

LEGAL REGIME OF ISLANDS (1982). By K. Jayaraman. Marwah Publications, H-39, Green, Park Extension, New Delhi-110 016. Pp. xi + 169. Price Rs. 45, \$ 9.

IN TRADITIONAL international law islands were the subject matter of discussion only in the context of sovereignty over them. Students of international law are thus immediately reminded of the *Clipperton Island* case¹—a dispute between France and Mexico over the uninhabited island in the Pacific Ocean, the *Island of Palmas* case²—a dispute between the Netherlands and the United States, both decided by the Permanent Court of Arbitration, and the *Minquiers and Ecrehos* case³—a dispute decided by the International Court of Justice. However, in the recent past the islands have been the focus of attention and have generated disputes because of vast quantities of fisheries and rich deposits of minerals.

It was the economic interest of the parties in the fisheries which brought the United Kingdom and Norway before the International Court of Justice in the *Fisheries* case⁴ and which resulted in the recognition of Norwegian system of drawing straight baselines. It is again the economic interest of the states, which has resulted in a separate legal regime for the islands in the convention on the law of the sea, concluded sometime back after years of sustained efforts. It is another matter that a body of opinion was not in favour of a separate item on the regime for the islands because it considered that “maritime zones of both continents and islands could be discussed together and in the same terms.”⁵ Apart from their economic potential many islands are also important both from the strategic and from the naval points of view. Yet another angle from which the islands come into the picture is delimitation of maritime zones such as the continental shelf.

Recently we witnessed a bitter confrontation between the United Kingdom and Argentina over the Falkland Islands. Several other disputes exist over islands such as the Kurile Islands in the sea of Okhotak between Japan and the USSR, the Paracel and the Spratly Islands between China and Vietnam, and the islands in the Beagle Channel between Argentina and Chile.⁶ Bangladesh has recently raised a dispute over New Moore

1. See *UN Reports of International Arbitral Awards*, vol. 2 at 1105.

2. *Id.* at 829.

3. I.C.J. Reports 1953, p. 7.

4. I.C.J. Reports 1951, p. 116.

5. C.R. Symmons, *The Maritime Zones of Islands in International Law* 8 (1979).

6. See also M.G. Srinath, “Disputed Islands,” *The Hindustan Times* (6 May 1982).

Islands. All these islands are either strategically or economically important to the disputing states. In the Third United Nations Conference on the Law of the Sea (UNCLOS III), under the archipelagic concept,⁷ the archipelagic states like Indonesia and the Philippines got the mandate to enclose waters within their outermost islands as their own by drawing straight baselines, but the states with offshore islands could not get this concession. The latter group of states such as India, Honduras, Portugal, Ecuador, Canada, Argentina and Spain felt that the arguments in favour of the establishment of a special regime for archipelagic states were equally valid for archipelagos forming part of the territory of a mainland state.⁸ Therefore, they considered any distinction on this score between the island states and offshore archipelagos of mainland states as arbitrary.⁹

A brief account of the problems concerning the islands clearly indicates that the author of the book¹⁰ under review selected an important subject for study. The book consists of seven chapters including chapters on introduction and conclusion. Chapter II discusses geomorphology and the resources of islands. Apart from fisheries the resources include diamonds, gold, magnetite, columbite, ilmenite, zircon, scheelite, monazite, silica, platinum, tin, phosphate, phosphorite nodules and so on. India's continental shelf around its islands, about 1200 in number, has oil, gas, salt, magnesium, bauxite, platinum, calcium, carbonate, uranium, tin, gold etc. Andaman, Nicobar and Lakshadweep islands are important Indian islands. It may be noted that section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, enacted by Indian Parliament, defines "limit" in relation to the various maritime zones to mean the limit of such waters, shelf or zone with reference to the mainland of India as well as the individual or composite group or groups of islands constituting part of the territory of India.¹¹

Chapter III deals with islands under traditional law. In this chapter the author deals with the question of title to the islands with reference to relevant case law. In this connection, he refers to concepts of effective

7. The President of the conference T.T.B. Koh included the concept of the archipelagic state as one of the innovations of UNCLOS III. See Elisabeth Mann Borgese, "Law of the Sea: The Next Phase," 4 *Third World Quarterly* 708 (1982).

8. *Supra* note 5 at 6.

9. *Ibid.* In this regard, see comments of the French delegate, *id.* f.n. 41 at 214; *Official Records of Third UN Conference on Law of the Sea*, vol. II at 263. See also Ann L. Hollick, *US Foreign Policy and the Law of the Sea* 296 (1982).

10. K. Jayaraman, *Legal Regime of Islands* (1982).

11. D.W. Bowett in his book *The Legal Regime of Islands in International Law* 93 (1979) refers to India's Andaman and Nicobar Islands among the islands which could be subject to archipelagic claims.

occupation and control as well as criterion of use and habitation for eligibility of an island to claim a territorial sea.

Chapters IV and V, dealing respectively with territorial sea and marine resource zones in relation to the islands, are quite important and enable the reader to appreciate the importance of islands and the issues involved. The author, while dealing with these matters, refers particularly to the efforts at codification made by the Hague Codification Conference 1930, International Law Commission, Geneva Convention 1958, and generally to conventions on territorial sea and contiguous zone and continental shelf as also the Draft Convention formulated by UNCLOS III. Article 121 of the Draft Convention deals with regime of islands. Both this article and article 10 of the Geneva Convention on the Territorial Sea 1958 define an island as "a naturally formed area of land, surrounded by water, which is above water at high tide." However, there is an innovation in the former in that it provides that "rocks which cannot sustain human habitation or economic life of their own have no exclusive economic zone (EEZ) or continental shelf." In a limited space of a few pages the author has made comparative study of the provisions contained in the 1958 convention and the recently concluded convention at UNCLOS III.¹² The author observes that the Draft Convention has not incorporated any clear specific rule on the delimitation of the territorial sea between opposite or adjacent states involving islands but is of the view that this has the merit of leaving requisite flexibility to parties to future disputes (article 15 of the Draft Convention) and to the court to apply the rule of "special circumstances" exception to the equidistance principle. The author believes that the equitable principles laid down in the judgment of the International Court of Justice in *North Sea Continental Shelf* cases¹³ have revitalized the "special circumstances" rule.¹⁴ He has discussed this judgment in some detail in chapter V, in particular its effects on the island situations. As to article 121 of the Draft Convention,¹⁵ he expresses the view that the question of definition of islands has been rightly separated from that of their eligibility to maritime zones, namely, exclusive economic zone and the continental shelf, on a functional basis.

Chapter VI of the book makes a survey of eight island disputes including Kachchativ island dispute and New Moore island dispute. The author concludes that India perfected effective occupation of New Moore island as soon as it emerged. He points out that, in any case, the island falls in the Indian territorial waters following the "median line" principle.

12. See *supra* note 10 at 51-55.

13. I.C.J. Reports 1969, p. 3.

14. *Supra* note 10 at 67.

15. The new convention on the law of the sea has since been signed at Montego Bay, Jamaica, on 10 December 1982.

The book includes a select bibliography and an appendix containing texts of four Geneva conventions on law of the sea held in 1958.

In this small book, the author succeeds in, and deserves commendation for, discussing wide range of issues pertaining to the legal regime of islands. It is written in a lucid style and exhibits a fairly thorough grasp of the subject. It may, however, be mentioned that the book does not deal with the regime of artificial islands or groups of islands known as archipelagos.

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