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FRONTIER ISSUES IN OCEAN LAW: MARINE RESOURCES,
MARITIME BOUNDARIES, AND THE LAW OF THE SEA

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Article 4

Preface

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It is especially fitting that the papers in this Law of the Sea Institute, UC Berkeley/Inha University symposium should appear in 2008, marking the half-century anniversary of the 1958 UN Geneva Conventions on the Law of the Sea. This set of four agreements on ocean uses and boundaries represented a breakthrough, albeit only partially so, in what had become a vexed and ominously incoherent legal order for the oceans. In controversy were the principles for the delimitation of boundaries at sea, and also the distances to which specific categories of jurisdictional and territorial claims at sea could be made. A League of Nations meeting in the interwar years had sought unsuccessfully to settle any of these basic questions in ocean law. In the Cold War context, as of 1958, with newly independent nations staking claims as decolonization proceeded, with rapid changes in technology for ocean uses occurring, and with a dangerous rift widening between coastal and maritime states, a multilateral approach in the UN framework was an important step forward. The work of the Geneva delegates has continued in the decades since they met in 1958, as the global community has sought to address the challenge of creating coherence and introducing rule of law—in the interests of justice and of peaceful international relationships—in ocean affairs.

The papers presented in this symposium address several of the most urgent issues still in contention today. The UN Convention on the Law of the Sea (UNCLOS), signed in 1982, and subsequent agreements under terms of the UNCLOS framework, have in some fundamental ways altered, while in other ways modified only marginally, the boundary-setting agreements of 1958. Even though the 1982 UNCLOS addressed some of the crucial questions involving boundaries and their relationship to ocean uses, still many legal questions were left vague and have proven difficult to resolve in the years since UNCLOS came into play as "the constitution for the oceans."

Some questions that have proved vital were not foreseen or fully understood as to their implications 26 years ago, for example the question of exploration and control of seabed genetic resources. Other issues in ocean law have proven intractable because they must be dealt with in the light of geographical and economic conditions, and their resolution requires the incorporation of those considerations into doctrinal development. A political approach is indispensable in regard to some of the most dangerous ocean issues, e.g., in situations where nations have conflicting claims to potential oil-rich areas such as in the South China Sea, or in the case of Japanese and Korean conflict over the ownership of a remote island with a large exclusive economic zone (hence a large area for fishing or undersea mining and drilling), or with regard to the Argentine-British conflict over the Malvinas/Falkland Islands. In the Arctic region, the conflicting claims of the United States, Russia, Canada, Greenland and other nations bordering the polar area, will require adjudication and resolution on

the basis of scientific data concerning the formation of the contiguous areas of the continental shelf.

As discussed in some of the articles in this symposium, a variety of political solutions already has been successfully applied for drawing boundary lines by agreement or for actual functional sharing of resource exploitation. Moreover, in the UN Tribunal for the Law of the Sea procedures have emerged that are potentially available for handling boundary disputes and related issues in the future day.

These papers do not cover the whole range of such issues, of course, but the authors have framed their inquiries in a way that provides insights into the more comprehensive issues in ocean law, policy, and diplomacy that lie beyond the scope of their individual inquiries. It is the hope of the co-editors that the original scholarship that appears here may advance and enrich the ongoing discussion of major legal and ocean policy issues that are of such great importance to international peace, rule of law, and rational resource use in the face of such rapidly changing conditions as we now face.

This symposium is one in a series sponsored by the Law of the Sea Institute, UC Berkeley (LOSI), a research program based in the Institute for Legal Research, UC Berkeley School of Law. Most of the present papers were first presented at a conference held in Seoul, Korea, in late 2007 and jointly sponsored by LOSI, UC Berkeley and Inha University; they are augmented by papers originally given at Berkeley in 2008 under the same joint sponsorship. Principal financial sponsorship was arranged by Inha University and by Christopher Edley, Jr., Dean of the UC Berkeley School of Law. The co-editors of this symposium, Professors Seokwoo Lee and Harry N. Scheiber, were also the co-organizers of the two conferences. We are grateful to Professor David Caron of UC Berkeley School of Law, who is Co-Director with Harry N. Scheiber of LOSI; and to Prof. Jon Van Dyke of the William S. Richardson School of Law, University of Hawai'i, for their invaluable counsel in conference planning and organization. Production of the papers was indispensably aided by Benjamin Jones, research assistant in LOSI, and by Toni Mendicino, of the staff of the Institute of Legal Research, UC Berkeley, and the School of Law.