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A Comprehensive look at India's stand on United Nations Conferences on the Law of the Seas (UNCLOS)

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India is one of the most influential players in the arena of international politics and holds a significant position in international organizations such as the United Nations (UN). India's stance on various international issues is particularly noteworthy and its stance on the United Nations Conferences on the Law of the Seas (UNCLOS)¹ is no exception. In this comprehensive study, we will take a look at a Brief introduction to UNCLOS and then India's position on the UNCLOS. We will explore the implications of India's stance on the UNCLOS. We will also consider how India's stand on the UNCLOS has impacted its relationship with other countries concerning a recent instance between India and USA. Finally, we will consider the potential challenges that India may face in the future as it relates to UNCLOS. This Article is based on secondary sources gathered from websites, adjudicated cases, journals, newspapers, textbooks on international law, and other sources. The collected sources were given in the past form to make the study more informative, analytical, and valuable to the readers.

Keywords: *unclos, india, eezs, warships, continental shelf.*

¹ United Nations Convention on the Law of the Sea 1982

INTRODUCTION

The environmental movement was only starting to take off throughout the world by the end of 1970, and land ethics was swiftly developing. A decade of environmental legislation covering a variety of environmental issues began with the passage of the United Nations Conference on the Human Environment, by name Stockholm Conference 1972. The Law of the Sea, which was finally agreed upon in 1982, is surrounded by a network of legal agreements, both global and regional. While the UNCLOS accords developing nations' particular status in a variety of ways, developing nations in the Indian Ocean nevertheless face certain obstacles in implementing the convention's provisions.

The Law of the Sea, finalised in 1982 after 10 years of difficult negotiations, stands at the centre of a complex of international and regional legal agreements. It is a global tool that deals with all of the uses of the ocean, including shipping and navigation, mining, fishing, scientific research, environmental preservation, etc., as well as conflict resolution. Since the end of World War II, the United Nations has codified and advanced international law, and the 1982 convention on the law of the sea (LOS Convention) is widely regarded as one of the most effective of these efforts.

Professor Henkin expressed in the article titled *"Changing law for the changing seas"* - *Most important, perhaps, there is a wealth of treasure in the sea for future generations, and decisions have to be made that will determine how those resources will be exploited, for whose benefit, and with what consequences for individuals and nations.*²

HISTORICAL CONTEXT OF INDIA'S POSITION ON UNCLOS

India's role in the Law of the Seas Convention has a long history. The Convention came into being in 1958 and has been amended in 1982, despite India being a signatory to the convention, it has not ratified it still the year 1995. The Convention gives the right to all the nations located in the Indian Ocean to use and benefit from the resources of the seas surrounding them. The Convention also established the International Seabed Authority (ISA) to oversee the mining of

² Louis Henkin, 'Changing Law for the Changing Seas', in *Uses of the Seas* (Edmund A Guillion ed, 1968) 69, 95-96

minerals and to distribute the profits. The Convention further granted the right to the coastal nations to regulate their territorial seas. India's initial resistance to the Convention was because it felt the Convention impinged on its sovereign rights. It was also concerned about the ISA's role to regulate the mining of minerals from the seabed. India was also concerned about what it considered to be the 'unequal' distribution of power between developed and developing nations. India's concerns were exacerbated when the ISA was granted exclusive jurisdiction over the seabed beyond the territorial waters of the littoral states.

IMPLICATIONS OF INDIA'S POSITION ON UNCLOS

As India has a long coastline and a significant marine territory, its position in the Convention was crucial. India's stance on the Convention was important since the Convention would not be successful without the participation of the Indian Ocean region. In terms of India's interests, several negative consequences were likely to follow if India participated in the Convention. First, the Convention impinged India's right to regulate activities in its territorial sea. Second, the Convention impinged India's right to regulate mineral exploration in its territorial waters. Third, the Convention discriminated against developing nations. Fourth, the Convention granted the rights of exploration and mining in the EEZ only to the coastal nations, and not the littoral states.

The vast majority of Indian Ocean States have relatively small continental shelves or underwater extensions of land. Even if the extension may not be so vast, coastal States are permitted by the Convention to assert a shelf of up to 200 nautical miles. Even in cases when it goes beyond 200 miles, a country enjoys sovereign rights over the resources of its continental shelf. Beyond 200 miles, a State is not allowed to assert rights under the Convention. Several Indian Ocean States have benefited from this clause, particularly those in the southern Bay of Bengal region, which has obtained sovereignty over a sizable portion of the enlarged seabed. UN Commission on the Limits of the Continental Shelf was established exclusively to determine the continental shelf limits under UNCLOS. India has a high stake in delineating the continental shelf since it is surrounded by oceans on three sides and has a total coastline of approximately 7,500 kilometers.

INDIA'S RECENT ISSUE UNDER UNCLOS

On April 7, 2021, the USS John Paul Jones (DDG 53) entered India's exclusive economic zone (EEZ) approximately 130 nautical miles west of the Lakshadweep Islands without obtaining consent. This prompted a stern response from the Indian government as it was seen to contravene India's regulations for navigation in its EEZ. This sparked debate surrounding whether the USA was acting by international law by not seeking permission before entering Indian waters.³ The EEZ extends to a maximum of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. It is an area beyond and adjacent to the territorial sea. As a result of the EEZ, a state, in this case, India has the right and control to move its ships, fish, and collect intelligence. Under the UNCLOS, a foreign ship with weapons may have an innocent passage as long as it does not affect India's peace, good order, or security.⁴

According to UNCLOS, the coastal state has the right to exploit the resources of the EEZ and the seabed, but foreign vessels, whether military or commercial, are not prohibited from passing through them. India and the USA have distinct views of a coastal state's right to prevent foreign military vessels from doing military operations within its EEZ. Both India and China feel that states should be empowered in controlling foreign warships' activities in the area. Nonetheless, the idea isn't accepted by all.⁵ Section 4(2) of The Territorial Waters, Continental Shelf, Exclusive Economic Zone, and Other Maritime Zones Act, 1976⁶ allows external military ships to enter India's EEZ; yet, prior notification must be delivered to the Central Government. The notice does not call for a response from the central government but serves as a notification about the route of passage. In contrast, Chinese law enforces "permission" for this kind of activity.⁷

³ Rashmi Salpekar & Aaditya Vikram Sharma, 'Freedom Of Navigation and India: A Policy Reading With Reference To American Actions' [2022] IEEE

⁴ Usanas Editorial Team, 'Explained: India and the United Nations Convention on the Law of the Sea' (*Usanas Foundation*, 15 June 2021) <<https://usanasfoundation.com/explained-india-and-the-united-nations-convention-on-the-law-of-the-sea-unclos>> accessed 04 January 2023

⁵ Pratyush Singh, 'UNCLOS Verdict on South China Sea – Lessons for India?' (*Berkeley Journal of International Law*, 2022) <<https://www.berkeleyjournalofinternationallaw.com/post/unclos-verdict-on-south-china-sea-lessons-for-india>> accessed 05 January 2023

⁶ Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, s 4(2)

⁷ Pratyush Singh (n 5) 4

The Convention granted the rights of exploration and mining in the exclusive economic zone (EEZ) only to the coastal nations, and not the littoral states. The EEZ was an area beyond the territorial sea, extending for a distance of 200 nautical miles. The Convention granted the coastal nations exclusive, sovereign rights over the exploration and use of the living and nonliving resources of the seabed and subsoil within the EEZ. The Convention also granted the coastal nations sovereign rights over the adjacent water and the air space above the EEZ. The US's actions in the UNCLOS situation showed a lack of sensitivity and weakened India's stance. Both countries managed to use diplomacy to settle things without it becoming an argument, but this episode revealed their conflicting views on maritime issues.⁸ There is plenty of scope for collaboration in the Indo-Pacific, but both have to attend to any bumps in the road arising from divergent strategic approaches in this area.⁹

Despite having an astonishing wealth of marine and coastal resources, the South Asian Seas Region, which is made up of Bangladesh, India, Maldives, Pakistan, and Sri Lanka, is notably lacking in sustainable and environmentally friendly resource use. The South Asian Seas' maritime environment is notable for its exceptional natural scenery and biological importance. Sadly, the area is experiencing severe environmental degradation brought on by the region's rapid population growth, oil pollution as a result of hosting some busy sea routes, unplanned and heavy pesticide use in agricultural activities, industrial pollution, unsustainable resource exploitation, and haphazard land use. The United Nation Environmental Programme opined that these pressures have destroyed crucial habitats, brought several wildlife species dangerously close to extinction, and overall jeopardised the future.¹⁰

⁸ Dr. Srinivas Burra, 'Military Exercises By Other States In India's Exclusive Economic Zone And The Law Of The Sea (Part 1)' (*Rgnul Student Research Review*, 13 August 2021) <<https://rsrr.in/2021/08/13/military-exercises-in-indias-eez-1/>> accessed 05 January 2023

⁹ *Ibid*

¹⁰ UN Report, 'Nature's Dangerous Decline Unprecedented; Species Extinction Rates Accelerating' (*UN*, 6 May 2019) <<https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/#>> accessed 06 January 2023

INDIA'S FOREIGN POLICY AND ITS RELATIONSHIP TO UNCLOS

India's foreign policy has gone through significant changes in the recent past. India has traditionally been an inward-looking state, shunning international engagement as much as possible. In recent years, though, India has been more actively engaging with the rest of the world. In terms of the Indian Ocean, which is one of the key areas of India's foreign policy, the Indian Ocean has been long recognized as a critical region in India's foreign policy. A large portion of India's trade takes place through the Indian Ocean, and the safety of this trade is crucial to India's economy. The Indian Ocean is also an important area for India's strategic and defence interests. It could also help strengthen India's claims over the Indian Ocean.

In the twenty-first century, it is predicted that the Indian Ocean would dominate both world geopolitics and economic activity. The region's share of global GDP has grown dramatically during the past century. Only three IOR nations, namely Australia, Singapore, and the United Arab Emirates, rank in the top 20 countries in terms of gross national income per capita. Many coastal and island IORCs rely on marine resources for economic potential due to the restricted terrestrial resource base.

CHALLENGES FACED BY INDIA ABOUT UNCLOS

One of the main challenges facing India regarding UNCLOS is the issue of maritime boundaries. India has a long coastline and EEZ, and its maritime territory is contested by several neighbouring countries. In addition, there are several unresolved disputes between India and other countries over areas of the continental shelf, which could potentially lead to conflict if not resolved. Another challenge for India is the question of naval warfare rules and regulations. Under UNCLOS, strict rules govern the conduct of naval warfare, which could potentially limit the Indian Navy's ability to defend Indian interests at sea.¹¹ Additionally, UNCLOS requires all ships to be registered with their respective governments, which could create difficulties for Indian-owned vessels operating in international waters. Finally, India must also consider the implications of ratifying UNCLOS on its fishing industry. The treaty includes provisions that

¹¹ Indian Navy, *Ensuring Secure Seas: Indian Maritime Security Strategy* (Naval Strategic Publication 12 October 2015)

regulate fisheries and conserve marine resources, which could hurt India's small-scale fishermen who rely on these resources for their livelihoods. India faced several challenges with UNCLOS but ultimately ratified it.¹²

CONCLUSION

Indian Ocean coastal states have access to a stronger management and development framework through the Law of the Sea. The Indian Ocean region has a distinctive environment and access points to the resources. The opportunities have grown much more as technology and capacities have advanced. Thus, coordinated efforts by governments, the business sector, and the larger community, especially the scientific ones, would be necessary for the sustained and sustainable growth of the Indian Ocean region.

The Convention requires each coastal State to implement appropriate conservation and management measures to guarantee the sustainable development of EEZ resources. Both the total permitted catches and optimal use must be determined. They must thus grant access to others if there is a surplus so that they can be governed by the rules established by the coastal State in conformity with the Convention. Nevertheless, the nations of the Indian Ocean lag behind the rest of the globe, particularly when compared to the United States and Europe, which have a much greater number of accords in force.

Given the vastness of the Indian Ocean and the potential for exploitation of resources, all stakeholders must collaborate and work together to ensure that interests are not compromised. While a majority of states have ratified the Convention, a few key states such as the USA, Brazil, and China have not ratified the Convention. If these states ratify the Convention, it will create a more balanced and inclusive system of governance of the oceans, which would benefit all stakeholders.

¹² Vinai Kumar Singh, 'Analysis of advantages and disadvantages of forums prescribed under the UNCLOS and state practice: the way ahead for India' (2016) 13(3) *Revista de Direito Internacional* 318-336