

By Invitation

# The UN Convention on the Law of the Sea: A revolutionary treaty

Today marks the 37th anniversary of the adoption of the landmark treaty that introduced new concepts of international law and brought about a more equitable order to maritime rights



Tommy Koh

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At a conference in Beijing last year, several Chinese scholars, including one from Singapore, made the surprising statement that the United Nations Convention on the Law of the Sea (Unclos) was a product of the West; China was therefore not bound to comply with the convention, in their view.

The truth is that Unclos was negotiated by more than 150 countries, the majority being developing countries. China participated actively in the negotiations and voted for the convention.

## IMPORTANCE OF THE OCEANS AND THE NEED FOR RULES

We often forget that 70 per cent of the Earth's surface is covered by the oceans.

Humankind derives many benefits from the oceans. International trade depends on shipping. The oceans serve as the highways of the world. The oceans provide us with fish, one of our principal sources of protein. The oceans provide us with hydrocarbon and other mineral resources.

The oceans also act as a carbon sink, absorbing carbon dioxide from the atmosphere. Finally, countries with navies depend on the oceans for their mobility and power projection.

Given the importance of the oceans to humankind, we obviously need rules to determine what coastal states can claim as their territories, jurisdictions and resources.

We also need rules on what are the rights of the international community, for example, to freedom of navigation and overflight.

We need rules on fishing, shipping, marine scientific research, protection of the marine environment, et cetera. We also need clear rules for the settlement of disputes. In short, we need the law of the sea.

## HISTORY OF THE LAW OF THE SEA

In 1609, a young Dutch legal scholar Hugo Grotius propounded the thesis that the freedom of the seas was part of international law.

In his view, coastal states could

assert their sovereignty over only a narrow belt of the sea, adjacent to their coasts, called the Territorial Sea.

As a result of state practice, it was generally recognised that the maximum permissible breadth of the Territorial Sea was three nautical miles. It is quite extraordinary that this rule of international law survived for 300 years.

The old legal order of the oceans survived for so long because it served the interests of the maritime powers for freedom of navigation, the interest in trade and the interests of the colonial empires.

## BREAKDOWN OF THE OLD ORDER

The old legal order for the oceans began to break down after the Second World War.

It was due to three causes: the emergence of the developing countries, the progress of technology and the failure of the traditional law to respond adequately to the concerns of coastal states regarding fishing.

After the Second World War, the British, French and Dutch empires were dissolved. Most of the former colonies attained their independence in the 1950s and 1960s. They felt, quite rightly, that they had no part in the making of the old legal order, which did not serve their interests. They therefore demanded that the traditional law of the sea be reformed to take their views and interests into account.

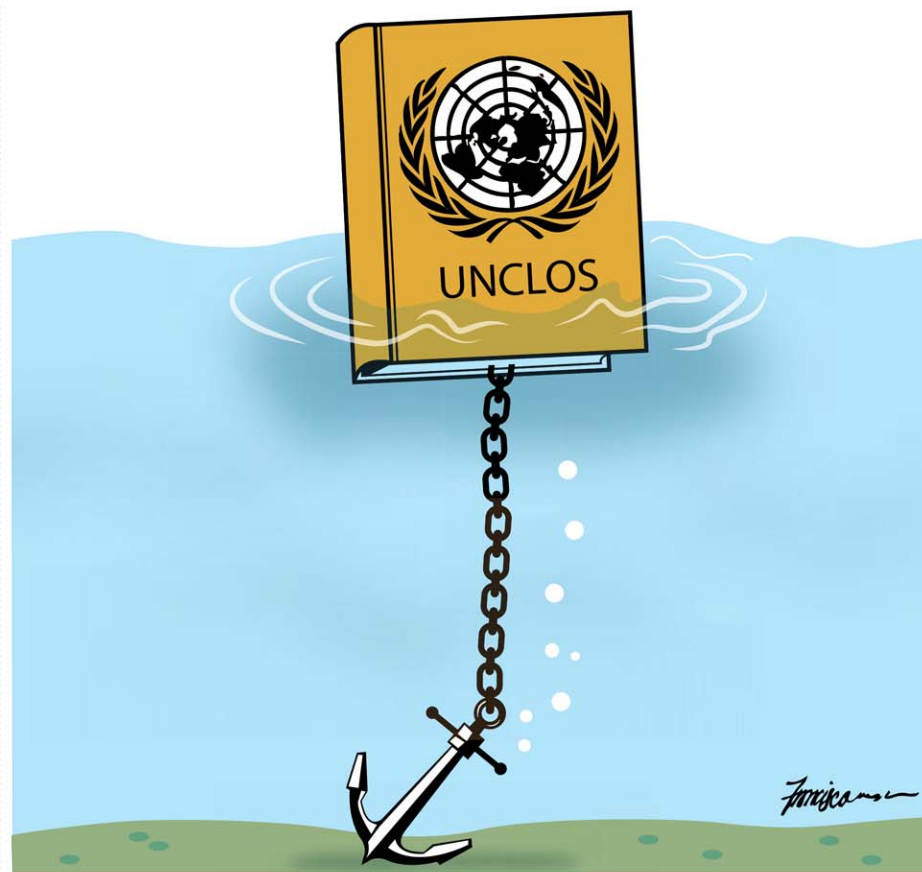
The combination of a narrow Territorial Sea and the freedom to fish in the high seas served the interests of the world community as long as there was plenty of fish for all.

Technology changed the situation. New factory fishing vessels, equipped with advanced electronic tracking radar, led to over-fishing and the depletion of fish stocks. Developing coastal states, which depended on coastal fisheries, for their survival, revolted against the injustice of the situation.

In protest against the status quo, many coastal states began to make unilateral claims. They extended their Territorial Seas beyond three nautical miles. They claimed a special fishing zone next to their coasts. Following the lead of the United States, they extended their jurisdiction over their continental shelves.

The result was that, instead of legal order, we had legal chaos. There was even a brief war between Iceland and the United Kingdom over cod.

In 1958, the UN convened the First UN Conference on the Law of



the Sea. The conference tried but could not agree on the limit of the Territorial Sea.

The conference also could not agree on the limit of a coastal state's exclusive fishing rights. In 1960, the UN convened the Second UN Conference on the Law of the Sea, to try to fix the two problems. That conference also ended in failure.

## A NEW CONSTITUTION FOR THE OCEANS

The UN convened the Third UN Conference on the Law of the Sea in December 1973. After nine arduous years of negotiations, the conference adopted Unclos. I served as the president of the conference in the final year.

Unclos is not a treaty which simply codified existing law. It is certainly not a product of the West. It is, in fact, a revolutionary treaty.

It replaced the old legal order with a new, modern and more equitable order. It invented new concepts of international law. It has been described as a Constitution for the oceans.

Some of its key features:

**Breadth of the Territorial Sea:** The long dispute over the breadth

of the Territorial Sea was settled. The convention specifies that its maximum breadth is 12 nautical miles. In addition to the Territorial Sea, coastal states are also entitled to claim a Contiguous Zone of 12 nautical miles.

**Straits used for international navigation:** There are 116 straits whose width is less than 24 nautical miles. When the Territorial Sea is expanded from three to 12 nautical miles, the high seas corridors in those straits disappear.

The maritime powers could not accept the regime of innocent passage for ships going through such important straits. They demanded, as a quid pro quo, that there should be a special regime for ships using such straits.

The special regime is called Transit Passage, a new concept in international law.

Transit passage, which is applicable to the Straits of Singapore and Malacca, is a stronger regime for ships than innocent passage, which is the regime applicable to ships in the Territorial Sea. Unlike the regime of innocent passage, the regime of transit passage permits both

overflight by aircraft and submerged transit by submarines.

**Archipelagic States:** Two of our neighbours, Indonesia and the Philippines, are archipelagos – meaning that their territories consist entirely of groups of islands.

At the 1958 and 1960 conferences, they sought but failed to gain recognition as Archipelagic States. They succeeded at the third UN conference, which accepted the new concept of Archipelagic States.

Under Unclos, an Archipelagic State can draw its baseline by connecting the outermost points of the outermost islands. The waters inside the baseline are considered archipelagic waters subject to the sovereignty of the Archipelagic State.

The convention contains a special regime for passage through archipelagic waters. It is similar to the Transit Passage and is called Archipelagic Sea Lane Passage.

**Exclusive Economic Zone:** The biggest victory for the coastal states, both developing and developed, is the new concept of the Exclusive Economic Zone (EEZ) in the convention.

The fight over fishing rights was

resolved in favour of the coastal states. They are entitled to claim an EEZ of 200 nautical miles, in which they enjoy sovereign rights to the fish and other resources there.

They do not, however, have sovereignty over the waters in the EEZ. The legal status of the waters is that of the high seas.

**Common heritage of mankind:** Another revolutionary concept in Unclos is the common heritage of mankind.

The mineral resources of the deep seabed and ocean floor, beyond national jurisdiction, are considered the common heritage of mankind.

The convention established a new international organisation, the International Seabed Authority (ISA), to govern activities in this area.

The convention also prescribes that the benefits of seabed mining should be shared among the developing countries. A Singapore company, OMS, has secured a mine site and is currently conducting exploration activities to have a more accurate picture of its terrain and biodiversity and to determine the density of the manganese nodules and the commercial feasibility of recovering them for processing.

Singapore is playing an active and constructive role in the work of the ISA. Ms Rena Lee, a Singapore lawyer and diplomat, is a member of its Legal and Technical Commission.

**The protection of the marine environment:** Unclos strengthens the international legal system in protecting and preserving the marine environment.

The convention not only imposes an obligation on all states to protect and preserve the marine environment, it also imposes on states the duty to cooperate, regionally and globally, towards that objective.

The convention deals with different sources of marine pollution, such as dumping and pollution from ships. It is one of the most robust environmental treaties currently in force.

## CONCLUSION

Unclos was adopted on April 30, 1982 in New York. Today is the 37th anniversary of its adoption.

It came into force in 1994, making this year the 25th anniversary of the coming into force of the convention.

Unclos is universally accepted as the modern law of the sea. It has restored order from chaos. It has kept the peace at sea. It has served the world well.

It is in our individual and collective interests to uphold and comply with its provisions. It is not in our interests to undermine it.

Finally, Unclos is able to respond to new challenges and opportunities. For example, the UN has convened a conference, chaired by Ms Lee, on the biodiversity of the high seas, beyond national jurisdiction. Any agreement adopted by the conference would be under Unclos.

stopinion@sph.com.sg

• Professor Tommy Koh, a veteran diplomat, is chairman of the Centre for International Law and rector of Tembusu College, both at the National University of Singapore.