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Current Oceans Law & Policy Issues in East Asia

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***The views presented are those of the speaker and
do not necessarily represent the views of DoD or its Components.***

Overview

- **Territorial and Maritime Disputes**
- **Other Legal Issues**
 - China's East China Sea Air Defense Identification Zone
 - U.S.-Philippines Enhanced Defense Cooperation Agreement
 - Japan and Collective Self-Defense
 - Malaysia Airlines Flight 370 Search



Territorial and Maritime Disputes: Key Statements of U.S. Policy



- **U.S. Oceans Policy Statement**

- President Reagan (March 10, 1983)

- **U.S. Policy on Spratlys and South China Sea**

- Department of State Press Briefing (May 10, 1995)



- **Testimony on Maritime Issues and Sovereignty Disputes in East Asia**

- Deputy Assistant Secretary Marciel (July 15, 2009)

- **Remarks at Press Availability**

- Secretary Clinton (July 23, 2010)



- **Statement on South China Sea**

- Secretary Clinton (July 22, 2011)

- **Statement on South China Sea**

- Department of State Press Statement (August 3, 2012)



- **Testimony on Maritime Disputes in East Asia**

- Assistant Secretary Russel (February 5, 2014)

U.S. Interests in East Asia

“With regard to regional stability and security in East Asia, I stressed that the United States has a fundamental interest in maintaining freedom of navigation, unimpeded commerce, respect for international law and the peaceful resolution of differences.”

- President Obama
(January 19, 2011)



1. **Respect for International Law**
2. **Freedom of Navigation**
3. **Security and Stability in the Region**
4. **Unimpeded Commerce and Economic Development**

Understanding the Categories of Disputes

Territorial Claims

- **Category #1**
 - “Competing” Territorial Claims
- **International Law**
 - Law of Sovereignty (*customary*)
- **U.S. Policy**
 - Take No Side on Sovereignty
 - Oppose Force, Coercion, or Intimidation to Assert Claim

Maritime Claims

- **Category #2**
 - “Overlapping” Maritime Claims
 - **International Law**
 - Law of the Sea Convention (*customary*)
 - **U.S. Policy**
 - Take No Side
 - Oppose Force, Coercion or Intimidation
 - Must Accord with International Law
 - Must Be Derived from Land
-
- **Category #3**
 - “Excessive” Maritime Claims
 - **International Law**
 - Law of the Sea Convention (*customary*)
 - **U.S. Policy**
 - Must Accord with International Law
 - Oppose Claim if It Impinges on Freedom of Navigation (FON)

Key Principles of International Law

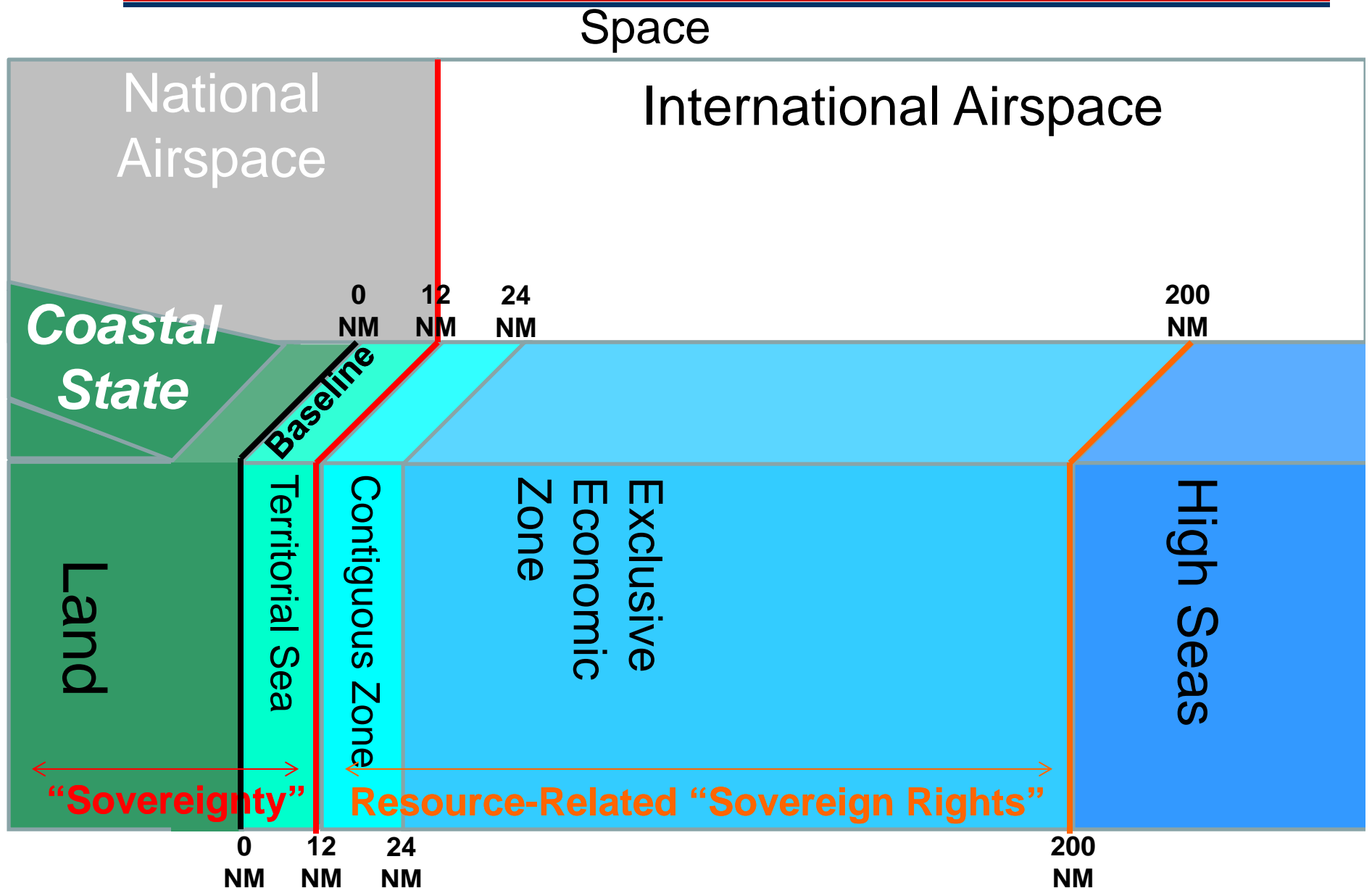
Law of Sovereignty

- **Criteria:**
 - Discovery
 - Effective Occupation
 - Effective Administration and Control
 - Acquiescence
- **“Critical Date”**
 - State Actions Before/After
- **Resolve International Disputes “by Peaceful Means”**
 - Negotiations
 - Arbitration
 - International Tribunal

Law of the Sea

- **Maritime Claims Derived from Land Features**
 - Mainland and Islands (incl. Rocks)
- **Coastal State Authority vs. User State Freedom**
 - LOS Convention Reflects Balance of Interests
 - Sliding Scale in Maritime Zones
- **Settle International Disputes “by Peaceful Means”**
- **Resolve Boundaries with “an Equitable Solution”**
- **Small Islands with no “Disproportionate Effect”**

Law of the Sea: Maritime Zones



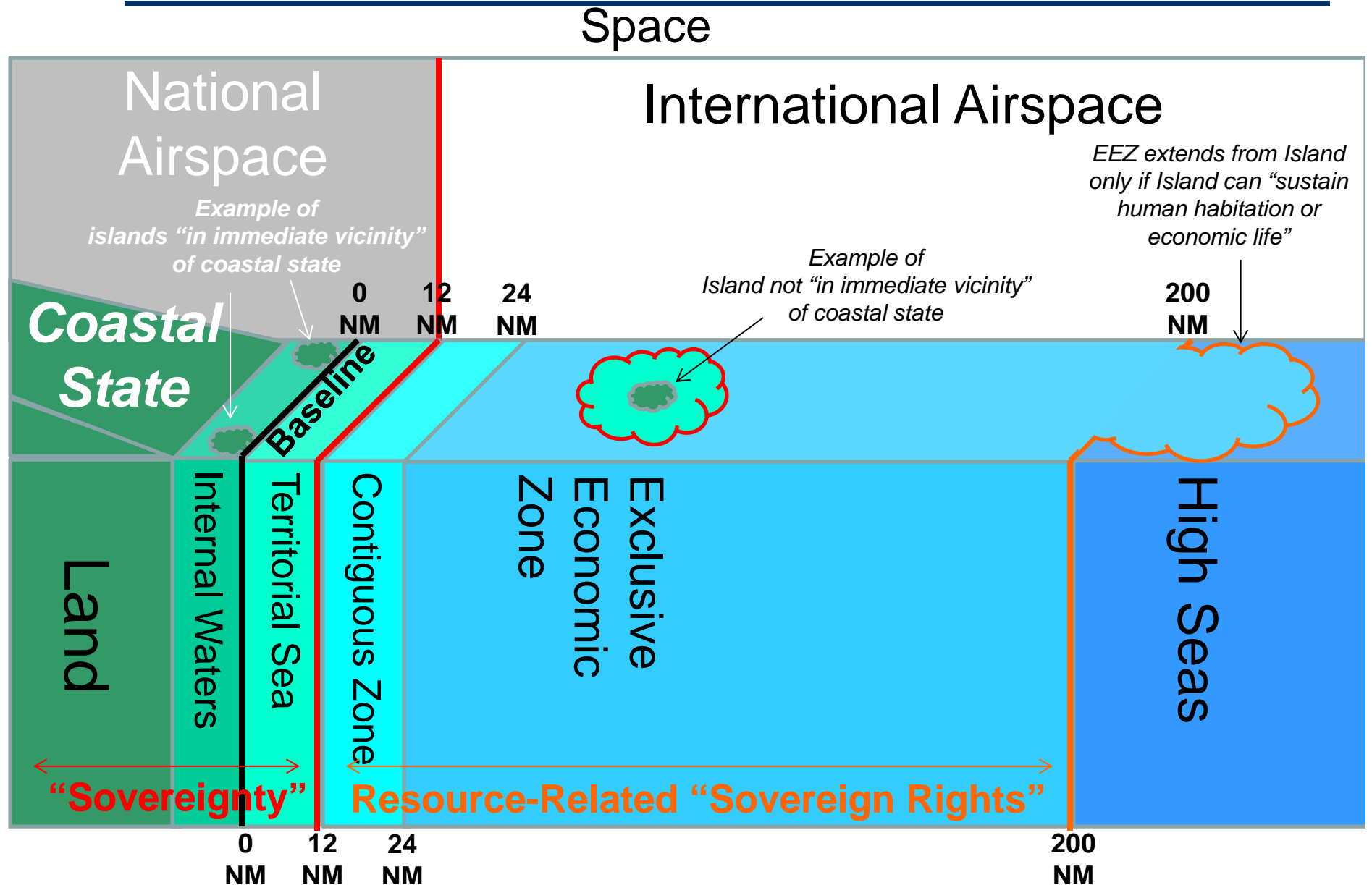
Law of the Sea: Effect of Land Features

Category	Definition (Elements)	Territorial Sea (TTS)	Contiguous Zone	Exclusive Economic Zone	Continental Shelf
Island (not a rock)	<ul style="list-style-type: none"> - “naturally formed” - “area of land” - “surrounded by water” - “above water at high tide” <i>See LOSC, art. 121(1)</i>	Yes <i>See LOSC, art. 121(2)</i>	Yes <i>See LOSC, art. 121(2)</i>	Yes <i>See LOSC, art. 121(2)</i>	Yes <i>See LOSC, art. 121(2)</i>
Rock	<ul style="list-style-type: none"> - island - “cannot sustain human habitation or economic life of [its] own” <i>See LOSC, art. 121(3)</i>	Yes <i>See LOSC, art. 121(2) and (3)</i>	Yes <i>See LOSC, art. 121(2) & (3)</i>	No <i>See LOSC, art. 121(3)</i>	No <i>See LOSC, art. 121(3)</i>
Low-tide Elevation (LTE)	<ul style="list-style-type: none"> - “a naturally formed” - “area of land” - “surrounded by water” - “above water at low tide” - “submerged at high tide” <i>See LOSC, art. 13(1)</i>	No TTS for the LTE, but: <ul style="list-style-type: none"> - If LTE is within the TTS of mainland or an island, then low-water line of the LTE may be used as the baseline for measuring TTS (and, therefore, measuring the breadth of other maritime zones); - If LTE is wholly situated outside of TTS, then the LTE has no TTS of its own. <i>See LOSC, art. 13</i>	Yes, but only if the LTE is within the TTS of the mainland <i>See LOSC, art. 13</i>	Yes, but only if the LTE is within the TTS of the mainland <i>See LOSC, art. 13</i>	Yes, but only if the LTE is within the TTS of the mainland <i>See LOSC, art. 13</i>
“Submerged” Feature	No definition in LOSC, but implied elements: <ul style="list-style-type: none"> - naturally formed - submerged at high tide - submerged at low tide 	Not expressly discussed in LOSC, but implied effects: <ul style="list-style-type: none"> - No TTS for a submerged feature, and - Submerged features may not be used as baseline for measuring TTS. 	No	No	No
“Artificial Islands, Installations & Structures”	No definition in LOSC.	No <i>See LOSC, art. 60(8)</i>	No <i>See LOSC, art. 60(8)</i>	No <i>See LOSC, art. 60(8)</i>	No <i>See LOSC, art. 60(8)</i>

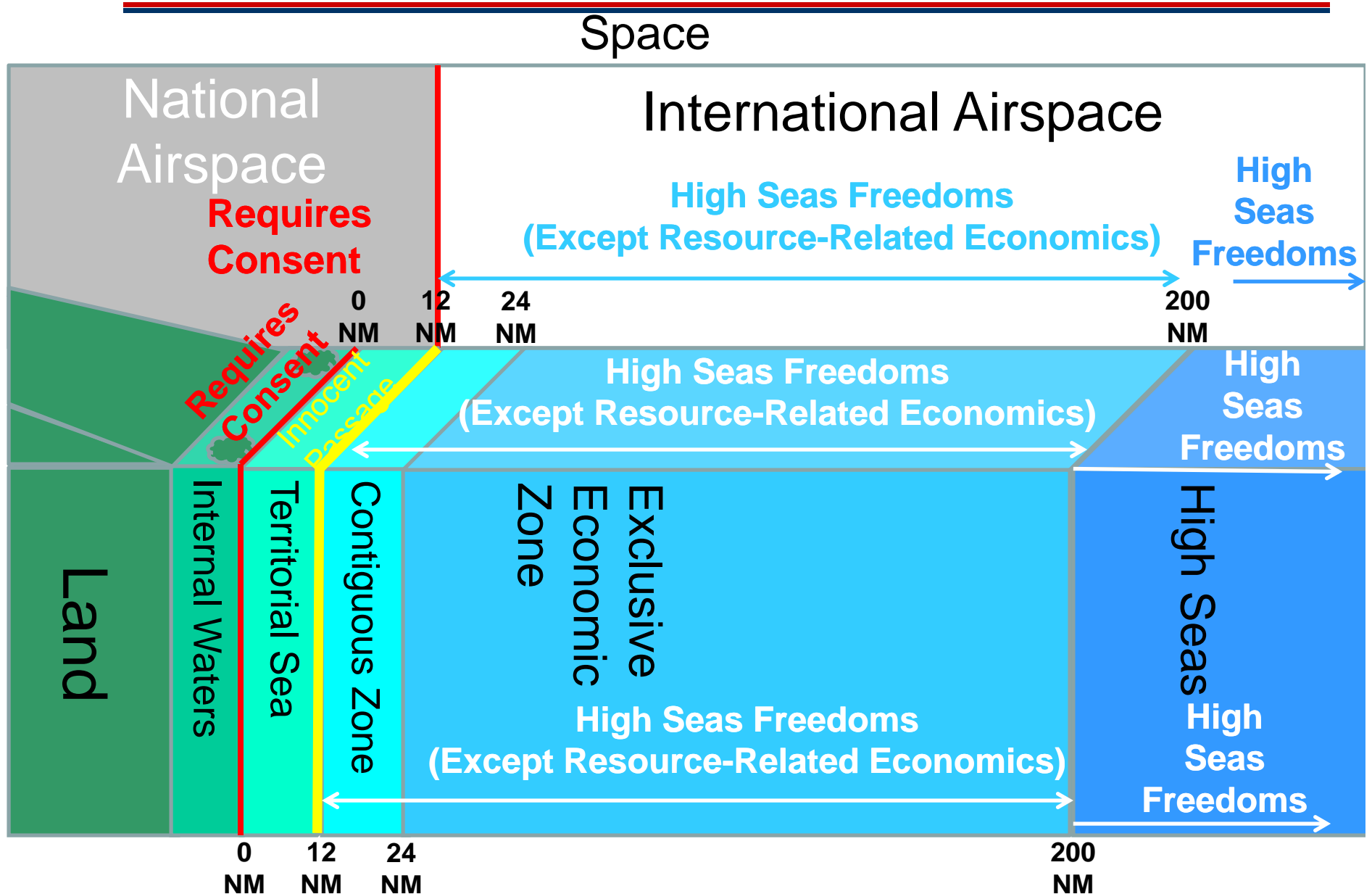
Islands have TTS and EEZ, Rocks have TTS, Everything Else has nothing.

Law of the Sea: Maritime Zones

* Special situation: Coastal state and offshore islands

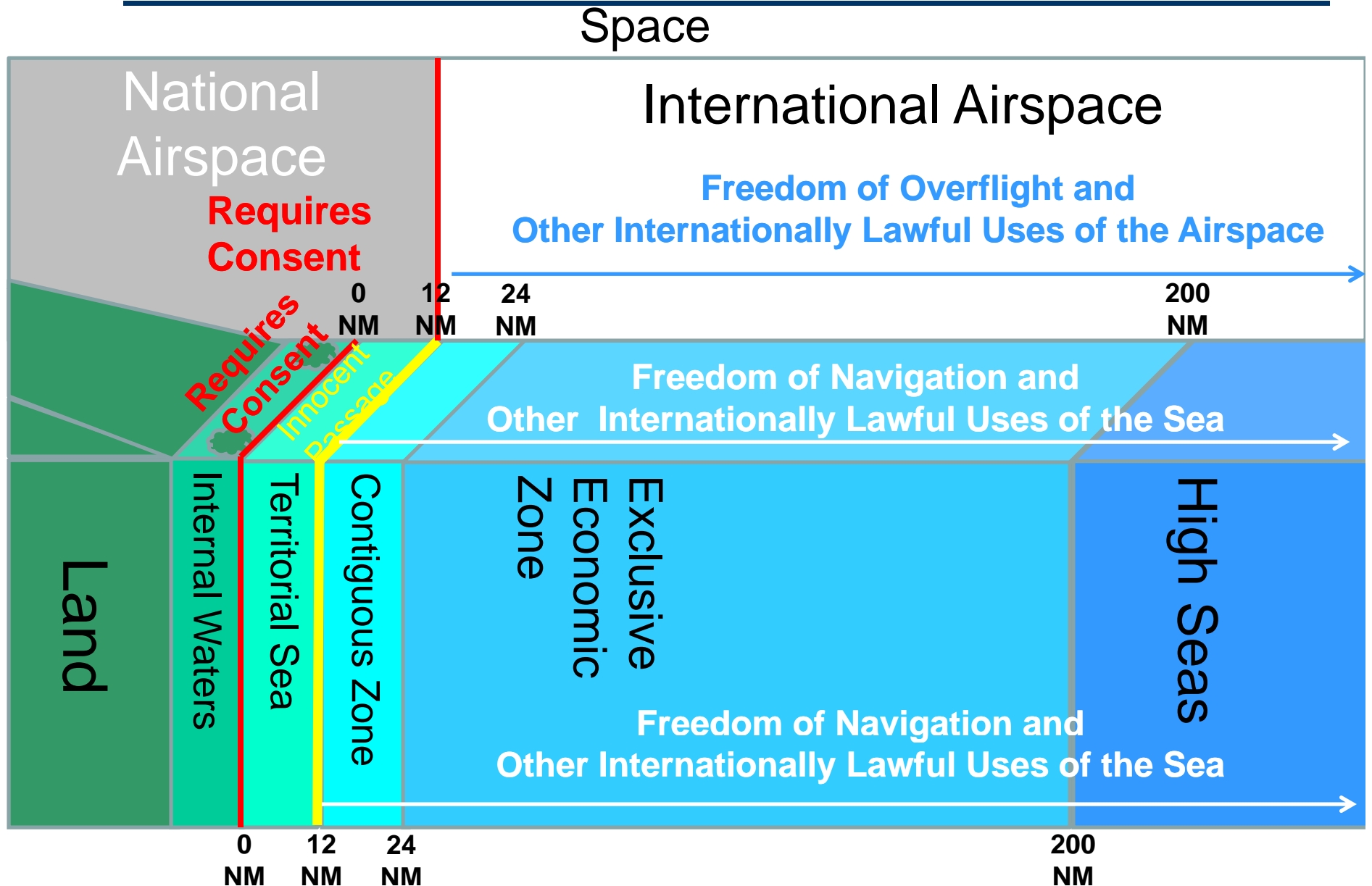


Law of the Sea: Freedom of the Seas



Law of the Sea: Freedom of the Seas*

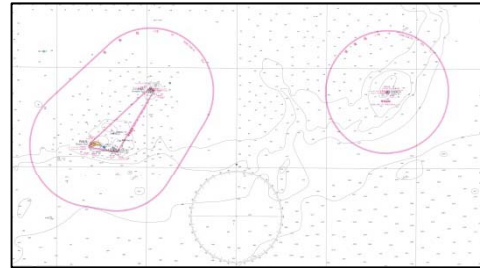
* For military vessels and aircraft – non-economic activities



China's Excessive Maritime Claims

- **Improperly-Drawn Baselines**

- Along Mainland Coast
- Around Paracel (Xisha) Islands
- Around Senkaku (Diaoyu) Islands



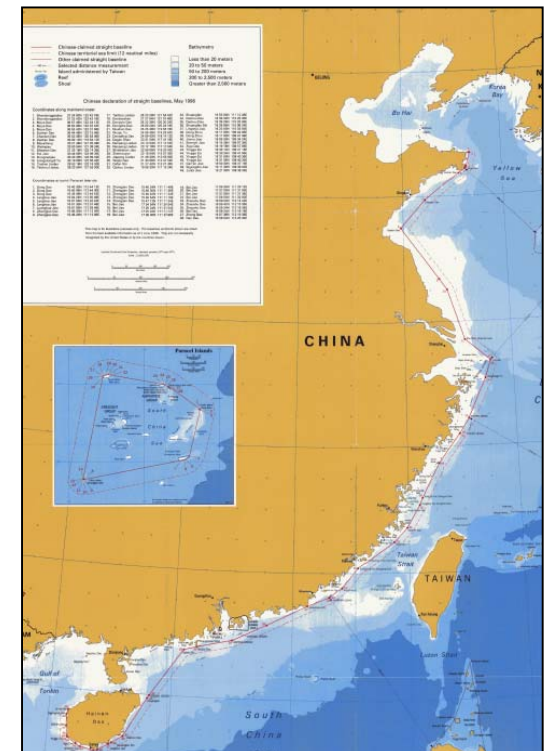
- **Restriction on Innocent Passage in Territorial Sea**

- Requires Prior Authorization from Foreign Warships

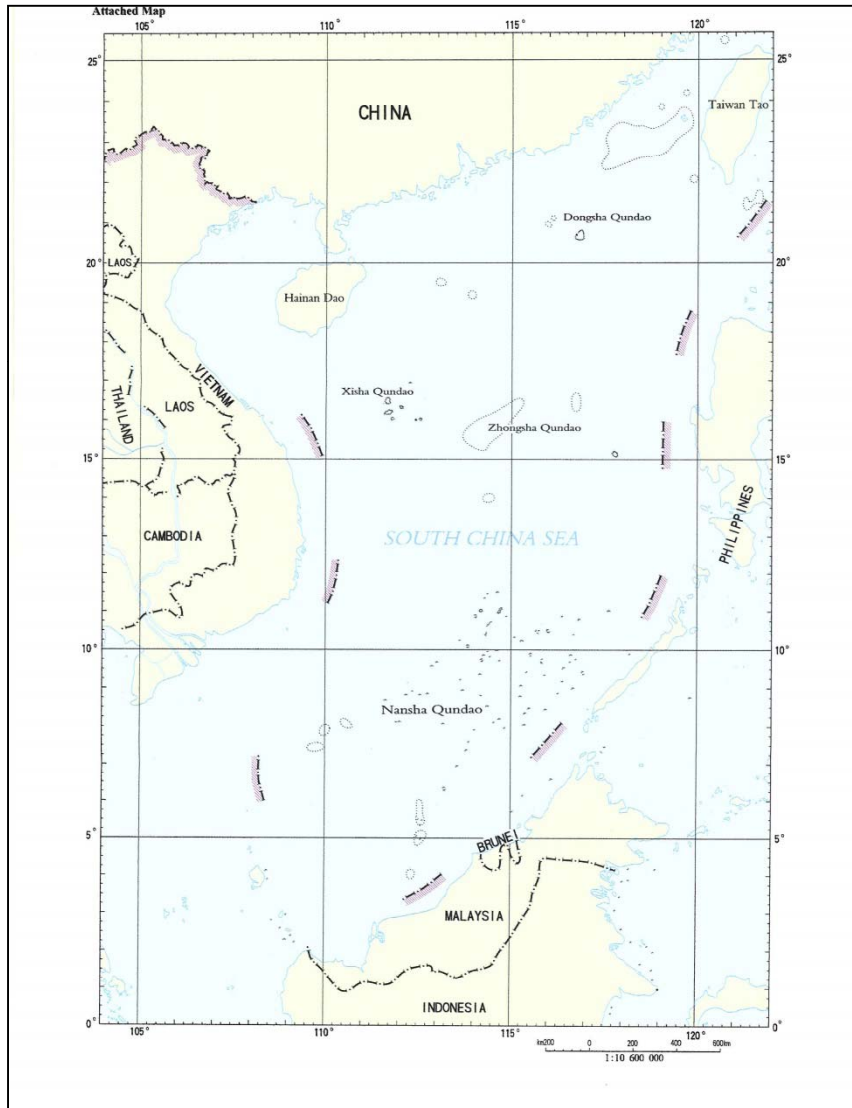
- **Security Restriction in Contiguous Zone**

- **Restrictions on Foreign Military Activities in/over EEZ**

- Survey, Surveillance and Reconnaissance Activities
- Marine Scientific Research



China's 9-Dash Line: Nature of Claim?



PRC Map Submitted (May 2009)

- A. Territorial Claim?
- B. Maritime Claim?
- C. All of the above?

“I want to reinforce the point that under international law, maritime claims in the South China Sea must be derived from land features. Any use of the "nine dash line" by China to claim maritime rights not based on claimed land features would be inconsistent with international law. The international community would welcome China to clarify or adjust its nine-dash line claim to bring it in accordance with the international law of the sea.”

***Assistant Secretary
of State (EAP)
Daniel R. Russel
(Feb. 5, 2014)***



South China Sea: Claims and Disputes



A. China

B. Vietnam

- Maritime Law (2012)
- Paracels (Xisha)
- Spratlys (Nansha)

C. Philippines

- Baseline Law (2009)
- Mischief Reef
- Scarborough Shoal
- 2nd Thomas Shoal

D. Malaysia

- James Shoal
- Luconia Shoals

E. Brunei

f. Taiwan

East China Sea: Claims and Disputes



A. China

B. Japan

- EEZ in ECS
- Continental Shelf
- Senkaku/Diaoyu Islands
- Okinotorishima
- Liancourt Rock
(with ROK)

C. Republic of Korea

- Jeodo/Suyan
- EEZ in Yellow Sea
- "Northern Limit Line"
(with DPRK)

D. Taiwan

- Taiwan "Strait"

U.S. Freedom of Navigation Program

Purpose

- “[T]o preserve the global mobility of U.S. forces by avoiding acquiescence in excessive maritime claims of other nations.”

Policy

- “The United States considers the 1982 Convention on the Law of the Sea to accurately reflect the customary rules of international law concerning maritime navigation and overflight rights and freedoms.”
- “The United States will exercise and assert its navigation and overflight rights on a worldwide basis in a manner consistent with the LOS Convention.”
- “It is U.S. policy to respect those maritime claims that are consistent with the navigational provisions of the LOS Convention.”
- “The United States will not acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other traditional uses of the high seas.”

Action

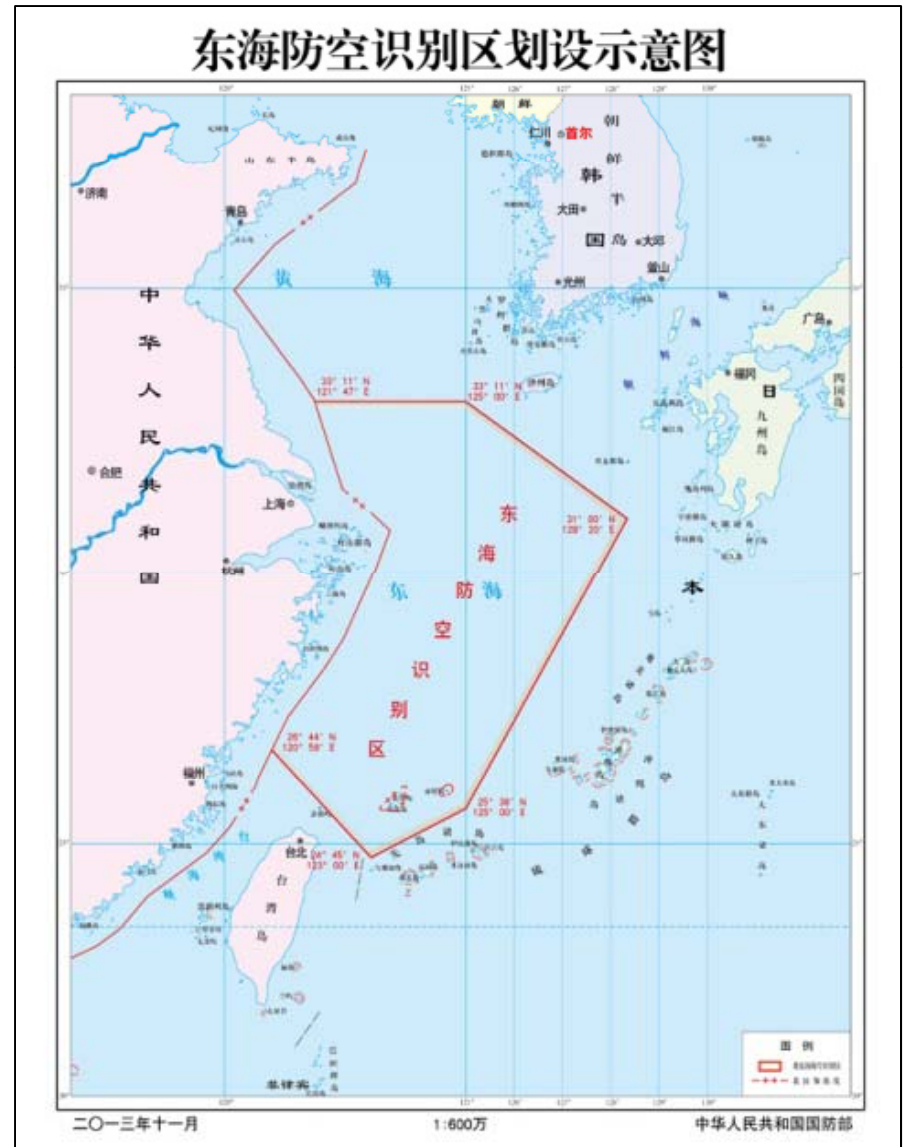
- The U.S. Department of State consults with coastal States and, when necessary, diplomatically protests maritime claims considered to be excessive.
- The U.S. Department of Defense conducts operational assertions to challenge excessive maritime claims, and reports those activities in the Annual DoD FON Report.

U.S. Freedom of Navigation (FON) Policy: Principles to Remember

- **Long-standing**
 - FON is a national interest preserved throughout U.S. history
 - Formal U.S. FON Program has been existence since 1979
- **Whole of Government Effort**
 - Both Diplomatic and Military efforts
- **Global in Application**
 - The maritime rule-set is international, the U.S. FON interest is global
 - FON Program is not directed at the claims of one nation or one region
- **State-neutral**
 - Challenges excessive claims by allies, partners, competitors, and potential adversaries
- **Protects more than mere passage or transit**
 - All the rights, freedoms, and lawful uses of the sea
- **Maritime and Air Domains**
 - Protects not only rights, freedoms, and uses of the sea, but also those of the airspace

China's East China Sea Air Defense Identification Zone (ADIZ)

- ADIZ Concept
- Air Interceptions
- U.S. ADIZ Law, Regulation, and Policy
- China's Declaration (2013)
- U.S. Response



U.S.-Philippines Enhanced Defense Cooperation Agreement

- **Prior History**

- U.S-Philippines Military Bases Agreement (1947, 1966)
- U.S.-Philippines Mutual Defense Treaty (1951)
- Constitution of the Republic of the Philippines (1987), Art. XVI, Sec. 25
- U.S-Philippines Visiting Forces Agreement (1998)

- **Highlights of EDCA (2014)**



Japan and Collective Self-Defense

- **Prior History**

- U.N. Charter, Art. 51 (1945)
- The Constitution of Japan, Art. 9 (1947)
- U.S.-Japan Treaty of Mutual Cooperation and Security (1960)

- **Ongoing Commentary**

- Japan
- United States
- China



Malaysia Airlines Flight 370 – Legal Issues

Maritime

- Search and Rescue
- Recovery
- Survey Activities
- Overflight & Access

Other

- Fiscal Law
- Technology Transfer
- Liability



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