

## LAW OF THE SEA: THE COMMON HERITAGE AND EMERGING CHALLENGES\*

During 1998, to celebrate the 500<sup>th</sup> anniversary of the inauguration of Vasco da Gama's great exploratory voyage of 1497-1499, an international conference on the law of the sea was held at the University of California (UC Berkeley) in November 1998. The papers in this volume represents the various discourses that were presented at the conference not only on the status of ocean governance but on outstanding questions of law and policy found in this realm. Twelve chapters, each written by a different author, are found within one of four distinct segments arranged according to related topics.

Part one, designated, "Trends in Ocean Law and Policy: An Overview, contains only one contribution, that of Jon M. Van Dyke, entitled *Sharing Ocean Resources— In a Time of Scarcity and Selfishness*. In this essay, the central theme and stage is set for what follows: the bounty of the sea is for the common heritage of all. Van Dyke scans a selected number of areas that show both flexible and pragmatic approaches in the 1990's which illustrate the strides made on certain ocean resources conflicts. These include transformation of the London Dumping Convention, sea transport of ultra-hazardous radioactive materials, changes involving both international and domestic harvesting of whales, and imaginative solutions devised for maritime boundary delimitation. He also addresses certain principles of international cooperation that need to play a central role in resolution of the resource conflicts.

Part two comprises three essays that center on "Inherited Doctrine and Institutional Innovation". Benedict Kingsbury takes us on an historical excursion in looking at the writing of Alberico Gentili and Hugo Grotius primarily, as well as other contributors to inquire into the contextual issues of today compared to those contending principles during the "founding" period of ocean law. In using the title "New Trends in the Settlement of Disputes and the Law of The Sea Convention", Tullio Treves points to the various tribunals currently available to disputants on law of the sea conflicts. He analyses the new law of the sea tribunal and chambers, statutes and rules applicable, procedures and methods of operation.

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A diagram showing the choices available to the potential parties would have been helpful. Access to certain tribunals by international organisations, humans and judicial persons, as well as states, provides new players that will impact the development of ocean law such as its possible fragmentation by different tribunals taking different positions on the law. In the final essay in this part, Ronald P. Barston writes about the changes that have taken place in the operating concepts of port-state control during the last two decades. The various regional developments vis-a-vis global standards raise intriguing questions when traditional flag-state prerogatives intersect with the newly imposed flag-state duties.

Two essays appear under Part three on the "Management and Conservation of Living Resources". When the 1982 United Nations Convention on the Law of the Sea altered the jurisdiction over fisheries of coastal states by providing for its extension in favour of the coastal authority to 200 nautical miles, inadequate guidance was given where fish swam at times both within and beyond national jurisdiction. Consequently, in 1995 an agreement relating to the conservation and management of straddling fish stocks and highly migratory fish stocks was concluded. William T. Burke analyses this 1995 Straddling Stock Agreement, as it is euphemistically called, that its new concepts and approaches may serve as models or guides for subsequent implementation agreements. The major procedural innovation of this agreement leads to the author's observation on the challenge of ecosystem management in the context of this agreement. In the second essay, the editor considers cultural claims and environmental ethics as they pertain to international regulation of whaling.

Part four, titled "Ocean Regions And New Legal Regimes" contains five essays beginning with David J. Bederman's enthralling examination of the resource management crisis now confronting Southern Ocean fisheries and the regime based on the Convention on the Conservation of Antarctic Marine Living Resources (1980). He advocates possible realistic solutions that emphasise institutional reform, use of new monitoring technologies, enhanced enforcement measures and use of global trade sanctions under the World Trade Organization. Jean-Pierre Ple's short essay looks at recent initiatives by two regional fishery organisations, namely, the International Commission for the Conservation of Atlantic Tunas and the Northwest Atlantic Fisheries Organization, to deal with the problem of non-member fishing activities on the high seas of the Atlantic Ocean for highly migrating and straddling fish stocks. Actions taken by the United States Department of State and the rationale behind these measures are also reviewed.

Yann-Huei Song provides a very interesting perspective on how both the People's Republic of China and Taiwan, while maintaining the one China policy, have developed their own maritime legislation in implementing various parts of the 1982 United Nations Convention on the Law of the Sea. Both entities' actions impact the Asia-Pacific region with attendant existing problems. These include: territorial disputes of ownership, e.g. Diaoyutai (Senkaku) Islands in the East China Sea; maritime boundary delimitation with

China's neighbouring coastal states, e.g. in the East China Sea, the Taiwan Strait and the South China Sea; sovereignty disputes between mainland China and Taiwan; and excessive maritime claims in the South China Sea in respect of historic rights. Finally, the author outlines the challenges that the Legislative enactments have upon the United States. In the fourth essay, Tsuneo Akaha provides the background for the Japan-South Korea Fishery Agreement of 1998, the key elements of the Treaty, what problems it has resolved and problems that it has left unsettled. He shows that higher political interests were at stake leading to this compromise Agreement than solely fishing interests.

In the fifth essay, David Vanderzwaag details current transboundary irritants that require resolution between the United States and Canada in the Gulf of Maine region. Problem areas involve sovereignty issues, such as Machias Seal Island and North Rock, delimitation of waters from the coast of Maine and New Brunswick with the related over harvest of lobsters in their area, and the boundary issues left unresolved by the 1994 Gulf of Maine case in the International Court of Justice. There are also threats to the bilateral relationships over potential oil and gas exploration on the Canadian portion of Georges bank that teeters on the fish verses oil controversy. There is a tension of national perspectives over the status of fisheries and fisheries management as pertain to herring, cod, haddock, and flounder, transboundary environmental dangers due to continuing acid rain, protection of the northern right whale and operation of high speed ferry service across the Gulf of Maine. The essay ends on a positive note as the author outlines the cooperative initiatives underway but not yet solidified.

A fifth Part, called "Looking Ahead" has only one essay by Robert Freidheim who presents a retrospective of trends that dominated the last decade. He submits a list of nine factors that embody concepts as a design for future ocean uses.

An index would have been a useful tool for those readers who would have liked to retrace their steps.

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