

Sea" on the provisional agenda of its 53rd session. At its 53rd Session the General Assembly *inter alia* considered the Report of the Secretary General on the item.³ After consideration of the item at its 53rd Session the General Assembly, among other things, reaffirmed the universal character of the United Nations Convention on the Law of the Sea 1982 and called upon States, that had not already done so, to become parties to the Convention.

In his report to the General Assembly at its 53rd Session the Secretary General had pointed out that at least 14 of the 46 declarations made upon ratification or accession do not seem to be in conformity with the provisions of Article 310 and are neither supported by any other provision of the Convention nor by any rule of general international law. One half of these declarations (7) have been made after the entry into force of the Convention. The General Assembly has, at its 53rd session, called upon States to ensure that any declarations or statements that they had made or make when signing, ratifying or acceding are in conformity with the Convention and to withdraw any of their declarations or statements that are not in conformity with the Convention.⁴ It also reaffirmed its decision to continue to undertake an annual consideration and review and evaluation of the developments pertaining to the implementation of the Convention and other developments relating to the Law of the Sea and Ocean Affairs.

The General Assembly at its 53rd session took note of the work of the Independent World Commission on the Oceans, and of its report "The Ocean... Our Future", and welcomed its issuance in the context of the International Year of the Ocean. It reaffirmed its decision to undertake an annual review and evaluation of the implementation of the Convention and other developments relating to ocean affairs and the law of the sea

³ A/53/456.

⁴ See operative paragraph 3 of General Assembly Resolution on the Oceans and the Law of the Sea. 53/32 of 6 January 1999. For the full text of the resolution see ANNEX.

and to consider the results of the review by the Commission on Sustainable Development of the sectoral theme of "Oceans and seas" in 1999 under the agenda item "Oceans and the law of the sea".

The provisions of the Convention have, since its adoption, been developed in two implementing agreements viz.

(a) The Agreement Relating to the Implementation of Part XI of the Convention adopted in 1994; and

(b) The Agreement for the Implementation of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted in 1995.

(a) The Agreement Relating to the Implementation of Part XI of the Convention, 1994

The Agreement Relating to the Implementation of Part XI of the Convention was adopted by General Assembly Resolution 48/263 on July 28, 1994 (hereinafter called the 1994 Agreement) and entered into force on 28 July 1996. It has since been ratified or acceded to by 90 States and one intergovernmental organization.⁵ It may be stated that 12

⁵ As of April 1, 1998 the 88 States that had consented to be bound by the Agreement are Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belize, Benin, Bolivia, Brunei Darussalam, Bulgaria, Chile, China, Cook Islands, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Equatorial Guinea, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Grenada, Guatemala, Guinea, Haiti, Iceland, India, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Macedonia (the former Yugoslav Republic of), Malaysia, Malta, Mauritania, Mauritius, Micronesia (Federated States of), Monaco, Mongolia, Mozambique, Myanmar, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Philippines, Portugal, Republic of Korea, Romania, Russian Federation, Samoa, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sweden, Togo, Tonga,

States have continued to be members of the International Seabed Authority on a provisional basis. The provisional membership of all these States was to have terminated on 16th November 1998.⁶

The 1994 Agreement is to be interpreted and applied together with the Convention as a single instrument and in the event of any inconsistency between the provisions of Part XI of the Convention and the 1994 Agreement the provisions of the latter are to prevail. Any ratification or accession to the Convention, after the adoption of the Agreement, represents also consent to be bound by the Agreement, and no State or entity can establish its consent to be bound by the Agreement unless it has previously established or establishes, at the same time, its consent to be bound by that Convention. States that were parties to the Convention prior to the adoption of the Agreement are now required to establish their consent to be bound by the Agreement, separately, by depositing an instrument of ratification or accession.⁷

The Secretary General of the United Nations, Mr. Kofi Annan, has said that "the entry into force of the United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the Convention has led the United Nations to redesign its programme of information, advice and assistance in the field."⁸ By its resolution 53/32 the

Trinidad and Tobago, Uganda, United Kingdom, Yugoslavia, Zambia, Zimbabwe and the European Union.

⁶ The States are *Bangladesh*, Belarus, Belgium, Canada, *Nepal*, Poland, *Qatar*, Switzerland, Ukraine, *United Arab Emirates*, and the United States of America.

⁷ For a detailed account of the 1994 Agreement see AALCC/XXXIV/Doha/95/5. Reprinted in the *Asian African Legal Consultative Committee Report and Selected Documents of the Thirty Fourth Session, Doha, Qatar*.

⁸ Kofi A. Annan: *Renewal and Transition: Annual Report on the Work of the Organization 1997* (United Nations, New York 1997) para 146 page 59.

General Assembly called upon States that had not already done so to become parties to the Agreement.

(b) **The Agreement for the Implementation of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995.**

The Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995 (hereinafter referred to as the 1995 Fish Stock Agreement) has since its adoption been signed by 58 States including 11 Member States of the AALCC and one international organization⁹ and is to enter into force 30 days after it has been ratified by 30 signatory States. It had until September 1998 been ratified by only 18 States¹⁰ including 4 Member States of the AALCC.

⁹ The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea, 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Species was adopted on August 4, 1995 by the United Nations Conference on Straddling Fish Stocks and Highly Migratory fish Stocks. As of April 1, 1998 the 58 States signatory to the UN Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks are: Argentina, Australia, Austria, *Bangladesh*, Belgium, Belize, Brazil, Burkina Faso, Canada, *China*, Cote d'Ivoire, Denmark, *Egypt*, Fiji, Finland, France, Gabon, Germany, Greece, Guinea Bissau, Iceland, *Indonesia*, Ireland, Israel, Italy, Jamaica, *Japan*, Luxembourg, Maldives, Marshall Islands, Mauritania, Micronesia (Federated States of): Morocco, Namibia, Netherlands, New Zealand, Niue, Norway, *Pakistan* Papua New Guinea, *Philippines* Portugal, *Republic of Korea*. Russian Federation, Saint Lucia, Samoa, *Senegal*, Seychelles, Spain, *Sri Lanka* Sweden. Tonga. *Uganda*, Ukraine, United Kingdom. United States of America, Uruguay and Vanuatu. In addition it has been signed by the European Community. See *Law of the Sea Bulletin No. 36*.

¹⁰ Bahamas, Fiji, Iceland, *Iran*, *Mauritius*, Micronesia, Namibia, Nauru, Norway, Russian Federation Saint Lucia, Samoa, *Senegal*, Seychelles, Solomon Islands, *Sri Lanka*. Tonga and the United States of America.

Although the 1995 Fish Stock Agreement stipulates for the possibility of its provisional application and many States were expected to apply the 1995 Fish Stock Agreement provisionally in tune with Resolution I on the "Early and Effective Implementation of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea, 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks as adopted by the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks", no party to that Agreement is known to have notified its wish to do so.

The 1995 Fish Stock Agreement is a separate instrument and greatly elaborates upon the general provisions of the Convention on the Law of the Sea, relating to the conservation and management of straddling fish stocks and highly migratory species. It is to be interpreted and applied in a manner consistent with that Convention. There is no link or nexus between this Agreement and the Convention in establishing a consent to be bound by these two instruments.

The General Assembly in its Resolution 52/26 had *inter alia*, emphasized the importance of the early entry into force¹¹ and effective implementation of the 1995 Agreement and called upon all States and other entities referred to in article 1 paragraph 2(b) of the Agreement to sign and ratify or accede to it and to consider applying it provisionally. It also decided to include under the item "Oceans and Law of the Sea" a sub-item entitled "Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory

¹¹ See *Oceans and The Law Of The Sea: 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*. A/52/555.

Fish Stocks".¹² The *Agenda For Development*, adopted by the General Assembly had encouraged countries "to become parties to the Agreement for the Implementation of the Provisions of The United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and to implement this Agreement".¹³

Meeting of States Parties to the Convention

Since the coming into force of the Law of the Sea Convention a number of Meetings of States Parties to the Convention have been held. Paragraph 4 of General Assembly Resolution 52/28 had requested the Secretary General to convene a Meeting of State Parties to the Convention in May 1998. The eighth Meeting of the State Parties convened by the Secretary General in May 1998 dealt primarily with the budget of the International Tribunal for the Law of the Sea (ITLOS) for 1999, the rules of procedure of the Meeting of State Parties and the role of the Meeting of the State Parties in reviewing ocean and law of the sea issues. The Secretariat of the AALCC was not represented at these and other meetings of the Law of the Sea Institutions. At its 53rd Session the General Assembly *inter alia* requested the Secretary-General to convene the Meeting of States Parties to the Convention in New York from 19 to 28 May 1999, during which, on 24 May, the election of seven judges of the International Tribunal for the Law of the Sea ("the Tribunal") took place.

¹² See *Law of the Sea: 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 Migration Fish Stocks*. A/51/L.28.

¹³ *Agenda for Development*, (United Nations, New York, 1997) para 151 at pp.58-59.

The International Seabed Authority (Isba)

The International Seabed Authority (hereinafter referred to as the Authority or ISBA) established by the Convention, with its seat at Kingston, Jamaica, is an autonomous international organization through which the States Parties to the Convention organize and control activities in the Area. It comprises all the States Parties to the Convention as well as those States which have agreed to the provisional application of the 1994 Agreement on the Law of the Sea. As of September 1998 there were 138 members of the Authority, including the 11 members on provisional basis. It may be stated that Ambassadors of 13 States Parties including 2 member States of the AALCC have already presented their credentials to the Secretary General of the Authority as Permanent Representatives to the Authority.¹⁴

At its third resumed session in August 1997 the ISBA granted observer status to Greenpeace International, a non-governmental organization. Thereafter, in March 1998 in the course of its fourth session the Authority accorded observer status to the Permanent Commission of the South Pacific, a sub-regional organization.¹⁵

The General Assembly at its 51st Session had by its resolution 51/6 invited "the Seabed Authority to participate in the deliberations of the General Assembly in the capacity of observer. At its 52nd Session the General Assembly approved the Agreement Concerning the Relationship between the United Nations and the International Seabed Authority of

¹⁴ The States that have hitherto established Permanent Missions to the Authority are Argentina, Brazil, Chile, China, Costa Rica, Cuba, Fiji, Germany, Haiti, Italy, Jamaica, Mexico, the Netherlands, and the Republic of Korea.

¹⁵ See the *Report of the Secretary-General of the International Seabed Authority under Article 166, paragraph 4, of the United Nations Convention on the Law of the Sea*, Doc. No. ISBA/4/A/11 of 20th July 1998.

March 14, 1997.¹⁶ The Agreement defines the terms of relationship of the United Nations and the Authority.¹⁷ It stipulates that the United Nations recognizes that the Authority is the organization for organizing and controlling activities in the seabed and ocean floor and subsoil thereof in the Area and that the Authority shall function as an autonomous international organization. The Authority on its part is to promote peace and international co-operation and the provisions of Article 4 of the Agreement requires the Authority to provide the Security Council with Information and assistance needed to maintain or restore international peace and security. Article 5 stipulates that the "Authority agrees, subject to the provisions of this Agreement relating to the safeguarding of confidential material, to provide any information that may be requested by the International Court of Justice in accordance with the Statute of the court". At its 53rd Session the General Assembly noted with satisfaction the adoption of the Agreement concerning the Relationship between the United Nations and the Authority.

At its fifth Session, scheduled to be held in Jamaica in 1999, the Authority will, among other things, consider the draft Agreement concerning the relationship between the Authority and the International Tribunal for the Law of the Sea; the draft Agreement between the Authority and the Government of Jamaica and the draft financial regulations.

(i) Council of the International Sea-bed Authority

The Council of the International Seabed Authority (hereinafter called the Council) consists of 36 members representing five groups of States reflecting 4 main elements

¹⁶ See General Assembly Resolution 52/27 of 26 November 1997.

¹⁷ See Article 1 entitled "Purpose of the Agreement" of the Agreement Concerning the Relationship between the United Nations and the International Seabed Authority. For the text of the Agreement see General Assembly Resolution 52/27 of 26 November 1997. The text of the Agreement has been reproduced in 36 *I.L.M.* 1492 (1997).

viz. (i) States with a special interest in deep seabed mining such as the largest consumers or largest producers of the categories of minerals to be mined from the seabed (ii) States that have pioneered large investments and activity in the international seabed area; (iii) developing States with special interests such as land locked or populous States; and (iv) an equitable geographical representation as well as a balance between developed and developing States.

The Council of the Authority was first elected in March 1996. The 36 members of the Council for the year 1999, including 13 member States of the AALCC, are Argentina, Austria, Belgium, Brazil, Cameroon, Canada, Chile, *China*, Costa Rica, *Egypt*, Fiji, France, Gabon, Germany, *Indonesia*, Jamaica, *Japan*, *Kenya*, Namibia, the Netherlands, *Nigeria*, *Oman*, *Pakistan*, Paraguay, *Philippines*, Poland, *Republic of Korea*, the Russian Federation, *Saudi Arabia*, *Senegal*, *Sudan*, Trinidad and Tobago, Tunisia, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

(ii) Legal and Technical Commission

Paragraph 1 (b) of Article 163 of the Convention on the Law of the Sea envisaged the establishment of a Legal and Technical Commission. The States Parties to the Convention have accordingly established a 22 member Legal and Technical Commission.¹⁸

(a) Draft Regulations on Prospecting Exploration of Polymetallic Nodules in the Area

The functions of the Legal and Technical Commission as enumerated in Article 165 of the Convention on the Law of the

¹⁸ Bahamas, Cameroon, *China*, Cote d'Ivoire, Costa Rica, Cuba, *Egypt*, Fiji, Finland, France, Germany, Gabon, *India*, Italy, *Japan*, Norway, Poland, *Republic of Korea*, Russian Federation, Ukraine and United States of America.

Sea inter alia include (i) making recommendations, upon the request of the council, with regard to the exercise of the Authority's functions; (ii) review formal plans of work for activities in the Area and to submit appropriate recommendations to the Council. The Legal and Technical Commission of the ISBA took a step towards the fulfillment of its functions by preparing a set of Draft Regulations on Prospecting and Exploration of Polymetallic Nodules in the Area (hereinafter referred to as the Draft Regulations). The Draft Regulations prepared by the Legal and Technical Commission and submitted to the Council for adoption, in March 1998, comprises 32 regulations arranged in seven (VII) Parts and 4 Annexes. The text of the Draft Regulations deals only with prospecting and exploration for Polymetallic nodules and consists of regulations governing applications for the approval of plans of work for exploration together with a standard contract and standard clauses of contracts.

Part I of the Draft Regulations entitled "Introduction" comprises of Regulation 1 on the use of terms and its first paragraph sets out no less than 20 definitions.¹⁹ The definitions included in this Part of the Draft Regulations include (i) Activities in the Area; (ii) Agreement; (iii) Area; (iv) Authority; (v) Coordinates; (vi) Contractor; (vii) Convention; (viii) Enterprise; (ix) Entity; (x) Exploration; (xi) Marine Environment; (xii) Poly-metallic Nodules; (xiii) Prospecting; (xiv) Provisional Member; (xv) Registered Pioneer Investor; (xvi) Reserved Area; (xvii) Resources; (xviii) Secretary-General; (xix) Serious Harm to the marine Environment; and (xx) State.

Part II of the Draft Regulations on the "Notification of Prospecting" comprises the texts of Regulations 2-5, addressed to Prospecting (Regulation 2) ; Notification of Prospecting (Regulation 3); Consideration of Notification (Regulation 4) and; Annual Report (Regulation 5) respectively.

¹⁹ See Regulation I in *The Draft Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area prepared by the Legal and Technical Commission* Doc. ISBA/3LTC/WP.1/Rev.3.