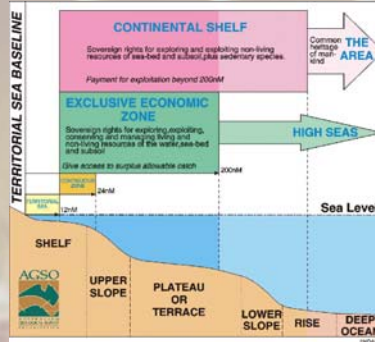


## International Law of the Sea and Maritime Zones

Available online at <http://madeandi.staff.ugm.ac.id> (see downloads)



Disclaimer: This lecture is mainly based on the presentation by Schofield (2005) for the International Workshop on Legal and Technical Aspects of Maritime Boundary Delimitation (Yogyakarta)

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Thursday, 28 September 2006



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### *Kutipan hari ini*

- The real voyage of discovery does not consist of seeking new landscape but in having new eyes
- *Penemuan, sesungguhnya bukanlah soal pencarian sesuatu yang baru melainkan soal memiliki sudut pandang yang baru.*
- *Marcel Proust*



- Introduction: scope of discussion
- Development of the law of the sea
- Rights of coastal states vs. freedom of the sea
- Codification efforts
- The United Nations Convention on the Law of the Sea (UNCLOS)
  - UNCLOS I
  - UNCLOS II
  - UNCLOS III



- International not private
- Early period → function, rights, usage of maritime zones
- Recent period → obligation, environmental concern, pollution, “save the planet!”
- Applicable mainly to State but can also influence individuals. Example?



### *Historical phenomena*

- 18<sup>th</sup>-19<sup>th</sup> century *Laissez-faire* beyond belt of coastal seas, free!!!
- Dominant European power → maintaining communication with their colonies
- The use of the sea → navigation and fishing (*dipikir ikan gak akan abis*)
- Second half of 20<sup>th</sup> century
- Emergence of two superpowers USA and USSR
- Independence and autonomy of developing countries
- Multi uses of the seas due to technology and increase of needs → conflicts as the consequences
- Consciousness of exhaustibility of marine resources → conservation



### *Historical Background to the Law of the Sea*

#### Three Distinct Periods

- Period 1: 14th Century-15th Century
- Period 2: 15th - 19th Century
- Period 3: 19th Century to Present



*Period 1: 14th Century-15th Century*

- Portuguese and Spanish control and domination over the oceans
- 1492: voyage by Columbus to North America
  - So-called “voyage of discovery”

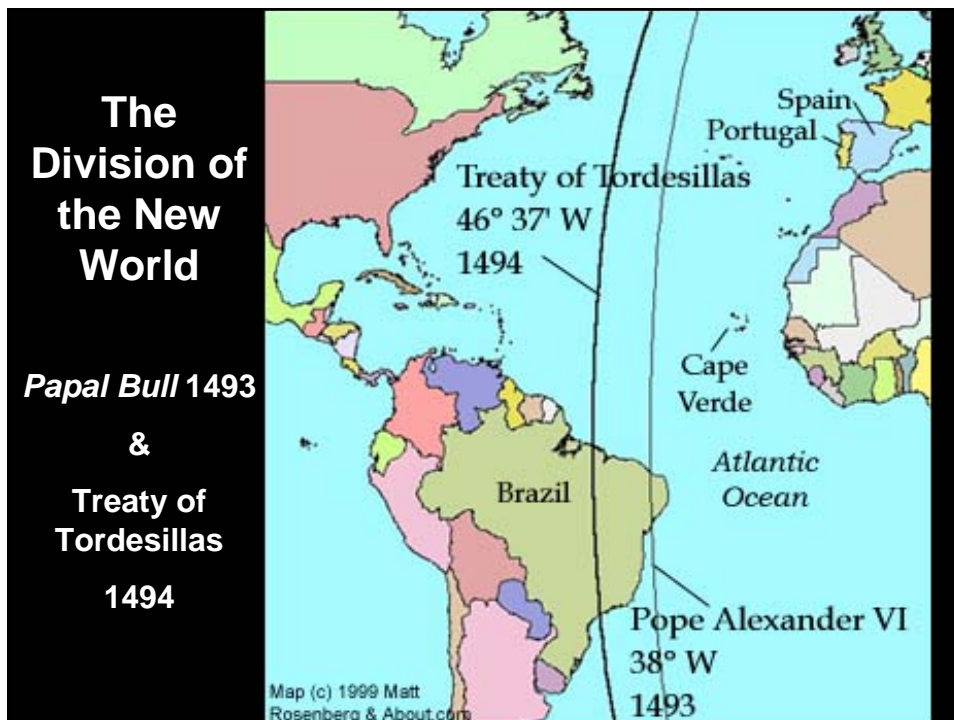


**Christopher  
Columbus  
1451-1506**



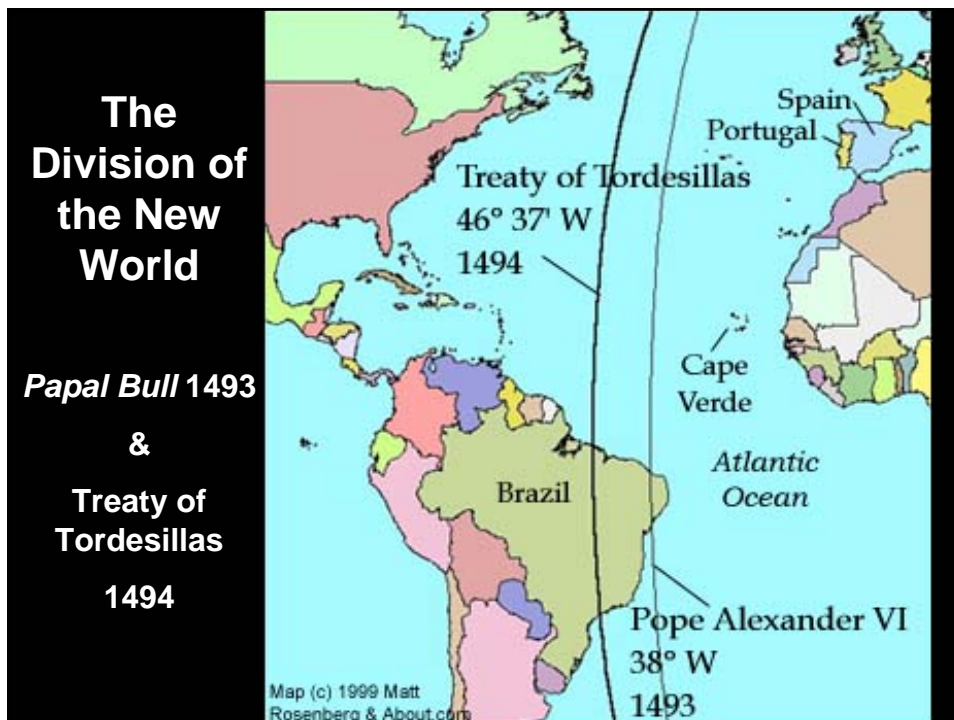
*Papal Bull of Demarcation 1493 (Pope Alexander VI)*

- Demarcation line to define spheres of Spanish and Portuguese possessions in the New World
  - 483 km west of Azores and Cape Verde Islands
  - All new lands to the east allocated to Portugal
  - All new lands to the west allocated to Spain

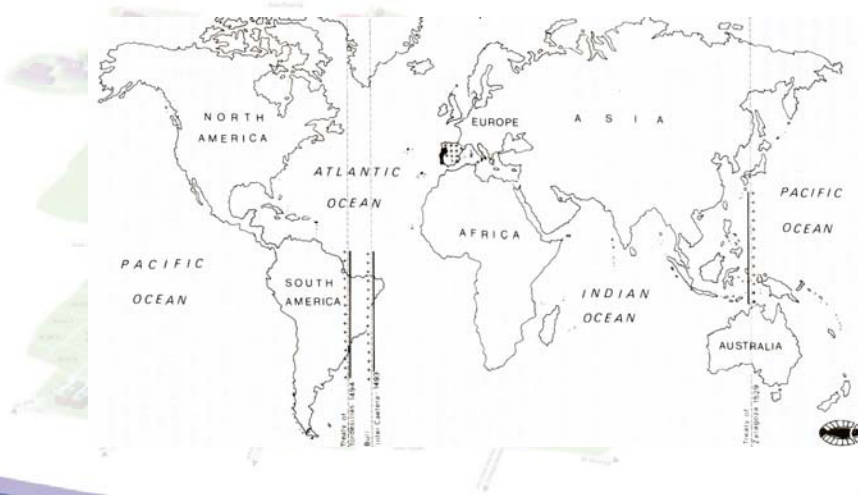


## *Treaty of Tordesillas – 1494*

- Resulted from Portugal's dissatisfaction with the Papal Bull
  - New line of demarcation agreed 1770 km west of Cape Verde Islands
  - Treaty sanctioned by Pope Julius II in 1506



### *The first division of the oceans*



### *Phase 2: 15th - 19th Century*

#### Role of the Dutch and British

- Establishment of the Dutch East Indian Company
- Conflict between the Dutch and the Portuguese
- Conflict between the Dutch and the British

State sovereignty versus Freedoms of the seas – *Mare Clausum vs. Mare Liberum*

### *Huigh de Groot (Hugo Grotius): 1583-1645*

- **Freedom of the Seas-  
*Mare Liberum* (1609)**
  - No ocean can be the property of a nation because it is impossible for any nation to take it into possession by occupation.
  - Contrary to the Laws of Nature



### *John Selden (1584-1654)*

- **Mare Clausum  
(1635)**
  - Closed Seas
- **Disputed Grotius' Mare  
Clausum**
  - Justification for  
British dominion over  
the British Isles
    - Little impact  
internationally





### *3<sup>rd</sup> Period : 19<sup>th</sup> Century to Present*

- Four Major attempts to codify the customary rules of law relating to the oceans.
- Rationale for codification
  - Complexity of rules
  - Increased number of States
  - Increased disputation



### *1. Hague Codification Conference 1930*

- Objectives
  - to codify the rules relating to the territorial sea:
    - The extent of the territorial sea.
    - The jurisdiction of the littoral or coastal State over the territorial sea.
- Disagreement among States over breadth of territorial sea



### *2. First Law of the Sea Conference (UNCLOS I - 1958)*

- Resulted in four conventions,
  - The Convention on the Territorial Sea and the Contiguous Zone 1958
  - The Convention on the High Seas 1958
  - The Convention on the Continental Shelf 1958
  - Convention on Fishing and Conservation of the Living Resources of the High Seas 1958
- Disagreement on breadth of the territorial sea



### *3. Second Law of the Sea Conference (UNCLOS II - 1960)*

- Convened to discuss two unresolved issues from the 1958 Conference.
  - The limits of the territorial sea.
  - Fisheries limits.
- 6+6 formulae – close to success but,
- Failed to resolve issues



#### *4. Third Law of the Sea Conference (UNCLOS III)*

- Lasted from 1973 to 1982
- Resulted in the Law of the Sea Convention (LOSC) 1982
- Indonesia and Indonesians active participants and contributors (especially in promoting the archipelagic concept)



#### *Factors that led to UNCLOS III*

- **New technologies** – desire to gain access to seabed resources
- **New resources** – discovery of mineral deposits nodules under the ocean bottom beyond the limits of national jurisdiction
  - Who had the right to exploit?
  - Competing economic interests



*Factors that led to UNCLOS III*

– **Creeping coastal State jurisdiction**  
over the resources of the oceans:

- Truman Proclamation, 1945
- Latin America Patrimonial Sea -  
200 miles Patrimonial Sea
- African States - claim 200  
nautical miles territorial sea



*Factors that led to UNCLOS III*

– **Environmental concerns** – depletions  
of resources as a result of lack of  
proper conservation measures.

– Group of 7: New International  
Economic Order



## *Obligations under the LOSC*

The Law of the Sea Convention (LOSC) provides coastal States with significant rights and opportunities but also carries with it major responsibilities and obligations including:

- Conservation of living resources;
- The prevention, monitoring and elimination of pollution;
- The protection and preservation of the marine environment;
- Marine scientific research; and,
- The enforcement of law and order at sea
- Therefore a major challenge



## *The Law of the Sea Convention*

- 157 signatories
- 148 State Parties to the Convention
- Indonesia ratified the Convention on 3 February 1986
- Entered into force November 1994
- United States has signed but not ratified
  - US views most provisions of the Convention as customary international law and adheres to its substantive provisions.



*Supplements to the LOSC*

Convention outmoded? Chapter 17 of Agenda 21  
(1992)

- 1994: Agreement to implement Part XI of the Law of the Sea Convention
- 1995: Code of Conduct for Responsible Fisheries
- 1995: Straddling/Highly Migratory Stocks Agreement
- Plus developments within the IMO Marine Environmental Protection Committee
- 2001: FAO Plan of Action on **Illegal, Unregulated and Unreported (IUU) Fishing**



*What to do next?*

- Assignment details
- Mid term test: 19 October 2006
- Next week materials
  - Sovereignty and Sovereign Rights
  - Maritime Zones
  - *Extended Continental Shelf* and International Zones
- Prepare for Student presentation

