

10 Annexing the oceans

The sea! The sea!

(Xenophon, c.428/7–c.354 BC, *Anabasis* IV.vii.24)

The freedom of the seas

The oceans cover more than 70 per cent of the world's surface and they have been an integral part of the geography of human history since at least the classical era, as Xenophon's enthusiastic acclamation indicates. Yet until the second half of the twentieth century the greater part of them was not subject to any form of political regulation or control. Sailors crossed them at their peril, protected only by force of arms from marauding pirates, or anyone else wanting to interrupt their safe passage (Glassner, 1990). The only semblance of any rules of international behaviour was a de facto acceptance by coastal states, which evolved first in early seventeenth-century Europe, that they had jurisdiction over territorial seas stretching for three nautical miles from their coastlines. The origins of this concept of territorial seas are opaque, but the popular view is that it was driven by defence of the realm and that they represented the extent of the seas that could practically be defended by canon fire from the land.

By the beginning of the twentieth century, the inadequacy of this informal agreement was becoming increasingly apparent and many coastal states were looking at ways of extending their coastal seas. The first to break ranks was the USA, which extended its territorial limit to 12 nautical miles more than a century ago. Other states gradually followed suit, but it was apparent that the main issue was not defence, but rather control over coastal fishing and mineral resources, and that a

different kind of regime would be required if this were to be properly addressed.

The focus of interest was the continental shelf (Figure 10.1), the area of relatively shallow seas of very variable extent, stretching out from the coastline. The earliest claim to jurisdiction over the continental shelf was made by Argentina in 1944. The USA was quick to follow suit and, a year later, Harry S. Truman in one of his first acts as president, issued Proclamation 2667, claiming sovereignty over all the seabed and the subsoil of the continental shelf, though not over the waters above and, therefore, fishing rights.

Other coastal states across the world quickly took similar action, but in the absence of any clear definition of what constituted the continental shelf an unacceptable state of confusion ensued. The difficulty was, however, that no international forum existed for arbitrating over disputed claims and, given the nature of sea traffic, bilateral negotiations were a practical impossibility. Eventually, there was broad international agreement that the best way forward would be to call upon the newly formed UN to try to devise a regime for regulating the use and exploitation of the oceans, and to persuade its member states to accept its proposed solution (Couper, 1978).

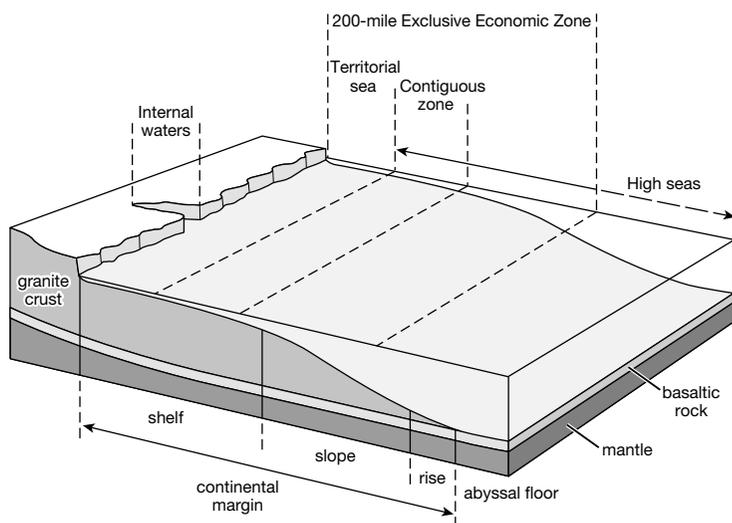


Figure 10.1 *The physical and political divisions of the oceans*

Source: after A. D. Couper (1978) *Geography and the Law of the Sea*. Macmillan, London, p. 4. Reproduced with permission of A. D. Couper.

UNCLOS – The United Nations Conventions on the Law of the Sea

The first UNCLOS results emerged in 1958 with agreement on the Continental Shelf Convention. This gave states the right to exploit the mineral resources of their coastal waters to a depth of 200 m, or beyond if exploitation was technically feasible. To further such exploitation, states were also to be permitted to build permanent structures, such as oil wells, but with two important provisos. They were not to be accorded the status of islands with territorial waters of their own, nor were they to impose any undue hazard to shipping. The convention also gave coastal states rights to sedentary living species on the seabed, such as shellfish and crustaceans, but not to fish. The absence of any proposals for regulating fishing stemmed from the extensive, and highly convoluted, network of bilateral agreements covering customary fishing rights that already existed between states. It was clear to all sides that any attempt to try to include regulation of fishing in the Continental Shelf Convention would have only served to stymie any agreement.

Once put into practice, the inadequacy of the convention quickly became apparent. It suffered from a number of serious weaknesses, that almost entirely neutralised it as an effective regime. The most fundamental was the failure to define exactly what was meant by the term continental shelf. The convention itself accepted that the 200-m depth limit was entirely arbitrary, by advising that states could claim jurisdiction over greater depths of water if they had access to the technology to do so. It was, therefore, a recipe for instability and constant revision and change, providing endless opportunity for legitimate legal challenge. Indeed, it is a measure of how poorly the march of technology was understood by delegates to the first UNCLOS that they agreed it in the first place.

A second problem was the emergence of overlapping claims. Coastal states invariably have contiguous neighbours and in some areas, such as western Europe, there are a large number of competing jurisdictions closely packed together, rendering the 200-m outer limit meaningless. Overlapping claims quickly became the norm, rather than the exception, offering yet another opportunity for almost unlimited litigation. The most obvious solution initially appeared to be a median line between two claims, but the problem was actually chronic, because there was no agreed mechanism for defining the coastal baseline from which such median lines should be measured. Coastlines are never straight and, depending on which particular point was chosen, quite different median

lines and definitions of national continental shelves would be produced. Furthermore, there was no agreement about from where baselines should be measured. Inland waters, such as Hudson's Bay, are normally considered as part of the land area, but the Gulf of Bothnia separating Sweden from Finland, Estonia, and Latvia in the Baltic Sea, is not, showing that the basis for defining an inland water is far from consistent. Countries like Norway, which have deeply indented coastlines, usually measure their baseline from a line joining the major promontories. Island states, such as Indonesia and the Philippines, pose especially difficult choices, but their baselines are now nearly always taken as straight lines encompassing the whole of the archipelago. The detail of the decisions about baselines are often economically vitally important, deciding which state has jurisdiction over valuable natural resources. Modern technology in the form of accurate positioning, satellite imagery, and GIS has the potential to solve some of these problems, though in practice it serves only to emphasise the shortcomings of the available charts (Cleverly, 2004).

The way in which the map of a coastal state can change if internal waters are taken as being part of the baseline and the territorial waters are included are clearly illustrated in Figure 10.2. The most obvious additions are all the waters around the Outer Hebrides and the Western Isles, which, with the addition of the territorial seas, mean that Northern Ireland is no longer separated politically from the rest of the UK.

Islands also pose special problems, since not only can they have valuable territorial waters associated with them in their own right, they can also form a point on a national baseline, sometimes increasing substantially the extent of the territorial waters of a coastal state. The continuing dispute over the islet of Rockall, which has been claimed inconclusively by the UK, Ireland, Iceland, and Denmark is evidence of the lengths that states can go in order to substantiate a claim to even the most inhospitable and, apparently, worthless ocean landfalls (Box 10.1).

A second UNCLOS was held in 1960 and only narrowly failed to reach agreement on defining more unequivocally an outer limit for territorial seas, though the net effect was to leave the whole issue unresolved and little short of anarchy as far as fishing and mineral rights over the continental shelf and the rest of the high seas were concerned. Increasingly, states began to act unilaterally, generating increasing levels of international tension. The most notorious of these conflicts were the three Cod Wars between the UK and Iceland between 1958 and 1976.

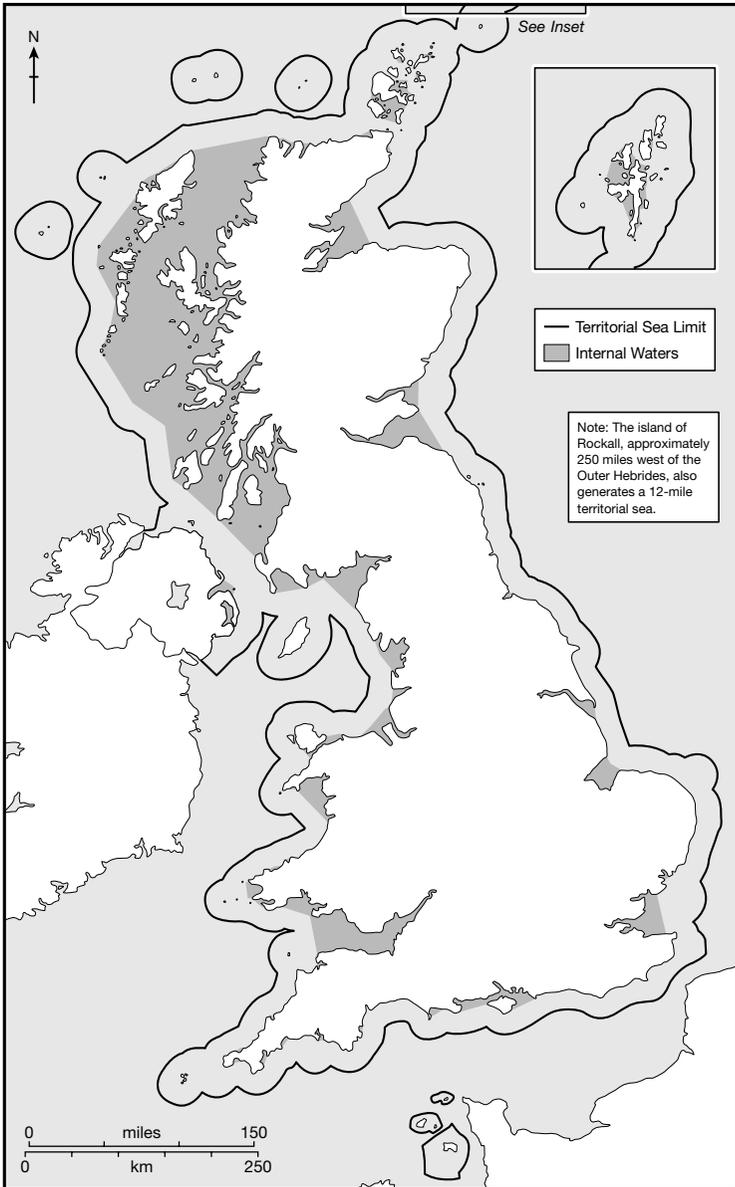


Figure 10.2 UK showing internal waters and territorial seas

Source: after UK Hydrographic Office (2004). Reproduced by permission of the Controller of Her Majesty's Stationery Office and the UK Hydrographic Office (www.ukho.gov.uk).

Box 10.1

Rockall

Rockall is an isolated, uninhabited, pudding-shaped islet in the middle of the North Atlantic Ocean. It is only 19 m high, 25 m across, and 30 m wide and is located 57° N and 13° W, roughly 300 miles from the coasts of the UK, Ireland, and Iceland. The UK, Ireland, and Denmark, by dint of it once having governed Greenland as a colony, have been arguing for many years over whether the islet is large enough to justify having territorial rights and, more importantly, which country has the rights to them. At issue is not really the sovereignty of Rockall itself, but its territorial waters and the fishing grounds that go with them and any oil, gas, and minerals that can be extracted from the seabed.

The British originally claimed Rockall in 1955 and a number of so-called annexation forces climbed the rock to legitimise the

claim. In 1971, the UK government passed an Act of Parliament incorporating Rockall into Invernesshire. To reinforce the claim, they installed a navigational beacon and banned all craft from approaching within 50 miles. In the 1980s, on two separate occasions, a British soldier climbed onto the rock and remained for a month, underlining the government view that it was an island and not uninhabitable. Not to be outdone, the environmental pressure group, Greenpeace, landed a party on Rockall in 1997, which stayed for 42 days, replaced the British navigational beacon with a solar-powered one, and claimed that they had saved the rock from oil development and industrialisation. There is still no international agreement on the status of Rockall.

The first broke out in 1958 when Iceland increased the extent of its territorial waters from 3 to 12 nautical miles. Deprived of access to port facilities on the Icelandic mainland, the British deep-sea fishing fleet was forced to accept the extension, but did so only after some noisy sabre-rattling. The second conflict in 1972–3 was altogether more serious. Iceland extended its territorial claim from 12 to 50 nautical miles, effectively excluding the British fleet entirely from its main deep-sea fishing ground for cod. Once again, after a tense stand-off, a compromise was agreed. For a two-year period, the British fleet was allowed to take 130,000 tonnes of fish from the newly defined Icelandic waters. However, when this agreement ran out in 1975, an emboldened Icelandic government extended the territorial waters to 200 nautical miles, with no access for British fishermen. A compromise proved

impossible; gunboats squared up to each other, and a number of warning shots were fired. After a winter of highly dangerous brinkmanship, the UK had to accept that it could do little to reverse the Icelandic action and reluctantly withdrew, tacitly accepting the new limits. Of themselves, the Cod Wars were a source of considerable international hilarity for all but the two countries directly involved, but at a more fundamental level they emphasised all too clearly the urgent necessity for international agreement.

In fact, even before the two conflicts in the 1970s, the urgency of the situation had been recognised by the UN and UNCLOS III was convened in 1973. The conference met every year from 1973–82, usually twice a year, and eventually agreed a draft convention at Montego Bay in Jamaica, covering all the major issues associated with an effective political regime for the oceans (Juda, 1996). The convention covered six broad areas: navigational issues, the exploitation of natural resources, deep-seabed mining on the high seas, protection of the marine environment, marine scientific research, and the settlement of disputes.

Navigation

It was crucial that extent of national territorial seas be regularised, and the convention proposed that there should normally be a 12-nautical mile limit to territorial seas, replacing the traditional 3-mile limit and other unilateral claims of up to 200 miles made by Ecuador and some other states in Latin America. Within this zone state laws apply, but with the important exception that all ships enjoy the right of innocent passage, which means that they should not prejudice the peace, good order, or the security of the coastal state in question. Beyond the 12-mile limit, states are also free to claim a contiguous zone, up to a total of 24 nautical miles, for customs, fiscal, immigration, and sanitary purposes, thus enabling the authorities to pre-empt illegal access into their territorial waters.

Extending territorial waters in this way, of course, raised new problems, the most critical being the status of ocean straits. The convention defined more than 100 straits used for international navigation, such as the Strait of Gibraltar, linking the Mediterranean to the Atlantic Ocean between Morocco and Spain, and articulated a right of international transit passage through them, including submerged submarines!

The convention also defined a new concept in international law, the archipelagic state, to allow mid-ocean archipelagos, such as the Maldives in the Indian Ocean, to enjoy similar territorial rights to other island and coastal states. For the first time, they had the right to draw archipelagic baselines connecting the outermost islands, though subject to stringent limits. The overall length of the baseline was normally not to exceed 100 nautical miles, though exceptionally this could be extended to 125 nautical miles, and the upper and lower ratios of water to land area within the baseline had to be in the ranges 1:1 and 9:1 respectively. The reason for these limits is to prevent some island groups, such as those in the Bay of Bengal, declaring themselves archipelagic states and, thus, extending the area covered as of right by their territorial seas. Not only would such a move restrict access to fishing grounds and other resources, it could also impair access to the high seas for other states.

All other parts of the oceans are defined by the convention as the high seas. Here, states have complete freedom of navigation and the right to over fly, as well as to lay pipelines and submarine cables, construct artificial islands, fish, and undertake scientific research. It is a recognition that, even if some form of regulation were to be desirable, it would be virtually impossible to enforce, as there is no international body with the necessary legitimacy or resources. It also acknowledges that the high seas are a global resource and that all nations have a right to benefit from them.

Exploiting natural resources

An end to the uncertainty created by the first UNCLOS Convention in 1958 about the right of states to exploit the resources of their adjacent continental shelf was a priority for the third conference. As a solution, it proposed that all coastal states should be able to claim the exclusive right to exploit the mineral and energy resources of an area extending 200 nautical miles from their baselines, to be known as the Exclusive Economic Zone (EEZ). In all other respects the waters of the EEZ remained part of the high seas, with all its freedoms of navigation and the right to conduct military activities on, over, and under the surface of the water. Almost immediately after the convention was published in 1982, all coastal states moved to take advantage of the proposal, in many cases giving private companies the confidence for the first time to invest in extremely expensive exploration, mainly for oil and natural gas. States

also have the right to fisheries in their EEZ, though with special restrictions: for highly migratory species, such as tuna; for marine mammals; and for species of fish like salmon and eels, which spend part of their life in freshwater rivers.

On their own, the EEZs did not solve all the problems of jurisdiction over the exploitation of natural resources on the continental shelves. In some cases, the continental shelf clearly extends for more than 200 nautical miles, even though a precise boundary is always very difficult to define. Where this occurs, the 200-nautical mile limit can be extended, but permission is not automatic, being decided upon by the UN Commission on the Limits of the Continental Shelf and usually involving some contribution by the benefiting state to the common good of all nations. There is also a continuing problem of overlap. There can be substantial differences in the area claimed as an EEZ, depending on which point on the baseline is taken as the reference point. The uncertainty frequently necessitates bilateral negotiations between neighbouring states to agree the boundary between their EEZs, no easy task, as the protracted arguments between the UK and Ireland, and the UK and France have clearly demonstrated.

Islands, so long as they are naturally formed areas of land, above water at high tide, are entitled to their own territorial waters. As can be seen from Figure 10.2, these island waters can add significantly to the area of sea over which a state has exclusive jurisdiction.

Deep-seabed mining on the high seas

The most contentious of all the areas in the convention was the regime for mining the deep seabed, beyond the EEZ. The original proposal in the convention was for an international regulatory regime under the UN International Seabed Authority. It would control the levels of production and provide for a mandatory transfer of the mining technology to developing countries, as well as a system of compensation for those developing countries whose land-based production of minerals, such as copper and nickel, was likely to be adversely affected by deep-sea mining.

In the early 1980s, there was considerable excitement about the possibilities for deep-sea mining, mainly from deposits of metallic nodules on the ocean floor, containing nickel, cobalt, copper, manganese,

and other metals. Subsequently, this interest has waned somewhat, as estimates of the extent of the deposits have declined, and the costs of recovery have risen.

All the major industrial countries immediately objected strongly to the proposals and refused to countenance signing up to the convention as it stood. Essentially, they objected to the whole concept of there being a UN International Seabed Authority, which would have the power to restrict their freedom to prospect and mine on the high seas, and to require them to provide for technology transfer. Negotiations dragged on for a decade, but in 1994 agreement was reached and all the industrial nations, with the exception of the USA, signed. The USA, the largest industrial economy in the world, is still not prepared to countenance any restrictions and, therefore, refuses to sign up to the convention as a whole. At the moment, the issue of deep-sea mining is of little immediate importance, because there are no serious commercial operations, but in the future this is bound to change. One has only to look at the way in which the possibilities of exploiting shallow coastal waters were being dismissed as recently as the middle of the twentieth century, to see how quickly developments in technology can bring about change.

Protecting the marine environment

The marine environment, in particular the high seas, is obviously highly at risk from pollution and the UNCLOS Convention requires all states to adhere to basic standards, usually those already laid down by other international organisations, such as the International Maritime Organisation. The states themselves are responsible for policing and enforcement within the area covered by their EEZs, while the UN International Seabed Authority is responsible for the situation on the high seas. As always, the most difficult issue is the whole question of enforcement, though as technology improves states are becoming increasingly adept at tracking down offenders, especially ships that dump oil into the open sea.

Scientific research

The convention pays considerable attention to marine scientific research, emphasising its importance for the future sustainable exploitation of the

oceans, but without defining precisely what it should encompass. Responsibility for monitoring and managing research within EEZs rests with individual coastal states, but with the International Seabed Authority in the high seas. However, all governmental authorities are committed not to withhold without very good reason requests to undertake research activities, making the maritime position much more open, and very different, from that on land.

Settling disputes

Disputes arising from the interpretation and application of the UNCLOS Convention are a matter for either the UN Law of the Sea Tribunal based in Hamburg, the International Court of Justice in the Hague, or specially convened arbitration tribunals. States have considerable freedom to choose which route they wish to use and also have the option to exclude altogether certain types of dispute, such as those involving delimitation, military activities, and those arising from the UN Security Council exercising its legitimate functions. In short, the regulatory regime is far from being a comprehensive one and its effectiveness has yet to be fully tested in practice.

The EU Common Fisheries Policy

As far as regulating fishing was concerned, the UNCLOS agreements were never likely to prove helpful when it came to managing fisheries in parts of the world, like Western Europe, where there are a large number of small coastal states, all with important fishing industries. Recognising this, the Common Fisheries Policy (CFP) of the EU was first agreed in principle in 1970 and proposed giving all member states unrestricted access to the territorial waters of each other until more detailed arrangements for fishing were agreed. At the time the EU comprised just six members, with little overlap between areas covered by their respective fishing fleets, but in 1970 the impending accession of Denmark, Ireland, and the UK meant that not only would the overall size of the fishing industry rise sharply, but there would also be substantial potential conflict, if there was unrestricted access for all member states in every part of their combined EEZs (Wise, 1984).

From the outset, it had been decided that a comprehensive policy must be introduced by 1983 and, for a decade, there were increasingly fraught

negotiations trying to reach agreement. When the deadline arrived, the member states had still not succeeded, but the reality of there being no national or EU-wide regulation quickly concentrated minds and the policy was agreed soon afterwards. In broad terms, the policy allowed member states to have exclusive control over fishing within the 12-nautical mile limit of their territorial seas, but allowed unrestricted access within the rest of their EEZs, subject to policies on the size of catches and the number of boats in each national fishing fleet, all to be determined centrally by the European Commission.

From the outset, the CFP was a source of friction between the member states themselves and with the European Commission and, predictably, the disagreements were greatest amongst those with the largest fishing industries, Denmark, France, Ireland, and the UK. Unfortunately, agreement became progressively more difficult as time progressed, especially once Spain and Portugal, both countries with large fishing fleets, joined the EU in 1986. Nevertheless, the EU has persisted with the policy and gradually developed a system of agreeing annually total allowable catches (TACs) for all the major commercial fish species, including quotas for specific fisheries, such as the North Sea, the Irish Sea, and the Southwest Approaches. It has also taken parallel actions to reduce the size of the fishing fleet, though there are still over 90,000 registered fishing vessels of varying sizes operating officially in EU waters.

The main challenge for the CFP is not the size of the market for fresh fish. Demand is far larger than can be caught in EU waters and the EU imports over 4 million tonnes of fresh fish annually, more than a third of its needs. Unfortunately, catches at present levels are unsustainable, so that the main goals of the CFP are determining and enforcing catch quotas which will ensure that there is a viable fishing industry in the EU in the long term. To this end, it has also invested heavily in promoting aquaculture and fish farming, but the scale of these operations nowhere near compensates for the reductions it needs to impose on catches in the open seas.

Managing decline is always a very difficult exercise and in the context of the CFP it is doubly so, because of the tensions between member states. Countries with large fleets, such as the UK and Ireland, resent the fact that many of their local fishing grounds are now open to boats from other EU states, which they see as undermining their domestic fishing industries. It is a situation that has been further hugely exacerbated by the

worldwide changes stemming from the UNCLOS Convention. The establishment of the 200-nautical mile EEZs as the norm for territorial waters has meant that fishermen everywhere have been excluded from most of their traditional fishing grounds, forcing them to concentrate their efforts closer to home. However, in areas like Western Europe, the local seas simply do not support the fish stocks to underpin the size of industry to which the fishermen had become accustomed.

Conversely, of course, in many other parts of the world, the fishing industry has been able to develop locally in a way that was impossible previously. Many developing countries in Africa, Asia, and South America now have much better technology available to them and are able to enjoy access to fish stocks that were previously a global resource, open to all.

It is important to remember that, despite the political revolution witnessed in the coastal waters of the continental shelves, the bulk of the world's oceans are still designated as the high seas with no restrictions on their exploitation for fishing. However, the fish species living here are different from the shallow coastal water species, like cod and haddock, that have traditionally been the staple of the industry and the deep water species living in the oceans of the high seas require substantially different technologies in order to catch them. They are also unfamiliar to consumers and, therefore, do not necessarily have the immediate appeal of shallow water species. Furthermore, as the population of the world inexorably increases, and with it the demand for fish, the pressure on stocks in the high seas is also going to steadily increase and this will, ultimately, force restrictive management regimes to be introduced here as well.

The amazing fact about the political annexation of the oceans that has happened so rapidly since the middle of the twentieth century is that it was so long in coming. Throughout all the economic, social, and political upheavals of the industrial revolution the management of the oceans remained essentially unchanged; the changes of the last fifty years have essentially been a catching-up exercise beginning to bring the world's oceans face to face with the realities of the modern world.

Key themes and further reading

The systematic incorporation of the oceans into a formal political framework since the middle of the twentieth century has been one of the most important recent changes to the world map. The way in which the ocean space has become progressively differentiated into a series of distinct zones is an important topic for political geography. The zoning closely mirrors the capacity of technology to exploit marine resources, running from a baseline, distinguishing the open sea from inland waters, to territorial waters, the contiguous zone, the EEZ, and the high seas. The role of the UN in overseeing the process of differentiation through a series of international treaties, culminating in UNCLOS III, has been highly innovative and significant, not least in clarifying the legal status of islands within the new maritime regime. Elsewhere, groups of states have concluded binding treaties, mostly governing fishing rights. The most ambitious of these is the Common Fisheries Policy of the EU, which has done much to draw attention to both the strengths and the weaknesses of attempts at international management of the oceans.

The most readable political geography of the oceans is M. I. Glassner's (1990) *Neptune's Domain: a political geography of the sea*. For those wanting a more detailed and formal legal account, *International Law and Ocean Use Management: the evolution of ocean governance* by L. Juda (1996) provides all the information one is likely to need in a most authoritative text. The tortuous history of how the EU Common Fisheries Policy was agreed is described by Mark Wise (1984) in *The Common Fisheries Policy of the European Community*.