



HOT PURSUIT

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JCU 2025 LAW SEMINAR SERIES



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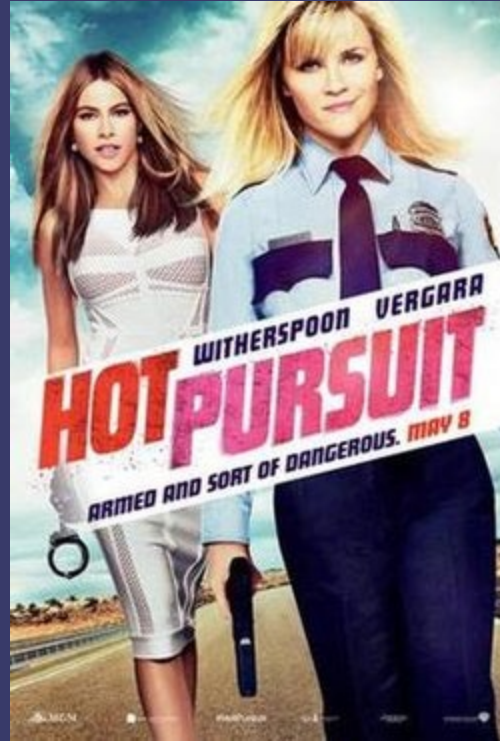
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**I AM SORRY IF YOU THOUGHT MY TALK WAS GOING TO
BE ABOUT REECE WITHERSPOON AND SOFIA VERGARA
BUT MY “HOT PURSUIT” IS ABOUT THE LAW OF THE
SEA**

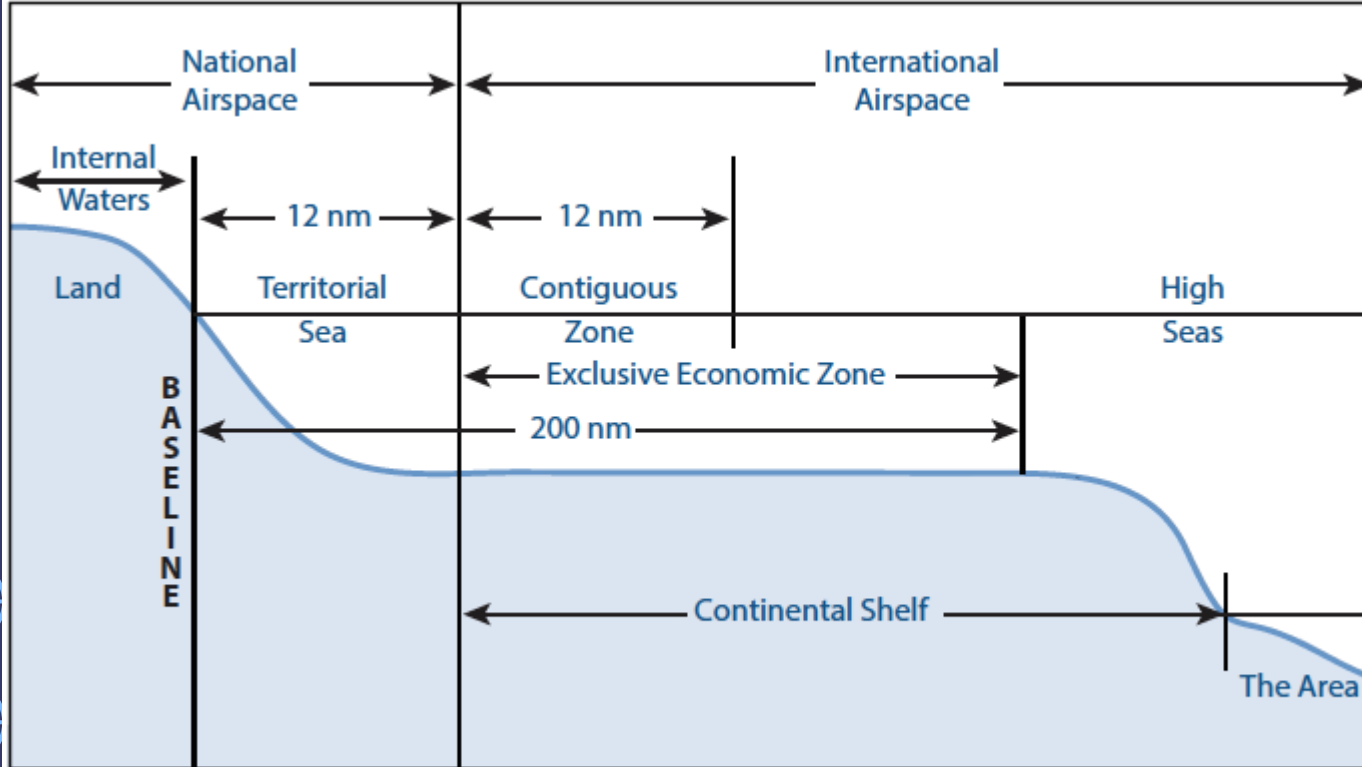


MARITIME ZONES

One of the fundamental aspects of the Law of the Sea, which is an important branch of Public International Law, is that of maritime zones. You may have heard of territorial waters and the high seas, but the concept is much more complicated than this, and has been codified in the UN Convention on the Law of the Sea.




Legal Boundaries of the Oceans and Airspace




nm – nautical mile



**UNCLOS ALLOWS COASTAL STATES TO CONTROL AND
USE CERTAIN AREAS OF THE OCEANS. THIS RIGHT IS
BALANCED AGAINST THE FREEDOM OF NAVIGATION
AND ACCESS TO RESOURCES OUTSIDE THE CONTROL
OF COASTAL STATES – FREEDOM OF THE SEAS.**

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AS WE SAW IN THE DIAGRAM, THERE ARE FOUR MAIN ZONES, IN EACH OF WHICH A COASTAL STATE HAS DIFFERENT RIGHTS. “HOT PURSUIT” IS CONCERNED WITH THREE OF THESE ZONES – THE TERRITORIAL SEA, CONTIGUOUS ZONE AND THE HIGH SEAS.

A decorative wavy line in a light yellow color runs vertically along the left edge of the image, separating the text area from a solid yellow background.

COASTAL STATES HAVE SOVEREIGNTY AND JURISDICTION OVER THE TERRITORIAL SEA. IN THE CONTIGUOUS ZONE, THE COASTAL STATE CAN ENFORCE IMMIGRATION, CUSTOMS, QUARANTINE AND FISCAL LAWS. THE HIGH SEAS ARE CONSIDERED “THE COMMON HERITAGE OF ALL MANKIND” – LIKE THE MOON AND THE STARS, AND CAN BE USED BY ALL STATES FOR PEACEFUL PURPOSES.



HOT PURSUIT

UNCLOS (ART 111) PERMITS A COASTAL STATE TO PURSUE A FOREIGN VESSEL THAT HAS BROKEN ITS LAWS AND MUST COMMENCE IN THE TERRITORIAL SEA OR THE CONTIGUOUS ZONE AND, IF THE VESSEL FLEES, TO PURSUE IT ON THE HIGH SEAS.



The “hot pursuit” must be undertaken by competent authorities of the coastal state (for example, navy or fisheries protection vessels), must start from the territorial sea or contiguous zone and cease if the fleeing vessel reaches the territorial sea of its own state or a third state.

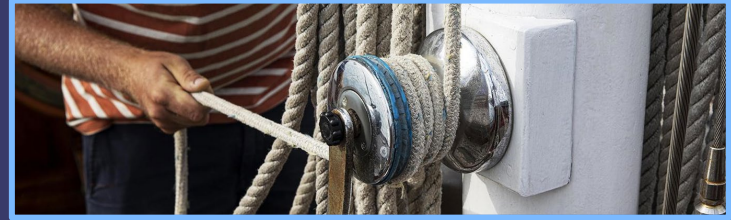


FV “SOUTH TOMI”

In 1997-1998, HMAS Anzac and HMAS Newcastle apprehended 3 fishing vessels near Heard Island. The Government then increased fishery patrols.

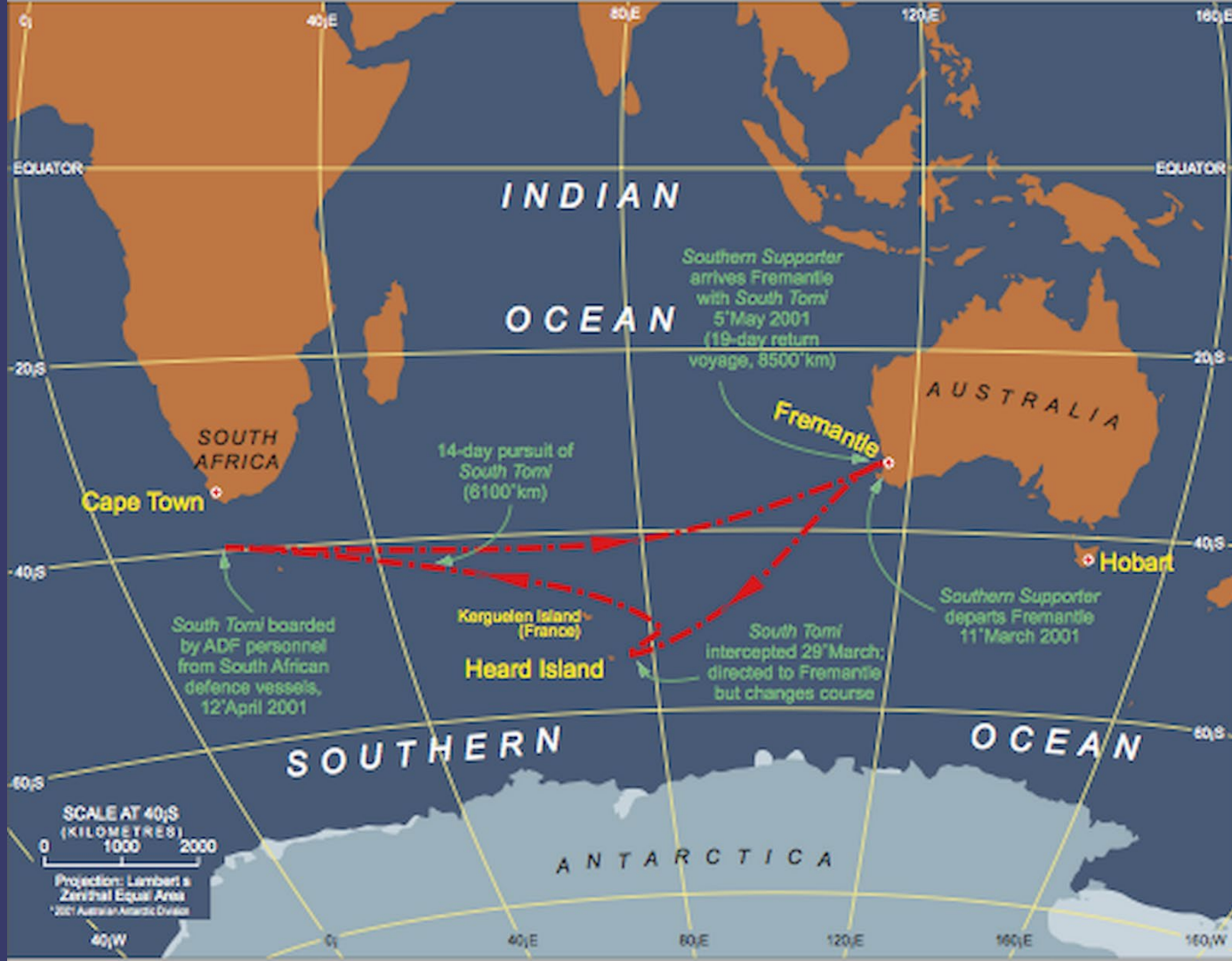


The FV “South Tomi” was ordered to sail to Fremantle, but after leaving Australian waters she fled towards the Atlantic with \$1.5 million worth of Patagonian toothfish on board, pursued by the “Southern Supporter”.



On 29 March 2001, the chartered fisheries protection vessel “Southern Supporter” intercepted the Togo-flagged FV “South Tomi” illegally fishing near Heard Island.







The “Southern Supporter” chased the FV “South Tomi” over 8,000 km until it was intercepted on 12 April 2001 at 320 nm south of Cape Town by the South African naval vessels “SAS Galeshewe” and “SAS Protea”, the latter carrying ADF personnel. The FV “South Tomi” was then sailed to Fremantle by fisheries officers and ADF personnel. The master of the FV “South Tomi” was charged with illegal fishing pursuant to ss 100A and 101A of the *Fisheries Management Act 1994* and fined \$136,000.



Australia was policing the CCAMLR (Convention for the Conservation of Antarctic Marine Living Resources), but there is still controversy about the legality of this “hot pursuit”, although ultimately the Government prevailed before Senior Magistrate Cicchini in the Court of Petty Sessions in Perth.

Can anyone work out why?





AFMA (Australian Fisheries Management Authority) relied on the *Fisheries Management Act 1994* to seize the FV “South Tomi”. The provisions of s 87 of the Act were not properly complied with, which is why the prosecution failed on the second charge. Furthermore, UNCLOS requires a “hot pursuit” to be uninterrupted. It was actually the South African naval vessels which stopped the FV “South Tomi”. The catch and equipment were also arguably seized unlawfully.





FV “VIARSA 1”

Two years later, on 7 August 2003, the “Southern Supporter” was again busy, having detected the Uruguayan-flagged FV “Viarsa 1” illegally fishing for Patagonian toothfish near Heard Island. The FV “Viarsa 1” fled and at one stage had to be helped by its pursuers when it became lost in Antarctic sea ice. The “Southern Supporter” was assisted in its pursuit by the South African polar icebreaker “SAS Agulhas” and the Falkland Islands fisheries patrol boat “Dorada”.



The chase ended 7,200 km later on 28 August and 4,000 km southwest of Cape Town. Australian personnel aboard the South African oiler “SAS Drakensberg” seized the FV “Varsa 1” and her 97 tonnes of Patagonian toothfish and she was escorted to Fremantle.

After two trials over 2 years the master and his crew were acquitted by a jury in Perth because no fishing gear had been found and were free to return home, the master praising the Australian justice system. The vessel was, however, forfeited.



CONCLUSION

The 58 metre FV “South Tomi” left Fremantle for Geraldton on 14 April 1982 where she was prepared for scuttling.

She now sits in 25 metres of water, 3 miles from the coast, and is a favourite dive site.

The two ‘hot pursuits’ I have described were at the time the longest such chases of illegal, unreported and unregulated fishing vessels.



THANKS

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