



THE LIMITATIONS OF UNCLOS AND THE MOVE TOWARDS A HYBRID MODEL: CASE STUDIES IN EAST ASIAN MARITIME DISPUTES

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Abstract

The United Nations Convention on the Law of the Sea (UNCLOS) was created in the early 1980s to prevent the oceans from becoming an irreversible case of the tragedy of the commons. It was thought that a global agreement on the management and use of the oceans would slow and possibly reverse existing damage. This paper reviews the literature to examine the limitations of global governance frameworks and uses case studies of China's construction of artificial islands in the South China Sea, the Philippines' arbitration proceedings against China under UNCLOS, and Japan's classification of Okinotorishima under Article 121 to show that states across the compliance spectrum have interpreted the convention selectively. The analysis argues that a hybrid approach prioritizing agreements adapted to the unique demands and cultures of smaller regions within the broader global framework, while using global agreements for coordination and knowledge-sharing, offers the most promising path forward for ocean governance.

Keywords

International law; law of the sea; UNCLOS; artificial islands; East Asia; South China Sea

Introduction

Adopted in 1982, the United Nations Convention on the Law of the Sea (UNCLOS) aimed to establish "rules for the allocation of States' rights and jurisdiction in maritime spaces, the peaceful use of the oceans and the management of their resources" (International Maritime Organization, n.d.). However, this global regulation has failed to effectively manage the complex and dynamic nature of human activity and its interaction with the oceans. Arvid Pardo, the diplomat known as the "father" of UNCLOS, characterized its failure with the rebuke that "All that is left of the common heritage of mankind is a few fish and a little seaweed" (Standing, 2022). The threats to the oceans and the life they contain are numerous and include, but are not limited to, overfishing, mining, pollution, warming, declining biodiversity, acidification, deoxygenation, and noise. Given the apparent failure of UNCLOS to prevent these threats from developing and how the threats differ from region to region, some have argued for abandoning efforts for global regulation and redirecting focus on the creation of regional agreements, which, it is argued, are easier to create and enforce. However, regional agreements cannot effectively address the global nature of the threats to the oceans. Instead, a hybrid model that uses global agreements as a form of general coordination and more precise, narrowly defined regional agreements to address specific threats will best facilitate the attempts to halt and possibly reverse the damage being done to the oceans. Case studies of China's construction of artificial islands, the Philippines' experience with UNCLOS arbitration, and Japan's classification of disputed maritime features will be used to show that the hybrid model offers the most effective approach to complex governance issues requiring regional cooperation underpinned by international standards.

Methods



This paper uses a qualitative literature review and comparative case-study method to evaluate whether governance frameworks have been effective for the management of the world's oceans. In addition to searching academic databases, the author also searched international legal documents and policy publications. Articles were selected that contained the keywords "Ocean Governance," "UNCLOS," "Marine Law," and "International Environmental Compliance" and were ranked according to relevance. Articles selected included both peer-reviewed and non-peer-reviewed (also referred to as gray) literature to account for all the various aspects involved, such as reports by the United Nations and policy-based think tank reports. As part of this research, the author also conducted a comparative analysis of China's maritime behavior in the South China Sea and Yellow Sea, the Philippines' use of UNCLOS arbitration mechanisms, and Japan's classification of disputed maritime features, in order to demonstrate how state practice produces selective interpretations of international law. The large volume of documentation available on these cases provided sufficient data to conduct an in-depth examination of the areas where inconsistencies and ambiguity in the case record arise.

Results And Discussion

Global Governance and Its Challenges

The major global governance framework of the oceans is UNCLOS. It is "widely viewed as a 'constitutive instrument that provides a legal framework that is being filled in, rounded out and complemented by existing and subsequently enacted international agreements and customary international law'" (Center for International Law, n.d.). It is a "framework within which a mosaic of different legal and non-legal institutions rests" including "international and national governance, in which governments and various public bodies are the primary actors" but includes "private governance initiatives led by companies and other non-state actors such as environmental organizations" (Pretlove & Blasiak, 2018). UNCLOS "contains relatively few detailed or precise obligations" and "leaves more detailed rules on issues such as shipping, fisheries and protection of the marine to subsequent agreements, of which there are many" (Churchill & Hartmann, 2021). UNCLOS has been described as "almost universally lauded for laying down laws and rules [whose] wide acceptance it is believed has greatly reduced the number, frequency and potential for inter-state conflicts that would otherwise have taken place" (Vanaik, 2020). This was achieved with agreement under UNCLOS that the area of the ocean 200 nautical miles from a State's coastline was an Exclusive Economic Zone (EEZ) for that State and gave the State "sovereign rights to explore and exploit in the seas, the seabed and subsoil" (Vanaik, 2020). Everything not included in the EEZs was described as the "common heritage of mankind," and the International Seabed Authority (ISA) was created to regulate the area not defined as part of an EEZ through "licenses and contracts with companies and governments" (Vanaik, 2020).

UNCLOS also created a dispute resolution mechanism, but fewer than 50 disputes have been heard compared to more than 600 at the World Trade Organization's equivalent mechanism, which was created at the same time (Serdy, 2021). The lack of use of the dispute resolution mechanism has been described as a sign of success as "it suggests that UNCLOS rules are for the most part clear and realistic enough not to generate disputes at all" (Serdy, 2021). However, as a form of international law, UNCLOS relies on consent and has no means to enforce decisions, and parties to the disputes often do not send representatives to attend the UNCLOS dispute resolution process (Serdy, 2021). Despite this claimed success, it has been found that UNCLOS currently "lacks the adaptability needed to respond to novel challenges such as climate change, deep-sea resource extraction, and geopolitical tensions" and even though "UNCLOS remains a foundational pillar for maritime law, there is an urgent need for reforms and supplementary agreements to ensure its relevance and effectiveness" (Capel, 2023). Although some argue that the weaknesses of UNCLOS are to some extent balanced by developments related to its adoption, such as EEZs, many criticize the inability of this type of global regulation to deal with significant challenges. For example, research shows widespread non-compliance with UNCLOS (Churchill, 2012). Furthermore, the world's major economic power, the United States, has not ratified UNCLOS due to "deep-seated, ideological concerns over maintaining commercial autonomy in the maritime domain" (Kraus, 2023). Although these problems are significant, the most immediate and dangerous challenge to global



governance of the oceans has been made by China.

China asserts historic rights within the nine-dash line over much of the South China Sea, a position that the 2016 arbitral tribunal found incompatible with UNCLOS where it exceeds maritime entitlements generated under the Convention (Mastro, 2021). UNCLOS has failed to create a consensus internationally on the freedom of navigation of military vessels. The US and Australia claim that “freedom of navigation of military vessels is a universally established and accepted practice enshrined in international law,” but Argentina, Brazil, India, Indonesia, Iran, Malaysia, the Maldives, Oman, Vietnam, and China argue they “have the right to limit navigation or exercise any control for security purposes in EEZs” (Mastro, 2021). China has also constructed artificial islands on contested reefs and rock formations in the South China Sea. Rather than generating EEZ entitlements through these structures—UNCLOS does not recognize artificial installations as EEZ-generating features—China has exploited the convention’s definitional ambiguity between natural islands, rocks, low-tide elevations, and artificial installations to create legal and factual control over disputed maritime space. An international tribunal found that UNCLOS prohibits the construction of artificial islands in the EEZ of another State, but failed to “provide clear guidance for determining the legitimacy of a state constructing an artificial island in international waters not within its own EEZ or an EEZ belonging to another state” (Kohl, 2018).

With regard to global warming and pollution, such as microplastics, there is confusion about whether UNCLOS creates obligations for States. UNCLOS Part XII Article 192 says “States have the obligation to protect and preserve the marine environment” (United Nations, 1982). Legal researchers are attempting to argue that this means UNCLOS State parties “may have a legal obligation to contribute to a fund that compensates countries for environmental harms caused by climate change” (Wam, 2024). Others argue that Article 192 could be used to regulate emissions that cause global warming (Agarwal & Agnihotri, 2022). Finally, some argue that “a future plastics treaty should be framed as a means of supporting the implementation of the requirements set out in UNCLOS” (Mendenhall, 2023).

Although UNCLOS has faced significant challenges since its ratification, governments and researchers have invested significant time and effort in creating a new global agreement with the aim of protecting “marine life in the ocean areas that lie beyond countries’ individual jurisdictions” (Pickerell & Swift, 2025). The Treaty for the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ) has been created under UNCLOS but will face the same issues of ratification, compliance, and enforcement (Pickerell & Swift, 2025). The binding agreement has been described as an “extraordinary diplomatic achievement,” but unresolved issues include “who will actually police” the newly created marine protected areas (MPAs), the lack of a dispute resolution system, and the level of financial resources made available for implementation (Patrick, 2023). Finally, the US signed the treaty under the Biden Administration, but the Trump Administration will not be ratifying it, creating the same fundamental weakness that exists for UNCLOS generally (Hughes, 2025).

The core challenge of any global agreement on protecting the oceans is that it will be vulnerable to international geopolitics. There is a general acceptance that in a multipolar globalized world, there is a need for “ordered rule and collective action,” and “global governance provides the needed orderliness and collective actions with processes and institutions that seek to manage pressing global problems” (Adewumi, 2021). However, these systems often have the unintended effect of merely creating new forms of “competition among states” (Adewumi, 2021). There is extensive evidence for using “ocean issues to compete and accrue political leverage” among African countries, in the Arctic, and in the South China Sea (Adewumi, 2021).

Regional Agreements and Their Effectiveness

Research on 263 multilateral environmental agreements between 1950 and 2017 has found that “regionally focused environmental agreements are two and a half times more likely to be ratified than globally focused environmental agreements” (Capel, 2023). Furthermore, one of the comparative strengths of regional agreements is that States have been found to be much more likely to contribute the significant resources needed to make change when an agreement to cooperate is regional and not global (Kahler, 2017). Regional agreements also benefit from the ability to “mobilize local knowledge more effectively” and create



competition with other regional agreements and global agreements that encourage “innovation and experimentation” (Kahler, 2017). Research shows that some of the criticisms of regionalism as opposed to globalism have also become outdated, as a “new regionalism” has emerged since the Cold War. Pre-Cold War regionalism has been described as “introverted and protectionist,” “exclusive in terms of membership,” and “state centered and state dominated” (Söderbaum & Hettne, 2006). In contrast, Post-Cold War regionalism can be defined as “extroverted, linked with globalization,” with “inclusive and open membership,” and involves “state, market, and civil society actors in many institutional forms” (Söderbaum & Hettne, 2006). However, one of the most successful examples of regional cooperation on the regulation of oceans has been the Convention for the Protection of the Mediterranean Sea Against Pollution (the Barcelona Convention), which was adopted in 1976, before the end of the Cold War. One of the strengths of the convention has been the participants’ willingness to update and develop the regulation efficiently to address emerging problems, something that global agreements such as UNCLOS struggle to achieve (Frantzi, 2008).

Another regional example of cooperation that has achieved significant successes is the Arctic Council. One of its strongest achievements has been the creation of the Arctic Climate Impact Assessment (ACIA). The ACIA focused on the narrow regional effects of climate change, and participant states funded the required research because they could see exactly how the money would be used and the results that would be expected. The specialized focus of the Arctic Council has meant that it has achieved “the development of a cooperative regime that has few if any equals” (Bloom, n.d.). The reason for the success of the Arctic Council has been identified as its focus on local problems with narrow expertise, which then informs general policy making: “the council has achieved considerable success in identifying emerging issues, framing them for consideration in policy venues and raising their visibility on the policy agenda” (Kankaanpää & Young, 2012).

Limitations of Regional Agreements

Although regional agreements have significant strengths, some argue that the “new regionalism” is opposed to the multilateralism of global agreements. At an international level, States have to balance their interests, but at a regional level, larger states can use their economic or military strength to shape agreements to empower themselves. Another weakness is the re-emergence of the pre-Cold War approach of exclusivity and introversion. This has been described as a “trend toward strengthening ties with friends and loosening them with non-friends” that “may reignite regional discrimination” (Ruta, 2023). The fundamental weakness of regional agreements is that regionalism without the anchor of multilateralism may be more exposed to the powerful forces of disintegration (Ruta, 2023).

Another significant weakness of regional agreements is that “international progress is limited by significant variation, with many regions failing to deliver effective environmental governance” (Newman, Mukherjee, & Hoole, 2024). Regional agreements in isolation fail to facilitate the sharing of knowledge and technology that has become an important part of global agreements such as UNCLOS and the new High Seas Treaty. For regional agreements to have the greatest impact, the use of global agreements and the dialogue and debate they encourage is required.

Despite the potential for regional agreements to act as catalysts for global agreements, there is a risk that negotiations at a regional level fail to lead to radical or ambitious change because the costs associated with the change will not be shared globally. For example, China, India, and the United States are the largest emitters of greenhouse gases, and reducing these emissions would require significant economic cost (Maizland & Fong, 2026). No government is likely to commit to the high costs of radical change if economic competitors in a different region are not agreeing to the same costs. For governments to commit high levels of investment to solving problems like microplastic pollution and biodiversity collapse in the oceans, global agreements are required, as regional agreements cannot coordinate the timing of such investments.

Regional agreements also face some of the same obstacles as global agreements. For example, compliance and enforcement remain challenges for any international agreement. States are more likely to have closer economic and cultural ties to their neighbors and, therefore, feel a sense of responsibility to enact change in their region. However, historic rivalries and grievances may also be amplified at a local



level, which would make establishing consensus challenging.

Case Study

The three cases below illustrate how different states have interpreted UNCLOS selectively: China by exploiting the convention's definitional ambiguities to create factual control while rejecting adverse rulings; the Philippines by successfully invoking UNCLOS arbitration yet finding the award unenforceable; and Japan by classifying disputed maritime features in ways that neighboring states contest as exceeding what Article 121 permits. Together they identify a structural problem: selective interpretation is not confined to states that openly defy the convention, but also characterizes states that formally accept its authority.

China

Although UNCLOS establishes rules for the governance of the seas through constructs such as exclusive economic zones, China has sought to use these rules to expand its international influence (Orford, 2021). China asserts historic rights within the nine-dash line over much of the South China Sea, a position the 2016 arbitral tribunal found incompatible with UNCLOS where it exceeds maritime entitlements generated under the Convention (Mastro, 2021). In the Yellow Sea, China has been "using so-called gray zone tactics to assert its claim over vast stretches of maritime territory – claims contested by several neighboring countries in the area" (Lee, 2025). By occupying contested reefs, dredging sand from the ocean floor, and constructing installations on rock formations, China exploits UNCLOS's definitional ambiguity between natural islands, low-tide elevations, rocks, and artificial structures to manufacture legal and factual control over disputed maritime space. UNCLOS does not recognize artificial installations as EEZ-generating features, yet the convention's imprecision on these distinctions has left sufficient room for China to contest any straightforward application of the rules against its activities. Regional neighbors dispute the claims, but China presents its conduct as asserting rights under international law.

To avoid this type of exploitation of generalized international rules, regional agreements negotiated by neighbors are required. Regional agreements that use international norms as a foundation and framework for specific local solutions are needed to prevent conflict over the application of international norms in regional contexts. The challenge of this approach is that the strongest regional powers may impose themselves on smaller neighbors, but this is a constant issue in all regional diplomatic negotiations, and smaller powers have the opportunity to cooperate against larger neighbors. In the case of China, South and North Korea, the Philippines, Taiwan, Japan, Malaysia, and Indonesia will have a strong interest in cooperating to negotiate regional agreements that prevent the use of the gray zone tactics that have emerged as a consequence of the gaps and differing interpretations of international law.

Regional negotiations will prevent China from using the defense that accusations from the West and the U.S. in particular are motivated by a desire to restrain China unjustly or by imperialistic goals (Doherty, 2019). Furthermore, neighbors are more likely to be able to connect the governance issues of their shared local seas with larger issues directly connected to the development of relationships and the avoidance of conflict. Without the framing of great-power rivalry, China would face greater pressure to negotiate a shared approach to regional governance of the seas connected to economic, environmental, and social development in the region.

The Philippines and The 2016 Arbitral Award

In 2013, the Philippines filed arbitration proceedings against China under UNCLOS Annex VII, initiating PCA Case No. 2013-19. The Philippines challenged China's nine-dash line claim and the occupation of several maritime features within the Philippine exclusive economic zone, arguing that China had violated Philippine sovereign rights and that the nine-dash line's assertion of historic rights over the waters of the South China Sea was incompatible with UNCLOS. The tribunal issued its award in July 2016, finding that China's claimed historic rights had no legal basis under UNCLOS and that several features China occupied were low-tide elevations incapable of generating maritime entitlements (Permanent Court of Arbitration,



2016). China had declined to participate in the proceedings from the outset and dismissed the award as null and void once issued.

The aftermath of the ruling illustrates a structural limitation in UNCLOS's enforcement architecture. Part XV of the convention provides for compulsory dispute resolution through Annex VII arbitration, which can be initiated without the consent of the opposing party. The Philippines used this mechanism to obtain a clear legal ruling—yet the ruling produced no change in China's conduct. Chinese Coast Guard vessels have repeatedly obstructed Philippine resupply missions to the BRP Sierra Madre, a deliberately grounded naval vessel at Second Thomas Shoal (Ayungin Shoal) that serves as a Philippine military outpost, using water cannons and other measures to prevent resupply (Mastro, 2021). Beijing characterizes these operations as lawful enforcement within its own waters; Manila characterizes them as violations of Philippine sovereign rights within its exclusive economic zone. Both governments invoke UNCLOS to describe the same maritime space. The case demonstrates not only that states may reject inconvenient arbitral awards, but that the convention's dispute resolution mechanism produces rulings it cannot enforce.

Japan and The Interpretation of Article 121

Japan's treatment of Okinotorishima illustrates that interpretive disputes over UNCLOS arise not only where states openly contest its rulings, but also among cooperative parties to the convention. Okinotorishima consists of two small rock outcroppings located approximately 1,740 kilometers south of Tokyo in the western Pacific Ocean. Japan classifies these features as islands under UNCLOS Article 121(1) and claims a 200-nautical-mile exclusive economic zone and an extended continental shelf on that basis (United Nations, 1982). China and South Korea contest this classification, arguing that the features satisfy the conditions of Article 121(3)—that they are rocks which cannot sustain human habitation or an economic life of their own—and should therefore generate only a 12-nautical-mile territorial sea. Japan has reinforced the outcroppings with concrete and steel structures and dispatched periodic government personnel to maintain their above-water status at high tide.

The dispute turns on the interpretive scope of Article 121(3)'s phrase "rocks which cannot sustain human habitation or an economic life of their own," which UNCLOS does not define with precision. The 2016 South China Sea Arbitration tribunal addressed similar interpretive questions in an analogous context, finding that the presence of government personnel or artificially maintained installations was insufficient to classify a feature as an island capable of sustaining an independent economic life (Permanent Court of Arbitration, 2016). Whether that reasoning applies to Okinotorishima has not been determined by any tribunal; no party has initiated formal proceedings on those specific features. The Okinotorishima case differs from the Philippine situation in one significant respect: here it is a cooperative UNCLOS party, one that has not rejected any adverse ruling, whose interpretation of Article 121 produces maritime claims that neighboring states contest as exceeding what the convention permits. This suggests that the problem of selective interpretation is at least partly a function of UNCLOS's own textual ambiguities rather than solely a matter of compliance posture.

Hybrid Governance Model

The strengths and weaknesses of global and regional agreements will determine whether the international community can effectively respond to the significant challenges that humanity currently faces. One of the most difficult is the protection of the oceans. Highly complex and dynamic factors shape the ways that governments, populations, and private interests interact with the oceans and their resources. Climate change is melting frozen regions so that previously unfeasible shipping routes and mining opportunities are becoming possible. States are pushing the limits of existing international agreements to achieve geopolitical aims such as extending territory with the construction of artificial islands. The short-term economic incentive of overfishing is causing catastrophic damage to ocean life and making previously reliable sources of food unsustainable. Pollution is damaging biodiversity and human health. Microplastic pollution has become a pervasive but often untraceable threat to all forms of life. Given rising geopolitical tensions, the unwillingness of the United States to ratify global agreements, and the use of global agreements as a tool



of advancing narrow national interest, often against the spirit of the agreement that has been made, global agreements cannot halt or reverse the various forms of damage currently being inflicted upon the oceans. Regional agreements also face challenges, as described, but the current approach is for global agreements to act as frameworks to guide and motivate further action. Based on this research, it is argued that the relationship between regional and global agreements should be flipped. States should focus on developing narrow, regional agreements that exploit local knowledge and build trust due to the shorter geographical and cultural distance between decision makers and the reality of the situation.

Global agreements attempt to impose generalized approaches on diverse regions with unique social, cultural, economic, environmental, and historical conditions. As seen from the success of the Arctic Council, however, it is more effective to develop practical solutions in specific contexts and then attempt to generalize the best practices that have been learned to more diverse contexts. As global agreements face the challenges of enforcement, States need to be incentivized to cooperate. A hybrid governance model that prioritizes regional agreements focused on narrow practical developments would create knowledge and best practices that could then be used to incentivize participation in global agreements.

One of the major weaknesses of global agreements is also what has been described as the “cloak” of “big ideological claims” that hides the “technical details” (Orford, 2021). Examples would be China defending its construction of artificial islands to exploit UNCLOS’s rules on EEZs with a “narrative of anti-imperialism and respect for sovereignty” (Orford, 2021). However, following WWII, the United States also used language of “freedom, humanitarianism, the rule of law and defence of liberty” to justify its reluctance to ratify or comply with global agreements (Orford, 2021). This framing of “great power rivalry” as a “question of values, without attending to the specific techniques, practices, actions” is mirrored in the use of global agreements to create an image of action based on values that has very little connection to what is happening in reality.

The current threats to the oceans require a focus on direct, practical action instead of spending significant amounts of time and effort on creating agreements that States can agree on but are so general that they can be interpreted in various ways and lack effective means of enforcement. However, the interconnected nature of global systems, such as the oceans, requires more than regional agreements.

A model for regional agreements that inform global agreements can be seen in the approach to air pollution. The Climate and Clean Air Coalition has praised the rapid creation of regional clean air agreements, which means that “today 95% of the Earth’s population is covered by air pollution-specific regional agreements” (CCAC Secretariat, 2023). Regional Sea Conventions are already being created with the aim of ensuring sustainable “regional development by establishing strategies and regional plans” (Marine Water Information System for Europe, 2024). However, more could be achieved by empowering regional groups to develop their own strategies based on their local knowledge and then creating systems for what has been learned to be shared in global forums.

Conclusion

The cases examined in this paper—China’s construction of artificial islands in the South China Sea and Yellow Sea, the Philippines’ arbitration proceedings against China and their aftermath, and Japan’s classification of Okinotorishima—reveal a pattern in which states across the compliance spectrum have interpreted UNCLOS selectively to support maritime claims that neighboring states dispute as exceeding what the convention permits. China rejected a binding arbitral award while exploiting the convention’s definitional ambiguities to manufacture legal and factual control over contested maritime features. The Philippines invoked UNCLOS’s own dispute resolution mechanisms, obtained a ruling in its favor, and found that the convention lacked the means to compel implementation. Japan, a cooperative UNCLOS party, has classified rock formations in ways that China and South Korea contest as inconsistent with Article 121(3), while reinforcing those formations to preserve their legal status. These cases, considered together, suggest that selective interpretation of UNCLOS is not confined to states that openly defy the convention; it also characterizes states that formally accept its authority. The pattern arises at least partly from the convention’s own textual ambiguities—on the status of artificial islands, on the threshold for island classification under Article 121, on the scope of military navigation rights in exclusive economic zones—combined with enforcement mechanisms that produce rulings without the means to ensure compliance.



These observations reflect that the international maritime law system, as currently applied, still has meaningful room for improvement at the level of implementation and enforcement.

This paper has argued that a hybrid governance model—one that prioritizes regional agreements while retaining global frameworks for broader coordination and knowledge-sharing—offers a more effective path forward than either purely global or purely regional governance. Regional agreements negotiated among neighboring states with shared interests in a specific body of water may produce more precise and enforceable rules than UNCLOS's necessarily generalized provisions. The success of the Arctic Council in generating consensus on specific regional issues offers one precedent for this approach. However, the cases reviewed here also indicate that regional dynamics are not inherently more rule-consistent than global ones. Regional negotiations face the same asymmetries of power and competing interpretations of shared rules that have complicated UNCLOS's implementation at the global level. Whether a hybrid governance model can manage these tensions more effectively than existing frameworks is a question that governance experiments in regions such as the South China Sea will need to address. What the evidence does suggest is that closing the gaps between the convention's formal provisions and their implementation in contested maritime spaces will require deliberate attention to both the precision of treaty language and the strength of enforcement mechanisms—attention that the current international maritime law system has not yet sufficiently provided.

Acknowledgements

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