Mathias Forteau and Jean-Marc Thouvenin (eds), ***Traité de droit international de la mer (CEDIN)***. Paris: Pedone, 2017. Pp. 1322. €94. ISBN: 9782233008503

This volume, entirely in French, is a treatise in the classic sense, covering the law of the sea as it stands more than 20 years after the UN Convention on the Law of Sea (UNCLOS) entered into force in 1994.[1] Edited under the auspices of the renowned Centre de Droit International at Nanterre by two leading French internationalists of their generation, Mathias Forteau and Jean-Marc Thouvenin, it brings together around 60 contributions by mostly francophone authors. Overall, it achieves a balance between academics and expert practitioners and also between contributors of the founding generation with first-hand knowledge of the negotiations during the third United Nations Conference on the Law of the Sea and a younger generation of scholars with recognized expertise acquired subsequently. The result is impressive: a text that is certain to be a key reference for years to come, supported in that function by the comprehensive bibliography provided.

The volume is set apart from comparably comprehensive, contemporary publications on the law of the sea, such as the *Oxford Handbook* and the *UNCLOS Commentary*. Evidently, this is so because of the language – French – one of the authoritative languages of the convention and the other working language of the International Tribunal on the Law of the Sea and the International Court of Justice. The volume thus taps into, and continues, the rich history of leading publications on the law of the sea by French-speaking authors such as the *Traité du nouveau droit de la mer* by Daniel Vignes and René-Jean Dupuy.[2] More than that, the structure of the volume owes much to French legal thinking. This orientation is not necessarily better or worse; rather, it offers an alternative viewpoint. It is not so much issue orientated but – unashamedly – systematic doctrinal, or, as the editors put it, 'cartesian'. The idea is that methodologically the law (of the sea) can be presented as a comprehensive system. The implication is that each and every particular problem will find its place in this system and can be meaningfully discussed therein. This idea is ultimately, in the words of the general introduction, anchored in the preamble of UNCLOS, which states as its objective to create the 'legal order of the oceans'. Indeed, this aim is, as again the introduction underlines, not merely aspirational, and both the International Court of Justice (in *Nicaragua v. Colombia*) and the International Tribunal for the Law of the Sea (in the *SFRC Opinion*) have drawn concrete legal consequences from it.[3]

As the editors indicate in their introduction, the purpose is to faithfully state the law, and the structure of the volume is deliberately aligned with that of UNCLOS, to facilitate cross-referral. The book consequently is about the law of the sea as a branch of public international law. While it also deals with custom and briefly the 1958 Geneva Conventions, the book is clearly orientated towards the 1982 UNCLOS.[4] The starting hypothesis is that the convention has been a fresh, and, in many respects, innovative, law-making exercise in what had been a very static part of international law, and, indeed, this dynamism entails that the written law in parts already appears overtaken by new uses and new actors of the sea. The treatment is comprehensive, erudite and up-to-date with the fast-moving jurisprudence, including the recent *South China Sea* and *Croatia/*

1 United Nations Convention on the Law of the Sea 1982, 1833 UNTS 3.

2 D. Vignes and R.-J. Dupuy, *Traité du nouveau droit de la mer* (1985).

3 *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, ICJ Reports (2012) 624; ITLOS, *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Order, 14 April 2014, ITLOS Case no. 21.

4 Convention on the Territorial Sea and the Contiguous Zone 1958, 516 UNTS 205; Convention on the High Seas 1958, 450 UNTS 11; Convention on Fishing and Conservation of the Living Resources of the High Seas 1958, 559 UNTS 285; Convention on the Continental Shelf 1958, 499 UNTS 311; Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes 1958, 450 UNTS 169.

Slovenia awards.[5] The traditional, systematic outline makes consultation of the treatise easy, and the reader is elegantly guided to the right place in searching for a specific question, which she will find discussed in the proper context.

The book has six parts: sources of the law of the sea; subjects; marine zones; ocean uses; police powers, implementation and dispute settlement; and the law of the sea and other branches of international law. A brief description in the sense of an overview of the content of the volume must suffice, even though it cannot in any way do justice to the deep and rich treatment the book gives to the law of the sea on the basis of the convention, the later implementing agreements, state practice, the international jurisprudence and the increasingly important activity of the European Union (EU).

The first part, 'sources', has an innocuous enough title, but, clearly, there are a number of important assumptions and issues. The sources here include the customary law of the sea, and there is a list of matters that the convention does not expressly cover and presumably leaves to custom, although the cited passage from *South China Sea* suggests a more hermetic and exclusionary conception of the customary law of the sea. *South China Sea* presents, arguably, a tension with the inclusionary tendency in *ARA Libertad*, which the chapter also discusses.[6] Nevertheless, UNCLOS is certainly the main source of the current law of the sea, and so rightly the devoted chapter gives its genesis extensive treatment. The final chapter of this part deals with 'contemporary production modes of the law of the sea' (*modes de production contemporains du droit international de la mer*). This is an innovative conceptualization of the new forms of international law-making, short of treaty making, for the law of the sea. The chapter makes for convincing and stimulating reading on the ongoing process of implementation and development with the United Nations at its centre.

In the second part, 'subjects', states and international organizations are discussed, with a focus on the EU as a privileged international organization. The EU has become a heavy user of UNCLOS, and the rise of the convention in internal EU law has been corresponding and inexorable. The chapter documents this rise well, and it engages with the somewhat problematic jurisprudence of the Court of Justice of the European Union from *Mox Plant* onwards.[7] The most challenging chapter discusses whether private parties are subjects of the law of the sea. It critically evaluates the state of this European case law. Arguably, the problems that the Court has had in this area reflect its generally uncertain stance on the enforceability of multilateral treaties before EU courts.

The third, fourth and fifth parts really are the heart of the book and reflect its cartesian conception most clearly. They treat core aspects of the law of the sea, following UNCLOS' distinction between different marine zones, the uses of the sea and the control of states' police powers over the sea. The touchstone of this conception is that the convention establishes zones, measured from the baseline that separates the law of the land from the law of the sea. The third part is devoted to this zonal concept. The zonal concept then is treated systematically by Forteau, and the subsequent chapters discuss each zone, starting from the internal waters, conceptionally and in regard to the main problems. To illustrate, the chapter on internal waters vigorously defends the idea that these waters should be covered by the convention rather than by the law of land. The chapter covering the territorial sea deals with the classic problem of innocent passage, even though the current issues arising, for instance, in the South China Sea might have

5 *In the Matter of the South China Sea Arbitration (The Republic of Philippines v. People's Republic of China*, Merits, PCA Case no. 2013–19, 12 July 2016; *Arbitration between the Republic of Croatia and the Republic of Slovenia*, Final Award, PCA Case no. 2012-04, 29 June 2017.

6 ITLOS, *The "Ara Libertad" Case (Argentina v. Ghana)*, Order, 15 December 2012, ITLOS Case no. 20.

7 ITLOS, *Mox Plant Case (Ireland v. United Kingdom)*, Order (Request for Provisional Measures), 3 December 2001, ITLOS Case no. 10.

been treated more prominently. For the contiguous zone, the discussion is focused on the lack of a clear delimitation. The chapter on the exclusive economic zone (EEZ) undertakes to capture the special character of this concept as a zone of functional competences and rights that are not exclusionary of other states. The balance of these rights and the equitable determination of competences over new uses are addressed. The EEZ is set apart from the continental shelf as an inherent part of the coastal state as well as the high seas (those parts of the sea not allocated to any other zone) with its freedoms. The Area with the recent upsurge in interest might have merited deeper treatment. But, overall, the chapters offer a reliable guide to the regimes of the different marine zones. In particular, the authors of these chapters are fully aware of the importance of the fast-moving jurisprudence that has been clarifying many long-standing disputes such as the concept of low-tide elevations, islands, an objective exclusive concept of the EEZ and the unitary delimitation method of equidistance-cum-special circumstances. All such matters are integrated by the authors, albeit to a varying degree.

Cutting across the marine zones, in the conception of the volume and partly in that of the convention, are the substantive uses of the sea to which the chapters in the fourth part are devoted. These deal with navigation, fisheries, resources of the (deep) seabed, marine scientific activities, complemented by marine environmental protection, and technology transfer. The particularly salient and dynamic challenges of genetic resources beyond national jurisdiction and the control of climate-induced ocean acidification find their treatment here. The reader is left intrigued and wondering: is there deeper integration with the international law on climate action?

In the fifth part, the volume then enters into an excellent discussion of the police powers of coastal and flag states, which it understands broadly as measures taken in the public interest. There is a particularly innovative and remarkable attempt here to separate allocated competences from standards governing their exercise. In an almost sleight of hand manner, the chapter distinguishes exclusive and concurrent competences of states allocated by the convention. The fifth part also comprises an in-depth discussion of the global dispute settlement established by the convention, a great if possibly unexpected success story, which is no doubt a highlight of the book. The system of Part XV is presented in great detail and by reference to the particularly rich case law that continues to evolve. As the chapter points out, the compulsory jurisdiction of the competent court or tribunal over 'any dispute concerning the interpretation or application of this Convention' is the linchpin of Part XV. This presupposes an exact definition of what disputes actually 'concern' UNCLOS; this is no doubt one of the critical questions of future dispute settlement. The chapter posits a convergence of the cases towards a 'substantive' understanding, which looks at the true cause of a dispute and asks whether it has its real cause in rights and duties arising under the convention. However, the reader is left wondering whether some of the cases do not rather point to a formal understanding in the sense that a claim relating to the convention if opposed will constitute a dispute, which cannot be defeated by reference to the alleged true nature of the dispute.

Throughout, the volume views UNCLOS not as an isolated regime but, rather, as an integral part of international law. This may be a more widely held conviction, yet this book takes it seriously and spells out the consequences in the sixth part. There are chapters on the integration of the law of the sea with international security, particularly the peaceful use of the oceans and also the proliferation of weapons of mass destruction over sea, world trade law and sea products, international labour law, human rights and international air law. It is impossible to engage in any detailed discussion here. However, the general point is clear: from the perspective of the volume, these areas of international law have become auxiliary means for the further implementation and enforcement of UNCLOS and its objective of providing order for the oceans. Although, it might be posited conversely, one may well consider the law of the sea as an apt instrument of implementation for a universal master norm of sustainable development. Taking such a functional approach would not call into question the autonomy of the convention. But

it would recognize that the convention, like other law-making multilateral treaties of universal aspiration, ultimately serves the functions of international law as a whole.

Despite being a multi-author volume, this text manages to tell a highly consistent story. Above all, it serves notice of how far the law of the sea has come in the 20 years after the entry into force of UNCLOS. The ambition then was to establish a constitution in the sense of a legal order for all ocean issues. This book demonstrates to what extent this ambition has become a reality. It leaves the reader with the impression of a well-ordered French garden – an image the editors themselves offer, possibly tongue in cheek. It revives an academic tradition and approach that may otherwise have been lost, and, what is more, it offers a view of the whole, of the trajectory of UNCLOS as a key text of contemporary international law. Narrowness of purpose gives the volume its strength. In turn, it might provide a basis for complementary writing that locates UNCLOS in the broader evolving context of international law, challenging assumptions about the world economic order, universal membership and states accepting compulsory dispute settlement. Such writing could also discuss the impact of new phenomena that were unforeseeable in 1982, such as climate change, and that present considerable challenges for the law of the sea, and it could also ask what we can learn from the convention about international law as a legal order. The book under review provides rich seams of learning to mine for such purposes.

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