

*The Law of the Sea in the Asian Pacific Region*

Eds. James Crawford and Donald R. Rothwell

(Dordrecht; Boston; London: Martinus Nijhoff Publishers, 1995), ix + 284 pp.

Those who have followed national, regional and international developments since the conclusion of the United Nations Convention on the Law of the Sea on 30 April 1982 (hereinafter 'UNCLOS') are aware that on 28 July 1994 the United Nations General Assembly unanimously adopted a resolution on Agreement on the Implementation of Part XI of UNCLOS that resolved many of the longstanding concerns which existed over deep seabed mining. Neither the Convention nor the Agreement have been a panacea for resolution of the many issues concerning the law of the sea. During the past two decades, the global international community has witnessed a significant growth in marine regionalism, including the Asian Pacific region which is defined as 'the area of the Pacific, north and south of the equator, bordered to the west by the countries of east Asia, south east Asia and Australia. It includes the whole of east Asia, the ASEAN countries, the independent Pacific islands and Australasia. It extends to the Southern Ocean, but not to Antarctica' (p. 2).

In 1991, two conferences were held in Australia which dealt with the marine and maritime issues of UNCLOS that impacted on the Asian Pacific region. This volume of essays contains a revision and update of the papers presented during these conferences. Also, this book constitutes the 21st volume in the publisher's Series on the International, Institutional and Policy Aspects of Ocean Development, under the general editorship of Shigeru Oda.

Following an introduction by James Crawford, the essays are arranged into five separate parts. In Part One, entitled 'Regional Perspectives', Jin-Hyun Paik considers the extent of maritime jurisdiction, freedom of navigation, maritime boundary delimitation with special reference to the South China Sea, protection of the marine environment, fisheries and deep seabed mining via an assessment of the laws and practices of China, Japan and the two Korean States. The principal emphasis in this contribution is a comparative perspective, with the main reference point being UNCLOS so that discrepancies between national laws and the UNCLOS provisions are highlighted. Jeanette Greenfield's focus is in the main on

the People's Republic of China's unresolved sovereignty claims over the Paracel and Spratly Islands.

Edward P. Wolfers outlines only an abbreviated glimpse at issues raised for South Pacific island countries as they pertain to UNCLOS. These issues will curtail their ratification of UNCLOS. The final essay in Part One, undertaken by Henry Burmeister, provides an insight into Australian government policy towards UNCLOS generally, and sets out in greater detail Australia's maritime claims, e.g. continental shelf and the exclusive economic zone (hereinafter 'EEZ'), and the implications of these claims for neighbouring States. Of particular interest is the Australian position as concerns navigational issues such as rights of passage, international co-operation involving fisheries, and Australia's lead in combating marine pollution. Although many of the topics discussed are expanded in subsequent essays, the author ably marks the guideposts for the reader to follow.

Part Two contains two essays on the marine environment. In the first essay, Ben Boer sheds light on the environmental problems that are encountered by small island developing States of the South Pacific. He makes us aware of the regional efforts already undertaken to protect the marine environment — for example, the South Pacific Regional Environment Program and its interplay with other multilateral and bilateral environmental conventions. Most interesting is his examination of the national strategy of attempted environmental protection, as exemplified by the Solomon Islands case. But as he correctly concludes, '[T]he fate of the South Pacific environment ... will not depend to any great extent on action by South Pacific countries, but on the industrialised countries and the operations of their transnational corporations in regions around and far beyond the Pacific rim' (p. 92). 'Environmental Regulation of the Southern Ocean' is the subject of Donald Rothwell's essay, which examines the relevant provisions of the Antarctic Treaty, the ancillary conventions which make up the so-called Antarctic Treaty System, those of UNCLOS, the International Convention for the Regulation of Whaling, the prevention of pollution conventions from ships (MARPOL), and the London Dumping Convention. His evaluation of these piecemeal constructs culminates in a call for a *sui generis* comprehensive environmental protection regime for the Southern Ocean.

Part Three comprises three essays devoted to 'Regional Fisheries'. The first essay, a joint effort by Martin Tsamenyi and Kwame Mfodwo, addresses the new regime of fisheries to have emerged as customary law since UNCLOS. Their examination is with reference to the South Pacific Island States, excluding Australia and New Zealand, but including the non-self-governing territories that participate as observers to the South Pacific Forum Fisheries Agency Convention. Analysis is primarily of the legal, organisational and economic factors that drive UNCLOS implementation in this region.

Bruce Miller looks specifically at the problems pertaining to drift-net

fishing in the South Pacific, the North Pacific and the Indian Ocean. His message carries an alert to those nations whose fishermen would impact the sustainability of fish stocks in the South Pacific. The range of problems over the use of drift nets are not identical in all three regions — for example, the threat to marine mammals and wildlife exists only in the North Pacific. In sum, the patterns of response are interesting, although the cessation of drift-net fishing is required on a global basis. The final essay in this part is by Dennis Renton, who provides a Papua-New Guinea perspective on how the Australian–Papua-New Guinea Torres Strait Treaty concerning sovereignty and maritime boundaries between the two countries has operated over a 15-year period.

Part Four is designated 'High Seas and Navigation' and contains three essays. The opening essay by Anthony Bergin covers both a broad picture of some of the multiple-use conflicts that have occurred, as well as the range of current problems that touch upon conservation and resource management within the high seas regime, including an emphasis on the South Pacific region. Although sparse in analysis, he identifies a range of subjects that involve tuna, salmon, protection of marine mammals from drift-netting, straddling stocks found within the 200 nautical mile zone and the high seas, the issue of deep seabed resources, the control of marine pollution and the delimitation of maritime boundaries. Because the Asian Pacific region is rich in state practice but not correspondingly well documented, Ivan Shearer's essay on a range of navigation rights is most significant. His assessment is carried out on the basis of customary international law and UNCLOS, with recognition of potential problems of interpretation as well as gaps in the provisions of UNCLOS. His attention is directed to nuclear-powered vessels, vessels carrying nuclear and other hazardous cargoes, nuclear-armed vessels and security zones. The reader will find the author's consideration of navigation rights as concerns straits, archipelagic waters, the passage of war ships, the rules governing historic waters, the EEZ and the high seas. Navigation rights appear to be more important to the Asian States than for the States of the Pacific, whose primary interest is resources.

The third essay by Sam Bateman measures maritime confidence and security-building techniques in the Asian Pacific region. It is his view that there is little scope for politically-oriented maritime confidence measures in this region. He makes the case for a regional maritime surveillance and safety regime. Cognisance is taken of a draft multilateral treaty on incidents at sea while noting some difficulties for its adaptation to this region. He makes the reader aware of current uncertainties or unresolved issues such as transit passage through straits, the EEZ and archipelagic waters that impact maritime confidence measures.

Two essays make up Part Five. In the first, Christine Chinkin outlines a range of real potential maritime disputes that can flare up in this region. She then reviews the different dispute resolution processes that are internationally available, including the UNCLOS provisions, the South

Pacific Forum and bilateral models. The final essay is a tandem effort by the editors in which they tie all of the chapters together and stress many of the issues on which regional co-operation is necessary. Lastly, they recount the various regional accomplishments and point to a number of questions that need to be addressed if growth of marine regionalism is to continue.

Although the essays have been updated prior to publication, they are somewhat dated due to UNCLOS's entry into force subsequent to this compilation. However, these essays are crucial in order to understand many of the ocean developments regarding UNCLOS in this region. Those wanting to add to their knowledge of the Asian Pacific region concerning the law of the sea issues examined in these essays can read one of Donald Rothwell's latest scholarly contributions. See Donald R. Rothwell, 'Navigational Rights and Freedoms in the Asia Pacific Following Entry into Force of the Law of the Sea Convention', (1995) 35 *Virginia Journal of International Law* 587. There is a voluminous literature on the law of the sea, but the same cannot be said as concerns the Asian Pacific region. Hopefully, this worthy addition will stimulate further research, interest and general awareness. It is a region designated for greater importance to coincide with the future trade developments of Asian Pacific Economic Cooperation (APEC).

Daniel C. Turack  
Law & Graduate Centre, Capital University

---

### *Jurisprudence of Liberty*

Eds. Suri Ratnapala and G.A. Moens  
(Sydney: Butterworths, 1996), viii + 312 pp.

Concepts of liberty and what it means to be free have been discussed and debated for centuries. It is unlikely that this debate will cease in the foreseeable future. Indeed, it would be of most concern should this debate falter as it seems a truism that if we stop talking about what it means to be free, we are surely well on the way to losing our liberty.

In this writer's opinion, some of the papers stand out for special mention. Sellers' 'Republican Liberty', for example, is an important contribution concentrating on the notion of liberty under a republican form of government. It has special significance in Australia in the mid-1990s given the ongoing debate about whether Australia should move to a republic. After reading Sellers' contribution one is struck, first, by how the republican debate in Australia is being conducted at such a shallow level; second, one is reminded of the tendency in Australia to regard democracy