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Introduction

The United Nations Convention on the Law of the Sea (LOS Convention)1 entered into force on 16 November 1994, and was the culmination of many decades of negotiation between States. The Convention remains one of the greatest attempts at codification of customary international law, as well as the creation of new law and institutions, ever undertaken. It was intended to be a “constitution for the oceans” and circumscribe and regularise State maritime practice into the 21st century.2

The purpose of this essay is to examine whether the objective of creating a “constitution for the oceans” has been realized, as demonstrated through the prism of State practice. States have had over ten years since the entry into force of the LOS Convention, and over 25 years since it was opened for signature, some 155 States have become parties to it.3 This would seem a reasonable period in which to regularize their practices, and ensure they are compliant with the LOS Convention, if indeed the Convention is exerting a normative effect on State behaviour, in the fashion one might expect of a “constitution.”

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3 As at 31 May 2007.
This essay will consider two key regimes of the LOS Convention and examine State practice, with a slight emphasis on the Asia-Pacific region, to determine whether State compliance with the Convention reflects its important status, and to demonstrate any normative effect the Convention has exerted. While these regimes represent only a small fraction of the Convention, a wider study of the text as a whole would be a vast undertaking, given the over 300 articles and nine annexes contained within it. Consequently, in the context of this book, length permits only these specific regimes within the LOS Convention to be explored.

The regimes selected are the maritime zones prescribed under the Convention and the guarantees of freedom of navigation. These have been chosen because each represents provisions which are in high usage and are applied by all coastal States. As well, their application is of interest not merely to coastal States, but also a wide range of users of the world’s oceans. The analysis of State behaviour will consider the practice of coastal States only, as it will be based on legislative responses to the LOS Convention. Landlocked States rarely have relevant legislation indicating their attitude to aspects of the Convention, and certainly not in respect of maritime zones and freedom of navigation. At best, such States exert a benign influence on these aspects of the law of the sea, and so they are not considered here.

**Maritime Zones**

Prior to the Third United Nations Conference on the Law of the Sea (UNCLOS III), the width of the territorial sea was an issue of great contention in the law of the sea. Disagreement over the issue of the width of the territorial sea was principally responsible for the failure of the 1930 Hague Conference and of the Second United Nations Conference on

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