

**CIL – ICPC WORKSHOP ON THE
PROTECTION OF SUBMARINE CABLES**
Singapore, 14-15 April 2011

Session 2 : Repairing Submarine Cables
**Best National Practices for the
Repair of Submarine Cables**

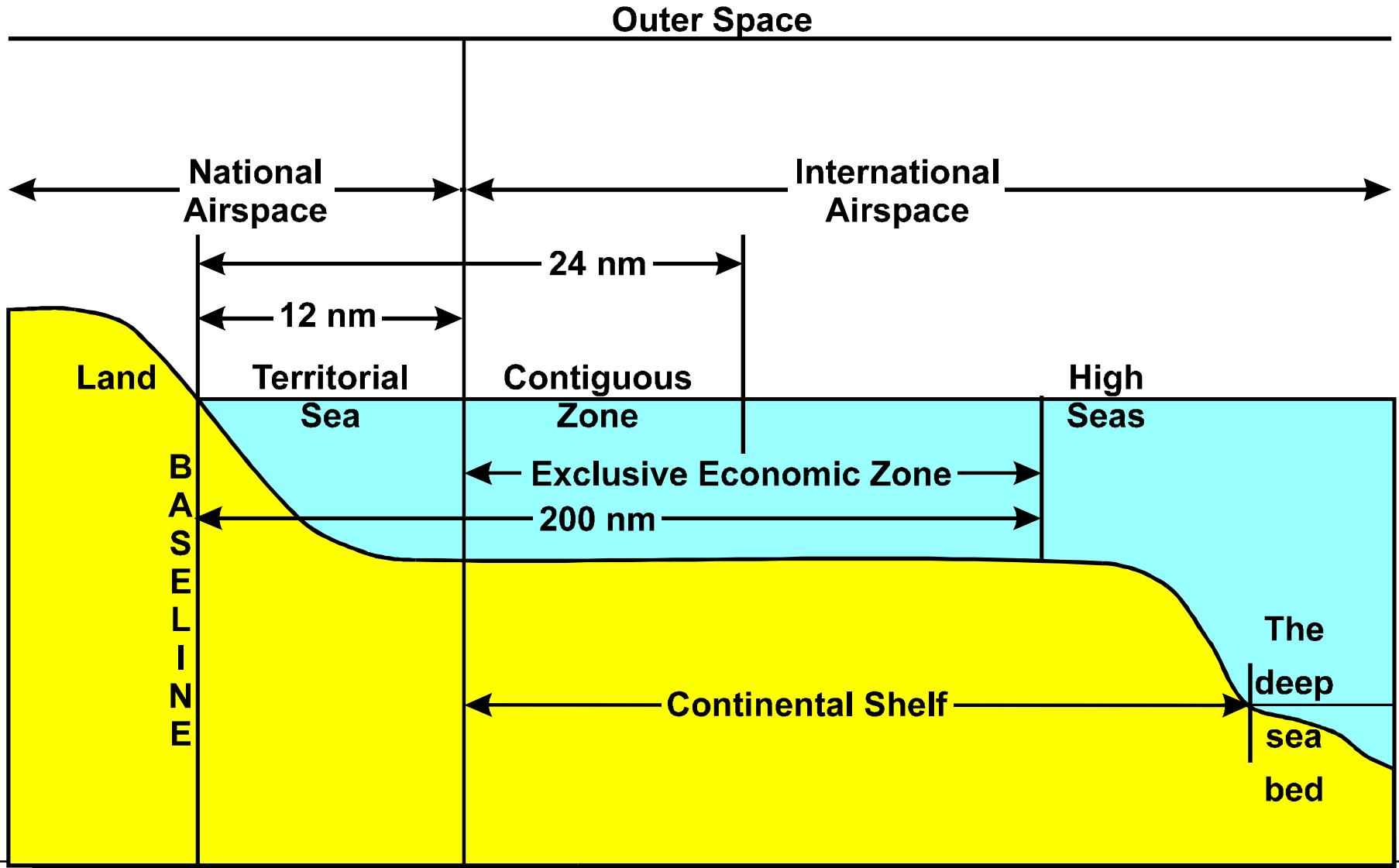
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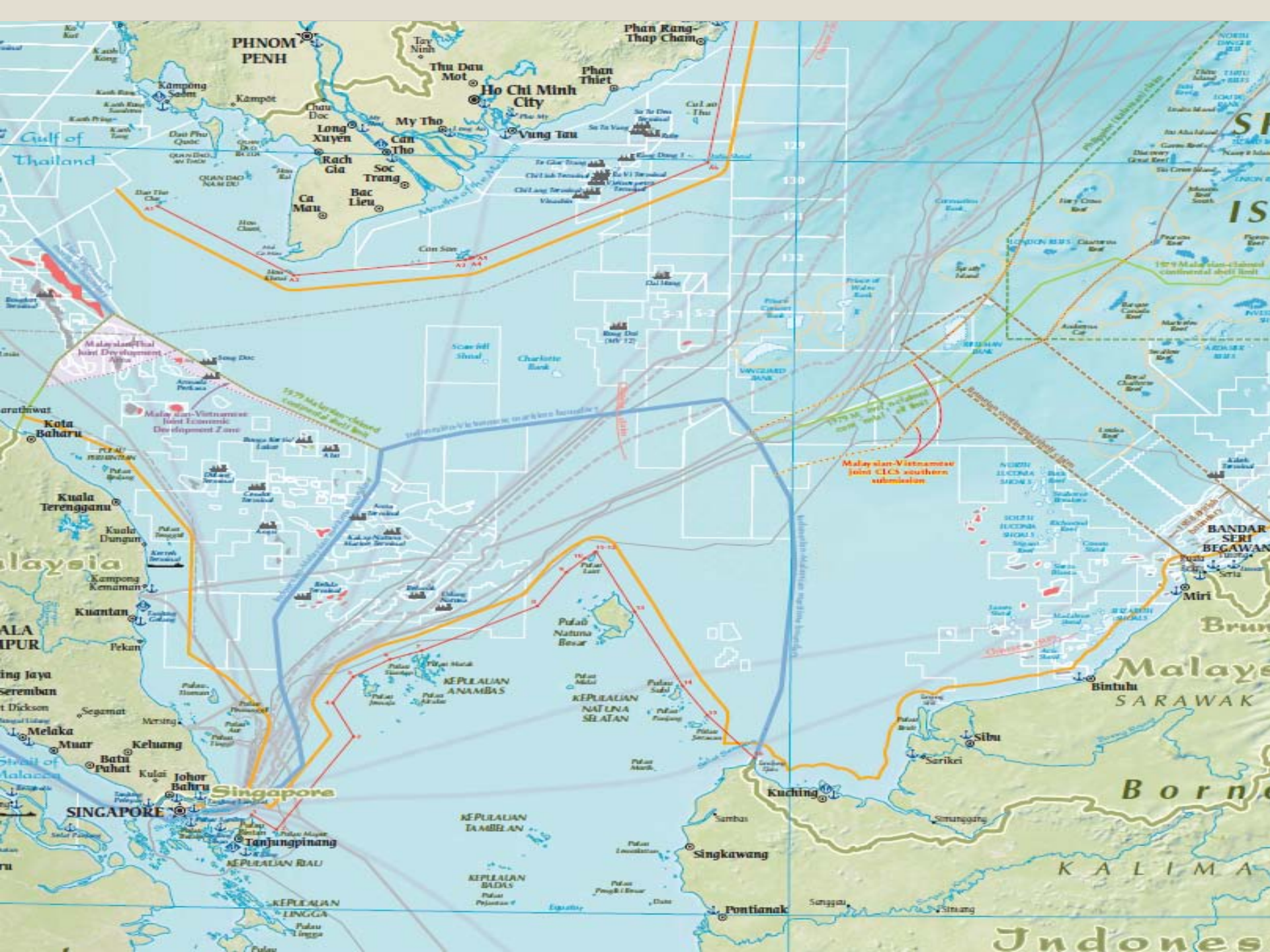
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Areas subject to Sovereignty of States

- Coastal States have sovereignty in their 12 nm territorial sea
- Archipelagic States like Indonesia and the Philippines have sovereignty in their archipelagic waters, which are the waters enclosed by straight baselines around the archipelago
- Sovereignty of coastal states is subject to the right of innocent passage of ships
- The repair of cables is not innocent passage, so coastal States have the right to regulate cable repair ships operating in their territorial sea

LEGAL REGIMES OF THE OCEANS AND AIRSPACE





PHNOM PENH

Phan Rang-Thap Cham

Ho Chi Minh City

Gulf of Thailand

Malaysia

Singapore

SINGAPORE

Indonesian

Malaysian-Vietnamese joint CLCS southern submission

1979 Malaysia-Vietnam continental shelf limit

1979 Malaysia-Vietnam EEZ limit

KEPULAUAN NATUNA BESAR

KEPULAUAN ANAMBAS

KEPULAUAN NATUNA SELATAN

KEPULAUAN TAMBEAN

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Interests of Coastal States

In developing best practices, cable companies should be mindful of the interests of the coastal States in regulating activities in waters under their sovereignty:

- Security concerns, including terrorist activities, illegal immigration, smuggling, etc
- Resource concerns, including prevention of illegal fishing, surveys of natural resources, etc
- Environmental concerns, including prevention of pollution of the marine and coastal environment, respect for marine protected areas, etc
- Competing activities, such as fishing, anchoring and other shipping activities, dredging, etc.

Repair - Best Practices for Governments

Governments should establish procedures to expedite
Permits for cable ships to repair cables:

1. Appointing a lead agency to coordinate the permit process
2. Standardizing forms for information about the cable ship and its crew members
3. Giving prior clearance to licensed cable repair ships that operate from ports within its territory
4. Consulting industry on fees and procedures, including compensation to other users

Repair – Best Practices for Industry

- Appoint representatives to serve as the focal point for industry in developing best practices with governments
- Invite Government agencies to briefings on the repair of cables and the operation of cable ships to ensure them that cable ships are not a threat to their interests
- Meet Government agencies to discuss the common interest of all States in repairing cables as quickly as possible

Part 2

Regulation of Cables in Areas Outside the Sovereignty of any coastal State

High Seas and Submarine Cables

- The right to lay submarine cables is a **high seas freedom** that may be exercised by all States [Art 87]
- The **right to lay cables** must be exercised with due regard to the rights of other States, such as the freedom of navigation [Art 87(2)]
- **States** must have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced. [Art 112, 79(5)]

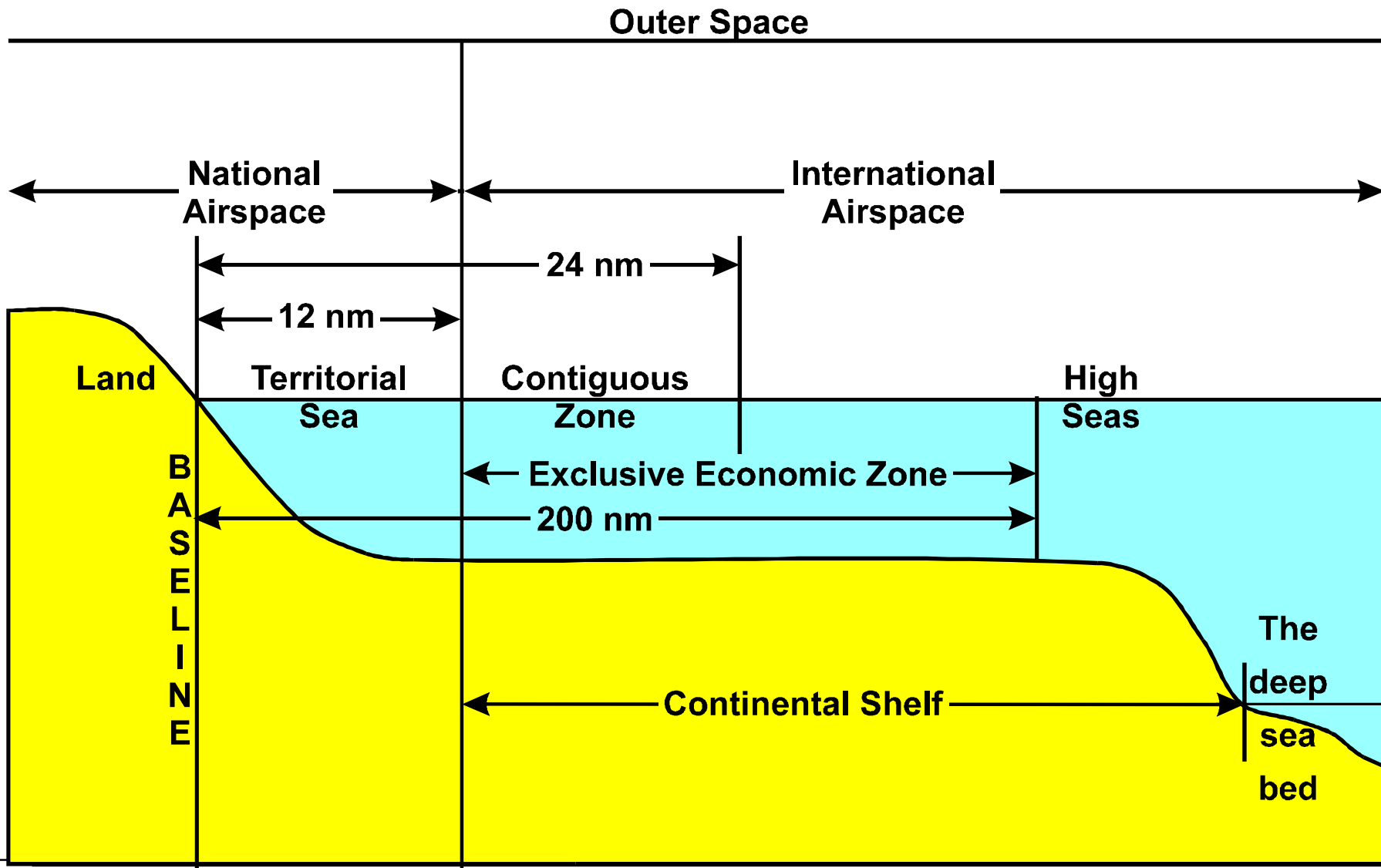
EEZ – Exclusive Economic Zone

- EEZ is a *sui generis* regime - not under the sovereignty of coastal States and not part of the high seas
- EEZ is a **Specific Legal Regime** in which UNCLOS sets out:
 - Rights, jurisdiction & duties of coastal States [Art 56]
 - The rights and duties of other States [Art 58]
- **Coastal States** have the sovereign right to explore and exploit the **natural resources**, including the resources of the sea-bed and subsoil [Art 56]
- **Other States** have the right to exercise high seas freedoms including freedom of navigation and **freedom to lay cables and pipelines**[Art 58]

Regime of Continental Shelf (CS)

- **Continental shelf** 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
- Coastal State can extend continental shelf beyond 200 nm by submitting information to Commission on the Limits of the Continental Shelf
- Coastal State exercises over the continental shelf **sovereign rights** for the purpose of **exploring it and exploiting its natural resources**

LEGAL REGIMES OF THE OCEANS AND AIRSPACE



Overlap in EEZ and CS Regimes

- Within 200 nm coastal State has sovereign rights to explore and exploit the natural resources of seabed and subsoil under both the EEZ and CS Regimes
- Beyond 200 nm, it has such right only under the Continental Shelf regime
- Sovereign rights of the coastal State in the EEZ with respect to the seabed and subsoil **shall be exercised in accordance with Part VI - Continental Shelf** [Art 56(3)]
- Therefore, rules on cables in EEZ and on Continental Shelf are almost exactly the same

Right to Lay & Repair Cables on Shelf

- All States have a **right to lay submarine cables** on the continental shelf [Art 79(1)]
- As on high seas, when exercising their right to lay cables, States shall have **due regard** to cables or pipelines already in position, and the repair of existing cables shall not be prejudiced [Art 79(5)]
- The **delineation of the course** for the laying of cables **[unlike pipelines]** on the continental shelf is NOT subject to the consent of the coastal State [Art 79(3)]

Limits on Rights of Coastal States on Continental Shelf

- 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 [Art 78]
- Article 79(2): The coastal State may not impede the laying or maintenance of cables subject to its right to take reasonable measures for:
 1. the exploration of the continental shelf;
 2. the exploitation of its natural resources; and
 3. the prevention, reduction and control of **pollution from pipelines [but not pollution from cables]**

“Reasonable Measures” by Coastal States

- Is reasonable for Coastal State to require the cable ship to give **advance notice** to the relevant government agency of the **details of the ship, its location, its schedule, its crew, and its planned activity**
- Is reasonable for Coastal State to require the cable ship to **report its location** at regular intervals
- Is reasonable for Coastal State to require the cable ship to allow **observers on board** its ship
- Is also reasonable to Coastal States to request that the cable ship provide it with a **report of its activities** upon the completion of the repair

“Due Regard” by Repair Ships in EEZ

- State exercising right to repair cables has obligation to give **‘due regard’ to the rights and duties of coastal States in the EEZ**, including their rights to:
 1. manage & conserve living resources
 2. exploit hydrocarbon resources
 3. use energy from winds & waves
 4. regulate marine scientific research
- State exercising right repair cables also has obligation to comply with laws of coastal State adopted in conformity with UNCLOS
- Coastal State has no jurisdiction over foreign ships to protect its security interests in the EEZ

“Due Regard” by Repair Ships in EEZ

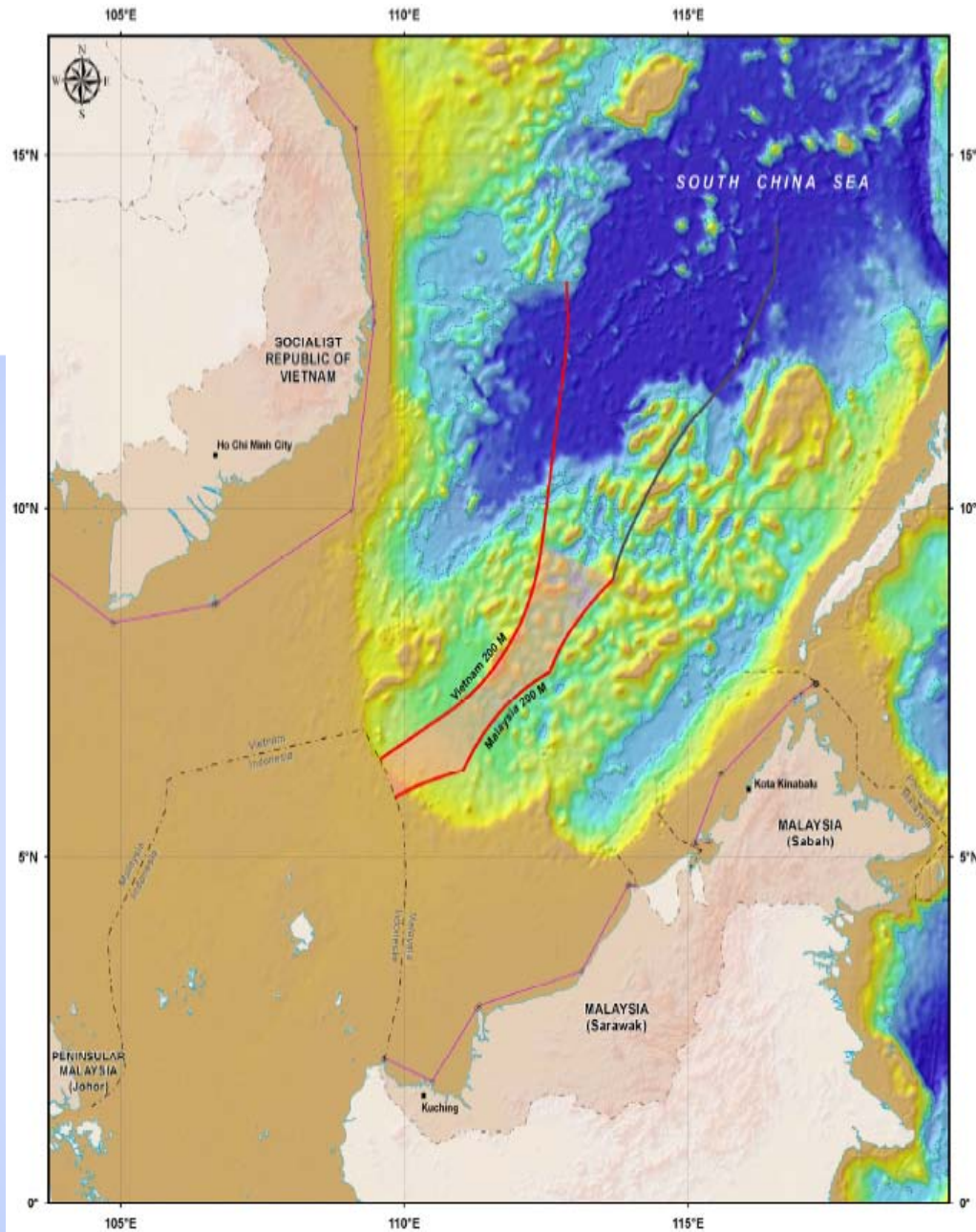
- Cable Repair ships should recognize that coastal States have a legitimate interest in taking reasonable measures to ensure that cable ships do not interfere with their sovereign right to explore and exploit the natural resources of the EEZ & continental shelf
- Cable Repair ships should be prepared to give notice to coastal States of intended repairs
- Cable Repair ships should be prepared to consult with coastal States and comply with all reasonable measures imposed by the coastal State

“Due Regard” by Coastal State in EEZ

- Coastal States should recognize that they have a duty to give “due regard” to the right of all States to lay and repair cables in the EEZ
- Coastal States should recognize that any requirements must be reasonable and must not unjustifiably interfere with the right to repair cables
- Coastal States should recognize that their rights to regulate cable repair ships is very limited if the repair is outside its territorial sea

“Due Regard” by Coastal State

- If a coastal State imposes any notice requirements and other requirements on cable repair ships, it should appoint a lead agency to serve as the government focal point with the cable repair ship
- The lead agency should advise all other government agencies of the activities of the cable repair ship and advise that they should not interfere with the repair activities
- The lead agency should also advise shipping and fisherman in the area of the activities of the repair ship and advise them to stay a reasonable distance away from the repair ship



Cables outside 200nm

- Rights of Coastal State to adopt “**reasonable measures**” also apply outside 200 nm to the outer limit of the extended continental shelf
- In the waters beyond 200 nm States have to lay and repair cables :
 1. with **due regard** for the interests of other States in their exercise of high seas freedoms; and
 2. with **due regard** for the rights under this Convention with respect to activities in the Area
- For cables in **the Area**, industry should consult with International Seabed Authority as set out in the 2009 MOU between the ICPC and the ISA

Part 3

Recommendations

Recommendations

1. In areas under sovereignty, the cable industry should work with interested governments to develop “best practices” for the repair of cables
2. In areas outside sovereignty, coastal States and the cable industry should recognize that they both have “due regard” obligations which require them to give notice and consult with each other
3. The cable industry and coastal States should work together to develop “best practices” which include reasonable measures to protect the legitimate interests of coastal States without interfering with the speedy repair of cables

Recommendations

- 4.** The coastal State should appoint a lead agency to communicate with cable repair ships and to advise all other government agencies not to interfere with the work of cable repair ships
- 5.** The cable industry should consider appointing a committee or focal point to communicate with Governments in the region in order to develop “best practices” at the regional level

Thanks for Your Attention!

For more information on Submarine Cables
and Law of the Sea, see the CIL web site:

[http://cil.nus.edu.sg/research-
projects/submarine-cables/](http://cil.nus.edu.sg/research-projects/submarine-cables/)

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