

**Statement by Ms. Patricia O'Brien,  
Under-Secretary-General for Legal Affairs,  
The Legal Counsel**

Meeting of the Asian-African Legal Consultative Organization

*(5 November 2012, 3:00pm)*

Excellencies,

Ladies and Gentlemen,

I am very pleased to have been invited here to discuss the theme "**Achievement of the Law of the Sea**" on this year, which marks the 30<sup>th</sup> anniversary of the opening for signature of the United Nations Convention on the Law of the Sea (UNCLOS). It is very fitting to be making this address at a meeting of the Asian African Legal Consultative Organization, given the long-standing interest of your organization in oceans and the law of the sea, and given the important role it has played over the years in promoting the Convention.

I would like to begin my remarks today by noting that, in December of this year, the General Assembly will commemorate the thirtieth anniversary of the Convention by holding a high-level plenary meeting. This high-level event, in many ways, will provide an appropriate ending to a year full of activities held around the world to mark this important occasion. These have included:

- A panel discussion held at United Nations Headquarters on World Oceans Day (8 June 2012), with the participation of the representatives of the three UNCLOS institutions, namely the International Sea Bed Authority (ISBA), the International Tribunal for Law of the Sea (ITLOS), the Commission on the Limits of the Continental Shelf (CLCS);
- A special commemoration held and a declaration adopted at the twenty-second Meeting of States Parties to the UNCLOS;
- An international conference on “Commemorating the 30th Anniversary of the Opening for Signature of the United Nations Convention on the Law of the Sea” held at the Yeosu World Expo, Republic of Korea, on 12 August 2012; and
- Commemorative events also held at the national level, including in Jamaica and China.

This series of events bears testimony to the prominent place of the law of the sea in today’s international legal order.

### **[Significance of the law of the sea]**

Given the importance of our oceans to humankind, it should not come as a surprise that the law of the sea occupies a major place among the components of the legal order anchored by the Charter of the United Nations that aims at ensuring friendly and peaceful relations among Nations. The development of the law of

the sea is intrinsically linked to the history of international law itself, as its study was spearheaded by those who are considered fathers of our discipline, among them the preeminent Dutch jurist and philosopher Hugo Grotius.

From the dawn of civilization, the oceans have been the unfortunate scene of wars and conflict, but have also played an important role in the development of international trade and diplomacy. From this perspective, it was only natural that the United Nations—an organization whose purposes include the maintenance of international peace and security, the development of friendly relations among Nations, and international co-operation—was destined since its very establishment to play an active role in the development of the law of the sea. As UNCLOS is, in this respect, the culmination of long-standing efforts of the Organization and its Member States in this area, let me go back in time and highlight briefly the milestones of this journey.

### **[A history of the codification of the law of the sea]**

When the United Nations Organization came to life, back in 1945, the oceans were mainly regulated by customary international law. The law of the sea was a set of unwritten rules, followed by States in their practice, with the conviction that they were doing so under a legal obligation. Many of these rules—such as the principle of the freedom of navigation in the high seas, were universally followed; others were highly divisive and provoked tensions, such as breadth of the territorial sea and possible constraints to the

exploitation of natural resources in the oceans and the seabed. This was an ideal setting for the General Assembly to perform one of its main functions, under Article 13 of the Charter of the United Nations, of “promoting international co-operation in the political field and encouraging the progressive development of international law and its codification”.

As early as in 1949, the issue was selected for consideration by the International Law Commission—an expert body charged with assisting the General Assembly in the codification and progressive development of international law. By 1956, the Commission had completed its work on draft articles and recommended the convening of an international conference on the law of the sea. This Conference took place in Geneva, in 1958, and resulted in the adoption of four Conventions—covering the territorial sea and the contiguous zone, the high seas, fishing and conservation of the living resources of the high seas, and the continental shelf—, as well as an Optional Protocol on the compulsory settlement of disputes. The 1958 Conference was a significant step forward in producing a single coordinated and systematic body of rules but failed to reach an agreement on some key issues, particularly on the breadth of the territorial sea and fishery limits.

In view of the crucial outstanding issues still to be discussed, the General Assembly, that same year, requested the Secretary-General to convene a Second United Nations Conference on the Law of the Sea. However, this Second Conference, also held in Geneva, in 1960, did not result in the adoption of any instrument.

The deadlock coming out of this meeting was finally broken, in part, as a result of a landmark speech made to the General Assembly in 1967 by Ambassador Arvid Pardo, Malta's permanent representative to the United Nations at that time. Ambassador Pardo's speech, which gave birth to the concept of "common heritage of mankind", set in motion a process that spanned fifteen years and set the groundwork for a global diplomatic effort to write down rules for all ocean areas, all uses of the seas and all of their resources.

The Third United Nations Conference on the Law of the Sea was thus convened in New York in 1973. For the better part of the following decade, first in Caracas and then shuttling back and forth between New York and Geneva, delegations of more than 160 States, representing all regions of the world, all legal and political systems and the spectrum of socio/economic development, sat down and discussed the issues, bargained and traded national rights and obligations in the course of marathon negotiations. The Conference lasted as many as nine years, and its unusual duration in itself attests the complexity and thoroughness of the negotiations. It resulted in the adoption of the United Nations Convention on the Law of the Sea by vote in April 1982 and its opening for signature in Montego Bay, Jamaica, on 10 December 1982.

### **[Role of AALCO in the development of Law of the Sea]**

I am pleased to recall the many contributions your Organization, AALCO, made throughout this process. As you know, the item "Law of the Sea" has been on the agenda of AALCO ever since it was first taken up for consideration at the initiative of the Government of Indonesia in 1970. Indeed, through its annual meetings, AALCO played a historic role in the development of such concepts such as the Exclusive Economic Zone (EEZ), Archipelagic States as well as Rights of Land Locked States, which were later codified in the Convention.

In addition, since the adoption of UNCLOS in 1982, AALCO has assisted its Member States in becoming Parties to the UNCLOS, by providing a forum for discussion of relevant law of the sea issues. In short, AALCO has been a staunch supporter and friend of the Convention throughout its history.

I am pleased to note that this tradition continues. I am aware that at its latest session, this June, AALCO held a half-day special meeting on a very topical issue arising from the implementation of UNCLOS, namely "The law of the sea responses to piracy: international legal challenges". It also adopted a resolution recalling the 30<sup>th</sup> anniversary of UNCLOS.

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### **[The Convention]**

The Convention, which was opened for signature at the end of the Conference, entered into force on 16 November 1994, twelve

months after ratification by Guyana (the sixtieth State Party). In March 2012, the Secretary-General sent letters to Member States of the United Nations that had not yet joined the Convention, urging them to become Parties to UNCLOS. Two States, namely Ecuador and Swaziland heeded that call. As a result, the Convention now has 164 parties, including the European Union. This means that only 32 Member States have yet to express their consent to be bound and we are inching towards the achievement of the goal of universal participation set out by the General Assembly of the United Nations.

In the words used by the then Secretary-General Javier Perez de Cuellar at the conclusion of the Conference, UNCLOS is “possibly the most significant legal instrument” of the twentieth century. The Convention contains the globally-recognized regime dealing with all matters relating to the law of the sea and oceans. It codified the existing practices, norms and rules on the law of the sea, and at the same time introduced new legal concepts and regimes, and addressed the existing challenges at the time. It was adopted as a “package deal” to be accepted as a whole, in all its parts, without reservation on any aspect. A significant number of the provisions of the Convention are considered customary international law and, therefore, binding on all States of the international community.

The Convention lays down a comprehensive regime of law and order in the world’s oceans and seas. I believe that the best way to briefly describe the regime contained in UNCLOS is to note that it provides a set of rights, freedoms, benefits and

obligations of States in different areas of the seas and the seabed. In this way, it achieves an appropriate balance between the interests of different States, while also upholding the broader interests of all States in the safety, security and health of the world's oceans. This balance has allowed it to stand the test of time and become one of the most successful and foundational international legal instruments ever concluded. It has truly lived up to its widely used description of being "a constitution for the oceans".

A fundamental notion enshrined in the Convention is that that all problems of ocean space are closely interrelated and need to be addressed as a whole. It would of course be impossible for me to try to describe in detail the regime resulting from the Convention in the context of this brief speech. I would, however, like to underline that the law of the sea represents a captivating challenge for the international lawyer, insofar as its implementation combines the need for rigorous legal analysis with the requirement to understand scientific and technological notions and incorporate them into the legal thinking.

### **[Further challenges]**

UNCLOS represents a truly historic milestone in the development of the law of the sea. It does not mark, however, the conclusion of the efforts of the international community and the United Nations in this area. The law of the sea is very much alive,

as demonstrated by the adoption in 1994 and entry into force in 1996 of the *Agreement relating to the implementation of Part XI of the Convention*, and the adoption in 1995 and entry into force in 2001 of the United Nations 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. The regime for oceans is also complemented by a plethora of other instruments adopted under the auspices of United Nations Agencies, programmes and bodies and other competent international organizations. The process of the development of the law of the sea is thus far from over.

Numerous mechanisms and initiatives remain active to face the challenges arising from the regulation of oceans and seas, for example in the fields of marine biological diversity beyond areas of national jurisdiction, ocean noise, ecosystem approaches, or climate change. Over the past year, there have been a number of important developments here at the United Nations, which are worthwhile to briefly note.

The vital link between the health and sustainable utilization of the oceans and their resources was underscored during the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil this summer. Member States reaffirmed existing commitments and adopted several new commitments relating to the oceans and seas. They also emphasized the need for capacity-building, in order to ensure that all States are able to maximize their benefits from the oceans and seas. It is important for the

United Nations to do its utmost to provide such assistance in the areas where it can do so effectively. South-south cooperation and inter-regional cooperation are also increasingly vibrant sources of capacity development for developing countries.

On 12 August 2012, the Secretary-General launched an initiative to set out a strategic vision for the UN system to deliver on its ocean-related mandates, consistent with the Rio+20 outcome document "The Future We Want", in a more coherent and effective manner. "The Oceans Compact: Healthy Oceans for Prosperity" aims to provide a platform for all stakeholders to collaborate and accelerate progress in the achievement of the common goal of healthy oceans. The Compact will assist Member States to implement UNCLOS, and other relevant global and regional conventions and instruments, and promote participation in those instruments.

To be effective in our efforts, it is important to have the capacity to assess the state of the oceans. In this regard, I am pleased to note that process for conducting the first global assessment of the state of the marine environment is well underway. My Office, as secretariat to the Regular Process, has been actively engaged in this effort, including by preparing regional workshops in various regions.

Some challenges are new and derive from the development of scientific research. The issue of biological diversity beyond areas of national jurisdiction, for example, was triggered by the discovery of

unique seabed ecosystems and a wealth of habitats and biodiversity hot spots in the deep oceans. Other challenges are well-known, but may re-emerge under different avatars. An example of the latter is provided by the resurgence of piracy and the efforts of the international community to face the peril it represents to international navigation. Before I conclude, let me say a few words about this issue, which I know is of tremendous interest to AALCO Member States.

Piracy, which has existed for centuries, had substantially diminished by the end of the nineteenth century. It seemed to have become one of the legends of the past, gradually disappearing from national criminal law legislation. However, a few decades ago, the “pirate phoenix” appeared to be rising again to become a scourge in various regions of the world, including East and West Africa and South-East Asia. Fortunately, the international rules on piracy were well-established. The notion itself was first codified by the 1958 Geneva Convention on the High Seas, and UNCLOS itself contains a detailed definition of the crime, which essentially includes violence or detention for private ends by the crew of a private ship against another ship. The mechanism for the prosecution of piracy is also solidly grounded in international law: as piracy is a crime which, by definition, takes place on the high seas, beyond the territorial jurisdiction of any State, UNCLOS and customary international law provide for universal jurisdiction over it. Any State may seize a pirate ship, arrest and detain the perpetrators, and prosecute them.

The legal problem posed by piracy, therefore, is not one of lack of rules, but rather of lack of implementation at the national level, in part due to lack of capacity. Our current efforts therefore aim at encouraging and assisting regional States in playing an active role in combating piracy. My Office, together with the UN Office on Drugs and Crime, represents the Organization in the legal discussions of the concerned States in the Contact Group on Piracy off the Coast of Somalia and has provided input on the international legal regime applicable to acts of piracy, including with respect to the transfer and detention of persons suspected of piracy. The Secretary-General has submitted several reports to the Security Council reviewing possible options to further the objective of prosecuting and imprisoning those responsible. In other words, for the United Nations, the piracy file is an active and important one.

### **[Conclusion]**

Excellencies, Ladies and Gentlemen,

The "Constitution for the Oceans" has definitely held out its promise of an orderly and equitable regime to govern all uses of the oceans and seas. This thirtieth anniversary shall, therefore, be an occasion to rejoice and celebrate the achievements that the international community may attain through dialogue, negotiation and agreement. I believe it is quite fitting to recall that a thirtieth anniversary is traditionally called a "pearl anniversary", an anniversary that is celebrated through a gift from the oceans, that

has come to symbolize something unique, delicate and precious as our marine ecosystem.

The goals of the Convention—the facilitation of international communication, the peaceful use of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of living species and the protection and preservation of the marine environment—can only be achieved if all join the club. This thirtieth anniversary is therefore also an opportunity to renew our hope and aspiration to achieve the goal of universality, and we are confident that in the not too distant future more States will become parties to UNCLOS.

Thank you very much.

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