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MELLAND SCHILL STUDIES IN  
international law

# The law of the sea

Third edition

R. R. Churchill  
A. V. Lowe

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*R. R. Churchill and A. V. Lowe*



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## Series editor's foreword

The third edition of this classic text will be warmly welcomed by the international legal community. *The law of the sea* is of systemic importance to the discipline of public international law. It teaches us much about the historical, social, economic and political forces that play upon the formation and interpretation of legal rules. It evidences the tensions in devising rules of order and conduct for the communal resources of a functioning international society. It has also displayed some legal ingenuity in devising an accommodation that should allow universal participation in the Law of the Sea Convention. All of these elements and many more are expertly analysed in this text.

Dominic McGoldrick  
International and European Law Unit  
University of Liverpool

# Preface

The aim of the third edition of this book remains broadly the same as that of the first two editions, namely to provide an introduction to the law of the sea, surveying not only the 1982 United Nations Convention on the Law of the Sea but also the customary and conventional law which supplements it. In covering such a large body of law in a relatively short space, our discussion of a number of topics has had to be more concise than we would have wished. To economise on space we have been sparing with footnotes. We give references to the sources of conventions and cases mostly in the tables of cases and conventions at the front of this book and not in the text itself. As a guide and, we hope, a stimulus to further reading and research, a select list of books and articles appears at the end of each chapter.

Since the previous edition of this book was published in 1988, much has happened in the law of the sea. Most notably, the 1982 Convention has entered into force and is now widely ratified. In addition a number of important multilateral treaties have been concluded (including the two Agreements of 1994 and 1995 relating to the implementation of the Convention), there have been several judgments by international courts and tribunals, and there has been a vast amount of bilateral treaty-making, national legislation and other forms of State practice. This new edition has been completely revised and extensively rewritten, although the basic structure of the book remains unchanged. Except where otherwise indicated in the text, we have endeavoured to state the law as at 31 August 1998.

In preparing this book we have received much help. We would like to thank our publishers for their patience as deadlines came and went; Dominic McGoldrick for reading the entire manuscript and making many helpful comments; Rob Cryer for research assistance; Chris Bleby for help with the tables; Lisa Comley for scanning the previous edition of this book which greatly facilitated production of this edition; and Thomas Churchill and Helen Wright for word processing. More generally we would like to thank all those, too numerous to mention individually, who over the years have discussed law of the sea issues with us, thereby helping to develop and broaden our knowledge and understanding of the subject.

Robin Churchill and Vaughan Lowe  
Cardiff and Cambridge

# Abbreviations

ACOPS	Advisory Committee on Pollution of the Sea, London
AD	<i>Annual Digest of Public International Law Cases</i>
AFDI	<i>Annuaire Français de Droit International</i>
AJIL	<i>American Journal of International Law</i>
ALR	<i>Australian Law Reports</i>
art.	article
BYIL	<i>British Yearbook of International Law</i>
Cm. and Cmnd.	<i>Command Paper</i> (of the United Kingdom)
CSC	(Geneva) Convention on the Continental Shelf, 1958
CTS	<i>Consolidated Treaty Series</i>
DLR	<i>Dominion Law Reports</i>
DUSPIL	<i>Digest of United States Practice in International Law</i>
EC	European Community
ECOSOC	Economic and Social Council of the United Nations
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFZ	exclusive fishing zone
ER	<i>English Reports</i>
FAO	(United Nations) Food and Agricultural Organisation
FOCP	Foreign Office Confidential Print
GA	(United Nations) General Assembly
GATT	General Agreement on Tariffs and Trade
GESAMP	Group of Experts on the Scientific Aspects of Marine Environmental Protection
HELCOM	Baltic Marine Environment Protection Committee
HSC	(Geneva) Convention on the High Seas, 1958
IA	Implementation Agreement
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organisation
ICES	International Council for the Exploration of the Sea
ICJ	International Court of Justice
ICJ Rep.	<i>ICJ Reports</i>
ICLQ	<i>International and Comparative Law Quarterly</i>
IJECL	<i>International Journal of Estuarine and Coastal Law</i>
IJIL	<i>Indian Journal of International Law</i>

## *Abbreviations*

<i>IJMC</i>	<i>International Journal of Marine and Coastal Law</i>
ILC	(United Nations) International Law Commission
<i>ILC Yearbook</i>	<i>Yearbook of the International Law Commission</i>
<i>ILM</i>	<i>International Legal Materials</i>
ILO	(United Nations) International Labour Organisation
<i>ILR</i>	<i>International Law Reports</i>
IMCO	(United Nations) Intergovernmental Maritime Consultative Organisation
IMO	(United Nations) International Maritime Organisation
INMARSAT	(Convention on the) International Maritime Satellite Organisation
IOC	(United Nations) Intergovernmental Oceanographic Commission
IOMAC	(Organisation for) Indian Ocean Marine Affairs Co-operation
ISA	International Sea Bed Authority
ITLOS	International Tribunal for the Law of the Sea
<i>JDI</i>	<i>Journal du Droit International</i>
<i>Jessup</i>	P. C. Jessup, <i>The Law of Territorial Waters and Maritime Jurisdiction</i> , New York, 1927
<i>JMLC</i>	<i>Journal of Maritime Law and Commerce</i>
<i>Limits in the Seas</i>	<i>Limits in the Seas</i> , published by the Geographer, United States Department of State
<i>LNTS</i>	<i>League of Nations Treaty Series</i>
<i>LOS</i>	(United Nations) <i>Law of the Sea Bulletin</i>
LOSC	(United Nations) Law of the Sea Convention, 1982
<i>LQR</i>	<i>Law Quarterly Review</i>
MARPOL	International Convention for the Prevention of Pollution from Ships, 1973
Moore, <i>Digest</i>	J. B. Moore, <i>A Digest of International Law</i> , 8 vols, 1906
Moore, <i>Int. Arb.</i>	J. B. Moore, <i>History and Digest of the International Arbitrations to which the United States has been a Party</i> , 5 vols, 1898
NAFO	Northwest Atlantic Fisheries Organisation
<i>ND</i>	<i>New Directions in the Law of the Sea</i> , ed. R. R. Churchill <i>et al.</i> , Dobbs Ferry, NY, Oceana, vols I–IX, 1973–81
<i>NYIL</i>	<i>Netherlands Yearbook of International Law</i>
<i>O'Connell</i>	D. P. O'Connell, <i>The International Law of the Sea</i> , 2 vols (Oxford, Clarendon), 1982, 1984
ODAS	Ocean data acquisition systems
<i>ODIL</i>	<i>Ocean Development and International Law</i>
OECD	Organisation for Economic Co-operation and Development
<i>OGLTR</i>	<i>Oil and Gas Law and Taxation Review</i>
<i>OJEC</i>	<i>Official Journal of the European Communities</i>
<i>Oppenheim I</i>	Sir Robert Jennings and Sir Arthur Watts (eds), <i>Oppenheim's International Law</i> , 9th edn, Vol. I, <i>Peace</i> (Harlow, Longman), 1992
<i>Oppenheim II</i>	H. Lauterpacht (ed.), <i>Oppenheim's International Law</i> , Vol. II, <i>Disputes, War and Neutrality</i> , 7th edn (London, Longman), 1952
PCIJ	Permanent Court of International Justice
P.D.	Law Reports, Probate and Divorce
PREPCOM	Preparatory Commission for the International Sea Bed Authority and for the International Tribunal for the Law of the Sea

## Abbreviations

<i>Recueil des Cours</i>	<i>Recueil des cours de l'Académie de droit international</i> (The Hague)
Res.	Resolution
RGDIP	<i>Revue générale de droit international public</i>
RIAA	(United Nations) <i>Reports of International Arbitral Awards</i>
S.I.	Statutory Instrument (of the United Kingdom)
Smith	R. W. Smith, <i>Exclusive Economic Zone Claims: An Analysis and Primary Documents</i> (Dordrecht, Nijhoff), 1986
SOLAS	Safety of Life at Sea (Conventions)
SOPAC	South Pacific Applied Geoscience Commission
STCW	(International Convention on) Standards of Training, Certification and Watchkeeping for Seafarers
TIAS	<i>Treaties and other International Acts Series</i>
TSC	(Geneva) Convention on the Territorial Sea and the Contiguous Zone, 1958
UKMIL	<i>United Kingdom Materials in International Law</i> (section in the <i>British Yearbook of International Law</i> )
UKTS	<i>United Kingdom Treaty Series</i>
UN	United Nations
UNCED	United Nations Conference on Environment and Development, 1992
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS I	First United Nations Conference on the Law of the Sea, 1958
UNCLOS II	Second United Nations Conference on the Law of the Sea, 1960
UNCLOS III	Third United Nations Conference on the Law of the Sea, 1973–82
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
<i>UN Leg. Ser.</i>	<i>United Nations Legislative Series</i> (see p. 26 below)
<i>UNTS</i>	<i>United Nations Treaty Series</i>
<i>US</i>	<i>United States Reports</i>
USC	United States Code
<i>UST</i>	<i>United States Treaties and other International Agreements</i>
<i>VJIL</i>	<i>Virginia Journal of International Law</i>
<i>Whiteman</i>	M. M. Whiteman, <i>Digest of International Law</i> , 15 vols (Washington DC, US Government Printing Office), 1963
WMO	World Meteorological Organisation
WTO	World Trade Organisation
ZAÖVR	<i>Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht</i>

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# Table of conventions

The various conventions referred to in this book are listed in chronological order. Protocols are listed following their parent convention and not in the year of their adoption. In each case information is given as to the place and date of signature; the date of entry into force; the number of ratifications (in the case of multilateral conventions); and references to the source of the convention. As regards ratifications, in the case of conventions for which the UN Secretary General is the depositary (indicated \*) the information is correct as at 12 November 1998. In the case of conventions for which the IMO is the depositary (#) it is correct as at 1 October 1998. With other conventions the number of ratifications (where known) is accurate as at the date shown.

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- 1661 Denmark–Sweden. Convention, Naslebacke, 26 October 1661. 6 *CTS* 495 182
- 1774 Russia–Turkey. Treaty of Perpetual Peace and Amity, Kucuk Kainardji, 10 July 1774. In force 13 January 1775. 45 *CTS* 349 115
- 1815 Act of the Congress of Vienna, Vienna, 9 June 1815. 2 *BFSP* 3 64
- 1857 Treaty for the Redemption of Sound Dues, Copenhagen, 14 March 1857. In force 31 March 1857. Fifteen ratifications. 116 *CTS* 357; *ND IV*, p. 320 114
- 1868 Convention for Rhine Navigation, Mannheim, 17 October 1868, as amended. In force 17 April 1869. Six ratifications. 1967 *UKTS* 66 443
- 1881 Argentina–Chile. Boundary Treaty, Buenos Aires, 23 July 1881. In force 22 October 1881. 159 *CTS* 45 114
- 1884 Convention for the Protection of Submarine Cables, Paris, 14 March 1884. In force 1 March 1888. Forty ratifications. 163 *CTS* 391 209, 218
- 1888 Convention respecting the Free Navigation of the Suez Canal, Constantinople, 29 October 1888. In force 22 December 1888. Nine ratifications. 171 *CTS* 241 65
- 1890 General Act of the Brussels Conference relating to the African Slave Trade, Brussels, 2 July 1890. In force 2 July 1891. Eighteen ratifications. 173 *CTS* 293 212
- 1903 Panama–USA. Convention for the Construction of a Ship Canal, Washington, 18 November 1903. In force 26 February 1904. 194 *CTS* 263 65

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- 1904 France—Great Britain. Declaration respecting Egypt and Morocco, London, 8 April 1904. In force 8 April 1904. 195 *CTS* 198 114
- 1907 Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts, The Hague, 18 October 1907. In force 26 January 1910. Thirty-one ratifications. 205 *CTS* 250 430  
 Convention relative to the Laying of Automatic Submarine Contact Mines, The Hague, 18 October 1907. In force 26 January 1910. Thirty-six ratifications. 205 *CTS* 331 423  
 Convention concerning the Rights and Duties of Neutral Powers in Naval War, The Hague, 18 October 1907. In force 1 February 1910. Thirty ratifications. 205 *CTS* 395 423
- 1910 International Convention for the Unification of Certain Rules relating to Assistance and Salvage at Sea, Brussels, 23 September 1910. In force 1 March 1913. Seventy ratifications. *British and Foreign State Papers*, Vol. 103, p. 434 277
- 1919 Treaty of Peace between the Allied and Associated Powers and Germany, Versailles, 28 June 1919. In force 10 January 1920. Twenty-eight ratifications. 225 *CTS* 189 434  
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 Declaration recognising the Right to a Flag of States having no Sea Coast, Barcelona, 20 April 1921. In force 20 April 1921. Forty-five ratifications.\* 7 *LNTS* 73 434  
 Convention and Statute on the Regime of Navigable Waterways of International Concern, Barcelona, 20 April 1921. In force 31 October 1922. Twenty-eight ratifications.\* 7 *LNTS* 36 65, 443  
 Convention instituting the Definitive Statute of the Danube, Paris, 23 July 1921. In force 1 October 1922. Twelve ratifications. 26 *LNTS* 173 65  
 Convention relating to the Non-Fortification and Neutralisation of the Aaland Islands, Geneva, 20 October 1921. In force 6 April 1922. Eight ratifications. 9 *LNTS* 212 114
- 1922 Treaty for the Limitation of Naval Armament, Washington, 6 February 1922. In force 17 August 1923. Five ratifications. 25 *LNTS* 202 428
- 1923 Convention and Statute on the International Regime of Maritime Ports, Geneva, 9 December 1923. In force 26 July 1926. Forty ratifications.\* 58 *LNTS* 287 63, 435  
 Convention and Statute on the International Regime of Railways, Geneva, 9 December 1923. In force 23 March 1926. Twenty-six ratifications.\* 47 *LNTS* 55 443  
 Treaty of Lausanne, 24 July 1923. In force 6 August 1924. 28 *LNTS* 12 110
- 1924 UK—USA. Convention respecting the Regulation of the Liquor Traffic, Washington, 23 January 1924. In force 22 May 1924. 27 *LNTS* 182 134, 219, 450

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- 1925 Convention for the Suppression of the Contraband Traffic in Alcoholic Liquors, Helsinki, 19 August 1925. In force 24 December 1925. Eleven ratifications. 42 *LNTS* 75 134
- 1926 International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, Brussels, 10 April 1926. In force 8 January 1937. Twenty-nine ratifications (as of January 1997). 176 *LNTS* 199 98
- Slavery Convention, Geneva, 25 September 1926. In force 9 March 1927. Seventy-nine ratifications. 60 *LNTS* 253 212
- 1927 Great Britain–Johore. Agreement concerning the Johore Strait, 19 October 1927. No information on date of entry into force. Schedule to the Straits Settlement and Johore Territorial Waters (Agreement) Act, 1928 182
- 1928 Treaty providing for the Renunciation of War as an Instrument of National Policy, Paris, 27 August 1928. In force 25 July 1929. Sixty-three ratifications. 94 *LNTS* 57 422
- 1930 International Treaty for the Limitation and Reduction of Naval Armament, London, 22 April 1930. In force 27 October 1930. Nine ratifications. 112 *LNTS* 65. *Procès-verbal* relating to the Rules of Submarine Warfare, London, 6 November 1936. In force 6 November 1936. Forty-four ratifications. 173 *LNTS* 353 429, 430
- Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, The Hague, 12 April 1930. In force 1 July 1937. Nineteen ratifications. 179 *LNTS* 89 257
- 1932 Denmark–Sweden. Declaration concerning the Boundaries of the Sound, Stockholm, 30 January 1932. In force 30 January 1932. 127 *LNTS* 62 182
- 1936 Convention regarding the Regime of the Straits, Montreux, 20 July 1936. In force 9 November 1936. Eleven ratifications. 173 *LNTS* 213; *ND II*, p. 535 106, 110, 115, 263
- 1937 Nyon Arrangement, Nyon, 14 September 1937. In force 14 September 1937. Nine ratifications. 181 *LNTS* 135 430
- 1940 Finland–USSR. Agreement concerning the Aaland Islands, 11 October 1940. In force 11 October 1940. 67 *UNTS* 139 114
- 1942 Great Britain–Venezuela. Treaty relating to the Submarine Areas of the Gulf of Paria, Caracas, 26 February 1942. In force 22 September 1942. 205 *LNTS* 121 143, 184
- 1944 Convention on International Civil Aviation, Chicago, 7 December 1944. In force 4 April 1947. 185 ratifications. 15 *UNTS* 295 173, 443
- International Air Services Transit Agreement, Chicago, 7 December 1944. In force 30 January 1945. 114 ratifications. 84 *UNTS* 389 443
- International Air Transport Agreement, Chicago, 7 December 1944. In force 8 February 1945. Twelve ratifications (as of 21 October 1997). 171 *UNTS* 387 443
- 1945 Charter of the United Nations, San Francisco, 26 June 1945. In force 24 October 1945. 185 ratifications.\* 1946 *UKTS* 67 107, 217, 422, 424, 449, 454, 459

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- Statute of the International Court of Justice, San Francisco, 26 June 1945. In force 24 October 1945. 187 ratifications.\* 1946 *UKTS* 67 451–3
- 1946 International Convention for the Regulation of Whaling, Washington, 2 December 1946. In force 10 November 1948. Forty-one ratifications (as of February 1998). 161 *UNTS* 72, *ND I*, p. 418 317
- 1947 General Agreement on Tariffs and Trade, Geneva, 30 October 1947. In force 1 January 1948. 126 ratifications.\* 55 *UNTS* 187 64, 113, 250, 441–2
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- 1949 ILO Convention No. 92 concerning Crew Accommodation on Board Ship, Geneva, 18 June 1949. In force 29 January 1953. Forty-two ratifications. 160 *UNTS* 223 270
- Convention on Road Traffic, Geneva, 19 September 1949. In force 26 March 1952. Ninety ratifications.\* 125 *UNTS* 3 443
- Agreement for the Establishment of the General Fisheries Council for the Mediterranean, Rome, 24 September 1949. In force 20 February 1952. Twenty-three ratifications. 126 *UNTS* 237 297
- Amendments, July 1976. In force December 1976. 297
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- Convention for the Establishment of the Inter-American Tropical Tuna Commission, Washington, 31 May 1949. In force 3 March 1950. Eleven ratifications. 80 *UNTS* 3 311
- 1952 International Convention for the High Seas Fisheries of the North Pacific Ocean, Tokyo, 9 May 1952. In force 12 June 1953. Three ratifications. Terminated 1993. 205 *UNTS* 65; *ND I*, p. 383. Protocol to the Convention, Tokyo, 25 April 1978. In force 20 February 1979. Three ratifications. *TIAS* 9242 297
- International Convention relating to the Arrest of Seagoing Ships, Brussels, 10 May 1952. In force 24 February 1956. Sixty-nine ratifications (as of January 1998). 439 *UNTS* 193 64, 98
- International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation, Brussels, 10 May 1952. In force 20 November 1955. Sixty-six ratifications (as of August 1997). 439 *UNTS* 233 98, 208
- International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, Brussels, 10 May 1952. In force 14 September 1955. Sixty-four ratifications (as of August 1997). 439 *UNTS* 217 98, 208
- 1953 Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, Ottawa, 2 March 1953. In force 28 October 1953. 22 *UNTS* 77 295
- Protocol, Washington, 29 March, 1979. In force 15 October 1990. *TIAS* 9855 295

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1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery, Geneva, 7 September 1956. In force 30 April 1957. 117 ratifications. 266 *UNTS* 3 212

1957 Treaty establishing the European Community, Rome, 25 March 1957. In force 1 January 1958. Fifteen ratifications. 1973 *UKTS* 1 63

International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, Brussels, 10 October 1957. In force 31 May 1968. Thirty-five ratifications (as of January 1997). 1968 *UKTS* 52 277, 363

Interim Convention on North Pacific Fur Seals, Washington, 9 February 1957. In force 14 October 1957. Terminated 1985. Four ratifications. 314 *UNTS* 105 320

1958 Poland-USSR. Protocol concerning the Delimitation of Polish and Soviet Territorial Waters in the Gulf of Gdansk in the Baltic Sea, Warsaw, 18 March 1958. In force 29 July 1958. 340 *UNTS* 94 182

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