

BOOK REVIEWS

Law of the Sea in East Asia: Issues and Prospects BY ZOU KEYUAN [Abingdon and New York: Routledge, 2005. xvi + 240 pp. Hardcover: £65]

Today, East Asia is a key area in the world, both politically and economically. Three global powers and several other major countries in terms of their populations, economies and roles in world affairs find themselves in the position of close proximity as territorial or maritime neighbours. They face each other across some relatively narrow waters or semi-enclosed seas of the western Pacific Ocean, including the Yellow Sea, the Sea of Japan, the East China Sea, the South China Sea, and the Gulf of Tonkin. Most of the States in the East Asia area, stretching from Russia in the north to Singapore in the south, have become States Parties to the United Nations Convention on the Law of the Sea (LOS Convention) and base their maritime law and practice upon its provisions. They have the usual interests of coastal States, such as inshore fisheries, off-shore oil and gas, security and environmental protection; however, for the greater part their jurisdictional limits have not been agreed. They also rely upon the seas and international shipping for their ever-growing trade in raw materials and manufactured goods. In the area, there are major flag States, major port States, major distant-water fishing States and States with other maritime interests, such as the provision of crews and bunkers to world shipping. Amongst the global powers, interest in China, in particular, continues to increase worldwide as its economy has grown significantly in recent years. Accordingly, a scholarly work devoted to East Asia and the Law of the Sea, and particularly to China, is both welcome and timely.

The author, Dr Zou Keyuan, needs little introduction to those who attend international conferences about the law of the sea. It suffices to recall that he studied the subject at Peking University under the supervision of Professor Zhou Lihai, who went on to become one of the “founding fathers” of the International

Tribunal for the Law of the Sea in Hamburg, where as the senior judge he made a valuable contribution to its initial work. Dr Zou has been based for several years at the East Asia Institute, National University of Singapore. He explains in his Preface that for him, Singapore is the best place to conduct legal studies relating to China and East Asia, thanks to Singapore’s special geographical position and cultural background which gives access to research materials in both Chinese and English. The content of the volume shows that good use has been made of these materials.

In his Introduction, the author correctly states that the current marine legal order has been established by and is maintained under the LOS Convention. It provides the benchmark for his assessments of law and practice in the region. He provides a table of maritime claims in the region, compiled from UN sources; a table of maritime laws enacted by China between 1958 and 2001, and a table of bilateral maritime agreements, mainly those establishing maritime boundaries or regulating fisheries, between East Asian States. The author summarises the outstanding boundary issues in the South China Sea, including disputes over sovereignty in the case of certain islands and similar features. He points out that, in addition, the internal divisions of China and Korea give rise to maritime tensions. The author calls for better co-operation amongst the countries in the region in maritime matters. His aim in the book is to inform the reader of the outstanding maritime issues in East Asia and to suggest possible solutions to them, in accordance with international law.

The substance of the book is contained in ten chapters, based on ten essays written by the author about aspects of the law of the sea in East Asia and previously published in different scholarly journals between 1999 and 2003. The ten chapters examine a wide range of topics, all of current interest, divided into five Parts.

Part I deals with compliance with the Law of the Sea and comprises two chapters. The first “Maintaining the marine legal order in

East Asia”, discusses two maritime incidents that resulted in loss of life: the interception of a US aircraft by the Chinese Air force off Hainan Island in 2001, and the sinking of an unidentified vessel by the Japanese patrol vessel in the East China Sea later in that year. The facts of each incident are set out and the legal issues, touching upon different aspects of the regime of the Exclusive Economic Zone (E.E.Z.), are examined by reference to the law of the UN Charter and decisions by international courts and tribunals, including the *Corfu Channel* and *Saiga (No 2)* cases. The author concludes that the law concerning the military uses of the E.E.Z. could be clarified by modifying the LOS Convention through a review conference (a suggestion which, if acted upon, would in this reviewer’s opinion have far-reaching implications for the whole instrument). The second chapter gives a learned analysis of the “Basic marine laws of mainland China and Taiwan”. The writer is able to present a good deal of information about the respective laws and regulations of the People’s Republic of China (PRC) and the Republic of China (ROC) relating to the territorial sea, the contiguous zone, the E.E.Z. (including fisheries) and the continental shelf (including marine scientific research). He draws attention to possible discrepancies between the PRC’s legislation and the terms of the LOS Convention before examining the relationship between the two sets of laws pending possible reunification. This is an interesting chapter that opens a window on China’s maritime legislation for non-Chinese speakers. The author does not shrink from criticising some Chinese claims and positions.

In Part II concerning territorial and maritime boundary disputes, there are three chapters about different disputes. The most interesting is the first concerning the Chinese traditional boundary line. This chapter sets out a “relatively thorough” assessment of the line from a legal perspective: accounts are given of its origins and history; China’s position regarding it; the reactions and legislative claims of neighbouring States facing the South China Sea; and finally its relevance to the LOS Convention. The author concludes that whilst the line may assist China in future boundary negotiations, concessions will be needed to reach agreed resolutions of the outstanding disputes. He points out that the LOS Convention calls for co-operation amongst States bordering a semi-enclosed sea. The second chapter examines the dispute between China and the Philippines over

Scarborough Reef, whilst the third reviews the maritime boundary delimitation in the Gulf of Tonkin between China and Vietnam.

Part III addresses in separate chapters the problems of fishery management in the East China Sea and the Gulf of Tonkin. All the coastal States concerned in these fisheries have large populations who depend upon seafood for their sustenance. The post-1945 history of fishery relations between China and Japan is reviewed, including the adjustments required by the implementation of full E.E.Zs by both China and Japan during the 1990s, as well as the changes in fishing patterns as the Chinese industry expanded. Although no boundary has been agreed, the whole area is within the jurisdiction of a coastal State. The respective fisheries legislation is analysed, together with the Agreement of 1997 on fisheries management in the East China Sea through the Joint Fishery Committee. The author notes that whilst the Agreement is a positive achievement, there are still gaps: no boundary has been agreed; there are third parties who fish, including Taiwanese fishermen, but who are not covered; and there is an urgent need for a regional agreement regulating migratory fish stocks. The picture in the Gulf of Tonkin has some more positive features: there exists a boundary agreement, as well as a Fishery Agreement between China and Vietnam.

Part IV concerns the safety of navigation and maritime security. In particular, chapter eight considers the status of the Taiwan Strait, whilst not overlooking other straits in the region. The significance of the fact that the waters of the Taiwan Strait have the status of E.E.Z. appears to be over-stressed, but the call for restraint is surely correct. Chapter nine addresses the age-old problem of piracy in the South China Sea, where disputed islets provide safe havens for marauders. Once again, the significance of the fact that the waters have the status of E.E.Z. should not be over-stressed in the context of piracy. The author notes that Chinese legislation on piracy is in need of improvement. The value of regional cooperation and the work of the International Maritime Bureau in Malaysia are both noted. The volume is rounded off in Part V by an essay examining China’s practice with regard to historical maritime claims. Once again, the Chinese legislation is found to be ambiguous, especially where reference to historic claims appears in the legislation about the E.E.Z.

The work includes translations by the author of the fishery agreements between China and

Japan and between China and Vietnam, as well as an index. A map or maps of the region would have assisted this reviewer at several points as geographical settings cannot always be described clearly by words alone. The position of States outside the region in regard to some of its troublesome issues is addressed primarily in the rather special context of the incident between China and the US. In general, the work is primarily about China and its East Asian neighbours, rather than a systematic study of East Asia as a whole.

Overall, the volume gives the reader the impression that a re-examination is underway of some old attitudes and some long-standing international issues against the new benchmarks of the LOS Convention. This is clearly a worthwhile exercise, to be undertaken by both commentators and governments in the region. The author's particular strength is his ability to interpret China's laws and practice, as well as those of Taiwan, to an English-speaking audience. He is able to explain Chinese history and thinking and, at the same time, to apply international concepts. He has looked at the standard international source materials and trusted authorities in order to open new windows on some old problems. By bringing the ten essays together in a single volume, he has been able to give an overall conspectus of the Law of the Sea as it affects China and its East Asian neighbours. He has certainly achieved his aims to inform the reader about the outstanding issues and to suggest solutions to them. The volume will be of interest to all those concerned with the law of the sea worldwide, as well as those concerned with international relations in the East Asian region and the peaceful handling and settlement of its many maritime disputes.

reviewed by H.E. JUDGE ANDERSON

Lawless World: America and the Making and Breaking of Global Rules by PHILIPPE SANDS
[London: Penguin, 2005. xxviii + 324 pp.
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The virtue of *Lawless World* lies in its modesty. A member of a line of literature detailing the foreign policy of the United States at the start of the 21st century, *Lawless World* exudes a simplicity and ease of reading that allows the conventional view of international law to permeate beyond the bookshelves of international lawyers and onto the nightstands of basically

anyone with a general interest in international relations and international law.

The lineage of scholarship with respect to contemporary US foreign policy is rather varied. Henry Kissinger's *Does the United States need a Foreign Policy? Towards a Diplomacy for the 21st Century* (New York: Simon and Schuster, 2001) introduced us to the internal struggle that the US faces as a global hegemon. In his book, Kissinger utilises the clash between foreign policy moralism/idealism and interest analysis/realism to describe the dilemma facing the US as the emergent post-Cold War hegemon. From his perspective, the US, at the start of the 21st century, stood at a foreign policy crossroads where the best path is a merger of these two schools of thought into a coherent holistic foreign policy. Understandably, Kissinger was able to reach these conclusions with use of a lifetime's worth of "behind the scenes" perspectives to dissect the "whos" and the "whys" behind past US foreign policy decisions.

Niall Ferguson shares a Kissinger-esque view of the role of US hegemony. In *Colossus: The Price of America's Empire* (New York: Penguin Press, 2004), he argues (some may say quite presumptuously) that the US is the most powerful empire (in both military and economic terms) that the world has ever seen. However, instead of analysing this issue by providing an internal or "behind the scenes" perspective, as Kissinger does, Ferguson applies an external perspective on US' "imperialism" and examines it as a phenomenon. That is, he addresses how the world views the US "empire". In his view, US "imperialism" is generally beneficial to the world at large as it brings with it the same technological and economic advancement as perhaps the Roman Empire did.

Both Kissinger and Ferguson have provided us with examples of scholarship on US foreign policy that are illuminating and yet easily understood. On the other side of the spectrum, Hardt and Negri in *Empire* (Cambridge, Massachusetts: Harvard University Press, 2000) have constructed a complex post-modern Marxist interpretation of global imperial power that is based on US hegemony but transcends the traditional boundaries of US sovereign power as international lawyers are familiar with. To Hardt and Negri, the empire is not the state. Empire is far less material and physical in nature. Accordingly, the US and the international political framework that the US has created is only the substratum on which a supranational empire is created.