Review Essay


Goodman’s eight-chapter monograph seeks to clarify the substantive extent and underlying nature of coastal State jurisdiction concerning fisheries resources in the exclusive economic zone (EEZ) via an inductive, State practice-based, research approach.¹ As the vast majority of commercially (and traditionally) exploitable fisheries resources are found in the world’s EEZs, establishing a bedrock of jurisdictional clarity, evolution, and opportunities concerning fisheries management and access control is of significant global economic, social, political, legal, and environmental interest. Likewise, this book nestles in nicely with other recent works addressing coastal State jurisdiction in non-fisheries contexts,² as well as works focused on coastal State jurisdiction in the EEZ from the perspective of multilateral instruments and developments.³

The powerful and inclusive analysis of contemporary coastal State fisheries law in this book is underlaid by a vast bounty of State practice (pp. xxxi–xliii). In Goodman's opinion – to which this reviewer sympathises – an authentic and authoritative interpretation of international law, including regulatory trends and alternatives, is rooted in an analysis of State practice as opposed to, for example, fact-specific jurisprudence alone. Academics conducting foundational research will thus find that the book provides an authoritative snapshot

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¹ On the significant societal value of such scholarship, see PJ Riding, ‘The influence of scholarship on the shaping and making of the law of the sea’ (2023) 38(1) International Journal of Marine and Coastal Law (IJMCL) 11.


³ EJ Molenaar, ‘Multilateral creeping coastal State jurisdiction and the BBNJ negotiations’ (2021) 36(1) IJMCL 5.
of the state of the art (as of 2020) and a most welcome new instalment in the tale of EEZ fisheries law since probably Burke’s 1994 tome. Readers conducting applied research will find it an invaluable reference source for case studies and analysis, for example, in conducting capacity development workshops that focus on local ownership and local choices moving forward. Finally, practitioners will benefit from the concise and referenced analysis of trends in contemporary practice. These trends can better inform domestic legislative choices, or the arguments, judgments, opinions, and declarations flowing from dispute settlement or advisory opinion proceedings. Given that known and unknown stresses on fisheries governance will only continue to deepen and diversify, the greater clarity and recognition of the evolution of EEZ fisheries law herein is deeply needed by all coastal States – not just those States with the capacity to otherwise monitor global developments and practices.

Chapter 1 focuses the lens of analysis upon a coastal State’s jurisdictional rights and obligations in respect of EEZ fisheries. It provides an outline of the general law of State jurisdiction, as contextualised by the law of the sea, followed by an explanation of the impacts State practice might have under treaty law and customary law. In sum, Goodman pushes back against certain overly broad readings of the Lotus principle (The Case of the ss Lotus (France v. Turkey)) and adopts the generally accepted ‘restrictive’ approach to State jurisdiction (albeit Goodman adopts a rather black and white position on territorial vs. extraterritorial jurisdiction (p. 8), which might not capture the inherently extraterritorial reach of the objective and subjective principles of territorial jurisdiction in ocean governance). Further commendable transparency on the author’s methodology is evident in her explicit detailing of the comparatively few States not examined in this book, as well as the possible inherent limitations in such research based on State practice (e.g., the necessary caution in drawing conclusions from State silence).

Chapter 2 takes the complex and fluid international fisheries law of the EEZ and presents it in an accessible and practical manner – a welcome addition to any teaching syllabus on the matter. Analysis includes the United Nations Convention on the Law of the Sea (LOSC) and subsequent soft law and hard law fisheries instruments, including the significant advances of the United Nations Fish Stocks Agreement (UNFSA).


5 Possible tweaks to coastal State fisheries jurisdiction produced by international trade law, or international labour standards and human rights law, is left to other literature. For example, see the further rights and responsibilities of coastal States possibly forthcoming: World Trade Organization (WTO) Secretariat, Implementing the WTO Agreement on Fisheries Subsidies:
‘ambiguous’ jurisdictional framework of Articles 56–59 of the LOSC, as supported by Articles 62 (prescriptive jurisdiction) and 73 and 111 (enforcement jurisdiction) of the LOSC, are identified as the heart of this book. Goodman identifies a ‘continuum’ of coastal State jurisdiction in Section 2.3, setting the stage to examine the extent of legally permissible coastal State jurisdiction. To stage right lays the minimum coastal State jurisdiction (‘must do’), to stage left the maximum coastal State jurisdiction (‘must not do’). Centre stage stands the discretionary coastal State jurisdiction (‘may do’). ‘The breadth and discretionary nature of the coastal State’s rights – and the difficulty in establishing the extent of its obligations – with respect to living resources in the EEZ’ (p. 31) suggests that coastal States negotiated a strong hand at the Third United Nations Conference on the Law of the Sea.

Chapter 3 seeks to clarify what ‘fishing activities’ and ‘fishing vessels’ come under the coastal State’s jurisdiction on the basis of its functional sovereignty over EEZ living resources (Article 56(1) of the LOSC). An examination of the LOSC and jurisprudence to date demonstrates the differences of opinion and uncertainties applicable here, particularly concerning fishing-related activities and vessels equipped to engage in fishing activities, respectively. Goodman thus turns to ‘robust international practice’ – including breakdowns by region and State – to provide a more comprehensive answer. On fishing-related activities, Chapter 3 persuasively demonstrates that ‘fish-handling’ activities (‘processing, packaging, storing, transhipping, and transporting fish up until the first time it is landed’) are near universally regulated by coastal States, while wider activities in support of fishing operations (‘such as bunkering, resupplying, and providing other logistical services to vessels at sea’) are at least widely regulated by coastal States (pp. 87–112). Such trends may extend to other existing or future activities, so long as the activities are ‘directly connected’ to fishing in the EEZ. If a direct connection is lacking, any support vessels in the EEZ will normally fall outside the fisheries jurisdiction of the coastal State.

Jurisdiction over licensed foreign fishing vessels and unlicensed foreign fishing vessels in the EEZ are addressed in Chapters 4 and 5 respectively. As before, the narrative of Chapter 4 fleshes out trends in State practice, this time on granting foreign fishing access. As always, a helpful tabulation of supportive legislative practice and waypoints for interested readers to dive further into the weeds is provided (pp. 120–129). The highlight of Chapter 4 is the exploration of a wide range of coastal State objectives in regulating fisheries access, including many concerns beyond fisheries management and exploitation, revenue

streams, or even ocean governance. Following Goodman’s advice to coastal States concerning individual or multilateral access arrangements, including possible terms and conditions of access, she concludes that “[d]espite having been expressed in the language of obligation and recognised in the literature as the “essence of the regime” for living resources in the EEZ, the principles established in the LOSC for regulating access to the living resources of the EEZ bear little similarity to the contemporary regulation of foreign fishing by coastal States’ (p. 171).

Meanwhile, as the LOSC ‘does not provide similar guidance regarding the coastal State’s jurisdiction over unlicensed fishing vessels in transit’ (p. 178), Chapter 5 posits that a ‘generally accepted’ array of extensive coastal State practice on the navigation of unlicensed foreign fishing vessels is lawfully based in the coastal State’s EEZ interests and Article 73(1) of the LOSC. Perhaps one of the most pressing areas of debate, it remains challenging to square Goodman’s well-researched arguments with this reader’s personal reservations that – especially with the scope of fishing-related activities seen in Chapter 3 – perhaps coastal State jurisdiction is becoming detached from limitation. The fact that the navigation of fishing and fishing-related vessels in the EEZ raises significant and legitimate coastal State interests is not unique to said vessels (pp. 176–181). Meanwhile, some examples, such as governing the carriage of ‘noxious substances’ (p. 197), appear particularly creeping in nature when we consider the wider LOSC framework limiting a coastal State’s jurisdiction to unilaterally regulate the construction, design, equipment and manning of foreign vessels exercising navigational entitlements. Ultimately, it might not be easy to distinguish a transiting fishing-related vessel (within coastal State jurisdiction, p. 212) from a transiting non-fishing vessel (outside coastal State jurisdiction, p. 354). Presumably, during mere transit or at the moment of request, no fishing-related activities by a support vessel have yet occurred so as to establish a ‘direct connection’ to fishing in the EEZ. However, an apparent lack of protest by foreign States (p. 206) suggests that perhaps these reservations are not shared by those actors that matter. Whether the lack of reaction to coastal States applying authorisation requirements to fishing vessels would extend to their application to all vessel that could conduct fishing-related activities (e.g., bunker or carrier vessels) remains to be seen.

Penultimately, in addressing coastal State enforcement jurisdiction, Chapter 6 addresses enforcement within the EEZ, while Chapter 7 concerns enforcement beyond the EEZ via hot pursuit. Chapter 6 assesses whether the balance struck 40 years ago between the interests of coastal States and flag States in fisheries enforcement has – or should be – rebalanced. Essentially, Goodman demonstrates that the necessity and reasonableness tests of coastal State enforcement measures, as well as the protections afforded to flag States, have
been interpreted differently within the practice of coastal States as compared to the International Tribunal for the Law of the Sea. Consistent with Article 73 of the LOSC, Goodman demonstrates that many coastal States, post-LOSC, have adopted a range of enforcement measures to improve the effective of their EEZ fisheries governance, including a monitoring, control and surveillance (MSC) approach; technological advances; broadening legislative drafting techniques; cooperative enforcement frameworks; and broadening administrative or other penalties. Understandably, Goodman concludes with some sharp critiques of the narrow approaches adopted in existing jurisprudence. Chapter 7 provides an excellent literature review on hot pursuit before diving into how coastal State practice has sought to utilise and evolve it within the context of fisheries enforcement. An analysis of State practice concerning the consensual continuance of hot pursuit into foreign territorial seas is particularly novel and informative (pp. 327–335).

Fulfilling the book’s objective, a concluding chapter reflects on the extent and underlying nature of coastal State jurisdiction concerning EEZ fisheries. First, ‘the nature of coastal State jurisdiction over the living resources of the EEZ is best described as a broad discretion constrained by functional limits, which are determined on the basis of reasonableness and by reference to the balance of interests reflected in the EEZ regime’ (p. 339; followed by a dissection of the elements in Goodman’s formulation, pp. 339–349). Second, on extent, the maximisation, expansion, thickening, collectivisation, and seaward projection of coastal State jurisdiction has been lawfully enabled by the considerable discretions, opportunities, silences, and ambiguities of the LOSC on coastal State jurisdiction, while practically enabled by developments in technologies, society, legislative drafting and practical imperatives (p. 349). In short, Goodman’s monograph provides invaluable clarity to coastal States, courts, tribunals and academics seeking to understand and implement the contemporary extent of coastal State fisheries jurisdiction, as based and expressed through global State practice.

So, standing on Goodman’s shoulders, where might discussions and literature go next? Apart from related questions outside the book’s scope, for example, the extent of a coastal State’s fisheries jurisdiction in areas of overlapping EEZ entitlement, one fruitful avenue for further nuances might be a corresponding collective review of State practice by the natural respondents – user States (p. 12). It is fair to say the structure, content and policy suggestions of Coastal State Jurisdiction over Living Resources in the Exclusive Economic Zone

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6 Issues of opacity and a general lack of State capacity or motive to respond to excessive coastal State practice will make this a tricky endeavour. This is particularly so for encroachments upon community interests.
suggests it was written from the perspective of, and principally for, coastal States. Much of the law is settled or applied (balance of interests, due regard, reasonableness, necessity) through discourse. So how have user States collectively responded to the march of coastal State fisheries jurisdiction in the EEZ? What has been demarcated as red lines by certain, or all, user States to preserve their national and community interests?

One might first consolidate the snippets of user State responses already witnessed in Goodman’s book. This could include both flag State submissions in the adjudicated cases discussed, such as those in Section 3.2 (p. 72), and formal State protests, such as those concerning prior notification requirements or imprisonment (pp. 204, 268). To the first, one might further add the scope of flag State objections within judicial proceedings that were settled or discontinued prior to any judicial pronouncement. This could include the Swordfish case (coastal State cooperation and the limits of measures preserving highly migratory resources in the EEZ from high seas conduct); the M/T ‘San Padre Pio’ (No. 2) case (the nature of coastal State jurisdiction concerning fisheries resources in the EEZ as fundamentally different from jurisdiction concerning non-living resources, including in respect of fishing/oil and gas ‘related’ activities); and the M/T ‘Heroic Idun’ case (whether prompt release can be subject to a non-restrictive interpretation). To the second, one might add further publicly accessible State protests to ‘excessive’ coastal State fisheries jurisdiction in the EEZ, or ‘excessive’ flag State access claims in a foreign State’s EEZ. Finally, State protests to other ‘excessive’ coastal State jurisdiction might signal previously unseen or exceptional coastal State jurisdiction with a nexus

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7 Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union), Notification of Special Agreement (18 December 2000), ITLOS Case No. 7, para 3(e)–(h). Discontinuance placed on record 17 December 2009.


to EEZ fisheries (e.g., whether aircraft above the EEZ which are aiding illegal fishing therein can be regulated).  

To conclude, while the battle to shape high seas fisheries governance is being fought in international agreements and competent organisations, the evolution of the EEZ regime remains the sandbox of coastal State practice. Inclusive and comparative works such as Goodman’s are significant in illuminating how far we have come and where we are heading.

Arron N. Honniball | ORCID: 0000-0002-5398-1549
Senior Research Fellow, Max Planck Foundation for International Peace and the Rule of Law, Heidelberg, Germany
honniball@mpffmr.de

12 See Roach (n 10), at pp. 413–415 for affirmative US position.