China and the Law of the Sea: An Update

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Introduction

This article examines the practice of the People’s Republic of China with respect to the 1982 United Nations Convention on the Law of the Sea (1982 LOS Convention). Two principal areas will be assessed: China’s efforts to accommodate the challenges of the Convention to its ocean domain as a coastal State and its major maritime legislation to implement the Convention regime. The analysis begins with a brief introduction of China’s maritime features and a review of its basic stance toward the Convention. This is followed by a discussion of the major challenges China encountered while establishing its ocean domain based on the Convention regime. China’s efforts in implementing the 1982 LOS Convention through national legislation are examined to assess the consistency of that statutory framework with Convention requirements. Finally, conclusions are drawn from China’s law of the sea practice. It is shown that China, for its part, has been accelerating domestic procedures with a view to enabling it to comply with Convention requirements. However, China’s maritime practice has not been wholly consistent with Convention provisions. At the same time, China’s oceans policy adjustments indicate a move away from its previous position as solely a coastal

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State to that of a maritime State. To that end, China needs to set priorities to improve its overall management capacity and to bring its maritime practice into alignment with the requirements of the 1982 LOS Convention.

**China’s Maritime Features and Basic Stance on the 1982 LOS Convention**

China is situated in the eastern part of the Asian continent with a land territory of 9.6 million square kilometers, which ranks it as the third-largest State in the world. As a developing country with a population of 1.3 billion, China faces an enormous task to feed more than one quarter of the world’s population on 7 percent of the world’s arable land. China’s overriding national policies call for economic expansion to meet the basic and growing needs of its huge population. In the last two decades, China has experienced tremendous economic growth, but the limited terrestrial resources hinder its further development. With a soaring increase in population and gradual reduction of land resources, China has turned to the ocean for marine resources to ease the pressure on insufficient land-based resources.

From north to south, China borders an internal sea—the Bohai Sea—and three semi-enclosed seas—the Yellow Sea, the East China Sea, and the South China Sea (hereinafter called the China Seas). China has a coastline of more than eighteen thousand kilometers, more than 6,500 offshore islands and an island coastline of over fourteen thousand kilometers. In the early 1990s, China embarked on a “Blue Revolution” to develop the “Blue Economy,” and this practice has continued into this century. China has eleven coastal provinces and municipalities that cover an area of 1.3 million square kilometers, account for 14 percent of the country’s landmass in total, but support 44.7 percent of its population and generate 60 percent of the nation’s gross domestic product.

As a land power, China did not focus as much attention as it should have on the sea or sea power. In its long history, the foreign invasions China suffered came mostly from the sea. Those bitter experiences made maritime security issues its major concern. Its participation in the Third United Nations Conference on the Law of the Sea (UNCLOS III) and the maritime practices of its neighbors kindled China’s interest in the seas. In UNCLOS III, China made its first contribution to the creation of a new international convention—the 1982 LOS Convention.

China signed the 1982 LOS Convention on December 10, 1982, the very day it was opened for signature, and was eager to enjoy the maritime rights and interests attached to the new regime. However, as a coastal State bordering three semi-enclosed seas, China found itself disadvantaged in embracing the full entitlement under the Convention. It had to deal with overlapping boundaries with its neighbors opposite or adjacent to its own coast and within four hundred nautical miles (nm).
In contrast to the worldwide acceptance of the Convention's exclusive economic zone (EEZ) regime, China hesitated to implement it. Overall, China considers the conclusion of the 1982 LOS Convention a concrete step toward the establishment of a new international legal order for the oceans, and is interested in both the legal and economic aspects of the Convention, as well as the political implications the Convention is bringing about. On the other hand, China is not satisfied with those articles of the Convention pertaining to innocent passage, the definition of the continental shelf, boundary delimitation of the EEZ and continental shelf, and the international deep seabed regime.

After years of debating the advantages and disadvantages, China ratified the Convention in May 1996 and established its EEZ at the same time. The ratification makes it possible for China to claim its sovereign rights and jurisdiction over three million square kilometers of maritime space to which it is entitled under the 1982 LOS Convention. It provides China with a vital opportunity to develop its “Blue Economy,” the best way to secure its national interests and the impetus to consolidate its links with the world. The Convention also enabled China to take part in global marine affairs and, more importantly, to pursue a sustainable development strategy consistent with that universal instrument. However, while implementing the Convention regime, China has encountered a series of challenges.

1982 LOS Convention Challenges Encountered by China

Since the 1982 LOS Convention was signed, the EEZ concept has been firmly established in customary international law. By the time the Convention finally came into force in 1994, more and more States had started to define the limits of their maritime zones and had started negotiations to settle maritime boundary disputes with their neighbors. This is also the case with the China Seas, where all the coastal States bordering those seas have made unilateral assertions of jurisdiction over extensive areas of offshore waters, including full 200-nm EEZ claims. However, nowhere in the Yellow Sea does the distance between opposing coastlines reach 400 nm. Most of the East China Sea is less than 400 nm in width. Any unilateral claim of a full EEZ or continental shelf would create substantial overlaps.

China is adjacent or opposite to eight neighboring countries surrounding the China Seas (the two Koreas, Japan, Vietnam, Malaysia, the Philippines, Brunei Darussalam and Indonesia). These States vary greatly in size, geographical configuration, social and cultural structures, and economic and political systems, but many of them have contested sovereignty claims or sovereign rights to different parts of the seas, particularly some islands of the South China Sea. The semi-enclosed seas surrounding these States provide not only distinctive ecosystems and
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abundant resources, but also a unique social and political environment. The geographical proximity and the confluence of myriad social and political factors, including historical legacy, different social systems and ideology, and international politics, have made the relationships among the China Seas' States complex over the last century.11

The situation is further complicated by disputes over the ownership of some uninhabited islands and the boundary delimitation of the continental shelf.12 Of the disputed island claims concerning China, the status of the Xisha (Paracel) Islands and the Nansha (Spratly) Islands have been the most serious and have resulted in several clashes involving military action between China and Vietnam.13 China also has maritime disputes regarding the ownership of the Diaoyu/Senkaku Islands with Japan; these show no sign of settlement in the near future. These disputes concern sovereignty over offshore islands that are valuable to the owners because of their locations, rather than their physical usefulness. The State that successfully establishes ownership of the islands gains enormous jurisdictional rights over the surrounding seas by establishing an EEZ.

Prompted by the problems of boundary delimitation with its maritime neighbors, China has shown a keen interest in continental shelf issues, as they involve China's vital interests. China's fundamental position is that the continental shelf is the natural prolongation of the coastal State, which defines, according to its specific geographical conditions, the limits of that portion of the continental shelf extending beyond its territorial sea or EEZ that is under its exclusive jurisdiction. The maximum limits of such a continental shelf may be determined among States through consultations. The progress, however, has been extremely slow due to the different principles the concerned parties employ for the delimitation, as well as the geophysical nature of the seabed at issue.14 South Korea argues for the median line in the Yellow Sea and part of the East China Sea, but relies on the doctrine of natural prolongation in the northeastern part of the East China Sea because in that area the continental shelf extends 200 nm beyond the baseline of its territorial sea. Carrying on with the doctrine of natural prolongation, China maintains that the Okinawa Trough is a natural boundary between itself and Japan. Understandably, Japan has denied this characteristic and insisted on the application of the equidistance principle.

In addition to the dispute over the ownership of islands and overlapping claims over maritime zones, China also has to deal with the competing interests over natural resources, living and non-living, with some of its neighboring States, particularly Japan, Korea and Vietnam. Prospects for resolution of these issues are limited due to their profound impact and critical consequence, plus the political relationship among these States. Over the years China has made a number of efforts to address disputes with its maritime neighbors, but these overtures have led to the
conclusion of only a few bilateral agreements (mainly pertaining to the settlement of fisheries conflicts), e.g., those with Japan, South Korea and Vietnam. However, the situation in the South China Sea has not changed much. The intensified competition for fisheries resources has even resulted in clashes between fishermen themselves, and between fishermen of one State and maritime forces of another. These clashes have often resulted in the loss of property and life. As a consequence, the South China Sea has become a site of tension and potential conflict. This has made access to those waters somewhat dangerous and problematic.

Besides a host of maritime challenges, the South China Sea has also been an important consideration for China’s defense and security. The South China Sea is of strategic importance to China, not only owing to its resources, but also for its location and value for transportation. In addition to a distinct ecosystem and rich natural resources, such as oil and gas, the South China Sea is one of the world’s busiest international sea lanes. It serves as a maritime superhighway with more than half of the world’s supertanker traffic and over half of the world’s merchant fleet passing through those waters every year. As the largest State bordering the South China Sea, China is relying more and more heavily on this superhighway for its energy supply and international trade. China is playing an increasingly important role in the evolution of maritime behavior in the South China Sea. Examples include China’s participation in the Regional Code of Conduct in the South China Sea adopted by the member States of the Association of Southeast Asian Nations and China in November 1999. The driving force for China’s proactive attitude in regional affairs is, on one hand, to resolve its long-standing disputes with its maritime neighbors, and to secure its interests in the South China Sea on the other. It may also be expected that China’s positive attitude will bring its management practices in line with international requirements and contribute to regional cooperation.

Compared with its maritime neighbors, China is disadvantaged in the use of the China Seas. Although China claims three million square kilometers of “blue territory” under the 1982 LOS Convention, the ratio of land to ocean space is smaller than those of its maritime neighbors. China has engaged in negotiations to settle maritime boundary disputes with its neighboring States. When dealing with these issues, China has shown little interest in using international adjudication and appears to favor consultation, thereby minimizing the necessity of multilateral involvement. Predictably, China will eventually settle these disputes by its own means. However, in situations where there is a dispute between two States as to the interpretation or application of the LOS Convention, the compulsory dispute settlement mechanism set out in Part XV is available.
Ratification of the 1982 LOS Convention has had a strong impact on China’s maritime legislation and practice. China’s commitment to the Convention’s obligations is evidenced by national legislation on maritime zones. Among the maritime zones under national jurisdiction provided for in the Convention, China has declared a 12-nm territorial sea (with straight baselines), a 24-nm contiguous zone, a 200-nm EEZ and a continental shelf. China formally promulgated the Law of the PRC [People’s Republic of China] on the Territorial Sea and the Contiguous Zone in 1992 (1992 TS/CZ Law), and the Law of the PRC on the Exclusive Economic Zone and the Continental Shelf in 1998 (1998 EEZ/CS Law). As the most important pieces of national maritime legislation, the two laws are fundamental and decisive in their legal status and direct impact on China’s LOS Convention practice, and merit a discussion.

China’s Law and Policy on the Territorial Seas

Much of China’s early law of the sea practice was found in specific laws and regulations concerning control and jurisdiction over foreign vessels in Chinese waters, in a number of treaties on commerce and navigation, or in bilateral agreements concluded with neighboring States. China’s first national action regarding the territorial sea was the Declaration of the Government of the People’s Republic of China on China’s Territorial Sea (1958 Declaration), which was promulgated in September 1958, five months after the conclusion of the first United Nations Conference on the Law of the Sea (UNCLOS I). As reflective of China’s early practice of the law of the sea, the 1958 Declaration corresponded generally with the principles of UNCLOS I as represented in the 1958 Geneva Conventions on the Law of the Sea. The Geneva Convention on the Territorial Sea and Contiguous Zone did not specify the extent of the territorial sea, but the common practice then was three nautical miles. However, the 1958 Chinese Declaration established a 12-nm territorial sea and declared that this breadth applied to all the Chinese territories, including Taiwan and its surrounding islands, and the islands in the South China Sea. This action may be related to the two most significant physical features of China’s geography: the length of its coastline and the size of its continental shelf. It may also have been necessitated by the desire to control foreign fishing activities in its coastal waters and to protect fisheries resources therein. This is evidenced by the fisheries agreements signed between China and Japan dating back to 1955. Most importantly, the bitter Chinese history certainly served as one of the impetuses for China to define a wider territorial sea and to adopt a position of favoring extensive coastal State jurisdiction.
The 1958 Declaration also established, *inter alia*, the straight-baseline method for delimiting the Chinese territorial sea limit and declared the Bohai Sea and Qiongzhou Strait (Hainan Strait) as Chinese internal waters. It also prohibited the entry of foreign military vessels or aircraft into China’s territorial sea and the national airspace above it without prior permission. These declarations were protested by a few States on grounds they constituted a unilateral extension of territorial waters and that the straight-baseline system was invalid under international law. It would be fair to say that the Chinese claim to a 12-nm territorial sea was a reflection of what was to become an irreversible trend.

Following the promulgation of the 1958 Declaration, China enacted Regulations Concerning the Passage of Foreign Non-military Vessels through Qiongzhou Strait in 1964 (1964 Regulation). According to this regulation, no foreign military vessels were allowed to pass through the strait, but foreign commercial vessels might pass through the strait with permission requested forty-eight hours in advance and only during daylight hours.

The 1958 Declaration and the 1964 Regulation were the basic legal documents that established China’s territorial sea regime. During the past decades, this regime has not been changed, except that foreign commercial vessels are now allowed to pass the Qiongzhou Strait in both daytime and nighttime. The general positions of these documents were effectively carried out on matters concerning China’s territorial seas.

China’s action in adjusting its territorial sea regime was made by the 1992 TS/CZ Law. In general, the 1992 TS/CZ Law maintained the principles of the 1958 Declaration, but improved the territorial sea regime in a number of aspects, including control over foreign scientific research and other activities, clarification of enforcement authorities, and the establishment of a contiguous zone. Some articles of the 1992 TS/CZ Law are, however, inconsistent with the LOS Convention regime regarding innocent passage of warships and jurisdictional control of security in the contiguous zone.

China’s consistent navigation policy that there is no right of innocent passage for warships through the territorial sea posed a constraint on China’s ratification of the 1982 LOS Convention. China insists that foreign warship transits should be regulated by requiring prior authorization of, or notification to, the coastal State before passing through the territorial seas. This policy was reiterated in the Maritime Traffic Safety Law of the People’s Republic of China (1983), which provides that “no military vessels of foreign nationality may enter China’s territorial seas without being authorized by the Government thereof.” Although China is not the only nation to have such a requirement—there are more than thirty nations in the world that have made similar pronouncements on this issue—it is suggested that
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China amend its legislation on the issue of innocent passage. China may begin by modifying the requirement for prior authorization to one of prior notification for foreign warships wishing to pass through its territorial seas. Such a policy may be a workable compromise between Chinese navigation policy and the innocent passage provisions of the LOS Convention.

Security has been the issue of most concern to China. This is reflected in Article 13 of the 1992 TS/CZ Law, which provides that China exercises control in the contiguous zone to prevent and impose penalties for activities violating Chinese laws and regulations on security, customs, fiscal, sanitary or entry-exit control within its territory, internal waters and territorial sea. The addition of security control is said to be on the basis of existing State practice and China’s special circumstances, but it has been criticized for not being consistent with the 1982 LOS Convention.

China’s EEZ Legislation and Enforcement

China proclaimed its EEZ upon ratification of the 1982 LOS Convention in 1996. This enabled China to declare sovereign rights over a significant ocean domain, guaranteed its growing interests in ocean-related activities and provided an impetus for China to focus increased attention on the sea bordering its landmass. China finalized its laws on the EEZ and continental shelf by adopting the 1998 EEZ/CS Law. With its sixteen articles, this law ensures China’s sovereign rights and jurisdiction over its EEZ and continental shelf, and safeguards China’s national interests. It provides a legal framework to manage China’s marine resources pursuant to the requirements of the 1982 LOS Convention.

The LOS Convention recognizes historic title or historic waters in articles 10(6), 15 and 46(b) without defining them. It has been observed that the Convention regime for such waters is to be determined in accordance with customary international law. China’s 1998 EEZ/CS Law provides in Article 14 that the provisions of “this law shall not affect the historic rights that China enjoys.” This provision is confusing in that it does not specify what provisions might affect China’s historical rights, and it is not clear what “historical rights” are being referenced. Arguably these rights refer to traditional fishing rights in the South China Sea, as China claims historic title to these waters. Given the overlapping EEZ claims and fisheries disputes between China and its maritime neighbors, it remains to be seen what measures could be worked out among them to resolve this non-specific claim to historic rights.

EEZ enforcement is a key component for coastal State parties to the 1982 LOS Convention in which coastal States’ jurisdictional rights are provided to ensure the compliance of management measures in their EEZ. According to the Convention, the EEZ is an area of shared rights and responsibilities between coastal States and
foreign States. In regard to State practice on EEZ enforcement, there is great variation in the national regimes that coastal States have put in place. China favors extensive and exclusive jurisdiction over sea areas for the coastal State, and holds the view that a coastal State is entitled to more control over its EEZ than that provided by the LOS Convention.

Regarding the legal status of the EEZ, China opposed the position that the EEZ should be regarded as part of the high seas. It argued that if the EEZ was to be considered part of the high seas, then it would make no sense to establish such a zone. As far as the rights of other States in the EEZ are concerned, China stated that normal navigation and overflight would not be affected since neither was it part of the territorial sea. Further, China considers that its EEZ serves as a buffer zone for defense. This position is demonstrated by the 2002 amendment of the Surveying and Mapping Law of the People’s Republic of China (1992). According to China, the EEZ is a new zone with specific legal status, and coastal States have the right to protect, use, explore and exploit all the natural resources in the zone; to adopt necessary measures and regulations to prevent the resources from being damaged or polluted; and to exercise overall control and regulation of the marine environment and scientific research within the zone.

Along with the development of EEZ activities in the seas, China’s maritime law and policy have been enhanced to deal with enforcement issues, including the basic principles of management. Although lacking sufficient capabilities to enforce jurisdiction throughout its EEZ, China has adopted strict domestic measures to control the activities of other States in those waters; these have resulted in some debate about their legality. Indeed, China does not have laws to specify operational procedures for EEZ enforcement. This leaves its 1998 EEZ/CS Law incomplete and difficult to implement. With no other law in place to fill the gap and an urgent need for EEZ enforcement, China needs to accelerate its legislation and improve its capacity for EEZ enforcement. China’s practice shows that the EEZ is a relatively new regime in international law, and that its precise nature and the full conceptualization of coastal States’ and other States’ rights and responsibilities in the EEZ are still evolving.

As a coastal State with increasing interests in the seas and oceans, China has moved away from its previous practice. China has taken action to build up its capacity and institutional framework with long-term strategies. With security being the number one issue, China has made an effort to develop its EEZ enforcement fleet. The Chinese navy, though mainly a coastal defensive force, is one of the largest in the world. In addition, China has devoted more attention and effort to participation in international and regional marine affairs. These activities have contributed to the image of China as an emerging maritime power.
Conclusion

As the most authoritative international instrument with the widest acceptance, the 1982 LOS Convention has changed access to, and the regulation of, the world oceans and ocean-related activities. It provides basic principles for the development of national law and policy and guidelines for State practice, and has remained a dynamic instrument and a point of reference for legal norms at the global, regional and national levels in dealing with the countless marine issues.\(^4\)

As the nation with the greatest population in the world, China is playing an increasingly more active role in international affairs and is undergoing a rapid transformation into the world’s most influential force in globalization. In the realm of the law of the sea, the years that have followed China’s ratification of the 1982 LOS Convention have witnessed major changes in China’s attitude toward the Convention and international marine affairs. Through the implementation of the LOS Convention framework, China has made a distinctive enhancement in the development of Chinese national law and policy.

This analysis of China’s implementation practices has shown that China has embraced opportunities to develop its legal and policy framework to safeguard its rights and interests related to the oceans and seas. In reviewing the actions taken, it can be concluded that China, as a contracting party, has made a solid effort to implement the 1982 LOS Convention regime. China, for its part, has been accelerating domestic procedures with a view to enabling it to comply with Convention obligations, and has made progress in legislative harmonization and policy adjustment. Notwithstanding its noticeable effort, the LOS Convention practice of China has not, as a whole, been totally consistent with Convention provisions—its legislation is incomplete and enforcement remains weak. China’s position is clear: to secure an opportunity for its national interests and to accept the accompanying commitments at the same time.

China once focused almost exclusively on its status as a coastal State. Now China has come to realize that freedom of navigation throughout the world’s oceans and through and over international straits is indispensable not only for its booming international trade but also for ensuring the steady stream of imported oil necessary to fuel its remarkably growing economy. Facing considerable structural, manpower and financial constraints within the ocean administrative system, China needs to set priorities to overcome political, economic, legal and technical obstacles, and to improve its overall management capacity. China also needs to adopt operational regulations regarding maritime enforcement issues to comport with the requirements of the 1982 LOS Convention.
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Notes


2. The names of these seas are commonly used in English. The use of the term “China Seas” does not imply that the seas somehow accrue to China. In Chinese, the East China Sea and the South China Sea are simply the East Sea (Donghai) and the South Sea (Nanhai), respectively.


5. GREENFIELD, supra note 4, at 231 app. 2.


8. All the coastal States around the China Seas have ratified the 1982 LOS Convention except North Korea, and all of them have claimed a 200-nm EEZ. A listing of the various EEZ claims is available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf (last visited Nov. 17, 2007).

9. For a brief account of the maritime claims of these States, see Mark J. Valencia, The South China Sea: Prospects for Marine Regionalism, 2 MARINE POLICY 87 (1978).


11. As Valencia observes, the region “is especially complicated in that it is surrounded or used by states sharing a similar historical and cultural background, but differing in internal political systems, external political and economic alignment, and levels of economic development.” See Mark J. Valencia, The Yellow Sea: Transnational Marine Resource Management Issues, 12 MARINE POLICY 382, 382 (1988).


14. For a discussion of China's boundary issues, see PARK, supra note 4, at 245–70.


16. Id. at 1. See also Nguyen Hong Thao, Vietnam and the Code of Conduct for the South China Sea, 32 OCEAN DEVELOPMENT & INTERNATIONAL LAW 105 (2001).

17. For a comprehensive discussion of China's claims and activities in the South China Sea, see GREG AUSTIN, CHINA'S OCEAN FRONTIER: INTERNATIONAL LAW, MILITARY FORCE AND NATIONAL DEVELOPMENT (1998).

18. For a discussion of the navigational importance of the South China Sea, see Park, supra note 13. See also PARK, supra note 4, at 83.


21. See Declaration of the Government of the People's Republic of China on China's Territorial Sea (Sept. 4, 1958) [hereinafter 1958 Declaration]. For Chinese and English versions, see id. at 1–2, 197–98. According to Greenfield, China acknowledged the concept of territorial waters as early as 1874. See GREENFIELD, supra note 4, at 57. The declaration defined the application of China's sovereignty (paragraph 1 states that China's sovereignty applies to some islands separated from the mainland and four large groups of archipelagos in the South China Sea); established a 12-nm breadth territorial sea measured from straight baselines; claimed internal waters, including the Bohai Sea and Qiongzhou Strait; and required foreign military vessels to obtain permission before passing through China's territorial sea. 1958 Declaration, COLLECTION OF THE SEA LAWS AND REGULATIONS, supra note 20, paras. 1, 2 and 3.


23. Park is of the opinion that China's claim to a 12-nm territorial sea should be viewed against its bitter history of being invaded on six occasions from the sea. See PARK, supra note 4, at 16. See also Wang, supra note 7, at 582.

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26. 1992 TS/CZ Law, supra note 20. Article 11 requires that all international organizations and foreign organizations or individuals obtain approval before carrying out scientific research and other activities in the territorial sea.

27. Id., arts. 8, 9, 10, 11, 13 and 14. The 1958 Declaration was silent about the control of the territorial sea. It might be subject to domestic regulations in this regard.


31. 1998 EEZ/CS Law, supra note 20. It is obvious that this legislative action was stimulated by neighboring States’ legislative moves on the same subject. Japan and South Korea promulgated their EEZ and continental shelf statutes in 1996.

32. Id., art. 1. The 1982 LOS Convention grants coastal States sovereign rights to the natural resources of their EEZs and jurisdiction over certain activities. See 1982 LOS Convention, supra note 1, art. 56.

33. Elferink, supra note 10, at 172.

34. China claims historical rights to the South China Sea. See 1998 EEZ/CS Law, supra note 20, art. 14. See also Austin, supra note 17, at 206–22.

35. There was no explanation of this provision during its legislative process. For a comprehensive discussion, see Keyuan Zou, Historic Rights in International Law and in China’s Practice, 32 OCEAN DEVELOPMENT & INTERNATIONAL LAW 149 (2001).


37. The 1982 LOS Convention provides coastal States sovereign rights and jurisdiction over natural resources, whereas foreign States retain certain freedoms, such as navigation and overfly. See 1982 LOS Convention, supra note 1, art. 58.
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38. See GERALD K. MOORE, UN FOOD & AGRICULTURE ORGANIZATION, COASTAL STATE REQUIREMENTS FOR FOREIGN FISHING (1981).

39. See Morgan, supra note 29, at 58. China is of the view that the use of the EEZ for non-peaceful purposes such as military and electronic intelligence gathering is illegal. See Xizhong Cheng, A Chinese Perspective on 'Operational Modalities,' 28 MARINE POLICY 25 (2004).

40. See GREENFIELD, supra note 4, at 231 app. 2, 233 app. 3, 235 app. 4 for China’s working papers submitted to UNCLOS III.

41. Morgan, supra note 29, at 61.


43. For a supporting view, see OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR THE LAW OF THE SEA, THE LAW OF THE SEA: NATIONAL LEGISLATION ON THE EXCLUSIVE ECONOMIC ZONE, THE ECONOMIC ZONE AND THE EXCLUSIVE FISHERY ZONE, U.N. Sales No. E.85.V.10 (1986). “EEZ is subject to a ‘special regime’. The regime is specific in the sense that the legal regime of the EEZ is different from both the territorial sea and the high seas. It is a zone which partakes of some of the characteristics of both regimes but belongs to neither.” Id. at 13.


45. This gap was partly filled by several ministerial regulations regarding fishing vessels. In June 1999, the Ministry of Agriculture (MOA) issued the Provisional Regulations on Foreigners and Foreign Fishing Vessels in the Sea Waters under the Jurisdiction of China. Series No. 18 of the MOA, June 24, 1999, Fisheries Management Bureau, Database for Fisheries Laws and Regulations (1949–99) (in Chinese).


47. The analysis of the provisions of the 1998 EEZ/CS Law, supra note 20, and China’s EEZ practice indicates that China’s implementation action is consistent with the general principles of the provisions of the 1982 LOS Convention. For instance, Articles 2, 3 and 5 of the 1998 EEZ/CS Law are virtually a verbatim copy of Articles 56(1) and 77(1) of the Convention. Article 10 of the 1998 EEZ/CS Law specifies that China is to prevent and control marine pollution.