

Foreword

We live in unprecedented times in human history. In this difficult and uncertain era, few will dispute that the marine environment, ocean processes and ecosystem services have never been more vital for the collective wellbeing and future progress of humans on planet Earth. In many ways, the existentialist and current predicaments faced by humanity in ocean affairs provide the general context for the daunting task taken on by the editors and contributors to this book, which is to explore the best solutions for sustainability and the protection of the marine environment. In light of their commendable endeavours in this regard, it is indeed a singular honour to pen the foreword to this very fine compendium of chapters published under the title, *The Environmental Rule of Law for Oceans: Designing Legal Solutions*.

Many of the chapters were first delivered at a memorable symposium convened by the research group on International Law and Governance in collaboration with the Norwegian Institute for Water Research and held in the Professorboligen in Oslo University in November 2019. This proved to be an enchanting venue for two days of thought-provoking deliberations on the academic papers that now form the core of these edited proceedings. In one volume, the collection draws together a range of incisive contributions made by leading law of the sea and environmental law scholars, diplomats and practitioners, who write with great authority and clarity about the protection, sustainable use and restoration of the marine environment, as well as its associated resources and ecosystems.

At the time of the symposium, no one foresaw that the world would change irrevocably shortly thereafter. Since then, many of the intergovernmental processes that are so crucial for the progressive development of the law of the sea have been delayed or postponed. Virtual and hybrid meetings have become the order of the day. Despite these constraints, the search for regulatory and policy responses to engender greater marine environmental stewardship has gathered pace and taken on a new sense of urgency. In light of these developments, the publication of this

volume could not be more timely, as it marks the fortieth anniversary of the adoption of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), as well as the seventieth anniversary of the 1972 United Nations Conference on the Human Environment, which led to the adoption of the Stockholm Declaration and Action Plan for the Human Environment. As is well known, these instruments were also adopted at a time of heightened international discord and concern about the degradation of the marine environment. Nonetheless, they managed to usher in a new era of intergovernmental cooperation and stability in the rule of law as it applies to ocean affairs and environmental matters more generally. The publication of this volume is therefore first and foremost a curt reminder of the resilience of the international community when faced with adversity in protecting and preserving the environment. At the same time, it signals the potency of the rule of law in setting priorities and delivering solutions that deftly balance competing interests in the use of ocean space and the conservation of natural resources.

The negotiators of UNCLOS intended the Convention to be comprehensive in substance and scope, as well as of universal application. Indeed, one has to go no further than the Preamble of UNCLOS to see that they were extravagantly optimistic as they sought to settle 'all issues relating to the law of the sea' by establishing a 'legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment'. In the four decades since the adoption of the Convention, many of the chapters reveal, however, that the law of the sea has not stood still. Today, the discrete field of law concerning the protection of the marine environment is made up of a complex and highly dynamic framework of specialist rules and standards. In addition, the jurisprudence of international courts and tribunals has added greatly to this framework in contentious and advisory proceedings concerning the interpretation and implementation of the Convention and related instruments. As the reader will see, this progression in normative development forms the backbone of much of the analysis undertaken in the volume. In shining the spotlight on contentious issues, the selection and treatment of topics is wide-ranging and cutting-edge, embracing as it does climate change and vessel source pollution, plastic pollution, space debris, living and non-living resources including biodiversity beyond national jurisdiction, environmental crimes, fisheries law, WTO Law, EU maritime governance, ecosystem-based management of the Arctic, the resumption of commercial whaling by Japan, as well as the perennial problems associated with the rule of law and the South China Sea. Significantly, the diffuse nature of individual chapter topics is structured creatively by the editors around five interwoven strands that bind the collection together, namely tackling multiple pressures on the oceans; balancing the exploitation and preservation of ocean resources; paths towards effective ocean governance, implementation and compliance; and strengthening the rule of law

in regional seas and oceans. The collection is book-ended by two discrete chapters authored by the joint editors that set the scene in the search for novel approaches to protecting the ocean, which conclude the compendium by charting out a compelling range of legal solutions for more sustainable uses of the oceans in an era of what often appears as unabated environmental change.

A fascinating question that pervades the entire narrative relates to the effectiveness and strength of the rule of law in meeting contemporary challenges as they pertain to the marine environment. In exploring various potential answers to this enquiry, many of the authors deconstruct the laws, science and policies in discrete fields, and by doing so make the topics at hand accessible and insightful to read. This approach will be welcomed by all readers, including specialist and non-specialist alike. As evident from the title of the volume, the narrative underpinning the collection does not only focus on the successes and failures of the environmental rule of law for the ocean but also tenders viable solutions to some of the most intractable challenges faced by humanity in the twenty-first century. The discussion reveals that many of the contemporary difficulties encountered in managing human impacts on the marine environment are not entirely new. The pressures are, however, intensifying due to a confluence of factors, including the climate emergency, extreme weather events and perhaps most acutely in relation to the tragic consequences of the recent Covid-19 pandemic. Furthermore, the impacts are most severe in countries in the Global South, where much remains to be done to address global inequalities, as well as to protect the human and natural environment.

In delving into the functions and the limits of the law, many of the contributions demonstrate that the normative might of instruments that protect the marine environment vary considerably and perhaps inevitably. Overall, what is also clearly evident is that the whole process of normative development is increasingly disparate. As such, it demands the creation of new mandates and new forms of engagement by intergovernmental bodies and other actors. Crucially, the authors point the way to strengthening the rule of law and the institutional setting for decision-making on the protection of the marine environment. In addition, on the basis of in-depth evaluation and analysis undertaken in the chapters, the editors provide a blueprint in the final chapter for the future development of the law and the road to ocean sustainability, which is to be applauded. Indeed, at the time of writing, several of the most pressing issues concerning the protection of the marine environment are subject to further regulatory developments with the elaboration of a new legally binding instrument on the conservation and sustainable use of biodiversity beyond national jurisdiction, as well as nascent steps to adopt a multilateral instrument aimed at controlling plastic pollution. Increasingly, we see the convergence of climate change and human rights considerations in law of the sea instruments, especially those concerned with forced migration and illegal, unreported and unregulated fishing. Moreover, the year of 2022 promises a new era of international engagement on ocean issues and will see the convening of an Ocean Summit in France, Our

Ocean Conference in Palau, the ninth World Ocean Summit and Expo in Portugal, the fourth session of the biodiversity beyond national jurisdiction intergovernmental conference at the United Nations, the fifteenth Conference of the Parties of the Convention on Biological Diversity, and the second UN Ocean Conference in Lisbon. One anticipates that the scientific basis for decision-making will become more assured in the years ahead, as we progress with the UN Decade of Ocean Science for Sustainable Development (2021–2030). We can also expect that the three institutions established by UNCLOS – the International Tribunal for the Law of the Sea, the International Seabed Authority, and the Commission on the Limits of the Continental Shelf – will continue to make steady progress in discharging their mandates and contribute to the progressive development and implementation of the law of the sea. All of the aforementioned show that marine environmental law commands broad international engagement and support. Furthermore, it will continue to flourish and remain a priority for legal scholarship.

In the regulatory and policy efforts ahead, we can be confident that the analysis undertaken in this volume will provide invaluable guidance to judges, diplomats, practitioners, academics and policymakers, who face the inevitable task of interpreting and applying the law, including mediating scientific evidence concerning the conservation and sustainable use of the marine environment, as well as its associated resources and ecological services. In doing so, this volume will make its own contribution to the maintenance of peace, stability and progress in human affairs. Permit me, therefore, to express my appreciation and congratulations to the editors and contributors for adding greatly to scholarship on the environmental rule of law for oceans, as well as to the international law of the sea more generally.

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