THE LAW OF THE SEA:
SOME RECENT DEVELOPMENTS
(With Particular Reference to the United Nations Conference of 1958)
Carl M. Franklin (Author)

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government, the U.S. Department of the Navy or the Naval War College.
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by
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REVIEWED AND APPROVED

August 3, 1961

(Date)

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Assistant Chief for Education and Training
FOREWORD

This Blue Book recognizes the desirability of changing the format of the current and succeeding volumes to include a greater number of problem situations, both hypothetical and actual, which would focus attention upon various phases of international law of vital concern to Naval officers. Under present circumstances it was determined that the compilation of treaties and other documents, important though they are to international lawyers, libraries, and the Navy Department, should be kept to a minimum in order to permit greater time and space for the problem situations.

Actually, the idea of incorporating more problem situations in the Blue Book is not new. The early editions were devoted almost entirely to problem situations. Moreover, Professor MacChesney, occupant of the Chair of International Law at the War College in 1955–56, wrote in the forward to his excellent volume entitled *International Law Situation and Documents* (1956) as follows:

“An International Law Situation, drawn from a problem used in the curriculum of the Naval War College was included in this volume in the hope that it would serve to encourage later writers in this Blue Book Series to revive the custom that was inaugurated so many years ago by the late Professor George Grafton Wilson.”

The problem situations in the present volume have been formulated with particular reference to the 1958 United Nations Conference on the Law of the Sea held in Geneva, Switzerland, and the four Conventions which were formulated at that Conference.

Normally the occupant of the Chair of International Law at the Naval War College has a full year in residence, plus additional time subsequent to his residency, to prepare the Blue Book. In my case, because of personal circumstances, that has not been possible. After receiving the appointment to the Naval War College for the year 1959–60, it became necessary, because of a new assignment at the University of Southern California, for the writer to arrange with the President of the Naval War College to shorten the tour of duty to approximately six months.

Perhaps the greatest debt of the writer is to Vice Admiral Stuart H. Ingersoll, who as President of the Naval War College not only
graciously consented to a shortened tour of duty, but kept the consult­ing and lecturing duties of the Chair to a minimum in order that the writer might have as much time as possible for the preparation of the Blue Book.

The writer is indebted to Professors McDougal (Yale), Baxter (Harvard), Lissitzyn (Columbia) and Oliver (Pennsylvania) for their helpful comments and suggestions. But, of course, these distinguished gentlemen are in no way responsible for the final conclusions herein.

In addition, the writer is deeply indebted to the Head and Officers of the Extension Education Department, and especially to CDR Charles R. Davis, International Affairs Division of the Naval War College for his helpful suggestions both as an international lawyer and as a Naval officer.

The writer is also grateful to a number of persons at the Naval War College including members of the Library staff and of the secretarial staff of the Extension Education Department.

The writer is also grateful to several institutions and people for their help: Yale Law School Library, Harvard Law School Library, Brown University Library, Peace Palace Library (The Hague), and the Los Angeles County Law Library. Mr. William B. Stern of the last named library has been especially helpful in the preparation of a preliminary bibliography and in making available the material in Appendix M. Oscar Schachter, Deputy Legal Advisor of the United Nations Secretariat, was most generous in making materials available.

Finally, the writer wishes to acknowledge a sincere debt to his wife, an ex-librarian and former Naval officer (WAVE), who gave invaluable assistance in proofreading the manuscript, preparing the bibliography, and submitted to the rather lonesome life of a "book widow."

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PREFACE

The publication of this series was inaugurated by the Naval War College in 1894. This is the fifty-second volume in the series, as numbered for index purposes. The titles vary from year to year. The preceding volume is entitled *International Law Situations and Documents 1956, Situation, Documents and Commentary on Recent Developments in the International Law of the Sea*, by Professor Brunson MacChesney.

During the past decade the world has witnessed an increasing interest in the Law of the Sea, an area of International Law which always has been of vital concern to Naval officers. Many international organizations, especially the International Law Commission of the United Nations, have devoted considerable time and thought to various aspects of the subject. The efforts of the International Law Commission resulted in the preparation in 1956 of 73 draft articles on the regime of the seas with elaborate commentaries. During the spring of 1958 the United Nations held a world-wide Conference on the Law of the Sea at Geneva, Switzerland, culminating in the preparation of four major conventions, a protocol and nine resolutions.

The present volume by Professor Carl M. Franklin of the University of Southern California, occupant of the Naval War College Chair of International Law during part of the year 1959–60, contains a discussion of some of the more important recent developments of the law of the sea, with particular reference to the 1958 United Nations Conference, together with an analysis of several problem situations. The opinions expressed in this volume are not necessarily those of the United States Navy or of the Naval War College.

B. L. Austin
*Vice Admiral, U.S. Navy*
*President, Naval War College*
INTRODUCTION

The United Nations Conference on the Law of the Sea held in Geneva from February 24 to April 28, 1958, is unquestionably the most important international conference ever held on this subject and one of the most significant attempts ever made by governments of the world to codify international law.

The Conference derives its importance from several facts. First, it was attended by all of the major maritime states of the world, including most, but not all, of the members of the United Nations plus some important non-member states such as the Federal Republic of Germany and Switzerland. Moreover, the list of participants included several land-locked states, emphasizing not only their interest in the utilization of the ocean resources of the world, but a demand that

1 This conference will be referred to hereafter as the Geneva Conference, 1958. A second conference, which will be referred to as Geneva Conference, 1960, has been convened by the United Nations starting in March 1960, pursuant to a resolution adopted by the Geneva Conference, 1958. For the full text, see Appendix F (8), p. 231.

2 The Hague Codification Conference of 1930, attended by 47 states and the Free City of Danzig, as compared with the 86 states at the Geneva Conference, 1958, was concerned with only one aspect of the total regime of the seas, namely, territorial waters. When the 1930 conference failed to reach agreement on the breadth of territorial waters, nothing was produced by way of a convention on the subject. As will be seen from the subsequent discussion here, the Geneva Conference, 1958, did produce a convention on the territorial sea, as well as three other conventions, despite the fact that the states, as in 1930, could not agree on a precise width of the territorial sea.

3 Other important codification conferences have been held during the past sixty years, such as the Hague Conferences of 1899 and 1907, concerned chiefly with the peaceful settlement of disputes and the laws of war, and, more recently, the Geneva Conference of 1949 which concerned itself with the protection of the wounded and sick, prisoners of war, and civilian persons. In general, the main purpose of previous codification conferences has been to facilitate the noncoercive means of settling disputes and to humanize the coercive means. While no one would detract from these worthwhile objectives, the broad purpose of the Geneva Conference of 1958 on the Law of the Sea to reach agreement on maximum utilization of two-thirds of the earth's surface and the resources thereof relegates previous codification conferences to positions of relatively minor importance.

4 The participants in the Conference were: Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian,
the Conference “study the question of free access to the sea of land-locked countries.”

Second, the Conference was the most important ever held on the law of the sea because of its broad scope and accomplishments. Called by the Secretary General of the United Nations, pursuant to a resolution adopted by the General Assembly on February 21, 1957, upon the recommendation of the International Law Commission, the Conference after nine weeks of arduous work adopted four conventions: (1) the territorial sea and the contiguous zone; (2) the high seas; (3) fishing and conservation of the living resources of the high

Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China (Republic of China referred to in text and footnotes as China), Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany (Federal Republic of), Ghana, Greece, Guatemala, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Korea (Republic of), Laos, Lebanon, Liberia, Libya, Luxembourg, Malaya (Federation of), Mexico, Monaco, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, San Marino (Republic of), Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Viet-Nam (Republic of), Yemen, Yugoslavia. Specialized agencies: International Labour Organisation, United Nations Food and Agriculture Organization, United Nations Education, Scientific and Cultural Organization, International Civil Aviation Organization, World Health Organization, International Telecommunication Union, World Meteorological Organization.


seas; and (4) the continental shelf. In addition, the Conference adopted one optional protocol of signature concerning the compulsory settlement of disputes, and nine resolutions.

It will be recalled that the Hague Codification Conference of 1930 was concerned essentially with only one phase of the law of the sea, namely, territorial waters. By contrast, the Geneva Conference of 1958 covered nearly all aspects of the seas and their resources: territorial sea, contiguous zone, high seas, bays, fisheries and conservation, continental shelf, piracy, nationality of ships, and other matters. The extensive coverage of the Conference is indicated by the resolution of the General Assembly which convoked the Conference, by the scope of preparatory documents and memoranda submitted to the participants by the United Nations Secretariat, and by the inclusiveness of the 73 draft articles of the International Law Commission, which with some important modifications were incorporated in the four conventions and the protocol.

While it is true that the Conference did not reach agreement on a number of important matters, notably the breadth of the territorial

8 For the complete texts of each of the four conventions, see the following:
Appendix A. Convention on the Territorial Sea and Contiguous Zone
Appendix B. Convention on the High Seas
Appendix C. Convention on Fishing and Conservation of the Living Resources of the High Seas
Appendix D. Convention on the Continental Shelf.


10 U.N. Doc. A/CONF. 13/L. 56. For a complete statement of the text of these Resolutions, see Appendix F, p. 228.

The work of the Conference was divided among five main committees, as follows, for which summary records of meetings and annexes have been prepared by the United Nations Secretariat:
First Committee: Territorial Sea and Contiguous Zone, (U.N. Doc. A/CONF. 13/39, V. III);
Second Committee: General Regime of the High Seas (U.N. Doc. A/CONF. 13/40, V. IV);
Third Committee: High Seas: Fishing, Conservation of Living Resources, (U.N. Doc. A/CONF. 13/41, V. V);
Fourth Committee: Continental Shelf, (U.N. Doc. A/CONF. 13/42, V. VI);

11 For a complete statement of the General Assembly resolution 1105 (XI) of 21 February 1957, see Appendix H, p. 255.

12 For a list of the titles of these preparatory documents see Appendix I, pp. 258.
sea, coastal fisheries, nuclear tests on the high seas, and the regime of historic waters, including historic bays, the four conventions which did emerge represent a surprising and gratifying amount of agreement among the participating states. For example, the relatively new concept of the continental shelf, little more than a decade old, was formulated in seven substantive draft articles and approved by a resounding 57 votes in favor, only three against, with eight abstentions.\textsuperscript{13}

The most controversial of the four conventions, the one on fishing and conservation of the living resources of the high seas, was adopted by the Conference as a whole by 45 votes in favor, only one against, and 18 abstentions.\textsuperscript{14} The final votes of the other two conventions also underscore the substantial amount of agreement reached during the nine weeks' Conference by the eighty-six participating states. The Convention on the High Seas was adopted by 65 in favor, 0 opposed, and 1 abstention.\textsuperscript{15} The vote of the Conference on the Convention on the Territorial Sea and Contiguous Zone was 61 in favor, 0 opposed, and 2 abstentions.\textsuperscript{16}

Even if all of the conventions are not eventually ratified by a substantial majority of the states attending the Conference, or even by twenty-two states whose signatures are necessary in each case to make the convention become effective, still the adoption at the Conference of the four conventions by such substantial majorities indicates the most recent restatement of the law on the various subjects covered. This being the case, the Geneva Conference of 1958 may be considered a mammoth stride in the direction of the ultimate codification of the law of the sea.

Thirdly, the 1958 Geneva Conference can be considered of major importance in that it constituted the first world-wide meeting to discuss draft articles prepared by the International Law Commission of the United Nations. Therefore, it represents the first \textit{United Nations codification} conference and may well set the pattern for similar future conclaves under the aegis of the United Nations. This fact not only enhances the prestige of the United Nations in the eyes of the world community, but, what is equally important, underscores the significance of the work of the International Law Commission. The world owes a debt of gratitude to the members of this Commission, whose

\textsuperscript{13} U.N. Doc. A/CONF. 13/SR. 18, 6.
\textsuperscript{14} U.N. Doc. A/CONF. 13/54/SR. 18, 11.
\textsuperscript{16} \textit{Ibid.}, at p. 73.
devoted and unstinting efforts over a number of years to develop and codify international law are at last beginning to bear fruit.

Finally, the Geneva Conference of 1958 is of particular significance in that the participating delegates viewed with optimism, determination and dedication their continuing duty to find an ultimate solution to those problems on which agreement could not be reached in 1958. After adopting the four conventions and the optional protocol, the Conference approved the resolution previously referred to which requested the General Assembly of the United Nations to consider convening a second international conference of plenipotentiaries for further study of the questions left unsettled by the 1958 Conference. In so acting the delegates recognized the desirability of making further efforts, at an early and appropriate time, to reach agreement on several unresolved questions regarding the law of the sea.

The manifestation of optimism and determination to continue discussions for the purpose of attempting to reach agreement at some future time on several knotty problems, on which agreement in 1958 was not possible, augurs well for the future. Problems are seldom solved by disregarding them in the vain hope that they will vanish. While the 1960 Conference may not result in agreement on either the delimitation of the territorial sea or the coastal fisheries problem, the only way to achieve the ultimate solution to these and other unresolved questions is to continue studying them. Although an international conference may not reach an agreement, it may, and often does, facilitate the delineation of the areas of disagreement. Moreover, with the spotlight of world public opinion focused upon an international conference there is always the hope that opposing sides will concede enough to produce a compromise convention which can inch forward the development of international law. Since the world is already too small for violence—and shrinking—the conference method of resolving international problems such as those relating to the law of the sea must be used increasingly.

The four conventions remained open for signature until 31 October 1958. As of that date fifty-two states had signed one or more of the conventions. The United States and the United Kingdom had signed all four; the U.S.S.R. had signed three of the four, but not the Convention on Fishing and Conservation of the Living Resources of the High Seas.

A summary of the totals of signatures to the five instruments (i.e., the four conventions and the optional protocol) reveals that there was greater support for the conventions on the high seas and the continental shelf than for the other two:
Total Signature on Five Instruments as of 31 October 1958

<table>
<thead>
<tr>
<th>Instrument</th>
<th>No. of States Signing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on High Seas</td>
<td>47</td>
</tr>
<tr>
<td>Convention on Continental Shelf</td>
<td>46</td>
</tr>
<tr>
<td>Convention on Territorial Sea and Contiguous Zone</td>
<td>44</td>
</tr>
<tr>
<td>Convention on Fishing and Conservation</td>
<td>37</td>
</tr>
<tr>
<td>Optional Protocol of Signature Concerning Compulsory Settlement of Disputes</td>
<td>30</td>
</tr>
</tbody>
</table>

The Optional Protocol of Signature Concerning Compulsory Settlement of Disputes received far less support than any of the four conventions. As indicated above, only 30 of the 52 states which had signed one or more of the conventions by the closing date had signed the Protocol. However, since the Protocol did not provide the closing date of 31 October 1958 for signatures, as was the case for the four conventions, it is possible that some states may still sign, although it is unlikely that many more will do so in view of the antagonism of a number of the delegations toward granting to the International Court of Justice compulsory jurisdiction over disputes arising out of the interpretation or application of the conventions.

As of 31 October 1958 only 25 states had signed all five of the

17 For a complete summary of the signatures to all four Conventions and the Optional Protocol, together with a statement of the reservations and/or declarations by the signatory states, see Appendix J, p. 264. Prepared by the author from information supplied by the United Nations.

18 The exact language of the Optional Protocol with respect to signatures thereto is: “Art. V: This Protocol shall remain open for signature by all States who become Parties to any Convention on the Law of the Sea adopted by the United Nations Conference on the Law of the Sea and is subject to ratification, where necessary, according to the constitutional requirements of the signatory States.” (Appendix E, p. 226.) If the intention was that any State signing any Convention became a party thereto, then the twenty-two states which have signed one or more of the Conventions but have not signed the Optional Protocol, may still do so. On the other hand, if the intention of this article is that a state becomes a party to a Convention by ratification or accession, then presumably additional states, that is the thirty-four which have not signed even one of the Conventions, could sign the Optional Protocol whenever they ratify or accede to one or more of the four Conventions.

19 The Optional Protocol makes an exception with respect to certain provisions in the Convention on Fishing and Conservation of Living Resources of the High Seas. See Article II of the Optional Protocol, Appendix E, p. 226 and also Articles 9, 10, 11 and 12 of the Convention on Fishing and Conservation, Appendix C, pp. 216–218.

20 The twenty-five states signing all four Conventions plus the Optional Protocol includes several of the major maritime states of the world: Bolivia, Canada, Ceylon, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Finland, Ghana, Haiti, Israel, Liberia, Nepal, Netherlands, New Zealand, Pakistan, Panama, Portugal, Switzerland, United Kingdom, United States, Uruguay, and Yugoslavia. See Appendix J.
instruments adopted at the Conference by the 86 participating states. Ten states had signed four of the five instruments; ten had signed three; four had signed two, and three had signed but one. Chile, Ecuador and Peru, leaders among the states of South America claiming sovereignty over a 200-mile breadth of high seas adjacent to their coasts, are the three states which signed only the Convention on the Continental Shelf.

The latest report from the United Nations Secretariat (as of 12 May 1961) indicates that 10 states have ratified the Convention on the High Seas (Afghanistan, Haiti, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Cambodia, Federation of Malaya, Byelorussian Soviet Socialist Republic, United States of America, Senegal), 9 states have ratified the Convention on the Territorial Sea and the Contiguous Zone (Haiti, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Cambodia, Federation of Malaya, Byelorussian Soviet Socialist Republic, United States of America, Senegal). 6 states have ratified the Convention on Fishing and Conservation of the Living Resources of the High Seas (Haiti, United Kingdom of Great Britain and Northern Ireland, Cambodia, Federation of Malaya, United States of America, Senegal). 8 states have ratified the Convention on the Continental Shelf (Haiti, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Cambodia, Federation of Malaya, Byelorussian Soviet Socialist Republic, United States of America, Senegal).

\[\text{Footnote:}\] For a discussion of these claims, see Ch. 1, pp. 15–58.