

## Book Review

Johnson, Lindy S., *Coastal State Regulation of International Shipping* (Oceana Publications, Dobbs Ferry, 2004) viii + 214 pp., incl. index and Annexes; ISBN 0-379-21511-X; US\$95.

Through her position as an attorney within the General Council's Office of International Law for the National Oceanic and Atmospheric Administration (NOAA) of the United States, Lindy Johnson has gained many years of experience with the regulation of international shipping, most importantly by means of her participation on the delegation of the United States in meetings within the sphere of the International Maritime Organization (IMO). Her monograph *Coastal State Regulation of International Shipping* reflects and builds on that experience.

The book's central objective is to assess "the provisions of the [United Nations Convention on the Law of the Sea (further: LOS Convention)] with regard to the actions a coastal State can take to regulate international shipping, while remaining within the boundaries of [the LOS Convention] and customary international law" (p. 5). It starts with an Introduction, followed by eight chapters dealing with: Background (I), The Maritime Zones (II), Ports (III), Territorial Sea (IV), Contiguous Zone (V), Exclusive Economic Zone (EEZ) (VI), Issues and Recommendations (VII) and Conclusions (VIII). The Annexes contain pertinent LOS Convention articles (I), a chronological list of ratifications of and accessions to the LOS Convention (II) and the texts of declarations made upon signature, ratification, accession or succession of the LOS Convention or anytime thereafter (III).

Each of the zonal chapters (III-VI) concisely discusses prescriptive jurisdiction separately from enforcement jurisdiction, illustrated occasionally with state practice. In addition, they contain separate sections on 'pragmatic considerations', which are aimed at guiding coastal States in deciding whether to regulate international shipping in their maritime zones unilaterally or multilaterally, commonly through the IMO. This guidance is for each of the maritime zones illustrated by three case studies, namely (a) ship strikes of the North Atlantic right whale, (b) harmful aquatic organisms and pathogens transferred through discharges of ships' ballast water and (c) wastewater discharges from

THE INTERNATIONAL JOURNAL OF MARINE AND COASTAL LAW, Vol 22, No 1  
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cruise ships. With respect to the EEZ, two further case studies are examined, namely: designation of no-anchoring areas and the responses of coastal States in the aftermath of the *Prestige* incident off the coast of Spain and Portugal in 2002. Finally, one of the issues addressed in Chapter VII is the transport of hazardous materials by sea.

As the case studies on ship strikes of whales and ballast water indicate, the substantive scope of the book is not strictly limited to vessel-source marine pollution but concerns more broadly the impacts of international shipping on the marine environment or marine ecosystem (within the maritime zones of coastal States). Also, the book does not just deal with the regulation of foreign ships in transit through a coastal State's maritime zones but also with foreign ships that visit a State's ports. For some readers it would have been helpful if the book had attempted to distinguish between these two capacities in which a State may act, more consistently—as 'port State' or 'coastal State'. Moreover, as may be gleaned from p. 11, the focus is on three categories of regulations: (a) construction, design, equipment and manning (CDEM) standards (b) operational requirements—which include regulations on discharges, speed, pilotage and cargo transfers and (c) navigation practices. Regulation through liability and compensation or through vessel safety standards such as those laid down in the 1974 International Convention for the Safety of Life at Sea (SOLAS 74) or vessel security standards such as those laid down in the 2002 International Ship and Port Facility Security Code (ISPS Code)—which is brought under SOLAS 74—are therefore in principle beyond the book's scope.

The author shares the view held by many that the LOS Convention was intended to be a dynamic and living instrument instead of a static one (see *inter alia* pp. 1 and 152). As international shipping has undergone enormous changes in the almost quarter of a century that has passed since the adoption of the LOS Convention, for instance in terms of the size and speed of ships, she disapproves of rigid interpretations of its provisions (p. 29).

Many provisions in the LOS Convention are vague and general, in part due to numerous undefined terms and phrases, such as "generally accepted international rules and standards". These provisions thus leave States—in their capacity as port, coastal or flag State—a considerable margin of interpretation. Port and coastal States that push the limits of this margin in order to protect their resources or marine environment by unilateral action—individually or on a regional basis—pose a threat to uniformity in the regulation of international shipping. Interpretations of the LOS Convention that are too liberal may of course be rejected by a court or tribunal acting through the dispute settlement mechanism incorporated in Part XV of the LOS Convention, provided it concerns a party to the LOS Convention.

Several of the interpretation scenarios examined by Johnson are interesting and well chosen and may stimulate academic debate or even lead to state practice or reform of the relevant international legal framework. One of these is

under what circumstances coastal States are entitled to exercise their sovereign rights in their EEZs pursuant to Part V of the LOS Convention<sup>1</sup> instead of their limited prescriptive and enforcement jurisdiction over vessel-source pollution pursuant to Articles 211(5 and 6) and 220 (3, 5 and 6) of Part XII of the LOS Convention. The United States invoked these sovereign rights when it unilaterally designated a no anchoring area approximately 115 nautical miles off Texas/Louisiana to protect coral reefs in the Flower Garden Banks National Marine Sanctuary. Many years later, however, the United States sought and obtained approval by IMO's Maritime Safety Committee of three mandatory no anchoring areas in the Sanctuary. This approach could be interpreted as a late recognition by the United States that, under the circumstances, coastal State sovereign rights in the EEZ do not allow unilateral regulation. However, Johnson seems to argue that IMO approval was mainly or exclusively sought to improve global awareness of the no anchoring area, and thereby compliance (pp. 129–130). In light of the similarities with the protection of cold water coral reefs and other benthic communities on coastal States' outer continental shelves against high seas bottom trawling, this view would currently be supported by many.

The possible impact of the decision by the United States to seek IMO approval is an interesting issue by itself. Arguably, this eventually led to the modification of the relevant jurisdictional framework of the LOS Convention. IMO approval of a no anchoring area in an EEZ implies that the international community of States has effectively recognized the power of IMO as a competent international organization within the framework of the LOS Convention to designate no anchoring areas in the EEZ, regardless of the fact that the LOS Convention does not explicitly provide for such a power. These developments within IMO amply demonstrate the dynamic nature of the LOS Convention and its ability to adapt to the changing needs and interests of the international community. At the same time, they also impact on the powers of coastal States within their EEZs. Coastal States that want no anchoring areas in their EEZs are arguably no longer able to do this unilaterally by invoking their sovereign rights but are required to seek IMO approval.

It must be said, however, that other interpretations advocated by Johnson are less well-chosen and convincing and may stimulate unilateral action by port or coastal States that would very likely be ruled as inconsistent with the LOS Convention, should a court or tribunal vested with jurisdiction pursuant to Part XV of the LOS Convention have an opportunity to examine them. As it is not evident that these interpretations fit within the book's central objective (see above), they should perhaps have been accompanied by even stronger words of caution. Among these are the port State's jurisdiction to impose as a condition for entry into port not only compliance with unilateral CDEM standards

<sup>1</sup> A similar argument could have been made in relation to a coastal State's sovereign rights over the (outer) continental shelf pursuant to Art. 77 in Part VI of the LOS Convention.

but also with unilateral operational requirements and navigational practices that apply beyond its own territorial sea (p. 43). Even though the type of enforcement action that should be applied is not clearly spelt out, this would seem to ignore the innovatory but clearly defined enforcement powers granted to port States under Article 218 of the LOS Convention. Moreover, it seems highly unlikely that a (international) court or tribunal would accept legislative techniques whereby conditions for entry into port are drafted so that “the violation itself is not the actual activity occurring beyond the territorial sea, but the entry into port after a ship has engaged in such activity” (pp. 42–43; see also pp. 52 and 54).

These points of criticism are of course part of the academic debate and in no way detract from the value of the book to students, scholars and practitioners alike. They will undoubtedly appreciate this book not only for its well written and easily accessible style but also for its concise and extremely useful analysis of relevant provisions of the LOS Convention placed in the context of the problems with which coastal States are nowadays faced.

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