





## Editorial

On 10 December 1982, the United Nations Convention on the Law of the Sea (UNCLOS) was opened for signature in Montego Bay, Jamaica, marking the culmination of 14 years of painstaking negotiations. An impressive number of 119 countries signed the Convention on the very first day itself. This overwhelming support was unprecedented in the history of treaty law and was a true testament to the success of the UNCLOS 1982, in achieving a delicate balance between a variety of competing interests in the use of the ocean and the harvesting of its resources.

UNCLOS constitutes the foundational legal framework for contemporary ocean-governance. It not only reviewed and codified customary law relevant to the seas but also introduced several new concepts and norms, such as the freedom of navigation; the right of innocent passage; the delimitation of maritime zones and boundaries; specification of the legal status of natural resources in the subsoil and seabed and the manner in which they could be exploited, harvested or extracted; the conservation and management of living resources in the high seas and those portions of the seabed that lie beyond national jurisdiction; freedoms and limitations on marine scientific research; the transfer and sharing of marine technology; the prevention of marine pollution; and perhaps most important of all, a binding procedure for the settlement of disputes. These innovations were critical to develop international consensus that would, nevertheless, meet the diverse and often conflicting needs of different segments of the international community and to ensure the equitable distribution of the wealth of the ocean. The evolution of public international maritime law, which began in 1945 with the emergence of the legal concept of continental shelf, did not, of course, culminate with UNCLOS, 1982. This notwithstanding, as a framework convention, UNCLOS has provided a solid, legal foundation for further progressive development of the law of the sea.

Over the course of the last four decades, the UNCLOS 1982 has been instrumental in maintaining global peace and security, promoting the equitable and sustainable use of marine resources, and the safe conduct of marine scientific research. However, major challenges to the law of the sea continue to grow with increasingly complex and rapid advancements in technology and the concomitant scientific research that supports such technological advancement. As the oceans become a new frontier for the extraction and economic expansion of natural resources, the extant pressure on the global marine ecology, resulting from an incessant demand for food to sustain a burgeoning global population, increases significantly, often resulting in the collapse of fragile ecologies.

As we mark the completion of 40 years since the international law was irrevocably transformed by the UNCLOS 1982, we must, of course, revel in its many triumphs. However, we must also assess its limitations and draw up coherent strategies that will enable this Foundation to support the weight of new and often unforeseen challenges relevant to the maritime domain. In this Special Issue of *Maritime Affairs*, we review some of the fundamental principles upon which the UNCLOS 1982 has been formulated and accepted worldwide (even as we recognise that there are still States that have not acceded to some or all its provisions). Of

greater salience is our examination of the continued relevance of UNCLOS in the very different international maritime paradigm that now prevails. Consequently, this issue explores the nuances of at least a few of the several challenges to UNCLOS and attempts to identify possible solutions that do not require us to throw out the baby with the bathwater, so-to-speak!

The UNCLOS provides for a regime of jurisdiction over the legal continental shelf, combining the criterion of distance with additional scientific and geological criteria to determine its outer limit, and makes provision for the sharing of revenues from the seabed beyond the exclusive economic zone (EEZ). The Commission on the Limits of the Continental Shelf (CLCS), tasked with examining the submissions of coastal States for the legal extension of their respective continental shelves, has been engaged in this complex exercise for over 20 years. Ángeles Jiménez García-Carriazo, in her article entitled, “Submissions to the Commission on the Limits of the Continental Shelf: Practice and Controversies”, analyses the scope of interpretations by the CLCS on geophysical questions and on politico-legal matters. In this absorbing piece, she attempts to identify patterns in the interpretations of the CLCS that may allow States to anticipate how their submissions would be analysed.

The UNCLOS has been aptly described as the largest, most technically complex, continuous negotiation of modern times and stands testimony to the effectiveness of international cooperation in treaty-making. It has largely been successful in securing global consensus to solutions that had eluded the international community for centuries. In her article entitled, “Interim Solutions under the Exclusive Economic Zone Regime: New Analyses and Prospects”, Rita El Murr examines the complexities of the EEZ legal regime and the interim mechanisms that have been put in place where there are overlapping EEZ claims. In so doing, she highlights the fact that UNCLOS was, indeed, a giant leap forward in the resolution of maritime disputes.

The next article, by Ana Olivert, “A New Global Order for the Oceans through Leadership and Pressure Points”, analyses some critical challenges faced by the international community and assesses their impact on the oceans and the law of the sea. Olivert argues that the UNCLOS has not been successful in tackling inequalities across the globe and avers that these inequalities and the consequences arising therefrom will only rise under the pressure of increasing population growth and the adverse impacts of climate change. Her conclusions are not a litany of gloom-and-doom, however, and she deftly explores how a new culture of cooperation and compliance could reverse the present trend.

In “Conservation and Sustainable Uses of the Marine Environment under UNCLOS: For the Benefit of ‘Mankind as a Whole’”, Petal Alexander undertakes a comprehensive analysis of UNCLOS, and the various measures adopted by the International Seabed Authority to establish that the common heritage of mankind (CHM) principle, permeated by equitable sharing of benefits, remains pertinent towards achieving sustainable standards of dealing with the marine environment for universal good.

One of the most important and pressing current global challenges to UNCLOS is the issue of climate change and its adverse effects, namely, those arising from rising sea-levels. In a jointly-penned article titled, “UNCLOS and Climate-induced Maritime Challenges: Strategic Implications for the Indian Ocean Region”, Captain Kamlesh Kumar Agnihotri (Retd) and Dr Sunil Kumar Agarwal examine how changes in baselines, accruing from a rise in sea-levels, could impinge on the maritime zones of littoral- and island-States, and how this scenario is likely to exacerbate contemporary geopolitical tensions in the Indian Ocean, which is the focal point of emerging great power rivalry.

The UNCLOS provides a regulatory framework that offers a comprehensive approach to ocean governance. A consistent feature of this approach is the need for cooperation amongst