

Iran's accession to the 1982 UN Convention on the Law of the Sea Based on the SWOT Framework

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Abstract

The government of Iran is one of the signatories of the 1958 Convention, but it has never ratified the Convention. This littoral state has also conditionally signed the 1982 Convention on the Law of the Sea, but it has been 40 years since Iran signed this convention and 28 years after the implementation of this convention in 1994, the government has always refused to ratify this convention, which is the most important convention in the field of littoral state maritime zone, and no plan or bill has been presented in the government or parliament to ratify it.

In this article, using the analytical descriptive method, the strengths, weaknesses, opportunities and threats and legal doubts of Iran regarding this convention, which is actually the most important regulation in the field of the law of the seas, are examined and in finally, an analysis is provided to resolve Iran's concerns in the direction of ratifying this convention. The findings of this research show that the mandatory reference to the legal methods of dispute resolution in the convention, the right of innocent passage of military ships in the territorial sea, the right of transit passage through the straits due to the internationalization of the Strait of Hormuz and the establishment of transit passage through this strait are the most important Iran's reason for not ratifying the 1982 Convention on the Law of the Seas. Therefore, it can be said that by removing such concerns and joining this convention, can enjoy its benefits such as the transfer of marine technologies, economic benefits, etc.

Keywords: Iran's accession, 1982 Convention, the Law of the Sea, SWOT

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1. Introduction

The United Nations Convention on the Law of the Sea was adopted in 1982. It lays down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources (IMO, 2022).

Iran has been an active participant in the entire sessions of the Third United Nations Conference on the Law of the Sea which culminated in UNCLOS. Iran signed the 1982 Convention in same year, but it has not ratified it, primarily due to their opposition to the "innocent passage" provisions of UNCLOS that allow U.S. warships freedom of navigation (UN Closdebate, 2022).

Until now, despite the government signing the 1982 Convention on the Law of the Sea, Iran has refused to ratify and enforce it by the legislature » The convention is by the legislature of Iran (UN Closdebate, 2022). Since Iran has signed the convention, the correct and appropriate word here is "ratification" of the convention, and "accession" to this convention cannot be considered from a legal point of view.

Iran is not currently a "party" to the treaty, but since it participated as a participating country in the Third Conference on the Law of the Sea from 1973 to 1982 and signed it, according to the laws of the treaties, it can have obligations and rights towards the convention. It should be noted that according to Article 18 of the 1969 Vienna Convention, it is not to take any action that harms the purpose and purpose of the treaty (law of the seas) or causes the failure of the implementation of the treaty (Vienna Convention on the Law of Treaties, 1969)¹.

Of course, the Convention on the Law of the Sea is the most important convention in the field of the law of the sea and is one of several important international treaties that the Iranian government has refused to ratify in spite of signing them,

¹ Article 18, Vienna Convention on the Law of Treaties expressed about the Obligation of state not to defeat the object and purpose of a treaty prior to its entry into force .A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
- (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.



and each of them requires a special discussion in its own place, such as the 1969 Vienna Convention. The Convention against Torture, the Convention against Nuclear Terrorism¹ and several other documents in this field, the Convention against Discrimination against Women, the Statute of the International Criminal Court, etc. Therefore, with needs assessment and scientific studies, current sensitivities can be addressed in line with national interests and it reduced international public opinion and conditionally provided the ground for Iran's accession to the mentioned conventions. Meanwhile, the Convention on the Law of the Sea is important for Iran from different legal, political, military and economic aspects.

First of all, it should be remembered that if the ratification of a treaty contains more legal aspects arising from related rights and obligations, the examination of the "non-ratification" of a treaty by a government is primarily a political issue, and this is a primarily political question. Why doesn't a government become a member of an important international convention?

Discovering the political will of the statesmen in not ratifying the convention, which has continued since 1982 (more than 40 years) and in all former governments and assemblies with relatively different tendencies towards "foreign policy", requires the examination of relevant documents and access to some competent officials in the ministry. Such as foreign affairs, Defense Ministry, and even Road and Urban Development-The Organization of Ports And Navigation, which is not possible at the moment, and in this opportunity, we should limit ourselves to examining the only available document, i.e. the speech of the representative of Iran at the conclusion of the conference on the Law of the Seas 1982 and legal and political analyses; Otherwise, the best authority to answer this question is the highest executive authorities of the country, especially the Minister of Foreign Affairs, and what is presented in this article has a theoretical research and analytical aspect.

The sensitivity of the three powers, especially the legislative power, is such that it should be stated that the Iran's accession to the agreement establishing the

¹ **The International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT)** is an essential element of the international legal architecture designed to effectively prevent and counter criminal conduct involving nuclear or other radioactive material.

Indian Ocean Tuna Commission¹ that its accession does not mean the accession and acceptance of the 1982 convention. From this point of view, considering this situation and the sensitivities of Iran, in this article, based on the SWOT method, with reference to some published documents and articles, the following questions will be answered:

1. What are the strengths, weaknesses, opportunities, and threats of the United Nations Conventions on the Law of the Sea?
2. Why has Iran not ratified this convention for 40 years?

2. Background of conventions related to the law of the sea

UNCLOS replaces the old 17th-century concept of 'freedom of the seas'. Under this concept, as developed by the Dutch "cannon shot" rule, a state's rights are defined as a specific shoreline extending from the national coast, usually 3 nautical miles. It was restricted to water bodies. The jurist Cornelius van Binkerszyk (Akashi, Kinji, 1998). All transnational waters were considered international waters. Free to all, but belonging to no nation (the *mare liberum* principle promulgated by Hugo Grotius) (oll.libertyfund, 2022). 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 conference in The Hague in 1930, but no agreement was reached (The Fletcher School of Law and Diplomacy at Tufts University, , 2022). In 1945, applying customary international law principles to the right of nations to protect their natural resources, President Truman declared that all natural resources on the continental shelf of the United States must be protected. Other countries soon followed suit. Between 1946 and 1950, Chile, Peru, and Ecuador extended their rights to 200 nautical miles to cover the Humboldt Stream fishing grounds. Other countries extended their territorial waters up to 12 nautical miles.

¹ The Agreement for the Establishment of the Indian Ocean Tuna Commission (IOTC) was adopted by the Food and Agriculture Organisation of the United Nations at the 105th Session in Rome on 25 November 1993. The Agreement entered into force on 27 March 1996, with Australia joining the IOTC November 1996



By 1967, only 25 countries still used the old limit of 3 nautical miles, 66 countries had a territorial limit of 12 nautical miles, and 8 countries had a limit of 200 nautical miles. As of July 15, 2011, only Jordan still uses the 3-mile limit (dl.icdst.org, 2017). This boundary is also used by certain Australian islands, areas of Belize, parts of the Japan Strait, certain areas of Papua New Guinea, and British overseas territories such as Gibraltar. (Alexander M. Lewis, 2017). UNCLOS does not bargain with matters of regional debate or resolve issues of sovereignty, as that field is administered by rules of customary international law on the securing and misfortune of territory (Natalie Klein, 2021) (Robert Beckman, 2013) (Beckman, 2021).

Below is an overview of three important UN conventions that actually put the status of the governing rights of the seas and oceans in the framework of international law:

1.2. Background of UNCLOS I

In 1956, the United Nations held the first Conference on the Law of the Sea (UNCLOS I) in Geneva, Switzerland. UNCLOS resulted in her four treaties concluded in 1958 as follows: 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. In spite of the fact that UNCLOS I was considered a victory, it cleared out open the critical issue of the breadth of regional waters.

2.2. Background of UNCLOS II

In 1960, the United Nations convened the Second Conference on the Law of the Sea ("UNCLOS II"). However, no new agreement was reached at the six-week Geneva meeting. In general, developing and third-world countries participated only as clients, allies, or dependents of the United States or the Soviet Union, and had no significant voice of their own.

Subsequent to the adoption of the 1958 Conventions on the Law of the Sea, at the first United Nations Conference on the Law of the Sea, the General Assembly requested the Secretary-General to convene a Second United Nations Conference

on the Law of the Sea to consider the topics of the breadth of the territorial sea and fishery limits, which had not been agreed upon in the said Conventions of 10 December 1958). The Conference was held from 17 March to 26 April 1960 and adopted two resolutions in its Final Act (A/CONF.19/L.15). However, no new agreement was reached at the six-week Geneva meeting. Substantive decisions on the topics of the breadth of the territorial sea and fishery limits were deferred to a later stage.

3.2. Background of UNCLOS III

The Third United Nations Conference on the Law of the Sea was convened with a broad agenda including items covering all aspects of the law of the sea, from the traditional ones to the newly emerging ones, such as the common heritage principle, the expansion seawards of the coastal States' jurisdiction and the protection of the marine environment. After a short procedural session in New York in 1973, the Conference started its substantive work in Caracas in 1974 on the basis of a multi-volume report of the Seabed Committee, without the benefit of the previous work of experts, such as that of the International Law Commission without a basic draft (Tullio Treves, 2008). The convention introduced many provisions. Topics covered included border determination, navigation, archipelago status and transit control, exclusive economic zones (EEZ), continental shelf jurisdiction, deep-sea mining, development regimes, protection of the marine environment, scientific research, and conflicts. It was resolved.

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, Territorial waters, Archipelagic waters, Contiguous zone, Exclusive economic zones (EEZs), Continental shelf And High Seas.¹

4.2. An overview of Iran's positions in the Conference on the Law of the Seas

At the beginning of the discussion, it is necessary to briefly examine the positions of Iran's delegation in the Jamaica Montegobi Conference or the United Nations Convention on the Law of the Sea in 1982. From the speech of the representative

¹ The area outside these areas is referred to as the "high seas" or simply "the Area"



of the Iranian delegation in the conference, it appears that Iran has accepted the theory of "single (general) deal" which was proposed by the representative of Peru in the conference, and has considered the entirety of the convention and is also interested in the final text being approved by consensus and in this sense, he accused the American delegation of selfishness. Also, Iran's representation on the issue of "Common Heritage of all mankind" is optimistic about marine resources and has evaluated the general application of the convention in the form of the rule of law and justice in its favor and in the direction of a fairer economic system for the world. Despite this, Iran has made three objections to the results of the conference:

First of all, Iran has problems in accepting the part related to the passage of military ships in its territorial waters, which later announced its interpretative opinion in this regard.

Second, Iran has objected to the participation of the liberation movements and specifically the "Palestinian Liberation Organization" only as an "observer", which is not an objection to the convention and is a formal issue related to the conference.

Thirdly, Iran believed that the interests and advantages of industrialized countries have been taken into account in exploiting the resources of the seas. This is while the industrialized countries had an opposing opinion at the beginning and for this reason they refused to sign the convention and intended to replace the convention with a "small agreement" among themselves in this field.

Therefore, the aforementioned protests were not so widespread as to prevent Iran from signing the convention. Despite these, Iran also announced five explanatory comments during the oral statement as follows (Irdiplomacy, 2008):

First of all, the cases that do not have the aspect of codifying international customs in the convention are only related to member countries and have no effect on non-member countries. The representative of Iran, of course, refers to Article 34 of the 1969 treaty in a situation where Iran is not a member of that treaty, and it would have been better for the representative of Iran to use customary rules in his statement.

Iran refers to "the right of transit passage through the straits for international transport", "exclusive economic zone" and the issues of "sea bed and common heritage of humanity" among the non-customary and purely contractual issues of the convention. Therefore, Iran will not benefit from the rights and obligations arising from these cases until membership.

Second, Iran believes that domestic legislation in line with Article 21, that is, denying the right of innocent passage in the territorial sea, is not the right of sovereignty of the coastal state to require prior permission for the harmless passage of military vessels.

Thirdly, the rights stipulated in Article 125 of the Convention (transit passage of countries that do not have access to the high seas) must be carried out within the framework of the agreements. Clarifying that although the delegation of Iran has only mentioned bilateral agreements, this does not seem to negate the suggestion of regional, regional or even multilateral agreements, which are also has been referred to in paragraph 2 of Article 125.

Another point is that Iran insists on the principle of "reciprocity" in this regard; While in principle, Article 125 is related to the right of transit of landlocked countries from the landlocked country, and the situation of the two countries may not be the same for mutual action, that is, the landlocked country may not have the transit importance that the coastal country want to use it.

Fourth, the representative of Iran interpreted Article 70 in defense of the rights of a non-geographically deprived country and believes that this article does not harm the rights of a coastal country that has a large population and is exclusively dependent on the resources of its maritime region. Clause 3 of Article 70 and especially its part A also confirms this interpretation.

Fifth, Iran believes that small islands that are potentially habitable or can have an economic life are subject to paragraph 2 of Article 121 and must have maritime zone. This is an interpretative issue and the contrary concept of paragraph 3 of Article 121 can be used to confirm Iran's opinion.

The last ambiguity for Iran in the conference was regarding the reference to legal methods of dispute resolution, which, at the time of signing the convention, postponed a decision on it to another time.



3. An overview of Iran's doubts

Based on the review of available sources, Iran has the following doubts regarding the ratification of the 1982 Convention on the Law of the Sea. These doubts are:

- A) The subject of compulsory settlement of the disputes of the members of the convention, especially in the disputes between Iran and the United Arab Emirates over the three islands¹.
- b) The issue of the passage of military ships through the inland sea
- c) The issue of transit passage through international straits, which, from Iran's point of view, has created ambiguity about the Strait of Hormuz, considering that it is located in the territorial waters of Iran and Oman.
- d) The issue of delimitation the boundaries of maritime areas

It seems that none of these four issues are serious enough to prevent Iran from joining the convention, but the main point that must be taken into consideration by Iranian legislators is that joining the 1982 Jamaica Convention on the Law of the Sea must be accompanied by the issuance of interpretive declarations. It is appropriate to allow warships to pass through territorial waters and to limit the forced dispute resolution methods included in this convention according to the conditions of "optional exceptions."

4. Examining the strengths, weaknesses, opportunities and threats of the 1982 Convention from the perspective of Iran

A) Strengths of joining the 1982 Convention

UNCLOS provides a comprehensive legal framework governing all activities and uses of the world's seas and oceans. The Convention establishes general obligations for safeguarding the marine environment and protecting freedom of

¹ After signing the 1982 convention, the government of Iran has announced its interpretive statement on the compulsory settlement of disputes, which states: "with regard to "Compulsory Procedures Entailing Binding Decisions" the Government of the Islamic Republic of Iran, while fully endorsing the Concept of settlement of all international disputes by peaceful means, and recognizing the necessity and desirability of settling, in an atmosphere of mutual understanding and cooperation, issues relating to the interpretation and application of the Convention on the Law of the Sea, at this time will not pronounce on the choice of procedures pursuant to articles 287 and 298 and reserves its positions to be declared in due time (United Nations, Treaties, 2021)".

scientific research on the high seas. The key achievements of UNCLOS were to standardise states' claims to maritime zones and the resources within them, and provide states with mechanisms for settling disputes when they arise. The United Nations Convention on the Law of the Sea that was adopted in 1982 lays down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources. By establishing the legal order for seas and oceans, the Convention contributes to sustainable development as well as peace, security and cooperation among all nations. The Convention also contains rules for protection of the marine environment as well as marine scientific research.

b) Examining the weaknesses of the 1982 Convention from the perspective of Iran

The most important things that have caused Iran to hesitate in joining the Convention on the Law of the Sea are the mandatory reference to legal methods for resolving disputes in the Convention, the right of innocent passage of military ships in the territorial sea, the right of transit through the straits, especially the Strait of Hormuz. In fact, it seems that these doubts have delayed the approval of the 1982 Convention on the Law of the Sea in the parliament.

c) Iran's opportunities to become a member of the 1982 Convention on the Law of the Sea

From an economic point of view, the Convention on the Law of the Seas is important in areas such as exclusive economic zone or marine resources as "the common heritage of mankind", and the special rights arising from them in cases that do not have a customary or contractual history will only belong to the member states of the convention. The United Nations Conventions on the Law of the Sea provide a comprehensive legal framework that governs all activities and use of the world's seas and oceans. This convention establishes general obligations to protect the marine environment and protect the freedom of scientific research on the high seas.

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cases that do not have a customary or contractual history will only belong to the member states of the convention. .

Based on the current negotiations, Iran's delegation on the issue of "Common Heritage of Humanity" is optimistic about marine resources and has generally evaluated the implementation of the convention in the form of the rule of law and justice in its favor and in the direction of a fairer economic system for the world. . But it seems that after the signing of this convention, Iran's opinion suddenly changed with the interpretation of the Iranian legislature and the advisory bodies.

d) Iran's Threats to become a member of the 1982 Convention on the Law of the Sea

From a legal point of view, membership in this important convention as the fundamental rights of the seas creates changes in the status of obligations and rights of Iran in the international law of the seas (compared to the 1958 conventions of which it is a member) .These relatively new rights and obligations may be created with any convention, and the ratification of treaties is basically subject to the assessment of the national interest and expediency of the states, which check their ability to fulfill the rights and obligations related to the relevant convention, that the balance of rights and obligations arising from the treaty, interests Provide them.

From a political point of view, non-membership in important and fundamental conventions of international law, especially such conventions that have been approved after conferences with a legislative and universal purpose, does not show a good image of the countries. If the withdrawal of the United States from the Kyoto Treaty or the return of that country's signature from the Statute of the International Criminal Court was opposed by the international community.

From the security and military point of view, Iran is located in the neighborhood of three seas. In fact, the Caspian Sea is a closed sea, the Persian Gulf is a semi-closed sea, and the Sea of Oman is destroyed as the gateway to the oceanic waters (Indian Ocean). Therefore, Iran always considers security and military issues in joining and approving conventions.

Conclusion

The results of this research show that Iran can enjoy its benefits such as maritime technology transfer, economic benefits, and other benefits by joining this convention. But for this accession there are also 4 doubts for this country. It seems that, in the analysis of these four issues, it is not so serious as to prevent Iran from joining the convention, but joining the convention should be accompanied by the issuance of appropriate explanatory declarations and limiting the compulsory methods of dispute resolution included in the convention according to the conditions of "optional exceptions." The results mentioned below are as follows:

1. Based on the review of available sources, Iran has the following doubts regarding the ratification of the 1982 Convention on the Law of the Sea. These doubts are:

- A) The subject of compulsory settlement of the disputes of the members of the convention
- b) The issue of the passage of military ships through the inland sea
- c) The issue of transit passage through international straits, which, from Iran's point of view, has created ambiguity about the Strait of Hormuz, considering that it is located in the territorial waters of Iran and Oman.
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A) Strengths of joining the 1982 Convention

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nations. The Convention also contains rules for protection of the marine environment as well as marine scientific research.

b) Examining the weaknesses of the 1982 Convention from the perspective of Iran

The most important things that have caused Iran to hesitate in joining the Convention on the Law of the Sea are the mandatory reference to legal methods for resolving disputes in the Convention, the right of innocent passage of military ships in the territorial sea, the right of transit through the straits, especially the Strait of Hormuz. In fact, it seems that these doubts have delayed the approval of the 1982 Convention on the Law of the Sea in the parliament.

d) Examining the Threats of the 1982 Convention from the perspective of Iran

It seems that from Iran's point of view, the most important threats that can be faced by this country through the 1982 Convention on the Law of the Sea are the passage of warships through its territorial waters, and the passage of the Strait of Hormuz in the part of Iran's territorial waters, which, of course, requires the mandatory settlement of disputes can also be added to these two problems.

c) Iran's opportunities

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