

Introduction to the Law of the Sea

1. Introduction

- ◆ For the legal purpose, the sea has been traditionally divided into three different zones: (1) internal waters, (2) territorial sea, and (3) high seas.
- ◆ The 1st UN Conference on the Law of the Sea held in 1958 adopted four Conventions:
 - The Convention on the Territorial Sea and the Contiguous Zone,
 - The Convention on the High Seas,
 - The Convention on the Continental Shelf, and
 - The Convention on Fishing and Conservation of the Living Resources of the High Seas.
- ◆ The 3rd UN Conference adopted in 1982 the “**UN Convention on the Law of the Sea**” (UNCLOS)
 - Though the Convention entered into force by Nov. 16, 1994, most industrialized countries refused to ratify the Convention because of its objection to the regime regulating deep seabed mining (Part XI of the Convention).
 - UNSG initiated consultations to accommodate those objections, which have resulted in a **1994 Agreement Relating to the Implementation of Part XI of the UNCLOS**.

2. Internal Waters

- ◆ **Internal waters** are those waters that lie within a state such as lakes or rivers. Bays and ports also form part of the internal waters. The state exercise exclusive jurisdiction over these waters.
- ◆ **Bays** (Art. 10 of UNCLOS): a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.
 - Semi-circular test: small coastal indentations are not counted as bays.
 - The distance between the low-water marks of the natural entrance points should not exceed 24 nautical miles.

3. Territorial Sea

◆ Art. 2 of UNCLOS states:

1. The sovereignty of a coastal State extends, beyond its land territory and internal 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.

◆ Art. 3 defines the breadth of the territorial sea a “not exceeding 12 nautical miles measured from baselines determined in accordance with this Convention.”

◆ Measuring the Territorial Sea

- The normal point from which to measure the territorial sea was agreed upon as the low-water mark along the coast. (art. 5)
- “Where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast.. ,“ the UNCLOS provides for straight baseline.

3. Territorial Sea

◆ Powers of the Coastal State and Foreign Ships' Right of **Innocent Passage**

- A great debate over whether foreign ships and in particular foreign warships had to get the permission of the coastal state before entering the territorial sea.
 - . Western nations argued for the right of innocent passage.
 - . Eastern nations argued that all foreign vessels or foreign warships should get prior permission by coastal state before entering the territorial sea.
- Art. 17 of the UNCLOS provides that “ships of all states, … , enjoy the right of innocent passage through the territorial sea.
 - . No distinction between between warships and mercantile ships.
 - . No similar right of innocent passage for aircraft.

◆ What does **innocent passage** mean?

- Art. 19(1) provides that “passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.”
- Art. 19(2) contains a long list of activities that are considered to be non-innocent such
 - as the threat or use of force, practice with weapons, launching or landing of aircraft

4. Exclusive Economic Zone (EEZ)

◆ Background

- Before the middle of the twentieth century most fishermen used small boats that had only the capacity to fish fairly close to the shore.
- Larger boat equipped with refrigerator changed the traditional fishing patterns.
- Countries with traditional fishing fleets were anxious to protect their fishing resources.
- Countries began to make unilateral declaration extending their exclusive fishing zones beyond their territorial sea.
 - . Iceland claimed 12 mile zone in 1958, which was recognized as legitimate by ICJ in 1974.
 - . A number of Latin American states claimed a two hundred mile zone.
- The 1958 Convention could reach no agreement on a fishing zone.
- 1982 UNCLOS created a new Exclusive Economic Zone.

◆ Definition

- The EEZ is an area beyond and adjacent to the territorial sea, subject to the specific legal regime provided for under the UNCLOS. (Art. 55).
 - The EEZ “shall not extend beyond 200 nautical miles from the baselines …” (Art. 57).

4. Exclusive Economic Zone (EEZ)

◆ Coastal States' Rights

- is given “sovereign rights” in the EEZ but only for certain purposes: “exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters … and of the sea-bed and its subsoil…” Art. 56(1)(a).
- is given the responsibility for determining “the allowable catch of living resources in its EEZ.” (Art. 61(1)).
- must undertake conservation and management measures to prevent over-exploitation.
- If the coastal state does not harvest the entire allowable catch, it must give other states access to the resources by making agreements with other states. (Art. 62(2)).
- may “take such measures, including boarding, inspection, arrest and judicial proceeding,
as may be necessary to ensure compliance…” (Art. 73(1)).

◆ Foreign State's Rights

- All states are guaranteed the rights of “navigation and overflight in the EEZ and the “laying of submarine cables and pipelines .. compatible with … this Convention.” (Art. 58(1))

5. The Continental Shelf

- ◆ In 1945, U.S. President Harry S. Truman proclaimed that
 - “The U.S. regards the natural resources of the subsoil and seabed of the continental shelf beneath the high sea but contiguous to the coasts of the U.S. as pertaining to the U.S., subject to its jurisdiction and control. ….”

- ◆ Definition
 - “comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. (Art. 76 (1))
 - “the outer limit … shall not exceed 350 nautical miles.” (Art. 76 (6))

- ◆ The Coastal State’s rights
 - “exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting natural resources.” (Art. 77 (1))
 - However, the Coastal State’s rights do not affect the status of the waters above it.

6. Contiguous Zone

◆ Definition

- A zone contiguous to its territorial sea which may not extend beyond 24 nautical miles from the baselines (Art. 33 (1), (2))

◆ The Coastal State may exercise the control necessary to:

- (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
- (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

7. The High Seas

◆ Definition

- “all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or the internal waters of a State, …” (Art. 86)

◆ Status: “the high seas shall be reserved for peaceful purposes.” (Art. 88)

- military maneuvering, nuclear test in the high sea generated much controversy.

8. Maritime Delimitation

◆ Principle

- The delimitation of the EEZ between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law, ... , in order to achieve **an equitable solution**. (Art. 74).
- Regime of islands (Art. 121)
 - . **islands** may have the territorial sea, the contiguous zone, the EEZ and the continental shelf.
 - . **Rocks** which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. (Art. 121, (3))

◆ Practice :

A. Maritime Delimitation in the Black Sea (Romania v. Ukraine, 2009)

- first, draw a provisional equidistance line.
- secondly, check whether it does not lead to an inequitable results.
- thirdly, confirm that no great disproportionality of maritime areas is evident by comparison to the ratio of coastal lengths.
- fourthly, do not take account of very small islands (serpent island).

8. Maritime Delimitation

◆ Practice :

B. The South China Sea Arbitration (Philippines v. China, The Hague, 12 July 2016)

The Tribunal concluded (in relation to Art. 121);

- “that the entitlements of a feature depend on (a) the objective capacity of a feature, (b) in its natural condition, to sustain either (c) a stable community of people or (d) economic activity that is neither dependent on outside resources nor purely extractive in nature.”
- “temporary use of the features by fishermen did not amount to inhabitation by a stable community and that all of the historical economic activity had been extractive in nature.”
- “all of the high-tide features in the Spratly Islands are legally “rocks” that do not generate an exclusive economic zone or continental shelf.”

9. ROK–Japan & ROK–PRC Fisheries

- ◆ Background
 - UNCLOS entered into force in 1994.
 - S. Korea, Japan and China ratified it in 1966.
 - S. Korea and Japan proclaimed their respective EEZ in 1966.
 - China followed suit in 1988.
- ◆ ROK– Japan Fisheries Agreement
 - signed in Nov. 1998 & entered into force in Jan. 1999.
 - In the ‘Midway Zone’: ‘Joint Commission on Fisheries’ make advice on the conservation and management of marine resources.
- ◆ ROK–PRC Fisheries Agreement
 - signed in Aug. 2000 and entered into force in June 2001.
 - In the ‘Interim Measures Zone’: maintain the

