

Maritime Cooperation and Ocean Governance

This article primarily looks at the United Nations Convention on the Law of the Sea to give content to the notions of maritime cooperation and ocean governance. It indicates certain areas of tension and specifically focusses on the South China Sea in general, and Indonesia more in particular.

The United Nations Law Convention on the Law of the Sea contains some solid building blocks to contribute to a regime of maritime cooperation and ocean governance. They practically form parts of the elements of the various maritime zones and areas as stipulated in the LOSC.

Maritime Cooperation and Ocean Governance under the LOSC

For instance, the regime of internal waters has a number of provisions with regard to the determination of the baselines for internal waters. The regime of archipelagic waters stresses the need for maritime cooperation in the context of ocean governance, such as on how to determine the archipelagic straight baselines as well as the management of various interests in the archipelagic waters, such as the principles of innocent passage, archipelagic sea lanes passage, the formulation of traditional fishing rights of neighboring countries in the archipelagic waters as well as the protection of the legitimate interests of neighboring countries, such as regarding the protection of underwater cables and others, despite the fact that the archipelagic waters are parts of the territorial sovereignty of the archipelagic state. The determination of archipelagic sea lanes and the rights and obligations of the passing ships in these sea lanes are also well-formulated taking into account the need for maritime cooperation through their adoption by the International Maritime Organizations (IMO) before designating and enacting legislation on the archipelagic sea lanes.

Beyond the archipelagic waters, every coastal state has also the right to determine its territorial seas up to 12 nautical miles. In this territorial sea, foreign vessel also has the right of innocent passages regulated by the national legislation and taking into account the provisions of the LOSC.

There are also specific regimes for straits used for international navigation that require cooperation between the straits States and the users of the straits, particularly with regard to safety of navigation and the protection of the marine environment. In this context, Indonesia, Malaysia and Singapore have cooperated since 1971 on the promotion of safety of navigation and the protection of the marine environment in the straits. In accordance with the provisions of the LOSC, these countries have formulated a cooperative mechanism for the promotion of safety of navigation and the protection of marine environment in the straits of Malacca and Singapore, through cooperation with the IMO and various user States around the world.

In addition to that, there is also the regime of the contiguous zone, in which a coastal state can exercise jurisdictions with regard to customs, fiscal, immigration or sanitary control and others, such as the removal of cultural or historical objects, like the remnants of shipwrecks in the zone. In my mind, the contiguous zones would also require some kind of maritime cooperation with the neighbouring countries, including the delimitation of the contiguous zone boundaries in order to make it more effective, particularly in the area of the sea beyond their territorial seas, but are less than 24 nautical miles from baselines from which the breadth of the territorial sea is measured.

Beyond the territorial sea there is also the regime of exclusive economic zone extending up to 200 nautical miles from a country's baselines. The country concerned has jurisdiction with regard to the conduct of marine scientific research, environmental protection and the establishment of artificial islands and structures, in addition to their sovereign rights concerning the resources of the economic zones, particularly fisheries. Again, in this context there are various kinds of maritime cooperation stipulated in the LOSC with regard to those issues in the EEZ, including on the need of the coastal States concerned to determine the 'allowable catch' of the fisheries, their 'capacity to harvest', and the possibility of sharing the 'surplus fisheries resources' in the EEZ with the neighbours particularly the land-locked countries in the area. It is therefore also very important for countries who have or may have overlapping EEZ's to negotiate the boundaries of their respective EEZ to avoid conflicts or potential conflicts in the area.

According to the LOSC, the regimes of freedom of navigation and overflight are recognized in the EEZ, despite the fact that the coastal States have sovereign rights and jurisdiction over the resources and other matters in the EEZ, such as the marine environmental protection, the conduct of marine scientific research and the construction of structures in the EEZ. There is a possibility of potential conflicts of interests of the freedom of navigation and overflight in the EEZ with the implementation of sovereign rights and jurisdiction of the coastal States in their EEZ. In this context, some guidelines are necessary to avoid potential conflicts between the interests of the users and the interests of the coastal States in the EEZ.

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