Preface and Acknowledgments

The quest to adjust the legal order of the oceans to changing realities—a quest that has produced some great achievements but also some grave failures—has produced one of the major developments in international law in modern times. The enterprise of “bringing new law to ocean waters,” as we term this quest, had its origins in the years immediately following World War II. A critical turning point in this enterprise came in 1967, however, when the United Nations General Assembly was called upon by the Malta delegation to develop new legal principles and rules that would protect the ocean floor and seabed resources from appropriation by any nation or private interest. The proposal went further, advocating that these resources, as “the common heritage of mankind,” be administered by an international agency acting as “trustee for all countries.”

As Louis Henkin would write a few years later, the members of the General Assembly were “surprised, uncertain, hesitant, cautious;” but they did set in motion, nonetheless, the negotiations that culminated in the historic agreement in 1982 on the final text of the U.N. Convention on the Law of the Sea (UNCLOS).¹ During the fifteen years of debate and successive formal conferences on UNCLOS, the Law of the Sea Institute (LOSI) established itself as a major voice for both scholarly analysis and discussion of reform proposals. The Institute, founded at the University of Rhode Island in 1965, enjoyed from the start the enthusiastic participation of legal scholars, jurists, government officials, industry and environmental representatives, and international agency staff. The

Preface and Acknowledgments

reports of LOSI workshops, a series of “occasional papers,” and above all its magisterial Proceedings volumes—which published the papers and comments at a series of major international conferences—quickly became recognized as among the most important contributions in the literature of ocean law studies. Many of them stand today as classics in that literature. And once the 1982 UN-CLOS was opened for signature and ratification, the Law of the Sea Institute (which after some years had moved its administrative headquarters to the University of Hawaii, then briefly at University of Miami) shifted to a new focus on implementation of UNCLOS and on issues associated with ratification debates. The issues in law, geopolitics, and diplomacy associated with “bringing of new law to ocean waters” continued, in sum, to be the central concern of the LOSI.

In 2002, the Institute moved its headquarters to the University of California, Berkeley, with the editors of this volume as co-directors. In its new home at Berkeley, LOSI has enjoyed basic financial support of the UC Berkeley Earl Warren Legal Institute (in whose offices LOSI is administered) and of the University of California School of Law (Boalt Hall), UC Berkeley. In the great tradition of the LOSI from its earliest days, the Institute continues to organize and host major international conferences. Building on the base of a major effort during 1998-2000 that produced the volume The Law of the Sea: The Common Heritage and Emerging Challenges (H. N. Scheiber, editor), published by Kluwer in 2000, the LOSI at Berkeley has another volume of conference papers on the subject “Multilateralism and International Ocean Resources Law” in press with the San Diego International Law Journal.

It is with special pleasure that we present the papers from our third major conference of recent years at Berkeley as a volume in the very distinguished series, Publications on Ocean Development, published by Martinus Nijhoff Publishers (an imprint of Brill Academic Publishers). We are indeed grateful for this opportunity to work on this volume in association with Annebeth Rosenboom of the Brill editorial staff. She is well recognized throughout the global community of “ocean law people” as an editor of very special talent and insight, and she has given generous attention to the editing and production of this book.

Others whom we need to thank include Prof. John Dwyer, formerly dean of the Boalt Hall School of Law; Prof. Robert Berring, interim dean at Boalt; and

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2 The volumes, though out of print, are available in most major law libraries and centers for marine studies. The Law of the Sea Institute at UC Berkeley has in process a project to post on its web site <www.lawofthesea.org> the tables of contents of every volume in the Proceedings series, as a guide for researchers and policy officials concerned with issues that were addressed in the scholarly and policy papers, as well as reports of floor discussions, published in that famous series.

3 Conference versions of many of the papers to appear in final form in the San Diego International Law Journal are available on the LOSI website at <www.lawofthesea.org> in a collection edited by H. N. Scheiber and Kathryn Mengerink. The LOSI website will also be the venue for dissemination of workshop materials, such as those now on the site with respect to a new LOSI project, directed by David D. Caron, on nuclear issues and the oceans.
Preface and Acknowledgments

Vice Chancellor for Research Beth Burnside, all of UC Berkeley, who were instrumental in welcoming the LOSI to Berkeley. Others who have contributed sage advice and active help to the restructuring and transition efforts, to our great advantage, include Prof. William T. Burke, University of Washington; Prof. Bernard Oxman, former director of LOSI at University of Miami; Prof. Jon Van Dyke, University of Hawaii, long an executive board member of LOSI, John Briscoe, Esq., of the Stoel Rives law firm in San Francisco; and Director Russell Moll of the California Sea Grant College Program, based at UC San Diego.

We are also greatly indebted, of course, to the distinguished members of the International Advisory Board for the LOSI for their supportiveness and direct involvement in the LOSI activities of recent years. These board members are as follows: David Bederman, Emory University, USA; John Briscoe, San Francisco; Carlos Espósito, Autonomous University of Madrid, Spain; Moritako Hayashi, Waseda University, Japan; Douglas Johnston, Victoria University, Canada; Said Mahmoudi, Stockholm University, Sweden; Edward Miles, University of Washington, USA; Bernard Oxman, University of Miami, USA; Judge Choon-ho Park, The U.N. International Tribunal for the Law of the Sea; Donald Rothwell, University of Sydney, Australia; Judge Tullio Treves, The U.N. International Tribunal for the Law of the Sea; Jon Van Dyke, University of Hawaii, USA; and Davor Vidas, The Fridtjof Nansen Institute, Norway. Emeritus members are Lewis Alexander, John Knauss, and William T. Burke, USA; and Willy Østreng, Centre for Advanced Study, Oslo, Norway.

Several Boalt Hall School of Law graduate law students assisted with great dedication in the organizing of the conference in 2002 and in editorial work leading to this publication of the papers. They include Martha Winnacker, Jocelyn Garovoy, Kathryn Mengerink, and Leah Harhey. Administrative support was provided with great efficiency and cheerful graciousness by Karen Chin and Toni Mendicino of the Earl Warren Legal Institute staff. Impeccable editorial and publishing support was provided by Maria Wolf of the University of California's Institute of Governmental Studies Press. Finally, deep thanks are owed to Jane L. Scheiber and Susan L. Spencer for their special roles in support of this scholarly enterprise.

Our principal debt is, of course, to the authors of the studies published in this work. In a real sense, this is a collaborative work, for each contributor had the benefit of intensive discussion over several days together at Berkeley; and the editorial process has involved further vetting and, in many cases, extended interchange among the authors and editors with the objective of giving integration and real focus to the volume as a whole.

It is the editors' hope that this book will represent not only the great LOSI tradition of collaborative studies in ocean law but also the legacy of ocean law and policy scholarship begun at the Boalt Hall School of Law, UC Berkeley. That legacy has its origins in the late 1930s, in the great work of the late Stefan A. Riesenfeld, who was a mentor and friend to the editors. We acknowledge with deep gratitude the debt our work in ocean law owes to him. No-one brought more dedication, eloquence, and scholarly acumen to the advancement of the
central ideals of multilateralism and peaceful dispute resolution that are so essential to the rule of law in ocean affairs.

David D. Caron and Harry N. Scheiber
Berkeley, California, 2004