Historic Waters and Historic Rights in the Law of the Sea

A Modern Reappraisal, 2nd edition

By

Clive R. Symmons

BRILL
NIJHOFF
LEIDEN | BOSTON
Contents

Preface and Acknowledgements  IX
List of Maps XV

1 General Issues Relating to Definitions of Historic Rights and Historic Waters  1

2 Differences between Historic Rights and Historic Waters  14

3 Additional Definitional Problems Relating to Historic Maritime Claims; Historic Title, 'Traditional' Rights: 'Quasi-Territorial' Rights and 'Exclusive' Historic Rights  19

4 Do Historic Rights/Waters Only Comprise Exceptional Claims?  32

5 The Inter-relationship of the Doctrine of Historic Rights with the Regime of the LOSC; and the Impact of the LOSC on the Doctrine of Historic Rights in the Narrow Sense as Discussed in Philippines v China  44

6 The Types of Waters to Which Historic Claims May Be Made  63

7 The Regime of Historic Waters in the Case of Bays, Coastal and Oceanic Archipelagoes, Straits and Territorial Seas  104

8 Historic Rights and Delimitation of Maritime Zones  112

9 A Possible Rationale of Historic Rights Based on Prescription  120

10 An Example from the Past of an Excessive Claim and Adverse International Reaction: The Russian Ukase of 1821 concerning Waters off Alaska  136


12 Problems as to When and Whether an Alleged Historic Claim Has Been Made  170
CONTENTS

13 The International Legal Requirements for Historic Waters and Rights 184

14 Exercise of Authority: The Need for a Formal and Official Claim 192

15 The Official Claim Must Be Clear and Consistent 212

16 The Necessity for Publicity of Historic Claim: Publication/Notification of the Claim to Other States 231

17 The Need for Continuity of Historic Claim and for Satisfaction of the Time Factor 246

18 The Need for Effective Exercise of Jurisdiction 261

19 Knowledge of, and Acquiescence to, Historic Claims 320

20 Vital Interests ('Vital Bays'): A 'Fourth' Factor Relevant to Evidence of Historic Waters? 365

21 The Burden of Proof Required for Historic Claims to Rights or Waters 378

22 Reliance for Historic Title on Succession to Actions and Claims of a Predecessor 382

23 Problems Relating to Disclaimer of Historic Title 394

24 Conclusions: Does the Concept of Historic Waters or Historic Rights Have Continuing Relevance in Contemporary International Law? 407

Appendix 437
Bibliography 441
Index 451