



## Challenges for the International Community in Implementing The 1982 United Nations Convention on the Law of the Sea

**Ngô Hữu Phước, Vũ Kim Hạnh Dung**

*University of Economics and Law and Vietnam National University,  
Ho Chi Minh City, Vietnam*



Corresponding Author — Vũ Kim Hạnh Dung

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**Abstract:** The 1982 United Nations Convention on the Law of the Sea (UNCLOS) was adopted on 30 April 1982 and opened for signature on 10 December 1982. UNCLOS entered into force on 16 November 1994. In terms of content, UNCLOS 1982 comprehensively regulates international legal issues on seas and oceans, and is the most important international legal basis for countries to establish and exercise sovereignty, sovereign rights, jurisdiction; rights, obligations and other freedoms in the process of exploiting, managing and using seas and oceans for peaceful purposes. Therefore, UNCLOS is considered the “Constitution of the Seas and Oceans” of the international community, the second most important global international treaty after the United Nations Charter, UNCLOS is the legal basis for all actions and cooperation at the national, regional and global levels to “resolve all issues related to the law of the sea” and “establish a legal order at sea.” However, in the face of the constant changes in science and technology, the need to exploit and use marine resources, climate change, international geopolitics, etc., UNCLOS also needs to change to continue to improve and promote its universal international legal value in the present and the future. Based on the above practice, this article will study and clarify three challenges to improve UNCLOS 1982.

**Keywords:** UNCLOS 1982; Constitution of the Seas and Oceans; Challenges to complete UNCLOS 1982; Vietnam

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## 1. Introduction

The management, exploitation, and utilization of the seas and oceans have been practiced by nations since the era of slavery.<sup>1</sup> However, it was not until 1930 that the first International Conference on the Sea was convened by the League of Nations<sup>2</sup> in The Hague, Netherlands, from 13 March 1930 to 12 April 1930 with the participation of 47 States. The aim of this Conference was to establish a “Law of the Sea Code” for the international community. However, due to disagreements among nations regarding the determination of the breadth and legal regime of the territorial sea, the establishment of baselines, the

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<sup>1</sup> According to historical records, as early as 406 BCE, Rome and Carthage (Tunisia) concluded an international treaty concerning the sea. Roman vessels were prohibited from navigating beyond the northern promontory of the Gulf of Carthage, except in cases of accident or pursuit by enemies, but were not permitted to engage in trade, with the exception of items necessary for ship repairs, and were not allowed to remain for more than five days. *See:* Maritime Safety Department (1982). *Some Issues on the Law of the Sea*, Navy Command, p. 11.

<sup>2</sup> The League of Nations is an intergovernmental organization, the precursor to the United Nations, established on 10 January 1920.

principle of freedom of navigation, the right of innocent passage, and the legal regime of the contiguous zone, the Conference failed to adopt any international treaty.

Following the Second World War, under the auspices of the United Nations, the International Conference on the Law of the Sea was held in Geneva, Switzerland, from 24 February 1958 to 29 April 1958. This Conference adopted the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas, the Convention on the Continental Shelf, and the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes. Nevertheless, owing to their dispersion across four separate conventions and the limited participation of States worldwide, the legal effectiveness and regulatory impact of these four conventions did not meet the expectations of the international community. Consequently, continued cooperation to develop a “Constitution for the Seas and Oceans of the International Community” remained the aspiration of humankind. After five years of preparatory work (1968–1973) and nine years of formal negotiations (1973–1982) spanning eleven sessions, the United Nations Convention on the Law of the Sea (UNCLOS) was adopted on 30 April 1982 in New York and opened for signature by States in Montego Bay, Jamaica, on 10 December 1982. Comprising 17 Parts, 320 Articles, 9 Annexes, 4 Resolutions, and over 1,000 provisions, UNCLOS stands as the most comprehensive and extensive international legal instrument governing the seas and oceans. UNCLOS entered into force on 16 November 1994.<sup>3</sup>

With the advent of UNCLOS 1982, for the first time in history, the seas and oceans were delimited into three zones with distinct legal regimes: (i) marine spaces under national sovereignty (internal waters,

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<sup>3</sup> According to Art. 308 of UNCLOS, the Convention would enter into force 12 months after the date of the sixtieth ratification. As of May 2025, UNCLOS has 168 member states, including 164 member states of the United Nations. Fourteen UN member states have signed but not yet ratified the Convention: Afghanistan, Bhutan, Burundi, Cambodia, Central African Republic, Colombia, El Salvador, Ethiopia, Iran, Democratic People’s Republic of Korea, Libya, Liechtenstein, Rwanda, and the United Arab Emirates. Fifteen states have not signed UNCLOS: Andorra, Eritrea, United States, Israel, Kazakhstan, Kyrgyzstan, South Sudan, Peru, San Marino, Syria, Tajikistan, Turkey, Turkmenistan, Uzbekistan, and Venezuela.

archipelagic waters, and the territorial sea); (ii) marine spaces under national sovereign rights and jurisdiction (the contiguous zone, the exclusive economic zone, and the continental shelf); and (iii) marine spaces considered the common heritage of mankind (the high seas) and the deep seabed (the Area). Simultaneously, UNCLOS 1982 comprehensively and extensively regulated legal issues pertaining to straits used for international navigation; islands and archipelagic States, geographical features at sea, maritime and air navigation, the exploitation, utilization, management, and conservation of marine resources, the protection and preservation of the marine environment, the suppression of piracy and maritime security, international cooperation on marine affairs, maritime delimitation, and dispute settlement.

Furthermore, UNCLOS established institutions to ensure the most effective implementation and international cooperation on marine issues, including: the International Seabed Authority,<sup>4</sup> the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, the Commission on the Limits of the Continental Shelf, the International Tribunal for the Law of the Sea established under Annex VI, arbitration constituted under Annex VII, and special arbitration constituted under Annex VIII. Consequently, it can be affirmed that UNCLOS serves as the most significant international legal basis for States to establish and exercise their sovereignty, sovereign rights, jurisdiction, as well as other rights, obligations, and freedoms for the peaceful exploitation and utilization of the seas and oceans.

As the “Constitution for the Seas and Oceans” of the international community, UNCLOS is not an international treaty with perpetual and immutable legal value but is continuously updated, supplemented, and progressively improved. Specifically, after the entry into force of UNCLOS, the international community adopted the 1994 Agreement relating to the Implementation of Part XI (the Area) of UNCLOS; and the 1995 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. Notably, after 15 years of negotiations, on

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<sup>4</sup> The International Seabed Authority, known in French as *Autorité Internationale des Fonds marins*, is abbreviated as ISA (English) and AIF (French).

19 June 2023, the United Nations General Assembly adopted 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 (the High Seas Treaty). This Treaty holds particular significance in reinforcing the UNCLOS framework and ensuring sustainable development and prosperity for all nations.

Notwithstanding this, the rapid and continuous advancements in science and technology, the evolving needs for the management and exploitation of marine and ocean resources, geopolitics, and international relations necessitate that the international community continue to supplement, develop, and refine UNCLOS in the future.

## **II. Three Keys Challenges Facing UNCLOS in the Current International Context**

### **II.1. The Challenge of Climate Change**

Climate change has had, is having, and will have a significant impact on natural and human systems, exacerbating the challenges to the existence and development of nations, particularly island States, and to maritime security. Climate change and rising sea levels contribute to population displacement, changes in marine ecosystems, shifts and declines in fishery resources, and increasing poverty and social inequality. Moreover, climate change and sea level rise “undermine legitimate coastal livelihoods and may provide fertile ground for the growth of blue crimes.”<sup>5</sup> The Arctic, in particular, is a region where climate change is expected to have significant implications for maritime security. Historically, the polar regions were considered safe, with little concern for maritime security. However, the melting of sea ice has led to increased vessel traffic and human activities in the Arctic, raising concerns over “illegal fishing, human security and safety, and marine pollution.”<sup>6</sup> Furthermore, disputes and disagreements have already emerged over which States will have rights over areas of the Arctic Ocean that were

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<sup>5</sup> Available at: <https://committees.parliament.uk/writtenevidence/40818/html/> [Accessed 23.09.2024].

<sup>6</sup> Available at: <https://committees.parliament.uk/oralevidence/2958/html/> [Accessed 23.09.2024].

previously covered by ice but are increasingly becoming open sea. This is attributable to the fact that during the negotiations of UNCLOS “the impacts of climate change were not envisaged.”<sup>7</sup> This presents a series of challenges in the 21st century, as the impacts of climate change, including sea-level rise, have become a reality, while UNCLOS lacks a sufficient legal basis to adequately address these effects.

The Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC)<sup>8</sup> Stated that global mean sea level has risen faster since 1900 than in any preceding century in at least the last 3,000 years.<sup>9</sup> Under a medium greenhouse gas emissions scenario, global mean sea level is projected to rise between 0.44 and 0.76 meters by 2100, and could reach up to 1.01 meters under a very high emissions scenario.

The rise in sea levels poses a challenge to the regulations governing maritime rights as enshrined in UNCLOS. Currently, maritime zones are determined from baselines established using the “normal baseline” method, which relies on the low-water line along a State’s coast. According to the traditional view, these baselines, defined by the low-water line along the coasts, islands, and archipelagos, are considered “mobile.” Consequently, as sea levels rise, the low-water line along numerous coastlines will shift landward. This has particularly significant implications for coastal States, small island developing States, and nations with low-lying topography, such as the Netherlands, which will face an “existential threat” due to rising sea levels. If climate change and sea-level rise remain unmitigated, low-lying States and small island nations risk submersion, leading to the loss of their legal status under UNCLOS and the criteria established by the 1933 Montevideo Convention. Be-

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<sup>7</sup> Available at: <https://committees.parliament.uk/writtenevidence/40883/html/> [Accessed 23.09.2024].

<sup>8</sup> The Intergovernmental Panel on Climate Change (IPCC) is a scientific body responsible for assessing the risks of climate change caused by human activities. The IPCC was established in 1988 by the World Meteorological Organization and the United Nations Environment Programme.

<sup>9</sup> Intergovernmental Panel on Climate Change. *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Available at: [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_FullReport.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport.pdf) [Accessed 23.09.2024].

cause according to Art. 1 of the 1933 Montevideo Convention, a State must possess four essential elements: a defined territory, a permanent population, a government, and the capacity to engage in relations with other States. Legally and theoretically, the loss of terrestrial territory could result in a State ceasing to exist as a subject of international law or could severely affect its maritime entitlements, as maritime rights are derived from land. Even if an island is not entirely submerged, a shrinking baseline could lead to reclassification of its territory, resulting in States losing maritime entitlements.

According to Art. 121 of UNCLOS, an island is defined as “a naturally formed area of land surrounded by water that is above water at high tide.” Islands are entitled to maritime zones (territorial sea, contiguous zone, exclusive economic zone, and continental shelf) similar to land territory. However, if an island cannot sustain human habitation or economic life, it is classified as a “rock” and is not entitled to an exclusive economic zone or a continental shelf. Geographical features that are above water only at low tide are classified as low-tide elevations and do not generate maritime entitlements.<sup>10</sup>

To address this issue, in August 2021, the Pacific Islands Forum (PIF),<sup>11</sup> the group of nations most severely affected by rising sea, issued a declaration affirming their intention to maintain existing maritime boundaries and zones. The declaration noted that UNCLOS, “in the determination of maritime zones, coastlines and maritime features were generally considered to be stable.” It is important to note that UNCLOS “imposes no obligation to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations.” As a result, the declaration asserts that “we intend to maintain these zones without reduction, notwithstanding climate change-related sea-level rise.”<sup>12</sup>

<sup>10</sup> Art. 13 UNCLOS.

<sup>11</sup> The Pacific Islands Forum (PIF) is an intergovernmental organization aimed at enhancing cooperation among independent states in the Pacific region.

<sup>12</sup> Pacific Islands Forum, “Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise” (6 August 2021). Available at: <https://forumsec.org/sites/default/files/2024-03/2021%20Declaration%20on%20Preserving%20Maritime%20Zones%20in%20the%20face%20of%20Climate%20Change-related%20Sea-level%20rise.pdf> [Accessed 25.04.2024].

The PIF Declaration has clearly expressed the position of coastal States, not only the 17 nations that adopted it, as it “avoids the gradual diminution of the areas over which they currently exercise sovereignty and jurisdiction, while other States lose nothing by it.”<sup>13</sup> In this regard, UNCLOS does not require States to update their maps, thereby allowing them to maintain the boundaries and maritime zones they have previously determine and formally deposited with the United Nations. According to Art. 62 of the 1969 Vienna Convention on the Law of Treaties, “a fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty.” Therefore, the PIF Declaration is significant and will have a substantial impact in ensuring that the determining of maintaining fixed baselines under UNCLOS is binding on all States. The PIF States support the negotiation of a supplementary agreement to UNCLOS, similar to the Fish Stocks Agreement to “ensure the legal validity of fixed baselines in the context of sea level rise.” This issue has been under consideration by the United Nations International Law Commission (ILC) since its 2021 session.<sup>14</sup> In principle, States must respond to any recommendations from the ILC in a manner that balances the need for stability and security in the law of the sea with the objective of promoting equity in addressing climate change and requiring a “serious consideration” in order to preserve the integrity of UNCLOS.<sup>15</sup>

Finally, the impacts of climate change will entail the responsibility of UNCLOS Member States concerning the protection and preservation of the marine environment and ecosystems, which necessitates a unified understanding and application by the international community, particularly by coastal States and territories. On this matter, at the request of the Commission of Small Island States on Climate Change

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<sup>13</sup> Available at: <https://committees.parliament.uk/writtenevidence/40693/html/> [Accessed 24.09.2024].

<sup>14</sup> More information is available at: <https://committees.parliament.uk/writtenevidence/40742/html/> [Accessed 24.09.2024].

<sup>15</sup> More information is available at: <https://committees.parliament.uk/writtenevidence/40763/html/> [Accessed 24.09.2024].

and International Law (COSIS),<sup>16</sup> on 21 May 2024, ITLOS issued Advisory Opinion No. 31 to clarify two questions. Specifically, regarding question (a) on the obligations of UNCLOS parties in relation to climate change, including the impacts from anthropogenic greenhouse gas (GHG) emissions, ocean acidification, and sea-level rise, ITLOS, concerning the definition of pollution, determined that GHG emissions into the atmosphere constitute pollution under Art. 1(4) of UNCLOS, as they cause direct or indirect harm to the marine environment through changes in temperature, acidification, and sea-level rise. Regarding the obligations under Art. 194(1), ITLOS established that States must take all necessary measures to prevent, reduce, and control pollution from GHGs. Concerning the nature of the obligation, ITLOS determined that this is an obligation of due diligence with a strict standard due to the risk of serious and irreversible harm, as scientifically assessed by the IPCC.<sup>17</sup> Furthermore, the obligation under Art. 194(2) to prevent transboundary pollution from GHGs carries an even stricter standard of due diligence due to its transnational character. The sources of pollution include land-based sources (Art. 207), vessels (Art. 211), and the atmosphere (Art. 212). Simultaneously, ITLOS requires States to enact legislation and implement it through international organizations. ITLOS calls upon States to engage in international cooperation under Art. 197, 200, and 201, including cooperative research, the establishment of standards, and data exchange. It also requires the provision of technical and financial assistance under Art. 202 and 203 to developing countries, particularly vulnerable States, and mandates monitoring, assessment, surveillance, reports publication, and environmental impact

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<sup>16</sup> COSIS was established on 31 October 2021, with initial members comprising small island developing states such as Antigua and Barbuda, Tuvalu, Palau, Niue, and Vanuatu, Saint Lucia, and was subsequently joined by Saint Vincent and the Grenadines, Saint Kitts and Nevis, and the Bahamas.

<sup>17</sup> Abbreviation for: Intergovernmental Panel on Climate Change, an international organization established in 1988 by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP). The IPCC's mandate is to provide objective, comprehensive, and the most up-to-date assessments of scientific, technical, and socio-economic information relevant to climate change, based on research conducted by scientists worldwide. IPCC reports serve as a crucial foundation for governments to formulate policies addressing climate change.

assessments for activities with the potential to cause GHG pollution under Art. 204, 205, and 206.

Regarding question (b) on the protection and preservation of the marine environment from the impacts of climate change, ITLOS affirmed that Art. 192, applicable to all threats, including climate change and acidification, requires both protection (prevention of harm) and preservation (restoration of degraded ecosystems). This obligation is one of due diligence with a strict standard, demanding proactive measures based on foreseeable risks. Article 194(5) concerning the protection of rare or fragile ecosystems (ice-covered areas under Art. 234) and the habitat of depleted, threatened, or endangered species (based on the CITES Convention) requires flexible but reasonable and science-based measures. Articles 61 and 119 on the conservation of living resources in the EEZ and High Seas necessitate management measures based on the best scientific evidence, the application of the precautionary and ecosystem approaches, and consideration of the impacts of climate change (such as the migration of fish stocks). Articles 63, 64, and 118 on international cooperation for the protection of migratory species and shared stocks require good-faith consultations to coordinate measures and adapt to changes in distribution due to climate. Article 196, addressing the prevention of the introduction of alien species due to climate change (warming sea temperatures altering ocean currents), sets a threshold of “significant harmful effects” and requires the application of the precautionary approach. Concerning area-based management tools, ITLOS encourages the use of marine protected areas (MPAs) and marine spatial planning, drawing upon regional practices (such as the OSPAR Convention<sup>18</sup>) and the BBNJ Agreement<sup>19</sup> for adaptation and mitigation.<sup>20</sup>

<sup>18</sup> Convention for the Protection of the Marine Environment of the North-East Atlantic. Available at: [www.ospar.org](http://www.ospar.org) [Accessed 02.05.2025].

<sup>19</sup> 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), was adopted on 19 June 2023, during the fifth session of the Intergovernmental Conference (IGC-5) under the United Nations. Available at: <https://www.un.org/bbnj/> [Accessed 02.05.2025].

<sup>20</sup> Advisory Opinion. Available at: [https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory\\_Opinion/C31\\_Adv\\_Op\\_21.05.2024\\_orig.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf) [Accessed 02.05.2025].

## II.2. Challenges in Maritime Security

The 21st century has witnessed the explosive development of science and technology across numerous domains, including the maritime sector, which encompasses Maritime Autonomous Vessels (MAVs) also known as unmanned vessels. These technologies replicate many functions of traditional ships and offer new capabilities to operators (Klein et al., 2021). Much of the development of such technologies is geared towards military purposes. The emergence of MAVs presents a novel challenge to international maritime security. This is because UNCLOS was drafted at a time when traditional maritime vessels required a physical crew to operate. Numerous UNCLOS provisions refer to and impose obligations upon the “crew” of a vessel. For instance, Point 4, Art. 94 of UNCLOS mandates that “each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship.” In contrast, MAVs do not require a physical crew for operation and some may not even require remote crew operation. According to the IMO classification, MAVs have four degrees of automation. Level 1 involves a ship with some automated systems but still manned; Level 2 involves remote control capabilities but still with personnel on board; Level 3 involves remote operation of the ship without personnel on board; and Level 4 is fully autonomous, meaning the ship has the capacity to make decisions independently.<sup>21</sup>

From a legal perspective, the classification of MAVs as “ships,” “warships,” or simply “equipment” is critical due to its implications for rights enshrined in UNCLOS such as the “right of innocent passage” through territorial waters applicable to “ships.” If MAVs are deemed “ships,” what responsibility falls upon the flag State? Therefore, there is a requirement that new regulations and guidance are imperative to address these questions, as technological advancements currently outpace the development of international law. The IMO is undertaking efforts

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<sup>21</sup> International Relations and Defence Committee. Corrected Oral Evidence: UNCLOS: Fit for Purpose in the 21st Century? Available at: <https://committees.parliament.uk/oralevidence/3000/html/> [Accessed 24.09.2024].

to establish a legal framework to fill these lacunae and provide specific guidance. However, this may not be finalized until 2028.<sup>22</sup>

On the other hand, can MAVs used by the military be classified as “warships”? Under the Law of Naval Warfare, only warships are legally permitted to use force in armed conflicts. This right known as the “belligerency rights” includes the authority to “kinetic strike, visit board search and seizure, laying mines, amphibious operations against enemy held coast, blockade enforcement.”<sup>23</sup> According to UNCLOS, warships are entitled to “immunity,” meaning that other States cannot exercise jurisdiction over them. Article 29 of UNCLOS defines a warship as: “a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.” Based on this definition, an MAV cannot be classified as a warship because it lacks both an officer in command and a crew. Consequently, in principle, MAVs do not enjoy the right of belligerency. Moreover, high-tech crime have evolved rapidly. MAVs have been employed for unlawful purposes, such as the Houthi rebels’ use of unmanned explosive boats in the Yemen conflict, Ukraine currently using them to attack Russian military vessels in the Black Sea, or the MAVs being used to transport illicit goods. These developments pose significant threats to international maritime security.

From a legal perspective, UNCLOS only provides a “starting point for establishing State rights and duties in responding to illicit activity at sea” (Klein et al., 2021). Accordingly, a coastal State may exercise criminal jurisdiction over offenses committed within its territorial waters, including internal waters, archipelagic waters, and the territorial sea. In the contiguous zone, however, the coastal State may only exercise the necessary control to prevent infringements of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or

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<sup>22</sup> International Relations and Defence Committee. Available at: <https://committees.parliament.uk/oralevidence/3000/html/> [Accessed 24.09.2024].

<sup>23</sup> Ministry of Defence. Evidence (UNCO018). Available at: <https://committees.parliament.uk/writtenevidence/40830/html/> [Accessed 24.09.2024].

territorial sea; and punish infringements of such laws and regulations that have occurred within its territory or territorial sea.<sup>24</sup>

Additionally, other international treaties, such as the 2000 United Nations Convention against Transnational Organized Crime (UNTOC)<sup>25</sup> and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances set out additional responsibilities and rights for States. However, the exercise of criminal jurisdiction depends on the State's ability to identify criminal activities once they are committed. This presents a significant challenge when crimes are committed using MAVs because "The level of autonomy and hence the level of human involvement has implications for characterizing the vessel, as well as for determining liability for conduct at sea, including ascertaining which actor is liable" (Klein et al., 2021). As a result, the exercise of national jurisdiction over MAVs currently presents a challenge because it is exceedingly difficult to determine ownership, as "it can be registered in a national registry, fly its flag, and be located in one State but be remotely controlled from another State." This issue remains unresolved because technology has advanced more rapidly than international law. Consequently, in the future, the international community needs to reach a consensus to develop international regulations to ensure that the use of MAVs for criminal purposes is incorporated into national law.

Beyond military applications, international shipping companies continue to invest in the development of MAVs for commercial purposes. However, they face similar legal challenges to those associated with military use. This is because UNCLOS and other relevant international treaties establish that ships must have a crew on board. For instance, both the SOLAS<sup>26</sup> and MARPOL<sup>27</sup> contain "provisions that explicitly refer to the presence of a master and a qualified crew on board" as well

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<sup>24</sup> Art. 33 of UNCLOS.

<sup>25</sup> The Convention entered into force on 29 September 2003.

<sup>26</sup> The International Convention for the Safety of Life at Sea (SOLAS) was adopted on 1 November 1974, and entered into force on 25 May 1980.

<sup>27</sup> The International Convention for the Prevention of Pollution from Ships (MARPOL) was adopted by the International Maritime Organization (IMO) in 1973, came into force in 1978, and was amended in May 2005.

as “provisions concerning cabins and other areas designated for crew use.”<sup>28</sup> Another key legal question is whether individuals remotely operating autonomous vessels from shore should be classified as “crew” and granted “seafarer rights in the way the crew of a crewed ship would have.”<sup>29</sup> This highlights the need for the International Maritime Organization (IMO) to establish future regulations governing the use of MAVs. Specifically, regulatory frameworks should clarify the meaning of terms such as “master,” “crew,” or “responsible person,” particularly in relation to levels three and four of autonomy MAVs.

### **II.3. Challenges in Protecting Human Rights at Sea**

While the exclusive jurisdiction of the flag state is a fundamental principle of international maritime law, the widespread use of Flags of Convenience (FOCs) has posed — and will continue to pose — a significant challenge to law enforcement efforts aimed at protecting human rights at sea. A vessel flying a FOC is registered under the flag of a country different from that of its actual owner. FOCs are particularly attractive to ship-owners more concerned with maximizing profits than ensuring the welfare of seafarers, as they allow for cost reductions. In practice, FOC registries offer ship-owners low registration fees and the opportunity to circumvent regulations. Once a vessel is registered under an FOC, ship-owners often hire cheap labor, pay low wages, and cut costs by lowering living standards and working conditions for the crew. FOCs also provide a revenue stream for countries without a domestic shipping industry. Such states establish ship registries and charge fees to ship-owners without assuming any real responsibility for crew safety and welfare, unlike states whose vessels genuinely operate under their national flag. Because FOC vessels lack a genuine national affiliation, they remain beyond the jurisdiction of seafarers’ unions in any single

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<sup>28</sup> International Relations and Defence Committee. Corrected Oral Evidence: UNCLOS: Fit for Purpose in the 21st Century? Available at: <https://committees.parliament.uk/oralevidence/3000/html/> [Accessed 24.09.2024].

<sup>29</sup> International Relations and Defence Committee. Corrected Oral Evidence: UNCLOS: Fit for Purpose in the 21st Century? Available at: <https://committees.parliament.uk/oralevidence/3000/html/> [Accessed 24.09.2024].

country. As a result, most seafarers working on FOC vessels are not union members. Even for those who are, their unions have little to no influence over conditions on board. This is why the International Transport Workers' Federation (ITF) has persistently campaigned against the use of FOCs. As of October 2024, ITF has identified 43 countries with FOC registries.<sup>30</sup>

In practice, the use of FOCs constitutes a major obstacle to the enforcement of regulations aimed at protecting human rights at sea, particularly in international waters. The jurisdictional gap created by the exclusive jurisdiction of the Flag State and the widespread use of FOCs presents a significant challenge to safeguarding human rights at sea. In reality, more than 30 million people work at sea, with the majority (about 27 million) being fishers (Haines, 2021). Other individuals working at sea include offshore oil and gas workers, migrants, refugees, asylum seekers, victims of human trafficking, crewmembers, and passengers on cruise ships.

UNCLOS contains several provisions related to the fisheries and their human rights implications, such as Art. 73 (Enforcement of Laws and Regulations of the Coastal State) requiring humane treatment in the context of fisheries enforcement, Art. 98 (Duty to Render Assistance), Art. 99 (Prohibition of the Transport of Slaves), and Art. 292 (Prompt Release of Vessels and Crews). However, there remain significant gaps in the protection of human rights at sea within UNCLOS itself. This is because UNCLOS was developed prior to and independently of international human rights law. Consequently, some argue that “UNCLOS was drafted as if people did not exist at sea, but only vessels, resources and marine species” (Papanicolopulu et al., 2021) or that it “does little to protect the human and labour rights of the people who travel, work and live at sea.”<sup>31</sup>

From a legal perspective, international human rights law applies to individuals both on land and at sea. Therefore, no State can claim

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<sup>30</sup> More information available at: <https://www.itfglobal.org/en/sector/seafarers/flags-convenience> [Accessed 25.09.2024].

<sup>31</sup> Human Rights at Sea — evidence (UNCO016). Fit for Purpose in the 21st Century? Available at: <https://committees.parliament.uk/writtenevidence/40825/html/> [Accessed 25.09.2024].

that, at any given time, it has no obligation to address human rights issues that extend to the maritime domain. Some argue that it may not be necessary to incorporate human rights into UNCLOS, as this matter has already been addressed by competent organizations such as the International Maritime Organization (IMO).<sup>32</sup> In practice, several other international treaties regulate the conditions of individuals working at sea, such as the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW),<sup>33</sup> International Convention on Maritime Search and Rescue (SAR),<sup>34</sup> and the Maritime Labour Convention (MLC)<sup>35</sup> adopted by the ILO. However, these treaties are not specialized international human rights instruments. Furthermore, the lack of attention to human rights in the maritime context is evident in the fact that only one NGO – Human Rights at Sea, a UK-based charity – focuses on human rights at sea, in contrast to the hundreds of organizations on land.<sup>36</sup> As a result, there remains a misalignment between the legal regimes governing the law of the sea and the protection of human rights.

As previously discussed, the exclusive jurisdiction of flag States and the use of FOC present significant obstacles to transparency and the detection of human rights violations at sea. Consequently, States must enact domestic legislation to fulfil their obligations under UNCLOS and international human rights law. This should include granting national courts the authority to prosecute and penalize any individual or entity responsible for human rights violations occurring at sea. However, in practice, many States either fail to enact such legislation, lack the will or capacity to enforce it, or deliberately refrain from enforce-

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<sup>32</sup> Human Rights at Sea – evidence (UNCOO16). Fit for Purpose in the 21st Century.

<sup>33</sup> STCW was adopted on 7 July 1978 and entered into force on 28 April 1984 (as amended in 1995 and 2010).

<sup>34</sup> SAR was adopted on 27 April 1979 and entered into force on 22 June 1985.

<sup>35</sup> MLC was adopted on 23 February 2006 and entered into force on 20 August 2013.

<sup>36</sup> International Relations and Defence Committee. Corrected Oral Evidence: UNCLOS: Fit for Purpose in the 21st Century? Available at: <https://committees.parliament.uk/oralevidence/3126/html/> [Accessed 25.09.2024].

ment. Additionally, ship-owners often choose to register under FOC regimes to evade accountability and maximize profits (Papanicolopulu et al., 2021). Even when a State has appropriate legal frameworks in place, exercising jurisdiction remains highly challenging, if not practically impossible. This is because ships can move freely across international waters, far beyond the territory and enforcement reach of the flag State's patrol vessels, making it exceedingly difficult to monitor, investigate, and prosecute human rights violations at sea.

Moreover, UNCLOS only establishes State jurisdiction within specific maritime zones. As a result, the State cannot invoke UNCLOS jurisdiction solely for the purpose of protecting human rights. For instance, if a vessel flying the flag of Liberia passes through Vietnam's territorial sea and has victims of human trafficking on board, those cases may fall under Vietnam's jurisdiction. However, this does not necessarily mean that Vietnam has the right to intervene in the vessel's innocent passage to protect the victims — unless Vietnam determines that the human rights violation constitutes a threat to its peace, security, or public order under Art. 27 of UNCLOS.<sup>37</sup> Thus, the primacy of the principle of freedom of navigation and the exclusive jurisdiction of Flag States under UNCLOS has significantly hindered the effective application of human rights law at sea.

Furthermore, the absence of procedural mechanisms allowing individuals to seek protection of their rights presents a significant challenge. The dispute settlement mechanism under UNCLOS is exclusively available to States, leaving individuals without direct recourse. Due to the nature of their activities, victims of human rights violations at sea face significant difficulties in bringing claims against their oppressors before domestic or international courts. Even when they attempt to do so, the legal process is often prolonged and complex. Moreover, the MLC does not extend protection to certain categories of workers at sea, explicitly excluding those who work on "ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and

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<sup>37</sup> Art. 27 of UNCLOS on Criminal Jurisdiction on a Foreign Ship.

junks.”<sup>38</sup> Meanwhile ILO Convention No. 188<sup>39</sup> has only been ratified by only 19 States and lacks universal adoption; this has rendered the protection of human rights at sea less effective.

Moreover, the issue of human rights at sea is further complicated by illegal, unreported, and unregulated (IUU) fishing. There is a clear link between IUU fishing and human rights violations, particularly in terms of exploitative practices. Fishing vessel owners often show little to no regard for labor rights and human rights standards. The prevalence of IUU fishing is facilitated by the use of FOC, as well as the lack of effective monitoring and enforcement at sea. The 2018 study revealed “70 % of vessels involved in IUU fishing were, or had been, flagged in a ‘tax haven’ jurisdiction.”<sup>40</sup> The absence of oversight and law enforcement, combined with overfishing, forces vessels to operate further offshore and for extended periods. This inevitably increases the risk of exploitation of migrant fishers, particularly through their prolonged confinement on vessels.

The absence of effective law enforcement mechanisms at sea has contributed to the occurrence of sexual crimes, as victims often face significant difficulties — or even insurmountable barriers — in accessing justice. This issue is particularly concerning for passengers on cruise ships, where jurisdictional complexities and the use of FOC play a crucial role. Crimes committed on cruise ships, including sexual assaults, are rarely investigated by competent authorities and often occur under ambiguous jurisdictional circumstances. As a result, many victims are denied justice after suffering abuse.<sup>41</sup> In practice, numerous cases of sexual assault at sea have gone unpunished because the Flag State of the vessel claims to “lack jurisdiction.” A notable example occurred in 2019 when a British woman was sexually assaulted by an Italian man

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<sup>38</sup> Para. 4 Art. 2, Maritime Labour Convention 2006.

<sup>39</sup> The International Labour Organization (ILO). *Work in Fishing Convention*, 2007 No. 188.

<sup>40</sup> Environmental Justice Foundation — Evidence (UNCO036). Available at: <https://committees.parliament.uk/writtenevidence/40877/html/> [Accessed 25.09.2024].

<sup>41</sup> Human Rights at Sea — Evidence (UNCO016). *Fit for Purpose in the 21st Century?*

aboard a Panama-flagged cruise ship while it was sailing outside territorial waters in the Mediterranean. Although Spanish courts launched an investigation and prosecution, they ultimately ruled that they lacked jurisdiction over the case. Meanwhile, Panama, despite having jurisdiction over the vessel flying its flag, failed to take any action to provide justice for the victim.<sup>42</sup> This case highlights the lack of clear obligations for States when human rights violations occur at sea, particularly when the concerned State is not the flag State and has no legal or vested interest in the victim. Furthermore, this issue remains inadequately addressed under both UNCLOS and the IMO framework.

In summary, the core challenge of human rights protection at sea lies in “the fragmented nature of international law and the absence of a dedicated legal regime that unifies international human rights, refugee, labour, and law of the sea provisions.”<sup>43</sup> This necessitates clearer legal provisions under international law to establish a solid legal foundation for effectively prosecuting crimes that violate human rights at sea. To address this issue, international law should reinforce the requirement of a genuine link between a vessel and its flag State under UNCLOS by imposing stricter regulations on open registries, thereby holding flag States accountable for human rights violations occurring on their flagged vessels. Additionally, port States should extend their jurisdiction to include human rights violations committed at sea when such vessels enter their ports.<sup>44</sup> In particular, supplementing and developing UNCLOS into a truly “living” international treaty — one that serves as an international legal framework effectively safeguarding human rights at sea — remains a pressing challenge for the international community, both now and in the future.

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<sup>42</sup> International Relations and Defence Committee. Corrected Oral Evidence: UNCLOS: Fit for Purpose for the 21st Century? Available at: <https://committees.parliament.uk/oralevidence/2852/html/> [Accessed 24.09.2024].

<sup>43</sup> Human Rights at Sea — Evidence (UNCO016). Fit for Purpose in the 21st Century?

<sup>44</sup> Port State control measures have been used to address marine pollution, and the 2009 FAO Agreement on Port State Measures focuses solely on combating IUU fishing. However, it has not yet been expanded to cover human rights issues, as the Agreement does not grant port states the authority or obligation to enforce measures such as investigation, judicial proceedings, and sanctions, which remain under the jurisdiction of Flag States.

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### III. Conclusion

Thirty-one years after its entry into force, UNCLOS has increasingly affirmed its significance and special mission as the “Constitution for the Seas and Oceans” of the international community, serving as the legal framework for States to establish and exercise their sovereignty, sovereign rights, jurisdiction, and other rights and freedoms to govern the seas and oceans for peaceful purposes. UNCLOS stands as the clearest testament to the spirit of international cooperation and the shared responsibility of the international community regarding the seas and oceans. Alongside the development of humankind, international relations grounded in international law have become increasingly consolidated and emphasized, with UNCLOS consistently maintaining a leading role, legal authority, and significance. However, UNCLOS needs to be further supplemented and developed to function as a truly “living” international treaty, capable of adapting to the evolving realities of international society and effectively addressing emerging challenges related to climate change, technological advancement, and the protection of human rights at sea and in the oceans.

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**Information about the Authors**

**Ngo Huu Phuoc**, PhD, University of Economics and Law and Vietnam National University, Ho Chi Minh City, Vietnam  
phuocnh@uel.edu.vn  
ORCID: 0000-0002-8189-7600

**Vu Kim Hanh Dung**, PhD, University of Economics and Law and Vietnam National University, Ho Chi Minh City, Vietnam  
dungvkh@uel.edu.vn (Corresponding Author)  
ORCID: 0000-0002-1907-3598

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