



Introduction to the Special Issue

The National Maritime Foundation (NMF) – India’s foremost maritime think tank and the only one that concentrates upon all facets of the maritime domain relevant to India – conducts intensive and extensive independent and policy-relevant research into a wide variety of issues that would enable the shaping and execution of optimal strategies for the preservation, promotion, and protection of the country’s maritime interests. Mindful of the opportunities offered by the fact that the year 2022 marks four decades in which the world’s oceanic governance has been guided by the United Nations Convention on the Law of the Sea (UNCLOS), 1982, the NMF has thought it prudent and useful to devote the Summer 2022 edition of its flagship journal, *Maritime Affairs* to commemoration of this seminal event and develop it as a Special Issue. The current edition thus comprises a number of thematic articles on UNCLOS – its ramifications, successes, and challenges.

The preamble to the UNCLOS lays down the inspirations and principles that are elaborated upon in its subsequent articles. It reflects the desire of its member States to establish a legal order for the seas and oceans, and to promote peaceful use of the oceans with due regard for the sovereignty of all States. It also lays emphasis on the equitable and efficient utilisation of marine resources; conservation of living resources; and the study, protection, and preservation of the marine environment. The full text of the 1982 Convention consists of 320 articles and nine annexes, governing very nearly all aspects of the globe’s oceanic spaces, including delimitation, prevention and control of pollution, preservation and protection of marine environment and living resources, marine scientific research, economic and commercial activities, the transfer of technology, and the settlement of disputes relating to ocean matters.

The codification process in respect of the UNCLOS commenced in 1949 when the International Law Commission (ILC), in its first session, drew up a provisional list of topics whose codification it considered to be necessary and feasible. Amongst these were the regime of the high seas and the regime of the territorial sea. The regime of the high seas was, in fact, included amongst the topics that were to be accorded the highest priority.¹ In its second session, held in 1950, the ILC considered the question of the high seas, taking as a basis of discussion the report of its special rapporteur, JPA Francois.² However, the ILC opined that it could not undertake the codification of the law of the high seas in all its aspects, and that it would, consequently, have to select subjects that it could take up in the first phase of its work. It was also decided to set aside, for the time being, subjects that were already being studied by other United Nations (UN) organs, or by specialised agencies, including subjects which, because of their technical nature, were not suitable for study.

In its third session (1951), the ILC examined the second report submitted by the special rapporteur, with particular attention being focused upon chapters dealing with the continental shelf, conservation of the resources of the sea, sedentary fisheries, and the contiguous zone. It decided to publish a draft on these questions in accordance with its statute, and to invite member governments to submit their comments on this draft.³ The ILC also considered

various other subjects, such as rules relating to the safety of life at sea, the right of warships to approach foreign merchant vessels on the high seas as part of the regime of the high seas, etc., and requested the special rapporteur to submit a further report at the next session of the Commission.⁴ In its fourth session (1952), the ILC had before it the third report of the special rapporteur, as also the comments on its draft articles on the continental shelf and related subjects, which had been received from a number of governments. However, due to lack of time, these would perforce have to be discussed in the next session.⁵ In addition, the ILC also considered certain aspects of the regime of the territorial sea on the basis of a report submitted by the special rapporteur. The report, in particular, dealt with the questions pertaining to baselines and bays. With regard to the delimitation of the territorial sea of two adjacent States, the ILC decided to ask the governments for particulars concerning their practices and for any observations they might consider useful. The special rapporteur was also directed to consult with the technical experts with a view to elucidating certain additional aspects of the subjects being dealt with.

During its fifth session (1953), based on the comments received from the governments and also by referring to a new report submitted by the special rapporteur, the ILC re-examined questions pertaining to: (i) the continental shelf; (ii) the fishery resources of the seas; and (iii) the contiguous zone. To deal with these questions, the Commission drew assistance from a collection entitled, *Laws and Regulations on the Regime of the High Seas*, Vol. I and II (1951), published by the Division for the Development and Codification of International Law, Legal Department of the Secretariat of the UN, which also led to the creation of revised drafts of questions on the three subjects.⁶ Further, the ILC decided to reverse the decision it had taken in its second session, by requesting the special rapporteur to prepare for subjects concerning the high seas not dealt with in the earlier reports. A decision was also taken to exclude any provisions on technical matters and matters that were already covered under special studies being undertaken by other UN organs, or specialised agencies, while codifying the law of the sea.

Due to a shortage of time in its sixth session (1954), the ILC was unable to deal with the question devoted to the regime of high seas and failed to examine the fifth report submitted by the special rapporteur, which specifically covered aspects relating to penal jurisdiction in matters of collision. As for the regime of the territorial sea, the special rapporteur submitted a third report to the ILC in which changes suggested by the experts were incorporated, and the comments received from governments, regarding the delimitation of the territorial sea between two adjacent States, were considered. Further, a number of provisional articles concerning the regime of the territorial sea, were adopted, with a commentary inviting the governments to furnish observations on those articles. In total, the UN Secretary-General received comments from 18 member States.

On the basis of the sixth report submitted by the special rapporteur, the ILC, during its seventh session (1955), adopted a provisional draft (with commentaries) on the regime of the high seas. This was submitted to the governments for observations. While preparing the articles that dealt with conservation of living resources, the ILC referred to the *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea*,⁷ and a decision was taken to also disseminate the chapter during the conference held in Rome from 18 April to 10 May 1955. However, considering the cogency of numerous comments, it was decided to amend several of those articles. With regard to the regime of the territorial sea, the ILC examined certain pending questions from its sixth session report that dealt with the breadth of the territorial sea, bays, and the delimitation of the territorial sea at the mouths of rivers.⁸ All these questions, too, were submitted to governments for comment. In its last session (1956), the ILC examined the replies received from 25

governments and the International Commission for the Northwest Atlantic Fisheries, together with a new report from the special rapporteur. After careful examination of these reports, the ILC drew up a final report in which it incorporated some of the points that had been made by the governments. A final report was also prepared on the subject of the delimitation of the territorial sea after incorporating the changes received from governments.

The final report of the ILC (A/CN.4/104) was divided into two parts,⁹ as required by the 14 December 1954 General Assembly Resolution 899 (IX),¹⁰ which mandated a systematic arrangement of the articles on the high seas, the territorial sea, the continental shelf, the contiguous zone, and the conservation of living resources. The first part of the final report dealt with the territorial sea and the second, with the high seas. The second part, on the high seas, was further subdivided into three sections: (i) general regime of the high seas; (ii) the contiguous zone; and (iii) the continental shelf. The ILC also made two observations which applied to the whole draft: (i) the draft regulates the law of the sea only in time of peace; and (ii) the term “mile” means nautical mile (1,852 metres) reckoned at 60-minutes of arc to one degree of latitude.

On 21 February 1957, the UN General Assembly, via Resolution 1105 (XI) and based on the discussions that followed from the ILC report of Session Eight (the last session), decided to convene the first-ever United Nations Conference on the Law of the Sea in Geneva. Held from 24 February to 27 April 1958, the first conference (UNCLOS I) aimed at (i) examining the law of the sea by considering not just the legal aspects but also technical, biological, economic, and political facets of the problem, and (ii) embodying the results of its work into one or more conventions or other appropriate instruments. The conference also gave way to the creation of four separate conventions, which were kept open for signature until 31 October 1958, and for accession by all member States of the UN, other States, and specialised agencies invited by the General Assembly. These conventions were: (i) 1962 Convention on the High Seas; (ii) 1964 Convention on the Continental Shelf; (iii) 1964 Convention on the Territorial Sea and the Contiguous Zone; and (iv) 1966 Convention on Fishing and Conservation of the Living Resources of the High Seas. In addition to these four conventions, the 1962 Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes was also created. Further, the conference also led to the adoption of resolutions for: (i) nuclear tests on the high seas; (ii) pollution of high seas by radioactive materials; (iii) international fishery conservation conventions; (iv) cooperation in conservation measures; (v) humane killing of marine life; (vi) special situations relating to coastal fisheries; (vii) regime of historical waters; (viii) convening of a second UN Conference on the Law of the Sea; and (ix) a tribute to the ILC.

A second conference (UNCLOS II) (1960) was convened based on the request of the General Assembly to the UN Secretary-General. This conference considered topics related to the breadth of the territorial sea and fishery limits, which had not been agreed upon in the conventions from the 1958 conference. Held from 17 March to 26 April 1960, the conference led to the adoption of two resolutions in its Final Act. However, discussions on the topics of the breadth of the territorial sea and fishery limits were referred to a later stage. Before the third conference, the General Assembly, by Resolution 2340 (XXII) (18 December 1967), established an *ad hoc* committee consisting of 36 member States to study the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction. The committee held three sessions and presented its study in 1968 to the twenty-third session of the General Assembly. Having considered the report of the committee, the General Assembly, on 21 December 1968, via Resolution A (XXIII), decided to establish a separate committee, consisting of 42 member States, to examine the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of the National Jurisdiction.

The decision to convene the third conference in 1973 was decided via the General Assembly Resolution 2750 C (XXV) (17 December 1970). In this regard, the committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction was directed to act as the preparatory body for the conference. Between 1971 and 1973, the committee held six sessions and a number of additional meetings in New York and Geneva. On 18 December 1972, having considered the report on the committee's work during the General Assembly, its 1972 session, requested the Secretary-General to convene the first session of the third conference in 1973, to deal with organisational matters, followed by a second session in 1974, and subsequent sessions, if necessary, to deal with substantive work. The committee submitted its final report, in 1973, to the twenty-eighth session of the General Assembly. Having considered the report, the General Assembly requested the Secretary-General to invite States to the conference and decided that the mandate of the conference was the adoption of a convention dealing with all matters relating to the law of the sea.

The third conference (UNCLOS III), which saw participation from 160 States, held 11 sessions between 1973 and 1982.¹¹ In the first session, the conference set up a general committee, three main committees, a drafting committee, and a credentials committee. The conference, in its second session, determined the competence of the three main committees by allocating to the plenary, or the committees, the subject and issues on the list prepared in accordance with General Assembly Resolution 2750 C (XXV). In this regard, the conference allocated the topic of international regime of the seabed and ocean floor beyond national jurisdiction to the first committee. The topics of the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone (EEZ), the high seas, landlocked countries, shelf-locked States and States with narrow shelves or short coastlines, and the transmission from high seas, were allocated to the second committee; and the topic on the preservation of the marine environment was allocated to the third committee. The main committees were also mandated to deal with topics such as regional arrangements, responsibility and liability for damage resulting from the use of the marine environment, settlement of disputes, the peaceful uses of the ocean space, and zones of peace and security. Further, the plenary committee directly dealt with the topic of enhancing the universal participation of States in multilateral conventions relating to the law of the sea.

At the request of the conference, during the third session, the chairmen of each of the three main committees prepared an informal, single negotiating text, covering the subjects entrusted to their respective committees, which taken in aggregate, constituted the informal single negotiating text. At its fourth and fifth sessions, revised texts on the settlement of disputes as well as a revised single negotiating text were prepared. During its sixth session, the conference requested the president and the chairmen of the main committees – working under the leadership of the president as a team with which the chairman of the drafting committee and the rapporteur general were associated, which was subsequently referred to as “the collegium” – to prepare an informal composite negotiating text, covering the entire range of subjects and issues contained in Parts I to IV of the revised single negotiating text.

In its seventh session, the conference identified certain outstanding core issues and established seven negotiating groups for the purpose of resolving these issues. During the eighth session, a revised version of the informal composite negotiating text was prepared, along with a decision to complete the work on the convention by 1980. At its ninth session, based on the deliberations of the conference (the 125th to the 128th plenary meetings), the collegium undertook a second revision of the informal composite negotiating text. Then,

based on the deliberations of the conference (142nd to 155th plenary meetings), the collegium, during the tenth session, prepared a revised version of the draft Convention on the Law of the Sea, which later became the official draft convention of the conference, subjected to only specific conditions recorded in document.

During the last session of the conference (157th to 166th plenary meetings), the collegium decided to issue a memorandum on the law of the sea based on the deliberations concerning the reports submitted by the president, the chairman of the main committee, and the chairman of the drafting committee. The memorandum consisted of (i) the changes which were to be incorporated in the draft convention, (ii) a document setting out three draft resolutions, and (iii) a draft decision of the conference. These were also to be adopted at the same time as the draft convention.

On 30 April 1982, during the 182nd plenary meeting, the Convention, together with Resolutions I to IV, was provisionally adopted, subject to drafting changes, by a recorded vote taken at the request of the delegation of the United States (US). Subsequently, on 10 December 1982, the conference adopted the UNCLOS, with its 320 articles and nine annexes. The Convention was opened for signature, first, at the Ministry of Foreign Affairs of Jamaica, and thereafter, at the UN Headquarters in New York. By Resolution 48/263 of 28 July 1994, the General Assembly also adopted the Agreement relating to the Implementation of Part XI of the UNCLOS, consisting of 10 articles and nine annexes. Subsequently, in 1995, the Agreement for the Implementation of the Provisions of the UNCLOS of 10 December 1982, relating to the Conservation and Management of the Straddling Fish Stocks and Highly Migratory Fish Stocks, was adopted.

The codification of the UNCLOS marked the culmination of more than 14 years of work, involving participation by more than 150 countries representing all regions of the world, all legal and political systems, and a wide spectrum of socio-economic development. At the time of its adoption, the Convention embodied, in a single instrument, traditional rules for the uses of the oceans and at the same time, introduced new legal concepts and regimes and addressed new concerns. It also provided the framework for further development of specific areas of the law of the sea.

The UNCLOS thus lays down a comprehensive regime of law and order in the world's oceans and seas, establishing rules governing all uses of the oceans and their resources. It enshrines within it the notion that all problems of oceanic spaces are closely interrelated and need to be addressed as a whole.

Some of the key features of the 1982 Convention are as follows:¹²

- (1) Sovereignty of coastal States to establish the breadth of their territorial sea not exceeding 12 nautical miles, and the grant to foreign vessels the right of innocent passage through the territorial sea.
- (2) Right of transit passage granted to ships and aircrafts of all countries through straits used for international navigation, and the right of States bordering such straits to regulate such navigation.
- (3) Right of archipelagic States to draw straight baselines and declare archipelagic waters to establish sea lanes and air routes to guarantee right of archipelagic passage through designated sea lanes.
- (4) Right of coastal States to establish an EEZ not exceeding 200 nautical miles with respect to natural resources and certain economic activities, and for exercising jurisdiction over marine scientific research and environmental protection.
- (5) Right of all States to freedom of navigation, overflight, laying of submarine cables and pipelines within EEZs.

- (6) Rights of landlocked States and geographically disadvantaged States to participate, on an equitable basis, in the exploitation of the living resources in the EEZ of a coastal State of the same region or sub-region.
- (7) Sovereign rights of coastal States over the continental shelf extending beyond 200 nautical miles, for purposes of exploring and exploiting the resources contained therein.
- (8) Duty of coastal States to share part of the revenue derived from exploiting resources from the continental shelf with the international community.
- (9) The duty of the Commission on the Limits of the Continental Shelf (CLCS) to make recommendations to States on determining the limits of the shelf's outer boundary which extends beyond 200 nautical miles.
- (10) Right of States to enjoy the traditional freedoms of navigation, overflight, scientific research, and fishing on the high seas; and the duty to adopt or cooperate with other States in adopting measures to manage and conserve living resources.
- (11) Legal regime of rocks and islands that cannot sustain human habitation or economic life of their own, and their impact on the delimitation of maritime zones.
- (12) Duty of States bordering enclosed or semi-enclosed seas to cooperate in managing living resources, environmental protection, and research activities.
- (13) Right of landlocked States to access to and from the sea, and to enjoy freedom of transit through territorial seas or international straits.
- (14) Duty of all States to prevent and control marine pollution, and liability for damage caused by violation of international obligations to combat such pollution.
- (15) Freedom of coastal States to give consent for marine scientific research in their EEZ and on the continental shelf if such research is being conducted for peaceful purposes.
- (16) Duty of all States to promote the development and transfer of marine technology *on fair and reasonable terms and conditions*, with proper regard for all legitimate interests.
- (17) Duty of all States to settle, by peaceful means, their disputes concerning the interpretation or application of the Convention.
- (18) Right of all States involved in a dispute to approach either the International Tribunal for the Law of the Sea (ITLOS) established under the Convention, or the International Court of Justice (ICJ), or undertake arbitration.

With the UNCLOS having completed, in 2022, four decades of its existence, it is important to safeguard the sanctity of the Convention, which is quite often referred to as the *constitution for the oceans*, especially in the ever-evolving maritime domain. There is also a need to revisit and analyse the provisions of the Convention so that member States can continue to safely navigate across the vast oceans and seas, while also complying with the Convention. To maintain a global order in the seas and oceans, member States need to undertake regular *checks and balances* of their activities in the maritime domain, with regard to the above-mentioned key features of the Convention. At the same time, the UNCLOS should also evolve and respond to the contemporary challenges faced by member States. This is exactly what the NMF, through this Special Issue of the *Maritime Affairs*, aims to explore.

Notes

1. International Law Commission, "Summaries of the work of the International Law Commission", https://legal.un.org/ilc/summaries/8_1.shtml.
Also see: International Law Commission, "Documentation", <https://legal.un.org/ilc/documentation/>.
2. ILC Report A/1316 (A/5/12), 1950, Part VI, Chap. III, para. 183, https://legal.un.org/ilc/documentation/english/reports/a_cn4_34.pdf.

Also see: Report of the Special Rapporteur, “A/CN.4/17”, 1950, Vol. II, https://legal.un.org/ilc/documentation/french/a_cn4_17.pdf.

3. International Law Commission, “Membership”, <https://legal.un.org/ilc/ilcmembe.shtml>.
4. Yearbook of the International Law Commission, 1951, Vol. II, https://legal.un.org/ilc/publications/yearbooks/english/ilc_1951_v2.pdf.
5. Report of the Special Rapporteur, “A/CN.4/51), 1952, Vol. II, https://legal.un.org/ilc/documentation/english/a_cn4_51.pdf.
6. Un Library, “Laws and Regulations on the Regime of the High Seas”, January 1951, Vol. I, <https://www.un-ilibrary.org/content/books/9789210044493>.
Also see: UN Library, “Laws and Regulations on the Regime of the High Seas”, December 1951, Vol. II, <https://www.un-ilibrary.org/content/books/9789210044509>.
7. United Nations Digital Library, “Report of the International Technical Conference on the Conservation of the Living Resources of the Sea”, A/CONF.10/6, 18 April to 10 May, 1955, https://digitallibrary.un.org/js/pdfjs-2.9.359/web/pdf_viewer.html?file=https%3A%2F%2Fdigitallibrary.un.org%2Frecord%2F6666686%2Ffiles%2FA_CONF.10_6-EN.pdf%3Fregister_download%3D0&chunksize=65536#page=1&zoom=auto,-5,742.
8. International Law Commission, “A/CN.4/88”, 1954, Vol. II, https://legal.un.org/ilc/documentation/english/reports/a_cn4_88.pdf.
9. International Law Commission, “A/CN.4/104”, 1956, Vol. II, https://legal.un.org/ilc/documentation/english/reports/a_cn4_104.pdf.
10. UN General Assembly, “Resolution 899 (IX)”, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/096/34/PDF/NR009634.pdf?OpenElement>.
11. Codification Division Publications Diplomatic Conferences, “Third United Nations Conference on the Law of the Sea”, 1973–1982, https://legal.un.org/diplomaticconferences/1973_los/.
12. United Nations Division for Ocean Affairs and the Law of the Sea, “United Nations Convention on the Law of the Sea of 10 December 1982”, https://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

John J Vachaparambil

Associate Fellow, Public International Maritime Law

✉ law5.nmf@gmail.com

Purnima Malik

Associate Fellow, Public International Maritime Law

✉ law6.nmf@gmail.com