

Legal gaps in the Arctic Regulatory Framework

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FORMAL AND INFORMAL SOURCES OF LAW

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Outline

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- The legal regime of the Law of the Sea (LoS)
- The zonal system
- Formal and informal sources of law
- Examples of how to use sources of law on different levels of regulation

The legal regime of the law of the sea

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- The LoS Convention constitute a framework
- Substantive number of other legal instruments
- Customary law

Zonal system

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- In accordance with LOS it is necessary to make the following distinctions:
- 1) Every state has the right to establish the breadth of its **territorial sea** to a limit not exceeding **12 nautical miles**, cf. LOS art. 3
- 2) Every state has rights and duties with respect to the **exclusive economic zone** within **200 nautical miles** adjacent and beyond the territorial sea, cf. art. 55 and 57

Zonal system

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- Furthermore, every state has sovereign rights of the continental shelf within the exclusive economic zone, cf. art. 56
- 3) In accordance with art. 76, subsection 6 the outer limit of the continental shelf can not exceed **350 nautical miles**
- 4) Depending on the applicability of the 200 of 350 nautical miles the sea beyond this point is considered the high seas, thus being considered international sea

Legal governance of the Arctic

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- Clash between coastal State and flag State interests
- Link between international law and national law
- The formal and informal instruments of law

Formal and informal sources of law

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- “hard law” & “soft law”
- Separation between law as rights and obligations and quasi-legal instrument with *some* value
- “good” law is not necessarily formal law

Quasi-legislative function

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International Maritime Organization

- 50 conventions
- Needs to be determined on an instrument-by-instrument basis
- Numerous codes, guidelines (BMP) and resolutions

The Illulissat Declaration

- “The law of the sea provides for important rights and obligations concerning (...)” We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims”.
- “This framework provides a solid foundation (...) and we therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean”

Cases

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Global level

- High seas
- “Donut hole”



Multilateral level

- Regional interests
- SAR, Anti-piracy, exploration of resources



Bilateral level

- Bilateral disputes
- Hans Ø, overlapping interest

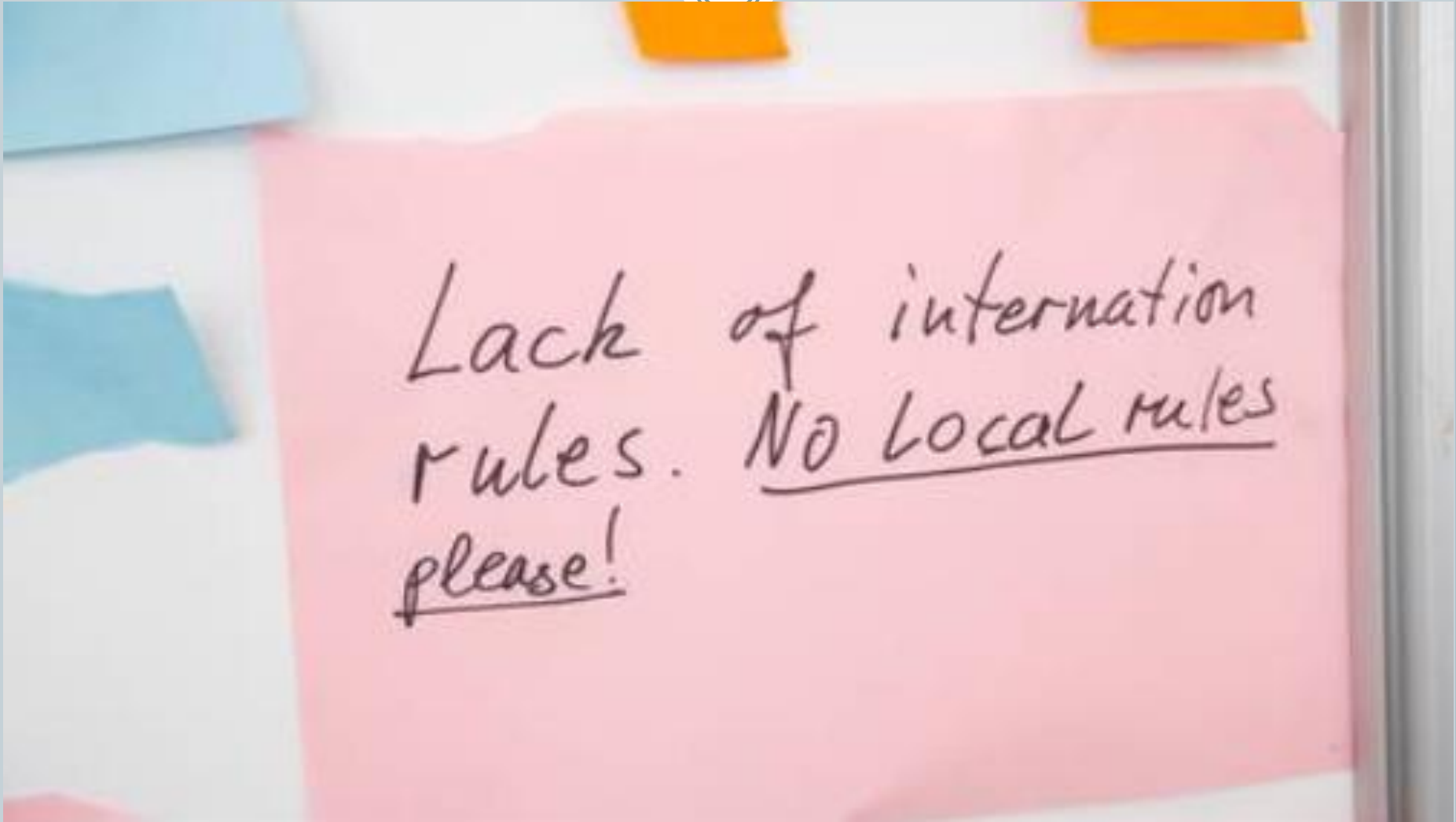
Summary

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- Subject matter
- Distinct features
- Scope of regulation
- Different actors, different perspectives

Danish Maritime Days

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A photograph of a whiteboard with several colorful sticky notes. The most prominent is a pink sticky note with handwritten text in black ink. The text reads: "Lack of international rules. No local rules please!". The word "international" is misspelled as "internation". There are also blue and orange sticky notes visible in the background.

Lack of international
rules. No local rules
please!