

**Commonwealth  
Seminar on  
Landlocked States  
in Africa**

**Ezulwini, Swaziland  
13-15 June 2005**

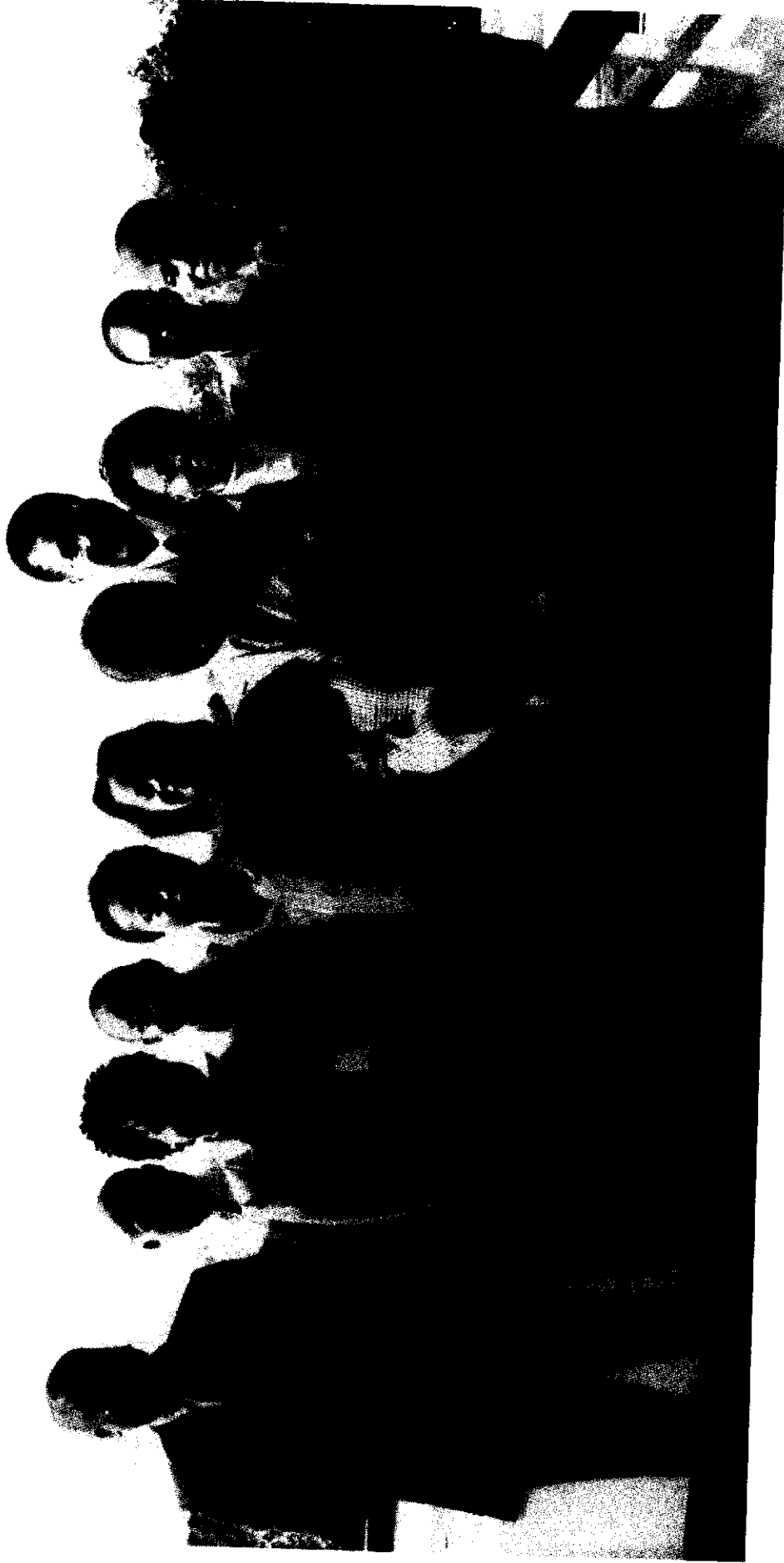
**REPORT**

Legal and Constitutional Affairs Division  
Commonwealth Secretariat  
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London SW1Y 5HX  
United Kingdom

July 2005

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Participants and Secretariat Staff at the Commonwealth Seminar on Landlocked States in Africa, Swaziland, 13-15 June 2005.

Front row, left to right: Fiona Kalemba (Malawi), Patience Kabuje (Uganda), Sicelo M Dlamini (Principle Secretary, Swaziland),  
Ms Gabisile Nester Mabuza (Swaziland), Sifiso Khumalo (Swaziland), Nobuhle Masebula (Swaziland).

Second row, left to right: Patrick Gunda (Botswana), Ts'Okolo Makhethe (Lesotho), Anne Mwewa Silali (Zambia),  
Cheryl Thompson-Barrow (Commonwealth Secretariat), Dr Stephen Vasciannie (Consultant), Sardia Cenac (Commonwealth Secretariat).

# INTRODUCTION

The Commonwealth Secretariat has, since 1999, been consistently called upon to provide legal and technical assistance to small and developing states in the implementation of international conventions. More specifically, **Law Ministers of Small Commonwealth Jurisdictions** in October 2004 mandated the Secretariat to assist landlocked states of the Commonwealth to take advantage of the provisions of the 1982 United Nations Convention on the Law of the Sea (**UNCLOS**).

In response to this request, the Law Development Section (**LDS**) of the Legal and Constitutional Affairs Division (**LCAD**), held a capacity-building seminar in Ezulwini, Swaziland from June 13 –15, 2005. The objective of this seminar was to sensitise Commonwealth Landlocked States in Africa, to the rights accorded to them under **UNCLOS**, and in particular, those provisions which relate to access to the sea; the sharing of the surplus living resources of the Exclusive Economic Zone (**EEZ**), and the deep-sea bed. **LDS-LCAD** sought also to encourage those states which had not yet done so, to become state parties to **UNCLOS** and/or to pass the relevant enabling legislation and conclude the necessary bilateral treaties. Such work is significant to the modern Commonwealth in that it promotes African solidarity and co-operation and too, the development of international law. (**Annex 1 for Agenda**)

A senior official of each Commonwealth Landlocked State in Africa was invited to attend. These representatives are to be the key resource persons at ongoing workshops in this area. The countries represented were Botswana, Lesotho, Malawi, Swaziland, Uganda and Zambia. (**Annex 2 for List of Participants**)

The Seminar was opened by Principal Secretary, Sicelo M. Dlamini for and on behalf of the Minister for Justice and Constitutional Affairs, HRH Prince David. The Minister underscored the significance of UNCLOS as a “constitution for the seas” and encouraged landlocked states to ratify and implement the convention, noting that economic benefits would accrue to states from the exercise of their rights under the Convention. **(Annex 3 for Opening Remarks)**

# OVERVIEW OF DISCUSSIONS

## 1. EXAMINATION OF COUNTRY REPORTS

Participants were given the opportunity to present Country Reports. These Reports : **(Annex 4 for Country Reports)** underscored the fact that the relevant provisions of UNCLOS had not been given effect to, but recognised that there were tangible economic benefits to be obtained by full and effective implementation and enforcement of the Convention. It was further revealed from the Country Reports that the following depicts the status of activity of landlocked states under UNCLOS:

		1982 United Nations Convention on the Law of the Sea	Agreement relating to Part XI of UNCLOS
	<b>COUNTRIES</b>		
1	Botswana	R	Ac
2	Lesotho	S	
3	Malawi	S	
4	Swaziland	S	S
5	Uganda	R	SP
6	Zambia	R	SP

R Ratification  
Ac Accession  
S Signature  
SP Simplified Procedure

## 2. PRESENTATIONS BY THE COMMONWEALTH SECRETARIAT

LDS sought, through a series of presentations and lectures, to highlight the rights and obligations of state parties to UNCLOS, and to give guidance to the need for those states which had not done so, to accede to the Convention. Further, the Commonwealth Secretariat guided the meeting through the need for the required implementing legislation and the potential treaty with the coastal state. Areas relating to the rights and obligations such as in the "Area" and the high seas, as well as the protection of the marine environment were featured in presentations and discussions. **(Annex 5 for Commonwealth Secretariat Presentations)**

## 3. DISCUSSIONS

All sessions were accompanied by open discussions which afforded participants the opportunity to further explore issues that were of particular interest.

The meeting examined the case for accession of UNCLOS. It was noted that the Convention was the high watermark of landlocked states' rights and that all of these rights at the time of negotiating the Convention, were at the insistence of landlocked states. It was explained that customary international law did not extend such extensive rights to landlocked states, and that the exact nature of the rights available under customary international law could not be easily or readily determined. It was however, emphasised that UNCLOS was to be read as a whole so that the acceptance of rights necessarily entailed the acceptance of burdens. Landlocked states, in exercising their rights under the Convention, therefore also had to be mindful of the duties imposed, for example, in relation to the conservation and sustainable utilisation of the marine environment.

Representatives raised the issue as to the financial costs incurred upon ratification of/accession to the Convention. It was noted in reply that the financial obligations incurred by small and developing state parties to the Convention were nominal.

The meeting explored more fully the Convention's provisions which benefited landlocked states. It was explained that the Convention both affirmed pre-existing rights and created new rights.

The *affirmed* rights included the right of innocent passage; right of passage on the high seas and of freedom of navigation; and the right of access to the sea. It was highlighted that the inclusion of the latter provision in the treaty, gave the absolute assurance of a legal right.

As to *new* rights, it was observed that **UNCLOS** created the concept of the Exclusive Economic Zone (EEZ) and gave landlocked states the right to share in the surplus living resources of the EEZ. The Convention also gave landlocked states a right to a share of the proceeds of the resources of the Deep Sea Bed, and to a share of the financial and economic benefits of the Area.

In order to give effect to the Convention, it was explained that states must:

- Accede to the treaty;
- Pass enabling legislation which contemplates ship registration and addresses the issue of jurisdiction; and
- Negotiate bilateral treaties to give effect to the provisions on access to/from the sea and access to the surplus living resources in the EEZ.

Representatives unanimously agreed that UNCLOS granted extensive rights to landlocked states, but noted that no state in Africa had yet properly availed itself of those rights as there was a lack of awareness/political will by Government officials as to the significance of the document for landlocked states. Representatives noted that they all enjoyed good relations with their coastal neighbours and were confident that they could make active use of the Convention if facilitated in this exercise by the Commonwealth Secretariat and other international/regional institutions.

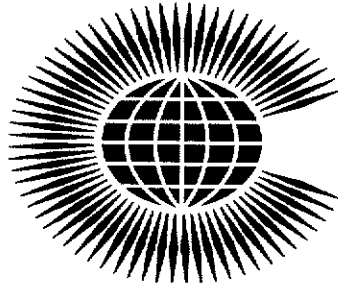
## THE WAY FORWARD

LDS-LCAD is to present a Report of this work and the recommendations received to the **Law Ministers Meeting** in Ghana in October, 2005. This would constitute a follow up to the discussions held at the meeting of Law Ministers for Small Commonwealth Jurisdictions (LMSCJD) which was held in London in October 2004, and where LMSCJ expressed their appreciation and desire that the Commonwealth Secretariat proceeds with the work to take this project forward.

LDS-LCAD plans, where indicated, to collaborate with other Divisions/Agencies, to further facilitate this work by holding a Workshop in Lesotho in December, 2005. A template treaty will be drafted on access to/from the sea and access to the surplus living resources in the EEZ for presentation to the meeting, which is to be attended by resource persons from this Seminar.

**Annex 1**

**AGENDA**



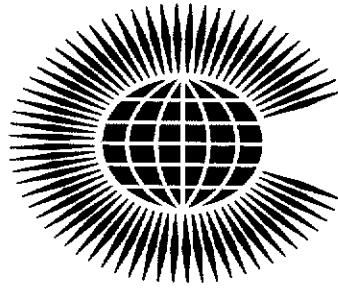
**Commonwealth Seminar on Landlocked States in Africa  
Ezulwini, Swaziland**

**13 – 15 June, 2005**

**AG E N D A**

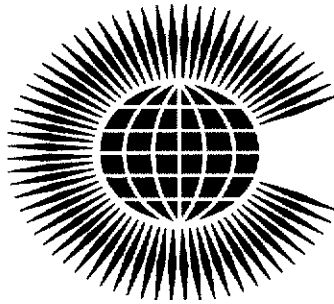
**MONDAY, JUNE 13, 2005**

- 10.00 – 10.15** - **WELCOME/INTRODUCTORY REMARKS**
- Ms. C. Thompson-Barrow**  
**Adviser & Head, Law Development Section, LCAD**  
**Commonwealth Secretariat**
- 10.15 – 10.45** - **Opening Address**  
**HRH Prince David**  
**Minister of Justice & Constitutional Affairs**
- 10.45 – 11.00** - **Coffee/Tea Break – “Meet and Greet”**
- 11.00 – 12.15** - **PRESENTATION OF COUNTRY REPORTS BY PARTICIPANTS**
- **Botswana**
  - **Lesotho**
  - **Malawi**
  - **Swaziland**
  - **Uganda**
  - **Zambia**



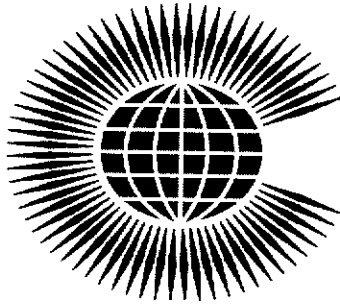
**MONDAY, JUNE 13, 2005 (CONT'D)**

- |                     |          |   |
|---------------------|----------|---|
| <b>12.15 – 1.15</b> | <b>-</b> | <b>Lunch</b>  |
| <b>1.15 – 3.15</b>  | <b>-</b> | <b>OVERVIEW OF 1982 UNITED NATIONS CONVENTION ON THE<br/>LAW OF THE SEA</b> |
|                     |          | <b>By Ms. Cheryl Thompson-Barrow</b>  |
| <b>3.15 – 3.30</b>  | <b>-</b> | <b>Coffee/Tea Break</b>   |
| <b>3.30 – 4.30</b>  | <b>-</b> | <b>DISCUSSIONS</b>  |



**TUESDAY, JUNE 14, 2005**

- 9.30 – 10.30** - **PRESENTATION ON RIGHTS AND OBLIGATIONS OF LANDLOCKED STATES IN INTERNATIONAL LAW**
- By Dr Stephen Vasciannie**
- 10.30 – 10.45** - **Coffee/Tea Break**
- 10.45 – 11.30** - **PRESENTATION ON RIGHTS AND OBLIGATIONS OF LANDLOCKED STATES IN INTERNATIONAL LAW (CONT)**
- By Dr Stephen Vasciannie – Consultant – Commonwealth Secretariat**
- 11.30 – 12.15** - **Discussions**
- 12.15 – 1.15** - **Lunch**
- 1.15 – 3.15** - **PRESENTATION ON ARRANGEMENTS TO GIVE EFFECT TO ARTICLE 69 OF UNCLOS (A COMPARATIVE SURVEY)**
- By Dr. Stephen Vasciannie**
- Negotiation of bilateral and regional arrangements**
- **Transit Arrangements**
  - **Access Agreements**
  - **Fisheries Agreements**
- 3.15 – 3.30** - **Coffee/Tea Break**
- 3.30 – 5.00** - **DISCUSSIONS**



**WEDNESDAY, JUNE 15, 2005**

- 9.30 - 10.00** - **ENABLING INSTRUMENTS BY ENACTMENT OF LAWS**
- 10.00 - 12.00** - **CONCLUSIONS AND RECOMMENDATIONS AND THE WAY FORWARD**

**CLOSE OF SEMINAR**

- 12.00** - **Lunch**

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## **Annex 2**

# **PARTICIPANTS LIST**

**Commonwealth Seminar on Landlocked States in Africa  
13 – 15 June 2005, Ezulwini, Swaziland**

**Participants List**

<b>Country</b>	<b>Name and Details</b>
<b>Botswana</b>	<b>Mr Patrick B Gunda</b> Acting Chief State Counsel Attorney General's Chambers Private Bag 009 Gaborone  Tel: (267) 361 3803 Fax: (267) 318 1518 Email: <a href="mailto:pgunda@gov.bw">pgunda@gov.bw</a>
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<b>Zambia</b>	<p><b>Mrs Anne Mwewa Sitali</b>  Chief Parliamentary Counsel  Legislative Drafting &amp; Law Revision Department  Ministry of Justice  Fairley Road  PO Box 50106  Ridgeway  Lusaka</p> <p>Tel: (260) 1 256 926  Fax: (260) 1 253 452  Email: <a href="mailto:mwewasitali@yahoo.co.uk">mwewasitali@yahoo.co.uk</a></p>
<b>Commonwealth Secretariat</b>	<p><b>Ms Cheryl Thompson-Barrow</b>  Adviser &amp; Head, Law Development Section  Legal and Constitutional Affairs</p>

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<b>Consultant</b>	<p><b>Dr Stephen Vasciannie</b> Department of Government University of the West Indies Mona Campus Kingston 7 Jamaica</p> <p>Tel: (876) 906 5155 Fax: (876) 977 1809 Email: <a href="mailto:svasciannie@kasnet.com">svasciannie@kasnet.com</a></p>

## **Annex 3**

# **OPENING REMARKS**

**OPENING ADDRESS BY HRH PRINCE DAVID,**

**MINISTER FOR JUSTICE**

**AND CONSTITUTIONAL AFFAIRS;**

**THE COMMONWEALTH SEMINAR ON**

**LANDLOCKED STATES IN AFRICA**

**AT THE ROYAL SWAZI SUN,**

**EZULWINI**

**ON MONDAY JUNE 13, 2005.**

**OPENING ADDRESS BY HRH PRINCE DAVID,  
MINISTER FOR JUSTICE AND CONSTITUTIONAL  
AFFAIRS; THE COMMONWEALTH SEMINAR ON  
LANDLOCKED STATES IN AFRICA AT THE ROYAL  
SWAZI SUN, EZULWINI ON MONDAY JUNE 13, 2005.**

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**Representatives of the Commonwealth Secretariat**

**Distinguished Participants**

**Ladies and Gentlemen**

Introductory Remarks

It is a great honor for me to stand before you to officially open the Commonwealth Seminar on Landlocked States in Africa. I wish on behalf of His Majesty and His Majesty's Government to extend a word of thanks to the Commonwealth Secretariat, in particular the Legal and Constitutional Affairs Division for the decision to hold this important seminar in the Kingdom of Swaziland. As

a Small Commonwealth Jurisdiction we feel greatly honoured to host such an important event.

To all the delegates welcome to the Kingdom of Swaziland. I do hope that you will find time to explore the beauty of the Kingdom as well as the hospitality of its people not only within reason but within the legal framework operative in this beautiful country.

### Background

In October, 2004 Law Ministers of Small Commonwealth Jurisdictions encouraged the Commonwealth Secretariat to continue its assistance to Small States as regard the implementation of International Conventions generally and in particular to assist Land locked States in the Commonwealth to give effect to the provisions of the United Nations Convention of the Law of the Sea (UNCLOS). It is with this background that the Legal and Constitutional Affairs Division of the Commonwealth Secretariat decided to conduct this seminar.

The objective of the seminar is to assist Commonwealth Land locked States to understand the provisions of UNCLOS as they relate to access to the Sea and the sharing of the surplus living resources of the Exclusive Economic Zone (EEZ). Another objective is to encourage Land locked States to participate in the exploitation of resources in the deep-sea bed. The expectation is that at the end of the programme participants will appreciate the regional or national arrangements that are necessary to give effect to the provisions of the convention.

### Implementation of International Conventions

Against this background the general concern of Law Ministers of Small Commonwealth Jurisdictions to secure technical assistance to Small States in implementing International Conventions. International Conventions otherwise referred to as treaties are the most important sources of International Law. They are either bilateral or multilateral. It is the latter type of treaty, which involves many States and International Organisations that are complex for developing States and therefore difficult to implement. Subjects of International Law States are

expected to cooperate in International Law making through treaties. Such cooperation is crucial especially for developing States, which lack the capacity to implement the provisions of some treaties hence, the need for technical and financial assistance. Whilst the basic principle of International Law is the sovereign equality of States; the special needs, interests and circumstances of developing States, in implementing International Conventions must be recognized by the developed or industrialized countries. The difference in the level of development is therefore an important factor in determining whether or not developing States need assistance in implementing International Conventions. It is in this light that the Commonwealth Secretariat is giving assistance to the States represented in this seminar. It is my sincere hope that the participants will commit themselves to the work that will be done during the course of the seminar for the benefit of the respective governments represented here.

## The Convention on the Law of the Sea (UNCLOS)

### General overview

The convention is a multilateral treaty adopted at Montego Bay Jamaica and opened for signature on the 10<sup>th</sup> December, 1982 and entered into force on the 16<sup>th</sup> November, 1994. In terms of the Preamble UNCLOS is the Legal Order for the Seas and the Oceans which facilitates international co-operation, promotes the peaceful use of the Seas and the Oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment. Further, the Preamble recognizes that the area of the sea bed, ocean floor and the subsoil thereof is beyond the limits of national jurisdiction. They are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States. The Preamble further recognizes the special interests and needs of developing countries, whether coastal or landlocked, in the implementation of the Convention.

The convention is regarded as the Constitution for the Seas that regulate all aspects of the resources of the Sea and uses of the Ocean, mankind's very source of life. It is important to highlight that the Oceans are the very foundation of human life. They are not only a prime source of nourishment for life but it has also served trade and commerce, adventure and discovery. Most of the world's people live no more than 200 miles from the Sea and relate closely to it.

#### Key features of the Convention

Key features of the convention include navigational rights, territorial sea limits, economic jurisdiction, legal status of resources on the sea bed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime and the binding procedure for settlement of disputes between States. These features relate to all States

whether land locked or coastal; hence the need for international cooperation.

### Signature and ratification of the Convention

In terms of Article 305 the convention is open for signature for all States and other entities. It is subject to ratification in terms of Article 306. Ratification or accession to a convention is the process by which a State consents to be bound by the provisions of it. It is common that States usually sign a convention and then neglect and/or fail to ratify a convention. It is important that States ratify the convention so that they can assume rights and duties under it. The Kingdom of Swaziland, much as it is hosting this important seminar has not yet ratified the convention. It must be appreciated however, that this being a complex convention it needs to be thoroughly understood before a State can consent to be bound by it. I wish to commend Botswana, Uganda and Zambia represented here for having ratified the convention. I hope that one of the fruits to be reaped from this seminar

is ratification of the convention by those States, especially those represented here that have not ratified it yet.

### The importance of the convention for land locked States

The convention creates rights and duties for all States, irrespective of geographic location. This means both coastal and land locked States have rights and duties under the convention. I propose to highlight some of the important parts of the convention as they relate to land locked States, in line with the objectives of the seminar. These include the provisions relating to access to the Sea and the sharing of the surplus living resources of the Exclusive Economic Zone and the deep-sea bed.

The Exclusive Economic Zone is an area in respect of which coastal States have rights and jurisdiction and other States have rights and freedoms. With respect to landlocked States, Article 69 of the convention stipulates that such States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive

economic zones of coastal States of the same sub-region or region, taking into account the relevant and geographical circumstances of all the States concerned in conformity with the provisions of this Article and of Article 61 and 62. Further, the said Article provides that the States concerned through bilateral, sub-regional or regional agreements, shall establish the terms and modalities of such participation.

The latter provision suggests the need for coastal States and land locked States to cooperate with each other in the exercise of their rights and execution of their duties under the convention. Therefore, the principles of good neighborliness and international cooperation are very important in this regard because for States to negotiate agreements they have to uphold these principles. There is therefore a need for political commitment to international cooperation in this sphere of International Law in order for landlocked States to have access to the Sea and share the surplus living resources of the Exclusive Economic Zone.

The High Seas and its seabed and sub soil is an area beyond the jurisdiction of any State; and hence are referred to as the Global Commons. In terms of Article 87 of the convention, the High Seas are open to all States whether coastal or landlocked in respect of which such States have freedoms, rights and duties. Landlocked States are encouraged to participate in the exploitation of the Area because in terms of the convention it and its resources are the common heritage of mankind and hence fall outside the jurisdiction of any State.

The exercise of the rights and execution of duties of States with regard to the High Seas also requires cooperation between or amongst States. It is therefore important for all States to cooperate in good faith in order for harmonious relations to prevail.

Allow me to challenge all the States represented here to exercise their rights and execute their duties in respect of the Area as provided for in the convention in order to derive economic benefits. Participation in activities of the Area by developing States has been made easier in terms of special provisions in the convention that take care of the

special needs of such States. Most importantly is the provision for the transfer of technology relating to activities in the Area to developing States. Developing States are therefore encouraged to cooperate in promoting the transfer of technology so that they can participate meaningfully in the activities of the Area.

### Conclusion

The convention is a complex International Legal Instrument. Its complexity however, must not deter States, especially land locked States from consenting to it; so as to be bound by its provisions. Landlocked States are encouraged to ratify and implement the convention so that they can benefit economically from the exercise of their rights. I wish to take this opportunity once again to thank most heartily the Commonwealth Secretariat for the assistance they are rendering to Landlocked States in implementing the convention.

Further, I wish all of you present very fruitful deliberations during the seminar, a very pleasant stay in the Kingdom and a very safe journey back home.

Thank you.

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**Annex 4**

**COUNTRY REPORTS**

**BOTSWANA POSITION ON THE IMPLEMENTATION**  
**OF THE**  
**UNITED NATIONS CONVENTION**  
**ON THE LAW OF THE SEA**

Botswana signed the Instrument of Accession to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of the 10<sup>th</sup> December 1982 on the 2<sup>nd</sup> July 2004. This Instrument of Accession was signed by His Excellency, the President Mr Festus Mogae (and later deposited with the Secretary General of the United Nations). This is in accordance with the constitution which confers executive powers on the President to sign or ratify international agreements. The Convention has not, as yet, gained the force of law in Botswana, as it has not been incorporated by legislation into the domestic law.

The relevant competent authority in the country responsible for administering and overseeing matters dealing with the Convention is the Ministry of Minerals, Energy and Water Affairs. However there are currently no administrative mechanisms in place for the effective implementation of the Convention.

Botswana is a landlocked State-sharing its borders with Zimbabwe in the North east, South Africa in the south, and Namibia in the west as well as Zambia in the north.

Botswana's main source of foreign exchange is diamonds. This is a finite resource. Botswana is willing to learn ways in which it can benefit from the provision of UNCLOS as they relate to access to the sea and the sharing of surplus living resources of the Exclusive Economic Zone. Part XI of the Convention (Article 136) states that the Area and its resources are the common heritage of mankind. Further, Article 137 provides that no State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources.

Botswana would also benefit from the acquisition of technology as well as scientific knowledge (Article 144). As a developing and landlocked State Botswana can effectively participate in the activities of the Area and overcome obstacles arising from its disadvantaged location. It is the understanding of Botswana that activities in the

Area would foster the development of the world economy as well as the fair and balanced growth of international trade.

State Parties to the Convention have a responsibility of paying their financial contributions to the Authority. A State Party shall have no vote if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, however, permit such a member to vote if the failure to pay is on account of factors beyond the control of the member (Article 184).

By acceding to the Convention Botswana has effectively brought itself under the jurisdiction of the Seabed Disputes Chamber which has the power to settle disputes relating to contracts between States Parties in matters affecting activities in the Area (Article 187).

Other pertinent provisions of the Convention relate to:

- the establishment of an economic assistance fund for economies affected by the production of minerals;

- the legal regime relating to the exclusive economic zone;
- the conservation of the living resources ;
- the right of land-locked States to participate, on an equal basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same region through bilateral, sub-regional or regional agreements. (Part V, Article 69).

A deeper understanding and implementation of the provisions of the Convention shall prove invaluable to the economics of land-locked States. Botswana is greatly honoured to have been invited to this seminar.

**COMMONWEALTH SEMINAR  
ON LAND-LOCKED STATES IN AFRICA**

**JUNE 13 – 15, 2005, SWAZILAND**

**LESOTHO COUNTRY REPORT:-**

**STATUS OF IMPLEMENTATION  
OF UNITED NATIONS CONVENTION  
ON THE LAW OF THE SEA (UNCLOS)**

**BY:- T. MAKHETHE  
DEPUTY ATTORNEY GENERAL**

Lesotho is a kingdom and a former colony of United Kingdom. She got her independence on 4 October, 1966. The total area of the Country is estimated to be 11, 716 square miles. The country is mountainous, having the highest peak in southern Africa at 11 425 feet from sea level. The economy rests upon agricultural foundations: crop farming, wool and mohair production. Industrial development, both large and small-scale, has seen significant growth in recent years. There is a diamond mining activity of relatively large-scale at one site in the Maluti mountains of Lesotho (Kao Diamond Mine) which in recent years has been doing relatively well, producing world-class diamonds.

The borders of Lesotho adjoin those of Kwa-Zulu Natal Province of South Africa in the east, of the Cape Province of South Africa to the south, and of the Free State Province of South Africa in the west and north. The eastern part of Lesotho is separated from the Indian Ocean by the Kwa-Zulu Natal Province, and the eastern border happens to be part of Lesotho nearest to the Indian Ocean.

Whereas the United Nations Convention on the Law of the Sea (signature 1982, entry into force 1994), in particular Articles 17, 18, 69 and 125 contain important provisions regarding land-locked States and their rights in relation to exploitation of resources of the high seas, land-locked States, including Lesotho, have nevertheless largely not benefited from the provisions of the Convention. Situations will differ but in Lesotho non-utilisation of the provisions of the UNCLOS is particularly in respect of living resources of the sea in respect of the neighbour's exclusive economic zone, deep-sea bed and the high seas. There exist no bilateral agreements on these aspects between the two countries, but for some time now since the era of a constitutional democratic State of the Republic of South Africa an idea has always been mooted by the two neighbours to explore the feasibility of what has become known as the Durban Corridor for Lesotho. Durban is the capital city of Kwa-Zulu Natal Province. There is not much

movement in this area, but for Lesotho the idea is most appealing, and if it were to materialise it would bring tremendous tangible economic benefits to the country because the Durban Corridor idea, even in its very infant stage, envisages opening a direct route for Lesotho, on the eastern border of the country, to the Indian Ocean. As a country, we believe that the arrangement of this nature would bring us closer home to a phlethora of other rights conferred under the Convention, such as enjoyment of deep-sea bed resources, sharing in the living sea resources of the exclusive economic zone and the high seas, and further the arrangement would help us enjoy a more affordable, than is the case hitherto, right of access to and from the sea, and indeed a more affordable right of freedom of transit through the territory of South Africa. Presently, access to and from the Durban port and harbour facilities is a long meandering journey through the Free State Province, and this, at high costs of transportation.

As already alluded to hereinabove, Lesotho as yet has no agreement with the Republic of South Africa regarding certain of the rights conferred by the Convention, besides access and transit through the territory of the Republic. It is fervently hoped that with the emergence of a constitutional and democratic order in South Africa, and against the background of the demise of the apartheid system, and the continuing broad-based cooperation of the two democratic States, eventually the two parties will find their way to entering into agreement/s giving effect to the provisions of the Convention in their entirety in respect of the rights of land-locked States.

**COUNTRY REPORT ON THE STATUS OF IMPLEMENTATION OF THE  
UNCLOS : MALAWI**

Malawi is a landlocked country in the southern part of Africa and is bordered by Mozambique, Zambia and Tanzania. Mozambique and Tanzania are coastal States.

Malawi signed the UNCLOS but has not yet ratified it. As such there is minimal implementation of the Convention, in the form of reference to the Convention in bilateral or regional agreements to which Malawi is a party.

The Government has however recently commenced the process of ratifying the Convention and it is hoped that the same will be concluded before the end of the year.

## COUNTRY REPORT

### COMMONWEALTH SEMINAR ON LANDLOCKED STATES IN AFRICA 13-15 JUNE 2005

#### STATUS ON IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA BY SWAZILAND

Swaziland took a first step to consent to be bound by the United Nations Convention on the Law of the Sea (UNCLOS) by signature on the 18<sup>th</sup> January 1984 as per Article 11 of the Vienna Convention on the Law of Treaties as read together with Article 305 of UNCLOS. Article 11 of the Vienna Convention on the Law of Treaties, stipulates that the consent of a state to be bound by a treaty may be expressed " by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession or by any other means if so agreed".

The country has not however ratified the UNCLOS as stipulated in Article 306 of UNCLOS which specifically subjects the Convention to ratification by States and the other entities referred to in Article 305 of the Convention. Swaziland has therefore not fully consented to be bound by UNCLOS. The reason for this state of affairs is unknown, except that one may speculate that it could be because of the geographic location of the country.

As a completely landlocked state, surrounded by Mozambique and the Republic of South Africa respectively, there does not seem to be any urgency to ratify the Convention and hence nothing is being done to implement it. This therefore means that at national level, no legislation has been enacted to give effect to the Convention as the country has neither rights nor duties arising from UNCLOS.

Considering the status of implementation, our expectations at the end of the seminar are that participants will be placed in a better position to understand the importance of ratification of UNCLOS by landlocked states.

**UGANDA REPORT ON THE IMPLEMENTATION OF UNCLOS AND ANY APPLICABLE REGIONAL ARRANGMENT TO WHICH UGANDA IS A PARTY AS IT RELATES TO FISHERIES AND ACCESS TO THE SEA presented by Patience Kabiije, Ministry of Justice & Constitutional Affairs, Uganda.**

**Introduction**

Uganda is a land locked country located in east Africa. It is bordered by Kenya in the east, Tanzania in the south, the Sudan in the north, Democratic republic of Congo in the west and Rwanda in the southwest. .

Uganda is a party to this convention and it ratified the convention in the year 1990. The Convention has to some extent gained the force of law in Uganda.

**The following is the extent to which Uganda has implemented the provisions of UNCLOS.**

**Article 17 Right of Innocent Passage**

Lake Victoria and other shared water ways are affected by the provisions of this convention. Therefore, vessels from neighboring countries like Kenya, Tanzania enjoy the right of innocent passage through Uganda's territorial water area.

**Article 91(2) Nationality of Ships**

This article provides that

2) Every state shall issue to ships which it has granted the right to fly its flag, documents to that effect.

This is the registration of ships under what is known as "flag of convenience" in the shipping industry. Uganda has not offered this as was popularly done by countries like Liberia.

**Article 93 Ships Flying the Flag of the UN and its specialized agencies**

Uganda allows a ship deplored on UN assignment to sail with two flags i.e. country of registry and for UN or other specialized Agency.

**Article 94 Duties of a flag State**

These are carried out in Uganda. However, they are being harmonized for the East African Community under the proposed L. Victoria Transport Bill, enactment which is expected by the end of this year (2005).

**Article 96 Immunity of Ships used only on Government Non-Commercial Services**

This is not applicable to Uganda as it shares no high seas. However as far as internal waters are concerned for example L. Victoria, Government vessels from other states like Kenya and Tanzania require special permission to be able to sail through the territorial waters of Uganda but are exempt from some fees.

**Article 97 (3) Penal Jurisdiction in matters of Collision or any other incident of Navigation**

This article provides that

“No arrest or detention of the ship, even as a measure of investigation shall be ordered by any authorities other than of the flag state”.

Some detention may occur if the vessel has been involved in criminal activities like smuggling, trafficking in narcotic drugs. In this instance the laws of Uganda as far as smuggling and narcotics are concerned will apply.

**Article 100 Duty to cooperate in the repression of Piracy**

Duty Uganda Revenue Authority, Police and other security agencies cooperate within the framework the East African Community, East

Africa Police Chiefs Cooperation (EACPCCO) and other bilateral agreements to repress piracy and activities connected thereto.

#### **Article 108 Illicit Traffic in Narcotic Drugs or Psychotropic Substances**

As mentioned earlier in Art. 100, Uganda cooperates with other states. There is continued exchange of information through INTERPOL and other enforcement agencies.

#### **Article 111 Rights of Hot Pursuit**

This can be done on request and permission is granted prior to the operation.

#### **Article 123 Cooperation of State bordering enclosed or semi-enclosed seas**

This is being implemented through

- The Lake Victoria Commission
- Nile Basin Initiative- an institution set up by riparian states in 2002 based on a vision to achieve sustainable socio-economic development through equitable utilization of, and benefit from the common Nile basin water resources.

#### **Article 125 Right of Access to and From the Sea and Freedom of Transit**

Particularly subsection 2 which provides for agreement between landlocked states on the terms and modalities of exercising freedom of transit.

This has been done for the port of Mombasa and the Northern Corridor.

The transit transport coordination authority of the Northern Corridor (TTCA) Agreement came into force in November 1986 and the members are Burundi, DR Congo, Kenya, Rwanda, and Uganda. For the port of Dar-es-salaam, bilateral agreements exist between

Tanzania and Uganda. Process has started for the setting up of the Central corridor Transport transit.

**Article 127 Customs, Duties, Taxes and other Charges**

In Uganda transit traffic vehicles are charged only transit license fees but these fees will be removed in future under the East African customs union, COMESA, Transit Transport Coordination Authority Agreements. In Kenya bond or escort fees for sensitive goods are imposed.

**Article 128 Free Zone and other customs facilities**

In Mombasa port there are facilities for Ugandan Cargo. Currently there are also project proposals for Entebbe Airport, Malaba/Busia border posts (eastern Uganda border with Kenya) and Namanve Industrial complex.

**Article 129 cooperation in the construction and Improvement of Means of Transport**

Under the East Africa Trade and Transportation Facilitation Project, funded by the World Bank there are proposed projects to establish one-stop border posts in Malaba, Busia and Katuna.

There is also in place the Lake Victoria safety Navigation Project under the East African Community. It has components to improve hydrography and aids to navigation, search and rescue, maritime radio communication and meteorology.

**Article 130 Measures to eliminate delays or other difficulties of a technical nature in traffic in transit**

Measures are provided for under the EAC, TTCA, COMESA and bilateral agreements.

**Article 131 Equal treatment in maritime ports**

This is done in Portbell, Jinja Port.

**Article 215 Enforcement with Respect to pollution from activities in the area**

Enforcement is done by the Marine Police and Fisheries Department partly because NEMA (National environment Management Authority) a body set up to ensure that principles of Environment Management are observed, has not yet built up capacity for enforcement.

**Articles 218/219/221**

The provisions in the above articles are being incorporated in the L. Victoria transport bill expected to be enacted this year.

**Article 255 Measures to facilitate Marine Scientific research and assist research vessels**

There are appropriate regulations, which allow these vessels to conduct the work. Permission is granted when applications are made.

**Article 262 Identification Markings and Warning signals**

This is being harmonized within the EAC under the L. Victoria Transport Bill and in line with the International Maritime Organization guidelines.

Uganda is honored at being invited to attend and participate in this seminar and it is our hope that we will learn from the experience of other land locked states.

## **COUNTRY REPORT – ZAMBIA**

**COMMONWEALTH SEMINAR ON LANDLOCKED STATES IN AFRICA 13-15  
JUNE 2005**

### **STATUS OF IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982**

Zambia ratified the United Nations Convention on the Law of the Sea of 1982 on 7<sup>th</sup> March 1983. This was just under three months from the date on which the Convention opened for signature on 10<sup>th</sup> December, 1982. Despite the good start Zambia appears not to have taken any step further regarding the implementation of the Convention. Zambia's failure to implement the Convention can only be explained as being due to Zambia's not having considered the full benefits to be had by implementing the Convention. As a landlocked state which is bordered by no less than eight countries Zambia would benefit a great deal from taking an active role in implementing the Convention.

Article 69 of the Convention gives Zambia as a State Party to the Convention the right to participate, on an equitable basis, in the exploitation of the surplus of the living resources of the exclusive economic zone of the coastal states of the same sub-region or region taking into account the relevant economic and geographical circumstances of all the states concerned.

In addition Article 125 grants landlocked states the right of access to and from the sea and related to that the freedom of transit through the territory of transit States by all means of transport. The right of access to the sea implies that a land-locked state must have access to the ports of a coastal state. Zambia should consider entering into bilateral agreements with, for instance, Tanzania and Mozambique, being the two coastal states which are closest to Zambia to share the surplus of the living resources of their respective exclusive economic zone. There should also be agreement concerning Zambia's access to and from the sea and Zambia's unimpeded transit through the territories of those states.

The seminar therefore comes as a timely reminder to Zambia of the country's rights under the Convention. Zambia is thus grateful to the Commonwealth Secretariat for the invitation to the seminar and for facilitating Zambia's participation in the same.