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Book Review: The Development of the Law of the Sea Convention: The Role of International Courts and Tribunals

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BOOK REVIEW

The Development of the Law of the Sea Convention: The Role of International Courts and Tribunals edited by Øystein Jensen (Edward Elgar Publishing 2020)

Oceans not only serve as the major point of inter-state connection for the world, but also as a source of abundant natural resources. They are also one of the main casualties of human-led climate change due to pollution, rising temperatures, and over-exploitation. Fortunately, the United Nations Convention on the Law of the Sea (UNCLOS) is one of the largest and most universally supported treaties—giving it the potential to support our oceans in the challenges they currently face. In *The Development of the Law of the Sea Convention: The Role of International Courts and Tribunals* editor Øystein Jensen artfully weaves together the work of eleven scholars to illustrate how the jurisprudence of UNCLOS has developed in its 25 years in force.

Jensen achieves this daunting task by dispensing with issues of procedure and jurisdiction and, instead, focuses on substantive provisions of UNCLOS. He begins by establishing the book's purpose which primes readers for the hefty undertaking of the next 250 pages. This book covers provisions from deep-sea mining, to exploitation in the exclusive economic zones, to illegal, unreported, and unregulated fishing. Jensen is successful in providing a survey of the development of 25 years of UNCLOS jurisprudence through effective and consistent organization. Each chapter addresses a different provision of the treaty. When reading the introduction of each chapter, one can easily find themselves overwhelmed and concerned about what is to come. However, each author takes a meticulous approach to breaking down the case law and implications of the provision they examined. Every chapter concludes with the author's take away of that provision, helping readers digest the large amount of information each chapter contains. The consistent structure of the chapters prevents the book with multiple authors and many subjects, from being overly disjointed.

A major focus of this book is the interpretations of key terms throughout UNCLOS, such as "hot pursuit" and "regime of islands." Treaties can bring the global community together to confront issues—like our oceans—but treaty interpretation is critical to ensure they are applied in an impactful way. The Vienna Convention on the Law of Treaties (VCLT) outlines the proper modes of interpretation. This book examines the use, or lack of use, of these modes of interpretation and it is clear that courts and tribunals do not apply the modes consistently, or apply them at all in some instances. The variation in application makes it difficult to ascertain the reasoning in decisions. One contributor, Robin Churchill, takes issue with the lack of attention paid to VCLT. Whereas modes of interpretation and standards of review provide insight into decisions in other areas of law, this book demonstrates how the lack of uniform application makes the interpretation of these key terms hard to predict.

The jurisprudence of most provisions of UNCLOS fit into one of two categories: "uncertain or ambiguous" or progressively interpreted. The provisions that do not fit into this divide leave readers with a resounding *it depends*. One

example is demonstrated by contributors Sir Malcolm D. Evans and Reece Lewis who address the jurisprudence of the regime of islands and determined *it depends* heavily on the context. In other instances, the lack of contentious cases has stunted the development of jurisprudence. Transboundary fish stocks and the questions of conservation and management also find themselves in this category. Contributor Andrew Serdy examined the advisory opinion of the International Tribunal for the Law of the Sea (ITLOS) and found it lacking in its ability to determine “the obligation of cooperation.”

One UNCLOS provision that has remained firmly in the uncertain category is the treatment of the economic exclusive zone (EEZ). Given that the international legal system does not consider precedent binding, it is no surprise that the jurisprudence of some provisions is confusing. Robin Churchill addresses provisions relating to the EEZ. The EEZ is especially important for the management of natural resources, within that maritime zone, states have exclusive jurisdiction over exploration and exploitation of the ocean. These provisions can impact things from pipelines to freedom of navigation. Churchill argues that the disjointed development creates a “mosaic” and leaves understanding of this provision “ambiguous.” This can be concerning because states may use this ambiguity to push limits on use and exploitation within their EEZs.

Some good news for our oceans is that a number of UNCLOS provisions have been progressively interpreted by international courts and tribunals. This has opened the door for judicial activism aimed at sustainability through some of the case law studied in this book. The development of fishery provisions within the EEZ was particularly promising. The ITLOS emphasized states’ responsibilities to ensure, “resources . . . are not endangered by over-exploitation.” More encouraging news came from the jurisprudence of deep seabed mining. Aline Jaeckel addresses how the “common heritage of mankind” principle which clearly encourages “the sustainable use of natural resources” is still very prevalent. There is no question that our oceans have changed in the last 25 years, especially given the impacts of climate change. Fortunately, ITLOS has utilized UNCLOS as a “living ocean constitution” which ensures UNCLOS remains relevant “in the face of new problems and social change.”

This book is well suited for students and scholars. Despite the well-organized and well-written nature of this book, the reader may require some background knowledge. Given the in-depth nature of the analysis, a background in either international law or maritime law might be helpful to fully enjoy all this book has to offer. It is the perfect textbook for a course that addresses the Law of the Sea to any extent. Scholars working to develop or understand any of the provisions in this book would be well served by reading the corresponding chapter. This piece also provides a helpful jumping-off point for research, especially for those not intimately familiar with UNCLOS. As it covers a wide breadth of provisions, the book could easily help students, like myself, grasp the reach of UNCLOS and understand how the Treaty has been applied in the last quarter-century.

Overall, the sheer magnitude of law this book takes on is impressive, but the effective organization and thought-provoking analysis elevates this book to the level of not only a helpful teaching tool, but a comprehensive authority on substantive measures in UNCLOS. Furthermore, this book serves as a reminder that

UNCLOS can and should be used as a valuable tool to deal with our ever-changing seas and the resources within them. Jensen leaves readers with an interesting proposition: maybe there has not been more development through case law because UNCLOS is functioning in the way it should. Could it really be possible that an instrument of international law, that has the potential to safeguard our seas, is working effectively?

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