Historical background

The UNCLOS replaces the older and weaker 'freedom of the seas' concept, dating from the 17th century: national rights were limited to a specified belt of water extending from a nation's coastlines, usually three nautical miles, according to the 'cannon shot' rule developed by the Dutch jurist Cornelius van Bynkershoek. All waters beyond national boundaries were considered international waters — free to all nations, but belonging to none of them (the mare liberum principle promulgated by Grotius).

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 resulted.) Using the customary international law principle of a nation's right to protect its natural resources, President Truman in 1945 extended United States control to all the natural resources of its continental shelf. Other nations were quick to follow suit. Between 1946 and 1950, Argentina, Chile, Peru, and Ecuador extended their rights to a distance of 200 nautical miles to cover their Humboldt Current fishing grounds. Other nations extended their territorial seas to 12 nautical miles.

By 1967, only 25 nations still used the old three-mile limit, while 66 nations had set a 12-mile territorial limit and eight had set a 200-mile limit. As of May 28, 2008, only two countries still use the three-mile limit: Jordan and Palau. That limit is also used in certain Australian islands, an area of Belize, some Japanese straits, certain areas of Papua New Guinea, and a few British Overseas Territories, such as Anguilla.

UNCLOS I

In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) at Geneva, Switzerland. UNCLOS I resulted in four treaties concluded in 1958:

- Convention on the Territorial Sea and Contiguous Zone, entry into force: 10 September 1964
- Convention on the Continental Shelf, entry into force: 10 June 1964
- Convention on the High Seas, entry into force: 30 September 1962
- Convention on Fishing and Conservation of Living Resources of the High Seas, entry into force: 20 March 1966

Although UNCLOS I was considered a success, it left open the important issue of breadth of territorial waters.

UNCLOS II

In 1960, the United Nations held the second Conference on the Law of the Sea (“UNCLOS II”); however, the six-week Geneva conference did not result in any new agreements. Generally
speaking, developing nations and third world countries participated only as clients, allies, or dependents of United States or the Soviet Union, with no significant voice of their own.

**UNCLOS III**

The issue of varying claims of territorial waters was raised in the UN in 1967 by [Arvid Pardo](https://en.wikipedia.org/wiki/Arvid_Pardo), of [Malta](https://en.wikipedia.org/wiki/Malta), and in 1973 the *Third United Nations Conference on the Law of the Sea* was convened in [New York](https://en.wikipedia.org/wiki/New_York). In an attempt to reduce the possibility of groups of nation-states dominating the negotiations, the conference used a consensus process rather than majority vote. With more than 160 nations participating, the conference lasted until 1982. The resulting convention came into force on November 16, 1994, one year after the sixtieth state, [Guyana](https://en.wikipedia.org/wiki/Guyana), ratified the treaty.

The convention introduced a number of provisions. The most significant issues covered were setting limits, navigation, archipelagic status and transit regimes, [exclusive economic zones](https://en.wikipedia.org/wiki/Exclusive_economic_zone)
(EEZs), continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes.

The convention set the limit of various areas, measured from a carefully defined baseline. (Normally, a sea baseline follows the low-water line, but when the coastline is deeply indented, has fringing islands or is highly unstable, straight baselines may be used.) The areas are as follows:

**Internal waters**
Covers all water and waterways on the landward side of the baseline. The coastal state is free to set laws, regulate use, and use any resource. Foreign vessels have no right of passage within internal waters.

**Territorial waters**
Out to 12 nautical miles from the baseline, the coastal state is free to set laws, regulate use, and use any resource. Vessels were given the right of innocent passage through any territorial waters, with strategic straits allowing the passage of military craft as transit passage, in that naval vessels are allowed to maintain postures that would be illegal in territorial waters. "Innocent passage" is defined by the convention as passing through waters in an expeditious and continuous manner, which is not “prejudicial to the peace, good order or the security” of the coastal state. Fishing, polluting, weapons practice, and spying are not “innocent”, and submarines and other underwater vehicles are required to navigate on the surface and to show their flag. Nations can also temporarily suspend innocent passage in specific areas of their territorial seas, if doing so is essential for the protection of its security.

**Archipelagic waters**
The convention set the definition of Archipelagic States in Part IV, which also defines how the state can draw its territorial borders. A baseline is drawn between the outermost points of the outermost islands, subject to these points being sufficiently close to one another. All waters inside this baseline are designated Archipelagic Waters. The state has full sovereignty over these waters (like internal waters), but foreign vessels have right of innocent passage through archipelagic waters (like territorial waters).

**Contiguous zone**
Beyond the 12 nautical mile limit there was a further 12 nautical miles or 24 nautical miles from the territorial sea baselines limit, the contiguous zone, in which a state could continue to enforce laws in four specific areas: pollution, taxation, customs, and immigration.

**Exclusive economic zones** (EEZs)
Extends from the edge of the territorial sea out to 200 nautical miles from the baseline. Within this area, the coastal nation has sole exploitation rights over all natural resources. In casual use, the term may include the territorial sea and even the continental shelf. The EEZs were introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important. The success of an offshore oil platform in the Gulf of Mexico in 1947 was soon repeated elsewhere in the world, and by 1970 it was technically feasible to operate in waters 4000 metres deep. Foreign nations have the freedom of navigation and
overflight, subject to the regulation of the coastal states. Foreign states may also lay submarine pipes and cables.

**Continental shelf**

The continental shelf is defined as the natural prolongation of the land territory to the continental margin’s outer edge, or 200 nautical miles from the coastal state’s baseline, whichever is greater. State’s continental shelf may exceed 200 nautical miles until the natural prolongation ends. However, it may never exceed 350 nautical miles from the baseline; or it may never exceed 100 nautical miles beyond the 2,500 meter isobath (the line connecting the depth of 2,500 meters). Coastal states have the right to harvest mineral and non-living material in the subsoil of its continental shelf, to the exclusion of others. Coastal states also have exclusive control over living resources "attached" to the continental shelf, but not to creatures living in the water column beyond the exclusive economic zone.

Aside from its provisions defining ocean boundaries, the convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority and the Common heritage of mankind principle.[4]

**Landlocked** states are given a right of access to and from the sea, without taxation of traffic through transit states.

**Part XI and the 1994 Agreement**

Part XI of the Convention provides for a regime relating to minerals on the seabed outside any state's territorial waters or EEZ (Exclusive Economic Zones). It establishes an International Seabed Authority (ISA) to authorize seabed exploration and mining and collect and distribute the seabed mining royalty.

The United States objected to the provisions of Part XI of the Convention on several grounds, arguing that the treaty was unfavorable to American economic and security interests. Due to Part XI, the United States refused to ratify the UNCLOS, although it expressed agreement with the remaining provisions of the Convention.

From 1983 to 1990, the United States accepted all but Part XI as customary international law, while attempting to establish an alternative regime for exploitation of the minerals of the deep seabed. An agreement was made with other seabed mining nations and licenses were granted to four international consortia. Concurrently, the Preparatory Commission was established to prepare for the eventual coming into force of the Convention-recognized claims by applicants, sponsored by signatories of the Convention. Overlaps between the two groups were resolved, but a decline in the demand for minerals from the seabed made the seabed regime significantly less relevant. In addition, the decline of Socialism and the fall of Communism in the late 1980s had removed much of the support for some of the more contentious Part XI provisions.
In 1990, consultations were begun between signatories and non-signatories (including the United States) over the possibility of modifying the Convention to allow the industrialized countries to join the Convention. The resulting 1994 Agreement on Implementation was adopted as a binding international Convention. It mandated that key articles, including those on limitation of seabed production and mandatory technology transfer, would not be applied, that the United States, if it became a member, would be guaranteed a seat on the Council of the International Seabed Authority, and finally, that voting would be done in groups, with each group able to block decisions on substantive matters. The 1994 Agreement also established a Finance Committee that would originate the financial decisions of the Authority, to which the largest donors would automatically be members and in which decisions would be made by consensus.

Signature and ratification


The convention is ratified by 160 countries, Niue, Cook Islands and the European Union.

Countries that have signed, but not yet ratified — (19) Afghanistan, Bhutan, Burundi, Cambodia, Central African Republic, Colombia, El Salvador, Ethiopia, Iran, Democratic People’s Republic of Korea, Libya, Liechtenstein, Malawi, Niger, Rwanda, Swaziland, Thailand, United Arab Emirates, United States.

Countries that have not signed — (16) Andorra, Azerbaijan, Ecuador, Eritrea, Israel, Kazakhstan, Kyrgyzstan, Peru, San Marino, Syria, Tajikistan, Timor-Leste, Turkey, Turkmenistan, Uzbekistan, Venezuela.

Non-Voting Member State - Vatican City
Non-State Observer - Palestine Liberation Organization
Non-Members and/or Non-Observers - Taiwan and Sahrawi Republic.
United States non-ratification

Main article: United States non-ratification of the UNCLOS

Although the United States helped shape the Convention and its subsequent revisions, and though it signed the 1994 Agreement on Implementation, it has not ratified the Convention.\[61\]