

Maritime Zones and Jurisdictions



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Maritime Zones and Jurisdictions

- The significance of maritime zones
- Maritime zones and boundaries
- Historical overview
- Types of maritime zone under the Law of the Sea
 - National Zones
 - National Claims
 - International Zones
 - Emerging issues and challenges
- The generation of maritime limits

The Importance of Maritime Claims

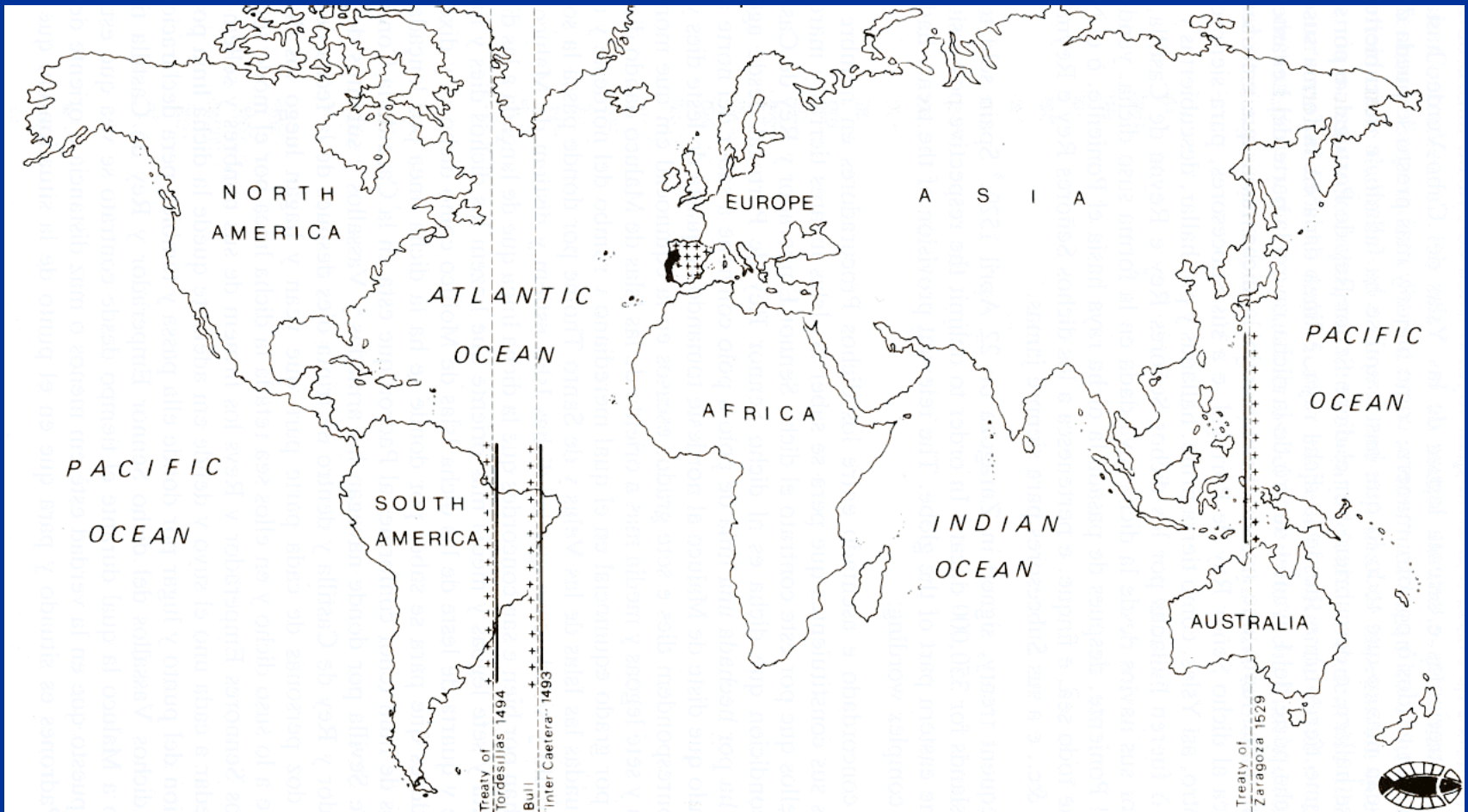
- Security
- Resources
 - Living resources
 - Non-living resources (hydrocarbons, minerals)
- Ocean management
- Rights balanced by responsibilities

Maritime Zones, Limits and Boundaries

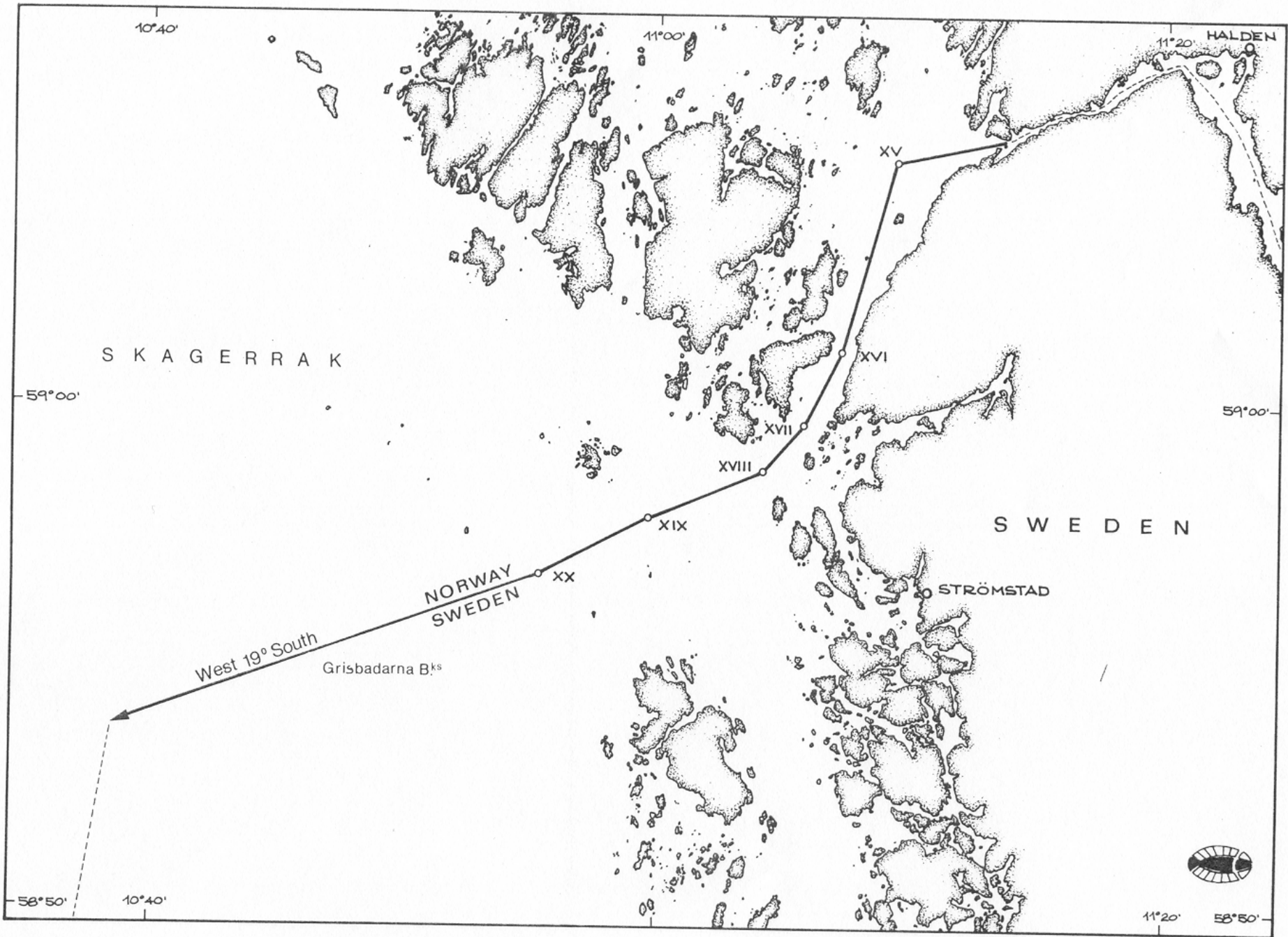
- Boundaries required because of extension of maritime jurisdiction offshore – a relatively young process
- Boundaries should produce an equitable division of maritime space
- Provide clarity and certainty to all maritime states
- Serve to minimise risk of disputes and conflict
- Provide security for coastal states and security for communications, shipping and trade through maritime enforcement
- Contribute to the sustainable management of the world's oceans and economic security for coastal states

Historical Overview

- 1493 *Papal Bull* and 1494 Portugal-Spain *Treaty of Tordesillas*
- State sovereignty versus Freedoms of the seas – *Mare Clausum vs. Mare Librum*
- The ‘*cannon shot rule*’
- 19th century: *lines of allocation*
- 1909: Norway-Sweden (*Grisbadana Banks*)



Source: *Lines in the Sea*



Extended Maritime Claims

- New technologies – desire to gain access to seabed resources
- The *Truman Proclamation*
- 1942: Trinidad & Tobago-Venezuela (Gulf of Paria)
- Creeping coastal state jurisdiction
- Maritime boundary delimitation is a recent phenomenon: 86% of all maritime boundary agreements are post-1970
- Also an incomplete process

Codification

- The Hague Conference of 1930
- First UN Conference – The Geneva Conventions of 1958
- Second UN Conference, 1960 – no consensus
- Third UN Conference
- United Nations Convention on the Law of the Sea, 1982
(entered into force 16 November 1994 for States Parties)
- 157 signatories
- 143 States Parties as of 19 August 2003

Types of Maritime Zones

- National
 - Archipelagic waters
 - Coastal waters
 - Territorial waters
 - Contiguous Zone
 - Continental Shelf
 - Exclusive Economic Zone (EEZ)
- International
 - High Seas
 - Deep Sea Bed
- Within national zones: Concept of **sovereignty** versus “**sovereign rights**”

Maritime Zones Under the Sovereignty of the Coastal State

- Internal waters
- Archipelagic waters
- Coastal waters
- Territorial waters
- Contiguous Zone
- Straits

Maritime Zones Under the Sovereign Rights of the Coastal State

- Exclusive Economic Zone (EEZ)
- Continental Shelf

Concept of Sovereignty

- Absolute prescriptive and enforcement power
- Limited only by coastal States international obligations
 - Customary international law
 - Treaty obligations

Sovereign Rights

- The coastal has a right of jurisdiction that is related to certain purposes:

“Sovereign rights for the purpose of...”

- Beyond the jurisdiction so defined, there is no special basis for coastal State rights

Sovereign Rights (Continued)

- In so far as the specific purposes are concerned, the coastal State is “sovereign”
- The coastal State has the exclusive right of decision in regard to the rules which are to apply within the zone, and the exclusive right to enforce the measures on which it has decided related to those specific purposes

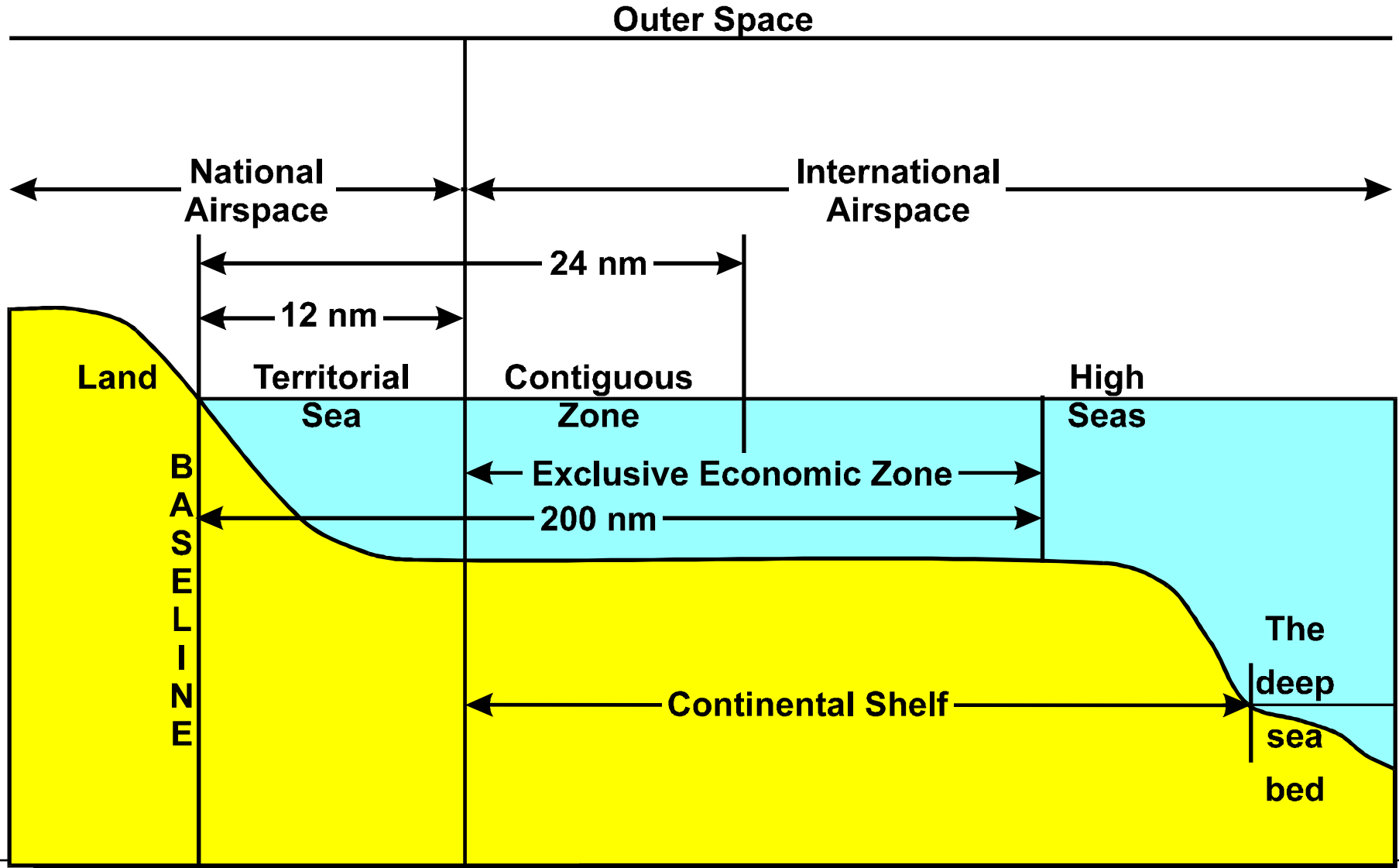
International Maritime Zones

- High Seas
- The Area – the deep seabed

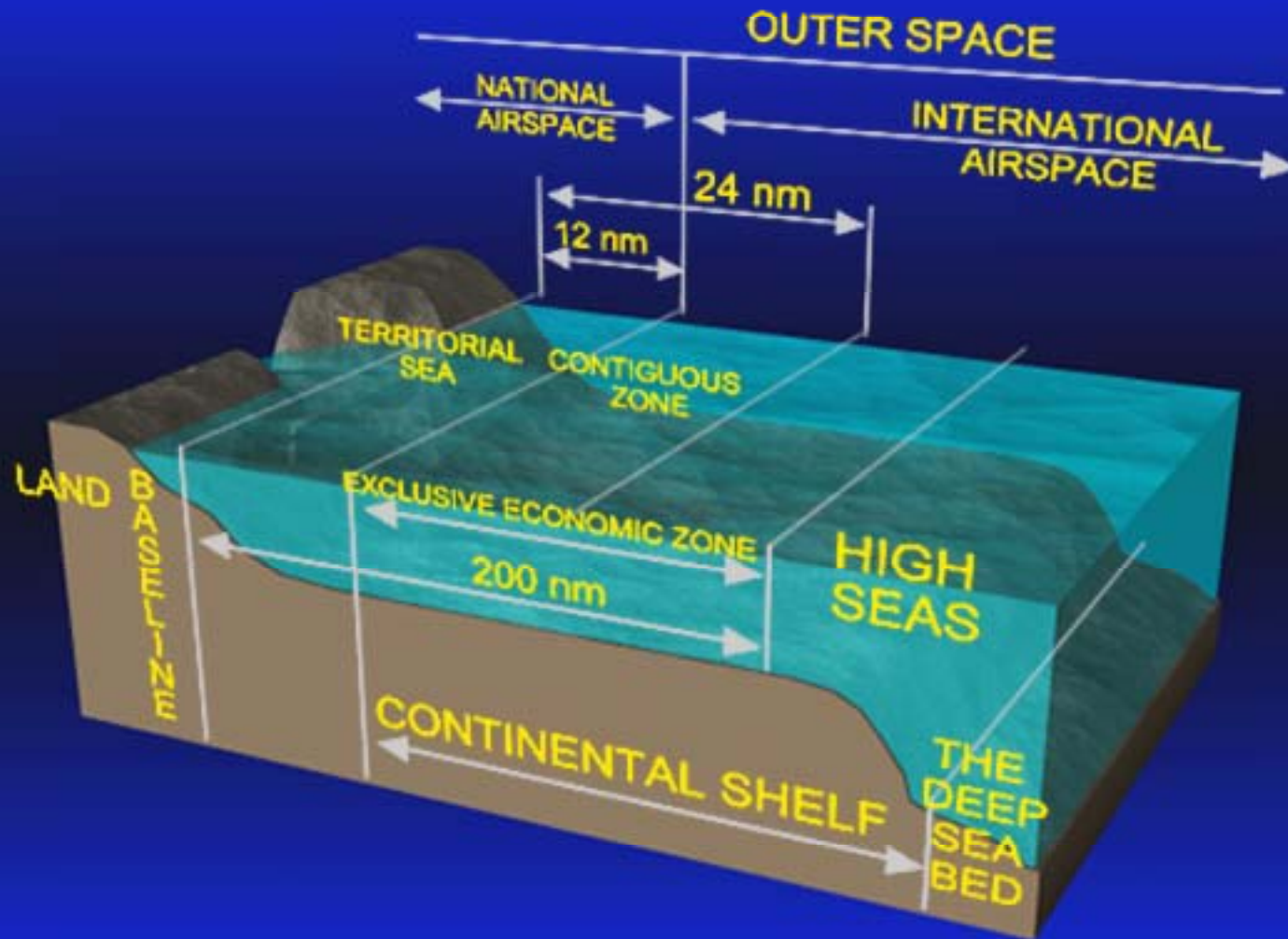
National vs. International Interests

- Coastal States sovereignty, sovereign rights and exclusive jurisdiction
- International rights and interests – notably freedom of navigation
- Differing interpretations of what rights and jurisdiction coastal states may claim in certain zones may lead to dispute between coastal states and the international community

LEGAL REGIMES OF THE OCEANS AND AIRSPACE



LEGAL REGIMES OF OCEANS AND AIRSPACE AREA



Maritime Zones Under the Sovereignty of the Coastal State:

Internal Waters

Internal Waters

- All waters landward of the territorial sea baseline
- Only created when non-normal baselines are used
- Waters enclosed by
 - River Mouths
 - Harbour Works, Ports, Roadsteads
 - Bays
 - Straight baselines

Internal Waters

- Sovereignty
 - Integral part of territory of coastal State
 - No right of overflight
 - No alien fishing/resource extraction
 - No right to conduct marine scientific research
 - ...unless with permission of coastal State
- Innocent passage
 - No right of innocent passage for foreign vessels
 - **Except** where straight baselines enclose internal waters previously not considered such and which were used for international navigation
 - Innocent passage retained under these circumstances
- Internal waters may exist within archipelagic waters in relation to mouths of rivers, bays and ports

Maritime Zones Under the Sovereignty of the Coastal State: Archipelagic Waters



The Archipelagic Concept

- New to the Third Conference on the Law of the Sea
- Archipelagic State
 - must be an island State (no continental states)
 - may consist of more than one archipelago
 - islands “are so closely interrelated that such islands, waters and other natural features form an intrinsic geographic, economic and political entity...”
 - Series of rules/tests related to archipelagic baselines (Article 47)

Archipelagic Waters

- Archipelagic waters (Article 49)
 - Waters enclosed by archipelagic baselines
 - Sovereignty over archipelagic waters, airspace, seabed and subsoil and all resources contained therein
 - Rights of passage
 - Innocent passage (may be temporarily suspended)
 - Archipelagic sealanes passage
 - Designation of sealanes
 - Regime of archipelagic sealanes passage shall not “in other respects” affect the status of archipelagic waters
 - Preservation of existing agreements and other state’s rights including “traditional fishing rights” and pre-existing cables and pipelines

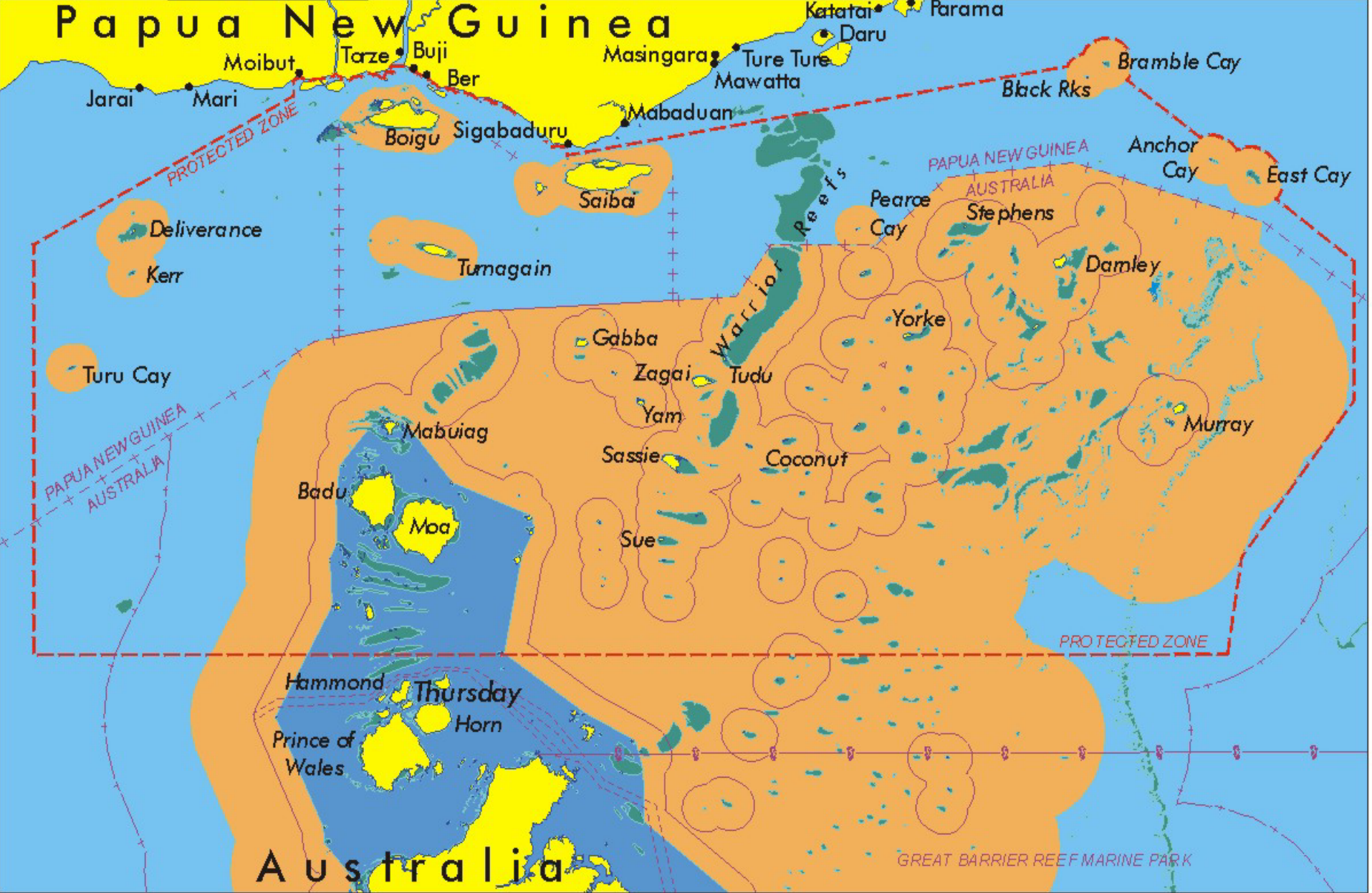
Archipelagic Sealanes

- Considerable responsibilities come with Archipelagic state status. Article 53 provides:
 - Designated archipelagic sealanes must include **“all normal routes used as routes for international navigation or overflight”**
 - Proposals for sealanes referred to “competent international organization” (International Maritime Organization)
 - Sealanes to be defined by series of continuous axis lines
 - Ships/aircraft using sealanes not to deviate more than 25nm from axis lines
 - **Ships/aircraft may navigate in, under, and above sea lanes “in the normal mode”**

**Maritime Zones Under the
Sovereignty of the Coastal State:**

Coastal Waters

Papua New Guinea



- | | | | | | | | |
|--------|---------------------------------------|-------|-----------------------------|-----|----------------------------|--------|----------------------------|
| +-+--+ | Seabed & Fisheries Jurisdiction Lines | +++++ | Fisheries Jurisdiction Line | —+— | Limit of 24 nautical miles | Orange | Australian Territorial Sea |
| —+— | Seabed Jurisdiction Line | —+— | Marine Park limits | —+— | Limit of 3 nautical miles | Blue | Australian Internal Waters |

Maritime Zones Under the Sovereignty of the Coastal State:

The Territorial Sea

Territorial Sea

- Sovereignty – seabed, water column, air space
- Breadth – up to 12 nautical miles
- Innocent Passage

Territorial Sea

Rights

- **Flag State**

Innocent passage

- **Coastal State**

Prescribe laws

Duties

Observe coastal
law

Allow innocent
passage

Notify hazards

Innocent Passage

- Continuous and expeditious transit, through territorial waters or internal waters, en route to or from the high seas
- Article 19(1): “Passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal State”
- Non-innocent passage may be prevented
- Submarines must transit on the surface and show their flag (Article 20)
- No right of overflight
- May be temporarily suspended
- Emerging issues:
 - Hazardous vessels?
 - Warships?
 - Right of innocent passage
 - Prior notification/permission?

Contiguous Zone

- 12 - 24 nm
 - Overlays EEZ
 - Foreign aircraft have overflight rights
 - Foreign vessels have full navigational, fishing and marine scientific research rights (so long as they are not infringing customs, fiscal, immigration and sanitation laws and assuming no EEZ declared for the latter rights)
- Extends territorial sea enforcement

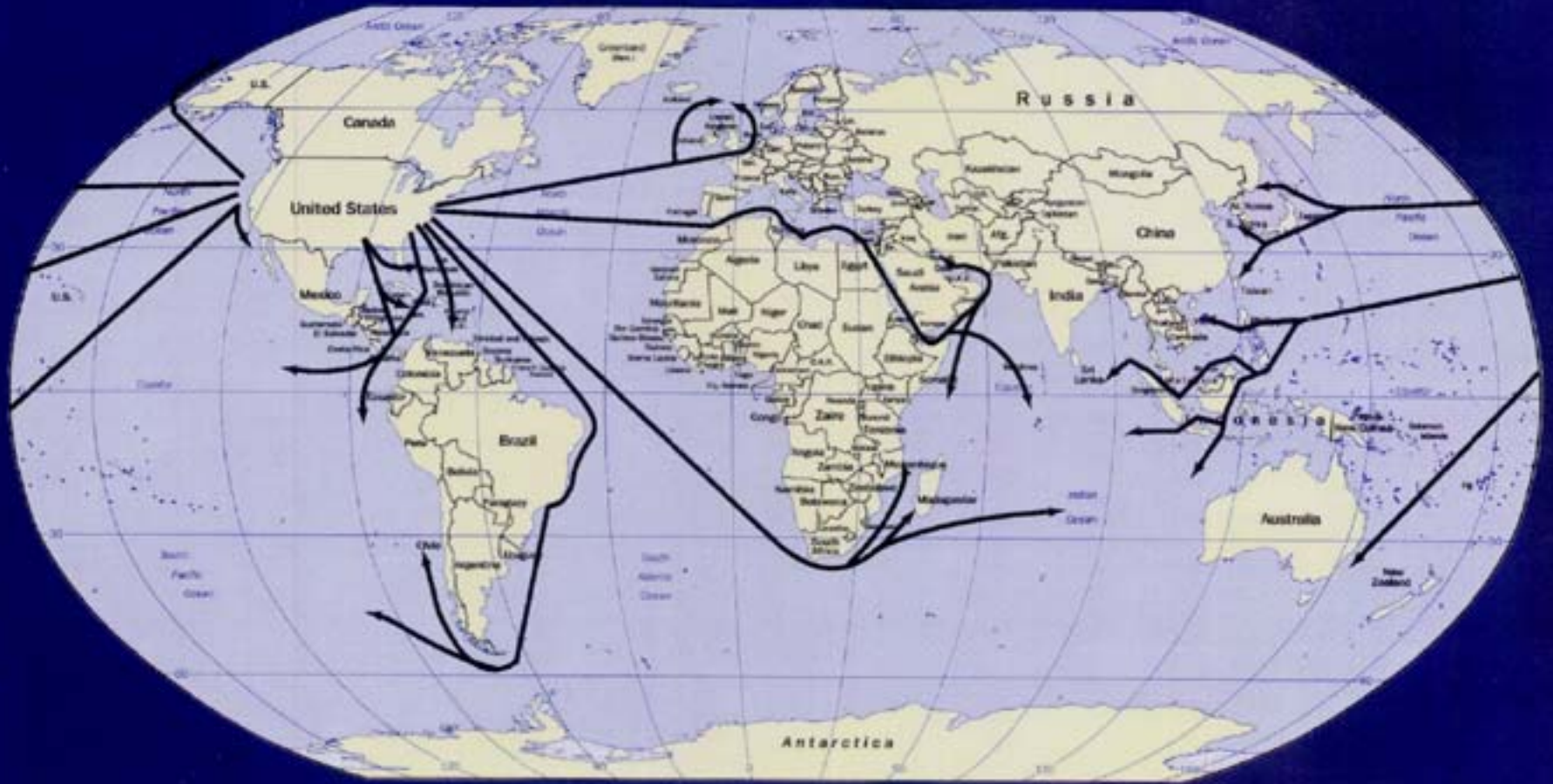
Article 33:

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

Maritime Zones Under the Sovereignty of the Coastal State: International Straits



STRATEGIC STRAITS





WITH TRANSIT PASSAGE RIGHTS



WITHOUT TRANSIT PASSAGE RIGHTS



Innocent vs. Transit Passage

- **Extension of permissible breadth of territorial sea to 12nm – several strategic straits (Hormuz, Bab al Mandeb) entirely within territorial seas of flanking states**
- **Compromise developed during Law of the Sea Conference on this issue**
- **Transit Passage (Articles 37-44)**
- **Differs from innocent passage in three key ways:**
 - **Includes overflight**
 - **Non-suspendable**
 - **No reference to warships, including submarines (can transit submerged)**

Maritime Zones Under the Sovereign Rights of the Coastal State:

The Exclusive Economic Zone

Exclusive Economic Zone Defined

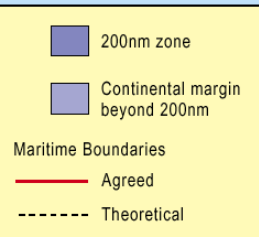
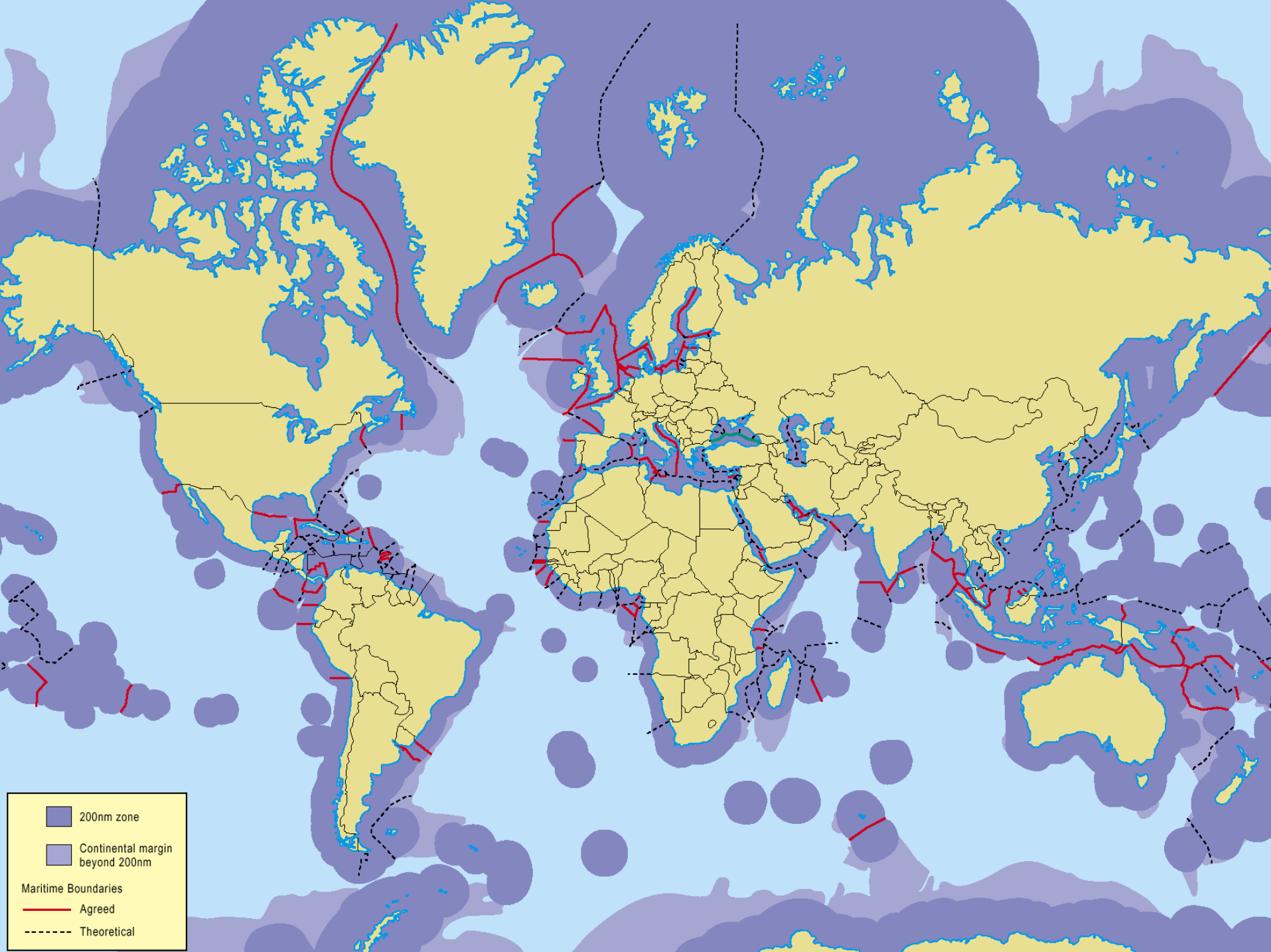
An “area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention” (Article 55)

Exclusive Economic Zone – Breadth

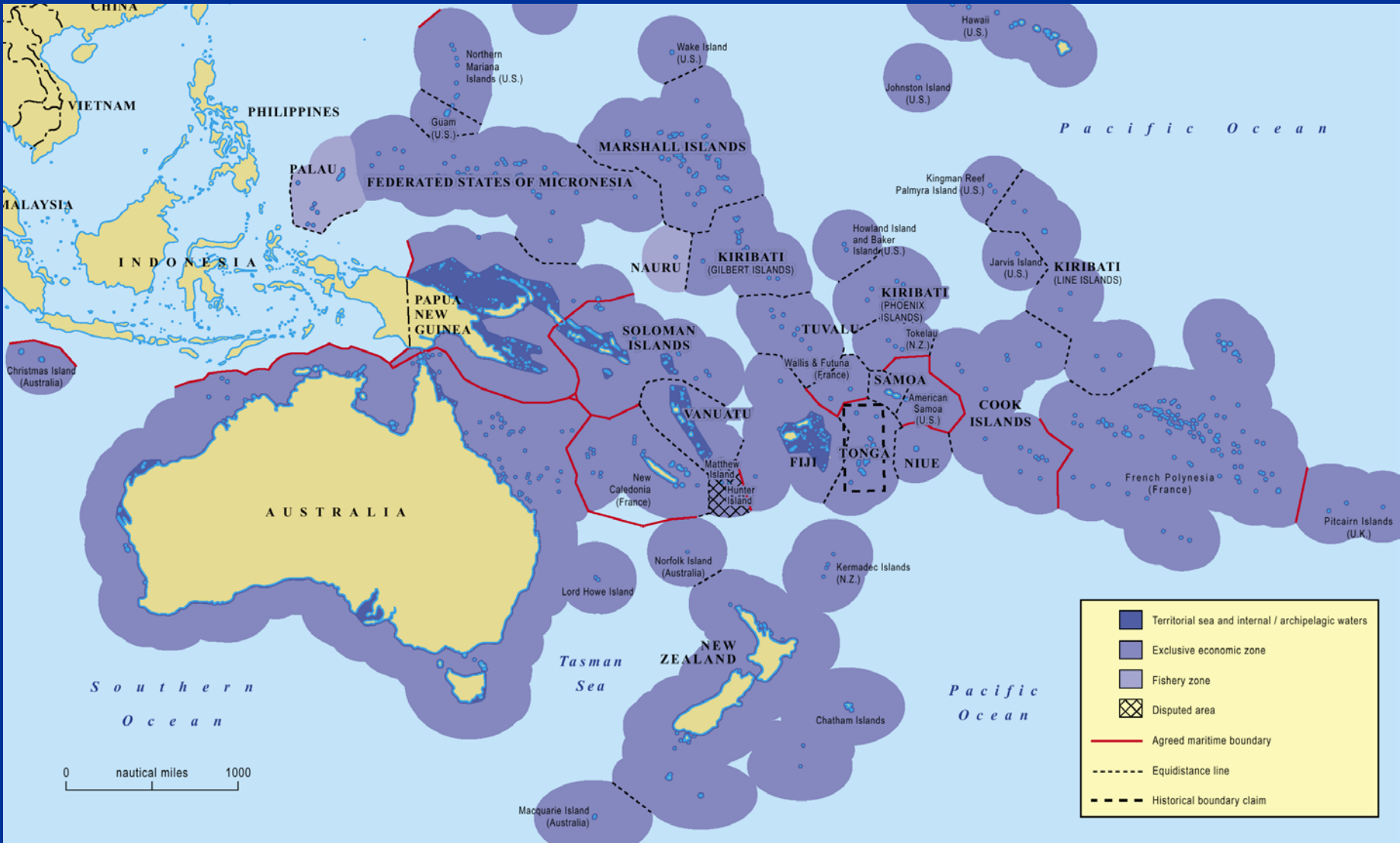
“The exclusive economic zone shall not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured” (Article 57)

Impact of the EEZ Regime

- The most significant modification of the Law of the Sea since the Grotius period
- Transfer of property rights from international commons to State property regimes
- Continuing developments in customary international law (State practice)



Southwest Pacific EEZs



The EEZ Concept: Historical Evolution

- The Truman Proclamations (1945)
 - Proclamation with respect to the Natural Resources of the Subsoil and sea-bed of the Continental shelf
 - Claim to natural resources of the subsoil and sea-bed of the shelf beneath the high seas but contiguous to its coast

EEZ: Historical Evolution

- Proclamations with Respect to Coastal Fisheries in Certain Areas of the High Seas
 - proposed the establishment of fisheries-conservation zones in waters contiguous to US coast but beyond the 3nm territorial sea
 - Note: Proclamation never applied

EEZ: Historical Evolution

- Declaration of Santiago - 1952
 - Chile, Ecuador, Peru, Costa Rica
 - Patrimonial seas
 - Extension of resource jurisdiction over seas up to 200nm
- Latin American Claims (1955)
 - National Fishing Zones by Nicaragua, Argentina, Panama

EEZ: Evolution

- UNCLOS II (1960)
 - 6+6 formulae failed
- African Claims (1971-1972)
 - OAU recommendations for 200nm territorial sea (1971)
 - Kenya's proposal for 200nm "Exclusive Economic Zone" (1972)

EEZ: Historical Evolution

- UNCLOS III 1973-1982
 - EEZ concept unanimously endorsed as representing customary international law
 - Basis of the conclusion: declarations of fisheries zones by many coastal States

Law of the Sea Provisions: Coastal State Rights and Duties

- **Sovereign Rights** for the purpose of exploiting, conserving and managing the natural resources, both living and non-living (Article 56)
- Article 61 deals with conservation of living resources
- Articles 62 deals with the utilisation of living resources
- Detailed provisions

Coastal State Rights and Duties (Article 56)

- **Jurisdiction** as provided for in the relevant provisions of the Convention with regard to
 - the establishment and use of artificial islands and installations
 - marine scientific research
 - the protection and preservation of the marine environment
- Coastal States therefore have considerable sovereign rights and jurisdiction within the EEZ but these rights are not exclusive and are coupled with significant responsibilities

Rights and Duties of Other States (Article 58)

- All States enjoy the freedoms under Article 87 (high seas freedoms)
- Articles 88-115 and other rules of international law to apply to the EEZ
- Other States to have due regard to the rights and duties of the coastal State
 - Must comply with the laws of the coastal State which are in conformity with the Convention

Emerging Issues in the EEZ

- Law of the Sea Convention regulates only fisheries in any detail
- Other resources not fully regulated
 - Marine biodiversity and biotechnology (not mentioned under Article 56)
 - Does reference to “living resources” include marine biodiversity and biotechnology?
 - Ocean energy (mentioned under Article 56(1))
 - Development implications

Emerging Issues in the EEZ

- Scope and extent of coastal State environmental regulatory and enforcement power in the EEZ
 - Transport of hazardous cargo through the EEZ
 - Prior notification?
 - Permission?
 - Stricter enforcement power over polluting vessels
 - Aftermath of *Prestige* incident – proposed Particularly Sensitive Sea Areas (PSSAs)

Emerging Issues in the EEZ

- Military activities by foreign States in and above the EEZ
 - P3 Incident
 - Military data-gathering – a freedom of the high seas?
- Marine scientific research – prior permission required but to be allowed “in normal circumstances”

Emerging Issues in the EEZ: Maritime Security

- Smuggling
- Illegal immigration
- Illegal, unreported and unregulated (IUU) fishing
- Piracy
- Maritime terrorism
- Maritime enforcement a huge challenge in the EEZ

Stop that ship!



Track of the *Southern Supporter*



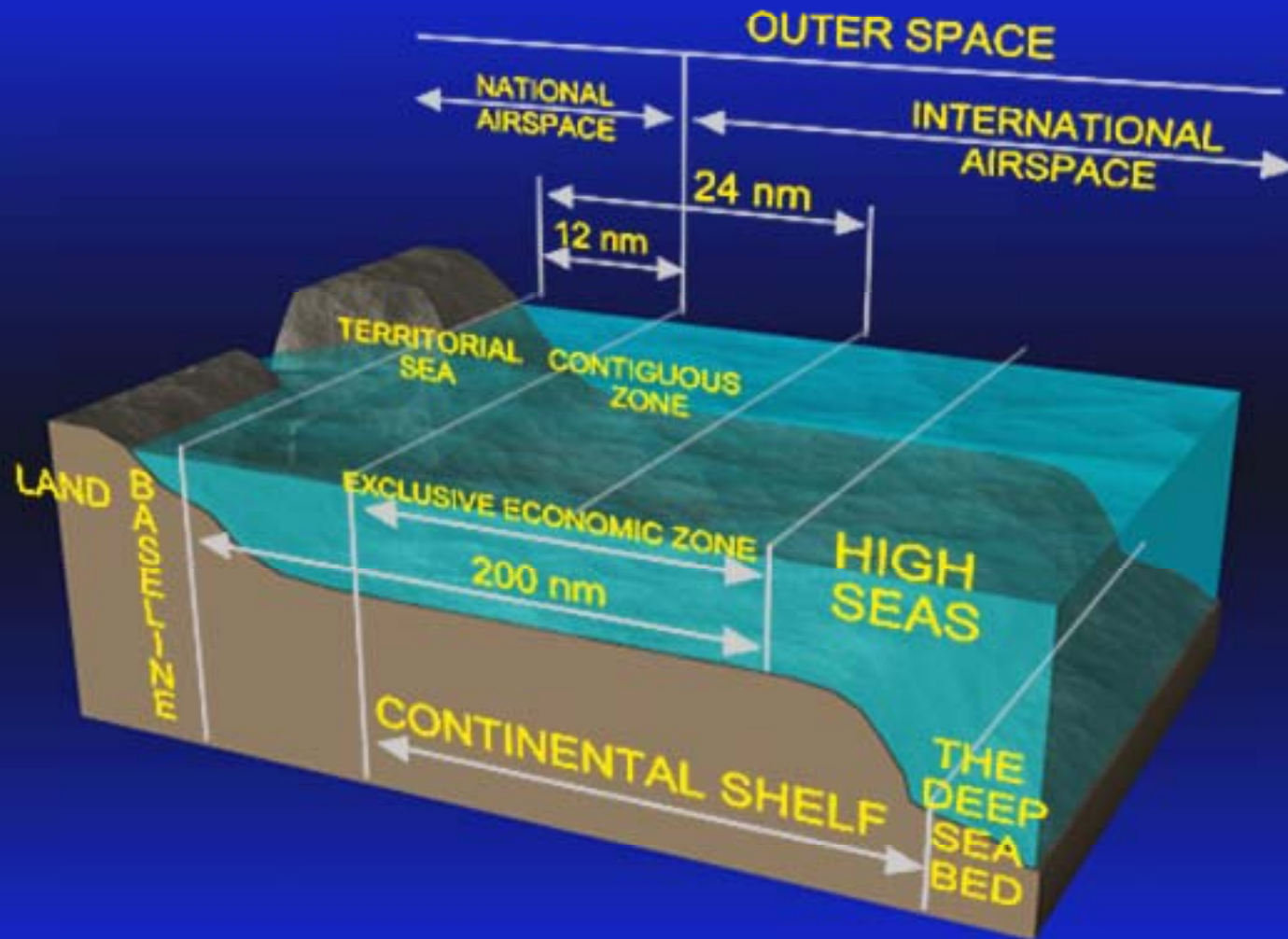
The *Viarsa*



**Maritime Zones Under the Sovereign
Rights of the Coastal State:**

The Continental Shelf

LEGAL REGIMES OF OCEANS AND AIRSPACE AREA



Continental Shelf: Historical Origin

- 1945 Truman Proclamation:
 - Assertion of US jurisdiction over the continental shelf adjacent to US coast
 - US claim followed by other States

Continental Shelf: Historical Origin

- By 1950s concept recognised as part of customary international law
- Significance
 - Living resources of sedentary nature
 - Petroleum and hydrocarbon resources

Legal Definition

- Article 1 of 1958 Convention on Continental Shelf:
 - (a) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the Territorial Sea to a depth of 200 metres.
 - (b) or to a depth beyond that limit where exploitation of resources was possible.
- Excludes water column

Problems with Exploitability Test

- Lack of technology at the time to allow exploitation beyond 200 metres
- Technological developments in the 1970s

Definition Under the Law of the Sea

- Article 76:
 - Sea bed and subsoil of the submarine areas that extends beyond the territorial sea to the outer edge of the Continental margin (i.e. from shelf to rise)
 - or to a distance of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured

Distinctions between 1958 and 1982 Conventions

- Exploitability test under 1958 Convention abandoned
- Law of the Sea Convention adopts distance criteria (Article 76)
 - 200 nautical miles from baseline
 - More than 200 nautical miles for long continental margin States

Coastal State Jurisdiction

- Article 77 Law of the Sea Convention
 - **Sovereign rights** for exploring and exploiting the natural resources
- Natural Resources:
 - Minerals, other non-living resources of the sea-bed and subsoil, living organisms of sedentary nature (Article 77 (4))
 - Exclusive right to drill on the Continental Shelf (Article 81)

Rights of Other States: Article 78

- Provides that Coastal State rights over the continental shelf do not affect the status of the superjacent waters or airspace above
- Explicitly states that such rights “must not infringe or result in any unjustifiable interference with navigation and freedoms of other States’ as provided for elsewhere in the Convention”

Rights of Other States: Submarine Cables and Pipelines

- Article 79 (1): Right to lay submarine cables and pipelines.
- Right Qualified:
 - Subject to the consent of the Coastal State with regard to pipeline route, but:
 - Generally coastal State may not impede the rights of others to lay submarine cables and pipelines
 - Potential conflict?

Claiming a Continental Shelf

- Not strictly necessary for a State to claim a continental shelf
- Article 77:
 - “The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation”
- Nevertheless, many coastal states have made continental shelf claims

National Claims: Archipelagic Status

- 19 states have claimed archipelagic status
- 14 have defined archipelagic baselines: Antigua and Barbuda, Cape Verde, Fiji, Indonesia, Jamaica, the Maldives, Papua New Guinea, the Philippines, Saint Vincent and the Grenadines, São Tomé and Príncipe, the Solomon Islands, Trinidad and Tobago, Tuvalu and Vanuatu.
- 5 have claimed archipelagic status but have yet to define their archipelagic baselines: the Bahamas, the Comoros, Kiribati, the Marshall Islands and the Seychelles.

National Claims: Territorial Sea

Breadth of Claim (nm)	Number of States
3	3
4	3
6	2
12	133
30	1
35	1
50	1
200	9

Thus, of 151 claims, 139 (92%) of 12nm breadth or less

National Claims: Contiguous Zone

Breadth of Claim (nm)	Number of States
10	1
14	1
15	1
18	4
24	63
41	1

Also several excessive claims relating to security issues

National Claims: EEZ

- 111 claimed EEZs
- Several states have, however, claimed jurisdiction that goes beyond the sovereign rights accorded to the coastal state under the UN Convention.
- The United States has, challenged the EEZ legislation of the following states on the grounds that it extends too much coastal state authority to the claimed EEZs: Barbados, Burma, Egypt, Grenada, Guyana, India, Mauritius, Pakistan and the Seychelles

US Freedom of Navigation Program

- Combination of diplomatic protests and operational challenges designed to demonstrate US non-adherence and non-recognition of “excessive” maritime claims
- Operational challenges conducted with ships and aircraft
- Annual report to the President summarising all Freedom of Navigation Program challenges

International Maritime Zones

The High Seas

Definition

1958 High Seas Convention, Article 1:

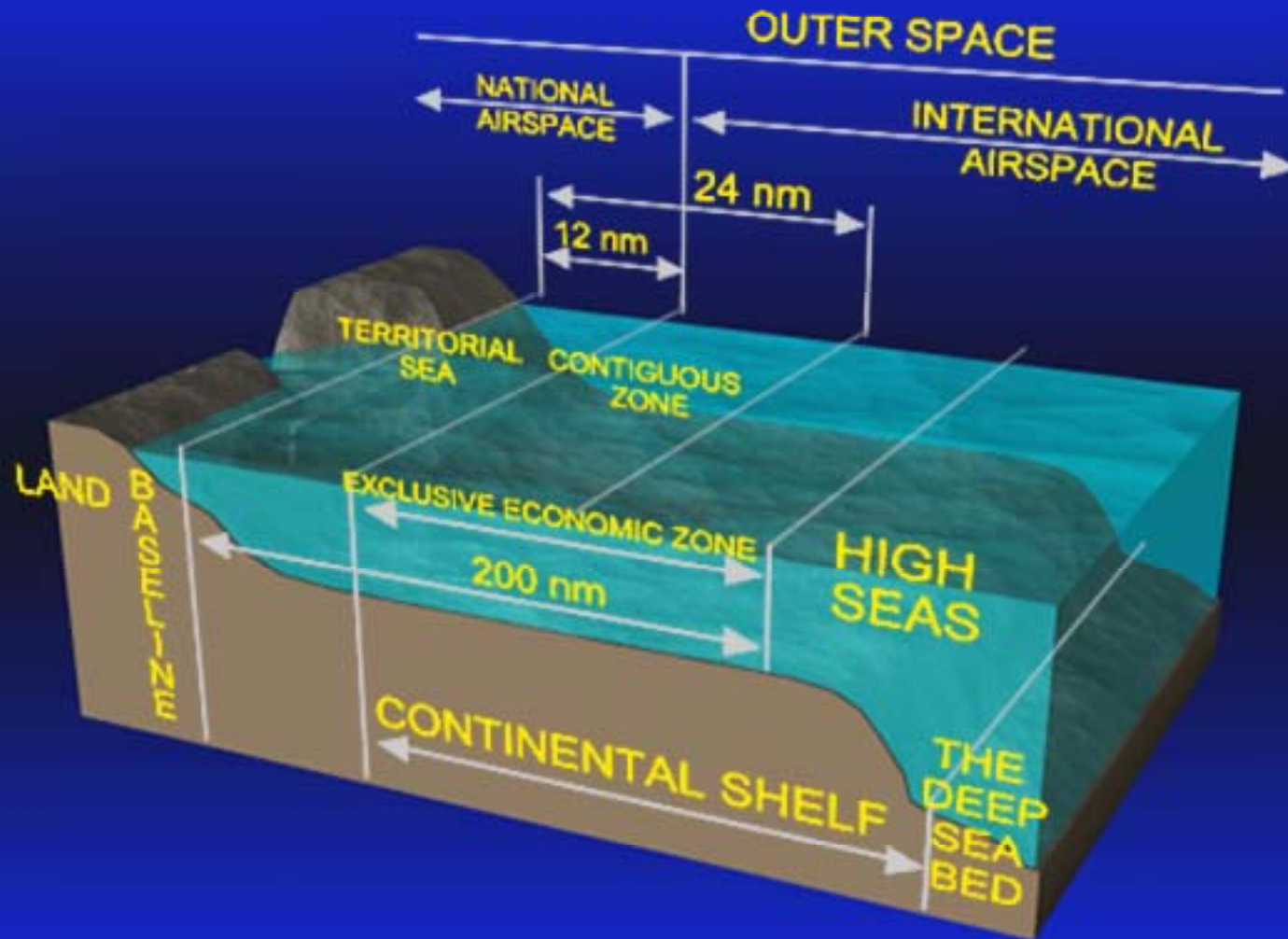
“Parts of the sea not included in the territorial sea or internal waters of a State”

Definition

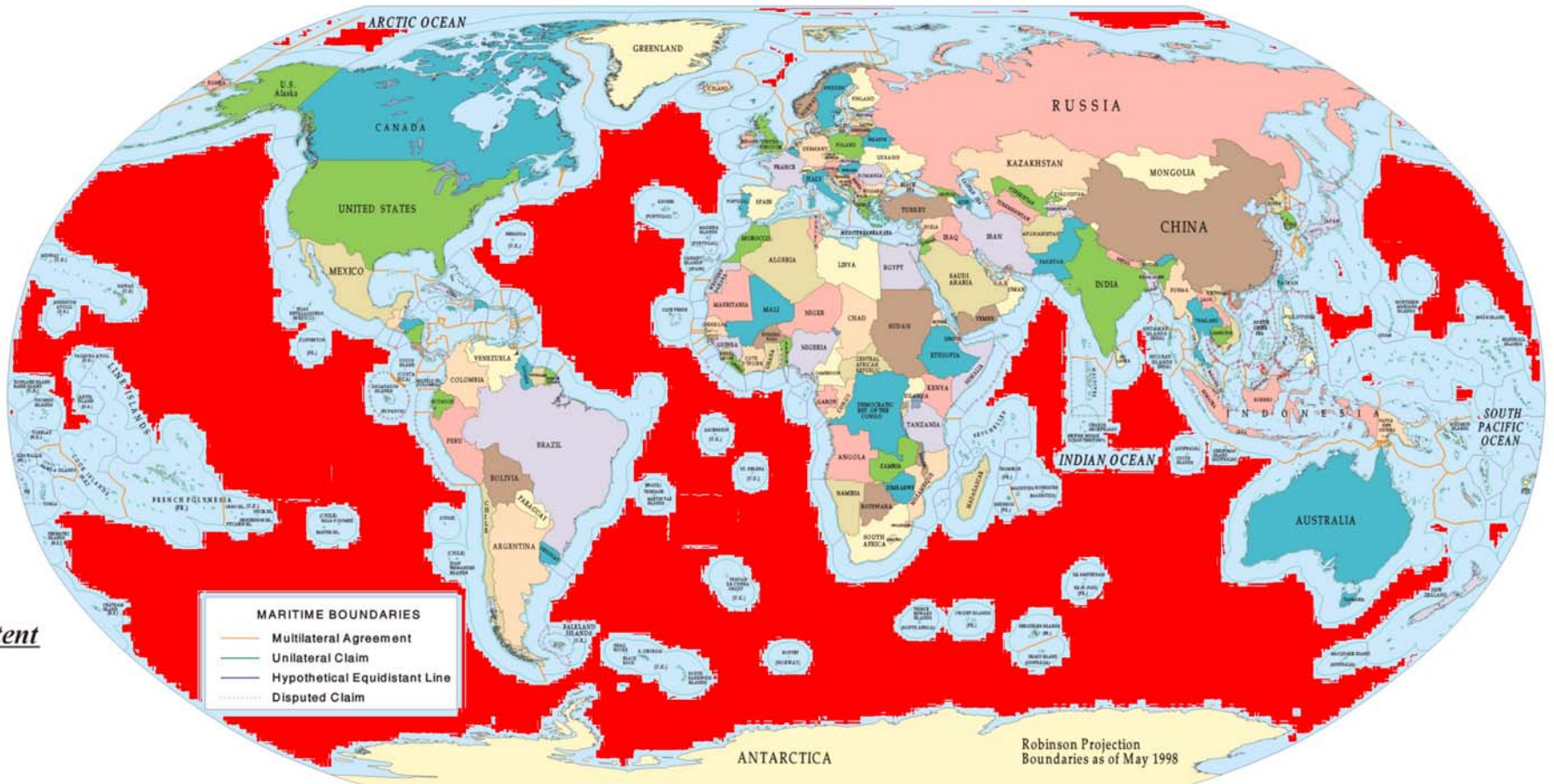
UN Convention, Article 86:

“All parts of the sea that are not included in the **exclusive economic zone**, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State”

LEGAL REGIMES OF OCEANS AND AIRSPACE AREA



Maritime Boundaries of the World



Content

Freedoms of High Seas

- 1958 Convention, Article 2
- Freedom of the High Seas comprise:
 - Freedom of navigation
 - Freedom of fishing
 - Freedom to lay submarine cables and pipelines
 - Freedom to fly over the high seas

Freedom of High Seas

- Law of the Sea Convention, Article 87(1)
- Freedom of the High Seas comprise:
 - (a) Freedom of navigation;
 - (b) Freedom of over-flight;
 - (c) Freedom to lay submarine cables and pipelines, subject to Part VI

Freedom of the High Seas

- (d) Freedom to construct artificial islands and other installation 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

EEZ & High Seas

- Article 86: “All parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State”
- Article 58: Reserves certain high seas freedoms in the EEZ
- What is the legal consequence of Article 58?
 - Does the high seas exclude the EEZ?
 - Is the EEZ a zone of high seas subject to special rights of coastal States?

Enforcement on the High Seas

- Exclusivity of flag State jurisdiction (except in limited circumstances)
 - Vacuum: People smuggling, vessels carrying weapons
 - What solution?
 - Proliferation Security Initiative

International Maritime Zones

The Area

The Area Beyond the Limits of National Jurisdiction

- Background
- Discoveries of minerals in the 1960s
 - Nickel
 - Cobalt
 - Manganese
 - Copper
- Legal uncertainty

International Seabed Authority

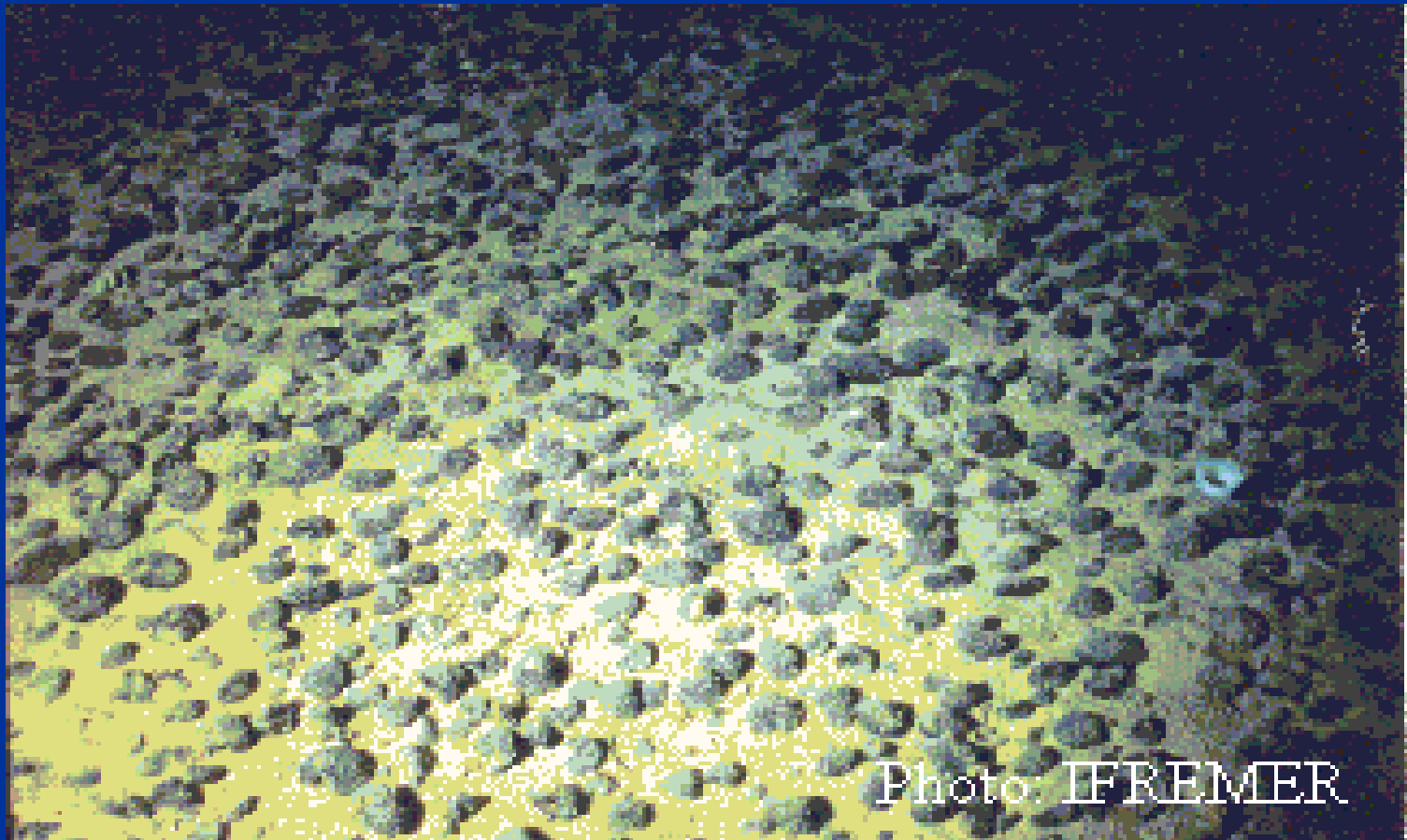


Photo: IFREMER

International Seabed Authority



Legal Uncertainty

- Who had the right to exploit?
 - High Seas freedom?
- Exploration activities
 - US/UK/Japan/German companies
- Unilateral legislation
 - US
 - UK
 - Germany

Evolution

- 1967: Arvid Pardo proposal in the UN General Assembly for reservation of the ocean floor and seabed beyond limits of national jurisdiction for peaceful purposes
- 1969: UN General Assembly “Moratorium” Resolution 2574
- 1970 Declaration of Principles
- US objections
- 1994 Agreement Relating to the Implementation of part XI of the United Nations Convention on the Law of the Sea

The Future?

- International Seabed Authority established in 1995
 - Headquarters in Kingston, Jamaica
- Deep sea-bed Mining Code developed
- No commercial exploitation as yet
- Most experts believe unlikely for another 50 years at least

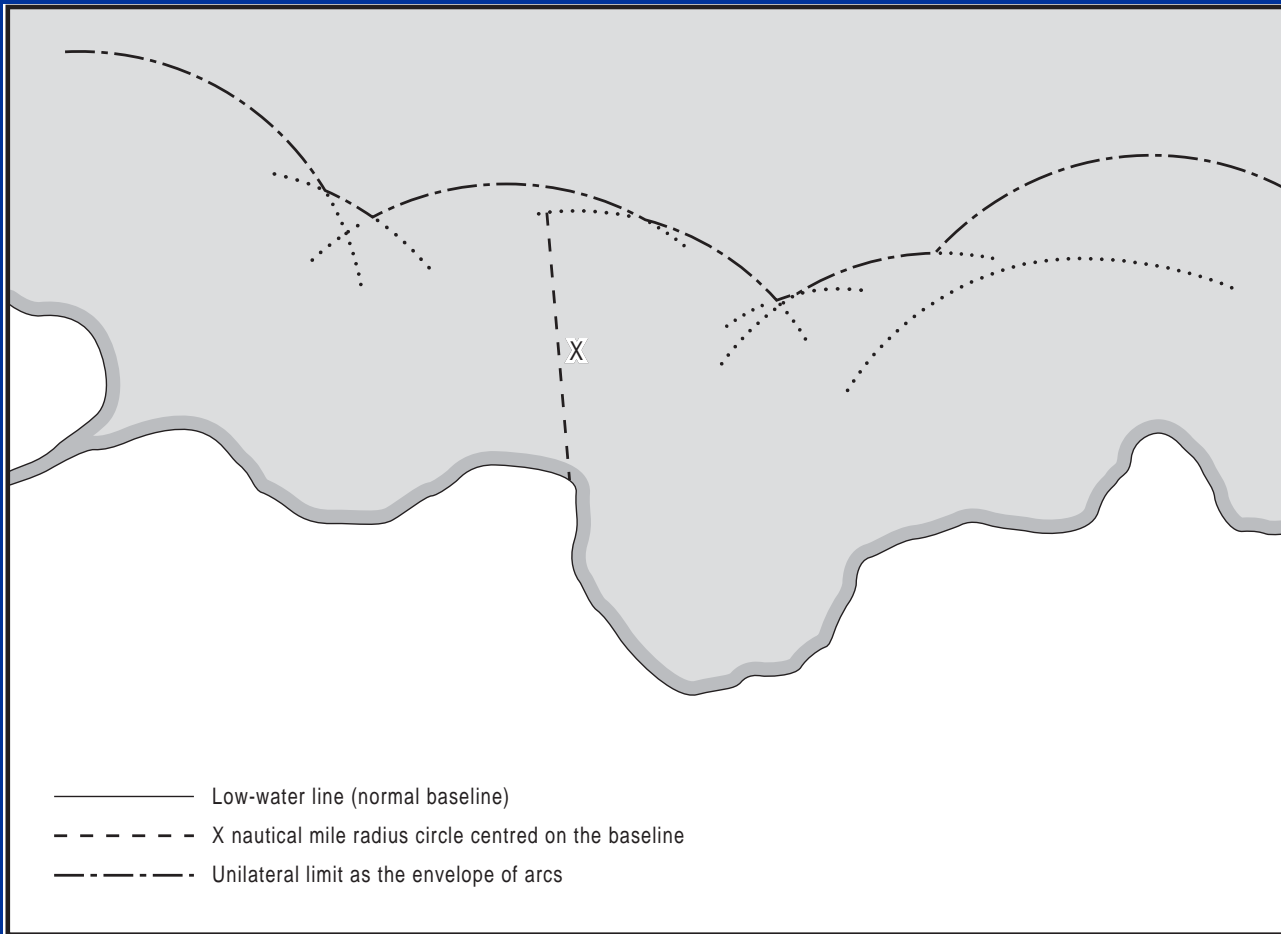
Emerging Policy Issues

- Managing environmental impacts of sea bed mining
 - Mining Code developed by ISA
 - Environmental Code under development
 - Non-parties to the Law of the Sea Convention
 - Any obligations to observe Code?
 - What if unilateral exploitation commences?

Limits and Boundaries

- Unilateral limits
- Unilateral boundaries
- The outer limits of the continental shelf
- Maritime boundaries

Envelope of Arcs



Publicising Maritime Zone Limits

Article 16 of the UN Convention states:

1. The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7, 9, and 10, **or the limits derived therefrom**, and the lines of delimitation drawn in accordance with articles 12 and 15 shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical coordinates of points, specifying the geodetic datum, may be substituted.
2. **The coastal State shall give due publicity to such lists of charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.**

Publicising Maritime Zone Limits

Articles 75 (EEZ) and 84 (continental shelf) of the UN Convention state:

1. Subject to this Part, the outer limit lines of the exclusive economic zone/continental shelf and the lines of delimitation drawn in accordance with article 74/83 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.
2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations (and in the case of those showing the outer limit lines of the continental shelf, with the Secretary-General of the Authority).