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Compliance monitoring pilot for Marpol Annex VI

Legal Framework for Monitoring and Enforcing Compliance with Marpol Annex VI

CompMon Stakeholder Conference

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Outline

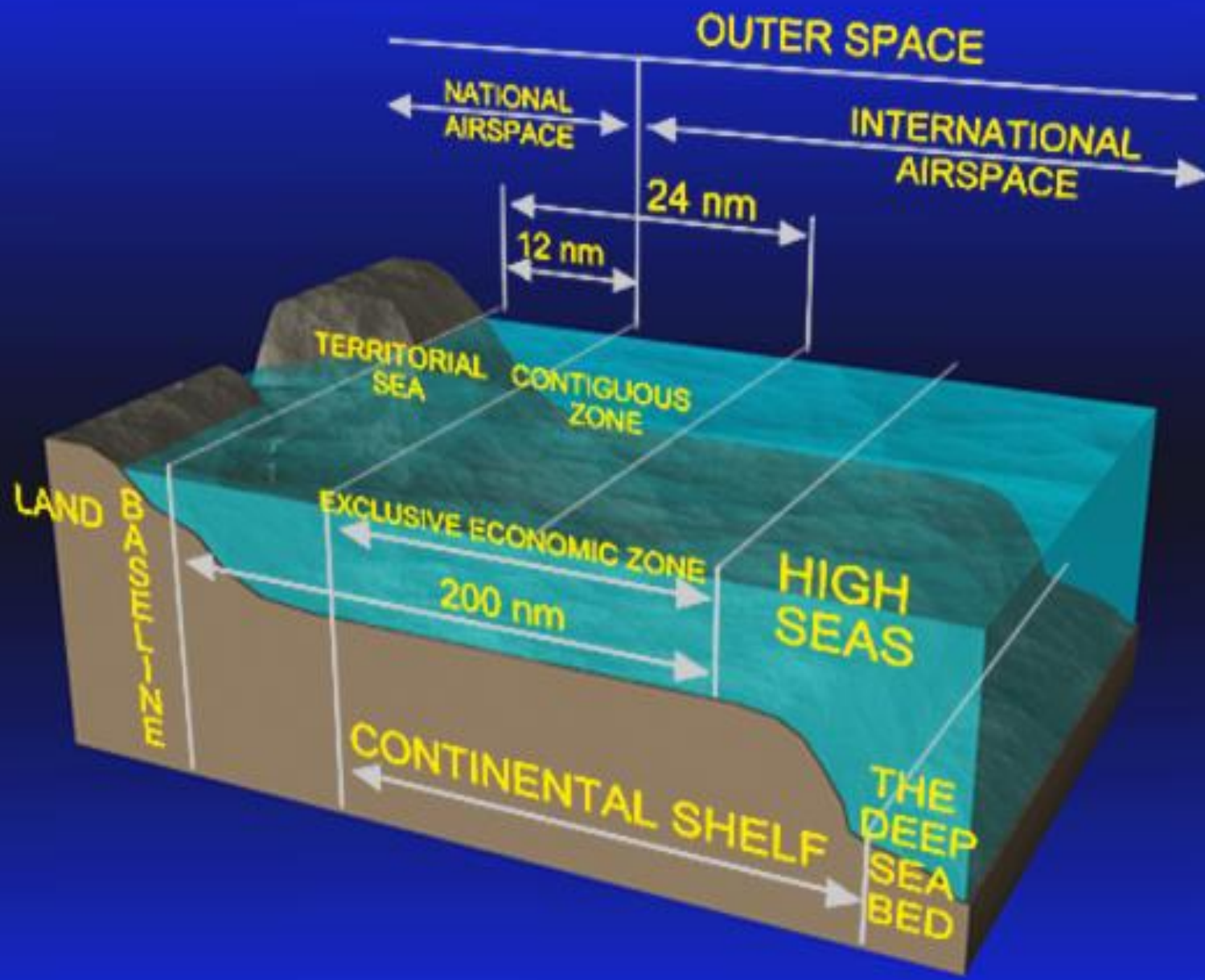
- General on legal framework for Marpol Annex VI
- Prescriptive jurisdiction
- Enforcement jurisdiction
- Special issues for enforcement of sulphur in fuel requirements
- Sanctions

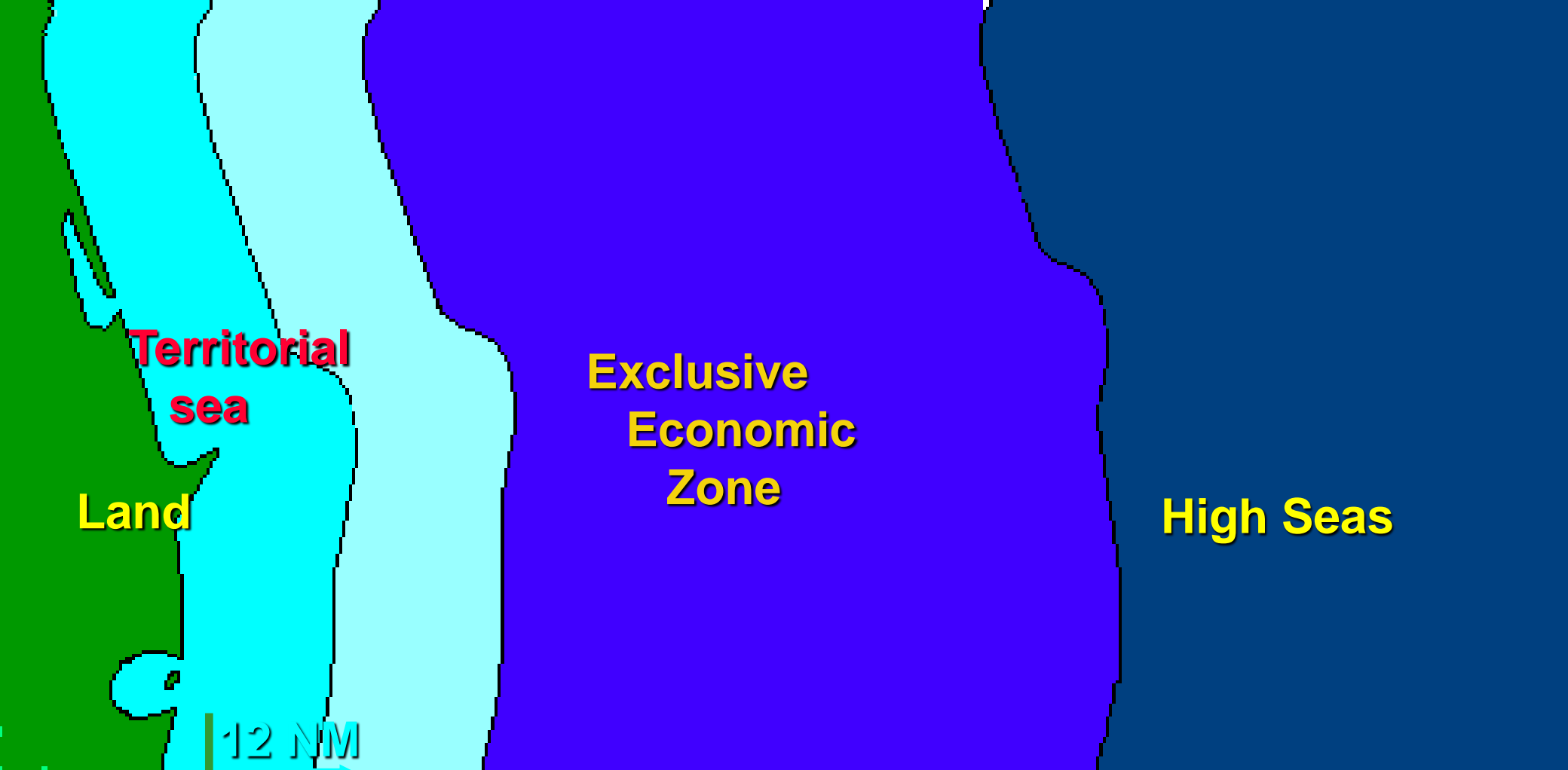
Criminal

Administrative

General

- UNCLOS (stable, customary law)
- Prescriptive and enforcement jurisdiction (need both to enforce)
- Not designed with ships' air emissions in mind (arts 212,222)





**Territorial
sea**

Land

**Exclusive
Economic
Zone**

High Seas

12 NM

24 NM

200 NM

Prescriptive jurisdiction

- Annex VI (and SECAs) cover any maritime zone, including high seas)
- Flag states
- Coastal states
 - EEZ, TS, international straits (DK and Dover)
 - Is it CDEM-rule?
- Port states
 - Broad powers
 - Jurisdictional 'cheating'
 - Other bases for extra-territorial jurisdiction?
 - Is UNCLOS art 218(1) applicable?
- Does freedom of navigation entail a right not to be remotely measured? (Probably not, note prescriptive jurisdiction, satellites etc., but 'due regard' duty applies)

Prescriptive jurisdiction in the law of the sea

	Flag State	Coastal- / port State
High seas	Minimum: 'Generally accepted international rules and standards' (GAIRAS) (i.e. SOLAS, Marpol, STCW etc.)	No, but limited environmental enforcement jurisdiction
EEZ		Max: GAIRAS
Terr. sea		Internal rules, + Max: GAIRAS CDEM
Internal waters, ports		Internal rules (implicitly) Max: ?

Enforcement jurisdiction

- At sea
 - Discrepancy art 220
 - Generally limited
- PSC (art 226 + IMO Conventions)
- Judicial enforcement (art 218)
- Safeguards (monetary penalties, timing, reasonableness, prompt release, security etc.)

Special enforcement challenges with respect to Annex VI (1)

- UNCLOS not entirely suitable (focuses on marine pollution)
- No enforcement provision in Annex VI (and very little in directive)
- Marpol (and EU Directive 2012/33) require effective and deterring sanctions
- Significant financial implications
- Technical issues (complex investigations)
- Time constraints
- Legal issues

Special enforcement challenges with respect to Annex VI (2)

- Legal issues
 - Establishing violation
 - Establishing negligence
 - Liable person
 - Evidence (overall assessment)
 - Level and basis of penalty
 - Type of sanction (criminal/administrative)
 - Other solutions? (e.g. financial securities)

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