

Our Manifold but Common Maritime Order

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It is not an easy task for me to conclude this Conference, but I would like to focus particularly on the “manifold” nature of the law of the sea. This is because this Conference has eloquently demonstrated that manifold nature. Furthermore, the manifold nature is even multilayered. I would like to propose three layers that form the manifold nature of the law of the sea. I will conclude the Conference by applying the three perspectives that demonstrate these multiple layers, one by one. Each perspective forms a set of terms that are in contrast to each other. They are: first, “holistic but specific”; second, “static but dynamic”; and third, “theoretical but practical.” These three sets of terms reflect the multiple layers constructing the manifold nature of the law of the sea. I really hope these sets of terms will work as perspectives for concluding this wonderful Conference.

1 Holistic but Specific

The first perspective is that the law of the sea is “holistic but specific.” How is it that, in this Conference, we find two factors that are in contrast to each other?

It goes without saying that UNCLOS, the so-called “Constitution of the Oceans,” covers almost all the fields of public international law in its seventeen Parts and three hundred and twenty Articles.

Regarding the content of this Conference, looking at the Programme, the titles of the seven panels may seem, at a glance, specific. This is because the title of the Conference is spotlighting East Asia and the Pacific Region. But, in many ways, this Conference has significantly demonstrated its wide coverage. I will explain this through the following four points.

First, under the title of each panel, speakers richly enlarged and widened the discussion. For instance, Panel 1 on Baselines and Archipelagic States touched upon not only these legal concepts but also unilateral and confrontational ambition in the widening jurisdictional sea areas based upon a problematic use of archipelagic baselines. The panel also addressed the issue of sea level rise. Panel 4 on East China Sea Maritime Boundaries analyzed the issue of maritime delimitation with deep consideration of dispute settlement, too.

Second, this Conference dealt with issues that UNCLOS treats in a relatively succinct manner, namely issues of maritime security and the Arctic. Panel 2 and Panel 3 of the Conference took up these issues. Maritime security is becoming an acute issue for the law of the sea, and particularly to the East China Sea and the South China Sea. In this regard, Professor James Kraska and the Naval War College took the initiative in the discussions at this Conference. Panel 2 examined the issues of navigation rights and law enforcement, each of which is doubtlessly a very important issue of the law of the sea. “Law enforcement” does not have a clear definition under UNCLOS. In this regard, Panel 2 dealt with “law enforcement” in relation to navigation rights. Such a viewpoint is really indispensable to the law of the sea, and therefore, very useful.

Third, the panels of the Conference did not take up – at least directly – some of the main parts of UNCLOS, specifically issues of natural resources development and dispute settlement. These issues seemed not to have been part of the themes of any of the six panels of the Conference. Nonetheless, we had the honor to have, as keynote speakers and a moderator, Judges of ITLOS, Judge Shunji Yanai, former ITLOS President and Judge Rüdiger Wolfrum, and Judge Jin-Hyun Paik, as well as Secretary-General of the International Seabed Authority, Mr. Michael Lodge. Their keynote speeches and their chairing of the panels certainly added to this Conference the viewpoint of dispute settlement and natural resources development.

Fourth, the Conference paid attention to the new issues that UNCLOS did not sufficiently know at its adoption in 1982. They are, for instance, BBNJ, plastic litter, and global warming. In dealing with these issues, panelists enlarged their examination, not confining themselves to UNCLOS but considering the relationships among multiple legal regimes. The relationships were namely between the law of the sea or UNCLOS, on the one hand, and the treaties on environmental protection and the WTO, on the other hand. Really, by the efficient interplay among the relevant international legal regimes, the law of the sea could contribute to achieving the goals of the conservation and sustainable use of BBNJ, combatting global warming, and the protection of the marine environment from the harmful effects caused by plastic litter.

This fourth point brings us to the second set of factors providing the perspective for concluding this Conference. That is “static but dynamic.”

2 **Static but Dynamic**

The law of the sea is one of the oldest fields in international law. Over at least several centuries, humankind established and further refined the fundamental

principles and concepts of the law of the sea. They still hold solid significance under UNCLOS, which succeeded the four 1958 Geneva Conventions on the law of the sea. To understand this, it is enough for us to think about the legal regimes of high seas, and territorial seas, and the concepts forming the essential elements of these legal regimes. These are, for instance, the freedom of high seas, navigation rights, innocent passage, and territorial sovereignty. UNCLOS, in the latter half of the 20th century, introduced its complicated system of the distribution of jurisdiction to coastal States, flag States, and port States under the refined zone system of sea areas, such as territorial sea, contiguous zone, exclusive economic zone, archipelagic waters, continental shelf, and deep seabed.

In the long history of its development, the law of the sea has fostered and maintained its fundamental principles and concepts. This means the static aspect of the law of the sea and UNCLOS. We find some of the fundamental concepts of the law of the sea in the titles of the panels of this Conference, such as baselines, archipelago, archipelagic baselines, navigational rights, law enforcement, and maritime boundaries. The unchanging significance of these concepts for the law of the sea eloquently proves the static nature of it. To respect the historical existence of the law of the sea, this Conference had, as the moderator for Panel 1, Professor Masaharu Yanagihara, an expert of the history of international law.

In contrast, the law of the sea is facing very radical and rapid changes due to the development of technologies for various marine uses and the growing harmful impacts on oceans of such uses. The relatively new issues of the law of the sea are, for instance, marine environmental protection, BBNJ, combatting global warming in the context of the law of the sea, particularly sea level rise, and coping with plastic litter. These could be included as issues of marine environmental protection under Part XII of UNCLOS. UNCLOS could cover these issues through the interpretation and application of the relevant provisions mainly under Part XII. However, far beyond that, these issues may strongly require some amendments of UNCLOS, and even the creation of new rules of the law of the sea in order to most effectively tackle these newly emerging issues.

Please allow me to add the issue of combatting the pandemic to the list of the new issues with which UNCLOS is facing serious challenges. Due to the COVID-19 pandemic, all the participants and attendants of this Conference had difficulty getting together for the Conference which was initially scheduled for 2020. Unfortunately, the harmful effects of the pandemic are still impacting our globe. For this reason, even this year, in 2021, we could not convene the Conference in person. So, everybody here would surely not deny the necessity

of international law to effectively counter such a devastating natural disaster. Certainly, this is the case with the law of the sea. As reported worldwide, the Diamond Princess was anchored at Yokohama Port, Japan with persons infected with COVID-19 onboard. In taking the necessary measures to prevent the further spread of the infection, Japan seriously considered the relationship between flag State jurisdiction and port State jurisdiction in relation to foreign vessels present in ports in internal waters. The experience of COVID-19 has raised further difficult issues to be examined for the purpose of necessary amendments of the law of the sea and even the possible creation of new rules for it.

These newly emerging issues could require changes of the key concepts and even the fundamental ideas of the law of the sea, for instance, the distribution of jurisdiction to port States, coastal States, and flag States, and even the solid zone system of sea areas. By flexibly responding to such changes, the law of the sea would really acquire a dynamic nature.

Thus far, I have explained the second set of factors that gives me one perspective for concluding the Conference, namely, “static but dynamic.” Then, how can the law of the sea keep its longevity by coping with the newly emerging issues? It is by holding practical attitudes that should necessarily accompany theoretical approaches.

Here, we have come to the third set of factors that are in contrast to each other, “theoretical but practical.”

3 Theoretical but Practical

Regarding the content of this Conference, it aimed to deal with both law and policy, and it focused upon peaceful maritime engagement in East Asia and the Pacific Region. Therefore, the law of the sea was discussed with a particular regional concern for East Asia and the Pacific Region. It undoubtedly gave us an indispensable practical attitude that should accompany the theoretical discussions on the issues of the law of the sea.

Let me explain the achievements of this Conference in this regard with some examples. East Asian countries have serious concern with China’s unilateral and even aggressive ambition and conduct. Such concern is, certainly, shared commonly by South Asian countries. Panel 1, regarding archipelagic baselines, gave thorough theoretical consideration of the interpretation of UNCLOS and the possible existence of customary international law. Furthermore, it conducted a very practical examination that was keenly motivated not only by South Asian States, but also by East Asian States as well. Panel 3 touched upon

the issue of the Arctic. In this panel, not only the voices of the coastal States of the Arctic, but also the viewpoints of the non-coastal States were heard for the purpose of building the Arctic regime. The voices of the non-coastal States significantly added, to the theoretical analysis of the possible Arctic regime, a reflection of their practical desires. As non-coastal countries of the Arctic, East Asian countries are trying to become essential stakeholders, in some sense, in a competitive manner. Panel 5 and Panel 6 did not stop at theoretical evaluation of the relevant legal regimes for the themes of the panels. They also dealt with the impact of BBNJ on the Pacific Region, plastics, and the issue of global warming, particularly by emphasizing sea level rise. In this sense, practical viewpoints were never missing from these panels, either. Thus, these ways of examining the issues under the panels undeniably proved to be fine combinations of the theoretical and practical viewpoints of this Conference.

In addition, I would like to highlight the valuable participation, in this Conference, by both academic and diplomatic societies. These speakers really embodied the theoretical and practical viewpoints in dealing with the themes of this Conference.

Thus far, I have explained the manifold nature of the law of the sea. To do so, I applied three perspectives, namely, three sets of factors that are in contrast to each other. These are, “holistic but specific,” “static but dynamic,” and “theoretical but practical.” These multiple layers really form the manifold nature of the law of the sea. The content and contributors of this Conference impeccably represent this manifold nature of the law of the sea.

4 Conclusion

I would like to emphasize the “common” nature of the law of the sea.

From a time-oriented viewpoint, it is remarkable that this Conference is the forty fourth Conference on Oceans Law and Policy. We had the honor of receiving a superb introduction given by Professor Myron Nordquist. He has continuously taken a leading role in ensuring the success of these conferences. The law of the sea needs to survive newly emerging challenges. For that goal, all of us, gathering here, have a heavy but very honorable duty to uphold the traditional law of the sea, and to collaborate to maintain our maritime order. Beyond that, from now on, we need to work together to pass the maritime order in our hands on to future generations.

From a space-oriented viewpoint, we should not forget that every maritime issue and its handling have both regional and global implications. We certainly know that the oceans cover our globe entirely. Many uses of oceans are taking

place at the same time all over the globe. The handling of a maritime issue in one region doubtlessly has impacts on other regions of the world.

Taking seriously into consideration these points, both from a time perspective and from a space perspective, we will never leave any States, nor anyone else, as bystanders to the maritime order.

This is because all of us share a common maritime order, meaning our common but manifold maritime order.

