

THE VENICE STATEMENT ON UNCLOS AND SUSTAINABILITY

Venice, 28 May 2022

The following is a joint document drafted by International Lawyers, Diplomats, University Professors, Economists, Scientists, Experts and Members of Civil Society.

What UNCLOS has achieved:

It is widely recognized that the 1982 United Nations Convention on the Law of the Sea (UNCLOS) has been a fundamental step forward for the governance of the oceans in the history of human kind. The UNCLOS annexes and implementing agreements provide the legal framework governing all activities in the oceans and seas.

After forty years of operation, UNCLOS has become the 'constitution of the oceans' and even those countries which are not parties to it are still bound by most UNCLOS provisions, as they are now generally accepted as reflecting customary international law.

UNCLOS has enabled all States to trade freely on the sea by simultaneously providing a legal framework for peaceful intergovernmental cooperation.

Where there are overlapping claims to territorial seas and exclusive economic zones, UNCLOS includes provisions for delimiting them. The majority of maritime boundaries between States have been agreed by treaty. Nonetheless, in some instances - where agreement may not be reached - dispute settlement is required and should follow the UNCLOS dispute resolution rules. States should always work together to resolve such claims peacefully.

As a framework convention, UNCLOS is designed to be adaptable to modern circumstances. Therefore, five Law of the sea related issues that were not specifically regulated, may now be addressed and resolved, either by reaching an agreement between States Parties, or by interpretation of the existing UNCLOS provisions rather than seeking to renegotiate them. For substantial or complex issues, where more formal agreement is required, States may enter into specific implementing agreements.

Those five issues are:

1. Climate change and rising sea levels;
2. Biodiversity;
3. Blue economy;
4. Subsea cables;
5. Human rights at sea.

Urgent action is required for:

- 1. Climate change and rising sea levels.** Even if UNCLOS makes no explicit reference to Climate change, it embodies the need for stability, predictability and security in the Law of the sea, with the objective of promoting equity even in responding to climate change issues. It implies a duty to solve disputes peacefully through negotiations and according to its dispute resolution mechanisms.

The continuing rise of sea levels over the coming century caused by climate change is of particular concern. However, there is still a lack of coordination between the UNCLOS and UNFCCC (United Nations Framework Convention on Climate Change) processes and approaches. Climate change will undoubtedly have a significant impact on current maritime frontiers as well as on the traditional mechanisms for establishing maritime entitlements for coastal and island states. Particular concerns are due to the adverse impact of climate change on low-lying and small island states, which face an existential threat.

Climate change will also become a significant driving factor for migration, because of the loss of territories and possible new wars where the existing territories cannot sustain human habitation or economic life.

Furthermore, UNCLOS places broad environmental obligations on States that are significant in the fight against climate change. New international rules should urgently address pollution from land-based sources accounting for around eighty per cent of marine pollution and, in particular, pollution from plastics and micro-plastics. Governments should push for the full recognition of ocean issues within the UNFCCC and for increased coordination between the UNFCCC and UNCLOS processes. The MARPOL treaty should become an international minimum standard.

Such international obligations are important because of the inter-related nature of climate change and environmental degradation.

- 2. Biodiversity.** The adverse impacts on the marine environment and biodiversity of a number of human activities are of growing concern, in particular for vulnerable marine ecosystems.

UNCLOS addresses the protection of the marine environment in its Part XII. The many provisions contained in Part XII refer to the protection of marine biodiversity in both areas within and beyond national jurisdiction. Biodiversity loss in areas beyond national jurisdiction, which is however not fully ascertained by science due to the lack of baseline information, has led the international community to consider it critical to increase the standard of protection for biodiversity.

In dealing with the protection of areas beyond national jurisdiction, a primary consideration relates to the interconnection between the biodiversity in the water column and the seabed. The ongoing negotiations on the agreement on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) entail that the third Implementation Agreement of the UNCLOS shall coordinate with the environmental regulatory framework developed by the International Seabed Authority with respect to the exploration and exploitation activities in the Area.

While the environmental mandate of the Authority is limited to the protection of the marine environment and its biodiversity from the effects of deep-sea mining in the Area, the organization nonetheless has broad environmental competences which are relevant for an holistic approach to conservation. The only reasonable approach to halt biodiversity loss and to

ensure its long-term conservation is to adopt an ecosystemic approach to the protection of the marine environment which overcomes the rigid spatial and functional division of marine spaces established under the UNCLOS.

On a global level, in addition to the regulations adopted by the International Seabed Authority for the protection and preservation of the marine environment in the Area, negotiations for the BBNJ Implementation Agreement should be given the highest priority in the international agenda. We therefore strongly support the conclusion of the negotiations for an ambitious, effective, inclusive and future-proof BBNJ during 2022, year corresponding with the 40th anniversary of UNCLOS, of which it will be an implementing agreement.

- 3. Blue Economy.** UNCLOS implicitly encourages blue economy by placing States under an obligation to “prevent, reduce and control pollution of the marine environment” from all sources, including greenhouse gas emissions. Blue Economy is aimed to addressing and promoting the sustainable use of the oceans and seas while preserving their fundamental role for the wellbeing and wealth of humankind. In particular the Blue Economy contributes in achieving the UN Sustainable Development Goal n.14 on "Life Below Water", which is aimed at the conservation and sustainable use of oceans, seas and marine resources.
- 4. Subsea cables** are also a critical element of every State communications infrastructure and security. UNCLOS places obligations on States to allow for the laying and repair of such cables. However, the international regulatory regime is presently unclear, and negotiations on such matters should be a priority for intergovernmental law making. The negotiations of the 1958 Conventions show that reliance on the 1884 International Convention for the Protection of Submarine Telegraph Cables was preferred over the establishment of exclusion areas and UNCLOS followed the same path. Nevertheless, the said regime is currently inadequate to ensure the protection of cables and pipelines as critical infrastructures and neglects their underwater dimension.
- 5. Human Rights.** UNCLOS does not expressly deal with human rights. Nonetheless, it is clear that international human rights law applies to people at sea. Forced labour and excessive working conditions are growing concerns for those working at sea in the fishing and shipping industries. While there are international agreements for the protection of social rights, the flag state system significantly reduces the possibilities of their enforcement in practice, including access to Courts. Governments should address human rights abuses at sea by increasing port state controls for the merchant navy. The merchant navy should address the issues raised in the 2001 UN Guiding Principles on Business and Human Rights and respond to such challenges increasing their compliance with International Law, with special reference to ILO and IMO Conventions.

This document will be submitted to the United Nations, Governments, Universities, NGOs, members of Civil Society and politicians of all countries. It will be available online and open for signing.

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