

# International Law of the Sea

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This report surveys developments in the international law of the sea during 1996. The first section addresses the 1982 U.N. Convention on the Law of the Sea (Law of the Sea Convention),<sup>1</sup> the associated 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (Part XI Agreement),<sup>2</sup> and institutions established by the Law of the Sea Convention. The second section concerns fisheries, the third the marine environment, and the fourth disputes over islands, maritime boundaries, and other issues. The last section notes miscellaneous developments.

## I. The Law of the Sea Convention and the Part XI Agreement

As of December 31, 1996, there were 110 parties to the Law of the Sea Convention, which codifies a broad range of issues related to navigation, maritime boundaries and zones, the marine environment, marine scientific research, and living and nonliving resources.<sup>3</sup> States parties now include Australia, China, France, Germany, Japan, the Republic of Korea, and several other developed states. During 1996, twenty-seven states ratified or acceded to the Convention, which entered into force on November 16, 1994. The United States signed the Part XI Agreement on July 29, 1994, and President Clinton submitted the Agreement and the Convention to the U.S. Senate for its advice and consent on October 7, 1994. The Senate Foreign Relations Committee, however, has yet to hold hearings.

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1. U.N. Doc. A/CONF.62/122 (1982), in UNITED NATIONS, *THE LAW OF THE SEA: OFFICIAL TEXT OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA WITH ANNEXES AND INDEX*, U.N. Sales No. E.83.V.5 (1983), 21 I.L.M. 1261 (1982) [hereinafter *Law of the Sea Convention*].

2. U.N. Doc. A/RES/48/263, 33 I.L.M. 1309 (1994) [hereinafter *Part XI Agreement*].

3. A current list of parties to the Law of the Sea Convention, *supra* note 1, is available at United Nations, *Status of the United Nations Convention on the Law of the Sea of 10 December 1982* <gopher://gopher.un.org:70/00/LOS/STATUS\_ALL/STAT\_LOS.TXT>.

The Part XI Agreement entered into force on July 28, 1996. This Agreement, which is to be interpreted and applied together with Part XI as a single instrument,<sup>4</sup> provides for the nonimplementation of certain deep seabed mining provisions of the Law of the Sea Convention with which the United States and other industrialized states had difficulties. The Convention provisions affected by the Part XI Agreement concern costs to states parties, the functioning of the Enterprise (the seabed mining arm of the International Seabed Authority created by the Convention), decision-making procedures, the mechanism for amending Part XI, requirements for the transfer of technology to the Enterprise and to developing states, limits on the production of seabed minerals, economic assistance, and the financial terms of contracts and other financial issues.<sup>5</sup>

There were seventy-eight parties to the Part XI Agreement as of December 31, 1996. The Agreement contains innovative procedural mechanisms designed to ensure it will become an integral part of the Law of the Sea Convention.<sup>6</sup> States accepting the Convention after July 28, 1994 (when the Part XI Agreement was adopted), also consent to be bound by the Part XI Agreement.<sup>7</sup> Furthermore, no state may consent to be bound by the Part XI Agreement without also accepting the Convention.<sup>8</sup> As of December 31, 1996, forty-six of the 110 parties to the Convention were bound by both the Convention and the Part XI Agreement because they accepted the Convention after July 28, 1994.<sup>9</sup> The other sixty-four Convention parties, which had accepted the Convention before July 28, 1994, could choose among a variety of mechanisms to express their consent to be bound by the Part XI Agreement. These mechanisms include definitive signature of the Part XI Agreement, ratification after signature, accession, or a simplified procedure consisting of signature of the Agreement followed by a lack of notice within twelve months of an intent not to use the simplified procedure.<sup>10</sup> Thirty-two of these sixty-four pre-Part XI Agreement parties to the Convention were, as of December 31, 1996, considered bound by the Agreement by virtue of one or another of these mechanisms.<sup>11</sup> The Part XI Agreement also had applied provisionally to a variety of parties and nonparties to the convention, including the United States, until it entered into force on July 28, 1996.<sup>12</sup>

4. Part XI Agreement, *supra* note 2, at art. 2(1).

5. *See id.* Annex. *See also Report and Recommendation on the United Nations Convention on the Law of the Sea*, 29 INT'L LAW. 252 (1995), reprinted in THE UNITED NATIONS AT 50: PROPOSALS FOR IMPROVING ITS EFFECTIVENESS 161 (John E. Noyes ed. 1996).

6. For a thorough explanation of these procedural mechanisms, see Moritaka Hayashi, *The 1994 Agreement for the Universalization of the Law of the Sea Convention*, 27 OCEAN DEV'T & INT'L L. 31 (1996). *See also* UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, STATUS AS AT 31 DECEMBER 1995, at 822, U.N. Sales No. E.96.V5 (1996).

7. Part XI Agreement, *supra* note 2, at art. 4(1).

8. *Id.* at art. 4(2).

9. Some of these 46 states formally ratified or acceded to both the Convention and the Part XI Agreement, and some formally accepted only the Convention but are considered bound to the Part XI Convention because of Article 4(1) of the Part XI Agreement, *supra* note 2. A current list of parties to the Part XI Agreement is available at United Nations, *Status of the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, Adopted by the General Assembly on 28 July 1994* <gopher://gopher.un.org:70/00/LOS/STATUS\_ALL/STAT\_PXI.TXT>.

10. Part XI Agreement, *supra* note 2, at arts. 4(3), 5.

11. Of the 32 Law of the Sea Convention parties not bound by the Part XI Agreement as of December 31, 1996, 26 had neither signed the Agreement nor accepted it through some other mechanism. The other six states, although signatories to the Agreement, have affirmatively stated that they do not avail themselves of the simplified procedure; thus, their acceptance of the Part XI Agreement will depend on their subsequent ratification of it. *See id.* at art. 5.

12. *See id.* at art. 7. *See also infra* note 15 & accompanying text.

The International Seabed Authority, headquartered in Kingston, Jamaica, held its second session in 1996, meeting during March 11-22 and August 5-16. The Authority's main organs are the Assembly, a thirty-six-member executive body (the Council), and a Secretariat. At the March 1996 meeting, the Assembly decided on final details of the composition of the Council and elected Satya N. Nandan as the first Secretary-General of the Authority.<sup>13</sup> At the August meeting, the Assembly and Council, following required review by the Authority's finance committee, approved a \$4.15 million budget for the Authority for 1997. Also at the August meeting, the council adopted its rules of procedure, elected Lennox Ballah of Trinidad and Tobago as its president, and elected the twenty-two members of the Legal and Technical Commission, which is one of the Authority's subsidiary organs.<sup>14</sup> Finally, the Assembly agreed on procedures for extending provisional membership in the Authority of states or entities that had not yet accepted the Law of the Sea Convention. A request from the United States to extend its membership on a provisional basis until November 16, 1998, was among those accepted, thus permitting the United States to continue at least temporarily to participate in the Authority's work.<sup>15</sup>

The first judges of the International Tribunal for the Law of the Sea, another institution created by the Law of the Sea Convention,<sup>16</sup> were elected on August 1-2, 1996.<sup>17</sup> Only States parties to the Convention were entitled to nominate judges and to vote in the election. The twenty-one judges are Joseph Akl (Lebanon), David Anderson (United Kingdom), Hugo Caminos (Argentina), Gudmundur Eiriksson (Iceland), Paul Engo (Cameroon), Anatoly Kolodkin (Russia), Edward Laing (Belize), Vicente Marotta Rangel (Brazil), Mohamed Marsit (Tunisia), Thomas Mensah (Ghana), Tafsir Malick Ndiaye (Senegal), L. Dolliver Nelson (Grenada), Park Choon-Ho (Republic of Korea), P. Chandrasekhara Rao (India), Tullio Treves (Italy), Budislav Vukas (Croatia), Joseph Warioba (Tanzania), Rüdiger Wolfrum (Germany), Soji Yamamoto (Japan), Alexander Yankov (Bulgaria), and Zhao Lihai (China). The judges, who were sworn into office on October 18, 1996, chose Thomas Mensah as president of the Tribunal and Rüdiger Wolfrum as vice president. The states parties approved an initial budget of \$6.17 million to cover operations of the Tribunal and its Registry from August 1, 1996, through December 31, 1997.<sup>18</sup> The Tribunal is headquartered in Hamburg, Germany.

At the July 24-August 2, 1996, meeting of the States Parties to the Law of the Sea Convention, it was decided to elect the twenty-one members of the Commission on the Limits of the Continental Shelf in March 1997.<sup>19</sup> The Commission will make recommendations to coastal

13. See *Law of the Sea, Report of the Secretary-General*, 51st Sess., Agenda Item 24(a), ¶¶ 59-61, U.N. Doc. A/51/645 (1996) [hereinafter *1996 Secretary-General Report*]; *Statement of the President on the Work of the Assembly During the First Part of the Second Session*, U.N. Doc. ISBA/A/L.9 (1996) <gopher://gopher.un.org/00/LOS/ISBA/ISBA\_L9.TXT>.

14. See *International Seabed Authority Concludes Second Session in Kingston*, U.N. Press Release SEA/1532 (Aug. 19, 1996) <gopher://gopher.un.org/00/LOS/ISBA/SEA1532.TXT>; *1996 Secretary-General Report*, *supra* note 13, ¶¶ 62-64.

15. See SEA/1532, *supra* note 14. The extensions are permitted pursuant to Part XI Agreement, *supra* note 2, at Annex § 1, ¶ 12(a).

16. See *Law of the Sea Convention*, *supra* note 1, at Annex VI.

17. See *Report of the Fifth Meeting of States Parties*, ¶¶ 13-31, U.N. Doc. SPLOS/14 (1996); *1996 Secretary-General Report*, *supra* note 13, at ¶¶ 68-71.

18. See *Report of the Fourth Meeting of States Parties*, ¶¶ 7-12, U.N. Doc. SPLOS/8 (1996); *1996 Secretary-General Report*, *supra* note 13, ¶¶ 72-74.

19. See *Report of the Fifth Meeting of States Parties*, *supra* note 17, at ¶¶ 41-42; *1996 Secretary-General Report*, *supra* note 13, at ¶¶ 77-84.

states concerning the establishment of the outer limits of their continental shelves, where those limits extend beyond 200 nautical miles from their coasts.<sup>20</sup> Only states parties to the Convention may nominate and vote for Commission members.

## II. Fisheries

Depletion of fisheries worldwide remained a significant concern in 1996. A July 19, 1996, report from the Fisheries and Agriculture Organization to the Secretary-General of the United Nations summarized the situation as follows:

Conservation and management of fisheries resources worldwide is generally in a poor state. There have been no major improvements in the situation since FAO reported in the early 1990s that approximately 70 per cent of the world's marine capture fisheries resources for which data were available were fully exploited, over-exploited or in a state of recovery.<sup>21</sup>

The United States enacted the Sustainable Fisheries Act on October 11, 1996.<sup>22</sup> This Act significantly amends the Magnuson Fishery Conservation and Management Act.<sup>23</sup> The Sustainable Fisheries Act, *inter alia*, calls for an international agreement to establish certain standards for bycatch reduction, grants authority to the secretary of commerce to issue transshipment permits for foreign flag fishing vessels in U.S. waters, requires that essential fish habitats be identified in fishery management plans, obligates the secretary of commerce to develop measures to rebuild over-fished stocks if Regional Fishery Management Councils fail to do so, provides for specific management acts with respect to certain fisheries and areas, and contains extensive provisions on fishery monitoring and research. The Act also institutes a program to reduce the size of a fishing fleet when the secretary of commerce determines there is a commercial fishery failure due to a fishery resource disaster, and the Act prohibits, until October 1, 2001, new loan guarantees by the U.S. Government for the construction of fishing vessels if the construction will result in increased harvesting capacity within the U.S. exclusive economic zone.

The U.S. Senate gave its advice and consent to ratification of the 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 (Straddling Stocks Agreement)<sup>24</sup> on June 27, 1996, and the United States deposited its instrument of ratification on August 21, 1996. The Straddling Stocks Agreement addresses the management of fish species found both inside states' 200-mile exclusive economic zones, where coastal states have primary management authority, and outside such zones. The Agreement requires that conservation and management measures established for the high seas and those adopted for areas under national jurisdiction be compatible.<sup>25</sup> Parties to the Straddling Stocks Agreement must observe a regional organization's conservation and

20. See Law of the Sea Convention, *supra* note 1, Annex II, at arts. 1-9.

21. *Report of the Secretary-General*, 51st Sess., Agenda Item 24(b), ¶ 21, U.N. Doc. A/51/383 (1996). Discussion of current developments relating to the conservation and management of fisheries is found in *1996 Secretary-General Report*, *supra* note 13, at ¶¶ 152-74.

22. 16 U.S.C. § 1801 (1997).

23. Pub. L. No. 94-265, 90 Stat. 331 (1976) (codified in large part, *as amended*, at 16 U.S.C.A. §§ 1801-1882 (West 1985 & Supp. 1996)).

24. *Adopted* Aug. 4, 1995, *opened for signature* Dec. 4, 1995, U.N. Doc. A/CONF.167/37, 34 I.L.M. 1542 (1995).

25. *Id.* at art. 7(2).

management measures even if they are not members of the organization.<sup>26</sup> The Straddling Stocks Agreement includes innovative enforcement mechanisms, allowing a party that is also a member of a regional fisheries organization to board and inspect vessels flying the flag of another party to the Straddling Stocks Agreement in order to check whether those vessels comply with regional conservation and management measures.<sup>27</sup> When a boarding state has clear grounds for believing a vessel has committed a "serious violation," and when the flag state fails to investigate or take enforcement action with respect to the alleged violation, the boarding state may secure evidence, bring the vessel into port, or take other steps proportionate to the seriousness of the violation.<sup>28</sup> Disputes among parties to the Straddling Stocks Agreement that are not resolved informally may be addressed through the third-party dispute settlement mechanisms of the 1982 Law of the Sea Convention, which are incorporated by reference into the Straddling Stocks Agreement.<sup>29</sup> The Agreement will enter into force thirty days after thirty states accept it.<sup>30</sup> As of December 31, 1996, seven states had ratified the Agreement, and there were fifty-nine signatories.<sup>31</sup>

On June 13, 1996, the United States and the Russian Federation entered into an agreement relating to straddling fish stocks in the Sea of Okhotsk.<sup>32</sup> Until recently, vessels from Japan, the People's Republic of China, Poland, and the Republic of Korea had fished for pollock in a small pocket of high seas, known as the "Peanut Hole," located in the central part of the Sea of Okhotsk. Although over ninety-five percent of the Sea of Okhotsk is within Russia's exclusive economic zone, this fishing undermined Russia's ability to conserve and manage the pollock "straddling stock" in the area. Article 2 of the Sea of Okhotsk Agreement obligates the United States to ensure that its nationals and vessels subject to its jurisdiction observe Russia's pollock fishing measures throughout the entire Sea of Okhotsk, including in the Peanut Hole. Article 3 requires each country to prohibit its nationals and vessels from fishing in the Peanut Hole until Russia determines, "on the basis of the best scientific evidence available," that pollock resources have sufficiently recovered to allow resumption of fishing. Article 5(3) requires Russia and the United States to take measures "individually or collectively, in accordance with international law," appropriate to deter fishing by vessels of other states in the Peanut Hole, if such fishing could adversely affect the long-term sustainable use of pollock resources. The Sea of Okhotsk Agreement is consistent with Title V of the U.S. Fisheries Act of November 3, 1995, which prohibits nationals and vessels of the United States from fishing in the central Sea of Okhotsk except in accordance with an international agreement accepted by both the United States and the Russian Federation.<sup>33</sup>

During 1996, the United States took several steps to implement other provisions of the Fisheries Act of 1995. Title VII of the Fisheries Act, known as the Yukon River Salmon

26. See *id.* at art. 8(4).

27. See *id.* at arts. 20-23.

28. *Id.* at art. 21(8), (16). The term "serious violation" is defined in *id.* at art. 21(11).

29. See *id.* at art. 30.

30. *Id.* at art. 40(1).

31. A current list of parties to the Straddling Stocks Agreement is available at United Nations, *Status of the 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* <gopher://gopher.un.org:70/00/LOS/STATUS\_ALL/STAT\_164.TXT>.

32. Agreement on the Conservation of Straddling Fish Stocks in the Central Part of the Sea of Okhotsk, June 13, 1996, U.S.-Russ. (on file with U.S. Dep't of State).

33. Fisheries Act of 1995, Pub. L. No. 104-43, §§ 501-502, 109 Stat. 366, 391 (1995) (amending Central Bering Sea Fisheries Enforcement Act of 1992, 16 U.S.C.A. § 1823 note (West Supp. 1996)).

Act,<sup>34</sup> implemented a 1995 U.S.-Canadian Agreement<sup>35</sup> designed to help conserve salmon stock on the Yukon River. The Yukon River Joint Technical Committee met in 1996 to begin implementing catch quotas, as contemplated under the U.S.-Canadian Agreement and the Act.

In accordance with Title IV of the Fisheries Act of 1995,<sup>36</sup> the United States in 1996 reimbursed those who paid transit fees to Canada while traveling through Canada's "inside passage" between Alaska and Washington.<sup>37</sup> Title IV also reauthorized the Fishermen's Protective Act of 1967,<sup>38</sup> thus extending the Fisherman's Protective Act Guaranty Fund. Owners of U.S. vessels seized on jurisdictional grounds not recognized by the United States may be reimbursed from this Fund for their actual costs and for the market price of fish confiscated or spoiled.<sup>39</sup> 1996 regulations set out revised procedures for the Guaranty Fund.<sup>40</sup> These regulations, in accordance with Title IV of the Fisheries Act of 1995, also indicate that direct appropriations from the U.S. Treasury will no longer be used to pay for any part of losses covered by the Fund; fees from participants are now the sole method for replenishing the Fund.

In other 1996 actions to implement the Fisheries Act of 1995, the secretary of commerce began issuing permits on April 4, 1996, in order to carry out the terms of Title I of the Act, which is known as the High Seas Fishing Compliance Act of 1995.<sup>41</sup> The permits, which are issued to U.S. vessels, are conditioned to require that the vessel act in compliance with international conservation and management measures recognized by the United States. During 1996, the secretary of commerce also appointed commissioners and other officials to the Northwest Atlantic Fisheries Organization, which the United States joined on November 29, 1995;<sup>42</sup> these appointments were required under Title II of the Fisheries Act of 1995.<sup>43</sup> In addition, the secretary took steps during 1996 to implement recommendations of the International Commission for the Conservation of Atlantic Tunas and other measures, all as required by Title III of the 1995 Fisheries Act.<sup>44</sup>

34. Fisheries Act of 1995, Pub. L. No. 104-43, §§ 701-710, 109 Stat. 366, 392-95 (1995) (codified at 16 U.S.C.A. §§ 5701-5709 (West Supp. 1996)).

35. Interim Agreement for the Conservation of Salmon Stocks Originating from the Yukon River in Canada, Feb. 3, 1995, U.S.-Can., Hein's No. KAV 4182, Temp. State Dep't No. 95-63.

36. Fisheries Act of 1995, Pub. L. No. 104-43, §§ 401-404, 109 Stat. 366, 388-90 (1995) (codified at 16 U.S.C.A. § 1383a (West Supp. 1996)), 22 U.S.C.A. §§ 1977(c), 1980a-1980b (West Supp. 1996)).

37. See *Testimony Before the Subcomm. on Fisheries, Wildlife and Oceans, House Comm. on Resources, Sept. 12, 1996* (statement of R. Tucker Scully, Acting Deputy Assistant Secretary for Oceans, Bureau of Oceans and International Environmental and Scientific Affairs).

38. See Fisheries Act of 1995, Pub. L. No. 104-43, § 403, 109 Stat. 366, 390 (1995) (codified at 22 U.S.C.A. § 1977(c) (West Supp. 1996)).

39. 22 U.S.C.A. § 1977 (West 1990 & Supp. 1996).

40. Fishermen's Protective Act Guaranty Fund Procedures, 22 C.F.R. pt. 33 (1997).

41. Fisheries Act of 1995, Pub. L. No. 104-43, §§ 101-111, 109 Stat. 366, 367-76 (1995) (codified at 16 U.S.C.A. §§ 5501-5509 (West Supp. 1996)). See *Testimony Before the Subcomm. on Fisheries, Wildlife and Oceans, House Comm. on Resources, Sept. 12, 1996* (statement of Rolland A. Schmitt, Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce) [hereinafter Schmitt Statement]. Title I of the Fisheries Act of 1995 is intended to implement the 1993 Food and Agriculture Organization's Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted Nov. 24, 1993, 33 I.L.M. 968 (1994).

42. See Schmitt Statement, *supra* note 41.

43. Fisheries Act of 1995, Pub. L. No. 104-43, §§ 201-211, 109 Stat. 366, 377-82 (1995) (known as the Northwest Atlantic Fisheries Convention Act of 1995) (codified at 16 U.S.C.A. §§ 5601-5610 (West Supp. 1996)).

44. *Id.*, §§ 301-311, 109 Stat. 366, 382-387 (known as the Atlantic Tunas Convention Authorization Act of 1995) (codified at 16 U.S.C.A. §§ 971-971j (West Supp. 1996)). See Schmitt Statement, *supra* note 41.

Several recent developments relate to efforts to implement both the 1991 U.N. General Assembly resolution that called for a moratorium on large-scale driftnet fishing<sup>45</sup> and the U.S. High Seas Driftnet Fisheries Enforcement Act of 1992.<sup>46</sup> Title VI of the Fisheries Act of 1995 (the High Seas Driftnet Fishing Moratorium Protection Act)<sup>47</sup> provides that the United States is precluded from entering into any international agreement that would prevent full implementation of the moratorium. On February 16, 1996, the U.S. Court of International Trade held that U.S. designation of Italy under the 1992 High Seas Driftnet Fisheries Enforcement Act had been unlawfully withheld and unreasonably delayed, and ordered the U.S. Secretary of Commerce to make this designation;<sup>48</sup> this court order had the potential of leading to U.S. trade sanctions against Italy. On July 26, 1996, Italy and the United States reached agreement on measures to uphold the U.N. moratorium.<sup>49</sup> Under the agreement, Italy increased its enforcement and prevention efforts, submitted laws for parliamentary approval to increase penalties for illegal driftnet fishing and to allow Italy to ratify the International Convention for the Conservation of Atlantic Tunas,<sup>50</sup> and presented a plan for European Union approval to either destroy driftnet vessels or convert them to other uses.

### III. The Marine Environment<sup>51</sup>

On May 3, 1996, states attending an International Maritime Organization conference adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.<sup>52</sup> The Convention provides a compensation mechanism for loss or damage resulting from pollution, fire, or explosion that is threatened or caused by hazardous and noxious substances carried on ships.<sup>53</sup> The Convention implements a two-tier compensation scheme. Shipowners are initially liable for compensation,<sup>54</sup> and must maintain insurance or other financial security to cover their liability for damage under the Convention.<sup>55</sup> If damages exceed the maximum liability of a shipowner (determined on a scale tied to a ship's tonnage, but in no event above 100 million Special Drawing Rights as defined by the International Monetary Fund<sup>56</sup>), compensation will be available from the

45. Dec. 20, 1991, U.N. Doc. A/RES/46/215, 31 I.L.M. 241 (1992).

46. *Codified in large part, as amended*, at 16 U.S.C.A. §§ 1826a-1826g (West Supp. 1996).

47. Fisheries Act of 1995, Pub. L. No. 104-43, §§ 601-606, 109 Stat. 366, 391-92 (1995) (codified at 16 U.S.C.A. §§ 1801 note, 1826d-1826g (West Supp. 1996)).

48. *Humane Soc'y v. Brown*, 920 F. Supp. 178 (Ct. Int'l Trade 1996).

49. Note Verbale from Italian Embassy to U.S. Department of State, July 22, 1996; Note Verbale from Italian Ministry of Foreign Affairs to U.S. Embassy Rome, July 25, 1996; Note Verbale from U.S. Dep't of State to Italian Embassy, July 26, 1996 (all on file with U.S. Dep't of State). See Nicholas Burns, *U.S. Satisfied with Italy's Commitment to Stop Illegal Driftnet Fishing*, July 26, 1996 (U.S. Dep't of State Release).

50. May 14, 1966, 20 U.S.T. 2887, 673 U.N.T.S. 63.

51. For a report on several recent developments related to the marine environment, see *1996 Secretary-General Report*, *supra* note 13, ¶¶ 85-110, 187-242, 286-94. In particular, one significant 1995 development, the Washington Declaration and the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities, is discussed in *id.* ¶¶ 198-205.

52. May 3, 1996, 35 I.L.M. 1415 (1996).

53. The substances covered include certain oils carried in bulk, liquefied gases, chemicals, magnesium, and iron oxide. See *id.* at art. 1(5).

54. See *id.* at art. 7.

55. *Id.* at art. 12.

56. See *id.* at art. 9(1). One hundred million SDRs is approximately equal to \$210 million.

International Hazardous and Noxious Substances Fund (HNS Fund) established by the Convention.<sup>57</sup> The HNS Fund will be financed by contributions from receivers of cargoes of hazardous and noxious substances.<sup>58</sup> The Convention will enter into force eighteen months after it has been accepted by at least twelve states, provided that additional requirements, related to the tonnage of shipping of states accepting the Convention, are met.<sup>59</sup> The IMO conference also adopted a Protocol amending the Convention on Limitation of Liability for Maritime Claims, 1976; the Protocol will enter into force ninety days after ten states accept it.<sup>60</sup>

On November 7, 1996, fifty-nine states attending a special meeting of Contracting Parties to the 1972 Convention on the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter (London Dumping Convention)<sup>61</sup> adopted a Protocol to that Convention.<sup>62</sup> Article 3 of the protocol sets out the principles that "the polluter should . . . bear the cost of pollution" and that appropriate preventative measures be taken even when "there is no conclusive evidence to prove a causal relation" between inputs of wastes and their effects.<sup>63</sup> The Protocol tightens the restrictions of the London Dumping Convention. Article 4 of the Protocol requires parties to "prohibit the dumping of any wastes or other matter;" exceptions exist for such matter as dredged material, sewage sludge, fish waste, or material resulting from industrial fish processing operations,<sup>64</sup> which matter may be dumped if authorized by permit.<sup>65</sup> The Protocol also obligates its parties to prohibit the incineration of wastes at sea.<sup>66</sup> Furthermore, parties to the Protocol "shall not allow the export of wastes or other matter to other countries for dumping or incineration at sea."<sup>67</sup> The United States is among the signatories to the Protocol. It will enter into force thirty days after it has been accepted by twenty-six states, fifteen of which must be Contracting Parties to the London Dumping Convention.<sup>68</sup>

Several regional international actions during the past year have significance for the marine environment. On March 7, 1996, fourteen states signed a protocol to the 1976 Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution,<sup>69</sup> calling for elimination of the most dangerous pollutants.<sup>70</sup> In July, Contracting Parties to the Barcelona Convention also agreed to create new regional centers and to adopt a new research and pollution control

57. *See id.* at arts. 13-30.

58. *See id.* at arts. 17-20.

59. *See id.* at art. 46.

60. Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976, May 2, 1996, 35 I.L.M. 1433 (1996). The 1976 Limitation of Liability Convention, Nov. 19, 1976, appears at 16 I.L.M. 606 (1977).

61. Dec. 29, 1972, 26 U.S.T. 2403, 1046 U.N.T.S. 120.

62. 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, *adopted* Nov. 7, 1996, IMO Doc. LC/SM 1/6, 36 I.L.M. 1 (1997).

63. *Id.* at art. 3(1)-(2).

64. *See id.* at art. 4 & Annex 1 (Wastes or Other Matter that May Be Considered for Dumping).

65. *See id.* at art. 9. Exceptions to the dumping ban are also authorized "in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels." *Id.* at art. 8.

66. *Id.* at art. 5.

67. *Id.* at art. 6.

68. *Id.* at art. 25.

69. Feb. 16, 1976, 15 I.L.M. 285 (1976).

70. *See Fourteen Nations Commit to Protocol on Elimination of Most Dangerous Pollutants*, 19 Int'l Env't Rep. (BNA) 207 (1996).

program,<sup>71</sup> and in October they concluded a protocol to the Barcelona Convention to restrict the movement of hazardous wastes, including through territorial seas.<sup>72</sup>

U.S. legislation enacted in 1996 also had implications for the marine environment. The 1996 amendments to the Oil Pollution Act of 1990<sup>73</sup> add exemptions to the Act's requirements of double-hull construction<sup>74</sup> and modify provisions concerning oil spill response vessels.<sup>75</sup>

#### IV. Island, Maritime Boundary, and Other Maritime Disputes<sup>76</sup>

Several ongoing maritime disputes relate to sovereignty over islands and maritime boundaries. Under the U.N. Convention on the Law of the Sea, states have the right to claim exclusive economic zones (EEZs) around inhabitable islands, and sovereign rights over resources on and under such islands' continental shelves.<sup>77</sup> Thus, sovereignty over islands has implications for the control of resources.

Islands in the Persian Gulf and other islands in or near shipping lanes also have strategic importance. A desire to protect freedom of navigation and overflight in important sea lanes was a primary reason for U.S. interest in obtaining a universal Law of the Sea Convention. Although the United States cannot claim benefits associated with being a party to the Law of the Sea Convention, the U.S. Department of Defense continues its long-standing program of projecting a naval presence in such areas from time to time. Notes on some active disputes follow.

As of December 31, 1996, four law-of-the-sea-related disputes were on the docket of the International Court of Justice. On March 15, 1996, the ICJ issued an order indicating provisional measures in the *Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria*.<sup>78</sup> On December 12, 1996, the Court ruled it had jurisdiction in the *Case Concerning Oil Platforms*,<sup>79</sup> which Iran had brought against the United States, alleging U.S. responsibility for the destruction of offshore oil production complexes in 1987 and 1988; the case will now proceed to the merits stage. Also pending at the ICJ are a dispute between Qatar and Bahrain with regard to maritime delimitation and sovereignty over the Hawar Islands, and a case brought by Spain against Canada following Canada's seizure of a Spanish fishing vessel outside Canada's EEZ.

71. See *Parties to Barcelona Convention Adopt New Plan to Curb Sea's Pollution*, 19 Int'l Env't Rep. (BNA) 640 (1996).

72. See *Protocol Signed by Mediterranean Nations Sharply Curbs Transborder Waste Movements*, 19 Int'l Env't Rep. (BNA) 861 (1996).

73. Pub. L. No. 101-380, 104 Stat. 484 (1990) (codified in scattered sections of U.S.C.).

74. Pub. L. No. 104-324, § 1103, 110 Stat. 3901, 3966 (1996) (amending 46 U.S.C. § 3703(a)) [hereinafter *Coast Guard Authorization Act*].

75. *Id.* at § 1104 (amending 46 U.S.C. §§ 2101, 3301, 3702, 8104(p), 8301(e), 8701(a), 8905).

76. An excellent comprehensive analysis of maritime boundaries worldwide is INTERNATIONAL MARITIME BOUNDARIES (Jonathan I. Charney & Lewis M. Alexander eds., 1991). For a recent survey of International Court of Justice decisions on law-of-the-sea-related issues, see Barbara Kwiatkowski, *The International Court of Justice and the Law of the Sea—Some Reflections*, 11 INT'L J. MARINE & COASTAL L. 491 (1996).

77. See Law of the Sea Convention, *supra* note 1, at art. 121.

78. I.C.J. COMMUNIQUÉ No. 96/13 (1996).

79. I.C.J. COMMUNIQUÉ No. 96/33 (1996).

On October 3, 1996, Yemen and Eritrea signed an agreement to arbitrate the question of sovereignty over the Hanish and Zuqar islands located at the entrance to the Red Sea, as well as an issue of maritime frontier demarcation.<sup>80</sup>

Other ongoing disputes are not pending before any international court or arbitral body. Several disputes have been exacerbated by recent claims of EEZs. For example, Japan and the Republic of Korea each claim sovereignty over the Liancourt rocks (Takeshima/Tok-to) in the Sea of Japan. Both states ratified the U.N. Convention on the Law of the Sea in 1996, and Japan proclaimed a 200-mile EEZ around the Liancourt islets on June 7, 1996; Korea subsequently proclaimed a 200-mile EEZ in the same area.<sup>81</sup> Japan's EEZ proclamation also applied to the southern Kuril Islands, which are held by Russia. Finally, the Japanese EEZ proclamation applied to the Senkaku/Dioayuta/Tiaoyutai Islands in the East China Sea, a group of islands claimed by China, Taiwan, and Japan. During 1996, a Japanese citizens' group built a structure on one of these disputed islands, and Japanese patrol boat activities in the region led to protests from China and Taiwan.<sup>82</sup>

Among other disputes,<sup>83</sup> perhaps the most significant involves the Spratly Islands, a group of approximately 100 islets scattered across a major sea route in the South China Sea. The Spratlys have been claimed in whole or in part by Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam. Bilateral and multilateral meetings held during 1996 did not resolve these competing claims. Additional disputes include a dispute between Iran and the United Arab Emirates to sovereignty over the islands of Abu Musa, Greater Tunb, and Lesser Tunb at the entrance to the Persian Gulf, tension between Malaysia and Indonesia concerning the Ligitan and Sipadan Islands, and confrontations between Greece and Turkey over the Imia/Kardak rocks and over Gavdos Island.

## V. Miscellaneous

The 1996 Coast Guard Authorization Act has amended provisions of the U.S. Maritime Drug Law Enforcement Act.<sup>84</sup> A "vessel without nationality," which under the Drug Law Enforcement Act is subject to U.S. jurisdiction, now includes a vessel whose master makes a claim of registry "and the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality." The 1996 amendments also affect the method of proving in U.S. court the consent or waiver of objection by a foreign nation to actions relating to its flag vessels, or the foreign nation's denial of registry. Formerly, such matters "may be proved" by certification of the secretary of state; now, they are "conclusively proved" by such certification. Finally, the 1996 changes make explicit that anyone charged with a violation of the Act "shall not have standing to raise the claim of failure to comply with international law as a basis for a defense."

80. See *1996 Secretary-General Report*, *supra* note 13, ¶¶ 250-52; United Nations, Division for Oceans Affairs and Law of the Sea, *In the News* (last updated Dec. 19, 1996) <[http://www.un.org/Depts/los/los\\_news.htm](http://www.un.org/Depts/los/los_news.htm)> [hereinafter *In the News*].

81. See Clive Schofield, *Island Disputes in East Asia Escalate*, 8 JANE'S INTELLIGENCE REV. NO. 11, at 517 (Nov. 1, 1996).

82. See *id.*

83. For discussion of these and other disputes, see *id.*; *1996 Secretary-General Report*, *supra* note 13, at ¶¶ 253-61; *In the News*, *supra* note 80. Additional background on the Spratlys is found in Barry Hart Dubner, *The Spratly "Rocks" Dispute*, 9 TEMP. INT'L & COMP. L.Q. 291 (1995).

84. 46 U.S.C. app. §§ 1901-1904 (1994). The amendments appear in Coast Guard Authorization Act, *supra* note 74, at § 1138.

A recent report on the law of the sea by the U.N. Secretary-General addresses additional developments related to illicit traffic in narcotic drugs and psychotropic substances and to other crimes at sea.<sup>85</sup> The report also covers ongoing activities concerning IMO projects, navigation, offshore installations, archaeological and historical objects found at sea, removal of wrecks, marine mammals, the development of nonliving marine resources, and marine science and technology.<sup>86</sup>

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85. 1996 *Secretary-General Report*, *supra* note 13, at ¶¶ 262-73.

86. *Id.* at ¶¶ 85-110 (IMO developments), 111-33 (navigation), 134-40 (offshore installations), 141-47 (archaeological and historical objects), 148-51 (removal of wrecks), 175-86 (marine mammals), 274-85 (development of nonliving marine resources), 286-301 (marine science and technology).

