

CIL-MPA Workshop
Ocean Governance & International Shipping
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Session 1.

Trends in Marine Environment Governance

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Outline of Presentation

1. Trends at the United Nations
2. Trends in Decisions of Courts & Tribunals
3. Trends at the IMO
4. Trends in Southeast Asia
5. CIL Research & Activities

Part 1.

Trends at the United Nations

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Trends at United Nations -1

1. Increased interest in protection of marine environment, including marine biological diversity
2. Increased interest in EIAs, including cumulative impact assessments
3. Increased interest in area-based management tools for marine & coastal areas, including Marine Protected Areas
 - Led by COP of 1992 Convention on Biodiversity
 - Call for 10% of coastal and marine areas to be marine protected areas by 2020

Trends at United Nations - 2

4. Move to identify “gaps” and loopholes in UNCLOS on the protection & preservation of the marine environment in areas outside national jurisdiction
 - 1) BBNJ negotiations at the UN
 - 2) Obligations of States to preserve & protect the Marine Environment of the High Seas
 - 3) ISA is drafting a Code for exploitation of “The Area”
5. Increased concern with two major effects of Climate Change on the oceans:
 - 1) Ocean warming
 - 2) Ocean acidification

Trends at United Nations -3

6. Effects of Climate Change on the Oceans:
 - 1) Rising sea levels
 - 2) Erosion of coastlines
 - 3) Damage to ecosystems
 - 4) Loss of marine biodiversity
 - 5) Melting of sea ice in Arctic and opening of new routes for international navigation
- Theme of 18th meeting of UN Open-Ended Consultation Process on Oceans & LOS is **“The Effects of Climate Change on the Oceans”**

7. Increasing concern that the health of the oceans and marine biodiversity are negatively affected by marine pollution from land-based sources and from ships, including **marine debris, plastics and micro-plastics**
 - This was the focus of 17th Meeting of the UN Informal Open-ended Consultative Process in 2016
8. **Sustainable Development Goal 14** – Conserve and Sustainably Use Oceans, Seas and Marine Resources for Sustainable Development

Part 2.

Trends in Decisions of Courts & Tribunals

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Trends in Court Decisions - 1

- Courts and Tribunals are reading the 1992 Rio Principles on International Environmental Law into UNCLOS:

1. Duty to Cooperate

- A State has a duty to cooperate with regard to planned activities under its jurisdiction & control that may have significant impact on marine environment of other States – duty to **notify** and **consult** the potentially affected State(s)
 - *MOX Plant Case* (Ireland v UK, ITLOS, 2001)
 - *Land Reclamation Case* (Malaysia v Singapore, ITLOS, 2003)

2. Duty to conduct Environmental Impact Assessments

- ITLOS has ruled that “the obligation to conduct an EIA is a direct obligation under the Convention and under customary international law.”
- States have a duty to conduct an EIA for any activity within their jurisdiction and control that may cause significant harm to the marine environment
 - and a duty to make the results of the EIA public
- 2011 ITLOS Advisory Opinion on Activities in the Area & 2016 South China Sea Arbitration

Trends in Court Decisions - 3

3. **General “due diligence” obligation** to ensure that activities within their jurisdiction & control do not harm the marine environment, including the protection and preservation of rare or fragile ecosystems as well as the habitat of endangered species
 - Is an obligation of **due diligence**
 - must adopt appropriate rules and measures to protect the marine environment
 - must also adopt a certain level of vigilance in enforcement & administrative control
 - South China Sea Arbitration 2016

4. Duty to Cooperate at Regional Level to protect and preserve the marine environment

- Tribunal in SCS Cases also ruled that China was in breach of its obligation to cooperate with other States bordering the South China Sea because it made no attempt to cooperate with other States to protect and preserve the marine environment in the SCS
 - Article 197. Cooperation on Regional Basis
 - Article 123. Cooperation in Semi-Enclosed Seas

Trends in Court Decisions - 5

- Trend is likely to continue – cases will further clarify the responsibility and liability of flag States, coastal States and port States to protect and preserve the marine environment
- The UNCLOS dispute settlement system can be utilized in two ways on issues concerning provisions on the marine environment:
 - Institution of compulsory binding dispute settlement procedures for disputes between States parties on provisions concerning the marine environment
 - Requests for an ITLOS Advisory Opinions under an international agreement

Part 3.

Trends at the IMO

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Trends at IMO - 1

1. Increasing concern with marine environment
2. Merger of “marine pollution” and preservation of the marine environment and marine biodiversity, including fragile ecosystems
3. Blurring of distinction between IMO measures on navigational safety & marine pollution
 - Measures on Transit Passage & ASLP
 - Routeing Measures under Chap V of SOLAS
 - Particularly Sensitive Sea Areas (PSSAs)
 - Art 234 on Ice-Covered Areas

Trends at IMO - 2

4. Call for further reducing greenhouse gas emissions from ships
5. Call for regulation of noise from ships
6. Implementation of the Ballast Water Convention
7. Call for new convention to address the issue of invasive species from hull fouling on ships
8. Call to study relationship between UNCLOS, the IMO Conventions and other international conventions
 - 1992 Convention on Biological Diversity
 - 1972 London Convention and its 1996 Protocol
 - Other conventions relating to marine & coastal environment (eg, Ramsar convention)

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Trends at IMO - 3

8. Call for action concerning 1972 London Convention and its 1996 Protocol (IMO serves as Secretariat)
 - Call for States to ratify the 1996 Protocol
 - Call for measures to regulate geo-engineering
 - Call for measures to regulate carbon sequestration
 - Call for coastal States to monitor and report on the disposal of waste in internal waters, including the disposal of waste from dredging

Part 3.

Trends in Southeast Asia

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Trends in Southeast Asia - 1

1. Proposals for restrictions on shipping to preserve and protect the marine environment
 - PSSAs proposed to IMO by Philippines, Malaysia, Vietnam & Indonesia ?
 - PSSAs in Straits and Archipelagoes?
 - Other types of marine protected areas?
2. IMO-IPIECA Global Initiative on Southeast Asia
3. 2014 ASEAN MOU on Oil Spill Response
4. Proposal for new study on State of Marine Environment in SOMS ?

Trends in Southeast Asia - 2

5. Increased focus on implementation of MARPOL ?
 - “Mystery oil spills” polluting Bintan beaches
 - MARPOL “Special Area” in SOMS ?
 - Adequacy of reception facilities?
 - IMO mandatory audit scheme
6. Focus on implementation of Ballast Water Convention
7. Cooperation to combat piracy, armed robbery against ships and other international maritime crimes

Part 4.

CIL Research & Activities

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CIL Research & Activities – 1

Governance of Arctic Shipping

- Initial funding from MFA to engage Capt. Ashley Roach as consultant to develop Arctic Programme
- **Arctic Guide** prepared and continually updated by Capt. Roach
- **Governance of Arctic Shipping** - Joint Conference on in Dec 2015 with Jepsen Center for Law of the Sea (JCLOS) from Tromso University in Norway
 - Book on Governance of Arctic Shipping submitted to Publishers (Brill) in March 2017
 - Co-editors from CIL and JCLOS

CIL Research & Activities – 2

Governance of Arctic Shipping

- Jan Solski, PhD candidate from JCLOS of Tromsø University is visiting researcher
- Visiting Consultants in 2017:
 - Prof Lawson Brigham of University of Alaska Fairbanks
 - Prof Aldo Chircop of Dalhousie University
- Workshop on Implementation of Polar Code, Nov 2016
- Articles/Book Chapters by CIL research staff, including the prospects for establishing PSSAs in the Arctic
- Continuing to update the Arctic Guide
- Participation in conferences on the Arctic

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CIL Research & Activities – 3

Ocean Governance in ABNJ

- Ashley Roach has been attending the negotiations at the UN on Biodiversity Beyond National Jurisdiction (BBNJ)
- CIL is organizing an International Conference on 24-25 April 2017 on High Seas Governance
- CIL has been in communications with the International Seabed Authority on issues concerning responsibility and liability for damage to the deep seabed
- CIL is conducting research on the establishment of PSSAs and MPAs in ABNJ

CIL Research & Activities – 4

Ocean Governance in SE Asia

- CIL will be organizing a regional workshop in 2017 on the use of PSSAs in SE Asia
- CIL will be researching the implications of PSSAs and other MPAs on the international shipping in SE Asia
- CIL is researching the implications to Singapore of the decisions of LOS courts & tribunals
- CIL is researching the application of legal criteria to identify sensitive marine areas under the various global conventions

CIL Research & Activities – 5

Climate Change & LOS

- CIL will be organizing an international conference in March 2018 on Climate Change and the Law of the Sea
 - Will include issues of special interest to small island developing States (SIDS)
 - May coordinate conference with meetings of two committees of the International Law Association (ILA)
- CIL is exploring the prospect of researching issues concerning the reduction of greenhouse gas emissions from ships

CIL Research – 6

Work of the IMO & Sing bodies



CENTRE FOR INTERNATIONAL LAW
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- CIL Senior Research Fellow Youna Lyons has been attending meeting of the MEPC and LC/LP COP and Scientific Group at the IMO
- CIL is researching the issues in SE Asia arising from the implementation of the Ballast Water Convention
- CIL is researching the costs and benefits of ratifying the 1996 London Protocol on ocean dumping
- CIL is researching issues arising from proposals for PSSAs in Straits and Archipelagoes
- CIL has been attending meetings of the SOMS Cooperation Forum, ReCAAP and IFC

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THANKS FOR YOUR ATTENTION

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