



## UNCLOS III: AN EFFORT TO REDISTRIBUTE SEA POWERS IN FAIR AND EQUITABLE MANNER FOR THE DEVELOPING COUNTRIES

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### **Abstract**

As Water covers most of the space on earth, oceans are a very important natural factor that should be governed through a competent and well-structured legal order. Even though land territories are divided and governed by different nations under different jurisdictions, it was difficult to regulate and govern sea areas as it does not belong to anyone. However, after the establishment of the United Nations, the International community was concerned with regulating sea areas, in distributing powers regarding seas with all the nations notwithstanding the sea power and other economic and political factors. The United Nations Convention on the Law of the Sea 1982 is a well-structured attempt of the international community to establish a non-biased legal order to govern sea areas that focused on distributing powers fairly and equitably between developing and developed nations. This Study mainly focuses on the United Nations Convention on the Law of the Sea 1982 which is considered a comprehensive law on the Law of the Sea, and willing to discuss the legal fraternity that has been established by the Convention 1982 regarding sovereignty rights of Nations, economic development, environmental conservation and acquisition of seabed in the high seas. The focus of this study is doctrinal research based on statutory laws, case laws, law reports and law journals in Sri Lanka. Based on Conventional articles, this will critically analyze how the provisions of the Convention on the Law Sea have been fairly and equitably distributed among the developing coastal nations of the world. The findings of this article show that the Convention of Law of the Sea has tried to distribute power among all the nations including developing nations by specifying their rights and obligations through the articles to protect the rights of developing countries. The sea is a natural entity that carries vast economic and political value, and most of developing nations try to own it and benefit from it for their own. In this context, the convention of the Law of the Sea of 1982 is a reasonable effort to distribute power as fairly and equitably as possible for developing countries through provisions of the convention.

**Keywords:** UNCLOS III, Fair and equitable, Distribution of provisions, Developing Countries, Law of the Sea



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### 1. Introduction

Among all the areas covered by Public International Law, laws governing the oceans are very important as oceans represent 71% of the earth. In the earth, there are five (05) oceans that are linked together as one. Even though land could be divided and owned by someone, oceans could not be divided and we ultimately owned it. But it is not clear how much we own from oceans.

In 1609, Hugo Grotius: a Dutch legal scholar introduced the legal standard of 'Free sea' in his book '*Mare Liberum*' to solve that long-lasting problem regarding the use of the sea. With this book, Grotius introduced the "Freedom of Navigation; seas free to all nations but no one owns the ocean" which is also valid till now. Even though the Doctrine of Freedom of Navigation stipulates oceans belong to everyone, it is not unlimited. Coastal nations owned sovereignty power over their territorial waters, which were limited to three nautical miles with the purpose of economic and security needs.

This doctrine remained over decades without any development until colonization and world wars embraced the world. With technological developments, discovering marine resources, increased pollution of the marine environment, overfishing, over-extracting marine resources as well as different types of over usage of oceans and seas led the international community to implement an international legal framework to govern international relations regarding oceans and seas. As a result of that, after many attempts (UNCLOS I, UNCLOS II) in 1982 the United Nations Convention of Law of the Sea was adopted, which came into force in 1994.

United Nations Convention on the Law of the Sea (UNCLOS) was initiated as a "Constitution of the Sea", mainly achieved to provide mechanisms for states to solve problems that rose between them and standardized the rights of the states for maritime zones. The UNCLOS is considered a guideline for business, environment, and management of marine resources. Also this convention is considered a codification of customary international law related to the law of the sea. Because of that those who are not parting to the convention



also have to obey the rules in the UNCLOS as customary laws. (*Peru v. Chile* (2014), *Medvedev v. France*). Thus this convention is considered as a comprehensive law on the law of the sea.

As the first convention on the Law of the Sea was mainly proposed for developed countries, developing countries seek an opportunity where they can have fair and equitable treatment in using marine power. UNCLOS III was embodied as a global platform to overcome that desire of the global community. Because of that most of the Western states such as the United Kingdom, the United States of America refused to accept, sign, or ratify the convention as they were not satisfied with the provisions in part IX regarding the “exploitation of the deep seabed”. Even though the UN General Assembly tried to fulfill the objectives of the industrialized countries by implementing the Agreement Relating to the Implementation of Part IX of the Convention in 1994, the USA and 16 United Nations countries refused to sign and ratify the convention. (Anderson, 1993)

As the main conventional instrument, that governs the international law of the sea, this has contained various principles and provisions focusing on the sovereignty of nations, economic development, environmental conservation, acquisition of seabed in the high seas and many other important areas. The objective of this study is to examine the United Nations Convention on the Law of the Sea (UNCLOS) and, to analyze whether its provisions have been distributed fairly and equitably among developing nations.

## **2. Methodology**

The focus of this study is to analyze whether the provisions of the United Nations Convention on the Law of the Sea, 1982 have distributed powers fairly and equitably over developing countries while addressing sovereignty rights of the nations, economic development, environmental conservation and acquisition of seabed in high seas. In order to overcome the objective of this study this work will be mainly based on the black letter approach of research, which is also referred to as doctrinal research as well as desk research. The black letter research basically focuses on the substantive law and not the practical law in use, distant from other features such as politics, money and power. Hence this research will be based on conventions and treaties, case laws, law reports and law journals to conduct a comprehensive review of legal sources to critically analyze the provisions of UNCLOS III and the distribution of its provisions among developing countries. Based on Conventional



articles, this will critically analyze how the provisions of the Convention on the Law Sea have been fairly and equitably distributed among the developing nations of the world.

### 3. Results and Discussion

The findings of this article show that the UNCLOS has introduced maritime zones jeopardizing the early existing practice of ‘freedom of seas’ to give an opportunity to every coastal state to have their own sea territory with exclusive jurisdiction to ensure the trade and security purposes of mainly developing coastal countries those who lacked maritime power. (Orakhelashvili, 2018) This introduction of maritime zones was a shield given by UNCLOS for developing countries to increase their maritime power as most of the developing countries utilized the sea resources with their well-developed technological powers. As UNCLOS identifies the territorial sea, it regulates that the sovereignty over the territorial sea extends to the air space above the territorial sea and its bed and subsoil (Convention on the Law of the Sea, 1982, art.2(2)). Instead of that, with the introduction of delimitation of Zones UNCLOS has recognized internal waters and other geographical indications in the coastal areas and emphasized the limitations of the application of sovereignty power regarding those natural indications. (Convention on the Law of the Sea, 1982, art.7-10) This strengthening of the sovereignty power of coastal states helped them to create more opportunities to achieve benefits from marine resources and gave them more space to compete with maritime giants with more confidence. Furthermore, it is visible that by limiting the sovereignty power through the ‘rights of innocent passage’ and ‘transit rights’, UNCLOS has tried to balance the distribution of sea powers among developed and developing countries. Moreover, this article discusses how the UNCLOS has been trying to ensure the sovereignty powers over coastal states to make sure the marine powers as well as marine natural resources have been fairly distributed among developing countries as developed marine nations try to keep it all only for their well-being. (Convention on the Law of the Sea, 1982, art.33-56)

This discussion initiated that the enforcement of UNCLOS was a worthy attempt to distribute powers over the states as developing countries also could use marine power in their economic development. The codification of customary law on Exclusive Economic Zone (*UK v. Iceland*, 1974) and recognition of economic rights of coastal states on seabed and subsoil of the EEZ that directly or indirectly connect to the economic activities, and opening opportunities for land-locked states over EEZs, have identified as the examples for the fair and equitable distribution of marine power through the provisions of UNCLOS to developing



countries for their economic development. This research moreover examines the conventional contribution of equal distribution of resources by providing an opportunity for coastal states to share all the living resources in their EEZ with other countries from the same sub-region or region (Convention on the Law of the Sea, 1982, art. 69-71) and the introduction of the 'right of innocent passage' and the 'right to transit passage' has not only ensure the sovereignty power of states but also it helped economically underdeveloped countries to use marine power without any interference of developed countries to develop their economies. Further, the UNCLOS has provided provisions regarding exploiting, exploring and utilizing seabed and subsoil of the continental shelf as well as tried to distribute powers relating to exploring and exploiting deep seabed fairly between developed and developing countries through part IX. And also, this effort to distribute legal powers fairly and equitably between developed countries and developing countries has given developing countries a chance to elaborate their economic growth.

Not only about sovereignty power and economic development, UNCLOS has also tried to distribute its provisions fairly and equitably to developing countries regarding the acquisition of Seabed on high seas. This study discusses that the high seas as the common heritage of mankind, the convention has opened it for all landlocked and coastal states (Convention on the Law of the Sea, 1982, art. 87) and shall not be claimed by any nation or shall not exercise any sovereignty rights by any nation or judiciary person. All the rights of the resources on the high seabed are vested in mankind. (Convention on the Law of the Sea, 1982, art. 137) Further, the findings of the study show how the implementation of the International Seabed Authority (Convention on the Law of the Sea, 1982, art. 156) has affected the fair and equitable distribution of marine power of UNCLOS towards the developing countries, as it is influenced by developing countries.

Moreover, in marine environmental conservation the UNCLOS has tried to distribute powers in a fair and equitable manner while emphasizing the general obligation of state parties to protect and preserve the marine environment (Convention on the Law of the Sea, 1982, art.192), UNCLOS allows countries to exploit their natural resources under sovereignty rights pursuant to their environmental policies (Convention on the Law of the Sea, 1982, art. 193). From providing a direct interpretation of marine pollution to imposing state obligation to prevent pollution in the marine environment, this study elaborates on the effort taken by UNCLOS to empower developing countries to improve their research and preservation skills



with the help of the developed countries with regard to environmental conservation on marine resources

#### 4. Conclusion

The law of the Sea Convention was a codification of customary law of the sea and an attempt to distribute marine powers in a fair and equitable manner to all countries. Even though the first two attempts to promulgate a non-favourable legal instrument failed UNCLOS III has produced immense support to the developing countries to achieve their marine goals. Specially, by recognizing maritime zones and separate powers entitled by coastal states in those zones creates a space for developing countries to directly claim ownership of their particular sea areas and enjoy the advantages of those zones. Also this delimitation of maritime zones produces immense support to the economic development of those coastal countries as UNCLOS has directly protected developing countries. With the recognition of coastal countries, landlocked states as well and geographically disadvantaged countries; most of the developing countries which are not even coastal countries now have the opportunity to advantage from the marine industry. Furthermore, the oil field as the power of the developing countries also was under the control of developed countries. After the codification of UNCLOS, the convention emphasized that all the rights of the seabed of the high seas were vested on mankind. That encouraged developing countries to claim resources in the deep sea bed. But under the practical conditions, it has been showed with a clock of power and wealth. However, regarding environmental conservation, the convention also encourages developed countries to share their resources with developing countries to protect and preserve their marine environment and natural resources for the use of future generations. However, in my perspective even though UNCLOS needs some modernization as it was codified in the early 80's, it is a reasonable effort to distribute as fairly and equitably as possible for the developing countries. But whether it is so in the practical level is questionable.

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