

**ReCAAP Capacity-Building Executive Programme
2019, 8-13 September 2019, Singapore**

Thursday 12 September 2019, 9.00-10.30

Piracy and Robbery at Sea under UNCLOS and UN Terrorism Conventions

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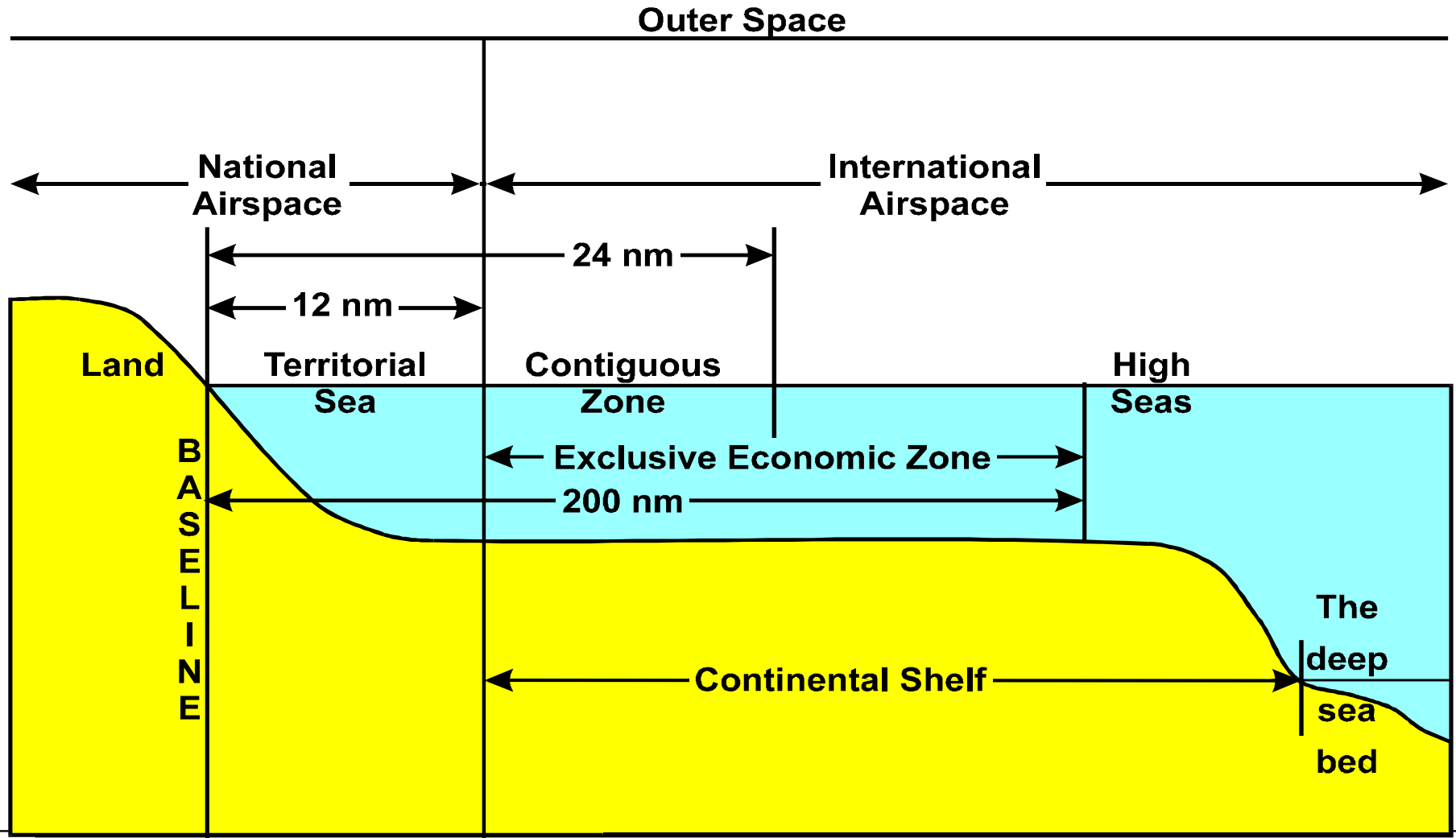
Part 1.

Piracy and Robbery at Sea under 1982 UNCLOS

Importance of UNCLOS

- 1982 UNCLOS establishes a legal framework governing the activities of States in the oceans
- It has been universally accepted, with 168 parties including the EU
- All States in Asia are parties except Cambodia, DPR Korea and Iran
- USA is not a party - but it accepts and follows its provisions

LEGAL REGIMES OF THE OCEANS AND AIRSPACE



96-CD603

Clive Schofield, Maritime Zones & Jurisdiction

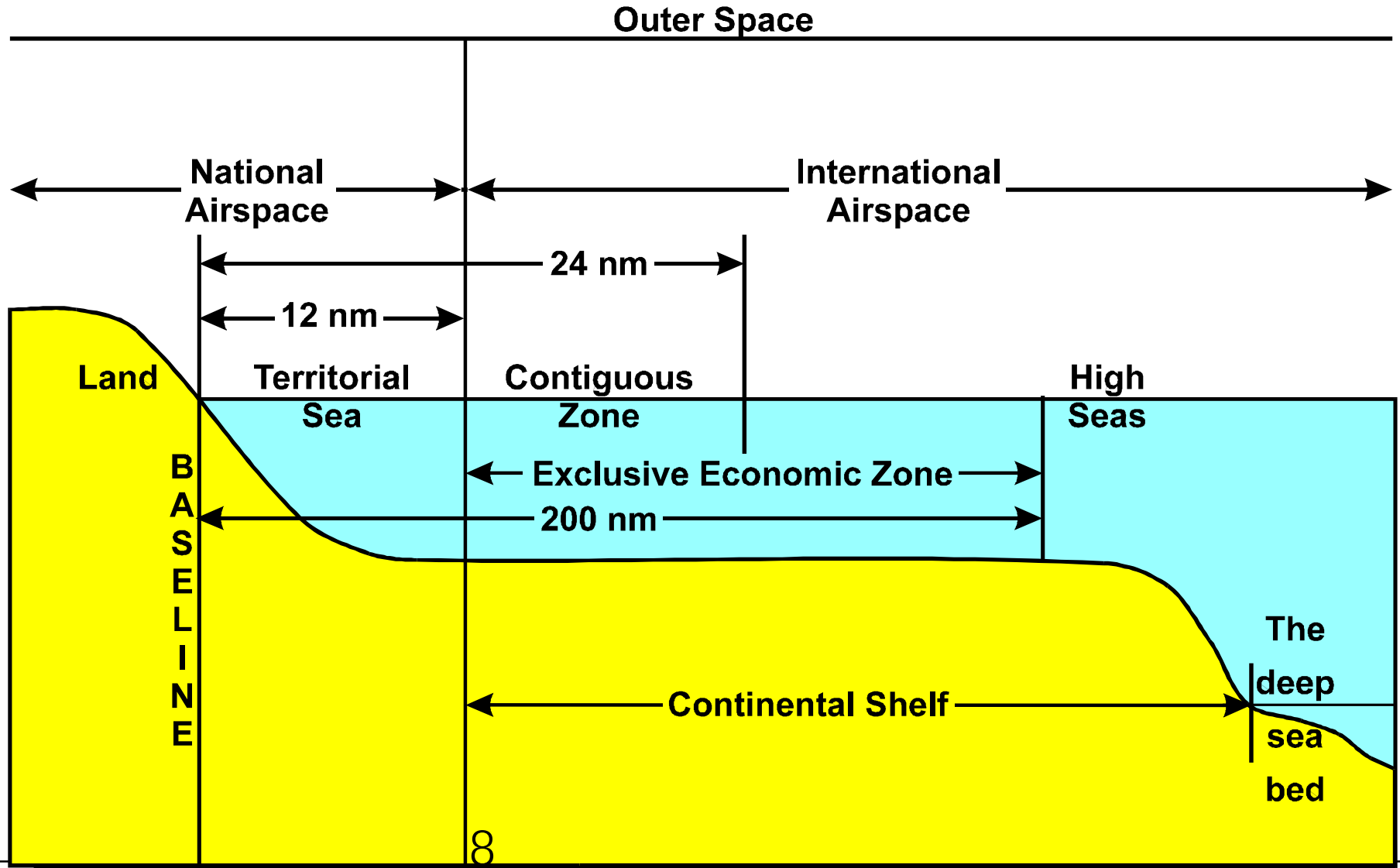
Enforcement Jurisdiction over Crimes against Ships in Zones under Sovereignty

- Coastal States have sovereignty over their land territory, ports, lakes and internal waters, territorial sea and archipelagic waters
- The criminal law of the Coastal State applies to crimes committed against all ships and against persons and property on ships in maritime zones subject to its sovereignty
- Coastal States have the exclusive right to exercise enforcement power in maritime zones subject to their sovereignty

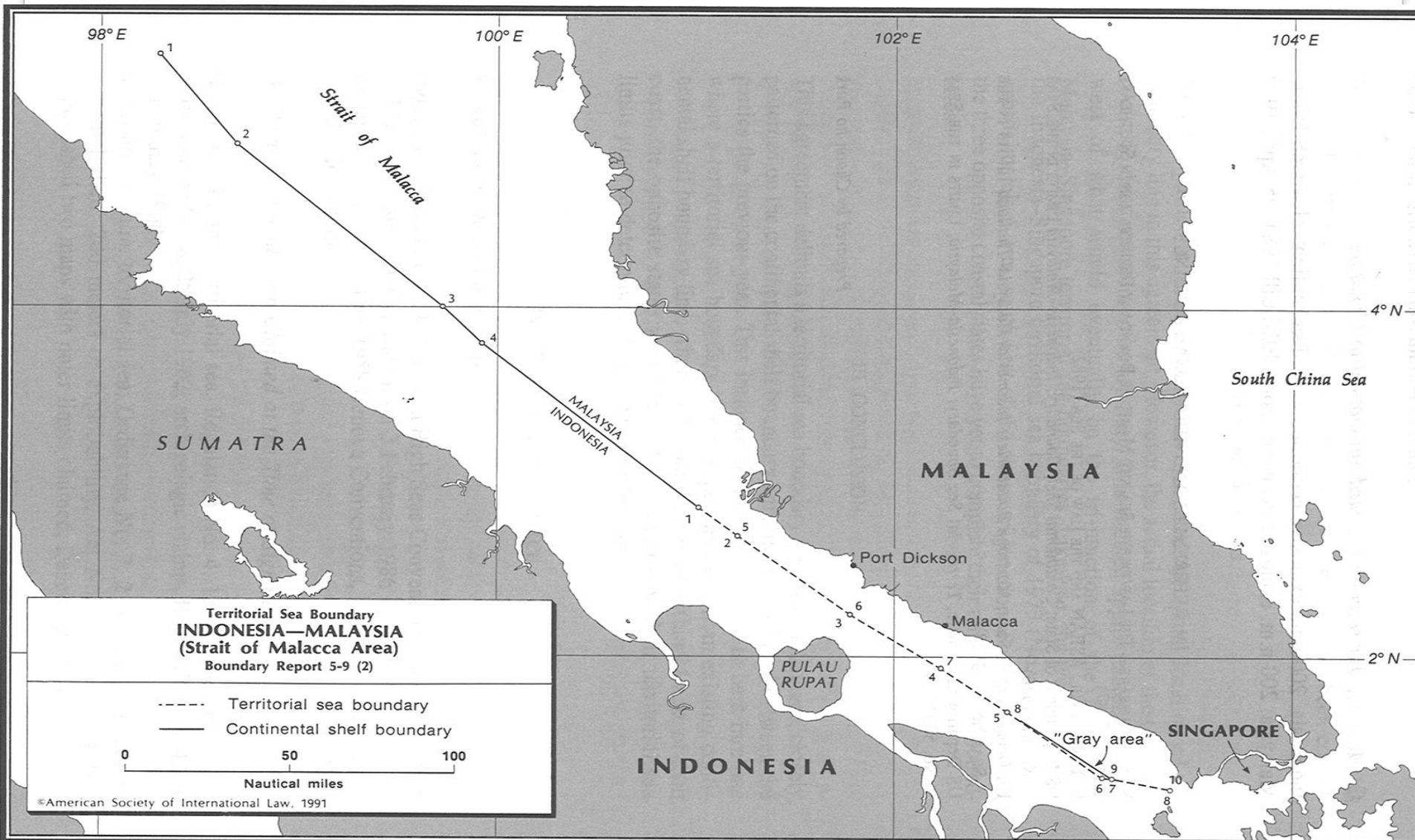
Enforcement Jurisdiction over Crimes against Ships on High Seas & in EEZ

- Ships on the high seas are subject to the **exclusive jurisdiction of the flag State**
- Crimes against ships on the high seas are also subject to the exclusive jurisdiction of the flag State except for PIRACY
- UNCLOS provides that for the offence of piracy as defined in Article 101, every State may seize a pirate ship and arrest the pirates
- The provision for the seizure of pirate ships also applies in the EEZ – it applies anywhere seaward of the outer limit of the territorial sea of any State

LEGAL REGIMES OF THE OCEANS AND AIRSPACE



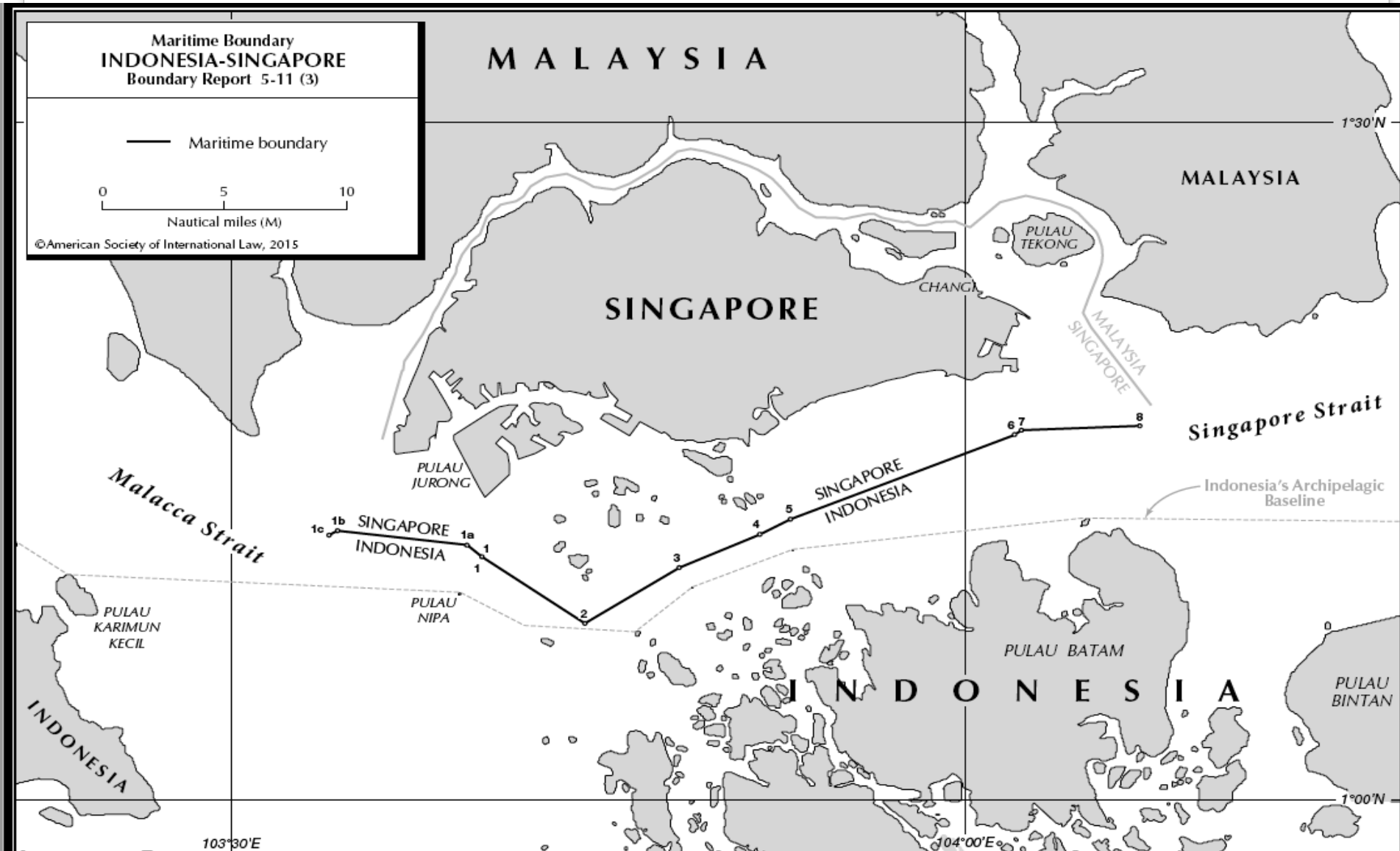
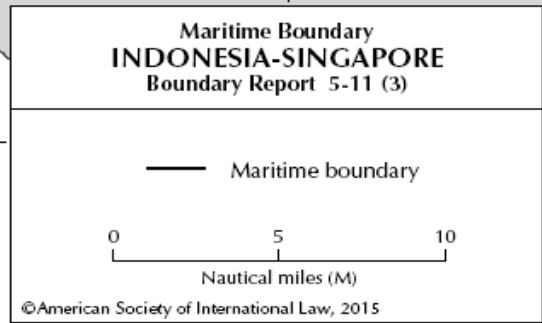
1970 Indonesia-Malaysia Boundaries on Territorial Sea & Continental Shelf

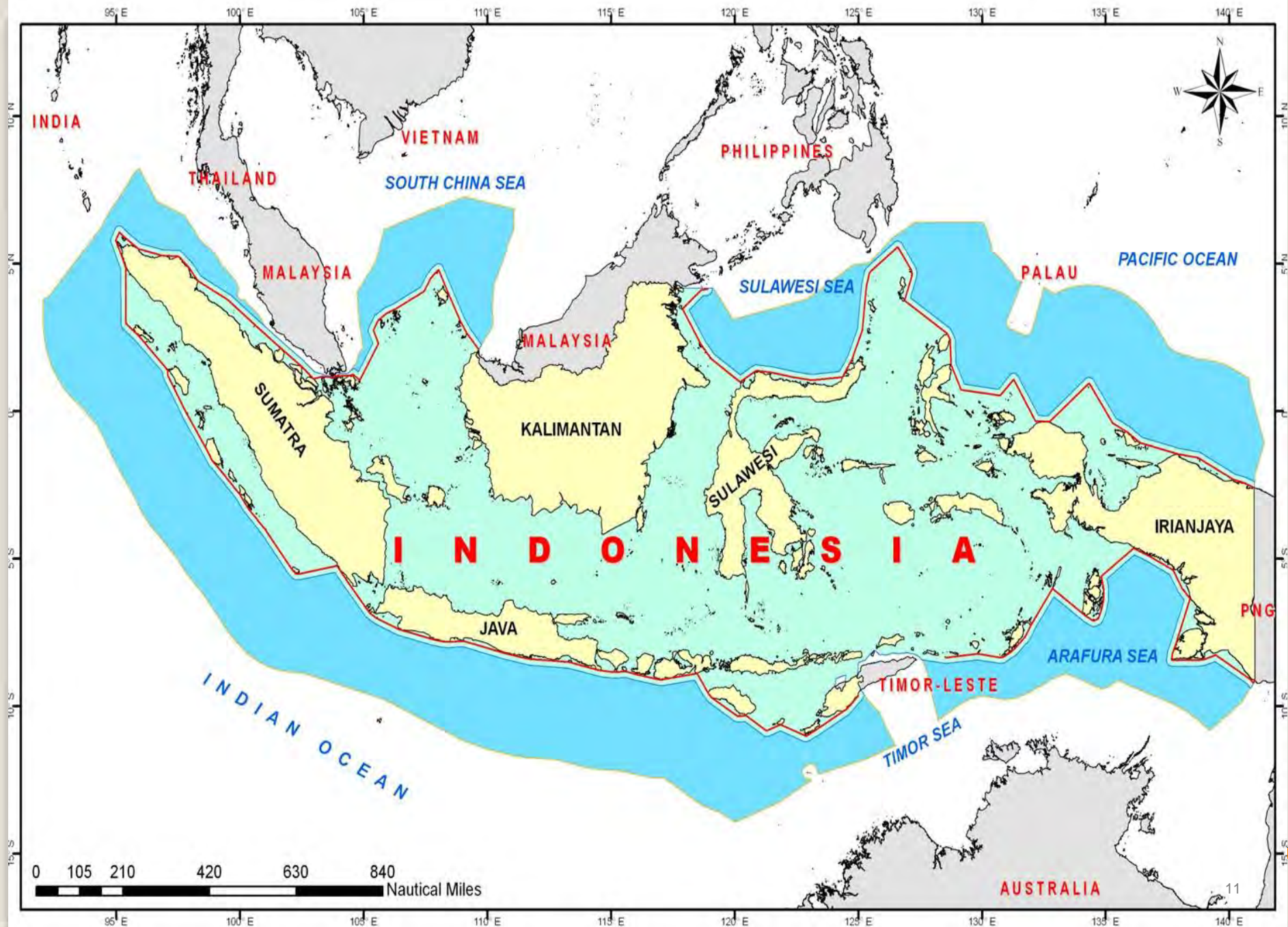


Indonesia-Singapore Territorial Sea Boundary

CIL

CENTRE FOR INTERNATIONAL LAW
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PIRACY: Article 101 of UNCLOS

1. **PIRACY** means any of the following acts:
 - (a) any **illegal act of violence or detention**, or any act of depredation,
committed **for private ends**
by the **crew or the passengers of a private ship** or a private aircraft, and directed:
 - (i) **on the high seas***, against **another ship**,
or against persons or property on board such ship;
 - (ii) against a ship, persons or property in a place outside the jurisdiction of any State;

* Article 58 provides that Article 101 also applies in the EEZ

Part 2.

Armed Robbery Against Ships (ARAS)

UNCLOS and Armed Robbery Against Ships

- UNCLOS has no provisions on **armed robbery against ships**
- The concept was developed to address attacks on ships in waters subject to the sovereignty of coastal States
- Concept is consistent with principles of jurisdiction set out in UNCLOS and general international law

Armed Robbery Against Ships

ReCAAP Agreement

2. “Armed robbery against ships” means any of the following acts:
- (a) any illegal act of violence or detention, or any act of depredation, or threat thereof, other than an act of “piracy”, committed for private ends and directed against a ship, or against persons or property on board such ship, within a State’s internal waters, archipelagic waters and territorial sea;
 - (b) any act of inciting or of intentionally facilitating an act described above.

Jurisdiction over Armed Robbery Against Ships

- The exact crime for “armed robbery against ships” will depend upon the criminal law or penal code of each State
- The State or States with jurisdiction over the crime of ARAS will depend upon international law and national laws :
 - The criminal laws of most States apply to acts committed in **waters subject to their sovereignty**, even if committed by foreign nationals against a foreign ship
 - The criminal laws of some States also apply to **crimes committed by their nationals** in areas under the sovereignty of another State
 - The laws of most States provide that they have the power to arrest persons in waters subject to their sovereignty if those persons have committed crimes in their waters

Cooperation, Extradition and Mutual Legal Assistance

- ReCAAP Agreement has provisions on cooperation, extradition and mutual legal assistance
- The provisions on cooperation could be serve as the basis for serious cooperation to address the problems of piracy and ARAS in the region
- The provisions on Extradition and Mutual Legal Assistance could also be effective even though they are framed as in softer language than similar international agreements.
 - “A Contracting Party shall, subject to its national laws and regulations, endeavor to . . .

Part 3.

UN Terrorism Conventions

- The UN Office of Counter-Terrorism states that since 1963, the international community has elaborated 19 international instruments to prevent terrorist acts
- This label is misleading because the majority of the 19 instruments do not require a “terrorist motive”
 - The offence need not be committed for a political purpose
 - The offence need not be committed to create a sense of terror in the population
 - The offence need not be committed to demand that a government or person do or refrain from doing a particular act

Common Provisions in UN Terrorism Conventions

1. Defines specific criminal offence
2. States Parties must make offence punishable by serious penalties
3. Parties must establish jurisdiction over the offence if committed by their national, in their territory, on ship flying their flag, etc.
4. Parties must establish jurisdiction over the offence if offender present in their territory
5. If alleged offender is present in territory, must take into custody
6. If alleged offender present in territory, must Prosecute or Extradite
7. Convention can be used as the basis for Extradition if no extradition treaty
8. Provides for mutual legal assistance in prosecuting offender

Jurisdiction Under Terrorism Conventions

- The conventions do not create a new exception to the principle that ships are subject to the exclusive jurisdiction of the flag State on the high seas or in the EEZ
- Enforcement mechanisms in the conventions:
 1. Jurisdiction based on **presence of offender in territory** – creates “quasi- universal jurisdiction” among States Parties
 2. Obligation on State in which offenders are present to arrest the offenders and either extradite or prosecute them

UN Counter Terrorism Conventions

Common Features

1. All have the same common provisions
2. Only distinction is that each covers a different specific “offence”
3. Although they are classified as “counter-terrorism conventions”, the offences they cover do not require that they were committed with a terrorist motive

Part 4.

1988 SUA Convention

Historical Background – *Achille Lauro* Incident

- On 7 Oct 1985, an Italian passenger ship, the *Achille Lauro* was hijacked by 4 men from the Palestine Liberation Front in the Mediterranean Sea, off the coast of Egypt
- The hijackers had boarded the ship as passengers
- The incident provoked an international debate on whether the hijacking was an act of “piracy” given that only one ship was involved
- Gave rise to decision to draft a new Convention
- Convention adopted in 1988 as an IMO Convention

1) Define the Offence

Article 3

- Any person commits an offence if that person unlawfully and intentionally:
 - 1) **seizes or exercises control** over a ship by force or threat thereof or any other form of intimidation; or
 - 2) performs an **act of violence against a person on board a ship** if that act is *likely to endanger the safe navigation of that ship*; or
 - 3) **destroys a ship or causes damage to a ship or to its cargo** which is *likely to endanger the safe navigation of that ship*; or

2) Create Serious Penalties

Article 5

- Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

3) Establish Jurisdiction if a Link to the Offence

Article 6

1. Each State Party shall take such measures as may be necessary to **establish its jurisdiction** over the offences set forth in article 3 when the offence is committed:
 - against or on board a ship flying the flag of the State at the time the offence is committed; or
 - in the territory of that State, including its territorial sea; or
 - by a national of that State.

4) Establish Jurisdiction if Present in Territory

Article 6.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is **present in its territory** and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5) Take Into Custody

Article 7

- Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, **take him into custody** or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted

6) Extradite or Prosecute

Article 10

- The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies,
if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory,
to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.
- Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

7) Convention as Basis for Extradition

Article 11

- 2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3.

8) Mutual Legal Assistance

Article 12

- State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

Part 4.

UN Terrorism Conventions and Int'l Maritime Crimes

UN Terrorism Conventions on Maritime Crimes

1. 1979 International Convention against the Taking of Hostages
2. 1988 SUA Convention
3. 1988 SUA Protocol on Fixed Platforms
4. 1999 International Convention for the Suppression of the Financing of Terrorism
5. 2005 SUA Protocol
6. 2005 SUA Protocol on Fixed Platforms

1979 Hostages Convention, Art 1

- Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

1988 SUA Convention, Art 3

1. Any person commits an offence if that person unlawfully and intentionally:
- (a) **seizes or exercises control over a ship** by force or threat thereof or any other form of intimidation; or
 - (b) **performs an act of violence against a person on board a ship** if that act is likely to endanger the safe navigation of that ship; or
 - (c) **destroys a ship or causes damage to a ship** or to its cargo which is likely to endanger the safe navigation of that ship;
...
 - (g) **injures or kills any person**, in connection with the commission or the attempted commission of any of the offences set forth in paragraphs (a) to (f)

1988 SUA Platforms Protocol, Art 2

Any person commits an offence if that person unlawfully and intentionally:

- (a) seizes or exercises control over a **fixed platform** by force or threat thereof or any other form of intimidation; or
- (b) performs an act of violence against a person on board a **fixed platform** if that act is likely to endanger its safety; or
- (c) destroys a **fixed platform** or causes damage to **it** which is likely to endanger its safety;
- (e) **injures or kills any person**, in connection with the commission or the attempted commission of any of the offences set forth in paragraphs (a) to (d)

1999 Convention for the Suppression of the Financing of Terrorism, Art 2

- 1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, **provides or collects funds** with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
 - (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;
- **Note: The Annex lists all of the UN Counter-Terrorism Conventions, including 1988 SUA and 1979 Hostages**

Status of the 3 Conventions

- **1979 Hostages:**
 - 176 Parties
 - all ReCAPP Parties
 - all ASEAN Member States except Indonesia
- **1988 SUA:**
 - 166 Parties
 - all ReCAPP Parties
 - all ASEAN Member States except Indonesia, Malaysia & Thailand
- **1999 Financing:**
 - 189 Parties
 - all ReCAAP parties
 - all ASEAN Member States

Hypothetical Problem 1

1. Four Philippine nationals hijack a Chinese Flag Vessel in Malaysia's territorial sea and take 3 Indonesian crew members hostage
2. Hostages taken by "pirates" to island in southern Philippines and ransom payment demanded
3. Vessel and remaining crew released after ransom paid; Chinese & Philippine authorities identify the "pirates" from pictures taken by a hidden camera on the hijacked vessel
4. Two of "pirates" fly to Singapore to gamble at MBS
5. Singapore authorities identify the two "pirates" at immigration at Changi Airport
 - Acts of "pirates" are crimes under both the 1988 SUA and 1979 Hostages Conventions
 - Which States have jurisdiction to prosecute the "pirates"?
 - What are Singapore's legal obligations and options?

Hypothetical Problem 2

- 5 Indonesian nationals board and take control by force of a product tanker flying a Singapore flag in Malaysia's territorial sea; they take the tanker to a place off a remote island and begin to transfer the bunker oil to a third ship. A passing ship alerts the MMEA and they respond and arrest the pirates .

Question 1: Which States have jurisdiction to try the “pirates”?

- Under questioning the “pirates” produce evidence that they were paid to hijack the tanker and steal the fuel by two businessmen in Singapore – one is a Singaporean and the other is an Indonesian; the pirates provide evidence with email messages, etc.

Question 2: Can Singapore arrest and prosecute the two businessmen for financing terrorism?

Conclusions on UN Counter-Terrorism Conventions

1. No new grounds for interdicting ships at sea
2. They establish “quasi-universal jurisdiction” among States Parties conditioned on **presence of the offender in territory**
3. If offenders **present in territory** of party, must take offenders into custody and either prosecute or extradite
4. They can be a very effective tool against both piracy and armed robbery against ships
5. But cannot be effective unless all of the States in the region become Parties to them and effectively implement and enforce them

Part 6.

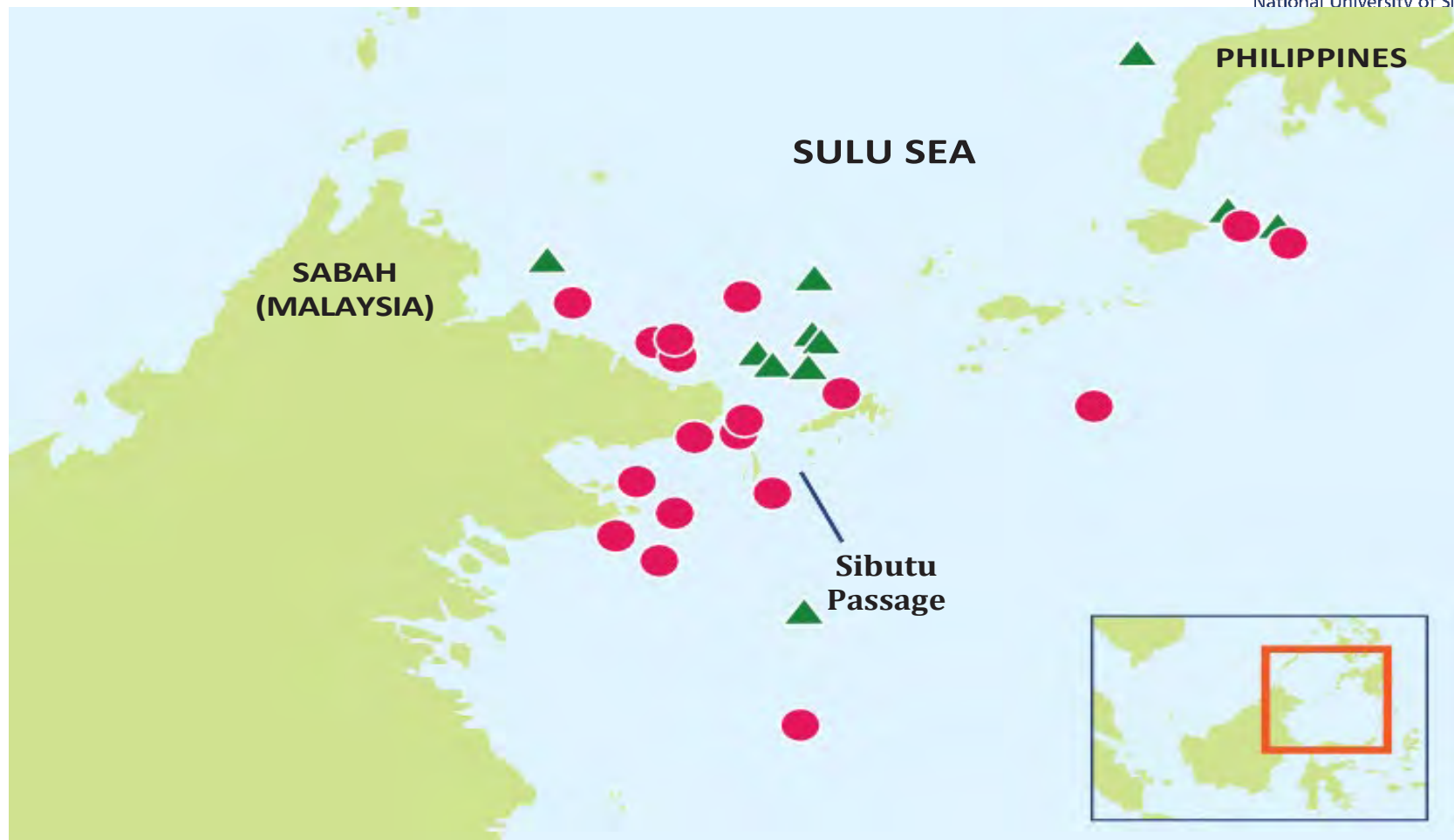
UN Terrorism Conventions and Int'l Maritime Crimes in SE Asia

ReCAAP Methodology in classifying incidents

A. Violence Factor. This factor refers to the intensity of violence in an incident, and the three indicators used to determine this are:

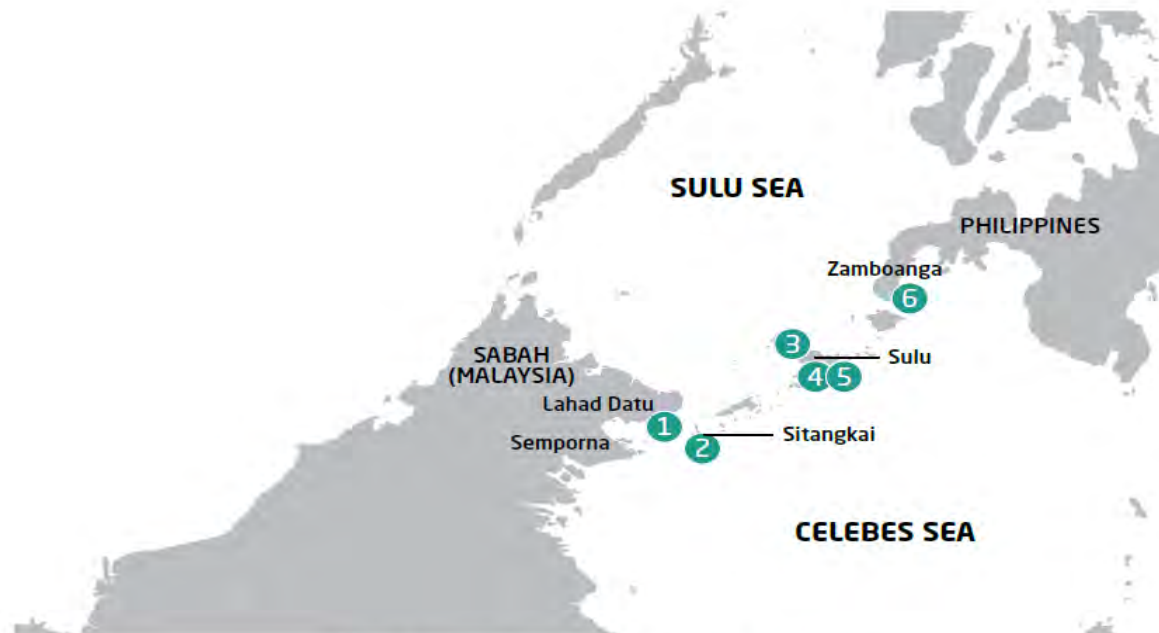
- (1) Type of weapons used
- (2) Treatment of the crew
- (3) Number of pirates/robbers engaged in an attack.

B. Economic Factor. This factor takes into consideration the type of the property taken from the ship.



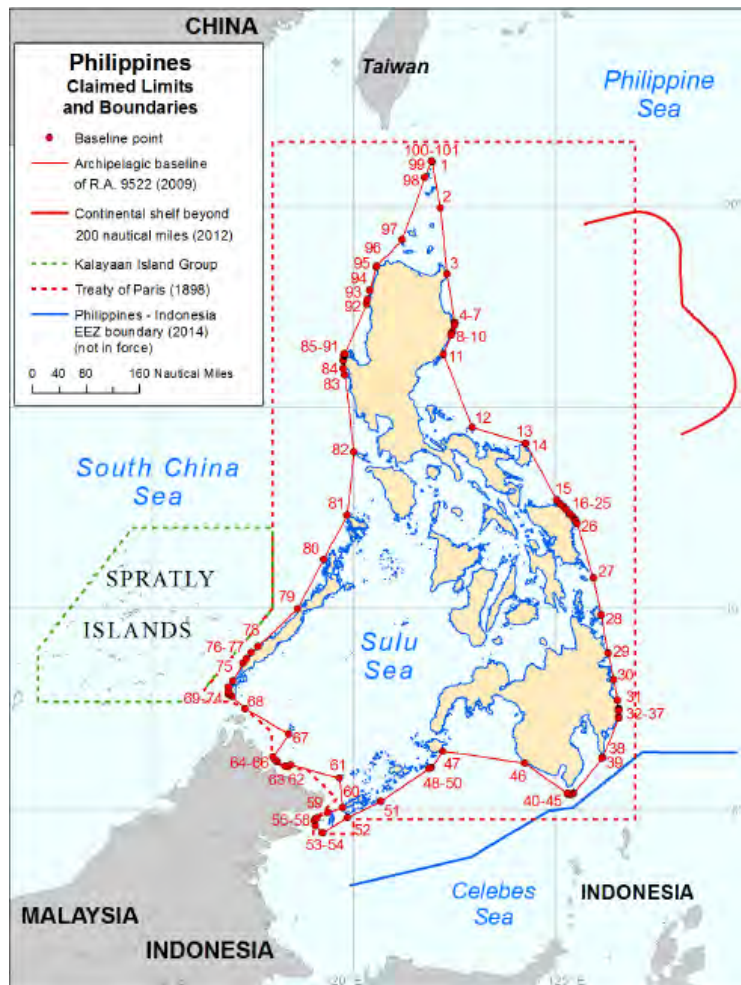
Hostage-Taking

ReCapp Half Yearly Report 2019



Map 2 - Locations of the abducted crew

- | | | |
|---|--|--|
| 1 18 Jun 0245 hrs
Boarding by ASG | 2 18 Jun 0330 hrs
Sight of ASG and
abducted crew | 3 21 Jun 2200 hrs
Abducted crew released |
| 4 22 Jun 0700 hrs
Abducted crew
debriefed and
medical check up | 5 24 Jun 1538 hrs
Abducted crew
departed for
Zamboanga city | 6 25 Jun 0900 hrs
Joint debrief by
Philippines authorities |

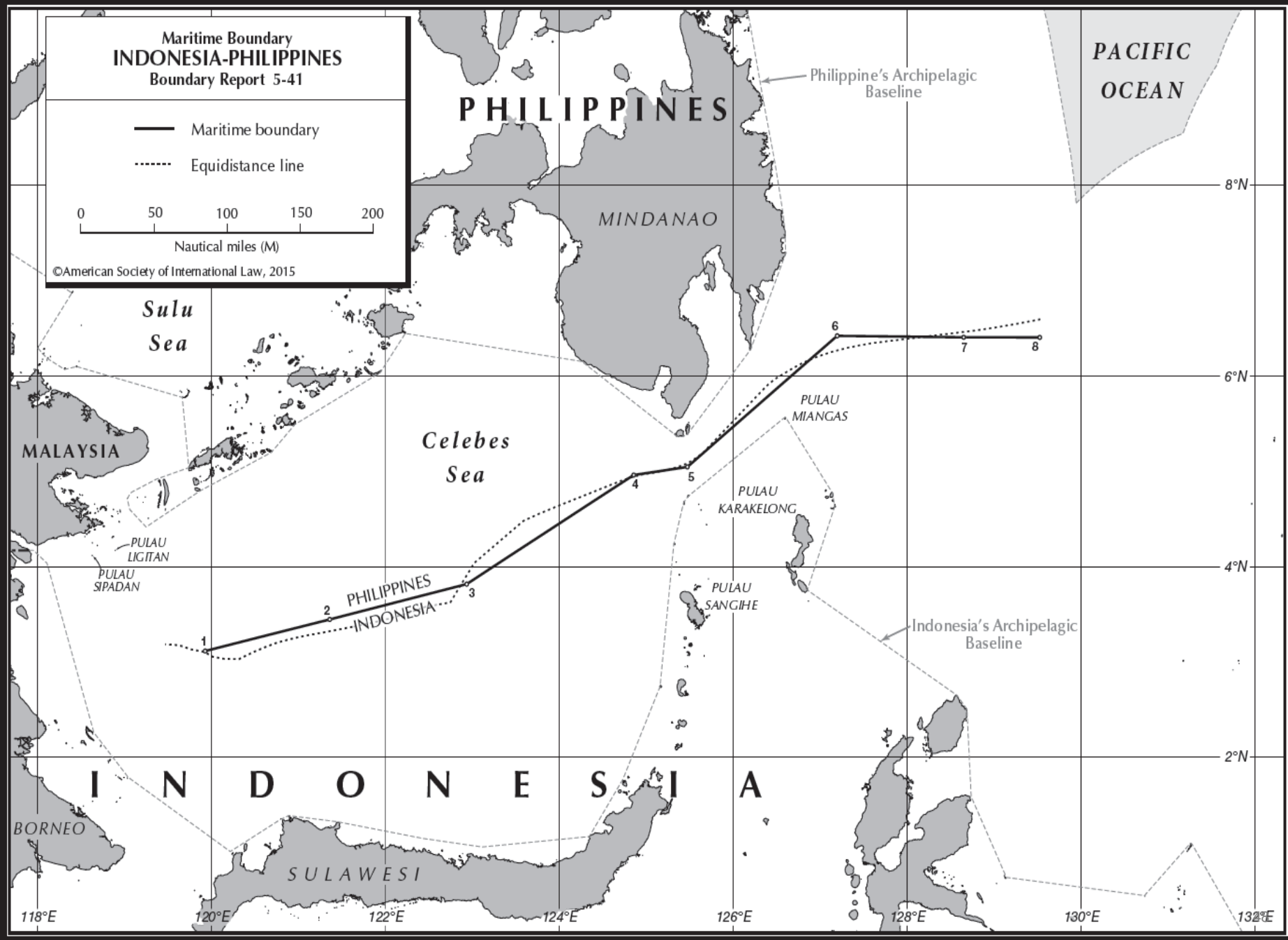


Maritime Boundary
INDONESIA-PHILIPPINES
Boundary Report 5-41

- Maritime boundary
- - - Equidistance line

0 50 100 150 200
Nautical miles (M)

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1988 SUA Offences

1. If all States in sub-region were parties, classifying offences as SUA offences would make it easier to combat ARAS
2. In areas where territorial sea boundaries are not defined, it would be an offence even if it were not clear in whose waters the offence took place
3. In many cases, 2 or 3 of the States in the sub-region would have jurisdiction
4. Perpetrators could be arrested based on presence of offender in territory – arresting State has duty to extradite or prosecute

ReCAAP Categories of Incidents

Category	Description
● CAT 1	CAT 1 incidents involved large number of perpetrators; more than 9 men in four out every 10 incidents and 4-9 men in the other six incidents. The perpetrators were mostly armed with guns and knives, and the crew is likely to suffer some form of injury or physical violence such as being assaulted or tied up or threatened. In term of losses, the ship was either hijacked or the cargo on board was stolen, for example siphoning of cargo oil.
● CAT 2	Majority of CAT 2 incidents involved 4-9 men who are likely to be armed with knives/machetes and in 1/4 of the incidents, armed with guns. The crew is likely to be threatened or held hostage temporarily to allow the perpetrators to steal the crew's cash and ship's property including engine spares. In a few cases, the crew suffered some form of injury or physical violence but less severe in nature compared to CAT 1 incidents.

ReCAAP Categories of Incidents

● CAT 3

The number of perpetrators involved in CAT 3 incidents usually involved groups of between 1-6 men. At times, the perpetrators were armed with knives/machetes/others or other items such as sticks, rods, bats etc. The crew was not harmed, although there remains a small possibility that the crew could be subject to duress during the incident but not harmed physically. In almost half of the CAT 3 incidents, the perpetrators were unable to steal anything from the vessel, but in cases where losses were reported, stores and engine spares were the commonly targeted items.

● CAT 4

The perpetrators were not armed and the crew not harmed. More than half of CAT 4 incidents involved 1-3 men who escaped empty-handed upon sighted by the crew.

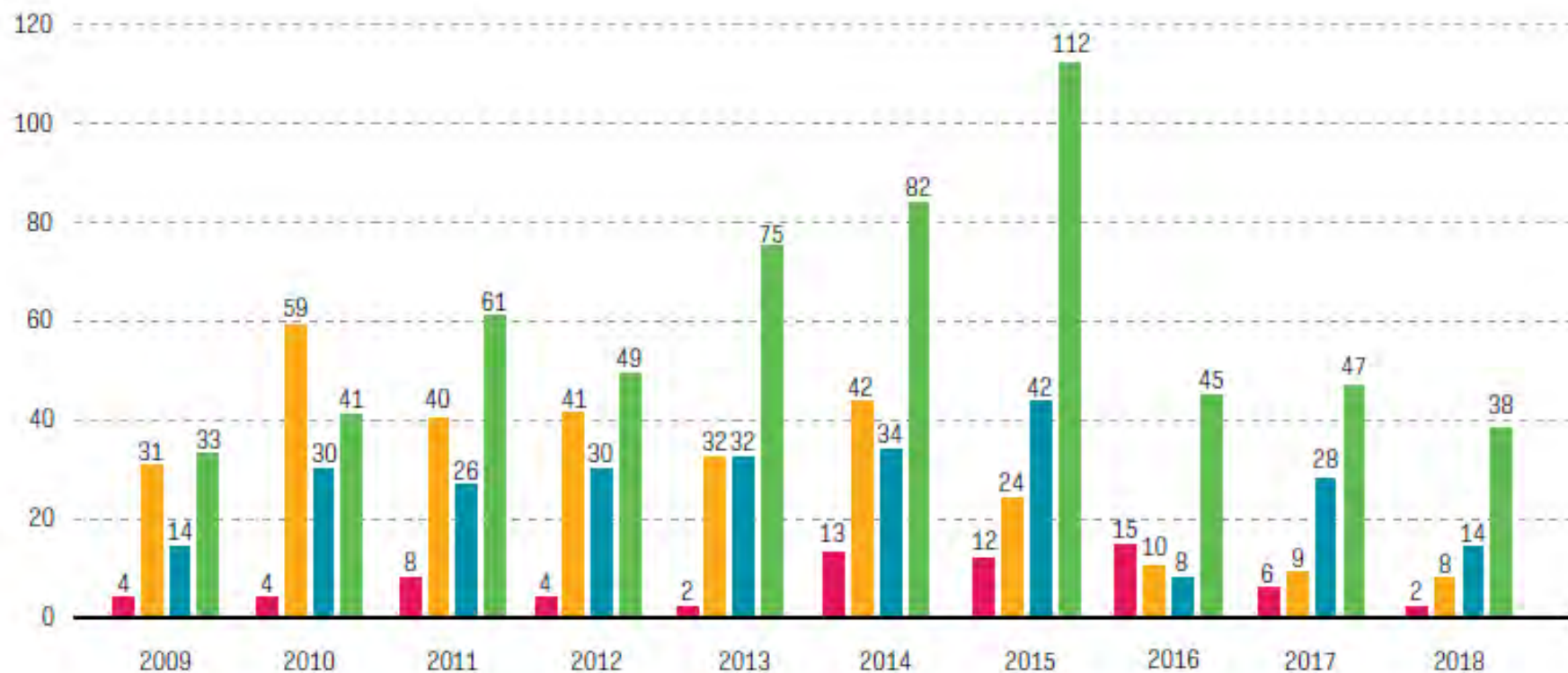


Chart 2 - Significance level of Incidents (2009-2018)

● CAT 1 ● CAT 2 ● CAT 3 ● CAT 4

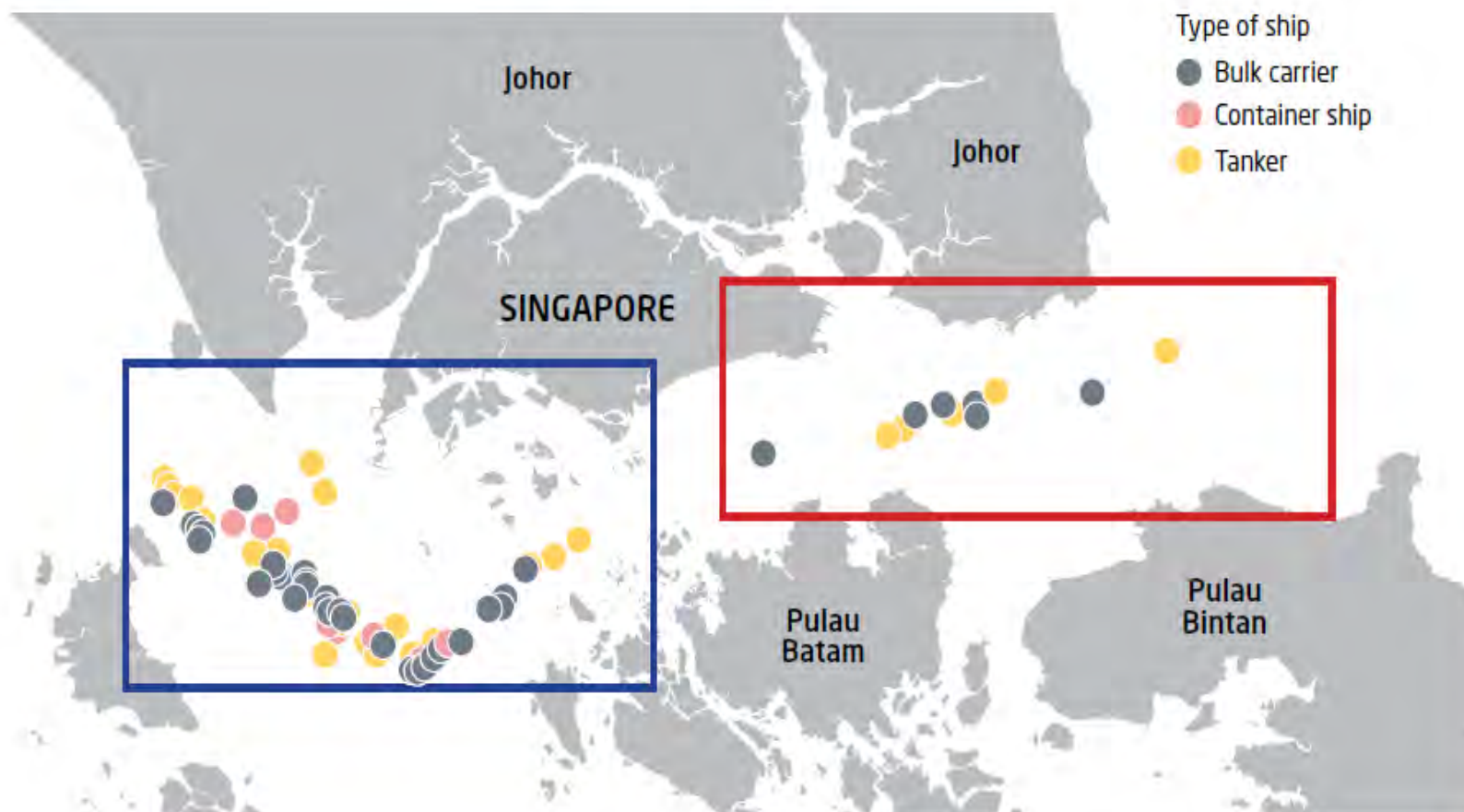
Incident in Kalimantan, Indonesia on 23 May 2019

- Odysseas L, Bulk Carrier Liberia 44180 9597381
- 23/05/2019 3° 43'S, 114° 26.3'E, Taboneo Anchorage, Kalimantan
- While at anchor, seven perpetrators armed with knives, boarded the bulk carrier. The duty watchman raised the alarm and the crew mustered. The perpetrators confronted the crew with their knives and stole ship stores before they escaped.
- The incident was reported to Taboneo Port Control and a patrol boat was dispatched to investigate. All seven perpetrators were later arrested.

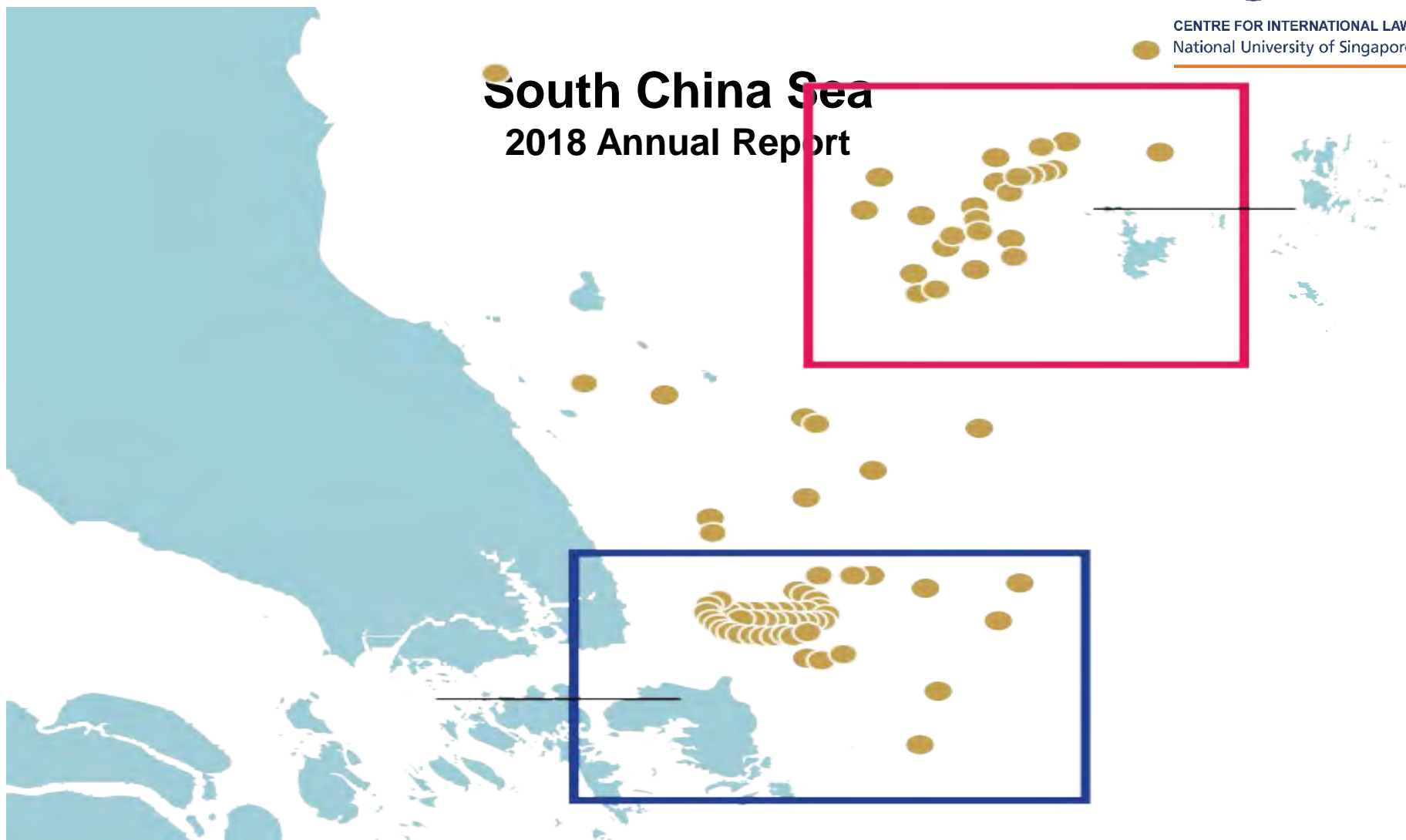
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Article 3

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 - 3) destroys a ship or causes damage to a ship or to its cargo which is *likely to endanger the safe navigation of that ship*; or



South China Sea 2018 Annual Report



Incident off Sabah, Malaysia

18 June 2019

- Two Fishing Boats from Malaysia
- 18/06/10, 02:45, 5° 2'N, 119° 4'E (Approximately 2 nm off Felda Lahad Datu, Sabah, Malaysia in Sulu-Celebes Seas)
- About 10 men armed with high powered firearms, believed to be members of the Sulu-based Abu Sayyaf Group (ASG) boarded the fishing boats from two speed boats.
- The perpetrators abducted four crew from the first fishing boat and five crew from the second fishing boat.
- The nine abducted crew were sighted in the area of Pondohan, Tabawan, Sitangkai, Tawi-tawi, Philippines at about 0330 hrs on 18 Jun 19.

1979 Hostages Convention

- Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2007 ASEAN Convention on Counter-Terrorism

- **2007 ASEAN Convention on Counter-Terrorism** has been ratified by all ASEAN Member States
- 2007 Convention establishes a framework for ASEAN Member States to cooperate to suppress offences under the UN Terrorism Conventions, including the 1988 SUA and 1979 Hostages Conventions
- Cooperative Framework set out in 2007 ASEAN Convention is more detailed than under the UN Terrorism Conventions

Part 7.

Conclusions & Recommendations

Conclusions

1. Some attacks now categorized as Category 1, Category 2 or Category 3 offences are also offences under 1988 SUA
2. 1988 SUA can be an additional tool in combatting piracy and ARAS in SE Asia
3. Some of incidents in Sulu Sea area are offences under the 1979 Hostages Convention
4. 1988 SUA and 1979 Hostages can be additional tools to combat incidents of hostage-taking in Sulu Sea Area
5. If attacks treated as offences under Terrorism Conventions it lessens the importance of where the attack took place
6. ASEAN has recognized the importance of the UN Terrorism Conventions and has established a cooperative framework

Recommendations

1. ReCAAP should consider the feasibility of categorizing attacks on ships to determine if there are offences under the UN Terrorism Conventions
2. All ASEAN Member States should ratify the 1988 SUA Convention and the 1979 Hostages Convention
3. ASEAN Member States and ReCAAP should study the merits of using the UN Terrorism Conventions and the ASEAN Convention on Counter-Terrorism to combat piracy, ARAS and hostage-taking in the region

**THANKS FOR YOUR
ATTENTION !**

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