The Law of the Sea Convention: Unfinished Agendas and Future Challenges

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This Special Issue of the International Journal of Marine and Coastal Law is published to mark the coming into force on 16 November 1994 of the 1982 Law of the Sea Convention (LOSC). The Convention seeks to provide a comprehensive framework for the orderly exploitation and conservation of the world's oceans. However in the 13 years since the LOSC was signed at Montego Bay, Jamaica in December 1982, the world has changed a great deal. Not least amongst these changes is the emergence of a whole new generation of law of the sea specialists who were not involved with the Third United Nations Conference on the Law of the Sea (UNCLOS III) and do not have the personal involvement with the negotiations. Their exegesis of the text of the Convention is already very different from that of those who were UNCLOS insiders. Important changes have also taken place in politics, in economics and also; and perhaps most significantly; in global priorities and perceptions.

Significant political changes have taken place since 1982. Although the hopes for a “new international economic order” have not been realized, the dynamic economic growth of Southeast Asia, the emergence of a free market in an independent China, the increasing democratization of Latin America, and above all the disintegration of the Soviet Union have put a new cast on international negotiations. In particular, the end of bitter US–Soviet antagonism has released the Security Council of the UN from its frustrating stalemate over the global maintenance of peace and security, opening further opportunities for international co-operation between East and West.

Environmental concerns, although significant in UNCLOS negotiations and neatly reflected throughout the Convention itself, have become the leitmotif of the 1990s. The decade has been dominated by international negotiations at the global level over issues such as Global Climate Change and Depletion of the Ozone Layer as well as irreparable loss of Biological Diversity. All of these issues have a marine dimension. At a regional level too there have been a plethora of

1 Twelve months after the deposit of the sixtieth instrument of ratification by Guyana, as required by Article 308 LOSC.
international environmental instruments with direct relevance to the law of the sea. The growth of the UNEP regional seas programmes and treaties, the further development of regional marine environmental regulation under the 1992 Paris Convention, the 1992 Helsinki Convention and the initiation of New Programmes in the Black Sea under the Bucharest Convention. The 1992 UN Conference on Environment and Development (UNCED), attended by 170 countries of the world, provided a major step forward in this process. Although the 600 pages of Agenda 21 are not in fact always realistic, they do elaborate for the twenty-first century important goals. Many of these—the whole of Chapter 17 at least—relate to the oceans.

We have called this special issue "Unfinished Agendas and Future Challenges". It is worth recalling that despite the fact that UNCLOS III took nine years to produce the text of the Convention, and that it runs to 320 articles and IX Annexes, there are still important issues that require further work—either because they were simply unfinished or because of new expectations and demands. The innovatory "consensus" procedure and the "package deal" approach adopted at the Conference which have been widely commented upon necessitated a large number of compromises, and, as a direct result, a significant number of issues were not fully resolved.

In the years that have elapsed since the conclusion of the Convention at Montego Bay, Jamaica, many of the new concepts of the LOSC have been recognized and implemented by states and they are widely regarded as having become customary international law: notably the concepts of archipelagic status (Articles 46–54 LOSC), transit passage (Articles 37–44 LOSC) as well as the EEZ concept itself (Articles 55–75). However, the evolution of customary international law has not been able to provide solutions for a number of issues which have assumed greater importance in the years since 1982. The 1992 UNCED recognized two issues in urgent need of further elaboration and development—the regulation of land-based sources of marine pollution and the regime for high