The International Law of the Sea

Third Edition

This new edition has been fully revised to include up-to-date coverage of essential issues of the international law of the sea. Covering a number of new and important issues, such as the headline debate of migrant movement across the seas, and the definition of islands in light of the South China Sea Arbitration, it also includes chapters on conservation of marine living resources and biological diversity, protection of the marine environment, and international peace and security at sea, as well as building further on such topics as the impact of climate change on the oceans. A precise and readable book, with many figures and tables, The International Law of the Sea continues to be the best choice for students wanting to understand the law of the sea.

The International Law of the Sea

Third Edition

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University of Copenhagen
Dedicated to my teachers,
Lucius Caflisch, Hugh Thirlway and Tetsuo Sato

Let the heavens rejoice, let the earth be glad;
Let the sea resound, and all that is in it.

Psalm 96:11
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The law of the sea is ever-expanding in nature and there have been several developments since the second edition of this book was published in 2015. In this third edition, all chapters were revised, updated and, where necessary, rewritten. In particular, the following modifications merit being highlighted.

Chapter 1 includes a new section, ‘Two paradigms in the law of the sea’ (section 1.3). In Chapter 2, the interpretation and application of rules governing islands were revised by analysing the 2016 South China Sea Arbitration (Merits). In Chapter 4, two sections, ‘Historic rights and the EEZ’ (section 3.7) and ‘Protection of archaeological and historical objects found within the continental shelf’ (section 4.9), were newly added. Chapter 5 includes a new section concerning the regulation of migrant smuggling by sea (section 2.9). In the same chapter, obligations and responsibility of sponsoring States were discussed in section 3.7. In Chapter 6, new sections, delimitation of the continental shelf beyond 200 nautical miles (section 7.3) and provisional arrangements (section 8), were added. In Chapter 7, obligations of the flag State were discussed in more detail on the basis of the ITLOS Advisory Opinion of 2015 (section 6.1). Chapter 8 dealing with marine environmental protection includes a new section, ‘Access to information and public participation’ (section 5.7). In response to a particular request from audience, more consideration was given to environmental protection of the marine Arctic in section 9.2. Chapter 13 regarding the peaceful settlement of international disputes was updated adding new cases. Further reading was updated, while some references before 2000 had to be deleted because of limitations of space.

The manuscript of this edition was completed in July 2018. All websites were current as of that date. At present, negotiation is ongoing, under the auspices of the United Nations, to develop an international legally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The outcome of the negotiation could not be examined in this edition since it remained unknown when the manuscript was completed.

I am grateful to the University of Copenhagen, Faculty of Law, and its Library, for its support in the completion of the text of this book. I would also like to thank staff of
Yoshifumi Tanaka

Cambridge University Press, in particular, Marta Walkowiak and Caitlin Lisle for their assistance. I thank Ms Llinos Edwards for her thorough copy-editing. I am grateful to my wife, Akiko, for all her support and prayer throughout my work. Like the previous editions, this book is dedicated to my teachers, Hugh Thirlway, Lucius Cafflisch and Tetsuo Sato.

YOSHIFUMI TANAKA
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<td>GESAMP</td>
<td>Group of Experts on the Scientific Aspects of Marine Environmental Protection</td>
</tr>
<tr>
<td>GHG</td>
<td>greenhouse gases</td>
</tr>
<tr>
<td>GYIL</td>
<td>German Yearbook of International Law</td>
</tr>
<tr>
<td>ICAO</td>
<td>International Civil Aviation Organization</td>
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<tr>
<td>ICCAT</td>
<td>International Commission for the Conservation of Atlantic Tunas</td>
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<tr>
<td>ICES</td>
<td>International Council for the Exploration of the Sea</td>
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<tr>
<td>ICIJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICLQ</td>
<td>International and Comparative Law Quarterly</td>
</tr>
<tr>
<td>IH0</td>
<td>International Hydrographic Organization</td>
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<tr>
<td>UMCL</td>
<td>International Journal of Marine and Coastal Law</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
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<tr>
<td>ILM</td>
<td>International Legal Materials</td>
</tr>
<tr>
<td>ILR</td>
<td>International Law Reports</td>
</tr>
<tr>
<td>IMO</td>
<td>International Maritime Organization</td>
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</tbody>
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## List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>IOC</td>
<td>Intergovernmental Oceanographic Commission</td>
</tr>
<tr>
<td>IOTC</td>
<td>Indian Ocean Tuna Commission</td>
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<tr>
<td>ITLOS</td>
<td>International Tribunal for the Law of the Sea</td>
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<tr>
<td>IUCN</td>
<td>International Union for the Conservation of Nature</td>
</tr>
<tr>
<td>IUU</td>
<td>illegal, unreported and unregulated (fishing)</td>
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<tr>
<td>IWC</td>
<td>International Whaling Commission</td>
</tr>
<tr>
<td>MARPOL</td>
<td>International Convention for the Prevention of Pollution from Ships</td>
</tr>
<tr>
<td>MPAs</td>
<td>marine protected areas</td>
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<tr>
<td>MSY</td>
<td>maximum sustainable yield</td>
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<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<tr>
<td>NEAFC</td>
<td>North East Atlantic Fisheries Commission</td>
</tr>
<tr>
<td>NILR</td>
<td>Netherlands International Law Review</td>
</tr>
<tr>
<td>NJIL</td>
<td>Nordic Journal of International Law</td>
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<tr>
<td>NYIL</td>
<td>Netherlands Yearbook of International Law</td>
</tr>
<tr>
<td>ODIL</td>
<td>Ocean Development and International Law</td>
</tr>
<tr>
<td>OPRC</td>
<td>International Convention on Oil Pollution Preparedness, Response and Cooperation</td>
</tr>
<tr>
<td>OSPAR</td>
<td>Convention for the Protection of the Marine Environment of the North-East Atlantic</td>
</tr>
<tr>
<td>PSI</td>
<td>Proliferation Security Initiative</td>
</tr>
<tr>
<td>PSSA</td>
<td>particularly sensitive sea area</td>
</tr>
<tr>
<td>RBDI</td>
<td>Revue belge de droit international</td>
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<tr>
<td>RCADI</td>
<td>Recueil des cours de l’Académie de droit international</td>
</tr>
<tr>
<td>ReCAAP</td>
<td>Regional Co-operation Agreement on Combating Piracy and Armed Robbery against Ships in Asia</td>
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<tr>
<td>RECIEL</td>
<td>Review of European Community and International Environmental Law</td>
</tr>
<tr>
<td>RGDIP</td>
<td>Revue générale de droit international public</td>
</tr>
<tr>
<td>RIAA</td>
<td>Reports of International Arbitral Awards</td>
</tr>
<tr>
<td>SOLAS</td>
<td>International Convention for the Safety of Life at Sea</td>
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<tr>
<td>SRFC</td>
<td>Sub-Regional Fisheries Commission</td>
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<tr>
<td>SUA Convention</td>
<td>Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation</td>
</tr>
<tr>
<td>TAC</td>
<td>total allowable catch</td>
</tr>
<tr>
<td>TSC</td>
<td>Geneva Convention on the Territorial Sea and the Contiguous Zone</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCLLOS</td>
<td>United Nations Conference on the Law of the Sea</td>
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<tr>
<td>UNDOALOS</td>
<td>United Nations Division for Ocean Affairs and the Law of the Sea</td>
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<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<tr>
<td>UNTS</td>
<td>United Nations Treaty Series</td>
</tr>
<tr>
<td>WMD</td>
<td>weapons of mass destruction</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
<tr>
<td>YILC</td>
<td>Yearbook of International Law Commission</td>
</tr>
<tr>
<td>ZaöRV</td>
<td>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</td>
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