



International Law for Seagoing Officers

Fifth Edition

by Burdick H. Brittin

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FIFTH EDITION

INTERNATIONAL LAW FOR SEAGOING OFFICERS.

Burdick H. Brittin

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TO TRUDI

who has more than tolerated the
growing pains of all five editions
and those fortunate enough,
through their profession or
interest, to achieve a close
affinity with and understanding of
that unique part of our globe—
our oceans

FOREWORD

Nonfiction books don't keep going into new editions if they aren't useful. It is a tribute to the continuing value of Burdick Brittin's *International Law for Seagoing Officers* that it has gone on to a fifth edition.

For the law of the sea, the five years that have elapsed since the last incarnation of this book have been a period both of consolidation and of continuing uncertainty: consolidation to the extent that so much of what was codified in the Law of the Sea Convention has now been absorbed into customary international law; uncertainty to the extent that controversy persists as to how many of its provisions should still be viewed as contractual in nature.

By the December 10, 1984, deadline for signing the Law of the Sea Convention, it had garnered 159 signatures—a record for any international agreement. That in itself is a remarkable demonstration of the world community's capacity to adapt legal principles to the realities of technological change. Coastal-state concerns about threats to the survival of their fishery stocks had stimulated expansive claims of national jurisdiction; the resulting compromise on a 200-mile exclusive economic zone has now won universal acceptance. The steady seaward march of deepwater-drilling capability had made necessary an agreed alternative to the "exploitability test" incorporated into the 1958 Continental Shelf Convention; the Law of the Sea Convention's complex formula for the definition of coastal state jurisdiction over the continental margin has been recognized as meeting this need. Both the expansion of the territorial sea to twelve—but not more than twelve—

miles and the innovative concept of archipelagic waters, with its concurrent requirement that the archipelagic state establish intersecting lanes of free navigation and overflight, have gained comparable recognition.

Contrary to the common impression that the U.S. has walked away from the Law of the Sea Convention, the Reagan administration has asserted its status as declaratory of customary law. In a statement made during the December 13, 1984, U.N. General Assembly debate on the LOS resolution, a spokesman for the U.S. said:

The U.S. . . . views the 1982 Convention on the LOS as a major accomplishment in the development of international law relating to the oceans. . . . The U.S. takes this opportunity to reiterate its commitment to cooperate with the international community on the development of international law relating to the oceans. This cooperation extends to a vast number of important principles contained in the 1982 Convention on the LOS.

There remains, however, the uncertainty stemming from the fact that many of the states that have endorsed the Law of the Sea Convention have also signified their intention to challenge the right of nonparties to claim the benefits of the treaty. In so doing, they have emphasized the mandate of the Third U.N. Conference on the Law of the Sea to produce a "package deal." They resist, therefore, the contention advanced by the U.S. and some of its friends that noncompliance with the deep-seabed mining regime established by the Convention will not impair the right to take advantage of its navigational provisions. Not until the seventh edition of this book, perhaps, will we have the definitive answer to this issue.

The fifth edition, meanwhile, accurately reflects and clearly explains all these developments and more. It thus comprises a reliable source of guidance for those whose concerns with ocean space require a firm grasp of the rights and obligations that flow from the principles governing its use.

ELLIOT L. RICHARDSON
Ambassador-at-Large
and Chief U.S. Delegate
to the U.N. Law of the
Sea Conference

PREFACE

The purpose of this fifth edition, like that of its predecessors, is to serve as an aid for those whose profession or interest is related to the seas, air space, or foreign lands, or all three, in either an official or an unofficial capacity. It is not a lawyer's law book; rather it is a generalized text on a complex regime that governs and guides our activities in peace or war at sea, in the air, and in foreign lands—International Law. Ocean law, as the title of the book indicates, has a dominant role in the text, but the table of contents gives evidence of the broader scope intended.

This enlarged edition covers a thirty-year period of evolution of the law that governs man's use of the world's oceans. In 1956, when the first edition was published, I certainly did not visualize historically tested precepts changing so much and so rapidly that a fifth edition would be necessary only three decades later. Indeed, if my recollection of history is correct, this thirty years just ended saw more change than any other. Before that time, the cadence of the law's development was almost measured. Assuredly, there were periods of experimentation and rather abrasive testing of conflicting views, but, on balance, the march forward was slow and relatively predictable.

In 1973, when the Third Law of the Sea Conference began to grapple with its charter to reexamine the entire body of sea law and to create a new regime for mining the resources of the deep seabed, it became apparent that one of the realities to be dealt with was the new, insistent, coordinated voice of well over a hundred developing countries. By the time the great mass of issues had been thoroughly debated and compromises had been reduced to

initial drafts and then to treaty language, it was clear that the views of the developing countries had helped produce many dramatic changes.

The Law of the Sea Conference completed its work and adopted the text of the Convention on 30 April 1982. The United States did not sign, because the seabeds regime did not meet U.S. objectives. While the seabed issues are indeed important, they are not of direct concern to the users of this text, because they have but peripheral and secondary impact on navigational regimes. As in the earlier editions, navigation over, on, and under the oceans is the primary focus of the chapters in this book dealing with ocean law. I believe that the articles that set forth the navigational regime, as well as those that address other ocean uses that affect navigation, can be characterized as the norms for navigation that will be practiced at sea in the years to come. The history of the conference, as noted in this text, and state practice in the two years since its completion, are supportive of this view.

In addition to the completion of the work of the Law of the Sea Conference, there have been several international events involving various facets of International Law since the last edition that collectively prompted this edition. The conduct of the Falklands war, the settlement of the U.S.-Canadian Gulf of Maine Boundary, the shooting down of the Korean airliner by a Soviet fighter, and the growth of modern piracy are examples of many developments that serve to highlight various facets of the law.

It was rewarding to have previous editions translated into several languages. Resulting comments by many foreign experts, coupled with those of U.S. authorities, served as a valuable guide in the preparation of this edition.

I most gratefully acknowledge the suggestions and recommendations of many experts from within the federal government, particularly from the Departments of State, Defense, and Commerce (NOAA), the Coast Guard, NASA, and the Maritime Administration; cooperation was also readily forthcoming from the academic, scientific, and legal communities, ocean-oriented industries, and organizations interested in ocean affairs. The following ladies and gentlemen warrant special mention: Jonathan D. Stoddart, formerly Minister and International Affairs Adviser to the Supreme Allied Commander, Europe; David A. Ross, Director, Marine Policy and Ocean Management Center, Woods Hole Oceanographic Institution; Lee Kimball, Executive Director, Citizens for Ocean Law; Rear Admiral Bruce Harlow, JAGC, USN (Ret.), former Department of Defense Representative for Law of the Sea Matters; Thomas Clingan, Professor of Law, University of Miami School of Law, U.S. delegate to the Law of the Sea Conference; Captain William L. Schachte, Jr., JAGC, USN, who served on the LOS delegation; and Melvin Conant, President of Conant and Associates, Ltd., and expert on international resources.

Because of the heightened interest in the subject, the body of law pertaining to the conduct of war or armed conflict and its effect on its victims

continues to receive considerable attention in this edition. Full credit and appreciation must go to Captain J. Ashley Roach, JAGC, USN, former head of the Law of Armed Conflict Branch of JAG and a member of the U.S. delegation to the U.N. Conference on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, Geneva, 1979, whose work and deep interest permeate chapters 9 and 10. Indeed, the comprehensive treatment accorded this field of International Law is the product of Captain Roach's knowledge.

Many of the additions and changes in emphasis contained in this edition are the result of comments by persons affiliated with the Naval Academy, the Coast Guard Academy, the Naval War College, and other institutions having an interest in ocean affairs.

The exacting work of updating the glossary and extensive index was done by Christa Conant; her thoroughness and skill are much appreciated. Preparation of the manuscript for submission to the publisher was cheerfully and accurately carried out by Elaine Snyder and Neesa Hart.

And finally, one of the most pleasant circumstances connected with the preparation of this edition was the good fortune of living in the small rural community of Great Falls; the tranquil environment served as an incentive to me to get the project completed.

Indeed, I am indebted to many. I trust that whatever errors were found in the prior editions have been eliminated. If the text serves to increase the appreciation that those whose career relates to the oceans and foreign lands have of International Law, its mission has been achieved.

Some years ago I wrote:

The seas are ancient, yet they are new.
Their regimes are immutable, yet they are fragile.
They are catalysts for progress, yet platforms for discord.

I believe those words are still valid. How man conducts his ocean affairs under the regimes that have emerged from the Third Law of the Sea Conference is going to determine whether the seas will be a platform for discord or a catalyst for progress. In brief, the global ocean can serve as a splendid servant of the world community, but only if that community respects it and its processes and the rights and duties imposed on ocean users by nature and by International Law.

Great Falls, Virginia

BURDICK H. BRITTIN

INTERNATIONAL LAW FOR SEAGOING OFFICERS

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SCOPE AND SOURCES

Physically our world remains the same size, but as man increases his technical knowledge and mutually shares his ideas and ideals, we witness a world of ever decreasing dimensions.

B.H.B.

INTRODUCTION

The scope of the subject we are going to explore and study here is as broad as the world itself. Some newspaper headlines indicate the diversity of the matter concerned:

ICJ DECIDES ON U.S.-CANADIAN MARITIME BOUNDARY
SENATE VOTES, 84-12, TO CONDEMN MINING OF NICARAGUAN
PORTS

3 SOVIETS END RECORD 237 DAYS IN SPACE

BRITAIN DECLARES BLOCKADE OF ARGENTINA'S COASTLINE

REAGAN REVEALS U.S. OBJECTIONS TO LAW OF SEA TREATY

THE RULE OF LAW—IS THERE REALLY AN ALTERNATIVE?

SOVIETS SHOOT DOWN KOREAN AIRLINER

WORLD'S FISHERY PROBLEMS SHOULD DIMINISH
UNDER EXCLUSIVE ECONOMIC ZONE REALITY

IRAQ-IRAN WAR—AN END IN SIGHT?

Although the sample headlines relate to subjects seemingly foreign to one another, there is a common thread that ties them together: they all refer to

sovereign states either involved in an international dispute or seeking to resolve a problem.

We can broaden our scope and approach the subject from another angle by considering some of the routine events that are so commonplace as to go unnoticed by most of us.

If you want to mail a letter to a friend in Switzerland, you first buy a U.S. stamp at the local post office and pay for it in U.S. money. En route to Switzerland the letter may cross the territory of Great Britain, Belgium, and France. The postal authorities in these countries undoubtedly assist in speeding the letter on its way. Two questions are apparent: What authority or arrangement permits a letter to cross the borders of various countries? Do the post offices of the other countries get any monetary reimbursement from the U.S. postmaster general for the work they do in helping to deliver a letter from the United States, and, if so, who determines how much is their equitable share? The same two questions might well be asked about a telephone call or cable to a distant country.

Assume that a Brazilian training ship comes to Annapolis or King's Point for a three-day rest-and-recreation visit. As the midshipmen come down the gangway and set foot on U.S. soil, no one is there demanding their passports. Further, if you were to ask them about their passports, they probably would tell you that they had none. Under what authority or understanding do we permit a foreigner to enter our territory without a valid passport?

If you look over the training ship, you will notice that she carries running lights precisely the same as those in use on our own ships. A query to one of the visitors will show that he knows that when two ships meet at sea both are obligated to turn to starboard. As a matter of fact, the Rules of the Road are as familiar to him as they are to you. If you question him a little more, he will undoubtedly state that not only do Brazilian and U.S. ships follow the Rules of the Road, but the ships of all countries feel a positive obligation to do so. Why is this true?

If you have not already traversed the Panama Canal, the odds are that you will do so sometime. The engineering history of that tremendous canal and the story of how the United States acquired the rights to build it are classics in their field. Those rights, ceded in the early part of this century, have a bearing on the jurisdiction over and operation of the canal today.

The scope of the subject we are about to explore and study is also indicated by some of the words and phrases used in the text:

continental shelf
blockade
innocent passage
immunity

chargé d'affaires
International Court of Justice
territorial sea
reprisal

comity	hot pursuit
de facto	extradition
neutrals	protocol
visit and search	sovereignty
thalweg	visas
Security Council	deep seabed
asylum	contiguous zone
exclusive economic zone	transit passage

You are undoubtedly familiar with many, if not all, of these terms. If you are familiar with even a few of them, you will recognize the fact that the subject of this text is not restricted to a narrow field. As you proceed, you will learn that these words, and many more of like import, have significant shades of meaning that a mariner cannot afford to ignore.

Thus far we have touched briefly on heterogeneous questions and subjects. We have sampled newspaper headlines that report events with a foreign flavor, and some words that have a familiar ring. It should be apparent that the focal point here lies in the fact that all these items have something to do with foreign countries. More specifically, they involve *relations* between countries. Countries can no more escape having relations with other countries than people living in the same small town can escape some form of relationship with one another.

Before the Industrial Revolution the necessity for countries to have relations with one another was minimal. All types of communication were poor, and most of the simple needs of a community of that day were satisfied by its own particular skills and land. The technological advances of the modern era, and in particular of the twentieth century, abruptly changed the mode of living throughout most of the world. No longer did it take weeks to go from Paris to Rome or to send a communication from one of those cities to the other. In the former case, it is now a matter of hours; in the latter, it takes but a few seconds. The demands of modern living require that products be obtained from all over the world. The jet airplane will continue to make the world still smaller. When we speak of making the world smaller we can only mean that, in contrast to the past, relations between countries have grown, and will continue to grow, more complex. In other words, countries have become more interdependent. This fact is inescapable. As we have already seen, it forces itself on us in many ways every day.

If there must be relations between countries, there must be some overriding authority or "rules of the game" to control them. Without such rules, and binding ones at that, we could liken international relations to an Army-Navy football game without referees, sidelines, goal posts, an agreed number of players, and a specified type of ball and field. In essence, if it were not