



# The International Law of the Sea

Second Edition

Yoshifumi Tanaka

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**Yoshifumi Tanaka**

*University of Copenhagen, Faculty of Law*



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UNIVERSITY PRESS

# CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

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[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107439672](http://www.cambridge.org/9781107439672)

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First edition published 2012

Second edition published 2015

Printed in the United Kingdom by T J International Ltd. Padstow Cornwall

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloging-in-Publication Data*

Tanaka, Yoshifumi, author.

The international law of the sea / Yoshifumi Tanaka, University of Copenhagen, Faculty of Law – Second edition.

pages cm

ISBN 978-1-107-08040-9 (Hardback) – ISBN 978-1-107-43967-2 (Paperback)

1. Law of the sea. I. Title.

KZA1145.T36 2015

341.4'5-dc23 2014043730

ISBN 978-1-107-08040-9 Hardback

ISBN 978-1-107-43967-2 Paperback

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# The International Law of the Sea

This new edition has been fully revised and updated to include contemporary issues of the international law of the sea in a systematic manner. It retains the clear chapter structure of the first edition, but has been expanded to include new material. A new concluding chapter has been added. Detailed footnotes and further reading sections, combined with illustrations and tables ensure understanding of the subject. By offering clarity of expression and academic rigour, *The International Law of the Sea* remains the best choice for students.

YOSHIFUMI TANAKA is Professor of International Law with specific focus on the law of the sea at the Faculty of Law, University of Copenhagen. He has taught International Law of the Sea at several different universities and has also published widely in this field.

*Dedicated to my teachers,  
Lucius Caflisch, Hugh Thirlway and Tetsuo Sato*

*Let the heavens rejoice, let the earth be glad;  
Let the sea resound, and all that is in it.  
Psalm 96:11*

## Preface to the second edition

The law of the sea is ever-expanding in nature and there have been several developments since the first edition of this book was published in 2012. In this second edition, all chapters were revised, updated and, where necessary, rewritten. The most obvious change is a new Chapter 14, Looking Ahead. In this chapter, I have attempted to provide a perspective on the future development of the law of the sea. It is hoped that readers of this book will also develop their own perspectives on the law.

The manuscript of this edition was completed in August 2014. All websites were current as of that date. Whilst major new decisions of international courts and tribunals delivered before that date have been incorporated in the book, the *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)* before ITLOS could not be examined in this edition because it was still pending when the manuscript was completed.

I am grateful to the University of Copenhagen, Faculty of Law, and its Library, for its support in the completion of the text of this book. I would also like to thank Sinéad Moloney for her encouragement and Marta Walkowiak and Helen Francis at Cambridge University Press for their assistance. I thank Laurence Marsh for his thorough copy-editing. I am grateful to my wife, Akiko, for all her support and prayer throughout my work. Like the first edition, this book is dedicated to my teachers, Hugh Thirlway, Lucius Caflisch and Tetsuo Sato.

YOSHIFUMI TANAKA

## Preface to the first edition

'The dark oceans were the womb of life: from the protecting oceans life emerged'.<sup>1</sup> As can be seen in the words of Arvid Pardo, the Ambassador for Malta, it would be no exaggeration to say that a sound marine environment provides the foundation for all life. Hence rules of international law governing the oceans are of particular importance in the international community. This book will seek to provide readers with a systematic overview of the international law of the sea as an inseparable part of public international law.

In the present author's view, rules of the international law of the sea must be examined from a dual viewpoint, namely the reconciliation of interests between States and the protection of community interests. This book is thus divided into two parts.

Part I, which consists of Chapters 1 to 6, involves international law governing jurisdictional zones at sea. In the international law of the sea, the oceans are divided into several jurisdictional zones, namely internal waters, territorial sea, archipelagic waters, the contiguous zone, the exclusive economic zone (EEZ), the continental shelf, the high seas and the Area. In principle, the law of the sea regulates human activities in the ocean according to these jurisdictional zones. Thus Part I will examine the rules of international law concerning each jurisdictional zone focusing on the reconciliation of various interests between States. At the same time, limits and delimitation of marine spaces will also be discussed in this part.

Part II, which contains Chapters 7 to 13, deals with international law intended to protect community interests concerning marine affairs. One can no longer deny that the survival of mankind as a whole may be difficult without the protection of community interests, i.e. common interests of the international community as a whole. The protection of community interests is increasingly important in international law in general and the law of the sea is no exception. Thus this part will address the following subjects which may involve the protection of such interests: conservation of marine living resources, protection of the marine environment, conservation of marine biological diversity, marine scientific

<sup>1</sup> United Nations General Assembly 22nd Session, First Committee, 1515th Meeting, A/C.1/PV.1515, 1 November 1967, p. 2, para. 7.

research, maintenance of peace and security at sea, the rights of land-locked States, and peaceful settlement of international disputes.

Because of the ever-expanding nature of the law of the sea, it is highly difficult to make a detailed examination with regard to each and every issue of the law in one book. Thus this book has only the modest aim of examining the principal issues of the law of the sea succinctly. It does not discuss maritime law or admiralty law, which is a distinct body of private law governing maritime questions and offences. Nor does it focus on the municipal law of a particular country or law and policy of particular regions. In essence, this book addresses the laws of peace, not the laws of war.

The manuscript of this book was completed in July 2011 at Copenhagen, Denmark. All websites were current as of that date.

## ACKNOWLEDGEMENTS

I would like to express my deep gratitude to three eminent professors of international law: Professor Hugh Thirlway and Professor Lucius Caflisch, both of the Graduate Institute of International Studies, Geneva, and Professor Tetsuo Sato of Hitotsubashi University, Tokyo. They were my supervisors when I was a graduate student in Geneva and Tokyo and I owe much to them. I am also indebted to Professor Kyoji Kawasaki of Hitotsubashi University for his encouragement.

I am grateful to the University of Copenhagen, Faculty of Law, for its support in the completion of this book. My thanks are also due to Sinéad Moloney at Cambridge University Press for her warm and professional assistance.

Finally, I wish to record my deep gratitude to my wife, Akiko, for all her support and prayer throughout my study.

YOSHIFUMI TANAKA



# Abbreviations

AFDI	<i>Annuaire français de droit international</i>
AJIL	<i>American Journal of International Law</i>
ASDI	<i>Annuaire suisse de droit international</i>
BYIL	<i>British Yearbook of International Law</i>
CCAMLR	Convention for the Conservation of Antarctic Marine Living Resources
CYIL	<i>Canadian Yearbook of International Law</i>
EEZ	exclusive economic zone
EFZ	exclusive fishery zone
EJIL	<i>European Journal of International Law</i>
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GYIL	<i>German Yearbook of International Law</i>
ICAO	International Civil Aviation Organization
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICJ	International Court of Justice
ICLQ	<i>International and Comparative Law Quarterly</i>
IHO	International Hydrographic Organization
IJMCL	<i>International Journal of Marine and Coastal Law</i>
ILC	International Law Commission
ILM	<i>International Legal Materials</i>
ILR	<i>International Law Reports</i>
IMO	International Maritime Organization
IOC	Intergovernmental Oceanographic Commission
IOTC	Indian Ocean Tuna Commission
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for the Conservation of Nature
IUU	illegal, unreported and unregulated fishing

IWC	International Whaling Commission
LOSC	United Nations Convention on Law of the Sea
MARPOL	International Convention for the Prevention of Pollution from Ships
<i>Max Planck Encyclopedia</i>	<i>Max Planck Encyclopedia of Public International Law</i> (Oxford University Press, 2008–2011, online edition: <a href="http://www.mpepil.com">www.mpepil.com</a> )
MPAs	marine protected areas
MSY	maximum sustainable yield
NAFO	Northwest Atlantic Fisheries Organization
NATO	North Atlantic Treaty Organization
NEAFC	North East Atlantic Fisheries Commission
<i>NILR</i>	<i>Netherlands International Law Review</i>
<i>NJIL</i>	<i>Nordic Journal of International Law</i>
<i>ODIL</i>	<i>Ocean Development and International Law</i>
OPRC	International Convention on Oil Pollution Preparedness, Response and Cooperation
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PSI	Proliferation Security Initiative
PSSA	particularly sensitive sea area
<i>RCADI</i>	<i>Recueil des cours de l'Académie de droit international</i>
<i>RECIEL</i>	<i>Review of European Community and International Environmental Law</i>
<i>RGDIP</i>	<i>Revue générale de droit international public</i>
<i>RIAA</i>	<i>Reports of International Arbitral Awards</i>
SOLAS	International Convention for the Safety of Life at Sea
SPLOS	Meeting of States Parties to the United Nations Convention on the Law of the Sea
SUA Convention	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
TAC	total allowable catch
TSC	Geneva Convention on the Territorial Sea and the Contiguous Zone
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNDOALOS	United Nations Division for Ocean Affairs and the Law of the Sea
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
<i>UNTS</i>	United Nations Treaty Series

<i>Virginia Commentaries</i>	<i>United Nations Convention on the Law of the Sea 1982: A Commentary</i> (The Hague, Nijhoff, 1985–2002), 6 vols
WMD	weapons of mass destruction
WTO	World Trade Organization
YILC	<i>Yearbook of International Law Commission</i>
ZaöRV	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>

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