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# **ADDRESSING CONTEMPORARY CHALLENGES IN THE IMPLEMENTATION OF UNCLOS: A COMPARATIVE ANALYSIS OF STATE PRACTICES AND LEGAL PERSPECTIVES**

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## **Research Problem:**

"Despite the existence of UNCLOS as a legal framework, there are persistent challenges in its implementation across different states. This research aims to identify, analyse, and compare the key obstacles hindering the full realization of UNCLOS provisions, examining the diverse legal perspectives and state practices that contribute to these challenges. The overarching goal is to propose recommendations and solutions to enhance the effectiveness of UNCLOS in addressing current and emerging issues in maritime governance."

## **Research Questions**

1. How do different states interpret and implement UNCLOS provisions related to maritime boundary disputes, and what are the key factors influencing the effectiveness of dispute resolution mechanisms within the framework of the convention?
2. what extent do governments manage and safeguard marine resources inside their Exclusive Economic Zones (EEZs) in accordance with UNCLOS guidelines? What are the primary barriers to sustainable fishing techniques and the preservation of marine biodiversity, in particular?
3. What legal actions might countries take in response to environmental changes that impact their marine zones, and how might rising sea levels and climate change impact the way that UNCLOS is applied? What additions or modifications to UNCLOS could be necessary to effectively address these problems?
4. In the context of UNCLOS, how do nations individually and jointly handle issues related to marine security, such as piracy and maritime terrorism? How far do the provisions of UNCLOS suffice to encourage regional cooperation and guarantee the security of marine activities?

## **INTRODUCTION**

With water covering more than 71% of the planet's surface, oceans make up more than 96% of the Earth's surface. 80% of global trade in goods is carried out in water, and over 30,000,000 people in water at any point of time. Signed 42 years ago, it was established in 1982 and went into implementation in 1994. 168 countries have ratified the UN Convention on sea, which is also known as the "constitution of the oceans," It is among the treaties which are most widely accepted. Its goal was to create comprehensive marine and ocean governance.

The Division of the Convention provides An yearly statement outlining all the changes concerning marine matters along with maritime rules. It also endorses the evaluation on these developments by the UN Open-ended Informal Consultative Process on Ocean. Under the the Law of the Sea, An global enforceable authority is the Intergovernmental Conference on the Marine Biological Diversity for its conservation and sustainable use which is Outside National Boundaries.

The Law of the Sea Convention is now being implemented in a number of ways that necessitate careful consideration. To shed light on the changing environment, this article compares state practices and legal viewpoints. We examine several strategies in order to find similarities, differences, and possible areas for development in handling UNCLOS-related matters. This research explores the complexity surrounding the implementation of UNCLOS, from maritime disputes to environmental concerns, offering insights into the dynamic interplay between state actions and legal frameworks. We hope to contribute to a thorough knowledge of the present issues and viable solutions through the use of this comparative lens.

## **Evolution of UNCLOS**

Prior to UNCLOS, waterways were governed by the 17th-decades notion of "freedom of the seas." After such, all oceans were considered to be global waters, available for any state to use and navigate. Because coastline states had claims on a small stretch of territorial sea close to them, approximately comparable to the range at which a projectile could be tossed from the shore, the first territorial water<sup>1</sup> boundary of 3 nautical miles was established.

1950s saw the beginning of UN discussions to codify these claims. "Unsuccessful in dealing

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<sup>1</sup> UNCLOS art 17.

with maritime zones," the 1956 start with the Law of the Sea sparked concerns that States with superior technology might appropriate large portions of the seafloor for itself. The absence of well-defined maritime rights caused disputes, as the "cod wars" between Iceland and the UK from 1958 to 1976.

In 1956, first Conference on the Sea took place in Geneva. Following the conference, four accords were signed, including the Territorial Sea and Contiguous Zone Convention, Continental Shelf Treaty, High Seas Convention, and High Seas Living Resources Convention on Fishing and Conservation.

The Conference takes place in 1960, 1973, and 1982, with 160 participating nations. The Convention was adapted in 1982, replacing previous conventions. In 1994, an implementing agreement was ratified for deep seafloor management, and in 1995, the UN Fish Stocks Agreement was ratified for fish stock preservation and management. Negotiations on a 3<sup>rd</sup> implementation treaty on marine biodiversity began at 2018.

### **OVER VIEW**

Nine Annexes and over 300 Articles divided into 17 Parts make up UNCLOS. Its regulations include a wide range of subjects, such as what constitutes a warship and whether or not it is permissible to conduct scientific research on board. Two noteworthy sets of provisions concerning maritime limits, areas, and processes for resolving disputes

The "chaotic situation" of the early 20th century was ended by UNCLOS, which defined new aquatic regions, confirmed the extent of the territorial sea, and established additional maritime zones. The Zones of Fourteen are established under the UNCLOS, along with the regulations that govern them. When geographical circumstances lead to governments' sea claims overlapping, boundaries must be "delimited". In case the concerned states are incapable of arriving at a mutually agreeable settlement, UNCLOS offers both extrajudicial and judicial processes to settle disputes related to maritime borders.

the United Nations Convention on the Sea (UNCLOS) sets out rules governing how the world's waters may be used. It delineates the limits of maritime regions and outlines the responsibilities as well as entitlements of states situated within these areas, and offers a dispute resolution process. UNCLOS encourages freedom of navigation, sustainable resource management, and

maritime conservation. It establishes guidelines for the continental shelf, exclusive economic zones, and territorial waterways. Many countries have ratified the pact, which promotes international cooperation<sup>2</sup> and guarantees the fair and peaceful use of the oceans for the good of all. Give space for maritime scientific study and environmental<sup>3</sup> conservation.

## MARINE ZONES

Any islands, rocks, and areas with low tides inside the territorial waters of a state with a coastline are regarded as belonging to the state. Marine zones are classified according to the following criteria, and the breadth of each zone is determined by baselines<sup>4</sup> established along the beach.

Internal waters are those portions of the ocean that are within the limits of the state with costlines, downward of baselines, in addition excluded from certain rights, like the liberty to navigate.

Territorial Sea: A 12-nautical-mile radius around the baseline is included in this.

even though foreign vessels are free to travel through it (known as "innocent passage").

Contiguous zone: Twelve nautical miles outside the territorial sea is the contiguous zone. On certain issues, the state is able to carry out its legislation (immigration, levy, emigration and contamination) exclusive economic zone: The baseline is separated by the 200 nautical miles that comprise in to exclusive zone (EEZ). The national government is the ultimate owner of natural resource rights.

Continental shelf: Coastal governments have the sole right to discover and utilize resources on the seafloor and below within the 200 nautical mile radius that surrounds the starting point. A coastal state may be entitled to an enlarged continental shelf if the continental edge stretches beyond 200 nautical miles.

The term "high seas" refers to any area of the ocean which is outside of a state's internal waters, exclusive economic zone<sup>5</sup> (EEZ), or territorial sea. All states have the same freedoms, such as the ability to build underwater connections, to overfly, and to navigate. Sovereignty claims

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<sup>2</sup> UNCLOS, art. 311 (1)

<sup>3</sup> UNCLOS art 56 III

<sup>4</sup> UNCLOS Article 3

<sup>5</sup> UNCLOS PART 5.

cannot extend to any part of the high seas<sup>6</sup>.

Area: The area below the continental shelf is referred to as "Area". The "common heritage of mankind" principle, which states that operations inside the Area must be carried out for the benefit of humanity as a whole, governs the Area. The International Seabed Authority was founded in 1994 to ensure the fair sharing of financial and non-financial advantages arising from operations carried out inside the Area.

### **DISPUTE SETTLEMENT**

Under UNCLOS Part XV, states have access to four distinct forums for the resolution of disputes:

The International Court of Justice; An Arbitral Tribunal pursuant to UNCLOS Annex VII; A Special Arbitral Tribunal pursuant to UNCLOS Annex VIII; The UNCLOS-established International Tribunal of the Law of the Sea States may also choose to employ extrajudicial dispute resolution techniques including regional agreements and discussion. UNCLOS dispute settlement is mandatory for signatories. The need to resolve conflicts enhances compliance with UNCLOS.

On rare occasions, Countries chose not to take part within the hearing procedure instead to adhere to the ruling. Due to China's actions in the region known as the South China Sea, the Philippines filed a lawsuit versus the country in 2013. Under UNCLOS Annex VII, an Arbitral Tribunal heard the issue and decided in favor of the Philippines in 2016. China, a signatory to UNCLOS, declined to take part in the activities and acknowledge the ruling. directly jeopardizes UNCLOS's the capacity to give the seas a reliable regulatory framework.

The Adjudication of the Chagos Ocean Reserve Region began in 2015 when Mauritius sued the UK for enclosing the Chagos islands with a Marine Protected Area (MPA). The Tribunal claimed that by not consulting Mauritius prior to announcing the MPA, the UK had broken its commitments under UNCLOS. since of this "expansive view," states may become less willing to accept articles requiring compulsory jurisdiction in international agreements since these kinds of cases "raise serious questions about the extent of jurisdiction under the mandatory dispute resolution mechanism given out by UNCLOS."

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<sup>6</sup> Art 88 UNCLOS.

Furthermore, the formal dispute resolution processes described in UNCLOS do not apply to legal transgressions made by or affecting non-state actors. UNCLOS and its related accords are subject to immediate execution by a single person governments, based on where the violation occurred.

This poses a unique difficulty because no region possesses direct authority over the oceans. UNCLOS aims in order to remedy this by giving flagged nations-the wherever the licensing of a ship is- authority on sailing vessels a flagged vessels on international waters. "Exclusive flag state jurisdiction" refers to this. Flags of necessity and unique flag state sovereignty leave a territorial void that is one especial issue affecting Safety on the sea in addition to safeguarding on maritime privileged for people

### **RESOURCES MANAGEMENT**

Establishing general standards regulating the use of marine resources, including both being alive and lifeless habitats like petroleum, gas, and oil as well as fisheries, the primary objectives of the Convention. The exclusive economic zone<sup>7</sup> surrounds each country's oceans and surrounding areas within Two hundred miles of water of the foundation and gives The government the authority to "consider, develop, record and manage" marine resources<sup>8</sup>. The government also has control over other industries, such as energy production.

In accordance with the 3rd clauses of United Nations Convention Article 74 and Article 83 on the Law of the Sea powers to the exclusive economic zone and the continental shelf intersect. The both sides agreed that, based on cooperation and understanding, "relevant countries should do everything to implement temporary labour arrangements without bias or interference during this transition that would affect the final agreement." If States cannot agree on the boundary in line with Article XV of Law of the Sea, in compliance with the aforementioned conditions They can use solution process specified in the section. Sometimes states reject or disagree with court decisions. Conflicts may also arise in the Arctic, where resources are becoming more accessible due to melting ice and climate change. Professor Schofield said that when it comes to protecting rights on the continent, all Arctic governments now "comply with the rules of the United Nations Convention on the Law of the Sea" and It is demonstrated by relevant

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<sup>7</sup> UNCLOS Article 73

<sup>8</sup> UNCLOS Article 2(1)

documents from Coastal Zone. State. Those who are parties to the contract receive it. A request was submitted to the Commission on Continental Shelf Limits. The area beyond national borders accounts for approximately 54% of the seas in the globe. Many countries have the right to exploit it, depending on whether the resource is inland or offshore, in the ocean, or at sea. Historically, the main motivation for countries to explore the deep seas was to obtain non-living resources. The United Nations Convention on the Sea sets out the laws towards land "mainly for oil and gas and later for other types of resources in the deep ocean." On the other hand, there is also interest in various mineral deposits that can be discovered in water depths Article 11 of the United Nations Convention Sea emphasizes "without prejudice to the special provisions of this chapter, activities in the region shall be beneficial to all humanity" and "all resources of the region" shall be used for this purpose. Although the United Nations Convention on Sea refers on the division in waters and exclusive economic zones in disputes, these provisions are reached after extensive negotiations and are broad and vague. However, most of the government's coastal boundaries are drawn by agreement. If the parties cannot reach an agreement, dispute resolution may be required. But as the Philippines' arbitration against China in 2013 showed, states are free to reject the decisions of this process. This once again highlights the need for governments to work together and communicate to resolve conflicts. This has proven to be among UNCLO's most divisive features.

### **CLIMATE CHANGE**

Sources said the treaty was "very important on climate issues" because of the lack of understanding of climate change during UNCLOS's decade-long debate, which lasted from 1970 to 1980. This poses many problems, given that the impacts of changing climate, such as rising sea, are already happening today, and that the United Nations Convention on the Sea has many "deficiencies" over addressing these issues.

According to what was said in the newly released 6th Review Report of the Intergovernmental Panel on Climate Change (IPCC), "global sea level average has risen faster since the year 1900 than over any preceding century in at least the last three thousand years." In a scenario with moderate greenhouse gas emissions, the average sea level worldwide is expected to rise by 0.44 percent to 0.76 percent meters by 2100; in a forecast with extremely high greenhouse gas emissions, the rise could reach a total of 1. meters. Rising sea levels put UNCLOS's marine entitlement clauses in jeopardy. Currently, marine zones are determined using baselines. This perspective has important implications for coastal states, especially submerged and tiny islands.

The "existential threat" to low-lying island republics was stated by witnesses. The loss of territory could conceivably affect a state's marine entitlements because maritime rights are derived from land.

To address this matter, the Pacific Islander Initiative (PII), which is composed with several of those rising levels of water particularly affecting coastal governments, declared in August 2021 that it will keep aquatic regions and boundaries where they are (i.e., "fix" their starting points).

Proclamation states as the idea behind UNCLOS was that when defining maritime zones, coasts and other marine features would remain constant. However, this hasn't played exactly as planned. It further states that there is no affirmative duty under UNCLOS to maintain beginnings as well as borders for the marine zones that are being examined, neither modify geographic position data or maps that have been submitted to the UN Secretary-General.

In an event that a state or territory was lost, The number of refugees and homeless people as a result of rising sea levels would increase. More than two hundred million individuals may need to relocate by Mid-century due to the effects of changing the climate, according to projections from the World Bank.

Climate and oceans are closely related. Referred to as the "engine room of the climate system," marine environments are "without any question extremely important in managing climate. "The statement "the oceans have absorbed nearly half of all carbon dioxide released in the period since industrialization by human activity" is accurate; without it, the quantity of carbon dioxide in the atmosphere would be much higher. The effects this has involve shifting oceanographic conditions on the aquatic environment circulations, altering the chemical composition of the seafloor, and ocean acidification. The geographic distribution and numbers of marine life, as well as the state of significant communities like mangrove swamps and reefs made of coral, are all impacted by these changes.

additionally affect the waters. Climate change-related changes in air temperatures, atmospheric circulations, and extreme weather patterns also have an impact on the oceans.

According to Part 12 of the UN Convention on the sea, countries must take all required actions

to guarantee that operations lying within their jurisdiction or authority are conducted in a manner that keeps pollution from endangering the environments and people of neighboring States, as well as halt, lessen, and manage contamination of the marine ecosystem from all sources. Although it fails to directly discuss changing climate, the UN Convention on the Sea imposes heavy obligations for countries in terms of the environment.

Over the course of the century to come, the level of the sea will rise as a end product of climate impacts. it has a major influence on the conventional methods used by coastline and island nations for establishing their maritime entitlements. Small, low-lying archipelago states—which are in serious danger of being extinct—will be most affected.

### **MARITIME SECURITY**

Because of its broad definition, "maritime security" might mean "very different things" for different community. It is today believed to be a "broader concept," that encompasses "the protection of a state's land and maritime territory as well as the protection of its infrastructure, economy, environment, and society from certain harmful acts occurring at sea." It has historically been connected to the national security of a state. The expansion of the definition of marine security is influenced by certain occurrences. when the list of conventional threats to maritime security was expanded to include terrorism. Over time, its scope has grown to include illegal fishing, terrorism, smuggling crimes, pirates, and robbery with weapons (which involves the smuggling of persons or illicit goods), and deliberate devastation of the marine environment. Threat perceptions held by the state have also been altered by technological breakthroughs.

Among them are cyber attacks on ports and ships, as well as the illegal usage of robotic technology by criminal organizations, such as unmanned aircraft and marine autonomous vehicles. We've heard that different countries and areas pose different hazards to marine security. The repercussions of melting ice in the polar regions, for example, illegal immigration and the preservation of seabed cultural property in the European Union, Increased attention is being paid to border disputes, terrorism in Asia, violent thefts, and thefts of petroleum in Africa. UNCLOS does not define maritime security, but it outlines The responsibilities and liberties of governments, especially those that are coastlines a starting point. Other agreements, like the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 2000 Protocol against Migrant Smuggling, and the Convention for the Suppression of Unlawful

Acts against the Safety of Maritime Navigation, supplement UNCLOS's provisions. Customary international law and UN Security Council resolutions also supplement UNCLOS. The ideas of dominant flag authority by states and liberty in passage are part of the law of the sea.

It ensures that governments are unable to "extend their jurisdiction to foreign ships on the high seas without the consent of the flag state," which not only helps to preserve freedom of navigation but also "ensures that there is always one state responsible for the ship." Ships registered to any state are free to sail the high seas, as stipulated by UNCLOS. UNCLOS only allows stop-and-search operations in extremely particular situations, including when there's a solid evidence that a vessel is infringing a statute or when finding the flag of the vessel is the main objective of the operation. If not, interested parties are required by UNCLOS Article 94 to present their case to the flag state, which has the power to look into the accusation and take necessary action, up to and involving a military presence. However, a lot of ships are flying the flags of nations that are either unwilling or unable to police international waterways. Even though absolute flag sovereignty of states is a fundamental component of the convention, the widespread usage of flags of convenience presents a significant threat to naval safety and the enforcement of laws at sea. One major obstacle in the enforcement of naval regulations is the application of flags of necessity. Often, flag states with the largest registered tons are neither willing nor able to fulfill their obligations for the management, supervision, or enforcement of their registered vessels. The authorities have to follow the lead and collaborate with different entities to guarantee that there's a true and significant tie among the vessels and the jurisdiction where they have been enrolled.

Since UNCLOS is based on the tenet that ships must be manned and cannot be operated remotely, the development of maritime autonomous vehicles directly challenges UNCLOS. In the event that the use of autonomous vehicles for illicit purposes increases, the government will need to closely monitor these developments and insist on an explanation of the existing legislation. The fundamentals of unrestricted exploration, as protected by UNCLOS, are obviously compromised by the southern China Sea and the activities of China. Evidence suggests that China is unlikely to opt to stay with its denial of the UNCLOS's Liberty of movement for innocent travelers and liberty in exploration and to give up its claim that it has exclusive sovereignty over most of the South China Sea. China's position challenges international law. When the right to free passage is threatened everywhere—not only in the South Chinese Sea, in order to safeguard and uphold these principles, the United Kingdom

administration should keep cooperating alongside its partners and friends. Climate change is expected to cause more challenges with maritime security, particularly in the Arctic.

### **SUGGESTIONS**

1. **Promote International Cooperation:** By organizing regional and international forums, governments can be encouraged to promote a more cooperative approach to implementing UNCLOS. This could encourage knowledge exchange, best practices, and understanding between parties, leading to the eventual development of a more unified framework for global maritime governance.
2. **Strengthen Dispute settlement Mechanisms:** Promote the enhancement of UNCLOS dispute settlement procedures, placing a focus on their effectiveness and equity. Simplified procedures for arbitration, more precise rules, and the creation of specialized tribunals to reduce the length of time that legal issues take to resolve could all be improvements.
3. **Strengthen Environmental Focus:** Make changes or additional agreements to address modern environmental issues including climate change and marine pollution. By including ecological factors in UNCLOS provisions, the convention would stay applicable in the face of environmental disasters and reflect shifting global priorities.
5. **Encourage Capacity Building:** In order to ensure that UNCLOS is implemented effectively, states—especially developing ones—should make investments in increasing institutional and human capacity. This promotes a more fair distribution of advantages and duties among member states and involves technological prowess, legal knowledge, and marine infrastructure.
6. **Regular Review Mechanisms:** Create review procedures on a regular basis to evaluate how well UNCLOS is being implemented while accounting for changing environmental and geopolitical circumstances. This would guarantee that the convention is still flexible enough to address new problems as they arise and that it can be updated in a timely manner to reflect modern marine concerns.
7. **Public Awareness and Education:** To improve knowledge of UNCLOS and its ramifications, support public awareness and education initiatives. To increase the convention's overall influence on the ground, this involves involving stakeholders, such as local communities and industry, to promote a sense of ownership and compliance.

## **CONCLUSION**

Enforcing international law is one of its shortcomings, and it can be especially challenging at sea. Despite UNCLOS's efforts For dealing with such a situation through using flagged situations and problems with There is a legal void on the globe's oceans as a consequence of the common use of flags of choice and the implementation capabilities. When the United Nations Convention on became law in the year 1982, maritime administration made significant progress. For the most part, this was beneficial, but not withstanding the limitations covered in this paper's subsequent parts, The renewal is not advisable. Therefore, given its limitations and modern issues- like maritime freedoms, rising It is obvious that its rules need to be constantly revised and expanded in light of rising sea levels, novel innovations, and the never-ending search for more assets.

It will be imperative that this measure be taken without endangering the convention.

This comparative study highlights the complex issues surrounding UNCLOS implementation by exposing disparate state practices and legal viewpoints. Differences continue to exist in how environmental issues and maritime matters are approached, despite common goals. Collaborative activities are essential to improving UNCLOS efficacy, as they promote a common understanding among nations. The differences that have been observed, along with the commonalities, offer the opportunity to improve the application of the convention. It's critical to have ongoing conversations and adapt as maritime dynamics change. The international community may improve UNCLOS implementation and advance a more just and sustainable maritime order that complies with modern requirements and legal viewpoints by acknowledging and resolving these issues.

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