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International Symposium: International Maritime Order - Contributions of Japan and Mexico

Mariko Kawano

School of Law, Waseda University

Yurika Ishii

National Defense Academy of Japan

Carlos Luis Bernal Verea

Academic Department of Law, ITAM

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INSTITUTO TECNOLÓGICO AUTÓNOMO DE MÉXICO

www.asiapacifico.itam.mx

asiapacifico@itam.mx

Instituto Tecnológico Autónomo de México ITAM

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Presentation

During the last ten years, the Asia Pacific Studies Program (PEAP), as part of the Academic Department of International Studies, has focused its attention on providing our students the opportunity, through regular classes, seminars, conferences and academic exchanges, to deepen knowledge on this macro-region. It provides, on a regular basis, analysis of the economic, political and diplomatic evolution of relevant countries, mainly Japan, China, South Korea, as well as the Association of Southeast Nations, and its impact in the international community. Here, the PEAP continues to devote attention to the understanding of this dynamic region and how Mexico may increase its interaction with this geographical area. With these goals in mind, the PEAP Working Paper Series has been devised as a vehicle to present relevant contributions to the field.

The issue 11 of our Working Paper series presents two papers and one minute of address resulting from three keynote speeches, followed by an engaging session of Q&A, of the symposium "International Maritime Order - Contributions of Japan and Mexico", held at Campus Rio Hondo on September 23, 2016, a project co-organized and with the full financial support of the Embassy of Japan in Mexico City. First, Professor Mariko Kawano, School of Law, Waseda University in Japan, delivered a paper titled "Jurisdiction and Admissibility of Claims under the Compulsory

Dispute Settlement System under UNCLOS”. Next, Professor Yurika Ishii, National Defense Academy of Japan, delivered the paper “Obligation of States in Disputed Maritime Areas and the Significance of the Code of Conduct”. Third, Professor Carlos Luis Bernal Verea, Academic Department of Law, ITAM, engaged the public through his presentation “Mexico: Its Maritime Boundaries.” As part of this academic activity, Prof. Kawano previously delivered on September 22 the keynote speech “Maritime Disputes in Asia and International Adjudication” at the Matias Romero Institute, the diplomatic academy of the Ministry of Foreign Affairs, as well as two interviews to the review Foreign Affairs Latinoamerica and Excelsior newspaper, both relevant publications widely read in Mexico and beyond our frontiers.

These three presentations included in the volume explores relevant, current problems along both sides of the Pacific Ocean involving the Law of the Sea, and future trends and challenges the Law of the Sea faces in the pursuit of peace and international order of the Ocean Commons. Topics of discussion included Japanese and Mexican experiences and perspectives on mediation and arbitration for dispute settlement, and the relevance of traditional international law, legally and non-legally binding codes of conduct among states, and the United Nations Convention on the Law of the Sea –UNCLOS- as regulators of state behavior at sea in the international community. In particular, the Permanent Court of Arbitration (PCA) historical award delivered in 12 July 2016 against the

People's Republic of China recent claims and activities in the South China Sea has push to the front of the international community's agenda the imperative for countries to strictly respect international law, in particular the Law of the Sea, as the main instrument to resolve disputes at sea. Undoubtedly, this symposium thus became a unique opportunity to know relevant Japanese and Mexican perspectives on the possible implications of the PCA award, to widen exchange of ideas on this relevant topic on both sides of the Pacific, and to foster the interest of younger generations.

Asia Pacific Studies Program PEAP

Welcome remarks

Dr. Stephan Sberro, Director of European Studies Program ITAM, Jean Monnet Chair Professor, The European Union

Good afternoon, my name is Stephan Sberro, Director of the European Studies Program at ITAM and professor at our Academic Department of International Studies. His Excellency Akira Yamada, Ambassador of Japan to Mexico, welcome to ITAM, as our frequent guest in many of our events, including the annual Shigeru Yoshida Chair of Japanese Studies, we would like to thank you for your official and personal interest in the academic activities that our Department organize for the sake of understanding Japan and East Asia. To our invited guests, Prof. Mariko Kawano, professor at Waseda University in Tokyo; Prof. Yurika Ishii, National Defense Academy of Japan, and Prof. Carlos Luis Bernal Verea, our colleague at the Academic Department of Law, ITAM, we wish you the very best during your visit to Mexico and to our symposium. To all of you, on behalf of Dr. Rafael Fernandez de Castro, Head of the Academic Department of International Studies, welcome to out campus.

Since the creation of the Department of International Studies, one of our main tasks has been to provide students with the analytical tools needed to understand the changes and processes the international community has been experienced under the current trend of globalization. Students,

professors and invited intellectuals, either in classrooms, in conferences, or in other institutions with their peers, deepen their knowledge on the dynamics that world politics have imprinted in the international society, the effects on Mexico, and how our younger generations can contribute to a better reality. To provide an education of excellence, we create synergies with relevant actors and produce knowledge for our students aiming at solving old and new problems affecting the international society.

The study of Asia Pacific, a macro region with renewed political, economic and social forces in expansion, is of particular importance for us. For more than 10 years ITAM has been promoting the understanding of the region and its links with our country, learning from several Asian universities' experiences, and sending our students to several countries in the region, including Japan. As part of our internationalization programs, the department sends and receives students through academic exchanges to and from several Japanese universities, namely Nanzan University, Chuo University, Nagoya University of Commerce & Business, Yokohama National University, and Sophia University. Mainly through our Asia Pacific Studies Program –PEAP, and with the annual generous sponsorship of the Japan Foundation in Mexico, we organized the Shigeru Yoshida Chair of Japanese Studies, and on a regular basis receive library support funds. Also, under the auspice, and in this occasion through the organization and complete, generous support of

the Japanese Embassy to Mexico, ITAM is able to offer students and the public events of world-class quality.

This year we have organized the symposium "International Maritime Order – Contributions of Japan and Mexico" to engage in an academic dialogue among Japanese and Mexican International Law specialists, students and interested audience over a particularly relevant topic for the international community: the rule of law vis-à-vis the politics of power at sea. The discussion will deal with current problems along both sides of the Pacific Ocean involving the evolution of international law, in particular the Law of the Sea, relevant mechanisms of dispute settlement, international adjudication, legally binding codes of conduct, as well as future trends and challenges the international maritime order face in the pursuit of peace and order of the Ocean Commons. Mexico and Japan, as littoral states, and signatories of the United Nations Convention on the Law of the Sea (UNCLOS), have historically attached the utmost importance to the rule of law, the peaceful settlement of disputes among states, and refraining of the use of force or coercion. Topics of today discussions may also include mediation and arbitration for dispute settlements, and the relevance of traditional international law and UNCLOS as regulators of state behavior in the international community.

Prof. Mariko Kawano will inquire on the "Jurisdiction and Admissibility of Claims under the Compulsory Dispute Settlement System under UNCLOS"; Prof. Yurika Ishii will deepen her analysis over the "Obligation

of States in Disputed Maritime Areas and the Significance of the Code of Conduct", while Prof. Carlos Luis Bernal Verea will present his analysis on "Mexico: Its Maritime Boundaries." The event will be moderated by Prof. Ulises Granados, coordinator of our Asia Pacific Studies Program PEAP.

We invite all of you to participate with our speakers so as to make this event a relevant point of discussion and a fruitful arena of intellectual proposals over the present and future role of Mexico and Japan, countries joined by the Pacific Ocean and common interest, in the advancement of a peaceful international maritime order.

Welcome again to the Instituto Tecnologico Autonomo de Mexico. Thank you!

Jurisdiction and Admissibility of Claims under the Compulsory Dispute Settlement System under UNCLOS

Mariko Kawano
School of Law, Waseda University

Introduction

Excellencies, distinguished guests and participants, ladies and gentlemen, I feel truly honored to be invited to make a presentation in this symposium. I am grateful for the kind invitation of the Instituto Tecnologico Autonomo de Mexico, ITAM, and highly appreciate the efforts of Professor Granados to organize this opportunity.

The title of my presentation is "Jurisdiction and Admissibility of Claims under the Compulsory Dispute Settlement System under the UNCLOS." Part XV of the UNCLOS is considered to enhance the compulsory jurisdiction of international courts and tribunals and is expected to contribute to the final settlement of maritime disputes. However, it is often pointed out that the compulsory jurisdiction established by Part XV does not realize a truly comprehensive regime of compulsory jurisdiction. I would like to examine the effectiveness and weakness of the compulsory jurisdiction and its effects to settle international maritime disputes. I will focus particularly on the dispute in the South China Sea, one of the most important matters of concern in Asia.

For that purpose, first, I want to examine the basic features of the dispute in the South China Sea. Second, I will explain the basic system of compulsory jurisdiction under Part XV of the UNCLOS. Third, I will examine the conditions to recourse to the compulsory jurisdiction under the UNCLOS, focusing on the South China Sea Arbitration case.

1. The Dispute in the South China Sea

(1) Dispute in the South China Sea

Let me start by briefly summarizing the dispute in the South China Sea. This is a map of the South China Sea. It is a semi-enclosed sea in the western Pacific Ocean spanning an area of almost 3.5 million square kilometers. It is a crucial shipping lane, a rich fishing ground, and is believed to hold substantial oil and gas resources. The South China Sea includes hundreds of geographical features, either above or below water.

(2) "Nine-Dash Line" and the Claims for the EEZ and CS in the South China Sea.

(3) Brief Chronology of the Dispute

In 1935, China published a list of 132 geographical names of islands. It claimed that it had exercised jurisdiction over this area for a long time before this year. Then, in 1947, it internally circulated an atlas, drawing an eleven-dash line to indicate the geographical scope of its authority

over the South China Sea, at least from the viewpoint of China. In 1953, two dashes were removed from the line. Since then, China has used the so-called "nine-dash line" as the basis for its claim in the South China Sea. Later, China started taking measures to enhance its claim and control over the maritime features and areas enclosed by the line.

In response, other coastal States have also tried to enhance their claims for sovereignty over certain maritime features and the entitlements to the maritime areas generated by those features. Because of these conflicting claims, the maintenance of maritime safety and security in the South China Sea has become an important issue among the ASEAN and its Member States. It is also a matter of concern of other States which have the interests in the freedom of navigation and the maintenance of the safety and security in that maritime area. At the 8th ASEAN Summit, on 4 November 2002, the Foreign Ministers of ASEAN and China adopted the Declaration on the Conduct of the parties in the South China Sea. The Declaration was not legally binding and the ASEAN Member States and China agreed to continue negotiations to make the Code of Conduct with legally binding effect. This attempt has not yet been successful.

In 2009, Malaysia and Vietnam made a joint submission to the Commission on the Limits of the Continental Shelf beyond 200 nautical miles from the baseline, from which the breadth of the territorial sea is measured pursuant to Article 76 of UNCLOS. The arguments in the

notes verbales addressed to the UN Secretary General by China, Malaysia, the Philippines, Vietnam and Indonesia reflected the differences in their views and the range of their interests in this maritime area.

Under these circumstances, on 22 January 2013, the Philippines decided to institute arbitral proceedings against China in accordance with Part XV of UNCLOS. China immediately declared that it refused these proceedings. Moreover, it should be noted that after the initiation of the arbitral proceedings by the Philippines, China accelerated its land reclamation, dredging, and construction of artificial islands, installations, and structures.

The Arbitral Tribunal decided to bifurcate the proceedings. It rendered its Award on jurisdiction and admissibility on 29 October 2015 and its final Award on 12 July 2016.

(4) Basic Features of the Dispute

The dispute in the South China Sea has the following features. First, while China has left ambiguous the legal meaning of the so-called “nine-dash line” and the “historic rights,” China’s claim on the basis of this line appears to cover its sovereignty over maritime features and jurisdiction over maritime areas. Second, the dispute in the South China Sea involves various claims made by several coastal States, some of which are interrelated or overlap, so it is rather difficult to divide the

dispute into respective bilateral ones. Third, the States involved in this dispute have taken unilateral measures to manifest or enhance their claims. These unilateral measures have resulted in the serious aggravation of the dispute and have affected safety and security in the region. Fourth, because of the importance of the South China Sea, even non-coastal States may have interests in the maintenance of its safety and security.

2. Compulsory Jurisdiction of an International Court or Tribunal in Accordance with Part XV of the UNCLOS

How and to what extent can the dispute settlement regime of the UNCLOS contribute to the settlement of this dispute?

(1) Choice of International Courts and Tribunals by the Declaration of a State Party

(2) Enhancement of Compulsory Jurisdiction of International Courts and Tribunals

Section 2 of Part XV of the UNCLOS provides for the regime for compulsory jurisdiction of international courts or tribunals. One of the special features of that regime is that each State Party is allowed the discretion to make a declaration expressing its choice or preference of international courts and tribunals provided in Article 287, paragraph 1.

The Parties are deemed to have accepted at least the jurisdiction of an arbitral tribunal under Annex VII of UNCLOS even if they do not make a declaration for that purpose. Accordingly, the arbitral tribunal in accordance with Annex VII is endowed with compulsory jurisdiction regardless of the declarations of State Parties.

(3) Conditions for the Exercise of Compulsory Jurisdiction of an International Court or Tribunal in Accordance with Section 2 of Part XV (Article 286)
Article 286 provides for three conditions that must be fulfilled in order to recourse to the compulsory jurisdiction in accordance with Section 2 of Part XV: first, the existence of a dispute concerning the interpretation or application of the UNCLOS should be established; second, it should be established that no settlement has been reached by recourse to Section 1; and, third, it is necessary to establish that the dispute does not fall within the scope of the limitations and exceptions provided in Articles 297 and 298.

3. Conditions for the Exercise of Compulsory Jurisdiction in the South China Sea Arbitration

Although China refused to appear before the Tribunal, it published an instrument explaining its objections, in the form of a Paper and raised

objections regarding all three conditions provided in Article 286.

(1) Existence of a Dispute Concerning the Interpretation or Application of the UNCLOS

The dispute filed in the South China Sea Arbitration case contained the elements of a “mixed dispute.”

It is an established principle of international law that land dominates the sea through the projection of the coasts or the coastal fronts and that the land is the legal source of the power which a State may exercise over territorial extensions to seaward. This principle reflects the close relationship between a territorial sovereignty and the jurisdiction over maritime areas. In many cases a maritime dispute involves the aspect of the dispute concerning territorial sovereignty. This is called a “mixed dispute.”

Can a “mixed dispute” be considered as a dispute concerning the interpretation or application of the UNCLOS? It should be noted that the UNCLOS does not contain the provision with regard to territorial sovereignty. In the Chagos Marine Protected Area case, the Arbitral Tribunal found that it lacked jurisdiction to consider Mauritius’s submissions, as they were essentially related to territorial sovereignty. However, it stated that it had no intention of excluding the possibility to exercise compulsory jurisdiction in a dispute in which “a minor issue of territorial sovereignty” is “ancillary or incidental” to the principal subject of

the dispute.

In the South China Sea Arbitration case, confirming the findings of the Arbitral Tribunal in the Chagos Marine Protected Area case, the Arbitral Tribunal noted that the Philippines sensibly characterized the submissions by focusing not on the territorial claims, but rather on the issues concerning concrete provisions of the UNCLOS. Accordingly, the Tribunal concluded that the first condition was satisfied.

(2) “No Settlement Has Been Reached by Recourse to Section 1”

Section 1 of Part XV allows the State Parties to settle their disputes by the peaceful means of their own choice and the unilateral reference of a dispute to compulsory adjudication is permitted only when it is established that no settlement has been reached by recourse to the peaceful means chosen by the Parties.

In the South China Sea Arbitration case, China raised various arguments regarding the second condition, and I will be very brief on this condition. The Arbitral Tribunal agreed with none of them.

(3) Limitations and Exceptions Provided in Section 3, Articles 297 and 298

Section 3 of Part XV provides for the limitations and exceptions to the application of compulsory dispute settlement procedures under Section 2. Article 297 enumerates the limitations to the compulsory jurisdiction. The

disputes falling outside of these limitations are exempted from the compulsory dispute settlement procedures. Article 298, however, allows a State Party to the UNCLOS to make a declaration to exclude certain categories of disputes provided thereby. This is a tool for the State Parties to opt-out from the compulsory jurisdiction regime by the discretion of each State Party.

In the South China Sea Arbitration case, the third condition played particularly important role in the Tribunal's decision over jurisdiction because China, in 2006, made a declaration under Article 298 to exclude all the categories of disputes provided thereby. In the Arbitral Award of 29 October 2015, the Arbitral Tribunal found that seven submissions among 15 of the Philippines were not of an exclusively preliminary nature. The Tribunal found that those submissions contained the issues concerning maritime delimitation, historic titles, or military activities which were the exceptions provided in Article 298. In the Award of 12 July 2016, the Arbitral Tribunal concluded that it had jurisdiction to consider almost all of the Philippines' submissions.

4. Principal Issues of the Final Award on the Merits

In this section, I will take up the principal issues of the final award on the merits which reflect the role of the arbitral proceedings in the process of settling the dispute in the South China Sea.

(1) The “nine-dash-line” and China’s claims to “historic rights” in the maritime areas in the South China Sea

(2) Status of maritime features in the South China Sea

As I have previously stated, the “nine-dash-line” and China’s claims to “historic rights” therein have constituted a decisive issue in the dispute in the South China Sea and China has not clarified the precise legal meaning of its claims.

The Arbitral Tribunal found that after the UNCLOS came into effect for China in 1996, claims that contradict with the relevant provisions of the UNCLOS could not be allowed. Moreover, there was no evidence to establish China’s “historic rights”. It also concluded that there was no maritime feature that had the capacity to generate entitlements to an exclusive economic zone or continental shelf among the maritime features taken up by the Philippines and those in the Spratly Islands.

(3) China’s activities in the maritime areas of the South China Sea

(4) Obligation to protect and preserve the marine environment

The Arbitral Tribunal also found that China had violated the relevant rules of the UNCLOS, which calls for ensuring respect for the Philippines’ sovereign rights in its EEZ. It should be noted that because of the exclusion of jurisdiction regarding the dispute concerning China’s military activities, the Tribunal did not examine the legality of the military

activities.
The Tribunal also found that China's activities violated the obligation to protect and preserve the marine environment under the UNCLOS by failing to prevent the illegal fishing activities of Chinese fishermen and fishing vessels and by conducting dredging, reclamation and construction of artificial islands, installations and structures -including those accelerated by China after the initiation of the arbitral proceedings.

(5) Obligation not to aggravate or extend the dispute pending international proceedings
The Arbitral Tribunal also found that China aggravated and extended the dispute through its activities since the institution of the arbitral proceedings, which is in violation of the relevant provisions of the UNCLOS and general international law.

Concluding Remarks

In the South China Sea Arbitration case, the Philippines successfully formulated their submissions in such a way that the compulsory jurisdiction of the Arbitral Tribunal could be justified. From the viewpoint of legal and diplomatic strategy, China should have appeared before the Arbitral Tribunal and should now comply with the final Award.
Because of the lack of an ultimate organ for the enforcement of a

decision by an international court or tribunal, it is very difficult to enforce the Arbitral Award, as such, against China. However, it should be noted that the refusal of these decisions is considered to be contrary to international law.

It should also be questioned to what extent the findings of the Arbitral Tribunal can contribute to the final settlement of the dispute in the South China Sea as a whole, which involves various States. I think that the international community should continue its effort to ensure a final settlement of the dispute in the South China Sea in order to recover the rule of law and to ensure the safety and security of that maritime area.

Obligation of States in Disputed Maritime Areas and the Significance of the Code of Conduct

Yurika Ishii

National Defense Academy of Japan

1. Introduction

In recent years, maritime confidence building measures (MCBM) emerged as an important means to overcome stalemate in relation to maritime disputes. A key consideration in the negotiation and establishment of MCBM is the balance between the freedom of the use of sea and maritime security. This paper assesses the state practices of MCBM with a particular focus of the code of conduct at sea. The focus of this paper is the relationship between international law and code of conducts.

The code of conduct is a rule which regulates the behavior of the naval vessels, government ships, military and government aircrafts at sea. Most of the existing codes of conduct are non-binding. The code of conduct is adopted in order to visualize the possible option and to enhance the foreseeability of the opponent party in the case of unplanned encounter. In other words, while such a non-binding code of conduct is not recognized as a source of the law, it is recognized as an operational norm, and expected to function as a crisis management

mechanism.

The adoption of a legally binding code of conduct for South China Sea has been long sought since the adoption of Declaration on the Conduct in 2002[1] without any concrete result. It was said that the code of conduct is not an effective solution for South China Sea because there are a number of overlapping area which includes not only undelimited maritime areas but also areas surrounding disputed features. The rights and obligation of states in disputed maritime area is a contentious theme to date.[2] Therefore, states may not be able to agree on what to shelve, when they decide to refrain from certain conducts.

This paper examines whether such an assessment is appropriate, analyzing the relationship between international law and the confidence building measures concerning the safety of navigation. It concludes that a code of conduct is being more of a confirmation of existing international law. States are obliged to conduct safely even at the disputed area under United Nations Convention on the Law of the Sea (UNCLOS).

The first part of this paper clarifies the concepts and the contents of a code of conduct, focusing upon its relationship between international law. Then the second part analyzes relevant state practices. Last part briefly

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[1] Adopted by the Foreign Ministers of ASEAN and the People's Republic of China at the 8th ASEAN Summit in Phnom Penh, Cambodia, November 4, 2002, available at http://www.aseansec.org/13163.htm.

[2] *See* British Institute of International and Comparative Law, *Report on the Obligations of States under Articles 74(3) and 83(3) of UNCLOS in respect of Undelimited Maritime Areas* (2016).

touches upon the chance for a multilateral code of conduct. The analysis will be limited to a situation where military or government ships or aircrafts confront to each other beyond the territorial sea and air. The scope of the research excludes a situation within a state territory and a situation under armed conflict.

2. The Code of Conduct at Sea and International Law

2.1 The Implication of the South China Sea Arbitration Award

UNCLOS provides the obligation of states to ensure the safety of navigation in a general term. International Regulations for Preventing Collisions at Sea (COLREG) and the Annex II of International Civil Aviation Organization Convention (ICAO Convention) are pertinent to conducts at maritime area.

COLREG is the “rules of the road” at sea, which sets out navigation rules in order to prevent collisions between vessels. A general reading of the convention may lead to an interpretation that it does not directly apply to military activities such as maneuver, simulated attack, military exercises as well as law enforcement activities within its own jurisdictional waters.

It is important with this regards that the South China Sea Arbitration Award held that law enforcement activities done in a dangerous manner violates both UNCLOS and COLREG. In the Award, the Tribunal considered the lawfulness of the conduct of Chinese law enforcement vessels at Scarborough Shoal when Chinese vessels had sought to

physically obstruct Philippine vessels from approaching or gaining entrance to the Shoal. China justified in a general term that such action was based on its authority, stating that waters surrounding the Shoal was within its sovereignty. The Tribunal decided that the shoal has a legal status of “rock” which may possess territorial sea up to 12M, but does not generate exclusive economic zone (EEZ).

Philippines claimed that Chinese law enforcement vessels had repeatedly approached the Philippine vessels at high speed and sought to cross ahead of them at close distances, creating serious risk of collision and danger to Philippine ships and personnel.[3] It submitted that COLREG is a “generally accepted international regulations,” which a flag state is obliged to ensure the implementation under Articles 94(3) and (5) of UNCLOS,[4] citing the statement of International Maritime Organization (IMO) that COLREG fulfilled the requirement of general acceptance.[5] The expert’s report stated that the Chinese vessels “internationally endangered another vessel through high speed ‘blocking’ or harassment

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[3] PCA Case No. 2013-19, In the Matter of the South China Sea Arbitration before an Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea, the Republic of the Philippines v. the People’s Republic of China, Award, 12 July 2016 [hereinafter “South China Sea Arbitration Award”], paras.1059 -1075.

[4] Ibid, para. 1063.

[5] Ibid. See also International Maritime Organization, Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization, Doc. LEG/MISC/3/Rev.1 (January 6, 2003), pp.10-11.

maneuvers", and they showed "a flagrant disregard of the tenets of good seamanship.[6]"

The Tribunal concluded that China had breached its obligations both under COLREG and UNCLOS. First, it determined that Article 94 of UNCLOS incorporates the COLREG into the duties of flag state by reference so that the latter binds a state even when it is not a state part of this instrument.[7] Then, having determined that the conducts of China's law enforcement vessels was "total disregard of good seamanship and neglect of any precaution,[8]" it held that these actions breached its Rule 2(a). It stated that, where the operational requirements of law enforcement ships stand in tension with the COLREGS, the latter must prevail.[9] In addition, the Tribunal held that the safe distance requirement (Rule 6) and the safe speed requirement (Rule 8) applies in the context of law enforcement, while recognizing the fulfilment of these conditions should be done on a context-dependent basis.[10] It also concluded that rules relating to right-of-way (Rules 15 and 16) applied in the scene of law enforcement.[11]

The South China Sea Arbitration Award is significant as it held that such activities are regulated under UNCLOS and COLREG, regardless of the

[6] South China Sea Arbitration Award, para. 1069.
[7] Ibid, para. 1083.
[8] Ibid, para. 1094.
[9] Ibid, para. 1095.
[10] Ibid, paras. 1097-1101.
[11] Ibid, paras. 1102-1104.

existence of the code of conduct. This judgment will have impact on the adoption of the code of conduct among ASEAN and China.

2.2 Typologies of Code of Conduct

The main contents of a code of conduct could be categorized into the following three obligations. The first is an obligation to refrain from undertaking certain actions. Examples include an obligation not to conduct a maneuver in certain areas or not to conduct law enforcement. The second is an obligation of due diligence when the state undertakes certain actions. Examples include an obligation to maintain safe speed or distance. The third is an obligation to communicate. This may be a contact between the vessels or the exchange of information between pertinent authorities. The analysis of the state practices reveals that there is a tendency that states choose to limit the scope of the code of conduct to an obligation of due diligence, particularly when the agreement covers a disputed maritime area. However, recent practices in Southeast region show that states may agree upon cooperation in law enforcement.

3. Three Types of Code of Conduct

3.1 Obligation to Refrain from Certain Conducts

3.1.1 INCSEAs

The first precedent of MCBM in the form of a code of conduct was

INCSEAs, which was concluded in 1972 between the US and the USSR.[12] The USSR signed the same type of agreements with other states in the Western side[13] including Japan[14] and South Korea,[15] from the end of the 1980s to the early 1990s. The USSR also concluded Agreements on Prevention of Dangerous Military Activities (DMAA) with the US[16] and Canada[17] among others, which focused upon military activities beyond the territorial sea. In addition, West Germany and Poland concluded the same type of agreement.[18]

One of the characteristics of the INCSEAs is that it concretely stipulates obligation to refrain certain actions. The agreement provides that ships shall avoid maneuvering in a manner which would hinder the evolutions of the formation of the other party.[19] It also prohibits formations from maneuvering through areas of heavy traffic where internationally recognized traffic separation schemes are in effect.[20] Ships engaged in

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[12] May 25, 1972, 23 U.S.T. 1168.

[13] United Kingdom, July 15, 1986, 1505 U.N.T.S. 89; West Germany, November 25, 1988, 1546 U.N.T.S. 203; France, July 4, 1989, 1548 U.N.T.S. 223; Canada, November 20, 1989, 1568 U.N.T.S. 11; Italy Dec. 31, 1989, 1590 U.N.T.S. 22; Spain, October 10, 1991, 1656 U.N.T.S. 429; the Netherlands, October 1, 1991, 1604 U.N.T.S. 3.

[14] November 12, 1993.

[15] Jul 2, 1994, 1832 U.N.T.S. I-31353.

[16] January 1, 1990, TIAS 11454; 28 I.L.M. 877.

[17] May 10, 1991, *Canada Treaty Series* 1991/26.

[18] Dec. 27, 1990, 1910 U.N.T.S. 39.

[19] Article III(2).

[20] Article III(3).

surveillance of other ships shall stay at a distance which avoids the risk of collision and also shall avoid executing maneuvers embarrassing or endangering the ships under surveillance.[21] It also provides the prohibition of provocation. Ships of the parties shall not simulate attacks by aiming guns, missile launchers, torpedo tubes, and other weapons in the direction of a passing ship of the other Party, not launch any object in the direction of passing ships of the other Party, and not use searchlights or other powerful illumination devices to illuminate the navigation bridges of passing ships of the other party.[22]

Secondly, it provides the detailed obligation of due regards. The 1972 INCSEA was concluded because they needed certain rules of the road, while COLREG was not adopted as a convention at that time. The agreement thus provides that, when conducting exercises with submerged submarines, exercising ships shall show the appropriate signals prescribed by the International Code of Signals (ICS) to warn ships of the presence of submarines in the area.[23] Ships of one party when approaching ships of the other party conducting operations, and particularly ships engaged in launching or landing aircraft as well as ships engaged in replenishment underway shall take appropriate measures not to hinder maneuvers of such ships and shall remain well

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[21] Article III(4).
[22] Article III(6).
[23] Article III(7).

clear.[24]

INCSEAs are remembered as a successful model of MCBM. The number of the incidents occurred by encounters at sea did not decrease after the conclusion of these agreements. However, the mechanism of cooperation allowed states to minimize the harm when an incident occurred.[25] There are a number of studies why the INCSEA succeeded. Winkler describes that the main factors are the mutual interest of the states, simplicity, practicability and professionalism.[26] In addition, in a larger picture, the MCBM was designed to enable state parties to prepare for the incident, exercise its discretion, allows state parties to engage in verification and accountability. The cooperation between the two states was based on hospitalities of the both sides.[27]

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[24] Article III(8).

[25] Pete Pedrozo, "Us-China Incidents at Sea Agreement: A Recipe for Disaster," *Journal of National Security Law and Policy* 6 (2012), 207, 210; James Kraska, *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics* (New York: Oxford University Press, 2011), 229; Tetsuo Kotani「Crisis Management in the East China Sea」『SIPRI Policy Brief』, (SIPRI, 2015) 3.

[26] David Winkler, *Preventing Incidents at Sea: The History of the Incsea Concept* (Centre for Foreign Policy Studies, Dalhousie University, 2008), 1; David Frank Winkler, *Cold War at Sea: High-Seas Confrontation between the United States and the Soviet Union* (Naval Inst Press, 2000), 1.

[27] Winkler, *Preventing Incidents at Sea: The History of the Incsea Concept*, 1.

3.1.2 INCSEAs-type Agreements

After the "success" of the US-USSR INCSEA, the following states concluded similar agreements with some modifications. The most significant difference between the US-USSR INCSEA and these agreements were that, in the latter case, there existed disputed areas among the state parties.

The first case is the Greece-Turkey INCSEA agreement in 1988. After a series of the crisis between the two states considering the use of Aegean Sea since the late 1970s, over which Greece went before the International Court of Justice (ICJ)[28] and a serious crises which came close to the outbreak of the military conflict in 1987, the parties agreed to adopt a guideline and a memorandum of understanding (MOU). The Guideline comprehensively regulates the activities of the naval units and the aircrafts. They came to agree on the same sort of understanding as to the use of air in September 1988.[29] However, the process came to withered by the end of 1989, nor did it prevent the crisis in 1995-1996 between the two parties.[30]

The second case is an agreement between India and Pakistan in 1991.[31]

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[28] Aegean Sea Continental Shelf (Greece v. Turkey), Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976, p. 3.

[29] International Crisis Group「Turkey and Greece: Time to Settle the Aegean Dispute (Europe Briefing N°64, Istanbul/Athens/Brussels, 19 July 2011)」『Policy Briefing』2011)3.

[30] Ibid.

[31] Agreement on Advance Notice of Military Exercises, Manoeuvres and

It is not an INCSEA agreement *per se*, but contains provision which regulates the activities of the state parties, against a background that collisions between the two states increased in the 1980s. The two states tried to conclude an INCSEA in 1991 only in vain. This agreement regulates the conduct of the state parties in order to avoid collisions in detail. In 1998, the relations of the two countries got worst after they both conducted nuclear weapons testing. In 1999, the ministers of foreign affairs adopted Lahore Declaration for peacekeeping. In that occasion, they also signed a MOU which promised a conclusion of an agreement on prevention of incidents at sea in order to ensure safety of navigation by naval vessels, and aircrafts. [32] The agreement was never implemented, besides there continues a track-two effort to promote CBM in the region.[33]

The third case is the MALINDO Guideline concluded between the defense authorities of Indonesia and Malaysia in 2001. It is a guideline that the both naval forces were to follow in the case of unplanned encounter at sea. This guideline basically follows the line of the INCSEAs. However, there are some differences in the wording. One of

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Troop Movements, April 6, 1991, 1843 UNTS 71.

[32] Memorandum of Understanding signed by Indian Foreign Secretary K. Raghunath and Pakistan Foreign Secretary Shamshad Ahmad, Lahore, 21 February 1999, http://www.acronym.org.uk/official-and-govt-documents/lahore-declaration-and-associated-memorandum-understanding, para.3.

[33] http://www.dal.ca/dept/cfps/Pillars/mspp/CCSAW.html.

the characteristic of this agreement is that it applies to "all maritime regimes relevant to UNCLOS of 1982 including disputed maritime territories." It is the only example which specifically mentions the inclusion of disputed areas. The inclusion of the disputed maritime area and the specification of the prohibited conducts were the signs of a successful MCBM.

However, in practice, this guideline did not prevent the disputes over maritime areas nor did it referred by navies or law enforcement officers. In particular, the Ambalat boundary dispute in the western Sulawesi Sea has been causing disturbance in the relations of the two states.[34] Indonesia had already given the license to Ente Nazionale Idrocarburi (ENI) in 1999 and to UNOCAL Corporation in 2004 to exploit the overlapping area. In 2005, there was a serious confrontation between the two navies in the same area, when Malaysia granted oil exploration rights to Shell Oil Company and to its national oil company Petronas.[35]

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[34] Mark J. Valencia, "Regime-Building in East Asia : Recent Progress and Problems," in *The Future of Ocean Regime-Building*, ed. Aldo Chircop, Ted L. McDorman, and Susan J. Rolston (2009), 671-99. Areej Torla, Salma Yusof, and Mohd Hisham Mohd Kamal, "The Dispute between Malaysia and Indonesia over the Nd6 and Nd7 Sea Blocks," *Journal of East Asia and International Law* 8, no. 1 (2015); IBR Supancana, "Maritime Boundary Disputes between Indonesia and Malaysia in the Area of Ambalat Block: Some Optional Scenarios for Peaceful Settlement," *Journal of East Asia and International Law* 8 (2015), 1.

[35] Valencia, "Regime-Building in East Asia : Recent Progress and Problems." Torla, Yusof, and Kamal, "The Dispute between Malaysia and

The MALINDO guideline was no use in preventing these disputes.

3.1.3 Maritime Law Enforcement Cooperation

1) Indonesia-Malaysia Agreement of 2012

An interesting trend in MCBM is that states come to conclude a maritime law enforcement cooperation agreement. The first case is done between Indonesia and Malaysia. There were frequent occasions where fishermen were capture or chased away by patrols when fishing around border areas.[36] The capture usually takes place in a border area claimed by both countries, usually referred to as overlapping area.[37] No agreed maritime boundaries are in place and border crossing is usually unilaterally-justified.[38] After a negotiation through Joint Commission for Bilateral Cooperation (JCBC) between Indonesia and Malaysia, the two states came to reach an agreement in 2012 with regards to law enforcement cooperation.[39]

The agreement applies to all unresolved maritime boundary areas

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Indonesia over the Nd6 and Nd7 Sea Blocks."; Supancana, "Maritime Boundary Disputes between Indonesia and Malaysia in the Area of Ambalat Block: Some Optional Scenarios for Peaceful Settlement."

[36] I Made Andi Arsana, "Indonesia-Malaysia Deal Is Good News for Fishermen," *Jakarta Post*, April 30 2012.

[37] Ibid.

[38] Ibid.

[39] Memorandom of Understanding in respect of the Common Guidelines concerning Treatment of Fisherman by Maritime Law Enforcement Agencies of Malaysia and Indonesia, January 12, 2012.

between the parties.[40] It is specifically mentioned that any action or omission undertaken pursuant to the provision of this MOU are without prejudice to the issues concerning maritime delimitation.[41] It is provided that every action and maneuver undertaken by maritime law enforcement agencies should avoid any violence and be carried out without use of force.[42] The parties have agreed on the following points. First, inspection request to leave the area shall be conducted promptly towards all fishing boats, except for those using illegal fishing gears, such as explosives, electrical and chemical fishing gears.[43] Second, notification on the inspection and request to leave the area shall be reported promptly to Focal Points, which were designated in both sides under this MOU.[44] Third, they agreed to conduct an open and direct communication among the maritime law enforcement agencies of the Parties promptly and expeditiously.[45] In addition, the parties agreed that any difference or dispute between the parties concerning the interpretation, implementation or application of the provision in the MOU shall be settled amicably through mutual consultation or negotiations between the Parties through diplomatic channels, without reference to

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[40] Article 5.
[41] Article 2(c).
[42] Article 2(b).
[43] Article 3.
[44] Article 3.
[45] Article 3.

any third party or international tribunal.[46] By preserving the national interest of each side, the two states succeeded in reaching a practical framework for maritime security.

2) Taiwan-Philippines Agreement of 2015

Taiwan and Philippines followed this practice after their clash in 2013 and 2015. In 2013, Philippines Coast Guard (PCG) shot upon Taiwanese fishery vessel, Guang Da Xing No. 28, causing the death of one Taiwanese fisherman.[47] The Philippines claimed that the area was within its EEZ,[48] and Taiwan claimed that it was within the undelimited EEZ between the two states.[49] Taiwan protested that the law enforcement measurement was an excessive use force, violating the principle of avoiding the use of force and basic procedures for the use of force, the principle of proportionality, the principle of humanity, the duty to provide assistance in international maritime law.[50] The Philippines could not

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[46] Article 10.

[47] *See* The British Institute of International and Comparative Law「Report on the Obligation of States under Articles 74(3) and 83(3) of Unclos in Respect of Undelimited Maritime Areas」2016)para.359.

[48] Balintang Channel Incident Report, August 7, 2013, available at http://www.gov.ph/2013/08/07/balintang-channel-incident-report/.

[49] Ministry of Foreign Affairs, Republic of China (Taiwan), "Background Information: Philippines violated International Law in Guang Da Xing No. 28 Incident," May 27, 2013, No. 049, available at http://www.mofa.gov.tw/en/News_Content.aspx?n=2C62458194137213&s=97B8486A61EC2693.

[50] Ibid.

prove its case because they did not record the evidence and its president later expressed his apologies.

The two parties concluded the Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters in 2015.[51] The agreement contains the three points of consensus, which are, avoiding the use of violence or unnecessary force, establishment of an emergency notification system, and establishment of a prompt release mechanism.[52] Following the signing of the agreement, the two parties convened a working group meeting, which reached a consensus on two mechanisms: a one-hour advance notification to the other party and prompt release of detained vessels and crew within three days. It was announced that the two parties will avoid the use of violence or unnecessary force when enforcing the law. Before taking law enforcement action against a fishing vessel from the other party which is believed to be operating illegally in the overlapping exclusive economic zones, a one-hour advance notification will be given to the fisheries and coast guard agencies as well as representative office of the other party. If the fishing vessel is found to have violated the law and subsequently

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[51] Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters on November 5, 2015.

[52] See Public Diplomacy Coordination Council, Taiwan, Press Release, “Taiwan and the Philippines sign agreement on law enforcement cooperation in fisheries matters,” November 9, 2015, No. 269. http://www.mofa.gov.tw/en/News_Content.aspx?n=1EADDCFD4C6EC567&s=200FD620B9CCE60B.

detained, it will be released within three days after posting reasonable bond, other security, or payment consistent with the law of the arresting party.

These two cases are important mechanisms which allows the cooperation between authorities of the state parties in undelimited maritime area.

3.2 Obligation of Due Diligence

While INCSEA was successful, the following INCSEAs-type agreements did not meet the expectation that they would reduce the tension between the states. The 2000s saw the increase of the agreements which mainly provides obligation of due diligence. Codes for Unplanned Encounters at Sea (CUES)[53], adopted in Western Pacific Naval Symposium in 2014,is considered to be a landmark instrument as it enjoys wide range of participation including China.[54] However, the content of CUES largely overlaps exiting legal instruments, most importantly COLREG. The state parties tried to incorporate the obligation to avoid maneuvers on certain

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[53] Apr 22, 2014, available at http://news.usni.org/2014/06/17/document-conduct-unplanned-encounters-sea.

[54] The twenty member states are Australia, Brunei, Cambodia, Canada, Chile, France, Indonesia, Japan, South Korea, Malaysia, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Tonga, Thailand, Singapore, the U.S. and Vietnam. There are three observer states, Bangladesh, India and Mexico.

occasion. However, such proposal was rejected and instead they inserted the safe speed and safe distance requirements. It is legally non-binding, and it frequently uses “should” or “may,” which are by themselves weak wordings.

The other example is the MOU concluded between China and the United States regarding the Rules of Behavior for Safety of Air and Maritime Encounters.[55] As described above, there was Military Maritime Consultative Agreement (MMCA) adopted in 1998, where the two states agreed to have annual meeting although it did not provide obligation at the sea. The MOUs of 2014 came in a different context from MMCA.[56] The characteristic of this US-China MOU is that it heavily cites existing legal instrument, in particular COLREG and CUES. There is anything new besides the confirmation of the political will of the two states to

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[55] U.S.-China Memorandum of Understanding (MOU) On the Rules of Behavior for the Safety of Air and Maritime Encounters, Nov 12, 2014, Annex I, Terms of Reference of the Rules of Behavior for Safety of Air and Maritime Encounters,
http://www.defense.gov/pubs/141112_MemorandumOfUnderstandingRegardingRules.pdf.
It is one of the two MOUs adopted in 2014. The other is Memorandum of Understanding on Notification of Major Military Activities Confidence-Building Measures Mechanism, November 12, 2014, Annex I, Notification of Major Security Policy and Strategy Developments; Annex II, Observation of Military Exercises and Activities,
http://www.defense.gov/pubs/141112_MemorandumOfUnderstandingOnNotification.pdf.

[56] Pedrozo, "Us-China Incidents at Sea Agreement: A Recipe for Disaster."

engage in cooperation.

3.3 Communication Mechanisms

Communication mechanisms belong to the last category of the obligation of the code of conduct. In certain cases, there are situations where the two parties are unable to contact with each other because of the lack of trust. Securing the communication is the very core of CBM so that most of the MCBM agreements incorporate this obligation. To take an example, Organization of American States (OAS) adopted Declaration of Santiago on Confidence- and Security-Building Measures in 1995.[57] While it is a declaration of general terms and not even MCBM, it repeatedly recommends states to exchange information.[58]

The tension between the conflict behind the scene and the content of the code of conduct is well shown in the case between Japan and China. There is an overlapping maritime area within East China Sea and state parties are in disagreement with the issue of entitlement of Senkaku Islands. The sea and air communication mechanism has been negotiated for years since 2012. It was halted after the relationship between the two states hit the bottom. It restarted negotiation in 2015, and yet they have not reached an agreement as of 2016. The main contents are reported to be (1) annual meetings between the two

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[57] http://www.state.gov/p/wha/rls/70561.htm.

[58] See paras.(b)(c)(e)(f).

governments, (2) an establishment of a hotline, (3) an agreement on common radio frequencies for use between military vessels and aircrafts. The mechanism does not deal with the prohibition of certain actions or obligation of due diligence. The difficulty of the negotiation shows the difficulty in reaching MCBM, regardless of the depth of the commitment of the states.

4. Concluding Remarks

This development of international law has an important implication towards the maritime safety and security at South China Sea. The adoption of a multilateral, legally binding code of conduct between China and ASEAN countries were sought for a decade in order to ease territorial disputes in the region. While it may be difficult to reach a legally binding multilateral code of conduct at South China Sea in foreseeable future, the Arbitration Award upheld that UNCLOS obliges state parties to respect the tenets of good seamanship, even in the disputed maritime area. It will be an important authority to ensure the safe conduct at South China Sea under UNCLOS.

Mexico: Its Maritime Boundaries

Carlos Luis Bernal Verea

Department of Law, ITAM

Minute of address

Professor Carlos Bernal started his lecture tracing the origins of the Law of the Sea back to the 16th Century when Spaniards and Portuguese started the age of navigation around the world, adding that, in principle, the jurisdiction of a state has been since then applied to the sea, as in the oceanic space the state also possess the right to legislate, navigate, as well as other economic activities including fishing. International Law, Bernal points out, essentially tells you where a state can legislate and apply that legislation, even though there a currently several international maritime issues that are yet to be solved through international law.

On the evolution of the Law of the Sea, part of the current rules that govern the seas –including also bilateral and multilateral treaties, Professor Bernal traced back the process to the first UN Conference held in 1958, year when at Geneva many countries tried to codify basic rules for the use and jurisdictions at sea. He highlighted that during the event, participant countries coincided on several important points, resulting in four important maritime international agreements –even though the breadth of the territorial sea was not agreed-. The second

conference in 1960, even though is regarded as an incomplete effort to codify the Law of the Sea, detonated relevant discussions on the need for solid international regulations to ensure peace and security at sea. Prof. Bernal remembered that after Geneva, the State Parties agreed to have a second preparative commission or a second convention that were drafted by the International Law Commission. Further, in 1967 Prime Minister of Malta Arvid Pardo´s electrifying speech at the UN underlined the importance of the economic interest of the countries that that were far beyond the International Law, thus calling for the third preparative commission of the UN. Echoing the proposal of Mr. Parvo – the initiator of the 15-year process culminating in UNCLOS III in 1982- all members then agreed, with the result of several subsequent meetings, including the famous meeting in Caracas in mid-1974. Eventually, it was when the international community held its third conference presided by its Preparatory Committee in 1972-1974 that the current convention was finally signed in Montego Bay, Jamaica in December 10, 1982. Prof. Bernal pointed out that the resulting United Nation Convention on the Law of the Sea (UNCLOS) did not –and still does not- derogate those agreements reached in Geneva in 1958.

During the 1974 Caracas meeting, continues Prof. Bernal, the Mexican delegation expressed the goal of the international community to guarantee national interests, among them, preserve the security of the oceans, rights to navigation, possible measures to combat pollution, as

well as several territorial issues. As mentioned by Bernal, Mexico was represented in New York and Geneva deliberations by Ambassador Jorge Castañeda, who emphasized that the country had particular interests in economic issues as well as security. Ambassador Castañeda, together with the Norwegian ambassador to the UN (the Evensen Group), crafted which will be later known as the exclusive economic zone (EEZ), where states have exclusive economic, not sovereign, rights for economic exploitation. As a successful conference, the Convention came into force in 1994, even though there remained several disagreements between countries, among them, the activities focused on sea minerals mining beyond its national jurisdiction. Prof. Bernal underscored that almost every country is a member of the Convention, with notable exceptions such as the US.

And yet, in spite of being the result of long negotiations, the Convention -added Bernal- does not represent a solution of all the current problems facing the world at sea. One of the obvious examples is the South China Sea and the East China Sea, where China has erroneously invoked historical rights on some territories. Other reasons behind some problems include the geography of some maritime spaces, like the South China Sea, that, in the words of prof. Bernal, is far from being as simple as that between Mexico and its neighbors.

Regarding Mexico's experience in dealing with its maritime boundaries, Prof. Bernal underlined that the country has successfully negotiated its

maritime boundaries with its northern neighbor. He remembered that the first agreement occurred in 1978; in the process, added Prof. Bernal, Mexico proposed agreement in line with the wording of the Convention while the US preferred to negotiate under the basis of general international law as the country was not part of the Convention. For Prof. Bernal, the reason why the negotiations took so long is because of vested economic interests of the oil companies represented in the US Senate. At the end they were agreed on the division of the continental shelf of the Gulf of México. The US government apparently was not much interested about the Pacific in general because, as having a very short continental shelf, the economic interests to the States were relatively small.

As for Cuba, added Bernal, the agreement was particularly fast, around one week, agreeing on the fifty-fifty division of the Yucatan Peninsula's maritime boundary. A similar formula was applied to Honduras, one of Mexico's maritime neighbors. Prof. Bernal pointed out that as there are some small Islands in the Gulf of Honduras and some small islands in the Mexican maritime territory, so the EEZ was divided in half. In the case with Belize, continued Bernal, Mexico still has a pending agreement over the EEZ at the exit of Hondo River, a situation somehow similar with Guatemala because of the complexity of the land demarcation through the Usumascinta River and also the Suchiate River. Prof. Bernal emphasized that for Mexico the main problem with its littorals, rather

than demarcation of jurisdiction at sea, is the drug trafficking coming to our waters in shipments from South America.

On a final note, Prof. Bernal enumerated some relevant pending problems that the international regime for the oceans faces nowadays. One involves the Artic Sea where the ice is progressively melting and, as a consequence, up to five arctic countries have seen the possibility to claim continental shelf to exploit it. In the words of prof. Bernal, they are "negotiating about the way to negotiate" in the future. A second problem involves pollution of the sea produced by several countries, including Mexico. Moreover, the persistent problem of piracy in high sea continues to be a priority for some states, in particular in Somalia, where the UN has already expressed strong condemnation.

Other pressing problem in the opinion of Prof. Bernal is the question of seabed mining, as some developed countries think that minerals in seabed areas belonging to developing countries in fact belong to the humanity, so those deposits must be mined by the UN and later sell and distribute the profits among the states. This has not been applied jet, Prof. Bernal recognizes, but warns that many states are illegally mining in areas of developing countries.

As a final example of problems facing the oceans nowadays is the presence of nuclear submarines, in particular Russian and American ones. As they pose a fundamental risk to the security and environment, Mexico has decreed that it will not welcome any nuclear submarines in

national ports, concluded Prof. Bernal.