INTRODUCTION

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Some three decades have passed since the signing in 1982 of the United Nations Convention on the Law of the Sea (UNCLOS), and nearly twenty years more since the Convention went formally into force. It is of vast historic significance, second only to the UN Charter itself, in having a universal scope for the application of the principles and specific rules that it set forth—and in having won nearly universal formal ratification, albeit with exceptions, among the sovereign nations of the world.

Even for the few nations that have not ratified, the United States most notable among these outliers, UNCLOS has been honored as providing the essential legal principles as well as the framework for the further development of international ocean law. Not only has there resulted a further elaboration of rules for ocean uses within the UNCLOS framework, insofar as UNCLOS serves, as is often said, as a “constitution for ocean governance;” the Convention has also inspired development of soft law and, in the largest sense, the emerging definition of aspirational principles for advancing the rule of law, peaceful relations, and sustainable use of global marine resources.

The breadth and adequacy of the UNCLOS framework have required constant reappraisal, however, and have impelled some new directions of legal development for ocean law in our contemporary era’s acceleration of complex changes in the technology and scale of ocean uses; in the emergence of new international security threats; and in the resource crises that have threatened marine fisheries and posed devastating challenges to ecosystems of the oceans and coasts globally.

When the UNCLOS negotiations were going forward in the 1970s, few scientific experts, diplomats, or jurists could have foreseen the dramatic intensification of pressures on ocean environments and resources that we have witnessed in recent decades. Among them may be mentioned especially the extraordinary growth of the “flag of convenience” segment of international shipping; and the wide-ranging impact on the high seas of illegal, unregulated, and unreported (IUU) fishing at
a volume level that has threatened to undermine management regimes while depleting valuable fish populations and even species. Meanwhile dramatic scientific and technological breakthroughs have made seabed exploitation and genetic resources policies central features in the array of new challenges that we face. Overshadowing even these formidable questions is the recognition, grudgingly achieved and so long in coming, of global climate change; it has become a central element now in the global debate of ocean law as well as in generating new pressures on the policies of sovereign nations for economic and environmental regulation.

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All the foregoing themes are explored in one or more of the essays on institutions and regions in ocean governance presented in this volume. The approach we have taken in the commissioning and editing of these papers has been constructed on conceptual foundations that were already in place when UNCLOS was signed in 1982: for even at that time, both the possibilities of new international institutions and the viability of regional approaches as an alternative to (or as complementary to) the universalist approach were subjects of intense discussion. Obviously, however, the new forms in oceans realist institutions and institutions that prevail at present were not fully anticipated three decades ago. A volume of essays on institutions and regions published in 1982 would have been of far narrower scope and richness than these themes evoke for scholars and jurists today.

First we need to say a word about institutions relevant to the legal ordering of ocean activities, as they are represented in the chapters devoted to that main set of issues in Parts I and II of this book. Three institutions of special prominence in global legal ordering were created under terms of the UNCLOS agreement. Each of them—the International Tribunal for the Law of the Sea, the Commission on the Limits of the Continental Shelf, and the International Seabed Authority—is assessed in dedicated chapters. But also considered in Part II are some important institutions that stand outside the UNCLOS formal structure but were recognized as having a global role in 1982; and whose rules today increasingly reflect or specifically embody legal principles expressed in UNCLOS. Vitally important in the shipping sector, and increasingly involved in environmental as well as safety and security issues, is of course the International Maritime Organization (IMO). Moreover, “regimes,” whether still theoretical and in the throes of global debate, or indeed merely aspirational as with regard to the iron fertilization projects and policy debates, are also of relevance. In the realm of fisheries and ecosystem protection, the newly prominent activities in ocean governance of the many regional fisheries management organizations (RFMOs), considered in light of the 1995 Straddling Stocks Agreement that resulted from a UN initiative, also are significant features of ocean governance today.