

2008

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Recommended Citation

Betsy Baker, *A Review Of A Dual Approach To Ocean Governance: The Cases Of Zonal And Integrated Management In International Law Of The Sea*, 14 *Ocean & Coastal L.J.* (2008).

Available at: <http://digitalcommons.maine.maine.edu/oclj/vol14/iss1/8>

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A REVIEW OF A DUAL APPROACH TO OCEAN
GOVERNANCE: THE CASES OF ZONAL AND
INTEGRATED MANAGEMENT IN
INTERNATIONAL LAW OF THE SEA

*Betsy Baker**

A DUAL APPROACH TO OCEAN GOVERNANCE: THE CASES OF ZONAL AND INTEGRATED MANAGEMENT IN INTERNATIONAL LAW OF THE SEA. By Yoshifumi Tanaka. United Kingdom: Ashgate Publishing, 2008. Pp.vii, 278.

The simple clarity of the opening paragraphs in *A Dual Approach to Ocean Governance* promises a deftly navigated exploration of how states have governed ocean space over time. Yoshifumi Tanaka frames the basic issue for all ocean governance as implicating the familiar tension between “the principle of sovereignty and the principle of freedom” of the seas. He does so, however, in a way that sheds fresh light on this old balancing act. His elegant initial summation of the development of ocean law over four centuries impresses upon the reader both the historical continuity and the contemporary resonance of efforts to resolve this tension. His “dual approach” can itself be seen as a balancing between coastal states’ zonal interests and the mechanisms the international community has devised for collective management of ocean resources.

Tanaka clearly maps out the historical channels of this dichotomy, starting with his lengthy but engrossing chapter one: “A New Perspective on Ocean Governance.” In the proceeding three parts he takes the reader quickly, but soundly, from the emergence of the nation state in the seventeenth century through to the twenty-first century involvement of multiple state and non-state players in national and multilateral ocean governance, including NGOs, municipal and regional authorities, and industry. Throughout the book—which pursues a dual approach to management of marine living resources in Part I and management of marine

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biological diversity in Part II—he keeps a steady eye on science. He sees its fundamental contribution to ocean management as providing data, assessment and, more recently, baselines for policy makers to draw on. He thus lays the foundation for Part III, perhaps the book’s most important contribution, which highlights the potential role of marine scientific research in ocean governance.

Even readers unfamiliar with Tanaka’s earlier work will sense from the first chapter that they can expect a systematic and thorough review of zonal and integrated management; the two models of ocean governance he highlights throughout the book and eventually combines. In Tanaka’s view, these two approaches differ in four respects, which I have attempted to capture in tabular form below.

	ZONAL MANAGEMENT APPROACH	INTEGRATED MANAGEMENT APPROACH
Interests	State, Westphalian sovereignty	Common, International community
Tasks	Distributing individual state jurisdiction over ocean zones	Promoting international cooperation and common usage among states
Distribution	Spatial, territorial	Ecosystem-based: Unity of marine ecosystems
Norm Implementation	Non-institutional (State) self-regulation on basis of reciprocity	Institutional regulation on basis of common interest

Under zonal management, an “exploitation-oriented”¹ system, each coastal state’s jurisdiction is “essentially expansive in nature.”² If international law does not protect collective interests or keep up with technology, the coastal state expands the “spatial ambit” of its jurisdiction to exploit its resources.³ In other words, if the coastal state feels its interests are not adequately protected by the international system, its inclination is to expand its territorial jurisdiction to handle the problem for itself.

Under integrated management, coastal and other states combine efforts and resources for promoting a common interest in managing ocean space. Tanaka offers a concise but convincing account of where and how the phrase “international community” has appeared in international

1. YOSHIFUMI TANAKA, A DUAL APPROACH TO OCEAN GOVERNANCE: THE CASES OF ZONAL AND INTEGRATED MANAGEMENT IN INTERNATIONAL LAW OF THE SEA 41 (2008).

2. *Id.* at 64.

3. *Id.* at 4.

instruments, beginning with the 1970 Barcelona Traction case⁴ and continuing on through such documents as the 1989 UN General Assembly Resolution addressing large-scale pelagic driftnet fishing.⁵ The key to understanding the concept of “international community,” he says, is the fact that it extends beyond states as the only actors.

In introducing integrated ocean management, Tanaka draws on Georges Scelle’s concept of the *domaine public international* and unity of the oceans, returning to this idea again in the call for holistic management with which he ends the book.⁶ According to Scelle, who discusses territorial waters as a legal fiction, it made little sense for the law to distinguish between territorial waters and the high sea when there was no natural dividing line between the two. He saw them as complementary to ocean use; seafaring and trading states need access through territorial waters, and coastal states need the trade that such a “unity of the oceans” provides.⁷ Tanaka traces this holistic approach to ocean use from Scelle and other sources, including the notion of the seas as the common heritage of mankind, and shows how these strands combine to become what he terms the “integrated management approach.” Again, he provides a useful survey of instances where such terms appear in relevant international documents regarding the oceans. He notes that the term “integrated ocean management” appears explicitly in the U.N. General Assembly Resolution of November 28, 2001, passed in preparation for the World Summit on Sustainable Development.⁸ These various references notwithstanding, Tanaka observes correctly that the term “integrated ocean management” or “IOM” remains “obscure,” and that international instruments use the term “loosely.”⁹

From the integrated ocean management literature, Tanaka concludes that “a certain degree of integration should be required in at least three levels. ecological, normative and implementation levels.”¹⁰ These levels are interlinked, in large part, by science. He points to the OSPAR Biodiversity Committee as one example of an institution attempting “comprehensive integrated management of human activities based on the best

4. Barcelona Traction (Belg. v. Spain), 1970 I.C.J. 3, 32 (Feb. 5).

5. G.A. Res. 44/225 U.N. Doc. A/RES/44/225 (Dec. 22, 1989) (addressing large-scale pelagic driftnet fishing and its impact on the living marine resources on the world’s oceans and seas); TANAKA, *supra* note 1, at 22-23.

6. TANAKA, *supra* note 1, at 241.

7. *Id.* at 10.

8. *Id.* at 16.

9. *Id.* at 17.

10. *Id.* at 18 (quoting Meeting of Biodiversity Committee, Dublin, Ir., Jan. 20-24, 2003, Summary Record 1, BDC 03/10/1-31/Annex 13).

available scientific information about the ecosystem and its dynamics.”¹¹ Tanaka notes that integrated ocean management is not the same as integrated coastal zone management. The former deals with the domestic law interface between land and territorial waters, whereas integrated ocean management deals with the entire ocean space in international law.¹²

The zones in Tanaka’s vision of “zonal management” are those established by the United Nations Convention on the Law of the Sea. He reminds us that the Convention’s zonal distinctions are two-fold: (1) vertically between water column and seabed; and (2) horizontally between territorial, contiguous, exclusive economic and continental shelf zones. He argues convincingly that, by enshrining these distinctions of ocean space in a treaty, the Convention transformed ocean management from the dualism of territorial waters/high seas to multilateralism. Prior to the Law of the Sea Convention, “States could agree the maximum breadth of the territorial sea only by changing the traditional dualism in the oceans.”¹³ Divisions in the 1958 Convention on the High Seas may have technically been three-fold (internal waters—territorial waters—high seas) but the first two categories remained under coastal state jurisdiction and thus, Tanaka contends, maintained the old dualism.

Tanaka credits the Convention’s creation of the Exclusive Economic Zone (EEZ) as a “resource-oriented zone,”¹⁴ which with a major role in unleashed multilateralism and fundamentally changed ocean management. Once coastal states were required to take account of other states’ interests in this new zone, multilateralism became the operative rule for managing substantial portions of ocean space. This transformative innovation of the EEZ notwithstanding, the Convention remains zonal, sectoral, and still inextricably based on the freedoms model of high seas. Tanaka argues that this model fails to take sufficient account of some of the very factors it claims to include—pollution control and resource conservation—because its basic premise is that simply extending national jurisdiction to cover more ocean territory will adequately address those problems: “It appears doubtful that the extension of coastal State jurisdiction could resolve problems relating to marine pollution and the conservation of living resources.”¹⁵

Part I, chapter two, explores several of these limitations with respect to marine living resources. For example, regulation of migratory species is an

11. *Id.*

12. *Id.* at 18 n.71.

13. *Id.* at 5-6.

14. *Id.* at 6.

15. *Id.* at 8.

“inherent limitation” with zonal management.¹⁶ Basing compliance and enforcement on the exclusive jurisdiction of the flag state is another.¹⁷ Such limitations led Tanaka to consider how to supplement the basic zonal framework of the Law of the Sea Convention with other management models for marine living resources.

Chapter three examines the concepts of “sustainable development,” the “ecosystem approach,” and the “precautionary principal” as ways of improving the zonal management model. Tanaka’s particular service here lies in his brief but thoughtful presentation of the essentials regarding all three of these overly-familiar concepts. Although those concepts are frequently used, there is infrequent investigation into their actual substance. Tanaka revisits questions of compliance and enforcement, exploring how they might enhance the zonal management model.

The concept of sustainable development provides one example of how Tanaka probes for substance in these three concepts. Chapter three contains a particularly helpful consolidation of respected scholars’ observations. It usefully condenses, for example, the different components of sustainable development as identified by Philippe Sands, David Freestone and Alan Boyle jointly, and P-M. Dupuy.¹⁸ Tanaka points with concern to the “open-textured”¹⁹ nature of the concept as well as questions about its normativity. Those questions include the lack of uniform agreement as to its specific contents, as well as the normativity of each of its components and the uncertain relationship between them.

To touch on the two other concepts, investigated in chapter three, Tanaka observes of them: “it is worth noting that legal instruments adopting the ecosystem approach tend to refer to the precautionary approach at the same time.”²⁰ On the following pages he provides a tabular overview of treaties dating from 1980 to 2001 that have adopted both the ecosystem and precautionary approaches.²¹ Of all three substantive concepts he observes that their normative content is “modest.”²² By contrast, he concludes that compliance and enforcement mechanisms have improved in effectiveness over time.²³ The discussion of “Compliance

16. *Id.* at 39.

17. *Id.* at 65.

18. *Id.* at 71-73.

19. *Id.* at 71.

20. *Id.* at 81.

21. *Id.* at 84 tbl.3.1.

22. *Id.* at 120.

23. *See, e.g., id.* at 102 tbl.3.2 (displaying a non-exhaustive list of instruments from 1946-2000 requiring reporting).

Procedures in Treaties relating to Conservation of Marine Living Resources”²⁴ is much more exhaustive, covering flag state responsibility and supervision through international institutions such as regional fisheries commissions, as well as non-flag state enforcement through inspections at sea and in port.

Marine Biological Diversity and Marine Protected Areas form the two axes for Part II. Tanaka concludes that the 1982 Law of the Sea Convention and the 1992 Rio Convention on Biological Diversity suffer some of the limitations inherent in the zonal model on which they are based: an exploitation-focused approach within national jurisdiction and lack of protection of biodiversity beyond it. Tanaka sees more promising protections for biodiversity in regional arrangements. He examines the OSPAR Convention—the 1992 Oslo/Paris Convention for the Protection of the Marine Environment of the North-East Atlantic—as a particularly strong model. Of note are the expansion of its geographic scope and its growing inter-linkages with “the Rio Convention, the Helsinki Convention, the NEAFC, the IMO, the EC and the INSC.”²⁵

The OSPAR Convention also serves as his case study for Marine Protected Areas (MPAs). He finds that an increasing number of international instruments are calling for MPAs;²⁶ however, most of these instruments share the drawback of being tied only to protecting the environment from vessel-based pollution and are “not designed directly to protect marine biological diversity.”²⁷ To address his concern that existing protections for marine biological diversity lack effectiveness he proposes strengthening connections between MPAs, protection of the marine environment, and regulation of fisheries.

Tanaka’s Part III comprises a single chapter bearing the title “The Obligation to Co-operate in Marine Scientific Research and Conservation of Marine Living resources and Biological Diversity.” In his now familiar formula, Tanaka looks for the first appearances of principles of science-based cooperation and finds one instance in Part XIII of the U.N. Convention on the Law of the Sea. He sees as well evidence of those principles in subsequent international instruments such as the FAO Code of Conduct and the Fish Stocks Agreement, both from 1995, and in various

24. *Id.* at 93-118.

25. *Id.* at 161.

26. *See, e.g.*, “Clearly Defined Area” in Article 211 (6) of the 1982 Law of the Sea Convention; Ice-covered Areas in Article 234 of the Law of the Sea Convention; Special Areas under MARPOL 73/78; Particularly Sensitive Sea Areas (PSSAs) in IMO Guidelines; and Specially Protected Areas in the 1985 Montreal Guidelines.

27. TANAKA, *supra* note 1, at 205.

regional agreements. In all of these sightings he detects a “clear” trend toward including the obligation to engage in scientific cooperation” in international agreements and regional arrangements.²⁸ All of this allows him to observe:

The emergence of the obligation to co-operate in marine scientific research is *not* an isolated phenomenon, but is closely linked to the new approaches to the conservation of marine living resources and biological diversity: the ecosystem and precautionary approaches. In applying the ecosystem approach, considerable studies will be needed with a view to investigating marine ecosystems. Such studies will necessitate international scientific co-operation, owing to the transboundary nature of marine ecosystems.²⁹

Returning to the concern with effectiveness expressed consistently throughout the book, Tanaka proposes improving effectiveness of this obligation—to cooperate in marine scientific research—by further specifying its contents, establishing institutional mechanisms to ensure its implementation, and providing scientific and technical assistance to developing countries. Notably, he does not address in any detail the questions as to what constitutes MSR, which is not defined in the Law of the Sea Convention.³⁰ He concludes Part III with a key observation that law needs to learn how better to reflect the dynamic character of the oceans and that collaboration with science is key in helping law do that.

The mere identification of phrases and principles in various international instruments does not automatically translate into their widespread recognition let alone their effective implementation by the individual states that make up a large portion of the international community. Tanaka recognizes this in his systematic tracing of the development of individual concepts and their normativity, always probing and questioning the actual content of an obligation. This method serves his readers well by providing a thorough analysis of the various trends that might be combined for better ocean management. The zonal model of management, he concludes, needs revision when it comes to conserving marine living resources and marine biodiversity. The integrated management approach can only be of limited use in such revision given its current “embryonic” state.³¹ Tanaka is not

28. *Id.* at 236.

29. *Id.* at 237.

30. See generally J. Ashley Roach, *Advances in Ocean Knowledge and Skill: Implications for the MSR Regime*, in *LAW, SCIENCE & OCEAN MANAGEMENT* (Myron H. Nordquist et al. eds., 2007) (providing various views on what constitutes MSR).

31. TANAKA, *supra* note 1, at 241.

dissuaded, however, from the holistic vision of ocean management that he believes can result from the proper reconciliation of the zonal and integrated approaches into a dual approach of ocean management.

His book is a refreshing reminder that the concepts on which better management might be based (the precautionary and ecosystem approaches, sustainable development, the obligation to cooperate in marine scientific research) are not as firmly established in international law as they might be. While expressing basic support for each of these concepts, Tanaka cautions that in fact they have varying degrees of substantive content and acceptance. Only by testing each of these concepts and filling those that work with the proper substantive content will a dual approach to ocean management be truly effective.