

THE RIGHTS AND OBLIGATIONS OF STATES IN DISPUTED MARITIME AREAS

Many disputed maritime areas exist around the world. Often, the States concerned have not been able to reach agreement on how to, for example, regulate commercial activities within such areas. Conflict regularly arises between claimant coastal States if one of them acts unilaterally, such as in the South China Sea. This book examines the rights and obligations States have under international law concerning disputed maritime areas, in the first comprehensive treatment of this highly topical and pressing issue. It analyses conventional law, general international law, judicial decisions, State practice, and academic opinions that shine a light on the international legal framework that is applicable in disputed maritime areas. Proposing practical solutions on how to interpret the relevant international law, the book discusses the extent to which it currently provides clear guidance to States, and how international courts and tribunals have dealt with cases related to activities in disputed maritime areas.

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The Rights and Obligations of States in Disputed Maritime Areas

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Preface and Acknowledgements

A significant number of disputed maritime areas remain in all parts of the world, including in the Aegean Sea (i.e. between Greece and Turkey), in the Mediterranean Sea (e.g. between Cyprus and Turkey, and Israel and Lebanon), and in Southeast Asia and the broader East-Asian region (between different combinations of claimant States, including China, Japan, Malaysia, Vietnam, South Korea, and the Philippines). Disputed maritime areas inevitably emerged due to the expansion of the limits of coastal State jurisdiction, for example, due to coastal States having entitlements to an exclusive economic zone of 200 nautical miles (nm) or concerning a continental shelf to a minimum of 200 nm. During the time that a maritime boundary has not been delimited, there are competing sovereignties, sovereign rights, and/or jurisdictional competences of at least two neighbouring coastal States over the same maritime area. Unilateral acts that are within the authority of the coastal State, and when they are undertaken in disputed maritime areas with the authorisation of only one of the claimant States – such as conducting work related to hydrocarbons, taking unilateral protective measures as regards the marine environment, and law enforcement measures – frequently lead to conflict between the States concerned. Considering the large number of disputed maritime areas that remain unresolved, several of which are long-standing, of great complexity, and regularly ignite conflicts, makes examining the issue of the rights and obligations of States prior to delimitation both necessary and timely. The central aim of this book is to discuss, from the perspective of international law, the rights and obligations of States (i.e. claimants and third States) in disputed maritime areas. A particular emphasis is placed on those areas in relation to which neighbouring coastal States have not able to agree on cooperative arrangements or a *modus vivendi* has not been developed to regulate activities that are undertaken in a disputed maritime area.

The topic of what the rights and obligations are of States in disputed maritime areas has kept me occupied for almost a decade now, and this book essentially forms the culmination of my research and thinking on the subject, although questions for further research do remain. My research on the topic started as a PhD student at the Netherlands Institute for the Law of the Sea (NILOS) at Utrecht University, which led to the successful defence of my PhD thesis in January 2019. This book is a heavily adapted version of my PhD manuscript. While several publications, whether from my own hand or by others, have touched on an aspect of the rather vast and complex issue of the rights and obligations of States in disputed maritime areas, none of these provides the broad coverage that this book has set out to achieve. The research for the book was completed in December 2020. Therefore, subsequent developments and materials made publicly available after that date, including those relating to *Somalia v. Kenya*, were not considered.

Over the years, there have been many people who contributed to the completion of the book in some shape or form. On the non-academic side, the support of my family and relatives, that started well before I began writing this book, requires special mention, particularly that of my parents and brother. From the academic side, special thanks is reserved for Fred Soons and Alex Oude Elferink, who were my two PhD supervisors at NILOS and whose (academic) guidance, substantive input on the PhD thesis, and other publications that were produced in the meantime, as well as after the completion of the PhD journey, have greatly contributed to this book. My special thanks also go to Erik Jaap Molenaar whose comments on my completed PhD manuscript have certainly added to the quality of this book. Gratitude is also owed to David Anderson. Our collaboration on a book chapter has been enormously helpful in further shaping my own ideas in relation to the issue of the rights and obligations of States in disputed maritime areas and has also been vital in writing the book. I am also grateful to Michael Wood and Robert Beckman for their help and stimulating conversations we had on the subject matter. I would also like to thank Jill Barrett, Marco Benatar, Douglas Burnett, Robin Churchill, Catherine Redgwell, Cedric Ryngaert, Clive Schofield, Nico Schrijver, Yoshinobu Takei, and Seline Trevisanut for their input. I am grateful to my current employer, Swansea University, for giving me a sabbatical that enabled me to finish the book. Further, I must thank my colleagues at the Institute of International Shipping and Trade Law (IISTL) for their continuous support. Also, the support of Tom Randall at Cambridge University Press and his belief in the book project from an early stage have been essential in the publication of this book.

And, to save the most important and influential one for last, thank you Jessica (Schechinger) for your continuous support and substantive input in terms of commenting on my writings and for lending your editing skills. Without you, the completion of this book was unlikely to have ever happened.

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Treaties and Legislation

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- Statute of the International Court of Justice (26 June 1945), 33 UNTS 993 (ICJ Statute)
- Timor Sea Treaty (20 May 2002), 2258 UNTS 3
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- United Nations Convention on the Law of the Sea (10 December 1982), 1833 UNTS 3 (LOSC)
- Vienna Convention on the Law of Treaties (23 May 1969), 1155 UNTS 331

Abbreviations

AJIA	Australian Journal of International Affairs
AJIL	American Journal of International Law
ARSIWA	Articles on the Responsibility of States for Internationally Wrongful Acts
AsJIL	Asian Journal of International Law
AusYIL	Australian Yearbook of International Law
AYIL	Asian Yearbook of International Law
BIICL	British Institute of International and Comparative Law
BYIL	British Yearbook of International Law
CIJ	China: An International Journal
CILJ	Cambridge International Law Journal
CJCL	Chinese Journal of Comparative Law
CJFAS	Canadian Journal of Fisheries and Aquatic Sciences
CJIL	Chinese Journal of International Law
CJIRD	Caribbean Journal of International Relations & Diplomacy
COLR	China Oceans Law Review
CSA	Contemporary Southeast Asia
CSC	1958 Convention on the Continental Shelf
CTS	1958 Convention on the Territorial Sea and the Contiguous Zone
CUP	Cambridge University Press
DLJ	Dalhousie Law Journal
EEZ	exclusive economic zone
EJIL	European Journal of International Law
EU	European Union
FEER	Far Eastern Economic Review
FILJ	Fordham International Law Journal
GJIA	Georgetown Journal of International Affairs

List of Abbreviations

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HAQ	Harvard Asia Quarterly
HIGJ	The Hague Institute for Global Justice
HILJ	Harvard International Law Journal
HJIL	Houston Journal of International Law
HYIL	Hague Yearbook of International Law
IA	International Affairs
IBRU	International Boundaries Research Unit
ICJ	International Court of Justice
IJIL	Indian Journal of International Law
ICLQ	International & Comparative Law Quarterly
IELR	International Energy Law Review
IGCC	Institute on Global Conflict and Cooperation
ILA	International Law Association
IJECL	International Journal of Estuarine and Coastal Law
IJMCL	International Journal of Marine and Coastal Law
ILC	International Law Commission
ILS	Issues in Legal Scholarship
IPEL	Suriname International Petroleum Exploration Ltd
ISAS	Institute of Southeast Asian Studies
ITLOS	International Tribunal for the Law of the Sea
JCSAA	Journal of Current Southeast Asian Affairs
JCSL	Journal of Conflict and Security Law
JEAIL	Journal of East Asia and International Law
JENRL	Journal of Energy & Natural Resources Law
JIA	Journal of International Affairs
JISWA	Journal of Interamerican Studies and World Affairs
JIWLP	Journal of International Wildlife Law & Policy
JTMS	Journal of Territorial and Maritime Studies
JWELB	Journal of World Energy Law & Business
JYIL	Japanese Yearbook of International Law
KIOST	Korean Institute of Ocean Science and Technology
KJILCL	Korean Journal of International Law and Comparative Law
km	kilometres
LJIL	Leiden Journal of International Law
LOSC	1982 United Nations Convention on the Law of the Sea
LOSI	Law of the Sea Institute
MIMA	Malaysian Institute of Maritime Affairs
MJIL	Melbourne Journal of International Law
MJILT	Maryland Journal of International Law & Trade
MP	Marine Policy

MSILR	Michigan State International Law Review
MSR	marine scientific research
NBR	The National Bureau of Asian Research
NIDS	The National Institute for Defense Studies
NJIL	Nordic Journal of International Law
nm	nautical miles
NRCCDFO	National Research Council of Canada and Department of Fisheries and Oceans
NWCR	Naval War College Review
NYUJILP	New York University Journal of International Law and Policy
OCLJ	Ocean and Coastal Law Journal
ODIL	Ocean Development and International Law
OUP	Oxford University Press
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PSJLIA	Penn State Journal of Law & International Affairs
SCJIL	Santa Clara Journal of International Law
SJILS	Stanford Journal of International Law Studies
SSI	Strategic Studies Institute
TILJ	Texas International Law Journal
TJOGL	Texas Journal of Oil, Gas and Energy Law
UBCLR	University of British Columbia Law Review
UCLJLJ	UCL Journal of Law and Jurisprudence
UMIALR	University of Miami Inter-American Law Review
UN	United Nations
UNSC	United Nations Security Council
UNCLOS I	First Conference on the Law of the Sea (1958)
UNCLOS III	Third Conference on the Law of the Sea (1973–1982)
VCLT	Vienna Convention on the Law of Treaties
VJIL	Virginia Journal of International Law
VJTL	Vanderbilt Journal of Transnational Law
VLR	Vermont Law Review
YIMEL	Yearbook of Islamic and Middle Eastern Law
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht