



Assessment Report on the United Nations Convention on the Law of the Sea (UNCLOS)

Achievements, Positioning and Challenges



China Institute for Marine Affairs (CIMA)
June 2026

Executive Summary

The 1982 United Nations Convention on the Law of the Sea (UNCLOS)—a significant achievement in the post-war development of the international legal order for the seas and oceans—serves important functions in upholding multilateralism, opposing hegemony, fostering marine and maritime cooperation, and advancing sustainable development for the seas and oceans, as well as in other areas. As a comprehensive legal instrument covering a broad spectrum of law-of-the-sea issues, UNCLOS is designed to serve the overall interests of the international community while balancing the interests of States, including, among others, coastal, flag, and landlocked States. UNCLOS establishes an open, inclusive legal framework and remains capable of continued evolution through subsequent implementing agreements. Nevertheless, UNCLOS neither covers all law-of-the-sea issues nor stands as the sole source of the law of the sea. Rather, it constitutes one of the important pillars of the modern legal order for the seas and oceans, together with other international treaties and agreements governing marine/maritime issues (hereinafter “other relevant treaties”) and customary international law.

In the course of its implementation, UNCLOS continues to face both internal constraints and external challenges requiring urgent response. As a “package deal” resulting from compromise and balance of interests, certain provisions of UNCLOS are vaguely formulated and susceptible to divergent interpretations, thereby undermining their uniform and effective implementation by States. Besides these textual limitations, emerging areas of focus such as climate change and artificial intelligence arise beyond the drafters’ foresight, constantly challenging the interpretation and application of UNCLOS. Particularly against the current backdrop where the authority of the United Nations is being challenged and the foundations of multilateralism are being eroded, we are witnessing repeated improper practices, including misrepresenting the status and role of UNCLOS, deviating from its object

and purpose, undermining its delicately calibrated balance of competing interests, and weakening its multilateralist underpinnings. Meanwhile, abusive practices are quietly on the rise, including distorting the meaning of UNCLOS provisions, abusing its dispute settlement procedures, and arbitrarily expanding judicial or arbitral jurisdiction. Inherent limitations of UNCLOS—such as textual ambiguities, lack of definitions and governance gaps—may be remedied through subsequent State practice and concerted multilateral action in accordance with the principles of extensive consultation, joint contribution, and shared benefits. In contrast, external challenges—including interpretive distortions and procedural abuses—pose a genuine threat to the legal order established by UNCLOS.

2026 marks the 30th anniversary of China's status as a State Party to UNCLOS. China has consistently ensured the full and faithful implementation of UNCLOS provisions, standing as an active participant, builder, and contributor to UNCLOS and its mechanisms. Against this backdrop, China Institute for Marine Affairs (CIMA) undertakes a comprehensive assessment on UNCLOS, covering its historical achievements, legal nature, role and functions, as well as the challenges it faces. In defense of the international rule of law and to uphold the solemnity, integrity, and authority of UNCLOS, we put forward the following recommendations to the international community, particularly to national governments and relevant agencies, academia, and the policy community:

First, view the UNCLOS in an objective, holistic, and dialectical manner. It is essential to recall its negotiating history, appreciate its spirit of compromise, and recognize its delicately calibrated balance therein. Furthermore, the positioning of UNCLOS within the modern legal order for the seas and oceans should be clarified—neither understating its relevance nor overstating its reach—so as to properly balance continuity and development in the law of the sea.

Second, interpret and apply the UNCLOS fully, accurately, and in good faith. Rights conferred by the UNCLOS should be exercised in a reasonable manner and

obligations thereunder discharged in good faith. The object and purpose of UNCLOS must be safeguarded, its built-in balance preserved, and abusive practices—such as interpretive distortions, procedural abuses, and jurisdictional overreach that undermine the solemnity, integrity, and authority of UNCLOS—opposed.

Third, make joint efforts to advance China's *Four Global Initiatives*, directing them toward addressing persistent difficulties and challenges in UNCLOS implementation and improving global ocean governance. The path forward lies in practising true multilateralism, accelerating the delivery of tangible outcomes under these *Initiatives*, and fostering a more just and equitable system for global ocean governance so as to advance steadily toward a community with a shared future for mankind.

Table of Contents

Executive Summary	i
Table of Contents	v
Introduction	1
1. UNCLOS: A Legal Achievement of the Post-war Era	3
1.1 Upholding Multilateral System	3
1.2 Opposing Maritime Hegemony	3
1.3 Fostering Maritime Cooperation	5
1.4 Advancing Sustainable Marine Development	5
2. UNCLOS: A Comprehensive Framework for Community Interests	7
2.1 A “Package Deal” for Balancing Competing Interests	7
2.2 A Comprehensive, Broad-Ranging Legal Instrument	8
2.3 An Open and Inclusive Framework, Evolving through Subsequent Agreements	9
2.4 The “Constitution for the Oceans”: A Misleading Elevation	11
3. Pillars of the Modern Law of the Sea: UNCLOS alongside Other Relevant Treaties and Customary International Law	15
3.1 Where UNCLOS Falls Silent: Applying General International Law to Non-regulated Matters	15
3.2 Other Relevant Treaties: Functioning in Parallel	19
3.3 Customary International Law: Enduring as an Irreplaceable Source of the Law of the Sea	20
4. Navigating UNCLOS Implementation: Between Inherent Limitations and External Challenges	23
4.1 Regulatory Ambiguity and Unforeseen Developments	23
4.2 Abusive Practices in Treaty Interpretation and Dispute Settlement	27
4.3 Unilateralism Beyond UNCLOS: The “Pick-and-Choose” Approach of a	

Non-Party Major Power	34
5. Conclusions and Recommendations	37
5.1 Conclusions	37
5.2 Recommendations	39
References	43
I. Books and Book Chapters	43
II. Journal Articles	43
III. Documents and Publications of International Organizations	44
IV. Judicial Decisions and Arbitral Awards	45
V. Other Materials	45

Introduction

1. The United Nations Convention on the Law of the Sea (UNCLOS), opened for signature in 1982 and entering into force in 1994, is a significant achievement in the post-World War II development of the international legal order for the seas and oceans, and a comprehensive legal instrument covering a broad spectrum of issues. China ratified UNCLOS in 1996, thereby becoming a State Party thereto. UNCLOS, other relevant treaties, and customary international law, collectively constitute the important pillars of the modern legal order for the seas and oceans. At the same time, UNCLOS, in its implementation, continues to confront persistent internal constraints and external challenges requiring urgent response. Currently, momentous changes unseen in a century are accelerating across the world, a significant shift is taking place in the international balance of power, and the global governance system is in pressing need of reform and improvement. In recent times, unchecked unilateralism and hegemonic conduct have proliferated, challenging the authority of the United Nations and eroding the very foundations of multilateralism. Certain States have hyped the so-called “rules-based international order,” treating international law as a pick-and-choose menu under this very guise. Such double-standard practices equally endanger the foundation of the international rule of law in the maritime domain. We are witnessing repeated improper practices, including misrepresenting the status and role of UNCLOS, deviating from its object and purpose, undermining its delicately calibrated balance of competing interests, and weakening its multilateralist underpinnings. Meanwhile, abusive practices are quietly on the rise, including distorting the meaning of UNCLOS provisions, abusing its dispute settlement procedures, and arbitrarily expanding judicial or arbitral jurisdiction. As a result, the solemnity, integrity, and authority of UNCLOS are under sustained erosion. The system of global ocean governance now stands at a crossroads, demanding urgent reform.

2. Amid an increasingly complex international political landscape and commemorating the 30th anniversary of China's status as a State Party to UNCLOS, CIMA conducts a comprehensive assessment on UNCLOS, covering its historical achievements, legal nature, role and functions, as well as the challenges it faces. This Assessment Report aims to foster an understanding of UNCLOS in an objective, holistic, and dialectical manner, promote its interpretation and application in a full, accurate, and good-faith manner, uphold the international rule of law in the maritime domain, and jointly safeguard the solemnity, integrity, and authority of UNCLOS.

3. To ensure both breadth and depth in the assessment and reflect diverse perspectives as well as an international outlook, this report incorporates representative academic commentary from renowned international law scholars, diplomatic officials, and senior lawyers from more than ten countries, including the United Kingdom, France, Germany, Italy, the Netherlands, Greece, Switzerland, Australia, New Zealand, the United States, Canada, and Chile. It also draws upon academic writings and public statements by former judges of the International Court of Justice and the International Tribunal for the Law of the Sea, former member of the International Law Commission, and former senior officials of the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs. Additionally, it references the jurisprudence of international judicial and arbitral bodies, the official documents and formal publications of the United Nations and its specialized agencies, alongside other authoritative materials. The reference materials consulted span four languages: English, French, Spanish, and German.

1. UNCLOS: A Legal Achievement of the Post-war Era

4. UNCLOS is a significant achievement in the post-war development of the international legal order for the seas and oceans. After World War II, the United Nations convened three conferences on the law of the sea. Held between 1973 and 1982, the Third United Nations Conference on the Law of the Sea culminated in a significant achievement—United Nations Convention on the Law of the Sea (UNCLOS)—ushering in a new era of global ocean governance. UNCLOS serves important functions in upholding multilateralism, opposing hegemony, fostering cooperation, and advancing sustainable development for the seas and oceans.

1.1 Upholding Multilateral System

5. UNCLOS represents a practical outcome of multilateral diplomacy. Concluded and opened for signature following nine years of negotiations, UNCLOS stands as a significant achievement of multilateralism in practice. Between 1973 and 1982, more than 160 States, including China, engaged in sustained, equal consultations marked by mutual understanding and accommodation, culminating in the adoption of UNCLOS. Its adoption by an overwhelming majority—130 votes in favour, 4 against, and 17 abstentions—marked a major victory for multilateral diplomacy. As of April 2026, UNCLOS has 172 States Parties (including the European Union)¹, attesting to its broad acceptance by the international community. The success of its conclusion demonstrates that only through true multilateralism can the international rule of law for the seas and oceans be progressively advanced.

1.2 Opposing Maritime Hegemony

6. UNCLOS serves as an institutional safeguard against maritime hegemony. UNCLOS expressly accommodates the special interests and needs of developing

¹ See United Nations Division for Ocean Affairs and the Law of the Sea, 'Chronological Lists of Ratifications of, Accessions and Successions to the Convention and the Related Agreements', *Oceans and Law of the Sea* <https://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm> accessed 16 June 2026.

countries and opposes maritime hegemony by establishing an equitable legal order for the seas and oceans. To advance the representation and voice of developing countries, its Preamble states that one objective of this order is to promote “the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked.”¹ With due regard for the sovereignty of all States², UNCLOS addresses developing countries’ claims to economic sovereignty over marine resources through the creation of the exclusive economic zone (EEZ) as a new legal regime³. This ended the monopoly over marine resources long exercised by developed countries—particularly traditional maritime powers—thereby substantially safeguarding the economic sovereignty of developing countries and vigorously advancing their maritime interests. UNCLOS declares the international seabed area (the Area) and its resources to be the common heritage of mankind⁴; all rights therein are vested in mankind as a whole, with the International Seabed Authority (ISA) acting on its behalf⁵. These provisions establish institutional guarantees that enable developing countries to participate effectively in international seabed affairs, thus playing an important role in opposing maritime hegemony. Furthermore, UNCLOS stipulates that marine scientific research in the EEZ and on the continental shelf requires the consent of the coastal State⁶, a regime intended principally to ensure that developing countries retain control over research activities within their jurisdictional maritime areas. Overall, compared with earlier law-of-the-sea regimes such as the 1958 Geneva Conventions, UNCLOS represents significant progress by departing from a structure that disproportionately favoured a handful of major powers.

¹ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS), preamble para 5.

² UNCLOS preamble para 4.

³ See, for example, Gemma Andreone, ‘The Exclusive Economic Zone’ in Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015) 160-161; Erwin Beckert und Gerhard Breuer, *Öffentliches Seerecht* (Walter de Gruyter, 1991) 18-21; Lothar Gündling, ‘Die exklusive Wirtschaftszone’, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 38 (1978) 616.

⁴ UNCLOS art 136.

⁵ UNCLOS art 137(2).

⁶ UNCLOS art 246(2).

1.3 Fostering Maritime Cooperation

7. UNCLOS operates as a framework fostering maritime cooperation. UNCLOS is itself a product of international cooperation and provides a framework for ongoing collaboration in the marine and maritime domain. Its Preamble expresses the desire “to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea,”¹ thus setting the foundation for international cooperation in maritime affairs. In areas including protection and preservation of the marine environment², marine scientific research³, and the development and transfer of marine technology⁴, UNCLOS expressly calls upon States and “[the] competent international organization[s]” to engage in international cooperation. It further stipulates that States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under UNCLOS.⁵ As Ms. **Annick de Marffy-Mantuano** (former Director of the UN Division for Ocean Affairs and the Law of the Sea) observed, UNCLOS, as a monument to international cooperation (*monument à la coopération internationale*), serves as a bridge not only between States and humanity, but also between the past and the future.⁶

1.4 Advancing Sustainable Marine Development

8. UNCLOS is an important instrument promoting sustainable marine development. UNCLOS establishes the legal framework for advancing sustainable marine development and provides institutional safeguards for the sustainable use of marine resources. Its Preamble states that the objectives of this legal order include promoting “the equitable and efficient utilization of ...[marine] resources,” “the conservation of ...[marine] living resources,” and “the study, protection and

¹ UNCLOS preamble para 1.

² UNCLOS Part XII, s 2.

³ UNCLOS Part XIII, s 2.

⁴ UNCLOS Part IV, s 2.

⁵ UNCLOS art 123.

⁶ Annick de Marffy-Mantuano, « La convention de Montego Bay » dans Mathias Forteau, Jean-Marc Thouvenin (dir.), *Traité de droit international de la mer* (Pedone, 2017) 67.

preservation of the marine environment.”¹ UNCLOS imposes the general obligation to protect and preserve the marine environment², requiring States Parties to take, individually or jointly as appropriate, all measures consistent with UNCLOS that are necessary to prevent, reduce and control marine pollution from any source³. At the same time, it affirms that States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.⁴ The key to sustainable marine development lies in achieving a sound balance between conservation and rational utilization; advancing this process requires balancing ambition with pragmatism in target-setting, while respecting the balance of rights, obligations, and interests as enshrined in UNCLOS.

¹ UNCLOS preamble para 4.

² UNCLOS art 192.

³ UNCLOS art 194(1).

⁴ UNCLOS art 193.

2. UNCLOS: A Comprehensive Framework for Community Interests

9. As a comprehensive legal instrument for the seas and oceans, UNCLOS serves the overall interests of the international community. Its Preamble expressly invokes “the interests and needs of humankind as a whole,” thereby establishing a balanced legal order that accommodates the interests of all States Parties.

2.1 A “Package Deal” for Balancing Competing Interests

10. Adopted as a “package deal,” UNCLOS incorporates agreed compromises and balances competing interests, resulting in an intricately balanced text. Unlike the approach taken in earlier instruments such as the 1958 Geneva Conventions, the Third United Nations Conference on the Law of the Sea opted for a “package deal” approach to produce a single convention accommodating the interests of diverse States, including coastal, flag, and landlocked States. This treaty-making strategy inevitably entailed substantial negotiated compromises. As a result, UNCLOS forged a legal framework characterized by its intricate equilibrium. As Mr. **Miguel de Serpa Soares** (former UN Under-Secretary-General for Legal Affairs and Legal Counsel) noted, the resulting UNCLOS thus reflects a spirit of compromise with States largely operating by consensus and balancing rights and obligations.¹ This package-deal approach, however, also resulted in deliberately ambiguous or imprecise wording in certain provisions, mirroring the fragile equilibrium of interests attained. **Robin Churchill** (emeritus professor at the University of Dundee, UK) writes in this regard:

The package deal approach thus implied, and required, a great deal of give and take by negotiating States. It also meant that there would inevitably be a certain amount of ambiguity and lack of precision in the convention in relation to matters where negotiating States could do no better than reach a weak compromise.²

¹ Miguel de Serpa Soares, *High-Level Commemorative Meeting of the General Assembly to mark the 40th Anniversary of the Adoption of the United Nations Convention on the Law of the Sea (UNCLOS)* (Statement delivered at the General Assembly Hall, New York, 29 April 2022), available at <https://www.un.org/ola/sites/www.un.org/ola/files/documents/2022/05/29042022-mss-statement-40-anniversary-unclos.pdf>, accessed 28 February 2026.

² Robin R. Churchill, ‘The 1982 United Nations Convention on the Law of the Sea’ in Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens (eds), *The Oxford Handbook of the Law of the Sea* (Oxford

2.2 A Comprehensive, Broad-Ranging Legal Instrument

11. UNCLOS is a comprehensive legal instrument covering a broad spectrum of law-of-the-sea issues. Historically, the law of the sea consisted mainly of fragmented customary rules without systematic codification. Although the First and Second UN Conferences on the Law of the Sea produced several treaties—notably the four 1958 Geneva Conventions—they did not create a unified framework. In this sense, UNCLOS represents a pivotal step forward: through a single instrument, it partially codifies pre-existing customary law, systematically incorporates the main regimes of the 1958 Geneva Conventions¹, and introduces novel legal regimes and principles. It is thus a comprehensive legal instrument regulating a broad spectrum of law-of-the-sea issues. UNCLOS comprises seventeen parts (320 articles) and nine annexes, addressing the territorial sea and contiguous zone, straits used for international navigation, archipelagic States, the EEZ, the continental shelves, the high seas, the regime of islands, enclosed or semi-enclosed seas, rights of landlocked States, the Area, marine environmental protection, marine scientific research, marine technology transfer, and dispute settlement. By establishing a 12-nautical-mile territorial sea limit, UNCLOS settled long-standing debates. It also enables coastal States with particular geographic configurations to draw straight baselines, and creates novel regimes such as the EEZ, archipelagic States, and the Area. Additionally, UNCLOS created new institutions—the International Seabed Authority (ISA), the Commission on the Limits of the Continental Shelf (CLCS), and the International Tribunal for the Law of the Sea (ITLOS)—which constitute significant mechanisms for contemporary global ocean governance.

12. Notwithstanding its comprehensive scope, UNCLOS does not claim to regulate every aspect of the law of the sea. As Judge **Vladimir Golitsyn** (former

University Press, 2015) 26.

¹ For the relationship between 1982 UNCLOS and four Geneva Conventions of 1958, see, for example, Franck Latty, « Du droit coutumier aux premières tentatives de codification » dans Mathias Forteau, Jean-Marc Thouvenin (dir.), *Traité de droit international de la mer* (Pedone, 2017) 51-52; Robin R. Churchill, 'The 1982 United Nations Convention on the Law of the Sea' in Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015) 30.

President of the ITLOS) has noted, UNCLOS “cannot and has never been intended to provide an answer to every issue arising in connection with the use of the oceans and their governance.”¹ The distinguished French scholars **Laurent Lucchini** and **Michel Voelckel**, writing in the 1990s, argued that any attempt to codify the entire corpus of the law of the sea within a single, monolithic convention—thereby stifling the natural development of customary law—would be legally unsustainable.² **Robin Churchill** (emeritus professor at the University of Dundee, UK) adds that to avoid excessive rigidity and rapid obsolescence, UNCLOS deliberately stops short of prescribing exhaustive regulations for specific activities such as navigation, fishing, mineral extraction (including hydrocarbons), scientific research, and the laying of submarine cables and pipelines.³

2.3 An Open and Inclusive Framework, Evolving through Subsequent Agreements

13. UNCLOS establishes an open, inclusive legal framework and remains capable of continued evolution through subsequent implementing agreements. As a comprehensive legal framework for ocean governance, UNCLOS functions not as a self-contained “insulator” but as an inclusive “regulator.” Historically, State practice has served as a primary force in shaping the evolution of the law of the sea. To align with its continued development, subsequent implementing agreements have been negotiated under the UNCLOS framework, addressing the Area, straddling and highly migratory fish stocks, and marine biodiversity beyond national jurisdiction.

14. The conclusion of the first such implementing agreement exemplifies the accommodative character of UNCLOS. Dissatisfaction among major developed

¹ Vladimir Golitsyn, ‘Foreword’ in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos, 2017) V.

² Laurent Lucchini and Michel Voelckel write in **French** as follows: « Il est néanmoins impossible d’un point de vue juridique de geler dans un bloc conventionnel monolithique l’ensemble des règles du droit de la mer et de prétendre entraver le fonctionnement normal de la création coutumière. » See Laurent Lucchini et Michel Voelckel, *Droit de la Mer: Tome I—La mer et son droit, les espaces maritimes* (Pedone, 1990) 96.

³ Robin R. Churchill, ‘The 1982 United Nations Convention on the Law of the Sea’ in Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015) 29-30.

States with Part XI (the regime for mineral resources in the Area) initially slowed ratifications; by April 1990, only 42 States—predominantly developing countries—had ratified UNCLOS.¹ Following intensive negotiations, the UN General Assembly adopted the *Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982* (1994 Implementation Agreement) on 28 July 1994², thereby modifying and supplementing Part XI. The Agreement reforms certain operating rules of the original regime, including eliminating the mandatory obligations of technology transfer, removing the overall production-limitation mechanism, and revising the financial regime for seabed exploitation (notably abolishing the requirement that a contractor pay an annual fixed fee of \$US 1 million). Crucially, the Agreement preserves the basic framework UNCLOS establishes for the Area, reaffirms that the Area and its resources are the common heritage of mankind, and confirms that the ISA is to act for and on behalf of mankind as a whole in authorizing, organizing and controlling exploration and exploitation in the Area. The 1994 Agreement and Part XI of UNCLOS are to be interpreted and applied as a single instrument, with the Agreement prevailing in the event of inconsistency.³ Despite these modifications, which entailed a certain relaxation of the seabed regime⁴, the United States and several other States remain Non-Parties to both UNCLOS and the 1994 Implementation Agreement.

15. To give effect to UNCLOS provisions on straddling fish stocks and highly migratory fish stocks and to promote their conservation and sustainable use, States adopted in 1995, within the UNCLOS framework, the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UN Fish Stocks Agreement). Since

¹ Erwin Beckert und Gerhard Breuer, *Öffentliches Seerecht* (Walter de Gruyter, 1991) 36.

² United Nations General Assembly, *Resolution 48/263*, A/RES/48/263 (17 August 1994).

³ Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (adopted 28 July 1994, entered into force 28 July 1996) 1836 UNTS 3 (1994 Implementation Agreement) art 2(1).

⁴ Wolfgang (Graf) Vitzthum, 'Kapitel 1. Begriff, Geschichte und Rechtsquellen des Seerechts' in Wolfgang (Graf) Vitzthum (Hrsg.), *Handbuch des Seerechts* (Verlag C.H. Beck, 2006) 42.

then, technological advances and rapid environmental change have exposed widening gaps in the rule-making supply of ocean governance. Against this backdrop, the *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction* (BBNJ Agreement), concluded in 2023 and entered into force in 2026, fills the gaps left by UNCLOS—particularly regarding marine genetic resources (MGR) and the activities related thereto—provides the legal basis for area-based management tools, including marine protected areas, at the global level, elaborates UNCLOS environmental impact assessment obligations, and strengthens capacity-building and the transfer of marine technology. The BBNJ Agreement thus constitutes an important further development of the modern law of the sea. Currently, States are actively engaged in significant rule-making processes at the international level—most notably the elaboration of the regulations for the exploitation of mineral resources in the Area—which underscores the dynamic and continuous evolution of the rules governing international ocean governance.

2.4 The “Constitution for the Oceans”: A Misleading Elevation

16. The label “Constitution for the Oceans” is a misleading metaphor, disconnected from the structure and reality of the international legal system. Given its comprehensive scope, UNCLOS is thus characterized as a “constitution for the oceans,” often invoked in political discourse. While this political metaphor underscores its significance, **Rainer Lagoni**, a German scholar in international law, cautions that even metaphorical usage could be misleading with regard to the effect of UNCLOS on “conflicting treaty rules or agreements.”¹

17. Notwithstanding its significance, UNCLOS remains but one important treaty within the international legal system; it does not possess the constitutional supremacy akin to that of domestic constitutions, as confirmed by several scholarly studies and

¹ Rainer Lagoni, ‘Preamble’ in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos, 2017) 16.

authoritative reports. The 2006 **Report of the International Law Commission (ILC) Study Group on *Fragmentation of International Law*** (hereinafter “ILC Fragmentation Report”) emphasizes the “horizontal” nature of the international legal system: unlike domestic systems which are organized in a strict hierarchy with a constitution at the highest level, the rules and principles of international law are not in a hierarchical relationship, nor are the different sources of law (treaty, custom, general principles) ranked in any general order of priority. There is no such formal constitution in international law, and consequently, no general order of precedence among international legal rules.¹ On the question of whether UNCLOS constitutes a genuine “constitution,” **Rainer Lagoni** further notes:

A ‘constitution’ in the proper sense of the law of modern States is a legal instrument which normally is adopted by a constitutional assembly with a particular legitimation for this act. It forms a comprehensive system of governance within a State. In the hierarchy of domestic norms a constitutional principle or rule is of a higher rank. A law is generally null and void if it violates the constitution. In contradistinction to these criteria, UNCLOS III was a diplomatic conference, not a constitutional assembly with a supreme law making power. The Convention was adopted as an international treaty, not as a constitution, which internationally would require the consent of all sovereign States to be constitutionally bound. States Parties are legally bound by the Convention, they are not subject to a constitution.²

A **British scholar** further argues that UNCLOS lacks two of the most essential constitutional elements: it neither establishes a constitutional structure of superior laws with invalidating effects, nor can it be said that UNCLOS establishes the legal order of the sea.³

18.Article 311 of UNCLOS does not establish its constitutional supremacy, nor should it be so misinterpreted. This provision, whose purpose is to regulate the relationship between the UNCLOS and other conventions and international

¹ International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc A/CN.4/L.682 and Add.1 (13 April 2006), para 324.

² Rainer Lagoni, ‘Preamble’ in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos, 2017) 11

³ Reece Lewis, ‘The “Constitution for the Oceans”? The Law of the Sea Convention as a Living Treaty’ (2025) 74(1) *International and Comparative Law Quarterly* 8.

agreements, is a conflict clause of the type commonly found in international treaties.¹ The **ILC Fragmentation Report** systematically examines treaty conflict clauses and categorises paragraphs 1, 2, and 3 of Article 311 into different types thereof. The Report notes that many conflict clauses in UNCLOS are quite open-ended and refrain from setting up neat priorities.² The relationship between the wording of Article 311 and the relevant rules of the 1969 Vienna Convention on the Law of Treaties (VCLT) is also noteworthy. As acknowledged by a **German scholar**, Article 311 is to some extent “modeled after” VCLT rules, such as those governing the application of successive treaties relating to the same subject matter (Article 30 VCLT) and agreements modifying or suspending treaty provisions between certain parties only (Articles 41 and 58 VCLT).³ In our view, this precisely demonstrates that Article 311 is a typical conflict clause whose core function is to prevent or resolve potential normative conflicts, not to establish the constitutional supremacy of UNCLOS.

19. International judicial and arbitral bodies have not accorded UNCLOS a position of general primacy. Instead, the applicable law is determined on a case-by-case basis, and in certain circumstances, UNCLOS may even be excluded from application. In the *Southern Bluefin Tuna cases*, the arbitral tribunal recognised the simultaneous applicability of both the 1982 UNCLOS and the 1993 Convention for the Conservation of Southern Bluefin Tuna, observing that “it is a commonplace of international law and State practice for more than one treaty to bear upon a particular dispute” and that “[t]here is frequently a parallelism of treaties.”⁴ Similarly, in the *MOX Plant* case, the ITLOS stated that rights and “obligations under other treaties, even if similar to those under UNCLOS, “have a separate existence.”⁵ Within the *sui generis*⁶

¹ International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc A/CN.4/L.682 and Add.1 (13 April 2006), para 268.

² International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc A/CN.4/L.682 and Add.1 (13 April 2006), para 278.

³ Nele Matz-Lück, ‘Art. 311’ in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos, 2017) 2011.

⁴ *Southern Bluefin Tuna Case between Australia and Japan and between New Zealand and Japan*, Award on Jurisdiction and Admissibility, 4 August 2000, RIAA, Vol. XXIII, p. 1, at p. 40, para 52.

⁵ *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p.95, at p. 106, para 50.

⁶ Wolfgang (Graf) Vitzthum, ‘Kapitel 1. Begriff, Geschichte und Rechtsquellen des Seerechts’ in Wolfgang (Graf) Vitzthum (Hrsg.), *Handbuch des Seerechts* (Verlag C.H. Beck, 2006) 8.

legal order of the European Union (EU), UNCLOS, as a “mixed agreement,” occupies a normative rank below that of EU primary law, such as the Treaty on the Functioning of the European Union.¹ In *Commission v. Ireland (Case C-459/03)*, the European Court of Justice (ECJ) held that the relevant UNCLOS provisions invoked by Ireland—mainly environmental protection provisions²—formed part of the Community legal order³, and that the dispute settlement system under the EC Treaty must in principle take precedence over that in Part XV of UNCLOS.⁴ This jurisprudence, as noted by **Annie Cudennec** (emeritus professor at the University of Western Brittany, France), “strictly frames (*encadre...strictement*)” the access of EU Member States to ITLOS.⁵

20. Some scholars contend that overemphasising the “constitution for the oceans” notion may constrain the law of the sea’s capacity to evolve. **Karen N. Scott** (professor at the University of Canterbury, New Zealand) argues that this characterisation “has become a straitjacket for the [law-of-the-sea] regime” and hinders exploration of alternative approaches. She advocates for a “quiet abandonment” of the term to dispel its practical and perceptual consequences.⁶ Similarly, a **British scholar** warns that viewing UNCLOS as the “constitution for the oceans” fosters a “false sense of security”, and does not necessarily help it remain an effective and enduring framework.⁷

¹ Gabriela A. Oanta, ‘The European Court of Justice and the Interpretation of the United Nations Convention on the Law of the Sea’ in Angela Del Vecchio and Roberto Virzo (eds), *Interpretations of the United Nations Convention on the Law of the Sea by International Courts and Tribunals* (Springer Nature Switzerland AG, 2019) 285.

² *Commission v. Ireland (Case C-459/03)*, Judgement, 30 May 2006, European Court of Justice, para 89.

³ *Commission v. Ireland (Case C-459/03)*, Judgement, 30 May 2006, European Court of Justice, para 121.

⁴ *Commission v. Ireland (Case C-459/03)*, Judgement, 30 May 2006, European Court of Justice, para 125.

⁵ Annie Cudennec writes in **French** as follows: « Cette position de la Cour de justice encadre dès lors strictement l’accès des États membres de l’Union au TIDM. » See Annie Cudennec, « L’Union européenne et la CNUDM » dans Marie-Pierre Lanfranchi (dir.), *La Convention des Nations Unies sur le droit de la mer: Bilan et perspectives* (DICE, 2024) 100.

⁶ Karen N. Scott, ‘The LOSC: A “Constitution for the Oceans” in the Anthropocene?’ (2023) 41(1) *Australian Year Book of International Law* 269.

⁷ Reece Lewis, ‘The “Constitution for the Oceans”? The Law of the Sea Convention as a Living Treaty’ (2025) 74(1) *International and Comparative Law Quarterly* 1.

3. Pillars of the Modern Law of the Sea: UNCLOS alongside Other Relevant Treaties and Customary International Law

21. The modern legal order for the seas and oceans is established jointly by UNCLOS, other relevant treaties, and customary international law. UNCLOS neither covers all law-of-the-sea issues¹ nor stands as the sole source of the law of the sea. Rather, it constitutes but one important pillar of the modern legal order for the seas and oceans, together with other relevant treaties and customary international law.

3.1 Where UNCLOS Falls Silent: Applying General International Law to Non-regulated Matters

22. Matters not regulated by UNCLOS continue to be governed by the rules and principles of general international law. The modern law of the sea constitutes an open and inclusive system, encompassing UNCLOS, other relevant treaties, and customary international law. While UNCLOS regulates a wide range of matters, it does not purport to provide exhaustive norms for all maritime activities. Its Preamble explicitly provides that “matters not regulated by this Convention continue to be governed by the rules and principles of general international law,”² thereby confirming the existence of matters falling outside the scope of UNCLOS. Whether a matter is regulated by UNCLOS must be determined through the interpretation of its relevant provisions in accordance with Articles 31 to 33 VCLT. A “non-regulated matter” may also refer to “a particular aspect of an issue which cannot be resolved by interpretation.”³ Furthermore, the “general international law” referred to in the Preamble encompasses not only international custom within the meaning of the Statute of the International Court of Justice (ICJ) or customary international law as

¹ See, for example, Anastasia Strati, Maria Gavouneli, and Nikolaos Skourtos, ‘Introduction’ in Anastasia Strati, Maria Gavouneli and Nikolaos Skourtos (eds), *Unresolved Issues And New Challenges to the Law of the Sea: Time Before And Time After* (Martinus Nijhoff Publishers, 2016) xi-xii.

² UNCLOS preamble para 8.

³ Rainer Lagoni, ‘Preamble’ in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos, 2017) 16.

mentioned in VCLT, but also other conventions or agreements.¹

23. Sovereignty over land territory is not a matter regulated by UNCLOS, and is consequently excluded from its interpretation or application. In principle, a State's sovereignty over its land territory constitutes the foundation of its maritime rights. The Preamble of UNCLOS explicitly declares: "Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans[...]"² It is thus evident that "due regard for the sovereignty of all States" forms a fundamental precondition for applying UNCLOS to determine maritime rights. As emphasized by **Rainer Lagoni**, the German scholar in international law, for the interpretation of UNCLOS, its Preamble articulates its principal object and purpose, which is often of critical relevance for construing its provisions.³ The ICJ has consistently affirmed the principle that "the land dominates the sea" (*la terre domine la mer*) in its jurisprudence. For instance, in the *Maritime Delimitation and Territorial Questions (Qatar v. Bahrain)* case, the ICJ, reviewing prior decisions, clarified that maritime rights derive from the coastal State's sovereignty over land, encapsulating the principle that "the land dominates the sea,"⁴ and underscored that a State's terrestrial territorial situation (*situation territoriale terrestre*) must serve as the starting point for determining its maritime rights⁵. Similarly, in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case, the ICJ reaffirmed that "[t]he title of a State to the continental shelf and to the exclusive economic zone is based on the principle that the land dominates the sea through the projection of the coasts or the coastal fronts", and that "the land is the legal source of the power which a State may exercise over territorial extensions to seaward."⁶

¹ Rainer Lagoni, 'Preamble' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos, 2017) 15-16.

² UNCLOS preamble para 4.

³ Rainer Lagoni, 'Preamble' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos, 2017) 3.

⁴ *Délimitation maritime et questions territoriales entre Qatar et Bahrein, fond, arrêt*, C.I.J. Recueil 2001, p. 40.à p. 97, para 185. This judgment is rendered in French and in English, the French text being authoritative.

⁵ *Délimitation maritime et questions territoriales entre Qatar et Bahrein, fond, arrêt*, C.I.J. Recueil 2001, p. 40.à p. 97, para 185.

⁶ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment*, I.C.J. Reports 2012, p. 624 at p. 674, para 140.

24. In practice, certain disputing parties, eager to invoke Annex VII arbitration under UNCLOS, have strategically engineered their submissions. By conflating sovereignty over land territory—the “principal question”—with maritime rights, they fabricate a “mixed dispute” imbued with elements of both sovereignty over land territory and maritime rights. Subsequently, employing a *Procrustean approach*¹, they downgrade the matter of sovereignty over land territory to an “incidental question.” This repackages the dispute in its entirety as a matter concerning the interpretation or application of UNCLOS, thereby attracting the jurisdiction of an Annex VII tribunal. A study by the *British Institute of International and Comparative Law* identifies this phenomenon as a “deliberate strategic choice.”² Critiquing the *Award on Jurisdiction and Admissibility in the South China Sea Arbitration*, Jean-Louis Iten (professor at the University of Paris 8, France) observed that the dispute adjudicated was “artificially defined by the claimant (*artificiellement déterminé par le demandeur*)”³ and detached from the substance of sovereignty over land territory—a so-called “rootless” dispute (*différend « hors-sol »*)⁴. The claimant’s submission appeared to constitute a “procedural trick (*astuce procédurale*)” designed to circumvent a finding of no jurisdiction.⁵ However, resorting to such “deliberate strategic choices” or “procedural tricks” not only undermines the credibility of the UNCLOS dispute settlement mechanism and the legitimacy of its awards, but also risks exacerbating interstate tensions and conflicts. As a Dutch scholar notes, “mixed disputes are more likely to give rise to conflict than ‘pure’ maritime delimitations.”⁶

¹ In Greek mythology, *Procrustes* was a notorious robber. He lured travelers to stay as guests, but it was a trap. He forced them onto his iron bed. If they were too short, he stretched their bodies to fit. If they were too tall, he chopped off their legs. All his guests died. Finally, *Theseus* (a legendary hero) killed him in like manner.

² British Institute of International and Comparative Law, *Mixed Disputes in International Dispute Settlement* (BIICL Research Report, 2025) 173.

³ Jean-Louis Iten, ‘Sentence arbitrale sur la compétence et la recevabilité du 29 octobre 2015 dans l’Arbitrage entre la République des Philippines c. la République populaire de Chine devant la Cour permanente d’arbitrage’, *Annuaire français de droit international*, 61 (2015) 295.

⁴ Jean-Louis Iten, ‘Sentence arbitrale sur la compétence et la recevabilité du 29 octobre 2015 dans l’Arbitrage entre la République des Philippines c. la République populaire de Chine devant la Cour permanente d’arbitrage’, *Annuaire français de droit international*, 61 (2015) 298-301.

⁵ Jean-Louis Iten, ‘Sentence arbitrale sur la compétence et la recevabilité du 29 octobre 2015 dans l’Arbitrage entre la République des Philippines c. la République populaire de Chine devant la Cour permanente d’arbitrage’, *Annuaire français de droit international*, 61 (2015) 296.

⁶ Irina Buga, ‘Territorial Sovereignty Issues in Maritime Disputes: A Jurisdictional Dilemma for Law of the Sea Tribunals’ (2012) 27 *International Journal of Marine and Coastal Law* 62.

25. While UNCLOS provides a framework for maritime delimitation, it refrains from prescribing exhaustive regulations.¹ For instance, UNCLOS lays down only general principles regarding delimitation, without specifying concrete methodologies; the contours of these principles have been elucidated through subsequent international judicial decisions. In accordance with the ICJ Statute, “[t]he decision of the Court has no binding force except between the parties and in respect of that particular case.”² However, “judicial decisions” may function as a “subsidiary means for the determination of rules of law.”³ This dynamic is well illustrated by the *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States)* case. Examining the state of international law at the time, including the not-yet-in-force Articles 74 and 83 of UNCLOS⁴, the Chamber of the ICJ cautioned against seeking overly precise rules in customary international law:

A body of detailed rules is not to be looked for in customary international law which in fact comprises a limited set of norms for ensuring the co-existence and vital co-operation of the members of the international community, together with a set of customary rules whose presence in the *opinio juris* of States can be tested by induction based on the analysis of a sufficiently extensive and convincing practice, and not by deduction from preconceived ideas. It is therefore unrewarding, especially in a new and still unconsolidated field like that involving the quite recent extension of the claims of States to areas which were until yesterday zones of the high seas, to look to general international law to provide a ready made set of rules that can be used for solving any delimitation problems that arise.⁵

¹ See UNCLOS arts 15, 74, 83.

² Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) (ICJ Statute) art 59.

³ ICJ Statute art 38(1)(d).

⁴ *Délimitation de la frontière maritime dans la région du golfe du Maine*, arrêt, C.I.J. Recueil 1984, p. 246. à p. 294, para 95. This judgment is rendered in French and in English, the French text being authoritative.

⁵ This judgment is rendered in French and in English, the French text being authoritative. There are certain discrepancies in tone and wording between the English and French versions of this cited passage. Notably, the English text refers to “general international law”, whereas the French text employs the term “customary international law (*droit international coutumier*)”. The **French** text reads as follows:

Il ne faut pas rechercher dans le droit international coutumier un corps de règles détaillées. Ce droit comprend en réalité un ensemble restreint de normes propres à assurer la coexistence et la coopération vitale des membres de la communauté internationale, ensemble auquel s'ajoute une série de règles coutumières dont la présence dans l'opinio juris des États se prouve par voie d'induction en partant de l'analyse d'une pratique suffisamment étoffée et convaincante, et non pas par voie de déduction en partant d'idées préconstituées à priori. Il est donc vain, surtout dans une matière nouvelle et encore peu consolidée comme celle qui est liée à l'extension toute récente des revendications des États à des aires qui constituaient hier encore des zones de haute mer, de vouloir puiser dans le droit international coutumier un ensemble déjà tout formé de règles prêtes à être appliquées à la solution de tous les problèmes de délimitation qui se présentent.

See *Délimitation de la frontière maritime dans la région du golfe du Maine*, arrêt, C.I.J. Recueil 1984, p. 246. à p.

Building on this understanding, the arbitral tribunal in the *Barbados v. Trinidad and Tobago* case famously described the delimitation rules set out in UNCLOS as a “simple and imprecise formula.”¹

3.2 Other Relevant Treaties: Functioning in Parallel

26. Beyond UNCLOS, other relevant treaties—whether concluded before or after it—also play a part in regulating maritime issues. UNCLOS explicitly calls for action through “[the] competent international organization[s]”² and requires State Parties to follow “generally accepted international rules and standards.”³ This shows that UNCLOS respects the roles of other organizations and its legal instruments thereunder. Numerous provisions within UNCLOS can only be implemented through mechanisms such as “other international agreements and arrangements.”⁴

27. The International Maritime Organization (IMO) has promulgated numerous maritime conventions⁵, codes, guidelines, and resolutions, and is recognized as playing a “critical role” in the international law of the sea.⁶ The maritime conventions adopted or administered under the auspices of the IMO generally fall into three categories. First, conventions related to maritime safety, such as the *International Convention for the Safety of Life at Sea (SOLAS)*⁷. Second, conventions concerning the prevention of marine pollution, such as the *International Convention for the*

299, para 111.

¹ *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them*, decision of 11 April 2006, RIAA, Vol. XXVII, p. 147, at p. 210, para 222.

² For example, UNCLOS arts 61, 211, 238.

³ See UNCLOS arts 211, 226.

⁴ See, for example, International Maritime Organization, *Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization*, LEG/MISC.8 (IMO, 2014) p. 8; Division for Ocean Affairs and the Law of the Sea, *United Nations Convention on the Law of the Sea at 40: Successes and Future Prospects* (United Nations, 2022) p. 2; Edmund Hughes, ‘The IMO: Ship-sourced Emissions, Climate Change, and Global Ocean Governance’ in David Joseph Attard, Rosalie P. Balkin, and Donald W. Greig (eds), *The IMLI Treatise on Global Ocean Governance: Volume III: The IMO and Global Ocean Governance* (Oxford University Press, 2018) 208.

⁵ See IMO, ‘List of IMO Conventions’, <<https://www.imo.org/en/about/conventions/pages/listofconventions.aspx>> accessed 19 March 2026.

⁶ Aldo Chircop, ‘The International Maritime Organization’ in Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015) 418.

⁷ See IMO, ‘International Convention for the Safety of Life at Sea (SOLAS), 1974’, <[https://www.imo.org/en/about/conventions/pages/international-convention-for-the-safety-of-life-at-sea-\(solas\)-1974.aspx](https://www.imo.org/en/about/conventions/pages/international-convention-for-the-safety-of-life-at-sea-(solas)-1974.aspx)> accessed 19 March 2026.

*Prevention of Pollution from Ships (MARPOL)*¹. Third, conventions addressing liability and compensation, particularly for pollution damage, exemplified by the *International Convention on Civil Liability for Oil Pollution Damage (CLC)*². Additionally, numerous other conventions cover areas such as the facilitation of maritime traffic, tonnage measurement, unlawful acts against ships, and salvage operations. It is worth noting that most of these maritime conventions were adopted many years before UNCLOS.

28. UNESCO also plays a significant role in maritime legal affairs. As **Tullio Scovazzi** (professor at the University of Milano-Bicocca, Italy) noted, UNCLOS does not provide a comprehensive regime for underwater cultural heritage.³ The 2001 *UNESCO Convention on the Protection of Underwater Cultural Heritage* helps fill the gaps in the 1982 UNCLOS, especially by protecting a wider area, setting clearer rules on jurisdiction, keeping commercial salvagers away, and providing scientific standards for protection.⁴

3.3 Customary International Law: Enduring as an Irreplaceable Source of the Law of the Sea

29. Customary international law remains a vital component of international law, including the law of the sea, and continues to play an irreplaceable role. As a Greek scholar in international law has noted, the drafters of UNCLOS acknowledged that certain pre-existing rules of customary law were not incorporated into UNCLOS.⁵

¹ See IMO, 'International Convention for the Prevention of Pollution from Ships (MARPOL)', <[https://www.imo.org/en/about/conventions/pages/international-convention-for-the-prevention-of-pollution-from-ships-\(marpol\).aspx](https://www.imo.org/en/about/conventions/pages/international-convention-for-the-prevention-of-pollution-from-ships-(marpol).aspx)> accessed 19 March 2026.

² See IMO, 'International Convention on Civil Liability for Oil Pollution Damage (CLC)', <[https://www.imo.org/en/about/conventions/pages/international-convention-on-civil-liability-for-oil-pollution-damage-\(clc\).aspx](https://www.imo.org/en/about/conventions/pages/international-convention-on-civil-liability-for-oil-pollution-damage-(clc).aspx)> accessed 19 March 2026.

³ Tullio Scovazzi, 'Article 303' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos, 2017) 1950.

⁴ See generally Anastasia Strati, 'Protection of the Underwater Cultural Heritage: From the Shortcomings of the UN Convention on the Law of the Sea to the Compromises of the UNESCO Convention' in Anastasia Strati, Maria Gavouneli and Nikolaos Skourtos (eds), *Unresolved Issues And New Challenges to the Law of the Sea: Time Before And Time After* (Martinus Nijhoff Publishers, 2016) 21-62.

⁵ Ioannis Stribis writes in **French** as follows : « Ainsi, malgré l'attitude de réserve, voire le scepticisme, envers le droit international coutumier de la mer qui caractérisait la période de la 3^e ConfNUDM, les auteurs de la CNUDM reconnaissent qu'ils existent quelques normes coutumières antérieures à l'adoption de la Convention qui n'y ont pas été codifiées. » See Ioannis Stribis, « CNUDM et coutume internationale: 40 ans après » dans Marie-Pierre Lanfranchi (dir.), *La Convention des Nations Unies sur le droit de la mer: Bilan et perspectives* (DICE, 2024) 150.

Although UNCLOS ambitiously seeks to regulate all aspects of the international law of the sea in peacetime, the evolution of customary law has not ceased.¹ **Michael Wood** (former member of the International Law Commission) points out that customary international law plays a significant role in relations with Non-Parties, matters not regulated by UNCLOS, the interpretation and application of its provisions, and the modification or supplementation of its rules.² Furthermore, matters concerning matters including historic rights and outlying archipelagos continue to be regulated by customary international law.

30. UNCLOS codifies certain rules of customary international law, and international judicial bodies have recognized some of its provisions as reflecting customary international law. However, not all provisions of UNCLOS may be regarded as customary international law. As **Robin Churchill** (emeritus professor at the University of Dundee, UK) writes:

Some States and commentators, including the USA, take the view that the whole of the LOSC apart from Part XI represents customary international law. This seems an oversimplification. It is certainly true that many provisions of the LOSC have this character, either because they represent rules of customary international law of longstanding codified in the Geneva Conventions and repeated in the LOSC; or because they have passed into custom as a result of State practice during or subsequent to the negotiation of the LOSC, as has been recognized by international courts and tribunals. However, some parts of the LOSC are simply not of a nature that can pass into customary international law: that is the case with those provisions concerning the three bodies that the LOSC establishes (the International Seabed Authority, the ITLOS, and the Commission on the Limits of the Continental Shelf (CLCS)) and the provisions on the settlement of disputes. Furthermore, many of those provisions that were described earlier as being 'soft' would seem not to be of the 'fundamentally norm-creating character', which the International Court of Justice has said is necessary for a treaty provision to become part of customary international law.³

¹ Ioannis Stribis writes in **French** as follows : « Malgré l'ambition de la Convention de régir tous les aspects du droit international de la mer (en temps de paix), le processus coutumier n'a pas pu être arrêté. » See Ioannis Stribis, « CNUDM et coutume internationale: 40 ans après » dans Marie-Pierre Lanfranchi (dir.), *La Convention des Nations Unies sur le droit de la mer: Bilan et perspectives* (DICE, 2024) 180.

² Michael Wood, « Le rôle contemporain du droit international coutumier » dans Mathias Forteau, Jean-Marc Thouvenin (dir.), *Traité de droit international de la mer* (Pedone, 2017) 73-77.

³ Robin R. Churchill, 'The 1982 United Nations Convention on the Law of the Sea' in Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015) 37-38.

Michael Wood (former member of the International Law Commission) expressed agreement with this view. He pointed out that the institutional provisions of UNCLOS, particularly those concerning the International Seabed Authority and the Commission on the Limits of the Continental Shelf, as well as the clauses on the peaceful settlement of disputes, do not possess a “fundamentally normative character (*caractère fondamentalement normatif*)”, and cannot be regarded as reflecting customary international law.¹

¹ The **French** version (translation) of Michael Wood's writing reads as follows:

Les dispositions d'ordre institutionnel de la convention des Nations Unies sur le droit de la mer, notamment celles relatives à l'Autorité des fonds marins et la Commission des limites du plateau continental, ainsi que celles portant sur le règlement pacifique des différends (partie XV) ne possèdent pas un 'caractère fondamentalement normatif' et ne peuvent pas être considérées comme reflétant le droit international coutumier.

See Michael Wood, « Le rôle contemporain du droit international coutumier » dans Mathias Forteau, Jean-Marc Thouvenin (dir.), *Traité de droit international de la mer* (Pedone, 2017) 72.

4. Navigating UNCLOS Implementation: Between Inherent Limitations and External Challenges

31. UNCLOS continues to face urgent inherent limitations and external challenges in its implementation. Like any international treaty, it suffers from inherent weakness. As Ms. **Annick de Marffy-Mantuano** (former Director of the UN Division for Ocean Affairs and the Law of the Sea) observed, UNCLOS is far from a flawless instrument. Many of its provisions received ambiguous content, either because the international context precluded definitive solutions, or because the relevant geographical context was not yet ripe at the time of drafting.¹

4.1 Regulatory Ambiguity and Unforeseen Developments

32. The limitations of relevant UNCLOS provisions undermine the effectiveness of their implementation. As a “package deal” born of compromise and a balance of interests, certain UNCLOS provisions were deliberately phrased in ambiguous terms, as negotiators could not secure full satisfaction for all parties. Consequently, some scholars regard these as products of deficient drafting. Furthermore, emerging challenges—such as climate change and artificial intelligence, which lay beyond the drafters’ foresight—continue to test the interpretation and application of UNCLOS.

33. Article 121, paragraph 3 of UNCLOS is a prime example of the fragile balance of interests among State Parties. It stipulates that “rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.” A review of the negotiating history reveals that this provision was indeed a product of compromise and interest balancing. **Haritini Dipla** (emeritus professor at the National and Kapodistrian University of Athens, Greece), noted in her 1984 monograph *Le régime juridique des îles dans le droit international de la mer* that

¹ Annick de Marffy-Mantuano writes in **French** as follows : « La Convention, plus de 20 ans après son entrée en vigueur, n’est pas un instrument parfait. De nombreuses dispositions ont reçu un contenu ambigu soit parce que le contexte international ne permettait pas d’apporter des solutions, soit parce que le contexte géographique ne s’y prêtait pas. » See Annick de Marffy-Mantuano, « La convention de Montego Bay » dans Mathias Forteau, Jean-Marc Thouvenin (dir.), *Traité de droit international de la mer* (Pedone, 2017) 65.

the provision treats habitability (*habitabilité*) and economic viability (*viabilité économique*) as alternative conditions, yet suffers from a “lack of clarity” (*manque de clarté*) and a “lack of definition” (*manque de définition*) for key terms.¹ She described it as a “typical outcome of difficult negotiations based on consensus.”² Similarly, **Robert Kolb** (Professor at the University of Geneva, Switzerland) summarized scholarly criticism in a 1994 article, noting that the provision was condemned as an “entirely new rule of unique vagueness,” characterized by subjectivity and being “replete with uncertainties,” and criticized as “poor drafting.”³ He reviewed the negotiating history of UNCLOS III, revealing that Japan and the United Kingdom successively proposed deleting the provision—a move supported by Greece, France, and Australia but opposed by others. Due to time constraints and the need to preserve the overall “package deal” framework, paragraph 3 was retained in its current form.⁴ **Alexander Proelß** (Professor at the University of Hamburg, Germany) also pointed out in the 2006 *Handbuch des Seerechts* that, whether in terms of wording or legislative history, this “drafting failure (*redaktionell misslungenen*)” does not yield clear conclusions.⁵ Professor **Dipla** further criticized that the compromise embedded in Article 121, paragraph 3 raises more questions than it answers, stemming from a delicate compromise among divergent interests, making it particularly thorny to

¹ Haritini Dipla writes in **French** as follows:

Toutes ces questions montrent que les critères de l'habitabilité ou de la viabilité économique sont sujets à des abus, des manipulations et des changements. Le fait qu'ils sont mentionnés alternativement aggrave par ailleurs l'insuffisance de la règle et son manque de clarté. A tout cela s'ajoute enfin le manque de définition du terme « rocher ».

See Haritini Dipla, *Le régime juridique des îles dans le droit international de la mer* (PUF, 1984) p. 65.

² Haritini Dipla writes in **French** as follows:

L'article 121, chiffre 3, est le résultat typique d'une négociation difficile fondée sur le consensus, dans le sens qu'il représente une tentative de concilier les deux tendances qui se sont manifestées au sein de la Conférence : l'une consistait, on l'a vu, à attribuer une zone économique à toutes les îles, alors que l'autre favorisait l'introduction d'un nombre exagéré de critères qui auraient abouti, s'ils avaient été acceptés, à priver presque toute île d'une zone économique.

See Haritini Dipla, *Le régime juridique des îles dans le droit international de la mer* (PUF, 1984) p. 80.

³ Robert Kolb, ‘L’interprétation de l’article 121, paragraphe 3, de la convention de Montego Bay sur le droit de la mer : les « rochers qui ne se prêtent pas à l’habitation humaine ou à une vie économique propre... »’ (1994) 40 *Annuaire français de droit international* 879.

⁴ Robert Kolb, ‘L’interprétation de l’article 121, paragraphe 3, de la convention de Montego Bay sur le droit de la mer : les « rochers qui ne se prêtent pas à l’habitation humaine ou à une vie économique propre... »’ (1994) 40 *Annuaire français de droit international* 892-894.

⁵ Alexander Proelß writes in **German** as follows: „Weder Wortlaut noch Entstehungsgeschichte des redaktionell misslungenen Art. 121 Abs. 3 SRÜ führen insofern zu einem eindeutigen Ergebnis.“ See Rainer Lagoni/Alexander Proelß, ‘Kapitel 3. Festlandsockel und ausschließliche Wirtschaftszone’ in Wolfgang (Graf) Vitzthum (Hrsg.), *Handbuch des Seerechts* (Verlag C.H. Beck, 2006) 233.

interpret.¹ Professor **Kolb** likened the interpretation of this provision to opening a “Pandora’s box (*boîte de Pandore*),”² arguing that interpreters often cannot escape the truth revealed by the maxim “*ex ambiguitate lux ambigua oritur*” (Ambiguity begets ambiguous results).³ He prophesied that once this “box” is opened, it will inevitably trigger a series of complex new problems.

Today, Professor **Kolb**’s prophecy has come to pass. In an attempt to clear jurisdictional hurdles, the Arbitral Tribunal in the so-called “**South China Sea Arbitration**” forcibly opened this “Pandora’s box,” drawing sharp criticism. Judge **Gilbert Guillaume** (former President of the ICJ) pointed out that the Tribunal’s interpretation of Article 121, paragraph 3 is extremely tenuous. He argued that this teleological interpretation (*interprétation téléologique*) disregards (*méconnaît*) the ordinary meaning of the terms used, the negotiating history, and the general practice of states.⁴ **Pierre Michel Eisemann** (emeritus professor at Paris 1 Panthéon-Sorbonne University, France) offered similar criticism, noting that the Tribunal described the preparatory works (*travaux préparatoires*) in a “rather partial and summary manner (*assez partiels et sommaires*)”, failing to accurately reflect the reality of the negotiations and obscuring the objections of many states.⁵ It is evident

¹ Haritini Dipla writes in **French** as follows:

Comme on vient de le constater, le compromis contenu au chiffre 3 de l’article 121 pose plutôt des problèmes qu’il ne les résout. Issu d’un compromis délicat entre intérêts divergents, il contient une disposition dont l’interprétation se révèle problématique.

See Haritini Dipla, *Le régime juridique des îles dans le droit international de la mer* (PUF, 1984) 65.

² Robert Kolb, ‘L’interprétation de l’article 121, paragraphe 3, de la convention de Montego Bay sur le droit de la mer : les « rochers qui ne se prêtent pas à l’habitation humaine ou à une vie économique propre... »’ (1994) 40 *Annuaire français de droit international* 899-908.

³ Robert Kolb writes in **French** as follows: « Malheureusement l’interprète n’échappe pas souvent à cette vérité qu’exprime l’adage élégant ‘*ex ambiguitate lux ambigua oritur*’ ». See Robert Kolb, ‘L’interprétation de l’article 121, paragraphe 3, de la convention de Montego Bay sur le droit de la mer : les « rochers qui ne se prêtent pas à l’habitation humaine ou à une vie économique propre... »’ (1994) 40 *Annuaire français de droit international* 908.

⁴ Guillaume Gilbert writes in **French** as follows:

Au total la sentence arbitrale dans l’affaire de la mer de Chine méridionale a donné de l’article 121, § 3 une interprétation d’une grande fragilité. Cette interprétation téléologique méconnaît le sens ordinaire des mots utilisés, l’histoire de la négociation et la pratique généralisée des États.

See Guillaume Gilbert, ‘Îles, rochers et hauts-fonds découvrants en droit de la mer’ (2019) 65 *Annuaire français de droit international* 523.

⁵ Pierre Michel Eisemann writes in **French** as follows:

Le tribunal consacre ensuite quelques développements assez partiels et sommaires aux travaux préparatoires qui ne donnent pas une image véritablement fidèle des négociations dans la mesure où la présentation qui en est donnée occulte l’opposition de nombreux États au paragraphe 3 de l’article 121.

See Pierre Michel Eisemann, ‘Qu’est-ce qu’un rocher au sens de la Convention de Montego Bay de 1982? Observations sur la sentence arbitrale du 12 juillet 2016 relative à la mer de Chine méridionale’ (2020) 124(1) *Revue générale de droit international public* 29.

that a far-fetched, extreme, and one-sided “interpretation” of a provision embodying significant compromises and balances seriously distorts the negotiating history, undermines the solemnity, integrity, and authority of UNCLOS, and causes severe adverse effects on State practice.

34. The marine scientific research (MSR) regime under the UNCLOS framework offers a further case in point. While Part XIII of UNCLOS establishes the legal framework for MSR, it notably fails to define the term “marine scientific research” with legal precision. Although this definitional gap facilitated the negotiating flexibility necessary to secure compromise during UNCLOS III, it has led to uncertainty in legal application, divergences in state practice, and operational difficulties. This absence of a clear definition remains a persistent and structural challenge to the conduct of MSR in practice.

35. Furthermore, while UNCLOS stipulates that its Arabic, Chinese, English, French, Russian, and Spanish texts are equally authentic, persistent differences in the wording of certain legal terms across these versions risk causing confusion and divergence in the interpretation, application, and implementation of UNCLOS. For instance, Judge **Gilbert Guillaume** (former President of the ICJ) pointed out in his commentary that the term “rocks” in the English text of Article 121, paragraph 3 is ambiguous. According to the *Oxford English Dictionary*, the word has two definitions: one corresponding to the French “roche” (soft rock/minerals) and the other to “rocher” (hard, rugged cliff). Regrettably, the Tribunal failed to refer to other language versions to resolve this ambiguity. By not distinguishing between “roche” and “rocher,” it failed to give the term “rocher” in the French text its ordinary meaning.¹

¹ Guillaume Gilbert writes in **French** as follows:

La sentence a assimilé les rochers aux îles en usant de trois arguments. Elle a noté tout d'abord que, selon l'Oxford English Dictionary, « rocks 'may consist of aggregates of minerals [...] and occasionally also organic matter [...] They vary in hardness, and include soft materials such as clays' » . Cette citation est exacte, mais incomplète, car, si le dictionnaire d'Oxford donne bien cette définition des « rocks » en second rang, il fournit comme première définition celle d'une « large rugged mass of hard mineral material ». Dans le premier sens il s'agit en français d'une roche, dans le second sens d'un rocher. Mais si la version anglaise contient ainsi une part d'ambiguïté, il n'en est rien de la version française qui se réfère non aux roches, mais aux rochers, c'est-à-dire selon le dictionnaire de l'Académie à des « masses de pierre dures escarpées ».

36.Beyond that, UNCLOS, as a product of 1970s–1980s international lawmaking, exhibits inherent limitations in addressing contemporary issues. Advancements in marine technology and shifts in the natural environment have posed novel challenges to international ocean governance: artificial intelligence, climate change, sea-level rise, marine debris, ocean acidification, and underwater noise. These developments were largely unforeseeable to the drafters, precluding the inclusion of specific institutional arrangements. Scholars note that the real task lies in adapting the legal order of the seas to evolving realities; it must be recalled that UNCLOS has not successfully addressed all ocean uses.¹ This institutional lag reflects new demands for the international rule of law and creates space for the further development of the international law of the sea.

4.2 Abusive Practices in Treaty Interpretation and Dispute Settlement

37.The implementation of UNCLOS is increasingly confronted with abusive practices, notably the misinterpretation of its provisions and the abuse of its procedures. The adoption of UNCLOS embodies the spirit of compromise, establishing a delicate balance in coordinating diverse interests, allocating rights and obligations, and defining principles and exceptions. However, its implementation is plagued by recurring misinterpretations of its provisions and abuses of its procedures. For instance, certain States deliberately misinterpret the doctrine of “freedom of the seas,” abuse the concept of “freedom of navigation,” coin the non-textual term “international waters,” and disregard the obligation of “due regard.” These abusive practices not only severely undermine the delicately balanced mechanism of UNCLOS, but also gradually weaken its solemnity, integrity, and authority.

Les versions chinoise, espagnole et russe vont toutes dans le même sens et l'on peut regretter que, compte tenu de l'ambiguïté de l'anglais, le tribunal ne se soit pas penché sur les autres versions. S'il l'avait fait, il aurait été amené à distinguer roches et rochers et à donner au mot rocher son sens ordinaire, celui d'une éminence abrupte composée de roches dures.

See Guillaume Gilbert, ‘Îles, rochers et hauts-fonds découvrants en droit de la mer’ (2019) 65 *Annuaire français de droit international* 519.

¹ Anastasia Strati, Maria Gavouneli, and Nikolaos Skourtos, ‘Introduction’ in Anastasia Strati, Maria Gavouneli and Nikolaos Skourtos (eds), *Unresolved Issues And New Challenges to the Law of the Sea: Time Before And Time After* (Martinus Nijhoff Publishers, 2016) xi-xii.

38. Guided by teleology, certain actors invoke the provisions of UNCLOS under the guise of interpreting and applying UNCLOS to create rules beyond its text. This constitutes the most prominent issue in the current interpretation and application of UNCLOS. The ICJ clarified in its *Advisory Opinion on the Interpretation of Peace Treaties* that “[i]t is the duty of the Court to interpret the Treaties, not to revise them.”¹ However, a notable practice is observed in international adjudication: certain international tribunals or arbitral bodies, driven by the self-serving calculation of creating precedents, engage in the improper expansion of their jurisdictional scope. They blur the line between treaty interpretation and law-making, effectively creating rules under the guise of interpretation—a power that, in both theory and practice, resides solely with States and is realized through treaties embodying the consent of States. The so-called “interpretation” of Article 121, paragraph 3, in the *South China Sea Arbitration Award* is a case in point, drawing widespread criticism from scholars. A Chilean scholar in international law argued that the use of “or” (*o*) in Article 121, paragraph 3 indicates that “human habitation” and “economic life of their own” are alternative conditions (*alternativos*), not cumulative ones (*copulativos*). Yet, the Tribunal’s “practical interpretation (*interpretación práctica*)” distorted this relationship into a cumulative requirement, erroneously asserting that human habitation cannot exist without its own economic activity.² This implies that the Tribunal’s interpretation significantly raised the threshold for qualifying as “islands,” effectively constituting a “distortion (*desnaturalización*)” of the wording, context, and purpose of Article 121, paragraph 3.³ Judge Gilbert Guillaume (former President of the ICJ) and Pierre

¹ This advisory opinion is rendered in French and in English, the French text being authoritative. The French text reads as follows: « La Cour est appelée à interpréter les traités, non à les reviser. » See *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie*, Avis consultatif du 18 juillet 1950 (deuxième phase), C.I.J. Recueil 1950, 221.

² Francisco Lertora Pinto writes in Spanish as follows:

En este artículo se han criticado varias de las conclusiones a las cuales arribó el tribunal, destacando su contradicción con relación a que los requisitos que establece el párrafo 3 del artículo 121 son alternativos y no copulativos como los transforma el tribunal en base a una ‘interpretación práctica’ del párrafo donde a su juicio no puede existir vida humana sin una actividad económica propia, cuestión criticable en su razonamiento.

See Francisco Lertora Pinto, ‘El régimen jurídico de las islas en el derecho internacional: una interpretación del artículo 121 de la CONVEMAR’ (2022) 29 *Revista de Derecho (Coquimbo. En línea)* e4299.

³ Francisco Lertora Pinto writes in Spanish as follows: ‘Ello, a nuestro entender, supone una desnaturalización de la redacción, contexto y fin que tiene el no. 3 del artículo 121 (CONVEMAR, 1982), y, por tanto, el tribunal parece haber extremado el test de las rocas no aptas para generar espacios marítimos.’ See Francisco Lertora Pinto, ‘El régimen jurídico de las islas en el derecho internacional: una interpretación del artículo 121 de la CONVEMAR’

Michel Eisemann (emeritus professor at Paris 1 Panthéon-Sorbonne University, France) have offered similar critiques, asserting that the Tribunal did not interpret the text but rather engaged in a “complete rewriting” (*une réécriture complète*) of it.¹ Professor **Eisemann** further noted that the Tribunal, by adopting a “somewhat Promethean ambition (*une ambition quelque peu prométhéenne*)”² substituted itself for the negotiators of the 1982 Convention, offering a general and deformed reading of Article 121, paragraph 3. Regarding the motive behind this overreach, Professor **Eisemann** pointed out that the Tribunal acted to “circumvent its lack of jurisdiction to rule on questions of sovereignty (*contourner son absence de compétence pour se prononcer sur des questions de souveraineté*)” . The reasons are twofold: First, the Tribunal knew its award “would not in itself close the dispute (*n’allait pas en elle-même clore le litige*)”, inciting it to “develop an argumentation of general scope (*développer une argumentation de portée générale*)”. Second, while remaining within its limited jurisdiction, the Tribunal followed a “reasoning path (*cheminement*)” designed to frustrate China’s claims to an EEZ and continental shelf in the South China Sea. The Tribunal thus proceeded with extreme firmness in interpreting Article 121, paragraph 3, evidently intending to “create a judicial precedent (*faire jurisprudence*)”.³ However, Judge **Guillaume** and Professor **Eisemann** contend that

(2022) 29 *Revista de Derecho (Coquimbo. En línea)* e4299.

¹ Guillaume Gilbert writes in **French** as follows: « Le tribunal n’a pas procédé à une interprétation, mais à une réécriture complète du texte. » See Guillaume Gilbert, ‘Îles, rochers et hauts-fonds découvrants en droit de la mer’ (2019) 65 *Annuaire français de droit international* p. 521; also, Pierre Michel Eisemann writes in **French** as follows: « Aller aussi loin que le fait le tribunal conduit non plus à interpréter mais à réécrire le texte, ce qui ne saurait être le rôle de l’interprète. » See Pierre Michel Eisemann, ‘Qu’est-ce qu’un rocher au sens de la Convention de Montego Bay de 1982? Observations sur la sentence arbitrale du 12 juillet 2016 relative à la mer de Chine méridionale’ (2020) 124(1) *Revue générale de droit international public* 32.

² Pierre Michel Eisemann writes in **French** as follows:

Plutôt que des en tenir à l’application d’une disposition conventionnelle, certes peu explicite mais pour laquelle le recours au sens ordinaire des termes aurait vraisemblablement été suffisant pour qualifier de rocher les formations marines visées par les Philippines, le tribunal a préféré faire place à une ambition quelque peu prométhéenne en se substituant aux négociateurs de la convention de 1982 et en proposant une lecture générale et déformée du paragraphe 3 de l’article 121 CNUDM.

See Pierre Michel Eisemann, ‘Qu’est-ce qu’un rocher au sens de la Convention de Montego Bay de 1982? Observations sur la sentence arbitrale du 12 juillet 2016 relative à la mer de Chine méridionale’ (2020) 124(1) *Revue générale de droit international public* 7.

³ Pierre Michel Eisemann writes in **French** as follows:

Tel ne fut pas le cas et, sans compter que la réduction de certaines formations marines au rang de rocher permettait au tribunal de contourner son absence de compétence pour se prononcer sur des questions de souveraineté et ainsi de statuer sur certaines demandes des Philippines, on peut sans doute avancer deux hypothèses pouvant expliquer, au moins partiellement, ce parti. En premier lieu, le tribunal a pu y être conduit précisément par le comportement de la Chine puisqu’il était évident pour tous que la sentence n’allait pas en elle-même clore le litige, ce qui a pu l’inciter à développer une argumentation de portée générale. En second lieu, tout en restant dans le cadre limité de sa compétence, le tribunal a suivi un

such an award cannot constitute a judicial precedent.¹ When international tribunals and arbitral bodies distort the provisions of UNCLOS in violation of the general rules of treaty interpretation, driven by the self-serving calculations to establish jurisdiction and bolster their own authority, they ultimately do little more than severely undermine their own credibility and impair its solemnity and integrity of UNCLOS.

39. The abuse of the dispute settlement mechanism under UNCLOS and the excessive expansion of jurisdiction constitute another prominent issue in its current implementation. Certain disputing parties, fully aware that disputes of sovereignty over land territory are the substantive core and fall outside the regulatory scope of UNCLOS, deliberately engineer their claims to fabricate a “mixed dispute”² that conceals the matter of sovereignty over land territory under the guise of maritime rights disputes. This maneuver packages the dispute as a matter of the interpretation or application of UNCLOS, initiating Annex VII arbitration and thereby abusing the mechanism. The Arbitral Tribunal in the so-called “South China Sea Arbitration,” driven by self-serving calculations and disregarding its lack of jurisdiction regarding the matter of sovereignty over land territory, attempted to bring such matters within its jurisdictional scope through interpretive distortions—a grave error. Pursuant to Article 298 of UNCLOS, with respect to disputes concerning, *inter alia*, maritime delimitation, States Parties may submit declarations indicating their non-acceptance of the

cheminement qui lui a permis de contrarier les prétentions de la Chine au regard de droits sur une zone économique exclusive et un plateau continental dans des espaces revendiqués par les Philippines. Quoiqu'il en soit, le tribunal s'est livré de manière parfaitement résolue à l'interprétation du paragraphe 3 de l'article 121 CNUDM avec l'évidente volonté de faire jurisprudence.

See Pierre Michel Eisemann, ‘Qu’est-ce qu’un rocher au sens de la Convention de Montego Bay de 1982? Observations sur la sentence arbitrale du 12 juillet 2016 relative à la mer de Chine méridionale’ (2020) 124(1) *Revue générale de droit international public* 12-13.

¹ Guillaume Gilbert writes in **French** as follows: « La solution retenue s’explique peut-être par les circonstances particulières de l’espèce. Elle ne saurait faire jurisprudence. » See Guillaume Gilbert, ‘Îles, rochers et hauts-fonds découvrants en droit de la mer’ (2019) 65 *Annuaire français de droit international* 523; also, Pierre Michel Eisemann writes in **French** as follows:

Compte tenu des libertés prises avec le droit positif ainsi que des diverses failles dans le raisonnement des arbitres, on peut douter que la sentence arbitrale du 12 juillet 2016 soit amenée à faire jurisprudence, et ce d’autant moins qu’elle contredit indirectement plusieurs décisions de la Cour internationale de Justice et du Tribunal international du droit de la mer.

See Pierre Michel Eisemann, ‘Qu’est-ce qu’un rocher au sens de la Convention de Montego Bay de 1982? Observations sur la sentence arbitrale du 12 juillet 2016 relative à la mer de Chine méridionale’ (2020) 124(1) *Revue générale de droit international public* 38.

² See generally British Institute of International and Comparative Law, *Mixed Disputes in International Dispute Settlement* (BIICL Research Report, 2025).

compulsory dispute settlement procedures under Section 2 of Part XV. In accordance with this provision, China deposited with the Secretary-General of the United Nations a declaration on August 25, 2006, stating that “[t]he Government of the People’s Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a), (b) and (c) of Article 298 of the Convention.” This explicitly excludes from UNCLOS compulsory dispute settlement procedures disputes concerning maritime delimitation, historic bays or titles, military and law enforcement activities, and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations. Regrettably, to clear jurisdictional hurdles, the Tribunal, through a misinterpretation of Article 121, paragraph 3, sought to prevent the formation of “overlapping entitlements”¹—a legal prerequisite for maritime delimitation—thereby maliciously excluding the application of Article 298. **Romain Le Bœuf** (professor at the Aix-Marseille University, France) writes in his commentary on the *South China Sea Arbitration Award*:

Yet, one cannot help but notice that there is something forced (*quelque chose de forcé*) about the rendered decision. The issue certainly does not stem from a lack of expertise on the part of the arbitrators: the award is admirably crafted and bears witness to the Tribunal’s exquisite mastery of the subject. However—and herein lies the problem—the excessive refinements of the analysis too often reveal the colossal argumentative effort deployed by the Tribunal, both in establishing its jurisdiction and in grounding its conclusions. Although formally perfect, the award fails to convince. It is to be feared that only those who were already disposed to be persuaded before the award was rendered will be convinced by the arbitrators’ reasoning, while others will regret subtleties bordering on artifice.²

¹ See, for example, Stephen Fietta and Robin Cleverly, *A Practitioner’s Guide to Maritime Boundary Delimitation* (Oxford University Press, 2016) 3.

² Romain Le Bœuf writes in **French** as follows:

Pourtant, on ne peut manquer de remarquer qu’il y a quelque chose de forcé dans la décision rendue. Le problème ne tient certainement pas à un défaut d’expertise des arbitres : la sentence est admirablement conçue et témoigne de l’exquise maîtrise de son sujet par le Tribunal. Au point – et c’est tout le problème – que les raffinements de l’analyse laissent trop souvent apparaître le colossal effort argumentatif déployé par le Tribunal, aussi bien pour établir sa compétence que pour fonder ses conclusions. Quoique formellement parfaite, la sentence ne parvient pas à emporter la conviction, et il est à craindre que ne soient persuadés par le raisonnement des arbitres que ceux qui, avant même le prononcé de la sentence, étaient disposés à l’être. Les autres regretteront des subtilités confinant trop souvent à l’artifice.

See Romain Le Bœuf, ‘Différend en mer de Chine méridionale (Philippines c. Chine), sentence arbitrale du 12

Professor **Le Bœuf** further noted that the Tribunal constantly attempted to sever the link between the technical issues it addressed and the actual stakes for the parties. By defining the issues within its jurisdiction in this manner, the Tribunal ultimately distorted the true nature of the dispute.¹ The abuse of the UNCLOS mechanism not only fails to resolve maritime disputes but may also undermine the authority of the mechanism itself and the legitimacy of its awards, potentially destabilizing the region. Scholars have warned of this. **Natalie Klein**, an Australian scholar in law of the sea, warns in her book *Dispute Settlement in the UN Convention on the Law of the Sea* that such misuse risks undermining the authority of tribunals and diminishing the likelihood of compliance with the decision.² Critiquing the *Award on Jurisdiction and Admissibility in the South China Sea Arbitration*, **Jean-Louis Iten** (professor at the University of Paris 8, France) questioned the practical utility of the proceedings, writing:

One cannot help but question the utility (*l'utilité*) of a procedure seemingly incapable of improving the South China Sea crisis. On the contrary, the forthcoming decision (*la décision à venir*)—which, undoubtedly, will be hailed as a victory by the Philippines—will only fuel regional tensions.³

Pierre Michel Eisemann (emeritus professor at Paris 1 Panthéon-Sorbonne University) pointed out that the Award did not “truly resolve the South China Sea dispute” but might instead “trigger new disputes in other maritime areas that have

juillet 2016’ (2016) 62 *Annuaire français de droit international* 180-181.

¹ Romain Le Bœuf writes in **French** as follows:

Sans doute les juges doivent-ils faire, en assurant leur office, abstraction de la dimension politique qui accompagne toujours les différends dont ils sont saisis. Sans doute, plus fondamentalement, le droit doit-il conserver son autonomie par rapport aux ordres de considérations qui lui sont extérieurs. Cependant, la déconnexion constante que cherche à établir le Tribunal entre les questions techniques qu’il résout et leurs enjeux réels pour les parties conduit à se demander si, en qualifiant comme il l’a fait les questions soumises à sa compétence, la juridiction n’en est pas arrivée à dénaturer le différend qui oppose véritablement les parties.

See Romain Le Bœuf, ‘Différend en mer de Chine méridionale (Philippines c. Chine), sentence arbitrale du 12 juillet 2016’ (2016) 62 *Annuaire français de droit international* 181.

² Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* (Cambridge University Press, 2004) 285.

³ Jean-Louis Iten writes in **French** as follows:

On ne peut donc s’empêcher de s’interroger sur l’utilité d’une procédure qui ne semble pouvoir apporter aucune amélioration à la crise en mer de Chine méridionale. Au contraire, la décision à venir qui sera fêtée, n’en doutons pas, comme une victoire par les Philippines, ne fera qu’attiser les tensions dans la région.

See Jean-Louis Iten, ‘Sentence arbitrale sur la compétence et la recevabilité du 29 octobre 2015 dans l’Arbitrage entre la République des Philippines c. la République populaire de Chine devant la Cour permanente d’arbitrage’, *Annuaire français de droit international*, 61 (2015) 308.

hitherto remained peaceful”.¹ Professor **Le Bœuf** observed that when law becomes excessively detached from the contingencies of the world (*contingences du monde*), it risks being unable to govern it effectively.² In a joint article for the *American Journal of International Law (AJIL) Unbound*, **Payam Akhavan** (Professor at the University of Toronto, Canada) and **Eirik Bjorge** (Professor at the University of Bristol, UK) invoke the evocative metaphor of opting to “**force an ungainly foot into Cinderella’s glass slipper**”³ to articulate their apprehension regarding the perils of expansively interpreting jurisdictional competence. They elaborate:

When they consider incidental questions as part of their dispute settlement function, international courts and tribunals must maintain a delicate balance between consent and coherence. On the one hand, a jurisdiction charged with applying a specific body of international law is, as Cassese observed, authorized to apply incidentally rules belonging to other bodies of international law, for the purpose of interpreting or applying a rule that is part of the legal rules on which it has primarily to pronounce. On the other hand, the impetus of coherence is tempered by that of consent: when exercising such incidental jurisdiction, international tribunals must proceed with the utmost prudence. If the incidence of international jurisdiction is exceptional and fragile, Cinderella’s glass slipper, too, is fragile—and may shatter if an ungainly foot is shoehorned into it. Expansive interpretations by international courts and tribunals of their competence ultimately cannot compensate for the failure of states to establish a comprehensive system of judicial dispute settlement.⁴

40. The misinterpretation of UNCLOS provisions and the abuse of its procedures are largely attributable to the disregard for—or outright challenge to—the principles of good faith and the prohibition of the abuse of rights. Good faith constitutes the ethical

¹ Pierre Michel Eisemann writes in **French** as follows:

Et ce ne serait pas le moindre des paradoxes que cette sentence – qui n’aura pas véritablement contribué à régler les différends en mer de Chine méridionale—soit à l’origine de nouveaux contentieux émergeant dans d’autres espaces marins et océaniques jusqu’à présent paisibles, donnant ainsi raison à ceux qui avaient constaté que l’article 121 de la convention de Montego Bay, et en particulier son paragraphe 3, ‘in its present form appears to be a perfect recipe for confusion and conflict’.

See Pierre Michel Eisemann, ‘Qu’est-ce qu’un rocher au sens de la Convention de Montego Bay de 1982? Observations sur la sentence arbitrale du 12 juillet 2016 relative à la mer de Chine méridionale’ (2020) 124(1) *Revue générale de droit international public* 38.

² Romain Le Bœuf writes in **French** as follows: « Or le droit, lorsqu’il se trouve excessivement détaché des contingences du monde, s’expose au risque de ne plus être en mesure de le gouverner. » See Romain Le Bœuf, ‘Différend en mer de Chine méridionale (Philippines c. Chine), sentence arbitrale du 12 juillet 2016’ (2016) 62 *Annuaire français de droit international* 181.

³ Payam Akhavan and Eirik Bjorge, ‘Between Consent and Coherence: Incidental Questions in an Imperfect World’ (2022) 116 *AJIL Unbound* 165.

⁴ Payam Akhavan and Eirik Bjorge, ‘Between Consent and Coherence: Incidental Questions in an Imperfect World’ (2022) 116 *AJIL Unbound* 169.

foundation of international law and is a universally recognized general principle of law. As Judge **Mohammed Bedjaoui** (former President of the ICJ) aptly observed, “Good faith is a fundamental principle of international law, without which all international law would collapse.”¹ To forestall such misinterpretation and abuse, Article 300 of UNCLOS explicitly mandates that States Parties shall fulfill their obligations under UNCLOS in good faith and shall exercise the rights, jurisdiction, and freedoms recognized therein in a manner that does not constitute an abuse of rights. Ms. **Annick de Marffy-Mantuano** (former Director of the UN Division for Ocean Affairs and the Law of the Sea) observes:

The essence of the balances embodied in the Convention is reflected in the fact that the rights and benefits it confers upon States must be concomitant with the rights and obligations it imposes upon them. Only on this condition can the order that must prevail on the seas and oceans be established. Respect for the rights of other States is certainly the supreme duty (*devoir suprême*). This fundamental balance between rights and duties finds further expression in Article 300 of the Convention, which requires that obligations be performed in good faith (*bonne foi*) and proscribes abuse of right.²

4.3 Unilateralism Beyond UNCLOS: The “Pick-and-Choose” Approach of a Non-Party Major Power

41. Unilateral actions erode the legal order established by UNCLOS. One Non-Party major power often invokes customary international law as a pretext to justify its unilateral actions, including delineating its so-called “extended continental shelf” and advancing deep-sea mining in a unilateral manner. These actions undermine the overall interests of the international community and erode the legal

¹ Mohammed Bedjaoui, speech at the conference ‘Good Faith, International Law, and the Elimination of Nuclear Weapons: The Once and Future Contribution of the International Court of Justice’ (Geneva, 1 May 2008), quoted in John Burroughs, ‘Good Faith: A Fundamental Principle of International Law’, *News in Review of the Lawyers Committee on Nuclear Policy INC.*, Final Edition, No. 9, 28 April - 9 May 2008, p. 5, available at https://static1.squarespace.com/static/603410a4be1db058065ce8d4/t/605b5b2e64d630119bed39f8/1616599854103/BurroughsNiRarticle_May2008.pdf, accessed 28 February 2026.

² Annick de Marffy-Mantuano writes in **French** as follows:

L’essence des équilibres contenus dans la Convention est reflétée dans le fait que les droits et les bénéfices qu’elle accorde aux États doivent être concomitants avec les droits et les obligations qu’elle leur impose. C’est à cette seule condition que peut s’établir l’ordre qui doit exister sur les mers et les océans. Le respect des droits des autres États est certainement le devoir suprême. Cet équilibre fondamental entre les droits et les devoirs trouve une autre manifestation de son expression dans l’article 300 de la Convention qui requiert d’exécuter de bonne foi les obligations tout en proscrivant l’abus de droit.

See Annick de Marffy-Mantuano, « La convention de Montego Bay » dans Mathias Forteau, Jean-Marc Thouvenin (dir.), *Traité de droit international de la mer* (Pedone, 2017) 59.

order established by UNCLOS, further revealing its “pick-and-choose” approach to international law.

42. Unilateral delineation of continental shelf outer limits beyond 200 nautical miles by a Non-Party major power represents a paradigmatic exercise of unilateral action. While UNCLOS has indeed codified certain pre-existing rules of customary international law, not every provision of UNCLOS enjoys that status. In *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, the ICJ found only that the definition of the continental shelf set out in Article 76, paragraph 1, of UNCLOS forms part of customary international law.¹ Yet when squarely confronted with whether paragraphs 2 to 6 of Article 76 reflect customary international law in *Delimitation of the Continental Shelf beyond 200 Nautical Miles (Nicaragua v. Colombia)*, the ICJ sidestepped the issue, leaving it unresolved.² International law scholars—including **Robin Churchill** (emeritus professor at the University of Dundee, UK) and **Michael Wood** (former member of the International Law Commission)—observe that institutional provisions establishing the ISA, the ITLOS, and the CLCS are not customary in nature.³ **Kevin A. Baumert** (legal counsel, U.S. Extended Continental Shelf Project, U.S. Department of State) likewise noted that Article 76, paragraph 8, of UNCLOS has a “largely procedural character” and lacks a “norm-creating character”. Given the absence of sufficient State practice and *opinio juris*, he concluded that this provision does not constitute customary international law.⁴ Moreover, **Baumert** notes in the *American Journal of International Law* that the very label “extended continental shelf” is not a legal concept employed by UNCLOS itself.⁵ The Non-Party to UNCLOS may not invoke the UNCLOS as the legal basis for claiming an outer/extended continental

¹ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 624 at p. 674, para 118.

² *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2023, p. 413 at pp. 447-448, paras 80-82.

³ Robin R. Churchill, ‘The 1982 United Nations Convention on the Law of the Sea’ in Donald R. Rothwell, Alex G. Oude Elferink, Karen N. Scott, and Tim Stephens (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press, 2015) pp. 37-38; Michael Wood, « La rôle contemporain du droit international coutumier » dans Mathias Forteau, Jean-Marc Thouvenin (dir.), *Traité de droit international de la mer* (Pedone, 2017) 72.

⁴ Kevin A. Baumert, ‘Article 76 of the UN Convention on the Law of the Sea: Parties and Non-Parties’ (2022) 99 *International Law Studies* 979.

⁵ Kevin A. Baumert, ‘The Continental Shelf Beyond 200 Nautical Miles: Announcement of the U.S. Outer Limits’ (2024) 118(2) *AJIL* 275.

shelf, nor is there any treaty-based pathway for it to submit its outer limits to the CLCS process. Its unilateral announcement of such limits is therefore illegal and without legal effect; it encroaches upon the Area, which is expressly designated as the common heritage of mankind, and thereby injures the overall interests of the international community.

43. Unilateral deep-sea mining by the Non-Party major power further encroaches upon the common heritage of mankind and jeopardizes the overall interests of the international community. Under international law, the Area and its resources are designated as the common heritage of mankind. Consequently, mineral resource exploration and exploitation in the Area must be conducted exclusively within the framework of the ISA, pursuant to the UNCLOS. The legal status of the Area and the regime governing its exploration and exploitation enjoy universal recognition and are consistently observed in international practice. No State—including Non-Parties to UNCLOS—may bypass the ISA to unilaterally authorize mineral exploration or exploitation in the Area. The ISA has affirmed that the legal mandate to regulate mineral-related activities in the Area rests solely with the ISA; the regime governing the deep seabed beyond national jurisdiction, established by UNCLOS, has been carefully articulated and developed precisely to prevent unilateral actions and parallel avenues; the unilateral action by the Non-Party major power not only compromises the integrity of the whole UNCLOS and the comprehensive regime it establishes, but also undermines the legitimacy of the multilateral system.¹

¹ See ISA, 'FAQs for the media about the International Seabed Authority and deep-sea mining', <https://www.isa.org.jm/wp-content/uploads/2025/05/FAQs-for-the-Media_28-May-2025.pdf> accessed 25 March 2026.

5. Conclusions and Recommendations

5.1 Conclusions

44. As a significant achievement in the post-war development of the international legal order for the seas and oceans, UNCLOS serves important functions in upholding multilateralism, opposing hegemony, fostering cooperation, and advancing sustainable development for the seas and oceans, as well as in other areas. Compared with earlier law-of-the-sea regimes, UNCLOS represents a marked historical advance.

45. As a comprehensive legal instrument covering a broad spectrum of issues, UNCLOS codifies part of customary international law and establishes novel legal regimes, including the exclusive economic zone. As a “package deal” balancing the interests of States, including, among others, coastal, flag, and landlocked States, UNCLOS incorporates a built-in balance reflecting its spirit of compromise. Furthermore, UNCLOS provides an open, inclusive legal framework and remains capable of continued evolution through subsequent implementing agreements. Notwithstanding its significance, UNCLOS remains but one important treaty within the international legal system; it does not possess the constitutional supremacy akin to that of domestic constitutions. While the label “Constitution for the Oceans” underscores its weight, it mischaracterizes its true legal status and role. Such elevation is at odds with the realities of the international legal system and practice; it is, in essence, a political narrative that risks misleading the public.

46. UNCLOS does not cover all law-of-the-sea issues, nor does it stand as the sole source of international law of the sea. Rather, it constitutes but one important pillar of the modern legal order for the seas and oceans, together with other relevant treaties and customary international law. Matters not regulated by UNCLOS, as recited in its preamble, continue to be governed by the rules and principles of general international law. The matter of sovereignty over land territory falls outside the scope

of matters regulated by UNCLOS and cannot, therefore, be subjected to its interpretation or application. A State's sovereignty over its land territory constitutes the foundation of its maritime rights, as can be seen from the preamble to UNCLOS. In practice, however, some disputing parties engage in fabricating of the so-called "mixed dispute"—deliberately tailoring the factual matrix to forcibly sever its substantive nexus with sovereignty over land territory—thereby effectuating an abuse of the dispute settlement procedures under UNCLOS. Furthermore, a number of provisions in UNCLOS require effective implementation through other international agreements and arrangements. Beyond UNCLOS, other international organizations, including the IMO, also regulate marine/maritime issues within their respective domains through various legal instruments. Customary international law has not faded into history; it continues to play an irreplaceable regulatory role in marine/maritime issues, as evidenced by matters including historic rights and outlying archipelagos, which remain subject to it. Although UNCLOS codifies some customary rules, not all its provisions reflect or form part of customary international law.

47. As a "package deal" resulting from compromise and balance of interests, certain provisions of UNCLOS are vaguely formulated and susceptible to divergent interpretations, thereby undermining their uniform and effective implementation by States Parties. Article 121, paragraph 3 exemplifies this fragile balance; long debated among States and criticized by scholars since the 1980s, it has been called a "Pandora's box." The UNCLOS does not define the key term "marine scientific research (MSR)," generating uncertainty in legal application, divergences in state practice, and difficulties in operations. This constitutes a persistent and structural challenge to the conduct of MSR in practice. Textual variations among different language versions of certain terms occasionally produce divergences in interpretation, application, and implementation. Beyond these textual limitations, emerging areas of focus such as climate change and artificial intelligence arise beyond the drafters' foresight, constantly challenging the interpretation and application of UNCLOS. Abusive practices in UNCLOS implementation are quietly on the rise, including

interpretive distortions, procedural abuses, and jurisdictional overreach. Particularly abusive practices—such as establishing new rules beyond the text under the guise of interpreting and applying UNCLOS provisions, or abusing its dispute settlement procedures—have undermined the solemnity, integrity, and authority of UNCLOS, inflicted structural trauma upon the legal order it establishes, and brought profound disruption to the international rule of law in the maritime domain. One Non-Party major power often invokes customary international law as a pretext to justify its unilateral actions, including delineating its so-called “extended continental shelf” and advancing deep-sea mining in a unilateral manner. Such actions damage the overall interests of the international community and corrode the legal order established by UNCLOS.

5.2 Recommendations

48. When sailing across the ocean, nothing is more crucial than maintaining the correct course. In recent years, certain States, seeking to perpetuate power politics and maritime hegemony, have hyped the so-called “rules-based international order” in the maritime domain. Yet they remain deliberately ambiguous about the content and provenance of these “rules,” treating international law as a pick-and-choose menu under this very guise. This stands in sharp contrast to the 2012 *UN Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels* (hereinafter the “UN Declaration on the Rule of Law”), which unequivocally affirms that an **“international order based on the rule of law”** is one of the “indispensable foundations for a more peaceful, prosperous and just world.”¹ The rule of law, as an institutional framework, entails not merely the existence of rules but requires that such rules must conform to higher principles and values. They must, for instance, embody the “just, fair and equitable” character of law as advocated by the Declaration², and align with the purposes and principles of the UN Charter³. While

¹ United Nations General Assembly, Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, A/RES/67/1, Resolution adopted by the General Assembly on 24 September 2012, para 1.

² United Nations General Assembly, *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, A/RES/67/1, Resolution adopted by the General Assembly on 24 September 2012, para 2.

interpretations of international rules may vary, upholding true multilateralism and preserving the authority and central role of the United Nations should represent the broadest consensus for the international community. China is always a staunch defender and builder of the international rule of law in the maritime domain. China firmly safeguards the international system with the United Nations at its core, the international order based on international law, and the basic norms governing international relations based on the purposes and principles of the UN Charter. As a State Party to UNCLOS, China fully and faithfully implements its provisions, standing as an active participant, builder, and contributor to UNCLOS and its mechanisms. China played a constructive role in advancing and concluding the BBNJ Agreement; it signed the Agreement on the very first day it was opened for signature and, ahead of entry into force, deposited its instrument of ratification with the UN Secretary-General—thereby lending robust impetus to international governance of the deep seabed and high seas. China's *Four Global Initiatives*—the **Global Development Initiative (GDI)**, **Global Security Initiative (GSI)**, **Global Civilization Initiative (GCI)**, and **Global Governance Initiative (GGI)**—resonate strongly with the principles of multilateralism, peace, cooperation, and sustainable development enshrined in UNCLOS. Furthermore, China's vision of building **a community with a shared future for mankind** aligns with the aspiration for a “more peaceful, prosperous and just world” envisioned in the UN Declaration on the Rule of Law.

49. Inherent limitations of UNCLOS—such as textual ambiguities, lack of definitions and governance gaps—may be remedied through subsequent State practice and concerted multilateral action in accordance with the principles of extensive consultation, joint contribution, and shared benefits. In contrast, external challenges—including interpretive distortions and procedural abuses—pose a genuine threat to the legal order established by UNCLOS. In defense of the international rule of law, we put forward the following recommendations to the

³ United Nations General Assembly, Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, A/RES/67/1, Resolution adopted by the General Assembly on 24 September 2012, para 1.

international community, particularly national governments and relevant agencies, academia, and the policy community, to uphold the solemnity, integrity, and authority of UNCLOS:

50. First, UNCLOS should be viewed in an objective, holistic, and dialectical manner. It is essential to recall its negotiating history, appreciate its spirit of compromise, and recognize its delicately calibrated balance therein. While recognizing the historical achievements of UNCLOS, the international community must squarely face the challenges in its implementation. Furthermore, the positioning of UNCLOS within the modern legal order for the seas and oceans should be clarified—neither understating its relevance nor overstating its reach. By ensuring coherence between UNCLOS, other relevant treaties, and customary international law, the international community can properly balance continuity and development in the law of the sea, thereby advancing the international rule of law in the maritime domain.

51. Second, UNCLOS must be interpreted and applied in a full, accurate, and good-faith manner. We recommend consistently bearing in mind “the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea,” taking into account “the interests and needs of mankind as a whole,” and applying “the rules and principles of general international law” to matters not regulated by UNCLOS. Furthermore, rights conferred by the UNCLOS should be exercised in a reasonable manner and obligations thereunder discharged in good faith. The object and purpose of UNCLOS must be safeguarded, its built-in balance preserved, and abusive practices—such as interpretive distortions, procedural abuses, and jurisdictional overreach—opposed.

52. Third, joint efforts are needed to advance the *Four Global Initiatives (GDI, GSI, GCI, and GGI)*, with these efforts targeting the persistent difficulties and challenges in UNCLOS implementation and aiming to reform and improve global ocean governance. Shared destiny, responsibility, and benefits embody a core value underpinning both modern law of the sea and China’s cultural ethos. The **GDI** seeks to accelerate the

implementation of the *UN 2030 Agenda for Sustainable Development* by prioritizing international development cooperation. Its objectives dovetail with those of UNCLOS, particularly in protecting and preserving the marine environment, promoting the equitable and efficient utilization of marine resources, and enhancing maritime cooperation. The **GSI** aims to eliminate the root causes of international conflict, improve global security governance, and secure enduring peace. It prioritizes resolving disputes through dialogue and consultation, thereby integrating seamlessly with the principles of “the maintenance of peace, justice and progress for all peoples of the world,” “due regard for the sovereignty of all States,” and the peaceful settlement of maritime disputes, as enshrined in UNCLOS. The **GCI** advocates advancing shared human values, strengthening international people-to-people exchanges, and promoting mutual learning among civilizations. Its spirit echoes the UNCLOS provisions regarding the common heritage of mankind, accommodating the interests of coastal, landlocked, and other States, and fostering the development and transfer of marine technology. The **GGI** guides the direction, principles, and pathways of global governance reform, anchored in sovereign equality, adherence to the international rule of law, multilateralism, a people-centered approach, and action-orientation. It provides a strategic compass and operational roadmap for tackling the inherent difficulties and external challenges confronting UNCLOS implementation and for advancing global ocean governance. We therefore recommend practising true multilateralism, accelerating the delivery of tangible outcomes under these *Initiatives*, and fostering a more just and equitable system for global ocean governance so as to advance steadily toward a community with a shared future for mankind.

References

I. Books and Book Chapters

ATTARD, D. J., BALKIN, R. P. and GREIG, D. W. (eds) (2018) *The IMLI Treatise on Global Ocean Governance: Volume III: The IMO and Global Ocean Governance*. Oxford: Oxford University Press.

BECKERT, E. und BREUER, G. (1991) *Öffentliches Seerecht*. Berlin: Walter de Gruyter.

DEL VECCHIO, A. and VIRZO, R. (eds) (2019) *Interpretations of the United Nations Convention on the Law of the Sea by International Courts and Tribunals*. Cham: Springer Nature Switzerland AG.

DIPLA, H. (1984) *Le régime juridique des îles dans le droit international de la mer*. Paris: PUF.

FIETTA, S. and CLEVERLY, R. (2016) *A Practitioner's Guide to Maritime Boundary Delimitation*. Oxford: Oxford University Press.

FORTEAU, M. et THOUVENIN, J.-M. (dir.) (2017) *Traité de droit international de la mer*. Paris: Pedone.

KLEIN, N. (2004) *Dispute Settlement in the UN Convention on the Law of the Sea*. Cambridge: Cambridge University Press.

LANFRANCHI, M.-P. (dir.) (2024) *La Convention des Nations Unies sur le droit de la mer: Bilan et perspectives*. Aix-en-Provence: DICE.

LUCCHINI, L. et VOELCKEL, M. (1990) *Droit de la Mer: Tome I—La mer et son droit, les espaces maritimes*. Paris: Pedone.

PROELSS, A. (ed.) (2017) *United Nations Convention on the Law of the Sea: A Commentary*. München: C.H. Beck; Oxford: Hart; Baden-Baden: Nomos.

ROTHWELL, D. R., OUDE ELFERINK, A. G., SCOTT, K. N. and STEPHENS, T. (eds) (2015) *The Oxford Handbook of the Law of the Sea*. Oxford: Oxford University Press.

STRATI, A., GAVOUNELI, M. and SKOURTOS, N. (eds) (2016) *Unresolved Issues and New Challenges to the Law of the Sea: Time Before and Time After*. Leiden: Martinus Nijhoff Publishers.

VITZTHUM, W. (Graf) (Hrsg.) (2006) *Handbuch des Seerechts*. München: Verlag C.H. Beck.

II. Journal Articles

AKHAVAN, P. and BJORGE, E. (2022) 'Between Consent and Coherence: Incidental Questions in an Imperfect World', *American Journal of International Law: Unbound*, 116, pp. 164-169.

BAUMERT, K. A. (2022) 'Article 76 of the UN Convention on the Law of the Sea: Parties and

Non-Parties', *International Law Studies*, 99, pp. 963-991.

BAUMERT, K. A. (2024) 'The Continental Shelf Beyond 200 Nautical Miles: Announcement of the U.S. Outer Limits', *American Journal of International Law*, 118(2), pp. 275-298.

BUGA, I. (2012) 'Territorial Sovereignty Issues in Maritime Disputes: A Jurisdictional Dilemma for Law of the Sea Tribunals', *International Journal of Marine and Coastal Law*, 27, pp. 59-95.

EISEMANN, P. M. (2020) 'Qu'est-ce qu'un rocher au sens de la Convention de Montego Bay de 1982? Observations sur la sentence arbitrale du 12 juillet 2016 relative à la mer de Chine méridionale', *Revue générale de droit international public*, 124(1), pp. 7-38.

GILBERT, G. (2019) 'Îles, rochers et hauts-fonds découvrants en droit de la mer', *Annuaire français de droit international*, 65, pp. 513-526.

GÜNDLING, L., 'Die exklusive Wirtschaftszone', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 38 (1978), pp. 616-646.

ITEN, J.-L., 'Sentence arbitrale sur la compétence et la recevabilité du 29 octobre 2015 dans l'Arbitrage entre la République des Philippines c. la République populaire de Chine devant la Cour permanente d'arbitrage', *Annuaire français de droit international*, 61 (2015), pp. 291-309.

KOLB, R. (1994) 'L'interprétation de l'article 121, paragraphe 3, de la convention de Montego Bay sur le droit de la mer : les « rochers qui ne se prêtent pas à l'habitation humaine ou à une vie économique propre... »', *Annuaire français de droit international*, 40, pp. 876-909.

LE BŒUF, R. (2016) 'Différend en mer de Chine méridionale (Philippines c. Chine), sentence arbitrale du 12 juillet 2016', *Annuaire français de droit international*, 62, pp. 159-181.

LERTORA PINTO, F. (2022) 'El régimen jurídico de las islas en el derecho internacional: una interpretación del artículo 121 de la CONVEMAR', *Revista de Derecho (Coquimbo. En línea)*, 29, e4299. Available at: <https://doi.org/10.22199/issn.0718-9753-4299> (Accessed: 28 February 2026)

LEWIS, R. (2025) 'The "Constitution for the Oceans"? The Law of the Sea Convention as a Living Treaty', *International and Comparative Law Quarterly*, 74(1), pp. 1-31.

SCOTT, K. (2023) 'The LOSC: A "Constitution for the Oceans" in the Anthropocene?', *Australian Year Book of International Law*, 41(1), pp. 269-298.

III. Documents and Publications of International Organizations

United Nations General Assembly (1994) *Resolution 48/263: Adoption of the Agreement relating to the Implementation of Part XI of UNCLOS*, A/RES/48/263, 17 August 1994.

United Nations General Assembly (2012) *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, A/RES/67/1, 24 September 2012.

International Maritime Organization (2014) *Implications of the United Nations Convention on*

the Law of the Sea for the International Maritime Organization, LEG/MISC.8. London: IMO.

United Nations. International Law Commission (2006) *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group finalized by Martti Koskenniemi*, UN Doc A/CN.4/L.682 and Add.1, 13 April 2006.

United Nations. Office of Legal Affairs. Division for Ocean Affairs and the Law of the Sea (2022) *United Nations Convention on the Law of the Sea at 40: Successes and Future Prospects*, New York: United Nations.

International Seabed Authority (2025) *FAQs for the media about the International Seabed Authority and deep-sea mining*, 28 May 2025. Available at:

https://www.isa.org.jm/wp-content/uploads/2025/05/FAQs-for-the-Media_28-May-2025.pdf (Accessed: 25 March 2026).

IV. Judicial Decisions and Arbitral Awards

CIJ, *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie (deuxième phase)*, Avis consultatif, C.I.J. Recueil 1950, p. 221.

CIJ, *Délimitation de la frontière maritime dans la région du golfe du Maine*, arrêt, C.I.J. Recueil 1984, p. 246.

CIJ, *Délimitation maritime et questions territoriales entre Qatar et Bahrein*, fond, arrêt, C.I.J. Recueil 2001, p. 40.

ICJ, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 624.

ICJ, *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2023, p. 413.

ITLOS, *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95.

Southern Bluefin Tuna Case between Australia and Japan and between New Zealand and Japan, Award on Jurisdiction and Admissibility, 4 August 2000, RIAA, Vol. XXIII, p. 1.

Arbitration between Barbados and the Republic of Trinidad and Tobago, Decision, 11 April 2006, RIAA, Vol. XXVII, p. 147.

ECJ, *Commission v Ireland (Case C-459/03)*, Judgment, 30 May 2006, EU:C:2006:345.

V. Other Materials

British Institute of International and Comparative Law (2025) *Mixed Disputes in International Dispute Settlement* [BIICL Research Report]. London: British Institute of International and Comparative Law. Available at:

[https://www.biicl.org/documents/200_biicl_mixed_disputes_nov_25_web.pdf] (Accessed: 28

February 2026).

BURROUGHS, J. (2008) 'Good Faith: A Fundamental Principle of International Law', *News in Review of the Lawyers Committee on Nuclear Policy INC.*, Final Edition, No. 9, 28 April-9 May 2008, p. 5. Available at:

https://static1.squarespace.com/static/603410a4be1db058065ce8d4/t/605b5b2e64d630119bed39f8/1616599854103/BurroughsNiRarticle_May2008.pdf (Accessed: 28 February 2026).

SERPA SOARES, M. de (2022) *High-Level Commemorative Meeting of the General Assembly to mark the 40th Anniversary of the Adoption of the United Nations Convention on the Law of the Sea (UNCLOS)*. Statement delivered at the General Assembly Hall, New York, 29 April. Available at:

<https://www.un.org/ola/sites/www.un.org.ola/files/documents/2022/05/29042022-mss-statement-40-anniversary-unclos.pdf> (Accessed: 28 February 2026).

