

UNCLOS**Twelfth Meeting of States Parties**

The States Parties to the United Nations Convention on the Law of the Sea (UNCLOS)¹ held their Twelfth Meeting from 16–26 April 2002 at UN Headquarters in New York. Among the topics on the agenda were the following:

- The election of new members to the International Tribunal for the Law of the Sea² as well as to the Commission on the Limits of the Continental Shelf.³
- The approval of the Tribunal's budget and the continued consideration of the Tribunal's draft financial regulations.

The Meeting was opened by Christian Maquieria (Chile), President of the Eleventh Meeting. He called for a moment of silence to commemorate the death of Judge Edward A. Laing, of the International Tribunal for the Law of the Sea, and Elisabeth Mann-Borgese, President of the International Oceanographic Institute of Canada, who died earlier this year (see also page 173).

Don MacKay (New Zealand) who was elected as President, welcomed three new members – Bangladesh, Madagascar and Hungary. He emphasised in his opening statement that all States Parties to the Convention must work

to ensure the widest possible acceptance of its principles. He noted that delegates had a full agenda before them, and said that he considered their most important tasks to be the election of seven members to the International Tribunal and 21 members to the Commission on the Limits of the Continental Shelf.

He stated that the just-concluded Third Meeting of the United Nations Consultative Process on Ocean Affairs (8–15 April) had been very successful, and reminded delegations that the General Assembly would review the consultative process later this year.

Matters related to Convention Article 319

Article 319 of UNCLOS spells out responsibilities entrusted to the Secretary-General under the Convention, including an obligation to report to all States Parties, the International Seabed Authority and competent international organisations on issues of a general policy nature that have arisen with respect to the Convention.

The perceived lack of a forum for discussion and coordination of such issues, under the framework of the Convention, had been identified by the Secretary-General as one factor that has prevented the emergence of more effi-

cient and results-oriented ocean policies. As a result, the United Nations Consultative Process on Ocean Affairs was established by the General Assembly in 1999.⁴

The Third Meeting of that consultative process focused on the protection of the marine environment, regional capacity building and integrated ocean management. It considered the Secretary-General's report on oceans and the law of the sea (see document A/57/57).

To incorporate such issues in the meeting of States Parties, Chile had proposed, at the Tenth Meeting, that a new agenda item be included at future meetings. It would be entitled either "Implementation of the United Nations Convention on the Law of the Sea" or "Issues of a general nature related to the United Nations Convention on the Law of the Sea". Under the proposal, the Secretary-General would submit his annual report on relevant issues of a general policy nature to the Meeting of States Parties itself. In addition, the proposal provided that the meeting should be informed of the work of the Commission on the Limits of the Continental Shelf and the International Seabed Authority, without prejudice to their sphere of autonomy and the necessary confidentiality.

When delegations took up matters related to Article 319, the discussion centred on the capacity of the States Parties to consider the full range of substantive issues relating to the implementation of the Convention.

The debate was characterised by two distinct points of view: (1) those delegations who felt the Meeting was the only competent body for taking decisions on issues relating to the implementation of the Convention; and (2) those delegations who felt that an expansion of the mandate of the meeting beyond budgetary and administrative matters would go beyond the scope of the Convention.

When it became clear that no decision would be reached during the present discussions, many delegations called for the relevant item to be retained for discussion at a later date. They feared that the deletion of the item from the Meeting's agenda would preclude the States Parties from addressing substantive matters related to the Convention in the future.

In summarising the debate, Don MacKay said the interventions had covered a range of views consistent with the discussions that had taken place last year. Objectives of delegations would be met by ensuring that there was a full reflection of the views expressed during the present discussions in the final report of the current session. He would return to the item later to allow other delegations to address it, but he felt that consensus was unlikely on the substance of the issue during the current session. As for the item itself, he felt that many delegations shared the view that it would be unfortunate to delete matters related to Article 319 from the Meeting's future sessions. Therefore, he proposed that the item in its general terms be retained on the agenda for next year.

Matters Related to Article 4, Annex II of the Convention

Under this Article, a coastal State intending to establish the outer limits to its continental shelf beyond 200 nautical miles is obliged to submit particulars of such limits

to the Commission on the Limits of the Continental Shelf. These must be accompanied by supporting scientific and technical data as soon as possible, but in any case within 10 years of the entry into force of the Convention for that State.

At their Eleventh Meeting, the States Parties noted that many countries would be unable to make a submission within the 10-year time frame stipulated in the Convention for reasons of capacity, financial and technical resources; and in addition the lack of settlement of key jurisdictional boundaries and the complexity of the technical issues involved.

The Meeting generally supported a step-by-step approach to the issues raised with respect to Article 4 of Annex II of the Convention. The first step was to address the issue of selecting the date for calculating the 10-year time limit, which could be done at the present Meeting of States Parties. The second step was to deal with the issue of a possible extension of the 10-year time limit, which required a sound legal solution on the substance of the matter and on the procedures to be followed.

Many delegations agreed that the starting date should be 14 May 1999, the date of adoption of the Scientific and Technical Guidelines, which also marked the completion of the three basic documents of the Commission; the other two being its Rules of Procedure and its *modus operandi*. They pointed out that a State which for economic, financial or technical reasons was able to make only a partial submission within the 10-year time period should be viewed as having complied with the requirements of Article 4 of Annex II to the Convention.

Commission on the Limits of the Continental Shelf

Yuri Kazmin, Chairman of the Commission on the Limits of the Continental Shelf, reported on the Commission's work. He said he hoped that the Commission's interaction with States Parties would be enhanced once it had been given observer status. Since the last Meeting, the Commission had held two sessions.

The ninth session considered a number of issues, including the decision of the Eleventh Meeting pertaining to Article 4 of Annex II of the Convention on the obligation of a coastal State intending to establish the outer limits of its continental shelf beyond 200 nautical miles. The Commission took note of the Eleventh Meeting on the extension of the 10-year period.

At the tenth session, the Commission discussed the submission by the Russian Federation regarding the outer limits of its continental shelf beyond 200 nautical miles. The Secretary-General had subsequently published the main provisions of that submission, including scientific data and other information. The Commission had been unable to establish a quorum, and had expressed concern about the participation of members in its work. It had asked the secretariat to express that concern to member States.

The Chairman explained that when a quorum was reached, work had begun and the proposal of the Russian Federation was considered. Following a thorough presentation by the Russian Federation, it was decided that a

sub-commission of seven States would take up the matter. Given the complexity of the submission, it was further proposed that the sub-commission would continue its work through April, May and June of 2002 and convene a special session thereafter.

He said that the current make-up of the Commission would change with the elections due to take place during the current meeting of States Parties. Newly elected members would assume their duties on 15 June 2002. Bearing this in mind, the Commission had decided to complete its work within plenary sessions and devote the rest of its time to examining the submission by the Russian Federation.

Yuri Kazmin then presented the proposal to grant observer status to the Commission. During the ensuing discussion, several representatives supported the proposal. The President of the Meeting pointed out that the Meeting's Rules of Procedure would have to be amended to specify the formal observer status of the Commission. He would turn the matter over to the secretariat so that the proper documentation could be formulated. When that was complete, he would open the matter for a final decision by the States Parties.

In responding to the report, the delegate from Senegal said his delegation was concerned that the Commission had not yet been granted observer status in the work of the States Parties. Senegal was also concerned at the lack of participation of Commission members who had been elected. Since a new Commission would shortly be elected, he appealed to the secretariat to exert every effort to address those issues. He also appealed to the International Tribunal and the representatives of the host country to finalise as soon as possible the protocol on privileges and immunities.

International Tribunal for the Law of the Sea

In his statement, the President of the International Tribunal, Judge P. Chandrasekhara Rao, noted that the Tribunal had dealt with three cases submitted to it in 2001. It delivered judgment on the "Grand Prince" case (*Belize v. France*). The "Chaisiri Reefer 2" case (*Panama v. Yemen*) was removed from the list of cases following an agreement between the parties. The Tribunal had also delivered its order in the "MOX Plant" case (*Ireland v. The United Kingdom*), concerning environmental issues.

He noted that the Tribunal had handled 10 cases over the past five years, but added that States were not making full use of it. The Tribunal would only be able to live up to community expectations when litigants, especially States, made full use of it. It was hoped that an increasing number of States would also make declarations under Article 287 of the Convention, choosing the Tribunal as their preferred means for settling disputes.

Also before the States Parties were the draft financial

regulations of the Tribunal which contained a comparative table outlining the proposed regulations, as well as the relevant regulations of the United Nations and the International Seabed Authority.

The draft financial regulations of the Tribunal already take into account the discussion that took place in previous meetings and of the various proposals put forward on the issue. Among these proposals was the presentation of the draft budget of the Tribunal under a "split-currency system" (dollar and euro) and the contributions to be made by the international organisations that are parties to the Convention.

Tribunal President Chandrasekhara Rao presented the draft budget for the Tribunal in 2003 (document SPLOS/WP.16). He said that, despite a growing workload, increased staff and greater outlay for premises, the Tribunal's proposed budget for 2003

was in line with the principle of zero growth. It amounted to a total of US\$ 7,798,300 or \$9,200 less than the approved appropriation of \$7,807,500 for 2002.

The proposed budget envisaged meetings of the Tribunal during a total of 10 weeks in 2003. This included six weeks to deal with cases, and four weeks for other purposes such as supervision of the work of the registry, adoption of budget proposals, adoption of the annual report to the Meeting of States Parties,

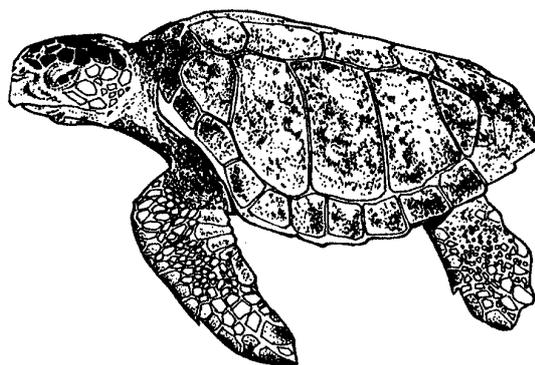
and consideration of organisational and procedural matters. The budget proposal included a total provision for the remuneration and allowances of judges, including their pensions and travel, to the amount of \$2,704,600. This figure included \$808,600 to meet expenditures related to cases.

International Seabed Authority

Satya Nandan, Secretary-General of the International Seabed Authority (ISA)⁵ gave an overview of its work. He said that the milestone for 2001 had been the Authority's completion of 15-year exploration contracts with six former registered pioneer investors. In March 2002, the ISA had also completed an exploration contract with the Government of India – the remaining registered pioneer investor.

As a result, the Authority was now in a contractual relationship with all seven pioneer investors registered under resolution II of the United Nations Convention on the Law of the Sea. The signature of those exploration contracts was important, because it gave practical and real effect to the single regime for the international seabed area established by the Convention in the 1994 Agreement on Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. As such, it represented a significant step forward for the international community.

A further significant Authority achievement in 2001 had been to issue recommendations for guiding contrac-



Courtesy: IUCN/NC

tors in assessing possible environmental effects of exploring for polymetallic nodules. The Authority's Council had also begun considering regulations for prospecting and exploring hydrothermal polymetallic sulphides (massive sea-floor sulphides) and cobalt-rich ferromanganese crusts.

Satya Nandan said that over the past five years, the Authority had successfully established itself as a functional international organisation. At the same time, however, the Authority's work had inevitably become more technical. It may now be necessary to take another look at the current pattern of meetings to see if these will meet the needs of the various organs and bodies that work with the Authority, and to determine whether this represents the most efficient mechanism for carrying out the technical work required.

He said that in the future, the Authority would focus on three main areas:

- carrying out its supervisory functions of exploration contracts;
- promoting and encouraging the conduct of marine scientific research in the area; and
- information gathering and developing databases of scientific and technical information to obtain a better understanding of the deep ocean environment.

The Authority's eighth session is scheduled to take place in Kingston, Jamaica from 5–16 August 2002, preceded by a workshop from 29 July to 2 August. During the eighth session, the Authority will elect half of its Council membership and consider and adopt its budget for 2003 and 2004.

Elections

On 19 April 2002, the Twelfth Meeting of States Parties to the United Nations Convention on the Law of the Sea elected seven Judges to the International Tribunal for

the Law of the Sea for a term of nine years, commencing from 1 October 2002. These are Hugo Caminos (Argentina), Tafsir Malick Ndiaye (Senegal), Tullio Treves (Italy), Guangjian Xu (China) and Alexander Yankov (Bulgaria). In addition, they elected Lennox Fitzroy Ballah (Trinidad and Tobago) to fill the vacancy that has arisen due to the death of Judge Edward Laing, for the remainder of his term (30 September 2002) and Jean-Pierre Cot (France).

On 23 April 2002, the Twelfth Meeting of States Parties to UNCLOS elected 21 members of the Commission on the Limits of the Continental shelf for a term of five years, commencing from 16 June 2002.

For details of those elected, see www.un.org/Depts/los/clcs_new/commission_2002elections.htm. (MJ)

Notes

1 Adopted on 10 December 1982. There are presently 138 Parties to the Convention, comprising 137 States and one entity, the European Union. The meetings of the States Parties are convened by the Secretary-General under Article 319 of the Convention.

2 The International Tribunal, established by the Convention, is one of the dispute-settlement forums to which parties might submit their disputes. It has exclusive jurisdiction in disputes concerning deep seabed mineral resources, provides advisory opinions when called upon to do so, and may be called upon to prescribe injunctive relief or provisional measures before a case or dispute is decided on. Most often, the Tribunal's injunctive and provisional measures have been directed at cases involving the detention of vessels and their crews. The Tribunal holds its meetings and hears cases at its seat in Hamburg, Germany. It is composed of 21 members (judges) elected to nine-year terms.

3 The Commission on the Limits of the Continental Shelf is one of the three major bodies established by the Convention. The Commission reviews and makes recommendations on applications of coastal States whose continental shelf boundaries extend beyond 200 nautical miles. The Commission and States are guided by a set of criteria outlined in Article 76 of UNCLOS. These guidelines establish the technical and scientific criteria that are to be met before approval of a continental shelf boundary beyond 200 nautical miles. Thus far, the Russian Federation is the only State to submit an application for extended continental shelf jurisdiction.

4 See *Environmental Policy & Law*, Vol. 30 (2000) No. 5 at page 224 for a report on the First Session.

5 See *Environmental Policy & Law*, Vol. 25 (1995) Nos 4-5 at page 157 for a report of the first meeting of the ISA and its responsibilities.