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Course Introduction

Maritime Jurisdictional Zones under the Law of the Sea Convention

China-ASEAN Academy on Ocean Law and Governance
1st Special Program of Maritime Law Enforcement

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International Law & Law of the Sea

Nature of the ocean

- Shared space used by multiple States
- Enforcement against foreign nationals
- Transboundary

Law of the Sea Convention (LOSC) and other instruments are based in international law

- Use of treaties
- Use of customary international law
- International dispute resolution





Professor Louis B Sohn (1914-2006)
US delegate at UNCLOS III



*“Two principles have governed the law of the sea since early times when sailors and fishermen first ventured into the sea: **the right of the coastal State to control a narrow strip along the coast,** and **the freedoms of navigation and fishing in the high seas** beyond that coastal area.”*



Law of the Sea Convention: A quick history




Hugo Grotius
1583-1645

mare liberum (1609)
'freedom of the seas'



Santa Catarina
1603



John Selden
1584-1654

mare clausum (1635)
'closed sea'



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The Law of the Sea Convention (LOSC)

- Entered into force 16 November 1994
- 168 State Parties (including EU)

Fiji (1982) <i>(first State)</i> Philippines (1984) Indonesia (1986) Micronesia (1991) Vietnam (1994) Australia (1994) Singapore (1994) Myanmar (1996)	China (1996) Malaysia (1996) Brunei (1996) Korea (1996) PNG (1997) Laos (1998) Vanuatu (1999) Thailand (2011) [latest State: Azerbaijan (2016)]
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Regional non-State Parties

- Cambodia (signed but not ratified)
- North Korea (signed but not ratified)

- US not a Party
 - US views most provisions of the Convention as customary international law and adheres to its substantive provisions

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Terminology

- Sovereignty
- Sovereign rights
- Zone
- Jurisdiction
- Fishing
- Coastal State
- Flag State
- Archipelagic State
- Ship



Is this a ship?

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Underlying objectives

- LOSC a “Constitution for the World’s Oceans”
- “Package deal” with no reservations
- Emergence of environmental protection
- Support for Developing States



Balancing competing interests

- Maritime zones / freedom of the seas
- Coastal State rights / freedom of navigation
- Compulsory dispute resolution / freedom of action for States
- Environmental protection / resource development



How are the interests balanced in LOSC?

Ambiguous language

- Few words defined (e.g. Art 1 – only 6 words defined)
- few words used for complex issues (e.g. Art 59)
- each State can interpret according to their national interest

Creation of zones of jurisdiction

- powers of coastal States over foreign vessels
- rights of foreign States in various maritime zones



LOSC Art 59

Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the EEZ

“In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the EEZ, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.”

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LOSC authentic in 6 UN languages

Arabic	French
Chinese	Russian
English	Spanish

‘equally authentic’: [Art 320](#)

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Balancing of interests at sea

Two competing interests in the Law of the Sea:

1. Control or Sovereignty
2. Freedom of the Seas

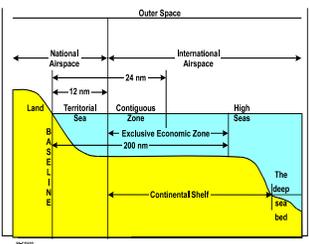


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Creation of maritime zones of jurisdiction

- Powers of coastal States over foreign vessels and their nationals
- Rights of foreign States and their nationals in various maritime zones



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Functions of zones of jurisdiction

- Establish the outer limits of States
- Define the competence of coastal States to enforce their laws against other States and their nationals
- Define the rights and duties of other States and their nationals in specific parts of the sea

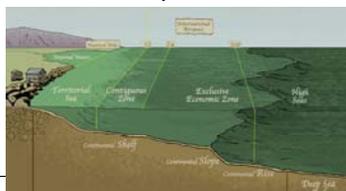


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Functions of zones of jurisdiction

Consider:

- powers of coastal States over foreign vessels and their nationals
- rights of foreign States and their nationals in various maritime zones
- rights for the international community as a whole



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Functions of zones of jurisdiction

Three categories:

1. Zones under **sovereignty** of States
2. Zones under **sovereign rights** of States
3. Zones **not subject to sovereignty or sovereign rights** of States

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Functions of zones of jurisdiction

Basic principle:

- *the closer one gets to land, the stronger the powers of the coastal State*

Conversely:

- *the further one moves away from the land, the weaker the powers of the coastal State*

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LOSC divides the sea into zones of jurisdiction

Within sovereignty of coastal State

- Internal waters
- Archipelagic waters
- Territorial sea
- Straits used for international navigation
- Contiguous zone (qualified sovereignty)



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LOSC divides the sea into zones of jurisdiction

Zones under sovereign rights of coastal State

- EEZ
- Continental shelf



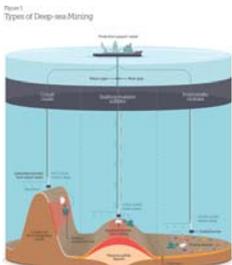
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LOSC divides the sea into zones of jurisdiction

Zones not subject to sovereignty/sovereign rights

- High seas (e.g. freedom of fishing)
- The Area (deep seabed) (common heritage)



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Concept of sovereignty

- Internal waters
- Archipelagic waters
- Territorial sea

- Full prescriptive and enforcement powers
- Subject only to specific limitations agreed to in international law

"The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea." [LOSC Art. 2]

- Sovereignty extends to the airspace over the territorial sea and to its bed and subsoil

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Internal waters

- All waters on the landward side of the territorial sea baseline (Art 8)
- Treated as part of the land territory of the coastal State (*writers talk of the submerged land being 'assimilated' to the territory of the State*)
- LOSC does not prescribe any rules for internal waters

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Archipelagic waters

- Full sovereignty over resources
- Traditional fishing rights in archipelagic waters preserved: Art 51(1)
- To be regulated by bilateral agreement: Art 47(6)



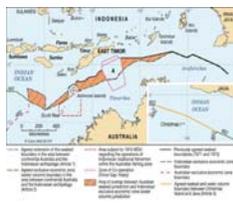
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Examples

Indonesia/Malaysia Papua New Guinea/Solomon Islands
Distinguish archipelagic waters traditional fishing from Australia/Indonesia MOU Box & Australia/PNG TS

MOU Box



Torres Strait Arrangements



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Territorial Sea

Historical development of territorial sea

- The 'cannon-shot rule'
 - Developed by the Dutch in the 17th Century in protest against the British claim to the fishing grounds off Greenland

Wherefore on the whole it seems a better rule that the control of the land extends as far as cannon will carry; for that is as far as we seem to have both command and possession.

Cornelius van Bynkershoek, *De Domino Maris*, 1702



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Territorial Sea

Width of TS has been the most controversial aspect of the law of the sea because of economic and security reasons

- Considered to be 3 nautical miles under customary international law
- 1958 Convention - silent on width
- 1960 UNCLOS II - failed to reach agreement
- LOSC (art 3) - not more than 12 nm



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Territorial Sea

Article 2

Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.



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Territorial Sea

- Up to **12 nm** from the baseline (art 3)
- Laws of coastal State apply subject only to the right of innocent passage
- Coastal State has sovereignty over territorial sea including seabed and airspace

Full prescriptive and enforcement powers
Subject only to specific limitations agreed to in international law

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Competing interests in the Territorial Sea

<p>Interest of coastal States</p> <ul style="list-style-type: none"> • Security • Resources • Environmental protection 	<p>Interests of foreign States</p> <ul style="list-style-type: none"> • Navigation
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Interests balanced through granting of innocent passage



Territorial Sea

Innocent passage by foreign vessels (Art 18)

- Continuous and expeditious traversing of the TS
- Includes stopping and anchoring, but only
 - incidental to normal navigation
 - as rendered necessary by *force majeure* or distress
 - to render assistance
- Must not be prejudicial to peace, good order, or security of the coastal State

Coastal States obliged not to 'hamper' innocent passage of foreign ships (art 24)

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Territorial Sea

Limited regulation by coastal States (Art 21):

- safety of navigation
- regulation of traffic
- conservation of living resources
- prevention of infringement of fisheries laws
- preservation of the environment/control pollution
- marine scientific research
- prevention of infringement of customs laws

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Territorial Sea

- Innocent passage is “not prejudicial to the peace, good order or security of the coastal State” (Art 19)
- Examples:
 - threat or use of force
 - weapons exercises
 - acts prejudicial to the defence or security of the coastal State

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Territorial Sea

More examples:

- propaganda affecting State security
- launching or landing aircraft or any military device
- breaking FISC regulations
- wilful pollution
- fishing
- research or survey
- interfering with communications
- “any other activity not having a direct bearing on passage” [art 19\(2\)\(f\)](#)

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Territorial Sea

Practical problems:

- Most of the provisions require a high degree of trust
- Problem of motive
- Whose perception?
 - any threat or use of force against the coastal State
 - intelligence collection against the coastal State
 - acts of propaganda directed against coastal State
 - any activity not having a direct bearing on passage

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Contiguous Zone

- A functional zone which cannot extend beyond 24 nm from the baseline
- The jurisdiction of the coastal State in the contiguous zone is limited to customs, fiscal, immigration and sanitary (F.I.S.C.) measures



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Contiguous Zone

Zone of limited sovereignty

- Art 33: Contiguous zone no more than 24 nm from baseline (1958 Convention: 12nm)
 - Note: Part of the EEZ for all other purposes
- History: UK Hovering Acts (1736-1876)
 - Enforcement against foreign smuggling ships within distance of 8 leagues (24 nm from shore)

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EEZ Sovereign rights

Article 56
Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:
(a) sovereign rights for the purpose of...

So, in the EEZ, coastal States have a right of jurisdiction for certain purposes

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EEZ defined

- An 'area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention' (Art 55)
- Can extend up to 200nm from baseline
 - 'The exclusive economic zone shall not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured' (Art 57)
 - Note: EEZ not included in the territorial sea
 - 200 nm EEZ incorrect

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Conceptualisation of the EEZ

EEZ as an inheritance

- 'Under the new regime of the seas, the world community has willed to the Coastal States the bulk of living resources in waters off their shores.'

FAO, 'Methodology and Guidelines for Fisheries Development Planning: With Special Reference to the Developing Countries in the African Region', FAO Fisheries Technical Paper No 297, Extracts in *Annual Review of Ocean Affairs* vol III (1990) 1358

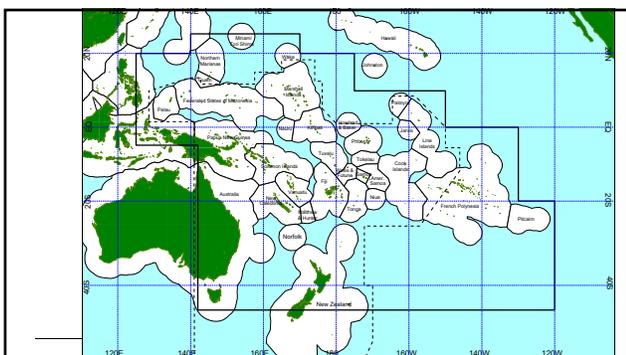
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Character of the EEZ

- Sui generis** – the EEZ is its own distinctive legal regime
- Rights and jurisdiction of coastal States and rights and freedoms of other States co-exist
- The most significant modification of the Law of the Sea since the Grotius period
- ~ Transfer of property rights from international commons to state property regimes

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Coastal State rights and duties in the EEZ

Article 56

- Sovereign rights for the purpose of exploiting, conserving and managing the natural resources, both living and non-living, of the waters superjacent to the seabed and of the seabed and its **subsoil**, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds

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Coastal State rights and duties in the EEZ

Article 56

Jurisdiction as provided for in the relevant provisions of the Convention with regard to

- the establishment and use of artificial islands and installations
- marine scientific research
- the protection and preservation of the marine environment

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Coastal State rights and duties in the EEZ

Article 58

- All States enjoy the freedoms under art 87 (high seas freedoms)
- Arts 88-115 and other rules of international law to apply to the EEZ
- Other States to have due regard to the rights and duties of the coastal State
 - must comply with the laws of the coastal State which are in conformity with the Convention

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Continental Shelf

Article 76

Definition of the continental shelf

Part VI

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory...



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