Virtual Course: Law of the Sea
Maritime Zones and Maritime Delimitation

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Maritime zones in the news

U.S. Penalizes 24 Chinese Companies Over Role in South China Sea

The Trump administration moved to cut them off from the American market on Wednesday, saying they had contributed to China’s controversial island-building campaign.

In Diplomatic Doubleheader, U.S. Seizes Iranian Fuel From Ships Headed to Venezuela

The high-seas handover blocked two diplomatic adversaries from evading American economic sanctions. Iran denied it was its fuel.
Maritime Zones and Maritime Delimitation

This lecture will examine:

- Maritime zones – what rights does a coastal State have in the waters surrounding its land territory?

- Maritime delimitation – how are the overlapping entitlements of two neighbouring coastal States divided up?
Maritime zones

- Territorial Sea (12nm)
- Continental Shelf (200nm as of right, potential to extend to 350nm)
- Exclusive Economic Zone ("EEZ") (200nm)
Maritime zones

Where are the zones measured from?

• Normal Baselines (Article 5) - the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State
• Straight baselines (Article 7)
• Bay closing lines (Article 10) and river mouth closing lines (Article 9)
Territorial Sea

- Under UNCLOS, extends up to 12 nm from the baseline (Article 3)
- Before UNCLOS, it was 3 nm under customary international law
- In the territorial sea, the coastal State exercises full sovereignty subject to the right of innocent passage of foreign ships (Article 17)
- Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State (Article 19)
- Extension from 3nm to 12nm had consequences for certain strategic routes through straits including around the world
- In straits all State have a right of transit passage defined as the “exercise... of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the straits between one of the high seas or an exclusive economic zone and another part of the high seas or exclusive economic zones” (Article 38)
- Innocent passage may be temporarily suspended in specified areas of the territorial if “essential for the protection of its security” (Article 25)
- Transit passage in straits may not be suspended (Article 44)
Territorial Sea

Before UNCLOS. Traditionally, coastal states claimed only a 3-nautical-mile territorial sea. Straits states, such as Iran and Oman, had narrow territorial seas that left a corridor of high seas passing through the center of the Strait of Hormuz. As such, foreign warships could easily transit through the strait without entering the territorial waters of either nation.

After UNCLOS. Under UNCLOS, states may claim territorial seas up to 12 nautical miles, essentially closing the high seas corridors that once passed through the center of narrow straits. Today, the Strait of Hormuz—which is only 21 nautical miles wide at its narrowest point—is “covered” by the combined territorial waters of Iran and Oman. Iran and Oman claimed 12-nautical-mile territorial seas in 1959 and 1972, respectively.

Note: Map locations and boundaries are approximate.
Continental Shelf

• The continental shelf is the seabed and subsoil of the submarine areas beyond the territorial sea

• Extends for 200nm from the baseline or to the outer edge of the continental margin, up to a maximum of 350nm from the baseline (or 100 nm from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres) (Article 76 (1))

• Article 76(3) - (7) of UNCLOS sets out method of calculating the outer limit of the continental shelf
Continental Shelf

- To establish the limits of the CS beyond 200nm, States must make submissions to the Commission on the Limits of the Continental Shelf (Article 76(8))

- Article 76(8): The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
Continental Shelf

- The coastal State has sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources (mineral and other non-living resources together with living organisms belonging to sedentary species) (Article 77(1))

- Distinction between sovereign rights and sovereignty – the term ‘sovereign rights’ does not imply the exercise of complete authority over the area to the exclusion of all other States

- If the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State (Article 77)

- Rights over the continental shelf are inherent, not dependent on proclamation (Article 77(3))

- The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (Article 82)
Ghana/Côte d'Ivoire dispute
Ghana/Côte d'Ivoire dispute
EEZ

- Water column beyond the territorial sea
- Maximum extent of 200nm (Article 57)
- The coastal State has sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources of the waters of the EEZ, and for other activities involving economic exploitation and exploration of the zone.
- The coastal State also has jurisdiction over the protection and preservation of the marine environment, and regarding other rights and duties set out in the Convention (Article 56)
- EEZ represents a balancing of competing interests of States wishing to preserve high seas freedoms to the fullest extent possible, and States wishing to ensure that others would not profit from resources in waters adjacent to their coasts due to greater technological capacity
- The sovereign rights of the coastal State in the EEZ are limited, particularly by Article 58 of UNCLOS which preserves the rights of all States regarding non-resource related activities in the EEZ, including navigation, overflight, the laying of submarine cables and pipelines and activities associated with the operation of ships
Note: Under the EU’s Common Fisheries Policy, the EEZs of all member states are managed as a common resource, termed ‘EU waters’. All EU fishing vessels have the right to fish anywhere in these waters, provided they hold a quota allocation for the stock of fish concerned.
Maritime zones

• Water column beyond the EEZ = High Seas (freedom of navigation and fishing for all States)

• Seabed beyond the continental shelf = The Area (common heritage of mankind), administered by the International Seabed Authority
Maritime zones

- Except for exceptional cases expressly provided for in international treaties or in UNCLOS, ships on the High Seas are subject to the exclusive jurisdiction of the flag State (Article 92 UNCLOS).
- On the high seas, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board (Article 92 UNCLOS).
- Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (General Assembly resolution 72/249).
Entitlement to Maritime Zones

- Entitlement to maritime zones flows from sovereignty over land territory.
- UNCLOS distinguishes between different types of offshore features, i.e., between islands, rocks, low-tide elevations and artificial islands (Articles 13, 121).
- Each of these features is entitled to different maritime zones.
- An island is a naturally formed area of land above water at high tide: Articles 121(1), 121(2).
- Islands are in principle entitled to the same maritime zones as land territory (a 12 nm Territorial Sea, a 200 nm EEZ and a Continental Shelf which could extend beyond 200 nm).
- Rocks which cannot sustain human habitation or economic life of their own are not entitled to an EEZ or Continental Shelf. They are only entitled to a 12 nm territorial sea: Article 121(3) UNCLOS.
Entitlement to Maritime Zones

- Low tide elevation is above water only at low tide. Outside an existing territorial sea it is not entitled to a separate maritime zone.
Entitlement to Maritime Zones

Chinese-made structures on the Johnson Reef in the Spratly Islands in the South China Sea

Can this feature generate a territorial sea?
Entitlement to Maritime Zones

Serpent’s Island in the Black Sea

Can this feature generate an EEZ/Continental Shelf?
Entitlement to Maritime Zones

QS 32

Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012, p. 624

- QS 32, is above water at high tide and thus constitutes an island within the definition embodied in Article 121, paragraph 1, of UNCLOS (para. 181)
- No minimum size which a feature must possess in order to be considered an island (para. 37)
- Colombia is entitled to a territorial sea of 12 nm around QS 32 (para. 182)
- QS 32 is a rock which is incapable of sustaining human habitation or economic life of its own under Article 121, paragraph 3, of UNCLOS, so this feature generates no entitlement to a continental shelf or exclusive economic zone (para. 183)
Maritime Delimitation

• Maritime delimitation is the process of establishing lines separating the overlapping entitlements of States to maritime zones.

• Territorial Sea (Article 15)
  “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.”

• EEZ and Continental Shelf (Articles 74/83)
  “The delimitation of the [EEZ/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, in order to achieve an equitable solution”

• Rules have been developed through the case law of international courts and tribunals who apply a three-stage process (standard method)
Maritime Delimitation

- Can a court delimit the continental shelf beyond 200nm in the absence of a CLCS recommendation?

- Outer limits of the continental shelf are only binding when made on the basis of CLCS recommendations

- Existence of overlapping entitlements is a precondition for the delimitation of any maritime zone

- **Nicaragua v Colombia (2012)** – ICJ delimited boundary up to 200nm. Nicaragua had submitted only “Preliminary Information” to the CLCS. The ICJ held: “Nicaragua […] has not established that it has a continental margin that extends far enough to overlap with Colombia’s 200-nautical-mile entitlement to the continental shelf”

- CS beyond 200 nm delimited by ITLOS in Bangladesh/Myanmar (2012) and by arbitral tribunal in Bangladesh v India (2014). In Ghana/Côte d’Ivoire only Ghana had received recommendations from the CLCS
Maritime Delimitation

- Can a court delimit the continental shelf beyond 200nm in the absence of a CLCS recommendation?

- *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast* (Nicaragua v. Colombia) – Judgment on Preliminary objections 17 March 2013

- The Court held that the condition imposed by it in its 2012 Judgment in order for it to be able to examine the claim of Nicaragua had now been fulfilled – Nicaragua had made a full submission to the CLCS

- “…since the delimitation of the continental shelf beyond 200 nautical miles can be undertaken independently of a recommendation from the CLCS, the latter is not a prerequisite that needs to be satisfied by a State party to UNCLOS before it can ask the Court to settle a dispute with another State over such a delimitation”
Maritime Delimitation – 3 step methodology

1. Construction of a provisional equidistance line.

2. Consideration of relevant circumstances (which are primarily geographical in nature) that may call for an adjustment of the equidistance line in order to achieve an equitable result.

3. Disproportionality test to assess whether the effect of the line, as adjusted, is such that the parties’ respective shares of the relevant area are markedly disproportionate to the lengths of their relevant coasts.

See *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* ICJ Reports 2009, p.61, paras. 115-122, which describe the process in detail.
Maritime Delimitation – 3 step methodology

- Relevant coasts are the coasts that generate overlapping claims
- The area of overlapping projections is called the “relevant area”
Maritime Delimitation – 3 step methodology

1. Construction of a provisional equidistance line - selection of basepoints

• The equidistance line is drawn between the nearest base points on the coast of each State

• The base points used for the construction of a provisional equidistance line are situated at the low-water line

• Generally, only those basepoints which mark a significant change in the direction of the coast are used

• Court or tribunal is not bound by choice of basepoints made by the parties

• Location of the low-water mark may be an issue
1. Construction of a provisional equidistance line - selection of basepoints

Maritime Delimitation – 3 step methodology

Selection of basepoints – an objective exercise?

• Romania/Ukraine (2009) – ICJ disregarded Serpents Island and Sulina Dyke as basepoints

• See also the treatment of St Martin’s Island by ITLOS in Bangladesh/Myanmar (2012) – not used as a basepoint in the delimitation of the EEZ/CS
2. Consideration of relevant circumstances that may call for an adjustment of the equidistance line in order to achieve an equitable result.

- Prevention of a cut-off effect
- Marked disparity in coastal lengths
- Disproportionate effect of small features such as islands, rocks, etc
- Hydrocarbon resources
- Fishing resources
- Navigation and security interests
Maritime Delimitation - 3 step methodology

2. Consideration of relevant circumstances

- Coastal concavity/convexity

North Sea Continental Shelf Cases (1969)
2. Consideration of relevant circumstances

• Disproportionate effect of small features such as islands, rocks, etc
Maritime Delimitation - 3 step methodology

2. Consideration of relevant circumstances

- In some cases there will be no relevant circumstance which would justify an adjustment of the provisional equidistance line (Romania/Ukraine, Ghana/Côte d’Ivoire)

- If the provisional equidistance line needs to be adjusted because of cut-off effect, the line, or a segment of the line is most commonly shifted along its axis
Maritime Delimitation - 3 step methodology

2. Consideration of relevant circumstances

- Adjustment of the provisional equidistance line
  - Adjustment using the *equiratio* method to give half weight to the islands (instead of a 50/50 split each point on the line is three times as far from Nicaraguan basepoints as from Colombian basepoints)
Maritime Delimitation - 3 step methodology

3. Proportionality test

• Checking whether the equidistance line (as adjusted where appropriate) leads to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State

• ICJ in Nicaragua/Colombia: there must be “a significant disproportionality so gross as to taint the result and render it inequitable” in order to require adjustment of the line at the third step

• In that case the “adjusted” equidistance line divided the relevant area relevant area between the Parties in a ratio of approximately 1:3.44 in Nicaragua’s favour. The ratio of relevant coasts is approximately 1:8.2. No adjustment required.
In exceptional geographic circumstances, the three-step method may not be appropriate.

Nicaragua v Honduras (2007). See also Tunisia/Libya (1982) and Gulf of Maine (1984)
Ghana/Côte d'Ivoire dispute
Maritime Delimitation in Practice

**ICJ**

- Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)
- Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)

**ITLOS**

- Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)