UNIVERSITY OF OXFORD

FACULTY OF LAW 2003-2004

LAW OF THE SEA: (1) INTRODUCTION AND OVERVIEW

INTRODUCTION

Reading:

The course textbook is R. R. Churchill and A. V. Lowe, *The Law of the Sea*, (3rd ed., Manchester UP, 1999. Paperback)

You should also obtain copies of the full text of the 1982 UN Convention on the Law of the Sea, and of the 1958 Geneva Conventions on the Law of the Sea. You will find a copy of *Blackstone's International Law Documents* helpful.

The 1982 Convention can be found at

http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm

http://fletcher.tufts.edu/multilaterals.html

The 1958 Conventions can be found in Blackstone's International Law Documents and at

http://www.oceanlaw.net/texts/

http://fletcher.tufts.edu/multilaterals.html

National legislation on the Law of the Sea can be found at

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/toc.htm

Other useful sites include:

http://www.un.org/Depts/los/index.htm

http://www.oceanlaw.net/

http://www.thimun.org/research/int_law.html

http://www.sosig.ac.uk/roads/subject-listing/World-cat/intreaties.html

OVERVIEW

1. **The classical structure of the law of the sea**: The 1958 Geneva Conventions on the Territorial Sea and Contiguous Zone, the High Seas, and the Continental Shelf, set out the rules of the international law as they stood in the middle of the present century. Essentially, the legal regime consisted in a narrow belt (3-12 miles) of coastal sovereignty in the ***territorial sea***, subject to the right of ***innocent passage*** for foreign ships (but not for aircraft), with limited jurisdiction for customs, fiscal sanitary and immigration purposes in a narrow ***contiguous zone*** (up to 12 miles) beyond. Coastal States also enjoyed sovereign rights over the exploration and exploitation of the living and non-living resources of the ***continental shelf***. The ***high seas*** beyond these zones were free for use (for navigation, fishing, overflight, weapons testing, etc.) by all States and could not be appropriated by any State.
2. As States regained their independence, and as the nature and intensity of uses of the seas changed, the '1958' regime was unable to accommodate the developing conflicts of interest between States. Conflicts were particularly evident in respect of certain resources:–
3. **Fisheries** –over-fishing, for which distant-water fishing vessels of developed States were often blamed, threatened fish stocks off the shores of many States.
4. **Oil, gas and other continental shelf resources** –there were and are disputes over the drawing of boundaries between national continental shelves, and over the ***basepoints*** which generate seabed entitlements, although many seabed boundaries have been fixed by agreement or adjudication.
5. **Clean seas** –pollution, again blamed on the developed States, which are the users of most pollutants, and on a handful of 'flag of convenience States', threatened coastal fishing and tourist industries of great economic importance to many States. The risk increased with the building of super-tankers after the 1967 closure of the Suez Canal; but ship-based pollution has always been a small proportion of marine pollution.
6. **Safe seas** –shipping accidents threatened not only pollution, but also loss of life and injury to other sea users; and sub-standard ships were seen as enjoying unfair commercial advantages over ships observing stricter safety standards.
7. **Secure seas** –the freedom to navigate on the high seas was seen by some as giving powerful naval States the liberty to spy upon and threaten weaker States.
8. **Deep seabed resources (manganese nodules)** –in the late 1960's manganese nodules on the deep ocean floor were thought to constitute an immensely valuable and profitable source of strategic minerals; but only developed States appeared able to exploit them.
9. These factors led to demands for extensions of coastal jurisdiction over the seas and for the internationalisation of deep seabed resources.
10. **The realignment of national interests at UNCLOS III.** The '1958' regime served the interests of traditional naval powers with large fishing and merchant fleets. By

1969, when the UN moved towards the revision of the 1958 rules, those States were in a minority. At the third UN Conference on the Law of the Sea (***UNCLOS III***, 1973-1982), the G-77 States had a dominant interest. Many special interest groups such as archipelagic and landlocked States emerged, alongside the traditional maritime States. Similarly diverse interests competed for priority within many individual States. UNCLOS III produced the ***1982 UN Convention on the Law of the Sea*** (***LOSC***), which entered into force in 1994 and which currently has over 130 States Parties. (See also the 1994 Implementation Agreement). Much of the LOSC has passed into customary international law, which binds all States, whether or not they are Parties to the Convention.

11. Demands for extended coastal State control were accommodated in the LOSC by agreement upon a 12-mile territorial sea under coastal State sovereignty, with a further 12-mile contiguous zone beyond. Special provision is made for ***archipelagic States***. In a 200-mile ***Exclusive Economic Zone*** (***EEZ***), coastal States have exclusive rights over fisheries, seabed exploitation (subsuming continental shelf rights over the seabed within 200 miles of land) and scientific research, and extensive powers in pollution matters. These measures dramatically reduce the extent of the high seas, and consequently of the high seas freedoms of navigation, fishing, etc. The interests of maritime powers are accommodated by the creation of a special regime, ***transit passage***, for navigation and overflight through major international straits. The high seas beyond the EEZ remain free for use by all States, but the exploitation of the resources of the deep seabed, beyond the limits of the continental shelf (which may extend beyond the 200-mile zone) is administered by the ***International Sea-Bed Authority***. In addition, there are many conventions regulating high seas fishing, on a regional or a species basis, pollution, and other activities on the high seas.

OVERVIEW

The Law of the Sea is a mixture of customary international law and treaty law. Until 1994 the main Conventions were the **1958 GENEVA CONVENTIONS**, which deal with: (i) the Territorial Sea and Contiguous Zone; (ii) the High Seas; (iii) the Continental Shelf; and (iv) a convention of lesser importance, on Fishing and the Conservation of Living Resources on the High Seas.

These Conventions were adopted at the first United Nations Conference on the Law of the Sea (**UNCLOS I**) in 1958. A second conference, **UNCLOS II**, tried unsuccessfully in 1960 to agree on the width of the territorial sea. The third and latest UN conference, **UNCLOS III**, met from 1973-82, during which time it produced a series of "negotiating texts", e.g., the Informal Composite Negotiating Text (ICNT) which had a profound impact on State practice and thus on the development of customary law. In December 1982, it adopted **the UNITED NATIONS CONVENTION ON THE LAW OF THE SEA** - (LOSC) - which entered into force for the States Parties to it on 16 November 1994. The 1982 Convention supplants the 1958 Conventions. This paper describes the main features of the 1982 LOSC regime.

Maritime zones are measured from a **BASELINE**, which is usually the low water mark; but baselines may be drawn across bays, river mouths, deltas and harbour works. **STRAIGHT BASELINES**, may be drawn along deeply indented coasts; and archipelagic States may use **ARCHIPELAGIC BASELINES** connecting the outermost islands. Islands, however small, may be used as basepoints; so may **LOW TIDE ELEVATIONS**, unless they lie at a distance exceeding the breadth of the territorial sea from the nearest mainland or island. (Exceptionally, uninhabitable rocks and islets do not generate EEZs or continental shelves of their own.)

Sea areas landward of baselines, including **PORTS**, are **INTERNAL WATERS**, under full coastal State sovereignty. Waters enclosed by archipelagic baselines are **ARCHIPELAGIC WATERS**, and they also are under coastal sovereignty, but subject to a right of innocent passage such as exists in the territorial sea. Seaward of the baseline are the following:

0-12 miles - **TERRITORIAL SEA** (or territorial waters), under coastal sovereignty but subject to a right, temporarily and locally suspendible for security reasons, of **INNOCENT PASSAGE** for foreign ships - but not for aircraft. Passage which prejudices the peace, good order or security of the coastal State is not innocent. Most States currently claim 12 mile territorial seas. In **STRAITS** constituted by the territorial seas of the littoral States and used for international navigation, the right of innocent passage is, under the 1958 rules, not suspendible. In most important straits the LOSC introduced a new and non-suspendible right of **TRANSIT PASSAGE**, which includes rights of overflight and of submerged passage, and which has no condition of "innocence" attached to it. A right practically identical to transit passage exists in recognised international sea routes through archipelagic waters: it is termed **ARCHIPELAGIC SEALANES PASSAGE**. Though not beyond doubt, it is probable that rights comparable to transit passage and archipelagic sealanes passage now exist as a matter of customary law, at least in respect of the handful of major international sea routes such as the straits of Dover and Gibraltar.

12-24 miles - **CONTIGUOUS ZONE**, in which the coastal State has the right to enforce only customs, fiscal, sanitary and immigration laws. It is under coastal jurisdiction, in this limited sense, but not under coastal sovereignty.

12-200 - **EXCLUSIVE ECONOMIC ZONE (EEZ)**, within which coastal States have limited jurisdiction to prescribe and enforce laws concerning the exploitation of living and non-living resources of the sea and seabed, pollution, research, and the establishment of installations. Other States enjoy freedoms of navigation and overflight in the EEZ. Many States claim only fisheries jurisdiction, in a 200 mile **EXCLUSIVE FISHERIES ZONE** (**EFZ**).

The seabed from 12 miles (the outer limit of the territorial sea) to the edge of the continental margin, or to 200 miles, whichever is the further, is the **CONTINENTAL SHELF**, in law. The coastal State has exclusive sovereign

rights for the purpose of exploring and exploiting its resources, living and non-living.

Beyond the EEZ lies the **HIGH SEAS**, where all States enjoy the "**FREEDOMS OF THE HIGH SEAS**", including navigation, fishing, overflight, research, and pipe and cable laying (the "right of immersion"). Ships on the high seas are in principle subject exclusively to the jurisdiction of their flag State; but exceptions are made - notably in the cases of pirate ships, which may be seized by any State, and ships chased by a coastal State from one of its jurisdictional zones and arrested on the high seas under the right of **HOT PURSUIT**. There are many treaties, on matters such as the regulation of high seas fisheries, and the prevention of drug trafficking, which give States Parties to them some powers over foreign ships on the high seas.

The seabed beyond the continental shelf and EEZ is the deep seabed, or **INTERNATIONAL SEA-BED AREA** (or more simply, **the Area**). Its resources - chiefly manganese nodules - are the "common heritage of mankind", and their exploitation is placed by **PART XI** of the LOSC under the control of the **INTERNATIONAL SEA-BED AUTHORITY**. The resources will be exploited directly by the Authority through the **ENTERPRISE**, and by States and companies licensed by the Authority. Revisions to the LOSC regime were made in 1994, in a largely successful attempt to make the LOSC acceptable those western States that objected to aspects of Part XI. No commercial exploitation of the Area is foreseeable in the near future.

FISHERIES. Coastal States have complete control over their EEZ / EFZ fisheries. They determine annually **a TOTAL ALLOWABLE CATCH** (TAC) for the EEZ fisheries, aimed at preserving **the MAXIMUM SUSTAINABLE YIELD** (MSY), and determine their harvesting capacity. Any surplus is to be made available to other States. Many high seas fisheries are regulated under agreements made by interested States, covering a specific region or specific species. Agreements include the 1989 Wellington Convention for the Prohibition of Fishing with Long Driftnets, the 1987 Port Moresby Convention between the US and sixteen Pacific Island States, and the proposed Convention on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The 1995 UN **STRADDLING STOCKS AGREEMENT** provides a framework suitable for many such agreements.

POLLUTION. Flag States and coastal States have concurrent jurisdiction in pollution, as in other matters. Coastal States may, broadly speaking, only prescribe generally accepted international rules – e.g., those agreed by the International Maritime Organisation (**IMO** - it was IMCO until 1982) - and may only enforce them in cases of serious violations. States Parties will be able, under procedures in the LOSC, to ask the offending ship's next port of call to institute proceedings in the exercise of **PORT STATE JURISDICTION**, even though the offence was not committed in the port State's maritime zones. Otherwise

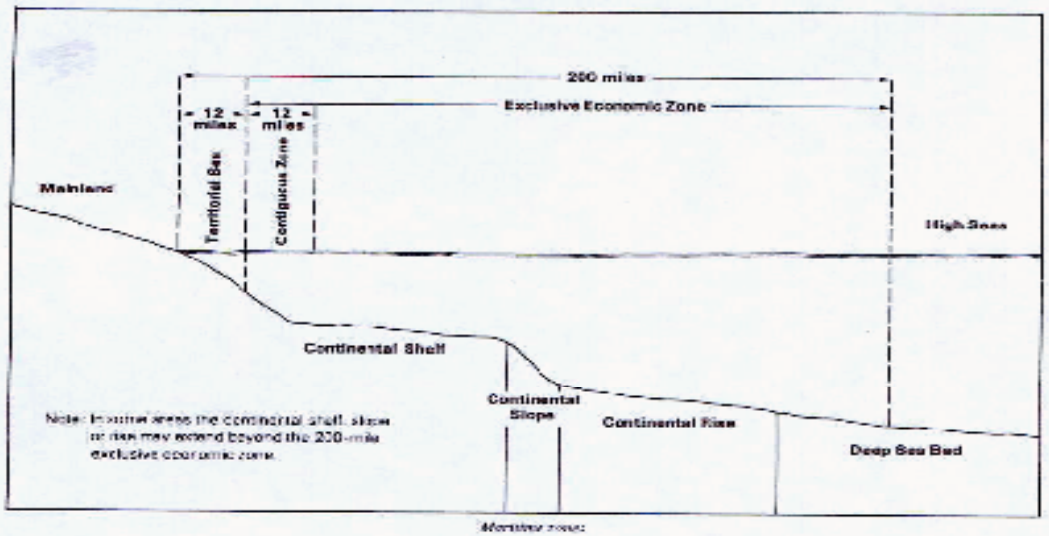
enforcement is left to the flag State. Internationally co-ordinated Port State inspections of vessels in port is, however, routine in North West Europe and some other areas. There are many Conventions on marine pollution, notably the 1973 Convention on Prevention of Pollution from Ships (**MARPOL**) and the 1969 Brussels Convention on Intervention on the High Seas.

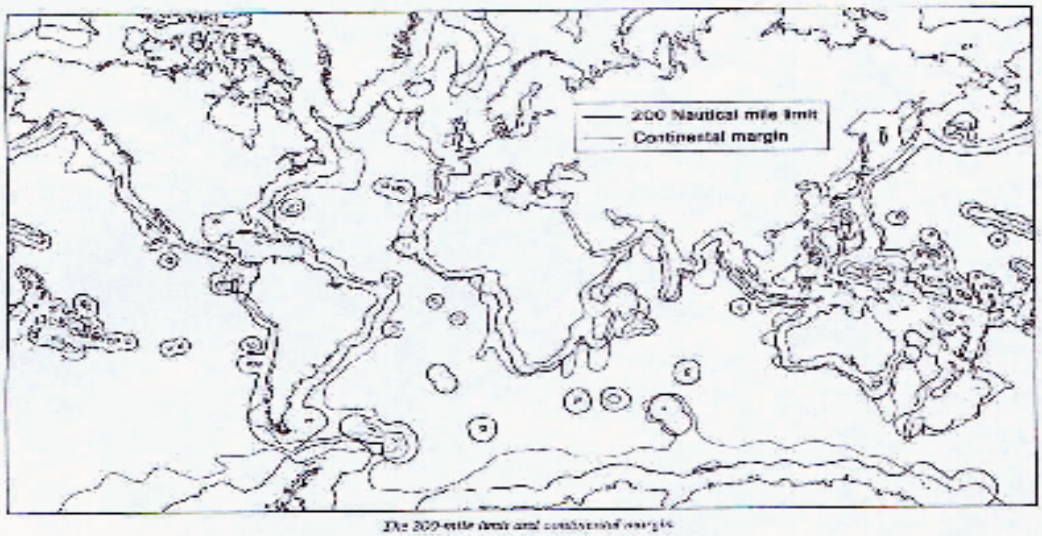
MARITIME BOUNDARIES are established by agreement based on principles of international law which require an equitable result based largely on geographical factors. A median line is often equitable, but there are many exceptions.

For reference:-

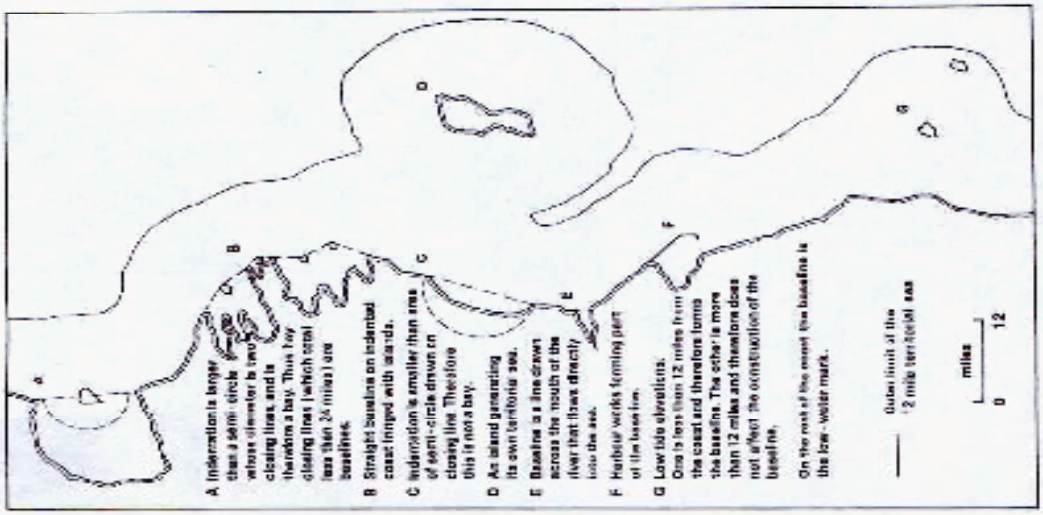
See the UN Law of the Sea website < **http://www.un.org/Depts/los/index.htm**>, and the IMO website < **http://www.imo.org/imo/welcome.htm**>, both of which contain links to many other useful sites.

M Nordquist et al. (eds.), *UNCLOS 1982: A Commentary*, (6 vols, 1985 -)





The 200-mile limit and continental margin



The construction of baselines