

LAW OF THE SEA

ROB YOUNG, COUNSEL



COMNAVMETOCCOM-COUNSEL

HISTORICAL OVERVIEW

- CUSTOMARY INTERNATIONAL LAW
- TRUMAN PROCLAMATION
- CREEPING JURISDICTION
- UNITED NATIONS CONVENTION ON THE LAW OF THE SEA



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TRUMAN PROCLAMATION

- CONTINENTAL SHELF - NATURAL RESOURCES
- FISHERIES
- FREEDOM OF NAVIGATION AND OVERFLIGHT



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CREEPING JURISDICTION

- SANTIAGO DECLARATION
- 200 NM MARITIME ZONES
- CLAIMED SOVEREIGNTY OVER RESOURCES & WATER COLUMN
- THREAT TO FREEDOM OF NAVIGATION IN TRADITIONAL HIGH SEAS



COMNAVMETOCCOM-COUNSEL

CODIFICATION

- **UNCLOS I (1958)**
 - BREADTH OF TERRITORIAL SEA
 - EXTENT OF COASTAL STATE FISHING JURISDICTION

- **UNCLOS II (1960)**
 - NO AGREEMENT REACHED



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UNCLOS III

- UNRESOLVED LOS ISSUES
- 150 NATIONS PARTICIPATED
- 1982 LOS CONVENTION
- CONSENSUS ON BROAD RANGE OF ISSUES



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OPPOSITION TO 1982 UN LOS CONVENTION

- ISRAEL - PLO SHARING DEEP SEABED RESOURCES
- TURKEY - BOUNDARY PROBLEM
- UNITED STATES - PART IX
- VENEZUELA - BOUNDARY DISPUTE WITH COLUMBIA



COMNAVMETOCCOM-COUNSEL

1982 UN LAW OF THE SEA CONVENTION

- **COMPREHENSIVE TREATY**
- **CODIFIES CAREFUL BALANCE**
- **COASTAL STATE INTERESTS**
- **FREEDOM OF OCEANS**



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THE “PACKAGE DEAL” AKA THE *QUID PRO QUO*

- MARITIME POWERS WOULD CONCEDE:
 - SOVEREIGNTY OVER ARCHIPELAGIC WATERS
 - 12 MILE TERRITORIAL SEAS
- COASTAL AND ARCHIPELAGIC STATES WOULD CONCEDE:
 - TRANSIT RIGHTS



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LOS CONVENTION BASICS

- DEFINES MARITIME ZONES
- CODIFIES NAVIGATIONAL RIGHTS AND FREEDOMS
- RECOGNIZES SOVEREIGN IMMUNITY OF WARSHIPS AND GOVERNMENT VESSELS IN NONCOMMERCIAL SERVICE



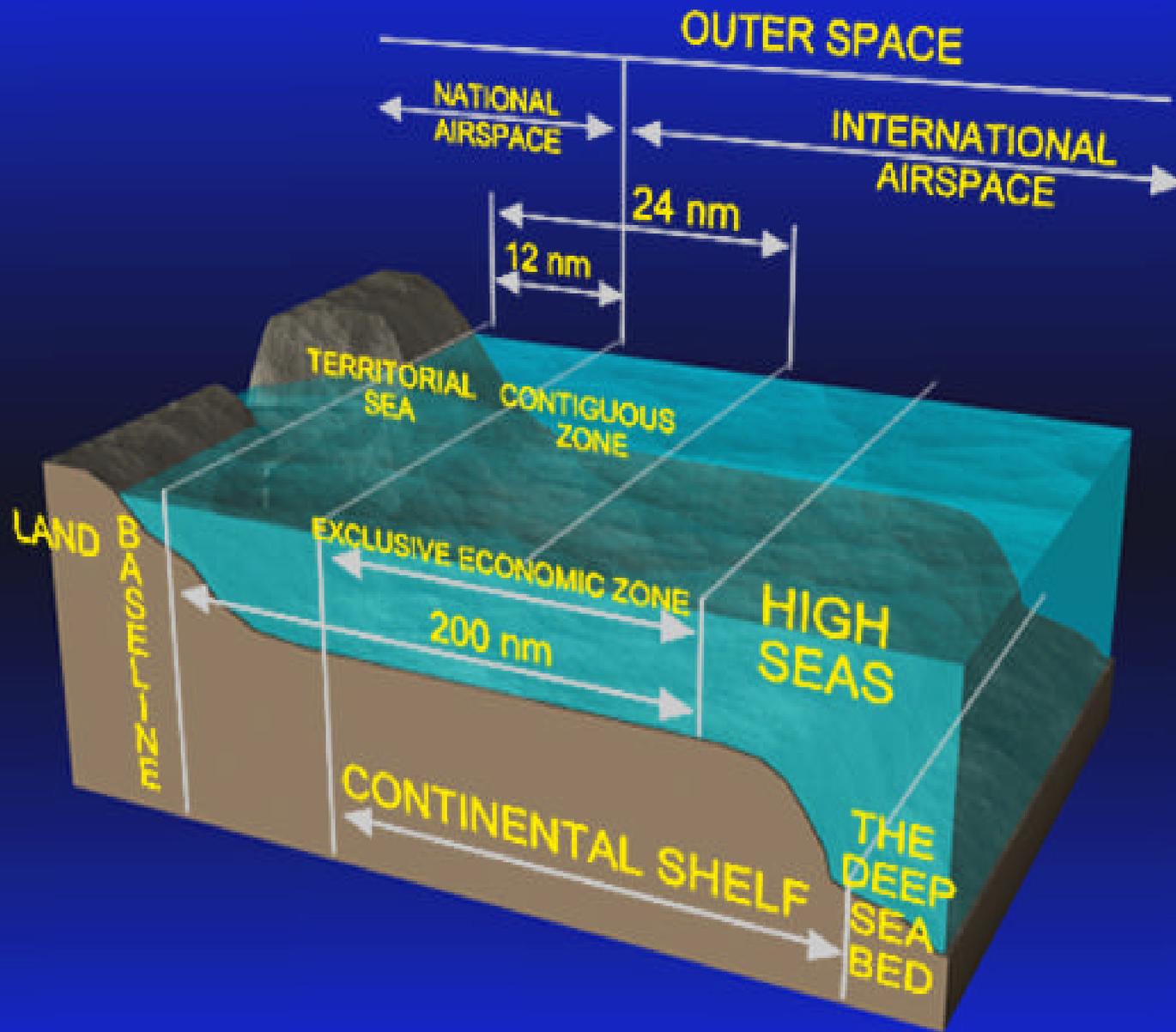
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MARITIME ZONES

- INTERNAL WATERS
- TERRITORIAL SEA (TS)
- CONTIGUOUS ZONE (CZ)
- EXCLUSIVE ECONOMIC ZONE (EEZ)
- CONTINENTAL SHELF (CS)



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CURRENT STATUS OF LOS CONVENTION

- ENTERED INTO FORCE, 16 NOV 94
- 130 PARTIES (1 APR 1999)
- MOVEMENT TOWARDS BECOMING PARTIES
- 6 OCT 94 SENATE ADVISE & CONSENT REQUESTED



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WIDESPREAD ADHERENCE

- 128 STATES CLAIM 12 NM (OR LESS) TERRITORIAL SEA
 - 17 EXCESSIVE TERRITORIAL SEA CLAIMS
 - 16 STATES ROLLED BACK EXCESSIVE CLAIMS
- 55 STATES CLAIM 24 NM (OR LESS) CONTIGUOUS ZONE
 - SYRIA 41 NM ZONE
- 95 STATES CLAIM 200 NM EEZ
- 19 STATES CLAIM 200 NM (OR LESS) FISHERY ZONE



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SURVEY OF THE LAW OF THE SEA



COMNAVMETOC-COUNSEL

AREAS OF SPECIAL INTEREST TO HYDROGRAPHERS

- NAVIGATIONAL FREEDOMS
- MARITIME ZONES
- BASELINES



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BASELINES

- NORMAL BASELINE
 - LOW WATER LINE
- EXCEPTIONS
 - STRAIGHT BASELINES
 - BAYS
 - ARCHIPELAGIC BASELINES



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STRAIGHT BASELINES

- DEEPLY INDENTED OR CUT INTO
- FRINGING ISLANDS ALONG THE COAST IN ITS IMMEDIATE VICINITY
- UNSTABLE COASTLINE
- SUBSEQUENT REGRESSION



COMNAVMETOCCOM-COUNSEL

STRAIGHT BASELINES

- LOSC -- NO GUIDELINES
 - SPECIFIC DISTANCE FROM SHORE
 - MAXIMUM LENGTH
- U.S. POSITION
- FISHERIES CASE -- 45 NM ACCEPTED
 - ONLY CASE
 - HISTORIC-ECONOMIC FACTORS



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STRAIGHT BASELINES

- MUST NOT DEPART TO APPRECIABLE EXTENT FROM DIRECTION OF COAST
- WATERS WITHIN - CLOSELY LINKED TO THE LAND
- PUBLISHED ON CHARTS OR GEOGRAPHIC COORDINATES
- LOW TIDE ELEVATIONS
- CUT OFF OTHER STATES TERRITORIAL SEA OR EEZ

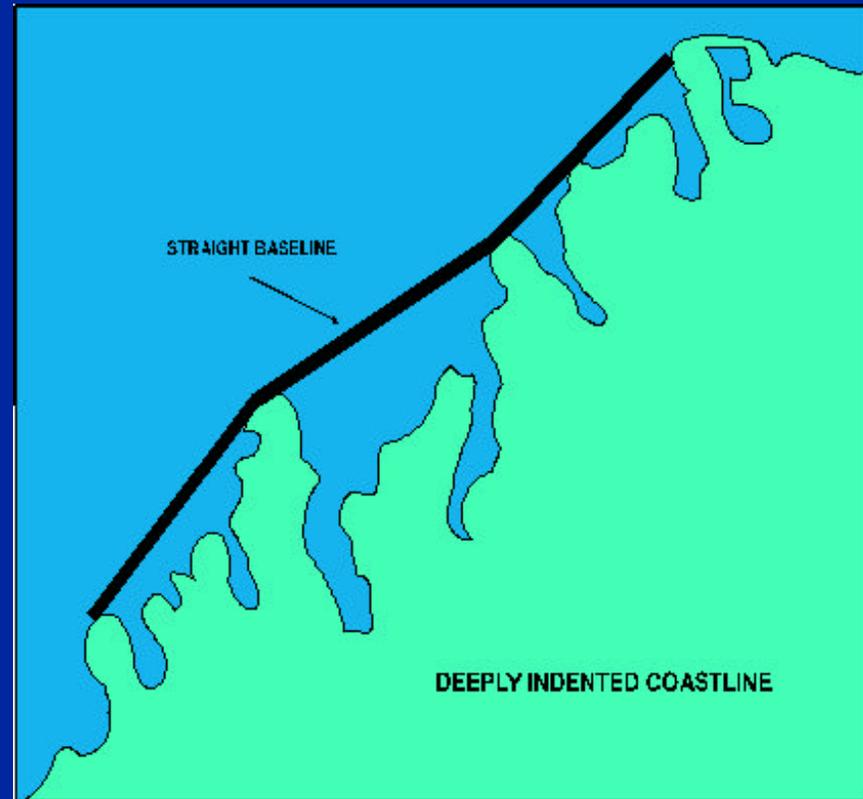


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DEEPLY INDENTED STRAIGHT BASELINES

U. S. POSITION

- 3 OR MORE IN CLOSE PROXIMITY
- DEPTH GREATER THAN 1/2 PROPOSED BASELINE

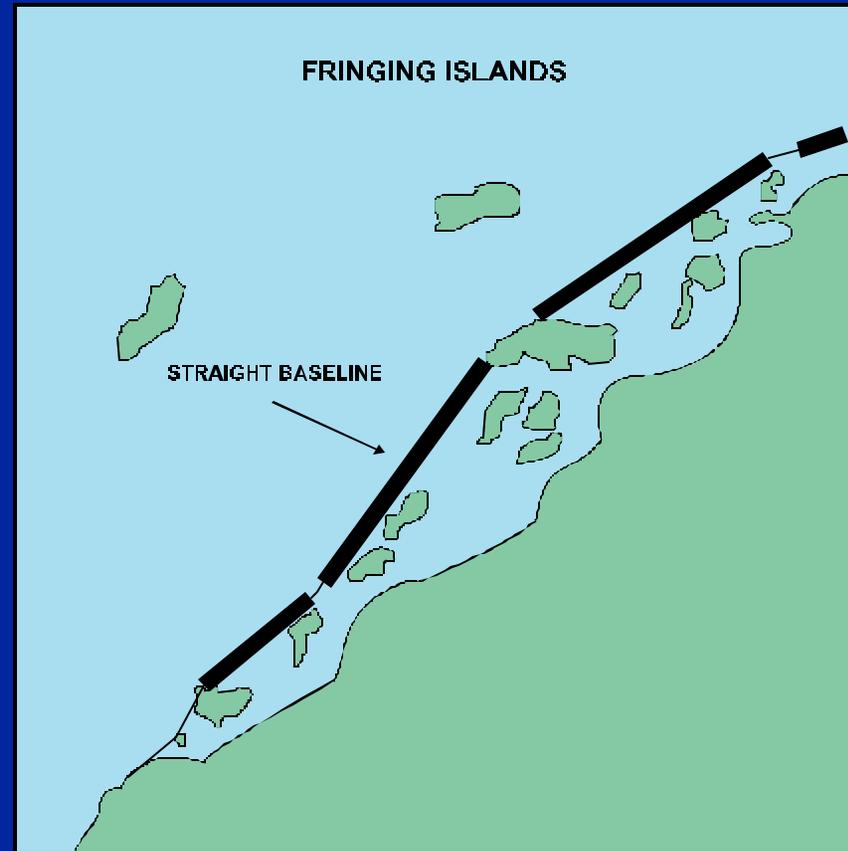


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FRINGING ISLANDS STRAIGHT BASELINES

U. S. POSITION

- GENERAL DIRECTION
- WITHIN 24 NM OF COAST
- 24 NM BASELINES
- 50% OF COASTLINE MASKED



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STRAIGHT BASELINES

- UNSTABLE COASTLINE
 - RIVER DELTA
 - EXAMPLES--MISSISSIPPI, NILE, GANGES
 - LOW WATER LINE
 - UNAFFECTED BY SUBSEQUENT REGRESSION
- MOUTHS OF RIVERS
- JURIDICAL AND HISTORIC BAYS



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IMPACT OF STRAIGHT BASELINES

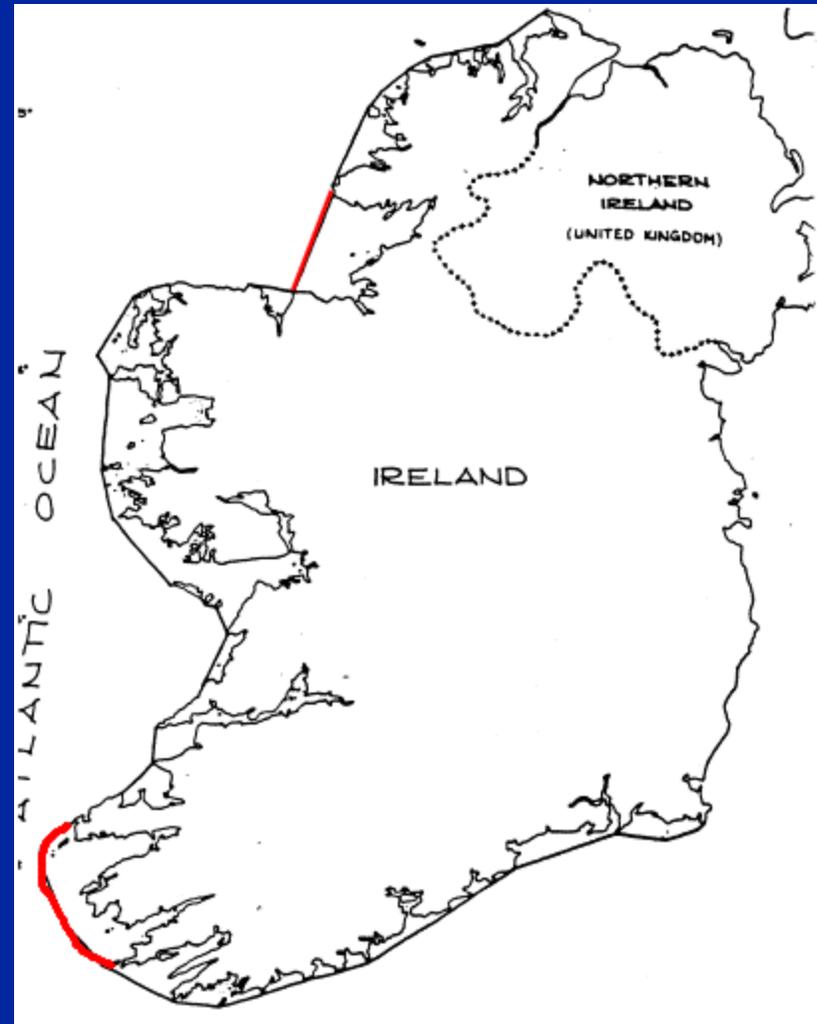
- INTERNAL WATERS
- EXTENDS MARITIME ZONES SEAWARD
- RESTRICTS MOBILITY AND FLEXIBILITY



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BASELINE EXAMPLE

IRELAND



COMNAVMETOCCOM-COUNSEL

BASELINE EXAMPLE

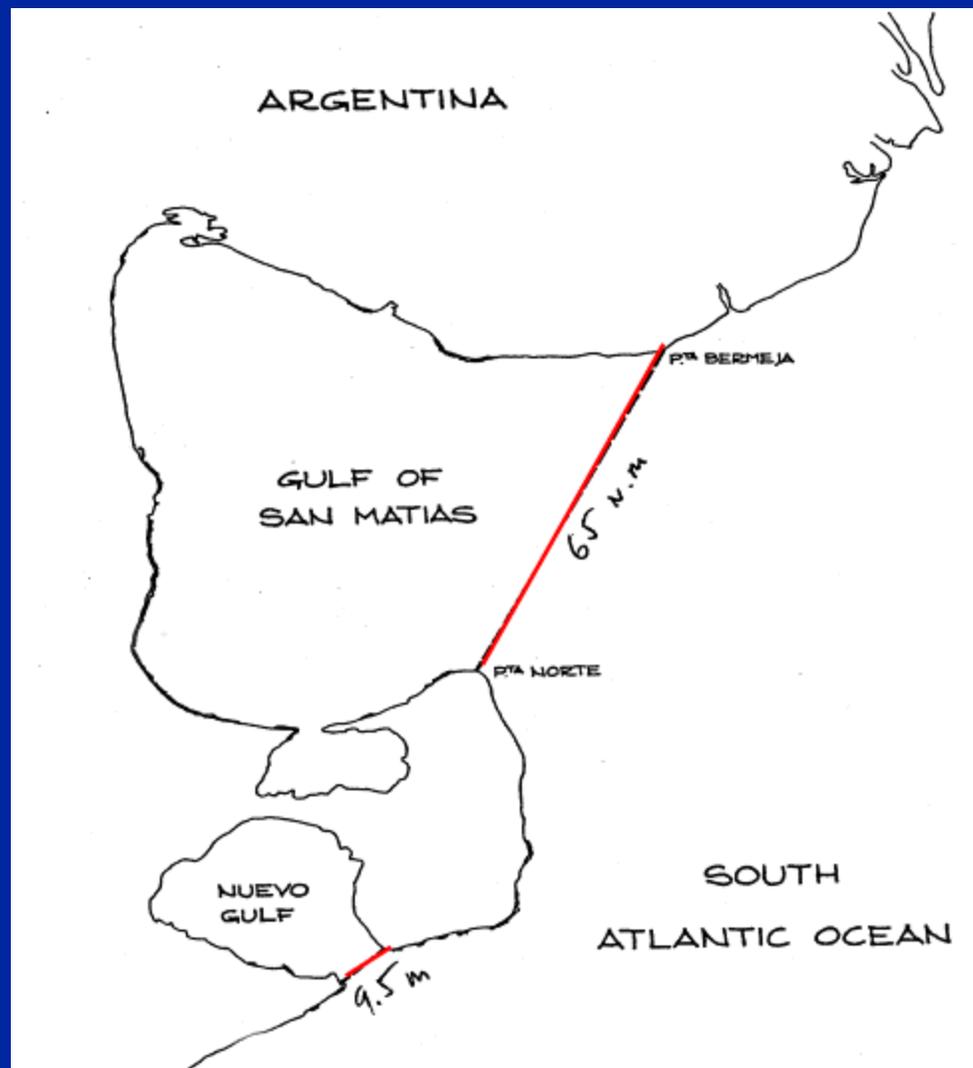
BAJA, CALIFORNIA/
MEXICO



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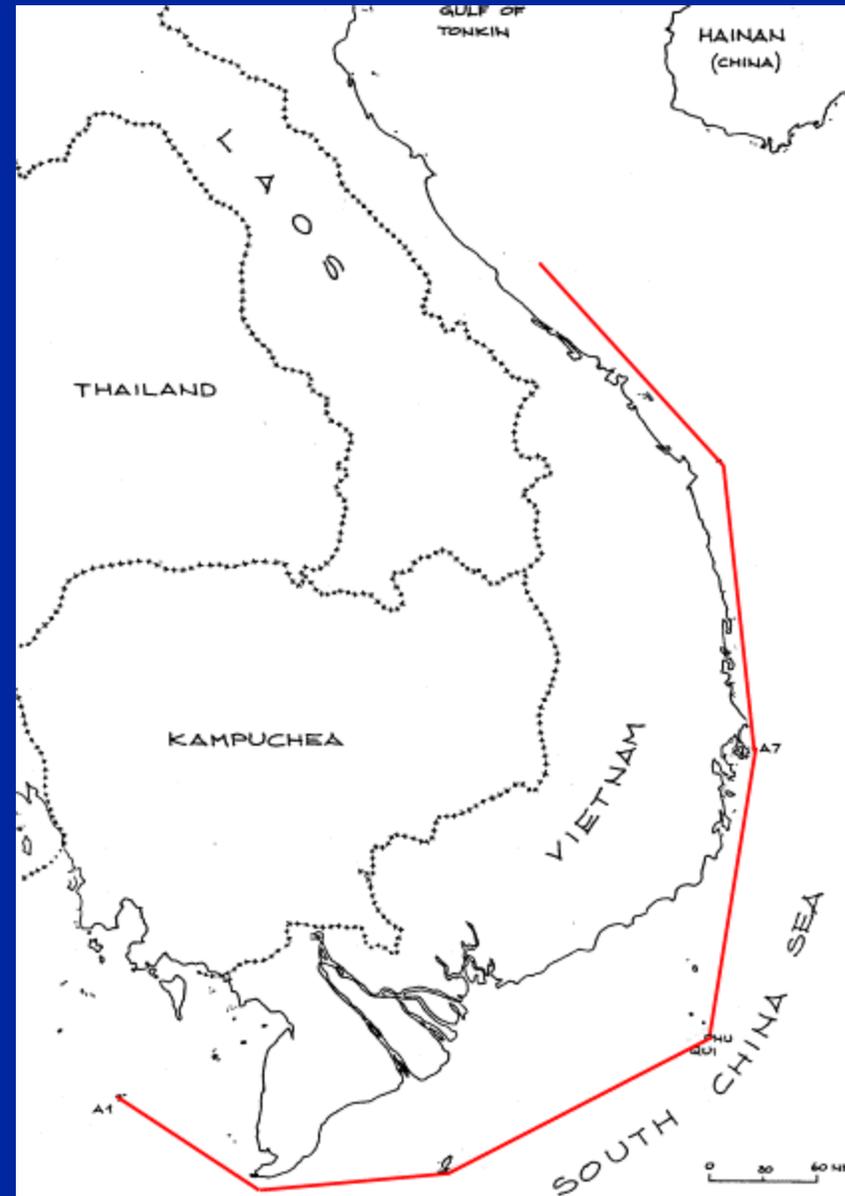
BASELINE EXAMPLE

ARGENTINA



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BASELINE EXAMPLE VIETNAM



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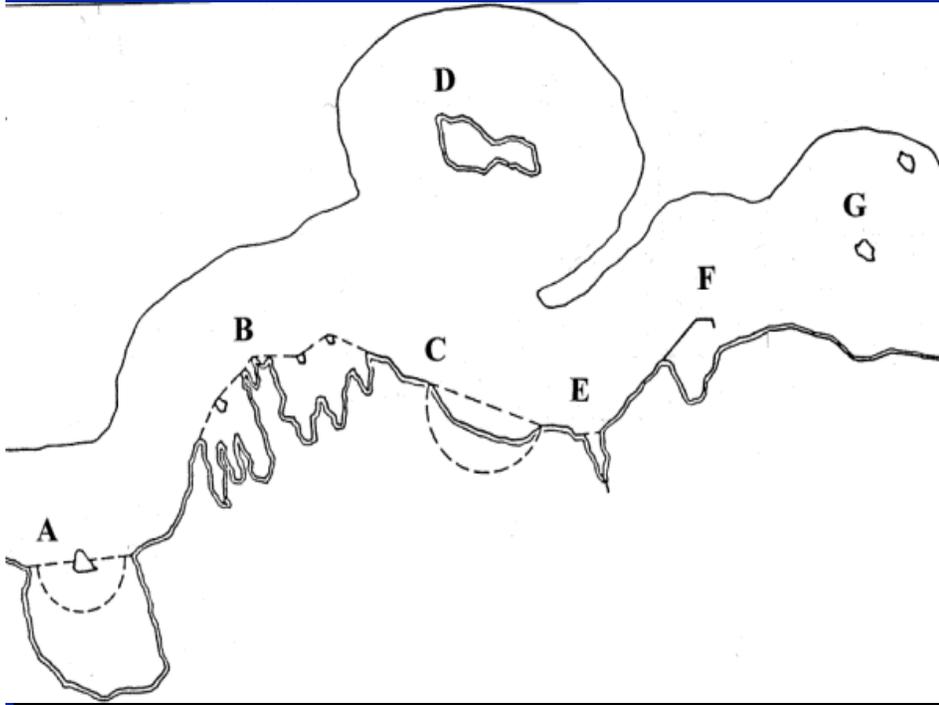
SPECIAL RULES

- REEFS
- SEAWARD OF LOW-WATER LINE
- PORTS
- OUTERMOST PERMANENT HARBOR WORKS



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BASELINES



On the rest of the coast the baseline is the low-water mark.

- A. Indentation is larger than a semi-circle whose diameter is two closing lines, and is therefore a bay. Thus bay closing lines (which total less than 24 miles) are baselines.
- B. Straight baseline on indented coast fringed with islands.
- C. Indentation is smaller than the area of semi-circle drawn on closing line. Therefore it is not a bay.
- D. An island generating its own territorial sea.
- E. Baseline is a line drawn across the mouth of the river that flows directly into the sea.
- F. Harbour works forming part of the baseline.
- G. Low tide elevations. One is less than 12 miles from the coast and therefore forms the baseline. The other is more than 12 miles and therefore does not affect the construction of the baseline.

LOW TIDE ELEVATIONS

- WHOLLY WITHIN TERRITORIAL SEA
DRAWN FROM MAINLAND OR ISLAND

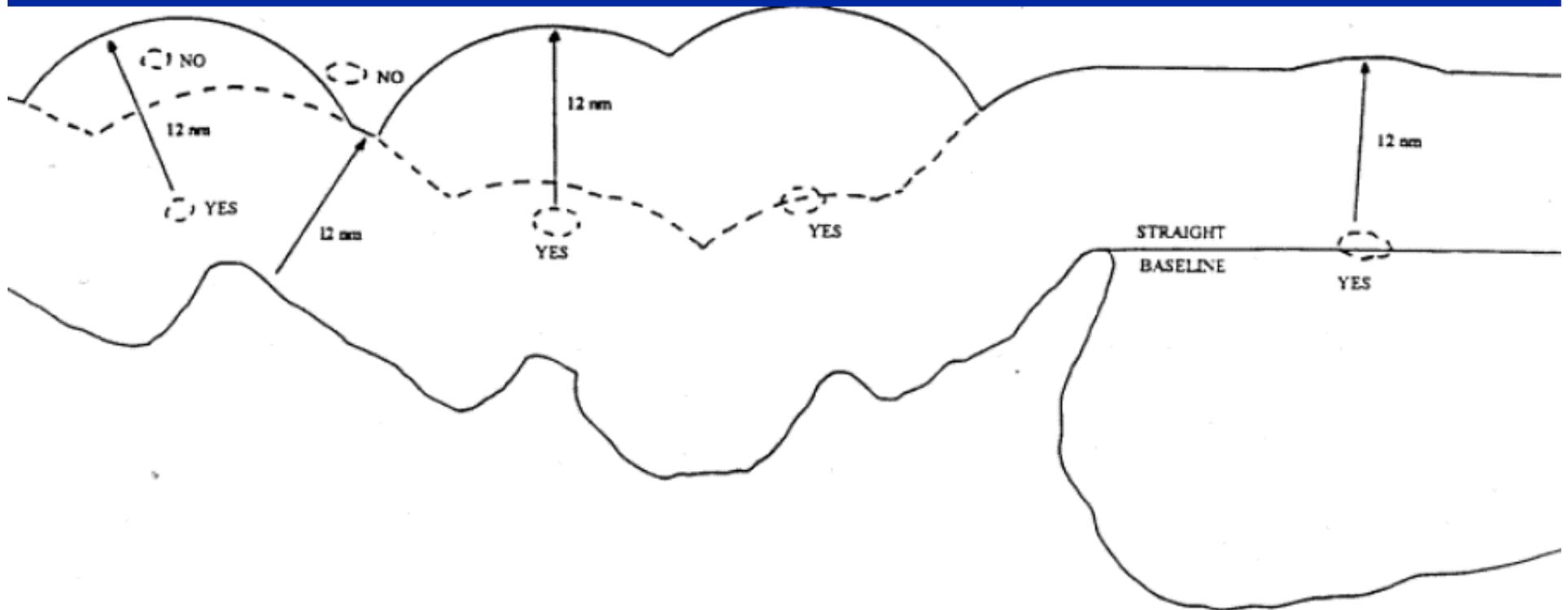
ISLANDS AND ROCKS

- SUSTAIN HUMAN HABITATION OR
ECONOMIC LIFE
- TERRITORIAL SEA ONLY FOR ROCK, NO
EEZ OR CONTINENTAL SHELF



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BASELINES



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MEAN HIGH WATER SPRINGS

MEAN HIGH WATER

MEAN HIGH WATER NEAPS

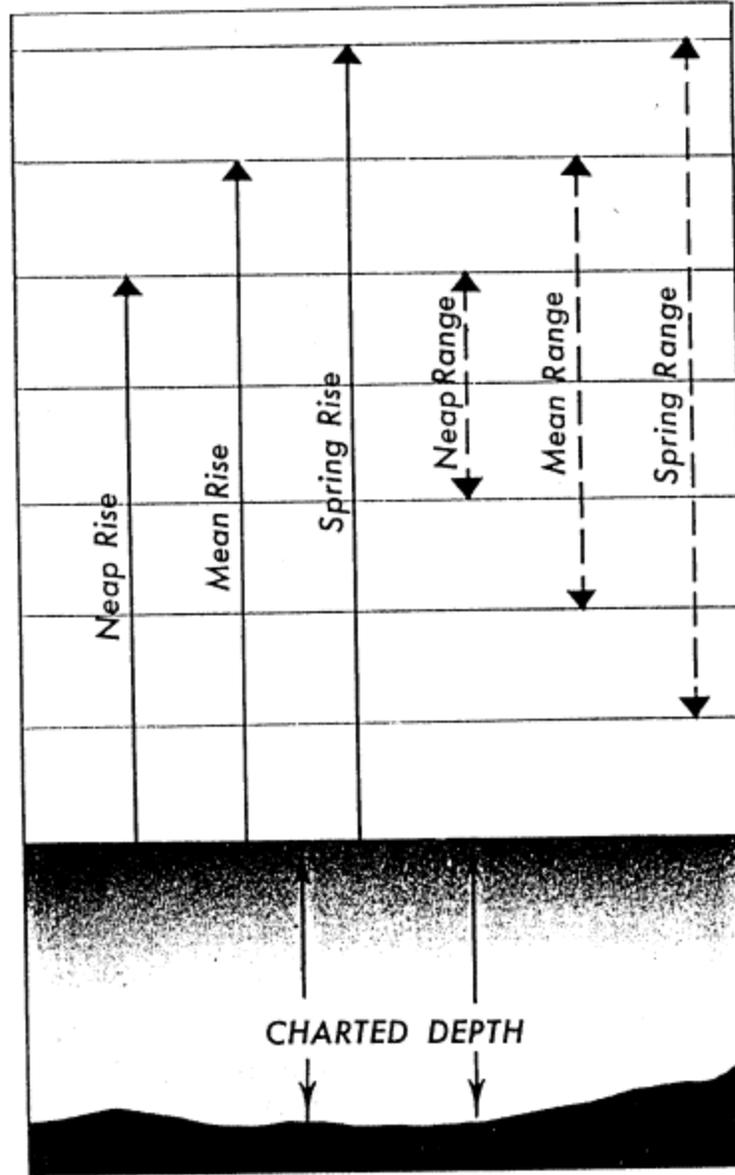
HALF-TIDE LEVEL

MEAN LOW WATER NEAPS

MEAN LOW WATER

MEAN LOW WATER SPRINGS

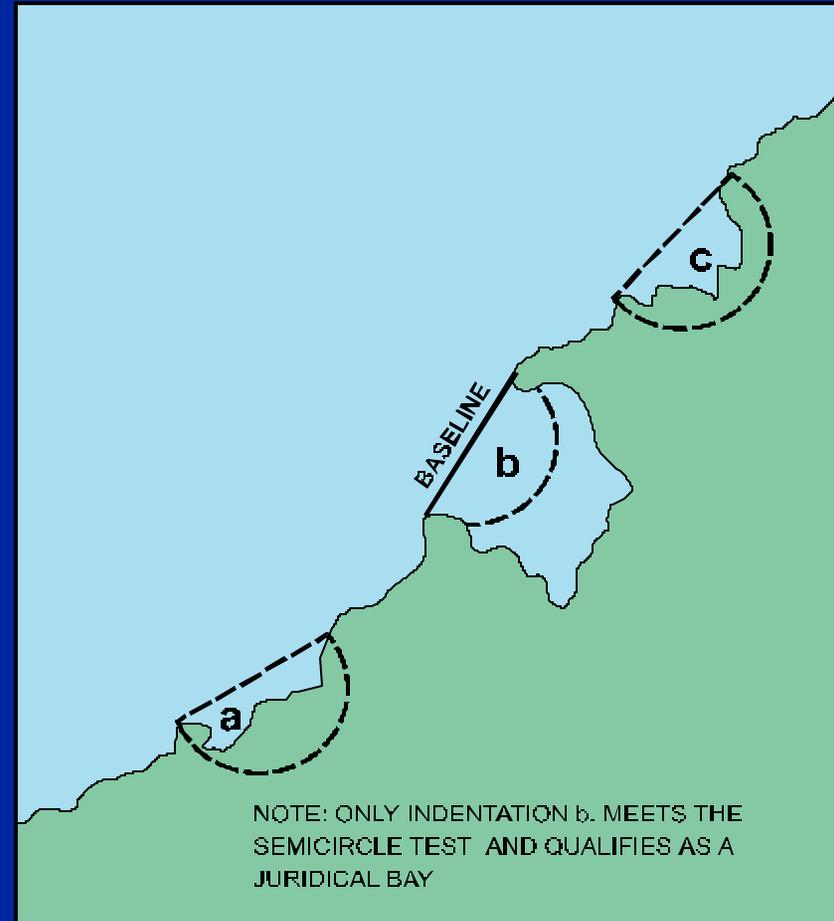
INDIAN SPRING LOW WATER
(CHART SOUNDING DATUM)



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JURIDICAL BAY

- WELL-MARKED INDENTATION
- LAND-LOCKED WATERS
- MORE THAN MERE CURVATURE
- AREA MUST BE EQUAL TO OR LARGER THAN SEMI-CIRCLE
- CLOSING LINE - CANNOT EXCEED 24 NM
- MAXIMUM AREA OF WATER



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HISTORIC BAYS/WATERS

- LEGAL REQUIREMENTS
 - OPEN, EFFECTIVE, LONG-TERM & CONTINUOUS EXERCISE OF AUTHORITY
 - ACQUIESCENCE OF FOREIGN STATES
- INTERNAL WATERS
 - “WHICH WOULD NOT HAVE THAT CHARACTER WERE IT NOT FOR THE EXISTENCE OF AN HISTORIC TITLE.”



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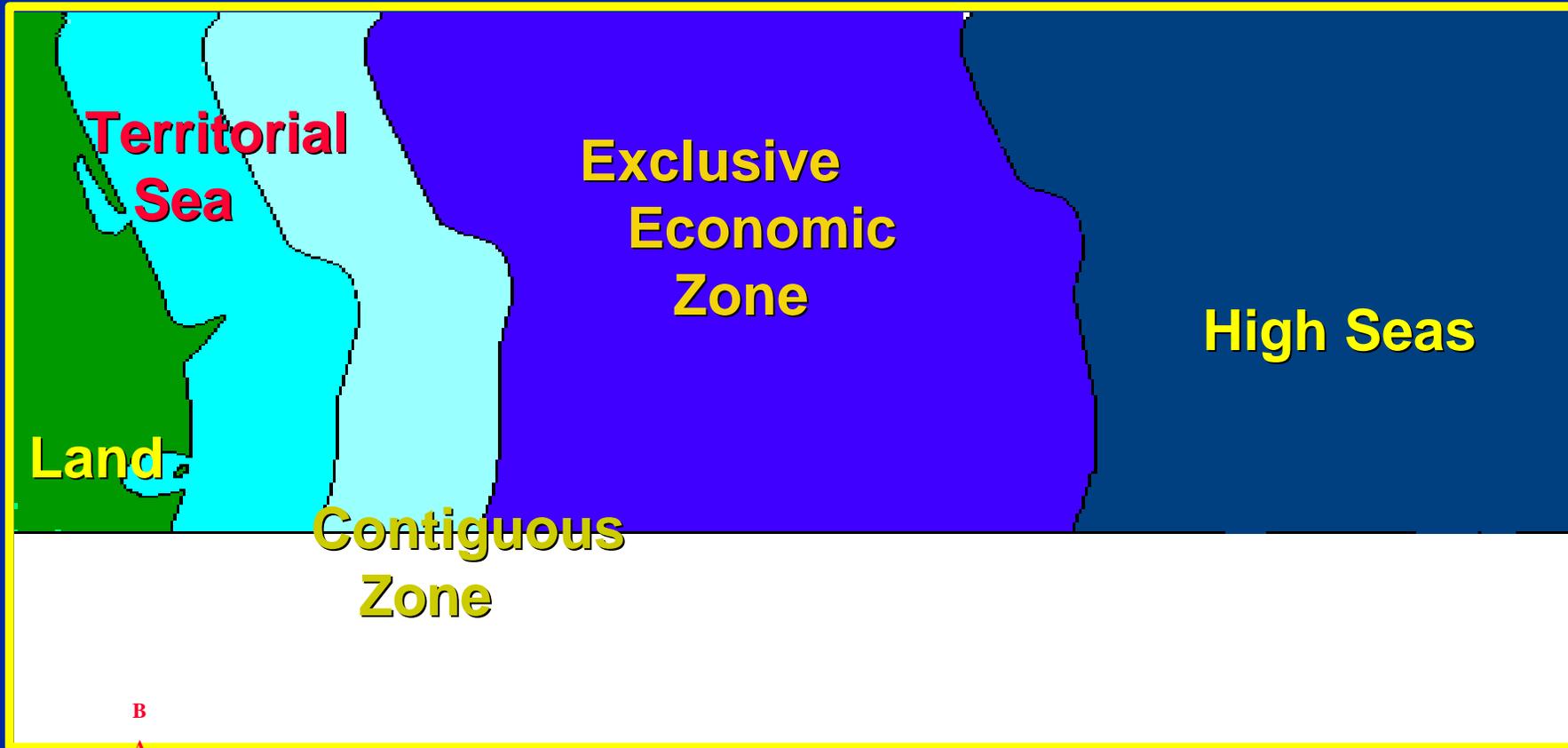
MARITIME ZONES

- INTERNAL WATERS
- 12 NM TERRITORIAL SEA
- 24 NM CONTIGUOUS ZONE
- 200 NM EXCLUSIVE ECONOMIC ZONE (EEZ)
- HIGH SEAS
- ARCHIPELAGIC WATERS
- CONTINENTAL SHELF
- DEEP SEABED



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MARITIME ZONES



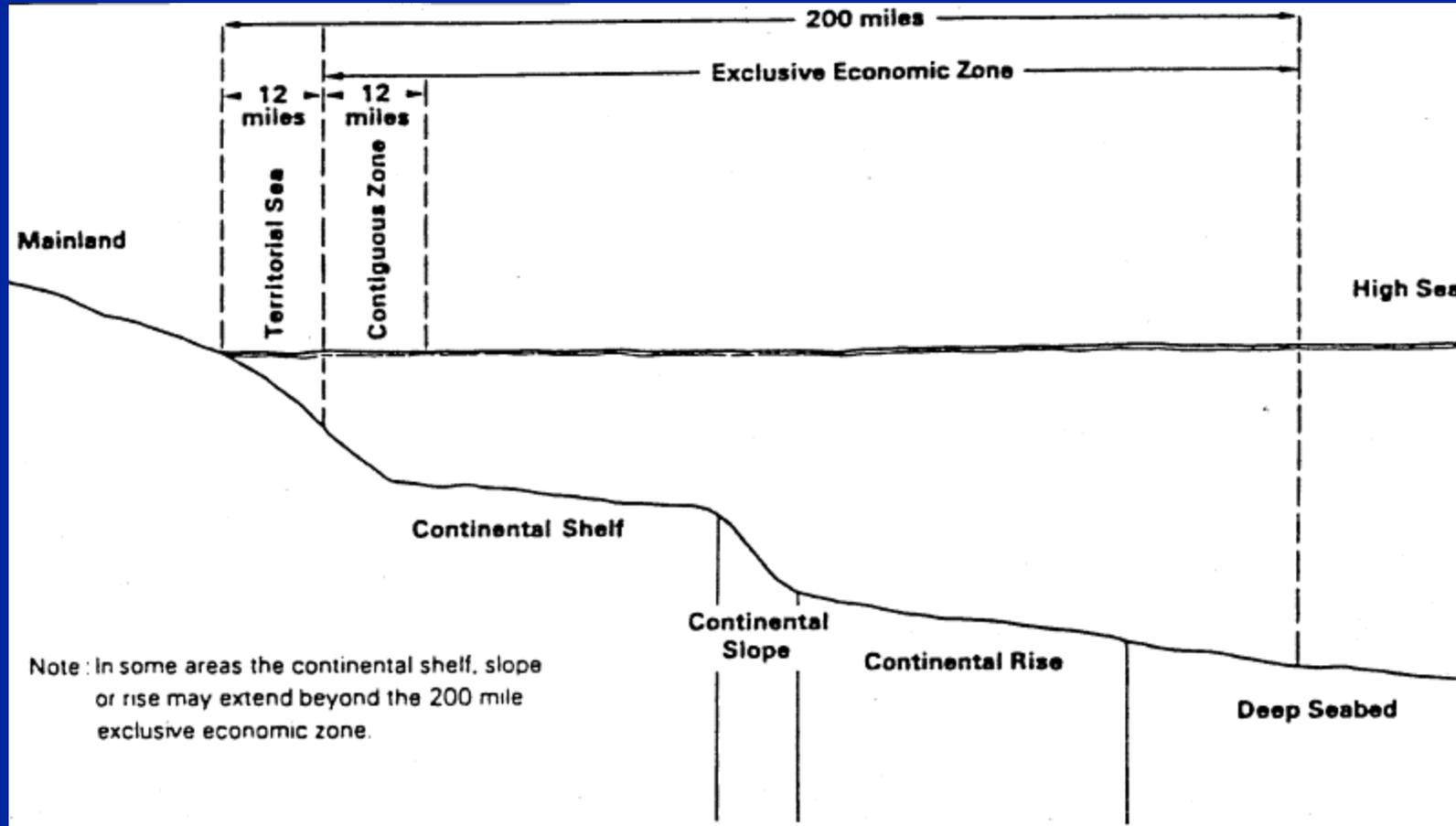
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12 NM

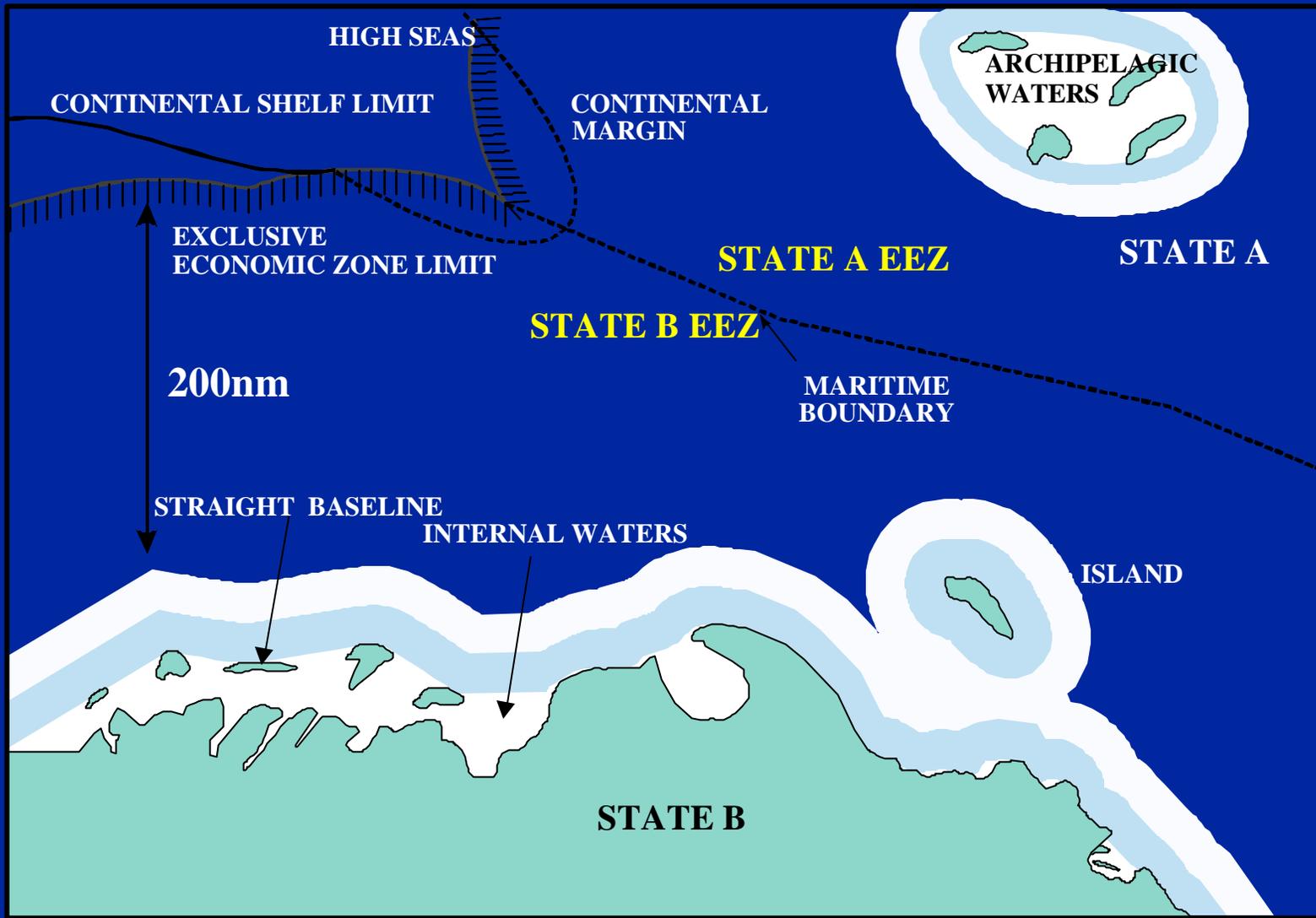
24 NM

200 NM

MARITIME ZONES



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COMNAVMETOCCOM-COUNSEL

INTERNAL WATERS

- WATERS LANDWARD OF THE BASELINE
- JURIDICAL BAYS
- HISTORIC WATERS
- NO RIGHT OF PASSAGE (WITHOUT CONSENT)



COMNAVMETOC-COUNSEL

TERRITORIAL SEA

- 12NM
- COMPLETE SOVEREIGNTY
- SUBJECT TO INNOCENT PASSAGE, TRANSIT PASSAGE & ARCHIPELAGIC SEA LANES PASSAGE & PROTECTION OF THE MARINE ENVIRONMENT
- AIRSPACE, SEABED & SUBSOIL



COMNAVMETOCCOM-COUNSEL

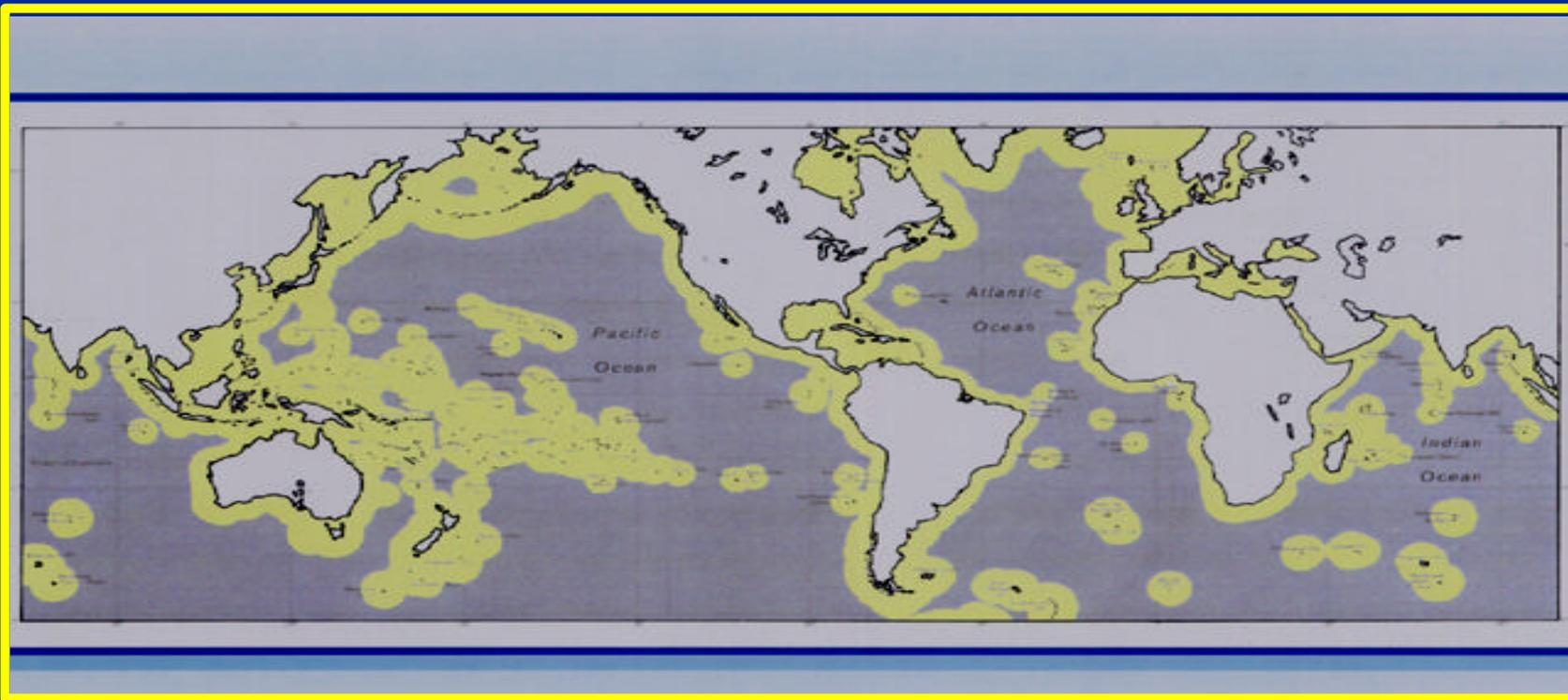
CONTIGUOUS ZONE

- 24 NM
- CUSTOMS, FISCAL, IMMIGRATION, & SANITARY LAWS & REGULATIONS
 - THAT OCCUR WITHIN THE TERRITORIAL SEA
- NO SOVEREIGNTY
- HIGH SEAS FREEDOMS



COMNAVMETOCCOM-COUNSEL

200 NM MARITIME ZONES



COMNAVMETOC-COUNSEL

EXCLUSIVE ECONOMIC ZONE

- 200 NM
- SOVEREIGN RIGHTS
 - EXPLORING, EXPLOITING, CONSERVING & MANAGING LIVING AND NON-LIVING RESOURCES
- BOARD, INSPECT, ARREST & INSTITUTE JUDICIAL PROCEEDINGS TO ENSURE COMPLIANCE
- SUBJECT TO INTERNATIONAL LAW REGARDING IMMUNE VESSELS
- NO IMPRISONMENT OR CORPORAL PUNISHMENT UNLESS AGREEMENT



COMNAVMETOCCOM-COUNSEL

EXCLUSIVE ECONOMIC ZONE

- JURISDICTION
- ARTIFICIAL ISLANDS
 - SAFETY ZONES
- MARINE SCIENTIFIC RESEARCH (MSR)
- PROTECTION & PRESERVATION OF MARINE ENVIRONMENT
- ARTICLE 236 SOVEREIGN IMMUNE VESSELS
- “DUE REGARD”



COMNAVMETOCCOM-COUNSEL

HIGH SEAS

- NO EXERCISE OF SOVEREIGNTY
- OPEN TO ALL STATES
- FREEDOM OF MOVEMENT & OPERATION -- ON, OVER AND UNDER
- “DUE REGARD”



COMNAVMETOCCOM-COUNSEL

HIGH SEAS FREEDOM

- **EXAMPLES**
 - NAVIGATION & OVERFLIGHT
 - LAY SUBMARINE CABLES & PIPELINES
 - CONSTRUCT ARTIFICIAL ISLANDS & OTHER INSTALLATIONS
 - FISHING
 - SCIENTIFIC RESEARCH
 - WARSHIPS & MILITARY AIRCRAFT



COMNAVMETOCCOM-COUNSEL

FISHING RIGHTS ON THE HIGH SEAS

- TREATY OBLIGATIONS
- LOSC RIGHTS, DUTIES & INTERESTS OF COASTAL STATE
- LOSC OBLIGATIONS OF FLAG STATE



COMNAVMETOC-COUNSEL

FLAG STATE JURISDICTION

- EXCLUSIVE FLAG STATE JURISDICTION
- DUTIES OF FLAG STATE
- ADMINISTRATIVE, TECHNICAL & SOCIAL MATTERS OF VESSEL & CREW
- MAINTAIN REGISTER
- ENSURE SAFETY AT SEA
- INVESTIGATE CASUALTIES & NAVIGATIONAL INCIDENTS



COMNAVMETOCCOM-COUNSEL

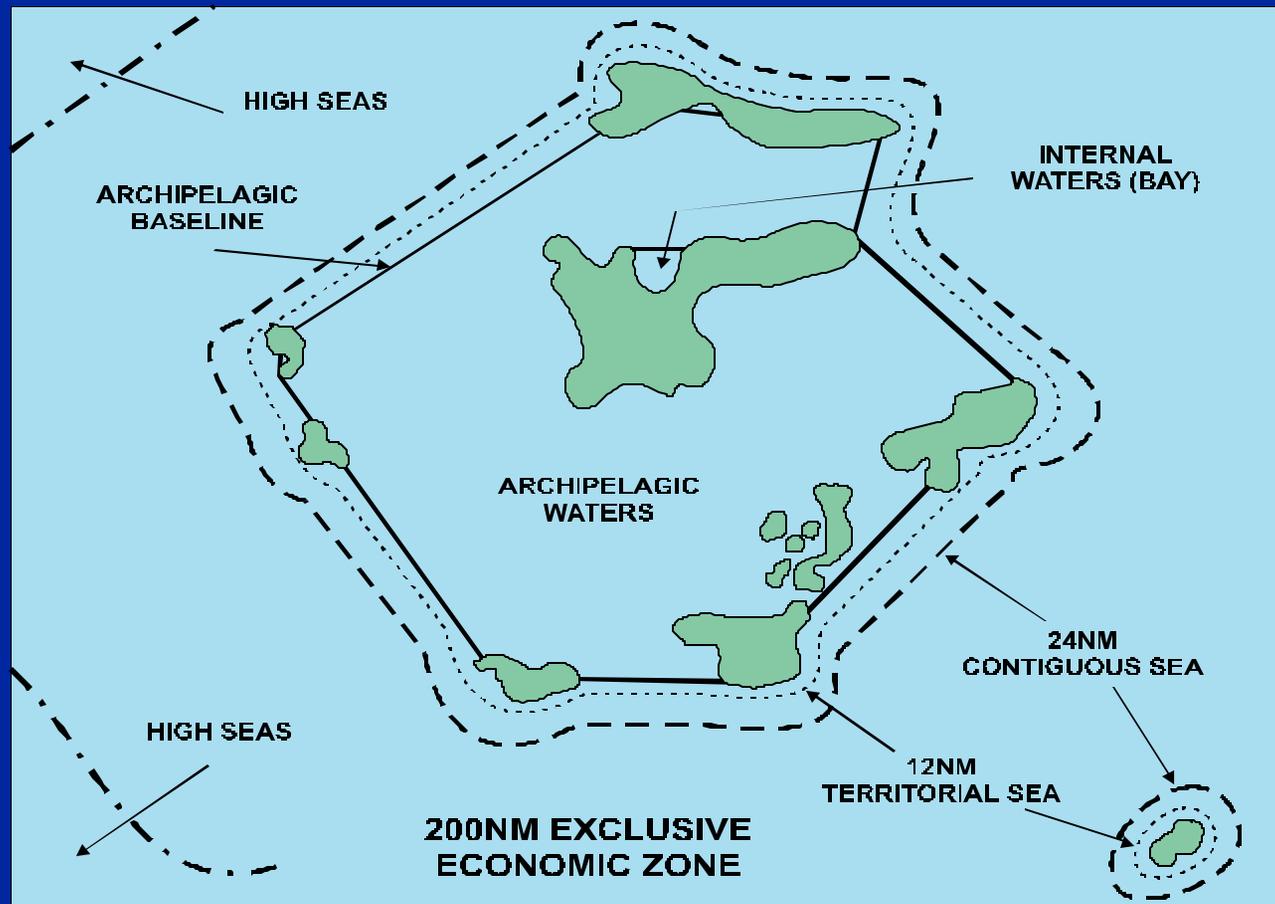
UNIVERSAL JURISDICTION

- TRANSPORT OF SLAVES
- PIRACY
- INTERNATIONAL NARCOTICS TRAFFIC
- UNAUTHORIZED BROADCASTING
- RIGHT OF APPROACH & VISIT



COMNAVMETOCCOM-COUNSEL

ARCHIPELAGIC BASELINES



COMNAVMETOC-COUNSEL

ARCHIPELAGIC WATERS

- GROUP OF ISLANDS, ... INTERCONNECTING WATERS AND OTHER NATURAL FEATURES WHICH ARE SO CLOSELY INTERRELATED THAT SUCH ISLANDS, WATERS AND OTHER NATURAL FEATURES FORM AN INTRINSIC GEOGRAPHICAL, ECONOMIC & POLITICAL ENTITY, OR WHICH HISTORICALLY HAVE BEEN REGARDED AS SUCH.
- NOT CONTINENTAL STATES (INCLUDING DEPENDENCIES)



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ARCHIPELAGIC BASELINES

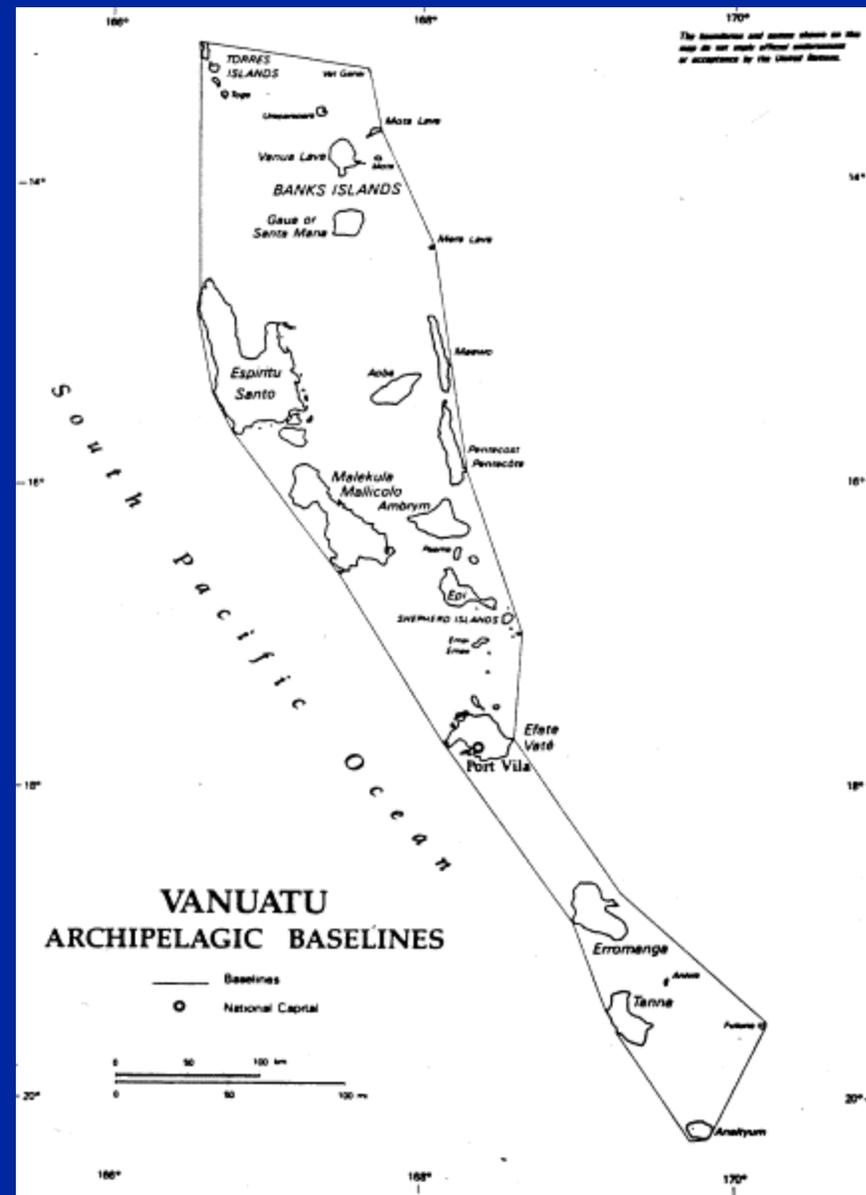
- STRAIGHT BASELINES JOINING OUTERMOST POINTS
- **WATER TO LAND RATIO (MINIMUM 1:1, MAXIMUM 9:1)**
- BASELINES MAY EXCEED 100 NM IN LENGTH (EXCEPT 3% UP TO 125 NM)
- GENERAL CONFIGURATION OF ARCHIPELAGO



COMNAVMETOCCOM-COUNSEL

ARCHIPELAGIC BASELINE

VANUATU



COMNAVMETOCCOM-COUNSEL

ARCHIPELAGIC WATERS & AIRSPACE

- ARCHIPELAGIC STATE SOVEREIGNTY
- RIGHT OF INNOCENT PASSAGE
- ARCHIPELAGIC SEA LANES & AIR ROUTES
- NORMAL PASSAGE ROUTES USED FOR INTERNATIONAL NAVIGATION



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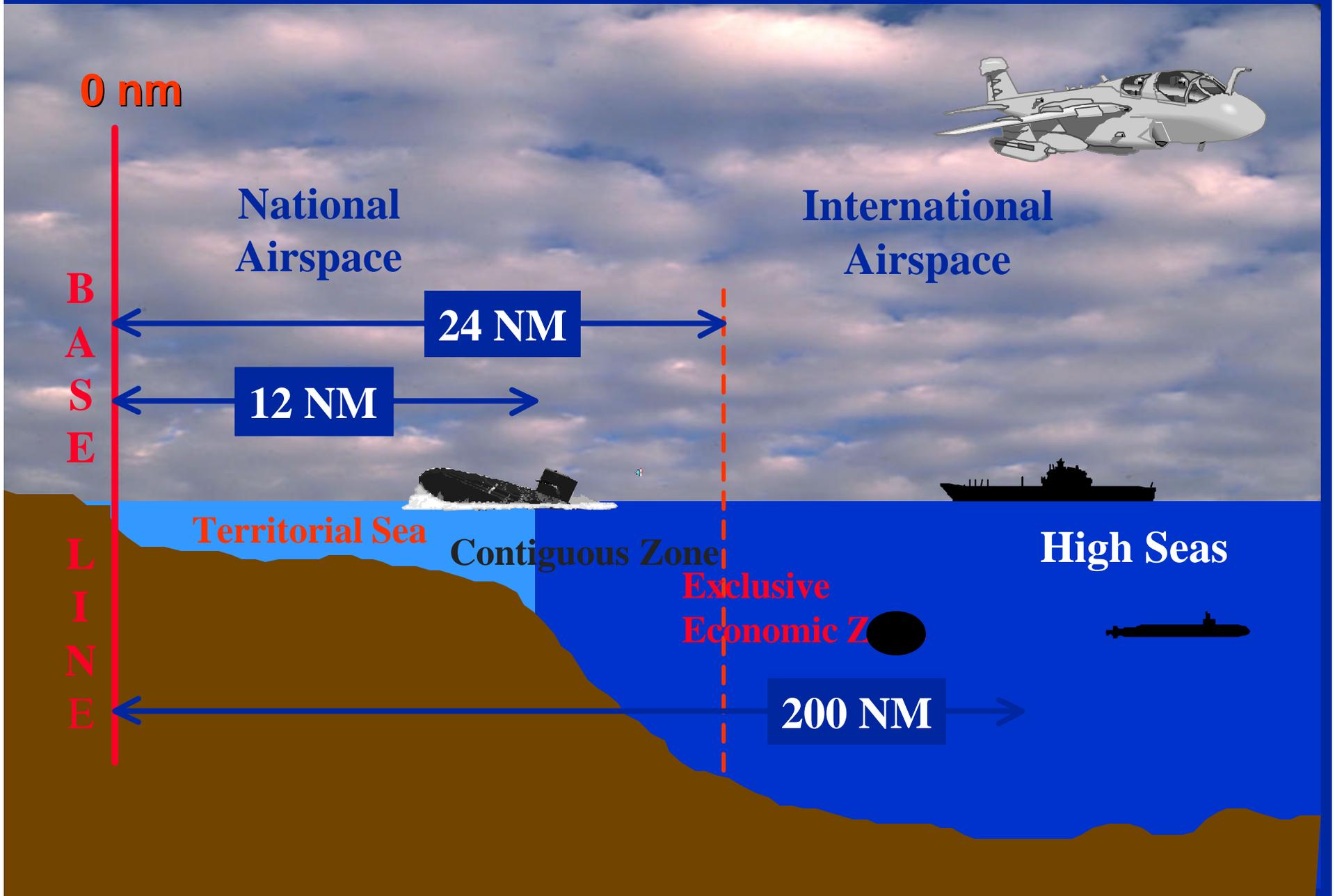
SURVEY OF THE LOS

MARITIME ZONES
COASTAL STATE RIGHTS
VS.
NAVIGATIONAL RIGHTS



COMNAVMETOCCOM-COUNSEL

OUTER SPACE



KINDS OF TRANSIT RIGHTS

- ***INNOCENT PASSAGE*** THROUGH TERRITORIAL SEAS AND ARCHIPELAGIC WATERS
- ***TRANSIT PASSAGE*** THROUGH INTERNATIONAL STRAITS
- ***ARCHIPELAGIC SEA LANES PASSAGE*** THROUGH ARCHIPELAGIC SEA LANES
- ***HIGH SEAS FREEDOMS*** (EEZ)



COMNAVMETOCCOM-COUNSEL

RIGHT OF INNOCENT PASSAGE

- INNOCENT PASSAGE THROUGH TERRITORIAL SEA
 - SHIPS
 - NOT AIRCRAFT
 - SUBMARINES MUST NAVIGATE ON SURFACE & SHOW FLAG
- NOT PREJUDICIAL TO PEACE, GOOD ORDER & SECURITY



COMNAVMETOCCOM-COUNSEL

RIGHT OF INNOCENT PASSAGE

- CONTINUOUS AND EXPEDITIOUS PASSAGE
- ALL SHIPS, REGARDLESS OF CARGO OR MEANS OF PROPULSION
 - NO PRIOR NOTICE OF CONSENT REQUIRED
- TEMPORARY SUSPENSION OF INNOCENT PASSAGE
 - ESSENTIAL FOR SECURITY
 - PUBLISHED & NON-DISCRIMINATORY



COMNAVMETOCCOM-COUNSEL

RIGHT OF INNOCENT PASSAGE

- COASTAL STATE LAWS & REGULATIONS
 - COMPLY WITH GENERALLY ACCEPTED INT'L REGULATIONS RELATING TO COLLISION AT SEA
 - NO REGULATION OF CONSTRUCTION, DESIGN, MANNING, OR EQUIPMENT OF FOREIGN SHIPS, UNLESS ACCEPTED INTERNATIONAL RULES OR STANDARDS
 - ARTICLE 21



COMNAVMETOCCOM-COUNSEL

RIGHT OF INNOCENT PASSAGE

- COASTAL STATE ENFORCEMENT AUTHORITY
 - APPROPRIATE ACTION
 - MAY INCLUDE USE OF FORCE
 - SOVEREIGN IMMUNE VESSELS
 - SOLE REMEDY - REQUIRE IMMEDIATE DEPARTURE
 - SELF DEFENSE
 - BLACK SEA BUMPING
 - PERU 1992



COMNAVMETOCCOM-COUNSEL

INNOCENT PASSAGE PERMITS

(ARTICLES 18, 21, 22)

- UNANNOUNCED CONTINUOUS AND EXPEDITIOUS PASSAGE
- STOPPING AND ANCHORING*
- COASTAL STATE NON-DISCRIMINATORY SUSPENSION
- COASTAL STATE REGULATION OF MARITIME TRAFFIC
- DESIGNATION OF SEA LANES AND TRAFFIC SEPARATION SCHEMES
- SOVEREIGN IMMUNITY OF WARSHIPS



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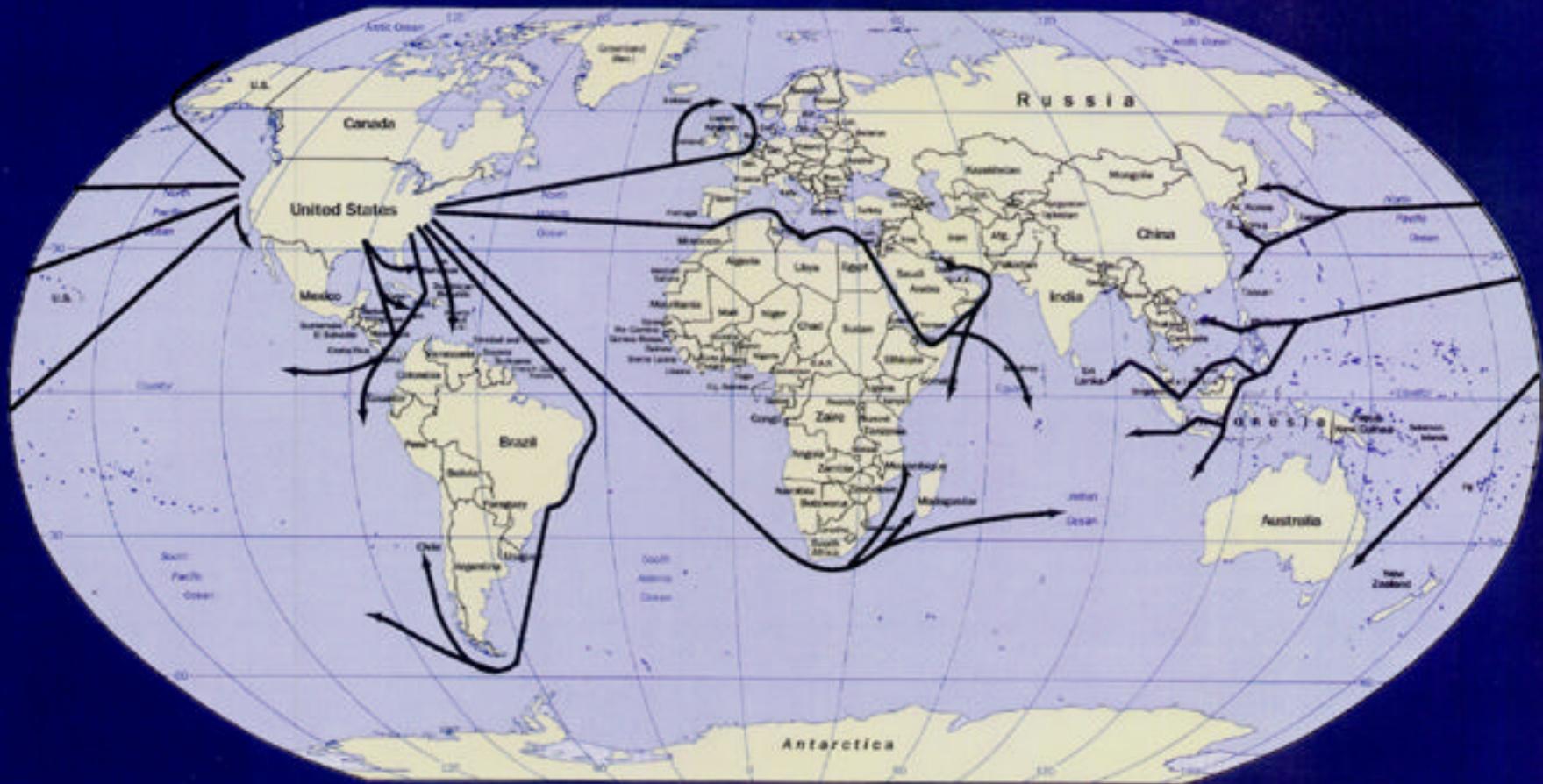
INNOCENT PASSAGE PROHIBITS (ARTICLES 19, 20)

- THREAT OR USE OF FORCE
- WEAPONS EXERCISE OR PRACTICE
- FLIGHT
- INTELLIGENCE COLLECTION
- RESEARCH OR SURVEY
- SUBMERGED SUBMARINES
- POLLUTION
- INTERFERENCE WITH COMMUNICATION
- PROPAGANDA
- LOADING OR UNLOADING OF ANY COMMODITY, CURRENCY, OR PERSON CONTRARY TO COASTAL STATE LAW
- FISHING



COMNAVMETOCCOM-COUNSEL

STRATEGIC STRAITS



PASSAGE THROUGH INTERNATIONAL STRAITS

- TRANSIT PASSAGE
- ARCHIPELAGIC SEA LANE PASSAGE
- NON-SUSPENDABLE INNOCENT PASSAGE
- REGIMES ONLY APPLY IF NO HIGH SEAS/EEZ CORRIDOR OF SIMILAR CONVENIENCE & SUITABLE FOR NAVIGATION
- LONG-STANDING INTERNATIONAL CONVENTIONS (E.G. TURKISH STRAITS, MAGELLAN)
- MAN-MADE CANALS (E.G. PANAMA, SUEZ)



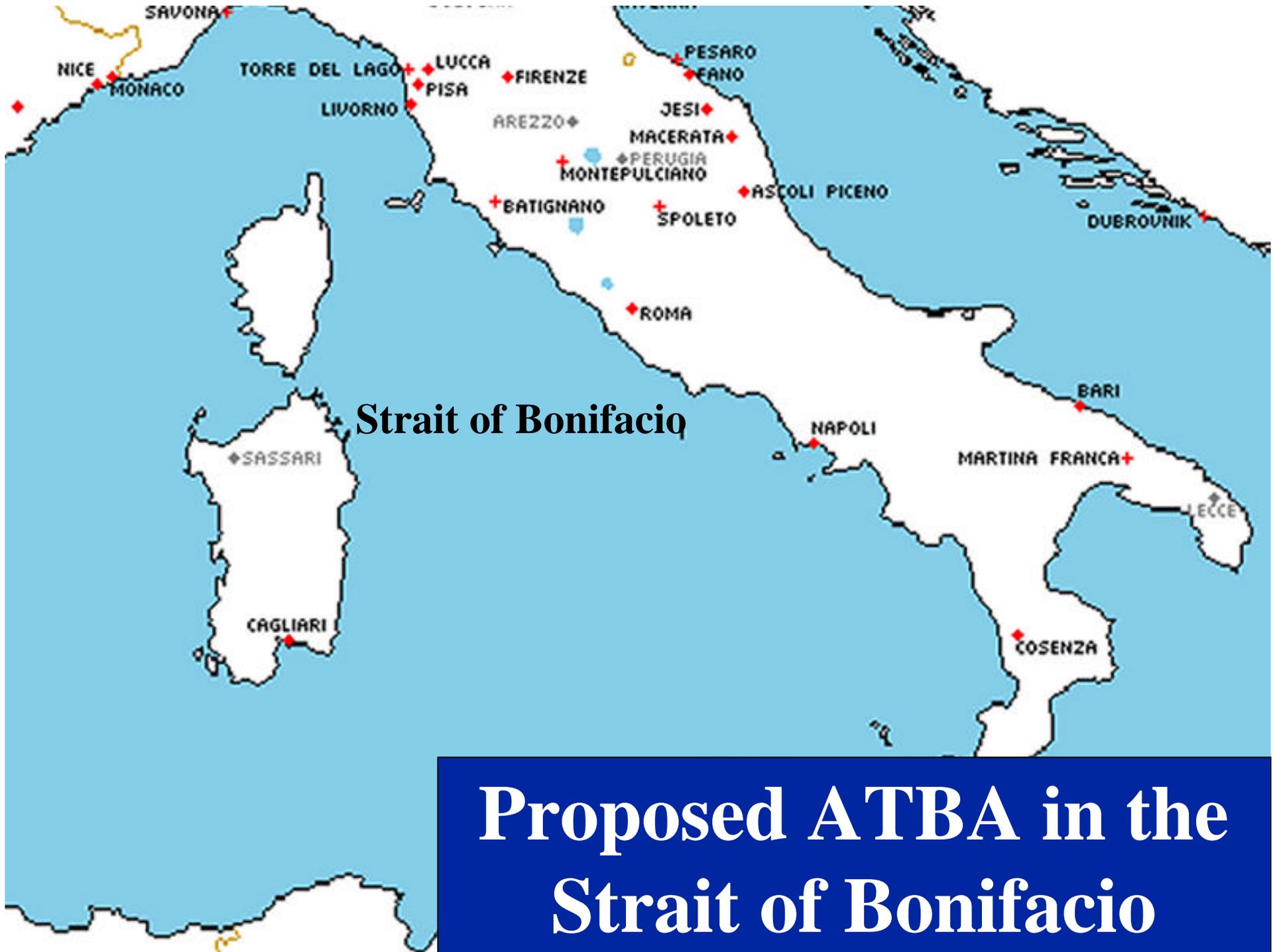
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RIGHT OF TRANSIT PASSAGE INTERNATIONAL STRAITS

- CONNECT HIGH SEAS/EEZ TO ANOTHER PART OF HIGH SEAS/EEZ -- GEOGRAPHY DECISIVE CRITERIA
- SIMILAR CONVENIENCE
 - MESSINA EXCEPTION - NON-SUSPENDABLE INNOCENT PASSAGE
- OVER 100 STRAITS OVERLAPPED BY TERRITORIAL SEAS WHICH PREVIOUSLY HAD BEEN HIGH SEAS CORRIDORS
 - MANY STRAITS VITAL TO NAVIGATION & OVERFLIGHT



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Strait of Bonifacio

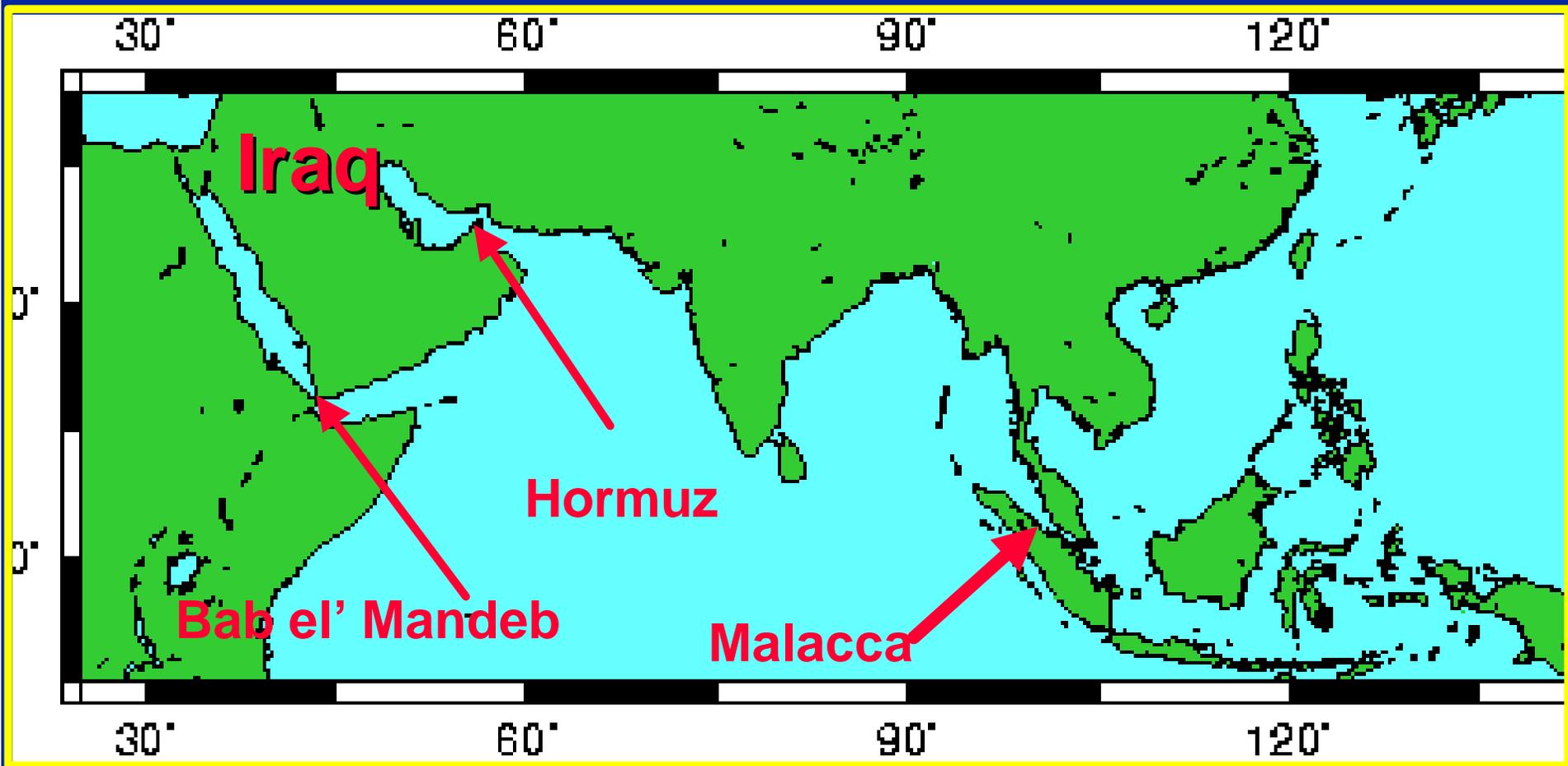
Proposed ATBA in the Strait of Bonifacio

Turkish Straits Issues





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TRANSIT PASSAGE

(ARTICLE 38)

- CONTINUOUS
 - EXPEDITIOUS
 - UNIMPEDED
 - NON-SUSPENDABLE
 - NAVIGATION
 - OVER-FLIGHT
 - IN THE NORMAL MODE
- NORMAL MODE:
 - CONSISTENT W/ SOUND NAVIGATIONAL PRACTICES AND SECURITY OF THE FORCE
 - SUBMERGED
 - FORMATION STEAMING
 - LAUNCH AND RECOVERY OF AIRCRAFT



COMNAVMETOCCOM-COUNSEL



WITH TRANSIT PASSAGE RIGHTS



WITHOUT TRANSIT PASSAGE RIGHTS



DUTIES OF SHIPS & AIRCRAFT DURING TRANSIT PASSAGE

- PROCEED WITHOUT DELAY
- REFRAIN FROM THREAT OR USE OF FORCE
- NO ACTIVITIES OTHER THAN NORMAL MODE OF CONTINUOUS & EXPEDITIOUS TRANSIT
- COMPLY WITH LOSC, PART III



COMNAVMETOCCOM-COUNSEL

DUTIES OF SHIPS AND AIRCRAFT IN TRANSIT PASSAGE (ARTICLE 39)

- SHIPS:
 - SHALL COMPLY WITH INTERNATIONAL REGULATIONS FOR SAFETY AT SEA, INCLUDING
 - COLREGS
- AIRCRAFT:
 - STATE AIRCRAFT "WILL NORMALLY COMPLY WITH SUCH SAFETY MEASURES" AND OPERATE WITH "DUE REGARD"
 - AND AT ALL TIMES MONITOR AIR TRAFFIC CONTROL FREQUENCY
 - CIVIL AIR MUST OBSERVE ICAO RULES OF THE AIR



COMNAVMETOCCOM-COUNSEL

RIGHTS & DUTIES OF STATES BORDERING STRAITS

- TRANSIT PASSAGE NON-SUSPENDABLE IN PEACETIME
- TRAFFIC SEPARATION SCHEMES (IMO APPROVAL)
- NON-DISCRIMINATORY LAWS & REGULATION
 - NAVIGATION SAFETY/TRAFFIC REGULATION
 - POLLUTION CONTROL
 - FISHING PROHIBITION
 - LOADING & UNLOADING ANY COMMODITY, CURRENCY OR PERSON



COMNAVMETOCCOM-COUNSEL

RIGHTS & DUTIES OF STATES BORDERING STRAITS

- CANNOT HAVE PRACTICAL EFFECT OF DENYING, HAMPERING, OR IMPAIRING TRANSIT PASSAGE
- SOVEREIGN IMMUNE VESSELS - FLAG STATE RESPONSIBILITY
- DANGER TO NAVIGATION OR OVERFLIGHT



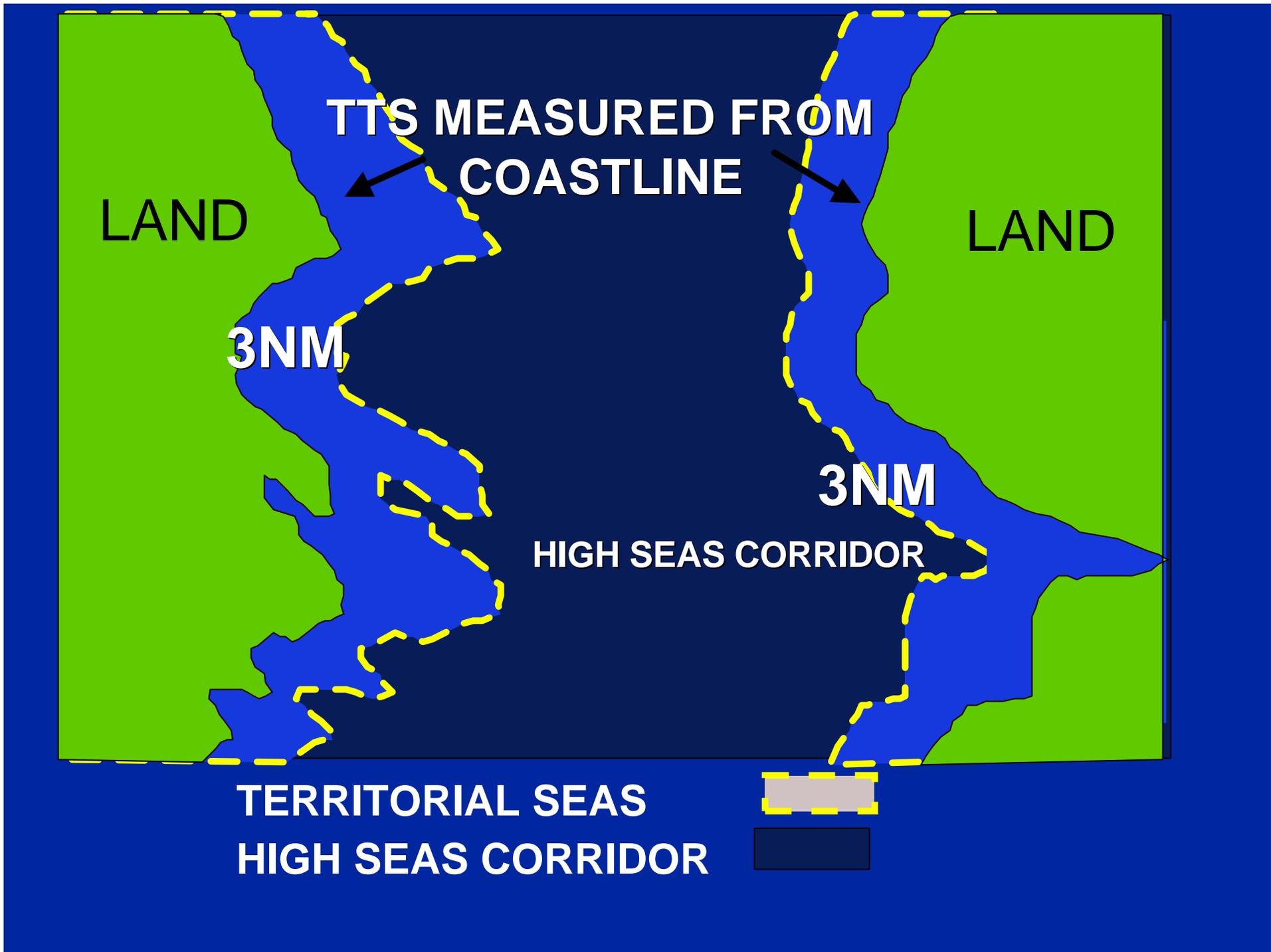
COMNAVMETOC-COUNSEL

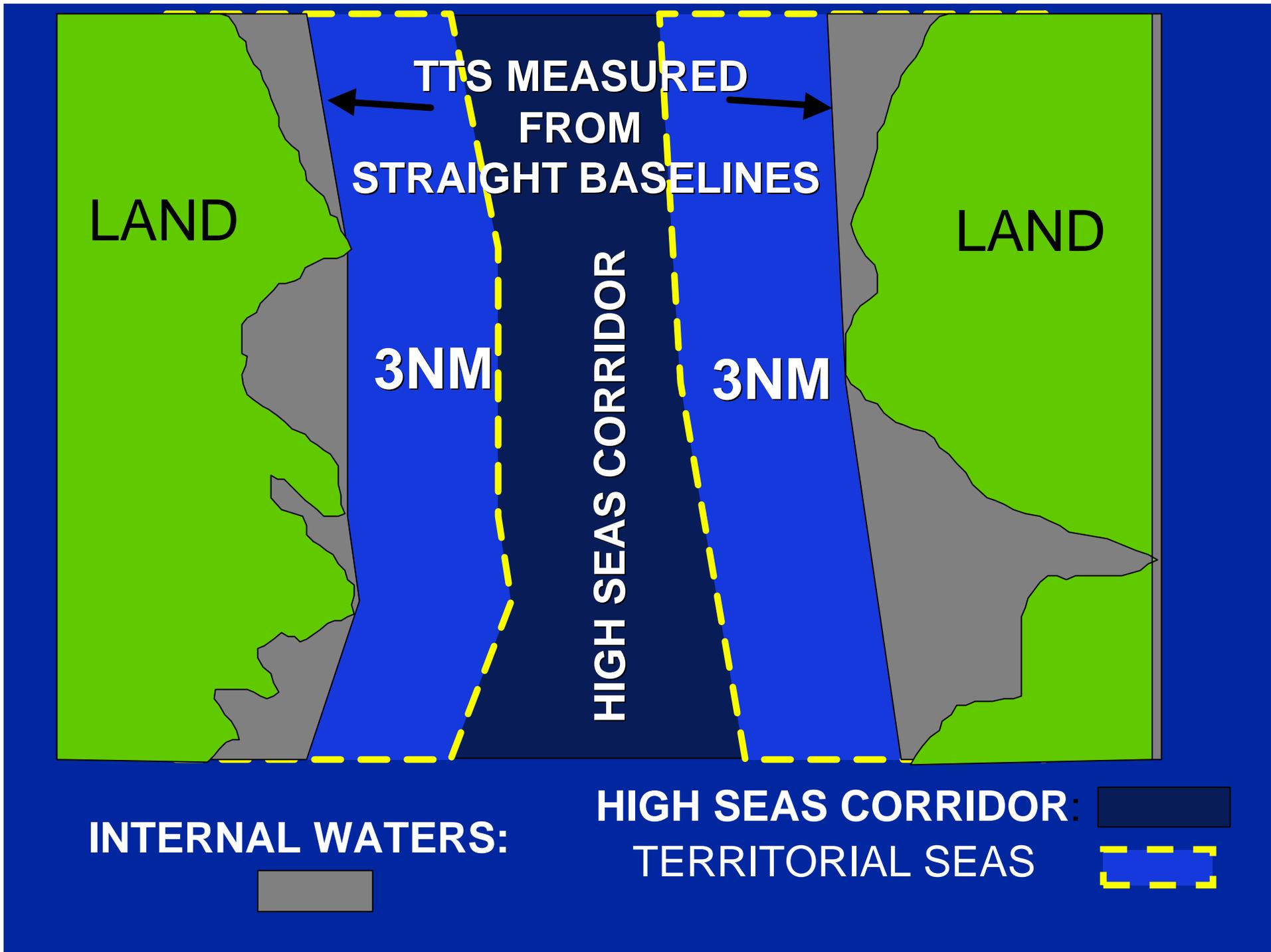
JAPAN TERRITORIAL SEA CLAIMS

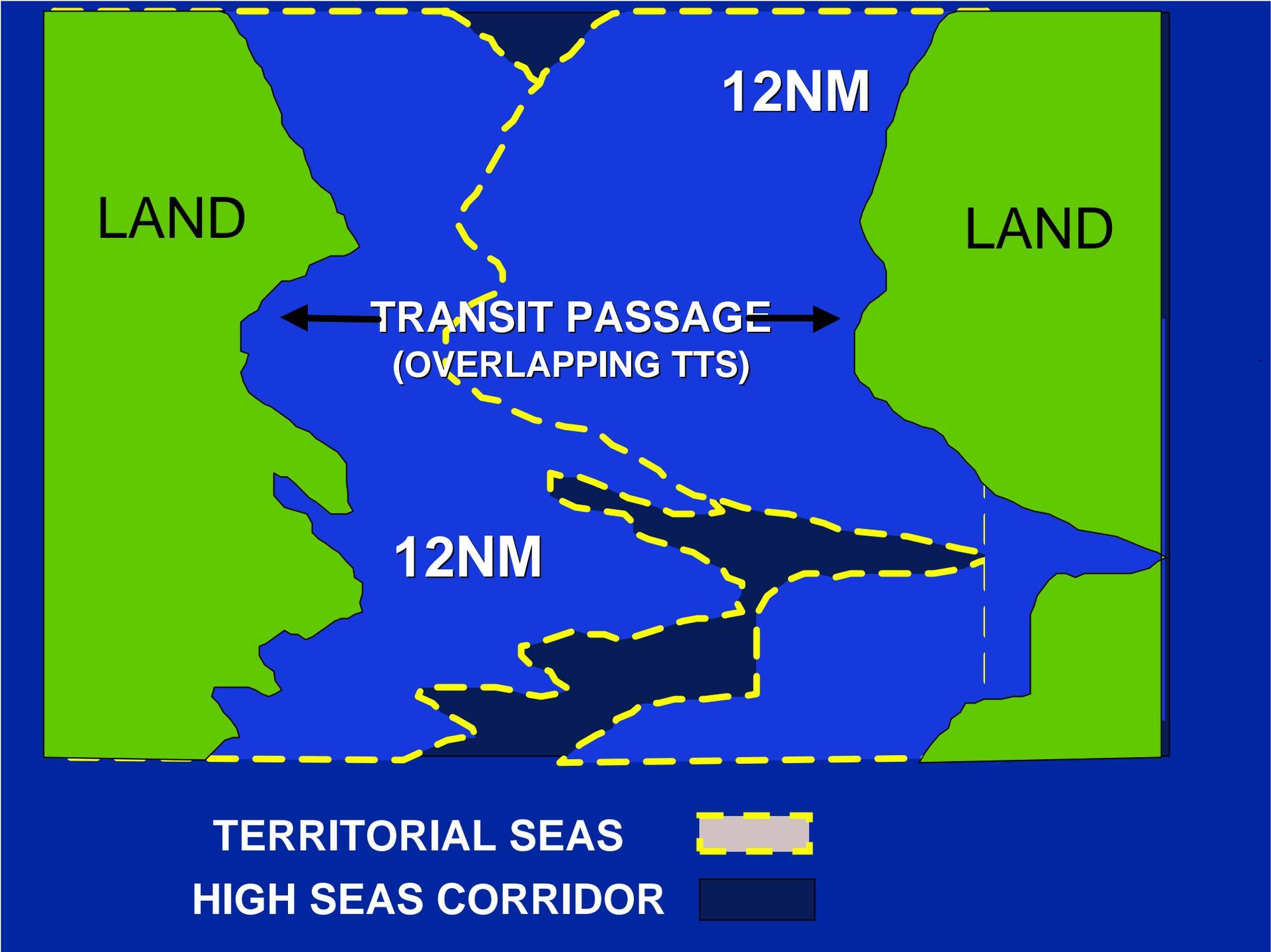
- CURRENT CLAIM IS 12NM, EXCEPT IN FIVE STRAITS WHERE 3NM CLAIMED
- PROVIDES FOR “HIGH SEAS CORRIDOR”
- INCREASE IN BREADTH OF TERRITORIAL SEA COULD RESULT IN RIGHT OF TRANSIT PASSAGE THROUGHOUT THE STRAIT



COMNAVMETOC-COUNSEL







ARCHIPELAGIC SEA LANES PASSAGE -- STRAITS

- ARCHIPELAGIC SEA LANES
PASSAGE APPLIES TO STRAITS
WITHIN ARCHIPELAGIC WATERS
 - E.G. SUNDA & LUMBOK STRAITS
INDONESIA DESIGNATED
ARCHIPELAGIC SEA LANES



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DEAD END STRAITS / MESSINA EXCEPTION

- NON-SUSPENDABLE INNOCENT PASSAGE
 - HIGH SEA/EEZ & TERRITORIAL SEA OF FOREIGN STATE
 - HIGH SEA/EEZ & HIGH SEA/EEZ - STRAIT FORMED BY ISLAND IF ROUTE OF SIMILAR CONVENIENCE EXISTS SEAWARD
 - EXAMPLE -- STRAITS OF TIRAN



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MAPQUEST™



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ARCHIPELAGIC SEA LANES PASSAGE (Article 54)

Transit passage rules apply
mutatis mutandis



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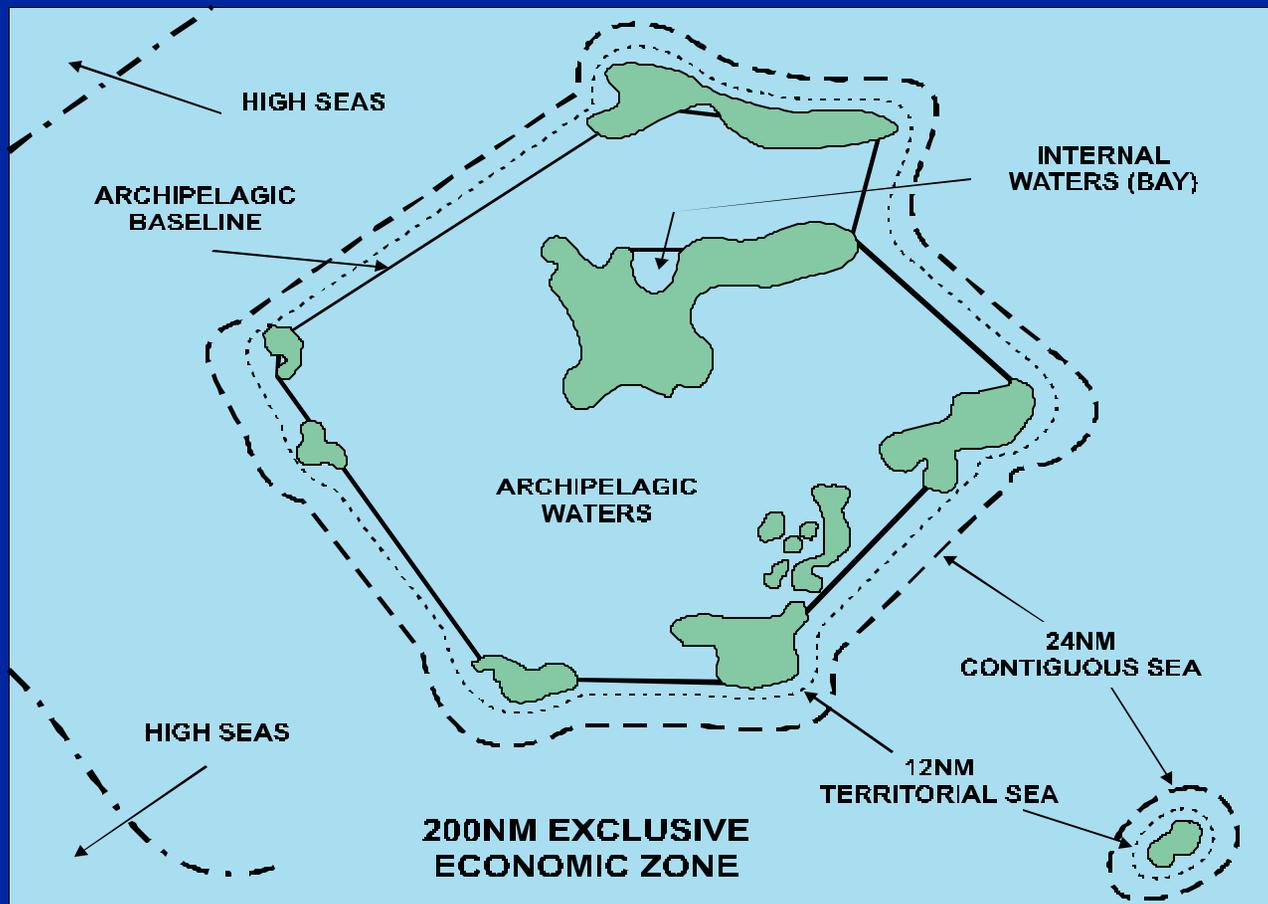
THE SOVEREIGNTY OF THE ARCHIPELAGIC STATE

EXTENDS TO THE WATERS
ENCLOSED BY THE ARCHIPELAGIC
BASELINES,
BUT IS SUBJECT TO THE REGIMES
OF INNOCENT AS WELL AS
ARCHIPELAGIC SEA LANES
PASSAGE



COMNAVMETOC-COUNSEL

ARCHIPELAGIC BASELINES



COMNAVMETOC-COUNSEL

ARCHIPELAGOES

- INNOCENT PASSAGE IN NON-SEA LANE ARCHIPELAGIC WATERS
- ARCHIPELAGIC SEA LANES PASSAGE IN ARCHIPELAGIC SEA LANES
 - NORMAL MODE
 - SUBMERGED SUBMARINES
 - NORMAL FLIGHT OPERATIONS



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ARCHIPELAGIC SEA LANE PASSAGE

- NAVIGATION & OVERFLIGHT IN NORMAL MODE
 - SOLELY FOR CONTINUOUS, EXPEDITIOUS & UNOBSTRUCTED TRANSIT
- INNOCENT PASSAGE IN ARCHIPELAGIC WATERS OUTSIDE SEA LANES
- NON-SUSPENDABLE RIGHT
- MUTATIS MUTANDIS - TRANSIT PASSAGE PROVISIONS



COMNAVMETOCCOM-COUNSEL

DESIGNATION OF ARCHIPELAGIC SEA LANES

- SEA LANES & AIR ROUTES MUST:
 - INCLUDE ALL NORMAL PASSAGE ROUTES & ALL NORMAL NAVIGATIONAL CHANNELS
 - CONFORM TO ACCEPTED INTERNATIONAL REGULATIONS
 - REFERRAL, IMO APPROVAL PRIOR TO IMPLEMENTATION
- IF NO SEA LANES DESIGNATED --ARCHIPELAGIC SEA LANE PASSAGE IN ALL ROUTES NORMALLY USED FOR INTERNATIONAL NAVIGATION & OVERFLIGHT



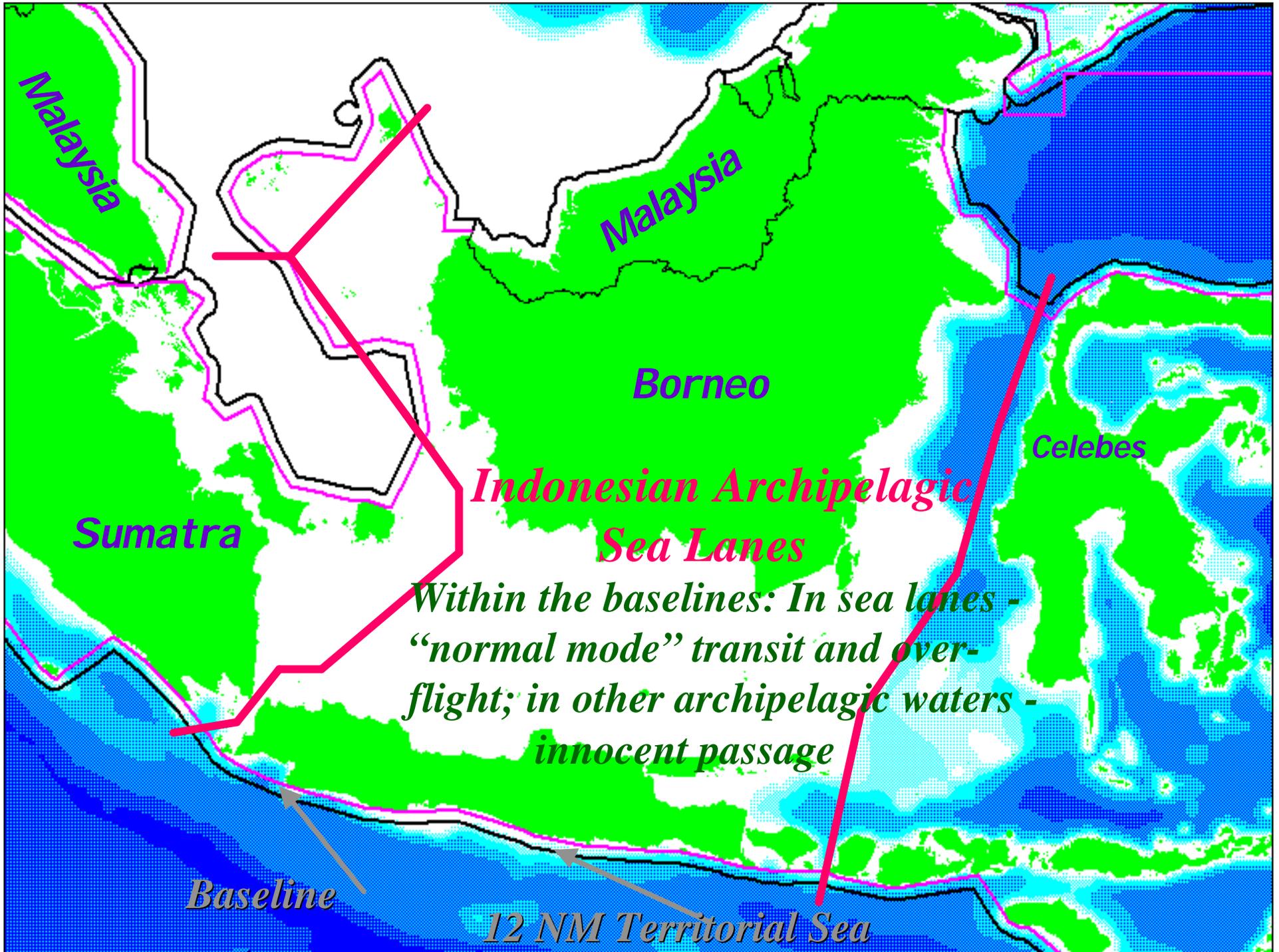
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SEA LANES & TRAFFIC SEPARATION SCHEMES

- AXIS POINTS FROM ENTRY POINTS OF TRANSIT ROUTES TO EXIT POINTS
- MAXIMUM WIDTH -- 50 NM
- ARCHIPELAGIC STATES - INDICATE AXIS OF SEA LANES & TRAFFIC SEPARATION SCHEMES
- SHIPS IN ARCHIPELAGIC SEA LANE PASSAGE MUST RESPECT APPLICABLE SEA LANES & TRAFFIC SEPARATION SCHEMES DESIGNATED & PRESCRIBED IAW LOSC



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Malaysia

Malaysia

Borneo

Celebes

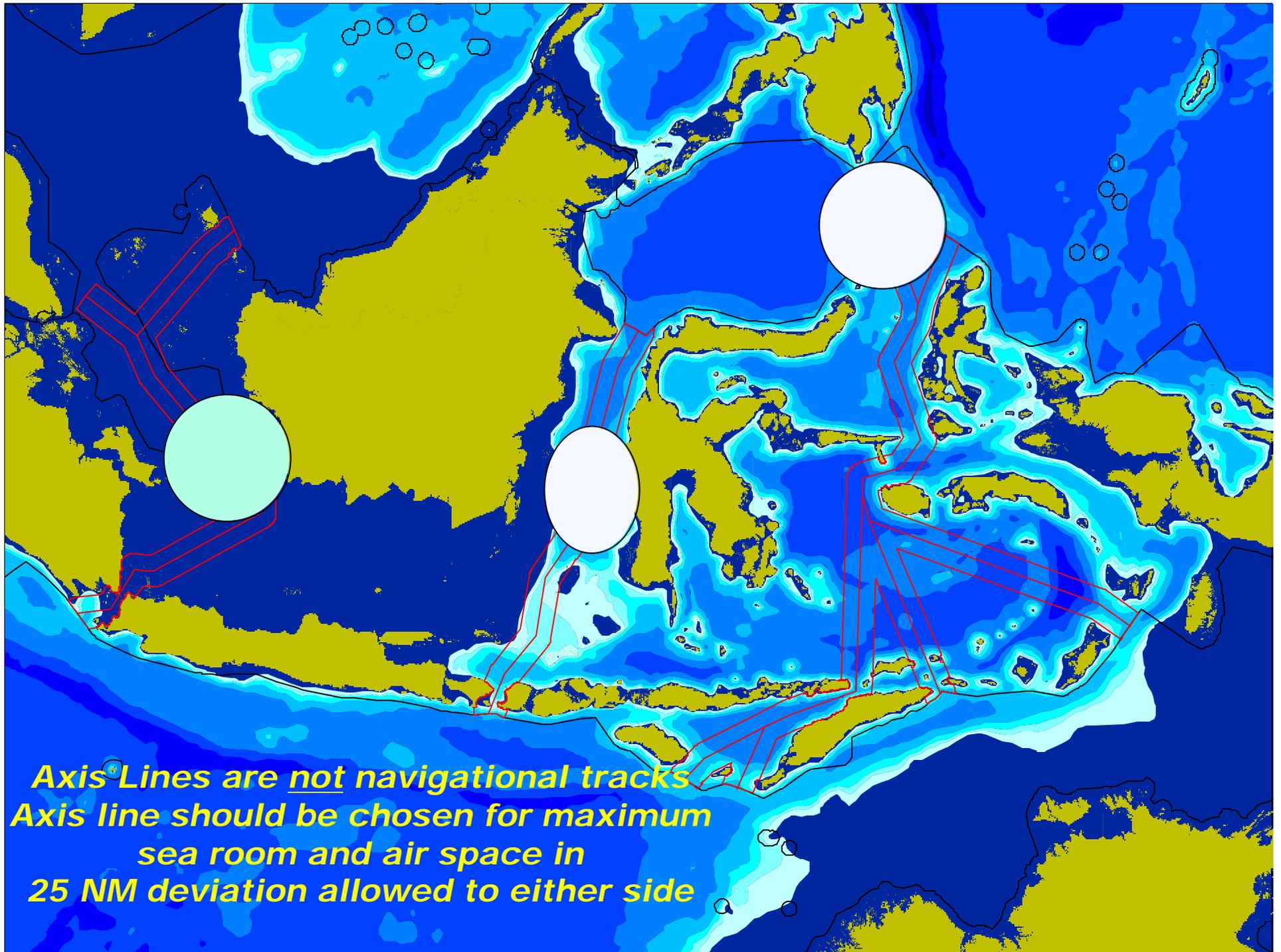
Sumatra

Indonesian Archipelagic Sea Lanes

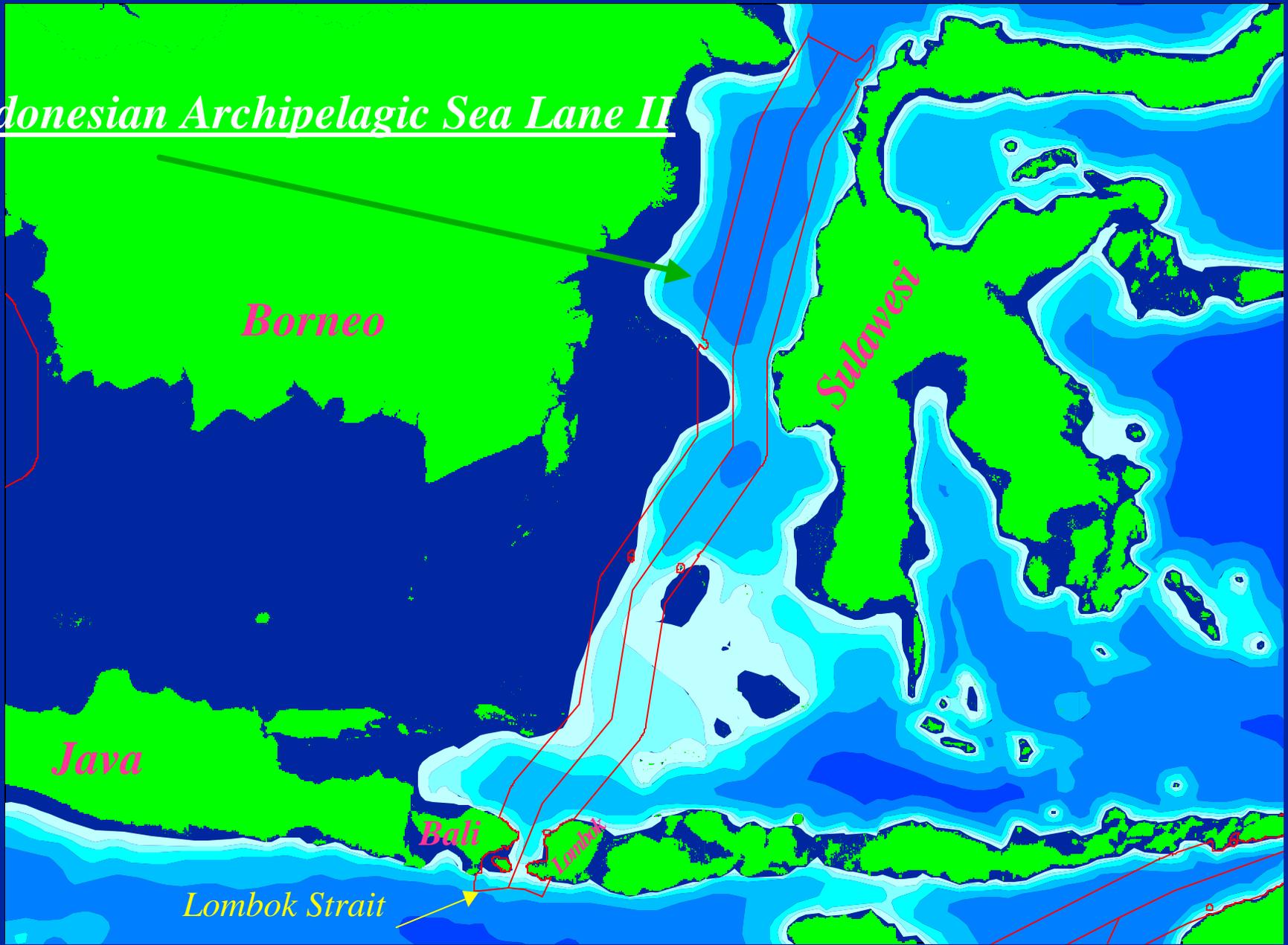
Within the baselines: In sea lanes -
"normal mode" transit and over-
flight; in other archipelagic waters -
innocent passage

Baseline

12 NM Territorial Sea



Indonesian Archipelagic Sea Lane II



*Bordering island with
10% rule applied*

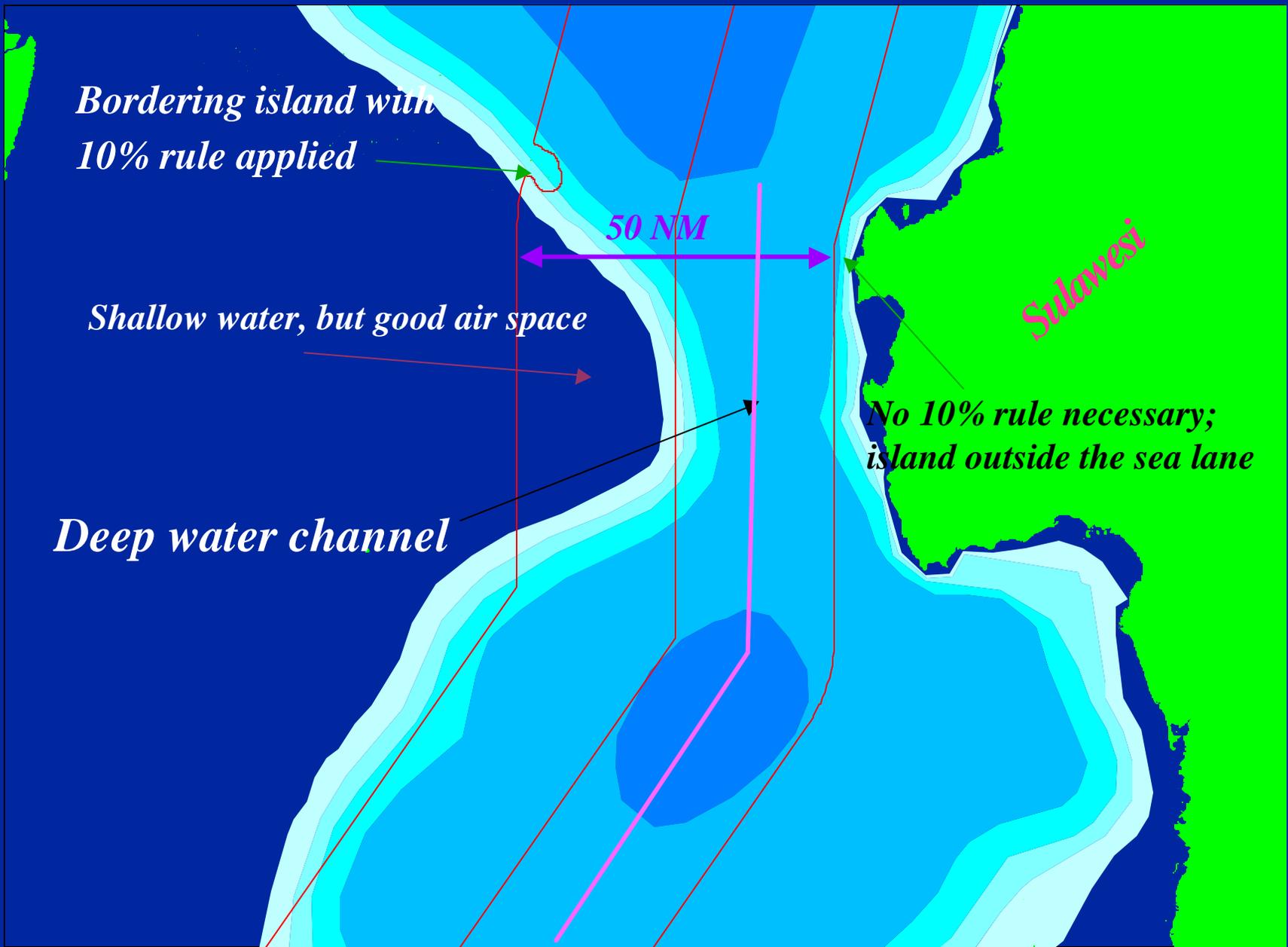
50 NM

Shallow water, but good air space

Deep water channel

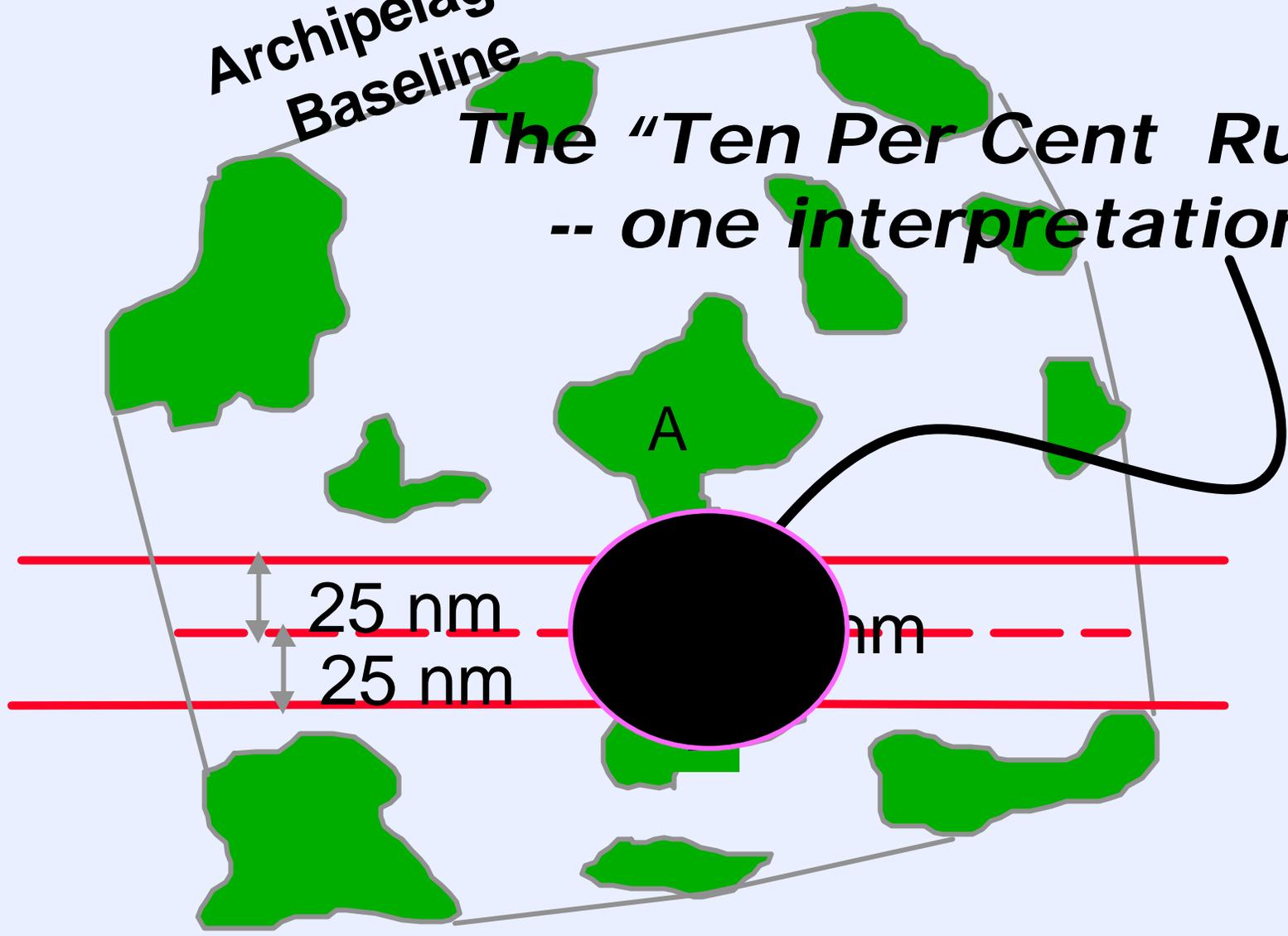
*No 10% rule necessary;
island outside the sea lane*

Sulawesi



Archipelagic
Baseline

*The "Ten Per Cent Rule"
-- one interpretation*



Ships/AC have 4 nm standoff from islands A & B

**MARINE SCIENTIFIC
RESEARCH
&
MILITARY &
HYDROGRAPHIC
SURVEY ACTIVITIES**



COMNAVMETOCCOM-COUNSEL

MARINE SCIENTIFIC RESEARCH

- OCEANOGRAPHY, MARINE BIOLOGY, FISHERIES RESEARCH, SCIENTIFIC OCEAN DRILLING AND CORING, GEOLOGICAL/GEOPHYSICAL SCIENTIFIC SURVEYING, AND OTHER ACTIVITIES WITH A SCIENTIFIC PURPOSE
- RIGHT TO CONDUCT MSR, SUBJECT TO RIGHTS AND DUTIES OF OTHER STATES



COMNAVMETOCCOM-COUNSEL

MARINE SCIENTIFIC RESEARCH

- COASTAL STATE CAN REQUIRE CONSENT WITHIN WATERS UNDER THEIR JURISDICTION
 - INTERNAL WATERS, TERRITORIAL SEA, ARCHIPELAGIC WATERS, CONTINENTAL SHELF & EEZ
- BALANCE - SPECIFIC CRITERIA - MAXIMUM SCIENTIFIC ACCESS
 - SHOULD NORMALLY GRANT CONSENT
 - ESTABLISHED RULES & PROCEDURES
 - CONSENT MAY BE WITHHELD UNDER CERTAIN CONDITIONS

U.S. DOES NOT REQUIRE NOTICE OR CONSENT FOR MSR WITHIN ITS EEZ



COMNAVMETOCCOM-COUNSEL

MARINE SCIENTIFIC RESEARCH

- IMPLIED CONSENT
- DUTIES OF RESEARCHING STATE/
INTERNATIONAL ORGANIZATION
 - NOT LESS THAN 6 MONTHS IN ADVANCE,
FULL DESCRIPTION
 - NATURE & OBJECTIVE
 - METHODS TO BE USED
 - PRECISE GEOGRAPHIC AREA
 - ESTIMATED DATES
 - SPONSORING INSTITUTION
 - EXTENT OF COASTAL STATE PARTICIPATION
REPRESENTATION



COMNAVMETOCCOM-COUNSEL

MARINE SCIENTIFIC RESEARCH

- RESEARCHING STATE OBLIGATIONS
 - PERMIT COASTAL STATE PARTICIPATION/ REPRESENTATION WITHOUT COST
 - PROVIDE PRELIMINARY REPORTS & FINAL RESULTS AND CONCLUSIONS
 - ACCESS TO & ASSESSMENT OF ALL DATA, SAMPLES & RESEARCH RESULTS
 - ENSURE RESULTS ARE MADE AVAILABLE INTERNATIONALLY



COMNAVMETOCCOM-COUNSEL

MARINE SCIENTIFIC RESEARCH

- COASTAL STATE RIGHTS
 - ORDER SUSPENSION
 - RESEARCH NOT CONDUCTED IN ACCORDANCE WITH INFORMATION PROVIDED
 - FAILURE TO COMPLY WITH LOSC DUTIES
 - ORDER CESSATION
 - NONCOMPLIANCE WITH LOSC, MAJOR CHANGE
 - SUSPENSION SITUATION NOT CORRECTED
 - NOT SUBJECT TO LOSC COMPULSORY DISPUTE SETTLEMENT



COMNAVMETOCCOM-COUNSEL

HYDROGRAPHIC & MILITARY SURVEYS

- HYDROGRAPHIC SURVEYS
- MILITARY SURVEY
 - MILITARY PURPOSE
- RESEARCH / MSR VS. HYDROGRAPHIC SURVEYS / SURVEY ACTIVITIES
- LOSC MSR PROVISIONS DO NOT APPLY TO HYDROGRAPHIC & MILITARY SURVEY ACTIVITIES
 - HIGH SEAS FREEDOM



COMNAVMETOCCOM-COUNSEL

EXCESSIVE MARITIME CLAIMS



COMNAVMETOCCOM-COUNSEL

TYPES OF EXCESSIVE CLAIMS

- BREADTH OF TERRITORIAL SEA
- BASELINES FROM WHICH CLAIMS ARE MEASURED
- SECURITY ZONES
- PRIOR PERMISSION AND NOTIFICATION REGIMES
- CLEARANCE REQUIREMENTS ON SOVEREIGN IMMUNE AIRCRAFT OVER INTERNATIONAL WATERS
- RESTRICTIONS ON MILITARY ACTIVITIES IN EEZ



COMNAVMETOCCOM-COUNSEL



EXCESSIVE TERRITORIAL SEA CLAIMS



COMNAVMETOCCOM-COUNSEL

COUNTRIES WITH TERRITORIAL SEA CLAIMS IN EXCESS OF 12 NM

- 20 NM
 - ANGOLA
- 30 NM
 - NIGERIA
- 35 NM
 - SYRIA
- 50 NM
 - CAMEROON
- RECTANGULAR
 - PHILIPPINES
- 200 NM
 - BENIN
 - CONGO
 - ECUADOR
 - EL SALVADOR
 - LIBERIA
 - NICARAGUA
 - PERU
 - SIERRA LEONE
 - SOMALIA
 - URUGUAY



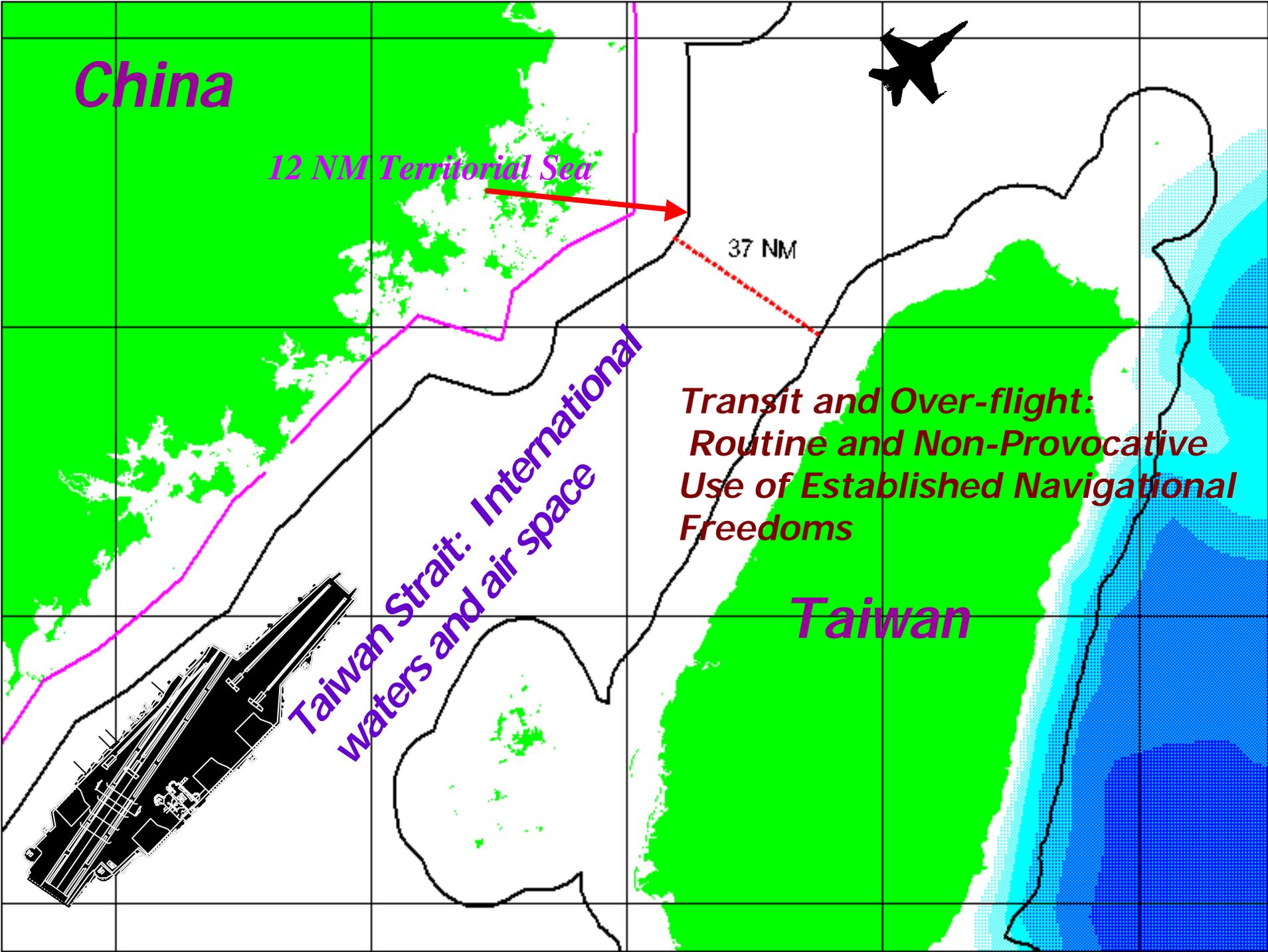
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IMPACT ON NAVIGATIONAL FREEDOMS

- COMPLETE SOVEREIGNTY EXERCISED WITHIN TERRITORIAL SEA (SEABED, SUBSOIL & AIRSPACE)
- INNOCENT PASSAGE
 - NO SUBMERGED PASSAGE
 - NO RIGHT OF OVERFLIGHT WITHOUT PERMISSION
- PERU



COMNAVMETOCCOM-COUNSEL



China

12 NM Territorial Sea

37 NM

Taiwan Strait: International waters and air space

Transit and Over-flight: Routine and Non-Provocative Use of Established Navigational Freedoms

Taiwan

ROLLED BACK EXCESSIVE TERRITORIAL SEA CLAIMS

- ALBANIA
- ARGENTINA
- BRAZIL
- GABON
- GERMANY
- GHANA
- GUINEA
- MADAGASCAR
- MAURITANIA
- PANAMA
- SENEGAL
- TANZANIA



COMNAVMETOCCOM-COUNSEL

Excessive Maritime Claims Block Strategic Sea Lanes

-  **With Transit Rights**
-  **Without Transit Rights**





WESTERN PACIFIC

COUNTRIES IN RED MAKE EXCESSIVE MARITIME CLAIMS: SUCH AS,

REQUIRING PRIOR NOTICE AND PERMISSION FOR INNOCENT PASSAGE,

EXTENDING TERRITORIAL SEAS BY USE OF EXCESSIVE STRAIGHT BASELINES, SECURITY ZONES, &

EXCESSIVE EEZ RESTRICTIONS

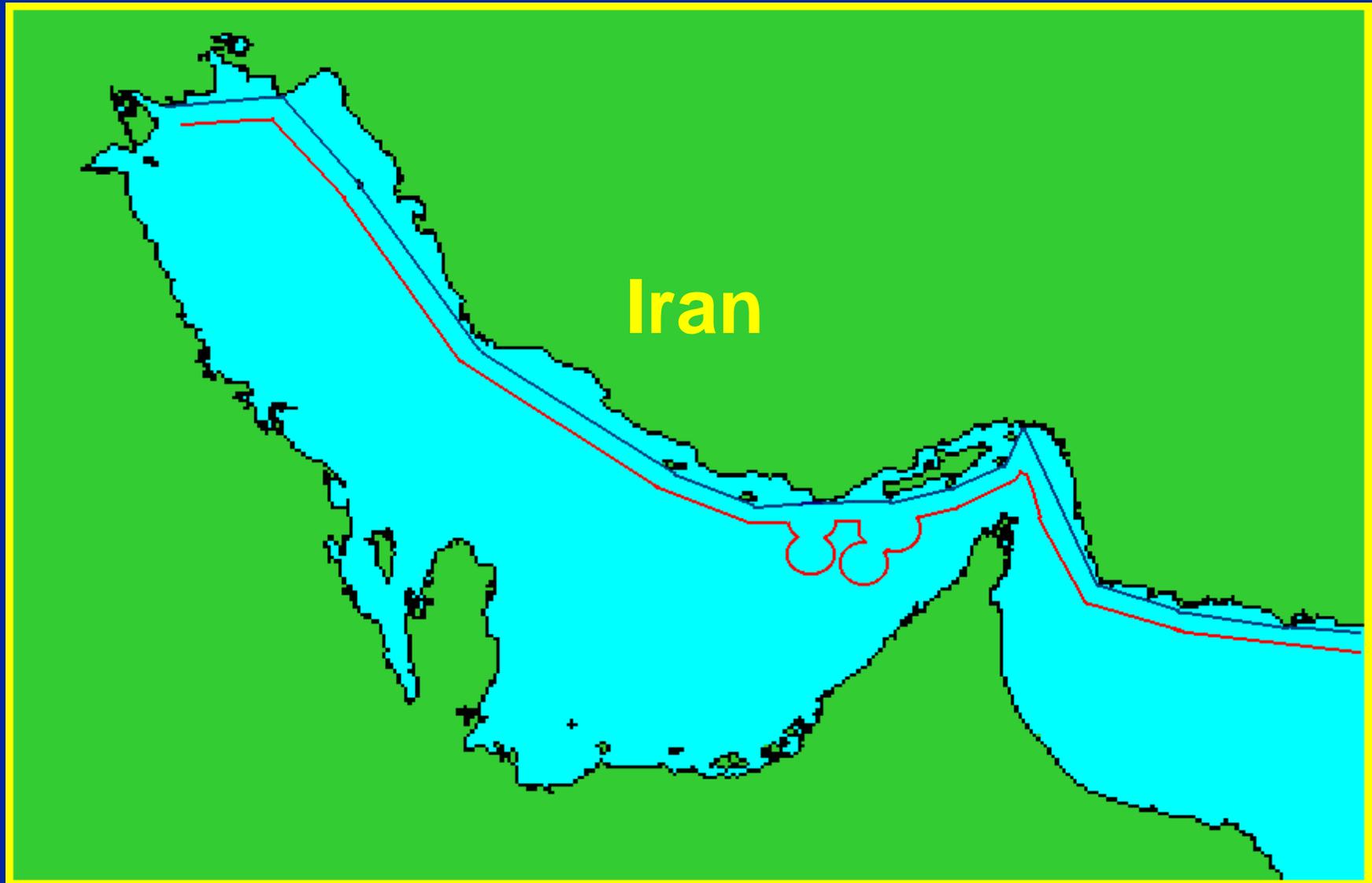
IMPROPERLY DRAWN STRAIGHT BASELINES

- OVER 60 STATES USE STRAIGHT BASELINES
 - 10 MORE HAVE ADOPTED ENABLING LEGISLATION, BUT HAVE NOT PUBLISHED BASELINES
 - MANY BASELINES INCONSISTENT WITH INTERNATIONAL LAW
 - 33 CLAIMS CHALLENGED BY U.S. THROUGH DIPLOMATIC PROTEST & FREEDOM OF NAVIGATION PROGRAM

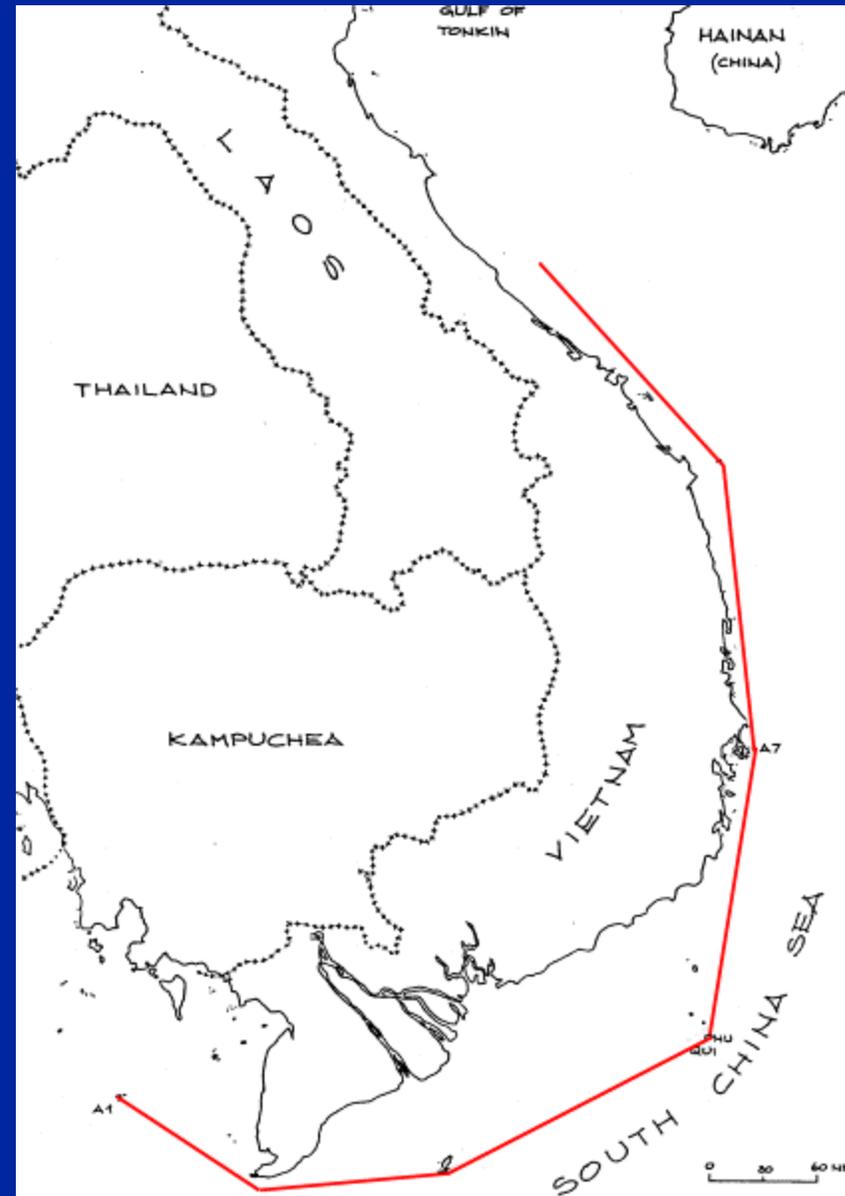


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IRANIAN STRAIGHT BASELINE CLAIMS



BASELINE EXAMPLE VIETNAM



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EXAMPLES OF EXCESSIVE BASELINES

- DRAWN OTHER THAN FROM LOW WATER LINE
- ENCOMPASSING ROCKS
- STRAIGHT BASELINES
 - DRAWN OTHER THAN WHERE THERE ARE FRINGING ISLANDS OR DEEPLY INDENTED COASTLINES
 - DRAWN INCORRECTLY FOR ARCHIPELAGOS
 - EXCESSIVE LENGTH OF EACH SEGMENT (>24 NM OR >100 NM IN ARCHIPELAGOS)



COMNAVMETOC-COUNSEL

NAVIGATIONAL FREEDOMS

- HOW MANY SEA LANES ARE DESIGNATED?
- WHERE ARE THEY LOCATED?
- PROCEDURES USED TO GAIN APPROVAL



COMNAVMETOCCOM-COUNSEL

IMPROPER DESIGNATION OF ARCHIPELAGIC SEA LANES

- REQUIREMENTS PRIOR TO DESIGNATION OF SEA LANES AND AIR ROUTES
 - MUST INCLUDE ALL NORMAL PASSAGE ROUTES AND NAVIGATIONAL CHANNELS
 - MUST BE APPROVED BY IMO BEFORE IMPLEMENTATION



COMNAVMETOC-COUNSEL

UNRECOGNIZED HISTORIC WATERS CLAIMS

- U.S. HAS CHALLENGED ALL BUT FOUR THROUGH DIPLOMATIC AND/OR FREEDOM OF NAVIGATION ASSERTIONS

- ARGENTINA
- CAMBODIA
- DOMINICAN REPUBLIC
- EL SALVADOR
- INDIA
- LIBYA
- RUSSIA
- THAILAND
- VIETNAM
- AUSTRALIA
- CANADA
- EGYPT
- HONDURAS
- KENYA
- PANAMA
- SRI LANKA
- URUGUAY



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IMPACT ON NAVIGATIONAL FREEDOMS

- HISTORIC WATERS CONSIDERED INTERNAL WATERS
 - SUBJECT TO COMPLETE SOVEREIGNTY & CONTROL
 - NO RIGHT OF PASSAGE WITHOUT CONSENT
- EXAMPLE: LIBYA'S CLAIM TO GULF OF SIDRA - "LINE OF DEATH"



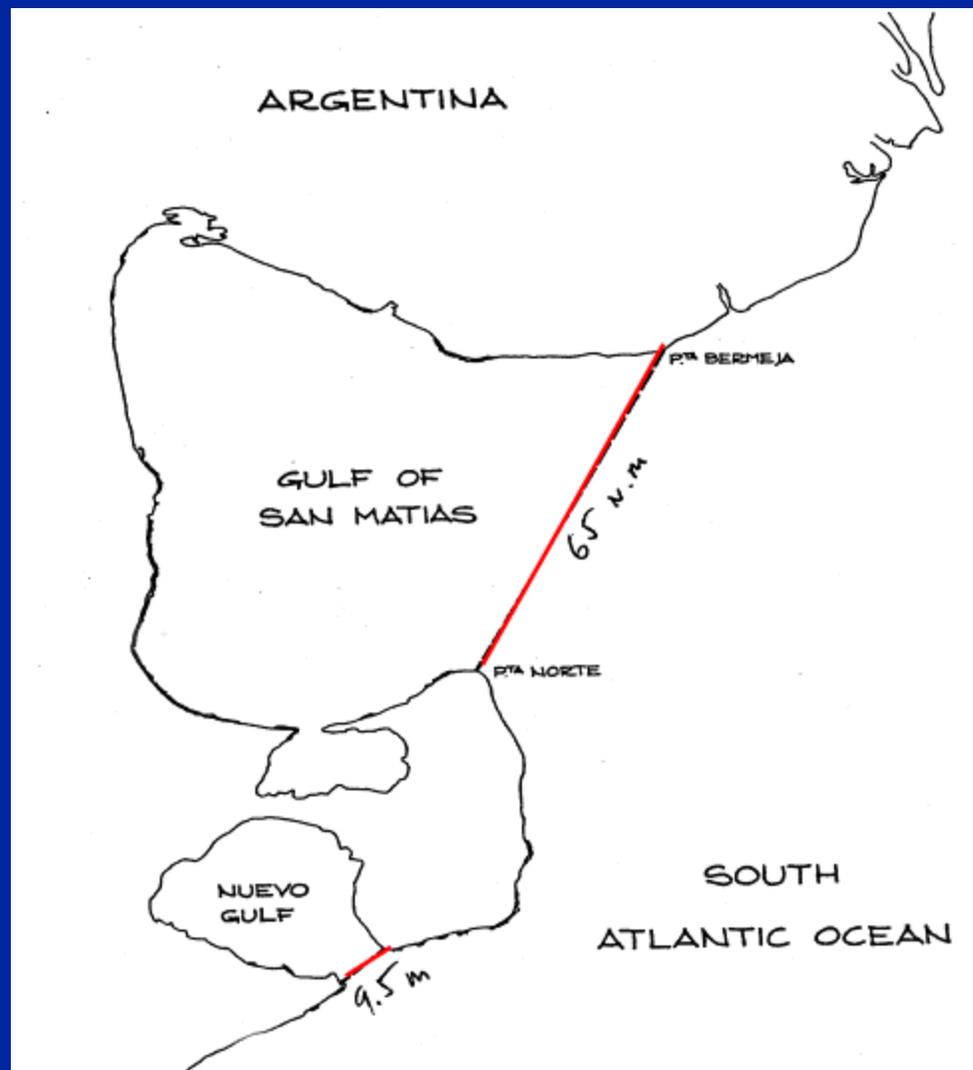
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LIBYA'S "LINE OF DEATH"



BASELINE EXAMPLE

ARGENTINA



COMNAVMETOC-COUNSEL

OVER-REGULATION IN EEZ

- RESTRICTIONS ON MILITARY ACTIVITIES
- DISCRIMINATORY TREATMENT OF NPW AND HAZARDOUS CARGOS
- UNREASONABLE ANTI-POLLUTION REGULATIONS
- PROHIBITIONS ON MARITIME DRUG ENFORCEMENT



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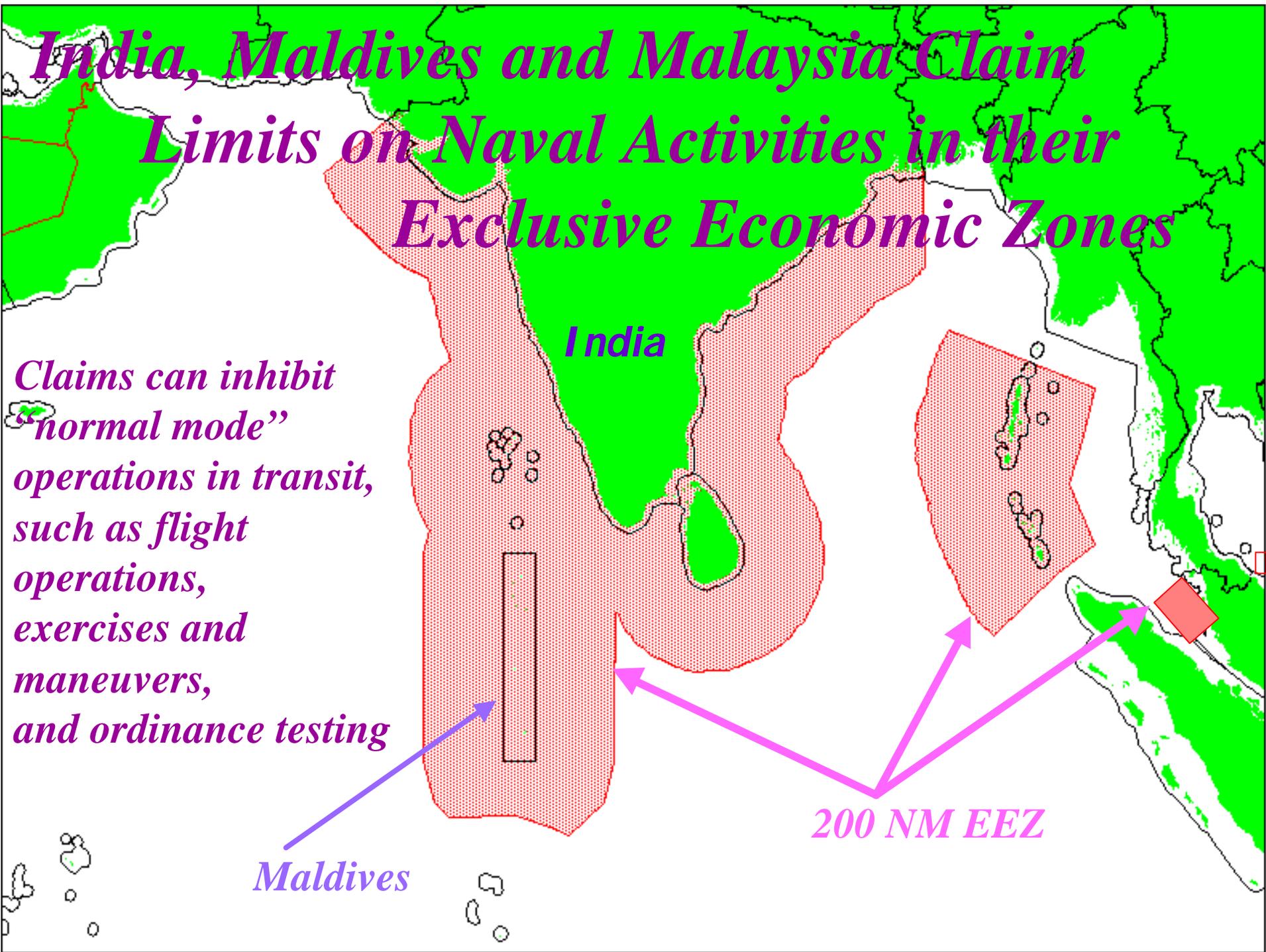
India, Maldives and Malaysia Claim Limits on Naval Activities in their Exclusive Economic Zones

India

Claims can inhibit "normal mode" operations in transit, such as flight operations, exercises and maneuvers, and ordinance testing

Maldives

200 NM EEZ



RESTRICTIONS ON HYDROGRAPHIC & MILITARY SURVEYS

- LOSC GIVES COASTAL STATE JURISDICTION OVER MARINE SCIENTIFIC RESEARCH (MSR) IN THE EEZ
- MILITARY & HYDROGRAPHIC SURVEY ACTIVITIES
 - HIGH SEAS FREEDOM
 - NO COASTAL STATE NOTICE OR CONSENT REQUIRED
- BRAZIL, SWEDEN, PAKISTAN



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RESTRICTIONS ON OTHER MILITARY ACTIVITIES

- **RIGHT TO CONDUCT MILITARY ACTIVITIES IN THE EEZ**
 - “DUE REGARD” FOR RESOURCE RELATED RIGHTS & JURISDICTION
 - NON-RESOURCE-RELATED MILITARY ACTIVITIES NOT SUBJECT TO COASTAL STATE REGULATION
 - BRAZIL, IRAN, CAPE VERDE, INDIA & URUGUAY



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RESTRICTIONS ON MILITARY ACTIVITIES

- RESTRICTIONS RANGE FROM COMPLETE PROHIBITIONS TO PRIOR NOTICE & CONSENT REGIMES
- IMPACT ON NAVIGATIONAL FREEDOMS ADVERSELY AFFECTS ABILITY TO:
 - CONDUCT HYDROGRAPHIC & MILITARY SURVEYS
 - VITAL RESEARCH, DEVELOPMENT, TESTING & EVALUATION OF NEW EQUIPMENT & WEAPONS SYSTEMS



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SOVEREIGN IMMUNITY

- ARTICLE 236 - LOSC ENVIRONMENTAL PROVISIONS DO NOT APPLY TO SOVEREIGN IMMUNE VESSELS
- BEST EFFORTS
 - COMPLIANCE ENCOURAGED IF REASONABLE & PRACTICABLE WITHOUT ADVERSELY AFFECTING OPERATIONS
 - U.S COMMITMENT TO BEST EFFORTS
 - ANNEX V MARPOL - PLASTICS DISCHARGES



COMNAVMETOCCOM-COUNSEL

CONCLUSION

- **COMPREHENSIVE LEGAL REGIME**
 - ACCESS TO WORLD'S OCEANS
 - COASTAL STATE RIGHTS & INTERESTS
 - CAREFUL BALANCE
- **NEW OPPORTUNITY FOR WIDESPREAD ADHERENCE**



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