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UNCLOS- A Law Governing the World's Oceans

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ABSTRACT

The law of the sea is an international law governing the geographic jurisdictions of coastal States and the rights and duties among countries in the use and protection of the ocean environment and its natural resources. This Convention on the Law of the Sea (UNCLOS) was negotiated under the United Nations' auspices, which was contracted in 1982 by 117 countries and entered into force in 1994. Presently 133 States have signed and ratified UNCLOS; USA, Canada, Israel, Turkey, and Venezuela are the most prominent among those not ratified. UNCLOS is best understood as an outline that provides an essential foundation for the oceans' international law intended to be extended and explained through more detailed international agreements and States' evolving customs.

INTRODUCTION

Long before the Indian entrance into the world's seas and oceans, people from the east fighting for their rights on the vast area of water body worldwide. In the east, most countries made the rules that govern the whole water area around them. However, there was no uniform law for the use and regulations of seas and oceans during that time. Different countries have different law as per their convenience. Powerful countries were able to control and regulate others. When we see the history of the laws for the control of seas by different countries, no one thought about conserving and preserving the ocean and their resources. Before the 20th century, the oceans had been subject to the freedom of the Seas doctrine. To protect their resources, nations began expanding their claims of sovereignty beyond the traditional 3-mile limit. The Dutch jurist Hugo Grotius formulated the principle of "freedom of the seas", arguing that the seas and oceans were international territories and all nations were free to use it in his book *Mare Liberum* in 1609 (Treves, 2015). The disputation directed towards the Portuguese Mare clausum policy and their claim of monopoly on the East Indian Trade (Selden, 1751). National rights were limited to a specified zone of water extending from a nation's baselines, usually three nautical miles, bestowing to the *'cannon shot'* rule established by the Dutch jurist *Cornelius Bynkershoek* (Walker, 1945).

All water beyond national boundaries was considered international waters - free to all nations but belonging to none of them per principle *Mare Liberum.* The League of Nations called a conference at The Hague, Netherland in 1930 but no agreements resulted. The first nation to encounter the long-standing freedom of the Seas doctrine was the United States of America. In 1945, extended United States controls to all the natural resources of its continental shelf. Quoting the United States proclamation, they claimed sovereignty over the adjacent water and underlying seabed up to distance 200 nm from their coasts.

Between 1946 and 1950, Chile, Ecuador and Peru extended their rights to a distance of 200

nautical miles to cover their Humboldt Current fishing grounds (Wintersteen, 2011). By 1967, only 25 nations following the old three-mile (5 km) limit, while 66 nations had using 12-nautical-mile territorial limit and eight had set a 200-nautical-mile (370 km) limit.

After many mishappenings of the oil spill and others, finally, countries agreed to formulate a common law that governs the whole world. UNCLOS (United Nations Convention on Law of Sea) also called as Law of Sea Convention. This particular law can be called as most extended law of the world. This is a body of public international law governing the geographic jurisdictions of coastal States and the rights and duties among States (here States means Countries) in the use and conservation of the ocean environment and its natural resources. This treaty contains Part XVII, 320 articles and nine annexes. This law addresses numerous issues including navigational rights of aircraft and ship, limits on the leeway of national dominion over the oceans, environmental protection of oceans, conservation of living resources and mining rights.

UNCLOS 1 (1956-58)

In 1956, the United Nations held its initial conference on the Sea Law at Geneva, Switzerland. Eighty-six nations participated. UNCLOS I resulted in four treaties that concluded in 1958 (Koh, 1987):

1. Convention on the High Seas (30 September 1962): Freedom of Navigation, Freedom of Overflight, Freedom of Fishing, Freedom to lay Cables and Pipelines.

2. Convention on the Continental Shelf (10 June 1964): Coastal countries have sovereignty over the seabed and its resources but not over the seabed water and airspace.

3. Convention on the Territorial Sea & Contiguous Zone (10 September 1964): This established sovereignty rights and rights of passage over the territorial sea, established the Contiguous Zone to extend 12 nautical miles from the baseline but failed to set standards of limits on the territorial sea. Convention on fishing and conservation of living resources of High Seas- 20 March 1966): Established the right of coastal nations to protect living ocean resources, required nations whose fishing fleets leave their territorial sea to create conservation measures, and established measures for dispute resolution

It left open the vital issue of the extent of territorial waters (Churchill and Lowe, 1999)

UNCLOS II, 1960

The six week Geneva conference did not result in any new agreements. No agreement reached on either issue. Many developing countries and third world countries participated only as, allies, or dependents of the United States or/and the Soviet Union, with no significant voice of their own. In 1973 the *Third UNCLOS* was convened in New York. 168 nations participated, the conference lasted until 1982. The Convention came into force on 16 November 1994. The most significant issues covered were set limits, navigation, transit regimes and archipelagic status, exclusive economic zones (EEZs), continental shelf jurisdiction, the exploitation regime, deep seabed mining, and the marine protection environment, scientific research and settlement of disputes. An International Seabed Authority will carry out, organize and control activities associated with the exploitation of the international seabed resources.

Important agreements reached UNCLOS III

- Every nation has the right to establish the extent of its territorial sea up to a limit not exceeding 12 nautical miles.
- Contiguous zone up to 24 nautical miles from the baseline for purposes of enactment of customs, fiscal, immigration, or sanitary laws.
- Exclusive economic zone (EEZ) up to 200 nautical miles from the shoreline for purposes of exploiting and exploring, managing and conserving the natural resources (Extavour, 1979). The resources of the seabed outside the limits of national jurisdiction are the common heritage of humanity (Shackelford, 2009). (to all). International Seabed Authority will organize, carry out, and control activities related to the exploitation of the resources of the international seabed. An equivalent system will be established for exploiting and exploring the international seabed.

Countries that have not ratified the UNCLOS III

Cambodia, Congo, North Korea, Dominican Republic, Erithrea, Ecuador, Iran, Israel, Latvia, Liberia, Peru, Morocco, Libya, Niue, Syria, Thailand, Turkey, Venezuela, and 21 landlocked states including Afghanistan, Ethiopia, and Niger

UNCLOS was first signed in December month of 1982, and the treaty came in to force in 1994. Many countries have not signed the UNCLOS, that requires 60 signatures for ratification and could only enter into force one entire year after the final nation had ratified. The main reason for not signing the treaty by the many of the countries is because of Article 309("Clinton's ASEAN appearance signals U.S.' back in Asia,"" n.d.), i.e., "No reservation or exceptions may be made to this Convention unless expressly permitted by other articles of this convention".

Controversy for International seabed Authority (ISA)

The United States is the only that has not ratified the Convention giving arguments that the ISA (International Seabed Authority) is unnecessary (Malone, 1983). In its original form, the Convention included specific provisions objectionable to many countries, including the United States. Such as imposition of permit requirements, taxation and fees on seabed mining; Use of collected money for redistribution of wealth in addition to ISA administration and mandatory technology transfer to all the nations including developing and under-developed nations.

In 1994, again, an agreement came on implementation that somewhat mitigates the issues as mentioned above and thus modifies the ISA's authority. Despite these many changes, the United States has not ratified the Convention and therefore, the US is not a member of ISA. However, it sends ample delegations to take part in meetings as observers. In October 2007 the Foreign Relations Committee of the U.S. Senate, by a vote of 17 to 4, recommended ratification, and President George W. Bush openly supported U.S. consent to the Convention. However, till now, no action had been taken by the senate.

Revision of UNCLOS 3

From 1983 to 1990, the U.S. accepted all the Convention but Part XI as customary international law, while endeavouring to establish an alternative regime for exploiting the minerals

of the deep seabed. The decline in the demand for minerals from the seabed made the seabed regime significantly less relevant. Also, the decline of Socialism throughout the world and the fall of Communism in the late 1980s had removed much of the support against Part XI. In 1990, consultations were started again among signatories and non-signatories (including the United States of America) over the possibility of amending the Convention to allow the industrialized countries to join the Convention.

The United States wants changes in the treaty. There should not be any crucial articles, including those on limitation of seabed exploitation and mandatory technology transfer, to other developing and under-developed nations. Moreover, if the US became a member, it would be guaranteed a seat on the Council of the International Seabed Authority. The voting in ISA would be done in groups, with each group able to block decisions on substantive matters that mean U.D. wants a complete authority over the ISA. In 1994, a Financial Committee was established that would make the financial decisions of the authority, to which the principal donors would automatically be a member and in which decisions would be made by consensus.

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