



# The legal framework for piracy and armed robbery against ships

ReCAAP-ISC

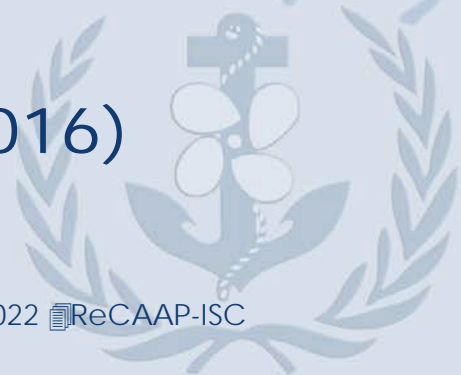
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23 August 2022



# UNCLOS @40

- By far the biggest, the longest, perhaps most significant and controversial international conference ever held in history
- Eleven sessions were held between 1973 and 1982
- 159 states in attendance
- plus specialized UN agencies, IGOs, NGOs, liberation movts, non-independent territories
- Signed in Jamaica 10 December 1982 by 117 states
- Entered into force 16 November 1994
- 168 states party (Azerbaijan 16 June 2016)





## Flag / Port / Coastal State

- Flag state — state the flag of which a vessel is flying
- Port state — state the port of which a vessel is calling/visiting
- Coastal state — state from whose coast or baselines the breadth of the territorial sea is measured





# Baselines

- Simplification
  - Landward of it are internal waters
  - Seaward of it emanate the different maritime zones
- Abuse or misuse of it could disadvantage
  - coastal states: erstwhile internal waters designated as waters wherein other states have rights
  - other states: full sovereignty over areas wherein certain rights are normally reserved





# Sovereignty and jurisdiction

- Sovereignty — supreme dominion, authority, or rule / supreme political authority of an independent state
- Jurisdiction — general power to exercise authority over persons/things within a specific territory/area
  - *prescribe/legislate*
  - *adjudicate*
  - *enforce*



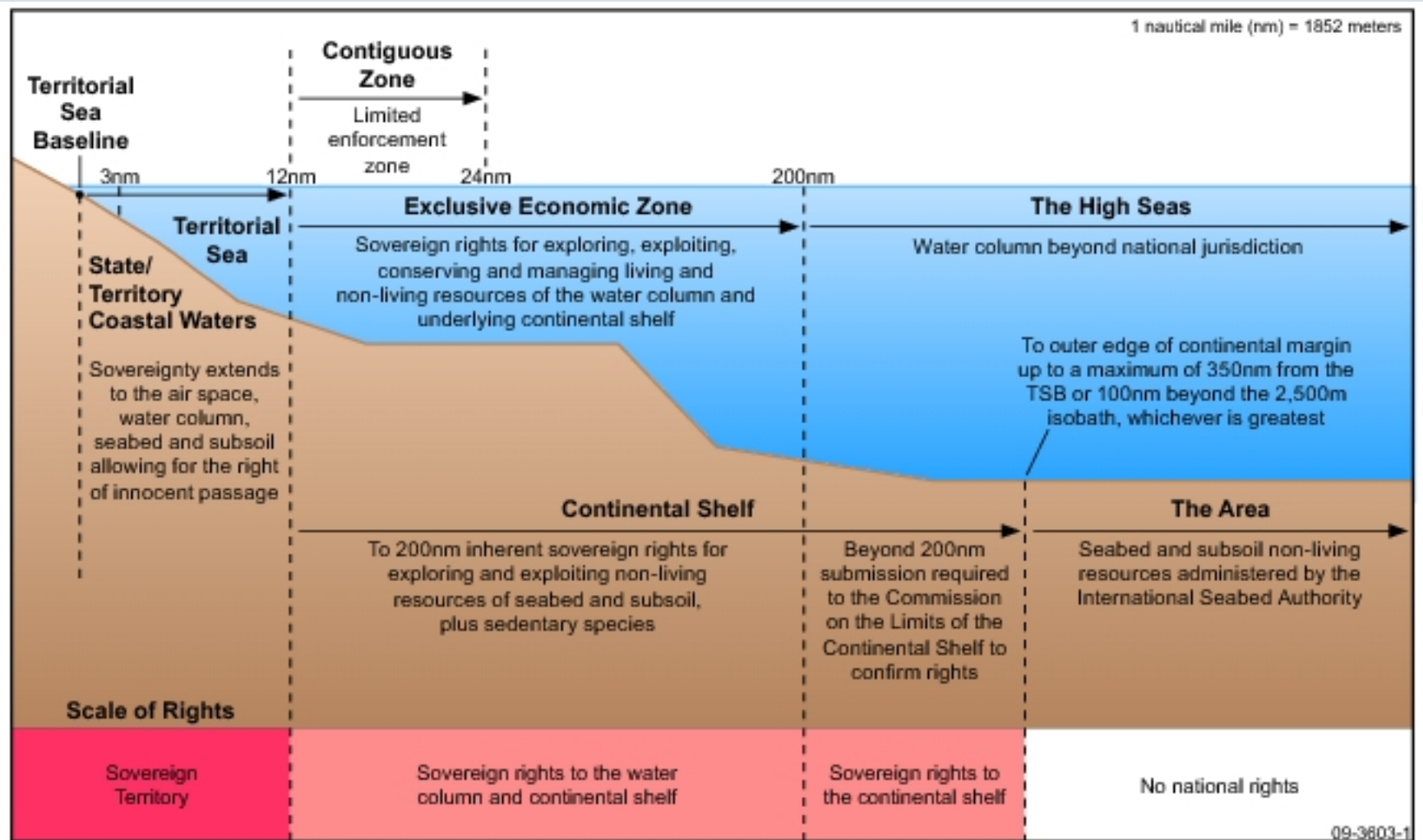


Figure 1: Offshore extent of the maritime zones recognized under international law



# Internal waters

- Waters on the landward side of the baseline, e.g.,
  - lakes
  - rivers
  - tidewaters
- Full sovereignty of the coastal state
  - Vessels in a coastal state's ports or other internal waters are within the full jurisdiction of the coastal state
  - The coastal may decline to exercise such jurisdiction – “internal economy” and comity concerns
- No right of “innocent passage”
  - exception: areas not historically internal waters, that are enclosed as such by straight baselines
- Access to ports and other internal waters
  - No rights at customary law for foreign vessels to enter a state's ports or internal waters (except perhaps vessels in distress)
  - Entry rights may be obtained by way of treaty law
- Coastal states have wide discretion to impose conditions for access to ports and limitations on vessels leaving its ports





# Territorial sea

- Breadth of its territorial sea: up to 12 NM, from baselines
- Coastal states have sovereignty and jurisdiction over the territorial sea!
- ...but there is an important distinction between internal waters and territorial seas —
  - the exclusive jurisdiction of the coastal state is limited by the passage rights of other States, including
    - **innocent passage** through the territorial sea and
    - transit passage through international straits
- Duties of the coastal state
  - Appropriate publicity of navigational dangers
  - No minimum breadth







# Innocent passage through the TS

- “Passage” (art. 18)
  - Navigation through TS for the purpose of
    - traversing that sea without entering internal waters, roadstead or port facility
    - proceeding to or from internal waters, roadstead or port facility
  - Passage shall be continuous and expeditious
  - Includes stopping and anchoring
    - incidental to ordinary navigation
    - force majeure or distress
    - assistance to persons, ships or aircraft in danger or distress
- “Innocent” (art. 19)
  - Not prejudicial to the peace, good order or security of the coastal State
  - Passage is prejudicial to the peace, good order or security of the coastal State if engaged in any of the following activities:
    - threat or use of force against the coastal State
    - any exercise or practice with weapons of any kind
    - any act aimed at collecting information to the prejudice of the defence or security of the coastal State
    - any act of propaganda aimed at affecting the defence or security of the coastal State





# Innocent passage through the TS (...cont'd)

- launching, landing or taking on board of any aircraft
  - launching, landing or taking on board of any military device
  - loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State
  - willful and serious pollution contrary to this Convention
  - fishing activities
  - research or survey activities
  - interfering with any systems of communication or any other facilities or installations of the coastal State
  - activity not having a direct bearing on passage
- 
- Coastal state retains the right to prevent passage which is not innocent; suspend temporarily in specified areas for the protection of its security (art. 25)





# Territorial Sea (legislative jurisdiction)

- Legislative Jurisdiction vis-a-vis innocent passage (art. 21)
  - safety of navigation and the regulation of maritime traffic;
  - protection of navigational aids
  - protection of cables and pipelines
  - conservation of the living resources of the sea
  - prevention of infringement of the fisheries laws
  - preservation of the environment
  - marine scientific research and hydrographic surveys
  - prevention of infringement of the customs, fiscal, immigration or sanitary laws
- Art. 24 & 26 also relate to legislative jurisdiction in the TS





# Territorial Sea (enforcement jurisdiction)

- Coastal state enforcement jurisdiction in the territorial sea is in principle complete except for:
  - crimes committed before a ship enters the TS, merely passing through the territorial sea (and not having entered internal waters)
  - Part V & Part XII violations exceptions
  - civil matters to arrest a ship in connection with liabilities not incurred in connection with its voyage through the territorial sea (LOSC '82, Arts. 27 and 28)
- Criminal jurisdiction exercised if the consequences of the crime committed on board the ship during its passage, (art. 27)
  - Disturbs peace or good order
  - Local authorities are requested by ship master or flag state
  - Necessary for suppression of drug trade

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# Territorial Sea (enforcement jurisdiction)

- Government ships that are not operated for commercial purposes, e.g. warships, are not subject to coastal state enforcement jurisdiction because of the immunity they enjoy under customary international law (LOSC '82, Art. 32;)
- Warships which violate coastal state laws concerning passage and which ignore requests for compliance may be required to leave the territorial sea and the coastal may use force to compel them to do so. (LOSC '82, Art. 30)

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# Contiguous zone

- A maritime zone declared by the state, normally 12 NM beyond the TS,
- ...where the coastal State may exercise the control necessary to:
  - prevent infringement of customs, fiscal, immigration or sanitary laws within territory/territorial sea
  - punish infringement of the above laws and regulations committed within territory/territorial sea





# Exclusive economic zone

- Area beyond the TS, up to 200 NM from baselines (Art. 57)
- Legal regime with specific rights and jurisdiction (Art. 55)
- Coastal State has **sovereign rights**
  - for exploring and exploiting, conserving and managing the natural resources, whether living or non-living
  - with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds
- Coastal State has *prescriptive & enforcement* **jurisdiction** with regard to
  - the establishment and use of artificial islands, installations and structures
  - marine scientific research
  - the protection and preservation of the marine environment
- *...may take such measures, including boarding, inspection, arrest and judicial proceedings to ensure compliance (art. 73)*



# High seas

- High seas — all parts that are not EEZ, TS, IW, or AW (Art. 86)
- Freedom of the high seas (Art. 87)
  - freedom of navigation
  - freedom of overflight;
  - freedom to lay submarine cables and pipelines
  - freedom to construct artificial islands and other installations
  - freedom of fishing
  - freedom of scientific research
- Every State has the right to sail ships flying its flag on the high seas (Art. 90)
- On the high seas, ships shall be **subject to the exclusive jurisdiction** of the flag state (art. 92)







# UNCLOS piracy provisions

Article 100 - Duty to co-operate in the repression of piracy

Article 101 - Definition of piracy

Article 102 - Piracy by a warship, gov't ship or gov't aircraft whose crew has mutinied

Article 103 - Definition of a pirate ship or aircraft

Article 104 - Retention or loss of the nationality of a pirate ship or aircraft

Article 105 - Seizure of a pirate ship or aircraft

Article 106 - Liability for seizure without adequate grounds

Article 107 - Ships and aircraft which are entitled to seize on account of piracy

Article 110 - Right of visit

Article 111 - Right of hot pursuit





# Piracy defined

## UNCLOS Art. 101

1. an illegal act of violence
2. motivated by private gain
3. committed by persons on board a private ship
4. directed against another vessel, or the persons and property on board
5. committed on the high seas or outside the jurisdiction of any State.





# High seas

- **Duty to cooperate:** All States shall cooperate in the repression of piracy on the high seas (art. 100)
- **Pirate ship definition:** ship intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101 (art. 103)
- **Universal jurisdiction:** every State may seize a pirate ship and arrest the persons and seize the property on board; the courts of the arresting State may decide on penalties and may determine the action to be taken with regard to the pirate ship (Art. 105)
- **Liability for seizure:** Where seizure has been effected without adequate grounds, the arresting state shall be liable to the flag state for any loss or damage caused by the seizure (Art. 106)
- **Ships entitled to seize:** A seizure may be carried out only by warships or other ships clearly marked and identifiable as being on government service and authorized to that effect (Art. 107)



# Right of visit (art. 110)

- A warship is not justified in boarding a foreign ship on the high seas, unless there is reasonable ground for suspecting that the ship is:
  - engaged in piracy
  - engaged in the slave trade
  - engaged in unauthorized broadcasting
  - without nationality
  - though disguised is in reality of the same nationality as the warship
- In above cases, the warship may proceed to
  - verify the ship's right to fly its flag
  - send a boat under the command of an officer to the suspected ship
  - a further examination on board the ship, if suspicion remains after check of documents
- If suspicions are unfounded, the ship shall be **compensated** for any loss or damage that may have been sustained.





# Right of hot pursuit (art. 111)

- Hot pursuit may be undertaken if coastal State has good reason to believe that the ship has violated the laws and regulations of that State
- Pursuit **must** be commenced when foreign ship is within the *internal waters*, the *archipelagic waters*, the *territorial sea* or the *contiguous zone* of the pursuing State, and
- May only continue outside TS or CZ if pursuit is uninterrupted
- When the foreign ship within TS/CZ receives the order to stop, the ship giving the order could be in another maritime zone
- If within CZ, pursuit may only be undertaken if there has been a CZ violation





# Right of hot pursuit (art. 111)

- Right of hot pursuit applies *mutatis mutandis* to EEZ/CS
- Right of hot pursuit ceases when the ship enters TS of its own or a third state
- Hot pursuit is not deemed to have begun unless the pursuing ship is satisfied that the ship pursued (or one of its boats) is within the TS, CZ, EEZ, or above the CS
- Pursuit may only commence after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.
- Hot pursuit may be exercised only by **warships** or **military aircraft**, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect





# Right of hot pursuit (art. 111)

- Release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.
- Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be **compensated** for any loss or damage that may have been thereby sustained.

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# Piracy in the EEZ

## Article 58 (Rights and duties of other States)

- All states enjoy [high seas] freedoms in Art. 87
- Arts. 88-115 [high seas] apply to the EEZ

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# Armed robbery against ships (IMO)

means any of the following acts

- any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;
- any act of inciting or of intentionally facilitating an act described above.
- *ResIn A.1025(26) "Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships" – 18 January 2010*

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# Armed robbery against ships (ReCAAP)

means any of the following acts

- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such a ship, in a place within a Contracting Party's jurisdiction over such offences;
- (b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).
- *Art. 1, ReCAAP Agreement, November 2004*



# Piracy defined

## UNCLOS Art. 101

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2. motivated by private gain
3. committed by persons on board a private ship
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# Jurisdiction in different maritime zones

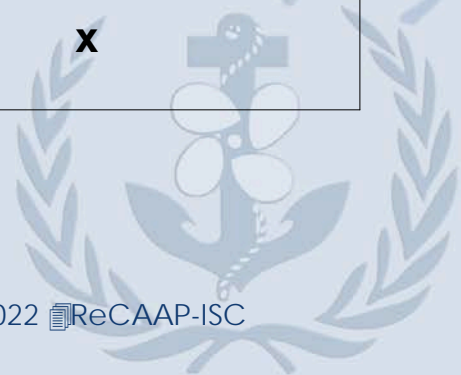
<b>ZONE</b>	<b>Prescriptive Jurisdiction</b>	<b>Enforcement Jurisdiction</b>
Internal waters	Yes	Yes
Territorial sea	Yes	Yes
Contiguous zone	No	Yes
Exclusive economic zone	in specific cases	in specific cases
High seas	No	No





# Piracy or armed robbery against ships?

ZONE	Armed robbery against ships	Piracy
Internal waters	x	
Territorial sea	x	
Contiguous zone		x
Exclusive economic zone		x
High seas		x





Questions ???

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# Case study 1

- **Ship name & type:** *M/V Karaboudjan*, general cargo ship
- **Flag state:** Kingdom of Syldavia
- **Coastal state:** Republic of Borduria
- **Ship's location & status:**
  - exercising innocent passage through Bordurian territorial sea (has not entered and has no plans to enter Bordurian internal waters)
  - Information from social media shows that there is an armed robbery in progress on board the *Karaboudjan*
- **Coastal state action:** Bordurian Navy and Coast Guard vessels stop the *Karaboudjan* to board and conduct investigation
- **Jurisdiction by coastal state authorities:**
  - Is in principle complete?
  - How about UNCLOS art. 27 vis-a-vis ships in innocent passage?

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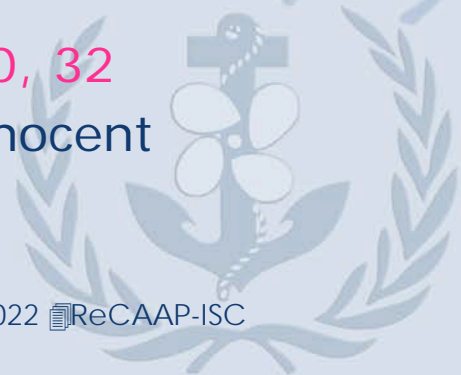




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- **Jurisdiction by coastal state authorities:**
  - Is in principle complete? **subj to arts. 27, 28, 30, 32**
  - How about UNCLOS art. 27 vis-a-vis ships in innocent passage? **detrimental to peace/good order**

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## Case study 2

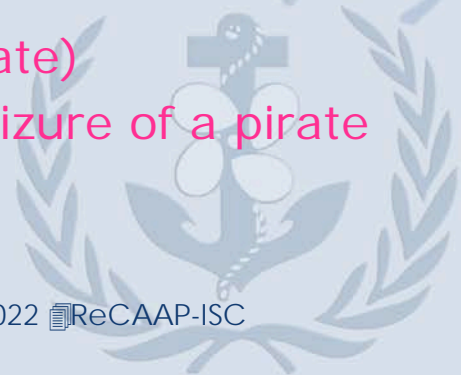
- **Ship name & type:**
  - *M/V Karaboudjan*, general cargo ship
  - *M/V Pachacámac*, general cargo ship
- **Flag state:** Kingdom of Syldavia
- **Coastal state:** Republic of Borduria
- **Ship's location & status:**
  - On the high seas
  - *Karaboudjan* has been hijacked by pirates
  - There is intelligence information that the *Karaboudjan* has attacked and taken over the *Pachacámac*
  - Syldavian and Bordurian naval forces rush to the scene
- **Which countries can exercise jurisdiction?**
  - Flag state?
  - Coastal state?





## Case study 2

- **Ship name & type:**
  - *M/V Karaboudjan*, general cargo ship
  - *M/V Pachacámac*, general cargo ship
- **Flag state:** Kingdom of Syldavia
- **Coastal state:** Republic of Borduria
- **Ship's location & status:**
  - On the high seas
  - *Karaboudjan* has been hijacked by pirates
  - There is intelligence information that the *Karaboudjan* has attacked and taken over the *Pachacámac*
  - Syldavian and Bordurian naval forces rush to the scene
- **Which countries can exercise jurisdiction?**
  - Flag state? **art. 92 (exclusive jurisdiction of flag state)**
  - Coastal state? **art. 110 (right of visit); art. 105 (seizure of a pirate ship); art. 103 (persons in dominant control)**





## Case study 3

- **Ship name & type:** *M/Bca Ranchi*, motor skiff
- **Flag state:** San Theodoros
- **Coastal states:**
  - Republic of Borduria
  - Kingdom of Syldavia
- **Skiff's location & status:**
  - Positive ID involvement in armed robbery against a ship in a Syldavian port
  - Running full speed ahead towards high seas
- **Hot pursuit by coastal state authorities:**
  - Violated laws?
  - Commenced within IW, AW, TS, CZ?
  - Uninterrupted?

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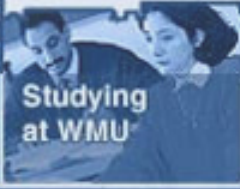




## Case study 3

- **Hot pursuit by coastal state authorities:**
  - Visual/auditory signal
    - Whistle?
    - Flag signals?
    - Flashing lights?
    - Cannonshot
    - Radio?
  - Pursuing vessel
    - Navy warship?
    - Maritime police patrol vessel?
    - Fishing vessel manned by Syldavian Coast Guard personnel?
  - Entry into Bordurian
    - EEZ?
    - CZ?
    - TS?





Thank you for your attention