



Participants and Secretariat Staff at the Meeting

Front Row, Left to Right: Nobuhle Matsebula (Swaziland), Leaba Thetsane (Lesotho), the Hon. Moses R. Masemene (Minister of Law & Constitutional Affairs, Lesotho), Ts'Okolo Makhethe (Lesotho), Molete Mosae (Lesotho)

Second Row, Left to Right: Anne Mwewa Sitali (Zambia), Mosito Mapetla (Lesotho), Fiona Kalemba (Malawi), Tseliso Kolane (Lesotho), Patience Kabiije (Uganda), Dr. Stephen Vasciannie (Consultant), Cheryl Thompson-Barrow (Commonwealth Secretariat), Chandida Thembe (Botswana), Sardia Cenac (Commonwealth Secretariat), Tsebang Putsoane (Lesotho)

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INTRODUCTION

The second in a series of Seminars aimed at sensitising and assisting Land locked States of the African region to implement the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was held in Lesotho from 28th November – 1st December, 2005 - (**Annex 1 for Agenda**). The first Seminar was held in Swaziland in June 2005.

This work serves to give effect to the 2005 mandate of Law Ministers who encouraged the Secretariat to continue to sensitise member countries to the immediate need to accede to UNCLOS with the necessary enabling legislation; recognising that the provisions of UNCLOS may be utilized by Land locked States and their neighbouring coastal states to foster relations and enhance regional co-operation.

The central purpose of the Lesotho Seminar was to develop and deepen understanding of the rights of Land locked States with respect to the sea. The Seminar started with the proposition that although Land locked States do have particular rights with respect to the sea, by virtue of customary international law and enhanced by the provisions of UNCLOS, they have not been taking full advantage and realising the benefits of these rights. One of the main issues for the Seminar series therefore has been to sensitise legal officials from Land locked States on the ways in which their countries may realise the rights to which they are entitled. This Seminar has sought, in particular, to encourage the development of a draft treaty on Access to the Sea and the Sharing of Resources in the Exclusive Economic Zone (EEZ) – such a treaty to be elaborated with the Land locked State and the pertinent neighbouring Coastal State.

The Seminar was attended by delegates of the core group which met in Swaziland in June. This was important as delegates had a good understanding of the main issues, and could therefore make substantive contributions to the development of a draft treaty text. Countries represented were Botswana, Lesotho, Malawi, Swaziland, Uganda and Zambia. **(Annex 2 for List of Participants)**

The Seminar was opened by the Minister of Law and Constitutional Affairs, the Honourable Moses Refiloe Masemene. The Minister expounded on the importance of UNCLOS, which was noted as having the potential to advance the economic development of Land locked State parties. The Minister further observed that it was necessary for states who had not yet acceded, to speed up the process of accession. **(Annex 3 for Opening Remarks)**

OVERVIEW OF DISCUSSIONS

1.1 BACKGROUND

The Seminar considered in the main, the following issues:

- The sources of International Law concerning the law of the sea;
- The participation of African Land locked countries in UNCLOS and possible reasons for the relatively low level of participation among these States;
- Factors that promote ratification of UNCLOS by Land locked countries;
- The rules in the UNCLOS that work to the advantage of Land locked countries;
- The right of Land locked States to innocent passage in the territorial waters of all coastal countries;
- The right of access to the sea for Land locked States, and attendant rights including the creation of “corridors” to the sea;
- The right of access of Land locked States to the EEZs of other countries;
- Rights of Land locked States with respect to the deep seabed;

- Methods of giving effect to the terms of UNCLOS from the perspective of Land locked countries.

1.2 PRESENTATIONS BY THE COMMONWEALTH SECRETARIAT

Dr. Stephen Vasciannie, (Consultant for the Commonwealth Secretariat) undertook a review of discussions from the Swaziland meeting (as *per* the above-highlighted issues), emphasising in particular, the advantages of accession to and implementation of UNCLOS.

Dr. Vasciannie considered in greater depth the provisions of UNCLOS which relate to access to the sea and the sharing of the surplus living resources of the EEZ, noting as regards the latter that:

- Coastal states of the region/sub-region are obliged to negotiate a treaty with Land locked state parties to UNCLOS setting out the rights and conditions of access to living resources;
- Land locked state parties to UNCLOS may seek conciliation where the coastal state has failed to determine either the Allowable Catch or the Harvesting Capacity in keeping with Convention requirements; and
- Land locked States' rights do not fall away when there is little or no surplus living resources within the EEZ, in keeping with Article 69(3).

It was further noted that Land locked States may wish to consider drafting domestic legislation for ship registration.

Ms. Cheryl Thompson-Barrow presented a paper to the meeting on the ***The Creation of Corridors and Access to the Sea by Landlocked States***. This presentation sought to highlight the historical basis for the recognition of the right of access for Land locked States to the sea, that is, the creation of

corridors, and to stimulate discussion as to the corridors to the sea which may be developed by Land locked States of the region. **(Annex 4.1)**

Ms. Thompson Barrow's second presentation – *An Examination of Treaty Law* – sought to give a brief overview of treaty law and drafting so as to set the tone for the treaty drafting sessions. **(Annex 4.2)**

All sessions were accompanied by open discussions. The key provisions of UNCLOS for incorporation into a bilateral/regional treaty were noted, and negotiating strategies discussed. Participants emphasised the development opportunities arising out of implementation of the Convention, and accordingly too, the implications for trade. The meeting agreed that the development of corridors to the sea may be dealt with as a matter of priority.

1.2 TREATY DRAFTING SESSIONS

Participants were divided into two Working Groups and invited to prepare a draft treaty setting out the main rights and duties for the Land locked States and its neighbouring coastal state. **(Annex 5 for Working Group Presentations)**

Based upon the models devised by the Working Groups, Dr. Vasciannie drafted a bilateral treaty template concerning Transit Rights and Duties (Access to the Sea) and a Treaty on the Sharing of Surplus Living Resources in the EEZ. These draft treaties seek to provide a framework within which Land locked State parties to UNCLOS may pursue negotiations with coastal states of the region. **(Annex 6 for Draft Treaties)**

RECOMMENDATIONS AND CONCLUSIONS

The draft treaty template is to be further refined at a subsequent meeting of the core group. Negotiations are to be encouraged between Land locked States and the coastal states of the region/sub-region. To this end, **LDS-LCAD** is to convene a series of sub-regional Seminars. The draft treaty is to be presented at these meetings as a model instrument for the effective implementation of UNCLOS in its recognition of the rights of both Land locked States and coastal states, and therefore as a starting point for negotiations.