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The Law of Naval Warfare: A Collection of Agreements and Documents with Commentaries

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N. Ronzitti

Policy Institute, School of Advanced International Studies, The Johns Hopkins Univ. 264pp. $42.50

This issue of the School of Advanced International Studies Papers, in the Conflict Management Studies series, is more timely today than when it was published. This is due, in no small part, to the willingness of the Superpowers to de-escalate their so-called regional disputes. Thus, mediation is returning to the international political agenda as a viable dispute settlement alternative. Or, perhaps, it would be more accurate to suggest that dispute prolongation employing various levels of violence is giving way to dispute termination, although not necessarily reconciliation.

Not unexpectedly, these case studies in mediation deal almost entirely with Third World disputes. For example, Part I contains: "Algeria and the U.S. Hostages in Iran" by Gary Sick; "Iran and Iraq at Algiers, 1975" by Diane Lieb; "The Zimbabwe Settlement, 1976-1979" by Stephen Low; "The Namibia Negotiations" by Marianne A. Speigel; and "The Soviet Mediation of the 1966 Indo-Pakistani Conflict" by Thomas Perry Thornton. Part II contains multilateral examples of third-party mediation, involving the OAS, the OAU, and the International Red Cross; discussed by L. Ronald Scheman, John W. Ford, Michael Wolfers, and David P. Forsyth, respectively.

A comment made by Gary Sick could apply to most of these vignettes, "The negotiating process that led to this outcome was tortuous and unpredictable. . . ." We know that political will, of course, is the first prerequisite to success, and this motivation has as much to do with internal power struggles as with external relations. In addition, the leverage that the third party can bring may enhance or diminish prospects of success.

It should be made clear, however, that a mediator, whether an agreed upon individual, private group, or third state, can never be effective if the proper political circumstances are not present. The Angolan situation is a case in point. The best efforts of the United Nations in regard to South Africa were to no avail—resolution to the contrary notwithstanding—until the various parties in this domestic insurrection overlaid with superpower rivalry and proxy armies were willing to discover a common basis of settlement. Therefore, the mediator must be prepared to seize the opportunity when it arrives and be sufficiently perceptive to recognize the opportunity for what it might be.

In sum, this book is a valuable reader on such an important and timely subject. What has occurred in world politics since its publication only serves to reaffirm this.

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Ronzitti, N., ed. *The Law of Naval Warfare: A Collection of Agreements*

and Documents with Commentaries. Boston, Mass.: Martinus Nijhoff, 1988. 888pp. $215

We have long needed a comprehensive collection of the agreements relating to the law of naval warfare, and for commentary in-depth on the impact of the customary international law. Ronzitti's book fills this need in part.

The book provides many, but not all of the major treaties, and it has serious limitations with regard to customary international law. Although some of this law is covered by the commentators, they are brief and are not a sufficient basis to establish the full impact of the customary international law. Treaties and conventional law relating to the law of the sea are most often valued for their expression of customary international law, or for the occasions when they are assimilated into that law.

Many of the treaties have been assimilated into customary international law. Most relevantly, the United States has indicated that it would not ratify the Montego Convention, (or the United Nations Convention on the Law of the Sea) but advised it would apply the provisions that declared customary international law.

We have discovered in our dealings with the Soviet Union that the parties tend to treat their treaty instruments with ambivalence. They want a liberal interpretation when it fits their own needs and they do so by making claims on each other to do this. But when they need a strict interpretation, they insist on it.

The application of customary international law reflects the slow development of law. This befits a global community that is slow to impose effective, enforceable law upon belligerents. As McDougal and Feliciano have pointed out, the sanctions in the law of war arise from the reaction of belligerent states who realize that they cannot unleash unconfined destruction without being the targets of such destruction in turn. The use of force creates its own law. Reprisals permitted under law are actions taken that would otherwise be unlawful, but imposed on an enemy to enforce the law, and return him to lawful conduct. Micro-managing these enforcement activities under law is fruitless and feckless: perhaps one of the major failings of the Geneva Protocols of 1977 lie in this attempt at detailed rule.

Ronzitti reposes his confidence in an emerging global order, perceiving in it the security and defense for states and the global community alike. But state practice under the United Nations Charter so far has not developed the customary international law needed for achieving more than the minimal global order, nor much of what is expected under the Charter provisions. State practice has left these matters of security and defense to the individual states, and they face each other as competitors over power and interests.

State practice is strengthened through the adoption and continuous

development of military manuals such as the NWP-9 of the United States Department of Navy. The manuals fill out the details of customary international law. Given the attention of the experienced naval officer, and the interaction of the naval lawyer and the men of the naval forces, it is they that provide us with the law of state practice. We can anticipate that states will harmonize differences in their attitudes toward the law when expressed in their manuals, but we can also anticipate that as such manuals are adopted they offer us major evidence of state intentions to be law-abiding.

Much of the emerging law among states comes from their practice and their changing relations, and much is the outcome of the shaping of tolerances with political and technological change, change in naval craft, naval missions, and naval weaponry. For this reason the adoption of the great codes such as the Declaration of London have significance only because they could stand upon custom, not because they made major advances into a law that states have been unable to develop through practice. This suggests that states will fulfill their own objectives in achieving more effective law by finding the means to make their process of claim about their law more effective.

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Johnson, Loch K. *America's Secret Power: The CIA in a Democratic Society*. New York: Oxford Univ. Press, 1989. 344pp. $24.95

This book provides a scholarly examination of the role of the Central Intelligence Agency in modern America. Loch K. Johnson served as both a congressional investigator and as a staff aide for five years on four separate House and Senate committees which had official jurisdiction over intelligence and foreign affairs. He participated in the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee") when, in 1975, it probed alleged abuses by the U.S. intelligence agencies.

Johnson's stated purpose is to ". . . carry on the search for a greater comprehension of how the CIA, with its preference for the shadows, might best exist in America's open society—especially how the United States might better manage the difficult task of balancing the genuine needs of national security, on the one hand, and the protection of individual liberties, on the other." Johnson used three methodologies to gather information for this book: (1) document search, (2) interviews and (3) participant observation. This last technique, as he notes, ". . . holds a special danger for someone who aspires to detached, scholarly analysis, (for) one can become too close to the subject and lose . . . objectivity." In spite of his sensitivity to this risk, the author