

The Law of The Sea



LOUIS B. SOHN
KRISTEN GUSTAFSON

THE LAW OF THE SEA IN A NUTSHELL

By

LOUIS B. SOHN

Woodruff Professor of International Law

University of Georgia School of Law

Bemis Professor of International Law, Emeritus

Harvard Law School

and

KRISTEN GUSTAFSON, J.D.



ST. PAUL, MINN.

WEST GROUP

Bancroft Whiney • Banks Baldwin • Clark Boardman Callaghan
Lawyers Cooperative Publishing • WESTLAW® • West Publishing

West Group has created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. West Group is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Nutshell Series, In a Nutshell, the Nutshell Logo and the West Group symbol are registered trademarks used herein under license.

COPYRIGHT © 1984 By WEST PUBLISHING CO.

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-328-9352

All rights reserved

Printed in the United States of America

ISBN 0-314-82348-4



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



PREFACE

Two principles have governed the law of the sea since the early times when sailors and fishermen first ventured into the sea: the right of the coastal state to control a narrow strip along the coast, and the freedoms of navigation and fishing in the high seas beyond that coastal area. Some states made attempts to appropriate certain areas of the sea; Rome and later Venice claimed dominion over the Mediterranean, Great Britain over the North Sea, and Portugal and Spain over the seas adjoining America, Africa and southern Asia. The issue was settled in the "battle of the books" in the 1600's when the concept of the freedom of the sea, advocated by the Dutchman Hugo Grotius (de Groot), prevailed over the "closed seas" ideas of the Englishman John Selden. For 300 years there were only occasional challenges to the freedoms of the high seas, and the rules governing the exercise of these freedoms (especially the freedoms of navigation and fishing) were generally agreed upon. First the League of Nations in 1930 and then the United Nations in 1958 and 1960 tried to solve the one recurrent issue—the breadth of the territorial sea under the control of coastal states. Both efforts proved unsuccessful, but the United Nations was able to codify in four 1958 conventions many other rules governing the territorial sea and the high seas, and added new rules relating to the oil-rich

PREFACE

continental shelf, the submerged part of the continents over which coastal states, led by the United States, started claiming jurisdiction in the 1940's.

The new treaties soon proved obsolete due to the rapid increase in the use of the ocean and in the exploitation of its resources. Fishing ceased to be a local enterprise, as large factory ships and vast fleets of smaller ships started roaming the oceans, exhausting the resources of one area after another. Mammoth oil tankers began carrying tremendous quantities of oil across the oceans, and several bad incidents made the people of the world conscious of the dangers of oil pollution of their beaches and fishing grounds. The marine environment could no longer cope with the assault from many directions: dumping of wastes from land, oil pollution from ships and additional oil pollution from drilling in the continental shelf. Technology developed to the point that even resources on the deep seabed, some 5,000 meters below the surface of the sea, became accessible, and a new regime became necessary for governing the exploitation of billions of tons of "manganese nodules," potato-sized lumps of several metals (not only manganese but also copper, nickel and cobalt), eagerly sought by metal-hungry industries.

Consequently in the late 1960's, the world was faced with a nightmare of conflicts over maritime rights between the big powers, between them and smaller powers, and between small powers themselves. The only possible solution was the establishment of a new international legal regime, a code

PREFACE

of international law for the oceans. The United Nations arranged, therefore, for the Third United Nations Law of the Sea Conference, which over a period of eight years, 1974 to 1982, hammered out a convention on the subject, a complex document of almost 200 pages, some 400 articles (300 in the main text and 100 in annexes), containing provisions on fifteen major topics. The area covered is tremendous, more than 70 percent of the surface of the earth. In the final division of spoils, the coastal states were able to obtain jurisdiction (diminishing in proportion to distance from land) over the resources of one-third of the ocean area, and new rules, more precise than in the past, were developed to control navigation, fishing and exploitation of other resources of the sea, and to protect the marine environment from pollution.

The United Nations Convention on the Law of the Sea was finally signed in December 1982 at Montego Bay, Jamaica, by more than 120 countries, and a dozen of other countries signed it later. One country was conspicuously absent—the United States. The Reagan Administration, which in 1981 expressed some doubts about the compromises reached by previous United States Administrations with other countries, especially the developing countries, decided finally that the Convention was not acceptable to it, as some provisions relating to deep seabed mining were contrary to its philosophy and ideologically alien. Nevertheless, it announced that practically all the other provisions, especially those relating to international navigation and the rights

PREFACE

and duties of coastal states, have by now become customary international law and as such binding on all states, whether parties to the Convention or not. In particular, in April 1983, President Reagan proclaimed a 200-mile wide exclusive economic zone, in terms consistent with the new Convention, and promised that the United States, subject to reciprocity, will respect similar zones established by other states. Consequently, it seems that, with the exception of the part relating to deep seabed mining, the provisions of the Convention have become the best evidence of the emerging new international law of the sea, and have become the law of the United States on the subjects covered by them. The *Paquete Habana*, 175 U.S. 677, 700 (1900) ("International law is part of our law, and must be ascertained and administered by the courts of the justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations . . .").

In summarizing the current principles and rules of the law of the sea, this Nutshell relies, therefore, strongly on those parts of the United Nations Convention on the Law of the Sea which have been accepted by the United States. It takes into account also other relevant treaties of the United States (including the four 1958 conventions on the law of the sea ratified by the United States), United States legislation and the jurisprudence of the United States

PREFACE

courts on this subject. It is hoped that this small volume would provide a sufficient introduction to this complex and vast subject for both students and for practicing lawyers. It must be remembered, however, that this volume can only highlight the principal issues, and anyone requiring more detailed knowledge on any particular topic would have to resort to the many monographs and law review articles on the subject.

Acknowledgements

The authors are very grateful to Sharon Adams and Elizabeth Magee who typed and retyped the manuscript several times; to Judith Hatton who typed part of it and helped to edit the final draft; and to James W. King who proofread the book twice with an eagle eye and saved us from many mistakes.

LOUIS B. SOHN
KRISTEN GUSTAFSON

April, 1984

*

TABLE OF CASES

References are to Pages

- Alaska, United States v., 59
Anna, The, 48
Antelope, The, 20
- Barger v. Petroleum Helicopters, Inc., 13
Benz v. Compania Naviera Hidalgo, 87
Berizzi Brothers Co. v. The S.S. Pesaro, 32
- Cadena, United States v., 25
California, United States v., 39, 40, 45, 46, 50, 54, 96, 111, 166
California v. Watt, 169, 170, 206
China National Chemical Import & Export Corp. v. M/V
Lago Hualaihue, 33
Church v. Hubbard, 114
City of (see name of city)
Complaint of Rio Grande Transport, Inc., 33
Complaint of Sedco, Inc., In re, 14
Continental Shelf Case (Tunisia-Libya), 77
Cook v. United States, 26
Corfu Channel Case (United Kingdom v. Albania), 106, 109
Corsa v. Tawe, 112
Cunard S.S. Co. v. Mellon, 18, 86, 87
- Dixie Carriers, Inc., United States v., 215
Douglas v. Seacost Products, Inc., 112
- El Salvador v. Nicaragua, 45

TABLE OF CASES

Fisheries Case (United Kingdom v. Norway), 36, 38, 42, 51, 58, 63
Fisheries Jurisdiction Cases (United Kingdom v. Iceland; Fed. Rep. of Germany v. Iceland), 120
Flores, United States v., 90
France-United Kingdom Continental Shelf Case, 75, 76, 77
F/V Taiyo Maru, United States v., 134

Get Oil Out! Inc. v. Exxon Corp., 148
Grisbadarna Case, 63
Green, United States v., 19
Gulf of Maine Case (Canada-United States), 77
Gulf Offshore Co. v. Mobil Oil Corp., 148

Hellenic Lines v. Rhoditis, 35

In re (see name of party)

Kaiyo Maru No. 53, United States v., 137
Kate A. Hoff Claim (United States v. Mexico), 90
Katelouzos v. The S.S. Othem, 88
Keller, United States v., 29

Lam Mow v. Nagle, 18
Lauritzen v. Larsen, 4, 18, 34
Le Louis, 20
Lee, United States v., 24
Louisiana v. Mississippi, 49
Louisiana v. United States, 58
Louisiana, United States v., 43, 48, 49, 50, 54, 111, 166

McCulloch v. Sociedad Nacional de Marineros de Honduras, 88
Maine v. Kreps, 136
Marino-Garcia, United States v., 22, 23
Marshall v. Nichols, 147
Merritt, The, 8
Mexico v. Hoffman, 32
Mowe, The, 79

TABLE OF CASES

States of Louisiana, Texas, Mississippi, Alabama, and Florida, United States v., 167

Stralla, People v., 113

Streifel, United States v., 25

Taylor, United States v., 232

Texas, United States v., 111, 166

Trail Smelter Case, The (United States v. Canada), 210

Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 160

Tunisia-Libyan Continental Shelf Case, 72

United States v. _____ (see opposing party)

Warren, United States v., 25

Weeren, People v., 140

Wildenhus' Case, 85, 86

TABLE OF CASES

- Muscat Dhows Case, 3
M/V Big Sam, United States v., 215
MYS Prokofyeva, United States v., 141
- Natural Resources Defense Council, Inc. v. Morton, 170
New York, City of v. Environmental Protection Agency, 204
North Atlantic Fisheries Case (Great Britain v. United States), 41
North Sea Continental Shelf Cases (Federal Republic of Germany—the Netherlands and Denmark), 65, 75, 77, 151, 156
Nottebohm Case, The (Liechtenstein v. Guatemala), 7
Nuclear Tests Cases (Australia and New Zealand v. France), 231
- Oil Spill by Amoco Cadiz off the Coast of France on March 16, 1978, In re, 220
Oliver v. Aminoil, U.S.A., Inc., 147
Orinoco Steamship Co. Case (United States v. Venezuela), 82
- People v. _____ (see opposing party)**
Perez v. Bahamas, 33
Piner, United States v., 25
Plumer, United States v., 29
Postal, United States v., 26
- Ray v. Atlantic Richfield Co., 85
Ray, United States v., 159, 160
Reagan, United States v., 91
Ricardo, United States v., 21
Rodriguez v. Orion Schiffahrts-Gesellschaft Reith & Co., 88
- S.S. Lotus, The, 2, 18
Saudi Arabia v. Arabian American Oil Company (ARAMCO), 80
Schooner Exchange, The v. McFadden, 31
Schooner La Jeune Eugenie, The, United States v., 20
Secretary of Interior v. California, 170
Skiriotes v. Florida, 140

TABLE OF TREATIES

To avoid repetitive citations, this Table contains all of the relevant citations, arranged by treaty dates.

Short Title	Full Title and Citation
1783 United States— Great Britain Peace Treaty:	Definitive Treaty of Peace, United States—Great Britain, signed at Paris, Sept. 3, 1783, 8 Stat. 80, T.S. No. 104, 12 Bev- ans 8.
1818 United States— Great Britain Fish- eries Convention:	Convention Respecting Fisher- ies, Boundary, and Restoration of Slaves, United States—Great Britain, signed at London, Oct. 20, 1818, 8 Stat. 248, T.S. No. 112, 12 Bevans 57.
1846 United States— Great Britain Boundary Treaty:	Treaty Establishing Boundary West of the Rockies (Oregon Treaty), United States—Great Britain, signed at Washington, June 15, 1846, 9 Stat. 869, T.S. No. 120, 12 Bevans 95.
1882 North Sea Fish- eries Convention:	Convention for Regulating the Police of the North Sea Fisher- ies, signed at The Hague, May 6, 1882, 160 Parry 219.

TABLE OF TREATIES

Short Title	Full Title and Citation
1884 Convention for the Protection of Submarine Cables:	Convention for the Protection of Submarine Cables, signed at Paris, March 14, 1884, 24 Stat. 989, T.S. No. 380, 1 Bevans 89. See also <i>id.</i> , at 112 and 114, for supplementary documents.
1910 United States—Great Britain Treaty:	Treaty concerning the Boundary Line Passamaquoddy Bay, United States—Great Britain, signed at Washington, May 21, 1910, 36 Stat. 2477, T.S. No. 551, 12 Bevans 341.
1910 Assistance and Salvage at Sea Convention:	Convention for the Unification of Certain Rules of Law with Respect to Assistance and Salvage at Sea, signed at Brussels, Sept. 23, 1910, 37 Stat. 1658, T.S. No. 576, 1 Bevans 780.
1911 Fur Seal Convention:	Convention concerning the Preservation and Protection of Fur Seals, signed at Washington, July 7, 1911, 37 Stat. 1542, T.S. No. 564, 1 Bevans 804.
1919 Treaty of Peace with Germany:	Treaty of Peace, signed at Versailles, June 28, 1919, 225 Parry 188.

TABLE OF TREATIES

Short Title	Full Title and Citation
1923 Convention, Statute and Protocol on the International Régime of Maritime Ports:	Convention and Statute on the International Régime of Maritime Ports, and Protocol of Signature thereto, signed at Geneva, Dec. 9, 1923, 58 L.N.T.S. 285, 2 Hudson, International Legislation 1156.
1924 United States—United Kingdom Anti-Smuggling Convention:	Convention for the Prevention of Smuggling of Intoxicating Liquors, signed at Washington, Jan. 23, 1924, 43 Stat. 1761, T.S. No. 685, 12 Bevans 414.
1926 Slavery Convention:	Convention to Suppress the Slave Trade and Slavery, signed at Geneva, Sept. 25, 1926, 46 Stat. 2183, T.S. No. 778, 60 L.N. T.S. 253.
1936 Montreux Straits Convention:	Convention Concerning the Régime of the Straits, with Annexes and Protocol, signed at Montreux, July 20, 1936, 173 L.N.T.S. 213, 7 Hudson, International Legislation 386.
1944 Chicago Convention on International Civil Aviation:	Convention on International Civil Aviation, signed at Chicago, Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295.

TABLE OF TREATIES

Short Title	Full Title and Citation
1944 International Air Services Transit Agreement:	International Air Services Transit Agreement, signed at Chicago, Dec. 7, 1944, 59 Stat. 1693, E.A.S. No. 487, 84 U.N. T.S. 389.
1946 U.S. Declaration Concerning Compulsory Jurisdiction:	Declaration by the President of the United States Concerning United States Recognition of the Compulsory Jurisdiction of the International Court of Justice, done at Washington, Aug. 14, 1946, 61 Stat. 1218, T.I.A.S. No. 1598, 4 Bevans 140.
1946 Whaling Convention:	International Convention for the Regulation of Whaling, signed at Washington, Dec. 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849, 4 Bevans 248, 161 U.N. T.S. 72. For the 1956 amending protocol, see 10 U.S.T. 952, T.I.A.S. No. 4228, 338 U.N.T.S. 366. The schedule to the Convention, containing detailed regulations, has been amended annually since 1949; see, e.g., 31 U.S.T. 4815, T.I.A.S. No. 9366.
1951 United States—United Kingdom Consular Convention:	Consular Convention and Protocol of Signature, United States—United Kingdom, signed at Washington, June 6, 1951, 3 U.S.T. 3426, T.I.A.S. No. 2494, 165 U.N.T.S. 121.

TABLE OF TREATIES

Short Title	Full Title and Citation
1952 Convention on Penal Jurisdiction in Matters of Collision:	International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation, signed at Brussels, May 10, 1952, 439 U.N.T.S. 233.
1953 Canada—United States Northern Pa- cific Halibut Con- vention:	Convention for the Preserva- tion of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Ottawa, March 2, 1953, 5 U.S.T. 5, T.I. A.S. No. 2900, 222 U.N.T.S. 77.
1953 North Pacific Fisheries Conven- tion:	International Convention for the High Seas Fisheries of the North Pacific Ocean, signed at Tokyo, May 9, 1952, 4 U.S.T. 380, T.I.A.S. No. 2786, 205 U.N. T.S. 65. For the 1962 amend- ment, see 14 U.S.T. 953, T.I. A.S. No. 5385; for the 1978 amendment, see 30 U.S.T. 1095, T.I.A.S. No. 9242.
1954 Oil Pollution Pre- vention Convention:	International Convention for the Prevention of Pollution of the Sea by Oil, done at London, May 12, 1954, 12 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3.