Boundary Delimitation and Demarcation

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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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
Lecture 4 – International Law of the Sea and Maritime Zones

Lecture outline

- Introduction: scope of discussion
- Development of the law of the sea
- Rights of coastal states vs. freedom of the sea
- Codification efforts
  - UNCLOS I
  - UNCLOS II
  - UNCLOS III

Introduction

- 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

- 18th-19th 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 20th 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

The Division of the New World

**Papal Bull 1493 & Treaty of Tordesillas 1494**

- Treaty of Tordesillas
  - 46° 37′ W
  - 1494

- Pope Alexander VI
  - 38° W
  - 1493

Map (c) 1000 Matt Rosenberg & About.com
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 Division of the New World

Papal Bull 1493
&
Treaty of Tordesillas 1494
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
3rd Period: 19th 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


- 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
Lecture 4 – International Law of the Sea and Maritime Zones

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)
- 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