

Sea Level Rise and Maritime Zones: Preserving the Maritime Entitlements of “Disappearing States”

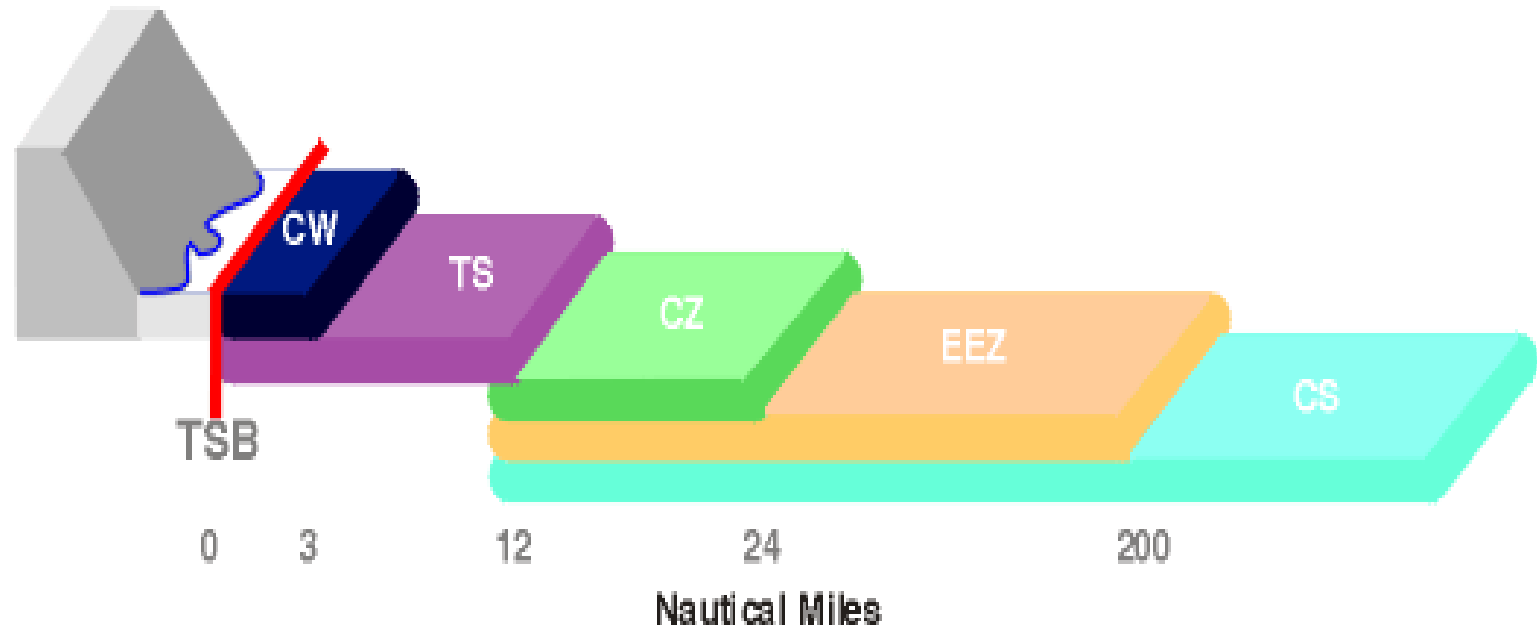
Never Stand Still

**Professor Rosemary Rayfuse
Faculty of Law
University of New South Wales**

The Basic Questions

- **If sea levels rise do the outer limits of a State's maritime zones retreat?**
- **If an island becomes uninhabitable does it lose its EEZ and continental shelf?**
- **If an island disappears does it lose all its maritime zones?**
- **If an island State ceases to be inhabitable does it cease to be State?**
- **How can the international law assist in providing stability, certainty and a future to disappearing Small Island States?**

Maritime Zones



TSB Territorial Sea Baseline

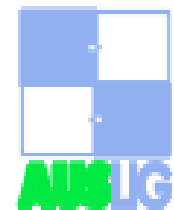
CW Coastal Waters

TS Territorial Sea

CZ Contiguous Zone

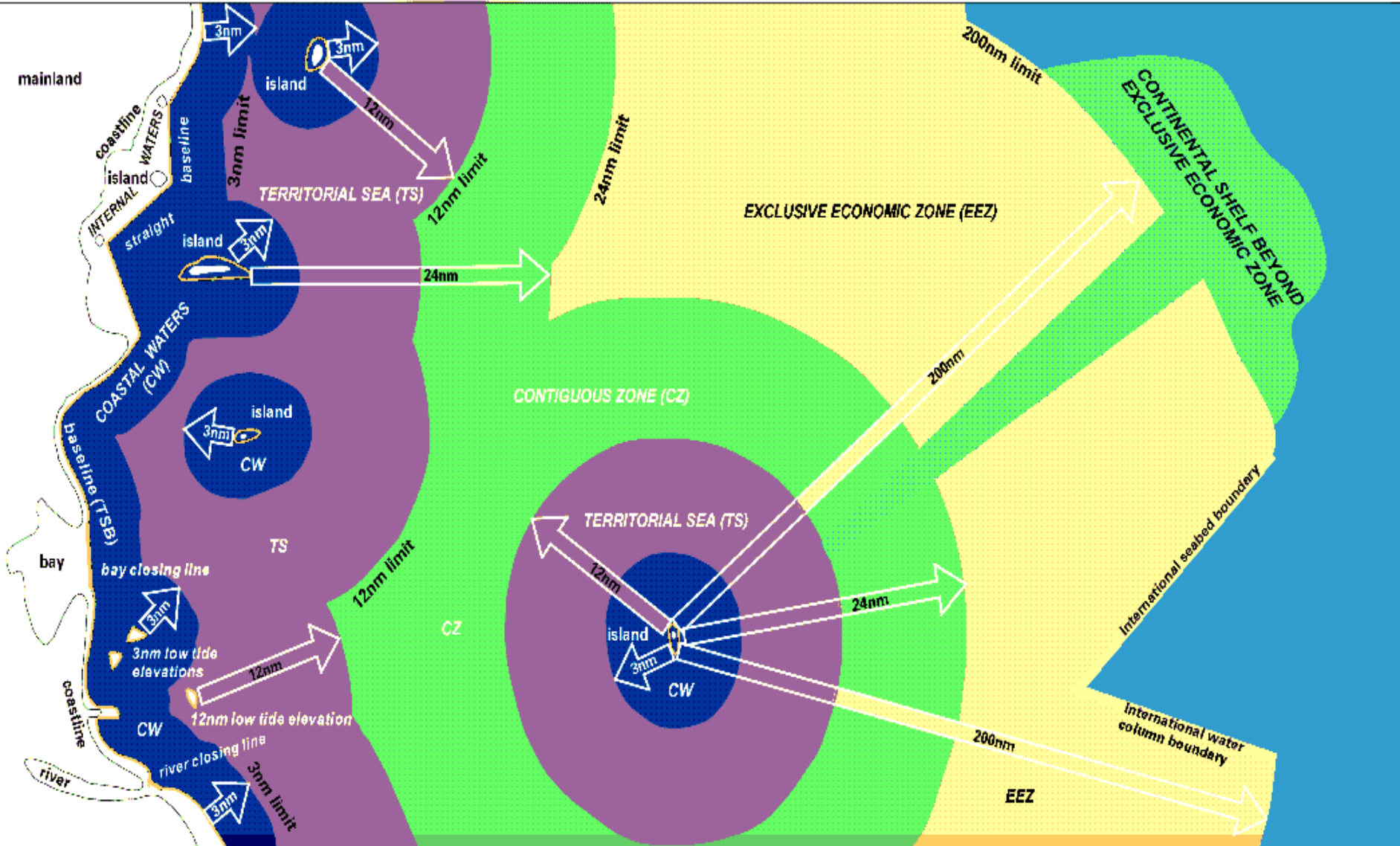
EEZ Exclusive Economic Zone

CS Continental Shelf



HP 90/489.1

Diagram showing relationship of maritime features, limits and zones seaward of the territorial sea baseline (not to scale)



The Baseline Dilemma

- **The ambulatory nature of baselines**
- **Permanent inundation of low-tide elevations and fringing reefs used as basepoints will move the outer limits**
- **‘Rocks which cannot sustain human habitation or economic life of their own’ are not entitled to an EEZ or continental shelf**
- **Islands that disappear may cease to generate any maritime zones**

The Statehood Dilemma

- **Criteria for Statehood (Montevideo Convention):**
 - **Permanent population**
 - **Defined territory**
 - **Government**
 - **Capacity to enter into relations with other States**
- **Loss of population and/or territory renders state non-existent**
- **Only States can claim maritime zones, therefore when a State ceases to exist, maritime zones cease and may revert to global commons or to other States**

Resolving the Statehood Dilemma

- **Disappearing State acquires new territory by cession**
- **Disappearing State merges into some form of federation with other State**
- **Recognition of new category of State – the deterritorialised State**

Deterritorialised States

Concept already recognized in international law

- Knights of Malta**
- Papal See**

Functional or non-territorial sovereignty also recognized

- Governments in exile**
- Communities made diasporic through invasion and colonisation**
- Communities overrun and internally dislocated or formally deterritorialised**

Rights of ‘entities’ also recognized

- European Union**
- Taiwan**

Disappearing States as Deterritorialised States

- **Governed by ‘government’ or ‘authority’ elected by registered voters**
- **‘Government’ acts as trustee of State assets for benefit of citizens wherever they might be located**
- **Maritime zones continue to inure to the State**
- **Resource rents from maritime zones (fishing, sea-bed mining etc) used to fund the relocation and continued livelihood of displaced population – whether diasporic or all located in one new ‘host’ State**
- **‘Government’ continues to represent deterritorialised State at the international level to ensure and preserve the trust ‘property’ and to ensure rights and interests of its citizens vis-a-vis their new host State or States**

Resolving the Baseline Dilemma: Options under Existing Law

- **LOSC Article 5 – fix zones by marking low-water line on officially recognised charts**
- **Increased use of straight baselines (to be used with caution)**
- **Establishment of outer limits of continental shelf where appropriate**
- **Bilateral maritime boundary delimitation agreements**
- **LOSC Article 5 & Article 16(1): declare baselines by recourse to geographical coordinates - may require amendment of domestic legislation especially in the Pacific**

Resolving the Baseline Dilemma: New International Approaches

Substantive questions:

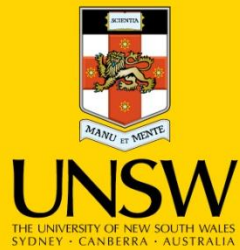
- **Freezing baselines vs freezing outer limits**
- **The time from which the baselines are frozen**

Procedural mechanisms:

- **Develop customary international law**
- **Protocol to UNFCCC**
- **Modify the Law of the Sea Convention by:**
 - **Formal amendment of LOSC**
 - **Decision of SPLOS**
 - **Supplementary agreement**
 - » **Adopted by SPLOS initiative**
 - » **Separate conference (ie Fish Stocks approach)**
 - » **UNGA Resolution (ie PART XI approach)**

Preserving Maritime Entitlements

- **Declare baselines in accordance with the LOSC and deposit the geographical coordinates with the UN**
- **Permanently establish outer limits of the continental shelf**
- **Delimit maritime boundaries with other states by treaty (defined by geographical coordinates)**
- **Promote adoption by the international community of a new rule that freezes baselines drawn in accordance with LOSC as permanent from the time they are publicly declared**



Thank You

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