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The Indian Ocean and the Law of the Sea: A Work in Progress

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Abstract and Keywords

This chapter assesses the implementation of the law of the sea in the Indian Ocean. It begins by providing a definition and general description of the Indian Ocean. It then discusses maritime zones and boundaries and regional and subregional cooperation. The practice of Indian Ocean coastal States generally shows a large measure of consistency with the UN Nations Convention on the Law of the Sea (LOS) as regards the extent of maritime zones. A considerable divergence from the LOSC exists in the case of straight baselines, whereas in the case of archipelagic baselines there is conformity to the Convention, suggesting that the numerical controls contained in Article 47 have been more effective.

Keywords: UNCLOS (UN Convention on the Law of the Sea), coastal states, ships / vessels, maritime boundaries, territorial sea, baselines

1 Introduction

*The Indian Ocean in the past decades undoubtedly has acquired an increased geostrategic significance. The economic rise of India has led to a growing power projection into the Indian Ocean. The simultaneous rise of China as a global player with a major interest in the region and its energy resources has given the Chinese-Indian rivalry a pronounced maritime dimension. The United States also has a major presence in the Indian Ocean.¹ Due to the significance of the Indian Ocean (p. 702) for maritime transport, coupled with the maritime security threats posed by among others Somali piracy, other extra-regional States also have an increased presence in the Indian Ocean. Some of those States have also been heavily involved in high seas fisheries.

Notwithstanding the significance of outside actors, the coastal States of the Indian Ocean are critical to shaping the implementation of the law of the sea in the region.² Coastal

The Indian Ocean and the Law of the Sea: A Work in Progress

States have the primary responsibility for defining its legal regime by establishing the geographical extent of coastal State jurisdiction and are key actors in most regional regimes which have been developed to further the implementation of the law of the sea and to pursue the effective management of the Indian Ocean and its resources.

The present chapter is intended to give an overview of the current status of the implementation of the law of the sea in the Indian Ocean. Due to the Indian Ocean's size, number of coastal States and the manifold relevant regimes, the chapter is not intended to present an exhaustive picture in this respect, but focuses on general trends and identifying interesting recent developments. The chapter starts by providing a definition and general description of the Indian Ocean. This is followed by sections on maritime zones and boundaries and on regional and sub-regional cooperation and conclusions.

2 Definition and General Description of the Indian Ocean

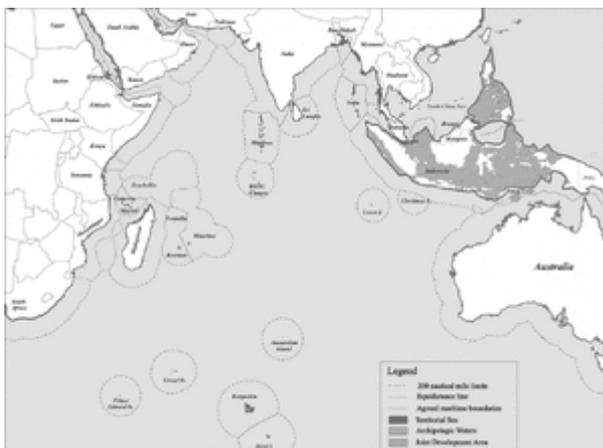


Figure 31.1 The Indian Ocean—Maritime Zones and Limits

The Indian Ocean borders on the continents of Africa, Asia, and Australia to respectively the west, north, and east. South of the continents of Africa and Australia, the Indian Ocean borders on the Atlantic, Pacific, and Southern Oceans.³ The boundary (p. 703) (p. 704) between the Indian and Southern Oceans has been defined differently. Both the parallel of 60° S and the Antarctic convergence have been used in this connection.⁴ The present chapter employs the Antarctic convergence as defined in the 1980 Convention on the Conservation of Antarctic Marine Living Resources (CAMLR Convention) as the boundary between the Indian and Southern Oceans.⁵ This puts the southern limit of the Indian Ocean between 45° S and 55° S.

There are a number of areas in the Indian Ocean that form more or less clearly defined sub-regions. Most noticeable are the Persian Gulf and the Red Sea, which are connected with the rest of the Indian Ocean by respectively the Strait of Hormuz and the Bab-el-Mandeb. Other peripheral seas of the Indian Ocean include the Gulf of Aden, Arabian

Sea, Bay of Bengal, Andaman Sea, Timor Sea, and Mozambique Channel. As will be seen, regional cooperation on the law of the sea in many cases is centred on such areas.

The coastal States of the Indian Ocean vary widely on a large number of parameters. In terms of economic development, the range is from industrialized high income countries like Australia or Singapore to small island developing States like Seychelles or Maldives. The Indian Ocean region also contains a number of failed or failing States, Somalia being the most noticeable example. These differences obviously impact on the capacity of coastal States to effectively contribute to the management of the Indian Ocean.

Most of the coastal States of the Indian Ocean are continental, some, such as India, with extensive island possessions, but the region also has a significant number of island and archipelagic States. Indonesia borders the north-eastern rim of the Indian Ocean, Maldives and Sri Lanka are located to the south of the Indian subcontinent, Bahrain in the Persian Gulf, and to the east of southern Africa are Madagascar and the small islands developing States of Comoros, Mauritius, and Seychelles. A number of these States have extensive maritime zones, which are much larger than their land territory.⁶

(p. 705) Prior to decolonization most of the Indian Ocean littoral was controlled by colonial powers. Today, only a number of islands are part of States from beyond the region. The islands of Reunion and Mayotte are overseas departments of France and the islands of St Paul and Amsterdam and the Îles Éparses—a number of islands in the Mozambique Channel and Tromelin to the east of Madagascar—are French overseas territories. The only remaining British possession in the Indian Ocean is the British Indian Ocean Territory, also known as the Chagos Archipelago, which is the home of a major United States naval base. The title to a number of these islands is disputed. Tromelin is also claimed by Mauritius, which also has a dispute with the United Kingdom over the Chagos Archipelago. Mayotte is also claimed by Comoros, of which it formed a part before the latter's independence, and the Îles Éparses in the Mozambique Channel are also claimed by Madagascar. These disputes also extend to the maritime zones generated by these islands.⁷ The most noticeable dispute in this respect at present concerns the Chagos Archipelago. Following the establishment of a marine protected area extending up to the 200-nautical-mile limit of the Chagos Archipelago by the United Kingdom in 2010 Mauritius instituted arbitral proceedings under the 1982 United Nations Convention on the Law of the Sea (LOS), alleging that the United Kingdom was not a coastal State within the meaning of the Convention and not competent to establish this area.⁸ Another territorial dispute concerns Abu Musa and Greater and Lesser Tunb. These islands, which are strategically located in the Persian Gulf at the entrance to the Strait of Hormuz are administered by Iran, but are also claimed by the United Arab Emirates. Apart from these disputes over islands, disputes over a number of land boundaries affect the starting point of maritime boundaries. In the case of India, this affects its maritime boundary with both Bangladesh and Pakistan. Other land boundary disputes with an impact on maritime boundaries concern Djibouti and Eritrea, Egypt and Sudan, and Saudi Arabia and Yemen.

A 2010 agreement between France and Mauritius concerning the island of Tromelin provides an interesting approach to managing the maritime zones of disputed territory.⁹ The agreement provides for co-management in relation to the (p. 706) island, its territorial sea and exclusive economic zone (EEZ) and specifies that it is without prejudice to the issue of sovereignty over Tromelin.¹⁰ The French Minister of Foreign Affairs has pointed out that the agreement could serve as a model to deal with the situation of the Îles Éparses in the Mozambique Channel, without addressing the issue of sovereignty.¹¹ The hydrocarbon potential of this latter area may make that solution more difficult to attain in that case.

3 Maritime Zones and Boundaries

All coastal States of the Indian Ocean except for Eritrea, Iran, Israel, and the United Arab Emirates presently are parties to the LOSC. Indian Ocean coastal States generally adhere to the maximum breadth of maritime zones provided for in the Convention. Almost all of them have established a 12-nm territorial sea.¹² The only State that currently claims a larger breadth—200 nm—is Somalia. Two States—Jordan and the United Kingdom in relation to the British Indian Ocean Territory—still claim a 3-nm territorial sea. In 1972, on the eve of the Third United Nations Conference on the Law of the Sea (UNCLOS III), practice was more diverse: over 20 States claimed a territorial sea of 12 nm and 17 States and territories had a territorial sea of under 12 nm. In most cases, this concerned a breadth of 3 nm. Only Maldives claimed a territorial sea of more than 12 nm in 1972. Few Indian Ocean coastal States claimed jurisdiction over fisheries or other economic uses of the oceans beyond the territorial sea—safe for the rights of coastal States under the continental shelf regime—in 1972. A couple of States and territories had a 12 nm fishing zone beyond their territorial sea (Australia, Mozambique, and South Africa) or a fishing zone extending 100 nm beyond their territorial sea (Pakistan and Sri Lanka).¹³ Maldives had established a fishing zone of varying distance extending up to 150 nm from its coast. Asian and African States at the time already supported (p. 707) the extension of coastal State resource jurisdiction to 200 nm.¹⁴ Currently, only Bahrain, Iraq, Jordan, Kuwait, Saudi Arabia, and Sudan are listed in the Doalos *Table of Claims to Maritime Jurisdiction* as not claiming resource jurisdiction on the basis of Part V of the LOSC.

In the early 1970s, 1970the coastal States of the Indian Ocean largely relied on the 1958 Convention on the Continental Shelf (CSC) to define the extent of their continental shelf. Article 1 of the CSC defines the continental shelf by reference to the 200 m isobath and the so-called exploitability criterion. National legislation at the time in no instance referred to the concept of natural prolongation that is central to the 1969 judgment of the International Court of Justice in the *North Sea Continental Shelf* cases and the definition of the continental shelf in Article 76 of the LOSC. Coastal States of the Indian Ocean at this time held different views on the future definition of the continental shelf. A number of them were part of the group of broad margin States (Australia, India, Madagascar, and Sri Lanka), which supported extension of the continental shelf to the outer edge of the continental margin.¹⁵ On the other hand, landlocked and geographically disadvantaged

States opposed extension of coastal State jurisdiction beyond 200 nm. This group included Kenya, Kuwait, Oman, Pakistan, and Singapore.¹⁶

Article 76 of the LOSC requires States parties to the LOSC to submit information on the outer limits of their continental shelf beyond 200 nm to the CLCS. Nearly all Indian Ocean coastal States have complied with this obligation. Australia, Bangladesh, France, India, Indonesia, Kenya, Madagascar, Maldives, Mauritius, Mozambique, Myanmar, Pakistan, Seychelles, South Africa, and Yemen have submitted information to the CLCS, while Comoros, Oman, Somalia, and Tanzania have submitted preliminary information.¹⁷ The only State for which no information is available on the website of the CLCS is the United Kingdom in relation to the British Indian Ocean Territory.¹⁸ The information that is available does not allow establishing whether or not the United Kingdom intends to make a submission in the future.

This short review of the outer limits of maritime zones in the Indian Ocean indicates a nearly universal adherence to the LOSC regime. A much more chequered pattern exists in relation to the baselines from which the breadth of the (p. 708) territorial sea and other maritime zones is measured.¹⁹ A number of Indian Ocean coastal States has drawn straight baselines that are not in accordance with Article 7 of the LOSC. This concerns coasts that are neither deeply indented and cut into nor have a fringe of island in front of them. This is, for instance, the case for the straight baselines established by Iran and Pakistan. Other straight baselines do not meet the requirement that they must not depart to an appreciable extent from the general direction of the coast. An example in this respect is the straight baseline of Myanmar across the Gulf of Martaban. This baseline in part deviates about 60° from the general direction of the coast.²⁰ Bangladesh's straight baselines are not linked to points on the low-water line, as is required by Article 7 of the LOSC.

Five coastal States of the Indian Ocean—Comoros, Indonesia, Maldives, Mauritius, and Seychelles—claim the status of archipelagic States.²¹ Four Indian Ocean island States—Madagascar, Bahrain, Timor-Leste, Singapore, and Sri Lanka—do not claim such status. Although these latter States possibly could be argued to fall under the definition of an archipelagic State, apart from Bahrain none of them would be able to draw archipelagic baselines in accordance with Article 47 of the LOSC. All five proclaimed archipelagic States have established archipelagic baselines. In contrast to the practice on straight baselines under Article 7 of the LOSC, this practice is generally in conformity with the requirements set out in Article 47 of the Convention.²²

The legislation of coastal States of the Indian Ocean that is applicable to their maritime zones also shows departures from the regime contained in the LOSC. This mostly concerns limitations on the navigational rights of third States in the territorial sea, straits used for international navigation and the EEZ.²³ Controversy concerning the extent of navigational rights also extends to a number of the straits in the Indian Ocean that are of vital importance to merchant shipping and warships. Iran, one of the States bordering the Strait of Hormuz, has argued that the regime of transit passage contained in the LOSC

does not reflect customary international law. This position would first of all affect the United States which is not a party to the Convention. Oman has only recognized the right of innocent passage through its territorial sea in the Strait of Hormuz.²⁴ In relation to the Bab el Mandeb, linking the Indian Ocean to the Red Sea and the Suez Canal, Yemen, in signing the (p. 709) LOSC, declared that warships and military aircraft must obtain prior authorization for passage.²⁵

A count of potential maritime boundaries based on the equidistance method results in 69 maritime boundaries between Indian Ocean coastal States.²⁶ Most of these boundaries delimit areas within 200 nm, but there also exist some 14 continental shelf boundaries beyond 200 nm.²⁷

The practice of Indian Ocean coastal States in respect of maritime boundary delimitation is similar to that of States in other regions. The first continental shelf delimitation agreements between States in the Persian Gulf in the 1960s were mainly triggered by the presence of hydrocarbon resources. The genesis of the 200 nm zone led to a proliferation of maritime boundary agreements. The majority of settled maritime boundaries has been delimited through agreements and has employed the equidistance method. In a number of cases islands have been given limited weight. Methods other than equidistance have been used in some instances. A limited number of maritime boundaries have been determined through adjudication. On all these points, the Indian Ocean is similar to other regions.

Notwithstanding the extension of coastal State jurisdiction in the second half of the 20th century, large parts of the Indian Ocean remain part of the high seas and the Area. This mostly concerns the central Indian Ocean. Some peripheral seas are completely covered by 200-nm zones. In other cases, such as the Bay of Bengal, there remains an area of high seas, but most, or all, of the seabed is part of the continental shelf beyond 200 nm. There currently are a number of exploration areas for polymetallic nodules (India) and polymetallic sulphides (Republic of Korea and China Ocean Mineral Resources Research and Development Association (COMRA) (sponsored by China)) in the Area under contract or approved by the International Seabed Authority (ISA). China's interest in mining sites in the Indian Ocean, for which a licence was granted in 2011, has led to concern on the part of India.²⁸

(p. 710) 4 Regional and Sub-regional Cooperation

The effective implementation of the law of the sea generally requires cooperation between coastal States and in certain cases will also need to involve other States. The present section will focus on regional and sub-regional cooperation in the Indian Ocean. Within the confines of this chapter it is not feasible to pay separate attention to bilateral cooperation between the many coastal States of the region. This section will first briefly look at a number of institutions that have been dealing with a wide range of law of the sea issues or have the potential to do so. After that, cooperation in relation to a number of specific issue areas is discussed.

4.1 Institutions with a broad mandate

The Indian Ocean Marine Affairs Co-operation (IOMAC) was set up in the wake of the negotiation of the LOSC. IOMAC was intended to provide an awareness of the (resource) potential of the Indian Ocean and furthering cooperation between the Indian Ocean coastal States, taking into account the new oceans regime of the LOSC. In addition, IOMAC aimed to develop a strategy that would allow Indian Ocean coastal States to integrate ocean-related activities in their development strategy and assist them in developing a framework for integrated ocean management.²⁹ Participation in IOMAC has never even come close to including all Indian Ocean coastal States. A 1990 Agreement on the Organization for Indian Ocean Marine Affairs Cooperation, which was intended to provide a formal basis for IOMAC, was signed or ratified by only nine Indian Ocean coastal States: Indonesia, Iran, Kenya, Mozambique, Mauritius, Nepal, Pakistan, Sri Lanka, and Tanzania. Due to the limited number of ratifications, the agreement has not entered into force.³⁰ The limited success of IOMAC has been attributed to the non-participation of Australia and India, two of the region's major powers.³¹

The Indian Ocean Rim-Association for Regional Co-operation (IOR-ARC) provides another example of the challenges of region-wide cooperation in the Indian Ocean. The initiative for the IOR-ARC was taken in the middle of the 1990s and (p. 711) it presently has 20 Member States, including important regional States such as Australia, India, Indonesia, and South Africa.³² The IOR-ARC has a broad range of objectives, including ocean activities, but its basic focus has been on trade-related issues.³³ The IOR-ARC is far from a success story. Assessments of its achievements have used qualifications like 'at best modest', 'largely moribund', 'little of substance has been achieved', and 'lacklustre performance'.³⁴ A number of recent studies and articles have argued for a reinvigoration of the IOR-ARC.³⁵ In this connection it has been suggested that there could be a larger focus on ocean activities.³⁶ At the same time, these analyses indicate that the role of a region-wide organization like the IOR-ARC in the management of ocean activities is likely to remain limited. Naidu, in taking issue with the criticism that the Indian Ocean region is too vast and diverse to successfully cooperate, points out that 'one needs to keep in mind that regions are primarily subjective constructs and most often politically driven'.³⁷ However, as Naidu also points out, regionalism requires a sense of 'Indian-Oceanness', which 'can be realised only if strongly backed by political will, which is something sorely missing in the case of the IOR-ARC'.³⁸ On certain issue areas initiatives by the IOR-ARC would be competing with existing institutions, raising the question to what extent the IOR-ARC would offer added value.³⁹ Wagner suggests that the function of IOR-ARC could primarily concern the exchange of information between its member States and between other regional organizations.⁴⁰

The adoption of the Perth Principles in November of 2013 signals an attempt to revitalize the IOR-ARC, which at the same time was renamed Indian Ocean Rim Association (IORA).⁴¹ The Perth Principles reiterate that 'IORA is the apex pan-regional organisation for the Indian Ocean'. The focus of the Principles is on the productive and sustainable use of the Indian Ocean and its resources, with particular (p. 712) attention for sustainable

fisheries management.⁴² The Perth ministerial meeting also stressed that IORA should look to enhance maritime security and safety.⁴³

In contrast to region-wide initiatives, sub-regional organizations dealing with a range of ocean issues seem to have been more successful.⁴⁴ The limited success of the IOR-ARC has been attributed to the fact that its member States have shown a greater interest in such cooperation.⁴⁵ Naidu in this connection refers to the Gulf Cooperation Council, the South Asian Association for Regional Cooperation (SAARC), the Association of South-East Asian Nations (ASEAN), and the Southern Africa Development Community (SADC).⁴⁶ However, the focus of these organizations in general is on economic cooperation and ocean affairs are not central to their activities. The Indian Ocean Commission (IOC) provides an example of the potential of such sub-regional organizations to take on ocean issues. The IOC got started in the first half of the 1980s and currently has Comoros, France (for Reunion), Madagascar, Mauritius, and Seychelles as Member States.⁴⁷ The IOC has been concerned with such varying issues as piracy, fisheries, oil spill contingency planning, and regional coral reef monitoring.⁴⁸

4.2 Sectoral cooperation

4.2.1 Marine capture fisheries

The Indian Ocean has witnessed similar increases in fisheries catches as other ocean areas. Between 1950 and 2010, catches increased from 861,000 tonnes to 11.3 million tons.⁴⁹ Comparing the trends in marine capture fisheries between 1970 and 2012, a notable difference emerges between the Indian Ocean and almost all other major fisheries areas that are used by the United Nations Food and Agriculture Organization (FAO) in compiling statistical information. Of these 19 areas, only the Western and Eastern Indian Ocean (respectively Major Fishing (p. 713) Areas 51 and 57) and the Western Central Pacific have shown sustained growth throughout most of this period.⁵⁰ The Eastern Indian Ocean is still experiencing significant growth in catches. Between 2007 and 2010 catches increased by 17 per cent and are now totalling 7 million tonnes.⁵¹ Catches in the Western Indian Ocean peaked at 4.5 million tonnes in 2006; 4.3 million tonnes were reported in 2010.⁵² The FAO estimates that globally about 90 per cent of catches are taken in the EEZs of coastal States.⁵³ In the Indian Ocean this figure is significantly lower. In the Eastern Indian Ocean high seas catches started to rise significantly in the first half of the 1970s. From a low-point of 3 per cent in 1973, these catches increased to 27 per cent of total catches in Major Fishing Area 57 in 2004.⁵⁴ For the Western Indian Ocean the relative weight of high seas catches is still bigger. Since the early 1980s, 1980more than 30 per cent of catches are taken in the high seas, with a peak of 39 per cent in 2003.⁵⁵ The role of extra-regional States in high seas catches has diminished over time, but remains significant.⁵⁶ For instance, in Major Fishing Area 51, Japan, the Republic of Korea, and Taiwan generally represented more than 50 per cent of landed catches in terms of value until the second half of the 1990s. This figure stood at 30 per cent in 2006.⁵⁷

(p. 714) The significance of marine capture fisheries for Indian Ocean coastal States varies widely.⁵⁸ A number of them, such as Indonesia and India, are among the major fishing nations of the world, while the fisheries in the EEZ of other Indian Ocean coastal States are mainly exploited by distant water fishing nations.⁵⁹ Most Indian Ocean coastal States face serious difficulties in managing the fisheries resources in their EEZ, which has resulted in overexploitation.⁶⁰ Limited information on catch data generally has resulted in difficulties in monitoring stock status and trends.⁶¹ An assessment of stocks by the Southwest Indian Ocean Fisheries Commission (SWIOFC) for 140 species in the area under its competence—the waters under national jurisdiction of its Member States—indicated that '[o]verall, 65 per cent of fish stocks were estimated to be fully exploited, 29 per cent overexploited, and 6 per cent non-fully exploited in 2009.'⁶² It has been submitted that Australia is unique in the Indian Ocean in developing an effective management regime that has resulted in a healthy fisheries industry.⁶³

Illegal, unreported, and unregulated (IUU) fishing constitutes a major problem in the Indian Ocean, just as in other ocean areas. One estimate for the period of 2000–2003 indicates that for the Western Indian Ocean the share of IUU fishing was equal to between 11 and 26 per cent of reported catches and that for the Eastern Indian Ocean this figure was between 20 and 43 per cent.⁶⁴ According to Hinrichs Oyarce, the issue has been in particular problematical in the Mozambique Channel and the southern part of the Indian Ocean.⁶⁵ An assessment of the trends in illegal fishing for the period between 1980 and 2003 indicates that it remained at around the same level in the Eastern Indian Ocean, but significantly declined for the Western Indian Ocean.⁶⁶ This decline has been attributed to increased control by coastal States, and a reduction of the unreported catch estimated by the Indian Ocean Tuna Commission (IOTC).⁶⁷

(p. 715) The widespread occurrence of IUU fishing has been attributed, among others, to: a lack of effective regional fisheries management;⁶⁸ registration of vessels in States that do not participate in such management;⁶⁹ lack of enforcement capacities of coastal States;⁷⁰ penalties for offences that are too low to discourage illegal practices;⁷¹ and a lack of political will on the part of coastal States.⁷² One study on illegal fishing has found 'no significant relationship between illegal fishing and the price of fish or the size of the EEZ or the fishery [concerned], but...did find a significant relationship with World Bank governance indicators'.⁷³

Regional fisheries cooperation in the Indian Ocean concerns both bodies that have an advisory role and bodies that are also competent to adopt management measures.⁷⁴ The latter are the Meeting of Parties of the Southern Indian Ocean Fisheries Agreement (SIOFA) and two tuna commissions, the IOTC, and the Commission for the Conservation of Southern Bluefin Tuna (CCSBT).

The SIOFA was concluded in 2006 and entered into force on 21 June 2012. Its area of competence is the southern part of Major Fishing Areas 51 and 57 to the west of the meridian of 120° E, excluding areas under national jurisdiction, and it applies to all fisheries resources except for sedentary species of the continental shelf beyond 200 nautical

miles and highly migratory stocks as defined in Annex I of the LOSC. Australia, Cook Islands, the European Union, Mauritius, and Seychelles are parties to the SIOFA. There currently is no similar management body for the remaining high seas of Major Fishing Areas 51 and 57. The original focus of the negotiations on the SIOFA on the Southern Indian Ocean seems to be explained by the fact that the members of the Committee for the Development and Management of Fisheries in the South West Indian Ocean that was abolished together with its parent body, the Indian Ocean Fishery Commission, by the FAO Council in June 1999, wished to re-establish a regional fisheries body.⁷⁵ The SIOFA takes on board the general principles of fisheries law that have been developed since the adoption of the LOSC. The SIOFA allows fishing entities, ie Taiwan, to participate in it.

The IOTC and the CCSBT both manage tuna fisheries. The CCSBT is only concerned with southern bluefin tuna and its competence extends over all waters where this species is found. This also concerns large parts of the southern Indian Ocean. Its membership originally comprised Australia, Japan, and New Zealand, but was subsequently enlarged with Indonesia and the Republic of Korea. In addition, the CCSBT established an Extended Commission to allow the participation of Taiwan (p. 716) in management. The European Union, South Africa, and Philippines are currently co-operating non-members.

The IOTC manages tuna and tuna-like species.⁷⁶ Its area of competence coincides with Major Fishing Areas 51 and 57, apart from its western boundary, which extends to the meridian of 20° E in order to align that boundary with the area of competence of the International Commission for the Conservation of Atlantic Tunas. Its membership includes the majority of the Indian Ocean coastal States and distant water fishing nations. IOTC's status as an FAO body has prevented the inclusion of Taiwan in its work.

The CCSBT and the IOTC both have their origins in agreements from 1993, which entered into force in respectively 1994 and 1996.⁷⁷ The performance of both organizations has been critically appraised as not having been successful in achieving effective management. In both instances, this has in part been attributed to the fact that the treaties that set up both bodies are outdated and do not take into account recent developments in the legal principles for fisheries management.⁷⁸ In both cases, the deficiencies in data collection and its consequences for future management have also been pointed out.⁷⁹ The fact that Taiwan is prevented from participating in the IOTC is seen as another factor negatively affecting the management of Indian Ocean tuna fisheries.⁸⁰ Both the IOTC and the CCSBT are addressing these issues in the light of performance reviews of their work. The IOTC, in considering the recommendation from the Performance Review Panel to either amend the existing Agreement or replace it with a completely renegotiated one, noted that 'the most logical path would be to undertake both paths, in series, i.e. to amend the Agreement...to satisfy some of the recommendations from the Panel, while also undertaking a process to renegotiate the entire Agreement'.⁸¹ The Commission also (p. 717) noted that the institutional links with the FAO inhibited the full involvement of all fleets, ie those of Taiwan, in its work. This contributed to non-compliance, while the Commission had little means at its disposal to deal with it.⁸² The CCSBT in the wake of the 2008 Performance Review has developed a Strategic Plan that is intended to address the issues

identified by the review.⁸³ A Second Performance Review is scheduled for 2014. This second review is to evaluate: the performance of the CCSBT; its progress in implementing the recommendations from the Performance Review; and the extent to which modern fisheries management standards have been incorporated into the Commission's work.⁸⁴

4.2.2 Environmental cooperation

Cooperation on the protection and preservation of the marine environment takes place at the global and regional level. As Part XII of the LOSC indicates, this cooperation plays an important role in standard-setting. To give an idea of the participation of Indian Ocean coastal States in global regimes, four randomly selected conventions are considered, namely the Convention on Biological Diversity (CBD), the 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS) and the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) and its 1996 Protocol. All Indian coastal States are parties to the CBD. This level of participation is commensurate with the near universal participation in the Convention. Twenty-three of the 38 Indian Ocean coastal States are parties to the CMS and for the London Convention and its 1996 Protocol these figures are respectively 13 and 6.⁸⁵ Especially the latter figure suggests that Indian Ocean coastal States may be lagging in implementing their obligations in relation to the protection and preservation of the marine environment. At the same time, it should be realized that the rate of participation of States from other regions in these instruments is not very dissimilar. The total number of parties to these three instruments stood at 119, 87, and 43, respectively. The rate of participation of Indian Ocean coastal States in (p. 718) the CMS is almost the same as that of all parties compared to the membership of the United Nations (respectively, 61 and 62 per cent). For the London Convention and its 1996 Protocol the Indian Ocean compares somewhat unfavourably in this respect, with a rate of participation of 34 and 16 per cent, respectively, as compared against 45 and 22 per cent.

Regional cooperation plays an important role in the protection and preservation of the marine environment. There is no cooperation in this respect spanning the entire Indian Ocean. It can be noted that the same applies for the Pacific and Atlantic Oceans. Cooperation on the protection and preservation of the marine environment is carried out by means of regional seas programs covering five sub-regions of the Indian Ocean: the East African region, including the island States of the southwestern Indian Ocean; the Red Sea and the Gulf of Aden; the Persian Gulf and Part of the Arabian Sea; the South Asian Seas; and the East Asian Seas.⁸⁶ In the latter two regions' cooperation is based in non-binding action plans and in the first three of these regions cooperation is based in a binding instrument.⁸⁷ These conventions all predate developments in environmental law since the second half of the 1980s. Only the Nairobi Convention has been subsequently amended, taking into account these developments.⁸⁸

Most of the maritime zones of the Indian Ocean coastal States are covered by these existing sub-regional cooperative mechanisms, but coverage is not complete. For instance, part of the EEZ and continental shelf of Oman and Yemen is beyond the area of application of the relevant regional conventions. Regional cooperation in general has focussed

on areas under national jurisdiction. None of the regional conventions includes the high seas and the Area in their area of application and the focus of the Action Plans is also on areas within national jurisdiction.

Recent developments involving the FAO and the CBD suggest that the interest in the management of areas beyond national jurisdiction (ABNJ) in the Indian Ocean may pick up.⁸⁹ These developments also provide an example of the linkages between the global and regional level of implementation of the law of the sea. In July 2012 two workshops on respectively vulnerable marine ecosystems (VMEs) and ecologically (p. 719) or biologically significant areas (EBSAs) in the Indian Ocean were organized back to back in Mauritius.⁹⁰ The workshop on VMEs was jointly organized by the FAO and the IOC and the workshop on EBSAs was convened by the executive secretary of the CBD in collaboration with the Secretariat of the Nairobi Convention and the FAO.⁹¹ Both workshops built on work at the global level and experiences from other regions. The workshop on EBSAs agreed on the descriptions of 39 EBSAs in the Southern Indian Ocean.⁹² This also concerns extensive areas in ABNJ.⁹³ The Workshop on VMEs among others concluded that it:

...was successful in raising awareness of VMEs and associated management options, and in explaining the various instruments and pathways necessary to achieve appropriate processes and management decisions. In addition, the workshop was a first step in developing regional networks to support this process.⁹⁴

The Indian Ocean has been designated as one of the priority regions of an FAO program that focuses on capacity development and the implementation of existing agreements and addresses both issues related to VMEs and EBSAs.⁹⁵ One interesting aspect of the workshops on VMEs and EBSAs is that they have been actively supported by the Nairobi Convention, but have not attracted involvement from the Action Plans for the South and East Asian Seas.⁹⁶ This raises the question what institutions will eventually take part in the management of ABNJ in the Indian Ocean. In that connection it can also be noted that the Meeting of Parties of the SIOFA is competent to deal with VMEs in relation to fisheries, but that there is no body with a similar competence in the northern part of the Indian Ocean.

Another recent development that has a potential to affect regional cooperation in relation to the marine environment concerns the concept of Large Marine Ecosystems (LMEs).⁹⁷ The LME concept has been propagated as 'a way forward for advancing ecosystem-based management of coastal and marine resources within a framework of sustainable development'.⁹⁸ Experiences with this concept in two (p. 720) parts of the Indian Ocean suggest that its impact may vary greatly depending on the existing framework for regional cooperation. In relation to the Agulhas and Somali current LMEs, which overlap spatially with the area of application of the Nairobi Convention, the Agulhas and Somali Current Large Marine Ecosystems (ASCLME) Project, which runs from 2008 to 2013, has been set up. The Nairobi Convention is a partner in the ASCLME Project and part of its Steering Committee.⁹⁹ Due to its focus and set up, the Project is complementary to the activities of the Nairobi Convention and likely providing useful input into the latter.

The Bay of Bengal Large Marine Ecosystem (BOBLME) Project overlaps spatially with the Action Plans for South Asian Seas and East Asian Seas, but not all countries represented in the two Action Plans participate in the BOBLME Project.¹⁰⁰ This makes the interactions with the Action Plans more problematic than in the case of the ASCLME Project for the Nairobi Convention. Moreover, as is observed on the webpage of the BOBLME Project:

Despite the large number of international, regional and sub-regional bodies and programmes operating in the Bay [of Bengal], none have a clear mandate, geographical scope and/or capacity to support a regional initiative that would effectively address the issues confronting the coastal communities of the [Bay of Bengal]. Furthermore, the current existence of many ineffective policies, strategies and legal measures at the National level would likely impede the development of any regional arrangements.¹⁰¹

4.2.3 Maritime security

Maritime security in its present-day form is a multifaceted concept ranging from the traditional focus over access to the sea and navigational rights and freedoms to modern-day issues such as illegal immigration, IUU fishing, and sub-standard shipping.¹⁰² In the Indian Ocean, traditional maritime security concerns are dominated by the strategic interests of two extra-regional powers, the United States and China, and the major regional player, India.¹⁰³ For the law of the sea, a major impact of India's rise as a naval power and its rivalry with China may be that 'India, a recovering champion of coastal State control over the oceans, is realigning its political might and military power to be more in concert with the liberal order of the ocean long promoted by the United States.'¹⁰⁴ At the same time, China's interests (p. 721) in the Indian Ocean also seem to be best served by maintaining the navigational framework contained in the LOSC. China's policy in relation to the seas near its shores is rather based on limiting these rights. To some extent China has tried to manage this tension by arguing the existence of special regimes, allowing a divergence from the LOSC framework, in the latter case. This approach has met with limited success and in the future may require reconsideration in the light of China's broader maritime interests.

Maritime security issues in the Indian Ocean in general have been managed in the existing law of the sea framework, but some approaches to dealing with specific issues have raised questions in this respect. The announcement by Australia in 2004 that it would declare a 1,000-nm maritime identification zone led to concerns of neighbouring States that this would affect their rights.¹⁰⁵ Some doubts about the compatibility of this scheme—implemented as the Australian Maritime Identification System—with the law of the sea have been voiced.¹⁰⁶ More recently, an election promise of the current Australian Government to 'turn back boats [with illegal migrants] where it is safe to do so'¹⁰⁷ has led to questions concerning how such a policy could be implemented within the current law of the sea framework.¹⁰⁸

One of the main challenges to the current law of the sea, and public international law generally, in the Indian Ocean likely was the surge of maritime piracy in the North-Western Indian Ocean in the wake of the collapse of State authority in Somalia. This implied that pirates could operate with impunity from bases in Somalia and Somalia's territorial sea. Instead of seeking to adjust or bypass international law to address this issue the international community has relied on a mandate of the United Nations Security Council to complement the law of the sea, which only allows addressing piracy beyond the limits of the territorial sea.¹⁰⁹

Deficiencies in implementation and a lack of capabilities seem to provide a bigger problem for ensuring maritime security than the existing legal framework. For instance, Bateman has pointed out the ineffectiveness of the Indian Ocean Memorandum of Understanding on Port State Control (Indian Ocean MoU). A number of Indian Ocean coastal States (eg Pakistan, Madagascar, and Seychelles) (p. 722) do not participate in the Indian Ocean MoU. Inspection rates of the MoU are moreover too low.¹¹⁰

5 Conclusions

The practice of Indian Ocean coastal States generally shows a large measure of consistency with the LOSC as regards the extent of maritime zones. A considerable divergence from the LOSC exists in the case of straight baselines, whereas in the case of archipelagic baselines there in general is conformity to the Convention, suggesting that the numerical controls contained in Article 47 have been more effective than the broad language of Article 7. A number of Indian Ocean coastal States has sought to impose restrictions on navigation and overflight that are not in accordance with the Convention's regime. Both as regards this latter issue and straight baselines, divergence from the conventional regime is certainly not unique to the Indian Ocean. The practice of Indian Ocean coastal States in respect of maritime boundary delimitation is similar to that of other regions. The practice of Australia in relation to some maritime security issues suggests that measures that are being considered in this context may lead to tension with the law of the sea. In view of the continued significance of these issues to the Indian Ocean region, they might in the future become a source of instability for certain aspects of the law of the sea.

Notwithstanding some attempts at Indian Ocean-wide cooperation on law of the sea, cooperation centred on specific regions is likely to remain prevalent (for such reasons as geography, larger coherence of these regions as compared to the Indian Ocean as a whole, existing patterns of cooperation, and the likely lack of benefits from moving from regional to Ocean-wide cooperation). Exceptions are only likely to be the case if the object of regulation—such as tuna fisheries—makes Indian Ocean-wide cooperation indispensable. The analysis also points to considerable differences between various regions of the Indian Ocean as regards the impact of existing institutional arrangements on new developments, as is illustrated by the reception of the LME concept in the East African region and the Bay of Bengal and the work on VMEs and EBSAs. The impact of extra-regional actors is

among others (p. 723) apparent from their role in high fisheries management and cooperation in combatting piracy off the coast of Somalia.

The analysis of existing cooperation in the field of fisheries, the marine environment and maritime security indicates that the implementation of the law of the sea—and achieving sustainable management of the Indian Ocean—is a work in progress. Many of these regimes need to be updated to bring them in line with the existing global legal framework and participating States oftentimes are lacking in the capacities and resources that are needed in this respect. The differences between the various regions of the Indian Ocean make it likely that they will stay on different trajectories in dealing with the implementation of the law of the sea.

Notes:

(*) I would like thank Rudolf Hermes, Youna Lyons, Erik Molenaar, and Don Rothwell for their comments on a draft of this chapter. Any mistakes or omissions remain the sole responsibility of the author.

(1) For recent literature discussing the strategic significance of the Indian Ocean, see eg C Bouchard and W Crumplin, 'Neglected No Longer: the Indian Ocean at the Forefront of World Geopolitics and Global Geostrategy' (2010) 6 *Journal of the Indian Ocean Region* 26; RD Kaplan, *Monsoon: the Indian Ocean and the Future of American Power* (Random House New York 2010); M Kearney, *The Indian Ocean in World History* (Routledge New York 2004); J Kraska, 'I.O. 2.0: Indian Ocean Security and the Law of the Sea' (2011–2012) 43 *Georgetown Journal of International Law* 433; D Michel and R Sticklor (eds), *Indian Ocean Rising: Maritime Security and Policy Challenges* (Stimson Washington DC 2012).

(2) In view of the definition of the Indian Ocean employed in this chapter (see text accompanying nn 3ff) this concerns the following States: Australia, Bahrain, Bangladesh, Comoros, Djibouti, Egypt, Eritrea, France, India, Indonesia, Iran, Iraq, Israel, Jordan, Kenya, Kuwait, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Myanmar, Oman, Pakistan, Qatar, Saudi Arabia, Seychelles, Singapore, Somalia, South Africa, Sri Lanka, Sudan, Tanzania, Thailand, Timor-Leste, United Arab Emirates, United Kingdom, and Yemen.

(3) The current edition of *Limits of Oceans and Seas: Special Publication No 23* (3rd edn International Hydrographic Bureau Monaco 1953) 22, puts the limit between the Indian and Atlantic Oceans at the meridian passing through Cape Agulhas in South Africa and the limit between the Indian and Pacific Oceans at the meridian passing through South East Cape in Tasmania. The third edition of *Limits of Oceans and Seas* does not clearly define the limits between the Indian and Pacific Oceans in the Indonesian archipelago. Publications put this limit in different places: see eg GVC Naidu, 'Prospects for IOR-ARC Regionalism: An Indian Perspective' (2012) 8 *Journal of the Indian Ocean Region* 21, 23; LG Luke and C O'Loughlin, 'Critical Issues in the Indian Ocean Region to 2020' in LG Luke and C O'Loughlin (eds), *Indian Ocean: A Sea of Uncertainty* (Future Directions Interna-

tional Perth 2012) 9. The present chapter sets the limits in this area in the Strait of Singapore and along the southern coast of the Indonesian archipelago and East Timor up to and including the Timor Sea. Figure 31.1 provides an overview of the maritime zones and limits in the Indian Ocean. It does not include information on the outer limits of the continental shelf beyond 200 nautical miles. For a figure including the latter information see eg T Schoolmeester and E Baker (eds), *Continental Shelf; The Last Maritime Zone* (United Nations Environmental Programme (UNEP)/GRID-Arendal Arendal 2011) 14–15.

(4) Australia's charting practice extends the Southern Ocean even up to the Australian continent (see eg Chart Aus4709 Southern Ocean—Australia South Coast).

(5) 1980 Convention on the Conservation of Antarctic Marine Living Resources, Art I(4) (hereinafter CAMLR Convention) defines the Antarctic convergence by parallels and meridians between the points 50°S, 0°; 50°S, 30°E; 45°S, 30°E; 45°S, 80°E; 55°S, 80°E; 55°S, 150°E; 60°S, 150°E; 60°S, 50°W; 50°S, 50°W; 50°S, 0°.

(6) See Figure 31.1.

(7) See eg the protest of France against the inclusion of Mayotte in the archipelagic baselines of Seychelles: Permanent Mission of France to the United Nations, Note No 378 to the UN Secretary-General (30 July 2009), available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn63_2008_fra_en.pdf>.

(8) For some additional information, see I Papanicolopulu, 'Mauritius v United Kingdom: Submission of the Dispute on the Marine Protected Area around the Chagos Archipelago to Arbitration', *EJIL Talk!* (11 February 2011), available at <<http://www.ejiltalk.org/mauritius-v-united-kingdom-submission-of-the-dispute-on-the-marine-protected-area-around-the-chagos-archipelago-to-arbitration/>>.

(9) Accord-cadre entre le Gouvernement de la République française et le Gouvernement de la République de Maurice sur la Cogestion Économique, Scientifique et Environnementale Relative à l'Île de Tromelin et à ses Espaces Maritimes (7 June 2010), available at <<http://www.senat.fr/leg/pjl11-299.html>>.

(10) Ibid, Arts 1 and 2.

(11) See the explanatory memorandum to the agreement, *Exposé des Motifs* (25 January 2012), available at <<http://www.senat.fr/leg/pjl11-299.html>>.

(12) All information on regional practice on the extent of maritime zones is based on US Department of State, 'National Claims to Maritime Jurisdiction' (1972) in No 36 *Limits in the Seas*, available at <<http://www.state.gov/e/oes/ocns/opa/c16065.htm>>; Doalos, 'Table of Claims to Maritime Jurisdiction (as at 15 July 2011)', available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf>; and information on the website of the Commission on the Limits of the Continental Shelf

The Indian Ocean and the Law of the Sea: A Work in Progress

(CLCS), available at <http://www.un.org/Depts/los/clcs_new/clcs_home.htm>, unless indicated otherwise.

(13) India reserved the right to establish such a zone.

(14) See *Virginia Commentaries*, Vol II, 497.

(15) Other Indian Ocean coastal States, such as Bangladesh also supported this position: *Official Records of the Third UN Conference on the Law of the Sea, Official Records* (Office of Legal Affairs New York 1975) Vol 1, 102 [56] (hereinafter *UNCLOS III Official Records*).

(16) *Ibid*, Vol 1, 152 [49]–[50] and 156 [33]; *ibid*, Vol II, 151 [32], 154 [74], and 162 [19].

(17) On these two modalities for complying with the time limit for submitting information on the outer limits of the continental shelf, see further Chapter 8 in this volume.

(18) Mauritius submitted preliminary information on the outer limits of the continental shelf of the Chagos Archipelago on 6 May 2009.

(19) See eg Kraska, n 1; JA Roach and RW Smith, *Excessive Maritime Claims* 3rd edn (Martinus Nijhoff Publishers Leiden 2012).

(20) Roach and Smith, n 19, 116.

(21) *Table of Claims to Maritime Jurisdiction*, n 12.

(22) The *Limits in the Sea Series* issued by the Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs in the US State Department indicates minor divergences of the archipelagic straight baselines established by Comoros, Maldives, and Seychelles assessed against the requirements of LOSC, Art 47 (see respectively (2014) 134 *Limits in the Seas* 2–3; (2005) 126 *Limits in the Sea* 3; (2014) 132 *Limits in the Sea* 4). In all these cases, it would seem possible to comply with the requirements of Art 47 by minor adjustments in the existing baselines.

(23) See eg Kraska, n 1, 450, 456–7, and 459.

(24) *Ibid*, 467; Roach and Smith, n 19, 293–6.

(25) For the Yemeni declaration, see Yemen, ‘Upon ratification’ (21 July 1987) in United Nations Division for Ocean Affairs and Law of the Sea (Doalos), *Declarations and Statements*, available at <http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm>; and Roach and Smith, n 19, 284–6.

(26) List on file with the author. This concerns pairs of States. Some of these pairs of States share more than one maritime boundary. Four bilateral boundaries are affected by the existence of sovereignty disputes over islands. Depending on the outcome of these disputes these maritime boundary relations might no longer exist.

The Indian Ocean and the Law of the Sea: A Work in Progress

(27) Based on the equidistance method and information on the website of the CLCS. The actual number of such boundaries may differ because, in some cases, the equidistance method has not been applied.

(28) See Kraska, n 1, 459 and 461-2.

(29) Ibid, 116-17; HW Jayewardene, 'The Indian Ocean: Lessons Learned' in MJ Valencia (ed), *Maritime Regime Building* (Kluwer Law International The Hague 2001) 105, 113-14.

(30) Kraska, n 1, 117; Luke and O'Loughlin, n 3, 22.

(31) Jayewardene, n 29, 124-125; Luke and O'Loughlin, n 3, 22. The latter publication doubts that IOMAC would have fared much better with the participation of Australia and India.

(32) For information on the history and current membership of the IOR-ARC, see Indian Ocean Rim Association website, at <<http://iorarc.org/>>; see also Naidu, n 3, 21-36; C Wagner, 'The Indian Ocean Rim-Association for Regional Co-operation (IOR-ARC): the Futile Quest for Regionalism?' (2013) 9 *Journal of the Indian Ocean Region* 6; S Bateman and A Bergin, *Our Western Front; Australia and the Indian Ocean* (Australian Strategic Policy Institute Barton 2010); S Bateman and A Bergin, 'New Challenges for Maritime Security in the Indian Ocean—an Australian Perspective' (2013) 9 *Journal of the Indian Ocean Region* 18.

(33) See Naidu, n 3, 26.

(34) Wagner, n 32, 13; Luke and O'Loughlin, n 3, 19 and 20; Naidu, n 3, 24-5; see also Bateman and Bergin, 'New Challenges', n 32, 122.

(35) Bateman and Bergin, *Our Western Front*, n 32, 47; Naidu, n 3, 32-4.

(36) See eg Wagner, n 32, 6; Bateman and Bergin, *Our Western Front*, n 32, 47; see also text accompanying nn 42ff.

(37) Naidu, n 3, 27.

(38) Ibid; see also Wagner, n 32, 7.

(39) Wagner, n 32.

(40) Ibid, 14.

(41) Declaration of the Indian Ocean Rim Association on the Principles for Peaceful, Productive and Sustainable Use of the Indian Ocean and its Resources (1 November 2013), available at <<http://www.dfat.gov.au/geo/indian-ocean/perth-principles-2013.html>>.

(42) Ibid.

(43) Perth Communiqué, 13th Meeting of the Council of Ministers of the Indian Ocean Rim Association, Perth, Australia (1 November 2013) [6], available at <<http://www.dfat.gov.au/geo/indian-ocean/perth-communication-2013.html>>.

(44) Naidu, n 3, 24.

(45) Ibid, 25, referring to S Kelegama 'Indian Ocean Regionalism: is There a Future?' (2002) 37(25) *Economic and Political Weekly* 2422, 2423.

(46) Naidu, n 3, 24.

(47) For information on the history and activities of the IOC, see Wikipedia, 'Indian Ocean Commission', available at <http://en.wikipedia.org/wiki/Indian_Ocean_Commission>.

(48) Ibid; A Tahindro, 'The Implementation of UNCLOS in the Indian Ocean Region: The Case of Madagascar' (2006) 12 *African Yearbook of International Law* 349, 390–4.

(49) LO Hayward, 'China in the Indian Ocean: A Case of Uncharted Waters' in Luke and O'Loughlin (eds), n 3, 101, 103.

(50) See United Nations Food and Agriculture Organization (FAO), *The State of World Fisheries and Aquaculture 2012* (FAO Rome 2012) 54–5, available at <<http://www.fao.org/docrep/016/i2727e/i2727e00.htm>> (hereinafter *State of World Fisheries*). The Western and Eastern Indian Ocean are divided by the meridians of 80°E (south of the equator) and 77°E (north of the equator). To the south, their limit coincides with the northern limit of the CAMLR Convention area (see n 5). The western limit of Area 51 and the eastern limit of Area 57 differ to some extent from the western and eastern limit of the Indian Ocean provided by the IHO. For instance, the western limit of Area 51 is set at the meridian of 30° E, whereas the western limit of the Indian Ocean in the IHO definition uses the meridian passing through Cape Agulhas (approximately 20° E). For the definition of Areas 51 and 57, see FAO, Fisheries and Aquaculture Department, *CWH Handbook of Fishery Statistical Standards* (2014), available at <<http://www.fao.org/fishery/cwp/handbook/H/en>>.

(51) *State of World Fisheries*, n 50, 59.

(52) Ibid.

(53) Ibid, 94. Figures from the Sea Around Us Project up to 2004 show a different division. Between 1992 and 2004 the figure for EEZ catches is around 85 per cent and that for the high seas 15 per cent: Sea Around Us Project, *Percent of Landings in EEZs vs. High Seas*, available at <www.seaaroundus.org/TrophicLevel/PercentEEZHS.aspx?EEZ=000&FAO=0&TypeOut=0&country=EEZ> (Global Catch).

(54) See Sea Around Us Project, *Percent of Landings Inside EEZs vs. Outside for FAO Area E Indian Ocean*, available at <<http://aerl06.aerl.ubc.ca/TrophicLevel/PercentEEZHS.aspx?EEZ=999&FAO=57&TypeOut=1#>>.

The Indian Ocean and the Law of the Sea: A Work in Progress

(55) See Sea Around Us Project, *Percent of Landings inside EEZs vs. outside for FAO area W Indian Ocean*, available at <<http://aerl06.aerl.ubc.ca/TrophicLevel/PercentEEZHS.aspx?EEZ=999&FAO=51&TypeOut=1#>>.

(56) See Sea Around Us Project, *Real 2000 value (US\$) by Fishing Country in High Seas—Indian Ocean, Western*, available at <<http://www.searoundus.org/highsea/51/14.aspx>>, and *Real 2000 Value (US\$) by Fishing Country in High Seas—Indian Ocean, Eastern*, available at <<http://www.searoundus.org/highsea/57/14.aspx>>.

(57) See Sea Around Us Project, *Real 2000 Value (US\$) by Fishing Country in High Seas—Indian Ocean, Western*, n 56.

(58) For general information on most Indian Ocean coastal States see the Fisheries and Aquaculture Department, *Fishery and Aquaculture Country Profiles* (2014), available at <<http://www.fao.org/fishery/countryprofiles/search/en>>.

(59) See eg FAO, *Fishery Country Profile; The Republic of Kenya* (FID/CP/KEN) (2007) [3.2] and [4.2], available at <ftp://ftp.fao.org/FI/DOCUMENT/fcp/en/FI_CP_KE.pdf>.

(60) See D Michel, H Fuller, and L Dolan, 'Natural Resources in the Indian Ocean: Fisheries and Minerals' in Michel and Sticklor (eds), n 1, 103, 103–4.

(61) *State of World Fisheries*, n 50, 59.

(62) *Ibid.*

(63) Michel et al, n 60, 104.

(64) J Hughes, 'The Piracy-Illegal Fishing Nexus in the Western Indian Ocean' in Luke and O'Loughlin (eds), n 3, 41, 42.

(65) X Hinrichs Oyarce, 'Current Ocean Law Issues in the Indian Ocean Region' in HN Scheiber and J Paik (eds), *Regions, Institutions, and Law of the Sea: Studies in Ocean Governance* (Martinus Nijhoff Publishers Leiden 2013) 359, 374.

(66) DJ Agnew et al, 'Estimating the Worldwide Extent of Illegal Fishing' (2009) 4 *Plos ONE* 1, 2 Table 2. For the period 1980–1984, illegal fishing equalled 31 per cent of reported catches in the Western Indian Ocean, and in the period 2000–2003—18 per cent.

(67) *Ibid.*, 3.

(68) Bateman and Bergin, *Our Western Front*, n 32.

(69) Hinrichs Oyarce, n 65, 374.

(70) *Ibid.*, 374–5.

(71) *Ibid.*

(72) Hughes, n 64, 41.

(73) Agnew, n 66, 4.

(74) For an overview of these bodies see FAO, *Regional Fishery Bodies (RFB)* (2014) available at <<http://www.fao.org/fishery/rfb/search/en>>.

(75) FAO, *Final Act of the Conference on the Southern Indian Ocean Fisheries Agreement* (2006), available at <http://www.fao.org/fileadmin/user_upload/legal/docs/035t-e.pdf>.

(76) This includes southern Bluefin tuna, but in practice the IOTC defers to the CCSBT for the management of this species: International Seafood Sustainability Foundation, *Southern Bluefin—Southern Hemisphere* (2014), available at <<http://iss-foundation.org/status-of-the-stocks/southern-bluefin-southern-hemisphere/>>.

(77) 1993 Convention for the Conservation of Southern Bluefin Tuna; 1993 Agreement for the Establishment of the Indian Ocean Tuna Commission.

(78) For the IOTC, see Bateman and Bergin, *Our Western Front*, n 32, 54; E Franckx and K van den Bossche, 'Regional Issues and Oceans Law: The African Region' in Scheiber and Paik (eds), n 65, 411, 412–21; see Commission for the Conservation of Southern Bluefin Tuna, *Report of the Independent Expert* (2008), available at <http://www.ccsbt.org/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_15/PerformanceReview_IndependentExpertsReport.pdf>.

(79) See Commission for the Conservation of Southern Bluefin Tuna, n 78, 4; Franckx and Van den Bossche, n 78, 412.

(80) WR Edeson, 'An International Legal Extravaganza in the Indian Ocean: Placing the Indian Ocean Tuna Commission outside the Framework of FAO' (2007) 22 *International Journal of Marine and Coastal Law* 485, 486.

(81) Indian Ocean Tuna Commission, *Report of the Seventeenth Session*. Doc IOTC-2013-S17-R[E] (2013) [99], available at <<http://iotc.org/sites/default/files/documents/2013/08/IOTC-2013-S17-R%5BE%5D%20-%20FINAL.pdf>>.

(82) *Ibid*, [100].

(83) Commission for the Conservation of Southern Bluefin Tuna (CCSBT), *Strategic Plan* (2011), available at <http://www.ccsbt.org/userfiles/file/docs_english/operational_resolutions/CCSBT_Strategic_Plan.pdf>.

(84) CCSBT, *Implementation of the CCSBT Strategic Plan* (2013) Attachment A (Draft Terms of Reference for the Second Performance Review of the CCSBT), available at <http://www.ccsbt.org/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_20/report_of_CC8.pdf>. The CCSBT agreed to the draft terms of reference at its 20th Meeting, *Report of the Twentieth Annual Meeting of the Commission* (2013) [81], available at <http://www.ccsbt.org/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_20/report_of_CCSBT20.pdf>.

The Indian Ocean and the Law of the Sea: A Work in Progress

(85) These figures are based on an assessment by the author of this chapter of 18 November 2013 (on file with the author). Eight Indian Ocean coastal States that are not a party to the CMS are either a party to an agreement or participate in one or more memoranda of understanding concluded in the framework of the Convention.

(86) The latter area also covers areas beyond the Indian Ocean. Background information on regional cooperation on the marine environment of all these sea areas can be accessed through the website, UNEP, *Regional Seas Programmes*, available at <<http://www.unep.org/regionalseas/>>.

(87) 1985 Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (hereinafter Nairobi Convention); 1978 Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution; 1982 Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment.

(88) 2010 Amended Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (hereinafter Amended Nairobi Convention).

(89) In addition, it can be noted that exploratory activities in relation to mineral resources in the Area are regulated by the ISA. The regulations of the ISA include environmental standards that are based on current principles of international environmental law.

(90) See FAO, *Fisheries and Aquaculture Report No. 1030: Report of the Regional Workshop on Vulnerable Marine Ecosystems (VMEs) in the Indian Ocean* (Flic en Flac Mauritius 2012) (hereinafter *VME Report*); *Report of the Southern Indian Ocean Regional Workshop to Facilitate the Description of Ecologically or Biologically Significant Marine Areas* Doc UNEP/CBD/RW/EBSA/SIO/1/4 (2013) (hereinafter *EBSA Report*). Although the latter workshop refers to the Southern Indian Ocean, its geographic scope generally extended up to the meridian of 10° N (see *VME Report*, Annex V).

(91) *VME Report*, n 90, iii; *EBSA Report*, n 90, 2 [5].

(92) *EBSA Report*, n 90, 37.

(93) *Ibid*, Annex V.

(94) *VME Report*, n 90, 26 [16].

(95) *Ibid*, 23 [15.1].

(96) Some of the States participating in these Action Plans did attend the workshops.

(97) For further information on the concept, see eg K Sherman and G Hempel (eds), 'Perspectives on Regional Seas and the Large Marine Ecosystem Approach' in *The UNEP Large Marine Ecosystems Report* (2008) 3, available at <<http://iwlearn.net/publications/regional-seas-reports/unep-regional-seas-reports-and-studies-no-182/background-report->

The Indian Ocean and the Law of the Sea: A Work in Progress

perspectives-on-regional-seas-and-the-large-marine-ecosystem-approach>. This report also contains information on the LMEs of the Indian Ocean.

(98) Ibid, 5.

(99) For further information on the ASCLME Project, see ASCLME, *Welcome to the ASCLME Project* (2014), available at <<http://www.asclme.org/>>.

(100) For further information on the BOBLME Project, see BOBLME, *The Bay of Bengal Large Marine Ecosystem Project* (2014), available at <<http://www.boblme.org/>>.

(101) See BOBLME, *The Bay of Bengal Large Marine Ecosystem Project: About BOBLME, Project Overview* (2014), available at <http://www.boblme.org/project_overview.html>.

(102) For a discussion of the concept of maritime security, see eg DR Rothwell, 'Maritime Security in the Polar Regions' in EJ Molenaar, AG Oude Elferink, and DR Rothwell (eds), *The Law of the Sea and the Polar Regions* (Martinus Nijhoff Publishers Leiden 2013) 367, 370-1.

(103) See further eg Kraska, n 1.

(104) Ibid, 489; see also ibid, 491-2.

(105) DR Rothwell, 'The Impact of State Practice on the Jurisdictional Framework contained in the LOS Convention: A Commentary' in AG Oude Elferink (ed), *Stability and Change in the Law of the Sea: The Role of the LOS Convention* (Martinus Nijhoff Publishers Leiden 2005) 145, 156.

(106) See DR Rothwell and T Stephens, *The International Law of the Sea* (Hart Publishing Oxford 2010) 96.

(107) The Nationals, *The Coalition's Operation Sovereign Borders Policy* (2013) 5, available at <<http://www.nationals.org.au/Portals/0/2013/policy/The%20Coalition%E2%80%99s%20Operation%20Sovereign%20Borders%20Policy.pdf>>.

(108) See ABC Fact Check, 'Is it Illegal to Turn Back Boats in International Waters to Indonesia?', *ABC Online* (17 November 2014), available at <<http://www.abc.net.au/news/2013-09-26/government-turn-back-boat-policy/4979898>>.

(109) See Chapter 37 in this volume.

(110) S Bateman, 'Maritime Security and Port State Control in the Indian Ocean Region' (2012) 8 *Journal of the Indian Ocean Region* 188, 197. See also the review of initiatives to cooperate in combatting piracy in the eastern and western part of the Indian Ocean: N Passas and A Twyman-Ghoshal, 'Controlling Piracy in Southeast Asia—Thinking outside the Box' in RC Beckman and JA Roach (eds), *Piracy and International Crimes in ASEAN* (Edward Elgar Cheltenham 2013) 62, 77; L Cordner, 'Rethinking Maritime Security in the Indian Ocean Region' (2010) 6 *Journal of the Indian Ocean Region* 67, 76.

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