THE LEGAL AND POLICY FRAMEWORK FOR MANAGING AREAS BEYOND NATIONAL JURISDICTION

The International Legal Regime for Oceans: The United Nations Convention on Law of the Sea

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Office of Legal Affairs
March 2016

IMPORTANT

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Outline

- Implementation Agreements: 1994 Part XI Agreement and United Nations Fish Stocks Agreement
- Maritime zones and their regime
- Bodies established under UNCLOS
- The Convention and the United Nations system
- Related International Instruments, current issues
- Discussion
Truman proclamations September 28, 1945

- Truman Proclamation 2667 - Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf
- Truman Proclamation 2668 - Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas

International Law Commission
Declaration of Santiago 1952

• Article II: “The Governments of Chile, Ecuador and Peru therefore proclaim as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast.”


Met at Geneva from 24 February to 27 April 1958, resulting in the adoption of four separate conventions:

- Convention on the Territorial Sea and the Contiguous Zone (UNTS, vol.516);
- Convention on the High Seas (UNTS, vol. 450);
- Convention on Fishing and Conservation of the Living Resources of the High Seas (UNTS, vol. 559);

As to the relationships btw parties to UNCLOS - superseded by 1982 UNCLOS

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1957 – Djuanda Declaration

1967-1968

1 November 1967, speech by Malta's Ambassador to the United Nations, Mr. Arvid Pardo

7. The dark oceans were the womb of life: from the protecting oceans life emerged. We still bear in our bodies—in our blood, in the salty bitterness of our tears—the marks of this remote past. Retracing the past, man, the present dominator of the emerged earth, is now returning to the ocean depths. His penetration of the deep could mark the beginning of the end for man, and indeed for life as we know it on this earth; it could also be a unique opportunity to lay solid foundations for a peaceful and increasingly prosperous future for all peoples.
Other developments -1970-72

• Declaration on the Law of the Sea
  Montevideo, 8 May 1970
• Declaration of the Latin American States on
  the Law of the Sea, Lima, 8 August 1970
• Declaration of Santo Domingo of 9 June 1972

1970 – GA Declaration of Principles

In 1970, the General Assembly unanimously adopted the Committee's Declaration of Principles:
"the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction ... as well as the resources of the area are the common heritage of mankind", to be reserved for peaceful purposes, not subject to national appropriation and not to be explored or exploited except in accordance with an international regime to be established.

Third United Nations Conference on the Law of the Sea
Third United Nations Conference on the Law of the Sea

Adoption of UNCLOS and its opening for signature
The United Nations Convention on the Law of the Sea

A comprehensive regime "dealing with all matters relating to the law of the sea, . . . bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole“ was established.

- “Constitution for the oceans” - legal regime governing all ocean space, 320 articles, 9 annexes

Convention as a “package”

- The conceptual underpinnings of the Convention as a “package” is its most significant feature, and has contributed to the remarkable achievement of the Convention.
- The package is the result of the close interrelationship of the many different issues involved, the large number of participating States and the vast number of often conflicting interests which frequently cut across the traditional lines of negotiation by region.
- Every individual provision of the text had to be weighed within the context of the whole, producing an intricately balanced text to provide a basis for universality.
Special Areas Needing Cooperation

- Straits
  Photo credit: Wikipedia (labeled for reuse)

- Enclosed or Semi-Enclosed Seas
  Photo credit: Wikipedia (labeled for reuse)

Cross-Cutting Issues

- Marine Environment
  Photo credit: Wikipedia labeled for reuse

- Marine Science
  Photo credit: Wikipedia labeled for reuse

- Marine Technology
  Photo credit: Wikipedia labeled for reuse
Implementing Agreements

Further development of the regime of the Convention

Two implementation Agreements:

- Agreement relating to the implementation of Part XI of UNCLOS - 1994
FACTORS LEADING TO THE SECRETARY-GENERAL’S CONSULTATIONS

- Dramatically changed geopolitical situation consequent to changes in Eastern Europe and Soviet Union
- Difficulties of industrialized countries, especially United States
- Regime denies market forces
- Continued deterioration of world metal market
- Unclos being ratified almost exclusively by developing countries - viability of the convention
- Viability of deep seabed mining not before first decades of 21st century
- Collapse of centralized economy system and overwhelming acceptance of market economy
- Continued determination of world metal market

OUTSTANDING ISSUES RELATING TO PART XI OF UNCLOS

- Costs to parties
- The enterprise
- Decision-making
- Review conference
- Transfer of technology
- Production limitation
- Compensation fund
- Financial terms of contract
Solution to the outstanding issues - Agreement relating to the implementation of Part XI of UNCLOS

Agreement relating to the implementation of Part XI of UNCLOS – “part of package”

General Assembly

Distr.: GENERAL
A/RES/49/263
17 August 1994

Forty-eighth session
Agenda item 36

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/48/L.60 and Add.1)]


The General Assembly,

Pursuant to the desire to achieve universal participation in the United Nations Convention on the law of the sea of 10 December 1982 (hereinafter referred to as the “Convention”), and to promote appropriate representation in the institutions established by it,

Reaffirming that the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, (hereinafter referred to as the “Area”), as well as the resources of the Area, are the common heritage of mankind, \[/\]
The Area - Agreement on Part XI

- Agreement: Implementation of Part XI; Relationship between this Agreement and Part XI; Signature, Consent to be bound, Simplified procedure, Entry into force; Provisional application; States Parties; Depositary; Authentic texts.
- Annex: Costs to States Parties and institutional arrangements; The Enterprise; Decision-making, Review Conference; Transfer of technology; Production policy; Economic assistance; Financial terms of contracts; The Finance Committee.

Addressing issues with respect to the provisions of Articles 63, para.2 and 64, and Part VII, Section 2 of UNCLOS.

- Inconsistence of fish migration route and man-made boundary
- The conflict between coastal States and distant water fishing nations (DWFNs)
- The lack of details in straddling and highly migratory fish species provisions in UNCLOS
- Dispute between States
- A mechanism to address straddling and highly migratory fish stocks was needed
The 1995 UN Fish Stocks Agreement


- 83 State Parties - A State can ratify UNFSA without ratifying UNCLOS (e.g., United States)
- Informal Consultations of States Parties: as Meetings of the Parties to UNFSA
1995 United Nations Fish Stocks Agreement

- 50 Articles, 2 Annexes
- Key elements in UNFSA
  - Fishing entities: whose vessels fish on the high seas
  - Arrangement: a simplified cooperative mechanism (c.f. RFMOs)
  - New conservation and management measures: precautionary approach, reference point
  - Compatibility of conservation and management measures in areas within and beyond national jurisdiction

1995 United Nations Fish Stocks Agreements-Cont.

- Key elements in UNFSA
  - Empowerment of the authority of RFMOs/Arrangements
  - Strengthened compliance and enforcement scheme: by flag States and port States, observer programs, vessel monitoring system (VMS)
  - Boarding and inspection procedures on the high seas
  - Special requirements of developing States

- Apply to third parties, too?
A new treaty?


### Status of UNCLOS and Implementing Agreements

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Open for signature</th>
<th>Entry into Force</th>
<th>Signatories</th>
<th>Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNCLOS</td>
<td>10 December 1982</td>
<td>16 November 1994</td>
<td>157</td>
<td>167</td>
</tr>
<tr>
<td>Fish Stocks Agreement</td>
<td>4 August 1995</td>
<td>11 December 2001</td>
<td>59</td>
<td>83</td>
</tr>
</tbody>
</table>
Maritime Space/Zones

- Internal Waters
- Archipelagic Waters
- Territorial Sea
- Contiguous Zone
- Exclusive Economic Zone
- Continental Shelf
- High Seas
- International Seabed Area

Maritime zones (detail)
Maritime zones and their limits
Archipelagic State

SAO TOME AND PRINCIPE
Official Maritime Claims

GULF OF GUINEA

SAO TOME AND PRINCIPE

Oceanic crust
Mid-oceanic ridge
Melted mantle
Earth's mantle

Foot of slope
Deep ocean floor
Continental rise
6-15 Km

Continental margin

Continental shelf (juridical)
30-50 Km
Crystalline continental crust

Continental Shelf (scientific)

Sediments

Mid-oceanic ridge

Deep ocean floor

Nautical miles (M)

Continental shelf (juridical)

30 - 50 Km
Crystalline continental crust

Continental Shelf (scientific)

Sediments

Mid-oceanic ridge

Deep ocean floor

Nautical miles (M)
The Commission on the Limits of the Continental Shelf

Established baseline (either normal or straight)

Foot of slope (FOS)
(max. change of gradient)

1% sediment thickness (Gardiner Line)

2500 m isobath + 100 M

Hedberg Line

Continental crust

Ocean crust

Established baseline

Foot of slope (FOS)
(max. change of gradient)

1% sediment thickness (Gardiner Line)

Outer limit of CS

Fixed points (lat, long)

Convention Information Commission

Depositary functions and due publicity

Convention Charts Deposit Geodatabase
Straits used for international navigation (UNCLOS Part III)

Islands
An island or a rock?

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Is there a map showing all maritime zones and limits worldwide?

- As a matter of fact, not yet. Despite some attempts to illustrate maritime claims worldwide, it is not yet possible to show an accurate illustration of the extent of all maritime zones and location of maritime boundary delimitation lines, for the following reasons:
  - Accurate, official baseline data are not available for all coastal States.
  - Complete and up-to-date information regarding national claims to maritime jurisdiction has not and cannot yet been collected.
  - Quite a few maritime boundary delimitations around the world still await some form of resolution by negotiations or other peaceful means.
  - There is a number of unresolved territorial and sovereignty disputes (especially with respect to islands). Unless and until the States concerned settle these disputes, it will not be possible to determine the maritime boundaries and the extent of the claims for the subregion concerned.

The high seas (Part VII)
High seas

All parts of the sea that are not included in the exclusive economic zone, the territorial sea or the internal waters of a State, or in the archipelagic waters of an archipelagic State

• Open to all States, whether coastal or land-locked
• Flag State exclusive jurisdiction with some exceptions
• Freedom of the high seas comprises, inter alia:
  – navigation
  – overflight
  – laying submarine cables and pipelines
  – constructing artificial islands and other installations
  – fishing, subject to certain conditions
  – scientific research

Qualified freedoms of the high seas

High seas freedoms are qualified by general obligation in UNCLOS:

• States shall exercise their freedoms on the high seas with due regard for the interests of other States in their respective exercise of the freedom of the high seas;
• The high seas shall be reserved for peaceful purposes;
• No State may validly purport to subject any part of the high seas to its sovereignty.
Qualified freedoms of the high seas

High seas freedoms are also qualified by specific provisions in UNCLOS, as well as other treaty rights

- For example, freedom of fishing is subject to the conditions laid down in Part VII, Section 2
  - Duty to cooperate in the conservation and management of high seas stocks;
  - Duty to adopt measures for conservation of high seas stocks;
  - Rights, duties and interests of coastal States
  - Treaty obligations (e.g. UNFSA).

Flag State under UNCLOS
General Obligation

Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag; as well as ensure compliance by those ships with applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment.

The Area (Part XI + Agreement)

- Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (article 1);
- The Area and its resources are the common heritage of mankind;
- Open to use exclusively for peaceful purposes;
- States Parties organize and control activities in the Area, particularly with a view to administering the resources of the Area, through the International Seabed Authority, in accordance with Part XI of the Convention and the 1994 Agreement relating to the Implementation of Part XI of the Convention;
- No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources.
Marine Scientific Research: General Provisions

- All States irrespective of their geographical location and International Organizations can conduct MSR
- States and International Organizations must promote and facilitate the development and conduct of MSR
- MSR is exclusively for peaceful purposes;
- MSR shall not unjustifiably interfere with other legitimate uses of the sea
- MSR activities do not constitute legal basis for claims on marine environment or its resources

Marine Scientific Research: International Cooperation

- States and International Organizations
  - Cooperation on the basis of mutual benefit
  - Create favorable conditions for MSR
  - Integrate scientists in the studying of the marine environment
### Marine Scientific Research: conduct and promotion

<table>
<thead>
<tr>
<th>Territorial Sea</th>
<th>High Seas</th>
<th>Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Exclusive rights</td>
<td>• Freedom of MSR</td>
<td>• In conformity with Part XI</td>
</tr>
<tr>
<td>• Express Consent</td>
<td></td>
<td>• for the benefit of mankind</td>
</tr>
</tbody>
</table>

### Marine Scientific Research in areas beyond the 200nm

- The Coastal State **may not withheld consent** outside of those designated areas that the coastal State has **publicly** designated as areas in which exploration or detailed exploratory operations are occurring or will occur within a reasonable period of time.
- Explicit exceptions
Marine Scientific Research: Suspension and cessation

- Suspension of MSR activities may occur:
  - When research activities are not in accordance with information initially supplied
  - When researchers fail to comply with conditions in Part XIII
- Cessation of MSR may occur:
  - If the researchers do not comply with requirements within a reasonable period of time
  - If non-compliance amounts to a major change in the research project

Scientific research installations and equipment in the marine environment

- They must have identification markings and adequate warning signals;
- They shall not constitute an obstacle to international shipping routes and;
- They may have safety zones of reasonable breadth around them.
UNCLOS Part XIII

Marine Scientific Research Revised Guide on the implementation of the relevant provisions of UNCLOS

Status of the Maritime Zones

<table>
<thead>
<tr>
<th>Coastal State: Sovereignty</th>
<th>Coastal State: Sovereign rights, obligations and/or jurisdiction</th>
<th>Areas beyond national jurisdiction: rights and obligations of States as members of the international community</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal waters</td>
<td>Contiguous zone</td>
<td>High Seas</td>
</tr>
<tr>
<td>Archipelagic waters</td>
<td>Exclusive economic zone</td>
<td>The Area</td>
</tr>
<tr>
<td>Territorial sea</td>
<td>Continental shelf</td>
<td></td>
</tr>
</tbody>
</table>
### Sovereignty, sovereign rights and freedoms in maritime zones

<table>
<thead>
<tr>
<th>Activity</th>
<th>Internal Waters</th>
<th>Archipelagic Waters</th>
<th>Territorial Sea</th>
<th>Exclusive Economic Zone</th>
<th>Continental Shelf</th>
<th>High Seas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Navigation</td>
<td>S (IP)</td>
<td>IP</td>
<td>IP (AP)</td>
<td>F</td>
<td>-</td>
<td>F</td>
</tr>
<tr>
<td>Overflight</td>
<td>S</td>
<td>AP</td>
<td>S (AP)</td>
<td>F</td>
<td>-</td>
<td>F</td>
</tr>
<tr>
<td>Laying of submarine cables and pipelines</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>F limited</td>
<td>F limited</td>
<td>F (art.112)</td>
</tr>
<tr>
<td>Constructing artificial islands and other installations</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>J</td>
<td>J</td>
<td>F</td>
</tr>
<tr>
<td>Fishing</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>J</td>
<td>J</td>
<td>F</td>
</tr>
<tr>
<td>Exploration and exploitation of non-living resources</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>SR</td>
<td>SR</td>
<td>F</td>
</tr>
<tr>
<td>Marine scientific research</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>J</td>
<td>J</td>
<td>F</td>
</tr>
<tr>
<td>Protection of the marine environment</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>J</td>
<td>J</td>
<td>Obligation</td>
</tr>
</tbody>
</table>

### Part XV of UNCLOS – settlement of disputes

- Choice of procedure under article 287 of the Convention
- International Court of Justice
- International Tribunal for the Law of the Sea
- Arbitration | Special Arbitration
- Conciliation
- Optional declarations under article 298
Compulsory Procedures Entailing Binding Decisions (Section 2)

Judicial settlement

The International Tribunal for the Law of the Sea

An arbitral tribunal constituted in accordance with Annex VII

Disputes settled by binding 3rd Party Mechanisms

A special arbitral tribunal constituted in accordance with Annex VIII

Arbitration

Bodies established under UNCLOS
International Seabed Authority

- Based on Article 156
- Headquartered in Kingston, Jamaica
- Became fully operational as an autonomous international organization in June 1996
- Includes the Assembly, Council, Legal and Technical Commission, Finance Committee and the Secretariat
International Tribunal for the Law of the Sea
Commission on the Limits of the Continental Shelf

Eastern European
WEOG

Africa

GRULAC

Vacant

Oduro, I.O.

Mahanjane, E.S.

Kalinda, E.

Heinesen, M.V.

Paterlini, C.M.

Charles, F.L.

Marques, J.

Rost, W.R.

Ustinowicz, S.

Glumov, I.F.

Arshad, M.

Ravindra, R.

Urbane, T.

Park, Y.A.

Lu, W.

Urabe, T.

Madon, M.B.

Asia/Pacific

2012-2017
ROLE OF THE UNITED NATIONS:
An Overview
United Nations bodies

- General Assembly
  - global forum for cross-sectoral policy guidance and comprehensive review of developments
  - two annual resolutions (oceans and the law of the sea; sustainable fisheries)

-Technical and scientific work of UN specialized organizations, agencies and bodies

General Assembly

- Established a number of processes:
  - Informal Consultative Process on Oceans and the Law of the Sea
  - [Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction]
  - Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects
Other UN bodies and organizations involved in ocean issues

Legal/Policy Framework (Global)
Biodiversity and species

» The Convention on Biological Diversity (CBD)

» The Convention on Migratory Species (CMS) and MoUs

» The Convention on International Trade of Endangered Species (CITES)
Legal/Policy Framework (Global)

**Fisheries**
- UN Fish Stocks Agreement
- FAO Compliance Agreement
- FAO Code of Conduct on Responsible Fisheries
- FAO International Plans of Action
- International Guidelines for the Management of Deep-sea Fisheries in the High Seas
- FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
- Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries

**Legal/Policy Framework (Global) - Shipping**

**IMO**
- Most important IMO Conventions
  - International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended
  - International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) as amended, including the 1995 and 2010 Manila Amendments

Other conventions relating to maritime safety and security and ship/port interface
- Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972
- Convention on Facilitation of International Maritime Traffic (FAL), 1976
- International Convention on Maritime Search and Rescue (SAR), 1979

Other conventions relating to prevention of marine pollution
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 1969
- International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC), 1990
  - Protocol on Preparedness, Response and Cooperation to pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol)
- International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS), 2001
- International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004
- The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009

Conventions covering liability and compensation
- International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969
- Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (NCLAR), 1971
- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (ATH), 1992
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Other Conventions
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- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (ATH), 1992
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Other subjects
- International Convention on Tonnage Measurement of Ships (TREATY), 1969
- The Nyasaland Agreement on the Conservation of Natural Resources by Sea (NAR), 1986 (and its 2010 Protocol)
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
- International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS), 2001
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Legal/Policy Framework (Global)

Other Instruments

- The Global Programme of Action for the Protection of the Marine Environment from Land-based Activities
- The Stockholm Convention on Persistent Organic Pollutants
- United Nations Framework Convention on Climate Change (UNFCCC)
- UNESCO Convention on the Protection of Underwater Cultural Heritage
- ILO Conventions (labor)
- Rules and regulations adopted by the International Seabed Authority
- Human Rights and Humanitarian Law instruments (e.g. migrants)
- Instruments addressing crimes at sea (e.g. traffic of drugs), transport of dangerous materials, ...others...

Legal/Policy Framework (Global)

Sustainable Development

- UNCED – Rio Declaration and Agenda 21 (Chapter 17)
- World Summit on Sustainable Development
- Rio+20 – The Future We Want

Development

- Millennium Development Goals
- Transforming our World: The 2030 Agenda for Sustainable development
Legal/Policy Framework (Regional)

- UNEP Regional Seas Conventions and Protocols
- Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)
- Regional Fisheries Management Conventions and Arrangements
- Regional Maritime Security Frameworks

Current issues in ocean affairs and the law of the sea

- Work of the Commission on the Limits of the Continental Shelf
- Dispute settlement
- Maritime safety and security
- Marine science
- Transfer of marine technology
- Marine environment (land-based activities, ocean acidification, marine debris, etc.)
- Marine biodiversity, including of areas beyond national jurisdiction
- Capacity-building to benefit from the oceans and their resources
Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects

- Established by the General Assembly in 2010, pursuant to a Recommendation of the 2002 World Summit on Sustainable Development
- Group of Experts to oversee and guide the Regular Process
- Pool of Experts to assist the Group of Experts
- Assessment covers subjects such as fisheries, tourism and recreation, marine debris and waste disposal
- First assessment NOW! Its summary issued as A/70/112