Seminar on the Importance of Key Trade and Transport Conventions
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The United Nations Convention on the Law of the Sea and Landlocked States

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UNITED NATIONS

• “A constitution for the oceans”
• General Assembly annually reaffirms that UNCLOS provides the legal framework within which all activities in the oceans and seas must be carried out
• Complemented by two Implementing Agreements
Landlocked and transit developing countries

Parties to UNCLOS

- LLDCs Parties: 19
- TDCs Parties: 29
- Other States Parties: 119
Overview of relevant provisions of UNCLOS

• Preamble
• Right of access of landlocked States to and from the sea and freedom of transit (Part X)
• Functional rights and duties in the various maritime zones (Parts II to XV and Annexes)
The Preamble of UNCLOS recognizes the necessity to take into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or landlocked.
Definitions in UNCLOS

• Landlocked State - A State which has no sea-coast (art. 124)

• Transit State - A State with or without a sea-coast, situated between a landlocked State and the sea, through whose territory traffic in transit passes (art. 124)
Right of access – Freedom of transit (Part X)

- **Landlocked States:**
  - Right of access to and from the sea
  - Freedom of transit through transit States: transit terms and modalities to be agreed upon
  - Ships shall enjoy treatment equal to that accorded to other foreign ships in maritime ports

- **Transit States:**
  - prohibition to impose financial burdens on traffic in transit
  - obligation to avoid/eliminate delays or other technical difficulties to traffic in transit
Navigation

• Every State, whether coastal or landlocked, has the right to sail ships flying its flag on the high seas (art. 90, which is also applicable in the exclusive economic zone by virtue of art. 58)

• Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag (art. 91)

• Ships have the nationality of the State whose flag they are entitled to fly (art. 91)

• Flag State obligations (arts. 94, 211, etc.)
Navigation (cont’d)

- Innocent passage (Part II, section 3):
  - Internal waters enclosed by straight baselines
  - Territorial sea
  - Archipelagic waters (also Part IV)
- Transit passage in straits used for international navigation (Part III)
- Archipelagic sea-lanes passage (Part IV)
- Freedom of navigation (Part VII)
  - High seas
  - Exclusive economic zone (EEZ) (also Part V)
Marine resources

• Living resources in the EEZ (art. 69):
  – **What**: part of the surplus
  – **Where**: EEZ of coastal States of same region/subregion
  – **How**: terms/conditions established by States concerned (bilateral/regional/subregional agreements)

• Living resources of the high seas:
  – Freedom of fishing (art. 87) subject to the duty to conserve and manage the living resources (arts. 116-120)
Marine resources (cont’d)

• Non-living resources on the continental shelf beyond 200M (Part VI, in particular art. 82):
  – **What**: share of the payments and contributions made by coastal States to the International Seabed Authority (ISA) arising from the exploitation of non-living resources on the continental shelf beyond 200M
  – **Where**: continental shelf, but only beyond 200M
  – **How**: terms/conditions still to be established by ISA
Marine resources (cont’d)

- Mineral resources in the Area (Part XI):
  
  **What:** all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including polymetallic nodules (art. 133)
  
  **Where:** seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (art. 1)
  
  **How:** The Area and its resources are the common heritage of mankind and are administered by ISA (art. 136)
  
  - Equitable sharing of financial and other economic benefits derived from activities in the Area to be ensured by ISA
  
  - States parties can, if authorized by ISA, explore and exploit mineral resources as contractors
Marine scientific research

- Equal right to conduct marine scientific research (MSR) (Part XIII)
  - **EEZ/continental shelf**: right to be notified of MSR projects, and receive information; and right to request participation (art. 254)
  - **High seas**: right to conduct MSR (art. 257)
  - **Area**: right to conduct MSR, subject to Part XI (art. 256) and possibility to participate in MSR programmes developed through ISA (art. 143)
Other uses

• High seas freedoms (Part VII)
  – Navigation and overflight
  – Laying of submarine cables and pipelines
  – Construction of artificial islands and other installations
  – Scientific research

• Transfer of marine technology to LLDCs (Part XIV)
Settlement of Disputes

Disputes to be settled by peaceful means (Part XV)

- Non-binding settlement, includes conciliation (nomination of conciliators)
- Binding settlement:
  - Right to choose procedure (article 287)
    - International Court of Justice
    - International Tribunal for the Law of the Sea (ITLOS)
    - Arbitration (nomination of arbitrators)
    - Special Arbitration (fisheries, MSR, navigation, environment)
  - Optional declarations (article 298)
- ITLOS - Provisional measures (art. 290)
- ITLOS - Prompt release of vessels and crew (art. 292)
- ITLOS – Advisory opinions (article 191, see also Case No. 21)
Bodies established under UNCLOS

• UNCLOS States Parties, including landlocked States, can:
  - participate in the work of the International Seabed Authority (ISA)
  - nominate candidates for and elect members of:
    ✓ the International Tribunal for the Law of the Sea (ITLOS)
    ✓ the Commission on the Limits on the Continental Shelf
  - resort to those bodies, as provided for in UNCLOS

• States Parties must pay assessed contributions to ISA and ITLOS
Intergovernmental processes dealing specifically with ocean issues at the UN

• Meeting of States Parties to UNCLOS

• General Assembly processes:
  ✓ Preparatory Committee established by resolution 69/292 “Development of an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
  ✓ UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea
  ✓ Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects
### New developments and recent additions

- First Global Integrated Marine Assessment (First World Ocean Assessment)

### Oceans and the Law of the Sea in the General Assembly

- United Nations Decennial Informal Consultative Process
- Reports of the Secretary-General
- General Assembly resolutions
- Other General Assembly documents
- Official Records of the General Assembly
- A Regular Process for Global Reporting on the Status of the State of the Marine Environment, including Vocational Areas
- Preparatory Committee established by General Assembly resolution 69/292, Development of an International Regime to Prevent, Protect and remedy the Environmental Damage resulting from the Activities in the Area beyond the Limits of National Jurisdiction
- Settlement of Disputes

#### Bodies Established by the Convention

- Commission on the Limits of the Continental Shelf
- International Seabed Authority
- International Tribunal for the Law of the Sea
- ITLOS Trust Fund
- List of Arbitrators and Conciliators

#### Settlement of Disputes

- Choice of procedure under article 297 of the Convention
- International Court of Justice
- International Tribunal for the Law of the Sea
- Lists of Arbitrators and Conciliators

### Themes

- Marine biological diversity beyond areas of national jurisdiction
- Ocean noise: peer reviewed scientific studies
- Ecosystem approaches
- Ocean and climate change
- Piracy

### Calendar of Meetings

- 8 June - World Oceans Day
- H.E. Amersinghe Fellowship
- TRAIN SEA-COAST
- United Nations - The Nippon Foundation of Japan Fellowship Programme
- United Nations - The Nippon Foundation of Japan Strategic Fellowship Program
- Technical Assistance
- United Nations publications prepared by the Division
- Study - Available assistance to and measures that may be taken by developing States

### United Nations Convention on the Law of the Sea

- Status of the Convention and the Agreement
- Meeting of States Parties to the Convention
- Status of the Convention and the Agreement
- Deposit of Instruments of Denunciation under the Convention
- Suspension of non-convening passage
- UNCLOS and sustainable development