

Oceans: *The Source of Life*

United Nations Convention on the Law of the Sea

20th Anniversary
(1982-2002)



United Nations



Law of the Sea

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Constitution of the Sea Brings Order to the Oceans

The United Nations Convention on the Law of the Sea – more than 10 years in the making, now 20 years old, and fast approaching universal participation — is perhaps one of the most significant but less recognized 20th century accomplishments in the arena of international law. It established for the first time one 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 seas; the protection of the marine environment; and basic law and order.

The Convention, often referred to as the “constitution of the sea”, is based on the all-important idea that the problems of the oceans are closely interrelated and must be addressed as a whole. Early on in the negotiating process, and possibly key to its success, it was agreed that the treaty must be taken as a whole, not bartered and argued piece by piece. And thus it was adopted on 30 April 1982. Today it is one of few international agreements that almost all countries abide by in practice, even those that are not States parties.

The Convention was opened for signature on 10 December 1982 in Montego Bay, Jamaica, when a record number of States, 119, signed on. Today, there are 137 States Parties plus the European Community. Several States that had previously found some provisions problematic are now taking steps for future ratification or accession. The United States of America has publicly stated its intention of becoming a State Party as soon as possible.

To honour the occasion of its 20th anniversary, the United Nations General Assembly has decided to hold two days of commemorative meetings on 9-10 December 2002, when many important people instrumental in the negotiations and adoption of the Convention will be honoured.

Some key features of the Convention:

Territorial seas

- ♦ Coastal States have sovereignty over their territorial seas, which they can establish up to a limit of 12 nautical miles. 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 shelf

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

Settlement of disputes

- ♦ The Convention provides for a binding and comprehensive system for the settlement of disputes.



The Marine Environment

ARE WE DESTROYING THE OCEANS?

The state of the world's oceans continues to deteriorate. As new threats to the health and viability of the oceans emerge, most of the problems identified decades ago have still not been solved and many have become worse, according to a study carried out in 2001 by the United Nations Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection. At risk are the vast resources of the oceans and the many economic benefits that humanity derives from them, estimated to be about \$7 trillion per year.

Coastal areas — the most productive marine environments — are the most affected. Currently more than half of the world's population lives within 100 kilometers of the coast, with two thirds of all cities with over 2.5 million inhabitants. By 2025, it is expected that 75 per cent of the world's population will live in coastal areas.

The large-scale movements of populations to coastal areas have been coupled with a significant increase in economic activity and industrialization along the coastline — such as oil and gas exploration, mining, fish farming, tourism, development of ports, marinas and coastal defenses — putting enormous pressure on coastal areas.

Pollution, the overexploitation of marine resources and the destruction of marine environments are the greatest threats to the oceans. About 80 per cent of all pollution entering the oceans comes from land-based sources: this includes both land-based discharges and discharges through the atmosphere. The rest is due to maritime transportation, dumping and offshore production.

Pollution from Land-based Activities

While the amount of some pollutants discharged into the seas has been reduced, and some forms of pollution are now thought to pose less of a threat than before, the amount of waste — municipal, industrial and agricultural — introduced into the sea is growing worldwide. These pollutants include sewage, persistent organic pollutants, radioactive substances, heavy metals, oils, nutrients and litter. Also growing is the use of pesticides, fertilizers and other agrochemicals — all substances that are washed or blown off the land into the oceans.

Sewage, or improperly treated domestic wastewater, poses one of the gravest hazards to coastal environments worldwide. The enormous inputs of nutrients that sewage introduces into the marine environment can destroy the very sensitive and fertile environments of coral reefs, lagoons and seagrass beds. It leads to changes in species diversity and causes excessive growth of algae. It also causes extensive economic losses by ruining large areas used for fisheries, recreation and tourism.

Human health is also threatened by pollution from sewage, which causes frequent outbreaks of gastrointestinal diseases such as cholera, typhoid and infectious hepatitis, which in turn has precipitated a health crisis with massive global implications. Bathing in polluted seas is estimated to cause some 250 million cases of gastroenteritis and upper respiratory disease every year, costing societies worldwide about \$1.6 billion per year, according to a recent study sponsored by the World Health Organization (WHO) and the United Nations Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection. The toll from consuming contaminated shellfish is even greater. The same study estimates that eating uncooked sewage-contaminated shellfish causes some 2.5 million cases of infectious hepatitis each year, at a cost of some \$10 billion annually.

Sewage also introduces significant amounts of plastics and other marine debris to coastal waters, threatening marine life through entanglement, suffocation and ingestion. Plastic bags are often mistaken by sea turtles for jellyfish and eaten — blocking their digestive systems and potentially killing them. Fishing lines and nets, six-pack rings, ropes and other litter can wrap around fins, flippers and limbs, resulting in drowning or amputation. Some debris can keep killing for decades.



To address problems caused by pollution from land-based activities, more than 100 countries in 1995 adopted two international documents: the Washington Declaration on the Protection of the Marine Environment from Land-based Activities, and the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA). The latter addresses the impacts of land-based activities on the marine and coastal environments, covering issues such as contaminants, the physical alteration of marine and coastal environments, sources of pollution, the protection of habitats critical for endangered species, and the protection of ecosystems such as breeding and feeding grounds.

In addition, the World Bank, through the Global Environment Facility (GEF), has in place programmes to reduce pollution due to non-treated sewage, as well as initiatives to reduce nitrogen pollution.

Pollution from Ships

Threats to the marine environment from shipping activities, while not as prevalent as pollution originating on land, can also arise from accidents, operational discharges, and physical damage to marine habitats.

While in tonnage terms the main pollutant entering the marine environment due to shipping operations is oil, the greatest threat to the marine environment stemming from shipping activities arises from the introduction of harmful alien species into new environments through ships' ballast water. It is estimated that 3,000 species of animals and plants are transported every day around the world in the ballast water of ships or in their hulls.

In response to these threats, the International Maritime Organization (IMO) — a United Nations specialized agency — has developed a number of international rules and standards, such as the International Convention for the Prevention of Pollution from Ships. In 2001, to address the use of toxic anti-fouling paints on ships hulls, the IMO adopted the Convention on the Control of Harmful Anti-fouling Systems on Ships. Regulations for ballast water management, to prevent the transfer of harmful aquatic organisms in ballast water, are under development.

Dumping

Until recently, ocean dumping was an accepted method of waste disposal in many regions of the world. But in recent years, dumping of substances considered to be threats to the marine environment, as well as incineration at sea, have been phased out as a result of the establishment of international and national norms that promote more environmentally friendly disposal methods. These changes have substantially reduced the amount of pollutants dumped into the oceans.

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention), adopted in 1972, and its 1996 Protocols, contain the key international rules and standards dealing with dumping. Other instruments have also been adopted at the regional level.

The United Nations Convention on the Law of the Sea

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

A growing number of detailed international agreements on the protection of the marine environment, as well as the utilization, conservation and management of marine resources, have been adopted under the unifying framework of the Convention. One of the most significant 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. This agreement 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 on the Law of the Sea 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 extremely effective, and was the basis for the development of the UNEP Regional Seas Programme and Action Plans, as well as other regional programmes.



Marine Resources

AN OCEAN OF RICHES

Oceans are of enormous value to the world economy. They provide us with food, water, raw materials and energy. The combined value of ocean resources and uses is estimated to be about \$7 trillion per year. Fish and minerals, including oil and gas, are among the most important marine resources, while the major uses of the oceans include the recreation industry, transportation, communications and waste disposal.

Marine Fisheries

Every year, approximately 90 million tons of fish are captured globally, supplying by far the largest source of wild protein for human consumption. The fishing industry is also a major source of employment, providing work to some 36 million people in the primary capture fisheries and aquaculture production alone.

While ocean fisheries have increased nearly five-fold in the past 50 years, to about 90 million tons in the late 1990s, a relative plateau has now been reached. This stagnation is due to the fact that most of the world's fishing areas have already reached their maximum potential for fish captures. About 50 per cent of stocks are already being fished at sustainable levels, and 25 per cent are being over-fished, making it very unlikely that there will be substantial increases in fish captures. The increase that has been observed in global marine fish production in recent years, about 20 million tons a year, is mainly due to marine aquaculture. In fact, the Food and Agriculture Organization (FAO) predicts that by 2030 aquaculture will dominate fish supplies and that less than half of the fish consumed will originate in capture fisheries.

Several factors have contributed to this serious and worrisome dwindling of fish stocks, including an enormous growth in the size and capacity of the world's fishing fleets; the prevalence of illegal, unregulated and unreported fishing, both on the high seas and within exclusive economic zones; poor selectivity of fishing gear, which often leads to large bycatches and discharges; harmful fishing practices that can lead to the destruction of critical habitats; and various environmental factors such as pollution from land-based sources.

Responsibility for ensuring the long-term sustainability of fish stocks within the 200 nautical mile economic zones, according to the United Nations Convention on the Law of the Sea, 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 and voluntary agreements, 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.

To reverse the global decline in fish stocks, a concerted international effort to improve the overall governance of marine fisheries is required. States must adopt new and more effective fishing policies and ensure the full implementation of existing regulations. The following actions are needed:

- ♦ establish reliable data on the state of fish stocks and fishing fleets, to allow better monitoring and assessment of fisheries management;
- ♦ adjust the size of fishing fleets to bring them in line with sustainable use of fish stocks;
- ♦ reduce bycatches and discarding by enforcing the use of appropriate fishing gear;
- ♦ protect fish habitats and incorporate ecosystem considerations into fisheries management; and
- ♦ establish a credible system of monitoring, controlling, surveillance and enforcement to encourage compliance with adopted conservation and management measures, and to deter unsustainable fishing practices.



In addition, policy makers should adopt a precautionary approach and be guided by sustainability indicators when assessing the size of allowable fish catches.

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, the 1993 FAO Compliance Agreement 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.

Oil, Gas and other Minerals

Marine minerals have been estimated to generate nearly \$1 trillion every year. These valuable minerals, which include offshore oil and gas, gold, tin, diamonds, sand and gravel, can be found both within and beyond the limits of national jurisdiction.

Resources within National Jurisdictions

Within national jurisdictions, the offshore oil and gas industry has been growing at a remarkable pace. Worldwide, offshore oil production grew from about 13,500 million barrels per day in the early 1980s to about 18,600 million in the mid-1990s, an increase of 37 per cent. In the same period, offshore gas production increased by 27 per cent, from about 28,300 to 35,900 million cubic feet per day. Today, offshore oil production accounts for about 30 per cent of total world oil production, while the share of the offshore gas industry in world gas production is about half.

In recent years, due to increasing world demand for oil and gas, offshore exploration and development have shifted to new frontiers where little research and discovery had taken place in the past. As a result, four areas — the Gulf of Mexico, the North Sea, and offshore West Africa and South-East Asia — have become the focus of exploration and development activity.

Beyond the traditional sources of oil and gas, the oceans hold the promise of new and potentially enormous sources of energy. The recovery of frozen compounds of methane gas (i.e. methane hydrates), of which huge deposits can be found at 600 to 1,500 feet below the ocean floor on continental margins throughout the world, is a particularly promising area of research. These ocean-floor deposits could be of tremendous value as scientists estimate that they contain twice the amount of organic carbon as all recoverable and non-recoverable oil, gas and coal deposits on Earth combined.

Resources beyond National Jurisdictions

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 on the basis of the Convention, which allows both public and private enterprises, as well as collective mining consortiums, to apply for permission to mine the seabed.

Deep seabed mining, while holding enormous promise, is extremely challenging. It has been compared to standing atop a New York City skyscraper on a windy day, trying to suck up marbles off the street below with a vacuum cleaner attached to a long hose. Mining takes place at a depth of more than 15,000 feet of 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, twenty years after the adoption of the Convention, exploration contracts for the mining of polymetallic nodules — which contain a number of important metals such as nickel, copper and cobalt — in the international seabed area have been issued to seven pioneer investors. Consideration is being given to allowing the exploration and exploitation of two other types of minerals — 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.



Crimes at Sea

PIRACY AND SMUGGLING ON THE RISE

On the world's oceans, piracy and armed robbery are on the rise. So is smuggling — especially of migrants and drugs. Among the most widespread and serious at sea, these crimes are often masterminded by organized criminals who take full advantage of weaknesses in law enforcement on the oceans. In some areas, they have succeeded in undermining marine transport.

Maritime security and the safety of life at sea are also threatened by other criminal activities, such as terrorism, hijackings, the smuggling of arms and hazardous wastes, illegal fishing and dumping, the illegal discharge of pollutants, and other violations of environmental laws.

Piracy — An Old Crime with a New Edge

Piracy today is very different from what it was like in the 17th, 18th and 19th centuries. Nowadays attacks against ships are not confined to the high seas, but take place most often on territorial seas and in ports, and pose a serious threat to seafarers and to the shipping industry.

From 1984 to the end of May 2002, 2,678 incidents of piracy and armed attack were reported to the International Maritime Organization (IMO). In the first six months of 2002, 171 such incidents were reported, with 370 in 2001 and 471 in 2000. But it is widely recognized that these figures are far below the number of actual cases. Shipowners often choose not to report such attacks because of the cost they would incur with their ships immobilized by an enquiry.

Modern day pirates can be petty thieves, members of armed gangs or members of highly organized crime syndicates with international ties and access to detailed information and know-how that allow them to target and attack vessels with maximum efficiency and minimal risk. They usually attack ships under cover of night in armed gangs of 5 to 10, using small speedboats that are hard to detect. Their loot ranges from money and valuables stolen from the crew and the ship's safe to the entire cargo or even the ship itself.

While in most cases pirates only threaten to use bodily harm, sometimes crew members are killed or wounded. According to reports received by the IMO, in 2000 alone 72 crewmembers were killed, 129 were wounded and 5 were reported missing. According to reports received by the International Maritime Bureau of the International Chamber of Commerce, since 1991, 286 crew members have been killed, 296 wounded, 50 reported missing, and 2,156 taken hostage. The areas most affected are the South China Sea, the Malacca Straits, the Indian Ocean, West and East Africa, South America and the Caribbean.

In recent years, there has been a significant rise in incidents of ship hijackings, usually involving organized crime syndicates. In 2001, 16 such incidents were reported, compared to eight in the previous year. Tracking down and prosecuting those responsible can be difficult, as the ships are often made to disappear. A hijacked ship, once its cargo has been offloaded, can be falsely renamed and reregistered, becoming a "phantom ship" — untraceable and free to sail away with any cargo placed in its care.

What makes acts of piracy and armed robbery against ships difficult to combat is the lack of effective law enforcement and prosecution of armed robbers. This makes piracy extremely attractive to criminals, promising easy money at low risk. To reverse this trend, more resources must be devoted to law enforcement agencies to enable increased and more effective monitoring of the seas, better regional communications and cooperation, more accurate and timely reporting and investigation of incidents, and more effective prosecution of criminals.



Human Cargo — The Smuggling of Migrants

The international shipping industry is an attractive and very lucrative mode of operation for criminals engaged in the smuggling of migrants. In fact, this trade in human cargo has become so profitable that many organized crime groups have chosen to refocus their smuggling operations away from drugs to human beings.

The smugglers prey on the desperation of migrants who are driven by poverty, the lack of opportunity and political and social violence in their countries of origin to risk everything in the hope of a better future. To maximize profits, the smugglers show little regard for human lives, hiding as many people as they can fit into sealed containers or in the hold of ships, which are often barely seaworthy. With few options, the migrants entrust their lives to the smugglers, who further victimize them by charging exorbitant fees and gambling with their lives. The migrants are often deceived about their country of destination, and are sometimes forced to engage in criminal activities upon their arrival in order to reimburse the criminals for expenses incurred. Women and children, in particular, are often enslaved.

While no exact figures are available, it is believed that the smuggling of migrants is on the rise. In an effort to better understand the extent of the problem, the Maritime Safety Committee of the IMO has established a reporting procedure to encourage governments and international organizations to report all unsafe practices associated with the trafficking or transport of migrants. As of 30 April 2002, 276 incidents involving 12,426 migrants had been reported.

The Drug Trade

Drug trafficking continues to be one of the most widespread crimes at sea. Fishing boats, small cargo vessels and pleasure craft — especially speedboats — are subject to fewer controls and reporting requirements than large-scale commercial vessels, and they provide a common means for smuggling illegal drugs and psychotropic substances, particularly cocaine and cannabis. Commercial vessels are used for moving large quantities of drugs between countries, particularly as unmanifested, well-concealed or falsely declared cargo.

Counter-drug operations are difficult to carry out at sea. As a result, the main focus of law enforcement operations has been on surveillance and control measures in ports, especially where container ships are involved. But, when successful, interception operations at sea often result in the seizure of larger quantities of drugs than those on land or in the air. For example, French authorities recently recovered 100 kilograms of cocaine when they intercepted a ship off the Atlantic coast of Africa, after several days of monitoring in a joint operation with the United States, Greece and Spain.

The Convention on the Law of the Sea requires States to cooperate in suppressing illicit trafficking in narcotic drugs on the high seas, and permits nations to request the assistance of other nations to suppress that traffic.

Fighting Crime at Sea

In the 20 years since the adoption of the Convention on the Law of the Sea, 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 either included only a general provision or none at all 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 on the Law of the Sea that nations cooperate in the suppression of illicit drug trafficking on the seas by allowing the interception of a ship suspected of illicit trafficking by a State other than the flag State of that ship.

Similar rights of interception 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 with regard to a ship suspected of smuggling migrants.

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 on the Law of the Sea. 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.



The UN Convention on the Law of the Sea

A HISTORICAL BACKGROUND

By the mid-1950s, it had become increasingly clear that existing 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-sea doctrine — a seventeenth century principle that limited national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline. The remainder of the seas was proclaimed to be free to all and belonging to none.

But technological innovations, coupled with a global population explosion, had drastically changed man's 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 its 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 the contiguous zone, the high seas, fishing and conservation of the living resources of the high seas, and the continental shelf.

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 on the Law of the Sea had advanced a number of issues concerning international ocean affairs, the majority still remained unsolved. 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 with the adoption of the Convention on the Law of the Sea in 1982. In his speech, Ambassador Pardo urged the international community to take immediate action to prevent the breakdown of law and order on the oceans, a disaster that many feared loomed 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 were 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 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. The same year, the Assembly decided to convene the Third Conference on the Law of the Sea to create a single comprehensive international treaty that would govern all ocean affairs.

Third Conference on the Law of the Sea

The Third 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 to be 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 on 30 April 1982, an agreement had been reached and the final text of the new convention



was put to a vote. The vote, which took place at United Nations Headquarters in New York, marked the end of over a decade of intense and often strenuous 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 same year, on 10 December, the Convention was opened for signature at Montego Bay, Jamaica, and received a record number of signatures — 119 — on the first day.

The United Nations Convention on the Law of the Sea entered into force on 16 November 1994, one year after it had reached the 60 ratifications necessary. Today the Convention is fast approaching universal participation, with 138 States, including the European Union, having become parties.

The Convention is supplemented by two agreements dealing respectively with Seabed Mining and Straddling and Highly Migratory Fish Stocks.

Timeline

- 1958 The First United Nations Conference on the Law of the Sea is convened.
- 1960 The Second United Nations Conference on the Law of the Sea is convened.
- 1968 The Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction is established.
- 1970 The General Assembly adopts the Committee's Declaration of Principles and decides to convene the Third United Nations Conference on the Law of the Sea.
- 1973 The Third United Nations Conference on the Law of the Sea opens.
- 1975 The first draft of the Convention on the Law of the Sea is submitted to delegations for negotiations.
- 1982 The Convention is adopted by the Third United Nations Conference on the Law of the Sea.
- 1982 The Convention is opened for signature at Montego Bay, Jamaica.
- 1994 The Convention enters into force.
- 1995 The International Seabed Authority becomes operational.
- 1996 The International Tribunal for the Law of the Sea becomes operational.
- 1997 The Commission on the Limits of the Continental Shelf holds its first session.

Three New International Bodies are Born

Having declared the seabed beyond the limits of national jurisdiction (the “Area”) 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, came into existence in 1994 when the Convention entered into force, and became fully operational as an autonomous international organization in June 1996. Disputes that arise over seabed activities are arbitrated by an 11-member Seabed Disputes Chamber set up by the International Tribunal for the Law of the Sea.

The 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 the continental shelf beyond 200 nautical miles. The Commission makes recommendations to coastal States on matters related to the establishment of these limits.



Reflections for the Future

Various developments in the area of ocean affairs and the law of the sea can be foreseen in the coming years.

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 4,000 feet. For example, microorganisms living around and nourished by deep-sea vents (“smokers” that form when two oceanic plates pull apart and erupting lava replaces the sea floor) were discovered in the late 1970s. Such newly discovered microorganisms are a source of genetic material with enormous potential value, such as for the pharmaceutical industry.

The scientific and commercial value of such new discoveries has raised questions regarding their legal status, which must be addressed by the international community. For example better coordination is needed among the involved international organizations, to clarify, within the legal framework of the Convention, certain aspects of the regime for marine scientific research and the regime for bioprospecting of marine genetic resources found beyond the limits of national jurisdictions.

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.

The community of nations will continue to be faced with urgent and complex problems, such as organized crime, terrorism, environmental degradation and unsustainable fishing practices, including overfishing and seriously depleted fish stocks. 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. To do less would contribute to the continued degradation of the marine environment, to shortcomings in environmental responses and to constraints in the availability of natural resources that could in turn affect food security and lead to conflict situations. Furthermore, the very survival of some countries, such as small island developing States and low-lying coastal States, is dependent on immediate action to prevent global warming and sea-level rise.

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. Efforts to improve the conservation and management of the world’s fisheries have been thwarted by an increase in illegal, unreported and unregulated (IUU) fishing on the high seas and in areas under the jurisdiction of many coastal States. In order to ensure that the world’s fisheries — on which about one billion people, mainly in developing countries, depend for their primary source of protein — will be sustainable, a number of pressing measures are required.

Fishing capacity must be roughly equal to the productive capacity of the world’s fisheries. Overfishing must be addressed, including through the elimination of subsidies in the fishing industry, the ban on the export of excess fishing capacity, the creation of alternative employment, and the implementation of the FAO International Plan of Action for the Management of Fishing Capacity. In addition, by-catch and discards must

be reduced through the development and use of more selective, environmentally safe and cost-effective fishing gear and techniques, as well as through better enforcement of fishing regulations. States should also ensure that vessels flying their flag do not engage in illegal, unreported and unregulated fishing, and for this purpose should take measures to implement the FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing. The role of subregional and regional fisheries organizations should be strengthened to ensure effective conservation and management of high seas fisheries resources.

Many of the problems facing the international community today, and those likely to linger in the future, transcend national borders and can only be countered effectively by nations acting in concert at the national, regional and global levels.

As for jurisprudence on the law of the sea, it will certainly continue to be developed and exert an influence on State practice as the International Tribunal for the Law of the Sea ensures the uniform interpretation and application of the Convention.

New discoveries, advancing technologies, problems related to fisheries and other uses of the sea, and other developments may require the adoption of new legal instruments. The Convention will remain a dynamic instrument and a point of reference for the legal norms that may be needed at the global, regional or national levels to deal with the countless issues on oceans and seas and their governance. One can be sure that, whatever emerging issues the international community will face in the future, the Convention will provide the necessary legal framework for the steady evolution of the law of the sea.



Facts and Figures about the Oceans

DID YOU KNOW?

- ◆ Oceans cover almost three-quarters of the Earth's surface, comprise nine-tenths of its water resources and are home to over 97 per cent of all life.
- ◆ The bulk of all international trade, approximately 90 per cent, is transported by sea.
- ◆ The combined value of ocean resources and uses is estimated to be about \$7 trillion per year. Fish and minerals, including oil and gas, contribute significantly to this figure, as do such ocean uses as the recreation industry, transportation, communications and waste disposal.
- ◆ Every year, almost 90 million tons of fish are captured globally, providing by far the largest source of wild protein for human consumption.
- ◆ The fishing industry provides work to some 36 million people each year in the primary capture fisheries and aquaculture production alone.
- ◆ About 50 per cent of fish stocks are fully utilized and another 25 per cent are overfished, leaving only 25 per cent with some potential for increased fish harvests.
- ◆ The UN Food and Agriculture Organization (FAO) predicts that by 2030 aquaculture will dominate fish supplies and that less than half of the fish consumed will originate in capture fisheries.
- ◆ About 90 per cent of the world's fisheries fall under the jurisdiction of coastal States.
- ◆ FAO projections of world fishery production in 2010, which includes both fish captures and aquaculture production, range between 107 and 144 million tons, from which 30 million tons will be converted into animal feed, leaving only an estimated 77 to 114 million tons for human consumption.
- ◆ Marine minerals — including offshore oil and gas, gold, tin, diamonds, sand and gravel — have been estimated to generate nearly \$1 trillion every year.
- ◆ Offshore oil production accounts for about 30 per cent of total world oil production, and offshore gas production accounts for about half of world production.
- ◆ Offshore oil production worldwide grew from about 13,500 million barrels per day in the early 1980s to about 18,600 million barrels per day in the mid-1990s, an increase of 37 per cent. In the same period, offshore gas production worldwide grew from about 28,300 to 35,900 million cubic feet per day, an increase of 27 per cent.
- ◆ Huge deposits of frozen compounds of methane gas (methane hydrates) can be found at 600 to 1,500 feet below the ocean floor on continental margins throughout the world. These ocean-floor deposits are a potentially enormous source of energy. Scientists estimate that they contain twice the amount of organic carbon as all recoverable and non-recoverable oil, gas and coal deposits on Earth.



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- ♦ The three greatest threats to the world's oceans, as identified by the Global Environment Facility, are pollution from land-based sources, overexploitation of living marine resources, and physical alteration or destruction of marine habitats.
 - ♦ Land-based sources are responsible for 80 per cent of the pollution of the oceans and affect the most productive areas of the marine environment.
 - ♦ Dumping of wastes and other matter accounts for 10 per cent of pollutants in the oceans.
 - ♦ The greatest threat to the marine environment from shipping activities arises from the introduction of harmful alien species into new environments through ship ballast water.
 - ♦ Ocean pollution is estimated to cause some 250 million cases of gastroenteritis and upper respiratory disease every year, costing societies worldwide about \$1.6 billion a year, according to a recent study sponsored by the United Nations Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) and the World Health Organization (WHO).
 - ♦ The consumption of uncooked sewage-contaminated shellfish causes some 2.5 million cases of infectious hepatitis each year, at a cost of approximately \$10 billion annually, according to the GESAMP/WHO study.
 - ♦ The global average sea level has risen by 10 to 25 centimeters over the past 100 years. Models project that sea levels will rise another 15 to 95 cm by 2100 (with the "best estimate" at 50 cm).
 - ♦ More than half of the world's population lives near the sea at a density twice the global average, exposed to the threats of floods, storms, sea level change and coastal erosion.
 - ♦ It is estimated that approximately 27 per cent of coral reefs are at high risk of degradation due to direct human impact and the effects of climate change. It is predicted that a further 50 to 60 per cent of the world's reefs may be destroyed within the next 30 years unless urgent measures are taken.
 - ♦ From 1984 to June 2002, 2,678 incidents of piracy and armed attack were reported to the International Maritime Organization (IMO). Of these, 171 were reported in the first six months of 2002, with 370 in 2001 and 471 in 2000. In 2000, according to reports received by IMO, 72 crewmembers were killed by pirates and armed robbers at sea, 129 were wounded and 5 were reported missing.
 - ♦ 276 incidents of migrant smuggling, involving 12,426 migrants, were reported to IMO from the end of 2000 to 30 April 2002.
 - ♦ On 30 April 1982, the United Nations Convention on the Law of the Sea was adopted by the United Nations General Assembly with 130 States voting in favour, 4 against and 17 abstaining. Later that year, on 10 December, the Convention was opened for signature at Montego Bay, Jamaica, and received a record number of signatures — 119 — on the first day.
 - ♦ The Convention on the Law of the Sea entered into force on 16 November 1994, one year after it had reached the 60 ratifications necessary. The Convention is fast approaching universal participation, with 157 signatures and 138 States, including the European Union, having become parties to it.



STATUS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Since the adoption of the Convention in 1982, the legal regime it established has reached practically universal acceptance. Today, the international community is only a small step away from reaching the goal of universal participation. The adoption in 1994 of the Agreement relating to the implementation of Part XI of the Convention, which offered a legal and political solution to the problems related to seabed mining, opened the way to an increased pace of ratifications and accessions to the Convention. Shortly after the Convention entered into force on 16 November 1994, there was a significant increase in the number of new parties.

The Division for Ocean Affairs and the Law of the Sea, of the United Nations Office of Legal Affairs, serves as the secretariat of the Convention. It promotes better understanding of the Convention and the two implementing Agreements, in order to ensure their effective implementation.

Statistics show that, out of 152 coastal States, only 31 are not yet parties to the Convention. Sixteen out of 42 landlocked States also joined the group of States parties. Total participation, including the European Community, thus stands at 138 (see Table 1). In the regions, the situation is as follows:

In Africa, there are 53 States, out of which 38 are coastal States. Thirty-eight African States are parties, including five landlocked States. In Asia and the Pacific, there are 60 States, out of which 50 are coastal States. Forty Asian and Pacific States are parties, including 3 landlocked States. In Europe, there are 46 States, out of which 31 are coastal States. There are 33 States parties from this region, including 6 landlocked States, as well as the European Community. In Latin America and Caribbean, there are 33 States, out of which 31 are coastal States. Twenty-seven Latin American and Caribbean States are parties, including two landlocked States. In North America, the United States and Canada, although not yet parties, accept the Convention as reflecting customary international law, and both are its strong supporters.

A number of non-States parties have already started their constitutional processes leading to their acceptance of the legal regime established by the Convention.

At the level of State practice, most of the coastal States have adjusted their maritime claims to be in conformity with the provisions of the Convention. One hundred and forty-four States now claim a territorial sea of 12 nautical miles or less, as allowed by the Convention, with only a few States still claiming a territorial sea in excess of 12 nautical miles. Sixty-six States have established a contiguous zone. The rapid pace and large degree of acceptance of the regime of the Convention has also been demonstrated with proclamations by 110 States of an exclusive economic zone, one of the most innovative concepts of the Convention. A number of States are preparing a submission to the Commission on the Limits of the Continental Shelf, created by the Convention, in order to establish their continental shelf beyond 200 nautical miles.

It can be said that overall State practice complies largely with this major international instrument, the importance of which, 20 years after its adoption, is ever increasing. This is also shown by the annual discussions on the oceans and the law of the sea in the United Nations General Assembly.



List of parties to the Convention, with the date of ratification or accession
(Status as of 10 November 2002)

1. Algeria (11 June 1996)
2. Angola (5 December 1990)
3. Antigua and Barbuda (2 February 1989)
4. Argentina (1 December 1995)
5. Australia (5 October 1994)
6. Austria (14 July 1995)
7. Bahamas (29 July 1983)
8. Bahrain (30 May 1985)
9. Bangladesh (27 July 2001)
10. Barbados (12 October 1993)
11. Belgium (13 November 1998)
12. Belize (13 August 1983)
13. Benin (16 October 1997)
14. Bolivia (28 April 1995)
15. Bosnia and Herzegovina (12 January 1994)
16. Botswana (2 May 1990)
17. Brazil (22 December 1988)
18. Brunei Darussalam (5 November 1996)
19. Bulgaria (15 May 1996)
20. Cameroon (19 November 1985)
21. Cape Verde (10 August 1987)
22. Chile (25 August 1997)
23. China (7 June 1996)
24. Comoros (21 June 1994)
25. Cook Islands (15 February 1995)
26. Costa Rica (21 September 1992)
27. Côte d'Ivoire (26 March 1984)
28. Croatia (5 April 1995)
29. Cuba (15 August 1984)
30. Cyprus (12 December 1988)
31. Czech Republic (21 June 1996)
32. Democratic Republic of the Congo
(17 February 1989)
33. Djibouti (8 October 1991)
34. Dominica (24 October 1991)
35. Egypt (26 August 1983)
36. Equatorial Guinea (21 July 1997)
37. European Community (1 April 1998)
38. Fiji (10 December 1982)
39. Finland (21 June 1996)
40. France (11 April 1996)
41. Gabon (11 March 1998)
42. Gambia (22 May 1984)
43. Georgia (21 March 1996)
44. Germany (14 October 1994)
45. Ghana (7 June 1983)
46. Greece (21 July 1995)
47. Grenada (25 April 1991)
48. Guatemala (11 February 1997)
49. Guinea (6 September 1985)
50. Guinea-Bissau (25 August 1986)
51. Guyana (16 November 1993)
52. Haiti (31 July 1996)
53. Honduras (5 October 1993)
54. Hungary (5 February 2002)
55. Iceland (21 June 1985)
56. India (29 June 1995)
57. Indonesia (3 February 1986)
58. Iraq (30 July 1985)
59. Ireland (21 June 1996)
60. Italy (13 January 1995)
61. Jamaica (21 March 1983)
62. Japan (20 June 1996)
63. Jordan (27 November 1995)
64. Kenya (2 March 1989)
65. Kuwait (2 May 1986)
66. Lao People's Democratic Republic
(5 June 1998)
67. Lebanon (5 January 1995)
68. Luxembourg (5 October 2000)
69. Madagascar (22 August 2001)
70. Malaysia (14 October 1996)
71. Maldives (7 September 2000)
72. Mali (16 July 1985)
73. Malta (20 May 1993)
74. Marshall Islands (9 August 1991)
75. Mauritania (17 July 1996)
76. Mauritius (4 November 1994)
77. Mexico (18 March 1983)
78. Micronesia (Federated States of)
(29 April 1991)
79. Monaco (20 March 1996)
80. Mongolia (13 August 1996)
81. Mozambique (13 March 1997)
82. Myanmar (21 May 1996)
83. Namibia (18 April 1983)
84. Nauru (23 January 1996)
85. Nepal (2 November 1998)
86. Netherlands (28 June 1996)
87. New Zealand (19 July 1996)
88. Nicaragua (3 May 2000)
89. Nigeria (14 August 1986)
90. Norway (24 June 1996)
91. Oman (17 August 1989)
92. Pakistan (26 February 1997)
93. Palau (30 September 1996)
94. Panama (1 July 1996)
95. Papua New Guinea (14 January 1997)
96. Paraguay (26 September 1986)
97. Philippines (8 May 1984)
98. Poland (13 November 1998)
99. Portugal (3 November 1997)
100. Republic of Korea (29 January 1996)
101. Romania (17 December 1996)
102. Russian Federation (12 March 1997)
103. Saint Kitts and Nevis (7 January 1993)
104. Saint Lucia (27 March 1985)
105. Saint Vincent and the Grenadines
(1 October 1993)
106. Samoa (14 August 1995)
107. Sao Tome and Principe
(3 November 1987)
108. Saudi Arabia (24 April 1996)
109. Senegal (25 October 1984)
110. Seychelles (16 September 1991)
111. Sierra Leone (12 December 1994)
112. Singapore (17 November 1994)
113. Slovakia (8 May 1996)
114. Slovenia (16 June 1995)
115. Solomon Islands (23 June 1997)
116. Somalia (24 July 1989)
117. South Africa (23 December 1997)
118. Spain (15 January 1997)
119. Sri Lanka (19 July 1994)
120. Sudan (23 January 1985)
121. Suriname (9 July 1998)
122. Sweden (25 June 1996)
123. The former Yugoslav Republic of
Macedonia (19 August 1994)
124. Togo (16 April 1985)
125. Tonga (2 August 1995)
126. Trinidad and Tobago (25 April 1986)
127. Tunisia (24 April 1985)
128. Uganda (9 November 1990)
129. Ukraine (26 July 1999)
130. United Kingdom of Great Britain
and Northern Ireland (25 July 1997)
131. United Republic of Tanzania
(30 September 1985)
132. Uruguay (10 December 1992)
133. Vanuatu (10 August 1999)
134. Viet Nam (25 July 1994)
135. Yemen (21 July 1987)
136. Yugoslavia (12 March 2001)
137. Zambia (7 March 1983)
138. Zimbabwe (24 February 1993)