

The Interpretation of Jurisdiction by UNCLOS Tribunals: *Navigating a Path between Judicial Activism and Judicial Self-restraint*

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The Scope of Litigation under the UNCLOS – Where are we now and where may we be going?

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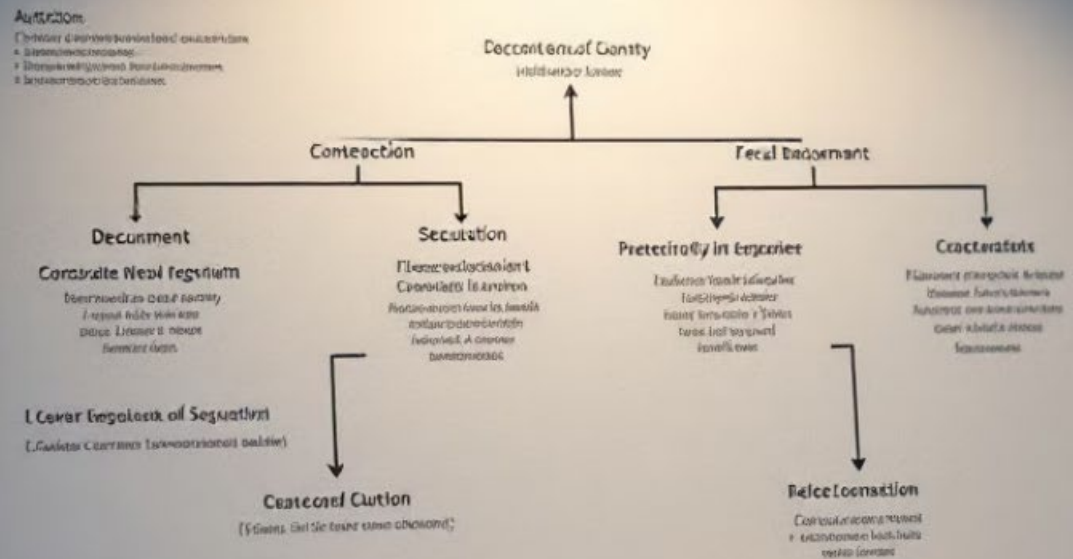
Overview

1 Research Questions

2 Selected Thesis: The Effect on Legitimacy

3 Preliminary Observations

Legal Document



Research questions

Judicial Interpretation

Have the UNCLOS tribunals interpreted their jurisdiction **inconsistently**?

Parameters

Can the variations be explained using the **judicial functions narrative**?

Legitimacy

How do the different interpretations of jurisdiction **affect the legitimacy** of UNCLOS tribunals?

Future Implications

What are the **potential consequences** of varying interpretations of jurisdiction for future disputes?



The judicial activism and judicial self-restraint narrative: Trailblazers or Pathfinders?

1

Definitions

Judicial activism: *exceeds the mandate to do more than it should*

Judicial self-restraint: *avoids performing the mandate to the fullest*

2

Context and Connotations

Highly-contextualized norms: *A Rabbit or a Duck?*

Negative connotations of a judicial conduct

3

Parameters

The perceived role: a public and private function

The interaction between the judicial institution and constituencies

Welche Tiere gleichen ein-
ander am meisten?



Raninchen und Ente.



The Legitimacy Risk

Contrasting the scope of jurisdiction (Self-restrained)

- Southern Bluefin Tuna: *procedural limitations*
- Chagos Marine Protected Area: *substantive limitations*

Expanding the scope of jurisdiction (Activist)

- South China Sea Arbitration: *maritime entitlements and territorial sovereignty*
- SRFC Advisory Opinion: *inherent function*

Consequences and backlashes

- Unpredictable judgements
- Non-appearance and non-compliance
- “Nervousness” in future treaty drafting

Should we be worried? Foreseeing or overthinking

1

Variations allow UNCLOS tribunals wiggle room to respond to complex issues

Guardian of the Convention and State's consent

Empowering v Constraining of member States

2

The legitimacy of UNCLOS tribunals has consolidated over time

More substantive cases being submitted:
escaping the shadow of a "prompt release" tribunal

Trigger positive responses:
from IUU fishing to climate change



GREAT MINDS
OVERTHINK ALIKE



Conclusion

Natural Phenomenon

The UNCLOS tribunals' approach exhibits a natural phenomenon of *a growing* judicial institution

Relevance

Tribunals have sought to *remain relevant* despite the limitations and exceptions to its jurisdiction

Adaptation

This approach demonstrates the tribunals' *ability to adapt* to complex legal landscapes

Thank you for listening

I am looking forward to
your comments!

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