

**CONFERENCE ON
LEGAL AND SCIENTIFIC ASPECTS OF CONTINENTAL SHELF LIMITS**

“International Oceans Governance and the Challenge of Implementation”

Keynote Address

by

Mr. Hans Corell

Under-Secretary-General for Legal Affairs

The Legal Counsel of the United Nations

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Ladies and Gentlemen,

We are gathered at this Conference to discuss the continental shelf and the delimitation of its outer limits. Let me start by thanking the organizers, the Center for Oceans Law and Policy and the Law of the Sea Institute of Iceland, for the initiative and for this important contribution to the development and understanding of the legal regime governing the oceans and the seas.

With respect to the subject of the Conference, I feel confident that you have discussed it in all aspects and that you are fairly well advanced in your thinking and in your actions. As always, there are a number of questions still to be resolved. But I am certain that solutions will be found.

On this occasion, I should like to broaden the perspective and the discussion somewhat. Therefore, I would like to focus tonight on some different, but very important issues: the structure of oceans governance and the challenge of implementation.

As you know, the United Nations Convention on the Law of the Sea (UNCLOS) has been called a constitution for the oceans. But unlike national constitutions, the Convention does not establish an executive, a legislative and a judicial branch. Instead, the architecture for oceans governance has developed organically in a rather dispersed, decentralized way, comprising not only bodies established by the Convention, but also those already in existence before its conclusion, as well as those created later in fulfilment of its obligations.

International oceans governance has to be viewed from two main perspectives: the legal and political. And it has to be managed at three, or even four, levels: global, regional, subregional and national.

At the highest level, the global and political, the United Nations General Assembly exercises a general oversight function over all matters related to ocean affairs and the law of the sea. Not only does the General Assembly debate oceans issues and adopt resolutions on an annual basis, it was also the moving force behind a series of international conferences that set the agenda for the law of the sea. Let me first mention the two important Geneva conferences; the Stockholm Conference on the Human Environment, which paved the way for the environmental provisions of UNCLOS; and the Third United Nations Conference on the Law of the Sea, which developed and adopted the Convention. To those should be added the United Nations Conference on Environment and Development, which adopted Agenda 21, whose 17th chapter sets forth commitments and a roadmap for the sustainable development of the oceans; the World Summit on Sustainable Development, whose Chapter IV contains recommendations and specific targets for the years ahead, and, most recently, the recommendations from the G-8 meeting in Evian, France.

Because the General Assembly has little time to discuss ocean affairs in depth, it decided to establish a method by which the complex issues could be examined. In 1999, acting upon a recommendation of the Commission on Sustainable Development, the General Assembly created, as a subsidiary body, the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea – a long title with a blessedly short acronym, ICP. Each spring, the ICP meets to discuss in some detail

two areas of focus chosen by the General Assembly, plus issues requiring coordination and cooperation among international organizations. Importantly, the ICP involves all stakeholders interested in ocean affairs: States, inter-governmental organizations and non-governmental organizations. At its conclusion, the ICP recommends certain issues for consideration by the General Assembly in the formulation of its annual resolution on oceans and the law of the sea.

At the same time, of course, there are a many UN agencies, programmes and funds, and international and regional organizations that have a mandate either wholly or partly relating to the law of the sea. Of course, this dispersal of authority does create some problems of overlap, the occasional gap and the challenge of cooperation and coordination. However, in general, all these bodies at the global and regional level are at least trying to work together – and to some extent the overlap is being whittled away.

And all these bodies have spawned an impressive array of legislation: hard law in the form of treaties, protocols and in some cases legally binding resolutions and regulations, as well as a multitude of soft law instruments in the form of memoranda of understanding, codes, guidelines, plans of action, and non-binding resolutions. Above all this soars UNCLOS, as the great umbrella convention, encompassing all the instruments on the law of the sea adopted before it entered into force, and providing for those that followed. These hard and soft law instruments cover a broad range of issues related to the law of the sea: safety of navigation; international fisheries; carriage of dangerous goods; protection of the marine environment; prevention and punishment of crimes at sea, etc. I might just add here that the United Nations Office of Legal Affairs

and its Division for Ocean Affairs and the Law of the Sea (DOALOS) will soon publish a compendium of all these agreements.

This brings me to the question of what the United Nations, and more specifically DOALOS, is doing to implement the Convention, the related agreements and the complementary instruments.

Just over a year ago, in a speech that I gave in Stockholm, I suggested some concrete steps that could be taken without going beyond the limits of the present arrangements. First, I proposed that the annual General Assembly resolution on oceans and the law of the sea set out some achievable actions relating to cooperation and coordination and that the informal consultative process could help in identifying those actions. Second, I proposed that the work programme of the UN Secretariat contain concrete activities and outputs promoting inter-governmental and inter-agency cooperation and coordination in ocean affairs, and that all UN agencies should be encouraged to engage in activities promoting implementation. Third, I proposed that the heads of organizations involved in oceans issues should have regular consultations. The fourth point was that there must be communication and cooperation at the national level among government departments dealing with ocean issues.

Well, what has happened in the past 12 months? In its resolution 57/141, the General Assembly requested the Secretary-General to take a number of concrete actions on which we have been following up in the intervening months. On the most prosaic level, we have asked both States and inter-governmental organizations to provide us with names and details of focal points in order to facilitate communication

and coordination. In relation to the continental shelf, DOALOS is working on a directory of sources of training, advice, expertise and technological services and information to be placed on its website. It is also preparing a training manual, as well as administering a Trust Fund to assist developing coastal States in preparation of their submissions to the Commission on the Limits of the Continental Shelf.

At a higher level, in response to calls for a regular general mechanism for cooperation among UN agencies and for greater cooperation and coordination among international organizations with respect to specific tasks, DOALOS has been extremely active. Although we expressed our view about a general mechanism for cooperation, unfortunately, the UN body with responsibility for this matter has not concluded its deliberations on the issue. In the meantime, DOALOS has made an effort to persuade representatives of the competent UN agencies to attend the most recent meeting of the Consultative Process. A record number of organizations and of States did attend the meeting, which was the most successful thus far. In fact, it would not be too far-fetched to consider that the Consultative Process itself is rapidly becoming a general mechanism for cooperation and coordination, for, not only did many agencies attend the formal meetings, some also met informally through the week. In future, we should probably set aside at least half a day during the consultative process for all organizations involved in oceans issues to engage in exchange of information and consultations about their work.

Moreover, in response to public concern about recent maritime accidents, I have taken the initiative in forming an Inter-Agency Consultative Group on Flag State Implementation comprising not only UN bodies but also the Organization for Economic

Cooperation and Development (OECD), to exchange information about the lack of flag state implementation in a number of areas, and also ideas about how to deal with the problem. A number of non-governmental organizations have proposed developing a new implementing agreement to UNCLOS, setting out a list of flag state obligations and containing a means for enforcing them. More specifically, for example, they proposed refusing access to ports of vessels flagged in States that did not fulfil their international legal obligations.

This latter proposal was made at the latest meeting of the Consultative Process, where it proved to be somewhat too radical for general acceptance. While two or three States supported the idea, the majority preferred only to request DOALOS to prepare a list of flag state obligations and to examine and clarify the role of the “genuine link” in relation to the duty of flag states to exercise effective control over ships flying their flag. In fact, DOALOS had already begun this work in the context of the Inter-Agency Consultative Group.

But another concrete measure involving inter-agency cooperation is perhaps of more interest, in particular since we are in Iceland. This is the Global Marine Assessment, or GMA. Iceland first proposed such a comprehensive assessment of the marine environment at the UNEP Governing Council meeting held in February 2001. The intent was to provide a scientific assessment of all aspects of the marine environment, including socio-economic aspects, in order to enable politicians to make informed decisions. After some preliminary meetings and a recommendation from the World Summit on Sustainable Development, in its resolution 57-141, the General

Assembly requested the Secretary-General to present proposals for modalities for the conduct of the GMA to its 58th session.

DOALOS has conducted extensive consultations with UN agencies, other international organizations, States and non-governmental organizations. There were a number of informal meetings on the issue at the recent Consultative Process, and the Process itself adopted a number of recommendations to the General Assembly on a road map for establishing the GMA. Consultations are continuing and a report is being prepared for the 58th session of the General Assembly. The degree of inter-agency and inter-state cooperation and coordination required to establish a comprehensive and effective GMA is so extensive that the GMA itself could be considered another general mechanism for cooperation and coordination.

I could continue on this subject, but time is running out. Suffice it to conclude that inter-agency cooperation is alive and well and inter-state cooperation as evidenced by the significant increase in participation and engagement at the recent ICP, is steadily intensifying.

So, we have an elaborate framework of political bodies: global, regional and subregional, cooperating and adopting a complex framework of legislation covering almost every issue. Yet, almost every day we see headlines reporting on shipping accidents with devastating consequences, massive depletion of the world's fisheries, an increase in the degradation of the marine environment. How can this be so? How have we failed?

Faced with the fact that most ocean-related problems are increasing, rather than being resolved, some have called for more legislation, more treaties, more soft law, in other words, yet another layer of international regulation. Still others, considering the problem to be one of lack of flag state implementation, have threatened to take unilateral action and some have even taken such action, sometimes of doubtful legality. Still others have called for amendments to UNCLOS, arguing that it is too weak, that it does not provide sufficient protection for the rights and interests of coastal states.

But – I am afraid that this would not solve the problem. The problem is not that there is not enough law or that the law is too weak. The problem is that existing rules are not being sufficiently and properly implemented and enforced. States are at fault here, both coastal and flag States, but primarily certain flag States.

The first step is for States to become parties to UNCLOS and to all the other agreements relevant to their situation. As a matter of fact, even the G-8 at their meeting in Evian called for adherence to UNCLOS. This means that their national law has to be adjusted accordingly. The second step is to provide for their implementation and enforcement through national administrative, law-enforcement and judicial bodies. The third step is to actually enforce the law against their nationals, their companies and the vessels flying their flag.

As for the first step, the membership of the Convention is now approaching universality, with 142 parties. It should be noted that most non-parties are landlocked States. An upcoming International Ministerial Conference of Landlocked and Transit Developing Countries will address the question of landlocked States.

However, it is very disappointing that two very large developed States with extensive continental shelves and with substantial maritime interests, in navigation, in fisheries, and in protection of the marine environment remain outside the association of States Parties to the Convention. We understand that Canada is prepared to ratify UNCLOS as soon as the European Union becomes party to the UN Fish Stocks Agreement, and we encourage the Union to expedite its move towards ratification. That would leave the United States as the only major power outside the Convention. We certainly hope that it will act quickly to join the club. International oceans governance would greatly benefit from the more active participation of those two countries from within the Convention family.

However, a more significant problem is the last two steps towards full and effective implementation of the Convention regime that I mentioned: implementation and enforcement. Many States will adhere to international and regional agreements, but do nothing to implement them. They then wonder why everything is becoming worse instead of better. Why does this happen? There are two main reasons: lack of capacity and lack of political will.

About lack of capacity, we can do something – and we are doing something. Many UN and regional bodies and many non-governmental organizations are actively involved in capacity building. Even DOALOS is doing its share and is expanding its own capacity to provide assistance. But, to be sure, the world community is not doing enough. Developed States must devote more resources to capacity building in developing countries, especially through organized programmes sponsored by international and regional bodies, often in close collaboration with each other.

But the greatest problem remains: lack of political will. The rules are there: UNCLOS contains very clear general principles within a comprehensive framework, other conventions and non-binding instruments contain carefully prepared detailed regulations, guidelines and plans of action. If we want to improve the conditions of the oceans and ensure that activities relating to them are carried out within the law, all States have to start making a real effort to implement and to enforce that law. Then we may see improvement! But only then!

So, again, I am posing a very serious question, one of the most fundamental questions in international law: how do we get States to take their international obligations and responsibilities seriously? We must all think about the answer to that question.

Thank you for your attention.