Chapter 15

REVIEWING THE IMPLEMENTATION OF THE LOS CONVENTION: THE ROLE OF THE UNITED NATIONS GENERAL ASSEMBLY AND THE MEETING OF STATES PARTIES

*Alex G. Oude Elferink**

INTRODUCTION

Many multilateral treaties provide for the establishment of standing bodies or a conference of the parties to facilitate their review and implementation. Such institutions can, for instance, be given the power to adopt recommendations to the parties, adopt protocols or annexes to the convention or amend these. According such powers to an institution under a treaty makes it possible to react quickly to new developments or to address shortcomings in a treaty that only become apparent after it has become operational. Formal amendment of a treaty would take much more time to address such issues.

The LOS Convention does not contain a detailed institutional arrangement to keep its implementation under review.[1] Article 319 of the LOS Convention provides for the possibility to convene a Meeting of States Parties, which seemingly has been accorded limited functions. Otherwise, this article attributes a review function to the Secretary-General of the United Nations. Although the General Assembly of the United Nations is not explicitly mentioned in the Convention, it

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[1] United Nations Convention on the Law of the Sea of 10 December 1982 (1833 UNTS 396).

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has been prominently involved in reviewing the implementation of the Convention and developments in the law of the sea generally.

The present chapter intends to assess how the existing framework for reviewing the implementation of the LOS Convention came about and how it has been functioning. As can be appreciated from the chapter's title, attention will be focused on the respective roles of the General Assembly and the Meeting of States Parties to the Convention (SPLOS). Before turning to the analysis of this framework, it is necessary to say some words concerning the matters the Convention regulates, and the consequences this has for its institutional design.[2] Detailed technical rules require different review mechanisms than principles of public international law.[3]

The Subject Matters Included in the LOS Convention

A number of subject matters can be distinguished in the LOS Convention: jurisdictional framework;[4] substantive regimes;[5] dispute settlement; and administration of the Convention. All of these subject matters place specific requirements on institutional design.

Jurisdictional Framework

One of the basic aims of the LOS Convention is the establishment of stable ocean boundaries. This is accomplished by a set of rules describing the extent of maritime zones under the sovereignty or jurisdiction of coastal States. The extent of areas beyond national jurisdiction is defined negatively, by providing that they are situated beyond the outer limits of areas under national jurisdiction. One of the basic tenets of international law is that only the coastal State is competent to define the extent of its maritime zones. Other States can, in case they consider this

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[2] The term "institutional design" covers such issues as the composition, size, mode of appointment and functioning of institutions (see eg K. Bradley "Institutional Design in the Treaty of Nice" (2001) 38 *Common Market Law Review* 1095-1124 at 1095).

[3] For instance, the Vienna Convention on the Law of Treaties of 23 May 1969 (1155 UNTS 331) makes no provision for a Meeting of States Parties.

[4] This term as employed here covers two issues, namely the spatial extent of maritime zones and the division of jurisdiction between States within maritime zones.

[5] This term is intended to refer to rules prescribing or allowing specific actions by States within the jurisdictional framework established by the Convention.

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appropriate, indicate their disagreement with the limits established by a coastal State.[6]

The LOS Convention has done little to change this state of affairs. There are a number of instances in which the LOS Convention requires some international involvement in the process of defining the limits of maritime zones, most notably in the case of the continental shelf.[7] However, in these cases, the coastal State ultimately remains competent to take a decision.[8]

The LOS Convention also addresses the division of jurisdiction between States within the different maritime zones established under it. The Convention exhaustively deals with this issue, making it generally possible to establish for any activity which State has jurisdiction. This indicates that treaties dealing with specific subject matters will have to respect this division of jurisdiction to prevent conflict with the rules contained in the LOS Convention.

Substantive Regimes

The LOS Convention lays down a substantive regime for a large number of ocean uses. Institutional arrangements play an important role in these regimes in a number of ways. The Convention requires States to cooperate on a number of issues and in this connection makes reference to global, regional or subregional organizations. For instance, this concerns the management and conservation of certain fish stocks, the protection of the marine environment and cooperation of States bordering enclosed or semi-enclosed seas. Especially in respect of the protection of the environment and navigational issues, the Convention uses rules of reference to establish the content of the legal regime. These rules of reference make mention of the competent international organization(s). This can be either the International Maritime Organization (IMO), in respect of navigational issues, or other global or regional organizations.

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[6] See eg [1951] ICJ Reports 116, at 132.

[7] See further chapter 6. Another example in this respect is formed by the procedure for the establishment of archipelagic sealanes (see LOS Convention, art 53; see also chapter 3).

[8] The confirmation of this "traditional" regime in respect of the establishment maritime limits is perhaps most vividly illustrated by the fact that the Convention does not give any role to the International Sea-Bed Authority (ISBA) in defining the extent of the Area, although it is charged with representing the community interest in the Area.

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Dispute Settlement

During the negotiation of the LOS Convention, the inclusion of procedures for the compulsory settlement of disputes was considered to be essential to guarantee the uniform interpretation and application of its provisions. Part XV of the Convention has largely succeeded in establishing a comprehensive system for the settlement of disputes.[9] An important innovation of the LOS Convention is that most disputes over the limits of maritime zones can be unilaterally submitted by a State to the compulsory dispute settlement mechanisms of its Part XV.[10] With a number of exceptions, most disputes concerning the division of jurisdiction within maritime zones and substantive regimes under the LOS Convention can also be submitted unilaterally to compulsory dispute settlement.[11]

Administration of the Convention

The administration of the Convention requires that a number of tasks are performed, such as depository functions, the election of the members of the International Tribunal for the Law of the Sea (ITLOS) and the Commission on the Limits of the Continental Shelf (CLCS) and the approval of the ITLOS budget. As is the case for other conventions that have been negotiated in the framework of the United Nations, depositary functions under the Convention are performed by the Secretary-General of the United Nations. The SPLOS is to deal with the other abovementioned issues.[12]

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[9] It can be noted that recent case law has raised some doubt about the comprehensiveness of this regime. This concerns the scope of arts 281 and 282 of the Convention, excluding certain disputes from the procedures for compulsory settlement under the Convention (see further chapters 11 and 13).

[10] The most notable (optional) exception in this respect are disputes concerning arts 15, 74 and 83 of the Convention (see LOS Convention, art 298(1)(a)). However, such disputes in general do not imply a challenge to the rules contained in the Convention, but seek to attribute jurisdiction which may be exercised under the Convention to a specific State. This obviates the need for compulsory dispute settlement to guarantee uniform interpretation of the Convention.

[11] Limitations and optional exceptions are contained in arts 297 and 298 of the Convention.

[12] See further *infra* text at note 38 and following.

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The Impact of Substance on Institutional Design

Unlike most other international agreements, the LOS Convention is not limited to one specific, more or less clearly circumscribed issue area, but deals with most uses of ocean space. In itself, this would already make it much more difficult to design an institutional framework to deal comprehensively with the implementation and application of the Convention, in comparison to agreements covering a single issue area. Even more importantly, the Convention was not negotiated to deal with a newly arising issue area, which often provides the impetus for negotiating an international regime. Rather, it redefined the basic jurisdictional regime and, to a lesser extent, substantive regimes applicable to a number of issue areas. Most substantive issue areas were already covered by existing institutional arrangements at the global or regional level.[13] The creation of an institutional framework under the Convention would have led to an unnecessary duplication of effort. The most important new issue area covered by the Convention, the exploitation of the mineral resources of the Area, is addressed by a specifically designed regime.

There did not exist a comparable institutional framework to deal with the provisions of the Convention on the jurisdictional framework for the oceans.[14] The Convention does not, apart from the CLCS and the IMO in respect of archipelagic sea lanes, explicitly provide for institutional arrangements to review the implementation of these provisions. Part of an explanation for this state of affairs is that their implementation in general does not require international cooperation or coordination, apart from the delimitation of overlapping maritime zones between neighboring States. Moreover, the definition of the jurisdictional framework is a cross-cutting issue, which touches upon all uses of ocean space. This makes its discussion in institutional settings designed to deal only with specific issue areas inappropriate. A solution that in itself is acceptable and effective for a specific

[13] This concerns, for instance, the IMO, which deals with navigation and shipping, and the Food and Agriculture Organization (FAO) and regional organizations in the fields of fisheries. A number of treaties on the marine environment and the protection of nature were already concluded in the first half of the 1970s.

[14] Neither was such a framework included in the four Geneva Conventions on the law of the sea of 1958, which provided the first comprehensive conventional regime dealing with the definition of ocean space.

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issue area may have repercussions for other issue areas and upset the overall balance of interests reflected in the LOS Convention.[15]

Instruments dealing with specific issue areas defer to the law of the sea generally and the LOS Convention as far as the jurisdictional framework for ocean uses is concerned.[16] It has been suggested that there is something of a historic pattern of restraint in regimes dealing with specific issue areas that has stopped them from producing agreements that are not really consistent with the basic rights and duties and allocation of jurisdiction set out in the LOS Convention.[17] This restraint seems to reflect an understanding that such questions are to be addressed in negotiations organized by the United Nations itself.[18]

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[15] In this connection reference can be made to the notion of "creeping jurisdiction" which refers to the tendency of the broadening of coastal State rights in maritime zones. When a zone has been established for specific functions, coastal States can be expected over time to claim more inclusive rights over such a zone (see C.E. Pirtle, "Military Uses of Ocean Space and the Law of the Sea in the New Millennium" (2000) 31 ODIL 7-45 at 30; see also B. Kwiatkowska "Creeping Jurisdiction beyond 200 Miles in the Light of the 1982 Law of the Sea Convention and State Practice" (1991) 22 ODIL 153-187).

[16] For instance, art 9(3) of the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (1340 UNTS 61; MARPOL Convention), which was adopted at a time when the negotiations on the LOS Convention were in an initial phase notes that "[t]he term "jurisdiction" in the present Convention shall be construed in the light of international law in force at the time of application or interpretation of the present Convention". Art 3 of the Convention on the Protection of the Underwater Cultural Heritage of 2 November 2001 ((2002) 41 ILM 40) provides:

> Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under international law, including the United Nations Convention on the Law of the Sea. This Convention shall be interpreted and applied in the context of and in a manner consistent with international law, including the United Nations Convention on the Law of the Sea.

Many conventions which are intended to apply beyond the territory of States provide for a general reference to activities taking place under the jurisdiction of States or areas under their jurisdiction.

[17] B.H. Oxman "Topic VI: The Tools for Change: The Amendment Procedure" paper presented at the Commemoration of the 20th Anniversary of the Opening for Signature of the 1982 United Nations Convention on the Law of the Sea; General Assembly of the United Nations; Fifty-seventh Session, 9 December 2002.

[18] Ibid. As a matter of fact, negotiations on Part XI of the LOS Convention and the regime for straddling and highly migratory fish stocks, which both concerned a considerable challenge to the regime contained in the LOS Convention, took place in respectively the framework of the United Nations General Assembly and a conference convened by the General Assembly.

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In the framework of specific regimes, States have suggested from time to time to detract from the jurisdictional framework contained in the LOS Convention, to enhance a regime's effectiveness. Such suggestions have, in general, raised strong opposition from other States and have not been accepted.[19] Nonetheless, even the functioning of specific regimes, which recognize the basic jurisdictional framework of the LOS Convention, may still have an impact on the regime contained in the Convention. This is one of the reasons explaining the need for coordination between different regimes and the consideration of the impact they may have on the basic jurisdictional framework.[20]

The most important means for addressing perceived inconsistencies between State practice and the rules contained in the LOS Convention probably remains the protest of other States. This especially concerns the rules of the LOS Convention concerning jurisdictional frameworks. Protest not only has an impact on non-conforming practice, but also provides a signal to other States considering similar non-conforming practice. In addition, as was noted above, most of the provisions concerning the jurisdictional framework of the Convention are covered by the dispute settlement procedures of its Part XV. This provides a mechanism for ensuring uniformity in applying and interpreting these provisions. A drawback of this mechanism may be that it will be employed sparingly and on a case by case basis.[21]

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[19] See, for instance, the discussion of a proposal of Australia at the Twenty-first Annual Meeting of the Commission for the Conservation of Antarctic Marine Living Resources (2002) to amend the application of art 73(2) of the LOS Convention for the Commission's management area (*Report of the Twenty-First Meeting of the Commission* (available at <www.ccamlr.org/pu/e/pubs/cr/02/all.pdf>), pars 8.62-8.73).

[20] For instance, the emerging issue of marine protected areas beyond national jurisdiction, raises issues which fall under the competence of different organizations, such as the IMO, ISBA and regional fisheries management organizations.

[21] Nonetheless, the case law has had a significant impact on the development of specific parts of the law of the sea. Examples are provided by the *Corfu Channel* case ([1949] ICJ Reports 1), addressing the regime of straits, and the *Anglo-Norwegian Fisheries* case, note 6, addressing the regime of straight baselines. More recently, in the *Qatar/Bahrain* case, the ICJ rejected a broad interpretation of art 7 of the LOS Convention ([2001] ICJ Reports pars 212-215). This pronouncement of the Court goes against a considerable amount of State practice in respect of art 7, and may contribute to preventing the gradual erosion of this provision.

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The Review Functions of the Secretary-General and the General Assembly of the United Nations and the SPLOS

During the third United Nations Conference on the Law of the Sea (UNCLOS III) a number of proposals were submitted for a review mechanism of a future law of the sea convention.[22] For instance, two proposals, submitted by Peru and Portugal in 1978, provided for respectively an international commission on the law of the sea and periodic review conferences on international ocean affairs.[23] These proposals did not gain widespread support at the Conference and subsequent proposals no longer provided for review by a newly established body or a review conference, but charged the Secretary-General of the United Nations with certain reporting functions.[24]

The LOS Convention requires the Secretary-General to "report to all States Parties, the Authority and competent international organizations on issues of a general nature that have arisen with respect to this Convention".[25] As can be appreciated, this is a very broad mandate, and makes it possible to report on any of the subject matters identified above.[26] Article 319 does not indicate what further action is to be undertaken after the Secretary-General has submitted a report. This implies that it is up to the subject(s) to whom a specific report is addressed to consider further action.

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[22] For an overview of the proposals in this respect submitted to the Conference and the drafting history of art 319 of the LOS Convention see S. Rosenne and L.B. Sohn, *United Nations Convention on the Law of the Sea 1982; A Commentary* Vol V (1989) 289-300.

[23] Doc. A/CONF.62/L.22 (Peru: proposal regarding an international commission on the law of the sea) of 10 April 1978; Doc. A/CONF.62/L.23 (Portugal: proposal regarding periodic conferences on international ocean affairs) of 4 May 1978.

[24] It has been submitted that the absence of machinery to close gaps in the original rules of the Convention, extend its rules into newly identified problem areas or have any provisions for correcting failures is one of the key lacunae of the LOS Convention (R.L. Friedheim "A Proper Order for the Oceans: An Agenda for the New Century" in D. Vidas and W. Østreng (eds) *Order for the Oceans at the Turn of the Century* (1999), 537-557 at 554). The solution to this problem offered by Friedheim is the creation of a body dealing incrementally with outstanding issues instead of a future conference to thoroughly overhaul the basic regime contained in the LOS Convention (ibid, 556). This role is actually fulfilled by the General Assembly (see also *infra*).

[25] LOS Convention, art 319(2)(a).

[26] See also Rosenne and Sohn, note 23 at 297-299, especially at 299.

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Following the adoption of the LOS Convention, the General Assembly requested the Secretary-General to report on developments relating to the Convention.[27] The Secretary-General annually prepares a comprehensive report on the law of the sea, which is submitted to the General Assembly. Originally, the report focused on the preparatory work for the entry into force of the Convention. Gradually, the scope of the report has been expanded and presently informs on all developments of relevance for the law of the sea and ocean affairs. The report takes note of compliance with provisions of the Convention in general terms[28] and sometimes refers to the non-conformity of specific measures with the Convention.[29]

Apart from preparing the annual report on oceans and the law of the sea, the Secretariat of the United Nations is involved in a number of activities that may contribute to the review and uniform interpretation and application of the Convention. The Secretariat's Division of Ocean Affairs and the Law of the Sea *inter alia* provides advice, studies, assistance and research on the implementation of the Convention, and on issues of a general nature and on specific developments relating to the legal regime for the oceans; provides support to the organizations of the United Nations system to facilitate consistency with the Convention of the instruments and programs in their respective areas of competence; and provides training and fellowships and technical assistance in the field of the law of the sea and ocean affairs.

After the entry into force of the LOS Convention, the General Assembly has undertaken an annual review and evaluation of the implementation of the LOS Convention and other developments related to the law of the sea.[30] In this way, the

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[27] See General Assembly resolution 38/59 B of 14 December 1983, par 8.

[28] See eg the 1999 report in respect of compliance with the provisions regarding the outer limits of maritime zones (Doc. A/54/429 of 30 September 1999, pars 85-87) and the 2002 report on conformity of declarations and statements made under art 310 of the Convention with that provision (Doc. A/57/57 of 7 March 2002, pars 21-23).

[29] See eg the 2003 report, noting that measures taken by Spain, France and Portugal to ban certain ships from their exclusive economic zones are not in conformity with art 58 of the Convention (Doc. A/58/65 of 3 March 2003, par 57). Such review of specific measures has been criticized by States (see eg the press release SEA/1708 of 18 May 2001).

[30] This decision is included in the 12th operative paragraph of General Assembly resolution A/Res.49/28 of 6 December 1994. The item "law of the sea", since 1996 "oceans and law of the sea", has been on the agenda of the General Assembly since 1984. The involvement of the General Assembly with the law of the sea goes back to the end of the 1940s and the preparations for UNCLOS III took place in one of its (sub)committees.

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General Assembly has taken upon itself a role which under most other treaties would be fulfilled by a conference of the parties. This has been possible because the LOS Convention did not assign such a role to the SPLOS. The fact that the General Assembly has allocated itself this role significantly reduces the possibility for such review in other institutional settings.

In introducing the 1994 draft resolution on the law of the sea, Ambassador Nandan of Fiji touched upon the relationship between the General Assembly and the SPLOS:

> While States parties to the Convention constitute the supreme body in relation to the Convention, the Convention does envisage a continuing role for the United Nations by assigning a number of functions to the Secretary-General which go beyond the usual depository functions. At the same time, the General Assembly is the only global body that has the competence to review the developments relating to the law of the sea on a regular basis.[31]

Otherwise, the debate on the draft resolution did not address the relationship between the General Assembly and the SPLOS.[32]

The General Assembly each year discusses the agenda item on oceans and law of the sea on the basis of the report on oceans and law of the sea prepared by the Secretary-General. The annual resolution on the law of the sea of the General Assembly covers a broad range of subjects.[33] The resolutions have stressed the importance of the unified character of the LOS Convention and its unified applica-

[31] General Assembly Official Records, A/49PV.77, p. 3. A report of the Secretary-General of the United Nations to the fifth SPLOS (1996) also stressed the review function of the General Assembly, suggesting a more limited role for the SPLOS:

> It is suggested that the future reports of the Secretary-General under article 319 focus on the identification and appropriate treatment of issues of particular importance to States Parties and competent international organizations and so facilitate the subsequent consideration of these issues by the General Assembly (Doc. SPLOS/6 of 11 April 1996, par 55).

[32] A number of delegations explicitly expressed support for a continued role for the General Assembly in reviewing developments in the law of the sea. The representative of Israel, ambassador Rosenne, observed that this practice is encouraged by paragraph 2(a) of art 319 of the LOS Convention (General Assembly Official Records, A/49/PV.78, p. 6).

[33] Apart from this resolution, the General Assembly also adopts other resolutions that have a relevance for oceans and law of the sea. A notable example is Resolution 46/215, which called upon all members of the international community to implement a global moratorium on large-scale pelagic drift-net fisheries by 31 December 1992 (par 3(c)). This matter, as other fisheries issues, is still under review of the Assembly.

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tion. They also address the conformity of State practice with the LOS Convention. This is only done in a general manner, which in itself provides little guidance on specific interpretations of the Convention.[34]

Since 2000 the debate on the agenda item on oceans and law of the sea has had an input from the United Nations Open-ended Informal Consultative Process on Oceans and Law of the Sea (ICP).[35] The Process mainly deals with substantive regimes and not the jurisdictional framework for ocean uses. The Process each year discusses a number of topics, and reports to the General Assembly. This has had an impact on the content of the Assembly's resolutions on oceans and law of the sea, which take over much of the detail contained in the reports of the Process.[36] The establishment of the Process has further reduced the need of review of the substantive regimes for oceans issues in other settings than the General Assembly.

The resolutions of the General Assembly are not only addressed to the membership of the organization and its organs, but also invite specialized agencies, such as the IMO or the FAO, to consider specific action. In this respect, the General Assembly, being one of the principal political organs of the United Nations, is uniquely placed to further the coherence of oceans policy.[37] A treaty body or conference of

[34] For instance, the third operative paragraph of Resolution A/Res.55/7 of 30 October 2000 provides:

> *Calls upon* States to harmonize, as a matter of priority, their national legislation with the provisions of the Convention, to ensure the consistent application of those provisions and to ensure also that any declarations or statements that they have made or make when signing, ratifying or acceding to the Convention are in conformity therewith and otherwise, to withdraw any of their declarations or statements that are not in conformity.

[35] The acronym of the Process has gone through a number of changes. Before "ICP", the acronyms "UNICPO" and "UNICPOLOS" had been in use. On the establishment of the Process see E. Mann Borgese "UNICPOLOS: The First Session" (2002) 16 *Ocean Yearbook* 1-21. Apart from the ICP, other inputs for the debate in the General Assembly are received from specialized agencies and other international organizations and the Commission on Sustainable Development, which periodically reviews the implementation of Agenda 21.

[36] Compare eg resolution A/RES/54/31 of 24 November 1999 with resolution A/RES/56/12 of 28 November 2001. See also Mann Borgese, note 35, at 19.

[37] Under the relationship agreements concluded between the United Nations and the specialized agencies the latter have accepted to submit recommendations of the General Assembly to their governing bodies. As the Secretary-General has indicated, the General Assembly debate should entail consideration of the proper choice of intergovernmental forum for the discussion of new issues of importance for the effective implementation of the Convention (see Law of the Sea; Report of the Secretary-General, Doc. A/51/645 of 1 November 1996, par 15).

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the parties that would have been accorded such a function under the LOS Convention could not have assumed the same centrality in respect of other organizations.

Unlike some other international agreements,[38] the LOS Convention attributes a limited role to the Meeting of States Parties. Article 319(2)(e) requires the Secretary-General of the United Nations to "convene necessary meetings of States Parties in accordance with this Convention". The Convention only explicitly accords a role to the SPLOS in respect of administrative matters. This concerns the election of the members of ITLOS and the CLCS and financial arrangements in respect of the Tribunal.[39] The language employed in article 319(2)(e) suggests that it is intended that the SPLOS only concern itself with the tasks explicitly attributed to it in the Convention.[40] Article 319(2)(e) requires the convening of meetings in accordance with the Convention. This could be taken to mean that meetings should only be concerned with matters specifically mentioned in the Convention. However, it can be noted that the French text of article 319 of the Draft Convention was more explicit in this respect, providing for the convening of meetings "conformément aux *dispositions* de la Convention" (emphasis provided).[41] This language suggests that the meeting would only have been competent to deal with an issue where this was explicitly indicated in a provision of the Convention. The French text of article 319(2)(e) of the Convention corresponds to the English text. The term "in accordance with the Convention" might be taken not to refer only to provisions of the Convention in which the SPLOS is specifically mentioned. In this respect, reference can be made to article 319(2)(a) of the Convention, which provides for reports of the Secretary-General to the States Parties to the Convention. Article 319(2)(a) does not spell out any further follow-up once a report has been submitted to the States Parties. One possible step could be the convening of a SPLOS to discuss the issues brought to the attention of the States Parties.[42]

The role of the SPLOS in reviewing the implementation of the LOS Convention has become a regular item on the agenda of the SPLOS. As far as can be

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[38] See eg the Convention on Biological Diversity of 5 June 1992 ((1992) 31 ILM 818), art 23, which lays down detailed rules for a Conference of the Parties.

[39] LOS Convention, Annex II, art 2(3) and Annex VI, arts 4(4), 18 and 19.

[40] See also *infra* for the discussion of this provision in the SPLOS.

[41] Draft Convention (Informal Text) (A/CONF.62/DC/WP.2), art 319(2)(e).

[42] Cf Doc. SPLOS/73 of 14 June 2001, par 87. The one report submitted to the States Parties under article 319 was an item on the agenda of the SPLOS (see *infra* note 43).

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ascertained from the reports of the SPLOS, this issue was first raised by New Zealand during the sixth SPLOS in 1997. New Zealand proposed as a new agenda item for the next meeting the role of the meeting in reviewing ocean and law of the sea issues.[43] The discussion of this item during the seventh SPLOS (1997) showed strong support for the suggestion that the review of ocean affairs should be a regular item on the agenda of the meeting.[44] Other delegations emphasized the significance of the work of the General Assembly on the law of the sea item,[45] implicitly suggesting that the SPLOS should not duplicate this effort. The President of the meeting suggested that it would be premature to take a decision on regular review of matters relating to oceans and the law of the sea by the meeting. Instead, he suggested that the President of the meeting should attend the General Assembly debate to report on the work of the SPLOS during that year. This suggestion was accepted by the meeting.[46] The eighth SPLOS (1998) decided not to include the item on the review of oceans and law of the sea issues on the agenda of the ninth meeting. However, it was noted that the meeting wished to continue to be free to consider any important issue related to the LOS Convention and its implementation.[47]

Although the item of review of the law of the sea was not placed on the agenda of the ninth SPLOS (1999), there was a discussion on the functions of the SPLOS. This issue has remained on the agenda of the SPLOS ever since. Certain States Parties maintain the view that the meeting should be involved in reviewing the implementation of the Convention. Other States oppose such a role and consider that the meeting should only deal with the administrative issues entrusted to it

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[43] Report of the Sixth Meeting of States Parties, Doc. SPLOS/20 of 20 March 1997, par 33. The fifth SPLOS (1996) had a report before it of the Secretary-General of the United Nations to the States Parties. The report indicates that "the attention of the States parties [...] is drawn, in accordance with article 319(2)(a), to certain issues which have arisen and which warrant their consideration" (Doc. SPLOS/6 of 11 April 1996, par 3). The report of the fifth SPLOS does not make any reference to discussion of this document by the meeting or any action being taken in pursuance of it (the report of the fifth SPLOS has been issued as Doc. SPLOS/14 of 20 September 1996).

[44] Report of the Seventh Meeting of States Parties (Doc. SPLOS/24 of 12 June 1997), par 38.

[45] Ibid, pars 39-40.

[46] Ibid, par 41.

[47] Report of the Eighth Meeting of States Parties (Doc. SPLOS/31 of 4 June 1998), par 70.

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under the Convention. Due to this divergence of views, little progress has been made in defining the role of the SPLOS in this respect.

Proponents of an expanded role of the SPLOS have argued that the meeting has the competence to discuss issues of implementation of the Convention, or that it is the only competent body responsible for taking decisions related to the implementation of the Convention.[48] During the twelfth SPLOS (2002), one delegation held that to say otherwise would contradict article 319 of the Convention and the law of treaties.[49] Opponents of an enlarged role for the SPLOS have argued that article 319(2)(e) results in a clearly defined mandate for the SPLOS. This provision limits the meetings to those that are necessary and the mandate of the meeting is linked to provisions in the Convention, which clearly specify the matters to be considered by the meeting.[50] Moreover, they have observed that this interpretation is supported by the drafting history of the article, which showed that proposals for periodic review of the Convention had not attracted sufficient support.[51] Opponents of an expanded role of the SPLOS have also pointed out that the implementation of the Convention involves a number of UN bodies and that the only body with the overall competence to review the implementation of the Convention is the General Assembly, which moreover has established the ICP to facilitate review of its agenda item on oceans and law of the sea.[52] This latter argument has been countered by noting, while recognizing the oversight role of the Assembly, that the meeting nonetheless had the right to discuss issues of implementation of the Convention. The roles of the SPLOS and the ICP would be complementary.[53] The meeting would in the future decide on legal issues relating to the implementation of the Convention and the ICP would promote international cooperation and coordination in the framework of the Convention.[54] The thirteenth SPLOS (2003) revisited

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[48] See Doc. SPLOS/60 of 22 June 2000, par 74; Doc. SPLOS/73 of 14 June 2001, par 88.

[49] Doc. SPLOS/91of 13 June 2002, par 114.

[50] Doc. SPLOS/73 of 14 June 2001, par 89.

[51] Ibid. It was further noted that "[i]f the drafters had intended to do so, they would have, as is the case of other conventions, expressly provided for a monitoring and review role for the Parties" (ibid).

[52] Doc. SPLOS/60 of 22 June 2000, par 75; Doc. SPLOS/73 of 14 June 2001, par 89.

[53] Doc. SPLOS/60 of 22 June 2000, par 77; Doc. SPLOS/73 of 14 June 2001, par 90.

[54] Ibid.

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the issue of its functions under the Convention. The discussion was a repetition of moves and the item remained included in the agenda of the meeting.[55]

Some broadening of the mandate of the SPLOS has occurred in practice. The meeting has taken a decision regarding the time limit for making submissions to the CLCS contained in article 4 of Annex II of the Convention that amounts to an amendment of this article.[56] This decision has been interpreted differently in the debate over the role of the SPLOS under article 319 of the Convention. According to some delegations, this formed an example of the role the meeting had already played in the implementation of the Convention.[57] Other delegations emphasized that the decision of the meeting was of an organizational nature, and one delegation held that this concerned an extension of the administrative powers of the SPLOS.[58] An earlier instance of an issue of interpretation of a provision of the Convention brought to the attention of the SPLOS suggests that the meeting at that time did not consider it had a role to play in this respect. In 1998, the CLCS submitted the question how the terms "coastal State" and "State" used in article 4 of Annex II to the Convention should be understood by the SPLOS. One delegate observed that the meeting "did not have the competence to give a legal opinion,

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[55] See Doc. SPLOS/103 of 25 June 2003, pars 94-102.

[56] As is observed by Aust:

> Given that parties can agree later to modify the treaty, they can also subsequently agree on an authoritative interpretation of its terms, and this can amount, in effect, to an amendment […]. The agreement can take various forms, including a decision adopted by a meeting of the parties, provided the purpose is clear (footnotes omitted; A. Aust *Modern Treaty Law and Practice* (2000) 191).

The decision is contained in Doc. SPLOS/72 of 21 May 2001 (on this issue see further *Issues with respect to article 4 of Annex II to the United Nations Convention on the Law of the Sea; Background paper prepared by the Secretariat* (Doc. SPLOS/64 of 1 May 2001)). The SPLOS on earlier occasions had decided on a change in procedural rules contained in the LOS Convention. This concerned a postponement of the date of election of the members of the ITLOS and the CLCS provided for in the Convention (see LOS Convention, Annex II, art 2(2) and Annex VI, art 4(3); Doc. SPLOS/3 of 28 February 1995, par 16; Doc. SPLOS/5 of 22 February 1996, par 20). These latter decisions are directly linked to the mandate of the SPLOS as defined in the Convention, whereas art 4 of Annex II does not refer to the SPLOS.

[57] Doc. SPLOS/73 of 14 June 2001, par 88; Doc. SPLOS/91 of 13 June 2002, par 114; Doc SPLOS 103 of 25 June 2003, par. 97.

[58] Doc. SPLOS/91, par 114.

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and that it was preferable not to pursue the matter any further."[59] Several delegations supported the point of view that the Commission should request the Legal Counsel of the United Nations for an opinion only when the problem actually were to arise.[60] The report of the meeting does not indicate that there were States Parties holding the view that this issue, if it were to arise, had to be settled by the SPLOS.

CONCLUSIONS

The LOS Convention does not have an elaborate review mechanism to monitor its implementation. The Convention does not accord this role explicitly to the SPLOS. In practice, the General Assembly of the United Nations has taken this task upon itself to a large extent. This suggests that the absence of a clearly defined review mechanism in the Convention probably in large part can be explained by an unwillingness on the part of States to create an institution under the Convention with an explicit competence to deal with all matters arising under it, rather than the absence of a need to include review mechanisms in the Convention's institutional design.

The General Assembly, due to its mandate and central position in relation to the specialized agencies, is well placed to address the coordination between different organizations and conventions, which is required to effectively implement the Convention. Even a treaty organ with more extensive powers than the SPLOS would have been less well placed than the General Assembly in this respect.

The situation is, however, different in respect of issues related to the jurisdictional framework for ocean uses established by the Convention. The General Assembly has considered this issue in general terms.[61] In itself this is already a useful function, as it provides a signal as to the views of the community of States. A further role of the General Assembly, for instance by providing specific guidance on the interpretation of provisions of the Convention, does not seem appropriate. However, such a role would neither seem to be more appropriately discharged by the SPLOS, which in any case does not have a clear competence to address this issue. Questions concerning the jurisdictional framework generally

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[59] UN Doc. SPLOS/31 of 4 June 1998, par 52.

[60] Ibid.

[61] Otherwise, the activities of the Secretariat of the United Nations in this respect can also be noted (see *supra*).

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center on the interpretation of specific provisions of the Convention. An authoritative ruling on an interpretation can in most cases be obtained through the dispute settlement mechanisms of Part XV of the Convention. This is more appropriate than a ruling of a political body on such a question, especially where it cannot reach consensus.

The SPLOS has grappled with the specific role it has to play in reviewing the Convention and a consensus in this respect does not seem to be forthcoming.[62] However, there does at least seem to exist agreement that the core business of the SPLOS is the administration of the Convention. Otherwise, States Parties differ over the functions attributed to the meeting under article 319 of the Convention. An analysis of this provision points out that this issue does not seem to be as clear-cut as opponents of an expanded role for the SPLOS have suggested.

In practice, there has been some extension of the mandate of the meeting. At the same time, a review of this practice suggests certain inconsistencies in the views on the exact role of the SPLOS. This role may be subject to further evolution in the future.[63] Such a role would only be possible in respect of non-controversial issues, as the SPLOS would have to adopt decisions by consensus to make them acceptable. However, it is an effective management tool, as the case of the decision taken in respect of article 4 of Annex II to the Convention illustrates.[64] A decision by the SPLOS prevents that some other means to address an issue, such as formal amendment of the Convention, has to be employed. Formal amendment probably would be too burdensome a procedure for relatively minor procedural questions.[65]

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[62] If the SPLOS would choose to play a more active role, its relation to the General Assembly probably would need to be defined more precisely.

[63] See also H. Corell "Future Role of the United Nations in Oceans and Law of the Sea" in M.H. Nordquist and J. Norton More (eds) *Oceans Policy; New Institutions, Challenges and Opportunities* (1999) 15-27 at 19.

[64] See *supra* text at note 56.

[65] As has been observed:

> Much will depend on the circumstances but, particularly where the modification is essentially procedural, it may be possible to embody it in an agreement as to the application of the treaty. This technique is particularly useful if there is a need to fill a lacuna, to update a term or postpone the operation of a provision. […] But the use of such means should be done cautiously and sparingly. The distinction between application and amendment is not always easy to draw. Problems could be caused if such means are used for a purpose which is safer done by a formal amendment to the treaty (Aust, note 56 at 193).

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All in all, the roles of the General Assembly and the SPLOS can be seen as complementary. One deals with matters of substance and coordination, and the other mostly with procedural matters solely related to the Convention.[66] Protests by States against what they perceive to be practice that is not in conformity with the LOS Convention will remain an equally or even more important means for guaranteeing the Convention's integrity, especially its provisions establishing the jurisdictional framework for ocean uses, which can be addressed to a much lesser extent by the General Assembly and the SPLOS. In this context, Part XV of the Convention provides a mechanism for an authoritative ruling on the interpretation or application of the Convention.

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[66] See also Mann Borgese, note 35 at 8-9.

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