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and the Resolution of South China Sea Disputes**  
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**Regional Cooperation to Combat Piracy and  
International Maritime Crimes:  
The Importance of Ratification and  
Implementation of Global Conventions**

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## Part 1

# “Piracy” and “Armed Robbery against Ships”

# Importance of UNCLOS

- 1982 United Nations Convention on the Law of the Sea (UNCLOS) establishes the legal framework
- There are 162 Parties to UNCLOS, including all States in East & Southeast Asia except Cambodia, Timor Leste & DPR Korea
- Substantive provisions are generally regarded as customary international binding on all States
- But only States Parties can invoke the dispute settlement mechanisms in Part XV

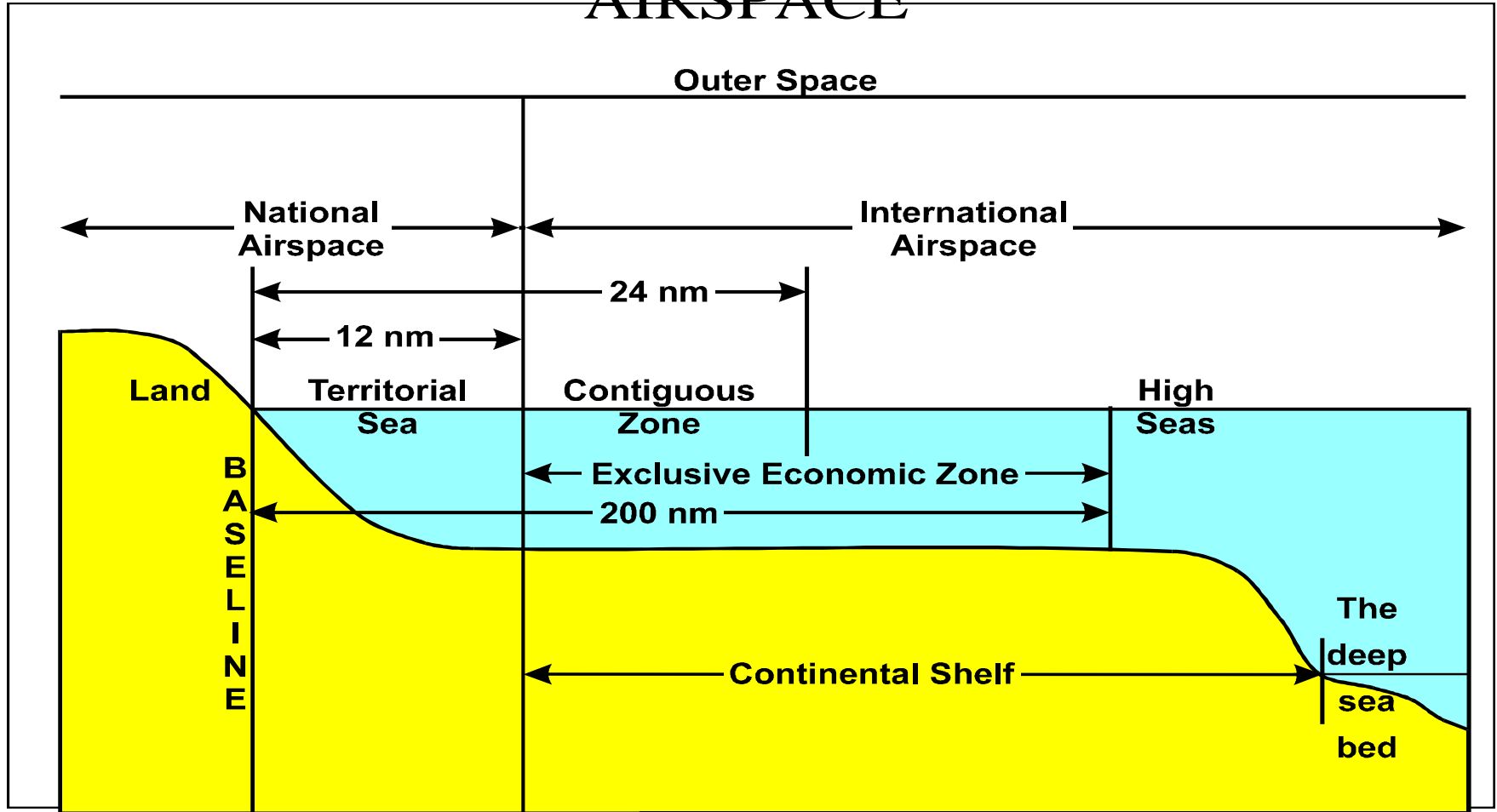
# Jurisdiction over acts aboard ships

- Jurisdiction is the power of a State to pass and enforce laws making certain acts criminal
- It includes the power to arrest and prosecute persons who break the laws
- Under the Law of the Sea, jurisdiction over foreign ships is determined by where the illegal acts took place

## **Ports, Territorial Sea & Archipelagic Waters**

- **Ports, territorial sea and archipelagic waters are under the sovereignty of the coastal State**
- **The criminal laws of the coastal State apply to illegal acts against ships in these areas**
- **The coastal State has the exclusive right to board foreign ships and arrest “pirates”**
- **Attacks on ships in areas under sovereignty are known as “armed robbery against ships”**

# LEGAL REGIMES OF THE OCEANS AND AIRSPACE



## High Seas & Exclusive Economic Zone

- The general principle governing ships on the high seas and in the EEZ is that they are subject to the exclusive jurisdiction of the flag State
- In the EEZ the jurisdiction of the coastal State is limited to governing economic activities like fishing
- Foreign ships cannot be boarded without the consent of the master or flag State
- The most important exception is PIRACY

# Piracy under UNCLOS

- Piracy provisions in UNCLOS apply on the high seas and in the 200 nm EEZ (anywhere outside of the territorial sea)
- UNCLOS provides that all States have a duty to cooperate in the repression of piracy
- Piracy provisions create an exception to the general principle that ships on high seas cannot be boarded without the consent of flag State
- Warships of all States have a right to seize pirate ships and arrest pirates



# Definition of Piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or depredation
- committed for private ends
  - by the crew or the passengers of a private ship . . . ,
  - on the high seas [or EEZ],
  - and directed against another ship . . .

# Definition of a Pirate Ship

- A ship . . . is considered a pirate ship . . if it is intended by the persons in dominant control to be used for the purpose of committing piracy
- The same applies if the ship . . . has been used to commit any such act, so long as it remains under the control of the persons guilty of that act

# Importance of “Piracy”

- The Piracy regime in UNCLOS provides the legal basis for warships or coast guard vessels to board pirate ships and arrest pirates on the high seas or in an EEZ without obtaining the consent of the flag State

# Seizure of a Pirate Ship

- On the high seas [or EEZ], every State may seize a pirate ship or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board
- The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships or property

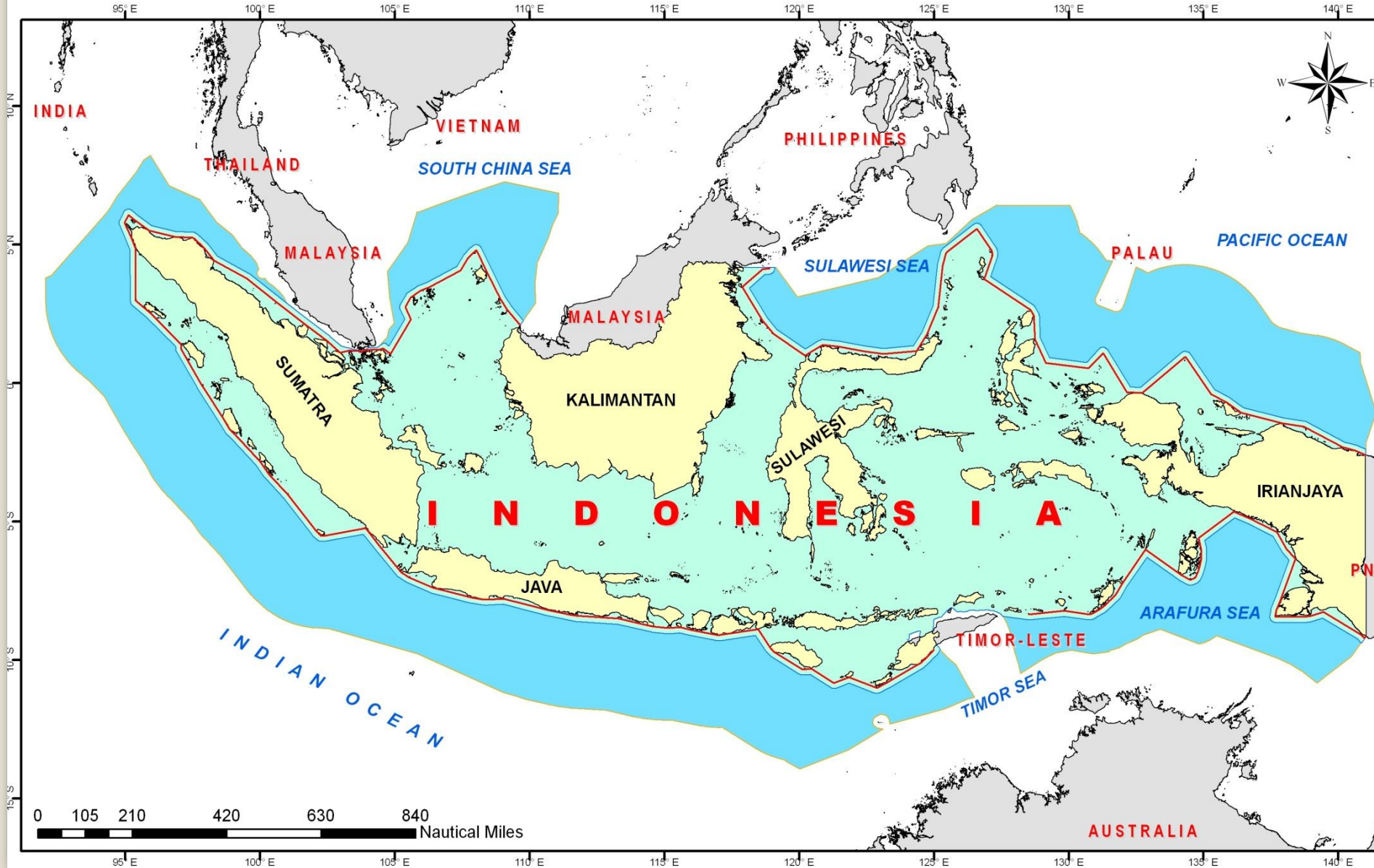
# Problems with Piracy Provisions

- 1. Piracy rules do not apply to attacks on ships in ports, in the territorial sea or in archipelagic waters**
- 2. Laws of the coastal State apply in areas under its sovereignty, and it has exclusive power to enforce its laws in these areas**
- 3. Attacks in areas under sovereignty are classified as “armed robbery at sea”, not piracy**

# Piracy in Southeast Asia

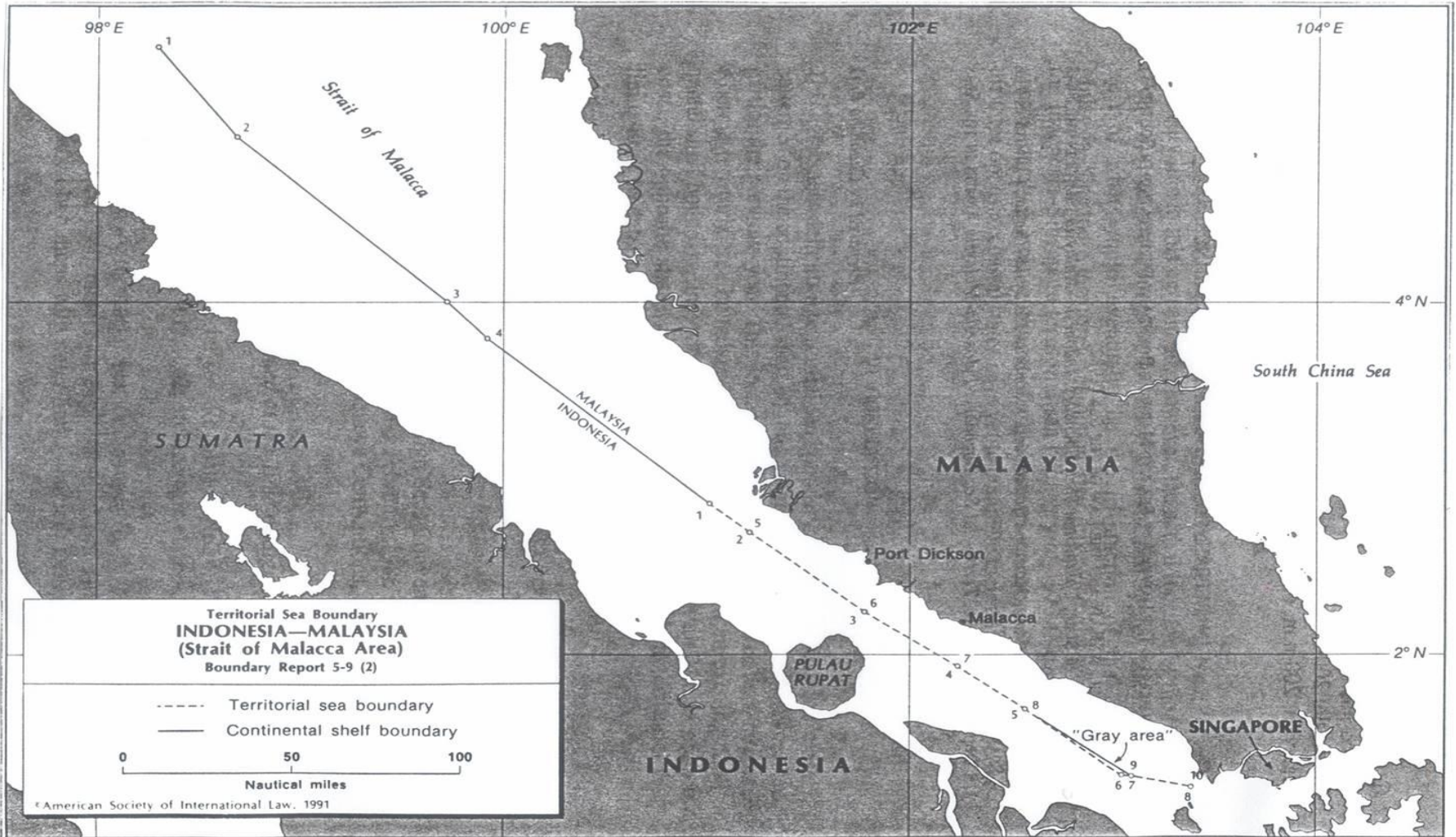
- The vast majority of attacks on ships in Southeast Asia take place within the sovereignty of coastal States
- The area of the Straits of Malacca and Singapore from Port Klang to Horsburgh lighthouse is within the territorial sea of the littoral States
- Piracy rules do not apply to attacks in these areas – coastal State has exclusive right to enforce its laws in these areas
- Coastal States conduct coordinated patrols in which the patrol ships of each State remain within their own waters



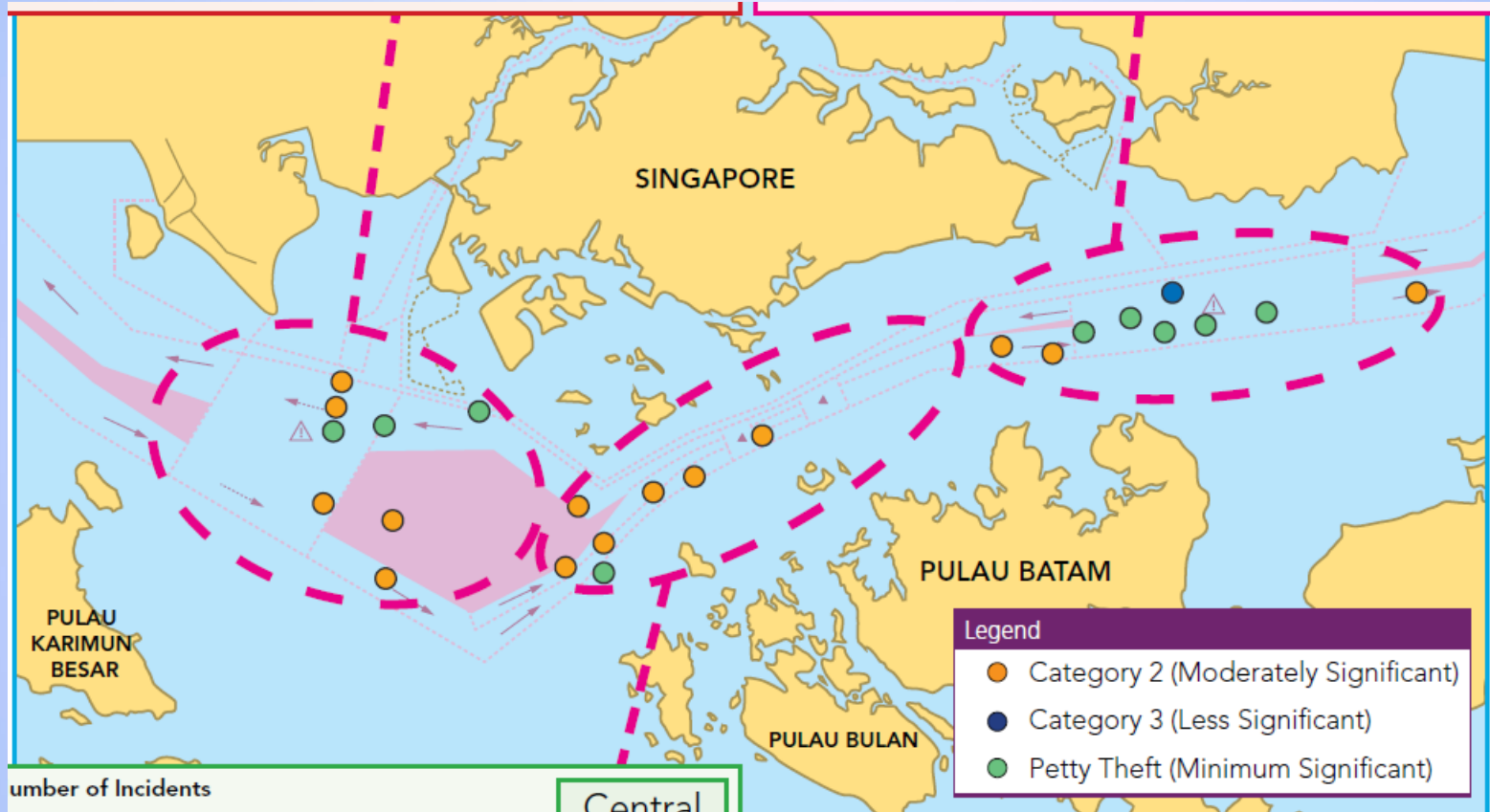




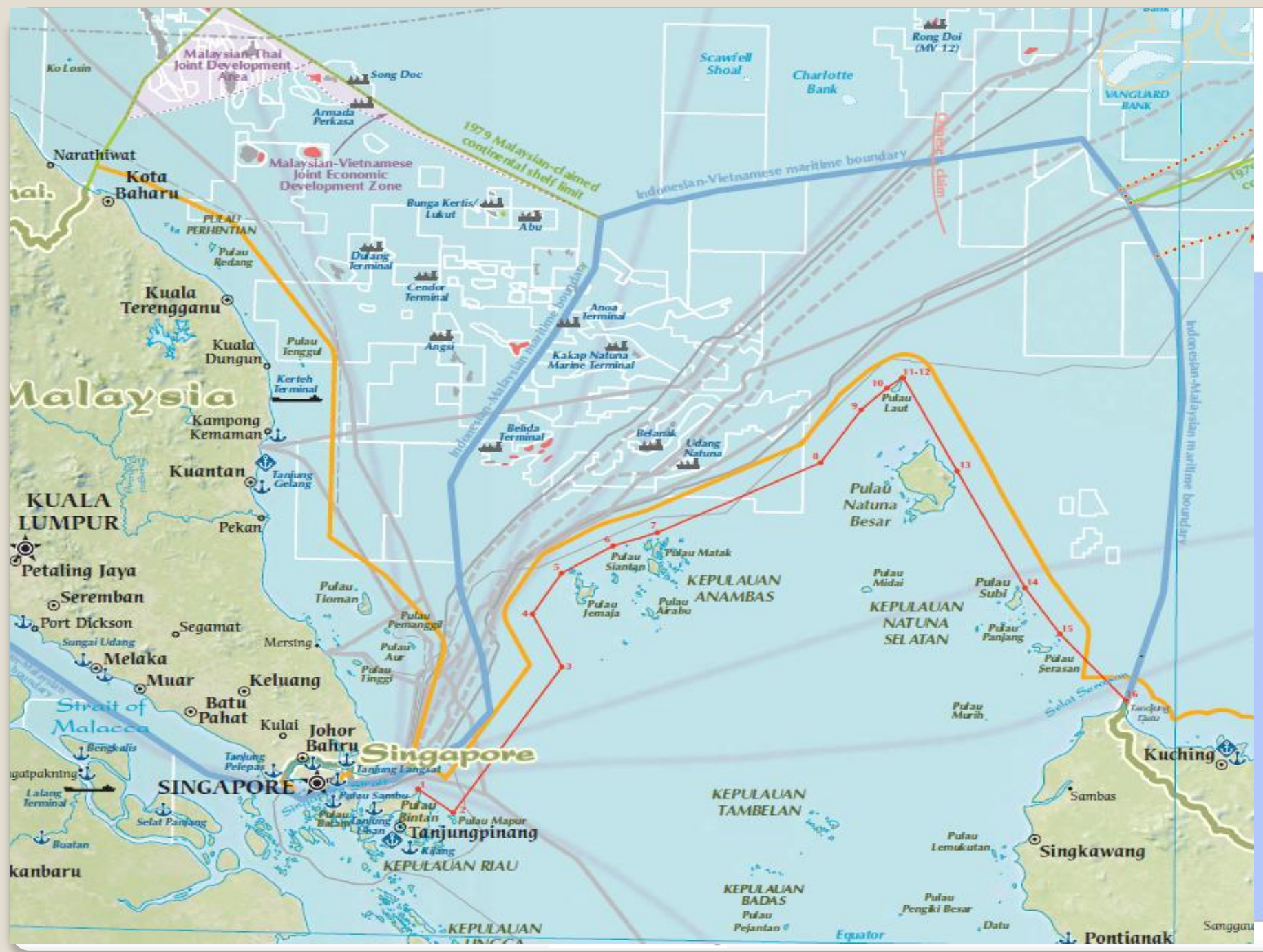




# Which State has Jurisdiction?



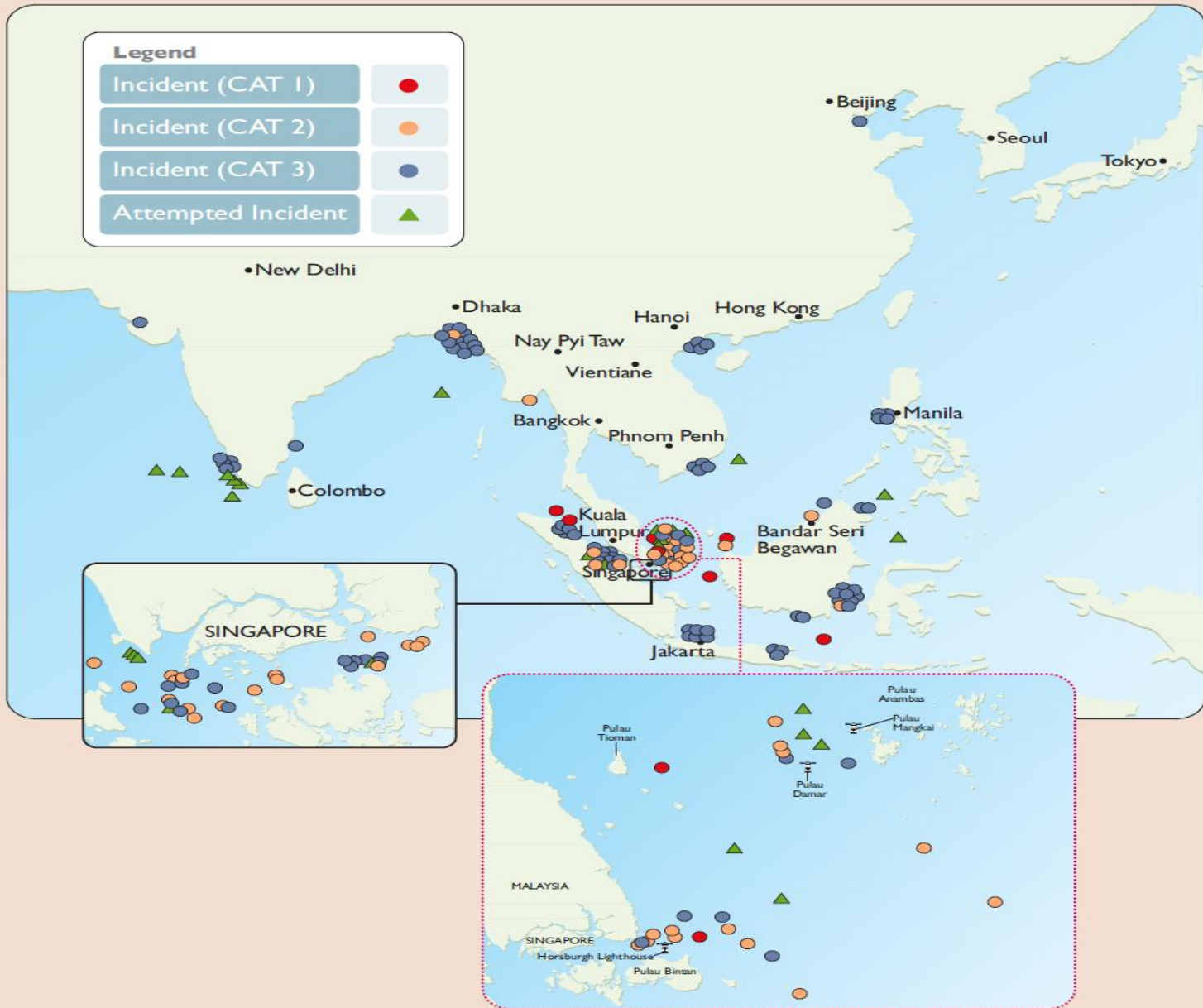




# Attacks in SE Asia

- Several ships have been boarded in the EEZ of Indonesia, off the Anambas islands
- These attacks would be piracy under IL, and the warship of any State could arrest the pirates
- However, the national laws on piracy in many States in SE Asia are not consistent with 1982 UNCLOS so there may be problems prosecuting arrested pirates
- Also, reporting organizations like ReCAAP do not identify such attacks as “piracy”
- Reports also do not identify which State has jurisdiction over the offence – maps show no territorial boundaries

Map 1: Location of Incidents (2011)



## Part 2

**1988 SUA Convention can help  
combat piracy and armed  
robbery against ships**



# 1988 SUA Convention

- **1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (1988 SUA)**
- **156 States parties as of 31 Dec 2009**
- **Key States in East and Southeast Asia that are not parties – Indonesia, Malaysia and Thailand**



## Obligations of State Parties

- 1) Make offences in the Convention crimes under its national law
- 2) Establish jurisdiction over offender if offence within territory, if flag state, if offender is its national, or if offender is present in territory
- 3) If alleged offenders are present in territory, (a) take them into custody; and (b) either prosecute them or extradite them
- 4) Provide greatest measure of assistance in connection with criminal proceedings

# Offences under 1988 SUA

Offence under 1988 SUA to:

1. **Seize or exercise control over a ship by force or threat thereof or any form of intimidation**
2. **Perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship**

# How SUA Convention applies

- Hijacking of vessels off Somalia are offences under 1988 SUA because the seizure of a ship by force is an offence
- It is an offence under 1988 SUA even if it took place in the territorial sea of another State
- If took place on high seas or in EEZ it might be both Piracy and a SUA offence

# Arrest & Prosecution

- No authority under 1988 SUA Hostage to board ships & seize offenders
- The conventions apply only when the alleged offenders are present in the territory [or territorial sea] of a State Party
- Once alleged offenders are present in the territory of a State Party, it is under an obligation to take them into custody, and to either (1) prosecute them or (2) extradite them

# Arrest & Prosecution

- Under 1988 SUA the master of a ship may deliver to any other State Party “any persons who he believes have committed a SUA offence”
- Therefore, if Kenya is a party to 1988 SUA, warships who seize pirates in the territorial sea or EEZ of Somalia can deliver them to Kenya for prosecution and trial

# Problems in SE Asia

- Many States have not updated their piracy legislation to make certain that their national laws on piracy are consistent with UNCLOS
- SUA Convention cannot be effective in SE Asia or any region unless all the States in the region become parties and adopt the necessary national laws to implement it

# Conclusions

- 1. Most attacks are armed robbery against ships - under the enforcement jurisdiction of coastal State**
- 2. The more serious attacks (such as hijacking) are offences under 1988 SUA**
- 3. Some attacks on ships in the EEZ & on the high seas are “piracy” under 1982 UNCLOS**
- 4. UNCLOS & 1988 SUA provide a legal framework for a cooperation in the region**
- 5. Keys: RATIFICATION & EFFECTIVE IMPLEMENTATION**

# The End

**Thanks for your attention**

**Any questions ?**

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