

Research Brief

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Africa, the Law of the Sea, and the International Tribunal for the Law of the Sea

Contrary to mainstream narratives, Africa does indeed have a history of contributing to global governance regimes, including the reformation of long-standing structures, and in particular the international maritime order. The latter requires greater reflection and assessment, which is the aim of this research brief which is released in recognition of the African Day of the Seas and Oceans (25 July). This brief is divided into three sections. The first section discusses the contributions of African states toward international maritime regimes, namely the Convention on the Law of the Sea, as well as the recently adopted High Sea Treaty. The second section explores the International Tribunal for the Law of the Sea (ITLOS) in relation to Africa, specifically its composition and

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dynamics. The final section summarises the key finding and recommendations for further study. Drawing from a recently conducted interview on 12 July 2023, the research brief incorporates some of the points raised by the latest election to the ITLOS, South Africa's Judge-Elect Thembile Joyini.

African Contributions to International Maritime Regimes

Africa and the Law of the Sea

The 1982 United Nations Convention on the Law of the Sea ([UNCLOS](#)) constitutes a comprehensive regime which sets forth the rules which govern the world's oceans and seas and the use of marine resources. In the lead up to the adoption of UNCLOS, African states played a key role in demanding, negotiating and influencing terms beneficial (conducive) to the interests of the continent, and the Global South. In fact, when UNCLOS was adopted, no African state voted against or abstained from voting, and by 1992, 26 of 54 African states had ratified the Convention. CEMLAWS (2016) describes this as “one of the greatest achievements of developing countries in international politics”. At its core this was a combined effort by African states and those of the Global South to “reform the post-colonial legal and economic order” with the goal of ensuring access to the oceans and marine resources for the purpose of development. Initially, this reformation initiative was pursued within the Organisation of African Unity (OAU – now the AU), but was subsequently [undertaken](#) by the Group of 77, in essence bringing together African states and the rest of the Global South.

A significant contribution to the Law of the Sea prompted by the African negotiating bloc was the inception of the Exclusive Economic Zone (EEZ). Under the Law of the Sea, the EEZ constitutes the 200 nautical miles in which a state has the

sovereign right and legal jurisdiction to explore and harness its marine resources. In 1972, African states led by [Kenya](#) presented the ‘*Draft Articles on an Exclusive Economic Zone Concept*’ to the Geneva Session of the UN Seabed Committee. Following this, the Addis Ababa and Mogadishu Declarations by the Council of Ministers of the OAU recognised the right of littoral African countries to establish their EEZs. At the international level, it was African and South American states that were the first to endorse this idea, as it guaranteed equitable access to marine resources. Despite opposition to the EEZ concept by some developed states who perceived it as adversarial to their fishery interests, military (naval) concerns, and freedom of navigation, the EEZ earned consensus. Subsequently, the concept of the EEZ was expressed as customary international law and incorporated into the Law of the Sea.

Beyond this contribution, it was also African states that demanded the participation and rights of landlocked states to the provisions of the Law of the Sea. Undisputedly, since the 1970s African states have played a central role in establishing, influencing, and improving the Law of the Sea.

Africa and the High Seas Treaty

On 19 June 2023, during a United Nations meeting, the Treaty on the High Seas was adopted by consensus, after over two decades and six rounds of negotiations. The [Treaty](#) is key to protecting the oceans, specifically the

areas and biodiversity beyond national jurisdiction (BBNJ) also referred to as international waters or the high seas. Essentially, this falls outside the 200 nautical miles, or exclusive economic zones (EEZs) of all countries; thus, no country has exclusive rights or jurisdiction over these designated areas. The high seas hold great [significance](#): they make up roughly 60 percent of the world's oceans and are home to a range of both living and non-living marine resources, of which 13 percent is classified as 'marine wilderness' (areas void of human impact).

During an interview with Judge-Elect Thembile Joyini, he pointed out the significant role played by the African negotiating bloc in advocating for the High Seas Treaty to be underpinned by the notion of the '*common heritage of mankind*'. This [concept](#), which is inherently linked to ethical concerns of international law, means that certain areas and resources and their benefits belong to all people. This concept also takes into consideration future generations. Judge-Elect Joyini maintains that the African bloc were "strong negotiators", that sternly advocated for the inclusion of an '*access and beneficiary mechanism*' as a key feature of the Treaty. This [provision](#) is clear in Part V, Articles 42 to 47 and Part VII, Article 52 which stipulate the provisions for 'Capacity-building, Transfer of Marine Technology and Financial Assistance'. Essentially, the BBNJ Agreement affirms that "states shall cooperate to assist each other, in

particular developing states" in achieving the objectives of the Treaty.

Over and above, the adoption of these articles, Judge-Elect Joyini confirms that substantial consideration was accorded in order to "protect the special interests of African states", including safeguarding traditional (indigenous) maritime knowledge and practices. Once again, it is clear that in international forums, African negotiators promote terms that will not only benefit the continent, but the entirety of the Global South, and humankind as a whole, both now and in the future.

Africa and the International Tribunal for the Law of the Sea (ITLOS)

Including its President and Vice-President, the ITLOS has a total of 21 members, of which five judges represent Africa. At present, the African judges are from Algeria, Cameroon, Cabo Verde, Tanzania, and South Africa which holds the Presidency. Judge-Elect Thembile Joyini will succeed Judge Albert Hoffman as the latest of South Africa's representatives to the ITLOS, after having been [nominated](#) by Cabinet in June 2023, and subsequently endorsed by the AU. From the list above, it is clear that there is no judge originating from the African island states in the Western Indian Ocean (WIO), nor is there a judge from the inland African countries. This is perhaps something that requires greater reflection and consideration.

To date, the ITLOS has [deliberated](#) over a number of cases related to maritime

boundary disputes in Africa including but not limited to, *Case No. 28 'Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean*, and *Case No. 23 'Dispute concerning delimitation of the maritime boundary between Ghana and Cote d'Ivoire in the Atlantic Ocean'*. In the case of the Kenya-Somalia maritime boundary dispute, the International Court of Justice (ICJ) was the main authority involved. It is worth noting that where international maritime matters are concerned, Judge-Elect Joyini maintains that the ITLOS should constitute the 'primary authority on the oceans' and all things related to legal-maritime affairs.

Concluding remarks

It is clear that building on past contributions, African countries are beginning to assert their presence and articulate their maritime concerns more impactfully on the security agendas of international fora. In the same vein, African countries are increasingly taking charge of their own maritime affairs. This does not mean that the role of extra-regional actors is no longer relevant, merely that they no longer hold the primary role in the African maritime environment.

Judge-Elect Joyini confirms that the AU has made momentous strides toward the advancement of the continent's maritime objectives and well-being; however, there remains 'a lot that which must be done'. This is true, especially where maritime security is concerned, and its importance toward advancing development agendas, namely Africa's blue economy objectives. Judge-Elect Joyini further emphasises the importance of raising maritime awareness, specifically in relation to the unlocked development potential of the oceans. This speaks directly to Africa's blue economy potential, but to realise this African states must play a central role. Echoing Judge-Elect Joyini, "African states must be more involved", they must take up active roles in asserting their agency and objectives in international forums, especially within the United Nations system.

With two years remaining since the AU declared this as the 'Decade of the African Seas and Oceans', African countries require joint efforts, and combined negotiating power, to elevate their maritime issues, concerns, and preferences on international security and development agendas, for the benefit of humankind as a whole. •