

LAW OF THE SEA INSTITUTE CONFERENCE



THE LIMITS OF MARITIME JURISDICTION

28 November – 2 December 2011
The Australian National Centre
for Ocean Resources and Security (ANCORS)
University of Wollongong, Australia

CONFERENCE PROGRAMME



Welcome Message

The Australian National Centre for Ocean Resources and Security (ANCORS) of the Faculty of Law, University of Wollongong, Australia, is honoured to host the sixth in a series of international conferences jointly organized and principally sponsored by the Law of the Sea Institute (LOSI) based at the School of Law, University of California, Berkeley, USA; and Korea Ocean Research & Development Institute (KORDI), Korea (with Inha University, Incheon, Korea: 2006-2010).

We have been extremely fortunate in our primary sponsors for the conference. Of especial note has been the outstanding support provided by KORDI and I would like to extend my sincere thanks to the President of KORDI, Jung-Keuk Kang, as well as Moon-Sang Kwon as conference co-organiser, together with their colleagues for their great cooperation and assistance, without which the conference would not have been possible. Additional financial support provided by cooperating sponsors, Academia Sinica, Taipei and the Sea Lanes of Communication (SLOC) Study Group in Korea is also acknowledged with gratitude. The role of Professor Seokwoo Lee of Inha University, Korea, in liaising between the main institutions and sponsors involved, as well as offering substantial contributions on the conference programme as it developed, was crucial, and I am greatly indebted to him.

The advice and intellectual support of key members of the Law of the Sea Institute, School of Law, University of California, Berkeley, notably Professor Harry Scheiber and Professor David Caron (Co-Directors of LOSI), was unflinching in the planning of the conference. Similarly, the input of Professor John Van Dyke of the School of Law, University of Hawai'i at Manoa, past Director and long-term supporter of LOSI, also proved invaluable.

Local support was provided by Professor Judy Raper, Deputy Vice-Chancellor (Research) of the University of Wollongong as well as by the Dean, Professor Luke McNamara, and Associate Dean (Research), Professor Warwick Gullett, of the Faculty of Law at the University of Wollongong. At ANCORS I am grateful to my colleagues for their support, led by Director of ANCORS Professor Martin Tsamenyi. Of particular note have been the unflinching endeavours of Mrs Myree Mitchell, in terms of conference organisation. I am also grateful to Dr Lowell Bautista for his enthusiastic assistance.

We are most fortunate to be in a position to welcome so many distinguished guests and law of the sea experts to Wollongong. Your presence deeply enriches the conference programme so I am delighted that you have agreed to join us. I believe that the conference theme, *The Limits of Maritime Jurisdiction*, offers great scope to address many of the key contemporary law of the sea challenges facing the international community and I look forward to a stimulating and intellectually enriching exchange of views as well as a most enjoyable time with new friends and old.

On behalf of the conference organising committee I would like to warmly welcome you to Wollongong.

Professor Clive Schofield

Director of Research

Australian National Centre for Ocean Resources and Security (ANCORS)

University of Wollongong

Australia

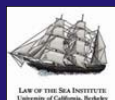
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Major Cooperating Sponsor:
The Australian National Centre for Ocean Resources and Security (ANCORS),
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The Faculty of Law, University of Wollongong (Australia)
University of Wollongong (Australia)



Conference Organizing Committee Members:
Harry N. SCHEIBER (UC Berkeley, USA)
David D. CARON (UC Berkeley, USA)
Jon M. VAN DYKE (University of Hawai'i at Manoa, USA)
Jin-Hyun PAIK (International Tribunal for the Law of the Sea)
Seoung-Yong HONG (Green-Growth Ocean Forum, Korea)
Moon-Sang KWON (KORDI, Korea)
Seokwoo LEE (Inha University, Korea)
Martin TSAMENYI (ANCORS, University of Wollongong Australia)
Clive SCHOFIELD (ANCORS, University of Wollongong Australia)

Conference Organizers & Coordinators:
Moon-Sang KWON (KORDI, Korea)
Seokwoo LEE (Inha University, Korea)
Clive SCHOFIELD (ANCORS, University of Wollongong Australia)

First Day: Monday, November 28

18:00-20:30

Welcome Reception

Venue: The Deck, Novotel Northbeach Hotel, Wollongong

Welcome to Wollongong

Martin TSAMENYI (Professor and Director, ANCORS, University of Wollongong, Australia)

Luke McNamara (Professor and Dean, Faculty of Law, University of Wollongong, Australia)

Introduced by

Clive SCHOFIELD (Professor and Director of Research, ANCORS, University of Wollongong, Australia)

Second Day: Tuesday, November 29

Venue: iC Theatre, ITAMS Building, Innovation Campus (iC), University of Wollongong

08:30-09:15

Opening Ceremony

Judy RAPER (Professor and Deputy Vice-Chancellor (Research), University of Wollongong, Australia)

Jon M. VAN DYKE (Professor, William S. Richardson School of Law, University of Hawai'i at Manoa, USA)

Jung-Keuk KANG (President, Korea Ocean Research & Development Institute (KORDI), Korea)

Moderated by

Clive SCHOFIELD (Professor and Director of Research, ANCORS, University of Wollongong, Australia)

09:15-10:00

Keynote Address:

Ivan SHEARER (Adjunct Professor of Law, University of South Australia, Adelaide; Emeritus Professor of Law, University of Sydney and University of New South Wales, Australia)

"The Limits of Maritime Jurisdiction"

Introduced by

William EDESON (Legal Adviser, Forum Fisheries Agency; Professorial Fellow, ANCORS, University of Wollongong, Australia)

10:00-10:30

Coffee Break

10:30-12:00

Panel One: On the Limits of Maritime Jurisdiction

❖ Panel Chair:

Hasjim DJALAL (Ambassador, Indonesia)

❖ Panelists:

Ian TOWNSEND-GAULT (Professor and Director of Southeast Asian Legal Studies, Faculty of Law, University of British Columbia, Canada)

"De Mare Liberum – 2011 and beyond"

Stuart KAYE (Professor and Dean, Faculty of Law, University of Western Australia, Australia)

"Maritime security in the post 9/11 World: A new creeping jurisdiction in the law of the sea?"

David FREESTONE (Executive Director of the Sargasso Sea Alliance; Professor and Visiting Fellow, George Washington University Law School, USA; Editor, International Journal of Marine and Coastal Law)

“Governing the Blue: Governance of areas beyond national jurisdiction in the Twenty-First Century”

12:00-13:30

Luncheon

Ocean Room, iC Central (Group Photo)

13:30-15:00

Panel Two: Baselines, Limits and Islands

❖ Panel Chair:

Judge Rüdiger WOLFRUM (International Tribunal for the Law of the Sea (ITLOS))

❖ Panelists:

Mark ALCOCK, Grant BOYES, Matthew McGREGOR and Tanya WHITEWAY (Geoscience Australia)

“The management of Australia’s marine jurisdictional limits and baselines”

Chang Hoon SHIN (Research Fellow, ASAN Institute for Policy Studies (AIPS), Korea) &

Moon-Sang KWON (Principal Research Scientist, Ocean Policy Research Department, Korea Ocean Research & Development Institute (KORDI), Korea)

“Baselines in trouble in Northeast Asia”

Moritaka HAYASHI (Professor Emeritus, Waseda University School of Law, Japan)

“Sea level rise and the law of the sea: How can the affected States be better protected?”

John BRISCOE and Peter PROWS (Briscoe Ivester & Bazel LLP)

“The role of islands in maritime boundary delimitation and delineation”

15:00-15:30

Coffee Break

15:30-17:15

Panel Three: Enduring Jurisdictional Disputes

❖ Panel Chair: **Ian TOWNSEND-GAULT** (Professor and Director of Southeast Asian Legal Studies, Faculty of Law, University of British Columbia, Canada)

❖ Panelists:

Sam BATEMAN (Professorial Fellow, ANCORS, University of Wollongong, Australia)

“Sovereignty as an obstacle to effective oceans governance – The case of the South China Sea”

Yann-huei SONG (Research Fellow, Institute of European and American Studies, Academia Sinica, Taiwan)

“Jurisdictional disputes in the South China Sea: Potential conflicts between China and the United States”

Julia XUE (Professor and Director, Institute for the Law of the Sea, Ocean University of China, China)

“The South China Sea: Competing claims and conflict situations”

Tran Truong THUY (Research Fellow and Director of the Center for the East Sea (South China Sea) Studies, Diplomatic Academy of Vietnam, Vietnam)

“South China Sea Disputes: Issues, Positions and Implications of Recent Developments”

Xinjun ZHANG (Associate Professor and Deputy Director, Centre for Law of the Sea Study, Tsinghua University, China)

“The notion of dispute in international law and its relevance to the Diaoyu Islands dispute”

17:15-18:45

Panel Four: Expanding Jurisdiction in Polar Waters?

❖ Panel Chair:

Rosemary RAYFUSE (Professor, Faculty of Law, University of New South Wales, Australia)

❖ Panelists:

Marcus HAWARD (Associate Professor, Institute for Marine and Antarctic Studies, University of Tasmania, Australia)

“The Southern Ocean, climate change and ocean governance”

Natalie KLEIN (Professor and Dean, Faculty of Law, Macquarie University, Australia) and **Tim STEPHENS** (Director, Sydney Centre for International Law, University of Sydney)

“Whaling in the Antarctic: Enforcing rights in areas beyond national jurisdiction through international litigation”

Suzanne LALONDE (Professor, Faculty of Law, University of Montreal, Canada)

“Evaluating Canada’s position on the Northwest Passage in light of two possible sources of international protection: Article 234 of UNCLOS and an IMO PSSA designation”

Tavis POTTS (Lecturer in Marine Policy, Ecology Department, Scottish Association for Marine Science, Scotland, UK)

“The practicalities of ecosystem based management and climate change in the Barents Sea: the ECOBAR project”

19:30-21:30

Reception and Dinner

The Norfolk Room, Novotel Northbeach Hotel, Wollongong

Dinner Speaker:

Donald R. ROTHWELL (Professor of International Law, ANU College of Law, Australian National University, Canberra, Australia)

“Polar oceans governance”

Third Day: Wednesday, November 30

Venue: iC Theatre, ITAMS Building, Innovation Campus (iC), University of Wollongong

08:15-9:45

Panel Five: Maritime Boundary Disputes and Developments in the Delimitation of Maritime Boundaries (Panel in Honour of Professor Kaiyan Homi KAIKOBAD)

❖ Panel Chair:

Seokwoo LEE (Director, Inha International Ocean Law Centre and Professor of International Law, Inha University Law School, Korea)

❖ Panelists:

His Excellency Damir ARNAUT (Ambassador of Bosnia and Herzegovina to Australia)
"Adriatic blues: Delimiting the former Yugoslavia's final frontier"

John DONALDSON (Senior Research Associate, International Boundaries Research Unit (IBRU), University of Durham, UK)
"Oil and water: Assessing the link between maritime boundary delimitation and hydrocarbon resources"

Clive SCHOFIELD (Professor and Director of Research, ANCORS, University of Wollongong, Australia)
"The Eldorado Effect: Reappraising the 'oil factor' in maritime boundary disputes"

Mark ALCOCK, Grant BOYES, Matthew McGREGOR and Tanya WHITEWAY (Geoscience Australia)
"The challenge of responding to increased regulatory intensity and the use of digital representations of maritime boundaries"

9:45-10:15

Coffee Break

10:15-12:15

Panel Six: Fresh Perspectives (Panel for early career researchers)

❖ Panel Chair:

Jon M. VAN DYKE (Professor, William S. Richardson School of Law, University of Hawai'i at Manoa, USA)

❖ Panelists:

Tara DAVENPORT (Research Associate, Centre for International Law (CIL), Faculty of Law, National University of Singapore (NUS), Singapore)
"The negotiation of maritime boundaries in the East China Sea: Legal and practical Issues"

Emily A. GARDNER (William S. Richardson School of Law, University of Hawai'i at Manoa, USA)
"The legacy and fate of bluefin tuna under international law"

Youri van LOGCHEM (Ph.D. Fellow, Netherlands Institute for the Law of the Sea (NILOS), University of Utrecht, The Netherlands)
"The limits of coastal State jurisdiction under international law to act against activities undertaken by States in disputed maritime areas not covered by provisional arrangements"

Jenny H. GROTE STOUTENBURG (Ph.D. candidate, University of Hamburg, Germany)
"Through the back door: A critical appraisal of the UN Law of the Sea Convention's usefulness as a tool to combat climate change"

Ben MILLIGAN (Visiting Fellow, British Institute for International and Comparative Law, London, UK and ANCORS, University of Wollongong, Australia)
“Marine protected areas in Antarctic waters: A review of policy options in the context of international law”

12:15-13:45

Luncheon

Ocean Room, iC Central

Luncheon Address:

His Excellency Jeff BLEICH (Ambassador of the United States to Australia)

Introduced by

John BRISCOE (Briscoe Ivester & Bazel LLP)

14:00-18:00

Excursion

Sydney Harbour Cruise

19:00-21:00

Dinner in Sydney

The Malaya, Darling Harbour, Sydney

21:00-22:00

Return to Wollongong

Fourth Day: Thursday, December 1

Venue: iC Theatre, ITAMS Building, Innovation Campus (iC), University of Wollongong

08:30-10:00

Panel Seven: Maritime Security and the Limits of Maritime Jurisdiction

❖ Panel Chair:

Masahiro AKIYAMA (Chairman, Ocean Policy Research Foundation, Japan)

❖ Panelists:

Robert BECKMAN (Director, Centre for International Law (CIL) and Associate Professor, Faculty of Law, National University of Singapore (NUS), Singapore)

“Maritime security and Jurisdiction over pirates and maritime terrorists”

Seokwoo LEE (Director, Inha International Ocean Law Centre and Professor of International Law, Inha University Law School, Korea)

“Korea’s trial of Somali pirates”

Irini PAPANICOLOPULU (Marie Curie Fellow, Faculty of Law, University of Oxford, UK)

“A missing part of the Law of the Sea Convention: Addressing issues of State jurisdiction over persons at sea”

Suk-Kyoon KIM (Director General, Planning and Coordination Bureau, Korean Coast Guard, Korea)

“Perspectives of maritime disputes between China and Japan in the East China Sea: Over the collision of a Chinese fishing boat with Japan Coast Guard ships”

10:00-10:30

Coffee Break

10:30-12:00

Panel Eight: Pushing the Limits of Oceans Governance – Environmental and Marine Living Resource Concerns

❖ Panel Chair:

Warwick GULLETT (Professor, ANCORS and Faculty of Law, University of Wollongong, Australia)

❖ Panelists:

Martin TSAMENYI (Professor and Director of ANCORS, University of Wollongong, Australia) and **Quentin HANICH** (Senior Research Fellow, ANCORS, University of Wollongong, Australia)

“High Seas boarding and inspection of fishing vessels in regional fisheries management organizations: A case study of the Western and Central Pacific Fisheries Commission”

Kuan-Hsiung WANG (Professor and Director, Graduate Institute of Political Science, National Taiwan Normal University, Taiwan)

“The role of RFMOs in deterring IUU: A success or a failure”

Anastasia TELESETSKY (Professor, College of Law, University of Idaho, USA)

“‘Good faith’ obligations to protect and preserve the marine environment: A proposal to create uniform High Seas fisheries through global fishing vessel registries and centralized fishing authorizations”

Suk-Jae KWON (Senior Research Scientist, Ocean Policy Research Department, Korea Ocean Research & Development Institute (KORDI), Korea)

“Issues and lessons from the Yellow Sea large ecosystem project: Building an effective regional governance”

12:00-13:30

Luncheon

Ocean Room, iC Central

13:30-15:30

Panel Nine: New Challenges in Oceans Governance: Climate Change and the Oceans

❖ Panel Chair:

David FREESTONE (Executive Director of the Sargasso Sea Alliance; Professor and Visiting Fellow, George Washington University Law School, USA; Editor, International Journal of Marine and Coastal Law)

❖ Panelists:

Jon M. VAN DYKE (Professor, William S. Richardson School of Law, University of Hawai'i at Manoa, USA)

"The crisis of climate change and its impact on Pacific Islands acing sea-level rise"

Rosemary RAYFUSE (Professor, Faculty of Law, University of New South Wales, Australia)

"Cinderella or Saviour? Climate Change and the Law of the Sea"

Warwick GULLETT (Professor, ANCORS and Faculty of Law, University of Wollongong, Australia)

"Rising tides, fluctuating rights: The impact of sea level rise on Australian property rights and domestic jurisdictions"

Seongwook PARK (Director, Ocean Policy Research Department, Korea Ocean Research & Development Institute (KORDI), Korea) and **Charity M. LEE** (Senior Research Scientist, Ocean Policy Research Department, KORDI, Korea)

"New and renewable energy policy response to climate change in Korea: Ocean energy"

Karen SCOTT (University Proctor and Senior Lecturer in Law, School of Law, University of Canterbury, Christchurch, New Zealand; Editor, New Zealand Yearbook of International Law)

"Exploiting the oceans for mitigation of climate change: Case study on iron fertilization in the Southern Ocean"

15:30-16:00

Coffee Break

16:00-17:30

Panel Ten: Beyond the Limits: Exploring and Managing New Frontiers

❖ Panel Chair:

Sam BATEMAN (Professorial Fellow, ANCORS, University of Wollongong, Australia)

❖ Panelists:

Philip SYMONDS (former Senior Adviser – Science & Law of the Sea, Petroleum and Marine Division, Geoscience Australia; Commissioner, United Nations Commission on the Limits of the Continental Shelf, Australia; Professorial Fellow, ANCORS, University of Wollongong, Australia)

"The work and practices of the Commission on the Limits of the Continental Shelf: progress and issues"

Joanna MOSSOP (Senior Lecturer, Faculty of Law, Victoria University, Wellington, New Zealand)

"Beyond delimitation: Interaction between the outer continental shelf and high seas regimes"

David LEARY (Senior Research Fellow, Faculty of Law, University of New South Wales, Australia) and **S. Kim JUNIPER**, (Professor, School of Earth and Ocean Sciences, University of Victoria, Canada)

"Addressing the marine genetic resources issue: is the debate heading in the wrong direction?"

Ronán LONG (Jean Monet Chair Professor, University of Galway, Ireland)
“Moving towards a new normative approach to ocean governance in the EU”

17:30-18:00

Closing Reflections:

Martin TSAMENYI (Professor and Director of ANCORS, University of Wollongong, Australia)

Jon M. VAN DYKE (Professor, William S. Richardson School of Law, University of Hawai'i at Manoa, USA)

Moon-Sang KWON (Principal Research Scientist, Ocean Policy Research Department, Korea Ocean Research & Development Institute (KORDI), Korea)

Presided over by

Seokwoo LEE (Director, Inha International Ocean Law Centre and Professor of International Law, Inha University Law School, Korea)

Formal Closing of the Conference:

Clive SCHOFIELD (Professor and Director of Research, ANCORS, University of Wollongong, Australia)

19:00-21:30

Reception and Closing Banquet

Lagoon Restaurant, Stuart Park, North Wollongong

Fifth Day: Friday, December 2

Day trip to Kiama and historic town of Berry.

Wine tasting and luncheon at Coolangatta Estate Winery, Shoalhaven.

Departure time from Novotel Northbeach Hotel, Wollongong: 9:00 a.m.

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