

foisted upon Pacific Island Countries without genuine regard for their cultural and economic well being.

Developed states on the Pacific Rim, as well as donors further afield, should appreciate that the true potential of Pacific regionalism lies in its capacity to build on the 'Pacific Way', so forcefully advocated by Fiji's Prime Minister, Ratu Sir Kamisese Mara, in the 1970s. On these foundations, Pacific regionalism can strengthen the ties that connect each Pacific territory to the others, and to the rest of the world. Ultimately, as Michael Powles observes in his chapter, the goal must be to make the Pacific Island Forum's Pacific Plan 'not just a plan for governments and regional organisations' (p 55) but for all the peoples of the Pacific.

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Salt Water Neighbors: International Ocean Law Relations between the United States and Canada

Ted L McDorman

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Canada and the United States are often said to share the longest undefended boundary of any two countries in the world. While some aspects of the Canada/US boundary may now be subject to greater security controls than in previous years, this observation underscores the fact that two of the largest States in the international community are direct neighbours with an extensive land boundary with associated fresh water dimensions through the Great Lakes and Saint Lawrence River. That relationship, and the history associated with it has made some significant contributions to international law over the centuries. It is often overlooked, for example, that the famous *Caroline* incident took place in 1837 on the Niagara River at a time when relations between British North America (now Canada) and the US were less peaceful.¹ Likewise, the foundational case for contemporary international environmental law, the *Trail Smelter Arbitration*,² involved aspects of the Canada/US transboundary relationship with respect to the emissions from the smelter at Trail drifting down the Columbia River valley into the US state of Washington. In recognition of the boundary issues both States confront, the 1909 Boundary Waters Treaty³ created the International Joint Commission in order to manage some of those issues, particularly the vast common

¹ *The Caroline* (United States and Canada) (1837) 29 *British and Foreign Papers* 1137.

² *Trail Smelter Arbitration* (United States v Canada) (1949) 3 RIAA 1905.

³ [1910] British Treaty Series 23.

waterways both countries share. However there is another aspect of the Canada/US boundary which has often been overlooked, but which has been a significant part of the bilateral relationship for the past 40 years and promises to remain a core part of Canada/US relations for years to come. The ocean relationship between Canada and the US is long and troubled, which has taken on multiple dimensions as the international law of the sea has evolved – especially during the twentieth century – and which as a result of a variety of factors, including climate change, has the potential to continue to evolve during the twenty-first century. In this regard, notwithstanding their significant ‘fresh water’ relationship, the Canada/US ‘salt water relationship’ which encompasses parts of their Pacific Ocean coastlines, the Arctic, and the Atlantic Oceans and associated seas, straits and bays, is one of the more remarkable bilateral relationships regulated by international law which as a result of developments in the international law of the sea has taken on many different dimensions since the late 1960s. It is this ocean relationship between Canada and the US which is the subject of this fine work by Ted McDorman, a leading Canadian law of the sea scholar, who combines a diplomatic and legal history of the Canada/US ocean relationship with some contemporary reflections on unresolved issues.

McDorman’s book, which consolidates, updates and expands upon five previously published journal articles, is a detailed, widely researched and authoritative account of the multiple unresolved disputes which characterise the Canada/US salt water relationship. It includes not only an assessment of the high profile longstanding maritime boundary disputes in areas such as the Beaufort Sea and Dixon Entrance, and the interminable fisheries disputes which have been a characteristic of Canadian and US west coast local politics over much of the past 30 years, but also a careful review and analysis of how some of these disputes have been managed so as to ensure that they have not become a major irritant in what is otherwise a very productive bilateral relationship. To that end the book appropriately gives considerable attention to the differences of opinion that have arisen over the status of the Northwest Passage through the Canadian Arctic Archipelago, and the Canadian response following the US-supported voyages by the SS *Manhattan* in 1969 and 1970 and the US Coast Guard vessel *Polar Sea* in 1985. McDorman revisits in considerable detail the Canadian responses to those voyages including adoption of the Arctic Waters Prevention Pollution Act, Canada’s campaign during the law of the sea negotiations for adoption of a specific ice-covered waters provision applicable within the exclusive economic zone, and the proclamation of straight baselines around the outer limits of the Canadian Arctic in 1985. A reader unfamiliar with this history may be surprised by McDorman asking ‘[h]ow Canadian are the waters?’ (p 208), yet this is precisely the question that newspaper editors and the Canadian public have demanded answers to since 1969 and successive Canadian governments have sought to utilise the law of the sea to their advantage to conclusively prove that these Arctic waters are truly Canadian. Here, while the book takes a somewhat parochial perspective, the author does attempt to present a balanced picture as to not only the official government positions on these issues but also the views taken by multiple commentators.

McDorman's work has a particular contemporary resonance as a result of the impact of global warming and the attention that has been given to the legal regime of the Arctic as a result of an expectation that the region will become subject to greater levels of shipping and development. Yet while there have been legal disputes aplenty in the maritime relations between Canada and US, the strong theme which emerges is how these disputes have been managed and continue to be managed in a way which makes formal and final dispute settlement unattractive to both sides. To that end, McDorman observes that the *Gulf of Maine Case*⁴ in the International Court of Justice is actually more of an exception to the rule. Not surprisingly, he maintains that there is little appetite for resort to formal dispute settlement mechanisms to resolve some of the outstanding disputes and that government officials are content for softer options.

For an Australian reader, Canada/US salt water relations may seem remote, however, there is some merit in reflecting upon how those two countries have managed their maritime relationship in contrast to the Australian/Indonesian relationship which is similarly dominated by maritime issues, including the status of boundary arrangements, fisheries matters, and sovereignty via the voyages of asylum seekers who often make their way from Asia to Australia via Indonesia. As McDorman observes with respect to the Canada/US relationship, '[t]he two States are almost always interested in defusing a problem rather than inflaming a controversy' (p 3). Nevertheless, an important point of distinction is that the Canada/US ocean relationship is one that has been characterised by considerable amounts of 'sovereignty rhetoric', principally from Canada, which as McDorman observes 'makes compromise politically risky' (p 331). Notwithstanding some of the headlines, both countries are cooperating in mapping their adjoining Arctic seabed and determining the outer limits of their respective continental shelves in the Beaufort Sea, which may pave the way for an eventual joint Canada/US submission to the Commission on the Limits of the Continental Shelf in coming years. For law of the sea scholars, this book also offers an insight into US state practice and interpretation of the 1982 United Nations Convention on the Law of the Sea⁵ and related customary international law, especially as it relates to navigational rights and freedoms and fisheries. Given the ongoing saga of the on again off again US accession to the Convention, these insights from a close observer of the US position on the law of the sea are most welcome.

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⁴ *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada/United States) [1984] ICJ Rep 246.

⁵ 1833 UNTS 397.