

D.P.O'Connell

THE
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LAW OF
THE SEA

———— VOLUME II ————

Edited by I.A. Shearer

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THE INTERNATIONAL LAW OF THE SEA

VOLUME II

by

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EDITOR'S PREFACE

With respect to this second volume of the work of the late Professor O'Connell, the same general remarks that were made in the preface to the first volume apply.

After the first volume went to press the United Nations Third Conference on the Law of the Sea concluded with the signing of the United Nations Convention on the Law of the Sea on 10 December 1982. A late decision was made by the Conference to sign the Convention in Montego Bay, Jamaica, instead of in Caracas, Venezuela. In volume 1 references were made to the draft Convention text as the 'Draft Caracas Convention' in accordance with the popular name then in currency in anticipation of the expected place of signature. References in the present volume to the Convention as signed are to the 'Montego Bay Convention', and to the earlier drafts as, 'the Draft Convention', the 'ICNT', or the 'RSNT', as appropriate.

In addition to the persons whose assistance was acknowledged in the preface to Volume 1, the editor would wish to record his thanks to the following: Mr R. F. Brian, Law Librarian at the University of New South Wales, and his assistants; Professor R. Bernhardt and the staff of the Max Planck Institute for Comparative Public Law and International Law, Heidelberg; Mr T. S. Busha of the International Maritime Organization; Commander R. E. Hearsey RN, Assistant Hydrographer, Royal Australian Navy; Lieutenant Commander K. Tuckey RAN, Royal Australian Navy Navigation School; Mr V. Thompson, of the University of Adelaide; Mr M. J. Tilbury, of the University of New South Wales; Mr C. Drace-Francis, of the Foreign and Commonwealth Office; Mr K. G. Brennan, AO, formerly of the Australian Department of Foreign Affairs; and Miss Shirley Hong of the secretarial staff of the Law School of the University of New South Wales.

Sydney
25 May 1983

I. A. Shearer

ABBREVIATIONS

A.C.	Appeal Cases, 1891–
A.des V.	Archiv des Völkerrechts
AJIL	American Journal of International Law
ALJ	Australian Law Journal
All E.R.	All England Law Reports
ALR	Australian Law Reports
Am.St.Pap.	American State Papers and Public Documents of the United States, 1789–1815, 8 vols (1815)
Ann. Dig.	Annual Digest of Public International Law Cases (1919–49). See also ILR
Annuaire	Annuaire de l'Institut de droit international
Annuaire, <i>Abridgement</i>	Annuaire de l'Institut de droit international, Edition nouvelle abregée, 7 vols (1875–1913)
Annuaire français	Annuaire français de droit international
App. Cas.	Appeal Cases, 1875–90
ASIL Proc.	Proceedings of the American Society of International Law
ASW	Anti-submarine warfare
Aust. YBIL	Australian Yearbook of International Law
B. & C.	Barnewall and Cresswell's Reports, 1822–30
B. & C.P.C.	British and Colonial Prize Cases, Vol. I, ed. by J. M. Trehern; Vols. II, III ed. by A. Wallace Grant (1915–22)
B. & S.	Best and Smith's Reports, 1861–5
Baldwin's C.C. Rep.	Reports, Circuit Court, United States, Third Circuit, 1827–33, by H. Baldwin (1837)
Barn. & Ald.	Barnewall and Alderson's Reports, 1817–22
BCLR	British Columbia Law Reports, 1977–(Canada)
BCR	British Columbia Law Reports, 1867–1947 (Canada)
Bell App. Cas.	Bell's Appeal Cases, 1842–50
Bell C.C.	Bell's Reports of Crown Cases, 1858–60
Bevans	Treaties and Other International Agreements of the United States 1776–1949, ed. by J. B. Bevans, 12 vols. (1968–74)
BFSP	British and Foreign State Papers (1806–1970)
BGBI.	Bundesgesetzblatt (F. R. Germany)

BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen (1952—)
Bibliotheca Visseriana	Bibliotheca Visseriana dissertationum jus internationale illustrantium, Vols 1–20 (1923–63)
Bing.	Bingham's Reports, 1822–34
Black Book of the Admiralty	The Black Book of the Admiralty, ed. by Sir Travers Twiss, 4 vols. (1871–6)
Bligh (N.S.)	Bligh's Reports (New Series), 1827–37
Br. Man. Prize Law	Manual of Naval Prize Law, ed. by T. E. Holland (1888)
Burr.	Burrow's Reports, King's Bench, 1757–71
Burrell	Burrell's Reports, Eccl. & Adm., 1584–1774
BYIL	British Yearbook of International Law
C., Cd., Cmd., Cmnd.	Papers presented to Parliament by Command of His (Her) Majesty: C. 1–9550 (1870–1899) Cd. 1–9239 (1900–1918) Cmd. 1–9889 (1919–1956) Cmnd. 1— (1956—)
Cal.	California Reports, 1850–
Camb. LJ.	Cambridge Law Journal
Can. YBIL	Canadian Yearbook of International Law
CCD	Conference of the Committee on Disarmament
Ch.	Chancery Reports, 1891–
Cl. & F.	Clark and Fennelly's Reports, House of Lords, 1831–46
Clunet	Journal du droit international
CLR	Commonwealth Law Reports (Australia)
CMLR	Common Market Law Reports
CML Rev.	Common Market Law Review
C.O.	Colonial Office Papers
Co.Lit.	Coke, Sir Edward. The First Part of the Institute of the Laws of England (1794); 19th ed. (1832)
Con.T.S.	Parry, C. (Ed.) Consolidated Treaty Series, 1648–1910, 210 vols (1969–80)
Co. Rep.	Coke's Reports, 1572–1616
Cowp.	Cowper's Reports, 1774–8
Cox C.C.	Cox's Criminal Cases (1844–1941)
C.P.D.	Common Pleas Division Reports, 1875–80
Cranch	U.S. Supreme Court Reports, Cranch, 1801–15
CREST	Crown Estate Office
C.Rob.	C. Robinson's Admiralty Reports, 1799–1808
Ct. Cl.	Court of Claims Reports (USA)
D.	Dalloz, Recueil périodique et critique de jurisprudence, de législation et de doctrine (France)
Dav.	Davis's Reports (Ireland), 1604–12
De G.F. & J.	De Gex, Fisher and Jones' Reports, Chancery, 1860–62

De G.M. & G.	De Gex, Macnaghten and Gordon's Reports, Chancery, 1851–7
Dept. of State Bull.	Department of State Bulletin (USA)
DLR	Dominion Law Reports (Canada)
Dods.	Dodson's Admiralty Reports, 1811–22
Draft Convention (1980)	United Nations Third Conference on the Law of the Sea. Draft Convention on the Law of the Sea (Informal Text), U.N.Doc.A/CONF. 62/W.P.10/Rev.3, 27 August 1980
ECR	European Court Reports, 1962–
EEC	European Economic Community
EEZ	Exclusive Economic Zone
ENDC	Eighteen Nation Disarmament Committee
E.R.	English Reports Reprint, 1220–1865
Ex.D.	Exchequer Division Reports, 1875–80
F. 2d.	Federal Reporter, Second Series (USA)
Fed.	Federal Reporter, First Series (USA)
Fed. Cas.	Federal Cases, 1789–1800 (USA)
Fed. L. Rev.	Federal Law Review (Australia)
Fitz. Abr.	Fitzherbert, A., <i>La Graunde Abridgement: Corone et Plees del Corone</i> (1565)
F.O.	Foreign Office Papers
Fontes Juris Gentium	Fontes Juris Gentium, ed. by Viktor Bruns (1931–38)
For. Rel.	Foreign Relations of the United States, 1861–
F. Supp.	Federal Supplement (USA)
Giur. Comp.	Giurisprudenza comparata di diritto internazionale privato (Italy)
Gray	Gray's Reports, Massachusetts, 1854–60
Grot. Trans.	Transactions of the Grotius Society, 1916–59
Hackworth	Hackworth, G. H. <i>Digest of International Law</i> , 8 vols (1940–44)
Hagg.	Haggard's Admiralty Reports, 1822–38
Hague Recueil	Académie de droit international, <i>Recueil des cours</i>
H. C. Deb.	See Parl. Deb.
H.C.R.	See Scott
H.C. Sess. Pap.	House of Commons Session Papers
Hertslet	Hertslet, L. (Ed.) <i>Treaties and Conventions . . . between Great Britain and Foreign Powers</i> , 31 vols (1840–1925)
H.L.C.	House of Lords Cases, 1847–66
How.St.Tr.	State Trials, 1163–1820, compiled by T. B. Howell and T. J. Howell, 34 vols (1809–28)
Hudson	Hudson, M. O. <i>International Legislation</i> , 9 vols (1932–50)
IBS	U.S. Dept. of State, Office of the Geographer, <i>International Boundary Studies</i> (cont. series)

I.C.J. Rep.	International Court of Justice, Reports of Judgments, Advisory Opinions and Orders
ICLQ	International and Comparative Law Quarterly
ICNT	United Nations Third Conference on the Law of the Sea. Informal Composite Negotiating Text, U.N.Doc.A/CONF.62/W.P. 10, 15 July 1977; Rev. 1, 28 April 1979; Rev. 2, 11 April 1980
IHO	International Hydrographic Organisation
ILA	International Law Association
ILC	International Law Commission
ILC Ybk.	Yearbook of the International Law Commission
ILM	International Legal Materials (American Society of International Law)
ILQ	International Law Quarterly, 1947–51
ILR	International Law Reports 1950– (Successor to Ann.Dig.)
IMCO	Intergovernmental Maritime Consultative Organisation (since 1982 IMO)
Indian JIL	Indian Journal of International Law
International Conference On Oil Pollution of the Sea	International Conference on Oil Pollution of the Sea, Report of Proceedings held at Rome, 7–9 October 1968, ed. by P. Barclay-Smith (1968)
I.R.	Irish Reports
Ital. YBIL	Italian Yearbook of International Law
J. & H.	Johnson and Hemming's Reports, Chancery, 1860–62
Jahrb. Int. R.	Jahrbuch für internationales Recht
J.Mar.L. & Com.	Journal of Maritime Law and Commerce
JO	Journal Officiel (France)
Jur.(N.S.)	The Jurist (New Series), 1856–66
JW	Juristische Wochenschrift (Germany)
K.B.	King's Bench Reports, 1901–51
Knapp.	Knapp's Reports, 1829–36
Law Mag. & Rev.	Law Magazine and Review, 37 vols (1872–1908)
Law Reps. Trials of War Criminals	United Nations War Crimes Commission, Law Reports of Trials of War Criminals (HMSO, 1947)
Lev.	Levinz's Reports, 1660–97
Limits in the Sea	U.S. Dept. of State, Bureau of Intelligence and Research, Limits in the Sea (Cont. series)
L.J.	Law Journal Reports
LI.L.R.	Lloyd's List Reports
LI.P.C.	Lloyd's Reports of Prize Cases, Vol. 1, ed. by J. B. Aspinall, Vols. 2–10, ed. by E. L. de Hart (1915–24); 2nd series ed. by H. P. Henley (1940–57)

LNTS	League of Nations Treaty Series
LoN Doc.	League of Nations, Documents
L.R.	Law Reports
L.R., C.C.R.	Law Reports, Crown Cases Reserved (1866–75)
L.R. Ind. App.	Law Reports, Indian Appeals, Privy Council, 1873–1950
L.R.P.C.	Law Reports, Privy Council, 1865–75
L.T.	Law Times, 1843–
Lush.	Lushington's Admiralty Reports, 1859–62
M. & W.	Meeson and Welsby's Reports, 1836–47
Macq.	Macqueen's House of Lords Appeals, 1849–65 (Scotland)
Malloy	Malloy, W.M., Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and Other Powers, 1776–1923, 3 vols (1910–23)
Marsden's Admiralty Cases	Marsden, R. G., A Digest of Cases Relating to Shipping, Admiralty, and Insurance Law, from the Reign of Elizabeth to the End of 1897 (1899)
Martens, <i>Recueil de traités</i>	Martens, G. F. de –
M.R.	Recueil des principaux traités . . . , 7 vols (2nd ed. 1791–1801)
M.R. Suppl.	Supplément au recueil des principaux traités . . . , 4 vols (1802–08)
M.R.	Recueil des traités de l'Europe . . . depuis 1761, 8 vols (rev. ed. 1817–35)
M.N.R.	Nouveau recueil de traités . . . de l'Europe . . . depuis 1808, 17 vols (1817–41)
M.N.R. Suppl.	Nouveaux suppléments au recueil de traités . . . depuis 1761, 4 vols (1839–42)
M.N.R.G.	Nouveau recueil général de traités, 20 vols (1843–75); Nouveau recueil général de traités, 2e sér., 35 vols (1876–1910); Nouveau recueil général de traités, 3e sér., 41 vols (1909–44)
Mass.	Massachusetts Reports, 1868–
McNair, <i>Opinions</i>	International Law Opinions, Selected and Annotated by Lord McNair, 3 vols (1956)
MDR	Monatschrift für Deutsches Recht (Germany)
Mod.	Modern Reports, 1669–1732
Moo. P.C.	Moore's Privy Council Cases, 1836–62
Moore, <i>Dig.</i>	Moore, J. B., A Digest of International Law, 8 vols (1906)
Moore, <i>Foreshore</i>	Moore, S. A., History and Law of the Foreshore and Sea Shore and the Law Relating Thereto (1888)
Moore, <i>IA</i>	Moore, J. B., History and Digest of International Arbitrations to which the United States has been a Party, 5 vols (1898)

MSA	Merchant Shipping Act (UK)
Naval Miscellany	Navy Records Society, <i>The Naval Miscellany</i> , Vol. 3, ed. by W. G. Perrin (1928)
Ned. Tijd.	Nederlands Tijdschrift voor Internationaal Recht
New Directions	New Directions in the Law of the Sea – Vols I–II by Lay, S. H., Churchill, R. and Nordquist, M. (1973) Vol. III by Churchill, Simmonds, K. R. and Welch, J. (1973) Vol. IV by Churchill and Nordquist (1975) Vols V–VI by Churchill, Nordquist and Lay (1977) Vols VII–VIII by Nordquist, Lay and Simmonds (1980) Vols IX–X by Nordquist and Simmonds (1980)
N.I.	Northern Ireland Law Reports
NJW	Neue Juristische Wochenschrift (Germany)
North Atlantic Coast Fisheries Arbitration: <i>Documents</i>	Documents relating to the North Atlantic coast Fisheries Arbitration, the United Kingdom and the United States, 18 vols (H.M.S.O., London, 1909–10)
North Atlantic Coast Fisheries Arbitration: <i>Proceedings</i>	Proceedings in the North Atlantic Coast Fisheries Arbitration, 12 vols. (Government Printing Office, Washington, 1912)
N.Y.	New York Reports
N.Y. Supp.	New York Supplement
NZLR	New Zealand Law Reports
N.Z.T.S.	New Zealand Treaty Series
OLR	Ontario Law Reports
OR	Ontario Reports, 1882–1900
P.	Probate Reports, 1891–1971
P. 2d.	Pacific Reporter, Second Series (USA)
Pac.	Pacific Reporter, First Series (USA)
Pacem in Maribus	Royal University of Malta Press, 7 vols (1971)
Parl. Deb.	Parliamentary Debates (Hansard), House of Commons (H.C.); House of Lords (H.L.)
Parl.Pap.	Parliamentary Papers. See also C., <i>supra</i>
Parry, <i>Opinions</i>	Parry, C. (Ed.) <i>Law Officers' Opinions to the Foreign Office, 1793–1860</i> , 97 vols (1970)
P.C.	Privy Council (Canada/UK)
PCIJ	Permanent Court of International Justice Reports, 1923–1940
Pet.	U.S. Supreme Court Reports, Peters, 1828–42
P.R.O.	Public Record Office (UK)
Q.B.	Queen's Bench Reports, 1891–1900; 1952–
QLR	Quebec Law Reports (Canada)
QSR	Queensland State Reports (Australia)

Raym.	Lord Raymond's Reports, 1694–1732
RDILC	Revue de droit international et de législation comparé (Belgium)
Reichsgerichtfestgabe	Schreiber, O. (Ed.), Die Reichsgerichtspraxis im deutschen Rechtsleben: Festgabe zum 50-jährigen Bestehen des Reichsgerichts (1929)
Rev. belge	Revue belge de droit international
Rev.crit.de droit int.	Revue critique de droit international privé, 1933—continuing Revue de droit international privé, 1905–1933 (France)
Rev. droit int.	Revue de droit international, de sciences diplomatiques et politiques (Switzerland)
Rev. égypt.	Revue égyptienne de droit international
Rev. hellén.	Revue hellénique de droit international
RGDIP	Revue générale de droit international public (France)
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen, 172 vols. (1880–1945)
Riv.D.I.	Rivista Di Diritto Internazionale
Rome Symposium	Sztucki, J. (Ed.), Symposium on the International Regime of the Seabed, held at Rome on 30 June–5 July 1969, Proceedings (1970)
Rot. Parl.	Rotuli Parliamentorum . . . 1279–1373, 6 vols (1767–77)
R.S.C.	Revised Statutes of Canada
RSNT	United Nations Third Conference on the Law of the Sea. Revised Single Negotiating Text, U.N.Doc.A/CONF.62/W.P.8/Rev.1, 6 May 1976
S.	Sirey, Recueil général des lois et des arrêts, 1801—(France)
SALR	South African Law Reports
SASR	South Australian State Reports
S.C.	Session Cases (Scotland)
S.	1821–62 (Shaw)
M.	1862–73 (MacPherson)
R.	1873–98 (Rettie)
F.	1898–1906 (Fraser)
Sess.Cas.	1907—
Scott H.C.R.	Scott, J. B., The Hague Court Reports, 1st ser. (1916); 2nd ser. (1932)
SCR	Supreme Court Reports, 1876–1922 (Canada)
S.I.	Statutory Instruments (UK)
S.J.	Scottish Jurist
S.L.T.	Scots Law Times
SNT	United Nations Third Conference on the Law of the Sea. Informal Single Negotiating Text,

Sovets. Gosud. Pravo S.P.	U.N.Doc.A/CONF.62/W.P. 8, 7 May 1975 Sovetskoe gosudarstvo i pravo (USSR) Calendar of State Papers – Domestic Series: Edward VI, Mary, Elizabeth, ed. by R. Lemon, 7 vols (1856–71); Charles II, ed. by M.A.E. Green (1860). – Foreign Series: Mary, 1553–8, ed. by W. B Turnbull (1861)
S.R. (NSW)	State Reports New South Wales (Australia)
S.R. & O.	Statutory Rules and Orders (UK)
Staund. P.C.	Staundford, W., Les Plees del Corone (Tottell, 1583)
StGB	Strafgesetzbuch (Criminal Code) (Germany)
S.W.	Southwestern Reporter (USA)
Swab.	Swabey's Reports, Eccl. & Adm., 1855–9
Syr.J.Int.L. & Com.	Syracuse Journal of International Law and Commerce
Tex.	Texas Reports, 1846–1962
Thesaurus Acroasium	Thesaurus Acroasium. Publications of the Institute of Public International Law and International Relations, Thessaloniki, Greece (1963–)
TIAS	Treaties and Other International Acts Series (United States)
TLR	Times Law Reports
U.K.T.S.	United Kingdom Treaty Series
UNCLOS I	United Nations First Conference on the Law of the Sea, 1958
UNCLOS II	United Nations Second Conference on the Law of the Sea, 1960
UNCLOS III	United Nations Third Conference on the Law of the Sea, 1973–82
U.N.Doc.	United Nations Documents
U.N.Leg.Ser.	United Nations Legislative Series: Multilateral Treaties in Respect of which the Secretary- General Performs Depositary Functions (ST/LEG/SER.D); Laws and Regulations on the Regime of the High Seas, Vol. I (ST/LEG/ SER.B/1, 1951); Laws and Regulations on the Regime of the High Seas, Vol. II (ST/LEG/ SER.B/2, 1952); Supplement to Laws and Regulations on the Regime of the High Seas and Laws Concerning the Nationality of Ships (ST/LEG/SER.B/8, 1959); Laws and Regulations on the Regime of the Territorial Sea (ST/LEG/SER.B/6, 1957); National Legislation and Treaties relating to the Territorial Sea, the Contiguous Zone, the Continental Shelf, the High Seas, and to Fishing and Conservation of

	the Living Resources of the Sea (ST/LEG/SER.B/15, 1970); National Legislation and Treaties relating to the Law of the Sea (ST/LEG/SER.B/16, 1974; SER.B/18, 1976; SER.B/19, 1980)
U.N. Rep.	Reports of International Arbitral Awards (United Nations publ.)
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series
UQLJ	University of Queensland Law Journal
U.S.	United States Reports
U.S. Law of Naval Warfare	Law of Naval Warfare, U.S. Govt. Printing Office (1955)
UST	United States Treaties Series
Va.J.Int.L.	Virginia Journal of International Law
Verzijl, <i>I.L. Hist.</i>	Verzijl, J. H., <i>International Law in Historical Perspective</i> , 10 vols (1968–79)
VLR	Victorian Law Reports (Australia)
Wall.	U.S. Supreme Court Reports, Wallace, 1863–74
WALR	Western Australian Law Reports
Wharton	Wharton, F. <i>International Law Digest</i> , 3 vols (1887)
Wheat.	U.S. Supreme Court Reports, Wheaton, 1816–27
Whitman	Whitman, M. W. <i>Digest of International Law</i> , 15 vols (1963–73)
W.L.R.	Weekly Law Reports
Wörterbuch des Völkerrechts	Wörterbuch des Völkerrechts und der Diplomatie, ed. by K. Strupp (1924–9); 2nd ed. by H. J. Schlochauer (1960–2)
WWR	Western Weekly Reports (Canada)
ZfaöRVR	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

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