

Boundary Delimitation and Demarcation

International Law of the Sea and Maritime Zones (cont)
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Lecture 5 – International Law of the Sea and Maritime Zones

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*

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Lecture 5 – International Law of the Sea and Maritime Zones

Lecture outline

- **Sovereignty and Sovereign Rights**
- **Maritime Zones**
 - Zones Under Sovereignty
 - Internal waters
 - Territorial sea
 - Archipelagic waters
 - Special Zone
 - Contiguous zone
 - Zone under sovereign rights
 - Exclusive Economic Zone (EEZ)
 - Continental shelf
 - Zones not subject to state's jurisdiction
 - The High Sea
 - The Area
- **Extended Continental Shelf**

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Sovereignty vs. Sovereign Rights

- **Concept of Sovereignty**
 - Absolute prescriptive and enforcement power
 - Coastal State power limited only by its international obligations.
 - Customary international law
 - Treaty obligations
 - *Kedaulatan penuh*
- **Concept of sovereign rights**
 - Non absolute prescriptive and enforcement power
 - Rights only to utilize natural resources therein
 - Distance does matter
 - *Hak berdaulat*

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Maritime Zone

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Maritime Zone

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Extent of national claims to maritime jurisdiction

- The oceans cover 71% of the surface of the earth
- 44.5% of the oceans subject to national claims out to 200 nautical miles
- A further 5% may be subject to extended continental shelf claims beyond 200 nautical miles from the coast
- Thus only just over 50% beyond national jurisdiction

What to learn?

- Properties of each maritime zone
 - Historical development
 - Breadth from baseline
 - Sovereignty of sovereign rights
 - Requires active claim or not?
 - Rights and obligation of coastal State
 - Rights and obligation of other States
 - Technical aspects of claim

Internal Waters

- Defined as:
 - Waters on the land-ward side of the baselines (Article 8)
 - Ports,
 - lakes,
 - lagoons,
 - estuaries,
 - bay
 - rivers

Internal Waters

- Distinguish between:
 - Inland Internal Waters
 - Marine Internal Waters
 - Law of the Sea deals only with marine internal waters
 - Inland internal waters not regulated by international law

Balancing of Interests in the Internal Waters

- Coastal State has full sovereignty
- Policy Implications
 - Coastal State has power to exclude all foreign vessels from internal waters
 - Provided non-discriminatory
 - Can prescribe conditions for entry into internal waters
 - Can designate its ports open to international access

Territorial Sea

- Concept of territory (Article 2)
 - “The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.”
- Sovereignty extends to the airspace over the territorial sea and to its bed and subsoil.

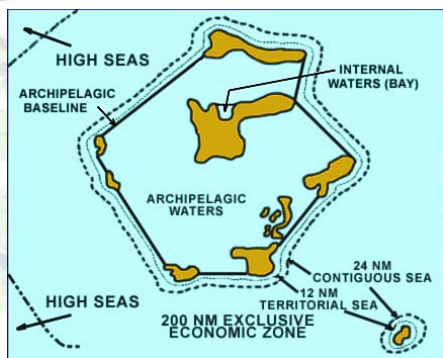
Territorial Sea

- Considered to be three nautical miles under customary international law
- 1958 Convention silent on width
- 1960 UNCLOS II failed to reach agreement
- Not more than 12 nautical miles - Article 3 of Law of the Sea Convention 1982

Policy Questions

- Can a State legally claim less than 12 nautical miles territorial sea?
 - If distance between neighbouring State less than 24 nautical miles
 - Territorial sea boundary required
- Does a State need to take any positive action to claim a territorial sea?
 - Part of territory - no need to claim
 - But outer limits need to be determined.
 - Obligation to give due publicity to coordinates and to deposit copy with the UN Secretary General (Article 16 (2))

Archipelagic waters



What is an archipelagic State?

- Consists of many islands
- Proportion between land and maritime area
- Based on active claim
- Indonesia is one of the biggest archipelagic State in the world
- Djuanda Declaration – *wawasan nusantara*

Properties of archipelagic waters



Contiguous Zone

- Zone of limited sovereignty
- Article 33: Contiguous zone no more than 24 nautical miles from baseline
 - Note: Part of the EEZ for all other purposes
- Coastal State to exercise "controls" necessary to prevent infringement of its
 - Customs
 - Fiscal
 - Immigration or
 - Sanitary
- Committed within its territory or territorial sea

Exclusive Economic Zone Defined

- An “area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention” (Article 55).

Exclusive Economic Zone

What is the maximum width/breadth of the EEZ?

“The exclusive economic zone shall not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured” (Article 57).

- Note: EEZ not included in the territorial sea

Impact of the EEZ Regime

- The most significant modification of the Law of the Sea since the Grotius period
- Transfer of property rights from international commons to State property regimes
- Continuing developments in customary international law (State practice)

The Continental Shelf: Historical Origin

- 1945 Truman Proclamation:
 - Assertion of US jurisdiction over the continental shelf adjacent to US coast
 - US claim followed by other States.

Continental Shelf: Historical Origin

- By 1950s concept recognised as part of customary international law.
- Significance
 - Living resources of sedentary nature.
 - Petroleum and hydrocarbon resources

Early Geographical Definition

- The area of the sea-bed from the low water-line to a depth where there is material increase in slope to greater depth.
 - 200 metre depth as limit

Legal Definition

- **Article 1 - 1958 Convention on Continental Shelf:**
 - (a) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the Territorial Sea to a depth of 200 metres.
 - (b) or to a depth beyond that limit where exploitation of resources was possible.
- **Note: definition excludes water column.**

Problems with Exploitability Test

- **Lack of technology at the time to make exploiting beyond 200 metres possible**
- **Technological developments in the 1970s**
- **Exploitation in deeper and deeper water progressively further offshore**

Continental Shelf under the LOSC

- **Part VI**
- **Definition (Art. 76(1)- Concept of Natural Prolongation**
 - “The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the **natural prolongation of its land territory** ...”

Continental Shelf Under Law of the Sea Convention

- **Article 76:**
 - Sea bed and subsoil of the submarine areas beyond the territorial sea to the outer edge of the Continental margin (i.e the shelf, slope ad rise)
 - **Extended continental shelf**
 - or to a distance of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.
 - **Exploitability test under 1958 Convention abandoned**
 - 1982 Convention adopts a **distance criteria**

Coastal State Rights

- **Article 77 Law of the Sea Convention**
 - Sovereign rights for exploring and exploiting the natural resources.
- **Natural Resources:**
 - Minerals, other non-living resources of the seabed and subsoil, living organisms of sedentary nature (Article 77 (4)).
 - Note: Definition of Sedentary organisms
- **Article 81 - Exclusive right to drill on the Continental Shelf.**

Exclusivity of Sovereign Rights

- **Article 77**
 - Rights of coastal State exclusive – If coastal State does not wish to exploit the resources of the continental shelf, no other State may do so without express consent of coastal State (Article 77(2))
 - The rights of coastal State over continental shelf **do not** depend on occupation, effective or notional or on any express proclamation
 - **Contrast with EEZ: Continental shelf does not need to be claimed**

Limitations on Coastal State Rights

- **Article 78**
 - The rights of coastal States over the continental shelf do not affect the legal status of the superjacent waters or the air space above those waters
 - The exercise of coastal State sovereign rights not to infringe or result in unjustifiable interference with the navigation and other rights and freedoms of other States

Rights of Other States

- **Article 79 (1): Right to lay submarine cables and pipelines.**
- **Right Qualified:**
 - Subject to the consent of the Coastal State, but:
 - Generally coastal State may not impede the rights of others to lay submarine cables and pipelines.

Submarine Cables and Pipelines

- Coastal State may take steps to regulate consistent with its right to exploit the resources and to control pollution on the continental shelf.
- Coastal State may prescribe conditions only when such pipelines enter its territorial sea or affect its pipelines used for the exploitation of the continental shelf.

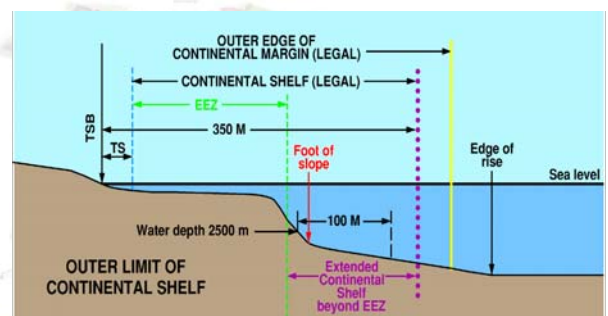
International zones

- **The High Sea**

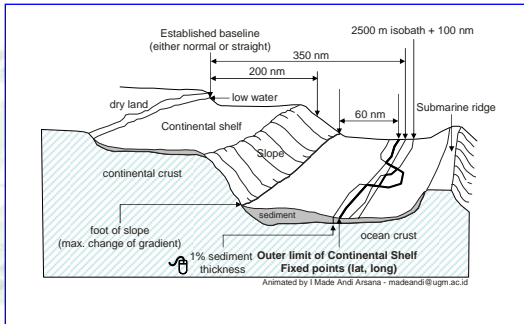
International zones

- **The Area**

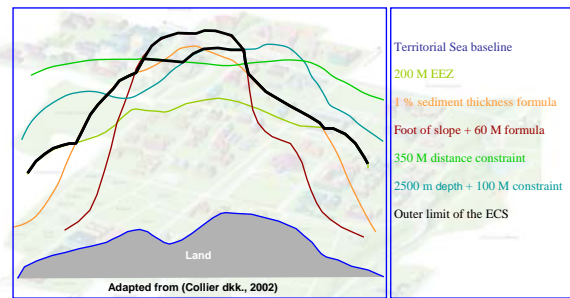
Extended Continental Shelf



Extended Continental Shelf



Landas Kontinen Ekstensi



What to do next?

- Paper proposal?
- Mid term test: 19 October 2006 [ok?]
- Next week materials
 - Ir. Soabar Sutisna, M.Surv, Ph.D
- Student presentation?