

PRESENTATION

BY

**H.E. Ambassador Eden Charles,
Deputy Permanent Representative,
Permanent Mission of the Republic of
Trinidad and Tobago to the United Nations**

on the

**"The role of the United Nations Convention
on the Law of the Sea in sustainable development"
at the panel discussion organized by the Division for
Ocean Affairs and the Law of the Sea**

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At the outset I wish to thank the Director and the members of staff of the Division for Ocean Affairs and the Law of the Sea for organizing this important event and also for inviting me to be a part of the panel.

Madame Chairperson

More than thirty years after the opening for signature of the 1982 United Nations Convention on the Law of the Sea (“the Convention”), and two decades after its entry into force, we are here to assess the role of the Convention in sustainable development. It is an opportune moment to examine this issue, as the Open Working Group on Sustainable Development Goals continues to address the issue of oceans and seas, as a possible sustainable development goal.

The *travaux préparatoires*, or negotiating history of the Convention, show that it brought together many countries representing all regions of the world, all legal and political systems and all degrees of socio-economic development. The Convention envisions international cooperation in diverse areas in an effort to achieve a “just and equitable international economic order” in relation to ocean space. It is also an example of the interrelationship of many issues. While it is a framework treaty, at the same time, it is also an instrument which requires States Parties to honour and implement specific obligations.

The Convention has not been amended but it has been subject to the adoption of two implementing agreements, on the implementation of Part XI, the 1994 Agreement, and the 1995 Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (“the Fish Stocks Agreement”).

I submit that if sustainable development means “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”, the Convention and its implementing agreements have sought to achieve this objective.

While the Convention has established legally defined maritime zones where coastal States exercise either sovereignty or sovereign rights over the resources in the maritime zones, it has also established a regime for the sustainable use of the said resources. For example, Article 56 of the Convention establishes certain rights, jurisdiction and duties of the coastal State in the Exclusive Economic Zone (EEZ) in relation to exploring and exploiting, conserving and managing the natural resources, whether living or non-living in this maritime zone. It also emphasizes the protection and preservation of the marine environment. I submit further that Article 56 is pellucidly clear with regard to the sustainable use of resources in the EEZ.

Madame Chairperson

Fisheries provide an important source of food for all States, whether coastal, land-locked, or geographically disadvantaged and therefore must be conserved and protected in order to address practices such as, Illegal Unreported and Unregulated fishing (IUU) and other destructive fishing practices. Consequently, Article 61 paragraph 2 of the Convention provides, among other things that “*the coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the EEZ is not endangered by over-exploitation*”.

Paragraph 3 of the same article states that: *Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal States...*”

It is evident, Madame Chairperson, that the underlying theme here is the sustainability of the resources so that future generations may also have their needs met. Without expressly providing for it, key sustainable development principles of intergenerational and intra-generational equity are observed here.

At the same time many States Parties, as well as other States which have accepted the Convention as forming part of customary law have been able to exploit the mineral resources of the continental shelf, such as oil and gas which have contributed significantly to their national development. This has been achieved through a largely effective formula under the Convention which has allowed coastal States to either declare maritime zones, such as the EEZ, or enjoy, *ab initio*, sovereign rights over the exploitation of the resources of the continental shelf pursuant to Article 77 of the Convention.

The provisions of Part XI of the Convention and the 1994 Agreement have ensured that there exists a measure of predictability and order with regard to the exploration and future exploitation of the resources in the Area, which are defined as, the “common heritage of mankind under Article 133 of the Convention.

To date the International Seabed Authority, consistent with its mandate under Article 157 and the 1994 Agreement maintains its assistance to States Parties to organize and control activities in the Area, with a view to administering the resources of the Area. The Authority has also shown that it is conscious of its role under Article 145 of the Convention to preserve and protect the marine environment from harmful effects, such as deep seabed mining which could damage the marine ecosystem or biodiversity in the Area to the detriment of future generations. Consequently, the legal codes developed by the Authority so far for prospecting and exploration of nodules, sulphides and ferromanganese cobalt crusts all have strong provisions for the preservation and protection of the marine environment. Moreover, contractors conducting work in the Area are also required to employ measures geared towards safeguarding the marine environment.

Madame Chairperson

I have no doubt that the Convention and its implementing agreements possess fundamental principles relating to sustainable development from which the international community has benefitted. It would be remiss of me, however, if I did not identify possible gaps or shortcomings in the instrument which are based on the interpretation of some of its provisions. Permit me to cite as an example, the debate on the matter relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction (BBNJ), which has been the subject of discussions at the Ad Hoc Working Group established by the General Assembly and also at the Rio+20 Conference.

A number of developing countries, including my own country, advance the position that BBNJ should be governed by the same regime applicable to resources in the Area, that is, they should form part of the “common heritage of mankind”. In opposition to this, is the view expressed by a very few States, non-States Parties included among them, who indicate that BBNJ should be subject to the regime of the High Seas because Article 133 of the Convention defines resources to only mean, mineral resources.

I wish to indicate that notwithstanding that definition, it must be pointed out that Article 136 provides that: “*The Area and its resources are the common heritage of mankind*”. The use of the conjunction “and”, clearly indicates that resources, as defined in Article 133, to mean, mineral resources, should not be the only resources under this particular regime, but that it should also include all resources, including BBNJ, that are found in the Area. To do otherwise, would be to construe the provision so narrowly that it would produce an effect not contemplated in the instrument. If we were to subject BBNJ to the regime of the High Seas, we would continue to perpetuate the existing practice whereby a few technologically- advanced States would continue to exploit and patent BBNJ to their economic and scientific advantage, at the expense of the majority of States. As a result, the ongoing deliberations towards the elaboration of an implementing agreement, under the Convention, are the only viable option which would ensure that these resources would be utilized for the benefit of all, including future generations.

Another subject which must be addressed so that the Convention and its implementing agreements could continue to contribute effectively to sustainable development is the issue of capacity building and the transfer of technology to developing countries. Although the Convention provides for cooperation in this area, evidence has shown that despite the fact that many developing countries have declared EEZs and have sovereign rights over the continental shelf, and have deposited the requisite coordinates with the Secretary-General, they have not been able to realize the full potential of these zones for their sustainable development due to lack of capacity and technology to fully explore and exploit both the living and non-living resources in these maritime zones. Three decades after the opening for signature of this landmark instrument, which is hailed as the constitution of the oceans and seas, the time is ripe for developed countries that are States Parties to honour their obligations and assist developing countries so that they would have the capacity and develop the required

technology to explore and exploit the marine resources within their national jurisdictions in the manner envisaged in the Convention and its implementing instruments.

I thank you.