

CHAPTER 1

Legal Divisions of the Oceans and Airspace

1.1 INTRODUCTION

The oceans of the world traditionally have been classified under the broad headings of internal waters, territorial seas, and high seas. Airspace has been divided into national and international airspace. In recent years, new concepts have evolved, such as the exclusive economic zone and archipelagic waters, that have dramatically expanded the jurisdictional claims of coastal and island nations over wide expanses of the oceans previously regarded as high seas. The phenomenon of expanding maritime jurisdiction and the rush to extend the territorial sea to 12 nautical miles and beyond were the subject of international negotiation from 1973 through 1982 in the course of the Third United Nations Conference on the Law of the Sea. That Conference produced the 1982 United Nations Convention on the Law of the Sea (1982 LOS Convention).

In 1983, the United States announced that it would neither sign nor ratify the 1982 LOS Convention due to fundamental flaws in its deep seabed mining provisions. Although the Convention, by its terms, would not come into formal effect until one year following deposit with the United Nations of the 60th instrument of ratification, the United States considered that the provisions relating to navigation and overflight codified existing law and practice and reflected customary international law.

On November 16, 1994, the 1982 LOS Convention came into force, with respect to those nations that are parties to it. The concerns of the United States and other industrialized nations with respect to the deep seabed mining provisions of the Convention were successfully resolved by an Agreement adopted without dissent by the United Nations General Assembly on July 28, 1994. That Agreement contains legally binding changes to the 1982 LOS Convention and is to be applied and interpreted together with the Convention as a single treaty. On October 7, 1994, the President of the United States submitted the 1982 LOS Convention and the Agreement reforming its deep seabed mining

provisions to the Senate for its advice and consent to accession and ratification, respectively.

1.2 RECOGNITION OF COASTAL NATION CLAIMS

In a statement on U.S. oceans policy issued 10 March 1983, the President stated:

"First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans [in the 1982 LOS Convention] — such as navigation and overflight. In this respect, the United States will recognize the rights of other States in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal States."

"Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the Convention. The United States will not, however, acquiesce in unilateral acts of other States designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses."

The legal classifications ("regimes") of ocean and airspace areas directly affect naval operations by determining the degree of control that a coastal nation may exercise over the conduct of foreign merchant ships, warships, and aircraft operating within these areas. The methods for measuring maritime jurisdictional claims, and the extent of coastal nation control exercised in those areas, are set forth in the succeeding paragraphs of this chapter. The DOD Maritime Claims Reference Manual (DoD 2005.1-M) contains a listing of the ocean claims of coastal nations.

1.3 MARITIME BASELINES

The territorial sea and all other maritime zones are measured from baselines. In order to calculate the seaward reach of claimed maritime zones, it is first necessary to comprehend how baselines are drawn.

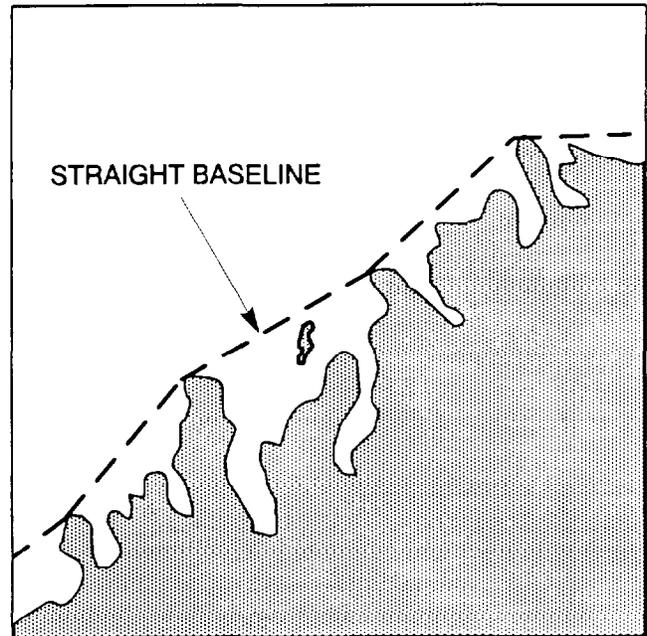
1.3.1 Low-Water Line. Unless other special rules apply, the baseline from which maritime claims of a nation are measured is the low-water line along the coast as marked on the nation's official large-scale charts.

1.3.2 Straight Baselines. Where the coastline is deeply indented or where there is a fringe of islands along the coast in its immediate vicinity, the coastal nation may employ straight baselines. The general rule is that straight baselines must not depart from the general direction of the coast, and the sea areas they enclose must be closely linked to the land domain. A coastal nation which uses straight baselines must either clearly indicate them on its charts or publish a list of geographical coordinates of the points joining them together. See Figure 1-1. The United States, with few exceptions, does not employ this practice and interprets restrictively its use by others.

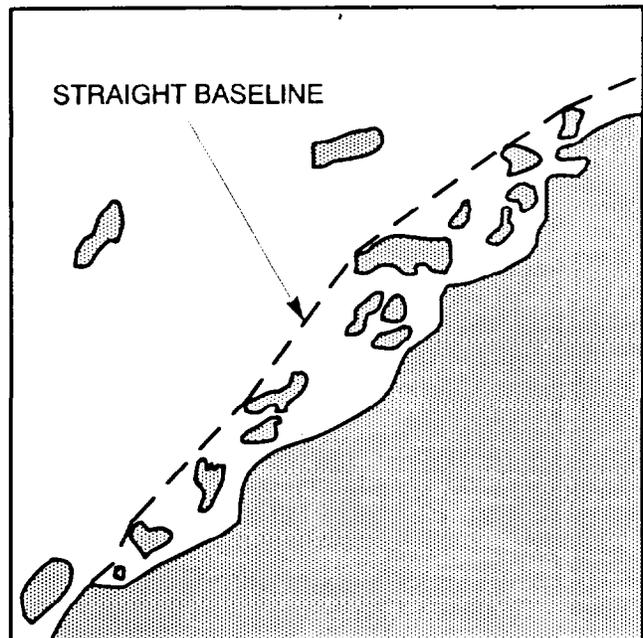
1.3.2.1 Unstable Coastlines. Where the coastline is highly unstable due to natural conditions, e.g., deltas, straight baselines may be established connecting appropriate points on the low-water line. These straight baselines remain effective, despite subsequent regression or accretion of the coastline, until changed by the coastal nation.

1.3.2.2 Low-Tide Elevations. A low-tide elevation is a naturally formed land area surrounded by water and which remains above water at low tide but is submerged at high tide. As a rule, straight baselines may not be drawn to or from a low-tide elevation unless a lighthouse or similar installation, which is permanently above sea level, has been erected thereon.

1.3.3 Bays and Gulfs. There is a complex formula for determining the baseline closing the mouth of a legal bay or gulf. For baseline purposes, a "bay" is a well-marked indentation in the coastline of such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. The water area of a "bay" must be greater than that of a semicircle whose diameter is the length of the line drawn across the mouth. See Figure 1-2. Where the indentation has more than one mouth due to the presence of islands, the diameter of the test semicircle is the sum of the lines across the various mouths. See Figure 1-3.



A. DEEP INDENTED COASTLINE



B. FRINGING ISLAND

Figure 1-1. Straight Baselines

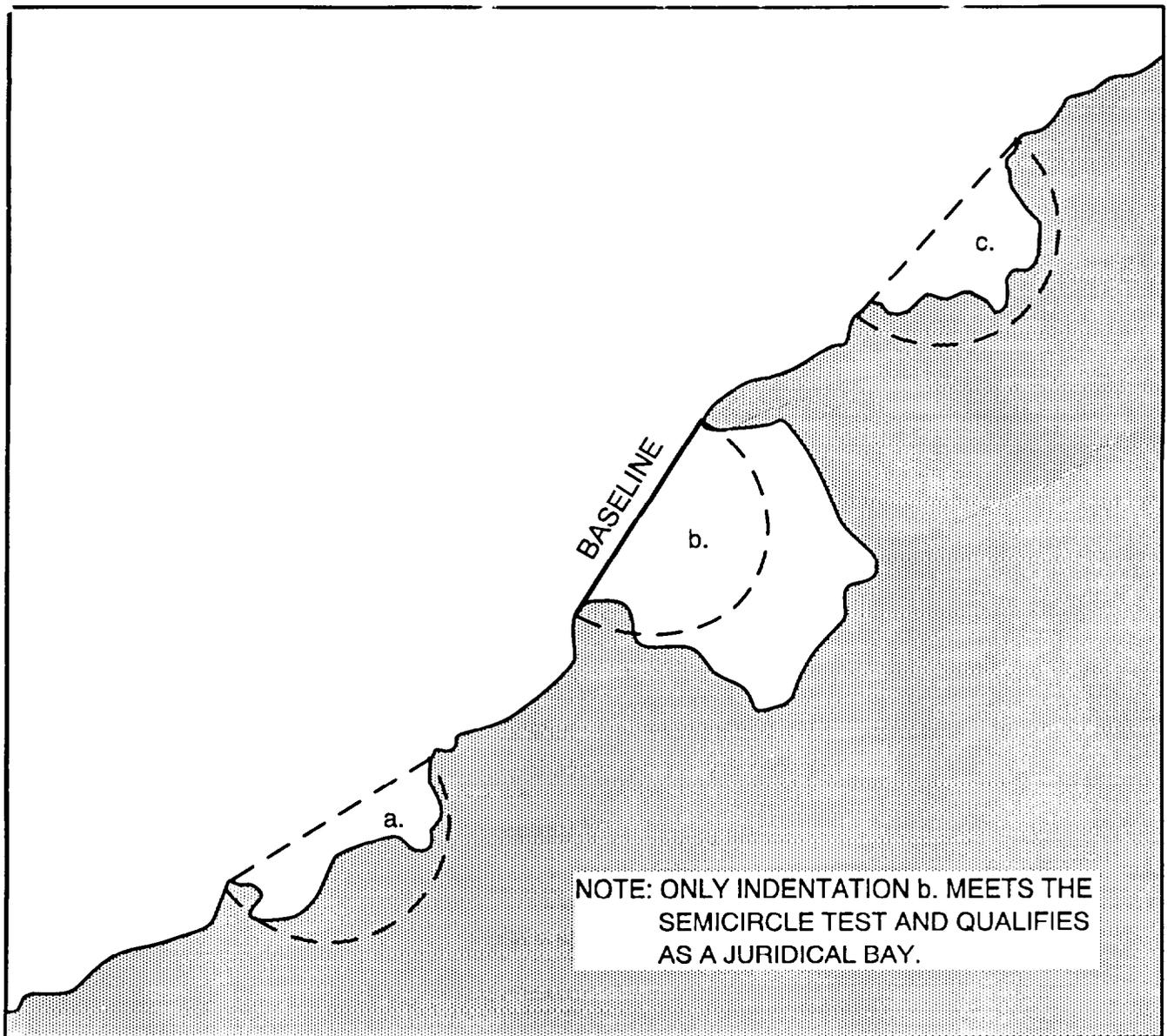


Figure 1-2. The Semicircle Test

The baseline across the mouth of a bay may not exceed 24 nautical miles in length. Where the mouth is wider than 24 nautical miles, a baseline of 24 nautical miles may be drawn within the bay so as to enclose the maximum water area. See Figure 1-4. Where the semicircle test has been met, and a closure line of 24 nautical miles or less may be drawn, the body of water is a "bay" in the legal sense.

1.3.3.1 Historic Bays. So-called historic bays are not determined by the semicircle and 24-nautical mile closure line rules described above. To meet the international standard for establishing a claim to a historic bay, a nation must demonstrate its open, effective, long term, and continuous exercise of authority over the bay, coupled with acquiescence by foreign nations in the exer-

cise of that authority. The United States has taken the position that an actual showing of acquiescence by foreign nations in such a claim is required, as opposed to a mere absence of opposition.

1.3.4 River Mouths. If a river flows directly into the sea, the baseline is a straight line across the mouth of the river between points on the low-water line of its banks.

1.3.5 Reefs. The low-water line of a reef may be used as the baseline for islands situated on atolls or having fringing reefs.

1.3.6 Harbor Works. The outermost permanent harbor works which form an integral part of the harbor system are regarded as forming part of the coast for

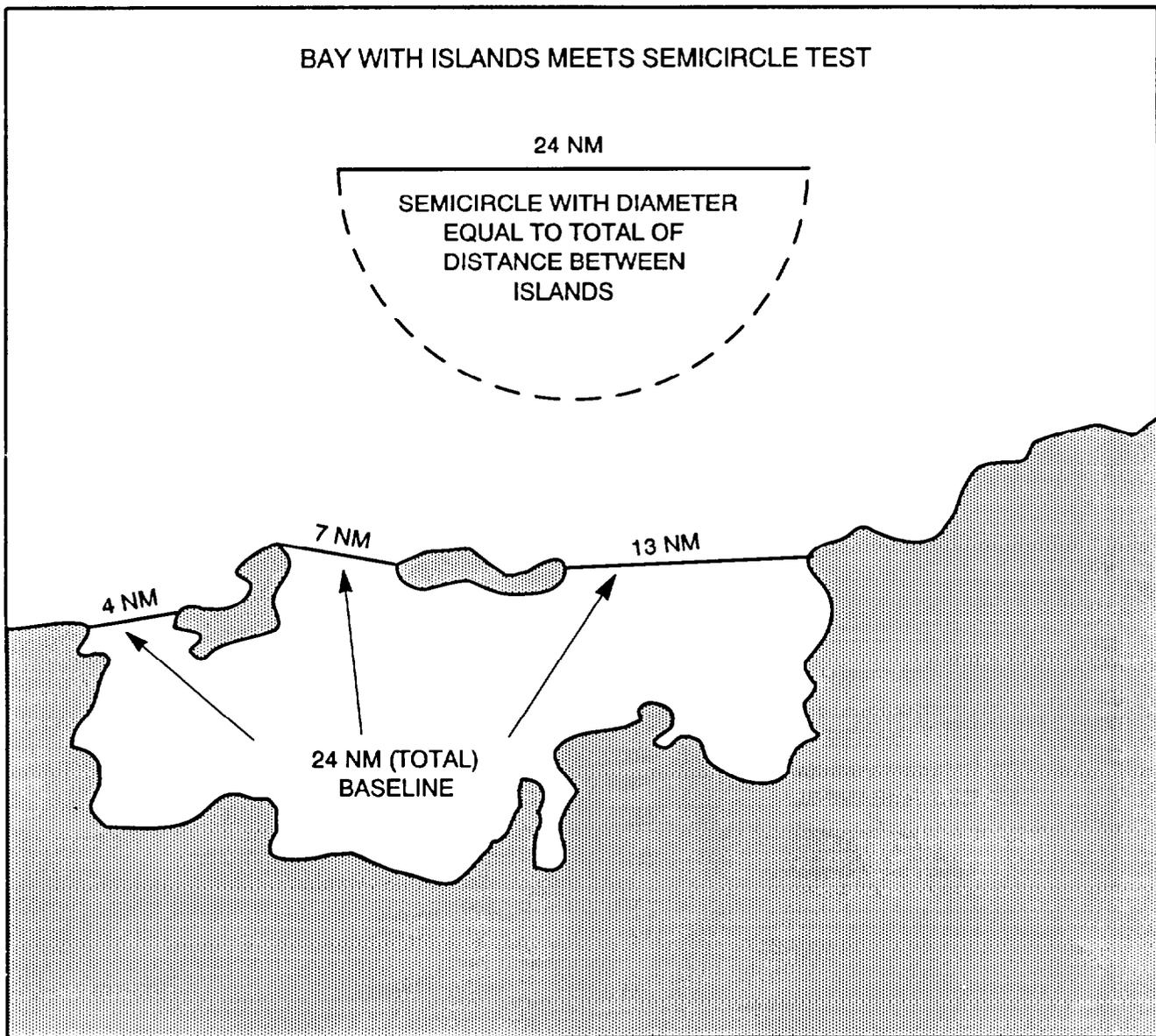


Figure 1-3. Bay With Islands

baseline purposes. Harbor works are structures, such as jetties, breakwaters and groins, erected along the coast at inlets or rivers for protective purposes or for enclosing sea areas adjacent to the coast to provide anchorage and shelter.

1.4 NATIONAL WATERS

For operational purposes, the world's oceans are divided into two parts. The first includes internal waters, territorial seas, and archipelagic waters. These *national waters* are subject to the territorial sovereignty of coastal nations, with certain navigational rights reserved to the international community. The second part includes contiguous zones, waters of the exclusive economic zone, and the high seas. These are *international waters* in which all nations enjoy the

high seas freedoms of navigation and overflight. International waters are discussed further in paragraph 1.5.

1.4.1 Internal Waters. Internal waters are *landward* of the baseline from which the territorial sea is measured. Lakes, rivers, some bays, harbors, some canals, and lagoons are examples of internal waters. From the standpoint of international law, internal waters have the same legal character as the land itself. There is no right of innocent passage in internal waters, and, unless in distress (see paragraph 2.3.1), ships and aircraft may not enter or overfly internal waters without the permission of the coastal nation. Where the establishment of a straight baseline has the effect of enclosing as internal waters areas which had previously not been considered as such, a right of innocent passage exists in those waters.

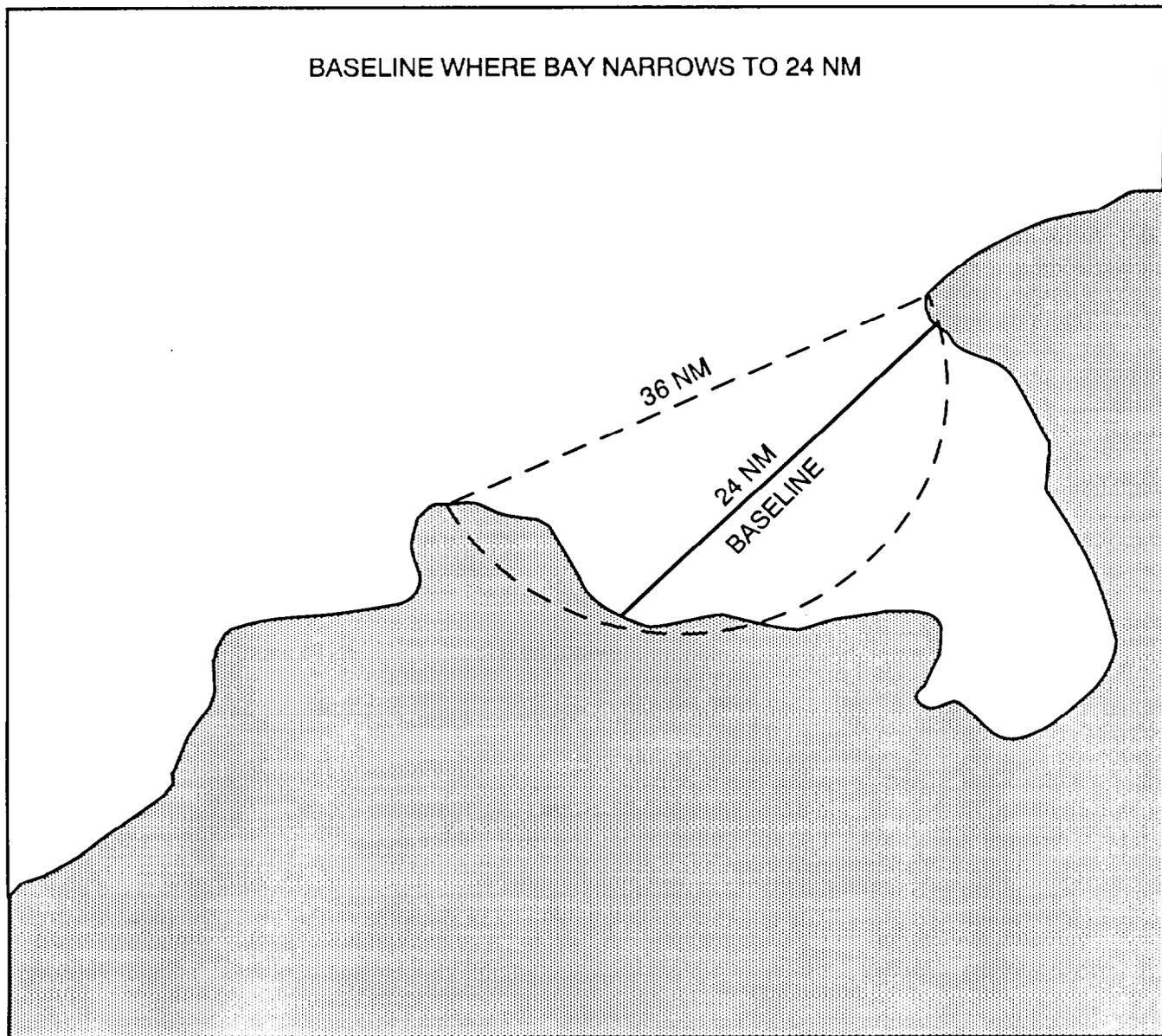


Figure 1-4. Bay With Mouth Exceeding 24 Nautical Miles

1.4.2 Territorial Seas. The territorial sea is a belt of ocean which is measured seaward from the baseline of the coastal nation and subject to its sovereignty. The U.S. claims a 12-nautical mile territorial sea and recognizes territorial sea claims of other nations up to a maximum breadth of 12 nautical miles.

1.4.2.1 Islands, Rocks, and Low-Tide Elevations. Each island has its own territorial sea and, like the mainland, has a baseline from which it is calculated. An island is defined as a naturally formed area of land, surrounded by water, which is above water at high tide. Rocks are islands which cannot sustain human habitation or economic life of their own. Provided they remain

above water at high tide, they too possess a territorial sea determined in accordance with the principles discussed in the paragraphs on baselines. A low-tide elevation (above water at low tide but submerged at high tide) situated wholly or partly *within* the territorial sea may be used for territorial sea purposes as though it were an island. Where a low-tide elevation is located entirely *beyond* the territorial sea, it has no territorial sea of its own. See Figure 1-5.

1.4.2.2 Artificial Islands and Off-Shore Installations. Artificial islands and off-shore installations have no territorial sea of their own.

1.4.2.3 Roadsteads. Roadsteads normally used for the loading, unloading, and anchoring of ships, and which would otherwise be situated wholly or partly beyond the outer limits of the territorial sea, are included *in* the territorial sea. Roadsteads must be clearly marked on charts by the coastal nation.

1.4.3 Archipelagic Waters. An archipelagic nation is a nation that is constituted wholly of one or more groups of islands. Such nations may draw straight archipelagic baselines joining the outermost points of their outermost islands, provided that the ratio of water to land within the baselines is between 1 to 1 and 9 to 1. The waters enclosed within the archipelagic baselines are called *archipelagic waters*. (The archipelagic baselines are also the baselines from which the archipelagic nation measures seaward its territorial sea, contiguous zone, and exclusive economic zone.) The U.S. recognizes the right of an archipelagic nation to establish archipelagic baselines enclosing archipelagic waters provided the baselines are drawn in conformity with the 1982 LOS Convention.

1.4.3.1 Archipelagic Sea Lanes. Archipelagic nations may designate archipelagic sea lanes through their archipelagic waters suitable for continuous and expeditious passage of ships and aircraft. All normal routes used for international navigation and overflight are to be included. If the archipelagic nation does not designate such sea lanes, the right of archipelagic sea lanes passage may nonetheless be exercised by all nations through routes normally used for international navigation and overflight.

1.5 INTERNATIONAL WATERS

For operational purposes, international waters include all ocean areas *not* subject to the territorial sovereignty of any nation. All waters seaward of the territorial sea are international waters in which the high seas freedoms of navigation and overflight are preserved to the international community. International waters include contiguous zones, exclusive economic zones, and high seas.

1.5.1 Contiguous Zones. A contiguous zone is an area extending seaward from the territorial sea in which the coastal nation may exercise the control necessary to prevent or punish infringement of its customs, fiscal, immigration, and sanitary laws and regulations that occur within its territory or territorial sea (but not for so-called security purposes - see paragraph 1.5.4). The U.S. claims a contiguous zone extending 12 nautical miles from the baselines used to measure the territorial sea. The U.S. will respect, however, contiguous zones extending up to 24 nautical miles from the baseline,

provided the coastal nation recognizes U.S. rights in the zone consistent with the provisions of the 1982 LOS Convention.

1.5.2 Exclusive Economic Zones. An exclusive economic zone (EEZ) is a resource-related zone adjacent to the territorial sea. An EEZ may not extend beyond 200 nautical miles from the baseline. As the name suggests, its central purpose is economic. The U.S. recognizes the sovereign rights of a coastal nation to prescribe and enforce its laws in the exclusive economic zone for the purposes of exploration, exploitation, management, and conservation of the natural resources of the waters, seabed, and subsoil of the zone, as well as for the production of energy from the water, currents, and winds. The coastal nation may exercise jurisdiction in the zone over the establishment and use of artificial islands, installations, and structures having economic purposes; over marine scientific research (with reasonable limitations); and over some aspects of marine environmental protection (including implementation of international vessel-source pollution control standards). However, in the EEZ all nations enjoy the right to exercise the traditional high seas freedoms of navigation and overflight, of the laying of submarine cables and pipelines, and of all other traditional high seas uses by ships and aircraft which are not resource related. The United States established a 200-nautical mile exclusive economic zone by Presidential Proclamation on 10 March 1983.

1.5.3 High Seas. The high seas include all parts of the ocean seaward of the exclusive economic zone. When a coastal nation has not proclaimed an exclusive economic zone, the high seas begin at the seaward edge of the territorial sea.

1.5.4 Security Zones. Some coastal nations have claimed the right to establish military security zones, beyond the territorial sea, of varying breadth in which they purport to regulate the activities of warships and military aircraft of other nations by such restrictions as prior notification or authorization for entry, limits on the number of foreign ships or aircraft present at any given time, prohibitions on various operational activities, or complete exclusion. International law does not recognize the right of coastal nations to establish zones that would restrict the exercise of non-resource-related high seas freedoms beyond the territorial sea. Accordingly, the U.S. does not recognize the validity of any claimed security or military zone seaward of the territorial sea which purports to restrict or regulate the high seas freedoms of navigation and overflight. (See paragraph 2.3.2.3 for a discussion of temporary suspension of innocent passage in territorial seas.)

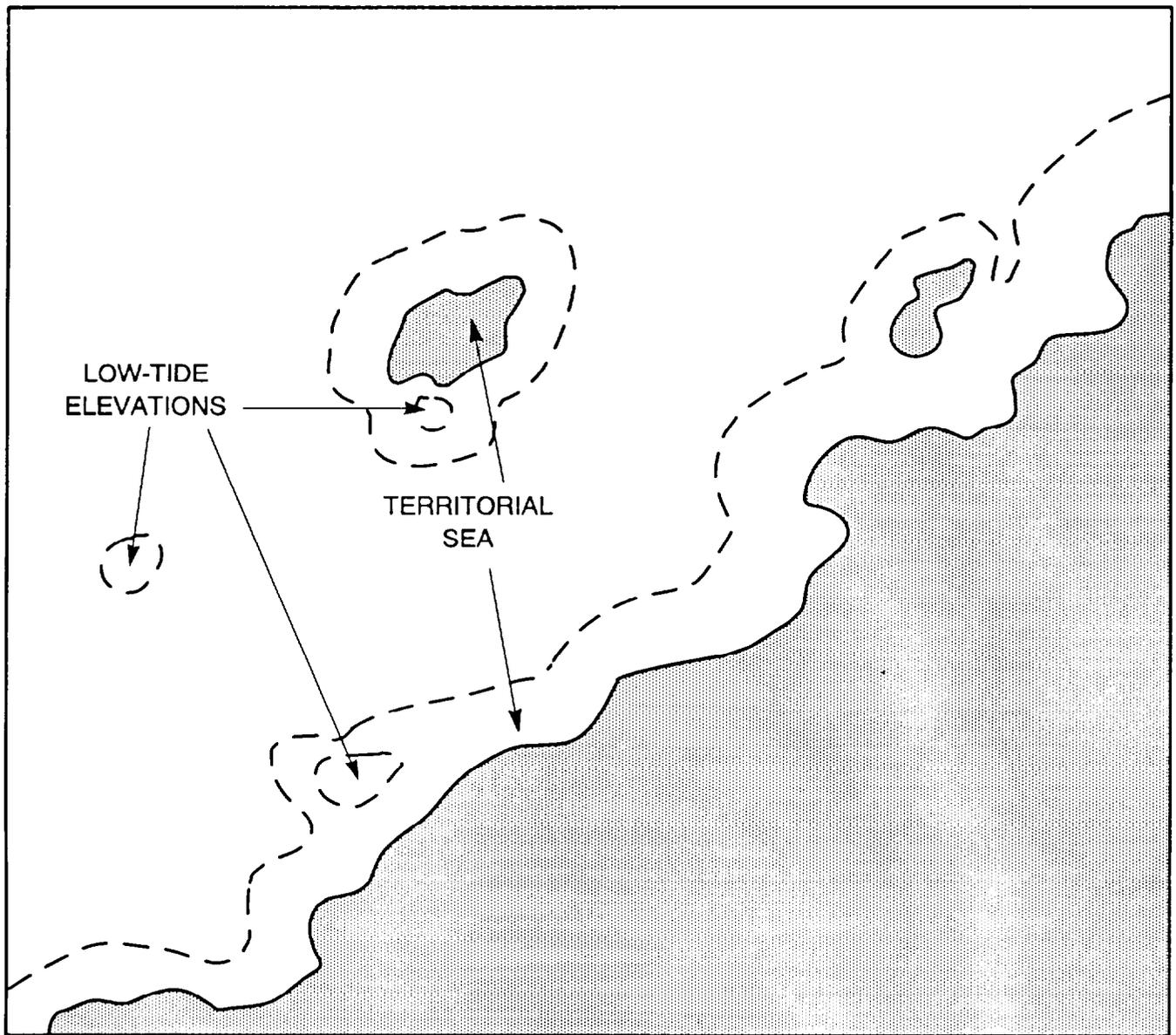


Figure 1-5. Territorial Sea of Islands and Low-Tide Elevations

1.6 CONTINENTAL SHELVES

The juridical continental shelf of a coastal nation consists of the seabed and subsoil of the submarine areas that extend beyond its territorial sea to the outer edge of the continental margin, *or* to a distance of 200 nautical miles from the baseline used to measure the territorial sea where the continental margin does not extend to that distance. The continental shelf may not extend beyond 350 nautical miles from the baseline of the territorial sea *or* 100 nautical miles from the 2,500 meter isobath, whichever is greater. Although the coastal nation exercises sovereign rights over the continental shelf for purposes of exploring and exploiting its natural resources, the legal status of the superjacent

water is *not* affected. Moreover, all nations have the right to lay submarine cables and pipelines on the continental shelf.

1.7 SAFETY ZONES

Coastal nations may establish safety zones to protect artificial islands, installations, and structures located in their internal waters, archipelagic waters, territorial seas, and exclusive economic zones, and on their continental shelves. In the case of artificial islands, installations, and structures located in the exclusive economic zones or on the continental shelf beyond the territorial sea, safety zones may not extend beyond 500 meters from the outer edges of the facility

in question, except as authorized by generally accepted international standards.

1.8 AIRSPACE

Under international law, airspace is classified as either *national* airspace (that over the land, internal waters, archipelagic waters, and territorial seas of a nation) or *international* airspace (that over contiguous zones, exclusive economic zones, the high seas, and territory not subject to the sovereignty of any nation). Subject to a *right of overflight of international straits* (see paragraph 2.5.1.1) and archipelagic sea lanes (see paragraph 2.5.1.2), each nation has complete and exclusive sovereignty over its national airspace. Except as nations may have otherwise consented through trea-

ties or other international agreements, the aircraft of all nations are free to operate in international airspace without interference by other nations.

1.9 OUTER SPACE

The upper limit of airspace subject to national jurisdiction has not been authoritatively defined by international law. International practice has established that airspace terminates at some point below the point at which artificial satellites can be placed in orbit without *free-falling to earth*. Outer space begins at that undefined point. All nations enjoy a freedom of equal access to outer space and none may appropriate it to its national airspace or exclusive use.

CHAPTER 2

International Status and Navigation of Warships and Military Aircraft

2.1 STATUS OF WARSHIPS

2.1.1 Warship Defined. International law defines a warship as a ship belonging to the armed forces of a nation bearing the external markings distinguishing the character and nationality of such ships, under the command of an officer duly commissioned by the government of that nation and whose name appears in the appropriate service list of officers, and manned by a crew which is under regular armed forces discipline. In the U.S. Navy, those ships designated "USS" are "warships" as defined by international law. U.S. Coast Guard vessels designated "USCGC" under the command of a commissioned officer are also "warships" under international law.

2.1.2 International Status. A warship enjoys sovereign immunity from interference by the authorities of nations other than the flag nation. Police and port authorities may board a warship only with the permission of the commanding officer. A warship cannot be required to consent to an onboard search or inspection, nor may it be required to fly the flag of the host nation. Although warships are required to comply with coastal nation traffic control, sewage, health, and quarantine restrictions instituted in conformance with the 1982 LOS Convention, a failure of compliance is subject only to diplomatic complaint or to coastal nation orders to leave its territorial sea immediately. Moreover, warships are immune from arrest and seizure, whether in national or international waters, are exempt from foreign taxes and regulation, and exercise exclusive control over all passengers and crew with regard to acts performed on board.

2.1.2.1 Nuclear Powered Warships. Nuclear powered warships and conventionally powered warships enjoy identical international legal status.

2.1.2.2 Sunken Warships and Military Aircraft. Sunken warships and military aircraft remain the property of the flag nation until title is formally relinquished

or abandoned, whether the cause of the sinking was through accident or enemy action (unless the warship or aircraft was captured before it sank). As a matter of policy, the U.S. Government does not grant permission to salvage sunken U.S. warships or military aircraft that contain the remains of deceased service personnel or explosive material. Requests from foreign countries to have their sunken warships or military aircraft, located in U.S. national waters, similarly respected by salvors, are honored.

2.1.3 Auxiliaries. Auxiliaries are vessels, other than warships, that are owned by or under the exclusive control of the armed forces. Because they are state owned or operated and used for the time being only on government noncommercial service, auxiliaries enjoy sovereign immunity. This means that, like warships, they are immune from arrest and search, whether in national or international waters. Like warships, they are exempt from foreign taxes and regulation, and exercise exclusive control over all passengers and crew with respect to acts performed on board.

U.S. auxiliaries include all vessels which comprise the Military Sealift Command (MSC) Force. The MSC Force includes: (1) United States Naval Ships (USNS) (i.e., U.S. owned vessels or those under bareboat charter, and assigned to MSC); (2) the National Defense Reserve Fleet (NDRF) and the Ready Reserve Force (RRF) (when activated and assigned to MSC); (3) privately owned vessels under time charter assigned to the Afloat Prepositioned Force (APF); and (4) those vessels chartered by MSC for a period of time or for a specific voyage or voyages. The United States claims full rights of sovereign immunity for all USNS, APF, NDRF and RRF vessels. As a matter of policy, however, the U.S. claims only freedom from arrest and taxation for those MSC Force time and voyage charters not included in the APF.

U.S. Navy and U.S. Coast Guard vessels which, except for the lack of a commissioned officer as commanding officer would be warships, also are auxiliaries.

2.2 STATUS OF MILITARY AIRCRAFT

2.2.1 Military Aircraft Defined. International law defines military aircraft to include all aircraft operated by commissioned units of the armed forces of a nation bearing the military markings of that nation, commanded by a member of the armed forces, and manned by a crew subject to regular armed forces discipline.

2.2.2 International Status. Military aircraft are "state aircraft" within the meaning of the Convention on International Civil Aviation of 1944 (the "Chicago Convention"), and, like warships, enjoy sovereign immunity from foreign search and inspection. Subject to the right of transit passage, archipelagic sea lanes passage, and entry in distress (see paragraph 2.5.1), state aircraft may not enter national airspace (see paragraph 1.8) or land in the sovereign territory of another nation without its authorization. Foreign officials may not board the aircraft without the consent of the aircraft commander. Should the aircraft commander fail to certify compliance with local customs, immigration or quarantine requirements, the aircraft may be directed to leave the territory and national airspace of that nation immediately.

2.2.3 Military Contract Aircraft. Civilian owned and operated aircraft, the full capacity of which has been contracted by the Air Mobility Command (AMC) and used in the military service of the United States, qualify as "state aircraft" if they are so designated by the United States. In those circumstances they too enjoy sovereign immunity from foreign search and inspection. As a matter of policy, however, the United States normally does not designate AMC-charter as state aircraft.

2.3 NAVIGATION IN AND OVERFLIGHT OF NATIONAL WATERS

2.3.1 Internal Waters. As discussed in the preceding chapter, coastal nations exercise the same jurisdiction and control over their internal waters and superjacent airspace as they do over their land territory. Because most ports and harbors are located landward of the baseline of the territorial sea, entering a port ordinarily involves navigation in internal waters. Because entering internal waters is legally equivalent to entering the land territory of another nation, that nation's permission is required. To facilitate international maritime commerce, many nations grant foreign merchant vessels standing permission to enter internal waters, in the absence of notice to the contrary. Warships and auxiliaries,

and all aircraft, on the other hand, require specific and advance entry permission, unless other bilateral or multilateral arrangements have been concluded.

Exceptions to the rule of non-entry into *internal waters* without coastal nation permission, whether specific or implied, arise when rendered necessary by *force majeure* or by distress, or when straight baselines are established that have the effect of enclosing, as internal waters, areas of the sea previously regarded as territorial seas or high seas. In the latter event, international law provides that the right of innocent passage (see paragraph 2.3.2.1) or that of transit passage in an international strait (see paragraph 2.3.3.1) may be exercised by all nations in those waters.

2.3.2 Territorial Seas

2.3.2.1 Innocent Passage. International law provides that ships (but not aircraft) of all nations enjoy the right of innocent passage for the purpose of continuous and expeditious traversing of the territorial sea or for proceeding to or from internal waters. Innocent passage includes stopping and anchoring, but only insofar as incidental to ordinary navigation, or as rendered necessary by *force majeure* or by distress. Passage is *innocent* so long as it is not prejudicial to the peace, good order, or security of the coastal nation. Military activities considered to be *prejudicial* to the peace, good order, and security of the coastal nation, and therefore inconsistent with innocent passage, are:

1. Any threat or use of force against the sovereignty, territorial integrity, or political independence of the coastal nation
2. Any exercise or practice with weapons of any kind
3. The launching, landing, or taking on board of any aircraft or of any military device
4. Intelligence collection activities detrimental to the security of that coastal nation
5. The carrying out of research or survey activities
6. Any act aimed at interfering with any system of communication of the coastal nation
7. Any act of propaganda aimed at affecting the defense or security of the coastal nation
8. The loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal nation

9. Any act of willful and serious pollution contrary to the 1982 LOS Convention
10. Any fishing activities
11. Any other activity not having a direct bearing on passage.

Foreign ships, including warships, exercising the right of innocent passage are required to comply with the laws and regulations enacted by the coastal nation in conformity with established principles of international law and, in particular, with such laws and regulations relating to the safety of navigation. Innocent passage does *not* include a right of overflight.

The coastal nation may take affirmative actions in its territorial sea to prevent passage that is not innocent, including, where necessary, the use of force. If a foreign ship enters the territorial sea and engages in non-innocent activities, the appropriate remedy, consistent with customary international law, is first to inform the vessel of the reasons why the coastal nation questions the innocence of the passage, and to provide the vessel a reasonable opportunity to clarify its intentions or to correct its conduct in a reasonably short period of time.

2.3.2.2 Permitted Restrictions. For purposes such as resource conservation, environmental protection, and navigational safety, a coastal nation may establish certain restrictions upon the right of innocent passage of foreign vessels. Such restrictions upon the right of innocent passage through the territorial sea are not prohibited by international law, provided that they are reasonable and necessary; do not have the practical effect of denying or impairing the right of innocent passage; and do not discriminate in form or in fact against the ships of any nation or those carrying cargoes to, from, or on behalf of any nation. The coastal nation may, where navigational safety dictates, require foreign ships exercising the right of innocent passage to utilize designated sea lanes and traffic separation schemes.

2.3.2.3 Temporary Suspension of Innocent Passage. A coastal nation may suspend innocent passage temporarily in specified areas of its territorial sea when it is essential for the protection of its security. Such a suspension must be preceded by a published notice to the international community and may not discriminate in form or in fact among foreign ships.

2.3.2.4 Warships and Innocent Passage. All warships, including submarines, enjoy the right of innocent passage on an unimpeded and unannounced basis. Submarines, however, are required to navigate on the

surface and to show their flag when passing through foreign territorial seas. If a warship does not comply with coastal nation regulations that conform to established principles of international law and disregards a request for compliance which is made to it, the coastal nation may require the warship immediately to leave the territorial sea in which case the warship shall do so immediately.

2.3.2.5 Assistance Entry. All ship and aircraft commanders have an obligation to assist those in danger of being lost at sea. See paragraph 3.2.1. This long-recognized duty of mariners permits assistance entry into the territorial sea by ships or, under certain circumstances, aircraft without permission of the coastal nation to engage in *bona fide* efforts to render emergency assistance to those in danger or distress at sea. This right applies only when the location of the danger or distress is reasonably well known. It does not extend to entering the territorial sea or superjacent airspace to conduct a search, which requires the consent of the coastal nation.

2.3.3 International Straits

2.3.3.1 International Straits Overlapped by Territorial Seas. Straits used for international navigation through the territorial sea between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone are subject to the legal regime of *transit passage*. Transit passage exists throughout the entire strait and not just the area overlapped by the territorial sea of the coastal nation(s).

Under international law, the ships and aircraft of all nations, including warships, auxiliaries, and military aircraft, enjoy the right of unimpeded transit passage through such straits and their approaches. Transit passage is defined as the exercise of the freedoms of navigation and overflight solely for the purpose of continuous and expeditious transit in the normal modes of operation utilized by ships and aircraft for such passage. This means that submarines are free to transit international straits submerged, since that is their normal mode of operation, and that surface warships may transit in a manner consistent with sound navigational practices and the security of the force, including formation steaming and the launching and recovery of aircraft. All transiting ships and aircraft must proceed without delay; must refrain from the threat or the use of force against the sovereignty, territorial integrity, or political independence of nations bordering the strait; and must otherwise refrain from any activities other than those incident to their normal modes of continuous and expeditious transit.

Transit passage through international straits cannot be hampered or suspended by the coastal nation for any purpose during peacetime. This principle of international law also applies to transiting ships (including warships) of nations at peace with the bordering coastal nation but involved in armed conflict with another nation.

Coastal nations bordering international straits overlapped by territorial seas may designate sea lanes and prescribe traffic separation schemes to promote navigational safety. However, such sea lanes and separation schemes must be approved by the competent international organization (the International Maritime Organization) in accordance with generally accepted international standards. Ships in transit must respect properly designated sea lanes and traffic separation schemes.

The regime of *innocent passage* (see paragraph 2.3.2.1), rather than transit passage, applies in straits used for international navigation that connect a part of the high seas or an exclusive economic zone with the territorial sea of a coastal nation. There may be no suspension of innocent passage through such straits.

2.3.3.2 International Straits Not Completely Overlapped by Territorial Seas. Ships and aircraft transiting through or above straits used for international navigation which are *not* completely overlapped by territorial seas and through which there is a high seas or exclusive economic zone corridor suitable for such navigation, enjoy the high seas freedoms of navigation and overflight while operating in and over such a corridor. Accordingly, so long as they remain beyond the territorial sea, all ships and aircraft of all nations have the unencumbered right to navigate through and over such waters subject only to due regard for the right of others to do so as well.

2.3.4 Archipelagic Waters

2.3.4.1 Archipelagic Sea Lanes Passage. All ships and aircraft, including warships and military aircraft, enjoy the right of archipelagic sea lanes passage while transiting through, under or over archipelagic waters and adjacent territorial seas via all routes normally used for international navigation and overflight. Archipelagic sea lanes passage is defined under international law as the exercise of the freedom of navigation and overflight for the sole purpose of continuous, expeditious and unobstructed transit through archipelagic waters, in the normal modes of operations, by the ships

and aircraft involved. This means that submarines may transit while submerged and that surface warships may carry out those activities normally undertaken during passage through such waters, including activities necessary to their security, such as formation steaming and the launching and recovery of aircraft. The right of archipelagic sea lanes passage is substantially identical to the right of transit passage through international straits (see para. 2.3.3.1). When archipelagic sea lanes are properly designated by the archipelagic nation, the following additional rules apply:

1. Each such designated sea lane is defined by a continuous axis line from the point of entry into the territorial sea adjacent to the archipelagic waters, through those archipelagic waters, to the point of exit from the territorial sea beyond.
2. Ships and aircraft engaged in archipelagic sea lanes passage through such designated sea lanes are required to remain within 25 nautical miles either side of the axis line and must approach no closer to the coast line than 10 percent of the distance between the nearest islands. See Figure 2-1.

This right of archipelagic sea lanes passage, through designated sea lanes as well as through all normal routes, cannot be hampered or suspended by the archipelagic nation for any purpose.

2.3.4.2 Innocent Passage. Outside of archipelagic sea lanes, all ships, including warships, enjoy the more limited right of innocent passage throughout archipelagic waters just as they do in the territorial sea. Submarines must remain on the surface and fly their national flag. Any threat or use of force directed against the sovereignty, territorial integrity, or political independence of the archipelagic nation is prohibited. Launching and recovery of aircraft are not allowed, nor may weapons exercises be conducted. The archipelagic nation may promulgate and enforce reasonable restrictions on the right of innocent passage through its archipelagic waters for reasons of navigational safety and for customs, fiscal, immigration, fishing, pollution, and sanitary purposes. Innocent passage may be suspended temporarily by the archipelagic nation in specified areas of its archipelagic waters when essential for the protection of its security, but it must first promulgate notice of its intentions to do so and must apply the suspension in a nondiscriminating manner. There is no right of overflight through airspace over archipelagic waters outside of archipelagic sea lanes.

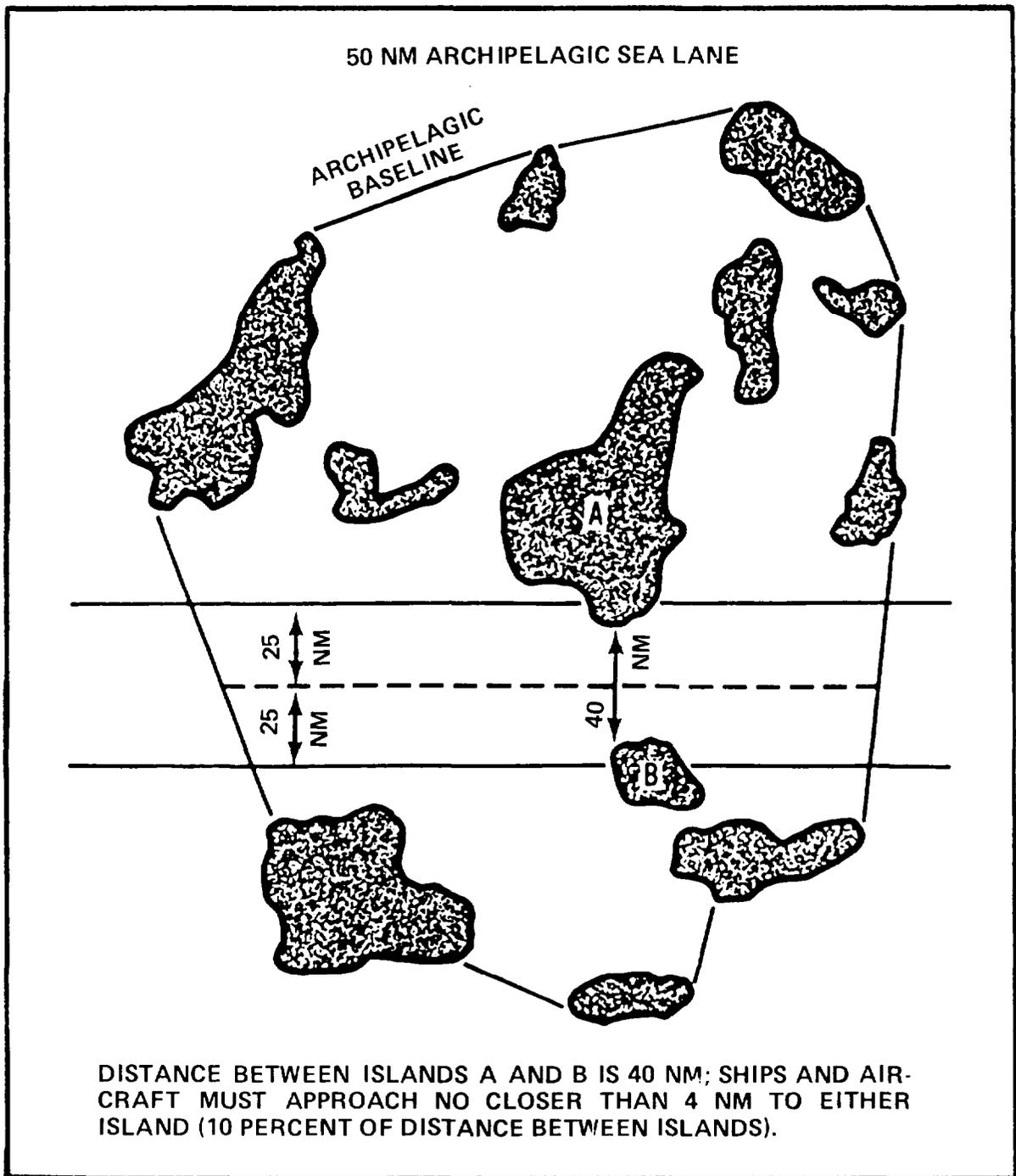


Figure 2-1. A Designated Archipelagic Sea Lane

2.4 NAVIGATION IN AND OVERFLIGHT OF INTERNATIONAL WATERS

2.4.1 Contiguous Zones. The contiguous zone is comprised of international waters in and over which the ships and aircraft, including warships and military aircraft, of all nations enjoy the high seas freedoms of navigation and overflight as described in paragraph 2.4.3. Although the coastal nation may exercise in those waters the control necessary to prevent and punish infringement of its customs, fiscal, immigration, and sanitary laws that may occur within its territory (including its territorial sea), it cannot otherwise interfere with international navigation and overflight in and above the contiguous zone.

2.4.2 Exclusive Economic Zones. The coastal nation's jurisdiction and control over the exclusive economic zone are limited to matters concerning the exploration, exploitation, management, and conservation of the resources of those international waters. The coastal nation may also exercise in the zone jurisdiction over the establishment and use of artificial islands, installations, and structures having economic purposes; over marine scientific research (with reasonable limitations); and over some aspects of marine environmental protection. Accordingly, the coastal nation cannot unduly restrict or impede the exercise of the freedoms of navigation in and overflight of the exclusive economic zone. Since all ships and aircraft, including warships and military aircraft, enjoy the high seas freedoms of navigation and overflight and other internationally lawful uses of the sea related to those freedoms, in and over those waters, the existence of an exclusive economic zone in an area of naval operations need not, of itself, be of operational concern to the naval commander.

2.4.2.1 Marine Scientific Research. Coastal nations may regulate marine scientific research conducted in marine areas under their jurisdiction. This includes the EEZ and the continental shelf. Marine scientific research includes activities undertaken in the ocean and coastal waters to expand knowledge of the marine environment for peaceful purposes, and includes: oceanography, marine biology, geological/geophysical scientific surveying, as well as other activities with a scientific purpose. The United States does not require that other nations obtain its consent prior to conducting marine scientific research in the U.S. EEZ.

2.4.2.2 Hydrographic Surveys and Military Surveys. Although coastal nation consent must be obtained in order to conduct marine scientific research in its exclusive economic zone, the coastal nation cannot regulate hydrographic surveys or military surveys con-

ducted beyond its territorial sea, nor can it require notification of such activities.

A hydrographic survey is the obtaining of information in coastal or relatively shallow areas for the purpose of making of navigational charts and similar products to support safety of navigation. A hydrographic survey may include measurements of the depth of water, configuration and nature of the natural bottom, direction and force of currents, heights and times of tides, and hazards to navigation.

A military survey is the collecting of marine data for military purposes. A military survey may include collection of oceanographic, marine geological, geophysical, chemical, biological, acoustic, and related data.

2.4.3 High Seas. All ships and aircraft, including warships and military aircraft, enjoy complete freedom of movement and operation on and over the high seas. For warships, this includes task force maneuvering, flight operations, military exercises, surveillance, intelligence gathering activities, and ordnance testing and firing. All nations also enjoy the right to lay submarine cables and pipelines on the bed of the high seas as well as on the continental shelf beyond the territorial sea, with coastal nation approval for the course of pipelines on the continental shelf. All of these activities must be conducted with due regard for the rights of other nations and the safe conduct and operation of other ships and aircraft.

2.4.3.1 Warning Areas. Any nation may declare a temporary warning area in international waters and airspace to advise other nations of the conduct of activities that, although lawful, are hazardous to navigation and/or overflight. The U.S. and other nations routinely declare such areas for missile testing, gunnery exercises, space vehicle recovery operations, and other purposes entailing some danger to other lawful uses of the high seas by others. Notice of the establishment of such areas must be promulgated in advance, usually in the form of a Notice to Mariners (NOTMAR) and/or a Notice to Airmen (NOTAM). Ships and aircraft of other nations are *not* required to remain outside a declared warning area, but are obliged to refrain from interfering with activities therein. Consequently, ships and aircraft of one nation may operate in a warning area within international waters and airspace declared by another nation, collect intelligence and observe the activities involved, subject to the requirement of due regard for the rights of the declaring nation to use international waters and airspace for such lawful purposes.

2.4.4 Declared Security and Defense Zones. International law does not recognize the right of any nation to restrict the navigation and overflight of foreign warships and military aircraft beyond its territorial sea. Although several coastal nations have asserted claims that purport to prohibit warships and military aircraft from operating in so-called security zones extending beyond the territorial sea, such claims have no basis in international law in time of peace, and are not recognized by the United States.

The Charter of the United Nations and general principles of international law recognize that a nation may exercise measures of individual and collective self-defense against an armed attack or imminent threat of armed attack. Those measures may include the establishment of "defensive sea areas" or "maritime control areas" in which the threatened nation seeks to enforce some degree of control over foreign entry into those areas. Historically, the establishment of such areas extending beyond the territorial sea has been restricted to periods of war or to declared national emergency involving the outbreak of hostilities. International law does not determine the geographic limits of such areas or the degree of control that a coastal nation may lawfully exercise over them, beyond laying down the general requirement of reasonableness in relation to the needs of national security and defense.

2.4.5 Polar Regions

2.4.5.1 Arctic Region. The U.S. considers that the waters, ice pack, and airspace of the Arctic region beyond the lawfully claimed territorial seas of littoral nations have international status and are open to navigation by the ships and aircraft of all nations. Although several nations have, at times, attempted to claim sovereignty over the Arctic on the basis of discovery, historic use, contiguity (proximity), or the so-called "sector" theory, those claims are not recognized in international law. Accordingly, all ships and aircraft enjoy the freedoms of high seas navigation and overflight on, over, and under the waters and ice pack of the Arctic region beyond lawfully claimed territorial seas of littoral states.

2.4.5.2 Antarctic Region. A number of nations have asserted conflicting and often overlapping claims to portions of Antarctica. These claims are premised variously on discovery, contiguity, occupation and, in some cases, the "sector" theory. The U.S. does not recognize the validity of the claims of other nations to any portion of the Antarctic area.

2.4.5.2.1 The Antarctic Treaty of 1959. The U.S. is a party to the multilateral treaty of 1959 governing

Antarctica. Designed to encourage the scientific exploration of the continent and to foster research and experiments in Antarctica without regard to conflicting assertions of territorial sovereignty, the 1959 accord provides that no activity in the area undertaken while the treaty is in force will constitute a basis for asserting, supporting, or denying such claims.

The treaty also provides that Antarctica "shall be used for peaceful purposes only," and that "any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons" shall be prohibited. All stations and installations, and all ships and aircraft at points of discharging or embarking cargo or personnel in Antarctica, are subject to inspection by designated foreign observers. Therefore, classified activities are not conducted by the U.S. in Antarctica, and all classified material is removed from U.S. ships and aircraft prior to visits to the continent. In addition, the treaty prohibits nuclear explosions and disposal of nuclear waste anywhere south of 60° South Latitude. The treaty does not, however, affect in any way the high seas freedoms of navigation and overflight in the Antarctic region. Antarctica has no territorial sea or territorial airspace.

2.4.6 Nuclear Free Zones. The 1968 Nuclear Weapons Non-Proliferation Treaty, to which the United States is a party, acknowledges the right of groups of nations to conclude regional treaties establishing nuclear free zones. Such treaties or their provisions are binding only on parties to them or to protocols incorporating those provisions. To the extent that the rights and freedoms of other nations, including the high seas freedoms of navigation and overflight, are not infringed upon, such treaties are not inconsistent with international law. The 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) is an example of a nuclear free zone arrangement that is fully consistent with international law, as evidenced by U.S. ratification of its two Protocols. This in no way affects the exercise by the U.S. of navigational rights and freedoms within waters covered by the Treaty of Tlatelolco.

2.5 AIR NAVIGATION

2.5.1 National Airspace. Under international law, every nation has complete and exclusive sovereignty over its national airspace, that is, the airspace above its territory, its internal waters, its territorial sea, and, in the case of an archipelagic nation, its archipelagic waters. *There is no right of innocent passage of aircraft through the airspace over the territorial sea or archipelagic*

waters analogous to the right of innocent passage enjoyed by ships of all nations. Accordingly, unless party to an international agreement to the contrary, all nations have complete discretion in regulating or prohibiting flights within their national airspace (as opposed to a Flight Information Region - see paragraph 2.5.2.2), with the sole exception of overflight of international straits and archipelagic sea lanes. Aircraft wishing to enter national airspace must identify themselves, seek or confirm permission to land or to transit, and must obey all reasonable orders to land, turn back, or fly a prescribed course and/or altitude. Aircraft in distress are entitled to special consideration and should be allowed entry and emergency landing rights. Concerning the right of assistance entry, see paragraph 2.3.2.5. For jurisdiction over aerial intruders, see paragraph 4.4.

2.5.1.1 International Straits Which Connect EEZ/High Seas to EEZ/High Seas. All aircraft, including military aircraft, enjoy the right of unimpeded transit passage through the airspace above international straits overlapped by territorial seas. Such transits must be continuous and expeditious, and the aircraft involved must refrain from the threat or the use of force against the sovereignty, territorial integrity, or political independence of the nation or nations bordering the strait. The exercise of the right of overflight by aircraft engaged in the transit passage of international straits cannot be impeded or suspended in peacetime for any purpose.

In international straits not completely overlapped by territorial seas, all aircraft, including military aircraft, enjoy high seas freedoms while operating in the high seas corridor beyond the territorial sea. (See paragraph 2.5.2 for a discussion of permitted activities in international airspace.) If the high seas corridor is not of similar convenience (e.g., to stay within the high seas corridor would be inconsistent with sound navigational practices), such aircraft enjoy the right of unimpeded transit passage through the airspace of the strait.

2.5.1.2 Archipelagic Sea Lanes. All aircraft, including military aircraft, enjoy the right of unimpeded passage through the airspace above archipelagic sea lanes. The right of overflight of such sea lanes is essentially identical to that of transit passage through the airspace above international straits overlapped by territorial seas.

2.5.2 International Airspace. International airspace is the airspace over the contiguous zone, the exclusive economic zone, the high seas, and territories not subject to national sovereignty (e.g., Antarctica). All international airspace is open to the aircraft of all na-

tions. Accordingly, aircraft, including military aircraft, are free to operate in international airspace without interference from coastal nation authorities. Military aircraft may engage in flight operations, including ordnance testing and firing, surveillance and intelligence gathering, and support of other naval activities. All such activities must be conducted with due regard for the rights of other nations and the safety of other aircraft and of vessels. (Note, however, that the Antarctic Treaty prohibits military maneuvers and weapons testing in Antarctic airspace.) These same principles apply with respect to the overflight of high seas or EEZ corridors through that part of international straits *not* overlapped by territorial seas.

2.5.2.1 Convention on International Civil Aviation. The United States is a party to the 1944 Convention on International Civil Aviation (as are most nations). That multilateral treaty, commonly referred to as the "Chicago Convention," applies to civil aircraft. It does *not* apply to military aircraft or AMC-charter aircraft designated as "state aircraft" (see paragraph 2.2.2), other than to require that they operate with "due regard for the safety of navigation of civil aircraft." The Chicago Convention established the International Civil Aviation Organization (ICAO) to develop international air navigation principles and techniques and to "promote safety of flight in international air navigation."

Various operational situations do not lend themselves to ICAO flight procedures. These include military contingencies, classified missions, politically sensitive missions, or routine aircraft carrier operations. Operations not conducted under ICAO flight procedures are conducted under the "due regard" standard. (For additional information see DOD Dir. 4540.1 and OPNAVINST 3770.4 (series) and the Coast Guard Air Operations Manual, COMDTINST M3710.1 (series).)

2.5.2.2 Flight Information Regions. A Flight Information Region (FIR) is a defined area of airspace within which flight information and alerting services are provided. FIRs are established by ICAO for the safety of civil aviation and encompass both national and international airspace. Ordinarily, but only as a matter of policy, U.S. military aircraft on routine point-to-point flights through international airspace follow ICAO flight procedures and utilize FIR services. As mentioned above, exceptions to this policy include military contingency operations, classified or politically sensitive missions, and routine aircraft carrier operations or other training activities. When U.S. military aircraft do not follow ICAO flight procedures, they must navigate with "due regard" for civil aviation safety.

Some nations, however, purport to require all military aircraft in international airspace within their FIRs to comply with FIR procedures, whether or not they utilize FIR services or intend to enter national airspace. The U.S. does not recognize the right of a coastal nation to apply its FIR procedures to foreign military aircraft in such circumstances. Accordingly, U.S. military aircraft not intending to enter national airspace need not identify themselves or otherwise comply with FIR procedures established by other nations, unless the U.S. has specifically agreed to do so.

2.5.2.3 Air Defense Identification Zones in International Airspace. International law does not prohibit nations from establishing Air Defense Identification Zones (ADIZ) in the international airspace adjacent to their territorial airspace. The legal basis for ADIZ regulations is the right of a nation to establish reasonable conditions of entry into its territory. Accordingly, an aircraft approaching national airspace can be required to identify itself while in international airspace as a condition of entry approval. ADIZ regulations promulgated by the U.S. apply to aircraft bound for U.S. territorial airspace and require the filing of flight plans and periodic position reports. The U.S. does not recognize the right of a coastal nation to apply its ADIZ procedures to foreign aircraft not intending to enter national airspace nor does the U.S. apply its ADIZ procedures to foreign aircraft not intending to enter U.S. airspace. Accordingly, U.S. military aircraft not intending to enter national airspace need not identify themselves or otherwise comply with ADIZ procedures established by other nations, unless the U.S. has specifically agreed to do so.

It should be emphasized that the foregoing contemplates a peacetime or nonhostile environment. In the case of imminent or actual hostilities, a nation may find it necessary to take measures in self-defense that will affect overflight in international airspace.

2.6 EXERCISE AND ASSERTION OF NAVIGATION AND OVERFLIGHT RIGHTS AND FREEDOMS

As announced in the President's United States Oceans Policy statement of 10 March 1983,

"The United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the [1982 LOS] convention. The United States will not,

however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses."

When maritime nations appear to acquiesce in excessive maritime claims and fail to exercise their rights actively in the face of constraints on international navigation and overflight, those claims and constraints may, in time, be considered to have been accepted by the international community as reflecting the practice of nations and as binding upon all users of the seas and superjacent airspace. Consequently, it is incumbent upon maritime nations to protest diplomatically all excessive claims of coastal nations and to exercise their navigation and overflight rights in the face of such claims. The President's Oceans Policy Statement makes clear that the United States has accepted this responsibility as a fundamental element of its national policy.

2.7 RULES FOR NAVIGATIONAL SAFETY FOR VESSELS AND AIRCRAFT

2.7.1 International Rules. Most rules for navigational safety governing surface and subsurface vessels, including warships, are contained in the International Regulations for Preventing Collisions at Sea, 1972, known informally as the "International Rules of the Road" or "72 COLREGS." These rules apply to all international waters (i.e., the high seas, exclusive economic zones, and contiguous zones) and, except where a coastal nation has established different rules, in that nation's territorial sea, archipelagic waters, and inland waters as well. The 1972 COLREGS have been adopted as law by the United States. (See Title 33 U.S. Code. Sections 1601 to 1606). Article 1139, U.S. Navy Regulations, 1990, directs that all persons in the naval service responsible for the operation of naval ships and craft "shall diligently observe" the 1972 COLREGS. Article 4-1-11 of U.S. Coast Guard Regulations (COMDTINST M5000.3 (series)) requires compliance by Coast Guard personnel with all Federal law and regulations.

2.7.2 National Rules. Many nations have adopted special rules for waters subject to their territorial sovereignty (i.e., internal waters, archipelagic waters, and territorial seas). Violation of these rules by U.S. government vessels, including warships, may subject the U.S. to lawsuit for collision or other damage, provide the basis for diplomatic protest, result in limitation on U.S. access to foreign ports, or prompt other foreign action.

2.7.2.1 U.S. Inland Rules. The U.S. has adopted special Inland Rules applicable to navigation in U.S. waters landward of the demarcation lines established by U.S. law for that purpose. (See U.S. Coast Guard publication Navigational Rules, International — Inland, COMDTINST M16672.2 (series), title 33 Code of Federal Regulations part 80, and title 33 U.S. Code, sections 2001 to 2073.) The 1972 COLREGS apply seaward of the demarcation lines in U.S. national waters, in the U.S. contiguous zone and exclusive economic zone, and on the high seas.

2.7.3 Navigational Rules for Aircraft. Rules for air navigation in international airspace applicable to civil aircraft may be found in Annex 2 (Rules of the Air) to the Chicago Convention, DOD Flight Information Publication (FLIP) General Planning, and OPNAVINST 3710.7 (series) NATOPS Manual. The same standardized technical principles and policies of ICAO that apply in international and most foreign airspace are also in effect in the continental United States. Consequently, U.S. pilots can fly all major international routes following the same general rules of the air, using the same navigation equipment and communication practices and procedures, and being governed by the same air traffic control services with which they are familiar in the United States. Although ICAO has not yet established an "International Language for Aviation," English is customarily used internationally for air traffic control.

2.8 U.S.-U.S.S.R. AGREEMENT ON THE PREVENTION OF INCIDENTS ON AND OVER THE HIGH SEAS

In order better to assure the safety of navigation and flight of their respective warships and military aircraft during encounters at sea, the United States and the former Soviet Union in 1972 entered into the U.S.-U.S.S.R. Agreement on the Prevention of Incidents On and Over the High Seas. This Navy-to-Navy agreement, popularly referred to as the "Incidents at Sea" or "INCSEA" agreement, has been highly successful in minimizing the potential for harassing actions and navigational one-upmanship between U.S. and former Soviet units operating in close proximity at sea. Although the agreement applies to warships and military aircraft operating on and over the "high seas", it is understood to embrace such units operating in all international waters and international airspace, including that of the exclusive economic zone and the contiguous zone.

Principal provisions of the INCSEA agreement include:

1. Ships will observe strictly both the letter and the spirit of the International Rules of the Road.

2. Ships will remain well clear of one another to avoid risk of collision and, when engaged in surveillance activities, will exercise good seamanship so as not to embarrass or endanger ships under surveillance.
3. Ships will utilize special signals for signalling their operation and intentions.
4. Ships of one party will not simulate attacks by aiming guns, missile launchers, torpedo tubes, or other weapons at the ships and aircraft of the other party, and will not launch any object in the direction of passing ships nor illuminate their navigation bridges.
5. Ships conducting exercises with submerged submarines will show the appropriate signals to warn of submarines in the area.
6. Ships, when approaching ships of the other party, particularly those engaged in replenishment or flight operations, will take appropriate measures not to hinder maneuvers of such ships and will remain well clear.
7. Aircraft will use the greatest caution and prudence in approaching aircraft and ships of the other party, in particular ships engaged in launching and landing aircraft, and will not simulate attacks by the simulated use of weapons or perform aerobatics over ships of the other party nor drop objects near them.

The INCSEA agreement was amended in a 1973 protocol to extend certain of its provisions to include nonmilitary ships. Specifically, the 1973 protocol provided that U.S. and Soviet military ships and aircraft shall not make simulated attacks by aiming guns, missile launchers, torpedo tubes, and other weapons at nonmilitary ships of the other party nor launch or drop any objects near nonmilitary ships of the other party in such a manner as to be hazardous to these ships or to constitute a hazard to navigation.

The agreement also provides for an annual review meeting between Navy representatives of the two parties to review its implementation. The INCSEA agreement continues to apply to U.S. and Russian ships and military aircraft.

2.9 MILITARY ACTIVITIES IN OUTER SPACE

2.9.1 Outer Space Defined. As noted in paragraph 2.5.1, each nation has complete and exclusive control over the use of its national airspace. Except

when exercising transit passage or archipelagic sea lanes passage, overflight in national airspace by foreign aircraft is not authorized without the consent of the territorial sovereign. However, man-made satellites and other objects in earth orbit may overfly foreign territory freely. Although there is no legally defined boundary between the upper limit of national airspace and the lower limit of outer space, international law recognizes freedom of transit by man-made space objects at earth orbiting altitude and beyond.

2.9.2 The Law of Outer Space. International law, including the United Nations Charter, applies to the outer space activities of nations. Outer space is open to exploration and use by all nations. However, it is not subject to national appropriation, and must be used for peaceful purposes. The term "peaceful purposes" does not preclude military activity. While acts of aggression in violation of the United Nations Charter are precluded, space-based systems may lawfully be employed to perform essential command, control, communications, intelligence, navigation, environmental, surveillance and warning functions to assist military activities on land, in the air, and on and under the sea. Users of outer space must have due regard for the rights and interests of other users.

2.9.2.1 General Principles of the Law of Outer Space. International law governing space activities addresses both the nature of the activity and the location in space where the specific rules apply. As set out in paragraph 2.9.1, outer space begins at the undefined upper limit of the earth's airspace and extends to infinity. In general terms, outer space consists of both the earth's moon and other natural celestial bodies, and the expanse between these natural objects.

The rules of international law applicable to outer space include the following:

1. Access to outer space is free and open to all nations.
2. Outer space is free from claims of sovereignty and not otherwise subject to national appropriation.
3. Outer space is to be used for peaceful purposes.
4. Each user of outer space must show due regard for the rights of others.
5. No nuclear or other weapons of mass destruction may be stationed in outer space.

6. Nuclear explosions in outer space are prohibited.
7. Exploration of outer space must avoid contamination of the environment of outer space and of the earth's biosphere.
8. Astronauts must render all possible assistance to other astronauts in distress.

2.9.2.2 Natural Celestial Bodies. Natural celestial bodies include the earth's moon, but not the earth. Under international law, military bases, installations and forts may not be erected nor may weapons tests or maneuvers be undertaken on natural celestial bodies. Moreover, all equipment, stations, and vehicles located there are open to inspection on a reciprocal basis. There is no corresponding right of physical inspection of man-made objects located in the expanse between celestial bodies. Military personnel may be employed on natural celestial bodies for scientific research and for other activities undertaken for peaceful purposes.

2.9.3 International Agreements on Outer Space Activities. The key legal principles governing outer space activities are contained in four widely ratified multilateral agreements: the 1967 Outer Space Treaty; the 1968 Rescue and Return of Astronauts Agreement; the Liability Treaty of 1972; and the Space Objects Registration Treaty of 1975. A fifth, the 1979 Moon Treaty, has not been widely ratified. The United States is a party to all of these agreements except the Moon Treaty.

2.9.3.1 Related International Agreements. Several other international agreements restrict specific types of activity in outer space. The US-USSR Anti-Ballistic Missile (ABM) Treaty of 1972 prohibits the development, testing, and deployment of space-based ABM systems or components. Also prohibited, is any interference with the surveillance satellites both nations use to monitor ABM Treaty compliance. The ABM Treaty continues in force between the U.S. and Russia.

The 1963 Limited Test Ban Treaty (a multilateral treaty) includes an agreement not to test nuclear weapons or to carry out any other nuclear explosions in outer space.

The 1977 Environmental Modification Convention (also a multilateral treaty) prohibits military or other hostile use of environmental modification techniques in several environments, including outer space.

The 1982 International Telecommunication Convention and the 1979 Radio Regulations govern the use of the radio frequency spectrum by satellites and the location of satellites in the geostationary-satellite orbit.

2.9.4 Rescue and Return of Astronauts. Both the Outer Space Treaty and the Rescue and Return of Astronauts Agreement establish specific requirements for coming to the aid of astronauts. The treaties do not distinguish between civilian and military astronauts.

Astronauts of one nation engaged in outer space activities are to render all possible assistance to astronauts of other nations in the event of accident or distress. If a nation learns that spacecraft personnel are in distress or have made an emergency or unintended landing in its territory, the highseas, or other international area (e.g., Antarctica), it must notify the launching nation and the Secretary-General of the United Nations, take immediate steps to rescue the personnel if within its territory, and, if in a position to do so, extend search and rescue assistance if a high seas or other international area landing is involved. Rescued personnel are to be safely and promptly returned.

Nations also have an obligation to inform the other parties to the Outer Space Treaty or the Secretary-General of the United Nations if they discover outer space phenomena which constitute a danger to astronauts.

2.9.5 Return of Outer Space Objects. A party to the Rescue and Return of Astronauts Agreement must also notify the Secretary-General of the United Nations if it learns of an outer space object's return to earth in its territory, on the high seas, or in another international area. If the object is located in sovereign territory and the launching authority requests the territorial sovereign's assistance, the latter must take steps to recover and return the object. Similarly, such objects found in international areas shall be held for or returned to the launching authority. Expenses incurred in assisting the launching authority in either case are to be borne by the launching authority. Should a nation discover that such an object is of a "hazardous or deleterious" nature, it is entitled to immediate action by the launching authority to eliminate the danger of harm from its territory.