

The Developing Order of the Oceans

Proceedings

Law of the Sea Institute
Eighteenth Annual Conference

Co-sponsored by the
University of San Francisco

October 24-27, 1984
San Francisco

Edited by
Robert B. Krueger
Stefan A. Riesenfeld

Published by
The Law of the Sea Institute
William S. Richardson School of Law
University of Hawaii • Honolulu

The Law of the Sea Institute is housed and sponsored by the William S. Richardson School of Law, University of Hawaii, and is a project sponsored in part by the University of Hawaii Sea Grant College Program under Institutional Grant No. NA-81AA-D-00070 from NOAA, Office of Sea Grant, United States Department of Commerce.

Sea Grant Cooperative Report
UNIHI-SEAGRANT-CR-85-03

Copyright © 1985 by the Law of the Sea Institute
University of Hawaii
All rights reserved.
Manufactured in the United States of America.

International Standard Book Number: 0-911189-13-0

Library of Congress Cataloging-in-Publication Data:

Law of the Sea Institute. Conference (18th : 1984 :
San Francisco, Calif.)
The developing order of the oceans.

(Sea grant cooperative report ; UNIHI-SEAGRANT-CR-85-03)

Includes bibliographies.

1. Maritime law--Congresses. 2. Marine resources
conservation--Law and legislation--Congresses. 3. Ocean
bottom (Maritime law)--Congresses. 4. Economic zones
(Maritime law)--Congresses. I. Krueger, Robert B.
II. Riesenfeld, Stefan Albrecht, 1908- .
III. University of San Francisco. IV. Title.
V. Series.

JX4408.L373 1984 341.4'5 85-23781

ISBN 0-911189-13-0

Cite as 18 L. Sea Inst. Proc. [page numbers] (1985)

THE LAW OF THE SEA INSTITUTE

DIRECTOR
John P. Craven

ASSISTANT DIRECTOR
Maivan Lam

ASSOCIATE DIRECTOR
Scott Allen

ADMINISTRATOR/EDITOR
Carol Stimson

EXECUTIVE BOARD

Lee G. Anderson
College of Marine Studies
University of Delaware

Myron H. Nordquist
Kelley Drye and Warren
Washington, D.C.

Gordon L. Becker
Kirlin, Campbell & Keating
New York

Francisco Orrego Vicuna
Institute of International Studies
Santiago

Thomas A. Clingan
School of Law
University of Miami

Bernard Oxman
School of Law
University of Miami

Brian Flemming
Stewart MacKeen & Covert
Halifax

Willy Ostreng
Fridtjof Nansen Institute
Oslo

John A. Knauss
Graduate School of Oceanography
University of Rhode Island

Renate Platzoeder
Institute of International Affairs
Munich-Ebenhausen

Tadao Kuribayashi
Keio University
Tokyo

Jan Schneider
Attorney
Washington, D.C.

Edward L. Miles
Institute for Marine Studies
University of Washington

Tullio Treves
Permanent Mission of Italy
to the United Nations

Max K. Morris
Arthur Vining Davis Foundation
Jacksonville, Florida

Jon Van Dyke
Richardson School of Law
University of Hawaii

Gordon R. Munro
Department of Economics
University of British Columbia

Conrad G. Welling
Ocean Minerals Company
Mountain View, California

CONTENTS

OPENING CEREMONIES

John P. Craven	xvii
Robert B. Krueger	xviii
William T. Bagley	xix
John Lo Schiavo	xx
Thomas A. Clingan	xxi

PART I: THE EFFECT OF THE LAW OF THE SEA CONFERENCE UPON THE PROCESS OF THE FORMATION OF INTERNATIONAL LAW

Introductory Remarks	3
Robert B. Krueger	

The Law of the Sea Experience and The	5
Corpus of International Law: Effects and Interrelationships	
Francisco Orrego Vicuna	

The Effect of the Law of the Sea Conference	23
Upon the Process of the Formation of International Law: Rapprochement between Competing Points of View	
Jens Evensen	

Customary International Law After the	41
Convention	
John Norton Moore	

Consolidating the Results of	50
The Third UN Conference on the Law of the Sea By Pursuing the Process of the Conference	
Hans-Joachim Kiderlen	

Commentaries	
Brian Hoyle	55
Jack Garvey	58
Bruce Harlow	62

Discussion and Questions	65
--------------------------------	----

LUNCHEON SPEECH

Introductory Remarks	83
Robert B. Krueger	

Freedom and Opportunity:	85
The Foundation for a Dynamic National Oceans Policy	
James L. Malone	

Discussion and Questions	95
PART II: SPECIAL ENVIRONMENTAL PROBLEMS AND THE ROLE OF INTERNATIONAL ORGANIZATIONS	
Introductory Remarks	101
Jon Van Dyke	
Implications of the Law of the Sea Convention	103
Regarding the Protection and Preservation of the Marine Environment	
Louis B. Sohn	
Recent Developments Under Special	117
Environmental Conventions	
Clifton E. Curtis	
Conservation and Management of the Marine	133
Environment: Responsibilities and Required Initiatives in Accordance with The 1982 U.N. Convention on the Law of the Sea	
Douglas M. Johnston	
Commentaries	
Tadao Kuribayashi	180
Edward L. Miles	183
Howard Hume	187
Discussion and Questions	189
PART III: THE DEEP SEABED OPERATIONS -- WITH THE CONVENTION AND WITHOUT IT	
Introductory Remarks	199
Stefan A. Riesenfeld	
The Status of the International Sea-bed Authority:	200
The Work of The PREPCOM	
James L. Kateka	
The Viability of A Dual Approach:	206
The French Position	
Philippe Manin	
The Viability of the Dual Approach:	218
Convention and Reciprocal Regimes	
Guenther Jaenicke	
Deep Seabed Mining -- The U.S. Position	226
David A. Colson	

Commentaries	
Otho E. Eskin	238
Niels-J. Seeberg-Elverfeldt	244
Tadao Kuribayashi	250
Vladimir Pisarev	253
LUNCHEON SPEECH	
Introductory Remarks	257
Stefan A. Riesenfeld	
Prospects for the Future:	259
The UN and Peaceful Uses of the Oceans	
Satya Nandan	
PART IV: THE DEVELOPMENT OF OCEAN MINERAL RESOURCES	
Introductory Remarks	267
Conrad Welling	
Polymetallic Sulfides and Cobalt Crusts:	270
New Mineral Resources of the Ocean Floor?	
Alexander Malahoff	
Comparative Pacific Basin Land Laws	310
Affecting Mineral Processing (Plants)	
David L. Callies	
Jurisdictional Issues Affecting	315
The Development of New Ocean Mineral	
Resources: Necessary Regimes	
Myron H. Nordquist	
Financing Ocean Mineral Developments:	319
Feasible Under What Terms?	
Alexander J. Krem	
Commentaries	
James L. Johnston	332
Joel Paul	336
Eldon H. Reiley	340
Robert E. Bowen	343
Discussion and Questions	346
PART V: AN EVALUATION OF THE U.S. FEDERAL-STATE EXPERIENCE IN THE MANAGEMENT OF MARINE AND COASTAL RESOURCES	
Introductory Remarks	357
Edgar B. Washburn	

Federal-State Offshore Boundary Disputes:	360
The Federal Perspective	
Louis F. Claiborne	
Federal-State Offshore Boundary Disputes:	380
The State Perspective	
John Briscoe	
Environmental Protection of the Coast and Offshore	421
Robert J. McManus	
Regional Fisheries Councils: What Have	444
They Done and How Have They Worked?	
James A. Crutchfield	
Commentaries	
Jan Schneider	460
George H. Hauck	464
G. Thomas Koester	466
 LUNCHEON SPEECH	
Introductory Remarks	473
Stefan A. Riesenfeld	
The Law of the Sea Convention,	475
Customary International Law, and the	
Role of Law Within The International Community	
Hugo Caminos	
 PART VI: ARCTIC ENERGY RESOURCES	
Introductory Remarks	483
Bernard H. Oxman	
National Claims and the Geography of	485
the Arctic	
Robert W. Smith	
Political and Boundary Issues	513
Affecting Arctic Energy Resources	
David A. Colson	
Engineering Economics of Alaskan Oil Exploration	524
Randy Heintz	
Economic and Environmental Constraints	533
on The Development of Arctic Petroleum Resources	
Roger Herrera	

Delimitation Arrangements in Arctic Seas:	539
Cases of Precedence or Securing of Strategic/Economic Interests? Willy Ostreng	
Commentaries	
Esther C. Wunnicke	575
George V. Kriste	581
Robert B. Krueger	583
Discussion and Questions	586
PART VII: ECONOMIC DEVELOPMENT AND MANAGEMENT OF FISHERIES IN THE EXCLUSIVE ECONOMIC ZONES OF THE PACIFIC BASIN: ACCOMPLISHMENTS AND PROBLEMS	
Introductory Remarks	591
Gordon R. Munro	
The Magnuson Fisheries Conservation and	593
Management Act: A Factor in the Development and Management of Alaskan Fisheries Dayton L. Alverson	
Economic Development and Management	608
of Fisheries in the Exclusive Economic Zones of the Pacific Island States L. G. Clark and A. J. Slatyer	
The Development of Mexican Fisheries	614
and Its Effect on U.S. Relations Roger W. Rosendahl	
Commentaries	
Lee Anderson	629
James Joseph	632
John Bardach	637
Discussion and Questions	640
LUNCHEON SPEECH	
Introductory Remarks	647
Robert B. Krueger	
A Conscientious Management of the Future	649
(The Administration's Position on Ocean Policy and Law) Anthony J. Calio	

PART VIII: SPECIAL SYMPOSIUM:
THE 1982 CONVENTION:
WHAT DOES IT HAVE TO DO WITH MARITIME TRADE?

Introductory Remarks	661
Jack Garvey	
Changes Made In the Rules of Navigation	662
and Maritime Trade by the 1982 Convention on the Law of the Sea	
William T. Burke	
UNCLOS III and Conflict Management	678
in Straits	
Bruce A. Harlow	
Arrest of Vessels and The Law of The Sea	687
Norman Letalik	
Discussion and Questions	
Gordon Becker	713
David Larson	715
Commentary	722
Carl Blom	
Continuation of Discussion and Questions	724
BANQUET SPEECH	
Introductory Remarks	733
John P. Craven	
Creeping Jurisdiction and	735
Customary International Law	
John A. Knauss	
LIST OF PARTICIPANTS	743