

DEFINITIONS FOR THE LAW OF THE SEA

*Terms Not Defined
by the 1982 Convention*

George K. Walker
General Editor

Definitions for the Law of the Sea

Report of the
International Law Association
American Branch
Law of the Sea Committee

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FOREWORD

John Norton Moore¹

The United Nations Convention on the Law of the Sea (UNCLOS) is one of the most important multilateral conventions in history. Adopted in 1982, and effectively completed in 1994 with a revision of Part XI on Deep Seabed Mining, the Convention is today in force for 160 nations plus the European Union. In its 17 parts encompassing 320 articles with nine annexes (and Final Act with six annexes) the Convention is the authoritative contemporary basis for the law of the sea. Over a quarter century in the making, the Convention has achieved a remarkable breakthrough in oceans law ending the struggle lasting more than four centuries between coastal nations seeking expanded control over coastal resources and maritime powers seeking to protect navigational freedom so essential for global trade and commerce. The answer embodied in the Convention is a simple functional division of ocean space, with coastal nations given jurisdiction over an extended 200 nautical mile exclusive economic zone for fisheries and other economic interests while navigation remains a high seas freedom beyond the territorial sea. In so doing the Convention has implemented the community common interest on both issues and has achieved a true win/win situation. Further, the Convention strengthens navigational rights through modernization of the regime of innocent passage as embodied in the 1958 Geneva Conventions and adopts an important new regime of transit passage for international straits. In addition, the

¹ John Norton Moore is the Walter L. Brown Professor of Law at the University of Virginia and Director of the Center for Oceans Law and Policy and the Center for National Security Law. Formerly he served as a United States Ambassador for the Law of the Sea Negotiations, Deputy Special Representative of the President for the Law of the Sea Negotiations, and Chairman of the National Security Council Interagency Task Force on Law of the Sea and head of D/LOS, the Department of State/National Security Council Office coordinating law of the sea policy for the United States Government. Subsequently he served as a member of the National Advisory Committee on Oceans and Atmosphere, was awarded the 1994 Compass Award of the Marine Technology Society, and was a founding director of the Rhodes Academy of Oceans Law and Policy. He has also served as the Counselor on International Law to the Department of State and as the first Chairman of the Board of the United States Institute of Peace.

Convention embodies an impressive framework environmental regime for the oceans, modernizes the regimes for the continental margin (still termed “continental shelf”) and marine scientific research. Following the 1994 revision, it sets out a workable regime for deep seabed mining in areas beyond national jurisdiction. The Convention also creates an effective dispute resolution mechanism, offering a choice between the International Court of Justice, a new Law of the Sea Tribunal and arbitration. Certainly UNCLOS is in the category of the United Nations Charter, the Vienna Convention on the Law of Treaties, and the 1949 Geneva Conventions on the Law of War, as among the most important and successful multilateral international agreements in history.

A starting point for analyzing UNCLOS is the multivolume *Commentary*² prepared with broad international participation under the auspices of the University of Virginia’s Center for Oceans Law and Policy. Virginia also maintains one of the largest collections of oceans law materials in the world, as well as what is believed to be the only oceans law archive in the world.

Definitions for the Law of the Sea, reflecting the work of the International Law Association (American Branch) Law of the Sea Committee in providing definitions for over 200 terms not defined in UNCLOS, is an indispensable additional source for governmental officials, academics and practitioners of oceans law as a supplement to the *Virginia Commentary*. It has been prepared with the participation of many top experts in oceans law, including important oceans law scholars from around the world and submission for comment to the United Nations Division for Oceans Affairs in the United Nations Office of Legal Affairs.

Particular thanks for this outstanding book are due J. Ashley Roach who, as the then top expert in oceans law of the United States Department of State, initially suggested the project, and the Chair of the International Law Association (American Branch) Law of the Sea Committee, Professor George K. Walker, who as Committee Chair undertook the work of compiling the volume, an enormously time consuming task normally undertaken by a committee reporter. Professor Walker, as a former Stockton Professor of International Law,

² United Nations Convention on the Law of the Sea 1982: A Commentary, vols. 1–7 (Myron H. Nordquist editor-in-chief).

is widely regarded as one of the top experts in the law of the sea. This work certainly confirms that reputation. The law of the sea community owes him a debt of gratitude for this important work.

There is yet another reason why it is a special pleasure for me to recognize this important new contribution to law of the sea scholarship and the outstanding work of Professor Walker. For Professor Walker, the force behind this splendid addition to the law of the sea, was one of the outstanding Master of Laws³ graduates of the University of Virginia School of Law. It was my pleasure to admit Professor Walker to the program and to have him as a student during my tenure as Director of the Graduate Program at Virginia. As such, I have long admired Professor Walker's scholarship and appreciated his friendship.

³ The Master of Laws program at the University of Virginia School of Law, as at all American law schools, is effectively a post-doctoral program in law, as today the first degree in law, the Juris Doctor degree, is itself a doctorate. Retention of the degrees Master of Laws (LL.M.) and Doctor of Jurisprudence (J.S.D. or S.J.D.) for the post-doctoral programs in American law is an artifact of the time when the first degree in law was called a Bachelor of Laws (LL.B.).

CHAPTER I

INTRODUCTION TO THE REPORT⁴

In 2001 the International Law Association, American Branch, Law of the Sea Committee began its project of defining terms in the 1982 UN Convention on the Law of the Sea⁵ or in UNCLOS analysis for which this treaty does not supply definitions. J. Ashley Roach, a longstanding Committee member, suggested the project to the Committee chair and submitted some of the first terms for analysis.

As an experiment, the Committee chair decided to undertake the project without a reporter. Committee membership has been small in number, from 10 to 22; the thought was that the chair could communicate directly with members and prepare drafts for direct consideration by them.

After preparing Tentative Drafts and a Revised Tentative Draft on one occasion, the chair submitted them to Committee members for comment. The chair particularly recognizes the strong support, detailed comments and suggestions of Committee members John E. Noyes and Howard S. Schiffman. Alex G. Oude Elferink of the Netherlands Institute for the Law of the Sea and the University of Utrecht was also most helpful in providing comments and suggestions for definitions. Dr. Ibne Hassan made detailed comments on many terms.

The chair also sent copies of Committee research drafts to others in the United States and around the world, including the Division for

⁴ Part I begins the Report as published in 2009–10 ABILA Proc., where it was published as Part I. Part I is identical with its Proceedings counterpart except for the General Editor's adding the name of his current secretary, Brenda Sargent, in Part I.3, and renumbered footnotes. The rest of the book is identical with the 2009–10 ABILA Proc. version except Parts III.A and Part III.D. Part III.A was edited to remove duplicate material discussed in Part I.1 at the request of the publisher, to add updated material, and to publish the ABILA LOS Committee's unanimous resolution, *2009 Resolution Supporting U.S. Accession to the Law of the Sea Convention*, 2009–10 ABILA Proc. 541, voted after Committee approval of the Report. John Noyes submitted a revised Part III.D to combine Parts III.D and III.E of the Report and to conserve pages. Part III.E is the Report's Part III.F with no amendments other than renumbered footnotes.

⁵ Abbreviated as UNCLOS in this Report. See Part II, *Table of Abbreviated (Short) Citations and Terms; Conventions for Citations*.

Ocean Affairs and the Law of the Sea of the UN Office of Legal Affairs for comment and expresses appreciation for comments received from these sources. Drafts also appeared in the *Proceedings* of the American Branch and in articles published in the *California Western International Law Journal* available in print and on line format.⁶ Other reviews, e.g., the *Journal of Maritime Law & Commerce*, noted the *California Western Journal* articles. The work of the Committee also went to the American Branch Directors of Research and Presidents of the American Branch. The Committee chair mailed *California Western Journal* offprints to colleagues in the United States and around the world, inviting comment.

The Committee sponsored panel discussions at American Branch annual fall meetings. Besides communications from Committee members, these discussions produced useful suggestions for revisions and additional terms for research and analysis.

The Committee has reviewed and commented on this draft, which was published in the 2009–10 ABILA *Proceedings*.

A. FORMAT OF THE REPORT; RATIONALE FOR AND USES OF THE REPORT

Part II lists abbreviated citation forms and terms commonly used throughout this *Report*. Part III reprints previously-published articles, in whole or in part, on the project with updated citations.⁷ Part IV recites definitions for terms the Convention does not define and terms for use with UNCLOS analysis with *Comments* for each definition; it is the heart of this *Report*. Part V offers general conclusions.

There are several reasons for and uses of the *Report*. As its title suggests, it attempts to provide meanings for words and phrases in UNCLOS for which the Convention does not give definitions, and definitions for terms used in Convention analysis. The *Report* attempts to consolidate and publish definitions for these terms after research in

⁶ The Journal gave reprint publication for extracts from or republication of these copyrighted articles, whose full titles are given in Part II: Walker & Noyes, *Definitions*; Walker & Noyes, *Definitions II*; Walker, *Defining*; Walker, *Last Round*. Parts III and IV republish them, in whole or in part, sometimes in amended format, e.g., for more current citations. The chair also published *Filling Some of the Gaps: The International Law Association (American Branch) Law of the Sea Definitions Project*, 32 *Fordham Int'l L.J.* 1336 (2009), describing the project, in an issue honoring Professor Joseph C. Sweeney, his longtime friend and colleague.

⁷ See note 5 and accompanying text.

several sources, some of which are on line and some are in print, perhaps in less than accessible books. Some sources may be out of date although in print or on line.⁸ As Part III.A emphasizes, the Committee has not sought to rewrite UNCLOS by redefining terms for which the Convention supplies meanings. Some glossaries have done so.⁹ The result for a less than careful user of the latter sources is that they can lead a researcher to apply UNCLOS-defined words or phrases in a way that is incompatible with the Convention. For all definitions in this *Report*, the Committee has endeavored to publish a definition that is oriented toward UNCLOS and not a geographic or geological definition; these may be similar but not identical.

As Parts III.B and III.C emphasize, this *Report's* product is at best a secondary source, or perhaps a source that aids in determining and giving content to primary sources like custom, treaties (including interpretive statements appended to UNCLOS) and general principles of law.¹⁰ The definitions can be a counterweight or support to the research from other, similar secondary sources. Where there is no other source, the *Report* may be the only source; it is hoped that the wide distribution of the work of the Committee, through publication in the *ABILA Proceedings* and the *California Western International Law Journal*, offprint distribution and discussion and correspondence has broadened the Committee's resources beyond its membership.

The published discussion of the context of the project, reprinted in Parts III.C-III.E, cautions UNCLOS researchers; this *Report* is not the end of the story. For example, the UNCLOS Commission on the Limits of the Continental Shelf and the ILA Committee on the Outer Limits of the Continental Shelf have supplied and will supply context in the future for UNCLOS terms. A new ILA Committee on baselines may also supply future context.

The *Report* has served, and hopefully will continue to serve, as a platform for discussion among those who research UNCLOS and those, including governments, who as oceans users are governed or guided by UNCLOS. Part III.A emphasizes that this *Report* does not represent the views of any government or government department,

⁸ *E.g.*, the Former Glossary, partly published in Annex A1-5 to NWP 1-14M Annotated, which is itself under revision. The fourth edition of the Consolidated Glossary is thus far available only on line. See Part II for full citations to these sources.

⁹ *E.g.*, some terms in the Consolidated Glossary.

¹⁰ ICJ Statute arts. 38, 59; Restatement (Third) §§ 102-03; Churchill & Lowe 5-27; Jennings & Watts §§ 8-16.