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Power Relations and Maritime Justice: An Exploration of UNCLOS Negotiations

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Abstract

This article offers a novel perspective on the interplay between power relations among states and maritime justice by exploring various manifestations of power during negotiations for the United Nations Convention on the Law of the Sea (UNCLOS). Here, UNCLOS is perceived as an agent of maritime justice insofar as the Convention's delimitation of maritime zones lays the foundation for establishing the rights and obligations of states in addressing maritime crime and insecurity. It employs Barnett and Duvall's (2005) taxonomy of power to analyse how key contentions during UNCLOS negotiations were reflective of various forms of power. The discussion reveals that compulsory, institutional, structural, and productive power significantly influenced UNCLOS provisions, often favouring developed states but occasionally benefiting developing nations through collective action. This analysis contributes to a deeper understanding of how power relations among states in the global order can shape the formation of international legal instruments and consequently influence their role as agents of justice.

Keywords

maritime legal framework; maritime justice; power relations; UNCLOS

1. Introduction

The United Nations Convention on the Law of the Sea (UNCLOS, 1982) stands as the most comprehensive legal instrument governing the world's ocean space. Four decades since its inception, the foundation laid by UNCLOS in establishing sovereignty and sovereign rights over the ocean space through its delimitation of maritime zones and its regime of flag state jurisdiction continues to shape regulation and enforcement against maritime crimes and threats.

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The Convention's centrality extends to other international legal instruments governing the global maritime space, including the 1995 Agreement for the Implementation of Provisions of UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish, the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 2023 Agreement under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement).

This article posits that UNCLOS, forged through complex negotiations, embodies the interplay of power and competing interests between developed and developing states (Moraes, 2019). Examining the Convention's negotiation process unveils how broader power relations within the international legal order shaped the provisions of a convention that remains relevant to addressing maritime crimes today. The article presumes that in establishing a maritime legal regime, UNCLOS is an agent of maritime justice, aligning with O. O'Neill's (2001) pluralistic view of justice agents. Through this lens, the article argues that the power relations between states that manifested during UNCLOS negotiations were not merely incidental, but crucial in shaping the very essence of maritime justice. To elucidate the multifaceted nature of power dynamics at play, the article employs Barnett and Duvall's (2005) taxonomy of power, which offers a unique framework for understanding how various forms of power permeated and influenced the negotiation process.

The article adopts perceptions of the global order as constituted by binaries—developed versus developing states, advanced versus emerging states, and rich versus poor states (Eslava & Pahuja, 2012). In doing so, it explores how contestations during UNCLOS negotiations between developing states, as weaker actors and developed states, as powerful actors within the global order, shaped the formation of the Law of the Sea.

The article's exploration of power relations during UNCLOS negotiations is threefold: it analyses how these relations influenced negotiation modalities, provisions concerning territorial and sovereignty limits, and provisions on the governance of maritime areas beyond national jurisdiction. These three instances are considered because they underpin the Convention's role in providing a framework for addressing illicit maritime activities within and beyond the jurisdiction of states.

This study builds upon existing literature on power relations in the international legal order and justice concerning the ocean space in two progressive ways. It places the global maritime legal framework at the centre of existing debates about power relations, facilitating a more holistic appreciation of the relationship between maritime justice and power. In aligning with an understanding of maritime justice as positioned at the nexus of illicit maritime activities and regulatory responses (Larsen, 2024), the article extends the discourse on justice to UNCLOS' role in regulation and enforcement against illicit maritime activities. Both contributions are important because the impact of power shifts on the global maritime legal framework requires further scholarly analysis, given the escalating importance of UNCLOS in the wake of evolving power relations among states (Seo, 2024).

The article begins by examining relevant concepts of power, with an emphasis on Barnett and Duvall's (2005) taxonomy. This theoretical framework provides the analytical lens through which it scrutinises the nature of power relations during UNCLOS negotiations. The subsequent section develops an understanding of maritime justice and elucidates the agency of UNCLOS in maritime justice. Building on these theoretical underpinnings, it then delves into specific aspects of UNCLOS negotiations that were markedly influenced by power relations.

This core analysis reveals how these relations shaped the resulting provisions, offering insights into the broader implications for maritime justice. The article concludes with a synthesis of its findings and a proposition of avenues for further research.

2. Relevant Concepts of Power

Many definitions of power adopt realist conceptions that emphasise control over material resources and their deployment to influence other states' actions (Dahl, 1957; Modelski, 1974; Schmidt, 2005; Singer & Small, 1966). However, there has been a progressive transition to multidimensional understandings of power, recognising that the complex social interactions in the global arena necessitate a shift from purely materialist interpretations (Barnett & Duvall, 2005; Coleman, 2017; Hart, 1976). Barnett and Duvall (2005, p. 45) embraced this adoption of the relational by elaborating a multifaceted taxonomy of power, which considers power as the "production, in and through social relations, of effects on actors that shape their capacity to control their fate."

They categorised power along two main dimensions: the social relations through which power operates and the directness or diffusion of effects that influence actors' capacity for self-determination. In the former, power manifests through specific actor interactions, where individual attributes can be deliberately deployed to shape others' actions or conditions, and through constitutive social relations, wherein the interactions between actors influence the formation of particular types of agents and their potential actions. In the latter, the effects of power can be spatially, temporally, or socially immediate/direct or diffused/indirect.

The intersection of these dimensions yields a foundational matrix of power forms. *Compulsory power* emerges when an actor directly influences others' actions or circumstances and is aligned with most realist conceptions of power. However, Barnett and Duvall (2005) expand this concept beyond the deployment of material resources to encompass symbolic and normative resources. This could be exemplified by NGOs leveraging principles of justice to influence state policies or less powerful UN members utilising legal norms to constrain dominant actors. *Institutional power* operates through formal and informal institutions that mediate inter-actor relations. Here, Barnett and Duvall (2005, p. 51) focus on instances where one actor, "working through the rules and procedures that define those institutions, guides, steers and constrains the actions…and conditions of others." *Structural power* encompasses forces that determine social capacities and interests, potentially influencing actors' self-perception. This could mean they fail to recognise their own dominance or accept existing conditions as immutable. *Productive power*, while similar to structural power, manifests through more diffused spatial, temporal, or social interactions. It encompasses social processes and knowledge systems that produce, establish, or transform meanings.

These forms of power are inherently interconnected and often mutually reinforcing. Although Barnett and Duvall's taxonomy addresses the relationship between social context and actors' actions (the agent-structure duality), it does not explicitly address the measurement of power. Baldwin (2013) further critiques it for excluding persuasion, mutual-gain cooperation, and power relations where one actor's power advances another's interests. These critiques pose minimal constraints for the current analysis. The primary objective is not to quantify power but to illuminate the multifaceted ways in which power asymmetries and relations influenced the UNCLOS negotiation process. Moreover, while Barnett and Duvall (2005) originally excluded persuasion and cooperation for mutual gain, this analysis does not disregard them. Persuasion

could be interpreted as a form of compulsory power if an actor influences a peer of comparable standing to voluntarily make decisions that may compromise their interests, drawing from non-material resources such as superior rhetorical or linguistic capabilities. Additionally, mutual-gain cooperation may still be permeated by more diffused forms of power, such as structural and productive power, if they shape perceptions of mutual benefit, even when outcomes disproportionately favour certain actors over others. The taxonomy's strength therefore lies in its ability to capture both overt and subtle forms of power, making it particularly suited to analysing complex multilateral negotiations where influence is exercised through various channels.

The analysis also finds an intersection between Barnett and Duvall's taxonomy and other realist conceptions of power as control over resources, where the discussions that follow refer to "developed" states or "great powers" as more powerful actors versus "developing" states as weaker actors in the global order (explicated further in the next section). The use of these terms in this article does not presuppose that the states in question have continued to fit into the same categorisations post-UNCLOS negotiations.

3. Towards an Understanding of Maritime Justice

The concept of justice, rooted in the Latin word jus meaning right or law, has been a subject of philosophical inquiry for centuries (Beitz, 1975; Cook & Hegtvedt, 1983; Rawls, 1971; Seo, 2024). Within the context of maritime governance, debates on justice have traditionally focused on areas such as the equitable distribution of marine environmental resources and issues surrounding the morality or immorality of their exploitation. More recently, scholarship has introduced the concept of "blue justice," which primarily examines the access, use, and management of oceanic resources, often with a focus on fisheries. This emerging field represents a "bluing" of existing environmental and social justice concepts, adapting them to the specific challenges of maritime domains (Bennett et al., 2021; Chuenpagdee et al., 2022; Ertör, 2023; Jentoft & Chuenpagdee, 2022; B. F. O'Neill et al., 2024).

These conceptions of justice are, no doubt, highly relevant to the maritime governance agenda and offer vast permutations for exploring overlaps between justice and power. However, rather than being constrained by social or environmental justice frameworks, this article aligns with Larsen (2024) in conceptualising maritime justice as a "composite term," encompassing the broad ways in which laws, regulations, and legal principles are applied in addressing illicit maritime activities and other maritime governance concerns.

This conceptual choice is grounded in the understanding that justice does not occur in a vacuum but is delivered through robust legal frameworks and institutions (Groff & Larik, 2020). As Miller (2023, p. 4) aptly notes, "it is a characteristic mark of justice that the obligations it creates should be enforceable." Larsen (2024), also positions law enforcement at the core of the maritime justice inquiry. Building on these insights, this article proposes—perhaps unconventionally—that international legal frameworks like UNCLOS can function as agents of justice.

This perspective resonates with O. O'Neill's (2001) assertion that multiple and diverse agents of justice can coexist. While O. O'Neill (2001) primarily assigns such agency to legal and juridical persons, they also identify primary agents of justice as those that "may assign powers to and build capacities in individual agents, or…may build institutions…with certain powers and capacities to act" (p. 181). UNCLOS meets these criteria in establishing and assigning powers to institutions such as the International Seabed

Authority (ISA), the International Tribunal for the Law of the Sea, and the Commission on the Limits of the Continental Shelf.

Furthermore, UNCLOS' role at the nexus of illicit maritime activities and regulatory responses is twofold. First, its sovereignty regime empowers coastal states to effectively address maritime crimes within their territorial waters. Second, the Convention establishes guidelines for addressing criminal activities in areas beyond national jurisdiction (Usman et al., 2021). This is accomplished through its regime of flag state jurisdiction and the obligation placed on states to cooperate in combating specific illicit activities such as piracy (Article 100), drug trafficking (Article 108), and the transportation of slaves (Article 99).

This new understanding of UNCLOS offers a more direct pathway to exploring the relationship between power and maritime justice; viz, examining how power relations between states shaped the formation of arguably one of the most central agents of maritime justice. It also transcends conventional interpretations of UNCLOS as solely a legal framework and positions the Convention as a manifestation of complex power negotiations with profound implications for maritime justice.

4. UNCLOS Negotiations: A Contentious Affair

4.1. Setting the Scene

UNCLOS was negotiated through three UN Conferences on the Law of the Sea (UNCLOS I, II, and III). Despite resulting in four instruments known as the 1958 Geneva Conventions, UNCLOS I (held from 24 February to 27 April 1958) failed to establish a lasting regime of the Law of the Sea (Joyner & Martell, 1996). Furthermore, it did not duly consider the needs and interests of African states, several of which were either newly independent or still colonised. Only six African states participated in UNCLOS I: Ghana, Liberia, Libya, Morocco, South Africa, and Tunisia (UN, 1958a). UNCLOS II (held from 17 March to 26 April 1960) was considered even less successful due to disputations, resulting in no decisions on substantive matters such as the breadth of the territorial sea and fishery zones, although two resolutions were adopted in its Final Act (UN, 1960).

At the time of UNCLOS III negotiations, held between 1973 and 1982, several Western European states and states of European colonial origin that had achieved significant industrialisation and global influence were considered "developed." Consequently, based on the notion of power-as-resources, they were perceived as more powerful actors in the international arena. These included the UK, the US, the USSR, France, Germany, Italy, the Netherlands, Sweden, Norway, and others. A number of developed states were also considered great powers—a fluid term that encompassed states in a given era whose economic and political policies dominated world affairs (Stevens, 1952), or who had the most military might (Baldwin, 2013). At the time of the Convention, the term was largely used to refer to four of the five permanent members of the Security Council who had played a crucial role during World War II and in its aftermath: the UK, US, USSR, and France.

In contrast, several African, Latin American, and Asian states were considered "developing" based on their colonial or neo-colonial status, weak economic integration, and low levels of industrial and technological advancement. Consequently, these states were perceived as weaker actors in the international system. Despite having permanent membership in the Security Council, China was not generally considered a great power (DeConde, 1953) and often aligned with developing countries during negotiations.

The negotiations, thus, unfolded against a multifaceted geopolitical backdrop, characterised by the lingering effects of colonialism and the emergence of newly independent states seeking to reshape the international order. In his opening remarks at the first plenary meeting of the Conference, the UN secretary-general acknowledged that it was "the first Convention on the subject since the accession to independence of a large number of developing countries, a fact which gave it a very particular and historic significance" (UN, 1973a, p. 1). The negotiations offered these states a crucial opportunity to influence the formation of a more equitable global order (Armstrong, 2024).

According to Meyer (2022, p. 155), developed states shared a "distinct sense of cynicism towards their formal colonies and their eagerness to shape decision-making in the international arena." Although the Cold War had bifurcated global politics into "the East" (representing the USSR and its allies) and "the West" (representing the US and its allies; Brzezinski, 1991; McMahon, 2021; Schlesinger, 1967), developing states' numerical strength posed a greater challenge to both blocs than their ideological differences (Cheever, 1984). In fact, the US and USSR had similar views on several matters of the Convention (Armstrong, 2024).

Perhaps most troubling for their developed counterparts was that developing states started working in unity. Seventy-five UN member states had established an informal working group intended to press for the interests of developing countries during the first UN Conference on Trade and Development. Later, three states joined the group and New Zealand left, bringing its membership to 77 states. From that point on, the group was referred to as the Group of 77. The formation of negotiating blocs added a significant layer of intricacy to the effects of actor power. Banded together, African states in regional or ideological blocs such as the Africa Group or Group of 77 introduced the dynamic of collective action. With African states having the power in numbers to tip the scales in favour of developing countries, negotiations required a delicate balancing of competing interests to ensure that the provisions would be acceptable to all parties.

4.2. The Rules of Procedure

Contentions between developing and developed states were reflected in deliberations concerning terms of negotiations. One controversy lay in the "Gentleman's Agreement"—a declaration approved by the General Assembly during its 28th session and 2169th meeting, which was held to convene the Conference on 16 November 1973. The declaration required that decisions on all substantive matters at the Conference be taken by consensus (UN, 1974a, p. 80).

Despite the declaration, the path towards consensus was hardly a straightforward one. Its weakness was particularly highlighted when a debate sprung up between developing and developed states on the allocation of seats on the conference committees. Amidst a controversy surrounding whether one of the seats allocated to the Western European Group was meant for the US, several African countries, including Ivory Coast, the Republic of Tanzania, Tunisia, Senegal, Kenya, and Uganda argued that Africa was underrepresented in the General Committee of the Conference (UN, 1973b) and that they had agreed to make concessions despite a "lop-sided" formula (UN, 1973b, p. 7). The expectation then, was that the Western European group should also be willing to compromise.

Debates on this continued well into the fourth plenary session, during which China emerged as an advocate for the principle of "one state, one seat." Insisting that the principle was supported by the Asian, African, and

Latin American groups, they stated that no country, however powerful, should enjoy a privileged position at a global conference. Furthermore, China argued that only "super-powers" were asking for more than one seat at the Conference (UN, 1973c, p. 9). Unsurprisingly, this position met resistance from the great powers. The USSR countered by invoking historical precedent, asserting that permanent members of the UN Security Council had consistently been granted multiple seats in past international conferences, both on the General Committee and the Drafting Committee. This argument was supported by fellow permanent UN Security Council members France and the US.

Despite the numerical majority of African, Asian, and Latin American groups supporting the principle of "one state, one seat," progress was significantly impeded by the consensus principle. The US, the USSR, and France continued to oppose this procedural rule, effectively stalling decision-making. By the fifth plenary, the paralysis induced by the consensus principle became a point of contention, with Algeria and Venezuela advocating for a democratic vote to break the impasse. At the sixth plenary, a compromise was reached: no state would be represented on more than one main organ of the Conference. Subsequent plenary debates, however, suggest that this decision may not have been strictly adhered to by the USSR.

The insistence on consensus by developed states, particularly the US, USSR, and France, was a strategic response to the overwhelming numerical strength of developing countries. The USSR articulated this stance emphatically, stating that "no group of states should be allowed to impose its views on others by means of a simple majority" (UN, 1973d, p. 16). After facing strong opposition from the great powers, developing states had to concede to the Gentleman's Agreement, which was added as an annex to the rules of procedure ('United Nations: Rules of Procedure for the Third UN Conference on the Law of the Sea', 1974, p. 1209). By agreeing to consensus-based decision-making, they traded the potential for majority-rule victories for the promise of a more widely accepted convention.

4.3. Negotiating Provisions on Territorial/Sovereignty Limits

The debates on the limits of territorial seas during UNCLOS III were the culmination of a long-standing juridical evolution concerning maritime jurisdiction over offshore offences (Fenn, 1926). While ancient maritime nations had rudimentary concepts of coastal water jurisdiction (Florsheim, 1970), the codification of territorial sea limits in the Law of the Sea became one of the most disputed issues in the emerging international maritime law. The disputation largely stemmed from states' dual, often conflicting interests: ensuring freedom of navigation and maintaining authority over adjacent coastal waters (Reeves, 1930).

In the lead-up to UNCLOS I, several states submitted comments on draft articles adopted by the International Law Commission, including provisions on territorial sea limits. Developed states, many of which were major maritime powers, typically advocated for limits not exceeding six nautical miles (nm). Denmark, Sweden, and Norway adhered to a four-nautical-mile limit in practice, while the Netherlands and the UK supported a three-nautical-mile limit (UN, 1958b). The UK argued that "the true interests of all nations are best served by the greatest possible freedom to use the seas for all legitimate activities" and warned that extending territorial seas beyond three nautical miles could create significant challenges (UN, 1958b, p. 101).

In contrast, developing states such as Chile, India, and Yemen supported the legality of a 12nm limit, while others like Peru believed that given the absence of uniform practice, each state should be able to establish its

own territorial waters within reasonable limits, taking into account a variety of factors, including geographical and biological factors, the economic needs of its population, security, and defence.

By UNCLOS I, the US, which initially sought to establish a three-nautical-mile limit as a rule of international law, revised its position to propose a maximum territorial sea breadth of six nautical miles, coupled with an additional six-mile zone for exclusive fishing rights, with restrictions regarding historical fishing rights of other states (UN, 1958a). Their proposal was framed as a *very* reasonable compromise, developed based on their desire to accommodate other state interests. The UK offered strong support for this position, while France provided qualified backing, contingent upon other states' renunciation of claims beyond six nautical miles.

When the US proposal was put to a vote, several developing countries, including Ghana, Thailand, India, Pakistan, Cuba, and Cambodia, voted in favour of it to advance the negotiations, although some had strong reservations. Ghana, in particular, expressed concerns, noting that less-developed countries would be disadvantaged in accessing traditional fishing grounds under the US proposal, while historically dominant fishing nations would continue to exploit their resources. Peru echoed this sentiment, opposing the proposal for enabling uncontrolled fishing activities near coastal states without their consent.

Despite these challenges, several developing states pressed for the 12nm limit and in some cases, more. A number of Latin American states, including El Salvador, pushed for a 200nm limit; and in one of its draft text submissions, Nigeria proposed a 50nm territorial sea limit. By UNCLOS III, however, the 12nm limit had almost crystalised as the most judicious compromise. Debates about the breadth of the territorial sea were overlayed with a new concept that had also slowly gained traction: the Exclusive Economic Zone (EEZ). The EEZ concept offered African and other developing states an opportunity to push for sovereign rights over marine resources without extending the breadth of the territorial sea.

In May 1973, the Organisation of African Unity stated in its Declaration on the Issues of the Law of the Sea the recognition of the right of African coastal states to establish an EEZ beyond the limits of their territorial sea (International Legal Materials, 1973). Led by Kenya, a group of African nations, including Algeria, Cameroon, Ghana, Ivory Coast, Liberia, Madagascar, Mauritius, Senegal, Sierra Leone, Somalia, Sudan, Tunisia, and Tanzania submitted draft articles on the EEZ to the UN Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration at UNCLOS III (UN, 1973e). Other submissions came from countries such as Uganda, Zambia, Pakistan, China, India, Sri Lanka, Argentina, Colombia, Mexico, and Venezuela, further cementing the concept of the EEZ.

Ultimately, a compromise was reached: a coastal state's territorial sea would extend 12nm from its baseline (Article 3 of UNCLOS). Beyond this, a series of other maritime zones were established. These included an EEZ extending up to 200nm from the baseline (Article 57), where coastal states would have exclusive rights for resource exploration and exploitation.

4.4. Negotiating Provisions on Governance of the Areas Beyond National Jurisdiction

The delimitation of territorial seas under UNCLOS set the stage for debates on governance in areas beyond these newly defined jurisdictions. A pivotal moment came in 1967 when Arvid Pardo, Malta's Ambassador to the UN at the time, proposed that the deep seabed and ocean floor beyond national jurisdiction be designated

as the common heritage of mankind (CHM; UN, 1967). This proposal aimed to ensure that wealth from these areas would help narrow inequalities between developed and developing states. The CHM principle gained significant traction among developing countries, who saw it as a means to secure their interests in areas they lacked the technological capacity to exploit.

Developed states, led by the US, argued that greater regulation of activities in the seabed would result in disproportionate economic losses to the global community. The US position emphasised that a secure investment climate would be essential for successful sea-bed mining operations. Rather than endorsing the CHM principle, the US proposed several articles concerning mineral resource exploitation in "the international sea-bed area" (later referred to in UNCLOS as "the Area") as a draft appendix to UNCLOS (UN, 1974b).

Developed and developing states also differed in their opinions about the institutional framework governing the deep seabed. Developed states, especially the US, largely wanted the ISA—established later in Article 156 of UNCLOS to organise and control activities in the Area—to have limited powers. On the other hand, the Group of 77 advocated that all rights in the resources of the Area be vested in ISA on behalf of mankind as a whole. The Group's submissions emphasised ISA's central role in managing the Area's resources, ensuring control, participation, and benefit-sharing among all nations, while also setting the framework for private and state entities to engage in exploration and exploitation activities under strict regulation and oversight (UN, 1974b). In the end, the CHM was reflected in Article 136 of the Convention, which declares that the Area and its resources are the CHM.

5. Examining Power Relations and Implications for Maritime Justice

5.1. Power Relations in Shaping the Path to Consensus

The discussions in the previous sections reveal how UNCLOS' provisions were shaped by power relations between negotiating states. Two illustrations from deliberations on the rules of procedure for the Convention provide a compelling starting point for understanding these power dynamics. First, in the debate over seat allocation, the USSR invoked its status as a permanent Security Council member to demand representation on both the General Committee and Drafting Committee, even after the Conference had decided otherwise. Their invocation depicted a direct attempt to leverage institutional status for procedural advantage (institutional power) but it also alluded to structures of production that had shaped the USSR's self-identity as an agent with greater responsibility and hence, greater rights or privileges than developing states (structural power).

Second, by threatening non-participation in a majority-vote Convention, developed states wielded their economic might as a coercive tool, whether intentionally or unintentionally. Developing countries were cognisant that a Convention lacking support from global economic powerhouses would be severely compromised in its funding and implementation. Moreover, the non-participation of developed states would leave their resource exploitation activities unrestrained (a factor aggravated by their superior technological capacity), undermining the goal of a more equitable oceanic order. Thus, the numerical superiority of developing states was neutralised by the compulsory power exerted through the economic and technological leverage of developed states, and they were effectively forced to acquiesce. Material and

positional resources were therefore transformed into coercive influence that shaped the very approach through which the provisions of UNCLOS were formed, even in the face of formal diplomatic equality.

The consensus principle may have debatably weakened the potency of UNCLOS as an agent of maritime justice. The desire to formulate provisions agreeable to all parties resulted in several provisions being deliberately crafted ambiguously. However, it is also arguable that agreements reached by consensus consolidate faster into rules of customary international law, as evidenced by the EEZ concept (Joyner & Martell, 1996).

5.2. Mapping Territorial Limits: Power in Historical Context

In negotiations surrounding the limits of territorial seas, there were undertones of compulsory and productive power. While elements of compulsory power were evident in the firm statements by the UK, France, and the US as great powers collectively insisting that the six-nautical-limit was a "reasonable compromise," the pervasive influence of productive power is visible in shaping the very discourse of what constituted "reasonableness" with respect to limits of the territorial sea.

The historical context is crucial to understanding these undertones. The three-nautical-limit, often presented as an established norm of international law, was in fact a product of 18th-century British maritime strategy. Great Britain recognised the benefits of a narrow territorial sea to its dominant commercial, military, and fishing fleet and therefore ardently advocated for it (Strang, 1977). Leveraging its global standing as a great power and garnering support from fellow naval powers, Great Britain successfully entrenched this principle as a widely accepted standard during the 1920s (Swarztrauber, 1970), long before many developing states had achieved independence or developed significant maritime capabilities.

By shaping the discourse and norms of the law of the sea over centuries, maritime powers like Great Britain established the legal context for future negotiations. This productive power manifested in the very language of "reasonableness" and "compromise" used during UNCLOS negotiations—terms that implicitly favoured the status quo beneficial to developed maritime nations. Many developing states played no role in consolidating the three-nautical-mile state practice and yet were expected to accept it as a baseline for negotiations. The marginalisation of more expansive claims, such as the 200nm limit proposed by some Latin American states, further demonstrates the constraining effect of productive power. These proposals, deemed "unreasonable" within the established discourse, were effectively sidelined from serious consideration, revealing how productive power not only shaped what was considered possible but also what was considered worthy of debate during UNCLOS negotiations.

However, it is important to note that the eventual compromise of a 12nm territorial sea, coupled with an EEZ, represented a partial success for developing nations in challenging the established norms. This outcome suggested that while productive power significantly shaped the negotiating landscape, it was not immutable.

Provisions on the territorial limits of states played a major role in shaping the role of UNCLOS as an agent of maritime justice. UNCLOS establishes the rights, powers and obligations of states concerning maritime governance through its delimitation of maritime zones. Sovereignty empowers coastal states to restrict certain rights and freedoms in their territorial sea that might be increasingly interlinked with crime and other

national security concerns (Bateman, 2007). The EEZ, which was a necessary compromise between the interests of developed and developing states, also proffers additional opportunities for coastal states to regulate the exploitation of marine resources adjacent to their territorial sea—opportunities that may not have existed if the demand for greater high seas freedoms of developed states had not been matched against the ambition of developing states for greater sovereignty.

5.3. The CHM: Strengthening the "Weak"?

Beyond the limits of sovereignty and sovereign rights, debates on the CHM principle proved instrumental in shaping the Law of the Sea. Here, institutional power operated appreciably in favour of developing states, at least in part. Arvid Pardo strategically advanced the CHM principle through the UN, recognising its potential appeal to developing countries. These states, aware of their limited capacity to exploit distant marine resources, saw in the CHM an opportunity to advocate for a more equitable international order. The UN, as a global governance platform, provided the institutional framework that allowed the CHM principle to gain traction and proliferate, ultimately serving the interests of developing states.

The negotiations also revealed the subtle workings of structural power, albeit to a limited extent, in favour of developing states. In this context, developing states were positioned as relatively weaker actors in the global arena, a status that paradoxically afforded them certain advantages. Their structural position as weaker actors in a new international order supposedly founded on the principles of justice and equity necessitated a degree of bias towards the interests and needs of developing states. The CHM principle provided a vehicle for expressing this bias. Evidence of this can be found in the Conference president's opening speech, which emphasised that any agreement must promote the well-being of all states, particularly developing ones, by making them beneficiaries of the CHM (UN, 1973a). Consequently, compulsory power was also present, insofar as resulting structural positions implied that developing states could deploy normative resources as "less powerful members" of the UN, such as demands for fairness and equity, to constrain the actions of more powerful actors (Barnett & Duvall, 2005, p. 50). This does not imply that developed states did not wield any compulsory power over their developing counterparts in the matter. Here again, the threat of abstention, along with all its legal and economic connotations was used by developed states.

The contentious nature of the CHM principle and the role of the ISA significantly impacted UNCLOS' ratification process, leading to the abstention of several developed states, including the US, UK, Germany, France, and the USSR. This impasse was only partly resolved in 1994 with the adoption of an Implementing Agreement to Part XI of UNCLOS, which rendered most of the provisions to which developed states were opposed inapplicable so that the Convention would not have to enter into force without their participation (Kawasaki & Forbes, 1996). Thus, ensuing power relations rendered ISA, established under the agency of UNCLOS, far less capable than envisaged by developing states. The Convention was later ratified or acceded to by the UK, Germany, France, and the Russian Federation. However, the US remains a non-party.

Contentions on the CHM principle and other aspects of governance in the ABNJ extended into negotiations towards the BBNJ Agreement, which commenced in 2018 and concluded in 2023. Despite these challenges, the inclusion of the CHM principle in UNCLOS demonstrates consonance with traditional concepts of justice (Miller, 2023; Sher, 2012; Woolcock, 2018), considering the role of the CHM in establishing a just and equitable order for the oceans.

UNCLOS was finally adopted on 10 December 1982 after a decade of negotiations. However, it was not until 16 November 1994—an additional 12 years later—that the Convention came into force based on the requirements of Article 308. This prolonged timeline reflects state ratifications stalled not merely by procedural delays, but by complex processes of diplomatic manoeuvring, shifting global power structures, and evolving perceptions of maritime rights and responsibilities. In the decades since its adoption, several provisions of the Convention have crystallised into rules of customary international law. The Convention's journey from conception to implementation thus mirrors the broader struggle to establish an instrument of maritime justice in the face of power relations resulting from divergent national interests.

6. Conclusion

This article has examined the profound influence of power relations between states on the negotiation and formation of UNCLOS offering significant insights into one of the ways through which power relations can shape maritime justice. The analysis is grounded in a conceptualisation of maritime justice as a composite term encompassing the broad ways in which laws, regulations, and legal principles are applied in addressing maritime governance concerns. This approach, while not claiming to be exhaustive, reorients the discourse away from prevailing social and environmental paradigms of blue justice, positioning maritime legal frameworks as the central focus of analysis (see Larsen, 2024). By framing UNCLOS as an agent of maritime justice, this article argues that power relations among states during its negotiations greatly shaped some of its key provisions and by extension, influenced maritime justice. Barnett and Duvall's taxonomy of power provided a valuable analytical framework, illuminating the multifaceted ways in which power manifested during negotiations. The analysis demonstrated that various forms of power—compulsory, institutional, structural, and productive—were at play in determining the Conference's rules of procedure and in negotiating provisions related to the territorial limits of states and the governance of the ABNJ. While this article highlights selected examples of these power manifestations, their deeply interconnected and mutually reinforcing nature means that examining one form often reveals the operations of others. Thus, the analysis presented here is by no means exhaustive. Power relations also influenced negotiations on other provisions of the Convention not contemplated in this study. This broader impact was evident, for example, in negotiations on marine environmental protection, where developed and developing states clashed over the distribution of conservation costs (Joyner & Martell, 1996).

Importantly, power relations did not uniformly favour traditionally powerful actors but could work to the advantage of ostensibly weaker actors, depending on the confluence of factors under consideration. Furthermore, the discussions revealed that actors may not always be fully aware of the varying forms of power they wield in such processes. However, for scholars across the disciplines of international relations, law, and politics, understanding the multifarious role of power relations and asymmetries in shaping international legal agreements provides crucial insights into their constitutions as agents of justice. Awareness of these insights can potentially allow actors to hedge against power asymmetries that may be detrimental to fundamental principles of justice.

This analysis establishes a crucial foundation for expanding the discourse on the intricate relationship between power dynamics and maritime regulation and enforcement. It paves the way for a rich vein of future research across multiple dimensions. Foremost, it invites scholars to develop more theoretical frameworks for conceptualising maritime justice. Such frameworks can deepen our understanding of

maritime justice effects, as well as how state interests, power relations, and emerging global challenges might shape these effects. There is also the need to critically examine UNCLOS' ongoing efficacy as an instrument of maritime justice, particularly in light of shifting global power structures. This line of inquiry could explore how evolving geopolitical realities reshape the interpretation and application of UNCLOS provisions, potentially altering its capacity to deliver maritime justice. Furthermore, as the international maritime legal landscape continues to evolve, investigating the implications of power relations and asymmetries on recent expansions of the UNCLOS framework like the BBNJ Agreement becomes increasingly crucial.

By revealing the complex interplay of various forms of power in the creation of UNCLOS, this article provides a critical perspective on the challenges and opportunities in pursuing a just global maritime order, even as the international community continues to grapple with emerging maritime security challenges.

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Conflict of Interests

The author declares no conflict of interests.

Data Availability

Summary records and documents from the UNCLOS (I, II, and III) can be found in the United Nations diplomatic conferences repository available at https://legal.un.org/diplomaticconferences

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