

# HYDRO INTERNATIONAL INTERVIEWS TULLIO SCOVAZZI

## UNCLOS: Sharing Benefits

Sharing benefits arising from the exploitation of mineral resources of the deep seabed between developed and developing countries is one of the main goals of the United Nations Convention on the Law of the Sea (UNCLOS) says professor Tullio Scovazzi, professor of International Law at the University of Milano-Bicocca, Milan (Italy) and one of Italy's most renowned experts on UNCLOS.

*Professor, you are one of the most renowned Italian experts on UN Convention on the Law of the Sea (UNCLOS) issues. Can you tell the readers of Hydro international a little about your career and why you focused your studies towards this subject?*

I prefer to avoid speaking about myself. As I teach international law, let me quote a proverb current in Italy. It's "*chi sa, fa; chi non sa, insegna*" and it means "he who knows, does; he who doesn't know, teaches". But if you insist, I can say that, as an academic, I have been attracted by the international law of the sea since the beginning of my studies. Then I had the possibility to participate in a number of international meetings as legal expert representing Italy for certain international institutions. With regard to international law of the sea, besides its many concrete aspects, it is characterised by a great intellectual attraction, arising from the fact that it ranges from the historical heritage of the past to the potential achievements of the future.

*The UNCLOS is now operational but some important maritime states have not yet ratified it. In your opinion, what could be the reasons for such reluctance?*

The UNCLOS has been ratified by 158 states so far; that is the large majority of countries in the world. The main state that is not a party is the USA. The USA is not satisfied with Part XI of the Convention, which relates to the greatly innovative concept of the common heritage of mankind, which is the sharing of the benefits arising from the exploitation of mineral resources of the deep seabed with developing countries. I regret that, for now, the richest country in the world takes such an attitude. The reason for other states that haven't ratified yet is mostly due to specific circumstances, such as maritime delimitation issues.

*Article 76 of the UNCLOS states that after the Convention enters into force for a given State, it has 10 years to submit its claim for extending the limits of its continental shelf to the UN Commission on the Limits of the Continental Shelf (UNCLOS). Even if*

*10 years may seem a sufficient time frame, it may happen that a State cannot collect the hydrographic data on time for a reasonable submission of the claim. Can you suggest a legal instrument to avoid this inconvenience?*

The 10-year deadline for the submission of claims to the UN CLCS is not a rigid one. In 2008, the Meeting of the States Party decided to impose the deadline of 13 May 2009 in a flexible way, as the lack of resources made it difficult for a number of countries to meet the deadline. It was decided that countries need not complete their full submission by the deadline, but can transmit preliminary information indicative of the outer limits of the continental shelf, along with a description of the status of preparation and the intended date when they will make a full submission. In fact, the present problem is to find ways to enable the Commission to face its very heavy workload.

*Once a State has submitted its claim to the UN CLCS and has met all the requirements of the Commission, in which way is its claim internationally recognised?*

Under the UNCLOS, the limits of the continental shelf established by a coastal State on the basis of the recommendations of the Commission are final and binding. In case of disagreement by the coastal State with the recommendations of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission. This means that no outer limit of the continental shelf can be established without the consent of the coastal State concerned.

*In the Mediterranean there is no space for claiming any exclusive economic zone by any of the coastal States. Nevertheless, France and other countries established an ecological protection zone after the year 2000. How do you value that initiative? What are its advantages?*

The question is not fully correct. The fact that a State cannot claim a full-size 200-mile exclusive economic zone does not mean that it is prevented from proclaiming such a zone. Exclusive economic zones have been established in other semi-enclosed seas, such as the Baltic and the Caribbean. Some Mediterranean States have already proclaimed an exclusive economic zone. The establishment of such a zone is the best way to face the shortcomings of the regime of the high seas, that is the absence of coastal State jurisdiction and the application of a regime based on flag State jurisdiction. This regime means in several cases the triumph of flags-of-convenience jurisdiction, with some unhappy consequences, such as a first-come-first-served approach leading to unsustainable fishing activities and a gross disregard for measures needed to protect the marine environment. In conclusion, the establishment of exclusive economic zones by the coastal States and the consequent elimination of areas of high seas in the Mediterranean can only be seen as a very positive evolution towards a better governance of this sea.

*In addition, in the Mediterranean, there are several bottom sea area delimitation treaties in force. What are the rights of the States on these areas?*

The rights of the coastal State on the seabed adjacent to its territory (the continental shelf, in legal terms) have already been set forth in the 1958 Geneva Convention on the Continental Shelf and have been confirmed by the UNCLOS. They relate to the exploitation of mineral resources of the seabed and the subsoil thereof, as well as of the sedentary fishing resources. In the Mediterranean, some treaties of delimitation of the continental shelf have already been concluded by the two adjacent or opposite States concerned. In this case, the question is whether the limit in the superjacent waters should remain the same. Where no treaty exists, the States concerned should start negotiations to delimit their respective marine spaces (fishing zones, ecological zones or, better still, exclusive economic zones).

*How do you value the role of the National Hydrographic Offices and International Hydrographic Organization for the implementation of UNCLOS articles?*

There are several provisions in the UNCLOS that have a technical character and make use of concepts with a scientific nature (such as high tide, low-water mark, nautical chart, straight baselines, routes of navigation having certain navigational and hydrographical characteristics, continental shelf, etc.). The role of national and international oceanographic institutions should be recognised and strengthened to ensure the full implementation of the UNCLOS, especially by developing countries.

*Piracy has existed for many centuries already, but it has grown dramatically in recent years - especially off the coast of Somalia. Is the UNCLOS regime adequate to meet the challenges posed by piracy within and beyond the territorial sea of Somalia?*

The recent events off the Somali coast and the resolutions adopted by the UN Security Council to face piracy in this area show that the definition of piracy provided by the UNCLOS is too restrictive. In legal terms, acts of piracy can take place only beyond the 12-mile limit of the territorial sea. If this is the case, every State can seize the pirate ship, arrest the pirates and impose sanctions on them. However, if acts of depredation and violence are committed within the territorial sea of a coastal State, only this State is entitled to exercise its jurisdiction. This is the reason why many pirates are active within the territorial sea of a State incapable to exercise its jurisdiction, such as Somalia, or, if they act beyond, they try to return as soon as possible within the territorial sea of such State. The UNCLOS regime should be improved to meet the need to prevent and sanction piracy also within territorial seas, in case of persistent lack of law enforcement by the coastal States' authorities.

*You have participated in works related to the UNESCO Convention on the Protection of the Underwater Cultural Heritage that was adopted by UNESCO at its General Conference held from 15 October to 3 November 2001. What is the status of ratification of this Convention? How does this Convention consider the wrecks from the Second World War: they are not older than 100 years (the antiquity prescribed by the Convention) but represent a value for the Nations that fought that war? In which way can the remains of what are sometimes important ships, such as the battleships Bismarck (Germany) and Roma (Italy), be protected?*

The UNESCO Convention on the Protection of the Underwater Cultural Heritage entered into force on 2 January 2009 and is now binding in 26 States. It is a good convention, despite the complex character of some of its provisions. It even becomes extremely good if compared with the extremely bad regime provided for in Article 303, paragraph 3, of the UNCLOS. The latter can be intended as an incentive for the looting of the underwater cultural heritage, especially in the light of the application made by American courts of the so-called admiralty law. The fact that the UNESCO Convention applies only to heritage that has been underwater for at least 100 years does not prevent the adoption of national legislation providing for a shorter period. In the case of warships, their protection as war cemeteries is also possible under national legislation.

*Finally, the UNCLOS is a matter of great interest, especially now when issues of marine environment preservation and exploitation, marine transport (with 95% of merchandise being transported by sea) and naval operations have increased dramatically. Do you see a future for young lawyers in finding a job in this particular field?*

*Do you have a message for them?*

There is a certain interest among students and young lawyers for law of the sea. Due to the progressive growth of maritime transportation of goods and commodities, private maritime law remains a promising field for lawyers, as it has been in the past. Today, questions of compensation for damage arising from pollution of the sea may determine litigation at both the domestic and international level. It is much less likely for a lawyer to be involved in litigation relating to public international law of the sea, even if cases of maritime delimitations are more frequent today than in the past. In addition, there are possibilities for finding an occupation within international organisations that are also responsible for maritime activities, such as the UN, International Maritime Organization, Food and Agriculture Organization (FAO) or the European Community.

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