assembly of the
International Seabed Authority**

I am deeply moved to be speaking at this commemoration of the twentieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea. How could I possibly conceal my feelings as I speak from the very same rostrum from which Ambassador Arvid Pardo of Malta on 1 November 1967 made his now famous appeal on behalf of the

common heritage of mankind? I also feel honoured to be speaking on this important occasion in my capacity as President of the eighth session of the Assembly of the International Seabed Authority, one of the main institutions created by the Convention.

Happily, the heartfelt appeal made by Ambassador Pardo was heard. The international seabed regime enshrined in the United Nations Convention on the Law of the Sea is now a reality. Likewise, the generous concept of the common heritage of mankind, which is its cornerstone, is today deeply anchored in the minds of States whether or not they are parties to the Convention. That means – and this is important – that the seas and oceans are no longer a source of division but rather one of solidarity.

Here, I am pleased to remember with gratitude Ambassador Pardo and the other distinguished pioneers of the law of the sea. I want to associate myself with the well-deserved tributes paid to them. I should also like to salute the memory of Ms. Elisabeth Mann Borgese, citizen of the world, and to pay tribute to her work for the development, strengthening and dissemination of the legal framework established by the Convention.

What a long way we have come since 10 December 1982, when the United Nations Convention on the Law of the Sea was opened for signature. On that day a record number of 119 signatures were reached. Today, 20 years later, the importance that the international community attaches to that legal instrument is increasing and we are making strides towards universal participation, with 157 signatory States and 142 States parties. This great interest is commensurate with the vital importance of the Convention for the present and future of humankind.

The merits of the Convention have been sufficiently described by preceding speakers. Having participated in its negotiation and drafting, they did so with great eloquence. So let us allow their words to resonate within us. I myself would like to recall that the United Nations Convention on the Law of the Sea is an immense act of faith. It is a beautiful hymn to cooperation and international solidarity. It describes and points the way to what the new international economic order must be, an international order that is wanted, organized and administered by us all for the benefit of and in the interests of each and every one of us. The United Nations Millennium Declaration is based on that same approach.

One of the most fundamental aspects of the Convention is that it proclaims the seabed beyond the limits of national jurisdiction to be the common heritage of mankind, a heritage that everyone has the right to use and the duty to protect. In order to preserve the resources of this common heritage of mankind, the Convention created a new organization, the International Seabed Authority, through which the States parties to the Convention organize and monitor the activities that are conducted in the international seabed zone, and in particular, the administration of its resources such as polymetallic nodules, sulphides and cobalt-rich crusts.

Over the past five years the members of the Authority and its secretariat have focused mainly on taking the practical decisions that are necessary for the proper functioning of the Authority as an autonomous international organization within the United Nations system. They have established various bodies and organs of the Authority, adopted the rules of procedure of its organs, adopted the financial and staff regulations, concluded a headquarters agreement, and periodically established a budget as well as a scale of assessments. In addition to these organizational activities the Authority has tackled the development of norms.

In six years the record of achievement is impressive. It includes adoption of the rules for the exploration and mining of polymetallic nodules in the Area, conclusion of exploration contracts with seven pioneer investors and preparation of a programme of technical workshops in order to expand scientific know-how on questions related to the mining of the seabed.

During its eighth session, held at Kingston from 5 to 16 August 2002, the Assembly of the International Seabed Authority began the consideration of the rules to be adopted for the exploration and mining of other types of mineral resources that might be in the zone – hydrothermal polymetallic sulphides and cobalt-rich crusts. It also examined plans aimed at encouraging the promotion and coordination of seabed research, and lastly, it approved the emblem and the flag of the Authority.

In other words, after adopting a range of decisions to define its institutional framework, the Authority now is taking up questions that are more technical in nature. Even though the prospects for the mining of the deep seabed are uncertain because of economic, physical and technological obstacles, the Authority is working to encourage research on the seabed. Thus, the future substantive work of the Authority will focus on four main areas: monitoring of exploration contracts; promotion of marine scientific research in the Area and dissemination of its results; information gathering and the establishment of a scientific and technical database that will make it possible to better understand the seabed environment; and continued development of the appropriate regulatory framework for the development of other mineral resources in the Area.

The Convention gave the International Seabed Authority the difficult task of administering the common heritage of mankind in a just and equitable way for the benefit of all humanity. In a context that is not always the most favourable, it

is endeavouring effectively to discharge its responsibilities. I should like to take the opportunity of this twentieth anniversary to pay a well-deserved tribute to the courage and dedication of the secretariat and of all the personnel of the Authority in Kingston. I also wish to make a strong appeal to all Member States to continue to give their full support to the Authority and to its activities. The challenges that lie ahead are many and substantial. The Authority will not be able to meet them without the support of all.

In our view, one of the main expressions of that support is participation in the activities of the Authority. In recent years, as the number of annual sessions has changed from two to one, we have unfortunately seen a steady erosion in State participation. This reduction in the number of participants in the meetings of the Authority has sometimes made it difficult to take important decisions, and it is at odds with the increase in the number of States parties to the Convention. I therefore want to invite Member States fully to participate in the work of the Authority and in particular of the ninth session of the Assembly of the International Seabed Authority that will be held in Kingston, Jamaica, from 28 July to 8 August 2003.

7. Mr. Satya N. Nandan, Secretary-General of the International Seabed Authority*

We celebrate today a Convention which has achieved unprecedented success in promoting peace and good order in the oceans.

* Source: www.isa.org.jm/en/whatsnew/GA_2002.pdf.

I should like to pay tribute to my colleagues and friends who participated in the Third United Nations Conference on the Law of the Sea, the Seabed Committee that preceded it, the Preparatory Commission that followed the Conference, and the negotiations on the Agreement for the implementation of Part XI of the Convention.

But for their dedication to the cause of achieving a universally acceptable Convention, we would not be here today to celebrate the twentieth anniversary of the adoption of the Convention and its opening for signature. Indeed, it is their individual and collective efforts over long years that we celebrate today. I am pleased to recognize the presence in the Assembly Hall of many of my colleagues and friends from the Conference. We are honoured by their presence. It would be remiss of me, however, not to remember on this occasion those who have not been able to make it to this session or, especially, not to remember those who are now deceased. I should also like to acknowledge the contributions of the dedicated secretariat of the Conference and of the then Office of the Special Representative of the Secretary-General for the Law of the Sea, now the Division for Ocean Affairs and the Law of the Sea. In this regard I should like to recall the invaluable contributions of two of my predecessors as Special Representatives of the Secretary-General for the Law of the Sea, the late Constantin Stavropoulos of Greece and the late Bernardo Zuleta of Colombia.

The Third United Nations Conference on the Law of the Sea and its legislative and institutional outcomes have made an important and undeniable contribution to the rule of law over the past 20 years.

For centuries it was assumed that the sheer vastness of the oceans and their apparently inexhaustible productivity exceeded human capacity for use and abuse. It was only in the latter part

of the last century that we began to realize, as rapid advances in science and technology increased our understanding of the vulnerability of ocean processes, that the old assumptions were no longer valid.

It is against that background that we must measure and evaluate mankind's attempts to establish a public order for the oceans through the rule of law. The function of the law of the sea has long been recognized as that of protecting and balancing the common interests of all peoples in the use and enjoyment of the oceans. Whereas historically the oceans were claimed for the exclusive use of a small number of States, we have seen that the more general community interest in the use of the oceans resulted in the pre-eminence for several centuries of the principle of freedom of the seas for use by all. In more recent history, the predominant factors in the law-making process have been the economic interest of States and the need to accommodate ever-increasing demands for exclusive and comprehensive jurisdiction over adjacent areas of the sea. The disparate unilateral claims that were generated created chaos in the law of the sea.

The achievements of the 1982 United Nations Convention on the Law of the Sea are many, but its greatest contribution has been to resolve important jurisdictional questions, some of which had eluded agreement for centuries. The Convention reflects a delicate balance between competing interests in the use of the ocean and its resources by taking a functional approach in establishing the various maritime zones and the rights and duties of States in those zones.

In reviewing the old law and revising or replacing it where necessary, and by introducing new concepts to meet the needs of the international community, the Convention revolutionized the international law of the sea. It did so through

painstaking negotiation on each important issue and through the process of consensus building. The last remaining issue, that relating to the regime for the mining of minerals from the deep seabed, was also resolved by consensus through the adoption by the United Nations General Assembly in July 1994 of the Agreement relating to the implementation of the provisions of Part XI of the Convention.

The result is that as far as the legal framework is concerned, the Convention is clearly recognized as the pre-eminent source of the current international law of the sea. It is truly a constitution for the oceans in the sense that it sets out the basic structure or framework for ocean management. Its norms are precise but it also establishes principles which lend themselves to further development of the law of the sea. In this sense there is an in-built flexibility which allows for the development of new norms in response to evolving circumstances. Within these parameters the Convention has created the conditions necessary for resolving the contemporary problems of ocean management.

There will always, of course, be practical problems associated with the implementation of the provisions of the Convention, as well as areas in which further progress needs to be made within the framework of the Convention. Some of the most pressing current issues include the problems of burden-sharing among users of straits used for international navigation; the need to deal with the problems of illegal, unregulated and unreported fishing; and equitable sharing of the benefits of marine scientific research. This Assembly will have the opportunity to consider some of those issues further tomorrow.

The Convention established a number of institutions with specific mandates, including the International Seabed Authority, the International Tribunal for the Law of the Sea and the

Commission for the Limits of the Continental Shelf. All those institutions established by the Convention are now functioning.

Despite the controversies that surrounded Part XI of the Convention, the International Seabed Authority has established itself as a credible, cost-effective and efficient organization. In 2000 the Authority adopted, by consensus, Regulations for prospecting and exploration for polymetallic nodules. Those Regulations, which are highly practical in nature and reflect the current realities of deep sea mineral exploration, completed and gave effect to the regime laid out in Part XI and Annex III of the Convention and in the Implementation Agreement. Their adoption also enabled the Authority to issue to the seven former registered pioneer investors 15-year contracts for exploration, thus finally bringing the pioneer investors within the single and definitive regime established by the Convention and the Agreement. Perhaps more significantly, through its programme of scientific and technical workshops, the Authority has also firmly established a role for itself as a forum for cooperation and coordination of marine scientific research in the international Area, thus giving effect to the frequently overlooked but very important principle which is contained in article 143 of the Convention.

In the past few years, as international attention has focused more on the sustainable use of the oceans, there has been concern at the apparent proliferation of organizations and bodies with overlapping responsibilities for ocean affairs and at the prospect for fragmentation in approaches to ocean management at the national, regional and global levels. While it was never intended by the framers of the Convention that there should be a legislative institution to review and give effect to the provisions of the Convention in the same manner as, for example, the

climate change and biodiversity conventions,⁴ the General Assembly has taken note of these concerns and has sought to address them through measures such as the Informal Consultative Process. Whether these measures are sufficient or need to be reinforced is a matter that needs to be kept under constant review if we are to avoid the erosion of the delicate balance between rights and duties of States that have been carefully woven together into the Convention.

The world we live in today is very different from the world of 1982. Many of the problems we face now could not have been anticipated in 1982 or earlier. Nor when we adopted the Convention could we have foreseen the rapid developments in international environmental law that have taken place, including, for example, the growing entrenchment of the precautionary approach to ocean management, and the increasing pressures on national, regional and global institutions in general.

Notwithstanding these developments, the Convention has proved to be resilient and adaptable to changing circumstances. Slowly but surely it has earned its place as one of the great achievements of the international community. Its universal acceptability is to be seen in the number of States parties and in the remarkable uniformity with which the Convention is applied in State practice, even by those who are not yet parties. Its influence goes beyond the confines of the law of the sea. It has established itself as part of the global system for peace and security of which the Charter of the United Nations is the foundation.

⁴ United Nations Framework Convention on Climate Change (1992); Convention on Biological Diversity (1992).

Unlike its predecessor instruments on the law of the sea, the 1982 Convention is an instrument that will endure. Its comprehensive nature and the delicate balance it has achieved in the competing uses of the oceans assure this. It provides stability and certainty in the international law of the sea and introduces equity and responsibility in the use of the oceans and their resources. Together with related instruments it will provide the framework for ocean governance well into the future.

**8. Judge Raymond Ranjeva, on behalf of Judge
Gilbert Guillaume, President of the
International Court of Justice**

I make this statement on behalf of Gilbert Guillaume, who was obliged to remain at The Hague, and on behalf of the International Court of Justice.

The International Court of Justice thanks the General Assembly and Secretary-General Kofi Annan for having kindly invited the Organization's principal judicial organ to attend this celebration of the twentieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea.

It was said – statesmen, legal practitioners and scholars have since confirmed – that mankind would recognize the Convention's

*"fundamental importance for the maintenance and
strengthening of international peace and security, as well*

as for the sustainable development of the oceans and seas”⁵

The Court fully subscribes to that statement by the General Assembly at its fifty-sixth session.

The Court cannot sufficiently stress the significance of the instrument whose anniversary we are celebrating today. Nothing will ever be the same again. The Montego Bay Convention of 10 December 1982 was the outcome of long-standing efforts for the creation, systematic presentation and adaptation of the rules governing the law of the sea, which can be traced back to the origins of international law with Grotius and his treatise *De Mare Liberum*. It represents a culmination of the process of codification of customary law and has contributed to the progressive development of international law. It has instilled the culture of the sea and of the law into international relations, based on the alignment of States’ domestic laws and on a new concept of the common heritage of mankind. The constant increase in the number of States parties to this instrument bears witness to the significance that they attach to it.

The International Court of Justice takes pleasure in drawing attention to paragraph 1 (b) of article 287 in Part XV of the Convention. This provision confirms the Court’s role as one of the means available to States for the settlement of disputes concerning the interpretation or application of the Convention. The Court welcomes the creativity displayed by the Conference in making provision for a special arbitral tribunal and in establishing the International Tribunal for the Law of the Sea, which is also represented here today. But it is also happy to note the Conference’s caution in maintaining tried and tested

⁵ General Assembly resolution 56/12 of 28 November 2001, preamble.

procedures – ad hoc arbitration and the International Court of Justice.

The entry into force of the 1982 Convention has not affected the willingness of States to have disputes concerning the interpretation or application of the law of the sea settled by the International Court of Justice. Out of the 63 declarations of acceptance of the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Court's Statute, only 10 contain reservations with respect to matters concerning the law of the sea. In their declarations regarding the choice of a compulsory procedure pursuant to article 287 of the Convention, 17 States have declared that they accept the jurisdiction of the Organization's principal judicial organ, while 6 have attributed exclusive jurisdiction to it.

Matters relating to the law of the sea constitute a significant proportion of the Court's activity. Since 1946, it has delivered 24 judgments in this field.

The 1982 Convention is one of the most significant and authoritative instruments available to the Court. The Court applied it directly for the first time in the Judgment delivered on 10 October 2002 in the case concerning the land and maritime boundary between Cameroon and Nigeria,⁶ since it was in force between the two parties to the dispute.

⁶ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment of 20 October 2002; to be published in *Reports of Judgments, Advisory Opinions and Orders (International Court of Justice)*, 2002. Available on www.icj.org/icjwww/idocket/icn/icnjudgment/icn_ijudgment_toc.htm.

However, it is not necessary for a multilateral international instrument on the law of the sea to be in force between the parties before the Court will apply it. Between 1982 and 2002 there were in fact four cases in which the Court applied the rules codified by the Montego Bay Convention under the head of customary law.

There have also been three occasions on which the Court referred to the United Nations Convention on the Law of the Sea without its having been invoked by the parties. The Court felt impelled to do so in order to support or amplify its own findings in these cases.

The Court has dealt, and continues to deal, with numerous questions relating to the law of the sea. Two examples may be cited: first, the delimitation of maritime areas, and second, maritime navigation and safety. The maritime delimitation of States with opposite or adjacent coasts is now governed by a unified system of applicable law. For the Court, any delimitation must lead to equitable results. It first determines provisionally the equidistance line and then asks itself whether there are any special circumstances or relevant factors requiring this initial line to be adjusted with a view to achieving equitable results. In this context it often settles disputes relating to the sovereignty of States over disputed islands or peninsulas.

Maritime navigation is the second subject that the Court, like its predecessor, has had to deal with. It has thus considered such issues as freedom of navigation on the high seas, the legal status of straits, and the right of innocent passage through territorial seas of warships and merchant vessels. Freedom of maritime communication and commerce, including fishing, has also been ruled upon by the Court.

The Court's jurisprudence has thus consolidated the law on a good number of points and has given States greater legal certainty. There is no reason why this jurisprudence should not continue to develop, with cases proliferating as recourse to judicial procedures finds increasing favour. Thus there is now a special Chamber for Environmental Matters, formed by the Court to deal with the growing number of issues concerning the environment and sustainable development. This is a new forum available to States for the settlement of disputes relating to the maritime environment.

The first 20 years of the Montego Bay Convention have proved the correctness of the legislative policy opted for by the Conference in the area of dispute settlement. A broad approach to the principle of flexibility has provided the international community with a wider choice of procedures, and that is welcomed by the Court. The Court's President, Judge Gilbert Guillaume, who is unfortunately unable to be with us today, said last year that the Court remained the only court with both universal and general jurisdiction capable of dealing with all disputes relating to the sea and to activities pursued at sea. The Court welcomes the fact that increasing numbers of States are bringing their disputes to it, and it will continue to do its utmost to meet their expectations.

**9. Judge Alexander Yankov, on behalf of Judge L.
Dolliver M. Nelson, President of the
International Tribunal for the Law of the Sea^{*}**

It is a great honour for me to address the General Assembly on the occasion of the commemorative meeting of the twentieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea. It is a particular pleasure for me to speak to a General Assembly that meets under the presidency of Mr. Jan Kavan, Deputy Prime Minister and Minister for Foreign Affairs of the Czech Republic.

The International Tribunal for the Law of the Sea is one of the institutions established by the 1982 Convention on the Law of the Sea – the others, of course, being the International Seabed Authority and the Commission on the Limits of the Continental Shelf. The Tribunal held its first session in October 1996 and thus has been functioning as a judicial institution for six years. Six years constitutes a fairly short period in the life of any international institution, let alone a global international judicial institution. During the first year, the Tribunal developed its rules of procedure,⁷ guidelines concerning the preparation and

^{*} As prepared by the President; available on www.itlos.org/news/statements/president_2002_12_09_en.doc. The official verbatim record of the Assembly meeting contains Judge Yankov's summary of this statement.

⁷ International Tribunal for the Law of the Sea, *Rules of Procedure* (document ITLOS/8), adopted 31 October 1997. Available on www.itlos.org/documents_publications/documents/rules_en.doc.

presentation of cases before the Tribunal⁸ and a resolution on the internal practice of the Tribunal.⁹

The Statute of the Tribunal provides for the establishment of the Seabed Disputes Chamber and for special chambers. The special chambers include the Chamber of Summary Procedure and the two chambers formed by the Tribunal in 1997: the Chamber for Fisheries Disputes and the Chamber for Marine Environment Disputes.

The Seabed Disputes Chamber has mandatory jurisdiction over all activities in the Area – that is, all activities of exploration and exploitation of the resources of the international seabed Area.

Judicial work of the Tribunal: To date, 11 cases have been submitted to the Tribunal.¹⁰

⁸ Ibid., *Guidelines concerning the Preparation and Presentation of Cases before the Tribunal* (document ITLOS/9), adopted 31 October 1997. Available on www.itlos.org/documents_publications/documents/guideleines_en.pdf.

⁹ Ibid., *Internal Judicial Practice* (document ITLOS/10), adopted 31 October 1997. Available on www.itlos.org/documents_publications/documents/resolution_int_jud_prac_en.pdf.

¹⁰ 1. The *M/V "Saiga" Case (Saint Vincent and the Grenadines v. Guinea)*, *Prompt Release* (1997). ITLOS, *Reports of Judgments, Advisory Opinions and Orders*, vol. 1 (1997). Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=1&lang=en.
2. The *M/V "Saiga" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)* (1998). Ibid., vols. 2 (1998) and 3 (1999). Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=2&lang=en.
3. and 4. *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)*, *Provisional Measures* (1999). Ibid., vol. 3 (1999). Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=3&lang=en.

Prompt release of vessels and crews: The Tribunal has now dealt with five prompt-release cases: the *M/V “Saiga” Case* (1997), the *“Camouco” Case* (2000), the *“Monte Confurco” Case* (2000), the *“Grand Prince” Case* (2001) and the *“Chaisiri Reefer 2” Case* (2001). A sixth case, the *“Volga” Case*, has been recently submitted to the Tribunal.

In these cases the Tribunal has been engaged in clarifying the rule contained in article 292 of the Convention with respect to the prompt release of vessels. The Tribunal is well aware that in deciding these prompt release cases it has to preserve a balance between the interests of the flag State and those of the coastal State, and it has seen this balance as a key to the

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5. The *“Camouco” Case (Panama v. France), Prompt Release* (2000). Ibid., vol. 4 (2000). Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=4&lang=en.
 6. The *“Monte Confurco” Case (Seychelles v. France), Prompt Release* (2000). Ibid. Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=5&lang=en.
 7. *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. European Community)* (2000). Ibid., vol. 5 (2001). Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=6&lang=en.
 8. The *“Grand Prince” Case (Belize v. France), Prompt Release* (2001). Ibid. Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=7&lang=en.
 9. The *“Chaisiri Reefer 2” Case (Panama v. Yemen), Prompt Release* (2001). Ibid. Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=8&lang=en.
 10. The *MOX Plant Case (Ireland v. United Kingdom), Provisional Measures* (2001). Ibid. Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=10&lang=en.
 11. The *“Volga” Case (Russian Federation v. Australia), Prompt Release* (2002). Ibid., vol. 6 (to be published). Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=11&lang=en.

determination of a reasonable bond. On this balance it had this to say in its Judgment in the “*Monte Confurco*” Case:¹¹

“Article 73 identifies two interests, the interest of the coastal State to take appropriate measures as may be necessary to ensure compliance with the laws and regulations adopted by it on the one hand and the interest of the flag State in securing prompt release of its vessels and their crews from detention on the other. It strikes a fair balance between the two interests. It provides for release of the vessel and its crew upon the posting of a bond or other security, thus protecting the interests of the flag State and of other persons affected by the detention of the vessel and its crew. The release from detention can be subject only to a ‘reasonable’ bond.”

“Similarly, the object of article 292 of the Convention is to reconcile the interest of the flag State to have its vessel and its crew released promptly with the interest of the detaining State to secure appearance in its court of the Master and the payment of penalties.”

“The balance of interests emerging from articles 73 and 292 of the Convention provides the guiding criterion for the Tribunal in its assessment of the reasonableness of the bond...”

¹¹ ITLOS Reports, vol. 4, The “*Monte Confurco*” Case (*Seychelles v. France*), *Prompt Release* (List of cases, no. 5), Judgment of 18 December 2000, paras. 70-72. Available on www.itlos.org/case_documents/2001/document_en_115.doc.

Provisional measures: The Tribunal has a general power to prescribe provisional measures under the Convention (article 290, paragraph 1). This power was exercised in the *M/V “Saiga” (No. 2) Case*, which was an incidental proceedings that formed part of the *M/V “Saiga” Case* on merits.

The Tribunal also enjoys a special jurisdiction – a compulsory residual power under certain circumstances to prescribe provisional measures “[p]ending the constitution of an arbitral tribunal to which a dispute is being submitted ... if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires” (Convention, article 290, paragraph 5). The Tribunal is here called upon to prescribe provisional measures pending the final decision not by the Tribunal itself but by an arbitral tribunal yet to be constituted to which a dispute has been submitted. The Tribunal prescribed such provisional measures in both the *Southern Bluefin Tuna Cases* and the *MOX Plant Case*.

In the *Southern Bluefin Tuna Cases*, both Australia and New Zealand requested the prescription of provisional measures under article 290, paragraph 5, of the Convention in their dispute with Japan concerning the southern bluefin tuna (SBT). The principal measures requested were: that Japan immediately cease unilateral experimental fishing for southern bluefin tuna; that it restrict its catch in any given fishing year to its national allocation as last agreed in the Commission for the Conservation of Southern Bluefin Tuna, subject to the reduction of such catch by the amount of SBT taken by Japan in the course of its unilateral experimental fishing in 1998 and 1999; and that Japan act consistently with the precautionary principle in fishing for SBT pending a final settlement of the dispute.

In this case the Tribunal noted, among other things, that in accordance with article 290 of the Convention, the Tribunal

may prescribe provisional measures to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment. It considered that the conservation of the living resources of the sea was an element in the protection and preservation of the marine environment. It noted that there was no disagreement between the parties that the state of southern bluefin tuna was severely depleted and was a cause for serious biological concern. The Tribunal was of the view that the parties should in the circumstances act with prudence and caution to ensure that effective conservation measures were taken to prevent serious harm to the stock of southern bluefin tuna.

The *MOX Plant Case* was another instance where provisional measures were sought pending the constitution of an Annex VII arbitral tribunal (article 290, paragraph 5). Ireland submitted a request for the prescription of provisional measures seeking the suspension of the authorization of the MOX Plant and the cessation by the United Kingdom of all marine transport of radioactive materials associated with the operation of the MOX Plant.

The Tribunal did not find that in the circumstances of the case the urgency of the situation required the prescription of the provisional measures requested by Ireland, in the short period before the constitution of the Annex VII arbitral tribunal.

The Tribunal, however, invoking its powers under its rules of procedure (article 89, paragraph 5) to prescribe measures different in whole or in part from those requested, prescribed provisional measures imposing on the parties the duty to cooperate and consult in certain specific areas, preserving what could be considered to be procedural rights. On the duty to cooperate the Tribunal had this to say:

“the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law ...”

It went on to add

*“that rights arise therefrom which the Tribunal may consider appropriate to preserve under article 290 of the Convention”.*¹²

As had been done in the *Southern Bluefin Tuna Cases*, the Tribunal again utilized the term “prudence and caution” to justify its action. It stated that “prudence and caution require that Ireland and the United Kingdom cooperate in exchanging information concerning risks or effects of the operation of the MOX plant and in devising ways to deal with them, as appropriate”.¹³

The emphasis laid by the Tribunal on both the duty to cooperate

and the notion of “prudence and caution” has led one commentator to remark that the significance of the decision in the MOX plant goes beyond the mere prescription of provisional measures, and will undoubtedly contribute to the development of the international law of the environment (*“sa décision dont l'intérêt dépasse largement le problème des mesures d'urgence,*

¹² *ITLOS Reports*, vol. 5, *The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures* (List of cases: no. 10), Judgment of 3 December 2001, para. 82. Available on www.itlos.org/case_documents/2001/document_en_197.doc.

¹³ *Ibid.*, para. 84.

contribue incontestablement au développement du droit international de l'environnement").¹⁴

The work of the Tribunal is not to be assessed only from cases which have been decided. It may also have played a role in resolving disputes which have been withdrawn before decision. The *Chaisiri Reefer 2 Case (Panama v. Yemen)* is a case in point. The President had fixed 18 and 19 July 2001 for the hearing of this prompt release case. On 12 July 2001 the parties informed the Tribunal that the vessel, its cargo and crew had been released by Yemen and the case was accordingly removed from the list. There is little doubt that this dispute was settled because of the prospect of resort to the Tribunal. The mere existence of the Tribunal, a standing body, may also assist States to settle their maritime disputes without resorting to litigation.

The *Swordfish* case raised an interesting question since, when the Tribunal became seized of the case, a dispute arising from similar facts had already been submitted by the European Community to the Dispute Settlement Body of the World Trade Organization (WTO), raising the prospect of two dispute settlement procedures running in parallel. In reference to the *Swordfish* case, one commentator has posed the question: does international law have a doctrine of *lis pendens* (litigation pending) or *forum non conveniens* (inconvenient forum)? The phenomenon of the multiplication of international tribunals has thrown this question into high relief. The suspension of the further proceedings before both the Special Chamber of the Tribunal and the WTO Dispute Settlement Body meant that the Tribunal was unable to shed any further light on this matter.

¹⁴ *Revue générale de droit international public*, vol. 106 (2002), p. 197.

The development of the international law of the sea by the Tribunal:

The primary task of courts and tribunals is to settle disputes. As a former President of the International Court of Justice more accurately put it: “to dispose, in accordance with the law, of that particular dispute between the particular parties before it”.¹⁵ Nevertheless these institutions undoubtedly, in the nature of things, help in developing the law. The Tribunal has already started making its contribution. The Judgment in the *Saiga (No. 2) Case* on the merits is particularly noteworthy in that respect. It will be remembered that in this case the Tribunal had to decide whether or not the arrest and detention of the *Saiga* and its crew by the Guinean authorities were lawful and, if not, what amount of compensation had to be paid to Saint Vincent and the Grenadines.

This case raised a number of issues, among them nationality of claims, reparation, the use of force in law enforcement activities and such classic law of the sea issues as hot pursuit and the question of flags of convenience. On each of these issues it is generally acknowledged that the Tribunal made a contribution to the development of international law.

Nationality of claims: With respect to nationality of claims the Tribunal supported Saint Vincent and the Grenadines’ assertion that it had the right to protect the ship flying its flag and those who serve on board, irrespective

¹⁵ Robert Y. Jennings, The role of the International Court of Justice, *The British Year Book of International Law*, vol. 68 (1997), pp. 1-63 at 41.

of their nationality. The Tribunal held that the provisions of the Convention supported the view that a ship should be treated as a unit and it made this percipient observation:

*"The Tribunal must also call attention to an aspect of the matter which is not without significance in this case. This relates to two basic characteristics of modern maritime transport: the transient and multinational composition of ships' crews and the multiplicity of interests that may be involved in the cargo on board a single ship. A container vessel carries a large number of containers, and the persons with interests in them may be of many different nationalities. This may also be true in relation to cargo on board a break-bulk carrier. Any of these ships could have a crew comprising persons of several nationalities. If each person sustaining damage were obliged to look for protection from the State of which such person is a national, undue hardship would ensue."*¹⁶

A learned commentator has observed that on the issue of nationality of claims the Tribunal has made an important clarification both of the Convention on the Law of the Sea and of general international law. This dictum undoubtedly has taken into account a salient element of modern shipping.¹⁷

¹⁶ *ITLOS Reports*, vol. 2, The *M/V "Saiga" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)* (List of cases: no. 2), Judgment of 1 July 1999, para. 107. Available on www.itlos.org/case_documents/2001/document_en_68.doc.

¹⁷ Shabtai Rosenne, The International Tribunal for the Law of the Sea: Survey for 1999, *The International Journal of Marine and Coastal Law*, vol. 15 (2000), pp. 443-474 at 456.

Reparation: The Tribunal has made an equally significant contribution with respect to reparation. The Judgment in the *M/V Saiga (No. 2) Case* contains a detailed account of the different heads under which damages were awarded and an annex which sets out the members of the crew and other persons, e.g., the painters. It seems to be generally agreed that this aspect of the Judgment constituted a major contribution to the general law concerning damages. It may be noted that the findings of the Tribunal on reparation form part of the commentary on the relevant article in the International Law Commission's draft articles on state responsibility.¹⁸

The use of force in law enforcement activities: In the “*Saiga*” (No. 2) Case, Saint Vincent and the Grenadines claimed that Guinea used excessive and unreasonable force in stopping and arresting the *Saiga*. The Tribunal came to the conclusion that Guinea had used excessive force endangering human life before and after boarding the ship. Guinea had as a consequence violated the rights of Saint Vincent and the Grenadines under international law. The Tribunal took particularly into account the circumstances of the arrest in the light of international law. It observed that

“Although the Convention does not contain express provisions on the use of force in the arrest of ships, international law, which is applicable by virtue of article 293 of the Convention, requires that the use of force

¹⁸ *Report of the International Law Commission on the work of its fifty-third session (23 April-1 June and 2 July-10 August 2001), Official Records of the General Assembly, Fifty-sixth Session, Supplement No.10 (A/56/10), article 36 (Compensation) [of draft Articles on International Responsibility of States for Internationally Wrongful Acts], commentary, paras. (10), p. 249, and (17), p. 253. Available on www.un.org/law/ilc/reports/2001/english/chp4.pdf.*

must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. Considerations of humanity must apply in the law of the sea, as they do in other areas of international law.”¹⁹

The intent of this dictum is to protect the human rights of the members of the crew.

In this case also the Tribunal’s findings illuminated certain areas of the international law of the sea, for example the rules with respect to hot pursuit, and the requirement of a “genuine link” between the vessel and its flag State.

The place of the Tribunal: The Convention offers States the choice of one or more of the following means for the settlement of disputes: (a) the International Tribunal for the Law of the Sea; (b) the International Court of Justice; (c) arbitration; and (d) special arbitration. States are free to choose by means of a written declaration one or more of these procedures for the settlement of disputes concerning the interpretation or application of the Convention. This user-friendly, flexible mechanism – the embodiment of the so-called Montreux formula – is the distinctive feature of the dispute-settlement system in the Convention. It reflects the trend of modern international law with its diversity and flexibility of responses in terms of peaceful settlement of disputes tailored to meet the needs of the present international society.

¹⁹ *ITLOS Reports*, vol. 2, The *M/V "Saiga" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)* (List of cases: no. 2), Judgment of 1 July 1999, para. 155. Available on www.itlos.org/case_documents/2001/document_en_68.doc.

The Convention does not purport to establish any hierarchy among the various procedures. It lies within the power of each party to establish its own preference.

As of 2002, of the 32 States that have filed declarations under article 287 of the Convention, 18 States have chosen the Tribunal, 3 of them having specified the Tribunal as their only choice. Another 18 States have chosen the International Court of Justice, 6 of them having specified the Court as their only choice. Of the 12 States which specified both the Tribunal and the Court, 7 have not indicated any preference between the two institutions and 5 have indicated the Tribunal as their first preference. Thus, State practice as manifested in declarations does not give credence to the notion that any of these procedures enjoys a superior status.

President Amerasinghe, the first President of the Conference on the Law of the Sea, once wrote, in an oft-quoted observation, that “Dispute settlement procedures will be the pivot upon which the delicate equilibrium of the compromise must be balanced; otherwise the compromise will disintegrate rapidly and permanently”.²⁰ Among these dispute settlement procedures the International Tribunal for the Law of the Sea was designed to play a pivotal role in the resolution of disputes concerning the interpretation and application of the Convention.

It is sometimes stated that the multiplication of international tribunals may pose a real risk to the unity of international law. Whatever may be the merits of this proposition – and it is certainly not generally accepted – the Tribunal for its part has not shown any disinclination to be

²⁰ *Official Records of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.84.V.3), vol. V, document A/CONF.62/WP.9/Add.1 (31 March 1976), para. 6.

guided by the decisions of the International Court of Justice. In fact, even in this short period of six years, decisions of the Court have been cited both in judgments of the Tribunal and in the separate and dissenting opinions of members of the Tribunal. The truth must lie in the words of a former President of the Court:

“It is inevitable that other international tribunals will apply the law whose content has been influenced by the Court, and that the Court will apply the law as it may be influenced by other international tribunals.”²¹

The Tribunal has not yet fully developed its potential as the specialized judicial organ of the international community for the settlement of disputes concerning the interpretation or application of the Convention on the Law of the Sea. The last six years represent only a chapter of its earliest beginnings.

It is fitting here to recall the words of the Secretary-General at the official opening of the building of the Tribunal with respect to centrality of the Tribunal in the resolution of maritime disputes:

“It is the central forum available to States, to certain international organizations, and even to some corporations for resolving disputes about how the Convention should be interpreted and applied.”²²

²¹ Address by the President of the International Court of Justice, Judge Stephen Schwebel, to the General Assembly, 27 October 1998; *Official Records of the General Assembly, Fifty-third Session, 44th plenary meeting* (A/53/PV.44).

²² “Secretary-General hopes more and more parties will make use of International Tribunal for Law of Sea”, United Nations press release

The Tribunal continues to seek the moral and material support of States, of the United Nations and of the international community as a whole for the successful achievement of the objectives underlying its establishment.

10. Mr. Peter F. Croker, Chairman of the Commission on the Limits of the Continental Shelf

I have the honour of making the first address to the Assembly on behalf of the Commission on the Limits of the Continental Shelf (CLCS). As is known, the Commission was the third body to be set up under the framework of the Convention on the Law of the Sea and was established following an election held at the Sixth Meeting of States Parties, in March 1997. The Commission formally came into being at its first session in June 1997.

Following the adoption in 1997 of a document on its *modus operandi*²³ and of its rules of procedure²⁴ in 1998, the

SG/SM/7477 - SEA/1684 (statement, 3 July 2000, in Hamburg, Germany by Secretary-General Kofi Annan). Available on www.un.org/News/Press/docs/2000/20000703.sgsm7477.doc.html.

²³ Commission on the Limits of the Continental Shelf. *Modus operandi of the Commission*: adopted [12 Sep. 1997] by the Commission at its second session, document CLCS/L.3.

Available on ods-dds-ny.un.org/doc/UNDOC/LTD/N97/277/06/IMG/N9727706.pdf.

²⁴ *Ibid.* Rules of procedure of the Commission on the Limits of the Continental Shelf, document CLCS/3/Rev.3 and Corr.1 (6 Feb. and 22 May 2001) [initially adopted 4 Sep. 1998]. Available on www.un.org/Depts/los/clcs_new/commission_rules.htm.

Commission set about drawing up its scientific and technical guidelines,²⁵ a document that was drafted with a view to assisting coastal States in the preparation of a submission to the Commission. The work on these guidelines was detailed and intense, but was finally completed in May 1999, when the document was formally adopted at the Commission's fifth session. The preparation of that document involved the first authoritative and detailed scientific and technical interpretation of article 76 of the Convention. Two decades had passed since the time of the Third Conference, two decades during which our knowledge about the nature of continental margins had increased enormously. The guidelines rapidly achieved widespread acceptance by technical and scientific experts around the world.

Following the completion of this landmark document, the Commission turned its energy to training. Although it is not part of the Commission's mandate per se, the Commission was and is of the view that training is of paramount importance, especially to developing States, in that it makes coastal States aware of the opportunities and also the challenges posed by article 76, while at the same time transferring to the appropriate people in those same coastal States the knowledge and expertise required to actually implement article 76.

As part of this training initiative, the Commission held an open meeting in May 2000, at which a series of presentations were given by members of the Commission on the guidelines and

²⁵ Ibid. Scientific and technical guidelines of the Commission on the Limits of the Continental Shelf : Adopted by the Commission on 13 May 1999 at its 5th session, document CLCS/11 & Corr.1 & 2 & Add.1 and Add.1/Corr.1.

Available on www.un.org/Depts/los/clcs_new/commission_guidelines.htm.

on the work of the Commission, to an audience of scientific and technical experts and government officials. The Commission has also prepared a number of documents on training, including its five-day course curriculum,²⁶ which has now been used in the delivery of courses in Europe, South America and Asia. The CLCS secretariat is currently preparing detailed teaching material to supplement the curriculum, an effort that is being coordinated by two members of the Commission.

The Commission had also requested the assistance of the General Assembly in setting up a trust fund for the purpose of facilitating the preparation of submissions to the Commission by developing States, in particular the least developed countries and small island developing States. That Trust Fund was established by the General Assembly in October 2001²⁷ and to date has received significant contributions from Norway and Ireland. Already, a number of States have availed themselves of that funding.

In December 2001 the Commission received its first submission, from the Russian Federation. That submission was examined initially by the Commission as a whole at its tenth session, in March 2002, and was subsequently examined in detail by a subcommission working from April to June 2002.

²⁶ Ibid. Outline for 5-day training course for delineation of the outer limits of the continental shelf beyond 200 nautical miles and for preparation of a submission of a coastal State to the Commission on the Limits of the Continental Shelf: adopted by the Commission at its 8th session on 1 September 2000, document CLCS/24 & Corr.1. Available on www.un.org/Depts/los/clcs_new/commission_documents.htm.

²⁷ Trust Fund for the purpose of facilitating the preparation of submissions to the Commission on the Limits of the Continental Shelf for developing States, established under General Assembly resolution 55/7 of 30 October 2000.

In the meantime, the second election of CLCS members took place at the Twelfth Meeting of States Parties to the Convention, in April 2002. I should like to take this opportunity to acknowledge the work of the first Commission and its Chairman, Yuri Kazmin. The new membership, with many re-elected members, met in June 2002 and, after consideration and some amendment of the recommendations put before it by the subcommission, the recommendations on the submission made by the Russian Federation were formally adopted. Following the procedure prescribed in the Convention, the recommendations were then forwarded by the secretariat to the Russian Federation and to the Secretary-General of the United Nations.

A summary of our recommendations on the Russian submission is contained in the report of the Secretary-General on oceans and the law of the sea.²⁸ There is something of a clamour now going on among some of the world's scientists who are eager to examine our recommendations to the Russian Federation in detail. However, the Commission's role is clearly stated in the Convention. It is to submit the recommendations in writing to the coastal State which made the submission and to the Secretary-General of the United Nations. There appears to be no mechanism for promulgation of the detailed recommendations from the Commission to any other body.

The number of coastal States with an extended continental shelf beyond 200 nautical miles appears to be somewhere between 30 and 60. I urge coastal States to make their submission to us as soon as possible. Remember that there

²⁸ Oceans and the law of the sea: Report of the Secretary-General, document A/57/57 and Add.1 (7 Mar. and 8 Oct. 2002), paras. 55-58. Available in www.un.org/Depts/los/general_assembly/general_assembly_reports.htm.

is a 10-year deadline within which States have to make their submission. The Commission has taken note of the decision made by the Eleventh Meeting of States Parties, in May 2001, regarding the date of commencement of the 10-year period for certain coastal States.²⁹ Coastal States should be setting aside, if they have not done so already, the necessary funds to carry out the task of delineating the outer limits of their continental shelves in a proper scientific and technical manner, according to the requirements of the Convention, since that process can have substantial costs attached.

It is important to remember also that the Commission is available to provide scientific and technical advice to all coastal States engaged in the delineation process. States may request advice from up to a maximum of three members of the Commission. Such requests should be made to the Commission via the CLCS secretariat in the Division for Ocean Affairs and the Law of the Sea. Somewhat to our surprise, no States have yet availed themselves of this option.

I have already mentioned the Trust Fund that the Secretary-General has established, according to the Assembly's decision. This Trust Fund is now available to assist developing States, particularly least developed countries and small island developing States, to prepare submissions to the Commission.

²⁹ Eleventh Meeting of States Parties to the United Nations Convention on the Law of the Sea. Decision regarding the date of commencement of the 10-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea, document SPLOS/72 (29 May 2001).

Available on ods-dds-ny.un.org/doc/UNDOC/GEN/N01/387/64/PDF/N0138764.pdf.

I should also like to welcome the proposal to expand the Global Resource Information Database to store and handle research data from the outer continental margin, with a view to serving the needs of coastal States in their compliance with article 76.

Finally, I should like to take this opportunity to thank our secretariat, particularly our Secretary, Mr. Alexei Zinchenko, and all the wonderful staff of the Division for Ocean Affairs, under their Director, Mrs. Annick de Marffy. They have provided us with excellent technical facilities and support, which were so important in enabling us to deal efficiently and effectively with our first submission.

III. INFORMAL PANELS HELD IN PARALLEL ON “THE DYNAMISM OF THE CONVENTION: CHALLENGES FOR THE PRESENT AND SOLUTIONS FOR THE FUTURE”

1. Panel 1

Moderator: Ambassador Cristián Maquieira (*Chile*)

Panellists: Mr. Nii A. Odunton (*International Seabed Authority*),
Mr. Rolf Fife (*Norway*), Professor Shabtai Rosenne (*Israel*)

A. Presentations

(i) *The International Seabed Authority: An institution to manage the “common heritage of mankind”*

*Mr. Nii Allotey Odunton, Deputy to the Secretary-General, International
Seabed Authority*

The International Seabed Authority has been given a mandate to administer the mineral resources of the deep seabed on behalf of the international community. These resources have been declared the common heritage of mankind, with the royalties deriving from their development to be distributed by the Authority to mankind as a whole.

Throughout the deliberations of the Third United Nations Conference on the Law of the Sea, the only marine mineral resources that were known to occur in the international Area

were polymetallic nodules. Polymetallic nodules had been found to contain copper, nickel, cobalt and manganese in grades that rivaled ore deposits of the same metals on land. Part XI of the Convention outlines the regime that was negotiated during the Conference to govern the exploration and exploitation of these resources. The regime included, inter alia:

- Provisions to enable the Enterprise – the operating arm of the Authority – to operate effectively;
- Provisions on transfer of technology to ensure that the Enterprise would have access to the required technology even if it was not available on the open market;
- Provisions to limit production from deep seabed polymetallic nodules based on 15 years of historical data on nickel consumption, thereby integrating deep seabed mineral production into the international metal market in an effort to minimize adverse effects on the economies of land-based producer countries;
- Detailed taxation schemes for exploration and/or exploitation of polymetallic nodules, consisting of payments to be made both before the start of exploration and after exploitation began, provided that the Authority established a system of compensation or took other measures of economic adjustment assistance for developing land-based producer States whose economies might suffer serious adverse effects as a result of deep seabed polymetallic nodule mining. However, the Convention did not provide any method for financing such a system or a basis on which any compensation was to be calculated.

Since the end of the Conference, three major events have taken place in relation to administering the mineral resources of the deep seabed, particularly polymetallic nodules: the negotiation and entry into force of the 1994 Implementation Agreement, which sought to introduce a market-oriented approach to the regime; adoption by the Council and the Assembly of the Authority on 13 July 2000 of an exploration code for deep-seabed polymetallic nodules in the Area,¹ and the signing of seven contracts governing exploration for these resources in the Area.

The Authority was established following the entry into force in 1994 of the Convention and the Agreement. At the outset, the most significant task of the Authority was to devise an exploration code for polymetallic nodules in the Area. It was decided that this code would be restricted to exploration because, even now, the viability of seabed mining has yet to be proven. Put another way, no company has been able to mine deep seabed polymetallic nodules for a period long enough to demonstrate the profitability of such mining operations. As a result, the taxation schemes agreed to in the Convention have no basis in reality and would, if incorporated in an exploitation code, represent a speculative set of norms.

As is well known, the metals that are the objects of polymetallic nodule mining are the manganese, nickel, copper and cobalt in the nodules. For the past 10 years the markets for all these metals have been in a depressed state, so much so that, from the Authority's perspective, it seems quite unlikely that deep seabed mining of polymetallic nodules will take place in the immediate future.

¹ Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. International Seabed Authority document ISBA/6/A/18.

In the meantime, the Authority has focused on a number of other areas of concern and opportunity. These include the protection and preservation of the marine environment from the impacts of nodule mining, increased knowledge of the circumstances of mineral deposition in the Area, and new information on mineral resources of the Area that were not the subject of discussions during the Third United Nations Conference on the Law of the Sea. On the latter issue, the Authority is studying seafloor polymetallic sulphides and cobalt-rich ferro-manganese crusts in the Area, following a request by a member of the Authority that it adopt rules, regulations and procedures for prospecting and exploration for these deposits. Moreover, the Authority is aware of the need to seek the assistance of marine scientific research organizations worldwide to collaborate in addressing a number of issues that must be examined if it is to effectively carry out its mandate of administering the resources of the Area in an environmentally sustainable manner.

Protection and preservation of the marine environment from adverse effects of exploration and exploitation of deep-seabed polymetallic nodules

In much of its work, right from the outset, the Authority has taken advantage of the results of marine scientific research. For example, with regard to the protection and preservation of the marine environment from any adverse effects of deep seabed mining of polymetallic nodules, a key element of the Authority's environmental monitoring programme has been the establishment of environmental baselines by contractors. Regulation 31, paragraph 4, of the exploration code requires contractors to gather environmental baseline data, to establish environmental baselines against which to assess the likely effects of their exploration activities on the marine environment, and to establish a programme to monitor and report on such effects. In

accordance with paragraph 2 (e) of article 165 of the Convention, the Authority convened a workshop of recognized experts in this field.

The results of this workshop,² held at Sanya, China, were forwarded to the Authority's Legal and Technical Commission (LTC), which carefully examined them and then incorporated them into a set of recommendations on guidelines that contractors are encouraged to follow in establishing environmental baselines.³

Arising from this workshop was the realization that, for the most part, there was very little standardization in the work undertaken by contractors. Examples of this abound and include the following:

- (i) A German researcher collecting animal specimens uses only a fifth of his sediment core from the deep ocean bottom before learning that his counts will not be statistically valid unless he uses all 2500 square centimetres of the core.
- (ii) An Indian scientist wishing to compare results on bottom-sediment density in the Indian and Pacific oceans learns that he cannot because his Japanese counterparts in the Pacific have used

² *Deep Seabed Polymetallic Nodule Exploration: Development of Environmental Guidelines*. Proceedings of the International Seabed Authority's workshop held in Sanya, Hainan Island, People's Republic of China, 1- 5 June 1998. International Seabed Authority, publication ISA/99/02.

³ Recommendations for the guidance of the contractors for the assessment of the possible environmental impacts arising from exploration for polymetallic nodules in the Area: issued by the Legal and Technical Commission. International Seabed Authority, document ISBA/7/LTC/1/Rev.1 (13 Feb. 2002).

different methods to take their measurements. One group removed the air from the sample before testing, while the other did not.

- (iii) A United States biologist who has identified a number of deep-sea worms from a Pacific site and wants to compare them with similar animals gathered at a second site has no way of matching them unless he works alongside another scientist residing elsewhere who has used different criteria to classify the second collection. As a result, he cannot immediately know whether the species he has collected also inhabit the second location or whether their range is more restricted.

Recognizing the need for standardization of the environmental data and information required, both to establish baselines and to enable the Authority to secure effective protection of the marine environment from the harmful effects directly resulting from activities in the Area, the Authority convened a workshop on this subject in June 2001.⁴

Regulation 31, paragraph 7, requires that when a contractor applies for exploitation rights, it shall propose areas to be set aside and used exclusively as impact reference zones and preservation reference zones. “Impact reference zones” are areas to be used for assessing the environmental effect of each contractor’s activities in the Area and which are representative

⁴ *Standardization of environmental data and information: Development of guidelines*. Proceedings of the 2001 International Seabed Authority workshop held in Kingston, Jamaica, 25-29 June 2001. International Seabed Authority, publication ISA/02/02.

of the environmental characteristics of the mine site. “Preservation reference zones” are areas in which no mining shall occur, to ensure representative and stable biota of the seabed in order to assess any changes in the flora and fauna of the marine environment.

At the Sanya workshop, it was noted that the greatest threat to the marine environment from polymetallic nodule mining would be the potential extinction of faunal species living in and around nodule deposits. It was also noted that, while deep-sea sediments appear to be major reservoirs of biodiversity – by some estimates harbouring 10-100 million species of worms, crustaceans and mollusks⁵ – these estimates remain extremely controversial because truly vast regions of the deep sea are very poorly sampled, taxonomic expertise required to identify and describe deep-sea species is dwindling rapidly, and modern molecular techniques have not been applied to most deep-sea animal groups. From the viewpoint of the Authority, such information is crucial, particularly as it seeks to secure effective protection of the marine environment from the effects of polymetallic nodule mining through the establishment of impact reference zones and preservation reference zones prior to exploitation. At the same time, it is virtually impossible to evaluate the threat of nodule mining to biodiversity – in particular, the likelihood of species extinctions – without knowledge of:

- (i) The number of species residing within areas that will be affected by mining operations, and

⁵ J.F. Grassle and, N.J. Maciolek (1992), Deep-sea species richness: Regional and local diversity estimates from quantitative bottom samples, *The American Naturalist*, vol. 139 (2), pp. 313-341.

- (ii) The typical geographic ranges of species and rates of gene flow within the general nodule province.

The enormity of the work involved in addressing these questions and the fact that such work is not an obligation of contractors led the Authority to convene its most recent workshop, on the subject of “Collaboration in marine scientific research for the purpose of gaining a better understanding of the deep-sea environment”. A number of possible collaborative topics were identified by the independent scientists and the scientists from contractors who participated in this workshop. Collaborative projects were proposed for the purpose of advancing knowledge of biodiversity in the nodule provinces, species ranges and rates of gene flow in nodule areas, burial sensitivity of deep-sea animals and their response to the type of disturbance caused when nodules are scraped from the sea floor, the impact of mining on the ocean layers above a mine site caused by unwanted materials from a mining operation, and natural variability in deep-ocean ecosystems over space and time.

A follow-up meeting was convened by the Authority last month, bringing together interested parties who had spoken about the possibility of collaboration on a number of the identified topics. The focus of this meeting was on collaboration for the purpose of advancing knowledge about the biodiversity, species ranges and rates of gene flow in the Clarion-Clipperton Fracture Zone of the deep seabed in the Equatorial Pacific Ocean. Potential collaborators at the meeting decided on the steps that needed to be taken, the contributions of each collaborator and when the project(s) would be undertaken. The groups consisted of independent scientists and scientists from contractors. I am happy to announce that agreement was reached for collaborative research on the taxonomy of nematodes, polychaetes and foraminiferans in the Central Pacific Ocean through ship time and traineeship exchanges between

contractors and collaborators at the British Antarctic Survey, the University of Hawaii and the Natural History Museum.⁶ There was further agreement on a workshop on intercalibration of sampling protocols for nematodes and polychaetes.

Polymetallic nodules in the Area

The environment is only one part of our work. Indeed, the engine of the work of the Authority is the development of the mineral resources of the Area. One of the Authority's mandates is to assess the results of prospecting and exploration for polymetallic nodules. In this regard, we have undertaken an assessment of the metal resources of the polymetallic nodules in the areas reserved for exploration and exploitation by the Enterprise. The results indicate vast resources of nickel, copper, cobalt and manganese in these areas. These numbers will become significant, however, only when the resources can be mined at a profit. The Authority expects to publish this report next year. To improve the quality of resource assessments of polymetallic nodules in the Clarion-Clipperton Zone (CCZ), which is the seabed area with the richest known nodule deposits in terms of both grade and abundance, the Authority will convene next year a workshop on the establishment of a geologic/prospecting model of polymetallic nodules in this area. In addition to enhancing the quality of resource assessments for deposits in this area, the model is expected to help prospectors and future explorers, as well as assist the Authority to perform its task of

⁶ Polychaetes, nematodes and foraminiferans were chosen because: polychaete worms dominate the abyssal macrofauna, constituting 60-75 per cent of macrofaunal abundance and species richness; nematode worms make up the bulk of the meiofauna and may be the most abundant and species rich multicellular animals in deep-sea sediments, and foraminiferans are the most abundant protozoans in deep-sea sediments.

administering the Area. It is to be noted that six out of the seven contractors have their exploration areas in the CCZ.

In undertaking the resource assessments, the issue of standardization of geologic information and data by the contractors again reared its head. It may be recalled that during the Third Conference, the present contractors for polymetallic nodule exploration were referred to as “pioneer investors”. However, in the pioneering work that they undertook no standards for data collection had been agreed upon, and each pioneer collected whatever information and data it required without consulting any other pioneer. A serious problem facing the Authority, therefore, was the comparability of information and data. To address this problem, the Authority has convened meetings with the contractors, and it is expected that the workshop on the geologic/prospecting model will suggest ways to get around this problem.

In addition to the deep seabed polymetallic nodules that have been the focus of interest during the past three decades, other types of marine mineral deposits such as polymetallic sulphides and ferro-manganese crusts have recently drawn the attention of scientists and prospectors. In that regard, based upon a request by the Russian Federation, the Authority is in the process of considering rules, regulations and procedures for prospecting and exploration for deep seabed polymetallic sulphides and ferro-manganese crusts. The process has been catalyzed by another of the Authority’s workshops. In this instance, participants in the workshop included marine geologists, prospectors and potential explorers who were able to exchange views, information and data, and provide the Authority with information on the state of scientific knowledge of these deposits and work that would be undertaken during prospecting and exploration for them. In addition, the workshop

was provided with, inter alia, reports on the metallogenesis of marine minerals and methane hydrate deposits of the Area.

Finally, the Authority has started work on the establishment of a central data repository on marine minerals that encompasses polymetallic nodules as well as polymetallic sulphides and ferro-manganese crusts. We have established a central data repository for these mineral resources that is Web-enabled. The Authority wishes to encourage anyone who is collecting such information or conducting resource assessments of such mineral deposits to visit this site.⁷

Although it appears that polymetallic nodule mining is not about to occur in the immediate future, the Authority's mandate to assess prospecting and exploration data enables it to provide the international community with information on the mineral resources of the deep seabed and the environment in which they occur. During one of our workshops, in a discussion of offshore oil and gas, an expert from Norway informed us about a database that had been established under the Norwegian Directorate for Petroleum. The significance of this database was that people were interested in contributing data and being part of a much bigger picture of delineating resources and reserves of petroleum in this province. From the perspective of the Seabed Authority and its work related to mineral resources, this is one of the areas in which we would like to encourage the international community to participate.

⁷ Available on http://www.cdr.isa.org/jm/servlet/page?_pageid=326,328&_dad=portal30&_schema=PORTAL30

(ii) ***The limits in the seas: The need to establish secure maritime boundaries; Some thoughts on the contributions of earth scientists to legal determinacy with regard to the extent of the continental shelf beyond 200 miles***

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“Universal Nature’s task is to shuffle, transpose, interchange, remove from one state and transfer to another. Everywhere there is change; and yet we need fear nothing unexpected, for all things are ruled by age-long wont, and even the manner of apportioning them does not vary.”

Marcus Aurelius (AD 121-180)⁸

Introduction

These reflections of the Roman emperor and philosopher Marcus Aurelius could serve as a prophetic illustration of the relationship between modern scientific insights into the dynamic nature of the surface of the Earth and the “stability and finality” of boundaries striven for in international law.⁹

The scientific world witnessed in the 1960s a major breakthrough in understanding the geology of the Earth. New

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⁸ *Meditations*, book VIII, para. 6 (transl. Maxwell Staniforth, 1964), The Folio Society, London (2002), p. 108.

⁹ See *Temple of Preah Vihear* case (Cambodia v. Thailand), Merits, Judgment 15 June 1962, *I.C.J. Reports (1962)* (Sales no. 260), p. 6 at 34.

insights into the slow motions of plates on the surface of the Earth, the spreading of ocean floors and the formation of continental margins, provided conceptual tools for the legal determination of the seaward limits of the continental shelf beyond 200 miles. New technologies provided practical instruments which enabled a subsequent implementation. During the Third United Nations Conference of the Law of the Sea (1973-1982) geologists and geophysicists made decisive contributions to the negotiations. These resulted in article 76 of the 1982 United Nations Convention on the Law of the Sea, containing arguably the most complex provisions of the Convention, and its Annex II.¹⁰ Moreover, scientists and technical experts have been given the key role in the implementation of the new rules, both in the national establishment of limits and through international advice and control by the Commission on the Limits of the Continental Shelf.

The Convention provides the modern comprehensive legal framework for the peaceful uses of the seas. It reflects an ambition to make “an important contribution to the maintenance of peace, justice and progress for all peoples of the world”.¹¹ The clarification of principles and rules governing the establishment of limits of national jurisdiction is one of the building-blocks of international peace and security and sustainable development of the seas. The twentieth anniversary of the Convention provides an opportunity to take stock of advances made to fulfil the Convention’s ambitions.

¹⁰Article 76, Definition of the continental shelf; Annex II, Commission on the Limits of the Continental Shelf.

¹¹ As stated in the Convention’s first preambular paragraph.

The outer limits of the continental shelf beyond 200 miles represent the “last frontier” of coastal State jurisdiction. In this regard, the Convention makes a decisive contribution to clarity and determinacy. It is tempting to recall the days when, in the words of Keith Highet and in another context, the International Court of Justice “was submerged beneath vast quantities of written material on tectonic plate theory, continental drift, rifting, uplifting, subsidence, horsts and grabens”, without guidance on which factors should be given legal relevance.¹² In contrast, the Convention sets out the legal framework for how to proceed when establishing the outer limits of the continental shelf. To this end, it provides a comprehensive “road map” with objective criteria, complete with a detailed and authoritative procedural mechanism for international advice and control.

Yet, this forces the international lawyer to wrestle with certain concepts developed by the earth sciences. The following passages will attempt to give a schematic account of contributions of physical scientists to this end. More than anything, this is a narrative of a layman’s journey of discovery into article 76 of the Convention. But first, let us briefly retrace the background of the effort to achieve increased legal determinacy with regard to the extent of the continental shelf.

¹² Keith Highet, Whatever became of natural prolongation?, in *Rights to Oceanic Resources: Deciding and Drawing Maritime Boundaries* (Dorinda G. Dallmeyer and Louis DeVorsey Jr., eds., 1989), p. 87 at 88, as noted by David A. Colson, The Delimitation of the Outer Continental Shelf Between Neighboring States, *American Journal of International Law*, vol. 97 (1) (Jan. 2003), p. 91 at 102.

The objectives of stability and finality for limits and boundaries in the seas

The objectives of stability and finality of boundaries have consistently been viewed as paramount in international law.¹³ This is reflected in the basic requirement of territorial integrity in the Charter of the United Nations and the permanence of territorial frontiers in State succession, including acceptance of inherited colonial boundaries by newly independent States after decolonization, as expressed in the principle of *uti possidetis juris*.¹⁴ More generally, fundamental changes of circumstances, or the *clausula rebus sic stantibus*, may not be invoked as a ground for terminating or withdrawing from a treaty establishing a boundary.¹⁵

¹³ See Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford University Press, New York, 1994), pp. 122-123; Marcelo G. Kohen, L'influence du temps sur les règlements territoriaux, in *Le droit international et le temps*. Colloque de Paris 2000, Société française pour le droit international (Paris, A. Pedone, 2001), p. 131; Georges Abi-Saab, La pérennité des frontières en droit international, *Relations internationales*, no. 64 (1990), pp. 341-349 at 345-346; Daniel Bardonnnet, Les frontières terrestres et la relativité de leur tracé (Problèmes juridiques choisis), *Recueil des cours de l'Académie de droit international de La Haye*, vol. 153 (1976) V, pp. 9-166.

¹⁴ In the *Frontier Dispute* case (Burkina Faso v. Republic of Mali), Judgment of 22 December 1986, *I.C.J. Reports (1986)* (Sales no. 525), p. 554 at 565, para. 20, the principle of *uti possidetis juris* is described as a general principle of international law, whose "obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power". Available on www.icj-cij.org/icjwww/lcases/iHVM/ihvm_ijudgment/ihvm_ijudgment_19861222.pdf.

¹⁵ This principle of customary law is reflected in article 62, paragraph 2 (a), of the Vienna Convention on the Law of Treaties (1969).

Considerations of stability and finality also apply fully to bilateral maritime delimitation of the continental shelf. As has been noted by the International Court of Justice:

*“Whether it is a land frontier or a boundary line in the continental shelf that is in question, the process is essentially the same, and inevitably involves the same element of stability and permanence, and is subject to the rule excluding boundary agreements from fundamental change of circumstances.”*¹⁶

Seen from a similar perspective the Court, in the context of both unilateral maritime limits and bilateral boundaries, has refused to take into account the size of populations of the territories concerned or considerations of economic development, which are factors that may vary over time:

“It is clear that neither the rules determining the validity of legal entitlement to the continental shelf, nor those concerning delimitation between neighbouring countries, leave room for any considerations of economic development of the States in question. While the concept of the exclusive economic zone has, from the outset, included certain special provisions for the benefit of developing States, those provisions have not related to the extent of such areas nor to their delimitation

¹⁶ *Aegean Sea Continental Shelf* case (Greece v. Turkey), Judgment of 19 December 1978 – Jurisdiction of the Court, *I.C.J. Reports (1978)* (Sales no. 440), p. 3 at 35-36, para. 85. Available on www.icj-cij.org/icjwww/icas/igt/igt_ijudgment/igt_ijudgment_19781219.pdf.

between neighbouring States, but merely to the exploitation of their resources.”¹⁷

The Court reminded us in another case that:

“... the attribution of maritime areas to the territory of a State, which, by its nature, is destined to be permanent, is a legal process based solely on the possession by the territory concerned of a coastline.”¹⁸

Jurisdictional clarity as regards the extent of the continental shelf promotes international stability. Moreover, it is vital for long-term national investment and economic development. Offshore investments on the continental shelf are by nature long-term. They involve financially high-risk exploration activities and technology-intensive production. They must meet a number of national standards and requirements for purposes of taxation, environmental protection, labour protection and the like, which in turn presuppose administrative controls and law enforcement.

If development is to a significant extent dependent on investments, investment climates are likewise highly dependent on predictability. A key factor for predictability is knowing which national jurisdiction applies. Such clarity is a precondition

¹⁷ *Continental Shelf* (Libyan Arab Jamahiriya/Malta) case, Judgment of 3 June 1985, *I.C.J. Reports (1985)* (Sales no. 513), p. 13 at 41, para. 50. Available on www.icj-cij.org/icjwww/icas/ilm/ilm_ijudgments/ilm_ijudgment_19850603.pdf.

¹⁸ *Maritime Delimitation in the Area between Greenland and Jan Mayen* (Denmark v. Norway), Judgment of 14 June 1993, *I.C.J. Reports (1993)* (Sales no. 635), p. 38 at 74, para. 80. Available on www.icj-cij.org/icjwww/icas/igjm/igjm_ijudgments/igjm_ijudgment_19930614.pdf.

for investment on the continental shelf, and thus for development and economic growth.

The modern law of the sea, as set out in the Convention, makes major contributions to the objectives of permanence and finality with regard to both limits and boundaries at sea. It should be noted that the bilateral delimitation between areas of overlapping claims by two or more States is fundamentally different from the unilateral establishment of limits of national jurisdiction. The two operations are of a markedly different nature, and are subject to different principles and rules.¹⁹

Delimiting a boundary between neighbouring States means drawing the exact line where the extension in space of the sovereign powers and rights of a State meets those of another State.²⁰ Maritime delimitation between States with opposite or adjacent coasts shall be effected by agreement under international law.²¹ The validity of the delimitation depends therefore on such agreement. While the Convention leaves broad discretion to States to resolve such issues through negotiation or third party settlement of disputes, both negotiation and dispute settlement are served by clear normative standards. To this end, the International Court of Justice has played a key role in developing the law of maritime delimitation. As noted by the President of the Court, Gilbert Guillaume, it has now “reached a new level of unity and certainty, whilst

¹⁹ See Combacau’s analysis in Jean Combacau and Serge Sur, *Droit international public*, 2nd ed. (Montchrestien, Paris, 1995), p. 424; Jean-François Dobelle in *Leçons de droit international public* (Marc Perrin de Brichambaut, Jean-François Dobelle and Marie-Reine d’Haussy, eds.) (Presses de Sciences Po et Dalloz, Paris, 2002), pp. 452-453.

²⁰ *Aegean Sea* Judgment, p. 35, para. 85.

²¹ Articles 15, 74 and 83 of the Convention.

conserving the necessary flexibility”.²² As unanimously noted in the 2002 Judgment in the case between Cameroon and Nigeria, the Court has on various occasions made it clear what the applicable criteria, principles and rules of delimitation are when a line covering several zones of coincident jurisdiction is to be determined.²³ The method involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an “equitable result”. Through the jurisprudence, applicable treaty rules, including articles 74 and 83 of the Convention, have been substantially clarified, thus consolidating the law governing maritime delimitation.²⁴

²² See statement by the President of the International Court of Justice, Judge Gilbert Guillaume, on 31 October 2001 to the Sixth Committee of the United Nations General Assembly; *Official Records of the General Assembly, Fifty-sixth session, Sixth Committee*, 12th meeting [summary record], 31 October 2001 (A/C.6/56/SR.12).. These observations were included in Gilbert Guillaume, *La Cour internationale de Justice et le droit de la mer*, in *La Cour internationale de Justice à l'aube du XXI^{ème} siècle: Le regard d'un juge* (A. Pedone, Paris, 2003), pp. 287-301.

²³ See *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, International Court of Justice, Judgment of 10 October 2002, para. 288 ff; available on www.icj-cij.org/icjwww/idocket/icn/icnjudgment/icn_judgment_20021010.PDF. See also *Jan Mayen* case, p. 61 para. 51, and the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar v. Bahrain), Judgment 16 March 2001 – Merits, *I.C.J. Reports (2001)* (Sales no. 820), para. 230; available on www.icj-cij.org/icjwww/idocket/iqb/iqbframe.htm. On the jurisprudence of maritime delimitations, see the comprehensive reference work of Barbara Kwiatkowska, *Decisions of the World Court Relevant to the UN Convention on the Law of the Sea: A reference guide* (Kluwer Law International, The Hague, 2002).

²⁴ Whether geological and geomorphologic characteristics will be given any relevance with regard to the bilateral delimitation of the continental shelf

On the contrary, the establishment of limits at sea is necessarily a unilateral act, because only the coastal State is competent to undertake it, while its validity with regard to other States depends upon international law.²⁵ This speaks in favour of particular requirements of clarity and determinacy with regard to the international rules concerned. The outer limits of the continental shelf will also define the international seabed Area, which is the common heritage of mankind.

The Convention clarifies that the territorial sea, the contiguous zone and the exclusive economic zone shall not extend beyond 12, 24 and 200 nautical miles, respectively, from the baselines of the coastal State.²⁶ Moreover, it also applies these objectives of finality to the establishment of the outer limits of the continental shelf beyond 200 miles, and in so doing removes uncertainties related to earlier rules. Pursuant to the Convention, the outer limits of the continental shelf established by the coastal State on the basis of recommendations by the Commission on the Limits of the Continental Shelf “shall be final and binding”.²⁷

The 1958 Geneva Convention on the Continental Shelf had defined the continental shelf as the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters “admits of the

beyond 200 miles was left open by the Libya/Malta case, p. 13, para. 39. See Colson, *op.cit.*, in particular p. 102.

²⁵ *Fisheries case* (United Kingdom v. Norway), Judgment of 18 December 1951, *I.C.J. Reports (1951)* (Sales no. 74), p. 116 at 132. Available on www.icj-cij.org/icjwww/icasess/iukn/iukn_judgment/iukn_ijudgment_19511218.PDF.

²⁶ Articles 3, 33 and 57 of the Convention.

²⁷ Article 76, paragraph 8 of the Convention.

exploitation of the natural resources of the said areas”.²⁸ A definition based on a criterion of exploitability did not foresee the rapidity of ensuing technological progress. Read in isolation from other factors of interpretation, it suggested, in fact, that the continental shelf could ultimately extend through the deep seabed to mid-ocean. If not for other reasons, this would ultimately have run totally counter to the ordinary meaning of the term continental shelf. Moreover, it would have excluded the notion of the international seabed Area as the common heritage of mankind.

The 1982 Convention, instead, is all the more specific with regard to the establishment of the outer limits of the continental shelf. It introduces a deliberate mix of legal and geological criteria in providing for a legal definition of the continental shelf. Clearly, the negotiated solution was based on a compromise package deal. Its elements did not all respond to the individual aspirations of geologists and geophysicists. However, it is this carefully balanced mix which is the linchpin of the negotiated compromise. And the criteria are to be applied on the basis of scientific and objective methods.

The provisions just mentioned set out rules and procedures intended to remove the issue of the outer limits of the continental margin from the sphere of arbitrariness, over to a considered assessment of legal and scientific criteria. At the same time, these provisions are possibly the most complex and technically difficult to understand for a lawyer.

²⁸ Article 1 of the Convention on the Continental Shelf (1958).

Earth's continuous reshuffling – What “on earth” are we talking about?

Any legal adviser, whether in government, in the private sector or in international organizations, is required to understand the reality of the environment in which he or she operates. In this case, the Convention explicitly mandates scientists and technical experts to prepare national submissions on the outer limits of the continental shelf, which are then to be assessed by other scientists and technical experts in the Commission on the Limits of the Continental Shelf. The submissions have to build on extensive scientific studies and must consist of scientific documentation demonstrating that certain criteria are met.

This may require the use of records such as multichannel seismic reflection data, digital bathymetric profiles and geoseismic depth sections. Such esoteric terms, beyond reminding us that lawyers have no monopoly of technical jargon understood only by peers, can contribute to anxieties among lawyers. To borrow from the Greek philosopher Plato, many lawyers are, in this case, like prisoners chained from birth in an underground cave. They see shadows which are a dim reflection of the reality outside. To escape the cave, a process of enlightenment may be needed. Modern science has brought new insights without requiring the “journey to the centre of the earth” envisaged by the French novelist Jules Verne.

No one has ever actually been able to drill very deep through the earth's crust. What happens a few kilometres under the surface has hitherto been invisible to the naked eye. Revolutionary methods and instruments have therefore been

necessary to analyze the inner structures of the earth and test the validity of various theories.²⁹

The scientific world witnessed a major breakthrough around 1967-68 in understanding the geology of the Earth. A paradigm shift came through the formulation of the theory of plate tectonics. The word “tectonics” comes from the ancient Greek word for “carpenter” (*tektonikon*), and describes how the surface of the Earth is modelled or built.

The outer shell of the Earth, including its continents and oceans, is called the crust. It is constantly being remodelled as a consequence of circulating flows of boiling magma at great depths. The crust is nothing but melted material that has cooled, hardened and accumulated, and is arranged in a system of large, interconnected and slowly moving plates. These dozen or so plates, floating on and travelling over the Earth’s mantle, carry the continents and the oceans. The magmatic flows in the inner Earth are the invisible carpenters modelling the continents.

Although violently attacked even in the 1970s, and while a number of questions remain unanswered today, the theory of plate tectonics laid entirely to rest the notion that continents are fixed on the Earth’s crust.³⁰

²⁹ As an example, Andrija Mohorovicic (1857-1936) identified the discontinuity between the Earth’s crust and the underlying mantle in 1910. While head of the meteorological observatory in Zagreb, in today’s Croatia, he studied the speed of waves created by earthquakes. The refraction of seismic waves at that boundary led to its designation as the “Moho”, after its discoverer.

³⁰ The author acknowledges a particular debt to Mr. Harald Brekke, member of the Commission on the Limits of the Continental Shelf, for his enlightening first aid in conveying an understanding of basic geological notions, as well as the United States Geological Survey for its very accessible information material. available on its official Internet site (www.usgs.gov). However, the author

When the Indian landmass moved northwards and collided with Asia, the mighty Himalayas and the Tibetan plateau were created. When a major plate supporting the Pacific Ocean moved east, pressed against the landmass of South America and disappeared underneath its plate, the imposing Andes Mountains were pushed up, in a process that also explains the depth of the adjacent ocean floor. The middle of the Atlantic Ocean is a laboratory of seafloor spreading, in which the ocean basin grows through the upwelling of hot material along the Mid-Atlantic Ridge.

As far back as 1620 the British philosopher Francis Bacon was struck by the remarkable resemblance between the coastal configurations of western Africa and South America, which seemed to have fitted together. The first theory of continental drift was developed around the First World War by the German meteorologist Alfred Wegener.³¹ Successive scientists suggested that all the continents had, in fact, been linked in one single land mass, called Pangea, which was surrounded by a gigantic ocean, Panthalassa.³² Pangea then broke up into two super-continent, Gondwanaland and Laurasia, which again slowly divided into continents drifting apart.³³

remains solely responsible for this presentation, including any excessive simplifications and mistakes.

³¹ Alfred Lothar Wegener (1880-1930), widely regarded as the originator of the theory of continental drift, developed his seminal ideas in *Die Entstehung der Kontinente und Ozeane* (Braunschweig, 1915); see *The Origin of Continents and Oceans*, transl. by John Biram (Dover Publications, New York, 1966).

³² These expressions are composed of Greek words, meaning respectively “all lands” and “all seas”.

³³ The names of these super-continent were coined by South African geologist Alexander L. Du Toit, a key supporter of Wegener’s theory, in *Our Wandering Continents* (1937).

Basic tenets of ground-breaking theories explaining how continents drift apart were developed between 1962 and 1968. The Americans Harry Hess³⁴ and Robert Dietz³⁵ were the key originators of the theory of seafloor spreading, and Lynn Sykes³⁶ applied new knowledge related to earthquakes to test and refine this new theory. The Britons Drummond Matthews and Frederick Vine, as well as the Canadian Lawrence Morley,³⁷ studied magnetic properties of ocean floors, applying new technologies originally developed during World War II to detect submarines. Magnetic striping of the seafloor made it possible to trace the movement of continents through time, thus confirming Hess' theory of seafloor spreading. Among many other prominent scientists, mention can also be made of the Canadian

³⁴ Harry H. Hess (1906-1969), professor of geology at Princeton University and head of its Geology Department from 1950, was widely regarded as a key originator of the theory of seafloor spreading; see his *History of Ocean Basins* (1962). He later served as Chairman (1962-1969) of the Space Science Board of the United States National Academy of Sciences.

³⁵ Robert S. Dietz (1914-1995), a geologist at the United States Coast and Geodetic Survey, coined the concept of seafloor spreading.

³⁶ Lynn R. Sykes (born 1937), seismologist (at the time of writing) at the Lamont-Doherty Earth Observatory of Columbia University, applied seismology to proving seafloor spreading; see Sykes, Bryan Isacks and Jack E. Oliver, Seismology and the new global tectonics, *Journal of Geophysical Research* (1968), vol. 73, pp. 5855-5899. He has also carried out research on nuclear test verification.

³⁷ While both were at Cambridge University, the two British geophysicists Drummond H. Matthews (1931-1997) and Frederick J. Vine (born 1939) were the first to elucidate basic magnetic properties of ocean floors. In 1963, a year after Hess' submission of his theory, they published "Magnetic anomalies over oceanic ridges", *Nature*, vol. 199 (1963), pp. 947-949. Independently, the Canadian Lawrence Morley made concurring findings.

Tuzo Wilson³⁸ and the Frenchman Xavier Le Pichon,³⁹ both of whom contributed to increased understanding of geodynamics.

Modern positioning systems have now reached such sophistication that it is possible to monitor the plate tectonic, centimetres-per-year movements of continents by geodetic measurements. Geodesy is the mathematical measurement of the earth's surface and of accurate positioning of points on its surface. Positioning of longitude and latitude is linked to a datum – that is, a co-ordinate system giving what might be called a snapshot of positions at a certain point in time. The current standard datum for positioning and navigation, the World Geodetic Datum 2000, originally developed by the United States Department of Defense, provides a common method, taking as a point of departure the crust of the earth as of 2000.

A linchpin in the legal definition of the continental shelf is the continental margin. This is the submarine continuation of the landmass of a continent, between the coast and the abyssal plain of the deep oceans. The outer edge of the continental margin marks the transition from the thick continental crust to the thin oceanic crust.⁴⁰

³⁸ J. Tuzo Wilson (1908-1993), geophysicist at the University of Toronto, coined the concept of “hotspots” when studying volcanic eruptions in the Hawaiian Islands far from plate boundaries. In so doing, he made in 1963 a crucial contribution to plate tectonic theory.

³⁹ Xavier Le Pichon (born 1937), professor of geodynamics at the Collège de France, Paris, wrote “Sea-floor spreading and continental drift”, *Journal of Geophysical Research*, vol. 73 (12) (1968), pp. 3661-3697.

⁴⁰ P.A. Symonds, O. Eldholm, J. Mascle and G. F. Moore, Characteristics of continental margins, in *Continental Shelf Limits: The Scientific and Legal Interface* (ed. Peter J. Cook and Chris M. Carleton) (Oxford University Press 2000), p. 25.

The formation of continental margins always involves two crustal plates and is decided by the way in which they move relative to each other. On this basis, it is common to distinguish three kinds of continental margins:

- (i) *Divergent margins* involve two crustal plates sliding apart. While they move away from each other, new oceanic crust and ocean basins are created in between, leaving a mid-oceanic spreading ridge in the middle. They are therefore also called constructive margins. Because they tend to have less volcanic and seismic activity, they are also referred to as passive margins. A prime example is provided by the Atlantic Ocean, explaining the term Atlantic margins. The African and Eurasian plates are retreating from the North American plate, creating at the same time a slowly spreading ridge. This Mid-Atlantic Ridge, with submarine mountain ranges, generated Iceland.⁴¹ Other examples of such margins include the East Pacific Rise, where Easter Island surfaces, and the Red Sea area, where the African and Arabian plates slowly slide apart.
- (ii) By contrast, *convergent margins* involve plates colliding in slow motion. One plate is pressed beneath, or “subducted” under, the other. This compressional mechanism leads to oceanic crust being destroyed, as opposed to the creation of new crust through seafloor spreading. Thus, these are also called destructive margins. They are prone to intense seismic activity, with the potential for deep and strong earthquakes, and are therefore also described as active margins. Since the

⁴¹ The fissure between the plates is apparent at Thingvellir, the historic venue of sessions of the world’s oldest parliament (Althing).

prime examples occur in the Pacific area, surrounded by the so-called “ring of fire”, they are often referred to as Pacific margins. Examples include the submarine Nazca plate in the Pacific Ocean pushing underneath the South American plate, which in its turn is lifted up, giving rise to the Andes Mountains. Another instance is the collision of the Arabian and Iranian plates, generating the Zagros Mountains rising in southern Iran. Collision of plates may also lead to the creation of deep submarine trenches. The most formidable of these is the well-known, deep Marianne Trench fissure, created by the collision of the Pacific and Philippine plates.

- (iii) Lastly, *transform margins* involve two plates sliding past each other along their common boundary. This causes neither the creation nor the destruction of oceanic crust. A prime example is the San Andreas Fault system in California, which separates the Pacific from the North American plates.

Determining the outer edge of the continental shelf beyond 200 miles involves in physical terms the mapping and definition of the extent of the continental margin as influenced by the factors cited above.

The solutions negotiated during the Third Law of the Sea Conference

Customary law and the exploitability criterion in the 1958 Geneva Convention provide the legal background for the negotiation process which lead to the adoption of article 76 and Annex II of the Convention. The International Court of Justice, in 1969, had confirmed that the continental shelf is the natural

prolongation of the landmass under water.⁴² Early during the Conference, agreement was reached that the continental shelf of a coastal State extends “throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines”, whichever is farther. This definition survived in paragraph 1 of article 76, and was recognized early as reflecting modern customary law.

From 1975 the main issue was how to establish the outer edge of the continental margin beyond 200 miles. The definition of the continental margin relies primarily on concepts drawn from geomorphology,⁴³ but there was disagreement on the criteria to be applied.⁴⁴

The American geologist Hollis D. Hedberg had long advocated basing the boundary purely on geology.⁴⁵ He suggested using the base of the continental slope as the critical reference

⁴² *North Sea* case, pp. 31, 47 and 53.

⁴³ Geomorphology is defined by *The Concise Oxford Dictionary* (8th ed., 1990, Clarendon Press, Oxford), p. 493, as “the study of the physical features of the surface of the earth and their relation to its geological structures”.

⁴⁴ Jean-François Pulvenis, The continental shelf definition and rules applicable to resources, in René-Jean Dupuy and Daniel Vignes (eds.), *A Handbook on the New Law of the Sea* (Martinus Nijhoff Publishers, Dordrecht, 1991), pp. 315-381 at 342 and 350.

⁴⁵ Hollis Dow Hedberg (1903-1988), American geologist (Ph.D. Stanford 1937), worked for the petroleum industry from 1926 to 1968. After an extensive period of petroleum exploration in Venezuela, he was made responsible in various capacities for all geological activities of Gulf Oil Corporation worldwide (1952-1968). He became a professor of geology at Princeton University (1959-1972, emeritus after 1972). He served as chairman of the Technical Subcommittee on Petroleum Resources of the Ocean Floor of the National Petroleum Council (1968-1973). See Georges Pardo, “Hollis Dow Hedberg”, in *Biographical Memoirs*, vol. 61 (National Academy of Sciences, 1992), pp. 214-245; available on www.nap.edu/openbook/0309047463/html/215.html.

feature,⁴⁶ as it was assumed to approximate the geological limit between oceanic and continental crust, and then to add a distance criterion.⁴⁷

Another formula was suggested in 1976 by the Irish geologist Piers Gardiner.⁴⁸ He emphasized the issue of thickness of sedimentary rocks, which are continental material, and suggested including in the margin those expanses where the sedimentary thickness is at least 1 per cent of the distance to the foot of the slope. This method ensured that structures of particular importance with regard to petroleum deposits were included in the continental shelf. It was swiftly coined the “Irish method” or “Gardiner method”.⁴⁹

⁴⁶ The idea of using the base of the slope as a fundamental criterion was presented at the 1969 annual meeting of the American Association of Petroleum Geologists in Dallas, Texas.

⁴⁷ H. D. Hedberg, The national-international jurisdictional boundary on the ocean floor, *Ocean Management*, vol. 1 (1973), pp. 83-118; Ocean boundaries for the law of the sea, *Marine Technology Society Journal*, vol. 10, no. 5 (June 1976), pp. 6-11; Relation of political boundaries on the ocean floor to the continental margin, *Virginia Journal of International Law*, vol. 17 (1976), pp. 57-75; Ocean boundaries and petroleum resources, *Science*, vol. 191 (1976), pp. 1009-1018. See Satya Nandan and Shabtai Rosenne, *United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. II (M.H. Nordquist, S.N. Nandan, S. Rosenne and N.R. Grandy, eds., 1993), pp. 878-879.

⁴⁸ Piers Richard Rochfort Gardiner (born 1940), Irish geologist, was educated at London and Dublin Universities. He worked for the Geological Survey of Ireland 1966-1992, serving as Head of the Mineral Resources Division. In 1992 he became Principal Geologist in the Department of the Marine and Natural Resources of Ireland. He was a member of the Irish delegation to the Third United Nations Conference on the Law of the Sea.

⁴⁹ The approach is clearly explained in Piers R.R.Gardiner, Reasons and methods for fixing the outer limit of the legal continental shelf beyond 200 nautical miles, *Iranian Review of International Relations*, vol. 11-12 (1978), pp. 145-170 at 158. See Nandan and Rosenne, op.cit., p. 878.

Hedberg criticized the “thickness of sediment” method as not accurate enough, as it “would inevitably lead to confusion and highly controversial boundary situations”.⁵⁰ Nevertheless, criticism was also levelled against reliance on the base of the continental shelf, since the method could lead to deeply inequitable results, and also when those results were compared to what fell within national jurisdiction according to existing international law. Moreover, difficulties linked to practical challenges and financial costs were noted in an important study commissioned by the United Nations in 1979.⁵¹

A compromise swiftly named the “Irish amendment” had been introduced in April 1976.⁵² It suggested combining, as alternative options, a modified version of the Hedberg proposal, drawing a line 60 nautical miles from the foot of the slope, with the Gardiner method, based on thickness of sediment. Building on an idea originally proposed by the United States, to have an international commission as a “watchdog” to prevent excessive coastal claims, the Irish amendment also presupposed that such a commission be given a “certification function” as well as an advisory role.⁵³

⁵⁰ Hedberg, *Ocean boundaries for the law of the sea*, op.cit., p. 8.

⁵¹ Study of implications of preparing large-scale maps for the Third United Nations Conference on the Law of the Sea, *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XI, p. 121, document A/CONF.62/C.2/L.99 (9 April 1979), paras. 25-29. See E.D. Brown, op.cit., p. 143; P.R.R. Gardiner, op.cit., pp. 162-163.

⁵² Amendment to the informal composite negotiating text (ICNT) proposed at the fourth session (1976). The full text is included in Nandan and Rosenne, op.cit., p. 852. See Pulvenis, op.cit., pp. 350-351.

⁵³ P.R.R. Gardiner, op.cit., pp. 161 and 164. For the original United States proposal for a commission, see “Draft UN Convention on the International Seabed Area”, in *Petroleum Resources under the Ocean Floor: Supplemental Report of the National Petroleum Council*, appendix D (National Petroleum

The compromise proposal contained in the “Irish amendment” gathered broad support through 1977 and 1978. However, proposals had also been put forward by the Soviet Union and supported by countries in the Group of 77, to set an overall fixed maximum distance of 300 nautical miles from the baselines. Ultimately, two alternative maximum distances, based on either distance or depth limitations, were integrated in a package deal. They set maximum limitations of 350 nautical miles measured from the baselines, or 100 miles from the 2,500-metre isobath, i.e. the contour line following that particular depth. The totality of this package, negotiated in 1979, was swiftly dubbed the “biscuit”.⁵⁴

This constituted the basic negotiating background for the complex set of provisions which emerged in article 76 of the Convention:

“Article 76

Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles

Council, Washington D.C., March 1971), p. 38. Further detailed proposals for a commission were circulated by Canada at the 1976 session.

⁵⁴ The “biscuit” package was included in article 76 of the ICNT in 1979 (A/CONF.62/WP.10/Rev.1). See Bernard H. Oxman, The Third United Nations Conference on the Law of the Sea: The eighth session (1979), *American Journal of International Law*, vol. 74 (1980), pp. 19-22 at 20, n. 66; D.P. O’Connell, *The International Law of the Sea* (ed. I.A. Shearer) (Oxford University Press), vol. I (1982), p. 496.

from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

- (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
- (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than

60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a) (i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.”

Particular rules apply with regard to the complex issue of submarine ridges. Article 76, paragraph 3, specifies that the continental margin excludes oceanic ridges of the deep ocean floor. With regard to such ridges, the outer limits of the continental shelf are to be set at 200 nautical miles.⁵⁵ According to paragraphs 5 and 6 of article 76, submarine elevations that are

⁵⁵ “It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.”

natural components of the continental margin are considered part of the continental shelf up to a maximum distance of either 350 miles from the coastal baselines or 100 miles from the 2,500-metre isobath, whichever is farthest. However, in the case of submarine ridges which are not natural components of the continental margin the maximum of 350 nautical miles applies.⁵⁶ A concrete assessment of these issues requires caution and considered judgement.

A specific exception to the general rules set out in paragraph 4 of article 76, i.e. the modified Hedberg and Gardiner methods, has to do with the particular effects of this method if applied off the coast of Sri Lanka. Because of geological particularities in the Bay of Bengal, the foot of the slope is extremely close to the coast, while a broad continental rise extends beyond, thus excluding a large part of the margin from Sri Lanka's continental shelf. An exception is therefore made, by setting a particular outer limit where the thickness of sedimentary rock is not less than 1000 metres. This is done in the form of a Statement of Understanding Concerning a Specific Method to Be Used in Establishing the Outer Edge of the Continental Shelf, attached to the Convention.⁵⁷

An issue that calls for the utmost restraint by the Commission is the situation in which areas of one coastal State's continental shelf beyond 200 miles overlap areas that are or may be claimed by other States. The relationship to bilateral delimitation is explicitly dealt with by the Convention, notably in article 76, paragraph 10, which prevents the Commission from

⁵⁶ See Edward Duncan Brown, *The International Law of the Sea*, vol. I (Dartmouth, 1994), pp. 143-144, including references cited therein.

⁵⁷ Annex II of the Final Act of the Third United Nations Conference on the Law of the Sea; available on www.un.org/Depts/los/convention_agreements/texts/final_act_eng.pdf. See Pulvenis, op.cit., p. 356.

considering a submission unless there is prior consent by the other party.⁵⁸

Concluding observations

The Convention evens out some basic inequities of nature. Irrespective of geomorphology, i.e. what the seabed actually looks like, every coastal State is in principle entitled to a continental shelf of 200 nautical miles, which would then coincide with the exclusive economic zone (EEZ). This is the famous “fits all” legal definition of the shelf.

Secondly, in cases where the continental shelf geologically extends beyond 200 miles, a largely geomorphological analysis is triggered. At the same time, the negotiated compromise rule in article 76 of the Convention removes the extent of the continental shelf from a purely geological or geomorphologic definition. Instead, this has aptly been described as a “legal outer edge”,⁵⁹ albeit, one should add, through the application of scientific criteria.

At the risk of over-simplifying, here is a bird’s eye view of the basic questions that must be asked before submitting information to the Commission on the Limits of the Continental Shelf:

1. Is the outer limit of the continental shelf at a distance of more than 200 nautical miles from the baselines?
If no, the shelf extends to 200 miles. If yes, then:

⁵⁸ “The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.”

⁵⁹ E.D. Brown, op.cit., p. 142.

2. The foot of the continental slope must be determined.

3. Next the distance from the foot of the slope must be determined, by either of two methods:

(i) sedimentary thickness (the Gardiner method), or

(ii) A 60-mile distance from the foot of the slope (modified Hedberg method).

4. Then there is a subsequent test, which may lead to correction in light of distance and depth criteria. This requires checking whether the outer limit is within either 350 miles from the baselines or, alternatively, 100 miles from the 2,500 metre isobath (depth), whichever is farther from the coast. Special rules apply to submarine ridges.

5. Straight lines not exceeding 60 miles connecting fixed points then delineate the outer limits.

6. Recommendations of the Commission are required in order to establish final and binding limits.

The 21-member Commission has already made huge strides. It has adopted rules of procedure, scientific and technical guidelines, and other instruments providing guidance on the preparation of submissions, including basic flowcharts, which are all available on the Internet.⁶⁰ It has started the consideration of the first submission, that of the Russian Federation.⁶¹

⁶⁰ The Commission's documents are available on www.un.org/Depts/los/clcs_new/clcs_home.htm. On the activities of the Commission, see Annick de Marffy Mantuano, *La fixation des dernières limites maritimes: Le rôle de la Commission des limites du plateau continental*, in *La mer et son droit*:

Article 4 of Annex II of the Convention establishes a 10-year time limit for submissions. The Eleventh Meeting of States Parties to the Convention decided that the 10-year period shall be considered to have commenced on 13 May 1999. At the same time, the Meeting decided to keep under review the general issue of the ability of States, particularly developing States, to fulfil the requirements of article 4 of Annex II.

Also in recognition of particular difficulties that may be encountered by some developing States, especially the least developed countries and small island developing States, two important recommendations were made by the Tenth Meeting of States Parties, in May 2000. At its 55th session in October 2001, the General Assembly endorsed these recommendations by requesting the Secretary-General to establish two voluntary trust funds in relation to article 76 implementation. The first is to enable the participation of Commission members from developing countries in the meetings of the Commission by defraying costs of participation. The other is to assist developing States to prepare submissions to the Commission.⁶² Norway has

Mélanges offerts à Laurent Lucchini et Jean-Pierre Quéneudec (A. Pedone, Paris, 2003), pp. 399-419.

⁶¹ See the map included in the presentation made on 25 September 2002 by Alexei Zinchenko, Secretary of the Commission on the Limits of the Continental Shelf, "Setting the limits in the oceans: The purpose and role of the Commission on the Limits of the Continental Shelf", DOALOS/UNITAR briefing on developments in ocean affairs and the law of the sea 20 years after the conclusion of the United Nations Convention on the Law of the Sea; available on [www.un.org/Depts/los/convention_agreements /convention_20 years /presentationazunitardoalos.htm](http://www.un.org/Depts/los/convention_agreements /convention_20_years /presentationazunitardoalos.htm).

⁶² See Decision regarding the establishment of a voluntary trust fund for the purpose of the Commission on the Limits of the Continental Shelf, document SPLOS/58 (6 June 2000); Decision regarding the establishment of a voluntary trust fund or funds for the purpose of facilitating compliance under article 76 of the United Nations Convention on the Law of the Sea, document SPLOS/59 (6

made contributions to both, and was the first to provide a donation to the latter, amounting to \$1million.⁶³

Applying the procedures described in article 76 of the Convention is an indisputable contribution to stability and legal determinacy. The imprecise and arbitrary legal definition of the continental shelf based on the “exploitability” criterion in the 1958 Geneva Convention on the Continental Shelf has been replaced in the 1982 Convention by a new legal, rather than strictly geological, definition of the shelf.

Because it was not built on a purely geological definition, this solution was at first criticized by some members of the scientific community.⁶⁴ In spite of his own major contributions, even the prominent geologist Hollis D. Hedberg became a critic of the compromise achieved in article 76.⁶⁵

June 2000);and General Assembly resolution 55/7 of 30 October 2000. For details on the status of the Trust Fund for the purpose of facilitating the preparation of submissions to the Commission on the Limits of the Continental Shelf for developing States, see the 2002 report of the Secretary-General on oceans and the law of the sea, A/57/57, paras. 62-70, and A/57/57/Add.1, paras. 46-50.

⁶³ Statement by Norway to the General Assembly under agenda item 25 on Oceans and the law of the Sea, *Official Records of the General Assembly, Fifty-seventh Session*, 71st plenary meeting (A/57/PV.71, 10 December 2002), pp. 20-23. Available on ods-dds-ny.un.org/doc/UNDOC/GEN/N02/729/16/PDF/N0272916.pdf.

⁶⁴ See, inter alia, R.D. Hodgson and R.W. Smith, The informal single negotiating text (Committee II): A geographical perspective, in *Ocean Development and International Law Journal*, vol. 3 (1976), pp. 225-259.

⁶⁵ G. Pardo, op.cit., p. 229. H.D. Hedberg, Ocean floor boundaries, *Science*, vol. 204 (1979), pp. 135-144; Deep-water petroleum prospects of the oceans and seas, *Oceanus*, vol. 26 (1983), pp. 9-16; A critique of boundary provisions in the law of the sea, *Ocean Development and International Law*, vol. 12 (1983), pp. 337-342.

However, the formula chosen in article 76 of the Convention has been widely perceived as containing a balanced mix of precise criteria. It commands broad support and legitimacy. It has undoubtedly laid the ground for predictability, finality and permanence of the outer limits of the continental shelf.

The international legal order has seen momentous developments since the Dutch lawyer Cornelius Van Byndershoek in 1703 advocated a uniform rule for all coasts, referring to the gunshot rule for the territorial sea, and criticizing the stand that “power decides possession”.⁶⁶ Earth scientists have made decisive contributions to legal determinacy with regard to the “last frontier” of coastal State jurisdiction. The watershed introduced by the entry into force of the Convention in 1994 has a bearing on future peace and development, by clarifying important building blocks of the international legal order of the oceans.

(iii) Settlement of disputes: A linchpin of the Convention – Reflections on fishery management disputes

Professor Shabtai Rosenne (Israel)

Circumstances have prevented my friend Judge Hugo Caminos from being present here today, and I would like to express my thanks to those who decided to ask me to assume this position. On the personal level I, and I am sure all of you, regret his absence. On the institutional level the reason why he is not

⁶⁶ Cornelius Van Byndershoek, *De Dominio Maris Dissertatio*, p. 364; Wyndham Walker, Territorial waters: The cannon shot rule, *British Yearbook of International Law*, vol. 22 (1945), p. 211.

with us is a cause for satisfaction. Judge Caminos has asked me to read the following message:

“The High-Level Committee of Ambassadors conferred upon me the honour of inviting me to be a panellist on this topic and I accepted the invitation. Unfortunately, or perhaps as Professor Rosenne will explain, not so unfortunately, I cannot be here today and I am glad to see Professor Rosenne in this position.

“The regime for the settlement of disputes in the Convention is not only an innovation. It is also an important step in the development of this area of international law. Many observers have quite correctly noted that the most important contribution of the Convention in strengthening the rule of law in international affairs is contained in article 286. That provision, notwithstanding some limitations and optional exceptions, declares that any dispute where no settlement has been reached by recourse to other peaceful means agreed by the parties shall be submitted, at the request of any party to the dispute, to arbitration or judicial settlement. This means that by becoming a party to the Convention, a State becomes bound by the compulsory procedures laid down in Part XV. Some criticism has been expressed over the limitations and optional exceptions to this, as if the Conference was a legislative body organizing a national judicial system. Professor Bernard Oxman rather ironically has concluded: ‘If States had no intention of being bound by the procedures, they might have happily permitted leading scholars to fashion a perfect and elegant dispute settlement regime... But because almost all States were negotiating with a view to producing a Convention that

they could ratify, they insisted, quite rightly, on accommodation of their important interests.⁶⁷

“The creation of the International Tribunal for the Law of the Sea (ITLOS) as a specialized universal tribunal has served as a model for the establishment of other judicial or quasi-judicial bodies in response to the transformation of the international society as a result of globalization, the emerging of new actors in the international community, and the continuous growth and expansion of international law. As Judge Alexander Yankov has stated, the drafters of the Charter of the United Nations anticipated with clear-sightedness in article 279 the need for States to make use of the plurality of options in choosing the means to settle their disputes. The Montego Bay Convention has paved the way for this development in the international judicial system, and that may have a controlling influence on the evolution of international law in the twenty-first century.”

As Judge Caminos anticipated, I want to say something about the historic significance of the action by the Russian Federation a week ago in taking the prompt release case against Australia to ITLOS. This is the first occasion since the entry into force of the Montego Bay Convention when a permanent member of the Security Council has initiated proceedings in any international court or tribunal relating to the law of the sea and on the basis of the Convention. Another permanent member has been a regular respondent in a series of prompt release actions, but that is another matter, and I will have something to say

⁶⁷ Bernard Oxman, The rule of law and the United Nations Convention on the Law of the Sea, in *European Journal of International Law*, vol. 7 (1996), no. 3, pp. 353-371. Available on www.ejil.org/journal/Vol7/No3/art1.pdf.

about that later. This is the first instance of a straight State-to-State case of prompt release, as opposed to an application made on behalf of a flag of convenience State. But more important, as I see it, is that Russia has taken this initiative. More than 100 years ago Russia was in the forefront of efforts to make the peaceful settlement of disputes compulsory, and Russia's initiative led to the Hague Conventions of 1899 and 1907 for the Peaceful Settlement of International Disputes. The incomplete draft of the 1907 Conference⁶⁸ for a court of arbitral justice, based on Russian and American proposals, was one of the basic texts that led to the Statute of the Permanent Court of International Justice of 1920. After the Revolution the new Soviet Union would have nothing to do with that Court or with the judicial settlement of international disputes. But at the San Francisco Conference (1945)⁶⁹ the Soviet delegation, with the participation of distinguished jurists who later became judges of the International Court of Justice, played a prominent role in the discussions on the revision of the Statute and, more importantly, on the status of that Court as the principal judicial organ within the United Nations context. As we all know, the Statute of the International Court of Justice has inspired the Statute of ITLOS, so we can say that Russia has a grand-paternal relationship to the Statute of ITLOS. At the same time, the Soviet Union was not attracted to the judicial settlement of international disputes. Its first direct participation in oral proceedings in an advisory case was in 1962. Since the end of the 1980s a change in this position has become evident. The Soviet delegation played an important role in working out the dispute settlement provisions of the Montego Bay Convention. A member of the German Democratic Republic delegation was chairman of the working group that negotiated section 5 of Part XI on the settlement of disputes in

⁶⁸ Second International Peace Conference, The Hague.

⁶⁹ United Nations Conference on International Organization.

the international Area, and in the Preparatory Commission, another member of the German Democratic Republic delegation was chairman of Special Commission 4, responsible for making practical arrangements for the establishment of ITLOS, until replaced by a member of the delegation of Ukraine. It is appropriate to recall this in the present context.

The opening of the Convention for signature at Montego Bay on 10 December 1982 marked one of the three major legal accomplishments of the twentieth century. I myself have taken part in five United Nations conferences on the law of the sea – the Rome Conference of 1955,⁷⁰ in some respects perhaps the most important and somewhat neglected of the conferences; the Geneva Conferences of 1958⁷¹ and 1960,⁷² most of whose work is now incorporated in the 1982 Convention; the Third United Nations Conference on the Law of the Sea from 1973 to 1982,⁷³

⁷⁰ International Technical Conference on the Conservation of the Living Resources of the Sea, Rome, 18 April to 10 May 1955. For its report see document A/CONF.10/6.

⁷¹ United Nations Conference on the Law of the Sea, Geneva, 24 February to 27 April 1958, document series A/CONF.13/-. This Conference produced the following instruments (known collectively as the 1958 Geneva Conventions on the Law of the Sea), all opened for signature on 29 April 1958: Convention on the Territorial Sea and the Contiguous Zone, Convention on the High Seas, Convention on Fishing and the Living Resources of the High Seas, Convention on the Continental Shelf and Optional Protocol of Signature concerning the Compulsory Settlement of Disputes.

⁷² Second United Nations Conference on the Law of the Sea, Geneva, 17 March to 26 April 1960, document series A/CONF.19/-.

⁷³ Third United Nations Conference on the Law of the Sea, New York / Caracas / Geneva / Montego Bay, 11 sessions, 3 December 1973 to 10 December 1982, document series A/CONF.62/-. This Conference adopted the United Nations Convention on the Law of the Sea, 10 December 1982, in force from 16 November 1994, now to be read together with the Agreement relating to the Implementation of Part XI of that Convention, adopted by the General Assembly in resolution 48/263 of 28 July 1964.

and the Straddling Stocks Conference of 1993-1995.⁷⁴ I am thus a first-hand witness to the great changes that have taken place in the law of the sea since 1945.

The theme of these informal panels is the dynamism of the Convention, and this session is devoted to the topic of the settlement of disputes in the law of the sea. In discussing this, however, we have to keep in mind that in many instances, especially in disputes arising out of the law of the sea, agreement is always the best settlement, and that recourse to other machineries is subordinate to the prime aim of the restoration or maintenance of international peace and security. Compulsory third party settlement is no exception.

A major difference between the Montego Bay Convention of 1982 and the Geneva Conventions on the law of the sea of 1958 is that in 1958, the settlement of disputes arising out of the interpretation or application of those instruments (except the fishing on the high seas Convention) was relegated to an Optional Protocol which I believe has been invoked once, and then only half-heartedly. In the preparatory work leading to the 1982 Convention – which started with an examination of the topic of the reservation exclusively for peaceful purposes of the seabed and ocean floor and the subsoil thereof underlying the

⁷⁴ United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, six sessions, 19 April 1993 to 4 August 1995, document series A/CONF.164/- . This Conference adopted the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 4 August 1994, entered into force on 11 December 2001. See also J.-P. Lévy and G. G. Schram, *United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks: Selected Documents* (Martinus Nijhoff, 1996); International Seabed Authority, *The Law of the Sea: Compendium of Basic Documents* (Caribbean Law Publishing Co., Kingston, 2001), p. 271.

high seas beyond the limits of national jurisdiction, following the initiative of the late Ambassador Pardo of Malta – the settlement of disputes was accepted as an integral part of the new regime. That was a political decision taken in the General Assembly, in the basic Declaration of Principles set out in resolution 2749 (XXV) of 17 December 1970. It was quickly realized that the compulsory peaceful settlement of disputes within the framework of Article 33 of the Charter would have to be an integral part of the new legal regime for the oceans. It was also soon evident — and Judge Caminos has indicated the principal reasons — that new concepts of international litigation, new types of legal action and new procedures for pursuing them would be required for the specific purposes of the law of the sea. Judicial proceedings for the prompt release of vessels and crews allegedly detained in breach of the provisions of the Convention was one of the matters that those who negotiated the dispute settlement provisions of the Montego Bay Convention had in mind. Once it was decided that compulsory judicial settlement of disputes was to be an integral element of the law relating to navigation at sea and that prompt relief proceedings could be brought by *or on behalf of* the flag State, it was clear that a new judicial institution would be required for this purpose. Likewise, non-State entities had to be given access to appropriate judicial procedures in connection with activities in the international Area.

I want to give one illustration of the dynamism that the dispute settlement provisions of the Convention has developed, taking the southern bluefin tuna dispute as an example. That dispute involved two of the new provisions of Montego Bay: article 290, paragraph 5, giving ITLOS a compulsory residuary jurisdiction to prescribe provisional measures pending the establishment of an arbitral tribunal, and compulsory recourse to arbitration under Annex VII of the Convention. ITLOS found that the proposed arbitral tribunal could *prima facie* have

jurisdiction over the merits sufficient to give ITLOS competence to prescribe provisional measures, which it did.⁷⁵ A year later, the Arbitral Tribunal which, under the Convention, alone has jurisdiction to determine its own jurisdiction, held that it did not have jurisdiction over the merits. However, in its Award⁷⁶ the Arbitral Tribunal linked its decision to the provisional measures in an interesting and constructive manner. Noting that the provisional measures prescribed by ITLOS ceased to have effect with the delivery of the arbitral award, the Arbitral Tribunal stated (paragraph 67):

“However, revocation of the Order prescribing provisional measures does not mean that the Parties may disregard the effects of that Order or their own decisions made in conformity with it. The Order and those decisions — and the recourse to ITLOS that gave rise to them — as well as the consequential proceedings before this Tribunal, have had an impact: not merely in the suspension of Japan’s unilateral experimental fishing program during the period that the Order was in force, but on the perspectives and actions of the Parties.”

⁷⁵ *Reports of Judgments, Advisory Opinions and Orders (International Tribunal for the Law of the Sea)*, vol. 3, *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Requests for provisional measures (1999)* (List of cases: nos. 3 and 4), Order 27 August 1999. Available on www.itlos.org/case_documents/2001/document_en_116.doc.

⁷⁶ International Centre for the Settlement of Investment Disputes, *Southern Bluefin Tuna Case – Australia and New Zealand v. Japan: Award on Jurisdiction and Admissibility, August 4, 2000, rendered by the Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea*; see *International Law Reports*, vol. 119 (eds. E. Lauterpacht, C.J. Greenwood and A.G. Oppenheimer) (2002), p. 508. Available on www.worldbank.org/icsid/bluefintuna/award080400.pdf.

That carefully crafted and creative reference to the provisional measures Order and its effects are what unblocked the diplomatic stalemate and allowed negotiations to resume and lead to the settlement of this dispute. The fact is that the two decisions taken together laid the basis for a political – meaning agreed – settlement of the dispute as a whole. There is also experience from the International Court of Justice where a carefully crafted Order refusing provisional measures laid the basis for an agreed settlement of the dispute.⁷⁷

We can see from this how a process of litigation which aims at clearing away legal difficulties and encumbrances to allow political negotiations to lead to an agreed settlement is an effective method of dispute settlement, made possible in an institutionalized form by the Convention.

This leads to my main topic, the role of courts in the new area of settling disputes about fishery management, for which the Montego Bay Convention provides the “umbrella”,⁷⁸ with the settlement of disputes as the linchpin.

I must first indicate what the expression “fishery management” has come to mean or should mean. The International Court of Justice gave a partial answer in the

⁷⁷ Case concerning *Passage through the Great Belt (Finland v. Denmark)*: Request for the indication of provisional measures, Order 29 July 1991, *I.C.J. Reports (1991)* (Sales no. 595), p. 12, and Order 10 September 1992 [removal from the list], *ibid.* (1992) (Sales no. 625), p. 348. Available on www.icj-cij.org/icjwww/lcases/afd/afdframe.htm.

⁷⁸ This is how the International Maritime Organization has described the Convention: *Implications of the entry into force of the United Nations Convention on the Law of the Sea for the International Maritime Organization*, IMO document LEG/MISC/3/Rev.1 (2003), p. 4; available on www.imo.org/includes/blastData.asp/doc_id=2833/2456.doc.

Fisheries Jurisdiction (Spain v. Canada) case in 1998 (paragraph 70):⁷⁹

“According to international law, in order for a measure to be characterized as a ‘conservation and management measure’, it is sufficient that its purpose is to conserve and manage living resources and that, to this end, it satisfies various technical requirements.”

It is in this sense that the term “conservation and management measures” has long been understood by States in the treaties which they conclude. Notably, this is the sense in which “conservation and management” is used in paragraph 4 of article 62 of the Convention. The same usage is to be found in the practice of States. Typically, in their enactments and administrative acts, States describe such measures by reference to such criteria as: the limitation of catches through quotas; the regulation of catches by prescribing periods and zones in which fishing is permitted; and the setting of limits on the size of fish which may be caught or the types of fishing gear which may be used. International law thus characterizes “conservation and management measures” by reference to factual and scientific criteria.

The importance of that judicial pronouncement lies in its stress on factual and scientific criteria and its emphasis on the fish. But that is only a partial answer, and it would be a mistake to think that the factual and scientific criteria relate only to fish, their biological characteristics and the quality of their environment. There is also a human element in fishery

⁷⁹ *Fisheries Jurisdiction Case (Spain v. Canada)*, *Jurisdiction of the Court*, Judgment of 4 December 1998, *I.C.J. Reports (1998)* (Sales no. 714), p. 432 at 461. Available on [www.icj-cij.org/icjwww/idocket/iec/iecjudgment\(s\)/iec_ijudgment_981204.htm](http://www.icj-cij.org/icjwww/idocket/iec/iecjudgment(s)/iec_ijudgment_981204.htm).

management that affects both the potential consumers of the fish and the actual and potential fishermen who hunt and catch them, process them for consumption and sell them. Their livelihood depends on this resource. Today we cannot forget that new regimes for fishery management based on the 1982 Convention have brought much human distress – for instance in coastal districts of England, the western coasts of the European continent and, not far from here, in the coastal fishing villages of New England and Nova Scotia. They have also caused major shortages in the supply of fish, hopefully only temporarily while overfished stocks are given the opportunity to recover. Basic fish such as cod, haddock, swordfish, whiting and herring, and some shellfish in European and North American waters, are the most relevant species in the northern hemisphere, and the most overfished and depleted.⁸⁰ Tuna and other migratory species are endangered in the southern hemisphere.

That dictum of the International Court of Justice, incomplete though it might be, indicates that fishery management is a complex matter, in which the law is only one factor. Other factors include elements of sociology, human geography in the law of the sea,⁸¹ economic factors, and a broad range of scientific factors by no means limited to the natural fishery sciences. As the General Assembly has insisted, for instance in the preamble of resolution 56/12 of 28 November 2001, the management of ocean affairs requires “an integrated, interdisciplinary and intersectoral approach”. Article 61 of the Convention, the principal relevant statement of the law for

⁸⁰See Craig S. Smith, “The disappearance of cod brings call for fishing ban in Europe”, *International Herald Tribune*, Tel Aviv edition, 8 November 2002, p. 3. Available on rasa.iht.com/articles/76306.html.

⁸¹ On human geography in the law of the sea, see S. Rosenne, *The Perplexities of Modern International Law: General Course on Public International Law*, Academy of International Law, *Collected Courses*, vol. 291 (2001), p. 9 at 325.

fishery management, recognizes this through its reference in paragraph 3 to the economic needs of coastal fishing communities. This complexity, implicating so many disciplines, raises the question of whether an organ composed exclusively of lawyers reaching their decision only on the basis of international law will always be the most appropriate type of organ for the compulsory settlement of complex and politically sensitive disputes about fishery management. To some extent, Annex VIII of the Convention, itself reflecting State practice, gives a negative answer. However, so far Annex VIII has not been chosen by many States as their preferred residual method of dispute settlement under the choice-of-procedure provision of article 287.⁸² No international court or tribunal has attempted to settle such a dispute; instead they have declined jurisdiction, while finding a way to indicate legal elements requiring consideration in the political operation of negotiating a settlement. It is also significant that while ITLOS has established a Special Chamber to deal with disputes concerning the conservation and management of marine living resources, no use has yet been made of it.⁸³

These thoughts have come to me in the course of dealing with various aspects of the law of the sea since 1982. I think that of all the issues relating to the law of the sea that have troubled the international community since 1982, fishery management has become the most significant and the most threatening. Three

⁸² For particulars, see *Yearbook of the International Tribunal for the Law of the Sea*, vol. 4 (2000), p. 110. Several of the principal coastal States likely to be concerned have chosen Annex VIII as their preferred procedure. They include Argentina, Austria (a landlocked State not known to have major distant-water fishing interests), Belgium, Chile, Portugal, Russian Federation and Ukraine.

⁸³ Ibid., p. 8. On the establishment of this Special Chamber for Fisheries Disputes, see G. Eiriksson, *The International Tribunal for the Law of the Sea* (Martinus Nijhoff, The Hague, 2000), p. 83.

things have prompted me to venture to present these thoughts to you.

First, there is the extraordinary similarity between three of the prompt release of vessels cases that have come before ITLOS: the “*Camouco*” Case in 2000 between Panama and France,⁸⁴ the “*Monte Confurco*” Case between Seychelles and France in the same year,⁸⁵ and the “*Grand Prince*” Case between Belize and France a year later.⁸⁶ All three cases arose out of the detention of foreign fishing vessels sailing under flags of convenience in the exclusive economic zone of the French Southern and Antarctic Territories. The vessels were all hunting the same species, a fish commercially valuable especially on the Japanese market, though not food for the European consumer. The European interests represented by the flags of convenience were similar – all Spanish, in fact – and the French surveillance frigate *Floréal* and the French judicial authorities in Reunion are to be commended for their contribution to the development of international law, although I am sure that the *matelots* who manned the *Floréal* were quite unaware of that.

The reaction of ITLOS to that phenomenon is also interesting. It had no problem with *Camuco*, the first of the cases. That is not surprising. The case looked straightforward enough. The majority had no problem with *Monte Confurco*,

⁸⁴ The “*Camouco*” Case (*Panama v. France*), *Prompt Release* (2000) (List of cases: no. 5). *ITLOS Reports*, vol. 4 (2000), p. 10. Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=4&lang=en.

⁸⁵ The “*Monte Confurco*” Case (*Seychelles v. France*), *Prompt Release* (2000) (List of cases: no. 6). *Ibid.*, p. 86. Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=5&lang=en.

⁸⁶ The “*Grand Prince*” Case (*Belize v. France*), *Prompt Release* (2001) (List of cases: no. 8). *Ibid.*, vol. 5 (2001). Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=7&lang=en.

although Judge David Anderson in his important dissent drew attention to what he called the “factual background” that had to be balanced, namely the respective interests of France and the applicant.⁸⁷ In that context it is clear that he was alluding to more general problems of balancing France’s fishery management concerns in those waters with the interests of the foreign owners of the fishing vessels to maximize their catch for their own commercial reasons. In the third case the Tribunal turned its attention to the flag of convenience and on the evidence before it found that it had no jurisdiction in that case because it was not satisfied that the vessel was entitled to fly that flag. Accordingly, it did not deal with any question of fishery management, although its close inspection of the entitlement of the vessel to the flag that it was flying serves notice on foreign fishing interests that a flag of convenience cannot necessarily be taken for granted in this type of case. The open-ended language on the nationality of ships in article 91 of the Convention, requiring that there must exist a genuine link between the State and the ship, may not always be sufficient.

Illegal fishing in that EEZ has become a serious problem for France and for the fisheries that it is trying to conserve and manage. Twenty-one instances of interception of illegal foreign fishing vessels in that EEZ have occurred in the last five years, leading Australia and France to co-operate in policing those waters.⁸⁸ It is interesting that apparently most of these incidents have not led to proceedings in ITLOS.

⁸⁷ The “*Monte Confurco*” Case (*Seychelles v. France*), *Prompt Release* (List of cases: no. 5), Judgment of 18 December 2000, Dissenting opinion of Judge Anderson. *ITLOS Reports*, vol. 4. Available on www.itlos.org/case_documents/2001/document_en_107.doc.

⁸⁸ French Embassy in Canberra, “France and Australia cooperate to intercept illegal toothfishing vessel in sub-Antarctic waters”, Media Release PR/12/02, 8

Three other cases in ITLOS also concerned issues of fishery management. Those were the first case before the Tribunal, the “*Saiga*” Case of 1997;⁸⁹ the *Southern Bluefin Tuna Cases* of 1999, consisting of provisional measures of protection proceedings in ITLOS,⁹⁰ followed in 2000 by the first instance of an Annex VII arbitration under the 1982 Convention,⁹¹ and the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean* between Chile and the European Community (2000), to be determined by an ad hoc Chamber of the Tribunal but now suspended following a provisional arrangement between the parties concerning the dispute.⁹² In the same period the International Court of Justice

July 2002; available on www.ambafrance-u.org/media/pages/2002/1202.en.htm. The vessel concerned, now named *Eternal*, had previously been arrested in these waters under the name of *Camouco* and under a different flag, in the case before ITLOS for prompt release. The recent *Volga Case* concerned fishing for the same stock in the adjoining EEZ of Australia; see The “*Volga*” Case, *Application for Prompt Release* (2002) (List of cases: no. 11), Judgment of 23 December 2002, in *ITLOS Reports*, vol. 6 (to be published); available on www.itlos.org/case_documents/2002/document_en_215.doc.

⁸⁹ The *M/V “Saiga” Case (Saint Vincent and the Grenadines v. Guinea)*, *Prompt Release* (1997) (List of cases: no. 1). *Ibid.*, vol. 1 (1997), p. 15. Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=1&lang=en.

⁹⁰ *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)*, *Provisional Measures* (1999) (List of cases: nos. 3 and 4). *Ibid.*, vol. 3 (1999), pp. 274 (joinder of cases), 280 (provisional measures). Available on www.itlos.org/cgi-bin/cases/case_detail.pl?id=3&lang=en.

⁹¹ For the arbitration, see note 78 above.

⁹² *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. European Community)* (2000) (List of cases: no. 7). Order of 20 December 2000 - Constitution of Chamber, in *ITLOS Reports*, vol. 5 (2001), p. 148; available on www.itlos.org/case_documents/2001/document_en_100.doc. Earlier, Chile had requested the President to appoint an arbitrator pursuant to Annex VII, article 3, of the Convention. Following the agreement between Chile and the European Union to submit this case to a special chamber of ITLOS, no further

has also had to deal with one case which, had it gone to the merits, would have involved fishery management, but in a different part of the world and different species, namely the *Fisheries Jurisdiction* case between Spain and Canada. The Court found that it had no jurisdiction to adjudicate upon that dispute.

Second, my attention was attracted to the report on the work of the United Nations Open-ended Informal Consultative Process on its session earlier this year, submitted to the current session of the General Assembly in connection with the annual discussion on the law of the sea.⁹³ Close reading of that document, and of its list of issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea, contained in part C of that document, shows that nearly all the issues concern different aspects of fishery management. I was particularly struck by the item, “Oceans stewardship/ecosystem-based integrated management of the marine environment”.⁹⁴ This topic may be viewed in light of the decision of the Third Committee of the Conference that in article 192, imposing on States the obligation to protect and preserve the marine environment, the expression “marine environment” as explained in article 1, paragraph 1 (4), includes “marine life”.⁹⁵ There is here an implication that uncontrolled overfishing could be seen as a form of pollution of the marine

action was taken on that request; see *Yearbook of the International Tribunal for the Law of the Sea*, vol. 4 (2000), p. 59. For the decision by ITLOS to suspend proceedings, see Order of 15 March 2001, in *ITLOS Reports*, vol. 5 (2001); available on www.itlos.org/case_documents/2001/document_en_99.doc.

⁹³ Document A/57/80 (third meeting of the Consultative Process, 2002).

⁹⁴ *Ibid.*, part C, para. 3 (e).

⁹⁵ *United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. IV (M. Nordquist, S. Rosenne, A. Yankov and N.R. Grandy, eds., 1990), p. 43.

environment, or at least as a violation of the obligation to *protect and preserve* the marine environment.

Third, the southern bluefin tuna dispute taken as a whole calls for further notice. That fish (*Thunnus maccoyii*) is listed in Annex I of the 1982 Convention as a highly migratory species. It is partly regulated by the Convention for the Conservation of Southern Bluefin Tuna (CCSBT) of 10 May 1993.⁹⁶ That instrument provides for the settlement of disputes through arbitration. I had nothing to do with the provisional measures proceedings in Hamburg, but was later honoured by the Government of Japan to join its team in the arbitration phase in that case. However, here I want to go beyond any personal involvement and look at the whole dispute – now, I understand, happily settled – and try to see its lesson for the control of fishery management disputes and their settlement, always best achieved through agreement. I would, however, say this about the two sets of legal proceedings: I think that both decisions were correct and that there is no contradiction between them. ITLOS was acting under the unusual provision of article 290, paragraph 5, of the Convention, the first case of this nature in that Tribunal.⁹⁷ That provision gives ITLOS an exceptional jurisdiction to prescribe provisional measures if arbitration is the competent procedure and the arbitral tribunal has not yet been

⁹⁶ The three States concerned in this litigation, both phases, are all parties to the Convention for the Conservation of Southern Bluefin Tuna. Other States engaged in fishing this species are not parties to that Convention.

⁹⁷ The “*Saiga*” (No. 2) case was initially brought under article 290, paragraph 5, but during the proceedings the parties agreed to submit the whole dispute to ITLOS, at which point the provisional measures phase came within the scope of article 290, paragraph 1. See *ITLOS Reports*, vol. 2 (1998), p. 24, The *M/V “Saiga”* (No. 2) Case (*Saint Vincent and the Grenadines v. Guinea*) (List of cases: no. 2), Order of 11 March 1998 – Request for provisional measures. Available on www.itlos.org/case_documents/1998/document_en_86s.doc.

constituted. In those circumstances, ITLOS can prescribe provisional measures if it considers that *prima facie* the arbitral tribunal to be constituted would have jurisdiction and that the urgency of the case so requires.

There can be little doubt that those two conditions were met. It cannot seriously be questioned that ITLOS was right in finding that the arbitral tribunal could *prima facie* have jurisdiction to hear the case. In the experience of the International Court of Justice, *prima facie* jurisdiction over the merits is a low threshold for the Court's power to entertain a request for provisional measures.⁹⁸ A negative finding would require that the absence of jurisdiction be manifest, which was certainly not the case here. In fact, some strenuous and wide-ranging pleading, written and oral by both parties, was needed before the Arbitral Tribunal decided that it did not have jurisdiction over the merits of that case. Any talk of the Arbitral Tribunal "overriding" the decision of ITLOS is utterly baseless, because *prima facie* jurisdiction to prescribe provisional measures pending the determination of the case and unreserved jurisdiction to deal with the merits of the case are two entirely different legal concepts, unrelated to each other. Article 287, paragraph 5, of the Convention, the first attempt to formulate this principle in treaty language, has to be read with article 288, paragraph 4, which expressly provides that in the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of *that* court or tribunal. This is what distinguishes compulsory recourse to an Annex VII arbitration from international arbitration proceedings generally encountered – that is, proceedings instituted by special agreement between the parties, where the jurisdiction would

⁹⁸ See S. Rosenne, Provisional measures and *prima facie* jurisdiction revisited, *Liber amicorum Judge Shigeru Oda* (The Hague, 2002), vol. I, pp. 515-544.

normally be manifest. A compulsory Annex VII arbitration is a new type of arbitration created by the Third Conference, and traditional concepts of arbitration practice are not fully applicable to it.

I also think that the decision of the Arbitral Tribunal was correct. Here, after careful analysis of both the treaty texts and the diplomatic history of the dispute, the Arbitral Tribunal gave preference to the *lex specialis* of the 1993 Convention relating specifically to this species over the more general provisions of the 1982 Law of the Sea Convention. The fact is that, as noted above, the two decisions taken together laid the basis for a political – that means agreed – settlement of the dispute as a whole.

The thorough examination of the natural characteristics of the southern bluefin tuna stock, including the salient features of the life-cycle of the fish, has brought out a remarkable feature of the 1982 Convention that causes difficulties in applying its provisions for fishery management. Southern bluefin tuna reproduce and hatch in the territorial sea and even the internal waters of State A, in the western part of the Pacific Ocean. The juvenile fish mostly inhabit the coastal waters of nearby State B, those coastal waters being either internal waters or territorial sea, or possibly waters of the exclusive economic zone, according to the classifications of the 1982 Convention. Then, as adults, the mature fish migrate to the high seas and across vast oceanic spaces, as far as the eastern coast of the African continent. Several States that are not parties to the 1993 Convention also exploit this species on the high seas. As this is a highly migratory species, article 64 of the Convention also applies. This means that during its lifespan the fish comes within the scope of four distinct legal regimes laid down in the Convention: internal

waters, territorial sea, exclusive economic zone⁹⁹ and the high seas.

Part VII, section 2 (articles 116 to 120), of the 1982 Convention addresses the conservation and management of the living resources of the high seas. It completely replaces the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas. This is partly to take account of the institution of the exclusive economic zone, and partly to better reconcile the sharply divided economic interests of the coastal States and the distant-water fishing States (mostly European coastal States, the fish itself being an important component of the diet of many European countries) that had become an important economic factor since the 1958 Conference. To this has to be added the increasing pressure on the world's fish stocks caused by at least two factors, the growth in the world's population and important changes in dietary habits leading to increased consumption of fish.

I have mentioned that in some respects the 1955 Rome Technical Conference on the Conservation of the Living Resources of the Sea was the most important and perhaps the most neglected of all the United Nations conferences on the law of the sea. For it was here that the basic pattern of fishery management was set out. The Rome Conference dealt with the problem of the settlement of disputes over fishery management in its General Conclusions. In its report, it drew attention to the

⁹⁹ Some States, instead of establishing an exclusive economic zone, have established what they term a fishery zone. While it is by no means clear whether there is any difference in the substantive rights and duties of States in a fishery zone in comparison with their rights and duties in an exclusive economic zone, it is not to be assumed that the provisions regarding the settlement of disputes in an EEZ as set forth in the Convention would necessarily be applicable in a fishery zone.

problems arising from disagreements among States over scientific and technical matters relating to fishery conservation, although without mentioning the human element, and it suggested (paragraph 79):

“A solution to such problems might be found through:

“(a) Agreement among States to refer such disagreements to the findings of suitably qualified and impartial experts chosen for the special case by the parties concerned, with the subsequent transmittal of the findings, if necessary, for the approval of the parties concerned;

“(b) Agreement by all States fishing a stock of fish to accept the responsibility to co-operate with other States concerned in adequate programmes of conservation, research and regulation.”

The International Law Commission took this matter up in articles 57 to 59 of its draft articles on the law of the sea of 1956.¹⁰⁰ That in turn led in 1958 to the Convention on Fishing and Conservation of the Living Resources of the High Seas. The provisions for the settlement of disputes appeared as articles 9 to 12 of that Convention as an integral part of the regime for fishing on the high seas, and by article 19, paragraph 1, no reservations to those articles were permitted. Article 58 of the draft (article 10 of the Convention) sets out the criteria to be applied by the arbitral commission, with emphasis on scientific findings that

¹⁰⁰ *Report of the International Law Commission covering the work of its eighth session, 23 April - 4 July 1956* (document A/3159), in *Yearbook of the International Law Commission*, 1956 (United Nations publication, Sales No. 56.V.3), vol. II (A/CN.4/SER.A/1956/Add.1), p. 253.

demonstrate the necessity of conservation measures to make possible the optimum sustainable productivity of the stock or stocks of fish. Specific measures are to be based on scientific findings that are appropriate for the purpose. The commissions were to be composed by agreement of the parties, and failing agreement the Secretary-General was to make the appointments in consultation with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations (FAO). The members were to be well-qualified persons specializing in legal, administrative or scientific questions relating to fisheries, depending on the nature of the dispute to be settled. To the best of my knowledge, that procedure has never been invoked. The Convention entered into force on 20 March 1966, a little more than a year before Ambassador Pardo's memorable speech in the General Assembly starting the work that ended in 1982. It never had more than 36 signatories (not all of whom ratified it) and 37 parties, many by way of State succession. In it we see the germ of what was developed in the 1982 Convention as the exclusive economic zone, as well as Part VII, section 2, on fishing and management of the living resources of the high seas, and also Annex VIII, on special arbitration for the settlement of disputes concerning the interpretation or application of the articles of the Convention relating to fisheries and other specialized aspects of maritime affairs.

How has this concept appeared in the 1982 Convention? In 1958, where the essential unity of the law of the sea was shattered into four separate treaties, the compulsory settlement of disputes relating to the interpretation or application of the instruments then adopted (other than the high seas fishing Convention) was optional, embodied in the Optional Protocol already mentioned. But in the Third Conference, procedures for the binding settlement of disputes were seen as inherent in the rules to be adopted. The principle and extent of compulsory

dispute settlement were to be dealt with by each Main Committee of the Conference insofar as was relevant to its mandate. The technical details were discussed mainly in informal meetings of the plenary and in working groups, and were co-ordinated through the Drafting Committee.¹⁰¹ In that context, the settlement of fishery management disputes came within the mandate of the Second Committee. The outcome is complicated, and is set out in Part XV (articles 279 to 299) of the Convention. Other aspects of the settlement of disputes were discussed in the First Committee (articles 186 to 191) and in the Third Committee (articles 264 and 265), and they might also touch upon fishery management disputes.

The general principle is laid down in articles 279 and 286. In principle, States parties should settle any dispute between them concerning the interpretation or application of the Convention by peaceful means in accordance with Article 33, paragraph 2, of the Charter. Where no settlement has been reached through negotiation or conciliation, the dispute shall be submitted to one of the compulsory procedures entailing binding decisions. Those procedures are set out in article 287. They include the International Court of Justice, ITLOS, compulsory recourse to arbitration under Annex VII (a new form of arbitration, partly governed by Part XV of the Convention) and special arbitration under Annex VIII (also partly governed by Part XV). (Special arbitration was developed from the compulsory settlement procedure of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas.) On the basis of the freedom of choice provision of Article

¹⁰¹ See Tommy T.B. Koh and S. Jayakumar, The negotiating process of the Third United Nations Conference on the Law of the Sea; and L.D.M. Nelson, The work of the Drafting Committee, both in *The United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. I (M. Nordquist, ed., 1985), pp. 32, 87 and 135.

33 of the Charter, article 287 allows a party to the Convention to choose its preferred method of compulsory dispute settlement, and in the event that the parties to a dispute have not chosen the same procedure, the dispute shall be submitted to Annex VII arbitration.

However, article 297, paragraph 3, contains an exception in favour of the coastal State in its exclusive economic zone.¹⁰² The coastal State is not obliged to accept the settlement of any dispute relating to its sovereign rights with respect to the living resources of the economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States, and the terms and conditions established in its conservation and management laws and regulations. Where no settlement has been reached through normal negotiating processes, such dispute shall be submitted to Annex V conciliation at the request of any party when it is alleged that a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the economic zone is not seriously endangered, or has arbitrarily refused to determine the allowable catch and its capacity to harvest living resources with respect to stocks which that other State is interested in fishing, or has arbitrarily refused to allocate to any State under different terms

¹⁰² Technically, by article 55 the exclusive economic zone is an area beyond and adjacent to the territorial sea, so that the seaward boundary of the territorial sea is the landward boundary of the zone. Article 297, paragraph 3, applies only to what the coastal State does in its exclusive economic zone, not to what it does in its territorial sea or, where relevant, its internal waters. But its fishery management will normally extend landward into those waters.

and conditions the whole or part of the surplus it has declared to exist.¹⁰³

As the arbitral tribunal that decided the Southern Bluefin Tuna case pointed out, article 297 “provides significant limitations on the applicability of compulsory procedures insofar as coastal States are concerned.” It added that the Convention “falls significantly short of establishing a truly comprehensive regime of compulsory jurisdiction entailing binding decisions.”¹⁰⁴ The exceptions in favour of the coastal State will obstruct the employment of procedures leading to a binding settlement of a fishery management dispute, with the possibility of a differentiation between that part of a dispute that refers to the exclusive economic zone and another part that refers to other areas of ocean space. The likelihood of fishery management disputes between distant-water fishing States and coastal States coming to an Annex VIII special arbitration would not appear to be promising. It is significant that the dispute between the European Union and Chile, which is a dispute of this character, is technically pending before a Special Chamber of ITLOS pending the outcome of diplomatic negotiations.

Outside the exclusive economic zone, the 1982 Convention provides no special procedures for the settlement of fishery management disputes. In appropriate cases, for instance in the 1995 Straddling Stocks Agreement, the procedures of Part XV of the Convention have been incorporated *mutatis mutandis* (always a risky phrase to include in a legal text). Article 31 of that Agreement extends the power of the competent dispute

¹⁰³ By virtue of Annex V, articles 7 and 14, the report of a conciliation commission is not binding upon the parties, although a copy of the report is to be deposited with the Secretary-General of the United Nations.

¹⁰⁴ International Centre for the Settlement of Investment Disputes, *op. cit.*, paras. 61 and 62.

settlement organ to prescribe provisional measures to prevent damage to the stocks in question. Article 7 also broadens the circle of States entitled to invoke the procedures of Part XV. At the same time, article 29, on disputes of a technical nature, permits the parties to refer such a dispute to an ad hoc expert panel established by them. The panel is to endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes. However, article 32 retains as part of the 1995 Agreement the exceptions in favour of the coastal State contained in article 297, paragraph 3, of the 1982 Convention. That agreement applies to species, and may thus to some extent override the several zones established by the 1982 Convention leading to different legal regimes according to the physical location of fish at a given moment. This is an important evolution in the institutional provisions for dealing with disputes about fishery management, and its practical application will be watched with interest.

What conclusions can be drawn from these developments?

Clearly, there is a powerful and well-marked trend in State practice to combine the legal and the scientific disciplines – the applied sciences and the social sciences – in the control of fishery management programmes, but this trend is not fully reflected in the framework treaties and even less in their compulsory dispute settlement provisions. The law can lay down a general framework, as in the Law of the Sea Convention and in the various fishery management conventions, some of them area-directed, some species-directed and some combining both features. This trend is manifested in several ways. The special arrangements for Annex VIII arbitration and the exclusion of important elements of fishery management issues from the compulsory dispute settlement provisions of the Law of the Sea Convention and other implementing instruments are perhaps the strongest manifestation of this. But I also ask myself whether the

negative conclusions reached by the International Court of Justice in the Spain/Canada case and by the Arbitral Tribunal in the Southern Bluefin Tuna case do not point to an inarticulate premise that neither of those disputes, major fishery management disputes whatever their formal appearance, was appropriate for purely judicial settlement – that is, for settlement based exclusively on international law. I am not saying that the law *cannot* settle these disputes. What I am suggesting is that if the compulsory settlement of disputes has as its object the maintenance or the restoration of international peace and security – and that *is* its prime function – the organ designated to produce the binding settlement of a fishery management dispute must be more widely constructed than any court or tribunal can be.

Here I find myself critical of the composition of the Special Chamber of ITLOS for Fisheries Disputes, established to deal with disputes concerning the conservation *and management* of marine living resources. It is composed exclusively of elected members of the Tribunal subject, in a given case, to the possible addition of judges ad hoc. That may be in literal conformity with Annex VI, article 15, paragraph 1, of the Convention, which requires special chambers to be composed of three or more of its elected members, as ITLOS considers necessary for dealing with particular categories of disputes. In establishing this Special Tribunal, however, ITLOS seems to have overlooked article 289 of the Convention, as much a part of its constitution as Annex VI. That article provides that in any dispute involving scientific or technical matters, a court or tribunal exercising jurisdiction under the Convention may, at the request of a party or *proprio motu*, select, in consultation with the parties, no fewer than two scientific or technical experts to sit with the court or tribunal but without the right to vote. It goes further: It requires that these experts should be chosen preferably from the relevant list prepared in accordance with Annex VIII, meaning in this

context prepared by or in consultation with the Director-General of the Food and Agriculture Organization. Nothing in the Convention would have prevented ITLOS, when constituting this Special Chamber, from requiring it to invoke article 289 and include at least two qualified experts, after consultation with the parties. That indeed would better reflect the trend as I see it than the bare requirement that the special chamber be composed exclusively of members of ITLOS.

We should also note that Annex VIII, article 5, contains a provision that does not appear in Annex VII for normal forms of arbitration, including compulsory Annex VII arbitration. Headed “Fact finding”, article 5 allows the parties to an Annex VIII arbitration at any time to request a special arbitral tribunal to carry out an inquiry and establish the facts giving rise to the dispute, and it adds that, unless the parties otherwise agree, the findings of fact of the special arbitral tribunal shall be considered as conclusive as between the parties. This last provision is in direct contradiction to the normal rule of fact finding enunciated in article 35 of the Hague Convention of 1907 on the Pacific Settlement of Disputes, according to which the report of a fact-finding commission is limited to a finding of facts, and has in no way the character of an award. “It leaves to the parties entire freedom as to the effect to be given to this finding.”¹⁰⁵ As the *Virginia Commentary* points out, Annex VIII reflects two concerns:

¹⁰⁵ S Rosenne (ed.), *The Hague Peace Conferences of 1899 and 1907 and International Arbitration: Reports and Documents* (T.M.C. Asser Press and Permanent Court of Arbitration, 2001). This corresponds word for word to article 14 of the 1899 Convention on the Pacific Settlement of Disputes. The report of the Third Commission of that Conference, in which the text was prepared, comments that the article states a “right which was not contested” (p. 41). See also General Assembly resolution 46/59 of 9 December 1991, Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security.

“On the one hand it recognizes the importance of scientific and technical considerations in the settlement of certain disputes. On the other hand, and of no less importance, it recognizes that the establishment of facts can serve as the basis for the settlement of a dispute.”¹⁰⁶

There is one further complication in fishery management disputes. It is a matter of common knowledge that the entry into force in 1994 of the Montego Bay Convention set off a long series of partly interrelated actions by States and by international organizations, particularly in this respect the FAO. These activities include formal delimitation agreements especially as regards the exclusive economic zone or fishery zones (to a lesser extent as regards the continental shelf, where different considerations might apply), and fishery management agreements. One only has to look at the nearly 50 issues of the *Law of the Sea Bulletin*¹⁰⁷ to see the reality of this. Many of these agreements include settlement of disputes clauses, not always in identical terms and not always compatible with the compulsory settlement provisions of the 1982 Convention. This issue also arose in both phases of the Southern Bluefin Tuna case. In the view of ITLOS, the fact that the specific species Convention applied between the parties did not exclude their right to invoke the provisions of the Montego Bay Convention in regard to the conservation and management of the species.¹⁰⁸ The Tribunal made this statement as part of its conclusion that the Arbitral

¹⁰⁶ *The United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. I (M.N. Nordquist, ed., 1985), p. 44.

¹⁰⁷ Issued since 1983 by the United Nations Secretariat, currently by the Division for Ocean Affairs and the Law of the Sea; frequency varies.

¹⁰⁸ *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Requests for provisional measures* (1999) (List of cases: nos. 3 and 4), Order 27 August 1999, para. 51. *ITLOS Reports*, vol. 3.

Tribunal could have *prima facie* jurisdiction under the Montego Bay Convention, so as to give ITLOS jurisdiction to prescribe provisional measures. It is a provisional finding, which I think correctly states the law. In the next paragraph (52) of the Order, the Tribunal wrote:

*“... in the view of the Tribunal, the provisions of the Convention on the Law of the Sea invoked by Australia and New Zealand appear to afford a basis on which the jurisdiction of the arbitral tribunal might be founded [italics added].”*¹⁰⁹

The Arbitral Tribunal, after what it called “a comprehensive and searching analysis [by the parties] of issues that are of high importance not only for the dispute that divides them but for the understanding and evolution of the processes of peaceful settlement of disputes embodied in UNCLOS and in treaties implementing or relating to the provisions of that great law-making treaty” (paragraph 44), continued with the following statement (paragraph 52):

“...it is a commonplace of international law and State practice for more than one treaty to bear upon a particular dispute. There is no reason why a given act of a State may not violate its obligations under more than one treaty. There is frequently a parallelism of treaties, both in their substantive content and in their provisions for settlement of disputes arising thereunder. The current range of international legal obligations benefits from a process of accretion and cumulation; in the practice of States, the conclusion of an implementing convention does not necessarily vacate the obligations

¹⁰⁹ For the comments of the Arbitral Tribunal on that passage of the Order, see paragraph 36 of the Award of 4 August 2000.

imposed by the framework convention upon the parties to the implementing convention.”

The Arbitral Tribunal then examined very carefully the two instruments and found that the dispute implicated both of them. From that finding it went on to state that the parties were grappling not with two separate disputes but with what was in fact a single dispute arising under both conventions. The Tribunal continued: “To find that, in this case, there is a dispute arising under UNCLOS which is distinct from the dispute that arose under the CCSBT would be artificial” (paragraph 54). It then examined closely the diplomatic history of the dispute (something which was not done fully by the parties or by the Tribunal in the hurried provisional measures phase), and found that the parties had conducted their negotiations within the framework of the 1993 species Convention and not within that of the Law of the Sea Convention. On that basis, among others carefully explicated in the Award,¹¹⁰ the Tribunal held that it lacked jurisdiction under the Law of the Sea Convention (paragraph 63).

At this point I want to try to rise above my personal satisfaction at that part of the Award and try to see what it means for fishery management issues.

The tone was set by the immediate reactions to the Arbitral Award by the three countries concerned. While Australia and New Zealand were naturally disappointed at the decision, they saw positive elements in the litigation process.

¹¹⁰ This analysis included in particular the relation between Part XV, section 2, of the Law of the Sea Convention and the binding settlement of a dispute arising under implementing treaties with different provisions for the binding settlement of disputes, a matter that seems not to have been fully addressed in the 1982 instrument.

Thus, the New Zealand Minister of Foreign Affairs and Trade said that:

“The pressure now falls on Japan, Australia and New Zealand to negotiate a resolution so we can get on with the business of developing a proper conservation and management of this important species. We also look forward to bringing other fishing countries, Korea, Indonesia and Taiwan into the programme. The future of this depleted stock is ultimately dependent on the co-operation of all the countries involved.”¹¹¹

Australia stressed its ongoing commitment related to the long-term conservation and optimum utilization of the stock and its intention to continue to explore all possible avenues to resolve the dispute amicably and expeditiously, including by negotiations, to achieve this goal.¹¹²

For its part Japan, while expressing satisfaction at the Award, recognized that the Award urged self-restraint upon the parties, promotion of negotiation and the utilization of an independent third party for that purpose.¹¹³ There is no doubt

¹¹¹ Government of New Zealand, “Tuna case has brought progress”, Press release, 8 August 2000, quoted by Scoop Media, New Zealand. Available on www.scoop.co.nz/mason/stories/PA0008/S00151.htm.

¹¹² Government of Australia, Joint statement of the Federal Minister for Agriculture, Fisheries and Forestry and the Federal Attorney-General, Media release AFFA00/153WTJ, 5 August 2000. Available on www.affa.gov.au/ministers/truss/releases/00/00153wtj.html.

¹¹³ Government of Japan, Statement by Foreign Minister Yohei Kono on the Award on Jurisdiction and Admissibility on the Southern Bluefin Tuna Case rendered by the Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea, Ministry of Foreign Affairs Press Release no. 149, 7 August 2000. Available on www.mofa.go.jp/announce/announce/2000/8/807.html.

that those promising expectations of the parties were the direct outcome of the carefully crafted provisions in the Award that related to the provisional measures prescribed by ITLOS.

The dispute was finally settled in May 2001, less than a year after the Award had been rendered, when Australia lifted the sanctions against Japanese fishing vessels in its waters. The settlement was achieved through the creation of a scientific research programme designed by a panel of eminent international fisheries scientists and endorsed by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the body established by the 1993 Convention. Agreed scientific processes were put in place to enable a stock assessment to be undertaken and subsequently for the CCSBT to set a preliminary total allowance catch on an objective scientific basis by October 2001.¹¹⁴ Although there is no mention of the litigation in the media release announcing the settlement, the terms of the settlement show that the double process had a major impact on the successful resolution of this dispute.

As in most maritime disputes, agreement is clearly, in the last resort, the only satisfactory way of resolving disputes involving the protection, conservation and management of fish. The law in one sense only entangles the dispute, through its division of ocean space into different zones each with a separate and unrelated legal regime; and while account has to be taken of that separation, it cannot be decisive, since in one sense all fish are migratory and straddling and not bound to any artificial lines. However, it is well known that agricultural and fisheries lobbies are always very strong and governments can fall if they

¹¹⁴ Government of Australia, "Tuckey announces end to southern bluefin tuna dispute with Japan", The Hon Wilson Tuckey MP, Former Minister for Forestry and Conservation, Media release AFFA01/42TU, 28 May 2001. Available on www.affa.gov.au/ministers/tuckey/releases/01/01_42tu.html.

run foul of those interests – incidentally a major factor in the case brought by the United Kingdom against Iceland in the 1970s. The tuna case was, I believe, complicated in its formative period by this kind of internal pressure. Recourse to international legal procedures is seen as a defensive posture of the governments initiating this kind of action, and the binding international decision removes this kind of internal pressure which makes it difficult for the governments concerned to reach an agreed political settlement that could be unacceptable to certain (although not all) internal interests. That is one of the reasons which leads me to the general conclusion that the scientific and other factors which (as all experience shows) must be taken into account in dealing with fishery management questions have to include the human element, the sociological and economic factors and the internal political factors in the States concerned. In dealing with a case of maritime delimitation, a Chamber of the International Court of Justice warned against what it termed “catastrophic consequences” that could result from ignoring the human factors.¹¹⁵ This concept does not have to be restricted to delimitation problems: it is equally applicable to the solution of fishery management issues, whether by agreement or by third party decision.

¹¹⁵ *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment of 12 October 1984, *I.C.J. Reports 1984*, p. 246 at 342, para. 237; available on www.icj-cij.org/icjwww/icasess/icigm/icigm_ijudgment/icigm_ijudgment_19841012.pdf. This concept has been applied by several arbitral tribunals established to determine maritime boundaries. See *Delimitation of Maritime Areas between Canada and France* [Court of Arbitration, 1992], United Nations, *Reports of International Arbitral Awards*, vol. 21 (1997), p. 270 at 294, para. 84; *Government of the State of Eritrea and Government of the Republic of Yemen (Phase Two: Maritime Delimitation)* [Arbitral Tribunal, 1999], *International Law Reports*, vol.119, p. 417 at 436, para. 50, available on pca-cpa.org/PDF/EY%20Phase%20II.PDF.

A strictly legal settlement formally binding on the parties is always possible. But the question is really whether that kind of settlement will be satisfactory and lasting, or will it end up by being nothing more than a palliative. That is the challenge. In this respect I would like to conclude with an important observation by William Mansfield, special adviser on international law in the New Zealand Ministry of Foreign Affairs and Trade, who was counsel for New Zealand in both phases of the tuna litigation. He has confirmed that the legal proceedings played a major role in the resolution of the dispute, and he noted:

“... the initiation of legal proceedings is seen as a significant step in the relations between states. It engages the attention of higher levels of government and ensures that the issues involved are examined in a broader context than may have been the case previously. This alone may bring about a greater impetus for resolution of disagreement and ensure that the highest levels of knowledge and experience about the techniques that may assist in that resolution are brought to bear.

“Secondly, the submission of a dispute to third party legal consideration and determination immediately levels the playing field between the parties. They become aware that their actions will be considered against objective legal standards rather than the relative power they possess in respect of the issue.”¹¹⁶

¹¹⁶ B. Mansfield, Letter to the Editor: The Southern Bluefin Tuna Arbitration - Comments on Professor Barbara Kwiatkowska's article, *International Journal of Marine and Coastal Law*, vol. 16 (2001), pp. 361-366 at 363; available on www.mft.govt.nz/support/legal/disputes/seapol.html. The Kwiatkowska article, “The *Australia and New Zealand v. Japan Southern Bluefin Tuna (Jurisdiction and Admissibility)* Award of the First LOSC Annex VII Arbitral Tribunal”, is in

He pointed out that the process of preparing and arguing a case before an international tribunal or tribunals forces the parties to analyse the issues and the differences between them in greater detail, from a wide range of perspectives and with the involvement of additional people. It also brings those issues and differences into public focus. Those observations are, in my experience, applicable to many other instances of the resolution of disputes through the intermediary of international litigation.

B. Discussion*

Moderator (Ambassador Maquieira of Chile): We have heard three very interesting statements from different perspectives of the issues related to the law of the sea and to the Convention. I now wish to offer the floor for comments, questions, arguments against and arguments in favour.

Mr. Tono Eitel (Germany): Please allow me to present the plan for an International Foundation for the Law of the Sea, initiated in Germany. A founding committee composed of academics and representatives of major maritime institutions and industries, with the support of the federal Government and the Free Hanseatic City of Hamburg, will register the international Foundation this month. The Foundation is meant to put the work of the International Tribunal for the Law of the sea into focus. It will make use of the outstanding concentration of maritime law expertise provided by the presence in Hamburg of

International Journal of Marine and Coastal Law, vol. 16 (2001), pp. 239-294; available (updated) on www.uu.nl/content/bluefin270303.pdf.

* Edited transcript.

the judges of that Tribunal. The Foundation intends, firstly, to promote the research and teaching of international maritime law, with particular reference to the United Nations Convention on the Law of the Sea; secondly, to further the dialogue between the academic world and the judges of the Tribunal; and thirdly, to promote the knowledge of the law of the sea, particularly in less developed States, and to provide scholarships for that purpose.

The Foundation will pursue its goals through the establishment of an academy. The academy will arrange its main activities to coincide with the sessions of the International Tribunal for the Law of the Sea, with meetings in the spring and fall. The foundation seeks the cooperation and support of all countries interested in the United Nations Convention on the Law of the Sea and their maritime institutions and industries.

Mr. Helmut Tuerk (Austria): As we hold this commemorative session I think it is time to reflect on the hopes we held when we drafted the Convention and on the results of that work. Have expectations been fulfilled?

I wholeheartedly agree with Professor Rosenne that the Law of the Sea Convention represents a major step forward in the international settlement of disputes. Although let me recall that when the Law of the Sea Tribunal was first proposed, it was met with considerable skepticism as yet another international organ where States would not make sufficient use of the dispute settlement mechanism. But the skeptics were wrong: it is surprising how well the Tribunal has developed since its inception. One must remember that when the Convention was signed, when it entered into force and when the Tribunal was established, many colleagues said that it would take at least 5 years before the Tribunal would hear its first case or even that the Tribunal would not have a case during the first 10 years.

Fortunately this prediction has been proven wrong and the Tribunal is well on its track.

Professor Rosenne also made very interesting remarks on Russia's important role in the development of international dispute settlement mechanisms. Let me also recall the important role that Professor Louis Sohn, of the United States delegation, played during the negotiations.

A second point, which was addressed by Mr. Fife, is the need to establish secure maritime boundaries. Of course, one of the most important features of the Convention is its provision for a mechanism to establish secure maritime boundaries. In this connection, Professor Rosenne mentioned that there are between 30 and 60 States with continental shelves extending beyond 200 nautical miles. For many this is a surprise, because when we drafted these provisions we thought that there were only 30 such countries. Perhaps some expectations voiced by Arvid Pardo in this respect could not be met.

I think that in the end we were able to negotiate a compromise with which everyone could live. Of course, we cannot forget that the International Seabed Authority will not get the revenues which we thought it would have. Even today, the Authority is still waiting for the 7 per cent contributions by coastal States for exploration beyond 200 nautical miles. And I think it will take quite some time until this 7 per cent is paid to the Authority. Also, economic circumstances have changed in a manner not foreseen 35 or even 25 years ago. So in this respect one has to be realistic.

A third area dealt with in the Convention, the protection and preservation of the marine environment, has become even more important than we originally anticipated. Recent developments have shown that further work in this respect is required because human activities threaten the marine

environment, while current legal rules do not seem sufficient to cover all cases.

Finally, if we were asked today to negotiate a convention on the law of the sea, could we achieve more than we did 20 or 25 years ago? I believe not. In some respects, of course, a new convention would have to take into account scientific knowledge which was not available 25 years ago. But overall, I think the rules incorporated in the Convention, which were the work of so many delegates, have borne fruit.

Ambassador Andreas J. Jacovides (Cyprus): As some of you may recall, as head of the Cyprus delegation during the Conference I spent quite a bit of time on the questions of island delimitation and dispute settlement. Perhaps I might be allowed to raise a question primarily addressed to Mr. Fife or Professor Rosenne, on delimitation between States whose coasts are opposite or adjacent to each other. As Mr. Fife has said, this is the key area of the law of the sea for international stability and for averting international conflict.

As we all know, the question of delimitation is regulated by articles 15, 74 and 83, dealing with the territorial sea, economic zone and continental shelf, respectively. These have proven to be difficult texts to read, especially articles 74 and 83, which were the object of extensive consideration and some contention in the appropriate working group. The end result was one of constructive ambiguity, if I may use this term, perhaps more ambiguous than constructive. Some people cynically said that it was a wording invented by lawyers to keep other lawyers busy for quite a few years to come. I wonder, in the light of the past 20 years and of several cases, such as Qatar/Bahrain¹¹⁷ and

¹¹⁷ *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Judgment of 16 March 2001, *I.C.J.*

Cameroon/Nigeria, whether we can say that we are wiser, in particular whether maritime delimitation by agreement has taken a more prominent role, as indicated in articles 74 and 83, subject of course to special circumstances, such as proportionality.

Ambassador Enele S. Sopoaga (Tuvalu): We are humbled by the vast opportunities and, of course, the rights offered by the Convention on the Law of the Sea, which are very significant to very Small Island States such as my own. This morning Tuvalu deposited its instrument of ratification of the Convention.

For Small Island States such as Tuvalu, the opportunities and rights offered by the Convention can be realized and exercised only to the extent that local capacity will allow. There is therefore the need to continue to build local capacity to take full advantage of these opportunities. In this regard we are thankful for the initiative just announced by the representative of Germany on the setting up of a Foundation that would facilitate assistance to least developed countries and certainly to island countries like Tuvalu.

A question that has come up as we prepared to ratify the Convention is the extent to which its provisions accommodate the rights of States that are now predicted to be affected seriously by the effects of climate change and sea-level rise. This is a question that may appear arbitrary but it is of serious concern to island countries like Tuvalu. I would like to hear the reactions of the panellists on how accommodating the Convention is in its present state.

Reports 2001 (Sales no. 820), p. 40 (forthcoming). Available on www.icj-cij.org/icjwww/idocket/iqb/iqbjudgments/ijudgment_20010316/iqb_ijudgment_20010316.htm.

Professor S. P. Jagota (India): When we started the preparatory work for the Conference in the 1960s and 1970s, there was a lot of ignorance about the oceans. Very few persons knew that the oceans comprised more than 70 per cent of the earth's surface and contained more than 87 per cent of the total water of the globe. If the ocean's resources were known and could be utilized, many problems could be solved.

But at the same time the bad part of history was also known, namely that only a few countries – those with good ships, technicians, politicians and administrators – could make political decisions on the use of the oceans and could look around to see what they contained and where they extended. Thus, ocean discoveries were largely the province of the major administering Powers of Europe. When the ships came and found a small island separated from a number of other small islands, they asked whose island it was and whether there were any human beings in the area. If there were none, then the area would be occupied. Even if there were human beings, the area would be occupied. This system of colonies and colonialism began 500 years ago.

This activity led to conflicts, for example between those who occupied an area and the original inhabitants, who suffered under the rule of outsiders. Therefore, among the uses of the sea, trade was given a lower position. As colonialism emerged, so did internal strife, not only between colonial countries and the local people but also among the colonial Powers themselves, whether Portugal, Great Britain, France or others.

We all knew that history, which was discussed in the Third United Nations Conference on the Law of the Sea. We asked what was the solution to the problem. The answer was that it was a political question that could be solved by saying “no colonialism”. What was meant by “no colonialism”? The answer

was a kind of self-determination: All people living anywhere have a right to self-determination; therefore they, not someone who has occupied them, will decide who will rule them. All this ended up in the 1960s with the establishment of independent States, especially in Africa but elsewhere too, which have become Members of the United Nations.

What I am suggesting is that the history of the law of the sea, while it was being reviewed, discussed and formulated, was about the effects of the use of the oceans and the developments which had taken place in that area, what problems had been generated by those developments, and what the solutions and prospects were. That framework continues even today. I personally felt that the results were very positive. Even today, after listening to everyone here, I still maintain a positive perspective on the future use of the oceans and of their resources.

In spite of the difficulties that may arise, there are solutions. But we must know what the difficulties are, we must analyze them properly, not only generally but also with the assistance of technicians, scientists, geologists and others, and then find the possible solutions.

Between 1982 and 1992, there were developments within the framework that had been settled by the 1982 Convention. But the problems that arose, which have been mentioned today, were resolved between 1992 and 2002, especially as regards seabed mining and the Agreement on Part XI. Also, although the question of illegal, unreported and unregulated (IUU) fishing has not been resolved, the Fish Stocks Agreement was adopted in 1995 and came into force in 2001. Problems were identified and their solutions emerged. Therefore, prospects were positive, which remains the situation today.

What do we see ahead? What we are doing in this panel is looking into the major issues that have emerged and that still pose problems. Major issues could arise regarding the institutions established by the Convention, namely the International Seabed Authority, the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf. Another approach is to look at the problems and prospects and the manner in which they have or have not been resolved.

Among these problems is the question of maritime boundaries and delimitation, with regard to States and islands as well as with respect to the outer limits of the continental shelf. The positive side is that, once we understand the facts on the earth and in the sea and the limits are known, particularly if they are expanding, and once the factual information is collected and analyzed, the solutions can be found, even with respect to maritime boundaries. In my view, the positive aspect of having factual information on such matters as the outer limits of the shelf, or areas where there may be islands or islets, is that not only would one party know how far the area extends but also that the other affected party would know that it had to take those facts into account. Bearing these two factors in mind, one might imagine as a solution the concept called a “joint development zone”. That concept, which has already emerged to some extent, will provide a solution to problems that may arise between 2002 and 2012.

I would therefore suggest that we take a positive rather than a negative view of these matters. Factual information should be useful for finding solutions which are rational and equitable. A group such as ours should review problems concerning the oceans and their possible solutions every five years. In any case, such problems should be reviewed as a whole, as we are doing here, 10 years from now, in 2012. We will then know how we looked at those problems in 2002 and what

solutions were found, and we can also identify emerging problems for which no solutions have been found.

Factual information is very useful and something new is emerging every day. This is particularly so in the international seabed Area, where we have found not only polymetallic nodules but also polymetallic sulphides, cobalt crusts and something absolutely new, namely huge amounts of life of a type which had never been known to exist on the seabed. Life started in the oceans, but always in the presence of sunlight. No one ever knew that, even without sunlight, there can be huge quantities of life on the seabed.

The year 2002 has been a major year, not only for the anniversary of the Convention but also for the 10-year review of the concept of “sustainable development”, carried out at the World Summit on Sustainable Development, held in August/September 2002 in Johannesburg, South Africa.

What I am trying to say is that the factual information we have is very useful and the problems have been identified. The solutions are also possible, they should also be identified and we should look ahead in a positive manner. My suggestion is to review those solutions and their workings every five years – that is, five years from now and again in 2012.

Moderator: Professor Jagota made some interesting points. He suggested that we have a review process every five years, to include not only the solutions to problems but also the carrying out of the commitments that we acquire in the process. One of the problems with sustainable development is precisely that, while we acquire certain commitments, somewhere down the road things happen which tend to allow countries, whether industrialized or developing, not to assume their commitments. So the idea of a constant review of the sustainable development approach is a very interesting one.

Mr. Janosz Symonides (Poland): I have a rather short question for Professor Rosenne. I would like to hear his opinion on a possible division of labour between the International Court of Justice and the International Tribunal for the Law of the Sea. As you know, the Tribunal deals mainly with the prompt release of vessels, whereas substantive questions and delimitation case are brought to the International Court of Justice. Is this trend a permanent one in your opinion or might it change in the future? Eventually, in my opinion, seabed disputes will probably be brought before the Tribunal, especially since it is open to non-State actors.

Moderator: Are you referring to a division of labour or to the fragmentation of law? Fragmentation of law is where two countries take a problem to two different legitimate forums and obtain two different solutions. That is an issue which is going to come up in one way or another.

Mr. Symonides (Poland): My question is about overlapping jurisdiction, not fragmentation. In fact, when this matter was discussed during the Third United Nations Conference on the Law of the Sea, I understood that many developing countries were not looking forward very much to the establishment of the International Tribunal for the Law of the Sea. Nevertheless, even those countries are now presenting cases to the Tribunal.

Moderator: I was referring to something else that caught my attention, if I may follow up. Take the case of Chile and the European Union. Here, I am taking off my shirt as a Chilean diplomat and I shall act as a semi-naked moderator without a shirt. We have a dispute with the European Union on the resources beyond 200 miles. The European Union decided to take Chile before the dispute settlement procedures of the World Trade Organization (WTO), whereas Chile thought it was more

applicable to take the dispute to the International Tribunal for the Law of the Sea. The outcome in each forum would be different, for reasons that would take too long to explain. In one case the WTO might favour the European Union, while in the other case ITLOS might favour the Chilean claim. Therefore you have a situation in which the established dispute settlement procedures do not settle a dispute. That is what I was thinking about when you posed your question to Professor Rosenne.

Three basic questions have been raised for the panelists to address. One issue, for Mr. Rosenne and Mr. Fife, concerns the state of maritime delimitation 20 years after the Convention. Second, the Permanent Representative of Tuvalu asked about the rights of States under the Convention when their territorial situation may be affected by climate change, rising waters and other phenomena. And finally, there is the interesting question put forward by the representative of Poland on the division of labour between the Court and the Tribunal.

Professor Rosenne: I would like first to say something about the important remarks made by our colleague from Poland. Actually he asked me to prophesize. Well, prophecy died out in Israel about 2000 years ago.

But leaving that aside, I do not think it is quite correct to say that ITLOS has dealt only or primarily with prompt release questions. It has dealt with many prompt release questions because it is the only international forum which has competence to deal with such questions. I would remind colleagues that the relevant provision of the Convention allows prompt release proceedings to be instituted either by or on behalf of the flag State. Of the prompt release questions that have come before ITLOS, three have been on behalf of the flag State, actually brought by parties interested in the cargo or in the ship, while

only one, pending between Russia and Australia, has been brought State to State and not by a flag of convenience.

The ICJ has no competence at all to deal with prompt release in the sense of ordering prompt release. I would not say it has no competence to deal with the consequences of detention, if that should be part of a dispute before it; that is a different matter all together. But for prompt release only ITLOS is competent. However, ITLOS has another competence which I do not think the ICJ could easily have. That is its competence – I call it an exceptional competence – to prescribe provisional measures when the substance of the dispute is going to arbitration of any kind. The ICJ does not have that competence at all. There have been two cases of that kind. One is the *Southern Bluefin Tuna Case* and the other is the pending *Mox Plant Case* between Ireland and the United Kingdom, a very complicated case in which ITLOS was asked to prescribe provisional measures and did so. Other complicated proceedings are possible as well, including arbitration under Annex VII of the Convention and another form of arbitration which is currently pending in the Permanent Court of Arbitration at The Hague under one of the European instruments.

Therefore, I am one of those who do not think that there is any serious risk of competition between ITLOS and ICJ. I think they are dealing with entirely different kinds of disputes. Incidentally, a further one is going to be decided next week. The judgment will be rendered next week in the case between Indonesia and Malaysia on some islands and the consequences for the law of the sea.¹¹⁸ These are cases which have deep

¹¹⁸ *Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment of 17 December 2002, *I.C.J. Reports 2002* (to be published). Available on www.icj-cij.org/icjwww/idocket/iinma/iinmajudgment/iinma_ijudgment_20021217.PDF.

complex historical backgrounds involving colonial diplomacy. Some of them go back to before World War I, involving even German colonies, which people have forgotten existed. And I think that the ICJ is very likely to have that kind of case. I do not think that kind of case will go before ITLOS, although I would not exclude it if that is what the countries want. But I do not think there is a risk of a serious competition between the two fora.

The possibility of different legal consequences arising from two separate competent tribunals is not a new problem at all. If you take the United States of America, there are, I believe, 51 jurisdictions: 50 States and the federal law judicial system. Of course there are different decisions, but the law is capable of absorbing and dealing with that situation.

On the question asked by the representative of Tuvalu relating to natural changes affecting the State, this question has already come before ICJ in the Cameroon/Nigeria case in relation to Lake Chad, the characteristics of which have changed considerably over the last 50 years. One of the questions was where the colonial frontier stood between those two countries in light of natural changes. Thus, the law has already started to face that problem. I think the problem may well arise. It is not a question particularly limited to the law of the sea, as it could also affect land territory. It is a new problem.

The representative of Cyprus asked a question about articles 74 and 83 of the 1982 Convention. I am not sure that those articles are quite so ambiguous. They reflect the ambiguity of geography. If geography were nice, convenient, orderly and square there would be no problem, as one could settle any delimitation by the equidistance line. But that is not possible, because geography is not orderly. There must be a starting point to effect a delimitation; there is no question or argument about

that. Delimitation might be quite arbitrary in some cases. Ultimately, the best delimitation is by agreement or agreed arbitration. I do not think that Annex VII arbitration is particularly suitable for delimitation purposes but delimitation by agreed arbitration is a different matter. The fact that the Conference failed in all attempts to lay down criteria for delimitation between opposite or adjacent States reflects geography and the impact of geography on national interests. I do not think it would be terribly wise to go too far into that.

Mr. Fife: I shall start with the question raised by Ambassador Jacovides in the area of maritime delimitation and what has happened during the last 20 years or so. Clearly, as pointed out in my initial statement, I believe that the International Court of Justice in particular has played a tremendous role in projecting more clarity and predictability in a field where there were growing perceptions of lack of predictability. I agree entirely with Professor Rosenne when he urged that priority be given to effecting maritime delimitation by agreement. At the same time, I believe that whether one wishes to resort to dispute settlement mechanisms or one is negotiating with a view to an agreed delimitation, one is well served in being guided by the tremendous advances that have been taking place in the case law. As for the couple of questions that Ambassador Jacovides raised, I shall limit myself to referring very briefly to a couple of points that were highlighted in the ICJ Judgment of 10 October 2002,¹¹⁹ where the issue was which factors could call for an adjustment or shifting of a median or equidistance line in order to achieve an equitable result.

¹¹⁹ *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, International Court of Justice, Judgment of 10 October 2002.

Certain very interesting comments were made, among them one to which Professor Rosenne referred. The ICJ basically stated that equity was not a method of delimitation but was solely an aim that should be borne in mind in effecting delimitation. And as I believe Professor Rosenne implied, the natural geographical configuration of the maritime area is a given, as pointed out by the Court. Nature, or the given, as expressed by geographical configuration, is not something which is open to modification by the Court, if I understand the ICJ Judgment correctly. Rather, it is the fact upon which the courts or the parties in other third party settlement proceedings have to base themselves when effecting delimitations. Thus, my point is that increased clarity is provided in particular through the case law.

I would also like to make some brief comments with regard to the points raised by the representative of Tuvalu. We are all aware in general of the special problems or challenges that developing countries, in particular least developed countries and small island developing States, are faced with as regards the Law of the Sea Convention, given their limited capacities, scarce resources or inadequate means of implementation.

Without going too much into the issue of climate change, in which I am not well versed, I would like to refer to the paramount importance of capacity building in enhancing the possibilities of really implementing the Convention in accordance with its terms. It is within that perspective that we salute, for instance, in the context of the work of the Commission on the Limits of the Continental Shelf, the establishment of trust funds, including the one which is meant to assist States in implementing the terms of article 76 of UNCLOS.

Moreover, I should refer to the huge potential which has still not been utilized within the context of the Global Resource

Information Database (the so-called GRID system) for data and information management. In this context, there are possibilities for expansion to help solve the needs of developing countries and small island developing States. In regard to those outstanding issues and the need to provide for a consistent implementation of the Convention, clearly my Government is among those that put great emphasis on capacity building, wherever it is needed.

I shall also make a brief reference to the comment by Mr. Jagota with regard to the issue of reviews and regular updated factual information on developments. We would be remiss if we did not refer in this context to the excellent work done by the Secretariat in preparing the annual reports by the Secretary-General on developments in law of the sea and ocean affairs, which help us to conduct a kind of annual review in the General Assembly and other fora.

In the context of establishing the outer limits of the continental shelf, the Convention has clearly made some very deliberate choices on how to proceed. There is a road map and there are objective criteria and time frames. Those criteria and the scientific and legal markers contained in article 76 were intended, as I read the Convention, to survive the test of time, including any improvements in scientific insight. So the tools of the trade are there and it is now up to the Commission to conduct its business on the basis of work carried out by coastal States. Judging from the way things are proceeding, the general impression is that there is a lot of transparency in international scientific communities. There is a general scientific discourse, which is very focused, and the Commission appears to be open in listening to the scientific community. At the same time, the scientific community is also very focused on the work carried out by the Commission. So in that area I believe that article 76 and Annex II of the Convention provide a framework for a substantial increase in legal predictability. That is going to be a

major contribution to stability as well as to sustainable development.

Judge Raymond Ranjeva (International Court of Justice) (translation from French): Let me clarify some delimitation-related issues as we are currently experiencing them rather than as they are being decided by the International Court of Justice. The two basic judgments handed down with regard to maritime delimitation are, first, the decision in the *Jan Mayen Case*¹²⁰ and second, the matter of land and maritime delimitation between Cameroon and Nigeria, including the Bakassi Peninsula. Decisions on delimitation were adopted by the Court unanimously or virtually so. What that means is that the rules that have been defined reflect a juridical affirmation of proposals that have the force of law. This observation responds to the question raised by Ambassador Jacovides.

Between these two decisions came the case of the delimitation between Qatar and Bahrain. In this case there were differences and divergent views within the Court. However, the divergence did not involve the methodology that the Court used in its delimitation; rather, it concerned the manner of determining, for both countries, coastal baselines and basepoints from which a median line could be provisionally drawn. In the context of the particularly complex delimitation involving Bahrain and Qatar, it should be noted that guidance or rules on geographic typology are not included in the 1982 Convention on the Law of the Sea. Such special cases have been difficult to categorize.

¹²⁰ *Case concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment of 14 June 1993, *I.C.J. Reports 1993* (Sales no. 635), p. 38. Available on www.icj.org/icjwww/lcases/igjm/igjm_ijudgments/igjm_ijudgment_19930614.pdf.

That explains the importance of the effort to define things. As you take a closer look at the geographical situation of the maritime areas in question, you realize how much work has to be done. Quite apart from Professor Rosenne's observation about the ambiguity of geography, I want to draw attention to a dimension which in practice is rarely noticed: the interaction and intertwining of maritime and terrestrial issues. In the *Jan Mayen Case*, that specific problem arose with respect to ice surfaces and the role they played when trying to delimit maritime spaces. This is another way of saying that in actual practice, when we try to deal with maritime delimitation we run into a task that calls for constant reflection and on-going analysis, both scientific and geographical.

The second point concerns the importance of conventional delimitation. We have stressed throughout this meeting the need for quality delimitation, conventional delimitation being the easiest to come by. We have to be open-minded and flexible in our thinking, and consider that when an agreement is reached between parties it may be before, during or even after a judicial proceeding. The *Jan Mayen Case* is a major court case in which the parties, Denmark and Norway, made direct reference to delimitation as settled by judicial means through the International Court of Justice when they resolved once and for all the question of how to implement the verdict and the agreement definitively reached between them.

Finally, with regard to the positive or negative conflict of competence between the International Court of Justice and ITLOS, my first observation is this: I wonder whether one can really talk about a conflict of competencies. These are two jurisdictions that are different in kind, and in the final analysis it is the parties to the litigation who will make a choice. In so doing, they will achieve a separation between the competencies of the Court and ITLOS. The competencies of the Court

essentially remain governed by the consensual nature of its competence.

My second observation is that at the heart of the competency of the International Court of Justice there is an irreducible core, namely the general and universal nature of the Court's competence as it deals not only with disputes regarding the seas and sea-based matters but also with questions of land territory.

Mr. Hans Corell (United Nations Legal Counsel): We are struck by the participation here and the interest that you have shown. This is important for the Secretariat. This is a meeting of friends, in many cases of very old friends. Names have been mentioned, and from the Secretariat's perspective we remember Mr. Constantin Stravropoulos, who was the first Special Representative of the Secretary-General for the law of the sea, as well as Mr. Bernardo Zuleta and Mr. Satya Nandan.

In 1992 law of the sea matters were brought within the Office of Legal Affairs; that is when the Division for Ocean Affairs and the Law of the Sea (DOALOS) was established. Its first Director, Mr. Jean-Pierre Lévy, is among us. He was followed by Mr. Moritaka Hayashi and now we have Mrs. Annick de Marffy. For us the dialogue among the Member States and all the others in the law of the sea community is very important. It is a challenge of some dimension to deal with law of the sea matters in the Secretariat

The role of DOALOS today is multifaceted. First, we have the famous report that is issued once a year, with a complementary report in August. The main report is now issued in April for the Consultative Process, in order to facilitate the work of Member States when they deal with the matter in the General Assembly. Then we have the negotiations and the implementation of the resolutions adopted by the General

Assembly. We also service the Commission on the Limits of the Continental Shelf and the Meeting of States Parties to the Convention.

We are currently being subjected to something called “in-depth evaluation” that is done by the Office of Internal Oversight Services, which relies on feedback mainly from outside the Secretariat. I am sure that some of you may have been contacted, and I look forward to the results of that in-depth evaluation with great interest. We are discussing how we can best serve Member States in the future.

From the Secretariat’s point of view, we highly appreciate the close contacts between the Secretariat and Member States and their representatives. This is a vital ingredient in our work, without which we would not be able to fulfill our functions.

Moderator: In closing, I am sure that you all have been holding your breath waiting for my summary of this panel. But I regret to have to disappoint. We have heard three or four extraordinary presentations this afternoon plus remarks from other speakers. If there is one conclusion that can be drawn from these proceedings, it is the fact that the Convention adopted 20 years ago stands firm. It has given rise to enormous State activity in the oceans and stands ready to be interpreted to face new challenges. I think that this is the outstanding outcome that we are celebrating today. This panel is now closed.

2. **Panel 2**

Moderator: Ambassador Hasjim Djalal, Indonesia

Panellists: Ambassador Felipe Paolillo (Uruguay), Mr. Michael Bliss (Australia), Professor Bernard H. Oxman (United States)

A. Presentations

- (i) *Implementation of the Convention: The challenge to ensure the effectiveness of its rules (role of non-State actors / regional approach)*

Ambassador Felipe Paolillo (Uruguay)

Now that 20 years have passed since the adoption of the Convention on the Law of the Sea, I think we are beginning to view the date 10 December 1982 in a different light. We used to see it as being, above all, a date marking the successful completion of a complex and difficult negotiation process that introduced radical changes into a branch of international law which had remained nearly unchanged for 300 years. We viewed that date as a culmination, with the feeling of satisfaction that always goes with the idea of completing a task, a feeling that inclines us to take a rest, a much-needed rest after fulfillment of a mission.

Today we tend to view the adoption of the Convention more as a point of departure than a point of arrival. In reality, 10 December 1982 did not usher in a period of rest from the work of establishing a new legal order for the oceans, but rather marked the beginning of a task that is as complex and difficult as that of concluding the Convention itself: the task of ensuring the Convention's effective implementation; the task of ensuring that the conduct of States and individuals, and of everyone who carries out activities in the ocean spaces, will be in keeping with the principles and rules of the new legal order of the sea.

The adoption of the Convention did operate as a point of departure in one sense at least: the Convention was the catalyst

for intense legislative activity at both the national and international levels. At the national level, numerous States enacted laws and other legislation and took steps to make the Convention's provisions enforceable.

At the international level, legislative activity was particularly productive. Numerous conventions and treaties that may be considered complementary to the Convention were concluded, particularly in the fields of fisheries, protection of the marine environment and navigation safety. International agencies working in the areas of ocean-related questions negotiated and adopted numerous instruments containing norms, regulations and procedures that develop and specify the principles and general provisions contained in the Convention.

Furthermore, many instruments containing what is referred to as "soft law", such as plans of action, codes of conduct, guidelines and recommended practices, have been adopted.

How is it, then, that 20 years after the adoption of the Convention and 8 years after its entry into force, in some areas of the law of the sea of extreme importance, the problems that the Convention was designed to end have yet to be resolved and have even become worse? This is what the experts have been telling us, what has been acknowledged in international conferences and what is stated in the reports of the competent international agencies, including the excellent reports prepared annually by the Division for Ocean Affairs and the Law of the Sea.

The news of the continuing deterioration of the oceans is very disturbing. The marine environment appears to be seriously threatened by pollution, overexploitation of its resources, and ecosystem and habitat destruction. The recent catastrophe along the coast of northern Spain and its adjacent maritime waters –

and possibly the maritime territories of Portugal and France – is just one more episode in the destructive process produced by human activity in the seas, which has increased in recent decades. The information provided by the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) and the Global Conference on Oceans and Coasts at Rio+10¹²¹ is truly alarming.

This deterioration takes many forms, including the decline and even the extinction of fisheries, the destruction of mangroves and coral reefs, climatic changes and increasing eutrophication.

With regard to fishing, despite a few positive signs such as the entry into force of the 1995 Fish Stocks Agreement and the recent reduction of large-scale pelagic drift-net fishing activities, what is certain is that illegal, unregulated and unreported fishing continues to have a strong adverse effect on attempts to preserve and ensure sustainable use of the living resources of the sea. Catches of certain species have reached their maximum potential and other species are under serious threat or on the verge of extinction. Most of the world's fisheries have attained their maximum output; some 25 per cent of stocks are overfished.

Crime on the seas is increasing, becoming more frequent and taking forms not foreseen by the authors of the Convention. Problems in this area are becoming more complex, in particular as a result of the increasing trafficking in migrants and the ever-present threat of terrorist attacks at sea.

¹²¹ Global Conference on Oceans and Coasts at Rio+10: Towards the 2002 World Summit on Sustainable Development: Assessing Progress, Addressing Continuing and New Challenges (3-7 December 2001, Paris).

The experts and officials who have looked into these matters agree that the problem is not one of lack of international regulations. To be sure, in certain sectors additional regulations should be promulgated and existing ones updated. However, there are no major gaps in the law of the sea; the Convention, which lays down the general legal framework, and its complementary instruments cover practically all aspects related to the use of the ocean spaces and the exploitation of their resources.

The Division for Ocean Affairs and the Law of the Sea has repeatedly stated in its reports that the existing legal framework is sufficient for meeting the objectives sought when the Convention was adopted and that the failure to attain the proposed objectives is due not to lack of international legislation but to lack of compliance with that legislation. At recent conferences such as the World Summit on Sustainable Development it has been noted that the cause of the degradation of the oceans over the past 20 years is lack of enforcement of the applicable rules.

With regard to conservation and management of marine living resources, the Convention and the numerous international instruments, both binding and non-binding, that were adopted after it, provide a sufficiently complete framework, and what is needed now is simply compliance with their provisions. The same may be said of protection and preservation of the marine environment. Similarly, with regard to safety at sea it is being stressed that the focus should be more on compliance with existing norms than with the elaboration of new ones. The core of the problem, then, is not one of producing new norms but of applying the existing ones.

We are confronting the following curious situation: While some of the Convention's rules – in particular those

relating to the legal status of the different maritime spaces and the determination of their limits, and those regulating the rights of the coastal and other States over those spaces – were implemented and complied with rapidly, compliance with rules relating to other aspects of the law of the sea, such as fishery management and protection of the marine environment, leaves much to be desired.

We must note that many of the principles and norms of the first category were being implemented by States even before the Convention entered into force, during the negotiations held in the framework of the Third Conference on the Law of the Sea. States were aligning their conduct in questions relating to the exercise of their rights over maritime spaces under national jurisdiction as the norms gradually emerged from the negotiations. Not only were those principles and norms gradually entering into States' legislation and practice, but international organizations and even international courts were also basing their decisions on the provisions of the Convention before it officially came into being. Certain parts of the new law of the sea came into effect before the Convention itself.

As the then Secretary-General of the United Nations, Javier Pérez de Cuéllar, said when the Convention was opened for signature by States, the law of the sea had already been “irrevocably transformed”.

This early, widespread implementation of some of the rules of the Convention even before they were compulsory reveals a curious and paradoxical contrast with other rules equally binding, especially those establishing duties, the implementation of which has been partial, postponed or simply ignored. It is clear that the current critical condition of the oceans has been caused, at least in part, by the lack of implementation of some of the provisions of the Convention and

its complementary instruments. But then, what is the cause of this lack of implementation? What makes States fail to apply some of the Convention's most important provisions, or apply them late, or partially?

One cause might be lack of information. It is possible that in many cases States do not fail to comply with the Convention deliberately, but that they do so because they have not understood the serious damage that the lack of implementation is causing to the health of the oceans. Perhaps Governments have not perceived how serious the problem is. In addition, many States do not consider the protection of the marine environment, for instance, or the preservation of certain fisheries to be priority issues. Countries coping with numerous problems that demand immediate attention and that may affect a nation's peace and the well-being, health and survival of its people, cannot be expected to assign priority to issues that appear to them to be remote, not requiring urgent action and removed from day-to-day vital problems.

Another cause lies in the shortcomings to which coastal developing countries are particularly prone: lack of trained personnel or equipment, the absence or weakness of national institutions or insufficient national legislation. Some developing countries find it especially difficult to adopt and enforce management and conservation measures to combat unauthorized fishing, for instance. Many coastal States are not prepared to effectively monitor fishing activities, or maritime traffic, due to the vast space over which they exercise jurisdiction and the lack of resources to do so. Lastly, we cannot rule out in some cases the lack of political will.

What can be done to enhance the level of compliance with the Convention and its complementary instruments?

All possible ways should be sought to persuade States that are reluctant to act or indifferent to problems of the oceans to comply with their obligations. This area more than any other requires coordination between neighboring States and interested States, universal and regional international agencies, non-governmental organizations and society at large.

In particular, consideration should be given to programming joint and coordinated action, together with the competent bodies of the United Nations system and the financial institutions, to detect areas in which the level of enforcement of the Convention needs to be enhanced and to assist all countries, in particular developing countries, to comply with the Convention, including through verification, monitoring and surveillance; through promotion of regional and subregional cooperation in this area, and through the strengthening of existing regional fishery institutions or, if necessary, the establishment of new ones.

One thing that should be done is to increase dissemination of information relating to the main problems affecting the ocean spaces. We must disseminate information about the situation of fisheries and the state of the marine ecosystem and habitats; warn against actual and potential dangers and damage, and report cases of violation of or non-compliance with the provisions in force, especially in the areas of conservation of marine resources, protection of the marine environment and navigation safety.

I believe the non-governmental organizations have an important role to play in this respect. Non-governmental organizations have the ability to arouse public interest and act independently.

A joint effort should also be made at all levels to assist countries, particularly developing countries, to develop their

capacities to apply the rules in force governing the conduct of States and other operators in the sea, to give countries the capacity to control the maritime spaces within their jurisdiction, to strengthen their institutions, and in some cases to elaborate national legislation – a task all States should do in order to bring their legislation into line with the Convention, a task that has not been done in many States. This coordinated effort should involve competent international institutions, especially regional institutions, when appropriate.

The regional fishery organizations should also be strengthened as a means of ensuring the implementation of the Convention and its complementary instruments. With regard to fishery management and conservation of living resources, the regional bodies have already proved that they can make a substantial contribution together with governments, and every means of strengthening their role in fishery management should be sought, as required by the international rules in force.

We must somehow achieve a substantial improvement in the level of implementation of the Convention, and we must do so urgently. Preventing the degradation of the oceans is the responsibility of all.

In celebrating the twentieth anniversary of the adoption of the Convention it is appropriate to recall that in 1967, when delivering the address that began the process that would lead to major changes in the law of the sea, the Ambassador of Malta, Arvid Pardo, called upon the nations of the world to keep their eyes open to the dangers that threatened devastation of the oceans. Thirty-five years later, the dangers remain. It is time for us to open our eyes, before it is too late.

(ii) *Emerging concepts for the development and strengthening of the legal regime for the oceans: Integrated oceans management, the ecosystem-based approach and marine protected areas*

Mr. Michael Bliss (Australia)*

Twenty years after the adoption of the Convention, the international community does not need more international instruments dealing with oceans. The framework provided by the Convention, and the instruments which have been elaborated since, are more or less comprehensive. What is needed is effective implementation of the Convention and related instruments. States have done their best to implement the international obligations contained in these instruments. But implementation is a continuing challenge. And as competing uses of the oceans become more intense, new approaches to implementation are required.

I have been asked to discuss three “emerging concepts” for developing and strengthening the legal regime of the oceans: integrated oceans management, the ecosystem-based approach and marine protected areas. These terms are not found in the Convention. Yet increasingly these concepts are coming to be seen as integral to effective implementation of the Convention, so much so that each of these concepts is highlighted in the omnibus law of the sea resolution which the General Assembly will soon adopt.¹²² Integrated oceans management provides an overall framework for implementation. The ecosystem-based

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¹²² Resolution 57/141 of 12 December 2002.

approach provides an organizing principle for that framework. And marine protected areas are a specific tool in that overall framework.

I will address each of these in turn and, to use the phrase that has now become a mantra in the annual law of the sea resolution, I intend to look at how each of these concepts applies at the “national, regional and global levels”. In doing so, I hope that you will forgive me for referring to the Australian experience, and that of the Pacific region generally, from time to time by way of illustration.

Integrated oceans management

Brevity has not been a feature of any law of the sea instrument. Certainly not in the Convention itself, with its 320 articles and 9 annexes, nor in the annual law of the sea resolution, which, despite the best efforts of the coordinator of the negotiations, still runs to 16 preambular and 74 operative paragraphs. Quite simply, there are too many important issues to cover. But how are Member States to effectively implement all these obligations and instructions?

The traditional approach has been to regulate by subject matter. Most coastal States had legislation in place to regulate particular oceans uses well before the Convention entered into force for that State. The standard approach has been for a State to adopt separate pieces of legislation dealing with subjects such as navigation, fisheries, exploitation of non-living natural resources and marine pollution. With the entry into force of the Convention, the easiest course was simply to update existing legislation, where necessary, to implement aspects of the Convention not already covered by such laws.

In addition, many coastal States have established specific regulatory agencies to implement and oversee each specific piece

of legislation – for example, a fisheries agency, a maritime safety agency, and an agency dealing with oil and gas exploitation.

The obvious point to make is that many of these activities take place in the same area of ocean space. And even where they do not, these activities take place in a common medium, the sea, which quickly carries the impacts of those activities to other areas. Therefore the challenge is to ensure that this pattern of sectoral regulation of specific activities actually works as a whole.

One early articulation of the appropriate response to this problem was the notion of “multiple uses frameworks” for the oceans. This captures the need to respond to the reality of numerous activities affecting the same area of ocean space. However, the term is limited to some extent, as it suggests the need for regulatory structures merely to referee between competing “uses”. Importantly, it does not suggest a role for “values” in determining an appropriate overall regulatory regime.

The term “integrated oceans management” is a better articulation of the appropriate response. This approach requires a regulatory framework which governs all activities affecting an area of ocean space. It also suggests a system of oceans governance based on certain principles – a key one being the “ecosystem approach”, which I shall address a little later.

The phrase “integrated oceans management” is nowhere to be found in the Convention. However there is a basis for it in the Convention as an appropriate means of implementation. The third line of the preamble to the Convention captures it particularly well: “the problems of ocean space are closely interrelated and need to be considered as a whole”. The Convention itself is organized by reference to particular ocean areas defined by jurisdictional boundaries, rather than solely by reference to uses of the oceans.

One of the first articulations of the concept of “integrated oceans management” was in chapter 17 of Agenda 21, adopted at the Earth Summit in 1992. In that document, coastal States committed themselves “to integrated management and sustainable development of coastal areas and the marine environment under their national jurisdiction” (paragraph 17.5). This required the adoption of “an integrated policy and decision-making process, including all involved sectors, to promote compatibility and a balance of uses” (ibid., paragraph (a)). Each coastal State was instructed to “consider establishing, or where necessary strengthening, appropriate coordinating mechanisms (such as a high-level policy planning body) for integrated management and sustainable development of coastal and marine areas and their resources, at both the local and national levels” (paragraph 17.6).

Ten years, and a few more adjectives, later the importance of the concept is still being stressed. The Plan of Implementation of the Johannesburg World Summit on Sustainable Development recognized the need to “[p]romote integrated, multidisciplinary and multisectoral coastal and ocean management at the national level and encourage and assist coastal States in developing ocean policies and mechanisms on integrated coastal management”.¹²³

Similarly, the report of the most recent meeting of the United Nations Informal Consultative Process on ocean affairs stated:

¹²³ *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex, para. 30 (e). Available on www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm.

“An integrated, interdisciplinary, intersectoral and ecosystem-based approach to oceans management, consistent with the legal framework provided by UNCLOS and the goals of chapter 17 of Agenda 21, is not just desirable, it is essential. Economic development, social development and environmental protection are mutually supportive components of the sustainable development of the oceans and seas.”¹²⁴

As a concept, this seems fairly straightforward – no right, and no activity, is to be viewed in isolation. But what does this require in practice?

National level

At the national level, it is useful to look at how coastal States have sought to make integrated oceans management a reality. After three years of consultations and preparatory work, Australia launched its Oceans Policy on 23 December 1998 – not coincidentally, just before the International Year of the Ocean concluded. With this policy, the Australian Government was seeking to set out a framework for integrated ecosystem-based planning and management for multiple uses of Australia’s oceans – an area of 11 million square kilometres which incorporates both tropical and sub-polar marine ecosystems, and everything in between.

The Australian Government was acting on recognition that “management of oceans purely on an industry-by-industry

¹²⁴ Report on the work of the United Nations Open-ended Informal Consultative Process established by the General Assembly in its resolution 54/33 in order to facilitate the annual review by the Assembly of developments in ocean affairs at its third meeting [2002], document A/57/80, para. 4. Available on ods-dds-ny.un.org/doc/UNDOC/GEN/N02/395/80/PDF/N0239580.pdf.

basis [would] not be sustainable in the long run. Activities such as fishing, tourism, shipping, aquaculture, coastal development and petroleum production must be collectively managed to be compatible with each other and with the ecological health of the oceans”.

Australia’s Oceans Policy does not substantively rewrite existing legislation.¹²⁵ Nor does it require a major restructuring of existing regulatory agencies. However, it does establish an overarching policy framework, as well as a new institution to coordinate all oceans related regulation and planning – the National Oceans Office.

The major tool of Australia’s Oceans Policy is the adoption of Regional Marine Plans. These are based on large marine ecosystems, and integrate sectoral commercial interests and conservation requirements. The Plans will provide a focus for coordination between existing and developing ocean uses and the range of sectoral and administrative agencies with responsibilities for marine systems. The objective of each Plan is to manage human activities to:

- ensure continuing marine ecosystem health;
- safeguard marine biological diversity;
- promote diverse, strong and sustainable marine industries; and

¹²⁵ For a detailed discussion of the legislative impact of the Oceans Policy, see Donald Rothwell and Stuart Kaye, “Australia’s legal framework for integrated oceans and coastal management”, in *Integrated Oceans Management: Issues in Implementing Australia’s Oceans Policy* (M. Haward, ed.), Cooperative Research Centre for Antarctica and the Southern Ocean, Research Report 26, May 2001. Available on www.acorn-oceans.org/IOM/Framework.PDF. 26 (2001).

- provide increased certainty and long-term security for all marine users.¹²⁶

The first draft Regional Marine Plan will soon be released.

The intention of an oceans policy is to bring coherence to the overall regulatory approach. The process of devising and implementing a national oceans policy should involve consultation with all interested groups, and so make possible an enhanced awareness and understanding of and involvement in oceans management among the broader community. The idea is to reach general agreement on the best mix of conservation, sustainable use and economic development of coastal and marine areas. The final result should be improved implementation of the Convention and other related instruments at the national level.

A number of other States have developed, or are in the process of developing, national oceans policies, including Canada, New Zealand and the United States. In each case, the preferred approach has been to view a national oceans policy as an overarching policy framework, rather than requiring a complete reworking of existing legislation.

Regional level

The need for coordination of oceans governance at the regional level has been recognized for some time. The United Nations Environment Programme (UNEP) has had in place its Regional Seas Programme for nearly three decades. UNEP is currently administering and is active in the coordination of 15

¹²⁶ See Government of Australia, Department of Environment and Heritage, *Australia's Oceans Policy* (1998), vol. 1, p. 12. Available on www.oceans.gov.au/content_policy_v1/default.jsp.

regional seas conventions and action plans. However it is fair to say that, while the regional seas programmes provide some basis for coordination of regulation at the regional level, they have not generally provided a comprehensive basis for integrated management. In part this has been due to the absence of regional institutions capable of driving the implementation of regional policies and approaches.

The Plan of Implementation of the Johannesburg World Summit on Sustainable Development recognized the need to “[s]trengthen regional cooperation and coordination between the relevant regional organizations and programmes, the regional seas programmes of the United Nations Environment Programme, regional fisheries management organizations and other” relevant organizations.¹²⁷

What is needed is the adoption of regional oceans policies which provide a comprehensive basis for integrated oceans management at the regional level – that is, which provide a policy framework for implementation. The first example of this is the Pacific Islands Regional Ocean Policy. The policy was adopted by Pacific Island States in August 2002.¹²⁸ It covers both national jurisdiction and areas beyond national jurisdiction. It recognizes the interconnectedness of marine ecosystems in the Pacific Islands region. It encourages Pacific Island States to establish complementary national oceans policies, and elaborates some principles for these policies. It emphasizes cooperation through established regional institutions, such as the South

¹²⁷ *Report of the World Summit on Sustainable Development* (Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex, para. 30 (f).

¹²⁸ Thirty-third Pacific Islands Forum (Suva, Fiji, 2002), Forum Communique, annex 2, in UN document A/57/331. For background, see M. Tsamenyi, “A Pacific Regional Ocean Policy”, *Scoping Paper*, July 2000, available at www.spc.org.nc/coastfish/Asides/Ocean/PROPscope.pdf.

Pacific Regional Environment Programme. It provides a regional policy framework for decisions taken by regional institutions, and also for regulation at the national level. It is, I would venture, the future of oceans governance at the regional level.

Global level

Integrated oceans management is necessary not only at the national and regional levels – it is also required at the global level. The principle holds firm: sectoral regulation of different activities and uses must be coordinated if oceans governance is to be effective.

This sentiment has found expression recently in General Assembly resolutions, in the work of the Informal Consultative Process on ocean affairs and in the Plan of Implementation of the Johannesburg World Summit on Sustainable Development (WSSD). In the latter instrument, there was express recognition of the need to “establish an effective, transparent and regular interagency coordination mechanism on ocean and coastal issues within the United Nations system” (paragraph 30 (c)). That is, international organizations charged with regulation of a particular sector should enhance their interaction and coordination to ensure that the integrated approach applies also at the global level.

What this means in practice is the International Maritime Organization (IMO) and the Food and Agriculture Organization (FAO) working together on flag State responsibility for fishery vessels; UNEP and IMO working together on appropriate responses to maritime disasters such as the recent oil spill that resulted from the sinking of the vessel *Prestige* off the Spanish coast; the World Trade Organization (WTO) and FAO working together to ensure the reduction of subsidies which lead to global fishing overcapacity. All of this is happening in practice, and it is

a trend which must be strengthened and formalized. And these agencies must report to the ultimate policy makers at the international level – Member States of the United Nations – not just on their efforts at sectoral regulation, but also on their efforts to take an integrated approach at the international level. The Consultative Process and the General Assembly provide the perfect fora for such reports.

Ecosystem-based approach

There has been considerable talk in recent years of the importance of the “ecosystem approach” in oceans management. It is, as I have suggested, an organizing principle for integrated oceans management. However, while the Convention does refer generally to the “marine environment”, there is no express mention of the “ecosystem approach”. Article 194, paragraph 5, requires States to take action to protect “rare and fragile ecosystems”. But the concept of regulating oceans uses so as to ensure the overall integrity of marine ecosystems is implicit at best.

Chapter 17 of Agenda 21 is slightly more explicit. It requires States to maintain marine biological diversity and assess the impacts of activities on the marine environment. However, the concept of focusing on marine ecosystems as the basis for management approaches is not expressly articulated.

It was the Convention on Biological Diversity which provided the express international law foundation for the “ecosystem-based approach”. Applied to the marine environment, this requires a consideration, in decision-making at the local, national and regional levels, of the impacts of activities on marine biological diversity.

Decision V/6 of the Conference of Parties to the Convention on Biological Diversity, adopted in 2000,¹²⁹ sets out in detail the principles behind the ecosystem approach:

- The ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way.
- The intention is to reach a balance of the three objectives of the Convention on Biological Diversity: conservation, sustainable use, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

By Johannesburg, the notion of an “ecosystem approach” had become integral. States were instructed to “[e]ncourage the application by 2010 of the ecosystem approach”.¹³⁰ Of course, this did not escape the attention of those of us involved in negotiating the omnibus law of the sea resolution:¹³¹ paragraph 53 of that resolution calls upon States “to promote the conservation and management of the oceans in accordance with chapter 17 of Agenda 21 and other relevant international instruments”, and “to develop and facilitate the use of diverse approaches and tools, including the ecosystem approach” to that end.

¹²⁹ Document UNEP/CBD/COP/5/23, annex III. Available on www.biodiv.org/doc/meetings/cop/cop-05/official/cop-05-23-en.pdf.

¹³⁰ *Report of the World Summit on Sustainable Development* (Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex, para. 30 (d).

¹³¹ Resolution 57/141 of 12 December 2002.

National level

Adoption of the ecosystem approach at the national level is closely related to the notion of integrated oceans management. Ideally, the adoption by a coastal State of an oceans policy which provides for integrated oceans management based on an ecosystem approach should go a long way towards ensuring sustainable ocean ecosystems within national jurisdiction. In practice, adoption of the ecosystem approach would mean, for example, that decisions about land use and planning in catchment areas would take into account the impact of resulting land-based pollution on oceans ecosystems; fisheries regulation would take into account all impacts of fishing activities on ecosystems; and all activities would be assessed for their impact on threatened species and fragile ecosystems.

Regional level

At the regional level, the ecosystem approach has been best articulated in the United Nations Fish Stocks Agreement, which, in its preamble, recognizes the “need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations”, and requires States to give effect to their duty to cooperate by establishing conservation and management measures for both target and non-target species, and by protecting biodiversity.¹³²

¹³² The United Nations Fish Stocks Agreement also requires States to “assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks” (article 5 (d)); to “adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks” (article 5 (e)), and to “protect biodiversity in the marine environment” (article 5 (g)). The application of the “ecosystem approach” in the fisheries context has also been

The establishment of new regional fishery management organizations and the updating of existing organizations, in accordance with the requirements of the Fish Stocks Agreement, provides both a legal and an institutional basis for pursuance of the ecosystem approach at the regional level in relation to fisheries activities, covering areas both within and beyond national jurisdiction.¹³³

Moving beyond fisheries activity, the Convention on Biological Diversity provides the basis for pursuance of the ecosystem approach at the regional level. Article 5 requires that “each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity”. The adoption of regional oceans policies is the best way of implementing this obligation and ensuring a comprehensive adoption at the regional level of the ecosystem approach.

Global level

At the global level, efforts to implement the ecosystem approach have perhaps been most extensive in the fisheries area. A striking example of effective global regulation of an activity

addressed by other instruments, including, recently, the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem (2001).

¹³³ Perhaps the most comprehensive attempt to pursue the ecosystem approach at the regional level is contained in the Convention on the Conservation of Antarctic Marine Living Resources (1980). See S. Kaye, D. Rothwell and M. Haward, Ecosystem Management in the Southern Ocean, in *Integrated Oceans Management: Issues in Implementing Australia's Oceans Policy* (Haward, ed.), op. cit. Available on www.acorn-oceans.org/IOM/Management3.PDF.

because of its negative impact on oceans ecosystems is the global moratorium on drift-net fishing, contained in successive General Assembly resolutions,¹³⁴ put in place due to the large amounts of by-catch, including the deaths of significant numbers of marine mammals, which result from their use.¹³⁵ Another example is the Agreement on the Conservation of Albatrosses and Petrels (2001), which requires States parties to regulate the use of longline fishing techniques so as to reduce the significant number of albatrosses killed each year as a result. The FAO International Plan of Action to Prevent Illegal, Unregulated and Unreported Fishing sets out a global framework for action against those fishing activities which do not comply with conservation and management measures, and which accordingly pose a serious threat to long-term sustainability of the world's fisheries and marine ecosystems generally.

Beyond the area of fisheries, there are other examples of international instruments and programmes which adopt an ecosystem approach at the global level. For example, global efforts to control the discharge of ballast water have sought to prevent the spread of alien invasive species to marine ecosystems, and so protect marine biological diversity. The IMO is close to completing work on an International Convention on the Control and Management of Ships' Ballast Water and

¹³⁴ See General Assembly resolution 57/142 of 12 December 2002 – Large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and on the high seas / illegal, unreported and unregulated fishing, fisheries by-catch and discards, and other developments. The first preambular paragraph lists earlier Assembly resolutions.

¹³⁵ See also the Convention for the Prohibition of Fishing with Long Drift Nets in the South Pacific (1989, Wellington), which banned the use of drift-nets in the South Pacific.

Sediments,¹³⁶ and implementation of this global standard will be critical to the protection of sensitive and unique marine ecosystems all over the world.

Marine protected areas

In pursuing integrated oceans management based on an ecosystem approach, the establishment of a representative system of protected areas is an essential tool. The importance of protected areas as a tool for protecting terrestrial ecosystems has long been recognized, and most States have established some system of national parks or protected areas on land. The same general principle applies to marine ecosystems. However, the development of marine protected areas and their conceptual framework has trailed their terrestrial counterparts by nearly a century.¹³⁷

The purpose of marine protected areas is to protect vulnerable marine ecosystems, threatened species and marine biodiversity through the regulation of activities and uses which would impact upon those ecosystems in a defined geographic area. While there is no specific reference in the 1982 Convention to the concept of marine protected areas, the legal foundation for the establishment of such areas is clear. As we know, article 192 of the Convention sets out the general obligation of States to protect and preserve the marine environment. Article 194, paragraph 1, requires that “States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control

¹³⁶ Draft convention in IMO document BWM/CONF/2, annex. Available on globallast.imo.org/index.asp?page=mepc.htm&menu=true.

¹³⁷Jon Lien and Robert Graham, eds. (1985), *Marine Parks and Conservation, Challenge and Promise*, National and Provincial Parks Association of Canada, Toronto.

pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal”. Article 194, paragraph 5, is more specific, stating that measures to protect and preserve the marine environment “shall include those necessary to protect and preserve rare and fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life”. Although Article 194 is focused on pollution, this provision is a key legal foundation for the establishment of marine protected areas.

Other provisions of the Convention reinforce the legal basis for the establishment of marine protected areas – for example, article 62 on the utilization of living resources, which permits closure of areas to fishing; and article 211 on the regulation of navigation in sensitive areas.¹³⁸

By the time Agenda 21 was adopted in 1992, the importance of marine protected areas as a tool in the integrated management of oceans and coastal areas was expressly recognized. Paragraph 17.7 of Agenda 21 provides that:

“Coastal States, with the support of international organizations, upon request, should undertake measures to maintain biological diversity and productivity of marine species and habitats under national jurisdiction. Inter alia, these measures might include ... establishment and management of protected areas”.

The Convention on Biological Diversity, in article 8, provided the general legal basis for this approach, requiring

¹³⁸ See Robin Warner, Marine protected areas beyond national jurisdiction: Existing legal principles and a future international law framework”, in *Integrated Oceans Management: Issues in Implementing Australia's Oceans Policy*, op. cit. Available on www.acorn-oceans.org/IOM/areas.pdf.

States to establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity.

By Johannesburg, the instruction to States to establish marine protected areas was unequivocal. Paragraph 32 of the WSSD Plan of Implementation requires States, regional organizations and other relevant actors to “promote the conservation and management of the oceans through actions at all levels to ...:

“(c) Develop and facilitate the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods”.

This language is reproduced in paragraph 53 of the latest omnibus law of the sea resolution.¹³⁹

Thus, a timeline has been set for the establishment of marine protected areas, including representative networks, by 2012. This is no small task. But what exactly does this requirement entail?

First, the establishment of a marine protected area requires regulation of uses in a particular area. But it does not necessarily mean the establishment of “no-go, no-take” zones in which all activities are prohibited or heavily regulated. Rather, marine protected areas can include areas where fisheries

¹³⁹ General Assembly resolution 57/141 of 12 December 2002.

activities are limited for certain periods of time, areas where anchoring is prohibited to prevent damage to fragile reef ecosystems, or areas where, consistent with the Convention, navigation is regulated so as to minimize the threat posed by vessel-source pollution or maritime accidents. In some cases, different regulatory regimes might apply at different depths – for example, in an area off South-Eastern Australia, fishing activity is permitted to a depth of 500 metres but bottom-trawling techniques are prohibited so as to protect a fragile seamount. In other areas, regulation is done on a temporal basis, with no-take or limited access seasons put in place to ensure adequate protection of a particular ecosystem.

In each case, an assessment must be made as to the relative importance and vulnerability of a specific area in question, the threats posed by potential impacts, and the appropriate regulatory approach to minimize those impacts and effectively protect the values of the area. A crucial factor in the establishment of effective marine protected areas is the involvement of relevant stakeholders. Enforcement is also essential: if States are not able to or prepared to enforce the applicable restrictions, the conservation objective will not be realized.

The establishment of individual marine protected areas is not sufficient: “A global representative system of marine protected areas is now needed as one essential component for ecosystem understanding, management and biodiversity protection”.¹⁴⁰ The establishment of a representative network of

¹⁴⁰ *Toward the 2002 World Summit on Sustainable Development, Johannesburg - Ensuring the Sustainable Development of Oceans and Coasts, A call to Action: Co-Chairs' Report from the Global Conference on Oceans and Coasts at Rio+10, Held at UNESCO, Paris, December 3-7, 2001*, para. 6. Available on ioc.unesco.org/icam/Co-Chairs%20report_Final.pdf.

marine protected areas requires the taking of an inventory of marine ecosystems and biodiversity, and the design of a system of protected areas which adequately protects the entire range of marine biodiversity.

National jurisdiction

Many States are well advanced in establishing marine protected areas. Australia, for example, has the largest marine protected area in the world – the Great Barrier Reef Marine Park – which covers an area of 350,000 square kilometres. The authority which oversees the park is now in the middle of a complete rezoning to ensure effective protection of a network of representative areas within the park, and improved integrated management of all uses of the park. This is just the largest example; Australia also has the largest number of such areas in any country.¹⁴¹ The establishment and maintenance of a representative system of marine protected areas now forms an integral component of Australia's Oceans Policy.

Regional level

The establishment of a representative system of marine protected areas will inevitably require action at the regional level. One potential way forward is the creation of transnational marine protected areas. Transnational protected areas have become common place on land; one only needs to think of the Serengeti / Masai Mara national park system traversing the Kenya/Tanzania border, or the Waterson-Glacier International Peace Park which straddles the Canada/United States border.

¹⁴¹ Graeme Kelleher, A global representative system of marine protected areas, *ATSE Focus* (Australian Academy of Technological Sciences and Engineering), no. 90, Jan./Feb. 1996 Available on www.atse.org.au/publications/focus/focus-Kelleher.htm.

The same approach should be taken at sea, and for the same reason: fragile ecosystems deserving protection seldom conform to jurisdictional boundaries. In fact, the establishment of such transnational protected areas to protect fragile marine ecosystems could be seen as required by a combination of the general obligation which States have to protect the marine environment and the general international law duty to cooperate. Regional organizations can obviously play a key role in assisting the establishment of representative systems of marine protected areas.¹⁴²

Areas beyond national jurisdiction

The need to protect vulnerable ecosystems does not stop at the boundaries of national jurisdiction. Our knowledge of the biodiversity and fragility of deep-sea ecosystems has increased exponentially in the last few years. “The diversity of the ‘Lilliputian’ fauna of the abyssal plains is now recognized to rival that of tropical rainforests.”¹⁴³ However, there is much still to learn and, clearly, much to conserve.

¹⁴² The third meeting (8-15 April 2002) of the United Nations Informal Consultative Process on Ocean Affairs made the following recommendation in its report (para. 25): “[T]he General Assembly should invite regional and subregional organizations, where appropriate, concerned with the marine environment, navigational safety, fisheries management and marine science to consider how to establish specific regional targets for managing marine and coastal ecosystems in an integrated manner. The range of regional action that could be considered could include ... arrangements such as networks of marine protected areas already established in some regions [and] the protection of fragile coastal ecosystems, such as coral reefs ...”

¹⁴³ H. Thiel and J.A. Koslow (eds.), *Managing risks to Biodiversity and the Environment on the High Sea, Including Tools such as Marine Protected Areas – Scientific Requirements and Legal Aspects: Proceedings of the Expert Workshop held at the International Academy for Nature Conservation, Isle of Vilm, Germany, 27 February - 4 March 2001*. BfN-Skripten 43. (German

A particular focus should be seamounts and hydrothermal vents, which are relatively small areas supporting significant biodiversity, often of endemic species. Potential threats to these ecosystems include trawling, mineral exploitation, bioprospecting and waste disposal.¹⁴⁴ The need for action has been recognized in the latest omnibus law of the sea resolution,¹⁴⁵ operative paragraph 56 of which “[e]ncourages relevant international organizations, ... with the assistance of regional and subregional fisheries organizations, to consider urgently ways to integrate and improve, on a scientific basis, the management of risks to marine biodiversity of seamounts and certain other underwater features within the framework of the Convention”. The International Seabed Authority is also looking at ways to ensure that activities under its authority are conducted so as to ensure the integrity of these ecosystems. Bioprospecting on the deep seabed is already a reality and will require some form of regulation in the near future.

I can hear the objections already: “But we cannot have protected areas on the high seas”. Why not? If we are serious about the need for a global representative system of protected areas, then we must consider how to protect the entire range of marine biodiversity, wherever it is found. The Convention already points the way: the obligations under articles 192 and 194, which provide the basis for the establishment of marine protected areas within national jurisdiction, also apply to protection of the environment beyond national jurisdiction. Other specific obligations relating to living marine resources, marine scientific research and environmental impact assessment

Federal Agency for Nature Conservation, Bonn.) Available on www.biodiv.org/doc/meetings/mar/temcpa-02/other/temcpa-02-bfn-en.pdf.

¹⁴⁴ See Robyn Warner, op. cit.

¹⁴⁵ General Assembly resolution 57/141 of 12 December 2002.

also lend support to the establishment of marine protected areas beyond national jurisdiction. The IMO Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas¹⁴⁶ provide a starting point for efforts to introduce measures to protect particularly sensitive areas beyond national jurisdiction.¹⁴⁷

This should not be beyond us. The Convention which we are commemorating today contains a number of radical solutions to complex problems which, at the time, no doubt seemed insurmountable. With that in mind, a cooperative approach to protecting marine ecosystems beyond national jurisdiction is achievable. Perhaps the best start would be to consider, as a demonstration, cooperative approaches to regulating particular uses in one identified area of concern beyond national jurisdiction. The next meeting of the United Nations Informal Consultative Process on ocean affairs will consider the topic of the protection of vulnerable marine ecosystems, and this will provide us with a forum for States to work on the protection of marine ecosystems beyond national jurisdiction.

Conclusion

Twenty years after the adoption of the Convention, it is important to ask how we can better implement its provisions, and those of other relevant instruments, to ensure sustainable development of the oceans. It is increasingly clear that, to do so, we must engage in integrated oceans management based on an ecosystem approach. Perhaps then in another 20 years we shall be able to ask how the comprehensive system of national and regional oceans policies and the representative network of

¹⁴⁶ IMO resolution A.927(22), annex 2, of 29 November 2001.

¹⁴⁷ See Warner, *op. cit.*, for a full elaboration of these arguments.

marine protected areas is working, and we shall be able to answer that it is working well.

(iii) *Tools for change: The amendment procedure*

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Having had the honour to participate in the Third United Nations Conference on the Law of the Sea as United States representative and chairman of the English Language Group of the Drafting Committee, it is not only a pleasure to be invited to speak to you on this occasion in the very building where we did so much of that work, but a unique privilege to be able to come back here to speak in a purely personal capacity.

The anniversary of the conclusion of the United Nations Convention on the Law of the Sea is an appropriate occasion to take stock of where we have been, where we are now and where we are going. This in turn invites us to reflect on some basic principles. We should seek these, first and foremost, in the Charter of the United Nations. Few would quarrel with the view that the fundamental goal of the Charter is the promotion of a peaceful international order throughout the world. And few would quarrel with the proposition that the promotion of the rule of law in international affairs is essential to achieving that goal.

This is not an easy project. Universal law requires universal commitment. The Charter embraces the legal premise of the sovereign equality of States. Promoting the rule of law depends on the willingness of States to commit themselves to particular rules, or – as the Charter itself illustrates – to commit themselves to particular institutional procedures for

promulgating rules binding on all without the specific assent of each State to each rule.

The history of the law of the sea in the twentieth century amply demonstrates both the need for and the difficulty of attaining universal assent to a single body of basic rules. Confusion and conflict increasingly emerged as each State attempted to impose its view of international law on others. It became increasingly evident that a ship navigating far from home needs more than a learned treatise to have the confidence that governments in the region will permit it to pass unharmed, and that a coastal State needs more than a passionate apologia to be sure it can impose rules on foreigners off its coast without provoking a costly response. Coastal States in particular became aware that each had important interests both in the classic high seas freedoms of Grotius' *Mare Liberum* and in restrictions on some of those freedoms, and that a stable balance between the two in the end could be achieved only through a stable global consensus on the rights, freedoms and duties of States with respect to the sea.

Once in the first half of the twentieth century, and twice in the first decade of the second half, the community of States attempted to achieve universal assent to a written articulation of these rules, and failed. Those failures may in themselves have contributed to the descent into confusion and chaos. It was with more than a little trepidation, and more than the ordinary degree of political attention, that the community tried again. Preliminary work, both within and outside the United Nations, began in 1967. The Third United Nations Conference on the Law of the Sea convened in 1973, thereafter generally meeting at length two times per year, with important informal meetings between sessions. It finally adopted the United Nations Convention on the Law of the Sea in 1982. In time it became evident that the goal of a global consensus, namely universal

ratification, could not be achieved without addressing the problems with Part XI of the Convention. This was done in 1994 in the Implementation Agreement. The Convention and the Agreement finally entered into force and began to attract widespread adherence.

Why did it take so long? Among the reasons is that governments were committed to trying to get it right this time: they understood that getting it right meant uniformity of substance and universality of adherence. Diplomats and lawyers are well aware that many treaties, by permitting reservations, sacrifice uniformity of substance in order to promote universality of ratification; others may do the reverse. This Convention, despite its enormous size and complexity, prohibits reservations. And the Convention as a whole, not merely the Implementation Agreement, was generally negotiated with a view to securing universal ratification. A single body of basic rights and duties, and precise allocations of jurisdiction applicable to all, were the ambitious goals.

We are now well on the way to achieving universal ratification. But we are not there yet. The good news is that as of this writing there are 143 parties to the Convention and soon to be more, and that the governments of some other States are publicly committed to seeking parliamentary approval of the Convention. The bad news is that there are nevertheless still a significant number of non-parties, including two of the largest countries in the world.

Those who regard the Convention as a species of *droit acquis* that can be taken for granted as we move on to new things ought not overlook the fact that two essential objectives of the Convention could be prejudiced by new projects unless care is taken in how they are pursued. The first is the goal of universal ratification: if we want a truly universal law of the sea,

governments and institutions should do more to promote universal ratification of the Convention, and should also seek to avoid actions that might frustrate it. The second is the goal of coherence and uniformity of substance: if we want to maintain the uniformity reflected in the prohibition on reservations, then we should be cautious about actions that could fracture the Convention into a series of conflicting and competing instruments regarding basic rights and duties and precise allocations of jurisdiction.

The question of amendments entails a risk/benefit calculus, and any such calculus must of course take into account the risks and benefits of alternatives as well. This is especially true of an amendment conference whose agenda could be difficult to control. Depending on the alternatives, an amendment conference may do more harm to the underlying goals of the Convention than the good that might be achieved with respect to the content of particular amendments.

While an amendment conference is possible under article 312 after the expiry of a period of 10 years from the date of entry into force, and while that date is no longer far away, any such conference – or even the prospect of such a conference – could prejudice universal ratification of the Convention as it stands. It could also undermine the perceived legitimacy of the Convention as a source of customary law and otherwise.

These costs would be sustained without even knowing whether the conference will be able to produce amendments that would themselves be widely accepted. At best, there is likely to be a long period of uncertainty. Pursuant to article 316, entry into force of amendments generally will require ratification by at least two-thirds of the States parties (two-thirds of the current 143 parties is 96); at that point the amendments generally will enter into force only for the States that ratify or

accede to them, and such amendments will not affect the enjoyment by other States parties of their rights or the performance of their obligations under the Convention without regard to the amendments.

The risks are somewhat more attenuated with respect to the simplified amendment procedure set forth in article 313. This is so not only because any State party may block the adoption of the amendment, but because that decision is made in capitals without the pressures of conference dynamics and deadlines. There is accordingly a greater, but by no means absolute, assurance that amendments adopted pursuant to article 313 are likely to be widely ratified.

The Convention has been called a constitution for the oceans. One of the reasons is that, like municipal constitutions, it provides a normative and procedural framework for change and adaptation within the constitutional order. In my view, to the extent possible, change should be contemplated within, rather than to, the constitutional order. To put it differently, one ought to consider the alternatives for achieving an objective before deciding that an amendment is necessary.

One of the more interesting aspects of the Law of the Sea Convention is that it recognizes and reflects an underlying irony of the law, namely that stability in the law is not possible without orderly adaptation and change. The regimes established by the Convention are not static. The Convention combines norms and jurisdictional allocations with a series of frameworks for developing specific rules in the context of other arrangements and organizations. Some are global, especially where global uniformity or minimum global standards are necessary or desirable; others are regional or local. Nowhere is this more apparent than in the regimes for environmental protection and conservation of living resources.

The Convention is one of the rare treaties to articulate a basic environmental norm in unqualified form. Article 192 provides that States have the obligation to protect and preserve the marine environment. This includes marine life, including the ecosystems and habitats that support such life. Paragraph 5 of Article 194 specifies that the measures taken to protect and preserve the marine environment shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

The Convention sets forth elaborate obligations to develop international rules and standards with respect to particular sources of pollution through the competent international organization, which is generally considered to be the International Maritime Organization (IMO). The Convention takes a very broad view of what those measures should encompass. But it does not stop there. The Convention takes a step forward in dealing with the problem of gaps in ratification and enforcement of environmental instruments now and in the future. The many standards with respect to ships that have already emerged in IMO instruments, and are already generally accepted by the laws and practices of maritime and other States, are incorporated by reference into the Convention. Such standards must be applied by the flag State and may be enforced by port States and coastal States with respect to foreign ships. As more such standards evolve in the future and become generally accepted by the laws and practices of maritime and other States, they too will become part of this legal structure.

While this system is most extensively elaborated with respect to environmental matters, there is similar provision in other areas as well for development of the law, and for incorporation of the results into the Convention system. Navigation safety is perhaps the clearest additional example,

where the system largely parallels that applicable to pollution from ships. The Rules of the Air elaborated by the International Civil Aviation Organization are incorporated by reference with respect to transit passage of straits and archipelagic sea lanes passage by civil aircraft. Deep seabed mining is of course dealt with directly under the Convention and the 1994 Implementation Agreement.

The Convention's provisions can easily accommodate new approaches. There is nothing to preclude the application of an ecosystem-based approach, for example. This in fact has already been done in part, for example in the Convention on the Conservation of Antarctic Living Marine Resources. As already mentioned, article 194 specifically refers to ecosystems; moreover, article 61, paragraph 4, and article 119, paragraph 1 (b), specifically refer to effects on species associated with or dependent upon harvested species. Similarly, there is nothing to preclude a State from prohibiting dumping, mining or other activities under its jurisdiction in order to protect the environment; that is typical of so-called marine sanctuaries. Moreover, under article 211, paragraph 6, a State may seek IMO approval of special restraints with respect to ships in particular areas. Article 145 expressly refers to the protection of the ecological balance of the marine environment in connection with deep seabed mining.

That said, it is not entirely clear what is meant by those who propose a system of integrated ocean management and where it is meant to apply. Depending on what it entails, it might implicate the rights of different States with respect to different activities in the same area, and at the same time implicate the competence of a variety of different domestic and international agencies. It is not clear that many States are ready for an all-embracing ocean agency on the municipal, regional or international level.

In this connection it perhaps bears repeating what was patently clear for many years to participants in the Law of the Sea Conference: given a choice, no State that prizes its sovereignty will willingly subject its lines of communication with the rest of the world to the control of another State. Assuming that this premise is understood and respected – that is, assuming that the provisions of the Convention on navigation and communications, and on the geographic and substantive limits of national jurisdiction, are respected – I for one do not believe the Convention is inhospitable to an approach pursuant to which regulatory decisions by the competent State or international organization take into account a whole variety of relevant factors and opinions.

The system for conservation of living resources on the high seas set forth in the Convention relies principally on subregional and regional arrangements and organizations composed of States interested in the same area or stocks. Too little attention has been devoted to the fact that this system also includes an incorporation by reference: article 116 provides that all States have the right for their nationals to engage in fishing on the high seas, subject to both the conservation and management provisions of the Convention and their other treaty obligations. In my view a good argument can be made that, just as the failure of the flag State to apply a generally accepted standard with respect to pollution from ships constitutes a breach of obligation under the Convention, so the failure of a State to abide by its other treaty obligations with respect to conservation and management of high seas fisheries also constitutes a breach of obligation under the Convention. In this connection it should be borne in mind that such treaties are the decentralized administrative means selected by the Convention for the implementation of its basic conservation and management norms.

That said, it was rather quickly apparent that problems which required global attention were arising with respect to high seas fishing for highly migratory stocks that range for large distances both within and beyond the exclusive economic zone, and for so-called straddling stocks that are found on both sides of the 200-mile limit of the zone. The result was the Agreement of 1995 regarding the implementation of the provisions of the Convention with respect to such stocks. This Agreement significantly strengthens the system set forth in the Convention, including new enforcement arrangements. It also makes clear that vessels of States that do not participate in or cooperate with the relevant regional and subregional arrangements may not fish in the area for the relevant stocks. The Agreement recently entered into force but, unfortunately, it is far from being universally ratified. In my view, any meaningful comprehensive environmental agenda for the oceans should include effective efforts to secure more widespread ratification of both the Convention and this Agreement. In this connection, it should be noted that the high seas conservation and management provisions of both the Convention and the Implementation Agreement are subject to arbitration or adjudication under the Convention, including the authority to prescribe provisional measures pending resolution of the dispute.

Quite apart from provisions incorporating by reference the results of the work of various international organizations, the Convention is replete with references to the right, and often the duty, of States to cooperate on a bilateral, regional or global basis in implementing its provisions. The Convention contemplates, and indeed encourages, a rich and expanding tapestry of agreements on all levels designed to address specific problems and adapt the law to new challenges and new perceptions. Few such agreements would be in derogation of the Convention; most would be expressly contemplated by it. But even if an agreement does on occasion modify or suspend provisions of the

Convention as between parties to the agreement, it might be recalled that article 311 of the Convention expressly permits such agreements in many circumstances where they do not impair the underlying integrity of the Convention and the rights of other parties.

It should also be recalled that many of the provisions of the Convention are subject to arbitration or adjudication. Those processes certainly can play an important role in assisting States in their understanding of how the Convention applies to new circumstances or unforeseen problems. It might be noted that under article 293 a court or tribunal applies both the Convention and other rules of international law not incompatible with the Convention.

With respect to most circumstances, therefore, the question is not whether new problems or new issues or new ideas can be addressed without formally amending the Convention, but rather how to do so.

For example, there is no doubt that the Convention provides for the conservation of high seas living resources associated with seamounts and the protection of their habitats. The question is how best to elicit the cooperation of States whose nationals and vessels may exercise their right to conduct activities that affect these living resources. There is, after all, little reason to assume that States that refuse to agree to restrain the exercise of their rights will easily agree to amendments qualifying or eliminating those rights. And there is reason to believe that international tribunals will be cautious about embracing principles of indeterminate scope whose widespread and representative acceptance by States is in doubt.

The challenging legal question regarding the possible exploitation of resources associated with deep sea hydrothermal vents is not whether the Convention applies, but how. That

question may require consultation or negotiation. But amendment is neither the only nor necessarily the best way to achieve agreement among the States concerned.

This analysis might be challenged on the grounds that such a decentralized system of negotiation on different issues can ultimately lead to more incoherence and lack of uniformity than an amendment process. My response is that the Convention largely deals with basic rights and duties and precise allocations of jurisdiction. In some cases, for example rules of the road or measures affecting the construction, manning, equipment, and design of ships, the Convention recognizes the need for uniformity by incorporating the generally accepted technical standards into the Convention system itself; but it still leaves to the competent international organization the task of elaborating those standards. In many other cases, there is no particular need for uniformity in technical measures. For example, so long as the Convention's underlying conservation norms are respected, there is no obvious need to manage a fishery for one stock in one part of the world in the same way as another stock in another part of the world.

But, one may ask: What is to stop these decentralized organs from producing agreements that are not really consistent with the basic rights and duties and precise allocations of jurisdiction set forth in the Convention, and that undermine the coherence of the system? My answer is that there is something of an historic pattern of restraint that seems to reflect an informal, and in my view felicitous, understanding that the questions of basic rights and duties and precise allocations of jurisdiction in the law of the sea are to be addressed in negotiations organized by the United Nations itself. All three conferences on the law of the sea were convened by the General Assembly. The two implementing agreements were both negotiated at United Nations Headquarters under United Nations auspices.

The International Maritime Organization, which has sponsored countless treaties on navigation and marine pollution, has attempted to build upon the jurisdictional structure of the Law of the Sea Convention without addressing basic jurisdictional issues dealt with in the Convention. The International Civil Aviation Organization (ICAO) looks to the Law of the Sea Convention to inform the content of its constituent instrument and regulations. The 1992 United Nations Conference on Environment and Development (UNCED), notwithstanding a very high level of representation, explicitly worked on the basis of the Convention, and entrusted to the General Assembly the question of an agreement regarding certain high seas fishing issues. A similar pattern can be discerned in the work of the Food and Agriculture Organization (FAO) and in the work of the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO). There is, however, a recent exception to this long pattern of deference to the role of the United Nations General Assembly and the United Nations Convention on the Law of the Sea that may be discerned in certain provisions of a controversial Convention on underwater cultural heritage¹⁴⁸ negotiated at UNESCO. I trust this will be the exception that proves the rule.

In conclusion, I would summarize my advice on this matter as follows:

First, most problems can and should be addressed by separate agreements within the framework of the Convention's basic norms and jurisdictional provisions.

¹⁴⁸ Convention on the Protection of the Underwater Cultural Heritage (2001).

Second, one should not confuse unwillingness to agree with legal inability to do so. Nothing in the Convention either requires States to insist on exercising rights or to refuse to accept new duties by agreement; in many cases, quite the opposite is suggested by the Convention. If there are political obstacles to an agreement on the matter, there is little reason to believe those obstacles will disappear in the context of a negotiation of amendments.

Third, there are risks involved in an amendment process. At a minimum, government representatives should hesitate to contemplate such a process until it has been fully explored by all their government agencies with an interest in marine matters and after they have been candidly informed that there is no sure way to control the agenda or the outcome of an amendment conference once it starts.

And last, if the real objective in launching an amendment process is to lay the foundation for imposing a new restraint on the rights of a State without consent and against its will, let us at least be frank and acknowledge that we are according a higher priority to the particular restraint than to the furtherance of universal commitment to the role of law in international affairs. Each time we do this, our appeals to law ring a little more hollow and we promote a little more cynicism about the role of law in international affairs. That was the lesson of the law of the sea in the twentieth century. It is not a lesson a rational world would ignore.

B. Discussion*

Moderator (Mr. Djalal of Indonesia): We have had three very compelling and very interesting statements. It is difficult for me to summarize the discussion on these issues. But before I give the floor to all of you to comment and to give your opinions, perhaps some salient points of the discussion could be summarized.

Professor Paolillo expressed some concerns with regard to the degradation of the ocean environment. As I understand him, this is due not to lack of rules but basically to lack of implementation of the existing rules. And he identified several reasons for this lack of implementation: lack of information to governments, lack of priorities by governments, lack of capacity and human resources, and in some cases it may be due to lack of political will. I noted also his suggestion that we need to step up publicity, distribute information to governments and in many cases provide effective assistance to governments. I detected also that he would like this to be done through the United Nations system.

Then we had a very interesting presentation by Mr. Michael Bliss, who talked about degradation of the oceans, ecosystem management and the need for marine protected areas. While he does not dispute the need for regional management for certain oceans, such as the Pacific, he also encouraged the idea of a much more integrated global oceans management system. He also called for more interaction and transparency among the various regional arrangements responsible for protecting the oceans.

* Edited transcript.

Professor Oxman, for his part, extensively elaborated on several provisions of the United Nations Convention on the Law of the Sea. One point was that despite the fact that the Convention may not be very satisfactory in some cases, he does not consider an amendment procedure to be the best solution. He would prefer employing mechanisms that are allowed in the Convention itself.

Further, Professor Oxman questioned the need to have integrated ocean management on a global basis, on the ground that there are quite a lot of issues that might better be pursued on a regional level or in some cases through species-related regulations. He also urged better coordination among the existing international mechanisms.

Mr. Charles Vella (Malta): What the President of the Conference said this morning about amending the Convention struck not only Mr. Oxman but also me. Twenty years ago today I left government service following the adoption of the Convention. In other words, I am out of date by 20 years. But whenever I have read anything about the Convention I was very interested in seeing whether it went according to the Convention, not only literally but also in accordance with the good faith that many people felt 20 years ago in accepting the Convention. Now, regarding the way that the Convention has been amended in practice, as Mr. Oxman very cleverly put it, people outside these walls are baffled by the fact that this has taken place. I am one of them, since for the last 20 years I have been outside these walls.

Let us say that a State brings a case against another State based on the Agreement on Part XI. The first thing the opponent State will do is claim that the Agreement was not done in accordance with the rules and regulations embodied in the Convention itself. This to me leaves a very open question, not

perhaps for people in this room but for those outside it. I do not know how wide was the discussion or consultation on the Agreement. If it was just presented to the General Assembly and it was adopted, one could say it was adopted by the General Assembly. But then you have created something that in the future can be used for certain other parts of the Convention. Then what is going to happen to the rules and regulations, to the very provisions of the Convention, if we continue to disregard them? Can we conclude that those who drafted the Convention were not farsighted enough? And that therefore they did not write into the Convention what was proper for its own amendment? These are the doubts that still lurk outside these walls and for which no answer has been given. Now how could one give an answer to assure people that the right thing has been done?

One thing that I might suggest but which may already have been done is to request a legal opinion from the United Nations Legal Counsel on the amendment made to the Convention. After all, we are dealing with a United Nations Convention, and he could tell us whether such a procedure was the right procedure or whether it was completely outside the scope of the Convention. Also, could any State take the matter before the International Tribunal for the Law of the Sea or to the International Court of Justice just to express itself on whether the right procedure was used?

Professor Oxman (United States): First, let me make it clear that there have been no amendments to the Convention. There have been two Agreements which were called Implementation Agreements. The first of these dealt with the difficulties a number of States had with Part XI. It was quite clear that those negotiations were undertaken by the Secretary-General of the United Nations and organized by him. It was quite clear that unless something was done about Part XI, the

goal of widespread representative ratification simply would not be achievable. And the result of the negotiations was that the General Assembly itself approved them. Indeed, measures were taken to bring those results into force rapidly through creative provisional implementation provisions. There are now a very large number of parties to the Implementation Agreement among the parties to the Convention and it is my understanding that the International Seabed Authority is applying the Convention in accordance with the provisions of the Implementation Agreement. So I would not anticipate any significant problems there. Law professors are supposed to worry about radical problems, and in theory this is a wonderful example for a creative law school examination. But in practice I think it is all working out, with the International Seabed Authority simply operating on the basis of the Implementation Agreement. And I have no doubt that any court would recognize that fact.

As to the second Implementation Agreement, the situation is quite different. It does not deal with the competence of an international organization and therefore there was no formal necessity for absolute uniformity in the provisions insofar as all parties were concerned. I have personally expressed the view in the past that I thought it was regrettable that the 1995 Implementation Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks was not tied to the Convention. In fact, I even said in writing that I thought it was a fundamental strategic error by Japan and the European Community that their delegations to that negotiation were very narrowly focused and did not realize that what was really at stake, and is at stake, for Japan and the European Community is the stability of the law of the sea.

The result is that the second Implementation Agreement, as it stands, binds only the parties. The issue did arise and it was

raised by Australia – perhaps Mr. Bliss may want to add to this – it was raised by Australia and New Zealand in their southern bluefin tuna case against Japan. While the lawyers for Australia and New Zealand recognized that the 1995 Implementation Agreement was not binding on the parties to the Convention, they did express the view that it should have communicated, to some extent at least, an understanding of what the Convention's provisions meant. I think one has to consider the merits of that argument.

The pedigree of the 1995 Agreement is quite impressive. It originates in the United Nations Conference on Environment and Development, which itself specifically asks in effect the General Assembly to deal with this question. It is dealt with under the leadership and in the negotiations led by Mr. Satya Nandan, who is also the Secretary-General of the International Seabed Authority. I would be disinclined to just ignore this matter, since it was perfectly obvious that the Convention's provisions were incomplete and ambiguous. And that is unfortunate.

There was an excellent proposal by Canada and Argentina in the last days of the Conference, which would in fact have solved much of this problem. But they were blocked by one State that threatened to reopen the straits articles if we considered the Canadian and Argentine proposal, and so everybody got scared. However, we now have an Implementation Agreement and I think the point you make is well taken.

I think it is very important that coastal States and distant-water fishing States become party to the 1995 Implementation Agreement as quickly as possible. But as a strictly legal matter, it is entirely possible to be a party to the Convention either with or without the Implementation Agreement. I would just add one thing: When environmentally oriented governments and groups

think about an agenda that would secure universal ratification of both the Convention and the Implementation Agreement, they should remember that the two largest States in the world that are not parties to the United Nations Convention on the Law of the Sea are parties to the Implementation Agreement regarding Straddling Stocks and Highly Migratory Stocks.

Moderator: I have my own views on this issue, but I suppose the chairman of this meeting should not express his own views. To my mind, the two Implementation Agreements are perfectly within the limits of the Convention. If there is any lingering question or disappointment, it is that, although the 1994 Implementation Agreement was supposed to induce countries to ratify the Convention, some of them have not done so even though the Agreement was designed to meet their requirements.

As to the Implementation Agreement of 1995, although as Professor Oxman said it may not be directly linked to the United Nations Convention on the Law of the Sea as such, to my mind it is linked. It is in fact an implementation of articles 63 and 64 of the Convention, dealing with straddling fish stocks and highly migratory stocks. Thus, from a substantive point of view, the 1995 Agreement, to my mind, is very clearly linked to the implementation of the United Nations Convention on the Law of the Sea.

Ms. Lee Kimball (IUCN – The World Conservation Union*): I want to comment on Michael Bliss's statement on ecosystem-based approaches and marine protected areas, because these are two tools that IUCN has long supported in their application to the oceans. We also see ecosystem-based

* Formerly, International Union for Conservation of Nature and Natural Resources.

approaches as an organizing principle for integrated ocean management, as you said. We have been working with United Nations agencies and the National Oceanic and Atmospheric Administration (United States) on implementing the large marine ecosystem concept, which links large ocean spaces with river basins in coastal areas, specifically to sustain the productivity of ecological goods and services in those systems.

We also consider regional approaches to ocean assessment and ocean management as the primary vehicle for implementing ecosystem-based approaches, and also as a way of promoting joint initiatives among neighbouring States in relation to shared resources and shared problems, and of coordinating international support. Such support comes from many different international agencies as they address goals and priorities that are defined in each region, by each region. We also see the regional approach as a way to really facilitate a more integrated approach to implementing the ocean and oceans-related conventions, both regional and global, such as the Convention on Biological Diversity that you mentioned, and to do that in a coordinated and mutually reinforcing manner that addresses the specific and differing conditions in each region.

On marine protected areas, we welcome very much, in the latest omnibus General Assembly resolution on ocean affairs, the call for the establishment of representative networks of marine protected areas and the emphasis on urgency in addressing the threat to biodiversity around seamounts and other deep sea and underwater features. In this context, I would like to draw attention to a resolution adopted at the Second IUCN World Conservation Congress held in Amman, Jordan in 2000, which called on the Director-General of IUCN to work with members and multilateral agencies to explore an appropriate range of tools, including high seas marine protected areas, with the objective of implementing effective protection, restoration

and sustainable use of biological diversity in ecosystem processes on the high seas.¹⁴⁹

In furtherance of the resolution, IUCN, now in association with the World Wide Fund for Nature (WWF), has initiated a project to explore the potential for high seas protected areas beyond national jurisdiction, building on the United Nations Convention of the Law of the Sea. The next step is a workshop in January 2003 of scientific and legal experts to evaluate the potential of priority areas and to agree on a strategy and action plan. We look forward to keeping the international community informed of the results of the workshop and certainly the Open-ended Informal Consultative Process on ocean affairs when it addresses vulnerable marine ecosystems.

Mr. Bliss: I want to thank Lee Kimball for those comments. There is certainly a significant amount of work already being done on these issues and I think it was for that reason that the subject was picked up both in Johannesburg and in the resolution which the General Assembly will adopt tomorrow. I take this opportunity also to mention that there will be a workshop on high seas MPAs (marine protected areas) to be convened in Australia next June, which will look at some of these questions and which would be of interest to those with a particular focus on this issue.

Ambassador Paolillo: With respect to the comment made by the first speaker about the Agreement on Part XI of UNCLOS, the comments of Professor Oxman indicated that the Agreement was perfectly orthodox and legal although it constituted a

¹⁴⁹ *Proceedings: World Conservation Congress, Amman, Jordan, 4-11 October 2000* (IUCN, 2001), resolution 2.20. Available on www.iucn.org/amman/content/resolutions/res20.pdf.

modification or amendment to the Convention made through unforeseen procedures. Such procedures develop simply to ensure that modifications in a given international instrument are introduced with the consent of all interested States parties. Such a technical defect would be remedied by the fact that after all the Agreement was adopted by consensus by the General Assembly. It could be said that the Agreement had even greater support than the Convention because the Convention was not adopted by consensus. In a sense, that process does give legitimacy to the “amendment”.

Mr. Rene Gaanderse (International Parcel Tankers Association): Ambassador Paolillo is correct in saying that the recent disaster of the *Prestige* could not have been avoided in spite of laws, because as far as has been established the ship did not violate any laws; it sailed with valid certificates.

After the *Erika* disaster IMO has been very active in getting single-hull tankers out of the transportation of crude oil or heavy oil. However, many big maritime nations were against that change and the best that IMO could do was to manage to get the phase-out by 2005. I must say that Mr. William O’Neil, Secretary-General of IMO, is doing a fantastic job under very difficult circumstances. It is too late for the *Prestige*, however, and the 2005 deadline is now in jeopardy because some unilateral decisions are probably going to be taken by a number of European countries. It is basically accepted that even though IMO, which is, as everyone knows, a specialized agency of the United Nations, was not able to convince the same countries which are now going to change the law that we should act faster. It has been said that it is a matter of money, but I think that safety and no accidents are good for any business.

The general transportation of oil is 99.999 per cent safe. Accidents are almost negligible if one considers the number of

barrels of oil carried. That is certainly not like the airline industry. When a ship incident occurs, it is big and everybody focuses attention on it. I would basically appreciate it if the United Nations could influence IMO to change the laws for safe transportation of oil as soon as possible.

Moderator: Are you suggesting that the date 2005 be advanced?

Mr. Gaanderse: Yes.

Ambassador Paolillo: I believe the European Union has already adopted a decision to ban the transportation of oil in single-hull ships. I am not absolutely certain whether that applies to single-hull vessels sailing beyond a certain distance. Is that not already in force?

Mr. Gaanderse: Yes. Some European countries no longer accept single-hull tankers for the transportation of crude oil.

Moderator: So the question is whether the United Nations system can prevail upon IMO or make a suggestion to IMO so that single-hull tankers are phased out as soon as possible before 2005, the year now agreed upon. Is that it?

Mr. Gaanderse: That should be the consensus. The earlier we can do it the better. This will not jeopardize any country's debt accounts receivable.

Mr. Hiroshi Terashima (Executive Director of the Institute for Ocean Policy, Ship and Ocean Foundation, Japan): I would like to make two comments. One is about the principles in conventions and action plans. As stated in Agenda 21, effective implementation of consistent and coherent ocean governance requires the participation not only of States but also of a broader range of ocean stakeholders, such as fishery

organizations, intergovernmental organizations, consumers, non-governmental organizations and scientists at the local, national and regional levels. Thus, it is definitely necessary that the process of consultation and participation with stakeholders be incorporated in the coordinating mechanisms for the integrated and sustainable development of coastal and marine areas and their resources, at both the local and national levels of each country. I think this panel should stress this point.

My second comment is on the necessity of creating networks among developing countries' ocean affairs administrators. The deliberations that produced UNCLOS were aimed at achieving a consensus that would benefit the participation of the greatest number of States. Many of the provisions in UNCLOS remain abstract and await efforts of those involved in ocean affairs for their implementation. For this reason, it is not an exaggeration to say that although many ocean and coastal zone initiatives have begun around the world, they are still in need of implementation measures.

Furthermore, in order to implement ocean governance effectively in individual countries, there is an urgent need for measures to assist mid-level ocean affairs administrators from around the world to acquire the same knowledge base, understanding and techniques, as well as to establish a network for cooperation and collaboration. It would therefore be most desirable if the Division for Ocean Affairs and the Law of the Sea, in cooperation with a research institute, could produce some kind of education and training programme in ocean governance.

Moderator: I regret that Mrs. de Marffy, the Director of DOALOS, is no longer in the room in order to respond to you. I will convey to her your request that DOALOS should take some action in producing training programmes/activities for countries.

Mr. Tiago de Pitta e Cunha (Portugal): I do not think that there is much disagreement with what was said by Mr. Michael Bliss in his excellent presentation when he mentioned that the issue is more a question of implementation than a question of developing the legal framework for ocean affairs. The Convention, which has been in force for a few years, has been widely regarded as a legal general framework for that purpose.

As regards implementation, I would like to refer to a very provocative statement by Ambassador Paolillo. He mentioned that it was less important to arrive at different means of implementation than to know the causes for the lack of implementation. This is, I think, a very important issue to be addressed when discussing the issues covered by this panel, such as emerging concepts and the threats facing the oceans.

Ambassador Paolillo also referred to the lack of priority, the lack of information and the lack of capacity. It is very much on these three areas that the work of the United Nations Division for Ocean Affairs and the Law of the Sea, and especially the work of the United Nations Open-ended Informal Consultative Process on oceans, have been focused.

The lack of priority, of course, is linked to the question of political will. While it is quite true that there is lack of capacity in developing countries, sometimes this lack of capacity also exists in developed countries because of a lack of political will in addressing ocean problems. On this matter I think it is quite important to recall the commitments made at the World Summit on Sustainable Development and the United Nations world summit on sustainable fisheries, for instance, and other benchmarks relating to ocean affairs that reveal political will. It is exactly political will that we shall need when we discuss issues such as the network of marine protected areas and the other emerging concepts that were developed by Mr. Michael Bliss. On

the questions of oceans integrated management and the ecosystem-based approach, we shall need political will to go further. We shall need it to address the questions raised in relation to such important biodiversity areas as seamounts and hydrothermal vents. In this respect I would like to acknowledge that we have established in Portugal the first seabed protected areas where hydrothermal vents exist.

The lack of information is also an important issue. We congratulate WSSD for the decision, which is also referred to in the omnibus resolution of this year's General Assembly session, to establish a regular process under the United Nations for a global report and assessment of the state of the marine environment. It is important that this information be disseminated and continuously updated. We also have been quite active in promoting marine science and in having marine science as a crucial element of these oceans discussions. Marine science is essential for decision making, where political will is necessary. Marine science is also an essential source of information for both decision makers and the general public. And marine science is of course essential for capacity building. In this respect we are very glad that there is a section on marine science and technology in this year's omnibus resolution, as was the case last year.

Finally, I would like to mention the question of lack of coordination. Coordination seems to be one of the essential ingredients for implementation. There are domestic coordination, regional coordination and global coordination, the three levels that Mr. Michael Bliss referred to. We consider the United Nations Open-ended Informal Consultative Process on ocean affairs as an example of how to initiate a process where coordination and cooperation are the main goals. We have been active supporters of this Process. We are learning from this Process at home, where we are also establishing a horizontal kind of working group to try to replicate the United Nations

Process in Portugal. Indeed, we suffer a great deal from a lack of coordination and from a sectoral approach to oceans issues.

Finally, in relation to coordination, a few words on the interagency coordination mechanism of the United Nations system. It is quite important for political will to be displayed by United Nations agencies also, and not only at the level of Member States. This issue has been referred to by Member States in earlier resolutions as well as in the reports of the Open-ended Informal Consultative Process. We are anxious to see how the Process will continue to develop at its upcoming sessions.

Moderator: One thing that has not been discussed much this afternoon is the informal approach in ocean management. We have generally been discussing the formal approach by various United Nations activities, national organizations and so forth. But in South-East Asia, we have managed potential conflicts basically through an informal approach, which has lasted now for 12 years or so, with the support of Canada for the first 8 years. In many cases this has avoided conflicts and has been very successful.

We devised three mechanisms: first, promoting dialogue among conflicting parties; second, creating a confidence-building process, and third, devising a cooperative programme. All of them have gone quite well.

The dialogue that we promoted has resulted in several agreements among the parties concerned. For instance, China and Vietnam signed an agreement on the Gulf of Tonkin. As for confidence building, we are very happy to see that our efforts to promote the establishment of a code of conduct in the South China Sea have resulted in a formal agreement between China

and the Association of South-East Asian Nations (ASEAN).¹⁵⁰ We have devised a number of cooperative efforts informally without official participation by governments. We have just finished a 12-day biodiversity expedition in the South-East Asian Sea; the results I think will be published in a book in the near future. We are now devising cooperative efforts for studying and monitoring such matters as climate change and sea-level rise. So

I would like to suggest that the informal approach to regional issues in maritime affairs could in many cases be very helpful. And it would be very useful if other States supported the informal approach, as Canada has done.

Mr. Bliss: First, with respect to Mr. Terashima's comments, we certainly would agree with both of the points he made. Non-State actors are critical in any process of ocean governance and certainly that has been our national experience in trying to put together a national oceans policy.

As for regional marine plans, there has to be a sense of involvement and a sense of ownership on the part of all sectors of the community in a marine planning exercise. For example, I went to the Website of a marine park authority in Australia the other day. They were going through a rezoning exercise and the first point on the Website was the statement, "No, we're not going to change your favourite fishing area". Then it explained for recreational fishers exactly what the process was about: that they should not be frightened that somehow this was also going to mean a change and a regulation which would infringe upon their interests. It is that sort of information dissemination exercise which the Consultative Process is essentially going toward.

¹⁵⁰ Declaration on the Conduct of Parties in the South China Sea, Phnom Penh, 4 November 2002 (ASEAN). Available on www.aseansec.org/13163.htm.

Second, on the need for networks and the sharing of experiences, I would also agree that this is absolutely critical. It is one aspect on which in a short three years the Consultative Process has really shown its benefits: the open format, the fact that there are presentations from all sorts of States about their own experiences and the opportunity to share these, both formally and informally, have really made a difference, I think, in understanding how nationally and regionally we can do better.

In respect to the points raised by Mr. de Pitta e Cunha, I think his focus on marine science is being borne out and amplified by the discussion we had in the Consultative Process. I think our resolution this year is much stronger as a result.

The final point I shall raise came up in both comments about coordination. I was not being flippant in my presentation. Coordination is by no means easy, particularly in federal States such as Australia. We have real difficulties because there is an extra level of regulation that has to be grappled with. But perhaps we are more used to doing that because we have to do it for every area of regulation nationally. It is slightly less cumbersome for a unitary State because often the coordination mechanisms for all the different agencies and sectors are in one place and can be used as a basis for that sort of coordination. It is by no means easy and takes a lot of work and it certainly requires a significant amount of effort. But it is worth it.

Moderator: We have come to the end of our discussion this afternoon and it has been very useful. I have learned a lot from the views of many of us and I would like to thank the panellists who have contributed their thoughts to the discussion. Also, I would like to thank you for the questions and comments from the floor, which have contributed to enriching the debate.

IV. SCIENTIFIC PRESENTATIONS

(i) *New discoveries in the oceans*

Dr. Peter Rona, Professor of Marine Geology and Geophysics at Rutgers University, Princeton, New Jersey, United States

While the United Nations Convention on the Law of the Sea was being negotiated, a scientific revolution in our understanding of the way the Earth works occurred in the 1960s and 1970s that has greatly expanded our knowledge of marine minerals. This revolution entailed a major change in the way we view the ocean basins and continents.

Before the scientific revolution, the continents and ocean basins were viewed as permanent features that have remained in their present positions through most of Earth history. According to the old view, the ocean basins were considered big bathtubs that served as passive containers for the oceans. The marine mineral provisions of UNCLOS were written in terms of this old view, which recognized only those marine mineral deposits that were derived from erosion of rocks on land and transported into the ocean by rivers in particulate or dissolved form. These minerals consist of heavy metals (tin, gold, etc.); aggregates (sand and gravel) and gemstones (especially diamonds) deposited in sediments of continental margins; phosphorite, also deposited on continental margins, and manganese nodules precipitated on the floor of the deep ocean from metals dissolved in seawater.

The scientific revolution is driven by the theory of plate tectonics. It reveals that the ocean basins are dynamic features that open and close on a time scale of tens to hundreds of millions of years, coupled with movements of the land areas

known as continental drift. Plate tectonics showed that the ocean basins are not simply passive sinks for material eroded from land, but are also active sources of mineralization. Rather than being big bathtubs that hold the oceans, the ocean basins are leaky containers for the seawater, because the volcanic rocks that underlie the seafloor are fractured. Cold, heavy seawater flows kilometres downward and most of it is assimilated into the Earth's interior. Where the seawater flows near hot molten rocks upwelling at plate boundaries submerged under the ocean, it is heated, expands, becomes lighter and rises buoyantly, dissolving and transporting metals from the surrounding rocks. The metals react with sulphur in the seawater and precipitate as polymetallic sulphide deposits beneath and on the seafloor. Hot metal- and sulphide-rich solutions discharge from the seafloor into the deep ocean and precipitate as clouds of metallic mineral particles called "black smokers" because they resemble black smoke billowing from factory smokestacks.

Polymetallic sulphides contain copper, iron, zinc, silver, gold and other metals in varying amounts. They are not renewable resources. Seafloor features such as chimney-shaped vents can regenerate in weeks to years, but the deposit as a whole requires tens of thousands of years to concentrate economically interesting metals into zones separate from the predominant iron. The polymetallic sulphide deposits occur at areas generally the size of a football field, where hot springs discharge from the seafloor. These areas are widely spaced along a submerged volcanic mountain range at a plate boundary that extends through all the ocean basins of the world, largely within the international Area. The hot springs and polymetallic sulphide deposits also occur offshore from volcanic island chains, such as those along the western margin of the Pacific Ocean largely within the 200 nautical-mile zones of coastal States.

The same metal-rich seafloor hot springs that concentrate polymetallic sulphide mineral deposits also energize heat-loving microbes. These microbes use chemicals in the hot springs dissolved from the underlying rocks as an energy source to manufacture carbohydrates (sugars and starches) to nourish themselves, largely independent of the light energy from the Sun that fuels the photosynthesis in plants at the base of the food chain on land. These chemosynthetic microbes, in turn, are at the base of a food chain that supports an ecosystem of newly discovered life forms in the ocean, which are hosted in the polymetallic sulphide deposits. Certain of the microbes are of great scientific interest because they exhibit genetic characteristics that place them at the base of the tree of life and they may be a key to the origin of life on Earth and beyond. Commercial applications of these microbes are being found, including use of their enzymes in DNA fingerprinting, detergents, food preservation, and flow enhancement in deep oil wells; use of their bioactive compounds for pharmaceuticals, including some being tested for cancer treatment; and use of the microbes themselves as bioreactors with roles in concentrating and refining metallic mineral ores. A critical challenge exists to manage development of the polymetallic sulphide deposits in an environmentally compatible manner that protects the microbes and ecosystems which the deposits host.

Another newly recognized type of marine mineral resource is cobalt-rich iron-manganese crusts. The crusts are precipitated over millions of years on the submerged flanks of inactive underwater volcanoes from metals dissolved in seawater derived from input of metals by both rivers and seafloor hot springs. These crusts are particularly abundant in the 200-nautical mile zones of island States in the central and southwestern Pacific Ocean. Cost-effective methods to recover the crust from a rocky substrate and refine it remain to be developed.

We are at the dawn of exploration of the oceans. At this early stage, with less than 5 per cent of the seafloor explored in detail, we already know that seafloor resources are immense and of great scientific and increasing economic value. Critical challenges presented by the new discoveries include the following: 1) to incorporate the newly discovered marine mineral resources into the UNCLOS framework; 2) to create a management system for mining the polymetallic sulphides that protects the microbes and ecosystems which these deposits host; 3) to maintain flexibility in the marine mineral provisions of UNCLOS, because more remains to be discovered about marine minerals and microbes; and 4) to increase the investment by governments in exploration of the oceans, because discoveries can directly contribute to quality of life for all. Finally, it is important to remember that mining of marine minerals is economic only when the costs of bringing them to market under prevailing conditions are factored in and environmental impacts are evaluated.

(ii) *Hydrothermal vent ecosystems*

Dr. Kim Juniper, Professor in the Department of Biological Sciences of the University of Quebec at Montreal (UQAM), and Director of the UQAM-McGill University GEOTOP Research Centre, Canada

Plant life is impossible in the total darkness of the deep sea and most deep-sea food chains are nourished by organic debris that descends as sediment from surface waters where phytoplankton carry out photosynthesis. Only a very small fraction (less than 1 per cent) of this surface productivity reaches the deep ocean floor. As a result, nutritional resources and animal life are very scarce.

The 1977 discovery of luxuriant oases of giant tubeworms, clams and mussels clustering around hydrothermal vents more than 2000 metres below the ocean surface came as a

complete surprise to biologists, who scrambled to identify the food source for this unusual ecosystem. Vent faunal biomass can be 500 to 1000 times that of the surrounding deep sea, and it rivals values in the most productive marine ecosystems such as shellfish cultures. Biological productivity at hydrothermal vents is sustained not by photosynthetic products arriving from the sunlit surface ocean, but rather by the chemosynthesis of organic matter by vent microorganisms, using energy from chemical oxidation to produce organic matter from carbon dioxide (CO₂) and mineral nutrients. Hydrogen sulphide and other reducing (oxygen-removing) substances present in hydrothermal fluids provide the fuel for organic matter synthesis. Since hydrothermal fluids are formed by the reaction of seawater with hot rock, researchers quickly realized that vent ecosystems were ultimately powered by heat from the Earth's mantle. This was a startling conceptual challenge to the long held view that all of our planet's ecosystems require sunlight and photosynthesis to create new biomass and nourish animal food chains.

Another surprise to biologists was the novel nature of the vent organisms, most of them previously unknown to science and many exhibiting unusual adaptations to the severe, potentially toxic nature of the hydrothermal fluids. High animal density and the presence of unusual species are now known to be common characteristics of deep-sea hydrothermal vents all over the globe, with the composition of the fauna varying between sites and regions. More than 100 vent fields have been documented along the 60,000-kilometre global mid-ocean ridge system.

Species conservation and environmental stewardship are becoming issues of particular concern to hydrothermal vent scientists. Hydrothermal faunal communities occupy very small areas of the seafloor and many sites contain animal species found nowhere else. As vent sites become the focus of intensive

research activity, ecotourism, mineral exploration and deep-sea mining, oversight organizations will need to develop mitigative measures to avoid significant loss of habitat or extinction of populations.

Arguments for the conservation of vent species can be developed from the same sources that have led to the present global interest in the preservation of biodiversity. In addition, cutting edge biological science has become an important stakeholder in this resource, with millions of research dollars directed annually to laboratory and field studies of vent organisms.

Vent biology, in its brief history, has made major contributions to the development of basic models of life processes. Most recent editions of university textbooks in biology and ecology now use examples from hydrothermal vents to illustrate points on symbiosis, detoxification, adaptation to extreme conditions and ecosystem function. The visually spectacular and extreme nature of vent communities also makes them popular subjects for the science media and science education sectors. Several of the world's leading natural history museums feature new exhibits on hydrothermal vents.

While few of the novel animal species discovered at vents may be edible or of any immediate material value, there is considerable interest from the biotechnology industry in extreme vent microorganisms. Hydrothermal vents are sites colonized by hyperthermophilic Bacteria and Archaea. Enzymes from these microorganisms have a range of applications from molecular biology to the food processing, fabric and chemical industries. The Taq DNA polymerase enzyme, used worldwide in molecular biology, is produced from *Thermus aquaticus*, a thermophile first isolated from terrestrial hot springs. Today, the market for Taq polymerase is valued at approximately \$500

million per year. Several DNA polymerase enzymes from hydrothermal organisms are currently being marketed, including a “vent polymerase” extracted from an organism first collected at shallow hydrothermal vents off Vulcano, Italy.

We still know very little about the biodiversity of microbes at vents. As a result, their full biotechnological potential remains unquantifiable. There is a strong economic, as well as ecological, argument for preserving vent sites to safeguard this biodiversity and the genetic potential of both the prokaryotic and higher organisms.

Canada is the first country to take measures to protect and conserve deep ocean hydrothermal vents. The Endeavour Hydrothermal Vents Marine Protected Area (MPA) is found in the northeast Pacific Ocean at 2200 metres depth, 270 kilometres southwest of Vancouver Island, Canada. Since their discovery in 1982, the Endeavour Hydrothermal Vents have been a focus of research by Canadian and international scientists. The 4-by-6 nautical mile (82 square kilometre) Endeavour MPA encompasses five vent fields that include features such as large hot black smoker chimneys and surrounding lower temperature vents. The fields span a wide range of hydrothermal venting conditions characterized by differences in water temperature and salt content, mineral chimney morphology and animal abundance. Temperatures associated with the black smokers are typically in excess of 300° Celsius. Formation of the large polymetallic chimneys takes place when dissolved minerals and metal ions carried upward by the hydrothermal fluids precipitate on contact with cold seawater. The flanks of the chimneys and the surrounding seawater support an abundant fauna that forms an unusual mosaic community whose composition is constantly changing in response to shifting temperature and chemical conditions. The Endeavour Hydrothermal Vents are home to at least 12 species found nowhere else.

The Endeavour MPA has been created to set the area aside for scientific research. Research activities are monitored by a Management Committee to mitigate use conflicts and environmental disturbance. Included in the current management plan are provisions such as zoning of sampling and “observation only” areas, to ensure the pristine nature of the area and permit long-term observations of natural change and response to natural disturbances.

V. DECLARATION OF THE PERMANENT COMMISSION FOR THE SOUTH PACIFIC

The Permanent Commission for the South Pacific (CPPS), as a regional maritime institution with competence in matters related to the law of the sea, among other topics, is thankful for the invitation to participate in the commemoration of the opening for signature of the United Nations Convention on the Law of the Sea on 10 December 1982.

The opening for signature of the United Nations Convention on the Law of the Sea is an important milestone for CPPS and the nations that comprise the institution: Chile, Colombia, Ecuador and Peru. This genuine “constitution of the oceans” was the result of a strenuous process, toward which our nations made valuable contributions that, in turn, were recognized by universal practice and accepted in the text of the Convention.

In this context we must mention the “Declaration of Santiago”, which 30 years prior to the signing of the Convention was subscribed to by Chile, Ecuador and Peru in 1952.¹ This Declaration provides, “as a rule under its international maritime policy, the exclusive sovereignty and jurisdiction of each nation over the sea along the coasts of their respective nations, up to a minimum distance of 200 nautical miles from such coasts”. Colombia adhered to those principles in 1979, upon becoming a member of the CPPS.

¹ Declaration of Santiago on the Maritime Zone, 18 August 1952.

This important instrument, besides being a novelty from the legal point of view, became a point of reference for the prevailing law of the sea, since it established sovereignty on the basis of economic issues and those related to the conservation of resources. The Declaration provides in its preamble that the nations have the duty to “safeguard the conservation and protection of their natural resources and to regulate their exploitation, in order to obtain the best advantages for their respective countries”.

The Declaration of Santiago also provides that the nations have the “duty to avoid the exploitation of such resources beyond the scope of their jurisdiction when their existence, integrity and conservation is at risk to the detriment of those who, due to their geographical position, possess in their seas irreplaceable sources of subsistence and economic resources which are critical to them”.

The Declaration of Santiago of 1952 has been widely recognized as a visionary, progressive and valuable contribution to the development of the new law of the sea, as it gave rise to a new doctrine – that is, the 200-mile “maritime zone” – which later became one of the main principles of international law and specifically the new law of the sea, acknowledged for its economic nature, the essence of which was reflected 50 years ago in the Declaration of Santiago.

This contribution by the nations of the Latin American South Pacific reminds us that we must continue working for the benefit of our people, and that in the midst of this permanent effort, cooperation with developed and developing nations is a matter of utmost interest.

Fifty years after the Declaration of Santiago and the resulting establishment of CPPS, and 20 years after the opening for signature of the United Nations Convention on the Law of

the Sea, we are faced with new challenges. We highlight the concern of our nations, as coastal States of the South-East Pacific Ocean, over the indiscriminate fishing activities in the high seas beyond the adjacent zones of jurisdiction, which necessarily affects the existence and conservation of living resources within these zones.

This concern has led the member States of CPPS to sign the Framework Agreement for the Conservation of Living Marine Resources on the High Seas of the South-East Pacific, also called the “Galapagos Agreement”, which is currently in the process of ratification. The Galapagos Agreement will exclusively apply to the high seas areas of the South-East Pacific and its aim is the conservation of the living marine resources in those areas, with special reference to straddling and highly migratory fish populations. This Agreement will be open for signature by other interested nations once it enters into force.

Another new challenge is the increase in illicit activities carried out at sea. The member States of CPPS are particularly concerned about the illicit traffic in drugs, light weapons, ammunition and people by sea in the South-East Pacific. As a response to this situation, in the Declaration of Ministers of Foreign Affairs of the CPPS member States,² subscribed to on 14 August 2002 at Santiago, Chile, within the framework of the celebration of the fiftieth anniversary of the Declaration of Santiago of 1952, a call was made for increased regional coordination and cooperation at all levels with a view to eradicating these illicit activities.

² Declaration of Ministers of Foreign Affairs on the Occasion of the 50th Anniversary of the "Santiago Declaration" and the Establishment of the Permanent Commission for the South Pacific (CPPS) (Santiago Declaration 2002). Available on www.cpps-int.org/english/santiagodeclaration.html.

Another matter which should be tackled by the international community is the transportation by sea of radioactive material and dangerous waste, in the absence of proper regulations to assure the coastal States about the whereabouts of such transport. For the member States of CPPS this activity is of major concern, since the Pacific Ocean is used as a route for the transportation of radioactive waste. For this reason, we consider that nations should be encouraged to ensure strict compliance with rules and standards related to applicable security measures, and we propose the regulation of the transportation of these materials in a manner compatible with the interests of the coastal States, taking into consideration environmental assessments, the prior notification of itineraries and contingency plans, and a strict responsibility regime in case of any environmental damage, including the obligation to restore the damaged environment and insurance requirements.

The Permanent Commission for the South Pacific has assumed the new challenges entrusted by its member States, but also continues to develop activities which have received our traditional attention and yielded positive results during its 50 years of existence. Within this context, ocean and atmospheric studies and their interrelations, with a view to understanding ocean climate, especially the impact of the ocean on fishing resources and fisheries, have been an activity carried out by CPPS since its initial stages.

The efforts toward increased and systematic knowledge about the El Niño and La Niña phenomenon developed in 1976 into a programme called ERFEN (Regional Study of the El Niño Phenomenon). ERFEN's capacity is supported by 22 scientific institutions in Chile, Colombia, Ecuador and Peru, more than 100 scientists and experts from these institutions, and a dozen research vessels.

Over the almost 30 years since the creation of the EFREN programme, important progress has been made in the capacity for assessing the marine climate, thereby facilitating the work performed by domestic prevention and mitigation agencies of the countries of the region in terms of reducing the damage caused and, where necessary, taking advantage of the benefits derived from climate changes.

In the area of protection and preservation of the marine environment, in 1981 the member States of CPPS and Panama subscribed to the Lima Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific and to its Action Plan. During its 21 years of fruitful regional cooperation, CPPS has performed various activities within the scope of this plan, such as research into and control of marine pollution, support for integrated management of coastal zones, conservation of protected marine and coastal areas, the protection of endangered species, studies on the effects of climate changes in marine ecosystems and coastal zones, and environmental education.

Participation in the South-East Pacific Action Plan³ has been very valuable in the regional application of Agenda 21, chapter 17, of the 1992 Conference of Rio de Janeiro; the Jakarta Mandate of the Convention on Biological Diversity;⁴ the International Maritime Organization agreements; the Global

³ Action Plan for the Protection of the Marine Environment and Coastal Areas of the South-East Pacific (SEPCF) (1981, revised 1986).

⁴ Jakarta Mandate on Marine and Coastal Biodiversity (1995). See Report of the Second Meeting of the Conference of the Parties to the Convention on Biological Diversity (6-17 November 1995, Jakarta), document UNEP/CBD/COP/2/19, annex I, appendix (Jakarta Ministerial Statement on the Implementation of the Convention on Biological Diversity), and annex II, decision II/10 (Conservation and sustainable use of marine and coastal biological diversity). Available on www.biodiv.org/doc/meetings/cop/cop-02/official/cop-02-19-en.pdf.

Programme of Action for the Protection of the Marine Environment from Land-based Activities;⁵ the Global International Waters Assessment project (GIWA), and others.

One of the great strengths of the Action Plan for the Protection of the Marine Environment and Coastal Areas of the South-East Pacific has been the establishment of partnerships and cooperation links with international bodies of the United Nations system and other governmental and non-governmental organizations, as well as with other similar programmes within the framework of horizontal cooperation.

The CPPS is very pleased to participate in the commemoration of the twentieth anniversary of the opening for signature of the United Nations Convention on the Law of the Sea, and would like to take advantage of this opportunity to call for the strengthening of coordination and cooperation at the intergovernmental and interinstitutional levels in the various fields that cover ocean- and sea-related activities.

⁵ Adopted 3 November 1995 by the Intergovernmental Conference to Adopt a Global Programme of Action for the Protection of the Marine Environment from Land-based Activities. UN document A/51/116, annex 2. Available on www.gpa.unep.org/documents/gpa/wholegpa/whole_gpa.pdf.

VI. MESSAGE FROM THE TWENTY-NINTH PACEM IN MARIBUS CONFERENCE*

The International Ocean Institute (IOI) and the University of the Western Cape, South Africa, the hosts of the Twenty-ninth Pacem in Maribus Conference, are celebrating the twentieth anniversary of the Law of the Sea Convention with you today.

It is our pride and great privilege that in your commemorative meeting you are honouring the two founders of the IOI: Arvid Pardo and Elisabeth Mann Borgese. It is due to their vision and foresight that we can proudly claim that the Convention has become a truly universal instrument for ocean governance, as evidenced by the number of contracting parties.

Over the years the International Ocean Institute has devoted its mission to the implementation of the principles and objectives of UNCLOS and Agenda 21, through its training programmes, technical cooperation, capacity building, research and analysis, annual conference and advocacy.

On this occasion, the twentieth anniversary, we are, during the six days of our conference, addressing the theme of

* Cape Town, South Africa, 8-14 2002.

“The Ocean in the new economy”. The Conference is well aware of the enormous challenge in reversing the continuing trend in the deterioration of the ocean. Meeting here are also delegates of the IOI Global Network, representing 22 Operational Centers, which are distributed over five continents.

While problems of decades past persist, we are confronted by new challenges and opportunities in the ocean. This requires us to redouble and fortify our efforts in seeking solutions and protecting the ocean for future generations.

The IOI is firmly committed to continue to uphold the vision of its founders – the common heritage of mankind in the ocean – and to assist developing countries in meeting the challenges. In this pursuit, the IOI is committed to reinforcing the ocean governance architecture that is underpinned by the two pillars of UNCLOS and Agenda 21. For this purpose, we renew our call for increased international and multilateral cooperation and coordination with all the stakeholders.

We commend the United Nations Secretary-General, Mr. Kofi Annan, for his commitment to “The oceans: the source of life”.

EPILOGUE*

The Third United Nations Conference on the Law of the Sea, which started almost 30 years ago, began a process that profoundly modified principles and rules governing the oceans. Its gigantic task culminated with the adoption of the United Nations Convention on the Law of the Sea, a constitution for the oceans.

From the fragmented approach of the 1950s, the new approach taken by the Conference and enshrined in the Convention was to recognize the growing interdependence of the world, to be translated into a comprehensive approach to ocean issues. Ambassador Arvid Pardo, one of the leading forces behind this far-reaching endeavour, strongly believed that both the concepts of freedom of the sea and the sovereignty of States within national jurisdiction “must yield to the supreme interests of mankind if we are to survive and to expand our beneficial use of the oceans”.¹ To achieve this ultimate goal, Ambassador Pardo envisaged a comprehensive management concept for the oceans entailing the establishment of an institution to regulate, supervise and manage all oceans issues including the deep seabed. The interlinked uses of the ocean induced Ambassador Pardo to go even further in his search for a more efficient governance of the oceans by proposing to integrate into the proposed institution, either entirely or partially, all existing organizations dealing with ocean affairs. This idea was not accepted by the Conference. Instead, the Convention assigned the various regulatory functions to the existing organizations competent in ocean affairs.

* Annick de Marffy, Director of the Division for Ocean Affairs and the Law of the Sea, United Nations Office of Legal Affairs.

It is certain, however, that the Convention not only mandates the respect for ocean limits but, as a source of positive obligations for States, it also compels them to cooperate in the resolution of common problems affecting the universal well-being and the sustainability of marine resources for the development of all nations. Specific provisions relating to coordination are included throughout the Convention, since coordination is essential for the effective implementation of the Convention. However, the Convention employs a sectoral approach by assigning to competent international organizations the task of regulating specific problems. Consequently, Pardo's idea for the establishment of an integrated institutional mechanism was rejected.

The need for enhanced coordination among the various agencies has become more urgent in recent years, triggered by increased uses of the oceans and by the complexity of managing them. As Ambassador Paolillo stated in his presentation in September 2002 to the United Nations Institute for Training and Research (UNITAR): "[T]he oceans remain to be a stage where a multifaceted drama takes place: territorial conflicts persist that pose a constant threat to international security; ocean resources and environmental conditions are continuing to decline, the safety of the seas is seriously threatened by illicit activities that have increased in recent years."¹

New advances in technology have allowed humankind to go further offshore and deeper into the oceans. Life on the seabed, which was once thought of as existing only in the shallow waters of the continental shelf, has now been found at depths of more than 4000 metres. The scientific and commercial

² Address by H.E. Ambassador Felipe Paolillo, Permanent Representative of Uruguay to the United Nations: UNITAR Briefing on Developments in Ocean Affairs and the Law of the Sea, 25 September 2002. Available on www.un.int/uruguay/discursos/ConferenciaDerechodelMar25Setiembre2002.htm.

value of such new discoveries has raised questions regarding their legal status, which must be addressed by the international community. In the years to come, the oil and gas industry will be affected by the continuing work of the Commission on the Limits of the Continental Shelf, as States seek to establish the outer limits of their continental shelves beyond 200 nautical miles. As deep seabed mineral activities move from prospecting to exploration and eventually to exploitation, the International Seabed Authority will have to give ever-greater attention to environmental considerations, in addition to benefit sharing, as it continues to administer the resources of the Area for humankind. Criminal activities on the high seas such as acts of terrorism, piracy and armed robbery, migrant smuggling, and illicit traffic in narcotic drugs, arms and other goods will require sustained global action. The health of the oceans is vital for the world's economic and ecological well-being. Urgent action is needed to protect the marine environment and its resources from all sources of pollution, in particular from land-based activities. As for the sustainable use of marine living resources, it should be borne in mind that overfishing not only threatens the balance and viability of the marine ecosystem, it also reduces economic opportunities and undermines the livelihoods of people in coastal areas, particularly those living in developing countries. With old ocean-related problems getting worse and new discoveries calling for new legal developments, the issues of interrelation and interaction between all uses of the oceans have become even more urgent.

These new challenges have prompted delegations at the United Nations to look for a solution capable of fostering better coordination in addressing ocean issues and eliminating duplication of tasks. The Open-ended Informal Consultative Process on ocean affairs was established by General Assembly resolution 54/33 of 24 November 1999 to respond to the need for an integrated approach for the oceans, which requires a cross-

sectoral consideration of all issues, taking into account all aspects: legal, economic, political and environmental. That resolution clearly puts the emphasis on identifying areas where coordination and cooperation at the intergovernmental and interagency levels should be enhanced.

During its four years of existence, the Consultative Process has devoted extensive discussion to the question of coordination, particularly when the Subcommittee on Oceans and Coastal Areas (SOCA) of the Administrative Committee on Coordination was abolished without any replacement. The call for a new effective, transparent and responsive mechanism has become louder, particularly during the fourth meeting of the Consultative Process. It has become more apparent that it is impossible to envisage sound ocean governance without an integrated approach, which should be effective not only at the international level but also at the national level.

In dealing with the international level, following a suggestion of Professor Louis Sohn,³ is it not perhaps time to revisit Ambassador Pardo's forgotten second idea for a more coherent management of the oceans in order to secure sustainability of their resources and strengthen international security?

ANNEXES

A. Personalities of the Third United Nations Conference on the Law of the Sea remembered at the commemoration

Andrés Aguilar (Venezuela)	Keith Brennan (Australia)
Slobodan Alfirević (Croatia)	Hortencio Brilliantes (Philippines)
Hamilton Shirley Amerasinghe (Sri Lanka)	Peter Brückner (Denmark)
Hans G. Andersen (Iceland)	Lucius Caflisch (Switzerland)
David Anderson (United Kingdom)	Carlos Calero-Rodrigues (Brazil)
Ib R. Andreasen (Denmark)	Jorge Castañeda (Mexico)
Alfonso Arias-Schreiber (Peru)	Claude Chayet (France)
John S. Bailey (Australia)	Amadou Cissé (Senegal)
Juan Miguel Bakula (Peru)	Thomas A. Clingan (United States)
Lennox Ballah (Trinidad and Tobago)	Charles Manyang d'Awol (Sudan)
Peter D. Barabolya (Russian Federation)	H. G. Darwin (United Kingdom)
Mohamed Bedjaoui (Algeria)	Manuel Primo de Brito
Christopher. D. Beeby (New Zealand)	Limpo Serra (Portugal)
J. Alan Beesley (Canada)	Hasjim Djalal (Indonesia)
Mohamed Bennouna (Morocco)	Jean-François Dobelle (France)
Adriaan Bos (Netherlands)	Rachid Driss (Tunisia)
K. K. Breckenridge (Sri Lanka)	R. Jean Dupuy (France)
	Antonius Eitel (Germany)
	Mohamed Mustapha El Gharbi (Morocco)
	Paul Bamela Engo (Cameroon)
	Jose Espinosa (Philippines)

Jens Evensen (Norway)	Georgy G. Ivanov (Russian Federation)
P.N. Evseev (Russian Federation)	Roger Jackling (United Kingdom)
Antoine Fattal (Lebanon)	Andreas Jacovides (Cyprus)
Gil Fernandes (Guinea-Bissau)	Guenther Jaenicke (Germany)
Carl-August Fleischhauer (Germany)	S. P. Jagota (India)
Masato Fujisaki (Japan)	Roger Jeannel (France)
Reynaldo Galindo Pohl (El Salvador)	Tomoyoshi Kamenaga (Japan)
Ivan F. Glumov (Russian Federation)	James Kateka (United Republic of Tanzania)
Günter Goerner (Germany)	Yuri B. Kazmin (Russian Federation)
Wojciech Góralczyk (Poland)	Allan Kirton (Jamaica)
Ernesto de la Guardia (Argentina)	Valeri S. Kniazev (Russian Federation)
Ramiro Saraiva Guerreiro (Brazil)	Karl Hermann Knoke (Germany)
Elsa Kelly de Guibourg (Argentina)	Tommy T.B. Koh (Singapore)
Gerhard Hafner (Austria)	Igor Kolosovsky (Russian Federation)
Kari Hakapää (Finland)	Vladimír Kopal (Czech Republic)
Theodore Halkiopoulos (Greece)	Abdul G. Koroma (Sierra Leone)
Mohammad Al-Haj Hamoud (Iraq)	F. N. Kovalev (Russian Federation)
Ralph Harry (Australia)	Semen Kozirev (Russian Federation)
Abdel Majid A. Hassan (Sudan)	Richard Král (Czech Republic)
F. M. Hayes (Ireland)	Mochtar Kusumaatmadja (Indonesia)
Asterius M. Hyera (United Republic of Tanzania)	
Vladimir Ibler (Croatia)	
Jorge E. Illueca (Panama)	

Guy de Lacharrière
 (France)
 José Manuel Lacleta
 Muñoz (Spain)
 Paul André Lapointe
 (Canada)
 Elihu Lauterpacht (United
 Kingdom/Australia)
 L. H. Legault (Canada)
 Gisler K. Libaba (United
 Republic of Tanzania)
 Julio César Lupinacci
 (Uruguay)
 Lev L. Lyubimov (Russian
 Federation)
 Alexander L. Makovski
 (Russian Federation)
 Elisabeth Mann Borgese
 (Austria)
 E.J. Manner (Finland)
 William R. Mansfield
 (New Zealand)
 Vicente Marotta Rangel
 (Brazil)
 Mohamed Mouldi Marsit
 (Tunisia)
 M. McKeown (Australia)
 Alexander P. Metelnikov
 (Russian Federation)
 Cornel A. Metternich
 (Germany)
 Jamshid Momtaz (Iran)
 Jean Monnier
 (Switzerland)
 John Norton Moore
 (United States)
 H.C. Mott (Australia)
 Toru Nakagawa (Japan)

Satya N. Nandan (Fiji)
 Ni Zhengyu (China)
 Francis X Njenga (Kenya)
 Shigeru Oda (Japan)
 Motoo Ogiso (Japan)
 Francisco Orrego Vicuña
 (Chile)
 Bernard H. Oxman
 (United States)
 Arvid Pardo (Malta)
 José Antonio Pastor
 Ridruejo (Spain)
 Zvonko Perišić
 (Yugoslavia)
 Christopher W. Pinto (Sri
 Lanka)
 Pedro Pinto (Portugal)
 Zdeněk Pisk (Czech
 Republic)
 Luis G. Preval Pérez (Cuba)
 José Luís Rodrigues
 Portero (Portugal)
 Árpád Prandler (Hungary)
 Blaise Rabetafika
 (Madagascar)
 Leigh S. Ratiner (USA)
 Kenneth Rattray (Jamaica)
 Elliot L. Richardson
 (United States)
 Willem Riphagen
 (Netherlands)
 Patrick Robinson (Jamaica)
 Inocencio Ronquillo
 (Philippines)
 Shabtai Rosenne (Israel)
 Holger Rotkirch (Finland)
 Mario Ruivo (Portugal)

Louis B. Sohn (United States)	Charles Vella (Malta)
Alvaro de Soto (Peru)	Helge Vindenes (Norway)
Constantin Stavropoulos (Greece)	Budislav Vukas (Croatia)
John Stevenson (United States)	Jaap A. Walkate (Netherlands)
Shinichi Sugihara (Japan)	Tieya Wang (China)
Janusz Symonides (Poland)	Joseph S. Warioba (United Republic of Tanzania)
Alberto Szekely (Mexico)	Karl Wolf (Austria)
Manuel Tello (Mexico)	Harry Wuensche (Germany)
Malcolm J.C. Templeton (New Zealand)	Igor I. Yakovlev (Russian Federation)
Hisayoshi Terai (Japan)	Soji Yamamoto (Japan)
Sérgio Martins Thompson-Flores (Brazil)	Alejandro D. Yango (Philippines)
Tullio Treves (Italy)	Alexander Yankov (Bulgaria)
Helmut Tuerk (Austria)	Victor A. Yarmolyuk (Russian Federation)
Necmettin Tuncel (Turkey)	Mustafa Kamil Yasseen (United Arab Emirates)
Luis Valencia Rodríguez (Ecuador)	José Antonio Yturriaga Barberán (Spain)
José Luis Vallarta (Mexico)	Fernando Zegers (Chile)
Alfred van der Essen (Belgium)	Hongzeng Zhang (China)
Nicolo Varvesi (Italy)	

Former members of the secretariat of the United Nations Conference on the Law of the Sea: Bernardo Zuleta (Colombia), Hugo Caminos (Argentina), Gritakumar E. Chitty (Sri Lanka), David L.D. Hall (Australia), Jean-Pierre Lévy (France), L. Dolliver M. Nelson (Grenada), Felipe Paolillo (Uruguay), Ismat Steiner (United Republic of Tanzania).

B. Status of the United Nations Convention on the Law of the Sea

*The 145 parties to the Convention (with dates of adherence)
as at 20 December 2003*

Albania (23 June 2003)	Cameroon (19 November 1985)
Algeria (11 June 1996)	Canada (7 November 2003)
Angola (5 December 1990)	Cape Verde (10 August 1987)
Antigua and Barbuda (2 February 1989)	Chile (25 August 1997)
Argentina (1 December 1995)	China (7 June 1996)
Armenia (9 December 2002)	Comoros (21 June 1994)
Australia (5 October 1994)	Cook Islands (15 February 1995)
Austria (14 July 1995)	Costa Rica (21 September 1992)
Bahamas (29 July 1983)	Côte d'Ivoire (26 March 1984)
Bahrain (30 May 1985)	Croatia (5 April 1995)
Bangladesh (27 July 2001)	Cuba (15 August 1984)
Barbados (12 October 1993)	Cyprus (12 December 1988)
Belgium (13 November 1998)	Czech Republic (21 June 1996)
Belize (13 August 1983)	Democratic Republic of the Congo (17 February 1989)
Benin (16 October 1997)	Djibouti (8 October 1991)
Bolivia (28 April 1995)	Dominica (24 October 1991)
Bosnia and Herzegovina (12 January 1994)	Egypt (26 August 1983)
Botswana (2 May 1990)	Equatorial Guinea (21 July 1997)
Brazil (22 December 1988)	European Community (1 April 1998)
Brunei Darussalam (5 November 1996)	
Bulgaria (15 May 1996)	

Fiji (10 December 1982)	Lao People's Democratic Republic (5 June 1998)
Finland (21 June 1996)	Lebanon (5 January 1995)
France (11 April 1996)	Lithuania (12 November 2003)
Gabon (11 March 1998)	Luxembourg (5 October 2000)
Gambia (22 May 1984)	Madagascar (22 August 2001)
Georgia (21 March 1996)	Malaysia (14 October 1996)
Germany (14 October 1994)	Maldives (7 September 2000)
Ghana (7 June 1983)	Mali (16 July 1985)
Greece (21 July 1995)	Malta (20 May 1993)
Grenada (25 April 1991)	Marshall Islands (9 August 1991)
Guatemala (11 February 1997)	Mauritania (17 July 1996)
Guinea (6 September 1985)	Mauritius (4 November 1994)
Guinea-Bissau (25 August 1986)	Mexico (18 March 1983)
Guyana (16 November 1993)	Micronesia (Federated States of) (29 April 1991)
Haiti (31 July 1996)	Monaco (20 March 1996)
Honduras (5 October 1993)	Mongolia (13 August 1996)
Hungary (5 February 2002)	Mozambique (13 March 1997)
Iceland (21 June 1985)	Myanmar (21 May 1996)
India (29 June 1995)	Namibia (18 April 1983)
Indonesia (3 February 1986)	Nauru (23 January 1996)
Iraq (30 July 1985)	Nepal (2 November 1998)
Ireland (21 June 1996)	Netherlands (28 June 1996)
Italy (13 January 1995)	New Zealand (19 July 1996)
Jamaica (21 March 1983)	Nicaragua (3 May 2000)
Japan (20 June 1996)	Nigeria (14 August 1986)
Jordan (27 November 1995)	Norway (24 June 1996)
Kenya (2 March 1989)	Oman (17 August 1989)
Kiribati (24 February 2003)	
Kuwait (2 May 1986)	

Pakistan (26 February 1997)	Singapore (17 November 1994)
Palau (30 September 1996)	Slovakia (8 May 1996)
Panama (1 July 1996)	Slovenia (16 June 1995)
Papua New Guinea (14 January 1997)	Solomon Islands (23 June 1997)
Paraguay (26 September 1986)	Somalia (24 July 1989)
Philippines (8 May 1984)	South Africa (23 December 1997)
Poland (13 November 1998)	Spain (15 January 1997)
Portugal (3 November 1997)	Sri Lanka (19 July 1994)
Qatar (9 December 2002)	Sudan (23 January 1985)
Republic of Korea (29 January 1996)	Suriname (9 July 1998)
Romania (17 December 1996)	Sweden (25 June 1996)
Russian Federation (12 March 1997)	The former Yugoslav Republic of Macedonia (19 August 1994)
Saint Kitts and Nevis (7 January 1993)	Togo (16 April 1985)
Saint Lucia (27 March 1985)	Tonga (2 August 1995)
Saint Vincent and the Grenadines (1 October 1993)	Trinidad and Tobago (25 April 1986)
Samoa (14 August 1995)	Tunisia (24 April 1985)
Sao Tome and Principe (3 November 1987)	Tuvalu (9 December 2002)
Saudi Arabia (24 April 1996)	Uganda (9 November 1990)
Senegal (25 October 1984)	Ukraine (26 July 1999)
Serbia and Montenegro (12 March 2001)	United Kingdom of Great Britain and Northern Ireland (25 July 1997)
Seychelles (16 September 1991)	United Republic of Tanzania (30 September 1985)
Sierra Leone (12 December 1994)	Uruguay (10 December 1992)
	Vanuatu (10 August 1999)
	Viet Nam (25 July 1994)

Yemen (21 July 1987)
Zambia (7 March 1983)
Zimbabwe (24 February
1993)