

Preface

“*Mare igitur proprium omnino alicujus fieri non potest, quia natura commune hoc esse non permittit, sed jubet*”¹ wrote Grotius in 1609. The law of the sea never was to be the same again. Many scholars have since dedicated all or part of their work to the law of the sea. Rüdiger Wolfrum is one of them, although he also worked intensively on international law in general, human rights, environmental law and the United Nations. As a scholar he dedicated part of his admirable energy to the law of the sea ever since he worked on his *Habilitationsschrift* on “The Internationalization of Common Spaces Outside National Jurisdiction”, published in 1984. His work as a practitioner equals his scholarly endeavors: from his participation in the Third U.N. Law of the Sea Conference as (alternate) representative of the German delegation and adviser to the Ministry of Economics to his now 14-year long tenure at the International Tribunal for the Law of the Sea, serving as its President from 2005 to 2008, he has seen the law of the sea develop and left his own mark on that development. This volume contains the proceeding of the seminar “Law of the Sea in Dialogue” held on December 4-5, 2009 at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg to honor Wolfrum’s work.

While fragmentation continues to loom large in international law debates, international regimes clearly touch on each other and increasingly overlap. The goal of the seminar was to reflect this growing interplay between international regimes and bring together scholars from different fields of international law. In an effort to stimulate a common dialogue on current global challenges which go beyond specific regimes, the focus of the conference was on those challenges resulting from global warming, the exploitation of the global commons and the new security threats that stem from the return with a vengeance of a threat almost as old as seafaring itself: piracy.

¹ “It is, then, quite impossible for the sea to be made the private property of any individual; for nature does not merely permit, but rather commands, that the sea shall be held in common.” H. Grotius, *Mare Liberum* (R. Feenstra ed., 2009), 64-65.

Tackling the issue of global warming *Christian Tomuschat* explores if and how rules on State responsibility could be made to bear on global warming. Concluding that these rules cannot adequately deal with the problems caused by global warming *Tomuschat* also examines the possibility of a different approach. *Michael Bothe* looks in-depth at the factual and legal interplay between global warming and the oceans. *Bothe* analyses the legal framework on all human activities relating to climate change and the oceans, ranging from vessel emissions to carbon storage in the seas. Turning back to the law of climate change proper, *Jutta Brunnée* discusses the “Copenhagen Accord” reached in December 2009 and the post-2012 climate regime. Her article identifies the principle of “common but differentiated responsibilities” as a key principle of the climate regime and fleshes out the meaning of that principle for Copenhagen and beyond. *Fred Morrison’s* contribution concludes the global warming section by facing head on one of the major concerns in the climate change regime: the reluctance of the United States to ratify treaties. He explains that reluctance with the difficulty in obtaining the Senate’s assent to ratification and discusses available alternatives to the ratification of a formal treaty.

Gerhard Hafner opens the discussion on the global commons. He provides an overview over different regimes usually associated with the commons and examines to what extent existing commons regimes under international law meet a set of design rules for successful common resource management institutions established by *Ostrom et al.*, identifying challenges for the future. *Tullio Treves* picks up the ball, analyzing ways to engage international courts and tribunals in the protection of the common heritage of mankind, in particular in the law of the sea. He identifies categories of disputes that may involve the notion of the common heritage of mankind, discusses jurisdiction and standing under UNCLOS and pinpoints shortcomings in the judicial protection of the common heritage under the current regime.

Mahnoush Arsanjani and *Michael Reisman* shift the focus to security issues in their article on East African piracy and the defense of world public order. They describe the current legal and factual situation with respect to piracy and evaluate techniques for the protection of public order, conceiving of the piracy problem as one of the restoration and maintenance of public order, rather than just a legal issue. *Thomas Mensab* presents the legal issues surrounding piracy, starting from the traditional legal position and going over legal and factual problems raised by new forms of piracy. Finally, he considers and evaluates proposals to tackle piracy. The volume is concluded by *Jochen Frowein’s* contribu-

tion discussing action against arms shipment on the seas in violation of Security Council resolutions or otherwise threatening international peace and security. Using as an example two recent cases, in which German ships transporting arms were intercepted, the article analyzes possible legal grounds for such interceptions ranging from Security Council authorization to the Proliferation Security Initiative, specific treaties authorizing boarding and the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

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