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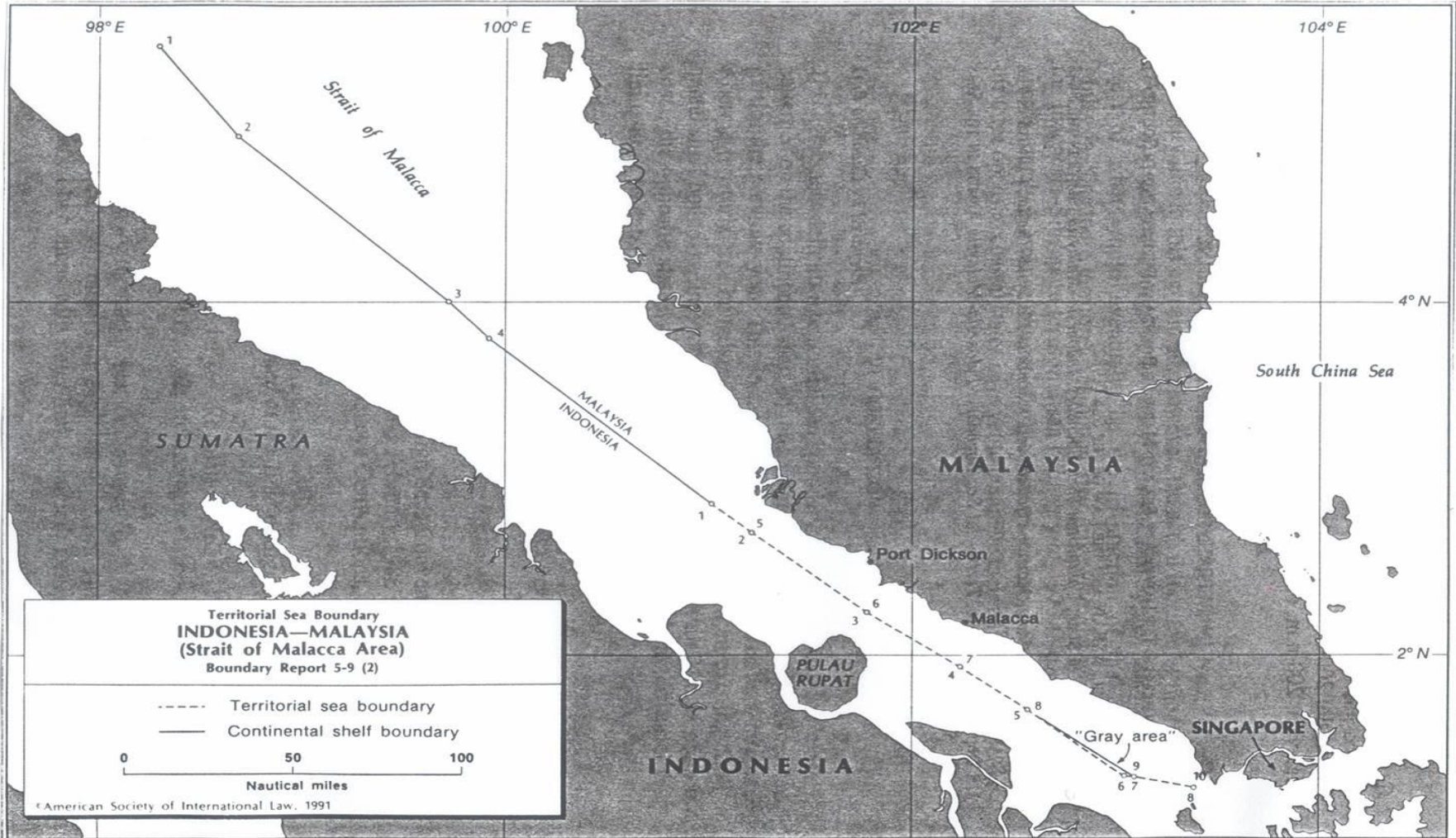
**THE BOUNDARIES DISPUTE IN THE
NORTH MALACCA STRAIT**

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Background

- Continental Shelf (CS) Boundary Agreement between Indonesia and Malaysia in 1969
- No agreement has been reached on the boundaries for Exclusive Economic Zone (EEZ)
- Malaysia claimed that the EEZ boundary is the same line as CS boundary
- Indonesia disagree and wants to re-negotiate



Continental Shelf Regime in the 60s

- 1958 Convention on the Continental Shelf
- **Outer limit:** from the outer limit of the territorial sea to a depth of 200 metres or as long as the coastal State capable to exploit the continental shelf
- No agreed outer limit of territorial sea, but common practice was 3 nm from baselines

Sovereign Rights on CS

Article 2(1). Rights of the coastal State over the continental shelf

The coastal State exercises over the continental shelf **sovereign rights** for the purpose of

- **exploring it** and
- exploiting its natural resources

Sovereign Rights on Continental Shelf

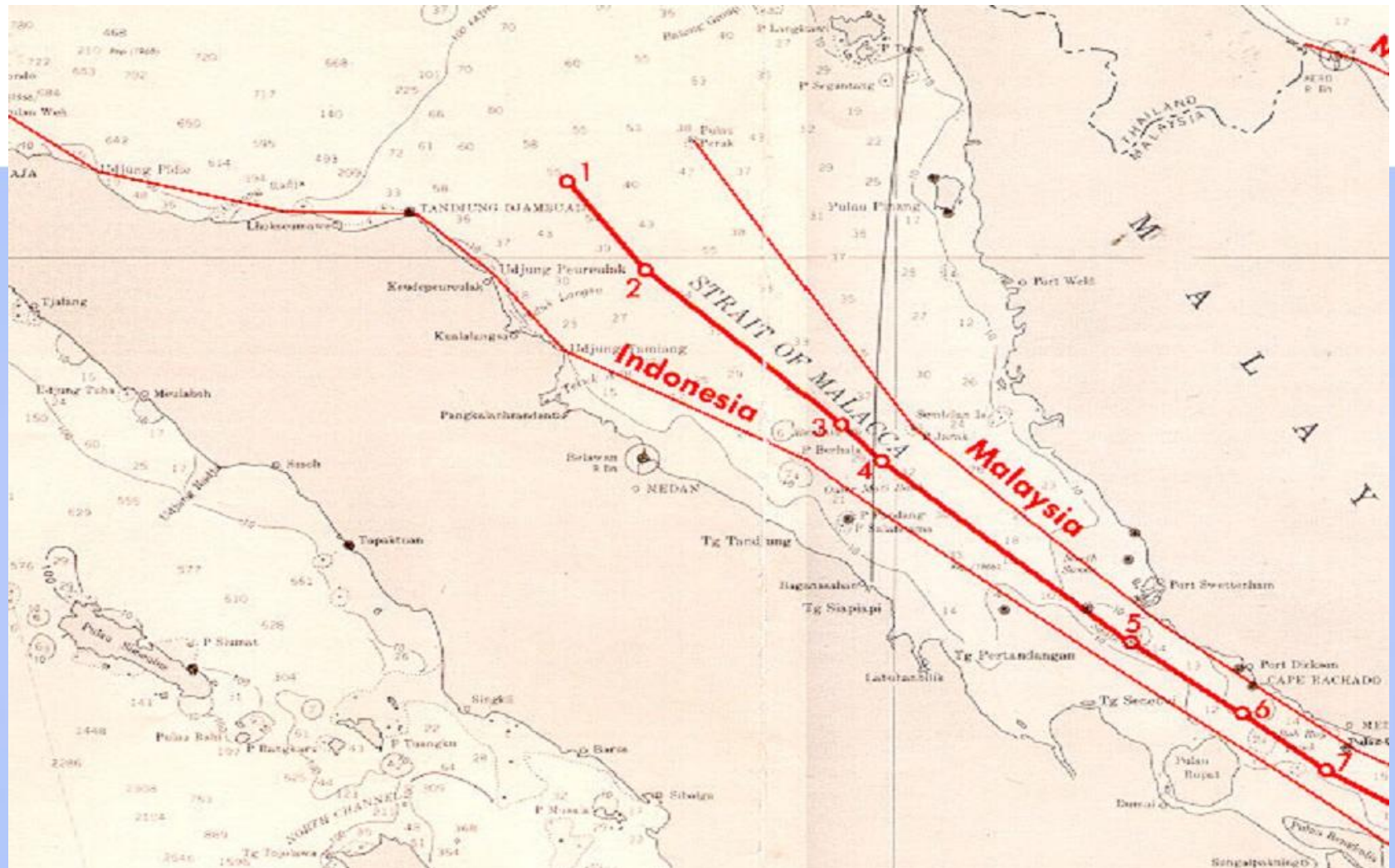
- Sovereign rights are **inherent** - they do not depend on occupation, effective or notional, or on any express proclamation
- Sovereign rights are **exclusive** - if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State

Baselines – 1958 TS Convention

- Art 3: the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast
- Art 4: Straight Baselines
 - where the coast line is deeply indented and cut into
 - if there is a fringe of islands along the coast in its immediate vicinity
 - must not depart from the general direction of the coast
 - the sea areas lying within the lines must be closely linked to the land domain as internal waters

Baselines – 1969 Agreement

- Indonesia and Malaysia both used straight baselines, even though the requirements in the TS Convention were not met
- Indonesia argued that it was applying the straight baselines to enclose its archipelago (archipelagic baselines)
- Malaysia applied the straight baselines to enclose all of its islands of the coast of western Malay Peninsula to put itself on an equal footing in the division of the continental shelf with Indonesia



Source: US Department of State

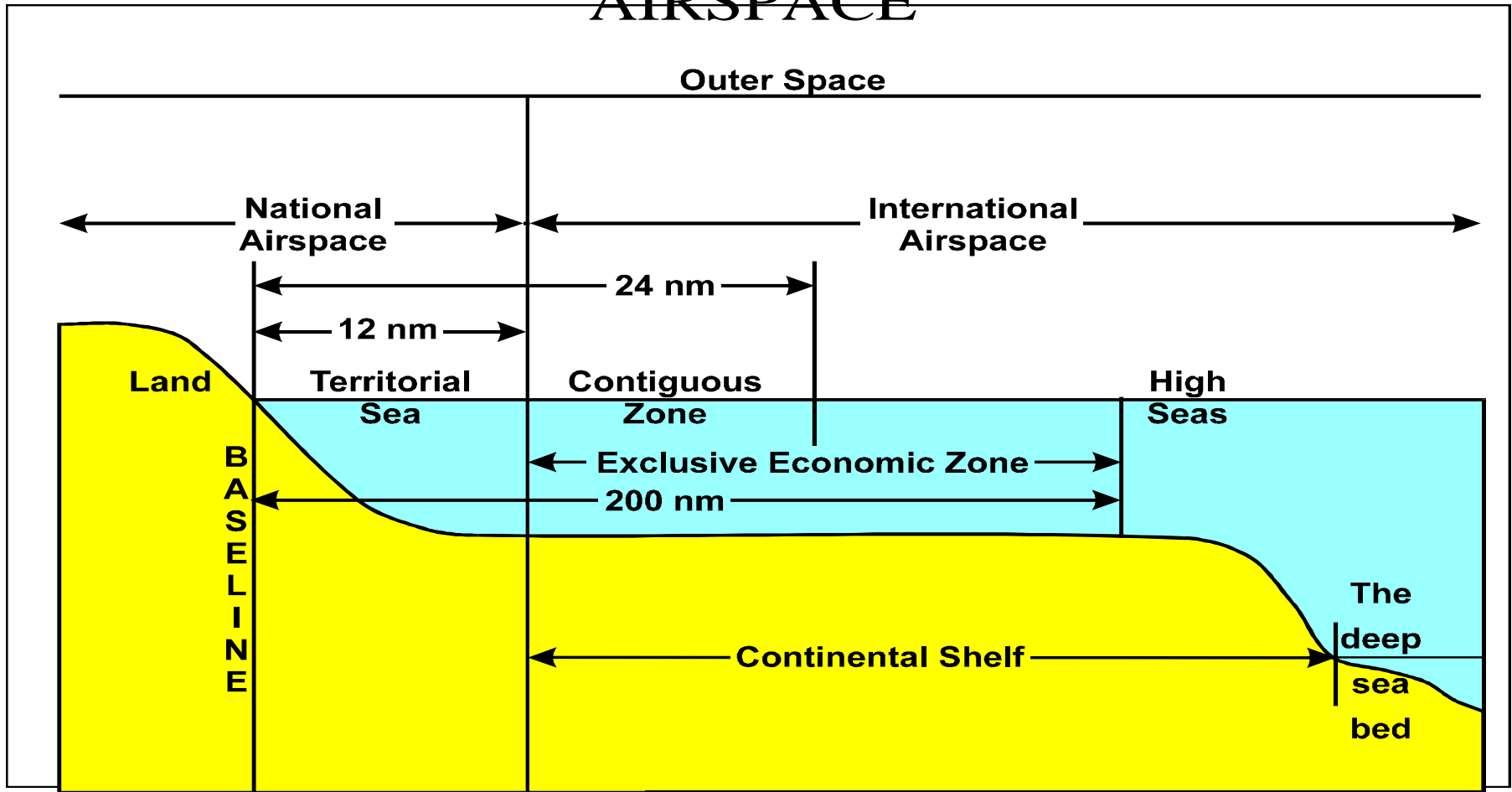
History of EEZ Regime

- The regime in Part V of UNCLOS on the EEZ was a major focus of negotiation at the Third UN Conference
- Since the EEZ regime includes the natural resources of the seabed and subsoil, there is a large overlap in the two regimes within the 200 nm limit
- A continental shelf is an 'inherent right' of a coastal State and need not be claimed, an EEZ should always be claimed.
- There can be a continental shelf without an EEZ but there cannot be an EEZ without a continental shelf

Art 56. Rights of Coastal State in EEZ

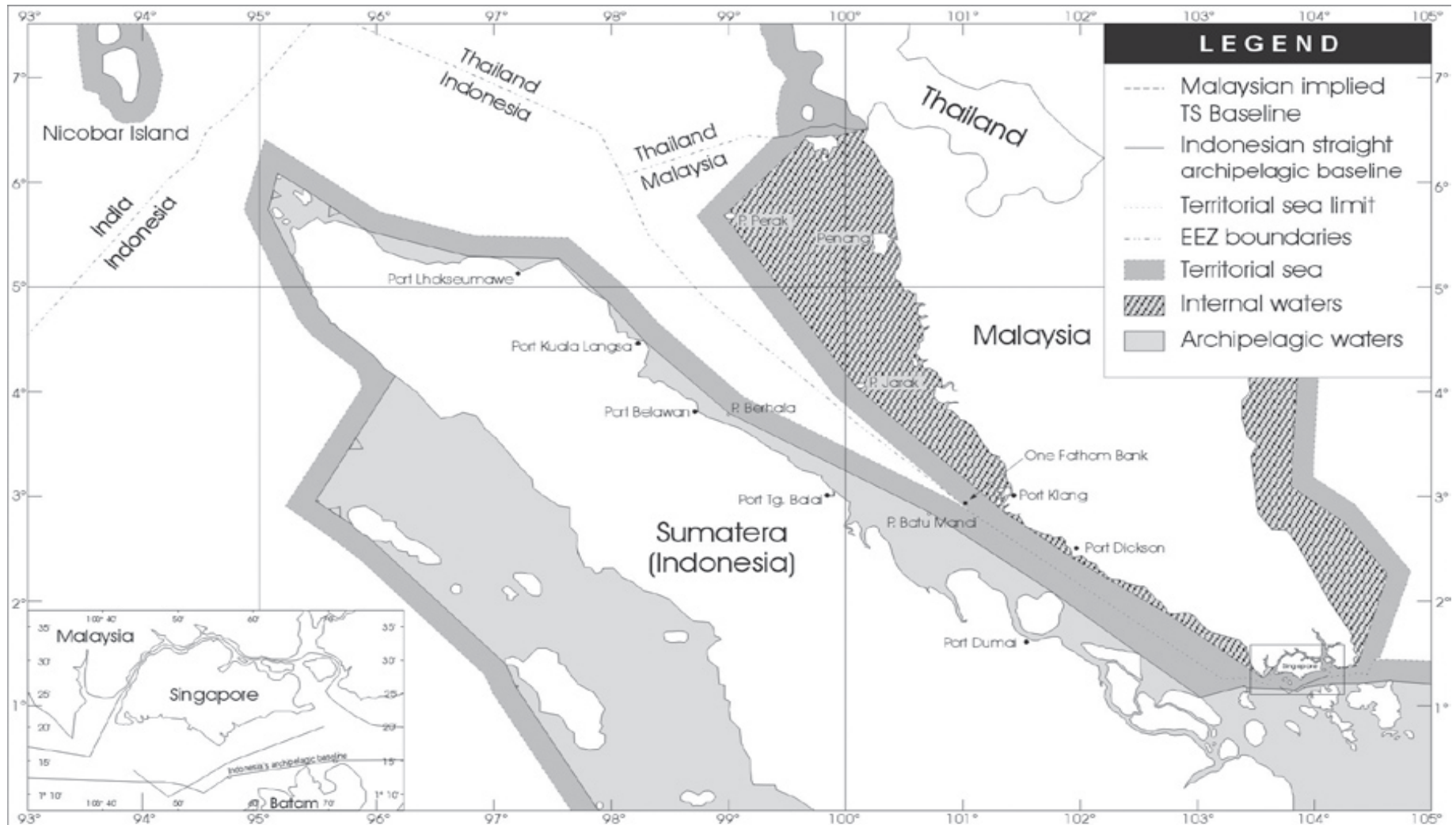
- **Art 56(1)**. In the 200 nm EEZ the coastal State has **sovereign rights** for the **purpose of exploring and exploiting**, conserving and managing, the natural resources, whether living or non-living,
 - of the waters superjacent to the seabed and
 - of the seabed and its subsoil
- The EEZ regime gives coastal States a second legal basis for claiming the natural resources of the seabed and subsoil within 200 nm

LEGAL REGIMES OF THE OCEANS AND AIRSPACE

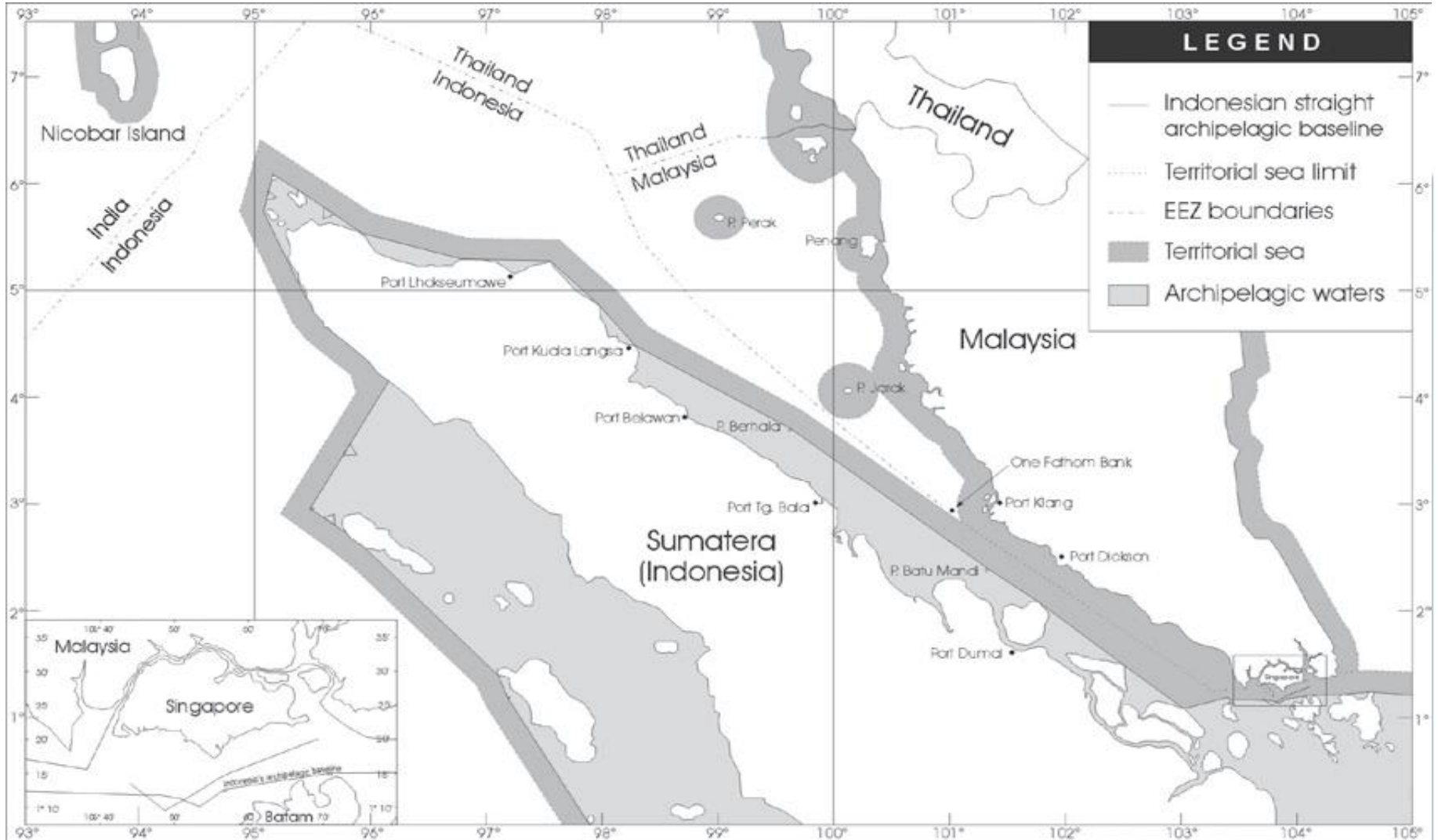


Archipelagic Baselines

- Archipelagic States are permitted to draw straight baselines connecting the outermost points of the outermost islands in their archipelago
- If a continental State has sovereignty over offshore island archipelagos, the normal baselines rules apply to such archipelagos as continental States do not fall within the definition of 'archipelagic States' under UNCLOS
- Indonesia's straight baselines as the basis of the continental shelf Agreement was legitimised



Source: Andi Arsana, ANCORS

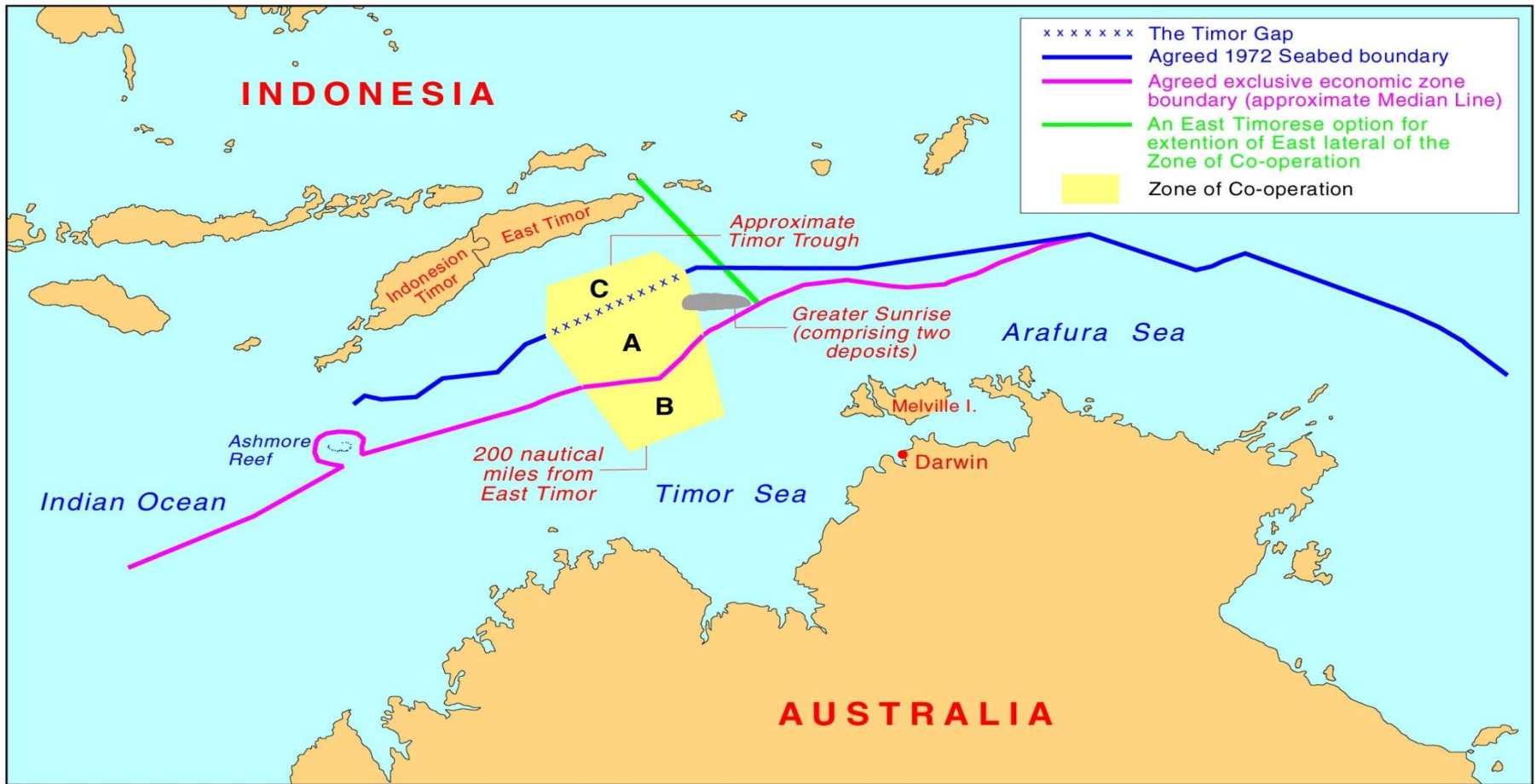


Source: Andi Arsana, ANCORS

Separate Boundaries of CS and EEZ

- UNCLOS does not have any provisions requiring the delimitation of a single maritime boundary for both EEZ and continental shelf
- Due to the different nature of EEZ and continental shelf regimes, the relevant circumstances to be considered to reach an equitable delimitation will vary between the regimes

Australia and Indonesia's Maritime Boundaries



Delimitation & Dispute Settlement

- Article 298. States parties may “opt out” of Section 2 of Part XV for any disputes concerning the interpretation of Articles 15, 74 and 83 on maritime boundary delimitation
- Indonesia and Malaysia have not opted out
- Indonesia or Malaysia can invoke compulsory dispute settlement on the question of straight baselines (Art 7) or EEZ delimitation (Art 74)

Article 74

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

“Without Prejudice”

- The final agreement on delimitation does not have to take into account the provisional arrangements
- The provisional arrangements is not a renunciation of a State to its claim or a recognition of the claim of the other parties
- The parties do not acquire any rights from the provisional arrangements

Joint Development

- An arrangement to jointly develop hydrocarbon and fisheries resources in the area of overlapping claims is a type of provisional arrangement
- Article 74 do not impose a legal obligation on States to enter into negotiations to establish joint development arrangements
- States are to enter into negotiations in good faith with a view to arriving at an agreement to establish provisional arrangements

Conclusions

- Indonesia and Malaysia to reach an agreement on the EEZ boundaries in the north Malacca Strait that differs from the continental shelf boundaries.
- Refer the dispute to the system of compulsory binding dispute settlement in Section 2, Part XV of UNCLOS
- Enter into an agreement to cooperate and establish a joint development area to share resources in the overlapping area

Thanks for Your Attention

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