

**Rothwell, Donald R.: Islands and International Law.** London: Bloomsbury Publishing 2022. ISBN 978-1-5099-5542-8 (hardback). 298 pp. £85.- €103.60

Islands are central to public international law. They make up a significant portion of State territory and determine the extent of exclusive maritime entitlements. As such they often are the subject of international disputes. Part VIII of the Law of the Sea Convention (LOSC)<sup>1</sup> is dedicated to a ‘regime of islands’ but only contains one article which governs the capacity of islands to generate maritime entitlements. This book addresses the many questions left unanswered by LOSC Article 121 and does so in a comprehensive and clear manner. While several books touch on the topic, this is the first of its kind covering all key contemporary issues relating to islands in international law, including recent decisions by courts and tribunals contributing to the development of this field of law.<sup>2</sup>

*Islands and International Law* is divided into 11 chapters. Issues are separated in a sensible manner, making them accessible to researchers. Chapter 1 on ‘Islands: Geography and Law’ sets the scene by discussing the physical and juridical dimensions of islands. It dissects LOSC Article 121 to provide a definition of ‘islands’ and explains the differences between juridical islands and juridical rocks. Rothwell analyses relevant jurisprudence and highlights its recent impact in clarifying the content of LOSC Article 121 (p. 18).

‘Artificial Islands’ are the subject of chapter 2. It defines artificial islands and names several examples of land reclamation or construction activities leading to the creation of artificial islands. Table 2.1. lists all such features within the Spratly Islands in the South China Sea (pp. 30-32). This chapter touches on the inability of artificial islands to generate maritime entitlements and the legal environmental considerations related to their construction.

Chapter 3 on ‘Islands and Territoriality’ gives a good and comprehensive overview of the rules applicable to demonstrating sovereignty over islands. It discusses territoriality through the lens of the Montevideo Convention<sup>3</sup> and the need for recognition (pp. 40-42); it also considers historical and modern cases relating to sovereignty over islands (pp. 44-54).

The status of islands as sovereign States and their status within political units is further analysed in chapter 4 on ‘Islands, Status and Statehood’. This chapter gives an exhaustive overview of islands and their current status. It

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<sup>1</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994), 1833 UNTS 3.

<sup>2</sup> In particular, *South China Sea* (Philippines v. China), Award on Jurisdiction and Admissibility of 29 October 2015, XXXIII RIAA 1.

<sup>3</sup> Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934), 165 LNTS 19.

particularly relates to islands under colonial rule with the possibility of self-determination, e.g. the Falkland Islands and New Caledonia, and islands legally and politically associated with continental States, e.g. Aruba and the Cook Islands (p. 76). Rothwell discusses ‘independent States, constituent units of a State, islands in free association or that have been integrated, United Nations (UN) listed “non self-governing” territories, the ocean territories of France, the United Kingdom (UK) and United States (US), and some sui generis categories’ (p. 77). Taiwan is among those discussed under the sui generis category and described as being in a ‘twilight zone’ (p. 97). Finally, special island regimes, such as the Svalbard/Spitsbergen regime, are considered (p. 98), offering an appropriate segue into chapter 5 on ‘Archipelagic States’.

The drafting history for the archipelagic regime is thoroughly recounted (chapter 6). Rothwell depicts the developments from the first to the third UN Conference for the Law of the Sea and the different positions of Indonesia and the Philippines (pp. 104-112). Some very useful information is portrayed on charts concerning all archipelagic States (pp. 116-118) and Appendix 1 provides a useful list of all islands subject to UN Charter Chapters XI and XII (pp. 262-267). The criteria for archipelagic States are thoroughly analysed (pp. 121-126) and Rothwell offers an excellent overview of archipelagic state practice and regulation of navigation. The following chapter discusses the topic of ‘Dependent Archipelagos’. It considers the possibility of drawing straight baselines or de facto archipelagic baselines around such features (pp. 152-153) and gives several examples from state practice (pp. 154-160).

‘Islands and Maritime Entitlements’ are the subject of chapter 7. It demonstrates the role of islands in generating exclusive maritime entitlements to vast areas and their impact on the location of straight baselines (p. 163). The history of straight baselines is traced back to the famous 1951 *Fisheries Case*<sup>4</sup> (p. 164) and followed by an analysis of LOSC Article 7, which regulates the drawing of straight baselines (pp. 166-167). Rothwell submits that the requirements of Article 7 are not cumulative, meaning that States can draw straight baselines along coasts that are highly irregular; fringed with islands in a close proximity; or if there is a delta or other condition making the coast highly unstable (p. 166). Rothwell goes on to examine judicial treatment of the provision and the requirements of ‘fringes’ of islands, their location ‘along’ relevant coasts and proximity between the coast and said islands (p. 170). This comprehensive overview includes an assessment of claims to

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<sup>4</sup> ICJ, *Fisheries Case* (United Kingdom v. Norway), judgment of 18 December 1951, ICJ Reports 1951, 116.

historic waters extending from islands (pp. 170-174); straight baselines along bays (pp. 174-178); and the ability of islands to generate various entitlements in the territorial seas, contiguous zones, exclusive economic zones, and continental shelves (pp. 178-186).

Chapter 8 explores the impact of islands on maritime boundaries. It explains the distinction between entitlements derived from juridical rocks and islands (p. 189) and sets out the different delimitation methodology for the territorial sea, exclusive economic zone, and continental shelf (pp. 191-192). This chapter offers a particularly useful compilation of the relevant case law, mentioning everything from *Grisbådarna* of 1909<sup>5</sup> (p. 188) to *Bangladesh v. India*<sup>6</sup> (p. 204), with an in-depth analysis of selected cases and regions. This analysis demonstrates how the rules governing maritime boundary delimitation have evolved, but also how imprecise the relevant LOSC Articles are.<sup>7</sup> When delimiting the exclusive economic zone and continental shelf, States are essentially required to reach equitable solutions with due regard for all relevant circumstances, including islands. Rothwell concludes that '[i]slands can have a significant impact on maritime boundary delimitation' although the impact does not follow 'a clear set of "rules"' (p. 213). There are 'some core fundamental criteria to be taken into account', such as the classification of features as either juridical rocks or juridical islands; the island's political status; and proximity to a neighbouring State's coastline (p. 214). Still, the circumstances surrounding each case can lead to varying results so '[c]aution needs to be exercised in suggesting general rules' (p. 215).

Chapter 9 is concerned with 'Islands and Human Rights'. International human rights law generally applies equally on islands and mainland territory. However, '[t]he territorial application of human rights treaties to islands that are overseas or external territories of metropolitan States has raised a number of important foundational issues with respect to the reach of those treaties into the islands' (p. 222). Rothwell addresses some of these issues, particularly focusing on the right to self-determination (pp. 225-227) and a number of territories involved in the process of self-determination (pp. 228-234); and the status of 'Small Island Developing States' (p. 234-237).

'Islands and Sea-Level Rise' is the topic of chapter 10. Here, Rothwell begins with an overview of the climate science (pp. 240-242) and revisits some previously discussed topics in the context of sea level rise. He outlines the work of the International Law Commission on sea level rise and the work of

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<sup>5</sup> Johannes A. Loeff, Michiels van Verduynen and Röell, Decision of the Permanent Court of Arbitration in the Matter of the Maritime Boundary Dispute between Norway and Sweden *Grisbådarna Arbitration (Norway v. Sweden)*, AJIL 4 (1910), 226-236.

<sup>6</sup> *Bay of Bengal Maritime Boundary (Bangladesh v. India)*, ILR 167 (2014), 1.

<sup>7</sup> Particularly LOSC Articles 74 and 83.

the International Law Association's Committee on International Law and Sea Level Rise. This provides an overview of the various potential impacts of sea level rise on islands, i. e. the status of islands and artificial islands (pp. 242-243); territoriality (pp. 243-245); the ability to qualify as archipelagic States (pp. 245-246); maritime entitlements and maritime boundaries (pp. 246-249); and human rights of those living on submerging islands (pp. 249-250). The chapter demonstrates that the impacts of sea level rise are serious and far-reaching and largely remain unresolved.

Chapter 11 considers whether there is a 'Regime of islands?' It provides an analysis of the 'regime' concept, as defined by the International Law Commission, and applies that test to LOSC Article 121. Rothwell finds that even if this provision establishes a set of specific rules applicable to islands, the law relevant for islands extends much further. Thus, and given the criteria set out by the International Law Commission, 'it is difficult to argue that there is a distinctive self-contained regime in international law with respect to islands' (p. 260). Rothwell concludes that LOSC Article 121 does not establish a regime of islands in this stricter meaning of the term. However, a more comprehensive 'Future regime of Islands' seems to be developing (p. 261). At any rate, it seems clear that islands have never before 'demanded such attention from international law' and that international law is now developing around them (p. 261).

This book gives an excellent overview of the law on islands and international law. It depicts the many facets of islands as the subject matter of international law, as opposed to the broader approach to islands as objects or actors of the law (p. 3). It does so in an accessible and comprehensive manner with a strong focus on case-law, state practice, and historical developments. All relevant jurisprudence is thoroughly examined, but the law is in flux and further developments<sup>8</sup> might be covered in a second edition. The book is anchored in LOSC Article 121, but legal issues concerning islands extend far beyond the law of the sea, as aptly demonstrated by Rothwell. They range from core issues of general international law, i. e. territoriality, self-determination, and statehood, to human rights and various sub-categories of the law of the sea, e. g. the law on baselines, maritime boundary delimitation, and the regime of archipelagic States. The book does not shy away from any of the more complex or unsettled legal questions of the field, such as those concerning artificial islands, sea level rise, human rights of displaced persons, and changing state practice. Overall, this is an important and timely contribution to the legal discourse on islands in international law.

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<sup>8</sup> E. g. ICJ, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (Nicaragua v. Colombia), judgment of 21 April 2022, ICJ Reports 2022, 1.