



NEGOTIATING MARITIME BOUNDARIES DELIMITATION: INDONESIA'S EXPERIENCE

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Dili International Conference on
Maritime Boundaries

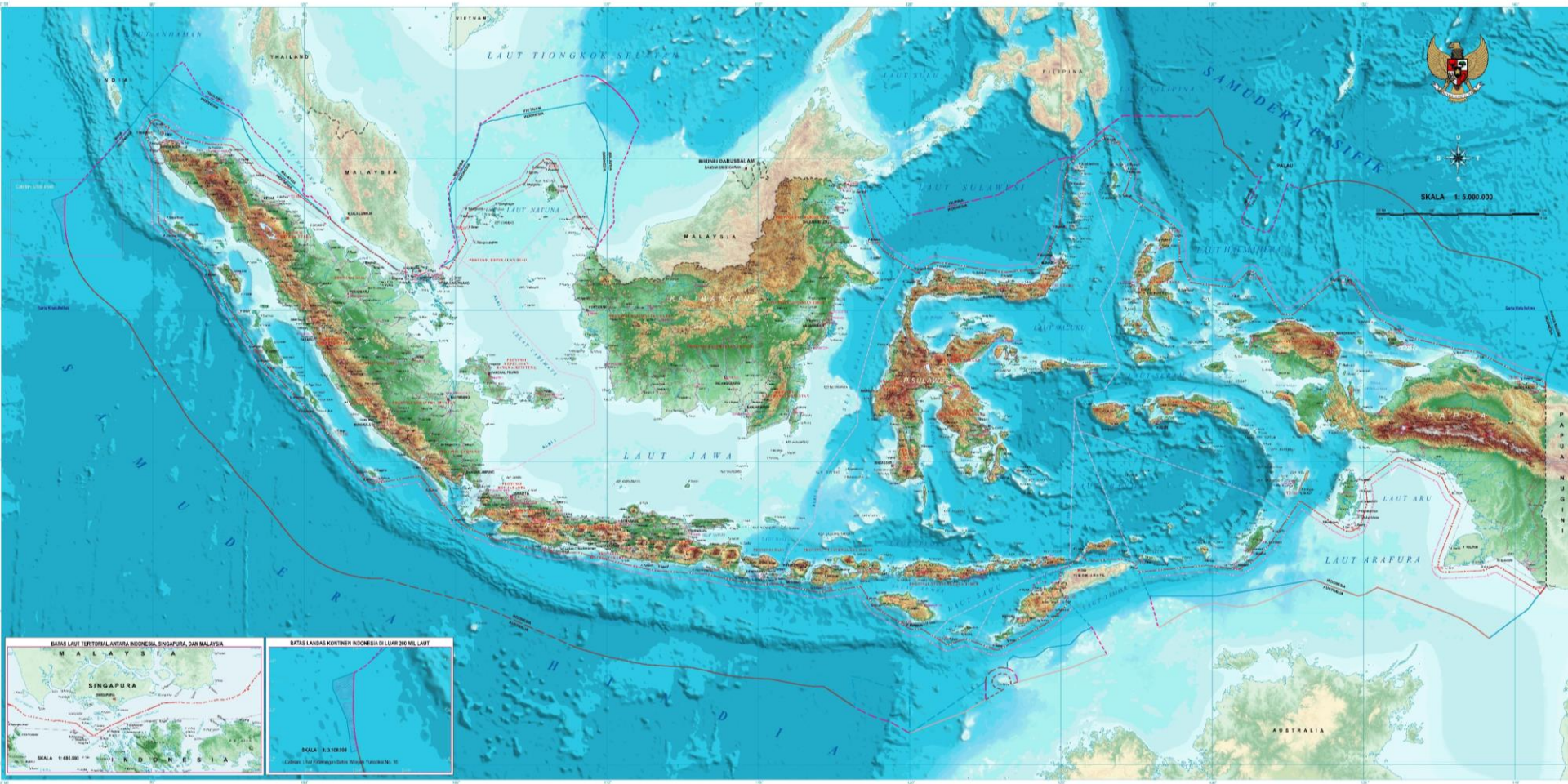
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OUTLINE

- ❑ Preparation and Process of Maritime Boundary Delimitation Negotiation
- ❑ Challenges in Maritime Boundary Delimitation Negotiation
- ❑ Options for Solutions and Way Forward
- ❑ Indonesia's Experience on Maritime Boundary Delimitation Negotiation: the Special Envoy Track



MAP OF INDONESIA



PREPARATION OF MARITIME BOUNDARY DELIMITATION NEGOTIATION

- ❑ Consolidating national position
 - Various interest handled by various government agencies
- ❑ Collecting relevant technical data
 - Data collection cannot be collected in a short period of time
 - Human resources and technological barrier
- ❑ Obtain mandate
 - Clear mandate is necessary to negotiate boundaries agreement



PREPARATION OF MARITIME BOUNDARY DELIMITATION NEGOTIATION

Substantive

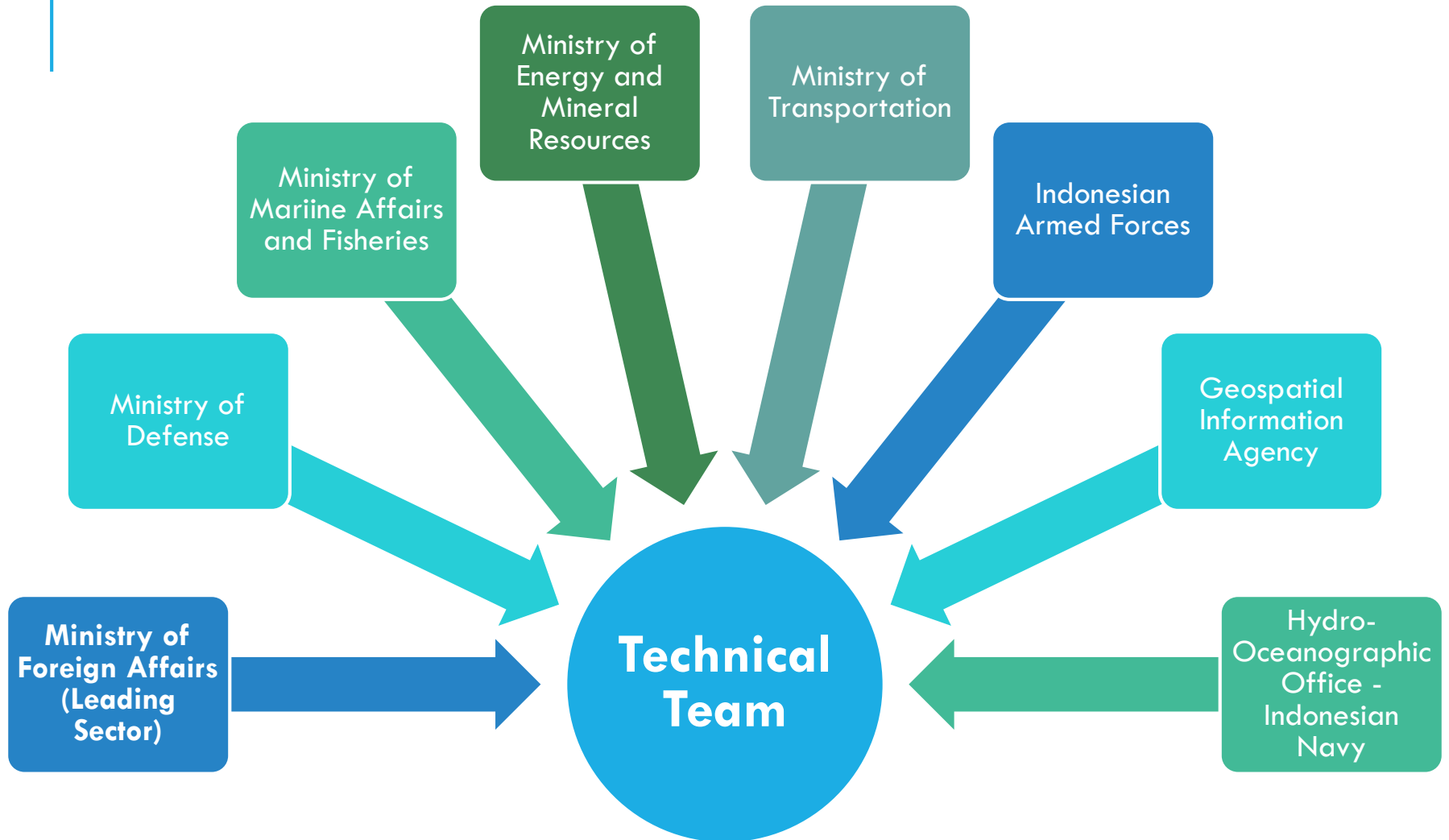
- Legal and Relevant Aspects Analysis
- Technical Exercises
- Strategy
- **Position Paper and Record of Discussion**

Administrative

- Proceedings
- Date and Venue
- Correspondence
- **Agenda and Business Arrangement**



CURRENT INDONESIAN MARITIME BOUNDARY DELIMITATION TECHNICAL TEAM



NEGOTIATION STAGE: COUNTERPART READINESS

- Mandate
- Negotiating team
- Scheduling
- Budgeting



NEGOTIATION STAGE: SUBSTANCE OF THE DELIMITATION – HOW TO DRAW THE LINE?

- ❑ Non Party to the 1982, UNCLOS
- ❑ Selection of basepoints
- ❑ Applicable baseline:
 - Normal baseline
 - Straight baseline
 - Archipelagic baseline
- ❑ Historic claim
- ❑ Definition of “rock” vs “island”
- ❑ Emerging delimitation rule in recent cases
- ❑ Where is the equidistance?
- ❑ What is considered to be “equitable”?



PROCESS OF MARITIME BOUNDARY DELIMITATION NEGOTIATION

Negotiation

Records/Notes
from Negotiation
*Report to respective
higher authorities*

Agreement
*Ratification –
Entry into Force*



CHALLENGES IN MARITIME BOUNDARY DELIMITATION NEGOTIATION

1/2

- ❑ Internal political situation: security, natural disaster, public opinion and political will.
- ❑ Preparedness to negotiate: priority, human resources, finance/budget.
- ❑ Personal: Head of Delegation's style to negotiate, negotiator's competence and negotiation skills
- ❑ Support from national stakeholders (higher authority, members of the technical team, local government, academicians, public)
- ❑ Language barrier
- ❑ Public awareness and expectation vs. complexity of delimitation
- ❑ Change of base points:
 - Natural factors
 - Man made changes (the use of original coastline)
 - Separation of part of States
 - Territorial / ownership dispute of maritime features / land terminus point



CHALLENGES IN MARITIME BOUNDARY DELIMITATION NEGOTIATION

- ❑ Once its done, its done: fundamental change of circumstances cannot modify boundary treaty (rebus sic stantibus: article 62 paragraph 2, Vienna Convention on the Law of Treaties 1969)
- ❑ Sensitivity of the issue relates to sovereignty and sovereign rights
- ❑ Interpretation of interntational law: method of drawing baseline, historic claim, definition of rock v. island, giving weights to relevant circumstances
- ❑ Technical: different approaches to construct the proposed delimitation line, change of features due to natural factors
- ❑ Other relevant factors: unresolved land boundary terminus, ownership dispute over maritime features



UNIQUENESS OF MARITIME BOUNDARY DELIMITATION NEGOTIATION

- ◆ Long-haul process (eg. Indonesia-Vietnam 20 years), once its done, cannot be changed even by fundamental change of circumstances
- ◆ Importance of Understanding legal and technical aspects
 - Importance of developing human resources: sending personnel for international training
 - Importance to pass on the institutional memory for negotiator to understand the matter thoroughly, preventing going back and forth in negotiation process: holding a national scale training as a forum to pass on the knowledge and experience
- ◆ The necessity to have a solid, single national position
 - Understanding essential element of interest in every aspect of delimitation (including economic aspect)
 - Coordination between all stakeholders



OPTIONS FOR SOLUTIONS: PREPARATION STAGE

- ❑ Conduct coordination meetings between relevant ministries/agencies
- ❑ Report to the highest political leader (president/prime minister) to obtain necessary mandate
- ❑ Regularly conduct national training:
 - Improve human resources capacity from various related background (legal, geographers, hydrographers, cartographers, etc.)
 - Regeneration of the negotiation team
- ❑ Regularly conduct research (court judgments, state practices)



OPTIONS FOR SOLUTIONS: NEGOTIATION STAGE

- ❑ Convene an exploratory meeting
 - Confirm mandates
 - Confirm procedures to conduct negotiation
 - Agree on the Term of References
 - Organization of work (including setting time scheduling)
- ❑ Wait until the counterpart have the necessary mandate and ready for negotiation
- ❑ Finding similar circumstances
 - Delimitation cases in international courts
 - Practice of other states in their delimitation agreement
- ❑ Recourse to experts opinion
- ❑ If deadlocked:
 - Report to higher decision making authority for more mandate
 - Continue negotiations after receiving mandate



WAY FORWARD

- ❑ Explore creative line that is mutually agreed (political solution)
- ❑ Explore High-Level Track (i.e. Special Envoy)
- ❑ Explore other alternatives:
 - Provisional arrangement
 - Third party (non binding and binding) – last resort



INDONESIA'S RECENT EXPERIENCE: A COMPARISON

☐ Singapore

- 8 Meetings (2005-2009): concluded West Segment
- 10 Meetings (2011-2014): concluded East (Batam-Changi) Segment

☐ Philippines:

8 Meetings (1994-2014), concluded EEZ boundary

☐ Malaysia:

29 Meetings (2005-2016) – **on going process**



SPECIAL ENVOY MECHANISM INDONESIA- MALAYSIA

10th Annual Consultation, Jakarta 19 December 2013

- RI President and Malaysia PM agreed to established Special Envoy Mechanism

Malaysian PM Letter dated 9 January 2014

- Informing Malaysia appoints Tan Sri Mohd. Radzi Abdul Rahman as Special Envoy

State Visit of the Indonesian President 5-7 February 2015

- RI President and Malaysia PM agreed to expedite the conclusion of the maritime boundaries and the Special Envoy Mechanism to give political push to the process

Indonesian President Decision No. 67/M 2015

- RI President appoints Ambassador Eddy Pratomo as Special Envoy
- Subsequently RI President informed Malaysian PM through letter dated 6 July 2015



MANDATE OF THE SPECIAL ENVOY (INDONESIA)

- ❑ Provides consideration for the conclusion of the maritime boundaries delimitation
- ❑ Seek comprehensive solution beyond legal and technical aspects of maritime boundaries delimitation
- ❑ Report to the President on the progress of its function
- ❑ Perform other tasks in relation to the maritime boundaries delimitation

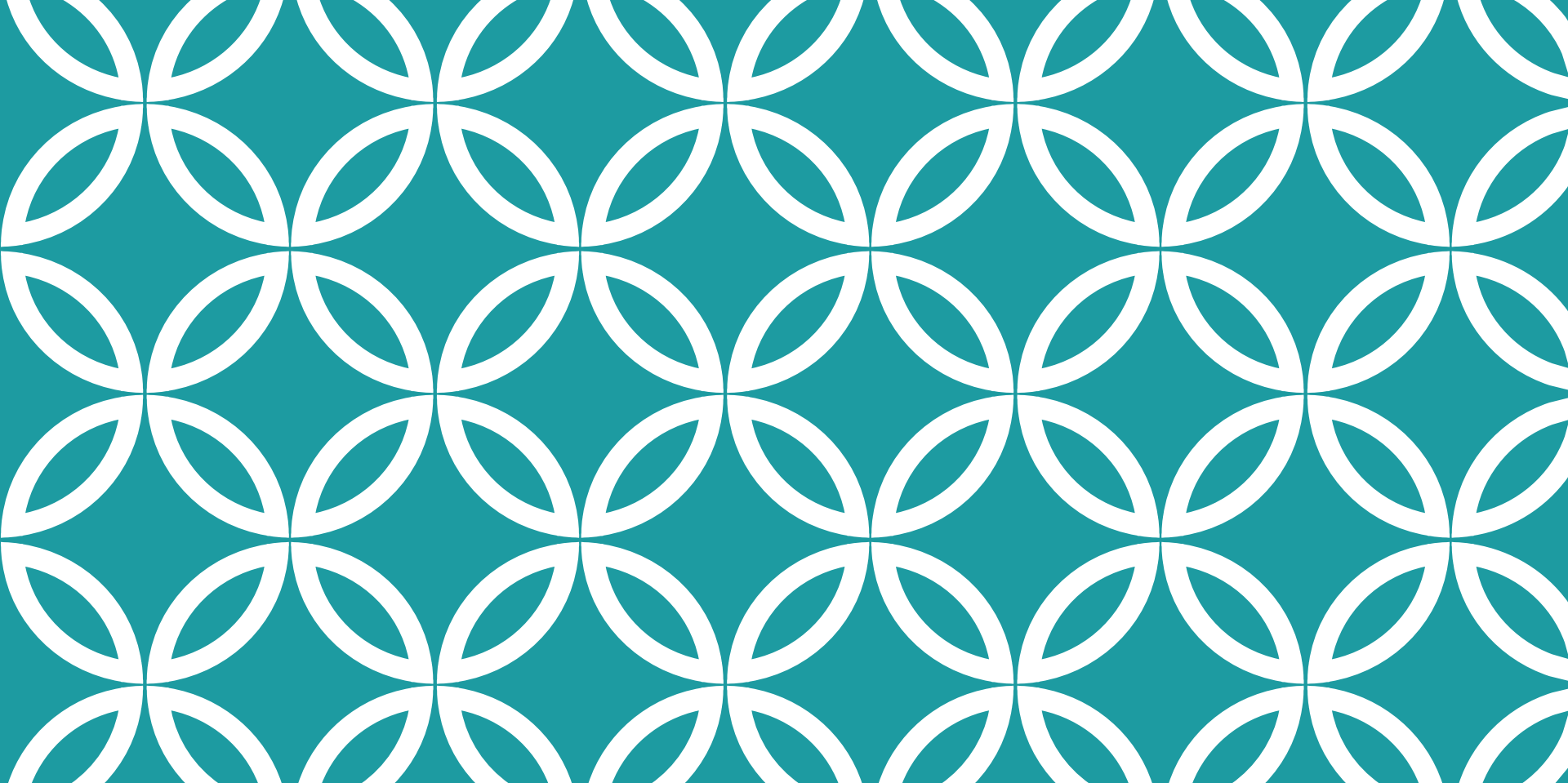


TOR OF SPECIAL ENVOY MECHANISM

- ❑ Objective: expedite the resolution of the delimitation of maritime boundaries

- ❑ Special envoy also discuss:
 - feasibility of the new approach
 - develop initiatives leading to the resolution of the delimitation
 - establishment of its own methods and program of work





THANK YOU

**Office of the Special Envoy to the
President of the Republic of Indonesia for
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