

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.

YOSHIFUMI TANAKA is Professor of International Law with Specific Focus on the Law of the Sea at the Faculty of Law, University of Copenhagen. He is the single author of five books: *Predictability and Flexibility in the Law of Maritime Delimitation* (2006; 2nd edition, 2019), *A Dual Approach to Ocean Governance* (2008), *The International Law of the Sea* (2012; 2nd edition, 2015), *The Peaceful Settlement of International Disputes* (Cambridge University Press, 2018) and *The South China Sea Arbitration* (2019). He has published widely in the fields of the law of the sea, international environmental law and peaceful settlement of international disputes.

The International Law of the Sea

Third Edition

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*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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Preface

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

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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 Caflisch and Tetsuo Sato.

YOSHIFUMI TANAKA

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Figures 1.1, 1.2 and 4.3 have been drawn using technical advice from Dr Anne Marie O'Hagan. The author wishes to thank Dr O'Hagan for her technical assistance.

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Abbreviations

<i>AFDI</i>	<i>Annuaire français de droit international</i>
<i>AJIL</i>	<i>American Journal of International Law</i>
<i>ASDI</i>	<i>Annuaire suisse de droit international</i>
<i>BYIL</i>	<i>British Yearbook of International Law</i>
CCAMLR	Convention for the Conservation of Antarctic Marine Living Resources
COP	Conference of the Parties
<i>CYIL</i>	<i>Canadian Yearbook of International Law</i>
ECHR	European Convention on Human Rights
EEZ	exclusive economic zone
EFZ	exclusive fishery zone
<i>EJIL</i>	<i>European Journal of International Law</i>
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GESAMP	Group of Experts on the Scientific Aspects of Marine Environmental Protection
GHG	greenhouse gases
<i>GYIL</i>	<i>German Yearbook of International Law</i>
ICAO	International Civil Aviation Organization
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICES	International Council for the Exploration of the Sea
ICJ	International Court of Justice
<i>ICLQ</i>	<i>International and Comparative Law Quarterly</i>
IHO	International Hydrographic Organization
<i>IJMCL</i>	<i>International Journal of Marine and Coastal Law</i>
ILC	International Law Commission
<i>ILM</i>	<i>International Legal Materials</i>
<i>ILR</i>	<i>International Law Reports</i>
IMO	International Maritime Organization

xxii List of Abbreviations

<i>IMLI Manual</i>	D. J. Attard, M. Fitzmaurice and N. A. Martínez Gutiérrez (eds.), <i>IMLI Manual on International Maritime Law</i> , 3 vols. (Oxford University Press, 2014–16)
IOC	Intergovernmental Oceanographic Commission
IOTC	Indian Ocean Tuna Commission
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for the Conservation of Nature
IUU	illegal, unreported and unregulated (fishing)
IWC	International Whaling Commission
LOSC	United Nations Convention on the Law of the Sea
MARPOL	International Convention for the Prevention of Pollution from Ships
<i>Max Planck Encyclopedia</i>	<i>Max Planck Encyclopedia of Public International Law</i> (Oxford University Press, 2008–2011, online edition: http://opil.ouplaw.com/)
MPAs	marine protected areas
MSY	maximum sustainable yield
NAFO	Northwest Atlantic Fisheries Organization
NATO	North Atlantic Treaty Organization
NEAFC	North East Atlantic Fisheries Commission
<i>NILR</i>	<i>Netherlands International Law Review</i>
<i>NJIL</i>	<i>Nordic Journal of International Law</i>
<i>NYIL</i>	<i>Netherlands Yearbook of International Law</i>
<i>ODIL</i>	<i>Ocean Development and International Law</i>
OPRC	International Convention on Oil Pollution Preparedness, Response and Cooperation
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
<i>Oxford Handbook</i>	D. Rothwell, A. G. Oude Elferink, K. N. Scott and T. Stephens (eds.), <i>The Oxford Handbook of the Law of the Sea</i> (Oxford University Press, 2015)
PSI	Proliferation Security Initiative
PSSA	particularly sensitive sea area
<i>RBDI</i>	<i>Revue belge de droit international</i>
<i>RCADI</i>	<i>Recueil des cours de l'Académie de droit international</i>
ReCAAP	Regional Co-operation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
<i>RECIEL</i>	<i>Review of European Community and International Environmental Law</i>
<i>RGDIP</i>	<i>Revue générale de droit international public</i>
<i>RIAA</i>	<i>Reports of International Arbitral Awards</i>
SOLAS	International Convention for the Safety of Life at Sea

xxiii List of Abbreviations

SPLOS	Meeting of States Parties to the United Nations Convention on the Law of the Sea
SRFC	Sub-Regional Fisheries Commission
SUA Convention	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
TAC	total allowable catch
TSC	Geneva Convention on the Territorial Sea and the Contiguous Zone
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNDOALOS	United Nations Division for Ocean Affairs and the Law of the Sea
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
<i>UNTS</i>	United Nations Treaty Series
<i>Virginia Commentary</i>	<i>United Nations Convention on the Law of the Sea 1982: A Commentary</i> , 6 vols. (The Hague, Nijhoff, 1985–2002)
WMD	weapons of mass destruction
WTO	World Trade Organization
<i>YILC</i>	<i>Yearbook of International Law Commission</i>
<i>ZaöRV</i>	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>