

Chief of Navy Address to
Law of the Sea Convention Conference hosted by
The Australian National University, Centre for Military and
Security Law and The United Services Institute of the ACT

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Realm Hotel, Canberra

*Law of the Sea Convention in the Asia Pacific Region: Threats,
challenges and opportunities*

Good Morning — it is a pleasure to be here today.

Thank you to both the ANU's Centre for Military and Security Law, and The United Services Institute of the ACT for the opportunity to be able to share my thoughts with you.

I am pleased to see these two organisations working together to host this conference.

I've been asked to talk about the threats, challenges and opportunities that surround the operation of the Law of the Sea Convention in the Asia Pacific region.

As you would expect this is a topic of great importance to me as the Chief of the Navy.

Indeed, it provides the very structure and the legal authority for much of what the Royal Australian Navy does in our region to enhance stability, deter armed confrontations, and facilitate maritime trade.

However before I start I need to caveat my comments.

I'm not going to argue a case for, or against, Freedom of Navigation Operations (FONOPS) or challenge a specific ruling on the 'the great walls of sand' accumulating in the South China Sea. If that is what you have come to hear – I'm sorry.

So I'm going to keep my remarks broad and will give a regional perspective – why?

Well, most if not all of you here today are lawyers and legal academics. This is your conference and your role to debate these issues. My role is somewhat different.

I am not a lawyer – although I must admit I do seem to attract them.

Apart from the fact that I have no less than four working in my office in a range of legal and non-legal roles; it is actually my past experiences as an operator, particularly as the Commander of Border Protection Command from 2010 to 2011, that has taught me the value of keeping my legal team close at hand as a constant reminder of the risks of at sea.

And they have guided my operational decisions. This should not be of such a surprise that some of you might think.

Admiral Harry Harris, Commander of the US Pacific Forces said it best from the US perspective at a military law conference I attended recently in Brisbane. He said:

I'm gonna tell the truth, the whole truth and nothing but the truth.

And the whole truth is that 70-plus years of security and stability in the Indo-Asia-Pacific didn't just happen on its own. It happened because of a fundamental understanding and commitment among like-minded nations that the law sits above the military and not the other way around.

So my comments today come from the perspective of a mariner, a military practitioner, and indeed a nascent author about the importance of a rules-based order for the prosperity of Australia and the region.

And let me say, I see the value in meeting to have an intellectually honest exploration of the legal challenges that surround the operation of the Law of the Sea Convention in the Asia-Pacific Region.

I look forward to reading about the key conclusions that are developed as a result of this conference – they will influence the way Navy looks at legal issues in our region, and our responses to them.

Australia has one of the largest maritime domains in the world, and it faces three oceans — the Indian, the Pacific and Southern — with a coastline of more than 32,000 nautical miles — and yet a population of only 25 million.

Ten per cent of the world's sea trade passes through Australian ports.

Australia relies on the sea for 98 per cent of our exports—and for a substantial proportion of our domestic freight. About 95% of our data is transmitted through undersea cable not by satellite.

Our \$1.6 trillion economy — is dependent on shipping being able to freely navigate the oceans and conduct maritime trade especially

through the massive economic trading artery that runs from the Middle East, across the Indian Ocean, through the South China Sea, past Japan and on to North America.

I predict that in the future Australia will only become more reliant on the oceans; especially those in our region. Not only as the highways of the globalised world economy, but also for both food and other natural resources.

Our reliance on the oceans means that we must constantly have regard to changes that are occurring in our region.

This region is growing and that growth is gathering pace.

It will not only be the world's largest producer of goods, but also be the largest consumer of them.

This will bring greater political and strategic weight to our region.

And in such a diverse region, there will also be a number of threats in the maritime domain. In my role as the Commander of Border Protection Command several years ago, we used to identify eight maritime threats to Australia.

Let's just look at four well known examples.

First, increasing transnational crime particularly the illegal importation of illicit substances. We regularly see reports of the interception of high quality drugs and precursors bound for Australia.

Two high profile examples in the last 12 months include a former research vessel being intercepted off the Tasmanian coast by HMAS Adelaide and a yacht which was intercepted off the New South Wales coast earlier this year.

Both vessels were carrying cocaine with the total estimated value being almost \$350 million dollars. This trade is increasing and worryingly we do not know the percentage of the trade that is not being found.

Second, there is growing concern among many nations in our region about environmental changes; be it an increasing trend in severe weather patterns or rising sea levels.

Both of these threaten stability by changing the availability of natural resources whether on the seabed, in the subsoil, or in the water column, or through the displacement of affected populations. In the future our issues with migration will not be restricted to those escaping conflict.

Third, maritime terrorism is on the rise.

Whether it is from small groups of extremists in south-east Asia who board ships and seize sailors for ransom through to attacks launched from the sea on naval and other port facilities, maritime terrorism threatens the ability to safely use the sea in our region.

Indeed, my current concerns range from activity in the Sulu Sea to actions off the Yemeni coast where our frigates continue to operate as part of the Combined Maritime Force.

Fourth, with the increasingly aggressive actions taken by some nations to assert their claims over disputed maritime boundaries, there is the increased risk of a regional maritime dispute escalating and the potential for armed confrontations at sea.

And given the audience, let's just remind ourselves of the government's position on this:

Australia does not take sides on these territorial disputes and the Navy will continue to exercise our rights under international law to freedom of navigation and overflight. We also encourage countries to resolve disputes peacefully in accordance with international law, including the Law of the Sea Convention.

So with that in mind how do our policy settings look in relation to our region neighbours? What does it mean for them from our perspective?

Well, it means that nations in our region must remember that the Law of the Sea Convention has been fundamental to our region's growth, prosperity, and security.

It means that we must commit to working together to maintain and advance this internationally-recognised, rules-based order that has been so conducive to ensuring maritime stability, and open and reliable maritime trade.

And it means that the nations in our region must commit to resolving maritime disputes peacefully, and that areas of disagreement will not adversely impact on the ability to make progress in the areas where there is agreement.

But how do we reconcile this with the challenges evident in each nation's interpretation of the Law of the Sea Convention – its ambiguities, its gaps, and the inherent tensions that exist because it seeks to balance a number of competing interests.

These challenges are exacerbated in our region because it has a relatively complex maritime geography with numerous islands, longstanding historic claims, archipelagos, many overlapping interests, and narrow shipping channels.

As a result some regional countries appear to exploit these challenges in several key regimes so as to advance their individual interests.

I will give you just three examples. And they are not all about the South China Sea by the way; there are many global examples.

First, despite the old adage that ‘good fences make good neighbours’, there are differences in approach between states in our region to the use of the straight territorial sea baselines rules.

Some have sought to maximise the use of those rules to the point it can be argued that it is an abuse.

This approach to maximising the use of straight baselines is understandable given the Law of the Sea Convention gives coastal states a powerful incentive to do so.

Indeed, it enables them to maximize the extent of their maritime jurisdiction and also limit the activities including the passage of other

nation's vessels in the claimed areas. We see this in many parts of the region, particularly in archipelagic waters.

Second, there are differences in approach between states in our region in relation to warships being able to exercise innocent passage.

A small, but vocal group, take the view that a foreign state must obtain approval in advance from or give prior notification to the coastal state for the passage of its warships through the territorial sea of the coastal state.

Many of these states have this requirement because they see the right of innocent passage through their territorial sea as a significant limitation on their sovereignty and a potential threat to their national security.

Third, differences of view have also emerged in our region over the rights and duties of coastal states in their Exclusive Economic Zone and the rights and duties of user states.

This is particularly an issue with regard to the rights of other states to conduct certain activities such as military operations, military surveying, intelligence collection and hydrographic surveying without the permission of the coastal state.

There is the risk that the differences in approach to the interpretation of the Law of the Sea Convention like the ones I have just outlined can cause misunderstanding or disagreement, lead to a stand-off between warships, or breaches of the International Regulations for Preventing Collisions at Sea with consequences for safety, or possibly even armed conflict at sea.

This is not what our region needs.

There are also the emerging challenges which were not of such significance when the Law of the Sea Convention was concluded in 1982.

Climate change may be the most pressing of the emerging challenges.

It has significant consequences for global maritime biodiversity, the ability to obtain food and other resources from the sea, the ability to access and utilise the Polar Regions, and responsibilities of states for environmental damage caused beyond their national jurisdiction.

Another emerging challenge is the increased ability to explore and exploit the resources of the deep seabed beyond the limits of national jurisdiction.

These areas of the world's oceans may contain deposits of key strategic metals and minerals such as copper, cobalt, nickel and manganese.

Thanks to technological advances and a stable regulatory regime deep seabed mining is an increasingly attractive option. This will most likely mean that states and other actors come into dispute.

But each of the threats and challenges that I have spoken about can also provide the opportunity for the region to work together to build trust and confidence in each other, and the systems which support our prosperity.

Trust and confidence that is built on:

- sharing the lessons each state has learned when seeking to understand and address the threats and challenges;
- collaboratively developing 'the rules of the game' which will be used to resolve the threats and challenges; and
- utilising the existing mechanisms whether they be under the Law of the Sea Convention or regional forums to avoid confusion.

If those opportunities are harnessed the stability of our region can be enhanced; the risk of armed confrontations reduced; allowing maritime trade to grow, and our region to prosper.

As I said at the beginning of my comments this morning I am pleased to see such a diverse group exploring these legal pressure points that surround the operation of the Law of the Sea Convention in our region.

And I am not naïve enough to think that it is a binary argument with an easy resolution. But as Admiral Harris said at the MILOPS conference I referred to earlier: *we can disagree without being disagreeable.*

So it behoves us to think critically during this conference. You need to debate what is, and what is not, in line with international norms and the rule of law. To suggest ways that differing interpretations can be resolved, and suggest how we work together to address emerging issues so our region can prosper.

The Navy need you to do this. We are an instrument of government policy, not the arbiter of what is right through might.

Before closing, let me again thank you for the opportunity to share my thoughts this morning.

It is through conferences such as this, that we are able to explore how we can create safe and secure seas in our region to ensure our future prosperity.

Thank you.