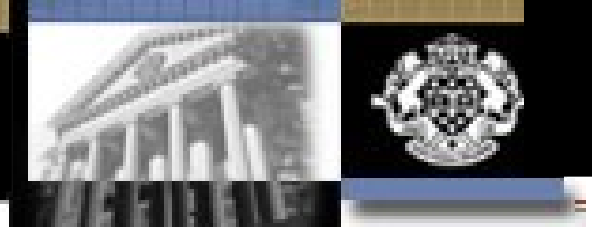


Part II:

Subjects of International Law

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Subjects of International Law

Key Subjects of International Law: The State

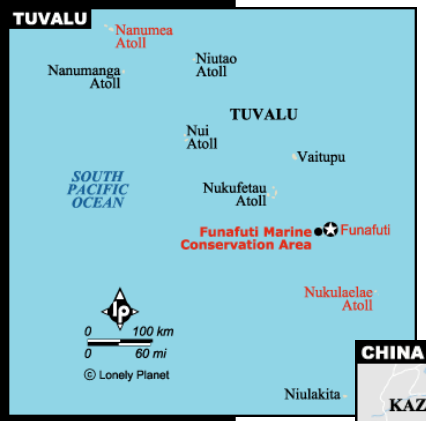
- State is a legally defined entity
  - Modern international law sets out four basic criteria for a state:
    1. A permanent population
    2. A defined territory
    3. A government
    4. A capacity to enter into relations with other states

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Subjects of International Law

Key Subjects of International Law: The State

1. Permanent Population:
   - Number: No maximum or minimum number
   - Permanence: Constant human presence



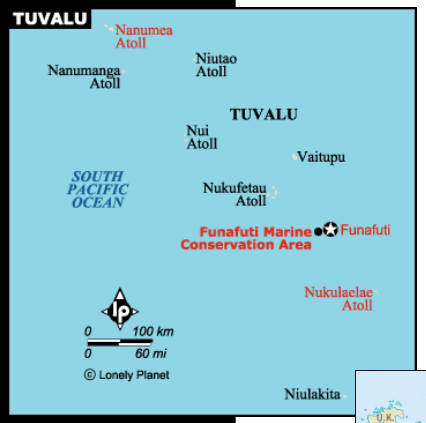


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Subjects of International Law

Key Subjects of International Law: The State

2. Defined Territory:
   - Size: No maximum or minimum size
   - Generally requires occupation and control





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Subjects of International Law

Key Subjects of International Law: <u>The State</u>



3. Government:
   - No requirement for a particular form of government
   - Must be some effective control of territory
     - Emergence of Finland in post-WWI: strict rule
     - Post-colonialism: requirement may be weaker in the post-WWII era







Subjects of International Law

Key Subjects of International Law: The State



4. Capacity to enter into foreign relations (independence):

- Must have competence under own constitutional system to enter into foreign relations
- States do not cease to exist where delegate some authority to a supranational entity
  - State is *agreeing*, in an exercise of its sovereignty to limit its independence
    - "independence" means the sole right of decision in all matters economic, political and financial
    - simply entering into treaties that limit this does not vitiate independence so long as state is not under the legal authority of another state



Austro-German Customs Union

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Subjects of International Law

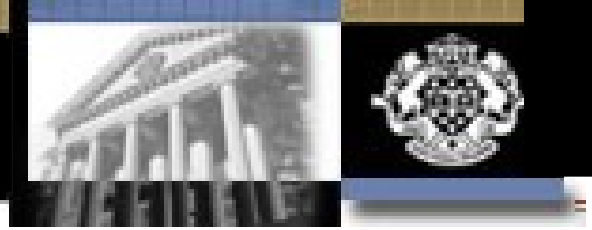
Key Subjects of International Law: The State

Vatican City and the Holy See: A marginal case?





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Subjects of International Law

Key Subjects of International Law: The State

Recognition of States:

- Complex definition:

  "…the free act by which one or more States acknowledge the existence on a definite territory of a human society politically organized, independent of any other existing State, and capable of observing the obligations of international law, and by which they manifest therefore their intention to consider it a member of the international Community."

- Simple definition:

  a formal acknowledgment by another state that an entity possesses the qualifications for statehood

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Subjects of International Law

Key Subjects of International Law: <u>The State</u>

Recognition of States:



Historical relevance:

- **Constitutive theory**: recognition essential to endow a state with its legal personality

- **Declaratory theory**: recognition simply recognizes an existing fact of statehood

- Recognition less relevant today as a legal matter, though as a practical matter of diplomatic practice, still important

Subjects of International Law

Key Subjects of International Law: The State

Recognition of Governments Distinguished:



- Recognition of a government is a formal acknowledgment that a particular regime is the effective government of a state
- Today, states generally prefer to practice tacit recognition of each other's governments (Estrada Doctrine)
  - However, recognition may be expressly denied in some instances

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Subjects of International Law

Key Subjects of International Law: The State

Persistence of the State: State Continuity

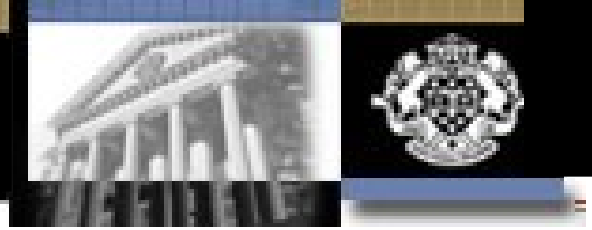
- Once a state exists, it is difficult for it to disappear (e.g., Somalia)
- Doctrine of state continuity: a state continues to exist irrespective of changes in government, until extinguished by absorption by another state or by dissolution
  - States persist even when governed by an illegitimate government, a… can bind the state
  - Mobutu's case
  - Who is the government in Zaire?











Subjects of International Law

Key Subjects of International Law: The State

Changes in the State: State Succession

- State succession deals with the emergence of new states: what are the legal obligations of these new states?
  - Bound by customary international law
  - Treaties are more complicated:
    - One state merges into another, surviving state's duties persist
    - A state acquires a piece of territory, the state's obligations extend to this new territory

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Subjects of International Law

Key Subjects of International Law: The State

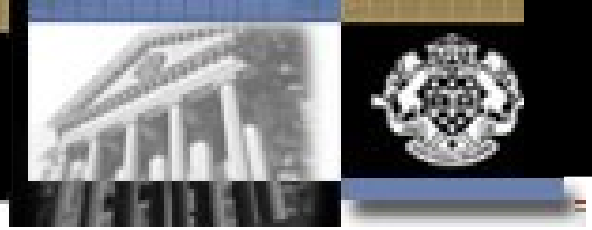




Changes in the State: State Succession

- State succession deals with the emergence of new states: what are the legal obligations of these new states?
  - Bound by customary international law
  - Treaties are more complicated:
    - Entirely new state emerges: transmissibility or no transmissibility?:
      - Modern preference for “clean slate”
      - But do we always want non-transmissibility: human rights in the Balkans

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Subjects of International Law

Key Subjects of International Law: The State

Sovereign Equality of States

- Sovereignty: exclusive control over own affairs
  - Sovereignty is taken to connote "independence" defined as the "right to exercise [within a set national territory], to the exclusion of any other State, the functions of a State"
- States are supposed to be equally sovereign
  - states "have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature"
- Flip-side is obligation not to interfere in the sovereign affairs of other states

Subjects of International Law

Key Subjects of International Law: <u>Intergovernmental Organizations</u>

International Personality of Intergovernmental Organizations



- *Reparations Case*
  - in order to perform the functions assigned to it by the UN Charter, the UN was endowed with some international legal personality, separate and apart from that of its state members



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Subjects of International Law

Key Subjects of International Law: United Nations

Established by the United Nations Charter (1945)

1. Purposes

- Article 1:
  - To maintain international peace and security
  - To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples
  - To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights
  - To be a centre for harmonizing the actions of nations in the attainment of these common

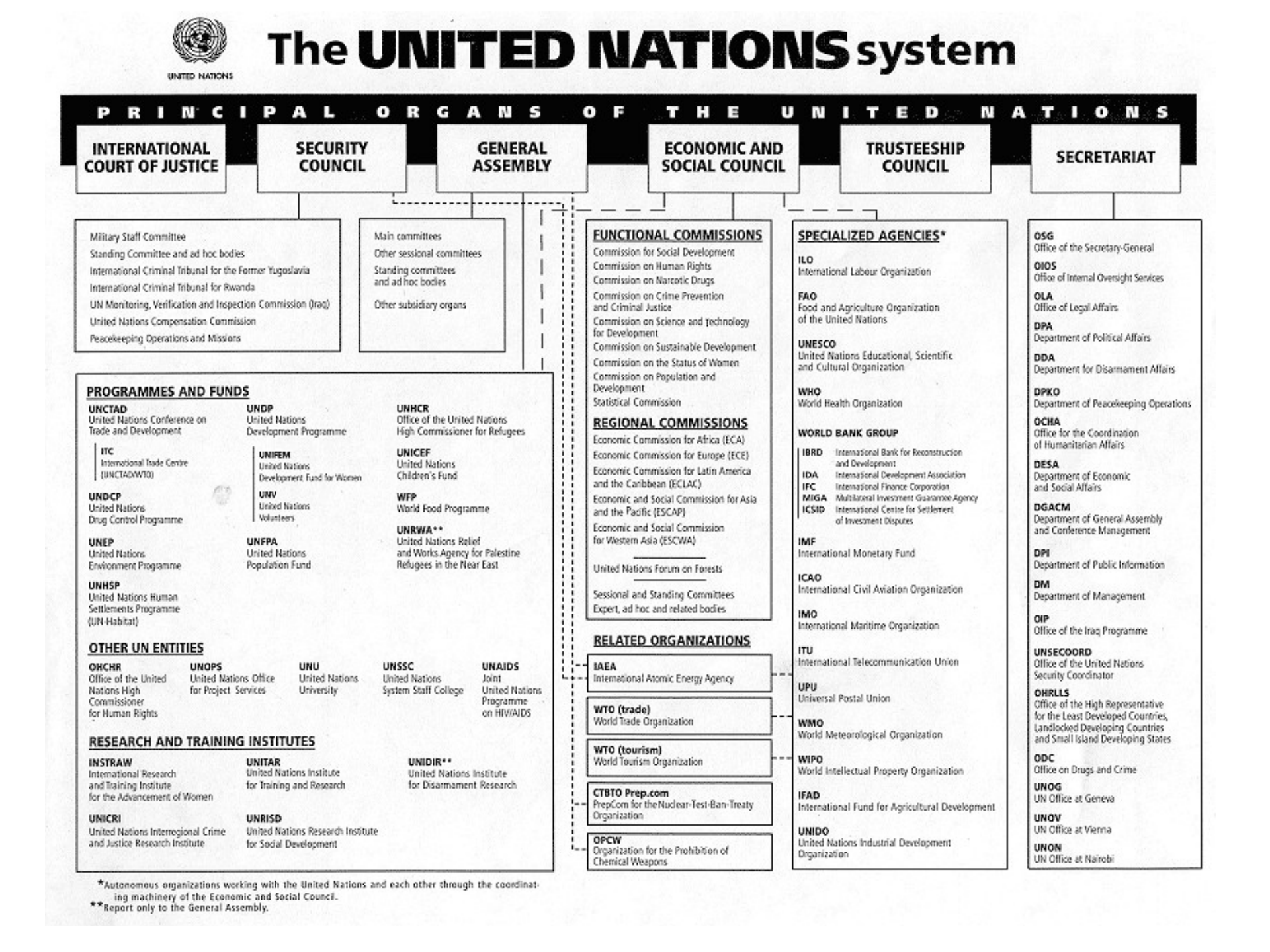
Subjects of International Law

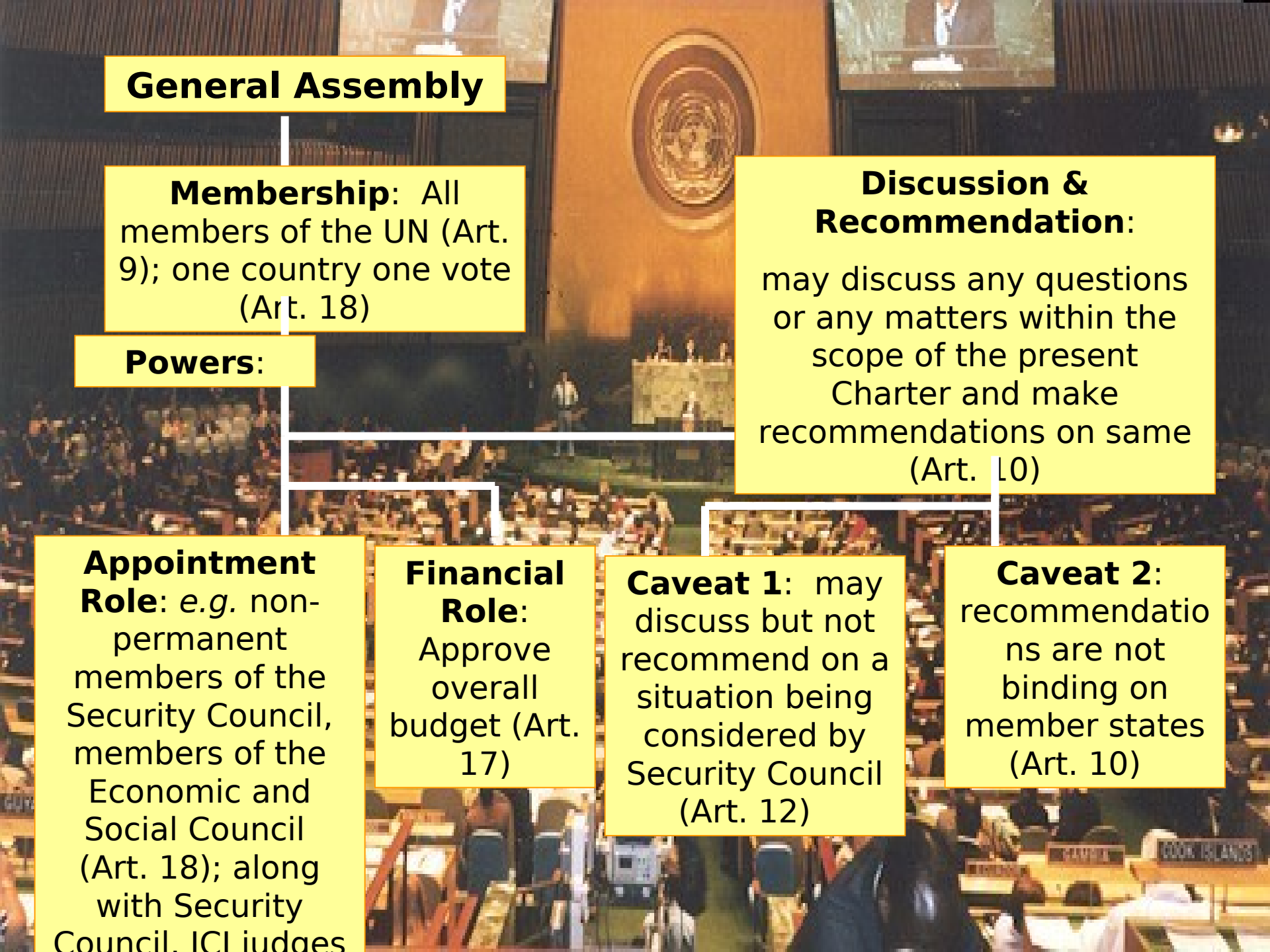
Key Subjects of International Law: United Nations

Established by the United Nations Charter (1945)

2. Principles

- Article 2 specifies, *inter alia*:
  - principle of the sovereign equality of all UN Members;
  - good faith obligation to act in fashion consistent with the Charter;
  - settlement of member international disputes by peaceful means in such a manner that international peace and security, and. justice, are not endangered;
  - members to refrain in their international relations from the threat or use of force against the territorial integrity or political


UNITED NATIONS
The UNITED NATIONS system
PRINCIPAL ORGANS OF THE UNITED NATIONS
INTERNATIONAL COURT OF JUSTICE
SECURITY COUNCIL
GENERAL ASSEMBLY
ECONOMIC AND SOCIAL COUNCIL
TRUSTEESHIP COUNCIL
SECRETARIAT
Military Staff Committee
Standing Committee and ad hoc bodies
International Criminal Tribunal for the Former Yugoslavia
International Criminal Tribunal for Rwanda
UN Monitoring, Verification and Inspection Commission (Iraq)
United Nations Compensation Commission
Peacekeeping Operations and Missions
Main committees
Other sessional committees
Standing committees and ad hoc bodies
Other subsidiary organs
FUNCTIONAL COMMISSIONS
Commission for Social Development
Commission on Human Rights
Commission on Narcotic Drugs
Commission on Crime Prevention and Criminal Justice
Commission on Science and Technology for Development
Commission on Sustainable Development
Commission on the Status of Women
Commission on Population and Development
Statistical Commission
REGIONAL COMMISSIONS
Economic Commission for Africa (ECA)
Economic Commission for Europe (ECE)
Economic Commission for Latin America and the Caribbean (ECLAC)
Economic and Social Commission for Asia and the Pacific (ESCAP)
Economic and Social Commission for Western Asia (ESCWA)
United Nations Forum on Forests
Sessional and Standing Committees
Expert, ad hoc and related bodies
SPECIALIZED AGENCIES*
ILO International Labour Organization
FAO Food and Agriculture Organization of the United Nations
UNESCO United Nations Educational, Scientific and Cultural Organization
WHO World Health Organization
WORLD BANK GROUP
IBRD International Bank for Reconstruction and Development
IDA International Development Association
IFC International Finance Corporation
MIGA Multilateral Investment Guarantee Agency
ICSID International Centre for Settlement of Investment Disputes
IMF International Monetary Fund
ICAO International Civil Aviation Organization
IMO International Maritime Organization
ITU International Telecommunication Union
UPU Universal Postal Union
WMO World Meteorological Organization
WIPO World Intellectual Property Organization
IFAD International Fund for Agricultural Development
UNIDO United Nations Industrial Development Organization
OSG Office of the Secretary-General
OIOS Office of Internal Oversight Services
OLA Office of Legal Affairs
DPA Department of Political Affairs
DDA Department for Disarmament Affairs
DPKO Department of Peacekeeping Operations
OCHA Office for the Coordination of Humanitarian Affairs
DESA Department of Economic and Social Affairs
DGACM Department of General Assembly and Conference Management
DPI Department of Public Information
DM Department of Management
OIP Office of the Iraq Programme
UNSECOORD Office of the United Nations Security Coordinator
OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
ODC Office on Drugs and Crime
UNOG UN Office at Geneva
UNOV UN Office at Vienna
UNON UN Office at Nairobi
PROGRAMMES AND FUNDS
UNCTAD United Nations Conference on Trade and Development
ITC International Trade Centre (UNCTAD/WTO)
UNDCP United Nations Drug Control Programme
UNEP United Nations Environment Programme
UNHSP United Nations Human Settlements Programme (UN-Habitat)
UNDP United Nations Development Programme
UNIFEM United Nations Development Fund for Women
UNV United Nations Volunteers
UNFPA United Nations Population Fund
UNHCR Office of the United Nations High Commissioner for Refugees
UNICEF United Nations Children's Fund
WFP World Food Programme
UNRWA** United Nations Relief and Works Agency for Palestine Refugees in the Near East
OTHER UN ENTITIES
OHCHR Office of the United Nations High Commissioner for Human Rights
UNOPS United Nations Office for Project Services
UNU United Nations University
UNSSC United Nations System Staff College
UNAIDS Joint United Nations Programme on HIV/AIDS
RESEARCH AND TRAINING INSTITUTES
INSTRAW International Research and Training Institute for the Advancement of Women
UNICRI United Nations Interregional Crime and Justice Research Institute
UNITAR United Nations Institute for Training and Research
UNRISD United Nations Research Institute for Social Development
UNIDIR** United Nations Institute for Disarmament Research
RELATED ORGANIZATIONS
IAEA International Atomic Energy Agency
WTO (trade) World Trade Organization
WTO (tourism) World Tourism Organization
CTBTO Prep.com PrepCom for the Nuclear-Test-Ban-Treaty Organization
OPCW Organization for the Prohibition of Chemical Weapons
*Autonomous organizations working with the United Nations and each other through the coordinating machinery of the Economic and Social Council.
**Report only to the General Assembly.


General Assembly
Membership: All members of the UN (Art. 9); one country one vote (Art. 18)
Powers:
Discussion & Recommendation:
may discuss any questions or any matters within the scope of the present Charter and make recommendations on same (Art. 10)
Appointment Role: e.g. non-permanent members of the Security Council, members of the Economic and Social Council (Art. 18); along with Security
Financial Role: Approve overall budget (Art. 17)
Caveat 1: may discuss but not recommend on a situation being considered by Security Council (Art. 12)
Caveat 2: recommendations are not binding on member states (Art. 10)

Subjects of International Law

Key Subjects of International Law: United Nations



Relevance of the General Assembly:

- Political relevance: important to have a global "talk-shop"
- Legal relevance:
  - "progressive" school of resolution interpretation have sought to characterize the General Assembly's resolutions as the source of international law where the Assembly formulates the norms for the first time and adopts the resolution overwhelmingly and with the intent for it to be legally binding
  - However, truer to say that resolutions are hortatory

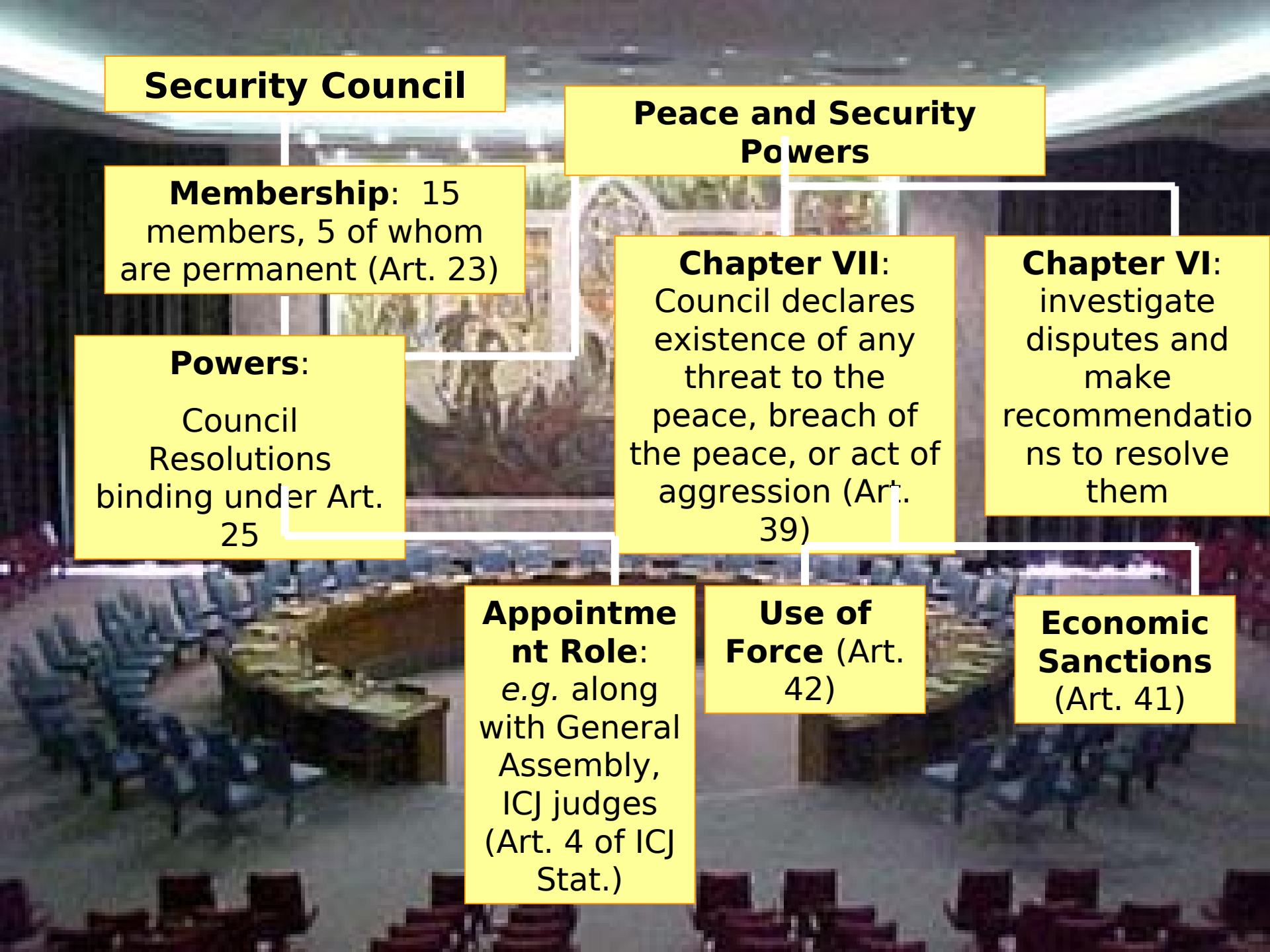
Subjects of International Law

Key Subjects of International Law: United Nations



Relevance of the General Assembly:

- Political relevance: important to have a global "talk-shop"
- Legal relevance:
  - Nevertheless, even if resolutions are not legally binding, they may have an impact on international law:
    - First, they can be evidence of customary international law
    - Second, sometimes they can catalyze or serve as the kernel around which new customary international law emerges


Security Council
Membership: 15 members, 5 of whom are permanent (Art. 23)
Powers:
Council Resolutions binding under Art. 25
Peace and Security Powers
Chapter VII: Council declares existence of any threat to the peace, breach of the peace, or act of aggression (Art. 39)
Chapter VI: investigate disputes and make recommendations to resolve them
Appointment Role: e.g. along with General Assembly, ICJ judges (Art. 4 of ICJ Stat.)
Use of Force (Art. 42)
Economic Sanctions (Art. 41)

Subjects of International Law

Key Subjects of International Law: United Nations

The International Court of Justice:

- Inheritor of a long tradition of states arbitrating international disputes
- Successor to the PCIJ, which had the following important qualities:
  - permanently constituted body with rules fixed beforehand and binding on parties having recourse to the Court.
  - able to set about gradually developing a constant practice and maintaining a certain continuity in its decisions,
  - empowered to give advisory opinions upon any dispute or question referred to it by the League of Nations Council or Assembly.

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International Court of Justice

(15 judges)

Contested Case
(between states only)

Basis for Jurisdiction (Art. 36)

Under treaties

Optional Protocol, Vienna Convention on Consular Relations

Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.



International Court of Justice

(15 judges)

Contested Case
(between states only)

Basis for Jurisdiction (Art. 36)

Under treaties

General Act for the Pacific Settlement of International Disputes

Article 17

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral


International Court of Justice
(15 judges)
Contested Case
(between states only)
Basis for Jurisdiction (Art. 36)
Compulsory jurisdiction
Special agreement conferring jurisdiction (*compromis*)
Under treaties
States allow automatic jurisdiction in instance where the other party also accepts the court's compulsory jurisdiction and where the matter concerns: *(a)* the interpretation of a treaty; *(b)* any question of international law; *(c)* the existence of any fact which, if established, would constitute a breach of an international obligation; *(d)* the nature or extent of the

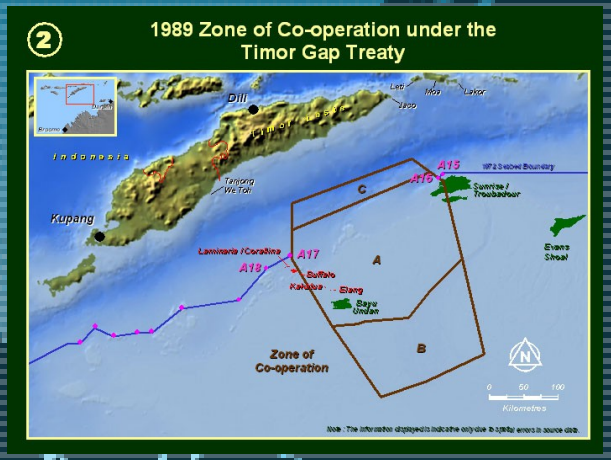
The Government of Australia declares that it recognises as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to the Secretary-General of the United Nations withdrawing this declaration. This declaration is effective immediately.

This declaration does not apply to:

(a) any dispute in regard to which the parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement;

(b) any dispute concerning or relating to the delimitation of maritime zones ... ;

(c) any dispute in respect of which any other party to the dispute has accepted the compulsory jurisdiction of the Court only in relation to or for the purpose of the dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited less than 12 months prior to the



Sample Compulsory Jurisdiction Declarations



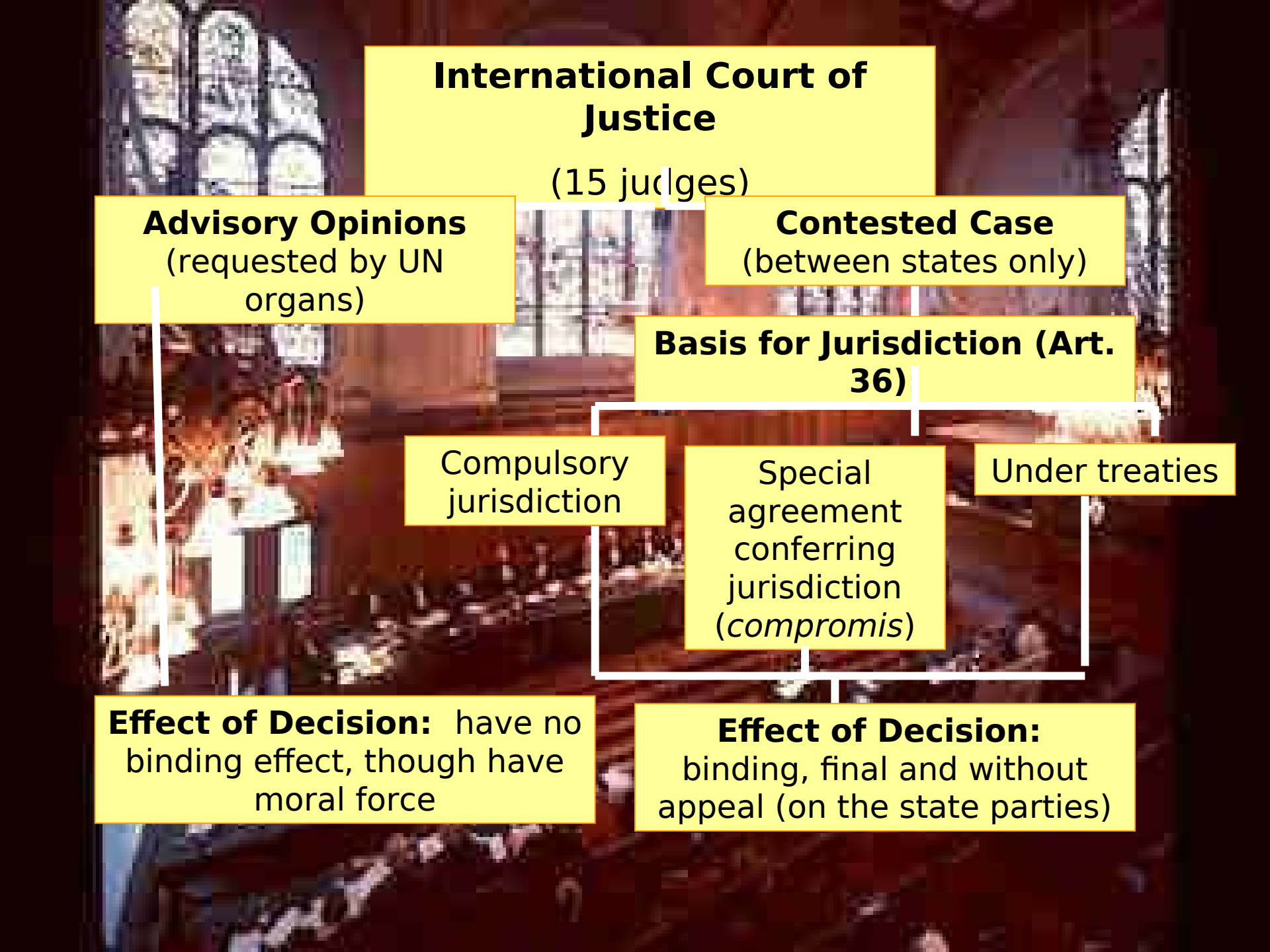
On behalf of the Government of Canada, …

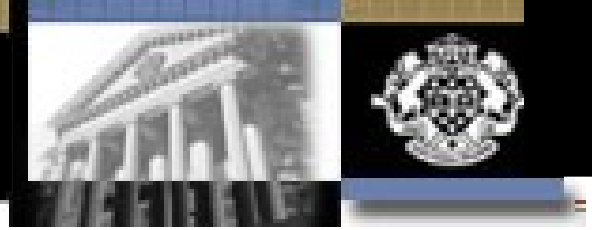
2. I declare that the Government of Canada accepts as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes arising after the present declaration with regard to situations or facts subsequent to this declaration, other than:

   a. disputes in regard to which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement;
   b. disputes with the Government of any other country which is a member of the Commonwealth, all of which disputes shall be settled in such manner as the parties have agreed or shall agree;
   c. disputes with regard to questions which by international law fall exclusively within the jurisdiction of Canada; and
   d. <u>disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area</u> …

3. The Government of Canada also reserves the right at any

Sample Compulsory Jurisdiction Declarations


International Court of Justice
(15 judges)
Advisory Opinions
(requested by UN organs)
Contested Case
(between states only)
Basis for Jurisdiction (Art. 36)
Compulsory jurisdiction
Special agreement conferring jurisdiction (*compromis*)
Under treaties
Effect of Decision: have no binding effect, though have moral force
Effect of Decision: binding, final and without appeal (on the state parties)



"Substantive Issues" in International Law

State Jurisdiction Over Territory

- How does international law govern the acquisition of territory by existing states (land, sea, air, even space)?
- How does international law regulate claims by peoples inhabiting territories controlled by states who wish to exert self-determination?

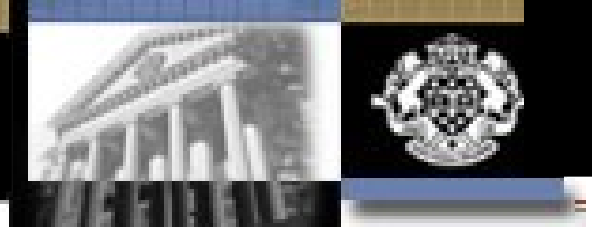
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Continent of Gondwanaland

Key Stats:	Aristan
Population:	38,740,807 (July 2003 est.)
Population growth rate:	1.05% (2003 est.)
Ethnic groups:	white 97%, mestizo, indigenous, or other nonwhite groups 3%
Government type:	republic
Legal system:	mixture of U.S. and West European legal systems; has not accepted compulsory ICJ jurisdiction
Suffrage:	18 years of age; universal and mandatory
Executive branch:	*chief of state:* President
Legislative branch:	bicameral National Congress consists of the Senate and the Chamber of Deputies
Judicial branch:	Supreme Court or Corte Suprema (the nine Supreme Court judges are appointed by the president with approval by the Senate)
International organization participation:	UN, WTO
GDP:	purchasing power parity - US$391 billion (2002 est.)
GDP - real growth rate:	-14.7% (2002 est.)
GDP - per capita:	purchasing power parity - US$10,200 (2002 est.)
GDP - composition by sector:	*agriculture:* 5% *industry:* 28% *services:* 67% (2000 est.)
Natural resources:	fertile plains, lead, zinc, tin, copper, iron ore, manganese, petroleum, uranium
Budget:	*revenues:* US$44 billion *expenditures:* US$48 billion, including capital expenditures of $NA (2000 est.)
Military expenditures - dollar figure:	US$4.3 billion (FY99)
	petrochemicals, printing, metallurgy, steel

Key Stats:	Platia
Population:	150,694,740 (July 2003 est.)
Population growth rate:	2.01% (2003 est.)
Ethnic groups:	5 distinct linguistic groups
Government type:	Military dictatorship
Legal system:	based on English common law; accepts compulsory ICJ jurisdiction, with reservations
Executive branch:	President and Chief of Army Staff
Legislative branch:	bicameral Parliament consists of the Senate and the National Assembly; suspended during military takeover
Judicial branch:	Supreme Court (justices appointed by the president)
International organization participation:	UN, WTO
GDP:	purchasing power parity - US$311 billion (2002 est.)
GDP - real growth rate:	4.5% (FY01/02 est.)
GDP - per capita:	purchasing power parity - US$2,100 (FY01 est.)
GDP - composition by sector:	*agriculture:* 24% *industry:* 25% *services:* 51% (FY01 est.)
Budget:	*revenues:* US$12.6 billion *expenditures:* US$14.8 billion, including capital expenditures of $NA (FY02 est.)
Industries:	textiles, and apparel, food processing, beverages, construction materials, paper products, fertilizer, shrimp
Military expenditures - dollar figure:	US$2.964 billion (FY02)

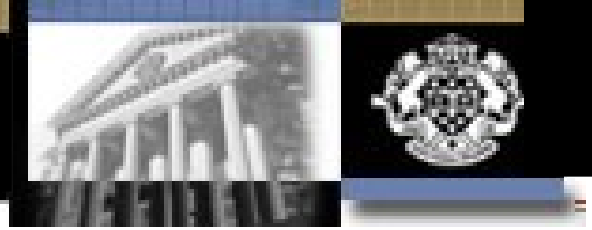


"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Sorts of Territory</u>

1. Territory over which states have sovereignty
2. *Res nullius (terra nullius)*
3. *Res communis*
4. Common heritage of humankind (actually a subset of *res communis*)

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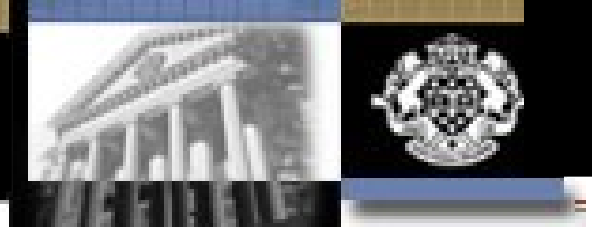


"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Sorts of Territory</u>

1. Territory over which states have sovereignty
    - Acquiring sovereignty over territory:
        1. "Primary" title:
            - Accretion
            - Effective occupation of *terra nullius*
                1. the effective and continuous display of state authority or power over a territory
                2. demonstrated intent to establish and maintain sovereignty over the territory

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"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Sorts of Territory</u>

1. Territory over which states have sovereignty
    - Acquiring sovereignty over territory:
        1. "Primary" title:
            - Accretion
            - Effective occupation of *terra nullius*

Concept of *terra nullius*:

Colonial concept of "discovery"

Modern conception less dismissive of indigenous peoples (*Western Sahara Case*)

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"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Sorts of Territory</u>

1. Territory over which states have sovereignty
    - Acquiring sovereignty over territory:
        1. "Primary" title:
            - Accretion
            - Effective occupation of *terra nullius*



Scramble for Africa and the modern concept of effective occupation:

> Berlin Act, 1885: XXXV. The Signatory Powers of the present Act recognize the obligation to insure the establishment of authority in the regions occupied by them on the coasts of the African Continent sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon.

"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Sorts of Territory</u>

1. Territory over which states have sovereignty

- Acquiring sovereignty over territory:

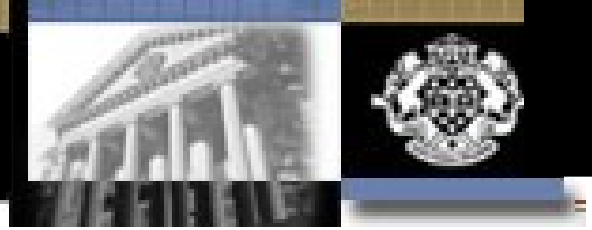
Effective Occupation in action:

Eastern Greenland Case:

- Denmark had entered into treaties over the years that explicitly excluded application to Greenland
  - and in so doing, they clearly illustrated an intent to exercise sovereign powers over Greenland



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"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Sorts of Territory</u>

1. Territory over which states have sovereignty
    - Acquiring sovereignty over territory:
        2. "Secondary" title:
            - Prescription: the first sovereign state can be displaced by the second through a peaceable occupation with sufficient intent of a second state

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"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Sorts of Territory</u>

1. Territory over which states have sovereignty

    - Acquiring sovereignty over territory:

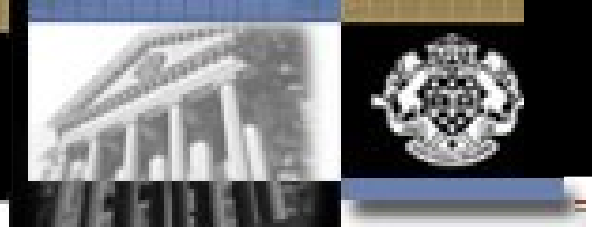
        Effective Occupation and Prescription in action:



Island of Palmas Case:

- no effective occupation ever exercised by Spain, thus no title in 1898, thus no title possessed by the United States

- in any event, even if Spain did have some sort of inchoate title by virtue of simple discovery, an inchoate title could not prevail over the continuous and peaceful display of authority by another state (in this case the Netherlands)

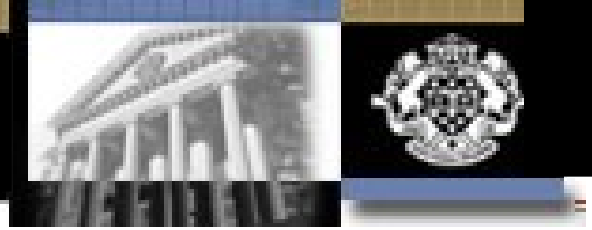


"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Sorts of Territory</u>

1. Territory over which states have sovereignty
    - Acquiring sovereignty over territory:
        2. "Secondary" title continued:
            - Conquest: currently a violation of international law
                - past conquests legal when made likely benefit from the concept of inter-temporal law

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"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Sorts of Territory</u>

1. Territory over which states have sovereignty
    - Acquiring sovereignty over territory:
        2. "Secondary" title continued:
            - Cession, Renunciation or Abandonment
                - Cession: given from one state to another under international agreement
                - Renunciation: renounced by one state, passing into the hands of another state which exercises sovereignty
                - Abandonment: renounced by one state, and left as *res nullius*
                    - Presumption against abandonment

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Northern Sea
Terra Nullius Island
Smiegelville
Misty Channel
Plati a
Socran
Sea of Aristan
Lake Critius
Alexendra
Aristan

Declaration of His Majesty Smiegel The Magnificant

Emperor of Everything He Beholds, and Specifically The Counties of the Confederacy of Aristan

Whereas The Island of Terra Nullius Was Discovered by Slobon the Navigator in 1625 and Claimed for the Counties of Aristan;

Whereas in This Year of the Lord 1765, 1,000 Aristandis Disembarked on the Eastern Shores of Terra Nullius Island and There Did Establish Smiegelville,



Now Therefore His Majesty Smiegel The Magnificant Does Declare Terra Nullius Island a Colony of the Aristan Confederacy

Smiegel Rex

Treaty between the Republic of Aristan and the Duchy of Platia

Article 1. The Republic of Aristan does transfer sovereign title to the Island of Terra Nullius to the Duchy of Platia as settlement in full for injury suffered in the War of Lake Critius.

Article 2. The Duchy of Platia does guarantee fair and equitable treatment in full compliance with the laws of nations of the Aristanis who choose to remain on Terra Nullius Island.

Article 3. This treaty comes into force upon signature by the accredited representatives of the Parties.

S. Alinizi

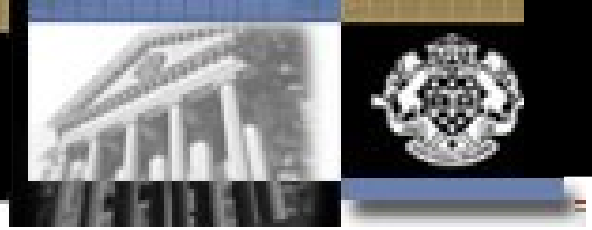
Ambassador of the Republic of Aristan

July 10, 1865

B. Smolden

Ambassador of the Duchy of Platia


Circa 1920
Terra Nullius Island
Smiegelville
Aristan fishing enclaves
Plati
a
Aristan

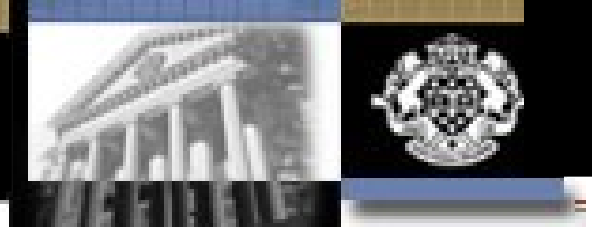


"Substantive Issues" in International Law

Loosing State Jurisdiction Over Territory: Self-Determination

1. Defining Self-Determination:
   - "all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development"
2. Sources of Self-Determination
   - recognized as a rule of customary international law and is invoked in Articles 1 and 55 of the United Nations Charter

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"Substantive Issues" in International Law

Loosing State Jurisdiction Over Territory: Self-Determination

3. Requirements for Self-Determination:

- "people" distinguished from a minority
  - Reflects a fear that self-determination not be used to dismember states:
    - General Assembly's Declaration on the friendly relations between states:

      self-determination may not be employed to "dismember or impair...the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples...and thus possessed of a government representing the whole people belonging to the

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"Substantive Issues" in International Law

Loosing State Jurisdiction Over Territory: Self-Determination

3. Requirements for Self-Determination:

A. Who are peoples?

- Sometimes refer to some level of ethnic homogeneity
  - But note that many of the states that emerged after colonialism were not ethnically homogenous
- UN Special Rapporteur on the Sub-Commission on Prevention of Discrimination and Protection of Minorities:
  1. The term "people" denotes a social entity possessing a clear identity and its own characteristics
  2. Relationship with a territory

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"Substantive Issues" in International Law

Loosing State Jurisdiction Over Territory: Self-Determination

3. Requirements for Self-Determination:

B. Non-self-governing status

- General Assembly friendly relations resolution:

  Self-determination may not be employed to "dismember or impair...the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples... and thus possessed of a government representing the whole people belonging to the territory"

- self-determination, in international law, has been invoked in the context of colonial and non-self-governing peoples (as well as perhaps peoples struggling against severe repression)

"Substantive Issues" in International Law

Loosing State Jurisdiction Over Territory: Self-Determination

4. Consequences of Self-Government:

- The General Assembly has outlined three possible outcomes in its Resolutions 742 and 1541:

    1. Emergence as a sovereign, independent state.

    2. Free association with an independent state.

        - "should be the result of a free and voluntary choice by the peoples of the territory concerned, expressed through informed and democratic processes"

    3. Integration with an independent state.

        - should "be the result of the freely expressed wishes of the territory's peoples . . . their wishes having been expressed through informed and democratic processes, impartially

"Substantive Issues" in International Law

Loosing State Jurisdiction Over Territory: Self-Determination

Example: Western Sahara: Self-Determination Denied



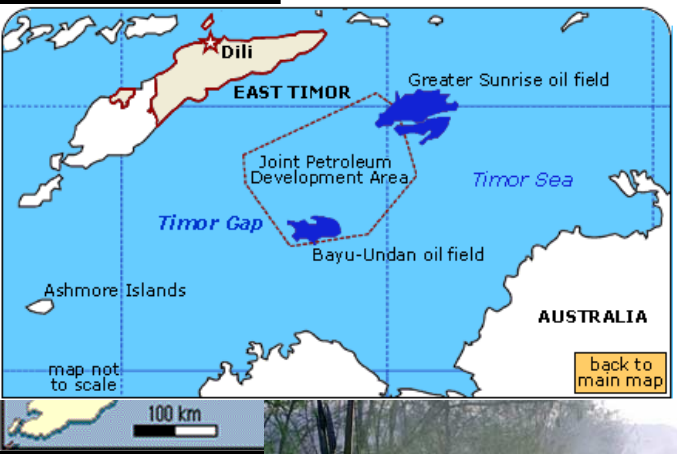
- ICJ asked two questions:
  1. Was Western Sahara Terra Nullius at the Time of Colonization by Spain?
     - No. It was not *terra nullius* because its inhabitants had sufficient political and social organization.
  2. What Were the Legal Ties of This Territory with the Kingdom of Morocco and the Entity that would become Mauritania?
     - the Court did not find "legal ties of such a nature as might affect … the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."

"Substantive Issues" in International Law

Loosing State Jurisdiction Over Territory: Self-Determination

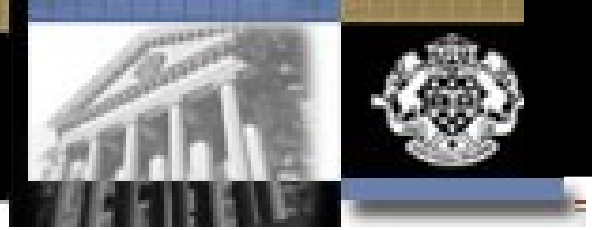
Example: East Timor: Self-Determination Denied

- Challenge to the Australia-Indonesia Timor Gap treaty



- Case turned on whether Indonesia illegally invaded East Timor and thus could not claim sovereign authority over the relevant zone
- Indonesia denied the court's competence
- Australia argued case could not be heard without Indonesia because it affected Indonesia's rights
- Portugal claimed that the Timorese right to self-determination was a right *erga omnes*
- Court agreed with that *erga omnes*, but





"Substantive Issues" in International Law

Loosing State Jurisdiction Over Territory: Self-Determination

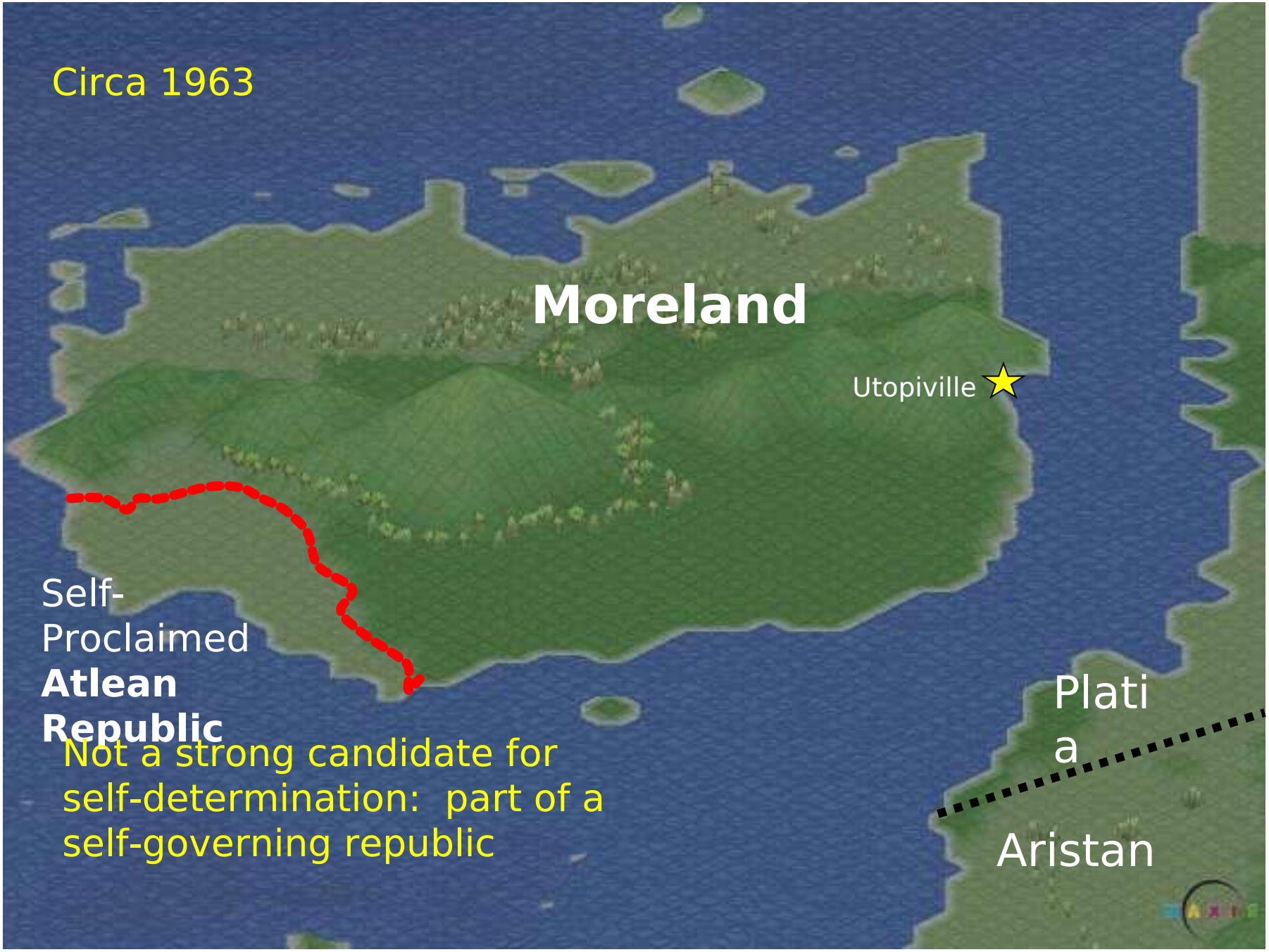
Self-Determination Good or Bad?

- The normative role of international law vs. the stabilizing role
  - because the criteria for self-determination are so fuzzy, and the meaning of peoples so uncertain, does this mean that self-determination runs the risk of every little ethnic group claiming state status, dismembering states and fighting bloody civil wars?

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Circa 1960
Terra Nullius Island
Smiegelville
Plati
a
Aristan
Looks like a classic case of colonialism: Terra Nullius would be a strong candidate for self-determination


Circa 1962
Republic of Moreland
Utopiville
Plati
a
Aristan


Circa 1963
Moreland
Utopiville
Self-Proclaimed **Atlean Republic**
Not a strong candidate for self-determination: part of a self-governing republic
Plati a
Aristan

"Substantive Issues" in International Law

State Jurisdiction Over Territory: Integrity of Boundaries

Concept of *Uti Possidetis*

- Former colonial boundaries graduate to international boundaries upon independence



Burkino Faso v. Mali (ICJ)

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"Substantive Issues" in International Law

State Jurisdiction Over Territory: <u>Inland Waterways</u>





Image from: http://www.great-lakes.net/gis/data/geographic.html#lk_sup

- Where these waterways are international, status usually determined by treaty
- Absent a treaty, the general rule probably is that where a river separates two states, the riparian states enjoy sovereignty up to the *medium filum acquae* (middle line of the stream of water)
- Absent a treaty, where a water resource is shared between two states, the general rule likely is equitable and reasonable use and sharing of the resource

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"Substantive Issues" in International Law

State Jurisdiction Over Territory: **Oceans**

1. Ocean over which states can have sovereignty (internal waters and the Territorial Sea)
    - Article 2 of the LOS Convention: Territorial Sea extends 12 miles from the baselines state's baselines



Determining baselines

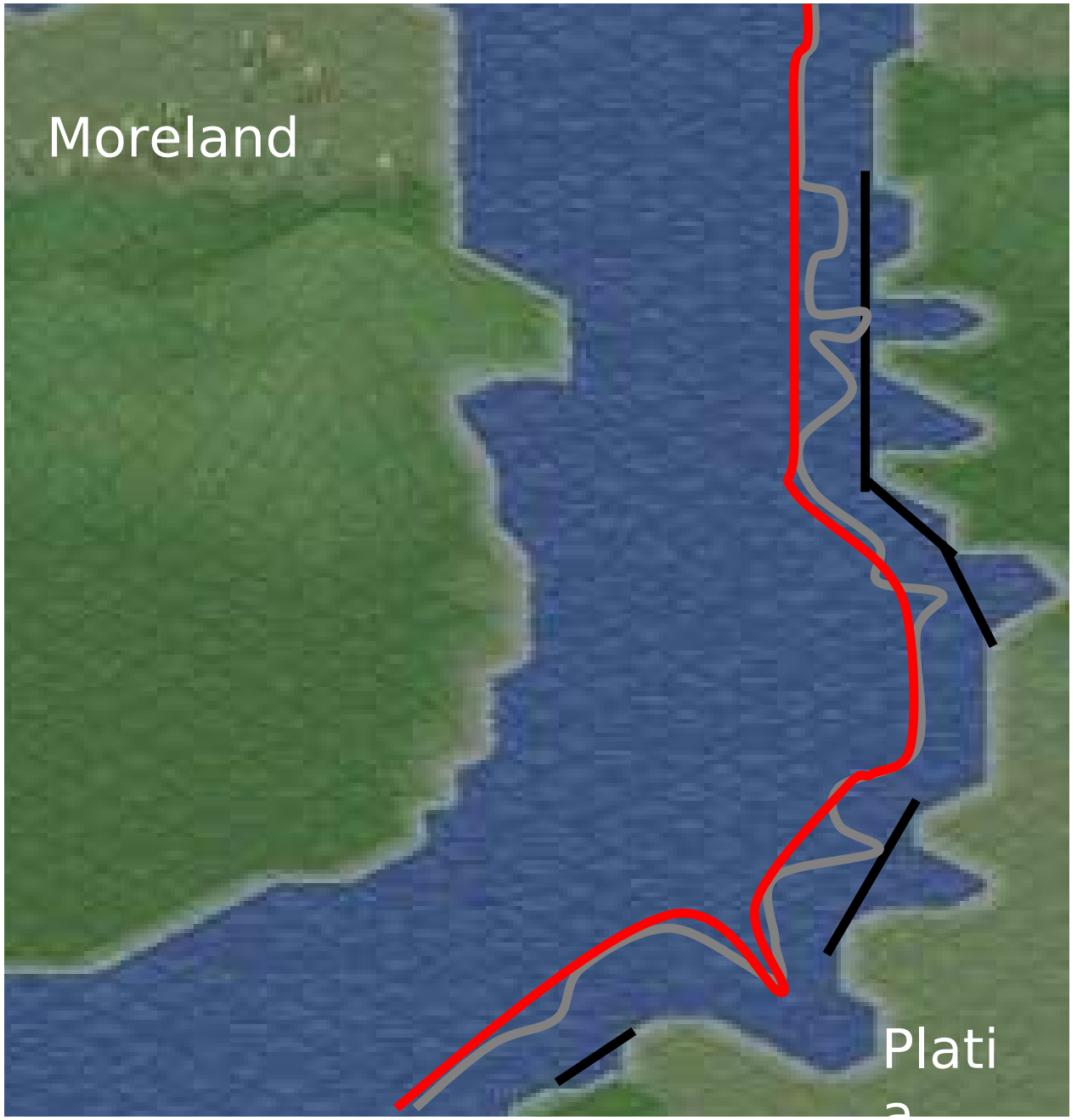
- *Anglo-Norwegian Fisheries Case*
    - low-water mark vs. straight baselines
    - Court concluded that straight baselines were appropriate given the nature of the Norwegian coast

Platia’s 12 mile territorial sea <u>without</u> straight baselines



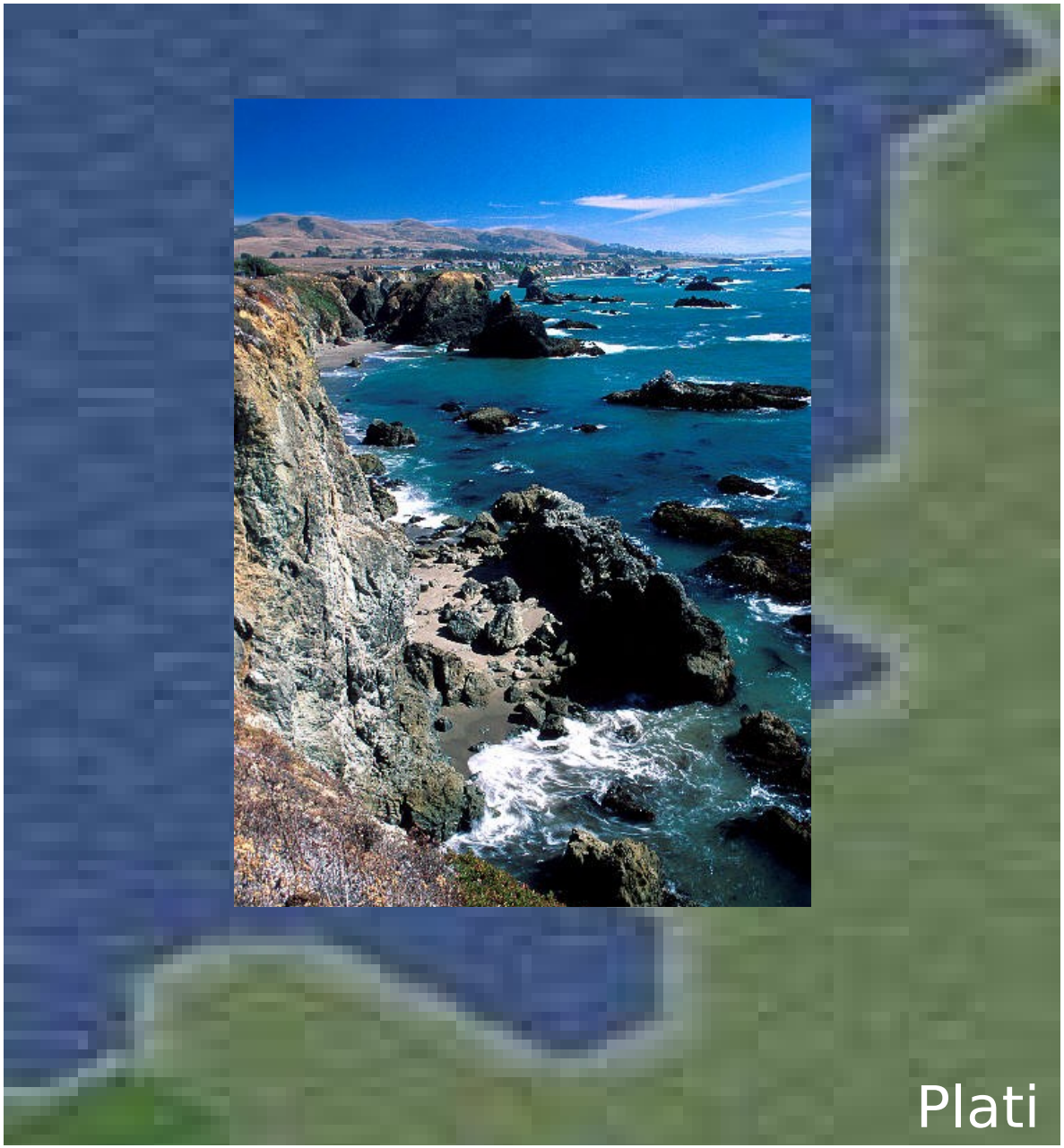
Platia’s 12 mile territorial sea <u>with</u> straight baselines

Rough comparison of territorial sea with and without straight baselines



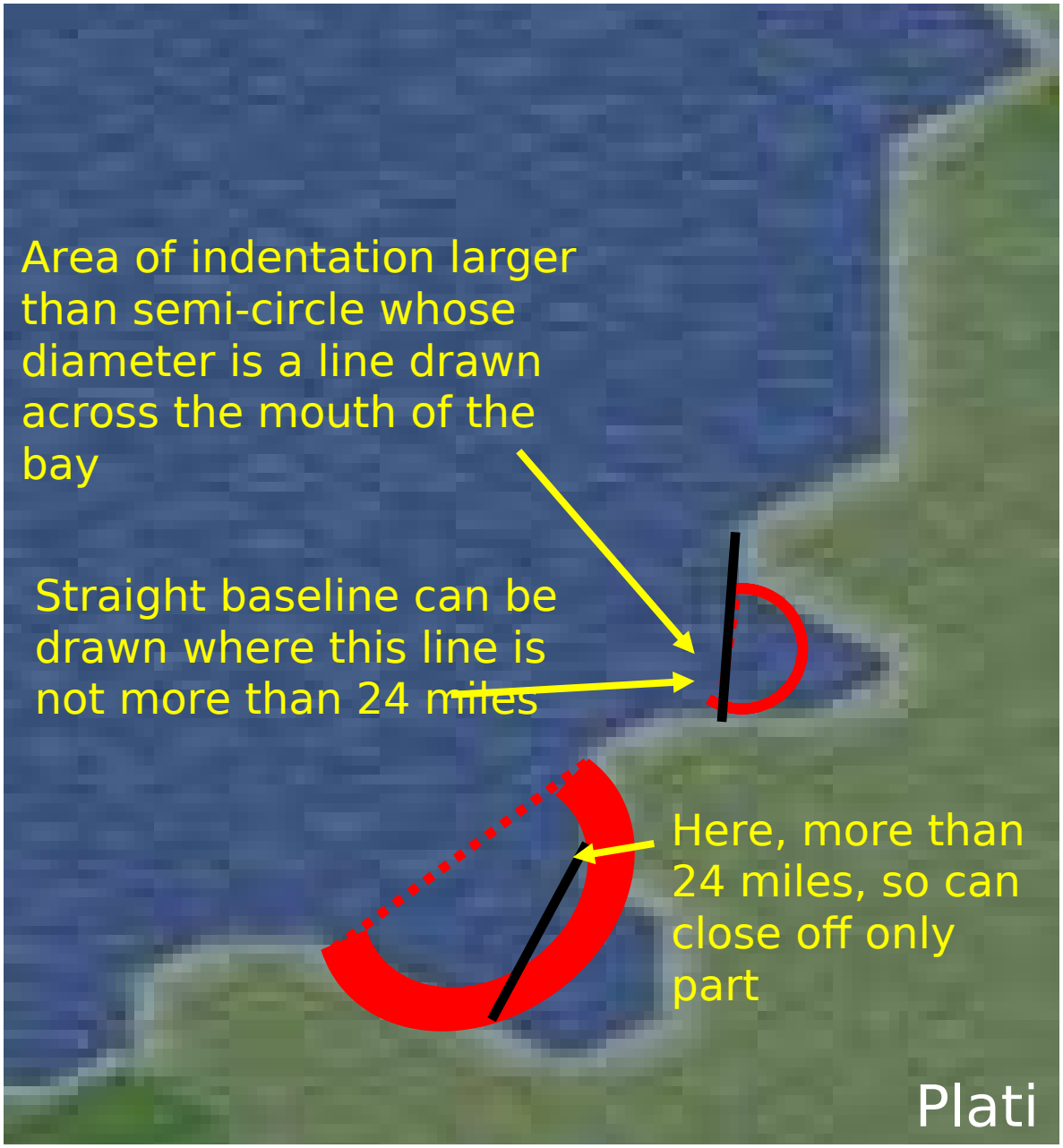
Where are straight baselines appropriate?

- LOS Art. 7: where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity



Where are straight baselines appropriate?

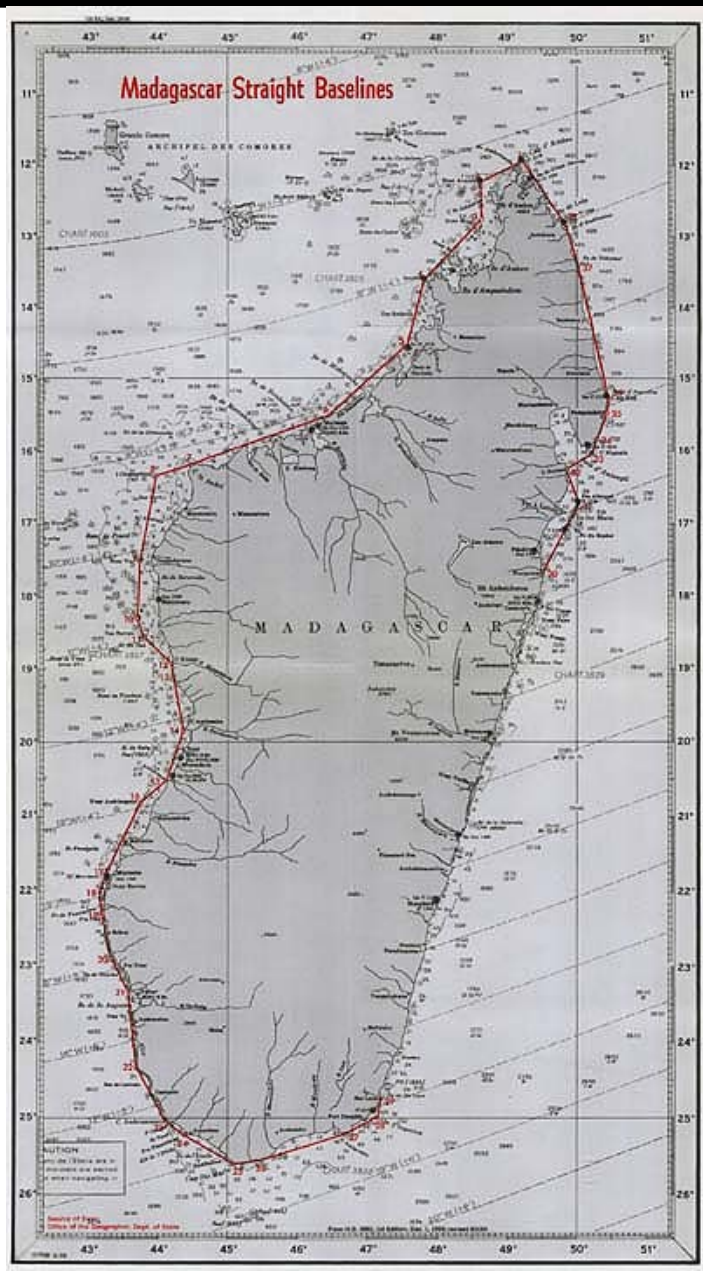
- LOS Art. 10: Bays – an indentation is a bay so long as its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation



State Jurisdiction Over Territory: Territorial Sea

Sample baseline

- Madagascar



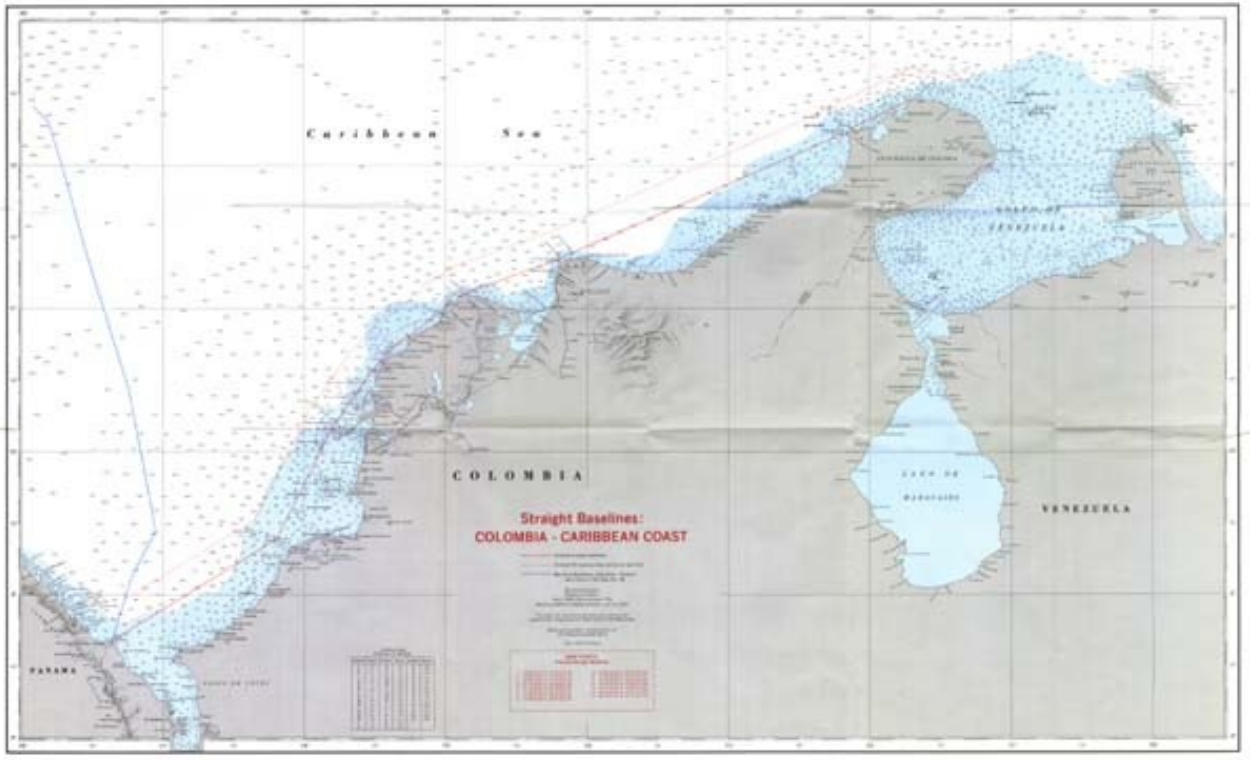
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State Jurisdiction Over Territory: Territorial Sea

Excessive straight baseline?

- Burma
- Colombia



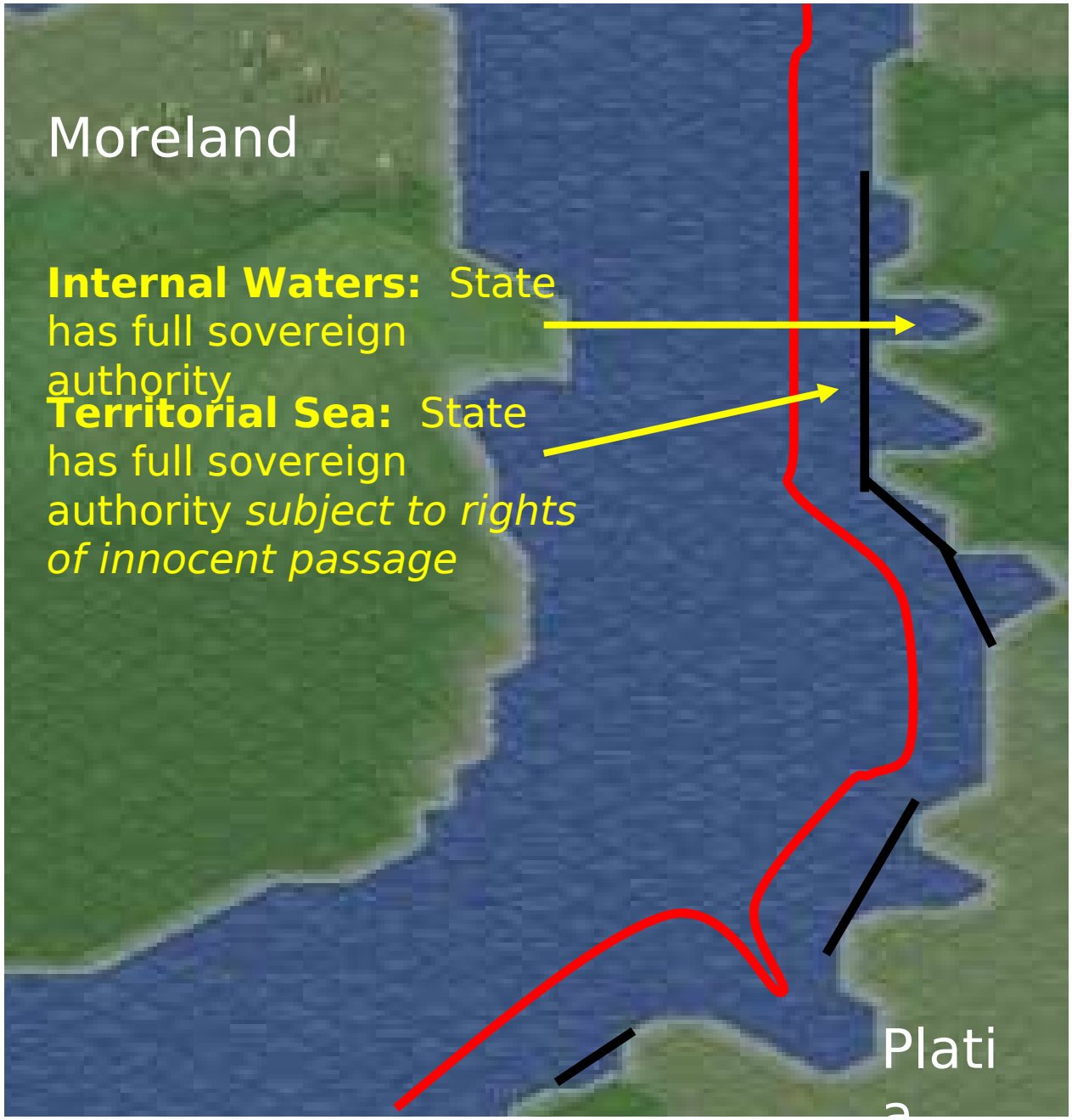


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Rights over Territorial Sea

Internal Waters: Sea landward of the baseline

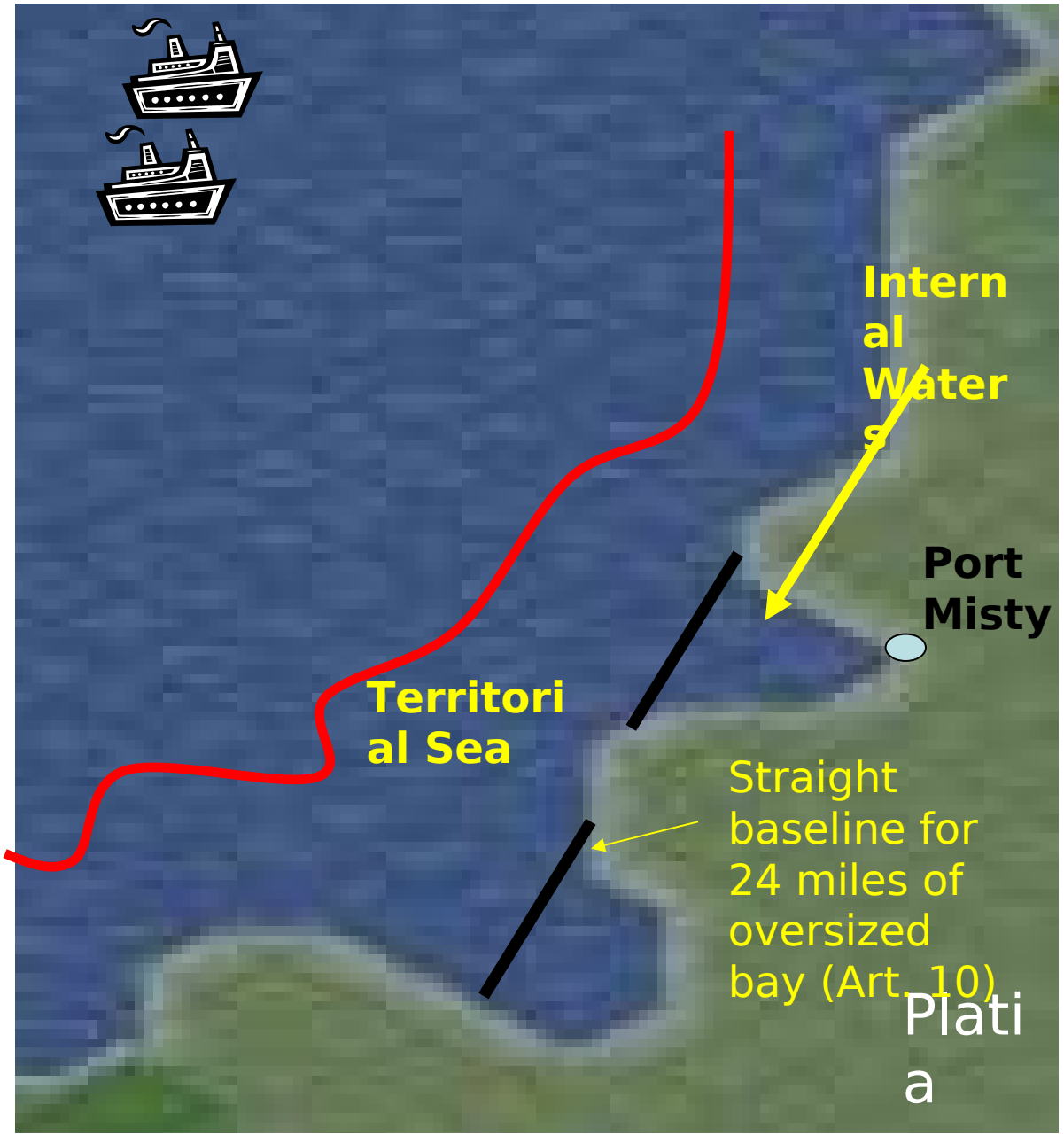
Territorial Sea: Sea from the baseline to the 12 mile limit



Rights over Territorial Sea

Right of innocent passage through territorial sea:

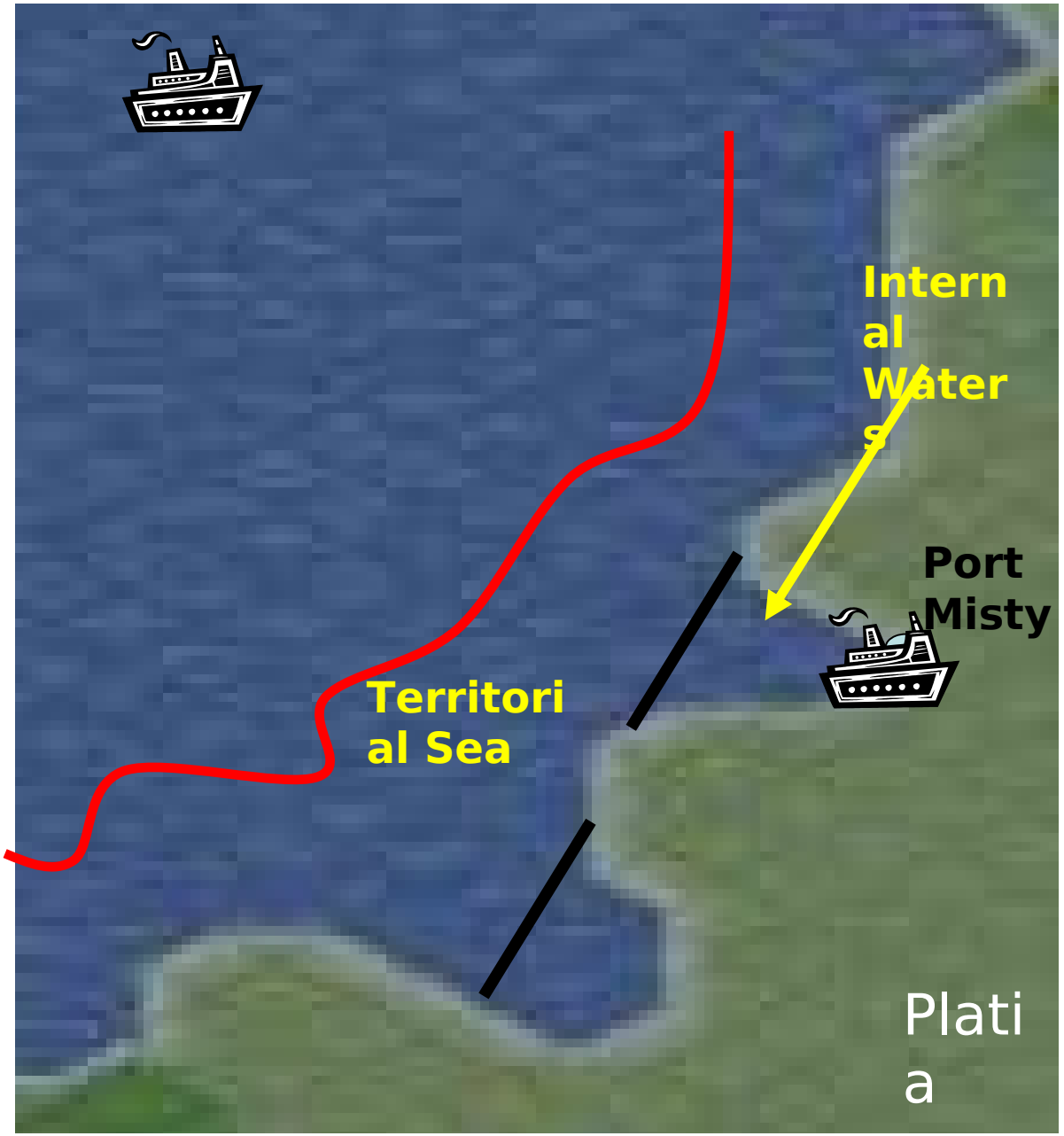
- Must meet the LOS requirements for "passage" and "innocent"
  - *e.g.*, to be innocent may not be prejudicial to peace, good order and security of the coastal state



Rights over Territorial Sea

Jurisdiction of coastal state over foreign ship while in Territorial Sea:

- Military and government ships absolutely immune
- Limited criminal jurisdiction over commercial ships merely passing through the Territorial Sea
- More extensive criminal and civil jurisdiction where ship is transiting after



State Jurisdiction Over Territory: Territorial Sea

Passage through International Straits:

- Article 38 of the LOS Convention provides that: all ships and aircraft enjoy the right of transit passage, which shall not be impeded
  - "Transit passage" means the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait



Example:

The Turkish Straits

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State Jurisdiction Over Territory: Territorial Sea

Resolution of Disputes:

- LOS Convention creates a International Tribunal



Straight Baseline Arbitration:

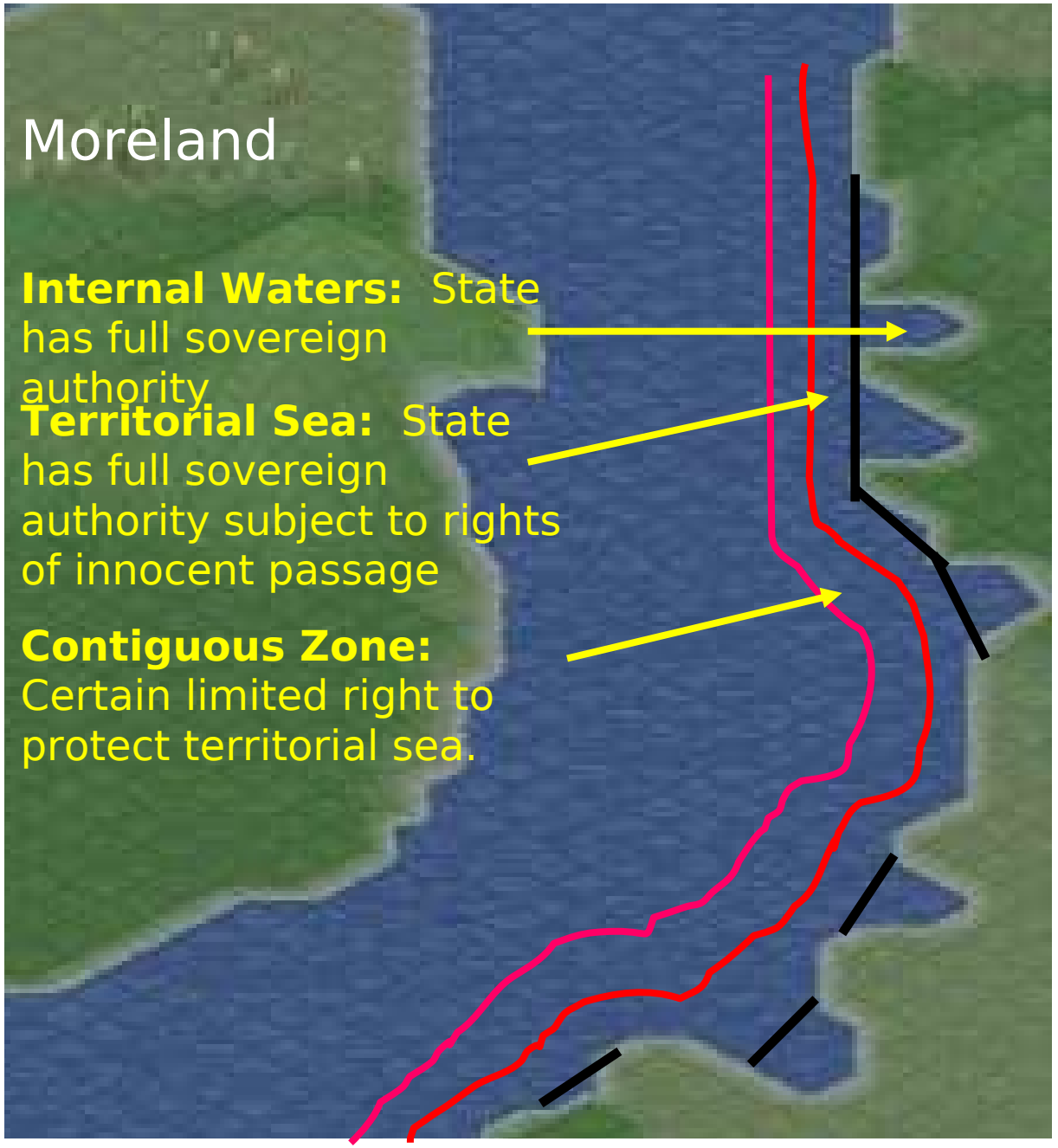
- Eritrea v. Yemen
  - Was not an LOS Tribunal Decision
  - But did deal with whether a straight baseline was proper

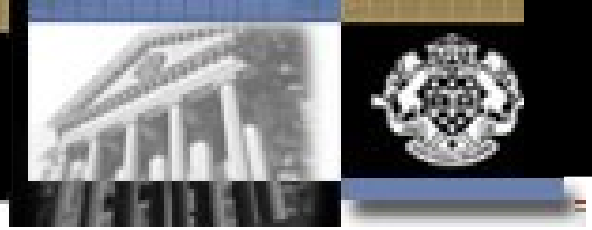
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Contiguous Zone: Another 12 miles out (24 miles from baseline)

<u>Coastal State Powers</u>:

- in the contiguous zone, the coastal State may exercise the control necessary to:
  - (a) prevent infringement of its customs, fiscal, immigration or sanitary laws within its territory or territorial sea;
  - (b) punish infringement of the above laws committed within





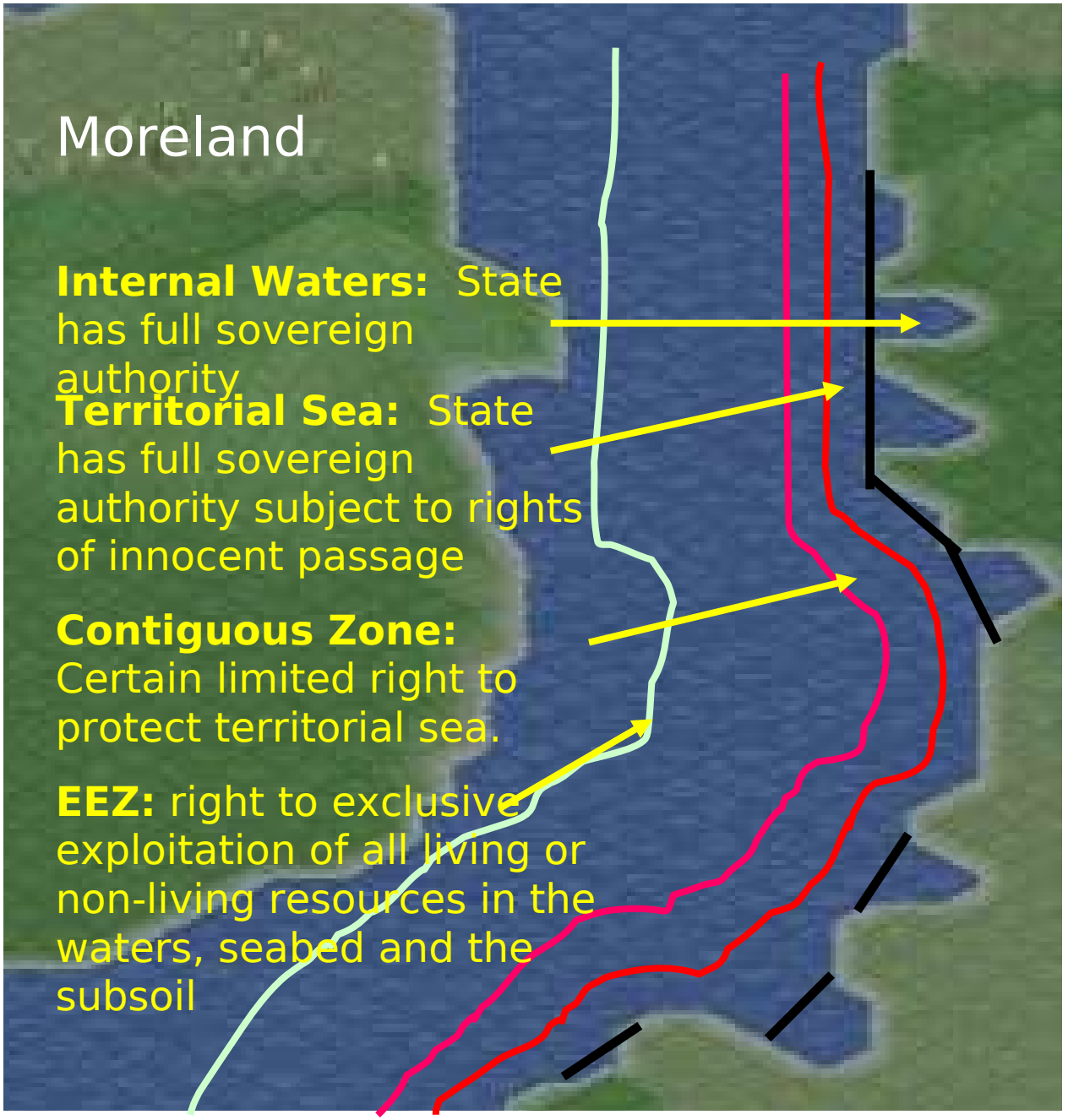
State Jurisdiction Over Territory: Exclusive Economic Zone

- states have important economic interests that extend beyond their territorial seas
  - *Fisheries Jurisdiction Case* – UK v. Iceland
    - customary law allowed a fishery zone, between the territorial sea and the high seas within which the coastal State could claim exclusive fisheries jurisdiction
  - Approach to the "Exclusive Economic Zone" set out in the LOS Convention

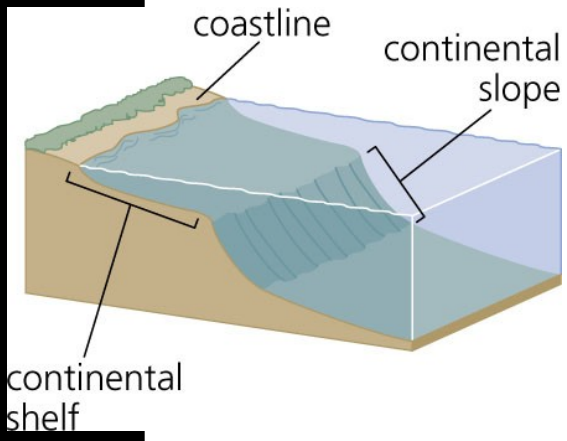
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EEZ: A total of 200 miles from the baseline

- Notice that the EEZ in this case would definitely overlap with Moreland's EEZ (and maybe its Territorial Sea!)

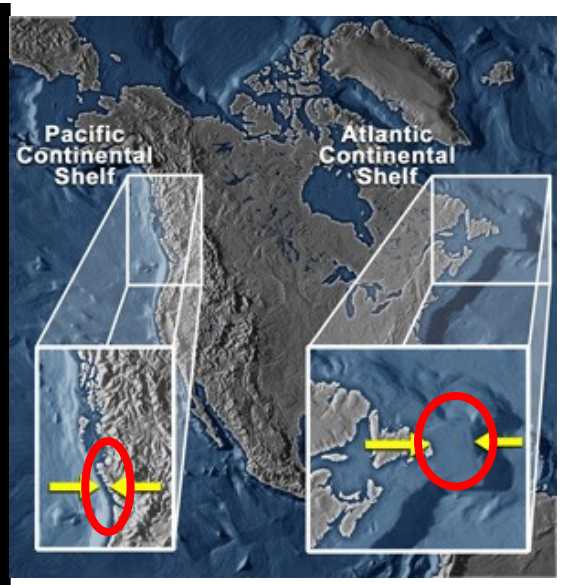


State Jurisdiction Over Territory: <u>Continental Shelf</u>



states have important economic interests that extend beyond their territorial seas

- Approach to the Continental Shelf set out in the LOS Convention:
  - Defined as the sea-bed and subsoil that extend beyond states territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin
    - Largest shelf can have is 350 miles from the baselines or 100 miles from the 2,500 metre isobath
    - Where actual shelf is small,

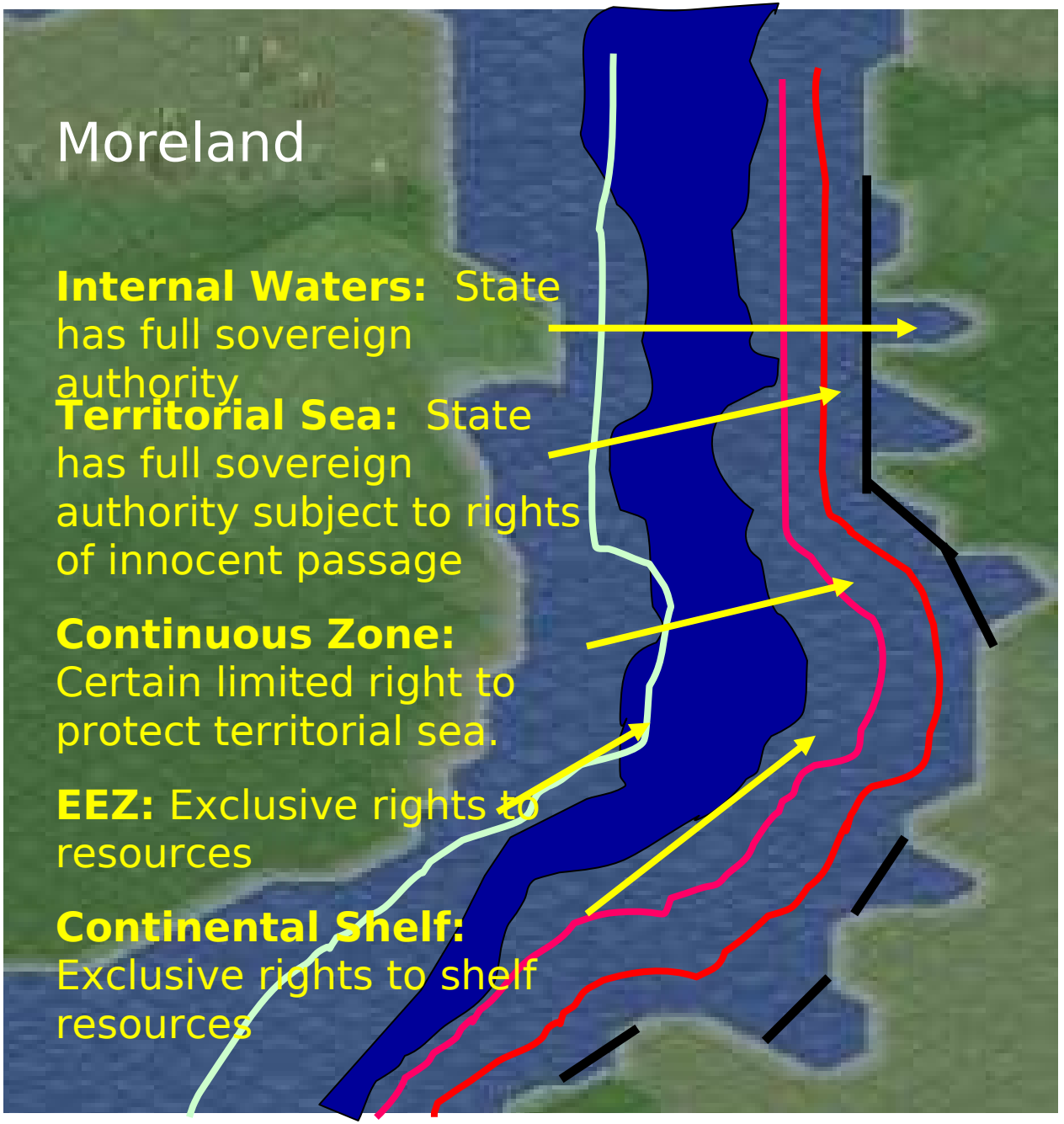


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Continental Shelf: max. 350 miles or 100 miles from the 2,500 metre isobath

- In this case, the continental shelf ends sooner than 200 miles out, and thus under the LOS Convention, legally-constructed continental shelf will extend for a distance of 200 nautical miles from the baselines

- Again, this would interfere with Moreland's rights



Various Sorts of Ocean:

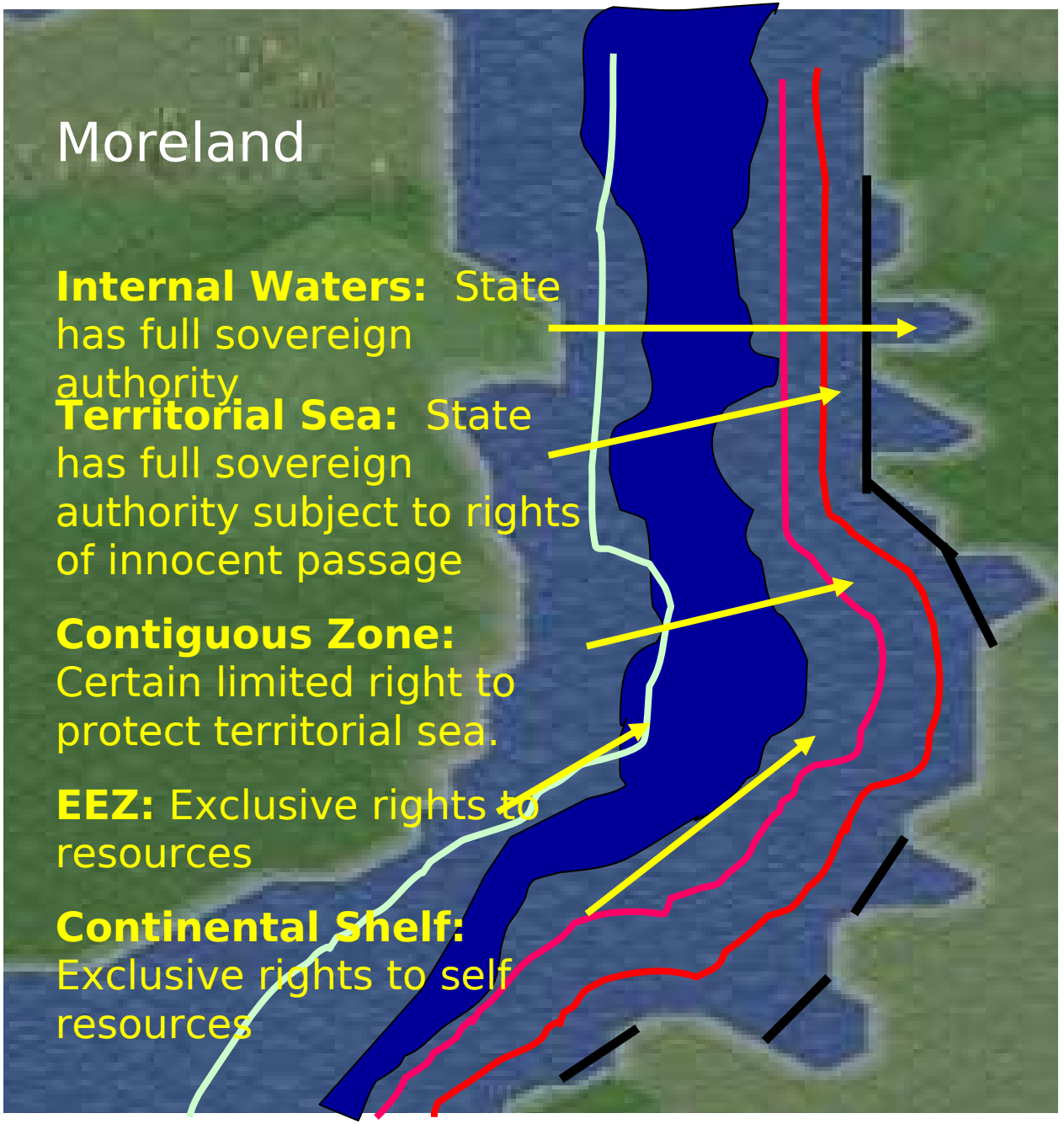
Internal Waters: Sea landward of the baseline

Territorial Sea: Sea from the baseline to the 12 mile limit

Contiguous Zone: Another 12 miles out (24 miles from baseline)

EEZ: A total of 200 miles from the baseline

Continental Shelf: max. 350 miles or 100 miles from the 2,500 metre isobath



Potential overlap of EEZ



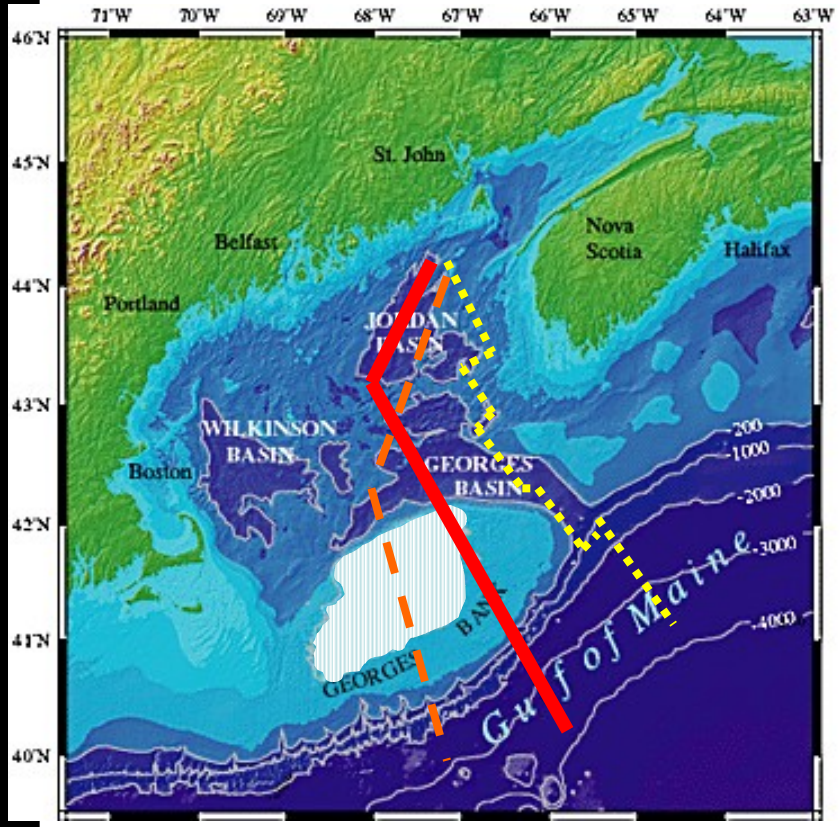
State Jurisdiction Over Territory: <u>Dispute Settlement</u>

- delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, in order to achieve an equitable solution
- delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law in order to achieve an equitable solution

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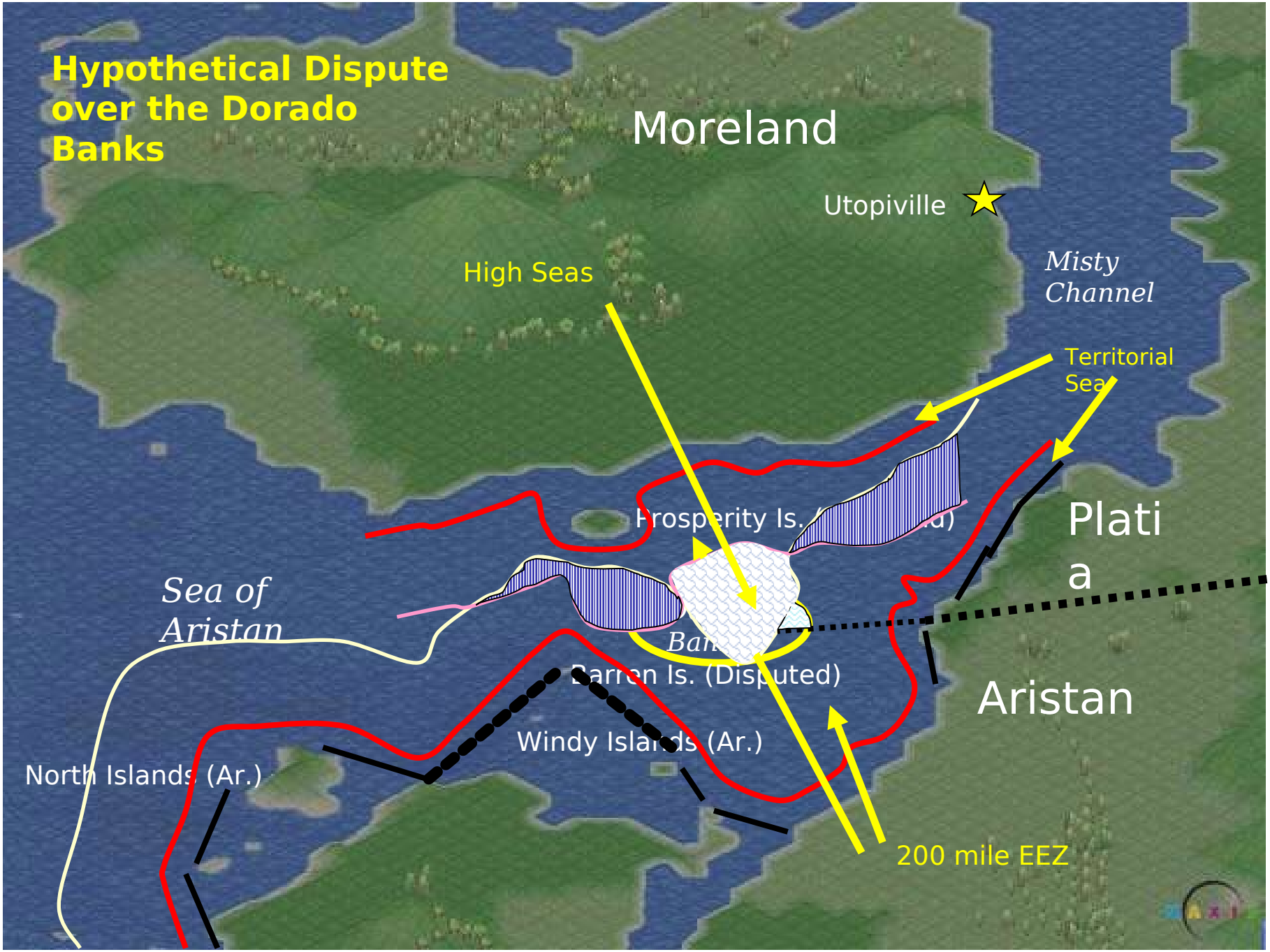
State Jurisdiction Over Territory: Dispute Settlement

- *Gulf of Maine Case* (Canada v. US)

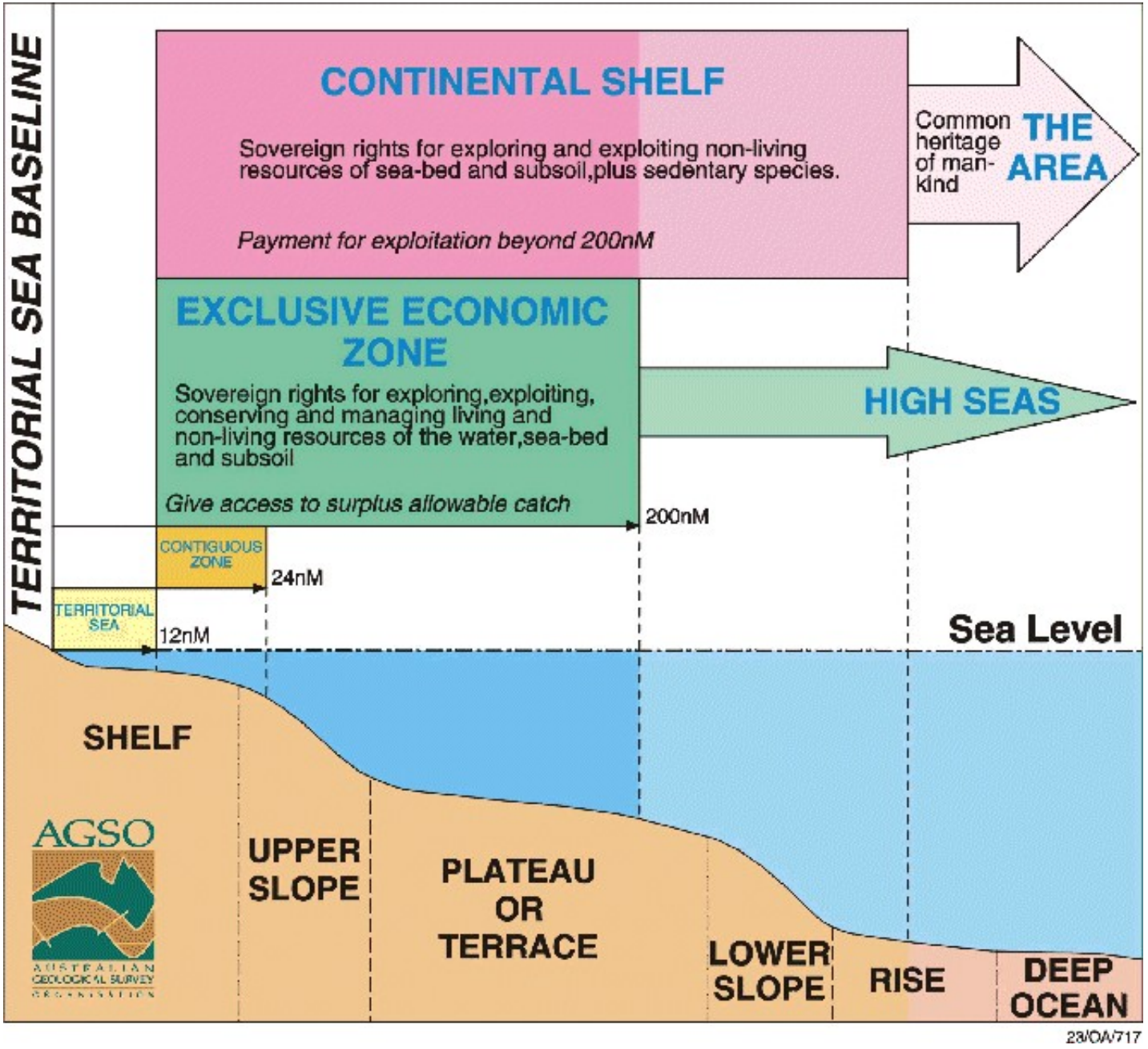


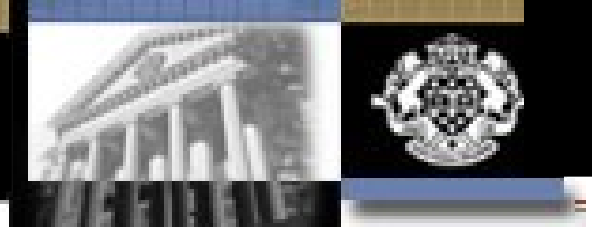
- It is a fundamental norm of international law that a maritime boundary be in conformity with equitable principles, having regard to all relevant circumstances, in order to achieve an equitable result
- for the ICJ in this case, the basic criteria used in the delimitation process must be based on geometrical methods

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Hypothetical Dispute over the Dorado Banks
Moreland
Utopiville
High Seas
Misty Channel
Territorial Sea
Prosperity Is. (
Plati
a
Sea of Aristan
Ban
Barren Is. (Disputed)
Aristan
Windy Islands (Ar.)
North Islands (Ar.)
200 mile EEZ

Summary:


TERRITORIAL SEA BASELINE
CONTINENTAL SHELF
Sovereign rights for exploring and exploiting non-living resources of sea-bed and subsoil,plus sedentary species.
Payment for exploitation beyond 200nM
Common heritage of man-kind
THE AREA
EXCLUSIVE ECONOMIC ZONE
Sovereign rights for exploring,exploiting, conserving and managing living and non-living resources of the water,sea-bed and subsoil
Give access to surplus allowable catch
HIGH SEAS
200nM
CONTIGUOUS ZONE
24nM
TERRITORIAL SEA
12nM
Sea Level
SHELF
AGSO
AUSTRALIAN GEOLOGICAL SURVEY ORGANISATION
UPPER SLOPE
PLATEAU OR TERRACE
LOWER SLOPE
RISE
DEEP OCEAN
28/OA/717



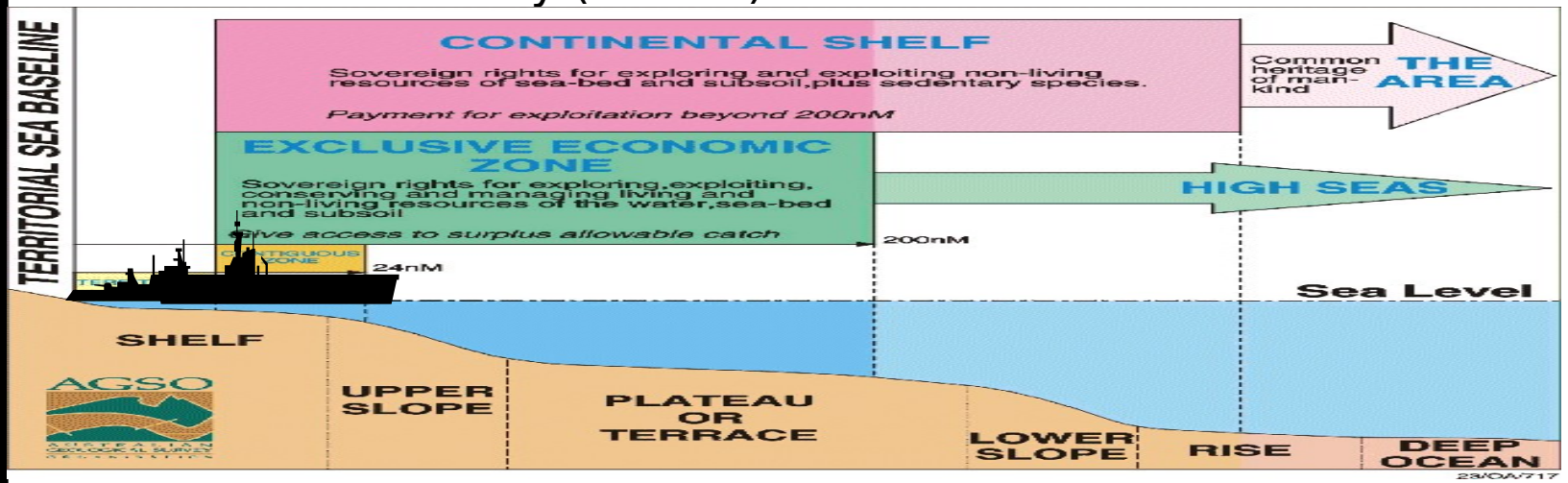
State Jurisdiction Over Territory: <u>High Seas</u>

- Pure *res communis*
  - on these commons all states have freedom of the high seas, such as freedom of navigation or freedom of overflight
  - No state may validly purport to subject any part of the high seas to its sovereignty

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State Jurisdiction Over Territory: <u>High Seas</u>

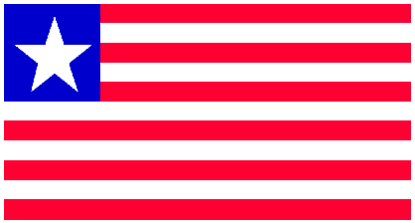
- Pure *res communis*
  - However, there are some limits on the "wild west" of the high seas:
    - Right of hot pursuit
    - Cooperation to suppress piracy
    - All ships are to have nationality, and be regulated by the states whose flags they fly (Art. 94)



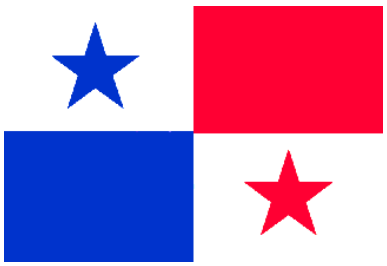
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State Jurisdiction Over Territory: <u>High Seas</u>

- Flags of Convenience







- *e.g.* Liberia
- *e.g.* Vanuatu
- *e.g.* Panama

1958 Convention on the High Seas:

- effort to require genuine link between state and ship

UN Convention on the Conditions for Registration of Ships:

- effort to force economic link between state and ship
- not yet in force

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State Jurisdiction Over Territory: <u>High Seas</u>

- Flags of Convenience
  - *"Grand Prince"* case (France v. Belize) at the Law of the Sea Tribunal
    - Article 292:

      Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release … the question of release from detention may be submitted to any court or tribunal agreed upon by the parties

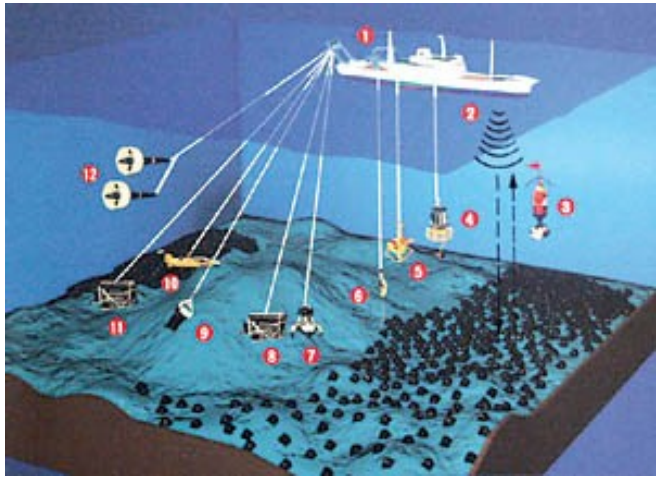
    - LOS Tribunal refused jurisdiction based on



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State Jurisdiction Over Territory: <u>Deep Seabed</u>

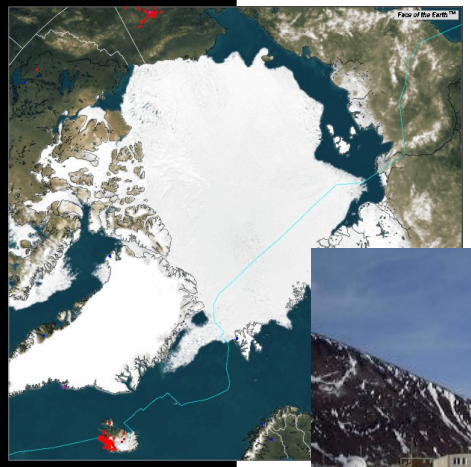
- Traditionally *res communis*
- Currently "common heritage of humankind"
  - Means that unilateral exploitation is not permitted
  - Exploitation must be approved by special UN



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State Jurisdiction Over Territory: <u>Arctic</u>

- Arctic Land: problem of establishing effective occupancy
  - Canada's approach: the example of resettlement of Inuit to Grise Fjord







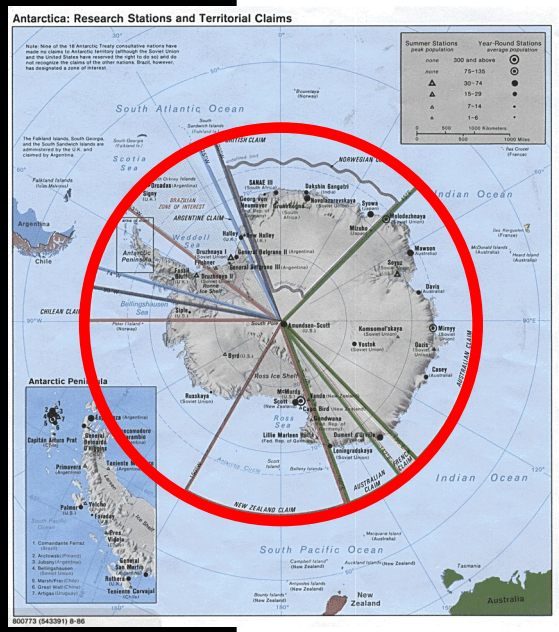
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State Jurisdiction Over Territory: <u>Arctic</u>

- Arctic Water: several states have asserted sovereignty
  - Sector theory: probably not good law
  - Arctic waters governed by the Law of the Sea Convention
    - Raises issues of use of straight baselines (*e.g.*, around Canada's Arctic islands)
      - Prompted dispute over Northwest Passage
        - Is passage an "international strait"?
        - Meets geographic test, but not functional test



State Jurisdiction Over Territory: <u>Antarctic</u>



- Several states have, in the past, asserted territorial rights to various parts of Antarctica

These claims have been placed in abeyance by the Antarctic Treaty of 1959

- All areas south of the 60th parallel are reserved for peaceful, scientific research
- The treaty has the effect of preserving the *res nullius* status of the continent

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