

# **CHAPTER 10**

## **INTERNATIONAL LAW OF THE SEA**

**PROFESSOR**

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# Intro: History of the Law of the Sea

- Freedom of the seas
- Roman law: *res nullius*, *res communis*
- The concept of the maritime belt, territorial waters or territorial sea
- Extended claims for the territorial sea



# 10. 1 THE UN CONVENTION ON THE LAW OF THE SEA, 1982 [p. 292]

- Adopted by the UNCLOS III on 10 Dec, 1982.
- Contains 320 Articles and 9 Annexes,
- Entered into force on 16 Dec, 1994.
- Part XI was amended by the 1994 New York Implementation Agreement.
- Currently, it has 157 Signatories and 153 State Parties.



# Legal Significance of the UNCLOS 1982

[p. 293]

- It is the “Constitution of the seas”; a single comprehensive convention encompassing all matters relating to the seas.
- Consensus on territorial sea limits
- New legal regime of the EEZ
- New legal regime of the International Sea Bed Area
- Establishment of the International Tribunal for the Law of the Sea
- Art. 311(1): UNCLOS prevails over four Geneva Conventions

## 10.2 TERRITORIAL SEA

### 10. 2. 1 Breadth of the Territorial Sea

- *Sovereignty in the TS (Art. 2)*

“The sovereignty of a coastal State extends, beyond its land territory and internal waters..., to an adjacent belt of sea, described as the territorial sea.”

*Breadth (Art. 3): 12 nautical miles from the baselines*



## 10.2.2 Baselines and Measurement of the TS

- Base line: the line along the coast from which the territorial sea and other maritime zones are measured.
- Two types of baselines: Normal and strait
- Normal baselines (Art. 5): *low water line* along the coast.
- Lower water line: The line along the coast at the time of low-tide.



## Straight baselines

- Straight baselines: Art. 7(1) In localities
  - (a) Where the coastline is deeply indented and cut into; or
  - (b) If there is a fringe of islands along the coast in its immediate vicinity.

The method of strait baselines joining the appropriate points may be employed.

Art. 7(4) Straits baselines shall not be drawn to and from low tide elevations....



# ***Anglo-Norwegian Fisheries case***

(1951) ICJ Rep. 116

- Norwegian Degree of 1935
- Norway's TS was not measured from the low water line along the coast, but from strait baselines linking the outermost points on the extremities of the islands and headlands of the coast.
- The Southern portion of the lines embraced clusters of islands. The Northern portion covered a heavily indented coastline.
- The ICJ upheld the Norwegian delimitation.





# Internal waters [Art. 8]

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State....



# Low-tide elevations [Art. 13]

- A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.
- If a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low water line on that elevation may be used as the baseline for measuring the territorial sea.

[Art. 13(1)]



## Low tide elevation [Cont.]

- Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea, it has no territorial sea of its own. [Art. 13 (2)]
- It means that there can be no leap-frogging.



# Island [Art. 121]

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. ...the territorial sea, the contiguous zone, the EEZ and the continental shelf of an island are determined in accordance with the provisions of this convention applicable to land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf.



# Delimitation [Art. 15]

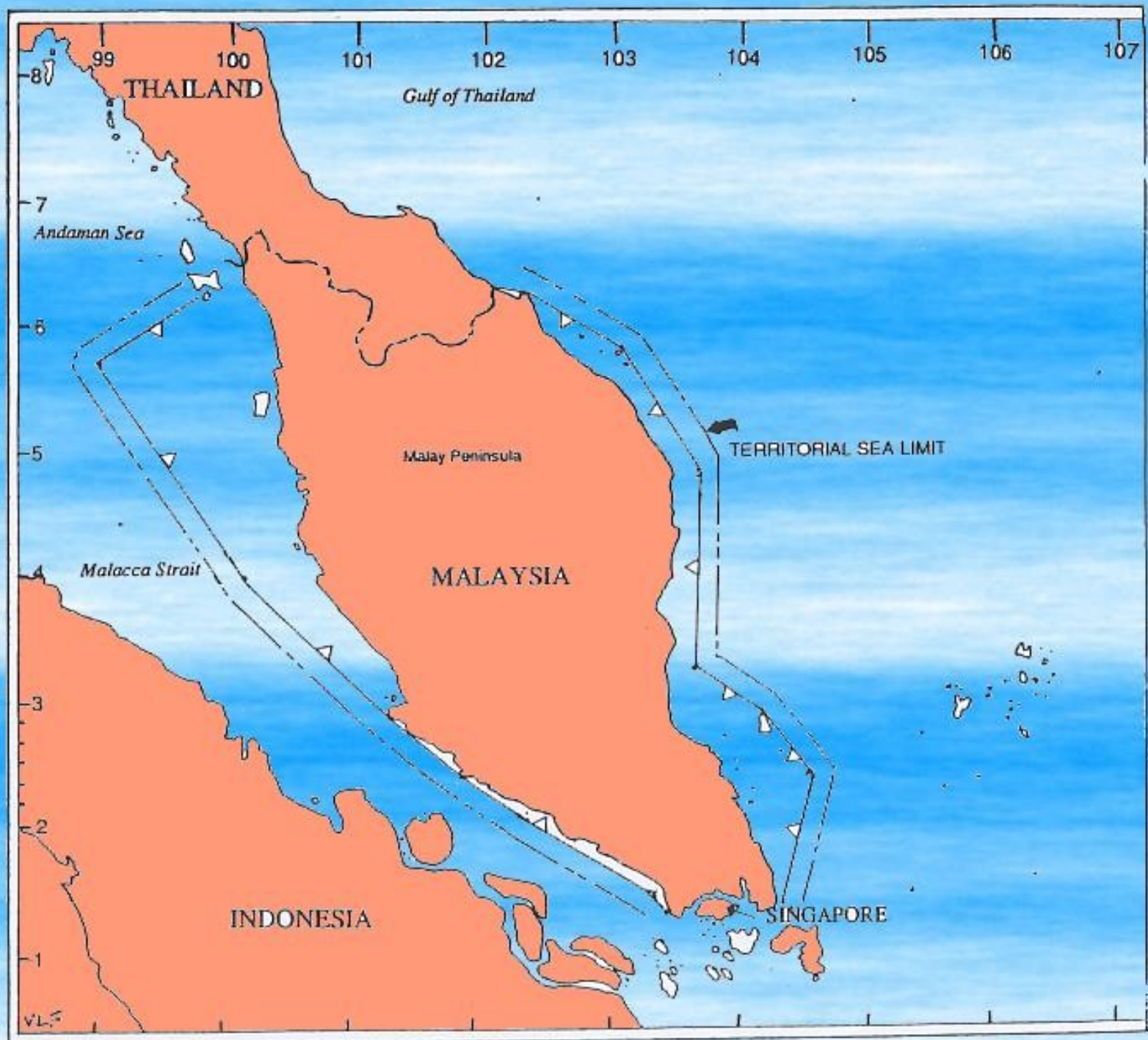
Where the coast of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest point from which the breadth of the territorial seas of the two States is measured.



# Baselines of Maritime Zones Act 2006 (Malaysia)

- See p. 142, Basic Materials book.





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SOUTH CHINA SEA

BRUNEI  
DARUSSALAM

SABAH

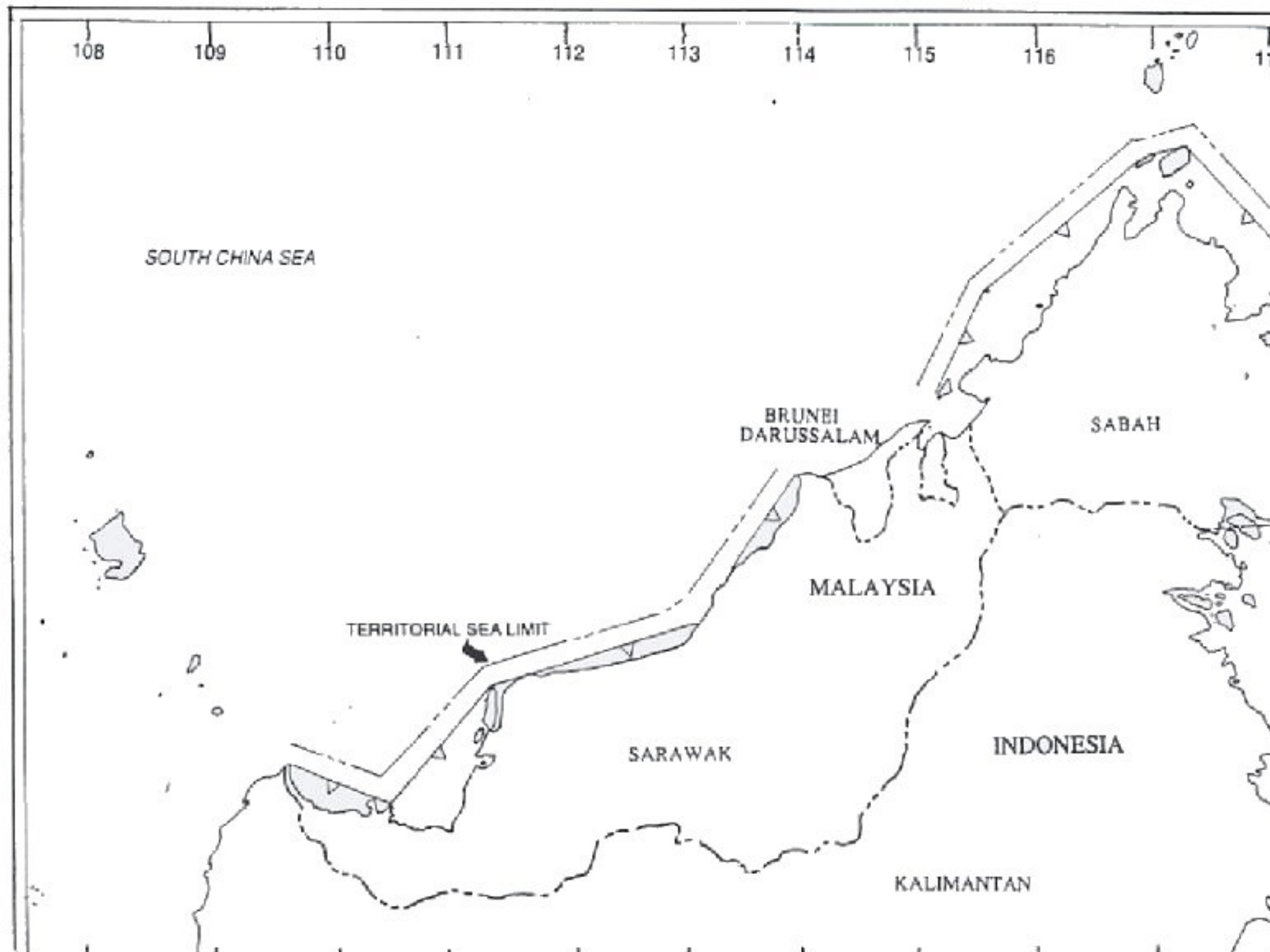
MALAYSIA

TERRITORIAL SEA LIMIT

SARAWAK

INDONESIA

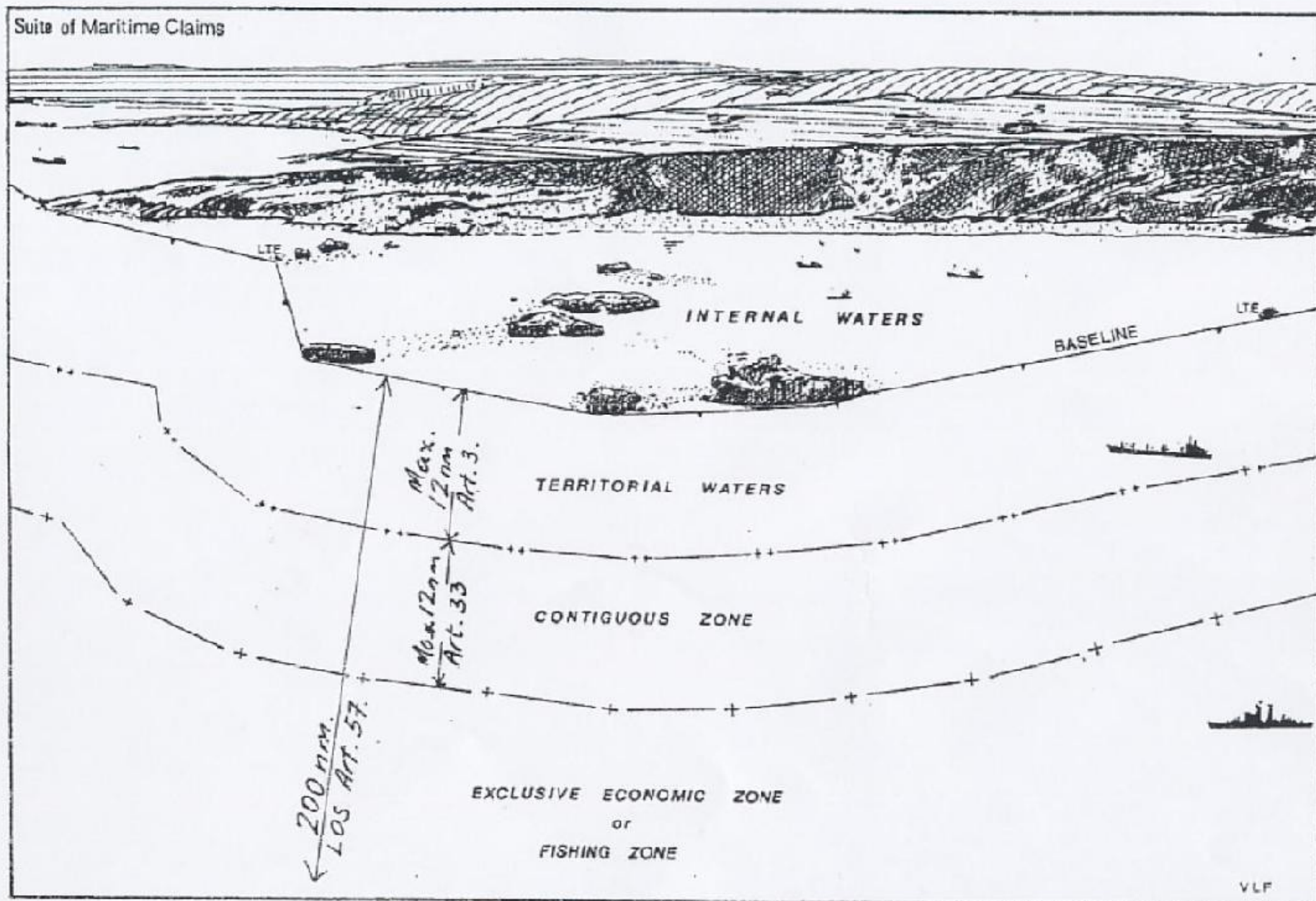
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# Maritime Limits off the Western Australian Coastline

## Suite of Maritime Claims



## 10.2.3 The Right of Innocent Passage

[pp. 298-308]

- Ships of all States enjoy the right (Art.17)
- Meaning of 'passage' (Art. 18)
- Meaning of 'innocence' (Art. 19)
- Jurisdiction (Arts. 27-28)
- Immunity of war ships and government ships operated for non-commercial purposes (Arts. 30-32)



## Meaning of 'passage'

- Article 17: Ships of all states enjoy the right of innocent passage through the territorial sea.

### Meaning of 'Passage'

- Article 18: (1) Passage means navigation through the territorial sea...  
(2) Passage shall be continuous and expeditious. Passage includes stopping and anchoring only in so far as necessary by force majeure or distress.



# Meaning of 'innocence'

[Art. 19] [pp. 298-99]

- (1) Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State....
- (2) Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the TS it engages in any of the following activities: ...
  - (i) any fishing activities;
  - (j) the carrying out of research or survey activities;
  - (l) any other activity not having a direct bearing on passage.

***PP v Narogne Sookpavit***  
[1987] 2 MLJ 100

- Held: The passage of Thai fishermen within the Malaysian TS was not an innocent passage because it contravened the domestic law of Malaysia.



# *Corfu Channel* case

(UK v Albania), (1949) ICJ Rep., p. 14

- Art. 24 (danger to navigation)
- Passage of war ships through straits used for international navigation. [p. 299]



## 10.2.4 Coastal state's legislative jurisdiction [pp. 300-01]

- Article 21 allows the coastal State to adopt laws and regulations, relating to innocent passage through the territorial sea, 'in respect of: navigation, conservation of the living resources, fisheries, pollution, scientific research, and customs, fiscal, immigration and sanitary regulations. Art. 21(1)
- These laws may not affect the design, construction, manning or equipment of foreign vessels unless they conform to generally accepted international standards. Art. 21 (2).



## The issue of the extent of Coastal state's legislative jurisdiction

- The Coastal State may legislate on matters expressly enumerated in Article 21.
- It is also well established in State practice that ships not engaged in innocent passage are subject to all coastal State laws.
- Beyond this, it seems a legitimate inference from the principle of coastal State's sovereignty over the territorial sea that States retain the right to extend any other legislation apart from that dealing with navigation and so on, to foreign ships in their waters.





## 10.2.5 Coastal State's enforcement jurisdiction

- War ships and government ships operated for non-commercial purposes enjoy immunity from local jurisdiction.
- In the case of an ordinary foreign ship, both the coastal state and the flag State have sufficient grounds to exercise jurisdiction:
- Coastal State – on the basis of the territorial principle; flag State –nationality principle.
- Two competing grounds for jurisdiction: thus the UNCLOS 1982 makes a compromise in Art. 27.



## Criminal jurisdiction [Art. 27]

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:



## Art. 27 [Cont.]

- (a) If the consequences of the crime extend to the coastal State;
- (b) If the crime is of a kind to disturb the peace of the country or the good order of the TS;
- (c) If the assistance of the local authorities has been requested...; or
- (d) If such measures are necessary for the suppression of illicit traffic in narcotic drugs...

## Art. 27 [Cont.]

2. The above provisions do not affect the right of the coastal State to take any steps authorised by its laws for the purpose of the arrest or investigation on board a foreign ship passing through the territorial sea after leaving the internal waters.



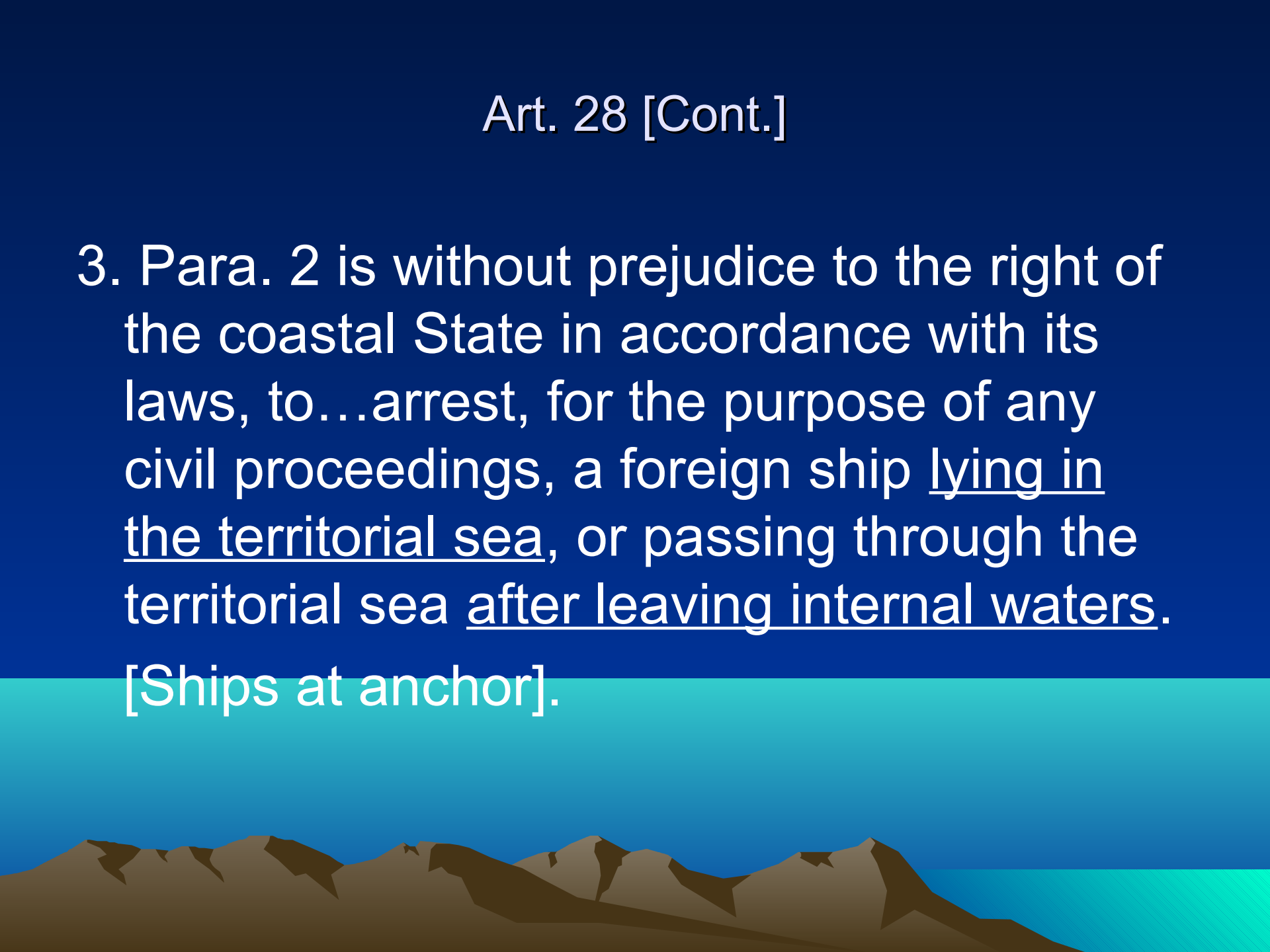
## Civil jurisdiction [Art. 28]

1. The coastal State should not stop or divert a foreign ship passing through the TS for the purpose of exercising civil jurisdiction in relation to a person on board the ship. [Person on board]
2. The coastal State may not...arrest the ship for the purpose of any civil proceedings, *save only* in respect of obligations or liabilities assumed or incurred by the ship itself *in the course of* or for the purpose of its voyage through the waters of the coastal State. [process against vessel]



## Art. 28 [Cont.]

3. Para. 2 is without prejudice to the right of the coastal State in accordance with its laws, to...arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.  
[Ships at anchor].



# Immunity from Jurisdiction

## Article 29 - Definition of warships

- For the purposes of this Convention, "warship" means a ship belonging to the armed forces 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 and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.



## Article 30

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





## Article 31

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law.



## Article 32

With such exceptions as are contained in articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships for non-commercial purposes.



# 10. 4 THE EXCLUSIVE ECONOMIC ZONE

[Textbook, p. 304]

- Definition and breadth  
An area beyond the TS (Art. 55);  
200 nautical miles from the baselines (Art. 57)
- *Sui generis* nature of EEZ:
- Rights and duties of coastal State (Arts. 56,73)
- Rights and duties of other states (Arts. 58)



# Rights and duties of the coastal State

## [Article 56]

1. In the EEZ, the coastal State has:
  - (a) Sovereign rights for the purpose of exploring, exploiting, ...the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and subsoil...
  - (b) Jurisdiction....
2. ..the coastal state shall have *due regard* to the rights and duties of other states....
3. The rights with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI(on the CS).

# Rights and Duties of Other States

## Art. 58

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 sub-marine cables and pipelines,...
3. In exercising their rights..., 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...



# Law enforcement by coastal State

## Art. 73 [Textbook, p. 307]

1. The coastal State may... take such measures, including boarding, inspection, arrest and judicial proceedings...to ensure compliance with the laws and regulations adopted by it....
2. Arrested vessels and their crew are to be promptly released upon posting of reasonable bond or other security. [*M/V Saiga* case, Textbook p. 323]. See Art. 292: 'prompt release'
3. Coastal State penalties for violations of fisheries laws and regulations...may not include imprisonment.

# 10.5 THE CONTINENTAL SHELF

[see Textbook p. 308]

- Background: Truman Proclamation [p. 308]
- Definition of continental shelf: 1958 Convention
- Definition of continental shelf: UNCLOS 1982, Art. 76 (1) [p. 309]
- Maximum limit of the continental shelf: Art. 76(5)
- Rights of the coastal State: (Art. 77)
- Delimitation: (Art. 83)



## Natural and legal shelf

- Continental shelf: “gently sloping submerged land surrounding the continents and islands” [the shelf slopes gently away from the coast before it goes steeply down to the great ocean depths].
- Natural continental shelf: the shelf given to a coastal state by nature on the basis of its peculiar geological situations. [Natural shelf varies in width from less than 5 miles to 750 miles]
- Legal continental shelf: the shelf allowed by the UNCLOS 1982.





# Truman Proclamation


- The 1945 Proclamation that the US had exclusive right to exploit the natural resources of the seabed and subsoil of the continental shelf.
- It created a precedent, followed by other states, and gave rise to a rule of CIL.



# Definition of the CS [Art. 76(1)]

[Textbook p. 309]

The continental shelf of a coastal State comprises the sea-bed and subsoil of the sub-marine areas that extend beyond its territorial sea (1) throughout the natural prolongation of its land territory to the outer edge of the continental margin, or (2) to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.



## Minimum limit of the CS

- 200 nautical miles from the base lines is the minimum limit of the legal continental shelf for all coastal states regardless of the extent of their natural shelf.



# Maximum Limits of the CS

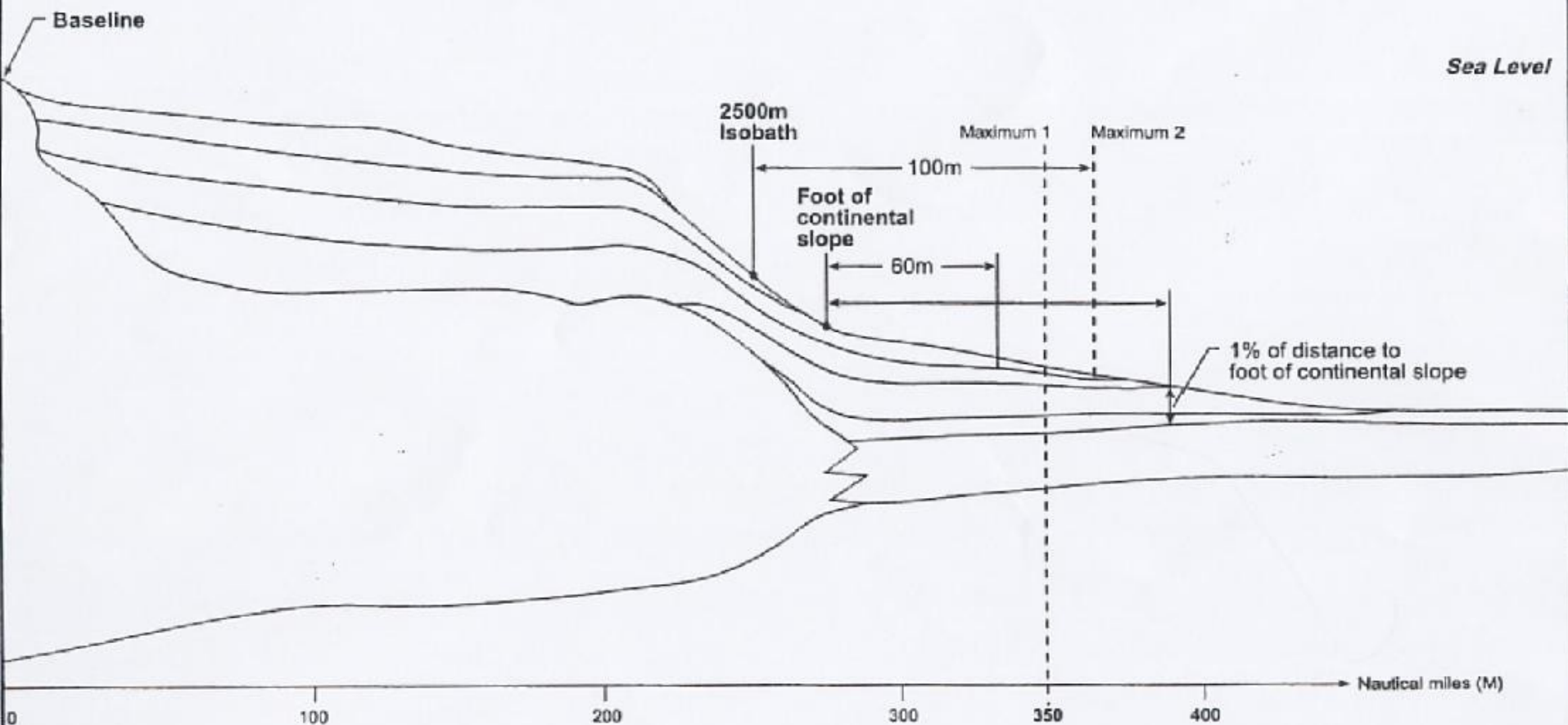
[Textbook, p. 310]

## Art. 76(5)

...[T]he outer limits of the continental shelf...  
either shall not exceed 350 nautical miles  
from the baselines from which the breadth  
of the territorial sea is measured or shall  
not exceed 100 nautical miles from the  
2,500 metre isobath, which is a line  
connecting the depth of 2,500 metres...



## Maximum Constraints Over the Outer Limits of the Continental Shelf



# Rights of the Coastal State over its Continental Shelf

[Textbook, pp. 310-311]

## Art. 77

- 1 ...[S]overeign rights for the purpose of exploring it and exploiting its natural resources....
4. The natural resources...consist of the mineral and other non-living resources of the sea-bed and sub-soil together with living organisms belonging to sedentary species, that is to say, organisms which...either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

# **Delimitation of the CS** [pp. 311-15]

## **(1) Geneva Convention on the CS, 1958, Art. 6**

In the absence of agreement, and unless another boundary line is justified by 'special circumstances':

(1) (in the case of opposite States) the boundary is "the median line, every point of which is equidistant" from the nearest point of the baselines, or

(2) (in the case of adjacent States) the boundary shall be determined by the application of the "principle of equidistance", from the nearest points of the baselines."

The principle is commonly known as the "equidistance/special circumstances rule".

## (2) Customary international law

- North Sea Continental Shelf cases, (1969) ICJ Rep. 3. “Delimitation is to be effected by agreement in accordance with *equitable principles*, and taking account of all the relevant circumstances”.
- [The Court held that the principle of equidistance was not a rule of CIL for the delimitation of the CS between adjacent states (The Court rejected only the second part of Article 6(2) ]
- [It seems that to draw a median line between opposite states was accepted by the court as reflective of customary law.]



- Tunisia Libya Continental Shelf case, 1982 ICJ Rep. 18. “The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable solution”.
- In the same case, the Court emphasized that: “each continental shelf case in dispute should be considered and judged on its own merits, having regard to its own peculiar circumstances.”



- *Continental Shelf* case (Libya v Malta) 1985 ICJ Rep. 13. [The Court reaffirmed the *equitable nature of the equidistance principle* in opposite state situations and concluded that drawing a median line between the two coasts would achieve an 'equitable result']



### (3) The UNCLOS 1982 [Art. 83]

1. The delimitation of the CS between States with opposite or adjacent coasts shall be affected by agreement on the basis of international law... in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV[on the settlement of disputes].



Even though the exact words “equitable principles’ cannot be found in Art. 83, the phrase “to achieve equitable solution” appears to express the objective of achieving “equitable result”, which is the fundamental norm of CIL.



# Settlement of disputes

Compulsory Procedure entailing binding decisions

[Art. 287]

[Textbook pp. 348-49]

When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes:

- (a) International Tribunal for the Law of the Sea;
- (b) The International Court of Justice;
- (c) An arbitral tribunal constituted under Annex VII;
- (d) A special arbitral tribunal constituted under Annex VIII.



# 10.6 THE REGIME OF THE HIGH SEAS

[See Text Book p. 315]

## Definition: Art. 86

“All parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.”



## 10.6.1 Freedom of the high seas

### [Art. 87]

1. The high seas are open to all States....

Freedom of the high seas...comprises:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines;
- (d) freedom to construct artificial islands...;
- (e) freedom of fishing; and
- (f) freedom of scientific research.

## 10.6.2 Maintenance of order on the High seas [Textbook. p. 316]

### Nationality of ships

Art. 90: Every State has the right to sail ships flying its flag on the high seas.

Art. 91: Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

[Nottebohm case; see Textbook p. 338, n. 83]





# Jurisdiction over ships sailing on the high seas [p. 317]

Art. 92: Ships shall sail under the flag of one State only and...shall be subject to its exclusive jurisdiction.

- [See Lotus case; Textbook p. 317]



## Two important exceptions to freedom of the high seas

- The general rule: Ships navigating on the high seas are under the exclusive jurisdiction of the flag State and no other State can exercise jurisdiction.
- But there are certain exceptions:
  - (1) Piracy *jure gentium*; and
  - (2) The right of hot pursuit.



## 10.6.3 Piracy

[See p. 317]

- Distinction between
  - (1) piracy at municipal law; and
  - (2) piracy *jure gentium*
- Lotus case [Textbook p. 317]

Piracy – an offence against the law of nations;

A pirate is regarded as *hostis humani generis*



## Definition [Art. 101]

Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship ..., and directed:

- (i ) on the high seas against another ship , or against persons or property on board such ship;
- (ii) against a ship, persons or property in a place outside the jurisdiction of any State.



# Elements of *piracy jure gentium*

[See Text Book pp. 318-20]

## Three elements of piracy:

- (1) Any illegal acts of violence, detention or depredation committed for private ends;  
[*Achille Lauro* Incident; SUA Convention 1988]
- (2) Two-ship rule (if committed on the high seas);  
[generally, mutiny is not piracy]
- (3) Committed on the high seas or in a place outside the jurisdiction of any State.



# Mutinied government ship

## Art. 102

The acts of piracy committed by a warship or government ship whose crew has mutinied and taken control of the ship are assimilated to acts committed by a private ship.



## Universal jurisdiction [Art. 105]

“... every State may seize a pirate ship,... and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ship, or property, subject to the rights of third parties acting in good faith.”

- *Pirata non mutat dominium* (Rightful owner is not deprived of his title) [see Textbook p. 320]
- Case for universal jurisdiction: *Re piracy Jure gentium*

# The Malaysian Practice

[See Text Book p. 320]

- No Piracy Act in Malaysia.
- Generally apply the Penal Code, ss. 392, 395, 396
- *Regina v Tunku Mahomed Saad & Others* [1840] 2 Ky, Cr., p. 18
- *Regina v Nya Abu & Others* (1885-1890) 4 Ky. , p. 169.





## 10.6.4 Right of hot pursuit

[Textbook p. 321]

- Rt. of hot pursuit: an exception to freedoms of the high seas.
- The coastal is justified to pursue a foreign vessel, which violated its laws and regulations within its maritime zones, to the high seas and there arrest it.
- 'Hot' here means 'immediate'.
- Justification: a continuation of an act of jurisdiction which has begun within its maritime zones.



## [Art. 111]

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal state has good reason to believe that the ship has violated the laws and regulations of that state. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the territorial sea or the contiguous zone of the coastal state, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted.



## Art. 111 [Cont.]

2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf....
3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own state or of a third state.



## Art. 111 [Cont.]

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.



## Art. 111 [Cont.]

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect....
8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.



# The *M/V Saiga* (No. 2) case

[ITLOS, case No. 2, 1999]

[See Textbook, pp. 323-24 for the details]

- Held: “The conditions for the exercise of the rt. of hot pursuit under Art. 111 of the Convention are cumulative; each of them has to be satisfied.”
- The Tribunal found that several of these conditions were not fulfilled. First, no laws or regulations of Guinea were violated by the *Saiga*. ...importing fuel oil into its ‘customs radius’, which extended to 250 kilometres from the coast of Guinea.
- The Tribunal found that the Convention did not empower a coastal state to apply its customs laws in respect of any parts of the EEZ.

# The use of force in hot pursuit

*The I'm Alone* (1935) 3 RIAA 1609

[See Text Book p. 324 for the details]

The principle laid down in the case:

“The pursued State may use necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port the suspected vessel...”



## The Red Crusader case [See Textbook, p. 325]

“ T]he captain of Danish vessel exceeded legitimate use of armed force on two counts: (a) firing without warning of solid gun-shot; (b) creating danger to human life on board the Red Crusader without proved necessity.”

- The MV Saiga (No. 2) case [P. 325] “Guinea used excessive and unreasonable force in stopping and arresting the *Saiga*. The *Saiga* was an unarmed tanker almost fully laden with gas oil, with a maximum speed of 10 knots and Guinea fired at the ship with live ammunition, using solid shots from large-calibre automatic guns.”




# Principle of constructive presence

*The Araunah* [Textbook p. 326] foreign vessel used canoes for illegal sealing.

*R v Mill* (1995) Croydon Crown Court

[Text Book p. 327 for details]

“A vessel, which has never been in the territorial sea (or EEZ) of a coastal State, can be pursued and arrested on the high seas, if one of its boats or other craft working as a team and using the ship pursued as a mother ship has violated the laws of the coastal State within the territorial sea (or EEZ) of that State.”



# 10.7 The regime of deep seabed mining

## [International Sea Bed Area]

[See Text Book p. 327]

Definition: Art. 1(1): The “Area” is the sea bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.

Art. 136: The Area and its resources are the common heritage of mankind.

Art. 153: Activities in the Area shall be, carried out, by the (International Sea Bed) Authority on behalf of mankind as a whole.



# 1994 New York Implementation Agreement [Amending Part XI]

The four major Amendments made are:

- (1) Enterprise shall conduct its initial deep sea-bed operations through joint ventures with private corporations from developed countries.
- (2) Must act in accordance with “sound commercial principles”.
- (3) No setting of production levels to protect land-based producers.
- (4) No transfer of technology to developing countries.



# 10.9 Malaysia and Law of the sea

[See Text Book p. 331]

- Malaysia is a coastal State with a very long coast line.
- The law of the sea is a matter of grave concern for economic and technological advancement of the country.
- Malaysia is a party to the UNCLOS 1982 [signed on 10 Dec. 1982 and ratified on 14 Oct. 1996].  
Malaysia is bound by the Convention.



# Territorial sea of Malaysia

- Emergency (Essential Powers) Ordinance No. 7, 1969, Section 3:  
The breadth of the territorial sea of Malaysia is 12 nautical miles from the baselines.
- Baseline of the Maritime Zones Act, 2006.
- Treaties with Thailand and Indonesia.



# Continental Shelf of Malaysia

- Continental Shelf Act, 1966

Section 2: “Continental shelf” means the sea-bed and subsoil of the submarine areas adjacent to the coast of Malaysia but beyond the limits of the territorial waters of the states, the surface of which lies at a depth no greater than 200 metres below the surface of the sea, or, where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas at any greater depth. [See textbook pp. 332-33 for the criticism]



# Exclusive Economic Zone of Malaysia: Exclusive Economic Zone Act, 1984

[Must study all the sections of the EEZ Act in the Basic Materials Book: ss. 1, 2, 3, 5, 6, 16, 24, 25, 33, 36]

**Section 1**: (1) This Act shall apply to the EEZ and continental shelf of Malaysia.

(2) The provisions of this Act pertaining to the CS shall be in addition to, and not in derogation of, the Continental shelf Act, 1966.

(3) In the event of any conflict or inconsistency, the provisions of this Act shall supercede....

[Textbook pp. 333 34, f.n. 138]



## Section 5. Prohibition of activities in the EEZ or on the CS except where authorised

Except where authorised in accordance with the provisions of this Act or any applicable written law, no person shall in the exclusive economic zone or on the continental shelf: (a) explore or exploit any natural resources, whether living or non-living;

(b) conduct any marine scientific research.





## Section 24. Powers of authorised officer

Any authorised officer may, where he has reason to believe that an offence has been committed under this Act or such written law, without a warrant:-

- stop, board and search any vessel within the exclusive economic zone...;
- arrest any person who he has reason to believe has committed any offence under this Act or any written law;
- detain any vessel, including its cargo, ...



## Section 25. Hot Pursuit

- Where any authorised officer has reason to believe that a foreign vessel has contravened any provision of this Act or any applicable law, he may undertake the hot pursuit of such vessel with a view to stopping and arresting it and bringing it within the exclusive economic zone in accordance with international law.



## **Section 36. Sessions Court and Magistrate Court have jurisdiction**

[A Sessions Court or a Court of a Magistrate of the First Class shall have jurisdiction to try any offence committed under this Act or any applicable written law.]



# Fisheries Act, 1985

[Must study all the sections of the Fisheries Act in the Basic Materials Book: ss. 2, 15, 16, 25, 34]

## Section 2: Interpretation

“Fish” means any aquatic animal or plant life, sedentary or not, ... but does not include any species of otters, turtles or their eggs.

“Fishing” means –

(a) The catching, taking or killing of fish by any means;

(b) The attempted catching, taking or killing of fish.



## **Section 15. Fishing by foreign fishing vessel**

- (1) Subject to subsection (2), no foreign fishing vessel shall do any of the following in Malaysian fisheries waters:
- (a) Fish or attempt to fish;
  - (b) Conduct any research or survey of any fishery.



## S. 16: Passage of foreign fishing vessels through Malaysian fisheries waters [pp. 335-36]

- (1) Subject to subsections (2) and (3) a foreign fishing vessel may enter Malaysian fisheries waters, for the purpose of passage through such waters in the course of a voyage to a destination outside such waters...
- (3) The master of a foreign fishing vessel... shall notify ... an authorized officer of the name, the flag State, location, route and destination of the vessel, the types and amount of fish it is carrying and of the circumstances under which it is entering Malaysian fisheries waters.



## Section 25. Offences under Act

- Any person who contravenes ...any provision of this Act shall be guilty of an offence and ..., such person shall be liable –
- (a) where the vessel concerned is a foreign fishing vessel or the person concerned is a foreign national, to a fine not exceeding one million ringgit each in the case of the owner or master, and one hundred thousand ringgit in the case of every member of the crew;
- (b) in all other cases, to a fine not exceeding fifty thousand ringgit or a term of imprisonment not exceeding two years or both.