A Regional Approach Towards the Management of Marine Activities

Some Reflections on the African Perspective – Comment

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Mr. Chairman, I would first of all like to execute the pleasant duty of saying what an auspicious coincidence it is, that the Max Planck Institute for Comparative Public Law and International Law should be observing its 70th anniversary simultaneously with the coming into force of the new legal regime for the oceans, as Prof. Wolfrum reminded us yesterday. In fact I had thought that the 70th anniversary was this year, but as he pointed out, it was last year, 1994. The occasion could not have been more auspicious, and I would therefore like to congratulate you and the Institute. My felicitations also go to the Institute for the role it has continued to manifest in matters relating to ocean space. The fact of our having been brought here together for these few days is evidence of the Institute's interest in promoting international peace and security and in helping us understand the provisions of the Law of the Sea Convention much better. Whatever may have been the purpose of this symposium, one thing I can say with certainty is that I have benefitted from it; and for this I would like to thank you, Mr. Chairman, as well as the Max Planck Institute.

I found the presentation by Prof. Kwiatkowska extremely stimulating, and would like to commend her both for her comprehensive paper and for the fact that she, like the Institute, has continued to keep faith with Africa. In spite of the fact that she could have been elsewhere this morning, she decided to take on the task of presenting the African perspective on the Law of the Sea.

My first reaction to the paper which, as I have said, I consider comprehensive, is to reiterate the African position in relation to the Law of the Sea negotiations. That position was not very different from that of the other members of the International Community. Most of the African States approached the Law of the Sea negotiations and the matters pertaining to ocean space against the background of a conviction that the problems of the ocean are closely interrelated and need to be considered as a whole. The negotiations which eventually resulted in the Law of the Sea Convention are evidence of the commitment of African States to elaborate and construct a universal regime for the ocean acceptable to the members of the international community as a whole.

I would, however, like to make one or two general comments in the light of the developments which have taken place since the Convention was adopted in 1982. As must have been realized when the names of signatories to the Implementation Agreement were read out yesterday, most African States supported that Agreement, although one or two caveats would be in order, notwithstanding. First of all, it is my considered opinion that full justice was not done to the objective nature of that Agreement, particularly in its preamble, where ideological changes that have taken place in the international community are proffered as one of the reasons for the new Implementation Agreement. It is my view that the Implementation Agreement could be justified on an objective basis. With the passage of time or changed circumstances – *clausula rebus sic stantibus* – it was inevitable that a legal instrument as diverse as the Law of the Sea Convention would have had to be adapted to take on board technological developments and objective realities. The Convention itself took almost 20 years to negotiate and since that time, some 12 years have gone by since it was signed. Time must, therefore, have had its effect on it. It was reasonable that the necessary adaptations should have been made to bring the Convention into line with modern realities, if the original of a universal Convention were to be realized and if participation were to become universal. The Convention was elaborated under the existing conditions and in accordance with the scientific data then available. Those conditions have changed and so have the data. It would have been

approriate for the Convention to be brought up-to-date. On the other hand, I am relieved that some of the fundamental principles of the Convention – such as the common heritage of mankind – have been reaffirmed. Or to put it differently in jurisprudential language, the principle of distributive justice – which I believe to be common to all legal systems – was retained.

African States, like the rest of members of the G77 developing countries, had decided to participate in the exploration and exploitation of the newly found ocean space in the hope that it would contribute to their economic development as the least endowed members of the international community in economic terms.

Reacting to the paper itself, I agree that the Convention should be viewed as part of the process of the peaceful settlement of such maritime disputes as had arisen and as might arise in the future, some with a potential to endanger international peace and security. It should be recalled that there had been a proliferation of maritime disputes prior to the negotiations; a proliferation of maritime claims in various parts of the world. This trend was viewed as a source for future conflicts. So the Convention put paid to this danger and achieved its objective in that respect, providing a framework through its rules and regulations, in accordance with which States agreed to regulate their competition for ocean space, which had emerged towards the end of the 60s and the beginning of the 70s. Many such claims and disputes have since been regulated and resolved in accordance with the Convention. A number of maritime delimitation claims have also been resolved accordingly. It should be recalled that on the eve of the negotiations leading to the adoption of the Convention there had been a plenitude of competing maritime boundary claims, but with the adoption of that instrument, a regime was put in place to regulate such claims. From that perspective the Convention has indeed played and continues to play a useful and determining role in conflict resolutions.

Moreover, in terms of the partitioning of the ocean space, the extent of the territorial sea, the exclusive economic/fishery zone, and the continental shelf, the Convention has helped to bring stability and predictability to this area. A number of African States have extended their territorial sea-limits to the 12-mile zone. Others have gone beyond that and have taken measures to realise the potential benefits of the exclusive economic/fishery zone. It is, however, a matter of regret that, because of their technological or management incapacity, many of them have so far not been able to exploit the resources of the maritime space under their juris-

diction to their advantage. Most African coastal States have not realised much of an economic return in terms of the exploration and exploitation, both of the living and non-living resources of their territorial sea or exclusive economic zone. Given this lack of economic benefit, the Economic Commission for Africa has recommended a strategy to African States in terms of ocean development, as outlined in the paper, for the realization of those objectives. However the strategy, sound as it is, sound as the recommendations are, will remain just a piece of paper unless African States are able to improve their technological and management capacity to enable them to realise their entitlements under the Convention. How to achieve this objective is the major preoccupation. The primary responsibility rests, of course, with the African States themselves. An additional requirement is the cooperation and input of the international community, as well as that of international institutions such as the United Nations Department of Ocean Affairs, the Food and Agricultural Organization in terms of fisheries industrial development, UNESCO, and institutions such as Max Planck, in terms of promoting knowledge of the Convention. A detailed and technical knowledge of the Convention is not so pervasive throughout the continent as to make it possible for States to take advantage of its provisions or of all that it has to offer. Hence, the need for a greater effort to be made to disseminate knowledge about it. The Max Planck Institute, together with other similar institutions could play a very useful role in helping to train the new African cadres now emerging to become familiar with the Convention. Through such knowledge, African States could be in a position to include ocean development as a component of their overall economic development plans.

Other outstanding issues raised in the paper relate to the number of domestic legislations of African States that have either not been repealed or brought into line with the Convention, in spite of the fact that some of these States have signed and ratified both the Convention and/or the Implementation Agreement. While this is true in some cases, it has, however, to be borne in mind that at the time at which most of those declarations were made, the States concerned were not – and are still not – in a position to enforce them. There would thus appear to be no deliberate intention not to comply with the Convention, but rather a situation in which, for one reason or another, those States have not been able to enact the necessary legislative measures so as to comply with the relevant provisions of the Convention. Every effort should, however, be made to ensure that national legislations are in accordance with the provisions of the Convention.

In the case of Sierra Leone, for example, I hope the necessary legislation will be enacted before long to bring it in line with the Convention. On the other hand, a number of African States have already enacted legislations in line with the provisions of the Convention relating to the territorial sea, the exclusive economic/fishery zone, and the continental shelf – evidence of their compliance with the Convention.

Sierra Leone, together with some other African States, has been participating in the South Atlantic Cooperation Zone together with Brazil and other Latin American countries such as Argentina and Uruguay. The north-western belt of the African coastline is considered to be one of the richest in terms of fisheries deposit. Countries belonging to the zone have agreed to cooperate in the implementation of the Convention to their common benefit. Such cooperation could be viewed in the context of the regional exclusive economic zone, as envisaged in the Convention, or the effect that if a State cannot individually on their own exploit the resources of their exclusive economic zone, such resources could be exploited on a regional basis with other States of the region or sub-region. Such an approach could allow the land-locked and geographically disadvantaged countries – States most of which are in Africa – to cooperate with coastal States in the exploration and exploitation of the EEZ, while at the same time they are able to realise their right of transit passage and to make use of the port facilities of coastal States.

There is also the reference to overlapping claims, i.e., that in spite of the provisions of the Convention, most African States have still not carried out the necessary delimitation of their maritime spaces, suggesting a potential source for future conflicts. Again, a degree of technological know-how is required if such an operation is to be carried out.

The other point to be considered is the contribution of the International Court of Justice (ICJ) to the solution of some of the maritime inter-State disputes that have arisen in the region. Some African States have taken advantage of the Convention and brought their disputes before the Court. Libya has already repeatedly appeared before the Court, requesting the Court to resolve its competing maritime claims with neighbouring States. A considerable amount of jurisprudence has developed in this area relating to maritime delimitation and the continental shelf (I.C.J. Reports, 1984).

Guinea-Bissau and Senegal also submitted their maritime dispute to the Court for adjudication (I.C.J. Reports, 1991). The latest African maritime dispute before the Court has been brought by Cameroon

against Nigeria. The Convention would appear relevant in resolving this dispute as well.

Finally, I would like to conclude by saying that what Africa needs to be able to benefit from the new regime of the ocean space, is a measure of international cooperation, including technological and financial investment, in terms of the exploitation of both the living and non-living resources. There is not much going on in terms of prospecting for hydrocarbons in the region. The African region has not been sufficiently explored to be able to determine its hydrocarbon content or to ascertain what other mineral resources may exist in the area. If Africa is to benefit from the Convention in which it played a by no means insignificant role, there is a need for international cooperation in terms of investment – technological, financial and management.