

DOALOS/United Nations – Nippon Foundation Alumni Law of the Sea Training Programme



UN Photo/Martine Perret

An Introduction to International Law and to the United Nations Convention on the Law of the Sea



DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA
UNITED NATIONS

Welcome and opening

Programme

Welcome and opening

3:00-3:10 pm

Mr. Francois Bailet, Senior Legal Officer, DOALOS

Ms. Valentina Germani, Senior Legal Officer
(Programme Advisor), DOALOS

An introduction to international law

3:10-3:30 pm

Ms. Jessica Howley, Associate Legal Officer, DOALOS

UNCLOS and related instruments

3:30-3:50 pm

Ms. Valentina Germani, Senior Legal Officer
(Programme Advisor), DOALOS

Q&A session

3:50-4:20 pm

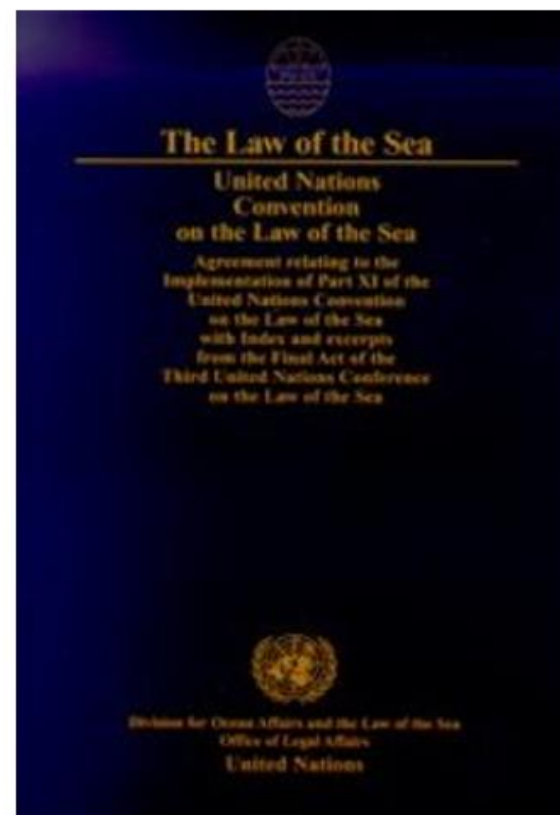
Moderated by Mr. Francois Bailet, Senior Legal Officer, DOALOS

Closing

4:20-4:30 pm

Mr. Francois Bailet, Senior Legal Officer, DOALOS

Ms. Valentina Germani, Senior Legal Officer
(Programme Advisor), DOALOS



UNITED NATIONS

An Introduction to International Law

Ms. Jessica Howley, Associate Legal Officer,
DOALOS



Introduction to International Law: Overview

- **What is international law?**
- **Sources of international law**
- **The law of treaties: definition, formation, obligations and interpretation**
- **Customary international law**
- **The law of State responsibility**
- **International law and the United Nations**

International law



UN Photo/Ryan Brown

- The law that governs the relations between States (primarily, though not exclusively)
- Covers a wide range of issues, including:
 - The use of force and humanitarian law;
 - The law of the sea and outer space;
 - Environmental matters;
 - Trade, investment and fiscal matters;
 - Transport and communications;
 - Diplomatic and consular relations;
 - Human rights;
 - Dispute settlement.

Sources of International Law

Article 38 of the Statute of the International Court of Justice

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations;

(d) ... judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.



UN Photo

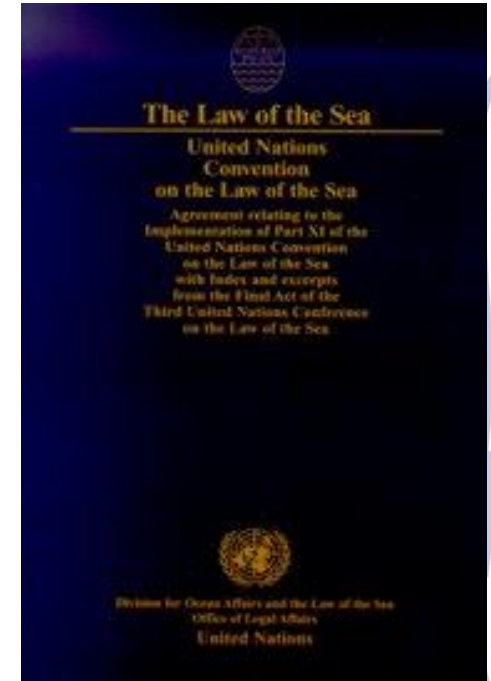
Treaties: Definition

- International agreement
- Concluded between States (and sometimes with or between other international legal persons)
- In written form
- Governed by international law

See: Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331, Article 2(1)(a); see also Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1985) (not yet in force), Article 2(1)(a)

Treaties: Formation

- Adoption
- Consent
 - ☐ By signature, exchange of instruments, ratification, acceptance, approval, accession
- Entry into force
 - ☐ As provided in the treaty, as agreed, or once consent established



See: *Vienna Convention on the Law of Treaties*, Articles 9, 11-16, 24.

Treaties: Obligations

- *Pacta sunt servanda*
 - ❑ Treaties binding; to be performed in good faith
- Denunciation

See: *Vienna Convention on the Law of Treaties*, Articles 26, 42, 54, 56.

Rules of treaty interpretation

Vienna Convention on the Law of Treaties

Article 31, GENERAL RULE OF INTERPRETATION

1. A treaty shall be interpreted **in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.**
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
 - (b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) Any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Rules of treaty interpretation

Vienna Convention on the Law of Treaties

Article 32. SUPPLEMENTARY MEANS OF INTERPRETATION

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31 :

- (a) Leaves the meaning ambiguous or obscure; or
- (b) Leads to a result which is manifestly absurd or unreasonable.



UN Photo

Rules of treaty interpretation in practice

- Meaning of the phrase “libre navegación . . . con objetos de comercio”
 - Alternative meanings
 - Context
 - Instruments
 - Intention
 - Object

Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009, p. 213, paras. 42-71

Customary international law



UN Photo/Patrick Bertschmann

"To determine the existence and content of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law (*opinio juris*)."

International Law Commission, Draft conclusions on identification of customary international law, with commentaries (2018), Draft Conclusion 2.

Customary international law in practice

"55. It follows that the Court must determine, in accordance with Article 38 (1)(b) of its Statute, the existence of “international custom, as evidence of a general practice accepted as law” conferring immunity on States and, if so, what is the scope and extent of that immunity. To do so, it must apply the criteria which it has repeatedly laid down for identifying a rule of customary international law. In particular, as the Court made clear in the *North Sea Continental Shelf* cases, the existence of a rule of customary international law requires that there be “a settled practice” together with *opinio juris* (*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969, p. 44, para. 77*)."

Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012, p. 99, paras. 52-79



UN
Photo/ICJ/
Capital
Photos/
Frank van
Beek

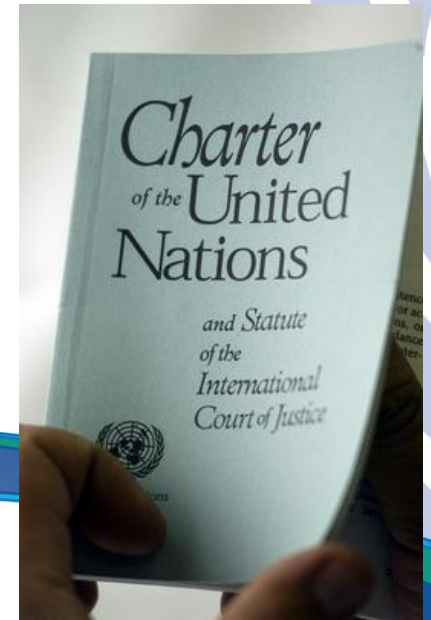
State responsibility

- Responsibility for breach of international obligations
- Consequences of responsibility include an obligation to make full reparation for the injury caused
- May be subject to claims by other States

See International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), particularly Articles 1-2, 12, 28-31, 42 and 48

- Dispute settlement

See Charter of the United Nations, Article 33; UNCLOS, Part XV



The United Nations and international law

"... to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained ..."

Charter of the United Nations, Preamble

- General Assembly
- Security Council
- International Court of Justice
- Secretariat



UN Photo/Manuel Elias

Resources

- The United Nations and international law: <https://www.un.org/en/sections/what-we-do/uphold-international-law/>
- Charter of the United Nations: <https://www.un.org/en/charter-united-nations/>
- United Nations Treaty Collection: https://treaties.un.org/pages/ParticipationStatus.aspx?clang=_en
 - Glossary of treaty terms: https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml
- *Vienna Convention on the Law of Treaties*: <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>
- Case law of the International Court of Justice: <https://www.icj-cij.org/en/list-of-all-cases>
- International Law Commission,
 - *Draft conclusions on identification of customary international law, with commentaries (2018)*: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf
 - *Articles on Responsibility of States for Internationally Wrongful Acts (2001)*: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf



UN Photo/John Isaac

An Introduction to the United Nations Convention on the Law of the Sea (UNCLOS)

Ms. Valentina Germani, Senior Legal Officer
(Programme Advisor), DOALOS



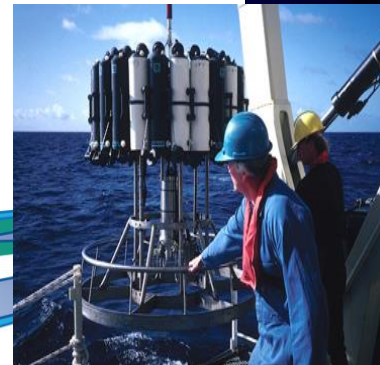
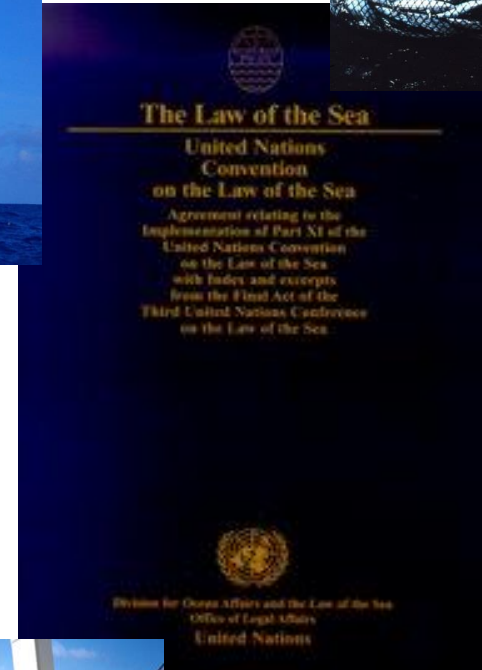
Introduction to UNCLOS

- Codification of existing international law
- Development of new principles and rules



UNCLOS

- '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'



A Balanced Framework

- The Convention ensures a balance between:
 - the different interests of States
 - the rights of States to use the oceans and their resources, and the need and duty to protect and preserve the marine environment



A Balanced Framework (Cont'd)

- Coastal States rights/duties vs. Freedoms that can be exercised by other States
- Sovereign rights over resources vs. Free access to resources
- Narrow margins and other geographic disadvantages vs. wide margins and other geographic advantages

=

Convention as a 'package deal'
(no reservations)

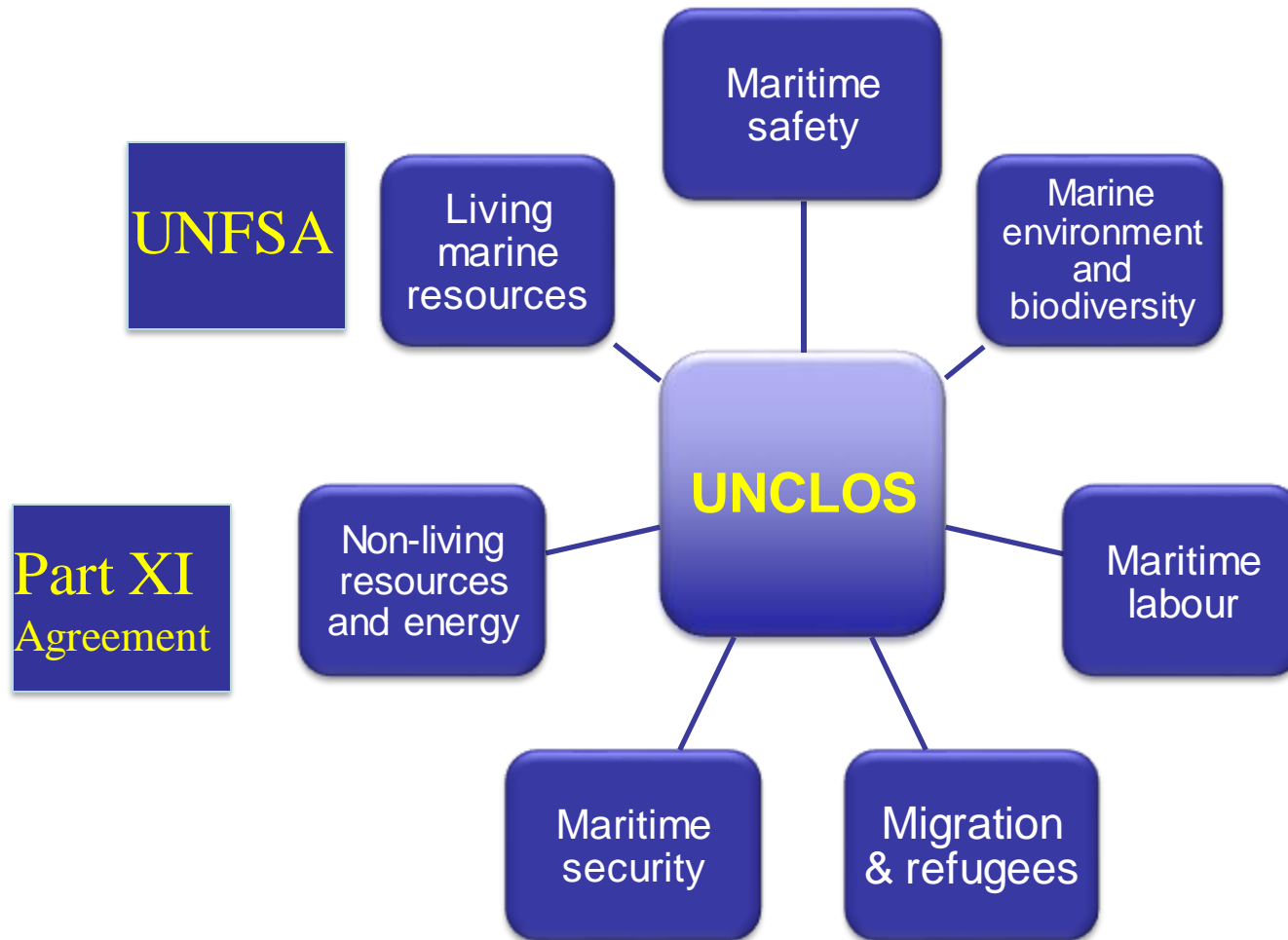
Duty to cooperate

- International cooperation - one of the cornerstones of the Convention
- Duty on States to cooperate at global, regional and subregional levels, including in the further development in specific areas of the law of the sea
 - “Competent” or “appropriate”
“international organizations”, “specialized agencies”

Implementing Agreements

- Part XI Implementation Agreement (28 July 1994)
- United Nations Fish Stocks Agreement (4 August 1995)
- Working Group, Preparatory Committee and Intergovernmental Conference on BBNJ (2006 – present)

UNCLOS as a framework Convention



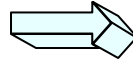
Legal framework for the oceans

It is an umbrella under which all ocean activities are regulated



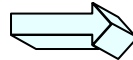
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA VARIOUS PARTS

MARITIME ZONES



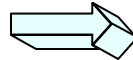
TERRITORIAL SEA AND CONTIGUOUS ZONE - PART II
EXCLUSIVE ECONOMIC ZONE - PART V
CONTINENTAL SHELF - PART VI
HIGH SEAS - PART VII
INTERNATIONAL SEABED AREA - PART XI

STATES WITH SPECIAL GEOGRAPHICAL CHARACTERISTICS



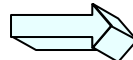
ARCHIPELAGIC STATES- PART IV
ISLANDS- PART VIII
LAND-LOCKED STATES- PART X

SPECIAL AREAS NEEDING COOPERATION



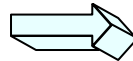
STRAITS USED FOR INTERNATIONAL NAVIGATION
- PART III
ENCLOSED OR SEMI-ENCLOSED SEAS - PART IX

CROSS-CUTTING ISSUES



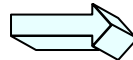
MARINE ENVIRONMENT- PART XII
MARINE SCIENCE - PART XIII
MARINE TECHNOLOGY- PART XIV

RESOLUTION OF CONFLICTS



SETTLEMENT OF DISPUTES - PART XV

PROCEDURAL/ ORGANIZATIONAL ISSUES



INTRODUCTION- PART I
GENERAL PROVISIONS - PART XVI
FINAL PROVISIONS - PART XVII



DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA

UNITED NATIONS

Bodies under UNCLOS

- International Tribunal for the Law of the Sea
- International Seabed Authority
- Commission on the Limits of the Continental Shelf
- Meeting of States Parties



International Tribunal for the Law of the Sea

(ITLOS or the Tribunal)



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

International Seabed Authority

(ISA, ISBA or the Authority)



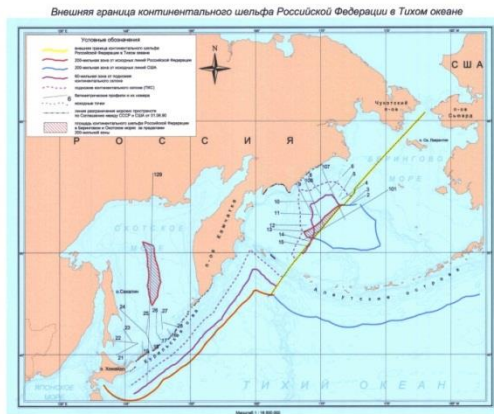
The Authority regulates deep seabed mining in the Area and regulates the protection of the marine environment and promotes scientific research



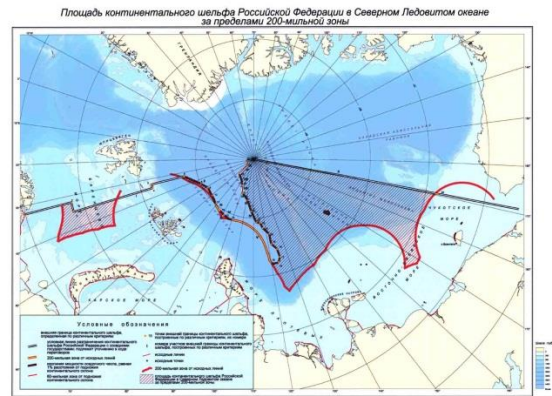
DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA

UNITED NATIONS

Commission on the Limits of the Continental Shelf



Map 3



Map 2

The CLCS considers submissions and makes recommendations thereupon. The outer limits established ON THE BASIS of the recommendations are FINAL and BINDING

Meeting of States Parties to UNCLOS



- Matters related to the International Tribunal for the Law of the Sea (ITLOS)
- Matters related to Commission on the Limits of the Continental Shelf (CLCS)
- Information on the activities of the International Seabed Authority (ISA)
- Matters related to article 319 of UNCLOS

United Nations General Assembly and oceans and the law of the sea



Following the entry into force of UNCLOS in 1994, the General Assembly in its resolution 49/28:

- Emphasized the principle in UNCLOS that the problems of ocean space are closely interrelated and need to be considered as a whole
- Decided that it is the global institution with the competence to annually review and evaluate:
 - ✓ implementation of UNCLOS
 - ✓ other developments relating to oceans and the law of the sea
- Assisted by subsidiary bodies

Concluding remarks

- UNCLOS sets out the legal framework within which all activities in the oceans and seas must be carried out
- UNCLOS as a “package” incorporates agreed compromises and balances
- Cooperation and coordination amongst States and relevant organizations at all levels is critical
- As a framework instrument UNCLOS has been further elaborated on by sector-specific instruments
- Effectiveness of UNCLOS depends on its full implementation

Q&A session

Moderated by Mr. Francois Bailet, Senior Legal
Officer, DOALOS



Closing



UN Photo/Mark Garten

Mr. Francois Bailet, Senior Legal Officer, DOALOS

Ms. Valentina Germani, Senior Legal Officer
(Programme Advisor) DOALOS