

cetaceans accordingly. At times, Fitzmaurice is required to essentially synthesize the current literature on particular issues. Meanwhile, although the intention to provide a series of stand-alone chapters aids the selective reader, those seeking a more holistic narrative will find themselves cross-referencing to later chapters in a number of key places. This is, however, an occupational hazard for commentators on the vexed question of whaling, for which explaining in detail the convoluted regulatory trajectory of particular issues is also key to projecting their future. Nevertheless, this should not detract from what is a fine volume on an issue of enduring scholarly interest. Fitzmaurice distils a vast array of competing regulatory challenges into a highly informed and informative evaluation of the whaling problem from a legal perspective. The future regulation of whaling remains likely to be a complex, emotive and frustrating task, for reasons that are explained in Fitzmaurice's rich account in a compelling, accessible and insightful manner.

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*Law of the Sea: UNCLOS as a Living Treaty*, edited by Jill Barrett and Richard Barnes  
The British Institute of International and Comparative Law, 2016, 489 pp, £40 pb,  
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Jill Barrett and Richard Barnes have edited a contemporary volume that unpicks the unique character and development of one of the most fundamental treaty regimes in international law: the United Nations Convention on the Law of the Sea (UNCLOS).<sup>1</sup> *Law of the Sea: UNCLOS as a Living Treaty* is the culmination of a project launched at a conference organized by the British Institute of International and Comparative Law in 2012 to mark the Convention's 30<sup>th</sup> anniversary. The contributors constitute an impressive group of leading scholars and practitioners who draw on a wealth of experience in the field and provide insights into a broad array of cross-cutting issues. The characterization of UNCLOS as a 'living instrument' – a term borrowed from the jurisprudence of the European Court of Human Rights – serves as the red thread throughout the book.

What the notion of a 'living treaty' entails and how it serves as an analytical approach is mapped out in Barrett's introductory chapter, which forms a clear and

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<sup>1</sup> Montego Bay (Jamaica), 10 Dec. 1982, in force 16 Nov. 1994, available at: [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm).

accessible prelude to the chapters that follow. Importantly, the continuing life of the treaty is not taken for granted. The measure of 'life' in UNCLOS is assessed by the extent to which it is able to adapt to major emerging challenges and developments that could not have been foreseen when it was drafted. Eminent examples are climate change, technological advances, and the expanding range of offshore activities. Various mechanisms built into the UNCLOS framework, as well as interpretative processes that enable it to adapt to changing circumstances, are considered, but it is also duly noted that the evolution of the law of the sea regime is not an unbounded process. As Sir Michael Wood put it, UNCLOS as a 'living instrument' has to develop 'with the grain of the law of the sea and the principles that it enshrines' (p. lxxxii). The question is thus directed more specifically at how the regime evolves and by whom such evolution is brought about. The following chapters delve into these questions within a more applied context. They are grouped into five Parts, each devoted to a topical theme.

Part II contains five chapters on the changing dimensions of the continental shelf, an important jurisdictional zone under UNCLOS in which coastal states have exclusive rights over non-living resources and sedentary species. The focus is on legal developments and uncertainties related to boundary delimitation, delineation and outstanding issues regarding the work by the Commission on the Limits of the Continental Shelf (CLCS). Special attention is paid to the question of what rights coastal states can exercise pending the required recommendation by the CLCS for the establishment of the outer limits of their continental shelf. Neither UNCLOS nor jurisprudence provides a clear answer, leaving room for further clarification and interpretation in the future, and thus for evolutionary development of the regime.

Part III deals with emerging energy needs. It starts with a compelling account by Catherine Redgwell of how generally accepted international rules and standards developed by international institutions or industry have driven a dynamic evolution of the general provisions on offshore energy activities under UNCLOS, enabling the regime to keep up with changing circumstances. She illustrates how such instruments have strengthened the implementation of UNCLOS by filling both substantial and procedural gaps. Examples can be found in detailed regional-level provisions on pollution prevention, best environmental practices, best available technology and prior environmental impact assessment. Redgwell's argument is one of normative reinforcement rather than conflict, but her analysis also identifies remaining gaps that are likely to become more pressing as offshore activities develop. In another chapter, Maria Gavouneli dives deeper into the diffuse regulation of placing and operating energy installations in the marine environment, and provides an illustrative case study that highlights some of the regulatory challenges ahead.

Part IV focuses on marine environmental protection. Alan Boyle's contribution explores climate change, possibly the greatest challenge of all. Considering the various dimensions of the climate regime's relation to UNCLOS, he maps out the institutional complexities and incoherencies among the competing mandates, while emphasizing the need and potential for coordinated action. Boyle goes on to develop an interesting line of enquiry into how the existing pollution provisions under

Part XII of UNCLOS on the protection and preservation of the marine environment could be interpreted to include airborne greenhouse gas emissions. He furthermore analyzes the extent to which standards agreed under the climate change framework could inform measures taken under UNCLOS.

David Freestone tackles another hot topic – namely, the governance of areas beyond national jurisdiction, which is currently the subject of the ongoing work by the Preparatory Committee for the development of an agreement under UNCLOS on the conservation and sustainable use of marine biodiversity beyond national jurisdiction. He identifies major shortcomings in the current regime and highlights the consequences of each sectoral regime dealing with its specific risks in its own area. These considerations are contrasted with an interesting case study on the Sargasso Sea project, which illustrates the range of alternative conservation action that remains possible within the current framework, although this is not easily achieved.

Turning to a different jurisdictional zone, Nilüfer Oral analyzes the balance of traditional navigational interests with the growing need to protect the marine environment in straits used for international navigation. Despite the fact that the right of transit passage tends to prevail in practice, she argues that UNCLOS provides scope to accommodate both interests, while a more flexible and better defined interpretation of the provisions could allow for stronger environmental measures when circumstances so require.

Malgosia Fitzmaurice presents a unique case study of the Baltic Sea – a sensitive and once heavily polluted area – to show how regional cooperation on environmental protection under the Helsinki Convention<sup>2</sup> has been successful in implementing and complementing the UNCLOS regime on semi-enclosed seas, through a variety of measures and mechanisms. It provides a prime example of how ‘life’ is brought into UNCLOS through other instruments that address evolving needs while, vice versa, UNCLOS provides the general legal framework to accommodate the drafting of such instruments.

On a wholly different theme, Part V follows with two chapters on maritime security: one discussing a number of pressing security issues, the other focusing specifically on China’s approach to UNCLOS in the context of the disputes in the South China Sea.<sup>3</sup> The last two chapters in Part VI take stock of the functioning of the UNCLOS dispute settlement mechanism, with one assessing specifically the role of the European Union (EU) in the application and implementation of UNCLOS vis-à-vis the EU compliance mechanisms.

Barnes, building on the parameters set out in Chapter 1, draws together all the strands in a compelling concluding chapter. He ponders the various facets of the meaning of the ‘living treaty’ concept, its processes and actors, and also touches on

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<sup>2</sup> UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki (Finland), 17 Mar. 1992, in force 6 Oct. 1996, E/ECE 1267 (1992), available at: <http://www.unece.org/env/water>.

<sup>3</sup> This chapter was written before the award *In the Matter of the South China Sea Arbitration (Republic of the Philippines v. The People’s Republic of China)* of 12 July 2016 was issued (although not accepted by China) and does not take account thereof.

authority and legitimacy considerations. Going beyond the mere capacity of a treaty to change, Barnes substantiates what ‘the meaning of life’ is through an illuminating metaphorical exploration of the concept. The conclusion is clear that UNCLOS has adapted to a variety of emerging issues. At the same time, the contributors have indicated some of the limits to its adaptability as a result of, for example, the complexity of the interrelationships of the Convention with other realms of international law or certain gaps that nevertheless persist within the UNCLOS framework. It would have been interesting to see more discussion devoted to the consequences of any inadaptability, how this could be dealt with, and what are the implications of potential fragmentation within the law of the sea.

*Law of the Sea: UNCLOS as a Living Treaty* certainly delivers what it sets out to do, and the topicality of the explored questions is highlighted, for example, within the context of the work cut out for the Preparatory Committee on biodiversity beyond national jurisdiction. A strong feature of the book is the variety of issues and case studies discussed to illustrate the general ‘living treaty’ theme. Although not all topics are necessarily novel in themselves, the book provides plenty of food for thought and adds to the existing literature with its forward-looking approach to the debate. Through this approach it can also provide useful lessons for other fields of international law. On a theoretical level, the book’s systemic treatment of the various applicable mechanisms of treaty evolution is original and illuminating. While accepting the unique character of the law of the sea regime, it is because of this character as the comprehensive framework governing all activities on the oceans and its broad substance that it gets to deal with major global developments in their full complexity, making it a pivotal example of evolving international law. The book is a valuable addition for anyone working on contemporary challenges and developments in international law and policy.

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*Environmental Principles and the Evolution of Environmental Law*, by Eloise Scotford  
Hart, 2017, 320 pp, £60 hb, ISBN 9781849462976

Just as G.W.F. Hegel saw ideas as the motor of history and social change,<sup>1</sup> so too many environmental law advocates worldwide have embraced the importance of ideas to catalyze improvements in human environmental behaviour.<sup>2</sup> They have had much

<sup>1</sup> Z.A. Pelczynski (ed.), *Hegel’s Political Philosophy: Problems and Perspectives* (Cambridge University Press, 1971).

<sup>2</sup> E.g., K. Bosselmann, *The Sustainability Principle: Transforming Law and Governance* (Ashgate, 2008).