

A General Overview of the Implementation Mechanism under the United Nations Convention on the Law of the Sea (UNCLOS): Some Institutional and Practical Aspects

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I. Introduction

- * The main purpose of this presentation
- * General overview of implementation mechanisms under UNCLOS
 - * Commission on the Limits of the Continental Shelf (CLCS)
 - * International Seabed Authority (ISA)
 - * International Tribunal for the Law of the Sea (ITLOS)
 - * Others
 - * Some international organizations, including UN family
 - * Division for Ocean Affairs and the Law of the Sea (DOALOS)

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II. Three Major Bodies under UNCLOS

- * Commission on the Limits of the Continental Shelf (CLCS)
- * International Seabed Authority (ISA)
- * International Tribunal for the Law of the Sea (ITLOS)

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1. CLCS (1)

- * Article 76 (8) of UNCLOS
- * ‘8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.’

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1. CLCS (2)

Annex II of UNCLOS
Article 3

- * 1. The functions of the Commission shall be:
 - * (a) to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with article 76 and the Statement of Understanding on 29 August 1980 ...’
 - * (b) to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data referred to in subparagraph (a).
- * 2. The Commission may co-operate, to the extent considered necessary and useful, with the Intergovernmental Oceanographic Commission of UNESCO, the International Hydrographic Organization and other competent international organizations with a view to exchanging scientific and technical information which might be of assistance in discharging the Commission’s responsibilities.’

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1. CLCS (3)

- * 21 members: experts of geology, geophysics, or hydrography
- * Equitable geographical representation
- * **Sub-commission** composed of 7 members
- * CLCS’s recommendations are based on those made by the subcommission.

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1. CLCS (4)

- * CLCS’s functions will **clarify the unclear situations of the continental shelf** in question.
- * CLCS’s **science-oriented, neutral, and non-political nature** will enhance to a considerable degree the **reliability and predictability** of CLCS as an organ of expertise.

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2. ISA (1)

- * Part XI ‘The Area’ of UNCLOS
- * Its functions were fairly modified by the **1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982**.
- * The ISA organises and controls activities in the Area (the sea-bed, ocean floor, and sub-soil beyond the limits of national jurisdiction), with a view to administering the Area and its resources.
- * The Area and its resources are designated as the ‘the common heritage of mankind’ (CHM).

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2. ISA (2)

- * Three principal organs of the ISA:
 - * the **Assembly**,
 - * the **Council**, and
 - * the **Secretariat**
- * The 1994 Agreement amended the original regime provided for by UNCLOS.
- * The 1994 Agreement considerably modified the functions, management, membership, and decision-making of the ISA (the Council and the Enterprise, among others).

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Assembly of ISA

- * Article 160
- * ‘1. The Assembly, as the sole organ of the Authority consisting of all the members, shall be considered the **supreme organ** of the Authority to which the other principal organs shall be accountable as specifically provided for in this Convention. The Assembly shall have the power to **establish general policies in conformity with the relevant provisions of this Convention on any question or matter within the competence of the Authority.**’

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Council of ISA

- * The Council, consisting of 36 members of the ISA, is, as the executive organ of the ISA, in charge of setting specific policies, supervising, and co-ordinating the implementation of the provisions of the deep seabed mining regime of UNCLOS.
- * The Council receives assistance from **two** subsidiary organs (both of which are composed of 15 members with expertise with a term of 5 years):
 - * the **Legal and Technical Commission** and
 - * the **Finance Committee**

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The Enterprise

- * The Enterprise was established as the ISA organ:
 - * to directly carry out activities in the Area, and
 - * to transport, process, and market minerals recovered from the Area.
- * The functions of the Enterprise (originally based on Article 170 and Annex IV of UNCLOS) have been considerably limited by the 1994 Agreement.
 - * The Enterprise's functions will be mainly **monitoring and assessment**.

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ISA's Future Role

- * With the task of guardian of the **CHM**
- * **'parallel system'** of mining modified by the 1994 Agreement
- * The **Mining Code** to be elaborated
- * Three stages:
 - * **prospecting, exploration, and exploitation**

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3. ITLOS

- * ITLOS is a permanent judicial body established by UNCLOS and its Annex VI, and is located in Hamburg, Germany.
- * It began functioning in 1996, and was seized of the first case in 1997.
- * To date, 19 cases have been submitted to it.

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Dispute Settlement Mechanism under UNCLOS

- * **Freedom to choose** a means to settle a dispute (cf. Article 33 (1) of the UN Charter)
- * In the absence of agreement on which method to choose, or in case of a failure to settle a dispute by the agreed method, the dispute must be submitted, by either state party's request, to one of the following **four** methods:
 - * International Court of Justice (ICJ),
 - * ITLOS,
 - * Arbitration under Annex VII, or
 - * Special arbitration under Annex VIII.

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Compulsory Jurisdiction of ITLOS

- * ITLOS has **compulsory jurisdiction** over all States Parties to UNCLOS in the following **three** areas:
 - * cases concerning requests for **prompt release** of vessels and crews;
 - * cases which are to be settled by arbitration and for which ITLOS is the forum to hear requests for **provisional measures**; and
 - * cases where a separate **Sea-bed Disputes Chamber** (comprised of 11 judges) of ITLOS has exclusive and compulsory jurisdiction over disputes concerning activities in the Area.

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Composition

- * ITLOS consists of 21 judges, elected by the parties to UNCLOS from among persons with the highest reputation for fairness and integrity and of recognised competence in the field of the law of the sea.
- * Special Chambers:
 - * a Chamber for Fisheries Disputes,
 - * a Chamber for Marine Environment Disputes,
 - * a Summary Procedure Chamber, and
 - * a Chamber for Maritime Delimitation Disputes

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Role of ITLOS

- * ITLOS has brought about a set of **jurisprudence** on the law of the sea by pronouncing law and settling disputes.
- * ITLOS’s role also adds considerable meaning to the **development of the law of the sea**, among other things.
- * It may be of interest to find a *de facto* **preliminary** role of ITLOS concerning its competence to indicate provisional measures where arbitration was used to consider the merits of cases.

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III. Other Institutional Mechanisms Related to the Implementation of UNCLOS

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III. Other Institutional Mechanisms Related to the Implementation of UNCLOS

- * **Three different levels of implementation** are presupposed in the Convention:
 - * Individual State Parties at the **national** level,
 - * Regional and sub-regional organizations at the **regional** level, and
 - * The United Nations system and other international organizations at the **global** level.

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Examples of cooperation with international organizations (1)

- * The regional fisheries management organisations and arrangements under UNCLOS necessitate their cooperation with fishery arrangements under the **Food and Agricultural Organization (FAO)**.
- * Integrated marine environmental protection equally seeks collaborative relations among regional seas programmes introduced by the **United Nations Environmental Programme (UNEP)**.
- * Some of the provisions in UNCLOS imply the roles of the **International Maritime Organisation (IMO)** as ‘the competent international organization’ in the provisions of UNCLOS, such as those related with territorial waters, straits, the right of archipelagic sea lanes passage, and pollution from vessels.
- * Relating to the protection of underwater cultural heritage, the **United Nations Educational, Scientific and Cultural Organisation (UNESCO)** and its agreements are important.

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Examples of cooperation with international organizations (2)

- * **UN General Assembly** and its subsidiary bodies
 - * The Ad Hoc Open-ended Informal Working Group to Study Issues Relating to the Conservation and Sustainable Use of Marine Biological Diversity Beyond Areas of National Jurisdiction
- * The **Secretary-General**, and
- * The **Meeting of State Parties** to UNCLOS.
- * The Division for the Ocean Affairs and the Law of the Sea (**DOALOS**)

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IV. Conclusions

- * UNCLOS has **institutionalised its implementation mechanism** in order to ensure the uniform and consistent application of UNCLOS and a coordinated approach to its overall implementation.
- * UNCLOS also presupposes the idea that the Convention and other relevant agreements need to be implemented through competent and responsible institutions and bodies **at domestic, regional, and global levels**.
- * Some other UN family institutions and UN subsidiary bodies have also been functioning **in cooperation with the three major bodies**.

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