

UNCLOS 40th ANNIVERSARY

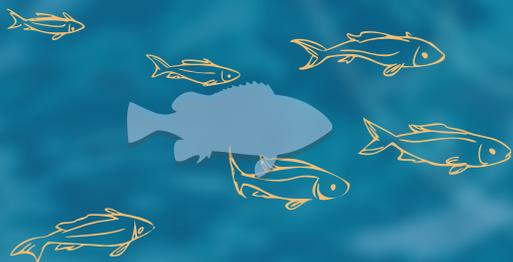
and Its Implementation of
Marine Policy



聯合國海洋法公約40週年
與海洋政策國際研討會

2-3 November, 2022

Taipei, Taiwan



OBJECTIVES & THEME



The United Nations Convention on the Law of the Sea (UNCLOS) was adopted on 10 December 1982, after nine years of negotiations. The UNCLOS entered into force in 1994. There are currently 168 parties to the Convention, which has become a collection of customary international law of the sea, and that is way the UNCLOS have been recognized as the “constitution for the world’s oceans”. All countries, including those who are not parties to UNCLOS, accept the convention as the foundation of the legal order governing the uses and resources of the oceans.

To commemorate the 40th anniversary and to review the development of the law of the sea in the past 40 years, sponsored by Ocean Affairs Council, National Taiwan Normal University organized this virtual conference to conduct academic discussions on the protection of the marine environment, marine science research, maritime order and law enforcement, and maritime dispute issues. The purpose of this webinar is to form an academic platform to exchange views on the development of international law of the sea.

List of topics:

- Development of the United Nations Convention on the Law of the Sea
- Marine Environment Protection and UNCLOS
- Marine Resources Conservation and UNCLOS
- Security and Law Enforcement
- Maritime Disputes and UNCLOS

0900-0930	Registration / Online Conference Room Opening
0930-0950	<p>Welcoming Session</p> <p>Moderator: Kuan-Hsiung WANG(王冠雄), National Taiwan Normal University, Taiwan</p> <p>Opening Remarks Mei-Wu Chou(周美伍), Acting Minister, Ocean Affairs Council Cheng-Chih Wu(吳正己), President, National Taiwan Normal University</p>
Group Photo	
0950-1030	<p>Keynote Speech:</p> <p><i>UNCLOS & MARITIME CLAIMS: The Case of the Taiwan Strait</i></p> <p>Moderator: Fu-Kuo LIU(劉復國), Taiwan Center for Security Studies, Taiwan</p> <p>Speakers: Yann-Huei SONG(宋燕輝), Research Fellow(ret.), Academia Sinica, Taiwan</p>
1030-1200	<p>Session I: Development of the Law of the Sea</p> <p>第一場：聯合國海洋法公約之發展</p> <p>Moderator: Chung-young Chang(張中勇), Fo Guang University, Taiwan</p> <p>Speakers:</p> <ul style="list-style-type: none"> • <i>Reciprocal Due Regard Obligations in the EEZ under the 1982 LOS Convention</i> Robert Beckman, National University of Singapore, Singapore • <i>Obligations Assumed by the State under the UNCLOS and Relevant Conventions and Agreements, Embodied and Reflected in Domestic Legislation Policies</i> Seokwoo LEE, University of Inha, Korea • <i>Fisheries Management Gap for Transboundary Stocks</i> Nien-Tsu Alfred HU(胡念祖), National Sun Yat-sen University, Taiwan
1200-1330	LUNCH BREAK

1330-1450

Session II: Marine Environment Protection and UNCLOS

第二場：海洋環境保護與聯合國海洋法公約

Moderator:

Wen-Yan CHIAU(邱文彥), National Taiwan Ocean University, Taiwan

Speakers:

- *Asia in a Multilateral World: Pivoting around Marine Policy, Climate Treaty and COP 27*
Pooran Chandra PANDEY, Resident Representative, Climate Scorecard, US
- *Protection and Preservation of the Marine Environment under the UNCLOS: The Contribution of ITLOS Provisional Measure and Advisory Proceedings*
Pei-Lun TSAI(蔡沛倫), National Taiwan Ocean University, Taiwan
- *Infringement procedures before the Court of Justice and the enforcement of EU marine environmental legislation*
Lorenzo Schiano di Pepe, University of Genoa, Italy
- *Japan's Discharge of Treated Water from Nuclear Power Plants into the Ocean and the UN Convention on the Law of the Sea*
Kanami ISHIBASHI(石橋可奈美), Tokyo University of Foreign Studies, Japan

1450-1500

TEA BREAK

1500-1620

Session III: Marine Resources Conservation and UNCLOS

第三場：海洋資源養護與聯合國海洋法公約

Moderator:

Kwang-Tsao SHAO(邵廣昭), Academia Sinica, Taiwan

Speakers:

- *Conservation of Living Marine Resources under UNCLOS and the Proposed BBNJ Agreement: Continuing Legal Issues*
David ONG, Nottingham Law School, UK
- *UNCLOS on the Conservation and Management of Marine Fisheries Resources and Responses of Taiwan's Distant Water Fisheries*
Shih-Ming KAO(高世明), National Sun Yat-sen University, Taiwan
- *Blue economy in transition: fish trade and sustainable development goals in concert?*
Wan-Chun Wendy HO(何婉君), Soochow University, Taiwan

0830-0900

Registration / Online Conference Room Opening

0900-1020

Session IV: Security and Law Enforcement**第四場：安全與執法****Moderator:**

Richard Y.K. CHEN(陳永康), Taiwan Center for Security Studies, Taiwan

Speakers:

- ***Tensions in the East China Sea from the Jurisdictional Perspective: Unsustainable Stability?***
Young Kil PARK, Korea Maritime Institute (KMI), Korea
- ***South China Sea in the regional security system***
Agata W. ZIĘTEK, Maria Curie-Skłodowska University, Poland
- ***Taiwan's Maritime Rights and Maritime Law Enforcement Dilemma under US-China Strategic Competition***
Wei-Hua CHEN(陳偉華), Central Police University, Taiwan

1020-1140

Session V: Maritime Disputes and UNCLOS**第五場：海洋爭端與聯合國海洋法公約****Moderator:**

Fu-Kuo LIU(劉復國), Taiwan Center for Security Studies, Taiwan

Speakers:

- ***UNCLOS Dispute Settlement Apart from Annex VII Arbitration: Other Options?***
Jay BATONGBACAL, Professor of Law, University of the Philippines
- ***Legal and Political Issues Related to Warships Passing through the Taiwan Strait***
Ruei-Lin YU(郁瑞麟), National Defense University, Taiwan
- ***Hypocrisy of Sovereignty and Maritime Disputes in the South China Seas: with Special Reference to the South China Sea Arbitration***
Chi-Ting TSAI(蔡季廷), National Taiwan University, Taiwan

1140-1200

Closing SessionKuan-Hsiung WANG(王冠雄), National Taiwan Normal University, Taiwan
Fu-Kuo LIU(劉復國), Taiwan Center for Security Studies, Taiwan

0830-0900

Registration / Online Conference Room Opening

0900-1140

Young Scholars Session / 青年學者專場

Moderator:

Kevin YL TAN, National University of Singapore, Singapore
Kuan-Hsiung WANG, National Taiwan Normal University, Taiwan

Commentators:

Wan-Chun Wendy HO, Soochow University, Taiwan
Pei-Lun TSAI, National Taiwan Ocean University, Taiwan
Yu-Hsin CHENG, National Taiwan Ocean University, Taiwan

Speakers:

- ***Dispute Resolutions Under UNCLOS: A Possible Resolution in the Yellow Sea?***
Angela Semee KIM, Assistant Professor, School of Law, Handong Global University
- ***Application of Quasi-Realistic Numerical Modeling to Prevent or Minimize Ocean Pollution: An Oil Spill Example***
Chih-Lun LIU, Ph.D Student, Oregon State University
- ***Advancing Itu Aba to comply with the South China Sea arbitration case as fully-titled island under the UN Convention on the Law of the Sea***
Jia-He Song, IDAS (Ph.D.) student, National Chengchi University
- ***International Cooperation on Underwater Cultural Heritage: Retrospect and Prospect***
Pei-Fu WU, Postdoctoral Research Fellow, The Center for Marine Policy Studies, National Sun Yat-sen University
- ***Grey-zone Tactics in the South China Sea: An Opportunity for Other Countries?***
Angelo Brian CASTRO, IDAS (Ph.D.) student, National Chengchi University
- ***Current Legal Issues of Indonesia's Outermost Small Islands***
Adrian NUGRAHA, Faculty of Law, Sriwijaya University

KEYNOTE SPEAKER

Taiwan



Dr. Yann-huei Song was a research fellow in the Institute of European and American Studies, Academia Sinica, Taipei, Taiwan. He retired in February 2021. He received his doctoral degree in International Relations from Kent State University, Ohio; L.L.M. and J.S.D. from the School of Law (Boalt Hall), University of California, Berkeley, the United States.

He has broad academic interests covering ocean law and policy studies and currently a member of the editorial boards of *Ocean Development and International Law* and *Chinese (Taiwan) Yearbook of International Law and Affairs*.

He is a member of the administrative committee of the ROC Association of Marine Affairs and Policy and a board member of the Chinese (Taiwan) Society of International Law.

Two of his recent publications are: "Taiwan's South China Sea Policy under the Tsai Administration," in *SECURITY, STRATEGY AND MILITARY DYNAMICS IN THE SOUTH CHINA SEA*, edited by Gordon Houlden, Scott N. Romaniuk, and Nong Hong (Bristol University Press, 2021) and "A Preliminary Study of the Potential International Legal Issues Arising from the Plan to Deploy FNNPs in the Disputed South China Sea," in *MARINE SCIENTIFIC RESEARCH, NEW MARINE TECHNOLOGY, AND THE LAW OF THE SEA*, edited by Keyuan Zou and Anastasia Telesetsky (Brill Publisher, 2021).

MODERATORS

Taiwan



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Professor, Department of Public Affairs,
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- Expertise:
Crisis Management, International Relations, Cross-strait Relations and Mainland Policy, Globalization and Security Research, National Security Research
- Education
Ph.D. in International Relations, University of Miami, U.S.A.

Taiwan



Wen-Yan CHIAU 邱文彥

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- Strategy Advisory Committee, Institute for National Defense Security Research
- Admiral (ret.)

- Expertise
Geopolitical, National Defense
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 - R.O.C Naval Academy in 1974
 - National Defense University in 1986
 - US Naval War College Naval Academy in 1997

MODERATORS

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- Director, Taiwan Center for Security Studies (TCSS)

- Expertise:

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- Education

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- Editor-in Chief, Asian Journal of Comparative Law

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MODERATORS

Taiwan



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COMMENTATORS

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COMMENTATORS

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SPEAKERS

Singapore



Robert Beckman

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Robert Beckman is an Emeritus Professor at the Faculty of Law of the National University of Singapore (NUS), where he has taught since 1977. He was the founding Director of the Centre for International Law (CIL), a university-level research institute at NUS. He is currently Head of CIL's Ocean Law and Policy programme. He has taught several international law courses at NUS, including Ocean Law & Policy and International Regulation of Shipping, and he currently teaches a course on International Regulation of the Global Commons. Since 2009 he has lectured in the summer programme at the Rhodes Academy of Oceans Law and Policy in Rhodes, Greece, and he is a member of the Governing Board for the Rhodes Academy. He has published widely on ocean law and policy issues. He is also a Senior Advisor to the Maritime Security Programme of the Institute for Defence & Strategic Studies (IDSS) at the S Rajaratnam School of International Studies (RSIS) at Nanyang Technological University (NTU).

Korea



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SPEAKERS

Taiwan



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- Expertise

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- Resident Representative, Climate Scorecard, US

- Expertise

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SPEAKERS

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- Expertise
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SPEAKERS

Japan



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SPEAKERS

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SPEAKERS

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SPEAKERS

Taiwan



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Philippines



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 - Doctorate in Jurisprudential Science, Marine Environmental Law Program, Dalhousie University, Canada
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 - Bachelor of Arts in Political Science, College of Social Science & Philosophy, University of the Philippines

SPEAKERS

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- Columbia University of NYC, Electrical Engineering, Master Degree.
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Taiwan



Chi-Ting Tsai 蔡季廷

- Associate Professor, Department of Political Science, National Taiwan University, Taiwan

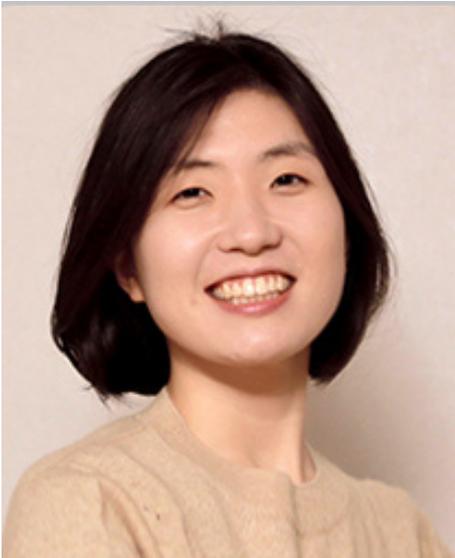
- Expertise

International Law, Marine Policy, International Human Rights

- Education

JSD, Cornell Law School, U.S.A.

YOUNG SCHOLARS



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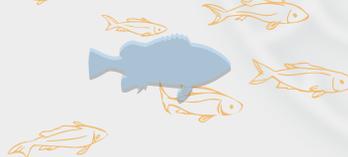
Session I

Development of the United Nations Convention on the Law of the Sea (UNCLOS)

聯合國海洋法公約之發展



- **Reciprocal Due Regard Obligations in the EEZ under the 1982 LOS Convention**
Robert Beckman, National University of Singapore, Singapore
- **Obligations Assumed by the State under the UNCLOS and Relevant Conventions and Agreements, Embodied and Reflected in Domestic Legislation Policies**
Seokwoo LEE, University of Inha, Korea
- **A Fisheries Management Gap for Transboundary Stocks**
Nien-Tsu Alfred HU(胡念祖), National Sun Yat-sen University, Taiwan



RECIPROCAL DUE REGARD OBLIGATIONS IN THE EEZ UNDER THE 1982 LOS CONVENTION

Robert Beckman

Abstract

The exclusive economic zone (EEZ) is maritime zone in which coastal States and other States have both rights and obligations. Coastal States have sovereign rights and jurisdiction for the purpose of exploring and exploiting the living and non-living natural resources of the waters and of sea bed and subsoil, and with regard to other activities for the economic exploitation of the zone. In the EEZ all other States enjoy the high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms. In exercising their rights and performing their duties in the EEZ, both coastal States and other States have reciprocal 'due regard' obligations as set out in Articles 56(2) and 58(3).

This presentation will discuss the emerging jurisprudence on the reciprocal due regard obligations in the EEZ with a focus on the implications of the 2015 Award in the Chagos Protected Area Arbitration. It will focus in particular on how the reasoning in that case can be applied to the legal issues raised by the conduct of military activities by other States in an EEZ of a coastal State and the construction of windfarms by the coastal State in its EEZ.

OBLIGATIONS ASSUMED BY THE STATE UNDER THE UNCLOS AND RELEVANT CONVENTIONS AND AGREEMENTS, EMBODIED AND REFLECTED IN DOMESTIC LEGISLATION POLICIES

Seokwoo LEE

Abstract

This presentation is to address obligations assumed by the state under the LOSC and relevant conventions and agreements, embodied and reflected in domestic legislation policies, on the protection and preservation of the marine environment. Discussion of relevant laws, policies, measures, agreements, and mechanisms that pertain to pollution from all sources, whether land-based sources, sea-bed activities, dumping, the atmosphere, or vessels would be covered. It might also include a discussion of domestic measures that pertain to area-based management measures, including the designation of marine protected areas or particularly sensitive sea areas, or similar domestic measures.

A FISHERIES MANAGEMENT GAP FOR TRANSBOUNDARY STOCKS IN THE EASTERN WATERS OF TAIWAN: BIOLOGICAL REQUIREMENTS VS. GEOPOLITICAL REALITIES

Nien-Tsu Alfred Hu

Abstract

A fisheries management gap exists in the eastern waters of Taiwan for certain transboundary stocks, such as the Pacific bluefin tuna (*Thunnus orientalis*, PBF) and the Japanese eel (*Anguilla japonica*, ELJ). While the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and its implementation agreement, the 1995 United Nations Fish Stocks Agreement (UNFSA), provide the legal frameworks for the conservation and management of such transboundary stocks, how to put them into effective practice is another matter or even challenges. The biology or the migration patterns of the PBF and the Japanese eel requires special considerations for their conservation and management; however, the geopolitical realities between or among the Philippines, Taiwan, and Japan constrain better international cooperation to be developed in the region.

The paper, at the outset, describes the migration pattern of the PBF and the Japanese eel in the western Pacific in general and the eastern waters of Taiwan in particular to provide special biological requirements for conservation and management purposes. The paper then describes the overlapping Exclusive Economic Zone claims made by the Philippines, Taiwan, and Japan in the narrow eastern waters of Taiwan to provide a conflicting geopolitical picture that constrains a better conservation and management arrangement or regime from being developed in the region. The paper then goes further to review the past failures in establishing stronger conservation and management organizations for the conservation and management of these two transboundary stocks. The paper argues that a gap is thus created between the biological characteristics that supposedly lead to special conservation and management requirements and the geopolitical realities that constitute a constraint for better international cooperation for the conservation and management of these two transboundary stocks in the eastern waters of Taiwan.

Keywords:

Transboundary stocks, transboundary fisheries management, Pacific bluefin tuna, Japanese eel, Taiwan, Japan, the Philippines

Session II

Marine Environment Protection and UNCLOS

海洋環境保護與聯合國海洋法公約



- **Asia in a Multilateral World: Pivoting around Marine Policy, Climate Treaty and COP 27**
Pooran Chandra PANDEY, Resident Representative, Climate Scorecard, US
- **Protection and Preservation of the Marine Environment under the UNCLOS: The Contribution of ITLOS Provisional Measure and Advisory Proceedings**
Pei-Lun TSAI, National Taiwan Ocean University, Taiwan
- **Infringement procedures before the Court of Justice and the enforcement of EU marine environmental legislation**
Lorenzo Schiano di Pepe, University of Genoa, Italy
- **Japan's Discharge of Treated Water from Nuclear Power Plants into the Ocean and the UN Convention on the Law of the Sea**
Kanami ISHIBASHI, Tokyo University of Foreign Studies, Japan

ASIA IN A MULTILATERAL WORLD: PIVOTING AROUND MARINE POLICY, CLIMATE TREATY AND COP 27

Pooran Chandra PANDEY

Abstract

Asia's place in the world since is arguably undisputed, given continent's rise in stature and spotlight on sea resources, under water assets, navigation routes, technological innovations, trust in democracies and push for blue economy.

UN Convention on Law of Sea systemizes and codifies standards and principles of international maritime law based on maritime experience, captured in UN charter and current international maritime law norms such as Geneva Convention.

Convention also overlaps with provisions of the Paris Climate Treaty propelling maritime agenda, putting the ocean vitality and biodiversity front and centre. COP 27 this November in Egypt would also round up agenda of securing oceans, maritime resources, climate and human well being.

Given the strategic importance of sea and sea routes in Asia, it assumes even greater significance for UNCLOS to focus on oceans, sea, maritime activities, freedom of navigation, protected seabed mining and maritime borders from security dimension.

Multilateralism, freedom of navigation, dialogue and rule of law can pivot the goals of shared prosperity in Asia and protect international peace and stability. It's also a time for UNCLOS to potentially sharpen its existing instruments while concluding the outstanding intergovernmental dialogues through effective intervention strategies as opposed to mere facilitation of processes.

Key words: UNCLOS, Asia, multilateralism, marine policy, climate treaty, COP27

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT UNDER THE UNCLOS: THE CONTRIBUTION OF ITLOS PROVISIONAL MEASURE AND ADVISORY PROCEEDINGS

Pei-Lun Tsai

Abstract

Among the 29 cases submitted to the International Tribunal for the Law of the Sea (ITLOS) since its inception, those involving issues of protection and preservation of the marine environment are often considered in provisional measures or advisory proceedings. Regarding the former, Article 290 of the United Nations Convention on the Law of the Sea (UNCLOS) stipulates that, the ITLOS has the competence to “prescribe any provisional measures which it considers appropriate under the circumstances to ... prevent serious harm to the marine environment, pending the final decision”, provided that other conditions of jurisdiction and admissibility are met. As for the latter, while the UNCLOS and the ITLOS Statute only explicitly stipulate that the Seabed Disputes Chamber may exercise advisory jurisdiction, the ITLOS, has adopted two advisory opinions since 2015 (one by the full Tribunal, and the other by the Seabed Dispute Chamber), both of which relate to the marine environment.

After the introduction, the paper will begin with brief overviews of both provisional measure and advisory proceedings, noting the debate regarding the jurisdictional basis of the latter. Then discussions concerning the marine environment in the five provisional measure orders and two advisory opinions will be summarised and analysed. As the UNCLOS contain sparse and mostly abstract provisions concerning the protection of the marine environment, the ITLOS’s jurisprudence can play a crucial role in elucidating what States’ obligations are vis-à-vis the environment. In particular, the ITLOS’s provisional measure orders might shed a light on what needs to be done in urgent cases. The paper will conclude with an evaluation of the contribution of ITLOS in this regard and consider the prospect of future developments and the potential for a more active role for the ITLOS in promoting the protection and preservation of the marine environment pursuant to the UNCLOS.

INFRINGEMENT PROCEDURES BEFORE THE COURT OF JUSTICE AND THE ENFORCEMENT OF EU MARINE ENVIRONMENTAL LEGISLATION

Lorenzo Schiano di Pepe

Abstract

The presentation aims at discussing “infringement procedures” governed by articles 258, 259 and 260 of the Treaty on the Functioning of the European Union (TFEU) and their role in the enforcement of the European Union’s legislative framework applicable to the protection of the marine environment.

At the outset, the overall purpose and general structure of “infringement procedures” will be described, for the benefit of those in the audience that do not have an in-depth knowledge of European Union law. This introductory part will be followed by an analysis of the role of “infringement procedures” in the area of environmental protection as such and in the more specific domain of marine environmental protection.

The presentation will then provide two case studies, drawn from the recent case law of the European Court of Justice, namely, on the one hand, *Commission v. Bulgaria* (case C-510/20 decided on 28 April 2022) and, on the other hand, *Slovenia v. Croatia* (case C-457/18) in two matters concerning inter alia Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy.

JAPAN'S DISCHARGE OF TREATED WATER FROM NUCLEAR POWER PLANTS INTO THE OCEAN AND THE UN CONVENTION ON THE LAW OF THE SEA

Kanami ISHIBASHI

Abstract

Japan's Discharge of Treated Water from Nuclear Power Plants into the Ocean and the UN Convention on the Law of the Sea

Session III

Marine Resources Conservation and UNCLOS

海洋資源養護與聯合國海洋法公約



- **Conservation of Living Marine Resources under UNCLOS and the Proposed BBNJ Agreement: Continuing Legal Issues**
David ONG, Nottingham Law School, UK
- **UNCLOS on the Conservation and Management of Marine Fisheries Resources and Responses of Taiwan's Distant Water Fisheries**
Shih-Ming KAO, National Sun Yat-sen University, Taiwan
- **Blue economy in transition: fish trade and sustainable development goals in concert?**
Wan-Chun Wendy HO, Soochow University, Taiwan



CONSERVATION OF LIVING MARINE RESOURCES UNDER UNCLOS AND THE PROPOSED BBNJ AGREEMENT: CONTINUING LEGAL ISSUES

David ONG

Abstract

This presentation will highlight continuing legal issues arising from the conservation of living marine resources in the interface maritime zone between the continental shelf beyond 200-nautical miles (nm) and the Area Beyond National Jurisdiction (ABNJ). The applicable international legal regimes in this interface maritime zone consists of the 1982 UNCLOS and proposed Biodiversity Beyond National Jurisdiction (BBNJ) Agreement, currently being negotiated under UN auspices. Specifically, the following points will be made about the conservation of living marine resources in this interface zone: First, definitional issues arise, initially in relation to 'sedentary species' under Article 77(4) of UNCLOS (crabs v lobsters?) and then as between such 'sedentary species' and 'marine genetic resources' (MGRs) under Article 1(11) of the further revised text of a BBNJ Agreement. Second, the absence of an international (treaty) obligation for the conservation of any (living and non-living) resources in the continental shelf can now be juxtaposed against the general objective for conservation of marine biological diversity under proposed BBNJ Agreement. However, this falls foul of the primacy accorded to UNCLOS in any dispute over which instrument prevails as between UNCLOS and the proposed BBNJ Agreement, as provided under Article 4(1) of the further revised draft text. Third, in the event of disputes between coastal and flag States over the definitions of 'sedentary species' and 'marine genetic resources', the principles of due regard under Article 56(2) of UNCLOS and Article 9(2) of the further revised draft text of the BBNJ Agreement; good faith under Article 300 of UNCLOS and Article 57 of the BBNJ Agreement; and finally, the principle against unjustifiable interference under Article 78(2) of UNCLOS, are all applicable, but may not be sufficiently specific enough to resolve these disputes.

UNCLOS ON THE CONSERVATION AND MANAGEMENT OF MARINE FISHERIES RESOURCES AND RESPONSES OF TAIWAN'S DISTANT WATER FISHERIES

Shih-Ming KAO

Abstract

The purpose of this paper aims to understand regulations related to the conservation and management of fisheries resources in the United Nations Convention on the Law of the Sea (UNCLOS) as well as those subsequently adopted international fisheries legal instruments and analyze their influence to the development and operation of Taiwan's distant water fisheries. This paper finds that led by the UNCLOS and the UNFSA, the modern international fisheries legal regime is composed of several international instruments, including legally-binding and non-binding instruments. In addition, regional fisheries management organizations (RFMOs) have been designated as the primary cooperative mechanism between distant water fishing nations (DWFNs) and coastal States, and as the executive bodies to implement the conservation and management of fisheries resources in the oceans, particularly on straddling and highly migratory fish stocks. Further, Taiwan has adopted many domestic laws and regulations to demonstrate its determination and willingness to combat illegal, unreported, and unregulated (IUU) fishing and forced labor issues, all of which are to fulfill Taiwan's international obligation as a flag State under the regime of international fisheries. However, pressures from RFMOs, States such as the United States and the European Union, as well as non-governmental organizations (NGOs) still exist for Taiwan, particularly on the implementation of these regulations and sanctions to violators. Thus, how these rules are to be implemented effectively and how enforcement and sanctions are to be ensured are still the main challenges that Taiwan has to face in the near future.

BLUE ECONOMY IN TRANSITION: FISH TRADE AND SUSTAINABLE DEVELOPMENT GOALS IN CONCERT?

Wan-Chun Wendy HO

Abstract

The adoption of the WTO Agreement on Fisheries Subsidies at the 12th Ministerial marks a significant step forward for ocean sustainability by prohibiting harmful fisheries subsidies. The new agreement not only delivers the mandate of SDG target 14.6, but is also the first multilateral trade deal with environmental obligations at heart. Sustainable use of fisheries resources is critical to the development of a resilient ocean and sustainable blue economy. The incorporation of the norms of environment sustainability into a binding trade agreement is relatively a new stage of work for the WTO and international fisheries regime. This article will begin with a thorough analysis of the adoption of soft and hard laws based on the content of the WTO fisheries subsidies agreement. It will then argue that the incorporation of environmental norms into the WTO agreement has exemplified an evolutionary process of soft law to hard law. The new WTO agreement sheds light on the possibility of sustainable solutions and shows a new trend of a structural transformation of international fisheries governance. It also implies that a systemic approach toward trade-environment interface is an essential step to build a resilient ocean. In the development of new blue economy and the building of a resilient ocean, more attention should be paid to the interaction of soft law and hard law in realm of international trade system and further to the improvement of international fisheries regime. The article will address the ambivalent relationship between trade and environment in the context of sustainable development. It will also clarify the roles of soft norms and hard law in the governance of international fisheries regime and analyze the alignment between subsidies rules and environmental soft norms with sustainable objectives in the new WTO agreement.

Session IV

Security and Law Enforcement

安全與執法



- **Tensions in the East China Sea from the Jurisdictional Perspective: Unsustainable Stability?**

Young Kil PARK, Korea Maritime Institute (KMI), Korea



- **South China Sea in the regional security system**

Agata W. ZIĘTEK, Maria Curie-Skłodowska University, Poland



- **Taiwan's Maritime Rights and Maritime Law Enforcement Dilemma under US-China Strategic Competition**

Wei-Hua CHEN, Central Police University, Taiwan



TENSIONS IN THE EAST CHINA SEA FROM THE JURISDICTIONAL PERSPECTIVE: UNSUSTAINABLE STABILITY?

Young Kil PARK

Abstract

My presentation aims to examine the status of the legal order in the East China Sea from the jurisdictional perspective. It analyses that the order in the East China Sea is becoming more unstable, reaching a critical point. The presentation points out several reasons for making the East China Sea unstable. Then, as a conclusion, it suggests a few alternative solutions.

The East China Sea has three distinctions in terms of maritime jurisdiction. First, it is a relatively small size semi-closed sea. The distance between the coasts of the relevant states is less than 400nm which inevitably produces overlapping claims of jurisdiction. The East China Sea is bounded in the south by Taiwan, in the east and southeast by the Kyushu and Ryukyu Islands of Japan, and in the north by Jeju Island of South Korea. It covers an area of about 1,249,000 square kilometers which is less than half of the South China Sea (3.5million square kilometers). Second, there are a small number of coastal states in the East China Sea; China (Taiwan), Japan, and Korea. Third, even though there are only a few coastal states in the East China Sea, the states still need to agree on their maritime boundaries. The jurisdictional issues of the East China Sea primarily arise from its geographical factor and the circumstance of no maritime delimitation between the coastal states.

Although the most volatile issue in the East China Sea would be the territorial dispute over Diaoyutai Islands/Diaoyu Islands or Senkaku islands between China(Taiwan) and Japan, my presentation will focus on jurisdictional problems. The tension over the territorial dispute has been escalating, particularly since 11 September 2012, when the Japanese government nationalized the islands by purchasing them from a Japanese civilian. The Chinese government immediately responded to the action by measuring all-around economic sanctions and incrementally expanding its law enforcement powers around the islands. The disputed islands also affect the maritime boundary between the relevant states. It is unclear whether Japan and China claim the median line between the disputed islands and the coast of the mainland.

Excluding the territorial dispute over Diaoyutai Islands/Diaoyu Islands or Senkaku islands, we may say that the East China Sea's legal order has been relatively stable compared to the South China Sea. In the South China Sea, bounded by at least seven states, there were two armed conflicts between China and Vietnam, and there are still severe territorial and jurisdictional disputes. The South China Arbitration properly reveals the disputes.

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We assume that the South China Sea plays a significant role in the East Asia and Indo-Pacific regional security system. Thus, the following hypothesis is formulated: the activities of states in the South China Sea, their patterns of cooperation and rivalry, influences regional security.

1. South China Sea is one of the largest Sea Line of Communication (SLOC) and play an important role in sea transportation in peace time and also during the time of conflict (the coastal states can block naval forces and make enemy operational capabilities more difficult).

International sea lanes through Southeast Asia are important to the economic and political wellbeing of billions of people throughout the world. The sea is a major source of food for the region, and the sea lanes are the lifeline of East Asian economies heavily dependent on unimpeded access to raw materials and market and investment opportunities throughout the region.

2. We can define few Sea Line of Communication in the region: 1) The first one is the Strait of Malacca, which is the main passage between the Indian Ocean and the South China Sea; 2) The second SLOC is the wider and deeper Lombok. It is less congested than the Strait of Malacca and quite often is used as an alternative passage. It is sometimes used for the largest tankers transiting between the Persian Gulf and Japan, and it is considered the safest route; 3) The third SLOC is the 50-mile long Strait of Sunda, another alternative to Malacca. Because the currents are strong and the depth of water is limited, deep draft ships do not use the strait; 4) The largest SLOC is already mentioned the South China Sea. Regional and greater powers, in terms of regional maritime security stability and seaborne trade, consider the Strait of Malacca and the South China Sea to be the most important.

3. The situation in the South China Sea has been quite stable for many years. In last 20 years it has been changed and Sea is perceived as a hotbed of rivalry not only among the countries of the region, but perhaps especially between China and the United States. One of the

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driving sources of rivalry in the South China Sea is still unresolved issues related to the sovereignty of the islands. The actors in the South China Sea disputes can be classified into two categories. The first is the group of immediate claimant states: China, Taiwan, Vietnam, Malaysia, the Philippines, and Brunei, they all formulated various maritime and territorial claims. China has the largest territorial claim, which is included within the so-called 9-dash line. Also Taiwan's claims to the South China Sea and the islands roughly mirror China's. There are some differences between Taiwan's position toward the SCS and that of its PRC counterpart. Unlike China, Taiwan has never taken or enforced measures to interfere with the exercise of freedom of navigation by vessels from other countries (e.g., the U.S.) in the waters marked by the U-shaped line. Taiwan prefers a multilateral approach to solving the problem, and also accepts and even welcomes the involvement of the United States. Suffering from international diplomatic isolation, Taiwan cannot participate officially in regional discussions, but engages in Track II diplomacy.

The second group includes countries that are indirectly involved, comprising primarily the United States of America, South Korea, Japan, India, and Australia.

Maritime territorial disputes and the sometimes belligerent behavior of the countries involved are often perceived as a set of risk factors or threats and encourage observers to define the region in terms of international security. Some of the most pressing issues include the negative feedback brought on by: (1) the exploitation of oil and natural gas reserves as well as the distribution of concessions for exploration and development among international corporations; (2) territorial disputes resulting from the actions of governments and national militaries, such as the appropriation of islands, reefs, and atolls; (3) shows of force, use of force, or threats to use force (military exercises and movements of naval units usually associated with embarking on a war footing, takeovers of fishing and commercial vessels and their crews, piracy); (4) the relations between China and the United States, including

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the issue of Taiwan; and (5) differing interpretations of international maritime law. This demonstrates that there are many different dimensions to the problem.

4. On the one hand, the situation in the region is influenced by the assertive policy of the People's Republic of China, which makes no secret of its superpower aspirations, to gain regional dominance, which will guarantee it the ability to settle territorial disputes in its favor. China's assertiveness in the South China Sea feeds U.S. perceptions of a revisionist challenge to what it calls the "rules-based international order". On the other hand, the presence of the United States, which is seen by China as a projection of power, or penetration of the region (Southeast Asia), which Beijing sees as containment obstructing its rightful international role. There is no doubt that how these tensions are managed matters for international law, maritime order and conflict risks.

5. In analyzing the security situation in the South China Sea, we can refer to three categories: security threats, security dilemmas, and balance of power. It can be pointed out that there are threats in the region, the source of which are competing strategies of states, mistrust, growing prejudices. The catalog of threats in the region includes: disputes, tensions and conflicts over land and sea areas and the exercise of sovereign power over them. An important area is the security of sea lanes of communication. Existing threats in the region are the result of such factors as the rise of the power of states, the arms race or the perception of other states' behavior as aggressive. The region is also unfamiliar with security dilemma thinking. Indeed, there is a strategic difficulty in relations between states, which results in a dilemma of interpreting the motives and intentions of behavior and capabilities of other actors, and a dilemma of reaction, i.e. choosing the optimally rational behavior.

Balance of power, on the other hand, is understood as the desire of states to prevent the excessive growth of the power of any of them. In

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this case, it is about identifying the power of China, and the power of other players in the region.

6. How to manage risk of conflict? Probably through the development of a law-based regional order that all countries will support. This refers to a regime, which can enhance the security of the SLOCs. A regime which has sets of implicit or explicit guidelines, principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations. In other words, a stable maritime regime pre-supposes a clear understanding on what are the common interests and what should be norms applicable to the management affairs of SLOCs. And that is very challenging. The U.S. have not ratify the Law of the Sea Convention. China does not comply with it (case China vs. the Philippines). In 2016, tribunal constituted under the UN Convention on the Law of the Sea (UNCLOS) invalidated China's expansive maritime claims in the South China Sea. Beijing, which had refused to participate in the legal proceedings, rejected the ruling. Not only that, China has doubled down on its claims, including materially altering the physical environment, most visibly through the construction and militarization of seven artificial islands in the Spratly Islands, which facilitated the pervasive maritime presence of the People's Liberation Army Navy, the Chinese Coast Guard and China's maritime militia. To manage potential conflict all the parties should reduce friction through high-level dialogue, agree on incident management mechanisms and clarify red lines.

7. Using two criteria: the nature of relations (bilateral/multilateral), and the consequences (conflict/cooperation). We can propose four scenarios of possible situation in the region. One of them is optimistic, one pessimist and two we can name realistic (maritime block, regional governance).

	Conflict	Cooperation
Bilateral	Maritime Block	Regional Governance
Multilateral	Contested Commons	Global Governance

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Global Governance: This scenario assumes that growing interdependence and diffusion of power will encourage greater multilateral maritime cooperation. With no single actor able to pursue its interests through military means, there is a stimulation for all actors to agree to further strengthen international governance and conflict mediation, in order to jointly explore maritime resources and trade routes. This will lead to strength of the international law of the seas, and inciting to adoption of additional guidelines on and conflict resolution and the governance of the high seas. According to this frozen maritime conflicts will be resolved in order to allow for the common exploitation of sea based resources (as president Ma Ying-jeou said: The islands cannot be divided up but resources can be shared) and to provide for security of the sea lanes. International actors will work also in concert to curtail the impact of crime, piracy and terrorism and to protect resources. It is a kind of win win game scenario. At the same time, the existing economic ties between the countries of the region, will promote the postponement of disputes, making open conflict (for the time being) unprofitable. The security problems require joint consideration and solutions. The great powers need to think carefully about conflict risks and shore up the existing UNCLOS regime. China's approach toward UNCLOS showed its ambiguity. China is part of it but also at the same time neglected it. U.S. has not ratified it. However China and the U.S. each stand to gain by submitting to the constraints of international law. For China, bringing its South China Sea claims into line with maritime law would reassure its neighbors and alleviate some of the anxiety that motivates the growing multinational pressure on Beijing's behavior in the South China Sea. For the U.S., acceding to the Law of the Sea treaty would reinforce both its own credibility and the treaty regime's strength and validity, making it more likely that an eventual resolution could be achieved within its framework.

Maritime Blocks: The second scenario refers to cold war or balance of power scenarios. It assumes that global maritime governance system would be undermined by the growing competition between the U.S.

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and China, as well as potentially other actors. U.S. has still a supreme position in terms of capabilities and resources, but with China aspiration and capabilities it is possible that in the long run it will be possible to create two maritime blocs. According to this scenario China would rule in the Asia Pacific, while the US would dominate in the Atlantic and parts of the North Pacific. Both would effectively set the code of conduct in their respective spheres of influence, while rallying multilateral coalitions behind them. Conflicts and frictions would arise where their respective spheres of interest overlap. And it will be most notably in the Indian Ocean and Pacific. China's ambition is to shape the international order along its periphery. Under the rubric of "community of common destiny", and aided by projects under the Belt and Road Initiative, China is attempting to develop a regional order. The U.S. and its allies, unsettled by China's growing power and assertive behavior, have reacted by advancing the idea of a Free and Open Indo-Pacific, largely pitched to South East Asia as an alternative to China's dominance. Maybe we will observe emergence of a so-called loose bipolar system in the region, in which there are two rival blocs with China and the US as leaders. Such a system may also include countries that will not be part of either bloc (e.g., Singapore, Indonesia). The characteristics of such a system are the loose organization of the blocs and apparent internal differences among members, as well as the presence of other transnational and regional actors (e.g., ASEAN).

Regional Governance: This scenario assume that a greater diffusion of power would prevent great power confrontation, but also undermine a more consensual global regime. Instead the focus would shift towards the development of regional security systems. Like the Code of Conduct (COC) between ASEAN and China which is intended to reduce the risk of conflict in the South China Sea in the disputed waterway where China's expansive maritime and territorial claims clash with those of four ASEAN member states. This could result in a stronger role for China in the region and an attempt to push back the U.S. As China's supreme leader Xi Jinping said in 2014, when he called for "Asian people to

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uphold Asia's security." Or when Chinese Foreign Minister Wang Yi said in 2022 during his stop in Indonesia that Southeast Asian nations should avoid "being used as chess pieces in major power rivalry and from coercion." He added, "The future of our region should be in our own hands." China's rising prominence has been accompanied by economic and military might. During the ASEAN-China Special Summit on 22 November 2021, Chinese President Xi Jinping stated that China sought to build "a closer China-ASEAN community with a shared future." He used the phrase "Community of Common Destiny and Shared Future" or shortly "Community of Common Destiny" (CCD).

Contested Commons: Under the last scenario, the current rebalancing of maritime power would result in growing global fragmentation. This would imply that maritime power would become increasingly diffuse, not just amongst different states and regions, but also between states and non-state actors. Meanwhile, the U.S. aims to preserve the post-World War II order that it believes has underpinned relative peace and prosperity in Asia while also serving its own interests. These paradigms clash in the South China Sea, where some observers see a new cold war that may turn hot. While the U.S. will remain important naval power, it would no longer act as a guarantor of the global maritime commons in time of growing Chinese maritime power. This could lead to growth of regional tension and potential conflicts.

Session V

Maritime Disputes and UNCLOS

海洋爭端與聯合國海洋法公約



- **UNCLOS Dispute Settlement Apart from Annex VII Arbitration: Other Options?**

Jay Batongbacal, Professor of Law,
University of the Philippines

- **Legal and Political Issues Related to Warships Passing through the Taiwan Strait**

Ruei-Lin YU, National Defense University,
Taiwan

- **Hypocrisy of Sovereignty and Maritime Disputes in the South China Seas: with Special Reference to the South China Sea Arbitration**

Chi-Ting TSAI, National Taiwan University,
Taiwan

UNCLOS DISPUTE SETTLEMENT APART FROM ANNEX VII ARBITRATION: OTHER OPTIONS?

Jay BATONGBACAL

Abstract

While the 2016 South China Sea Arbitration has received much attention since 2013, several other dispute settlement mechanisms are provided for under UNCLOS which may become more relevant to the claimant States as their interactions show a trend toward diversification and intensification. This paper will discuss and compare these other mechanisms and their relevance to the more recent record of incidents among SCS claimant States, and consider the likelihood and feasibility of resorting to them should ongoing COC negotiations fail to provide a robust dispute management mechanism.

LEGAL AND POLITICAL ISSUES RELATED TO WARSHIPS PASSING THROUGH THE TAIWAN STRAIT

Ruei-Lin YU

Abstract

Whether or not warships sail through the Taiwan Strait has high and only political implications. In recent years the US warships, and on occasion few western countries such as Britain and Canada, have sent their warships to sail through the Taiwan Strait, drawing Beijing's anger. The legal opinions of various parties on whether military ships (aircrafts) can pass through the Taiwan Strait are obviously different, and the political concerns are much complicated. This paper will review the coastal states (PRC and ROC) and the US legal statement by UNCLOS and argue the Taiwan Strait is neither international water nor international strait but an EEZ Strait where military ships (aircrafts) should enjoy the freedoms of navigation and overflight due regard to very limited coastal jurisdiction. This article argues that the application of “transit passage” in the Taiwan Strait can be excluded, and there is an EEZ channel in the middle of the strait for freedom of navigation, but it cannot be denied that foreign warships can indeed choose the other side of Taiwan, the Pacific Ocean, when passing through Taiwan. In other words, there is no “need” for foreign warships to pass through the Taiwan Strait. This unique geographic feature also changes the passage of warships through the Taiwan Strait from a legal issue into a political issue, which depends on the judgment of international politics rather than legal debates.

軍艦是否通過臺灣海峽具有高度的政治意義。近年來，美國軍艦以及英國、加拿大等少數西方國家，皆曾派遣軍艦通過臺灣海峽，引起北京的抱怨。各方對軍艦（機）能否通過臺海的法律意見明顯不同，政治關切也複雜得多。本文透過國際海洋法檢視沿岸國家（中華人民共和國與中華民國）和主要執行軍艦通過的國家——美國的相關法律論點，認為臺灣海峽既不是國際水域，也不是國際海峽，而是軍艦（飛機）應享有航行和飛越自由的專屬經濟區海峽。本文認為，因為臺灣海峽中間有一條完整的專屬經濟海域航道，依據公約可以排除臺灣海峽的過境通行權，故在航道可施以類似公海的自由航行權，但不可諱言的是，外國軍艦在航經臺灣時，確實可以選擇臺灣的另一邊，也就是太平洋海域通過；換言之，外國軍艦確實沒有「必要」選擇通過臺灣海峽。這也將軍艦通過臺灣海峽從一個法律問題變成了一個政治問題，取決於國際政治的判斷，而不是法律辯論。

HYPOCRISY OF SOVEREIGNTY AND MARITIME DISPUTES IN THE SOUTH CHINA SEAS: WITH SPECIAL REFERENCE TO THE SOUTH CHINA SEA ARBITRATION

Chi-Ting TSAI

Abstract

The concept(s) of sovereignty has long been formulated and reformulated in the history. However, there are always debates over the nature and scope of sovereignty in each specific case, which illustrates the concept of sovereignty is essentially contestable in nature. In this article, I will use the South China Sea Arbitration as an example to illustrate why the obscure concept of sovereignty might give China some leeway to legitimize its following legalization action in their discourse, and why China's various maritime claims in the South China Sea could become a hypocritical construct and not able to resolve maritime disputes easily. A main argument the author attempts to make here is: China does employ the Absolute Sovereignty and Westphalian models as conventional wisdom suggests in its legalization actions reflects in its foreign policy actions and legal jurisprudence. However, such observation overlooks that China may actually dialectically utilize the modern concepts of Popular Sovereignty model and the Relative Normativity under international law to legitimize its territorial sovereignty, maritime jurisdiction and historical rights claims in the South China Sea. The concept of sovereignty is an essentially contestable nature, by utilizing these competing arguments, China's various maritime jurisdiction claims also becomes a hypocritical construct in the South China Sea.

Young Scholars Session

青年學者專場

- **Dispute Resolutions Under UNCLOS: A Possible Resolution in the Yellow Sea?**

Angela Semee KIM, Assistant Professor,
School of Law, Handong Global University

- **Application of Quasi-Realistic Numerical Modeling to Prevent or Minimize Ocean Pollution: An Oil Spill Example**

Chih-Lun LIU, Ph.D Student, Oregon State
University

- **Advancing Itu Aba to comply with the South China Sea arbitration case as fully-titled island under the UN Convention on the Law of the Sea**

Jia-He Song, IDAS (Ph.D.) student, National
Chengchi University



Young Scholars Session

青年學者專場

- **International Cooperation on Underwater Cultural Heritage: Retrospect and Prospect**

Pei-Fu WU, Postdoctoral Research Fellow,
The Center for Marine Policy Studies,
National Sun Yat-sen University

- **Taiwan Grey-zone Tactics in the South China Sea: An Opportunity for Other Countries?**

Angelo Brian CASTRO, IDAS (Ph.D.) student,
National Chengchi University

- **Current Legal Issues of Indonesia's Outermost Small Islands**

Adrian NUGRAHA, Faculty of Law, Sriwijaya
University



DISPUTE RESOLUTIONS UNDER UNCLOS: A POSSIBLE RESOLUTION IN THE YELLOW SEA?

Angela Semeo KIM

Abstract

The United Nations Convention on the Law of the Sea (UNCLOS) provides a means of settlement of disputes among State Parties concerning the interpretation or application of the Convention (Article 279). It provides that States Parties have an obligation to settle disputes by peaceful means. Nonetheless, there are many maritime disputes, specifically in the Asian Pacific region, that remain unresolved. How does the provision on settlement of disputes under UNCLOS play a role in today's world, where many maritime disputes arise between States? This paper aims to discuss the dispute resolution mechanisms provided under UNCLOS, along with cases studies that used such mechanisms, and discusses how they can be applied to the maritime disputes existing in the Yellow Sea, for example, between China and the Republic of Korea. Moreover, this paper will discuss the current maritime issues in the Yellow focused on the perspective of the Republic of Korea. Last but not least, this paper will analyze how maritime disputes can possibly be peacefully resolved under UNCLOS.

APPLICATION OF QUASI-REALISTIC NUMERICAL MODELING TO MITIGATE OCEAN POLLUTION: OIL SPILL EXAMPLE

Chih-Lun LIU

Abstract

Pollution in the ocean has been an international issue because some pollutants travel with ocean currents, waves, and wind and can cause serious damage locally and even globally. Regional and global cooperation is paramount to reduce harm by exchanging research information and data such that scientific criteria and regulations can be established accordingly. An appropriate scientific approach should be compatible with the UNCLOS general principles, and shall not unjustifiably interfere with other regulations. In this report, we take oil spills as an example, which are devastating and detrimental to the ocean ecosystem. History has shown that oil spills can cause catastrophic damage to the fishery industry. A three-dimensional numerical simulation has been conducted near Green Island, East of Taiwan, as a case study. A passive tracer is used in the model, which mimics oil spills, to not only predict oil trajectories but also revert oil spill incidents that potentially help identify the suspect and bring them to justice. Numerical simulations can be applied to other parts of the ocean and can be coupled with satellite imagery for model validation. The hope is to minimize damage by encouraging competent international organizations to jointly develop and promote marine scientific research for responding to pollution incidents in the marine environment.

Keywords: Marine scientific research, Global and regional cooperation, Oil spill pollution, Numerical Model

ADVANCING ITU ABA TO COMPLY WITH THE SOUTH CHINA SEA ARBITRATION CASE AS FULLY-TITLED ISLAND UNDER THE UN CONVENTION ON THE LAW OF THE SEA

Jia-He Song

Abstract

The 2016 South China Sea arbitration case refers to the Republic of the Philippines on the grounds that the People's Republic of China's (PRC) maritime rights and interests claims based on the "Nine Sections" in the disputed waters of the South China Sea and the Philippines and that recent years' law enforcement and island reef development activities have violated the United Nations Convention on the Law of the Sea (UNCLOS).

Therefore, proposed to the Permanent Court of Arbitration. On February 19, 2013, PRC formally refused to participate in the arbitration case, stating that the statement made by PRC in 2006 under Article 298 of the Convention excludes the application of the dispute settlement mechanism provided for in the Convention to PRC on issues such as delimitation of sea areas. It also considers that the dispute involved in this case is essentially a question of territorial sovereignty and maritime delimitation beyond the scope of the Convention, so the arbitral tribunal has no jurisdiction over this case.

On July 12, 2016, with the absence of PRC, the arbitral tribunal announced the results of the arbitration in support of the Philippines' almost all claim. The five arbitrators of the arbitral tribunal unanimously ruled that under the United Nations Convention on the Law of the Sea, PRC does not enjoy historic rights based on the "Nine Segments" of the South China Sea natural resources.

Although this result has its' difficulties on addressing Taiwan, R.O.C., which has been unsuccessful in its attempts to be included in multilateral mechanisms aimed at managing or resolving disputes, it is undeniable that this ruling also seriously affected R.O. C's sovereignty in the South China Sea. In particular, the result of this arbitration defines Itu ABA Island as a reef. This Thesis try to examine parts of the 2016 Arbitration and further more explores the possibilities to advance Itu ABA to comply with Article 121 as Fully- Titled Island.

Keywords: South China Sea, Maritime Disputes, UNCLOS, Itu ABA, Marine Resources Protection, Article 121, Fully- Titled Island.

INTERNATIONAL COOPERATION ON UNDERWATER CULTURAL HERITAGE: RETROSPECT AND PROSPECT

Pei-Fu WU

Abstract

This article reviews Taiwan's legal frameworks for international cooperation on underwater cultural heritage together with essential international regimes, including the 1982 United Nations Convention on the Law of the Sea and the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage. The author claims that these regimes are more amplified, particularly in their applications, which will present opportunities and challenges for Taiwan in the future.

Keywords: Convention on the Protection of the Underwater Cultural Heritage, underwater cultural heritage, Underwater Cultural Heritage Preservation Act of 2015, United Nations Convention on the Law of the Sea

CHINA SEA: AN OPPORTUNITY FOR OTHER COUNTRIES?

Angelo Brian CASTRO

Abstract

The highly contested South China Sea has become a silent witness to a prolonged dispute among global and regional stakeholders. One of the tools employed by countries such as China, Russia, and Iran in conflict areas where conventional war is not an option is called grey-zone tactics. Most commonly, this can be in the form of information warfare, economic coercion, and ambiguous forces, to name a few. Despite the large frequency of this practice, only a few studies have been published looking into the possible options of the other country claimants. This study investigated the timeline of employing grey-zone tactics in the South China Sea since the declaration of the nine-dash line in the area. It also explored the plausible directions for other country claimants to protect their interests in the contested territory, including UNCLOS provisions. Resources for the study include earlier studies about grey-zone tactics in other conflict areas, media reports about the incidents, and other documents published by reputable institutions relevant to the topic. It was found that other claimant countries in the South China Sea may exercise responsive actions individually or collectively to counteract the growing effectiveness of grey-zone tactics in the contested area. As the other claimant countries should avoid further escalating the volatile situation, they are still obligated, as sovereign states, to protect their national interests permitted by international laws and the UNCLOS. The research contributed by supplementing the earlier studies investigating the implementation of grey-zone tactics in the South China Sea and empowering the other claimant countries in the region by exploring their available options.

Keywords: Grey-zone Tactics, South China Sea, UNCLOS, Responsive Action, Nine-dash Line

CURRENT LEGAL ISSUES OF INDONESIA'S OUTERMOST SMALL ISLANDS

Adrian NUGRAHA

Abstract

This article analyzes various provisions of legal instruments related to the Indonesian archipelago, especially the outermost small islands. In detail, this study discusses current issues on the outermost small islands as maritime boundaries between Indonesia and neighboring countries, from defense and security aspects, border management institutions, as well as the use of these islands for public welfare and preservation of the marine environment. This article also develops solutions to overcome these challenges.

This research methodology uses a normative juridical approach by looking at law as a norm in society, in this case, the norms that exist in international law and Indonesian national law. Legal materials collection techniques used in this research include documents, literature, and internet studies. The legal instruments analyzed included the 1982 United Nations Convention on the Law of the Sea and various laws and regulations related to the management of Indonesia's outermost-small islands. In addition, this research also collects relevant field data through interviews with officials at various government institutions in Indonesia, such as the National Border Management Agency, the Indonesian Navy, the Coast Guard, and the Ministry of Marine Affairs and Fisheries. Interviews using semi-structured questionnaires with twenty personnel representing these four State institutions. All findings were interpreted, analyzed, and presented qualitatively.

This study analyzes various current challenges in implementing the legal framework and provides solutions for the strategy for the utilization of Indonesia's outermost small islands. The challenges faced include, first, the several indefinite boundaries of Indonesia's seas. To overcome this problem, the Indonesian Government must make agreements on several segments of maritime boundary delimitation with neighboring countries. Second, regarding challenges to maritime

CURRENT LEGAL ISSUES OF INDONESIA'S OUTERMOST SMALL ISLANDS

security. The solution strategy is to increase the number of trained naval law enforcement personnel and Navy patrol vessels to strengthen maritime law enforcement and surveillance. Third, the overlapping implementation of law enforcement at sea. The strategy to solve this problem is that the Government must maximally empower two maritime law enforcement institutions, namely the Navy and the Coast Guard, by increasing their capabilities. In addition, it is necessary to amend the laws and regulations that provide a more explicit mandate to these two institutions in protecting Indonesia's maritime sovereignty. Fourth, challenges in border management. To resolve this issue, the National Border Management Agency needs to train and improve the quality of its personnel in managing borders and establishing cooperation in border management in the outer islands with neighboring countries. Fifth, the issue of the institutional framework for the utilization of the outermost small islands for public welfare and environmental protection. The solution to this problem is to develop an integrated marine governance framework and national marine policy to coordinate the actions of relevant government agencies. The results of this study may be useful in increasing and developing knowledge that can help implement the utilization of the outermost small islands in Indonesia.

Keywords: archipelagic state, community welfare and environmental protection, delimitation of maritime boundaries, outermost small islands, sea defense and security

UNCLOS 40th ANNIVERSARY

and Its Implementation of
Marine Policy

聯合國海洋法公約40週年
與海洋政策國際研討會



海洋委員會
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