Exploring the Effect of Negotiation on UNCLOS

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Abstract. This article provides an in-depth discussion of the circumstances surrounding the establishment of the United Nations Convention on the Law of the Sea and looks at the role that negotiation skills played in its creation. This law was created at the time of the Third United Nations Conference on the Oceans and brought about a new order for the oceans, aimed at better managing and preserving the common oceans of mankind. During the negotiations, the stalemate between third world countries and developed countries over the delimitation of deep-sea mining and special economic zones brought to light the positions and deep concerns of both sides, and the negotiations on the basis of interests brought a way out of the situation. The success of the interest base negotiations and their impact on the Law of the Sea Convention will be analyzed in detail in this paper. As a result, the successful establishment of a maritime convention law has led to a more equitable maritime research ecology and curbed the tendency of developed countries to hegemonize the oceans.

Keywords: UNCLOS · EEZ · Deep-sea Mining · Positional Negotiation · Interested-based Negotiation · Third World Country · Development Country

1 Introduction

The United Nations Convention on the Law of the Sea refers to the United Nations' three law of the sea conferences, as well as the convention enacted during the third session in 1982. The terms of the 1982 resolution are referred to as the "Convention on the Law of the Sea." Internal waterways, territorial seas, neighboring seas, continental shelf, exclusive economic zones, and the high seas are all defined under the Convention. It is crucial in directing and adjudicating territorial sea sovereignty issues, the management of natural resources at sea, and pollution remediation across the world. Prior to UNCLOS, which imposed various restrictions on high-seas freedom, it was vital to recognize the concept of humanity's shared heritage and to take steps for marine conservation.

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The United Nations Conference on the Law of the Sea, which was struck in the month of December 1982, went into effect on November 16, 1994, over than ten years after it was signed in December 1982 and after nine years of discussions. Its decision was, without a question, an exceptional the terms of the 1982 resolution are referred to as the "Convention on the Law of the Sea." In international law. It announced a new agenda for the oceans, ocean management, and ocean space, including a variety of novel notions including the exclusive economic zone, additional criteria such as maritime environmental preservation, archipelagic status, and the deep bottom [1].

2 Background and Disagreemetn

2.1 Background: A General Introduction of UNCLOS

2.1.1 Development of UNCLOS-> Negotiation on UNCLOS III

In this century, the Third United Nations Conference on the Law of the Sea has the most catalytic effect on building a fresh lawful system for marine environment. The symposium, as well as the preliminary work done by the "Seabed Committee," has left an indelible mark on ocean vistas. Even in the absence of a broadly accepted, comprehensive treaty, these viewpoints will have a significant impact on state practice—200 miles of coastal fisheries management rights, and now they're legal, for example. If the conference is successful in overcoming the remaining obstacles, notably deep bottom mining, the new pact will likely control ocean law for the foreseeable future [2].

2.1.2 Universal Disagreement Subject Before UNCLOS

Ideological, intellectual, and economic divisions among the parties hampered and complicated the discussion of the ultimate United Nations Convention on the Law of the Sea. The uncertain aspect of seabed mining customary law is another reason for the increase seabed mining process. Seabed mining is a new technology invention not included by the typical high seas regimen, yet for some countries in development, seabed extraction is a new innovative breakthrough, the typical high-seas regime does not apply to this situation. Because of their differing legal opinions, the parties have used different types of bargaining techniques and have opposite perspectives of the repercussions of failing to reach an agreement on a regime of seabed mining. Moreover, the parties' legal disputes signal that the traditional, consensus-based method of generating customary law is in jeopardy, a tendency that could harm the equitable solution [3].

2.1.3 Brief Explanation of EEZ and Seabed Mining

Regardless of the fact that mare liberum triumphed in principle, states did not completely surrender their claims to maritime sovereignty. The enormous oceans remained open and unaffected by any state's appropriation, and people of all countries were free to fish in them. Exclusive sovereignty over territorial seas may be claimed by states as long as it was maintained by effective occupation [4]. The concept of the territorial sea evolved as an outcome of subsequent legal opinion consolidating and developing the idea that states might obtain sovereignty over certain areas of the sea for purposes of security or

exclusive fishing. When jurists realized that exclusive control of coastal waters did not have to conflict with navigational freedoms on the open seas, the path was cleared for the creation of separate legal regimes for the high seas and territorial waters.

The increasing popularity in deep-seabed mining in a number of countries has raised concerns about its prospective environmental consequences and to assess their significance. The United Nations Convention on the Law of the Sea (UNCLOS) mandates the International Seabed Authority (ISA) to provide efficient ocean environmental protection as an outcome of its duties for overseeing mining in seabed areas outside legislative competence (the Area) in the name of humanity. A severe deterioration that could result in "major injury," as defined by the global legal sense in order to protect the ocean environment, is a term used in the ISA Mining Code to define the magnitude of harm that must be avoided with a deliberate effort. In addition, the environmental background and distribution, possible exploitation procedures and the impact of environmental hazards of multiple subsea energy zones were studied [5].

2.2 The Practicalities of Positional and Interest-Based Negotiation in the Context of Multi-party Negotiations

Positional and interest-based negotiations can promote understanding and mutuality between different parties in multi-party talks. Both positions and interests of other parties are tied to economic, political, social, and ideological systems. Negotiators came to the table with a firm conviction that their beliefs and ideological leanings must be respected. Maintaining a solid position on any issue under deliberations can slow down reaching a joint agreement. Little progress can be attained if one country or block feels that seas bordering their territories are their natural right and should not be subjected to the control or influence of other international players can be dangerous. Positional negotiation can be complex if some members find ways of attacking the ideological or belief systems anchoring the various positions held [6]. To achieve success, negotiators must learn to respect the positions of each party and find ways of reaching a common understanding or perspective. Mutual respect and recognition of the legitimacy of all issues related to the other party's ideology, economic, political, and social interests are paramount. It is easy to work when various parties can identify areas where their interests converge [7]. Even if such issues do not exist, negotiators can work towards identifying their shared goals and pursuing them.

2.2.1 The Position and Interests of Both Parties

Developing countries want strengthened control or jurisdictions over the seas bordering them. These countries want to benefit from their waters and enjoy broader maritime rights irrespective of their technological capacities. On the other hand, developed nations with policies and laws advocate for free navigation owing to their massive resources and technical maritime capabilities. Both developed and developing countries value sea resources and agree that a harmonious way of exploiting them will guarantee prosperity for every party thus the need for 'packaged' solutions [8]. All these factors indicate that a proper negation framework that balances the position and interest of all parties will lead to the successful implementation of all elements of UNCLOS.

2.2.2 Deep Concern for Both Parties

The primary concern of the developing countries about the utilization of marine resources is their lack of technological capacity and fear of manipulation by private or state firms from developed countries. Giving these forms the exclusive rights to conduct exploration, extraction, and processing can lead to a monopoly of the resources. The developed nations utilize their strengths to benefit more than the countries where the minerals are extracted. Whereas the developing nations want to benefit from the seabed minerals within their jurisdiction, they have a deep concern about how their technological inferiority might be used to rob them of their rights and resources [9]. Developed countries have big industries that rely on the supply of oil and minerals from other countries, thus their susceptibility to international trade conflicts and geopolitical interests that can undermine the utilization of these restorative materials at any given time. Hence, they are willing to work together with developing countries to have a common understanding of laws, policies, and practices in the seabed and ocean resource utilization [10]. All this arrangement fits with the principles of interest-based bargaining. The primary interest of all counties is to benefit from sea resources. Since the developing countries lack the required capacity, they will be willing to negotiate for a favorable solution with developed nations whose primary concern is having alternative mineral resource plans in case of unfavorable geopolitical and international trade arrangements.

2.2.3 The Respective Dilemmas and Opportunities

Technological and other resource inequality between the developed and developing countries increases the dilemma in reaching a common understanding of how to formulate ocean laws, policies, and related practices. Whereas the third world nations prefer the recommendation of ISBA regarding undersea resources exploration, developed countries vouch for the utilization of private companies and other state mechanisms owing to their technological prowess. A unified approach towards extraction and utilization of ocean resources, as recommended by ISBA, promotes the belief that all resources found undersea are meant for everyday use or equitable sharing by humanity [11]. As the heritage of humankind, deep-sea minerals and other resources ought to benefit a significant number of people irrespective of their nationalities. Whereas the developing nations want to utilize the minerals close to their sea bodies, they may not have the requites capacity in terms of technological and other material resources to conduct meaningful exploration and other processes that will see the extraction and processing of deep see resources such as oil, fish, and minerals. Such a development will force them to negotiate with developed nations on the best approach that will promote equity and respect for territorial integrity and the right to determine how such resources are either shared or utilized.

2.3 Negotiation Review and Analysis for UNCLO

Successful integrative negotiation includes seven factors: some common objectives; faith in one' problem-solving ability; a belief in the validity of one' own position and the other's perceptive; the motivation and commitment to work together; trust; clear and accurate communication; and an understanding of the dynamic of integrative negotiation

[12]. In this paper, we will analyze how some of these factors work in constructing UNCLOs and how it helps solve complicated maritime issues.

2.3.1 Key Factors for Successful Integrative Negotiation

As most of maritime issues covered great matter of entities and often so interrelated, it was soon realized that some issue would only be solved if they could resolve all of them [11]. In other words, due to its transboundary nature of the matter, regional cooperation is necessary. Such building a unified "regional front" leading to greater leverage whether in direct confrontation with external powers or as highly fractionalized negotiation is foreseeable [13]. With no doubt, this provides the motivation and commitment to work together, and it works as the premise of successful negotiation [12].

2.3.2 The Power of Common Interests

Over time, it leads to a very creative method of negotiation, the concept of package deal [6, 11]. In 1970, package deal was rooted as the fundamental concept and were used as trade-off strategy to simplify the process of achieving consensus on major issues [10, 11]. The difference of achieving consensus and obtain agreement by vote is that one conjugated entity of similar positions or mere mind and the other one split parties between negotiation as opposite side [10]. For instance, many countries in Group 77 with different views on the width of territorial sea worked well as they have common ground on technology. They agreed technology is a "common heritage of mankind" and the right of access technology is essential to improve living of their people [9, 11]. The power of a common mere mind solved the maritime disagreement ultimately by forming new rules of law [9, 11].

In conclusion, package deal strategy was a smart negotiation strategy and when coupled with consensus procedure, it soon harmonized the problems and accelerated law forming process later leading a significant reduction on maritime issue [10, 11].

2.3.3 The Impact of Interest-Based Negotiations on UNCLOS

One of the great benefits of UNCLOS is that it set definite limits, such as the territorial to be 12 nm; contiguous as 24 nm, and exclusive economic zones of 200 nm [14, 15]. Besides, it meticulously defined the developed coastal and non-coastal states' authority in those mentioned areas as well [14, 15]. On top of that, UNCLOS also construct very detailed compulsory dispute settlement procedures [14, 15]. All signed states agreed to avoid the use of military force and may utilize various peaceful techniques to solve their maritime disputes as applied under Part XV of UNCLOS [14]. Specifically, Article 279 reemphasizes states' obligations under Articles 2(3), 33(1), and 51 of the UN Charter—specifically, to resolve maritime disputes peacefully [13, 14]. An exchange of views among UNCLOS states parties involved in a maritime dispute is encouraged by Article 283 [13, 14]. Flexibility in the peaceful procedures for a settlement can be found in Article 280; and various conflict management tools are provided in Articles 284 to 286 [14].

The fundament of UNCLOS coupling with the comprehensive conflict resolution system provide clear communication and fair procedures for all possible cases [6, 12].

It consequently facilitated interstate coordination and overtime building trust as bridge for long term relationship [12, 14].

Moreover, the optional declaration under Article 287 of UNCLOS elucidated litigation outcomes and possible court involvement [14]. Based on previous decisions, states' ability to foresee court action towards future dispute became enhanced [14]. By lengthening the shadow of future, it actually altered the bargaining behavior and forced the states to only consider military force as the last step [6, 14]. Their second last outlet remained to be adjudication [14]. However, since all the parties wish to avoid litigation costs and achieve a more preferable outcome, it ultimately increased the frequency of states resorting to bilateral negotiation [14].

3 Result

UNCLOS explains key terms like inland water, territorial sea, adjacent sea area, continental shelf, exclusive economic zone (additionally known as "exclusive economic sea area" for short: EEZ), high seas and so on. It is crucial in directing and adjudicating contemporary territorial sea sovereignty issues, marine natural resource management, and pollution remediation across the world. [16].

It indicates that the international law of the sea has developed to a new historical stage. The maritime claims increased from 1900 to 1982, and dropped precipitously after 1994, the time convention entered into force [14].

As a parallel treaty to jointly control maritime risks with the special international maritime security treaty, the UNCLOS determines the system composition from the aspects of seaworthiness requirements, the control responsibility of subject diversity and collision-oriented seaway delimitation; The UNCLOS introduces the concept of regional coordination and fills the gap in the distribution of national jurisdiction such as flag state, coastal state and port state, so as to build a maritime control system covering all sea areas and all ships [17].

At the same time, by introducing the concept of regional coordination and putting forward the innovative requirements of "risk management" and its evaluation tools, it expresses the strong demand for building a maritime management and control system covering all sea areas and all ships, Moreover, in terms of top-level design and development, it promotes the extension of maritime safety control from a single field to multiple fields, so as to maximize the complete connection between various marine divisions and international maritime safety.

By observing the reduction of maritime issues, we can see that the United Nations Convention on the law of the sea indicates a new historical epoch in the evolution of international maritime law, and a new international maritime order is shaping up gradually. The vast number of developing countries, including China, have made long-term and unwavering efforts for the formation of the United Nations Convention on the law of the sea. During the Third United Nations Conference on the law of the sea, they worked together to eliminate many difficulties and overcome various obstacles; After nine years of strive**,** it finally declared triumph, and a new Convention on the law of the sea, the UNCLOS was born. It is true that the Convention is directly related to the interests of States parties and must take into account the interests of all states that have

concluded the Convention [18]. Therefore, in this sense, the UNCLOS was the product of the balance of power, the compromise of various interests and the running in of various contradictions at that time.

The impact of the provisions of the Convention on different countries is different. This is because there is a great difference in maritime navigation capacity and development capacity between large countries and small countries. Before the establishment of the exclusive economic zone system, the vast oceans were often galloped by large countries, while small countries had only territorial waters and were unable to develop them [19].To a great extent, the establishment of the exclusive economic zone enables small countries to strengthen their jurisdiction over their own oceans, limits the uncontrolled development of large countries in the waters of other countries, and more protects the maritime rights and interests of small countries. The United Kingdom, the United States, and other maritime countries, for example, have vast fishing fleets, sophisticated navies, and cutting-edge marine scientific research.

Therefore, they actively expand the scope of free navigation in the process of negotiation on the law of the sea; In order to national defense and protecting their own rights and interests, developing countries generally advocate a larger territorial sea, a wider exclusive economic zone and greater jurisdiction [16]. This is the result of the long-term struggle and efforts of most developing countries. It has effectively curbed the maritime hegemony of a few maritime powers and reflected and protected the common aspirations and fundamental interests of the vast majority of countries in the world, especially coastal developing countries, in the development and utilization of the oceans [20].

4 Discussion

A total of 168 countries or organizations participated in the negotiation conference of the UNCLOS. It is also the longest and largest international legislative conference convened by the United Nations so far. The successful establishment of the international maritime negotiation was finally facilitated by the persistent spirit of international maritime negotiation. This paper finds that in the process of formulating the UNCLOS, relevant countries and multi parties have made a lot of efforts in the reasonable establishment of the UNCLOS. At the same time, it reflects that in the face of international negotiation affairs, in order to make the final convention beneficial to many countries and abide by unified standards, we should not only have a rigorous and intelligent negotiation mentality, but also pay attention to the application of negotiation methods and negotiation strategies, Like the final conclusion of this Convention, it has created a peaceful and convenient environment for the United Nations in the field of maritime law, and further enhanced mutual trust, mutual benefit and mutual benefit among countries through negotiations. The UNCLOS is the product of compromise between various international forces. It is unavoidable that there will be some flaws, some of which will be major. However, it is still the most extensive and comprehensive international treaty for maritime management.

Following the basic concept of negotiation and starting from its main guiding factors, this paper analyzes the characteristics of the long negotiation and negotiation in the establishment of the UNCLOS. Starting from the promotion theme of the United Nations maritime convention and the calibration of their own interests and positions by many

countries, through reasonable negotiation, it not only effectively coordinates the relationship between countries in the "International Maritime Security Treaty", Moreover, the domestic legislative benchmarks of States parties were set as "generally accepted international rules and standards" and "applicable international rules and standards". Finally, through the reform and innovation of negotiation strategies, the great initiative of the United Nations in maritime negotiations was realized.

However, in the negotiation elements, this paper only analyzes some of them and does not complete a more comprehensive and in-depth analysis. However, in the pertinent research of the United Nations Convention on the law of the sea, the analysis from the perspective of "negotiation" is rare. Some scholars analyze the "international maritime security system" and "the constituent content of the convention law". Natalie believes that UNCLOS and special international maritime security conventions, In the process of specific legal practice and theoretical development, obvious consistency has been reached, so that UNCLOS and special international maritime safety conventions can serve the construction of maritime safety legal system in the same track [21]. In his book public international law, Alina pointed out that the method of negotiation, as a method of solving international disputes, appeared in modern times [22]. To the 1950s, consultation was only an integral part or step of traditional international law and was not recognized and valued by the international community. In terms of essence and subject, these studies are quite different from the research findings described in this paper. To a certain extent, this paper clearly combs the role of international negotiation in the process of UNCLOS, provides a certain theoretical basis for relevant research, and provides a reference practical case for solving the importance of negotiation in international affairs.

5 Conclusion

To sum up, negotiations have played a great role in the field of international maritime disputes, such as agreements on the delimitation of territorial sea, exclusive economic zone and continental shelf, fishery disputes and conventions on the governance of the marine environment. However, the multi-party positions and interest factors in the negotiation process, as well as the selection and formulation of negotiation strategies are more important, because the negotiation is ultimately a criterion for reaching the basic recognition and long-term implementation of multiple parties, which should take into account the participants' own positions and interests and concerns about the common interests of multiple parties.

This paper expounds the relevant factors for the successful conclusion of UNCLOS and the settlement of complex maritime issues, interprets the strategic adjustments and efforts made by various parties based on their positions and interests in the negotiation process, and finally plays a beneficial role in promoting the establishment of the Convention through long-term negotiation, which not only provides practical evidence for the substantive effectiveness of the negotiation in multilateral talks, but also provides practical evidence for the future political Ideological and economic differences have laid the foundation for successful cases, and accumulated realistic and prospective negotiation confidence for the positive contribution of the negotiations to complex and long-term marine issues.

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