

# ASEAN Regional Forum

Fourth ARF Workshop: Implementing UNCLOS and other  
International Instruments to address Emerging Maritime Issues

30 Nov – 01 Dec 2022

**Session 1: 14:30-15:30**

**Rights and obligations under UNCLOS  
& related instruments**

**UNCLOS at 40: Successes  
and Prospects for the Region**

**Robert Beckman**

# Part 1

# UNCLOS at 40: Successes

# Success # 1: Universal Acceptance

- Objective was to settle all issues relating to law of the sea in a universally-accepted treaty that would withstand the test of time
- Text adopted in 1982 after 9 years of negotiations was challenged by the United States and other Western powers because Part XI on deep sea mining
- Part XI was in effect “amended” by 1994 Implementation Agreement
- UNCLOS is now “universally accepted” with 168 Parties
- All 27 Members of the ASEAN Regional Forum are parties except Cambodia, DPR Korea and the United States
- UNCLOS is often described as a “Constitution for the Oceans”

# Success # 2: Navigational Regimes

- UNCLOS resolved issue of **breadth of Territorial Sea** at 12 nm and gave **archipelagic States** sovereignty over their “**archipelagic waters**”
- Ships of all States, including warships, have the **right of innocent passage** through the territorial sea and archipelagic waters, but submarines must navigate on the surface and fly their flag, and passage can be suspended
- Two new passage regimes providing for non-suspendable passage for ships and aircraft through **Straits used for International Navigation** and **Archipelagic States**: (1) Transit passage; and (2) Archipelagic Sea Lanes Passage
- The new regimes now govern passage in the sea lanes in the choke points between the Indian Ocean and the South China Sea

# Success # 3: Rights to Natural Resources

## 1. Exclusive Economic Zone

- Provisions in Part XV on prompt release of vessels and exclusion of discretionary decisions of coastal State on access to “surplus” from Compulsory Dispute Settlement
- EEZ provisions supplemented by 1995 Fish Stocks Agreement

## 2. New definition of **Continental Shelf** allowing an “extended CS” to the outer edge of the continental margin

## 3. Resources of **The Area** administered by Int’l Seabed Authority

- Area and its resources the “common heritage of mankind”
- 1994 Implementation Agreement amended Part XI

# Success # 4: Dispute Settlement System

1. Most complex system of dispute settlement in any treaty
2. Negotiated as a part of 'package deal' with no reservations permitted
3. General Principle: Any dispute between two parties on the interpretation or application of the provisions of UNCLOS that cannot be resolved by negotiation is subject to compulsory binding dispute settlement in Part XV
4. Decisions of Courts and Tribunals are "final and binding" on the parties to the dispute
5. State Parties can "opt out" of disputes concerning sensitive issues such as maritime boundary delimitation and "military activities"
6. Decisions of Courts and Tribunals have successfully resolved disputes and clarified provisions in UNCLOS

# Success # 5

## Protection of Marine Environment

- Part XII of UNCLOS was drafted in 1970s after 1972 Stockholm Conference, 1972 London Convention and 1973/78 MARPOL Convention
- Provisions on ship-source pollution “incorporate by reference” the latest conventions and annexes of IMO Conventions
- General Principles in the Convention are being developed in light of the evolving principles of international environmental law, including the principles in the 1992 Rio Declaration on the Environment and Development
- Major Shortcoming: provisions on baselines and boundaries did not anticipate the challenges posed by global warming and Sea Level Rise

## Part 2

# Challenges and Prospects for the Region



# Shortcomings & Challenges

1. 1982 UNCLOS reflects the politics, values and science of the 1970s
2. Almost impossible to update except by Implementation Agreements and decisions of courts and tribunals
3. Some difficult issues in the negotiations were resolved through “intentionally vague” provisions and failure to define key terms
  - Article 121. Regime of Islands
  - No definitions for Marine Scientific Research, research and survey activities, or military activities
  - Article 58(1) – “other internationally lawful uses of the sea relating to those freedoms”
4. Sets out rights and obligations of States, but some activities are being carried out by private entities without regulation by States

# Submarine Cables

- Submarine fibre optic cables carry 98% of the data in modern telecommunications and the Internet
- Provisions in UNCLOS on submarine cables were unchanged from 1958 Geneva Conventions which were drafted in the age of telegraphic cables
- National laws in most States fail to recognize that submarine cables are now critical communications infrastructure
- Action at the national, regional and global levels is necessary to protect submarine cables from sabotage or terrorist attacks
- Problems are exacerbated because UNCLOS governs actions of States, but cables are owned, laid and operated by private companies

# Unmanned Ships and Drones

- Advances in technology will soon result in unmanned commercial ships and military vessels as well as unmanned drones or equipment that engages in “research and survey activities”
- UNCLOS has no definition of “ship”, “vessel” or “underwater vehicle”
- IMO is studying the impact of “maritime autonomous surface ships” (MASS) on IMO Conventions
- Military powers are developing unmanned ships, drones and equipment
- Some unmanned ships, drones or equipment may prejudice either the economic and/or security interests of coastal States
- Issue: who should draft rules or guidelines to govern these developments?

# Threat of Maritime Terrorism

- Maritime Terrorism was a priority for most States following the 9/11 attack on the World Trade Center in on Sep 11, 2001
- 2005 Protocol to the 1988 SUA Convention was adopted to address the threat of terrorism to shipping
- 2005 Protocol entered into force in July 2010, but only 45 States have become Parties
- Only 2 of the 27 ARF members outside the EU are parties to the 2005 SUA Protocol – New Zealand and the USA
- Because there have been no terrorist attacks on shipping, most States have not made ratification of the 2005 SUA a priority
- Question: Is the region prepared for a Terrorist Attack on shipping?

# Addressing threats to Maritime Security

## – Structural Impediments

- Cooperation at the national, regional and global levels to address threats to “maritime security” is often difficult because the agencies concerned are not responsible for “security issues”
- Commercial Shipping is usually under the:
  - Ministry of Transport at the National Level
  - Economic Pillar at the ASEAN level
  - IMO at the Global Level
- Submarine Cables are usually under the:
  - Ministry of Telecommunications at the National Level
  - Economic Pillar at the ASEAN level
  - No UN specialized agency at the Global level

**Thanks for your attention!**

**Robert Beckman**

**Emeritus Professor, Faculty of Law  
Head, Ocean Law & Policy Programme, CIL  
National University of Singapore**