International Law-Making

CONVENTION ON THE CONSERVATION OF ANTARTIC MARINE LIVING RESOURCES (CCAMLR)

Background

The CCAMLR is an international treaty that was adopted at the Conference on the Conservation of Antarctic Marine Living Resources which met at Canberra, Australia, 7-20 May 1980. It is a multilateral response to concerns that unregulated increases in krill catches in the Southern Ocean could be detrimental for Antarctic marine ecosystems particularly for seabirds, seals, whales and fish that depend on krill food. It was signed by 14 states and has been ratified by 35 states and the European Community (EC). Per 2013, the states that have ratified the convention are: Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, China, Cook Islands, Finland, France, Germany, Greece, India, Italy, Japan, south Korea, Mauritius, Namibia, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Poland, Russia, South Africa, Spain, Sweden, Ukraine, United Kingdom, United States, Uruguay and Vanuatu.

CONCEPT

According to Article 1, the convention applies to the Antarctic marine living resources of the area south of 60 degree South latitude and to the Antarctic marine living resources of the area between that latitude and the Antarctic Convergence which form part of the Antarctic marine ecosystem, in which the objective is for the conservation of the Antarctic marine resources (Article 2). It applies to all Antarctic populations of finfish, mollusks, crustacean and sea birds excluding whales and seals, which are the subject of other conventions; the international Conven-

tion for the Regulation of Whaling and the Convention for the Conservation of Antarctic Seals. It is related to the Antarctic Treaty which are explicitly explained in its provisions.

ENTRY INTO FORCE

The convention entered into force on April 7th 1982 by the Commission for the Conservation of Antarctic Marine Living Resources. According to Article 28, the Convention shall enter into force on the thirteenth day following the date of deposit of the eighth instrument of ratification, acceptance or approval by States referred to in paragraph 1 of Article 26 of this convention. With respect to each State or regional economic integration organization which subsequent to the date of entry into force of this convention deposits an instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following of such deposit.

MAIN FEATURES

The convention consists of 33 Articles and an annex regarding arbitral tribunal. There is also a statement by the chairman of the Conference on the Conservation of Antarctic Marine living resources regarding the application of the CAMLR Convention to the waters adjacent to Kerguelen and Crozet Islands over which France has jurisdiction and to waters adjacent to other islands within the area to which the Convention applies over which the existence of State sovereignty is recognized by all Contracting Parties.

The relationship between this convention and the Antarctic Treaty, as well as its Protocol and the principles embedded in the Convention itself, are among the key features that distinguish CCAMLR from regional fisheries management organizations. This relationship is further explained in Article 3, Article 4 paragraph 1 and Article 5.

This convention also established Commission and also Scientific Committee under the Article 7 to embody the objectives set out in Article 2. The Commission has established two subsidiary bodies, which are Standing Committee on Implementation and Compliance and Standing

Committee on Administration and Finance. Its decisions are to establish the regulatory framework applied to the management of each fishery in the convention Area.

The Scientific Committee takes into account the outcomes of research from national programs of CCAMLR Members. The Scientific Committee provides the best available scientific information on harvesting levels and other management issues to the Commission. In turn, the Commission is obligated by the Convention to take full account of the recommendations and advice of the Scientific Committee in making its decisions.

TIMOR SEA TREATY

Timor Sea Treaty (Perjanjia Laut Timor) antara Timor Timur dan pemerintah Australia ditandatangani di Dili pada 20 Mei 2002. Hari dimana Timor Timur mendapatkan kemerdekaan berdasarkan keputusan PBB, untuk eksplorasi minyak secara gabungan di Laut Timor. Perjanjian ini berlaku pada 2 April 2003, menyusul sudah terjadinya pertukaran nota diplomatik antara kedua negara. Treaty ini dikatakan akan berlaku selama 30 tahun atau saat batas seabed dapat ditentukan. Akan tetapi, dengan penandatangtanan Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) pada 2007, maka ikut memperpanjang masa berlaku Timor Sea Treaty hingga 2057, bersamaan dengan habisnya masa berlaku CMATS. Timor Sea Treaty menjelaskan mengenai pembagian hasil minyak bumi yang ditemukan di wilayah dasar laut yang sudah disepakati, yang disebut dengan Joint Petroleum Development Area dan tidak menentukan kedaulatan dan batas maritim antara kedua negara. Perjanjian tersebut menyatakan bahwa hak salah satu negara untuk mengklaim bagian yang overlap di dasar laut tetap terjaga

Perjanjian ini menggantikan berlakunya Timor Gap Treaty yang ditandatangani oleh Australia dan Indonesia pada 11 Desember 1989 yang tidak lagi berlaku dikarenakan wilayah Timot Timur tidak lagi menjadi bagian dari Indonesia. Dengan ini Timor Timur menggantikan posisi Indonesia di dalam *Timor Gap Treaty* tetapi memiliki sedikit perbedaan dari sebelumnya. Perbedaan yang signifikan antara Timor Gap Treaty dan Timor Sea Treaty adalah bahwa perjanjian yang baru hanya menciptakan *Joint Petroleum Develoment Area*, dengan pembagian bahwa Timor Timur mendapat 90% dan Australia mendapat 10% dari pendapatan yang berasal dari wilayah tersebut.

Dalam treaty ini *Joint Petroleum Development Area* diatur di dalam pasal 3 dan ketentuan untuk membagi produksi bahan bakar. Pasal 6 perjanjian membahas adanya tiga badan regulatori/ badan yang mengatur, yang pertama ada *Designated Authority* yang dikatakan memiliki kapasitas hukum (l*egal capacity*) dibawah hukum Australia dan Timor Timur untuk menjalankan kekuasaan dan menjalankan fungsinya. *Des-*

ignated Authority memiliki kapasitas untuk membuat kontrak, untuk mendapatkan dan membuang benda/properti bergerak dan tidak bergerak dan dapat menjadi pihak di dalam *legal proceeding*. Yang kedua ada Joint Commission terdiri dari anggota komisioner ynag ditunjuk oleh kedua negara untuk membuat kebijakan dan regulasi berkaitan dengan aktifitas bahan bakar di JPDA dan memantau kerja dari Designated Authority. Lalu yang ketiga. Ada Ministerial Council, terdiri dari para menteri dari kedua belah pihak, yang tugasnya mengawasi berjalannya perjanjian ini. Perjanjian ini juga mengaur mengenai yurisdiksi kriminal pada pasal 14. (**Ratu Gita N. W**.)

THE NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS (2007)

BACKGROUND

The Nairobi International Convention on the Removal of Wrecks (the Nairobi Convention) was adopted in Nairobi, Kenya, on May 2007. This convention was negotiated and drafted within the International Maritime Organization (IMO) Legal Committee. The idea of drafting this Convention aroused after almost more than thirteen hundred wrecks were abandoned and cause problems to the coastal state of other party. This Convention eventually will fill a gap in the existing international law by providing a set of international rules to ensure the prompt and effective removal of wrecks located beyond the territorial sea.

CONCEPT

The making of the Nairobi Convention was designed to fill a gap in current framework of international law on marine pollution which particularly resulted from wrecks. The Nairobi Convention applies to the exclusive economic zone (EEZ) of the State Party, or to its area beyond an adjacent to the territorial sea of that state if the said state party has not established any EEZ, and extending not more than 200 nautical miles from the baseline which the territorial sea is measured. However, the Nairobi Convention also provides an opt-in option whereby State Party may also make the convention applicable to their territorial seas and inland waters with notification to the Secretary-General.

The basic idea of the Nairobi Convention is that following a maritime casualty resulting in a wreck, the operator of a ship must report the wreck to the affected state which then determine what hazard the wreck bring with it, locate, and mark the wreck. The affected state then will cooperate and supervise the registered owner of the ship who bears the primary obligation for removal of the wreck. When the owner is not capable to remove the ship, the affected state may remove the wreck and the cost resulted from this wreck removal will be recovered by the ship owner. However, the affected state is not under any obligation to remove wrecks deemed to constitute a hazard.

ENTRY INTO FORCE

According to Article 18 of the Convention, the Nairobi Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General. For any State which ratifies, accepts, approves or accedes to this Convention after the conditions mentioned for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1 of Article 18.

On April 2014, the Nairobi Convention finally achieved the requisite number of ratifications and has entered into force in State Parties on 14 April 2015.

MAIN FEATURES

The Nairobi Convention consists of 21 Articles with one Annex.

Article 1 to 4 of the Nairobi Convention addresses the definitions, objectives and general principles, and scope of the Convention. The Convention defines 'wreck' specifically to a sunken or stranded ship; any part of a sunken or stranded ship; any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or a ship that is about, or may reasonably be expected to sink or to strand where effective measures to assist the ship or any property in danger are not already being taken. According to Article 4, the Convention shall not apply to any warship or other ship owned or operated by a State and used on Government non-commercial services.

Article 5 to 8 regulates the acts taken by the State Party to report the wrecks, determine whether the wrecks pose a hazard, locate the wreck, and mark it. Article 5 specifically provides criteria that should be taken into consideration by the affected states in determining whether a wreck poses a hazard. Some of those points of consideration are the depth of the water in the area, and the type, size and construction of the wreck, and any other circumstances that might necessitate the removal of the wreck.

Article 9 provides regulation on measures taken by the affected state to facilitate the removal of wrecks. While Article 10 regulates the liability of the owner unless the owner can provide that the wreck resulted from act of war, natural phenomenon, act or omissions by the third parties who has the intention to damage, or negligence or other wrongful act of any authority responsible for the maintenance of navigational aids. This convention does not affect the right of the owner to limit liability under any applicable national or international regime such as the Convention on Limitation of Liability for Maritime Claims 1976. Article 10 also preserves the right of ship owners incurring any cost under the Convention to pursue a recourse action against a third party, for example, costs arising from a collision with another vessel.

Article 12 of the Convention requires the owner of a 200 gross tonnes or more ship that is registered in a State Party, to obtain insurance or financial security to cover liability under the Convention. The amount of such insurance is determined by the ship owner's limit of liability under the Convention on Limitation of Liability for Maritime Claims. To facilitate and further ensure the efficient settlement of claims, the Convention provides a right of direct action against insurers or persons providing financial security for the ship owner's liability for any claim arising under the Convention.

Article 13 provides a dual time bar on the filing of claims by any party that has incurred costs related to the marking or removal of a wreck. Claims shall be extinguished unless an action is commenced within three years from the date when the affected state determine the existence of hazard. In any event, no action shall be brought after six years form the said maritime casualty and if it consists of a series of occurrence, the six-year period starts from the date of the first occurrence.