



**STATEMENT OF SATYA N. NANDAN
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INTERNATIONAL SEABED AUTHORITY**

AGENDA ITEM 49: OCEANS AND THE LAW OF THE SEA

**59th SESSION OF THE GENERAL ASSEMBLY
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Mr. President,

Ten years since the entry into force of the United Nations Convention on the Law of the Sea is a good time to assess its contributions to peace and good order in the oceans. Unfortunately, in the short time available to address this Assembly, it is difficult to do such an assessment in any detail.

It would be fair to say that, overall, the Convention has been a remarkable success. The United Nations should feel justly proud of this great achievement. Because of the outstanding success of the Convention, the law of the sea is generally taken for granted without any thought to its complex and multifaceted nature and the way in which it has carefully woven together a fine balance in competing uses and claims. Nor is it adequately appreciated that the Convention continues to make an immense contribution to global peace and security.

The achievements of the Convention are many. The Convention has provided stability and certainty in the international law of the sea. By defining the rights and duties of States, it has provided the basis for the conduct of relations between and among States on maritime issues. It has provided a sound legal framework for States to conduct activities in the oceans. The comprehensive report of the Secretary-General prepared by the Division for Ocean Affairs and the Law of the Sea, not only demonstrates the diversity of oceans-related issues, but also illustrates clearly that the Convention is widely seen by States, international organizations and judicial bodies as the primary source of the international law of the sea. This is further reflected in the consistency with which the Convention is applied in State practice.

Where the international community has not succeeded however is in the discharge of the responsibilities assumed by States under the Convention. As the two draft resolutions before the Assembly demonstrate, the international community cannot feel satisfied that its efforts in ocean governance have been successful. States need to develop management strategies that balance sound ecological practices with economic needs and adopt an ecosystem approach to ensure long term sustainable use of the ocean and its resources. For this to be achieved there is need for capacity building with strong emphasis in promoting scientific and environmental literacy. Knowledge will produce informed decision-makers and promote ethical stewardship of the seas and oceans.

Mr. President,

This year is also the tenth anniversary of the establishment of the International Seabed Authority, which came into existence upon the entry into force of the Convention. The Authority celebrated this event in May this year during its regular session by holding a two-day Commemorative Session which was addressed by the President of the Assembly, the Secretary-General of the Authority, the Prime Minister of Jamaica, the Secretary-General of the United Nations through the then Acting Legal Counsel, the President of the Tribunal for the Law of the Sea and the Chairman of the Preparatory Commission. Messages were also received from the President of the Third United Nations Conference on the Law of the Sea and the first Chairman of the Preparatory Commission and statements were made by the Chairmen of the Regional Groups.

Two panel discussions were held on the achievements of the Authority in its first ten years and on its future directions. This was followed by scientific presentations on the various mineral resources in the deep seabed and the marine environment in which they are found. The annual report of the Secretary-General of the Authority this year contained a review of the Authority's work and development over the past ten years (ISBA/10/A/3). I recommend it to those who would like to know more about the functioning of the Authority.

Mr. President,

I wish to take this opportunity to thank the Member States of the Authority who for the past ten years have supported and guided its development. I also wish to express my appreciation for the many encouraging remarks made by delegations in this Assembly on the work of the Authority. I believe this to be a positive indication of the commitment of Member States to see the Authority fulfill its responsibilities in accordance with the 1982 Convention and the 1994 Agreement for Implementation of Part XI of the Convention.

Last year, I had informed this Assembly that the Authority was about to adopt a three-year programme of work. This was done at the tenth session. The substantive work programme of the Authority is based on the provisions of the Convention and the Agreement, in particular section I, paragraph 5, of the Annex to the Agreement. The work of the Authority has progressively become more scientific and technical. It is based largely on marine scientific research in the deep ocean and on the need to develop a better understanding of the deep ocean environment. Indeed one of the basic responsibilities of the Authority under the Convention is to promote and encourage marine scientific research in the deep seabed and to disseminate the results of such research. The Authority is also mandated to ensure effective protection of the marine environment from harmful effects which may arise from activities in the deep seabed. The Authority has attempted to fulfill these mandates in two ways.

The first is by holding technical workshops which bring together internationally recognized scientists, experts, researchers, contractors for exploration, representatives of the offshore mining industry, and representatives of Member States. The most recent workshop, held in September this year, adopted recommendations on the establishment of environmental baselines and monitoring programmes for polymetallic sulphides and cobalt crusts. The recommendations from this workshop will be presented to the Legal and Technical Commission of the Authority for its consideration and adoption.

Second, the Authority promotes marine scientific research through selected scientific research programmes being undertaken by international scientists. Currently the Authority is associated with what is known as the Kaplan Project, which is designed to measure biodiversity, species range, and gene flow in the Clarion-Clipperton Zone in the north-east Pacific. This is the region where the Authority has already issued six exploration contracts. The information gained from this project can be used to determine the potential risks for marine life as a result of mining for manganese nodules. The first set of detailed results and analyses from this project should be available by the summer of 2005. The outputs will include a database of some of the important species found in the Clarion-Clipperton Zone, including their genetic sequences. This will in fact be the first project of its kind to assess the genetic resources in the nodule province. The information on the biodiversity derived from this project will be superimposed on the geological model which the Authority is developing for that zone. The model will considerably enhance our knowledge of the geological and biological environment of that area.

The Authority will also be promoting two programmes within the Census of Marine Life which are directly relevant to its work. These are the work being undertaken by the Chemosynthetic Ecosystems Group (known as ChEss) and the Seamounts Group (known as CenSeam). Both of these cover the environments where polymetallic sulphides and cobalt-rich crusts are found. The Council of the Authority is currently considering regulations for exploration for these resources. Polymetallic sulphides are found at hydrothermal vent sites, which are areas of the seabed where mineral rich super-heated water emerges from the seabed producing mineral chimneys that support a vast diversity of life. Cobalt-rich crusts on the other hand are usually found on seamounts which often support fauna endemic to specific seamounts, meaning that the species are not found elsewhere. The vulnerability of seamount communities and the concern for their protection has clearly been highlighted in recent years through the discussions regarding destructive fishing methods on seamounts. This issue was a subject of discussion at the United Nations Informal Consultative Process and is also referred to in the two draft resolutions before the General Assembly. For the Authority it is very important to understand the ecology of seamounts and the nature of the fauna and flora that exists there and to determine what measures need to be taken in order to minimize any harmful effects from mining-related activities. It is a matter of grave concern that while the Authority is in the process of developing guidelines for the application of precautionary measures for the protection of the ecosystem on the seamounts on a scientific basis, there are fishing activities which through the use of certain types of gear are indiscriminately destroying the very same ecosystem.

Mr. President,

Marine scientific research is an essential tool for ocean governance. It increases knowledge of the ocean environment and enables us to take sound management decisions concerning its resources. For the Authority, such knowledge is important to ensure that the regulations and guidelines it adopts are scientifically sound. Despite the progress that has been made in marine scientific research in recent years, the fact is that our knowledge of the oceans remains insignificant. We know more about the surface of the moon than about the ocean on which life on earth depends. Concern over the lack of scientific information in the development of effective ocean policy was recently echoed in the introductory statement of the Chairman of the US Commission on Ocean Policy when he introduced the Commission's final report entitled "Ocean Blueprint for the 21st Century" to the US Senate Committee on Commerce, Science and Transportation. He stated that "[A]n effective national ocean policy should be based on unbiased, credible, and up-to-date scientific information. Unfortunately, the oceans remain one of the least explored and most poorly understood environments on the planet, despite some tantalizing discoveries over the last century." The need for a better knowledge of the ocean environment is self-evident. One only has to read the draft resolutions before the Assembly to recognize that the number of actions that States are being asked to take can only be implemented effectively if States have sound scientific knowledge of the marine environment. It is for this reason that last year in my statement I had urged the General Assembly to adopt a declaration in support of enhanced efforts in marine scientific research through national, regional, and global programmes in order to generate a new impetus in marine scientific research. Such a declaration will have no financial implications for the United Nations. On the other hand, it will serve to encourage governments, inter-governmental organizations, non-governmental organizations, charitable foundations and scientific institutions to give high priority to marine scientific research.

Mr. President,

The two rather comprehensive resolutions before the Assembly contained in documents A/59/L.22 and A/59/L.23 refer to a variety of subject areas and it is difficult to cover them all. I would like to congratulate the coordinators of the resolutions and others who assisted them for highlighting the many important issues pertaining to ocean governance. I wish to express my appreciation for the references to the Authority and its work and also the need for timely contributions by Member States. I would like to inform this Assembly that the eleventh regular session of the Authority will be held from 15 – 26 August, 2005. This will be preceded by a one week meeting of the Legal and Technical Commission. I might mention that there is a good prospect that the Authority may receive a new application for a nodule exploration license by the next session. I would like to take this opportunity to renew the appeal the Authority made to Member States to contribute to the Voluntary Fund established to facilitate the participation of the members of the Legal and Technical Commission and the Finance Committee from developing countries.

Mr. President,

Since I had the honour to serve as the Chairman of the United Nations Conference on Highly Migratory Fish Stocks and Straddling Fish Stocks and was the architect of the UN Fish Stocks Agreement (UNFSA) that was adopted in 1995, I cannot resist making a few comments concerning the draft resolution A/59/L.23 on Sustainable Fisheries. I would first like to express satisfaction at the entry into force of the Fish Stocks Agreement and the adoption of some of its provisions in a number of regional fisheries organizations – in particular the new Convention for the Western and Central Pacific Ocean, which entered into force in June 2004, and the South-East Atlantic Fisheries Organization Convention which entered into force in 2003.

As stated in the draft resolution, by the terms of the UNFSA a review Conference is scheduled for 2006. In the light of a number of important issues raised with respect to high seas fisheries in the draft resolution, the review Conference might be an appropriate forum to consider a number of these issues. It may be useful to begin to consider how they can be addressed.

Perhaps the first point to make is that the UNFSA is a strong and far-reaching instrument. It may not be perfect, but it is by far the most comprehensive agreement relating to the conservation and management of fish stocks.

Nevertheless, it has to be acknowledged that until UNFSA enjoys universal participation and States fully comply with their obligations, in particular those in Article 8 of the Agreement in relation to the role of Regional Fisheries Management Organizations (RFMOs), unregulated high seas fishing, i.e. fishing by non-members outside the rules set by RFMOs, will remain a considerable problem. The UNFSA is indisputably a giant step in the direction of sustainable use of fish resources, but it cannot attain its full potential unless the most important coastal States, fishing States and flag States are parties to it.

A key strategy must be to secure broader participation in UNFSA. The need for this has been emphasized repeatedly in numerous General Assembly resolutions and in other international bodies. In the long-term it is important that all parties to the 1982 UN Convention on the Law of the Sea become parties to UNFSA, so that, as originally intended, there would be a seamless connection between the provisions of the Convention and the provisions of the Agreement. This is likely to take time but in the short-term, it is especially important that all high seas fishing nations

and actual and potential flag States become parties to UNFSA as soon as possible so that the opportunities for 'free riding' can be minimized and so that as many high seas actors as possible are bound by the existing web of legal obligations.

Special efforts should be made to bring specific countries into UNFSA. These might include countries that are already members of two or more regional arrangements (thus having a clear fishing interest) but are not yet parties to UNFSA and those countries that are significant flag States of high seas fishing vessels. It is interesting to note that of the 14 open-registry countries that had registered the largest number of fishing vessels between 1999 and 2003, 10 are not parties to UNFSA. Three of those countries are not even party to the Convention – in other words, they willingly flag fishing vessels but are not prepared to commit to the basic obligations of flag States that are enshrined in the Convention and accepted by the overwhelming majority of the international community (144 member States of the United Nations are parties to the Convention). Yet all of these countries are present in the General Assembly and likely to participate in the adoption of the present draft resolutions.

The second key point to make is that experience has shown that UNFSA may not have gone far enough. There are critical gaps in its coverage which need to be dealt with. Firstly, it is seen as limited in application to straddling fish stocks and highly migratory fish stocks. Some consider that it does not cover sufficiently the problem of discrete high seas stocks, including deep sea fisheries. Although this difficulty may be more a perception than a reality, it is leading to the undesirable situation in which piecemeal and sometimes rather radical proposals are being promoted to deal with specific problems, such as proposals for blanket prohibitions on certain fishing practices. Surely it would be much better if these problems were dealt with in accordance with the same principles as apply to straddling and highly migratory fish stocks and under the same sort of comprehensive management framework that UNFSA encourages. High seas fishing is a global phenomenon and there needs to be a comprehensive global management framework, rather than piecemeal gap-filling. Serious consideration should therefore be given to expanding the scope of application of UNFSA so as to include all fish stocks in the high seas.

The third major issue with regard to UNFSA is that, although it accords a key role to RFMOs, designed to lead eventually to a situation where (high seas) fishing can only be engaged in by vessels flying the flags of States that are members of RFMOs or that cooperate with them, unfortunately, what we have seen is that this is not enough by itself. RFMO coverage is incomplete. Some RFMOs lack capacity and in all of them participation is not sufficiently broad to ensure compliance with conservation and management measures and eliminate the problem of free riders. The irresistible conclusion is that it is not enough to rely on a disparate and relatively inefficient and incomplete network of RFMOs to implement the UNFSA. It is likely that increased oversight at the global level can significantly reinforce regional and national measures to effectively implement the Agreement. This would promote a more systematic approach to improving the conformity of conservation and management measures with the UNFSA. At the very least, RFMOs can and should be improved. Their mandate should also be expended to cover all fish stocks in the area of their competence including those found on seamounts.

The fourth major problem is that neither UNFSA, nor any of the RFMOs, are equipped to deal with the problem of allocation of high seas resources. The high sea is one of the few remaining global commons, others being the atmosphere and biosphere. Despite the increasing qualifications that have been placed on the exercise of high seas freedoms through the widening

and deepening of the obligations placed upon States by UNFSA, the current international regime governing access to high seas resources remains the traditional rule of capture. Left unconstrained, we know that the end result of States exercising the unrestricted right to fish on the high seas is the "tragedy of the commons."

A number of international initiatives have begun to look in more detail at these problems. The FAO, for example, continues to provide valuable technical advice and support to RFMOs and will hold a Ministerial Session of its Committee on Fisheries in 2005. The OECD's Fisheries Committee is also expected shortly to produce a major piece of work on the economic incentives for IUU Fishing, based on exhaustive analysis. I also look forward with interest to the outcomes of the novel initiative taken by a group of fisheries ministers from developed and developing countries to establish a Ministerial Task Force on High Seas Fishing to try to identify practical measures that will have a measurable impact on the problem of IUU fishing. Together, the results of these processes, if applied and implemented by States and fishing entities, should help to show the way forward.

Mr. President,

I would like to conclude by restating that the 1982 United Nations Convention on the Law of the Sea and its related instruments provide a sound legal foundation for ocean governance but clearly there is much that needs to be done by the international community, individually and collectively, to meet the demands of responsible stewardship of the ocean and its resources.
