JOURNAL OF POLITICAL DISCOURSE
ISSN Print: 2992-2763 – ISSN Online: 2992-4618 | Vol. 1, Issue 4, No. 2 / December 2023
https://www.jopd.com.ng

THEORETICAL PERSPECTIVES ON THE POLITICS AND DECISION-MAKING PROCESS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) III

Oladimeji Talibu
Senior Lecturer, Department of History and International Studies, Al-Hikmah University, Ilorin, Nigeria.
E-mail: talibuoladimeji@alhikmah.edu.ng

Abejide Taye Samuel
Associate Professor, Department of History and International Studies, Al-Hikmah University, Ilorin, Nigeria.
E-mail: tsabejide@alhikmah.edu.ng

Abstract
The United Nations Convention on the Law of the Sea (UNCLOS) III is a comprehensive international treaty that governs the use of the world's oceans. The convention was adopted in 1982 and entered into force in 1994. It establishes the legal framework for various activities at sea, including navigation, environmental protection, scientific research, and the management of marine resources. The politics and decision-making process of UNCLOS III can be analyzed through various theoretical perspectives. The focus of this research is to assess the role of theories in understanding the framework of the UNCLOS III. Thus, the research has shown that it may be difficult to understand the structural workings of UNCLOS III without properly studying it under the theoretical lens of liberalism and Realism. The article thus concludes that realist and liberalist thoughts are veritable theoretical lens through which one can make meaning of the international decision-making process of UNCLOS II. In this research, qualitative content analysis has been employed as a method of data collection and design. In terms of theoretical approach, the study adopts the liberal institutionalism in understanding the UNCLOS III.
Keywords: UNCLOS; Liberalism; Realism; Institutionalism; Politics

Introduction

Theorising events and issues within the international system has become fashionable in international relations for decades. Most of these theories are employed to give empirical meaning to unfolding events within the global arena. In this case, some international relations scholars result to historical exploration to establish their theory. Such historical analysis was employed by Mearsheimer (2013) to unravel China's prospect as the next hegemon in the international system. According to Mearsheimer (2013), theory of international relations is 75% reliable in predicting the course of events within the global arena. Thus, it is based on the seeming accuracy that the theory of liberal institutionalism is used to discern the process of decision-making in UNCLOS III. Theories of international relations abound. Some of these theories are used to examine and evaluate socio-political events that occur between and among states in the international system. Generally speaking, most events and actions that happen within the global political system normally receive the attention of international relation scholars and analysts and providing explanations in the form of theory generation is always the end result (Kegley and Blanton, 2013). Some of the theories normally employs are realism (with all its variants), Liberalism (with all its variants) and constructivism. In examining the decision-making process of UNCLOS III, therefore, the theory of liberal institutionalism is employed to discern and delineate the whole decision process. Theorising UNCLOS III from

liberal institutionalist perspective should be seen as an attempt at explaining the existence of international institutions, their workability and its benefit to nation-states. Before analysing UNCLOS III from liberal institutionalist point of view, it is necessary to discuss briefly the basic principles of liberalism and most importantly liberal institutionalism. This is necessary in order to establish the applicability of liberal institutionalist tradition in explaining UNCLOS III.

Theory of Liberalism

Liberalism as an international relations theory gives importance and priority to process of communication, negotiation, compromise, consensus and cooperation among nations (Sterling-Folker, 2013). It does dismantle the realist perception of conflict and anarchy as the major defining features of global politics. There are four variants of liberalism. These are sociological liberalism, interdependence liberalism, republican liberalism and institutional liberalism (Jackson and Sorensen, 2013:99). Of all these variants, the focus of this discussion rests solely on liberal institutionalism. Choosing this theory over other variants is based on the empirical potency of institutionalist in discerning the role of states in international regimes and institutions. According to Pease (2008), the basic tenets of liberalism of all variants are as follows: First, states and non-state actors are crucial to international relations; Second, state is not necessarily a unitary and rational actor; Third, the nature of international relations is a composite one and; Lastly There are varieties of issues dominating international agenda. Jackson and Sorensen (2013: 128) also highlighted that human progress through development and modernisation has compelled the need for cooperation between and among nations. The emphasis of liberal institutionalism on cooperation, signifying by the establishment of international institutions and regimes, makes it relevant to discussion of UNCLOS III. It needs to be stressed further that liberal institutionalism is a fashion of neoliberalism that "accounts for the way international institutions promotes global change, cooperation, peace, and prosperity through collective programmes for reforms" (Kegley and Blanton, 2012:42). Like realist, liberal institutionalist assumed that states are independent entity that act only in their own self-interest (Jackson and Sorensen, 2013:110). The theoretical approach stresses that international law matters more than realists claim as long as states are assured that their interest are guaranteed. Unlike realists, however, institutionalists are of the view and belief that cooperation between and among states is possible, and that international institutions can serve as crucial mechanism in facilitating that cooperation (Hansclever, Mayer and Rittberger, 1997:98). In this manner, scholars argue that the mechanism of multilateral diplomacy can assist states overcome prisoner's dilemma problems which are regularly faced in international politics. Thus, liberal institutionalists argue that multilateral institutions can mitigate "verification costs in international affairs, reduce the cost of punishing cheaters, and increase the repeated nature of games – all of which make cooperation more likely" (Guzman, 2002:1829). It should be said that liberal orientation in IR theory developed from idealist school of thought which primarily came to the fore in the early twentieth century. This culminated in the formation of League of Nations in 1919 to prevent the occurrence of another major World War.

Liberal Institutionalism and UNCLOS III

In essence, the concern of this section rests primarily on the explanandum proficiency of liberal institutionalist theory in delineating the role international institutions play in the process of law-making process of high sea, oceans, seabed resources and other maritime issues. It should be stressed that the process of global institutionalisation is rooted in the need to have common position on the issue affecting the humanity as a whole. One of such issues is the delimitation

of maritime boundary which has always been within the control of some powerful states since the 17th century. The institutional liberal's emphasis on multilateral diplomacy as opposed to unilateralism makes it relevance to UNCLOS III. In contrast to liberalism, realists (of all variants) see the international system as anarchical in nature which compels state to fend for its own survival and such survival relies greatly on military security (Dunne and Schmidt, 2011:87). Thus, such realist assumption was reduced to disrepute with the formation of League of Nations in 1919 with the main aim of forming an organisation that could act as global police in the maintenance of law and order. Although, the lofty claim was dashed with the outbreak of World War II; nevertheless, the ending of the war heralded the formation of another global multilateral institution to manage global affairs. Thus, the global powers, including the lesser ones, realised that the world would never make any progress if there was no mechanism where the interest of each state are addressed amicably. The insistence of states in forming and maintaining multilateral institutions therefore serves as a way of denouncing the realist ethos in international relations. When the UN was formed in 1945, most states were still under the direct rule of colonial masters and this did not give some of the dependent states much voice in the establishment and subsequent administration of the global multilateral organisations. In forming the UN, many specialised agencies were formed to cater for the diverse issue affecting the humanity and global space. It was in this circumstance that the United Nations Convention on Law of the Sea was convened in Geneva in 1958 with the aim of finding lasting solution to differentiated claims and rules adopted by each state in maritime delimitation (Hamzah, 2002:30). It needs to be stressed here that there is precursor to UNCLOS of 1958. The League of Nation tried to convene similar conference in 1930 but failed to materialise. Similarly, UNCLOS II was convened in Geneva in 1960 and some of the newly-independent states participated in the negotiation. Nevertheless, some of the developing countries who participated in the UNCLOS II were either client or dependent of the two superpowers of the time, the USSR and the US (Sanger, 1987:3). With little or no agreement reached in the previous UNCLOS, the UNCLOS III came to the fore in 1973 which is historically known as third United Nations Conference on Law of the Sea (UNCLOS III). This brief historical milestone is crucial in order to provide background information on the efficacy of institutional liberalism in explaining the UNCLOS III decision-making process.

As it has been highlighted above, there have been various attempts by states to unanimously reach comprise on the issue pertaining to high seas and maritime boundary. Such attempts compelled states to form organisations to solve maritime issues. According to liberal institutionalist, most states, especially the developing ones, feel unsafe within the seeming anarchical system that primarily depends on the "might is right" conception (Jackson and Sorensen, 2013:69). As a result, most are attracted to the promise of equality of all states in the global multilateral institutions. By this standard, some states sought to promote their national interest through consensus that was adopted in UNCLOS III between 1973 and 1982. Thus, the liberal institutionalist is right to assert that international institution could act as an avenue to discuss issue that may compromise the existing peace and security within the global system (Martin and Simmons, 2013:331-332). If one defines international order in terms of maintenance of security and order then UNCLOS III represents one. It needs to be stated here that the adoption of consensus as opposed to majority voting in UNCLOS III clearly undermines the power of superpowers and great powers. This in turn empowered the developing countries that were hitherto clients and dependencies in previous UNCLOS meetings. The notion that liberal institutionalism "provides a flow of information and opportunities to negotiate" is upheld in this circumstance (Jackson and Sorensen, 2013:112). How could it have been possible for developing states to claim parity with developed ones if not for the mechanism provided by the UN? Previously, various countries within the

international system had been unilaterally asserting their control over the high seas and other areas including the newly defined EEZ. For example, in 1945 Harry Truman, the President of the US unilaterally extended the rights of the US over the continental shelf and some other countries like Peru, Chile and Ecuador made similar claim. In such circumstance, there was no unanimous agreement on what should become the "standard" method of defining the maritime boundary of a state for effective economic and security purposes without colluding with other states' interests. It is the institutionalisation of multilateral organisation, in this way, UNCLOS III, that helped mitigating the rival claims on high seas (Sanger, 1987:62).

Moreover, the liberal institutionalism also stresses that through institutional mechanism, states has the correct and reliable information on the compliance of the other states to the stated agreement (Jackson and Sorensen, 2013:112). This in turn enhances other states to implement their own and make credible commitment to the cause of the organisation. The corollary of this is that such commitment helps to maintain security and order in the governing of international waters which had set limits to the claim of each governments. The institutionalisation of UNCLOS III in this circumstance has set limits to the claims of states in international seas and waters. The agreement reached therefore regulates navigations procedure, archipelagic status, EEZ, continental shelf jurisdiction, deep-sea bed mining and protection of environment (Churchill and Lowe, 1999). In addition, UNCLOS, under the watchdog of the UN, has diverted the attention of nations from the hitherto-conceived notion of" Freedom of high seas" which powerful countries clung to in penetrating all waters and seas of the world since 17th century. Thus, UNCLOS III has enhanced the bargaining capacity of developing countries in pursuing their national interests in the utilisation of seas and waters, and both developed and developing nations benefitted in this regard (Sanger, 1987:65). Knowing that pursuing individual interests may not be attained, the G-77 nations acted in bloc form in UNCLOS III to drive home their demands in managing international waters, coastal waters and seabed resources (G-77 Ministerial Declaration, 2011). By this agreement, which has been ratified by 167 nations, each state can defined its internal waters, territorial waters, contiguous zone and EEZ. As a corollary, states, especially the developing ones, are now rest assured that in case of flouting of rules and regulations as established by UNCLOS III, there is in place a mechanism that can mediate on their behalf (Hamid, 2011:291). This milestone implicitly promote the efficacy of liberal institutionalism in explaining the roles international organisations and regimes could play in promoting the rights of each states in the global system. In this way, UNCLOS III has enhanced the bargaining capacity of developing countries to achieve their national interests in the area of administration, customs duties, taxation, immigration and pollution in contiguous zones as well as having the exclusive rights to sole exploitation and exploration of resources in EEZ (Churchill and Lowe, 1999:160-180). The benefits and freedom of choice enjoin by these developing countries has intensified their hope in global multilateral institutions and regimes.

The employment of consensus adopted in UNCLOS III represented an important landmark for developing states in having voice on issue affecting them collectively. The G-77 states were the most affected in the area of administering high seas and coastal waters; they did not have autonomy in asserting their claim in their territorial waters. The superpowers and great powers infringed on their rights and since the number of G-77 states outnumbered that of western countries, it was easy for developing countries to employ the consensus method to actualise their objectives in UNCLOS III (Hamid, 2011:255-256). In this way, the use of consensus over majority vote enhanced the bargaining capacity of developing countries which invariably lend credence to liberal ideology. Thus, the questions that should be asked here are: Why states agree to UNCLOS III to manage their affairs? Why some powerful states, who have the wherewithal to "do things alone" fell prey to global institutional mechanism? States agree

to international law and organisation for some reasons. One of such reasons is the institutional capacity of international organisation to enforce rule that enhances autonomous resource control within state borders (Martin and Simmons, 2013:332). Since international law is an appendage of the UN, some states, most importantly the developing ones assume that the UNCLOS III will enhance their autonomous capacity in managing the resources that lie within their control in waters and seas. This is most apparent in the way some developing countries today control commercial and economic activities within their contiguous zones and EEZ. UNCLOS III provides and defines the rights of each state in this circumstance and defaulters are promised with some penalties. States also agree to some of the UNCLOS III agreements in order to protect their environment from pollution and hazardous waste, which might threaten the aquatic, and terrestrial lives most especially humanity and fishes (Churchill and Lowe, 1999:329). Such agreement has thus helped some weak countries to have independent control over their waters without external infiltrations. Security and territorial integrity is also one of the factors that propelled the states to agree to UNCLOS III (Rao, 1975:167). Because of the military might of some powerful countries in relation to the weaker ones, UNCLOS III has further strengthened the ability of some weaker states to protect their territory from external aggression. This is because most of these developing countries control immigration, rights of movement and determine which are of danger to their corporate existence as a state. States in this circumstance can stop and restrict the movement of any suspicious movement within its contiguous and EEZ zones. Invariably, this assists the developing countries in setting limits to those national vessels that patrol and navigate their waters. As highlighted earlier, the UN was formed in 1945 with the underline principle of equality among nations. Such pronouncement therefore serves as strength to the developing countries to prey on powerful states in the process of bargaining. Although, weaker developing states appear to have recorded milestone achievement in UNCLOS III, it should be noted that institutional liberal emphasis more on absolute gains rather than relative gains (Hansclever, Mayer and Rittberger, 1997:99). Most of these developed countries are liberal democracies and in this way, it was very easy for them to agree with whatever agreement reached in UNCLOS III. Some scholars and analysts might interpret this as a gain for developing countries but it need to be realised that liberal institutionalists are only concerned about absolute gains and not relative gains as emphasised by realist's balance of power theory (Dunne, 2011:107).

Furthermore, Robert Keohane in evaluating the degree of institutionalisation proffered three important indicators which can be used to measure the degree of institutionalisation. These are "autonomy, commonality, and specificity" (Keohane, 1989:4). One of the basic indexes of measuring the degree of institutionalisation is autonomy. According to liberal institutionalist, an institution should exhibit a measure of autonomy in the process of reaching decision among state actors. That is, the activities and decision process of the institution should not be constrained, curtailed and influenced by any outside agents, usually states (Jackson and Sorensen, 2013:111). This basic feature of liberal intuitionalism reflects itself in the way decisions were reached in UNCLOS III between 1973 and 1982. No state was allowed to dictate the term of agreement and the superpowers were compelled to go with the crowd. In the process of reaching agreement package deal and consensus processes were adopted (Caminos and Molitor, 1985:873). In package deal, all identified issues are treated together and no consensus could be reached on one issue without the other. This process was adopted in other to avoid a situation where certain issue were mortgaged for others. In addition, the principle of consensus became imperative in order to guide against any group having advantage over another which normally exhibited in majority voting procedure. This decision reaching process might explain why some powerful countries were helpless in influencing the agreement reached in UNCLOS III, most especially in relation to the US's apprehension over navigation and ocean-going

commercial vessels (Sanger, 1987:3). Although, this fear was exhibited prior to the negotiation process of UNCLOS III in 1973, there had always been concerned from Britain, the US and USSR over Gibraltar (Spain), Malacca (Malaysia) and northern tip of Bab-el-Mandab (Egypt, Saudi Arabia and Palestine).

Similarly, propensity for cooperation is also one of the hallmarks of liberal intuitionalists (Kegley and Blanton, 2013:344). Liberals generally assumes that collaboration and rule-making shape the behaviour of states within the global politics and for such rules and collaboration to take effect an institution or regime is needed. In this way, UNCLOS III is one of such regimes and institutions that enforces the rules pertaining to the claimant of each state to international seas and waters. To this effect, an International Tribunal for the Law of the Sea (ITLOS) was established to arbitrate disputes relating to the use of high seas, oceans and other coastal areas of international waters. It has its seat in Hamburg, Germany and has 21 independent elected members. As of 2010, sixteen cases have been effectively handled by ITLOS (Hamid, 2011:291). Thus, another liberal institutional position is upheld by UNCLOS III-making rules and regulations governing the conduct of states in the utilisation of seas and waters. In addition, International Seabed Authority was established under UNCLOS III in 1982 to manage what is commonly referred to as the "common heritage of mankind" (Joyner, 1986). UNCLOS III specifically defines this as an area beyond the territorial confine of any states which resources therein will be used to the betterment of all humankind especially the developing countries (Hamid, 2011:289). Such provision under UNCLOS III is an historical milestone that moderates the redistribution of income and resources for the betterment of humanity. Here again, the liberal institutional principles of collaboration and rule making is upheld. Commonality as one of the basic indicators of liberal institutionalism is also reinforced in this regard. The third major indicator, specificity, is also exhibited by UNCLOS III because of the "degree to which these expectations are clearly specified in the forms of rules" (Keohane, 1989:4). The latter is exhibited in the way UNCLOS III specified certain rules governing the conduct of nations in high seas and coastal areas. Hamid (2011: 290) stresses this further:

> The UNCLOS 1982 is remarkable for the provision it makes for the settlement of disputes by judicial means or arbitration if negotiation, conciliation, or other means of peacefully settling disputes as enshrined in Article 33 of the UN Charter are unsuccessful. Article 286 of the UNCLOS 1982 provides an alternative to that effect.

By critically examining the way UNCLOS III decision process was reached and operated, it can be said that its process conform to the theoretical precepts of liberal institutionalism. It should be said here that other theoretical lens like realism, functionalism, and constructivism can also be employed in explaining the decision making process of UNCLOS III. Claiming liberal institutionalism as the only theoretical underpinning for examining UNCLOS III may amount to monocausality. Nevertheless, as it has been indicated earlier, the major focus of this article is on the efficacy of liberal institutionalism in providing explanation to UNCLOS III decision process.

Conclusion

Although, liberal institutionalism has been variously criticised for its inability to explain the failure of the UN to solve global poverty, terrorism, child trafficking, nuclear proliferation and some environmental issues, this does not incapacitate the theory to shed lights on the decision making process of UNCLOS III. Thus, the historical milestones of UNCLOS III above revealed efforts at multilateral level in keeping global peace and order. Considering the fact that previous conventions had been dominated by superpowers and great powers, third UNCLOS represented important watershed in the efforts of states at reaching compromise on important global issues

like fishing, environment, rights of passage and delimitation of state offshore boundaries. UNCLOS III decision-making process and operation can be explained from the liberal perspectives which lends credence to cooperation through institutional mechanism and regime formation. There are two variants of liberal theory which can adequately provide explanation for UNCLOS III decision-making process. These are liberal interdependence and liberal intuitionalists. In this case, the latter version has been employed because of its proficiency in delineating the UNCLOS III as a regime formation for the governing of seas and waters. Thus, the regime has incapacitated the activities of distant-water fishing nations which formerly had unlimited freedom to fishing for centuries. Such step has reduced the incidence of depletion of fisheries in Atlantic and other major oceans of the world. UNCLOS III therefore represents an important institutional framework that guarantees the rights of every nation in protecting its seas and waters for effective use. And if other nations want to make use of seas and waters not under its jurisdiction, such must be done according to UNCLOS III regulations. The confidence of most developing nations in the capacity of UNCLOS III, as important regime in regulating the affairs and conducts of nations' activities in territorial and sea waters, has strengthened its legitimacy to intervene in disputes between nations. Sixteen of such disputes have been amicably settled so far. Consequently, if the essence of an institution is to maintain law, cooperation and order among states, which are the main precepts of liberal theory, then UNCLOS III has fulfilled such mandate.

References

Caminos, H., & Molitor, M. R. (1985). Progressive development of international law and the package deal. *American Journal of International Law*, 871-890.

Churchill, R. R., & Lowe, A. V. (1999). *The law of the sea*. Manchester University Press.

Dunne, T. and Schmidt, B. (2011). Realism. In Baylis, J., Smith, S. And Owens. P. (Eds). *The globalisation of world politics: an introduction to international relations. United States:* Oxford University Press.

Dunne, T. (2011). Liberalism In Baylis, J., Smith, S. And Owens. P. (Eds). *The globalisation of world politics: an introduction to international relations. United States:* Oxford University Press.

G-77 Ministerial Declaration (2011). retrieved from http://www.g77.org/doc/Declaration2011.htm on 23/1/2016

Guzman, A. T. (2002). A compliance-based theory of international law.*California Law Review*, 90 (6), 1823-1887.

Hamid, A. G. (2011). *Public international law: a practical approach*. Malaysia: Sweet & Maxwell Asia.

Hamzah, B.O .(2002). International rules on decommmissioning of offshore installations: some observations. *journal of diplomacy and foreign relations*. 4(1), 21-39.

Hasenclever, A., Mayer, P., & Rittberger, V. (1997). *Theories of international regimes* (Vol. 55). Cambridge university press

Jackson, R. & Sorensen, G. (2013). *Introduction to International Relations, Theories and Approaches*. New York: Oxford University Press

Joyner, C. C. (1986). Legal implications of the concept of the common heritage of mankind. *International and Comparative Law Quarterly*, *35*(01), 190-199.

Kegley, C., & Blanton, S. (2013). *World Politics: Trend and Transformation, 2013-2014 Update Edition*. Cengage Learning.

Keohane, R. O. (1989). *International institutions and state power* (Vol. 3). Boulder: Westview Press.

Martin, Lisa, L. & Simmons, Beth, A. (2013) "International Organizations and Institutions" in Walter, Carlsnaes, Thomas, Risse, and Beth A. Simmons (eds) *Handbook of International Relations*. London: Sage.

Mearsheimer, J. (March 26, 2013). Why China cannot rise peacefully? The lecture took place at the Robert S. Strauss Center for International Security and Law. Accessed at https://www.youtube.com/watch?v=CXov7MkgPB4 on 23/1/2016

Pease, K. K. (2008). *International organizations: Perspectives on governance in the twenty first century*. New Jersey: Prentice Hall.

Rao, P. S. (1975). *The Public Order of Ocean Resources: A Critique of the Contemporary Law of the Sea.* Cambridge, Mass.: MIT Press.

Sanger, C. (1987). *Ordering the Ocean: The Making of the Law of the Sea*. Toronto: University of Toronto press.

Scott, S. V. (1994). International Law as Ideology: Theorizing the Relationship between International Law and International Politics. *Eur. J. Int'l L.*, *5*, 313.

Sterling-Folker, J. (2013) Neoliberalism. In Dunne, T., Kurki, M., & Smith, S. (Eds). *International relations theories*. Oxford University Press.