

International Legal Framework - UNCLOS

Radostina Nedeva-Mägerlein

Training for Flag State Inspectors for
ENP beneficiary countries
Lisbon, 5-9 March 2018



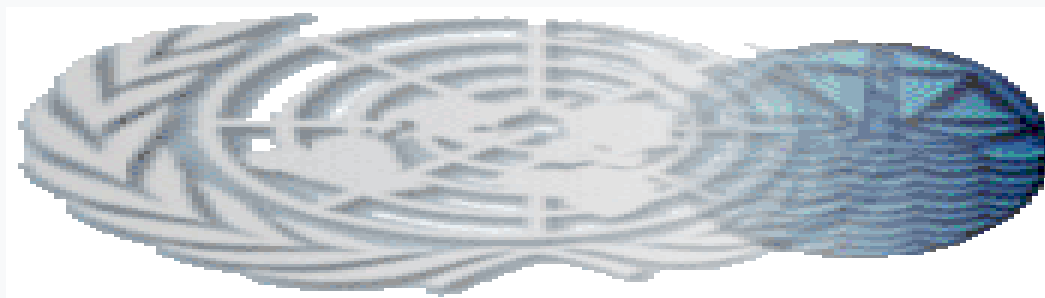
General introduction to the United Nation Convention of the Law of the Sea (UNCLOS):

- **Historical development of the Convention**
- **Main Objectives**
- **Concept of 'Genuine Link'**
- **Role of the Flag State (Article 94)**



Historical development of UNCLOS

United Nations Convention on the Law of the Sea



Logo of the Convention

Signed	10 December 1982
Location	Montego Bay, Jamaica
Effective	16 November 1994 ^[1]
Condition	60 ratifications
Signatories	157 ^[2]
Parties	168 ^{[2][3]}
Depositary	Secretary-General of the United Nations
Languages	Arabic, Chinese, English, French, Russian, and Spanish

- **Trend in the development of national maritime law towards international agreements**
- **The dominant role of Great Britain – since 1906 application of national load line rules to all ships calling at British ports**
- **British Board of Trade rules and their applicability**
- **Adoption of the International Load Line Convention - 1930**

- **1910 Conference in Brussels on collision and other matters of ship safety**
- **Adoption of:**
 - 1. Unification of Certain rules of law with Respect of Collisions between Vessels (The Brussels Rules – annexed to SOLAS in 1948)**
 - 2. Convention on Assistance and Salvage at Sea**



After Titanic disaster:

- ✓ **British Government called a conference on adequacy of lifeboats on passenger ships**
- ✓ **On 20 January 2014 was adopted the first Safety of Life at Sea Convention (SOLAS 2014)**
- ✓ **Institution of Ice Patrol in the North Atlantic**
- ✓ **Adoption of 1929 SOLAS Convention, amended and expanded by 1948 SOLAS and 1960 SOLAS Conventions**

- **Introduction of tonnage measurement as an essential aspect of registration of ships**
 - **Bilateral agreements on measurement of ships**
 - **Different measures were used to determine tonnage of ships and this led to inconsistent tonnage certificates for Suez and Panama Canals**
- **Convention Relating to the Tonnage Measurement of Merchant Ships, Warsaw 1934**
- **International Convention on Tonnage Measurement of Ships, London 1969**

- **Need of international convention to codify wide range of issues**
- **1930 League of Nations Conference did not reach an agreement**
- **International law committee drafted a number of Articles (high sea and territorial sea) which influenced the later draft of UNCLOS I (UN Conference on the Law of the Sea)**

In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) at Geneva, Switzerland. UNCLOS I resulted in four treaties concluded in 1958:

- Convention on the Territorial Sea and Contiguous Zone, entry into force: 10 September 1964
- Convention on the Continental Shelf, entry into force: 10 June 1964
- Convention on the High Seas, entry into force: 30 September 1962
- Convention on Fishing and Conservation of Living Resources of the High Seas, entry into force: 20 March 1966

Main Objectives & Concept of Genuine Link

1. Primacy of the Flag State in all matters related to nationality and operation of ships

Every state is under the duty to fix the conditions for granting its nationality to ships, registration of ships in its territory and the right to fly its flag

2. The 'Concept of the Genuine Link

There must be a genuine link between the state and the ship. (ILC Articles:’ for the purposes of recognition of the national character of the ship by other states. The jurisdiction of the state over ships and the control it should exercise can only be effective where there exists in fact relationship between the state and the ship other than mere registration or mere grant of certificate of registry.

3. The Flag state shall effectively exercise jurisdiction and control over administrative, technical and social matters over ships flying its flag

This requirement was adopted to support the 'Genuine link' concept.

4. A state is required to issue to ships flying its flag documents to that effect

Ships can only fly the flag of one state and shall be subject to its exclusive jurisdiction on the high seas.

5. A state is required to take such measures for ships under its flag as are necessary to ensure safety at sea with regard inter alia to use of signals and maintenance of communication and the prevention of collision.

Together with the above, the state was required to ensure proper manning of the ships and the labor conditions of the crew taking into account the international labor instruments; the proper construction, equipment and seaworthiness of the ship.

6. Each state is required to conform to the generally accepted international standards and to take any steps which may be necessary to ensure their observance

In the event of a collision or any other incident of navigation the issuing state has the power to withdraw any certificate of competence 'even if the holder is not a national of the state which issued them

7. Only a flag state has the power to arrest or detain a ship ‘even as a measure of investigation’ after a collision or any other incident of navigation on the high sea.

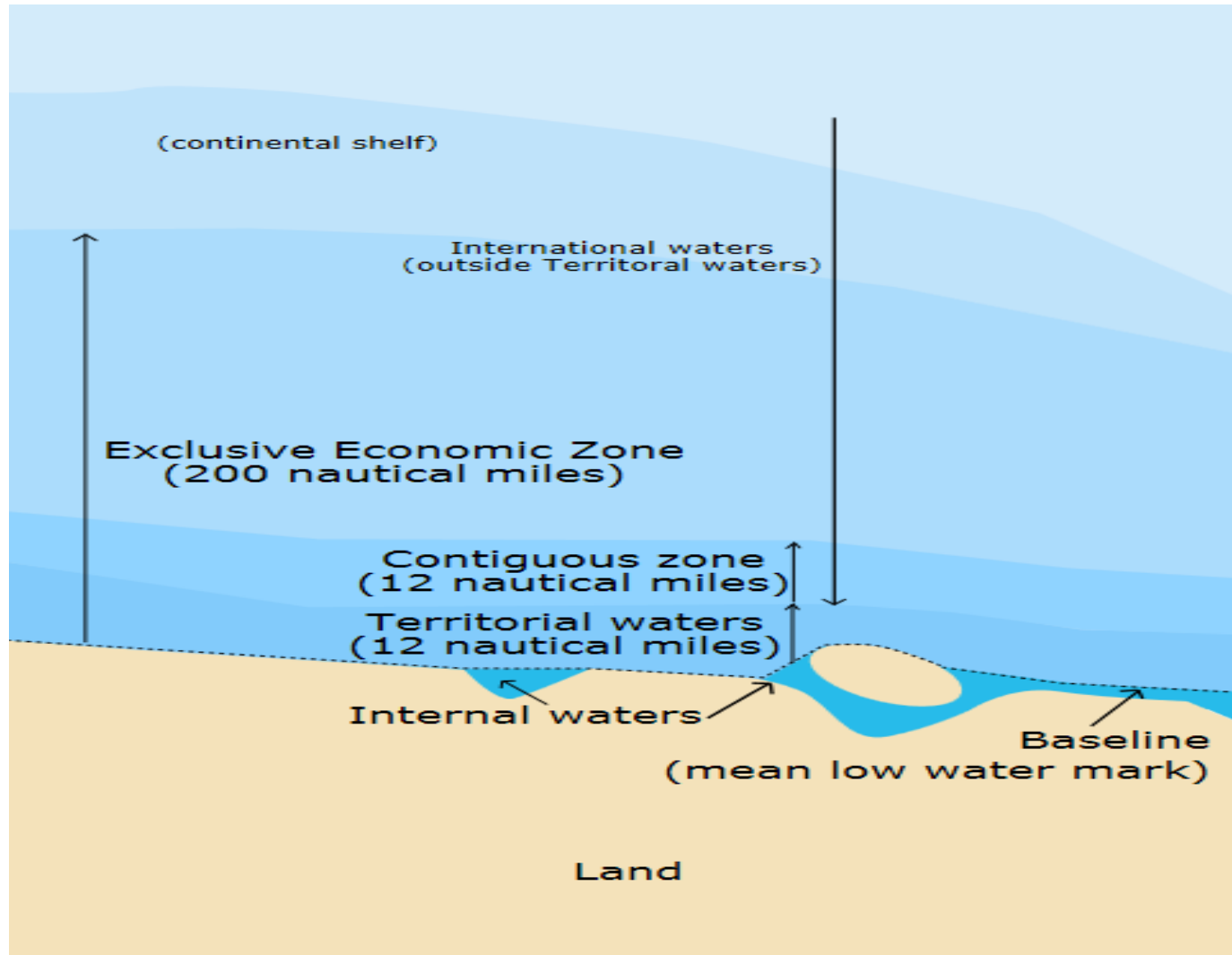
Further article enhancing the responsibility of the flag state:

‘Every state shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships...’



- **The issue of varying claims of territorial waters was raised in the UN in 1967 and in 1973 the Third United Nations Conference on the Law of the Sea was convened in New York**
- **The conference used a consensus process rather than majority vote**
- **With more than 160 nations participating, the conference lasted until 1982. The resulting convention came into force on 16 November 1994**

- The convention set the limit of various areas, measured from a carefully defined baseline:



The convention establishes general obligations for:

- *safeguarding the marine environment and protecting freedom of scientific research on the high seas,*
- *creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority and the Common heritage of mankind principle.*
- *Landlocked states are given a right of access to and from the sea, without taxation of traffic through transit states.*

Role of the Flag State (Article 94)

UNCLOS established:

- **Freedom of the high seas**
- **Right of navigation**
- **Conditions for granting nationality to ships**
- **Status of ships**

Role of the Flag State - Art. 94 'Duties of the flag state'

Article 94

Duties of the flag State

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

(a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and

(b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:

(a) the construction, equipment and seaworthiness of ships;

(b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;

(c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

(a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;

(b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;

(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

In taking the measures called for in paragraphs 3 and 4 each State is to conform to generally accepted international regulations, codes and practices and to take any steps which may be necessary to their observance.

A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to property or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by either State into any such marine casualty or incident of navigation.

- **Firm Customary Law Principles on the matters of Flag state duties, but those duties were not detailed enough (Great Britain)**
 - **The articles of the Geneva Convention 'are incomplete' (France)**
- *Large number of instruments was adopted to codify the 'generally accepted international standards' that flag states and crews of their ships are required to meet and understand under art.94*

Article 94 defines:

- *The administrative, technical and social duties of the flag state including investigation of casualties*
- *Non-exhaustive measures it must take to ensure safety at sea*
- *Conformity with generally accepted international regulations*
- *Allows any state unsatisfied by the jurisdictional control of the flag state to report their concern to that state*

Questions?





Thank you for the attention

 twitter.com/emsa_lisbon

 facebook.com/emsa.lisbon

