



IMO

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Swiss Ratification of the  
United Nations Convention on the Law of the Sea 1982

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of Master of Laws (LL.M.) in International Maritime Law, Malta

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## **Dedication**

"Play", "Make Their Day", "Be There" and "Choose Your Attitude".

This work is dedicated to my Partner.

I wish to express my fullest thank to you for all your endeavour support and motivation throughout this project and my course at IMLI. Thanks to your "Fish Philosophy" my time here became a unique challenge.

## **Acknowledgement**

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## **Abbreviations**

DFA	Department of Foreign Affairs
GA	General Assembly of the United Nations
SR	Official Gazette of Switzerland (Systematische Rechtssammlung)
UNCLOS	United Nations Convention on the Law of the Sea 1982
USA	United States of America

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## I. Explanatory Memorandum

### 1. Preamble

The preamble of the United Nations Convention on the Law of the Sea 1982 (hereinafter interchangeably referred to as the Convention or UNCLOS) states:

"The States Parties to this Convention,

...*Recognizing* the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and 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,

*Bearing in mind* that the achievement of these goals will contribute to the realization of a just and **equitable international economic order** which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked, ... have agreed"<sup>1</sup> and acknowledge the importance and value of the regulations set forth in this Convention."

### 2. The United Nations Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea is the most important multilateral instrument since the approval of the Charter of the United Nations.

The Convention contains provisions for governing, inter alia, limits of national jurisdiction over ocean space, access to seas, navigation, protection and preservation of the marine environment, exploitation of living and non-living resources, scientific research, seabed mining and the settlement of any disputes concerning application and interpretation of the Convention.

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<sup>1</sup> Preamble of the UNCLOS.

The Convention is based on the principle<sup>2</sup> that the Area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are given the status of common heritage of mankind. Furthermore, the exploration and exploitation shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, in other words, whether coastal or land-locked.

### **3. Switzerland and its position under the Convention**

The Convention identifies two classes of States: land-locked<sup>3</sup> and coastal States. Switzerland is a land-locked State situated in the middle of Europe. Throughout history land-locked States have always been regarded as possessing a disadvantaged position. It alienates the country from marine resources of the sea such as fishing or mineral resources, but more importantly it cuts off also access to seaborne trade which even today makes up a large percentage of international trade. The Convention emphasises the rights for land-locked States and respects their special position not being connected with the world's oceans.

The land-locked States, at the Third United Nations Conference on the Law of the Sea claimed that a right of passage must be recognized. Transit States agreed under the condition that the exercise of this right of transit passage<sup>4</sup> causes no damage to the interests of the transit States.

The established principle of innocent passage<sup>5</sup> through the territorial sea of a coastal State<sup>6</sup> has been cited in support of analogous rights of transit for land-locked States by several publicists.

The open seas constitute a "sine qua non" for international peace and development, the improvement of human conditions of life and attainment of respect for human dignity. The major concern of the world community today is

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<sup>2</sup> Declared in the GA Resolution 2749 (XXV) of 17 December 1970.

<sup>3</sup> Article 124, paragraph 1(a), of the Convention.

<sup>4</sup> Article 125, paragraph 1, of the Convention.

<sup>5</sup> Article 17 of the UNCLOS.

<sup>6</sup> Article 15 of the Geneva Convention on the Territorial Sea and the Contiguous Zone; SR 0.747.305.11; 29 April 1958; Entered into force for Switzerland on 17 June 1966.

the total elimination of hunger, poverty, disease and ignorance. The oceans have the potential for solving some of these problems.

Dominion over the seas in earlier time was possible. However the structure of world order has considerably changed. Continued non-consideration of the land-locked and geographically disadvantaged States contains the inherent danger of precipitating a war with incalculable consequences for the whole world.<sup>7</sup> The only preferred alternative to have a proper legal regime of the high seas is the continued preservation and protection of the freedom of the high seas.

Ships flying the Swiss flag are under the supreme authority of the Swiss government (Federal Council). Since navigation problems often involve matters of international law, it is the DFA, acting through the Swiss Maritime Navigation Office in Basle, which has direct oversight of this particular activity.

#### **4. Signature of Switzerland subject to the approval by the Federal Parliament**

On 17 October 1984 Switzerland signed the Convention subject to the approval of the Federal Parliament<sup>8</sup>. During the expired time no canton or committee launched a referendum<sup>9</sup>. Today, Switzerland is ready to deposit its document of ratification and express its willingness to be bound by the Convention.

The Act is structured as follows: Article 1 contains the promulgation. The scope of the Convention is stated in article 2. For purposes of the Convention the meaning of the words used is defined in article 3. In article 4 Switzerland expresses the withdrawal of the four Geneva Conventions on the Law of the Sea of 29 April 1958. The Implementation Authority is named in article 5. According to article 6, Switzerland shall make declarations of understanding with respect to the ratification of the Convention contained in Annex II and with respect to the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory

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<sup>7</sup> See for example the war between Ethiopia and Eritrea: Ethiopia does not acknowledge the border of Eritrea, because it would cut off Ethiopia from any sea access.

<sup>8</sup> Both chambers of the Parliament, article, 166 paragraph 2, and article 184, paragraph 2, of the Federal Constitution of Switzerland; SR 101.

<sup>9</sup> Article 141, paragraph 1(d), of the Federal Constitution of Switzerland; SR. 101.

Fish Stocks in Annex III. Article 7 regulates the financial participation of Switzerland for the Seabed Authority. Article 8 determines the effective date. Article 9 deals with the transmission and deposit of the ratification document to the Secretary General of the United Nations. Finally, article 10 fixes the date of entry into force of the Convention.

## **5. Ratification of Switzerland**

The ratification of the Convention is a reflection of Switzerland's recognition of the many positive elements it contains, including its comprehensiveness and its role in the application of the concept of the common heritage of mankind. At the same time, it is realized that the effectiveness of the regime established by the Convention depends to a great extent on the attainment of its universal acceptance.

The Convention represents a very carefully drafted balance between the interests of all States.<sup>10</sup> It was negotiated over a 15-year period, following two earlier attempts to reach agreement. As a result, the Convention is the bedrock of international law as it relates to ocean uses. One should note that though the Convention was adopted in 1982, it only came into force in 1994, after its regime of deep seabed mining was amended. In addition, the regime of the Convention was further supplemented in 1995 with the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. This document acknowledges the biological reality that while some stocks straddle the exclusive economic zone and the high seas, they nevertheless need to be managed throughout their range (according to the so-called biological unity of the stocks). By ratifying the Convention, Switzerland can strengthen its position as a land-locked State. This disadvantaged position is expressly recognized and improved through emphasizes and improvements in Part X of the Convention.

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<sup>10</sup> The Law of the Sea, Churchill and Lowe, 3<sup>rd</sup> Edition, Manchester, 1999.



## II. Act of Ratification

An Act to incorporate the United Nations Convention on the Law of the Sea, done at Montego Bay, Jamaica, 10 December 1982, entered into force, 16 November 1994, as part of the law of Switzerland.

The United Nations Convention on the Law of the Sea 1982 (UNCLOS):

Signed by Switzerland on 17 October 1984;

Approved by the Federal Parliament of Switzerland on \_\_\_\_\_;

Swiss Ratification Document deposited on \_\_\_\_\_;

Entered into force for Switzerland on \_\_\_\_\_.

The Federal Government of Switzerland signed the Convention subject to approval by the Federal Parliament according to article 184, paragraph 2, of the Federal Constitution of Switzerland.

The Federal Parliament of Switzerland confirms to be bound by the Convention as expressed by the signature of its representatives affixed on 17 October 1984.

Upon the effective date of this Act and the consequent ratification of the Convention, the ratification of Switzerland to the four Geneva Conventions 1958 shall thereby be denounced vis-à-vis the State parties.

The Federal Parliament of Switzerland approves, on the basis of article 166, paragraph 2, of the Swiss Constitution, after consulting the message of the Federal Government of \_\_\_\_\_ 2005:

Promulgation

Article 1:

The provisions of the Convention are hereby adopted and incorporated into the law of Switzerland and shall have the force of law as hereafter provided.

Scope of the Act

Article 2:

<sup>1</sup> The Convention shall be applied to all nationals of Switzerland whether natural or juridical.

<sup>2</sup> The Convention shall likewise apply to all ships flying the Swiss flag.

<sup>3</sup> The provisions of the Convention shall apply to Switzerland in the exercise of its rights and the performance of its obligations arising from the parts on the territorial sea and the contiguous zone, straits used for international navigation, archipelagic States, exclusive economic zone, continental shelf, high seas, regime of islands, enclosed or semi-enclosed seas, right of access of land-locked States to and from the sea and freedom of transit, the area, protection and preservation of the marine environment, marine scientific research, development and transfer of marine technology, settlement of disputes [including the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995].

Definitions

Article 3:

For purposes of this Act, the following words shall have the meanings hereafter set forth:

<sup>1</sup> "Convention" or "UNCLOS" means the United Nations Convention on the Law of the Sea 1982 and the Agreement relating to the Implementation of Part XI of the Convention and the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995.

<sup>2</sup> "Ratification" means the act of Switzerland expressing its consent to be bound by the Convention.

<sup>3</sup> "The four Geneva Conventions on the Law of the Sea of 29 April 1958" shall refer to the following Conventions: Convention on the Continental Shelf; Convention on Fishing and Conservation of the Living Resources of the High Seas; the Convention on the High Seas; and the Convention on the Territorial Sea and the Contiguous Zone.

<sup>4</sup> "Declarations of understanding" means the expression of Switzerland of the manner by which a certain provision or a set of provisions found in the Convention shall apply to it.

<sup>5</sup> "Authority of the Convention" means the International Seabed Authority.

<sup>6</sup> "Authority of Implementation" means the Department of Foreign Affairs of Switzerland acting through the Swiss Maritime Navigation Office with respect to maritime matters according to article 8, paragraph 2, of the Swiss Federal Law of Shipping under the Swiss flag.

Withdrawal

Article 4:

<sup>1</sup> The signature of Switzerland is withdrawn with respect to the four Geneva Conventions on the Law of the Sea 29 April 1958 and for this purpose it shall no longer be bound by its obligations arising under the said Geneva Conventions vis-à-vis those States that are parties thereto.

<sup>2</sup> This article does not affect international agreements expressly permitted or preserved by other articles of the Convention.

Authority of  
Implementation

Article 5:

The Authority of Implementation acting through the Swiss Maritime Office is hereby empowered to enact and adopt such rules and regulations necessary to implement the specific

provisions of the Convention. The Swiss Maritime Office may delegate any power in the foregoing provisions for the implementation of the Convention or any power thereof to any other relevant competent authority of the Swiss Federal Government.

Declarations of  
Understanding

Article 6:

On its ratification of the Convention, the Government of Switzerland shall make the declarations of understanding and deposit on terms of the relevant provisions of the Convention hereto attached as Annex II and Annex III.

Financial Participation

Article 7:

Switzerland shall allot funds to finance its duties toward the Authority of the Convention in accordance with an agreed scale of assessment based upon the scale used for the regular budget of the United Nations.

Effective Date

Article 8:

This Act shall be effective 30 days after publication in the Official Gazette of Switzerland following its ratification by the Federal Government.

Ratification

Article 9:

The Federal Government of Switzerland is hereby directed to transmit the ratification document to the Secretary General of the United Nations immediately upon its ratification and the completion of its publication in the Official Gazette.

Entry into Force

**Article 10:**

The Convention shall enter into force on the day that the Federal Government of Switzerland has deposited its ratification document with the Secretary General of the United Nations.

### **III. Annex I**

Annex I:                   UNCLOS Articles  
UNCLOS

Full text of the Convention will be attached to the law project.

## IV. Annex II

Annex II:  
Declarations of  
Understanding with  
respect to the  
Convention

Switzerland upon ratification of the Convention shall make interpretative declarations:

<sup>1</sup> Freedom of access to and from the sea, which the Convention grants to land-locked States, is a right Switzerland has been exercising by virtue of bilateral and multilateral treaties and will continue to exercise by virtue of the norms of positive international law contained in the Convention.

<sup>2</sup> With regard to article 287 of the Convention, Switzerland declares the following:

In the absence of any other peaceful means to which it would give preference, the Federal Government of Switzerland hereby chooses one of the following means for the settlement of disputes concerning the interpretation and application of article 287 of the Convention, in the following order:

1. The International Tribunal for the Law of the Sea established in accordance with Annex VI of UNCLOS;
2. A special arbitral tribunal constituted in accordance with Annex VIII of UNCLOS;
3. The International Court of Justice.

Also in the absence of any other peaceful means, the Government of Switzerland hereby recognizes as of today the validity of special arbitration for any dispute concerning the interpretation or application of the Convention relating to fisheries, protection and preservation of the marine environment, marine scientific research and navigation, including pollution from vessels and by dumping.

<sup>3</sup> According to article 309 of the Convention, no reservations or exceptions may be made unless expressly permitted by other

articles of the Convention. A declaration or statement made pursuant to article 310 of the Convention cannot purport to exclude or to modify the legal effect of the provisions of the Convention in their application to the State, entity or international organization making it. Consequently, the Federal Government of Switzerland declares that it does not consider itself bound by declarations or statements that have been made or will be made by other States, entities and international organizations pursuant to article 310 of the Convention and that exclude or modify the legal effect of the provisions of the Convention and their application to the State, entity or international organization making it. Lack of response by the Swiss Government to any declaration or statement shall not be interpreted as tacit acceptance of that declaration or statement. The Government of Switzerland reserves the right at any time to take a position on any declaration or statement in the manner deemed appropriate.



## V. Annex III

Annex III:  
Declarations of  
Understanding with  
respect to the  
Agreement on the  
Implementation of the  
Provisions of the  
United Nations  
Convention on the Law  
of the Sea relating to  
the Conservation and  
Management of the  
Straddling Fish Stocks  
and Highly Migratory  
Fish Stocks

Switzerland upon ratification of the Convention shall make interpretative declarations:

<sup>1</sup> Switzerland understands that no provision of this Agreement may be interpreted in such a way as to conflict with the principle of the freedom of the high seas recognised by international law.

<sup>2</sup> Switzerland understands that the terms "geographical particularities", "specific characteristics of the sub-region", "socio-economic geographical and environmental factors", "natural characteristics of that sea" or any other similar terms employed in reference to a geographical region do not prejudice the rights and duties of States under international law.

<sup>3</sup> Switzerland understands that the term "States whose nationals fish on the high seas" shall not provide any new grounds for jurisdiction based on the nationality of persons involved in fishing on the high seas other than on the principle of the flag State jurisdiction.

<sup>4</sup> Switzerland understands that in the application of the provisions of article 21, paragraphs 6, 7 and 8, the flag State may rely on the requirements of its legal system under which the prosecuting authorities enjoy discretion to decide whether or not to prosecute in the light of all the facts of a case. Decisions of the flag State based on such requirements shall not be interpreted as failure to respond or to take action.

<sup>5</sup> Switzerland reiterates that all States shall refrain in their relations from the threat or use of force in accordance with general principles of international law, the United Nations Charter and the Convention. In addition, Switzerland underlines that the use of force as referred to in article 22 constitutes an exceptional measure which must be based on the strictest

compliance with the principle of proportionality and that any abuse thereof shall imply the international liability of the inspecting State. Any case of non-compliance shall be resolved by peaceful means and in accordance with the applicable dispute-settlement procedures.

<sup>6</sup> Switzerland does not consider itself bound by any of the declarations which other States may have made, or will make, upon signing or ratifying the Agreement, reserving the right, as necessary, to determine its position with regard to each of them at the appropriate time, in particular, ratification of the Agreement does not imply automatic recognition of maritime or territorial claims by any signatory or ratifying State.

## **VI. Bibliography**

### **Books**

Churchill, R.R. and Lowe, A.V: The Law of the Sea, 3<sup>rd</sup> Edition, Manchester, 1999.

Sinjela, A. Mpazi: Land-Locked States and the UNCLOS Regime, Oceana Publications, USA, 1983.

Vasciannie, C. Stephen: Land-Locked Countries and Geographically Disadvantaged States in the International Law of the Sea, Clarendon Press, Oxford, 1990.

### **Codes and Conventions**

Constitution of Switzerland; SR 101; 18 April 1999.

Federal Law of Shipping under Swiss flag; SR 747.30; 23 September 1953.

Geneva Convention on the Continental Shelf; SR 747.305.13; 29 April 1958.

Geneva Convention on Fishing and Conservation of the Living Resource of the High Seas 1958.

Geneva Convention on the High Seas; SR 747.305.12; 29 April 1958.

Geneva Convention on the Mandatory Settlement of Disputes; SR 747.305.14; 29 April 1958.

Geneva Convention on Territorial Sea and the Contiguous Zone; SR 747.305.11; 29 April 1958.

United Nations Agreement on Straddling and Highly Migratory Fish Stocks, 1995.

United Nations Charter of 26 June 1945; SR 120; 10 September 2002.

United Nations Convention on the Law of the Sea (UNCLOS 1982).

### **Resolution**

GA Resolution 2749 (XXV) of 17 December 1970.

### **Websites**

<http://www.daccessdds.un.org/doc/resolution>

<http://www.unitednations.org>