

BOOKS

The Legal Order of the Oceans: Basic Documents on the Law of the Sea

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This is the first major source book in the English language devoted to the international law of the sea. For that reason alone, it deserves special attention. Law of the sea sources have usually been incorporated into general source books on international law and are therefore limited, by necessity, to the United Nations Convention on the Law of the Sea (the ‘1982 Convention’) and perhaps a few other documents. This so-called Constitution for the Oceans, moreover, has not always been reprinted in full in these collections because of its size (320 articles and nine annexes). And yet, it should be clear that even this basic document does not contain all of the applicable law of the sea rules. First, this particular Constitution seems to be of the flexible kind, that is, one that is open to frequent changes. Recall that even before the 1982 Convention entered into force, a so-called implementing agreement had already substantially changed the content of Part XI (‘The Area’). Only a year later, a similar procedure was followed to complement its straddling and highly migratory stocks provisions. Secondly, the founding fathers of the 1982 Convention did not want to recodify rules and regulations of a technical nature that had already been codified by other international instruments. The 1982 Convention, in other words, only provides a kind of umbrella, in many instances only indicating general rules primarily apportioning competence while leaving technicalities to other legal instruments, already existing or still to be created. Consequently, while the 1982 Convention certainly forms the cornerstone of the present-day legal framework applicable to about two-thirds of the globe, it is by no means the only legal instrument regulating that vast area. Numerous other instruments therefore exist, which did not normally find their way in to these general international law source books.

The present book fills this gap. By means of 90 documents it intends to present the most commonly used materials in this domain in a convenient and easy-to-use format. These documents are ordered chronologically, with each document receiving a proper number (Doc no), and accompanied by a very detailed index, which opens up these documents to the user with

unprecedented ease. Totalling more than 1,000 pages, this constitutes by any measure a sizeable source book. One could therefore be tempted to think that it covers the field in a rather exhaustive manner, but this is clearly not the case. Indeed, one of the most difficult tasks that the editors probably had to face when preparing this compilation was that of making the selection between the many relevant instruments in existence. The outcome therefore reflects the choices made by the editors, who seem to have given a certain preference to the possible conventional, or even unilateral, restrictions of the flag state competence on the high seas. Given the nationality of the editors, moreover, the choice to include the Falkland maritime war measures taken by the Argentine and British authorities (Doc no 34) should not surprise the user either. Fishing receives due attention, including a selection of the more recent relevant universal or regional conventions, in addition to the International Convention for the Regulation of Whaling (Doc no 7), which remains, of course, very topical today. Pollution is treated likewise, with inclusion of the most relevant international and regional documents. Internal (regime of canals, international watercourses) and Antarctic waters (Convention on the Conservation of Antarctic Marine Living Resources), on the other hand, have been totally excluded with the exception of ports, which receive some attention. Delimitation agreements are scarce (Doc nos 70–71), and legal instruments relating to the regime of vessels, maritime transport and civil and criminal responsibility are kept to a minimum. No documents predating the 20th century have been included. Finally, the book contains a good number of agreements that have not yet entered into force (Doc nos 26, 30, 72 and 83), sometimes even preferring newer versions of legal instruments not yet in force over their predecessors, which are operational, but not reproduced (Doc nos 24, 31, 79 and 80).

This source book provides a great variety of types of documents spanning the whole spectrum from universally binding UN Security Council Resolutions acting under Chapter VII of the Charter (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) (see, for example, Doc no 86), on the one hand, and non-binding instruments such as memoranda of understanding (Doc no 33), codes of conduct (Doc no 58), plans of action (Doc no 67) and UN General Assembly Resolutions (Doc no 16), on the other. And there is everything in between as well:

- bilateral (Doc no 2) or multilateral (Doc no 1) agreements;
- European Union legal acts (Doc no 59);
- national notices to mariners (Doc no 82);
- rules of procedure of international bodies (Doc no 60);
- binding resolutions by universal (Doc no 76) or regional (Doc no 51) intergovernmental organisations;

- bilateral (Doc no 16) or multilateral (Doc no 85) government announcements or declarations, sometimes even agreed on between a governmental organisation and a state (Doc no 69); and
- guidelines issued by intergovernmental organisations (Doc no 41).

At a time when many of the law of the sea primary sources can easily be found on the internet, a book like this, nevertheless, remains useful for a number of reasons. First of all, the information to be found on the web, sometimes even on the official web pages of the organisation in question, can be incorrect (see, for instance, Doc no 66, containing 35 articles in total, where the internet source mistakenly adds an article 36; or Doc no 69 containing an 11-point programme, whereas the internet source only has ten). Secondly, organisations such as the IMO follow a strict policy of not providing the full-text version of international agreements concluded under their auspices online, resulting in the fact that the consolidated versions of these agreements are nowhere to be found on the web. Thirdly, internet sources quickly change (Doc no 73, introduction).

The book therefore has to be recommended as an extremely useful tool for anybody involved in the teaching or practice of the law of the sea and should be present in any law library worth that name. It is well presented and contains only a few minor infelicities (certain dates of entry into force to be found in Doc nos 28, 32 and 74, for instance, need to be double checked). But as all source books, it will have to try to remain up to date, especially in a field as quickly developing as the law of the sea (the EC material listed in the book seems to be particularly at risk, for Doc no 59 has already been repealed, and Doc no 78 substantially amended). Therefore, if the book does not want to lose the battle against the easily adaptable and all-encompassing web in this domain, obligatory updates at regular times, while maintaining its high standards, will prove key to the future success and usefulness of this publication.

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