

**Antonio José Rengifo Lozano. (2011).
*International regime theory and the law
of the sea: a study of fisheries on the high seas.*
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In 2011, Colombian professor Antonio José Rengifo Lozano published the book *International regime theory and the law of the sea: a study of fisheries on the high seas*. This is an academic work that provides a large body of law and regulations on the subject, describing the birth of a new international regime that has been developing since the second half of the twentieth century, but is especially marked by the Straddling Fish Stocks Agreement of 1995, more formally known as The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

This regulation on straddling stocks and highly migratory fish stocks has set a number of guidelines for the new regime on the law of the sea due the complexity of regulating species in constant movement between the jurisdiction of coastal States and what can be considered the “high seas,” generally recognized as belonging to all humankind and subject to the long-standing principle of freedom of fishing.

Through its description of the specific issue of straddling fish stocks and highly migratory fish stocks, this work demonstrates that “state

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sovereignty is not incompatible with international progress in solving common problems” (Rengifo, 2011, p. 19). As for the importance in an international context which is commonly characterized by the struggle between rivalry and cooperation, the work describes, analyses, and evaluates the advantages of a regime that offers greater balance in the actions of States viewed as actors within an international agenda.

To reach these conclusions, the author discusses four elements that underlie the international regime for fisheries on the high seas and that provide an interdisciplinary slant, considering the expectations of actors in different areas of international relations. These elements are: 1) scientific and diplomatic consensus; 2) principles, norms, and rules (mostly from the 1995 SSA); 3) a body of organizational and decision-making procedures; and 4) mechanisms for compliance and enforcement.

The first chapter of the book provides an introduction and contextualization of the topic. Chapters 2 to 6 discuss the elements described above, and chapter 7 provides conclusions and prospects for the future.

Chapter 1 is called *A new international regime for fisheries on the high seas*, and is divided into three sections. The first section, *The crisis of fisheries management*, introduces the principle causes for reshaping of the existing regime. Advances in fishing technologies, biological factors, social equality and its effect on cultural heritage, and political acceptance are just some of the circumstances that have led to the depletion of fish stocks and changed dynamics in developing fisheries on the high seas that have led to stagnation.

The second section, called *International regime theory and international law*, points out the valuable contribution that the study of international relations can provide to international law. By understanding *regime* in its classical definition by Krasner as a “set of explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations,” the book argues that the need for a regime derives from the need for cooperative strategies in international law.

In the third section, called *Framework for analysis*, the four elements described above are introduced as principal reasons for the creation of an international regime that presents an interdisciplinary approach to the study of global common goods.

Chapter two, *The UN conference on straddling and highly migratory fish stocks*, explains that the first element needed for a regime is scientific and diplomatic consensus, by describing the inadequacies of the 1982 UN Convention on the Law of the Sea (UNCLOS) with respect to straddling stocks and describing the pressures for the regulation of fisheries that the Straddling Fish Stocks Agreement addresses, such as the depletion of fisheries and the acute crisis of some coastal States that could alter the political, economic, and environmental equilibrium.

The work illustrates the importance of several factors: networks of individuals or groups having authority in specific knowledge, called epistemic communities, for achieving the scientific consensus necessary to design action plans; the significance of diplomatic consensus, understood as “the absence of substantive objection” (Rengifo, 2011, p. 71); and of rethinking state sovereignty when dealing with environmental issues.

Chapter 3, *The general principles of the new regime for international fisheries*, argues from the principle that fisheries as unrestricted common property is an obsolete and unsustainable approach. By embracing the “large marine ecosystem” concept, the 1995 SSA reshapes the relationship between the exclusive economic zone and the high seas, reorganizing the way that fisheries in these areas should be managed.

The emphasis placed on the precautionary principle is viewed as crucial for understanding the new dynamics and responsibilities of States, because it would set out future paths. This and the good faith of States, along with the cooperation principle, would play an important role in establishing regional and subregional organizations for the conservation and management of fisheries on the high seas.

The third element of for a new regime of fisheries on the high seas is developed in chapters 4 and 5. Chapter 4, *Fisheries management organizations*, considers the dynamics between existing organizations and arrangements, on the one hand, and new organizations and arrangements, on the other, concluding that coastal States have an obligation to negotiate measures enhancing conservation, but that these negotiations will bear fruit only if there is an adaptation to rapid changes, understanding the difference between the power *to* (associated with co-operation) and power *over* (associated with competition).

The author discusses the role of the FAO in the process of organizing a new regime, as well as the use of other international subjects such as NGOs, which promise to contribute to the development of an international agenda by creating pressure and awareness and propelling negotiation processes for new members and participants in regional and sub-regional organizations.

What is memorable in this analysis is that it assesses the positive aspects of the 1995 SSA and other regulatory instruments, but also its negative effects, specifically on regulation, but also regarding common situations that may occur when in the presence of stocks shared between the EEZs (exclusive economic zones) of two or more states.

The chapter also raises the question of how international organizations would manage the problem of high seas fisheries exploitation without putting states' sovereignty at risk. It proposes, as a possible answer, the theory of Ruben Mendez, which suggests that the current pattern for international public administration and funding is obsolete, and that a new method should be implemented, which should include international taxation, new monetary measures in the IMF, and changes in the use of global commons. Unfortunately, the mechanisms of subjects and procedures for implementation are not developed either by Mendez or here, leaving the doubt unresolved, but the key role of international trade in co-operation is very clear.

On the other hand, decision making procedures are developed in chapter 5 which states from the beginning that incoherent decision making procedures weaken the regime. That is why the section studies how the 1995 SSA sought compatibility between conservation and management measures, inferring a great advance since 1982 UNCLOS, but additionally demonstrating that there is a long road ahead in terms of management and agreement between parties.

That is why the author stresses the importance of collecting and sharing environmental data with minimum standards between states. In this context, he draws on several international instruments adopted from the second half of the last century to our own days, to account for the importance of the advances that have been achieved thanks to research, and the leading role of the epistemic communities for the creation of a regime and the development of ocean management theory.

There are two important points worthy of deeper consideration in the author's examination of decision-making procedures. On the one hand, there is the determination to redirect the discussion to a more humanist perception, taking into account the socio-economic factors that converge during the efforts to universalize the system. This effort is very valuable to a science that traditionally did not consider the views of biology, statistics, or even sociology. This is a problem that led to the current crisis.

In addition, the solution analyzed through the matter of open access to common property (in this case, the high seas) is innovative in proposing a system of common property institutions that can lead to better management of resources in the scenario of a regional or subregional fisheries organization comprised of members and non-members. In that way, as international organizations grant the right of access to the managed zone for defined periods, property rights call "for receipt of a fair economic return to all of those State and non-State parties from which the resource was obtained" (Rengifo, 2011, p. 185). When fishermen consider stock as their own, it is more likely that they will limit their catch in the interest of conserving it and avoiding its depletion.

The compliance and enforcement mechanisms studied in chapter 6 fully describe the elements that comprise a regime. Their importance arises from the influence that they have on participant States' behavior. After discussing the duties of different States and the roles they must play when flagging their vessels and working to fulfill their obligations, the book is innovative in propounding a new view of the principle that has reigned over the law of the sea since its first regulations: freedom of fishing on the high seas, folded into a regulated regime for the control of resources.

Peaceful means for the settlement of disputes are encouraged by UNCLOS, and the SSA implements them to avoid any such disputes and to favor expedited and efficient decision making procedures. It is worth recalling that the dispute settlement mechanisms in the rising fisheries regime on the high seas have had an immense influence on other mechanisms contemplated by international law.

All of the above goes hand in hand with strengthening international organizations (especially fishing organizations) and reinforcing the conservation and management of the oceans. In this way, the *trade* component of the disputes would eventually lead to the utilization of the WTO's

Dispute Settlement Body. This makes it even more evident that the new roles of the actors under international law in the context of law of the sea are similar and in constant juxtaposition to their roles in other contexts such as trade integration processes. In both areas, negotiation is key when propounding mechanisms for joint progress where both developed and developing States can benefit from an integration processes by *eliminating* differences; as opposed to cooperation processes, where the aim is to *limit* them. The same is true for cooperation processes.

The last section of the book is *The dynamics of the new regime for international fisheries: the relevance of legitimate expectations*. In his concluding and summarizing his analysis of the body of norms in the law of the sea and the cases, circumstances and characters involved, the author agrees with Philip Allot when saying that “States are representatives not only of their nationals, but also of the international community as a whole in organizing world governance” (Rengifo, 2011, p. 231).

It is important for students to recall the basic foundations of the phenomena of integration and cooperation. In the former, there is a cession of sovereignty by States that are integrated with the goal of *resolving* the differences between them on one specific subject. In the latter, the assignment of sovereignty is minimal, and the aim is *reducing* differences.

The general proposal of this book relates to a process in which relevant States must yield sovereignty and allow specialized agencies to make decisions that affect them domestically. One wonders to what extent this would be a component of an integration process? In order to develop such a process, there will be major challenges that involve, inter alia, the harmonization of the interests of international policy with those of the proposed regime, as well as the difficult task of appeasing the doubts of States that look with suspicion at the assignment of sovereignty to a third party.

Nonetheless, the academic work of Rengifo Lozano responds forcefully to the frequent criticism of international law as lacking coercive power. By emphasizing the role played by cooperation in the international dynamics of the 21st century, he shows that in a field as controversial as the law of the sea, it is possible to develop a regime that will move us forward in legal, economic, and social scenarios, and produce a precedent for what can be accomplished through international cooperation

and commitments by States. This is a precedent that can be extrapolated to additional branches of international law, especially branches relevant to other environmental issues.

References

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