

World Oceans Day 2010 - Our oceans: opportunities and challenges

Roundtable discussion on the United Nations Convention on the Law of the Sea
fifteen years after its entry into force

CLOSING REMARKS

*By David Freestone**

It has been my great pleasure to moderate this Roundtable Discussion on “UNCLOS 15 years after its entry into force”, sponsored by the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, to mark the second observance by the United Nations of World Oceans Day. My thanks to the Legal Counsel, Ms. Patricia O’Brien, for introducing the event, and to Mr. Serguei Tarassenko, Director of DOALOS, for hosting.

It is not an easy task to sum up such a rich and diverse discussion as we have had this afternoon. You will recall that we were tasked with discussing two discrete but related questions. First: how effectively is UNCLOS operating, as the legal framework for the oceans and seas? And second: what are the challenges facing UNCLOS as we move into the second decade of the 21st century

In the first section, Professor Bernard H. Oxman from the University of Miami expertly explained the maritime zones that States were entitled to under the UNCLOS regime, highlighting some of the more difficult issues of legal geography that States face; Professor Robert Beckman from the National University of Singapore looked at piracy off the coast of Somalia voicing a number of criticisms of current responses and pointing out that one of the

* Lobingier Visiting Professor of Comparative Law and Jurisprudence, George Washington University Law School.

ostensible reasons for the rapid growth of this phenomenon was the failure of the international community to address IUU fishing in the Gulf of Aden which had deprived many coastal communities of their livelihoods. Ms Emma Romano Sarne, Second Secretary of the Permanent Mission of the Republic of the Philippines to the United Nations looked in considerable detail at the current rules relating to the conservation and sustainable use of marine biodiversity, including marine genetic resources.

In the second session, Professor Ted L. McDorman of the University of Victoria put forward some provocative and characteristically entertaining thoughts about how the UNCLOS regime might be made even more effective. Acting as a self appointed agent provocateur he produced a rich menu of suggestions and perspectives for us all to consider. Finally, Professor Lucia Fanning, Director of Marine Affairs Programme at Dalhousie University, discussed the important role of regional cooperation as a means of enhancing ocean governance.

We then had a second round from the panel to allow them to respond to some of the issues raised by their colleagues and then embarked upon a very wide ranging discussion, stimulated by issues raised by the panel and a number of perceptive questions from the audience. We discussed the possibilities of lacunae in the UNCLOS regime, particularly the need for clarity in relation to governance of areas beyond national jurisdiction, the extent to which existing regional institutions could fill a wider role in general ocean governance and possible modalities for supplementation of the UNCLOS regime. The pro and cons of such supplementation – perhaps through a third Implementation Agreement to add to those of 1994 and 1995 - were explored as well as the difficulty of formal amendment of the Convention – should it be needed. The point was made that UNCLOS itself envisages continual updating by

means of what Professor Oxman has elsewhere called 'incorporation by reference' to the legislative powers of other international bodies and that it already contains, for example, obligations of prior impact assessment for high seas activities. But the discussion also ranged through the impacts of climate change on the oceans, limitations of flag state jurisdiction and the dispute settlement provisions of the Convention.

Let me end by thanking again all our talented panellists and those who raised such interesting questions from the floor. We are all delighted to be able to mark World Oceans Day in this way and let me remind everyone here in New York to be sure to cast an eye this evening to the Empire State Building which will be lit by coloured lights from white, blue to purple to signify the entirety of the oceans from the shallows to the darker depths, to mark the observance of World Oceans Day 2010 by the United Nations.