

volume

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ASCOMARE YEARBOOK ON THE LAW OF THE SEA 2021

*Law of the Sea,
Interpretation and Definitions*

Edited by
Pierandrea Leucci and Ilaria Vianello

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ON THE LAW OF THE SEA

2021

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The *Associazione di Consulenza in Diritto del Mare* (ASCOMARE) is dedicated to promoting the study, and uniform interpretation and application of the international law of the sea, including the United Nations Convention on the Law of the Sea, 1982, and its implementing instruments. The work of ASCOMARE is inspired by human rights considerations and environmental principles. The *ASCOMARE Yearbook on the Law of the Sea* strives to serve as a tool to support the work of international law experts, judicial bodies, policy makers and legal practitioners in the field of the law of the sea.

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Volume 1 of the *ASCOMARE Yearbook on the Law of the Sea* can be accessed in a free and open digital format on: www.ascomare.com

Graphics and printing: Luglioprint, Trieste

ACKNOWLEDGEMENTS

The Editors wish to express their utmost gratitude to Prof. André De Paiva Toledo, Prof. Abdullah Al Faruque, Prof. Andrea Caligiuri, Prof. Lorenzo Schiano di Pepe, Dr. Peter Clinton, and Prof. Thiago V. Zanella, for their comments and constructive feedback on this volume; as well as to Ms. Andrea Marina Galassi for her help and strategic contribution. The Editors are also extremely grateful for the support received from the Brazilian Institute for the Law of the Sea (BILOS) and the Norwegian Centre for the Law of the Sea (NCLOS).



BILOS
Brazilian Institute
for the Law of the Sea

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NORWEGIAN CENTRE
FOR THE LAW OF THE SEA

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© Prima Edizione 2021 by Luglio Editore

Loc. Domio, 107 - San Dorligo della Valle - Trieste

Tel. 040.381416 - Fax 040.280215

Internet: www.luglioeditore.it

E-mail: info@luglioeditore.it

ISBN 978-88-6803-309-5



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Cover image: Emma Critchley, ‘Frontiers’ from a film still, 2016.

*The Editors would like to dedicate this book to all the souls lost at sea
searching for hope, peace, and a warm touch of humanity*

Ilaria Vianello and Pierandrea Leucci
Heidelberg and Lecce, December 2021

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Foreword

A few years ago, I was supporting a government in drafting a piece of its domestic legislation. It was late at night when I started working on the part of the text setting rules on marine environmental conservation. I needed a definition of ‘environment’ that could fit the purposes of the law. Something broad enough to cover not only natural resources and ecosystems, but also environmental amenities. After an hour or so, my mind switched to autopilot. For a moment, I felt like Darrell Standing traveling across space and time, and finding shelter, quite oddly, in the words of Judge Bedjaoui in the *Gabčíkovo/Nagymaros* case — the captivating idea that the conceptualisation of the ‘environment’ holds a static nature. In the meantime, *The Dark Side of the Moon* LP, gently playing in the background, reached track three — ‘Time’. I could hear the voice of Gilmour singing, ‘the sun is the same in a relatively way but you’re older’. What an unconventional way to grasp the intimate gist of the unruly relation between predictability and reality, including the perception of reality. The environment is the environment, but the way we look at it changes over time. This is also why definitions are needed in the first place. A flowery normative dress to wrap words in. A dress that, like any other, does not last forever, but from time to time needs to be patched up, and eventually thrown away. In the *Corfu Channel* case, Judge Alvarez noted that ‘international life is in a state of constant evolution, and [...] international law must always be a reflection of that life.’ But then how could the gap between predictability and reality be bridged, in practice? One way of doing so is by changing the law; another by (re)interpreting it. The latter exercise, however, is more challenging, as rules and definitions have a life of their own: they have a history, a legal family, an object, and a purpose. This is true in the law of the sea, as in other areas

of international law, where the meaning of terms (or the absence of any official meaning) is the result of a complex negotiation process. As such, reaching a common understanding of what certain terms mean and how they should be interpreted is not an easy task for jurists, nor for national and international courts.

This first volume of the *ASCOMARE Yearbook on the Law of the Sea* is devoted to ‘law of the sea, interpretation and definitions’. This is not a manifesto of all the undefined terms and concepts of the law of the sea. Here you will not find a comprehensive definition of ‘environment.’ Rather, the goal envisioned in this book is to look at legal terms and provisions through the lens of our times in order to prompt further reflection, and facilitate an exchange of views on the role of interpretation and definitions under the law of the sea. We hope you will enjoy the reading.

Pierandrea Leucci

President of ASCOMARE

Lecce, December 2021

