



## Book Review

Sunil Kumar Agarwal\*

O.P. Sharma, *The International Law of the Sea: India and the UN Convention of 1982*. New Delhi: Oxford University Press, 2009, p. 357, ISBN 019806000-9.

The 1982 United Nations Convention on the Law of the Sea (UNCLOS-III) is a comprehensive international treaty on the law of the sea. The salient features of the 1982 UNCLOS include maritime zones under national sovereignty or jurisdiction, navigational rights, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime, legal status of resources on the seabed beyond the limits of national jurisdiction and a more unique feature, a binding procedure for settlement of disputes between states. In short, the Convention is an unprecedented attempt by the international community to bring a stable world order in the maritime domain through setting up of a legal regime to regulate all aspects of human activities related to the different uses of the oceans and marine resources.

The book under review attempts to take a new look at the law of the sea, in an endeavour to relate the various uses of the oceans in the maritime zones to promote national economy and strength. It dwells upon the historical evolution of the legal regime of the sea and the codification process at the international level, which culminated in the adoption of the 1982 UNCLOS. The book contains eight chapters, dealing

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\*Dr. Sunil Kumar Agarwal is an Associate Fellow at the National Maritime Foundation, New Delhi. He was a Nippon-Fellow (2009-2010) at International Tribunal for Law of the Sea, Hamburg. He specialises in international law and the law of the Sea.

with the freedom of the seas, internal and archipelagic waters, straits and maritime zones which include territorial sea, contiguous zone, exclusive economic zone (EEZ) and continental shelf. A separate chapter is given on the naval missions and ocean governance and its implications for the future of sea power. This has been done to give a military and strategic dimension to the law of the sea.

The author, in the first chapter, "Freedom of the Seas", provides an account of the origin of the concept of *Mare Liberum*, which was articulated by Hugo Grotius in 1609 as the legal basis for the uses of the sea by all countries. It also deals with the evolution of the freedom of the sea in relation to the piracy, seabed resources, flag state jurisdiction, unauthorised broadcasting and boarding of merchant ships on the high seas.

The second chapter, "Inland or Internal Waters", analyses the legal status of inland or internal waters. It dwells upon the various aspects of a coastal state's sovereignty over internal waters. In this respect, the chapter deals with the right of access to ports and other internal waters, construction of baselines, bays and other geographical features. There is a reference to Bangladesh's case on baseline to discuss issues related to baselines. The discussion about the legality of naval operations in internal waters is also important to determine the range of countermeasures that a coastal state may adopt against a foreign intruder.

The third chapter, "Territorial Sea, International Straits and Archipelagos", analyses the legal issues related to the territorial sea, international straits and archipelagos, including their legal status, innocent passage, delimitation and use of force in territorial sea. It also deals with the issues related to transit passage and passage of warships through international straits. The chapter also provides an interesting account of the evolution and formal acceptance of the concept of archipelagic states in the 1982 UNCLOS.

The fourth chapter, "Contiguous Zone", deals with the contiguous zone and the issue of hot pursuit in this zone. It gives an account of the origin of the contiguous zone in the state practice pertaining to preventive control for a certain belt of high seas contiguous to the territorial sea. It highlights the debate among states about the justification of the concept of contiguous zone in light of the extension of the territorial sea up to 12 nautical miles and emergence of a new concept of 200 nautical mile EEZ under the UNCLOS-III. However, the concept was finally retained in the 1982 UNCLOS. The author contends that non-inclusion of security as one of the

considerations in the recognition of contiguous zone has resulted in the tendency of coastal states to claim competence over large areas of the high seas under the guise of protection/security zones or defensive sea areas. This exigency has arisen because the claim of jurisdiction over contiguous zone for “security purpose” is not recognised by either the 1958 Convention on the High Sea or 1982 UNCLOS. Moreover, the International Tribunal for the Law of the Sea (ITLOS) in *M/V Saiga* (no. 2) *St. Vincent and Grenadine v. Guinea* case held that Article 33 of the 1982 UNCLOS is reflective of customary law.

The fifth chapter, “Exclusive Economic Zone”, elaborates on the evolution of the concept of the EEZ during negotiations for the UNCLOS-III to address the demands of the coastal states – mostly developing countries – to have exclusive jurisdiction over all living and non-living resources upto 200 nautical miles. While dealing with the legal status of EEZ, the author provides an interesting account of the acceptance of EEZ as neither high sea nor territorial sea but a *sui generis* zone. This chapter also deals with the institutional arrangement for ocean management in India through the enactment of the Maritime Zone Act, 1976 and the Coast Guard Act, 1978. It has been pointed out that international disputes over military activities in the EEZ arise primarily due to the reluctance of countries to directly confront this issue during the negotiations. However, this is a slightly oblique statement. Anyone who is well versed with the negotiations knows that the UNCLOS is not a perfect law of the sea, but a compromise between the interests of coastal states and maritime powers. The author was closely associated with these negotiations and the reader would have benefited from a more reflective and analytical account, while dealing with an important issue like this.

The sixth chapter, “Continental Shelf”, deals with the development of the concept of continental shelf from the 1945 Truman Proclamation to its recognition in the 1982 UNCLOS. An attempt has been made to explain the delimitation process of the maritime boundaries. It points out that the emergence of the 200 nautical mile EEZ – accompanied by still further extension seaward of the outer limit of the continental shelf – as well as a uniform adoption of the 12 nautical mile territorial sea worldwide, has significantly increased the importance of maritime boundary delimitation in contemporary international law. The chapter also deals with the military uses of the continental shelf.

In the seventh chapter, “Naval Missions and Ocean Governance”, the author has attempted to explain the relation between naval missions and ocean governance with

a view to speculate about their implications for the future sea power. The author starts with the hypothesis that the needs of naval or military establishments are sufficiently different from other users of the marine environment. Thus, the development of any law of the sea is affected more by economic than by military considerations. This is an important insight and elucidates the complexity of the negotiations process leading to the adoption of the UNCLOS in 1982. The chapter also deals with the issue of integrated ocean management, naval control of shipping in India, maritime security and terrorism at sea. Finally, in the eighth chapter, the author summarises the book chapter-wise and reflects on the future directions and challenges concerning safety and security of the sea.

Overall, the book is a useful guide for those who are interested in the codification process of the law of the sea in the modern era. The author has dealt with the issues related to the UNCLOS from a historical perspective, emphasising on the development of law of the sea through the codification process under the auspices of the United Nations, which culminated in the adoption of UNCLOS in 1982. This approach is suitable for those interested in understanding the historical background to the Convention.

The book, however, has certain gaps. Although it lucidly explains and analyses the Indian position on most of the issues related to the law of the sea, it does not adequately deal with the Indian perspective on the subject. Moreover, issues relevant for India – maritime disputes with its neighbouring countries or India's position on military activities and marine scientific research in the EEZ – do not find adequate mention in the book. For instance, only a brief reference has been made to the Bangladeshi position on baseline and the book does not elucidate the facts and legal issues in the Indo-Bangladesh dispute. India's dispute with Pakistan over the Sir Creek maritime boundary has also not been dealt in detail. Hence, the reader loses the opportunity to get an insight into the Indian thinking on these issues and benefit from the rich experience of the author, who is one of the most distinguished Indian scholar on the subject.

In summary, the book is a valuable addition to the literature on the law of the sea and a useful guide for all concerned, especially, those who are interested in understanding the nuances of international law-making with respect to the law of the sea. It is pertinent to note that Indian scholarship in this highly relevant field is sparse. Thus, the author deserves appreciation for writing on such highly relevant and complex issues.