

The **2026 Session** of the **Philippine International Law of
the Sea Academy (PHILSEA)**

**Territorial Sea, Contiguous Zone, and
Innocent Passage**

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References

1. Treaties

The relevant provisions are reproduced in the PPT Slides at appropriate places for your convenience.

(1) The United Nations Convention on the Law of the Sea

https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

(2) The Geneva Convention on Territorial Sea and Contiguous Zone

https://treaties.un.org/doc/Treaties/1964/11/19641122%202-14%20AM/Ch_XXI_01_2_3_4_5p.pdf

2. Authentic Text

Please read the relevant chapters to this lecture

Robin Churchill, Vaughan Lowe and Amy Sander,

The Law of the Sea : Fourth Edition (Melland Schill Studies in International Law) (4TH)

References

3. Reading Materials

Please obtain the articles by the URLs, when URL is provided.

Otherwise, PDF documents are provided by PHILSEA Academy to which I sent them.

• Atsuko Kanehara, “Refining Japan’s Integrative Position on the Territorial Sovereignty of the Senkaku Islands,” *International Law Studies*, Vol. 97 (2021),

["Refining Japan’s Position on the Senkaku Islands" by Atsuko Kanehara \(usnwc.edu\)](https://www.usnwc.edu)

• “Reconsideration of the Distinction Between the Use of Arms in Law Enforcement and the Use of Force Prohibited by International Law - With an Analysis of the Inherent Significance of This Issue to Japan-,” *Japan Review*, Vol. 5, No. 2 (2023), pp. 13-48

https://www.jiia.or.jp/eng/upload/eng/JapanReview_Vol5_02_%20Kanehara.pdf

References

3. Reading Materials (continued)

• Atsuko Kanehara, “The Incident of an Unidentified Vessel in Japan’s Exclusive Economic Zone,” *The Japanese Annual of International Law*, No. 45 (2002), pp. 116-126

[PDF](#)

• Atsuko Kanehara, “The Japanese Legal System Concerning Innocent Passage of Foreign Vessels (1990-1998),” *The Japanese Annual of International Law*, No. 42 (1999), pp. 90-110

[PDF](#)

Structure of the Lecture

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Territorial Sea, Contiguous Zone, and Innocent Passage

I. Introduction: Historical Development of the Zone System

1. Traditional Controversy in the History of the Law of the Sea
2. Dual Zone System in the Law of the Sea
3. Functional Jurisdiction Incorporated into the Zone System of the Law of the Sea

II. Territorial Sea System

1. Breadth
2. Rights of Coastal States to Territorial Sea

Structure of the Lecture

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II. Territorial Sea System (continued)

3. Exceptions to Sovereignty of Coastal States to Territorial Sea

(1) Innocent Passage of Foreign Vessels

👉 III.

(2) (Sovereign) Immunity

III. Innocent Passage of Foreign Vessels

IV. Contiguous Zone System

1. Incorporation of Functional Jurisdiction into the Zone System of the Law of the Sea

2. Legal Status of Contiguous Zone

I. Introduction: Historical Development of the Zone System

1. Traditional Controversy in the History of the Law of the Sea

(1) “Mare Liberum”

The historical controversy:

“Mare Liberum” v. “Mare Clausum” in the 17th Century

The most famous conflicting arguments were conducted between **Hugo Grotius** of the Netherlands, the so-called founder of international law, and **John Selden** of the United Kingdom.

With the background of the mercantilism and necessity of marine transportation, “*mare liberum*” surpassed “*mare clausum*.”

I. Introduction: Historical Development of the Zone System

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1. Traditional Controversy in the History of the Law of the Sea

(1) “Mare Liberum” (continued)

The oceans became to be understood as being **wide (and open) and free** for various uses of all humankind.

= A fundamental idea of oceans that still keeps some influence even in the current days.

I. Introduction: Historical Development of the Zone System

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1. Introduction: Historical Development of the Zone System

(1) Mare Liberum (continued)



Current Sea Zone System under the United Nations Convention on the Law of the Sea (UNCLOS)

Selden's "Mare Clausum" Revisited?

Reduction of the "wide" high seas

By:

200M (=nautical mile) Exclusive Economic Zone (EEZ)

Deep Sea-bed as "common heritage of mankind"

I. Introduction: Historical Development of the Zone System

1. Traditional Controversy in the History of the Law of the Sea (continued)

(2) Dual Zone System: High Seas and Territorial Sea

Initially coastal States did not have a concept of “sea zones”, and claimed different distances (breadths) for their rights depending on matters, such as maritime security, fishing, immigration, marine pollution, hygiene, and etc.

e. g. “Cannon Shot Rule” as origin of 3M rule for the breadth of territorial seas

👉 From the perspective of maritime security

I. Introduction: Historical Development of the Zone System

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1. Traditional Controversy in the History of the Law of the Sea

(2) Dual Zone System: High Seas and Territorial Sea (continued)

With the development of the understanding of territorial seas as “sea zones” over which coastal States have a comprehensive right (sovereignty), the dual zone system was established.

At the latest, at the end of the 19th century, States became to grasp their sea areas near to their coasts as “sea zones” over which they have a comprehensive right (sovereignty) in relation to the various matters.

= **Territorial sea**

Wide High Seas and Narrow Territorial Sea for the Interest of Maritime Nations

c. f. Maritime Nations vs. Coastal States Later in the History of the Law of the Sea (👉 II. 1. Breadth of Territorial Sea)

I. Introduction: Historical Development of the Zone System

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1. Traditional Controversy in the History of the Law of the Sea (continued)

(2) Dual Zone System: High Seas and Territorial Sea (continued)



A main pillar of the **1958 four Geneva Conventions on the Law of the Sea**

Among the four conventions, the two are related to high seas and territorial sea:

The Convention on the High Seas

The Convention on Territorial Sea and Contiguous Zone

(Others: Continental Shelf, Conservation of Fishery Resource)

I. Introduction: Historical Development of the Zone System

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3. Functional Jurisdiction Incorporated into the Zone System of the Law of the Sea

(1) “Sea Zone” Concept for Territorial Sea System

Comprehensive right (sovereignty) of coastal States of territorial sea

c. f. In the history, without a concept of “sea zone,” coastal States claimed different distances (breadths) for their rights depending on matters, such as maritime security, fishing, immigration, marine pollution, hygiene, and etc.



It could be said to be an idea of “functional jurisdiction” idea depending on matters in territorial sea, which appeared later in the history of the law of the sea

I. Introduction: Historical Development of the Zone System

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3. Functional Jurisdiction Incorporated into the Zone System of the Law of the Sea

(1) “Sea Zone” Concept for Territorial Sea System (continued)

Which idea could make the consent easier for States regarding the breadth of territorial sea

: “zone” concept? or “functional” concept depending on matters?



II. 1. Breadth of Territorial Sea

I. Introduction: Historical Development of the Zone System

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3. Functional Jurisdiction Incorporated into the Zone System of the Law of the Sea

(2) Functional Jurisdiction Incorporated into the Law of the Sea

Sea Zone Approach vs. Functional Approach

Contiguous Zone 12M under the Geneva Convention, 24M under UNCLOS

Article 33 of UNCLOS

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

(a) **prevent** infringement of its **customs, fiscal, immigration or sanitary** laws and regulations within its territory or territorial sea;

(b) **punish** infringement of the above laws and regulations committed within its territory or territorial sea

I. Introduction: Historical Development of the Zone System

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3. Functional Jurisdiction Incorporated into the Zone System of the Law of the Sea

(2) Functional Jurisdiction Incorporated into the Law of the Sea (continued) Sea Zone Approach vs. Functional Approach

(Different breadths of Continental Shelf under the 1958 Geneva Convention and UNCLOS)

[Article 77 of UNCLOS]

1. The coastal State exercises over the continental shelf **sovereign rights for the purpose of exploring it and exploiting its natural resources.**

[Article 78 of UNCLOS]

1. The rights of the coastal State over the continental shelf do not affect **the legal status of the superjacent waters or of the air space** above those waters.

I. Introduction: Historical Development of the Zone System

3. Functional Jurisdiction Incorporated into the Zone System of the Law of the Sea

(2) Functional Jurisdiction Incorporated into the Law of the Sea (continued)

EEZ 200M under UNCLOS

[Article 58 of UNCLOS]

1. In the exclusive economic zone, the coastal State has:

- (a) **sovereign rights** for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) **jurisdiction** as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;

II. Territorial Sea System

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1. Breadth

(1) The 1958 Geneva Convention on Territorial Sea and Contiguous Zone

No provision to sets the breadth of territorial sea

(2) The 1960 Second United Nations Conference on the Law of the Sea

Failure for States to agree the breadth of territorial sea

e. g. 6M territorial sea and 6M Fishery Zone

(3) The 1982 UNCLOS

[Article 3]

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding **12 nautical miles**, measured from baselines determined in accordance with this Convention.

II. Territorial Sea System

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1. Breadth (continued)

(4) Why Could UNCLOS Decide the Breadth of Territorial Sea?

① Coastal States' Interest(s) in the Vicinity of Their Coasts

Desire of the many of States in the international society in the latter half of the 20th century

Claim of 200M territorial sea!?

② Establishment of the EEZ Regime

Protection of the exclusive right of coastal State to particularly fishery resources up to EEZ of 200M

③ Maritime Nations vs. Coastal States



Core Counterpoint of the Law of the Sea

Wide or Restricted Freedom of (High) Seas?

c. f.

When the dual sea zone system was established, “wide high seas and narrow territorial sea” were for the interest of maritime nations.

II. Territorial Sea System

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2. Rights of Coastal States to Territorial Sea

(1) Sovereignty

[Article 2 of UNCLOS]

1. The **sovereignty** of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This **sovereignty** extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

II. Territorial Sea System

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2. Rights of Coastal States to Territorial Sea

(1) Sovereignty (continued)

① Sovereignty=a comprehensive right

c.f. the “sovereign right” of coastal States of EEZ and continental shelf

Right to solely designated matters by UNCLOS

e. g. exploration and exploitation of natural resources

② In the history of forming the territorial sea system
(explained above)

Initially coastal States did not have a concept of “sea zones”, and claimed different distances (breadths) for their rights depending on matters, such as maritime security, fishing, immigration, marine pollution hygiene, and etc.

With the development of the understanding of territorial seas as “sea zones” over which coastal States have **a comprehensive right (sovereignty)**, the dual zone system was established.

II. Territorial Sea System

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2. Rights of Coastal States to Territorial Sea

(1) Sovereignty (continued)

③ Concept of territory in international law

Land, **sea**, and air construct territory of States

States have sovereignty over their territory, namely, land, **sea**, and air

④ Exceptions to Sovereignty of Coastal States to Territorial Sea

[Article 3, Paragraph 3 of UNCLOS]

3. The sovereignty over the territorial sea is exercised **subject to this Convention and to other rules of international law.**

- Innocent Passage of Foreign Vessels

👉 III.

- (Sovereign) Immunity

II. Territorial Sea System

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3. Exceptions to Sovereignty of Coastal States to Territorial Sea

(1) Innocent Passage of Foreign Vessels

👉 III.

(2) (Sovereign) Immunity

① Basis for the sovereign immunity

- Sovereign immunity under international law

Equality of sovereign States to each other

- Under the Law of the Sea: UNCLOS

[Article 32]

With such exceptions as are contained in subsection A and in articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

II. Territorial Sea System

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3. Exceptions to Sovereignty of Coastal States to Territorial Sea

(2) (Sovereign) Immunity (continued)

② Warship

[Article 29]

For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

③ Right of protection of coastal States 👉 Based upon the sovereignty Particularly in relation to innocent passage of foreign vessels (👉 III)

[Article 25]

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

II. Territorial Sea System

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3. Exceptions to Sovereignty of Coastal States to Territorial Sea

(2) (Sovereign) Immunity (continued)

④ Contents of immunity

* 3 kinds of Jurisdiction:

prescriptive, enforcement, adjudicative jurisdiction

In general, under international law, immunity from courts procedure (adjudicative jurisdiction)

At sea, immunity from enforcement jurisdiction is also important

II. Territorial Sea System

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3. Exceptions to Sovereignty of Coastal States to Territorial Sea (2) (Sovereign) Immunity (continued)



e. g. Serious violation(s) of sovereignty of the coastal State of territorial sea by conducting in a way to deny the sovereignty

Immunity, which is based upon sovereignty and sovereign equality, should be respected?

Japan's experience in its territorial sea surrounding the Senkaku Islands



Atsuko Kanehara, "Refining Japan's Integrative Position on the Territorial Sovereignty of the Senkaku Islands," *International Law Studies*, Vol. 97 (2021),

["Refining Japan's Position on the Senkaku Islands" by Atsuko Kanehara \(usnwc.edu\)](#), pp. 1628-1630.

II. Territorial Sea System

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3. Exceptions to Sovereignty of Coastal States to Territorial Sea (2) (Sovereign) Immunity (continued)

An interpretative issue in respect to the strange phrasing of Article 32 of UNCLOS

[Article 32]

With such exceptions as are contained in subsection A and in articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

III. Innocent Passage of Foreign Vessels

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1. Exception to the Sovereignty of Coastal State of Territorial Sea

(1) [Article 3, Paragraph 3 of UNCLOS]

3. The sovereignty over the territorial sea is exercised **subject to this Convention and to other rules of international law.**

(2) Legal Basis for Innocent Passage of Foreign Vessels

Under UNCLOS and customary international law

Article 17 of UNCLOS

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

 Article 18 (passage) and Article 19

III. Innocent Passage of Foreign Vessels

2. UNCLOS Article 18 and Article 19

[Article 18 Passage]

1. Passage means navigation through the territorial sea for the purpose of:

(a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or

(b) proceeding to or from internal waters or a call at such roadstead or port facility.

2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

III. Innocent Passage of Foreign Vessels

2. UNCLOS Article 18 and Article 19 (continued)

[Article 19]

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. ...

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:
 - (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 - (b) any exercise or practice with weapons of any kind;
 - (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
 - (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
 - (e) the launching, landing or taking on board of any aircraft;

III. Innocent Passage of Foreign Vessels

2. UNCLOS Article 18 and Article 19 (continued)

[Article 19](continued)

- (f) the launching, landing or taking on board of any military device;
- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- (h) any act of wilful and serious pollution contrary to this Convention;
- (i) any fishing activities;
- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage.

III. Innocent Passage of Foreign Vessels

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3. Interpretative Issues

(1) Development in Article 19 of UNCLOA in comparison with Article 14 of the 1958 Geneva Convention on Territorial Sea and Contiguous Zone

[Article 14, Paragraph 4 of the 1958 Convention]

4. the Passage is **innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.**

* The part of red letters are reproduced under Article 19, Paragraph 1 of UNCLOS



c. f. 12 **Concrete examples of actual conducts** to be non-innocence under Article 19, Paragraph 2, (i) ~ (l)

Here, too, Maritime (Military) Nations vs. Coastal States

Objectivization!?!→Prevention of subjective judgment by coastal States of territorial sea on non-innocence

Is it so?

For instance, [(1) of Article 19, Paragraph 2] (above)

III. Innocent Passage of Foreign Vessels

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3. Interpretative Issues (continued)

(2) Foreign Warships

① Do warships have the right of innocent passage?

[Article 17 of UNCLOS]

Subject to this Convention, **ships of all States**, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

② Arguments

a. Warships, as they are, non-innocent.

b. Only when warships conduct some of 12 catalogues under Article 19, Paragraph 2, they are non-innocent.

③ State practice of requiring prior notice or prior consent of coastal States for passage of warships

III. Innocent Passage of Foreign Vessels

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3. Interpretative Issues (continued)

(3) Relation between Article 19, Paragraph 1 and Article 19, Paragraph 2

? Are the 12 catalogues of non-innocence under Article 19, Paragraph 2, **exclusive**? No other possibilities of non-innocence?

OR, ? Is a passage by a foreign vessel which does not fall under any of the 12 categories of Article 19, Paragraph 2, possible to be non-innocent according to Article 19, Paragraph 1?

[Article 19, Paragraph 1]

Passage is innocent **so long as it is not prejudicial to the peace, good order or security of the coastal State.**

III. Innocent Passage of Foreign Vessels

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[Case Study: Unidentified Foreign Vessels]

In 1999 and 2001 Japan experienced to cope with unidentified vessels in its territorial sea and EEZ. * Later, they are recognized as “spy ships.”

- Apparently fishing boats but with strange equipment
- Wandering about the sea areas



- Passage under Article 18 of UNCLOS?
- Non-innocence under Article 19, Paragraph 1 or Paragraph 2
- Law enforcement against illegal fishing? Self-defense?
- Use of weapons accompanying law enforcement measures taken by the Japan Coast Guard vessels and vessels belonging to the Japan Maritime Self-Defense Force
- Hot pursuit

III. Innocent Passage of Foreign Vessels

[Case Study: Unidentified Foreign Vessels] (continued)

Please see,

- Atsuko Kanehara, “The Incident of an Unidentified Vessel in Japan’s Exclusive Economic Zone,” *The Japanese Annual of International Law*, No. 45 (2002), pp. 116-126 (PDF)
- Atsuko Kanehara, “Reconsideration of the Distinction Between the Use of Arms in Law Enforcement and the Use of Force Prohibited by International Law - With an Analysis of the Inherent Significance of This Issue to Japan-,” *Japan Review*, Vol. 5, No. 2 (2023), pp. 13-48
https://www.jiia.or.jp/eng/upload/eng/JapanReview_Vol5_02_%20Kanehara.pdf
- Atsuko Kanehara, “The Japanese Legal System Concerning Innocent Passage of Foreign Vessels (1990-1998),” *The Japanese Annual of International Law*, No. 42 (1999), pp. 90-110 (PDF)

III. Innocent Passage of Foreign Vessels

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4. Protection of Coastal State of Territorial Sea from Non-Innocent Passage

(1) Article 25 of UNCLOS

1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.
2. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.
3. The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

III. Innocent Passage of Foreign Vessels

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4. Protection of Coastal State of Territorial Sea from Non-Innocent Passage (continued)

(2) Restriction of the Right of Protection of Coastal States Due to Immunity of Foreign Warships and Government Vessels (as explained above)

[Article 30 (Warships)]

If any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, **the coastal State may require it to leave the territorial sea immediately.**



Coastal States should refrain from taking other measures.

(Reproduce) II. Territorial Sea System

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(Reproduce)

3. Exceptions to Sovereignty of Coastal States to Territorial Sea

(2) (Sovereign) Immunity (continued)



e. g. Serious violation(s) of sovereignty of the coastal State of territorial sea by conducting in a way to deny the sovereignty Immunity, which is based upon sovereignty and sovereign equality, should be respected?

Japan's experience in its territorial sea surrounding the Senkaku Islands

IV. Contiguous Zone System

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1. Incorporation of Functional Jurisdiction into the Zone System of the Law of the Sea

The 1958 Convention on Territorial Sea and Contiguous Zone, as well as the Convention on Continental Shelf, incorporated functional jurisdiction into the law of the sea.

c. f. Dual Zone System: High Seas and Territorial Sea
[Article 24 of the 1958 Convention]

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

Prevent infringement of **its customs, fiscal, immigration or sanitary regulations** within its territory or territorial sea;

(b) Punish infringement of the above laws and regulations committed within its territory or territorial sea.

IV. Contiguous Zone System

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1. Incorporation of Functional Jurisdiction into the Zone System of the Law of the Sea (continued)

[Article 33 of UNCLOS]

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

(a) prevent infringement of **its customs, fiscal, immigration or sanitary laws and regulations** within its territory or territorial sea;

(b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

Raison d'être of Contiguous Zone

To protect coastal States in relation to **the designated matters** within their territory or territorial sea

IV. Contiguous Zone System

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2. Legal Status of Contiguous Zone

(1) Comparison between Article 24 of the 1958 Convention and Article 33 of UNCLOS

[Article 24 of the 1958 Convention (12M Contiguous Zone)]

1. In a zone of the high seas contiguous to its territorial sea...

[Article 33 of UNCLOS (24M Contiguous Zone)]

1. In a zone contiguous to its territorial sea...

High Seas? EEZ? Sui Generis Sea Zones?

Moving Forward

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Related Subjects to Be Discussed In the PHILSEA Curriculum 2026

History of the Law of the Sea

Transit Passage in International Straits

Exclusive Economic Zone

Continental Shelf

High Seas

Maritime Boundary Delimitation, and etc.

END

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Thank You for Your Attention!