



The Limits of Maritime Jurisdiction

A Law of the Sea Institute Publication

Edited by

**Clive Schofield, Seokwoo Lee,
and Moon-Sang Kwon**

MARTINUS NIJHOFF PUBLISHERS

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MARTINUS
NIJHOFF
PUBLISHERS

LEIDEN • BOSTON
2014

Library of Congress Cataloging-in-Publication Data

The limits of maritime jurisdiction / edited by Clive Schofield, Seokwoo Lee and Moon-Sang Kwon.
pages cm

Includes index.

"A Law of the Sea Institute Publication."

ISBN 978-90-04-26258-4 (hardback : alk. paper) — ISBN 978-90-04-26259-1 (e-book)

I. Law of the sea. I. Schofield, Clive H., 1969– editor of compilation. II. Yi, Sog-u, 1967– editor of compilation. III. Kwon, Moon-Sang, editor of compilation.

KZAI145.L56 2014

341.4'48—dc23

20130354

This publication has been typeset in the multilingual "Brill" typeface. With over 5,100 characters covering Latin, IPA, Greek, and Cyrillic, this typeface is especially suitable for use in the humanities. For more information, please see www.brill.com/brill-typeface.

ISBN 978-90-04-26258-4 (hardback)

ISBN 978-90-04-26259-1 (e-book)

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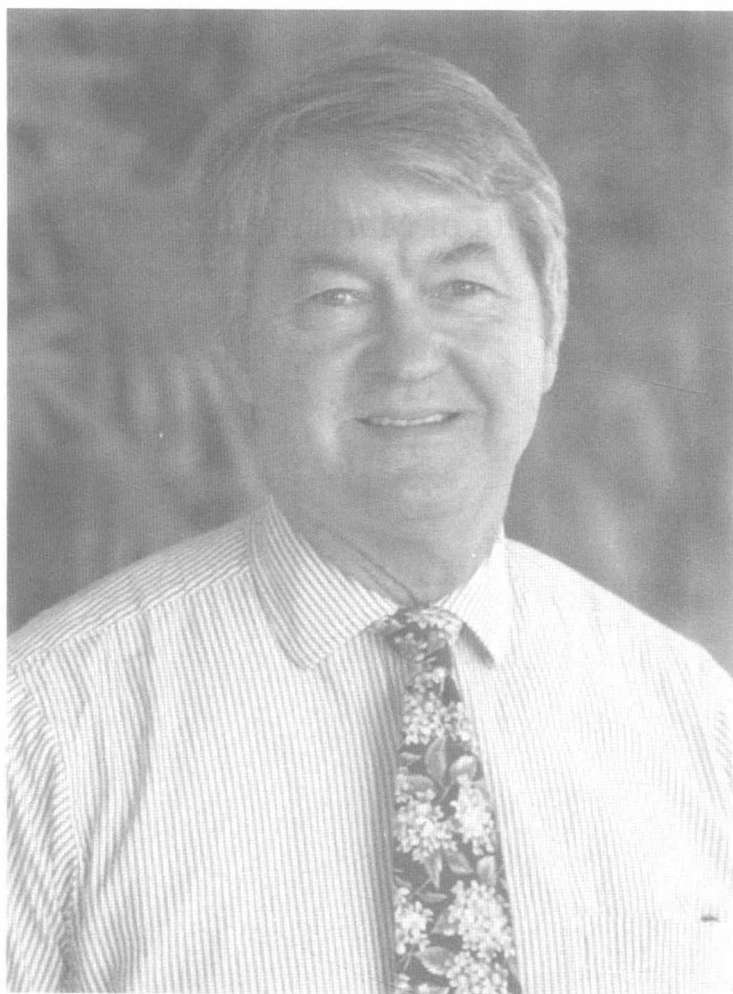
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The Limits of Maritime Jurisdiction



*Dedicated to the memory of
Professor Jon Markham Van Dyke*

PREFACE AND ACKNOWLEDGMENTS

Harry N. Scheiber

The successful conclusion of the prolonged international negotiations that produced the United Nations Law of the Sea Convention (LOSC) in 1982 was a transformative event in the history of modern international law. That it is an agreement global in reach, rather than one of limited multilateral dimensions, is itself a feature of great historic importance. Even before its signing, and prior to its formal entry into force in 1994, the Convention impelled an extraordinary acceleration in the pace of ocean-law development: it led to a proliferation in the number and types of ocean resources and marine activities affected by new rules, large principles, and emerging aspirational understandings. This complex process of development continues in a robust way today, as shown by the papers in the present volume.

The Law of the Sea Institute (LOSI) at the University of California, Berkeley is grateful to the authors and editors of this book, which contributes new perspectives on many vital aspects of ocean law and policy. We also welcome the collaboration in organisation and funding of the project culminating with an international conference at the Australian National Centre for Ocean Resources and Security (ANCORS) at the University of Wollongong, Australia, and with this book, extended by the Korea Ocean Research & Development Institute (KORDI) (now KIOST—the Korea Institute of Ocean Science and Technology) and the other cooperating sponsors.

Since the founding of the original LOSI in the mid-1960s, its conferences and publications have served as major forums for scholarly analysis and international discourse on how best to achieve an effective and equitable legal order for the oceans. Jurists, government officials, industry representatives, environmental organizations, and international agency staff all have participated prominently in LOSI activities—speaking at its workshops, writing of its *Occasional Papers*, and above all presenting their research and policy views in a magisterial series of *Proceedings* volumes. The latter series became recognised as among the most important works in the literature of ocean law and policy; and many of them stand today as classics.

The Institute has been headquartered and administered since 2002 at the Law School of the University of California, Berkeley. It was founded at the University of Rhode Island in 1965, where John Knauss, Lewis Alexander, William Herrington and other major figures in ocean policy studies led the organisation; later it was headquartered at University of Hawaii, then briefly to the University of Miami. In 2002, the UC Berkeley Law School assumed responsibility for the organisation's support, and it became officially a unit of our University. For eleven years, Professor David D. Caron was co-director with me of LOSI at Berkeley; he is now Dean of Law at Kings College, London, but he continues to be associated with the Institute in its various projects.

At Berkeley Law, we have remained firmly committed to nurturing the international outreach and participation that have been the hallmark of LOSI from the time of its founding. In this effort, some of the most eminent figures in ocean law studies internationally—including the late Professor Jon Van Dyke, to whom this volume is dedicated—continuously lent their devoted support and invaluable counsel to our efforts. Papers from the LOSI series of major international conferences have appeared, after being revised and comprehensively edited, in a series of books published by Martinus Nijhoff Publishers (an imprint of Brill Academic Publishers), the present volume being the most recent in this series, which succeeds the older *Proceedings* series.¹

Recent LOSI publications have considered many aspects of the implementation of LOSC agreement and ocean governance issues related to other regimes for the oceans: marine resources management and conservation, dispute settlement, technology and ocean science, and practical diplomacy reaching to all dimensions of ocean uses. Regions and institutions formed the organising theme of a 2013 volume in the LOSI series, and books in editing at this writing will address key problems in ocean governance and the law of straits. In the present volume, authors from sixteen countries provide learned perspectives on a range of contemporary issues that are of pressing importance to academics, policy makers, and administrators as well as diplomats. Although the range of subjects is great, they have in common that the definition of marine jurisdictional limits and boundaries are a key element in addressing pressing contemporary challenges in ocean law and governance.

Both in the diversity of the topics considered and in the sense of urgency with which the authors have addressed them, these papers pay tribute to the special genius and spirit that were so admirable in the voluminous writings of Professor Van Dyke whose unexpected death occurred on the day when he was scheduled

¹ The LOSI website at www.lawofthesea.org includes the titles of all papers in the older *Proceedings* series, as a guide to researchers, as well as web site and journal citations for papers that have been published or posted under LOSI auspices since the move of headquarters and reorganisation at Berkeley.

to speak at the Wollongong conference, to the design and organisation of which he had contributed in many ways.

Special thanks are owed to Professor Clive Schofield, who has played the lead role in the editorial team, and to his co-editors Professor Seokwoo Lee and Director Moon Sang Kwon, in the work of bringing this book to completion. Also requiring thanks are the contributions of many others, among them the creative role of the research administration of KIOST and the generous financial support of that distinguished institution. Judge Jin-Hyun Paik of the International Tribunal for the Law of the Sea, and of Seoul National University, has been a stalwart leader and supporter in the collaborations between LOSI of UC Berkeley and Korean institutions. Similarly, Professor Yann-huei Song has provided leadership in regard to the role of Academia Sinica of Taiwan as cooperating sponsor.

The authors and sponsors are greatly indebted to Ms Marie Sheldon, Ms Lisa Hanson and their colleagues in the editorial and production departments of Brill. Their talented contributions have been an indispensable reliance for the editors as they are for the LOSI office at Berkeley. Dean Christopher Edley, Jr, of the UC Berkeley School of Law, and Dr Moon-Sang Kwon of KIOST have given unstinting encouragement and material support at every turn in the history of this project.

Similarly, the support offered by the administration and faculty of the University of Wollongong, host institution for the conference, was crucial. Of especial note in this context are Professor Martin Tsamenyi, Director of ANCORS, Professors Luke McNamara and Warwick Gullet, the past and present Deans of Law at the University of Wollongong; Professor Judy Raper, Deputy Vice Chancellor (Research) at the University of Wollongong; and Senior Deputy Vice Chancellor Professor John Patterson. The staff and students of the Australian National Centre for Ocean Resources and Security, led by the indefatigable Mrs Myree Mitchell, provided splendid hospitality to the presenters and panellists. Their enthusiasm and efficiency were essential to the successful realisation of the meeting.

Jon Van Dyke was an inspiring figure and huge presence in ocean law scholarship and policy debates. Apart from his distinction in that regard, he was a man of exceptional kindness and a good friend of most of the authors in this volume. The LOSI and its collaborating institutions are honoured to join in the dedication of this book to his memory.

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INTRODUCTION

EXPLORING THE LIMITS OF MARITIME JURISDICTION

Clive Schofield, Seokwoo Lee and Moon Sang Kwon*

While it is the case that the boundaries of national jurisdiction over land territory are well established and relatively stable or, at the least, the contours of extant and often longstanding territorial disputes are well defined, the same does not hold true offshore. Despite significant progress made towards the delimitation of international ocean boundaries,¹ less than half of the potential maritime boundaries have been even partially delimited.²

This remarkable state of affairs in large part stems from the enormous expansion in claims to maritime space resulting from the process of 'creeping coastal State jurisdiction', especially in the era following the Second World War and in large part culminating in the negotiations leading to the United Nations Convention in the Law of the Sea (LOS).³ A key achievement of LOSC was the definition of clear spatial limits for national claims to maritime jurisdiction, something that, notably, had eluded earlier codification efforts.

The prodigious extension in the breadth of coastal State claims to maritime jurisdiction has resulted in a similarly significant increase in the number of overlapping maritime claims and a consequent proliferation in the number

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¹ See, in particular, the six (and soon to be seven) volumes that comprise *International Maritime Boundaries*, published by Martinus Nijhoff which provide systematic and comprehensive coverage of international maritime boundary agreements.

² See, J. R. Victor Prescott and Clive H. Schofield, *The Maritime Political Boundaries of the World* (Leiden/Boston: Martinus Nijhoff Publishers, 2005), 217–218.

³ *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, entered into force 16 November 1994, 1833 UNTS 3 (LOS).