



Office of Legal Affairs
Division for Ocean
Affairs and the
Law of the Sea

Regional Training Course on the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982) in Fisheries Perspective

*Overview of the United Nations Convention on the Law of
the Sea of 10 December 1982 (UNCLOS)*

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IMPORTANT

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Programme

- ▶ **Module 1:** Introduction to the law of the sea
- ▶ **Module 2:** Maritime zones under UNCLOS
- ▶ **Module 3:** Activities under UNCLOS, including fisheries

1

Introduction to the law of the sea

1



Overview of the global framework

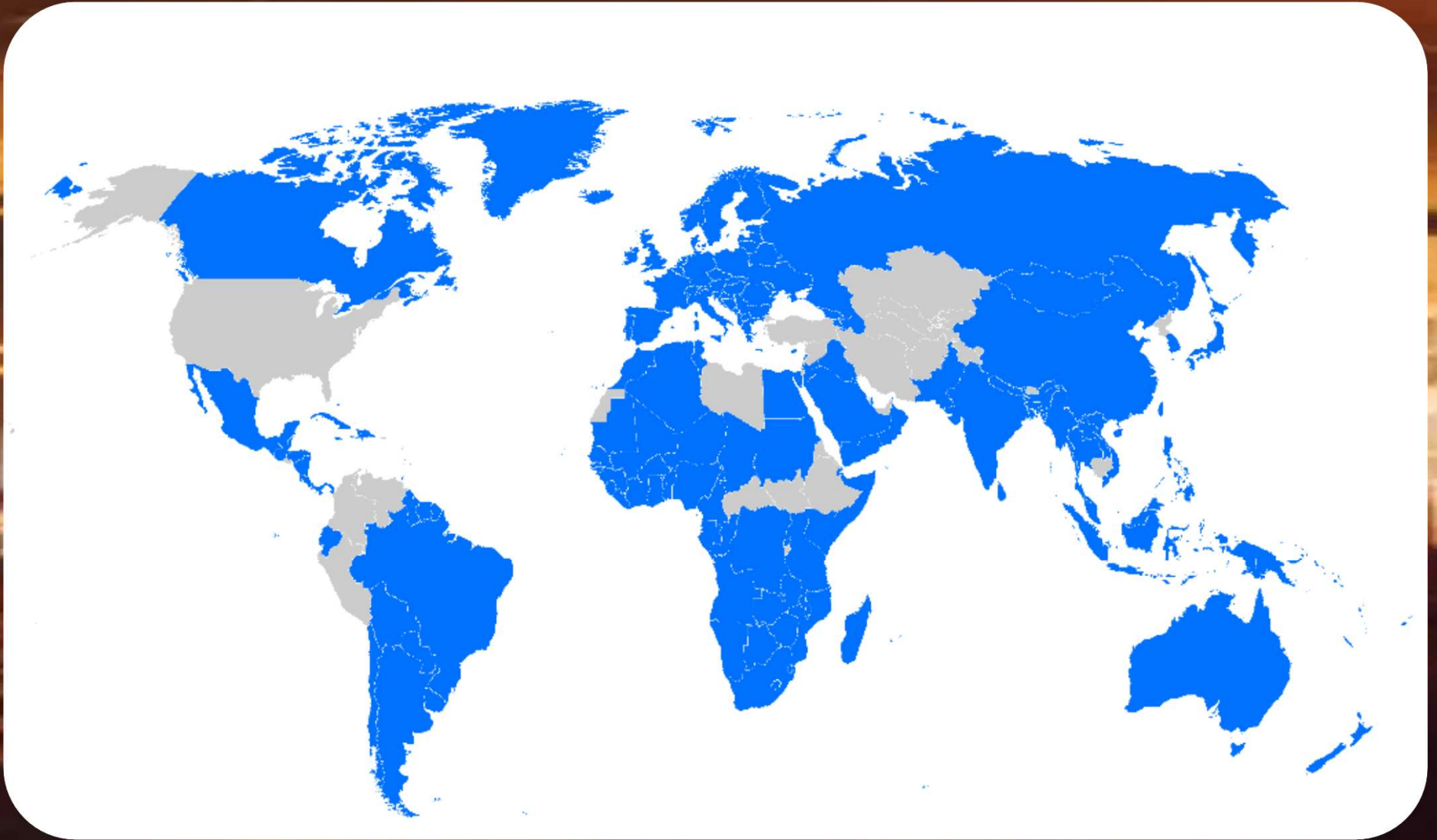
- **UNCLOS**
- **Implementing Agreements** (Part XI Agreement, UNFSA, BBNJ)
- **Other instruments and processes**



UNCLOS

- ▶ Full title: **United Nations Convention on the Law of the Sea**
- ▶ Concluded **10 December 1982**; in force **16 November 1994**
- ▶ **320 articles + 9 Annexes**
- ▶ Provides the **legal framework for all activities in the ocean and seas**
- ▶ Implementing agreements
 - ▶ Part XI Agreement (1994)
 - ▶ United Nations Fish Stocks Agreement (1995)
 - ▶ BBNJ (2023)

UNCLOS: **169 Parties**, including the European Union





UNCLOS: A “Constitution for the oceans”

- ▶ **Comprehensive:** “*all issues relating to the law of the sea*” (Preamble)
- ▶ **Integrated:** “*closely interrelated ... and considered as a whole*” (Preamble)
- ▶ **Package deal:** balance of interests, no reservations (art. 309)
- ▶ **Enforceable:** compulsory dispute settlement (Part XV)
- ▶ **Universal:** 169 Parties (including the EU) and many provisions considered as customary international law
- ▶ **Framework:** reference to other instruments and competent international organizations

Resolution of conflicts and other matters

- Introduction (Part I)
- General provisions (Part XVI)
- Settlement of disputes (Part XV)
- Final provisions (Part XVII)

Cross-cutting issues

- Marine environment (Part XII)
- Marine technology (Part XIV)

Activities

- Fishing (Parts II-VII)
- Navigation (Parts II-V, VII)
- Other activities (Parts VI, VII, XI)
- Marine science (Part XIII)

Maritime zones

- Territorial sea & contiguous zone (Part II)
- EEZ (Part V)
- Continental shelf (Part VI)
- High Seas (Part VII)
- International seabed Area (Part XI)

Special geographical characteristics

- Archipelagic States (Part IV)
- Islands (Part VIII)
- Land-locked States (Part X)

Special areas needing cooperation

- Straits used for international navigation (Part III)
- Enclosed or semi-enclosed seas (Part IX)



UNCLOS: A Balance Framework

*“The sea has always been lashed by **two major contrary winds**: the wind from the high seas towards the land is the wind of freedom; the wind from the land toward the high sea is the bearer of sovereignties. The law of the sea has always been in the middle between these conflicting forces.”*

R.J. Dupuy, “The Sea under National Competence”, in Dupuy (ed.), *A Handbook on the Law of the Sea*, 1991, p. 247



UNCLOS: A Balance Framework

The **Convention** ensures a **balance** between:

- ▶ The **different interests** of States
- ▶ The **rights of States to use the ocean and its resources**, and the **need and duty to protect and preserve the marine environment**



Duty to cooperate

- ▶ **International cooperation** - one of the cornerstones of the Convention
- ▶ **Duty on States to cooperate at global, regional, subregional levels**, including in the further development in specific areas of the law of the sea
 - ▶ “Competent” or “appropriate” “international organizations“, “specialized agencies”

UNCLOS: A Framework

Non-binding instruments

Customary Law and other sources of IL

UNFSA

UNCLOS

Sectoral instruments
(fisheries, shipping, marine environment etc.)

Regional Instruments

BBNJ

Part XI Agreement

UNCLOS Implementing Agreements

1982 – UNCLOS

**1994 – Agreement relating to the implementation of Part XI of
UNCLOS**

1995 – United Nations Fish Stocks Agreement

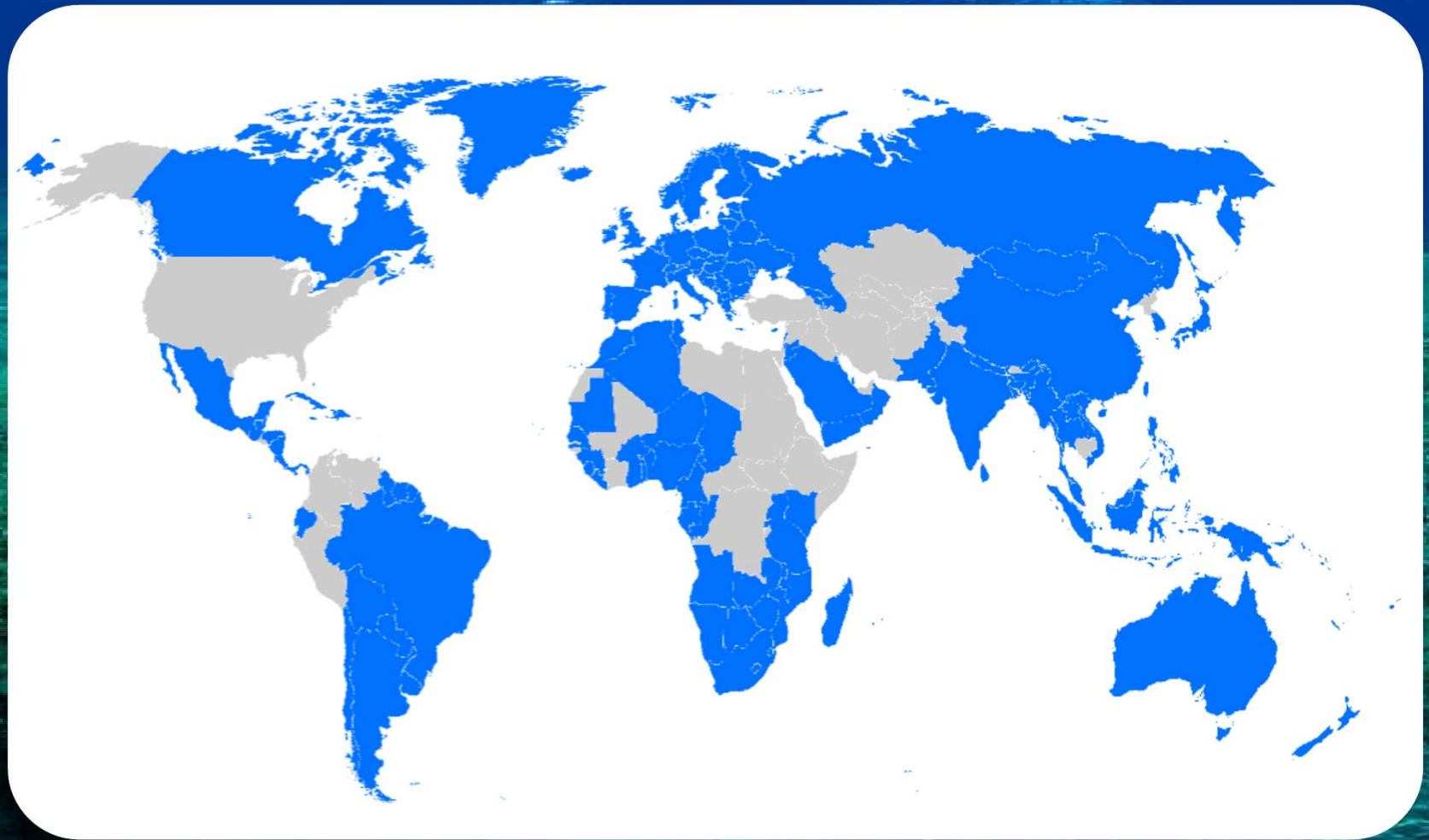
**2023 – Agreement under UNCLOS on the conservation and
sustainable use of marine biological diversity of areas beyond
jurisdiction**



Part XI Agreement

- ▶ Full title: **Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982**
- ▶ Concluded **28 August 1994**; in force **28 July 1996**
- ▶ **152 Parties** (including the European Union)
- ▶ **Substantively amends part XI of UNCLOS** to address concerns raised by certain countries
- ▶ To be interpreted and applied together as **a single instrument** with UNCLOS
- ▶ In the event of any inconsistency between the Agreement and Part XI, the **provisions of the Agreement shall prevail.**

Part XI Agreement: **152 Parties**, including the European Union





UNFSA

- ▶ Full title: **United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**
- ▶ Concluded 4 August **1995**; in force 11 December **2001**
- ▶ **Facilitates the implementation of some of the fisheries-related provisions of UNCLOS**
- ▶ **Strengthens and further develops the general rules set out in the Convention** by providing specific rights and obligations to States.



BBNJ

- ▶ Full title: **Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.**
- ▶ Adopted by consensus on **19 June 2023**
- ▶ In accordance with its art. 65, the Agreement shall be **open for signature by all States and regional economic integration organizations, on 20 September 2023**, and shall remain open for signature at United Nations Headquarters in New York **until 20 September 2025.**
- ▶ 83 signatories (as of 6 November 2023)

Other instruments and processes

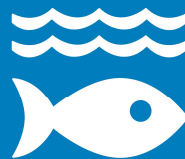
Sectoral Instruments



Non-binding instruments




14 LIFE BELOW WATER



International Customary Law

- (1) **State practice**
(objective element)
- (2) **Opinio juris**
(subjective element)



Overview of the Bodies established under UNCLOS

- ▶ **International Tribunal for the Law of the Sea (ITLOS)**
- ▶ **International Seabed Authority (ISA)**
- ▶ **Commission on the Limits of the Continental Shelf (CLCS)**
- ▶ **Meeting of States Parties (MSP)**



Commission on the Limits of the Continental Shelf (CLCS)

- ▶ Established under **Annex II of UNCLOS**
- ▶ In operation since **1997**
- ▶ **21 experts** elected by States Parties to UNCLOS for 5-year terms
- ▶ Mandated to **consider submissions and make recommendations on extended continental shelf claims**
- ▶ Meets for **21 weeks per year** in New York



International Tribunal for the Law of the Sea (ITLOS)

- ▶ Established under **Annex VI of UNCLOS**
- ▶ In operation since **1996**
- ▶ Located in **Hamburg, Germany**
- ▶ **21 independent members** elected by States Parties to UNCLOS for 9-year terms MAO
- ▶ Jurisdiction over any dispute concerning interpretation or application of UNCLOS
- ▶ **Contentious and Advisory jurisdiction**
- ▶ Seabed Disputes Chamber; Special Chambers; Chambers under article 15(2) of the Statute
- ▶ 32 cases – 2 pending (as of July 2023)

Slide 31

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Members or judges?

Michele Ameri, 2023-11-02T16:18:32.776

RLO 0

Members = art. 2 of the Statute

Rachel Lucas, 2023-11-06T16:34:10.185



International Seabed Authority (ISA)

- ▶ Established under UNCLOS and the 1994 Implementing Agreement
- ▶ In operation since **1994**
- ▶ Located in **Kingston, Jamaica**
- ▶ Mandated to **promote the orderly, safe and responsible management and development of the resources of the deep seabed area for the benefit of (hu)mankind as a whole**



International Seabed Authority (ISA)

► Main functions:

- Developing a “Mining Code” to regulate prospecting, exploration and exploitation of the Area
- Protect the environment and conserve the natural resources
- Promote and encourage marine scientific research
- Capacity Building
- Distribution of payments and contributions received under UNCLOS art. 82.



Meeting of States Parties to UNCLOS (MSP or SPLOS)

- ▶ Convened pursuant to art. 319(2) of UNCLOS
- ▶ Meets annually in New York, usually in June
- ▶ Considers information reported by the bodies established under UNCLOS (ITLOS, ISA, CLCS)
- ▶ Deals with budgetary and administrative matters of ITLOS
- ▶ Elects members of ITLOS and the CLCS
- ▶ Considers the report of the Secretary-General under article 319 of UNCLOS

Module 1 key points

▶ The law of the sea balances the interests of States and others in a shared space: the ocean

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▶ UNCLOS sets out the legal framework within which all activities in the ocean and seas must be carried out

▶ UNCLOS also establishes institutions to facilitate implementation (ISA, ITLOS, CLCS)

▶ UNCLOS is a framework agreement complemented by other instruments relevant to ocean affairs

Slide 36

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Suggest to change text color or highlight to make more legible.

Michele Ameri, 2023-11-02T16:19:58.623

2

Maritime Zones

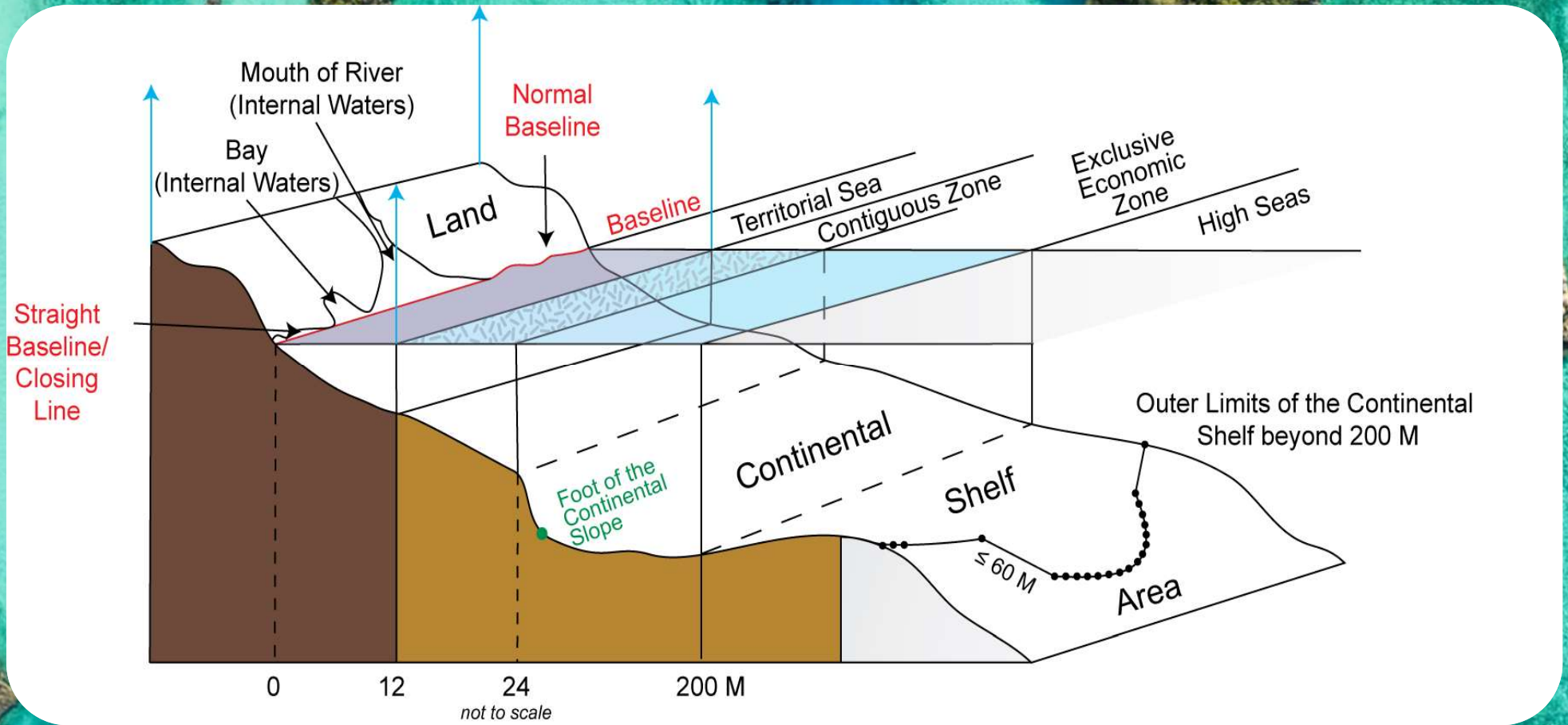
2

An aerial photograph of a tropical island with lush green vegetation. The surrounding water is a vibrant turquoise color, indicating shallow depths. A small boat is visible in the water on the left side of the island. The overall scene is bright and clear, with high contrast between the green land and the blue water.

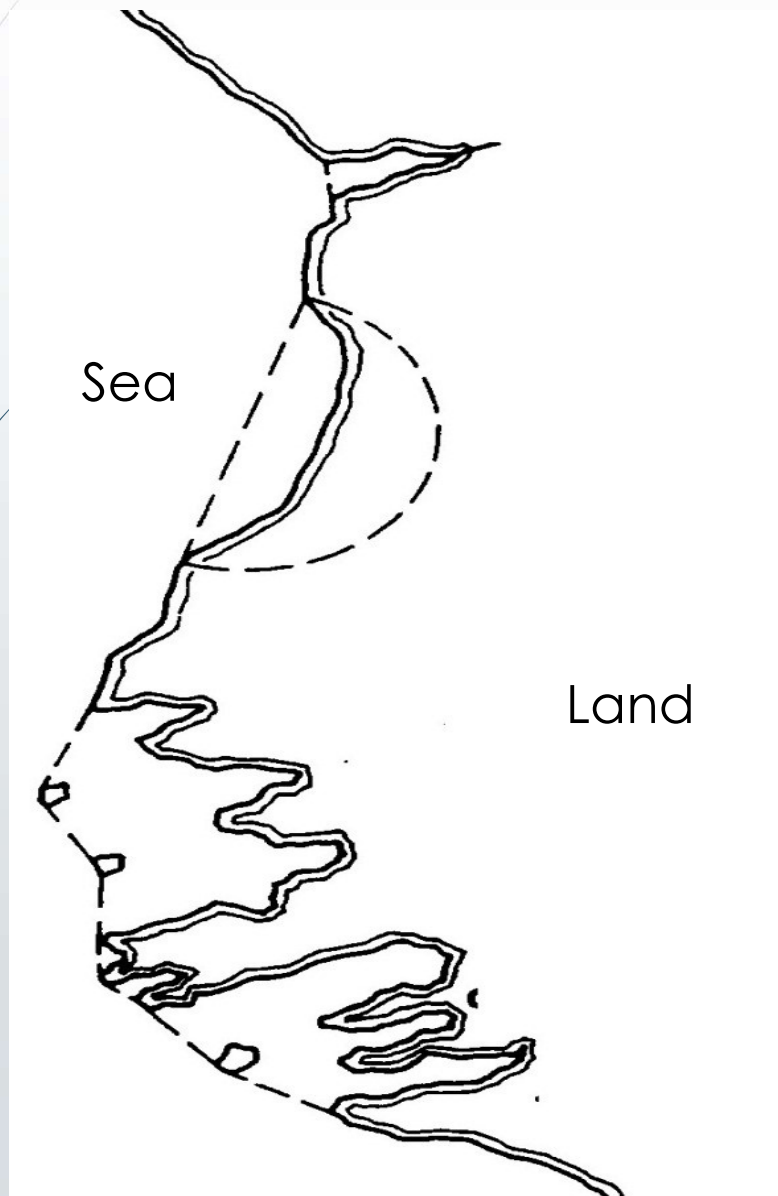
Maritime zones

- Baselines
- Internal waters
- Territorial sea
- Contiguous zone
- Exclusive economic zone
- Continental shelf
- High seas
- International seabed Area

Maritime zones

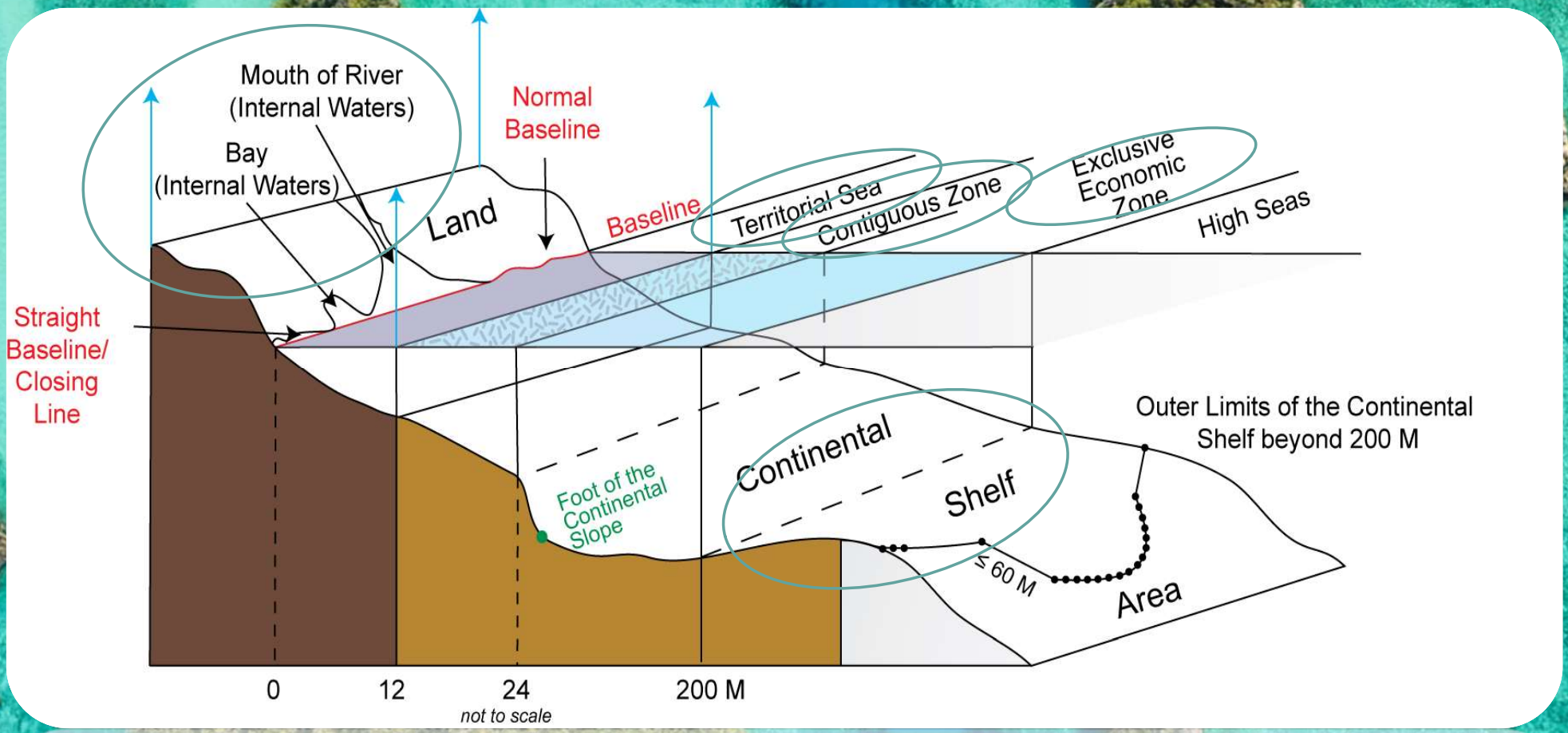


Baselines

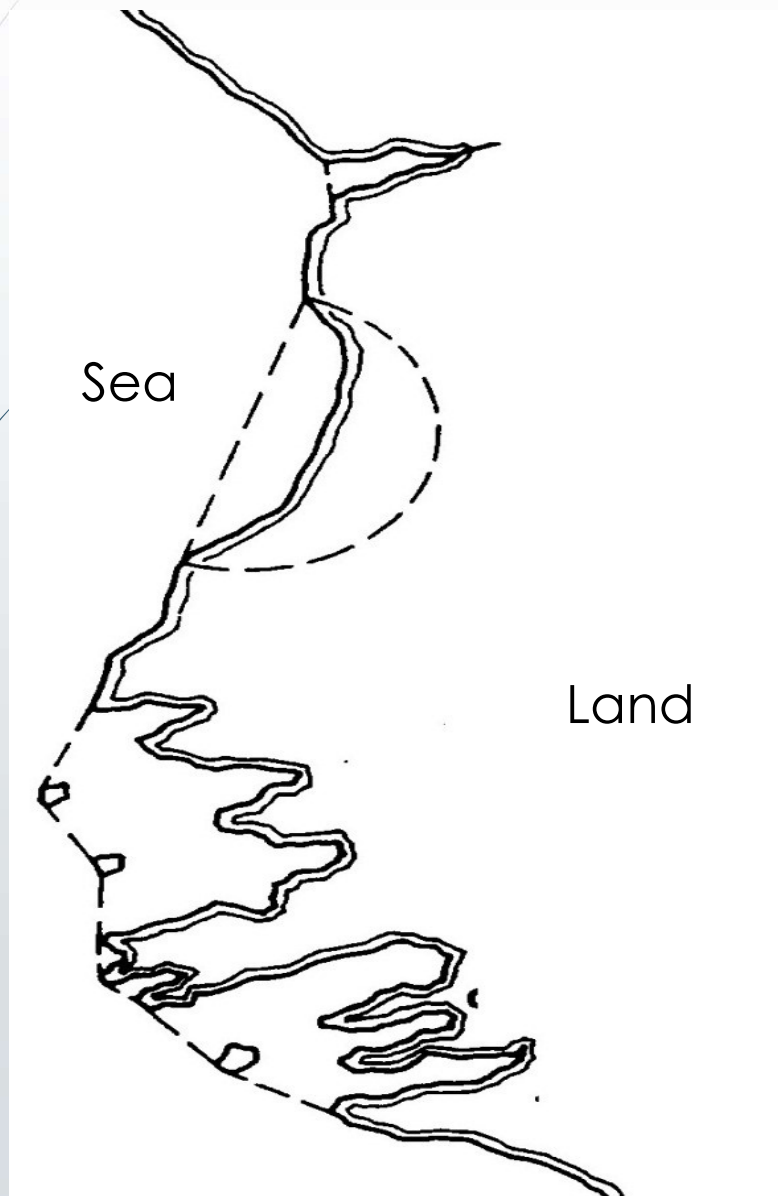


- The **line from which the breadth of maritime zones is measured**
- **Normal baseline:** low-water line along the coast as marked on large-scale charts (art. 5)
- **Other baselines:**
 - straight baseline (art. 7);
 - closing baselines (rivers/bays) (art. 9-10);
 - baselines around ports (art. 11);
 - reefs (art. 6) and low-tide elevations (art. 13);
 - archipelagic baselines (art. 47)
- **Combination of methods**

Maritime zones within national jurisdiction

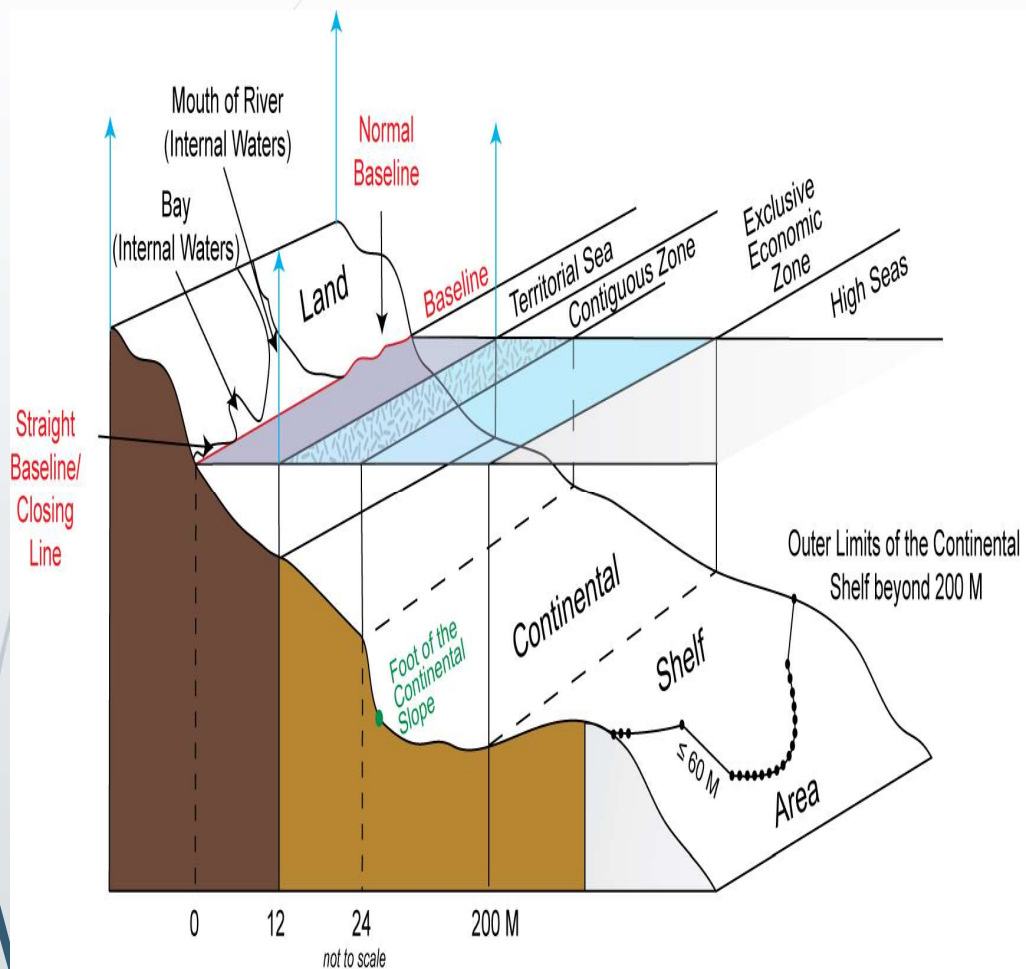


Internal Waters



- **Art. 8**
- **Waters on landward side of baseline**
- **Coastal State = full sovereignty**
- No other generally enjoyed rights by other States.
 - **Access to port is granted by *ad hoc* treaties**

Territorial Sea



- **Art. 2 - 32**
- **Breadth:** up to 12 nautical miles, measured from the baselines.
- **Entitlement:** inherent part of its territory.
- **Scope:** sea; air space; seabed; and subsoil.
- **Note:** Other States have the right of innocent passage.

Territorial Sea

Territorial sea : part of coastal State territory

Sovereignty of coastal State over territorial sea

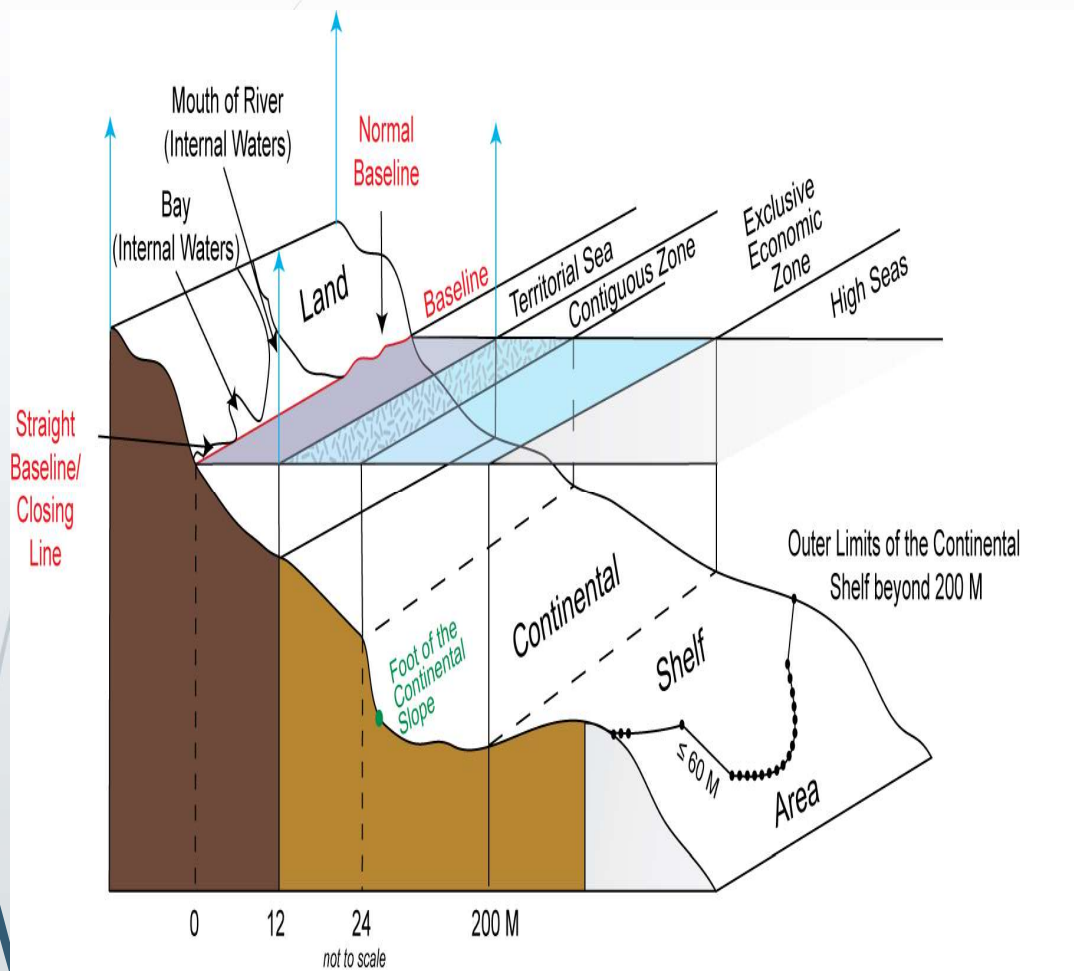
In principle: complete jurisdiction to prescribe, enforce and adjudicate

“the sovereignty of the territorial sea is exercised subject to this Convention and other rules of international law” – art. 2(3)

Innocent Passage – art. 19

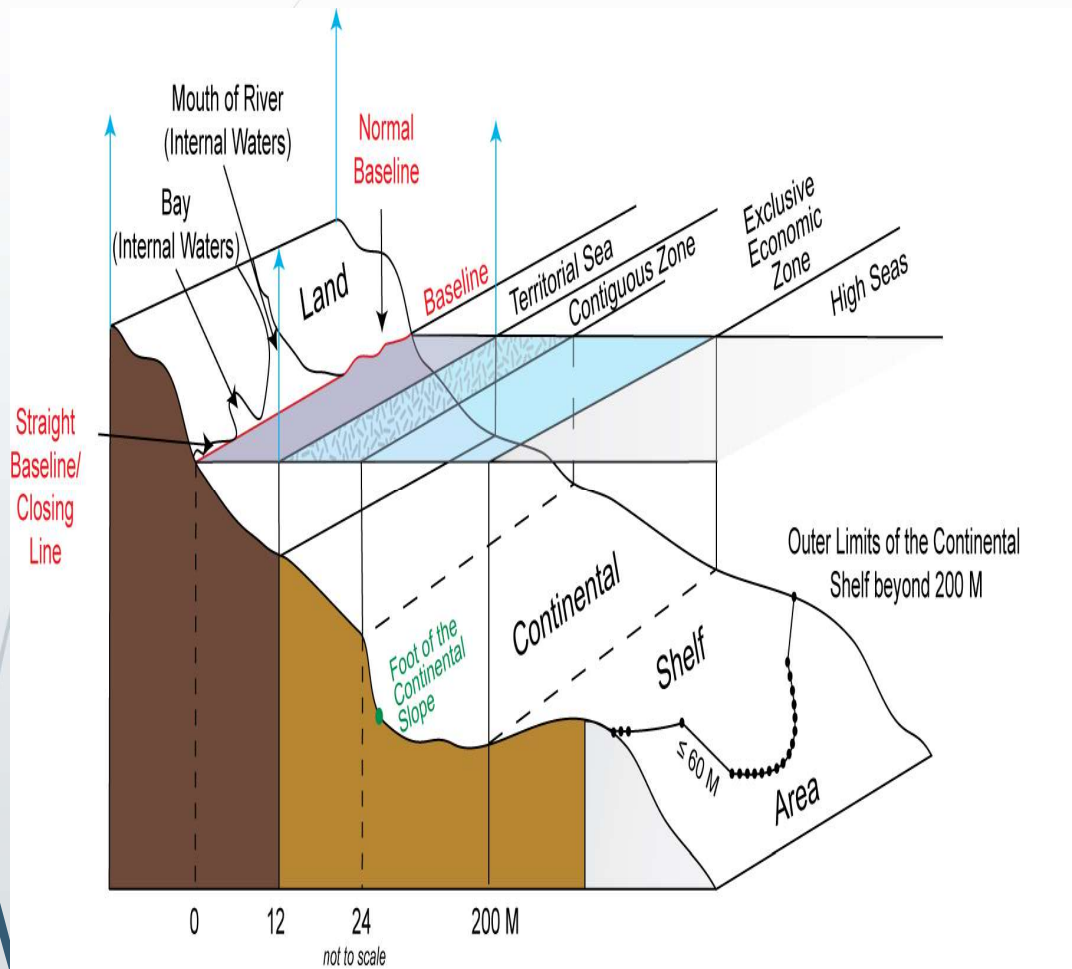
Possibility to suspend the passage that is not innocent – art. 25

Contiguous Zone



- **Art. 33; 303**
- **Breadth:** up to 24 nautical miles, measured from the baselines.
- **Entitlement:** the coastal State may proclaim it.
- **Scope:** sea; and seabed.
- **Coastal States** have **limited degree of jurisdiction** with regard to preventing or punishing infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea.

Exclusive Economic Zone (EEZ)



- **Art. 55-75**
- **Breadth:** from the outer limit of the territorial sea to **up to 200M**, measured from the baselines.
- **Entitlement:** the coastal State may proclaim it.
- **Scope:** sea, seabed and subsoil.
- The EEZ is an area beyond and adjacent to the territorial sea within which the **coastal State has sovereign rights and jurisdiction** to explore and exploit the natural resources and related activities ⇔ **other States have certain freedoms**

Exclusive Economic Zone (EEZ)

The coastal State has sovereign rights
Art. 56(1)(a)



Living Resources

**Non living
resources**

**Other economic
activities**
(such as the production
of energy from the
water)

For the purpose of exploring
and exploiting, conserving
and managing

With regard to

+ Art. 56(2) Coastal States' due regard obligation

Exclusive Economic Zone (EEZ)

The coastal State has jurisdiction with regard to Art. 56(1)(b)

Artificial Islands,
installations and
structure

Marine Scientific
Research

Protection and
preservation of the
marine
environment

+ Art. 56(2) Coastal States' **due regard obligation**

Exclusive Economic Zone (EEZ)

Rights and duties of other States
Art. 58(1)



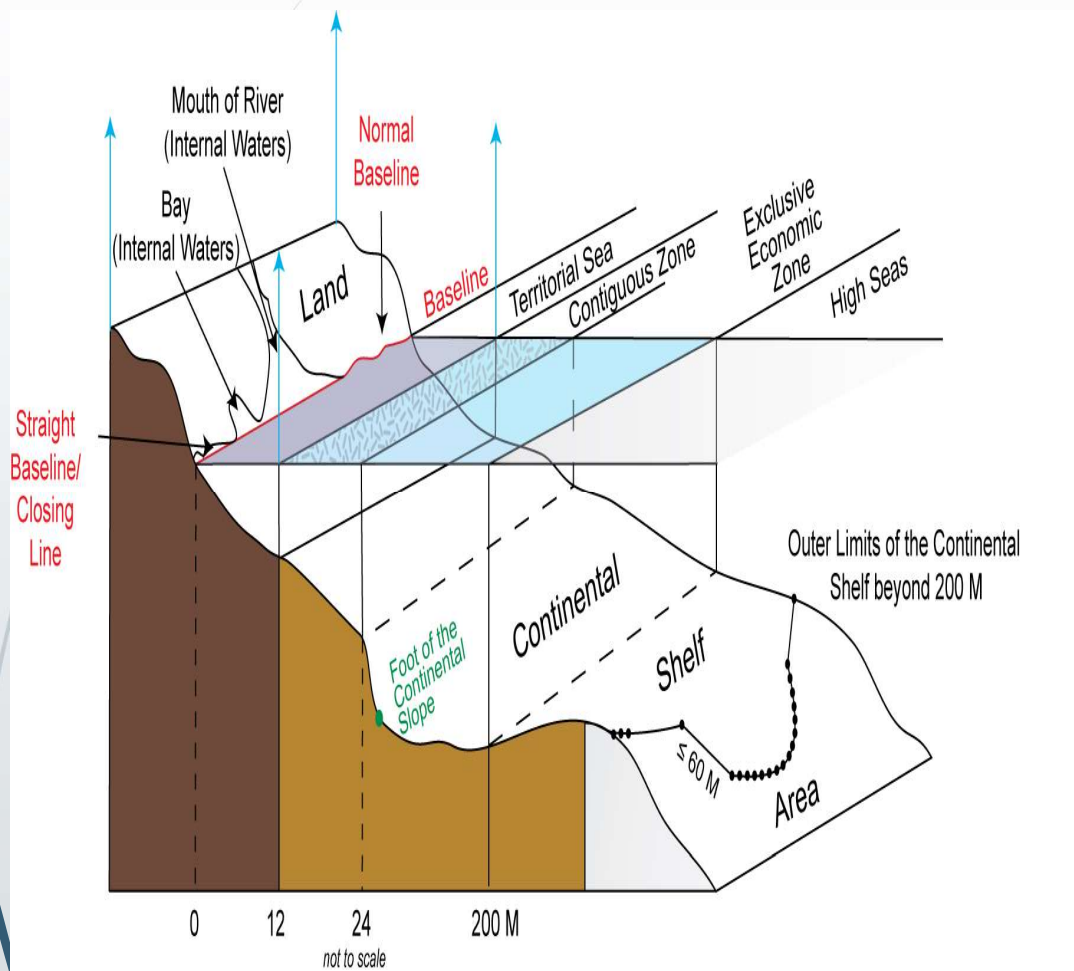
Navigation

Overflight

Submarine cables
and pipelines

+ Art. 58(3) Other States' **due regard obligation**

Continental Shelf



- **Art. 76-85 + Annex II**
- The coastal State has **exclusive sovereign rights** for the purpose of **exploring the continental shelf** and **exploiting its natural resources**.
- Comprises the **seabed and subsoil** of the submarine areas that extend beyond its territorial sea +2 scenarios.

Continental Shelf

Art. 76(1) “The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the **natural prolongation of its land territory to the outer edge of the continental margin, or 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.**”

2 scenarios

200 M

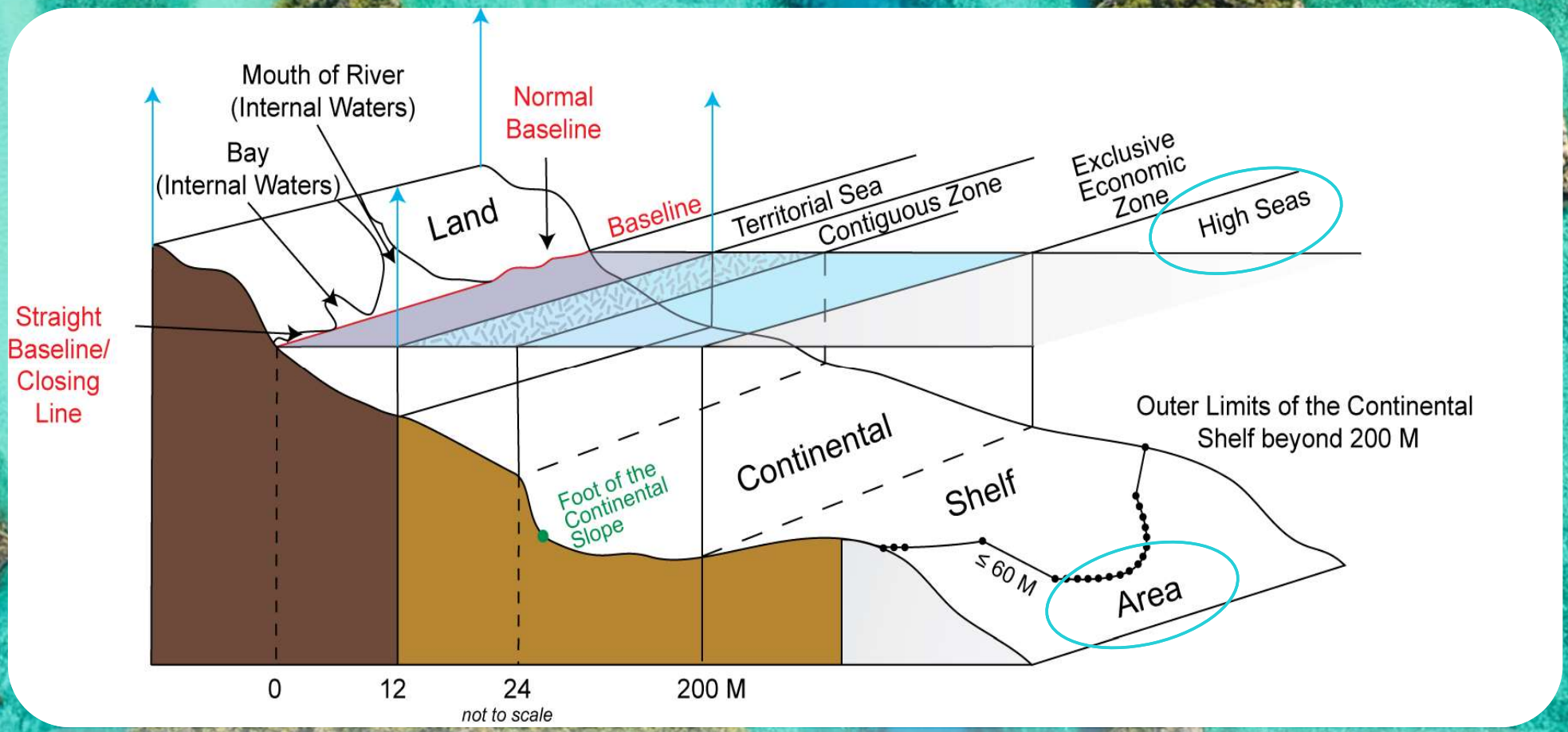
Every States,
regardless
geological
conditions

> 200 M

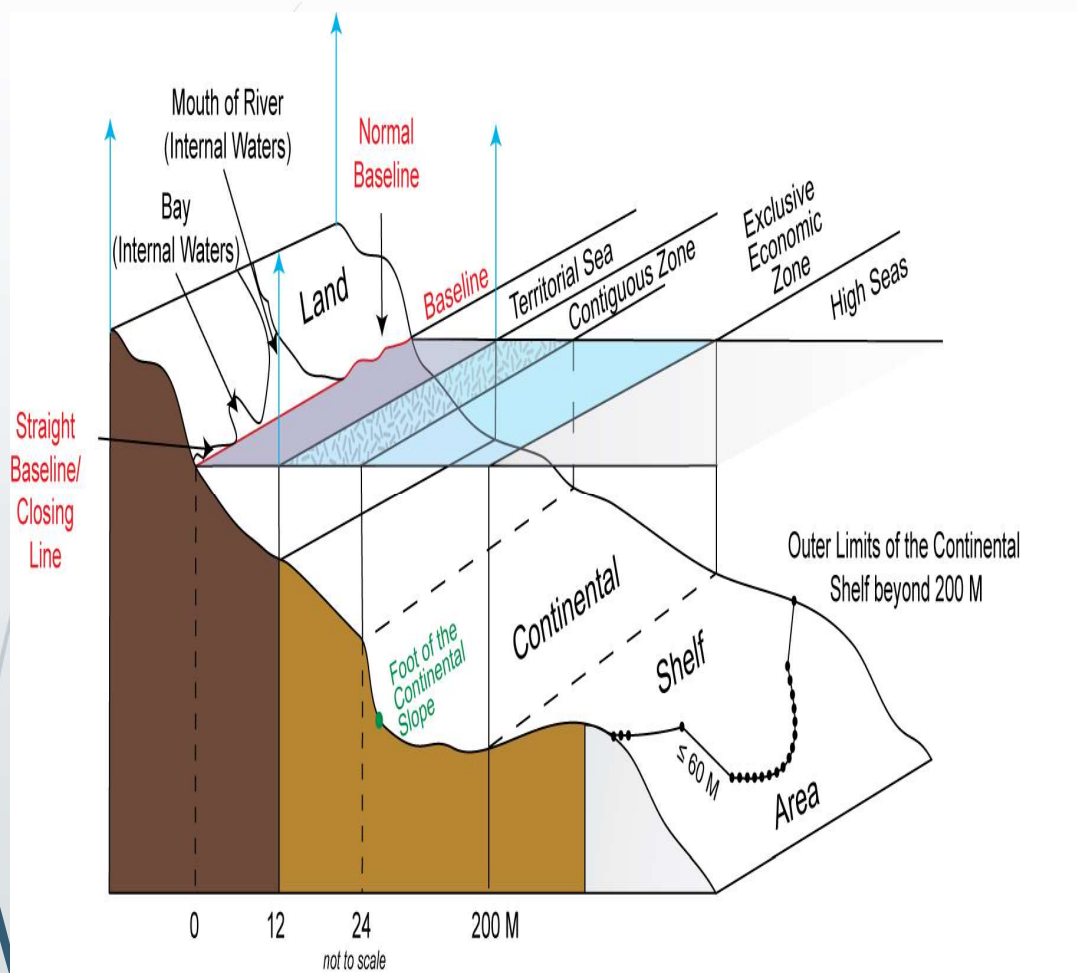
Natural prolongation
of its land territory

Zone	Breadth	Scope	Coastal state	Other States
Internal waters	Landward side of baseline	Sea, air space, seabed, subsoil	Sovereignty	-
Territorial sea	Up to 12 nm (to be proclaimed)	Sea, air space, seabed, subsoil	Sovereignty	Right of innocent passage
Contiguous zone	Up to 24 nm (to be proclaimed)	Sea and seabed	Limited jurisdiction to enforce customs, fiscal, immigration or sanitary laws	Certain freedoms, including navigation
Exclusive economic zone	Up to 200 nm (to be proclaimed)	Sea, seabed and subsoil	Sovereign rights and jurisdiction regarding natural resources and related activities	Certain freedoms, including navigation
Continental shelf	Up to 200 nm or beyond ("extended" continental shelf) (inherent)	Seabed and subsoil	Sovereign rights regarding natural resources	Limited freedom to lay submarine cables and pipelines

Maritime zones beyond national jurisdiction



High Seas



- **Art. 86-120**
- **Not subject to the jurisdiction of any State**
- **Freedom of High Seas** (art. 87(1)) ⇔ due regard (art. 87(2)) and peaceful purposes (art. 88)

High Seas

Art. 87(1) Freedom of the high seas comprises *inter alia*

Navigation

Overflight

Submarine
cables &
pipelines

Construct.
of arti.
islands &
other

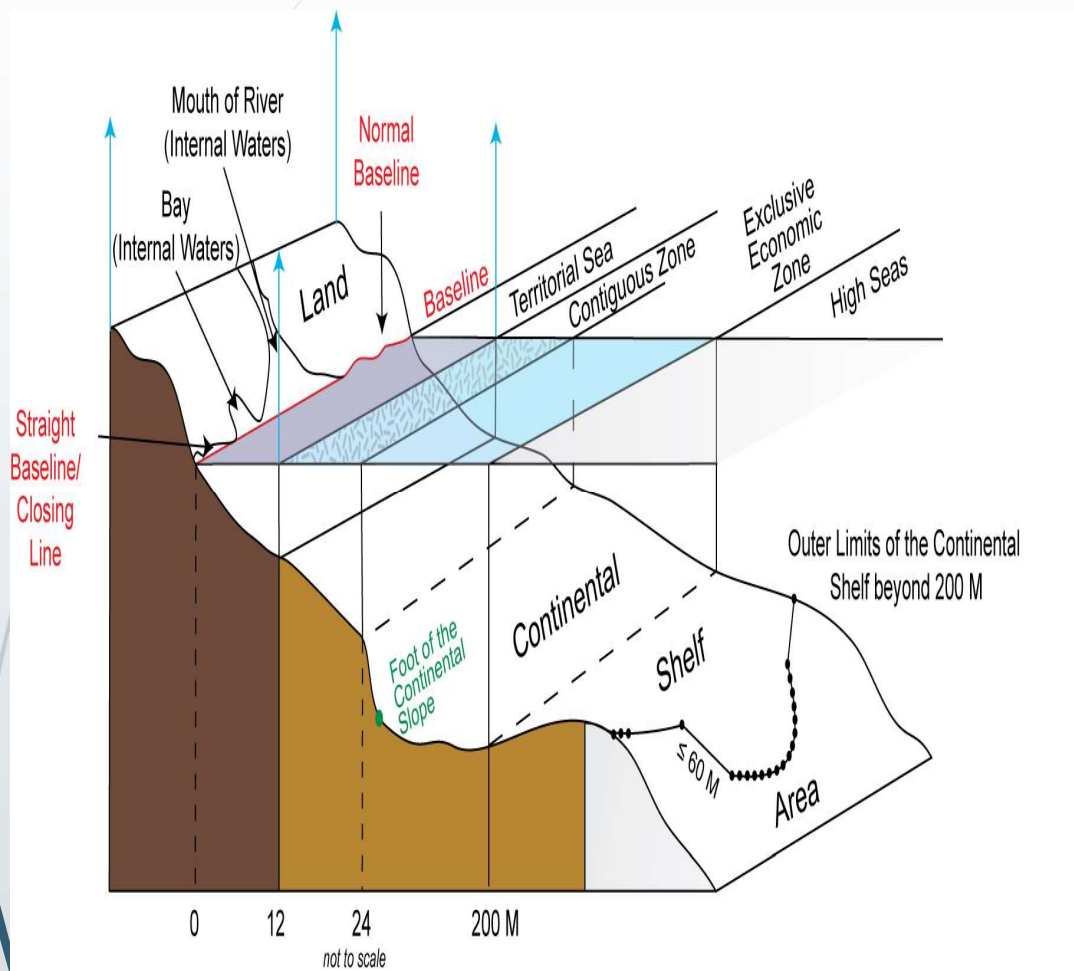
Fishing

MSR

These freedoms are

- Subject to **relevant provisions of UNCLOS** – art. 87(1)
- Must be exercised with **due regard to the interests of other States** – art. 87(2)
- + **The high seas shall be reserved for peaceful purposes** – art. 88

High Seas

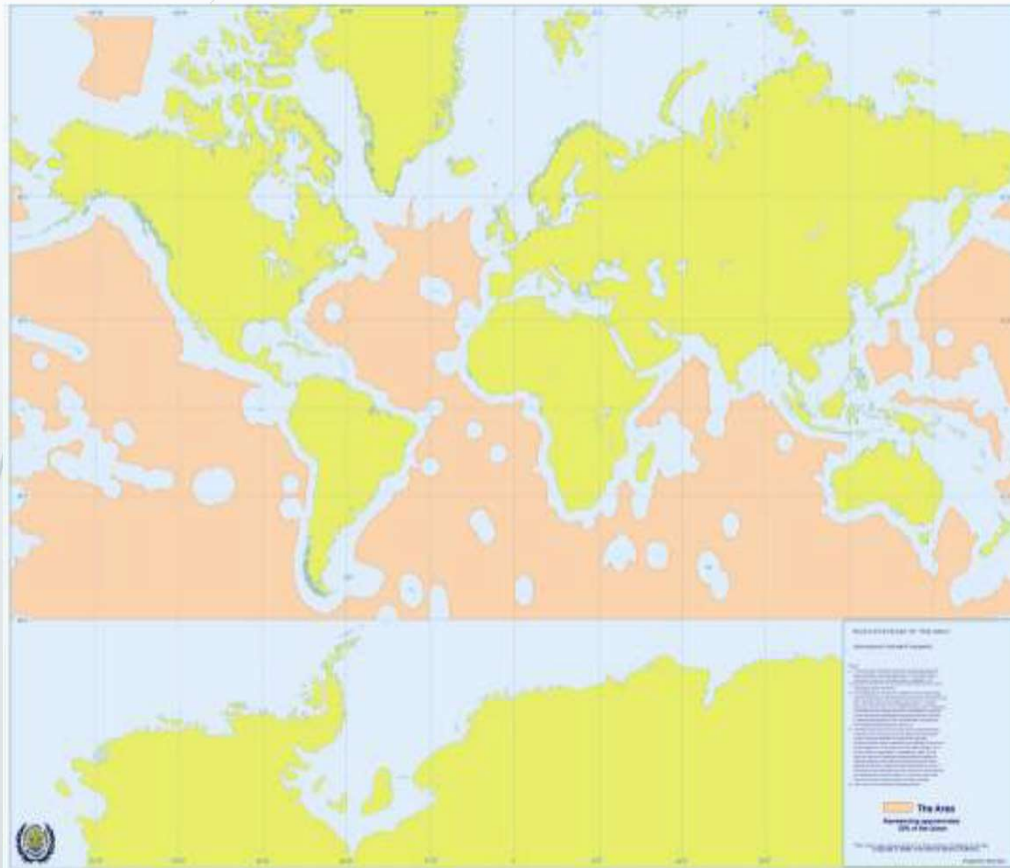


Flag State Jurisdiction

Art. 92-94

- Ships **must fly the flag of a single State and are under its exclusive jurisdiction** – art. 92
- Every State must **effectively exercise its jurisdiction and control** over ships flying its flag – art. 94
- In doing so, States must **conform to generally accepted international regulations, procedures and practices** (e.g. IMO, ILO, ...)

The Area



- **Art. 133-191**
- The **seabed** and **ocean floor** and **subsoil beyond the limits of national jurisdiction** (art. 1(1))
- **Common heritage of [hu]mankind** (art. 136)
- Managed by the International Seabed Authority (ISA)

Special Geographical Characteristics

- Archipelagic States
- Islands

Slide 59

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Given the region, archipelagic states, rocks and islands might be relevant to maintain.

Michele Ameri, 2023-11-06T14:23:52.864

Archipelagic States



- **Art. 46-54 (Part IV)**
- “constituted wholly by one or more archipelagos and may include other islands” – art. 46
- Island, waters and other natural features forming an “intrinsic geographical, economic or political entity”
- Entitled to draw **archipelagic baselines**
- **Sovereignty over archipelagic waters**
- Other States have right of innocent passage (and archipelagic sea lane passage if lanes are designated)

Islands



Art. 121

- (1) “a **naturally formed area of land, surrounded by water, which is above water at high tide**”
- (2) Islands are entitled to **territorial sea, contiguous zone, EEZ and continental shelf**
- (3) “Rocks which cannot sustain human habitation or economic life of their own shall have **no exclusive economic zone or continental shelf.**”

Art. 60(8) Artificial islands do not possess the status of island.

Islands



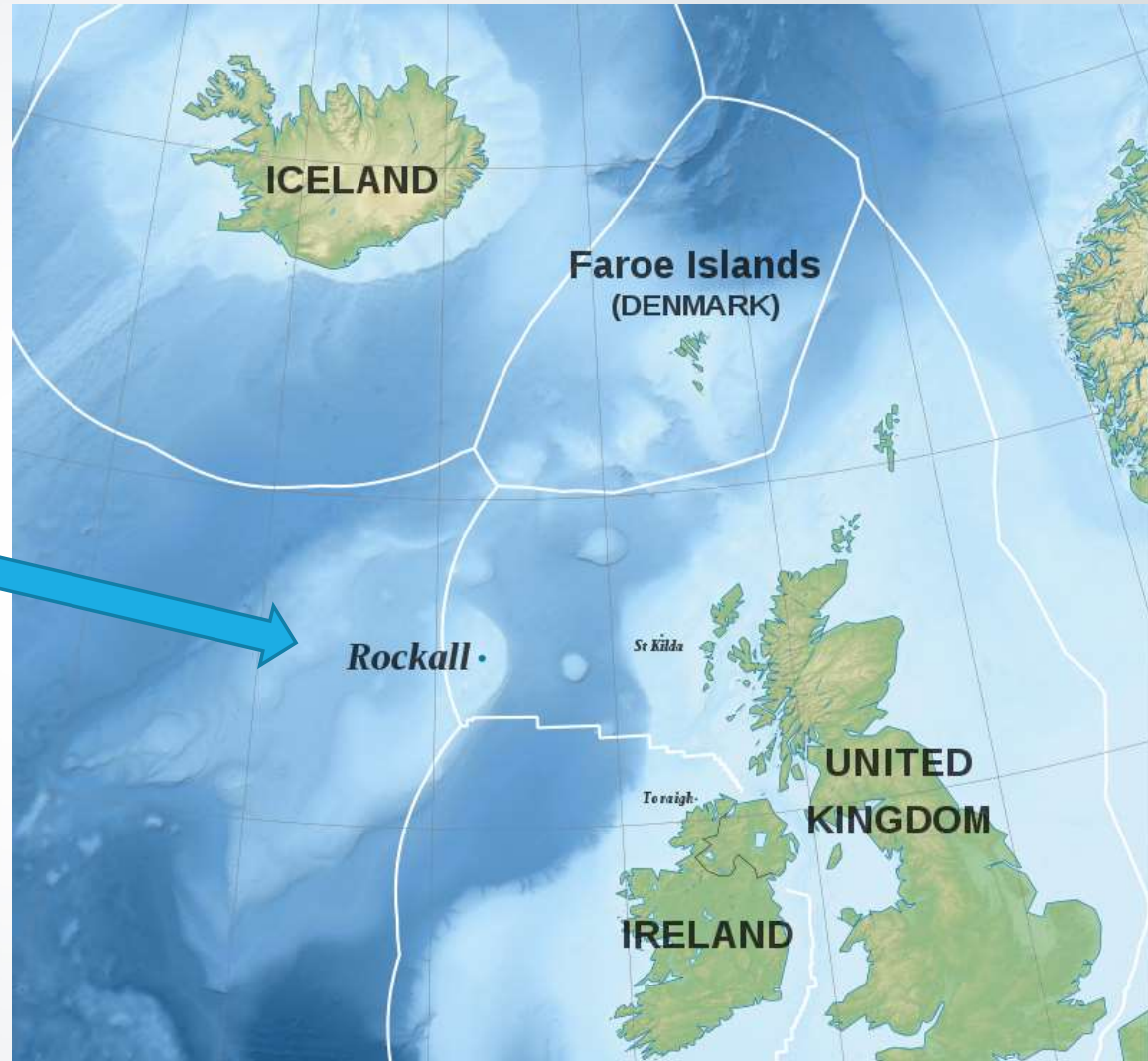
Art. 121

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Art. 60(8) Artificial islands do not possess the status of island.

Islands – the example of Rockall

Island or Rock?





Maritime zones: key points

- UNCLOS sets out different maritime zones measured from baselines
- In each zone, the rights and jurisdiction of the coastal State are balanced against the freedoms of other States
- In general, the further away from the coast, the less strong the rights and jurisdiction of the coastal state and the more freedoms other States enjoy

Activities

3



Navigation



Fishing



Marine Science



Mining



Artificial islands and platforms



Cables and pipelines



Protection and preservation of the
marine environment

Navigation

- ▶ **UNCLOS** sets out the legal regime for navigation (and overflight), including **rights of passage and responsibilities of coastal States and flag States**
- ▶ This framework is complemented by **other international instruments**, including those established under the auspices of the International Maritime Organization (IMO)

Navigation

Duties of Coastal States

Territorial Sea

Duty of coastal State not to **hamper innocent passage** of foreign ships, subject to sea lanes and traffic separation schemes, laws and regulations

Straits used for int'l navigation

States bordering straits, **shall** not hamper or **suspend transit passage**, subject to sea lanes and traffic separation schemes, laws and regulations

EEZ

Duty of due regard for rights and duties of other States, including freedom of navigation

Navigation

Duties of Foreign Vessels and Flag States

Territorial Sea

Duty to engage in passage that is **'innocent'**

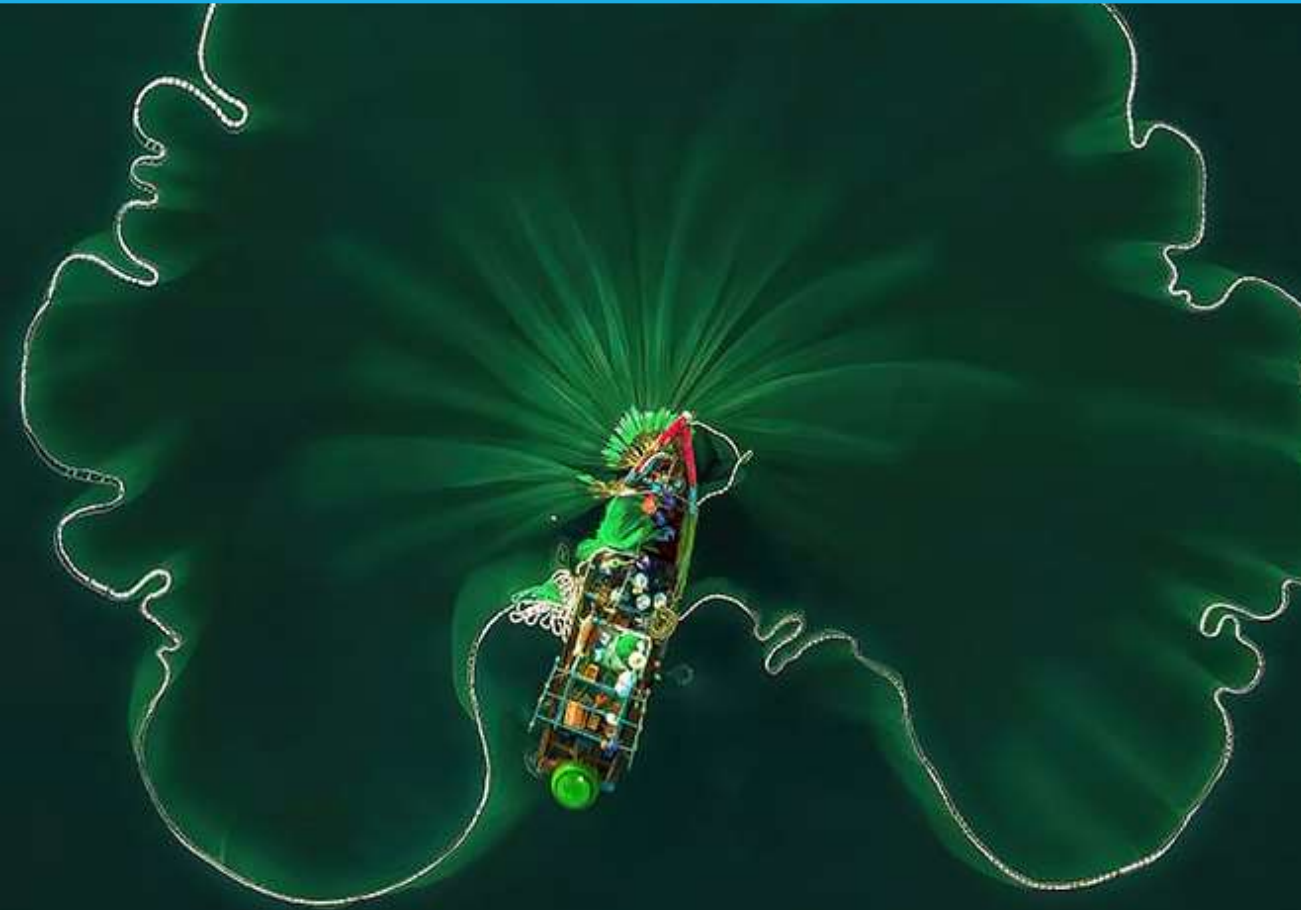
Straits used for int'l navigation

Duty to engage in 'transit passage'

EEZ & High Seas

Freedom of navigation and overflight in the EEZ of other States and on the high sea, **subject to conditions in UNCLOS**, including on the **protection of the marine environment**, and **general duties of flag States in exercising exclusive jurisdiction**

Fishing



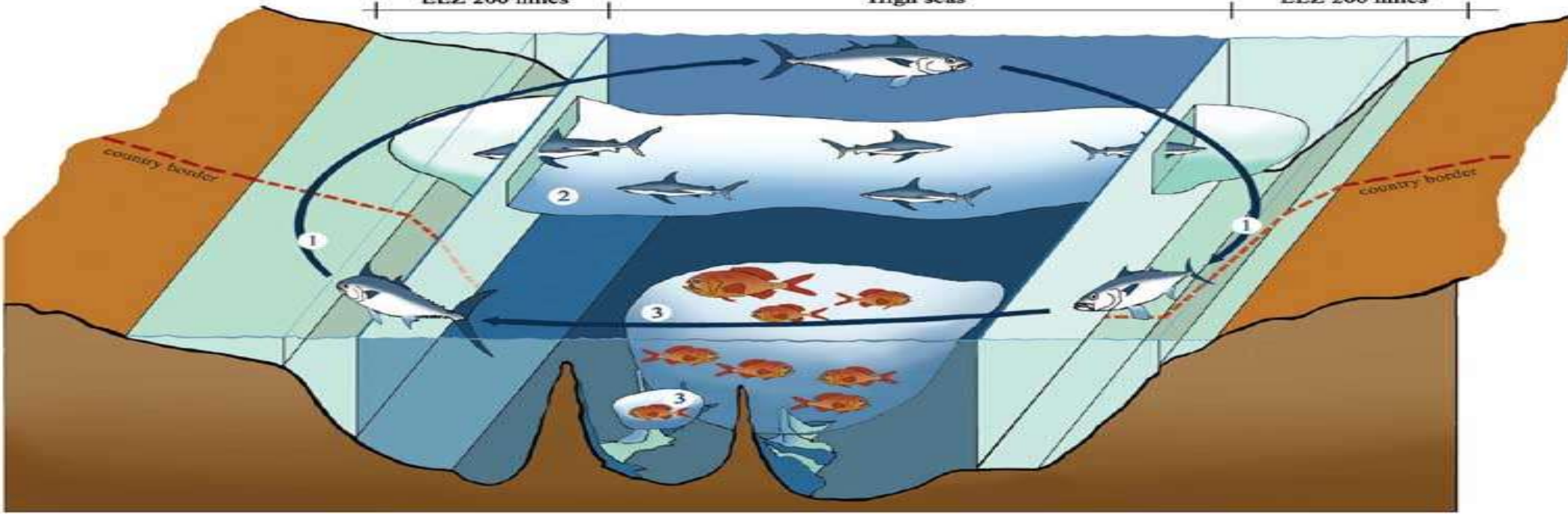
- **UNCLOS** sets out the overarching legal regime for sustainable fisheries under international law
- **1995 United Nations Fish Stocks Agreement (UNFSA)** sets out a more detailed legal regime for straddling fish stocks and highly migratory fish stocks
- Complemented by **other international instruments** (e.g. FAO instruments, General Assembly resolutions, RFMO instruments and biodiversity instruments)

Fishing

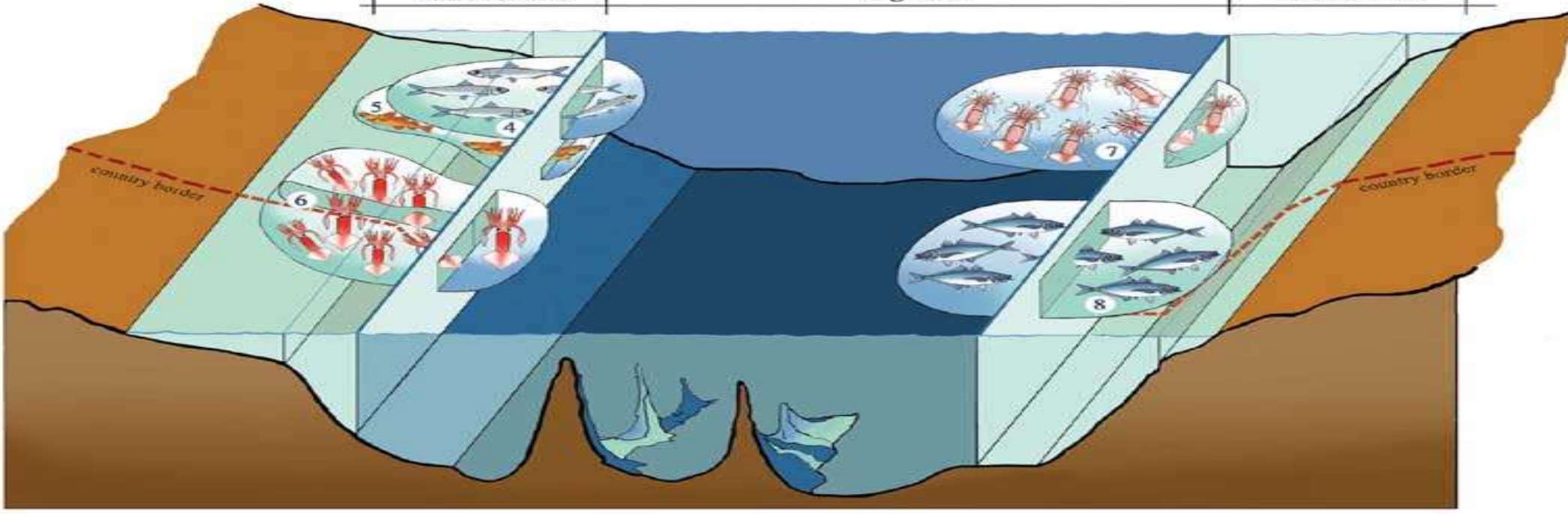
Overview of the fish stocks

- Local fish stocks (arts. 61 and 62 UNCLOS)
- Shared/transboundary fish stocks (art. 63:1 UNCLOS)
- Straddling fish stocks (art. 63:2 UNCLOS + UNFSA)
- Highly migratory fish stocks (art. 64 UNCLOS + UNFSA)
- Discrete high seas fish stocks (Part VII, section 2 UNCLOS)
- Anadromous stocks (art. 66 UNCLOS)
- Catadromous species (art. 67 UNCLOS)
- Sedentary species (art. 77:4 UNCLOS)
- Marine mammals (arts. 65 and 120 UNCLOS)

Neritic	Oceanic			Neritic
Shelf	Slope	Deep sea	Slope	Shelf
EEZ 200 miles		High seas		EEZ 200 miles



Neritic	Oceanic			Neritic
Shelf	Slope	Deep sea	Slope	Shelf
EEZ 200 miles		High seas		EEZ 200 miles



Fishing

In the territorial sea

Full sovereignty of the coastal State

In the EEZ

- Coastal States have sovereign rights over marine living resources
- Coastal States have the obligation to conserve and manage marine living resources and to promote “optimum utilization”
- Coastal State has the obligation to grant other States the right of access to “surplus” of the allowable catch, under terms and conditions (e.g. in licences)

Fishing

In the High Seas

- Legal framework provided in Part VII, Section 2 of UNCLOS
- Freedom of fishing on the high seas, subject to certain treaty obligations, and the rights, duties and interests of coastal States
- Duty to cooperate in the conservation and management of high seas stocks
- Duty to adopt measures for conservation of high seas stocks

Problem of overfishing

- Relocation of fishing fleets in the 1980s after the extension of fisheries jurisdiction and the establishment of the EEZ
- Overfishing primarily of straddling and highly migratory fish stocks in areas adjacent to EEZs
- Fishing overcapacity
- Depletion of several straddling stocks brought to the fore shortcomings in the high seas fisheries regime of UNCLOS – general and vague provisions



Marine Science



- Ocean is still the last major unknown ecosystem on earth
- **UNCLOS (Part XIII)** lays down a comprehensive global regime for the promotion and conduct of MSR and cooperation in such research
- **No definition** of MSR in UNCLOS.

Mining and other activities under national jurisdiction

Territorial Sea

Sovereignty (art.2)

*Archipelagic waters: Sovereignty (art.49)

EEZ

Sovereign rights (art.56)

Continental Shelf

Sovereign rights (art.77)

* Beyond 200M, revenue sharing (art. 82)

High Seas

Freedom of the high seas (art. 87)

Artificial Islands installations and structures



EEZ – Article 56 and 60

Continental shelf – Article 80

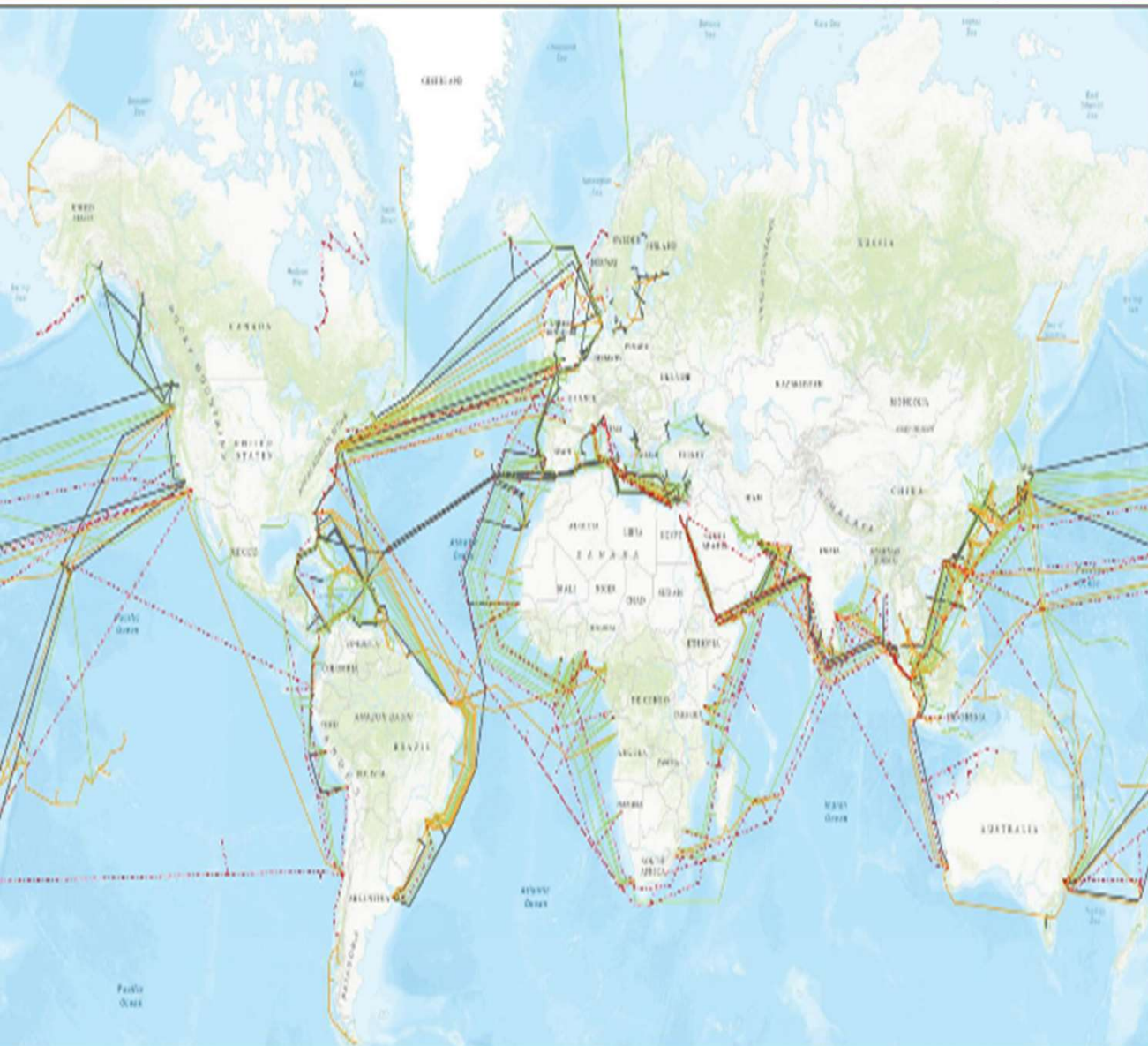
Safety zones

- Coastal States may, where necessary, **establish reasonable safety zones around artificial islands, installations and structures**
- Coastal States may take **appropriate measures to ensure the safety** both of navigation and of the artificial islands, installations and structures
- The breadth of **the safety zones shall not exceed a distance of 500 metres**

This Photo by



Submarine cables and pipelines



- **Territorial sea:** Article 21(1)(c)
- **EEZ:** Article 58
- **Continental shelf:** Article 79
- **High seas:** Article 112 and 113-115



Protection and Preservation of the Marine Environment – Part XII

- UNCLOS was the **first multilateral treaty** to introduce a **comprehensive set of articles on the protection and preservation of the marine environment**
- This followed a growing interest in environmental issues following the 1972 Stockholm Conference on the Human Environment (which saw the establishment of UNEP) and the conclusion of a number of specific conventions on marine pollution, such as the London Dumping Convention (1972) and the MARPOL Convention (1973).

A vibrant underwater scene featuring a diverse coral reef. The reef is composed of various types of coral, including branching corals in shades of red, orange, and purple, and a large, textured orange coral structure. Numerous small, colorful fish, including yellow and purple ones, are swimming around the reef. A larger, spotted orange fish is prominently featured in the center. The background is a clear, deep blue water.

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General obligation

- **General obligation to protect and preserve the marine environment** (art. 192)

= all States

= in all maritime zones

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Other general obligations (art. 194-196)

- Prevent, reduce and control **pollution from any source** (e.g. seabed, vessels, atmosphere, land-based, alien species)
- Ensure that activities under a State's jurisdiction or control are so conducted as **not to cause damage by pollution to other States** and their environment
- Ensure that **pollution** arising from incidents or activities under a State's jurisdiction or control **does not spread beyond the areas where they exercise sovereign rights.**
- Measures to protect and preserve **rare or fragile ecosystems** and the habitat of depleted, threatened or endangered species and other forms of marine life
- Duty **not to transfer damage or hazards or transform one type of pollution into another**
- Prevent, reduce and control **pollution** from **use of technologies or introduction of alien or new species**

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Definition of pollution – art. 1(4)

"**pollution of the marine environment**" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities

From Land-
Based
Sources
(art. 207)

From
activities
subject to
national
jurisdiction
(art. 208)

From
activities in
the Area
(art. 209)

By dumping
(art. 210)

From or
through the
atmosphere
(art. 212)

From vessels
(art. 211)

An underwater photograph showing two divers in white shirts and dark gear swimming through a clear blue ocean. They are surrounded by a network of thick, light-colored ropes or cables that are heavily encrusted with yellowish, branching coral. The divers appear to be inspecting or working on the ropes. The background shows a vast expanse of water with some smaller fish visible.

Activities: key points

- UNCLOS sets out rights and obligations of States with regard to different activities in the ocean, including fishing, navigation and other activities.
- These provisions are typically complemented by other international and regional instruments



Thank
you!