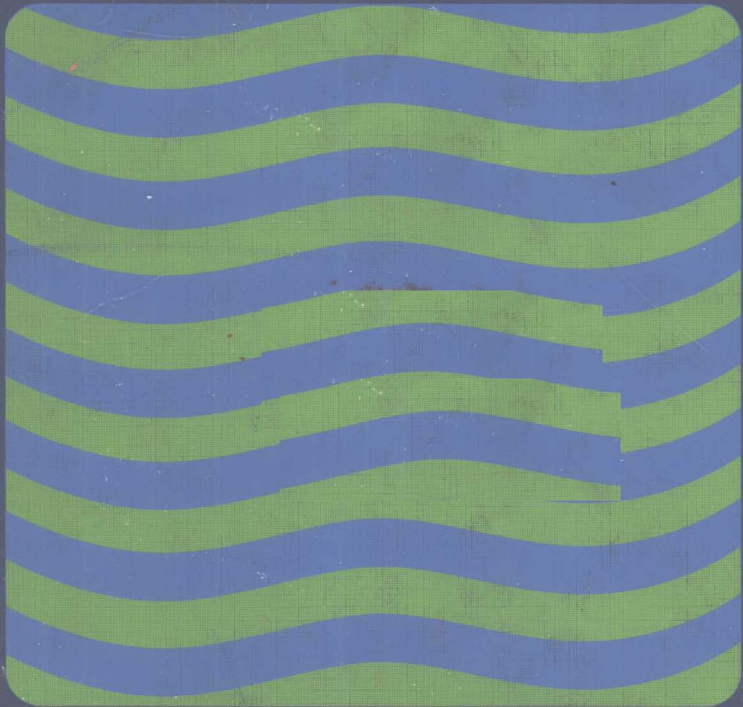


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EDITORS' PREFACE

This Volume 17 of *International Organizations and the Law of the Sea - Documentary Yearbook* was again prepared on the basis of experience gained in producing previous volumes and taking into account various comments and suggestions made by distinguished members of our Advisory Board.¹ The Volume covers the documents, both legal and non-legal, of the United Nations family of international organizations which are structured along two main categories. In particular, documents of the UN General Assembly (UNGA) and the Security Council, Meeting of States Parties to the 1982 UN Convention on

¹ During the first decade of the *Yearbook's* publication, its reviews included those of Vol. 1 - 1985 (1987) by: E. Decaux, 115 *Journal du Droit International* 282-283 (1988/1); M.I. Glassner, *Political Geography Quarterly* of 8 February 1989; L.A. Kimball, 12 *Marine Policy* 415-416 (1988/4); A.V. Lowe, 3 *International Journal of Estuarine & Coastal Law* (IJECL) (presently, *International Journal of Marine & Coastal Law* [IJMCL]) 280-281 (1988/3); Swan Sik Ko, 35 *Netherlands International Law Review* 100-101 (1988/1); R. Wolfrum, 30 *German Yearbook of International Law* (GYIL) 463-464 (1987); also noted in 33 *Annuaire Français de Droit International* (AFDI) 1077 (1987); reviews of Vol. 2 - 1986 (1988) of the *Yearbook* by: D. Freestone, 4 IJECL 310-311 (1989/3); *Lloyd's Maritime Commercial Law Quarterly* (1989); and review of Vol. 3 - 1987 (1989) of the *Yearbook* by: D. Freestone, 6 IJECL 151-153 (1991/2). For joint reviews of Vols 1-5, see B. Boczek, "Basic Sources of Law of the Sea Documentation," 15 *Marine Policy* 455-459 (1991/6), and of Vols 5-6, see E.D. Brown, 17 *Marine Policy* 67 (1993/1), and D. Freestone, 10 IJMCL 143-144 (1995). For reviews of Vol.8 - 1992 (1994), see D. Köning, 38 GYIL 467 (1995); 40 AFDI 1208 (1994). For reviews of Vol.9 - 1993 (1995), see J. Thomas, 3 OGLTR 136-137 (1996), and J. Morris, 3 *Int.ML* 110-111 (1996). For review of Vol.10 - 1994 (1996), see U. Jenisch, 30 *Verfassung und Recht in Übersee* 280-281 (1997). For announcements of the *Yearbook's* next volumes, see *New and Important Publications in Law of the Sea of Kluwer Law International* 17 (1999) 22, 30 (2001), and *Law of the Sea* 2002 9 (2002) <<http://www.kluwerlaw.com>>; followed since mid-2003 by announcements of Brill Academic Publishers of which Martinus Nijhoff Publishers became an imprint <<http://www.brill.nl>>.

the Law of the Sea (UNCLOS),² UN Commission on the Limits of the Continental Shelf (CLCS), International Sea-Bed Authority (ISBA), International Tribunal for the Law of the Sea (ITLOS), Follow-up to the UN Conference on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, Follow-Up to the UN Global Conference on the Sustainable Development of Small Island Developing States (SIDS), World Summit on Sustainable Development (WSSD), UN ECOSOC, UNEP and UNCTAD are included first. They are followed by the documents of specialized agencies and other autonomous organizations within the UN system that include FAO, IAEA, IMO and UNESCO/IOC. The numerous regional programmes and organizations, a number of which reports annually to the UNGA, are covered by documents of the respective global organizations.

The major General Assembly's documents remain the annual Oceans and the Law of the Sea Resolution (56/12) and the Report of the Secretary-General giving an excellent overview of innumerable and closely interlinked developments concerning the new oceans regime. The 2001 *Oceans and the Law of the Sea Report* was prepared, as every year, by the Division for Ocean Affairs and the Law of the Sea (DOALOS) of the UN Office of Legal Affairs (OLA). The UNDOALOS operates (since 1 March 1992) in continuation of the UN Office for Ocean Affairs and the Law of the Sea (UNOALOS). It was headed originally by Ambassador Satya N. Nandan (Fiji), followed by Dr. Jean-Pierre Lévy (France), who was succeeded since 1 February 1996 by Dr. Moritaka Hayashi (Japan) and since 20 October 1996 by Dr. Ismat Steiner (Tanzania). Mrs. Annick de Marffy (France) has been since 2001 the UNDOALOS's current Director.³ The Division is charged with a general mandate to contribute to the better understanding and widespread acceptance of

2 The traditional acronym of "LOS Convention" has been for reason of practical convenience increasingly replaced by that of "UNCLOS". Cf. W.R. Edeson, "Confusion over the Use of 'UNCLOS', and References to Other Recent Agreements", 15 IJMC 413-419 (2000). The use of "UNCLOS" acronym, which was previously reserved for the First, Second and Third United Nations Conferences on the Law of the Sea (UNCLOS I-III), has been initiated by *The Law of the Sea - Report of the Secretary-General*, UN Doc. A/52/487 and Corr.1, para.13 (1997), reproduced as item UN-1 in this *Yearbook's* Volume 13 - 1997 (1999), and it has since been maintained in all UN Secretary-General's Reports and many other documents and publications. See also notably the 2000 *Australia and New Zealand v. Japan Southern Bluefin Tuna (Jurisdiction and Admissibility)* Award, *infra* note 24, para.1 n.1; and the 2003 *OSPAR Ireland v. UK Mox Plant* Award, *infra* note 33, paras 63, 141 and Dissenting Opinion of Arbitrator Griffith, para.85.

3 See UN Office of Legal Affairs (OLA), Division for Ocean Affairs and the Law of the Sea - Core Functions <<http://untreaty.un.org/ola-internet/doalos.htm>>; and *infra* notes 5-14. For outstanding website of the UNDOALOS, see <<http://www.un.org/Depts/los>> and *infra* note 85.

the UN Convention on the Law of the Sea at national, regional and international levels. The numerous UNDOALOS publications continue to be only listed in the *Yearbook*, but the reader will find (through the Index of Keywords) a detailed record of UNDOALOS activities in the relevant documents.

As a result of deposition of the 60th ratification (by Guyana) during the 48th session of the General Assembly in 1993, the UNCLOS entered into force on 16 November 1994. Prior thereto, further rounds of the UN Secretary-General's Informal Consultations led successfully to the adoption at the resumed 48th session of the General Assembly (by a vote of 121:0:7) of the Resolution 48/263 of 28 July 1994. The UNGA Resolution's Annex contains an Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, with the entry into force of the two instruments having been closely intertwined.⁴

The entry into force of the UNCLOS and the provisional application of the Part XI Agreement as followed by the Agreement's entry into force on 28 July 1996 marked, according to Dr. Moritaka Hayashi, the beginning of a new phase in the functions of the United Nations Secretary-General - "as the chief

4 See *UN/DOALOS Law of the Sea Bulletin*, Special Issue IV, 16 November 1994, and for status of the Convention and the Part XI Agreement as at 9 December 2002, see *id.* No. 50 (2003) and the UNDOALOS website <<http://www.un.org/Depts/los>>. Cf. D.H. Anderson, "Legal Implications of the Entry Into Force of the UN Convention on the Law of the Sea," 44 *International & Comparative Law Quarterly* (ICLQ) 313-326 (1995); J.P. Lévy, "Les Nations Unies et la Convention sur le droit de la mer," 28 *Revue Belge de Droit International* 11-35 (1995); M. Hayashi, "The 1994 Agreement for the Universalization of the Law of the Sea Convention," 27 *Ocean Development & International Law* (ODIL) 31-39 (1996); B.H. Oxman, "Observations on the Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea", in *Order for the Oceans at the Turn of the Century, Proceedings of the Fridtjof Nansen Conference, Oslo, Norway, 7-11 August 1998* 15-35 (1999); Edeson, *supra* note 2; J.P. Lévy, "The United Nations Convention on the Law of the Sea", in *Continental Shelf Limits: The Scientific and Legal Interface* 8-16 (2000); V.-D. Degan, "The Common Heritage of Mankind in the Present Law of the Sea", in N. Ando *et al.* eds, *Liber Amicorum Judge Shigeru Oda* 1363-1376 (2002).

On the pending ratification of the UNCLOS by the United States (as well as by Canada), see 34 ILM 1393 (1995); "The Law of the Sea Convention and U.S. Policy", Issue Brief for U.S. Congress of 19 March 2003 <<http://www.ncseonline.org/NLE/CRSreports/03Jun/IB95010.pdf>>; U.S. Mission to the United Nations <<http://www.un.int/usa/>> - International Law, Bureau of Oceans <www.un.int/usa/los.htm>; and *infra* notes 9, 12-13.

administrative officer of the Organization”⁵ - with regard to the two instruments.⁶ A detailed set of (mostly long-term) mandates for the Secretary-General and, through him, particularly the UNDOALOS/OLA, include the increased reporting responsibilities, the unprecedented (and distinct from the usual depositary functions) responsibilities pertaining to deposit of charts and geographical coordinates concerning national maritime zones,⁷ as well as responsibilities relating to servicing Meeting of UNCLOS States Parties, Commission on the Limits of the Continental Shelf (CLCS) and UN Open-Ended Informative Consultative Process on Oceans and the Law of the Sea (UNICPOLOS), conducting special studies, dispute settlement (including in the context of the ITLOS’ establishment), and provision of advice and assistance to states. Other mandates comprise functions relating to other agreements, normal depositary functions, and a number of short-term responsibilities of the UN Secretary-General. Since 1997, the UNCLOS has been in a crucial phase of its evolution because of the rapid move toward universalization of its States

5 *Difference Relating to Immunity From Legal Process of a Special Rapporteur of the Commission on Human Rights* Advisory Opinion (hereinafter: *ECOSOC Advisory Opinion*), ICJ Reports 1999, 62, at 84, para.49, reprinted in 38 ILM 873 (1999); ICJ Communiqué No.99/15, 12 April, and Nos 99/16 and 99/16bis, 29 April 1999 <<http://www.icj-cij.org>>. On the Opinion’s implementation, see Letters from the UN Secretary-General to the ECOSOC President of 19 October and 15 December 1999, UN Docs E/1999/121 and E/1999/124, reproduced as items UN-66/67 in this *Yearbook’s* Volume 15 - 1999 (2001), and of 24 July 2000, Doc. E/2000/105; 121 ILR 1, reproduced as item UN-71 in Volume 16 - 2000 (2002).

Cf. Lady Hazel Fox, “The Advisory Opinion on the *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission of Human Rights*”, 12 LJIL 889-918 (1999); J. Matringe, “CIJ, Avis Consultatif du 29 avril 1999”, 45 AFDI 413-433 (1999); G. Ziccardi Capaldo, “The *Difference Relating to Immunity from Legal Process* Advisory Opinion”, 1 *Yearbook of International Law and Jurisprudence* (YILJ) 251-266 (2001); R.St.J. Macdonald, “A Short Note on the Interpretation of the UN Charter by the ICJ”, in *Liber Amicorum Judge Oda*, *supra* note 4, at 177, 181-182; and *infra* notes 9 and 89.

6 M. Hayashi, “The Role of the Secretary-General Under the Law of the Sea Convention and the Part XI Agreement,” 10 IJMCL 157-164 (1995); and UNDOALOS Core Functions, *supra* note 3.

7 For the authoritative guidance on the issue of disclaimer placed on all the United Nations maps, see the 2002 UN *Eritrea/Ethiopia Boundary (Merits)* Decision, *infra* note 61, paras 3.26-3.28 and Appendix A, paras A26-A32. For reliance on these holdings, see the *Indonesia/Malaysia (Merits)* Oral Hearings, CR 2002/29, 42-43 (Counsel Malintoppi, 4 June), CR 2002/32, 37 (Counsel Crawford, 7 June 2002) <<http://www.icj-cij.org>>.

Parties; the building of the key institutions - ISBA,⁸ ITLOS, CLCS (including the 2001 inaugural submission of Russia, as responded by Canada, Denmark, Japan, Norway and the United States)⁹ - under the Convention;¹⁰ the

8 See Statement by H.E. Ambassador Satya N. Nandan, Secretary-General of the International Sea-Bed Authority, in *Order for the Oceans*, *supra* note 4, at 9-13, and 73-80; and S.N. Nandan, "Improvements in Global and Regional Ocean Governance", in *UNESCO Global Conference on Oceans and Coasts at Rio+10: Toward the 2002 Johannesburg World Summit on Sustainable Development, Paris, 3-7 December 2001* (2002), available online at <<http://www.udel.edu/CMS/csmp/globaloceans/index.html>>, "Participants use only": password <OCR+10PA>, as referred to *infra* notes 80-81; Degan, *supra* note 4; Address by Ambassador Felipe Paolillo at DOALOS/UNITAR Briefing on Developments in Ocean Affairs and the Law of the Sea Held on the 20th UNCLOS Anniversary, New York, 25-26 September 2002 <<http://www.un.org/Depts/los/>>; and *infra* note 53.

9 On privileges and immunities of the UNCLCS members, see references to Convention on Privileges and Immunities of the United Nations, 1946 (1 UNTS 15 and Corr. 90 UNTS 327), and to ICJ - *Mazilu* Advisory Opinion (ICJ Reports 1989, 177), as reaffirmed by the 1999 *ECOSOC* Advisory Opinion (*supra* note 5, at 66, 78, 82-83), in Index of Keywords in this *Yearbook's* Volume 14 - 1998 (2000) and Volume 15 - 1999 (2001). Cf. B. Kwiatkowska, "The Law of the Sea Related Cases in the International Court of Justice During the Presidency of Judge Stephen M. Schwebel (1997-2000) and Beyond", 16 *IJMCL* 1, 37-38 (2001) <[http://www.kluwerlawonline.com /document.php?id=335941](http://www.kluwerlawonline.com/document.php?id=335941)>, reprinted in this *Yearbook's* Vol.14 - 1998 xix-li (2000) and published as revised, in G. Ziccardi Capaldo Editor-in-Chief, 2 *YILJ* 1-45 2002 (2003), also available in the version updated as of 2003 on the NILOS website <www.law.uu.nl/nilos> - Publications, Papers; *infra* note 86.

On inaugural submission made by the Russian Federation to the UNCLCS on 20 December 2001 with respect to the Arctic Ocean, the Barents Sea, the Bering Sea and the Sea of Okhotsk areas, see *Press Release SEA* No.1729, 21 December 2001 <<http://www.un.org/News/Press/docs/2001 /sea1729.doc.htm>>, Statement of the Deputy Minister for Natural Resources of the Russian Federation of 28 March 2002, UN Doc. CLCS/31, 5 April 2002, and other documents reproduced in this *Yearbook's* Vol.17 - 2001 (2003) and the next ones, and available on the UNDOALOS website, *supra* note 3; *UN/DOALOS Law of the Sea Information Circular* (2002 No.16 and 2003 No.17).

Cf. essay by ITLOS President L.D.M. Nelson, "The Continental Shelf: Interplay of Law and Science", in *Liber Amicorum Judge Oda*, *supra* note 4, at 1235-1253. President Nelson serves as the Chairman of the new ILA Committee on Legal Issues of the Outer Continental Shelf, of which Dr. A. Oude Elferink of NILOS and Mr. D. Ong are Co-Rapporteurs, while Prof. B. Kwiatkowska and Dr. E. Molenaar of NILOS are amongst this Committee's members. The Committee's Draft Interim Report was discussed at its meeting held in Hamburg on 5-6 September 2003.

10 See excellent appraisals by H.E. Judge Abdul G. Koroma, "Implementation of the Law of the Sea Convention Through Its Institutions," in *Order for the*

consolidation and further strengthening of its regime through the adoption of many global and regional complementary instruments; and the emerging consensus on the role of the UNGA as the global ocean forum. As the United Nations Legal Counsel, Dr. Hans Corell stated:

The track record of the United Nations in providing stewardship in matters related to the world's oceans and seas is long-standing, proven and impressive. From the First UN Conference on the Law of the Sea to the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, from the agenda item on "Resources of the Sea" to the agenda item on "Oceans and the Law of the Sea", the United Nations has served the community of nations quite effectively in dealing with ocean issues in a coordinated manner. It is a reasonable expectation that such performance will extend to the future. A renewed trust in the United Nations in regard to oceans would be an integral component of a relevant and effective United Nations in the 21st century.¹¹

The current shift in this process from setting norms to implementing and coordinating them was stressed on the occasion of the 30th Anniversary of the 1972 UN Stockholm Declaration on the Human Environment by the UNDOALOS's Director, Mrs. Annick de Marffy, who observed that:

Footnote 10 continued

Oceans, *supra* note 4, at 57-72; and UN OLA Senior Officer Vladimir Golitsyn, "Interrelation of the Institutions Under the United Nations Law of the Sea Convention with Other International Institutions", *id.* at 133-142.

- 11 Address by the United Nations Legal Counsel and Under-Secretary-General for Legal Affairs, Dr. Hans Corell, "Oversight of the Implementation of the Global Ocean Regime: The Role of the United Nations", in *Order for the Oceans*, *supra* note 4, at 337, 342. For authoritative definition of the concept of sustainable development as being equally relevant when states conclude new treaties and undertake new activities and when they apply existing instruments, obligations and activities, see *Hungary/Slovakia Gabčíkovo-Nagymaros Project Judgment*, ICJ Reports 1997, 78, para.140. Cf. B. Kwiatkowska, "The Contribution of the ICJ to the Development of the Law of the Sea and Environmental Law", 8 *Review of European Community & International Environmental Law* 10-15 (1999); B. Kwiatkowska, *Stockholm Lecture on The Contribution of the International Court of Justice to the Development of the Law of the Sea* (BWP 2002) <<http://www.bwp-bookcenter.com>>, also available online in the version updated as of 2003 on the NILOS website <<http://www.law.uu.nl/nilos>> - Publications, Papers; and works quoted *infra* notes 28 and 88.

From the UNCED process has emerged many new conventions, agreements, programmes of action and guidelines developed to respond to the call for action contained in Agenda 21 and also to fill gaps wherever needed. Thirty years have now elapsed since this process began. It is therefore important, before engaging in the 2002 review of Agenda 21 by the Johannesburg World Summit on Sustainable Development (WSSD) to take time to assess the progress achieved and look at the challenges ahead, particularly in considering how the UNCLOS and its related Agreements have been implemented in response to the environmental problems still facing the oceans and seas.¹²

The central role of implementing measures was forcefully reiterated in the 2003 Reykjavik Keynote Address of Dr. Hans Corell, who commended the current initiatives within and outside the United Nations system, encouraged Canada and the United States to speedy ratification of the UNCLOS, as pledged in the Marine Environment and Tanker Safety Action Plan of Group-8 Summit, and stressed that calls of some states for amendments to UNCLOS (in a follow-up to accident of the Bahamian-flag *Prestige* tanker off the coast of Spain, Portugal and France in November 2002) would not solve the problem, because: "The problem is not that there is not enough law or that the law is weak. The problem is that existing rules are not being sufficiently and properly implemented and enforced. States are at fault here, both coastal and flag States,

12 Annick de Marffy, "The Marine Environment and the Implementation of the United Nations Convention on the Law of the Sea and Related Agreements", in *UNESCO Global Rio+10 Conference*, *supra* note 8. As she stressed in her conclusions, the only three major coastal states known for having established comprehensive ocean policies, which should be encouraged as a first step worldwide, are Australia, Canada and the United States. See also B. Kwiatkowska, "Peaceful Settlement of Oceans and Other Environmental Disputes Under International Agreements", *id.* or directly at <www.udel.edu/CMS/csmp/globaloceans/pdf/Papers/Kwiatkowska%20Paper.PDF>, published as revised by BWP (2002) <<http://bwp-bookcenter.com>> - Books, Environmental Law; Address by the United Nations Legal Counsel, Dr. Hans Corell, "Conference on Stockholm Declaration and Law of the Marine Environment", Stockholm University, 25 May 2002 <<http://www.un.org/law/counsel/english/stockholm.pdf>>; and *infra* notes 37-38, 76, 80-81 and 90.

but primarily certain flag States".¹³ As the United Nations Legal Counsel rightly concluded:

The greatest problem remains: lack of political will. The rules are there: UNCLOS contains very clear general principles within a comprehensive framework, other conventions and non-binding instruments contain carefully prepared detailed regulations, guidelines and plans of action. If we want to improve the conditions of the Oceans and ensure that activities relating to them are carried out within the law, all States have to start making a real effort to implement and to enforce that law. [...] So, again, I am posing a very serious question, one of the most fundamental questions in international law: how do we get States to take their international obligations and responsibilities seriously? We must all think about the answer to that question.¹⁴

The ITLOS was inaugurated in Hamburg on 18 October 1996, when the 21 Judges took their oath of office and signed solemn declarations in the presence of the UN Secretary-General, the ISBA Secretary-General, Ambassador Satya N. Nandan, and other high dignitaries. The first ITLOS

13 Keynote Address by the United Nations Legal Counsel, Dr. Hans Corell, "International Oceans Governance and the Challenge of Implementation", Reykjavik Conference on Legal and Scientific Aspects of Continental Shelf Limits, 27 June 2003, at 9-10 <<http://www.un.org/law/counsel/english/Reykjavik.pdf>>. On ratification of the UNCLOS by the United States, see also *supra* note 4. For Marine Environment and Tanker Safety Action Plan of Group 8, comprising Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, the USA and the European Union (EU), expressing their commitment to "the ratification or acceding to and implementation of the UNCLOS, which provides the overall legal framework for oceans" (para.1.1), see 2003 G8 Summit Documents <<http://www.g8.fr/evian/english>>. For effective measures being undertaken in a follow-up to the *Prestige* accident, see the remaining provisions of the G8 Action Plan; *Oceans and the Law of the Sea - Report of the Secretary-General*, UN Doc. A.58/65 and Add.1 (2003), available at the UNDOALOS website, *supra* note 3; as well as websites of the IMO <<http://www.imo.org>> and the EU <http://eu.int/comm/transport/themes/maritime/prestige/index_en.html>.

14 Reykjavik Keynote Address of Dr. Corell, *supra* note 13, at 11. See also the 20th UNCLOS Anniversary Address by Ambassador Paolillo, *supra* note 8; Bernard H. Oxman, "The Tools for Change: The Amendment Procedure", and Shabtai Rosenne, "Reflections on Fishery Management Disputes", both presented at the 57th UNGA Commemorating the 20th UNCLOS Anniversary, 9 December 2002 <<http://www.un.org/Depts/los>>.

President in the inaugural triennium 1996-1999 became Dr. Thomas A. Mensah (Ghana) and Vice-President - Dr. Rüdiger Wolfrum (Germany), followed by the triennium 1999-2002 of President P. Chandrasekhara Rao (India) and Vice-President Dolliver Nelson (Grenada), who in the years 1974-1994 was a member of the United Nations Secretariat in New York, and who has been the ITLOS President in the current triennium 2002-2005, during which Judge Budislav Vukas (Croatia) has served as the Vice-President. The Tribunal's first Registrar was until 30 June 2001 Mr. Gritakumar E. Chitty (Sri Lanka), followed by Dr. Philippe Gautier (Belgium).

While the ITLOS is included into the United Nations section of this *Yearbook*, it is noteworthy that the Tribunal is an autonomous treaty organ within the United Nations system, of which the first instance of judicial activity was welcomed in Statement of the then President of the International Court of Justice (ICJ), Judge Stephen M. Schwebel, to the 53rd UNGA as a notable event in the life of international courts.¹⁵ The ITLOS Rules and its Guidelines Concerning the Preparation and Presentation of Cases and the ITLOS Resolution on Internal Judicial Practice, are all modelled on the respective instruments of the ICJ, and so are the maximum remuneration of the ITLOS members and their pension scheme adjusted to the revision in the emoluments of the ICJ Judges (at US \$ 160,000 effective 1 January 1999) and the

15 Statement of Judge Stephen M. Schwebel, President of the International Court of Justice, in Connection with the Annual Report of the ICJ, to the 53rd General Assembly, UN Doc. A/53/PV.44, 1-5, at 1, 27 October 1998; *ICJ Communiqué* No.98/33; reprinted in *ICJ Yearbook 1998-1999* 316-323 (No.53) <<http://www.icj-cij.org>>. See also, e.g., appraisal by ICJ Vice-President Raymond Ranjeva, "Aux origines de l'article 287.1b) de la Convention des Nations Unies sur le Droit de la Mer", in *La Mer et Son Droit - Melanges offerts a Laurent Lucchini et Jean-Pierre Queneudec* 545-550 (2003); and *infra* notes 18-19.

amendments in their pension scheme.¹⁶ The ICJ's response to the United Nations Secretary-General of 15 July 1997 pointed out that: "The Court has indicated its willingness to cooperate with the ITLOS, established pursuant to the Convention, on an informal, *ad hoc* basis, in the furnishing of information that may be requested by that Tribunal, to the extent that this is authorized by the Statute and Rules of the Court".¹⁷ At the same time, in their Statements delivered to the 54th-57th UNGA in 1999-2002, then ICJ Presidents Schwebel and Guillaume appreciated virtue in enabling other international tribunals, both those which are organs of the United Nations (such as the ICTY or the ICTR) and those which are not (such as the ITLOS or the ICC) to request Advisory

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- 16 For excellent analysis, see S. Rosenne, "The ITLOS and the International Court of Justice: Some Points of Difference", in *The Baltic Sea: New Developments in National Policies and International Cooperation* 200-215 (1996); D.H. Anderson, "The Internal Judicial Practice of the ITLOS", 38 *Indian Journal of International Law* (IJIL) 410-428 (1998); and S. Rosenne, "International Tribunal for the Law of the Sea: 1996-1997 Survey", 13 *IJMCL* 487-514 (1998), "1998 Survey", 14 *IJMCL* 453-465 (1999), "1999 Survey", 15 *IJMCL* 443-474 (2000), A.V. Lowe, "2000 Survey", 16 *IJMCL* 549-570 (2001), "2001 Survey", 17 *IJMCL* 463-484 (2002), "2002 Survey", 18 *IJMCL* (2003, in press). Cf. remarks by ITLOS President Thomas A. Mensah, "The International Tribunal for the Law of the Sea", 11 *Leiden Journal of International Law* (LJIL) 527-546 (1998); articles contributed by President Mensah and Judges Eiriksson, Nelson, Treves, Wolfrum, Yankov, Vukas, Akl and Laing, in 37 *IJIL* 347-477 (1997); B. Kwiatkowska, "The Future of the Law of the Sea Tribunal in Hamburg", in *International Law and The Hague's 750th Anniversary, Kurhaus Conference, 2-4 July 1998* 417-425 (T.M.C. Asser Institute 1999); G. Eiriksson, *The International Tribunal for the Law of the Sea* (2000) and its review by B.H. Oxman, 95 *American Journal of International Law* (AJIL) 731-734 (2001); B. Kwiatkowska, *Decisions of the World Court Relevant to the UN Convention on the Law of the Sea* (Kluwer Law International 2002) and its review by G. Ziccardi Capaldo, 50 *Netherlands International Law Review* (NILR) 88-92 (2003); M.M. Marsit, "Cinquieme anniversaire du Tribunal International du Droit de la Mer", in *La Mer et Son Droit*, *supra* note 15, at 421-436.
- 17 See *Impact of the Entry Into Force of the 1982 UN Convention on the Law of the Sea on Related Existing and Proposed Instruments and Programmes - Report of the Secretary-General*, UN Doc. A/52/491, para.6 and Part G (20 October 1997), reproduced as item UN-2 in this *Yearbook's* Volume 13 - 1997 (1999). See also Agreements on Cooperation and Relationship between the United Nations and the ISBA (1997 UNGA Resolution 52/27; 1967 UNTS 256; 36 ILM 1492 (1997), Article 5, in force: 26 November 1997, reproduced as item UN-44 in Volume 13 - 1997 (1999)) and the ITLOS (1998 UNGA Resolution 52/251, Article 4(1)(iii), in force: 8 September 1998, reproduced as item UN-64 in Volume 14 - 1998 (2000)), which provide for furnishing, subject to requirements of confidentiality, information requested by the ICJ.

Opinions from the ICJ as the principal judicial organ of the United Nations on issues of international law that arise in cases before those tribunals and are of importance to the unity of international law.¹⁸ In its Statement to the 57th UNGA, the Russian Federation commended the Court's advisory rulings on interpretations of international law, adding that: "In the coming years, the role of Advisory Opinions would grow in light of the increase of international courts and tribunals".¹⁹ In an illuminating Message delivered on the occasion of the 20th UNCLOS Anniversary, the ICJ reaffirmed that: "The 1982 Convention is one of the most significant authoritative instruments available to the Court", and pointed out with respect to Article 287 of its Part XV on Settlement of Disputes that:

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- 18 Statement of Judge Stephen M. Schwebel, President of the International Court of Justice, in Connection with the Annual Report of the ICJ, to the 54th General Assembly, UN Doc. A/54/PV.39, 1-5, at 3-4, 26 October 1999, *ICJ Communiqué* No.99/46, reprinted in *ICJ Yearbook 1999-2000* 282-288 (No.54); Statements of Judge Gilbert Guillaume, President of the International Court of Justice, to the 55th General Assembly, at 5, *ICJ Communiqué* No.2000/36, 26 October 2000, reprinted in *ICJ Yearbook 2000-2001* 319-326 (No.55); to the 56th General Assembly, UN Doc. A/PV.32, 1-5, at 4, 30 October 2001, reprinted in *ICJ Yearbook 2001-2002* (No.56, in press); and to the 57th General Assembly, UN Doc. A/57/PV.37, 1-5, at 4 (2002), *ICJ Press Release* No.2002/29, 29 October 2002 <<http://www.icj-cij.org>>. See also Article 119 of the 1998 UN Rome ICC Statute, 37 ILM 999 (1998) <<http://www.un.org/icc>>. Cf. support expressed for this ICJ Presidents' suggestion by UN Legal Counsel Hans Corell, "The Feasibility of Implementing The Hague/St. Petersburg Centennial Recommendations under the United Nations System", in *Peaceful Resolution of Major International Disputes* 31-48 (UN 1999); Statement of President Jacques Chirac of France, *ICJ Communiqué* No.2000/7, 29 February 2000 <<http://www.icj-cij.org>>; Kwiatkowska, "Peaceful Settlement" (BWP 2002), *supra* note 12, at 53-54, 74-75 <<http://www.bwp-bookcenter.com>>; Shabtai Rosenne, "The Perplexities of Modern International Law - General Course", 291 *Collected Courses* 132-133 (2001); R. Etinski, "Appearance of Specialized Tribunals and the Question of Balanced Application of International Law", 1 *Facta Universitatis* 389, 391 (2001) <<http://facta.junis.ni.ac.yu/facta/lap/lap2000/lap2000-04.pdf>>; Kwiatkowska, *Decisions of the World Court*, *supra* note 16, Preface at xx; B.H. Oxman, "Comments", in *The Legalization of International Relations, Proceedings of the 96th ASIL Annual Meeting, Washington D.C., 13-16 March 2002* 375-376 (2002), recalling that suggestion to authorize ITLOS to request Advisory Opinions from the ICJ was originally made by the United States during UNCLOS III, J.R. Stevenson and B.H. Oxman, "The Preparations for the Law of the Sea Conference", 68 *AJIL* 1, 32 (1974).
- 19 UN Doc. A/57/PV.37 (2002), *supra* note 18, at 5. On the subsequently instituted *Russia v. Australia Volga (Prompt Release)* case, see *infra* note 30.

The Court welcomes the creativity displayed by the Conference in making provision for a special arbitral tribunal and in establishing the International Tribunal for the Law of the Sea, which is also represented here today, but it also is happy to note the Conference's caution in maintaining tried and tested procedures: *ad hoc* arbitration²⁰ and the International Court of Justice.²¹

The inaugural *Saint Vincent and the Grenadines v. Guinea M/V Saiga* (Prompt Release) Judgment, delivered by the ITLOS on 4 December 1997 (Case No.1), was followed by the *M/V Saiga* (Jurisdiction and Merits) Judgment (Case No.2) of 1 July 1999, which included the phase of incidental proceedings on provisional measures decided by an Order of 11 March 1998.²² The next triennium was inaugurated by another *Panama v. France Camouco* (Prompt Release) Judgment rendered by the ITLOS on 7 February 2000 (Case No.5). The two preceding cases were those between Australia and New Zealand against Japan, in which the ITLOS delivered on 27 August 1999 its *Southern Bluefin Tuna* (Provisional Measures) Order (Cases Nos 3/4), in

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- 20 The UNCLOS Annex VII arbitration was - in combination with innovative Article 290(5) authorizing the ITLOS (or any court or tribunal agreed upon by the parties) to prescribe provisional measures pending the establishment of such an Arbitral Tribunal - resorted to three times, i.e., in the *Southern Bluefin Tuna*, the *Mox Plant* and *Malaysia v. Singapore* cases, *infra* notes 24, 33 and 66.
- 21 Message from the International Court of Justice on the Occasion of the 20th Anniversary of the Opening for Signature of the UNCLOS, paras 3-4 and 7-8, *ICJ Press Release* No.2002/38, 10 December 2002, summarized in UN Doc. A/57/PV.70, at 18-19, 9 December 2002, and UNGA Resolutions 57/33 and 57/141 (paras 10-13, paying "tribute to the important and longstanding role of the ICJ with regard to the peaceful settlement of disputes") on Oceans and the Law of the Sea of 19 November and 12 December 2002, both to be reproduced in this *Yearbook's* Vol.18 - 2002 (2004); *infra* notes 85-90. See also Statement of ITLOS President Dolliver Nelson on the Occasion of the 20th UNCLOS Anniversary, 9 December 2002 <<http://www.itlos.org>>, summarized in A/57/PV.70, *supra*, at 19-21.
- 22 See 37 ILM 360 (1998) and 38 ILM 1323 (1999); <<http://www.itlos.org>>. Cf. Sir Elihu Lauterpacht, "The First Decision of the ITLOS: The *M/V Saiga*", in G. Hafner *et al.* eds, *Liber Amicorum Professor Seidl-Hohenveldern* 395-418 (1998); B.H. Oxman, "The *M/V Saiga*, ITLOS Case No.1", 92 AJIL 278-282 (1998); E.D. Brown, "The *M/V 'Saiga'* Case on Prompt Release of Detained Vessels: The First Judgment of the ITLOS", 22 *Marine Policy* 307-326 (1998); Rosenne, "1996-97 Survey", "1998 Survey" and "1999 Survey", *supra* note 16; B. Kwiatkowska, "Inauguration of the ITLOS Jurisprudence: The *Saint Vincent and the Grenadines v. Guinea M/V Saiga* Cases", 30 ODIL 43-77 (1999); B.H. Oxman and V. Bantz, "The *M/V Saiga*, ITLOS Case No.2", 94 AJIL 140-150 (2000).