
ISSUE FOCUS

China Being A Maritime Power under the UNCLOS: Issues and Ways Ahead

Mincai Yu*

China has recently established a strategic goal of building herself into a maritime power. China's pursuit of this goal is interconnected with the UNCLOS. However, China faces increasingly serious challenges resulting from the application of the UNCLOS, especially the provisions in relation to the EEZ and the new continental shelf, which were strongly supported by China herself at the UNCLOS III. Drawing lessons from the participation in the UNCLOS III, this article argues that the only option for China in response to the challenges is to transform her traditional position of a coastal State into that of a maritime power by actively applying and defending the relevant UNCLOS regimes as well as taking future law-making seriously on marine biodiversity, including the marine genetic resources, beyond national jurisdiction. At the same time, China should hold an open attitude in the revision of national laws which are arguably incompatible with the UNCLOS.

Keywords

China, A Maritime Power, UNCLOS, UNCLOS III, South China Sea, Real Challenges, Possible Options, Dotted Line

* Associate Professor of International Law at Renmin University of China Law School & Senior Fellow at Collaborative Innovation Center of South China Sea Studies. LL.B.(CUPL), Ph.D.(Peking). ORCID: <http://orcid.org/0000-0002-6207-1678>. This paper is supported by the Fundamental Research Funds for the Central Universities and the Research Funds of Renmin University of China (No. 14XNK001). The author may be contacted at: ymc685@sina.com /Address: Renmin University of China School of Law, 59 Zhongguancun Street, Haidian District, 100872, Beijing, China.
DOI: <http://dx.doi.org/10.14330/jeail.2014.7.2.01>

I. Introduction

2014 is a very special year for China in respect of her maritime affairs. It is the twentieth anniversary of the entry into force of the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”) as well as the eighteenth anniversary of China’s ratification of it.¹ Earlier this year China has officially established a national goal of “building China into a maritime power,”² firstly put forward in the Report to the Eighteenth National Congress of the Communist Party of China of 2012.³ China is shifting her national agenda from the traditional land-centered strategy to an ocean-centered one. China’s efforts to develop herself into a maritime power are closely interwoven with the UNCLOS, which has long been regarded as the constitution for the Oceans. However, the task of applying the UNCLOS while implementing her national strategy to become a maritime power at the same time is highly complicated.

In this article, the author seeks to identify these challenges and propose the Chinese ways forward for the becoming of a maritime power from an international legal perspective. This paper is composed of five parts including a short Introduction and Conclusion. Part two will introduce the China’s contributions to the UNCLOS as an analytic background. Part three will analyze the legal challenges that China is facing. Then, Part four will seek to identify China’s possible ways ahead.

II. China’s Contributions to the UNCLOS

The UNCLOS is a product of the Third UN Conference on the Law of the Sea (“UNCLOS III”).⁴ It was a large-scale international law-making process in which

¹ 1833 U.N.T.S. 31363 (The UNCLOS came into force on November 16, 1994; China has ratified it on June 7, 1996).

² Keqiang Li, *Full Text: Report on the Work of the Government*, THE PEOPLE’S DAILY, Mar. 15, 2014, available at <http://english.peopledaily.com.cn/90785/8567219.html> (last visited on Sept. 28, 2014).

³ Hu Jintao, *Firmly March on the Path of Socialism with Chinese Characteristics and Strive to Complete the Building of a Moderately Prosperous Society in All Respects*, Report to the Eighteenth National Congress of the Communist Party of China on November 8, 2012, *re-cited from* Xinhuanet, *Full text of Hu Jintao’s report at 18th Party Congress*, THE PEOPLE’S DAILY, Nov. 19, 2012, available at <http://english.people.com.cn/90785/8024777.html> (last visited on Sept. 28, 2014).

⁴ See UN Codification Division of the Office of Legal Affairs, *Third United Nations Conference on the Law of the Sea, 1973-1982*, available at <http://legal.un.org/diplomaticconferences/lawofthesea-1982/lawofthesea-1982.html> (last visited on Sept. 28, 2014) (UNCLOS III was prepared by the UN Sea-Bed Committee in 1972 and starting in December 1973).