

Book Reviews

Edited by

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Protecting the Oceans Beyond National Jurisdiction: Strengthening the International Law Framework

Robin Warner

(Martinus Nijhoff, 2009 275 pages)

The years leading up to the adoption of the United Nations Convention on the Law of the Sea and subsequently saw the greatest change in jurisdictional regulation of the world's oceans ever seen. The world community embraced the concept of the exclusive economic zone (EEZ), which permitted coastal States to regulate fisheries activities up to a maximum of 200 nautical miles from their coasts. In the course of two decades, the world's oceans went from essentially unregulated access to fisheries beyond the relatively narrow territorial sea, to enclosing one third of the world's ocean space under littoral State control.

This change has had a profound impact upon fisheries regulation worldwide, bringing whole fisheries under the regulatory control of a single State and closing access to fisheries by vessels from so-called "Distant Water Fishing Nations" or DWFNs, even where these vessels had fished in the now closed waters for many years. The denial of access to coastal fisheries created a new problem for the world community: that being, a huge increase in pressure on fisheries beyond national jurisdiction. It also has the potential to cascade into offshore mining, placing some remarkable mid-ocean ecosystems at risk.

The growing difficulty about what to do about these problems is at the heart of Robin Warner's book, *Protecting the Oceans beyond National Jurisdiction: Strengthening the International Law Framework*. She has identified that the oceans beyond national jurisdiction are vulnerable and under threat from a range of human activities, and then critically assesses what elements of international law can be brought to bear to permit the regulation of these vulnerable areas before they are destroyed.

The work commences with an examination of the physical characteristics of the open ocean and deep seabed, and the nature of the threats these areas are facing. This is a useful addition, as often legal texts have a tendency to assume the problem is well understood by the reader and can be glossed over. Warner catalogues a wide array of threats, including activities as diverse as deep seabed mining, bioprospecting and climate change mitigation activities.

Chapter 2 provides a succinct summary of the basic legal framework provided by the Law of the Sea Convention, both beyond areas of national jurisdiction and in the context of protection of the marine environment. This is certainly not the totality of the available law, and in Chapters 3 and 4, Warner moves to consider the nature of the more specific regimes that can complement the Law of the Sea Convention. Much of this material straddles hard and soft law, particularly in developments with respect to concepts in international environmental law post the Brundlandt Commission in 1987. There is consideration of emerging fisheries law in the years since the adoption of the 1995 United Nations Fish Stocks Agreement and in marine pollution from maritime transport.

Chapters 5 and 6 continue this specific focus, taking in the deep seabed mining regime administered by the International Seabed Authority, and regional marine protection through the medium of the United Nations Environment Programme's Regional Seas Conventions. In both cases, the actual impact upon protection of the marine environment is still more in the realm of theory than practice, but Warner recognises that both represent significant milestones in the development of the law.

The book's final chapter considers where the law might go from here. It charts the efforts of a number of States to drive the issue of marine protection beyond national jurisdiction, most notably through the United Nations Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS). At this point, the author neglects to advise of her own efforts as part of the Australian delegation to UNICPOLOS, nor those of UNICPOLOS' Australian chair, Phil Burgess, in trying to drive international law forward. While the UNICPOLOS process ultimately proved unsuccessful in developing a new binding instrument to protect the oceans beyond national jurisdiction, the fact the issues were extensively canvassed in at the UN over a number of years has done much to pave the way forward for the international community.

Warner considers a variety of possible solutions to the problem of ocean governance beyond national jurisdiction, from regional arrangements to an 'oceans trust'. Quite rightly she concludes the 'achievement of a strengthened framework for the protection of the marine environment beyond national jurisdiction will require the coalescence of political will among members of the international community and a long term commitment to sustainable use and management of resources and biodiversity of this vast global commons'. Ultimately she recognises that there is little political will to tackle the growing problems.