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Law of the Sea at the Crossroads: The Continuing Search for a Universally Accepted Régime

Proceedings of an Interdisciplinary Symposium
of the Kiel Institute of International Law
July 10 to 14, 1990

Edited by

Rüdiger Wolfrum

Assistant Editors:

Ursula E. Heinz · Denise A. Bizzarro



Duncker & Humblot · Berlin

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Internationales Recht an der Universität Kiel**

Herausgegeben von

Jost Delbrück und Rüdiger Wolfrum
Institut für Internationales Recht an der Universität Kiel

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Foreword

Although the Convention on the Law of the Sea has not yet entered into force, it has already had a substantial impact upon the legislation of many States with regard to maritime issues. Such State practice has induced the view that parts of the Convention have already become customary international law. This view has been challenged on the grounds that the Convention on the Law of the Sea should be regarded as a “package” which excludes the entry into force of parts of it. In any case it must be noted that the ratification process has recently slowed down: a reluctance seems to exist on the part of the industrialized States to subscribe to the sea-bed régime as enshrined in Part XI and the relevant Annexes of the Convention on the Law of the Sea. Equally, there seems to exist at present a reluctance on the part of the developing countries to set the Convention on the Law of the Sea into force. The uncertainty over the future status of the Convention is unsatisfactory since the possibility cannot be ruled out that State practice may render some parts of the Convention obsolete. The Secretary-General of the United Nations has already indicated that State practice does not always reflect the delicate balance between the rights and duties of States embodied within the Convention. To preserve the achievements of the Convention, Ambassador *Mumba S. Kapumpa*, spokesman of the Group of 77, called for a dialogue between signatories and non-signatories of the Convention in 1988 with a view to overcome impediments for the universal acceptance of the Convention on the Law of the Sea. The intention behind this Symposium was to contribute to these efforts by providing an academic forum where new ideas may be voiced and discussed openly.

The Institute of International Law is greatly indebted to the Fritz Thyssen Foundation for funding this Symposium. The publication of the proceedings have been supported by the Federal Ministry of Foreign Affairs. Further assistance has been received by the Kieler Spar- und Leihkasse, Honeywell-Elac-Nautic Ltd., the Landesbank of Schleswig-Holstein, Salzgitter Ltd., Krupp MAK, DMT Marinetechnik, the Industrie- und Handelskammer in Kiel, the Bagge Foundation, Wintershall Ltd., Süverkrüp Automobile Ltd. and the Deutsche Bank, Kiel.

My personal thanks are extended to the staff of the Institute whose efforts have, as on many occasions before, made this Symposium possible. I am especially grateful to Mr *Enno Harders*, Dr. *Ursula Heinz*, Mrs *Denise Bizzarro* and Mrs *Rotraut Wolf* for their effective management of the symposium and its follow-up.

Rüdiger Wolfrum

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Abbreviations

AALCC	= Asian-African Legal Consultative Committee
ACABQ	= Advisory Committee on Administrative and Budgetary Questions
ACP	= Africa-Caribbean-Pacific
AFDI	= Annuaire français de droit international
AJIL	= American Journal of International Law
BGBI.	= Bundesgesetzblatt
BYIL	= The British Year Book of International Law
CPC	= Committee for Programme and Co-ordination
CRAMRA	= Convention on the Regulation of Antarctic Mineral Resource Activities
CTC	= Centre on Transnational Corporations (United Nations)
doc.	= Document
ECLAC	= Economic Commission for Latin America and the Caribbean (United Nations)
EEC	= European Economic Community
EEZ	= Exclusive economic zone
EPIL	= Encyclopedia of Public International Law
FAO	= Food and Agriculture Organization
FRG	= Federal Republic of Germany
GA	= General Assembly (United Nations)
GATT	= General Agreement on Tariffs and Trade
GESAMP	= Group of Experts on the Scientific Aspects of Marine Pollution
GNP	= Gross national product
GYIL	= German Yearbook of International Law
IAEA	= International Atomic Energy Agency
ICAO	= International Civil Aviation Organization
ICES	= International Council for the Exploration of the Sea
ICJ	= International Court of Justice
ICNT	= Informal Composite Negotiating Text
IDA	= International Development Association
IFAD	= International Fund for Agricultural Development
ILC	= International Law Commission
ILM	= International Legal Materials
ILO	= International Labour Organization
IMF	= International Monetary Fund
IMO	= International Maritime Organization
IO	= International Organization
IOC	= Intergovernmental Oceanographic Commission

LOS	= Law of the Sea
MARPOL	= International Convention for the Prevention of Pollution from Ships
MSR	= Marine scientific research
nm	= Nautical miles
NYIL	= Netherlands Yearbook of International Law
ODILA	= Ocean Development and International Law
OTEC	= Ocean Thermal Energy Conversion
PrepCom	= Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea
res.	= Resolution
RV	= Research vessel
TRIMs	= Trade-related investment measures
TRIPs	= Trade-related aspects of intellectual property rights
TUSCH	= Tiefsee-Umweltschutz
UNCLOS III	= Third United Nations Conference on the Law of the Sea
UNCTAD	= United Nations Conference on Trade and Development
UNEP	= United Nations Environmental Programme
UNESCO	= United Nations Educational, Scientific and Cultural Organization
UNIDO	= United Nations Industrial Development Organization
UNITAR	= United Nations Institute for Training and Research
UNTS	= United Nations Treaty Series
UPU	= Universal Postal Union
WHO	= World Health Organization
WIPO	= World Intellectual Property Organization

Welcoming Address

Michael Müller-Wille*

Your Excellencies, Herr Bundestagsabgeordneter, Herr Minister, Spektabilität,
Dear Colleagues, Ladies and Gentlemen:

On behalf of the Christian Albrecht University at Kiel, I have the great honour and pleasure to welcome you as participants of the symposium “Law of the Sea at the Crossroads: The Continuing Search for a Universally Accepted Régime.”

We are thankful that so many of you have accepted our invitation. We consider this a vote of confidence in the capabilities of this university and its strong marine research facilities.

I wish to take advantage of welcoming the great number of eminent experts in the fields of law of the sea and related areas of research who have assembled here in Kiel as guests of this university and in particular of the Institute of International Law to briefly give you an overview of the many activities of the Christian Albrecht University at Kiel in the area of marine research. I further want to inform you of some of the initiatives that will be pursued at the University in the coming years. It would be impossible to offer you, in this short message, a comprehensive overview of all our endeavours. I will, therefore, limit myself to those projects which will likely interest most — if not all — participants from some 25 countries represented here.

The Christian Albrecht University at Kiel was founded in 1665. Today, about 18,500 students are enrolled in seven faculties and very soon another faculty will be added to the university. This will be a faculty of engineering and it is to be hoped that in the long run it will further strengthen the capabilities regarding the marine sciences.

Marine research as such at this University looks upon a tradition of 100 years. The international reputation of the University in this respect is manifested by the Institute of Marine Research, which constitutes an independent research and teaching department. The name of the Institute is carried all over the world by its four research vessels. Aside of traditional marine scientific research the *Institut für Meereskunde* is very active in the field of marine technology.

Apart from this Institute there exists a focal point of the University in marine geology and marine geophysics. Its emphasis is on the exploration of non-

* Prof. Dr. Dr. hc. *Michael Müller-Wille*, Rector of the Christian-Albrechts-Universität at Kiel.

renewable natural resources of the sea-bed as well as the exploitation of the sea-bed as a basis for stable offshore technology. The research in the areas of marine geology and marine geophysics mounted in 1986 in the decision for the establishment of GEOMAR at this university. GEOMAR is an abbreviation for *Forschungszentrum für marine Geowissenschaften*. GEOMAR is an independent body of the University which has — and that is quite a novelty — a commercial branch. It is this part of GEOMAR which has provided us with the exhibition in the hall. GEOMAR is active in four departments which are: marine environmental geology, marine geophysics, paleo-oceanography and petrology of the ocean crust. In combination with the marine-oriented institutes of the natural sciences faculty and the Institute for Marine Research with its long tradition, GEOMAR adds another focus in the area of marine research.

In the area of applied physics, special attention is given to the development of instruments for marine technology. Especially range-finders and plummets have been developed in co-operation with industry. These efforts are concentrated in the Research Center for Marine Technology. One of its current projects deals with “Gewinnung regenerativer Energien aus dem Meerwasser” (the exploration and use of the renewable energy resources of the sea-water). Such interests in the field of ocean technology are part of the co-operation between the University of Hawaii, Honolulu, and the Christian Albrechts University.

Finally, I would like to mention that marine issues are intensively dealt with in the faculty of economy and social sciences and the Institute on World Economy as well as in the Institute of International Law. The activities of the latter have resulted in numerous symposia as well as in the elaboration of studies concerning the European régime for offshore activities such as oil and gas.

All those working in the field of marine sciences, law or economy are integrated in a special working group which meets at least once a semester. In this group a vivid exchange of views takes place fostering the interdisciplinary approach to all sea related matters. I believe that this interdisciplinary approach is quite unique and an important feature of the Kiel University.

May I, in closing, express the hope that this symposium will lead to a lively exchange among the participants which leads to a better understanding and even an accomodation of the different positions taken so far.

I leave you with these broad prospects and offer you my best wishes for a pleasant and productive conference.

Opening Address

Franz Froschmaier*

Your Excellencies, Ladies and Gentlemen:

It is a great pleasure and honour for me to open this international symposium and to extend a very warm welcome to all participants on behalf of the Government of Schleswig-Holstein.

We are happy to host this conference in Kiel, organized by Professor *Wolfrum* and the Kiel Institute of International Law, at this particular moment in time when both Germanies are engaged in the process of unification with the help of our neighbours and friends and within the European and international framework. It should always be maintained that Germany is part of the international community of States, which in turn face problems and challenges of a global scale.

Thus, it is highly pertinent to take a fresh look at the law of the sea (LOS). It was *Satya Nandan*, the UN Under-Secretary-General for the law of the sea, who — speaking on “The 1982 UN Convention on the Law of the Sea at a Crossroad” in June 1989 — gave the “Leitmotiv” for this conference in Kiel when he stated that we are at a very important crossroad while time is running out for the Convention to enter into force. He also set the stage with his proposal that any changes can be incorporated in a “protocol,” to come into force simultaneously with the LOS Convention.

With a view to the need for a new assessment of the LOS Convention let me make three short remarks:

First, the growing importance of marine environmental protection, including the problem of “global change,” on the one hand and the somewhat reduced interest in deep sea-bed mining on the other, allows for different priorities. It is my view that this change of priorities calls for an early entry into force of the Convention, at least in its non-sea-bed subjects.

Second, there is a growing willingness among States to find an accommodation of the remaining “hard-core issues” for sea-bed mining. All partners of the European Community, the Soviet Union and a growing number of other countries share the view that realistic modifications are required. Moreover, the chairman of the “Group of 77,” Ambassador *Kapumpa* of Zambia, has reaffirmed the

* Dr. *Franz Froschmaier*, Minister for Economics, Technology and Transport of the Land Schleswig-Holstein.