

Legal Aspects of Maritime Spatial Planning

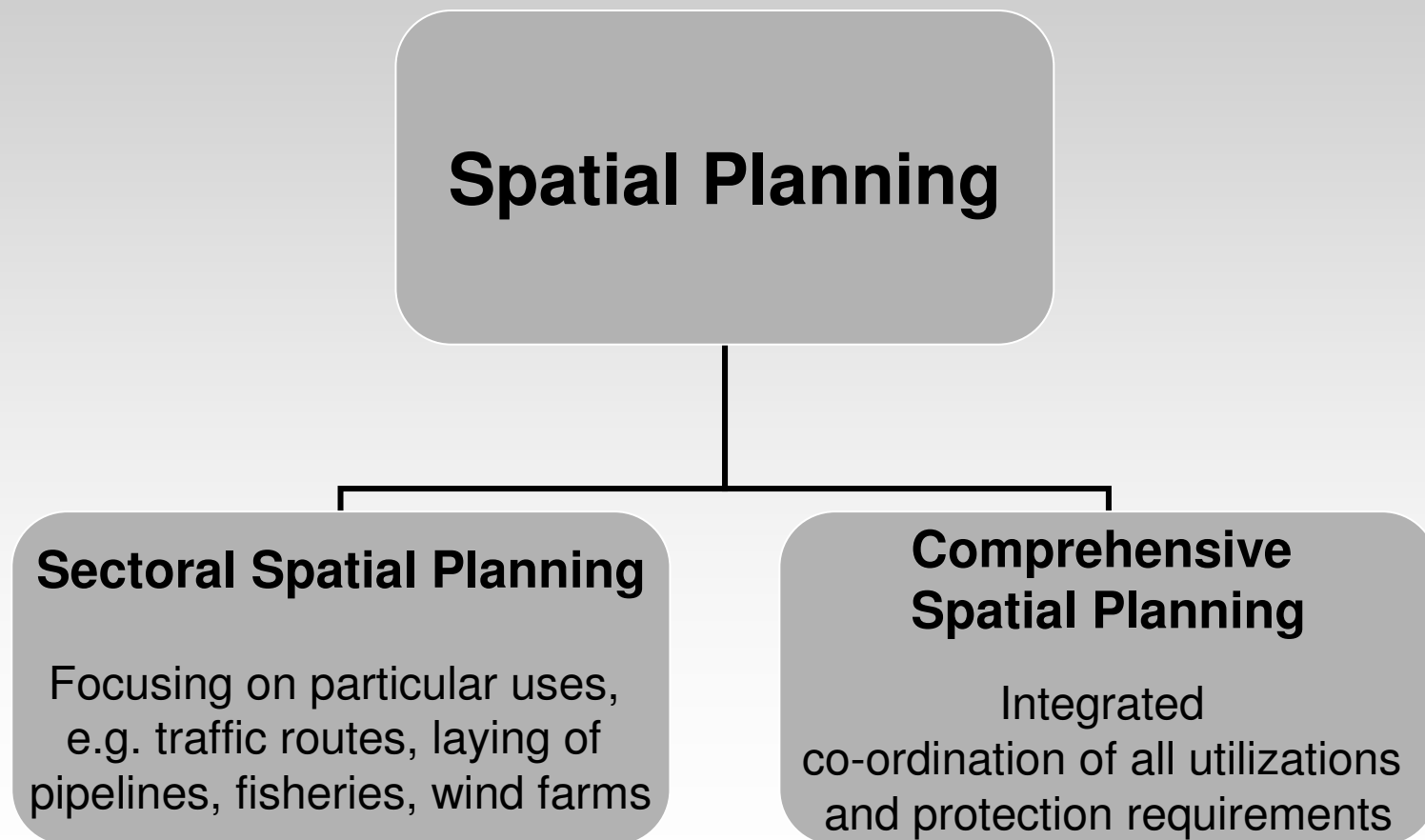
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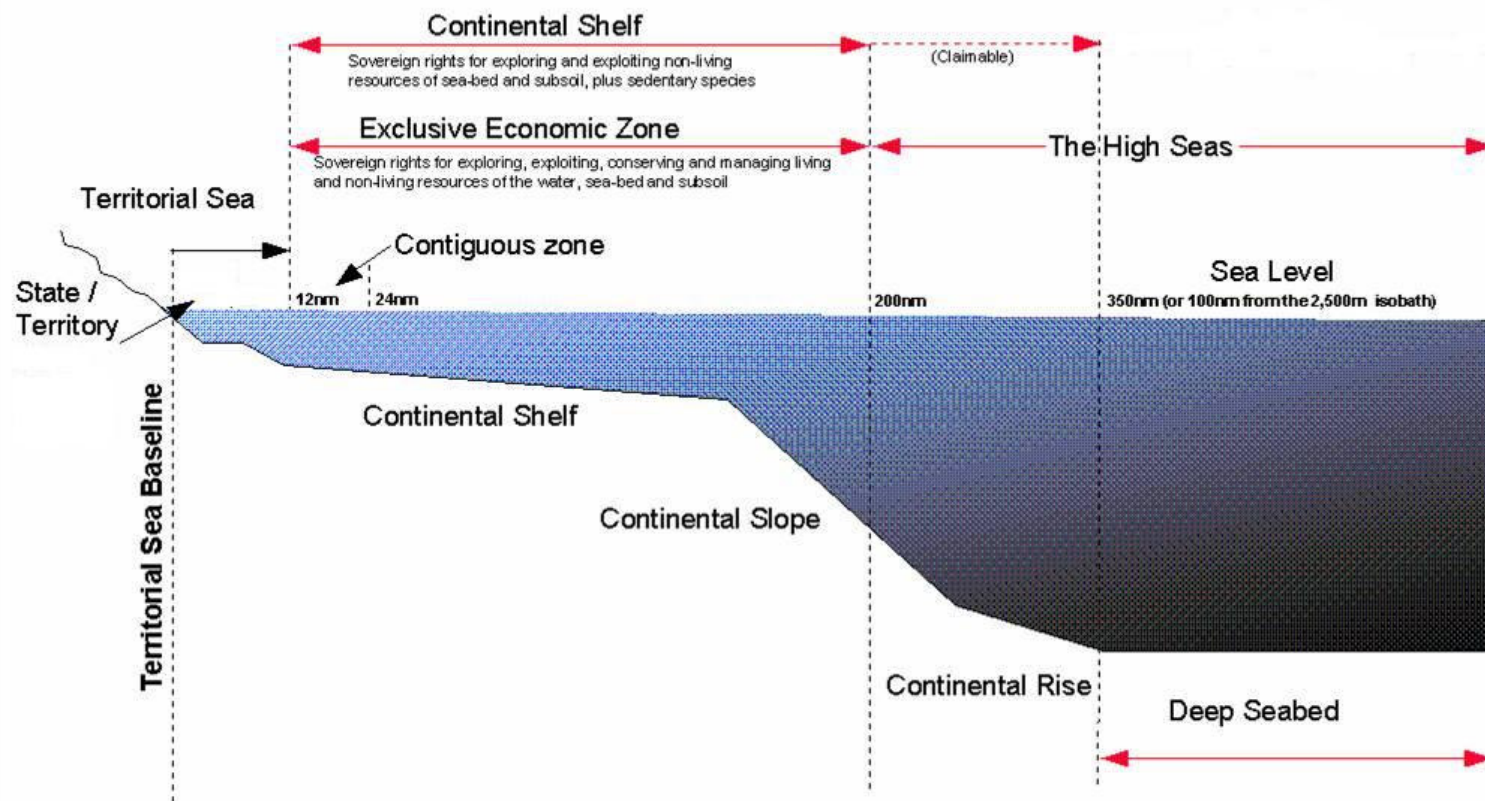
Legal Aspects of Maritime Spatial Planning

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Diagram of Our Maritime Zones



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| Internal Waters (landwards of baseline) | Territorial Sea (12 nm seawards of baseline) | Exclusive Economic Zone (max. 200 nm seawards of baseline) |
|--|--|--|
| <p>Full jurisdiction based on sovereignty of the coastal State</p> <p>☞ complete MSP jurisdiction</p> | <p>Full jurisdiction based on sovereignty of the coastal State</p> <p>☞ MSP jurisdiction limited by the right of innocent passage of foreign ships</p> | <p>Sovereign rights for the purpose of economic exploitation (resources, energy etc.)</p> <p>Jurisdiction:</p> <ul style="list-style-type: none">- Artificial islands, installations, structures- Scientific research- Environmental protection <p>☞ functionally limited MSP jurisdiction</p> |

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Regulatory Competence for MSP in the EEZ

From the Preamble of the LOSC:

*„...Conscious that the problems of ocean space are **closely interrelated** and need to be **considered as a whole**...“*

*„...Recognizing the desirability of establishing ...a legal order for the seas and oceans which will...promote...the equitable and **efficient utilization** of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment...“*

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European Community:

- No legal base for (maritime) spatial planning in the EC Treaty
- No competence for specific legislation with regard to MSP
- Only regulatory competences for MSP-relevant acts, e.g.
 - Art. 32 et. seqq. EC Treaty (fisheries)
 - Art. 70 et. seqq. EC Treaty (traffic incl. maritime traffic)
 - Art. 158 et. seqq. EC Treaty (economic and social cohesion)
 - Art. 174 et. seqq. EC Treaty (protection of environment)

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Legal constraints on MSP in international and EC law

Shipping:

- **Territorial Sea** – sovereignty limited by the right of innocent passage
- **EEZ** – freedom of navigation for all States
 - Restrictions by coastal State: exercise of sovereign rights and jurisdiction (e.g. establishment of artificial islands, installations, structures and safety zones – Art. 60 LOSC)
 - No unilateral definition of sea lanes for international navigation

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Legal constraints on MSP in international and EC law

Fisheries:

- **Territorial Sea** – sovereignty over conservation and management of living resources – Art. 2, 21 (d) LOSC
- **EEZ** – sovereign rights for the purpose of exploring, exploiting, conserving and managing living resources – Art. 56 (1) lit. a LOSC
- Competences have passed to EU (**Common Fisheries Policy**)
 - Only Council may establish areas in which fishing activities are prohibited or restricted - Art. 4 (2) Reg. (EC) 2371/2002
 - Subsidiary Member State competence for territorial sea in Art. 9 (1) Reg. (EC) 2371/2002

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Legal constraints on MSP in international and EC law

Laying of pipelines and cables:

- **Territorial Sea** – full jurisdiction based upon sovereignty
- **EEZ/ Cont. Shelf** – freedom of laying of pipelines and cables for all States – Art. 58 (1), 79 (1) LOSC
 - Delineation of the course is subject to the consent of the coastal State – Art. 79 (3) LOSC
 - Laying itself may not be prevented

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Legal constraints on MSP in international and EC law

Exploitation of non-living resources

(oil, gas, sand, gravel etc.):

- **Territorial Sea** – full jurisdiction based upon sovereignty
- **EEZ/ Continental Shelf** – sovereign right of coastal State
– Art. 56 (1) lit. a, 77 (1) LOSC

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Legal constraints on MSP in international and EC law

Carbon capture and storage (CCS):

- Proposal for EC-Directive from January 2008
- Scope: Territorial Sea, EEZ, Continental Shelf – Art. 2 (1)
- Member States determine areas from which storage sites may be selected – Art. 4 (1)

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Legal constraints on MSP in international and EC Law

Marine Strategy Framework Directive 2008/56/EC

- Main objectives: good environmental status and reduction of inputs in marine environment – Art. 1 (1), (2) MSF-Directive
- Member States develop programmes of measures
- Measures may include spatial and temporal distribution controls – Art. 13 (1), No. 3 of Annex VI MSF-Directive
- MSP only one among many recommended measures

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Legal constraints on MSP in international and EC Law

Strategic Environmental Assessment Directive (SEA-Directive)

- Requires **formal environmental assessment** of plans likely to have significant effects on the environment – Art. 1
- Applies to maritime **sectoral plans** (e.g. fisheries, energy, industry, transport, waste management, tourism) and **comprehensive spatial plans** – Art. 3 (2)
- Environmental report, (transboundary) consultations – Art. 5-8
- **Effect:** ecological enhancement of planning proceedings

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Conclusions:

- **General legal frame** of differing competences for MSP set by the LOSC
- Within this frame: **network of international and European regulations** focusing on particular forms of use and/or conflicts + cross-sectoral/ integrative regulations
- **Status quo:** patchwork instead of systematic legal regime
- **Required:** coherent and integrated legally based concept for comprehensive and future-oriented management at sea

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Thank you for your attention!