SELECTED DOCUMENTS

UN/56th GA

Oceans and the Law of the Sea

Statement by Satya N. Nandan*

Mr President,

I wish to express the appreciation of the International Seabed Authority to the delegations which have expressed their support for the work of the Authority. It is encouraging that there is such a high level of interest in the Authority's work and I believe this to be a positive indication of the commitment of member States to see the Authority develop into an effective organisation capable of giving effect to its responsibilities under the 1982 Convention on the Law of the Sea and the 1994 Agreement for the implementation of the Convention.

I also wish to express appreciation for the various references to the Authority in draft resolution A56/L.17, which is now before the Assembly, particularly those in Parts V and VI, in which the Assembly notes with satisfaction the ongoing work of the Authority, including the issuance of contracts for exploration for polymetallic nodules and the elaboration of recommendations for the guidance of contractors to ensure effective protection of the marine environment from harmful effects that may arise from activities in the International Seabed Area.

The signature in 2001 of 15-year exploration contracts with six out of the seven registered pioneer investors marked a significant milestone for the Authority. It brings to an end the interim regime established by resolution II of United Nations Convention on the Law of the Sea (UNCLOS) III. More importantly, it gives practical and real effect to the single regime for the Area established by the Convention, the Agreement and the Regulations for Prospecting and Exploration for Polymetallic Nodules in the Area and, as such, represents a significant step forward for the international community.

The Authority is now in a contractual relationship with the former registered pioneer investors. In accordance with the provisions of the Regulations, each contractor has provided the Authority with details of its proposed activities under the contract and each contractor is under an obligation to report to the Authority on the progress of exploration.

Another significant achievement In 2001 was the issue by the Authority's Legal and Technical Commission of a set of recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for polymetallic nodules in the Area. These recommendations, which are highly technical in nature, are designed to help contractors to fulfil their obligations under the contract as they relate to the protection of the marine environment from potential harmful effects, which may arise from activities in the Area. These recommendations are based upon the outcomes of a successful international workshop held by the Authority in 1998, which was then given detailed scrutiny by the Legal and Technical Commission. They represent, therefore, an analysis based on the best available scientific knowledge of the deep ocean environment and the technology to be used in exploration.

The objective of the reporting requirements under the contracts and the recommendations is not to burden the contractors with unnecessary requirements, but to establish a mechanism whereby the Authority, and particularly the Legal and Technical Commission, can be provided with the information necessary to carry out its responsibilities under the Convention and the Agreement to ensure the protection of the marine environment from harmful effects arising from activities in the Area.

In this context, on a broader scale, the draft resolution before the Assembly, as well as the report of the co-chairmen of the informal consultative process, reiterate that national, regional and global efforts to manage the oceans need to be informed and guided by the concept of ecosystem-based management. This applies equally to the deep ocean. We need to improve our knowledge of deep ocean ecosystems, increase our understanding of the relationship between ecosystems and multiple uses of the oceans and take these

* Agenda item 30(a): Secretary-General of the International Seabed Authority, 27 November 2001. See also page 5.

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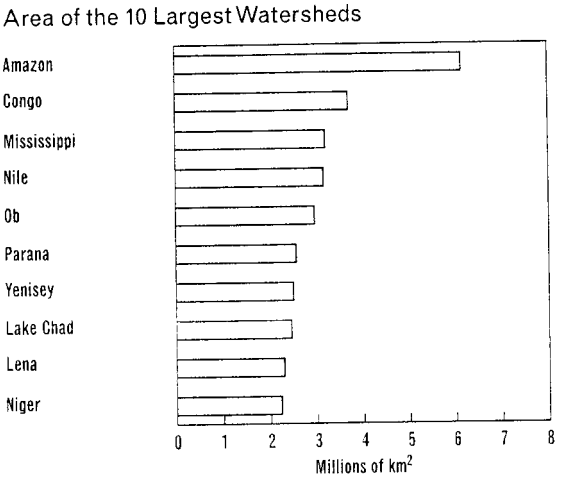
factors into account when making decisions.

Over the past two years, the work of the Authority has become increasingly of a technical nature. This is a development that is both inevitable and desirable. In June 2001 the Authority convened the fourth in its series of international workshops on issues relating to deep seabed mining. The subject of this year's workshop, which was attended by a number of eminent scientists and researchers, was the standardisation of data collection and evaluation from research and exploratory activities undertaken in the deep seabed, both in respect of the mineral resources and in respect of protection and preservation of the marine environment. It is clear from the discussions that took place during this and previous workshops that considerable research is required to bridge the gaps in knowledge of deep ocean ecosystems to enable the Authority to effectively manage impacts from future mining.



Courtesy: World Resources 2000–2001

It is also clear that the Authority has an important technical role to play, both as a global repository of data and information and as a catalyst for collaborative research at the international level. In July 2002, immediately prior to the eighth session, the Authority will convene a further technical workshop which will focus on the prospects for international cooperation and collaboration in marine scientific research on the deep oceans and address critical issues for the sediment biota and biota living on nodules in potential mining areas.

To succeed in its efforts, the Authority will need to work closely with, and establish a symbiotic relationship with, contractors in the implementation of exploration contracts and the practical application of the recommendations. I am confident that contractors will cooperate with the Authority and realise that improved knowledge of the deep ocean environment is to the benefit of everyone.

At the same time, however, there is a need for ongoing involvement of a political nature in the work of the Authority. At this year's session, in response to a request made by a member State, the Council of the Authority commenced work on consideration of the appropriate type of regulation for prospecting and exploration for hydrothermal polymetallic sulphides and cobalt-rich crusts. While work in this area is at a preliminary phase, the Council decided nevertheless that it should continue consideration of issues relating to the elaboration of such regulations at its next session in order to give the members of the Council the opportunity to consider further the important conceptual issues involved. In the meantime, the Secretariat has been requested to collect and assemble necessary information for the consideration of the Council.

Given the nature of the issues under consideration, I would like to repeat the call I made during last year's debate, for all member States to consider seriously their participation in the meetings of the Authority. It is particularly important that, in formulating new regulations, the views of all member States should be taken into consideration. The Convention and the Agreement establish a very high threshold for the quorum necessary for the convening of the Assembly and the Council, which in the case of the Assembly is one half of the total membership of the Authority. It is apparent, therefore, that without the presence of members at the meetings of the Authority, its ability to take decisions will be affected.

I would like to refer to paragraph 15 of draft resolution A/56/L.17 which refers to the prompt payment of dues to the Authority and the Tribunal. I would like to take this opportunity to urge those member States that have not yet done so to pay their contributions to the administrative budget of the Authority in full and on time. I am pleased to say that the response to previous requests by both the Assembly of the Authority and this Assembly has been encouraging and that the majority of member States have fulfilled their obligations promptly. This is important, because it has helped the Authority in turn to manage its finances in a responsible and efficient manner. I am grateful to all member States for their cooperation in this regard and I would once again urge all those who are in arrears, including those former provisional members of the Authority, to pay their outstanding contributions in full and as soon as possible to enable the Authority to continue its work.

I would like to express appreciation to the Secretary-General for his report contained in document A/56/58 and Add.1. I congratulate my friends and colleagues in the Division for Ocean Affairs and the Law of the Sea on a comprehensive report. I particularly welcome the addendum to the main report, which provides a succinct and up-to-date overview of developments since the main report was issued.

I also wish to commend the co-chairmen of the informal consultative process for their excellent work during the second meeting of that process and to thank them for their report, contained in document A/56/121. I believe the report is a considerable improvement on last year's report and contains a number of thought-provoking suggestions and recommendations which will help to guide the work of the General Assembly, not only this year but in the future. The themes selected for consideration during this year's meeting, particularly the theme of priorities for marine scientific research, are extremely important and it was particularly pleasing to see the participation in the meeting of a broad cross-section of representatives from a number of the specialised agencies and other international organisations and bodies concerned with marine scientific research.

The subject of marine scientific research is, of course, a matter of great concern to the International Seabed Authority, which has a duty under the Convention to promote and encourage scientific research in the Area and to coordinate and disseminate the results of such research. I was therefore greatly encouraged at the level of support expressed by the participants in the informal consultative process for scientific projects aimed at investigating the biological diversity of the high seas and the biota, biotopes and habitats of the deep ocean, as well as the recognition of the need to better coordinate inter-agency responses regarding the sustainable use of living resources and the protection of biological diversity on the high seas.

Two of the particular issues which I believe will need to be addressed through better coordination are the need to clarify certain aspects of the regime for marine scientific research as well as the question of how to deal with newly-discovered genetic resources.

The basic principle set out in the Convention is that all States and competent international organisations have the right to conduct marine scientific research subject to the rights and duties of other States as provided for in the Convention. This broad principle is justified by the need to increase our knowledge of the marine environment and the benefit of such knowledge to mankind as a whole. In the context of the International Seabed Authority, for example, marine scientific research will be an essential tool in providing the Authority with the information it needs to fulfil its obligations to protect and preserve the marine environment under article 145 of the Convention, as well as providing the basic information necessary in order to

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effectively regulate prospecting, exploration and exploitation of the resources of the Area.

The problem is that, while there is a freedom to engage in marine scientific research on the high seas and in the seabed, mineral resource prospecting and exploration in the Area are regulated through the Authority. The Convention fails to adequately distinguish between the terms 'marine scientific research', 'prospecting' and 'exploration', nor does it make a distinction between 'pure' and 'applied' scientific' research. The problem becomes even more acute when we consider the new scientific discoveries that have been made in recent years, particularly the deep sea vents, which comprise both mineral resources (polymetallic sulphides) and genetic resources in the form of rich biological communities of unknown potential use to science. Here we have not only a very real conflict between true marine scientific research and mineral prospecting, but also the potential for multiple use conflicts between, for example, deep seabed miners, so-called bioprospectors, and the proper conservation and management of the deep ocean environment.

Clearly, there is a close relationship between the conduct of activities relating to non-living resources, for which the Authority has responsibility, and the sustainable use of living resources of the deep ocean. Indeed, the Authority has the duty, under article 145 of the Convention, to adopt appropriate rules, regulations and procedures for the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment. In this regard, it is therefore critical at this early stage that the various interests and agencies involved cooperate to the maximum extent possible.

I would like to comment briefly on draft resolution A/56/L.18 relating to the Fish Stocks Agreement. As one who was closely associated with the negotiation and adoption of this important Agreement, as chairman of the Conference, I feel very gratified that the Agreement will enter into force in the next few days. The Agreement is an essential complement to the 1982 Convention as it relates to conservation and management of fisheries resources. Together with the various instruments adopted by organisations such as the Food and Agriculture Organisation (FAO), the Agreement has already had a profound effect on fisheries management. It has become the reference point for the review of fisheries management organisations worldwide and has been used as the basis for the establishment of at least two important regional fisheries management organisations in the Western and Central Pacific Ocean and in the South-East Atlantic Ocean.

I particularly welcome the reference In the draft resolution to the provisions of article 36 of the Agreement. This is a very important provision, which calls for a conference to be convened four years after the date of entry into force in order to review and assess the adequacy of the provisions of the Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions to address any continuing problems in the conservation and management of the fish stocks to which the Agreement applies. I am encouraged to see that the resolution recognises the importance of this process and requests the Secretary-General to report annually on the implementation of the Agreement.

A major problem in fisheries today is illegal, unregulated and unreported fishing which the draft resolution rightly addresses. The draft resolution also requests flag States to exercise effective control over fishing vessels flying their flags, focusing on the primary responsibility of the flag State and the use of all available jurisdiction in accordance with international law. While the efforts of FAO and International Maritime Organisation (IMO) in this regard are to be commended, the fact is that in many cases flag States are not in a position to control and prevent illegal, unregulated and unreported (IUU) fishing, particularly if they are flags of convenience. It is well known that flags of convenience are invariably used as a device by the owners of fishing vessels to avoid compliance with conservation and management measures. It is useful to observe here that of the five cases on prompt release of vessels under article 292 of the Convention that have come before the Tribunal, all have involved fishing vessels flying flags of convenience. The problem of illegal, unregulated and unreported fishing cannot be tackled simply by concentrating on the definition of 'genuine link' because that concept has wider implications and concerns all types of vessels, and it is therefore not surprising that any attempt to tinker with the idea of defining the 'genuine link' invariably meets with formidable roadblocks. The conservation and management of fisheries resources is very much a problem of the fisheries sector and must be dealt with in that context. In this modern day of free movement of labour and capital, it is no longer sufficient in the case of fishing vessels to rely on flag State control alone. The reality is that the primary culprits are the vessels and the masters of such vessels, who are not always nationals of the flag State. We have to therefore tackle this festering problem head-on by making owners and masters equally responsible for the activities of the fishing vessels under their ownership, direction and control. This is not a radical suggestion. It has been used in the context of other types of activities in the oceans. For example, in the case of oil pollution, the owners of tankers and the owners of the cargo are held responsible for oil spills (International Convention on Civil Liability for Oil Pollution Damage, IOPC Fund Convention). There is no reason why owners and charterers of fishing vessels and those who actually control the vessels, the masters, should not be held similarly responsible. This is an area of fishing law the development of which needs urgent attention if we are serious about taking effective measures to deal with the problems of IUU fishing.

I am pleased to see the reference in draft resolution A/56/L.17 to the forthcoming twentieth anniversary of the opening for signature of the Convention in 2002 and I look forward to participating in the commemoration of this significant event in the life of the Convention.

May I conclude by once again thanking all those who have spoken earlier in support of the Authority. I look forward to the continued and constructive participation of member States in the future work of the Authority.