

The Changing International Law of High Seas Fisheries, by Francisco Orrego Vicuña (Cambridge Studies in International and Comparative Law, Cambridge University Press, Cambridge, 1999) xix + 338pp. + index; £45.00 (hb)

The Changing International Law of High Seas Fisheries builds on Professor Orrego Vicuña's profound knowledge of the law of the sea in general and international fisheries law in particular. The book follows an impressive list of publications on directly related issues and nicely complements his 1989 monograph, *The Exclusive Economic Zone: Regime and Legal Nature under International Law*. Consisting of 10 chapters, the book deals with the following issues: 1. Evolving principles and concepts of international law; 2. The influence of the Third United Nations Conference on the Law of the Sea; 3. International law options for conservation and management; 4. Trends in contemporary international law, national legislation and practice; 5. The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks; 6. Conservation and management issues; 7. Ecosystem management and the legal interactions between areas under national jurisdiction and the high seas; 8. International co-operation in conservation and management through organisations and arrangements; 9. Compliance and enforcement; 10. Dispute settlement. The author then submits a conclusion, which bears the title: "Preserving the freedom of high seas fishing and ensuring conservation".

Each chapter is divided into thematically well-chosen sections which identify the key issues at stake. This gives the book a "feel" of a string of essays which logically succeed each other and ensures pleasant reading; almost like a novel. As the summarised table of contents given above may already have revealed, the focus of this work is the international legal regime for conservation and management of straddling fish stocks and highly migratory fish stocks. The analysis of the 1982 United Nations Convention on the Law of the Sea is therefore only undertaken as far as necessary in light of the 1995 Fish Stocks

³ See <http://www.un.org/Depts/los>.

Agreement. The Agreement's negotiation history and developments in state practice after and prior thereto receive obviously ample attention. Finally, as most high seas fish stocks are either straddling or highly migratory, no specific attention is given to discrete high seas stocks.

One of the book's central propositions is that the exploitation of marine living resources has witnessed a continuously widening recognition of the need for conservation. The relatively recent development of a body of international environmental law, including such concepts as sustainable development, ecosystem management, the precautionary approach and biological diversity, served to strengthen and accelerate this recognition. This trend would imply a closing of the gap between the traditionally conflicting interests of coastal states and distant-water fishing states, eventually even leading to a fusion with the international community's interest in the sustainable management of marine living resources. The optimistic note on which Professor Orrego Vicuña's concludes would seem to reflect his belief that the 1995 Fish Stocks Agreement in general, but its core concept of compatibility, in particular, will make a valuable contribution to this end.

Perhaps even more significant is Professor Orrego Vicuña's perception of the role of coastal states as vehicles for change or custodians of the interests of the international community. This view correctly assumes that, as coastal states have sovereignty or sovereign rights over marine living resources in their maritime zones, they are bound to have a greater interest in the sustainable management of high seas fisheries due to the presumed transboundary effects on management under national jurisdiction. Although this does not question flag states' interests in sustainable management of high seas fisheries, it seems hard to deny these are commonly less pressing than those of the coastal state.

As an avid defendant of Chile's "presential sea", the author is likely to surprise only few with his advocacy of the coastal state view. But even though examples of this can be found throughout the book, the arguments are never stated in an unbalanced manner. Accordingly, he captures his views in the following two sentences:

"the issue lies not in the establishment of new maritime zones but in the exercise of badly needed regulatory authority to ensure conservation or the introduction of market mechanisms to that effect. The option of so doing under international law or under unilateral state action depends essentially on the effectiveness and timeliness of the solutions envisaged." (p. 118)

Orrego Vicuña's rejection of a further carving-up of the oceans thus underscores the need for further regulation of high seas fisheries, something which he identifies as the trend since the ineffective approach of abstention of the 1950s. Ultimately, this trend will ensure that the freedom of fishing on the high seas can only be exercised if it is in compliance with reasonable conservation and management measures. Also, while he speaks of unilateralism generally, it seems obvious that he actually perceives this as an avenue open to coastal states only

(p. 292). With some concern it is noted that unilateralism is almost exclusively seen in positive terms, namely, an inevitability for the greater good (p. 117), while the potential risks of unilateral action are not addressed.

A final aspect of Orrego Vicuña's overarching conclusion is that of the introduction of market mechanisms as alternative or additional regulatory measures. This suggestion pays tribute to the growing popularity of allocating the TAC (total allowable catch) through ITQs (individually transferable quotas). The extent of the impact of ITQ management on world fisheries, whether or not in conjunction with flexible conditions for registration of vessels, is still far from clear, certainly with respect to the role of multinational fishing companies. However, it could provide a solution for the dilemma of new entrants to high seas fisheries. Prospects for TAC allocations to these states are in Orrego Vicuña's opinion rather bleak (p. 211), particularly in light of the fact that he regards the 1995 Fish Stocks Agreement as an objective regime under international law (p. 209).

A conclusion which can obviously be drawn from this summary is that Professor Orrego Vicuña's latest book is not only a joy to read but also an impressive feat of scholarship. It manages to combine a well-balanced conceptual discussion with a comprehensive overview of the positions of states before and during the negotiation process of the 1995 Fish Stocks Agreement and recognition of the real complexities in current high seas fisheries. As such it is certainly the most up-to-date and thorough publication on the issue.

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