

BOOK REVIEWS

Islands and International Law by DONALD R ROTHWELL [Hart Publishing, London, 2022, 328pp, ISBN: 978-1-50995-542-8, £85.00 (h/bk)]

Islands play a crucial role in international law (not only in the law of the sea) and are of increasing relevance today, as the disputes in the South China Sea to Ukraine's defence of Serpent Island demonstrate. Rothwell's book could not be timelier, and it will be of interest to international lawyers, academics and practitioners alike. 'Islands' are the subject of Article 121 of the 1982 United Nations Convention on the Law of the Sea (LOS). This single Article, which is itself comprised of just three provisions, is described as the 'regime of islands'. However, what *Islands and International Law* demonstrates—though arguably stops short of saying—is that this description is not only incorrect but also misleading. In truth, while Article 121 is concerned with the definition and maritime entitlements of 'islands', islands affect and are affected by a variety of international legal issues.

Consequently, the book consists of 11 chapters which address: the distinction between the legal and geographic understanding of an 'island'; artificial islands; the territoriality of, and sovereignty over, islands—including a helpful review of the variety of governance models which apply to dependent island territories; islands and statehood; 'archipelagic states'; dependent archipelagos of 'mainland states'; the maritime entitlements of islands; islands in maritime delimitation; the application of human rights law in the context of islands; and the consequences of sea-level rise on islands.

The conclusion asks whether there *is* a 'regime of islands' at all, and the answer Rothwell gives characterises his overall approach to the subject—perhaps suggesting this ought to have been considered earlier. He concludes that while it is difficult to say that one currently exists, he thinks there *is* a 'developing regime of islands that, while having a foundation in the law of the sea, is much more comprehensive' (260–1). This is demonstrative of Rothwell's approach to the many thorny legal issues which are presented throughout the book: that solutions to these *can* be found and, crucially, that the LOS's 'regime of islands' continues to be constructive in this endeavour—even if it means looking elsewhere for clearer answers.

One of the thorniest issues considered in the book is the definition of an 'island' in Article 121 (which is the focus of Chapter 1). Definitions are important because whereas 'islands' are entitled to generate the full suite of maritime zones in the LOS, other features (such as 'rocks' and 'low-tide elevations') are not. To shed light on this, Rothwell examines the legal and diplomatic development of Article 121. He then identifies key principles of the decisions of international courts and tribunals, including the Award of the

Arbitral Tribunal in *The South China Sea Arbitration* (2016), and concludes that ‘the decisions of international courts and tribunals over the past two decades have given greater clarity to the interpretation of Article 121’ (18).

Nevertheless, by the end of the book one cannot help but be left with the impression that there are many difficulties that Article 121 fails to address, or indeed itself generates as a result of the nebulous terms that it uses, and that, thus far, the jurisprudence has done little to clarify these. One of the major achievements of the book is the logical way in which legal complications are addressed; yet it still effectively demonstrates where the complications *remain*. For example, one of the ‘traditional difficulties’ concerns the way that islands are treated in the maritime boundary delimitation process (which is the focus of Chapter 8). The book helpfully illustrates the variety of impacts that islands are given, from having full effect, half effect, or even no effect at all on the final boundary. Again, Rothwell locates the complication: that each case, each island, each maritime space, is different to the next and, thus, the differential impact given to islands very much reflects this (213). And so, once more, the book illustrates the limited role the ‘regime’ actually has in practice since we are left to find clarity beyond it: to find what factors *really* matter (214–15).

Chapter 10 illustrates this further. Having explained how the definition of an ‘island’ in Article 121 (that islands must be above water at high tide and of natural formation only) is a challenge for many threatened islands as a result of sea-level rise, Rothwell concludes that legal solutions in the law of the sea—such as freezing baselines—will gain ‘endorsement’ but that these will only be ‘short-term’ responses (252). Instead, ‘the longer-term questions associated with principles of statehood and the human rights of island peoples ... will be the bigger challenge for international law’ (252). This is indicative of the helpful way in which the book recognises the limitations of the LOSC and its treatment of ‘islands’, although, admittedly, is never explicitly critical of it.

In sum, the book helps the reader identify the complexities in the way islands are treated in international law and Rothwell provides a framework to better understand these. Of broader significance, the book demonstrates that islands are not only of considerable importance for general international law, but that many of the legal complexities facing islands will need to be addressed by it—not just the LOSC, nor its underwhelming ‘regime of islands’.

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