

Fisheries enforcement jurisdiction and maritime zone regimes



Maritime Enforcement Jurisdiction

What is 'jurisdiction'? Why is it important?

The ability of a State to make and enforce its laws

- Jurisdiction is the authority of a State under international law to make, apply and enforce rules of conduct in relation to persons and property.
- Underpins the peaceful co-existence of sovereign States by providing a framework for the lawful exercise of regulatory authority.

Maritime Enforcement Jurisdiction

The ability of a State to make and enforce its laws

Prescriptive and enforcement jurisdiction

Prescriptive jurisdiction:

- the capacity of a state to **prescribe**; to apply laws and regulations
- may extend extraterritorially in certain cases

Enforcement jurisdiction:

- the capacity of a state to **enforce**; to compel compliance with laws and regulations
- may only be exercised territorially unless specifically provided for in treaty or custom

Maritime Enforcement Jurisdiction

- In the 1927 *Lotus* case, the PCIJ held, in relation to enforcement jurisdiction:
- 'the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State.
- In this sense jurisdiction is certainly territorial; **it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention**'.



What does this mean for fisheries enforcement jurisdiction?

Maritime zone regimes and fisheries enforcement

	Maritime zone	Jurisdictional regime	Navigational regime	
Land	Internal Waters	Sovereignty	Coastal State consent	} Single regime for both prescriptive & enforcement jurisdiction over fisheries
0-12 nm	Territorial Sea		Innocent passage	
	Archipelagic Waters		Innocent passage/Archipelagic sea lanes passage	
	International Straits		Transit passage	
12-24 nm	Contiguous Zone	Sovereign Rights	Freedom of navigation	} Different rules for prescriptive & enforcement jurisdiction over fisheries
12-200 nm (CS may extend beyond)	Exclusive Economic Zone (EEZ)		(if compatible with the LOSC and subject to due regard for coastal State rights and duties)	
	Continental Shelf			
Beyond 200nm	High Seas	Areas beyond national jurisdiction	Freedom of navigation	
	Deep Seabed			

Maritime zone regimes and fisheries enforcement

Different considerations apply to:

- Areas under **sovereignty** (internal waters, territorial sea and archipelagic waters)
 - Subject to full sovereignty of the coastal State
 - UNCLOS does not regulate fisheries enforcement in these zones
- Areas under **sovereign rights** (exclusive economic zone and continental shelf)
 - Enforcement powers under Article 73
 - Limits on enforcement can be subject to judicial consideration
- Areas **beyond national jurisdiction** (high seas)
 - Freedom of fishing
 - Exclusive jurisdiction of the flag State, subject to exceptions

These differences have implications for the application and enforcement of domestic fisheries legislation