General Principles of the Law of the Sea

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General Principles of the Law of the Sea

Office of the Staff Judge Advocate, U.S. Indo-Pacific Command

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The thoughts and opinions expressed are not necessarily those of the U.S. government, the U.S. Department of the Navy, or the U.S. Naval War College.
The world’s oceans are divided into maritime zones—internal waters, archipelagic waters, territorial seas, contiguous zones, exclusive economic zones (EEZs), continental shelves, high seas, and the Area (see the Maritime Zones figure below). International law, as reflected in the U.N. Convention on the Law of the Sea (UNCLOS),\(^1\) establishes functional rights, obligations, and jurisdiction over each zone. These rights and obligations include navigation and overflight of the oceans; exploration, exploitation, and conservation of ocean-based living and non-living resources; protection of the marine environment; and marine scientific research. Coastal State rights and jurisdiction in offshore areas diminish as the distance from the shoreline increases. Conversely, the rights and freedoms of the international community increase farther from land.
**Baselines.** All maritime zones are measured from the baseline. Under international law, the normal baseline for measuring the breadth of these zones is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State. Straight baselines may be used, but only in very limited circumstances, as detailed in the four permissible uses below.

**Permissible Use of Straight Baselines**
- In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity.
- Where because of the presence of a delta and other natural conditions the coastline is highly unstable.
- Across the mouth of a river that flows directly into the sea.
- To close the natural entrance of a bay, not to exceed 24 nm.
**Internal Waters.** Internal waters are all waters landward of the baseline along the coast. Lakes, rivers, some bays, roadsteads, harbors, canals, and lagoons are examples of internal waters. Coastal States exercise sovereignty over their internal waters and superjacent airspace, and foreign ships or aircraft may not enter internal waters without coastal State consent.4

**Territorial Sea.** All States may claim a 12 nm territorial sea. Within the territorial sea, the coastal State exercises complete sovereignty over the water column, the seabed and subsoil, and the airspace above the territorial sea, subject to the right of innocent passage.5
Innocent Passage. All ships, including warships, regardless of armament, cargo, or means of propulsion, enjoy the right of innocent passage through the territorial seas without coastal State notice or consent. Submarines and other underwater craft engaged in innocent passage are required to navigate on the surface and show their flag. Innocent passage must be continuous and expeditious, but may include stopping and anchoring (1) if incidental to ordinary navigation, (2) if rendered necessary by force majeure or distress, or (3) to render assistance to persons, ships or aircraft in danger or distress at sea. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Innocent passage does not include a right of overflight through national airspace above the territorial sea or submerged transit by submarines.

An inclusive list of activities considered to be non-innocent include:

- Any threat or use of force against the sovereignty, territorial integrity, or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the U.N. Charter
- Any exercise or practice of weapons
- Any act aimed at collecting information to the prejudice of the defense or security of the coastal State.
- Any act of propaganda aimed at affecting the defense or security of the coastal State.
- The launching, landing, or taking on board of any aircraft or military device
- The loading or unloading of any commodity, currency, or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State
- Any act of willful and serious pollution
- Any fishing activities
- Research or survey activities
- Any act aimed at interfering with any systems of communication of the coastal State.
- Any other activity not having a direct bearing on passage
International Straits. There are seven types of international straits: (1) straits used for international navigation where transit passage applies (e.g., Straits of Malacca and Singapore); (2) geographic straits through which a high-seas corridor exists (e.g., Taiwan Strait); (3) straits governed by long-standing conventions (e.g., Turkish Straits); (4) straits with routes through the high seas or exclusive economic zone (EEZ) that are of similar convenience (e.g., Japanese Straits--Soya, Tsugaru, Osumi and Tsushima Straits); (5) straits formed by islands (e.g., Messina Strait); (6) archipelagic straits, governed by archipelagic sea lanes passage (ASLP); and (7) dead end straits (e.g., Strait of Tiran). Each type of strait has its unique characteristics and passage regimes. For example, high seas freedoms of navigation and overflight apply in geographic straits (Taiwan Strait) and in straits with an EEZ/high sea route of similar convenience (Japanese Straits).

Transit Passage. All military and commercial ships and aircraft enjoy a right of unimpeded transit passage through straits used for international navigation in the normal mode of operation without bordering States notice or consent.10 “Normal mode of operation” means that submarines may transit submerged, military aircraft may overfly in combat formation and with normal equipment operation, and surface ships may transit in a manner consistent with vessel security, to include formation steaming and launch and recovery of aircraft, if consistent with sound navigational practices.11 The bordering States may not suspend transit passage for any purpose, including military exercises, and are prohibited from adopting laws or regulations that have the practical effect of denying, hampering or impairing the right of transit passage.12

Archipelagic Waters. An archipelagic State is a nation constituted wholly of one or more groups of islands.13 The Philippines and Indonesia are considered archipelagic States. Such nations may draw straight archipelagic baselines joining the outermost points of their outermost islands, if the ratio of water to land within the baselines is between 1:1 and 9:1.14 The waters enclosed within the archipelagic baselines are archipelagic waters, which are subject to archipelagic State sovereignty.15 Archipelagic baselines are also used to measure the archipelagic State’s territorial sea, contiguous zone, and EEZ.16 Archipelagic States may (but are not required to) designate archipelagic sea lanes (ASL) through their archipelagic waters suitable for continuous and expeditious passage of ships and aircraft. All normal routes used for
international navigation and overflight are to be included in the designation, and must be adopted by the International Maritime Organization. If the archipelagic State does not designate or makes only a partial designation of ASLs, vessels and aircraft of all nations may continue to exercise the right of archipelagic sea lanes passage (ASLP) in all normal passage routes used for international navigation and overflight through the archipelago. The right of innocent passage applies in archipelagic waters not covered by the ASLP regime.

**Archipelagic Sea Lanes Passage.** ASLP applies within archipelagic waters and the adjacent territorial sea whether or not the archipelagic State has designated ASLs, and is virtually identical to transit passage. ASLP is the exercise of the rights of navigation and overflight in the normal mode of operation solely for the purpose of continuous, expeditious, and unobstructed transit through archipelagic waters. All military and commercial ships and aircraft enjoy the right of ASLP while transiting through, under, or over archipelagic waters and adjacent territorial seas via all normal passage routes used as routes for international navigation or overflight. The archipelagic State may not impede or suspend the right of ASLP for any reason.

**Contiguous Zone.** Coastal States may claim a 24-nm contiguous zone measured from the baseline in which the coastal State may exercise limited control necessary to prevent or punish infringement of its customs, fiscal, immigration, or sanitary laws and regulations in its territory or territorial sea. The coastal State does not exercise sovereignty over its contiguous zone. Military and commercial ships and aircraft of all States enjoy the same high seas freedom of navigation and overflight, and other internationally lawful uses of the seas associated with those freedoms, in the contiguous zone that apply in the EEZ and on the high seas.
**Exclusive Economic Zone.** Coastal States may claim a 200-nm EEZ measured from the baseline. The EEZ is not subject to coastal State sovereignty. Within this zone, the coastal State enjoys sovereign rights for the purpose of exploring, exploiting, conserving and managing living and non-living natural resources, as well as jurisdiction over resource-related offshore installations and structures, marine scientific research (MSR), and the protection and preservation of the marine environment. The production of energy from the water, currents, and winds also falls under the jurisdiction of the coastal State. The concept of the EEZ is new in international law. The zone comprises 38 percent of the world’s oceans that just three decades ago was entirely high seas. The EEZ was created for the sole purpose of granting coastal states greater control over the resources adjacent to their coasts out to 200 nm. Efforts by a handful of nations to expand coastal State jurisdiction in the EEZ to include security matters were not accepted by the majority of the delegations participating in the negotiations.
**High Seas Freedoms.** Within the EEZ, all States enjoy high seas freedoms of navigation and overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the seas related to those freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, which are compatible with the coastal State’s resource rights and jurisdiction. 27 Lawful military activities that can be conducted in the EEZ without coastal State notice or consent include, *inter alia*: intelligence, surveillance and reconnaissance (ISR) operations; oceanographic surveys and marine data collection; military exercises, use of weapons and flight operations; freedom of navigation and presence operations; maritime security operations to counter the slave trade, repress piracy, suppress unauthorized broadcasting, and suppress narcotics trafficking; and the exercise of belligerent right of visit and search during wartime and the peacetime right of approach and visit, rending assistance, and hot pursuit. 28

**Continental Shelf.** Coastal States also exercise sovereign rights over their continental shelf for the purpose of exploring and exploiting its natural resources, including mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species. 29 The continental shelf includes the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the baselines where the outer edge of the continental margin does not extend up to that distance. 30 Continental shelf claims that extend beyond 200 nm must be submitted to the Commission on the Limits of the Continental Shelf, an independent technical international organization, to consider and make recommendations to coastal States on matters related to such claims. 31 The continental shelf regime preserves high seas freedoms of navigation and overflight in the zone by providing that coastal State rights over the seabed do not affect the status of the superjacent waters or airspace above those waters. 32

**High Seas.** Beyond the 200 nm EEZ lies the high seas, which remain open to all States. 33 No State may validly purport to subject any part of the high seas to its sovereignty. 34 Freedom of the high seas includes: freedom of navigation and overflight; freedom to lay submarine cables and pipelines; freedom to construct artificial islands and other installations; freedom of fishing; freedom of scientific research; and other internationally lawful uses of the sea. 35 Warships and military aircraft enjoy freedom of movement and
operation on and over the high seas, including, *inter alia*, task force maneuvering, flight operations, military exercises, submarine operations, ISR activities, military marine data collection, and ordnance testing and firing.

**The Area.** The deep seabed and its mineral resources located beyond the EEZ and continental shelf comprises the Area. Mineral resources of the Area are administered by the International Seabed Authority.36 Navigational freedoms and other high seas freedoms (such as scientific research and telecommunications) in the Area are preserved to the international community by UNCLOS, which provides that neither Part XI nor any rights granted or exercised pursuant thereto shall affect the legal status of the waters superjacent to the Area or that of the air space above those waters.37
1. The United States did not sign the Convention when it was opened for signature on December 10, 1982 because of its objections to Part XI on deep seabed mining. However, on March 10, 1983, President Ronald Reagan issued an Ocean Policy Statement that recognized that the convention contains provisions that generally confirm existing maritime law with respect to traditional uses of the oceans and fairly balance the interests of all States. Accordingly, President Reagan announced that the United States would accept and act in accordance with the balance of interests relating to traditional uses of the oceans, such as navigation and overflight, and would recognize the rights of other States in the waters off their coasts so long as the rights and freedoms of the United States are recognized by such coastal States. See President Ronald Reagan, Statement on United States Oceans Policy (Mar. 10, 1983).


3. Id. arts. 7, 9, 10.

4. Id. art. 8.

5. Id. arts. 2, 3; Convention on International Civil Aviation (Chicago Convention), art. 1, Dec. 7, 1944, U.N.T.S. 295 [hereinafter Chicago Convention].

6. UNCLOS, supra note 2, art. 17.

7. Id. art. 20.

8. Id. art. 18.

9. Chicago Convention, supra note 5, arts. 1–3bis; UNCLOS, supra note 2, arts. 18, 20.

10. UNCLOS, supra note 2, art. 38.

11. Id. art. 39.

12. Id. art. 42.

13. Id. art. 46.

14. Id. art. 47.

15. Id. art. 49.

16. Id. art. 48.

17. Id. art. 53.


19. UNCLOS, supra note 2, art. 52.

20. Id. art. 53.

21. Id. art. 54.

22. Id. art. 33.

23. Id. art. 58.

24. Id. art. 57.

25. Id. arts. 56, 58.


27. UNCLOS, supra note 2, art. 58.
28. UNCLOS, supra note 2, arts. 56, 58, 86–87, 89–92, 94–96, 98–112; 2 VIRGINIA COMMENTARY, supra note 26, at 60–71; see generally id. at 491–821.
29. UNCLOS, supra note 2, art. 77.
30. Id. art. 76.
31. Id.
32. Id. art. 78.
33. Id. art. 87.
34. Id. art. 89.
35. Id. art. 87.
37. UNCLOS, supra note 2, art. 135.