

The Unfinished Business of the Seas: Limitations of UNCLOS III

Md. Imran Wahab¹, Dymphna Hawkins²

¹IPS, Inspector General of Police, West Bengal, India

²Barrister-at-Law, Australia

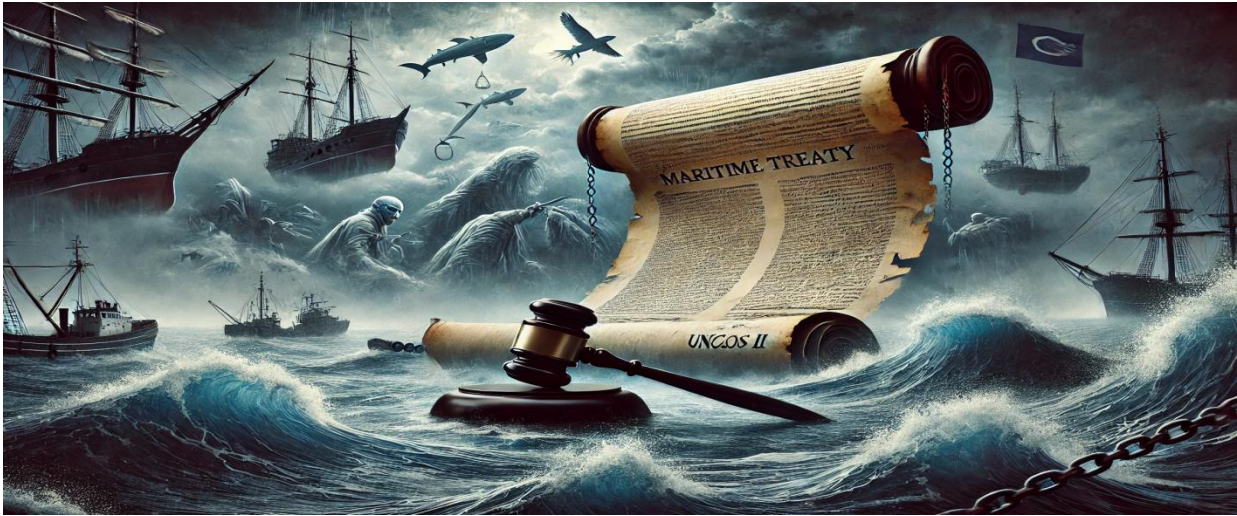
Abstract:

The 1982 United Nations Convention on the Law of the Sea (UNCLOS III), while a significant achievement in international maritime law, is increasingly challenged by modern oceanic issues. This paper identifies key areas where UNCLOS III falls short, revealing its "unfinished business." Specifically, the convention lacks sufficient strength in environmental protection, climate change adaptation, marine biodiversity conservation, and the regulation of deep seabed mining. Furthermore, it presents weaknesses in addressing maritime security threats, resolving territorial disputes, and regulating emerging technologies. Issues surrounding the rights of landlocked states, contemporary maritime terrorism, and the complex legal implications of rising sea levels expose further inadequacies. Given evolving geopolitical tensions, technological advancements, and escalating environmental threats, an updated and adaptable legal framework is critical. This study argues for comprehensive amendments and supplementary agreements to fill these gaps, ensuring the continued relevance of UNCLOS III and promoting sustainable, equitable ocean governance in the 21st century.

Keywords: UNCLOS III, Maritime governance, Environmental protection, Climate change, Marine biodiversity, Territorial disputes, Deep seabed mining, Maritime security, Exclusive Economic Zones (EEZs), Ocean law reform

INTRODUCTION:

The 1982 United Nations Convention on the Law of the Sea (UNCLOS III) stands as a monumental achievement in international law, providing a comprehensive legal architecture for governing maritime activities, defining maritime boundaries, and managing resource exploitation. This widely adopted convention, ratified by 168 nations, establishes a structured framework for ocean governance, encompassing territorial waters, Exclusive Economic Zones (EEZs), deep seabed mining, environmental safeguards, and mechanisms for resolving disputes, thereby fostering cooperation and stability in the maritime domain.



Despite its groundbreaking nature, UNCLOS III, conceived in the late 20th century, now faces significant limitations in light of evolving global realities. The convention's provisions struggle to adequately address the escalating threats posed by climate change, including rising sea levels, ocean acidification, and the forced displacement of coastal communities. Furthermore, marine biodiversity in areas beyond national jurisdiction remains dangerously exposed due to the lack of robust international regulations. Existing environmental protections are insufficient to combat contemporary challenges such as pervasive plastic pollution and the potentially devastating impacts of deep-sea mining. Lingering ambiguities concerning territorial disputes, access rights for landlocked states, and emerging maritime security threats – including piracy, cyber warfare, and maritime terrorism – further undermine the effectiveness of global ocean governance.

Therefore, adapting UNCLOS III to the exigencies of the 21st century is a matter of critical urgency. This article will critically analyze and demonstrate the convention's shortcomings, focusing particularly on environmental protection, dispute resolution, and maritime security. It will advocate for essential legal reforms and strengthened international collaboration to ensure that ocean governance remains effective, sustainable, and equitable in the face of unprecedented global challenges.

Main Points of UNCLOS III:

The Third United Nations Conference on the Law of the Sea (UNCLOS III), a landmark series of negotiations held from 1973 to 1982, culminated in the adoption of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982. This comprehensive convention established a universally recognized legal framework to govern all aspects of ocean space and maritime activities. It sought to balance the interests of coastal states with the freedom of navigation and resource utilization for the benefit of the international community.

Territorial Sea and Sovereignty:

UNCLOS III reaffirmed the long-standing principle of state sovereignty over territorial seas, extending the zone to a maximum of 12 nautical miles from the coastal baseline. Within this zone, coastal states exercise full sovereign rights over the airspace above, the water column itself, the seabed, and the subsoil beneath. This sovereignty, however, is subject to the right of innocent passage for foreign vessels, ensuring that ships can navigate through the territorial sea peacefully.

Contiguous Zone:

Beyond the territorial sea, UNCLOS III recognized the right of coastal states to establish a contiguous zone extending up to 24 nautical miles from their baselines. In this zone, states can exercise control deemed necessary to prevent and punish infringements of their customs, immigration, sanitation, and fiscal laws and regulations within their territory or territorial sea. This zone provides an additional layer of security and enforcement capabilities.

Exclusive Economic Zone (EEZ):

A pivotal innovation of UNCLOS III was the creation of the Exclusive Economic Zone (EEZ), extending up to 200 nautical miles from the coastal baseline. Within the EEZ, coastal states possess sovereign rights to explore, exploit, conserve, and manage all living and non-living resources in the water column, seabed, and subsoil. While granting these rights, UNCLOS III also preserves the freedoms of navigation, overflight, and the laying of submarine cables and pipelines for other states within the EEZ.

Continental Shelf Rights:

UNCLOS III granted coastal states sovereign rights over their continental shelf, defined as the natural prolongation of their land territory into the seabed. These rights extend to a minimum of 200 nautical miles and, in some cases, beyond if the shelf extends further. Coastal states have the exclusive right to explore and exploit the natural resources of the continental shelf, including oil, gas, and minerals, without the need for permission from or sharing revenue with other states.

High Seas and Freedom of Navigation:

The high seas, defined as the waters beyond national jurisdiction, were declared open to all states. UNCLOS III enshrined the fundamental freedoms of navigation, overflight, scientific research, fishing, and the laying of submarine cables and pipelines on the high seas. These freedoms must be exercised with due regard to the interests of other states and in accordance with international law and regulations.

International Seabed Authority (ISA);

UNCLOS III established the International Seabed Authority (ISA) to regulate activities in the deep seabed beyond national jurisdiction, known as "the Area." The ISA manages the exploration and exploitation of mineral resources in the Area, ensuring equitable benefit-sharing, environmental protection, and compliance with international regulations. The ISA is composed of all states party to UNCLOS and operates through various organs to implement its mandate.

Common Heritage of Mankind:

A significant principle introduced by UNCLOS III is that the seabed and ocean floor beyond national jurisdiction, and their resources, constitute the "common heritage of mankind." This principle stipulates that no state can claim sovereignty over these areas, and their resources must be managed for the benefit of all humanity, with particular consideration for the needs of developing countries.

Straits Used for International Navigation:

UNCLOS III recognizes the importance of straits used for international navigation and ensures they

remain open to all states. It introduces the concept of transit passage, which guarantees uninterrupted passage through straits for ships and aircraft, even if the strait overlaps with the territorial sea of a coastal state. Vessels and aircraft exercising transit passage must comply with coastal state regulations related to safety and environmental protection.

Archipelagic States:

The convention introduced the concept of archipelagic states, allowing countries composed of multiple islands forming an archipelago, such as Indonesia and the Philippines, to draw straight baselines connecting the outermost points of their outermost islands. Archipelagic states exercise sovereignty over the waters enclosed by these baselines, known as archipelagic waters, while respecting the right of innocent passage for foreign vessels.

Marine Environmental Protection:

UNCLOS III contains extensive provisions for the protection and preservation of the marine environment. States are obligated to prevent, reduce, and control pollution from various sources, including land-based activities, vessels, and seabed exploitation. International cooperation is emphasized in combating marine pollution, addressing issues such as oil spills, dumping of waste, and pollution from offshore installations.

Marine Scientific Research:

The convention promotes marine scientific research, recognizing its importance for understanding the oceans and their resources. Coastal states have the right to regulate marine scientific research within their EEZ and continental shelf, but they must grant consent for research projects conducted for peaceful purposes. UNCLOS III encourages international collaboration and knowledge-sharing in marine scientific research.

Dispute Settlement Mechanisms:

To ensure compliance with UNCLOS and resolve disputes arising from its interpretation or application, the convention established a compulsory dispute settlement mechanism. States party to UNCLOS may choose to resolve conflicts through the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), arbitration, or conciliation. The availability of these mechanisms promotes peaceful resolution of maritime disputes.

Arbitration As the Default Mechanism of UNCLOS III With Exceptions:

Under UNCLOS III, arbitration serves as the primary method for resolving disputes. While parties retain the option to utilize the ITLOS or ICJ, the treaty promotes resolving disagreements through political channels via a disclosure process, except in cases involving potential security risks.

Under Article 298 of UNCLOS III states can declare non-acceptance of dispute resolution procedures outlined in section 2, based on three specific grounds:

1. Disputes concerning the delimitation of the territorial sea boundary, exclusive economic zone, and continental shelf, or those involving historic bays or titles.
2. Disputes related to military and law enforcement activities.
3. Disputes relating to issues under consideration by the UN Security Council.

Even when these exceptions are invoked, parties are still obligated to reach an agreement through alternative means. Sea boundary delimitations are typically resolved through direct negotiation. However, states must still endeavour to resolve the dispute peacefully, in good faith, and within a reasonable timeframe, or submit to a conciliation process that yields a binding report. Failing that, parties must agree on an alternative procedure by arbitration or judicial means.

If one state continues to refuse resolution, the other state can initiate proceedings before the court or tribunal. This process can be lengthy, potentially allowing for the exploitation of natural resources within the disputed boundary during the interim. This poses a practical challenge to UNCLOS III, for preliminary measures such as injunctions to halt such exploitation. While the ICJ could be approached, statistics indicate compliance with ICJ rulings is around 50% and decreasing.

Protection of Landlocked and Geographically Disadvantaged States

UNCLOS III recognizes the special needs and rights of landlocked and geographically disadvantaged states. The convention ensures their access to and participation in marine resource exploitation, particularly in the EEZ and high seas. Transit rights through coastal states are also guaranteed to facilitate access to the sea for landlocked states.

Rights of Landlocked States to the High Seas

Landlocked states were granted the right to participate in the exploration and exploitation of resources in the high seas and the deep seabed, reinforcing the principle of equitable resource distribution. This provision aims to address the historical disadvantages faced by landlocked states in accessing and benefiting from marine resources.

Regulation of Fishing Rights

The convention introduced measures to regulate fishing activities, including the sustainable management of fish stocks. Coastal states have the right to establish quotas and conservation measures within their EEZ to prevent overfishing and ensure the long-term health of fish populations. International cooperation is required for the management of migratory and straddling fish stocks that cross national boundaries.

Piracy and Maritime Security

UNCLOS III defines piracy as illegal acts committed on the high seas against ships or aircraft for private ends. The convention allows all states to seize pirate ships or aircraft, arrest the pirates, and prosecute them. It also includes provisions addressing other illicit activities at sea, such as drug trafficking, smuggling, and unauthorized broadcasting.

Submarine Cables and Pipelines

The convention ensures the freedom to lay and maintain submarine cables and pipelines on the continental shelf and in the high seas. States are responsible for protecting these vital communication and energy infrastructure elements from damage or interference. Coastal states have the right to regulate the laying of cables and pipelines on their continental shelf to protect their resources and environment.

Implementation and Enforcement

UNCLOS III assigns enforcement responsibilities to flag states, coastal states, and port states, ensuring compliance with its provisions. Flag states are responsible for ensuring that ships flying their flag comply with international maritime regulations. Coastal states have the right to enforce laws within their territorial sea and EEZ. Port states can inspect foreign ships calling at their ports to ensure compliance with international standards.

Conclusion and Global Acceptance

UNCLOS III, a monumental achievement in international law, was adopted in 1982 and entered into force in 1994. It has achieved near-universal acceptance, with over 160 countries ratifying the convention. UNCLOS remains the cornerstone of international maritime law, balancing sovereign rights with the principles of equitable resource distribution, environmental protection, and global cooperation, contributing to a more peaceful and sustainable use of the world's oceans.

Limitations of UNCLOS III:

The main limitations of the UNCLOS III are given below:

Environmental Protection: A Lack of Teeth: One significant gap is a robust strategy for environmental protection. While UNCLOS III mandates states to protect the marine environment, it lacks specific, enforceable measures to combat pollution, especially emerging threats like plastic pollution and land-based waste, making its approach too general for today's environmental challenges.

Climate Change Blind Spot: The convention also lacks provisions for climate change and ocean governance. Because the global threat of climate change was not fully understood at the time of drafting, UNCLOS III fails to account for the impacts of rising sea levels, ocean acidification, and shifting ocean currents.

Biodiversity Beyond Borders: An Unprotected Frontier Marine biodiversity beyond national jurisdiction receives insufficient attention. While UNCLOS III manages biodiversity within Exclusive Economic Zones (EEZs), it lacks a framework for protecting marine life in the high seas, which leaves vast ocean areas vulnerable to unregulated exploitation.

Deep Seabed Mining: Ambiguity in the Depths: Though UNCLOS established the International Seabed Authority (ISA) to regulate deep seabed mining, aiming to manage the seabed as the "common heritage of mankind," it lacks a concrete, equitable scheme for resource exploitation regarding resource management, environmental protection, and profit-sharing.

Landlocked States: Navigating a Murky Path to the Sea: While UNCLOS III recognizes the right of landlocked states to access the sea, the provisions are vague and not always enforceable, often leading to hurdles in securing trade and accessing maritime routes.

Nuclear Waste: An Unaddressed Threat: The disposal of nuclear waste at sea was another area not explicitly addressed. While the convention mentions pollution, the specific issue of nuclear waste dumping in international waters remains unregulated and later treaties like the 1993 London Dumping Protocol fill the gap.

Maritime Security: An Evolving Landscape of Threats: UNCLOS III addresses piracy, but it lacks a broad maritime security framework including armed conflict, terrorism, and modern forms of piracy, such as cyber attacks and drone warfare.

Territorial Disputes: Unresolved Conflicts at Sea: The convention defines the boundaries of territorial waters, EEZs, and continental shelves, yet it offers no solutions for disputes over territorial claims,

resulting in ongoing tensions in regions like the South China Sea, the Arctic, and the Eastern Mediterranean.

Dispute Resolution: A Need for Stronger Mechanisms: Though UNCLOS III established the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and arbitral tribunals, it lacks a robust, universally accepted mechanism for resolving complex territorial and maritime disputes.

Technological Advancements: Uncharted Regulatory Waters: UNCLOS III's finalization predates much modern technological advancement in maritime activities, such as autonomous vessels, drones, and underwater technology, introducing new regulatory challenges.

Marine Genetic Resources: An Untapped Regulatory Frontier: Similarly, UNCLOS III did not anticipate the use of marine genetic resources, particularly in biotechnology, which are increasingly used for pharmaceuticals, food production, and industrial applications, yet the convention lacks a framework for their regulation and benefit-sharing.

Fisheries Management: A Partial Solution to a Global Problem: Although UNCLOS addresses fishing rights within EEZs and provides regulations, it lacks a binding global framework for sustainable fisheries management, leaving overfishing and the depletion of marine stocks as global concerns.

Marine Spatial Planning: An Overlooked Approach: The concept of marine spatial planning (MSP) was not fully developed at the time UNCLOS III was drafted, which is a modern approach to managing the ocean's resources and ecosystem in an integrated and sustainable manner.

Overlapping EEZ Claims: A Source of Maritime Conflicts: While UNCLOS III grants coastal states sovereign rights over marine resources in their Exclusive Economic Zones (EEZs), it fails to definitively resolve overlapping EEZ claims.

Straits Used for International Navigation: An Unbalanced Regime: UNCLOS III established a regime for straits used for international navigation, but this has been criticized for not fully balancing transit passage rights with coastal states' sovereignty, leading to disputes in areas such as the Strait of Hormuz.

Maritime Terrorism: Unexpected Attacks at Sea: Maritime terrorism was not anticipated during the drafting of UNCLOS III. Attacks on shipping, such as hijackings and cyberattacks, highlight the convention's insufficiency in addressing non-state actors' threats.

Sea-Level Rise: An Existential Threat for Island Nations: The issue of sea-level rise and its impact on island nations was not addressed. The convention fails to clarify the status of islands that may disappear due to climate change. The survival of low-lying nations depends on how international law defines their maritime zones.

The Role of Non-State Actors: Complicated Environmental Regulations: UNCLOS III does not adequately address the increasing role of non-state actors, such as private corporations involved in shipping, offshore drilling, and seabed mining, complicating environmental regulations, resource management, and profit-sharing.

Land-Based Pollution: An Unaddressed Source of Marine Degradation: While UNCLOS III regulates pollution from ships, it does not sufficiently address pollution originating from land-based sources, such as agriculture, sewage, and industrial runoff.

Seafarers' Rights: An Overlooked Aspect of Maritime Law: Finally, UNCLOS III does not fully address the human rights of seafarers, particularly regarding working conditions, safety, and protections against exploitation.

Decisions concerning UNCLOS III limitations:

In *Philippines v. China* 2016 the Permanent Court of Arbitration's decision addressed the legitimacy of China's "nine-dash line" claim within the South China Sea. China's historical rights were found to be inconsistent with UNCLOS regulations concerning exclusive economic zones, and the geographic features in the South China Sea did not warrant the creation of such zones. This underscored the difficulties in interpreting and implementing UNCLOS amidst competing territorial claims where Mischief Reef and Second Thomas Shoal were deemed low-tide elevations and not maritime zones of their own, nor part of China's EEZ. However where Chinese military activities were engaged, the PCA had no jurisdiction under Art 298(1)(b) UNCLOS to determine other claims. This reflects the PCA's limited jurisdiction for arbitration where military issues are raised.

In *Bangladesh v. India* 2014, the Permanent Court of Arbitration reviewed the delimitation of their maritime boundary in the Bay of Bengal, their EEZs and continental shelves in a complex dispute, where equitable principles and the specific geographic circumstances required careful consideration. It highlighted how UNCLOS can be used to peacefully settle disputes and promote stability in maritime regions.

In "*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan coast*" 13 July, 2023 the ICJ determined issues of continental shelf delimitation, and overlapping claims beyond 200 nautical miles (nm). The ICJ found that on the basis of "equitable geographical representation" in Art 76(8) UNCLOS, and customary international law, a state's continental shelf beyond 200 nm cannot extend within 200 nm of another state's baselines.

Conclusion: An Evolving Legal Landscape:

The United Nations Convention on the Law of the Sea III (UNCLOS III) serves as a cornerstone of international maritime law, offering a comprehensive framework for regulating activities across the world's oceans. However, the enduring effectiveness of UNCLOS III is increasingly challenged by a rapidly changing world, necessitating continuous evaluation and adaptation. The convention's ability to effectively govern is tested by the swift pace of technological advancements, which introduce novel uses of the sea and raise unforeseen legal questions. Escalating environmental concerns, such as climate change and marine pollution, demand updated regulations to protect vulnerable ecosystems. Furthermore, shifting geopolitical dynamics and competing national interests require a recalibration of maritime boundaries and resource allocation. To remain a relevant and robust legal instrument, UNCLOS III must undergo ongoing updates and amendments that address these evolving challenges, ensuring the sustainable management of maritime resources and fostering international cooperation in the face of contemporary realities. The effectiveness of the ICJ is fundamentally challenged by the issue of state compliance with its rulings. While this has always been a concern to some degree, it is facing increased scrutiny. As ICJ Judge Oda observed over two decades ago, "consistent disregard for the Court's judgments and orders by involved parties would inevitably erode its prestige and cast doubt on its function within the international community."

References:

1. Natalie Klein, *Maritime Security and the Law of the Sea* (2011), 10; see UNSC, Resolution 1816 of 2 June 2008 on Piracy off the Coast of Somalia, UN Doc. S/RES/ 1816 (2008).
2. *Settlement of Disputes Mechanism: Recapitulative Tables* (2004) United Nations Division for Ocean

Affairs and the Law of the Sea

http://www.un.org/Depts/los/settlement_of_disputes/choice_procedure.htm.

3. PCA, Southern Bluefin Tuna Case (Australia and New Zealand v. Japan), Jurisdiction and Admissibility, Award of 4 August 2000, RIAA XXIII, 1, paras. 64, 105; see also Markus Kotzur, Good Faith, MPEPIL, para. 22, available at: <http://www.mpepil.com>
4. Dispute Settlement Under UNCLOS: The Exclusion of Maritime Delimitation Disputes" [2005] UQLawJl 7; (2005) 24(1) University of Queensland Law Journal 165, Anne Sheehan, Senior Legal Officer, Australian Department of Defence
5. Provisional, but Not (Always) Pointless: Compliance with ICJ Provisional Measures by Matei Alexianu EJIL: Talk! Blog of European Journal of International Law, , 3 November 2023
6. Why the ICJ Cannot Order Israel to Stop the War in Gaza as a Provisional Measure, ,by US Attorney, Jesse Lempel,EJIL Talk! Blog of the European Journal of International Law, 8 January 2024
7. Beckman, R. (2013). The UN Convention on the Law of the Sea and the maritime disputes in the South China Sea. American Journal of International Law, 107(1), 142–163. <https://doi.org/10.5305/amerjintelaw.107.1.0142>
8. Churchill, R. R., & Lowe, A. V. (1999). The law of the sea (3rd ed.). Manchester University Press.
9. Gjerde, K. M., Clark, N., & Harden-Davies, H. (2019). Building a platform for the future: The relationship of the expected new agreement for marine biodiversity in areas beyond national jurisdiction and the UN Convention on the Law of the Sea. Ocean Yearbook Online, 33(1), 3–44. https://doi.org/10.1163/9789004395633_002
10. Oxman, B. H. (2006). The rule of law and the United Nations Convention on the Law of the Sea. European Journal of International Law, 17(3), 353–371. <https://doi.org/10.1093/ejil/chl021>
11. Rayfuse, R. (2005). Protecting marine biodiversity in the face of climate change: What can the existing international legal framework offer? Yearbook of International Environmental Law, 19(1), 3–30. <https://doi.org/10.1093/yiel/19.1.3>
12. Rothwell, D. R., & Stephens, T. (2016). The international law of the sea (2nd ed.). Hart Publishing.
13. Tanaka, Y. (2012). The International Law of the Sea. Cambridge University Press.
14. Treves, T. (2008). Law of the Sea. In R. Wolfrum (Ed.), Max Planck Encyclopaedia of Public International Law. Oxford University Press. Retrieved from <https://opil.ouplaw.com>
15. United Nations. (1982). United Nations Convention on the Law of the Sea (UNCLOS). Retrieved from https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
16. Warner, R. (2009). Protecting the ocean beyond national jurisdiction: Strengthening the international law framework. Martinus Nijhoff Publishers.