CHAPTER 18

Compliance with the UN Convention on the Law of the Sea: Problems and Prospects

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1 Introduction

Whether the parties to a multilateral treaty comply with its provisions is a crucial test of its efficacy and worth. With some kinds of treaty—human rights and arms control treaties, for example—the question of compliance receives a great deal of attention, and monitoring bodies spend considerable time and effort seeking to determine whether States parties are complying with the treaty. With other treaties compliance seems, rather surprisingly perhaps, to be a less important issue for States parties and academic commentators. The UN Convention of the Law of the Sea¹ (hereafter LOSC) at present belongs to this latter category.

The aim of this paper is to add to the relatively limited literature on compliance with the LOSC by considering three questions: (1) what is the state of compliance with the LOSC? (2) if there is significant non-compliance, does it matter? and (3) if so, what can be done about it? Each of these questions is considered in turn. However, before attempting to address the first of these questions, it should be made clear that it is not always easy to determine if there is compliance with the provisions of the LOSC, as will be explained in the following section.

2 Problems with Ascertaining Compliance with the LOSC

There are both practical and conceptual difficulties in seeking to determine whether States parties to the LOSC are complying with its provisions. A first

¹ 1833 UNTS 396.

difficulty is that, with the exception of activities in the Area (i.e. the seabed beyond the limits of national jurisdiction) and the establishment of the outer limit of the continental shelf beyond 200 miles, where the International Seabed Authority and the Commission on the Limits of the Continental Shelf, respectively, have a role in overseeing compliance (as explained below), the LOSC establishes no bodies to monitor compliance with its provisions. In this, the LOSC compares unfavourably with many multilateral environmental agreements (MEAs), human rights treaties and arms control treaties, which have comprehensive and reasonable effective compliance monitoring bodies.2 Furthermore, again unlike the types of treaty just mentioned, there is no obligation on States parties to report on their implementation of the LOSC except in relation to a handful of matters, such as baselines, the outer limits of the exclusive economic zone (EEZ) and continental shelf, and maritime boundaries.3 Because of the absence of a more comprehensive obligation to report, it is often difficult to obtain information about the legislation and other relevant practice of State parties. While the UN Division for Ocean Affairs and the Law of the Sea (DOALOS) maintains a database of State practice,4 that database, extremely valuable though it is, is neither comprehensive nor completely up to date, as the Division would probably be the first to concede. The combination of the factors just mentioned means that someone wishing to ascertain the state of compliance with the LOSC is left largely on their own to discover much of the relevant information and make a judgment about compliance.

The difficulty of making such a judgment is frequently compounded by the fact that some of the obligations in the LOSC are too vaguely and generally formulated for one to be able to conclude very easily, or definitely, whether or not a State party is complying. Furthermore, some LOSC obligations are imposed on States collectively (e.g. to develop pollution standards)5 or bilaterally (e.g. to determine the terms and modalities for the access of land-locked States to the sea),6 so that where the obligation has not been fulfilled, it may be impossible to identify any particular State as being at fault and therefore in non-compliance. A somewhat analogous issue arose in the Pulp Mills case.

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3 See, respectively, Arts. 16(2), 75(2), 76(9) and 84(2).
5 See, for example, Arts. 207(4), 208(5), 210(3), 211(1) and 212(3).
6 Art. 125(2) of the LOSC.