

how Article 13 could be construed and applied by the Court, including the principles of subsidiarity, rule of law and the margin of appreciation. However, the author does not adopt, or recommend, an overarching theoretical framework to guide interpretation. Nevertheless, it is difficult to argue with his conclusion that the Court should make more use of Article 13 and that, when considering its application, it should engage in more principled and abstract reasoning, which, amongst other things, would provide a much stronger signal to States intent upon altering an already fragile framework of national ECHR protection.

This is an important book, filling a gap in the literature around a Convention right that has not quite yet had its time. It will be of particular interest to academics, postgraduate and research students, and the numerous government staff in ECHR Contracting States working on ensuring that human rights protection is guaranteed at the national level in the most effective manner.

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The Development of the Law of the Sea by UNCLOS Dispute Settlement Bodies by LAN NGOC NGUYEN [Cambridge University Press, Cambridge, 2023, 336pp, ISBN: 978-1108845632, £85 (h/bk)]

This book provides a comprehensive study of the contribution of the United Nations Convention on the Law of the Sea (UNCLOS) dispute settlement system to its development and the factors that affect its operation. The previous studies on UNCLOS dispute settlement by Natalie Klein (2005) and Igor V Karaman (2012) were written in the early stages of its development. This book is limited to three areas, ie fisheries, the continental shelf and the marine environment, and consists of seven chapters. The author argues that UNCLOS is a product of compromise between the rights and interests of the parties (284).

Chapter 1 sets out the scope of the work and introduces the significance of the UNCLOS dispute settlement mechanism (focusing on International Tribunal for the Law of the Sea (ITLOS) and ad hoc tribunals under Annex VII) (12). The author contends that the dispute settlement framework is not merely a tool to settle disputes arising between the States, but also a framework to iron out legal ambiguities in UNCLOS itself, so that its role is more that of a legal guardian (286). Chapter 2 provides a comprehensive analysis of the Convention's provisions concerning fisheries, clarifying the rights and obligations of coastal States. It shows how the dispute settlement mechanisms have helped clarify the scope of regulatory powers, what amounts to a reasonable bond in prompt release cases and the enforcement

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powers of coastal States (29). As a result, they have made it clear that there is to be a 'balance of interests' (31) which does not prejudice the interests of the flag State, thus propounding a test of reasonableness.

Chapter 3 discusses the rights and obligations of flag States, including the granting of nationality to a vessel and the establishment of a 'genuine link' (67). The dispute settlement mechanisms have clarified the necessity of the genuine link requirement. It also provides a detailed analysis of the obligations of a flag State engaged in fishing in the EEZ. The *Advisory Opinion on IUU Fishing* clarified the scope of these obligations in the context of Articles 91, 92, 94, 192 and 194 of UNCLOS, providing a broad interpretation which included the conservation of marine living resources (91). The author concludes that the focus of the dispute settlement mechanisms has shifted from exploitation to the conservation of marine living resources.

Chapter 4 on maritime entitlement and maritime delimitation focuses on three key cases, viz: *Bangladesh v Myanmar*, *Bangladesh v India* and *Ghana v Côte d'Ivoire* (110). The open question addressed by this chapter concerns the extent of entitlement to the continental shelf beyond 200 nautical miles. According to the author, there is an independent relationship between the establishment of 'entitlement' to an outer continental shelf and the identification of the 'outer limits' of the continental shelf. Whilst States are required to submit proposals concerning their outer limit to the Commission on the Limits of the Continental Shelf (CLCS) and then wait for its recommendations, this does not mean that their entitlement to the continental shelf depends on their doing so. In the view of the UNCLOS tribunals, Article 77(3) confirms that entitlement is not premised on the establishment of the outer limit but, as the author puts it, '... on the sole fact that the basis of entitlement, namely, sovereignty over the land territory, is present' (108).

Further, the chapter delves into the method of delimitation applicable to the outer continental shelf. The author states that the application pertaining to the delimitation of the exclusive economic zone (EEZ) and continental shelf has primarily been judge-made (132). The International Court of Justice (ICJ) has laid down a three-stage approach to the delimitation of EEZ and continental shelf in the 2009 *Black Sea* case. Rather than study the three-stage approach itself, the author examines whether UNCLOS tribunals have adopted and applied the three-stage approach. Prior to the *Black Sea* case, the UNCLOS tribunals applied the two-stage approach, ie excluding the third stage of verification of the disproportionality test, but the author argues that the UNCLOS tribunals have now merged that third stage with the second stage, viewing proportionality as a relevant circumstance to be taken into account when considering whether the provisional line produces an equitable result. The author further adds that, although the UNCLOS tribunals have embraced this two-stage approach they have more or less followed the approach of the ICJ. Thus the author concludes that the UNCLOS tribunals have contributed


collectively to ensuring continuity and certainty in the development of the law of maritime delimitation (137).

Chapter 5 analyses the contribution made by the dispute settlement bodies to the protection of the marine environment, focusing on Part XII of UNCLOS (154). The author points out that these contributions are mostly found in provisional measures cases and advisory opinions, rather than merits decisions in contentious cases. One of the key principles relied upon by the Arbitration Tribunal under Annex VII is the precautionary principle, as evident from the *Southern Bluefin Tuna*, *Mox Plant* and *Land Reclamation* cases; however, the author points out that they have not clarified its customary international law status (186). Similarly, when seeking to clarify the meaning of the duty to cooperate, ITLOS has failed to provide sufficient detail. However, they have acknowledged that the principle is a part of general international law and applicable to all aspects of the protection of the environment (192). More positively, in the Advisory Opinion on the *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* ITLOS acknowledges the customary international law status of Environmental Impact Assessments, further enhancing the ICJ's *Pulp Mills* jurisprudence that the obligation to carry one out is both an international and domestic law obligation (180). In its advisory opinions, ITLOS has also observed that due diligence is an obligation of conduct and not result, though there is no explicit provision concerning this in UNCLOS (166). These various contributions are significant because they help draw together into a more coherent whole the somewhat scattered provisions of UNCLOS regarding the protection of the marine environment.

Chapter 6, concerning the procedural rules on dispute settlement, explores Part XV of UNCLOS (195), explaining that they can be divided under three heads. First, it is argued that although there are provisions such as Articles 281, 282 and 283 which seem to exclude the application of Part XV, it has become increasingly possible to overcome these jurisdictional barriers (207). Secondly, whilst at first a narrow approach was taken to Article 288(1) concerning the interpretation and application of UNCLOS, more ambitious approaches have been taken in later cases, such as the *Chagos MPA* case, where the tribunal looked to the underlying nature of the dispute when determining whether it was to exercise jurisdiction (214). Thirdly, under Articles 297(1) and (3) and 298, certain disputes are excluded from the purview of UNCLOS. As the author puts it, in the *Chagos MPA* case the tribunal adopted a broad interpretation of Article 297(1) to exclude the tribunal's jurisdiction relating to fisheries (222). Under Article 298, however, the tribunal appears to have taken a restrictive approach, which is not reflected in the wording of the provision. The author notes that there seems to be greater potential for ITLOS to make more broad-ranging contributions in Advisory Opinions, as it is not so constrained by the facts of a given case and the range of manners which are in dispute (240).

In the final chapter the author summarizes the contributions of the dispute settlement mechanisms to UNCLOS in terms of: (a) confirmation of customary international law (254); (b) clarifying the meaning of vague terminology (281); and (c) defining the scope of rights and obligations under the Convention (281). As the author notes, it is surprising that ITLOS has not employed 'evolutionary interpretation' (265), unlike several other courts, to inject more contemporary meaning into the terms of UNCLOS (279). Instead, the emphasis is more on subsequent practice and agreements, albeit unsystematically (262).

This book makes a rich contribution to the literature by examining cases under ITLOS, Annex VII and examining the role of dispute settlement in the development of UNCLOS. Although the chapter on the protection of the marine environment draws on the work of other dispute settlement mechanisms such as the ICJ, this could have been done more generally and would have allowed for a better assessment of the overall impact of the UNCLOS mechanisms themselves. Having said this, the book serves as a 'gold standard' for lecturers, students and practitioners of the law of the sea due to its lucid explanation of the key concepts under the UNCLOS dispute settlement mechanism.

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