

**The Evolving Balance Between Coastal  
State Rights and High Seas Freedoms:  
Current Developments and Future  
Prospects**

**ABLOS  
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## Outline

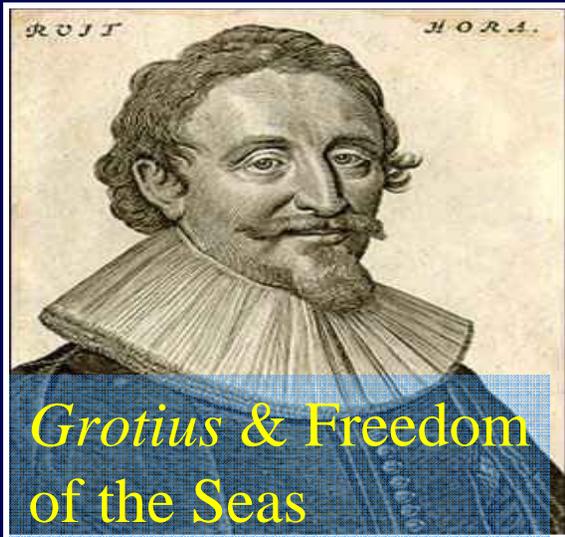
- Introduction – Characteristics of Current (LOS 1982) Regime
  - Inside National Jurisdiction
  - Outside National Jurisdiction
- Post – UNCLOS Pressures and Developments
- Diplomatic and Legal Responses
- Conclusions and Prospects: Relevance to MSR?



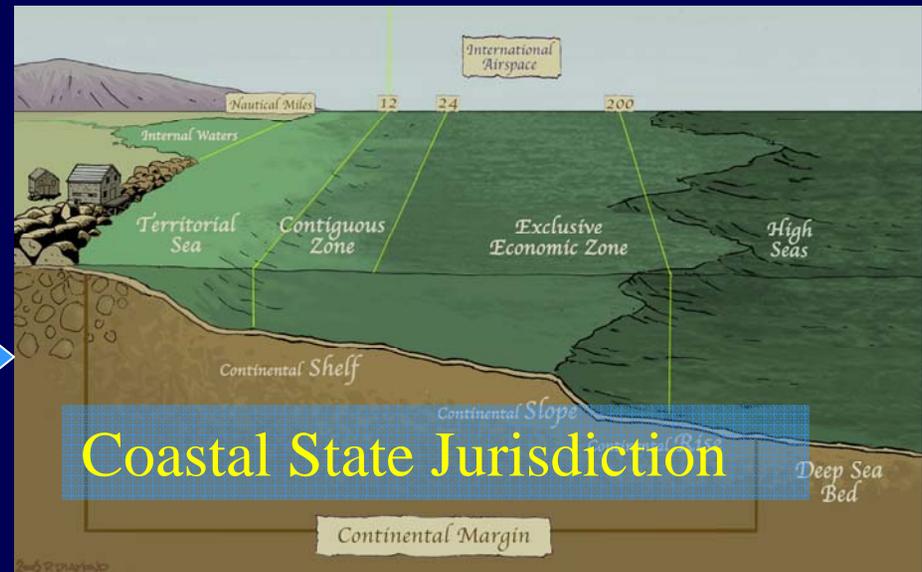
*HMS Challenger (1870s)*



*Knorr, Oceanus & Atlantis (WHOI)*



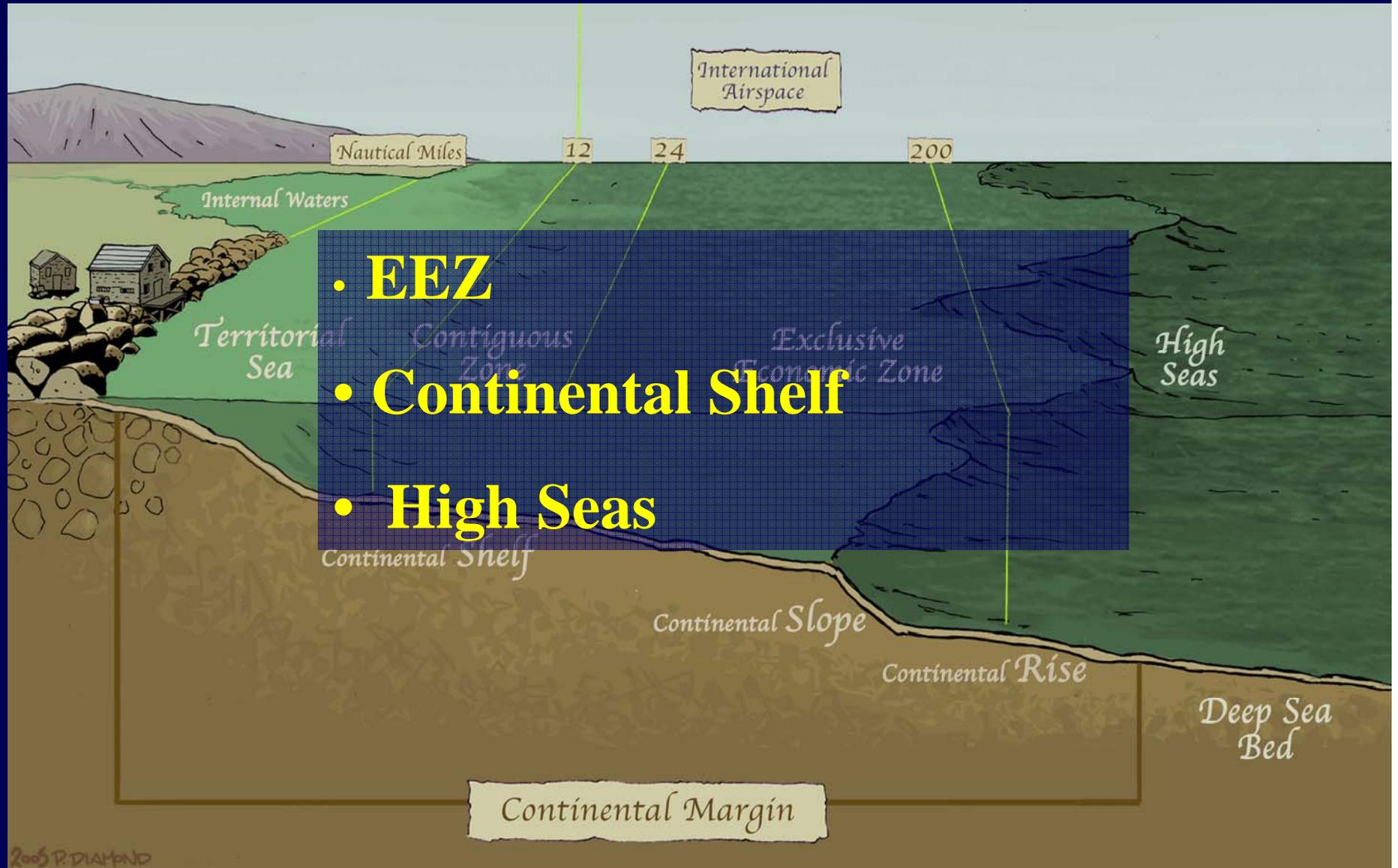
*Grotius & Freedom of the Seas*



*Coastal State Jurisdiction*

MSR and the Law of the Sea: Both Have Evolved & Continue To Do So

# Jurisdictional Zones



## Characteristics of EEZ/Shelf Jurisdiction

- Establishes **Rights and Responsibilities** for Coastal States and Others
- Jurisdiction is **Limited in Scope** and **Functional In Nature**
  - No Plenary Form of Sovereign Jurisdiction: Cannot Assume Powers Not Stated
  - This Pattern Is Exemplified by MSR Regime

## MSR Provisions

- Art. 238: General **Right** to Conduct MSR
  - But Subject to **Responsibilities** Imposed by Consent Regime
- Art. 246(3) – Consent to be Given in “Normal” Circumstances
- Art. 246(6) – Limits Discretion to Refuse Consent on Outer Shelf
- Art. 252 – Implied Consent Where No Response Within Time Frame

## Characteristics cont'd

- Establishes Rights and Responsibilities
- Limited in Scope and Functional In Nature
- Distinction Between Regulatory and Enforcement Jurisdiction
  - See Arts. 263 & 264 Re - MSR: Responsibility on **Flag State**
- Flag State Jurisdiction: Default Position Except Where Otherwise Provided

## Characteristics Of High Seas Regime

- Obligations versus Enforcement
  - Violations DO NOT Confer Automatic Enforcement Powers
- Importance of Duties to Cooperate
  - MSR – Key Part of Regime
- Regime is *Sectoral* In Nature
  - Built Around Industries or Resources: *eg.* Fishing, Shipping, Seabed Mining

## Post-UNCLOS Pressures and Developments

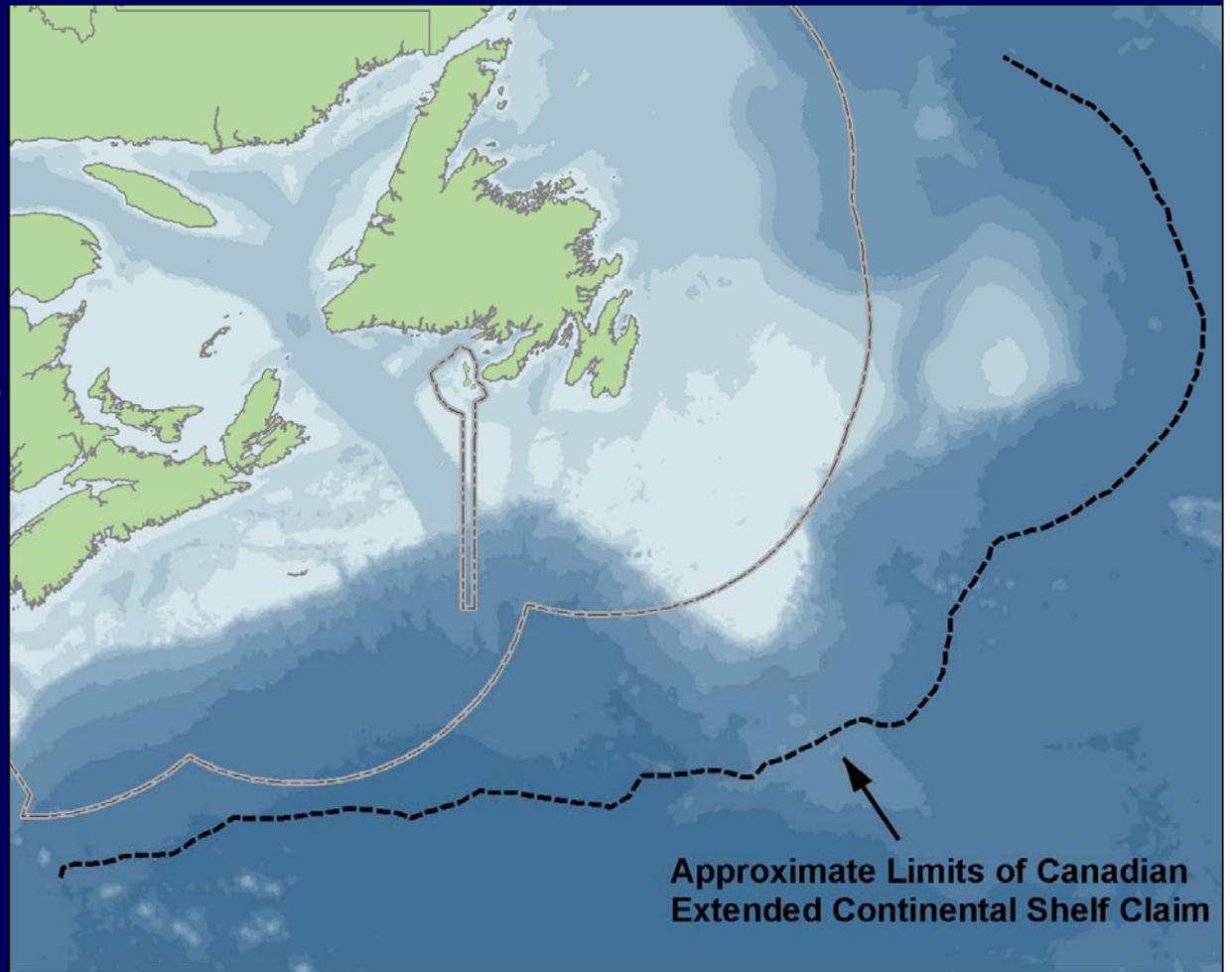
- High Seas Fishing: Straddling Stocks, Highly Migratory Stocks, Discrete High Seas
- Vessel Source Pollution: Operational and Accidental
  - Enforcement Issues Within EEZs
- Integrated Management versus Sectoral Regulation
  - Additional Problems With New Uses (*eg* bioprospecting, deep-sea mining)

## High Seas Marine Biodiversity

- Pressure from NGOs and Others To Deal With Biodiversity More Broadly
- Vulnerable Habitats, Species, Threats (*egs.*):
  - Seamounts
  - Submarine canyons
  - Marine Mammals
  - Bioprospecting
  - Deep sea corals
  - Hydrothermal Vents
  - High Seas Fishing
- Calls for High Seas MPAs – Legally Problematic and Scientifically Speculative

# Concrete Example: The Grand Banks

- Issues Most Salient Where National and High Seas Regimes Intersect
  - Straddling Stocks,
  - HMS,
  - Shipping Within EEZ
- All Factors Present On Grand Banks – Area of Recent Research



# Management Challenge On Grand Banks

- **Multiple Zones:**
  - **EEZ, Cont. Shelf, High Seas**
- **Multiple Uses and Users:**
  - **Fishing, Oil and Gas, Shipping, Pipelines, Cables, Military & Security**
- **Multiple Legal Authorities:**
  - **Canada**
  - **NAFO (fishing beyond 200)**
  - **IMO, Other International Organizations**

Approximate Limits of Canadian  
Extended Continental Shelf Claim

# Diplomatic and Legal Responses

## UNFSA and Related Instruments

- Compliance Agreement
- Code of Conduct
- RFMO Agreements (Multiple Regional)



*HMCS Fredericton:  
Boarding on the Grand  
Banks*

## Diplomatic and Legal Responses cont'd

- “Pushing the Limits” of LOS / MARPOL Regime (*egs*)
  - Special Areas and PSSAs (*eg* Western Europe)
  - Quasi-Criminalization – *eg* Canada (seabirds), EU (pollution)



*Exxon Valdez*

# Diplomatic and Legal Responses cont'd

- Specific Agreements on Defined Areas of Species (Binding on Parties):
  - CCAMLR Regime
  - CITES
  - Whaling
  - Ligurian Sea Marine Mammals Sanctuary *eg*
- More Speculative
  - CBD – High Seas
  - Expanding ISA Role

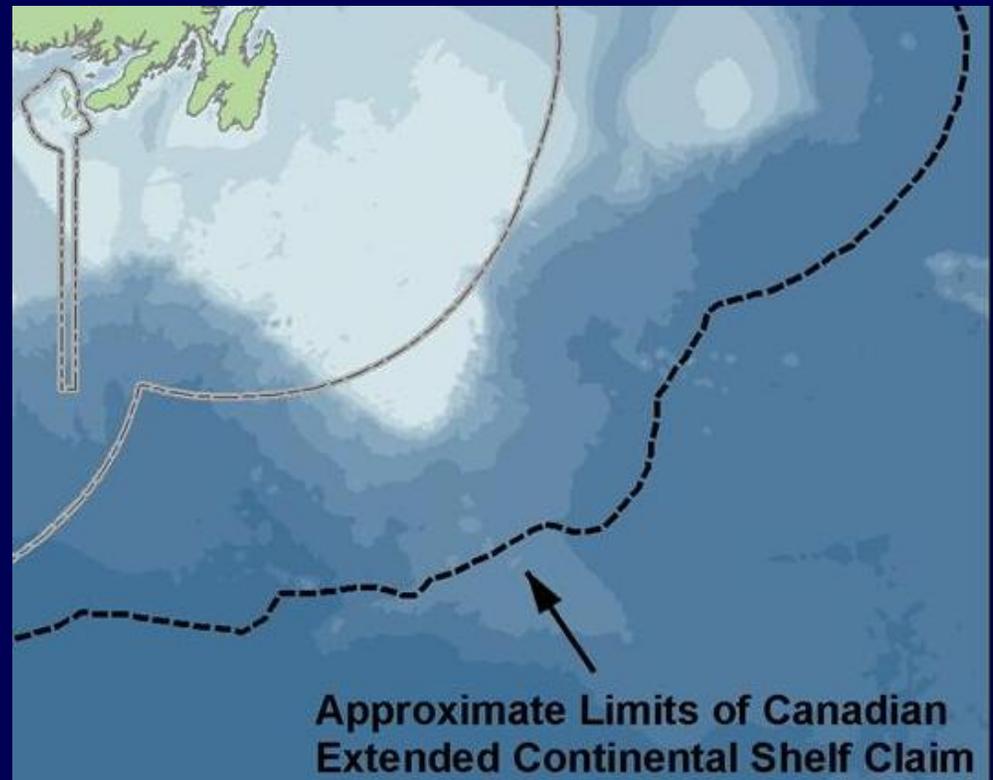


Ligurian Sea Sanctuary

## Other Actions

- Threat of Unilateral Action: *eg.* “custodial management” of Grand Banks to Limits of Shelf

- BUT: Amendment of LOS 1982 under Arts. 312-313 is difficult, unlikely



- AND: Action By Other States – *eg.* Australia, France, South Africa - to cooperate in pushing limits of enforcement within the LOS regime

## Remaining Legal Issues

- Dissatisfaction With Implementation
  - Especially For Fishing, Biodiversity, Pollution
  - Problems With Flag State Implementation
- Clarification of Duties to Cooperate
  - Actions by like-minded states
  - Interpretation by Implementation
  - Dispute Resolution
- Influence of Security Environment (*eg* SUA Convention)

## Conclusions

- Not yet at stage of widespread assertions of new coastal state control
- But still useful to act to forestall new unilateral moves
  - Priority for implementation of existing measures
  - Focus on **actual**, not speculative problems first
  - **Regional** level important to implementation of regime; Global for new principles

- **MSR Central To Future Development Of Legal Regime**
  - Development of LOS driven by science & technology
  - Now – moves to regulate high seas hampered by lack of knowledge
  - Not just high seas: on Grand Banks – no legal tools without scientific basis
- **Need a focus on Part XIII provisions which promote research, cooperation**
  - Science should precede legal development

