Chapter 5

The Current Status of the Conventions on the Law of the Sea*

The purpose of this chapter is to examine the current status of the various Conventions which set out much of the modern law of the sea. The Conventions are the UN Convention on the Law of the Sea of 1982, together with the Implementation Agreement of 1994, the four Geneva Conventions of 1958, and the Implementation Agreement of 1995 on Straddling and Highly Migratory Fish Stocks.

* This chapter, the text of a paper read at the inaugural colloquium of the Association internationale du Droit de la Mer (2001), was first published in G. Cataldi (ed.), La Méditerranée et le Droit de la Mer à l’aube du 21e Siècle (2002). The information about the status of the Convention, its two Implementation Agreements and the Geneva Conventions of 1958 has been updated; current information, posted on http://www.un.org/Depts/los/index.htm, is also digested in the UN Secretary General’s reports on Oceans Affairs and the Law of the Sea, most recently in document A/61/63/Add.1 of 2006. Many developments are reviewed in other chapters of this book.
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A Some Developments during the Mid-1990s

On 16 November 1993, Guyana became the sixtieth state to establish its consent to be bound by the Convention, thereby bringing about its entry into force one year later. During that twelve month period, the Agreement relating to the Implementation of Part XI of the Convention was adopted and opened for signature in July 1994 by the UN General Assembly. When the Convention entered into force on 16 November 1994, 68 states were parties, but this group was not fully representative of the international community of states. It included only two industrialised states, Australia and Germany. It quickly became clear that the problems for industrialised countries with Part XI had been met by the Implementation Agreement. After November 1994, participation in the Convention rose as the industrialised countries moved rapidly to approve the two treaties. By the end of 1995, the number of parties to the Convention had risen to 83. Sweden and the Netherlands became the 99th and 100th parties in June 1996, just in time for the first elections for the judges of the International Tribunal for the Law of the Sea, held on 1 August 1996 when there were 100 electors present in New York. By the end of 1997, the total had reached 123. This short period, from November 1993 to 1997, witnessed a major change in the status of the Convention.

B The Extent of the Participation and its Representative Character

In today’s world of approximately 195 states, the Convention has now attracted the participation of 151 States, plus the European Community in accordance with Annex XI to the Convention. This is more than three-quarters of the total number of States, making the Convention one of the most widely accepted law-making treaties. By way of comparison, there are 192 Members of the UN which have all accepted the UN Charter, 179 parties to the Vienna Convention on Diplomatic Relations, 165 to the Consular Relations Convention and 91 to the Convention on the Law of Treaties.

1 Regional Participation

The two-thirds proportion now exists in all regions of the world. There are 39 parties from Africa out of a total of 53, or about 73%. There are 44 from Asia (including the

1 W.R. Edeson has urged the use of the correct title, rather than more descriptive ones: see his note entitled “Law of the Sea Convention: Confusion over the use of “UNCLOS”, and references to other Recent Agreements” in 15 IJMCL (2000), 413.

2 There are 160 parties to the UN Covenant on Civil and Political Rights, 143 to the UN Torture Convention, 190 to the Climate Change Convention and 189 to the Biological Diversity Convention. In the wider maritime context, SOLAS 1974 has 156 parties (98% of tonnage); the Loadlines Convention of 1966 has 156 (98%); the MARPOL Convention, Annexes I & II have 138 (97%); and the Collision Regulations have 149 (97%).