



The Law of the Sea

**National Legislation on the Territorial Sea,
the Right of Innocent Passage and
the Contiguous Zone**



Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs
United Nations

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NOTE

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FOREWORD

1. The United Nations Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, has prepared the present compilation to complete the series of publications dealing with the practice of States in relation to subject-matters covered by the Convention. ^{1/}

2. This compilation contains the national legislation of States on the territorial sea, the right of innocent passage in the territorial sea and the contiguous zone. This legislation is based on concepts enshrined in customary law, codified in the Convention on the Territorial Sea and the Contiguous Zone, done at Geneva on 29 April 1958 (hereinafter referred to as "the 1958 Convention") and redefined by the United Nations Convention on the Law of the Sea, done at Montego Bay, Jamaica, on 10 December 1982 (hereinafter referred to as "the Convention").

3. The United Nations has in the past prepared comprehensive compilations on the national legislation of States relating to these subjects (United Nations Legislative Series references ST/LEG/SER.B/6, ST/LEG/SER.B/15, ST/LEG/SER.B/16, ST/LEG/SER.B/18, ST/LEG/SER.B/19). The last compilation prepared is previous to the adoption of the Convention. It was thus necessary to publish a new compilation in order to reflect the degree of acceptance by States through their national laws of the legal regime established by the Convention.

4. Although the concept of "baseline" is defined in Part II of the Convention ("Territorial sea and contiguous zone", articles 5 to 14), a survey of State practice as regards baselines has already been published. ^{2/} Consequently, legislation on baselines is not included in the present compilation. The reason for the separate treatment of the legislation on baselines stems from the fact that from the baselines not only the breadth of the territorial sea (article 3 of the Convention) and of the contiguous zone (article 33, paragraph 2, of the Convention) are measured, but also the breadth of other areas defined in the Convention, such as the exclusive economic zone (article 57) and the continental shelf (article 76).

5. An examination of this series of national maritime legislation 12 years after the opening for signature of the Convention and at the time of its entry into force on 16 November 1994 shows a widespread acceptance of the rights and obligations contained therein.

6. As of December 1994, out of 151 coastal States, 117 have established a 12-mile territorial sea, and 11 more States have set their outer limits to less than 12 miles. Thus, 128 States have adopted limits in conformity with the Convention.

7. As regards the contiguous zone, 46 States have established a contiguous zone of a breadth of 24 miles, and 8 more States have claimed a contiguous zone of less than 24 miles. All but one of the 53 States that have established a contiguous zone have done so in conformity with the Convention. The 1958 Convention has been in force since 10 September 1964; 49 States are parties to it. The relationship between both legal regimes is established by article 311,

^{1/} The list of publications of the Division can be obtained from the Division for Ocean Affairs and the Law of the Sea, room DC2-0450, New York, NY 10017, USA. Telephone (212) 963-3976, fax (212) 963-5847.

Publications should be ordered directly from United Nations Publications, room DC2-0853, New York, NY 10017, USA. Telephone (212) 963-8302 and (800) 253-9646, fax (212) 963-3489.

^{2/} The Law of the Sea - Baselines: National Legislation with Illustrative Maps, Division for Ocean Affairs and the Law of the Sea, 1989 (United Nations publication, Sales No. E.89.V.10).

paragraph 1, of the Convention: "This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958." States that are parties to both Conventions shall apply the regime of the 1982 Convention. Thus the 1958 Convention shall remain applicable for the States which are parties to it but not yet parties to the 1982 Convention.

8. It must be stressed that the widespread acceptance by the international community of most of the rules relating to the territorial sea and the contiguous zone as defined by the Convention has contributed to the establishment of rules of customary international law in relation to the regime applicable to these marine areas.

I. THE TERRITORIAL SEA

The territorial sea is a marine space over which coastal States exercise sovereignty. This sovereignty extends to an adjacent belt of sea described as the territorial sea, to the airspace over the territorial sea as well as to its bed and subsoil. However, the need of international navigation has placed some limits on the power of the coastal States.

A. Establishment of the limits

10. Whereas the 1958 Convention and other previous attempts failed to establish a limit to the breadth of the territorial sea (article 6 of the 1958 Convention), the 1982 Convention succeeded in establishing a 12-mile limit to this breadth, this being indeed a significant contribution of the Convention to the international law of the sea. Article 3 of the Convention gives coastal States the right to establish a territorial sea the breadth of which may extend up to a line not exceeding 12 nautical miles from the baselines determined in accordance with the Convention.

11. Articles 5 to 14 set out the conditions for drawing baselines and the publicity to be given to them.^{3/} These rules follow the provisions of the 1958 Convention with some exceptions, dealing with specific geographical features such as the presence of a delta (article 7, paragraph 3).

12. The rule for the delimitation of the territorial sea between States with opposite or adjacent coasts is contained in article 15. This provision is almost identical to article 12 of the 1958 Convention. The solution of the median line, except when otherwise agreed or if there is a historic title or other special circumstance, is at variance with the solution offered by the Convention in the case of the delimitation of the exclusive economic zone (article 74, paragraph 1) and of the continental shelf (article 83, paragraph 1).

13. Article 16 imposes on coastal States the obligation to show on charts or, alternatively, by lists of geographical coordinates, the straight baselines and the lines of delimitation drawn by the State. The State shall give due publicity to such charts and lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations. This provision encompasses a new set of responsibilities given to the Secretary-General.

^{3/} For an analysis of these rules, please refer to Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea, Division for Ocean Affairs and the Law of the Sea, 1989 (United Nations publication, Sales No. E.88.V.5).

B. Rules regulating the right of innocent passage for all ships

14. The coastal State exercises sovereignty over its territorial sea; however, the right of innocent passage has been granted to preserve navigational rights through the territorial sea. The Convention provides for a regime where the rights of both the coastal State and the flag States whose ships navigate in the territorial sea have been balanced.

15. The ship must exercise its right of innocent passage in accordance with the rules contained in articles 18 and 19 of the Convention. Unlike the 1958 Convention, the Convention contains in article 19, paragraph 2, a list of activities that are considered to be prejudicial to the peace, good order or security of the coastal State.

16. Article 20 requires submarines and other underwater vehicles to navigate on the surface and to show their flag to consider their passage innocent.

17. Innocent passage must also conform to the laws and regulations adopted by the coastal State in conformity with the Convention. This regulatory power is limited: the Convention provides for a closed list of subjects on which the coastal State can impose laws and regulations (article 21).

18. Article 22, which has no parallel in the 1958 Convention, allows the coastal State to establish sea lanes and traffic separation schemes where necessary having regard to the safety of navigation, particularly with reference to the passage of tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials. Article 23 determines that these categories of ships shall, when exercising the right of innocent passage, carry documents and observe special precautionary measures established by international agreements.

19. The coastal State can take the necessary steps in its territorial sea to prevent passage which is not innocent (article 25). It is authorized to suspend temporarily all form of innocent passage under certain conditions.

20. The duties of the coastal State as regards innocent passage are established in articles 24 and 26 of the Convention. The coastal State has the duty not to hamper the innocent passage, in particular by means of imposing excessive requirements on ships or discriminating against certain ships. It has the duty to preserve the security of navigation by giving appropriate publicity to any danger of navigation of which it has knowledge. The coastal State may not levy any charge by reason of the innocent passage, except if specific services have been rendered to the ship.

21. With regard to the exercise of jurisdiction over ships which are in the territorial sea, the Convention makes a distinction between merchant ships and warships and other Government ships operated for non-commercial purposes. Government ships operated for commercial purposes are assimilated to merchant ships. This distinction can already be found in the 1958 Convention.

C. Rules applicable to merchant ships

22. The provisions applicable to merchant ships and Government ships operated for commercial purposes contain the rules on the exercise of criminal jurisdiction and civil jurisdiction. These rules preserve again a balance between the interests of the coastal State and the navigational rights guaranteed by the innocent passage.

23. The criteria established by article 27 to allow the exercise of criminal jurisdiction are based on where the crime is committed, the consequences the crime has on the coastal State and whether a request for assistance has been made by the master of the ship.

24. With respect to the exercise by the coastal State of its civil jurisdiction against ships passing through the territorial sea, the criteria are that, as a general rule, coastal States should not stop or divert these ships; they may levy execution against or arrest these ships only in respect of obligations or liabilities assumed or incurred by the ship itself that have taken place during the course of the passage of the ship through the territorial sea, or in the internal waters the ship has left, or while the ship is in the territorial sea.

D. Rules applicable to warships and other Government ships operated for non-commercial purposes

25. Article 29 of the Convention contains a definition of "warship" and article 30, which closely follows similar provisions of the 1958 Convention, sets forth the regime to be applied in case of non-compliance by warships with the laws and regulations of the coastal State. Articles 31 and 32 contain long-established rules of international law bearing on the responsibility of the flag State for damage caused by warships and other Government ships operated for non-commercial purposes and on the immunities of these ships, limited by the provisions of the Convention relating to innocent passage.

II. THE CONTIGUOUS ZONE

26. The regime that governs the contiguous zone which may not extend beyond 24 miles from the baselines from which the territorial sea is measured is established in Section 4 of Part II, in article 33. The freedom of navigation applies to it.

27. As had already been stipulated in the 1958 Convention, the contiguous zone admits a limited function to the coastal State: article 33 refers exclusively to the prevention and punishment of the infringement of its customs, fiscal, immigration or sanitary laws. The State can only exercise its control when such infringements have been committed within its territory or territorial sea. The jurisdiction of the State does not apply directly to infringements committed in the zone.

28. One very specific extension of the coastal State's jurisdiction in the contiguous zone relates to the control of archaeological and historical objects removed from the seabed of the contiguous zone (article 303).

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