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# Recent Developments in the International Law of the Sea

BARRY HART DUBNER\*

This report reviews developments in the sphere of the international law of the sea during 2001.

## I. A New U.S. Commission on Ocean Policy Created in 2001

The *New York Times* reported recently that some of the most “pressing environmental and economic decisions—about managing global warming, finding new energy sources, predicting climate changes, sustaining fisheries and protecting coastal property—depend on understanding the inner workings of our oceans.”<sup>1</sup> The Oceans Act of 2000 established the newly created Ocean Commission (Commission).<sup>2</sup> It held its first meeting in September 2001, and it has an eighteen-month tenure during which it must come up with recommendations for future U.S. oceans policy. The Ocean Commission will “have the opportunity to make the study of our oceans a national priority.”<sup>3</sup> The Commission, which is composed of scientists, government officials, and representatives of business, shall, for example, make “recommendations to the president and Congress for new policies relating to our oceans [so that we can] protect and manage fisheries and coastlines.”<sup>4</sup> “It has been nearly three decades since the federal government created the National Oceanic and Atmospheric Administration, the federal agency that monitors and conducts research on weather and oceans. The demands on oceans and coastlines have expanded considerably since then.”<sup>5</sup>

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1. Robert Gagolian, Editorial, *What the Seas Can Offer*, N.Y. TIMES, Aug. 6, 2001, at A15.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

[F]or example, the oceans' relation to energy issues and global warming. We recently found clues that the natural gas methane may be percolating up from the sea floor in large quantities. This could be a potentially large new source of energy. Methane is also a potent greenhouse gas; if it rises to the surface, steadily or in sudden bursts, it could play a significant role in global warming.<sup>6</sup>

It is also possible, however, "that oceans can help mitigate global warming by absorbing large amounts of carbon dioxide, another greenhouse gas from the atmosphere. The oceans store 1,100 times more heat than the atmosphere." As the *New York Times* stated, "With more information, scientists will be able to figure out if global warming will interfere with the ability of oceans to absorb and release heat, destabilize their delicately balanced circulation and trigger dramatic climate changes."<sup>8</sup>

With this type of information, we can be more prepared at minimizing the economic losses caused by weather events and can make better long-term decisions—about which crops to plant, for example. According to a NOAA report, the climate predictions made possible by the instruments that the United States deployed in the Pacific in the mid-1990s will save farmers and taxpayers in the United States about \$300 million a year.<sup>9</sup>

However, one of the first items that the Ocean Commission should address is urging the Senate to give its advice and consent to ratification of the 1982 Convention on the Law of the Sea.

During 2001, the Executive branch launched a successful effort, somewhat delayed by the events of September 11, to obtain interagency agreement that early approval in the Senate of accession to the Law of the Sea Convention would be an administrative priority. A perhaps long-forgotten Agreement amending the controversial deep seabed mining provisions of the 1982 Convention was adopted by the U.N. General Assembly and signed by the United States in July 1994. This Agreement and the Convention were then transmitted to the Senate for its advice and consent to ratification. No hearings have ever been held due to the opposition of now former Chairman of the Senate Foreign Relations Committee, Jesse Helms. The Convention came into force in November of 1994.<sup>10</sup>

On November 27, 2001, the U.S. representative to the U.N. Economic and Social Council, addressing an oceans related item, stated the following: "Because the rules of the (LOS) Convention meet U.S. national security, economic and environmental interests, I am pleased to tell you that the Administration of President George W. Bush supports accession of the United States to the Convention."<sup>11</sup>

The immediate impetus for early ratification was the forthcoming elections, in April 2002, of members of the Commission on the Limits of the Continental Shelf. The Commission is a body created by the Convention and charged with reviewing proposed definitions of the geographic boundaries on the continental shelf where it extends beyond 200 miles, an issue of considerable importance both with respect to oil and for other strategic considerations. To have an eligible candidate for the Commission the United States would

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6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. Law of the Sea 2001 Report supplied by Margaret Tomlinson.

11. *Id.*

have to ratify the Convention by February, a fairly unlikely prospect [at the time of this writing]. Nevertheless, the interest of oil companies and others in its work has added weight to the arguments for ratification.<sup>12</sup>

Another development revitalizing interest in U.S. ocean policy was the creation in the summer of 2001 of the U.S. Commission on Ocean Policy, pursuant to legislation passed, after several attempts, by the House and Senate that was signed by the President in 2000. The 16-member Commission chaired by former Admiral James Watkins, is charged with a comprehensive review of U.S. ocean interests and to make recommendations on a coordinated national oceans policy at the conclusion of its 18-month life. The Commission is a successor to the Stratton Commission of the 1960s. Its second meeting and first substantive session was held in Washington on November 13 and 14 during which time members of Congress and representatives of national organizations testified before the Commission. An invitation to testify was extended to the President of the American Bar Association, Bob Hirshon, who was accompanied at the hearing by former Law of the Sea Committee chairman, Peggy Tomlinson. Mr. Hirshon's statement noted, *inter alia*, that the ABA had adopted a resolution in August of 1994 supporting ratification of the Convention, following an extensive review of the amendment provisions of the 1994 Agreement. Following Mr. Hirshon's testimony the Commission took the somewhat unusual action of immediately proposing and unanimously passing a resolution supporting early ratification of the Convention. This resolution was subsequently sent to the chairman of the Senate Foreign Relations Committee, the White House, and the Secretaries of State and Defense, with a statement which quoted from Mr. Hirshon's characterization of the Convention as the foundation of a stable rule of law in the oceans. The Act creating the 18 month Commission requires the President within 120 days of delivery of the Commission's report, to submit Congress proposals and responses to its recommendation. Further hearings will be held around the country in 2002.<sup>13</sup>

## II. Status of the 1982 Convention on the Law of the Sea

As stated in recent reports, the U.N. Convention on the Law of the Sea was opened for signature on December 10, 1982.<sup>14</sup> The occasion marked the culmination of more than fourteen years of work involving participation by more than 150 countries to create a broad-based legal framework to accommodate multiple uses of the ocean.<sup>15</sup> Although the United States took a leadership role in the negotiations and successfully sought to codify customary navigational freedom of the seas and of international waterways, in the end it did not sign the treaty because of objection to provisions of the section of the treaty dealing with deep sea mining. In the late 1980s as it became evident that the Convention as written would likely enter into force without the participation of many states, the Secretary-General convened an informal working group to attempt to resolve the issues of concern to the United

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12. *Id.* For more information on the Commission on the Limits of the Continental Shelf, see *infra* text accompanying notes 71-72.

13. *Id.*

14. United Nations, *United Nations Convention on the Law of the Sea of 10 December 1982 Overview* (2001), available at [http://www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_convention.ht](http://www.un.org/depts/los/convention_agreements/convention_overview_convention.ht) (last visited Sept. 21, 2001) [hereinafter *Overview*].

15. *Id.*

States and others. That effort resulted in the adoption on July 28, 1994 of the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of December 10, 1982, which effectively modified the LOS Convention with respect to its seabed mining provisions. The United States then signed the Agreement and sent the Agreement and the Convention to the Senate for its advice and consent. The treaty entered into force in November 1994<sup>16</sup> and has been ratified by 137 States Parties as of August 28, 2001.<sup>17</sup>

The LOS Convention on the Law of the Sea lays down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources. It enshrines the notion that all problems of ocean space are closely related and need to be addressed as a whole. "The Convention entered into force in accordance with its article 308 on 16 November, 1994, 12 months after the date of deposit of the sixtieth instrument of ratification or accession."<sup>18</sup> "The Convention comprises 320 articles and nine annexes, governing all aspects of ocean space, such as delimitation, environmental control, marine scientific research, economic and commercial activities, transfer of technology and the settlements of disputes relating to ocean matters."<sup>19</sup>

Some of the key features of the Convention are:

- Coastal States exercise sovereignty over their territorial sea which they have the right to establish its breadth up to a limit not to exceed 12 nautical miles; foreign vessels are allowed 'innocent passage' through those waters;
- 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;
- Archipelagic States, made up of a group or groups of closely related islands and interconnecting waters, have sovereignty over a sea area enclosed by straight lines drawn between the outermost points of the islands; all other States enjoy the right of archipelagic passage through such designated sea lanes;
- Coastal States have sovereign rights in a 200 nautical mile exclusive economic zone (EEZ) with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection;
- All other States have freedom of navigation and overflight in the EEZ, as well as freedom to lay submarine cables and pipelines;
- Land-locked and geographically disadvantaged States have the right to participate on an equitable basis in exploitation of an appropriate part of the surplus of the living resources of the EEZ's of coastal States of the same region or sub-region; highly migratory species of fish and marine mammals are accorded special protection;
- Coastal States have sovereign rights over the continental shelf (the national area of the seabed) for exploring and exploiting it; the shelf can extend at least 200 nautical miles from the shore, and more under specified circumstances;
- Coastal States share with the international community part of the revenue derived from exploiting resources from any part of their shelf beyond 200 miles;

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16. *Id.*

17. United Nations, *Chronological Lists of Ratifications of, Accessions and Successions to the Convention and the Related Agreements as at 12 November 2001*, U.N. Doc., available at [http://www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm) (last updated Feb. 6, 2002).

18. *Overview*, *supra* note 14.

19. *Id.*

- The Commission on the Limits of the Continental Shelf shall make recommendations to States on the shelf's outer boundaries when it extends beyond 200 miles;
- All States enjoy the traditional freedoms of navigation, overflight, scientific research and fishing on the high seas; they are not obliged to adopt, or cooperate with other States in adopting, measures to manage and conserve living resources;
- The limits of the territorial sea, the exclusive economic zone and continental shelf of islands are determined in accordance with rules applicable to land territory, but rocks which could not sustain human habitation or economic life of their own would have no economic zone or continental shelf;
- States bordering enclosed or semi-enclosed seas are expected to cooperate in managing living resources, environmental and research policies and activities;
- Land-locked States have the right of access to and from the sea and enjoy freedom of transit through the territory of transit States;
- States are bound to prevent and control marine pollution and are liable for damage caused by violation of their international obligations to combat such pollution;
- All marine scientific research in the EEZ and on the continental shelf is subject to the consent of the coastal State, but in most cases they are obliged to grant consent to other States when the research is to be conducted for peaceful purposes and fulfills specified criteria;
- States are bound to promote the development and transfer of marine technology 'on fair and reasonable terms and conditions,' with proper regard for all legitimate interests;
- States Parties are obliged to settle by peaceful means their disputes concerning the interpretation or application of the Convention; and
- Disputes can be submitted to the International Tribunal for the Law of the Sea established under the Convention, to the International Court of Justice, or to arbitration. Conciliation is also available and, in certain circumstances, submission to it would be compulsory. The Tribunal has exclusive jurisdiction over deep seabed mining disputes.<sup>20</sup>

### III. Overview of Recent Developments in Law of the Sea

Every year the U.N. General Assembly issues a report of the Secretary-General concerning oceans and the law of the sea. This year, the report was issued March 9, 2001, with a supplementary report (Addendum) in September 2001. These reports highlight information that is relevant to all countries. Much of the information in this section is derived from the Secretary-General's report.

#### A. MARITIME SPACE

At the time of this report, an estimated 100 maritime boundary delimitations still needed to be decided by peaceful means worldwide.<sup>21</sup> The United States and Mexico did resolve one boundary when they signed a treaty on Delimitation of the Continental Shelf in the Western Gulf of Mexico<sup>22</sup> beyond 200 nautical miles (June 9, 2000). This treaty entered force on January 17, 2001, with the exchange of instruments of ratification.<sup>23</sup> The United States auctioned bids for oil and gas leases in the "western gap" region in August 2001.<sup>24</sup>

20. *Id.*

21. *Oceans and the Law of the Sea: Report of the Secretary-General*, U.N. GAOR, 56th Sess., at 16, U.N. Doc. A/56/58 (2001) [hereinafter *Report of the Secretary-General*].

22. Senate Treaty Doc. 106-39, 106th Cong., 2d Sess.

23. E-mail from John E. Noyes, Professor of Law, California Western School of Law (Dec. 22, 2001, 07:54:00 EST) (on file with author).

24. *Id.*

The Continental Shelf area oil production was estimated to be 1.23 billion tons and natural gas production was 650 billion cubic meters in 2000.<sup>25</sup>

## B. SHIPPING AND NAVIGATION

The Secretary-General's report pointed out that ships are getting bigger and faster.<sup>26</sup> Navigational aids are becoming more sophisticated.<sup>27</sup> By the end of 1999, the world merchant fleet had reached 799 million deadweight tons (dwt).<sup>28</sup> The International Maritime Organization (IMO) has a global mandate to ensure safety of navigation and prevention of marine pollution from vessels through the adoption and implementation of international shipping rules and standards.<sup>29</sup> Between 110 and 143 states (depending on the treaty) have become parties to the main IMO Conventions.<sup>30</sup> Particularly interesting is the fact that the ILO Joint Maritime Commission noted that fishing at sea may be the most dangerous occupation in the world and suggested that better designed and constructed vessels and required safety courses may reduce fatalities.<sup>31</sup>

## C. CRIMES AT SEA

"Criminal activities at sea include piracy and armed robbery against ships, terrorism, smuggling of migrants, and illicit traffic in persons, narcotic drugs, and small arms," and violation of international environmental rules such as "illegal dumping, illegal discharge of pollutants . . . [or] illegal fishing."<sup>32</sup> Most crimes at sea are part of a broader land-based problem of organized crime and require cooperation of states at the global level.<sup>33</sup> Examples of efforts to prevent and combat transnational crime include the U.N. Convention against Transnational Organized Crime; the Protocol against the Smuggling of Migrants by Land, Sea, and Air; and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.<sup>34</sup>

The IMO reported that most of these piracy and armed robbery attacks occur in territorial waters while the ships are at anchor or berthed.<sup>35</sup> The International Maritime Bureau (which keeps statistics on piracy and other crimes at sea) identified four types of attacks. The first, occurring mainly in Asia, involves the boarding of ships with a minimum of force "unless resistance is offered and cash is taken from the ship's safe." The second type, occurring mainly in West Africa or South America, occurs when ships are "attacked by armed gangs while berthed or at anchor" and "cash, cargo, personal effects, ship's equipment in fact anything" moveable is taken with a high degree of violence. The third type occurs mainly in Southeast Asia where "ships are hijacked and the entire cargo and/or the vessel

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25. *Report of the Secretary-General*, *supra* note 21, at 17.

26. *Id.* at 21.

27. *Id.*

28. *Id.* at 22.

29. *Id.*

30. *Id.*

31. *Id.* at 27.

32. *Id.* at 34.

33. *Id.*

34. *Id.*

35. *Id.* at 35.

itself are stolen," with the crew often sent adrift in boats, "thrown overboard, or shot dead." The fourth type of maritime attack has military or political features.<sup>36</sup> Hijackings are apparently the work of organized criminals.<sup>37</sup> "A hijacked ship is given a new name, repainted, and given false registration papers and bills of lading, thereby creating a 'phantom ship.'"<sup>38</sup> The false identity of the ship and cargo often escapes identification, and the "[s]hips are sold and often end up in shipbreaking yards."<sup>39</sup> *Jane's Intelligence*, as late as 1997, was stating that this type of piracy was not an economical problem. However, more ship owners are beginning to get worried about this problem, as organized crime seem to be getting more involved in this type of piracy. Now the International Maritime Bureau "defines piracy for statistical purposes as 'an act of boarding or attempting to board any ship with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of the act.'"<sup>40</sup> Therefore, "[t]he definition covers actual or attempted attacks, whether the ship is berthed, at anchor or at sea."<sup>41</sup> The true figures are probably higher because ship owners are reluctant to report incidents and risk costly delays in losing clients.<sup>42</sup>

The General Assembly urged all States to take all necessary action to combat piracy and armed robbery against ships, including regional and international cooperation, submission of reports of incidents to the IMO, implementing IMO guidelines, and preventing attacks of piracy and armed robbery.<sup>43</sup> In 1993, the IMO Assembly "adopted resolution A.738(18) on measures to prevent and suppress piracy and armed robbery against ships."<sup>44</sup> The International Maritime Safety Commission approved a draft developed by the IMO. The draft has a comprehensive anti-piracy strategy. The code was instated for adoption by the IMO Assembly at its 22nd session, which was held between November 19–30, 2001.<sup>45</sup>

The Code adopts the definition of piracy contained in Article 101 of UNCLOS. Armed robbery against ships is defined as any unlawful act of violence or detention, or any act of depredation, or threat thereof, other than an act of piracy, directed against a ship or against persons or property on board, within the States' jurisdiction over such offenses.<sup>46</sup>

Therefore, "[t]he draft thus combines the geographical scope of jurisdiction over piracy, as laid down in UNCLOS, when the jurisdiction over unlawful acts, as laid down in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988 SUA Convention) and its Protocol (SUA Protocol)."<sup>47</sup> Apparently the main problem areas in dealing with pirates and armed robbers, as revealed by various workshops and missions, are:

the current economic situation in the regions concerned;  
certain resource constraints on law enforcement agencies;

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36. *Id.* at 36.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 37.

44. *Id.*

45. *Id.* at 38.

46. *Id.*

47. *Id.*



lack of communication and cooperation between the agencies involved; and the length of the coastal State's response time following the affected ship's report of an incident; general problems of ship reporting; timely and proper investigation into reported incidents; the prosecution of pirates and armed robbers when apprehended; and lack of regional cooperation.<sup>48</sup>

Another problem with regard to piracy is jurisdiction. Under Article 105 of UNCLOS, States have "universal jurisdiction on the high seas to seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board."<sup>49</sup> This right extends to the "exclusive economic zone by virtue of article 58, paragraph 2," but does not extend to the territorial sea, although article 25 allows a coastal State "to prevent passage, which is not innocent."<sup>50</sup> Article 27 allows the coastal State to "exercise criminal jurisdiction against a foreign ship if it commits an act that disturbs the peace of the country . . . or if the consequences of the crime extend to that coastal State."<sup>51</sup>

Other crimes at sea besides piracy and armed robbery have also drawn attention. For example, the smuggling of migrants is increasing because of poverty and less legal immigration being allowed. It is estimated that 120 people lost their lives in the first six months of 2000 trying to cross the Straits of Gibraltar.<sup>52</sup> The smuggling of migrants has become more sophisticated with the increased use of forged documents.

Since the terrorist activities of September 11, 2001, the U.S. Coast Guard is attempting to secure U.S. ports in order to prevent further attacks.

#### D. MARINE RESOURCES, MARINE ENVIRONMENT, AND SUSTAINABLE DEVELOPMENT

While many conventions have been adopted to prevent overfishing and restore sustainability of the fishery resources, there has been an "increase in illegal, unreported and unregulated fishing activities . . . on the high seas in contravention of conservation of management measures adopted by regional fisheries organizations and arrangements."<sup>53</sup>

In the early 1990s, the United Nations General Assembly called upon States to take responsibility, consistent with their obligation under international law, to take measures to ensure that no fishing vessels entitled to fly their national flag fished in zones under the national jurisdiction of other States unless duly authorized by the coastal States concerned.<sup>54</sup>

This prohibition was soon extended to the high seas, where a ship flying a State's flag could not fish on the high seas unless authorized to do so by that State[,] and no fishing could occur in contravention of any applicable conservation or management measures.<sup>55</sup> At the regional level, many measures have been adopted to combat illegal, unreported, and unregulated fishing. Many flag States are ensuring that vessels flying their flags are not en-

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48. *Id.* at 39.

49. *Id.* at 42.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 46.

54. *Id.* at 47.

55. *Id.*

gaging in any of these fishing activities by requiring that they have proper authorization to fish from the flag State and by ensuring that vessels have a sufficient link with the flag State so that the State has power over the vessel for enforcement (i.e., no flags of convenience) and compliance with applicable conservation and management measures.<sup>56</sup> In one notable development, the 1995 U.N. Fish Stocks Convention<sup>57</sup> entered into force on December 11, 2001. As of December 31, 2001, there were 31 parties.<sup>58</sup>

The search for oil and gas has moved into deeper waters—6,079 feet for offshore production and 8,016 feet for offshore exploration drilling.<sup>59</sup> The big three areas for exploration are the Gulf of Mexico, Brazil, and West Africa.<sup>60</sup> Other areas seeing more activity include, Indonesia, Egypt, Israel, Malaysia, India, Turkey, Australia, New Zealand, Norway, Denmark, Greenland, Guyana, and the Russian Arctic.<sup>61</sup> Methane hydrates, a possible source of fuel when conventional oil and gas reserves decline, can be found “in the Blake Plateau off the Atlantic Seaboard of the United States . . . in the Gulf of Mexico and in deep-water off West Africa.”<sup>62</sup>

Minerals are also becoming more heavily mined. Gold is mined intermittently off the shore of Alaska, tin is mined off the shore of Thailand, Myanmar, and Indonesia, and diamonds are mined off the shore of Namibia and South Africa. Other minerals of interest are: barium, chromium, iron, rare-earth elements, thorium, tungsten, zirconium, lime, siliceous sand and gravel, phosphorite and polymetallic nodules.<sup>63</sup>

Pollution by “dumping contributes 10 percent of potential pollutants in the oceans.”<sup>64</sup> “Some pollutants, such as oil, noxious liquid substances, sewage, garbage, anti-fouling paints, or unwanted aquatic organisms, are released . . . by ships in the course of routine operations, either as a result of accidents, or illegally.”<sup>65</sup> Up to “92 per cent of all oil spills involving tankers occur at the terminal during loading or unloading.”<sup>66</sup> Single-hulled tankers are being phased out. Fishing vessels and small craft are also a major source of marine debris and waste.<sup>67</sup> Anti-fouling chemicals used on ships are biocides, which harm the marine environment. Ballast water is a source of unwanted aquatic organisms and must be managed to avoid the spread of these organisms into non-native habitats.<sup>68</sup>

Finally, “the average sea level worldwide has risen and the ocean heat content has increased.”<sup>69</sup> Arctic sea-ice thickness has declined, but Antarctic sea-ice thickness has remained constant.<sup>70</sup>

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56. *See id.*

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

58. [http://www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm)

59. *See Report of the Secretary-General, supra* note 21, at 55.

60. *Id.*

61. *Id.*

62. *Id.* at 56.

63. *Id.*

64. *Id.* at 62.

65. *Id.* at 64.

66. *Id.*

67. *Id.* at 64–65.

68. *Id.* at 66.

69. *Id.* at 75.

70. *Id.*

#### E. COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF<sup>71</sup>

Each state intending to establish, in accord with Article 76 of the Law of the Sea Convention, outer limits of its continental shelf beyond 200 nautical miles from its base-lines must submit to the Commission on the Limits of the Continental Shelf (CLCS) particulars relating to those limits. According to Article 76(8), coastal states shall establish the outer limits of their continental shelf *on the basis of* recommendations of the Commission. During 2001, the CLCS continued its planning work concerning the receipt of submissions and the development of training programs to assist states in making the required technical submissions.

According to Article 4 of Annex II to the Law of the Sea Convention, a state must make its submission to the CLCS no later than ten years after the entry into force of the Convention for that state—i.e., by November 16, 2004, for states that had accepted the Convention prior to its November 16, 1994 entry into force. In May 2001, however, the States Parties to the Law of the Sea Convention decided that “it is understood that the ten-year time period . . . shall be taken to have commenced on 13 May 1999” for each State Party for which the Convention entered into force before May 13, 1999.<sup>72</sup> This decision was a response to concerns that many states would need additional time to prepare their submissions. Russia became the first state to make a submission to the CLCS, on December 20, 2001.

The initial five-year term of the members of the CLCS ends in 2002. All twenty-one members of the Commission are to be elected in April 2002 by the States Parties to the Law of the Sea Convention. Nominations of candidates opened on December 11, 2001, and will close on March 11, 2002. The United States (and other states that are not yet parties to the Law of the Sea Convention) may make provisional nominations, but individuals who are provisionally nominated will not be eligible for election unless the states concerned have accepted the Convention by March 11, 2002.

#### F. SETTLEMENT OF DISPUTES

The International Tribunal for the Law of the Sea was established by the 1982 United Nations Convention on the Law of the Sea and functions in accordance with the relevant provisions of Part XV and Part XI of the Convention, the Statute as contained in Annex VI to the Convention, and the Rules of the Tribunal. It is composed of twenty-one members elected by the States Parties to the Convention in the manner provided for by Article 4 of the Statute. The Tribunal hears cases involving disputes concerning fisheries, arrest proceedings, and other law of the sea matters. The Tribunal, under the complex dispute settlement provisions of the Convention, has residual compulsory jurisdiction over applications seeking the prompt release of detained vessels and their crews (under Article 292) and cases involving provisional measures (under Article 290). Most of the Tribunal’s cases have arisen under Article 290 or 292. The International Tribunal for the Law of the Sea heard the following cases during 2001: “Monte Confurco” Case (Seychelles v. France) (Article 292 prompt release case); Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-eastern Pacific Ocean (Chili/European Community);

71. This section was prepared by John E. Noyes.

72. SPLOS/72 (May 29, 2001).

“Grand Prince” Case (Belize v. France) (prompt release case); “Chaisir Reefer 2” Case (Panama v. Yemen) (prompt release case; discontinued); MOX Plant Case (Ireland v. United Kingdom) (Article 290 provisional measure case).<sup>73</sup> Because the United States is not a party to the Convention, no U.S. judge can be elected to the Tribunal.

The International Court of Justice also issued some rulings and decisions in the law-of-the-sea-related cases that were on its docket during 2001. Case included: Case concerning Oil Platforms (Iran v. United States), Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Case concerning Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), and Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria).<sup>74</sup>

More information about law-of-the-sea-related rulings and decisions of international courts and tribunals appears in the report of the International Courts Committee.

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73. [http://www.itlos.org/start\\_2\\_en.html](http://www.itlos.org/start_2_en.html).

74. *Report of the Secretary-General, supra* note 21, at 77–81.

