

The future law of the sea [research]

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What is the legal basis for the Law of the Sea Convention 1982 in building the universal law of the sea? And can the State-Parties Consensus Decision-Making' be a new law-making technique for the law of the sea? Certainly sea thugs will not like these questions.

But Rohani Md. Shah and team of UiTM Malaysia do. For answers, they investigated the legal basis for the Law of the Sea Convention 1982 to propose a new code of conduct for State-Parties Consensus Decision-Making in law of the sea.

She explained that legal systems contain rules to lay ways for laws to be made, changed or abolished. However, unlike many national legal systems, interational law does not have a written constitution which specifies the source of law to make law. There is also no supreme legislative organ in the international legal order which can impose laws on a state without its consent. But the international legal system, so complex, has caused difficulty to many to comprehend and execute.

Coming back to the law of the sea, in the early history, no one had exclusive control over the oceans. The law of the jungle, ironically, ruled the the sea. But the seas provide means of contact for all. At the same time, the oceans and the ocean floor contain valuable and abundant resources - living and non living. As such the sea always always vulberable to be the centre of dispute.

Rohani said one of the things that makes dispute worse is the constant progress in marine technologies. The technologies enhance the

possibilities to dig more and deeper resources of the sea. Thus to cope with these changing demands, the universal framework law-making techniques and theories are needed to meet and protect the rights of all.

As such various attempts have been made over the last century to lay down a legal framework for the seas. The adoption of the Law of the Sea Convention on 30 April 1982 marked as sacred history in the development of the law of the sea. This is the first time a single comprehensive treaty governing all uses of the seas and oceans of this earth was ever formulated.

Hence, the Third United Nations Conference on the Law of the Sea was considered to be one of the most important law-making events of the twentieth-century. The convention becomes a comprehensive treaty on all activities of the sea. In this context, the convention created an institution of law-making process, which replaced the law-making process by States. Thus the present Convention, is claimed to be a constitution of the law of the sea.

However, this status, poses problems for its future development if it relies solely on the law of treaties which does not allow any changes after the treaty is signed. Upon this, the State-Parties have shown a preference for a new law-making technique based on the practice of State-Parties ‘consensus decision-making’ over the formal amendment procedures provided in the convention, in order to accomodate for rapid changing values of international community. This approach is a revolusion in international law.

Thus Rohani attempted to establish the legal basis for the Convention. The team will examine available mechanisms for change within the convention and to what extent the practice of State-Parties ‘consensus decision-making’ influences customary international law in modifying the Convention. The role of Courts and Tribunals will be examined to

confirm that the convention is able to evolve into a universal law without upsetting its essential balance.

In view of the above, her case is justified on several grounds. Firstly, there are numerous competing theories of how international law is made. Each theory offers its own framework for the study and analysis of [international law](#). However, none of the theories allows consensus decision-making by a group of States to become law and governed the other group of States which are not party to that audience. The technique of law-making through the State-parties consensus decision-making is not the usual mechanism in law-making process.

The law-making technique through the State-Parties Consensus Decision-making may change the present system of law-making process. Secondly, the research will investigate the process of law-making in law of the sea from various perspectives. The team will also see if the law of treatise and customary international provides foundation for the universal Law of the Sea.

They will also produce a new structured State-Parties Code of Conduct in Consensus Decision-Making to ensure the future of the law of the sea is maintained and developed in a stable legal order. This could assist policy makers to improve the Law of the Sea Convention 1982, which Malaysia signed on the same day it was open for signature (on 10 Dec 1982). Malaysia gave its ratification to the convention in 1998, two years after the Law of the [Sea](#) Convention 1982 was enforced. But even though the convention is enforced it is still not considered a universal [law](#) as it is without the consensus of States.

Pirates'd better stay away...

Provided by ResearchSEA

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