

## 不断发展中的现代海洋法

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现代海洋法是现代国际法的一个重要组成部分。海洋法是调整国家之间在沿海国享有管辖权的海域及不属于任何国家管辖的海域及海底的关系的法。海洋法是条约和习惯规则的混合。

值得指出的是，一方面，《联合国海洋法公约》UNCLOS 规定了许多法律制度和规则，对规范海洋活动发挥着重要作用，构成了现代海洋法的重要组成部分。另一方面，UNCLOS 没有成功地处理所有海洋用途。还有许多国际条约和国际文件以及国家实践都在共同发挥着重要作用，推动着包括 UNCLOS 在内的现代海洋法不断取得新发展。具体表现为：

首先，从 UNCLOS 的内容看，有些问题并未得到充分解决。例如，航行自由、海洋科学研究等重要术语均未在 UNCLOS 中予以定义。又如，UNCLOS 并没有成功地处理所有海洋用途，其他许多国际条约也在发挥重要作用。UNCLOS 第十二部分虽然规定了海洋环境的保护和保全相关法律问题，但是，与此同时，对于如何防止、减少和控制海洋环境污染，应适用的是其他许多国际条约，至少包括《伦敦倾废公约》和 IMO 框架下的十余个防止海洋环境污染的公约及其议定书，以及适用于南极地区的《南极条约》体系下的相关议定书。更不用说关于渔业问题，在 UNCLOS 之外，还有许多国际文件以及国际和区域组织也都在发挥着重要的作用。

其次，从发展的视角看，UNCLOS 具有时代局限性。UNCLOS 是上世纪 70 年代谈判制定的，因此，不可避免地具有那个时代对于海洋的认知和理念的局限性。例如，UNCLOS 只规定了海洋环境保护，只字未提对海洋生态系统或海洋生物多样性养护问题。原因是国际社会对于养护海洋生态系统、保护海洋生物多样性的认知、理念和需求，是从上世纪 80 年代里约环境与发展大会之后才逐渐形成的。目前正在进行的 BBNJ 协定磋商进程，是对 UNCLOS 的一个制度空白进行填补。

最后，从应对新挑战的角度看，现代海洋法仍然处于不断发展进程中。一些在 UNCLOS 谈判时还不是问题的问题，例如，气候变化引起的海平面上升、塑料垃圾污染、海上自主船舶新技术运用等，都将对现有的海洋法制度带来新挑战。这些新挑战，有的已经成为或将成为制定新的国际协定或当代海洋法新规则的推动力。

综上所述，我认为 UNCLOS 的缔约者们是很清晰地意识到该公约无法处理全部海洋问题，为此，在 UNCLOS 前言里已经明确规定了“确认本公约未予确定的事项，应继续以一般国际法的规则和原则为准据”。简言之，UNCLOS 是现代海洋法的重要组成部分，但不是全部。面对快速变化所带来的新挑战，国际社会应共同努力，不断完善当代海洋法相关制度和规则，共同构建更加公平合理的海洋秩序，实现海洋可持续发展目标。

## The Evolving Modern Law of the Sea

By Prof. Haiwen ZHANG

Modern law of the sea is an important component of modern international law, comprising primarily treaty and customary law. The law of the sea is that law by which States regulate their relations in respect of the marine territory subject to coastal State jurisdiction and those areas of the sea and sea bed beyond any national jurisdiction. The law of the sea is an amalgam of treaty and customary rules. [---Timothy Hillier, *Principles of Public International Law* (Second Edition), Cavendish Publishing Limited, 1999. P.183]

It is worth pointing out that, on the one hand, UNCLOS prescribes many legal regimes and rules, which play an important role in regulating marine activities and constitute an important part of the modern law of the sea. UNCLOS, on the other hand, has not successfully addressed all marine uses. There are also many international treaties, international documents and national practices that are playing an important role together, promoting the continuous development of modern law of the sea including UNCLOS. Specific performance is as follows:

First of all, from the content of UNCLOS, some problems are not fully resolved. For example, many very important terms such as freedom of navigation and marine scientific research are not defined in UNCLOS. UNCLOS, for example, has not successfully addressed all marine uses, there are also many other international treaties dealing with maritime issues. As another example, the Part XII of UNCLOS is *Protection and Preservation of the Marine Environment*, at the same time, how to prevent, reduce and control of marine environmental pollution, should apply to many other international treaties, at least including the London Dumping Convention and other more than ten convention and their protocol relating to prevent marine environmental pollution under the framework of IMO, as well as relevant protocols under the Antarctic Treaty System applicable to the Antarctic region. For fishing resources, in addition to UNCLOS, there are so many international documents and international or regional organizations that are also working on it.

Secondly, from the perspective of development, UNCLOS has limitations of the times. UNCLOS was negotiated and formulated in 1970s and the early 1980s, so it inevitably has the limitations of that era's perception and concept of the ocean. For example, UNCLOS only provides for the protection and preservation of the marine environment, but, does not mention the conservation of marine ecosystems or marine biodiversity at all. The reason is that the recognition, concept and demand of the protection and conservation of marine ecosystems or marine biodiversity were gradually formed after the Rio Conference in the 1980s. The ongoing BBNJ agreement negotiation is to fill an gap in UNCLOS.

Finally, from the perspective of responding to new challenges, the modern law of the sea is still in a constant process of development. Issues that were not an issue at the time of the UNCLOS negotiations, such as rising sea levels caused by climate change, pollution from plastic waste, and the application of new technologies for autonomous vessels, will pose new challenges to the existing regime and rules. Some of these new challenges have become or

will become a driving force for the development of new international agreements or new rules of the modern law of the sea.

To sum up, I believe that the signatories of UNCLOS are well aware that the Convention cannot deal with all maritime issues. For this reason, the preamble of UNCLOS has clearly stipulated that "matters not determined by this Convention shall continue to be subject to the rules and principles of general international law". In short, UNCLOS is an important component of modern law of the sea, but not the whole of it. In response to new challenges brought about by rapid changes, the international community should make joint efforts to constantly improve modern law of the sea, jointly build a more equitable and equitable maritime order, and promote the achievement of SDG 14.