

## Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (Hart, 2010), ISBN 978-1-84113-257-0, 516 pages

REVIEWED BY ANDREW SERDY\*

Possibly for the wrong reasons — the planting of a Russian flag on the seabed at the North Pole in 2007 and the upsurge starting at about the same time in piracy off the coasts of Somalia, neither of which is evidence of any inadequacy in the existing law — interest in the Law of the Sea among non-specialists in the subject is perking up significantly for the first time since several of its longstanding problems were apparently ‘solved’ with the adoption in 1982 of the *United Nations Convention on the Law of the Sea* (UNCLOS).<sup>1</sup> For nearly all of the intervening period, as its first edition appeared the following year, the ‘bible’ on the subject in the English-speaking world has been the text by Churchill and Lowe. Those who, like the present reviewer, regularly teach the Law of the Sea have been subject to frustration mounting year on year as its current third edition (1999),<sup>2</sup> for all its many virtues, grows ever longer in the tooth — a point made as early as 2006 in the foreword to its nearest German equivalent.<sup>3</sup> Despairing of ever seeing a fourth edition, many will have seized eagerly on this new work by two eminent Australian scholars, and will have been pleased to discover that it is a worthy rival.

The book is divided into 19 chapters. For the benefit of students coming to the subject without a previous grounding in public international law, Chapter 1, on the sources and history of the Law of the Sea, sets the subject in its proper context. There then follow seven chapters on the various maritime zones (eight, no less) in the modern Law of the Sea (the territorial sea and contiguous zone understandably share a chapter, considering that only two articles of UNCLOS deal with the latter zone), although oddly Chapter 8 is presented as being about archipelagic States, rather than the archipelagic waters that are their distinguishing feature; this appears to be a deliberate choice, as it is also the sole exception to what is otherwise an orthodox spatial ordering of the zones. The last 11 chapters are on thematic issues, of which some are of venerable vintage (navigational issues in Chapter 10; fisheries in Chapter 13; delimitation of maritime boundaries in Chapter 16; dispute settlement in Chapter 18) and others are much more recent (Chapter 19 on oceans governance being the pre-eminent example and one that for obvious reasons is missing from Churchill and Lowe). Since UNCLOS is now front and centre in the Law of the Sea,

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<sup>1</sup> *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 19 November 1994).

<sup>2</sup> RR Churchill and AV Lowe, *The Law of the Sea* (Manchester University Press, 3<sup>rd</sup> ed, 1999).

<sup>3</sup> W Graf Vitzthum (ed), *Handbuch des Seerechts* (CH Beck, 2006), V (that edition and another work ‘können daher...keinen gegenwartsnahen Stand bieten’ [‘therefore cannot provide a near-present position’]).

and is emphatically part of the law of peace rather than of war, to use the basic Oppenheim distinction, military uses of the ocean, which used to be a standard inclusion, have tended more recently to be left out of textbooks. Here, however, they make a welcome return in Chapter 12 — although the law of naval warfare is given only tantalisingly brief treatment (two pages). The authors do not shy away from some of the controversies on this topic: they believe that hydrographic surveys by military vessels in the exclusive economic zone (EEZ) are part of the freedom of navigation and not subject to coastal State regulation as marine scientific research — though they hedge their bets on whether weapons practice is permissible in that zone. That apart, the content of the pertinent chapters deals well with all the necessary issues with no omissions of any consequence, and Chapter 15 on marine environmental protection, though still a hard slog, is a model of clarity and by far the most readable account that the reviewer has yet encountered of this increasingly prominent aspect of the law.

The book is engagingly and approachably written, and good use is made of the tabular form for setting out information that lends itself to such treatment. This notably includes the dozens of submissions made by States to the Commission on the Limits of the Continental Shelf and the recommendations received in return from the Commission — although, given that this is the currently the most active of the three institutions established by UNCLOS, this information, showing the state of play as at 30 October 2009, is inevitably already a little out of date.

No indication is given of which chapters were drafted by Rothwell and which by Stephens, but it is quite possible that the two authors collaborated closely on every chapter, as this reviewer was unable to detect any difference among them in the writing style, which is remarkably uniform throughout (apart from some chapters having been carefully proofread and others much less so). If so, and the whole of it having accordingly been through two pairs of hands, that would explain why — although there is much that the present reviewer would have expressed differently — the book is, with a single exception, very sound on the substance of the law. That exception is the right of merchant ships to enter foreign ports, for which the wrongly decided *Aramco Arbitration*<sup>4</sup> is cited as the authority and the modern literature convincingly explaining why it is erroneous<sup>5</sup> has been unaccountably overlooked. It is also hard to square with the reference in a later chapter to the plenary capacity of States to set conditions for entry to their ports. Similarly, only one judgement is questionable: the prediction on page 403 that natural prolongation will have no role to play in delimitation of the continental shelf beyond 200 nautical miles from the territorial sea baseline, which may in turn rest on a considerable exaggeration on the preceding page of the role of equidistance in the Australia/New Zealand treaty boundary of 2004, confined as that role was almost exclusively to the delimitation of overlapping EEZ entitlements.

The book proved popular in the 2010–11 United Kingdom academic year among the reviewer's students to whom he set it as a prescribed text even before its publication, on

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<sup>4</sup> *Saudi Arabia v Arabian-American Oil Company* (1963) 27 ILR 117.

<sup>5</sup> AV Lowe, 'The Right of Entry into Maritime Ports in International Law' (1977) 14 *San Diego Law Review* 597; L de La Fayette, 'Access to Ports in International Law' (1996) 11 *International Journal of Marine and Coastal Law* 1.

the perhaps bold — but, as it turns out, correct — assumption that the whole would prove to be of the same high standard as Chapter 5 on the continental shelf, which one of the authors asked him to review at the draft stage. If there is one thing that the authors could have done to make their work more useful to a specifically Australian readership, it would have been to indicate how the various provisions of UNCLOS and other relevant treaties are implemented in Australian legislation and policy. That, though, would have made it a somewhat different book, and it is no criticism of the authors that they elected not to alienate their potential readership in other countries in order to do so. As it is, there is no trace of australocentricity and for that their textbook will appeal worldwide not only to students, but also to others in the international legal community — public servants and diplomats wanting to explore a given issue in greater depth — all of whom will benefit in addition from another of its positive features: the further reading lists given at the end of each chapter.

The abiding impression left, particularly by the thematic chapters, is that, while UNCLOS did indeed settle most of the large 20<sup>th</sup>-century questions about the Law of the Sea, there is no shortage of issues of implementation that States and their advisers have to work out as they go. This timely book will serve them well as a first point of reference and it will be surprising if it does not have the commercial success it assuredly deserves, leading to a second edition in a few years' time.

