

## SPEECHES

## UNCLOS—TWO DECADES ON

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More than two decades have passed since the United Nations Convention on the Law of the Sea (UNCLOS) was concluded, and more than a decade has passed since the Convention entered into force. UNCLOS enabled a comprehensive review of the entire range of issues pertaining to the Law of the Sea. It also created a legal framework for cooperation amongst States. There have been new developments since. First, the sheer volume of international shipping has increased dramatically. Second, there are new threats, especially to the maritime space and shipping lanes in Southeast Asia, East Asia and the Pacific which are important both to the regional community as well as the international community. These new threats include terrorism, the risk of proliferation of weapons of mass destruction through maritime transportation, the security of sea lanes of communication, the use of sea vessels for human trafficking and the threat of oil spills. While respecting the fundamental territorial interests and sovereignty of coastal states, there is a clear need for bilateral, regional and international cooperation to better manage these threats and concerns, especially piracy and terrorism. Singapore and her fellow littoral states in the Straits of Malacca and the Straits of Singapore have taken several initiatives. The Regional Cooperation Agreement on Anti-Piracy in Asia (ReCAAP) was also adopted last year. Its Information Sharing Centre (ISC) will be an international organisation hosted by Singapore. Aside from such formal cooperative frameworks, other stakeholder countries are also taking an active interest in the security of these straits. We need such international cooperation to ensure the safety and security not only of the Malacca Straits but of all straits used for international navigation. No single state has the resources to deal effectively with the threats of piracy and terrorism alone.

## I. LOOKING BACK AT UNCLOS 1982

The United Nations Convention on the Law of the Sea<sup>1</sup> (UNCLOS) is the most comprehensive and unified codification of the Law of the Sea. It broke important new ground in several areas.

Firstly, it promulgated the Exclusive Economic Zone (E.E.Z.) regime which reflected the interests of coastal States for jurisdiction over resources in the maritime areas off their coasts. Secondly, it established transit passage through Straits used for International Navigation as well as archipelagic sea lanes passage—reflecting the interests of the international community that rights of navigation be unimpeded. Thirdly, it laid down the regime for the exploitation of the resources of the Deep Sea Bed. Fourthly, it created important dispute resolution regimes and mechanisms, including the International Tribunal for the Law of the Sea (ITLOS). The UNCLOS entered into force in 1994 and as of 31 January 2005, 148 States are parties.

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<sup>1</sup> *United Nations Convention on the Law of the Sea*, 10 December 1982, 21 I.L.M. 1261.

The UNCLOS did not come about as a result of a clear, predetermined plan to redefine and modernise the Law of the Sea. What sparked off the move for UNCLOS was a modest but important project in the UN General Assembly to prevent a mad scramble among nations for the rich mineral and other resources in the deep seabed which existed beyond national limits. These resources were declared to be the “common heritage of mankind”, and a UN Seabed Committee was established to work out the rules for management of the deep seabed area. However, it became clear that it was neither practical nor politically acceptable to discuss the area beyond national limits without international consensus on what the permissible limits were. This happened at a time when the old law of the sea was breaking down as a result of conflicting claims by coastal States regarding the breadth of their territorial seas, fishery zones, continental shelves, *etc.* For example, there were clashes at sea, including a “cod war” between Iceland and the UK. This led to skilful diplomacy and lobbying by those countries—especially coastal countries with long coastlines—to urge for a comprehensive reform of the Law of the Sea to legitimise their vested interests for extended maritime jurisdiction. Before long, the deep seabed issues were relegated to being just one component of a much wider, comprehensive review of the entire range of issues pertaining to the Law of the Sea.

## II. OCEANS LAW AND POLICY INVOLVE RECONCILIATION OF COMPETING CLAIMS AND INTERESTS

Negotiations in UNCLOS were complicated, difficult and protracted because there were many competing national interests and interest groups. As Professor Tommy Koh and I have written elsewhere<sup>2</sup>:

The politics of UNCLOS III generated the emergence of new alliances and groupings. It is true that the traditional groups operating in the United Nations, such as the regional groups, also existed and operated in the Conference. But on substantive matters they were not the dominant groups at the Conference. Instead, interest groups emerged which were unique to the Conference and were very influential in the negotiations. They were unique because they cut across geographical ties, the traditional division of developed versus developing country, and even ideological ties.

Some of these new special interest groups which emerged were:

- the coastal States group
- the group of land-locked and geographically disadvantaged States (LL/GDS)
- the territorialist group
- the group of straits States
- the group of archipelagic States
- the broad-shelf States or margineers
- the Oceania group
- the group of EEC countries
- the group favouring median line or the equidistance principle as the method of delimitation of economic zones or continental shelves between States with opposite or adjacent coasts
- the group favouring the equitable principles method for delimitation of economic zones or continental shelves between States with opposite or adjacent coasts
- the group of land-based producers
- the group of five comprising the USA, USSR, United Kingdom, France and Japan
- the co-ordinating group of five comprising the USA, United Kingdom, France, Federal Republic of Germany and Japan.

<sup>2</sup> Tommy T. B. Koh & Shanmugam Jayakumar, “The Negotiating Process of the Third United Nations Conference on the Law of the Sea” in Norquist *et al*, eds., *United Nations Convention of the Law of the Sea 1982: A Commentary (Volume 1)* at 54.

Apart from these special interest groups, there also emerged informal private negotiating groups whose membership cut across the various special interests. These informal groups attempted to contribute to the process of compromise-making.

### III. UNCLOS TWENTY YEARS ON

More than two decades have passed since the Convention was adopted, and more than a decade has passed since it entered into force. The Convention has served and continues to serve us well today. However there are new issues and concerns which require us to examine if the legal regime is sufficiently flexible to permit the international community to respond to these new challenges. Those of us who were closely involved in the negotiations are now an “endangered species”! But as one of them, I recall that UNCLOS had to deal with and balance numerous competing interests. We had to strike a balance, for example, between the interests of coastal States in exercising sovereignty and jurisdiction over their territorial seas with the equally important interests of other States in freedom of navigation. These old tensions still exist and will not disappear. However, they are being tested by changes in the interests of the international community due to advances in technology and shifts in the geopolitical environment.

In this regard, we should note two developments: Firstly, the sheer volume of international shipping has increased dramatically. In 1980, global container volumes totalled 34.8 million Twenty-foot Equivalent Units (T.E.U.s), while the corresponding figure for 2003 was 274.4 million T.E.U.s. This represents an eight-fold increase in a period of twenty-three years.<sup>3</sup> In Singapore alone, we have seen an even more dramatic nineteen-fold increase over the same period. In 1980, we handled only 1.0 million T.E.U.s, but container volumes at our port in 2003 reached 18.4 million T.E.U.s. In 2004, our port handled 21.3 million T.E.U.s.<sup>4</sup>

Secondly, there are new threats and concerns post September 11. These include terrorism, and recourse by terrorists to maritime space for their terrorist acts; risk of proliferation of weapons of mass destruction (W.M.D.) through maritime transportation; the security of Sea Lanes of Communication (S.L.O.C.), for example, the Straits of Malacca has become more important with the growing demand for oil and other energy resources.

In addition, there have been other recent developments posing new challenges to the international community. I would list amongst them the use of vessels for large scale trafficking in people, as well as oil spills, such as the one off the coast of Spain involving the *Prestige* which has revived concerns about international policy and regulation of older single-hulled tankers.

### IV. THE OCEANS IN SOUTHEAST ASIA AND ASIA

Nearly all the interests and concerns which I mentioned earlier as features in the UNCLOS negotiating process, as well as the more recent challenges, are also present in the Asian region. In our region, we have:

- States with extensive coastlines
- Landlocked States
- Archipelagic States
- States bordering Straits used for international navigation
- Geographically disadvantaged States
- Critical sea-lanes, the most important being the Straits of Malacca and the Straits of Singapore.

<sup>3</sup> Statistics available at Containerisation International, online: <[www.ci-online.co.uk](http://www.ci-online.co.uk)>.

<sup>4</sup> Statistics from Maritime and Port Authority of Singapore.

*Importance of the Straits of Malacca and Straits of Singapore*

The maritime space in Southeast Asia, East Asia and the Pacific is important not just to the countries in the region but to the international community. Many of the shipping lanes and trade routes criss-cross these waters. The shipping lanes connect the South China Sea, the Indian Ocean and the countries bordering them to Europe, the Americas and the Middle East. Take, for example, just the Straits of Malacca and Straits of Singapore. About a quarter of international commerce and half of the world's oil pass through the Malacca and Singapore Straits. Some 50,000 ships travel through the two Straits every year. Clearly, anything which will jeopardise unimpeded and safe navigation in these vital sea lanes will have serious economic consequences not only for the coastal States but for the commerce of many countries and, indeed, the global trading system.

What are the threats that we are particularly concerned about? One is piracy. The other is international terrorism.

*1. Piracy*

Piracy has always been a source of concern, and incidences of piracy around the world remain high. The International Maritime Bureau (IMB) reports that there were 325 cases in 2004 compared to 90 cases a decade ago in 1994—a tripling of the number of piracy incidents. A third of these occurred in waters around the region.

Our concern is not just about the increase in absolute numbers, but in the nature of the acts of piracy committed. Physical violence and the use of firearms appear to be the norm of recent cases of piracy. In 1994, there were no fatalities, but by 2004 pirates caused 30 deaths at sea. In 1994, there were 17 instances in which firearms were used by pirates, this rose to 87 in 2004. Hostages taken by pirates increased more than ten-fold from 11 in 1994 to 148 in 2004. Kidnapping of crew for ransom and the hijacking of vulnerable tugs and barges for their valuable cargo suggest that organised elements are creeping into what was previously the domain of opportunistic thuggery. Today, the threats to maritime safety cannot be seen as merely traditional “skull and bones” piracy—rather, the threats have become more sophisticated. Piracy has become a high-tech international enterprise.

*2. Terrorism: Terrorist Attacks Against Seagoing Vessels in our Region is not Hypothetical*

Let me now turn to terrorism in relation to maritime security. In a Note on the Protection of Vital Shipping Lanes, the Secretary-General of the International Maritime Organisation (IMO), Mr Efthimios Mitropoulos, said of the Malacca Straits:

Given the nature of and volume of trade passing through the Straits, the Straits are considered by many to be a prime target for terrorists intending to disrupt international commerce and a strategically important shipping lane, and there have been indications that that will be the case.<sup>5</sup>

In March 2005, speaking at the Association of Southeast Asian Nations (ASEAN) Regional Forum Conference on Regional Cooperation in Maritime Security in Singapore, he said:

“[The] overall cost of a major terrorist attack on shipping in a strategic location would likely be measured in the tens of billions of dollars. There are just a handful of such

<sup>5</sup> On file with author.

locations in the world and it does not take a great strategic mind to understand . . . that the Straits of Malacca and Singapore are amongst them.”

Singapore has experienced directly the threat to maritime security posed by terrorists. In November 2001, some 2 months after September 11, we uncovered and arrested a terrorist group in Singapore known as the Jemaah Islamiyah. They had been planning to launch terrorist attacks in or around Singapore. Let me read to you a chilling account from the White Paper which the Government of Singapore published on the “Jemaah Islamiyah Arrests and the Threat of Terrorism”.<sup>6</sup>

A fairly well developed plan by *Fiah* Ayub was an attack against US naval vessels off Changi and Pulau Tekong. One of the items found in *Fiah* Ayub leader Khalim’s possession was a topographical map with markings indicative of targeting and operational planning. Analysis of the markings indicated that detailed planning had been made for a sea-borne bomb attack using a small vessel against US ships travelling eastwards from Sembawang Wharf via Pulau Tekong. The markings identified a strategic “kill” zone where the channel was narrowest and where the ship would have had no room to avoid a collision with a suicide vessel. It also took advantage of the geography of the areas to hide the attack vessel from radar and visual detection until the very last minute. Investigation showed that the JI members had been exploring such an attack and had monitored the route and patrol schedule of the Police Coast Guard in the area from a location across the Straits in Johor. JI members also revealed that they observed the naval vessels at Sembawang Wharf from a restaurant in Johor across the Straits.

Apparently, these plans which were made sometime from around the mid-1990s were not pursued as the Singapore JI members lacked the operational capability to mount such an attack. As in the case of the other significant plans, the Singapore JI members saw their role as supportive of actions to be mounted by foreign terrorists. The Singaporeans provided the “leg-work” while the foreign elements would mount the actual attack.

In early 2001, these plans were re-visited when two unidentified Middle-Easterners approached Faiz for information on US military vessels in Singapore. Faiz then instructed members of another operations cell, *Fiah* Musa, to survey both Sembawang Wharf and Changi Naval Base. They video-recorded what they observed and a copy of the video was later given to the Middle-Easterners in Kuala Lumpur.

I should also mention an incident in March 2003 where ten armed men hijacked a tanker and steered the vessel for about half an hour in the Malacca Straits. They neither plundered nor harmed the crew. Security analysts vary in their assessments on the likelihood of terrorists using a “floating bomb” to disrupt global trade. To me, it does not matter who is right. What is important is that awareness of such a threat has been raised, and efforts are being made to combat this. It has provided a new urgency for greater international cooperation and responses by the international community to more effectively deal with the twin threats of piracy and maritime terrorism.

### 3. *Two Challenges Arising from these Threats*

The two challenges are, firstly, to ensure that the legal regime in UNCLOS and other international law instruments remains adequate to meet these new challenges. Secondly, for the Governments of the coastal States immediately concerned to have the political resolve and commitment to take the necessary measures, in collaboration with other stakeholders.

<sup>6</sup> Command Paper 2 of 2003, 7 January 2003, presented to the Parliament of Singapore.

## V. ARE LEGAL NORMS IN UNCLOS AND OTHER INTERNATIONAL LAW INSTRUMENTS ADEQUATE?

It is important that the way we interpret and apply the legal regime in UNCLOS enables the international community to meet these new challenges and developments. The emergence of new challenges will, no doubt, test the limits of existing international norms, and new balances have to be struck in reconciling the interests of individual littoral States asserting sovereignty and jurisdiction with the broader interests of the international community to ensure international maritime security and to combat international terrorism.

This exercise will require new emphasis on the concept of cooperation. The notion of cooperation in matters affecting the interests of two or more States already finds expression in many parts of UNCLOS. This cuts across many areas, from cooperation in navigational safety in straits used for international navigation embodied in Article 43, to marine scientific research and the protection of the marine environment. In particular, Article 100 of UNCLOS makes it a duty for all States to cooperate in the repression of piracy in the high seas. Indeed, cooperation between nations is very much one of the main threads running through UNCLOS. In similar vein, whether in the high seas or territorial waters, the scourges of piracy and maritime terrorism are threats to navigational safety, to the safety of lives at sea, and to the very lifelines of global trade. Maritime security is therefore a matter of concern to the international community. It calls for a similar level of cooperation among all stakeholders.

We can take a leaf from the experience of the IMO. The IMO was originally established with the intention of addressing maritime navigational and environmental issues. However, it has ably risen to the more recent challenges of international maritime security with its promulgation of the International Shipping and Port Facilities Security (ISPS) Code. It has evolved, and has thus stayed relevant to the evolving world and its new challenges.

Existing frameworks can therefore be robust enough to actively adapt and stay relevant and applicable today, as we bear in mind what the spirit and substance underlying those frameworks are. This takes a combination of law and political resolve.

### *Actions Taken by Countries in the Region and other Stakeholder Nations to deal with Terrorism and Piracy*

Whilst respecting the fundamental territorial interests and sovereignty of coastal States, there is clearly a need for bilateral, regional and international cooperation to better manage the threats and concerns I have highlighted. In this regard, Singapore, her fellow littoral states in the Straits of Malacca and Singapore, and other stakeholders including international organisations, have taken several initiatives which include:

- Coordinated patrols among the navies of Indonesia, Malaysia and Singapore
- Bilateral cooperation in combating trans-border crime
- Maritime security workshops and confidence building measures under the aegis of the ASEAN Regional Forum (ARF), the most recent being the ARF Conference on Regional Cooperation in Maritime Security, hosted by Singapore from 2-4 March 2005
- an IMO-sponsored conference on safety, security and environmental protection of the Straits of Malacca and Singapore, to be held in Jakarta later in 2005

I should also mention the Regional Cooperation Agreement on Anti-Piracy in Asia (ReCAAP), adopted on 11 November 2004, the key features of which are:

- It enhances cooperation among ASEAN+3 countries, India, Sri Lanka and Bangladesh, to combat piracy

- It provides for information exchange, cooperative enforcement action, capacity building and other cooperative arrangements
- It supplements UNCLOS by providing a mechanism to enhance the protection and safety of ships
- A key pillar of ReCAAP is the Information Sharing Centre (ISC). This is a centre for piracy reporting, studies of piracy incidents, issuance of piracy alerts and information sharing among ReCAAP members
- Hosted by Singapore, the ISC will be an international organisation. It aims to facilitate communications and information sharing among national focal points of member countries, as well as improve the quality of statistics and reports on piracy in the region. It will also serve to enhance cooperation among ReCAAP member countries on anti-piracy efforts.

Apart from formal cooperative frameworks like ReCAAP, individual user states are taking an active interest in the security of the Straits of Malacca and Singapore. At a recent Conference on the Straits of Malacca in Malaysia, China noted that<sup>7</sup>:

The sea lanes of communication and sea-borne commerce have become increasingly important for China. 90% of China's trade pass through regional waters. More than 80% of China's energy imports pass through the Straits of Malacca. China has a vital stake in keeping the Straits secure and free.

China has joined other stakeholders like the US and Japan in active engagement of regional and international maritime cooperation, including a Memorandum of Understanding (M.O.U.) with ASEAN to cooperate on non-traditional security issues (2004),<sup>8</sup> and has shown strong support for maritime security cooperation within the ARF framework. This bodes well for the international cooperation that will be needed if we are to ensure safety and security in not just the Malacca Straits, but in all Straits used for international navigation.

Let me conclude by recalling that no single state has the resources to deal effectively with the threats of piracy and terrorism alone. In regional waterways used for international navigation, the primary responsibility for safety and security lies with the coastal States, but they are obviously not the only stakeholders. Many other users have an interest in keeping such waterways secure, and it is therefore also the responsibility of the international community to play a part in making this so.

Speaking at another occasion some 9 years ago in 1996,<sup>9</sup> I had said:

Preserving the Straits of Malacca and Singapore is an international responsibility and cannot be just that of the littoral states alone. The two Straits are not mere geographic points. They are also geo-political and geo-economic chokepoints that allow a great flow of trade between different regions and oceans. The lifelines and prospects for

<sup>7</sup> Zhao Jianhua, Counsellor, Asian Department, Ministry of Foreign Affairs of the People's Republic of China, "The Straits of Malacca and Challenges Ahead: China's Perspective" (Paper presented at conference, "The Straits of Malacca: Building a Comprehensive Security Environment", 11-13 October 2004, Kuala Lumpur).

<sup>8</sup> *Memorandum of Understanding Between the Governments of the Member Countries of the Association of Southeast Asian Nations (ASEAN) and the Government of the People's Republic of China on Cooperation in the Field of Non-Traditional Security Issues*, Bangkok, Thailand, 10 January 2004, archived at ASEAN Secretariat, online: <<http://www.aseansec.org/15647.htm>>.

<sup>9</sup> S. Jayakumar, "Straits of Malacca and Singapore: Meeting the Challenges Ahead" (Keynote address at Institute of Policy Studies (Singapore)-IMO Conference, "Navigational Safety and Control of Pollution in the Straits of Malacca and Singapore: Modalities of International Co-operation", 2-3 September 1996, Singapore) [Published in (1998)2 *Sing.J.I.C.L.* at 427-432].

economic growth of both littoral states and non-littoral trading countries are intertwined in the two Straits. It is in the interests of all countries to help preserve and protect the Straits of Malacca and Singapore.

I believe that what I had said almost a decade ago still holds true today. The various new challenges, not just in areas like combating piracy and terrorism, but also the recent unprecedented international humanitarian and relief efforts for the tsunami tragedy of December 2004, underscore the urgency of the need for international cooperation in the management of our oceans and seas. In this regard, UNCLOS, in establishing a legal framework for cooperation, has enabled States to cooperate in combating new dangers.