Oceans Economy and Trade Strategies (OETS) Project
National Stakeholder Workshop

Ocean Affairs and the Law of the Sea:
the Framework for Sustainable Ocean-based Economies
Sustainable development

Social development

Economic Growth

Environmental protection

Sustainable development
Oceanic services

Provisioning Services:
- Food Production
- Water
- Wood and Fiber
- Fuel

Supporting Services:
- Nutrient Cycling
- Soil Formation
- Primary Production
- Habitat Provision

Cultural Services:
- Spiritual
- Aesthetic
- Educational
- Recreational

Regulating Services:
- Climate Regulation
- Flood Regulation
- Water Purification

Source: Millennium Ecosystem Assessment, 2005.
Need for clarity and stability

- Avoid conflicts
- Protect freedom of navigation
- Regulate resources
- Balance interests
- Accommodate new activities
- Protect and preserve the marine environment
- Foster and protect investments…
The United Nations Convention on the Law of the Sea - Background

• 1930 Hague Conference [no outcome]
• 1958 Geneva Conferences and 4 Conventions (based on ILC draft articles)
• 1967 Ad hoc (then regular) Comm. On the Peaceful uses of the seabed/ocean floor beyond national jurisdiction (Arvid Pardo)
• 1970-73: preparatory work
• 1973-82: 11 sessions of the 3rd UN conference on the L.o.S.
• 1982 Adoption of UNCLOS (1994 entry into force)

• ‘A constitution for the oceans’
• Comprehensive legal instrument dealing with all aspects of our interaction with the oceans
• Legal framework within which all activities in the oceans and seas must be carried out
• Incorporates agreed compromises and balances, thus constituting a ‘package’
UNCLOS is a legal framework for the oceans
It is an umbrella under which all ocean activities are regulated
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From freedom to a cannon

- **Mare Librum** – 1609 Hugo Grotius, Dutch legal scholar proposed that the oceans are free and non-appropriable, an international territory of sorts, free to be used by all nations for TRADE.

- **Mare Clausum** – 1963 John Seldon, British legal scholar counter-proposed that the oceans are as appropriable as land; in waters it controlled, a State could defend TRADE.

- Maritime claims based in the notion of the *extension of land*

- **De Dominio Maris** – 1702 Cornelius Bynkershoek, Dutch legal scholar proposed to limit the maritime domain of States to the reach of a CANNON.

- Maritime “territory” based on the *3-Mile cannon reach*
Types of Maritime Spaces

*A nautical mile (M) is a unit used in measuring distances at sea, equal to approximately 1,852 meters.
## Status of the Maritime Zones

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Baselines

Line from which breadth of maritime zones is measured

Types:
- Normal Baseline
- Straight Baseline
- Closing Baseline
- Archipelagic Baseline
Internal Waters

• Waters on landward side of baseline
• Coastal State has full sovereignty
• No other generally enjoyed rights (some exceptions)
Territorial Sea

- Sovereignty of a coastal State extends beyond its land territory to an adjacent belt of sea: the territorial sea.
- Breadth: up to 12 nautical miles, measured from the baselines.
- Scope: sea; air space; seabed; and subsoil.
Contiguous Zone

• The contiguous zone is a maritime zone contiguous and seaward of the territorial sea within which coastal States have a limited degree of jurisdiction.

• Breadth: from the outer limit of the territorial sea to up to 24 nautical miles, measured from the baselines.

• Scope: sea and seabed.
Exclusive Economic Zone

- The EEZ is beyond and next to territorial sea; State’s rights and jurisdiction limited to exploration and exploitation of natural resources and related activities.
- Breadth: up to 200 nautical miles, measured from the baselines.
- Scope: sea; seabed; and subsoil.
Continental Shelf

• Breadth: Up to 200M, more in some cases but must establish if beyond 200M.
• Scope: seabed and subsoil.
• The coastal State has sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources.
Jurisdiction in the Continental Shelf

- In addition to sovereign rights, coastal States have Jurisdiction with regard to the:
  - establishment/use of artificial islands, installations and structures (article 80);
  - drilling on the continental shelf (article 81);
  - cables and pipelines (article 79);
  - marine scientific research (article 246); and
  - protection and preservation of marine environment (article 208).
Maritime Zones beyond national jurisdiction

- High Seas (Articles 86-120): all parts of the sea that are not included in the EEZ, territorial sea, internal waters, archipelagic waters.

- International Seabed Area (Articles 133-191 and Part XI Agreement): “Common Heritage of Mankind”
High Seas

• Freedom of high seas comprises, inter alia:
  – freedom of navigation;
  – freedom of overflight;
  – freedom to lay submarine cables and pipelines;
  – freedom to construct artificial islands and other installations;
  – freedom of fishing, subject to certain conditions;
  – freedom of scientific research.
• Reserved for peaceful purposes
• Combat universal crimes and preserve environment
International Seabed Area

Polymetallic Nodules Exploration Areas in the Clarion-Clipperton Fracture Zone
Approved plans of work and areas reserved for the International Seabed Authority (25 July 2014)

Contract area or contract approved as of 25 July 2014

- Ocean Mineral Singapore Pte Ltd (OMS)
- Cook Islands Investment Corporation (CIC)
- Mariana Research and Exploration Ltd (Kiribati)
- Bundesanstalt für Geowissenschaften und Rohstoffe (BGR, Germany)
- China Ocean Mineral Resources Research and Development Association (COMRA, China)
- Deep Ocean Resources Development Company (DORD, Japan)
- G-TEC Minerals Resources NV (GSR, Belgium)
- Government of the Republic of Korea
- Institut français de recherche pour l'exploitation de la mer (IFREMER, France)
- Iriocañaritmineral (OMT, Búgara, Cuba, Czech Republic, Poland, Russian Fed, Slovakia)
- Naurs Ocean Resources Inc (NORI, Nauru)
- Tonga Offshore Mining Ltd (TOML, Tonga)
- UK Seabed Resources Ltd (UKSR, UK)
- Vishmorgolica (Russian Federation)

Area of particular environmental interest (APEI) ** Exclusive Economic Zones

* In the case of polymetallic nodules the so-called parallelism provides that each application for exploration by a developed State must cover two parts of “equal estimated commercial value”.

** In July 2012, the Authority adopted an environmental management plan for the Clarion-Clipperton Zone to be implemented on a provisional basis over an initial three-year period. The plan includes the designation of a network of areas of particular environmental interest (ISBA/SC/23).
Rights in Each Zone

Figure 1: Offshore extent of the maritime zones recognized under international law
Cross-Cutting Issues

- Marine Environment

- Marine Science
  Photo credit Wikipedia labeled for reuse

- Marine Technology
  Photo credit Wikipedia labeled for reuse
Institutions under UNCLOS

- International Seabed Authority (ISA, ISBA or the Authority)
- International Tribunal for the Law of the Sea (ITLOS)
- Commission on the Limits of the Continental Shelf (CLCS)
- Meeting of States Parties (MSP or SPLOS)
The Authority regulates deep seabed mining in the Area, regulates the protection of the marine environment and promotes scientific research.
International Tribunal for the Law of the Sea
(ITLOS or the Tribunal)

ITLOS is an independent body to resolve disputes from interpreting and applying UNCLOS.

Resolution of Conflicts
The CLCS considers submissions and makes recommendations thereupon. The outer limits established ON THE BASIS of the recommendations are FINAL and BINDING.
The Meeting elects ITLOS and CLCS members, considers reports, and deals with budgetary and administrative matters.
UNCLOS and other international law instruments

UNCLOS

- Safety of navigation
- Environmental protection
- Rights of workers at sea
- Migration and refugees
- Maritime warfare
- Energy
- Fisheries
UNCLOS and other international bodies

• As a framework convention, UNCLOS provides for further development in specific areas of the law of the sea
• Duty on States to cooperate at global, regional and subregional levels
• “Competent” or “appropriate” international organizations, “International organizations”, “Specialized agencies”
Frameworks for implementation

• ocean affairs
• marine affairs
• ocean and coastal management
• integrated coastal zone management
• ocean governance...

What is: ➢ Ocean?
➢ Governance?
Elements of ocean governance

These is no comprehensive operational definition, but elements can be broadly grouped into these categories:

• Political / Diplomatic
• Legal / Policy
• Institutional / Operational
• Levels of Implementation
  – Global, regional, national, local
• Cross-cutting: participatory, integrated and ecosystem-based...
Levels of Implementation

– Linkages are necessary
– between all relevant levels:
  ✓ Local
  ✓ National
  ✓ Regional
  ✓ International

Linkages must be established within (participatory) and across sectors (integration) taking into consideration the ecosystem context (ecosystem approach) and the best available science (science-policy interface)
Political/Diplomatic

• The national political processes, and the pursuit of national interests at the multilateral level.
Legal/Policy Framework

- Legislative, regulatory and policy arrangements related to management of marine and coastal activities and the environment
Legal/Policy Framework (National)

- Labour laws
- Laws and regulations for transport and trade
- Marine scientific research laws
- Natural resources laws (e.g. fish, oil & gas)
- Environmental laws and regulations
- Laws and Regulations for specific activities (e.g. navigation)

OCEANS' POLICY
Institutional frameworks that enable effective regulation, management and co-ordination of activities in the marine and coastal zone
Institutional Framework (National)

- Ministry of Foreign Affairs
- Ministry of Environment
- Ministry of Agriculture and Fisheries
- Ministry of Natural Resources
- Ministry of Finance
- Ministry of Trade
- Ministry of Transport
- Ministry of Science and Technology
- Others...??
- OCEANS ?????

- Division for Ocean Affairs and the Law of the Sea
  United Nations
Institutional Framework (Regional)

Scope:

• Regional scales essential for cooperation, development and implementation
• Supports commonalities of interests above conflict
• Political space and ecological space do not coincide (need to reconcile)

Some examples:

• Regional Seas Conventions (environmental)
• Regional Fisheries Management Organizations (RFMOs)
• Large Marine Ecosystems (LMEs)
• Regional Political/Security Organizations
The 3 elements of Ocean Governance
Thank you for the opportunity to contribute to your important discussions