

**DEFINITIONS FOR THE 1982
LAW OF THE SEA CONVENTION — PART II***

GEORGE K. WALKER**

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* This revises and adds to International Law Association (American Branch) Law of the Sea Committee, *Defining Terms in the 1982 Law of the Sea Convention (Sept. 4, 2001 Initial Draft) (Rev. 1, Jan. 22, 2002)*, 2001-02 PROC. AM. BRANCH INT’L L. ASS’N 154 (John E. Noyes ed., 2002), reprinted in George K. Walker & John E. Noyes, *Definitions for the 1982 Law of the Sea Convention*, 32 CAL. W. INT’L L.J. 343 (2001-02).

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GENERAL INTRODUCTION

GEORGE K. WALKER

In 2001, the American Branch of the International Law Association Law of the Sea Committee embarked upon a study of terms in the 1982 U.N. Convention on the Law of the Sea (UNCLOS or the Convention)¹ that are not defined in the Convention. The result of the first round of terms, submitted by members, has been published.² In 2002 the Committee studied terms the International Hydrographic Organization (IHO)³ collected and defined in its *Consolidated Glossary*.⁴ Sixty *Glossary* terms are the principal focus of this article, along with continued analysis of terms considered in 2001.

After discussing the Committee's methodology in the Introduction, the article reprints the 2003 *Revised Tentative Draft* in Part II.A of the Analysis, followed by the IHO *Glossary* definitions analysis in Part II.B. Professor John E. Noyes comments on Parts II.A and II.B in Part II.C. Conclusions, Part III, summarize the analysis and offer projections for the Committee's future work. Parts II.A and II.B are the same as materials circulated to the

1. U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3, 397 [hereinafter UNCLOS, followed by article, or 1982 LOS Convention, the LOS Convention or the Convention; English language version]. Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, July 28, 1994, 1836 U.N.T.S. 3 [hereinafter 1994 Agreement], modified LOS Convention, *supra*, in certain respects not relevant to this analysis.

2. See International Law Association (American Branch) Law of the Sea Committee, *Defining Terms in the 1982 Law of the Sea Convention (Sept. 4, 2001 Initial Draft)* (Rev. 1, Jan. 22, 2002), 2001-02 PROC. AM. BRANCH INT'L L. ASS'N 154 (John E. Noyes ed., 2002), reprinted in George K. Walker & John E. Noyes, *Definitions for the 1982 Law of the Sea Convention*, 32 CAL. W. INT'L L.J. 345, 347 (2001-02) [hereinafter ABILA LOS Comm., *Defining*].

3. Convention on the International Hydrographic Organization, May 3, 1967, 21 U.S.T. 1857, 751 U.N.T.S. 41 [hereinafter IHO Convention] constitutes the Organization [hereinafter IHO].

4. International Hydrographic Organization Technical Aspects of the Law of the Sea Working Group, *Consolidated Glossary of Technical Terms Used in the United Nations Convention on the Law of the Sea*, in International Hydrographic Bureau Special Publication No. 51 (1989) and United Nations Office for Ocean Affairs and the Law of the Sea, Baselines 46-62 (1989), reprinted as Annex A1-5 [hereinafter *Consolidated Glossary*], ANNOTATED SUPPLEMENT TO THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS, 74 NAV. WAR C. INT'L L. STUD. 1, 51-77 (A.R. Thomas & James C. Duncan eds., 1999) [hereinafter NWP 1-14M ANNOTATED]. *Consolidated Glossary* page numbers refer to those in NWP 1-14M *Annotated*. The *Consolidated Glossary* has not been updated. Email of Hans-Peter Rhode, International Hydrographic Bureau to Howard K. Sinclair, Wake Forest University School of Law Reference Librarian, May 6, 2002 (copy in chair's file). The IHO has also published International Hydrographic Organization International Hydrographic Bureau, *Glossary of ECDIS-Related Terms*, App. 3, Special Publication No. 52 (3d ed. Dec. 1997) [hereinafter *ECDIS Glossary*], which might be the subject of a future draft.

Committee before publication, except footnote renumbering and abbreviations within footnotes, i.e., *supra* references, and omission of multiple identifier notes (*). In some instances the resulting article may publish repetitive material found in two or more Parts; it is the Committee Chair's intention to submit documents, the text of which is identical, except footnote treatment, identical with what the Committee studied.

**A. DEFINITIONS FOR THE 1982
LAW OF THE SEA CONVENTION
(REVISED TENTATIVE DRAFT NO. 1, FEB. 10, 2003)**

GEORGE K. WALKER

I. INTRODUCTION

Part II.A, an updated revision of the Committee's 2001-02 drafts⁵ to delete reference to outer space and space law in its discussion and analysis of "ocean space" and "sea,"⁶ is republished because of many references to it in Part II.B, the Analysis and Discussion of IHO *Consolidated Glossary* definitions.

Part II.B, commenting on IHO *Consolidated Glossary* terms and proposing definitions taken from them, is the heart of the Committee's 2002-03 research.⁷

Headquartered in the Principality of Monaco, the IHO is organized under the Convention on the International Hydrographic Organization.⁸ Its 62 member States as of January 1, 2002 include many maritime countries, among them the United States.⁹ Treaty succession principles for China, the former USSR and the former Yugoslavia, listed as members, may mean that even more countries are Convention parties.¹⁰ Certain States commonly considered open registry states—Panama, Liberia, Honduras—are not IHO members.

The IHO, formerly the International Hydrographic Bureau, organized in 1921 to make navigation easier and safer by improving nautical charts and documents, is an intergovernmental organization that is purely consultative and technical in nature. Its goals are to coordinate activities of national hy-

5. See *supra* note 2, *infra* notes 15-102 and accompanying text.

6. See *infra* notes 70-71 and accompanying text.

7. See *infra* notes 103-292 and accompanying text.

8. IHO Convention, *supra* note 3.

9. UNITED STATES DEPARTMENT OF STATE, TREATIES IN FORCE: A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 2002, at 392-93 (2002) [hereinafter TIF].

10. *Id.*; Symposium, *State Succession in the Former Soviet Union and in Eastern Europe*, 33 VA. J. INT'L L. 253 (1993); George K. Walker, *Integration and Disintegration in Europe: Reordering the Treaty Map of the Continent*, 6 TRANSNAT'L LAW. 1 (1993); see also TIF, *supra* note 9, at 392-93 (treaty succession issues for China, Federal Republic of Germany, German Democratic Republic, former USSR, former Yugoslavia; Ukraine already a party).

drographic offices, achieving the greatest possible uniformity in nautical charts and documents, adopting reliable and efficient methods of carrying out and exploiting hydrographic surveys, and developing the sciences involved in hydrography and techniques used in descriptive oceanography. Its Hydrographic Bureau is responsible for bringing about a close, permanent association among national hydrographic offices; studying matters related to hydrography and its allied sciences and techniques, and collecting necessary papers; furthering exchange of nautical charts and documents between member governments' hydrographic offices; circulating appropriate documents; tendering guidance and advice, if requested, to States engaged in establishing or expanding their hydrographic service; encouraging coordination of hydrographic surveys with relevant oceanographic activities; extending and facilitating application of oceanographic knowledge for the benefit of navigators; and cooperating with international organizations and scientific institutions with related objectives.¹¹ The IHO compilation of definitions therefore carries relatively great weight as a scholarly contribution, perhaps leading to customary or general principles norms.¹²

Professor Noyes' Part II.C comments are also important for their insights on problems of defining words that apply to a concept, i.e., the words "ship" and "vessel," and for his thoughts on words related to UNCLOS provisions on the continental shelf.¹³ He did so ably with respect to other terms in the 2001-02 Committee draft,¹⁴ and his contribution to this article is equally good.

II. ANALYSIS

1. Introduction

This is the first draft, of several, of proposed definitions for terms not otherwise defined in the 1982 U.N. Convention on the Law of the Sea,¹⁵ to

11. IHO Convention, *supra* note 3, pmb., arts. 1-4, 8, 21 U.S.T. at 1859-61, 1863, 751 U.N.T.S. at 43-45, 47.

12. I.C.J. Statute, art. 38(1); IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 2-3 (5th ed. 1998); 1 OPPENHEIM'S INTERNATIONAL LAW § 15 (Robert Jennings & Arthur Watts eds., 1992); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 102-03 (1987) [hereinafter RESTATEMENT (THIRD)].

13. See *infra* notes 321-349 and accompanying text.

14. John E. Noyes, *Treaty Interpretation and Definitions in the Law of the Sea Convention: Comments on Defining Terms in the 1982 Law of the Sea Convention* (Sept. 4, 2001 Initial Draft) (Rev. 1, Jan. 22, 2002), 2001-02 PROC. AM. BRANCH INT'L L. ASS'N 175, reprinted in 32 CAL. W. INT'L L.J. 367 (2001-02).

15. LOS Convention, *supra* note 1; 1994 Agreement, *supra* note 1. What follows in this article, *Revised Tentative Draft No. 1 Feb. 10, 2003*, [hereinafter *Tentative Draft No. 1*] and Part II.A of this article, and *Definitions for the 1982 Law of the Sea Convention — Part II: Analysis of the IHO Consolidated Glossary* (Revised Initial Draft No. 1, Feb. 10, 2003), and Part II.B of this article are revisions of a draft circulated to LOS Committee members before the International Law Association (American branch) fall 2003 annual meeting. These drafts

be considered at International Law Association (American Branch) (ILA AB) annual meetings starting in 2001. After conferring with the ILA AB Director of Studies and others, I have decided that this may be an appropriate initial project for the Committee.

The proposed procedure is the Committee Chair's circulating each initial draft (Initial Drafts) among ILA AB Law of the Sea Committee (LOS Committee, or Committee) members and perhaps other interested persons (e.g., other ILA AB members not LOS Committee members wishing to participate) for comments before the meeting. ILA AB LOS Committee member meeting attendees will consider an Initial Draft and these comments at a Committee meeting during the annual meeting. The Committee Chair will then circulate a Proposed Tentative Draft among Committee members and perhaps other interested persons for further comments. The resulting Final Draft may be published in, e.g., ILA materials, for consideration by the general ILA membership and others, with an invitation to submit more comments. The Committee Chair will file the resulting Tentative Draft for final consideration and possible amendments, perhaps suggested by additional research on other terms, for adoption as a Final Draft. If, at the end of this stage, the Committee wishes to revisit and discuss a term at the next meeting, it will be placed on the Committee agenda for the next ILA AB annual meeting. However, in general a Tentative Draft, once approved by the Committee, will not be subject to general discussion and wholesale revision until the end of the process, unless the Committee wishes to do so for a particular term.

As with all ILA projects, the Final Draft will not necessarily represent any State's or international organization's practice, views or policy, unless that State or international organization chooses to adopt it in whole or in part.

Draft formats will follow an English alphabetical order, e.g., "mile" ahead of "ocean space." After reciting a term for definition, a Discussion and Analysis will follow, including reference to UNCLOS provisions, other treaties, e.g., the 1958 law of the sea (LOS) conventions,¹⁶ treatises, cases, articles, etc. Comments will summarize correspondence, those who propose terms to simplify correspondence, etc. Conclusions will end each entry.

differ slightly from those published in ABILA LOS Comm., *Defining, supra* note 2; *reprinted in* 32 CAL. W. INT'L L.J. 367 (2001-02)

16. Convention on the Continental Shelf, Apr. 29, 1958, 15 U.S.T. 471, 499 U.N.T.S. 311 [hereinafter Continental Shelf Convention, followed by article; English language version]; Convention on Fishing and Conservation of the Living Resources of the High Seas, Apr. 29, 1958, 17 U.S.T. 138, 559 U.N.T.S. 285 [hereinafter Fishery Convention, followed by article; English language version]; Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 82 [hereinafter High Seas Convention, followed by article; English language version]; Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205 [hereinafter Territorial Sea Convention, followed by article; English language version], referred to collectively as the 1958 LOS Conventions.

This method of analysis is similar to that which the ILA employed in drafting the *Helsinki Principles of Maritime Neutrality*,¹⁷ the American Law Institute in developing the *Restatements*, and the International Institute of Humanitarian Law in preparing the *San Remo Manual*.¹⁸

The project will not revisit terms defined in UNCLOS;¹⁹ it will not enter debates on what are customary norms that require no definition of terms²⁰ or the wisdom of ratifying UNCLOS.²¹

III. DEFINITIONS

A. “Applicable” and “Generally Accepted”

1. Discussion and Analysis

The terms “applicable” and “generally accepted” are related, for reasons that follow.²² “Applicable” appears in UNCLOS, Articles 42(1)(b), 94(4)(c), 211(6)(c), 213, 217(1), 218(1), 219, 220(1), 220(2), 220(3), 222, 226(1)(b), 226(1)(c), 228(1), 230(1), 230(2), 293 and 297(1)(c). The term also appears in Annex III, Basic Conditions of Prospecting, Exploration and Exploitation, Article 21; Annex VI, Statute of the International Tribunal for the Law of the Sea, Articles 23 and 38.

“Generally accepted” appears in Articles 21(2), 21(4), 39(2), 41(3), 53(8), 60(3), 60(5), 60(6), 94(2)(a), 94(5), 211(2), 211(5), 211(6)(c) and 226(1)(a). In all instances “generally accepted” modifies words or phrases like “international rules or standards” (Article 21[2]), “international rules and standards” (Articles 211[2], 211[5], 211[6][c], 226[1][a]), “international regulations” (Articles 21[4], 41[3], 53[8], 94[2][a], 94[5]), “international regulations, procedures and practices” (Articles 39[2][a], adding “for safety

17. International Law Association Committee on Maritime Neutrality, *Final Report: Helsinki Principles on the Law of Maritime Neutrality*, in INTERNATIONAL LAW ASSOCIATION, REPORT OF THE SIXTY-EIGHTH CONFERENCE HELD AT TAIPEI, TAIWAN, REPUBLIC OF CHINA 24-30 MAY 1998, at 496 (1998) [hereinafter *Helsinki Principles*].

18. SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA (Louise Doswald-Beck ed., 1995) [hereinafter SAN REMO MANUAL].

19. LOS Convention, *supra* note 1, art. 1(1); *see also* 2 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY ¶¶ 1.14-1.15 (Satya N. Nandan & Shabtai Rosenne eds., Myron H. Nordquist ed.-in-chief, 1993) [hereinafter 2 COMMENTARY].

20. E.g., the now largely resolved debate on the customary maximum width of the territorial sea. *See generally* GEORGE K. WALKER, THE TANKER WAR 1980-88: LAW AND POLICY 260-68 (Nav. War C. Int’l L. Stud., vol. 74, 2000).

21. *See id.* at 305-06.

22. This analysis relies, in part, on International Law Association Committee on Coastal State Jurisdiction Relating to Marine Pollution, *Second Report*, in INTERNATIONAL LAW ASSOCIATION, REPORT OF THE SIXTY-SEVENTH CONFERENCE HELD AT HELSINKI, FINLAND, 12-17 AUGUST 1996, at 372 [hereinafter *Second Report*]; International Law Association Committee on Coastal State Jurisdiction Relating to Marine Pollution, *First Report*, in INTERNATIONAL LAW ASSOCIATION, REPORT OF THE SIXTY-SEVENTH CONFERENCE HELD AT HELSINKI, FINLAND, 12-17 AUGUST 1996, at 148 (1996) [hereinafter *First Report*].

at sea, including the International Regulations for Preventing Collisions at Sea;" 39[2][b], adding "for the prevention, reduction and control of pollution from ships"), "international standards" (Articles 60[3]; 60[5]; 60[6], adding "regarding navigation in the vicinity of artificial islands, installations, structures and safety zones").

In titles to UNCLOS, Article 293; Annex III, Article 21; and Annex VI, Articles 23 and 28, "applicable" modifies "law." Annex VI, Articles 23 and 28 refer to UNCLOS, Article 293. Article 293(1) says that "[a] court or tribunal having jurisdiction under this section [UNCLOS, Articles 286-96] shall apply this Convention and other rules of international law not incompatible with this Convention."²³ Annex III, Article 21, referring to contracts for prospecting, exploring and exploiting the Area, says such contracts "shall be governed by the terms of the contract, the rules, regulations and procedures of the Authority, Part XI [UNCLOS, Articles 133-91] and other rules of international law not incompatible with this Convention." The negotiating history record is sparse²⁴ on what "applicable law" means other than the supremacy of UNCLOS, at least where U.N. Charter decision issues are not at stake.²⁵ The principle of the Convention's supremacy over other agreements appears in, e.g., UNCLOS, Articles 311(2)-311(4). There is no point in recommending a further definition for "applicable" where it modifies "law."²⁶

In vessel-source rules of reference, UNCLOS, Articles 94(3)(b), 213, 217(1), 218(1), 219, 220(1), 220(2), 220(3), 222, 226(1)(b), 226(1)(c), 228(1), 230(1), 230(2) and 297(1)(c), "applicable" qualifies "international rules and standards" with respect to ocean environment matters. UNCLOS, Article 94(4)(c) requires:

4. Such measures [for ships flying its (a registry state's) flag] shall include those necessary to ensure: . . .

. . . .

(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio. . . .

In UNCLOS, Article 42(1)(b), however, the word "applicable" is employed in a different context:

23. LOS Convention, *supra* note 1, art. 293(2) allows the tribunal or court to decide a case *ex aequo et bono* if the parties so agree; *see also* I.C.J. Statute, art. 38(2).

24. *See generally* 5 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY ¶¶ 293.1-293.5, A.VI.131-32, A.VI.198-200 (Shabtai Rosenne & Louis B. Sohn eds., Myron H. Nordquist ed.-in-chief, 1988) [hereinafter 5 COMMENTARY].

25. U.N. CHARTER arts. 25, 48, 103; *see also infra* notes 79-80 and accompanying text.

26. *See infra* notes 72-89 for analysis of "other rules of international law" and how it relates to the Convention.

1. Subject to the provisions of this section [relating to straits transit passage], States bordering straits may adopt laws and regulations relating to transit passage through straits, in respect of all or any of the following:

....

(b) the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait; . . .

In its declaration upon signature of the Convention, Spain insisted that “applicable” in Article 42(1)(b) should have been replaced by “generally accepted.” Spain’s declaration upon ratification submitted that strait States can “enact and enforce in straits used for international navigation its own regulations, provided that such regulations do not interfere with the right of transit passage.”²⁷ The ILA Committee on Coastal State Jurisdiction Relating to Marine Pollution (the ILA Pollution Committee) “suggests that flag States should not have to submit to the enforcement of rules and standards that they have not somehow accepted[, but that] it would not be correct to transpose conclusions arrived at there to a more general enforcement perspective.”²⁸

There is no record in the Convention negotiating history of the origin or intention of “applicable.” The UNCLOS Drafting Committee English language group had recommended that the words “generally accepted” be substituted for “applicable” in Articles 42(1)(b), 94(4)(c), 218(1) and 219. There is no formal attitude of States toward the concept of “generally accepted.”²⁹ For Article 21(4), the “generally accepted” international regulations, practices and procedures means those adopted within the International Maritime Organisation (IMO) framework.³⁰ The same is true for Articles 39(2), 41(3), and 53(8),³¹ and perhaps Articles 94(2)(a) and 94(5),³² for the “generally accepted international rules or standards” of Articles 21(2), 211(2), 211(5) and 211(6)(c),³³ and for “international standards” requirements of Articles 60(3), 60(5) and 60(6).³⁴ On the other hand, analysts cite other international agreements, but also the possibility of IMO action, for the “generally accepted

27. *Second Report*, *supra* note 22, at 373 n.6.

28. *Id.* at 373-74.

29. *Id.* at 373, 378.

30. 2 COMMENTARY, *supra* note 19, ¶¶ 21.11(g)-21.11(i); *see also* 4 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY ¶¶ 211.15(c)-211.15(d) (Shabtai Rosenne & Alexander Yankov eds., Myron H. Nordquist ed.-in-chief, 1991) [hereinafter 4 COMMENTARY]; *First Report*, *supra* note 22, at 169.

31. 2 COMMENTARY, *supra* note 19, ¶¶ 39.10(i), 41.9(c), 53.9(l); *see also First Report*, *supra* note 22, at 169.

32. 2 COMMENTARY, *supra* note 19, ¶¶ 94.8(b), 94.8(i); *see also First Report*, *supra* note 22, at 169.

33. 2 COMMENTARY, *supra* note 19, ¶¶ 21.11(g)-21.11(i); 4 COMMENTARY, *supra* note 30, ¶¶ 211.15(c)-211.15(d); *see also First Report*, *supra* note 22, at 169.

34. 2 COMMENTARY, *supra* note 19, ¶ 60.15(f); *see also First Report*, *supra* note 22, at 169.

rules and standards” to which Article 226(1)(a) refers.³⁵ In view of Convention Articles 311(2)-311(4), prohibiting any treaties with standards incompatible with the Convention, “generally accepted” must mean that any international law, rule, regulation or other standard allowed or required by the Convention cannot be incompatible with it.³⁶ This would appear to take into account differing views of commentators: (1) “generally accepted” means whatever customary international law is on the point; (2) “generally accepted” means whatever norms a State has accepted through ratification of treaties, a position taken by States during the Ship Registration Convention negotiations; (3) “generally accepted” refers to standards of IMO conventions in force, whether or not a State is a party to the conventions; or (4) for States party to UNCLOS, ratification means they have agreed to be bound by a less strict standard than those postulated by advocates of options (1), (2) or (3).³⁷ The ILA Pollution Committee rejected options (1), (2) and (3), advocating adoption of State practice, as distinguished from customary international law with a possibility of the persistent objector and the time over which custom must mature, for “generally accepted.”³⁸ The Pollution Committee adopted this definition in the context of UNCLOS maritime pollution issues, where many (but not all) uses of “generally accepted” appear. There is risk of inapposite results if the ocean pollution definition is applied to other uses of the term, particularly if “applicable” is equated to “generally accepted.” This requires careful consideration.

Under the circumstances it seems appropriate to formulate a special definition for “applicable law” wherever appearing in the Convention, a special definition for “applicable” in Article 42(1)(b), and another, more general definition for other provisions using “applicable.” It would seem appropriate to adopt the ILA Committee approach for “generally accepted” wherever the phrase appears in the Convention.

2. Comments

A Committee member suggested “applicable” and “generally accepted” for definition; he concurs with John Noyes’ recommendation that the *ILA Committee Reports*’ analysis be accepted. The Chair distilled these materials and others for recommended definitions.

35. See generally 4 COMMENTARY, *supra* note 30, ¶ 226.11(b) & n.6; see also *First Report*, *supra* note 22, at 169.

36. See also 5 COMMENTARY, *supra* note 24, ¶¶ 311.1-311.8, 311.11.

37. *First Report*, *supra* note 22, at 170-71, *inter alia*, referring to U.N. Convention on Conditions for Registration of Ships, Feb. 7, 1986, U.N. Doc. TD/RS/CONF/23, 26 I.L.M. 1229, 1236 (1987) (not in force) [hereinafter Ship Registration Convention]. Eleven States are party. 2 UNITED NATIONS, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS AT 31 DECEMBER 2001, U.N. Doc. ST/LEG/Ser. E/20, at 42 (2002) [hereinafter MULTILATERAL TREATIES].

38. *First Report*, *supra* note 22, at 174-77.

3. Conclusions

These definitions are proposed:

a. “Applicable” when modifying “law” in the LOS Convention is governed by the particular article in which the phrase “applicable law” appears.

b. “Applicable regulations” in the LOS Convention, Article 42(1)(b), means the same as “generally accepted regulations,” but no such regulations may have the effect of interfering with straits passage as provided in the Convention.

c. “Applicable” means the same as “generally accepted” where the word “applicable” modifies “international rules and standards” in LOS Convention, Articles 94(3)(b), 213, 217(1), 218(1), 219, 220(1), 220(2), 220(3), 222, 226(1)(b), 226(1)(c), 228(1), 230(1), 230(2) and 297(1)(c), and where “applicable” modifies “international regulations” in LOS Convention, Article 94(4)(c).

d. “Generally accepted,” as employed in the LOS Convention, Articles 21(2), 21(4), 39(2), 41(3), 53(8), 60(3), 60(5), 60(6), 94(2)(a), 94(5), 211(2), 211(5), 211(6)(c) and 226(1)(a), means those international rules, standards or regulations that bind States party to the LOS Convention through international agreements, or bind States through customary law, or reflect State practice that has not necessarily matured into custom, that reflects LOS Convention standards. In many cases these will be those international rules, standards or regulations the International Maritime Organisation establishes.

The Convention declares few, if any, specific international rules and standards or international regulations. However, since Articles 311(2)-311(4) do not allow agreements contrary to the Convention, the result should be that generally accepted standards cannot differ from the Convention or implementing treaties, e.g., regional conventions establishing pollution standards. The foregoing formulation, ¶ d, would limit generally accepted customary standards to those declared as treaty-based standards under the Convention, but would also allow State practice in the absence of a treaty or customary norm, as the ILA Pollution Committee advocated.

In law of armed conflict (LOAC)-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the Charter supersedes the Convention, or if *jus cogens* norms apply.³⁹

39. See *infra* notes 72-89 and accompanying text.

B. "Coastal State"

1. Discussion and Analysis

UNCLOS does not explain this phrase. "It is that State from the coast or baselines of which the breadth of the territorial sea is measured. . . ."⁴⁰

2. Comments

The Chair researched this proposed definition.

3. Conclusions

This definition of "coastal State" is proposed:

"Coastal State" is that State from the coast or baselines of which the breadth of the territorial sea is measured, those baselines themselves being determined in accordance with the 1982 LOS Convention, Articles 5-7, 9-10, 47.

In LOAC-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may be the situation if the Charter supersedes the Convention, or if *jus cogens* norms apply.⁴¹

C. "Flag State"

1. Discussion and Analysis

UNCLOS does not define "flag State," although its meaning can be deduced from UNCLOS, Articles 91 and 94.⁴² The Ship Registration Convention Articles 1 and 2, not in force, define "flag State" as "a State whose flag a ship flies and is entitled to fly" and indicate that the flag State must "exercise effectively its jurisdiction and control over such ships with regard to identification and accountability of ship owners and operators as well as with regard to administrative, technical, economic and social matters."⁴³

40. 2 COMMENTARY, *supra* note 19, ¶ 1.29.

41. *See infra* notes 72-89 and accompanying text.

42. 2 COMMENTARY, *supra* note 19, ¶ 1.30.

43. *Id.*; 3 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY § 91.9(e) (Satya N. Nandan & Shabtai Rosenne eds., Myron H. Nordquist ed.-in-chief, 1995) [hereinafter 3 COMMENTARY]; 4 COMMENTARY, *supra* note 30, ¶ 217.8(j) (citing Ship Registration Convention, *supra* note 37, arts. 1-2, 26 I.L.M. at 1237); *see also* Robin R. Churchill, *The Meaning of the "Genuine Link" Requirement in Relation to the Nationality of Ships* ¶ 6, at 69 (Oct. 2000), available at <http://www.oceanlaw.net/hedley/pubs/ITFOct.2000.pdf>.

2. Comments

The Chair researched this proposed definition.

3. Conclusions

This definition of “flag State” is proposed:

“Flag State” is a State whose flag a ship flies and is entitled to fly under terms of the 1982 LOS Convention.

Since the Ship Registration Convention is not in force, its additional qualifications (“a State . . . social matters”) have been omitted. If the Convention comes into force, these qualifications will govern States party and will govern all except persistently objecting States if Convention standards are accepted as custom. Until that time, nonparty registry States may choose to apply definitions different from the Ship Registration Convention, Article 2, so long as they are consistent with obligations under the conventional or customary law of the sea.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the Charter supersedes the Convention, or if *jus cogens* norms apply.⁴⁴

D. “Genuine Link”

1. Discussion and Analysis

“Genuine link” appears in UNCLOS, Article 91(1):

Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

Article 94(1), carrying over language from the High Seas Convention, Article 5(1), declares: “Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.” Ensuing Article 94 provisions elaborate on these requirements.⁴⁵ Arti-

44. See *infra* notes 72-89 and accompanying text.

45. High Seas Convention, *supra* note 16, art. 10, was a source for the LOS Convention, *supra* note 1, arts. 94(3), 94(5). Churchill, *supra* note 43, at 6, §§ 3.3.2, 4.1, 4.3, 4.6; 3 COMMENTARY, *supra* note 43, ¶¶ 91.9(c), 94.2.

cle 217 imposes environmental enforcement requirements on registry States.⁴⁶ The High Seas Convention, Article 5(1), has similar language:

Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must be a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

Neither Convention defines “genuine link.” A principal difference between the Conventions is their scope; UNCLOS applies its Articles 91 and 94 terms in all ocean areas, while the High Seas Convention governs only on the high seas.⁴⁷ Both Conventions leave it to States to fix specific registry requirements in their discretion.⁴⁸

Among the High Seas Convention languages, translation of the Spanish text suggests the same meaning as “genuine link” in the English language version. The French language version translates to “substantial” or “significant” link, which suggests some difference of meaning. The same distinction appears true for UNCLOS, Article 91(1).⁴⁹

The High Seas Convention preparatory works the International Law Commission developed suggest that mere administrative formality, i.e., registry only or grant of a certificate of registry without submitting to registry state control, does not satisfy that Convention’s “genuine link” requirement. States would be free to establish their own conditions for registration, however.⁵⁰ The 1958 U.N. Conference on the Law of the Sea added the “particularly . . .” language, but there was disagreement on whether the requirement of effective exercise of jurisdiction and control was “an indispensable, if not necessarily the only, element of the genuine link” (the traditional maritime States’ view), or whether the requirement was independent of the genuine link (flag of convenience States’ view).⁵¹ Preparatory work leading to the 1982 Convention does not explain why the High Seas Convention Article 5(1) “particularly” language was dropped, to be reinserted in similar language in UNCLOS, Article 94(1). There is no explanation of how this shift affects the meaning of “genuine link.”⁵²

Nevertheless, one observation may be made and a possible conclusion drawn. It would not seem permissible to deduce from the difference be-

46. See also Churchill, *supra* note 43, § 4.6; 4 COMMENTARY, *supra* note 30, ¶¶ 217.8(a)-217.8(j).

47. 3 COMMENTARY, *supra* note 43, ¶¶ 91.9(f), 94.8(f).

48. *Id.* ¶ 91.9(b).

49. Churchill, *supra* note 43, §§ 3.2 at 11, 4.2 at 42 (confessing lack of ability in other official Convention languages).

50. *Id.* § 3.3.1, at 19; 3 COMMENTARY, *supra* note 43, ¶¶ 91.9(b)-91.9(c).

51. Churchill, *supra* note 43, § 3.3.2, at 20-21.

52. *Id.* § 4.3, at 45-46.

tween Article 5 . . . and Article 91 . . . that the effective exercise of flag State jurisdiction is no longer an element in the genuine link. It does not seem that the drafters of the 1982 Convention had any intention, when deleting the effective exercise of jurisdiction phrase, of affecting the meaning of . . . “genuine link.”⁵³

The negotiating history confirms this view. The transfer appears to have been a drafting decision, so that the same language would not appear in Article 91 and in Article 94(1).⁵⁴ The Ship Registration Convention would give substance to a definition of genuine link, but its low ratification rate suggests that it would not be appropriate to copy that Convention’s terms into a definition now.⁵⁵

Most, but not all, international court decisions considering the High Seas Convention, Article 5(1), appear to support a view that mere registry is not enough for a genuine link.⁵⁶ Commentators divide on the issue, but the more recent analyses say that more than just registry is necessary to establish a genuine link.⁵⁷

Whether more than pro forma registry is necessary to establish a genuine link under the 1982 Convention is not free of doubt. However, because of transfer of High Seas Convention, Article 5(1)’s “particularly” language from UNCLOS, Article 91 to Article 94, and elaboration of requirements in Articles 94(2) to 94(7), some of which were derived from the High Seas Convention, Article 10, and what seems the weight of recent decisional and commentator authority, it would appear that a “genuine link” requires more than nominal registry. What is enough for satisfying the genuine link must be considered on a case-by-case basis.

It has been argued, however, that “genuine link” should mean “ability to exercise jurisdiction and control” rather than effective exercise of jurisdiction and control.⁵⁸

53. *Id.* § 4.3, at 46-47.

54. 3 COMMENTARY, *supra* note 43, ¶¶ 91.9(c), 94.8(b).

55. Churchill, *supra* note 43, § 5.1.1; 3 COMMENTARY, *supra* note 43, ¶ 91.9(e); 4 COMMENTARY, *supra* note 30, ¶ 217.8(j) (citing and discussing Ship Registration Convention, *supra* note 37).

56. National court decisions were not considered in the analysis. Churchill, *supra* note 43, §§ 3.4-3.4.2, 4.4-4.4.2; *see also* WALKER, *supra* note 20, at 293.

57. Churchill, *supra* note 43, §§ 3.5, 3.6, 4.5, 4.6 (genuine link requirement has same meaning as in High Seas Convention, *supra* note 16); *see also* WALKER, *supra* note 20, at 293-95 (supporting the view that satisfying the genuine link requirement imposes more obligations on States than mere registry).

58. John E. Noyes, *Treaty Interpretation and Definitions in the Law of the Sea Convention: Comments on Defining Terms in the 1982 Law of the Sea Convention*, 2001-02 PROC. AM. BRANCH INT’L L. ASS’N 175, 189-93, *reprinted in* 32 CAL. W. INT’L L.J. 367, 380-83 (2001-02) (responding to ABILA LOS Comm., *Defining*, *supra* note 2, at 162-65, *reprinted in* 32 CAL. W. INT’L L.J. at 355-57).

2. Comments

A Committee member submitted this phrase for definition; the Chair researched this proposed definition for “genuine link.” Professor Noyes has commented on the proposed definition in the *Initial Draft*.⁵⁹

3. Conclusions

This revised definition of “genuine link” is proposed (added material *italicized*):

“Genuine link” in the LOS Convention, Article 91, means that a flag State under whose laws a ship is registered must *be able to* effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

This recombines standards in the High Seas Convention, Article 5(1), as restated in UNCLOS, Articles 91 and 94(1). It leaves to practice pursuant to the Convention, Article 94, to decide what is effective exercise and control of a ship’s administrative, technical and social matters. What is appropriate exercise and control is a matter of national laws, but, in any case, it must be effective exercise and control.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the Charter supersedes the Convention, or if *jus cogens* norms apply.⁶⁰

E. “Mile” or “Nautical Mile”

1. Discussion and Analysis

UNCLOS does not define “mile.” According to one commentary, the Convention negotiators understood that a nautical mile of 1852 meters or 6080 feet was meant, i.e., sixty nautical miles per degree of latitude.⁶¹ (O’Connell notes, however, that although the U.S. figure was 6080.2 feet, this equals 1853.248 meters.⁶²) Although “absence of a formal definition may be more in accord with modern marine cartography,”⁶³ lack of any definition may sow seeds of claims well beyond the contemplation of UNCLOS because of different definitions of “mile”⁶⁴ and resulting protests,⁶⁵ even

59. See *supra* note 58 and accompanying text.

60. See *infra* notes 72-89 and accompanying text.

61. 2 COMMENTARY, *supra* note 19, ¶ 1.27.

62. 2 D.P. O’CONNELL, THE INTERNATIONAL LAW OF THE SEA 644 (I.A. Shearer ed., 1984).

63. 2 COMMENTARY, *supra* note 19, ¶ 1.27.

64. 2 O’CONNELL, *supra* note 62, at 643-45, lists six different possibilities.

though differences can be relatively minute.⁶⁶ Since 1959 the current international nautical mile has been 6,076.115 feet or 1852 meters.⁶⁷ On balance, absent a more precise definition than the developing international rule, a restatement of the current international rule is recommended.

2. Comments

The Chair researched this proposed definition; Professor Noyes concurs with the proposed definition in the *Initial Draft*, suggesting that the appositive phrase “60 nautical miles per degree of latitude” may not be necessary.⁶⁸ Because a future draft will offer a definition of “latitude,” and because the Chair’s experience is that mariners think of “mile” in terms of latitude equivalency, the tentative decision is to keep the appositive. The definition

65. Protests on other LOS issues, but not on defining “mile,” have been numerous before and after the LOS Convention’s ratification. See generally J. ASHLEY ROACH & ROBERT W. SMITH, UNITED STATES RESPONSES TO EXCESSIVE MARITIME CLAIMS (2d ed. 1996).

66. E.g., 0.237 kilometers over 200 miles is the difference between the U.K. Admiralty measurement and the measurement using 1852 meters to the nautical mile. 2 O’CONNELL, *supra* note 62, at 644. Nevertheless, Murphy’s Law of Measurements suggests that if there will be a dispute, it will be within those 237 meters.

67. Spain uses 1,850 meters, and the United Kingdom would seem to use 1,855 meters, based on a marine Admiralty league of twenty leagues to a degree of latitude, or 5,565 meters and 3.4517 English statute miles per league. The Scandinavian league of 7,420 meters is based on fifteen leagues per degree of latitude. The French metric equivalent, 1,852 meters to the mile, is gaining currency in legislation and in international organizations. *Id.* at 644-45. Any measurement is inexact for all of the Earth; it is an oblate spheroid and not a perfect sphere. See generally *id.* at 639-43, published in 1984. In 1989 the *Consolidated Glossary*, *supra* note 4, ¶¶ 52, 56, reprinted in Annex A1-5, NWP 1-14M ANNOTATED, *supra* note 4, at 51, 66-67 included “mile” within its definition of “nautical mile” and defines a nautical mile as “[a] unit of distance equal to 1,852 meters,” noting the International Hydrographic Bureau’s adoption of 1,852 meters in 1929. The *Consolidated Glossary*, has not been updated. Email of Hans-Peter Rhode, *supra* note 4. Headquartered in Monaco, the IHO is organized under the IHO Convention, *supra* note 3. Its sixty-two member States include many maritime countries, among them the United States. Some States commonly considered open registry countries (e.g., Liberia) are not Convention parties. TIF, *supra* note 9, at 392-93. Treaty succession principles for China, the former USSR and the former Yugoslavia, listed as members, may mean that even more States are Convention parties. Symposium, *supra* note 10; Walker, *Integration*, *supra* note 10; see also TIF, *supra* note 9, at 393 (noting treaty succession issues for China, German Democratic Republic, Federal Republic of Germany, former USSR, former Yugoslavia; Ukraine already a party). Annex 1: *Glossary of Technical Terms*, in PETER J. COOK & CHRIS M. CARLETON, CONTINENTAL SHELF LIMITS: THE SCIENTIFIC AND LEGAL INTERFACE 326 (2000) [hereinafter *Annex 1*] also defines a nautical mile as 1852 meters. *Consolidated Glossary*, *supra*, was one of four sources for *Annex 1*, *supra*. Other sources for *Annex 1*, *supra*, were AMERICAN GEOLOGICAL INSTITUTE, DICTIONARY OF GEOLOGICAL TERMS (Robert L. Bates & Julia A. Jackson eds., 3d ed. 1984); AMERICAN GEOLOGICAL INSTITUTE, GLOSSARY OF GEOLOGY (Julia A. Jackson ed., 4th ed. 1997); Association for Geographic Information & Edinburgh University, Online Dictionary (1996, rev. 2003), at www.agi.org.uk/public/gis.resources/index.htm (last visited Feb. 10, 2003). Since *Annex 1*, *supra*, represents consolidated thinking on definitions, this Revised Tentative Draft does not cite the latter publications separately. The chair thanks Professor John E. Noyes for suggesting *Annex 1*, *supra*.

68. Noyes, *supra* note 58, at 181-82, reprinted in 32 CAL. W. INT’L L.J. at 372-73.

has been expanded to include the words “nautical mile” as well as “mile,” however; the 1982 Convention and common parlance refer to both.

3. Conclusions

This definition of “mile” or “nautical mile” is proposed:

“Mile” or “nautical mile,” wherever appearing in the 1982 LOS Convention, means the international nautical mile, i.e., 1852 meters or 6076.115 feet, corresponding to 60 nautical miles per degree of latitude.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the Charter supersedes the Convention, or if *jus cogens* norms apply.⁶⁹

F. “Ocean Space” and “Sea”

1. Discussion and Analysis

UNCLOS does not define “sea” or “ocean space.”⁷⁰ Because UNCLOS includes sea areas ranging from the high seas to internal waters, UNCLOS measures “ocean space” or the “sea” from given distances from land, regardless of the technical legal or physical classification of those ocean spaces. A “saltiness” or salinity definition is not useful; some “ocean space” or “sea” areas, e.g., some internal waters covered by UNCLOS may be brackish or largely freshwater in nature. Under the circumstances, the best definition is:

“Ocean space” or “sea” in the 1982 LOS Convention means those areas, including the water surface and water column as those water areas are regulated by Convention provisions. Depending on a particular ocean space or sea area, “ocean space” or “sea” may also include the seabed. “Ocean space” or “sea” may include the air column superjacent to a given water surface of an ocean space or sea area governed by the Convention; the law of the air column over these ocean spaces or sea areas is governed in part by the Convention (e.g., high seas overflight as a freedom of the seas) and in part by other law, e.g., air law.

The second sentence covers situations of a seabed outside the Area, see UNCLOS, Article 1(1), where, e.g., a coastal State has not claimed to the limit for a continental shelf UNCLOS, Article 76 permits, and the seabed off a coastal State between the edge of Article 76’s limit and the seabed within the Area. The third sentence declares applicability of air law where UNCLOS does not apply. UNCLOS, Article 2(2), following the Territorial Sea Convention, Article 2, declares that coastal State sovereignty extends to the

69. See *infra* notes 72-89 and accompanying text.

70. 2 COMMENTARY, *supra* note 19, ¶ 1.26.

airspace over the territorial sea. UNCLOS, Article 34(1), *inter alia* declares that straits passage shall not in other respects affect the exercise by States bordering straits of their sovereignty or jurisdiction over their airspace. Article 49(2) declares that archipelagic state sovereignty extends to airspace over archipelagic waters. Article 56(1)(a) declares the coastal State has sovereign rights with regard to other activities for EEZ economic exploitation and exploration, e.g., energy production “from . . . winds[.]” Articles 58(1) and 87(1), the latter following the High Seas Convention, Article 2, refer to overflight rights in the EEZ and over the high seas.

2. Comments

The Chair researched these proposed definitions. Professor Emeritus Horace B. Robertson, Duke University School of Law, commented on the definition in late 2002, recommending omission of references to space and space law. Those references have been omitted, and new material Professor Robertson suggested for references to airspace sovereignty and jurisdiction and overflight have been added.

3. Conclusions

“Ocean space” or “sea” where found in UNCLOS should be defined:

“Ocean space” or “sea” in the 1982 LOS Convention means those areas, including the water surface and water column as those water areas are regulated by Convention provisions. Depending on a particular ocean space or sea area, “ocean space” or “sea” may also include the seabed. “Ocean space” or “sea” may include the air column superjacent to a given water surface of an ocean space or sea area governed by the Convention; the law of the air column over these ocean spaces or sea areas is governed in part by the Convention (e.g., high seas overflight as a freedom of the seas) and in part by other law, e.g., air law.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, different definitions may apply. The same may be the situation if the Charter supersedes the Convention, or if *jus cogens* norms apply.⁷¹

G. “Other Rules of International Law”

1. Discussion and Analysis

This phrase, sometimes stated slightly differently, appears throughout UNCLOS, i.e., in the Preamble and in Articles 2(3) (territorial sea); 19, 21, 31 (territorial sea innocent passage); 34(2) (straits transit passage); 52(1)

71. See *infra* notes 72-89 and accompanying text.

(archipelagic sea lanes passage; incorporation by reference of Articles 19, 21, 31); 58(1), 58(3) (exclusive economic zone); 78 (continental shelf; coastal State rights do not affect superjacent waters, i.e., territorial or high seas; coastal State cannot infringe or unjustifiably interfere with "navigation and other rights and freedoms of other States as provided in this Convention"); 87(1) (high seas); 138 (the Area); 293 (court or tribunal having jurisdiction for settling disputes must apply UNCLOS and "other rules of international law" not incompatible with the Convention); 303(4) (archeological, historical objects found at sea, "other international agreements and rules of international law regarding the protection of objects of an archeological and historical nature"); Annex III, Article 21(1).

The phrase is also in the High Seas Convention, Article 2, and the Territorial Sea Convention, Article 1. Although it does not appear in other 1958 LOS Conventions, the Continental Shelf Convention, Articles 1 and 3 say the Convention does not affect status of waters above as high seas, and the Fishery Convention, Articles 1-8, declares it does not affect other high seas rights. The implication from these two treaties is that except as the Shelf or Fishery Conventions derogate from High Seas or Territorial Sea Convention rules, those treaties' terms must be read into the Shelf and Fishery Conventions.

The High Seas Convention⁷² and UNCLOS' navigational articles,⁷³ i.e., those dealing with navigation through the territorial sea, high seas, etc., restate customary law. The increasing number of UNCLOS ratifications strengthens a view that its navigational articles restate custom.⁷⁴ The result is that these provisions bind States as custom, even if they are not parties to the 1958 LOS Conventions or UNCLOS. For those countries that are parties to either,⁷⁵ they are bound by treaty and customary norms.⁷⁶

72. See, e.g., High Seas Convention, pmb., *supra* note 16 (declaring it restates custom); UNITED STATES DEPARTMENT OF THE NAVY, ANNOTATED SUPPLEMENT TO THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS: NWP 9 (Rev. A)/FMFM 1-10 ¶ 1.1, at 1-2 n.4 (1989); cf. 1 D.P. O'CONNELL, THE INTERNATIONAL LAW OF THE SEA 385, 474-76 (I.A. Shearer ed., 1982).

73. RESTATEMENT (THIRD), *supra* note 12, Part V, *Introductory Note*, at 3-5; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.1; cf. John Norton Moore, *Introduction to 1 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY* xxviii (Myron H. Nordquist ed., 1985); Bernard H. Oxman, *International Law and Naval and Air Operations at Sea*, in THE LAW OF NAVAL OPERATIONS 1, 19, 29 (Nav. War C. Int'l L. Stud., vol. 64, Horace B. Robertson, Jr. ed., 1991)[hereinafter Robertson].

74. MULTILATERAL TREATIES, *supra* note 37, at 221-23, lists 137 States as parties to LOS Convention; 103 States have ratified the 1994 Agreement, LOS Convention, *supra* note 1; 110 have declared it provisionally applicable. MULTILATERAL TREATIES, *supra* note 37, at 255-57.

75. See TIF, *supra* note 9, at 383, 415-16 (sixty States party to Continental Shelf Convention, thirty-seven parties to Fishery Convention, sixty-four parties to High Seas Convention, fifty-three parties to Territorial Sea Convention, *supra* note 2); *supra* note 74 (137 States Parties to UNCLOS). Treaty succession principles may suggest that even more States are parties. See generally Symposium, *supra* note 10; Walker, *Integration*, *supra* note 10.

76. I.C.J. Statute art. 38(1); RESTATEMENT (THIRD), *supra* note 12, §§ 102-03.

Most authorities agree that the phrase “other rules of international law,” refers to the LOAC.⁷⁷ This being the case, the phrase means that the LOS is subject to the LOAC in situations where the latter applies. At the same time, as between, e.g., neutrals engaged in merchant ship navigation far from an area of armed conflict on, over or under the sea, the LOS continues in effect. UNCLOS, Article 88, declaring that the high seas are reserved for peaceful purposes, is not to the contrary. Like the 1958 LOS Conventions,

That provision does not preclude . . . use of the high seas by naval forces. Their use for aggressive purposes, which would . . . violat[e] . . . Article 2(4) of the [U.N.] Charter . . . is forbidden as well by Article 88. See also [UNCLOS,] Article 301, requiring parties, in exercising their rights and p[er]forming their duties under the Convention, to refrain from any threat or use of force in violation of the Charter.⁷⁸

77. *Reports of the International Law Commission on the Second Part of Its Seventeenth Session and on Its Eighteenth Session*, U.N. Doc. A/6309/Rev.1), reprinted in 1996 Y.B. INT'L L. COMM'N 169, 267-68; 2 GEORG SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 376-77 (5th ed. 1967); WALKER, *supra* note 20, at 191-92; Boleslaw Boczek, *Peaceful Purposes Provisions of the United Nations Convention on the Law of the Sea*, 20 OCEAN DEVEL. & INT'L L. 359 (1989); Herbert W. Briggs, *Unilateral Denunciation of Treaties: The Vienna Convention and the International Court of Justice*, 68 AM. J. INT'L L. 51 (1974); Carl Q. Christol & Charles R. Davis, *Maritime Quarantine: The Naval Interdiction of Offensive Weapons and Associated Material to Cuba, 1962*, 57 AM. J. INT'L L. 525, 539-40 (1963); Scott Davidson, *United States Protection of Reflagged Kuwaiti Vessels in the Gulf War: The Legal Implications*, 4 INT'L J. ESTUARINE & COASTAL L. 173, 178 (1989); W.J. Fenrick, *Legal Aspects of Targeting in the Law of Naval Warfare*, 1991 CAN. Y.B. INT'L L. 238, 245; Alan V. Lowe, *The Commander's Handbook on the Law of Naval Operations and the Contemporary Law of the Sea*, in Robertson, *supra* note 73, at 109, 132; Bernard H. Oxman, *The Regime of Warships Under the United Nations Convention on the Law of the Sea*, 24 VA. J. INT'L L. 809, 811 (1984); Natalino Ronzitti, *The Crisis of the Traditional Law Regulating International Armed Conflicts at Sea and the Need for Its Revision*, in THE LAW OF NAVAL WARFARE: A COLLECTION OF AGREEMENTS AND DOCUMENTS WITH COMMENTARIES 1, 15 (Natalino Ronzitti ed., 1988); Francis V. Russo, *Neutrality at Sea in Transition: State Practice in the Gulf War as Emerging International Customary Law*, 19 OCEAN DEVEL. & INT'L L. 381, 384 (1988); A.G.Y. Thorpe, *Mine Warfare at Sea—Some Legal Aspects of the Future*, 18 OCEAN DEVEL. & INT'L L. 255, 257 (1987); Rudiger Wolfrum, *Reflagging and Escort Operations in the Persian Gulf: An International Law Perspective*, 30 VA. J. INT'L L. 387, 391-92 (1989). Apparent dissenters include 2 O'CONNELL, *supra* note 62, at 1112-14, (referring to 1 O'CONNELL, *supra* note 72, at 747-69 in the context of merchant ships); Luan Low & David Hodgkinson, *Compensation for Wartime Environmental Damage: Challenges to International Law After the Gulf War*, 35 VA. J. INT'L L. 405, 421 (1995) (discussing environmental protections in the LOS context but saying nothing about the clauses, although they elliptically seem to recognize the principle); Margaret T. Okorodudu-Fubara, *Oil in the Persian Gulf War: Legal Appraisal of an Environmental Disaster*, 23 ST. MARY'S L.J. 123, 195-97 (1991).

78. RESTATEMENT (THIRD), *supra* note 12, § 521, cmt. b (citing U.N. CHARTER art. 2(4)); LOS Convention, *supra* note 1, arts. 88, 301 and referring to RESTATEMENT (THIRD), *supra* note 12, § 905, cmt. g); *accord* Legality of Threat of Nuclear Weapons, 1996 I.C.J. 226, 244 (advisory opinion); 3 COMMENTARY, *supra* note 43, ¶¶ 87.9(i), 88.1-88.7(d); Frank Russo, *Targeting Theory in the Law of Naval Warfare*, 30 NAV. L. REV. 1, 8 (1992); *see also* *Hel-sinki Principles*, *supra* note 17, ¶ 1.2, at 499; Boczek, *supra* note 77; Oxman, *The Regime*, *supra* note 77, at 814; John E. Parkerson, Jr., *International Legal Implications of the Strategic Defense Initiative*, 116 MIL. L. REV. 67, 79-85 (1987). LOS Convention, *supra* note 1, arts.

(U.N. Charter Article 103 applies to UNCLOS, like any treaty; U.N. Security Council decisions⁷⁹ or States' individual or collective self-defense responses⁸⁰ can supersede inconsistent LOS treaty provisions. The same analysis applies to *jus cogens* norms, although there is a recurring debate on what principles, if any, have ascended to *jus cogens* status.⁸¹)

It might be argued that UNCLOS, Article 293(1) and Annex III, Article 21(1) subordinate other rules of international law to UNCLOS. Those provisions read:

Article 293
Applicable Law

1. A court or tribunal having jurisdiction under this section [UNCLOS, Articles 286-96] shall apply this Convention and other rules of international law not incompatible with this Convention.

Article 21
Applicable Law

1. The contract shall be governed by the terms of the contract, the rules, regulations and procedures of the Authority, Part XI [UNCLOS, Articles 191-233] and other rules of international law not incompatible with this Convention.

The negotiating history is sparse on the point.⁸² However, part of the Convention to which these provisions refer are the other rules clauses. It seems,

19(2)(a), 39(1)(b), forbid activity during a foreign ship's innocent passage or straits transit passage that is a threat or use of force against coastal state sovereignty, territorial integrity, or political independence.

79. U.N. CHARTER arts. 25, 48, 103; *see also* LELAND M. GOODRICH ET AL., CHARTER OF THE UNITED NATIONS 614-17 (3d ed. 1969); 2 BRUNO SIMMA, THE CHARTER OF THE UNITED NATIONS 1292-1302 (2d ed. 2002); George K. Walker, *Information Warfare and Neutrality*, 33 VAND. J. TRANSNAT'L L. 1079, 1128-29 (2000).

80. U.N. CHARTER arts. 51, 103; *see also* sources cited in George K. Walker, *Anticipatory Collective Self-Defense in the Charter Era: What the Treaties Have Said*, 31 CORNELL INT'L L.J. 321 (1998), *reprinted in* THE LAW OF MILITARY OPERATIONS: LIBER AMICORUM PROFESSOR JACK GRUNAWALT, ch. 15 (Nav. War C. Int'l L. Stud., vol. 72, Michael J. Schmitt ed., 1998).

81. *See generally* Vienna Convention on the Law of Treaties, May 23, 1969, pmbl., arts. 53, 64, 1155 U.N.T.S. 331, 332, 344, 347 [hereinafter Vienna Convention]; BROWNLIE, PRINCIPLES, *supra* note 12, at 4, 19, 514-17 (*jus cogens* content uncertain); T.O. ELIAS, THE MODERN LAW OF TREATIES 177-87 (1974); RESTATEMENT (THIRD), *supra* note 12, §§ 102-103, 331, 338(2); 1 OPPENHEIM'S INTERNATIONAL LAW, *supra* note 12, § 2; IAN SINCLAIR, THE VIENNA CONVENTION ON THE LAW OF TREATIES 17-18, 218-26 (2d ed. 1984) (Convention principles progressive development); Eduardo Jimenez de Arechaga, *International Law in the Past Third of a Century*, 159 RECUEIL DES COURS 1, 64-67 (1978); Mark Weisburd, *The Emptiness of the Concept of Jus Cogens, as Illustrated by the War in Bosnia-Herzegovina*, 17 MICH. J. INT'L L. 1 (1995).

82. 5 COMMENTARY, *supra* note 24, ¶¶ 293.1-293.5; *see also supra* note 24 and accompanying text.

therefore, that the ultimate result is that a court, tribunal or other decision-maker must apply the LOAC as part of the law of the Convention incorporated by reference in appropriate situations through the other rules clauses.

An illustration of the difference between LOAC and LOS standards is the LOAC rule that the flag flown determines whether a merchant ship operates as a neutral or enemy vessel.⁸³ UNCLOS, Articles 91 and 94, follow genuine link principles for determining a merchantman's nationality, following the High Seas Convention, Article 5(1), today a customary⁸⁴ LOS rule.⁸⁵

Professor Noyes advocates a broader potential definition of the phrase, particularly with reference to UNCLOS, Article 293, part of the dispute settlement provisions governing the International Tribunal for the Law of the Sea, and Article 303, protection of the underwater cultural heritage. He concludes that a broader definition "would not . . . preclude reference to the LOAC in matters relating to armed conflict."⁸⁶

2. Comments

The Chair submitted the "other rules of international law" phrase for Committee consideration, based on prior research.⁸⁷ Professor Noyes has offered commentary, supporting the possibility of a more inclusive definition, particularly with respect to UNCLOS, Articles 293 and 303.⁸⁸

3. Conclusions

The Committee should adopt the prevailing view that the phrase, "other rules of international law," means the law of armed conflict (proposed amendments italicized):

The traditional understanding is that "other rules of international law" and similar phrases in the 1982 LOS Convention restate a customary rule that the phrase means the law of armed conflict, including the law of naval warfare and the law of maritime neutrality as components of the law of armed conflict. In some instances, however, for example Convention Articles 293(1) and 303, the phrase may include law other than the law of armed conflict in situations where the law of armed conflict does not apply.

83. NWP 1-14M ANNOTATED, *supra* note 4, ¶ 7.5; SAN REMO MANUAL, *supra* note 18, ¶¶ 112-13.

84. *See supra* note 72 and accompanying text.

85. *See supra* notes 72-73 and accompanying text.

86. Noyes, *supra* note 58, at 182-89, reprinted in 32 CAL. W. INT'L L.J. at 374-79; *see also* 3 COMMENTARY, *supra* note 43, ¶ 87.9(b); *supra* notes 72-85 and accompanying text. A few recent commentators would agree with Professor Noyes while citing less authority. *See supra* note 77 and accompanying text.

87. *E.g.*, WALKER, *supra* note 20, at 191-92.

88. *See supra* note 86 and accompanying text.

Although the law of naval warfare and the law of neutrality are usually the only branches of the LOAC considered applicable to war at sea, other LOAC components may apply in some situations, e.g., land-based aircraft engaged in combat or attacks over the sea, after which the aircraft return to bases on land. If the Charter supersedes the Convention, or if *jus cogens* norms apply, a different definition may apply.⁸⁹

H. "Seaworthiness"

1. Discussion and Analysis

"Seaworthiness" appears in UNCLOS, Articles 94(3)(a), 219 and 226(1)(c). It is also a term with different meanings in countries' admiralty and maritime law jurisprudence. Even within a particular State's admiralty and maritime law, seaworthiness may be defined differently, depending on the admiralty claim at issue, e.g., in U.S. practice, there are different seaworthiness standards for mariner tort claims and cargo damage claims.⁹⁰ It is therefore risky to try to provide an elaborate definition.⁹¹

2. Comments

The Chair proposed this term for definition.

3. Conclusions

This definition for "seaworthy" is proposed:

"Seaworthy" refers to a ship in fit condition to undertake voyages, including perils of the sea that it might reasonably encounter on those voyages.

LOAC definitions would apply through the "other rules of law" provisions for armed conflict situations. The same may be the situation if the Charter supersedes the Convention, or if *jus cogens* norms apply.⁹² For example, seaworthiness is a concept in the law of maritime neutrality; a ship considered seaworthy under the LOS might or might not be considered seaworthy in LOAC situations. A ship considered seaworthy under the LOS or the LOAC might or might not be considered seaworthy with respect to a particular situation also governed by a State's admiralty and maritime law jurisprudence.

89. See *supra* notes 79-81 and accompanying text.

90. See generally 1 & 2 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW §§ 6-25 to 6-27, 10-24 (3d ed. 2000).

91. See 2 COMMENTARY, *supra* note 19, ¶ 1.31.

92. See *supra* notes 72-89 and accompanying text.

*I. "Ship" or "Vessel"**I. Discussion and Analysis*

The UNCLOS English text uses "ship" or "vessel" interchangeably throughout the text; the French, Russian and Spanish language versions use one word.⁹³ "[A]s far as concerns [UNCLOS], there is no difference between the two English words."⁹⁴ There is no consensus on the definition of "ship,"⁹⁵ three treaties, one of them not in force, offer similar definitions. The 1962 amendments to the 1954 Oil Pollution Convention say a ship is "any sea-going vessel of any type whatsoever, including floating craft, whether self-propelled or towed by another vessel, making a sea voyage."⁹⁶ The MARPOL 73/78 definition is similar: "a vessel of any type whatsoever operating in the marine environment . . . includ[ing] hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms."⁹⁷ The Ship Registration Convention, not in force, defines a ship as "any self-propelled sea-going vessel used in international seaborne trade for the transport of goods, passengers, or both. . . ."⁹⁸ National legislation occasionally supplies varying definitions, most of which are in accordance with the Registration Convention statement.⁹⁹ General as they are, the 1962 and MARPOL definitions are more inclusive; most seafaring States have accepted them, although MARPOL's reference to platforms seems inappropriate to include in an UNCLOS definition,¹⁰⁰ given UNCLOS' separate treatment of them.¹⁰¹

93. 2 COMMENTARY, *supra* note 19, ¶ 1.28 is the basis for this analysis.

94. *Id.*

95. 2 O'CONNELL, *supra* note 62, at 747-50.

96. 1962 Amendments to the 1954 Convention for Prevention of Pollution of the Sea by Oil, Apr. 11, 1962, Annex, art. 1(1), 17 U.S.T. 1523, 1524, 600 U.N.T.S. 332, 334. *See also* International Regulations for Preventing Collisions at Sea, June 17, 1960, Rule 1(c)(1), 16 U.S.T. 794, 796 (in force for a few States and similarly defines "ship"); TIF, *supra* note 9, at 420-21.

97. Protocol of 1978 Relating to International Convention for Prevention of Pollution from Ships, 1973, Feb. 17, 1978, art. 1 & Annex: Modifications and Additions to the International Convention for the Prevention of Pollution from Ships, 1973, Annex I, 1340 U.N.T.S. 61, 63, 66 (incorporating by reference International Convention for Prevention of Pollution from Ships, Nov. 2, 1973, art. 2(4), 1340 U.N.T.S. 184, 185). By 1995, MARPOL 73/78 had been accepted by countries, including the United States, representing ninety-two percent of world merchant fleets, measured in gross registered tons (GRT). M.J. BOWMAN & D.J. HARRIS, MULTILATERAL TREATIES: INDEX AND CURRENT STATUS 292-93 (11th Cum. Supp. 1995); TIF, *supra* note 9, at 412-13.

98. Ship Registration Convention, *supra* note 37, art. 2(4), 26 I.L.M. at 1237 (excluding vessels under 500 GRT). *See also* RESTATEMENT (THIRD), *supra* note 12, § 501 rep. n.1; *supra* note 23 and accompanying text.

99. *See, e.g.*, 16 U.S.C. § 916(e) (1994); 33 U.S.C. §§ 1471(5), 1502(19) (1994); 46 U.S.C. § 23 (1994) (includes seaplanes on the water); 2 O'CONNELL, *supra* note 62, at 747-50.

100. *See also* WALKER, *supra* note 20, at 285-86.

101. *See generally* LOS Convention, *supra* note 1, arts. 1(1)(5)(a), 1(1)(5)(b)(i), 11, 56(1)(b)(i), 60, 79(4), 80, 87(1)(d), 208(1), 214 & 246(5)(c).

2. Comments

The Chair proposed this definition.

3. Conclusions

This definition of “ship” and “vessel” is proposed:

“Ship” or “vessel” have the same, interchangeable meaning in the English language version of the 1982 LOS Convention. “Ship” is defined as a vessel of any type whatsoever operating in the marine environment, including hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms. Where, e.g., “ship” or “vessel” is modified by other words, or prefixes or suffixes, as in the Article 29 definition of a warship, those particular definitions apply.

LOAC definitions would apply through the “other rules of law” provisions for armed conflict situations. The same may be the situation if the Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁰²

IV. CONCLUSIONS

These proposed definitions may only scratch the surface of UNCLOS terms that should be considered. Many may be terms readily easily susceptible of acceptance without great difference of opinion. The 2001 LOS Committee meeting should provide an opportunity to formulate a standard procedure for the future as well as discussing and perhaps accepting these terms, or some of them, for Final Draft status.

102. See *supra* notes 72-89 and accompanying text.

**B. DEFINITIONS FOR THE 1982 LAW OF THE SEA
CONVENTION — PART II:
ANALYSIS OF THE IHO CONSOLIDATED GLOSSARY
(REVISED INITIAL DRAFT, FEB. 10, 2003)**

GEORGE K. WALKER

I. INTRODUCTION

This is the second submission, of perhaps several, of proposed definitions for terms not otherwise defined in the 1982 U.N. Convention on the Law of the Sea,¹⁰³ to be considered at the 2002 ILA AB annual meeting. The project began in 2001 with a September 4, 2001 *Initial Draft* submitted for the 2001 annual meeting. Thereafter, minor revisions were made, and this *Revision 1* has been published.¹⁰⁴ *Tentative Draft No. 1* (September 4, 2002), based on suggested revisions and updated citations, has been submitted to the ILA AB Law of the Sea Committee (LOS Committee, or Committee). This Revision reflects comments received since the 2002 ILA AB annual meeting.

The procedure that has been followed is the Committee Chair's circulating *Initial Drafts* among ILA AB LOS Committee members and perhaps other interested persons (e.g., other ILA AB members not LOS Committee members wishing to participate) for comments before the meeting. ILA AB LOS Committee member meeting attendees will consider an *Initial Draft* and these comments at a Committee meeting during the annual meeting. If there are corrections, etc., a revised *Initial Draft* may follow. The Committee Chair will then circulate a *Tentative Draft* among Committee members and perhaps other interested persons for further comments. A resulting *Final Draft*, combining the work of several years, may be published in, e.g., ILA materials, for consideration by the general ILA membership and others, with an invitation to submit more comments. The Committee Chair will file the resulting *Tentative Draft* for final consideration and possible amendments, perhaps suggested by additional research on other terms, for adoption as a *Final Draft*. If, at the end of this stage, the Committee wishes to revisit and

103. LOS Convention, *supra* note 1; 1984 Agreement, *supra* note 1, modified UNCLOS, *supra* note 1, in certain respects not relevant to this analysis.

104. See ABILA LOS Comm., *Defining*, *supra* note 2.

discuss a term at the next meeting, it will be placed on the Committee agenda for the next ILA AB annual meeting. However, in general a *Tentative Draft*, once approved by the Committee, will not be subject to general discussion and wholesale revision until the end of the process, unless the Committee wishes to do so for a particular term.

As with all ILA projects, the *Final Draft* will not necessarily represent any State's or international organization's practice, views or policy, unless that State or international organization chooses to adopt it in whole or part.

Draft formats will follow an English alphabetical order, e.g., "mile" ahead of "ocean space." New terms will be interspersed among terms formerly considered, e.g., "adjacent coasts" and "aid to navigation," discussed in this *Interim Draft*, will appear under headings 1A and 1B, ahead of "applicable and generally accepted" from the 2002 *Tentative Draft No. 1*, and "artificial island" will appear under heading A.1. After reciting a term for definition, a Discussion and Analysis will follow, including reference to UNCLOS provisions, other treaties, e.g., the 1958 law of the sea (LOS) conventions,¹⁰⁵ treatises, cases, articles, etc. Comments will summarize correspondence, those who propose terms to simplify correspondence, etc. Conclusions will end each entry.

This method of analysis is similar to that the ILA employed in drafting the *Helsinki Principles of Maritime Neutrality*,¹⁰⁶ the American Law Institute in developing the *Restatements*, and the International Institute of Humanitarian Law in preparing the *San Remo Manual*.¹⁰⁷

The project will not revisit terms UNCLOS defines;¹⁰⁸ it will not enter debates on what are customary norms requiring no definition of terms¹⁰⁹ or the wisdom of ratifying UNCLOS.¹¹⁰

The chair researched terms defined in a *Consolidated Glossary* published by the IHO Technical Aspects of the Law of the Sea Working Group,¹¹¹ The *Glossary* terms are the only ones to be considered for 2002 unless Committee members wish to submit other terms.¹¹² As stated for the

105. Continental Shelf Convention, *supra* note 16; Fishery Convention, *supra* note 16; High Seas Convention, *supra* note 16; Territorial Sea Convention, *supra* note 16.

106. *Helsinki Principles*, *supra* note 17.

107. SAN REMO MANUAL, *supra* note 18.

108. See *infra* notes 114-25 and accompanying text.

109. E.g., the now largely resolved debate on the customary maximum width of the territorial sea. See generally WALKER, *supra* note 20, at 260-68.

110. See *id.* at 305-06.

111. *Consolidated Glossary*, *supra* note 4; NWP 1-14M ANNOTATED, *supra* note 4, at 51-77. *Consolidated Glossary* page numbers refer to those in NWP 1-14M ANNOTATED. The *Consolidated Glossary* has not been updated. Email of Hans-Peter Rhode, *supra* note 4. The IHO has also published *ECDIS Glossary*, *supra* note 4, which might be the subject of a future draft.

112. *Consolidated Glossary*, *supra* note 4, was one of four sources for *Annex 1*, *supra* note 67. Other sources for *Annex 1* were American Geological Institute, *supra* note 67; GLOSSARY OF GEOLOGY, *supra* note 67; Association for Geographic Information & Edinburgh University, *supra* note 67. Since *Annex 1* represents consolidated thinking on definitions, this

2001 *Drafts*,¹¹³ terms the LOS Convention defines but are also listed in the *Glossary* will not be redefined in this analysis. These terms include:

- “archipelagic sea lane;”¹¹⁴
- “archipelagic state;”¹¹⁵
- “Area;”¹¹⁶
- “continental margin;”¹¹⁷
- “continental shelf;”¹¹⁸
- “enclosed sea;”¹¹⁹
- “exclusive economic zone” (EEZ);¹²⁰
- “internal waters;”¹²¹
- “island;”¹²²
- “low-tide elevation;”¹²³
- “semi-enclosed sea;”¹²⁴
- “territorial sea.”¹²⁵

Where *Glossary*-defined terms may have a broader or different meaning that includes, e.g., a geographic definition in addition to rules UNCLOS supplies, e.g., “strait,” the ensuing analysis includes these. *Glossary*-defined terms

Revised Initial Draft does not cite the latter publications separately. The chair thanks Professor John E. Noyes for suggesting *Annex 1*.

113. See *supra* note 104 and accompanying text.

114. Compare LOS Convention, *supra* note 1, art. 53, with *Consolidated Glossary, supra* note 4, ¶ 4, and *Annex 1, supra* note 67, at 321.

115. Compare LOS Convention, *supra* note 1, art. 46, with *Consolidated Glossary, supra* note 4, ¶ 5, and *Annex 1, supra* note 67, at 321.

116. Compare LOS Convention, *supra* note 1, art. 1(1)(1), with *Consolidated Glossary, supra* note 4, ¶ 7, and *Annex 1, supra* note 67, at 321; see also 2 Commentary, *supra* note 19, ¶¶ 1.14-1.15.

117. Compare LOS Convention, *supra* note 1, art. 76(3), with *Consolidated Glossary, supra* note 4, ¶ 19, and *Annex 1, supra* note 67, at 323; see also Victor Prescott, *Resources of the Continental Margin and International Law*, in COOK & CARLETON, *supra* note 67, ch. 5; Philip A. Symonds et al., *Characteristics of Continental Margins*, in COOK & CARLETON, *supra* note 67, ch. 4.

118. Compare LOS Convention, *supra* note 1, art. 76(1), with *Consolidated Glossary, supra* note 4, ¶ 21, and *Annex 1, supra* note 67, at 323; see also Robert W. Smith & George Taft, *Legal Aspects of the Continental Shelf*, in COOK & CARLETON, *supra* note 67, ch. 3.

119. Compare LOS Convention, *supra* note 1, art. 122, with *Consolidated Glossary, supra* note 4, ¶ 28, and *Annex 1, supra* note 67, at 323.

120. Compare LOS Convention, *supra* note 1, art. 55, with *Consolidated Glossary, supra* note 4, ¶ 31, and *Annex 1, supra* note 67, at 324.

121. Compare LOS Convention, *supra* note 1, art. 8(1), with *Consolidated Glossary, supra* note 4, ¶ 42.

122. Compare LOS Convention, *supra* note 1, art. 121(1), with *Consolidated Glossary, supra* note 4, ¶ 43, and *Annex 1, supra* note 67, at 325.

123. Compare LOS Convention, *supra* note 1, art. 13(1), with *Consolidated Glossary, supra* note 4, ¶ 49, and *Annex 1, supra* note 67, at 325.

124. Compare LOS Convention, *supra* note 1, art. 122, with *Consolidated Glossary, supra* note 4, ¶ 77, and *Annex 1, supra* note 67, at 328.

125. Compare LOS Convention, *supra* note 1, arts. 2-16, with *Consolidated Glossary, supra* note 4, ¶ 91, and *Annex 1, supra* note 67, at 329.

relevant to the law of the sea but not often appearing in the LOS Conventions, e.g., latitude and longitude,¹²⁶ that may be necessary or useful in understanding the law of the sea and the Conventions are also included. Besides UNCLOS references, the ensuing analysis adds terms' usage in the 1958 LOS Conventions and a few secondary sources, following the *Restatement* and similar models. The secondary source analysis is not intended to be exhaustive; Committee members' suggestions for other seminal sources are welcome, but the hope is that this project will not have overlong notations.

Committee members are encouraged to recommend adding or deleting terms besides recommending amendments.

Headquartered in Monaco, the IHO is organized under the Convention on the International Hydrographic Organization.¹²⁷ Its sixty-two member States as of January 1, 2002 include many maritime countries, among them the United States.¹²⁸ Treaty succession principles for China, the former USSR and the former Yugoslavia, listed as members, may mean that even more countries are Convention parties.¹²⁹ Certain States commonly considered open registry states—Panama, Liberia, Honduras—do not belong to the IHO, however. The IHO, formerly the International Hydrographic Bureau, organized in 1921 to make navigation easier and safer by improving nautical charts and documents, is an intergovernmental organization that is purely consultative and technical in nature. Its goals are to coordinate activities of national hydrographic offices, achieving the greatest possible uniformity in nautical charts and documents, adopting reliable and efficient methods of carrying out and exploiting hydrographic surveys, and developing the sciences involved in hydrography and techniques used in descriptive oceanography. Its Hydrographic Bureau is responsible for bringing about a close, permanent association among national hydrographic offices; studying matters related to hydrography and its allied sciences and techniques, and collecting necessary papers; furthering exchange of nautical charts and documents between member governments' hydrographic offices; circulating appropriate documents; tendering guidance and advice, if requested, to States engaged in establishing or expanding their hydrographic service; encouraging coordination of hydrographic surveys with relevant oceanographic activities; extending and facilitating application of oceanographic knowledge for the benefit of navigators; and cooperating with international organizations and scientific institutions with related objectives.¹³⁰

126. See *infra* ¶¶ D.9, D.11.

127. IHO Convention, *supra* note 3.

128. TIF, *supra* note 9, at 392-93.

129. *Id.*; Symposium, *supra* note 10; Walker, *Integration*, *supra* note 10; see also TIF, *supra* note 9, at 392-93 (treaty succession issues for China, Federal Republic of Germany, German Democratic Republic, former USSR, former Yugoslavia; Ukraine already a party).

130. IHO Convention, *supra* note 3, pmbl., arts. 1-4, 8, 21 U.S.T. at 1859-61, 1863, 751 U.N.T.S. at 43-45, 47.

II. PROPOSED DEFINITIONS

The format for proposed definitions follows that of the 2001 *Interim Draft*. After reciting a term proposed for definition in quotations in English alphabetical order,¹³¹ a Discussion and Analysis, including the term as defined in the *Consolidated Glossary*, references to the LOS Conventions, cross-references to other terms proposed for definition in this and prior Committee research, and other primary and secondary material references, follows. The Discussion and Analysis of primary and secondary material references are not exhaustive, in the main following *Restatement* and similar approaches.¹³² A comment paragraph identifies the term's proponent and may recite administrative matters. The Conclusion, which proposes the version to be adopted by the Committee, sometimes includes a summary of analysis or reasons why a proposed definition may differ from the *Consolidated Glossary* version. This format will carry over into the *Tentative Draft*. Later versions may reverse and revise the order of conclusion and Discussion and Analysis for each term, while dropping the comment paragraphs, to bring the format into one similar to the *Restatements* and similar publications.

1A. "Adjacent Coasts"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 1, defines "adjacent coasts" as "[t]he coasts lying either side of the land boundary between two adjoining States."

UNCLOS, Article 15, echoing Territorial Sea Convention, Article 12(1), provides that:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.¹³³

The Territorial Sea Convention, Article 14(1), also provides that:

The boundary of the territorial sea between two adjacent States shall be determined by agreement between them. In the absence of such agreement, and unless another boundary line is justified by special circumstances, the boundary is drawn by application of the principle of equidis-

131. See *supra* note 16 and accompanying text.

132. See *supra* notes 17-18 and accompanying text.

133. See also 2 COMMENTARY, *supra* note 19, at 134-43.

tance from the nearest points on the baseline from which the breadth of the territorial sea of each country is measured.

With respect to the continental shelf, UNCLOS, Article 76(10), provides that Article 76's other terms "are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts."¹³⁴ The Continental Shelf Convention does not have an equivalent provision, but its Article 6 provides:

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the . . . shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the . . . shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 . . . should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.¹³⁵

UNCLOS, Article 83 is different:

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, . . . to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV[, UNCLOS dispute resolution procedures, Articles 279-99].

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

134. *See also id.* at 883.

135. Continental Shelf Cases (F.R.G. v. Den., F.R.G. v. Neth.), 1969 I.C.J. 3, 41-45 (holding that the Continental Shelf Convention, *supra* note 16, art. 6, did not then restate customary international law).

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the . . . shelf shall be determined in accordance with the provisions of that agreement.¹³⁶

UNCLOS, Article 74(1), states principles for the EEZ between States with opposite or adjacent coasts analogous to those for the continental shelf in Article 83.¹³⁷

Under UNCLOS, Article 47(6), if part of an archipelagic State's archipelagic waters lies between two parts of "an immediately adjacent neighboring State," existing rights and all other legitimate interests the latter State has traditionally exercised in such waters and all rights in agreements between those States must continue and be respected.

Tentative Draft No. 1, ¶ B, proposes a definition for "coastal State." This *Interim Draft*, ¶ A.6, proposes a definition for "chart;" ¶ F.3, for "opposite coasts."¹³⁸

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of "adjacent coasts" is proposed:

As used in the 1982 LOS Convention, Articles 15, 74(1) and 83, "adjacent coasts" means coasts lying on either side of the land boundary between two adjoining States.

In law of armed conflict (LOAC)-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹³⁹

136. See also LOS Convention, *supra* note 1, art. 134(4); LOS Convention, *supra* note 1, Annex II, art. 9; 2 COMMENTARY, *supra* note 19, at 952-85.

137. Compare LOS Convention, *supra* note 1, art. 74, with *id.* art. 83.

138. The *Glossary* definition is the same as the *Annex 1* definition; see *Annex 1*, *supra* note 67, at 326. See also 2 COMMENTARY, *supra* note 19, ¶¶ 15.1-15.12(c), 47.1-47.9(m), 83.1-83.19(f); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.4.3, particularly n.42; 1.6, particularly n.57 & Fig. A1-2; 2 O'CONNELL, *supra* note 62, at 681, 684-90, 699-732; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 516-17; *Annex 1*, *supra* note 67, at 326.

139. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

2A. "Aid to Navigation" and "Navigational Aid"

1. Discussion and Analysis

The *Consolidated Glossary* defines an "aid to navigation" as a "[v]isual, acoustical or radio device external to a craft designed to assist in the determination of a safe course or of a vessel's position, or to warn of dangers and obstructions." "Navigational aid" has the same meaning.

UNCLOS, Article 21(1)(b), includes, among laws and regulations a coastal state may adopt relating to innocent passage, in conformity with UNCLOS and other rules of international law, laws and regulations for "protection of navigational aids and facilities. . . ." Article 43(a) provides that "[u]ser States and States bordering a strait should by agreement cooperate . . . in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation. . . ." The Territorial Sea Convention, Article 16(2), requires a coastal State . . . to give due publicity to any dangers to navigation of which it has knowledge."

UNCLOS also provides for signals "warning" of various dangers. Article 60(3) *inter alia* requires coastal states declaring an EEZ to give "[d]ue notice . . . of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained." Articles 208(1) (standards for regulating pollution from seabed activities subject to national jurisdiction) and 246(5)(c) (standards for withholding consent for other States' marine scientific research (MSR)) incorporate its standards by reference.

Article 147(2)(a) requires that installations used for carrying out activities in the Area must be subject to, *inter alia*, this condition: "[S]uch installations shall be erected, emplaced and removed solely in accordance with this Part [XI, law governing the Area] and subject to the rules, regulations and procedures of the Authority. Due notice must be given of the erection, emplacement and removal of such installations, and permanent means for giving warning of their presence must be maintained. . . ."

With respect to MSR, UNCLOS, Article 262, requires for identification markings and warning signals:

Installations or equipment referred to in this section [XIII.4] shall bear identification markings indicating the State of registry or the international organization to which they belong and shall have adequate internationally agreed warning signals to ensure safety at sea and the safety of air navigation, taking into account rules and standards established by competent international organizations.

UNCLOS, Article 1(1)(1), defines the Area.

The Continental Shelf Convention, Article 5(5), requires permanent means of warning of presence of artificial islands or other installations a coastal State installs on its continental shelf.

Tentative Draft No. 1, ¶ G proposes a definition for “other rules of international law” as used in UNCLOS, Article 21(1)(b); ¶ I, for “ship” or “vessel.” This *Interim Draft*, ¶ A.1, proposes definitions for “artificial island” and “installation.”¹⁴⁰

Nowhere does the Convention define “aids to navigation,” “navigational aids” or “warning signals” as the latter phrase is used in Articles 60(3), 147(2)(a) and 262. Mariners and publications related to navigation on the seas refer to aids to navigation and navigational aids interchangeably.

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “aids to navigation” is proposed:

“Aids to navigation” means the same as “navigational aid[s]” as used in the 1982 LOS Convention, Articles 21(1)(b), 43(a), and means any visual, acoustical or radio or similar device external to a craft designed to assist in the determination of a safe course or of a vessel’s position, or to warn of dangers and obstructions. Depending on the nature of the artificial island, installation or equipment referred to in the Convention, Articles 60(3), 147(2)(a) and 262, “aid to navigation” may also include “warning signals” mentioned in Articles 60(3), 147(2)(a) and 262.

This is the definition the *Glossary* recommends, expanded to cover some “warning signals” and adding “or similar” before “device.”

Some warning signals may aid navigation; some may not, e.g., a warning signal, like a light, aboard a MSR vessel, whether underway or at anchor, would not be an aid to navigation, although it would warn of the vessel’s presence. In the latter case lawfulness of the signal would be subject to other rules, e.g., in the Convention on International Regulations for Preventing Collisions at Sea, Oct. 20, 1972, 28 U.S.T. 3459, 1050 U.N.T.S. 16, as modified by subsequent regulations. On the other hand, warning signals on artificial islands would almost certainly be aids to navigation in most cases. The phrase “or similar” has been added before “device” to project into the future,

140. *Annex 1*, *supra* note 67, at 321, provides a more general definition: “A device, external to a vessel, charted or otherwise published, serving the interests of safe navigation, e.g., buoys, lights, radio beacons.” See also 2 COMMENTARY, *supra* note 19, ¶¶ 1.16-1.19, 21.1-21.11(a), 43.1-43.8(a), 60.15(f), 60.15(i)-60.15(m); 4 COMMENTARY, *supra* note 30, ¶¶ 208.1-208.10(d), 246.1-246.17(f), 262.1-262.5; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 2.4.2.1.4; RESTATEMENT (THIRD), *supra* note 12, §§ 513-15.

when navigational aids based on computer or similar technology may come into common use.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁴¹

A.1. “Artificial Island;” “Offshore Installation;” “Installation (Off-shore)”

1. Discussion and Analysis

The *Consolidated Glossary* does not offer a separate definition for “artificial island;” in ¶ 8 it refers to its definition for “installation (off-shore;)” in ¶ 41: “Man-made structure in the territorial sea, exclusive economic zone or on the continental shelf usually for the exploration or exploitation of marine resources. They may also be built for other purposes such as marine scientific research, tide observations, etc.”

UNCLOS, Article 11, says that offshore installations or artificial islands are not considered permanent harbor works and may not be used as part of the baseline to measure the territorial sea’s breadth. Articles 7(4) and 47(4) say that low-tide elevations having lighthouses or similar installations may be used as basepoints for otherwise straight baselines or archipelagic baselines. A coastal state has jurisdiction over artificial islands, installations and structures it erects within its EEZ under Article 56(1)(b)(i). However, artificial islands, installations and structures do not have the status of islands. They have no territorial sea; their presence does not affect the territorial sea, the EEZ or the continental shelf, according to Article 60(8). Article 60 also lays down notice of construction or removal of artificial islands; permanent means of warning of their presence must be maintained. Safety zones, not over 500 meters, may be established. Abandoned or disused installations must be removed under generally accepted international standards. Articles 208(1) (standards for regulating pollution from seabed activities subject to national jurisdiction) and 246(5)(c) (standards for withholding consent for other States’ MSR) incorporate Article 60 standards by reference. Article 60 rules apply to artificial islands erected on the continental shelf, according to Article 80; under Article 79(4), a state declaring a continental shelf may lay pipelines or cables to be used in connecting artificial islands, installations or structures under its jurisdiction. Subject to rules governing the continental shelf, Part VI, Article 87(1)(d), lists as a high seas freedom the right to construct artificial islands and other installations. Coastal states may withhold consent to another State’s or a competent international organization’s conducting a MSR project if it involves constructing, operating or using artificial islands, installations or structures in a coastal state’s EEZ or on its con-

141. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

tinental shelf, according to Article 246(5)(d). A coastal State must adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with artificial islands, installations and structures in its EEZ or on its continental shelf, according to Article 208(1). Article 214 requires enforcing these laws and adopting laws and regulations, and taking other measures to implement applicable international rules and standards established through competent international organizations or diplomatic conferences to prevent, reduce and control marine environmental pollution from artificial islands, installations and structures under coastal States' EEZ and continental shelf jurisdiction.

The 1958 LOS Conventions do not provide for artificial islands or similar installations except in connection with continental shelf activity. The Territorial Sea Convention, Article 10, anticipating UNCLOS, Article 121(1), defines an island as "an area of land, surrounded by water, which in normal circumstances is permanently above [the] high-water mark." By implication these definitions exclude artificial islands. The Continental Shelf Convention, Article 5, anticipated many UNCLOS principles:

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intent of open publication.

2. Subject to . . . paragraphs 1 and 6 . . . , the coastal State is entitled to construct and maintain or operate on the . . . shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones . . . may extend to . . . 500 meters around the installations and other devices which have been erected Ships of all nationalities must respect these . . . zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea . . . , and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor . . . zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the . . . zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained [for] . . . any research concerning the . . . shelf and conducted there. Nevertheless, the . . . State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the . . . shelf, subject to . . . the coastal State[s] . . . [having] the right . . . to participate or to be represented in the research, and that in any event the results shall be published.

This *Interim Draft*, ¶ D.4, proposes a definition for “harbor works.”¹⁴²

2. Comments

The Chair researched the proposed definition.

3. Conclusions

The *Glossary* definition for “installation (off-shore)” should be modified to include “artificial island”:

An “artificial island” or “offshore installation,” or “installation (off-shore),” as used in the 1982 LOS Convention means a human-made structure in the territorial sea, in the exclusive economic zone or on the continental shelf, which is usually employed to explore or exploit marine resources. Artificial islands or offshore installations, or installations (off-shore), may also be built for other purposes such as marine scientific research, tide observations, etc. Artificial islands or other offshore installations as here defined are subject to all other jurisdictional and other limitations and requirements stated in the Convention, for example, that artificial islands can possess no territorial sea, that artificial islands or offshore installations cannot be considered as permanent harbor works, and that coastal States are responsible under the Convention for environmental protections required for artificial islands.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁴³

142. See also 2 COMMENTARY, *supra* note 19, ¶¶ 7.1-7.9(a), 7.9(f), 11.1-11.5(d), 47.1-47.8, 47.9(f), 56.1-56.11(e), 60.1-60.15(c), 60.15(k)-60.15(m), 79.1-79.7, 79.8(d), 79.8(f); 3 COMMENTARY, *supra* note 43, ¶¶ 87.1-87.9(b), 87.9(f), 87.9(i); 4 COMMENTARY, *supra* note 30, ¶¶ 208.1-208.10(d), 214.1-214.7(c); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.4.2.2; 1 O’CONNELL, *supra* note 72, at 196-97, 562-63; 2 O’CONNELL, *supra* note 62, at 798, 843, 846-47, 890, 905-07; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 514-15.

143. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

A.2. "Atoll"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 9, defines "atoll" as "[a] ring-shaped reef with or without an island situated on it surrounded by the open sea, that encloses or nearly encloses a lagoon."¹⁴⁴

UNCLOS, Article 6, declares that for islands situated on an atoll or an island having a fringing reef, the baseline for measuring the territorial sea is the seaward low water line of the reef as shown by the appropriate symbol on charts the coastal State officially recognizes. UNCLOS, Article 47(7), similarly says that for computing the ratio of water to land when establishing archipelagic waters of an archipelagic State as the Convention defines that State in UNCLOS, Article 46(a), atolls and waters within them may be included as part of the land area of an archipelagic State. Pursuant to UNCLOS, Article 47(1), an archipelagic State may draw straight archipelagic baselines joining outermost points of the outermost islands and drying reefs of the archipelago, defined in Article 46(b), provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

Tentative Draft No. 1, ¶ F, proposes a definition for "ocean space" or "sea." This *Interim Draft*, ¶ A.6, proposes a definition for "chart," ¶ G.3, for "reef." UNCLOS and the *Glossary* do not define "lagoon."¹⁴⁵

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of "atoll" is proposed:

As used in the 1982 LOS Convention, Articles 6 and 47, "atoll" means a reef with or without an island situated on it surrounded by the open sea, that encloses or nearly encloses a lagoon.

In LOAC-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may

144. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 6.7(a).

145. *Annex 1*, *supra* note 67, at 322, supplies a similar definition: "A ring-shaped reef with or without an island situated on it surrounded by the open sea, which encloses or nearly encloses a lagoon. An atoll is usually formed on the top of a submerged volcano by coral growth." See also 2 *COMMENTARY*, *supra* note 19, ¶¶ 6.1-6.7(e) (also offering no definition of "lagoon"), 47.1-47.8, 47.9(l); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.5 n.25; 1 O'CONNELL, *supra* note 72, at 185, 195-96; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁴⁶

A.3. "Bank"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 10, gives two definitions related for "bank." The first relates to the continental shelf: "an elevation of the sea floor located on a continental (or an island) shelf, over which the depth of water is relatively shallow." The second relates to the term as used in connection with a river: "a shallow area of shifting sand, gravel, mud, etc., as a sand bank, mud bank, etc., usually constituting a danger to navigation and occurring in relatively shallow waters."¹⁴⁷

UNCLOS, Article 9, says that if a river flows directly into the sea, the baseline shall be a straight line across its mouth between points on the low water line of its banks. The Territorial Sea Convention, Article 13, applies the same rule for the low tide line. UNCLOS, Article 76(6), as part of the continental shelf definition, says that notwithstanding its Article 76(5) submarine ridge provisions, the shelf's outer limit shall not exceed 350 nautical miles from baselines from which the territorial sea's breadth is measured. The Article 76(6) proviso does not apply to submarine elevations that are natural components of the continental margin, e.g., its plateaus, rises, caps, banks and spurs. Under UNCLOS, Article 121(2), an island's sovereign may claim a continental shelf for the island. The Continental Shelf Convention has no similar provisions.

Tentative Draft No. 1, ¶ F, proposes a definition for "ocean space" or "sea." This *Interim Draft*, ¶ G.4, proposes a definition for "river."

Because of the term's use as related to river banks and banks beneath the ocean's surface, a two-part definition is necessary.¹⁴⁸

2. Comments

The Chair researched the proposed definition.

3. Conclusions

The *Glossary* suggests this two-part definition for "bank":

146. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

147. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 76.18(i), at 880. *Annex 1*, *supra* note 67, at 322, concerned with continental shelf issues, agreed with the first definition of "bank": "A submarine elevation located on a continental margin over which the depth of water is relatively shallow."

148. See also 2 *COMMENTARY*, *supra* note 19, ¶¶ 9.1-9.5(e); 76.1-76.18(a), 76.18(i); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.3.4, 1.6, Fig. A1-2; 1 O'CONNELL, *supra* note 72, at 221-30; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515.

1. The word “banks” in the 1982 LOS Convention, Article 9, when referring to river banks, means shallow areas of shifting sand, gravel, mud, etc., as a sand bank, a mud bank, etc., that usually constitutes a danger to navigation and which occurs in relatively shallow waters and is usually associated with rivers.

2. The word “bank” in the 1982 LOS Convention, Article 76(6), means an elevation of the sea floor located on a continental shelf, including an island’s continental shelf as permitted by the Convention, Article 121, over which the depth of water is relatively shallow.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁴⁹

A.4. “Basepoint” or “Point”

1. Discussion and Analysis

The *Consolidated Glossary* defines “basepoint” as

any point on the baseline. In the method of straight baselines, where one straight baseline meets another at a common point, one line may be said to “turn” at that point to form another baseline. Such a point may be termed a “baseline turning point” or simply “basepoint.”

The *Glossary* defines the term “baseline” as “[t]he line from which the seaward limits of a State’s territorial sea and certain other maritime zones of jurisdiction are measured.”¹⁵⁰ While this is a workable, general definition, the *Glossary* definition is not advanced as a term to be defined; UNCLOS supplies different definitions for “baseline,” depending on a particular ocean area.¹⁵¹

UNCLOS, Article 5, provides that except as otherwise provided in the Convention, “the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.” The Territorial Sea Convention, Article 3 applies the same rule. UNCLOS, Article 121(2) applies the same rule for islands, as does the Territorial Sea Convention, Article 10(2).

UNCLOS, Article 33(2), says that a contiguous zone may not be declared beyond twenty-four nautical miles “from the baselines from which the breadth of the territorial sea is measured.” Article 57 declares the same prin-

149. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

150. *Consolidated Glossary*, *supra* note 4, at 49.

151. One protocol for the project is that no term already defined in the Convention will be defined anew. See *supra* notes 114-25 and accompanying text.

ciple for an EEZ, which cannot extend “beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.”

Article 76(1) measures the continental shelf “beyond [a coastal State’s] territorial sea throughout the natural prolongation of its land territory, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.” However, the shelf may not extend beyond limits Articles 76(4) and 76(6) declare. Article 76(4) declares that

(a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the territorial sea is measured, by either:

(i) a line delineated in accordance with [Article 76(7)] by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 percent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with [Article 76(7)] by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

Article 76(5) says that the fixed points comprising the line of the shelf’s outer limits on the seabed, drawn in accordance with Articles 76(4)(a)(i) and 76(4)(a)(ii) either may not exceed 350 nautical miles “from the baseline from which the breadth of the territorial sea is measured” or may not exceed 100 nautical miles from the 2500-meter isobath, a line connecting the depth of 2500 meters. However, Article 76(6) sets a 350 nautical mile limit, again measured “from the baselines from which the breadth of the territorial sea is measured.” Under Article 76(7) a coastal State must delineate its shelf’s outer limits “where that shelf extends 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points,” defined by latitude and longitude coordinates. Article 76(8) requires a coastal State establishing a shelf more than 200 nautical miles “from the baselines from which the breadth of the territorial sea is measured” to submit data on that shelf to the Commission on the Limits of the Continental Shelf; its recommendations on limits for this kind of shelf are binding. Articles 82(1) and 82(4) requires states exploiting the shelf beyond 200 nautical miles from the baselines from which the territorial sea is measured to make payments or contributions in kind through the Authority, which must distribute them to UNCLOS parties on the basis of equitable sharing.

Article 246(5) recites certain situations, including projects of direct significance for exploring and exploiting natural resources as stated in Article 246(5)(a), when coastal States may withhold EEZ and continental shelf MSR consent, which normally must be given other States or competent international organizations under Articles 246(3) and 246(4). However, coastal States may not withhold consent under Article 246(5)(a) on the shelf beyond 200 nautical miles from baselines from which the breadth of the territorial sea is measured, outside specific areas coastal States may publicly designate for exploitation or detailed exploration operations focused on those areas.

The Continental Shelf Convention uses only depth of waters or exploitability as criteria:

“[C]ontinental shelf” . . . refer[s] . . . (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

UNCLOS, Article 83, providing for delimiting a shelf between opposite or adjacent states, has no provision involving baselines, but the Continental Shelf Convention, Article 6(1) says that if there is no agreement between opposite states, and unless “special circumstances” justify another line, the boundary is “the median line, every point of which is equidistant from the nearest points of the baselines” from which the States’ territorial sea are measured. Article 6(2) recites the same rule for adjacent States. Article 6(3) says that lines drawn in accordance with Articles 6(1) or 6(2) must refer to “fixed permanent identifiable points on the land.”¹⁵²

The territorial sea baseline is therefore the standard benchmark for determining most seaward boundaries. UNCLOS, Article 5, declares that except as otherwise provided in the Convention, “the normal baseline for measuring the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.” The Territorial Sea Convention, Article 3, applies the same standard.

For islands on atolls or islands with fringing reefs, UNCLOS, Article 6 provides that the baseline for the territorial sea is the seaward low-water line of the reef, as shown by the same kind of chart.

Where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast “in its immediate vicinity,” UNCLOS, Article 7(1), provides that “the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.” If Article 7(1) applies, Article 7(5) allows account to be taken to determine particular baselines of “economic interests peculiar to the region concerned, the reality and importance of which are

152. See also *supra* ¶ 1A.

clearly evidenced by long usage.” The Territorial Sea Convention, Articles 4(1) and 4(4) are to the same effect. UNCLOS, Article 7(2), says that where a delta and other natural conditions produce a “highly unstable” coastline, “the appropriate points may be selected along the furthest seaward extent of the low-water line, and notwithstanding subsequent regression” of this line, the straight baselines remain effective until the coastal State changes them in accordance with the Convention. Article 7(3) provides: “The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently linked to the land domain to be subject to the regime of internal waters.” The Territorial Sea Convention, Article 4(2), is to the same effect. UNCLOS, Article 7(4), adds that straight baselines must not be drawn to and from low-tide elevations unless lighthouses or similar installations permanently above sea level have been built on them, except where drawing baselines to and from such elevations “has received general international recognition.” Apart from the last exception, Territorial Sea Convention, Article 4(3), uses the same language. UNCLOS, Article 7(6) says that a State cannot apply a straight baseline system to cut off another State’s territorial sea from the high seas or EEZ. The Territorial Sea Convention, Article 4(5) applies the same rule to another State’s territorial sea.

UNCLOS, Article 8, says that except for archipelagic waters situations under the Convention, Part IV, internal waters are those on the landward side of territorial sea baselines. If an Article 7-determined straight baseline has the effect of enclosing as internal waters an ocean area not previously considered as such, a right of innocent passage under the Convention exists. The Territorial Sea Convention, Article 5 is to the same effect, except that there is no reference to archipelagic States.

For river mouths, UNCLOS, Article 9, provides that if it flows directly into the sea, the baseline is a straight line across its mouth between points on the low-water line of its banks. The Territorial Sea Convention, Article 13 recites the same language.

UNCLOS, Article 10, declares rules for bays where their coasts belong to one State. Article 10(5) says that where the distance between low-water marks of the natural entrance points of a bay exceeds twenty-four nautical miles, a straight baseline of twenty-four nautical miles must be drawn within the bay so as to enclose the maximum area of water possible with a line of that length. The Territorial Sea Convention, Article 7(4), has the same language. UNCLOS, Article 10(6), excludes “historic bays” and cases where Article 7’s straight baseline system applies, as does the Territorial Sea Convention, Article 7(6).

For ports under UNCLOS, Article 11, the outermost permanent harbor works forming an integral part of the harbor system are part of the coast. Offshore installations and artificial islands are not. Except for the proviso for offshore installations and artificial islands, the Territorial Sea Convention, Article 8, is the same. Under UNCLOS, Article 12, roadsteads normally used

for loading, unloading and anchoring ships and which would otherwise be wholly or partly outside the territorial sea are included in the territorial sea. The Territorial Sea Convention, Article 10, is to the same effect.

Under UNCLOS, Article 13, a low-tide elevation, a naturally formed area of land surrounded by and above water at low tide but below water at high tide, is wholly or partly at a distance not exceeding the territorial sea's breadth from the mainland or an island, the low-water line on that elevation may be used as a baseline for measuring the territorial sea. If wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, an elevation has no territorial sea. The Territorial Sea Convention, Article 11, uses the same language.

UNCLOS, Article 14, allows a coastal State to "determine baselines in turn by any . . . method . . . in the foregoing articles [Articles 1-13] to suit different conditions."

Article 15 recites rules for States with opposite or adjacent coasts. The rules are the same as in the Territorial Sea Convention, Article 12.¹⁵³

Article 16 requires that baselines for measuring the territorial sea's breadth determined under Articles 7, 9 and 10, or limits derived from these Articles, and delimitation lines drawn in accordance with Articles 12 and 15, must be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical coordinates of points, specifying the geodetic datum, may be submitted. The coastal State must give due publicity to these charts or lists and must deposit a copy of each chart or list with the U.N. Secretary-General.

UNCLOS, Article 35(a), declares that nothing in the Convention rules for straits used for international navigation affects areas of internal waters within a strait, except where establishing a straight baseline by Article 7 has the effect of enclosing as internal waters areas not previously considered as such.

There are separate rules for archipelagic baselines applying to archipelagic States and archipelagoes defined in UNCLOS, Article 46. Under Article 47(1), an archipelagic State may draw straight archipelagic baselines joining outermost points of the outermost islands and drying reefs of the archipelago, provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between one to one and nine to one. Article 47(2) says these baselines' length must not exceed 100 nautical miles; up to three percent of the total number of baselines enclosing an archipelago may exceed that length, to an 125 nautical mile maximum. Drawing these baselines may not depart "to any appreciable extent" from an archipelago's general configuration, according to Article 47(3). Article 47(4) says these baselines may not be drawn to and from low-tide elevations, unless lighthouses or similar installations have been built on them or where an elevation is situated wholly

153. For text, see *id.*

or partly at a distance not exceeding the breadth of the territorial sea from the nearest island. Article 47(5) declares that an archipelagic state cannot apply this baseline system cannot be applied to cut off another State's territorial sea from its EEZ or the high seas. Under Article 47(6), if part of an archipelagic State's archipelagic waters lies between two parts of an immediately neighboring adjacent State, existing rights and all other legitimate interests the latter State has traditionally exercised in such waters and all rights in agreements between those States must continue and be respected. Under Article 47(7), in computing ratio of water to land when establishing archipelagic waters of an archipelagic State as the Convention defines that State, atolls and waters within them may be included as part of the land area of that State. Article 47(8) says that baselines drawn in accordance with Article 47 must be shown on charts of a scale or scales adequate for determining their position. Lists of geographical coordinates of points, specifying the geodetic datum may be substituted for these. Article 47(9) requires archipelagic States to give due publicity to these charts or lists and to deposit a copy of each with the U.N. Secretary-General.

UNCLOS, Article 48, provides that an archipelagic State's breadth of territorial sea, contiguous zone, EEZ and continental shelf are measured from Article 47 archipelagic baselines. Under Article 49(1), archipelagic State sovereignty extends to waters archipelagic baselines enclose pursuant to Article 47. Article 50 provides that an archipelagic State may draw closing lines to delimit internal waters in accordance with Articles 9 through 11.

UNCLOS, Article 1(1)(2), defines the Authority cited in Article 82(4).

Tentative Draft No. 1, ¶ B proposes a definition for "coastal State;" ¶ E, for "mile" or "nautical mile." This *Interim Draft*, ¶ A.2, proposes a definition for "atoll;" ¶ A.6, for "chart;" ¶ G.3, for "reef;" ¶ D.4, for "harbor works."

Specific definitions for "baseline," generally described in the *Glossary* as a "line from which the seaward limits of a State's territorial sea and certain other maritime zones of jurisdiction are measured,"¹⁵⁴ can be divined from particular UNCLOS articles regulating each situation. However, there is no definition of "basepoint" or "point" from which these baselines are drawn.¹⁵⁵

154. *Consolidated Glossary*, *supra* note 4, at 49.

155. *Annex 1*, *supra* note 67, at 322, defines "basepoint" as "any point on the baseline." Commentaries reflect continuing debate on measuring or determining baselines; *see, e.g.*, 2 COMMENTARY, *supra* note 19, chs. 5-16, 33, 35, 47-48, 76, 82; NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.3-1.3.6; Fig. A1-2; Tables A1-3, A1-7; 1 O'CONNELL, *supra* note 72, at 171-85, 199-218, 345, 352-53, 390-99; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12. This analysis has no view on the issue; its purpose is to define the point(s) from which measurements are made. For further analysis of delimitation issues, *see* Chris M. Carleton, *Delimitation Issues*, in COOK & CARLETON, *supra* note 67, ch. 20.

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Because the LOS Convention applies separate definitions for “baseline,” and because the Convention adequately defines the term, no further definition should be advanced for consideration. Following the *Glossary*, these definitions of “basepoint” or “point” are proposed:

A “basepoint” when employed in analyzing the 1982 Law of the Sea Convention means any point on the baseline. In the method of straight baselines, where one straight baseline meets another at a common point, one line may be said to “turn” at that point to form another baseline. Such a point may be termed a “baseline turning point” or simply “basepoint.” In either case “point” means a location that can be fixed by geographic coordinates or geodetic datums meeting 1982 Law of the Sea Convention standards.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁵⁶

A.5. “Cap”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 14, defines “cap” as a “feature with a rounded cap-like top. [It also means] . . . a plateau or flat area of considerable extent, dropping off abruptly on one or more sides.”¹⁵⁷ Although the *Glossary* does not say so, the first definition would seem to refer to a feature on land near the sea; the second would refer to features of the sea bottom. The single UNCLOS reference to “cap” supports the latter view.

UNCLOS, Article 76(6), discussed in connection with this *Interim Draft*'s proposed definition for “bank,” ¶ A.3, says its provision “does not apply to submarine elevations that are natural components of the continental margin, such as its plateaus, rises, caps, banks and spurs.”

There appears to be no reference in the LOS Conventions to “cap” as the first *Glossary* statement would define it. The Chair recalls personal experience with nautical charts, which use “cap” to refer to land promontories

156. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

157. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 76.18(i), at 880. *Annex 1*, *supra* note 67, at 322, being concerned with continental shelf issues, defines “cap” as “[a] submarine feature with a rounded caplike top; also defined as a plateau or flat area of considerable extent, dropping off abruptly on one or more sides.”

used to fix positions in navigation. “Cap” may also refer to mariner head-gear, e.g., an officer’s cap as distinguished from a sailor’s hat. Custom of the sea may require or recommend touching a cap, or removing it, in salute or courtesy.

Tentative Draft No. 1, ¶ F, proposes definitions for “ocean space” or “sea.” This *Interim Draft*, ¶ A.6, proposes a definition for “chart;” ¶ F.1, for “oceanic plateau.”¹⁵⁸

2. Comments

The Chair researched the proposed definition.

3. Conclusions

The definitions of “cap” are proposed, based on the *Glossary*:

1. When used in navigation pursuant to the 1982 LOS Convention, “cap” means a feature with a rounded cap-like top, usually on a promontory of land visible from the sea and so stated on navigational charts.

2. In the Convention, Article 76(6), when referring to the continental shelf, “cap” means a plateau or flat area of considerable extent, dropping off abruptly on one or more sides.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁵⁹

A.6. “Chart”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 15 defines “chart” as “a nautical chart specially designed to meet the needs of marine navigation.” It depicts such information as depths of water, nature of the sea-bed, configuration and nature of the coast, dangers and aids to navigation, in a standardized format; also called simply “chart.” Using the same word in the definition creates a tautology.

Although “chart” almost invariably refers to a depiction of water areas, often as related to land areas and designed to meet needs of marine naviga-

158. See also 2 COMMENTARY, *supra* note 19, ¶¶ 76.1-76.18(a), 76.18(i), at 880; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6 & Fig. A1-2; 1 O’CONNELL, *supra* note 72, ch. 13; 2 O’CONNELL, *supra* note 62, ch. 18A; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

159. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

tion,¹⁶⁰ “map” usually refers to depiction of land areas or land and water areas.¹⁶¹

Although UNCLOS and the Territorial Sea Convention recite “chart,” often with qualifications, they do not define the word. No LOS Convention uses the word “map.”

In connection with the territorial sea, UNCLOS, Articles 5-6, refer to “large-scale charts officially recognized by the coastal State.” The Territorial Sea Convention, Article 3, uses similar language. UNCLOS, Article 16(1), requires showing lines of territorial sea delimitation “on charts of a scale or scales adequate for showing their position;” Article 16(2) requires due publicity for these charts, which must be deposited with the U.N. Secretary-General.

UNCLOS does not have chart requirements for the contiguous zone; see Article 33.

Under UNCLOS, Article 75, coastal States proclaiming an EEZ must be shown on “charts of a scale or scales adequate for ascertaining [the] . . . position [of EEZ outer limit lines and Article 74 lines of delimitation].” The State must give due publicity to such charts and must deposit a copy with the U.N. Secretary-General.

UNCLOS, Article 76(9), requires a State proclaiming a continental shelf to deposit with the Secretary-General “charts” and other information permanently describing the shelf’s outer limits; the Secretary-General must give due publicity to this. Subject to other rules in UNCLOS, Part V, on the shelf, Article 84 requires that shelf outer limit lines and Article 83 lines of delimitation must be shown on “charts of a scale or scales adequate for ascertaining their position.” Coastal States must give due publicity to such charts and must deposit copies with the Secretary-General and a copy showing the outer limits of the shelf with the Authority Secretary-General.

UNCLOS, Article 47(8), requires an archipelagic State to show archipelagic baselines on “charts of a scale or scales adequate for ascertaining their position.” Under Article 47(9), that State must give due publicity to these charts and must deposit a copies of these with the U.N. Secretary-General.

Under UNCLOS, Article 22(4), coastal States must “clearly indicate sea lanes and traffic separation schemes [in the territorial sea] on charts to which due publicity shall be given.” Article 41(6) recites the same standard for sea lanes and traffic separation schemes in straits; Article 53(10) has the same rules for archipelagic States.

UNCLOS, Article 134(3), says requirements concerning deposit of and publicity given to charts showing limits of the Area are in UNCLOS, Part

160. 2 COMMENTARY, *supra* note 19, ¶ 5.4(c); 2 O’CONNELL, *supra* note 62, at 646-47. Annex 1, *supra* note 67, at 322, defines “chart” as “[a] special-purpose map generally [that] meet[s] the needs of marine navigation; also called *nautical chart* or *navigational chart*” (emphasis in original).

161. Cf. 2 O’CONNELL, *supra* note 62, at 645.

VI, which declares continental shelf rules, thereby incorporating Articles 76(9) and 84 by reference.

UNCLOS, Article 1(1)(2), defines the "Authority." *Tentative Draft No. 1*, ¶ B, proposes a definition for "coastal State;" ¶ F, for "ocean space" or "sea." This *Interim Draft*, ¶ A.7, proposes a definition for "chart datum;" ¶ B.6, for "due publicity;" ¶ G.1 for "outer limit;" ¶ G.7, for "routing system;" ¶ G.8, for "scale;" ¶ G.9, for "sea-bed;" ¶ I.10, for "traffic separation scheme."¹⁶²

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of "chart" is proposed, based on the *Glossary* and taking into account different requirements for different charts in UNCLOS:

"Chart" as used in the 1982 LOS Convention is a nautical map specially designed to meet the needs of marine navigation. A chart depicts such information as depths of water, nature of the sea-bed, configuration and nature of the coast, dangers and aids to navigation, in a standardized format. Convention provisions may require different scales of charts, official coastal State recognition of a chart, publicity standards and depository rules.

In LOAC-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁶³

A.7. "Chart Datum"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 92, defines "chart datum" in defining "tide" as "[t]he tidal level to which depths on a nautical chart are referred to constitutes a vertical datum called chart datum." The *Glossary* notes, "[w]hile there is no universally agreed chart datum level, under an International Hydrographic Conference Resolution (A 2.5) it 'shall be a plane so low that the tide will seldom fall below it.'"

162. See also 2 COMMENTARY, *supra* note 19, ¶¶ 5.1-5.3, 5.4(c)-5.4(d), 6.1-6.6, 6.7(e), 16.1-16.8(e), 22.1-22.9, 41.1-41.8, 47.1-47.8, 47.9(m), 53.1-53.8, 53.9(l), 75.1-75.5(d), 76.1-76.18(a), 76.18(l), 84.1-84.9(c); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.1; 1 O'CONNELL, *supra* note 72, at 205-06; 2 O'CONNELL, *supra* note 62, at 636, 645-47.

163. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

“Chart datum” does not appear as a term in any LOS Convention.

This *Interim Draft*, ¶ A.6, proposes a definition for “chart;” ¶ D.2, for “geodetic datum;” ¶ I.9, for “tide.”¹⁶⁴

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “chart datum” is proposed, based on the *Glossary*:

Under 1982 the LOS Convention, “chart datum” means the tidal level to which depths on a nautical chart refer constitutes a vertical datum called chart datum. While there is no universally agreed chart datum level, under International Hydrographic Conference Resolution A 2.5, it is a plane so low that the tide will seldom fall below it.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁶⁵

A.8. “Closing Line”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 16, defines “closing line,” citing UNCLOS, Articles 9-11: “[a] line that divides the internal waters and territorial seas of a coastal State or the archipelagic waters of an archipelagic State. It is most often used in the context of establishing the baseline at the entrance to rivers . . . , bays . . . , and harbors”

UNCLOS, Article 9, and its counterpart in the Territorial Sea Convention, Article 14, refer to a “straight line across the mouth of the river . . . where it enters the sea.” UNCLOS, Article 10(4), and its counterpart in the Territorial Sea Convention, Article 7(4), refer to a “closing line” across the entrance to a bay more than twenty-four miles across. UNCLOS, Article 11 and its counterpart in the Territorial Sea, Article 8, establishing rules for ports, do not mention lines of any kind. UNCLOS, Article 50, allows an archipelagic State to draw “closing lines” to delimit its internal waters in accordance with Articles 9-11. Other UNCLOS and Territorial Sea Convention provisions refer to “baselines” or “lines” for the territorial sea, contiguous

164. See also NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.1 n.12.

165. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

zone, EEZ, continental shelf, archipelagic States or the Area. The phrase “closing line” is not used in those provisions.

Tentative Draft No. 1, ¶ F proposes definitions for “ocean space” and “sea.” This *Interim Draft*, ¶ A.4, proposes a definition for “base point” in discussing baselines; ¶ G.4 proposes a definition for “river.”¹⁶⁶

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “closing line” is proposed, based on the *Glossary*:

“Closing line” is a line dividing the internal waters and territorial seas of a coastal State or the archipelagic waters of an archipelagic State, most often used in the context of establishing the baseline at the entrance to rivers, bays and harbors as stated in the 1982 LOS Convention, Articles 9-11 and 50.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁶⁷

B.1. “Continental Rise”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 20, defines the “continental rise” as “[a] submarine feature which is a part of the continental margin lying between the continental slope and the abyssal plain. It is usually a gentle slope with gradients of 1/2 degree or less and a generally smooth surface consisting of sediments.”¹⁶⁸

UNCLOS, Article 76(3), defines the continental margin as “the submerged prolongation of the land mass of the coastal State, and consist[ing] of the seabed and subsoil of the [continental] shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil

166. The *Annex 1*, *supra* note 67, at 322, definition of “closing line” is almost the same as the *Glossary* definition. See also 2 COMMENTARY, *supra* note 19, ¶¶ 9.1-9.5(e), 10.1-10.4, 10.5(d), 11.1-11.5(d); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.3 & Figs. 1-2 to 1-4; 1 O’CONNELL, *supra* note 72, at 352-53, 381-84, 389; 2 O’CONNELL, *supra* note 62, at 647-48; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

167. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

168. *Accord* 2 COMMENTARY, *supra* note 19, ¶ 76.18(d). *Annex 1*, *supra* note 67, at 323, defines “continental rise” as “[a] submarine feature which is that part of the continental margin lying between the continental slope and the deep ocean floor.”

thereof.” Article 76(6), setting a 350-mile outer continental shelf limit, says its terms do not apply to “submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.” UNCLOS does not refer to “continental rise” or otherwise refer to “rise.” There are no comparable Continental Shelf Convention provisions.

UNCLOS does not use the term “abyssal plain.” Article 1(1)(1), defining the Area, includes “the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction[.]” as does the Preamble, referring to U.N. General Assembly Resolution 2749, Declaration of Principles on the Seabed and Ocean Floor (Dec. 17, 1970).¹⁶⁹ UNCLOS, Article 76(3), refers to the “deep ocean floor.” Article 56(3), reciting EEZ rights, says rights related to the “sea-bed and subsoil thereof shall be exercised in accordance with Part VI[.]” referring to the law of the continental shelf. The basic shelf definition, Article 76(1), refers to “the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin. . . .” Article 77(4) says continental shelf natural resources include “mineral and other non-living resources of the sea-bed and subsoil. . . .” Article 194(3)(c) includes among measures dealing with marine pollution sources those designed to minimize pollution from installations and devices used in exploring or exploiting “sea-bed and subsoil” natural resources.

This *Interim Draft*, ¶ A.4 discusses UNCLOS, Articles 76(3) and 76(6) in connection with baselines and basepoints. This *Interim Draft*, ¶ B.2, proposes a definition for “continental slope;” ¶ B.4, for “deep ocean floor.”¹⁷⁰

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “continental rise” is proposed, based on the *Glossary* definition and accounting for the context of “rise” in UNCLOS, which does not use the phrase “abyssal plain:”

As used in the 1982 LOS Convention, Articles 76(3) and 76(6), “rise” means a submarine feature that is a part of the continental margin lying between the continental slope and the deep ocean floor. It is usually a gentle slope with gradients of 1/2 degree or less and a generally smooth surface consisting of sediments.

169. G.A. Res. 2749, U.N. GAOR, 25th Sess., Supp. No. 28, at 24, ¶¶ 1-4, 9, U.N. Doc. A/8028 (1970); see also RESTATEMENT (THIRD), *supra* note 12, § 523 rep. n.2.

170. See also 2 COMMENTARY, *supra* note 19, ¶¶ 76.1-76.17, 76.18(d) & Fig. 2; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6 & Fig. A1-2; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁷¹

B.2. “Continental Slope”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 22 defines the “continental slope” as “[t]hat part of the continental margin that lies between the shelf and the rise[, s]imply called the slope in article 76.3. The slope may not be uniform or abrupt, and may locally take the form of terraces. The gradients are usually greater than 1.5 degrees.”¹⁷²

UNCLOS, Article 76(3), defines the continental margin as “the submerged prolongation of the land mass of the coastal State, and consist[ing] of the seabed and subsoil of the [continental] shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.” Article 76(4)(a)(ii) requires a coastal State to establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the territorial sea’s breadth is measured, by “a line delineated in accordance with [Article 76(7)] by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.” (Article 76[4][a][i] gives another measuring option, not relevant to this analysis.) Article 76(4)(b) says that absent contrary evidence, “the foot of the continental slope shall be determined as the point of maximum change in the gradient.”

This *Interim Draft*, ¶ A.4 discusses lines while proposing a definition of “basepoint.” It proposes a definition for “closing line” in ¶ A.7; for “continental rise,” in ¶ B.1; for “deep ocean floor,” in ¶ B.4.¹⁷³

2. Comments

The Chair researched the proposed definition.

171. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

172. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 76.18(d). *Annex 1*, *supra* note 67, at 323, defines “continental slope” as “[t]hat part of the continental margin that lies between the [continental] shelf and the [continental] rise.”

173. See also 2 *COMMENTARY*, *supra* note 19, ¶¶ 76.1-76.17, 76.18(d) & Fig. 2; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6 & Fig. A1-2; *RESTATEMENT (THIRD)*, *supra* note 12, §§ 511-12, 515.

3. Conclusions

This definition of “continental slope” is proposed, based on the *Glossary* and UNCLOS, Article 76:

“Continental slope” or “slope” as used in the 1982 LOS Convention, Article 76, means that part of the continental margin lying between the continental shelf and the continental rise. The continental slope may not be uniform or abrupt, and may locally take the form of terraces. The continental slope’s gradients are usually greater than 1.5 degrees.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁷⁴

B.3. “Danger to Navigation” and “Danger to Overflight”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 23, defines “danger to navigation” as “[a] hydrographic feature or environmental condition that might operate against the safety of navigation.” The *Glossary* does not define “danger to overflight.”

UNCLOS, Article 24(2), following the Territorial Sea Convention Article 15(2) rule, requires a coastal State to give “appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea.” UNCLOS, Article 44 requires “States bordering straits . . . [to] give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge. There shall be no suspension of transit passage.” A State declaring an EEZ must, under Article 60(3), have a permanent warning system for artificial islands, installations or structures in its EEZ. Article 80 applies this rule to the continental shelf, echoing Continental Shelf Convention, Article 5(5). UNCLOS, Article 121 applies the UNCLOS rules to an island’s territorial sea, EEZ or shelf. Article 54, governing archipelagic States’ rights and duties, applies Article 44, thereby requiring an archipelagic State to give appropriate publicity to any danger to navigation or overflight within or over archipelagic sea lanes of which the archipelagic State has knowledge. Article 225 says that States in enforcing environmental laws or regulations “shall not endanger the safety of navigation or otherwise create any hazard to a vessel. . . .”

UNCLOS does not define “danger to navigation” or “danger to overflight.” UNCLOS differentiates between navigation, relating to vessels, and overflight, relating to aircraft operations while in flight. See, for example,

174. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

UNCLOS, Articles 87(1)(a) (freedom of navigation), 87(1)(b) (freedom of overflight); and High Seas Convention, Articles 2(1), 2(4) (freedom of navigation, freedom to fly over the high seas). It is therefore appropriate to define the terms separately. There is no right, analogous to straits transit or archipelagic waters passage, of aircraft innocent passage through the territorial sea. See UNCLOS, Articles 2, 19(2)(e); Territorial Sea Convention, Articles 1-2 and 14.¹⁷⁵

2. Comments

The Chair researched the proposed definitions.

3. Conclusions

Following the *Glossary*, this definition of “danger to navigation” is proposed:

“Danger to navigation” as used in the 1982 LOS Convention, Article 24(2) and as incorporated by reference in Articles 54 and 121, means a hydrographic feature, a condition violating Articles 60 or 80 and as incorporated by reference in Articles 54 and 121, or an environmental condition, that might operate against the safety of navigation.

By analogy to the proposed definition for “danger to navigation,” this definition for “danger to overflight” is proposed:

“Danger to overflight” as used in the 1982 LOS Convention, Article 44 and as incorporated by reference in Articles 54 and 121, means a hydrographic feature, a condition violating Articles 60 or 80 and as incorporated by reference in Articles 54 and 121, an environmental condition, or any other obstruction the Convention does not authorize, that might operate against the safety of overflight as permitted by the Convention.

The final phrase, “as permitted by the Convention,” continues the prohibition against territorial sea overflight but would allow high seas overflight while forbidding dangers to overflight there. See UNCLOS, Articles 2, 19(2)(e); Territorial Sea Convention, Articles 1, 2, 14, 87(1)(a), 87(1)(b); High Seas Convention, Articles 2(1) and 2(4). The freedom of high seas

175. See also Convention on International Civil Aviation, Dec. 7, 1944, art. 1, 61 Stat. 1180, 15 U.N.T.S. 295, 297; Joint Statement on Uniform Interpretation of Rules of International Law Governing Innocent Passage, Sept. 23, 1989, USSR-U.S., ¶¶ 3-7, 89 DEP'T ST. BULL. 25, 26 (Nov. 1989), 28 I.L.M. 1444 (1989) [hereinafter Joint Statement]; 2 COMMENTARY, *supra* note 19, ¶¶ 2.1-2.8(f), 19.1-19.9, 19.10(b), 19.10(f), 19.11, 21.12, 24.1-24.7(a), 24.7(c), 24.7(e)-24.8, 54.1-54.7(b), 60.1-60.15(m), 80.1-80.9; 3 COMMENTARY, *supra* note 43, ¶¶ 121.1-121.12(c); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.4.2, 1.4.3, 1.5.2, 1.6-1.8, 2.3.2-2.3.2.4, 2.3.4-2.3.4.2, 2.5.1; *Annex 1*, *supra* note 67, at 323 (defining “danger to navigation” as “[a]ny feature or condition that might hinder, obstruct, endanger, or otherwise prevent safe navigation” but offers no definition for “danger to overflight”).

overflight, subject to regulations in the LOS Conventions for the contiguous zone, EEZ, continental shelf, or the Area, remains for those sea areas. UNCLOS, Articles 1(1)(1), 33, 58, 78, 87, 134; Territorial Sea Convention, Article 24(1); Continental Shelf Convention, Article 3; High Seas Convention, Article 2(4).

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, different definitions may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁷⁶

B.4. “Deep Ocean Floor”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 24, defines “deep ocean floor” as “[t]he surface lying at the bottom of the deep ocean with its oceanic ridges, beyond the continental margin.”¹⁷⁷

UNCLOS’ Preamble cites U.N. General Assembly Resolution 2749, which *inter alia* declared that the area of the seabed and subsoil and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of humankind, the exploration and exploitation of which shall be carried out for the benefit of humankind as a whole, irrespective of the geographical location of States. Article 1(1)(1) defines the Area as the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction. Article 76(3) defines the continental margin as “the submerged prolongation of the land mass of the coastal State, and consist[ing] of the seabed and subsoil of the [continental] shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.”

This *Interim Draft*, ¶ A.4 discusses UNCLOS, Articles 76(3) and 76(6), in connection with baselines and basepoints. This *Interim Draft*, ¶ B.1, proposes a definition for “continental rise;” ¶ B.2, for “continental slope.”¹⁷⁸

2. Comments

The Chair researched the proposed definition.

176. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

177. *Accord 2* COMMENTARY, *supra* note 19, ¶ 76.18(d); *Annex 1*, *supra* note 67, at 323.

178. See also 2 COMMENTARY, *supra* note 19, ¶¶ 76.1-76.17, 76.18(d) & Fig. 2; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6 & Fig. A1-2; RESTATEMENT (THIRD), *supra* note 12, § 523.

3. Conclusions

Following the *Glossary*, this definition of “deep ocean floor” is proposed:

As used in the 1982 LOS Convention, Article 76(3), “deep ocean floor” means the surface lying at the bottom of the deep ocean with its oceanic ridges, beyond the continental margin.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁷⁹

B.5. “Delta”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 26, defines “delta” as “[a] tract of alluvial land enclosed and traversed by the diverging mouths of a river.”¹⁸⁰

UNCLOS, Article 7(2), says that where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points [for the baseline(s)] may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with” UNCLOS. However, Article 9, following Territorial Sea Convention, Article 13, says that if a river flows directly into the sea, the baseline is a straight line across the river mouth between points on the low-water line of its banks.

This *Interim Draft*, ¶ A.4, discusses baselines while proposing a definition for “basepoint” or “point;” ¶ A:7 proposes a definition for “closing point,” and also discusses these lines; ¶¶ E.2 and G.4 propose definitions for “mouth” and “river.”¹⁸¹

2. Comments

The Chair researched the proposed definition.

179. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

180. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 7.9(a); *Annex 1*, *supra* note 67, at 323.

181. See also 2 COMMENTARY, *supra* note 19, ¶¶ 7.9.1-7.9(d), 9.1-9.5(e); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.4; 1 O’CONNELL, *supra* note 72, at 221-30, 398 n.12; 2 O’CONNELL, *supra* note 62, at 682-83; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

3. Conclusions

Following the *Glossary*, this definition of “delta” is proposed:

As used in the 1982 LOS Convention, Article 7(2), “delta” means a tract of alluvial land enclosed and traversed by the diverging mouths of a river.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁸²

B.6. “Drying Reef”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 66, defines “drying reef” as “[t]hat part of a reef which is above water at low tide but submerged at high tide.”¹⁸³

UNCLOS, Article 47(1), allows an archipelagic State to draw straight archipelagic baselines joining the outermost points of the archipelago’s outermost islands and drying reefs, provided that the main islands are included within such baselines and an area in which the ratio of the area of the water to the area of the land, including atolls, is between one to one and nine to one. .

Article 47(7) says that to compute the ratio of water to land under Article 47(1), land areas may include waters lying within islands’ and atolls’ fringing reefs, including that part of a steep-sided oceanic plateau enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the plateau perimeter.

This *Interim Draft*, ¶ A.2, proposes a definition for “atoll;” ¶ C.2, for “fringing reef;” ¶ D.12, for “low water line” or “low water mark;” ¶ F.1, for “oceanic plateau;” ¶ G.3, for “reef;” in proposing a definition for “base-point” or “point,” ¶ A.4 discusses baselines.¹⁸⁴

2. Comments

The Chair researched the proposed definition.

182. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

183. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 47.9(b).

184. See also *id.* ¶¶ 47.1-47.9(c), 47.9(l); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.5; 1 O’CONNELL, *supra* note 72, at 185-96; RESTATEMENT (THIRD), *supra* note 12, § 511.

3. Conclusions

Following the *Glossary*, this definition of “drying reef” is proposed:

As used in the 1982 LOS Convention, Articles 47(1) and 47(7), “drying reef” means that part of a reef which is above water at low tide but submerged at high tide.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁸⁵

B.7. “Due Notice,” “Notice,” “Appropriate Publicity,” and “Due Publicity”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 27, defines “due publicity” as “[n]otification of a given action for general information through appropriate authorities within a reasonable amount of time in a suitable manner.” The *Glossary* does not define “due notice” or other similar terms. It adds a suggestion that “[I]n addition to notification to concerned States through diplomatic channels, more immediate dissemination to mariners may be achieved by passing the information directly to national Hydrographic Offices for inclusion in their Notices to Mariners.”

UNCLOS, Articles 16(2), 47(9), 75(2) and 84(2), require States to give “due publicity” to charts or lists of geographic coordinates, as well as depositing copies of these, with the U.N. Secretary-General, for their baselines measuring the territorial sea and lines delimiting them under Articles 7, 9, 10, 12 and 15; for their archipelagic State baselines; for their EEZ outer limit lines; and for their continental shelf outer lines. Article 76(9) requires coastal States to deposit charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf, with the U.N. Secretary-General. The Secretary-General must give “due publicity” to these charts and relative information. Article 21(3) requires “due publicity” to coastal State laws and regulations, adopted in conformity with the Convention and “other rules of international law,” relating to innocent passage through the territorial sea, permitted under Articles 21(1) and 21(2). Article 22(4) requires “due publicity” of charts clearly indicating sea lanes and traffic separation schemes. Under Article 53(7), an archipelagic State may, when circumstances require, after giving “due publicity,” substitute sea lanes or traffic separation schemes for those previously designated or prescribed. Article 53(10) requires archipelagic states to clearly indicate axis of sea

185. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

lanes and traffic separation they designate or prescribe on charts; they must give “due publicity” to these charts.

UNCLOS, Article 41(2), allows States bordering straits, when circumstances require, after giving “due publicity,” to substitute other sea lanes or traffic separation schemes for those previously designated or prescribed. Article 41(6) requires these States to clearly indicate sea lanes or traffic separation schemes they designate or prescribe on charts “to which due publicity shall be given.” Under Article 42(3) these States must give “due publicity” to their laws and regulations governing transit straits passage permitted by Articles 42(1), 42(2) and 44. Under Article 54, these rules apply *mutatis mutandis* to archipelagic sea lanes passage.

Under Article 211(3), States establishing particular requirements for preventing, reducing and controlling marine environmental pollution as a condition for foreign vessel entry into their ports or internal waters or for an offshore terminal call must give “due publicity” to these requirements and must communicate them to the competent international organization.

The Territorial Sea Convention, Article 9, requires “due publicity” to be given to charts “clearly demarcat[ing] roadsteads outside the territorial sea.”

UNCLOS, Article 60(3), requires “[d]ue notice” of construction of artificial islands, installations or structures in the EEZ; Article 60(5) requires “due notice” of safety zones around these artificial islands, installations or structures. Article 60(3) also requires “[a]ppropriate publicity” of the depth, position and dimensions of any installations or structures not entirely removed. Article 80 applies these rules *mutatis mutandis* to the continental shelf. Article 62(5) requires a coastal state establishing an EEZ to give “due notice” of its conservation and management laws and regulations. Article 51(2) requires an archipelagic State to allow maintaining and replacing existing submarine cables after receiving “due notice” of the cables’ location and intention to repair or replace them. Article 147(2)(a) requires “due notice” of erection, emplacement and removal of installations in the Area.

The Continental Shelf Convention, Article 5(5), requires “[d]ue notice” of construction of installations on the continental shelf.

Tentative Draft No. 1, ¶ G proposes a definition for “other rules of international law.” This *Interim Draft*, ¶ A.1, proposes a definition for “artificial island;” ¶ A.4, for “basepoint” or “point” and discusses baselines; ¶ A.6, for “chart;” ¶ A.8, for “closing line.”¹⁸⁶

186. *Annex 1, supra* note 67, at 323 (defining “due publicity” as “[n]otification of a given action for general information through appropriate authorities within a reasonable amount of time in a suitable manner”). *See also* 2 COMMENTARY, *supra* note 19, ¶¶ 16.1-16.7, 16.8(c)-16.8(e), 21.1-21.10, 21.11(h), 21.12, 22.1-22.9, 41.1-41.8, 41.9(b), 42.1-42.9, 42.10(j), 42(10)(l), 47.1-47.8, 47.9(m), 51.1-51.6, 51.7(g)-51.7(i), 53.1-53.8, 53.9(l), 54.1-54.7(b), 60.1-60.15(c), 60.15(e)-60.15(f), 60.15(h), 62.1-62.16(a), 62.16(k)-62.16(l), 75.1-75.4, 75.5(c)-75.5(d), 76.1-76.18(a), 76.18(l), 84.1-84.9(c); 4 COMMENTARY, *supra* note 30, ¶¶ 211.1-211.15(f); *Tentative Draft No. 1, supra* note 15, ¶ G.

2. Comments

The Chair researched the proposed definitions.

3. Conclusions

Following the *Glossary* general format, this definition of “due notice,” “notice,” “appropriate publicity,” and “due publicity” is proposed:

As used in the 1982 LOS Convention, “due notice,” “notice,” “appropriate publicity” and “due publicity” mean communication of a given action for general information through appropriate authorities within a reasonable amount of time in a suitable manner.

Besides communication to concerned States and international organizations as the Convention requires through diplomatic or other designated channels, more immediate dissemination to mariners and airmen may be achieved by passing information directly to national hydrographic offices or analogous national government offices for inclusion in governments’ Notices to Mariners or Notices to Airmen as appropriate.

The second paragraph follows the *Glossary* recommendation, adding references to international organizations, analogous governmental offices for those countries that do not have separate hydrographic offices for Notices to Mariners (NOTMARs) or have offices dealing with Notices to Airmen (NOTAMs). Those exercising freedoms of overflight stand on the same footing of needing notice through NOTAMs as mariners through NOTMARs.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁸⁷

B.8. “Equidistance Line;” “Median Line”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶¶ 29 and 51 define “equidistance line” or “median line” as “[a] line every point of which is equidistant from the nearest points on the baselines of two or more States between which it lies.”

UNCLOS, Article 15, *inter alia* provides that when two States’ coasts are opposite or adjacent to each other, unless there is an agreement between them, neither State may extend its territorial sea “beyond the median line every point of which is equidistant from the nearest points on the baselines” from which the territorial sea’s breadth is measured. The Territorial Sea Convention, Article 12(1) recites the same formula, omitting the agreement

187. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

exception. The Continental Shelf Convention, Articles 6(1) and 6(2), has the same formula as UNCLOS, Article 15, but the analogous UNCLOS provisions for the shelf and the EEZ, Articles 74, 83 and 134(4), do not.

This *Interim Draft*, ¶ A.4, proposes a definition for “basepoint” or “point” and discusses baselines; ¶ A.8 proposes a definition for “closing line.”¹⁸⁸

2. Comments

The Chair researched the proposed definitions.

3. Conclusions

Following the *Glossary*, these definitions of “equidistance line,” “equidistant line” and “median line” are proposed:

In the 1982 LOS Convention, an “equidistance line,” synonymous with “equidistant line” or “median line,” means a line every point of which is equally distant from the nearest points on the baselines of two or more States between which an equidistance line, equidistant line or a median line lies.

Although only UNCLOS, Article 15, uses the term “equidistant,” the definition has been more broadly stated to take into account agreements contemplated by, e.g., Articles 74, 83 or 134(4), or the Continental Shelf Convention, Articles 6(1) and 6(2).

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁸⁹

B.9. “Estuary”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 30, defines “estuary” as “[t]he tidal mouth of a river, where the tide meets the current of fresh water.”¹⁹⁰

188. *Annex 1, supra* note 67, at 324, 326, defines “median line” as “[a] line every point of which is equidistant from the nearest points on the baselines of two States.” *See also* 2 COMMENTARY, *supra* note 19, ¶¶ 15.1-15.12(d); 2 O’CONNELL, *supra* note 62, at 637-39; RESTATEMENT (THIRD), *supra* note 12, § 516.

189. *See Tentative Draft No. 1, supra* note 15, ¶ G.

190. *Accord* 2 COMMENTARY, *supra* note 19, ¶ 1.22, at 42. *Annex 1, supra* note 67, at 324, defines “estuary” differently: “[t]he tidal mouth of a river, where freshwater comes into contact with seawater and where tidal effects are evident.”

UNCLOS, Article 1(1)(4), defines “pollution of the marine environment” as

introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities[.]

Article 207(1) requires States to adopt laws and regulations “to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.”

This *Interim Draft*, ¶ E.2, proposes a definition for “mouth” of a river; ¶ G.4, for “river.”¹⁹¹

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “estuary” is proposed:

As used in the 1982 LOS Convention, Articles 1(1)(4) and 207(1), “estuary” means the tidal mouth of a river where the tide meets the current of fresh water.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁹²

C.1. “Foot of the Continental Slope”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 34, recites UNCLOS, Article 76(4)(b) and says the foot of the continental slope “is the point where the continental slope meets the continental rise or, if there is no rise, the deep ocean floor.” The *Glossary* adds: “To determine the maximum change of gradient requires

191. See also 2 COMMENTARY, *supra* note 19, ¶¶ 1.1-1.15, 1.1.24; 4 COMMENTARY, *supra* note 30, ¶¶ 207.1-207.7(a); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.4 & n.24; 1 O’CONNELL, *supra* note 72, at 221-25; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

192. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

adequate bathymetry covering the slope and a reasonable extent of the rise, from which a series of profiles may be drawn and the point of maximum change of gradient located.”

UNCLOS, Articles 76(4)(a)(i) and 76(4)(a)(ii), use the continental slope as a point of reference for the continental margin. Article 76(4)(b) says that absent contrary evidence, “the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.”

In proposing a definition for “basepoint” or “point,” this *Interim Draft*, ¶ A.4, discusses UNCLOS, Article 76. This *Interim Draft*, ¶ B.1, proposes a definition for “continental rise;” ¶ B.2, for “continental slope;” ¶ B.4, for “deep ocean floor.”¹⁹³

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “foot of the continental slope” is proposed:

As used in the 1982 LOS Convention, Article 76, “foot of the continental slope” means the point where the continental slope meets the continental rise or, if there is no rise, the deep ocean floor.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁹⁴

C.2. “Fringing Reef”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 66, defines “fringing reef” as “[a] reef attached directly to the shore or continental land mass, or located in their immediate vicinity.”

UNCLOS, Article 6, says that in the cases of islands on atolls or islands having fringing reefs, the baseline for measuring the territorial sea’s breadth

193. *Annex 1*, *supra* note 67, at 324 (defining “foot of the continental slope” as “[t]he point of maximum change of gradient at the base of the continental slope”). See also 2 COMMENTARY, *supra* note 19, ¶¶ 76.1-76.18(a), 76.18(e)-76.18(g); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6 & Fig. A1-2; RESTATEMENT (THIRD), *supra* note 12, §§ 511, 515, 523.

194. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

is the seaward low-water line of the reef, as shown by the appropriate signal on charts the coastal State officially recognizes.

Article 47(7), says that to compute the water-land ratio under Article 47(1), land areas may include waters lying within islands' and atolls' fringing reefs, including that part of a steep-sided oceanic plateau enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the plateau perimeter.

Tentative Draft No. 1 proposes a definition for "coastal State." This *Interim Draft*, ¶ A.2, proposes a definition for "atoll;" ¶ A.6, for "chart;" ¶ B.6, for "drying reef;" ¶ D.12, for "low water line" or "low water mark;" ¶ F.1, for "oceanic plateau;" ¶ G.3, for "reef;" in proposing definitions for "base-point" or "point," ¶ A.4 discusses baselines.¹⁹⁵

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of "fringing reef" is proposed:

As used in the 1982 LOS Convention, Articles 6, 47(7), "fringing reef" means a reef attached directly to the shore or continental land mass, or located in their immediate vicinity.

In LOAC-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁹⁶

D.1. "Geodetic Data"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 35, defines "geodetic data" as "[i]nformation concerning points established by a geodetic survey, such as descriptions for recovery, coordinate values, height above sea level and orientation."

UNCLOS, Article 76(9), requires a coastal State to deposit with the U.N. Secretary-General charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf.

195. See also 2 COMMENTARY, *supra* note 19, ¶¶ 6.1-6.7(e), 47.1-47.8, 47.9(i); 1 O'CONNELL, *supra* note 72, at 185-96; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.5; RE-STATEMENT (THIRD), *supra* note 12, §§ 511-12.

196. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

Tentative Draft No. 1, ¶ F, proposes definitions for “ocean space” or “sea.” This *Interim Draft*, ¶ A.6, proposes a definition for “chart;” ¶ D.2, for “geodetic datum.”¹⁹⁷

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “geodetic data” is proposed:

In the 1982 LOS Convention, “geodetic data” means information concerning points established by a geodetic survey, such as descriptions for recovery, coordinate values, height above sea level and orientation.

Although the term seems to appear only in UNCLOS, Article 76(9), the definition is more inclusive, to take into account UNCLOS-related agreements that may use the term.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.¹⁹⁸

D.2. “Geodetic Datum”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 36, defines “geodetic datum:”

A datum defines the basis of a coordinate system. A local or regional geodetic datum is normally referred to an origin whose coordinates are defined. The datum is associated with a specific reference which best fits the surface (geoid) of the area of interest. A global geodetic datum is now related to the center of the Earth’s mass, and its associated spheroid is a best fit to the known size and shape of the whole Earth.

The *Glossary* also says “geodetic datum is also known as the horizontal datum or horizontal reference datum,” commenting: “The position of a point common to two different surveys executed on different geodetic datums will be assigned two different sets of geographical coordinates. It is important, therefore, to know what geodetic datum has been used when a position is

197. *Annex 1*, *supra* note 67, at 324 (defining “geodetic data” as “[i]nformation concerning points established by a geodetic survey, such as descriptions for recovery, coordinate values, height, and orientation”). See also 2 COMMENTARY, *supra* note 19, ¶ 76.1-76.18(a), 76.18(l); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6.

198. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

defined[.]” and that “[t]he geodetic datum must be specified when lists of geographical coordinates are used to define the baselines and the limits of some zones of jurisdiction[.]” citing UNCLOS, Articles 16(1), 47(8), 75(1) and 84(1).

UNCLOS, Article 16(1), refers to a list of geographical coordinates of points, which specify the geodetic datum, as an alternative for charts showing territorial sea baselines as stated in Articles 7, 9, 10, and lines of delimitation in Articles 12 and 15. Article 47(8) gives the same option for archipelagic baselines. Article 75(1) gives the same option for EEZ outer limit lines and lines of delimitation. Article 84(1) gives the same option for continental shelf outer limit lines and lines of delimitation.

This *Interim Draft*, ¶ D.1 proposes a definition for “geodetic data.”¹⁹⁹

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, these definitions of “geodetic datum” are proposed:

As used in the 1982 LOS Convention, “geodetic datum” means the horizontal datum or horizontal reference datum. A datum defines the basis of a coordinate system. A local or regional geodetic datum is normally referred to an origin whose coordinates are defined. The datum is associated with a specific reference which best fits the surface (geoid) of the area of interest. A global geodetic datum is now related to the center of the Earth’s mass; its associated spheroid is a best fit to the known size and shape of the whole Earth.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁰⁰

199. *Annex 1*, *supra* note 67, at 324, defines “geodetic datum” as “[a] set of parameters specifying the reference surface or the reference coordinate system used for geodetic control of in the calculation of coordinates of points on the Earth. Commonly, datums are defined as horizontal and vertical datums separately.” See also 2 COMMENTARY, *supra* note 19, ¶¶ 16.1-16.8(b), 47.1-47.8, 47.9(m), 84.1-84.9(a); 2 O’CONNELL, *supra* note 62, at 635-37, 648-49; Alan Dodson & Terry Moore, *Geodetic Techniques*, in COOK & CARLETON, *supra* note 67, ch. 6.

200. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

D.3. “Geographical Coordinates” or “Geographic Coordinates”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 37, defines “geographical coordinates” as “[u]nits of latitude and longitude which define the position of a point on the Earth’s surface with respect to the ellipsoid of reference.”

The *Glossary*, ¶ 79, says that “[t]he most common system of coordinates are those of latitude and longitude, although rectangular coordinates on the Universal Transverse Mercator Grid (quoting the appropriate zone number), Marsden Squares, Polar Grid Co-ordinates, etc. are also unambiguous.”

The *Glossary*, ¶ 37, notes that latitude is expressed in degrees, minutes and seconds or decimals of a minute, from zero degrees to ninety degrees north or south of the Equator. Lines or circles joining points of equal latitude are known as “parallels of latitude” or “parallels.” Longitude is expressed in degrees, minutes and seconds or decimals of a minute, from zero degrees to 180 degrees east or west of the Greenwich meridian. Lines joining points of equal longitude are known as “meridians.” Latitude and longitude definitions are proposed separately at *Interim Draft*, ¶¶ D.9, D.11.

UNCLOS, Article 16(1), refers to a list of geographical coordinates of points, which specify the geodetic datum, as an alternative for charts showing territorial sea baselines as stated in Articles 7, 9 and 10, and lines of delimitation in Articles 12 and 15. Article 16(2) requires the coastal State to give these lists of geographical coordinates due publicity and to deposit a copy of each list with the U.N. Secretary-General. Articles 47(8) and 47(9) offer the same option and impose the same requirements for archipelagic baselines. Article 75 offers the same option and imposes the same requirements for EEZ outer limit lines and lines of delimitation. Article 84 offers the same option and imposes the same requirements for continental shelf outer limit lines and lines of delimitation. Article 134(3) refers to Articles 1(1)(1) and 84 and governs deposit of and publicity for lists with respect to the Area. Annex III, Articles 8 and 17(2)(a), refer to the unmodified word “coordinates,” although the context strongly suggests that “geographic coordinates” are meant.

This *Interim Draft*, ¶ A.4, proposes a definition for “basepoints” or “points” and discusses baselines; ¶ A.6 proposes a definition for “chart;” ¶ D.2, for “geodetic datum.”²⁰¹

201. *Annex I, supra* note 67, at 324, defines “geographical coordinates” as “[a] system of spherical coordinates for defining the positions of points on the Earth.” *See also* 2 COMMENTARY, *supra* note 19, ¶¶ 16.1-16.8(e), 47.1-47.8, 47.9(m), 75.1-75.5(d), 84.1-84.9(c); RESTATEMENT (THIRD), *supra* note 12, § 511.

2. Comments

The Chair researched the proposed definition.

2. Conclusions

Following the *Glossary*, these definitions of “geographical coordinates,” “geographic coordinates” or “coordinates” are proposed:

As used in the 1982 LOS Convention, arts 16, 47, 75, 84 and 134, “geographical coordinates” most commonly means units of latitude and longitude which define the position of a point on the Earth’s surface with respect to the ellipsoid of reference, which is the most common system of coordinates. Latitude is expressed in degrees, minutes and seconds or decimals of a minute, from 0 degrees to 90 degrees north or south of the Equator. Lines or circles joining points of equal latitude are known as “parallels of latitude” or “parallels.” Longitude is expressed in degrees, minutes and seconds or decimals of a minute, from 0 degrees to 180 degrees east or west of the Greenwich meridian. Lines joining points of equal longitude are known as “meridians.” Rectangular geographical coordinates that are unambiguous, such as those on the Universal Transverse Mercator Grid (quoting the appropriate zone number), Marsden Squares or Polar Grid Coordinates, may also be used under the Convention. “Coordinates” as used in the Convention, Annex III, Articles 8 and 17(2)(a), is synonymous with “geographic co-ordinates” found elsewhere in the Convention.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁰²

D.4. “Harbor Works”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 38, defines “harbor works” as “[p]ermanent man-made structures built along the coast which form an integral part of the harbor system such as jetties, moles, quays, or other port facilities, coastal terminals, wharves, breakwaters, sea walls, etc.”²⁰³

UNCLOS, Article 11, says that for delimiting the territorial sea, “the outermost permanent harbor works which form an integral part of the harbor system are regarded as forming part of the coast. Offshore installations and

202. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

203. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 11.5(c). *Annex 1*, *supra* note 67, at 324-25, supplies a nearly identical definition of “harbor works”: “[p]ermanent synthetic structures built along the coast which form an integral part of the harbor system, such as jetties, moles, quays, or other port facilities, coastal terminals, wharves, breakwaters, sea walls, etc.”

artificial islands shall not be considered as permanent harbor works.” The Territorial Sea Convention, Article 8 says that for delimiting the territorial sea, “the outermost permanent harbor works which form an integral part of the harbor system shall be regarded as forming part of the coast.” As this *Interim Draft*, ¶ A.4, demonstrates, territorial sea baselines anchored in coastal points are the predicate for delimiting, e.g., the contiguous zone, the EEZ and the continental shelf.²⁰⁴

Tentative Draft No. 1, ¶ B proposes a definition for “coastal State.”²⁰⁵

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “harbor works” is proposed:

As used in the 1982 LOS Convention, Article 11, “harbor works” means permanent human-made structures built along the coast which form an integral part of the harbor system such as jetties, moles, quays, or other port facilities, coastal terminals, wharves, piers, breakwaters, sea walls, etc.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁰⁶

D.5. “Historic Bay”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 39, defines “historic bay” as “those [bays] over which the coastal State has publicly claimed and exercised jurisdiction[,] and this jurisdiction has been accepted by other States. Historic bays need not meet the requirements prescribed in the definition of “bay” contained in [UNCLOS,] article 10(2).”

UNCLOS, Articles 10(1)-10(5), establish rules for bays belonging to a single State. If a bay as defined in the Convention has a closing line of a distance not exceeding twenty-four nautical miles between two low-water marks, a closing line may be drawn between two low-water marks, and wa-

204. See also *Consolidated Glossary*, *supra* note 4, at 54.

205. See also 2 COMMENTARY, *supra* note 19, ¶¶ 11.1-11.5(d); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.6; 1 O’CONNELL, *supra* note 72, at 385; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

206. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

ters thus enclosed are considered internal waters, according to Article 10(4). Under Article 2(1), internal waters are part of a coastal State's sovereign territory. If the distance between the low-water marks is more than twenty-four nautical miles, Article 10(5) requires that a straight baseline of twenty-four nautical miles must be drawn within the bay to enclose the maximum area of water with a line of that length. The Territorial Sea Convention, Articles 1(1) and 7(1)-7(5) recite the same rules.²⁰⁷

UNCLOS, Article 10(6), and the Territorial Sea Convention, Article 7(6), say that the "foregoing provisions do not apply to so-called 'historic bays,' or in any case where the system of straight baselines provided for in [UNCLOS, Article 7, Territorial Sea Convention, Article 4] is applied." UNCLOS, Article 15, providing rules for opposite and adjacent territorial seas, excepts from its application "where it is necessary by reason of historic title or other special circumstances to delimit the territorial sea of the two States in a way that is at variance therewith." The Territorial Sea Convention, Article 12(1) has a similar exception.

UNCLOS, Article 298(1)(a), allows a State signing, ratifying or acceding to the Convention, "or at any time thereafter . . . without prejudice to the obligations" under Articles 279-85, to declare it does not accept the UNCLOS compulsory dispute resolution procedures, Articles 286-96, with respect to disputes concerning interpretation of Article 15 relating to sea boundary delimitations or those involving historic bays or titles. After the Convention is in force, a declaring State must submit to UNCLOS, Annex V § 2 conciliation unless it reaches agreement with States concerned. After conciliators report, States party must reach agreement based on the report. If there is no agreement, the States must submit the question to an Article 286-96 dispute resolution procedure, unless they otherwise agree. The Article 298 procedure does not apply if settlement methods under a binding bilateral or multilateral agreement are in force.

What are "historic bays" has been a subject of controversy; the UNCLOS, Article 298(1), exception for them and historic title cases illustrates the sensitivity of the issue. United States policy is that

To meet the international standard for establishing a claim to a historic bay, a nation must demonstrate its open, effective, long term, and continuous exercise of authority over the bay, coupled with acquiescence by foreign nations in the exercise of that authority. The United States has taken the position that an actual showing of acquiescence by foreign nations in such a claim is required, as opposed to a mere absence of opposition.²⁰⁸

207. For commentary and illustrations, see NWP 1-14 ANNOTATED, *supra* note 4, ¶ 1.3.3 & Figs. 1-2 to 1-4.

208. NWP 1-14 ANNOTATED, *supra* note 4, ¶ 1.3.3.1, *inter alia*, citing Assistant Legal Adviser for Ocean Affairs Bernard H. Oxman, Sept. 17, 1973 memorandum, Law of the Sea and International Waterways, 1973 DIGEST § 2, at 244 (1974) (U.S. historic bays position); L.F.E. Goldie, *Historic Bays in International Law—An Impressionistic Overview*, 11 SYRACUSE J. INT'L L. & COM. 205, 221-23, 248, 259 (1984); *United States v. Alaska*, 422 U.S. 184,

Other countries' policies may be different. Historic bay claims that are controversial include Argentina's and Uruguay's for Rio de la Plata; Australia's for Anxious Bay, Encounter Bay, Lacedpede Bay and Rivoli Bay; Cambodia's for the Gulf of Thailand; Canada's for Hudson Bay; India and Sri Lanka's for Palk Bay and the Gulf of Manaar; Italy's for the Gulf of Taranto; Libya's for the Gulf of Sidra (Sirte); Panama's for the Gulf of Panama; the former USSR's for the Gulf of Riga and Peter the Great Bay; and Vietnam's for the Gulfs of Tonkin and Thailand.²⁰⁹

This *Tentative Draft No. 1*, ¶ B proposes a definition for "coastal State."

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of "historic bay" is proposed:

As used in the 1982 LOS Convention, Article 10(6), "historic bay" means a bay over which a coastal State has publicly claimed and exercised jurisdiction, and this jurisdiction has been accepted by other States. Historic bays need not meet requirements prescribed in the definition of "bay" in the Convention, Article 10(2).

This definition appears to follow the United States position, shortening "open, effective, long term, and continuous exercise of authority" to "publicly claimed and exercised" and otherwise following the *Glossary* formula. Other States may have different views. Given continuing controversy over certain water areas' eligibility for historic bay status, it serves no purpose to list specific bays in the definition.

In LOAC-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²¹⁰

200 (1975). Fisheries (U.K. v. Nor.), 1951 I.C.J. 116, 138-39, would say toleration is sufficient; see also 2 COMMENTARY, *supra* note 19, ¶¶ 10.1-10.6; 1 O'CONNELL, *supra* note 72, chs. 9A, 10-11; 2 O'CONNELL, *supra* note 62, at 647-48; RESTATEMENT (THIRD), *supra* note 12, § 511, cmt. f & rep. n.5. Annex 1, *supra* note 67, at 325, supplies a simple definition: "[a] bay over which a coastal State has claimed and exercised jurisdiction."

209. NWP 1-14 ANNOTATED, *supra* note 4, ¶ 1.3.3.1 n.23 & Table A1-14.

210. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

D.6. "Hydrographic Survey"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 40, defines "hydrographic survey" as "[t]he science of measuring and depicting those parameters necessary to describe the precise nature and configuration of the seabed and coastal strip, its geographical relationship to the land mass, and the characteristics and dynamics of the sea." The *Glossary* adds: "Hydrographic surveys may be necessary to determine the features that constitute baselines or basepoints and their geographical positions."

UNCLOS, Article 19(2)(j), says that a foreign ship's passage is considered prejudicial to coastal State peace, good order or security, i.e., it is not innocent passage if it engages in carrying out "research" (otherwise not qualified) or "survey" (also otherwise not qualified) activities in the territorial sea. Article 21(1)(g) provides that a coastal State may adopt laws and regulations, in conformity with UNCLOS, relating to innocent passage through the territorial sea, for MSR and hydrographic surveys. In other words, a coastal State may allow hydrographic surveys in its territorial sea pursuant to UNCLOS; if there are no coastal State laws or regulations governing these surveys, conducting them is a violation of the innocent passage regime. Article 121(2) incorporates the territorial sea regime by reference for islands. The Territorial Sea Convention, Article 14, has no specific prohibition on surveys during innocent passage; Article 14(4) says "[p]assage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with [Articles 14-23] and other rules of international law." Article 17 requires foreign ships in innocent passage to comply with laws and regulations of the coastal State in conformity with Articles 14-23 and other rules of international law and, in particular, with laws and regulations relating to transport and navigation. Article 21 applies these rules to government ships operated for commercial purposes. As to government ships operated for non-commercial purposes, Article 22(1) applies these rules as well, but Article 22(2) says that with exceptions in Articles 21 and 22(1), nothing in Articles 14-23 affects immunities that government non-commercial ships enjoy under Articles 14-23 or other rules of international law. Article 10(2) says an island's territorial sea is measured by Articles 1-13.²¹¹

UNCLOS, Article 40, forbids MSR and hydrographic survey activities during straits transit passage without prior authorization of States bordering straits. Article 45 imposes an innocent passage regime on straits covered by Article 38(1) and straits between a part of the high seas or an EEZ and a foreign State's territorial sea, thereby incorporating Articles 19(2)(j) and 21(1)(g) by reference. Article 54 incorporates Article 40 by reference for

211. See also *Consolidated Glossary*, *supra* note 4, at 61.

archipelagic sea lanes passage, thereby forbidding hydrographic survey activity during archipelagic sea lanes passage without the archipelagic State's prior authorization. The Territorial Sea Convention, Article 16(4) says the innocent passage regime for straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State may not be suspended.

UNCLOS, Annex III, Article 17(2)(b)(ii), governing rules, regulations and procedures for exercise of the Authority's functions in the Area, says that these rules, regulations and procedures must fully reflect objective criteria, *inter alia*, for duration of exploration operations to permit a thorough survey of a specific area.

Tentative Draft No. 1, ¶ B, proposes a definition for "coastal State;" ¶ G, for "other rules of international law;" ¶ I, for "ship" or "vessel." This *Interim Draft*, ¶ G.9, proposes a definition for "sea-bed;" ¶ A.4, for "base-point" and "point" while discussing baselines.²¹²

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of "hydrographic survey" is proposed:

"Hydrographic survey" means the science of measuring and depicting those parameters necessary to describe the precise nature and configuration of the seabed and coastal strip, its geographical relationship to the land mass, and the characteristics and dynamics of the sea. Hydrographic surveys are among the "surveys" contemplated by the 1982 LOS Convention, Articles 19(2)(j), 21(1)(g), 40, 45, 54 and 121(2).

Hydrographic surveys may be necessary to determine the features that constitute baselines or basepoints and their geographical position.

In LOAC-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may

212. *Annex 1*, *supra* note 67, at 325, defines "hydrographic survey" as "[t]he science of measuring and depicting those parameters necessary to describe the precise nature and configuration of the seabed and coastal strip, its geographical relationship to the landmass, and the characteristics and dynamics of the sea." *See also* Joint Statement, *supra* note 175, ¶ 3; 2 COMMENTARY, *supra* note 19, ¶¶ 19.1-19.9, 19.10(j), 19.11, 21.1-21.11(a), 21.11(d), 40.1-40.9(d), 45.1-45.8(c), 54.1-54.7(b); 3 COMMENTARY, *supra* note 43, ¶¶ 121.1-121.11, 121-12(b); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 2.3.2-2.3.2.4, 2.3.3-2.3.3.2, 2.3.4.2, 2.4.2.1-2.4.3; 1 O'CONNELL, *supra* note 72, ch. 7; 2 O'CONNELL, *supra* note 62, at 867-74, 959-65, 1026-33; RESTATEMENT (THIRD), *supra* note 12, §§ 511-13.

be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²¹³

D.7. "Isobath"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 44, defines "isobath" as "[a] line representing the horizontal contour of the seabed at a given depth."

UNCLOS, Article 76(5), requires that fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with Articles 76(4)(a)(i) and 76(4)(a)(ii), either may not exceed 350 nautical miles from the baselines from which the territorial sea's breadth is measured or may not exceed 100 nautical miles from the 2500-meter isobath, which is a line connecting the depth of 2500 meters.

The term "isobath" can also refer to lines depicting pressure gradients on weather charts or maps.

Tentative Draft No. 1, ¶ F, proposes a definition for "ocean space" or "sea." This *Interim Draft*, ¶ G.9, proposes a definition for "sea-bed."²¹⁴

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of "isobath" is proposed:

In the 1982 LOS Convention, "isobath" means a line representing the horizontal contour of the seabed at a given depth.

Although only UNCLOS, Article 76(5), recites the term, it appears to be a term of general usage and might appear on charts and other documents UNCLOS requires.

In LOAC-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²¹⁵

213. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

214. *Annex 1*, *supra* note 67, at 325 defines "isobath" as "[a] line representing the horizontal contour of the seabed at a given depth." See also 2 COMMENTARY, *supra* note 19, ¶¶ 76.1-78.18(a), 76.18(h); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6 & Fig. A1-2; 1 O'CONNELL, *supra* note 72, at 443-49; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515, 523.

215. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

D.8. “Land Territory;” “Land Domain”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 45, defines “land territory” as “[a] general term in the Convention that refers to both insular and continental land masses that are above water at high tide,” citing UNCLOS, Articles 2(1) and 76(1). It does not define “land domain,” to which Article 7(3) refers.

UNCLOS, Article 2(1), declares that sovereignty of a coastal State extends “beyond its land territory and internal waters and, in the case of an archipelagic State [defined in Article 46(a)], its archipelagic waters [defined in Article 46(b)], to an adjacent belt of sea, described as the territorial sea.” Article 76(1) says the continental shelf of a coastal State comprises the seabed and subsoil of submarine areas extending beyond its territorial sea “throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to 200 nautical miles from baselines from which the territorial sea’s breadth is measured where the continental margin’s outer edge does not extend up to that distance.”

Measurement for territorial sea baselines begins at the low-water line, Articles 5, 6, 7(2), and 9, as does the Territorial Sea Convention, Articles 3 and 13. UNCLOS, Articles 7(4) and 13, define and set rules for low-tide elevations, as does the Territorial Sea Convention, Article 11; if a low-tide elevation is beyond the territorial sea’s breadth from the mainland or an island, it has no territorial sea of its own. On the other hand, if a low-tide elevation is wholly or partly within the breadth of the territorial sea, its low-water line may be used as a territorial sea baseline. The regime of bays, Articles 10(3)-10(5), refers to low-water marks; the Territorial Sea Convention, Articles 7(3)-7(5), also does so. UNCLOS appears to refer to the high tide line only in defining an island, Article 121(1). The Territorial Sea Convention, Article 10(1) declares the same rule.

UNCLOS, Article 8(1), says waters on the landward side of territorial sea baselines are part of a coastal State’s internal waters, except in the case of archipelagic States. The Territorial Sea Convention, Article 5(1) states the same rule, omitting reference to archipelagic States. Under Article 49, archipelagic States have sovereignty over archipelagic waters defined in Article 47, subject to rules in Articles 46-54. Article 50 allows archipelagic States to draw closing lines for its internal waters in accordance with Articles 9-11. Article 7(3), *inter alia*, says sea areas within straight baselines “must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.” The Territorial Sea Convention, Article 4(2), uses the same language.

If the *Glossary* high-tide rule is adopted, the result can be a belt of land that appears between high and low tide that could be said to be subject to an internal waters regime at high tide and while there is sea covering it, and a land regime at low tide when no water covers it. The *Glossary* definition

does not account for waters within the land mass, e.g., rivers, streams lakes or ponds that have no outlet to the sea through rivers or other internal waters. An example of the latter is the Great Salt Lake in the United States.

It would seem that a definition of land territory should refer to the high-water mark, but with a transition to LOS criteria (e.g., internal waters) when land between the low and high water marks is covered with water. It would seem, also, that the definition should include waters which are not connected to rivers or internal waters as defined in the Convention.

Tentative Draft No. 1, ¶ F, proposes definitions for “ocean space” or “sea.” This *Interim Draft*, ¶ G.4, proposes a definition for “river.”²¹⁶

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “land territory” is proposed:

“Land territory” as used in the 1982 LOS Convention, Articles 2(1), 76(1), or “land domain” as used in Article 7(3), means general terms referring to island and continental land masses above water at high tide, and land connected to these masses and uncovered between high and low tide. When land territory or land domain under this definition is submerged, it becomes subject to law of the sea rules, e.g., those in Article 8(1) for internal waters. Land territory or land domain also includes rivers, streams, lakes, ponds and the like, within islands or continental land masses, that do not connect with the sea through internal waters or rivers flowing into the sea.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²¹⁷

D.9. “Latitude”

1. Discussion and Analysis

In proposing a definition for “geographical coordinates,” or “geographic coordinates,” this *Interim Draft*, ¶ D.3, notes that the *Consolidated Glossary*, ¶ 37 says latitude is expressed in degrees, minutes and seconds or decimals

216. *Annex 1*, *supra* note 67, at 325 defines “land territory” as “. . . [i]nsular and continental landmasses that are above water at high tide.” See also 2 COMMENTARY, *supra* note 19, ¶¶ 2.1-2.8(c), 7.1-7.8, 7.9(e), 76.1-76.18(b); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.4.1; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515.

217. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

of a minute, from zero degrees to ninety degrees north or south of the Equator. Lines or circles joining points of equal latitude are known as “parallels of latitude” or “parallels.”

UNCLOS, Article 76(7), refers to “coordinates of latitude.” The word’s meaning is also critical to understanding geographical coordinates, geographic coordinates, and charts generally. This *Interim Draft*, ¶ A.4, discussing baselines, proposes definitions for “basepoints” and “points;” ¶ A.6, for “chart;” ¶ D.11, for “longitude.” Although the *Glossary*, ¶ 63 lists “parallel of latitude” separately, a separate definition seems unnecessary.²¹⁸

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “latitude” is proposed:

In preparing geographical coordinates or geographic coordinates and for similar purposes under the 1982 LOS Convention, latitude is expressed in degrees, minutes and seconds or decimals of a minute, from 0 degrees to 90 degrees north or south of the Equator. Lines or circles joining points of equal latitude are known as “parallels of latitude” or “parallels.”

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²¹⁹

D.10. “Line of Delimitation”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 47, defines “line of delimitation” as “[a] line drawn on a map or chart depicting the separation of any type of maritime jurisdiction,” noting that “[a] line of delimitation may result . . . from unilateral action or from bilateral agreement and, in some cases, the State(s) concerned may be required to give due publicity.”

UNCLOS refers to lines of delimitation in many contexts: the territorial sea, Articles 15, 16(1), 60(8), 147(2)(e), 259; archipelagic State internal waters, Article 50; the EEZ, Articles 74, 75(1), 147(2)(e), 259; the continental shelf, Articles 76(10), 83, 134(4), 147(2)(e), 259 and Annex II, Article 9;

218. See generally 2 O’CONNELL, *supra* note 62, ch. 16. Annex 1, *supra* note 67, at 325 defines “latitude” as “[o]ne of the coordinates that describes a geographical position; angular distance of a position from the equator.”

219. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

territorial sea, EEZ or shelf opposite or adjacent coasts, Articles 15, 74(1), 76(10), 83(1), 134(4) and Annex II, Article 9; special circumstances or historic title, Article 15; disputes regarding delimitations, Articles 298(1)(a)(i), 298(a)(iii) and Annex II, Article 9. Article 208(1), requiring coastal States to adopt laws to prevent, reduce and control pollution from artificial islands, etc., cross-references to Article 60, which is also incorporated into Article 246(5)(b), which allows coastal States to withhold consent to MSR under certain conditions. Some Articles also require filing with international organizations, e.g., the U.N. Secretary-General, besides giving due publicity.

The Territorial Sea Convention also refers to delimiting or delimitation, Article 8, as does the Continental Shelf Convention, Article 6(3).

Tentative Draft No. 1, ¶ B proposes a definition for “coastal State.” This *Interim Draft*, ¶ A.4, in discussing baselines proposes definitions for “base-point” and “point;” ¶ A.6, for “chart.”²²⁰

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “line of delimitation” is proposed:

In the 1982 LOS Convention, “line of delimitation” means a line drawn on a map or chart depicting the separation of any type of maritime jurisdiction. A line of delimitation may result from unilateral action or from agreement of States.

Reference to “publicity” has been dropped; the revised definition refers to “agreement of States,” because in some cases more than bilateral agreements may be involved.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²²¹

220. See also 2 COMMENTARY, *supra* note 19, ¶¶ 15.1-15.12(d), 16.1-16.8(b), 50.1-50.6(b), 60.1-60.15(c), 60.15(k)-60.15(m), 74.1-74.11(f), 75.1-75.5(d), 76.1-76.18(a), 76.18(m), 83.1-83.19(b); 4 COMMENTARY, *supra* note 30, ¶¶ 208.1-208.10(d), 246.1-246.17(f); 2 O'CONNELL, *supra* note 62, ch. 16; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 514-17.

221. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

D.11. “Longitude”

1. Discussion and Analysis

In proposing a definition for “geographical coordinates” or “geographic coordinates,” ¶ D.3 of this *Interim Draft* notes that the *Consolidated Glossary*, ¶ 37 says that longitude is expressed in degrees, minutes and seconds or decimals of a minute, from zero degrees to 180 degrees east or west of the Greenwich meridian. Lines joining points of equal longitude are known as “meridians.”

UNCLOS, Article 76(7), refers to “coordinates of . . . longitude.” The word’s meaning is also critical to understanding geographical coordinates, or geographic coordinates, and charts generally. This *Interim Draft*, ¶ A.4, discussing baselines, proposes definitions for “basepoints” and “points;” A.6, for “chart;” ¶ D.9, for “latitude.”²²²

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “longitude” is proposed:

In preparing geographical coordinates or geographic coordinates and for similar purposes under the 1982 LOS Convention, longitude is expressed in degrees, minutes and seconds or decimals of a minute, from 0 degrees to 180 degrees east or west of the Greenwich meridian. Lines joining points of equal longitude are known as “meridians.”

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²²³

D.12. “Low Water Line” or “Low Water Mark”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 50, defines “low-water line” or “low-water mark” as “[t]he intersection of the plane of low water with the shore[,

222. See generally 2 O’CONNELL, *supra* note 62, ch. 16. Annex 1, *supra* note 67, at 325, defines “longitude” as “[o]ne of the coordinates that describes a geographical position; angular distance of a position from an initial meridian.”

223. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

or t]he line along a coast, or beach, to which the sea recedes at low water.” The *Glossary* also notes:

It is the normal practice for the low-water line to be shown as an identifiable feature on nautical charts unless the scale is too small to distinguish it from the high-water line or where there is no tide so that the high and low water lines are the same. The actual water level taken as low-water for charting purposes is known as the level of chart datum.²²⁴

Measurement for territorial sea baselines begins at the low-water line, Articles 5, 6, 7(2), and 9, as does the Territorial Sea Convention, Articles 3, 13. UNCLOS, Articles 7(4) and 13, define and set rules for low-tide elevations, as does the Territorial Sea Convention, Article 11; if a low-tide elevation is beyond the territorial sea’s breadth from the mainland or an island, it has no territorial sea of its own. On the other hand, if a low-tide elevation is wholly or partly within the breadth of the territorial sea, its low-water line may be used as a territorial sea baseline. The regime of bays, Articles 10(3)-10(5), refers to low-water marks; the Territorial Sea Convention, Articles 7(3)-7(5), also does so.

Hydrographers report that regression of low-water marks is a rare phenomenon.²²⁵ However, determining where low-water marks should be can be less than an exact science.²²⁶

Tentative Draft No. 1, ¶ B proposes a definition for “coastal State;” ¶ F, for “ocean space” and “sea.” This *Interim Draft*, ¶ D.8, proposing definitions for “land territory” and “land domain,” discusses these and other LOS Convention provisions; ¶ A.6 proposes a definition for “chart.”²²⁷

2. Comments

The Chair researched the proposed definition.

224. *Accord* 2 COMMENTARY, *supra* note 19, ¶ 5.4(b). *Annex 1*, *supra* note 67, at 325, offers a slightly different definition for “low-water line” or “low water mark”: “[t]he intersection of the plane of low water with the shore; the line along a coast, or beach, to which the sea recedes at low water.” *Annex 1* defines “low-tide elevation as “. . . a naturally formed area of land . . . surrounded by and above water at low tide but submerged at high tide.” *Id.*

225. 2 COMMENTARY, *supra* note 19, ¶ 7.9(c).

226. Before the LOS Conventions, which reflect recent State practice, high tide was the benchmark in some quarters. There are at least eleven choices of tide level for hydrological purposes. Low tide for hydrological purposes may therefore not be the same as the juridical definition. *See generally* 1 O’CONNELL, *supra* note 72, at 173-83. As *Tentative Draft No. 1*, *supra* note 15, ¶ E comments in defining “mile” and “nautical mile,” Murphy’s Law of Measurements suggests that disputes will occur between competing claims for the low tide line. *Cf. supra* note 66.

227. *See also* 2 COMMENTARY, *supra* note 19, ¶¶ 5.1-6.7(e), 7.1-7.9(a), 7.9(c)-7.9(d), 7.9(f), 9.1-9.5(e), 10.1-10.5(f), 13.1-13.5(b); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.1; 1 O’CONNELL, *supra* note 72, at 173-83, 398-99; 2 O’CONNELL, *supra* note 62, at 635-37; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

3. Conclusions

Following the *Glossary*, this definition of “low water line” or “low water mark” is proposed, substituting “low tide” for “low water”:

In the 1982 LOS Convention, the phrases “low-water line” or “low-water mark” are synonymous. They mean the intersection of the plane of low water with the shore, or the line along a coast or beach to which the sea recedes at low tide.

It is the normal practice for the low-water line to be shown as an identifiable feature on nautical charts unless the scale is too small to distinguish it from the high-water line or where there is no tide so that the high and low water lines are the same.

The actual water level taken as low water for charting purposes is known as the level of chart datum.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²²⁸

E.1. “Mouth” of a Bay

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 53 defines “mouth” of a bay as “the entrance to the bay from the ocean.” The *Glossary* comments that UNCLOS, Art 10(2).

states “a bay is a well-marked indentation,” and the mouth of that bay is “the mouth of the indentation.” Articles 10(3), 10(4) and 10(5) refer to “natural entrance points of a bay,” Thus i[t] can be said that the mouth of a bay lies between its natural entrance points. In other words, the mouth of a bay is its entrance. Although some States have developed standards by which to determine natural entrance points to bays, no international standards have been established.

Besides bays described in Articles 10(2)-10(5), Article 10(1) limits Article 10 coverage to bays, the coast of which belongs to a single State, i.e., Article 10 does not govern bays belonging to more than one State. Article 10(6) excludes from Article 10 coverage “so-called ‘historic bays,’ or in any case where the system of straight baselines provided for in [Article] 7 is applied.” The Territorial Sea Convention, Article 7 is similar to UNCLOS, Article 10.

This *Interim Draft*, ¶ A.4, discusses baselines in connection with proposing a definition for “basepoint” or “point;” ¶ D.5 proposes a definition

228. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

for “historic bay.” Not all bodies of waters that are labeled “gulf” or “bay” are considered “bays” within the meaning of the LOS Conventions; the latter are “juridical bays,” as distinguished from “geographic bays.”²²⁹

The *Glossary* definition seems to focus too narrowly in its elaboration. Any definition of a bay “mouth” should be understood to include those excluded from UNCLOS, Article 10, coverage.

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “mouth” of a bay is proposed:

In the 1982 LOS Convention “mouth” of a bay means the entrance to the bay from the ocean, including bays described in the Convention, Articles 10(2)-10(6), bays excluded from Article 10 coverage because they belong to more than one State, “historic bays” as provided in Article 10(6), or bays in which the Article 7 system of straight baselines applies.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²³⁰

E.2. “Mouth” of a River

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 54, defines “mouth” of a river as “[t]he place of discharge of a stream into the ocean.”

UNCLOS, Article 9, provides that “[i]f a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks.” The Territorial Sea Convention, Article 13, is the same, except where “low-tide” is used instead of “low-water” in UNCLOS, Article 9.

Commenting on UNCLOS, Article 9, the *Glossary* says in part: “Note that the French text of the Convention[, Article 9] is ‘si un fleuve se jette dans la mer sans former d’estuaire. . . .’ (underlining added)[.]” and that

229. *Annex 1*, *supra* note 67, at 326, defines “mouth” of a bay as “[t]he entrance to a bay from the ocean.” See also 2 COMMENTARY, *supra* note 19, ¶¶ 10.1-10.6; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.3 & Figs. 1-2 - 1.4; 1 O’CONNELL, *supra* note 72, chs. 9A, 10-11; 2 O’CONNELL, *supra* note 62, at 647-48; RESTATEMENT (THIRD), *supra* note 12, § 511, cmt. f & rep. n.5.

230. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

“[n]o limit is placed on the length of the line to be drawn.” The fact that the river must flow “directly into the sea” suggests that the mouth should be well marked, but otherwise the comments on the mouth of a bay apply equally to the mouth of a river.”

Tentative Draft No. 1, ¶ F, proposes definitions for “ocean space” and “sea.” This *Interim Draft*, ¶ A.4, in discussing baselines, proposes a definition for “basepoint” or “point;” ¶ B.7, for “estuary;” ¶ D.12, for “low water line” or “low water mark;” ¶ E.1, for “mouth” of a bay; ¶ G.4, for “river.”²³¹

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “mouth” of a river is proposed:

In the 1982 LOS Convention, Article 9, “mouth” of a river means the place of discharge of a stream into the ocean.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²³²

F.1. “Oceanic Plateau”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 59, defines “oceanic plateau” as “[a] comparatively flat-topped elevation of the seabed which rises steeply from the ocean floor on all sides and is of considerable extent across the summit.”

UNCLOS, Article 47(7), part of the Convention rules for archipelagic States, provides that

For the purpose of computing the ratio of water to land under [Article 47(1)], land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

231. *Annex 1*, *supra* note 67, at 326, defines “mouth” of a river as “[t]he place of discharge of a river into the ocean.” See also 2 COMMENTARY, *supra* note 19, ¶¶ 9.1-9.5(e); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.4; 1 O’CONNELL, *supra* note 72, at 221-30, 398; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

232. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

The *Glossary* recites a similar but not identical recitation of Article 47(7).

Tentative Draft No. 1, ¶ F, proposes definitions for “ocean space” and “sea.” This *Interim Draft*, ¶ A.2, proposes a definition for “atoll;” ¶ B.6, for “drying reef;” ¶ C.2, for “fringing reef;” ¶ D.4, for “deep ocean floor;” ¶ G.3, for “reef;” ¶ G.9, for “seabed.”²³³

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “oceanic plateau” is proposed:

In the 1982 LOS Convention, as used in Article 47(7), “oceanic plateau” means a comparatively flat-topped elevation of the seabed which rises steeply from the ocean floor on all sides and is of considerable extent across the summit.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²³⁴

F.2. “Oceanic Ridge”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 60, defines “oceanic ridge” as “[a] long elevation of the ocean floor with either irregular or smooth topography and smooth sides.”²³⁵

UNCLOS, Article 76(3), defining the continental margin, says “[i]t does not include the deep ocean floor with its ridges or the subsoil thereof.”

Tentative Draft No. 1, ¶ F proposes definitions for “ocean space” and “sea.” This *Interim Draft*, ¶ B.4, proposes a definition for “deep ocean floor;” ¶ I.6, for “submarine ridge;” ¶ I.7, for “subsoil.”²³⁶

233. *Annex 1*, *supra* note 67, at 326, defines “oceanic plateau” similarly: “[a] comparatively flat-topped elevation of the seabed which rises steeply from the ocean floor and is of considerable extent across the summit.” Geographic archipelagoes may not qualify as juridical archipelagoes under the LOS Convention. *See generally* 2 COMMENTARY, *supra* note 19, ¶¶ 47.1-47.8, 47.9(l); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.4.3, 1.6 & Fig. A1-2; 1 O’CONNELL, *supra* note 72, ch. 6; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515, 523.

234. *See Tentative Draft No. 1*, *supra* note 15, ¶ G.

235. *Accord* 2 COMMENTARY, *supra* note 19, ¶ 76.18(d). *Annex 1*, *supra* note 67, at 326, has a similar definition for “oceanic ridge”: “[a] long elevation of the deep ocean floor with . . . irregular or smooth topography and steep sides.”

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “oceanic ridge” is proposed:

In the 1982 LOS Convention, as used in Article 76(3), “oceanic ridge” means a long elevation of the ocean floor with irregular or smooth topography and smooth sides.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²³⁷

F.3. “Opposite Coasts”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 61, defines “opposite coasts” as “[t]he geographical relationship of the coasts of two States facing each other.”

UNCLOS, Articles 15, 74(1), 76(1), 83(1) and 134(4), and Annex II, Article 9, declare rules for delimiting sea boundaries for States with opposite and adjacent coasts. The Territorial Sea Convention, Article 12; and the Continental Shelf Convention, Article 6 also declare rules for delimiting sea boundaries for States with opposite and adjacent coasts.

Tentative Draft No. 1, ¶ B proposes a definition for “coastal State.” This *Interim Draft*, ¶ 1A, proposes a definition for “adjacent coasts.”²³⁸

2. Comments

The Chair researched the proposed definition.

236. See also 2 COMMENTARY, *supra* note 19, ¶¶ 76.1-76.18(a), 76.18(d) & Fig. 2; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6 & Fig. A1-2; 2 O’CONNELL, *supra* note 62, ch. 18A; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515, 523; Philip A. Symonds et al., *Ridge Issues*, in COOK & CARLETON, *supra* note 67, at 285.

237. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

238. The *Annex 1*, *supra* note 67, at 326, definition is identical. See also 2 COMMENTARY, *supra* note 19, ¶¶ 15.1-15.12(c), 47.1-47.9(m), 83.1-83.19(f); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.4.3, particularly n.42; 1.6, particularly n.57 & Fig. A1-2; 2 O’CONNELL, *supra* note 62, at 681, 684-90, 699-732; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 516-17.

3. Conclusions

Following the *Glossary*, this definition of “opposite coasts” is proposed:

As used in the 1982 LOS Convention, Articles 15, 74, 76, 83 and 134 and in the Convention’s Annex II, Article 9, “opposite coasts” means the geographical relationship of the coasts of two States facing each other.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²³⁹

G.1. “Outer Limit”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 62, defines “outer limit” as “[t]he extent to which a coastal State claims or may claim a specific jurisdiction in accordance with the provisions of the Convention.”

UNCLOS, Article 4, provides that the territorial sea outer limit is the line every point of which is at a distance from the nearest point of the baseline equal to the territorial sea’s breadth. The Territorial Sea Convention, Article 6 recites the same formula. UNCLOS, Art 33(2) says the contiguous zone may not extend beyond twenty-four nautical miles from baselines from which the territorial sea’s breadth is measured but does not use the phrase “outer limit.” The Territorial Sea Convention, Article 24(2), uses the same language but limits the contiguous zone to twelve miles.

Article 75(1) says that, subject to Articles 55-75, “the outer limit lines” of the EEZ and the lines of delimitation drawn in accordance with Article 74, stating rules for delimiting EEZs between States with opposite or adjacent coasts, must be shown on charts of a scale or scales adequate for ascertaining their position. Article 57 says the EEZ may not extend beyond 200 nautical miles from baselines from which the territorial sea’s breadth is measured.

Article 76(5) says fixed points comprising the continental shelf’s “outer limits,” drawn in accordance with Articles 76(4)(a)(i) and 76(4)(a)(ii), may not exceed 350 nautical miles from baselines from which the territorial sea’s breadth is measured, or may not exceed 100 nautical miles from the 2500-meter isobath, a line connecting the depth of 2500 meters. Article 76(8) provides that a coastal State must submit information on shelf “limits” beyond 200 nautical miles from baselines from which the territorial sea’s breadth is measured to the Commission on the Limits of the Continental Shelf UNCLOS, Annex II establishes. The Commission must make recommendations,

239. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

which are final and binding, on matters related to establishing “outer limits” of the shelf. Article 76(9) requires a coastal State to deposit with the U.N. Secretary-General charts and relevant information, including geodetic data, permanently describing its shelf’s “outer limits.” Subject to other provisions in Articles 76-85, Article 84(1) requires that shelf “outer limit lines” must be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points specifying the geodetic datum, may be substituted for these outer limit lines. Article 84(2) *inter alia* requires a coastal State, in the case of charts or lists showing “outer limit lines,” to deposit these with the Secretary-General of the Authority. Article 134(4) declares that nothing in Article 134 affects establishing shelf “outer limits” in accordance with Articles 76-85. Annex II, Article 3(1)(a), includes considering UNCLOS, Article 76(8), material among the functions of the Commission on Limits of the Continental Shelf. Annex II, Article 4 recites rules for coastal State submission of this material. Annex II, Article 7 requires establishing shelf “outer limits” in accordance with UNCLOS, Article 76(8) and appropriate national procedures. The Continental Shelf Convention, Article 1(a) defines the shelf as referring to the seabed and subsoil of submarine areas adjacent to the coast but outside the territorial sea, to a depth of 200 meters or, “beyond that limit,” where the superjacent waters’ depth allows exploitation of the area’s natural resources.

Tentative Draft No. 1, ¶ B, proposes a definition for “coastal State.” This *Interim Draft*, ¶ A.6, proposes a definition for “chart;” ¶ D.2, for “geodetic datum;” ¶ D.7, for “isobath;” in discussing baselines, ¶ A.4 proposes definitions for “basepoint” and “point.”²⁴⁰

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of “outer limit” is proposed:

Under the 1982 LOS Convention, “outer limit” means the extent to which a coastal State claims or may claim a specific jurisdiction in accordance with the Convention, Articles 4, 75, 76, 84 and Annex II. “Outer limit” also means the outer boundary of a contiguous zone States may claim or do claim under the Convention, Article 33.

240. *Annex 1*, *supra* note 67, at 327, has the same definition for “outer limit.” See also 2 COMMENTARY, *supra* note 19, ¶¶ 4.1-4.5(b), 33.1-33.8(i), 75.1-75.5(b), 76.1-76.18(a), 76.18(h), 84.1-84.9(a); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.4.2, 1.5.1-1.5.2, 1.6; 1 O’CONNELL, *supra* note 72, chs. 4-5, 13, 15; 2 O’CONNELL, *supra* note 62, chs. 16-18; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515.

This definition focuses on Convention provisions using the term and adds a definition for the contiguous zone “outer limit” where Article 33 does not use the phrase.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁴¹

G.2. “Port”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 65, defines “port” as “[a] place provided with various installations, terminals, and facilities for loading and discharging cargo or passengers.”

UNCLOS, Article 18(1), defining innocent passage, says that passage means “traversing [the territorial] sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or . . . proceeding to or from internal waters or a call at such roadstead or port facility.” The Territorial Sea Convention, Article 14(2), uses similar but not identical language. UNCLOS, Article 25(2), says that in the case of ships proceeding to internal waters “or a call at a port facility outside internal waters,” a coastal State also has a right to take necessary steps to prevent a breach of conditions to which admitting these ships to internal waters “or such a call” is subject. The Territorial Sea Convention, Article 16(2), uses similar but not identical language.

UNCLOS, Article 211(3), requires States establishing particular requirements for preventing, reducing and controlling marine environmental pollution as a condition for foreign vessel entry into their ports or internal waters or for a call at their offshore terminals must give due publicity to these requirements and must communicate them to the competent international organization. Subject to Articles 223-33, Article 219 requires a State ascertaining that a vessel within its port or at its offshore terminal is violating international rules and standards relating to seaworthiness and therefore is threatening damage to the marine environment must, as far as practicable, take administrative measures to prevent the vessel from sailing. Article 220(1) provides that when a vessel is voluntarily within a State’s port or at its offshore terminal, that State may, subject to Articles 223-33, institute proceedings for violation of its laws and regulations adopted in accordance with the Convention or international rules and standards for preventing, reducing and controlling pollution from vessels when the violation has occurred within that State’s territorial sea or EEZ. Article 220(3) provides that when there are clear grounds for believing a vessel navigating in a State’s

241. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

EEZ or territorial sea has committed, in the EEZ, a violation of international rules and standards, or that State's laws and regulations giving effect to these rules and standards, for preventing, reducing and controlling pollution from vessels, that State may require the vessel to give information regarding its identity and port of registry, its last and next ports of call, and other relevant information required to establish whether a violation has occurred. Article 225 requires that States not endanger the safety of navigation or otherwise create a hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk, in exercising environmentally-related enforcement measures against a foreign vessel.

UNCLOS, Article 92(1), requires that ships sail the high seas under one State's flag, and save in exceptional cases for which international treaties or UNCLOS provide, must be subject to flag State exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of real transfer of ownership or change of registry. The High Seas Convention, Article 6(1) is the same. UNCLOS, Article 98(1)(c), says that a State must require masters of ships flying its flag, insofar as the master can do so without serious danger to the master's ship, its crew or passengers, to render assistance after a collision to the other ship, its crew and passengers, and where possible, to inform the other ship of the master's ship, its port of registry, and the nearest port at which it will call. The High Seas Convention, Article 12(1)(c), is the same.

This *Interim Draft*, ¶ A.1 proposes definitions for "artificial island," "offshore installation" and "installation (off-shore);" ¶ G.5, for "roadstead."²⁴²

2. Comments

The Chair researched the proposed definition.

3. Conclusions

Following the *Glossary*, this definition of "port" is proposed:

Under the 1982 LOS Convention, "port" means a place provided with various installations, terminals and facilities for loading and discharging cargo or passengers.

242. *Annex 1*, *supra* note 67, at 327, has the same definition for "port." See also Ship Registration Convention, *supra* note 37, art. 4(5), 26 I.L.M. at 1236 (not in force); 2 COMMENTARY, *supra* note 19, ¶¶ 18.1-18.6(b), 25.1-25.8(c); 3 COMMENTARY, *supra* note 43, ¶¶ 92.1-92.6(d), 92.6(f), 98.1-98.11(a), 98.11(c); 4 COMMENTARY, *supra* note 30, ¶¶ 211.1-211.15(b), 211.15(g), 219.1-219.8(d), 220.1-220.11(c), 220.11(f), 220.11(l)-220.11(n), 225.1-225.9; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.6; 1 O'CONNELL, *supra* note 72, at 218-21, 275, 385; 2 O'CONNELL, *supra* note 62, at 738, 837, 842-58, 953-63; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 522. Eleven States are parties to the Ship Registration Convention, *supra* note 37. 2 MULTILATERAL TREATIES, *supra* note 37, at 42.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁴³

G.3. “Reef”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 66, defines “reef” as “[a] mass of rock or coral which either reaches close to the sea surface or is exposed at low tide.”²⁴⁴

UNCLOS, Article 6, says that in the cases of islands on atolls or islands having fringing reefs, the baseline for measuring the territorial sea’s breadth is the seaward low-water line of the “reef,” as shown by the appropriate signal on charts the coastal State officially recognizes.

Articles 47(1) and 47(7) refer to “fringing” and “drying” reefs.

Tentative Draft No. 1, ¶ B, proposes a definition for “coastal State;” ¶ F, for “ocean space” and “sea.” This *Interim Draft*, ¶ A.2, proposes a definition for “atoll;” ¶ A.6, for “chart;” ¶ B.6, for “drying reef;” ¶ C.2, for “fringing reef;” ¶ D.12, for “low water line” or “low water mark;” ¶ F.1, for “oceanic plateau;” ¶ G.6, for “rock;” in proposing a definition for “basepoint” or “point,” ¶ A.4 discusses baselines.²⁴⁵

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “reef” is proposed, based on the *Glossary*:

As used in the 1982 LOS Convention, Articles 6, 47(1) and 47(7), “reef” means a mass of rock or coral that reaches close to the sea surface or is exposed at low tide.

243. See *Tentative Draft No. 1*, *supra* note 15, ¶ G. E.g., Hague Convention XIII Concerning Rights and Duties of Neutral Powers in Naval War, Oct. 18, 1907, 36 Stat. 2415; Convention on Maritime Neutrality, Feb. 28, 1928, 47 Stat. 1989, 135 L.N.T.S. 187 (establishing rules for neutral ports and roadsteads during international armed conflict). See also, e.g., NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 7.3.2-7.3.2.3; 2 O’CONNELL, *supra* note 62, at 1126-30; SAN REMO MANUAL, *supra* note 18, ¶¶ 17, 21 & cmts.; *Helsinki Principles*, *supra* note 17, ¶¶ 1.4, 2.2, 5.1.1 and cmt., at 500, 502, 506.

244. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 6.7(a); *Annex 1*, *supra* note 67, at 327.

245. See also 2 COMMENTARY, *supra* note 19, ¶¶ 6.1-6.7(e), 47.1-47.9(c), 47.9(l); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.3.5, 1.4.3; 1 O’CONNELL, *supra* note 72, at 183-96, ch. 6; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 514.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁴⁶

G.4. “River”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 68, defines “river” as “[a] relatively large natural stream of water.”

UNCLOS, Article 9, provides that if a river flows directly into the sea, the territorial sea baseline must be a straight line across the river mouth between points on the low-water line of its banks. The Territorial Sea Convention, Article 13 declares the same rule, substituting “low-tide” for “low-water.”

UNCLOS, Article 66(1), says that States in whose rivers anadromous stocks of living resources originate have the primary interest in and responsibility for such stocks. Article 66(2) says the State of origin of these stocks must ensure their conservation by establishing appropriate regulatory measures for fishing in all waters landward of its EEZ outer limits and for fishing for which Article 66(3)(b) provides. The State of origin may, after consultations with other States referred to in Articles 3 and 4 that fish these stocks, establish total allowable catches for stocks originating in its rivers. Article 66(3)(c) provides that States to which Article 66(3)(b) refers, participating by agreement with the State of origin in measures to renew anadromous stocks, particularly by expenditures for that purpose, must be given special consideration by the State of origin in harvesting stocks originating in its rivers.

This *Interim Draft*, ¶ A.4, in proposing definitions for “basepoint” and “point,” discusses baselines; ¶ D.12; proposes a definition for “low water line” or “low water mark;” ¶ E.2, for “mouth” of a river; ¶ I.2, for “straight line.”²⁴⁷

The definition would not include tidal estuaries, as defined in this *Interim Draft*, ¶ B.9, i.e., the tidal mouth of a river where the tide meets the current of fresh water. “River” would also not include bodies of water connected to the sea that are not natural streams, e.g., the East River alongside Manhattan Island in the United States. The Hudson River, to the west of the Island, would be a “river” within the meaning of the proposed definition.

246. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

247. See also 2 COMMENTARY, *supra* note 19, ¶¶ 9.1-9.5(e), 66.1-66.9(a), 66.9(c), 66.9(g); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.3.4; 1 O’CONNELL, *supra* note 72, at 221-30; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 514; George Taft & Bilal Haq, *Deep Sea Fan Issues*, in COOK & CARLETON, *supra* note 67, ch. 19.

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “river” is proposed, based on the *Glossary*:

As used in the 1982 LOS Convention, Articles 9 and 66, “river” means a relatively large natural stream of water.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁴⁸

G.5. “Roadstead”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 69, defines “roadstead” as “[a]n area near the shore where vessels are intended to anchor in a position of safety; often situated in a shallow indentation of the coast.”

UNCLOS, Article 12, provides that roadsteads normally used for loading, unloading and anchoring ships, and which would otherwise be situated wholly or partly outside the territorial sea’s outer limit, are included in the territorial sea. The Territorial Sea Convention, Article 9, applies the same rule, adding that “the coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.” There is no equivalent in UNCLOS, Article 12. However, as the *Glossary*, ¶ 69 notes, “[I]n most cases roadsteads are not delimited by natural geographical limits, and the general location is indicated by . . . its geographical name on charts. . . . If [A]rticle 12 applies, . . . the limits must be shown on charts or must be described by . . . geographical coordinates.” See UNCLOS, Article 16.

Sometimes anchorage areas known in UNCLOS as a “roadstead” are shortened in nautical publications or charts to “roads,” e.g., Roosevelt Roads off Puerto Rico. Occasionally a general geographic area may be meant, e.g., Hampton Roads, but this should not be included within the definition, any more than “road” as a synonym for highway or street. “Road” in the sense of “rules of the road” refers to rules for seagoing traffic found in the COLREGS.

248. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

Tentative Draft No. 1, ¶ B proposes a definition for “coastal State;” ¶ I, for “ship” and “vessel.” This *Interim Draft*, ¶ A.6 proposes a definition for “chart.”²⁴⁹

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “roadstead” is proposed, based on the *Glossary*:

As used in the 1982 LOS Convention, Article 12, “roadstead” means an area near the shore where vessels are intended to anchor in a position of safety, often situated in a shallow indentation of the coast. Sometimes charts or nautical publications may substitute the word “roads” for “roadstead.”

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁵⁰

G.6. “Rock”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 70, defines “rock” as “[a] solid mass of limited extent.”

UNCLOS, Article 76(4)(a)(i), says that for Convention purposes, a coastal State must establish the continental margin’s outer edge wherever the margin extends beyond 200 nautical miles from baselines from which the territorial sea’s breadth is measured, by a line delineated in accordance with Article 76(7) “by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 percent of the shortest distance from such point to the foot of the continental slope;” or by another method not relevant to ¶ G.6. Article 121(3) declares that “[r]ocks which

249. The *Annex 1*, *supra* note 67, at 328, definition for “roadstead” is identical. *See also* 2 COMMENTARY, *supra* note 19, ¶¶ 12.1-12.4(c); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.4.2.3; 1 O’CONNELL, *supra* note 72, at 218-21, 385; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

250. *See Tentative Draft No. 1*, *supra* note 15, ¶ G. *E.g.*, Hague Convention XIII, *supra* note 243; Convention on Maritime Neutrality, *supra* note 243, recite rules for neutral ports and roadsteads during international armed conflict. *See also, e.g.*, NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 7.3.2-7.3.2.3; 2 O’CONNELL, *supra* note 62, at 1126-30; SAN REMO MANUAL, *supra* note 18, ¶¶ 17, 21 & cmts.; *Helsinki Principles*, *supra* note 17, ¶¶ 1.4, 2.2, 5.1.1 & cmt., at 500, 502, 506.

cannot sustain human habitation or economic life of their own have no exclusive economic zone or continental shelf.” The Territorial Sea Convention, Article 10 has no equivalent.

“Rocks” to which UNCLOS, Article 76(4)(a)(i), probably can be considerably smaller than those Article 121 contemplates; however, the generalized *Glossary* definition would seem to fit both. Adding the word “natural” before “mass” would exclude human-made materials like concrete, which the Convention does not appear to contemplate.²⁵¹

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “rock” is proposed, based on the *Glossary*:

As used in the 1982 LOS Convention, Articles 76 and 121, “rock” means a solid natural mass of limited extent.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁵²

G.7. “Routing System”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 71, defines “routing system” as “[a]ny system of one or more routes and/or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas and deep-water routes.”²⁵³

UNCLOS, Article 211(1), provides that States, acting through the competent international organization or general diplomatic conference, must establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote adoption, in the same manner, wherever appropriate, of “routing systems designed to mini-

251. *Annex 1, supra* note 67, at 328, defines “rock” differently: “[c]onsolidated lithology composed of minerals of igneous, metamorphic, or sedimentary origin.” *See also* 2 COMMENTARY, *supra* note 19, ¶¶ 76.1-76.18(a), 76.18(e)-76.18(g), 76.18(j); 3 COMMENTARY, *supra* note 43, ¶¶ 121.1-121.11, 121.12(c); 2 O’CONNELL, *supra* note 62, at 331-32; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515.

252. *See Tentative Draft No. 1, supra* note 15, ¶ G.

253. *Accord* 2 COMMENTARY, *supra* note 19, ¶ 41.9(h); *Annex 1, supra* note 67, at 328.

mize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage” to coastal State related interests. Such rules and standards must be reexamined from time to time in the same manner.

Coastal states may establish sea lanes and traffic separation schemes in the territorial sea, UNCLOS, Articles 22(1), 22(3), 22(4); for straits transit passage, Article 41; for straits innocent passage, Article 45, incorporating by reference Article 22; for archipelagic sea lanes passage, Article 53(6)-53(12). Reciting traffic separation schemes among several options suggests the IHO meant to give a more inclusive definition for “routing system.” However, no routing system may deny States rights under the Convention like freedom of navigation, Article 87; straits passage, Articles 37-45; innocent passage, Articles 17-32; etc.

This *Interim Draft*, ¶ I.10, proposes a definition for “traffic separation scheme.”²⁵⁴

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “routing system” is proposed, based on the *Glossary*:

As used in the 1982 LOS Convention, Article 211(1), “routing system” means any system of one or more routes and/or routing measures aimed at reducing risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas and deep-water routes.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁵⁵

254. See also Joint Statement, *supra* note 175, ¶¶ 5-6; 2 COMMENTARY, *supra* note 19, ¶¶ 22.1-22.9, 41.1-41.9(h), 45.1-45.8(c), 53.1-53.9(a), 53.9(i)-53.9(n); 4 COMMENTARY, *supra* note 30, ¶ 211.1-211.15(e); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 2.3.2.2, 2.3.3.1; 1 O’CONNELL, *supra* note 72, ch. 6; 2 O’CONNELL, *supra* note 62, at 833-36; RESTATEMENT (THIRD), *supra* note 12, § 513.

255. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

G.8. "Scale"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 74, defines "scale" as "[t]he ratio between a distance on a chart or map and a distance between the same two points measured on the surface of the Earth (or other body of the universe)."

UNCLOS, Articles 16(1), 47(8), 75(1) and 84(1) require that territorial sea baselines and delimitation lines, archipelagic baselines, EEZ outer limit and delimitation lines and continental shelf outer limit and delimitation lines be shown on charts "of a scale or scales adequate for ascertaining their position." Article 5 says that except where UNCLOS otherwise provides, the normal territorial sea baseline is the low-water line along the coast "as marked on large-scale charts" the coastal State officially recognizes, repeating the Territorial Sea Convention, Article 3, formula. Article 12(2) provides that to demarcate opposite or adjacent States' territorial seas, the line of delimitation must be "marked on large-scale charts" the coastal States recognize. Article 234 incorporates Article 134(3) by reference for Area standards.

The *Glossary*, ¶ 74, adds: "Scale may be expressed as a fraction or . . . ratio. If on a chart a true distance of 50,000 meters is represented by a length of 1 meter[,], the scale may be expressed as 1:50,000 or as 1/50,000. The larger the divisor the smaller is the scale of the chart."²⁵⁶

Tentative Draft No. 1, ¶ B, proposes a definition for "coastal State." This *Interim Draft*, ¶ 1A, proposes a definition for "adjacent coasts;" ¶ A.4, for "basepoint" and "point" in discussing baselines; ¶ A.6, for "chart," with a discussion of "map;" ¶ D.12, for "low water line" or "low water mark;" ¶ F.3, for "opposite coasts;" ¶ G.1, for "outer limit."

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of "scale" is proposed, based on the *Glossary*:

In the 1982 LOS Convention, Articles 5, 12, 16, 47, 75 and 84, "scale" means the ratio between a distance on a chart or map and a distance between the same two points measured on the Earth's surface.

256. *Annex 1*, *supra* note 67, at 328, defines "scale" more narrowly as "[t]he ratio between a distance on a chart or map and a distance between the same two points measured on the surface of the Earth." See also 2 COMMENTARY, *supra* note 19, ¶¶ 5.1-5.4(d), 12.1-12.4(c), 16.1, 16.8(b), 16.8(e), 47.1-47.8, 47.9(m), 75.1-75.5(b), 84.1-84.9(a); 2 O'CONNELL, *supra* note 62, at 645-47; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 516-17.

The *Glossary* definition parenthetical (“or . . . universe”) has been deleted as irrelevant.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁵⁷

G.9. “Sea-Bed,” “Seabed” or “Bed”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 75, defines “sea-bed,” sometimes referred to in this analysis as “seabed,” as “[t]he top of the surface layer of sand, rock, mud or other material lying at the bottom of the sea and immediately above the subsoil.” The *Glossary* does not define “bed.”

The term appears in UNCLOS, Articles 1(1)(1), 56(3), 76(1), 76(3), 77(4), 133(a) and 194(3)(c), usually in conjunction with “subsoil,” for which this *Interim Draft*, ¶ 1.7, proposes a definition. The Continental Shelf Convention, Article 1 employs a similar formula in defining the continental shelf. UNCLOS, Article 2(2) refers to “its bed and subsoil” in defining the territorial sea’s status. Article 49(2) includes within an archipelagic State’s sovereignty over archipelagic waters to include “their bed and subsoil, and the resources contained therein.” The Territorial Sea Convention, Article 2, has the same provision as UNCLOS, Article 2(2). UNCLOS, Article 49(4) declares the regime of archipelagic sea lanes passage that Articles 46-54 establishes does not otherwise affect archipelagic waters’ status, including archipelagic State sovereignty over its archipelagic waters and their “bed and subsoil.” Article 112(1) allows all States to lay submarine cables and pipelines “on the bed of the high seas beyond the continental shelf.” The High Seas Convention, Article 26(1) entitles all States to lay cables and pipelines on “the bed of the high seas.”

Tentative Draft No. 1, ¶ F, proposes definitions for “ocean space” and “sea.” This *Interim Draft*, ¶ G.6, proposes a definition for “rock.”²⁵⁸

2. Comments

The Chair researched the proposed definition.

257. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

258. The *Annex 1*, *supra* note 67, at 328, definition of “seabed” is the same. See also 2 COMMENTARY, *supra* note 19, ¶¶ 1.1-1.19, 2.1-2.8(d), 49.1-49.8, 49.9(b), 49.9(d), 56.1-56.10, 56.11(g), 76.1-76.18(b), 76.18(d), 77.1-77.6, 77.7(c); 3 COMMENTARY, *supra* note 43, ¶¶ 112.1-112.8(d); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.5.2, 1.6; 1 O’CONNELL, *supra* note 72, chs. 12-13; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515-17.

3. Conclusions

This definition of “sea-bed” is proposed, based on the *Glossary*:

As used in the 1982 LOS Convention, Articles 1, 56, 76, 76, 77, 133 and 194, “sea-bed,” sometimes referred to as “seabed,” means the top of the surface layer of sand, rock, mud or other material lying at the bottom of the sea and immediately above the subsoil. “Bed,” as used in the Convention, Articles 2, 49 and 112, is synonymous with “sea-bed.”

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁵⁹

H.1. “Sedimentary Rock”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 76, defines “sedimentary rock” as “[r]ock formed by the consolidation of loose sediments that have accumulated in layers in water or the atmosphere.”

The term appears in UNCLOS, Article 76(4)(a)(i). This *Interim Draft*, ¶ G.6, proposes a definition for “rock.”²⁶⁰

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “sedimentary rock” is proposed, based on the *Glossary*:

259. See *Tentative Draft No. 1*, *supra* note 15, ¶ G; see also, e.g., Treaty on Prohibition of Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor & in the Subsoil Thereof, Feb. 11, 1971, 23 U.S.T. 701, 955 U.N.T.S. 155; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 10.2.2.1; 2 O’CONNELL, *supra* note 62, at 824-30.

260. *Annex 1*, *supra* note 67, at 328, defines “sedimentary rock” as “[a] layered rock resulting from the consolidation of sediment, e.g., a clastic rock such as a sandstone, a chemical rock such as rock salt, or an organic rock such as limestone. Some authors include pyroclastic rocks, such as tuff.” *Annex 1*, *supra* note 67, at 322, defines “clastic” as “[p]ertaining to a rock or sediment composed principally of fragments derived from preexisting rocks or minerals and transported some distance from their places of origin; also said of the texture of such a rock; e.g., the commonest clastics are sandstone and shale.” See also 2 COMMENTARY, *supra* note 19, ¶¶ 76.1-76.18(a), 76.18(e)-76.18(g); 1 O’CONNELL, *supra* note 72, chs. 12-13; RESTATEMENT (THIRD), *supra* note 12, § 515.

As used in the 1982 LOS Convention, Article 76(4)(a)(i), “sedimentary rock” means rock formed by consolidation of loose sediments that have accumulated in layers in water or the atmosphere.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁶¹

H.2. “Shelf”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 78, defines “shelf” as “[g]eologically an area adjacent to a continent or around an island and extending from the low-water line to the depth at which there is usually a marked increase of slope to greater depth.”

“Shelf” as an unmodified word does not appear in UNCLOS. Articles 76-85 define and establish rules for the “continental shelf,” as does the Continental Shelf Convention. Other rules in UNCLOS, e.g., Article 121(2), regarding islands, also refer to the “continental shelf.” This analysis occasionally refers to the “shelf” for brevity where “continental shelf” is meant. As the *Glossary*, ¶ 78, makes clear, its definition for “shelf” refers to the meaning in marine geology. This is similar to the UNCLOS, Articles 46-75 definition and use of “archipelago” and “archipelagic,” which include some but not all geographic archipelagoes. For example, although the Hawaiian Islands may be referred to and defined as a geographic archipelago, under UNCLOS, Articles 46(b) and 47, they are not an archipelago. Islands are subject to the regime of islands, Article 121.²⁶²

This *Interim Draft*, ¶ B.2, proposes a definition for “continental slope;” ¶ D.12, for “low water line” or “low water mark.”

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “shelf” is proposed, based on the *Glossary*:

261. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

262. *Annex 1*, *supra* note 67, at 328, also defines “shelf” as “[g]eologically an area adjacent to a continent or around an island extending from the low-water line to the depth at which there is usually a marked increase of slope to greater depth.” See also 2 COMMENTARY, *supra* note 19, Part VI; NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6; 1 O’CONNELL, *supra* note 72, chs. 12-13; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515, 523.

The 1982 LOS Convention does not define “shelf” as an unmodified word, referring in all cases to the “continental shelf,” for which the Convention, Articles 76-85, supply definitions and rules. The geological definition of “shelf,” which may differ from the “continental shelf” as defined and used in the Convention, means, geologically speaking, an area adjacent to a continent or around an island and extending from the low-water line to the depth at which there is usually a marked increase of slope to greater depth.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁶³

I.1. “Spur”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 81, defines “spur” as “[a] subordinate elevation, ridge or projection outward from a larger feature.”²⁶⁴

UNCLOS, Article 76(6), says that, notwithstanding Article 76(5), on submarine ridges the continental shelf outer limit may not exceed 350 nautical miles from baselines from which the territorial sea’s breadth is measured. Article 76(6)’s provisions do not apply “to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.”

Besides being used to describe undersea geography or geology, “spur” can refer to a similar land formation, i.e., a “spur” as meaning a subordinate elevation, ridge or projection outward from a larger feature, e.g., a mountain. “Spur” used in this sense might appear on charts or maps.

This *Interim Draft*, ¶ A.4, proposes definitions for “basepoint” or “point” and discusses baselines; ¶ A.3 proposes definitions for “bank;” ¶ A.5, for “cap;” ¶ A.6, for “chart;” ¶ B.1, for “continental rise;” ¶ G.1, for “outer limit.”²⁶⁵

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “spur” is proposed, based on the *Glossary*:

263. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

264. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 76.18(i); *Annex 1*, *supra* note 67, at 329.

265. See also *2 COMMENTARY*, *supra* note 19, ¶¶ 76.1-76.18(a), 76.18(i).

As used in the 1982 LOS Convention, Article 76(6), “spur” means a subordinate elevation, ridge or projection outward from a larger feature, like the continental margin or an undersea mountain. Although “spur” may also have the same meaning as the word might be used on charts or maps showing features on land, a definition based on similar land formations may not necessarily apply to the law of the sea.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁶⁶

1.2. “Straight line;” “Straight Baseline;” “Straight Archipelagic Baseline”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 83, defines “straight line” as “[m]athematically[,] the line of shortest distance between two points.”

UNCLOS uses the term “straight line” only once, in Article 76(7), requiring a coastal State to delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the territorial sea’s breadth is measured, “by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.” Elsewhere, in Articles 76(1), 76(4)(a), 76(5)-76(8), 82(1) and 246(6), UNCLOS refers to “baselines.”

UNCLOS, Article 7(1), says that where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, “the method of straight baselines joining appropriate points” may be used to draw the baseline from which the territorial sea’s breadth is measured. Article 7(2) allows straight baselines where there is a delta or an otherwise highly unstable coastline. However, in drawing these baselines, Article 7(3) requires the coastal State not to depart to any appreciable extent from the general direction of the coast; sea areas within the lines must be sufficiently closely linked to the land to be subject to the territorial waters regime. Article 7(4) says that straight baselines may not be drawn to and from low-tide elevations unless lighthouses or similar installations that are permanently above sea level have been built on them or except where drawing baselines to and from such elevations has received general international recognition. Where Article 7(1) baselines are used, account may be taken of economic interests peculiar to the region concerned, “the reality and the importance of which are clearly evidenced by long usage.” Article 7(6) says a State may not apply a straight baseline system as to cut off another State’s territorial sea from the high seas or an EEZ. The Territorial Sea Convention,

266. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

Articles 4(1)-4(5), have provisions similar to UNCLOS, Articles 7(1)-7(2) and 7(4)-7(6).

UNCLOS, Article 10(5), provides that where the distance between low water marks of a bay's natural entrance points exceeds twenty-four nautical miles, "a straight baseline of 24 nautical miles shall be drawn within the bay . . . to enclose the maximum area of water . . . possible with a line of that length." Article 10(6) excludes from its terms cases where the Article 7(1) "system of straight baselines" applies. The Territorial Sea Convention, Articles 7(5)-7(6), has similar provisions.

UNCLOS, Article 47(1), allows an archipelagic State to draw "straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago[,] provided that within such baselines" the main islands are included and an area in which the ratio of the water area to the land area, including atolls, is between one to one and nine to one.

Tentative Draft No. 1, ¶ E, proposes a definition for "mile" or "nautical mile." This *Interim Draft*, ¶ A.4, in discussing baselines, proposes a definition for "basepoint" or "point;" ¶ A.2, for "atoll;" ¶ D.3, for "geographic coordinate;" ¶ D.9, for "latitude;" ¶ D.11, for "longitude;" ¶ D.12, for "low water line" or "low water mark;" ¶ G.3, for "reef."²⁶⁷

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of "straight line" is proposed, based on the *Glossary*:

As used in the 1982 LOS Convention, Article 76(6), "straight line" means a line of the shortest distance between two points.

As used in the 1982 LOS Convention, Articles 7 and 10, "straight baseline" means a baseline of the shortest distance between two points that are derived in accordance with the Convention.

As used in the 1982 LOS Convention, Article 47, "straight archipelagic baseline" means a baseline of the shortest distance between two points that are derived in accordance with the Convention.

In LOAC-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may

267. *Annex 1*, *supra* note 67, at 329, has the same definition of "straight line." See also 2 COMMENTARY, *supra* note 19, ¶¶ 7.1-7.9(d), 10.1-10.6, 47.1-47.9(c), 76.1-76.18(a), 76.18(i); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.3.2, 1.3.3-1.3.5, 1.4.3, 1.4.3.1; I O'CONNELL, *supra* note 72, chs. 6, 9A, 10, 15; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁶⁸

1.3. "Strait;" "Straits"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 84 defines "strait" as "[g]eographically, a narrow passage between two landmasses or islands or groups of islands connecting two sea areas."

UNCLOS, Articles 34-45 and 233 establish rules for "straits used for international navigation," through which the right of transit passage for all but Article 45-defined straits may not be suspended, and through which the right of innocent passage for Article 45-defined straits may not be suspended; Article 54 incorporates Articles 39-40, 42 and 44 *mutatis mutandis* by reference for archipelagic sea lanes passage. The Territorial Sea Convention, Article 16(4) declares that there shall be no suspension of the right of innocent passage of foreign ships through straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state.

As in the case of archipelagos and the continental shelf, where not all archipelagos or every continental shelf is within the UNCLOS definition, not every body of water geographically defined as a strait is a "strait" within the meaning of UNCLOS, although UNCLOS, Articles 34-45 and 233 define, and establish rules for, where ocean waters ranging from the territorial sea to the high seas are involved. For example, the Straits of Mackinac connect Lakes Huron and Michigan among the Great Lakes that Canada and the United States border. Some geographic straits and straits used for international navigation as regulated by UNCLOS are commonly known in the plural, e.g., Mackinac or the Straits of Gibraltar. Others commonly use the singular form of the word, e.g., the Strait of Hormuz. Some commonly use both the singular and the plural.

Tentative Draft No. 1, ¶ F, proposes definitions for "ocean space" and "sea."²⁶⁹

2. Comments

The Chair researched the proposed definition.

268. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

269. *Annex 1*, *supra* note 67, at 329 has an identical definition for "geographic straits." See also 2 COMMENTARY, *supra* note 19, Part III; 4 COMMENTARY, *supra* note 30, ¶¶ 233.1-233.9(f); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 2.3.3-2.3.3.2; 1 O'CONNELL, *supra* note 72, ch. 8; RESTATEMENT (THIRD), *supra* note 12, § 513; WALKER, *supra* note 20, at 278-85.

3. Conclusions

This definition of “strait,” based on the *Glossary*, is proposed:

The geographic definition of a strait is a narrow passage of water between two land masses or islands or groups of islands connecting two sea areas. The 1982 LOS Convention, Articles 34-45 and 233 define, and establish rules for, straits where ocean waters ranging from the territorial sea to the high seas are involved, i.e., straits used for international navigation, and for all but Article 45-defined straits the right of transit passage may not be suspended, and through which the right of innocent passage for Article 45-defined straits may not be suspended. The geographic definition of a strait may not necessarily be the same as those in the Convention; for example, narrow water passages between two lakes in inland waters may be straits in a geographic sense, but the Convention’s terms do not apply to them. In both cases “strait” includes the singular and plural versions of the word.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁷⁰

1.4. “Submarine Cable”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 86, defines “submarine cable” as “[a]n insulated, waterproof wire or bundle of wires or fiber optics for carrying an electric current or a message under water.” The *Glossary* adds that these cables are laid on or in the seabed; the most common are telephone or telegraph cables, but they may also carry high-voltage electric current for national power distribution or to offshore islands or structures.

UNCLOS, Article 87(1)(c), lists laying submarine cables and pipelines, subject to UNCLOS, Articles 76-85, which define and recite rules for the continental shelf, as among the freedoms of the high seas, which must be exercised with due regard for others’ high seas freedoms under Article 87(2). Article 112(1) says all States may lay these cables and pipelines on the bed of the high seas beyond the continental shelf. Article 112(2) says Article 79(5) applies to such cables and pipelines. Articles 113-15 recite rules for breakage of or injury to a submarine cable or pipeline, including indemnity principles. Article 79 allows all States to lay submarine cables and pipelines on a continental shelf, subject to rules in Article 79. Article 58(1) declares that all States have the right to lay submarine cables and pipelines, subject to other UNCLOS provisions, in the EEZ and must have due regard for coastal State rights and duties. Article 51(2) requires an archipelagic State to respect

270. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

other States' existing submarine cables, and their maintenance or replacement, passing through its waters without making landfall. Article 297(1)(a) establishes a dispute resolution mechanism for cable and pipeline issues.

The High Seas Convention, Article 26(1) lists laying submarine cables and pipelines as a high seas freedom which must be exercised with reasonable regard for others' high seas freedoms. Article 26(1) is similar to UNCLOS, Article 112(1); the High Seas Convention, Article 26(2) says that subject to a coastal State's right to take reasonable measures for exploiting its continental shelf, it may not impede laying or maintenance of such cables or pipelines. Article 26(3) requires a State laying such cables or pipelines to have due regard to those already in position on the seabed. The possibility of repairing existing cables or pipelines may not be prejudiced. Articles 27-29 have provisions similar to UNCLOS, Articles 113-15, for cable or pipeline breakage, repair and indemnity. The Continental Shelf Convention, Article 4 says that subject to a coastal State's right to explore or exploit its continental shelf and natural resources, it may not impede the laying of submarine cables or pipelines on the shelf.

This *Interim Draft*, ¶ 1.5, proposes a similar definition for "submarine pipeline."²⁷¹

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of "submarine cable," based on the *Glossary*, is proposed:

As used in the 1982 LOS Convention, Articles 51, 58, 79, 87, 112-15 and 297, "submarine cable" means an insulated, waterproof wire or bundle of wires or fiber optics for carrying an electric current or a message under water.

In LOAC-governed situations under the "other rules of international law" clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁷²

271. The *Annex 1*, *supra* note 67, at 329 definition of "submarine cable" is the same. See also 2 COMMENTARY, *supra* note 19, ¶¶ 51.1-51.6, 51.7(g)-51.7(i), 58.1-58.10(f), 79.1-79.8(f); 3 COMMENTARY, *supra* note 43, ¶¶ 87.1-87.9(i), 112.1-115.7(d); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.6, 2.4.3; 1 O'CONNELL, *supra* note 72, at 508-09; 2 O'CONNELL, *supra* note 62, at 796-99, 819-24; RESTATEMENT (THIRD), *supra* note 12, §§ 515, 521.

272. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

1.5. "Submarine Pipeline"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 87, defines "submarine pipeline" as "[a] line of pipes for conveying water, gas, oil, etc., under water." The *Glossary* says these cables are laid on or trenched into the seabed; they can stand at some height above the seabed. In areas of strong tidal streams and soft seabed material the seabed may be scoured from beneath sections of pipe, leaving them partially suspended. Pipelines are usually shown on charts if they lie in areas where trawling or anchoring ships may damage them.

UNCLOS, Article 87(1)(c) lists laying submarine cables and pipelines, subject to UNCLOS, Articles 76-85, which define and recite rules for the continental shelf, as among the freedoms of the high seas, which must be exercised with due regard for others' high seas freedoms under Article 87(2). Article 112(1) says all States may lay these cables and pipelines on the bed of the high seas beyond the continental shelf. Article 112(2) says Article 79(5) applies to such cables and pipelines. Articles 113-15 recite rules for breakage of or injury to a submarine cable or pipeline, including indemnity principles. Article 79 allows all States to lay submarine cables and pipelines on a continental shelf, subject to rules in Article 79. Article 58(1) declares that all States have the right to lay submarine cables and pipelines, subject to other UNCLOS provisions, in the EEZ and must have due regard for coastal State rights and duties. Article 297(1)(a) establishes a dispute resolution mechanism for cable and pipeline issues.

The High Seas Convention, Article 26(1), lists laying submarine cables and pipelines as a high seas freedom which must be exercised with reasonable regard for others' high seas freedoms. Article 26(1) is similar to UNCLOS, Article 112(1); the High Seas Convention, Article 26(2), says that subject to a coastal State's right to take reasonable measures for exploiting its continental shelf, a State may not impede laying or maintenance of such cables or pipelines. Article 26(3) requires a State laying such cables or pipelines to have due regard to those already in position on the seabed. The possibility of repairing existing cables or pipelines may not be prejudiced. Articles 27-29 have provisions similar to UNCLOS, Articles 113-15, for cable or pipeline breakage, repair and indemnity. The Continental Shelf Convention, Article 4, says that subject to a coastal State's right to explore or exploit its continental shelf and natural resources, it may not impede the laying of submarine cables or pipelines on the shelf.

This *Interim Draft*, ¶ I.4, proposes a similar definition for "submarine cable."²⁷³

273. *Annex 1*, *supra* note 67, at 329 has the same definition for "submarine pipeline." See also 2 COMMENTARY, *supra* note 19, ¶¶ 51.1-51.6, 51.7(g)-51.7(i), 58.1-58.10(f), 79.1-79.8(f); 3 COMMENTARY, *supra* note 43, ¶¶ 87.1-87.9(i), 112.1-115.7(d); NWP 1-14M ANNO-

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “submarine pipeline,” based on the *Glossary*, is proposed:

As used in the 1982 LOS Convention, Articles 58, 79, 87, 112-15 and 297, “submarine pipeline” means a line of pipe for conveying water, gas, oil, etc. under water.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁷⁴

1.6. “Submarine Ridge”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 88, defines “submarine ridge” as “[a]n elongated elevation of the sea floor, with either irregular or relatively smooth topography and steep sides, which constitutes a natural prolongation of land territory.”

UNCLOS, Article 76(6), says that notwithstanding Article 76(5), “on submarine ridges,” the continental shelf outer limit may not exceed 350 nautical miles from baselines from which the territorial sea’s breadth is measured. Article 76(6)’s provisions do not apply to submarine elevations that are the continental margin’s natural components, e.g., its plateaus, rises, caps, banks and spurs.

Tentative Draft No. 1, ¶ E, proposes a definition for “mile” or “nautical mile;” ¶ F, for “ocean space” and “sea.” In discussing baselines, this *Interim Draft*, ¶ A.4 proposes a definition for “basepoint” and “point;” ¶ A.3, for “bank;” ¶ A.5, for “cap;” ¶ B.1, for “continental rise;” ¶ B.4, for “deep ocean floor;” ¶ F.1, for “oceanic plateau;” ¶ F.2, for “oceanic ridge;” ¶ G.1, for “outer limit;” ¶ G.9, for “seabed” and “bed;” ¶ I.1, for “spur.”²⁷⁵

TATED, *supra* note 4, ¶¶ 1.6, 2.4.3; 1 O’CONNELL, *supra* note 72, at 508-09; 2 O’CONNELL, *supra* note 62, at 796-99, 819-24; RESTATEMENT (THIRD), *supra* note 12, §§ 515, 521.

274. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

275. The *Annex 1*, *supra* note 67, at 329 definition of “submarine ridge” is the same. See also 2 COMMENTARY, *supra* note 19, ¶¶ 76.1-78.18(a), 76.18(i); NWP 1-14M ANNOTATED, *supra* note 4, ¶ 1.6; 1 O’CONNELL, *supra* note 72, chs. 12-13; RESTATEMENT (THIRD), *supra* note 35, § 515; Symonds et al., *supra* note 117.

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “submarine ridge,” based on the *Glossary*, is proposed:

Under the 1982 LOS Convention, Article 76(6), “submarine ridge” means an elongated elevation of the sea floor with irregular or relatively smooth topography and steep sides that constitutes a natural prolongation of land territory.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁷⁶

1.7. “Subsoil”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 89, defines “subsoil” as “[a]ll naturally occurring matter lying beneath the seabed or deep ocean floor. The subsoil includes residual deposits and minerals as well as the bedrock below.”²⁷⁷

UNCLOS, Article 2(2), declares that coastal State sovereignty extends to the territorial sea “bed and subsoil.” The Territorial Sea Convention, Article 2, is similar.

UNCLOS, Article 56(1)(a), says a coastal State has sovereign rights in its EEZ to explore and exploit, conserve and manage living or non-living natural resources of the waters superjacent to the seabed and of the seabed “and its subsoil,” and with regard to other EEZ economic exploitation and exploration activities. Article 68 says UNCLOS EEZ provisions do not apply to sedentary species defined in Article 77(4), discussed below in connection with the continental shelf.

UNCLOS, Article 76(1), defines a continental shelf of a coastal State as “the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance” of 200 nautical miles from the baselines from which the territorial sea’s breadth is measured where the continental margin’s outer edge does not extend up to that distance. Article 76(3) defines the continental margin as the submerged portion of a coastal

276. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

277. *Accord 2 COMMENTARY*, *supra* note 19, ¶ 2.8(e); *Annex 1*, *supra* note 67, at 329.

State's land mass, consisting of the seabed and "the subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof." Article 77(4) says shelf resources to which Articles 76-85 refer, consist of the mineral and other non-living resources of the seabed "and subsoil together with living organisms belonging to sedentary species," i.e., organisms which, at the harvestable stage are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed "or the subsoil." Article 246(7) cites Article 77 with respect to MSR. Article 85 says Articles 76-85 do not prejudice coastal States' rights "to exploit the subsoil" by tunneling, irrespective of the water depth "above the subsoil."

The Continental Shelf Convention, Article 1, defines the continental shelf as referring "(a) to the seabed and subsoil of the submarine areas" adjacent to the coast but outside the territorial sea to a depth of 200 meters or to where the superjacent waters admits of exploitation of the area's natural resources, or "(b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands." Article 2(4) defines natural resources as mineral and other non-living resources of the seabed "and subsoil" together with living organisms which at the harvestable stage are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed "or the subsoil," the same language as in UNCLOS, Article 77(4). Like UNCLOS, Article 85, the Continental Shelf Convention, Article 7, says its provisions do not prejudice coastal State rights "to exploit the subsoil" by tunnelling irrespective of the water depth "above the subsoil."

UNCLOS, Article 49(2), declares that archipelagic State sovereignty extends to archipelagic waters' "bed and subsoil, and the resources contained therein."

UNCLOS, Article 1(1)(1), defines the Area as the seabed "and ocean floor and subsoil thereof, beyond the limits of national jurisdiction." Article 133(a) says area "resources" are all solid, liquid or gaseous mineral resources *in situ* in the area at or beneath the seabed, including polymetallic nodules.

UNCLOS, Article 194(3)(c), defines measures taken pursuant to UNCLOS' rules for protecting and preserving the marine environment, Articles 192-237, designed to minimize, to the fullest possible extent, pollution from installations and devices used in exploring or exploiting natural resources of the seabed "and subsoil," in particular measures to prevent accidents, deal with emergencies, ensure safety of operations at sea, or regulate design, construction, equipment, operation and manning of such installations or devices.

Tentative Draft No. 1, ¶ B, proposes a definition for "coastal State;" ¶ F, for "ocean space" or "sea." This *Interim Draft*, ¶ G.9, proposes a definition for "bed" and "seabed;" ¶ G.6, for "rock."²⁷⁸

278. See also 2 COMMENTARY, *supra* note 19, ¶¶ 1.1-1.19, 2.1-2.7, 2.8(d)-2.8(e), 49.1-49.8, 49.9(b), 56.1-56.11(c), 68.1-68.5(b), 74.1-74.11(f), 76.1-76.18(a), 76.18(d), 77.1-77.6, 77.7(d), 85.1-85.6; 4 COMMENTARY, *supra* note 30, ¶¶ 194.1-194.10(d), 194.10(h)-194.10(m),

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “subsoil,” based on the *Glossary*, is proposed:

As used in the 1982 LOS Convention, Arts 1, 2, 49, 56, 76, 77, 85 and 194, “subsoil” means all naturally occurring matter lying beneath the seabed or deep ocean floor. The subsoil includes residual deposits and minerals as well as the bedrock below.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁷⁹

1.8. “Superjacent Waters”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 90, defines “superjacent waters” as “[t]he waters lying immediately above the seabed or deep ocean floor up to the surface.”²⁸⁰

UNCLOS, Article 56(1)(a), declares that a coastal State has sovereign rights in its EEZ to explore and exploit, conserve and manage living or non-living natural resources of the waters “superjacent to” the seabed and of the seabed and its subsoil, and with regard to other EEZ economic exploitation and exploration activities. Article 78(1) says a coastal State’s rights over the continental shelf “do not affect the legal status of the superjacent waters or of the air space above those waters.” Article 58 also preserves high seas freedoms in the EEZ, insofar as they are not incompatible with Articles 55-85, which state rules and standards for the EEZ. Article 121(2) incorporates UNCLOS EEZ and shelf principles, including Arts 56 and 78, for the regime of islands. Article 135 declares that Articles 133-91, stating UNCLOS terms for the Area, nor any rights granted or exercised pursuant thereto, affect “the legal status of the waters superjacent to the Area or that of the air space above those waters.” Article 135(2) says the Review Conference for the

246.1-246.7(f); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.4.2, 1.4.3, 1.5.2, 1.6; 1 O’CONNELL, *supra* note 72, chs. 3-4, 6, 12-13, 15; 2 O’CONNELL, *supra* note 62, chs. 17-18; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12, 515, 523.

279. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

280. *Accord 4 COMMENTARY*, *supra* note 30, ¶ 257.6(c); the *Annex 1*, *supra* note 67, at 329, definition is similar for “superadjacent waters”: “. . . waters overlying the seabed or deep ocean floor.”

Area must, *inter alia*, ensure maintenance of principles in Articles 133-91 with regard to “the legal status of the waters superjacent to the Area and that of the air space above those waters. . . .”

The Continental Shelf Convention, Article 3, like UNCLOS, Article 78(1), says coastal State rights “do not affect the legal status of the superjacent waters as high seas, or that of the air space above those waters.”

“Water column” as used in UNCLOS, Article 247, corresponds to “superjacent waters” in Articles 56, 78 and 135.²⁸¹

Tentative Draft No. 1, ¶ B, proposes a definition for “coastal State;” ¶ F, for “ocean space” or “sea.” This *Interim Draft*, ¶ G.9, proposes a definition for “bed” or “seabed;” ¶ I.7, for “subsoil;” ¶ I.11, for “water column.”²⁸²

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “superjacent waters,” based on the *Glossary*, is proposed:

Under the 1982 LOS Convention, Articles 56, 78 and 135, “superjacent waters” means the waters lying immediately above the seabed or deep ocean floor up to the surface. “Superjacent waters” is synonymous with “water column” in Article 257 of the Convention.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁸³

1.9. “Tide”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 92, defines “tide” as “[t]he periodic rise and fall of the surface of the oceans and other large bodies of water due principally to the gravitational attraction of the Moon and Sun on a rotating Earth.”

281. 4 COMMENTARY, *supra* note 30, ¶ 257.6(c); *see also infra* ¶ I.11.

282. *See also* 2 COMMENTARY, *supra* note 19, ¶¶ 56.1-56.11(c), 58.1-58.10(f), 78.1-78.8(b); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.5.2, 1.6; 1 O’CONNELL, *supra* note 72, chs. 12-13, 15; 2 O’CONNELL, *supra* note 62, ch. 18; RESTATEMENT (THIRD), *supra* note 12, §§ 514-15, 523.

283. *See Tentative Draft No. 1*, *supra* note 15, ¶ G.

UNCLOS does not refer to “tide” without modifying adjectives. Articles 7(4), 13 and 47(4) refer to “low-tide elevations.” Article 13 defines “low-tide elevation,” saying such an elevation is land “above water at low-tide but submerged at high tide.” Articles 5, 6, 7(2), 9 and 13(1) refer to “low-water line;” Articles 10(3)-10(5) refer to “low-water mark.”

The Territorial Sea Convention, Articles 7(3), 11(1) and 13, refer to “low-tide elevations.” Article 11(1) defines “low-tide elevation,” saying such an elevation is land “above water at low-tide but submerged at high tide.” Article 3 refers to the “low-water line.” Articles 7(3)-7(4) refer to “low-water marks.”

This *Interim Draft*, ¶¶ B.6, D.8 and G.3, propose definitions for “drying reef,” “land territory” and “reef” by citing low and high tide as reference points; see also ¶ A.6, proposing a definition for “chart;” ¶ A.7, for “chart datum;” ¶ D.12, for “low water line” or “low water mark.”²⁸⁴

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “tide,” based on the *Glossary*, is proposed:

Under the 1982 LOS Convention, “tide” means the periodic rise and fall of the surface of the oceans and other large bodies of water due principally to the gravitational attraction of the Moon and Sun on a rotating Earth.

No specific UNCLOS Articles are cited; this proposed definition will cover “tide” as used in UNCLOS and as defined in the present project.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁸⁵

284. The *Annex 1*, *supra* note 67, at 329, definition for “tide” is the same. See also 2 COMMENTARY, *supra* note 19, ¶¶ 5.1-5.4(d), 6.1-6.7(e), 7.1-7.9(d), 7.9(f), 10.1-10.6, 13.1-13.5(b), 47.1-47.8, 47.9(f); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.4.2, 1.4.3; 1 O’CONNELL, *supra* note 72, chs. 3-6; 2 O’CONNELL, *supra* note 62, ch. 17; RESTATEMENT (THIRD), *supra* note 12, §§ 511-12.

285. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

1.10. "Traffic Separation Scheme"

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 93, defines "traffic separation scheme" as "[a] routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes."

UNCLOS, Article 22(1), allows a coastal State to require foreign ships exercising innocent passage to use "traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships." Article 22(3) requires a coastal State, in prescribing these schemes, to take into account competent international organizations' recommendations, channels customarily used for international navigation, particular ships' and channels' special characteristics and traffic density. Article 22(4) requires coastal States to clearly indicate schemes on charts and give them "due publicity." Article 121(2) incorporates Article 22 standards for islands.

Article 41 establishes a similar regime for international straits and States bordering them; these schemes may be described to promote safe ship passage. States may, when circumstances require and after due publicity, substitute other schemes for previously prescribed schemes. These schemes must conform to generally accepted international regulations. Before designating or substituting schemes, States bordering these straits must refer proposals to competent international organizations with a view to their adoption. The organization may adopt only such schemes as may be agreed with States bordering a strait, after which States may designate, prescribe or substitute them. If there is a strait where schemes are proposed through two or more States' waters, States concerned must cooperate in proposals in consultation with the organization. States must clearly indicate prescribed schemes on charts to which due publicity must be given. Ships in transit passage must respect schemes established in accordance with Article 41. Article 44 declares that "States bordering straits shall not hamper transit passage . . . There shall be no suspension of transit passage."

Article 45, incorporating Article 22 traffic separation scheme standards for certain straits, declares that "[t]here shall be no suspension of innocent passage through such straits."

Articles 53(6)-53(11) allow archipelagic States to prescribe similar traffic separation schemes for narrow channels in sea lanes through their archipelagic waters and territorial seas.

The 1958 LOS Conventions have no comparable provisions; the Territorial Sea Convention, Article 17, requires foreign ships exercising innocent passage to comply with coastal State laws and regulations conforming to the Convention and other rules of international law, particularly those relating to transport and navigation.

Tentative Draft No. 1, ¶ B, proposes a definition for "coastal State;" ¶ I, for "ship" or "vessel." This *Interim Draft*, ¶ A.6, proposes a definition for

“chart;” ¶ B.7, for “due publicity;” ¶ G.7, for “routing system;” ¶ I.3, for geographic “strait,” distinguishing juridical straits, for which UNCLOS lays down definitions and rules.²⁸⁶

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “traffic separation scheme,” based on the *Glossary*, is proposed:

Under the 1982 LOS Convention, Articles 22, 41 and 53, “traffic separation scheme” means a routing measure aimed at separating opposing streams of waterborne traffic by appropriate means and by establishing traffic lanes.

The *Glossary* definition is modified by adding “waterborne.” This would exclude air traffic lawfully flying over the territorial sea, straits and archipelagic waters.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁸⁷

1.11. “Water Column”

1. Discussion and Analysis

The *Consolidated Glossary*, ¶ 94, defines “water column” as “[a] vertical continuum of water from sea surface to seabed.”²⁸⁸

UNCLOS, Article 257, in according all States and competent international organizations the right, in conformity with UNCLOS, to conduct MSR “in the water column” beyond EEZ limits, is the sole reference to the term. UNCLOS, Articles 56(1)(a), 78, 135 and 155(2), refer to “superjacent waters,” as does the Continental Shelf Convention, Article 3. “Water column” corresponds to “superjacent waters” in those articles.²⁸⁹

286. The *Annex 1*, *supra* note 67, at 329, definition for “traffic separation scheme” is the same. See also Joint Statement, *supra* note 174, ¶¶ 5-6; 2 COMMENTARY, *supra* note 19, ¶¶ 22.1-22.9, 41.1-41.9(h), 45.1-45.8(c), 53.1-53.9(a), 53.9(i)-53.9(n); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 2.3.2.2, 2.3.3.1; 1 O’CONNELL, *supra* note 72, ch. 6; 2 O’CONNELL, *supra* note 62, at 833-36; RESTATEMENT (THIRD), *supra* note 12, § 513 cmt. d.

287. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

288. *Accord* 4 COMMENTARY, *supra* note 30, ¶ 257.6(c); *Annex 1*, *supra* note 67, at 330.

289. 4 COMMENTARY, *supra* note 30, ¶ 257.6(c).

Tentative Draft No. 1, ¶ proposes a definition for “ocean space” and “sea.” This *Interim Draft*, ¶ G.9 proposes a definition for “bed” or “seabed;” ¶ I.8, for “superjacent waters.”²⁹⁰

2. Comments

The Chair researched the proposed definition.

3. Conclusions

This definition of “water column,” based on the *Glossary*, is proposed:

Under the 1982 LOS Convention, Article 257, “water column” means a vertical continuum of water from sea surface to seabed. “Water column” is synonymous with “superjacent waters” as this term appears in Articles 56, 78, 135 and 155 of the Convention.

In LOAC-governed situations under the “other rules of international law” clauses in the Convention, a different definition may apply. The same may be the situation if the U.N. Charter supersedes the Convention, or if *jus cogens* norms apply.²⁹¹

III. CONCLUSIONS

This *Interim Draft (Revision 1)* proposes sixty definitions for terms not defined in the 1982 LOS Convention, or for terms related to provisions of the Convention. Corrections for these, suggestions for more sources, and additions to them for future consideration, are welcome. Further revisions will appear in a *Tentative Draft*, to be circulated in a fashion similar to this *Draft*. These definitions, once approved as described in Part I, will be merged into an English-language alphabetical list along with other definitions derived from sources, perhaps like the IHO *ECDIS Glossary*,²⁹² for which LOS Committee members’ suggestions, and the suggestions of others, are also welcome.

290. See also 2 COMMENTARY, *supra* note 19, ¶¶ 56.1-56.11(c), 58.1-58.10(f), 78.1-78.8(b); 4 COMMENTARY, *supra* note 30, ¶¶ 247.1-257.6(c); NWP 1-14M ANNOTATED, *supra* note 4, ¶¶ 1.5.2, 1.6; 1 O’CONNELL, *supra* note 72, chs. 12-13, 15; 2 O’CONNELL, *supra* note 62, ch. 18; RESTATEMENT (THIRD), *supra* note 12, §§ 514-15, 523.

291. See *Tentative Draft No. 1*, *supra* note 15, ¶ G.

292. See *supra* note 4 and accompanying text.

C. DEFINITIONS FOR THE 1982 LAW OF THE SEA CONVENTION AND THE IMPORTANCE OF CONTEXT: “SHIPS” AND OTHER MATTERS

JOHN E. NOYES

Professor Walker, in a significant undertaking on behalf of the Law of the Sea Committee of the American Branch of the International Law Association, is preparing definitions for words and phrases not otherwise defined in the 1982 Law of the Sea Convention.²⁹³ He wrote nine definitions in 2001,²⁹⁴ and has now drafted an additional sixty definitions.²⁹⁵ The project has already generated considerable discussion, formal and informal, and is certain to generate more as work progresses.

When is it appropriate to try to narrow or limit the meaning or understanding of a concept by defining the words that apply to the concept? Not everyone may agree about whether it is appropriate to define a term at all, or about the details of a proposed definition. But the process of discussing proposed definitions can be valuable, even when observers disagree. Disagreement can sharpen our perspectives about controversies to which a defined term may relate. Disagreement can also make us think about whether steps—perhaps not limited to definitions—should be taken to address identified problems. I have previously reflected on these and other broad issues concerning definitions and treaty interpretation,²⁹⁶ and those reflections provide essential background for the comments in this essay.

293. U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3 (entered into force Nov. 16, 1994) [hereinafter LOS Convention].

294. International Law Association (American Branch) Law of the Sea Committee, *Defining Terms in the 1982 Law of the Sea Convention (Sept. 4, 2001, Initial Draft) (Rev. 1, Jan. 22, 2002)*, 2001-02 PROC. AM. BRANCH INT'L L. ASS'N 154 (John E. Noyes ed., 2002), reprinted in 32 CAL. W. INT'L L.J. 347 (2001-02) [hereinafter ABILA LOS Comm., *Defining*], revised by George K. Walker, *Definitions for the 1982 Law of the Sea Convention (Revised Tentative Draft No. 1, Feb. 10, 2003)*, 33 CAL. W. INT'L L.J. 191, 196 (2002-03) [hereinafter *Tentative Draft No. 1*], as part of George K. Walker & John E. Noyes, *Definitions for the 1982 Law of the Sea Convention – Part II*, 33 CAL. W. INT'L L.J. 191 (2002-03).

295. George K. Walker, *Definitions for the 1982 Law of the Sea Convention – Part II: Analysis of the IHO Consolidated Glossary (Revised Initial Draft, Feb. 10, 2003)*, 33 CAL. W. INT'L L.J. 191, 219 (2002-03) [hereinafter *Revised Initial Draft*], as part of Walker & Noyes, *Definitions for the 1982 Law of the Sea Convention – Part II*, 33 CAL. W. INT'L L.J. 191 (2002-03).

296. John E. Noyes, *Treaty Interpretation and Definitions in the Law of the Sea Convention: Comments on Defining Terms in the 1982 Law of the Sea Convention*, 2001-02 PROC. AM. BRANCH INT'L L. ASS'N 175, 175-81, reprinted in 32 CAL. W. INT'L L.J. 367, 367-72 (2001-02).

My comments here, however, are quite specific, focusing on three topics. First, Professor Walker has asked me to react to revisions of his 2001 definitions of “other rules of international law” and “genuine link.” Second, I review the proposed definition of “ship” and question whether it is useful to define this term in light of how it is used in the Law of the Sea Convention. Third, this essay briefly discusses a group of twenty-six new definitions, all relevant to the definition of the continental shelf, which Professor Walker includes in his February 10, 2003, Revised Initial Draft.

A common theme running through this essay is the idea that it may sometimes be valuable to leave terms undefined or to define them very broadly. Sometimes the concept for which a word stands is a matter of great political controversy. In that case, a limiting definition is unlikely to solve the controversy and will not reflect any generally shared understanding among past treaty negotiators and present treaty interpreters. Other times, it may be sensible for the meaning of a word to vary in various contexts. In that case, defining the word could contribute to the nonapplication of a treaty provision containing the word when it is sensible to apply the provision, or to the application of such a provision when it is sensible not to apply it.

I. COMMENTS ON THE REVISED DEFINITIONS OF “OTHER RULES OF INTERNATIONAL LAW” AND “GENUINE LINK”

A. “Other Rules of International Law”

Professor Walker’s 2001 proposed definition of “other rules of international law” linked the meaning of the phrase exclusively to the law of armed conflict (LOAC):

“Other rules of international law” and similar phrases in the 1982 LOS Convention restate a customary rule that the phrase means the law of armed conflict, including the law of naval warfare and the law of maritime neutrality as components of the law of armed conflict.²⁹⁷

I previously questioned whether this definition should be so narrow, pointing to the plain meaning of the word “other,” the drafters’ apparent intended meaning with respect to at least some of the Law of the Sea Convention articles in which the phrase “other rules of international law” is used, and some actual and hypothetical examples of use of the phrase.²⁹⁸

My reservations about the definition related especially to how the phrase “other rules of international law” was used in Articles 293 and 303. In Article 303, on archaeological and historical objects found at sea, the phrase “other rules of international law” appears to refer to future legal de-

297. ABILA LOS Comm., *Defining*, *supra* note 294, at 172, *reprinted in* 32 CAL. W. INT’L L.J. at 363.

298. Noyes, *supra* note 296, at 182-89, *reprinted in* 32 CAL. W. INT’L L.J. at 374-79.

velopments that could flesh out the general provisions of Article 303.²⁹⁹ The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage³⁰⁰ may prove to be an example of such “future law.”

Article 293 is one of the dispute settlement articles in Part XV of the Law of the Sea Convention. It directs courts and tribunals to apply “this Convention and other rules of international law not incompatible with this Convention.”³⁰¹ A court or tribunal, while using the Convention as its primary source, should be able to turn to related law in reaching a decision. Both the drafting history and some litigation scenarios support this assertion.³⁰² One example of how the phrase “other rules of international law” has been construed—an example that supplements my earlier discussion of this issue—is found in the 1999 decision of the International Tribunal for the Law of the Sea (ITLOS) in the *M/V Saiga (No. 2) Case*.³⁰³ In that case the ITLOS considered (along with several issues explicitly addressed in the Law of the Sea Convention) the legality of Guinea’s use of force in a peacetime seizure of a foreign flag vessel. Guinea allegedly fired on the *Saiga*, an unarmed tanker plodding along at ten knots, with automatic weapons. St. Vincent and the Grenadines, the *Saiga*’s flag state, claimed that this behavior constituted an excessive and unreasonable use of force in stopping and arresting the vessel. The Tribunal referred to “other rules of international law” in addressing St. Vincent’s claim:

In considering the force used by Guinea in the arrest of the *Saiga*, the tribunal must take into account the circumstances of the arrest in the context of the applicable rules of international law. Although the Convention does not contain express provisions on the use of force in the arrest of ships, *international law, which is applicable by virtue of article 293 of the Convention*, requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances.³⁰⁴

The Tribunal went on to cite various international law sources, including two arbitral decisions, to support its statement of the law concerning limits on the permissible use of force.³⁰⁵ The Tribunal’s recourse in the *Saiga Case* to

299. *See id.* at 187-88, *reprinted in* 32 CAL. W. INT’L L.J. at 378. Article 303(4) provides: “This article is without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature.”

300. United Nations Educational, Scientific and Cultural Organization (UNESCO): Convention on the Protection of the Underwater Cultural Heritage, Nov. 6, 2001, 41 I.L.M. 40.

301. LOS Convention, *supra* note 293, art. 293(1).

302. *See Noyes, supra* note 296, at 182-87, *reprinted in* 32 CAL. W. INT’L L.J. at 375-78.

303. 120 I.L.R. 143 (Int’l Trib. Law of the Sea 1999) (Merits).

304. *Id.* at 196 (emphasis added).

305. *Id.* (citing S.S. “I’m Alone” (Can./U.S., 1935)), 3 U.N.R.I.A.A. 1609, and The Red Crusader (Comm’n of Enquiry, Den.-U.K., 1965), 35 I.L.R. 485. In a similar vein, the Tribunal discussed the defense of necessity in the *Saiga Case*, citing the International Law Commission’s Draft Articles of State Responsibility and the International Court of Justice’s decision in the *Case Concerning the Gabčíkovo-Nagymaros Project* (Hun. v. Slov.), 1997 I.C.J. 7,

rules of international law outside the Convention was eminently sensible. One forum was able to decide all the relevant issues in the dispute. The *Saiga Case* supports the view that “other rules of international law” in Article 293(1) should be given its plain meaning, and not defined—confined—just in terms of the LOAC.

Professor Walker has taken account of Articles 293(1) and 303 in his revised definition of “other rules of international law.” The revised definition provides:

The traditional understanding is that “other rules of international law” and similar phrases in the 1982 LOS Convention restate a customary rule that the phrase means the law of armed conflict, including the law of naval warfare and the law of maritime neutrality as components of the law of armed conflict. In some instances, however, for example Convention Articles 293(1) and 303, the phrase may include law other than the LOAC in situations where the LOAC does not apply.³⁰⁶

Part of my concern about this revised definition relates to the possible negative implication of the last sentence. That is, where the LOAC does apply, the negative implication of the last sentence is that non-LOAC “other rules of international law” may not apply. I see no reason to preclude the application of non-LOAC “other rules” if it is sensible for such rules to apply. One clarification that would address this concern would be to delete the last phrase (“in situations where the LOAC does not apply”).

I also note that the revised definition lists Articles 293(1) and 303 only as “examples” of some instances in which it may make sense to give “other rules of international law” its ordinary meaning. There may indeed be other instances. For example, in a 1989 article about straits, Satya Nandan, who was the Rapporteur of the Second Committee at the Third United Nations Conference on the Law of the Sea, and David Anderson, who was a member of the British delegation and who now sits on the ITLOS, commented on the phrase “other rules of international law” as used in Article 34(2).³⁰⁷ Article 34(2), which is part of the provisions on straits fashioned at UNCLOS III, provides: “The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this Part [III] and to other rules of international law.” First, Nandan and Anderson commented that the “precise meaning of the reference to ‘other rules of international law’ may not always be entirely clear in practice.”³⁰⁸ Second, they noted that Article 34(2) referred to “other

40-41. This discussion also illustrates the Tribunal’s reliance on non-LOAC rules of law under the “other rules of international law” clause of Article 293 of the Law of the Sea Convention. See 120 I.L.R. at 190-92.

306. *Tentative Draft No. 1*, *supra* note 294, at 215.

307. S.N. Nandan & D.H. Anderson, *Straits Used for International Navigation: A Commentary on Part III of the United Nations Convention on the Law of the Sea 1982*, 60 BRIT. Y.B. INT’L L. 159 (1989).

308. *Id.* at 172 n.39 (referring also to the use of the phrase in Articles 2(3) and 49(3) of the Law of the Sea Convention).

rules of international law, e.g., those on the non-use of force or delimitation. In other words, in so far as non-navigational questions may arise, other rules of international law, including other Parts of the Convention, apply.³⁰⁹ In this regard, Article 34(2)—unlike, for example, Articles 19(1) and 21(1)—does not refer to the “Convention and other rules of international law.” By referring instead “to this Part and to other rules of international law,” Article 34(2) implicitly places Convention rules that are not found in Part III within the category of “other rules.”³¹⁰ Third, Nandan and Anderson suggested that the phrase “other rules of international law,” as used in certain Spanish and Moroccan proposals concerning straits,³¹¹ referred to rules of general international law relating to civil aviation.³¹² Although those proposals were not accepted at the Third U.N. Conference on the Law of the Sea, they perhaps suggest that at least some states participating in the Conference did not regard the phrase “other rules of international law” as limited to the LOAC. If that is true, it becomes harder to support the notion that the phrase refers only to the LOAC. In their article, Nandan and Anderson nowhere suggested that the reference to “other rules of international law” has a customary meaning based exclusively on the LOAC.

Professor Walker’s revised definition moves us toward the position that “other rules of international law” may mean the LOAC, or, depending on the context, may mean non-LOAC rules. The above discussion suggests that it is appropriate to interpret the phrase nonrestrictively, as it is used in Article 293(1), Article 303, and other Law of the Sea Convention articles as well.³¹³ Further consideration of this issue is warranted.

B. “Genuine Link”

Professor Walker’s revised definition of “genuine link” provides:

“Genuine link” in the LOS Convention, Article 91, means that a flag State under whose laws a ship is registered must be able to effectively exercise its jurisdiction and control in administrative, technical, and social matters over ships flying its flag.³¹⁴

309. *Id.* at 172 (footnote omitted).

310. Nandan and Anderson cited Article 233 of the Law of the Sea Convention (concerning safeguards for straits used for international navigation) as an example of such an “other rule.” *Id.* at 172 n.39

311. *Informal Suggestion by Spain, C.2/Informal Meeting/4 (1978) (Spain)*, reproduced in 5 THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA: DOCUMENTS 6 (Renate Platzöder ed., 1984); *Informal Suggestion by Morocco—Straits Used for International Navigation, C.2/Informal Meeting/22 (1978) (Morocco)*, reproduced in *id.* at 30.

312. Nandan & Anderson, *supra* note 307, at 182.

313. For discussion of another situation—in addition to Articles 34(2), 293(1), and 303—in which the phrase “other rules of international law” might be interpreted nonrestrictively, see Noyes, *supra* note 296, at 188, reprinted in 32 CAL. W. INT’L L.J. at 378.

314. *Tentative Draft No. 1, supra* note 294, at 208.

This definition differs from the one originally proposed by inserting the words “be able to” in front of the phrase “effectively exercise its jurisdiction and control.” I agree that it is better to conceptualize “genuine link” in terms of “ability to exercise jurisdiction and control” rather than in terms of actual “effective exercise of jurisdiction and control.” Yet, some of the concerns that I raised with respect to Professor Walker’s original definition still remain.³¹⁵ First, at what time must the flag state be able to exercise its jurisdiction and control? If the definition is read to require a continuing ability to exercise control, the destabilizing prospect of vessels losing their nationality presents itself. Suppose a flag state was able to exercise control at the time a vessel was registered but later lost that ability. Since Article 91 of the Law of the Sea Convention makes “genuine link” a component of nationality, would the vessel thus become stateless? If the vessel were stateless, it might be difficult to find any state responsible under doctrines of state responsibility for, say, serious pollution by the vessel.³¹⁶ At the least, debates about whether a putative flag state was in fact able to exercise jurisdiction and control could create uncertainties as to the nationality of vessels.

A second concern is that the soft reference to “genuine link” in Article 91 (and in Article 5(1) of the 1958 High Seas Convention³¹⁷) papered over fundamental disagreements about just what sort of link between a flag state and its vessel would be considered “genuine.” For example, some states would regard a connection between the crew and the flag state as one of several alternative ways in which the genuine link requirement could be satisfied. The drafting history of the genuine link requirement and its placement in the 1958 High Seas Convention and the Law of the Sea Convention make clear that the requirement is about nationality, and not exclusively about the flag state’s exercise of jurisdiction and control over its vessels.³¹⁸ In the Law of the Sea Convention, Articles 94 and 217 specify in detail each flag state’s obligations—separate from the Article 92 requirement that “[t]here must exist a genuine link between the State and its ship”—to exercise jurisdiction and control over its vessels. The ability to exercise effective jurisdiction and control may, it is true, be one way to satisfy the genuine link requirement. But it is only one of several ways to satisfy that requirement. As Professor Robin Churchill concluded after a thorough study of the genuine link requirement:

There is no single or obligatory criterion by which the genuineness of a link is to be established. A State has a discretion as to how it ensures that

315. Noyes, *supra* note 296, at 189-93, reprinted in 32 CAL. W. INT’L L.J. at 380-83.

316. See generally BRIAN D. SMITH, STATE RESPONSIBILITY AND THE MARINE ENVIRONMENT (1988).

317. Convention on the High Seas, Apr. 28, 1958, 13 U.S.T. 2312, 2315, 450 U.N.T.S. 82, 84.

318. Robin R. Churchill, *The Meaning of the “Genuine Link” Requirement in Relation to the Nationality of Ships* § 6, at 69 (Oct. 2000), available at <http://www.oceanlaw.net/hedley/pubs/ITFOct.2000.pdf>.

the link between a ship having its nationality and itself is genuine, be it through requirements relating to the nationality of the beneficial owner or crew, its ability to exercise its jurisdiction over such a ship, or in some other way.³¹⁹

In light of Professor Churchill's conclusion and the longstanding disagreements among states over the meaning of "genuine link," a definition that is more open ended than Professor Walker's revised definition may be in order. I previously proposed the following as an alternative that could avoid some of the difficulties just noted:

"[G]enuine link" means more than a mere link, requiring, by way of example, connections between the flag State and the vessel such that the flag State has the ability to exercise effective control over the vessel when nationality is granted, or connections between the flag State and the vessel's crew, or connections between the flag State and the vessel's officers,³²⁰ or connections between the flag State and the vessel's beneficial owners.

The problems associated with lax flag state control are not likely to be ameliorated by a definition of "genuine link" that is not the product of a new set of interstate negotiations. We should instead directly ask what abuses or problems relating to flag state control deserve attention and consider what measures are appropriate to correct those abuses. Is the concern with vessels that are prone to oil spills? With vessels that pose other safety hazards? With substandard labor conditions on board? With the use or potential use of vessels for terrorist activities? I agree that more should be done to improve vessel safety, for example, but I question whether a narrow definition of "genuine link" is a sensible way to further that goal. Agreements supplementing the flag state obligations set out in Article 94 of the Law of the Sea Convention, technical support to enable flag states to carry out their obligations, port state controls, and coordination among port states strike me as more direct routes to that goal.

II. COMMENTS ON THE DEFINITION OF "SHIP" OR "VESSEL"

Drafters and decision makers have struggled with the problem of defining "ship" in both national and international law. In one British case involving coverage under an insurance policy, the lower court had found that a crane floating on pontoons was not a "ship" or "vessel." On appeal to the Court of Appeal, Lord Justice Scrutton was troubled by the lack of a definition of those terms:

One might possibly take the position of the gentleman who dealt with the elephant by saying he could not define an elephant, but he knew what it was when he saw one, and it may be that that is the foundation of the

319. *Id.* § 6, at 70.

320. Noyes, *supra* note 296, at 193, *reprinted in* 32 CAL. W. INT'L L.J. at 383.

learned Judge's judgment [in the court below], that he cannot define "ship or vessel" but he knows this thing is not a ship or vessel. I should have liked to be able to give a definition here, because . . . it is rather a pity that the Courts are not able to give a definition of the words which are constantly turning up in a mercantile transaction. But the discussion today . . . of the various incidents and various kinds of things to which [the words "ships and vessels" have] been applied, has convinced me that it is of no use at present to try to define it, and the only thing I can do in this case is to treat it as a question of fact and to say that I am not satisfied that the learned Judge was wrong.³²¹

We assuredly can say more about the concept of "ship" or "vessel" than "I know one when I see one," but it does not necessarily follow that an all-encompassing definition is essential to that end. Professor Walker has proposed the following definition for the Law of the Sea Convention:

"Ship" or "vessel" have the same, interchangeable meaning in the English language version of the 1982 LOS Convention. "Ship" is defined as a vessel of any type whatsoever operating in the marine environment, including hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms. Where, e.g., "ship" or "vessel" is modified by other words, or prefixes or suffixes, as in the Article 29 definition of a warship, those particular definitions apply.³²²

I fear that this definition, or any one definition proposed for use in the 1982 Law of the Sea Convention, may be either too broad or too narrow, depending on the context in which it is used. The interpretation of "ship" may well vary from issue to issue, and when we seek a definition that applies to as wide a range of situations and issues as does the Law of the Sea Convention, it becomes particularly difficult to agree on an acceptable definition.

Before I explore my concerns with the proposed definition, let me note that there is much in the definition with which I agree. First, I agree that particular subcategories of ships may need to be addressed separately. This is certainly true of warships, which are the subject of Article 29 of the Law of the Sea Convention. My comments do not address warships.

Second, I agree that "ship" is a general term, referring to a variety of different craft. There was a time, in the age of sail, when "ship" may have had a relatively specific and determinate meaning. A "ship" was "a vessel with three or more masts and fully square-rigged throughout."³²³ A "ship" was thus distinguishable from smaller craft; a "ship" was not a brig, or a schooner, or a cutter. Today, however, the connotation of the word "ship" is not so specific.

321. *Merchants Marine Ins. Co. v. North of England Protecting & Indemnity Ass'n*, 26 Lloyd's List L. Reports 201, 203 (1926) (Scrutton, J.).

322. ABILA LOS Comm., *Defining*, *supra* note 294, at 174, *reprinted in* 32 CAL. W. INT'L L.J. at 366; *Tentative Draft No. 1*, *supra* note 294, at 218.

323. DAVID CORDINGLY, *UNDER THE BLACK FLAG 277* (1995) (also noting, however, that the term "ship" sometimes was used to refer to broader categories of craft).

Third, I agree that the terms “ship” and “vessel” should be equated. As Professor Walker has noted,³²⁴ the terms were viewed as identical at the Third U.N. Conference on the Law of the Sea. The use of different terms in the English language version of the Law of the Sea Convention came about because two different committees at the Conference worked on different articles; one committee used “ship” in its articles while the other used “vessel.”³²⁵ This point suggests the need for one technical change in the proposed definition. The word “vessel” in the second sentence should be changed, because if “ship” and “vessel” are synonyms, then the sentence in effect reads, “Vessel” is defined as a vessel” It would be better to substitute a phrase along the lines of, “Ship” or “vessel” is defined as a device capable of traversing the sea”

The critical issue, though, is whether we can come up with any sensible definition that captures all the various types of craft and all the different purposes for which we have international legal rules related to ships. With respect to types of craft, the concern with whether a definition is suitable is likely to occur at the margins. All will agree that an oil tanker, navigating the high seas under its own power and exposed to maritime risks, is a “ship” or “vessel.” But, with respect to various issues, should we include as ships: floating platforms or drilling rigs (with or without motors), temporarily fixed platforms, hydrofoils, seaplanes on the water, amphibious craft, submersibles, very small boats, houseboats or docked hotels such as the *Queen Elizabeth II*, boats being towed for repairs, abandoned craft, wrecks (capable of being raised or not), boats in dry dock for repair or safekeeping, craft under construction (launched or not yet launched)? If we could agree on what to include or exclude as a ship in all cases, drafting challenges arise. For example, Professor Walker’s commentary indicates that he would prefer to exclude fixed platforms from the category of “ship.”³²⁶ Yet the proposed definition, which encompasses “a vessel of any type whatsoever operating in the marine environment,” may be ambiguous in this regard, unless the word “including” is read as a term of limitation rather than a term of illustration, i.e., is read to mean “including the specified examples and excluding other examples not listed.”

Although we can massage the drafting if need be, the difficult question remains: In a general convention, is it appropriate to use the same conception of “ship” for all purposes? Consider the issue of whether to exclude temporarily fixed platforms, as a way to illustrate the possibility that the definition should vary depending on the purposes for which one is construing the term. It may be nonsense to consider fixed platforms as vessels when

324. ABILA LOS Comm., *Defining*, supra note 294, at 174, reprinted in 32 CAL. W. INT’L L.J. at 366; *Tentative Draft No. 1*, supra note 294, at 217.

325. 2 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY ¶ 1.28 (Satya N. Nandan & Shabtai Rosenne eds., Myron H. Nordquist ed.-in-chief, 1993).

326. ABILA LOS Comm., *Defining*, supra note 294, at 174, reprinted in 32 CAL. W. INT’L L.J. at 365-66; *Tentative Draft No. 1*, supra note 294, at 217.

one is concerned with a rule, such as Article 111 on the right of hot pursuit, that contemplates a vehicle capable of self-propulsion. Yet when one considers legal rules concerning the protection of life—for example, rules relating to the duty to rescue, or to serious marine pollution—the case for a restrictive definition is not compelling.³²⁷ For example, the definition of “ship” in the MARPOL Convention is indeed broad, including fixed platforms.³²⁸ And that seems appropriate: if important objectives could be damaged by pollution from fixed platforms, or by failing to rescue from fixed platforms, our conception of “ship” should encompass fixed platforms. One might, I suppose, leave the broader definition, which includes fixed platforms, to the MARPOL Convention and not construe the meaning of “ship” in the Law of the Sea Convention so broadly. But is there any good reason to do that? I question whether the fact that the Law of the Sea Convention contains some articles referring to “platforms or other man-made structures at sea” and to “artificial islands, installations, and structures”³²⁹ should mean that temporarily fixed platforms should be excluded from the category of ships when considering the application of rules concerning the protection of life.

Even if we focus solely on the Law of the Sea Convention—even if we set aside concerns over the compatibility of a definition for the Law of the Sea Convention with definitions used in other oceans treaties—we still should conclude that different definitions of “ship” make sense in different settings. For example, Article 91(2) of the Convention provides, “Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.” The problem is that not every state—including states that were part of the unanimous support in 1956 in the International Law Commission for the identically worded predecessor to Article 91(2) (Article 5(2) of the 1958 Convention on the High Seas)³³⁰—issues documents to small boats entitled to fly its flag. Rather than presume such states to be in violation of Article 91(2), it seems more sensible, as H. Meyers has suggested, to construe the term “ship” in this context as not including “small yacht.”³³¹ Compare, however, Article 91(1), which provides that “every State shall fix the conditions for the grant of its nationality to ships,” and that there must be “a genuine link between the State and the ship.” There is no reason

327. See Laurent Lucchini, *Le Navire et Les Navires*, in *LE NAVIRE EN DROIT INTERNATIONAL* 11 ¶ 34 (Société Française pour le Droit International ed., 1992).

328. MARPOL 73/78 defines “ship” as “a vessel of any type whatsoever operating in the marine environment . . . includ[ing] hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.” Protocol of 1978 Relating to International Convention for Prevention of Pollution from Ships, 1973, Feb. 17, 1978, art. 1, 1340 U.N.T.S. 61, 63, and International Convention for Prevention of Pollution from Ships, Nov. 2, 1973, art. 2(4), 1340 U.N.T.S. 184, 185.

329. See the references in ABILA LOS Comm., *Defining*, *supra* note 294, at 174 n.81, *reprinted* in 32 CAL. W. INT’L L.J. at 366 n.85; *Tentative Draft No.1*, *supra* note 294, at 217 n.97.

330. H. MEYERS, *THE NATIONALITY OF SHIPS* 17 (1967).

331. *Id.*

to exclude small yachts from those Article 91(1) rules.³³² The dilemma posed by these examples is obvious: one definition cannot at the same time include and exclude small yachts.

One could even read the word “ship” in the Law of the Sea Convention to refer, at times, to individuals. Article 94(1), in setting out the general obligation of every state to “effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag,” seemingly refers both to the craft and to its master, officers, and crew. This notion is reinforced by subsequent paragraphs of Article 94, which specify particular obligations that flesh out the general obligation of Article 94(1). Those particular obligations certainly apply both to the craft (e.g., the flag state must maintain ship registers³³³) and to the master, officers, and crew (e.g., the flag state must set labor conditions for the crew³³⁴). A flag state’s general obligation in Article 94(1) to exercise jurisdiction “over ships flying its flag” thus appears to encompass an obligation to exercise jurisdiction with respect to the master, officers, and crew of those ships.³³⁵

An attempt to draft a generally applicable definition of the word “ship” at the International Law Commission in the 1950s was not successful. François, the special rapporteur for the International Law Commission in its work leading up to the 1958 conventions, proposed the following definition: “A ship is a device capable of traversing the sea but not the air space, with the equipment and crew appropriate to the purpose for which it is used.”³³⁶ When the definition came up for discussion, François said he “had doubts as to the necessity of the definition of a ship,” and the ILC, in 1955, unanimously voted to delete the definition from its articles on the high seas.³³⁷ One observer has suggested that the discussion at the ILC may have indicated that the definition was not suitable for all purposes.³³⁸ The ILC decided it was preferable not to have a fixed definition.

Others have studied in great detail the conception of “ship” in national and international law. These scholars have concluded that international law lacks one general conception of “ship.” Some of them have also concluded that one definition is undesirable, in light of the various situations and rules applicable to “ships.” Lazaratos argued that a general definition of “ship” was desirable, but he also noted the “unbridgeable” variety in national law

332. *See id.* at 17-18.

333. LOS Convention, *supra* note 293, art. 94(2)(a).

334. *Id.* art. 94(3)(b).

335. *See* MEYERS, *supra* note 330, at 12-13. To the same effect is Article 92(1), providing that “[s]hips . . . shall be subject to” the flag state’s exclusive jurisdiction on the high seas. That rule seemingly applies both to the physical ship and to the master, officers, and crew. *See id.* at 11. *See also* George Lazaratos, *The Definition of Ship in National and International Law*, 1969 REVUE HELLÉNIQUE DE DROIT INTERNATIONAL ET ÉTRANGER 57, 66.

336. [1955] 1 Y.B. INT’L L. COMM’N 10 n.5, U.N. Doc. A/CN.4/SER.A/1955.

337. *Id.* at 10. For François’s discussion of the issue, see [1950] 2 Y.B. INT’L L. COMM’N 38, U.N. Doc. A/CN.4/SER.A/1950/Add.1.

338. *See* MEYERS, *supra* note 330, at 16.

definitions and found no definition in customary international law.³³⁹ He also did not specify the text of a proposed definition, although he suggested some features, such as a limitation to ocean-going vessels,³⁴⁰ that he thought should characterize a “ship” in international law. Lucchini noted the impossibility of using particular treaties to discern the characteristics of any common definition of “ship.”³⁴¹ He suggested that academic discussion of ships, which recognized the importance of ability to navigate, ability to float, and regular exposure to maritime risks, could help decision makers—not by providing a fixed definition, but by suggesting factors that could be examined case by case in determining what is and what is not a ship.³⁴² The judge in each case should also assess the purposes for which it is important to determine whether a device is a ship.³⁴³ Lucchini concluded that the diversity of vessels and applicable rules made any effort to find one unified conception extraordinarily complex, and that practice and doctrine made it impossible to specify a general definition of “ship.”³⁴⁴ Meyers stressed that an object that cannot float and is not capable of traversing the sea could not be considered a ship,³⁴⁵ but concluded that a uniform definition suitable for all purposes is impossible:

There may be good grounds in favour of either very broad or very narrow definitions. It all depends upon what subject-matter is at issue. It would seem quite undesirable to adopt one and the same definition as obtaining for the whole of the law of the sea. . . . One detailed, all-embracing concept: ship, obtaining under all circumstances, does not and cannot exist for all the purposes of international law.³⁴⁶

In short, “water-tight definitions do not exist.”³⁴⁷

Because so many different rules apply to ships, because those rules may fulfill so many different purposes, and because those rules might apply to so

339. Lazaratos, *supra* note 335, at 92.

340. *Id.* In addition, in his examination of national laws, Lazaratos expressed concern with exposure to maritime risks, which he thought should preclude devices from being considered ships before they were launched. *See id.* at 77. Lazaratos also suggested that sunken wrecks should not be considered ships because they lacked the ability to navigate. *See id.* at 77-78

341. Lucchini, *supra* note 327, ¶ 35.

342. *Id.* ¶ 42.

343. *Id.* ¶ 43(1).

344. “On est frappé par l’extraordinaire complexité de toute tentative visant à faire rentrer dans l’unité des navires. . . . Une définition générale et commune du navire n’a pu être dégagée, la variabilité de sa notion dans le temps et dans l’espace en étant la cause principale.” *Id.* ¶ 57.

345. MEYERS, *supra* note 330, at 23.

346. *Id.* at 22-23. *Accord id.* at 17. *See also* Tullio Treves, “Navigation,” in 2 A HANDBOOK ON THE NEW LAW OF THE SEA 835, 842 (René-Jean Dupuy & Daniel Vignes eds., 1991) (concept of “ship” depends on a link to a state, and that concept “may take on a different hue according to the zone of the sea concerned”).

347. MEYERS, *supra* note 330, at 15.

many different types of objects, I doubt that one all-encompassing definition for the Law of the Sea Convention would be satisfactory. The definitions of “ship” in national laws and in various treaties addressing specific law of the sea issues certainly vary considerably.³⁴⁸ This fact illustrates the difficulty in fashioning a “one size fits all” definition. It is unremarkable in the law that the same term may mean somewhat different things in different contexts. As the International Court of Justice has stated, a word “obtains its meaning from the context in which it is used. If the context requires a meaning which connotes a wide choice, it must be construed accordingly, just as it must be given a restrictive meaning if the context in which it is used so requires.”³⁴⁹ The ILC’s 1955 decision not to include a definition of “ship” in a general law of the sea convention was a wise one. If I were forced to attempt a definition, it would be so broad as to be essentially meaningless—something along the lines of: “A ‘ship’ or ‘vessel’ is a man-made device capable of floating and capable of traversing the sea, including its master, officers, or crew; provided, however, that a narrower definition should be used if the context or purposes of a particular rule indicate that the narrower definition is appropriate.”

III. COMMENTS ON DEFINITIONS RELATING TO THE CONTINENTAL SHELF

Among Professor Walker’s proposed new definitions, twenty-six concern terms appearing in Article 76 of the Law of the Sea Convention, which defines the continental shelf. These are: adjacent coasts; bank; basepoint or point; cap; chart; continental rise; continental slope; deep ocean floor; due publicity; foot of the continental slope; geodetic data; isobath; latitude; line of delimitation; longitude; oceanic ridge; opposite coasts; outer limit; rock; seabed; sedimentary rock; shelf; spur; straight line; submarine ridge; and subsoil.³⁵⁰ The issue of how to define the outer boundary of the continental shelf presents some difficult challenges. It is the subject of ongoing work in the Commission on the Limits of the Continental Shelf (CLCS)³⁵¹ and in the International Law Association’s Committee on the Outer Limits of the Continental Shelf.

We should consult the work of the CLCS and the International Law Association’s Committee to see whether it is possible to develop a consistent understanding of the concepts sought to be defined. Also, in addition to the International Hydrographic Organization, on whose work Professor Walker has relied, other expert organizations (the Association for Geographic In-

348. See the surveys in Lazaratos, *supra* note 335, Lucchini, *supra* note 327, and MEYERS, *supra* note 330.

349. Constitution of the Maritime Safety Comm. of the Inter-governmental Maritime Consultative Org., 1960 I.C.J. 150, 158 (Advisory Opinion of June 8) (construing the meaning of the word “elected”).

350. *Revised Initial Draft*, *supra* note 295.

351. See LOS Convention, *supra* note 293, art. 76(8) & Annex II.

formation and the American Geological Institute) have proposed definitions that should be consulted.³⁵²

The definition of some terms relating to the continental shelf may well be politically sensitive. For example, there are likely to be disputes over just what does and does not constitute an “oceanic ridge,” which Professor Walker defines as a “long elevation of the ocean floor”³⁵³ The term is an important one, since, under Article 76 of the Law of the Sea Convention, “the deep ocean floor with its oceanic ridges” cannot be considered part of the continental margin.³⁵⁴ The CLCS has compiled a nonexhaustive list of eight different types of ridges, derived from different geologic processes.³⁵⁵ The CLCS has struggled to define just which of these ridges might be considered “oceanic ridges” and has concluded that the determination of just what is and what is not a ridge should be made on a “case-by-case basis.”³⁵⁶ In some areas, geologic formations that may satisfy Professor Walker’s definition of an oceanic ridge could include rocks that intrude into a continental margin along a fault line. Should these intrusive rocks still be considered part of the oceanic ridge and thus excluded from the continental margin? In other areas, formations that may satisfy Professor Walker’s definition of an oceanic ridge have islands on them. Concluding that an island is located on an “oceanic ridge,” rather than on some other type of submarine elevation, could have important implications. Article 121(3) of the Law of the Sea Convention provides that islands capable of sustaining human habitation or economic life shall have their own continental shelf. If an island is located on an “oceanic ridge,” however, Article 76(3), read in conjunction with Article 76(1), appears to limit the island’s continental shelf to 200 nautical miles.³⁵⁷ The purpose of noting these issues is to emphasize that, as this project proceeds, we must pay careful attention to the implications of any definitions. Adopting geologic or geomorphologic definitions as legal definitions can be a sensitive matter, particularly with respect to definitions relating to the continental shelf.

352. CONTINENTAL SHELF LIMITS: THE SCIENTIFIC AND LEGAL INTERFACE 321-30 (Peter J. Cook & Chris M. Carleton eds., 2000) [hereinafter CONTINENTAL SHELF LIMITS].

353. *Revised Initial Draft*, supra note 295, at 279.

354. LOS Convention, supra note 293, art. 76(3).

355. See CLCS, *Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf*, CLCS/11, ¶ 7.2.1, available at <http://ods-ddsny.un.org/doc/UNDOC/GEN/N99/171/08/IMG/N9917108.pdf?OpenElement> (last visited April 11, 2003).

356. *Id.* ¶ 7.2.11.

357. Many difficult issues relating to ridges are analyzed in Philip A. Symonds et al., *Ridge Issues*, in CONTINENTAL SHELF LIMITS, supra note 352, at 285.

CONCLUSIONS

GEORGE K. WALKER

Revised Definitions and The International Hydrographic Organization Consolidated Glossary continue to illustrate the number of terms that the 1982 Law of the Sea Convention does not define, the debate over meanings, and whether a single definition is possible that began with the first year of analysis, 2001-02.³⁵⁸ Some words or phrases appear relatively “safe,” i.e., there appears to be little controversy about their meaning in the Convention. Others may have been left deliberately ambiguous, e.g., separation of clauses into Articles 91(1) and 94(1) of the Convention relating to “genuine link” from what had been one provision in the High Seas Convention, Article 5.³⁵⁹ Differences over others may spark political controversy.³⁶⁰

As I wrote last year, words, even the “safest” and surest, are always the skins of living ideas.³⁶¹ New occasions for using terms may teach new duties, making ancient good uncouth.³⁶² The Committee, with suggestions, comments and assistance of colleagues interested in a law of the sea as uniform as possible, should go forward to develop as much certainty as possible,³⁶³ recognizing limitations of any definitions today and tomorrow. The further problem is that any definition is subject to its use in a rapidly-changing world. As a colleague once wrote about adoption of new rules for civil litigation, “[T]he real test comes with use[;] . . . trial and appellate judges will play a large part in developing the philosophy of the rules. A mere rule, regardless of how polished the draft, is [neither] flexible nor workable per se. It is the use which makes it so.”³⁶⁴ This may also be true with respect to any definitions the Committee develops. The real test will come with the use States and others make of them. However, to fail to try to develop workable definitions may provoke unnecessary disputes that can boil over into serious confrontations in a world that does not need any more.

The Committee solicits suggestions, comments and assistance in its endeavors.

358. See *supra* notes 1-102 and accompanying text.

359. See *supra* notes 45-60 and accompanying text; see also Noyes, *Treaty*, *supra* note 14, at 189-93, reprinted in 32 CAL. W. INT'L L.J. at 380-83.

360. See Noyes, *Definitions for the 1982 Law of the Sea Convention and the Importance of Context: “Ships” and Other Matters*, *supra* notes 293-357.

361. *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921) (Holmes, J.).

362. James Russell Lowell, *The Present Crisis*, in 1 JAMES RUSSELL LOWELL, POETICAL WORKS 185, 190 (1890).

363. George K. Walker, *Conclusions: “Words, Words, Words”: Dilemmas in Definitions*, 2001-02 PROC. AM. BRANCH INT'L L. ASS'N 195, 198, reprinted in 32 CAL. W. INT'L L.J. 384, 386 (2001-02) (citing *Gully v. First Nat'l Bank*, 299 U.S. 109, 117-18 (1936) (Cardozo, J.)).

364. James E. Sizemore, *General Scope and Philosophy of the New Rules*, 5 WAKE FOREST INTRAM. L. REV. 1, 6 (1969).