

# Regional MARSEC Practitioner Programme

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**CIL**

CENTRE FOR INTERNATIONAL LAW  
National University of Singapore

## ***Law of the Sea and Naval Operations***

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# Outline of Presentation

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# Part 1

# International Law Terminology

# Sovereignty

- **Sovereignty** is the power of a State to exercise the functions of a State within its territory, to the exclusion of any other State
  - The functions of a State include the establishment of legislative, administrative and judicial institutions for governing the State
- States have *sovereignty* over their land territory, including their offshore islands.
- States also have sovereignty over a belt of ocean space adjacent to their coast called the Territorial Sea

# Jurisdiction

- **Jurisdiction** refers to the power of a State under international law to govern persons and property by its laws, including its criminal laws and regulatory laws
  - **Prescriptive Jurisdiction** refers to the power of a State to prescribe laws to govern persons or activities
  - **Enforcement Jurisdiction** refers to the power of a State to enforce its laws by arresting, prosecuting and imprisoning persons

# Treaty Law Terms

- **Treaty:** an international agreement between States in written form that is governed by international law
- **Date of Adoption:** the date on which the text of treaty was adopted by the United Nations or by States attending an international conference; the treaty is then opened for **Signature**
- **Signature:** If a State signs a treaty, it is not bound by the terms of the treaty, but it must not act contrary to its object and purpose
- **Ratification.** The document whereby a State that has **signed** a treaty it gives its formal **consent to be bound** to the treaty
- **Accession:** The document whereby a State which has **not signed** a treaty gives its **consent to be bound**

## Part 2

# Overview of 1982 UNCLOS

# History and Current Status

- **Adopted in 1982 after 9 years of negotiations**
- **Entered into force on 16 Nov 1994**
- **Referred to as “1982 UNCLOS” or “1982 LOS Convention”**
- **168 parties, including the EU**
- **All coastal states in Asia are parties except Cambodia & DPRK Korea**
- **Other important States that are not parties are Iran and Turkey**
- **USA is only major state that is not a party, but it has stated that it accepts and follows the provisions of the Convention**



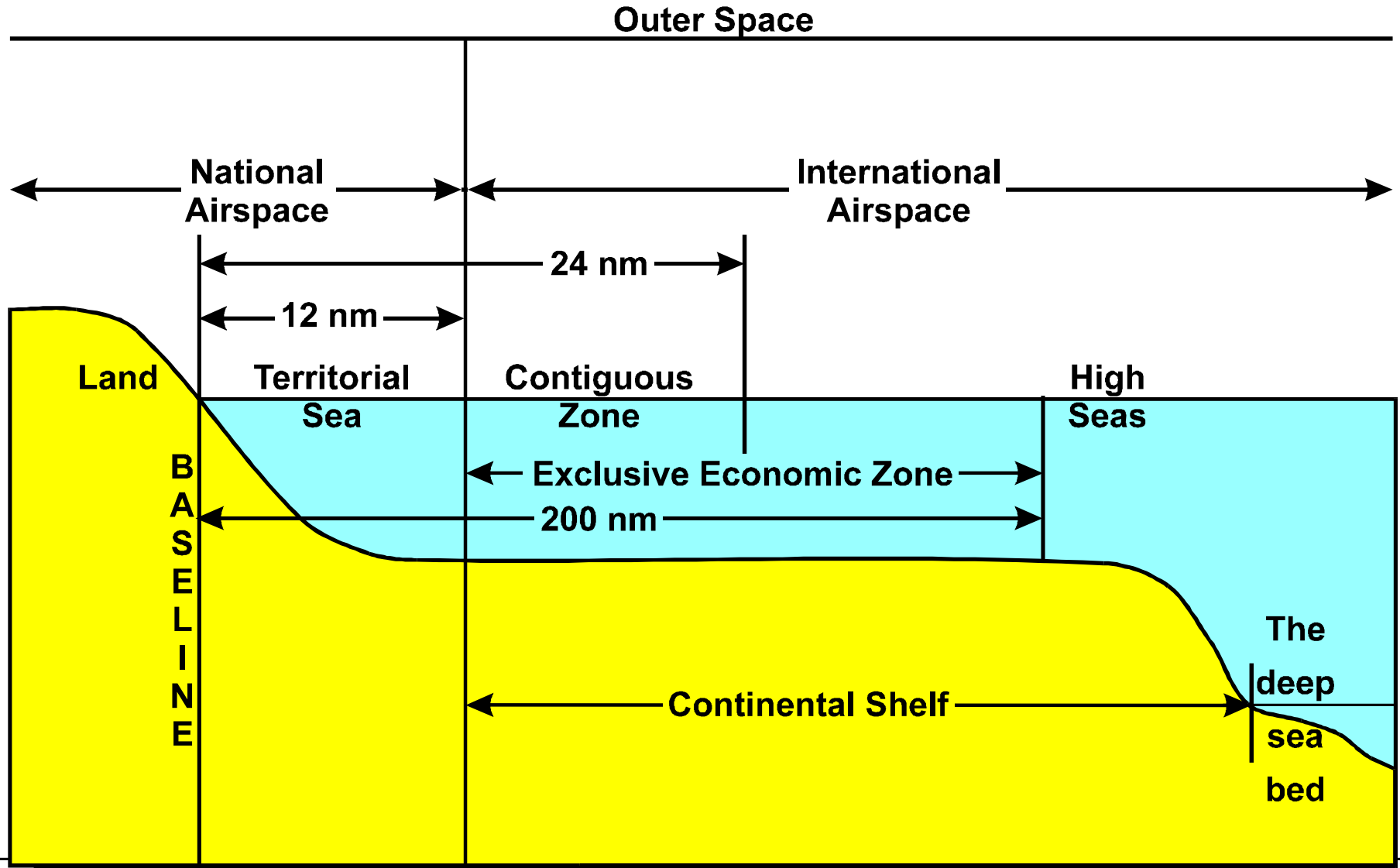
# Grand Bargain on Sovereignty and Passage Rights

- **Coastal State sovereignty** in 12 nm territorial sea and in archipelagic waters, subject to:
  - **Innocent Passage** in Territorial Sea
  - **Transit Passage** in Straits used for International Navigation
  - **Archipelagic Sea Lanes Passage** in Archipelagic waters
- **High Seas Freedoms** outside 12 nm territorial sea, subject to rights and jurisdiction of coastal States over natural resources and economic activities in their 200 nm EEZ

# Grand Bargain on Resources

- **Exclusive Economic Zone** – Coastal States have sovereign right to explore and exploit natural resources out to 200 nm
- **Continental Shelf** – Coastal States have right to natural resources of seabed and subsoil in extended continental shelf beyond 200 nm
- **The Area** – Mineral Resources of deep seabed are common “heritage of mankind” governed by International Seabed Authority

# LEGAL REGIMES OF THE OCEANS AND AIRSPACE



# Part 3

# High Seas

# Freedom of the High Seas

- **General principle** is that ships and aircraft of all States, including warships and warplanes, have freedom to use the high seas, including the freedoms of navigation and overflight
- The **freedom of the high seas** is generally understood to include the freedom to conduct military exercises, including the live firing of weapons
- It is generally agreed that the provision that high seas should be reserved for **peaceful purposes** means that it cannot be used to commit acts of aggression against other States

# Freedom of the High Seas

- Freedom of the high seas comprises, *inter alia*, . . . :
  - (a) freedom of **navigation**;
  - (b) freedom of **overflight**;
  - (c) freedom to lay submarine cables and pipelines, subject to Part VI (Continental Shelf);
  - (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
  - (e) freedom of fishing, subject to the conditions laid down in section 2;
  - (f) freedom of scientific research, subject to Parts VI and XIII.

# Exclusive Jurisdiction of the Flag State

- Ships on the high seas are subject to the **exclusive jurisdiction** of the flag State
- The general principle is that navy or coast guard vessels cannot board a foreign ship on the high seas without the express consent of the flag State
- The one clear exception is “piracy” – ships of all States

# US Commander's Handbook - Activities of Warships and Warplanes

- Warships and Warships enjoy complete freedom of movement on and over the high seas, including:
  - Task force maneuvering
  - Flight operations
  - Military exercises
  - Surveillance and intelligence gathering
  - Ordnance testing and firing
- But such activities must be conducted with **due regard** for the rights of other States and the safe conduct and operation of other ships and aircraft



# US Commander's Handbook - Warning Areas

- States may declare a **temporary warning area** to advise other States of the conduct of military activities that are hazardous to navigation and/or overflight
- Examples include missile testing, gunnery exercises, and space vehicle recovery operations
- Notice of such areas must be promulgated in advance through special warning to mariners, etc.
- Warships and aircraft of other States are not required to remain outside a declared warning area, but are obliged not to interfere with the activities

# Immunity of Warships on the High Seas

## Article 95 Immunity of Warships on the High Seas

- Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

## Article 96 Immunity of Ships Used only on Government Non-Commercial Service

- Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

# Part 4

# Baselines and Maritime Zones

# “Land Dominates the Sea”

- General principle with respect to maritime zones – “**the land dominates the sea**”
- Claims to maritime zones must be from **land territory**
- **Land territory** includes the mainland territory & **islands**
- All Maritime Zones are measured from the “**baselines**” from which the territorial sea is measured
  - **Normal Baseline**: low water-line along the coast
  - **Closing Lines** can be used in certain circumstances
  - **Straight Baselines** can be used in certain circumstances

# Maritime Zones under UNCLOS

## Areas under Sovereignty

- Internal Waters
- Territorial Sea
- Archipelagic Waters

Sovereignty

## Areas outside of Sovereignty but within national jurisdiction

- Contiguous Zone
- Exclusive Economic Zone
- Continental Shelf

Sovereign  
Rights &  
Jurisdiction

## Areas Beyond National Jurisdiction

- High Seas
- Deep Seabed (The Area)

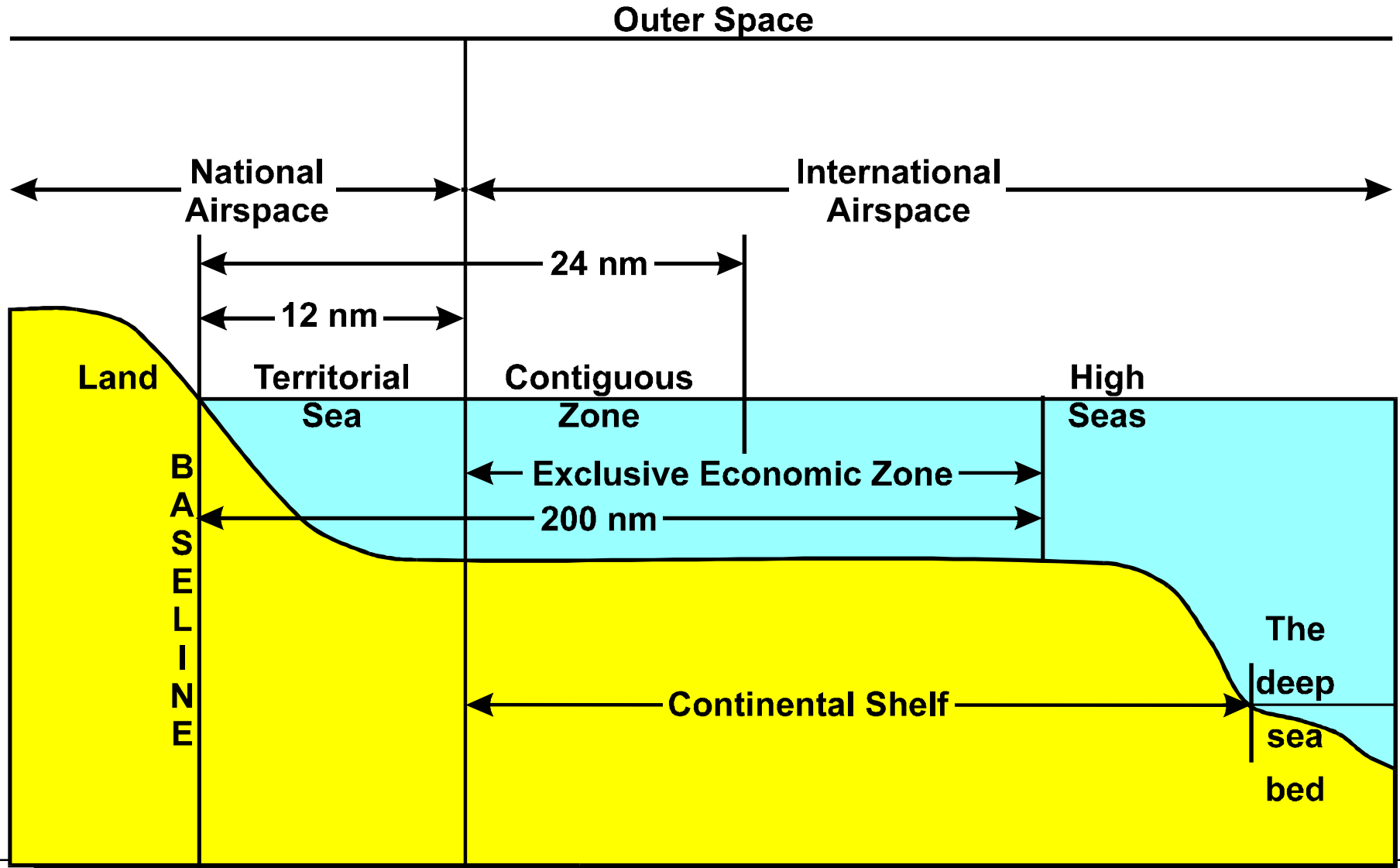
Freedom of  
the Seas

Common  
Heritage of  
Mankind

# Purpose of Baselines

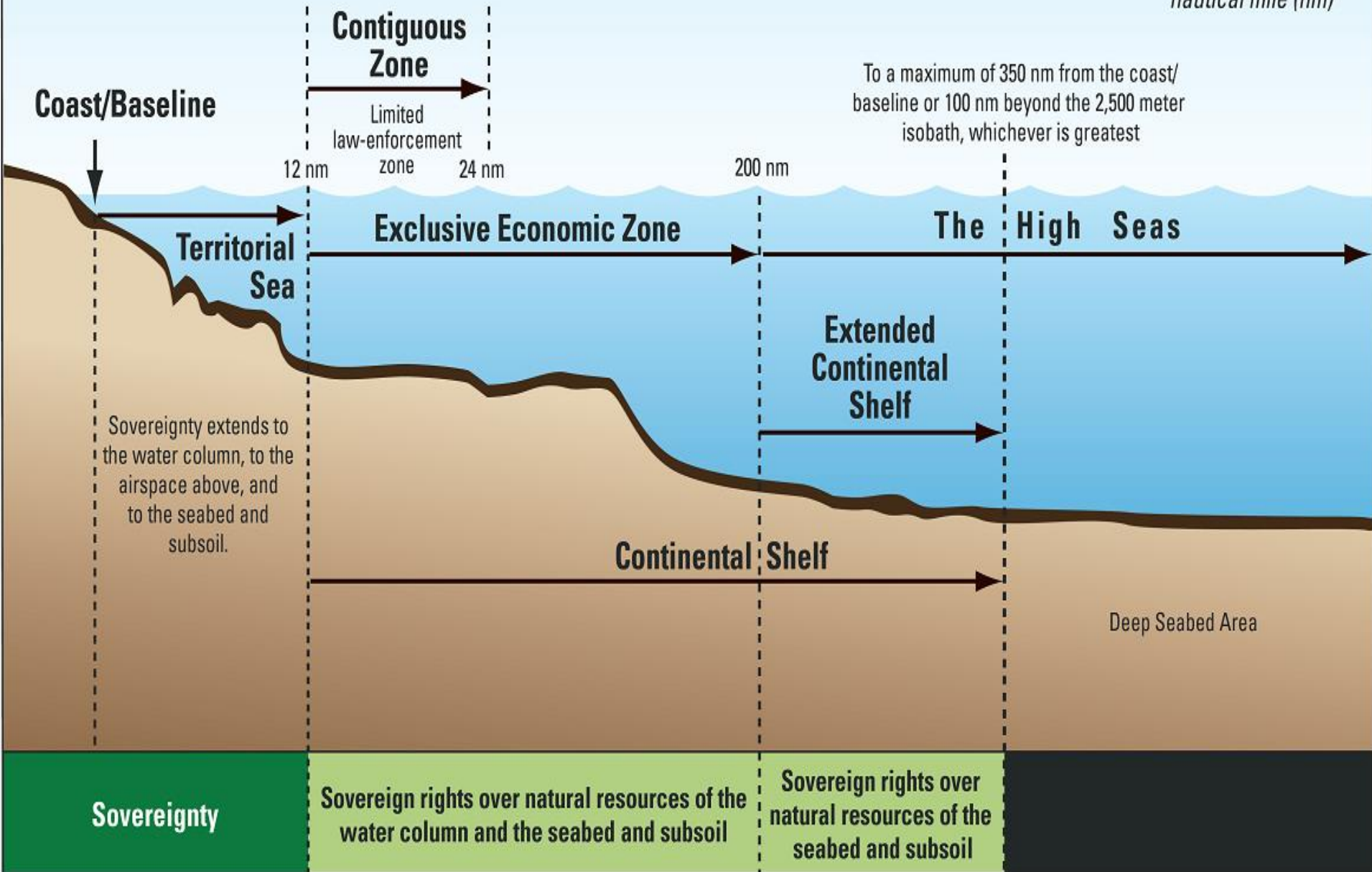
- Baselines separate **internal waters** (sovereignty of the coastal State) from the **territorial sea** (where the sovereignty is subject to the rights of other States)
- Waters landward of the baseline are "internal waters"
- All maritime zones are measured from the same baselines
  - **Territorial Sea** (12 nm from baselines)
  - **Contiguous Zone** (24 nm from baselines)
  - **Exclusive Economic Zone** (200 nm from baselines)
  - **Continental Shelf** (one of criteria for determining outer limit of extended continental shelf)

# LEGAL REGIMES OF THE OCEANS AND AIRSPACE



# Maritime Zones

*nautical mile (nm)*





# Normal Baseline

## Article 5. Normal Baseline

- Except where otherwise provided in this Convention,  
the normal baseline for measuring the breadth of the territorial sea is the **low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.**

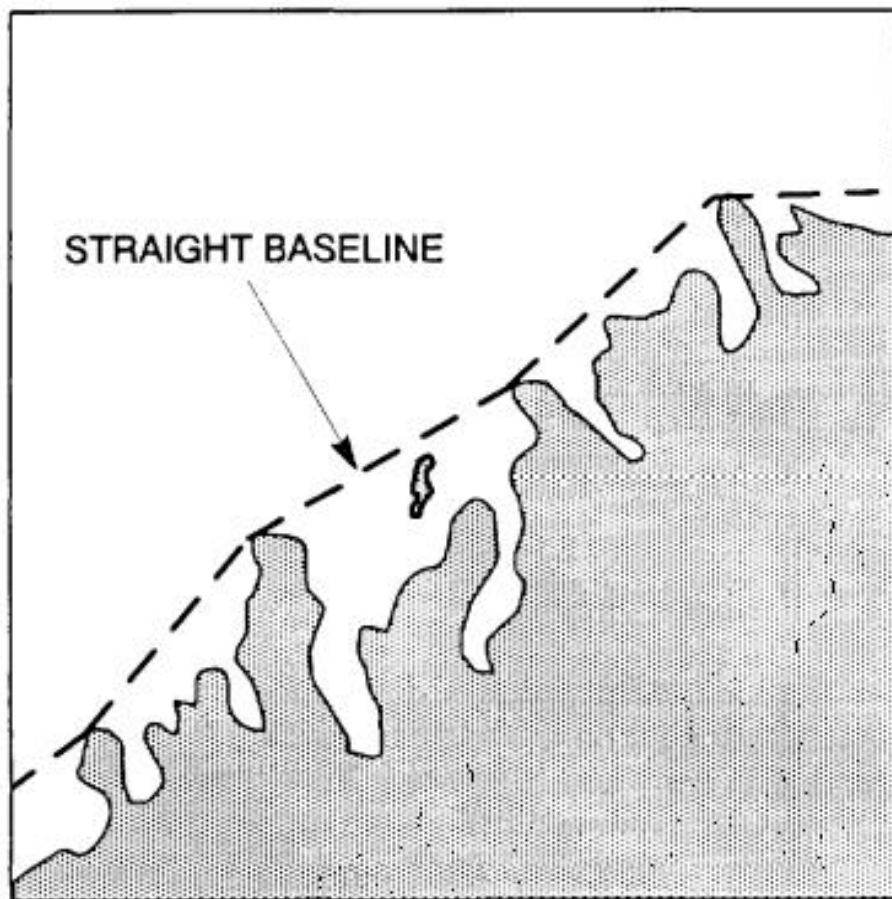
# Article 7. Straight Baselines

- **Straight baselines can be used where:**
  1. **the coastline is deeply indented and cut into, or**
  2. **if there is fringe of islands along the coast in its immediate vicinity**
  3. **Where because of the presence of a delta and other natural conditions the coastline is highly unstable (Art. 7.2)**

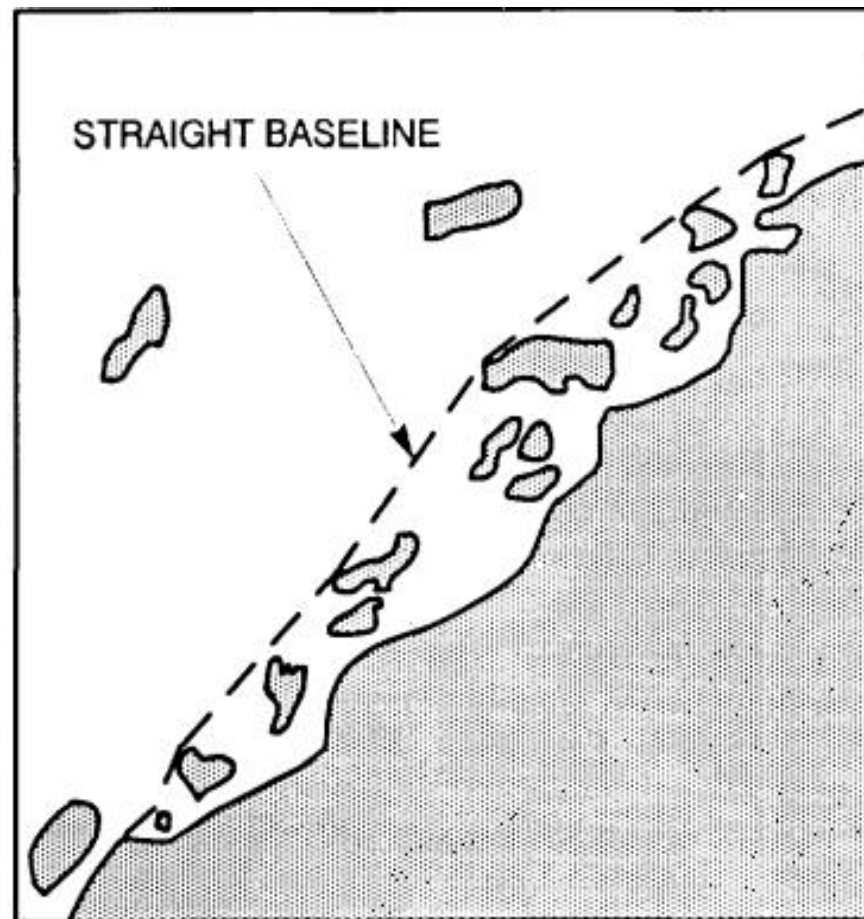
# Article 7 UNCLOS – Restraints

- The drawing of **straight baselines** must not depart to any appreciable extent from the general direction of the coast,
- The sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

## Illustrations of Straight Baselines



**A. DEEP INDENTED COASTLINE**



**B. FRINGING ISLAND**

## Part 5

# Ports and Internal Waters

# Entry into Ports and Internal Waters

- Coastal State's permission is required for entry of Warships into Ports or Internal Waters
- Unless bilateral or multilateral arrangements provide for entry into particular ports or internal waters, **specific and advance permission** is required for entry

# Warships in Foreign Ports

- **Warships in Foreign Ports**
  - Police and port authorities may board a foreign warship only with permission of the commanding officer
  - A warship cannot be required to consent to an on-board search or inspection
  - Warships are required to comply with coastal State regulations on traffic control, sewage, garbage, health and quarantine restrictions,  
but **failure of compliance** is subject only to **diplomatic complaint by coastal State or an order by the coastal State to leave its port and territorial sea**

# Part 6

# Territorial Sea



# INNOCENT PASSAGE IN TERRITORIAL SEA

- Warships have a right of innocent passage for the purpose of continuous and expeditious traversing of the territorial sea or for proceeding to internal waters
- Includes stopping and anchoring only if:
  1. Incidental to normal navigation or
  2. Rendered necessary by force majeure or distress or
  3. For purpose of **rendering assistance to persons or vessels in distress**
- There is no right of innocent passage for aircraft
- Submarines and other underwater vehicles are required to navigate on the and fly their flag

# ACTIVITIES THAT MAKE PASSAGE “NOT INNOCENT”

1. any threat or use of force . . . in violation of the principles of international law embodied in UN;
2. any exercise or practice with weapons of any kind;
3. any act aimed at collecting information to the prejudice of the defense or security of the coastal State;
4. any act of propaganda aimed at affecting the defense or security of the coastal State;
5. the launching, landing or taking on board of any aircraft;
6. the launching, landing or taking on board of any military device;

# ACTIVITIES THAT MAKE PASSAGE “NOT INNOCENT”

7. 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;
8. any act of willful and serious pollution contrary to this Convention;
9. any fishing activities;
10. the carrying out of **research or survey activities**;
11. any act aimed at **interfering with any systems of communication** or any other facilities or installations of the coastal State;
12. any other activity not having a direct bearing on passage.

# NOTICE OR AUTHORIZATION FOR EXERCISE OF INNOCENT PASSAGE

- Some States have adopted national laws requiring foreign warships to either obtain **prior authorization** or provide **prior notification** before exercising innocent passage through the territorial sea
- The US and some Western European countries have protested such requirements as inconsistent with UNCLOS
- 1989 US-USSR Agreement – neither notice nor authorization if required for innocent passage

# INNOCENT PASSAGE OF SUBMARINES

## ***Article 20. Submarines & Other Underwater Vehicles***

- **In the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.**

# NUCLEAR POWER SHIPS & SHIPS CARRYING DANGEROUS OR NOXIOUS SUBSTANCES

## *Article 23.*

- Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.
- **Beckman Note:**
  - Must carry Documents required by IMO or the IAEA
  - Coastal State cannot require authorization or notice

# ARTICLE 25. RIGHTS OF PROTECTION OF THE COASTAL STATE

- **Prevention of Passage that is not innocent**
  - The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent
- **Suspension of Innocent Passage**
  - The coastal State may, without discrimination in form or 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.

# NON-COMPLIANCE BY WARSHIP WITH LAWS AND REGULATIONS OF COASTAL STATE

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



# DEFINITION OF A WARSHIP

- **Definition of Warship:**  
a ship belonging to the armed force 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 whose name appears in the  
appropriate service list or its equivalent, and  
manned by a crew which is under regular armed forces  
discipline

## Part 7

# Straits used for International Navigation

# STRAIT USED FOR INTERNATIONAL NAVIGATION

- **Transit Passage regime applies to straits which are used for international navigation between on part of the high seas and EEZ and another part of the high seas and EEZ**
- **Example: The regime applies to passage through the Straits of Malacca and Singapore because it is used for international navigation between the high seas and EEZ in the Indian Ocean and the high seas and EEZ in the South China Sea**

# Transit Passage vs Innocent Passage

1. Apply to aircraft as well as ships
2. Ships can transit in their “normal mode”
  - Submarines can remain submerged
  - Escort vessels can transit in formation
3. Can never be suspended
4. Power of coastal States to pass laws and regulations on pollution is limited to giving effect to in applicable international regulations (MARPOL 73/78)
5. Power of coastal States to pass laws and regulations on safety of navigation is limited to proposing sea lanes and traffic separation schemes for adoption by the IMO

# Duties of Ships in Transit Passage

- 1. Must proceed without delay**
- 2. Must refrain from threat or use of force**
- 3. Passage solely for purpose of continuous and expeditious transit**
- 4. Shall refrain from any activities other than those incident to their normal modes of continuous and expeditious transit**
- 5. Must comply with generally accepted international regulations, procedures and practices for safety at sea and ship-source pollution**
- 6. Cannot engage in research or survey activities**

# Duties of Ships in Transit Passage

- **Obligation of ships exercising transit passage to comply with IMO Conventions applies :**
  - **whether or not the flag State is party to UNCLOS**
  - **whether or not the littoral States have ratified the conventions or adopted laws and regulations**
- **The obligation to ensure that ships comply with IMO conventions under Article 39 rests with flag States, not the littoral States**
- **Littoral States have obligation under Art 44 not to hamper transit passage**

# Enforcement Powers of littoral States

- **Article 44 provides that shall not hamper transit passage**
- **Article 38(3) provides that any activity which is not an exercise of the right of transit passage remains subject to the other applicable provisions of UNCLOS**
- **For normal safety violations during passage the States Bordering the Strait can only report the violation to the Flag State**

# IMO Approval for Regulations on Safety and Pollution

- **IMO conventions on safety and ship-source pollution, including new amendments, automatically apply once they are “generally accepted”**
- **Littoral States can make proposals to the IMO for laws and regulations on safety of navigation and pollution from ships exercising transit passage**
- **If littoral States believe that stricter regulations are necessary, they must ask the IMO to create exceptions under SOLAS or COLREGS**



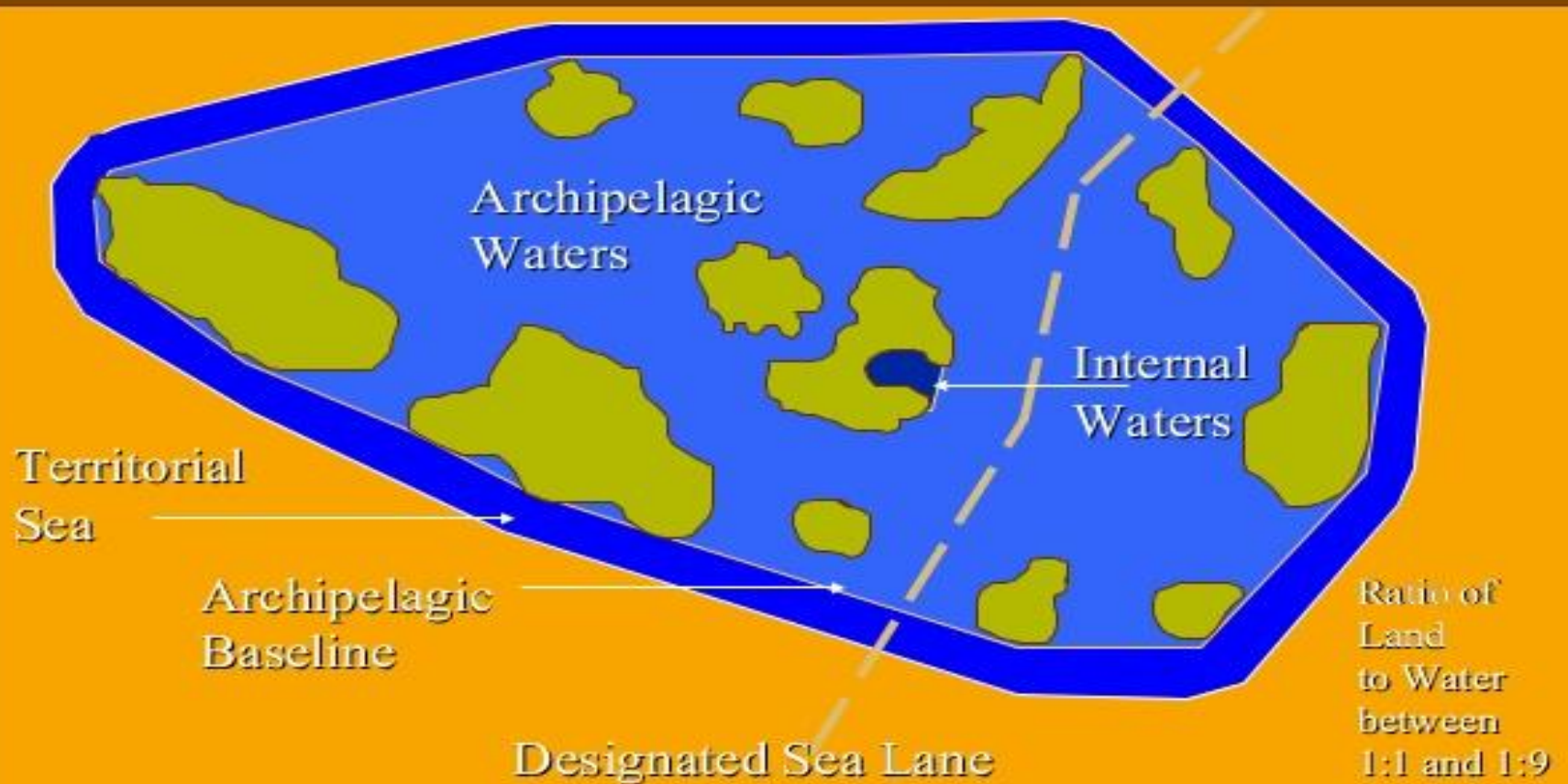
## Part 8

# Archipelagic States

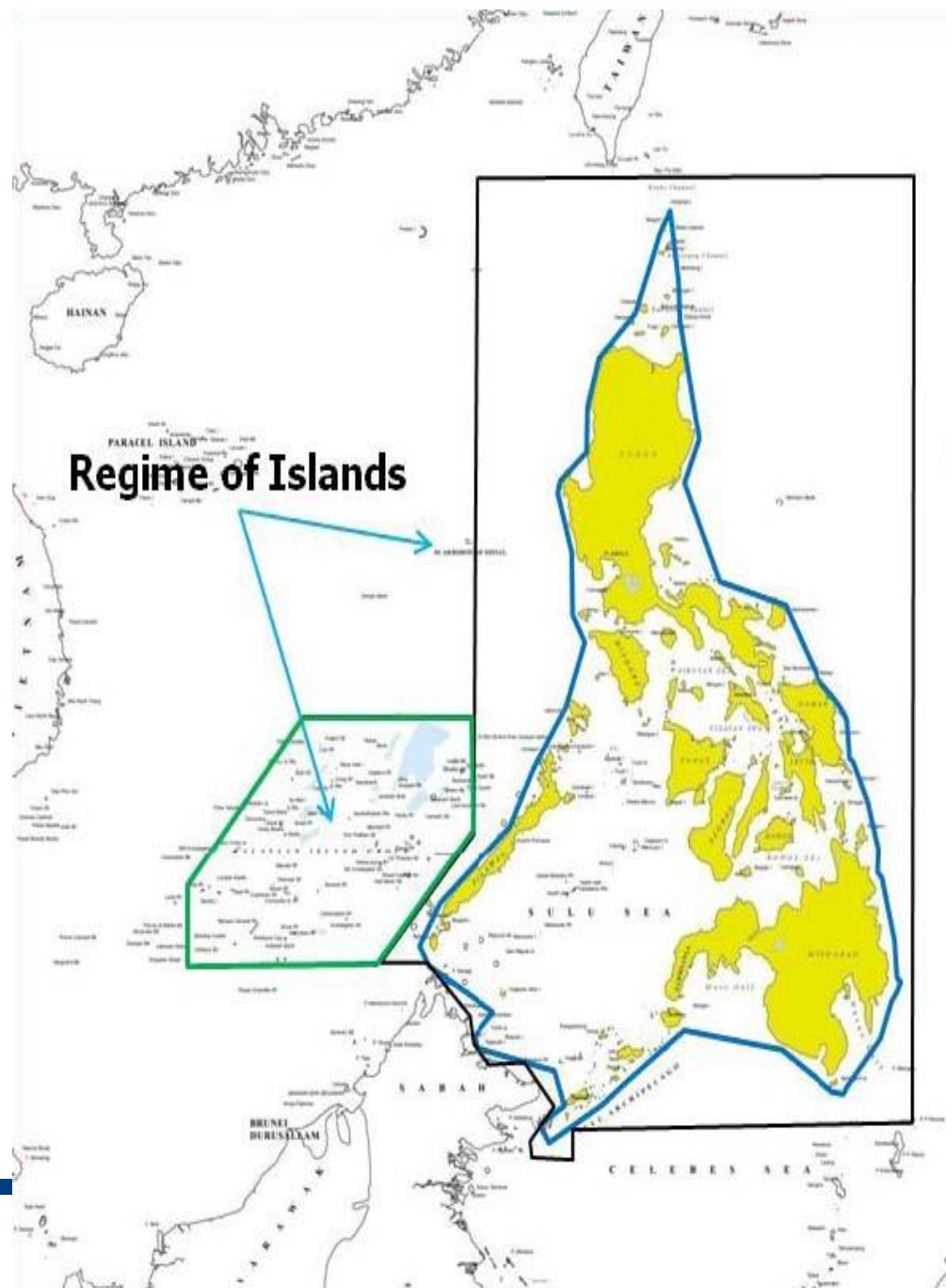
# ARCHIPELAGIC STATES

- **1982 Convention recognised concept of “Archipelagic State”**
- **Art 46. “Archipelagic State” means a State constituted wholly by one or more archipelagos and may include other islands**
- **Art 47. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago**
- **Waters inside the baseline are archipelagic waters**
- **Maritime zones are measured from the Archipelagic baselines**

## Archipelagic State (Example)









# SOVEREIGNTY OF ARCHIPELAGIC STATE

- Art 49(1) The sovereignty of an archipelagic State extends to its archipelagic waters & its Territorial Sea
- Art 49(2) This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.
- Art 49(3) This sovereignty is exercised subject to Part IV of the Convention

# PASSAGE OF SHIPS AND AIRCRAFT THROUGH ARCHIPELAGIC STATES

- Ships of all States have the **right of innocent passage** through Archipelagic Waters
- Rules on Innocent Passage to their rights of passage through the territorial sea
- Ships and aircraft also have **the right of archipelagic sea lanes passage** through and over the archipelagic waters and the adjacent territorial sea
- Rules on **archipelagic sea lanes passage** the same as rules on **transit passage** through straits used for international navigation

# Transit Passage & ASLP vs Innocent Passage

1. Apply to aircraft as well as ships (Arts 38 & 53)
2. Submarines can transit in their “normal mode” (Arts 39(1)(c) and 53(3) rather than surface & fly flag
3. Can never be suspended (Arts 44 and 54)
4. Power of coastal States to pass laws and regulations on pollution is limited to giving effect to in applicable international regulations (MARPOL 73/78)
5. Power of coastal States to pass laws and regulations on safety of navigation is limited to proposing sea lanes and traffic separation schemes for adoption by the IMO



# Duties when exercising Transit Passage & ASLP

1. **Must proceed without delay**
2. **Must refrain from threat or use of force**
3. **Passage solely for purpose of continuous and expeditious transit**
4. **Shall refrain from any activities other than those incident to their normal modes of continuous and expeditious transit**
5. **Must comply with generally accepted international regulations, procedures and practices for safety at sea and ship-source pollution**
6. **Cannot engage in research or survey activities**

# Art 39(2) Duties of Ships exercising Transit Passage and ASLP

- Obligation of ships exercising transit passage to comply with IMO Conventions applies :
  - whether or not the flag State is party to UNCLOS
  - whether or not the littoral States have ratified the conventions or adopted laws and regulations
- The obligation to ensure that ships comply with IMO conventions under Article 39 rests with flag States, not the littoral States
- Littoral States have obligation under Art 44 not to hamper transit passage

# Enforcement Powers of littoral States

- **Article 44 provides that shall not hamper transit passage**
- **Article 38(3) provides that any activity which is not an exercise of the right of transit passage remains subject to the other applicable provisions of UNCLOS**
- **For normal safety violations during passage the States Bordering the Strait can only report the violation to the Flag State**

# Regulations applicable to ships exercising Transit Passage or ASLP

- **Power to adopt laws and regulations on pollution from ships exercising transit passage has been delegated to the IMO when requested by States bordering States or archipelagic States**
- **IMO conventions on safety and ship-source pollution, including new amendments, automatically apply once they are “generally accepted”**
- **If littoral States believe that stricter regulations are necessary, they must ask the IMO to create exceptions under SOLAS or COLREGS**

# Art 41. Establishment of sea lanes

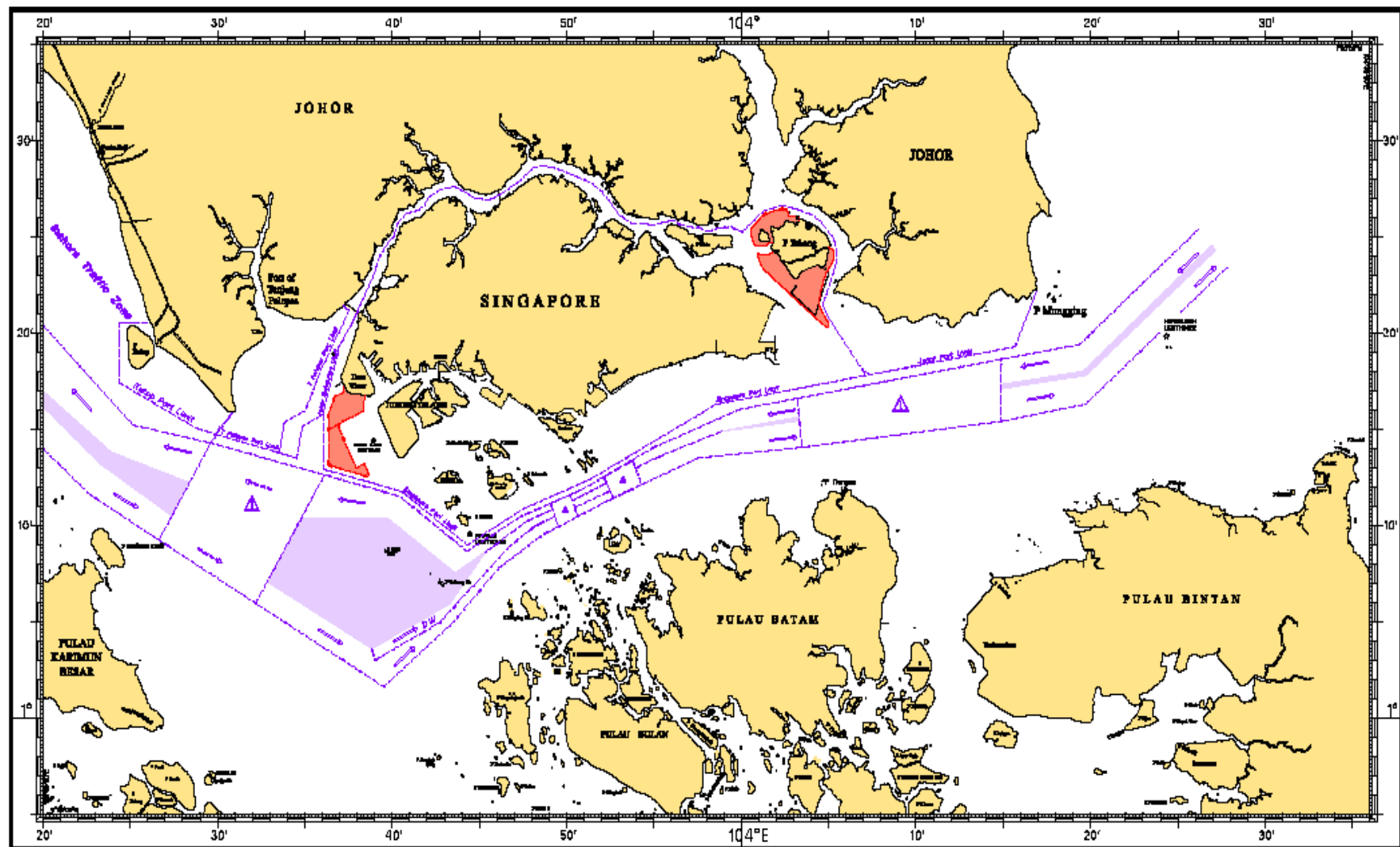
- **Littoral States may designate sea lanes and prescribe traffic separation schemes (TSS) for navigation in straits when it is necessary to promote safe passage of ships (Art 41)**
- **Sea lanes and Traffic Separation Scheme must conform to generally accepted international regulations**
- **Proposals by the littoral States must be referred to and adopted by the IMO**

# **Straits of Malacca & Singapore – IMO-Approved Measures**

- **Administered as a single strait since the 1970s**
- **Measures adopted by the IMO upon the request of the 3 littoral States:**
  - 1. Traffic Separation Scheme and associated routeing measures adopted in 1977**
  - 2. Traffic Separation Scheme extended in 1998 from Port Klang off Kuala Lumpur southward through the Singapore Strait to Pedra Branca**
  - 3. Mandatory Ship Reporting System adopted in 1998 (STRAITREP)**



# SINGAPORE STRAIT - PORT LIMITS AND TRAFFIC SEPARATION SCHEME



Prepared by WaseGIS/SHRI Hydrographic Dept. MPA 6 Feb 06 ON 616/06 Scale 1:500 000

POSITIONS IN WGS 84

HY Code AD0401308

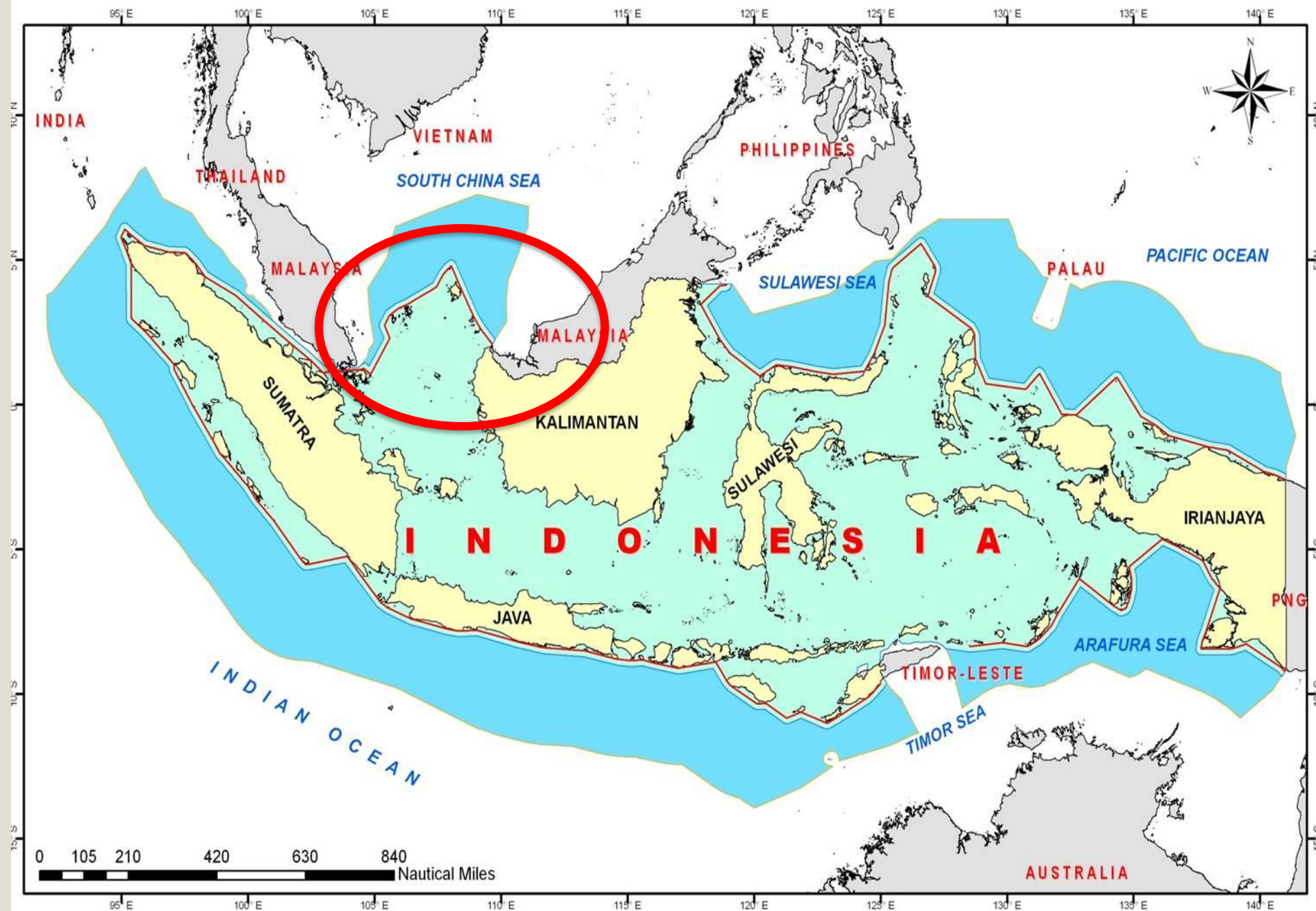


# “SINGAPORE CLAUSE” - ARTICLE 51

- An Archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of **the immediately adjacent neighbouring States** in certain areas falling within archipelagic waters.
- The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them.

# **“MALAYSIA CLAUSE” - ARTICLE 47(6)**

- **If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.**



# Article 53. ASLP – Designation of Sea Lanes

- 1. An archipelagic State **may designate sea lanes and air routes** thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.
- 2. All ships and aircraft enjoy the right of archipelagic sea lanes passage **in such sea lanes and air routes.**

# ASLP - Sea lanes and air routes

## Article 53. Right of ASLP

- **4. Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.**

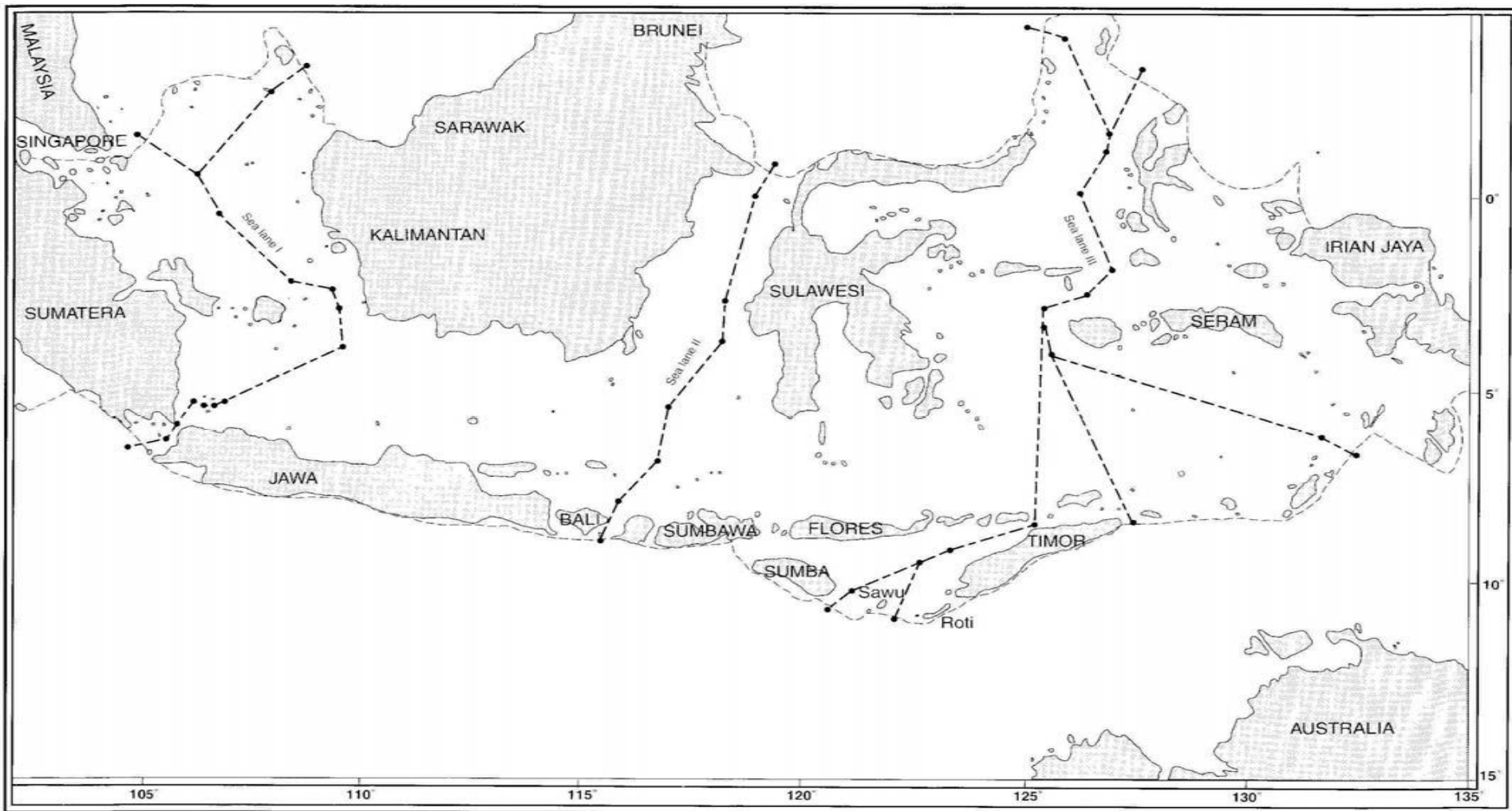
- **9. In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption.  
The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.**

# ASLP - Sea lanes and air routes

- **11. Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.**
- **12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.**



# Indonesia's "Partial Designation"



INDONESIAN ARCHIPELAGIC SEA LANES I, II AND III

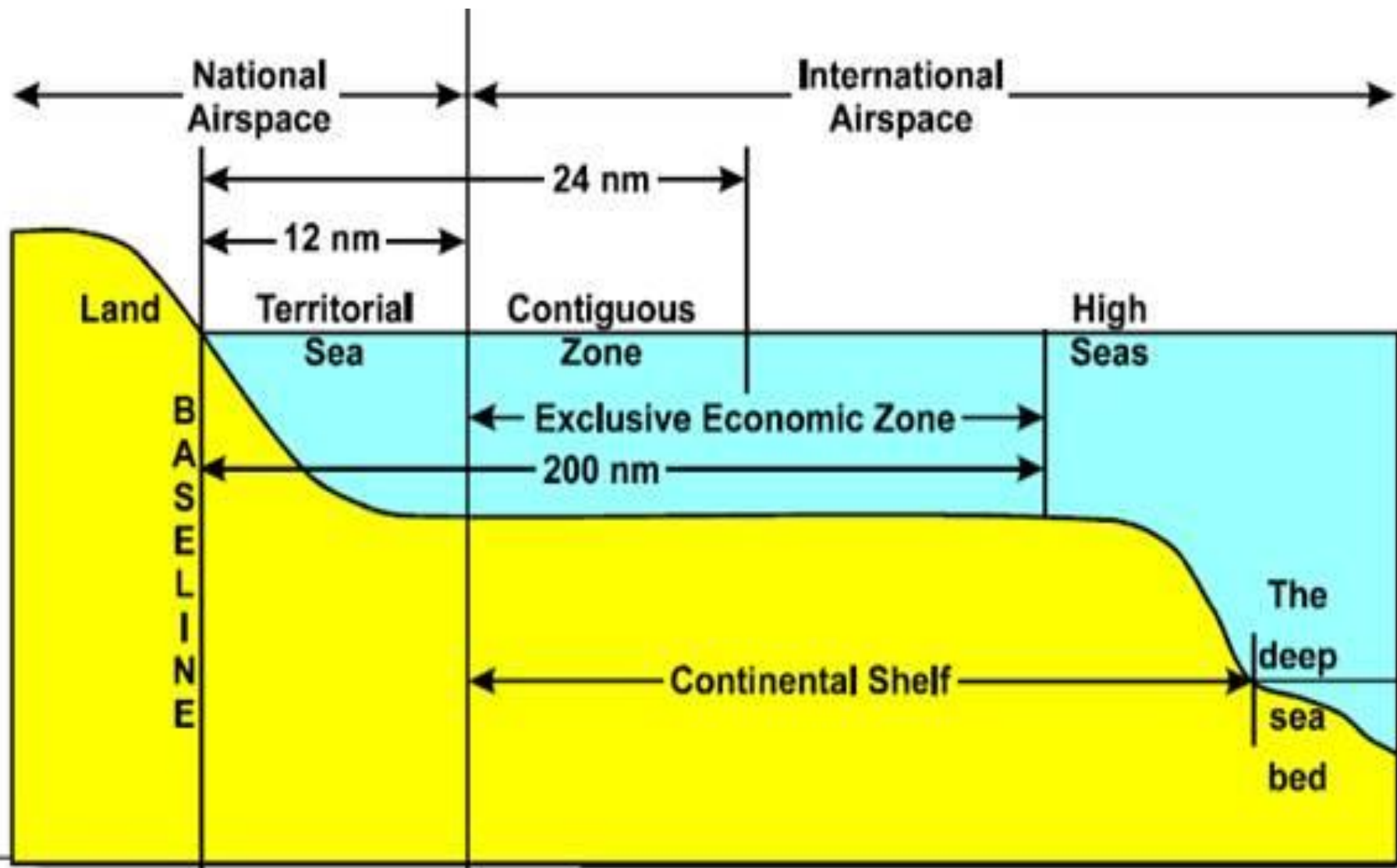


## Part 9

# Exclusive Economic Zone

# Nature of EEZ Regime

- EEZ is a maritime zone beyond and adjacent to the territorial sea, extending out to 200 nautical miles from the baselines from which the territorial sea is measured
- EEZ is **not** part of the high seas
- EEZ is **not** subject to the sovereignty of coastal State
- EEZ is a specific legal regime in which the **rights and jurisdiction of coastal States and the rights and freedoms of other States** are set out in UNCLOS
- EEZ is subject to only selected sovereign rights and jurisdiction of the coastal State which co-exist with some remaining freedoms of the high seas.



# Overview of EEZ Regime

**Article 55 – Specific Legal Regime**

**Article 56 – Rights, Jurisdiction & Duties of Coastal States**

**Article 58 - Rights and Duties of Other States**

**Article 59 – Basis for resolution of conflicts regarding the  
Attribution of Rights and Jurisdiction in the EEZ**

# Art. 56(1)– Rights of Coastal State

In the EEZ, 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 seabed and of the seabed 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;
- (c) **other rights and duties** provided for in this Convention.

# Art. 56(2) – Jurisdiction of Coastal State

In the EEZ, the coastal State has:

(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; [Part VI]
- (ii) marine scientific research; [Part XII]
- (iii) the protection and preservation of the marine environment; [Part XII]

# Art 56(3) – Due Regard Obligation

2. In exercising its rights and performing its duties under this Convention in the Exclusive Economic Zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

# Article 58 – Rights and Duties of Other States in the EEZ

1. In the EEZ, all States, . . . enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.



# **Art. 58 – High Seas rules on Jurisdiction over ships apply in EEZ**

- **Articles 88 to 115 and other pertinent rules of international law apply to the EEZ in so far as they are not incompatible with this Part.**
  - **Note: Articles 88-115 include the rules on jurisdiction over ships on the high seas, including:**
    - **Exclusive jurisdiction of the flag state**
    - **Immunity of warships**
    - **Piracy regime**
    - **Right of Visit**
    - **Hot Pursuit**

# Reciprocal “Due Regard” Obligations



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## Article 56(2) Rights, Jurisdiction & Duties of Coastal State in EEZ

In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the **coastal State** shall have **due regard** to the **rights and duties of other States** and shall act in a manner compatible with the provisions of this Convention.

# Reciprocal “Due Regard” Obligations



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## Article 56(2) Rights, Jurisdiction & Duties of Coastal State in EEZ

In exercising its rights and performing its duties under this Convention in the EEZ, the **coastal State** shall have **due regard** to the rights and duties of **other States** and shall act in a manner compatible with the provisions of this Convention.

## Article 58(2) Rights and Duties of Other States in EEZ

In exercising their rights and performing their duties under this Convention in the EEZ, **States** shall have **due regard** to the rights and duties of the **coastal State** and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

# Summary of Rights & Jurisdiction in the EEZ

- Coastal States do not have sovereignty in the EEZ – they have sovereign rights to explore and exploit the natural resources, and jurisdiction over economic activities, marine scientific research and protection of the marine environment [Art 56] as provided in the Convention
- Other States have high seas freedoms and “other lawful uses of the sea related to those freedoms” [Art 58(1)]
- If coastal State is not given jurisdiction in Part V, the high seas rules on jurisdiction apply [Art 58(2)]
- In exercising their rights and performing their duties, both States must have due regard to the rights and duties of the other

# Part 10

# Naval Operations in the EEZ

# Freedom of the Seas

- General principle is that ships and aircraft of all States, including warships and warplanes, have freedom to use the high seas, including the freedoms of navigation and overflight
- The **freedom of the high seas** is generally understood to include the **freedom on conduct military exercises**, including the live firing of weapons
- It is generally agreed that the UNCLOS provision that high seas should be reserved for **peaceful purposes** means that it cannot be used to commit acts of aggression against other States

# The Commander's Handbook: Activities of Warships and Warplanes

- Warships and Warships enjoy complete freedom of movement on and over the high seas, including:
  - Task force maneuvering
  - Flight operations
  - Military exercises
  - Surveillance and intelligence gathering
  - Ordnance testing and firing
- But such activities must be conducted with **due regard** for the rights of other States and the safe conduct and operation of other ships and aircraft

# Commander's Handbook on Warning Areas

- States may declare a **temporary warning area** to advise other States of the conduct of military activities that are hazardous to navigation and/or overflight
- Examples include missile testing, gunnery exercises, and space vehicle recovery operations
- Notice of such areas must be promulgated in advance through special warning to mariners, etc.
- Warships and aircraft of other States are not required to remain outside a declared warning area, but are obliged not to interfere with the activities



# Unilateral Declarations of Coastal States

- When signing or ratifying UNCLOS, India, Malaysia and several other States made “unilateral declarations” on exercises involving live firing of weapons.
- For example, India’s declaration states:
  - The Government of India understands that the provisions of the Convention do not authorize other States to carry out in the exclusive economic zone and on the continental shelf **military exercises or manoeuvres, in particular those involving the use of weapons or explosives without the consent of the coastal State.**

# US State Dept on “Due Regard”

- Under article 58(1), all States have the right to conduct **military activities** within the EEZ, but may only do so consistently with the obligation to have due regard to the rights and duties of the Coastal State
- **US Position:** It is the duty of the flag State, not the right of the coastal State, to enforce this "due regard" obligation.
- User State must only comply with the laws and regulations adopted by the coastal State in accordance with UNCLOS and other rules of international law

**Thanks for your attention!**

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