

# WHAT ARE THE REASONS FOR THE STATES HAVING NOT RATIFIED THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982 (UNCLOS)?\*

The 168 states are party to UNCLOS now; however, 30 countries are not either. Of these 30 non-party states, 14 signed but did not ratify, 16 countries neither signed nor acceded to the Convention.

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**O**n December 10, 1982, a new age began in the seas while effectuating a comprehensive system of the legal regime in the oceans and seas of the world. The main aim of the United Nations Convention on the Law of the Sea (UNCLOS) about is how the oceans and their resources will be used and shared. It includes traditional rules for the limitation and uses of the seas, moreover introduces new concepts and principles. This Convention

has emerged after a long and challenging process. It was started to be discussed in 1973 and completed in 1982.

The subject of the study is the determination of the reasons for states' reluctance in adopting the UNCLOS. This study covers states that have not signed or ratified the UNCLOS. It consists of examining the situation of states that have not signed or ratified this Convention, which was written and adopted in 1982.

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**It is crucial to understand the difference between signing and ratifying a convention to analyze the roles of non-party states at the convention. Ratification defines an international act by which a State indicates its consent to be bound by a treaty if the parties intend to demonstrate their consent by that Convention.**

In the study, a two-tier approach will be made among the States listed first those of signed but did not ratify, or neither signed nor became a party to the UNCLOS. The subject will be examined in the light of the countries' concerns, and the relevant laws will be discussed by comparing with other legal arrangements.

## **I. Relationship with Unclos and United Nations**

The United Nations is an international organization formed in 1945 by 51 countries to maintain international peace and security, establish positive relations among nations, and improve social progress, higher living standards, and human rights.<sup>1</sup> Each of the 193 member states of the United Nations is also a member of the General Assembly. The number of countries has also changed since the date UNCLOS was first signed. Palestine has accepted UNCLOS even if it has only observer status. There have been some new states that emerged after the dissolution of the USSR. Some of them chose to be a party to UNCLOS, some did not.

The number of states participating in the UN Third Conference on the Law of the Sea is very different from the 1958 Geneva Conference on the Law of the Sea. While the UN Third Conference held with 151 state participants, the 1958 Geneva Convention with 85 states. Numerical superiority is in underdeveloped and developing countries. The fact that the asymmetry mentioned above is not in favor of developed states provides an advantage to developing countries with numerical superiority in conference negotiations.<sup>2</sup> The UNCLOS replaced the 1958 Geneva Convention on the Law of the Sea as per article 311/1.

Some countries are not recognized by the UN, but are recognized by some UN member states: The Republic of Abkhazia, the Republic of China (Taiwan), Kosovo, the Turkish Republic of Northern Cyprus, the State of

Palestine, the Arab Republic of the Sub-Saharan Democratic Republic, and the Republic of South Ossetia. Finally, some countries are recognized by the United Nations, but some countries do not recognize them: China, Armenia, the Republic of Cyprus, Israel, North Korea, South Korea.<sup>3</sup>

## **II. Non-Party States and Their Reason for Reluctancy**

### **A) Overview**

The 168 states are party to UNCLOS now; however, 30 countries are not either. Of these 30 non-party states, 14 signed but did not ratify, 16 countries neither signed nor acceded to the Convention.

**14 UN member states have signed but not ratified the convention:** Afghanistan, Bhutan, Burundi, Cambodia, Central African Republic, Colombia, El Salvador, Ethiopia, Iran, North Korea, Libya, Liechtenstein, Rwanda, United Arab Emirates,

**Other 16 UN member States have neither signed nor ratified the Convention:** Andorra, Eritrea, Israel, Kazakhstan, Kyrgyzstan, Peru, San Marino, South Sudan, Syria, Tajikistan, Türkiye, Turkmenistan, Uzbekistan, Holy See (Vatican), Venezuela, USA.

It is crucial to understand the difference between signing and ratifying a convention to analyze the roles of non-party states at the convention. Ratification defines an international act by which a State indicates its consent to be bound by a treaty if the parties intend to demonstrate their consent by that Convention. In the case of bilateral treaties, ratification is usually accomplished by exchanging the instruments required. In contrast, in the case of multilateral treaties, it is the usual procedure for the depositary to obtain ratifications of all the instruments required.

At the same time, since landlocked states will be examined under a separate heading, it is necessary to define this as well. Article 124 of the UNCLOS defines a land-locked State as a state with no sea coast. So, each land-locked state wants to reach and access the seas; it depends on its neighboring state.

“Transit State means a State, with or without a seacoast, situated between a land-locked State and the sea, through whose territory traffic in transit passes.”<sup>4</sup>

Though land-locked states are given legal right of





access to and from the sea and freedom of transit under Article 125 (1), such rights are put along with significant practical restrictions. Accordingly, Article 125 (2) states that:

“The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, sub regional or regional agreements.”<sup>5</sup>

Even though one cannot deny the relevance of international law of the sea to the land-locked states’ overall rights on the sea, the fact remains that the very enjoyment of those rights is contingent upon the

negotiation to be made between land-locked and transit states.<sup>6</sup>

## B) Neither Signed Nor Acceded

### 1- The United States of America

The United States of America (USA) conceived a legal framework for deep-seabed mining. The USA thought it secured title to oil and gas resources located on the USA extended continental shelf. They hesitate to expose climate change lawsuits and other environmental actions brought against it by other members of the Convention.

**Israel has a hesitation about the Tiran Strait and the transition regime there. Further, Israel will not withdraw from the Sinai unless there is a guarantee that there will be a settlement of, inter alia, its rights of passage in the Straits of Tiran.**

<sup>7</sup> The United States opposed part XI of the Convention for several reasons. Moreover, in the United States' opinion, Part XI was unfavorable to American economic and security interests.<sup>8</sup> In the United States, the Convention will set other undesirable precedents, such as mandatory technology transfer and the allocation of funds to national liberation movements.<sup>9</sup>

Part XI of UNCLOS includes the international seabed, and there are strong criticisms of the United States against these regimes in UNCLOS. With being a large and technologically advanced country, U.S was concerned about being obliged to pay the International Seabed Authority (ISA) exorbitant costs for redistribution to developing countries. As a result, the United States has

accepted UNCLOS except for Part XI as customary international law.

## 2- Israel

Israel has not signed UNCLOS, despite being a signatory to the 1958 United Nations Convention on the Continental Shelf.

Israel was one of four countries to vote against UNCLOS because of a provision allowing revenues generated from seabed activities to benefit '*peoples who have not yet attained full self-governing status*'.<sup>10</sup> Following international law and established practice, Israel has reached an agreement with the Greek Cypriot Administration of Southern Cyprus (GCASC) to delimit its territorial waters and exclusive economic zone in the Mediterranean Sea.

One of the official reasons for Israel's refusal to sign and ratify the UNCLOS is Article 15 of the Rules of Tribunal, which may require Israel to comply with the mandatory procedures of the International Tribunal for the Law of the Sea (ITLOS).<sup>11</sup> Israel believes that if these disputes go to compulsory jurisdiction, a decision will come against them.



Israel's main concern is related to the discovery of important oil and gas resources in the eastern Mediterranean basin. It is necessary to clearly delineate the exclusive economic zone before exploration and development of such resources can begin.<sup>12</sup>

In addition to these, Israel has a hesitation about the Tiran Strait and the transition regime there. Further, Israel will not withdraw from the Sinai unless there is a guarantee that there will be a settlement of, inter alia, its rights of passage in the Straits of Tiran.<sup>13</sup> Israel does not want a change in the transition regime in the Tiran Strait.

### 3- Venezuela

Venezuela has claimed a large swathe of the Caribbean Sea based on applying a 200 nautical mile exclusive economic zone (EEZ) around Bird Island, which is situated some 550 km to the north of Venezuela and 110 km to the west of Dominica. Due to the unique nature of the Caribbean Region, Venezuela does not want to accept the definition of islands in UNCLOS 121 and the conclusions drawn from the article.

Regarding the strife between Venezuela and Guyana, the two states have locked horns concerning overlapping maritime claims stemming significantly from the Essequibo dispute. Consequently, both argue that they acted lawfully within their maritime zones.<sup>14</sup>

Venezuelan officials underlined “*practical settlement of controversy*” to exclude all other phrases from the relevant provisions. Shortly after that, they called the issue a “*controversy*.” However, Guyana stated *no* “*territorial controversy*”; only disagreement over Venezuela's claim that the 1899 arbitration award was invalid.<sup>15</sup>

### 4- Türkiye

Türkiye avoided signing and ratifying the United Nations Convention on the Law of the Sea, because the convention did not allow reservations even though some provisions of the UNCLOS can be interpretable in parallel with Turkish arguments.<sup>16</sup> Article 3, 33 and 121 are the most problematic provisions of UNCLOS for Türkiye. The Aegean Sea is a semi-enclosed sea that lies between mainland Türkiye and Greece, so there are many tiny islands and islets. The primary reasons of contention between Türkiye and Greece are these islands and islets.<sup>17</sup>

Türkiye's eventual decision to not becoming party to the UNCLOS, as well as its subsequent unwillingness to sign and ratify it, was caused by two causes. The first

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factor was the prohibition of reservation.<sup>18</sup> The second reason for Türkiye's non-ratification of UNCLOS is that marine delimitation regulations for states with opposing or near coasts was uncertainty.

Türkiye actively proposed several texts on enclosed and semi-enclosed seas during the negotiations. Türkiye initially contemplated and proposed the principle of equity for states bordering enclosed or semi-enclosed seas, implicitly including delimitations matters.<sup>19</sup> Although it was included in the final text that the parties should agree before the limitations and do so in the framework of equity, Türkiye was not ultimately convinced that the ratification of the UNCLOS could successfully resolve its disputes with Greece in the Aegean.<sup>20</sup>

### 5- Eritrea

Eritrea has not ratified UNCLOS and UN Fish Stock Agreements. Eritrea is a fisheries country, and the provision of UNCLOS about fisheries is not acceptable for Eritrea.<sup>21</sup> The Arbitral Tribunal in Eritrea/Yemen also recognized the existence of traditional fishing rights of Eritrea's fishermen to continue to have access to and use of waters around the islands, the islands themselves, and access to Yemen's port.<sup>22</sup>

Consequently, maritime zones such as the Territorial Sea, Contiguous Zone, Exclusive Economic Zone (EEZ) are not yet defined. Nevertheless, according to international customary law, it should be bound by the convention. Consequently, it allows innocent passage in its TW (Territorial Waters) and only interferes in cases involving a grave and imminent threat to its coastal areas.<sup>23</sup>

### 6- Peru

Peru is not part of UNCLOS because the state thought that signing that treaty was unnecessary to resolve Chile's dispute. It is a political and strategic movement. Peru claims 200-mile territorial seas and refuses to become parties to the Convention.<sup>24</sup> The Court



evaluated whether, as Chile asserted, there existed an agreed maritime border extending 200 nautical miles from the Parties' respective coasts in its January 27, 2014, judgment. After a lengthy procedure, Peru and Chile finalized the coordinates of their maritime boundary on March 25, 2014.<sup>25</sup>

### 7-Syria

Between 1963 and 2003, it claimed a 6-mile contiguous zone seaward of its excessive 35-mile territorial sea boundary before reducing the claim to 12 miles and the contiguous zone claim to 24 miles.<sup>26</sup> The other reason is that all of Syria's territorial seas require prior permission or license for foreign vessels to sail through.<sup>27</sup> Syria considers claiming an EEZ despite not having ratified the UNCLOS; jurisprudence has long recognized that the concept of an EEZ is part of customary international law.<sup>28</sup>

### 8- Landlocked Countries that have neither Signed nor Acceded

Landlocked Countries that have neither signed nor acceded are: *Andorra, Kazakhstan, Kyrgyzstan, Uzbekistan, San Marino, South Sudan, Tajikistan, Turkmenistan, Vatican.*

When the landlocked state passes across part of the whole of the territory of another State, it should be established by common agreement among the States concerned, with due regard to the multilateral conventions to which these states are parties. This situation can be unstable and hesitant.<sup>29</sup>

Humanity turns to the sea for subsistence as our needs for food, fuel, and other resources increase. Due to the development of science and technology, the vast ocean depths are actually within the reach of mankind. As the utility of the sea has broadened, its role has also evolved from a medium of communication to a repository of wealth.<sup>30</sup> In this direction, the difficulties experienced by these landlocked countries and their desire to reach the sea would also be considered in future.

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### C) Have Signed, Not Ratified

#### 1- Cambodia - Jul 1, 1983

The country took part in several meetings of the Third UN Conference on the Law of the Sea, but Cambodia's participation was not very active due to internal problems. So far, the necessary preparations have not been made for the national measures to approve and ensure its implementation at the national level.<sup>31</sup> A significant issue with East Asia's innocent passage regime is generally the requirement of coastal and archipelagic states to seek advance notice or approval of innocent passage of warships.<sup>32</sup>

As far as the 1982 UNCLOS is concerned, in early 1995, the Cambodian Ministry of Foreign Affairs submitted to the Royal Government of Cambodia for the creation of an ad hoc inter-ministerial commission to study in detail the implications of the UNCLOS.<sup>33</sup>

Apart from these, there has been significant development in Cambodia. On 30 December 2019, a total of 110 National Assembly members convened to review and unanimously approve seven draft laws in a historic session that saw the Kingdom ratify the UNCLOS.<sup>34</sup>

When considering the validity of this law, it may be necessary to first look at maritime claims. It can be concluded that all maritime claims stated by Cambodia are compatible with UNCLOS, and accordingly, they prepare themselves for UNCLOS.<sup>35</sup>

Three interrelated factors are likely to have weighed on Cambodia's decision to ratify UNCLOS at this time. Cambodia is very keen to be seen as supportive of international law by the international community. The first factor relates to the impending decision by the European Union to consider rescinding preferential tariffs under their *Everything But Arms* (EBA) policy. Cambodia is one of the primary beneficiaries of the EBA scheme. Secondly, Cambodia hopes to take advantage of the

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recent improvement in bilateral relations with the United States by demonstrating its support for a “rules-based” Indo-Pacific region. Thirdly, Cambodia feels isolated and overly dependent on China at this particular time. Some friction has arisen over Chinese Investors, companies and Chinese nationals working and living in Cambodia.<sup>36</sup>

## 2- Colombia - Dec 10, 1982

Geographical location of Colombia did not allow the ratification of UNCLOS. The western Caribbean is full of rich mineral and biological resources. Because of this situation Colombia thought that it should be shared in different ways.<sup>37</sup>

Between Colombia and Nicaragua, there were some conflicts, resulting in problems, especially fish and fishing, which covers a wide area, among the EEZ and continental shelf. Due to that, the Republic of Colombia was subjected to an application instituting proceeding under the first two states of Article 121 regarding a dispute concerning “a group of related legal issues subsisting” between the two States “concerning title to territory and maritime delimitation”<sup>38</sup>, by the Republic of Nicaragua. Although the Court had recognized these two paragraphs of Article 121 as customary international law, the Republic of Colombia objected and affirmed that they did not know about it.<sup>39</sup> At that point, because of the delimitation problems that were caused mutually, Colombia refused to become a party to the convention.

## 3- El Salvador - Dec 5, 1984

El Salvador may have decided not to vote because of their claim to the 200-mile territorial sea.<sup>40</sup> Despite decades of ratification discussions and treaty negotiations, El Salvador still claims 200 miles of territorial waters.<sup>41</sup> It refuses to become parties to the convention. Some of El Salvador’s border problems with Honduras and Nicaragua are also among the reasons for not being a party to UNCLOS.<sup>42</sup>

## 4- Iran - Dec 10, 1982

Even participating in UNCLOS negotiations, Iran criticized the provisions of the 1982 Convention; the most important provisions criticized by Iran are “innocent passage of warships through territorial waters” and “right of transit through international straits”.<sup>43</sup> The most important issue is about the Hormuz Strait. Iran has concerns about the right to passage through the international straits and does not accept transit passage in the Strait of Hormuz.

The extension of innocent passage rights of the naval units over the territorial sea was a contentious problem during the Third UN Conference on the Law of the Sea and after the conclusion of the UNCLOS. Iran supports that there should be a provision on notifying beforehand the passage of naval ships of other states over territorial waters to observe requirements of the innocent transition.<sup>44</sup>

Based on this, while signing the UNCLOS, Iran proposed a statement to the UN pursuant to Article 310 of the 1982 Convention that provides states with the convenience to submit a declaration. According to its interpretation and application of Article 34 of the 1969 Vienna Convention on the Law of Treaties, Iran considers that only states party to the UNCLOS shall benefit from the contractual rights in the treaty.<sup>45</sup>

## 5- North Korea - Dec 10, 1982

The incompatibility of North Korea’s perspectives on the law of the sea with general international law and the UNCLOS consists of establishing excessive straight baselines and military boundary zones.<sup>46</sup>

The first problem with North Korea is that the obligation to allow foreign ships the right of innocent passage through their territorial sea is a significant limitation on their sovereignty and a potential threat to their national security.<sup>47</sup> North Korea believes that it had been victimized unjustly by the hostile powers of the outside world in the past.<sup>48</sup> It is mainly about the United States of America and disputes between them. In addition, North Korea has resisted the fact that most provisions of the Convention have achieved the status of customary international law.<sup>49</sup>

## 6- Libya - Dec 3, 1984

In the negotiations of UNCLOS III, Libya, as the State from the Mediterranean Sea interested in adopting





specific rules on the delimitation of maritime boundaries for semi-enclosed seas.<sup>50</sup> Firstly, Libya claims to restrict international airspace out to 100 miles in the vicinity of Tripoli. Secondly, Libya had declared discomfort with the status of historic bays and the presence of the USA in their waters.<sup>51</sup>

Article 8 of UNCLOS clearly states that the provisions do not apply to so-called “historic bays”. Libya’s first claim to the Gulf of Sirte (1973) using a 300 nautical mile closing line is apparently on historic grounds and national security grounds.<sup>52</sup> On 19 October 1973, the Libyan Arab Jamahiriya claimed the Gulf of Sirte, which is 290 miles wide, as a historic bay, stating that this Gulf formed part of its territory and that the baseline should therefore not be calculated from the coastline inside the Gulf but the furthest points of land.<sup>53</sup>

Libya has exercised jurisdiction over the Gulf of Sirte for a long time. In response to this, the U.S. Navy has conducted many exercises in the Gulf region, but Libya defended its rights in the Gulf region and clashed with the United States. As evidence supporting its claim, Libya stated that its navy controlled its territorial waters in the 18th and 19th centuries.<sup>54</sup>

#### 7- United Arab Emirates - Dec 10, 1982

The United Arab Emirates’ (UAE) territorial disagreement with Iran over three small islands is symbolic of the very strained relations between the two countries. It illustrates the UAE government’s deep distrust of Iran.<sup>55</sup>

Another problem is that the UAE has many artificial islands and facilities.<sup>56</sup> UNCLOS describes artificial islands as structures constructed by humans rather than natural processes. These islands are formed by expanding existing islands, building existing coral reefs, or merging several natural islands into one giant island.<sup>57</sup>

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According to the 1982 Convention, states' artificial islands cannot be regarded as national borders. Due to the fact that artificial islands cannot engender or develop baselines, territorial seas, and EEZ for the belonging states.<sup>58</sup> The UAE does not benefit from them, although they make huge investments and generalize their plannings on artificial islands.

#### 8- Landlocked Countries that have Signed not Ratified

Landlocked Countries that have signed but not ratified are: *Afghanistan, Bhutan, Burundi, Central African Republic, Ethiopia, Rwanda and Lichtenstein.*

As mentioned above, access to the open sea by states with no access to the sea is subject to all kinds of agreements with coastal states. UNCLOS could have considered potential problems more when making these adjustments, but limits in its scope must have prevented addressing the question comprehensively.

Political instability in transit states prevents landlocked from accessing the sea. Improved transit provisions in the evolving UNCLOS and for assurance of access to and benefits from the resources of the sea.<sup>59</sup> For instance, Burundi had used the transit corridor of Kenya before UNCLOS. The state suffers from not having access to the sea from the Mombasa Port.<sup>60</sup>

### III. Systemetical Analysis of the Reasons

After examining the reasons for the states have not ratified the UNCLOS, it can be seen that the bilateral distinction made is not very decisive. Both groups of countries have some demands and claims. Some signatory countries may have considered that UNCLOS did not contain sufficient provisions for their own countries and would cause some conflicts. Despite playing an active role in the Convention process, non-signing countries do not sign directly because of the prohibition of making reservations. Many countries have accepted UNCLOS provisions as customary law. For example, the United States declared its EEZ even though it did not agree. However, they prefer not to become the Convention, as they cannot make any reservations on the items they experience conflict with it.

In Article 38 of the Statute of the International Court of Justice (ICJ), sources of international law were included, and customary international law was arranged among the primary sources.<sup>61</sup> Customary law rules bind all states whether or not they participate. The state, which remains silent in forming such a customary law rule, is deemed to have accepted it implicitly, even if it does not participate in the implementation. The state, which does not want to be bound by customary law rules, should object as persistent objectors when the relevant customary law rule begins to form. Although the contract provisions





have turned into a customary rule, it cannot bind any country that is a Persistent objector.

Many states are concerned that some provisions of UNCLOS are not clear enough and that situations may arise that may affect their national security. The special situation of semi-closed and closed seas is not open enough, and islands on the wrong side of the claimed coastal stands with many loopholes to be fulfilled by jurisprudence and alike that can be observed in specific areas of the UNCLOS. Some countries are concerned about possible outcomes in the compulsory judicial mechanism. Moreover, some countries do not want to share their technology and rich oceans resources with other countries to satisfy their higher appetite with greater demands.

Finally, land-locked countries considered that bilateral agreements with neighbouring countries standing between themselves and their access to oceans could have been made within the framework of UNCLOS regulation, which seems to have been left out as national prerogatives to the parties of the Convention. There is no absolute right of passage. In practical terms, landlocked

countries are located in the interior of continents, hundreds or even thousands of kilometers from maritime ports. Moreover, these kinds of countries need transit states' contentions, and this situation brings some problems. The obligation to make bilateral and multilateral agreements does not consider possible hostile relations between states; neither UNCLOS has such power to make transiting agreements happen.

## Conclusion

In this study, a general classification of the states that are not parties to UNCLOS has been attempted. The difficulties faced during this process and the demands put forward by the countries were tried to be examined. It is true that UNCLOS is an international constitution of the seas. Looking at its process, it can also be seen that it contains long arguments; however, it is not completely clear, understandable and sufficient for non-party states. The idea of UNCLOS as a whole has been the reason why many countries did not become a party. Although many countries have their own reasons, this has been the main determining reason.

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