Tommy Koh Receives the Great Negotiator Award

EPL congratulates Ambassador Tommy T.B. Koh of Singapore, on whom Harvard University’s Program on Negotiation bestowed the Great Negotiator Award. After his success in the UN Conference on the Law of the Sea, Koh was elected President for the 1992 UN Conference on Environment and Development (Rio de Janeiro). It is no surprise to us that such a dynamic and able person also received this award, and we congratulate him on his award and thank him for his tireless efforts.

ITLOS Issues Order for Release of the “Arctic Sunrise”

On 22 November 2013, the International Tribunal of the Law of the Sea (ITLOS) issued an order in response to The Netherlands’ request for provisional measures, ordering the Russian Federation to release the Netherlands-flagged Greenpeace vessel the “Arctic Sunrise” and the persons detained on it, as soon as the Netherlands posts the €3,600,000 bond, as security with regard to any future disposition of the vessel in the case Kingdom of the Netherlands v. Russian Federation, originally filed in October 2013. The Tribunal’s order is available at http://www.itlos.org/index.php?id=264#c1465.

INTERPOL Becomes Involved in San Juan River Dispute

Costa Rica recently requested INTERPOL to involve itself in the country’s dispute with Nicaragua over the dredging of the San Juan River (see EPL 43(3): at 175 and 43(4-5): at 276). Reportedly, INTERPOL initially accepted a warrant against Nicaragua, but later withdrew its acceptance, following a submission by Nicaragua which noted that, in an on-going case, the International Court of Justice had formally declared that the area is a “disputed territory” “San Juan River: Costa Rica and Nicaragua at Interpol”, Derecho Internacional Público. Costa Rica, 7 January 2014, at http://derechointernacionalcr.blogspot.de/2014/01/costa-rica-and-nicaragua-at-interpol.html.

United Nations

– SIDS Conference

The final preparatory meeting in advance of the third international conference on Small Island Developing States (SIDS) was held in New York from 21–29 April 2014. The meeting’s primary outcome document reflected agreement on disaster-risk reduction, food security (integrating gender equality and the empowerment of women), health, sustainable consumption /production, sustainable tourism and water, but opted not to address the unfinished processes on the post-2015 development agenda and technology transfer. This document will form the basis of the work of the Conference itself, when it meets in September 2014, in Apia, Samoa. “Zero Draft of the Outcome of the Third International Conference on Small Island Developing States”, at http://www.sids2014.org/content/documents/298SIDS%20zero%20draft%2014%20March%20WITH%20ATTRIBUTIONS.pdf.

– HLPF Operational Materials Online


– International Law Commission Report

The United Nations General Assembly has posted the “Draft report of the International Law Commission on the work of its sixty-fifth session”, including the ILC’s most recent deliberations on the protection of the environment in armed conflicts. Available

– SG Ban Views Impact of Climate Change
First-hand in Greenland


FAO: Brazzaville Declaration Takes on Illegal Timber Trade

The UN Food and Agriculture Organization (FAO) reports the adoption of the Brazzaville Declaration by the Forum International sur le Développement Durable de la Filière Bois dans le bassin du Congo, with the goal of combating the illegal timber trade in the Congo Basin. “Déclaration de Brazzaville”. Available at http://www.fao.org/fileadmin/user_upload/newsroom/docs/Brazza_FR_2013.pdf.

WHO: The Risks of Air Pollution

In a recent report, the World Health Organization (WHO) estimated that indoor and outdoor air pollution caused the premature deaths of about seven million people worldwide in 2012, making it the world’s largest single environmental health risk. Reported at http://www.who.int/mediacentre/news/releases/2014/air-pollution/en/.

WMO: 2013 Warmest Year on Record

The World Meteorological Organization (WMO) stated that 2013 is to be among the warmest years since records began in 1850, also resulting in rising sea levels due to melting ice caps and glaciers. UN Press Release, 13 November 2013. “As global sea levels continue to rise, 2013 set to be among warmest on record”. Available at www.un.org/apps/news/story.asp?NewsID=46484#.U4j2oyjLKuQ.

UNEP

– Green Growth Knowledge Website

UNEP has recently announced its support for the “Green Growth Knowledge Platform” to help governments make the transition into green economic growth. This is part of the work done to pave the way for sustainable development goals beyond 2015. UN Press Release, 22 January 2014. “UN-backed website aims to aid ‘green’-minded governments”. Available at http://www.un.org/apps/news/story.asp?NewsID=46983#.Ux2O-f-Ybcs.

CBD: Nagoya Protocol Set to Enter into Force

The Secretariat of the Convention on Biological Diversity (CBD) has announced that on 14 July 2014, it received the 51st ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, indicating that that Protocol will enter into force according to its terms on 12 October 2014. UN Secretary General Ban Ki-moon commended the States that have ratified the Protocol, stating that in so doing they have “fulfill[ed] the promise made at the 2002 World Summit on Sustainable Development”. A number of experts that have participated in the Protocol processes have indicated that they find both concern and some confidence in the fact that seven of the 51 ratifications came from European countries (Albania, Belarus, Denmark, European Union, Hungary, Norway, Spain and Switzerland). While the European Union will be a Party to the Protocol, its approval earlier this year did not count towards the 50 ratifications required for entry into force.

Basel Convention: Hazardous Waste Seized

The Secretariat of the Basel Convention, the World Customs Organization (WCO), UNEP’s Regional Office for Asia and the Pacific, and Chinese Customs have reported the seizure of over 7,000 tons of illegal hazardous waste. WCO Press Release, at http://sids-liisd.org/news/basel-convention-wco-and-unepe-roap-seize-tons-of-hazardous-waste/.

IRENA : World Future Energy Summit


UN/ECE: Water and Health Protocol


UN Watercourses Convention Enters Into Force

Through the tireless efforts of Steven McCaffrey, and after too long a time, the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention) will enter into force in August 2014. Viet Nam became the 35th country to accede to the Convention, so in accordance with Article 36 of the Convention, the Convention will enter into force on the 90th day following the deposit for the 35th ratification, acceptance, approval or accession. See http://biodiversity-l.iisd.org/news/un-watercourses-convention-to-enter-into-force-following-35th-ratification/.

EU

– EP Supports Nagoya Protocol

On 11 March 2014, the European Parliament (EP) voted in support of ratification of the Nagoya Protocol to the Convention on Biological Diversity. Although this move does not, in itself, increase the number of Protocol ratifications, it opens the path for the 28 EU Member States to ratify the Protocol – an important
possibility, given that the Protocol will enter into force 90 days after the 50th ratification. Formal adoption of the latter by Parliament is expected in April.

Fisheries Policy Reform


Developments Regarding Trade in Aviation Emissions

The EU’s Emissions Trading System (EU ETS), controversial since its inception, has been the subject of additional action, when, in March 2014, after long discussions, the EC and EP reached an informal agreement on changes to the EU ETS under a draft regulation covering 2013–2016 that will limit the aviation coverage of EU ETS to emissions from flights within the European Economic Area (EEA), but will apply to all such flights, including those of third-country airlines. at http://www.eu-koordination.de/umweltnews/news/verkehr/2401-widerstand-gegen-ausweitung-des-luftfahrtmissionshandels-waechst. These developments will be discussed in EPL in next issue’s summary of recent EU developments.

DRC: Attacks in Virunga Park

Emmanuel de Merode, Chief Warden of the National Parks of the Democratic Republic of Congo, was shot and seriously injured in Virunga National Park last March. Over 150 park rangers have been killed over the last 20 years protecting Virunga, which is Africa’s oldest national park, listed since 1979 as a UNESCO World Heritage Site, owing to its exceptional biodiversity. IUCN Press release, 17 April 2014, at http://www.iucn.org/?14708/IUCN-condemns-attack-on-Virungas-Chief-Warden.

China: Legal Ivory Market


Japan: “FutureCity” Initiative


Namibia Issues Licence to kill Rhinoceroses

Corey Knowlton, an electronic bidder from Texas, won an auction for the licence to kill one rhinoceros in Namibia at the price of US$ 350,000. The idea behind the auction was that the profit made through the auction would benefit the conservation of the species in Namibia. Lavandera, E. 2014, at http://www.cnnd.com/2014/01/16/us/black-rhino-hunting-permit/.

Land Mines

A total of 3,268 people were killed by land mines last year, half of whom were children. 526 km² were freed of landmines, and 540,000 mines and other war remnants have been destroyed.

Arctic Adaptation Actions

A joint project by the Arctic Council and the Arctic Monitoring and Assessment Programme called Adaptation Actions for a Changing Arctic was released. The project was aimed at enabling the free transfer of information to respond and drive policy related to adaptation actions in a rapidly changing Arctic. The AACA will run until 2017 and will provide a baseline for future studies and assessments. A brochure with more information can be found at: http://www.amap.no/documents/doc/aaca-information-brochure/1067

First Report on the Protection of the Atmosphere

Degradation of the atmosphere has become increasingly evident as discussions of causes of climate change and rapid increase in respiratory diseases have been seen across the globe. To address these concerns in the past, States have been left to their own devices, doing as they see fit to combat atmospheric degradation, which has had little to no beneficial results. Special Rapporteur for the Sixty-Sixth session of the International Law Commission, Shinya Murase, posited another way to approach the atmospheric degradation issue, namely to focus on the international law aspect in trying to protect and revitalise the atmosphere. Murase spearheaded the production of a paper analysing the legal route to the protection of the atmosphere for the International Law Commission (ILC) which explains why he believes that the legal route is the best route. The atmosphere is the planet’s largest single natural resource, argues Murase, and it is indispensable to the survival of humankind. Though a few conventions have tried to address the issue of atmospheric pollution, all have been piecemeal and have not created a complete and holistic protection programme. Murase therefore argues that the ILC can make a significant contribution by identifying the legal principles and rules applicable to the whole range of atmospheric problems on the basis of State practice and jurisprudence.

Murase begins his discussion with a lesson on the difference between lex lata and lex ferenda. He says that too often in the field of international environmental law, lex ferenda is smuggled into the interpretation of lex lata, thereby hijacking the established law. Murase believes that this should be avoided and replaced by actual lex lata prescribing guidelines for protection of the atmosphere. First, the ILC should seek to clarify the meaning and function of the existing legal principles in a broader framework. Next, where there are holes in this framework, the ILC should explore reinterpretation of the existing legal concepts, principles and rules. Lastly, if any holes should remain where a simple reinterpretation will not suffice, add certain clarifications with regard to the progressive development of emergent rules of international law. Any such emergent rules should be considered in conjunction with general international law.

No legal framework on the environment would sufficiently address the issues they are meant to mitigate unless they are buttressed by an understanding of the scientific and technical aspects of the problem, asserts Murase, such as the sources and effects of the damage. It is therefore important for the ILC to consult with scientific institutions and individual experts, as it is part of their responsibility to develop international law, as stated in Article 16(e) of its Statute. Murase argues it is no different than international tribunals who ask for scientific assistance in transboundary pollution cases.

Combined Environmental Conferences in Cancun

On 25–30 May 2014, a combined conference was held in Cancun, Mexico, which included the 46th Meeting of the Global
Environment Facility (GEF) Council, the Civil Society Organizations Forum, the 16th Meeting of the Least Developed Countries Fund and the Special Climate Change Fund Council, and the 5th GEF Assembly. More information about the conference including a combined summary and video coverage can be found at http://www.isisd.ca/gef/assembly5/

First UN Environment Assembly to Address Environmental Sustainability
The First UN Environment Assembly (UNEA) convened in Nairobi, Kenya from 23–27 June 2014. The event marks an historic milestone in the history of the UN Environment Programme, beginning a new phase in its agenda to address worldwide environmental concerns. The meeting will host a wide range of international actors from differing fields of study including those with economics, finance, social science, legislative, judiciary, and sustainable development backgrounds. More information regarding the meeting can be found in UNEP’s Press Release at http://www.unep.org/NewsCentre/default.aspx?DocumentID=27888&ArticleID=10888&Lang=en

Call for 2014 Wangari Maathai Award Nominees
The Collaborative Partnership on Forests will soon be presenting awards in the name of Nobel-Prize-winning Environmentalist Wangari Maathai to individuals who have improved our forests and the lives of people who depend on them. The award for the extraordinary individual is 20,000 USD. http://www.iufro.org/news/article/2014/04/28/wangari-maathai-award-2014/

HRC Adopts Human Rights and Environment Resolution

US Secretary of State Kerry: UN Enforcement to Protect Oceans
In a recent press statement, US Secretary of State John Kerry called for global consensus for a structure within the United Nations to enforce regulations on the management and protection of the oceans. Kerry emphasised that enforcement was the key, as rules on how to manage and protect the ocean mean nothing without enforcement measures. When asked about the ongoing effort to have the UN Convention on the Law of the Sea ratified by the US Senate, Kerry replied that it is his desire that the treaty be ratified, but that as it stands now the US de facto abides by the treaty without actually being a Party. See http://cnsnews.com/news/article/patrick-goodenough/kerry-calls-global-understanding-un-enforcement-protect-oceans.

ITLOS Judgment in the M/V “Virginia G” Case
On 14 April 2014, the International Tribunal on the Law of the Sea ruled on the case of an oil tanker flying a Panamanian flag, allegedly refueling foreign vessels in Guinea-Bissau’s Exclusive Economic Zone (EEZ), holding that Guinea-Bissau acted within its powers in citing the vessel for violating its reasonable regulations, but not in the vessel detention, arrest, confiscation of the fuel being used in this manner or failure to notify the flag State. A more detailed report on this decision will be included in EPL 4/4.

US in the 1980s: Strategic Minerals from the Seabed Objectives
A recent article from OceanLaw.org highlighted that support for accension to the UN Convention on the Law of the Sea (UNCLOS) came from both sides of the American Congressional aisle. Ronald Reagan, before and during his presidency, was very involved with UNCLOS as a result of the proposed provisions introduced by Committee I chairman Paul Engo of Cameroon, which reflected the input from the African Group. Having his own view, President Reagan completely changed the US LOS delegation upon his taking the office, and developed six objectives for the seabed mining provisions, including a provision to protect the interests of “pioneer investors” for their pre-convention interests. More about this topic can be found at http://us6.campaign-archive1.com/?u=f8f44615fa&id=abca2fe468e&e=e01bbf6521.

Sustainable Development Goals
On 2 June 2014, the former Director of the Stakeholder Forum on Sustainable Development Goals, Felix Dodds, released a Zero Draft Introduction and Proposed Goals and Targets on Sustainable Development for the Post-2015 Development Agenda. The document lists 17 SDGs, each with sub-goals, to be reached by 2030, including sustainable consumption, sustainable human settlement, worldwide access to clean air and water, and prevention of aquatic and terrestrial biodiversity loss. See http://sustainabledevelopment.un.org/content/documents/4044140602workingdocument.pdf; or http://sustainabledevelopment.un.org/focusssds.html.

Fulfil Human Rights Obligations on Environmental Protection
John Knox, the Independent Expert on Human Rights and the Environment appointed by the Human Rights Council, used World Environment Day to call on States to fulfil their human rights obligations related to environmental protection. Knox highlighted the need to protect civil society activists working on environmental issues and the need to consider impacts of environmental projects on traditionally marginalised groups. The full article can be found at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14664&LangID=E.

UN Secretary-General: Climate Change Impacts Small Islands
On World Environment Day, UN Secretary-General Ban Ki-moon emphasised that while Small Island Developing States have contributed little to climate change, they are to bear the brunt of the impact. He urged everyone to consider the plight of SIDS and to work towards a more sustainable future. See http://www.un.org/sg/spokesperson/highlights/index.asp?HighD=6/5/2014&d_month=6&d_year=2014.
Kidnapped Endangered Gorilla Brought Home

An endangered female Grauer’s Gorilla was airlifted back to the Democratic Republic of Congo by UN Peacekeepers. The gorilla was confiscated from poachers three years ago, when she was just a baby. See http://www.cona.unep.org/documents/news/UN%20Helicopter%20returns%20Gorilla%20Orphan%20to%20Democratic%20Republic%20of%20Congo.pdf

World Mountain Forum

World representatives met in Cusco, Peru, to discuss sustainable mountain development. Discussion topics included the need to address climate change in mountain ecosystems and to provide incentives for mountain communities to use their resources sustainably and to act as stewards of this important ecosystem. The Forum also discussed family farming as a low-intensive means of self-preservation of the mountain communities. http://www.iisd.ca/mountain/wmf/2014/

Xiamen Declaration: CITES Requirements for Sharks and Manta Rays

The Xiamen Declaration and Action Plan for the Implementation of CITES Requirements in Relation to Sharks and Manta Rays was developed in a conference in Xiamen, China, which included players such as China, the EU, the Food and Agriculture Organization of the United Nations (FAO), and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). The representatives decided on a plan which focused on the need for improvement of data collection, the strengthening of national legislation and enforcement, and the strengthening of conservation and management measures, to ensure the propagation of the sharks and manta rays. The group emphasized the need to work with fishermen and related stakeholders regarding the management and sustainable utilisation of the shark and ray species. See http://cites.org/sites/default/files/eng/news/sunday/2014/xiamen_declaration_%26_action_plan.pdf

UNDG Announces Dialogues on Implementation


US Senate Gives Nod to Fisheries Protection

The US Senate has given its consent to the ratification of three treaties aimed at managing international fisheries: (1) the FAO Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing, done at Rome, Italy, on 22 November 2009, (Treaty Doc. 112-4); (2) the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, done at Auckland, New Zealand, November 14, 2009 (Treaty Doc. 113-1); (3) Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, done at Tokyo on 24 February 2012, and signed by the United States on 2 May 2012, (Treaty Doc. 113-2).

Wall Street Journal: There is a Cost to US Non-party Status in UNCLOS

In a recent article published in the Wall Street Journal (WSJ), Senior Correspondent and Columnist, Andrew Browne, provides a refreshingly different perspective than the one usually subscribed to in the WSJ regarding the UN Convention on the Law of the Sea (UNCLOS). Browne, using the current tensions between China and Viet Nam as an example, shows how the US non-party status is actually a detriment to US maritime interests. Firstly, Browne points out that while the US government points to the fact that it upholds the treaty’s provisions despite its non-party status, it is not the same as being a member of the group. Only members of the group can help shape the legislative agenda of the Convention and only members can appeal to the internal mechanisms to resolve disputes.

Second, the US absence from UNCLOS undermines its arguments to China about the supremacy of internal law. China has acceded to UNCLOS, albeit while still ignoring the treaty in favour of “historical rights” and domestic law. But despite this, China goes along with the Law of the Sea by and large. The American absence therefore leaves the US with no authority to call a foul when China uses its domestic law instead of abiding by the rules of the treaty.

Lastly, and perhaps most importantly for the American Congressional naysayers, the article points out that while Congress will not ratify the treaty, the US military and US private energy interests are two of the biggest proponents of ratification. With the two major American maritime interests in agreement over the need for the US to ratify the treaty, it seems that Congressional representatives who are dragging their feet have no real ground to stand on. The article and an OceanLaw.org editorial on the article can be found respectively at http://online.wsj.com/news/articles/SB10001424052702304198504579573091143124688?mod=--newsreel_4 and http://us6.campaign-archive2.com/?u=f8f44615fa&id=b2e51b01f6&e=e01bbf6521.