# BOOK REVIEWS

## *A DUAL APPROACH TO OCEAN GOVERNANCE: THE CASES OF ZONAL AND INTEGRATED MANAGEMENT IN THE INTERNATIONAL LAW OF THE SEA* BY YOSHIFUMI TANAKA (SURREY, UK: ASHGATE PUBLISHING, 2008) 310 PAGES. PRICE £65.00 (HARDBACK) ISBN 978075467170.

The limitations inherent in the traditional zonal approach to ocean governance are well understood by managers, regulators, international lawyers, regional fisheries bodies, non-governmental organisations and fishers alike. As Yoshifumi Tanaka notes, 'the ocean is a dynamic natural system, it is logical that international law of the sea must take the dynamics of nature into account'.[1]

However, the division of the world's oceans, internal waters, territorial seas, contiguous zones, continental shelves and high seas does not sit comfortably with the fluid nature of the oceans, for it underpins a management regime based upon zones. Living marine resources do not respect these zonal boundaries, nor, for that matter, do contaminants such as crude oil. The marine environment is not conducive to marine species being corralled and managed like terrestrial species. Tensions inevitably arise over the management of and access to resources.

Tanaka acknowledges that the problems with a zonal management approach have been noted by authors in the past. He quotes several of them in his opening chapter[2] which sets the context for this book. The author's stated focus is to examine the interaction between zonal and integrated management approaches to ocean governance.[3] The author does not restrict himself to marine living resources (Chapters 2 and 3); he also examines the management of marine biological diversity (Chapters 4 and 5) and the role of marine scientific research in ocean governance (Chapter 6). These latter two issues have had less attention than international fisheries, yet the point is made at the outset of Chapter 3 that maintaining marine biological diversity 'is a prerequisite to maintain[ing] the biosphere in a condition supporting human and other life'.[4] The attention paid to marine biodiversity and the obligation to cooperate in marine scientific research makes this book much more than just another fisheries book. Although acknowledging the inadequacies of zonal management is not novel, the investigation into integrated management does contribute to existing literature.

I admit to having a great deal of empathy for the author's underlying approach to ocean governance, which is evident in Chapter 2. Consider the current state of marine resources: a 2005 review by the Food and Agriculture Organization of the United Nations ('FAO') found that only three per cent of global marine fish

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1 Yoshifumi Tanaka, *A Dual Approach to Ocean Governance: The Cases of Zonal and Integrated Management in International Law of the Sea* (2008) 7.

2 He quotes several of these, including José León Suárez, Georges Scelle, David Ruzié, Nguyen Quoc Dinh and Suzanne Bastid, as well as more recent works by Lawrence Juda and Tullio Scovazzi, in order to set the context for the book: ibid 6, 9–13.

3 Ibid 25.

4 Ibid 126.

stocks are under-exploited.[5] Of the 15 cases brought to the International Tribunal for the Law of the Sea, 10 involved applications for prompt release.[6] Three more involved fisheries disputes,[7] with only two cases not raising issues of fisheries management.[8] In the 10 years since the *Melbourne Journal of International Law* was first published, there have been many developments in international fisheries law,[9] yet the zonal framework remains entrenched in fisheries management approaches. Tanaka's aim is therefore to identify where elements of an integrated management approach are emerging and being applied.

The author's review of the 1893 *Bering Sea Fur Seals Case*[10] links the dispute to the way in which zonal management approaches underpin the concept and application of coastal state jurisdiction.[11] He makes the valid point that the case illustrates 'that the absolute application of the principle of the freedom of the high seas would run a risk of exhausting marine species'.[12] Yet this is what has occurred. The dramatic collapse of the pollock fishery in the Central Bering Sea, within a decade of the United States and the then Soviet Union having declared 200 mile exclusive economic zones, is a case in point. High seas fishing states continued to exercise their right to fish in the remaining 50 000 square miles of high seas and fished the pollock to the point of commercial extinction.

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5 Marine Resources Service, Fishery Resources Division, FAO Fisheries Department, *Review of the State of World Marine Fishery Resources* (FAO Fisheries Technical Paper No 457, 2005) 6.

6 *The M/V 'SAIGA' Case (Saint Vincent and the Grenadines v Guinea) (Judgment)* (4 December 1997) ITLOS Case No 1; *The M/V 'SAIGA' (No 2) Case (Saint Vincent and the Grenadines v Guinea) (Merits)* (1 July 1999) ITLOS Case No 2; *The 'Camouco' Case (Panama v France) (Judgment)* (7 February 2000) ITLOS Case No 5; *The 'Monte Confurco' Case (Seychelles v France) (Judgment)* (18 December 2000) ITLOS Case No 6; *The 'Grand Prince' Case (Belize v France) (Judgment)* (20 April 2001) ITLOS Case No 8; *The 'Chaisiri Reefer 2' Case (Panama v Yemen) (Orders)* (13 July 2001) ITLOS Case No 9; *The 'Volga' Case (Russian Federation v Australia) (Judgment)* (23 December 2002) ITLOS Case No 11; *The 'Juno Trader' Case (Saint Vincent and the Grenadines v Guinea-Bissau) (Judgment)* (18 December 2004) ITLOS Case No 13; *The 'Hoshinmaru' Case (Japan v Russian Federation) (Judgment)* (6 August 2007) ITLOS Case No 14; *The 'Tomimaru' Case (Japan v Russian Federation) (Judgment)* (6 August 2007) ITLOS Case No 15. All ITLOS cases are available from <http://www.itlos.org>.

7 *Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan) (Orders)* (27 August 1999) ITLOS Cases Nos 3 and 4; *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific (Chile/European Community) (Orders)* (30 November 2007) ITLOS Case No 7.

8 *The MOX Plant Case (Ireland v United Kingdom) (Orders)* (3 December 2001) ITLOS Case No 10; *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v Singapore) (Orders)* (8 October 2003) ITLOS Case No 12.

9 See, eg, *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, UN GAOR, 6th sess, UN Doc A/CONF.164/37 (8 September 1995); FAO, *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (2001); FAO, *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* (1995).

10 *The Bering Sea Fur-Seals Arbitration (Proceedings of the Tribunal of Arbitration Convened at Paris under the Treaty of Arbitration between the US and UK, concluded at Washington DC, February 29 1892)* (UK v US, 1893) (Government Printing Office, Washington DC, 1895).

11 Tanaka, above n 1, 36–45.

12 Ibid 43.

Chapter 3 seeks to identify some of the factors stimulating an integrated management approach. Tanaka concludes that

> the concept of sustainable development, ecosystem and precautionary approaches, international supervision through international institutions and non-flag enforcement are developing in treaties as well as in various non-binding documents relating to the conservation of marine living resources.[13]

The question then remains as to what extent these factors can constrain state practice in the future;[14] that is, shape management towards an integrated approach. Tanaka also acknowledges that it is not only limitations in international law that constrain fisheries management and contribute to resource decline. Over-capacity in global fishing fleets also contributes to falls in stock numbers,[15] as do a range of other economic and political factors.[16]

After dealing with marine living resources, the next two chapters address marine biological diversity. The critical importance of maintaining biological diversity in the marine ecosystem is an underlying message. The author notes that it has been suggested that a third of the earth's oxygen is produced by marine biodiversity.[17] Chapter 3 also outlines the existing international framework for the conservation of biological diversity including marine biodiversity under the 1982 *UN Convention on the Law of the Sea* ('*LOSC*')[18] and the 1992 *Convention on Biological Diversity*.[19] The conclusion is that the conservation of biological diversity is hampered by the traditional zonal approach to ocean governance and further, the exploitation-oriented nature of the approach.

Chapter 4 focuses on marine protected areas ('MPAs') as a vehicle for an integrated approach to the conservation of biological diversity. Although MPAs are not new to domestic law, they are a relatively recent phenomenon in international law. Tanaka refers to *Agenda 21* (adopted at the UN Conference on the Environment and Development)[20] and specifically to ch 17 where there is reference to the need to establish and manage MPAs as a measure to maintain biological diversity. This international sentiment was replicated in 2002 in the *Plan of Implementation* adopted at the World Summit on Sustainable Development.[21] In 2003, the UN General Assembly reiterated the need for MPAs for proper coastal and land use and watershed planning.[22]

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13 Ibid 120.

14 Ibid.

15 Ibid.

16 Tanaka does not list these, but they include: the low risk of apprehension and high profits; subsidies; capital investment; and increases in technology and the entry of corporate criminals into marine fisheries. See, eg, FAO, *Report of the Expert Consultation on Illegal, Unreported and Unregulated Fishing Organized by the Government of Australia in Cooperation with FAO*, FAO Doc FI:IUU/2000/2 (19 May 2000).

17 Tanaka, above n 1, 125–6.

18 Opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994).

19 Opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

20 *Report of the United Nations Conference on Environment and Development*, UN Doc A/CONF.151/26/Rev.1 (Vol II) (13 August 1992) ('*Agenda 21*').

21 Tanaka, above n 1, 162–3.

22 Ibid 163. See also ibid 205 for a list of other international documents addressing MPAs.

The link between MPAs and an integrated approach to ocean management in areas beyond national jurisdiction is considered in Chapter 5. The fact that different regions have different vulnerabilities adds to the degree of difficulty in securing a global consensus on how to preserve biological diversity. Threats to marine ecology and the marine environment vary from region to region. Tanaka refers to the differing threats to deepwater coral reefs and enclosed or semi-enclosed seas, the latter being most at risk from land-based marine pollution.[23]

The adoption of MPAs is one option for protecting biodiversity at a regional level. The work of the parties to the *OSPAR Convention*[24] and the development of a network of MPAs in the North-East Atlantic is noted as an example of what can be achieved.[25] However, achieving agreement on MPAs relating to the high seas is more problematic. Tanaka gives the example of MPAs in the Mediterranean Sea acknowledging, however, that this is not the high seas in a strict sense.[26] He then outlines some of the obstacles to establishing MPAs on the high seas. These include the principle of the freedom of the high seas and its corollary — that 'no one state can unilaterally establish a MPA on the high seas' — as well as the problems of legitimacy and the practical difficulties with implementation of an MPA on the high seas.[27]

Part III, Chapter 6 examines to what extent there is a legal basis for international cooperation in marine scientific capacity. Many international agreements address the need for cooperation at the global and regional levels.[28] Tanaka considers the importance of sound and independent scientific understandings in enhancing fisheries management and biological diversity.[29] His point is a valid one. Trust between scientists and lawyers; scientists and managers; and scientists and fishers is fundamental. Yet not all research is equal. Tanaka identifies two types of research: pure research for peaceful purposes or to contribute to scientific knowledge; and applied research where the aim is to aid future exploration and exploitation of natural resources.[30]

In summary, whilst the legal order established under the *LOSC* provides great stability, it is also restrictive in that it cannot address the problem of managing mobile marine stocks and conserving biodiversity, or necessarily ensuring scientific research is fully cooperative. This book provides a useful review of the limitations of the existing traditional approach to ocean governance and then explores the extent to which there are signs of an emergent integrated management approach. Tanaka also acknowledges the very real difficulties that are changing the mindset that has prevailed for centuries.[31] This book will be a valuable guide to students of the law of the sea and international law generally,

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23 Ibid 184–5.

24 *Convention for the Protection of the Marine Environment of the North-East Atlantic*, opened for signature 22 September 1992, 32 ILM 1069 (entered into force 25 March 1998) ('*OSPAR Convention*').

25 Tanaka, above n 1, 188.

26 Ibid 198–202.

27 Ibid 203–4.

28 Ibid 236.

29 Ibid 209–10.

30 Ibid 211.

31 Ibid 239–40.

as it provides a realistic view of the nature of international law and its limitations in this area. International law does work at the lowest agreed level and often does not achieve best practice. It does, however, enable the international community to function and provides those seeking a better outcome, be it for marine resources, biodiversity, climate change or human rights, a platform from which to negotiate.

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