

Faculty of Law

*Defining tomorrow*



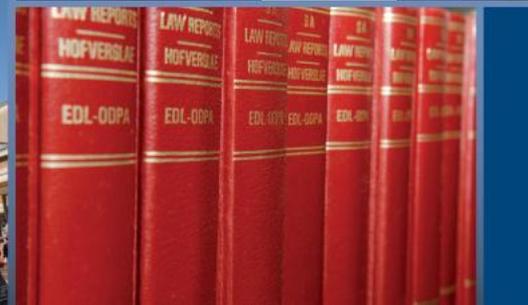
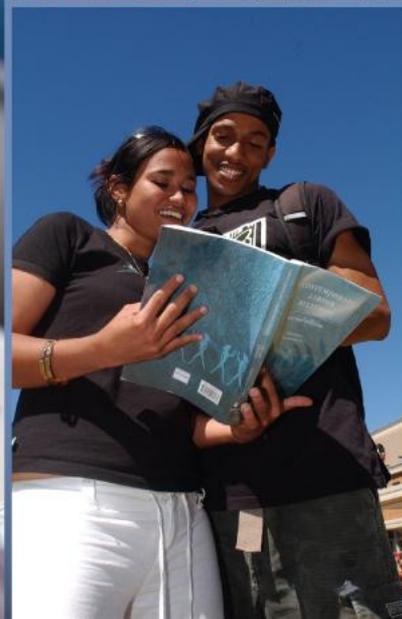
Nelson Mandela  
Metropolitan  
University

*for tomorrow*

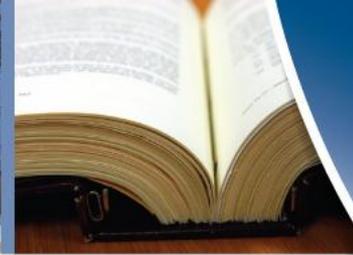
# The proposed CEMZA

GEF IW Workshop

Grahamstown, 7 May 2014



# Structure of the presentation



**Historical background**

**UNCLOS**

**Cooperation**

**Autonomy**

**Paradigm shift**



# Introduction



c1500: “discoveries” (Spain + Portugal)

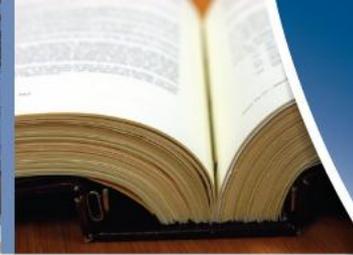
1600: + UK + Netherlands + France

*Mare liberum* <> *Mare clausum*

*Laissez-faire* regime

Limited and “harmless” navigation

Resources thought to be inexhaustible



19<sup>th</sup> century: industrial development

1930 codification attempt

UNCLOS I (1958) 4 Geneva Conventions

UNCLOS II (1960) unsuccessful

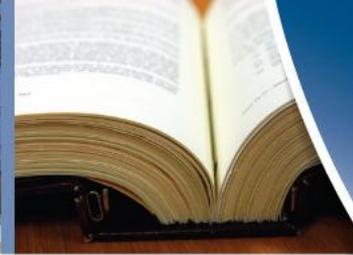
UNCLOS III (1973-1982) → 1982 LOSC

(17 chapters + 9 annexes)

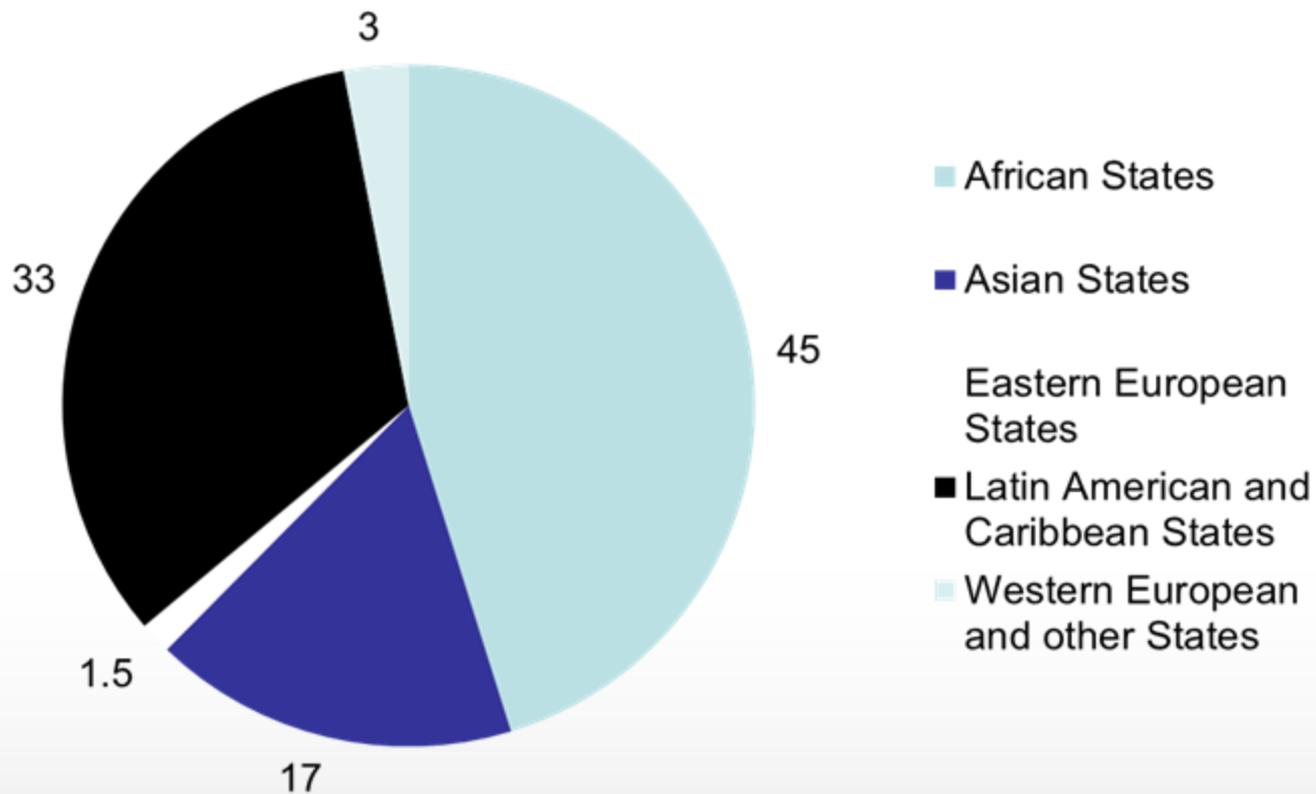
1994: came into force

160+ States Parties (RSA (1997) but not USA)

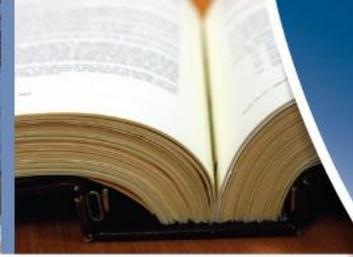
# Africa



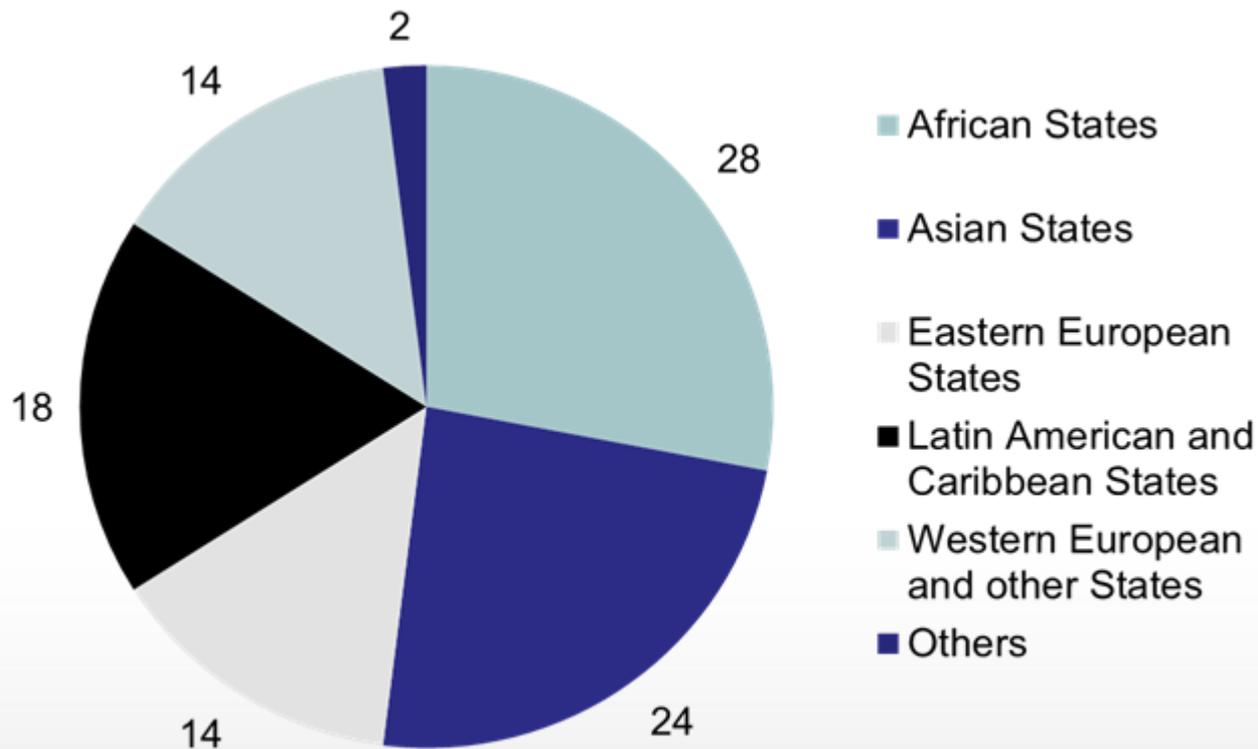
## Ratifications of UNCLOS per region (end of 1993)



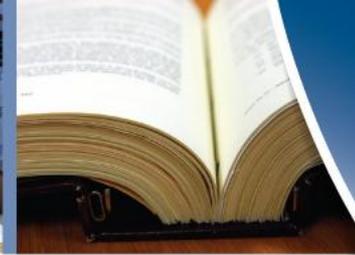
# Africa



## Ratifications of UNCLOS per region (end of 2012)

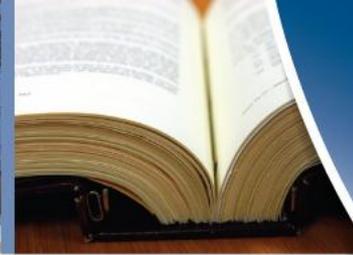


# UNCLOS Preamble



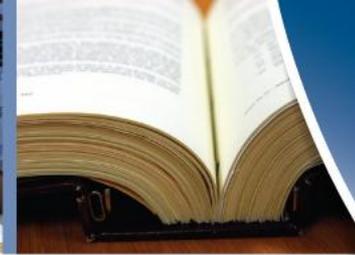
“Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will **facilitate international communication**, and will **promote the peaceful uses of the seas and oceans**, the **equitable and efficient utilization of their resources**, the **conservation of their living resources**, and the **study, protection and preservation of the marine environment**,  
...”

# UNCLOS Preamble



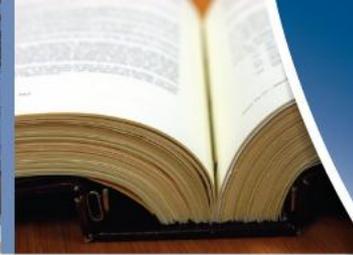
“Bearing in mind that the achievement of these goals will contribute to the realization of a **just and equitable international economic order** which takes into account the interests and needs of mankind as a whole and, in particular, the **special interests and needs of developing countries**, whether coastal or land-locked, ...”

# UNCLOS Preamble



“Believing that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the **principles of justice and equal rights** and will **promote the economic and social advancement of all peoples of the world**, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter, ...”

# UNCLOS



UNCLOS = “Constitution of the seas”

Inaccurate

No “super State”

Compromise (“package deal”) ex: EEZ

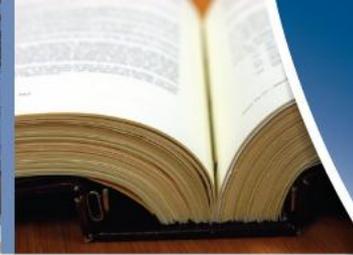
Very weak vertical component

Exit *Mare Liberum*?

Superficially: YES

Fundamentally: NO

# Cooperation



Straits (art 41(5) and 43)

Living resources of EEZ (art 61-67 and 69-70)

EEZ and CS delimitation (art 74 and 83)

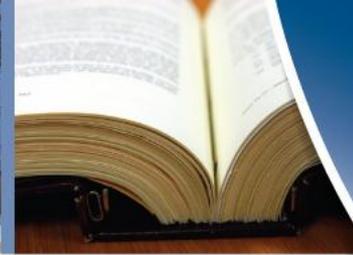
Marine casualty or incident of navigation (art 94(7))

Duty to render assistance (art 98)

Repression of piracy (art 100)

Illicit traffic in narcotic drugs or psychotropic  
substances (art 108)

Unauthorized broadcasting from the high seas (art  
109)



Conservation and management of living resources of the high seas (art 117-120)

Enclosed or semi-enclosed seas (art 123)

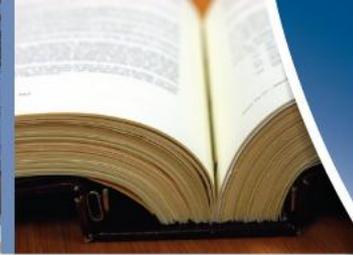
Landlocked States (art 129-130)

Marine scientific research in the Area (art 133(3))

Transfer of technology and scientific knowledge relating to activities in the Area (art 144(2))

ISBA production policies (art 151(1)(a))

Consultation and cooperation with international and non-governmental organizations (art 169)



Protection and preservation of the marine environment (art 197-201)

Avoidance of unnecessary physical inspection of vessels at sea (art 226(2))

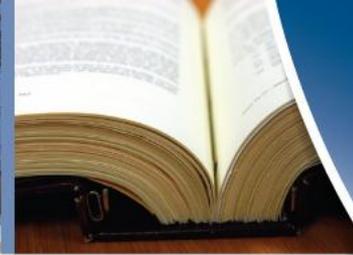
Responsibility and liability for damage to the environment (art 235(3))

Marine scientific research (art 242-244)

Development and transfer of marine technology (art 266(1), 268-278)

Archaeological and historical objects found at sea (art 303(1))

# Autonomy



National governance

Baselines and maritime zones (ex: art 7; art 33; art 47; art 57; art 76)

Registration (ex: art 91)

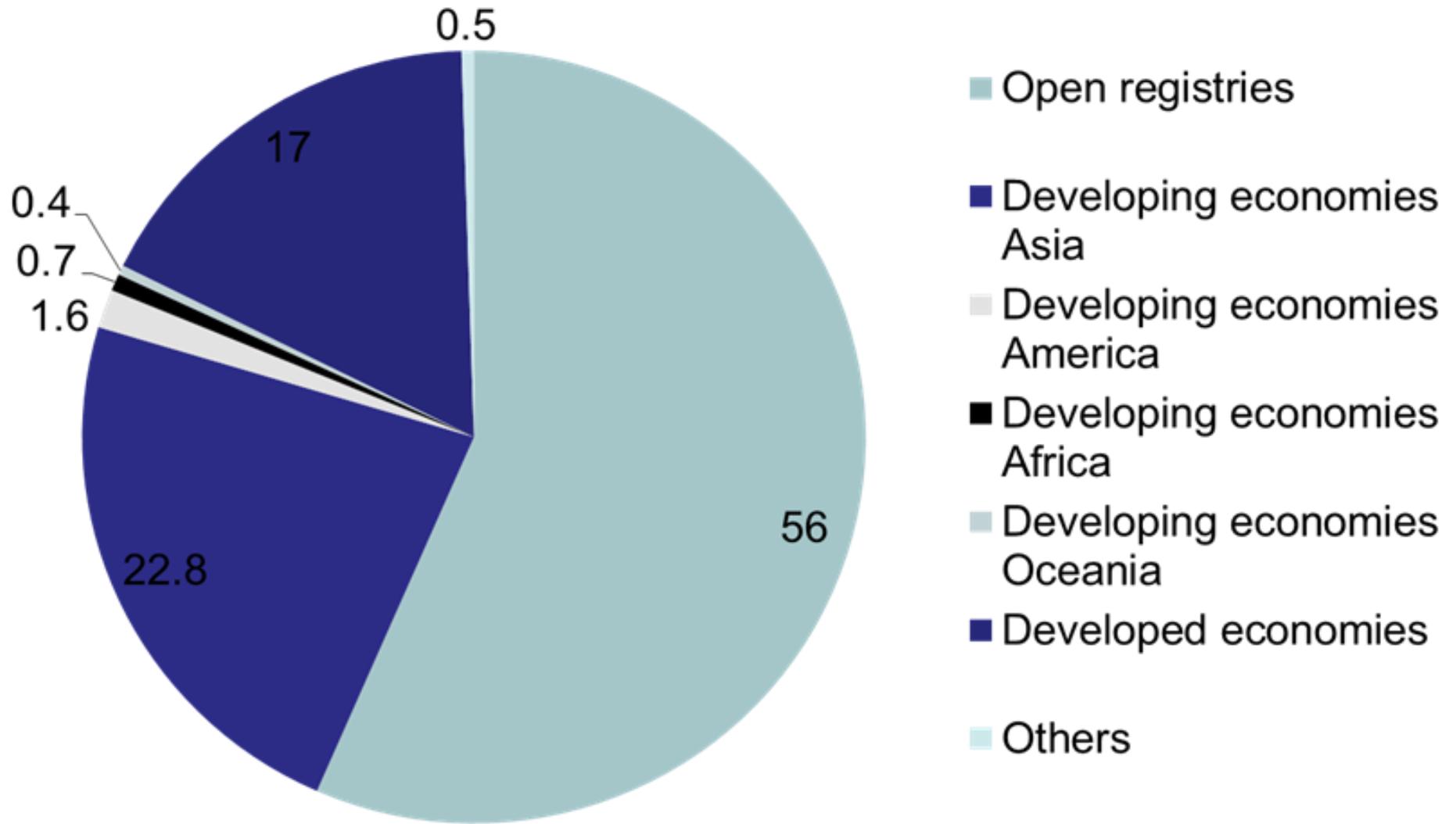
Regulation (ex: art 21; art 42; art 56; art 77)

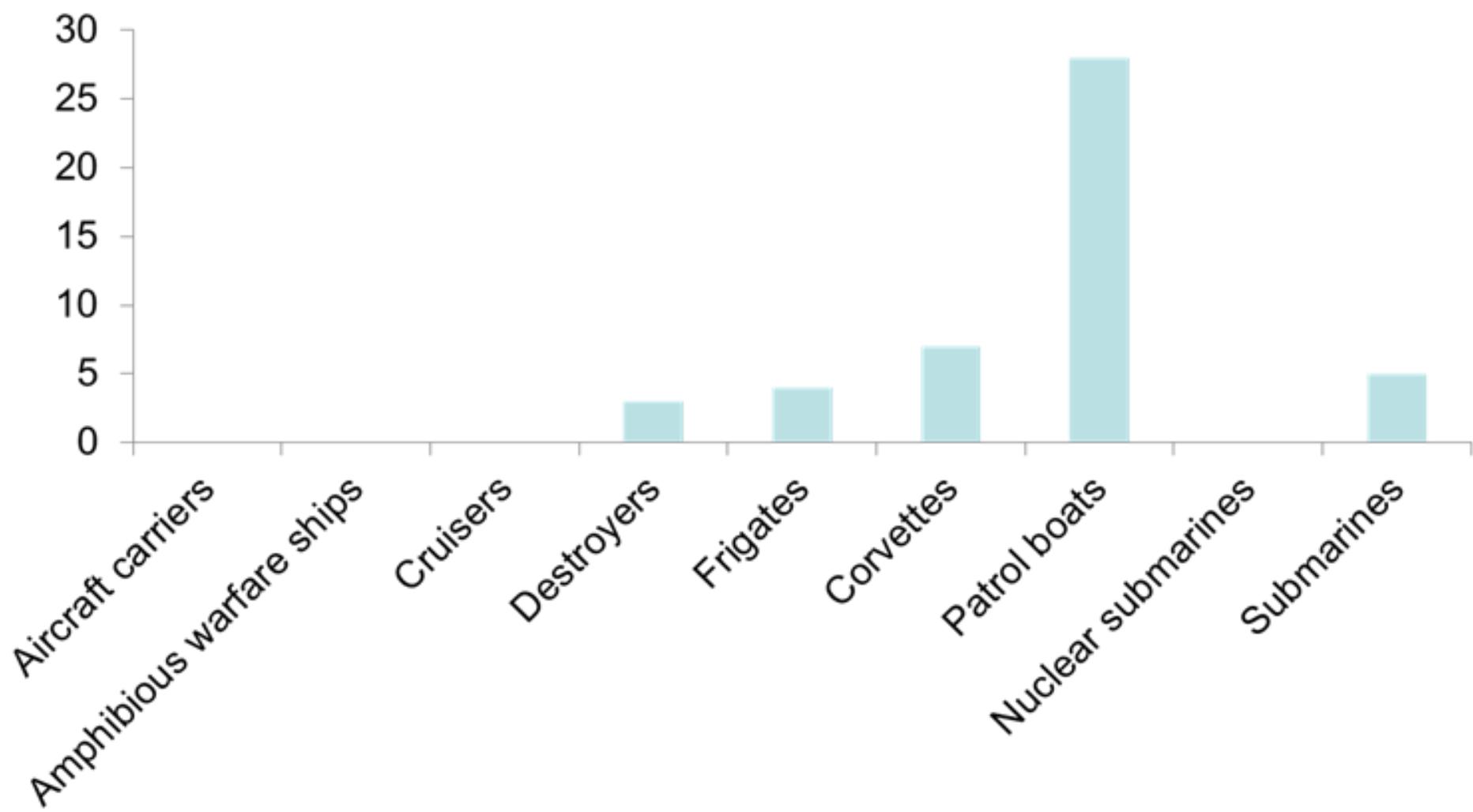
Enforcement (ex: art 27-28; art 73; art 97)

Sovereign equality of States

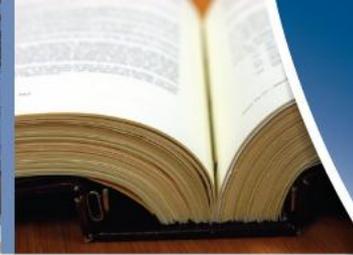
Substantive equality? (Adequate capacity?)

# % world merchant fleet (dwt)

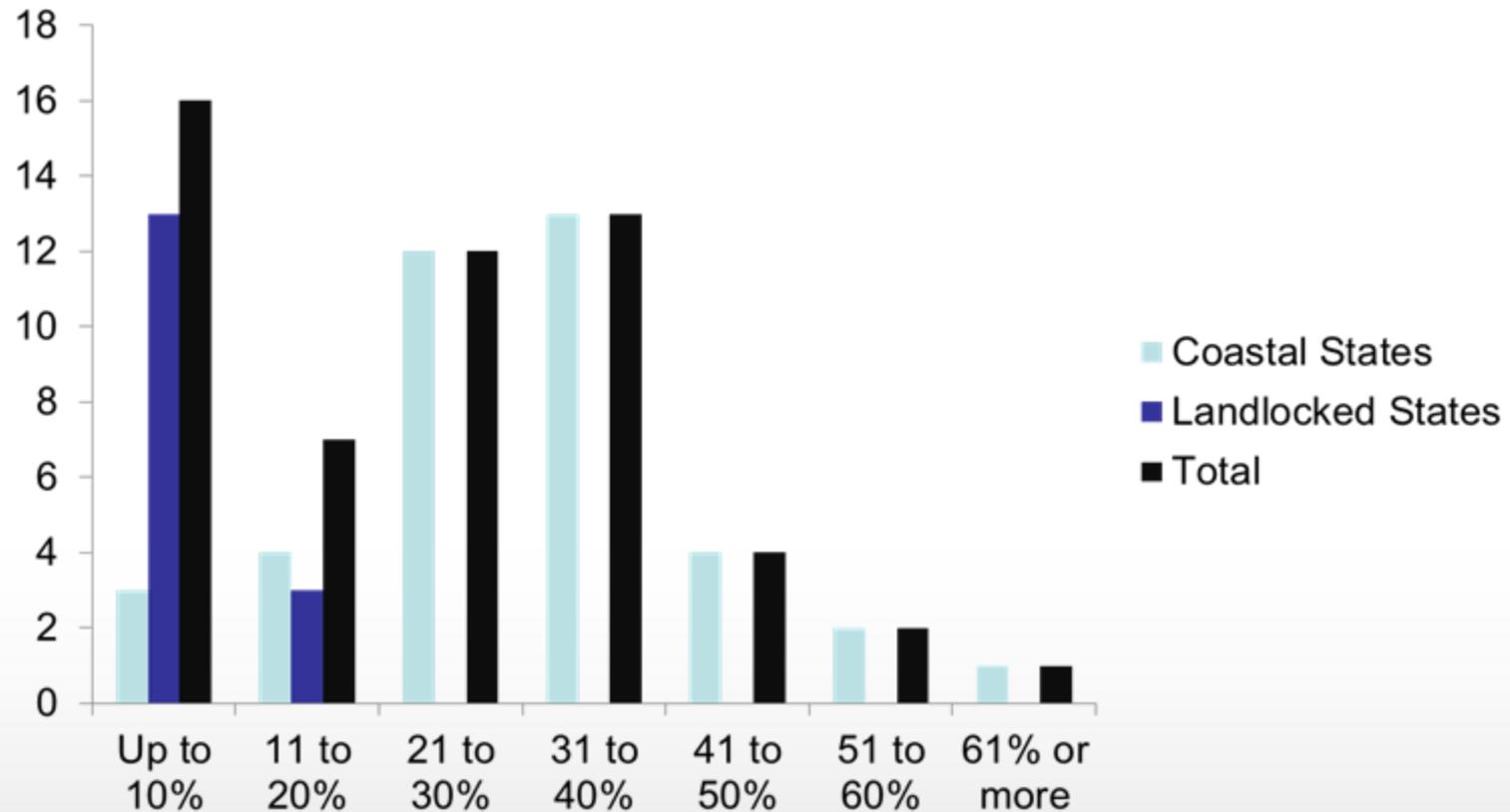




# Africa

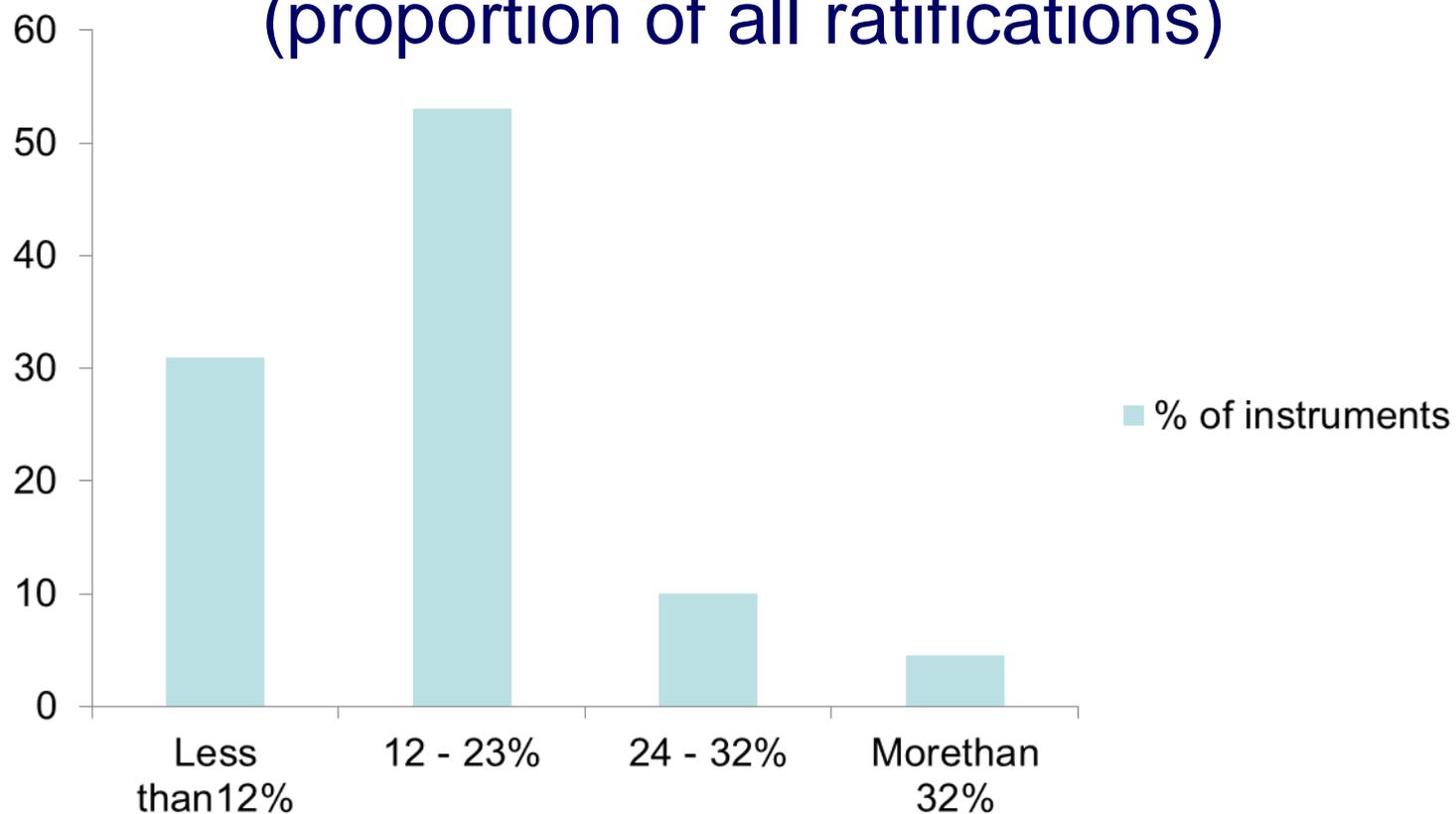


## African ratifications of instruments other than LOSC



# African ratifications of instruments other than LOSC

(proportion of all ratifications)





## South African Maritime Safety Authority (SAMSA)

### Maritime Sector Skills Development Study



Transforming the National and Regional Maritime Landscape

21 September 2011



**Nelson Mandela  
Metropolitan  
University**

*for tomorrow*

Port Elizabeth & George



**Faculty of Law**  
*Defining tomorrow*

## South African Research Chair in the Law of the Sea and Development in Africa

[Home](#)

[Researchers](#)

[Admission information](#)

[Library](#)

[Resources](#)

[Links](#)

[Faculty of Law](#)

### Facebook link

[South African Research Chair  
in the Law of the Sea](#)

"When a man has done what he considers to be his duty to his people and his country, he can rest in peace" (Nelson Mandela)

Welcome to the website of the South African Research Chair in the Law of the Sea and Development in Africa, hosted by the Nelson Mandela Metropolitan University, funded by the Department of Science and Technology and managed by the National Research Foundation.

The research undertaken by the Chair focuses on the following three areas:

1. South Africa and the law of the sea, including the legal regime governing the South African continental shelf and the exploitation of its resources;
2. Development in Africa and the law of the sea, including relevant indigenous law – research at international and comparative level on:
  - i. the East coast of Africa and the Indian Ocean;
  - ii. the West coast of Africa and the Atlantic Ocean;
  - iii. the Southern Ocean and Antarctica;
3. The legal aspects of marine tourism.



### Contacts

**Ms Gerda Baard**

Admin Assistant

Tel: 27 41 504 1193

[marinelaw@nmmu.ac.za](mailto:marinelaw@nmmu.ac.za)

### Files you can download

[NMMU Chair - Law of the Sea and Development](#)  
(531 kB)

**Nelson Mandela Metropolitan University**

Telephone: 041-504 1111 | Fax: 041-504 2574 / 2731

E-mail: [info@nmmu.ac.za](mailto:info@nmmu.ac.za)

PO Box 77000 | Nelson Mandela Metropolitan University

Port Elizabeth | 6031 | South Africa

[Contact us](#)

**News & Events**

[Staff mail](#) | [Student mail](#)

[Staff portal](#) | [Student portal](#)

[BEE & Tax certificates](#) | [PAIA](#) | [ISPA](#)

[WCMS](#)



© NMMU 2013

[A-Z Index](#)

[NMMU site map](#)

Country	Count
CHINA	680
USA	569
FRANCE	206
Ukraine	156
South Africa	152
Russian Federation	113
Germany	88
Italy	65
Netherlands	52
UNITED KINGDOM	50
Canada	23
Uganda	18
India	15
Romania	14
Spain	13
Hong Kong	11
Korea (Republic of)	10
Taiwan	10
Sweden	8
Tunisia	8
Europe	6
Japan	5
Ireland	4
Iceland	4
Kenya	3
Namibia	3

APARTHEID

AMATEUR!

GLOBAL  
APARTHEID

Subsidised  
OVER-CONSUMPTION

IMF

WTO

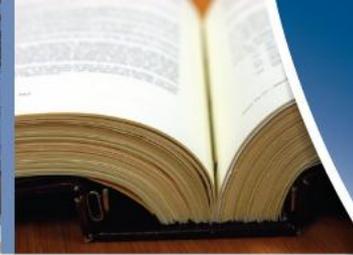
WORLD  
BANK

PICKLE  
DOWN

ZAPIRO



# GDP



## Belgium:

Population: 11.000.000

GDP: 483.7 billion USD (2012)

## South Africa:

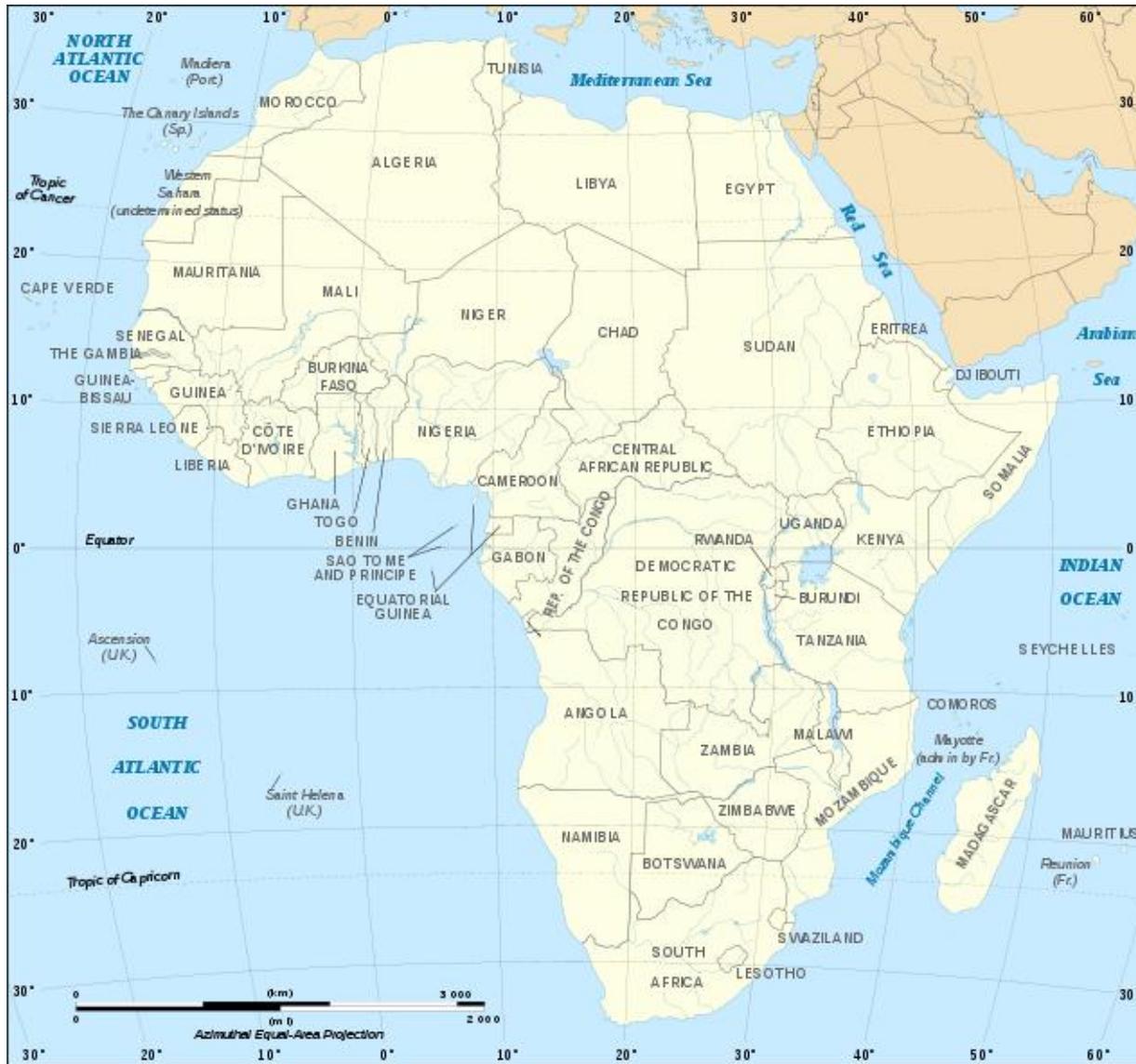
Population: 55.000.000

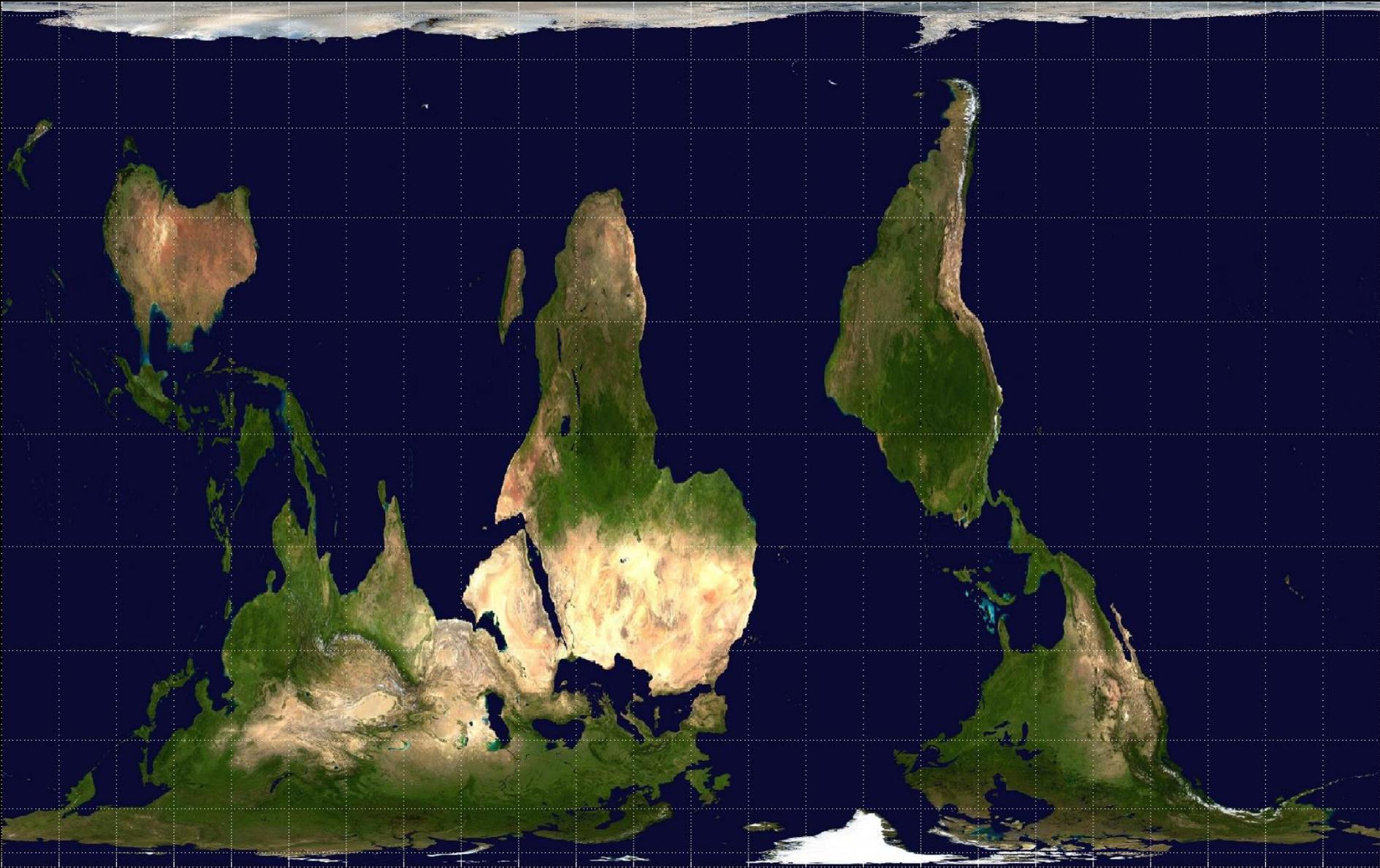
GDP: 408.074 billion USD (2011)

## Africa:

Population: 1.000.000.000 +

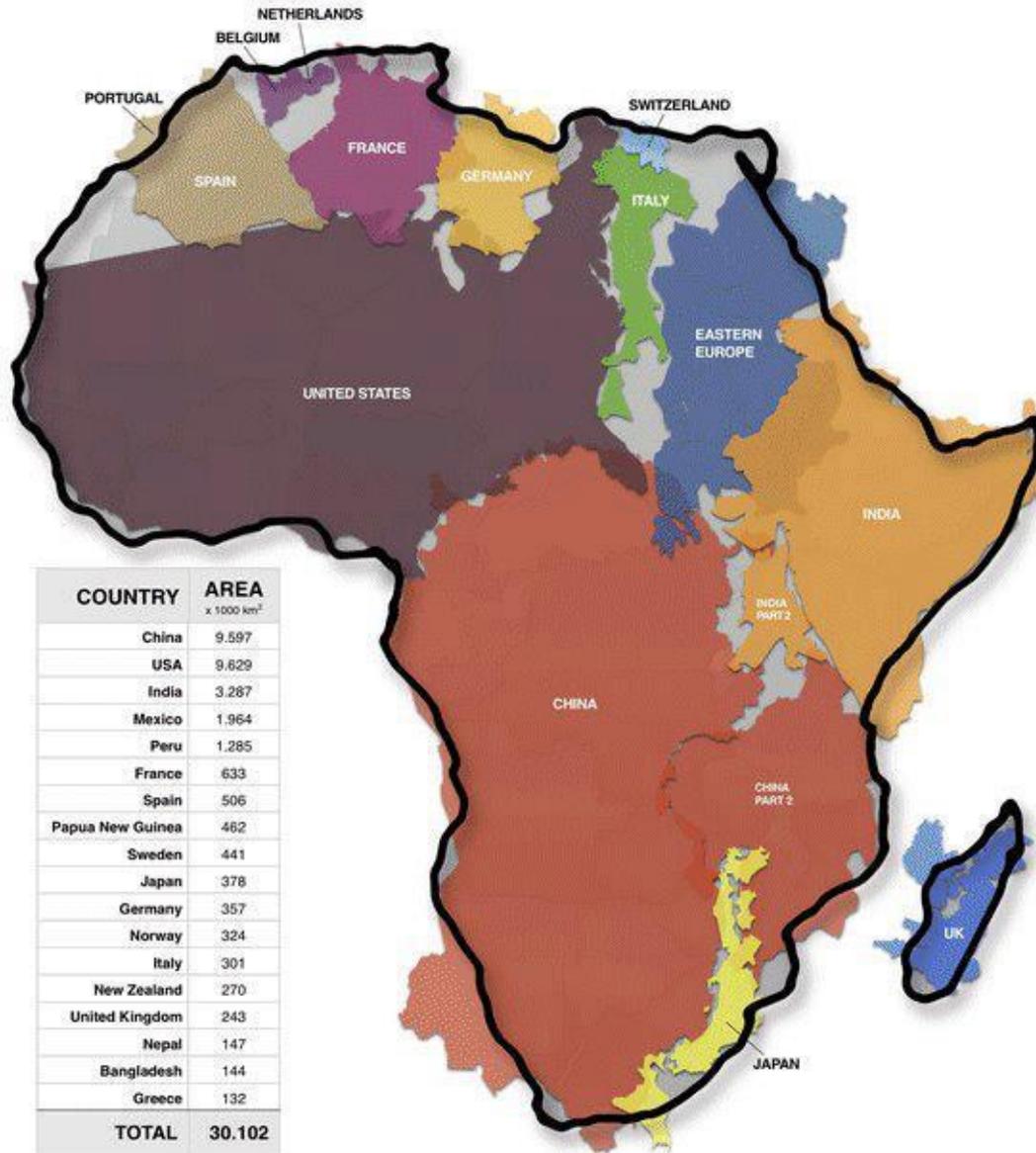
GDP: 1880.38 billion USD (2011)





# The True Size of Africa

A small contribution in the fight against rampant *Immappancy*, by Kai Krause  
 Graphic layout for visualization only ( some countries are cut and rotated )  
 But the conclusions are very accurate: refer to table below for exact data



COUNTRY	AREA x 1000 km <sup>2</sup>
China	9.597
USA	9.629
India	3.287
Mexico	1.964
Peru	1.285
France	633
Spain	506
Papua New Guinea	462
Sweden	441
Japan	378
Germany	357
Norway	324
Italy	301
New Zealand	270
United Kingdom	243
Nepal	147
Bangladesh	144
Greece	132
<b>TOTAL</b>	<b>30.102</b>
<b>AFRICA</b>	<b>30.221</b>



United States



Europe



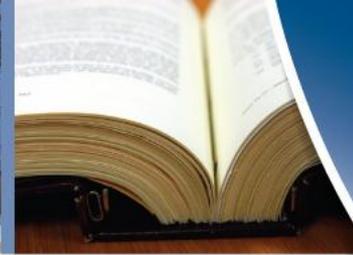
India



Japan

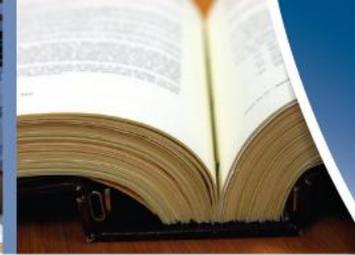


China



## Section 9 (SA Constitution)

- “(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. ...”



## **Combined Exclusive Maritime Zone of Africa (CEMZA)**

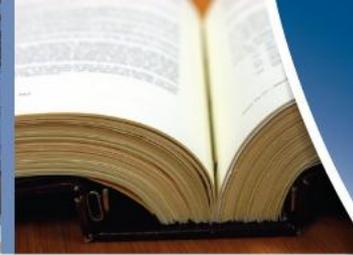
“Africa is to establish as appropriate and when permissible, a Combined Exclusive Maritime Zone of Africa (CEMZA). This will require the establishment of a dedicated Strategic Special Task Force (S2TF) to prepare the technical file which will underpin the Solemn Declaration of the CEMZA. The technical file will include charts presenting the CEMZA limits. CEMZA is expected to grant Africa enormous cross-cutting geo-strategic, economic, political, social and security benefits, as it will engender collective efforts and reduce the risks of all transnational threats, environmental mismanagement, smuggling and arms trafficking” [29]



## **Combined Exclusive Maritime Zone of Africa (CEMZA)**

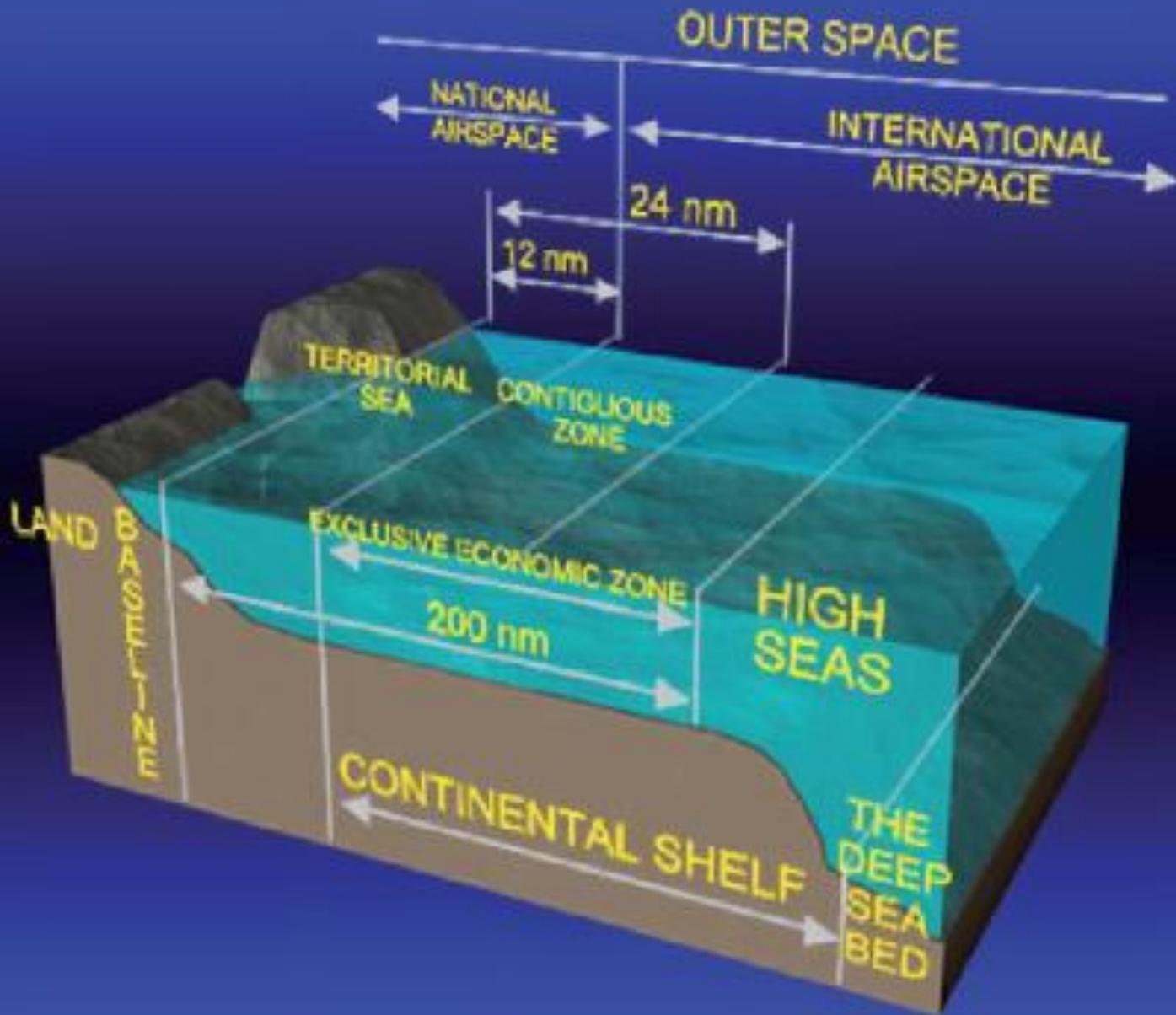
“a common African maritime space without barriers ... which aims at “Boosting intra-African Trade”, eliminating or simplifying administrative procedures in intra-AU maritime transport, the aim being to make it more attractive, more efficient and more competitive, and do more to protect the environment ... . [It] should allow for the convergence of existing and future monitoring and tracking systems used for maritime safety and security, protection of the marine environment, fisheries control, trade and economic interests, border control and other law enforcement and defence activities” [30]

# Unpacking



 Nelson Mandela  
Metropolitan  
University  
*for tomorrow*

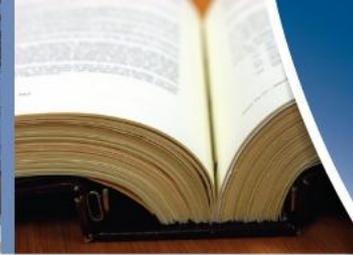
## Combined Exclusive Maritime Zone of Africa (CEMZA) = Common EEZ ?



# AIM Strategy Introduction



“Nothing in this document shall be construed or applied contrary to the **sovereignty** of any of the AU Member States in accordance with the principles of international law” [13]



Legal status of TS (art 2 LOSC)

Breadth of TS (art 3-4 LOSC)

No general right of access (harbours)

Ships in distress

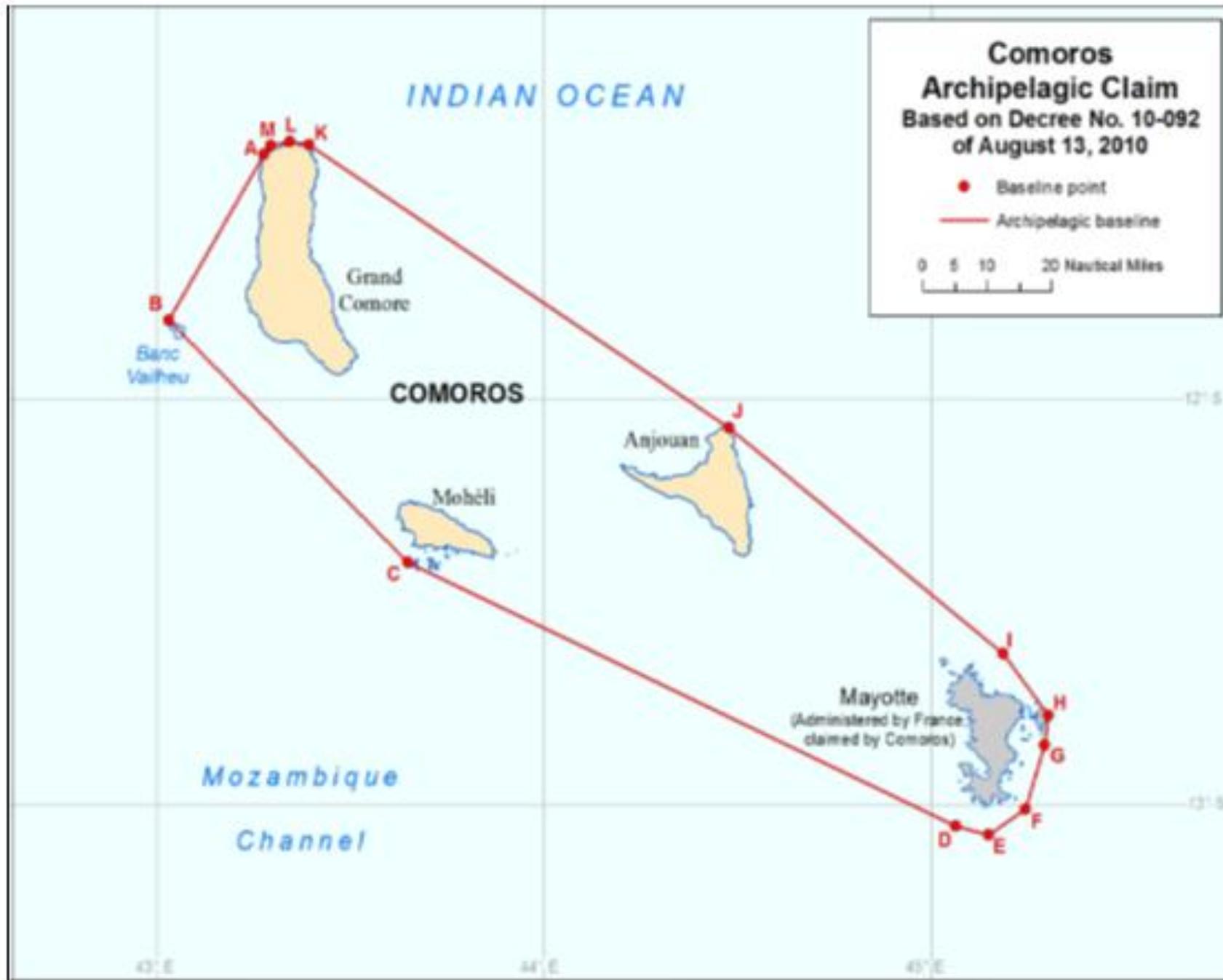
Right of innocent passage (art 17-20 LOSC)

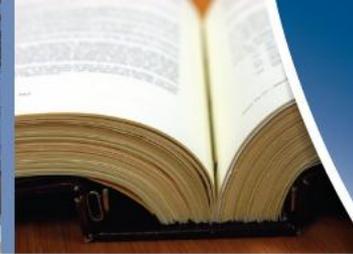
Rights and duties of coastal State (art 21-26 LOSC)

Criminal jurisdiction (art 27 LOSC)

Civil jurisdiction (art 28 LOSC)

Warships and other government ships operated for  
non-commercial purposes (art 29-32 LOSC)





Beyond territorial sea up to 24 NM (art 33 LOSC):

“... the coastal State may exercise the control necessary to:

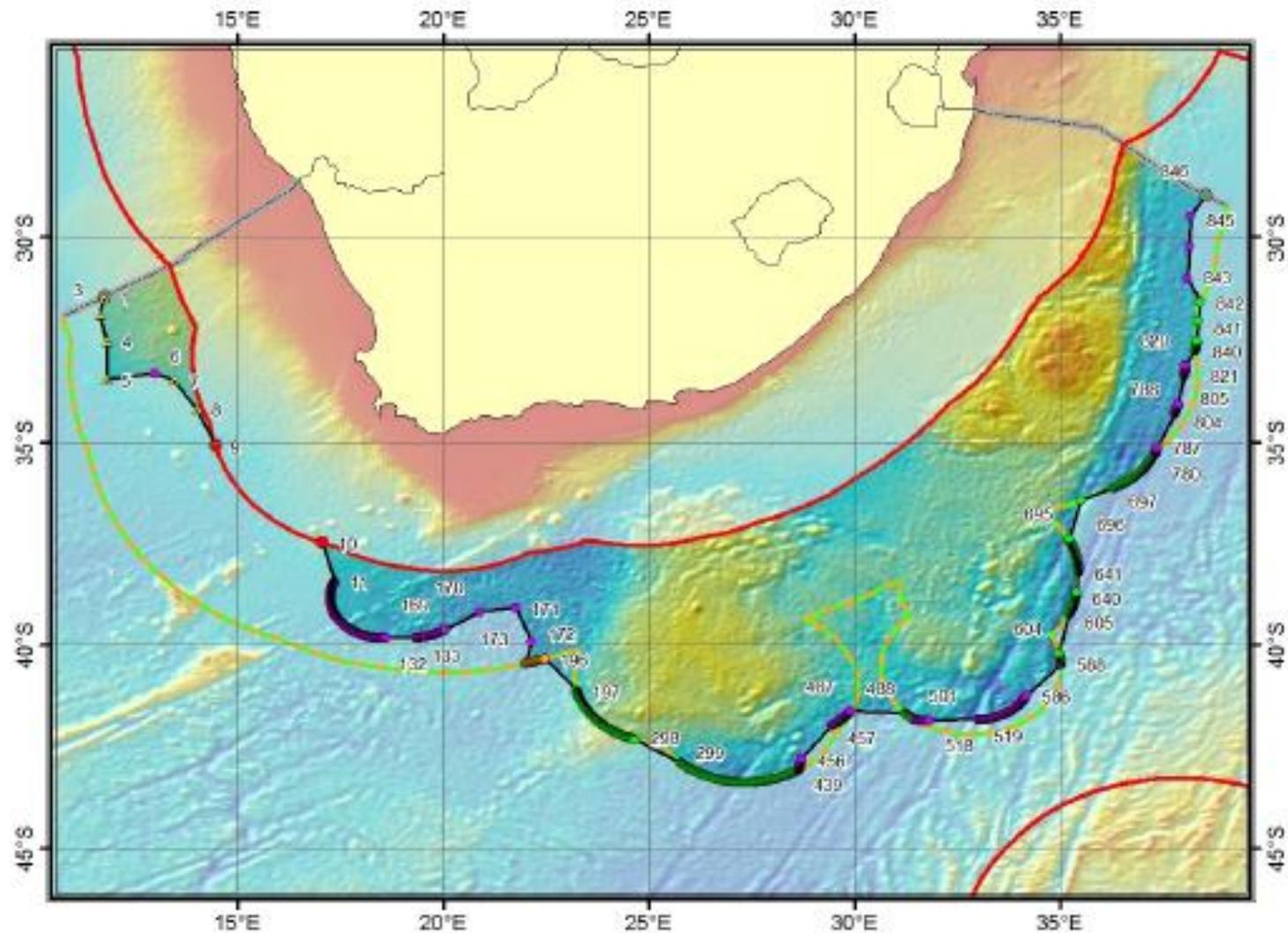
- (a) prevent infringement of its **customs, fiscal, immigration** or **sanitary** laws and regulations within its territory or territorial sea;
- (b) punish infringement of the above laws and regulations committed within its territory or territorial sea”.

Art 303 LOSC: archaeological and historical objects found at sea



## *Exclusive economic zone (12-200 NM):*

- ⇒ The **coastal State** enjoys extensive rights in relation to **natural resources** and related jurisdictional rights.
- ⇒ **Other States** enjoy the freedoms of **navigation**, **overflight** by aircraft and laying of **cables** and **pipelines**.

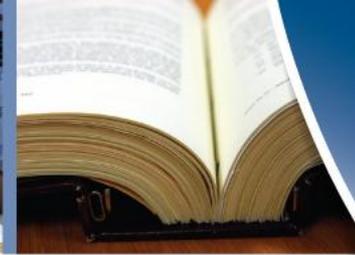


### Fixed Points

#### Art 76 Method

- |                         |                             |
|-------------------------|-----------------------------|
| ▲ 1% Sediment Thickness | — Straight Line Segment     |
| ● FOS + 60M             | — Combined Constraint Lines |
| ● 2500m+100M            | — Median Lines              |
| ● 350M                  | — 200M                      |
| ● 200M                  |                             |
| ● Median Line           |                             |

0 250 500 1,000  
Kilometres



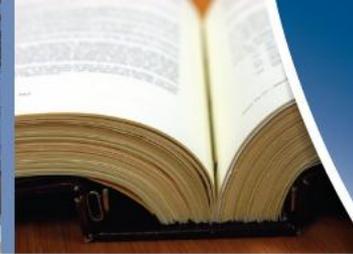
## **Combined Exclusive Maritime Zone of Africa (CEMZA)**

“Africa is to establish as appropriate and when permissible, a Combined Exclusive Maritime Zone of Africa (CEMZA). This will require the establishment of a dedicated Strategic Special Task Force (S2TF) to prepare the technical file which will underpin the Solemn Declaration of the CEMZA. The technical file will include charts presenting the CEMZA limits. CEMZA is expected to grant Africa enormous cross-cutting geo-strategic, economic, political, social and security benefits, as it will engender collective efforts and reduce the risks of all transnational threats, environmental mismanagement, smuggling and arms trafficking” [29]



## **Combined Exclusive Maritime Zone of Africa (CEMZA)**

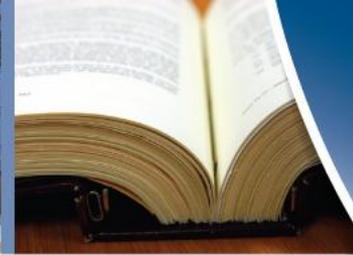
“a common African maritime space without barriers ... which aims at “Boosting intra-African Trade”, eliminating or simplifying administrative procedures in intra-AU maritime transport, the aim being to make it more attractive, more efficient and more competitive, and do more to protect the environment ... . [It] should allow for the convergence of existing and future monitoring and tracking systems used for maritime safety and security, protection of the marine environment, fisheries control, trade and economic interests, border control and other law enforcement and defence activities” [30]



## Art 87(1) LOSC:

“... Freedom of the high seas ... comprises, inter alia, both for coastal and land-locked States:

- (a) freedom of **navigation**;
- (b) freedom of **overflight**;
- (c) freedom to lay **submarine cables and pipelines**, subject to Part VI;
- (d) freedom to construct **artificial islands** and other installations permitted under international law, subject to Part VI;
- (e) freedom of **fishing**, subject to the conditions laid down in section 2;
- (f) freedom of **scientific research**, subject to Parts VI and XIII”.

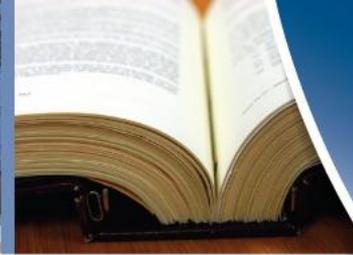


## Art 110(1) LOSC:

“Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

- (a) the ship is engaged in **piracy**;
- (b) the ship is engaged in the **slave trade**;
- (c) the ship is engaged in **unauthorized broadcasting** and the flag State of the warship has jurisdiction under article 109;
- (d) the ship is **without nationality**; or
- (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the **same nationality** as the warship”.

+ SOLAS -> LRIT regulations / MIZ / SUA Convention



## **Art 111 LOSC:**

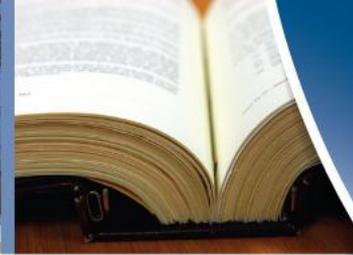
Warship, military aircraft or other government vessels authorized to that effect (art 111(5))

Visual or auditory signal to stop (art 111(4))

Commenced in the relevant zone (art 111(1))

No interruption (art 111(1))

Not into territorial sea of other State (art 111(3))



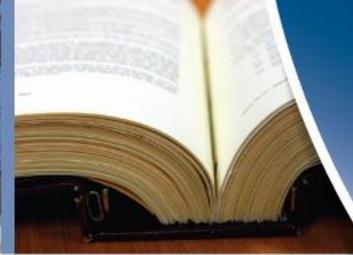
## Pollution from vessels

1973 International Convention for the Prevention of Pollution from Ships (MARPOL)

2001 International Convention on the Control of Harmful Anti-Fouling Systems on Ships

2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments

1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties



## **Pollution from vessels**

## **Pollution by dumping**

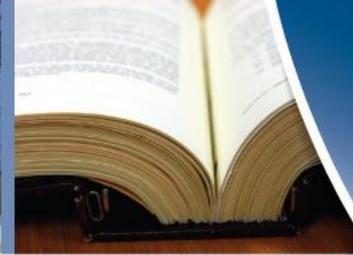
1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters

**Pollution from seabed activities (art 208 LOSC)**

**Pollution from land-based sources (art 207 LOSC)**

**Atmospheric pollution (art 212 LOSC)**

# Part XII

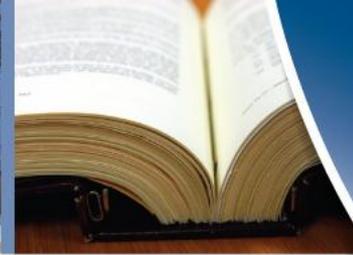


1. General provisions (192-196)
2. Global and regional cooperation (197-201)
3. Technical assistance (202-203)
4. Monitoring and environmental assessment (204-206)
5. International rules and national legislation to prevent, reduce and control pollution of the marine environment (207-212)
6. Enforcement (208-222)
7. Safeguards (223-233)
8. Ice-covered areas (234)
9. Responsibility and liability (235)
10. Sovereign immunity (236)
11. Obligations under other conventions (237)

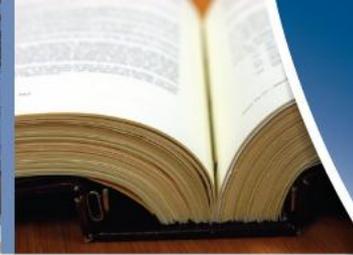


- Exploitation, preservation, military uses, Earth
- High seas and Area (freedom for peaceful purposes)
- Territorial sea (art 245 LOSC)
- EEZ and CS (art 246-255 LOSC)
  - consent of coastal State
    - pure research (little discretion)
    - applied research (complete discretion)
- Ocean data acquisition systems (ODAS) (art 258 LOSC)
- International cooperation

# Part XIII



1. General provisions (238-241)
2. International cooperation (242-244)
3. Conduct and promotion of marine scientific research (245-257)
4. Scientific research installations or equipment in the marine environment (258-262)
5. Responsibility and liability (263)
6. Settlement of disputes and interim measures (264-265)



## 1974 Res 3201/2 New International Economic Order

Area (art 144 + 274 LOSC)

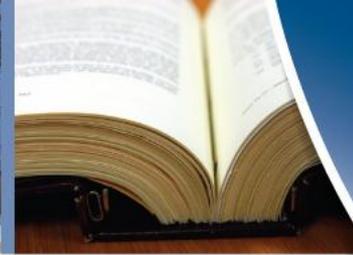
EEZ fisheries (art 62 LOSC)

Pollution (art 202 LOSC)

Part XIV LOSC (art 266-278 LOSC)

*pacta de contrahendo*

# Part XIV



1. General provisions (266-269)
2. International cooperation (270-274)
3. National and regional marine scientific and technological centres (275-277)
4. Cooperation among international organizations (278)

# Settlement of disputes



**Peaceful settlement** (art 279 LOSC)

**Choice of the parties** (art 280-281 LOSC)

**Compromissory clauses** (art 282 LOSC)

**Obligation to exchange views** (art 283 LOSC)

**Conciliation** (art 284 + annex V LOSC)

**ITLOS** (art 287(1)(a) + annex VI LOSC)

**ICJ** (art 287(1)(b) LOSC)

**Arbitral tribunal** (art 287(1)(c) + annex VII LOSC)

**Special arbitral tribunal** (art 287(1)(d) + annex VIII LOSC)

**Prompt release** (art 73(2) + 292 LOSC)

Thank you  
for your kind  
attention



 Nelson Mandela  
Metropolitan  
University  
for tomorrow

Prof Patrick HG Vrancken *LLD (UCT)*  
South African Research Chair in the Law of the  
Sea and Development in Africa  
email: [marinelaw@nmmu.ac.za](mailto:marinelaw@nmmu.ac.za)  
website: <http://lawofthesea.nmmu.ac.za>

