



Extension in the Airspace of Pakistan – Based on Lack of Harmony Between UNCLOS And ICAO Convention Regarding Distribution of Airspace Over EEZ

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Abstract

This article is -written with a focus on the extension of the airspace of Pakistan from the existing dimension to the extent of the exclusive economic zone which was initially 200NM but now extended to 350NM since 2015 (*National Institute of Oceanography Pakistan, n.d.*). The stated objective is based on the following agenda points which are further elaborated on in this article: 1) The lack of harmony between the United Nations Convention on the Laws of Sea (UNCLOS) and the provisions of the Convention on International Civil Aviation (Article-12 and Annex-11 of the ICAO Convention) regarding the airspace distribution over Exclusive Economic Zones (EEZ). 2) It is a vested right of the coastal state to regulate the airspace over its EEZ, and if not, then at least all the economic benefits should belong to the coastal state. 3) The difficulties and threats faced by coastal states if they are not provided with the opportunity to regulate their airspace over the EEZ. Based on the stated agenda and the discussion therein, the following results or outcomes are expected: 1) The airspace over EEZ could be defined in a more harmonized way in line with all the international laws/bodies for which necessary amendments should be made in the UNCLOS, Article-12 and Annex-11 of the ICAO Convention. 2) Affected countries can approach ICAO through concerned departments/authorities / ANPs either for extension and adjustment of their airspaces over their EEZ or for the acquisition of financial benefits i.e. aeronautical charges or air navigation charges being earned from the airspace over their EEZ.

Keywords: *Airspace law, Pakistan's airspace, airspace over EEZ, airspace of coastal states, ICAO's airspace distribution, airspace regulation over EEZ, air navigation services, ICAO Convention on civil aviation, Laws of the sea, airspace extension, Airspace disputes, IMO airspace laws, UNCLOS for airspace,*



Introduction

There are two separate laws/bodies for regulating the sea and the airspace adjacent to it, which are UNCLOS and the Convention on International Civil Aviation (also known as the Chicago Convention) respectively. The UNCLOS, established in 1982, provides a framework for the rights and obligations of states regarding the use of the world's oceans including territorial waters, Exclusive Economic Zone (EEZ), Continental Shelves, and High seas but it does not provide a clear definition of the status of airspace over the EEZ. On the other hand, Article-12 and Annex-11 of the ICAO's Convention on International Civil Aviation (hereinafter referred to as ICAO Convention) provide guidelines for air traffic services and air navigation in the airspace over lands and high seas but it does not differentiate between the airspaces over the high seas and the EEZ despite of the fact that these two areas of the sea are very different in many aspects when it comes to rights and obligations of the States. Hence, harmonization regarding the airspace of EEZ between these two laws i.e. UNCLOS and ICAO Convention, is crucial for the uninterrupted operation of ships and aircraft over the sea.

The EEZ is an area of coastal waters extending 200 nautical miles from the coast of a state where the coastal state has special economic rights over the exploration and use of marine resources (UNCLOS, 1982). UNCLOS and ICAO Convention are two major international laws governing the use and management of airspace over EEZ. However, as stated above there is a lack of harmony between these laws when it comes to regulating airspace over EEZ. This has created difficulties and threats for coastal states, particularly in search and rescue operations, air surveillance, and air traffic management. This article aims to shed light on this issue and suggests a way forward for coastal states.

This article delves into the legal, practical, and geopolitical intricacies of extending airspace control over a coastal state's EEZ. It examines the need for this extension considering potential conflicts and recent regional developments. This analysis also underscores the critical importance of equitable resource distribution and the role of advanced technological capabilities in ensuring safety, security, and efficiency in maritime and aerial activities within EEZ.

For this purpose, the incongruity where the sea within the EEZ is under Pakistani purview (*Marine Regions*, n.d.) while airspace control is vested into India (*Sky Vector: Flight Planning / Aeronautical Charts*, n.d.) is discussed as a case reference because Pakistan is at the more vulnerable position, being a country having a history of multiple wars and conflicts



with its neighboring state i.e. India. Furthermore, although Pakistan can provide Air Navigation Services (ANS), it is unable to capitalize on the financial benefits affiliated with the provision of these services in the airspace adjacent to its EEZ.

Lack of Harmony between UNCLOS and the ICAO Convention

The right of countries to use and manage the natural resources in their EEZs, including the airspace above them, is based on UNCLOS. The convention defines the EEZ as a maritime zone extending 200 nautical miles (370 km) from a country's baseline, within which the coastal state has special rights to explore, exploit, and manage the natural resources, both living and non-living, in the water column and on as well as under the seabed.

Provisions of UNCLOS

Article 56 of UNCLOS sets out the rights, jurisdiction, and duties of the coastal state in the EEZ. It provides that in the EEZ, the coastal state has sovereign rights for exploring and exploiting, conserving, and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil. The coastal state also has jurisdiction over the establishment and use of artificial islands, installations, and structures; marine scientific research; and the protection and preservation of the marine environment.

Additionally, *Article 58 of UNCLOS* sets out the rights and freedoms of other states in the EEZ. It provides that all states, whether coastal or landlocked, have the freedom of navigation, overflight, and to conduct activities such as laying of submarine cables and pipelines in the EEZ. All these rights are subject to the rights, consent, jurisdiction, and duties of the coastal state within its EEZ. Thus, the State enjoying this freedom shall comply with the laws and regulations adopted by the coastal State.

Here are some specific clauses of UNCLOS that relate to the rights and duties of coastal states in their EEZs, including the airspace above them,

- **Article 55 of UNCLOS** provides that within the EEZ, the coastal state has special rights over the exploration, exploitation, conservation, and management of the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil.
- **Article 60 of UNCLOS** sets out the duty of the coastal state to prevent and control pollution of the marine environment in the EEZ. The coastal state has the obligation to



take all measures necessary to prevent, reduce, and control pollution of the marine environment from any source, including vessels and installations.

- **Article 62 of UNCLOS** sets out the duty of the coastal state to promote the objective of optimum utilization of the living resources in the EEZ. The coastal state must ensure the conservation and management of the natural resources in the EEZ, considering the best available scientific information, to achieve optimum utilization of these resources.
- **Article 74 of UNCLOS** sets out the obligation of the coastal state and other states concerned to cooperate in the management of fishery resources that occur in the EEZ and on the continental shelf beyond it. The coastal state and other states concerned are required to cooperate with each other in the conservation and management of these resources.

Although there are no specific provisions in UNCLOS that address the provision of air traffic services in the EEZ based on the stated articles it can be generally accepted that a coastal state has the right to regulate air traffic in its EEZ to ensure the safety of navigation and protect the marine environment. It is understood that the rights and responsibilities of the coastal state mentioned in the stated articles of UNCLOS cannot be exercised if the rights/authority granted in the EEZ is not extended to the airspace adjacent to it.

Provisions of the ICAO Convention

ICAO is the specialized agency of the United Nations responsible for the development of standards and recommended practices for international civil aviation. Annex-11 – Air Traffic Services – to the ICAO Convention sets out the standards and recommended practices for the provision of air traffic services worldwide. It includes specifications related to the provision of air traffic services over international waters, without clearly differentiating between EEZ and High seas.

Article-12 of the ICAO Convention allows any state to provide air navigation service over international waters by ICAO-assigned Flight Information Regions (FIRs) for safety and operational efficiency but neither differentiating between high seas and EEZ nor considering the sovereign economic rights of coastal States within their EEZ under UNCLOS, which shows a violation of UNCLOS regarding the distribution of international waters i.e. High-seas and EEZ. As per UNCLOS, all the States have different rights and obligations in EEZ and High seas, especially in EEZ coastal States have responsibilities for the protection of resources, management of the environment, and maintenance of security therefore Coastal



states can challenge the unrestricted implementation of Article-12 of the ICAO Convention by arguing that it undermines their economic, social, environmental, and security interests in the EEZ. While Article-12 grants international control over airspace in the EEZ for air traffic management by creating FIRs and other provisions of the ICAO Conventions, coastal states maintain that their sovereign rights under UNCLOS such as resource exploitation, environmental protection, and security could be jeopardized by unchecked air traffic.

Evidently, UNCLOS grants coastal states sovereign economic rights over the natural resources in their EEZs, on the other hand, Article-12 and Annex-11 to the ICAO Convention define the high seas as "all parts of the sea that are not included in the territorial sea or internal waters of a State." This definition creates a gray area for EEZ airspace management, which falls between the high seas and territorial waters. This indicates that the distribution of airspace by ICAO is therefore not explicitly aligned with the framework of UNCLOS. The inherent discord between UNCLOS and the ICAO Convention can lead to jurisdictional disputes, especially when aircraft operations intersect with marine activities in the EEZ.

Difficulties and Threats Faced by Coastal States

The lack of harmony between UNCLOS and the ICAO Convention and the absence of a harmonized airspace law can have significant consequences for coastal states as major issues can be witnessed if the EEZ is controlled by the coastal state and the airspace over the EEZ is regulated by another state. Some of the challenges are highlighted below considering the situation of Pakistan and India as a case reference:

Deprivation of Economic Benefits and Rights

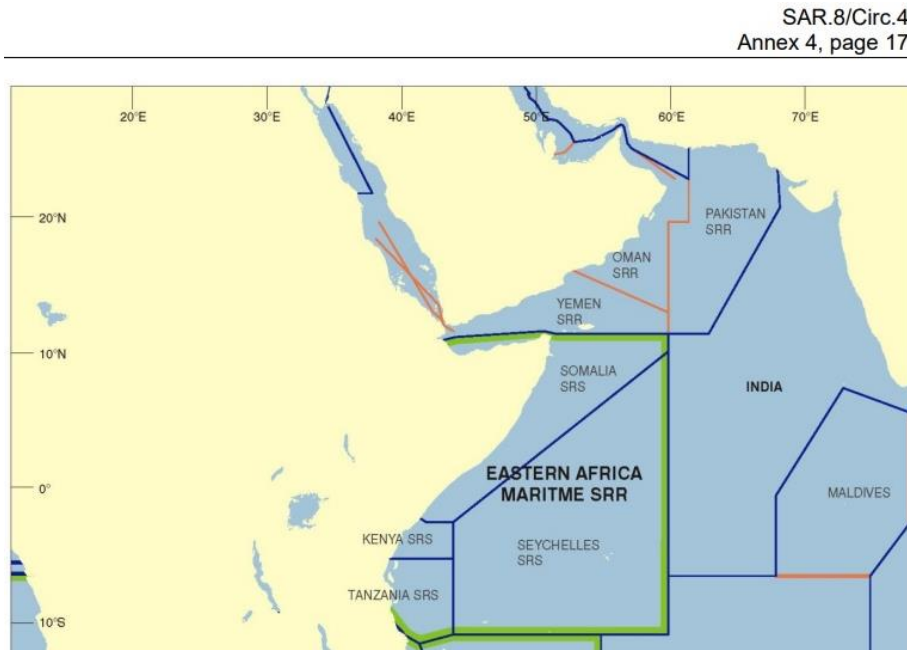
The disharmony between the two conventions can have adverse effects on the coastal state's economy. It is well known that the aviation industry plays a vital role in a country's economy. As per UNCLOS (1982), the EEZ belongs to the coastal state when it comes to taking financial or economic benefits in the sea; however, the lack of clarity about the regulation of airspace above the EEZ creates confusion regarding aerial economic benefits. In the case under reference, the provision of ANS by India over the EEZ of Pakistan deprives Pakistan of its economic right to aeronautical earnings from its EEZ.

Incongruity in Search and Rescue (SAR) Operations

SAR operations are conducted through coordination of different agencies including air and marine service providers. Naturally, in such a scenario different rules and obligations of the

Laws of the Sea and ICAO Convention must be fully harmonized for smooth and flawless rescue operations. According to the limits defined by the International Maritime Organization (2012) (IMO) in the Global SAR Plan, Pakistan's area of responsibility stretches to approximately 840 NM into the sea.

Figure 1



This area encompasses Pakistan's EEZ waters of 350NM as depicted in the map by the Pakistan Maritime Security Agency (PMSA), reproduced below.

Figure 2

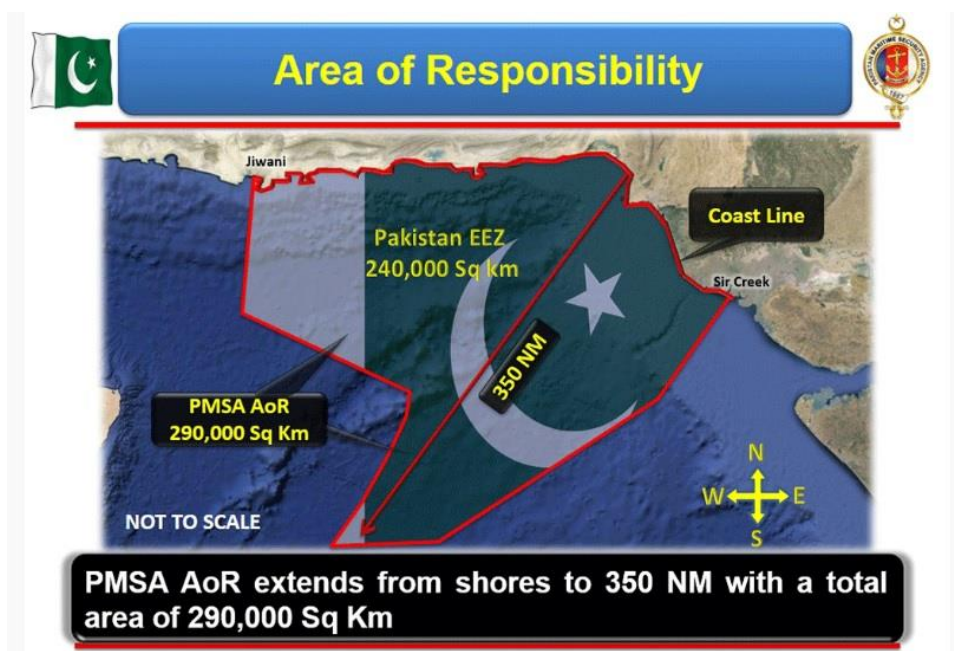
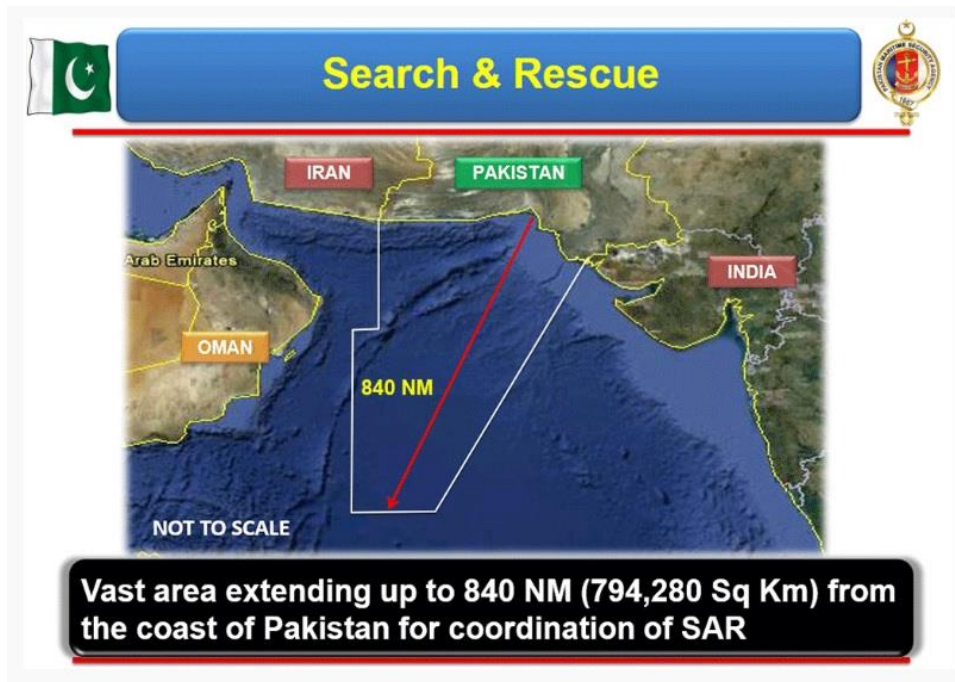


Figure 3

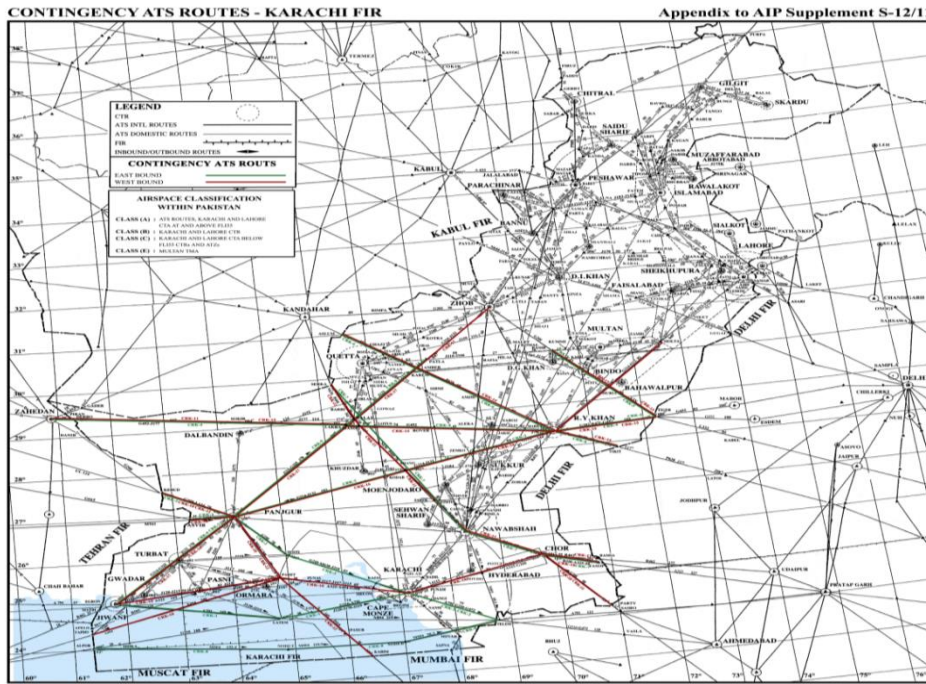


On the other hand, as per ICAO's airspace distribution, Pakistan is responsible for SAR operations within an area of approximately 120NM in the air (*Search and Rescue System of Pakistan*, n.d.) which is the same as the airspace allotted for air traffic services (*Air Traffic Management*, n.d.).

Figure 4

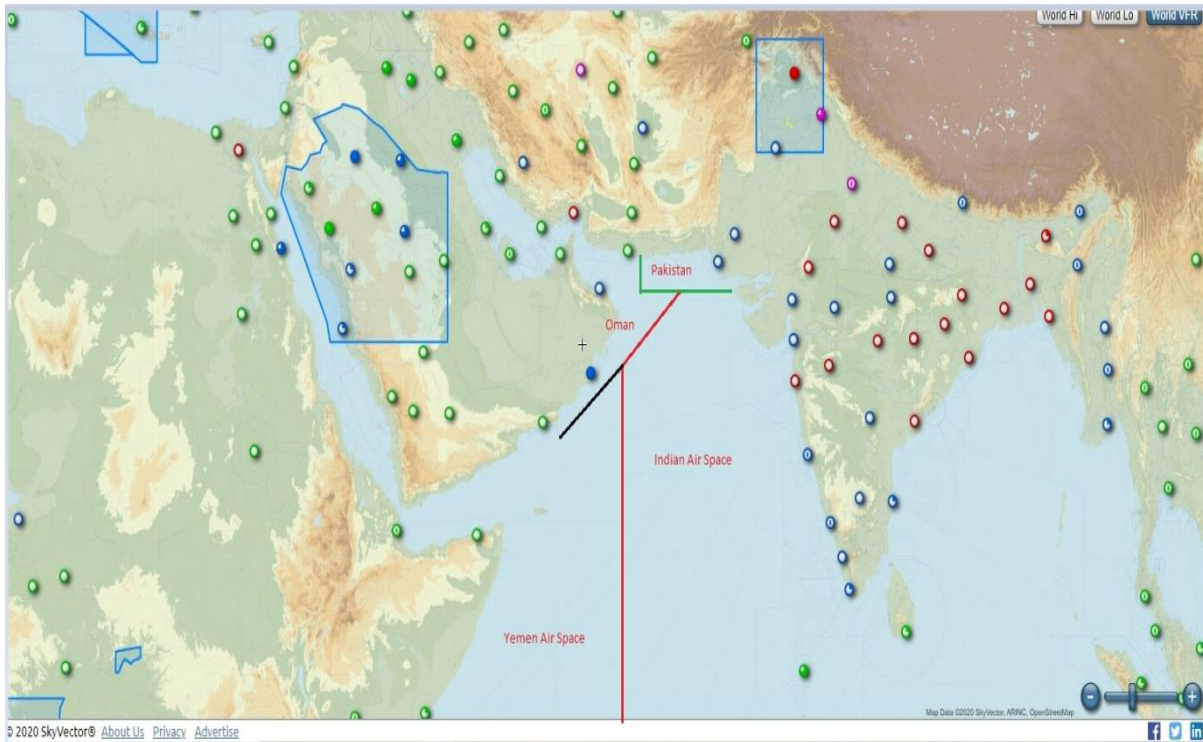


Figure 5



The airspace of 120NM does not cover the complete EEZ of Pakistan and the rest of the aerial region above Pakistan's EEZ falls under the responsibility of India.

Figure 6





Incongruously, while Pakistan is responsible for SAR operations in its EEZ waters, it cannot carry out such operations without foreign coordination and permission since the airspace above is regulated by India through Mumbai FIR. This scenario may lead to considerable delays and inefficiencies in SAR operations, which can be life-threatening.

Threat to National Safety and Security

Concerns regarding national security also arise, especially when the countries have worse diplomatic relations and have witnessed war several times. The imperative for extending airspace control over the EEZ to the coastal state is heightened by regional conflicts, such as the airstrike by India in Pakistan (“Indian Aircraft Violating Pakistani Airspace,” 2019), which is a question mark on the safety and security of marine operations carried out in the EEZ of Pakistan by respective departments while the airspace above is being regulated by India.

Challenging for environmental conservation

The discrepancy in the conventions can also lead to environmental hazards, as the aerial pollution of the sea is uncontrolled by the coastal state since the state does not have the right to regulate the airspace over its EEZ.

Other Countries Facing Similar Challenges

The stated inconsistency between UNCLOS and ICAO regulations regarding airspace above EEZ adversely affects the international norms and national controls of any coastal state. Like the Pakistan-India situation, many other coastal states are also involved in conflicts for the same reason as countries seek greater control over airspace in their EEZ for security and economic interests. The following examples further highlight how geopolitical tensions can worsen by the stated legal conflict:

China and Countries Surrounding the South China Sea

China claims large parts of the South China Sea. As per the ICAO Convention, the airspace above the South China Sea is considered as international airspace where no state has any sovereignty. This airspace overlaps the EEZ of several countries viz. China, Philippines, Vietnam, and Malaysia. China, taking advantage of the fact that there is no sovereignty over this airspace, has considered establishing ADIZ which would potentially give it control over the airspace which overlaps the EEZs of other nations.

However, international bodies do not recognize this Chinese claim which is creating ongoing legal conflicts and diplomatic tensions (Gianoni, 2023).



Japan and China (East China Sea)

Like the situation in the South China Sea, China has also established an ADIZ in the East China Sea based on the same provision of the ICAO Convention that airspace beyond the territorial waters is part of international airspace, disregarding the concepts of EEZ provided in UNCLOS. This new ADIZ overlaps with the existing ADIZs of Japan and South Korea which is causing tensions between China and the other countries, as it requires the aircrafts to identify themselves and follow certain procedures when flying through the zone (“China’s Air Defense Identification Zone (ADIZ),” 2015). Additionally, both China and Japan claim sovereignty over this region but neither country has full control. Resultantly, a conflict of significant legal implication has arisen as Japan contends that China’s ADIZ is a violation of international norms, raising concerns about aerial safety and potential military conflict (Lee, 2014).

Greece and Turkey (Aegean Sea)

The disharmony between UNCLOS and ICAO Conventions is a source of conflict between Greece and Turkey over their EEZs in the Aegean Sea. Greece controls airspace over its islands and adjacent waters in the Aegean Sea. Turkey challenges Greece's control over this airspace, especially regarding FIR boundaries and military activities. Turkey disputes Greece's right to manage this airspace, particularly over parts of its EEZ. This dispute extends to military and civilian air traffic management, leading to diplomatic tensions and frequent confrontations (*Air Space Related Related Problems / Republic of Türkiye Ministry of Foreign Affairs*, n.d.).

Conclusion and Discussion

The lack of harmony between UNCLOS and provisions of the ICAO Convention in the case of EEZ creates confusion and inconsistencies in the regulation of airspace over the EEZ. To address this issue, UNCLOS and the relevant provisions of the ICAO Convention should be reformed to provide a common airspace law clearly defining the rights and responsibilities of the coastal states over the EEZ. This will ensure the effective regulation of airspace over the EEZ by the coastal state, and prevent difficulties and threats faced by coastal states in regulating their airspace over the EEZ. With the cooperation of ICAO and neighboring states, these issues can be resolved. Coastal states should take the initiative to engage with ICAO and negotiate bilateral treaties to ensure the safety and security of air traffic and search & rescue



operations in their EEZs. The balance between economic benefits and equitable resource distribution should remain at the forefront of policy discussions.

Pakistan's EEZ is a crucial economic zone, rich in marine resources, and its extension from 200 NM to 350 NM presents a complex legal and geopolitical landscape (Nabeel, 2023).

Ensuring the alignment between UNCLOS and ICAO regulations amidst the evolving regional dynamics is vital. Technical advancements in air navigation services are pivotal for maintaining safety and security and recent improvements have equipped Pakistan with the technical capacity to provide air navigation services within its EEZ (*PCAA ANS Future Plans*, n.d.). This technological progress empowers the nation to ensure safety, security, and efficiency in aerial and maritime operations. Thus, equitable resource distribution and airspace control within the EEZ become essential considerations.

Diplomatic efforts are imperative to navigate the complex airspace jurisdiction issues.

However, the pursuit of sovereignty and control over airspace above the EEZ must be in harmony with international norms.

Conclusively, it is essential that both laws be revised to develop a common airspace law over EEZs that is more comprehensive, efficient, and practical. The revised law must recognize the coastal state's rights and responsibilities with respect to the airspace over its EEZ while adhering to international air traffic regulations and safety standards. This would ensure that coastal states have the authority to regulate and manage the airspace above their EEZ while maintaining safety and efficiency in air traffic.

Way Forward

To address these issues, Pakistan should take up the matter with ICAO through the concerned authorities or departments such as the Pakistan Civil Aviation Authority, Pakistan Airports Authority, and Pakistan Defense Authorities for restructuring of the airspace over Pakistan's EEZ. For the interim period, until the reallocation or extension of the airspace, Pakistan should engage with ICAO to plan to execute an agreement between Pakistan and India for joint economic benefit from the routes over the EEZ of Pakistan, like the long-standing joint financing agreement between Denmark, Iceland, and Canada for provision of air navigation and metrological services in the airspace of Greenland. This agreement governs the provision of civil aviation services, including air traffic control and meteorological services, over the North Atlantic (*Danish/Icelandic Agreements*, n.d.).

Other Coastal states should also negotiate bilateral treaties to resolve any conflicting claims over airspace and ensure smooth sea and air transport activities, especially search and rescue



operations. There are several cases of countries revising their airspace limits, either unilaterally or through bilateral or multilateral agreements. Here are a few examples:

- United States: In 1958, the United States revised its airspace limits by introducing a new system of airspace classification based on altitude, known as the National Airspace System (NAS). The NAS established different airspace classes and altitudes for different types of air traffic, and it provided for the creation of new air traffic control zones and other airspace restrictions (*National Airspace System (NAS)*, n.d.).
- European Union: In 2004, the European Union (EU) revised its airspace limits by establishing the Single European Sky (SES) initiative, which aimed to create a unified airspace for Europe and reduce air traffic congestion. The SES introduced new airspace management and air traffic control systems, as well as new regulations for air traffic management (*Single European Sky*, n.d.).
- Canada: In 2017, Canada revised its airspace limits by introducing a new system of airspace classification based on performance-based navigation (PBN), which uses satellite technology to guide aircraft more precisely along flight paths. The new system allowed for more efficient use of airspace and reduced the environmental impact of air traffic (*Performance-based Navigation (PBN) State Plan - Canada*, 2016).

Ultimately, the United Nations should consider amending UNCLOS, and Article 12 and Annex 11 of the ICAO Convention, by employing concerned offices of IMO and ICAO, to clearly differentiate between the airspace over high seas and airspace over EEZ and to provide clear guidelines for air traffic management in EEZ keeping it in line with the rights and obligations of the Coastal states.

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