



UNIT 9. STATE POWERS OVER MARINE SPACES AND THE AIRSPACE

1. Competences of the State over marine spaces
2. Competences of the State over the airspace.

STATE POWERS OVER MARINE SPACES

- A) General aspects
- B) The United Nations Convention on the Law of the Sea (UNCLOS).
 - B.1. Regime of the marine spaces under the jurisdiction of the coastal state
 - B.2. Regime of the marine spaces beyond the limits of the jurisdiction of the coastal state.

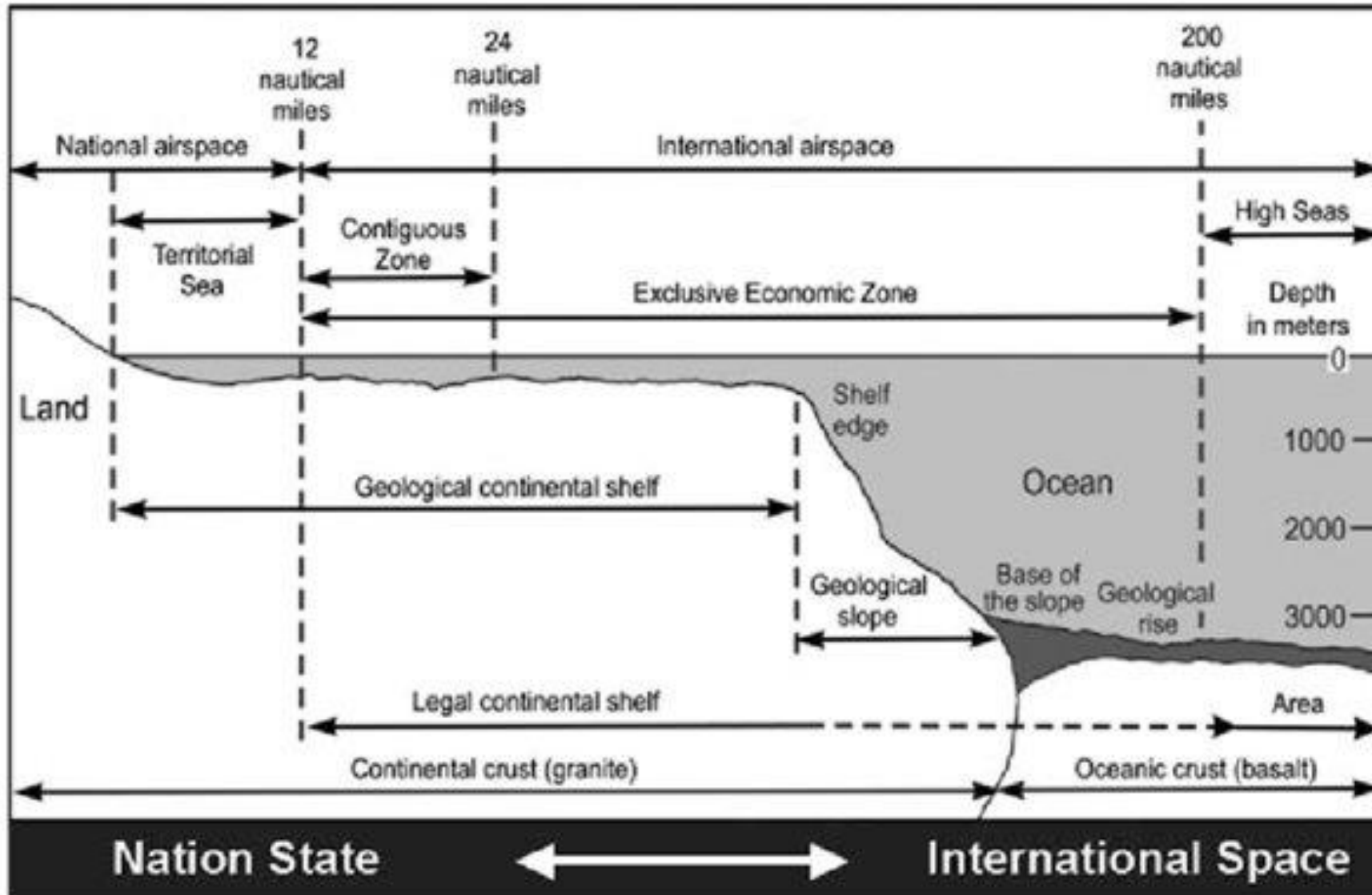
A. GENERAL ASPECTS

- The exercise of jurisdiction over marine spaces stems from the principle that the land dominates the sea and thus the projection of the State into the sea from the mainland.
- Expansive or rampant jurisdiction: greater extension and more spaces.
- Historical evolution of the Law of the Sea:
 - International customary law: Spanish School (freedom of navigation) and John Selden (The Prince is sovereign in the seas close to land). High sea and Territorial Sea (TS) appear as concepts.
 - LoN attempts to codify the "statute of the territorial sea" (The Hague-1930) but fails because of the differences between the proposed limits.
 - First UN Conference on the Law of the Sea (Geneva 1958): Although it was not possible to achieve a single convention and the problem of the outer limit of the TS was not solved it was possible the signature of the IV Conventions on the Law of the Sea:
 - the Convention on the Territorial Sea and the Contiguous Zone (CTS);
 - the Convention on the High Seas (CHS);
 - the Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR);
 - the Convention on the Continental Shelf (CCS); and the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes (OPSD).

- Second UN Conference on the Law of the Sea (Geneva 1960): Failure (the formula of 6 nm TS and 6 nm CZ is not supported by one vote).
- Third UN Conference on the Law of the Sea (1973-1982) ends with the adoption of the UN Convention on the Law of the Sea of Montego Bay (UNCLOS), 10/12/1982, which was negotiated by consensus and adopted by vote and whose entry into force required the adoption of an Agreement relating to the implementation of Part XI of UNCLOS (1994).

B. THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS)

- **UNCLOS** creates a spatial division of the seas and oceans, distinguishing marine spaces under the S^a or jurisdiction of the coastal State/marine spaces beyond the limits of national jurisdiction.
 - Spaces under S^a or jurisdiction: baselines; internal waters; archipelagic waters; territorial sea; contiguous zone; exclusive economic zone; continental shelf.
 - Spaces outside the S^a: High Seas; the Area.

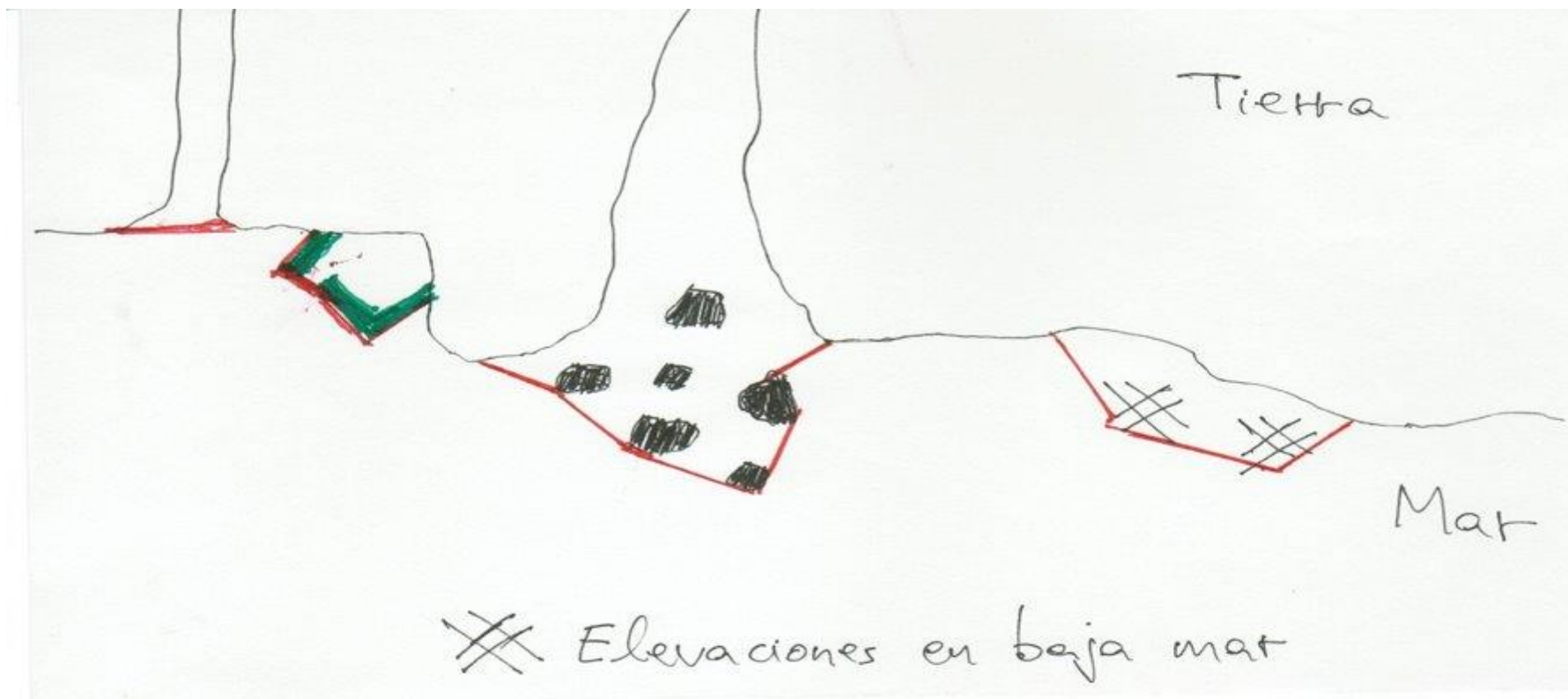


Zones of Marine Spaces, from National Coastal Boundaries to International Spaces [Paul Arthur Berkman, Environmental Security in the Arctic Ocean: Promoting Co-Operation and Preventing Conflict, Whitehall paper 75, 2010, 91.]

B.1. REGIME OF THE SPACES UNDER JURISDICTION OF THE COSTAL STATE

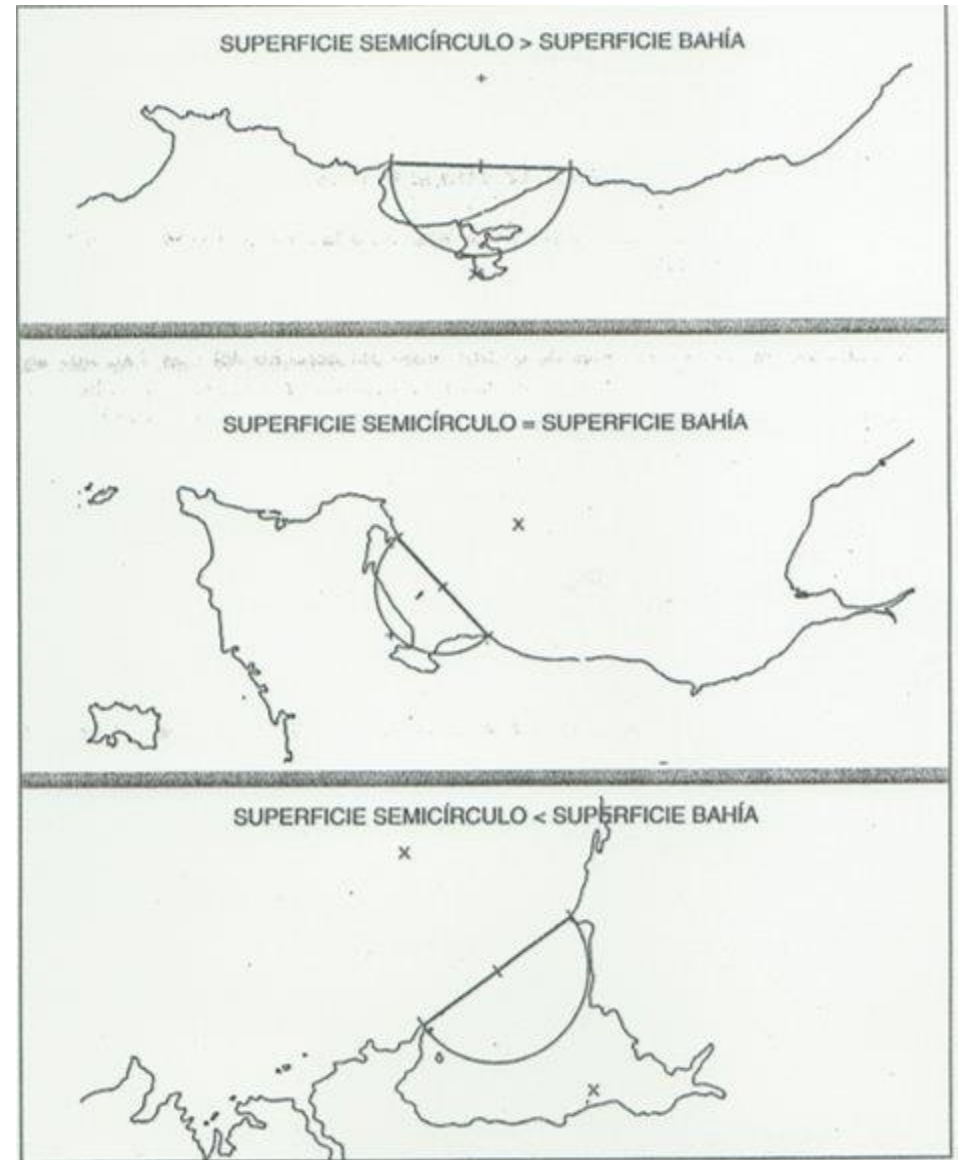
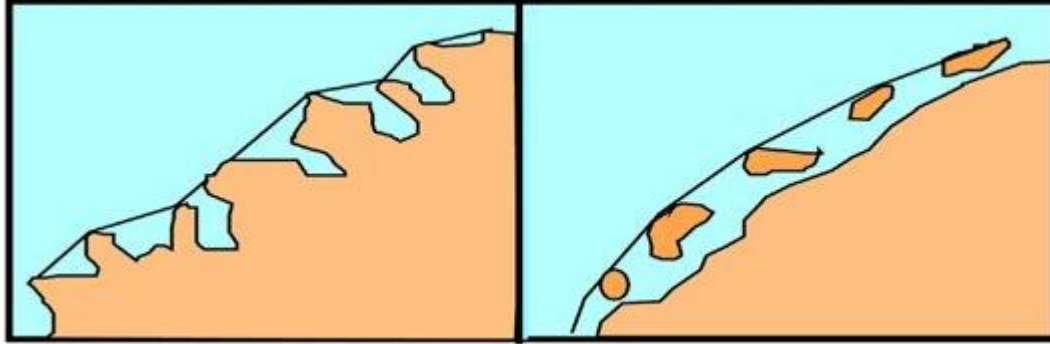
BASELINES

- Drawing baselines is the first operation to establish the different sea areas. As a general rule: normal baseline is the low tide line along the coast.
- Exceptions:
 - Traditional baselines (slide n^o. 8)
 - Rivers (estuaries): if it flows directly into the sea, the LB will be a straight line drawn across the mouth between the points of the low tide line of its banks.
 - Rivers (deltas)
 - Ports: The permanent harbor constructions farthest from the coast that form an integral part of the port system are considered part of it.
 - Bays: If the distance between the low-water lines of the natural points of entry does not exceed 24 mm, a demarcation line may be drawn between the two low-water lines and the enclosed waters are considered inland waters.
 - Elevations in low water.



TRADITIONAL BASELINES

- Straight baseline: coasts with deep openings and island breaks/slots along the coastline in their immediate vicinity.



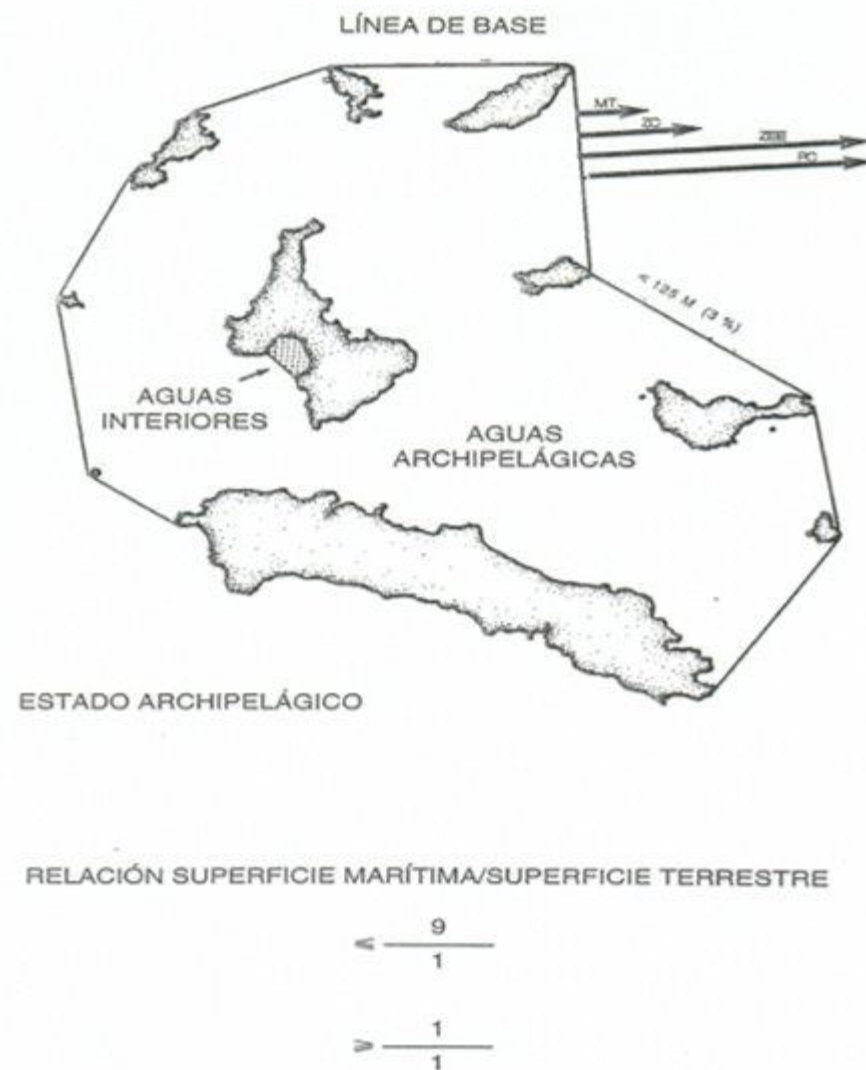
- Straight archipelagic baselines:



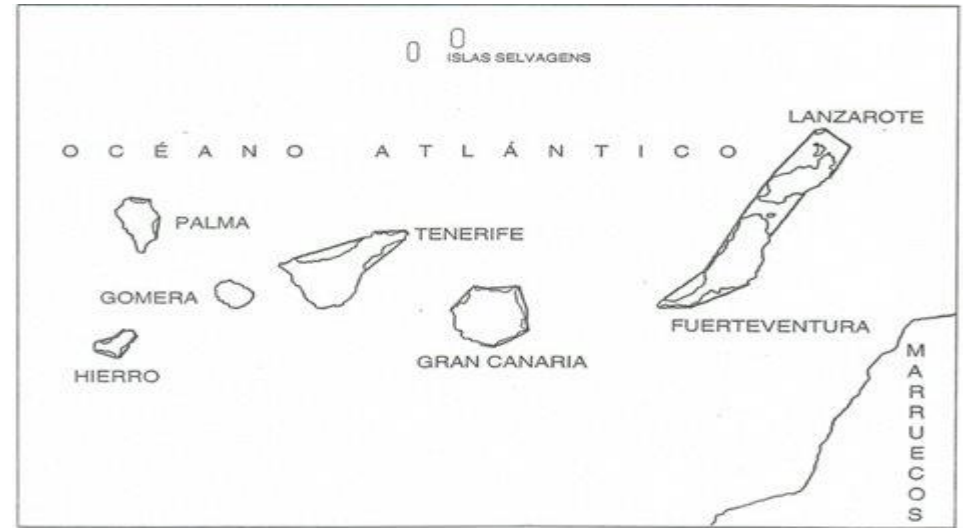
➤ Having in mind the baselines:

- **INLAND WATERS:** Waters located inside the baseline of the TS and subject to the S^a of the State with a limit: right of innocent passage in inland waters that have been created by the drawing of straight baselines.
- **ARCHIPELAGIC WATERS:** These are the waters enclosed by archipelagic baselines and include bed and subsoil. It should be taken into account that there may also be inland waters as a result of traditional closures. In any case, they are subject to the S^a of the archipelagic State with two limits: right of innocent passage with the possibility of temporary suspension in all archipelagic waters and right of passage (maritime and aerial) through archipelagic sea lanes.

- Inland Waters and archipelagic waters:



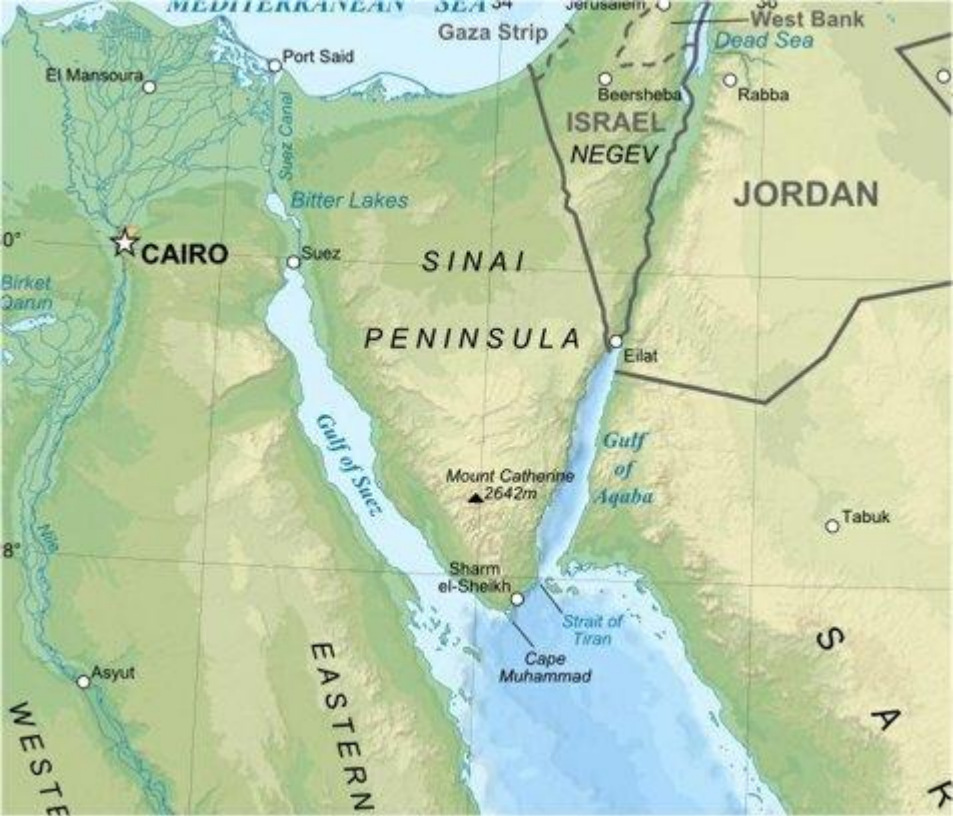
- Spain's baselines:



TERRITORIAL SEA (TS):

- Definition: It is the strip of sea adjacent to the land territory of a State. It includes soil and subsoil and has two limits (interior: Baseline/exterior: up to 12 nm).
- For the delimitation of the TS between States with adjacent or opposite coasts, the rule of equidistance will be applied.
 - General regime: S^a limited by right of innocent passage with possibility of temporary suspension.
 - Spain: Law 10/1977, on Spanish TS: 12 nm and delimitation by equidistance.
 - Strait's regime: The UNCLOS modifies the previous customary law that established the right of innocent passage without the possibility of suspension. Different regimes are established:
 - Straits communicating a part of the HS or of an EEZ: **Transit passage**.
 - Innocent passage without the possibility of suspension for straits formed by the island of a coastal State and its continental territory (Messina) and those located between a part of the High Seas or EEZ and the TS of another State.
 - Large data straits: straits that have been regulated by an international agreement in force. In those cases, the particular agreements apply.
 - False straits.

Straits with innocent passage regimes: Tiran and Messina



Larga data straits: Dardanelles, Sea of Marmara and Bosphorus



False straits:



CONTIGUOUS ZONE (CZ):

- Definition: the next area is referred to as the CZ and has two boundaries (inner: outer boundary of the TS/outer: up to 24 mm MEASURED from the closing line).
- Regime: Limited Jurisdiction of the coastal state.

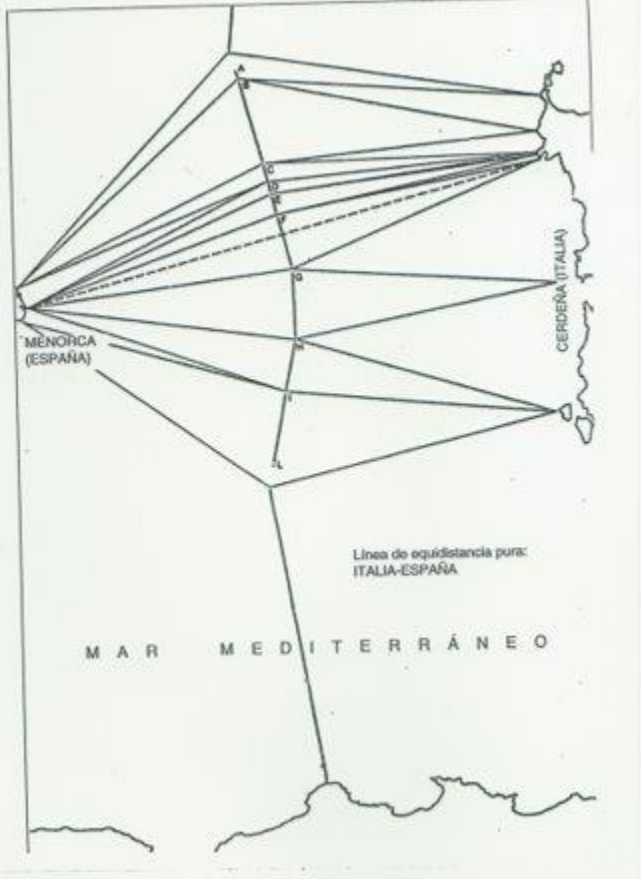
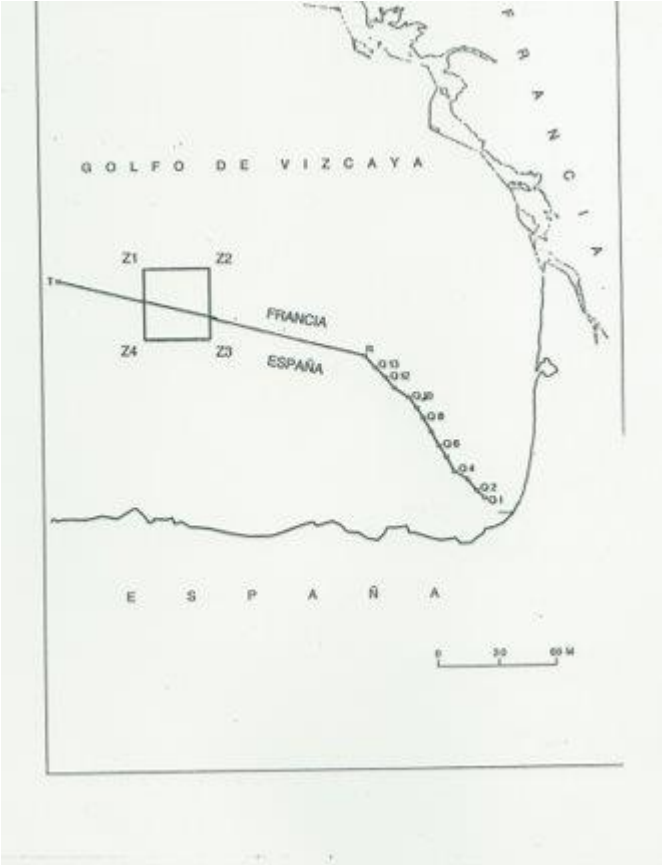
EXCLUSIVE ECONOMIC ZONE (EEZ):

- Definition: area beyond and adjacent to the TS and has two boundaries (inner: outer boundary of the TS/outer: up to 200 nm MEASURED from the baseline).
- It covers the water column and the seabed and subsoil, but we must take into account the continental shelf regime.
- It is established by an act of express proclamation of the State.
 - Spain: Atlantic Ocean only.
- Rights, jurisdiction and duties of the coastal State:
 - economic "sovereignty rights" (fishing regime) and jurisdiction over islands and artificial structures, marine scientific research, protection and preservation of the environment.
 - Other UNCLOS rights.
- Rights and duties of other States. Residual clause.
- Delimitation of the EEZ between States with adjacent or conflicting coasts: equitable solution.

CONTINENTAL SHELF (CS):

- Definition: the bed and subsoil of the submarine areas that extend beyond the TS and has two boundaries: inner: outer boundary of the TS/outer: two options:
 - UP TO 200 mm. counted from the baselines
 - UP TO the outer edge of the continental margin (art. 76.3: includes shelf + slope + continental emersion) with two alternative limits (art. 76.5):
 - UP TO 350 mm. from the baselines.
 - UP TO 100 mm. from the 2,500 meters isobath.
- Rights, jurisdiction and duties of the coastal State independent of (i) its real or fictitious occupation (= ab initio) and (ii) of any express declaration (ipso facto).
 - economic "sovereignty rights".
 - They are exclusive rights: there is no surplus even if the coastal State does not exercise them.
- Questions regarding the CS:
 - Determination of the concept "natural resource": mineral resources; other non-living resources (includes gas and hydrocarbons); sedentary species (immobile in bed or subsoil in period of exploitation; can only move in physical contact with bed or subsoil).
 - Delimitation: equidistance/special equity circumstances.

Delimitation of CS between Spain and France; and between Spain and Italy:



B.2. REGIME OF THE SPACES BEYOND JURISDICTION OF THE COSTAL STATE

HIGH SEA (HS):

- Residual space that is defined by exclusion (art. 86 UNCLOS), so it will depend on the outer limits of the marine spaces of the coastal States (Importance of communicating a copy of scale charts or coordinate lists to Secretary General of UN).
- Legal regime:
 - regime of freedom (Art. 87). Navigation (regulated in detail in UNCLOS); overflight; laying submarine cables and pipelines; construction of artificial islands and installations permitted in DI; fishing (not absolute, ensure conservation and state cooperation); scientific research.
 - Peaceful use/illegitimacy of sovereignty claims.
 - Freedom of navigation: regulation of exceptions to the exclusive jurisdiction of the flag State over merchant vessels on the high seas by warships or military or duly authorized and identifiable military aircraft: Drawing baselines is the first operation to establish the different sea areas. As a general rule: normal baseline is the low tide line along the coast.

- Right to board and seize pirate (or pirate-held) vessel or aircraft and detain persons and seize property: warships or military aircraft or other State vessels/aircraft, duly authorized, and identifiable as vessels in the service of a government.
- Right to board and seize vessel making unauthorized radio/television transmissions to the general public in violation of international regulations, and to seize persons and confiscate equipment: warships or military aircraft or other State vessels/aircraft, duly authorized, and identifiable as vessels in the service of a government of any State in which they may be received or of those whose services are interfered with.
- Right of hot pursuit and seizure on the high seas of a foreign vessel, when the coastal State has reasonable grounds to believe that it is committing violations of State laws and regulations or violating rights for the protection of which the area where the violation occurs, or violation of the laws of the marine space where it is located.
 - ❖ Must begin in internal waters, territorial sea, etc. (waters within sovereignty) and continue outside marine space without interruption: warships or military aircraft or other State vessels/aircraft, duly authorized, and identifiable as vessels in the service of a government of the coastal State ONLY.

- Right to visit foreign vessel on reasonable suspicion of (i) slave trade; (ii) no nationality; (iii) same nationality as warship but flying foreign flag is denied: warships or military aircraft or other State vessels/aircraft, duly licensed, and identifiable as vessels in the service of a government, of any State.
- Repression of narcotic/psychotropic drug trafficking: This is no exception to the general rule, except in exceptional cases expressly provided for in international treaties. Thus, a flag State may request cooperation from other States: 1989 UN Vienna Convention against Trafficking in Narcotic Drugs and Psychotropic Substances: cooperative measures for surveillance and law enforcement.
 - Spain-Italy: 1990 Treaty on mutual recognition right to intervene beyond the territorial sea. Duty of assistance on the high seas.

THE AREA (A):

- Definition: Seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction; precise determination of the extent of the outer limit of the continental shelf of the coastal States.
- UNCLOS: Common heritage of mankind, without recognition of sovereignty claims or appropriations; activities for the benefit of mankind, with special consideration for the benefit of developing States; peaceful purposes.
- International Seabed Authority (States parties to UNCLOS are automatically members): IOA organizes and controls exploration and exploitation of resources in the Area.
 - Part XI: Complex, innovative and equitable regime of utilization, but no developed States joined. Therefore, Agreement relating to the implementation of Part XI of UNCLOS 1982 (UNGA resolution 48/263)-in force 1996.
 - Amendment of Part XI regarding exploration and exploitation system, to be interpreted jointly and in case of collision, with preference to the Agreement.

STATE POWERS OVER AIRSPACES

- A) Airspace.
- B) National airspace regime.
- C) International airspace regime.
- D) Suppression of unlawful acts against the security of international civil aviation

A. THE AIRSPACE

- Atmospheric space above the Earth.
 - Upper boundary: outer space, although the precise boundary is not known.
 - It is located: On the one hand: on spaces subject to the S^a of a State: territory, waters....
 - Lateral limits: vertical projection of the terrestrial borders and territorial sea limits (archipelagic waters).
 - On the other hand: Located on spaces not subject to the S^a: ZC, EEZ, AM and Antarctica.
- Initially: conflict between supporters of absolute freedom/conciliation of overflight State protection rights. Finally: pragmatic solution establishing a differentiated regime for national/international airspace.

B. NATIONAL AIRSPACE REGIME

- It is the airspace above the spaces subject to S^a.
- Convention on International Civil Aviation - Chicago 1944 (applicable only to civil aircrafts): " The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory". Consequences "complete and exclusive sovereignty":
- Overflight and landing: with State consent.
- Legal regime distinction between scheduled/non-scheduled international air services:
 - Non-scheduled: the "five freedoms of the air": art. 5.
 - Scheduled: do not benefit from commercial freedoms of the air: Art. 6: special permission to operate (U.S.-U.K. model bilateral air traffic agreements of 1946) but enjoy freedom of overflight and technical stopover.
 - Can aircraft be shot down if it overflights without authorization? Amendment 1984: Require landing and give necessary guidance to stop the violation but must refrain from using weapons against civil aircraft and avoid endangering aircraft occupants' lives (art. 3bis).
- Establishment International Civil Aviation Organization (ICAO).

C. INTERNATIONAL AIRSPACE REGIME

- Airspace overlying spaces not subject to S^a State.
- Legal regime: freedom of overflight, in a *sensu contrario* interpretation of the provisions of the national airspace legal regime and UNCLOS articles.

D. SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SECURITY OF INTERNATIONAL CIVIL AVIATION

- The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963.
- The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970.
- The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.



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