
The 1982 United Nations Convention on the Law of the Sea (UNCLOS) has long and widely been regarded as “A Constitution for the Oceans,” however, it is definitely not perfect. UNCLOS calls for cooperation between fishing nations and coastal nations for the conservation and optimum utilization of living marine resources in the exclusive economic zone and the high seas; it offers no strong mechanism to fulfill this goal. Thus came the 1995 Implementation Agreement for the Conservation and Management of Highly Migratory Fish Stocks and Straddling Fish Stocks (the UN Fish Stocks Agreement) to empower regional fisheries management organizations and/or arrangements with mandates to undertake needed tasks.

There are three provisions in UNCLOS having relevance with the protection of underwater culture heritage (UCH) or “objects of an archaeological and historical nature found at sea”. However, UNCLOS as a whole provides vague or little guidance with respect to the rights that coastal states possess to deal with the protection and management of UCH in the EEZ, continental shelf and the Area, as well as means of cooperation between coastal states in whose waters the UCH is found and the identifiable owners of such UCH. Therefore, the United Nations Educational, Scientific and Cultural Organization (UNESCO) came into play and adopted an International Convention on the Protection of Underwater Cultural Heritage in 2001 to supplement and amend the relevant provisions in UNCLOS.

Part VIII Regime of Islands, or the single article thereof, Article 121, of UNCLOS creates more problems than it clarifies when states are at strife in their maritime claims and/or delimitation disputes over the legal status and the weight of insular features in the seas, such as tiny or semi-submerged rocks, reefs, banks, and shoals.

The above-mentioned are just a few prominent examples of the flaws of UNCLOS. They present a lot of issues, problems and lacunae for academics and practitioners to debate, dig in and explore. This is the reason why so many international meetings or seminars have been organized around the world to address issues arising from UNCLOS. (For example, The School of Law at the Trinity College Dublin organized an international conference on “Current Problematic Issues in the Law of the Sea” on 3–4 June 2010.) The book *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea* is one of the academic...
efforts in this regard, as it adds more thoughts and insights in the discussion of law of the sea issues.

This book is a collection of 13 chapters/articles selected from papers presented at international meetings on the law of the sea held in 2006 and 2007, co-organized by the Law of the Sea Institute based at the School of Law of the University of California at Berkeley and the Inha University at Incheon, Korea. The first two articles deal with problems of UNCLOS on maritime delimitation in a more generic sense: Chapter I on “Climate Change, Sea Level Rise and the Coming Uncertainty in Oceanic Boundaries: A Proposal to Avoid Conflict” by David D. Caron and Chapter II “The Trouble with Islands: The Definition and Role of Islands and Rocks in Maritime Boundary Delimitation” by Clive Schofield.

In his article, Caron argues convincingly that the ambulatory coastlines either as their nature or as a result of sea-level rise will encourage wasteful spending by states in solidifying their regressive baselines and lead to uncertainty in boundaries and hence conflict. Thus, states should move toward fixing ocean boundaries on the basis of presently accepted baselines. However, Caron’s proposal will lead to unanswered issues of which Caron himself is aware. The fixation of baselines and ocean boundaries will inevitably detach such legal lines from their geographically ambulatory nature that will in turn create future international disputes about whether such lines are still valid if their geographical bases have been substantially changed or diminished (e.g., the probable total erosion of Japan’s Okinotori rock or even certain low-lying western and central Pacific Island countries) and can no longer be accepted by neighboring states or the international community as a whole. Schofield recognizes in his article that “many disputes are associated with either sovereignty over islands or their treatment in the context of the delimitation of maritime boundaries.” (p. 36) After examining some contentious cases, he observes that “[r]elevant state practice and the jurisprudence of international courts and tribunals may well help to clarity matters, but a definitive ruling on this issue has yet to eventuate.” (p. 36) However, Schofield is optimistic in this regard by stating that “maritime disputes relating to islands are certainly capable of resolution, if the elusive but vital ingredient of political will can be found.” (p. 37)

After the two opening articles, the book turns to six case studies with special relevance to the East Asia region (with the possible exception of Chapter V, or Masahiro Miyoshi’s article, which is a generic rather than specific treatment), followed by two chapters focusing on Canada-U.S. international ocean law relations in the Northeast Pacific region and on U.S.-Mexico relations in the Gulf of Mexico, which are further followed by a chapter exploring the interaction between UNCLOS and the Antarctic Treaty System. These chapters constitute the bulk of the book, which the title partially, but primarily reflected – maritime boundary disputes and the law of the sea.

Jon M. Van Dyke writes on disputes over islands and maritime boundaries in East Asia in Chapter III, which provides readers with a thorough, informative
and valuable review of the current situation in the region. In Section IX of his article “The South China Sea,” Van Dyke raises nine issues/questions with respect to the Spratly Islets, such as “Sovereignty Issues: Who owns the Spratlys?” and “Do any of the Spratly Islets have the capacity under Article 121 to Generate EEZs or continental shelves?” The reoccurrence of the same issues/questions in other articles only highlights the difficulty of solving these issues and the ineffectuality of UNCLOS in providing unequivocal guidance to solve these issues. Van Dyke points out, like Schofield, that it is up to the countries involved that perceive it is in their political and economic interest to resolve the issues with permanent solutions. Thus, states’ political will matters.

The different views and positions between the People’s Republic of China (PRC) and Japan toward the delimitation of the EEZ and continental shelf of the East China Sea have contributed to a long-standing source of maritime conflicts between the two countries. The PRC asserts that the legal regimes for the EEZ and continental shelf are separate from each other, and the natural prolongation principle should be applied to the delimitation of the continental shelf, while Japan insists to use the median line principle in delimiting the East China Sea. In Chapter IV, Ji Guoxing examines these different positions and proposes approaches for the settlement of Sino-Japanese delimitation disputes.

As indicated previously, Masahiro Miyoshi looks into the maritime boundary delimitation issue from a more generic perspective in Chapter V, entitled “Some Thoughts on Maritime Boundary Delimitation,” rather than dealing with any specific maritime dispute cases in the East Asia region. His article tries to highlight some essential points of jurisprudence of international arbitral and judicial tribunals dealing with maritime boundary delimitation, with his personal belief that “[t]he basic role of lawyers is to expound the correct rules or principles of law, rather than act as the mouthpiece for their government.” (p. 118) Thus, Miyoshi’s article seems misplaced, and it would be better if it appeared as one of the preceding chapters.

Seokwoo Lee takes an historic perspective, or inter-temporal law perspective to be more precise, to look at territorial disputes in Asia in Chapter VI, “Intertemporal Law, Recent Judgments and Territorial Disputes in Asia.” “Almost all Asian countries are involved in territorial and boundary disputes with their neighboring countries. Regional stability in Asia is still heavily influenced by the legacy of colonialism and is partly dependent on the outcome of ongoing territorial disputes in which former colonizing countries take part as disputants.” (p. 120) Lee penetratively observes, “Although the claimants for ownership of the disputed territories often rely on ancient historical sources for support, much of the uncertainty surrounding territorial disputes is a by-product of the post-World War II boundary decisions and territorial dispositions. The controversies in question did not arise as independent territorial disputes within East Asian countries, but are reflections of the legacies of post-war decision-making.” (p. 121) Given that this observation is so real to the countries and peoples of East Asia, but so rare in western literature in the
field, Lee’s mental exercise on and approach to the issues deserves the attention of readers.

In Chapter VII on “Some Legal Aspects of Territorial Disputes over Islands,” Kentaro Serita, a Japanese scholar, starts his article by extending his personal apology to the Koreans for the Japanese colonial rule and sharing the feelings of deep remorse and heartfelt apology with Japanese Prime Ministers Murayama and Koizumi toward the peoples and nations of Asia for their tremendous damage and suffering due to Japanese colonial rule and aggression before he discusses the territorial dispute between Japan and Korea over the Take-Shima/Dokdo islets. (p. 137) A spirit of humanity pervades the beginning of the article, and the rest is quite legalistic. Other than the significance of the “critical date” to a territorial dispute, Serita also attaches great importance on historic facts in appraising the relative strength of opposing claims. However, Serita does not argue further which claim is having more strength than the other based on his line of reasoning.

Another issue having caused recent attention is the legality of Japan’s claimed maritime zones (EEZ, continental shelf and extended continental shelf beyond 200 NM) and jurisdiction around the Okinotori, a tiny insular feature in the western Pacific and north of Palau, due to a dispute over the legal status of such features that involves the understanding and interpretation of Article 121(3) of UNCLOS with respect to the distinction between a rock and an island. Yuan-huei Song examines this recent dispute, analyzes the UNCLOS provision, and reviews relevant judicial decisions, state practices, and scholarly opinions in Chapter VIII, “Okinotorishima: A ‘Rock’ or an ‘Island? Recent Maritime Boundary Controversy between Japan and Taiwan/China.” His conclusion is that Okinotori is an island, however, it cannot generate a 200-NM EEZ, and thus the arrest of a Taiwanese fishing vessel in the Japanese-claimed EEZ is in violation of international law. It would benefit curious readers if Song’s sound legal analysis could further lead to some policy recommendations with respect to the approaches that Taiwan/China or the rest of international community could take in dealing with such a dispute.

The following three chapters turn the focus of the book from the western Pacific to issues occurring in the North Pacific, the Gulf of Mexico, and the Antarctic regions.

Ted McDorman in Chapter IX, “Canada-U.S. International Ocean Law Relations in the North Pacific: Disputes, Agreements and Cooperation,” looks into the principal ocean law disputes, as well as cooperation and agreement cases between these two North American neighbors in the North Pacific region. McDorman wittily characterizes the ocean law or “salt water” relationship between these two neighbors as being on an “even keel” (p. 196), due to the reason that they “have often found ways to ‘agree to disagree’… and proceed in pragmatic ways to overlook the international legal disputes” and “[c]ooperation, coordination, and some benign neglect of disputed matters are fundamental characteristics of the Canada-US ‘salt water’ relationship.” This observation
can be enlightening to other countries in dealing with their bi- or multi-lateral “salt water” relationship.

Chapter X, “Maritime Boundary Delimitation and Cooperative Management of Transboundary Hydrocarbons in the Ultra-Deepwaters of the Gulf of Mexico,” by Richard J. McLaughlin examines the bilateral interactions between the U.S. and Mexico in their exploitation of oil and gas in the Gulf of Mexico, and in the “Western Gap” (an area falling beyond the 200-NM EEZ or national jurisdiction of both countries) in particular. This case involves issues like bilateral maritime delimitation of the (outer) continental shelf vis-à-vis the recommendations made by the Commission on the Limits of the Continental Shelf and cooperation for resource exploitation in a semi-enclosed sea. With a view to developing a more effective cooperative scheme on transboundary shared resource exploitation in the Gulf of Mexico, McLaughlin advocates the model Puerto Vallarta Draft Treaty for consideration by the two Governments (pp. 226–227). He has also raised some politically difficult recommendations to the two governments, including accession to UNCLOS by the U.S., clarifying or reforming Mexican Constitution or domestic laws prohibiting foreign exploitation of its natural resources, and clarification of U.S. laws having relevance to the future cooperation activities. This article may be illuminating to other nations encountering a similar situation, such as China/Taiwan and Japan on the hydrocarbon resource exploration and exploitation in the East China Sea.

UNCLOS and the Antarctic Treaty System are two separate international treaty regimes, but they have their converging points. Without referring to legal theory and practice that “lex specialis derogate legi generali,” or “the more specific law has precedence over the general law or a law governing a specific subject matter (lex specialis) overrides a law which only governs general matters (lex generalis),” (in this case UNCLOS is a general law dealing with all issues relating to oceans and the seas, while the Antarctic Treaty is a specific law dealing specifically with Antarctic issues), or “lex posterior derogate legi priori,” or “a later law overrides an earlier law” (UNCLOS was signed on 10 December 1982, while the Antarctic Treaty was signed on 1 December 1959), one can easily perceive that states’ rights and jurisdiction in the EEZ, on the continental shelf, high seas, and in marine environmental protection and marine scientific research enshrined in UNCLOS all have relevance with the relevant provisions contained in the various international instruments of the Antarctic Treaty System. Chapter XI, “The Law of the Sea Convention and the Antarctic Treaty System: Constraints or Complementarity?” by Marcus Haward should be interesting to readers with its attractive title. However, Haward spent too much effort in presenting these two international treaty regimes and not enough on the convergence of the two regimes, nor provided definitive answers to the inquiries as the title alluded to.

The last two chapters deal with UNCLOS-related subjects without geographical elements. Chapter XII, “The Contribution of the International Tribunal for the Law of the Sea to International Law” by Helmut Tuerk, a judge
and incumbent Vice-President of the Tribunal, presented Tribunal-related factual information, including the history, jurisdiction, composition and structure of the Tribunal, as well as different categories of various cases that the Tribunal has considered. In the end, Tuerk defended the Tribunal’s non-impressive record of work in terms of the relative paucity of cases brought before the Tribunal by its youth and tried to ward off criticism about the Tribunal’s unnecessary existence and risking a fragmentation of international law by a different mindset or perspective of his own.

Chapter XIII, “The Tomimaru Case: Confiscation and Prompt Release” by Bernard H. Oxman mostly examines an application for prompt release of a fishing vessel, the Tomimaru, filed by Japan with the Tribunal against Russian detention. This is a purely legal analysis of an ITLOS judicial decision. The observations or analyses made by Oxman are instructive for nations that may file similar applications with the Tribunal or that may be involved in similar cases on the issue of “detaining State’s duty of prompt release of foreign violating fishing vessels on bond vs. detaining State’s enforcement powers of confiscating fishing vessel in question” or “whether confiscation extinguishing the duty to release the vessel on bond.”

As a whole, this book maintains the style and quality of Nijhoff’s “Publications on Ocean Development.” As a collection of articles written by different authors, regardless of how distinguished these authors are, it shares the same non-imputable imperfection with other similar edited books – lacking a common thematic thread and a universal intellectual quality running through the entire book. However, most articles are fairly informative and some enlightening. They can attract the attention of scholars and practitioners alike who are either keen to grasp the situation and development in particular geographical and legal areas or eager to find certain guidance under similar circumstances.

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The marine environment is complex, dynamic and vast, and knowledge of it processes and components is, as the recent Census of Marine Life has shown, rudimentary at best. While the oceans have traditionally been considered inexhaustible, unlimited, and capable of supporting any human activity or use, in recent decades it has become clear that marine resources are exhaustible and that increasing and intensifying human activities and uses are pushing the oceans to the limits of their ecological carrying capacity. Responsibility for protecting the marine environment in areas beyond national jurisdiction rests with the international community as a whole. The 1982 United Nations Law of the Sea Convention (LOSC) and numerous other treaties regulate various aspects of human activities in areas beyond national jurisdiction. However, in recent years the adequacy of this legal regime has come under scrutiny, with commentators identifying a range of governance, regulatory, substantive and implementation gaps in this fragmented and decentralised regime. The objective of this book is to analyse that legal regime and examine some options for its improvement.

The book begins with a discussion of the impact of human uses on the marine environment beyond national jurisdiction. Chapter 1 provides a description of the characteristics of the open ocean and deep seabed, describing the taxonomy of marine biological and biogeographic divisions of the ocean and the topography of the seafloor before turning to a description of deep-sea habitats, including seamounts, hydrothermal vents, cold seeps and pockmarks, deep-sea trenches, and deep-sea coral reefs. It then turns to a discussion of the threats posed to these environments by human activities. Threats discussed include those associated with exploitation of marine living resources, marine transport, deep-seabed mining, bioprospecting and marine scientific research and those associated with climate change mitigation activities. The picture painted of the potential and actuality of destructive human impacts is not a pretty one. In vividly demonstrating “the interdependence of the open ocean and deep sea environments,” and the threats posed by human activities, Warner “underscores the need for legal and institutional arrangements which allow for integrated protection of the marine environment beyond national jurisdiction and the establishment of connections between global and regional bodies with regulatory competence in these areas” (p. 25).

Succeeding chapters describe the current legal principles and institutional arrangements that apply to the protection and preservation of the marine environment in areas beyond national jurisdiction. Beginning with the law of the sea, Chapter 3 discusses the LOSC and its regimes for the high seas, the seabed
beyond national jurisdiction, and Part XII on the protection and preservation of the marine environment. Warner notes that while the LOSC recognises the global dimension of the problem and the need for coordinated efforts at both the global and regional levels, it introduces an inherent tension due to the different legal treatment accorded to the water column, on the one hand, and the deep seabed on the other. It is this differentiation which underlies the controversial and ongoing debate over the legal status of marine genetic resources which has thus far paralysed international attempts to develop a more integrated and holistic approach to protection and preservation of the marine environment. Warner further notes the tension between the requirements of protection and preservation and the “relative freedom of states and non-state actors to engage in a range of activities on the high seas without prior assessment or monitoring of their impacts on the environment” (p. 65).

In Chapter 3, Warner turns to a discussion of the principles for regulating the marine environment which have developed in the broader international environmental law context, tracing the evolution and applicability of relevant principles from the 1972 Stockholm Conference on the Human Environment to the 1992 Rio Conference on the Environment and Development and its outcomes including the Rio Declaration, Agenda 21 and the Convention on Biological Diversity, and the 2002 World Summit on Sustainable Development. She identifies a number of modern conservation principles which have emerged separately from the LOSC provisions and which appear to provide for a “more integrated, ecosystem-based regime for managing the oceans which promotes rational use of marine resources and a precautionary approach to the protection of the marine environment” (p. 96). The effective marriage of the LOSC and broader environmental regime is, however, “frustrated by the global commons status of the high seas, the ad hoc and non-comprehensive nature of the marine environmental instruments applicable to the high seas and the primary reliance on devolved flag state responsibility for implementation of those environmental protection measures” (p. 97). Reconciliation of the LOSC with these other instruments is, Warner concludes, “an essential prerequisite in establishing a strengthened legal framework for marine environmental protection beyond national jurisdiction” (p. 97).

Chapters 4 and 5 examine sectoral implementation of environmental protection relating to marine living resources, maritime transport and deep-seabed mining, while Chapter 6 discusses regional regimes. There is no doubt that a considerable body of law exists. However, the description and discussion provided in these chapters further highlights the shortcomings of the current sectoral and fragmented regime. Governance gaps in the international institutional framework are identified, including the absence of institutions at the global, regional or sub-regional level and inconsistent mandates of existing organisations and mechanisms. Regulatory gaps caused by non-existent or inadequate regulation of activities at the global, regional and sub-regional level are revealed as are implementation gaps arising from the failure of states to adequately implement their international obligations.
Chapter 7 provides the real ‘food for thought’ in the book. As Warner puts it, “for most states protection of the marine environment beyond national jurisdiction has been largely aspirational and devoid of specific objectives. It is only in the last decade that states in the international community have turned their attention to supplementing and strengthening the global framework for protection of the marine environment beyond national jurisdiction” (p. 208). This chapter reviews the key policy debates that have arisen in international fora, with particular reference to discussions in the United Nations Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) and its ad hoc working group on biodiversity in areas beyond national jurisdiction and the Conference of the Parties to the Convention on Biological Diversity. It then turns to a discussion of the outcomes of the IUCN High Seas Governance for the 21st century workshop that was held in October 2007. From these discussions, Warner identifies a range of options for strengthening the environmental protection framework for marine areas beyond national jurisdiction, the pros and cons of each of which are carefully analysed.

It is clear that effective protection of the marine environment beyond national jurisdiction and conservation and sustainable use of its resources, requires extensive knowledge and understanding of all aspects of the marine environment and its uses as well as the current legal regime for its protection. This book provides a comprehensive and articulate exposition of both the impacts of human activities on ocean areas beyond national jurisdiction and the current, albeit imperfect, legal framework for its protection, as well as an examination of a number of options currently being considered for strengthening the legal and institutional framework for protecting ocean areas beyond national jurisdiction. As Warner concludes, however, whether any of these options are ever adopted, and the neglect of the marine environment reversed, will “require the coalescence of political will among members of the international community and a long term commitment to sustainable use and management of the resources and biodiversity of [the] vast global commons” (p. 234).

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In the post-9/11 world, there have been a number of books written on the subject of security; a few less covering the topic of maritime security. Most
were attempting to cash in on the anti-terrorism bandwagon by examining, with varying degrees of success, the implications of terrorist attacks by sea, using ships, or targeting port and coastal infrastructure. A second failing of many of these studies is that they were written by authors with a military or security background, or alternatively with a legal background, but seldom with both. The third weakness is that they almost exclusively written from a “North Atlantic” perspective (i.e., North America and Western Europe).

Fortunately, the present book avoids all of these shortcomings, making a much wider examination of the subject than the title would suggest. As such, it should appeal to a much wider scope of readers than those involved in maritime defense or criminal matters or those geographically located in the Southwestern Pacific Ocean (Oceania). I would suggest that this book is a worthwhile read for anyone involved in the traditional maritime security sector, but it will also be of interest to the greater “Marine Affairs” community, especially those involved in integrated maritime policy, compliance and enforcement or oceans management.

The book itself is a collection of 14 chapters by a group of Australian and New Zealand university-based academics who were participants in the “Trans-Tasman Maritime Security Project.” This project comprised two workshops held at Victoria University, Wellington New Zealand in 2007, and at Australian National University (ANU) in 2008. The workshops were supported by both academic and government organizations, including participants from the legal, political and operational sectors of the Australia and New Zealand governments. A major objective of the project was to determine whether there was a distinctive Australian/New Zealand perspective on the topic of maritime security, hence I suspect, the “Trans-Tasman,” as opposed to a “Greater Oceania” focus.

The book contains the following chapters:

1. Australia, New Zealand and Maritime Security, Natalie Klein, Joanna Mossop and Donald R. Rothwell;
3. Australia’s Traditional Maritime Security Concerns and Post-9/11 Perspectives, Donald R. Rothwell and Cameron Moore;
4. Maritime Security in New Zealand, Joanna Mossop;
5. Whose Security is it and how much of it do we want? The US Influence on the International Law against Maritime Terrorism, Shirley V. Scott;
6. New Zealand and Australia’s Role in Improving Maritime Security in the Pacific Region, Sam Bateman and Joanna Mossop;
7. Maritime Security and Shipping Safety in the Southern Ocean, Karen N. Scott;
8. Counter-Terrorism and the Security of Shipping in South East Asia, Caroline E. Foster;
9. Maritime Security and Oceans Policy, Peter Cozens;
10. Act of State Doctrine in the Antipodes: The Intersection of National and
    International Law in Naval Constabulary Operations, Cameron
    Moore;
11. The Protection of Platforms, Pipelines and Submarine Cables under
    Australian and New Zealand Law, Stuart Kaye;
12. Maritime Domain Awareness in Australia and New Zealand, Chris
    Rahman;
13. Intelligence Gathering and Information Sharing for Maritime Security
    Purposes under International Law, Natalie Klein;
14. Maritime Security in the Twenty-First Century: Contemporary and
    Anticipated Challenges for Australia and New Zealand, Donald R.
    Rothwell.

The authors of the chapters include many of the “usual suspects” in what is a
fairly small community of law of the sea-focused scholars. What adds credibility
to the analysis is that several of these authors are “dual-hatted,” having both a
scholarly as well as an operational background in maritime security. There is a
distinct advantage to having both a naval and a legal or political science
background, something which will be appreciated by anyone who has ever tried
to explain the subtitles of one field to an experienced, but narrowly focused
expert of the other. The chapters making up this book have a considered and
practical feel to them, which makes them credible to both the scholar and the
practitioner.

It is somewhat disappointing, however, that the authors chose to restrict
their study to “Trans Tasman” rather than a “Greater Oceania,” and not include
participants and perspectives from the Pacific Island nations as well. In fairness,
Australia, and to an only slightly lesser extent New Zealand are the only
countries in the region having what would be considered “first rate” operational, burea-
ucratic and academic resources, the equal of any of the major economies of
Europe or North America. There are a number of obvious reasons for this, size
being one and their participation in various alliances, including being the south-
ern flank of the Cold-War being another. The book, and notably Sam Bateman
and Joanna Mossop’s article titled “New Zealand and Australia’s Role in
Improving Maritime Security in the Pacific Region,” discusses the issues of the
Pacific Island states in some detail. It does not, however, provide an insight into
what the perspective of these states might be.

The main focus of the book, as the title would suggest, is an examination of
“Maritime Security.” The authors have taken an inclusive view of what that
involves and provide a quite detailed discussion of a wider interpretation of mar-
itime security. The lead article, “Australia, New Zealand and Maritime Security”
has quite a detailed discussion on the meaning of maritime security, looking at
contemporary analysis in the UN Report to the Secretary General on Oceans
and Law of the Sea, as well as national and regional fora. The conclusion, that
maritime security should include not just traditional military threats, but also economic, environmental and social concerns, provides a broader perspective, perhaps more readily adaptable to those seeking to do a comparative study in their own country or region.

This makes the book a more useful study for those involved in fisheries, environmental protection or other sectors that tend to see the focus on terrorism as taking attention and financial resources away from the protection of the natural resource base or the marine environment. The book might well be titled “Integrated Maritime Security” since it includes discussions of illegal, unreported and unregulated (IUU) fishing, biodiversity, pollution from ships, and the protection of submarine cables and pipelines. By broadening the scope of the discussion and the book, the authors have produced a more useful comparative study and increased the potential readership beyond the Trans-Tasman region.

The chapter entitled “The Protection of Platforms, Pipelines and Submarine Cables under Australian and New Zealand Law,” while quite comprehensive in its analysis of the threat and legal response to these infrastructures, does not deal with potential threats from these infrastructures. As this review is being written (May 2010), the United States is being seriously threatened by the BP Deepwater Horizon platform oil spill occurring in the Gulf of Mexico. It seems obvious now that accidental or natural disasters create as significant a “maritime threat” as the acts of any outside agency. Any subsequent study would have to include a more detailed analysis of the integration of “preemptive” measures with “reactive” measures. It is not clear, for example, if the government would play a greater or earlier role if the spill had resulted from a terrorist attack, rather than an industrial accident though the result could have exactly the same consequences.

The chapter “Intelligence Gathering and Information Sharing for Maritime Security Purposes under International Law” provides a relatively unique study into an area which has not been widely considered in the “open” literature. Because of the secretive nature of the intelligence community, there may well be numerous classified analyses of the subject that are not available to the general public. This chapter provides a glimpse into many of the practical issues that surround information sharing in the maritime domain. What is missing, however, is a more comprehensive analysis of the problem of what can be referred to as “legal firewalls.” In most cases, there are minimal practical impediments to the sharing of information between countries, or sectors within a country (i.e., customs and military or police). The problems are the legal impediments, since information gathered for one purpose may not be releasable to other authorities without legislative or judicial authority. For example, customs may gather information from an importer for taxation purposes including proprietary commercial information that would be of considerable benefit to any business competitors. Sharing this information with other government departments, and especially with other countries, would not be conducive to full and honest
disclosure. A consideration of the implications of personal privacy and access to information legislation becomes a key factor in any contemporary intelligence and information sharing discussion.

The issue of piracy and maritime crime is discussed in several of the chapters, which is quite fortuitous considering that the problem was just beginning to emerge in the Red Sea and Horn of Africa area when they were written. Since there has been a multi-national response to the problem, it is quite useful to have an analysis from the perspective of some of the participating nations, more so since it also includes a comparison with the older anti-piracy initiatives in the South China Sea and the Straits of Malacca.

In conclusion, this book, though relatively small, is considerably more than just the regional perspective on maritime terrorism that its title might suggest. It is quite a thoughtful collection of pieces dealing with the problem of securing the coastal and ocean areas of what might arguably be called two of the world’s leading “island states.” Maintaining a broad overview of the topic, and including resource and environmental considerations gives this book a much wider appeal to readers from other regions and disciplines. It also provides a useful standard for comparison by analysts from other regions who might wish to undertake a similar examination of their own policies and legislation. It is worth pointing out that one of the authors and editors, Natalie Klein, is preparing a book titled *Maritime Security and the Law of the Sea*, for publication in 2011. If this is intended to be an expanded and more global perspective on the subject it should provide a useful and comprehensive “southern” counterpoint to the more traditional “North Atlantic” perspective.

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Divided into four parts and nine chapters, this enticing book proposes an overview of the impact and relationship of trade regulation and the law of the sea over maritime transport services. The title suggests that the purpose of the book is to examine the triangular relationship between the two global regimes and a section of the industry, in this case the vital maritime transportation. Triangular
relationship studies are en vogue when it comes to the World Trade Organization (WTO). World trade regulations, being a cross-cutting issue that reaches almost every other regime (human rights, environment, labor, and national security, etc.) and has consequences in other spheres of interstate relations (Pauwelyn 2001, 539–540), it is an issue that deserves proper research as the one furnished by Dr. Liu.

Part I

After Chapter 1 (which serves the purpose of an introduction), Chapter 2 provides the reader with a general background on maritime transport services, setting the industry’s framework in perspective with its regulatory dimension, taking into account the premise that maritime transport services are subject to diverse types of services classifications, and organized in different and complex ways. The author includes in the term “maritime transport services” not only international shipping, but port and auxiliary services, and cabotage (Chapter 5) activities as well. She reflects on the dual regulation (domestic and international) to which those activities are subject and without too much detail on some of the regulatory instruments, follows a chronological approach, from the Rhodian Code, passing through the well known historical landmarks like Oleron and the Black Book of Admiralty, until the more recent Hague/Visby Rules, the York/Antwerp Rules and the post-World War II events that led to the creation of the International Maritime Organization (IMO).

Later on in the said Chapter, the author discusses the evolution of certain trade principles that actually emerged from maritime law, such as national treatment and most favored nation (p. 23) now cornerstones of WTO law. The Chapter concludes with a superficial analysis of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Chapter 3 addresses the issue of international maritime transport services in the WTO by focusing its attention on the General Agreement on Trade in Services (GATS), its negotiation process, coverage and structure, principles and obligations and specific commitments. The Chapter goes into detail on the negotiation process during the Uruguay Round and its three pillars’ schedule: international maritime transport, maritime auxiliary services, and access to and use of port services (p. 54). The author concludes that such a mechanism has come about as a weakness for further progress in the area (p. 85–88), as the non-uniform usage of service classifications in the state’s commitment schedules. In her view some restrictions on maritime transport services (as flag requirements, cabotage,

cargo sharing, and bilateral agreements, etc.) combine with other non-tariff barriers and anticompetitive practices such as burdensome vessel and cargo examinations and port access and clearance procedures, to hinder efficiency and higher transport costs. Thereafter she analyzes the relevance of principles in the GATS (and in the GATT as well) such as the most favored nation (p. 65), national treatment (p. 70) and transparency (p. 74) to maritime transport services today. The Chapter is closed with a concise review of multi-modal transport negotiations under GATS and some of the proposals for future negotiations.

Part II

Part II covers by separate chapters “selected issues” to be analyzed. Those issues are: Access to Port (Chapter 4), Cabotage (Chapter 5), and Liner Shipping (Chapter 6).

Access to Port has been a long-discussed issue, and Chapter 4 follows the usual historical approach to the subject in order to demonstrate whether access to port is or is not customary, or it still lies on state sovereignty as well as if it is subject to any limitation. When reaching contemporaneous regulation, the author focuses on port state control (PSC) under UNCLOS, IMO Conventions (SOLAS, MARPOL, FAL) and Memoranda of Understanding (MOU) on PSC, some of the efforts conducted by UNCTAD, and WTO regulation on access to port, highlighting Articles V and VIII of GATT.

Chapter 5 is dedicated to cabotage as access to cargo in coastal shipping. The author provides a general background note on the activity of cabotage, which includes defining it and pointing out several historical examples. This is followed by a brief explanation of multilateral efforts relating to cabotage (OECD and WTO) and then shortly examines relevant regulation of New Zealand, the European Union and the United States of America. It would have been desirable to obtain a deeper and richer analysis of this subject (particularly in relationship with the WTO) than the one available in the publication, especially due to the fact that it is one of only three “selected issues.” Moreover, the difference between this one and the other two “selected issues” is quite evident.

Liner Shipping is dealt with in Chapter 6, which is structured following the same scheme as previous chapters, beginning with a definitional and historical approach to, later on, expound multilateral efforts and close it with selected jurisdictions analyses. Thus, concepts like conference, consortia, alliance (or global strategic alliance) and discussion agreements are touched upon and explained in their industry’s application and salient features. The 1974 United Nations Code of Conduct for Liner Conferences is examined together with OECD’s work on the matter. The regulatory frameworks of the EU and the US and their Block Exception (p. 207–216) and Antitrust Immunity (p. 217–228) features respectively are discussed in relation to each of the concepts mentioned above.
Part III

Entitled “Jurisdiction and Dispute Settlement,” Part III comprises Chapter 7 alone. The latter endeavors in an overview of both the WTO Dispute Settlement Understanding (DSU) and UNCLOS dispute settlement provisions (particularly Part XV of that Convention). Starting with WTO’s DSU, the author correctly focuses on GATS-related disputes, although later on turning into general WTO dispute settlement by describing the DSU and the jurisprudence of the Appellate Body and Panels. Strangely, while writing a short section on the relationship between WTO law and the general corpus of international law (where she pinpoints Article XX of GATT as utmost important), the author describes such relationship as “uncertain”, (p. 237) therefore in opposition to the generality of scholars dealing with WTO law (Pauwelyn 2001, 538). Among the few important links that the author finds between both are on the one hand the cross-fertilization process on procedural and substantive dispute settlement law and on the other the quotation and reliance on the common customary interpretation rules.

When dealing with UNCLOS, the author briefly distinguishes the most salient features of Part XV and of the International Tribunal for the Law of the Sea (ITLOS). The subject is taken to a comparison exercise between the DSU and the International Court of Justice (ICJ), and then between the jurisdiction of the latter and ITLOS, dwelling on the argument of proliferation/fragmentation and its by-product: forum shopping. By making an analogy with private international law, the author points out the “most substantive link theory” (p. 259–261) as means to determine the appropriate dispute settlement forum, and engages in a case study of the now-settled Chile/EU Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean as the epitome of the previously mentioned risk of fragmentation and forum shopping.

Part IV

The recommendations of Dr. Liu’s work are presented in Chapter 9, which is preceded by the unnecessary inclusion of a summary (Chapter 8) that hardly holds cohesion with the rest of the book. In her recommendations, the author goes through the three “selected issues” and pleads for: a) strengthening WTO principles (such as transparency) and eliminate uncertainty by clarifying key concepts in WTO law in order to add certainty in the field of access to ports, and encourages bilateral and regional efforts in that respect; b) enhancing domestic and international consultation when dealing with cabotage (where apparently she recognizes that no easy solution is available); c) clarifying the security exception embedded both in GATT and in GATS and associated terms; and d) further efforts in regulating and monitoring liner shipping practices and the possibility to discuss those within future WTO negotiations.
Overall, Dr. Liu’s book is a well researched, well structured and (besides some typographical and other minor mistakes) well written effort to bring to the wider attention the points of convergence between the law of the sea and WTO law, particularly addressing the effects that such convergence has on international maritime transport services. A balance is kept between the different disciplines, rendering the book accessible and interesting for maritime law, law of the sea and trade law interested readers, thus providing something from the other disciplines to those knowledgeable in one or more spheres.

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