

Excellencies, distinguished delegates,

At the outset, I would like to thank the President of the General Assembly, His Excellency Mr Abdullah Shahid, for organizing this high-level commemorative meeting to mark the 40<sup>th</sup> anniversary of the adoption of the United Nations Convention on the Law of the Sea, and for giving me the opportunity to address you this morning.

2022 is an important year for the world's oceans.

Negotiations are ongoing at the United Nations relating to an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; at the International Seabed Authority for the elaboration of a mining code for mineral resource activities in the Area; at the World Trade Organization to address the issue of fisheries subsidies; and negotiations will soon commence at the United Nations Environment Assembly for the drafting of a new plastic pollution treaty. The outcome of each of these negotiations will have a tremendous impact on how we use the ocean and protect the marine environment in years to come.

With an ever-growing interest in the ocean, the remit set down in the Convention's preamble to create a legal order to promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of its resources, the conservation of living resources, and the study, protection and preservation of the marine environment, has never been more relevant than today.

This makes it a particularly pertinent time to review the legal regime established by the Convention, to evaluate its performance and consider whether it remains adequate to meet the challenges that lie ahead.

It goes without saying that 40 years ago our understanding of the ocean and its associated challenges and opportunities was a long way from where we are now. Many of the matters regulated under the Convention, such as the establishment of the various maritime zones including the Area, navigational rights, the protection and preservation of the marine environment, the sustainable exploitation of fisheries

resources, and marine scientific research, represented major innovations at the time of its conclusion and are now an established part of the legal regime of the oceans, thanks in no small part, to the work of the institutions created under the Convention. However, some of the most pressing issues in the law of the sea today were either unknown or unconsidered at the time of the negotiation of the Convention. Legal issues arising in relation to climate change, human rights at sea, plastic pollution, bioprospecting for marine genetic resources, ocean-based carbon dioxide removal, and maritime autonomous vessels raise the question of whether the legal regime established by the Convention remains adequate 40 years later.

Excellencies, distinguished delegates, I am of the view that the Convention would continue to be a valuable legal framework for the regulation of the ocean in future.

The Convention was designed as a flexible framework for the international governance of maritime activities. Since the entry into force of the Convention, the law of the sea has evolved in numerous ways, both as a result of the jurisprudence of courts and tribunals established under the Convention and through other more formal processes.

The adoption to date of two implementing agreements under the auspices of the Convention – the 1994 Agreement relating to the Implementation of Part XI of the Convention; and the 1995 Implementing agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks, demonstrates how the Convention’s standing as a framework convention has enabled both the further development and the elaboration of provisions relating to seabed mining and the conservation and optimum utilization of fisheries resources.

This flexibility is also evident in the “rules of reference” incorporated into the Convention, in particular into the Convention’s provisions dealing with the protection and preservation of the marine environment. These references to “generally accepted international rules and standards” open the door for the Convention to be aligned with the latest standards adopted by international bodies such as the International Maritime Organization. Such references may also play a role in relation to agreements adopted within the context of climate change.

In this sense, it is evident that the Convention is a living and not a static instrument. The capacity of the Convention to regulate new legal issues is also evident in the work of the judicial bodies provided for under Part XV of the Convention, and in particular, in the jurisprudence of the International Tribunal for the Law of the Sea.

The approach of the Tribunal towards the interpretation or application of the Convention has been both consistent and innovative. From its initial case law on the arrest and detention of vessels and crews, in which the Tribunal provided valuable clarification on the issue of the nationality of ships and developed the notion of “ship as a unit”, the Tribunal has gone on to deal with important aspects of resource exploitation, whether fisheries, or the non-living resources of the Area, maritime delimitation and the protection and preservation of the marine environment.

The 2015 Advisory Opinion of the Tribunal, delivered in response to a request submitted by the Sub-Regional Fisheries Commission, relating to illegal, unregulated and unreported fishing, provides a pertinent example of how the framework of the Convention can be applied to current legal issues. The issue of flag State responsibility for IUU fishing activities is not directly addressed in the Convention and therefore needed to be examined in light of general and specific obligations of flag States under the Convention for the conservation and management of marine living resources. The Tribunal’s Advisory Opinion established that a flag State is under a due diligence obligation to take all necessary measures to ensure compliance with the relevant laws and regulations and to prevent IUU fishing by vessels flying its flag, and that the flag State can be held liable if it fails to comply with its due diligence obligations concerning IUU fishing activities. By clarifying the legal obligations of flag States, the Tribunal has demonstrated the capacity of the Convention to regulate new uses of the oceans.

Looking forward, I therefore see enormous potential for the Convention to be applied to new challenges, or indeed for the Tribunal, in fulfilling its mandate concerning the interpretation or application of the provisions of the Convention, to address previously unconsidered legal questions. Allow me to briefly mention the pollution of the marine environment by greenhouse gas emissions as an example. The Convention does not contain any provisions specifically addressing the issue of climate change but it may be noted that article 192 of the Convention provides that “States have the obligation

to protect and preserve the marine environment.” Moreover, under article 194, paragraphs 1 and 2, of the Convention, States are required to “take all measures necessary” to “prevent, reduce and control pollution of the marine environment from any source” and to “ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment”.

Over the years, the Tribunal has developed the scope and content of the obligation set out in article 192 through its jurisprudence in the context of fisheries and activities in the Area, and it may well be called upon to add to this jurisprudence in the future. Thus, although certain legal issues were not contemplated at the time of the drafting of the Convention, the Convention may still provide guidance on how they can be addressed.

In conclusion, I consider that the drafters of the Convention deserve to be celebrated for their wisdom and foresight in creating a longstanding and adaptable legal regime also known as the “constitution of the seas and oceans”. The Tribunal is proud to serve the parties to the Convention as a guardian of this legal regime, fulfilling its role in assisting States with the peaceful resolution of any disputes which may arise, now and in the future.

Thank you for your kind attention.