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# Session 1: OVERVIEW OF UNCLOS CABLE PROVISIONS AND LEGAL ISSUES

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# Treaties and Agreements

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- **1884 Submarine Cables Convention**
- **1958 Continental Shelf Convention**
- **1958 High Seas Convention**
- **1972 Collision Regulations**
- **1982 Law of the Sea Convention**
- **Most comprehensive is LOS Convention**

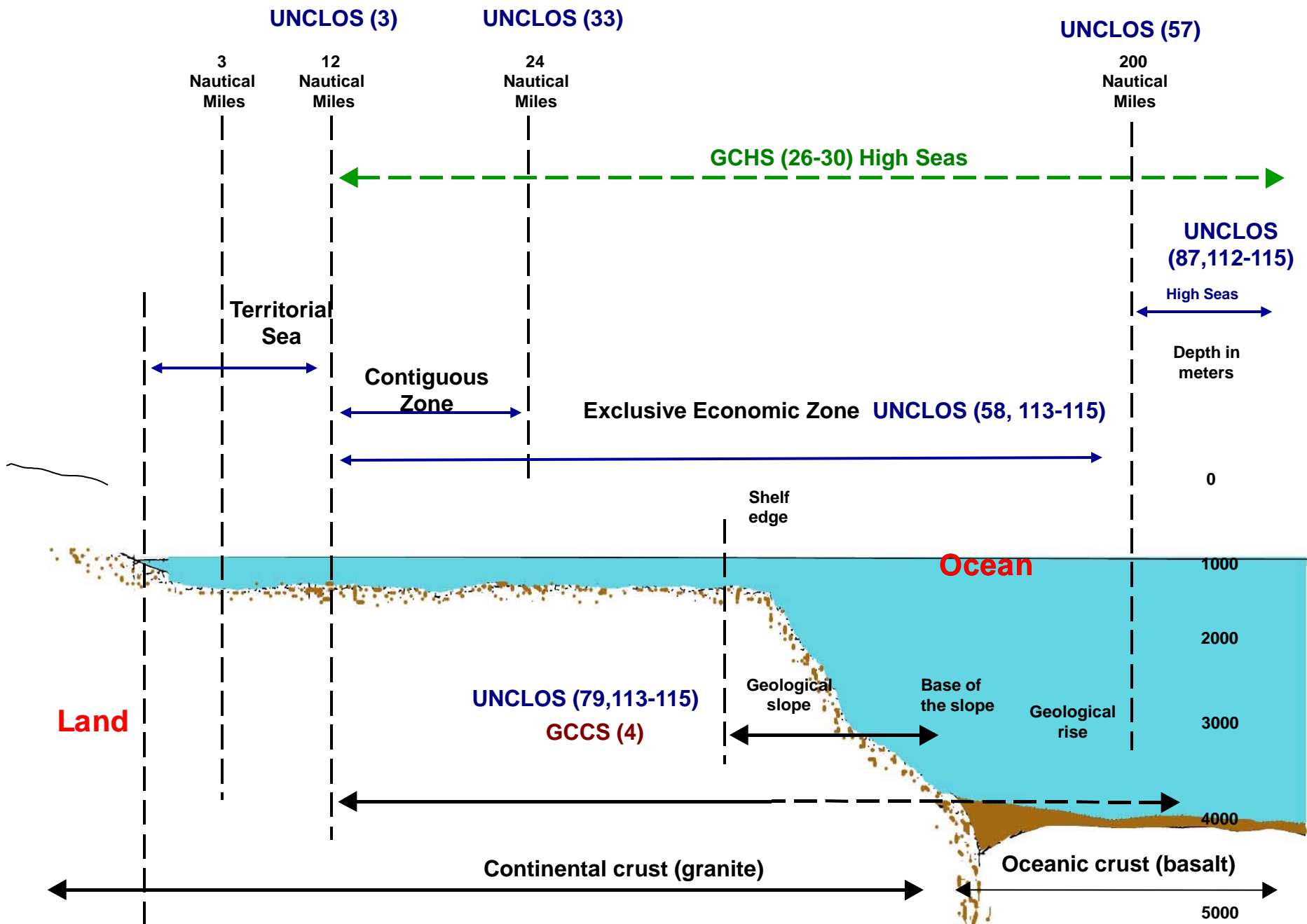
# 1982 Law of the Sea Convention

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- **UN Convention on the Law of the Sea, Montego Bay 10 December 1982, entered into force 10 November 1994**
- **160 Parties**
- **Australia, Brunei, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, Philippines, Singapore, South Korea, Vietnam are parties.**
- **Cambodia, Thailand are signatories.**

# United Nations Convention on the Law of the Sea (1982)

- The preamble of UNCLOS state, in part:
  - Recognizing the desirability of establishing through this Convention, with due regard to the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication...
- The official position of the UN on this issue:
  - “Beyond the outer limits of the 12NM territorial sea, **the coastal State may not (and should not) impede the laying or maintenance of cables**, even though the delineation of the course for laying of pipelines [**not cables**] on the continental shelf is subject to its consent”
  - Response to Question #7, Frequently Asked Questions at UN website:  
[www.un.org/Depts/los/LEGISLATIONANDTREATIES/frequently\\_asked\\_questions.htm](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/frequently_asked_questions.htm)



# Territorial Sea

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- **Maximum of 12 nautical miles from shoreline**
- **Coastal State may adopt laws and regulations to protect cables in its territorial sea**
- **Article 21(1)(c)**

# Archipelagic States

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- **Archipelagic State must**
  - **respect existing cables laid by other states and passing through its archipelagic waters**
  - **permit maintenance and replacement of such cables**
- **(Article 51(2))**

# Article 78. Legal Status of superjacent waters and air space and the rights and freedoms of other States.

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1. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.
- 2. The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and *other rights and freedoms of other States* as provided for in this Convention.**



# Article 112. Right to lay submarine cables and pipelines

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1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.
2. Article 79, paragraph 5, applies to such cables and pipelines.

# Article 79. Submarine cables and pipelines on the continental shelf

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1. **All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article.**
2. Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, **the coastal State may not impede the laying or maintenance of such cables or pipelines.**
3. The delineation of the course for the laying of **such pipelines** on the continental shelf is subject to the consent of the coastal State.

# Article 79. Submarine cables and pipelines on the continental shelf

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4. Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial island, installations and structures under its jurisdiction.
5. **When laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.**

# Article 58. Rights and duties of other States in the exclusive economic zone

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1. In the exclusive economic zone all States, whether coastal or land-locked, 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 submarine cables** and pipelines, and **other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables** and pipelines, and compatible with the other provisions of this Convention.
2. Article **88 to 115** and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

# Article 297. Limitations on applicability of section 2.

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1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:
  - (a) When it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;**

# LEGAL ISSUE: REPAIR PERMITS

- Substantial majority of States require no permits for repairs outside of territorial seas.
- In those States that do require permits it takes up to 6 weeks to obtain permits to repair each failure
  - Uncertainty
- While awaiting repair, related Undersea Cables are at greater risk for catastrophic double failures.
  - Future delays could prolong communications outages
- Permit process imposes significant costs and risks
  - Cable ships incur crew and fuel expenses while in port or at sea awaiting permits
  - Permitting delays cause “cascading delays” with construction schedules, ship schedules, and other operations
  - Is pre-approval of designated cable ships for repairs an option?

# LEGAL ISSUE: REPAIRS IN OVERLAPPING BOUNDARY CLAIM AREAS

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Permitting conflicts and uncertainty in waters of overlapping Maritime boundaries

- Cable Ships and Cable Owners are neutral
- Repairs are open and transparent
- Is there a solution for cable ships and owners to avoid being caught in the middle of competing boundary disputes?
- Protocol or understanding that cable repair and survey activities are accepted as done “without prejudice” to any coastal States’ legal claims.

# LEGAL ISSUE: DOMESTIC LAW COMPLIANCE WITH UNCLOS

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- Many States have no domestic laws implementing UNCLOS requirements under Article 113.
- Other States have obsolete domestic laws, usually associated with the 1884 Cable Convention that need to be updated.



# LEGAL ISSUE: CABLE ROUTE SURVEYS

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- Cable route surveys are incident to the freedom to lay and maintain cables
- Cable route surveys are not MSR
- Cable route surveys do not explore for natural resources or use seismic tools associated with natural resource location

# LEGAL ISSUE: CABLE PROTECTION GAPS

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- Use of AIS and working relationship with cable companies and coastal States
- Legal authority for naval vessels to board vessels suspected of injuring submarine cables outside of territorial seas
- Collection and admission of evidence
- Protection of cables and cable ships from pirates and terrorists

# Questions?

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