*The seas have historically performed two important functions: first, as a medium of communication, and secondly as a vast reservoir of resources, both living and non-living. Both of these functions have stimulated the development of legal rules.1 The fundamental principle governing the law of the sea is that ‘the land dominates the sea’ so that the land territorial situation constitutes the starting point for the determination of the maritime rights of a coastal state.*

The seas were at one time thought capable of subjection to national sovereignties. The Portuguese in particular in the seventeenth century proclaimed huge tracts of the high seas as part of their territorial domain, but these claims stimulated a response by Grotius who elaborated the doctrine of the open seas, whereby the oceans as res communis were to be accessible to all nations but incapable of appropriation. This view prevailed, partly because it accorded with the interests of the North European states, which demanded freedom of the seas for the purposes of exploration and expanding commercial intercourse with the East.

The freedom of the high seas rapidly became a basic principle of international law, but not all the seas were so characterised. It was permissible for a coastal state to appropriate a maritime belt around its coastline as territorial waters, or territorial sea, and treat it as an indivisible part of its domain. Much of the history of the law of the sea has centred on the extent of the territorial sea or the precise location of the dividing line between it and the high seas and other recognised zones. The original stipulation linked the width of the territorial sea to the ability of the coastal state to dominate it by military means from the confines of its own shore. But the present century has witnessed continual pressure by states to enlarge the maritime belt and thus subject more of the oceans to their exclusive jurisdiction.

Beyond the territorial sea, other jurisdictional zones have been in process of development. Coastal states may now exercise particular jurisdictional functions in the contiguous zone, and the trend of international law today ismoving rapidly in favour of even larger zones in which the coastal state may enjoy certain rights to the exclusion of other nations, such as fishery zones, continental shelves and, more recently, exclusive economic zones. However, in each case whether a state is entitled to a territorial sea, continental shelf or exclusive economic zone is a question to be decided by the law of the sea.

This gradual shift in the law of the sea towards the enlargement of the territorial sea (the accepted maximum limit is now a width of 12 nautical miles in contrast to 3 nautical miles some forty years ago), coupled with the continual assertion of jurisdictional rights over portions of what were regarded as high seas, reflects a basic change in emphasis in the attitude of states to the sea.

The predominance of the concept of the freedom of the high seas has been modified by the realisation of resources present in the seas and seabed beyond the territorial seas. Parallel with the developing tendency to assert ever greater claims over the high seas, however, has been themove towards proclaiming a ‘common heritage of mankind’ regime over the seabed of the high seas. The law relating to the seas, therefore, has been in a state of flux for several decades as the conflicting principles have manifested themselves.

A series of conferences have been held, which led to the four 1958 Conventions on the Law of the Sea and then to the 1982 Convention on the Law of the Sea.5 The 1958 Convention on the High Seas was stated in its preamble to be ‘generally declaratory of established principles of international law’, while the other three 1958 instruments can be generally accepted as containing both reiterations of existing rules and new rules.

The pressures leading to the Law of the Sea Conference, which lasted between 1974 and 1982 and involved a very wide range of states and international organisations, included a variety of economic, political and strategic factors. Many Third World states wished to develop the exclusive economic zone idea, by which coastal states would have extensive rights over a 200-mile zone beyond the territorial sea, and were keen to establish international control over the deep seabed, so as to prevent the technologically advanced states from being able to extract minerals from this vital and vast source freely and without political constraint. Western states were desirous of protecting their navigation routes by opposing any weakening of the freedom of passage through international straits particularly, and wished to protect their economic interests through free exploitation of the resources of the high seas and the deep seabed. Other states and groups of states sought protection of their particular interests. Examples here would include the landlocked and geographically disadvantaged states, archipelagic states and coastal states. The effect of this kaleidoscopic range of interests was very marked and led to the ‘package deal’ concept of the final draft. According to this approach, for example, the Third World accepted passage through straits and enhanced continental shelf rights beyond the 200-mile limit from the coasts in return for the internationalisation of deep sea mining.

***The 1982 Convention contains 320 articles and 9 Annexes. It was adopted by 130 votes to 4, with 17 abstentions. The Convention entered into force on 16 November 1994, twelve months after the required 60 ratifications. In order primarily to meetWestern concerns with regard to the International Seabed Area (Part XI of the Convention), an Agreement relating to the Implementation of Part XI of the 1982 Convention was adopted on 29 July 1994.***

Many of the provisions in the 1982 Convention repeat principles enshrined in the earlier instruments and others have since become customary rules, but many new rules were proposed. Accordingly, a complicated series of relationships between the various states exists in this field, based on customary rules and treaty rules.9 All states are prima facie bound by the accepted customary rules, while only the parties to the five treaties involved will be bound by the new rules contained therein, and since one must envisage some states not adhering to the 1982Conventions, the 1958 rules will continue to be of importance. During the twelve-year period between the signing of the Convention and its coming into force, the influence of its provisions was clear in the process of law creation by state practice.