The Law of the Sea Convention at 30: Successes, Challenges and New Agendas

David Freestone
Editor in Chief
The International Journal of Marine and Coastal Law

Abstract
The introduction to this volume of 20 essays by Law of the Sea scholars, published to mark the 30th Anniversary of the adoption of the 1982 UN Convention on the Law of the Sea, highlights some of the strengths of the legal regime established by the Convention, and reviews some of the more significant lacunae in the Convention regime. Recognising the significant changes that have taken place in scientific knowledge and political agendas in the thirty years since 1982, it reviews the challenges that these new agendas pose to the Convention regime.

Keywords
UN Law of the Sea Convention; lacunae; areas beyond national jurisdiction (ABNJ); UN; fisheries; jurisdiction; compliance; marine scientific research; underwater cultural heritage

Thirty years ago, on 10 December 1982, the UN Convention on the Law of the Sea was signed at Montego Bay, Jamaica.1 Readers will already know that this was the culmination of a huge and unique effort—the longest running negotiation in the history of the UN—which also developed new negotiation processes now commonly used elsewhere. The monumental Convention resulting from this process has 320 Articles and IX Annexes and has been described, albeit metaphorically, as the “Constitution for the Oceans.”2 This collection of essays is published to mark that anniversary.

Although it is thirty years since the Convention was signed, it has been in force for less than two decades. It was not until November 1994 that, with the conclusion of the 1994 Implementing Agreement,3 it finally attained the

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60 parties that brought it into force. To mark that event, in early 1995 IJMCL published a Special Issue—*The Law of the Sea Convention: Unfinished Agendas and Future Challenges.*⁴ That Special Issue contained nine essays by “a strong team of distinguished commentators.”⁵

Gerard Mangone and I, as editors, recalled that

...despite the fact that UNCLOS III took nine years to produce the text of the Convention... there are still important issues that require future work—either because they were simply unfinished—or because of new expectations and demands. The innovatory ‘consensus’ procedure and the ‘package deal’ approach... necessitated a large number of compromises and, as a direct result, a significant number of issues were not fully resolved.

We also pointed out that in the years that had passed since 1982 the world itself had changed a great deal, and that

not least among those changes is the emergence of a whole new generation of law of the sea specialists who were not involved in... UNCLOS III and do not have the personal involvement with the negotiations. Their exegesis of the text of the Convention is already very different from that of those who were UNCLOS insiders.

If those comments were true in 1995, they are even truer today in 2012—30 years on from the signing of the Convention. This volume is an attempt to celebrate the continuity of the Convention but also to take a harder look at the way in which the Convention regime has been able to deal with the challenges we pointed out in 1995, as well as with new ones. We take this harder look with the help of some of the scholars who contributed to the 1995 Volume but also with others, including those who truly are the next generation of scholars, whose approaches and concerns are also very different.

Alas, the coming of a new generation does mean the passing of an older one. Since 1995 we have lost Professor Louis Sohn (1914–2006) and Ambassador Shabtai Rosenne (1917–2010) from the *IJMCL* Editorial Board, as well as my co-editor Professor Gerard Mangone, who died in July 2011 aged 92.

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⁵ *Ibid.*, p. 157. Those commentators were Louis Sohn on the Dispute Settlement Regime, Dolliver Nelson on the Seabed Mining regime, Moritaka Hayashi on the role of the UN Secretary-General under the LOSC and the Part XI Agreement, Ted McDorman on Article 76, Patricia Birnie on Marine Scientific Research, Christopher Joyner on the Antarctic Treaty System and the LOSC, Erik Franckx on Coastal State Jurisdiction, Ellen Hey and André Nolkaemper on implementation of the safety and environmental aspects of shipping within the European Community and, with an early assessment of the UN Straddling Fish Stocks Negotiations, Jon Van Dyke.