A Regional Approach Towards the Management of Marine Activities

Some Reflections on the African Perspective

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Introductory Remarks

Since Professor Wolfrum left my panel with a freedom of determining a specific content of the Regional Approach Towards the Management of Marine Activities, I was tempted to focus on the Southeast Asia in continuation of a paper Professor Wolfrum assigned me with during his major Kiel Symposium on the Law of the Sea at the Crossroads.[1] The Southeast Asian region is now in the spotlight due to peculiar *Portugal* v. *Australia East Timor* case,[2] as well as tension caused by unresolved Spratlies dispute and potentially unpredictable position of China claiming the entire South China Sea. China has also been opposing the return of the US naval forces to Cam Ranh Bay in Vietnam in the neighbouring Northeast Asian region, where in addition the situation has been aggravated by the Japan/Europe plutonium shipments and the North Korean nuclear reactor programme and the alleged production of plutonium for military use.

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[1] Rüdiger Wolfrum (ed.), Law of the Sea at the Crossroads: The Continuing Search for a Universally Accepted Régime, Proceedings of an Interdisciplinary Symposium of the Kiel Institute of International Law, July 10 to 14, 1990 (Berlin 1991).

[2] The *East Timor* Oral Pleadings commenced on 30 January 1995. See ICJ Communiqué No.94/12 of 31 October 1994.

Another interesting region, which appears to be leading in the follow-up actions to the Rio Earth Summit, is the Wider Mediterranean, including the Black Sea in its new post-Cold-War dimension, and the uniquely difficult Aegean Sea where a new tension over the possibility of a conflict has been raised again as recently as two months ago. Commencing with the celebrated 1927 *France* v. *Turkey The S.S. Lotus* Judgment,[3] the Wider Mediterranean was involved in as many as six cases in which the World Court made a significant contribution to the development of international law of the sea.

Equally strong temptation was provided by the region of the Permanent South Pacific Commission, especially in view of ongoing negotiations of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks and the unprecedented claim of Chile to *Mar Presencial* which, as Professor Wolfrum might have noticed, appears to reach up to the Chilean Antarctic Sector.[4] The Presential Sea has been echoed with such other recent reflections, all of them justified, of the concept of *l'obsession du territoire*[5] as the pressures in Norway to extend its fisheries limit to 250 miles in the Barents Sea Loop Hole (*Smutthullet*), and the 1994 Amendment of the Canadian Fisheries Protection Act providing for unilateral legislative measures and enforcement by Canada of (otherwise nonenforceable) regulations of the Northwest Atlantic Fisheries Organization (NAFO) beyond 200 miles. As was the case in the past with the 1970 Canadian Arctic Waters Pollution Prevention Act, the latest fisheries legislation was accompanied by a new reservation made by Canada on 10 May 1994 to its Optional Clause Declaration, with a view to exempting – as a temporary step in response to an emergency situation – from the Court's jurisdiction disputes arising out

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[3] PCIJ Series A, No.10.

[4] Giampiero Francalanci/Tullio Scovazzi, Lines in the Sea, No.69 – Presential Sea: Chile (including map), 148–149 (Dordrecht/Boston/London 1994). Cf. Francisco Orrego Vicuña, Toward an Effective Management of High Seas Fisheries and the Settlement of the Pending Issues of the Law of the Sea, 24 Ocean Development and International Law (ODIL) 81–92 (1993); Thomas A. Clingan, Mar Presencial (The Presential Sea): Déjà vu All Over Again? – A Response to Francisco Orrego Vicuña, id., 93–97.

[5] Cf. Daniel Bardonnet, Frontières terrestres et frontières maritimes, 36 Annuaire Français de Droit International (AFDI) 48–53 (1990), referring in n.118 at p.48 to G. Scelle, Obsession du territoire: Essai d'étude réaliste de droit international, Symbolae Verzijl 347–351 (La Haye 1958).

of, or concerning, Canadian fisheries measures and their enforcement in the NAFO Area.[6]

Notwithstanding all these temptations, I eventually made up my mind to focus my paper on perhaps presently the least advantaged but "the" Continent of the Future – Africa, and in particular West African region.

I. The Montego Bay Convention as an Indispensable Part of the Global System of Peace and Security of which the Charter of the United Nations is the Foundation

In view of the importance of African membership in the Group of 77 and the interrogative form of the subtitle of our Symposium – A Redistribution of Competences Between States and International Organizations in Relation to the Management of International Commons?, let us stress that, as one of the leading ocean negotiators, Ambassador Satya N. Nandan put it, the Montego Bay Convention has become "an indispensable part of the global system for peace and security of which the Charter of the United Nations is the foundation."[7] This emphasis of, as he is rightly called, "Mr Law of the Sea,"[8] was echoed in the statement made on behalf of the UN Secretary-General, Boutros Boutros-Ghali by the Legal Counsel Hans Corell pointing out that:

> As the international community strives for a new, more peaceful order in the relations among States, the United Nations Convention on the Law of the Sea stands as a momentum to international cooperation, mutual understanding, shared responsibility and an undertaking to resolve differences by resorting to the rule of law rather than to the use of force. (...) The United Nations Convention on the Law of the Sea is widely recognized as a significant component of the global system of peace and security of which the Charter of the United Nations is the foundation. Through its codification and progressive develop-

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[6] Cf. Separate Opinion of Judge Sir Robert Jennings to the *Nicaragua* v. *USA Military and Paramilitary Activities In and Against Nicaragua* (Jurisdiction and Admissibility) Judgment, ICJ Reports 1984, 392, 533 (Jennings), 551. For the 1970 Canadian Arctic Act and Optional Clause Declaration, see 9 ILM 543, 598 (1970); for the 1994 Fisheries Amendment Act, see 33 ILM 1383 (1994), and for this Act and the 1994 Optional Clause Declaration of Canada, see UN/DOALOS Law of the Sea Bulletin 19 (1994 No. 26).

[7] Statement of Ambassador Satya N. Nandan (Fiji), UNGA 48th Session, Doc. A/48/PV.99, 27 July 1994, 1–6, 2. See also his Statement at UNGA 49th Session, Doc. A/49/PV.77, 6 December 1994, 1–5.

[8] Statement of Tuerk (Austria), UNGA 48th Session, Doc. A/48/PV.100, 27 July 1994, 7–9, 8.

ment of the law of the sea, the framers of the Convention hoped that it would contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of the Charter.[9]

The adoption of the new Agreement, which together with the Convention's Part XI are to be interpreted and applied as a single instrument, is, as Dr Corell stated, "another milestone in our quest for a stable legal order for the oceans," and seeks to achieve a number of important goals, "chief among them being the safeguarding of the unified nature of the Convention by securing for it the universal support of the community of nations." A symbolic coincidence of adoption of the Montego Bay Convention on 10 December 1982, the International Day of Human Rights can be perceived as "an omen of the humanistic mission of the Convention as an epoch-making reward of international cooperation for the promotion of the peaceful uses of the seas and oceans for the well being of humanity."[10]

As a result, one cannot but agree with Judge Sir Robert Jennings that the entry into force of the Montego Bay Convention is undoubtedly a major event in the development of public international law as a whole and not just the law of the sea.[11] This is also reflected in emphasis of the Deputy Legal Adviser to the British Foreign Office, David Anderson that:

> My delegation looks forward to the situation whereby the great majority of States in the world are bound by the Convention on the Law of the Sea, which will then stand alongside other major achievements of this Organization in the codification and progressive development of international law, such as the Conventions on diplomatic relations and the law of treaties. A universally accepted law of the sea Convention will greatly strengthen international peace

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[9] Statement of the Legal Counsel Hans Corell (Sweden), on behalf of the UN Secretary-General, UNGA 48th Session, Doc. A/48/PV.101, 28 July 1994, 19–21, 20. Cf. Law of the Sea Forum, with participation of Bernard H. Oxman, Louis B. Sohn and Jonathan I. Charney, 88 American Journal of International Law (AJIL) 687–714 (1994).

[10] Alexander Yankov, The Entry Into Force of the United Nations Convention on the Law of the Sea: An Epoch-Making Event in Marine Affairs, in: Towards Sustainable Use of Oceans and Coastal Zones, Proceedings of the 2nd IOC International Conference on Oceanography, Lisbon, Portugal, 14–19 November 1994 (Paris, in press). Cf. Statement of Ambassador Shabtai Rosenne (Israel), UNCLOS III Off. Rec., Vol. XVII, 84 para.22 (New York 1984).

[11] Robert Y. Jennings, Introduction, in: Entry Into Force of the Law of the Sea Convention, Proceedings of the Annual Seminar of the Center for Oceans Law and Policy, University of Virgina, Held in Rhodes, Greece, 22–25 May 1994 (in press).

and security, the maintenance of which remains the fundamental task of this Organization.[12]

In his overall assessment of the Montego Bay Convention, Judge Sir Robert Jennings notes that the invention and development of quasi-legislative techniques is essential to the future well-being of international law in general. A renewed appreciation, in the context of the law of the sea, of "the existence of the problem of peaceful change of the law, as distinct from its codification, was, in an important measure," as Sir Robert continues his argument, "thanks to the insistency of developing States that this legislative problem should be faced anew at the Third United Nations Conference on the Law of the Sea; and thanks also to powerfully led and organized Group of 77. For this we must all be grateful. (...) We may be thankful that the Conference on the Law of the Sea produced and inspired a class of new international lawyers compelled to think about the political, economic, financial, environmental and social implications of the system of international law, in addition to their orthodox expertise in the introspective manipulation of legal concepts."[13] This unique and instructive law-making process continued through preparation of the 1994 Agreement which, in Sir Robert's opinion, is a remarkable testimony to those negotiators who, starting from very different points of view, have nevertheless shown how, given a genuine desire for agreement, even the most daunting legal obstacles may be overcome or at least circumvented.

The role of the Montego Bay Convention and the new Agreement as a part of the Global System of Peace and Security determines now our task which has been urged by Professor Elisabeth Mann Borgese, namely that the implementation of the Convention, together with that of the UNCED Agenda 21, the Agenda for Peace, the Agenda for Development, and the restructuring of the United Nations, must be creative,

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[12] Statement of Deputy Legal Adviser David Anderson (UK), UNGA 48th Session, Doc. A/48/PV.100, 27 July 1994, 12–14, 13.

[13] Jennings, *supra* note 11; id., The Discipline of International Law (Lecture in Tribute to Lord Arnold McNair), in: Report of the 57th Conference of the International Law Association (ILA), Madrid, 30 August–4 September 1976, 622–632 (London 1978); Robert Y. Jennings, Gerald Gray Fitzmaurice, 55 British Yearbook of International Law 1, 28–29 (1984); Robert Y. Jennings, Universal International Law in a Multicultural World, in: M. Bos/I. Brownlie (eds.), Liber Amicorum for The Rt. Hon. Lord Wilberforce 39, 49–50 (Oxford 1987); Robert Y. Jennings, An International Lawyer Takes Stock, 39 International and Comparative Law Quarterly 513, 518–519 (1990); id., Treaties, in: M. Bedjaoui (ed.), International Law: Achievement and Prospects 135, 148 (Paris 1991).

must be inspired by a vision of the 21st century.[14] This is a formidable task necessitating fundamental transformation of the North-South interdependence, which presently does, and is likely to continue for at least a generation, reflect the relationship adequately apprehended by the former President of Algeria, Hoauri Boumedien as that between a Horse-Group of 77 and a Rider-Group of 7.

A major step towards healing this inequitable interdependence, as recently included in a broader concept of interconnectedness, and towards preventing transformation of the new era after the Cold War into one of Economic Conflict and/or Cold Peace, would be a reversal of paradoxical effect of the end of the Cold War which is apparent in pushing issues of development to the back burner of international discourse. Such reversal with a view to revitalizing development of African and other Third World states could, as the former Chairman of the PrepCom ISA/ITLOS and Prime Minister of Tanzania, Dr Joseph Warioba stresses, be achieved through restoring, in accordance with the UN Charter, the pre-eminence of the United Nations in the field of social and economic development.[15]

To this end, the Bretton Woods institutions (the IBRD, IMF and the GATT/WTO) which are under strong control of the Group of 7 and not the United Nations, should be reintegrated under the ECOSOC and the United Nations system. Alternatively, the ECOSOC could be abolished and its mandate merged in the Security Council, which would be deprived of Permanent Membership (instead of its proposed extension to Germany or European Union and Japan) and of which one sub-organ would deal with development issues, including the Bretton Woods institutions. The mandate of the General Assembly would also, in Warioba's view, be revised to enable it to really become a supreme organ, whereas the Security Council would become a truly executive organ of the United Nations. The measures envisaged by Dr Warioba represent a conceptualization of the proposals made with respect to the restructuring, revitalizing and democratizing the United Nations (including the Security Council and General Assembly) by the 1992 Jakarta

[14] Elisabeth Mann Borgese, Training Education in Ocean Management for the 21st Century: Regional and Global Aspects, in: Towards Sustainable Use, *supra* note 10.

[15] Joseph Warioba, The Reform of the United Nations System in the Context of the Law of the Sea and the United Nations Conference on the Environment and Development, in: Proceedings of Pacem in Maribus XXII, Madras, India, 4–8 December 1994 (Tokyo, in press).

Summit of Non-Aligned Movement (NAM),[16] as supported by the 1993 Declarations of the Group of 77 and the Least Developed States,[17] and as further developed by the 1994 Cairo NAM Summit[18] and the 1994 Declaration of the OAU Ministers for Foreign Affairs.[19]

Drawing upon (though the influence appears mutual) Dr Warioba's vision of at least the 22nd rather than 21st century and upon proposals initiated during Malta's Presidency of the 45th UN General Assembly, Professor Elisabeth Mann Borgese outlined on the eve of the 50th Anniversary of the United Nations her "wish list" of contributions that the development of Ocean governance might make to the restructuring of the United Nations.[20] In view of the somewhat narrow – compared with complex and multicultural character of the world of today – focus of the Open-Ended Working Group presently examining certain aspects of the restructuring of the United Nations, Professor Borgese's prescriptions include:

– strengthening and restructuring the UN Security Council through abolishment of the Permanent Membership and regulation of Membership region-wise on the basis of equitable geographical representation;

– strengthening the UN Commission for Sustainable Development and its relocating at a strategic position in the restructured UN System, with its name changed in the Commission for Comprehensive Security and Sustainable Development;

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[16] Final Document of the 10th Ministerial Conference of the Movement of the Non-Aligned Countries, Jakarta, Indonesia, 1–6 September 1992, paras 27–37.

[17] Declaration of the 17th Annual Meeting of the Ministers for Foreign Affairs of the Group of 77, UN/New York, 5 October 1993, paras. 65–66, UN Doc. A/48/485, 11 October 1993; and Declaration of the Ministerial Meeting of the Least Developed Countries, UN/New York, 30 September 1993, paras. 23–24, UN Doc. A/C.2/48/4, 19 October 1993.

[18] Final Document of the 11th Ministerial Conference of the Movement of the Non-Aligned Countries, Cairo, Egypt, 31 May–3 June 1994, paras. 20–38, UN Doc. A/49/287-S/1994/894, 29 July 1994; and Report of the NAM Chairman on the Activities of the Movement, September 1992–May 1994, id., Annex (2), 89, 99–102.

[19] Declaration of the Ministers for Foreign Affairs of the Organization of African Unity, UN/New York, 29 September 1994, UN Doc. A/49/479, 10 October 1994.

[20] Elisabeth Mann Borgese, Keynote Address of 4 December 1994, in: Proceedings of Pacem in Maribus XXII, *supra* note 15, as endorsed in the PIM XXII Conclusions on Impact of the Law of the Sea and UNCED on Restructuring of the UN System, id.; and as preceded by the Recommendations of the UN Second Generation Experts' Meeting co-sponsored by the Foundation for International Studies, Euro-Mediterranean Centre for Insular Coastal Dynamics (Malta), Malta's Ministry of Foreign Affairs and International Ocean Institute (Valetta/Halifax), Malta, 3–5 October 1994. The ideas concerned are to be further developed in the Report by the Independent World Commission on the Seas and Oceans to be presented to the 50th UN General Assembly.

[The first two are the long-term goals resulting from the fact that it is not only the composition of the Security Council that must be re-examined and adjusted to the realities of the next century, but the very concept of Security on which it is based needs to be renewed and revised[21].]
– increased engaging the restructured and reformed UN System in social, economic, scientific, technological and developmental matters;
– increasing, in accordance with Malta's proposal, the number of annual sessions of the UN General Assembly to at least three, including one (three-week) biennial Session devoted to the Oceans;
– establishing, in view of inadequate funding from traditional sources, some form of international/regional taxation as contribution to the implementation of the UNCED Agenda 21 and Agendas for Peace and Development;
– establishing the UN Regional Commissions for Sustainable Development and Comprehensive Security (as recently proposed for the Mediterranean under the UNEP Barcelona Action Plan);
– setting up the Regional Centres for the advancement of marine science and technology;
– further integrating and coordinating the Ocean-related activities of the UN System with a view to increasing effectiveness of actions and promoting integrated approach in all matters relating to the Oceans;
– early reconsidering by the ISA Council and Assembly of the initial functions of the ISA to implement the "evolutionary approach," contribute to cost-effectiveness, and make the ISA immediately useful to the international community in general, and developing countries in particular;

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[21] On the ongoing controversial debate on the potential judicial review of the Security Council decisions, cf. Mohammed Bedjaoui, Du contrôle de la légalité des actes du Conseil de Sécurité, in: Recueil d'études en l'honneur du professeur François Rigaux 11–52 (Bruxelles 1993); Derek W. Bowett, The Impact of Security Council Decisions on Dispute Settlement Procedures, 5 European Journal of International Law 89–101 (1994); Thomas M. Franck, The Political and the Judicial Empires: Must There Be Conflict Over Conflict-Resolution?, in: International Legal Issues Arising Under the UN Decade of International Law, Proceedings of a Multichoice Conference Held in Doha, Qatar, 22–25 March 1994 (Dordrecht/Boston/London, in press).

On proposals to either continue the Security Council's power under Article 94(2) of the UN Charter but without the right of veto, or to set up the new "UN Judgment Enforcement Council" vested with this power, see Bola Ajibola, Compliance with Judgments of the ICJ, A paper delivered at the University of Leyden on 7 October 1994 (on the file with the author).

– further developing the concept of the Common Heritage of Mankind, including its extension to the high seas fisheries;
– undertaking a detailed study of the concept of "reservation for peaceful purposes" as used in the Montego Bay Convention, with a view to its development as the legal basis for: the denuclearization of regional seas or the world ocean as a whole, designation of the seas and oceans as Zones of Peace, enhancing both military and environmental security, promoting regional naval cooperation for peaceful purposes, and setting up the UN Naval Peace-Keeping Force;[22]
– establishing a Federation of Ocean Universities to enhance interdisciplinary international cooperation in Ocean affairs.

The above wish list includes suggestions which, Professor Mann Borgese admits, may not be realistic in the immediate future, but may nevertheless indicate directions in which it will be desirable to move, or in which we may move regionally at first, and globally in a more remote future. Similarly, in Dr Warioba's view, his largely coinciding prescriptions may appear too far reaching, if not utopian at present, but, as he notes, when Abraham Lincoln in 1863 talked of democracy being a government of the people, by the people and for the people, he was talking of a system which did not include the slaves, women and Indians. Yet that definition is as valid today as it was to Lincoln.[23] Notwithstanding their Don Quixotic[24] nature, we may keep in mind that the prescriptions envisaged above are designed to remedy real causes, and not but symptoms, of underdevelopment, and to deal with the type, and not but degree, of sustainable development. Thereby, these prescriptions form the means requisite for transformation of the Boumedien's Horse/Rider analogy, which is being perpetuated by just symptoms-oriented initiatives guided by the Group of 7. As a result, at present the development aid not only frequently inhibits or delays economic reforms and helps perpetuate otherwise unsuitable domestic economic policies, but it also often sup-

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[22] See Rear Admiral Fred W. Crickard RCN/Gregory L. Witol, Seapower and Reservation for Peaceful Purposes: A Discussion Paper, in: Proceedings of Pacem in Maribus XXII, *supra* note 15.

[23] Warioba, *supra* note 15.

[24] Cf. the admirable conclusion of Antonio Cassese, International Law in a Divided World 417 (Oxford 1986): "Though no doubt we live in gloomy times, yet as individuals, we can have a say, if we are not too submissive. After all, we should not forget what a great French writer said in 1942, namely that 'on all essential problems – I mean thereby those that run the risk of leading to death or those that intensify the passion of living – there are probably but two methods of thought: the method of La Palisse and the method of Don Quixote'" [A. Camus, Le Mythe de Sisyphe 16 (Paris 1960)].

ports military expenditure and, thereby, may aggravate military confrontations.[25]

Even less visionary amongst us could, moreover, hardly disagree with Professor Thomas M. Franck, of whom Joseph Warioba had a privilege to be a student, that the emerging law of the biosphere is illustrative of underlying issue of fairness of how best to divide, globally, jurisdiction and function among available levels of governance – the local, national, regional and international. This at first glance jurisdictional issue has, as Professor Franck explains, important distributive aspects, in particular: "Where responsibility for governance is lodged, will affect the outcome of distributive issues as well as the allocation of costs and benefits. It is readily apparent that if national quotas for noxious emissions were to be established by the General Assembly, where each member has one vote, they would be rather different than if they were set by the World Bank, where voting power is established by the size of each member's contribution to the Bank's reserves. The issue of fairness thus permeates the choice of forums."[26]

II. ICJ Contribution to the Law of the Sea Development as a Part of the Global System of Peace and Security

In their statements made at the 48th UN General Assembly quoted above, both Ambassador Satya N. Nandan and the UN Legal Counsel Dr Hans Corell stressed that an immeasurable contribution of the Montego Bay Convention to the Global System of Peace and Security of which the Charter of the United Nations is the foundation, is reflected by the fact that even before its entry into force the Convention has become the basis for the decisions of the principal judicial organ of the United Nations, International Court of Justice.[27] Through its consistent pronouncements, the World Court has indeed been contributing significantly to the development of both the traditional (through the 1923 *Wimbledon*, 1927 *Lotus*, 1949 *Corfu Channel*, 1951 *Anglo/Norwegian Fisheries*, and 1955 *Nottebohm* Judgments) and the new (through the 1960 *IMCO*, 1969

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[25] See Boutros Boutros-Ghali, Global Development Cooperation, 7 Emory International Law Review 1, 2–3 (1993). Cf. Dossier: Development Policies, ACP-EC Courier 48–86 (1993 No.141).

[26] Thomas M. Franck, Law, Moral Philosophy and Economics in Environmental Discourse, in: Ronald St.J. Macdonald (ed.), Essays in Honour of Wang Tieya 311, 314 (Dordrecht/Boston/London 1994).

[27] UN Docs A/48/PV.99 and 100, *supra* notes 7 and 8.

North Sea, 1973/74 *Nuclear Tests*, 1972/74 *Icelandic Fisheries*, and 1976/78 *Aegean Sea* Judgments) law of the sea, as codified and progressively developed in the four 1958 Geneva Conventions and Montego Bay Convention respectively.

Commencing with the 1933 *Eastern Greenland* Judgment (as paralleled by the *Southeastern Greenland* [discontinued] case), a number of cases (including in the 1953 *Minquiers and Ecrehos*, 1956 [discontinued] *Antarctica*, 1992 *Gulf of Fonseca*, and the pending *Qatar* v. *Bahrain* and *East Timor*) involved the question of sovereignty over island territory, dealing with certain law of the sea-related aspects in this context. The Court's decisions in the *South West Africa (Namibia)* (1966 and 1971) and the 1975 *Western Sahara* cases concerned, moreover (both West African) territories whose long coastlines determine their major interests in ocean governance.[28] Upon adoption of the Montego Bay Convention, the Court's Judgments delivered in the 1982 *Tunisia/Libya*, 1984 *Gulf of Maine*, 1985 *Libya/Malta*, 1986 *Nicaragua*, 1991 *Guinea-Bissau* v. *Senegal* and *Great Belt*, 1992 *Gulf of Fonseca*, and 1993 *Jan Mayen* cases, have continued to retain the highest authority in determining the state of law regarding various law of the sea issues and concepts.[29]

This relates equally to individual Opinions attached by the members of the Court to the Judgments, of which such Opinions form an inherent part.[30] Apart from Judge Abdul G. Koroma (Sierra Leone), and Judge

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[28] Cf. UNGA Resolution 48/49 on Question of Western Sahara of 10 December 1993, and Report of the Secretary-General on the Work of the Organization, UN Doc. A/49/1, 78–79 (Western Sahara), 2 September 1994; Namibia, South Africa, and the Walvis Bay Dispute, 89 Yale Law Journal 903–922 (1980); Lynn Berat, The Evolution of Self-Determination in International Law: South Africa, Namibia, and the Case of Walvis Bay, 4 Emory International Law Review 251–290 (1990); 1992 Namibia/South Africa Agreement on the Joint Administration of Walvis Bay and the Offshore Islands, 32 International Legal Materials (ILM) 1152, 1470 (1993).

[29] Cf. Rosalyn Higgins, Problems and Process: International Law and How We Use It 18 (Oxford 1994), referring to the submission of Hugh Thirlway, International Customary Law and Codification (1972), that international law is defined as that which the Court would apply in a given case.

[30] See Shabtai Rosenne, The Law and Practice of the International Court of Justice 595–599 (Dordrecht/Boston/London 1965/1985); Robert Y. Jennings, The Internal Judicial Practice of the International Court of Justice, 59 British Yearbook of International Law 31–47 (1988); id., The Collegiate Responsibility and Authority of the International Court of Justice, in: International Law at a Time of Perplexity, Essays in Honour of Shabtai Rosenne 343–353 (Dordrecht/Boston/London 1989); Mohammed Bedjaoui, La "fabrication" des arrêts de la Cour Internationale de Justice, in: Le Droit international au service de la paix, de la justice et du développement, Mélanges Michel Virally 87–107 (Paris 1991).

Shigeru Oda (Japan) whose Opinions amount to "miniature treaties" on international law of the sea,[31] other members of the Court with an outstanding experience in global ocean negotiations include Judge Carl-August Fleischhauer (Germany) who in charge of his previous tasks as the UN Legal Counsel was one of the principal architects of the 1994 Agreement on Part XI; his predecessor on the Bench, Judge Jens Evensen (Norway) who was one of the most influential negotiators during UNCLOS III; Judge Andrés Aguilar (Venezuela), formerly an excellent Chairman of the important Committee II of UNCLOS III; and the present President Judge Mohammed Bedjaoui (Algeria) who, as is perhaps less known, headed the Algerian delegation to UNCLOS III and served as a member of the Arbitral Tribunals in the 1985 *Guinea/Guinea-Bissau* and the 1989 *Guinea-Bissau/Senegal* cases.

We may also note that the British members of the Court, including Lord Arnold McNair, Sir Gerald Fitzmaurice, Sir Humphrey Waldock and Sir Robert Jennings,[32] have almost habitually devoted a considerable attention to the law of the sea in both their Opinions and academic writings. Whereas by contrast no such interest can be traced in the voluminous academic achievement of the present Court's Vice-President (1994–1997), Judge Stephen M. Schwebel (USA), his law of the sea-related Opinions attached to the Court's Judgments are striking in their perceptive submissions and conclusions. One of his predecessors on the Bench, Judge Philip C. Jessup belonged, moreover, to the most eminent experts in international law of the sea. Important contribution to the development of law in this field was also made in the Opinions of Judge Bola Ajibola (Nigeria), Mohamed Shahabuddeen (Guyana) and Christopher G. Weeramantry (Sri Lanka).

Due to its late decolonization, Africa in one aspect or another was for a long time appearing before the World Court more often as the object

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[31] See Barbara Kwiatkowska, Judge Shigeru Oda's Opinions in Law-of-the-Sea Cases: Equitable Maritime Boundary Delimitation, 36 German Year Book of International Law 225–294 (1993). For *Curriculum Vitae* of Judge Abdul G. Koroma, see ICJ Communiqué Nr. 94/7 of 24 February 1994.

[32] Cf. Barbara Kwiatkowska, Equitable Maritime Boundary Delimitation as Exemplified in the Work of the World Court During the Presidency of Robert Y. Jennings, in: A Critical Review of the First Half Century of the International Court of Justice: Liber Amicorum for Sir Robert Jennings (Cambridge, in press); and *supra* notes 11 and 13.

rather than the subject of international law.[33] The 1960 *Constitution of the IMCO Maritime Safety Committee* Advisory Opinion was a notable, though rather irregular exception in that the applied procedure, while retaining its advisory character, approached most closely of all advisory cases the procedure prescribed for contentious cases.[34] In view of its quasi-contentious character, we could hold that Liberia, along with Panama, won this case (decided by 9:5 majority vote). But we might keep in mind that so did the United States supporting claims of the two countries due to its strategic interest in the continued existence of open registry fleets.

In spite of their (and likewise other Third World's states) habitual emphasis on state sovereignty and the manifest fear of outside interference, as testified by their preference of the more flexible methods of negotiation, mediation and good offices, and conciliation,[35] African states brought for the past fifteen years their disputes before the Court in nine (*Tunisia/Libya*, *Libya/Malta*, *Burkina Faso/Mali*, [two] *Guinea-Bissau* v. *Senegal*, *Libya/Chad*, and the pending [two parallel] *Lockerbie* and *Cameroon* v. *Nigeria*) cases. Except of the *Lockerbie*, all these cases involve territorial and (including four maritime) delimitation questions, with one (*Guinea-Bissau* v. *Senegal Maritime Delimitation*) dispute having been meanwhile settled by bilateral negotiations. The (Libya's-)face-saving *Libya/Chad Territorial Dispute* (in which Chad made use of the UN Secretary-General's Trust Fund) was, as the then President Sir Robert Jennings stressed, the very important case showing how expeditious the Court's work became.[36] The written pleadings in that case amount to some 30 stout volumes, while oral hearings took five weeks. The documentation is, as President Jennings indicated, remarkable, for the case involves long periods of colonial history in Africa and both par-

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[33] See T.O. Elias, The Role of the International Court of Justice in Africa, 1 African Journal of International and Comparative Law (AJICL) 1–12 (1989). Cf. Separate Opinion of Judge Bola Ajibola (Nigeria) to the *Libya/Chad Territorial Dispute* Judgment of 3 February 1994, ICJ Reports 1994, 6, 51–92.

[34] See Shabtai Rosenne, La Cour Internationale de Justice en 1960, 65 Revue Générale de Droit International Public (RGDIP) 473, 508–509 (1961). This was subsequently magnified in the *Western Sahara* advisory case.

[35] Cf. Jean-Pierre Quéneudec, Remarques sur le règlement des conflits frontaliers en Afrique, 74 RGDIP 69–77 (1970); Malcolm Shaw, Dispute-Settlement in Africa, 37 Yearbook of World Affairs 149–167 (1983).

[36] Speech by Robert Y. Jennings (UK), President of the International Court of Justice, to the UN General Assembly, 15 October 1993, UN Doc. A/48/PV.31, 2–4 (1993); reprinted in 6 AJICL 328–336 (in English and French), 330 (1994); 88 AJIL 421–424, 422–423 (1994).

ties have been able to use the relevant British, French and Italian archives. As of December 1994, 18 African countries[37] (of 58 states in total) made the Optional Clause Declarations recognizing as compulsory the jurisdiction of the Court in accordance with Article 36(2) of the ICJ Statute.

This by now well-established confidence in the World Court is a welcomed detour from the previous attitude of African countries towards the Court. The former distrust, especially disappointment with the 1963 *Northern Cameroons (Cameroon* v. *UK)* Judgment and that *bête noir* of Court's jurisprudence, the 1966 *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa)* Judgment (taken by a casting vote of President Sir Percy Spender) were in fact – in spite of the Court having "redeemed" itself by its 1971 *South West Africa (Namibia)* Advisory Opinion[38] – the main reason of support exerted effectively by Africans, as joined by other Third World states, during UNCLOS III in favour of the new International Tribunal for the Law of the Sea (ITLOS). The wider resort to the Court's jurisdiction, whether on the basis of Optional Clause under Article 36(2) or a *compromis* and compromissory clauses under Article 36(1) of the ICJ Statute, has been meanwhile importantly promoted by the Asian-African Legal Consultative Committee (AALCC) under the longstanding leadership of one of the principal architects of the modern oceans regime, its Secretary-General Ambassador Francis X. Njenga (Kenya), as recently succeeded by Dr Tang Chengyuan (China).

In 1985 the AALCC submitted to the UN General Assembly its major Study on the Role of the International Court of Justice,[39] whereas recently it has been focusing on the enhanced role of the Court in matters relating to the protection and preservation of the environment.[40] The latter focus resulted from Chapter 39.10 of the UNCED Agenda 21, which recommended, where appropriate, recourse to the In-

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[37] They include: Botswana, Cameroon, Egypt, Gambia, Guinea-Bissau, Kenya, Liberia, Madagascar, Malawi, Mauritius, Nigeria, Senegal, Somalia, Sudan, Swaziland, Togo, Uganda, and Zaire.

[38] Cf. Leo Gross, Review of the Rôle of the International Court of Justice, 66 AJIL 479, 488 (1972).

[39] Doc. AALCC/XXIV/8, transmitted to the UN Secretary-General as UN Doc. A/40/682, Annex, 26 September 1985.

[40] See Cooperation Between the United Nations and the AALCC – Report of the Secretary-General, Part D: Promoting Wider Use of the ILC, UN Doc. A/47/385, 28 August 1992; Statement of the AALCC Secretary-General, Ambassador Francis X. Njenga (Kenya) of 21 October 1992, UNGA 47th Session, Doc. A/47/PV.43, 4 November 1992, 86–101, 93–95; Report of the 31st AALCC Session, Islamabad, Pakistan, 25 January–

ternational Court with a view to solving disputes in the field of sustainable development, and which was followed by establishment, under Article 26(1) of the ICJ Statute, of the seven-member Chamber for Environmental Matters.[41] While commending the wide range of topics, including Law of the Sea, deliberated by the AALCC, Ambassador Abdul G. Koroma, the then Chairman of the International Law Commission (ILC) stated at the 47th UN General Assembly that:

> In this period of total and preventive diplomacy, my delegation is of the view that both the International Court of Justice and the AALCC could make genuine contribution in strengthening the role of the United Nations for the maintenance of international peace and for the realization of its objectives.[42]

He therefore welcomed the intensification of the ICJ-AALCC Cooperation as a part of the continuing growth of confidence of the international community in the Court, and in this context, he paid tribute to the then Court's President, Judge Sir Robert Jennings, for the invaluable role the Court has been playing under his presidency. Significantly, the actual and potential role of the International Court of Justice in delimitation of African maritime boundaries has also been stressed by the 1994 Strategy and Programme of Action for Integrated Development and Management of Marine/Ocean Affairs in Africa referred to further below.

During the Presidency of Judge Sir Robert Jennings (1991-1994), the ICJ had a longer case list than at any previous stage in the history of the World Court and it became used in the general context of the Agenda for Peace. The Court assumed a new role unimagined by earlier commentators on the adjudication process in international matters which is reflected by becoming by the Court, as President Jennings put it, "a component of the scheme of preventive diplomacy" in terms of the "tendency to use the Court, acting under its contentious jurisdiction, as a partner in preventive diplomacy rather than as a last-resort alternative ...".[43] In the context of proliferation of various specialized courts and

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1 February 1992, 8–9 (New Delhi 1992); Report of the 32nd AALCC Session, Kampala, Uganda, 1–6 February 1993, 10 (New Delhi 1993).

[41] The Chamber is composed of President Bedjaoui (Algeria), Vice-President Schwebel (USA), and Judges Shahabuddeen (Guyana), Weeramantry (Sri Lanka), Ranjeva (Madagascar), Herczegh (Hungary), and Fleischhauer (Germany).

[42] Statement of Ambassador Abdul G. Koroma (Sierra Leone), Doc. A/47/PV.43, *supra* note 40, 82–85, 83.

[43] Speeches by Robert Y. Jennings (UK), President of the International Court of Justice, to the UN General Assembly, 21 October 1992, Doc. A/47/PV.43, *supra* note 40, 6–16, 11; 15 October 1993, Doc. A/48/PV.31, *supra* note 36, 6 AJICL 329 (1994), and

tribunals, of which the ITLOS is an example, President Jennings stressed:

> The relationship of these tribunals to each other and to each other's jurisdiction, and their respective contributions to the directions taken by the development of international law by the resulting case law from their decisions, raise interesting and difficult questions which might at some time have to be addressed. There is only one thought I wish to leave with the members of the General Assembly on this occasion: there can be only one "principal judicial organ of the United Nations," as there is normally only one supreme court of any legally ordered community; and that position of the International Court of Justice ought always to be remembered and strenuously protected.[44]

While referring to this question in his Preliminary Note presented at the Milan Session of the Institut de Droit International (IDI), Sir Robert Jennings remarked that the creation of tribunals for modish subjects such as the environment[45] may obscure the fact that the problem of the environment will only be solved when it is seen to be a part of the problem of general international law,[46] having, as he on another occasion noted, this peculiar and tremendously significant quality of "a common and universal system."[47] Accordingly, the role and organization of specialized courts such as the ITLOS or International Criminal Tribunal (ICT), and their relationship, if any, with the ICJ, was included by Sir Robert in his list of topics for further studies by the IDI. Studies on these questions are also envisaged by Professor Elisabeth Mann

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88 AJIL 422 (1994). Cf. Robert Y. Jennings, Note préliminaire, Comité restreint sur le règlement pacifique des différends, 65 Yearbook of the Institute of International Law (Session of Milan) 279, 281–282 (1993-II); Carl-August Fleischhauer (the then UN Legal Counsel), The UN Decade of International Law – The Role and Work of the Secretariat of the United Nations and of Its System of Organizations, in: International Legal Issues, *supra* note 21.

[44] UN Doc. A/48/PV.31, *supra* note 36, 6 AJICL 331 (1994), and 88 AJIL 423–424 (1994). Cf. Stephen M. Schwebel, Justice in International Law 3–26 (Cambridge 1994).

[45] Cf. Alfred Rest, Need for an International Court for the Environment? – Underdeveloped Legal Protection for the Individual in Transnational Litigation, 24 Environmental Policy and Law 173–187 (1994); and Draft ICEL Resolution, id., 204.

[46] Robert Y. Jennings, Note préliminaire, *supra* note 43, 282. See also Speech by Robert Y. Jennings (UK), President of the International Court of Justice, to the UNCED, 3–14 June 1992, read on behalf of President by the ICJ Registrar, Eduardo Valencia-Ospina, in: ICJ Yearbook 1991–1992212–218 (No.46); reprinted as Robert Y. Jennings, Need for Environmental Court?, 22 Environmental Policy and Law 312–313 (1992). Cf. Elihu Lauterpacht, Aspects of the Administration of International Justice 19–22 (Cambriddge 1991).

[47] Speech by Robert Y. Jennings (UK), President of the International Court of Justice, to the UN General Assembly, 21 October 1992, *supra* note 43, 16.

Borgese in her Project Proposal of 15 May 1994 on the interdisciplinary Independent World Commission on the Seas and Oceans, and by the Director of the Law of the Sea Institute (LSI), Dr Thomas A. Mensah (Ghana) in his Agenda for the Institute adopted at the 28th LSI Annual Conference held in Honolulu on 11–14 July 1994.

The ICT Statute, whose draft was adopted by the UN International Law Commission at its 46th session in 1994,[48] and to development of which Judge Koroma importantly contributed as a member (1982–1993) and a Chairman (1991) of the ILC, raises in fact the question of relationship of the proposed International Criminal Tribunal not only with the ICJ but also with ITLOS. This is because the Draft ICT Statute permits jurisdiction over certain crimes governed by a number of what might be called "suppression conventions," including the 1988 UN Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances whose Article 17 covers Illicit Traffic by Sea.[49] At the regional level, the Agreement on Illicit Traffic by Sea, Implementing Article 17 of the UN Vienna Convention was adopted by the Committee of Ministers of the Council of Europe on 8 September 1994, whereas the Working Group on Maritime Cooperation newly established by the UN Commission on Narcotic Drugs held its first meeting on 19–23 September 1994 with a view to developing a comprehensive set of principles to enhance, on a global basis, the implementation of Article 17.

As that distinguished commentator on the World Court and one of the principal architects of the Montego Bay Convention, Ambassador Shabtai Rosenne showed, although the ITLOS Statute is largely drawn up along the lines of the ICJ Statute, the ITLOS is characteristically a different type of judicial organ from the International Court and it will have

[48] UNGA 49th Session Off. Rec., Suppl. No.10 (A/49/10), Chap. II.B.I, para.91 (New York 1994).

[49] 28 ILM 493 (1989), in force on 11 November 1990, ratified as at 31 December 1993 by 95 states. For declarations and reservations, including those made on Article 17 by Tanzania and Brazil, as objected to by the EU members, see UN Doc. ST/LEG/SER.E/12, 280–285 (1994); Statement of Tullio Treves (Italy), UNGA 44th Session, Doc. A/44/PV.61, 28 November 1989, 79–89, 86–87; Barbara Kwiatkowska, Creeping Jurisdiction Beyond 200 Miles in the Light of the 1982 Law of the Sea Convention and State Practice, 22 ODIL 153, 162 (1991). Cf. Law of the Sea – Report of the Secretary-General, Part I – IX. Crime at Sea, para.177, UN Doc. A/49/631, 16 November and Corr. 1, 5 December 1994; James Crawford, The ILC's Draft Statute for an International Criminal Tribunal, 88 AJIL 140, 143 (1994).

to chart its own course.[50] We may nevertheless hope that the ITLOS to which the European Union, as Ambassador Antonius Eitel (Germany) stated, attaches great importance,[51] will within the principle of judicial consistency take due account of the significant contribution which was and will continue to be made by the International Court to the development of law of the sea as a part of general international law.

III. United Nations New Agenda for the Development of Africa in the 1990s in the Post-UNCED Period

An important point of reference for the efforts aimed to restore the pre-eminence of the United Nations in the field of socio-economic development discussed above may be found in the UN New Agenda for the Development of Africa in the 1990s, as coupled with initiation of the African Economic Community (AEC) under the OAU auspices in 1991.[52] The New Agenda also overlaps with the two UN Second Decades (1991–2000) of Industrial Development and of Transportation and Communication for Africa. If effectively pursued, the promotion of regional integration of Africa within these frameworks, paralleled by requisite structural transformations at national level, might contribute to the evolution of Africa as a Political and Economic Entity. The democratic change in South Africa, now a member of the OAU, ECA and Non-Aligned Movement, draws us moreover nearer to anticipation of Egypt, Nigeria and South Africa, along with Maghreb states, providing an "umbrella"-framework essential for prosperous growth of the African continent and for forging its unity out of diversity.[53] An encouraging *hirondelle* of South Africa's commitment is contained in its statement at the 48th General

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[50] Shabtai Rosenne, The International Tribunal for the Law of the Sea and the International Court of Justice, obtained in 1994 through kindness of Ambassador Rosenne (on the file with the author). Cf. Schwebel, Justice in International Law, *supra* note 44, 18.

[51] Statement of Ambassador Antonius Eitel (Germany) on Behalf of the European Union, UN Doc. A/48/PV.99, *supra* note 7, 8. Cf. Statement of Halkiopoulos (Greece), Doc. A/48/PV.100, *supra* note 8, 18–19, 18, referring to ITLOS as "an irreplaceable body."

[52] OAU Treaty Establishing the African Economic Community, Abuja, Nigeria, 3 June 1991, 30 ILM 1241 (1991).

[53] Cf. Ben Yacine Touré, Afrique: L'épreuve de l'indépendance 109 (Presses Universitaires de France: Paris 1983). Issa Ben Yacine Diallo (Guinea; Touré being his mother's name) is presently a Director of the Conference Services Division of the UN-Geneva Secretariat.

Assembly that: "As a coastal country, situated between the vast Atlantic and Indian Oceans, South Africa is fully aware of its responsibilities and obligations in both the marine and maritime fields."[54]

The New Agenda for Africa (as annexed to the 1991 UNGA Resolution 46/151) does not specifically include the Ocean sector, although it proclaims generally that "Africa is fully committed to the promotion of sustainable development at all levels of socio-economic activity" (§ 17). The 1991 Abuja AEC Treaty provides an overall basis for the promotion of a balanced economic development in all parts of the African continent, including in sectors of marine fisheries, science and technology, energy and natural resources, environment, and maritime transport and communications. In its Resolution 1409(LVI) of 28 June 1992 on the Outcome of the UNCED, the OAU Council of Ministers noted the Official Development Assistance, the Global Environment Facility (GEF) and Regional Banks as mechanisms for the implementation of Agenda 21, and invited member states and the OAU Secretary-General to facilitate the follow-up and the coordination of the implementation of Agenda 21 and other UNCED decisions. Subsequently, a Progress Report on the Follow-Up to UNCED was submitted by the UN Economic Commission for Africa (ECA) to the 7th Meeting of the Intergovernmental Regional Committee on Human Settlements and Environment held in the ECA Headquarters in Addis Ababa in March-April 1993.

The Conference of African Ministers Responsible for Economic Development and Planning, meeting thereafter jointly with ECA in Addis Ababa on 3–6 May 1993, adopted as its theme, Taking Africa Into the 21st Century: Implementation of the Abuja Treaty Establishing the AEC and Agenda 21. In Resolution 744(XXVIII) of 6 May 1993 on African Strategies for Implementation of Agenda 21, the African Ministers urged member states to establish and/or strengthen mechanisms for the mobilization of resources for the implementation of such African Strategies. Another Resolution 757(XXVIII) replaced the Conference of African Ministers of the Environment and the Intergovernmental Regional Committee referred to above by the new Conference of African Ministers Responsible for Sustainable Development and the Environment.

A deep concern with Africa being the only continent experiencing a negative net transfer of resources in the 1990s was expressed in the major General Assembly Resolution 48/214 of 23 December 1993 on the UN New Agenda for the Development of Africa in the 1990s which reaf-

[54] Statement of Steward (South Africa), Doc. A/48/PV.101, *supra* note 9, 9.

firmed the high priority attached to this Agenda in the UN Medium-Term Plan for 1992–1997.[55] The General Assembly also urged all United Nations organs, organizations and programmes to integrate the New Agenda's priorities in their mandates, to allocate sufficient resources for their operation, and to improve further the use of available resources, as well as recommended a number of other measures. We should, however, stress that it is not the "high" but the "highest" priority, and not "sufficient" but the "largest" resources, which must be mobilized with a view to alleviate African Crisis. This especially that in practice of be it ocean-related or other organizations and programmes, any attempt of channelling the funds to Africa will effectively be countered by potential recipients from other regions. It is in this context that while commending the 1993 Addis Ababa Conference referred to above for deliberating implementation mechanisms for Agenda 21 and the AEC in a manner best suited to Africa's special needs and concerns, the UN Secretary-General, Dr Boutros Boutros-Ghali stated that:

> it was largely up to Africans themselves, in the present era of increased competition for increasingly scarce development funds, to strive to keep Africa's problems and concerns on the international agenda by displaying a serious and sustained commitment.[56]

In his other Message, while noting that the opportunity to escape from the distorted economic priorities of the Cold War period is coupled with strong competition for development resources from the newly independent nations of Eastern Europe and the former Soviet Union, Dr Boutros-Ghali made three practical suggestions how Africans should face up to the present challenge.[57] First, Africans must become more active

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[55] Similar concern and commitment to the UN New Agenda was expressed in the 1993 Declaration of the Group of 77, paras 59–60, the 1994 Cairo NAM Final Document, para. 99, and the 1994 Declaration of the OAU Ministers for Foreign Affairs, para. 10, referred to *supra* notes 17, 18 and 19; as well as the ECOSOC Resolution 1994/38 of 29 July 1994 on the Effective Implementation of the UN New Agenda for the Development of Africa in the 1990s.

[56] Message of the UN Secretary-General Boutros Boutros-Ghali of 3 May 1993, in: Annual Report of the UN Economic and Social Council, 24 April 1992–6 May 1993, Official Records, Suppl. No.18 29–30, Doc. E/1993/38–E/ECA/CM.19/27 (1993).

[57] Message of the UN Secretary-General Boutros Boutros-Ghali of 20 September 1993 (delivered by Issa Ben Yacine Diallo), in: Proceedings of the 5th Annual Conference of the African Society of International and Comparative Law (ASICL), Accra, Ghana, 20–24 September 1993 xx–xxii (London 1994).

participants in the international community;[58] second, they must undertake the task of preparing themselves to compete in the new global market economy; and third, they must direct the coordination and dedication towards the struggle for economic development in the same way as they have previously demonstrated with respect to political issues.

One of the measures implementing these suggestions would be the *expressis verbis* inclusion of the Ocean sector in both the UN New Agenda for the Development of Africa in the 1990s and the ECA African Strategies for Implementation of Agenda 21. A first step to this effect is reflected by the ECOSOC Resolution 1994/39 on Development and Strengthening of the Programme Activities of the ECA in the Field of Natural Resources, Energy and Marine Affairs of 29 July 1994. It refers to identification in the UN Revised Medium-Term Plan 1992–1997 of a single Subprogramme aimed at enhancing the interrelationships between the natural resources, energy and marine affairs sectors to ensure greater programme impact. The Resolution recognizes the urgency involved in strengthening both the substantive and the operational capacity of the new Subprogramme, and expresses appreciation with regard to the initiatives taken by the UN Secretary-General to strengthen the ECA activities in these areas. All partners in the operational activities for the African development are urged to give due consideration to the priorities assigned to this Subprogramme with a view to funding related projects, and the member states are called upon to facilitate the institutional implementation of those projects.

IV. UN/ECA Strategy and Programme of Action for Integrated Development and Management of Marine/Ocean Affairs in Africa

At the 1982 Concluding Session of UNCLOS III in Montego Bay, Jamaica, Ambassador Abdul G. Koroma stated that:

> In reality, the United Nations Convention on the Law of the Sea represents another Treaty of Tordesillas or even another Berlin Treaty for African States. In real terms, the African States have benefited very little from this Convention. I say in real terms, not in esoteric terms. (...) Thus, the Convention does not provide for the equitable distribution of resources that would have been beneficial to the developing countries, African countries among them. In re-

[58] Cf. remarks on Rio and post-Rio "North-South semicircles" by Peter H. Sand, UNCED and the Development of International Environmental Law, 3 Yearbook of International Environmental Law 3, 15–16 (1992).

turn for the considerable quantum of rights granted the maritime countries, they have not gained much in real terms.[59]

The slowly progressing experience in Ocean governance in Africa testifies, however, that this dissatisfaction of Judge Koroma in particular and African states in general has been meanwhile transformed into much more positive attitude. The African Ministerial Conference on the Environment (AMCEN) proclaimed the years 1991–2000 an African Decade for the Protection of the Marine Environment, whereas the Regional Leadership Seminar which was held by the UN/ECA in cooperation with the International Ocean Institute, under Chairmanship of Professor Elisabeth Mann Borgese, in Addis Ababa, on 28 March–2 April 1994, and of which Judge Koroma was one of the participants, adopted the Strategy and Programme of Action for Integrated Development and Management of Marine/Ocean Affairs in Africa.[60] Although this Seminar was the first of its kind ever organized by the Commission, ECA has already been promoting the ocean-related activities for over ten years through, *inter alia*, the UN Group of Experts on the Law of the Sea of the States Members of the Zone of Peace and Cooperation of the South Atlantic (convened by the UN Division for Ocean Affairs and the Law of the Sea and comprising West African, along with the respective Latin American, states) and initiating by the 1990 ECA Resolution 694(XXV) of the concern of ECOSOC and UN General Assembly with Cooperation in Fisheries in Africa. Yet due to the ECA's limited resources and capacity in the Ocean sector, the impact of its activities was until now very limited.

As the ECA Executive Secretary and the UN Under-Secretary-General, Ambassador Layashi Yaker stressed in his Opening Address, the 1994 Seminar is a testimony to the ECA's commitment and determination to assist the African countries to develop their capacities in the field of Ocean resources for the benefit of their people. The need for such an assistance is particularly timely in view of urgency to undertake measures aimed to alleviate the African crisis, and to implement Chapter 17 of Agenda 21 and the Montego Bay Convention. A notable African contribution to the Convention's entry into force bears testimony to the commendable work hitherto done by the ECA in promoting the Convention. It was, however, reiterated during the Seminar that although the

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[59] Statement of Ambassador Abdul G. Koroma (Sierra Leone) of 9 December 1982, UNCLOS III Off. Rec., Vol. XVII, *supra* note 10, 131.

[60] Draft Report, UN Doc. ECA NRD/MAR/1/94 of 31 March 1994.

African continent is surrounded by seas and oceans, African states do not yet possess the requisite scientific knowledge, technological capacity and management skills to be able to explore and exploit the marine living and non-living resources in accordance with the Convention.

The ECA Strategy and Action Programme cover six essential areas of:
- a properly developed legal framework, enabling African states rational utilization of the extended zones (200-mile exclusive economic or fishery zones and the continental shelf) under their national jurisdiction, with its concomitants of determining baselines and effecting maritime boundary delimitation;
- a coordinated and integrated institutional system capable of establishing and implementing plans and programmes in the ocean sphere;
- an adequate technology acquisition policy leading within a reasonable period of time to national and/or regional self-reliance;
- a promotion of special needs of land-locked states in transit transport and use of port facilities as well as other fields of their interest;
- a human resources development policy leading to the creation of critical skills at national, subregional and regional levels; and
- a project formulation capacity enabling states to generate adequate financial resources both domestically and externally, including as a result of a meeting of international funding agencies and other donors to be convened by the ECA.

Within development of the legal framework, the ECA Strategy and Action Programme call specifically upon all African coastal states, if they have not already done so, to ratify the Montego Bay Convention and enact laws claiming jurisdiction over maritime zones as provided for in the Convention.[61] The ECA is recommended to collect all information on the existing legislation with a view to making it available to any African coastal state upon its request and to drafting model legislation/regulations on a regional or subregional basis and/or set of guidelines for rational exploitation of marine resources in the context of sustainable development. Coastal states are recommended to determine baselines and geographical coordinates from which their extended zones of maritime jurisdiction are measured, with such baselines having not so far been defined by most African countries. All African coastal states are, moreover,

[61] Cf. Joseph Warioba, African State Practice and the 1982 Law of the Sea Convention, in: Myron H. Nordquist (ed.), Proceedings of the 14th Annual Seminar of the Center for Oceans Law and Policy, University of Virginia, Cascais, Portugal, 19–22 April 1990 (Charlottesville 1991); Barbara Kwiatkowska, Ocean Affairs and the Law of the Sea in Africa: Towards the 21st Century, 17 Marine Policy 11–43 (1993).

called upon, if they have not already done so, to enter into dialogue with their neighbours with a view to establishing their maritime boundaries, keeping in mind the concepts of joint development and/or management zones.

The respective maritime spaces of African states have so far been subjected to only 11 maritime boundary delimitations (three in the Mediterranean and eight in the African region), of which four were achieved through third-party procedures. The latter relate to the 1982 *Tunisia/Libya*, 1985 *Libya/Malta*, 1985 *Guinea/Guinea-Bissau*, and 1989 *Guinea-Bissau/Senegal* delimitations, of which the first two were referred to the International Court of Justice, and the latter two to arbitration. The *Guinea-Bissau/Senegal 1989 Arbitral Award* dispute was also subsequently referred to the ICJ, which upheld the validity of the 1989 Award. The parallel *Guinea-Bissau* v. *Senegal Maritime Delimitation* case instituted before the Court is to be discontinued due to conclusion by the parties on 14 October 1993 of the Dakar Management and Cooperation Agreement providing for the joint exploitation zone (between the 268 and 220 azimuths drawn from Cape Roxo).[62]

The other seven (*Italy/Tunisia*, *Cape Verde/Senegal*, *Cameroon/Nigeria*, *Gambia/Senegal*, *Kenya/Tanzania*, *Mauritania/Morocco*, and *Mozambique/Tanzania*) are delimitation agreements achieved originally through direct negotiations between the parties. As Ambassador Adede (Kenya) has emphasized, these delimitations share several common characteristics, which include the use of a combination of equidistance and a system of parallels of latitudes so as to enable the parties to extend their jurisdiction seaward to the maximum extent permitted by international law.[63] Another characteristic is that the boundary lines are designed to accomodate the interests of other potential delimitations in the region. The *Cameroon* v. *Nigeria Land and Maritime Boundary* case presently pending before the ICJ involves the maritime boundary

[62] UN Doc. A/49/631, *supra* note 49, para.43.

[63] Andronico O. Adede, Region IV: African Maritime Boundaries, and Reports Nos 4-1/7, in: Jonathan I. Charney/Lewis M. Alexander (eds.), International Maritime Boundaries, Vol. I, 293-294, 841–902 (Dordrecht/Boston/London 1993). Cf. Gerard J. Tanja, The Contribution of West African States to the Legal Development of Maritime Delimitation Law, 4 Leiden Journal of International Law 21–46 (1991). For 1993 Cape Verde/Senegal Agreement, see UN/DOALOS Law of the Sea Bulletin 45–49 (1994 No.26).

between the two states in so far as that frontier had not already been established in 1975.[64]

In his Outline on the Implementation of the 1994 ECA Strategy and Action Programme, the then AALCC Secretary-General, Ambassador Francis X. Njenga stresses that the proposed International Conference on the Law of the Sea in Africa should focus on finding African solutions to African ocean resources problems in the changing International World Order. As the Outline rightly suggests, it may not be sufficient merely to read the provisions of the Montego Bay Convention in the light of Chapter 17 of Agenda 21, even though they furnish the basic blueprint of ocean policy. Due consideration would require to be given to the recommendations of the UN agencies such as the IMO, IOC, FAO and UNEP, as well as the work of the UN Commission for Sustainable Development. It may also be useful to study the existing interregional, regional and subregional arrangements and the infrastructure that these agencies and bodies may have to offer.

The AALCC Outline elaborates further on all six major areas of the ECA Strategy and Action Programme specified above, and suggests the establishment of a Law of the Sea Planning Directorate to coordinate all matters relating to the management and utilization of African marine resources. A regional intergovernmental Secretariat, which could work directly under the supervision of the AEC Economic and Social Council or the ECA, could function as an interdisciplinary body for specific purposes identified in the Strategy. Similarly, setting up of the National Planning Directorates (NPDs) – to be substantially different from any existing Planning Services Divisions – could be considered by African states. In order to be effective, such NPDs should, according to the Outline, be established under the authority of the President or the Prime Minister and be composed of all the relevant Ministries, what would in no way derogate from the powers delegated to specific Ministries.[65]

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[64] See ICJ Communiqué No.94/12 of 30 March 1994 and No.94/13 of 20 June 1994; UN Doc. A/49/631, *supra* note 49, para.44; Adede, Report No.4-1, *supra* note 63; Oladipo O. Sholanke, Delimiting the Territorial Sea Between Nigeria and Cameroon: A Rational Approach, 42 International and Comparative Law Quarterly 398–411 (1993).

[65] Including Ministries responsible for: Administrative and Financial Affairs, Legal and Technical Services, Strategic and Defence Planning, Local Planning and Development, Environment Policy, Agriculture Policy, Fisheries and Aquaculture, Mineral and Petroleum Resources, and Tourism. Cf. Jean-Pierre Lévy, Towards an Integrated Marine Policy in Developing Countries, 12 Marine Policy 326–342 (1988); and id., A National Ocean Policy – An Elusive Quest, 17 Marine Policy 75–80 (1993).

With a view to prepare implementation of the ECA Strategy and Action Programme, seminars should be held in the main regional areas of Africa, including the North (Cairo), the East (Nairobi), the South (Gabarone), the West (Abuja) and Central (Cameroon) Africa. Given their critical importance, we may hope that these and other preparatory initiatives will be given a priority and a substantial support by the UN Division for Ocean Affairs and the Law of the Sea (DOALOS) which, under the experienced Directorship of Dr Jean-Pierre Lévy (France), continuously carries out a wide range of advisory services to states and intergovernmental organizations.[66]

V. Implementation of the UN/ECA Strategy and Programme of Action in West Africa

As the West African coastal zone represents a very significant part of socio-economic activities of the whole continent, states bordering the eastern central Atlantic could importantly contribute to furthering objectives of the 1994 ECA Strategy and Programme of Action for Integrated Development and Management of Marine/Ocean Affairs in Africa. The upwelling which enhances high productivity of fisheries, although associated with the circulation along the east coast of the continent, occurs primarily along the west coast of Africa. Accordingly, the Eastern Central Atlantic is the sixth most productive fishing area in the world, with a biological potential of about 4 million tons and the richest areas situated between Morocco and Guinea.

[66] See UN Doc. A/49/631, *supra* note 49, Part II – II. Advisory Services and III. Cooperation within the United Nations System, paras 212–261.

State	Coast (km)	Marine A. (sq.nm)	LOSC (ratif.)	TS	CZ	EEZ	EFZ	CS
*Benin	111	7,900		200				
*Burkina Faso	landlocked							
Cameroon	360		19.11.85	50				
*Cape Verde		230,200	10.08.87	12		200		[200/CM-P]
Chad	landlocked							
*Côte d'Ivoire	515	30,500	26.03.84	12		200		200
*Gambia	510	5,700	22.05.84	12	18		200	
Ghana	539	63,600	7.06.83	12	24	200		[200/CM-P]
*Guinea	346	20,700	6.09.85	12		200		
*Guinea-Bissau	274	43,900	25.08.86	12		200		[200/CM-P]
*Liberia	579	67,000		200				
*Mali	landlocked		16.07.85					
*Mauritania	735	45,000		12	24	200		200/CM
*Niger	landlocked							
*Nigeria	853	61,500	14.08.86	30		200		200m/EXP
*Senegal	531	60,000	25.10.84	12	24	200		200/CM
*Sierra Leone	402	45,400		200				200m/EXP [200/CM-P]
*Togo	50	600	16.04.85	30		200		

* member of the Economic Community of West Afrikan States (ECOWAS)

Although the extent of the West African coastal zone is not well defined, it is being referred to as an area situated on the south western corner of the African continent north of the Equator between longitudes 15° 30' west and 10° 00' east, encompassing 13 coastal states: Mauritania, Cape Verde, Senegal, Gambia, Guinea-Bissau, Guinea, Sierra Leone, Liberia, Côte d'Ivoire, Ghana, Togo, Benin and Nigeria.[67] In an overview above, we added thereto Cameroon bordering Nigeria, and four landlocked states (Burkina Faso, Chad, Mali and Niger) bordering directly one or more of the 14 coastal countries. Fifteen of them (as marked) are the members of the ECOWAS, whereas Cameroon and Chad participate in the Economic Community of Central African States (ECOCAS), which both, along with other regional economic groupings, contribute to the African Economic Community.

[67] See L.F. Awosika (Nigeria), Exploitation of Coastal Resources of Western Africa and Associated Environmental Problems, in: Towards Sustainable Use, *supra* note 10.

The marine areas vary from 600 square miles in Togo to 230,200 square miles in Cape Verde. The coastline is bordered mainly by the Eastern Equatorial Atlantic and the Gulf of Guinea shelf ranging in width from 10 km off Cape Three Points in Ghana and off Cape Vert in Senegal to well over 200 km off Guinea-Bissau. Nigeria and Sierra Leone still rely on traditional criteria of 200 meters isobath and exploitability (200m/EXP) in defining the outer limit of their continental shelf (CS). Côte d'Ivoire and Ghana made express claims to the new minimum CS limit of 200 miles (200), which also applies to Gambia, Guinea and Togo claiming the 200-mile zones. Whereas Mauritania and Senegal are presently the only claimants in the region of the new maximum limit of the continental shelf as extending up to 200 miles or the outer edge of the continental margin (200/CM), such potential West African claimants also include Cape Verde, Ghana, Guinea-Bissau and Sierra Leone ([200/CM-P]).

Although Cameroon and Nigeria ratified the Montego Bay Convention, they still claim territorial sea of 50 and 30 miles respectively (Nigeria in combination with a 200-mile exclusive economic zone [EEZ]) exceeding the permissible width of 12 miles. Cameroon claims only a 50-mile territorial sea presumably because it is zone-locked on a concave coast by Nigeria, and especially by the island of Bioko (Fernando Poo) which belongs to Equatorial Guinea. The region also includes three claimants of a 200-mile territorial sea – Benin, Liberia and Sierra Leone, neither of whom has yet ratified the Convention. Liberia has (since 1949) been one of the major states granting flags of convenience whose expansion found an important support in the 1960 *IMCO* Advisory Opinion referred to above. The current flags of convenience problem in the NAFO Area, which led to the new fisheries legislation and Optional Clause reservation of Canada mentioned earlier, was largely caused by vessels from Panama, Honduras and Belize, and also those from Sierra Leone, USA, South Korea and some other states which in 1993 withdrew their vessels from the NAFO Area. Panama also is one of presently 11 states in total still claiming a 200-mile territorial sea which in addition include: Congo, Somalia, Ecuador, El Salvador, Nicaragua, Peru and Uruguay. The United States either has protested or asserted its navigation rights against all the territorial sea claims that exceed the 12-mile limit.

In view of by now overwhelmingly conforming practice of in total 128 states which possess territorial sea up to 12 miles, and 92 and 19 states which proclaimed EEZ and EFZ up to 200 miles respectively, the still non-conforming claims might soon be adjusted. In West Africa this occurred in the past in case of: Cape Verde which in 1977 rolled back from

a 200-mile territorial sea claimed in 1975; Ghana which in 1986 rolled back from a 200-mile territorial sea claimed in 1977, as preceded by a 30-mile territorial sea claimed in 1973; Guinea which in 1980 rolled back from a 200-mile territorial sea claimed in 1965, as preceded by a 130-mile territorial sea claimed in 1964; Guinea-Bissau which in 1978 rolled back from a 150-mile territorial sea claimed in 1974; and Senegal which in 1985 rolled back from a 200-mile territorial sea claimed in 1976.[68] Senegal's practice was especially spectacular in that prior to proclamation of its 200-mile territorial sea, Senegal denounced, as at 9 June 1971 and 1 March 1976, both the 1958 UN Geneva Convention on the territorial sea and the Contiguous Zone and the Convention on the Living Resources of the High Seas respectively.[69] Cape Verde, which is the only archipelagic state in the region, also recently adjusted, under the new law promulgated in 1992, its previously non-conforming archipelagic baselines.[70]

We may be puzzled by the continuing adherence by Sierra Leone to a 200-mile territorial sea, especially in view of the 1982 Montego Bay statement of Ambassador Koroma quoted above where he also stressed that:

> At the commencement of the negotiations on the law of the sea back in 1974, Sierra Leone, with its 200-mile territorial sea limit, declared that it would nevertheless be prepared to review its position should an acceptable compromise be reached. True to our word, when the Charter for the World's Oceans was adopted on 30 April this year Sierra Leone was found in the ranks of the majority which had made painful concessions in order to achieve a universal Convention through consensus. Indeed, Sierra Leone, like many other African States, made those painful concessions in the interests of achieving peace and harmony in the oceans. We even sacrificed the common heritage

[68] See Limits in the Seas No.112: United States Responses to Excessive National Maritime Claims 32 (Washington, D.C. 1992).

[69] For the notifications of denunciation by Senegal, see 781 UNTS 332 and 997 UNTS 486 respectively; for the *mutatis mutandis* identical communications of the UK questioning the validity or effectiveness of the purported Senegalese denunciation, see 854 UNTS 214, 220, and 1021 UNTS 433 respectively. See also UN Doc. ST/LEG/SER.E/12, 785–786 n.5, 797 n.4 (1994); Daniel Bardonnet, La dénonciation par le gouvernement Sénégalais de la Convention sur la mer territoriale et la zone contigue et de la Convention sur la pêche et la conservation des ressources biologiques de la haute mer en date à Genève du 29 avril 1958, 18 AFDI 123–180 (1972).

[70] Cf. Barbara Kwiatkowska/Etty R. Agoes, Archipelagic Waters: An Assessment of National Legislation, in: Wolfrum, *supra* note 1, 107, 120–121, 137; UN Doc. A/49/631, *supra* note 49, para 32.

principle and the equitable distribution of resources – all in the name of consensus.[71]

Another puzzling element is the absence of Sierra Leone amongst the 69 states which, as at 16 November 1994, had signed the new Agreement on Part XI[72] and amongst 62 sponsors of the 1994 annual draft Law of the Sea Resolution of the UN General Assembly.[73] Nor did Sierra Leone take previously part in the Meetings of the Law of the Sea Experts of the UN South Atlantic Zone (though it participated in the Zone's annual conferences) which were convened by Dr Jean-Pierre Lévy's Division in Brazzaville, Congo in 1990 and Montevideo, Uruguay in 1991, and Reports of which contain invaluable National Policy Contributions of otherwise 17 Central and South West African and three Latin American states. These instances of non-action might be due to internal unrest in Sierra Leone and the neighbouring Liberia, in particular the fact that since March 1991 armed insurgents of the Revolutionary United Front, aided by the National Patriotic Front of Liberia, have been violating the territorial integrity of Sierra Leone through armed attacks from across the border with Liberia.

Nevertheless, since the adoption by Sierra Leone of its Fisheries Management and Development Act on 30 April 1988, as followed by Fisheries Agreement concluded with Japan on 2 November 1990, and initiation in 1991 (with the EU-support) of a two-year Project between the Institute of Marine Biology and Oceanography, University of Sierra Leone (IMBO) and the International Center for Living Aquatic Resources Management, Manila, Philippines (ICLARM), a growing attention has been attached to (artisanal and foreign-dominated industrial) fisheries management of Sierra Leone.[74] Further enhancement of these and other ocean-

[71] See *supra* note 59.

[72] Cf. Ambassador Koroma's Non-Paper, on Part XI of August 1993, which he decided not to pursue in view of satisfactory results achieved by the UN Secretary-General Informal Consultations. See Jean-Pierre Lévy, les bons offices du Secrétaire Général des Nations Unies en faveur de l'universalité de la Convention sur le droint de la mer, 98 RGDIP 871–896 (1944).

[73] UN Docs A/49/L.47, 2 December, and L.47/Add.1, 6 December 1994.

[74] Cf. The Search for Appropriate Technology in Boatbuilding in Sierra Leone, 3 EC Fisheries Cooperation Bulletin (ECB) 16 (1990 No.4); Fish Processing on Yeliboya, 4 ECB 16 (1991 No.2); Assessing and Managing the Marine Fish Resources of Sierra Leone, 5 ECB 22–24 (1992 No.2); Tracking the Purchasing Power of Artisanal Fisherfolk in Sierra Leone, 5 ECB 14–16 (1992 No.3); Introduction of Cold-Moulded Fishing Boats to the Sierra Leone Artisanal Fleet, 7 ECB 6–7 (1994 No.1); Ministerial Conference on Fisheries Cooperation Between the African States Bordering the Atlantic Ocean – Workshop on the Establishment of a Regional Maritime Database (BDRM), Dakar, Senegal, 15–19 February 1993, Annex VIII/11: Country Report – Sierra Leone, 113–115 (Dakar 1993).

related measures might be expected as a result of the insertion of a buffer zone along the Liberia/Sierra Leone border to prevent any further cross-border military activities, as was urged by the 1994 Cairo NAM Summit.[75]

Apart from the UN/ECA, the OAU/AEC, ECOWAS, ECOCAS and the AALCC referred to above, the main regional institutional frameworks, within which West African states cooperate with a view to meeting the challenges of an integrated Ocean policy and management in accordance with the Montego Bay Convention and Chapter 17 of the UNCED Agenda 21, include:

– within the United Nations system –

- IOC Regional Committee for the Central Eastern Atlantic (IOCEA),
- UNESCO Regional Research and Training Project on Coastal Marine Systems in Africa (COMARAF),
- FAO Fishery Committee for the Eastern Central Atlantic (CECAF),
- UNEP West and Central African Action Plan (WACAF), in cooperation with IMO, IOC/UNESCO, FAO and other agencies,
- 1994 UNEP Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora in Africa,
- bodies and programmes of the IMO, WMO, IAEA and other agencies,
- UN Zone of Peace and Cooperation of the South Atlantic, in cooperation with UN/DOALOS and other agencies, including the 1994 Declaration on the Marine Environment;

– outside the United Nations system –

- Regional Marketing, Information and Technical Advisory Services for Africa (INFOPECHE)
- 1991 Dakar Convention on Fisheries Cooperation Among African States Bordering the Atlantic Ocean,
- Regional Fisheries Committee on the Gulf of Guinea (COREP),
- Subregional Commission on Fisheries (SCF),
- International Commission for the Conservation of Atlantic Tunas (ICCAT),
- AMCEN Committee on Seas, with Secretariat at UNEP,
- 1968 Algiers African Convention for the Conservation of Nature and Natural Resources, as revised,
- 1991 OAU Bamako Convention on the Ban on the Import Into Africa and the Control of Transboundary Movement and Management of

[75] Cf. UN Doc. A/49/287, paras 164–166, *supra* note 18; UN Security Council Resolutions 813 and 856 (Situation in Liberia) of 26 March and 10 August 1993; Doc. A/49/1, 73–75 (Sierra Leone), *supra* note 28.

Hazardous Wastes within Africa (covering ocean dumping of hazardous and radioactive wastes),
– Ministerial Conference of West and Central African States on Maritime Transport (MINCONMAR),
– 1989 African-Caribbean-Pacific/European Union (ACP/EU) Lomé IV Convention (1990–1999).

Whereas the detailed analysis of these frameworks can be found elsewhere,[76] we may note here two issues of general importance. One of them is an appreciable tendency to integrate, in accordance with the Montego Bay Convention and Chapter 17 of Agenda 21, the problems of fisheries and the environment,[77] as is illustrated by the 1991 Dakar Fisheries Convention referred to above. In particular, while providing an excellent overall framework for fisheries management, the Dakar Convention additionally supports the UNEP/WACAF (applicable to the same area of the Atlantic) by committing its parties to intensify efforts at the national, regional and international levels with a view to ensuring marine environment protection and coastal area management (Article 12). Another example is provided by the 1994 Declaration on the Marine Environment, which was adopted by the State Members of the UN Zone of Peace and Cooperation of the South Atlantic within joint implementation of Agenda 21 and the Montego Bay Convention. The Declaration sets forth a series of measures designed both for the protection of the marine environment and for promoting the precautionary approaches to fisheries management and conservation of straddling and highly migratory fish stocks in the region.[78]

Another tendency relates to the *travaux préparatoires* of the Dakar Fisheries Convention, whose successful adoption by the 2nd Ministerial Conference on Fisheries Cooperation Among African States Bordering

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[76] Cf. *supra* notes 61 and 67; Barbara Kwiatkowska, UN Agenda on Cooperation in Marine Fisheries in Africa – Towards Alleviation of the African Crisis, 11 Ocean Yearbook 1994 (in press); id., Some Remarks on Africa, with Particular Reference to State Practice of Ghana, in: Thomas A. Mensah (ed.), Ocean Governance – Strategies and Approaches for the 21st Century, Proceedings of the 28th LSI Annual Conference, Honolulu, Hawaii, 11–14 July 1994 (Honolulu, in press); and the literature quoted therein.

[77] Cf. Jonathan I. Charney, The Marine Environment and the 1982 United Nations Convention on the Law of the Sea, 28 The International Lawyer 879–901 (1994); Tullio Treves, The Protection of the Oceans in Agenda 21 and International Environmental Law, in: The Environment After Rio: International Law and Economics 161–171 (London 1994).

[78] See UN Doc. A/49/631, *supra* note 49, paras 59, 70, 172.

the Atlantic Ocean held in Dakar, Senegal, on 1–5 July 1991, was the result of a favourable concern within the United Nations with Cooperation in Fisheries in Africa. This concern, as initiated by the 1990 ECA Resolution 694(XXV), was reflected in the ECOSOC Resolution 1990/77 and the UN General Assembly Resolution 45/184 adopted the same year on Cooperation in Fisheries in Africa, and was coupled with the 1990 Brazzaville and 1991 Montevideo Meetings of the Law of the Sea Experts of the UN South Atlantic Zone referred to above.[79]

These developments exemplify the usefulness, if not indispensability, of the submissions of Dr Joseph Warioba and Professor Elisabeth Mann Borgese as to restoring the pre-eminence of the United Nations in the field of socio-economic development discussed earlier. After the Dakar Convention's adoption in 1991, however, although the UN Secretary-General Report[80] and the ECOSOC Resolution 1992/54 on Cooperation in Fisheries in Africa still followed the next year, the topic was not maintained as the agenda item of the 47/49th UN General Assembly. The re-inclusion of this important topic seems particularly urgent at the present stage of developing the institutional framework of the Ministerial Conference in a follow-up to the texts endorsed in this respect at the Seminar held at Praia, Cape Verde on 28 June–1 July 1993.[81]

The UNGA's re-involvement would conform with, and could stimulate activities resulting from, the recently renewed, though limited, attention of the ECOSOC with this topic. In particular, in its Resolution 1994/264 on Cooperation in Fisheries in Africa of 25 July 1994, the ECOSOC took note of the FAO Report (pursuant to Resolution 1992/54) on the Ministerial Conference on Fisheries Cooperation Among African States Bordering the Atlantic Ocean,[82] and requested the UN Secretary-General to submit to it the Report on the 3rd Session of the Ministerial Conference to be held at Praia, Cape Verde in 1995.

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[79] See Barbara Kwiatkowska, The 1991 Dakar Convention on Fisheries Cooperation Among African States Bordering the Atlantic Ocean, 7 International Journal of Marine and Coastal Law 147–164 (1992).

[80] Cooperation in Fisheries in Africa – Report of the Secretary-General, UN Doc. A/47/279-E/1992/79, 24 June 1992.

[81] See Law of the Sea – Report of the Secretary-General, UN Doc. A/48/527, para.131, 10 November 1993.

[82] UN Doc. E/1994/79, 16 June 1994.

VI. Conclusion

On the eve of the 50th Anniversary of the United Nations we should seek all means of further promoting the contribution of the Montego Bay Convention and the new Agreement on Part XI, along with the Agendas for Peace and Development and the Agenda 21, to the Global System of Peace and Security of which the Charter of the United Nations is the foundation. While guided by the commitments envisaged in these instruments and by masterly decisions of the World Court applying and developing law of the sea as part of general international law, we may keep in mind the encouraging words of the Court's Vice-President, Judge Stephen M. Schwebel that:

> There is no use in pretending that we have the sort of international law we need simply because we need it. On the contrary, there is a need for realism, for sobriety, for a critical spirit - and for a constructive spirit.[83]

At the present stage of yet inequitable North-South relationship, the international lawyer must assume the role defined by Professor Thomas M. Franck as that of "a moderator and interlocutor between the economist and the moral philosopher in a quest for arrangements which are legitimate and distributively fair while serving multiple objectives that may be hard to reconcile."[84] It is within such an understanding of our role and a constructive spirit that we feel inclined to support the innovative and visionary prescriptions of Professor Elisabeth Mann Borgese concerning contribution that Ocean governance can make to the restructuring of the United Nations. We would also like to supplement these prescriptions by certain actions related to this least advantaged of all the continents, Africa.

In particular, within promotion of the 1994 UN/ECA Strategy and Programme of Action for Integrated Development and Management of Marine/Ocean Affairs in Africa, we should seek inclusion of the Ocean sector as a separate subprogramme in both the United Nations New Agenda for the Development of Africa in the 1990s and the ECA African Strategies for the Implementation of Agenda 21. This should be coupled, on the one hand, with re-including the topic of Cooperation in Fisheries in Africa into the agenda of the UN General Assembly and adding other problems of African Ocean governance thereto, and on the other hand, with including in the annual General Assembly's Law of the Sea Resolu-

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[83] Schwebel, *supra* note 44, 13. Cf. also Judge Schwebel's reflections on the Government Legal Advising in the Field of Foreign Affairs, id., 608–617.

[84] Franck, *supra* note 26, 330.

tions an express emphasis on the highest priority to be given to Africa by the UN Secretary-General and the competent international organizations.

The need of developing states for advice and assistance has found repeated expression in the Law of the Sea Resolutions, in the most recent of which (Resolution 49/28 of 6 December 1994) the General Assembly requests the UN Secretary-General to continue its responsibilities and to fulfil the functions consequently upon the entry into force of the Montego Bay Convention, in particular by:

> Ensuring that the institutional capacity of the Organization can respond to requests of States, in particular developing States, and competent international organizations for advice and assistance and to identify additional sources of support for national, subregional and regional efforts to implement the Convention, taking into account the special needs of developing countries (§ 15(e)).

The Assembly also:

> Invites the competent international organizations, as well as development and funding institutions, to take specific account in their programmes and activities of the impact of the entry into force of the Convention on the needs of States, especially developing States, for technical and financial assistance, and to support subregional or regional initiatives aimed at cooperation in the effective implementation of the Convention (§ 20).

According to the 1994 Law of the Sea Report, the General Assembly thus not only mandates the Secretary-General to provide advice and assistance to member states in relation to the Montego Bay Convention, but also gives him the responsibility, in effect, to coordinate and integrate the assistance measures taken by states and international organizations for developing countries.[85] It would, therefore, be appreciable, if within its coordinating role, the UN/DOALOS headed by Dr Jean-Pierre Lévy, would consider channelling the assistance to African states on a priority basis. If it required strengthening of the DOALOS capacity being determined by the constraints of resources, measures to this effect would be justified by the commitment to the UN New Agenda for the Development of Africa in the 1990s. This, in combination with other prescriptions envisaged above, would activate an adequate response from the donor community to the formidable needs of African states for assistance in ocean-related matters, and would thereby provide the requisite means to alleviate the African Crisis.

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[85] UN Doc. A/49/631, *supra* note 49, para.213.