

Cases and Materials on the Law of the Sea

Louis B. Sohn

Distinguished Research Professor
The George Washington University Law School

John E. Noyes

Professor of Law
California Western School of Law



Transnational Publishers

Published and distributed by
Transnational Publishers, Inc.
410 Saw Mill River Road
Ardsley, NY 10502

Phone: 914-693-5100
Fax: 914-693-4430
E-mail: info@transnationalpubs.com
Web: www.transnationalpubs.com

Library of Congress Cataloging-in-Publication Data

Sohn, Louis B.

Cases and materials on the law of the sea / Louis B. Sohn, John E. Noyes.

p. cm.

Includes bibliographical references and index.

ISBN 1-57105-317-4

1. Law of the sea--Cases. I. Noyes, John E., 1951-- II. Title.

K ZA1145.S66 2004

341.4'5--dc22

2004047950

Copyright © 2004 by Transnational Publishers, Inc.

All rights reserved. This book may not be reproduced, in whole or in part, in any form (beyond that copying permitted by U.S. Copyright Law in Section 107, "fair use" in teaching and research, Section 108, certain library copying, and except in published media by reviewers in limited excerpts), without written permission from the publisher.

Manufactured in the United States of America

To my parents

— JEN

TABLE OF CONTENTS

<i>Preface</i>	<i>xix</i>
<i>Acknowledgments</i>	<i>xxiii</i>
<i>Table of Figures</i>	<i>xxxi</i>
<i>Table of Abbreviations</i>	<i>xxxiii</i>
<i>Table of Treaties and Other International Instruments</i>	<i>xliii</i>
<i>Table of Cases</i>	<i>lxvii</i>
Chapter 1: Introduction	1
A. Historical Overview and the 1982 United Nations Convention on the Law of the Sea	1
1. Historical Overview to 1982	1
2. The 1982 Convention on the Law of the Sea: An Overview	6
Bernard H. Oxman, “The New Law of the Sea”	6
Note	13
3. Recent Developments	14
B. International Law and International Legal Process	16
1. An Introduction to International Law Sources and Process	16
Statute of the International Court of Justice, Article 38	16
Notes	16
North Sea Continental Shelf Cases (1969)	17
Libya/Malta Continental Shelf Case (1985)	26
Figure I.A	27
Notes	28
2. Regimes and International Organizations	30
Satya N. Nandan, “Existing Institutional Framework and Mechanisms”	31
Notes	40
Chapter 2: Freedom of the High Seas	43
A. Introduction	43
Law of the Sea Convention, Articles 87 and 89	44
Notes	44
B. Freedom of Navigation	46
Hugo Grotius, The Freedom of the Seas (1633)	46
Law of the Sea Convention, Article 90	47
Notes	47
C. Freedom of Overflight	48
U.S. Protest to Ecuador	48
Notes	48
D. Freedom of Fishing	50
E. Freedom to Lay Submarine Cables and Pipelines	51

Law of the Sea Convention, Articles 112 and 113	51
Notes	51
Alleged Damage to United States Submarine Cables by Soviet Vessels	53
Note	56
F. Other Freedoms	57
G. Reasonable Regard to Interests of Other States	58
Note	58
Warning Areas	58
Legality of Using the High Seas in Connection With Nuclear Weapons Tests in the Pacific Ocean	58
Notes	61
Nuclear Tests Case (Australia v. France) (1974)	62
Notes	68
H. Reservation of the High Seas for Peaceful Purposes	71
Law of the Sea Convention, Articles 88 and 301	72
Notes	72
Note on the Cuban Missile Crisis	72
Note on the Iran-Iraq War	73
The U.S. Plan to Protect Kuwaiti Ships in the Gulf by Putting Them under U.S. Flags	74
Notes	77
Note on the Falkland/Malvinas War and Maritime Exclusion Zones	79
Notes	79
Declaration of a Zone of Peace and Co-operation of the South Atlantic	80
Notes	80
Amerada Hess Shipping Corp. v. Argentine Republic (1987)	81
Argentine Republic v. Amerada Hess Shipping Corp. (1989)	87
Notes	92
I. Rights of Land-Locked States	92
Law of the Sea Convention, Articles 90 and 125	92
Notes	92
J. Duty to Render Assistance	93
Law of the Sea Convention, Article 98	93
Warshauer v. Lloyd Sabaudo, S.A. (1934)	94
Notes	96
Rescue at Sea	97
Notes	99
Chapter 3: Nationality of Vessels	103
A. The Concept and Significance of Vessel Nationality	103
Law of the Sea Convention, Articles 91 and 92	103
Notes	103
B. Right of States to Confer Nationality on a Ship	106
The Case of the <i>Virginius</i> (1906)	106
Lauritzen v. Larsen (1953)	107
Notes	107
Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization	108

1. Written Statement of the Netherlands Government, December 4, 1959	109
2. Written Statement of the Government of India	110
3. Oral Statement of Mr. Weeks (Liberia), April 27, 1960	111
4. Oral Statement of Dr. Fábrega (Panama), April 27, 1960	112
5. Oral Statement of Mr. Seyersted (Norway), April 29, 1960	113
6. Advisory Opinion of the Court, June 8, 1960	115
Notes.	116
Note on the 1986 United Nations Convention for Registration of Ships	117
The M/V “Saiga” (No. 2) Case (1999).	119
Notes.	122
C. Registration and Documentation	124
The M/V “Saiga” (No. 2) Case (1999).	124
Separate Opinion of Vice-President Wolfrum	127
The “Grand Prince” Case (2001)	131
Notes.	135
Calvo, <i>Le Droit International Théorique et Pratique</i>	137
Notes.	138
Documentation of United States Vessels	139
Notes.	141
D. What Is a Ship or Vessel?	142
In re Sedco, Inc. (1982).	142
Notes.	144
Chapter 4: Jurisdiction of the Flag State	147
A. Flag State Obligations	147
Law of the Sea Convention, Article 94.	147
Notes.	148
IMO Conventions	150
International Convention on Standards of Training, Certification and Watchkeeping of Seafarers, Article XII	154
Notes.	155
B. Overview of Jurisdiction of the Flag State and Exceptions to the Flag State’s Exclusive Jurisdiction	157
Law of the Sea Convention, Article 110.	158
Notes.	158
C. Jurisdiction in Matters of Collision	159
The S.S. “Lotus” (1927)	160
Notes.	166
D. Illegal Acts	167
1. Piracy.	168
Law of the Sea Convention, Articles 101, 103, 105–107.	168
Notes	169
The Ambrose Light (1885).	169
Notes	174

	<i>In re Piracy Jure Gentium</i> (1934)	176
	Notes	178
2.	Slavery	181
	<i>Le Louis</i> (1817)	181
	Notes	184
	UN Secretariat, “The Relation Between the Articles Concerning the Law of the Sea Adopted by the International Law Commission and International Agreements Dealing with the Suppression of the Slave Trade”	184
	Notes	189
3.	Unauthorized Broadcasting	191
	Law of the Sea Convention, Article 109	191
	Notes	191
4.	Drug Traffic	192
	Law of the Sea Convention, Article 108	192
	Note	192
	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 17	193
	Notes	194
	U.S.-U.K. Agreement to Facilitate the Interdiction of Vessels Suspected of Trafficking in Drugs	195
	Note	196
	Note on U.S. Legislation and Vessels Suspected of Drug Trafficking	196
	Maritime Drug Law Enforcement Act	197
	Notes	198
	United States v. Pinto-Mejia (1983)	198
	Notes	201
	United States v. Gonzalez (1985)	203
	Notes	209
5.	Terrorism on the High Seas	212
	Note on the <i>Achille Lauro</i> Incident and the 1988 IMO Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation	212
	Notes	215
E.	UN Security Council Decisions, Threats to International Peace and Security, and Interdiction of Vessels	215
	United Nations Charter, Articles 25, 39, 41, 42, 48, 103	215
	Note	216
	Security Council Resolution 787	217
	Security Council Resolution 820	217
	Ebony Maritime SA and Loten Navigation Co. Ltd v. Prefetto Della Provincia Di Brindisi and Others (1997)	218
	Final Report of the Security Council Committee Established Pursuant to Resolution 724	219
	Notes	220
	Proliferation Security Initiative: Statement of Interdiction Principles	221
	Notes	223

F.	Hot Pursuit	224
	Law of the Sea Convention, Article 111	224
	United States v. F/V Taiyo Maru (1975)	225
	Notes	228
	The M/V “Saiga” (No. 2) Case (1999)	229
	Notes	231
Chapter 5:	Baselines	233
A.	The Normal Baseline	233
	Law of the Sea Convention, Article 5	233
	United States v. California (1965)	233
	Notes	234
	Figure V.A	236
B.	Straight Baselines	237
	Anglo-Norwegian Fisheries Case (1951)	237
	Figure V.B	247
	Notes	248
	Law of the Sea Convention, Article 7	248
	Notes	249
	U.S. Protest of Oman’s Straight Baselines	250
	Figure V.C	252
	Notes	253
	Qatar-Bahrain Maritime Delimitation Case (2001)	254
	Note	255
C.	Bays	255
	North Atlantic Fisheries Case (1910)	255
	Notes	256
	Law of the Sea Convention, Article 10	257
	Notes	257
	United States v. Louisiana (1969)	258
	Notes	262
	Figure V.D	263
D.	Historic Inland Waters	264
	United States v. Louisiana (1969)	264
	United States v. Alaska (1975)	267
	Notes	272
	Figure V.E	273
E.	Islands	274
	United States v. Louisiana (1969)	274
	Notes	275
F.	Harbors and Roadsteads	276
	Law of the Sea Convention, Article 11	276
	United States v. Louisiana (1969)	276
	Notes	278
G.	Archipelagic States	278
	Law of the Sea Convention, Articles 46–48	279
	Notes	280

Chapter 6: Boundaries of Maritime Jurisdiction Between Adjacent and Opposite States	283
A. The Territorial Sea	284
Law of the Sea Convention, Article 15.	284
Note	284
Eritrea-Yemen Arbitration (Second Phase: Maritime Delimitation) (1999)	285
Note	286
B. The Continental Shelf and Exclusive Economic Zone	287
1. General Rule: Delimitation by Agreement	287
Law of the Sea Convention, Articles 74, 83	287
Notes	287
H. Burmester, “The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement”	289
Notes	294
2. Delimitation in the Absence of Agreement and the Role of International Courts and Arbitral Tribunals	295
1958 Continental Shelf Convention, Article 6.	296
Note	296
North Sea Continental Shelf Cases (1969)	296
Notes	303
Note on the Continental Shelf Boundary Arbitration Between France and the United Kingdom	305
Figure VI.A	306
Note on Delimitation of Maritime Boundaries Between the States of the United States	309
Figure VI.B	310
Tunisia-Libya Continental Shelf Case (1982)	311
Notes	316
Figure VI.C	317
Gulf of Maine Case (1984).	318
Notes	323
Figure VI.D	324
Libya/Malta Continental Shelf Case (1985)	326
Notes	335
Figure VI.E	336
Note on the <i>Maritime Delimitation in the Area between Greenland and Jan Mayen Case</i>	337
Eritrea-Yemen Arbitration (Second Phase: Maritime Delimitation) (1999)	339
Notes	346
Figure VI.F.	347
3. Conciliation	349
R.R. Churchill, “Maritime Delimitation in the Jan Mayen Area”.	349
Notes	354
Figure VI.G	355
Chapter 7: Internal Waters and Ports	357
A. Introduction.	357
1. Internal Waters.	357

2. Ports	358
B. Access to Ports and Port Security	358
Statute on the International Régime of Maritime Ports, Articles 1, 2, 13, 14, 16, 17	358
Notes	360
Saudi Arabia v. Arabian American Oil Co. (Aramco) (1958)	361
Notes	363
Law of the Sea Convention, Article 25(2)	364
Notes	364
Maritime Transportation Security Act of 2002	366
Notes	368
Security: Alert!	370
Notes	374
Khedivial Line, S.A.E. v. Seafarers' International Union (1960)	375
Notes	377
Note on Access of Warships to Ports	377
C. Port State Jurisdiction over Foreign Vessels While in Port	378
Wildenhus's Case (1887)	378
Notes	382
Benz v. Compania Naviera Hidalgo (1956)	384
Notes	386
Hellenic Lines Ltd. v. Rhoditis (1970)	388
Note	389
The Eisler Case	390
Notes	392
Kate A. Hoff (United States) v. Mexico (1929)	393
Notes	394
D. Flag State Jurisdiction over Vessels in Foreign Ports or Foreign Internal Waters	395
United States v. Flores (1933)	396
Notes	396
E. Jurisdiction over Foreign Government Vessels	397
The Schooner Exchange v. McFaddon (1812)	397
Notes	399
F. Enlarged Port State Jurisdiction	401
United States v. Caribbean Cruises Ltd. (1998)	401
Notes	406
Lee A. Kimball, "Introductory Note on Memorandum of Understanding on Port State Control in the Caribbean Region"	409
Notes	411
Chapter 8: Territorial Sea, Contiguous Zone, Straits, and Archipelagic Waters.	413
A. Status of the Territorial Sea	413
Regina v. Keyn (1876)	413
Notes	417
Law of the Sea Convention, Articles 2–3	417
Notes	417
B. Innocent Passage and Jurisdiction Over Passing Vessels.	418
1. Innocent Passage	419
Law of the Sea Convention, Articles 17–26	419

Notes	422
2. Jurisdiction over Passing Vessels	423
<i>Compañía de Navegación Nacional (Panama) v. United States</i> (1933)	423
Law of the Sea Convention, Articles 27–28	428
Notes	429
3. Passage of Warships	430
<i>Corfu Channel Case (1949)</i>	430
Dissenting Opinion by Judge Krylov	432
Dissenting Opinion by Judge Azevedo	433
Uniform Interpretation of Rules of International Law Governing Innocent Passage, Articles 1–6	436
Notes	436
Law of the Sea Convention, Articles 29–32	438
Note	439
C. Contiguous Zone	439
<i>Church v. Hubbard (1804)</i>	439
Notes	442
<i>The Grace and Ruby (1922)</i>	443
Notes	445
Convention on the Territorial Sea and Contiguous Zone, Article 24	446
Notes	446
UNCLOS III Discussion of the Contiguous Zone	447
Notes	450
D. Straits Used for International Navigation	452
<i>Corfu Channel Case (1949)</i>	452
Notes	455
Law of the Sea Convention, Articles 34–45	456
UNCLOS III Discussion of Straits Used for International Navigation	459
Notes	473
E. Archipelagic Waters	475
Law of the Sea Convention, Articles 46–54	475
UNCLOS III Discussion of the Status of Archipelagic Waters	478
Notes	492
Chapter 9: Continental Shelf	495
A. Early Developments	495
Presidential Proclamation No. 2667 (Truman Proclamation)	496
White House Press Release, Sept. 28, 1945	496
Notes	497
Annual Report of the Secretary of the Interior, Fiscal Year Ended June 30, 1945	498
Note	499
Chile, Presidential Declaration Concerning the Continental Shelf, June 23, 1947.	499
Note from the Government of the United States to the Government of Chile, July 2, 1948.	501
Notes	501

B.	Drafting the 1958 Convention on the Continental Shelf	
	Report of the International Law Commission, 1956	502
	Notes	509
C.	National Implementation	510
	United States v. Ray (1970)	511
	Notes	515
	Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel (1978)	515
	Notes	518
D.	The 1982 Revision	519
	Law of the Sea Convention, Articles 76–79, 81–82	519
	Notes	522
E.	The Commission on the Limits of the Continental Shelf	525
	Law of the Sea Convention, Annex II, Articles 1–9	525
	Figure IX.A	526
	Figure IX.B	527
	Figure IX.C	528
	Notes	530
Chapter 10:	Exclusive Economic Zone	533
A.	Early Developments	533
	Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas	534
	Notes	534
	Convention on Fishing and Conservation of Living Resources of the High Seas, Articles 1, 6–7	535
	Notes	536
	Fisheries Jurisdiction Case (1974)	537
	Notes	546
B.	1982 EEZ Regime	547
	Law of the Sea Convention, Articles 55–59	547
	Notes	549
	Exclusive Economic Zone of the United States of America	550
	Notes	551
	The M/V “Saiga” (No. 2) Case (1999)	553
	Notes	558
C.	Living Resources Within the EEZ	558
	1. Management and Conservation of the Living Resources Within the EEZ	559
	Law of the Sea Convention, Articles 61–62	559
	Notes	560
	The “La Bretagne” Case (1986)	561
	Notes	565
	Harry N. Scheiber, “Ocean Governance and the Marine Fisheries Crisis: Two Decades of Innovation—and Frustration”	565
	Notes	567
	2. Enforcement of Coastal State Laws Concerning Living Resources Within the EEZ	569

Law of the Sea Convention, Article 73	569
Notes	569
3. Rights of Geographically Disadvantaged and Land-Locked States in the EEZ	570
Law of the Sea Convention, Articles 69–72	570
Notes	572
D. Marine Scientific Research	572
Law of the Sea Convention, Articles 238–241, 246–253	573
Notes	577
U.S. Military Survey Operations in East China Sea	579
Notes	580
E. Artificial Islands and Installations	581
Law of the Sea Convention, Article 60.	581
Notes	582
 Chapter 11: The Deep Seabed.	 585
A. Early Developments in the United Nations.	585
The “Moratorium” Resolution	586
Note	587
Explanatory Statements Concerning Votes on the Moratorium Resolution	587
The Principles Resolution	590
Notes	592
B. Technical Background	593
Roger-J. Bonnel, “Belgians and Americans are Getting Ready to Collect Ocean Minerals”	593
Notes	595
Figure XI.A.	597
C. Part XI of the Law of the Sea Convention	598
Law of the Sea Convention, Articles 1, 133, 136–137, 140–141, 150, 153, 156–158	598
Bernard H. Oxman, “The New Law of the Sea”.	601
Notes	604
D. U.S. Objections, Unilateral Legislation, and Reciprocating States Treaties	606
White House Office of Policy Information, Issue Update No. 10	606
Notes	609
1980 U.S. Deep Seabed Hard Mineral Resources Act.	610
Notes	614
E. The Preparatory Commission, Pioneer Investors, and Overlapping Claims to Seabed Mining Sites	615
Registration of Pioneer Investors in the International Sea-Bed Area	616
Lee A. Kimball, “Introductory Note”.	617
Notes	618
F. The 1994 Agreement and the International Seabed Authority.	620
Bernard H. Oxman, “The 1994 Agreement and the Convention”	621
Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982	627

Notes	630
Note on the International Seabed Authority	631
G. Nonmineral Resources and Uses of the Area	632
1. Deep-Sea Vent Living Resources	633
Craig H. Allen, “Protecting the Oceanic Gardens of Eden: International Law Issues in Deep-Sea Vent Resource Conservation and Management”	633
Notes	634
2. Underwater Cultural Heritage	635
R.M.S. Titanic, Inc. v. Haver (1999)	635
Notes	645
Law of the Sea Convention, Articles 149, 303	646
Convention on the Protection of the Underwater Cultural Heritage, Articles 1–5, 7–12, 14–18, and Annex Rules 1–8, 11, 33	646
Notes	654
Chapter 12: Marine Pollution	657
A. Evolution of International Law Concerning Protection of the Human Environment	657
The State of the World Environment, 1972–1982	658
Stockholm Declaration on the Human Environment	660
Notes	664
The State of the World Environment, 1972–1982	666
P.W. Birnie & A.E. Boyle, International Law and the Environment	668
Rio Declaration on Environment and Development	673
Notes	677
Request for an Examination of the Situation in the Nuclear Tests Case (1995)	677
Dissenting Opinion of Judge Sir Geoffrey Palmer	678
Notes	682
B. Protection of the Marine Environment	684
1. Marine Pollution and the Law of the Sea Convention	685
Discussions in UNCLOS III	685
Notes	698
2. Vessel-Source Pollution, Dumping, and the Work of the International Maritime Organization	702
Cleaner Oceans: The Role of IMO in the 1990s	702
Notes	717
Summary Report of the Second International Meeting of Legal Experts on Particularly Sensitive Sea Areas	719
Notes	720
3. Land-Based Pollution	723
Law of the Sea Convention, Articles 207, 213	723
Notes	724
Montreal Declaration on Protection of the Marine Environment from Land-Based Activities	725
Note	727
The MOX Plant Case (2002)	727
Joint Declaration of Judges Caminos, Yamamoto, Park, Akl, Marsit, Eiriksson, and Jesus	733
Notes	734

Chapter 13: Living Resources of the High Seas	737
A. Challenges to the Sustainability of Living Resources	737
Harry N. Scheiber, “Ocean Governance and the Marine Fisheries Crises: Two Decades of Innovation—and Frustration”	738
Agenda 21 of the 1992 UN Conference on Environment and Development	739
Plan of Implementation of the World Summit on Sustainable Development	740
Notes	742
B. Basic Legal Principles	743
Law of the Sea Convention, Articles 63–64, 116–119	743
Notes	745
Southern Bluefin Tuna Cases (1999)	746
Notes	751
Straddling and Highly Migratory Fish Stocks Agreement, Articles 5–7	752
Notes	755
C. Regional Fisheries Organizations and Compliance Issues	757
Are K. Sydnes, “Regional Fishery Organizations: How and Why Diversity Matters”	757
Notes	760
Straddling and Highly Migratory Fish Stocks Agreement, Articles 8, 33	762
Notes	763
Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, Articles 6(1), 8, 18	764
Notes	765
Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, Articles 6, 17, 20, 23	766
Notes	769
FAO Flag State Compliance Agreement, Articles III–VI	770
Notes	773
Straddling and Highly Migratory Fish Stocks Agreement, Articles 20–23	774
Notes	779
D. Marine Mammals and Trade Restrictions	781
Law of the Sea Convention, Articles 65 and 120	781
Notes	781
International Convention for the Regulation of Whaling, Articles I, V, VIII, and Schedule 10(e)	782
Notes	783
The Shrimp-Turtle Case (1998)	785
Notes	794
Chapter 14: Settlement of Disputes	799
A. An Overview	799
Louis B. Sohn, “Peaceful Settlement of Disputes in Ocean Conflicts: Does UNCLOS III Point the Way?”	799
Note	804

B.	Negotiating Dispute Settlement Provisions for the Law of the Sea Convention	804
	Draft Articles on Dispute Settlement: United States Proposal to the Sea-Bed Committee, 1973	804
	UNCLOS III Working Paper on the Settlement of Law of the Sea Disputes, 1974	806
	Notes	813
	UNCLOS III Statement by Mr. Galindo Pohl of El Salvador in Plenary, 1974	814
	Note	814
	Basic Choices for the Settlement of Maritime Boundary Disputes	816
	Note	819
	Statement by the Chairman of Negotiating Group 7 (Judge Manner, Finland) Concerning the Settlement of Delimitation Disputes	820
	Proposal by the Chairman of Negotiating Group 7 (Judge Manner, Finland) Concerning the Settlement of Delimitation Disputes	823
	Note	824
	Law of the Sea Convention, Article 298	824
	Notes	825
C.	The International Tribunal for the Law of the Sea	825
	1. Overview	826
	John E. Noyes, “The International Tribunal for the Law of the Sea”	826
	Notes	830
	2. Prompt Release of Vessels and Crews	832
	Law of the Sea Convention, Articles 73 and 292	832
	The Volga Case (2002)	832
	Dissenting Opinion of Judge Anderson	837
	Notes	840
	3. Provisional Measures	842
	Law of the Sea Convention, Article 290	842
	Notes	843
	Southern Bluefin Tuna Case (2000)	844
	Separate Opinion of Justice Sir Kenneth Keith	847
	Notes	852
	<i>Index</i>	855