

University of Hawaii at Manoa

School of Law

MEMORANDUM

May 10, 1996

To: M. Casey Jarman

From: Jon Van Dyke *Jon*

Please forgive me for taking so long to complete this book review of Tom Clingan's casebook.

Best wishes.

JVD:hns

AN EQUAL OPPORTUNITY EMPLOYER

Law of the Sea: Ocean Law and Policy. By Thomas A. Clingan.
San Francisco: Austin and Winfield, 1994. Pp. ix, B, 638.
\$89.95, cloth; \$69.95 paper. ISBN 1-880921-37-53.

Thomas Clingan has produced a good casebook on ocean law. It is compact and easy to handle and provides a rich body of important material. Instructors can pick from among the chapters to focus on a number of different areas.

The book is organized around the Law of the Sea Convention and includes articles from the Convention in the chapters that focus on various topics. Including the Convention's text in the volume has the advantage of allowing students to only use one book but perhaps the disadvantage of not letting them see the Convention as a composite whole. It is sometimes difficult to find the precise article one is looking for because they are not in numerical order in the book.

The book begins with an excellent opening chapter discussing the negotiating process. Professor Clingan shares the realities of these negotiations and helps to bring them to life. Throughout the book, short editorial notes add insights to the materials. Professor Clingan's writing is excellent, and the book would be even better if more of his writing were included.

The book then goes topic-by-topic organized logically along geographical lines. Chapter 2 addresses the freedom on the high seas. It includes good historical selections. The exclusive economic zone is introduced, as is the governance of shipping. Some cases are included, but the book might be strengthened with even more cases. The Lotus decision, for instance, is surprisingly omitted.

Chapter 3 looks at the internal waters and the territorial sea. The introductory material again contains good, clear writing. The writing makes this material accessible to newcomers to the field but is not patronizing or overly simplistic. The access to ports is covered along with the territorial sea. The 1988 U.S. Territorial Sea Declaration is included, but no real explanation or analysis of it is provided.

A number of topics do not have as many questions and problems and examples as might be useful to bring the reader and student to full understanding of the topics. Particularly in the later sections the editorial material tends to be less. Some topics that might have been emphasized more are the Black Sea incident in 1986 illustrating innocent passage concepts, the Jackson Hole Agreement between the United States and Russia, how islands generate maritime zones, and, of course, current controversies. Although this book is recent, the field is growing so rapidly that many of the current controversies are not included at all.

The other two casebooks in the field are William Burke's loose-leaf materials published by Lupus Publications, Ltd. (second edition in 1995) and the book entitled International Law of the Sea, published by Elsevier Applied Science, written by Gary Knight and Hungdah Chiu. The Knight and Chiu book is quite good but so expensive that it is essentially out of reach as something one could assign to students. The Burke materials work

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well in the classroom but also suffer from too few problems, questions, and textual explanations. I found that the Burke materials, as good as they are, still need supplementation with additional law and policy materials.

Tom Clingan's casebook is certainly a strong competitor in this field. It provides extensive material for instructors and is a very useful teaching tool. I would recommend putting more questions, examples, and explanatory transitions in the next editing, but this volume nonetheless is one that teachers should look at seriously in deciding what materials to use for an ocean law course.

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