CHAPTER 1

Implementation of the United Nations Law of the Sea Convention in China

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1 Introduction

The People’s Republic of China (PRC or China) signed the United Nations Convention on the Law of the Sea (LOSC) in December 1982 and ratified it in June 1996. The Third UN Conference on the Law of the Sea (1973–1982) (UNCLOS III) was the first grand diplomatic conference to which the Chinese Government sent a delegation after the PRC replaced the Republic of China (ROC or Taiwan) in 1971 for the seat of China in the United Nations. As a newcomer on the international stage, it was to be expected that China might not have been well prepared for such a conference. During this period China was highly influenced ideologically under Chairman Mao Zedong. The first five years of UNCLOS III coincided with the Cultural Revolution (1966–1977), a catastrophic era in Chinese history. China used the opportunity presented by UNCLOS III to criticize the two China-perceived superpowers (the former Soviet Union and the United States). It focused on accusing them of hegemonism in the global ocean order rather than on constructively deliberating detailed provisions for China’s national interests. China only submitted to the conference three short working papers during the entire lengthy negotiating period.¹ As a prominent scholar observed, China had little involvement in and no expertise on the law of the sea matters: ‘The Chinese delegation sought instead to embarrass the Soviet Union wherever possible and to maintain the ideological and political integrity of the G77 coalition’.² Nevertheless, the negative impact from domestic politics gradually disappeared after 1978 when


China began to implement economic reform and the ‘open-door’ policy. With diplomatic pragmatism under the leadership of Chairman Deng Xiaoping, China paid attention to provisions in the draft LOSC which might not be favorable for China, such as the definition of the continental shelf. Yet it was difficult for China to revise these provisions during the final stages of UNCLOS III. Thus on the occasion of signing the LOSC, the head of the Chinese delegation made a statement expressing disappointment with provisions concerning the continental shelf and innocent passage.³

China perceives deficiencies in the LOSC yet it upholds the principles and norms of the Convention as well as most of its provisions. China regards LOSC as the embodying the ‘new’ law of the sea as opposed to the ‘old’ law of the sea, represented by the four 1958 Geneva Conventions when PRC was outside the UN system and unable to participate in the international deliberations that led to the conventions. This chapter is not designed to present an historic overview of Chinese practices in the law of the sea.⁴ Rather, it examines recent practices by reviewing China’s domestic implementation of the LOSC and exchanges with its neighbors in maritime cooperation and dispute settlement. The chapter identifies a number of controversial issues facing China. Determining solutions to these challenges is a priority for China.

2 China’s Ocean Policy and Legislation

The LOSC is the most important driving force for the formulation and development of China’s modern ocean policy and law. It has enabled coastal States to extend their maritime space under national jurisdiction at least to 200 nautical miles (nm), through expanded territorial seas, the new EEZ regime and developments in the continental shelf regime. China enacted two basic laws to implement LOSC. These are the 1992 Law on the Territorial Sea and the Contiguous Zone and the 1998 Law on the Exclusive Economic Zone and the Continental Shelf.⁵ These two laws have enabled China to establish maritime zones under its national jurisdiction such as the internal waters, the territorial sea, EEZ and continental shelf. According to Article 2 of the Territorial Sea

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⁴ For historical accounts, see chapters in Zou Keyuan, China’s Marine Legal System and the Law of the Sea (2005).

⁵ English versions of these two laws are appended to Zou Keyuan, id., at 338–345.