#### INSTITUTE FOR MARINE AND ANTARCTIC STUDIES

## Overlapping legal regimes and the ATS

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# 4 – Overlapping legal regimes

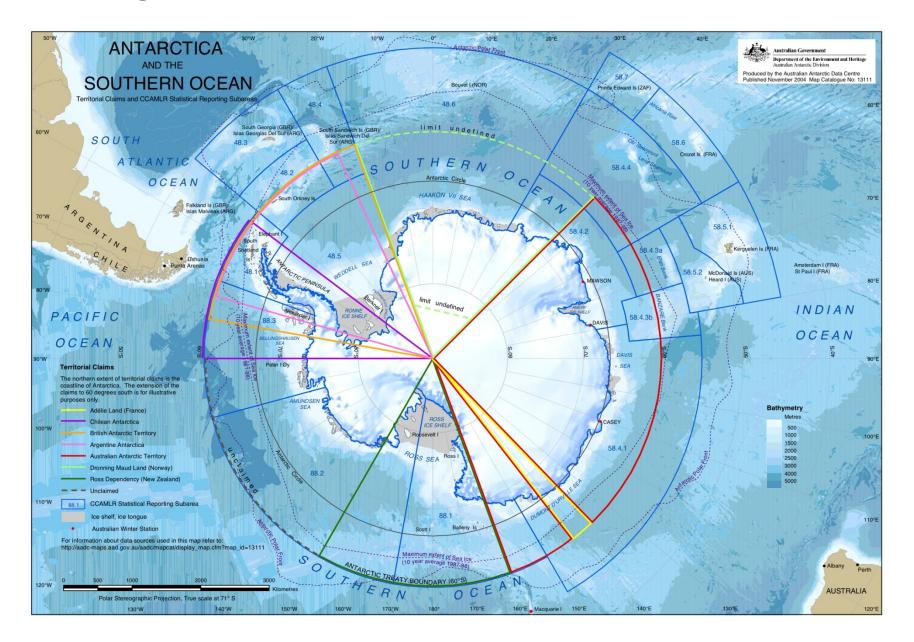
This seminar introduces the United Nations Law of the Sea Convention, one of the principal legal instruments outside the Antarctic Treaty System that has an impact on the Antarctic. The seminar will highlight overlaps between the ATS and the LOSC and other legal regimes, including the potential for seabed mining in the extended continental shelf zones of Australia, which reach into the Antarctic Treaty Area south of 60° South, and the problem with whaling and a whale sanctuary.

## Recommended Reading

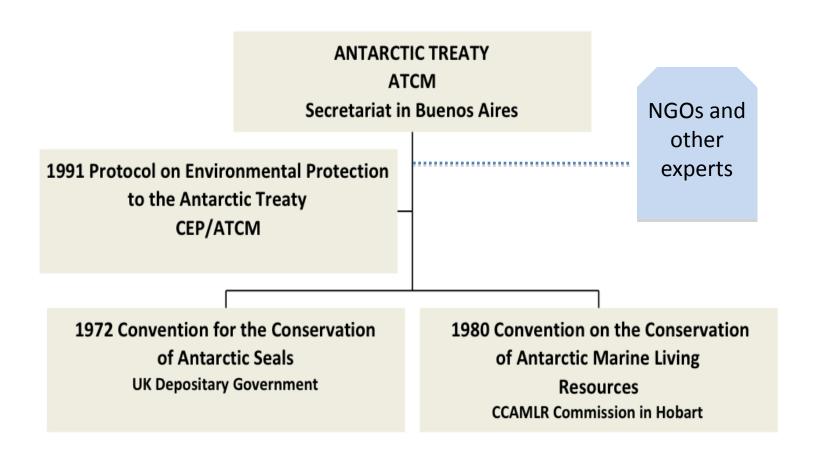
Christopher Joyner, "...Sovereign Rights Over the Antarctic Shelf" extract from The Antarctic Continental Shelf Regime, Chapter 4 in Joyner, C (1994) Antarctica and the Law of the Sea, Dordrecht: Martinus Nijhoff, pp121–142.



### **Huge maritime area of Southern Ocean...**



# The Antarctic Governance Structure



## **Antarctic Treaty Summary**

- Peace and science
- Collaboration
- 'Suspension' of claims to territory status quo ante
- No military activity
- No nuclear testing/dumping
- Compliance through inspection provisions
- Consensus decisions

## **ATCMs**

- All Consultative Parties (28/48) collaborate throughout the year and meet annually at ATCM
- Receive reports from ATS organisations, NGOs and invited experts
- Make decisions (CCAS, CCAMLR, MP etc)
- Produce Final Report (www.ats.aq)
- Supported by Secretariat in Buenos Aires

# **Seals Convention Summary**

- Conservation of seals
- Harvesting permitted within national rules; able to establish a moratorium if parties agree
- Objection to amendments available
- Oversight formally entrusted to SCAR and UK Foreign and Commonwealth Office as no secretariat established (not necessary, no commercial sealing)

## **CCAMLR Summary**

- "Conservation includes rational use"
- Ecosystem approach (time and space; harvested, dependent and related populations)
- Whales/seals covered elsewhere
- Commission (in Hobart) oversees Convention
- Consensus decisions but can opt out (nobody does)
- Observation and inspection procedures

# Sub-Antarctic Islands within CCAMLR Area

- Heard and McDonald Islands (Australia)
- Kerguelen and Crozet Islands (France)
- Bouvetøya (Norway)
- Prince Edward & Marion Islands (South Africa)
- South Georgia and the South Sandwich Islands and Shag Rocks (Argentina and United Kingdom
  - in dispute)

## **Madrid Protocol Summary**

- Limit adverse impacts on Antarctic environment and dependent and associated ecosystems
- Scientific research has priority
- Planned activities must have prior EIA (state responsibility)
- Prohibition on mineral resource activities
- Details set out in 6 annexes

# Committee for Environmental Protection

- All signatories to Madrid Protocol consult throughout the year and meet at ATCM
- Examines environmental matters and formulates a report on operation of MP for ATCM
- Makes recommendations (advisory only)

## + other international law

#### Marine resources

- UN Convention on the Law of the Sea
- International Convention for the Regulation of Whaling

#### Biodiversity generally

- Convention on International Trade of Endangered Species of Wild Fauna and Flora
- Convention on Biological Diversity

#### Marine Operational

- MARPOL
- Convention on Maritime
   Search and Rescue
- Safety of Life at Sea
- Ballast Water Management
- [Polar Code]

#### Climate Change

- UNFCCC
- Kyoto Protocol

## Conceptual regime overlaps

- Exist but are not generally contradictory, eg,
  - Broad appeals through various agreements including LOSC to conserve living resources
  - Many treaties rely on best scientific evidence to inform decision-making
  - Scientific cooperation, collaboration, free exchange of information and acknowledgement of 'all mankind' commonly articulated
- Potential to cause conflict escalates when states interpret/demand rights within narrow context of one agreement alone

## **LOSC**

- "Prompted by the desire to settle, in a spirit of mutual understanding, all issues relating to the law of the sea..."
  - This will result in a "just and equitable international economic order" and "strengthening of peace, security, cooperation and friendly relations among all nations"
- Introduction provides special definitions, eg. "Area", "pollution of the marine environment"

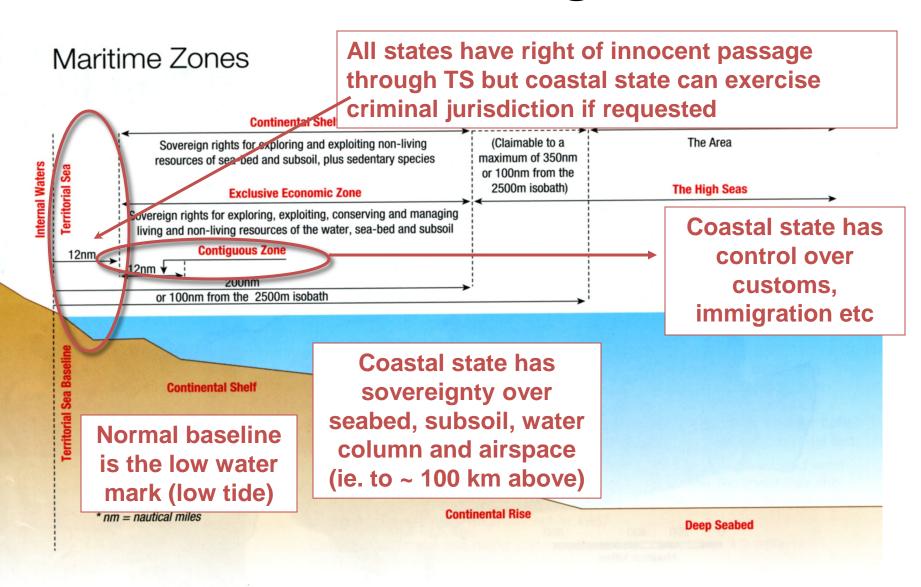
## **LOSC Table of Parts**

#### **Preamble**

- 1 Introduction
- 2 Territorial Sea and Contiguous Zone
- 3 Straits used for International Navigation
- 4 Archipelagic States
- **5 Exclusive Economic Zone**
- 6 Continental Shelf
- 7 High Seas
- 8 Regime of Islands
- 9 Enclosed or Semi-enclosed Seas

- 10 Right of Access of Land-locked States to and from the Sea and Freedom of Transit
- 11 The Area
- 12 Protection and Preservation of the Marine Environment
- 13 Marine Scientific Research
- 14 Development and Transfer of Marine Technology
- 15 Settlement of Disputes
- **16 General Provisions**
- 17 Final Provisions

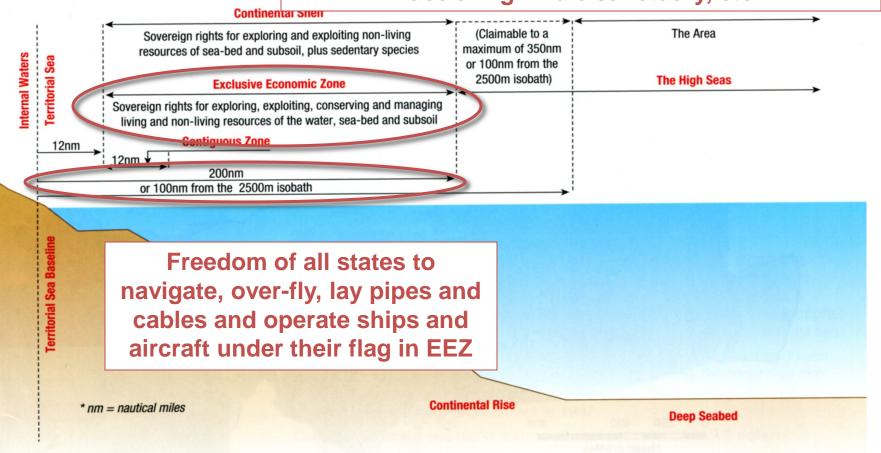
# **Territorial Sea/Contiguous Zone**



## **Exclusive Economic Zone**

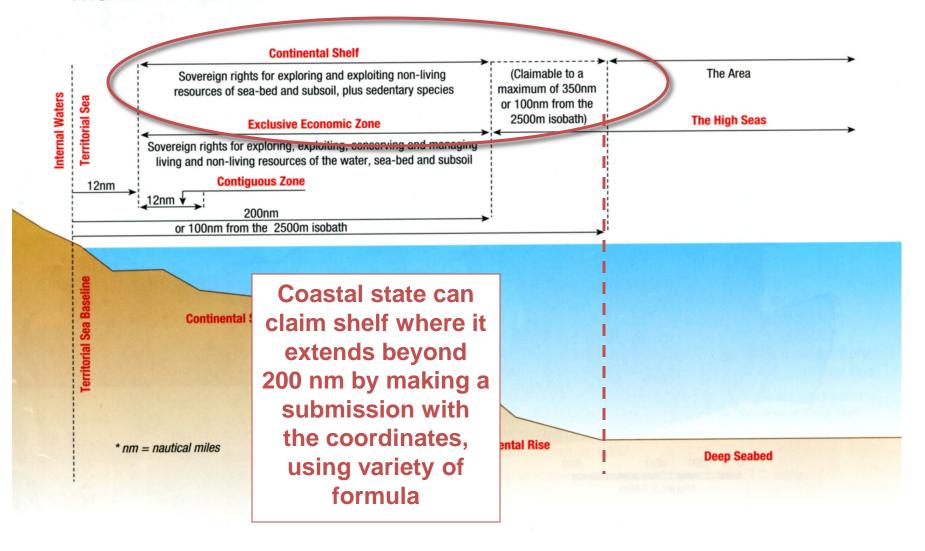
Maritime Zones

Coastal state has <u>duty</u> to conserve EEZ living resources, incl. licensing foreign fishing vessels, declaring whale sanctuary, etc



## **Continental Shelf**

#### Maritime Zones

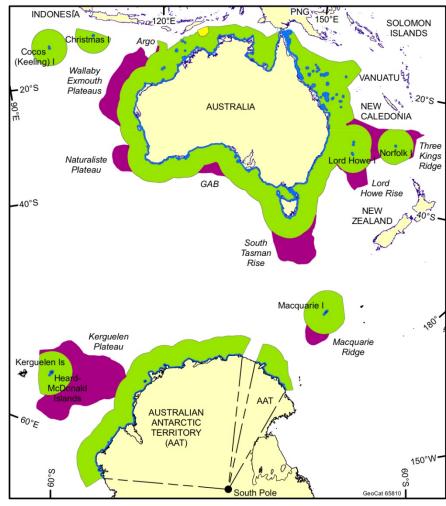


### Aus zones

# Officially publicised maritime zones of Australia

- Territorial sea
- EEZ
- Extended continental shelf
  - note Antarcticterritorial sea andEEZ
- Joint petroleum development area

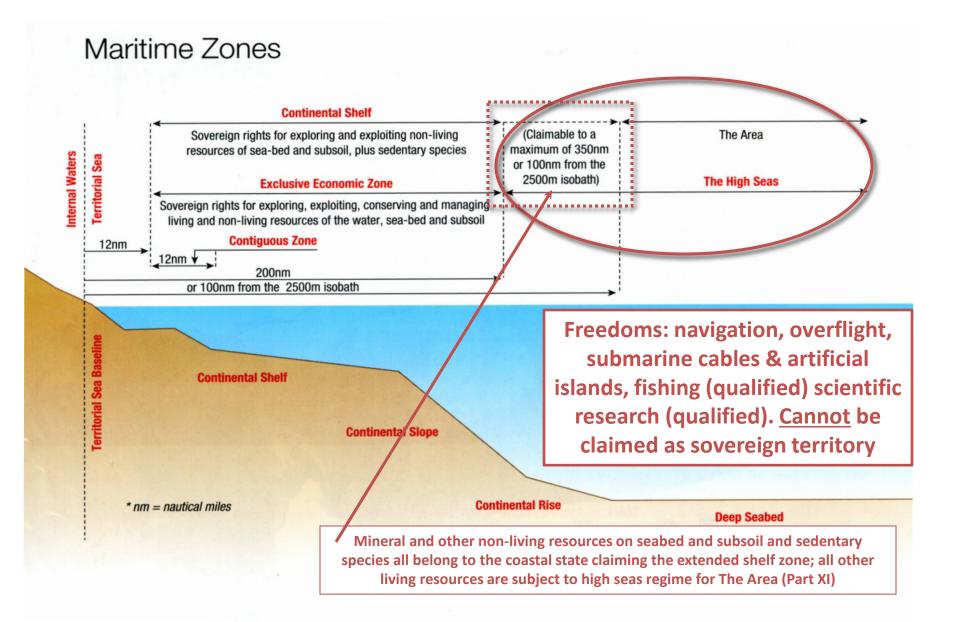




#### AUSTRALIA'S CONTINENTAL SHELF CONFIRMED BY THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF



## **High Seas**

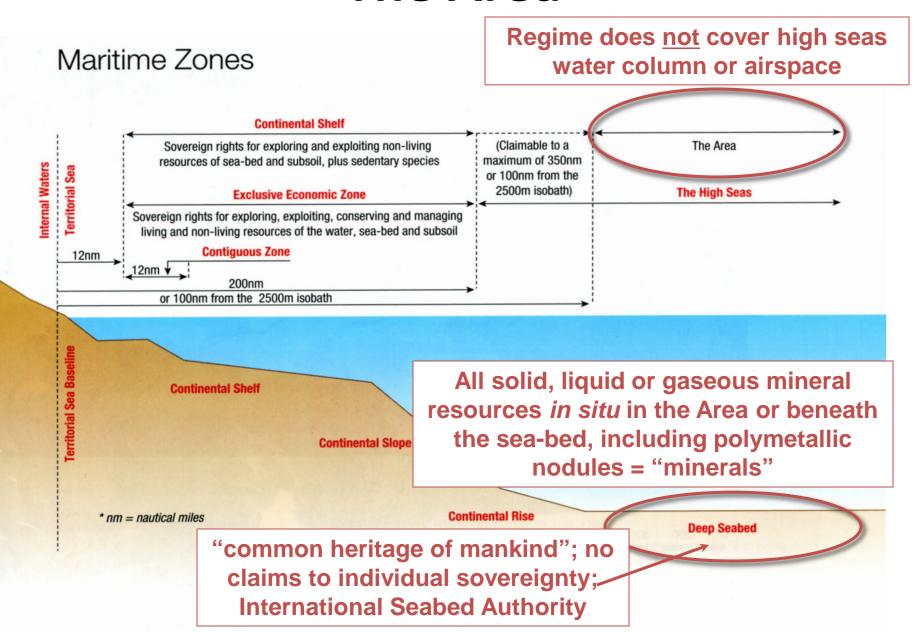


# **High Seas**

- Ships must fly a flag from one country only
  - Flag states have specific responsibilities for activities of ship/crew
- Duty to render assistance
- Prohibition of transport of slaves
  - Jus cogens
- Duty to repress piracy
  - Also jus cogens
  - Piracy has specific definition

- Suppression of drugs trafficking and illegal broadcasting
- Right of hot pursuit
  - Must only begin from territorial/contiguous waters and must not be interrupted
- Right to fish
  - Conservation to be based on scientific evidence
  - Cooperation between harvesting states
  - Right to fish subject to treaty obligations

## The Area



## Protection and Preservation of the Marine Environment

 States have the obligation to protect and preserve the marine environment

#### **Marine Scientific Research**

- All states have the right to conduct marine scientific research
- No research activities shall constitute a legal basis for any claim to any part of the marine environment

## **Dispute Settlement**

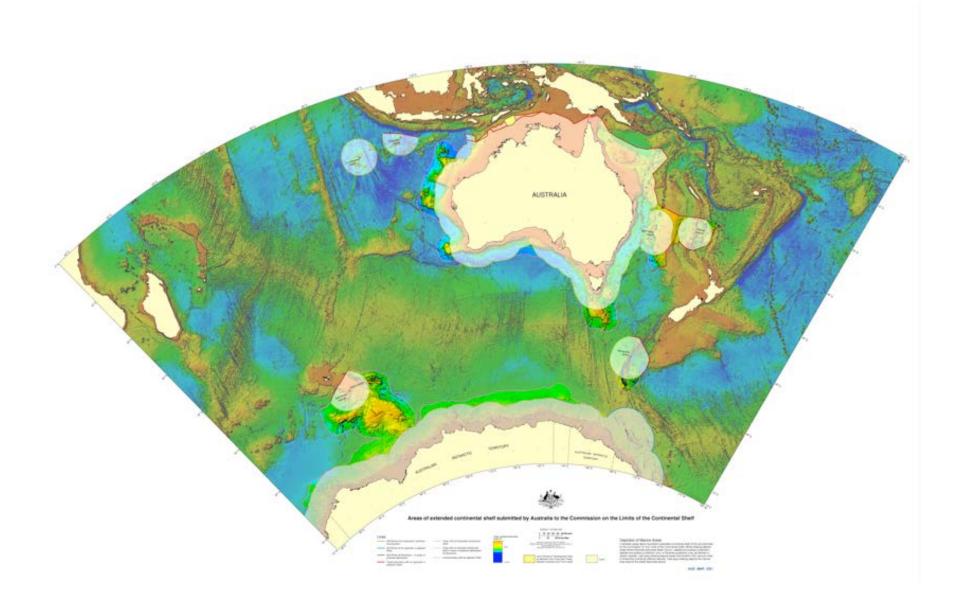
- 4 alternatives
  - International Tribunal for the Law of the Sea (ITLOS)
  - International Court of Justice (ICJ)
  - an arbitral tribunal constituted in accordance with LOSC Annex VII (Arbitration on any dispute)
  - a special arbitral tribunal constituted in accordance with Annex VIII (Special Arbitration on fishing, marine environment, scientific research or navigation)
- State Parties free to choose one or more of these by written declaration
- If parties to a dispute have not accepted same settlement procedure, dispute may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree

# Potential contradictions with LOSC

#### **LOSC**

- Promotes coastal state jurisdiction over maritime zones (eg, EEZ, extended continental shelf zone)
- Provides regulatory regime for seabed mining

Antarctic Treaty Art IV suspends territorial claims Protocol Art 7 mining prohibition v. Heard Is ECSZ



## **Contradictions with ICRW**

# International Convention for the Regulation of Whaling

- Promotes orderly development of whaling industry;
- Moratorium on commercial whaling but permits objections, lethal research for science

Australia's whole EEZ is whale sanctuary
ATCM, CCAMLR ignore whales, thus difficult to make
it an <u>Antarctic</u> issue

# Potential contradictions with CBD

#### **Convention on Biological Diversity**

- State jurisdiction over resources in sovereign territory and over processes and activities of nationals outside
- Provides rules for access and benefit-sharing

Antarctic Treaty promotes peaceful scientific cooperation
Antarctic Treaty Art IV suspends territorial claims, so resources
in claimed areas are not "owned" exclusively by claimants
Antarctic Treaty Art III promotes free exchange of "observations
and results from Antarctica", cf. obligations of commercial-inconfidence

## Benefiting from overlaps with IMO

### Polar Shipping Code

 ATCPs asked IMO in 2009 for mandatory polar shipping code

#### MARPOL HFO ban

- came into force August2011
- bans use and carriage all intermediate and heavy fuel oil south of 60° South

# Ballast Water Management Convention

- Timely and useful enhancement of Madrid Protocol's rules on marine protection
- Essential in waters that are increasing in temp.
- Adopted 2004, 28/30
   signatories so in force as soon as % shipping tonnage increases

## **Tutorial Topic**

In 200 words, is the seabed below 60° South in the Antarctic Treaty Area part of The Area under the International Seabed Authority's jurisdiction, and thus able to be "mined", or is it subject to the Madrid Protocol's Article 7 prohibition on mineral resource activities?