

THE ACHIEVEMENTS OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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We inhabit a Blue Planet.

The ocean covers nearly three-quarters of the Earth. The ocean is the source of the fresh water which is the fundamental ingredient of existence for mankind. The living resources of the ocean are an essential source of food – more than a billion people in fact depend upon fish as a major source of protein – as well as economic wealth.

The non-living resources of the ocean, such as oil, gas and minerals, provide the energy and raw materials that support our very existence.

The ocean simultaneously divides us by creating natural boundaries between countries yet connects us by acting as a marine highway, carrying most of the world's trade and electronic communications, and providing the means by which people and cultures moved and mingled.

Throughout history, the immensity of the global ocean has permitted its use by mankind for multiple simultaneous and conflicting activities. Among the more important of these activities are transportation, communication, scientific research, and resource production. The ocean has of course also served as a space in which navies extend and project sovereign power abroad and an arena for conflict, conquest and domination.

For centuries, it was assumed that the sheer vastness of the ocean, and its apparently inexhaustible productivity, exceeded human capacity for use and abuse. It is only in the last fifty years that we have begun to realize that the old assumptions are no longer valid. Thanks to

rapid advances in science and technology, we now know that the ocean fundamentally affects the planet's weather and climate. It redistributes heat from the tropics to cooler regions, which profoundly affects the habitability of those lands. It serves as a massive sink for pollution and carbon dioxide emissions, thereby slowing global warming, but at the same time wreaking havoc upon its delicate ecosystems.

It is against this background that we must measure and evaluate mankind's attempts to establish a public order for the ocean through the rule of law.

The current international ocean governance framework has its roots in sixteenth century European imperialism. As States competed for territory and essential trade routes, two contradictory philosophies of ocean use collided. On the one hand, Spain and Portugal claimed ownership of vast areas of ocean space and a monopoly on trade in those areas. On the other hand, proponents of free trade, such as the Dutch East India Company, emphasized the 'freedom of the seas', a philosophy developed primarily to provide an ideological justification for Dutch imperial ambitions in the East Indies. Similar motives led the Lord Protector of England, Oliver Cromwell, to declare war on Spain in 1664 and to attack Spanish trading routes in the West Indies. One outcome of this, of course, was the capture of the island of Jamaica by the English in 1665, to become the 'dagger pointed at the heart of the Spanish Empire'.

Over the next three centuries, the concept of the freedom of the seas became the dominant theory in maritime law, subject only to the exception that the coastal State had sovereignty over a narrow band of coastal waters over which it was able to exert control. Related to this was the concept that ships represented floating islands of sovereignty, and that the authority of the flag State over the activities of the ship and the individuals on board was absolute except in certain well-defined and exceptional circumstances, such as piracy.

During the twentieth century traditional uses of the ocean multiplied exponentially. For example, in the 25 years from 1950 to 1975, both the world fish catch and the gross tonnage of merchant ships quadrupled. The discovery of oil under the continental shelf of the United States led President Harry S. Truman in 1945 to proclaim that the United States had the exclusive right to explore and exploit the mineral resources of its continental shelf beyond the traditional three-mile limit. This was soon followed by other unilateral declarations. In the Pacific, Chile, Ecuador and Peru declared extensions of their maritime jurisdictions to 200

nautical miles, including jurisdiction over migratory fish stocks such as tuna, sparking confrontation with the powerful United States tuna fleet based in San Diego, California. In the North Atlantic, Iceland's declaration of a 200 nautical mile fisheries zone led to the so-called 'cod war' with the United Kingdom as fishermen were excluded from their traditional fishing grounds.

These unilateral declarations were of growing concern to the major maritime powers, particularly the United States and the Soviet Union, who feared that their traditional freedom of navigation might be severely curtailed. The greatest concern of all was the potential loss of high seas freedoms in strategically important straits used for international navigation, such as the straits of Malacca, Gibraltar and Hormuz.

The urgent need for a new international public order for the ocean was already recognized by the League of Nations and, after a temporary hiatus as a result of World War II, by the new United Nations. A series of conferences beginning with the 1930 Hague Conference and ending with the first two United Nations conferences on the law of the sea, in 1958 and 1960, made some progress in establishing an agreed set of rules on maritime jurisdiction, but the results of these conferences were never widely accepted.

Fortunately for us, dissatisfaction with the outcomes of the 1958 and 1960 conferences, combined with rapid geopolitical changes taking place at the time, including decolonization, nuclear proliferation, increases in unilateral claims to extended maritime jurisdiction and calls for more equitable allocation of resources, meant that issues relating to oceans remained at the forefront of the global political agenda throughout the 1960s and led to the decision to convene a third United Nations conference on the law of the sea in Caracas in 1973.

UNCLOS III, as the conference became known, soon became the most complex and ambitious multilateral conference convened by the United Nations to that date. The conference met almost continuously from 1973 to 1982 and resulted in the adoption, in April 1982, of the United Nations Convention on the Law of the Sea, which was opened for signature at Montego Bay, Jamaica, on 10 December 1982.

The Convention is a remarkable achievement. In purely legal terms it has resolved a number of critical issues, some of which had eluded agreement for centuries. Let me briefly review some of the key achievements of the Convention.

First and foremost, the Convention settles for once and for all the breadth of the territorial sea at 12 nautical miles. It also secures for coastal States resource jurisdiction in a 200 nautical mile exclusive economic zone without limiting other legitimate uses of that zone by the international community. So far, 136 States have declared exclusive economic zones in accordance with the Convention.

The Convention establishes a special regime for archipelagic States, greatly increasing the size of the maritime areas of such States. In the case of Jamaica, for example, the archipelagic waters cover an area greater than the size of the land area.

At the same time, in order to facilitate international commerce, the Convention provides a guaranteed right of passage for international navigation in those waters as well as rules to ensure unhampered passage of vessels and aircraft through and over vital straits used for international navigation around the world. The result is that over 90 per cent of international trade takes place by sea, as well as 95 per cent of global Internet traffic through submarine cables.

In perhaps the greatest redistribution of global public goods in human history, the Convention declared the mineral resources of the seabed beyond national jurisdiction to be the common heritage of mankind, to be administered through an international organization established for the express purpose of ensuring that the economic benefits from the exploitation of those minerals are shared equitably for the benefit of mankind as a whole. At the same time, in giving States with certain geographic characteristics jurisdiction over some 23 million square kilometres of outer continental shelf, the Convention introduced a unique system for sharing the revenue from mineral exploitation in those areas.

The Convention contains the most comprehensive rules for the protection and preservation of the marine environment and imposes a duty on States to protect the oceans from all sources of pollution. It also imposes a duty on all States to ensure, through proper conservation and management measures, the long-term sustainability of fish and other marine living resources.

From the earliest voyages of scientific discovery, the quest for knowledge of the marine environment has been insatiable. The Convention sets out clear rules for the conduct of marine scientific research and other survey activities in the various maritime zones that have greatly increased the potential for international scientific collaboration for the benefit of all. In any

given year, hundreds of thousands of oceanographic observations relating to sea temperatures, currents, salinity and chemistry are collected, analysed and shared thanks to the provisions of the Convention.

The true success of the Convention, however, lies in its widespread, consistent and uniform application in State practice. Notwithstanding attempts by a few to deviate from its provisions the fundamental principles of the Convention are being applied in State practice. Its universal acceptability is to be seen in the number of States Parties, which exceeds all expectations. Out of 193 members of the United Nations, only 34 are not yet parties to the Convention.

The Convention is also recognized as the pre-eminent source of international law of the sea by the International Court of Justice, the International Tribunal for the Law of the Sea, and other judicial or arbitral bodies which deal with marine-related issues.

In this regard, the Convention is truly the constitution for the ocean. It has earned its place as one of the great achievements of the international community and an integral part of the global system for peace and security, of which the Charter of the United Nations is the foundation.

This is not to say that there are no challenges and threats to the public order of the ocean. There are many. The world we live in now is very different from the world of 1982. Many of the problems we face now could not have been anticipated in 1982.

Recently, the global population reached 7 billion. As many as 40 per cent of these people live within 100 kilometres of the coast. Human impacts on oceans and coasts have destroyed 20 per cent of mangroves and put more than 60 per cent of tropical coral reefs under direct threat. According to FAO, 85 per cent of the world's fisheries are fully exploited, over-exploited or depleted with some populations, such as Atlantic Bluefin tuna having declined by more than 80 per cent since 1950. Over 400 'dead zones' exist in the world – areas where algal blooms have depleted the water of oxygen. The infamous garbage patch in the North Pacific gyre covers an area twice the size of Texas. In contrast, less than one per cent of the ocean is protected.

Profound political and economic changes bring new challenges as well. Massively increasing demand for new and secure sources of metals, including the rare earth elements needed to support new technologies, has created new interest in the exploitation of seabed minerals, especially polymetallic sulphides located on mid-ocean ridges near hydrothermal vents and cobalt crusts located on seamounts. The melting of the Arctic ice cap will open the pristine

Arctic Ocean to fishing, international shipping and the development of an estimated 22 per cent of the world's remaining undiscovered, but technically recoverable hydrocarbon reserves. At the same time, there is increasing interest in the potential of new categories of living resources, including highly-specialized microbes and chemosynthetic organisms to supply medicines and food supplements from some of the most vulnerable marine ecosystems.

At the other end of the spectrum, poverty and war have led to a resurgence of piracy which threatens the integrity of strategic shipping lanes.

Finally, the one threat that overshadows all others in terms of its magnitude and potential consequences is the potential impact of climate change and acidification on the ocean. Rising sea temperatures are already having a major influence on the distribution of marine species and, as with rising temperatures on land, on the timing of the cycles of life in the ocean. Ocean acidification is a direct result of the absorption of carbon dioxide by the ocean and threatens all marine animals and plants that secrete calcium carbonate as part of their structure.

It could easily be argued that the inability of States so far to manage ocean resources in a sustainable and environmentally responsible manner represents a massive failure of international governance and cooperation.

Lest this sound too depressing, let me conclude on a more optimistic note.

I believe it is not yet too late for coordinated action to deal with these problems. In this respect, there is one vitally important thing on which all States are agreed. That is that, as far as the legal framework is concerned, the 1982 Convention is clearly recognized as the pre-eminent source of the international law of the sea. It is truly a constitution for the oceans in the sense that it sets out the basic structure, or framework, for ocean management within which all States must operate.

What is most interesting to observe is that, although the rules embodied in the Convention developed out of predominantly western precepts and practices, the Convention also in many ways marked the end of 600 years of Western hegemony and the beginning of a more balanced and harmonious approach to public order in the ocean. It is perhaps no coincidence in this respect that the largest contributor to the multilateral task force operating off Somalia to keep international trade routes open is not the Royal Navy or the French or US navies, but the Chinese navy.

The norms embodied in the Convention are precise, but it also establishes principles which lend themselves to further development of the law of the sea. It reflects a delicate balance between competing interests in the use of the ocean and its resources, but contains an in-built flexibility which allows for the development of new norms within the framework of the Convention in response to evolving circumstances.

Within these parameters, the Convention has created the conditions necessary for resolving the contemporary problems of ocean management and that is why it must be regarded as one of the greatest and lasting achievements of the international community.
