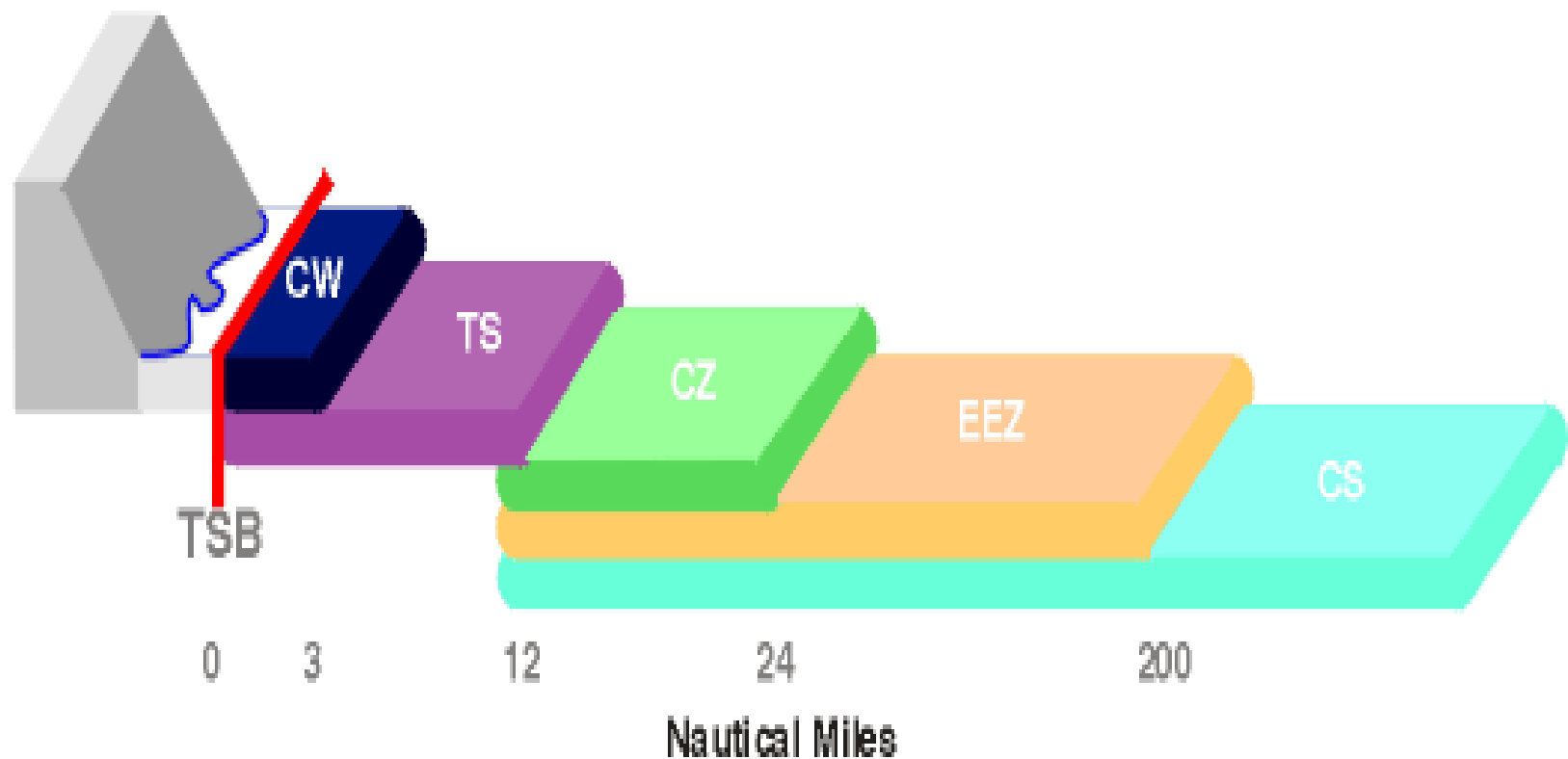


# **Climate Change and Disappearing States: Utilizing Maritime Entitlements to Overcome the Statehood Dilemma**

**Professor Rosemary Rayfuse  
Faculty of Law  
University of New South Wales  
Sydney, Australia**

# Maritime Zones



TSB Territorial Sea Baseline

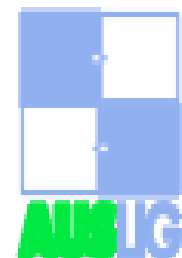
CW Coastal Waters

TS Territorial Sea

CZ Contiguous Zone

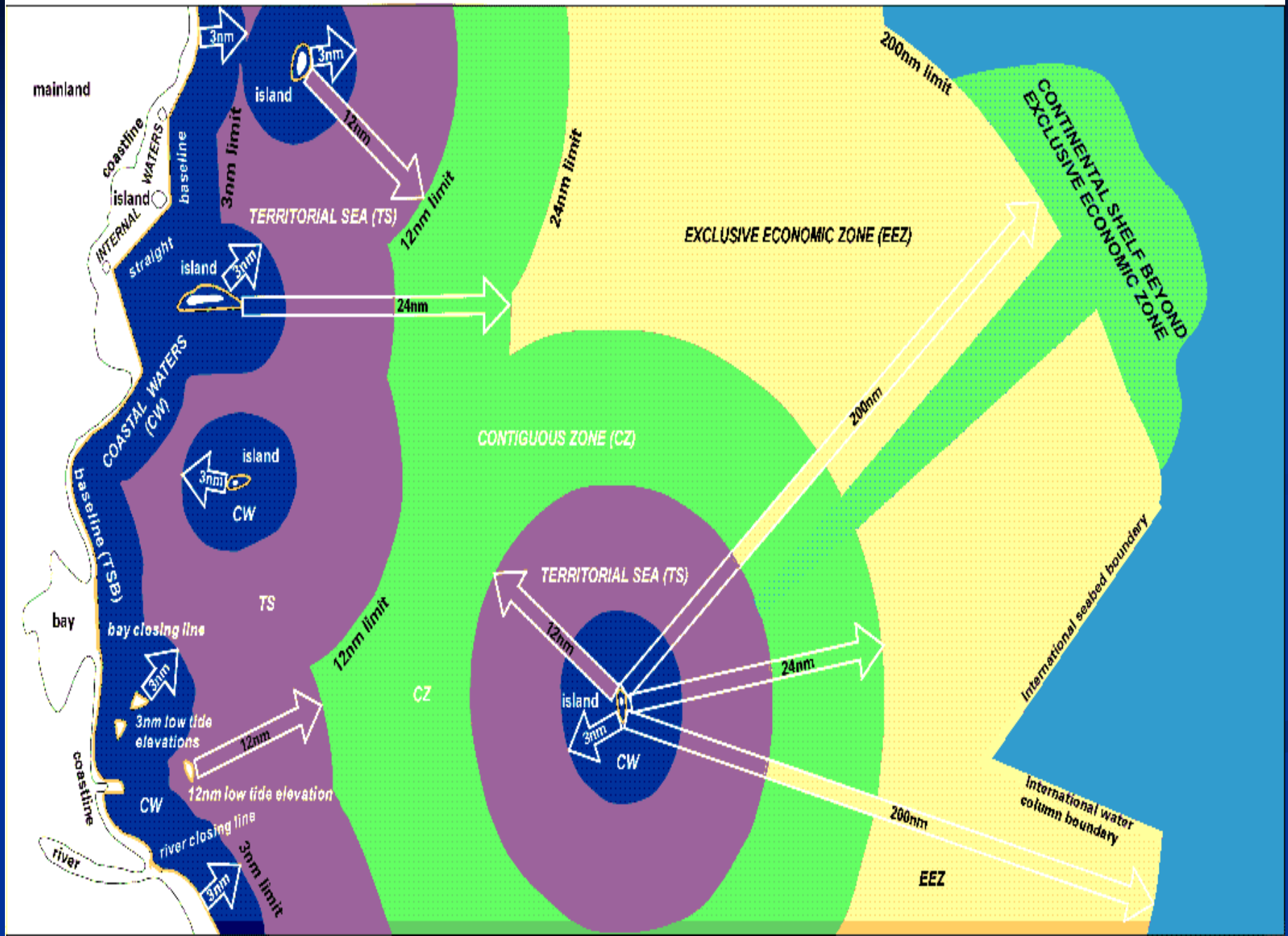
EEZ Exclusive Economic Zone

CS Continental Shelf



MP 96/489.1

**Diagram showing relationship of maritime features, limits and zones seaward of the territorial sea baseline (not to scale)**



# The Basic Questions

- If the low water line retreats do baselines and the outer limits of maritime zones retreat?
- If an island becomes uninhabitable does it lose its EEZ and continental shelf?
- If an island disappears does it lose all its maritime zones?
- If an island State ceases to be inhabitable does it cease to be State?
- How can the international law assist in providing stability, certainty and a future to disappearing Small Island States?

# The Baseline Dilemma

- The ambulatory nature of baselines
- Permanent inundation of low-tide elevations and fringing reefs used as basepoints will move the outer limits
- ‘Rocks which cannot sustain human habitation or economic life of their own’ are not entitled to an EEZ or continental shelf
- Islands that disappear cease to generate any maritime zones

# Legal and Policy Options for Resolving the Baseline Dilemma

- Under existing international law
  - Increased use of straight baselines
  - Establishment of outer limits of CS
  - Bilateral delimitation agreements
- Adoption of new rules of international law
  - Freezing baselines vs freezing outer limits
    - Develop customary international law
    - Protocol to UNFCCC
    - Modify the Law of the Sea Convention by:
      - Formal amendment of LOSC
      - Decision of SPLOS
      - Supplementary agreement
        - Adopted by SPLOS initiative
        - Separate conference (ie Fish Stocks approach)
        - UNGA Resolution (ie PART XI approach)

# The Statehood Dilemma

- Criteria for Statehood (Montevideo Convention):
  - Permanent population
  - Defined territory
  - Government
  - Capacity to enter into relations with other States
- Loss of population and/or territory renders state non-existent
- Only States can claim maritime zones, therefore when State cease to exist, maritime zones cease and may revert to global commons or to other States



# Resolving the Statehood Dilemma

- Disappearing State acquires new territory by cession
- Disappearing State merges into some form of federation with other State
- Recognition of new category of State – the deterritorialised State



# Deterritorialised States

- Concept already recognized in international law
  - Knights of Malta
  - Papal See
- Functional or non-territorial sovereignty also recognized
  - Governments in exile
  - Communities made diasporic through invasion and colonisation
  - Communities overrun and internally dislocated or formally deterritorialised
- Rights of 'entities' also recognized
  - European Union
  - Taiwan

# Disappearing States as Deterritorialised States

- Governed by 'government' or 'authority' elected by registered voters
- 'Government' acts as trustee of State assets for benefit of citizens wherever they might be located
- Maritime zones continue to inure to the State
- Resource rents from maritime zones (fishing, sea-bed mining etc) used to fund the relocation and continued livelihood of displaced population – whether diasporic or all located in one new 'host' State
- 'Government' continues to represent deterritorialised State at the international level to ensure and preserve the trust 'property' and to ensure rights and interests of its citizens vis-a-vis their new host State or States

# Protecting Marine Entitlements

## ■ ALL coastal States should:

- Declare their baselines in accordance with LOSC
- Delimit their maritime boundaries with other states by treaty
- Promote adoption by international community of a new rule that freezes baselines drawn in accordance with LOSC as permanent from the time they are publicly declared

## ■ Small Island States should additionally:

- Establish sovereign/national trust funds to receive economic rents from maritime zones (and other State assets) for distribution to their citizens
- Promote adoption by the international community of the concept of deterritorialised state

**Thank you**