

Yeosu World Expo

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

Excellencies,

Ladies and Gentlemen,

I am very pleased to be here today at the UN Pavilion in Yeosu to introduce to you a video in commemoration of the thirtieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea (commonly known as “UNCLOS”).

This video, entitled “UNCLOS at 30”, was prepared by my Office[, the Office of Legal Affairs], with the technical assistance of the UN Department of Public Information. It will guide you through the law of the sea, from its early stages to new developments which are still awaiting us in the future and for which the “Constitution for the Oceans”, as the Convention is often called, provides the legal framework.

This is but one of many events organized this year to mark the thirtieth anniversary of the Convention. On 8 June, which is World Oceans Day, the States Parties to the Convention, guided by the General Assembly, will commemorate this milestone with a panel discussion amongst representatives of the three institutions established by the Convention: the International Tribunal for the Law of the Sea, the International Seabed Authority and the Commission on the Limits of the Continental Shelf.

In the evening of that same day, the lights of the Empire State Building, a New York landmark, will be brightly lit in white, blue and purple to commemorate the World Oceans. The white light at the top will stand for the shallowest, sunlit waters and the polar ice cap; the slightly deeper waters will be represented by the blue light; and the purple light at the bottom will symbolize the deeper waters in the ocean.

In December of this year, the General Assembly will also commemorate the thirtieth anniversary of the Convention by holding a high-level plenary meeting to discuss the annual resolution on oceans and the law of the sea. Every year, the General Assembly considers the issues relating to this area of law, and adopts what is often referred to as an “omnibus resolution”, which contains as many as 250 paragraphs dealing with the several facets of this field of activity of the Organization. The particularity of this year is that Member States have been invited to be represented at the highest possible level. Moreover, at the meeting, a booklet will be distributed containing memories, reflections, recollections and thoughts from many of the delegates present thirty years ago when the Convention was signed. [Here in this room, you can see the banner, prepared especially for the Yeosu World Expo.]

There are, and will be, in other words, numerous celebrations for the thirtieth anniversary of the Convention, which can only take place thanks to the generous contributions of Member States of the United Nations, including the Republic of Korea.

In this regard, it is a great pleasure for me to point out that the thirtieth anniversary of the Convention will also be celebrated here, at the Yeosu World Expo. As you may know, an international conference will be held, from 11 to 13 August, to discuss Asian perspectives on “UNCLOS at 30”. This conference is co-sponsored by the United Nations, the Ministry of Foreign Affairs and Trade of the Republic of Korea and the Korea Maritime Institute, in cooperation with the Organizing Committee for the Expo. I am very glad to mention that the Secretary-General of the

United Nations, Mr. Ban Ki-moon, is expected to attend the conference. And I hope that as many of you as possible will be joining him.

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[Significance of the law of the sea]

In sum, this is an eventful year for the law of the sea. And this series of events bears testimony to the central importance of this area of law in today's international legal order.

It is a very well-known fact that more than 70% of the Earth's surface is covered by water. I believe that we have all shared a sentiment of awe the day we contemplated, for the first time, a picture of Earth taken from space and we came to the realization that ours is a blue planet. A planet of oceans and seas.

It should therefore come as no surprise that the field of law that regulates these vast areas of our globe occupies a central place in the legal order that aims at ensuring friendly and peaceful relations among Nations. From the dawn of civilization, the seas have been the unfortunate scene of wars and conflict, but have also played an important role in the development of international trade and diplomacy.

The development of the law of the sea is intrinsically linked to that of international law itself. For us, international lawyers, this is beautifully illustrated by the work of Hugo Grotius, who is considered to be one of the fathers of our discipline. Back in the seventeenth century, this Dutch jurist and philosopher published a pioneering treatise entitled "On the Law of War and Peace", which described the legal system that resulted from the end of the Thirty Years' War in Europe and the Peace of Westphalia. His work met with unprecedented success and became an essential reference to international lawyers in the centuries to come. It should not be

forgotten, however, that Grotius's first incursions into the law of Nations—well before his masterpiece—were in the field of the law of the sea, and aimed at resolving very concrete issues that arose for Dutch companies in their maritime trading endeavours. In his early volumes “On the Indies” and “The Free Sea”, the Dutch thinker identified the seas as an international territory and postulated the principle that all Nations were free to use the seas for their trade. The freedom of navigation in the high seas remains one of the core principles of contemporary international law and has played a crucial role in the development of maritime commerce.

Throughout the centuries—and particularly in the past few decades—, the law of the sea has significantly evolved. Today, this field of law comprises a rich and articulate set of rules that covers essential aspects of human life. From maritime trade and transportation to the preservation of the marine environment and biological diversity, fishing, the exploitation of natural resources in the seabed, the placement of submarine cables (including those that allow broadband Internet connections), the safety of navigation and the fight against piracy, to name just a few.

From this perspective, it was only natural that the United Nations—an organization whose purposes include the maintenance of peace and security, the development of friendly relations among Nations, and international co-operation—be called to play an active role in the development of the law of the sea. UNCLOS is, in this respect, the culmination of long-standing efforts of the Organization and its Member States in this area, and has provided the basis for their further engagement towards enriching its comprehensive legal framework ever since.

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[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 that were 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, which I mentioned before—were universally accepted; others were highly divisive and provoked tensions, such as the delimitation 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 considered 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 recommended the convening of an international conference on the law of the sea. Such a 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 the systematization of the law of the sea: it recognized, for example, the legal relevance of the “continental shelf”, a concept that had rapidly developed, following the advances of technology, after a famous proclamation by President Truman of the United States of America, in 1945. The participants to the Conference, however, 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, thus requested the Secretary-General to convene a Second United Nations Conference on the Law of the Sea. This Second Conference was held, once again in Geneva, in 1960, but did not result in the adoption of any binding instrument. The story of the codification of the law of the sea, however, was far from over.

On the long road that led to the adoption of UNCLOS, the speech made to the General Assembly by Ambassador Arvid Pardo, Malta's permanent representative to the United Nations, in 1967, represents a major landmark. Last year, the General Assembly expressly indicated that the commemoration of the thirtieth anniversary of the Convention shall include "special recognition of the crucial role played" by Ambassador Pardo and what it qualified as his "visionary" speech. Back in 1967, Ambassador Pardo spoke of the super-Power rivalry that was spreading to the oceans, of the pollution that was poisoning the seas, of the conflicting legal claims and their implications for a stable order, and of the rich potential that lay on the seabed. He called for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction", which—he said— "is the only alternative by which we can hope to avoid the escalating tension that will be inevitable if the present situation is allowed to continue".

Ambassador Pardo's urging came at a time when many recognized the need for updating the freedom-of-the-seas doctrine to take into account the technological changes that had altered man's relationship to the oceans. It set in motion a process that spanned fifteen years and saw the creation of the United Nations Seabed Committee, the signing of a treaty banning nuclear weapons on the seabed, the adoption of the declaration by the General Assembly that all resources of the seabed beyond the limits of national jurisdiction are the common heritage of mankind, and the convening of the Stockholm Conference on the Human Environment.

What started as an exercise to regulate the seabed turned into a global diplomatic effort to write down rules for all ocean areas, all uses of the seas and all of their resources. These were some of the factors that led to a conference that was to elaborate a comprehensive treaty for the oceans.

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, 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 in Montego Bay, Jamaica, on 12 December 1982, of the United Nations Convention on the Law of the Sea.

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[The Convention]

The Convention, which opened for signature at the end of the Conference, entered into force on 16 November 1994, twelve months after the date of deposit of the sixtieth instrument of ratification or accession by Guyana. Today, it contains the globally-recognized regime dealing with all matters relating to the law of the sea and oceans. The Convention 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. A significant number of the provisions of the Convention are considered customary international law and, therefore, binding on all States of the international community.

In the words used by the then Secretary-General at the conclusion of the Conference, UNCLOS is “possibly the most significant legal instrument” of the twentieth century. It was adopted as a “package deal” to be accepted as a whole, in all its parts, without reservation on any aspect. Under international law, the mere signature of the Convention by Governments carries the undertaking not to take any action that might defeat its object and purpose. Ratification of, or accession to, the Convention expresses the consent of a State to be bound by its provisions.

To date, the Convention has 162 parties, including the European Union. This means that only 34 Member States of the United Nations have not yet joined the Convention. In March 2012, the Secretary-General sent letters to these 34 Member States urging them to become Parties to UNCLOS.

The Convention lays down a comprehensive regime of law and order in the world’s oceans and seas. It comprises 320 articles and nine annexes, governing all aspects of ocean space, such as delimitation, marine environment, marine scientific research, economic and commercial activities, transfer of technology and the settlement of disputes relating to ocean matters. 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. I will therefore not attempt to introduce you to the complexities of the delimitation of maritime areas and the continental shelf, the rules applicable to States in different geographical situations (such as archipelagic or land-locked States), or the principles governing the use and exploitation of that mysterious space known as the “Area”, which includes the seabed and ocean floor beyond the limits of national jurisdiction. I would however like to underline that the law of the sea represents a captivating challenge for the international lawyer, insofar as it combines the need for

rigorous legal analysis with the requirement to understand scientific and technological notions and incorporate them into the legal thinking. A good law of the sea specialist is one who remains open to the indispensable contributions from cartography, geology, zoology, biology and countless other areas of scientific development.

I believe that a good way to give an overview of the regime contained in UNCLOS is to describe it as a set of rights, freedoms, benefits and obligations of States in different areas of the seas and the seabed. Let me briefly turn to this.

[Territorial rights]

As far as territorial rights are concerned, coastal States may, under UNCLOS, establish the breadth of their territorial sea, up to a limit not to exceed 12 nautical miles. Each State exercises sovereignty over its territorial sea, while foreign vessels are allowed what is known as “innocent passage” through those waters.

Coastal States also have sovereign rights in an area adjacent to their territorial sea, up to 200 nautical miles, called the “exclusive economic zone”. These rights cover the exploitation of natural resources and certain economic activities, as well as the exercise of jurisdiction over marine scientific research and environmental protection. Coastal States further have sovereign rights over what is known as the “continental shelf” (which is the national area of the seabed) for the purposes of exploration and exploitation. Under the Convention, the continental shelf may extend at least 200 nautical miles from the shore, and up to 350 nautical miles under specified circumstances. However, the coastal State’s rights over the shelf are not unlimited, and remain subject to certain freedoms.

[Freedoms]

Indeed, pursuant to UNCLOS, all States continue to enjoy the traditional freedoms of navigation, overflight, scientific research and fishing on the high seas. They are obliged to adopt, or cooperate with other States in adopting, measures to manage and conserve living resources. Additionally, all States have freedom of navigation and overflight in the exclusive economic zone of other States, as well as freedom to lay submarine cables and pipelines.

A special regime is applicable to straits used for international navigation, in which ships and aircraft of all countries are allowed “transit passage”. The States bordering such straits can regulate navigational and other aspects of passage.

[Benefits]

Turning now to the benefits, according to UNCLOS, land-locked and geographically disadvantaged States have the right to participate on an equitable basis in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same region or sub-region.

As proclaimed by the General Assembly in 1970, the resources of the seabed beyond the limits of national jurisdiction are “the common heritage of mankind”. It was not, however, until the adoption of the Convention that the international community set up a system with the goal of conserving that common heritage and profiting from it at the same time.

[Obligations]

And this leads us to the obligations. The Convention lays down, first of all, the fundamental obligation of all States to protect and preserve the marine environment. It further urges all States to cooperate on a global and regional basis in formulating rules and standards and in adopting measures for the same purpose. The Convention

is quite detailed in this regard, identifying six main sources of pollution, which include, for example, continental-shelf drilling, ocean dumping or pollution from vessels. States are bound to prevent and control marine pollution and are responsible for damage caused by violation of their international obligations to combat such pollution. States are finally bound to promote the development and transfer of marine technology “on fair and reasonable terms and conditions”, with proper regard for all legitimate interests.

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[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 and 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.

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, with which you are probably familiar.

Piracy has existed for thousands of years. It had substantially diminished in the end of the nineteenth century and seemed to have become one of the legends of the past, gradually disappearing from criminal law legislation. A few decades ago, the “pirate phoenix” appeared to be rising again to become a regional, if not a global, scourge. The well-known emergence of Somalia as the main piracy hotspot of the world is relatively recent. South-Asia, especially the Malacca Strait between Singapore, Malaysia and Indonesia, and the South China Sea were the first regions to draw international attention to the crime of piracy.

Now, the international rules on piracy are well-established. The notion itself was first codified by the 1958 Geneva Convention on the High Seas, and UNCLOS 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. The seizing States seem to be reluctant to exercise the broad powers they have with respect to prosecuting arrested pirates due to legal complexities, in particular human rights implications. Our current efforts 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 so-called “Contact Group” 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 mention 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.

As proclaimed by the preamble of the Convention, the problems of ocean space are closely interrelated and need to be considered as a whole. 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 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.
