

# **International Ocean Law**

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# **International Ocean Law**

## **Materials and Commentaries**

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# Preface

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*International Ocean Law: Materials and Commentaries* is intended for use by faculty and students as an introductory volume for a law school course that has as its focus the international law of the sea. It is purposefully different than other course books that are available on this subject and is purposefully different than traditional course books used in U.S. law schools.

The American-Canadian compilers of this volume have been influenced by the insights of the American-Canadian Robert MacNeil (author and longtime co-anchor on the MacNeil-Lehrer Newshour on PBS, born in Montreal and raised in Halifax, Nova Scotia) who wrote: “Speak to me and you will move me; write to me and I’ll have to think about it.”<sup>i</sup> Adapted to a university course setting: speaking/lecturing is about moving an audience; while writing/reading is about informing an audience. The materials and commentaries in this volume are designed to provide students (and faculty faced with teaching law of the sea for the first time) with the fundamental building blocks of international ocean law—to inform the reader. It is the challenge of the faculty member to enrich the materials through appropriate supplemental materials that reflect the particular interests of the faculty member and to enliven the material through lecture and discussions. This is the relationship between course materials and the classroom that the compilers are aiming for with this book.

Other features of this collection of materials should be noted. First, it is designed largely to be read as a cohesive text. It is believed that a text of this kind should be easier for students to manage and understand than the more traditional collection of disputed cases, statutes, treaty provisions and commentaries. Second, this volume is intended as an introduction to a fairly complex field of specialization. The primary emphasis is placed on fundamental concepts. At the end of the Preface some suggestions are offered on books and website addresses that might be consulted by students or instructors wishing to pursue certain topics in more detail. Third, it is hoped this compilation will be useful to faculty members with a specialized knowledge of law-of-the-sea issues as well as the teacher teaching this subject for the first time. It may be sufficiently comprehensive for instructors in the latter category, but experienced specialists will certainly wish to add materials of their own choosing. Fourth, the volume has been kept relatively short in the hope that “less is more”. The philosophy of the compilers is that succinctness sharpens focus, making it easier to absorb than more extensive readings.

A word about the law of the sea. Despite its name as a sub-discipline of public international law, it is truly a multi-dimensional field of studies, composed of many disciplines. Although questions of strict law do arise (what is the law? how should it

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i. Robert MacNeil, *Wordstruck: A Memoir* (New York: Viking/Penguin, 1989), at p. 186.

be applied? how should the relevant texts be interpreted?), ocean policy and management issues engage many other professions. For example, marine biologists, economists, sociologists and others are just as deeply involved in fishery development and management problems as lawyers. Navigation concerns are of direct interest to military security specialists and mariners. Geologists work alongside lawyers in matters related to the continental shelf and the ocean floor. Geographers have a central role in the mapping of zones in the sea and the development of maritime boundaries. Many disciplines come together in the sector of marine pollution control. It is useful for readers of this work to be aware of the multi-disciplinary sophistication that permeates this fascinating field.

Although the law of the sea is inherently international and the perspective adopted by the compilers is not intended to reflect a particular national interest, this volume is designed for U.S. students with the result that they are U.S. oriented. Most of the referenced material is American, although, not surprising, some Canadian examples and experiences have seeped in.

New developments are taking place in the international law of the sea on a regular basis. At the time of the preparation of this volume neither the United States, nor Canada, were parties to the 1982 United Nations Convention on the Law of the Sea. This could change at any time. Such a decision by the United States would not have a significant impact on materials in this volume. There are other developments that may have a more significant impact particularly in the areas of marine environmental protection, the utilization of dispute settlement and the application of principles regarding maritime boundary delimitation.

As the volume is intended to expose students to the basic building blocks of the international law of the sea, an effort has been made to constrain the special interests of the compilers. This has not always been possible. For example, Chapter Four "Marine Living Resources" contains a large section on the Canada-U.S. Pacific salmon dispute and a further section on the intersection of international trade law and fisheries law. In another situation, lack of editorial interest has resulted in the cursory treatment of an area that others may see as critical—the regime for harvesting minerals on the deep ocean floor. Chapter One, "The Nature and Structure of International Ocean Law," contains a section on the common heritage of humanity, one of the new concepts in the international law of the sea, and there are other references to deep seabed mining in the volume, but no detailed materials are provided.

For reasons of expedience, much of the excerpted commentaries are drawn from the academic and other writings of the compilers. In almost every case, other writings could have been used to deal with the particular subject matter. The choice of excerpts has left many leading authorities unacknowledged in this volume. The reader will recognize that copyright issues have played a significant role in materials selection.

One of the compilers, Ted L. McDorman, is currently the editor-in-chief of *Ocean Development and International Law: The Journal of Marine Affairs*. The compilers wish to acknowledge with gratitude that Taylor and Francis, the publisher of *Ocean Development and International Law*, has provided generous copyright releases for material published in this journal.

## A Note on Reference Materials

It is not the purpose here to provide a comprehensive listing of available reference materials and websites related to the international law of the sea. Nevertheless, it is hoped that the following information is of some assistance in furthering examination of the many law-of-the-sea issues raised in this volume.

Regarding the United Nations Convention on the Law of the Sea and related treaties and activities, the United Nations, Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea (DOALOS) maintains a valuable web site at: [www.un.org/Depts/los/index.htm](http://www.un.org/Depts/los/index.htm). At this address information on the status of the Law of the Sea Convention and related treaties can be obtained, as well as information on the work of the Parties to the Convention and the bodies created by the Law of the Sea Convention including the International Tribunal for the Law of the Sea. As well, one can access directly the texts of the U.N. Convention on the Law of the Sea and the 1995 Straddling and Migratory Fish Stocks Agreement.

Attention is also drawn to [www.oceanlaw.net](http://www.oceanlaw.net) which, while primarily focused on fisheries matters, provides access to treaty texts, legislation and case materials on a variety of ocean law topics.

There are a number of leading scholarly journals to which reference needs to be made. The following are journals that have ocean law and affairs as their specific focus:

- *Ocean Development and International Law: The Journal of Marine Affairs* (Taylor and Francis);
- *International Journal of Marine and Coastal Law* (Kluwer Law International);
- *Marine Policy: The International Journal of Ocean Affairs* (Butterworth-Heinemann);
- *Ocean & Coastal Management* (Elsevier Sciences);
- *Ocean Yearbook* (University of Chicago Press); and
- *Ocean and Coastal Law Journal* (Marine Law Institute, School of Law, University of Maine).

Journals in the discipline of international law that should be noted included:

- *American Journal of International Law* (American Society of International Law);
- *British Yearbook of International Law*; and
- *International and Comparative Law Quarterly*.

What follows is a partial list of what might be considered as fundamental books regarding the law of the sea.

Perhaps the single most comprehensive work is that of R.R. Churchill and A.V. Lowe, *The Law of the Sea* (3rd edition) (Manchester University Press, 1999). Not only is this text invaluable in itself, but in addition at the end of each chapter is added a bibliography of materials relating to that chapter. Another classic, general text is E.D. Brown, *The International Law of the Sea: Introductory Manual* (Dartmouth, 1994). A more dated text is D.P. O'Connell, *The International Law of the Sea* (two volumes, edited by I.A. Shearer) (Clarendon Press, 1982).

While not a book, per se, the recently published lectures of Tullio Scovazzi given at the Hague Academy of International Law entitled "The Evolution of International Law

of the Sea: New Issues, New Challenges” (Vol. 286, (2000), *Collected Courses of the Hague Academy of International Law, Recueil des Cours*, pp. 39-244) provides a useful overview of the history and issues arising in modern law of the sea.

Regarding the Law of the Sea Convention, the negotiating history of the provisions of the Convention is carefully set out in *United Nations Convention on the Law of the Sea 1982: A Commentary* (five volumes) (Martinus Nijhoff). A recent addition to the literature on the Law of the Sea Conference is Edward L. Miles, *Global Ocean Politics* (Martinus Nijhoff, 1998). The United Nations, Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea has produced commentaries on numerous parts of the LOS Convention and, as well, publishes the *Law of the Sea Bulletin* on a semi-regular basis.

On recent developments in the international law of fisheries, the most authoritative analysis is William T. Burke, *The New International Law of Fisheries: UNCLOS 1982 and Beyond* (Clarendon Press, 1994). An excellent collection of papers on a wide range of international fisheries issues is Ellen Hey, ed. *Developments in International Fisheries Law* (Kluwer Law International, 1999).

For years, the Law of the Sea Institute (located in Rhode Island, Hawaii, Miami and now at the University of California, Berkeley) has published conference and workshop proceedings of extremely high caliber. The Center for Oceans Law and Policy, University of Virginia School of Law has been hosting annual conferences on ocean law and policy issues and having the proceedings published by Martinus Nijhoff. Note should also be made of the books published as part of the International Environmental Law and Policy Series of Kluwer Law International. (The web site for Kluwer Law International/Martinus Nijhoff is [www.kluwerlaw.com](http://www.kluwerlaw.com).)

## Author Format Note

Various authors from many English speaking backgrounds are represented in this work and no attempt is made to achieve spelling uniformity following the American English format.