MEASURING THE DOMINANT PARADIGMA IN UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Nadhif Fadhlan Musyaffa[1], Arie Kusuma Paksi,[2] Lalu Radi Myarta[3]

[1] Universitas Muhammadiyah Yogyakarta, Indonesia, E-mail: nadhif.f.isip20@mail.umy.ac.id
[2] Universitas Muhammadiyah Yogyakarta, Indonesia, E-mail: ariekusumapaksi@umy.ac.id
[3] Universitas Muhammadiyah Yogyakarta, Indonesia, E-mail: lalu.radi.psc19@mail.umy.ac.id

Article Info	Abstract
Keywords: Law, United Nations, Paradigm, Sea-Related Issues, United Nations Convention on the Law of the Sea **DOI :** 10.25041/lajil.v4i2.2595	This study discusses the paradigm used by the United Nations in governing relations among countries on sea-related issues through the analysis of the United Nations Convention on the Law of the Sea. Laws/regulations on sea-related issues have undergone changes, since their inception in 1958 in line with the development of the issue of sea between countries and the factors that cause the proliferation of sea-related disputes, as well as political and economic dynamics in the international sphere. Reforms in the regulatory mechanism on sea-related issues between countries by the United Nations were marked by the formation of the United Nations Convention on the Law of the Sea in 1982 which has several stipulations. This writing aims to analyze and measure the paradigm used by the United Nations in regulating mechanisms on sea-related issues between countries through the analysis of the United Nations Convention on the Law of the Sea. The author uses the content analysis method in analyzing the law. The analysis was carried out on three indicators; actors, authorities, and governance representing the three paradigms; realism (competition), liberalism (collaboration), and constructivism (historical and social construction). Based on the analysis results, it can be concluded that; the United Nations Convention on the Law of the Sea concerning the regulation mechanism on sea-related issues between countries is strongly influenced by the realism paradigm.

A. Introduction

The term territorial waters are sometimes used informally to refer to any area of water over which a state has jurisdiction, including internal waters, the territorial sea, the contiguous zone, the exclusive economic zone, and potentially the continental shelf. The term is used as a synonym for the territorial sea in a narrower sense.[1]

According to the United Nations Convention on the Law of the Sea (UNCLOS) [2], The territorial sea is a belt of coastal waters extending at most 12 nautical miles (22 km; 14 mi) from a coastal state's baseline (usually the mean low-water mark). The territorial sea is regarded as the state's sovereign territory,[3] although foreign ships (military and civilian) are allowed innocent passage through it or transit passage for straits; this sovereignty also extends to the airspace over and seabed below. Adjustment of these boundaries is called, in international law, maritime delimitation.

The regulation of maritime boundaries has also been regulated in the 1982 United Nations Convention on Law of The Sea.[4] International law is known as the law that regulates legal subjects across countries. [5] The law of the sea is a body of customs, treaties, and international agreements by which governments maintain order, productivity, and peaceful relations on the sea.[6]

The scope of international relations has its own perspective in viewing marine issues. The point of view and approach used will influence our thoughts on marine issues. The realism approach views maritime issues as an important issue in international relations.

Realism, also known as political realism, is a view of international politics that stresses its competitive and conflictual side.[7] Realism views the state as the primary and most influential actor (state-centric).[8] It is usually contrasted with idealism or liberalism, which tends to emphasize cooperation. Realists consider the principal actors in the international arena to be states, which are concerned with their own security, act in pursuit of their own national interests, and struggle for power.[9]

As the opposite of realism, Liberalism, or labelled as idealist,[10] the liberalism approach views that international relations actors are not only the state but also other actors such as multinational companies (MNCs), non-governmental organizations (NGOs), and others. Then, the interest of the state is the individual's interest. Moreover, liberalism sees the international structure as not a conflictual relation, but collaboration. Liberalists naturally turn to law as a limitation of power.[11]

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[1] https://www.britannica.com/topic/territorial-waters, diakses pada 3 April 2022.

[2] Law Number 2 of 1982 United Nations Convention on the Law of the Sea

[3] Jörgen Ödalen, "UNDERWATER SELF-DETERMINATION: SEA-LEVEL RISE AND DETERRITORIALIZED SMALL ISLAND STATES." *Ethics, Policy, and Environment 17*, no. 2, (2014): 225-237, 17, DOI: 10.1080/21550085.2014.926086

[4] *Ibid.*

[5] Orakhelashvili, Akehurst's Modern Introduction to International Law (London: Routledge, 2018). (8th ed.). https://doi.org/10.4324/9780429439391

[6] https://oceanservice.noaa.gov/facts/lawofsea.html, diakses pada 10 Maret 2022.

[7] William Wohlforth, "GILPINIAN REALISM AND INTERNATIONAL RELATIONS." *International Relations* 25, no. 4, (2011): 499–511, 25, https://doi.org/10.1177/0047117811411742

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[9] Hans. J. Morgenthau, Politic Among Nations. (New York: McGraw-Hill, 1985), 165.

[10] Andrew Moravcsik, Liberalism and International Relations Theory. (Cambridge: Harvard University Press), 3-4.

[11] Robert Keohane, "TWENTY YEARS OF INSTITUTIONAL LIBERALISM." *International Relations 26,* no. 2, (2012): 125–138, 26, https://doi.org/10.1177/0047117812438451

Meanwhile, the constructivist approach states that marine issues are not issues that arise by themselves but issues that arise from social construction.[12] Constructivism has always linked security issues with ideas and norms. The root of this theory is structuration and symbolic interactionism. In the scope of actor, the state is not the only actor in the world, but also the international institutions.[13]

The three approaches that have been presented above are often used by countries and institutions, or organizations in viewing an issue and making a policy. Therefore, the author intends to conduct a more in-depth analysis of the perspectives and approaches used by the United Nations in viewing marine issues through the United Nations Convention on the Law of the Sea.

There is already an article that discusses marine issues in the international scope through content analysis from UNCLOS. The article is The Concept Of The Archipelagic Province And Archipelagic State In The Perspective Of National And International Law compiled by Muhammad Risnain.[14]

The similarity of this writing with previous writings is that they both carry out analysis using UNCLOS. Meanwhile, the novelty this article the difference between this writing and the previous one is that the writer performs an analysis using content analysis through three indicators (authority, governance, and actors). Then the author views the results of the UNCLOS content analysis using three approaches in international relations, namely realism, liberalism, and constructivism. This paper aims to determine the paradigm used by the United Nations in viewing and making policies related to marine issues.

This paper aims to determine the paradigm used by the United Nations in viewing and making policies related to marine issues (UNCLOS). The author has compiled three hypotheses to analyze the measurement results. First, the regulation of the maritime problems regulated by UNCLOS uses a realism approach. Second, the regulation of maritime issues regulated by UNCLOS uses a liberalism approach. Third, the regulation of maritime issues regulated by UNCLOS uses a constructivist approach.

B. Discussion

Analysis Towards United Nations Convention On The Law Of The Sea

As a step to realize justice for all nations in terms of maritime affairs and avoid the impact of conflicts between countries, it is necessary to have the role of the United Nations. Because, in the beginning, there was a law of the sea, namely the older 'freedom of the seas' concept,[15] dating from the 17th century. Until in the early 20th century, some nations expressed their desire to extend national claims: to include mineral resources, to protect fish stocks, and to provide the means to enforce pollution controls. (The League of Nations called a 1930 conference at The Hague, but no agreements). In other hand, law of the sea is accommodating the negotiation in attempting to increase state sovereignty and exploitation of the seabed[16]. Then, by 1967, only

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[12] Peltonen and Hannes, "A TALE OF TWO COGNITIONS: THE EVOLUTION OF SOCIAL CONSTRUCTIVISM IN INTERNATIONAL RELATIONS." *Revista Brasileira de Política Internacional* 60, no. 1, (2017): 1-18, 60, https://doi.org/10.1590/0034-7329201700105.

[13] Muhammad Rosyidin, Teori Hubungan Internasional: Dari Perspektif Klasik Sampai Non-Barat. (Depok: Rajawali Pers, 2020)

[14] Muhammad Risnain, "THE CONCEPT OF THE ARCHIPELAGIC PROVINCE AND ARCHIPELAGIC STATE IN THE PERSPECTIVE OF NATIONAL AND INTERNATIONAL LAW", *Lampung Journal of International Law* 3, no. 2, (2021): 73-84, 3, doi: 10.25041/lajil.v3i2.2367

[15] Mirja Amshav, "THE FREEDOM OF THE SEAS: UNTAPPING THE ARCHAEOLOGICAL POTENTIAL OF MARINE DEBRIS," *Journal of Maritime Archaeology 9*, no.1, (2014): 8, 9, doi:10.1007/s11457-014-9129-5

[16] Pierre Thévenin, "A LIBERAL MARITIME POWER AS ANY OTHER? THE SOVIET UNION DURING THE NEGOTIATIONS OF THE LAW OF THE SEA CONVENTION," *Ocean Development and International Law* 52, no. 2, (2021): 193–223, 52, https://doi.org/10.1080/00908320.2021.1910158

25 nations still used the old three nautical mile limit. Because of those rules are not relevant anymore, the United Nations formed the new law. In addition, the provisions in the United Nations Convention On The Law Of The Sea concerning the law and regulations of the sea are in accordance with constitutional life, legal developments, and the needs of the community so that the law does not need to be changed. Thus, on December 10, 1982, the United Nations, after the third maritime conference, ratified the United Nations Convention On The Law Of The Sea concerning a legal framework for all marine and maritime activities.[17] Then the law was ratified with 60 ratifications as the basis for the United Nations in carrying out its roles and functions to regulate laws related to maritime affairs. Maintaining international order by agreeing to regulatory authority to avoid dispute in specific areas[18]. Most of the dispute came from the legal issues of international concern such as ocean navigation, strategic purposes and trade[19]. It is essential to manage the distribution of state's interest in achieving ecological, economic and the outcome through social interaction[20].

Territorial sea and contiguous zone according to the United Nations Convention On The Law Of The Sea is The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea. The United Nations carry out arrangements on maritime issues between countries. In practice, not all countries have signed UNCLOS (a total of 157 countries have signed).

The author uses three indicators to analyze the point of view and approach used by the United Nations in viewing marine issues through UNCLOS. As such maritime security is prone to be attacked by piracy and any armed robbery, therefore this should be in the discourse under UNCLOS[21], conflict of interest[22] , conquest and exploitation[23]. The peace would be a threat for peace and cause further conflict[24]. Therefore, the concepts of UCLOS is essential to the interest of international community, in other to maintain society purposes among the members[25]. The three indicators are actors, authorities, and governance. Then, the writer groups the use of words, sentences, and symbols related to the three indicators into three approaches. The three approaches are realism, liberalism, and constructivism. The following are the results of the analysis that has been carried out by the author.

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[17] Spalding, Ana K, de Ycaza, and Ricardo, "NAVIGATING SHIFTING REGIMES OF OCEAN GOVERNANCE," *Environment and Society: Advances in Research 11*, no. 1, (2020): 5–26, 11, doi:10.3167/ares.2020.110102

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1. **Authority Analysis**

Table 1. Measurement Results of Authority Indicators in the United Nations Convention On The Law Of The Sea

Approach	No	Authority	Word Count
Realism	1	Maintenance	31
	2	Government	79
	3	Assignment/Assign	5
	4	Supervision	7
	5	Mastery	9
	6	Measuring	160
	7	Warning	6
	8	Bordering	28
	9	Enforcement	50
	10	Exploitation	98
	11	Audit	10
	12	Arrangement	55
	13	Evaluating	6
	14	Operation	112
	15	Controlling	101
		TOTAL	**757**
		PERCENTAGE	**60%**
	16	Services	42
Constructivism	17	Protection	62
	18	Planning	10
	19	Directing	1
	20	Investigation	18
	21	Management	30
	22	Compliance	70
	23	Recovery	31
	24	Coordinate	30
	25	Rescue	2
	26	Dealing	18
	27	Prevention	88
	28	Training	20
	29	Repair	6
	30	Allocation	10
	31	Organizing	1

	32	Avoidance	2
	33	Cooperation	47
	34	Distribution	11
		TOTAL	**499**
		PERCENTAGE	**40%**
		TOTAL AUTHORITY	**1256**

Based on the results of the analysis listed in Table 1, it can be explained that the authorities in UNCLOS on maritime issues between countries place more emphasis on the realism approach with a percentage of 60%. This realism authority is evidenced by the use of the words government, measuring, exploitation, operation, controlling, and other authorities. While the use of words that represent the constructivist approach only has a percentage of 40% with the use of the words compliance, cooperation, prevention, protection, and other authorities.

UNCLOS provides guarantees to the United Nations for governing, measuring, exploitation, operation, controlling, and other actions. Actions based on this realist approach aim to regulate maritime issues between countries in the international arena.

2. Governance Analysis

Table 2. Results of Measurement of Governance Indicators in the United Nations Convention On The Law Of The Sea

Approach	No	Governance	Number of Words
Realism	1	Plan	26
	2	Policy	20
	3	Law	204
	4	Constitution	8
	5	Process	46
	6	Threat	18
	7	Criminal	3
	8	Decision	75
	9	System	42
	10	Procedure	228
		TOTAL	**670**
		PERCENTAGE	**45%**
Liberalism	11	Information	64
	12	Document	10
	13	Program	39
	14	Detail	5
	15	Conservation	37
		TOTAL	**155**
		PERCENTAGE	**10.5%**
	16	Aid	31

Constructivism	17	Facilities	55
	18	Infrastructure	5
	19	Principle	41
	20	Foundation	1
	21	Accord	317
	22	Education	6
	23	Structure	36
	24	Guideline	8
	25	Consideration	30
	26	Warrant	3
	27	Guarantee	7
	28	Deliberation	2
	29	Agreement	122
TOTAL			**664**
PERCENTAGE			**44.5%**
TOTAL GOVERNANCE			**1489**

Based on the results of the analysis listed in Table 2, it can be explained that the governance in UNCLOS emphasizes the realist approach compared to the liberal and constructivist approaches, even though the constructivism approach is almost balanced with the realism. Governance that emphasizes a realist approach is evidenced by the use of the words law, procedure, decision, process, and other governance. Governance in UNCLOS aims to regulate marine issues by the United Nations, namely coordination with countries related to governing, measuring, exploitation, operation, controlling, and other actions. The United Nations realizes its function as an enforcer of the law of the sea through the establishment of UNCLOS regulations.

3. Actor Analysis

Table 3. Measurement Results of Actor Indicators in the United Nations Convention On The Law Of The Sea

Approach		Actor	Number of Words
Realism	1	President	39
	2	Secretary	78
	3	Officials	49
	4	Parties	501
	5	Army	2
	6	Councils	125
	7	Courts	38
	8	Advisory	10
	9	Representatives	17
	10	Tribunal	212

			TOTAL	1071
			PERCENTAGE	50%
Liberalism	11	Institutions		20
	12	People		8
	13	Community		1
	14	Public		33
	15	Residents		2
	16	Fisher		14
	17	Groups		14
	18	Members		252
	19	Private		4
			TOTAL	348
			PERCENTAGE	16%
Constructivism	20	Non-governmental		3
	21	Nations		107
	22	Corporations		1
	23	International		370
	24	Organizations		201
			TOTAL	682
			PERCENTAGE	34%
		TOTAL ACTORS		2101

Based on the results of the analysis listed in Table 3, it can be explained that UNCLOS places more emphasis on the role of state actors compared to non-state actors. From the analysis results, realist actors get a higher percentage of results than liberalist and constructivist actors. The use of realist actors, as evidenced by the use of the words tribunal, court, secretary, parties, councils, and is followed by other actors related to the state.

The use of realist actors has a percentage yield of 50%, liberal actors have a percentage yield of 16%, and constructivist actors have a yield of 34%. The activities of state institutions as realist actors are more emphasized on maritime issues that aim to seek peace between countries and governments.

Based on the comparison of the measurement results of three indicators (authority, governance, and actors) using three approaches (realism, liberalism, and constructivism), it shows that the realism approach has dominated the United Nations' policy direction in viewing marine issues through UNCLOS.

This realism approach has been reflected in the use of words that are dominated by state actors and government institutions, which are carried out through governing, measuring, exploitation, operation, controlling, and other actions. Realistic governance is wrapped through a series of regulations and laws that are adapted to official procedures.

The difference between this paper and previous research related to UNCLOS is that this paper analyzes the paradigm that UNCLOS has according to the international relations theories. Meanwhile, the paper titled The Concept Of The Archipelagic Province And Archipelagic State

In The Perspective Of National And International Law compiled by Muhammad Risnain discussed about the perspective of UNCLOS towards archipelagic states.[26]

C. Conclusion

The realism paradigm influenced the United Nations to form the UNCLOS in 1982. According to this research, we can understand that the countries in the world are playing a significant influence to implement and force this regulation. We suggest to the United Nations to make balance on forming the UNCLOS. Liberalism might be very useful to be used in this case in order to decrease the conflict and increase the collaboration among states. Also, for constructivism, the United Nations have to form the paradigm that the law of the sea was also made not by the structured way from states, but also the historical reasons and societies. The suggestion for the following research could be analyzing the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. This could give opportunity for the researcher to understand more about the paradigm that the United Nations uses for regulating sea-related issues.

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