

THE OXFORD HANDBOOK OF

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OF THE SEA

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THE UNITED NATIONS

A PRACTITIONER'S PERSPECTIVE

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HANS CORELL

1 INTRODUCTION

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THE adoption and opening for signature of the United Nations Convention on the Law of the Sea (LOSC) at Montego Bay, Jamaica, on 10 December 1982, and its entry into force on 16 November 1994, constitute a major contribution of the United Nations to the development of international law.¹ To a large extent, the Convention, presently (January 2015) ratified or acceded to by 167 parties, represents a codification of customary international law. However, it also contains important advances of the law of the sea.

The potential for disputes and conflicts relating to the law of the sea is great. However, because of the manner in which the Convention establishes the law and provides methods for resolving disputes, the Convention can actually be regarded as making a major contribution to the maintenance of international peace and security. This was noted by the General Assembly in its resolution recognizing the entry into force of the LOSC, where the Assembly recalled the historic significance of the Convention 'as an important contribution to the maintenance of peace, justice, and

¹ To maintain conformity in the present volume, the acronym LOSC is used in this chapter. It should be pointed out, however, that the acronym applied throughout the entire United Nations system is UNCLOS.

progress for all peoples of the world.² The Convention has even been described as the most successful treaty adopted by the international community since the adoption of the 1945 Charter of the United Nations.³

The process leading up to the adoption of the LOSC, the institutions established by the Convention, and many of the features of the treaty, are described elsewhere in this volume. The present chapter addresses the contributions of the United Nations to the development of the law of the sea during the period following the adoption of the Convention in 1982. Particular attention is paid to the way in which the work of the UN is organized.

Consequently, the following sections focus on: preparing for the entry into force of the LOSC; informal consultations relating to the implementation of Part XI of the LOSC; establishing the Convention institutions after the entry into force of the LOSC; the Division for Ocean Affairs and the Law of the Sea (DOALOS); United Nations conferences on the human environment; the role of the General Assembly; the Meeting of States Parties to the LOSC (SPLOS); sustainable fisheries and straddling fish stocks and highly migratory fish stocks; the Oceans and Coastal Areas Network (UN-Oceans); the United Nations open-ended informal consultative process on oceans and the law of the sea; the so-called Regular Process; the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction; and piracy on the agenda of the Security Council. The final section contains some conclusions and reflections on the future, in particular, on the connection between the protection of the oceans and international peace and security.

2 PREPARING FOR THE ENTRY INTO FORCE OF THE LOSC

The Third United Nations Conference on the Law of the Sea (UNCLOS III) was serviced by the UN Office for Ocean Affairs and the Law of the Sea, headed by an Under-Secretary-General for Ocean Affairs and the Law of the Sea and Special Representative of the Secretary-General for the Law of the Sea. This position was

² UNGA Res A/49/28 (1994) [1]. Note that General Assembly resolutions are available at <<http://www.un.org/documents/resga.htm>>. Law of the sea resolutions can also be easily accessed at <http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm>.

³ SN Nandan, 'UNCLOS Anniversary: What are the Challenges?' (2012) 106 *American Society of International Law Proceedings* 400, 402.

held by Bernardo Zuleta of Colombia from 1974 to 1983. He was succeeded by Satya Nandan of Fiji, who held the position until 1992, when his office was integrated into the United Nations Office of Legal Affairs and became the DOALOS. This Office is now the focal point for law of the sea matters within the UN system.

After the adoption of the LOSC, an important function of these offices was to be the secretariat servicing the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (ITLOS), established by the Conference.⁴ On 3 December 1982, the General Assembly, *inter alia*, approved the assumption by the Secretary-General of the responsibilities entrusted to him under the LOSC and related resolutions. It also approved the stationing of an adequate number of Secretariat staff in Kingston, Jamaica, for the purpose of servicing the Preparatory Commission as required by its functions and programme of work.⁵

3 INFORMAL CONSULTATIONS RELATING TO THE IMPLEMENTATION OF PART XI OF THE LOSC

In July 1990, Secretary-General Perez de Cuellar convened a series of informal consultations to address certain difficulties with the seabed mining provisions contained in Part XI of the LOSC. The purpose was to achieve universal participation in the Convention, a goal that by then had become formally set up by the General Assembly.⁶ However, concerns had been raised, primarily by the industrialized countries, and the Secretary-General acknowledged that there were problems with some aspects of the deep seabed mining provisions of the Convention, which had prevented some States from ratifying or acceding to it. He noted that, in the eight years that had elapsed since the Convention was adopted, certain significant political and economic changes had occurred which had had a marked effect on the regime for deep seabed mining contained in the Convention.⁷

These informal consultations took place between 1990 and 1994. During this period, 15 meetings were convened, the two last held from 4 to 8 April 1994 and

⁴ See Final Act of the Third United Nations Conference on the Law of the Seas, Annex I, available at <http://www.un.org/depts/los/convention_agreements/texts/final_act_eng.pdf> (hereinafter Final Act).

⁵ UNGA Res A/37/66 (1982).

⁶ UNGA Res A/44/26 (1989) [3].

⁷ United Nations Secretary General, *Consultation of the Secretary-General on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the law of the sea: Report of the Secretary General to the General Assembly*, UN Doc A/48/950 (1994) [2].

from 31 May to 3 June 1994. It was the privilege of the author of this chapter, who had joined the UN Secretariat on 6 March 1994, to conduct these last two consultations on behalf of the Secretary-General. A striking feature of these last rounds of consultations was the spirit of cooperation that was demonstrated by the delegates. The fact that the Convention would enter into force on 16 November the same year introduced a sense of urgency into the consultations. There were different informal groups that were active in the consultations. In particular, mention should be made of the contribution of the 'Boat Paper Group', chaired by Ambassador Satya Nandan of Fiji, who in his earlier capacity (see Section 2 of this chapter), had convinced the Secretary-General to initiate the informal consultations.

The consultations were successful and, on 28 July 1994, the General Assembly adopted the resulting Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994 Implementation Agreement).⁸ The Agreement entered into force on 28 July 1996.⁹

4 ESTABLISHING THE CONVENTION INSTITUTIONS AFTER THE ENTRY INTO FORCE OF THE LOSC

4.1 The role of the United Nations Secretariat

According to Article 308(1) of the LOSC, the Convention would enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession. When, on 16 November 1993, the LOSC received the sixtieth instrument of ratification or accession (Guyana), it was clear that the Convention would enter into force on 16 November 1994. This led to an intensification of the work in the UN Secretariat, focusing mainly on the establishment of the Convention institutions.

The three institutions established by the LOSC—the International Seabed Authority; the International Tribunal for the Law of the Sea; and the Commission on the Limits of the Continental Shelf—are examined in Chapter 17. However, it is important in this context to briefly describe the role of the United Nations

⁸ UNGA Res A/48/263 (1993).

⁹ A comprehensive description of this process is available on the website of DOALOS, at <<http://www.un.org/Depts/los/index.htm>>.

Secretariat in the establishment of these institutions. This was quite an undertaking from an administrative point of view.

4.2 The International Seabed Authority

As already mentioned, a Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea was established by UNCLOS III. Its first meeting was held in Kingston, Jamaica, in March 1983 and, over the years, the Commission met on several occasions, reporting regularly to the General Assembly, which, in a consecutive number of resolutions, recognized the work of the Committee. Jose Lui Jesus, later Judge and President of ITLOS, chaired the Preparatory Commission from 1987 to 1994. This Commission was now serviced by DOALOS.

The International Seabed Authority was the first among the three institutions to be established. In preparation for this, the United Nations Office of Legal Affairs had established a local office in Kingston. The purposes of this local office were to support the Preparatory Commission and to prepare for a seamless handover to the International Seabed Authority the moment the LOSC entered into force. The Authority was therefore established on 16 November 1994 in the presence of UN Secretary-General Boutros Boutros-Ghali. In June 1996, the Authority took over the UN premises and facilities in Kingston and became fully operational as an autonomous international organization. Its first Secretary-General was Satya Nandan of Fiji.

The International Seabed Authority is an autonomous international organization through which States parties to the Convention shall, in accordance with the regime for the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (the Area) established in Part XI of the LOSC and the Agreement relating to Part XI, organize and control activities in the Area, in particular with a view to administering the resources of the Area.¹⁰

4.3 The International Tribunal for the Law of the Sea

As mentioned in Section 4.2 above, the first meeting of the Preparatory Commission took place in March 1983. During consecutive meetings, the Commission discussed all issues pertaining to the establishment and operation of the ITLOS.

¹⁰ The website of the Authority contains detailed information on the organs of the Authority, including the Assembly, Council, Legal and Technical Commission, Finance Committee, and the Secretariat. The site also includes a full list of documents issued by the Authority at each of its sessions, and the full text of selected documents. See International Seabed Authority website, at <<http://www.isa.org.jm/en/home>>.

The General Assembly had also requested the Secretary-General to appoint an officer to prepare for the establishment of the Tribunal in the Free and Hanseatic City of Hamburg. This task was given to one of the officers of DOALOS, Mr Gritakumar Chitty.¹¹ Over the next couple of years, an intense interaction took place between the Secretariat and the German authorities and, in particular, the authorities of the host city. The very positive contribution by the First Mayor of Hamburg, Mr Henning Voscherau, should be particularly mentioned.

At the fifth Meeting of States Parties to the Convention, held on 1 August 1996, the first twenty-one Judges of the Tribunal were elected. The Tribunal held its first session from 1 to 31 October 1996 at its seat in Hamburg. The author of the present chapter had the privilege of presiding over the meeting until the election of the President. This occurred on 5 October 1996, when the Judges elected Thomas A. Mensah of Ghana the first President of the Tribunal and Rüdiger Wolfrum of Germany the first Vice-President.¹² On 21 October 1996, the Tribunal appointed Gritakumar Chitty of Sri Lanka as Registrar. The inauguration of the Tribunal took place in the town hall of the Free and Hanseatic City of Hamburg on 18 October 1996 in the presence of UN Secretary-General Boutros Boutros-Ghali and other dignitaries. On 3 July 2000, the official opening of the new building for the permanent headquarters of the Tribunal took place in the presence of UN Secretary-General Kofi Annan.

4.4 The Commission on the Limits of the Continental Shelf

In accordance with the provisions of Article 2 of Annex II to the Convention, 'the Commission shall consist of twenty-one members who shall be experts in the field of geology, geophysics or hydrography, elected by States Parties to the Convention from among their nationals, having due regard to the need to ensure equitable geographical representation, who shall serve in their personal capacities'. The members of the Commission were elected by the sixth Meeting of States parties in March 1997. The first meeting of the Commission was held from 16 to 20 June 1997.¹³ At this meeting, serviced by DOALOS,¹⁴ the Commission elected Yuri Borisovitch Kazmin of the Russian Federation as its first Chairman.

¹¹ UNGA Res A/49/28 (1994) [11].

¹² Reference is made to United Nations Convention on the Law of the Sea, Seventh Meeting of States Parties, Interim Report prepared by the Tribunal, Doc SPLOS/21 (9 May 1997), available at <http://www.itlos.org/fileadmin/itlos/documents/annual_reports/ar_interim_e.pdf>.

¹³ *Statement by the Chairman of the Commission on the Limits of the Continental Shelf of the Progress on the Work in the Commission*, Doc CLCS/1 (30 June 1997), available at <[http://www.un.org/depts/los/clcs_new/commission_documents.htm#Statements by the Chairman of the Commission](http://www.un.org/depts/los/clcs_new/commission_documents.htm#Statements%20by%20the%20Chairman%20of%20the%20Commission)>.

¹⁴ 1982 United Nations Convention on the Law of the Sea, Annex II, Art 2(5) (hereinafter LOSC) states: '... The secretariat of the Commission shall be provided by the Secretary-General of the United Nations.'

The initial phase of the work of the Commission was a period when rules of procedure and other provisions were adopted. For the Secretariat, it was also a learning process since the Commission informed the Secretariat of the technical aspects of its work and its need for relevant technical equipment. Thus, a special meeting room was organized with computers and a screen on the wall that the members of the Commission needed for their work, in particular, for discussing among themselves details of submissions by coastal States.

Eventually, the substantive work started, triggered by the first communication that was submitted by the Russian Federation in 2001.¹⁵ Since then, there has been tremendous development. The workload of the Commission and DOALOS has increased so dramatically that it has given cause for concern including within the General Assembly.¹⁶

The General Assembly is following the work of the Commission with great attention, noting the importance of the delineation of the outer limits of the continental shelf beyond 200 nautical miles and that it is in the broader interest of the international community that coastal States with such a shelf submit information on its outer limits. The Assembly has also welcomed the submissions to the Commission by a considerable number of States parties in this respect and that the Commission has continued to fulfil its role, including of making recommendations to coastal States, and that the summaries of recommendations be made publicly available.¹⁷

Currently, the list of submissions to the Commission contains 70 entries, of which a limited number have generated recommendations by the Commission. The status of submissions through the Secretary-General to the Commission pursuant to Article 76(8) of the LOSC appears on the website of DOALOS.¹⁸

At the request of the General Assembly, the Secretary-General has also established two trust funds. The first is for the purpose of defraying the cost associated with the participation of developing States Members of the Commission in the meetings of the Commission.¹⁹ The purpose of the second fund is to assist developing States in the preparation of submissions to the Commission where their continental shelves extend beyond 200 nautical miles.²⁰

¹⁵ See DOALOS, 'Outer Limits of the Continental Shelf beyond 200 Nautical Miles from the Baselines: Submissions to the Commission: Submission by the Russian Federation' (20 December 2001), available at <http://www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm>.

¹⁶ See eg UNGA Res A/68/70 (2013) [69]. ¹⁷ *Ibid.*, [63]–[67].

¹⁸ See DOALOS, Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the LOSC, available at <http://www.un.org/Depts/los/clcs_new/commission_submissions.htm>.

¹⁹ UNGA Res A/55/7 (2000) [20]. ²⁰ *Ibid.*, [18].

5 THE DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA

In the present chapter, there are numerous references to the DOALOS of the United Nations Office of Legal Affairs. The simple reason for this is that this Division plays a key role in the law of the sea work within the United Nations system. This fact also explains why there are so many references in resolutions by the General Assembly and other bodies to DOALOS. For the sake of completeness, it is therefore appropriate to refer in this context to the provision that lays down the responsibilities of the Division, namely Section 9 of Secretary-General's Bulletin ST/SGB/2008/13, entitled 'Organization of the Office of Legal Affairs'.²¹

The following elements of the detailed provision on the responsibilities of DOALOS are of particular interest in this context:

- providing to States and intergovernmental organizations a range of legal and technical services, such as advice, studies, assistance, and research and information on the application of LOSC, the Agreement relating to the implementation of Part XI of the LOSC (see Section 3 above) and the Agreement for the implementation of LOSC relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (see Section 9 below) with a view to promoting a better understanding of the LOSC and the implementing Agreements, their wider acceptance, uniform, and consistent application and effective implementation;
- providing substantive servicing to the General Assembly on the law of the sea and ocean affairs, including the United Nations open-ended informal consultative process (see Section 11 below); the meeting of States parties to the LOSC (see Section 8 below); and to the Commission on the Limits of the Continental Shelf (see Section 4.4 above);
- monitoring and reviewing developments in ocean affairs and the law of the sea and reporting thereon to the General Assembly through comprehensive annual reports on oceans and the law of the sea and fisheries-related issues, as well as special reports on specific topics of current interest;
- providing support to the organizations of the United Nations system to facilitate consistency with the LOSC of the instruments and programmes in their respective areas of competence;

²¹ UN Secretary-General, 'Organization of the Office of Legal Affairs', *Secretary-General's bulletin*, Doc ST/SGB/1997/5 (1 August 2008), available at <<http://legal.un.org/ola/media/st-sgb-2008-13.pdf>>.

- discharging the responsibilities, other than depositary functions, of the Secretary-General under the LOSC and the UN Fish Stocks Agreement (see Section 9 below);
- conducting monitoring and research activities and maintaining a comprehensive information system and research library on the Convention and on the law of the sea and ocean affairs; and
- providing training, fellowships and technical assistance in the field of the law of the sea and ocean affairs.

Reference is here made specifically to the information on the website of DOALOS under the title 'Technical assistance provided by the Division for Ocean Affairs and the Law of the Sea'.²²

All in all, it is fair to say that DOALOS is a key actor and a focal point in the work of the United Nations system relating to the law the sea. The interaction between the Division and the three organs established by the LOSC, with the Meeting of the States Parties, and with the UN General Assembly is intense. At the same time, the work is extremely interesting and rewarding. This also reflects on the work of the UN Legal Counsel who is charged with overseeing the Division. During ten years as the UN Legal Counsel the author of this chapter found the work relating to the law of the sea, and in particular the period during which the three institutions under the LOSC were established, very stimulating and challenging. It is important that DOALOS is provided with sufficient resources so that it can continue its work also in the future. After all, the seas represent some 70 per cent of the surface of the globe. It is extremely important that this area is administered effectively and competently by all those who are engaged in law the sea matters.

6 UNITED NATIONS CONFERENCES ON THE HUMAN ENVIRONMENT

It must be understood that the work performed by the United Nations in the field of the law of the sea has to be viewed against the background of the United Nations conferences on the human environment and the declarations and other documents adopted at these conferences. In this context, the following conferences

²² See DOALOS, Technical Assistance provided by the Division for Ocean Affairs and the Law of the Sea, available at <<http://www.un.org/Depts/los/TechAsst.htm>>.

deserve to be mentioned specifically, namely the United Nations Conference on the Human Environment (Stockholm, 1972), the Conference on Environment and Development (Rio de Janeiro, 1992), the World Summit on Sustainable Development (Johannesburg, 2002), and the Rio+20 Conference on Sustainable Development (Rio de Janeiro, 2012).

From the declarations and other documents adopted at these conferences the following elements deserve particular attention.

6.1 Declaration of the United Nations Conference on the Human Environment

The Stockholm Conference adopted 25 principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.²³

Of particular importance in a law of the sea context is Principle 2 according to which the natural resources of the earth, including the air, water, land, flora and fauna, and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations and that this must be done through careful planning or management, as appropriate.

The need to protect the seas from pollution is another example. According to Principle 7, States 'shall take all possible steps' to prevent such pollution by substances that are liable to create hazards to human health or to harm living resources and marine life or to damage amenities or to interfere with other legitimate uses of the sea.

The role of international organizations is also emphasized. Principle 25 requires that States shall ensure that such organizations play a coordinated, efficient, and dynamic role for the protection and improvement of the environment.

Principle 21 with its reference to the UN Charter and the principles of international law should also be mentioned here. The point of departure is that States have the sovereign right to exploit their own resources pursuant to their own environmental policies. However, in exercising this right, they also have a responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

²³ *Report on the United Nations Conference on the Human Environment, Stockholm 5–16 June 1972*, UN Doc A/CONF/48/14/REV.1 (1972) ch 1.

6.2 The Rio Declaration on Environment and Development and Agenda 21

From the 27 principles adopted by the Rio Conference, the following elements are of particular interest in this context, namely that activities within the jurisdiction or control of States should not cause damage to the environment of other States or in areas beyond the limits of national jurisdiction (Principle 2); eradication of poverty as an indispensable requirement for sustainable development (Principle 5); the notion that States have 'common but differentiated responsibilities' (Principle 7); the idea that environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus (Principle 12); and the application of the precautionary approach to protect the environment, the 'polluter pays principle' and the importance of environmental impact assessment (Principles 15–17).²⁴

The Conference also adopted an international programme of action for global sustainable development for the twenty-first century, commonly referred to as Agenda 21. Of particular importance here is Chapter 17 of the Agenda on protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, coastal areas, and the protection, rational use, and development of their living resources.²⁵

6.3 The Johannesburg Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development

The conference in Johannesburg, often referred to the 'World Summit', adopted the Johannesburg Declaration on Sustainable Development.²⁶ This Declaration is also relevant in this context. Most importantly, it contains a commitment to the Plan of Implementation of the World Summit on Sustainable Development and to expediting the achievement of the targets in the Plan.²⁷ The actions necessary within the area of the law of the sea are addressed in paragraphs 30–36 of the Plan of Implementation.²⁸ In particular, States are invited to ratify or accede to and implement the LOSC and to promote the implementation of Chapter 17 of Agenda 21.

²⁴ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, UN Doc A/CONF.151/26 (Vol I) (1992) Annex 1.

²⁵ United Nations Sustainable Development, Agenda 21, available at <<http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>>.

²⁶ *Report of the World Summit on Sustainable Development (Johannesburg, South Africa, 26 August–2 September 2002)* UN Doc A/CONF.199/20, Res 1.

²⁷ *Ibid.*, [6]. ²⁸ *Ibid.*

6.4 The Rio+20 United Nations Conference on Sustainable Development and *The Future We Want*

The Outcome Document adopted by the Rio+20 Conference in 2012 is entitled *The future we want*. Of particular interest here is the part under the title 'Oceans and Seas' (paragraphs 158–77). Extensive references are made to this part by the General Assembly following its endorsement of the document.²⁹

6.5 The relationship between the documents adopted by the United Nations Conferences on the Human Environment and the LOSC

As it appears, the documents adopted by the United Nations conferences on the human environment have a direct bearing on the LOSC and the work performed on the basis of the provisions of the Convention. The principles adopted are always borne in mind by the organs established by the Convention and also by other bodies dealing with law of the sea matters. The UN General Assembly should be mentioned in particular. A study of the resolutions adopted by the General Assembly through the years demonstrates that there are extensive references to the declarations and other documents adopted by the United Nations conferences on the human environment. The references to the Rio+20 Conference document *The future we want* just mentioned is a good example.³⁰

7 THE ROLE OF THE GENERAL ASSEMBLY

From the very outset, the General Assembly became the central organ within the United Nations in dealing with law of the sea matters. At its first session in 1949, the International Law Commission (ILC) included in its provisional list of topics the regime of the high seas and the regime of the territorial sea, which caused the General Assembly to recommend that the ILC include the second of these topics in its list of priorities. After its eighth session in 1956, the ILC presented the result

²⁹ See *The future we want* endorsed by the General Assembly in UNGA Res A/66/288 (2012).

³⁰ See further Chapter 3 in this volume.

of its work in the form of a set of articles concerning the law of the sea dealing with both the territorial sea and the high seas.³¹ The history of the development of the law of the sea is presented in Chapter 1 of the present volume. Suffice it to mention in this context that in 1972 the General Assembly decided to convene the Third United Nations Conference on the Law of the Sea.³²

The actions of the General Assembly after the adoption of the LOSC in 1982 are dealt with in Section 2 of this chapter. After the entry into force of the Convention, the annual resolutions of the General Assembly under the item 'Law of the Sea' and later 'Oceans and the law of the sea' underwent a great change. The first of these resolutions was adopted on 19 December 1994.³³ In this resolution, the UN Secretary-General was asked to provide services required for the meetings of the States parties to the LOSC and for the Commission on the Limits of the Continental Shelf. Furthermore, the Secretary-General was requested to continue to carry out the responsibilities entrusted to him upon the adoption of the LOSC and to fulfil the functions consequent upon the entry into force of the Convention. In subsequent resolutions, which covered only a few pages, decisions were made in support of the institutions of the LOSC, in particular, the International Seabed Authority.

The mandate given to the UN Secretary-General on 19 December 1994 was refined by the General Assembly in a resolution on 26 November 1997 in which it requested the Secretary-General to continue to carry out the responsibilities entrusted to him in the LOSC and related resolutions of the Assembly.³⁴ These activities include, *inter alia*:³⁵

- preparing annually a comprehensive report for the consideration of the General Assembly on developments relating to ocean affairs and the law of the sea;
- preparing periodically special reports on specific topics such as fisheries, transit problems of the landlocked developing States, or other topics of current interest, including those requested by intergovernmental conferences and bodies, taking into account the provisions of the LOSC;
- developing and maintaining the appropriate facilities for the deposit by States of charts and geographical coordinates concerning maritime zones, including lines of delimitation, and to give due publicity thereto, as required by Articles 16(2), 47(9), 75(2), 76(9), and 84(2) of the LOSC;
- strengthening the existing system for the collection, compilation, and dissemination of information on ocean affairs and the law of the sea and, in cooperation with

³¹ See *Report of the International Law Commission on the Work of its Eight Session 23 4 July 1956*, UN Doc A/CN.4/104 (1956), available at <http://legal.un.org/ilc/documentation/english/a_cn4_104.pdf>.

³² UNGA Res A/30/29 (XXVII) (1972).

³³ UNGA Res A/49/28 (1994).

³⁴ UNGA Res A/52/26 (1997).

³⁵ *Ibid.*, [11(a)]–[11(i)].

- the relevant international organizations, furthering the development of a centralized system for providing coordinated information and advice;
- undertaking efforts to promote better understanding of the LOSC and the 1994 Implementation Agreement in order to ensure their effective implementation;
 - ensuring appropriate responses to requests from States, in particular developing States, for advice and assistance in implementing the provisions of the LOSC and the 1994 Implementation Agreement;
 - preparing for and convening the meetings of States parties to the LOSC and providing the necessary services for such meetings, in accordance with the Convention;
 - preparing for and convening the meetings of the Commission on the Limits of the Continental Shelf and providing it with the necessary services in accordance with the Convention; and
 - strengthening training activities in ocean and coastal area management and development.

Subsequent resolutions by the General Assembly had a fairly limited scope, focusing to a large extent on the duties of the Secretary-General under the LOSC. However, in 2001, the General Assembly concluded that the substance of the item Oceans and the law of the sea had become very comprehensive. As it appears from resolution A/56/12 of 28 November 2001, the Assembly therefore deemed it necessary to structure the material in the resolutions under different headings. Thus, to give an idea of the development of the substance of the topic, the material in this resolution is organized under the following headings: implementation of the Convention; capacity-building; meeting of States parties; settlement of disputes; the Area; effective functioning of the Authority and the Tribunal; the continental shelf; marine science and technology; piracy and armed robbery; safety of navigation; marine environment, marine resources, and sustainable development; underwater cultural heritage; activities of DOALOS; international coordination and cooperation; and trust funds.

The latest resolution of the General Assembly adopted on 9 December 2013 demonstrates a dramatic development with respect to the substance dealt with by the Assembly.³⁶ In a 48-page document, the substance is organized under 17 titles. In addition to the ones already mentioned in relation to the resolution from 2001, the following topics now appear: the continental shelf and the work of the Commission; maritime safety and security and flag State implementation; marine environment and marine resources; marine biodiversity; 'Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects'; and the open-ended informal consultative process on oceans and the law of the sea.

³⁶ UNGA Res A/68/70 (2013).

8 THE MEETING OF STATES PARTIES TO THE LOSC

Article 319(2)(e) of the LOSC provides that the UN Secretary-General 'shall convene necessary meetings of States Parties in accordance with this Convention'. As previously mentioned, the General Assembly approved that the Secretary-General should assume the responsibilities entrusted to him under the LOSC and related resolutions,³⁷ and from Section 2 of this chapter it appears that the Secretary-General is obliged to continue preparing for and convening these meetings and providing the necessary services for them in accordance with the Convention.³⁸

Among the obligations of these meetings are election of the members of the International Tribunal for the Law of the Sea and the members of the Commission on the Limits of the Continental Shelf. Every year, the meeting also considers the report of the Tribunal and deals with budgetary and administrative questions relating to the Tribunal. Furthermore, the meetings receive information provided by the Secretary-General of the International Seabed Authority and the Chairman of the Commission on the Limits of the Continental Shelf on the activities of these bodies. And, most importantly, the annual report on the law of the sea that the UN Secretary-General delivers to the General Assembly is also sent to the States parties in response to Article 319 of the LOSC.

The first meeting of States parties took place in New York on 21 and 22 November 1994, immediately following the entry into force of the Convention and the establishment of the International Seabed Authority. The meetings are serviced by DOALOS.³⁹

9 SUSTAINABLE FISHERIES AND STRADDLING AND HIGHLY MIGRATORY FISH STOCKS

On 22 December 1992, the General Assembly decided to convene, in 1993, under the auspices of the United Nations, and in accordance with the mandate agreed upon at

³⁷ UNGA Res A/37/66 (1982) [7].

³⁸ UNGA Res A/49/28 (1994) [9]–[11]; and UNGA Res A/52/26 (1997) [11].

³⁹ Further information relating to the Meeting of States Parties appears in Chapter 17 in this volume.

the United Nations Conference on Environment and Development, an intergovernmental conference on straddling and highly migratory fish stocks.⁴⁰

After successful negotiations, the conference was able to adopt 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 (FSA).⁴¹ The FSA was opened for signature on 4 December 1995. Presently (January 2015) 82 parties have ratified or acceded to the instrument.

Since the adoption of this agreement, the General Assembly has included straddling and highly migratory fish stocks in its agenda as a sub-item under the item relating to the law of the sea, nowadays framed as 'Oceans and the law of the sea'. The resolutions adopted by the General Assembly since then demonstrate a tremendous development, partly in response to the declarations and other documents adopted at the United Nations conferences in Johannesburg in 2002 and in Rio de Janeiro in 2012 (see Section 6 above). While the resolutions in the beginning dealt with fisheries matters in two to three pages, they have now developed into very substantive documents summarizing major yearly deliberations under the sub-item 'Sustainable fisheries, including through the 1995 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, and related instruments'.

By way of example, the latest resolution, adopted on 9 December 2013,⁴² is a 32-page document addressing in a very comprehensive manner the following substantive elements: achieving sustainable fisheries; implementation of the FSA; related fisheries instruments; illegal, unreported, and unregulated fishing; monitoring, control and surveillance, and compliance and enforcement; fishing overcapacity, large-scale pelagic drift-net fishing, fisheries by-catch and discards; sub-regional and regional cooperation; responsible fisheries in the marine ecosystem; capacity-building; and cooperation within the United Nations system.

In this resolution, the General Assembly deplores the fact that fish stocks, including straddling and highly migratory fish stocks, in many parts of the world are overfished or subject to sparsely regulated and heavy fishing efforts, as a result of, *inter alia*, illegal, unreported, and unregulated fishing, inadequate flag State control and enforcement, including monitoring, control, and surveillance measures, inadequate regulatory measures, harmful fisheries subsidies and overcapacity, as well as inadequate port State control. The Assembly refers in this context to a report of the Food and Agriculture Organization of the United Nations (FAO).⁴³ The General Assembly

⁴⁰ UNGA Res A/47/192 (1992).

⁴¹ UNGA Res A/50/24 (1995).

⁴² UNGA Res A/68/71 (2013).

⁴³ United Nations Food and Agriculture Organization (FAO) Fisheries and Aquaculture Department, *The State of World Fisheries and Aquaculture 2012* (FAO Rome 2012).

also expresses particular concern that illegal, unreported, and unregulated fishing constitutes a serious threat to fish stocks and marine habitats and ecosystems, to the detriment of sustainable fisheries as well as the food security and the economies of many States, particularly developing States.

10 OCEANS AND COASTAL AREAS NETWORK (UN-OCEANS)

The Oceans and Coastal Areas Network (UN-Oceans) stems from the United Nations Conference on Environment and Development—‘The Earth Summit’—held in Rio de Janeiro in 1992. As already mentioned, this Conference adopted an international programme of action for global sustainable development for the twenty-first century, commonly referred to as Agenda 21 (see Section 6 above). Chapter 17 of Agenda 21 deals with the protection of the oceans and the protection, rational use, and development of marine living resources. After extensive preparatory work by the UN agencies dealing with oceans and coastal issues, a proposal was made to form an Oceans and Coastal Areas Network. This proposal was endorsed by the United Nations System Chief Executives Board, the highest-level coordination forum of the United Nations system.⁴⁴ The result was that on 12 December 2002 the General Assembly invited the UN Secretary-General to establish an effective, transparent, and regular inter-agency coordination mechanism on oceans and coastal issues within the United Nations system.⁴⁵

The objective of the UN-Oceans Network is to enhance cooperation and coordination among secretariats of the international organizations and bodies concerned with ocean related activities. The UN-Oceans has recognized the requirement for effective coordination and cooperation at the origin of the establishment of the Network and the strong connection with the open-ended informal consultative process on oceans and the law of the sea (see Section 11 below).

The terms of reference for the UN-Oceans are as follows:

- strengthening coordination and cooperation of the UN activities related to ocean and coastal areas;

⁴⁴ *Report of the High-level Committee on Programmes on its twenty-fourth session New York, 3 to 5 October 2012*, UN Doc CEB/2012/6 (2012).

⁴⁵ UNGA Res A/57/141 (2002).

- reviewing the relevant programmes and activities of the UN system, undertaken as part of their contribution to the implementation of the LOSC, Agenda 21, and the Johannesburg Plan of Implementation (see Section 6 above);
- identification of emerging issues, the definition of joint actions, and the establishment of specific task teams to deal with these, as appropriate;
- promoting the integrated management of ocean at the international level;
- facilitating as appropriate, the inputs to the annual report of the Secretary-General on oceans and the law of the sea; and
- promoting the coherence of the UN system activities on oceans and coastal areas with the mandates of the General Assembly, and the priorities contained in the Millennium Development Goals and the Johannesburg Plan of Implementation and of governing bodies of all UN-Oceans members.

UN-Oceans has agreed to operate as a flexible mechanism to review joint and overlapping on-going activities and to support related deliberations of the open-ended informal consultative process on oceans and the law of the sea, coordinating as far as possible its meetings with the sessions of this process (see Section 11 below). The participation in UN-Oceans appears on its website.⁴⁶ With respect to officers and secretariat it has been decided that there shall be a coordinator and a deputy coordinator and that the agency serving as coordinator will also serve as the secretariat for UN-Oceans for the period of the coordinator's term.

11 THE UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEANS AND THE LAW OF THE SEA

In 1999, an important development occurred when the General Assembly instituted the United Nations open-ended informal consultative process on oceans and the law of the sea.⁴⁷ The background was that the General Assembly had come to the conclusion that it was important to maintain the integrity of the LOSC through the annual consideration and review of ocean affairs and the law of the sea by the Assembly 'as the global institution having the competence to

⁴⁶ See UN-Oceans website, at <<http://www.unoceans.org/>>.

⁴⁷ UNGA Res A/54/33 (2000).

undertake such a review'. At the same time, the Assembly was convinced of the need, building on existing arrangements, for an integrated approach to all legal, economic, social, environmental, and other relevant aspects of oceans and seas, and the need to improve coordination and cooperation at both the intergovernmental and inter-agency levels. Therefore, the General Assembly endorsed recommendations made by the Commission on Sustainable Development through the Economic and Social Council under the sectoral theme of 'Oceans and seas' regarding international coordination and cooperation, and decided to establish an open-ended informal consultative process.⁴⁸ The purpose of this process should be to facilitate the annual review by the Assembly, in an effective and constructive manner, of developments in ocean affairs by considering the Secretary-General's report on oceans and the law of the sea and by suggesting particular issues to be considered by it. The emphasis should be on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.

It was decided that the meetings would be open to all UN Member States and States Members of the specialized agencies, all parties to the LOSC, entities that had received a standing invitation to participate as observers in the work of the General Assembly pursuant to its relevant resolutions, and intergovernmental organizations with competence in ocean affairs.

It was also decided that the meetings would take place for one week each year and that the first meeting should be held from 30 May to 2 June 2000. The meetings

- would deliberate on the Secretary-General's report on oceans and the law of the sea, with due account given to any particular resolution or decision of the General Assembly, any relevant special reports of the Secretary-General and any relevant recommendations of the Commission on Sustainable Development;
- should, in identifying areas where coordination and cooperation are to be enhanced, bear in mind the differing characteristics and needs of the different regions of the world, and should not pursue legal or juridical coordination among the different legal instruments;
- would be coordinated by two co-chairpersons to be appointed by the President of the General Assembly in consultation with Member States and taking into account the need for representation from developed and developing countries.⁴⁹

⁴⁸ See Commission on Sustainable Development, 'Report on the Seventh Session' (1999) *Official Records of the Economic and Social Council*, Suppl No 9 (E/1999/29) ch I, § C, Decision 7/1, [37]–[45], available at <<http://www.un.org/documents/ecosoc/docs/1999/e1999-29.htm>>.

⁴⁹ UNGA A/Res/54/33 (2000) [3].

An important element in the decision was that the format of the informal consultative process should ensure the opportunity to receive input from representatives of the major groups as identified in Agenda 21, in particular through the organization of discussion panels. The process would be supported by DOALOS in cooperation with other relevant parts of the Secretariat, including the Division for Sustainable Development of the Department of Economic and Social Affairs, as appropriate. The importance of the participation of developing countries, including least developed countries and small island developing States, in the consultative process was emphasized.

Since 1999, these informal consultations have provided extremely important input and ideas for the work of the General Assembly, bearing also on the activities of the other agencies involved. Over the years, the participants in the process have considered a number of specific items. Among these items are the following:

- marine science and the development and transfer of marine technology as mutually agreed, including capacity-building in this regard;
- coordination and cooperation in combating piracy and armed robbery at sea;
- protection and preservation of the marine environment;
- capacity-building, regional cooperation and coordination, and integrated ocean management, as important cross-cutting issues to address ocean affairs, such as marine science and transfer of technology, sustainable fisheries, the degradation of the marine environment, and the safety of navigation;
- protecting vulnerable marine ecosystems;
- the safety of navigation; for example, capacity-building for the production of nautical charts;
- new sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction;
- fisheries and their contribution to sustainable development;
- marine debris;
- ecosystem approaches and oceans;
- marine genetic resources;
- maritime security and safety;
- capacity-building in ocean affairs and the law of the sea, including marine science;
- marine renewable energies; and
- impacts of ocean acidification on the marine environment.

The fifteenth meeting of this informal consultative process was held between 27 and 30 May 2014 and focused on the role of seafood in global food security.

12 THE REGULAR PROCESS

An important development occurred in 2002, when the General Assembly decided to establish the so-called Regular Process. The Process has its roots in the World Summit on Sustainable Development, held in Johannesburg in 2002 (see Section 6 above). In the Johannesburg Plan of Implementation, States agreed to 'establish by 2004 a regular process under the United Nations for global reporting and assessment of the state of the marine environment, including socio-economic aspects, both current and foreseeable, building on existing regional assessments' (the 'Regular Process'). On 12 December 2002, this agreement was endorsed by the General Assembly,⁵⁰ and the Secretary-General was requested to prepare proposals on modalities for a regular process for the global reporting and assessment of the state of the marine environment, drawing, *inter alia*, upon the work of the United Nations Environment Programme (UNEP) and taking into account a recently completed review by the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP), and to submit these proposals to the General Assembly.⁵¹

During the preparatory phase, the Secretary-General was requested to convene a group of experts to produce a draft document with details on various components of the process. In March 2004 the group of experts recommended that an 'Assessment of Assessments' be undertaken as part of the start-up phase of the Regular Process. International workshops were organized, and, on 29 November 2005, the General Assembly launched the start-up phase to the Regular Process, called the 'Assessment of Assessments'.⁵² An Ad Hoc Steering Group to oversee the execution of the 'Assessment of Assessments' was established. UNEP and the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO) were asked to lead the process. A Group of Experts was appointed and charged with undertaking the actual work of assessing the various assessments. The result of the 'Assessment of Assessments' was presented in 2009.⁵³

⁵⁰ UNGA Res A/57/141 (2002).

⁵¹ An elaborate description of the Regular Process and its background is available on the website of DOALOS. See *A Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-economic Aspects*, available at <http://www.un.org/Depts/los/global_reporting/global_reporting.htm>.

⁵² UNGA Res A/60/30 (2005) [90]–[96].

⁵³ See *Regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects: the 'assessment of assessments'*, UN Doc A/64/88 (2009), available at <http://www.un.org/ga/search/view_doc.asp?symbol=A%2F64%2F88&Submit=Search&Lang=E>.

An Ad Hoc Working Group of the Whole had been established to recommend a course of action at the sixty-fourth session of the General Assembly based on the outcomes of the review by the Ad Hoc Steering Group of the completed 'Assessment of Assessments' report.⁵⁴ On 4 December 2009, the General Assembly endorsed the recommendations adopted by the Ad Hoc Working Group of the Whole.⁵⁵ Since then intense work has been put into the process, including with informal meetings and several workshops in different parts of the world.

The Regular Process is accountable to the General Assembly. It is an inter-governmental process guided by international law, including the LOSC and other applicable international instruments, and takes into account relevant General Assembly resolutions. In addition, it is overseen and guided by the Ad Hoc Working Group of the Whole of the General Assembly composed of member States. DOALOS provides secretariat support to the Process, including its established institutions. Technical and scientific support is provided by the Intergovernmental Oceanographic Commission of UNESCO, UNEP, the International Maritime Organization, FAO, and other competent United Nations specialized agencies. The Group of Experts is an integral part of the Process. Among other things, it provides guidelines for the experts who will contribute to the first global integrated marine assessment. The Group has estimated that a total of around 1,500–2,000 experts would be needed for the preparation of the first global integrated marine assessment due at the end of 2014.

On 10 December 2012, the General Assembly adopted the outline for the first global integrated marine assessment of the Regular Process and the terms of reference and working methods for the Group of Experts.⁵⁶ Furthermore, the General Assembly requested the secretariat of the Regular Process to send the first draft of the first global integrated marine assessment to member States for comments from June to August 2014. This assessment will be revised by the Group of Experts in the light of the comments received. Once revised, the draft will be presented to the Bureau of the Ad Hoc Working Group of the Whole together with the comments received. With the approval of the Bureau, the assessment will be transmitted for consideration by the Working Group and for final approval by the General Assembly in 2015.⁵⁷

⁵⁴ *Ibid.* ⁵⁵ UNGA Res A/64/71 (2009) [174]–[177].

⁵⁶ UNGA Res A/67/78 (2012) [221]–[222].

⁵⁷ The Regular Process has established a website which contains general information on the Process as well as specific information on the development of the first global integrated marine assessment, or 'World Ocean Assessment', see <www.worldoceanassessment.org>.

13 CONSERVATION AND SUSTAINABLE USE OF MARINE BIODIVERSITY IN AREAS BEYOND NATIONAL JURISDICTION

One of the latest developments in the work of the United Nations in the field of the law of the sea is the question of the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.⁵⁸ On 17 November 2004, the General Assembly decided to establish an ad hoc open-ended informal working group to study issues relating to this topic. The mandate given to the group was:

- to survey the past and present activities of the United Nations and other relevant international organizations with regard to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction;
- to examine the scientific, technical, economic, legal, environmental, socio-economic, and other aspects of these issues;
- to identify key issues and questions where more detailed background studies would facilitate consideration by States of these issues; and
- to indicate, where appropriate, possible options and approaches to promote international cooperation and coordination for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.⁵⁹

On 24 December 2011, the General Assembly decided to initiate, within the working group, a process with a view to ensuring that the legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction effectively addresses those issues. This should be done by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under the LOSC. Matters to be addressed in this process will include: the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, in particular marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; and environmental impact assessments, capacity-building, and the transfer of marine technology. The Assembly also decided that the process should take place within the existing working group and, in addition, in the format of inter-sessional workshops aimed at improving understanding of the issues and clarifying key questions as an input to the work of the working group.⁶⁰

⁵⁸ See further Chapter 34 in this volume.

⁵⁹ UNGA Res A/59/24 (2004) [73].

⁶⁰ UNGA Res A/66/231 (2011) [167].

The latest development is reflected in the report of the working group from its meeting in August 2013 and the resolution by the General Assembly on 9 December 2013.⁶¹ In this resolution, the General Assembly reaffirmed the commitment made by States in *The future we want* (see Section 6 above) to address, on an urgent basis, building on the work of the working group and, before the end of the sixty-ninth session of the Assembly, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under the LOSC. The General Assembly thus charged the working group with preparing within its existing mandate for a decision to be taken at that session of the Assembly, and to make recommendations to the Assembly, on the scope, parameters, and feasibility of an international instrument under the LOSC.

14 PIRACY ON THE AGENDA OF THE SECURITY COUNCIL

Unlike the General Assembly, the Security Council has not over the years addressed specifically matters relating to the law of the sea. The reason is the manner in which the UN Charter lays down the competence of the two organs; in contrast to the General Assembly, the Security Council's mandate focuses more narrowly on the maintenance of international peace and security. However, precisely because of this, the acts of piracy in recent years off the coast of Somalia have caused the Council to adopt a number of resolutions relating to that situation. Reference is made to the enumeration by the General Assembly in its law of the sea resolution of 9 December 2013.⁶²

Maritime security and piracy are dealt with in Chapters 25 and 37 in this volume. However, the following brief presentation is of the essence in the present context.

In the several resolutions adopted by the Security Council since 2008 relating to piracy off the coast of Somalia, the Council has expressed grave concern over the threat that acts of piracy and armed robbery against vessels pose to the prompt, safe, and effective delivery of humanitarian aid to Somalia, to the safety of commercial maritime routes, and to international navigation. The Council has also affirmed that

⁶¹ Letter dated 23 September 2013 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly, UN Doc A/68/399 (2013) and UNGA Res A/68/70 (2013) [194]–[201].

⁶² UNGA Res A/68/70 (2013) [105].

international law, as reflected in the LOSC, sets out the legal framework applicable to combating piracy and armed robbery, as well as other ocean activities. In addition, the Council has affirmed that relevant provisions of international law provide guiding principles for cooperation to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State, 'including but not limited to boarding, searching, and seizing vessels engaged in or suspected of engaging in acts of piracy, and to apprehending persons engaged in such acts with a view to such persons being prosecuted'.⁶³

Acting under Chapter VII of the UN Charter, the Council has also urged States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to be vigilant to acts of piracy and armed robbery and, in this context, encouraged States to increase and coordinate their efforts to deter acts of piracy and armed robbery at sea in cooperation with the Transitional Federal Government of Somalia.⁶⁴ Of particular interest in this context is that the Council has decided that States cooperating with the Transitional Federal Government in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the Transitional Government to the Secretary-General, may enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law.⁶⁵ On the same conditions, they are also authorized to use all necessary means to repress acts of piracy and armed robbery within the territorial waters of Somalia.⁶⁶

At the same time, the Council has affirmed that the authorization in the resolutions that contain these provisions apply only to the situation in Somalia and do not affect the rights, obligations or responsibilities of member States under international law, including any rights or obligations under the LOSC, with respect to any other situation, and underscores, in particular, the fact these resolutions are not to be considered as establishing customary international law.⁶⁷

The Council resolutions also contain provisions on information sharing, various forms of assistance, and cooperation in many fields, including in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia.

Finally in this context reference should be made to a letter dated 23 March 2012 from the UN Secretary-General to the President of the Security Council in response to a request from the Council in resolution 2015 (2011). The letter contains a compilation of information received from member States on measures they have taken to criminalize piracy under their domestic law and to support the prosecution of

⁶³ See eg UNSC Res 1816 (2008).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ See eg UNSC Res 2125 (2013) [13].

individuals suspected of piracy off the coast of Somalia and imprisonment of convicted pirates.⁶⁸ The request by the Council should be seen against the background of the concern that the Council has expressed that the domestic law of a number of States lacks provisions criminalizing piracy and/or procedural provisions for effective criminal prosecution of suspected pirates.

15 CONCLUDING OBSERVATIONS

As it appears from the foregoing discussion, the United Nations has been deeply involved in matters relating to the law of the sea almost since the Organization was established in 1945. Today, a wide-ranging number of components related to an area that covers 70 per cent of the surface of the globe are dealt with under the item Oceans and the law of the sea on the agenda of the General Assembly.

The traditional law of the sea issues, for example maritime zones and their delimitation are, of course, present in the discussions. However, the manner in which these questions are regulated in the LOSC means that any disputes are settled peacefully by negotiations or through proceedings before the International Court of Justice or the International Tribunal for the Law of the Sea. The existing disputes relating to the South China Sea and the Senkaku/Diaoyu Islands will also be resolved peacefully, provided that the main actors are able to demonstrate the necessary statesmanship.⁶⁹

Interestingly, the law of the sea regime now also applies in areas where maritime activity was not possible in the past, notably in the Arctic. In the media there are often articles referring to the potential disputes over 'territory' in the Arctic where it is obvious that the authors do not understand that the Arctic Ocean is a sea and that the ordinary rules relating to the territorial sea, the exclusive economic zone and the continental shelf are applicable. Basically, the territorial disputes in the Arctic have been resolved with the exception of two cases where no doubt the parties will find solutions.⁷⁰ The issues that remain to be resolved relate to the delimitation

⁶⁸ See *Letter dated 23 March 2012 from the Secretary General to the President of the Security Council*, UN Doc S/2012/177 (2012).

⁶⁹ Disputes of this nature should be resolved through negotiations or other methods for peaceful settlement of disputes. To allow those disputes to develop in a manner that the parties resort to the use of force or other hostile acts is wholly irresponsible, not to say unacceptable in a modern world. Ultimately, the responsibility rests with the leaders of the States concerned.

⁷⁰ The cases concern Canada and the United States, and Canada and Denmark (Greenland), respectively.

of the exclusive economic zones and the continental shelves of the littoral States. However, since the rules that apply here are clear, there is good reason to conclude that also these issues will be peacefully resolved.⁷¹

Of greater concern are other aspects relating to the oceans, in particular, the effects generated by pollution, climate change and the overexploitation of marine resources. The outcome of the Regular Process (Section 12 above) will be of great importance here, most likely raising additional concerns. It is therefore to be expected that the work within the United Nations system relating to the law of the sea will be even more intense in the future.

As it appears from the foregoing, it is of crucial importance that the organs within the United Nations system that are responsible for this work are supported and provided with the necessary resources. Capacity building in developing countries is also an important element in this effort.

All this brings to the forefront the overarching issue of the human behaviour on the globe. The status of the oceans must be viewed in a very broad perspective, including through the dimension of international peace and security. It is important that determined efforts are made to protect the oceans in the future against the threats that they are exposed to through human behaviour. Additional efforts must be made to educate the general public and not least those who represent them at the political level about these matters and the need to address them effectively and with determination. If this is not done, there is great risk that the consequences for the future human habitat will be very serious.

⁷¹ H Corell, 'The Arctic: An Opportunity to Cooperate and Demonstrate Statesmanship' (2009) 42 *Vanderbilt Journal of Transnational Law* 1065.