

書 評

*Oceans Management in the 21st Century:
Institutional Frameworks and Responses*, edited
by Alex G. Oude Elferink and Donald R. Rothwell,
Martinus Nijhoff Publishers, Leiden, 2004. Pp. xxxv, 391. Index.

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Issues of oceans management have been of increasing interest and concern since the entry into force of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This book is the result of a research project, which was started at the end of 2000 and carried out jointly by the Netherlands Institute of the Law of the Sea (NILOS) of the Law Faculty of Utrecht University, the Netherlands and the Law Faculty of the University of Sydney, Australia. It is concerned with the important legal and practical problems involved in the development of the institutional framework under and outside the UNCLOS.

The book contains articles by nearly twenty contributors, mostly attached to or associated with the above-mentioned institutes, and reflects the outcomes of recent workshops held in Sydney in 2001 and 2002. The editing and preparation of the manuscript were supported by the Australian National University, Australia, and the University of Victoria, Canada.

This book includes 17 chapters, which may be roughly divided into the following parts: the introductory overview (chapter 1); navigation (chapters 2 and 3); fisheries (chapters 4 and 5); the continental shelf and its limitation (chapter 6); maritime boundary delimitation (chapters 7 and 8); environmental issues (chapter 9); regional frameworks (chapter 10); dispute resolution (chapters 11, 12, 13 and 14); implementation

of the UNCLOS through various institutions (chapters 15 and 16); and concluding remarks (chapter 17). Each part includes a very detailed examination of the current issues concerning the institutional aspects of the law of the sea, maritime jurisdiction, dispute settlement mechanisms, and other regional organisations on ocean management, with careful and ample surveys of practice, both national and regional.

Ivan Shearer presents a concise and systematic review of the first decade after the entry into force of the UNCLOS. As he notes, 'the law of the sea is still in need of development' (p. 16), and, thus, 'the law can consistently with principle, reflect changing conceptions of justice and convenience' (p. 17).

The part which mainly deals with navigation is devoted to maritime traffic regulation in straits used for international navigation (Chapter 2 by Mary George) and to archipelagic sea lane navigation in the light of the active role played by the International Maritime Organization (IMO) (Chapter 3 by Jay L. Batongbacal). Both chapters express critical views towards the current navigational situations in terms of the effective implementation of the UNCLOS, principally due to lack of the clarity and consistency of its provisions and effective institutional mechanism.

The third part addresses current issues concerned with the membership of regional fisheries management organizations (RFMOs) and the need for cooperation among all the states concerned (Chapter 4 by Erik Jaap Molenaar), and with the illegal, unreported and unregulated (IUU) fishing in the high seas (chapter 5 by Marcus Haward). Neither author is convinced of the

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efficacy of traditional practice as regards the regulation of the IUU fishing. Particularly noteworthy is Haward's statement that '[t]he development of contemporary practices against IUU fishing reflects both the opportunities and limitations posed by institutional frameworks and responses under the LOS Convention' (p. 105).

The fourth and fifth parts of the book examine the dispute settlement mechanisms regarding maritime delimitation under the UNCLOS. Alex G. Oude Elferink analyses the significance and limitations of the delimitation procedure of the Commission on the Limits of the Continental Shelf (CLCS) and attributes its weakness to the non-legal character of the institution, while he rather positively evaluates its strength in relation to its specific role as to 'the evaluation of scientific and technical data' (p. 123). As for the role of the International Court of Justice in maritime delimitation cases, both Chapters 7 and 8 point to the limitations of the ICJ as the appropriate dispute settlement machinery for this subject, partly because 'in international law', as Robin R. Churchill observes, 'litigation is traditionally exceptional and sporadic' (p. 141) and partly because, according to Stuart Kaye, 'recourse to litigation places the result beyond [the parties'] control, and is therefore unacceptable' (p. 166).

In chapter 9, Jon M. Van Dyke surveys some of the current developments, through the case law of the ICJ and the International Tribunal for the Law of the Sea (ITLOS) as well as regional practices, to illustrate the ways in which emerging principles of international environmental law are being applied to oceans and coasts. He emphasizes the need for cooperation between regional and international institutional frameworks to protect our fragile oceans more effectively. In Chapter 10, his conclusion seems to be shared by Martin Tsamenyi and Lara Manarangi-Trott, who place particular stress on regional cooperation, facilitated by regional institutions, and on the interplay within multilateral frameworks in meeting UNCLOS challenges from various sources (p. 207).

The part which addresses dispute resolution and the LOS in the latter half of the book also amplifies the

concerns of international lawyers as to the importance of the procedures and the influence of the case law. Donald R. Rothwell and Tim Stephens (Chapter 11) positively assess 'the potential and capacity' of the courts and tribunals procedures indicated in Part XV of the UNCLOS, although they highlight 'potential ongoing problems of resolving interaction between marine environment and other instruments, (...) with respect to how sectoral agreements relate to global framework instruments' (p. 229). Clive Schofield and Chris Carleton (Chapter 12) maintain that in maritime boundary cases '[professional] technical experts should be regarded as an integral part of the team throughout the delimitation process' (p. 254). It may be said that, in view of the scientific knowledge required, lawyers cannot discharge their responsibilities without the help of technical experts in this field. Similarly, Bill Mansfield stresses the efficacy of the use of the help of third parties in dispute settlement procedures, as one of the lessons learnt in current proceedings such as the *Southern Bluefin Tuna* cases (Chapter 13). For him, 'the help of third parties is not a reflection on negotiating skills, but instead may be a wise and constructive step' (p. 272). Andrew Serdy and Michael Bliss discuss the significance and influence of the current cases of the ITLOS (Chapter 14) and, as the *Volga* case suggests, indicate the principal role of 'coastal States' legitimate efforts to protect their resources', and 'regional and global efforts to combat illegal fishing' (p. 294).

In chapter 15, Alex G. Oude Elferink assesses the respective roles of the General Assembly of the United Nations (UNGA) and the Meeting of States Parties to the Convention (SPLOS) in reviewing the implementation of the UNCLOS. He positively evaluates the complementary review mechanism exerted respectively by these institutions which had not been expressly envisaged in the LOS. Shirley V. Scott provides a summary of the LOS Convention Organizations, particularly the CLCS and the ISBA (Chapter 16), and is of the opinion that the prospects for the harmonious implementation of the UNCLOS's provisions on the continental shelf will depend more on 'what States do as a result of the interactive process with' the CLCS than the functioning

of the CLCS *per se* (p. 327).

The final chapter summarises the aforementioned mechanisms and procedures of the implementation of the UNCLOS and reviews the developments in the context of the analysis and comment upon the effectiveness and interaction of the dispute settlement machineries. Donald R. Rothwell concludes that '[t]he challenges faced by the Convention in the twenty-first century are partly of its own making and also as a result of new developments' (p. 355).

The book is a rich contribution to the understanding of the current state of ocean management under the UNCLOS regime. The two 'relatively minor quibbles' have been pointed out by a reviewer, i.e., lack of a consistent approach to the theme and heavier reliance on the Australian experience¹. In addition, two other small criticisms could be made: the first is the scarcity of the description of the historical background; the second is the absence of comparative research on the regional institutional development and mechanisms in Europe and Asia.

Nevertheless, the wide range of the subjects involved and the very updated treatment of complicated issues have made the volume extremely valuable and informative.

1 Philip Kimpton, 'Book Reviews', *Australian Year Book of International Law*, vol. 24, 2005, pp. 246–251, at p. 251.