Interactive Dialogue 7

Enhancing the conservation and sustainable use of oceans and their resources by implementing international law as reflected in the United Nations Convention on the Law of The Sea

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I am pleased to have the opportunity to contribute these remarks to this interactive dialogue and to offer a few thoughts as to how implementation of international law, as reflected in UNCLOS, can contribute to improved conservation and sustainable use of oceans and their resources.

UNCLOS is forty years old this year. There will be a special event in the General Assembly in December to celebrate. There have been already many conferences and meetings around the world to celebrate the achievements of UNCLOS, including one in Lisbon last week, and there will be many more. We will hear it said repeatedly that UNCLOS is one of the greatest achievements of the United Nations and has helped to ensure international peace and security and the rule of law in the oceans for forty years.

I agree fully with those sentiments.

UNCLOS provides a solid institutional and jurisdictional framework for all activities in the ocean and is also one of the most far-reaching environmental treaties ever adopted.

It provides us with the best opportunity to achieve the twin, and equally important, objectives of SDG14: conservation and sustainable use of the ocean and its resources.

In fact, it is the only opportunity, because with multilateralism in retreat on so many fronts, the reality is that it would not be possible to adopt UNCLOS again today.

This also means that we must not take UNCLOS for granted.

Instead, we should remind ourselves of the positive contributions of UNCLOS to sustainable development and consider why it is that we seem to be failing in our collective duty to fully and effectively implement its provisions:

- It defines the maritime jurisdictions of States and in doing so establishes the rights and duties of States within those zones, including their duties with respect to the conservation and management of marine resources.

- It reinforces for all States, including landlocked States, essential high seas freedoms such as navigation, overflight and the right to lay submarine cables, that are critical to modern life and development.

- It creates an unqualified obligation on States to protect and preserve the marine environment. It is worth noting that this obligation is unqualified and holistic, applicable to all zones of maritime jurisdiction and to all elements of the marine environment, including its biodiversity. It recognizes that it is scientifically and legally unsound to attempt to regulate only one component of the marine environment in only one part of the ocean.

- It defines 'pollution of the marine environment' in the broadest possible terms so as to prohibit not only pollution from human activities in the ocean, but equally the introduction of pollution from land-based and atmospheric activities, including plastics and anthropogenic CO2 emissions, which are the cause of the main problems of the ocean today.

- It provides a comprehensive system for the peaceful settlement of disputes

- Most importantly, perhaps, it establishes a delicate balance between the interests of all States, developed and developing, coastal and land-locked.

It has already been demonstrated that UNCLOS is a dynamic treaty and can adapt to new challenges.

The 1995 Fish Stocks Agreement is a perfect example. It resolved problems that had been left unresolved by UNCLOS in 1982 and led over time to a transformation in the way in which we manage highly migratory fish stocks and straddling fish stocks both on the high seas and in areas under national jurisdiction.

The institutions mandated to implement this important agreement – FAO and the regional fishery bodies – have responded magnificently to the challenges of institutional reform presented by the Agreement and fish stocks on the high seas are much better managed than before.

As I said recently in the General Assembly on the occasion of the celebration of the 40th anniversary of the adoption of the Convention, the backbone and essence of the entire system of global ocean governance under UNCLOS is the regime for the deep seabed contained in Part XI.

From the outset, UNCLOS was regarded as a package deal and there would have been no agreement on all other elements of the package without agreement on the status and use of the seabed beyond national jurisdiction. That is why it was necessary to adopt an Implementing Agreement in 1994 to reflect the understanding on the deep seabed and bring UNCLOS into force.

It is no understatement to say that this regime, implemented through the International Seabed Authority, is one of the most complex and ambitious systems of global governance that humanity has yet devised.

At its core is a collective vision of a comprehensive legal regime to achieve the sustainable use of marine mineral resources on the basis of equality between States and in such a way as to provide benefit for all humanity.

This vision is realised by the establishment of the International Seabed Authority which has been equipped with a series of unique and complementary responsibilities including to manage activities in the Area, protect the marine environment, promote and encourage marine scientific research and share the benefits on the basis of equity.

Today this ocean space is the frontier for exploration, using cutting-edge marine science, and advanced technological innovation. More than ever before, the rich mineral deposits found on the sea floor and the biodiversity associated with them create exciting opportunities for sustainable development.

It is therefore with legitimate interest that many developing States parties to UNCLOS are looking to this unique governance architecture to support the rights that are recognized to them under international law.

And it is important to understand and acknowledge what those rights entail.

It is the right of all States, developed and developing, coastal and landlocked, to conduct exploration and, eventually, to exploit, minerals in the Area.

The only conditionality around the exercise of this fundamental right is that all activities in the Area must be carried out in accordance with the rules, regulations and procedures of the Authority.

The fact that there have been no unilateral claims to the Area outside the rules set by the Authority is testament to the success of the regime.

So far, the Authority has granted 31 exploration contracts in the Area. Eleven of these were granted to developing States, including six Small Island Developing States, which is further evidence that the regime works.

The data and information generated from exploration for minerals resources in the Area over more than 40 years have made an important contribution to increased knowledge of the deep sea and its environment. Far from damaging marine ecosystems, the intensive exploration work being undertaken is the main source of knowledge of the deep sea.

This scientific knowledge also plays a critical role in informing the development of evolving rules governing activities in the Area, which is being done before any extractive activity begins.

It is through the development and implementation of a set of rules and standards governing deep-seabed mining and related activities, including marine scientific research in the Area, that the international community can balance the imperative need for resource extraction with the preservation of the marine environment. The goal is a regime that is crafted in a way that fully respects the proper application of the precautionary approach yet is consistent with the social, economic, and environmental aspirations of the SDGs.

The global standards adopted by the Authority, which are already the most rigorous for any activity beyond national jurisdiction, will also form a benchmark for activities within national jurisdiction.

It is therefore not surprising that an independent report on the contribution of the Authority to the 2030 Agenda, concluded that the Authority contributes to 12 of the 17 SDGs. At the core is the recognition of the role of the Authority as a neutral and transparent platform for consensus decision-making for the management of the global commons in a way that ensures sustainability and equity.

Concluding remarks

So as we convene here for this second UN Ocean Conference to discuss the implementation of SDG14 it is important to recall that without UNCLOS we would not be here at all.

UNCLOS in its entirety is the foundation and the prerequisite for SDG14. It lies at the heart of all efforts to conserve and manage the ocean and its resources. It is perfectly capable of addressing the existing and emerging issues that the world has to deal with.

For that reason, it is essential that States parties remain vigilant to ensure that all provisions of UNCLOS are implemented effectively and that the institutions mandated for this purpose are supported and not undermined.

Today, we see too often that the careful balance of rights and obligations contained in UNCLOS and its two implementing agreements is challenged in the name of conservation. We have even heard in some isolated cases calls, including this week, to radically adjust this constitution for the ocean without even acknowledging the divide between the perspectives projected.

To heed these calls would be a mistake. UNCLOS is a fundamental part of the rules based international order that has ensured peace at sea for 40 years.

It is fit for purpose.

It stands as a testament to the success of multilateralism as a foundation for the maintenance of peace, justice, economic and social advancement for all peoples of the world.

I would like to conclude my remarks by highlighting some of the ways in which implementation of UNCLOS could be further strengthened:

- First, we should not push back against the current tendency to an extreme polarization of interests which runs the risk of denying the achievements of this treaty to global peace and stability.

- Second, it is important that States take a consistent and rigorous approach to implementation of the provisions of UNCLOS. Each chapter of UNCLOS is an integral part of the whole. Its provisions reflect the ecological unity of the ocean and are carefully designed to respond to the interests of all States, including developing States. We cannot pick and choose different elements depending on the circumstances and the interests of particular constituencies. At the national level, better coordination and cooperation between different sectoral interests is essential.

- Third, it is essential that the balance of rights recognized to different States in light of their different capacities and needs be maintained. I specifically want to recognize the challenges faced by LDCs, LLDCs and SIDS in benefiting fully from the rights recognized to them in UNCLOS.

- Fourth, it is essential that there is consistency of treatment in the regulation of activities in the ocean, especially in areas beyond national jurisdiction. The environmental goal of UNCLOS is to preserve the ecological balance of the ocean and this means that we should apply common ESG standards, without discrimination.

- Fifth, it is vital that the institutions created to implement UNCLOS are supported and not undermined. The mandate given to each institution reflects an appropriate and careful balance between the many different competing interests reflected in the States parties to UNCLOS and it is critical that these mandates are respected, strengthened, and not undermined, including by States taking conflicting approaches in other institutions. A counterbalance to this is that international organizations must act strictly within the mandates conferred on them and not aspire to exceed those mandates.

With these few remarks and suggestions, I look forward to the dialogue.