

# UNCLOS and marine scientific research

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# Disclaimer

All views expressed are personal views of the author and do not, in any way, reflect the opinion of the Commission on the Limits of the Continental Shelf, the UN or any Government

# FREEDOM of the SEAS

The oceans had long been subject to the freedom of-the-seas doctrine - a new principle was put forth in the seventeenth century essentially limiting national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline. The remainder of the seas was proclaimed to be free to all and belonging to none.

# States claim to waters contiguous to their coasts

HVGONIS GROTII  
DE  
**IVRE BELLI  
AC PACIS**  
LIBRI TRES.

In quibus jus naturæ & Gentium: item  
juris publici præcipua explicantur.

*Editio secunda emendatior, & multis locis auctior.*



AMSTERDAMI.

Apud GVILIELMVM BLAEVW.

CID IDC XXXI

*Com Privilegiis S. Cæsaris Maj. & Christianissimi Galliarum Regis.*

- The term “territorial sea” emerged as a result of Hugo Grotius works “De jure belli ac pacis ” in 1625 who proposed that a sovereign could treat waters adjacent to a state in the same way as its land territory, if effectively controlled.
- Reason; control over piracy and acts that threaten the security of a state i.e. to preserve good order, peace of the state

# Territorial Sea



- The content, purpose and breadth of Territorial Sea becoming more clearly defined
- Cornelius Van Bynkershoek in his work "De Dominio Maris Dissertatio " (1702)
- Hugo Grotius' idea: effective control has to correspond to the range of the coastal state's weapons

XV- XVIème

## 3 Nautical Miles

- Ferdinand Galiami calculated the range of the most advanced cannon at the time to three nautical miles or a league. This idea became common practice, known as the "**cannon shot rule**" and was regarded as the internationally accepted measure of the width of the territorial sea.



# Truman Declaration

- In 1945, President Harry S Truman, responding in part to pressure from domestic oil interests, unilaterally extended United States jurisdiction over all natural resources on the US continental shelf - oil, gas, minerals, etc.
- This was the first major challenge to the freedom-of-the-seas doctrine. Other nations soon followed suit.

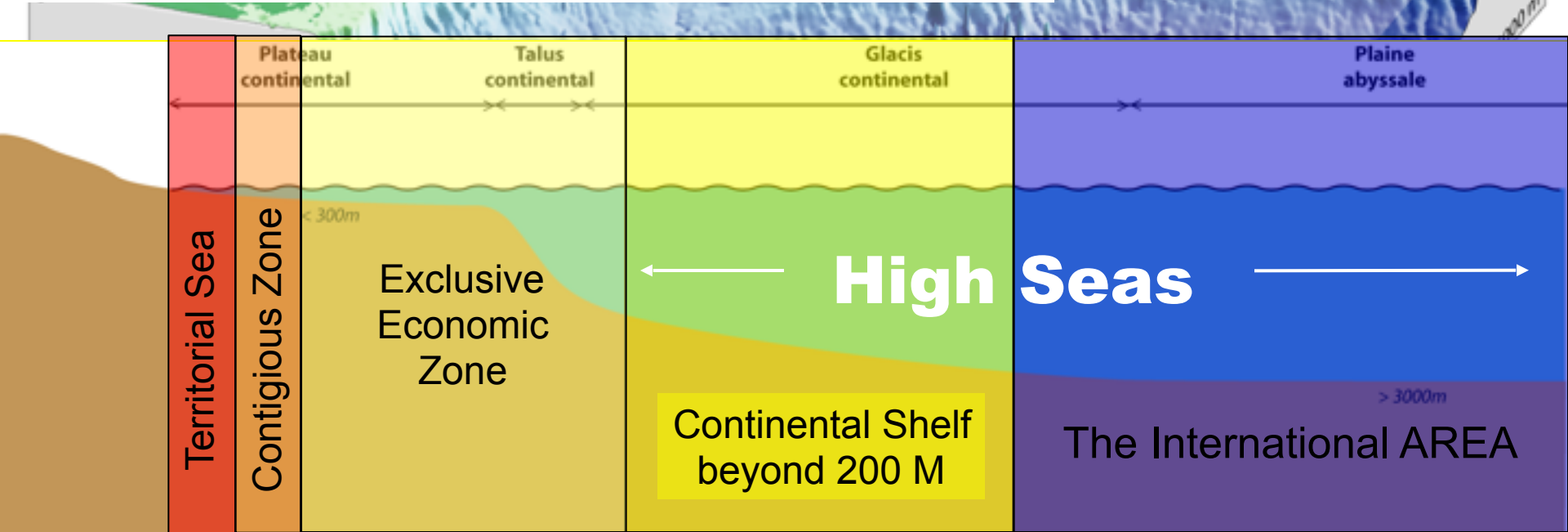
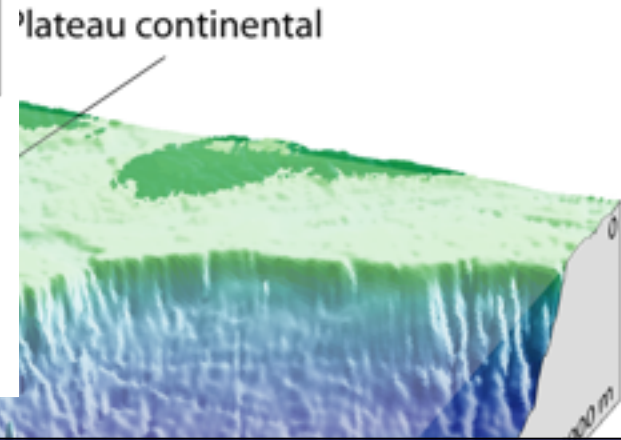
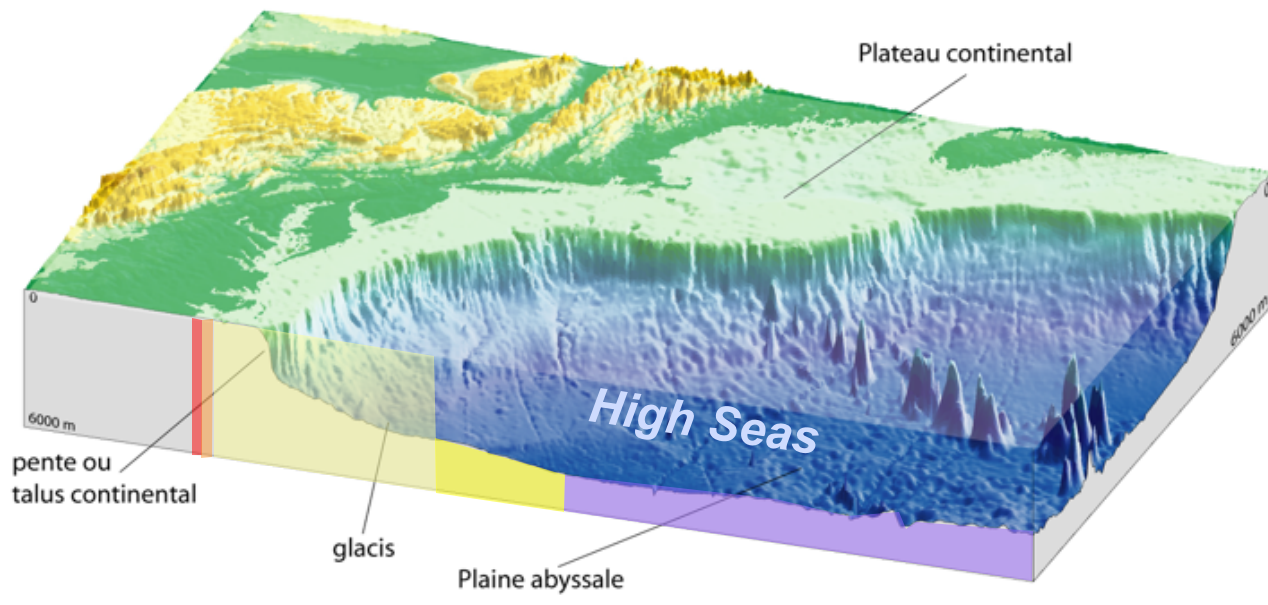
# 1982 UN Convention on the Law of the Sea (Montego Bay)

- Constitution of the oceans
  - Open for signature on 10 December 1982 and entered into force on 16 November 1994
  - 166 States ratified, and the European Union Defines different maritime zones with respective rights and obligations
- Declares the international 'Area' common heritage of Mankind
- Creates 3 entities:
  - Commission on the Limits of the Continental Shelf
  - International Seabed Authority
  - International Tribunal on the Law of the Sea

## Article 76 : Definition of the Continental Shelf

1. The **continental shelf of a coastal State** comprises the sea-bed and the 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 edge of the continental margin does not extend up to that distance

# Maritime Zones



## Article 76 : Definition of the Continental Shelf - Formulas

4. (a) For the purposes of this Convention, the coastal State shall establish **the outer edge of the continental margin** wherever the margin extends beyond 200 nautical miles [...], by either:
- (i) a line delineated [...] by reference to the outermost fixed points at each of which the **thickness of sedimentary rocks** is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
  - (ii) a line delineated [...] not more than **60 nautical miles from the foot of the continental slope**.
- (b) **In the absence of evidence to the contrary**, the foot of the continental slope shall be determined as the **point of maximum change in the gradient** at its base.

## Article 76, Paragraph 5: Constraints

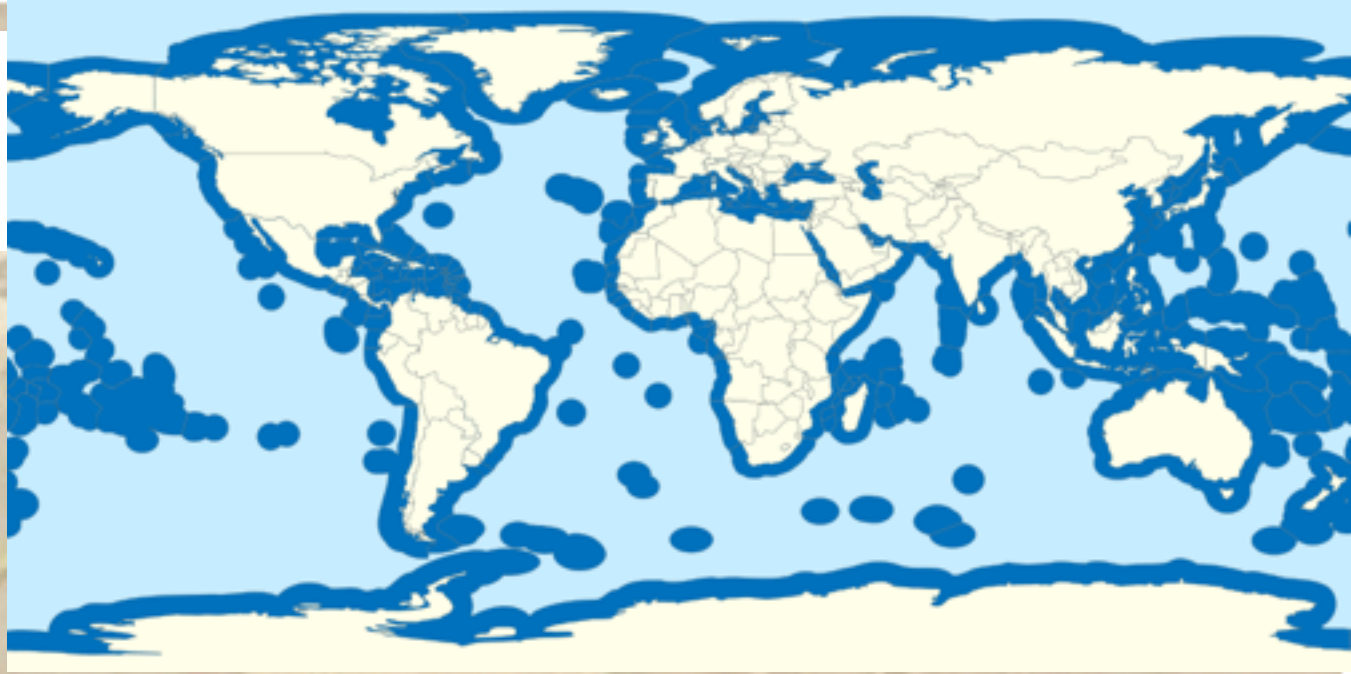
5. The fixed points comprising the line of the outer limits of the continental shelf on the sea-bed, drawn in accordance with paragraph 4 (a) (i) and (ii), **either shall not exceed 350 nautical miles** from the baselines from which the breadth of the territorial sea is measured **or shall not exceed 100 nautical miles from the 2500 meter isobath**, which is a line connecting the depth of 2,500 meters.

## Article 76, paragraph 8 : The Commission

8. Information on the limits of the continental shelf [....] shall be **submitted by the coastal State to the Commission on the Limits of the Continental Shelf** set up under Annex II on the basis of geographical representation. The **commission shall make recommendations** to the coastal States on matters related to the establishment of the outer limits of their continental shelf. The **limits of the shelf established by a coastal State** on the basis of these recommendations shall be final and binding.

# The Commission on the Limits of the continental shelf

- 21 Experts elected every 5 years according to UN rules
- Publication of the Scientific and Technical Guidelines (CLCS-11, May 1999)
- Rules of Procedure (CLCS-40, 2004)
  - Sub-commission of 7 members
  - Conflict of interest rules
  - Unresolved land or maritime disputes
  - Working language of the Subcommittee is English
  - Three active Subcommissions at any one time (currently ten)
- 22 recommendations issued to date



## Some Numbers

- Global EEZ:  $\sim 60$  million  $\text{km}^2$
- Global Shelf beyond 200 M estimated at  $\sim 20$  million  $\text{km}^2$
- $> 70$  States have entitlement over continental shelf beyond 200 M
- States have 10 years after 1999 or after ratification to claim
- Most States had to submit before May 13th 2009
- 77 Submissions lodged with the Commission, and 4 revised Submissions

- **Autonomous international organization** established under the 1982 United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the Implementation of Part XI of UNCLOS.
- The Authority is the organization through which States Parties to the Convention shall, in accordance with the regime beyond the limits of national jurisdiction (the Area) established in Part XI [...], **organize and control activities in the Area**, particularly with a view to administering the **resources of the seabed and subsoil** of the Area. The Area and its resources are the common heritage of mankind.

# The International Tribunal for the Law of the Sea

- The International Tribunal for the Law of the Sea is an **independent judicial body** established [...] to adjudicate disputes arising out of the interpretation and application of the Convention.
- The Tribunal is composed of **21 independent members**, elected from among persons enjoying the highest reputation for fairness and integrity [...].
- The Tribunal has **jurisdiction over any dispute concerning the interpretation or application of the Convention**, and over all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal (Statute, article 21).



ITLOS, Hambourg, Germany

# Marine Scientific Research

Article 87 Freedom of the high seas  
(f) freedom of scientific research, subject to  
Parts VI and XIII.

Article 143 Marine scientific research

1. Marine scientific research in the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole, in accordance with Part XIII.

## Part XIII

### Marine Scientific Research

- Article 238: Right to conduct marine scientific research
- Article 239: Promotion of marine scientific research
- Article 240: General principles for the conduct of marine scientific research
- Article 248: Duty to provide information to the coastal State
- Article 249: Duty to comply with certain conditions

## Part XIII Marine Scientific Research

**Article 238 Right to conduct marine scientific research**  
All States, irrespective of their geographical location, and competent international organizations have the right to conduct marine scientific research subject to the rights and duties of other States as provided for in this Convention.

**Article 239 Promotion of marine scientific research**  
States and competent international organizations shall promote and facilitate the development and conduct of marine scientific research in accordance with this Convention.

## Part XIII

### Marine Scientific Research

Article 240 General principles for the conduct of marine scientific research

- (a) marine scientific research shall be conducted exclusively for peaceful purposes;
- (b) marine scientific research shall be conducted with appropriate scientific methods and means compatible with this Convention;
- (c) marine scientific research shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Convention and shall be duly respected in the course of such uses;
- (d) marine scientific research shall be conducted in compliance with all relevant regulations adopted in conformity with this Convention including those for the protection and preservation of the marine environment.

## Part XIII Marine Scientific Research

### Article 245

Marine scientific research in the territorial sea  
Coastal States, in the exercise of their sovereignty,  
have the exclusive right to regulate, authorize and  
conduct marine scientific research in their territorial  
sea. Marine scientific research therein shall be  
conducted only with the express consent of and  
under the conditions set forth by the coastal State.

## Part XIII

### Marine Scientific Research

Article 246 Marine scientific research in the exclusive economic zone and on the continental shelf

1. Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf in accordance with the relevant provisions of this Convention.
2. Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State.
3. Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects [...] coastal States shall establish rules and procedures ensuring that such consent will not be delayed or denied unreasonably

## Part XIII

### Marine Scientific Research

Article 256 Marine scientific research in the Area

All States, irrespective of their geographical location, and competent international organizations have the right, in conformity with the provisions of Part XI, to conduct marine scientific research in the Area.

Article 257 Marine scientific research in the water column beyond the exclusive economic zone

All States, irrespective of their geographical location, and competent international organizations have the right, in conformity with this Convention, to conduct marine scientific research in the water column beyond the limits of the exclusive economic zone.

## PART XIV DEVELOPMENT AND TRANSFER OF MARINE TECHNOLOGY

### Article 266 Promotion of the development and transfer of marine technology

1. States, directly or through competent international organizations, shall cooperate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions.
2. States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, including land-locked and geographically disadvantaged States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment [...]

# Summary (1)

- The UNCLOS is generally considered as a very successful Treaty, ratified by many landlocked states as well
- Many states are claiming a continental shelf beyond 200 miles
- However, many issues need to be resolved, notably for the international Area:
  - Biodiversity beyond national jurisdiction
  - Sustainable, responsible development, preservation
  - Sharing of benefits with developing and land-locked states
  - Pollution – measures and fines
  - Marine Scientific Research ...

## Summary (2)

- Territorial Sea
  - Coastal State Rules apply
- Continental Shelf < 200 M
  - Consent required
  - Coastal States may exercise their discretion to withhold consent (e.g. drilling into the continental shelf)
  - State shall not unreasonably withhold
  - Implicit consent possible after delay
- Continental Shelf > 200 M
  - Coastal States may not exercise their discretion to withhold consent
- The Area
  - Situation unclear in contract areas, discussions underway