

Forum: Disarmament Commission

Issue: Enforcing the United Nations Convention on the Law of the Sea

Student Officer: Joanne Yang

Position: Assistant President

Introduction

The United Nations Convention on the Law of Sea (UNCLOS) details well established and thorough regulations to govern the order and use of the world's oceans and resources. The doctrine was consolidated after 14 years of summits and conferences among over 150 countries, signed on December 10, 1982 in Jamaica, and implemented on November 16, 1994.

The Convention aims to minimize pollution of waters, develop safety regulations for shipping, assist governments with knowledge on operation of successful shipping industries, and ensure marine peace and security. Other aspects of governance include discretion over marine research, maritime disputes, and commercial activities. The UN delegates specialized organizations like the International Maritime Organization (IMO) and International Whaling Commission to help carry out the terms of the UNCLOS.

The Convention is monumental because it sets a concrete, global standard for the safety and environment of maritime activities and international shipping. The shipping industry is a particularly integral aspect of the globalized and interconnected world we live in today, where international shipping constitutes more than 80% of global trade,¹ and is a reliable, cost efficient way of transporting commerce among people, contributing to prosperity and the general economic codependency of nations. However, shipping industries are estimated to be responsible for 3.1% of global carbon dioxide emissions. This is because the combustion of marine fuel produces concentrated amounts of black carbon particles.² Moreover, in order to fundamentally maximize marine infrastructure and innovation alongside traffic management, numerous organizations are collaborating to uphold the 2030 Agenda for Sustainable Development Goals (SDGs) which include Goal 14 "life below water" and Goal 11 on sustainable cities and communities.

¹ <http://www.imo.org/en/About/Pages/Default.aspx>

² <https://www.transportenvironment.org/what-we-do/shipping-and-environment/shipping-and-climate-change>

Definition of Key Terms

United Nations Convention on the Law of Sea (UNCLOS)

The UNCLOS establishes a thorough regime of law and order in the world's seas by laying down rules that govern their use and resources. It deals with multiple issues pertaining to the rights and responsibilities of nations over marine conservation, environment, and use of resources.

International Maritime Organization (IMO)

The IMO is a specialized agency of the United Nations that is primarily responsible for regulating shipping industries. In addition, it also maintains a regulatory framework for environmental concerns, maritime legal disputes, and security. It is headquartered in London and has 174 member states to date.

International Whaling Commission (IWC)

The IWC is a global body with 88 member states that is responsible for the conservation of whales. It manages the whaling industry, and also addresses conservation issues including pollution, sustainable fishing, ocean noise, and collision between ships and whales all around the world. ³

Vessel Traffic Services (VTS)

Vessel Traffic Services are systems that monitor maritime traffic by port authorities, similar to air traffic control at airports. These include informational messages to certain vessels, hazard and traffic warnings, and management of traffic in waterways. Ships are tracked down by a VTS center after they self-report their location entering a VTS area.

Piracy

Piracy includes the unauthorized plundering or criminal violence against other ships at a coastal area or at sea in order to procure valuable cargo, items, and property. When this crime is committed more than 12 nautical miles off a coastline, it is considered maritime piracy. A crime committed under state jurisdiction is otherwise classified as armed robbery.

Smuggling

Smuggling include the illegal movement of goods, substances (drugs), or even people across international borders for profit and other personal reasons. The smuggling of people includes migrants in the status quo who voluntarily pay smugglers to gain cheap transportation and access to reach other countries in attempts to flee humanitarian crises.

³ <https://iwc.int/home>

Biofouling

The minimization of movement of invasive and deleterious aquatic organisms near and on hulls of ships. These invasive species compete with native species, reproducing and increasing at an alarming rate due to amplified trade networks and volumes, causing threats to biological diversity.

Seafarer Abandonment

The act of deserting a crew or seafarers due to bankruptcy or other reasons, leading to deteriorating health conditions, inadequate medical assistance, and food scarcity. The UN is working toward better protection, liability, and compensation of seafarer rights through seafarer training and certification processes.

Automatic Identification Systems

Automatic Identification Systems, as their name suggests, provide necessary information from vessels to alert coastal authorities of their presence. Many governments impose regulations to construct ships with built in identification systems to obtain information regarding ship type, speed, position, and level of safety.

Background

Oceans and coastal areas constitute an indispensable part of the Earth's ecosystem, as they cover more than two thirds of the Earth's surface and provide opportunities for sustainable development. Over 3 billion people rely upon marine resources for employment and sustenance of livelihoods and health. The oceans are also crucial for the regulation of the global climate by providing oxygen, becoming carbon sinks for unnatural emission of gases, and proliferating biodiversity under water. Despite the importance of oceans, they deteriorate in condition and function with constant exposure to human pollution, unsustainable exploitation of resources, destruction of habitats, and climate change. The UNCLOS is a monumental treaty in addressing these social and economic costs of marine exploitation and laying firm ground rules for the sustainability of our oceans. Despite the agreement on the UNCLOS, however, there are continuous problems regarding the effective implementation of the treaty.

Maritime safety

The proper stowage and security of cargo is important in minimizing casualties and injuries at sea during loading and discharge. When there is an overloading or inaccurate weighing of contents, supply chain workers are subject to hazards that would otherwise be avoidable. In support of marine safety, the Code of Safe Practice for Cargo Stowage and Securing (CSS Code) has been developed to provide technical advice on what type of ships are suitable for certain transportation, proper procedure of securing cargo, specialized training and information of personnel in response to severe weather emergencies, and supervision of safe conduct at sea. Other provisions for carriage of specifically solid bulk cargo are incorporated in the International Maritime Solid Bulk Cargo (IMSBC) Code to minimize structural damage due to chemical reactions of cargo during voyage or unsuitable distribution of cargo.

Threats to maritime safety can come in the form of unexpected yet catastrophic fires on passenger ships where a multitude of people have to be quickly and efficiently evacuated before flammable cargo catches on fire.

Extinguishing fires is a rising concern that has not been sufficiently addressed with technological innovations and infrastructure, although fireproof carpets, wall coverings, and an organized fire evacuation plan for passengers can help.

The IMO further attempts to regulate maritime security through the Maritime Safety Committee (MSC) and Legal Committee. Armed robbery against vessels have been especially centralized in the South China Sea and Straits of Singapore since the early 2000s, but more recently piracy has increased off the coast of Somalia and in the Indian Ocean. The UNODC is aiming to counter maritime crimes including abduction for ransom, particularly at the Celebes and Sulus Seas, and addressing attacks on shipping at the Gulf of Aden, and heroin and cocaine trafficking at the Atlantic and Indian Oceans.⁴ The fact that criminal organizations abuse territorial waters because there is no single state jurisdiction is posing immediate threats to lives, national sovereignty, and property. The UNCLOS attempts to facilitate the safe and secure use of Earth's waters by establishing the right of states to exercise national discretion till a range of 12 nautical miles while allowing innocent and transit passage for foreign vessels. It lays clear grounds for nations to objectively evaluate vessels and their equipment for safety purposes, while verifying the contents of vessels to ensure they do not contain illegal cargo.

Marine environment

Marine pollution is a prevalent and concerning phenomenon that disrupts marine ecosystems and organisms worldwide. One of the major factors in marine pollution is chemical contamination where the runoff of fertilizers and nutrients used in agricultural farms flow into water passageways and ultimately reach the ocean. The unnatural increase of nitrogen and phosphorous germinates algal blooms which are noxious to aquatic organisms and humans by hurting fishing and tourism industries. Another cause of marine pollution is the disposal of garbage into the oceans where subpar waste management causes plastic items like bottles, straws, grocery bags, and food wrappers to float on top of oceans and take extensive amounts of times to decompose. Approximately 8 million tons of plastic waste reach the oceans annually. This is due to the rapid urbanization of megacities near coastlines where effective sewage management and recycling initiatives evidently is not a priority.⁵

Due to marine pollution, fishes and turtles are marred in the accumulation of debris where they are often entangled in nets or mistakenly consume plastic as food. It is estimated that plastic clogs the digestive tracts of one million sea birds a year.⁶ Broken-down plastic is referred to as microplastic, and is sometimes eaten by planktons and whales that become part of their tissues and work their way up the food chain through a process called biomagnification, until even the food humans consume on a daily basis is affected. The protection of the marine environment is particularly crucial in the wake of climate change. As the burning of fossil fuels and intensive human activities like deforestation cause rapid increases in emissions of greenhouse gases, climate change is causing not only erratic weather patterns but the acidification of oceans that endangers sustainable marine life, food security, and shore protection. Coral reefs, which are biodiversity hotspots, are in decline and now cover only 1% of the Earth's

⁴ <https://news.un.org/en/story/2019/02/1032011>

⁵ <https://www.nationalgeographic.org/encyclopedia/marine-pollution/>

⁶ <https://thecommonwealth.org/marine-pollution>

surface.⁷ The UNCLOS attempts to reinforce marine sustainability by establishing a legal framework in which national sovereignty is well balanced with the overarching global obligation to conserve and preserve aquatic ecosystems.

Maritime Disputes

Historically, major sea powers have been in conflict with one another to assert their dominance beyond land boundaries and gain access to marine resources. The UNCLOS classifies areas of oceans into exclusive economic zones, territorial waters, and international waters. The territorial waters are recognized as being twelve nautical miles from the low water mark of a state and are subject to its direct, legal discretion though all international ships are still permitted transiting passage. The Exclusive Economic Zone (EEZ) encompasses 200 nautical miles where coastal states are granted permission to utilize marine resources through activities like seabed mining and fishing and can also freely navigate or establish submarine telecommunications.⁸ Beyond this zone lie the international waters where all states (coastal and non-coastal) have equal freedom and access to the use of the waters.

Though there are boundaries that mark these distinct zones in ocean governance, countries still compete over islands and maritime resources. Recently, the South China Sea dispute has garnered international attention, as conflicting claims in its waters by Vietnam, the Philippines, China, Taiwan, Brunei, and Malaysia have led to a rise of tensions. As the sea is a commercial passageway that connects Asia to Europe, \$3.37 trillion dollars of international trade passes through it annually. Additionally, it is said to be brimming with resources like natural gas and oil and accounts for 10 percent of global fisheries. The South China Sea is hotly contested over as a key provider of food for millions of economic resources. Whilst Vietnam claims jurisdiction over the Paracel and Spratly Islands, China claims 80% of the waters through the 8-dashed line, and Brunei and Malaysia claim southern parts of the sea and the Spratly Islands as well. China has deployed drilling rigs in the South China Sea, which led to Vietnamese protests and military confrontations in 2014, and it continues to mark its control with military and industrial posts on islands.⁹ In 2016, the Hague ruled in favor of Philippines under the UNCLOS against claims made by China, but the issue remains highly contested because China refuses to accept the authority of the ruling even as a signatory to the treaty. This dispute signifies the ineffective implementation of the UNCLOS in the status quo, leading to degeneration of peace at borders.

Other issues involve Japan's amplified rhetoric in claiming ownership of Okinotorishima, which is also claimed by Taiwan. Based on the UNCLOS, the disputed Spratly archipelago are not made of actual islands because they cannot maintain a community of individuals.

Major Parties Involved

China

⁷ <https://www.iucn.org/theme/marine-and-polar/get-involved/coral-reefs>

⁸ <https://www.atlanticcouncil.org/blogs/new-atlanticist/maritime-disputes-and-international-law/>

⁹ <https://www.cfr.org/interactive/global-conflict-tracker/conflict/territorial-disputes-south-china-sea>

China is among one of the first countries to sign the UNCLOS and is generally in favor of the establishment of reasonably fair marine order and jurisdiction. However, in the South China sea dispute, China has increasingly militarized the islands and refuses to accept arbitration in favor of Philippines' claims. The official government line is that China supports the exploration and use of resources in oceans while adhere to commercial guidelines and advocates efforts to conserve and sustain use of fisheries and marine resources. However, China consistently advances its claims over the Dongsha, Nansha, Xisha, and Zhongsha Islands as its bordering archipelagos and claims discretion over the South China Sea, stirring up controversy among its neighbors. China has also pitched the "21st Century Maritime Silk Road" Initiative¹⁰ which aims to build multiregional cooperation among states to combat marine challenges. It has signed over 30 bilateral agreements so far on tackling climate change and natural catastrophes. In other relevant issues, China is playing an active role in combating Somalian piracy by dispatching naval missions to the Gulf of Aden to escort thousands of foreign and Chinese ships, driving away around 3,000 pirate vessels so far.

United States

The United States participated in a series of conferences and negotiations that resulted in the UNCLOS, recognizing it as customary international law— though it did not officially ratify it due to opposition from domestic politicians. This strong opposition comes from the fact that the ratification does not provide exclusive benefits: the US already enjoys maritime freedom and access to oil and gas resources. However, acceding to this treaty will penalize companies that will be forced to pay money to the International Seabed Authority, which distributes funds to developing countries and potentially puts them in a disadvantageous position.¹¹ Even without the ratification of the UNCLOS, however, the US does adhere to many of the guidelines of the treaty and plays an important role in mediating the South China Sea dispute.

Previous Attempts to Resolve the Issue

The International Maritime Organization (IMO) was established in 1948 by 158 member states in order to address marine pollution, safety, and liability. Port state inspection and control enables countries to verify if foreign vessels are complying to certain norms and detain them once they do not. The IMO adopted the International Convention for the Safety of Life at Sea (SOLAS) concerning security and safety at sea, and the carriage of dangerous goods or marine traffic. The Marine Pollution (MARPOL) treaty is in charge of addressing oil pollution, sewage, and runoff of chemicals into the oceans. The IMO requires new tankers to be equipped with designs like double hulls to protect cargo in case of collision.

¹⁰ https://brill.com/view/journals/cjgg/5/1/article-p1_1.xml?language=en

¹¹ <https://www.heritage.org/global-politics/commentary/7-reasons-us-should-not-ratify-un-convention-the-law-the-sea>

The “Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972,” commonly referred to as the London Convention, is one of the earliest attempts to work toward marine conservation and protection from human activities. Its purpose was to implement practical ways to control sources of marine pollution and prevent the dumping of wastes and chemicals. Under this protocol, the dumping of sewage, mining fish waste, and carbon dioxide streams are prohibited.¹²

The United Nations Regular Process for Global Reporting and Assessment of the State of the Marine Environment organized the First Global Integrated Marine Assessment in 2015 on the condition of the seas. The assessment revealed dire pressure on marine ecosystems from climate change that hampers its ability to sustain biodiversity. In response to this wake-up call, the General Assembly introduced Sustainable Development Goal 14, which seeks to “conserve and sustainably use the oceans, seas and marine resources for sustainable development” in September 2015. The protection of life under water would be maximized by addressing illegal or unregulated extraction of marine resources, increasing the transfer of scientific knowledge to developing countries regarding sustainable marine practices, and implementing the UNCLOS more effectively.

Another enforcement mechanism of the UNCLOS is the Fish Stocks Agreement, which is a multilateral treaty that encourages cooperative management of fisheries. It provides a framework for the conservation of fish stocks, prevents illegal and unregulated fishing, and reduces the accidental catching of other marine animals.

Possible Solutions

- Specialized training for ship captains concerning the safety of their vessels. Captains should have adequate knowledge and familiarity with regulations outlined in the convention regarding proper and safe ship construction and operation, so as to make maritime travel safe and transparent.
- Systematic measures or guidelines can be implemented domestically by member nations to reduce safety hazards or incidents on ships. For example, requiring organized evacuation and escape routes in cases of emergency, having sophisticated and built-in fire protection systems on large cruises, and securing more medical arrangements and supplies for ships. Stability requirements can also entail watertight infrastructure and compartments within vessels.
- Member nations can significantly reinforce border patrol and external management of coastlines/ports to crack down upon illicit smuggling of goods and drugs, as well as strengthening an active search and rescue team that can identify and safely bring to shore abandoned vessels and seafarers.
- Assisting developing countries who cannot afford capital or specialized knowledge in innovating sustainable and green technologies can be a potential solution in enhancing marine environment protection. Through bilateral or global cooperation programs and technical partnerships, MEDCs can support LEDCs with their own resources.

¹² <https://worldmaritimeneews.com/archives/67923/uk-london-convention-celebrates-40-years-of-progress/>

- Moreover, international cooperation can be strengthened to increase responsiveness to oil leaks in oceans. Effective protocols and contingency plans that prepare for incidents of marine pollution should be undertaken with more efficient division of management responsibilities and centralization of equipment to remedy such situations. Nations can regularly share technology, guidance documents, and training courses that best respond to oil leaks in regularly scheduled summits, conferences, and other platforms.

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