

ICPC-CIL Workshop on Submarine Cables
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Session 1.
Spatial and Competing Use Issues for Submarine Cables

Legal Issues under 1982 UNCLOS
and a Possible Solution

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Maritime Zones subject to Sovereignty

- **Coastal States** have sovereignty over their land territory and a 12 nm **territorial sea** adjacent to their coast
- **Archipelagic States** such as Indonesia and the Philippines have sovereignty over the **archipelagic waters** inside baselines connecting the outermost points of their outermost islands and drying reefs
- Coastal States and Archipelagic States have the right to designate the location of cable routes in their territorial sea and archipelagic waters, as well as the location of landing stations in their territory

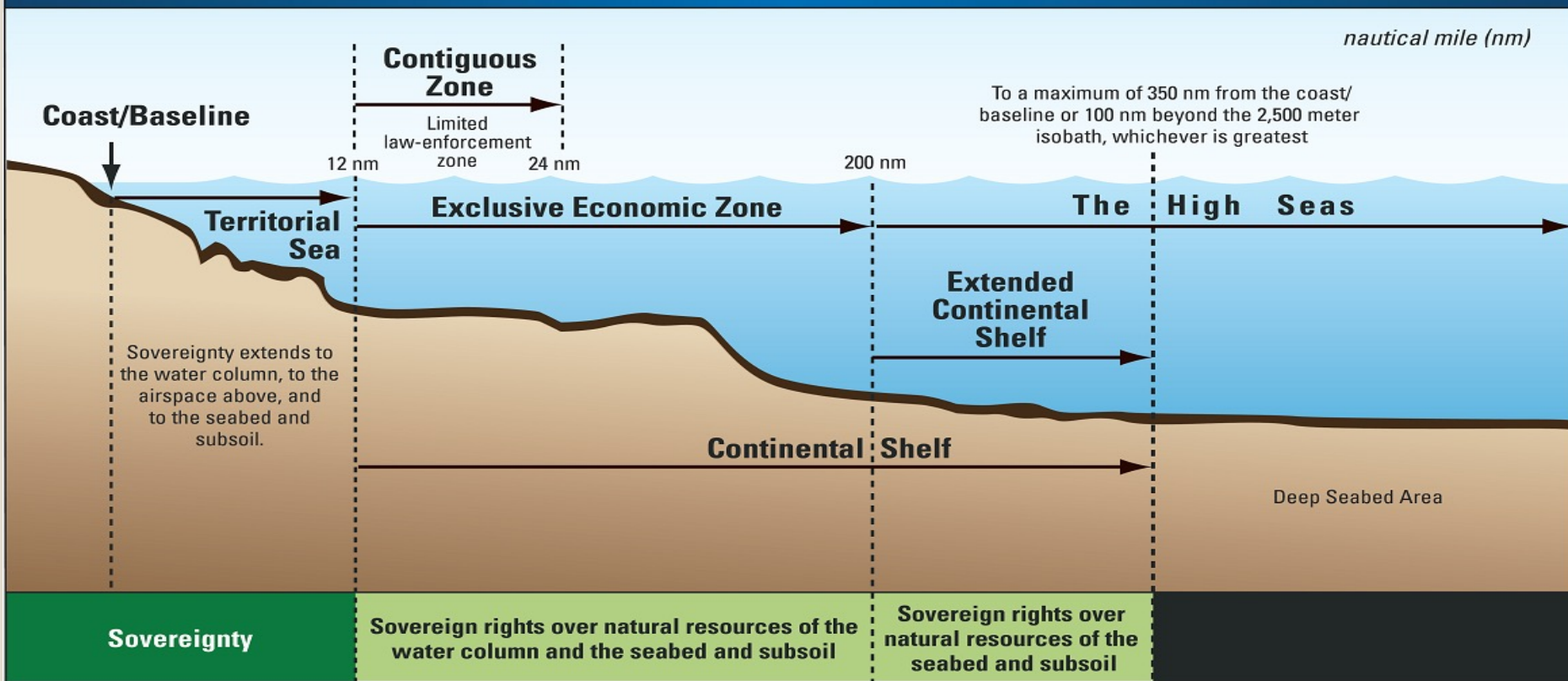
Freedom to Lay Cables under UNCLOS

- Coastal States have a 200 nm **exclusive economic zone (EEZ)** in which they have **sovereign rights and jurisdiction** to explore and exploit the natural resources in the water column and on the seabed
- Coastal States with a wide shelf can claim an **extended continental shelf** beyond 200 nm to the outer edge of the continental margin, where they have sovereign rights to explore and exploit the natural resources on the seabed and subsoil
- **All States** have the **freedom to lay submarine cables** on the high seas, in the exclusive economic zone (EEZ), and on the continental shelf

Cables - EEZ & Continental Shelf

- **Coastal States** have **sovereign rights** to explore and exploit the natural resources in their EEZ and on their continental shelf
- **Coastal States** have **jurisdiction** as provided in the convention
- **All States** have the **freedom to lay submarine cables** on the high seas, in the EEZ and on the continental shelf
- Subject to its right to take reasonable measures for the exploration of the **continental shelf**, the exploitation of its natural resources, . . . the **coastal State** may not impede the laying or maintenance of such cables
- **Coastal States** may prescribe conditions for cables entering its territory or territorial sea

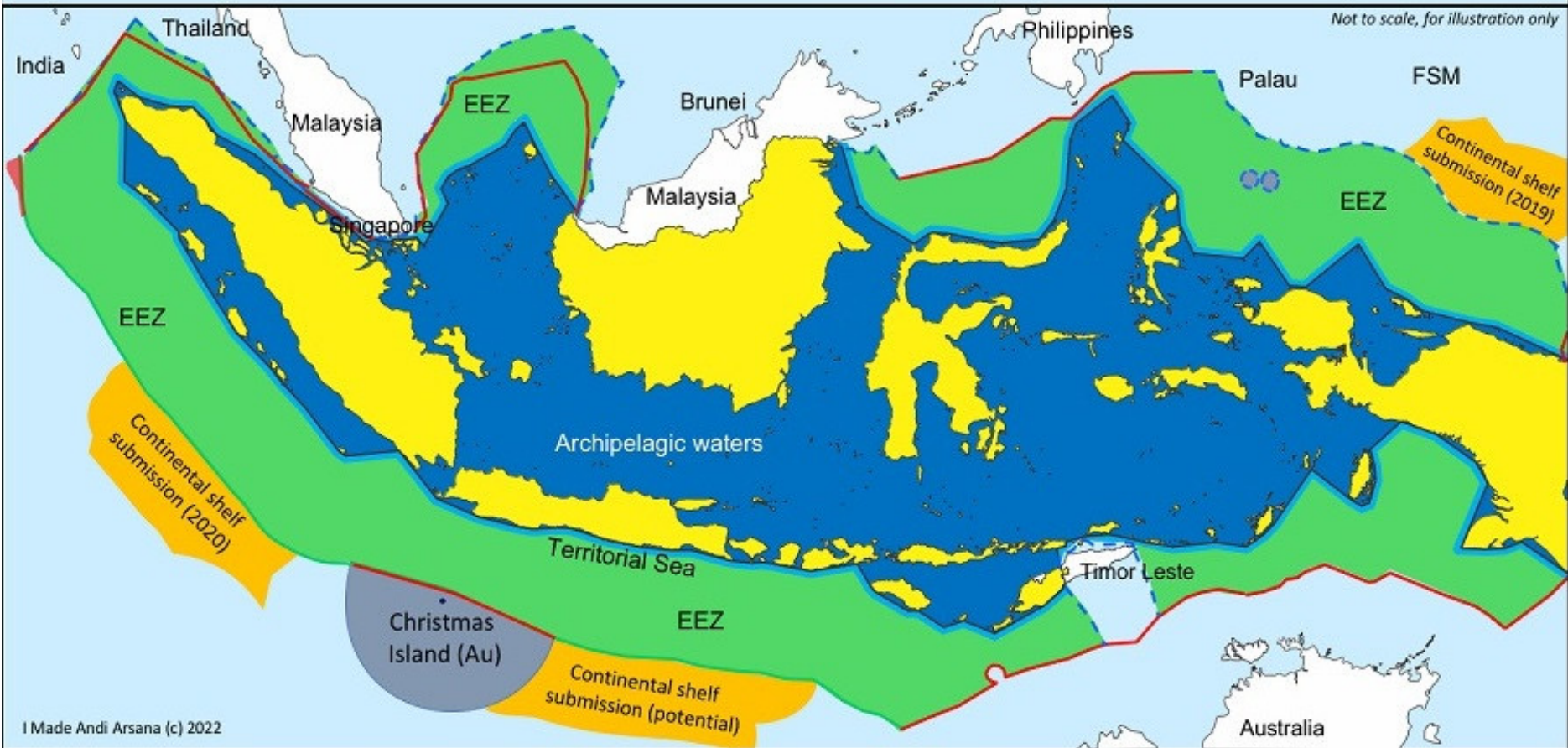
Maritime Zones



EEZ and Continental Shelf

INDONESIA

Not to scale, for illustration only



<https://www.thejakartapost.com/paper/2022/03/22/indonesias-maritime-plans-may-mean-welcoming-new-neighbors.html>

High Seas Freedoms: States vs Companies

- 1982 UNCLOS provides that all **States** have the freedoms of **navigation** and **overflight** and the **freedom to lay submarine cables** on the high seas, in the EEZ and on the continental shelf
- **Ships** and **aircraft** are owned by private companies, but they are registered in a State, and the **State of registration** must ensure that ships or aircraft flying its flag comply with the rules & regulations adopted by a UN specialized agency (IMO or ICAO)
- **Cables** are owned by **private companies** – the cables are not registered in a State that is required to ensure that cables registered in its territory comply with the laws and regulations of a UN specialized agency
- **Conclusion: States** have the right to lay cable under UNCLOS, but in fact cables are laid by **private companies**, not States

Reciprocal “Due Regard” Obligations

- In the EEZ, coastal States and **other States** have reciprocal “due regard” obligations
- UNCLOS Article 56(2): In exercising their rights in the EEZ, coastal States shall have due regard to the rights and duties of **other States**
- UNCLOS Article 58(3): In exercising their rights in the EEZ, **States** shall have due regard to the rights and duties of coastal States

Practical Solution for Planning Cable Routes in EEZ and on Continental Shelf

- Coastal States and cable companies should apply the “due regard” provisions in UNCLOS that are set out in the provisions on the EEZ
- When exercising its right to regulate economic activities, the coastal State should give due regard to the freedom of other States (or cable companies) to lay cables in its EEZ or on its continental shelf
- Similarly, when planning cable routes or when laying cables in the EEZ or continental shelf of coastal States, cable companies should give due regard to the rights and jurisdiction of coastal States in their EEZ and on their continental shelf

“Due Regard” of Cable Company on Planning of Cable Routes in EEZ or CS

The “due regard” obligation of the cable company would include

- notice to coastal States;
- consultation in good faith; and
- exchange of information

In its consultations with the authorities in the coastal State, the cable company should ask the coastal State:

- whether it has planned any economic activities in the area;
- whether it has other information that should be taken into account when planning the cable route

Due Regard Obligation of Coastal States

- If a coastal State is planning activities in its EEZ or on its continental shelf (e.g., oil and gas exploitation) which may cause damage to **existing** submarine cables, it should consult the cable companies who own the existing cables
- If a coastal State, engages in **Marine Spatial Planning** to regulate the location of various activities in its EEZ, and it plans to establish **cable route corridors for new cables**, who from the cable industry should it consult?

ICPC Government Best Practices for Protecting and Promoting Resilience of Submarine Telecommunications Cables

- contains valuable advice for governments in adopting and implementing a **submarine cable resilience plan**
- For example, the best practices include guidelines for States on the special separation distance between cables and other marine or coastal activities under the jurisdiction of coastal States

ICPC Government Best Practices and the Cable Industry

- The General Principles of the **ICPC Government Best Practices** recommend that in adopting and implementing a submarine cable resilience plan, the **state** should be guided by various factors, including:
 - Consult closely with **industry** to understand industry technology and operating parameters and to share data regarding risks;
 - Complement existing **industry best practices**;
- **However:**
 - (1) it is not clear who States should consult in the cable industry
 - (2) it is difficult to locate documents on the Internet setting out “industry best practices”

Recommendation – Best Practice Guidelines on Collaboration between Industry & Govts

- ICPC should consult selected Governments with an interest in cables to prepare Best Practices Guidelines on Collaboration between Industry and Governments on the Planning, Laying, Repair and Security of submarine cables
 - Guidelines should include practical steps on how Industry and Governments can implement their “due regard” obligations in the EEZ and on the continental shelf
 - Guidelines should also set out how coastal States can establish cable route corridors and engage in marine spatial planning while giving “due regard” to the freedom to lay cables in the EEZ and on the continental shelf

Thanks for your attention!

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