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Fiji: draft articles relating to passage through the territorial sea

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which constitute part of an island State or of an archipelagic State.

Article 3

The delimitation of space between two neighbouring States, whether they be adjacent or opposite, or whether they have both of these two geographical characteristics simultaneously, shall be governed by the method or combination of methods

which provides the most equitable solution. For example, neighbouring States may use, exclusively or jointly, the geographical parallel or the perpendicular line from the terminal point of the land or river frontier, equidistance, or the median line of the points closest to the coasts or their baselines. The terminal point of a river frontier shall be considered as the immediate confluence of the river and the sea, irrespective of whether the river flows into the sea in the form of an estuary.

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Fiji: draft articles relating to passage through the territorial sea

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Explanatory note

In the draft articles submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in document A/AC.138/SC.II/L.42 (A/9021 and Corr.1 and 3, vol. III, sect. 31), the Fiji delegation sought to establish general rules of a more objective nature for the passage of ships through the territorial sea. In particular it attempted to elaborate a more precise definition of the concept of innocent passage, and to elaborate on the existing rules relating to the passage of warships.

In the light of the many helpful comments that have since been made in relation to that paper, including the fact that other delegations have adopted parts of our text in their proposals, we felt that it might be desirable to revise our own paper in order to maintain the unity of its approach.

As in the case of the previous draft articles these are now presented to this Committee as a basis for discussion.

Since the concept of innocent passage is being discussed in relation to the territorial sea and in relation to straits, items 2 and 4 respectively, we consider it appropriate to relate this draft to both those items. This is without prejudice to any ultimate decision that this Committee or the Conference may make in relation to the régime or régimes applicable to the passage of foreign ships through straits.

Fiji: Revised draft articles on navigation through the territorial sea, including straits used for international navigation

I. RULES APPLICABLE TO ALL SHIPS

A. RIGHT OF INNOCENT PASSAGE

Article 1

Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

Article 2

1. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering any port in the coastal State, or of proceeding to any port in the coastal State from the high seas, or of making for the high seas from any port in the coastal State.

2. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress; otherwise passage shall be continuous and expeditious.

3. For the purposes of these articles the term "port" includes any harbour or roadstead normally used for the loading, unloading or anchoring of ships.

Article 3

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State, if in the territorial sea it engages in any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of the coastal State or of any other State, or if it engages in any of the following activities:

- (i) Any other warlike act against the coastal or any other State;
- (ii) Any exercise or practice with weapons of any kind;
- (iii) The launching or taking on board of any aircraft;
- (iv) The launching, landing or taking on board of any military device;
- (v) The embarking or disembarking of any person or cargo;
- (vi) Any act of espionage affecting the defense or security of the coastal State;
- (vii) Any act of propaganda affecting the security of the coastal State;
- (viii) Any act of interference with any systems of communication of the coastal or any other State;
- (ix) Any act of interference with any other facility or installation of the coastal State;
- (x) Any other activity not having a direct bearing on passage.

3. The provisions of paragraph 2 of this article shall not apply to any activities carried out with the prior authorization of the coastal State or as are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

4. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea and, in particular, it shall not, in the application of these articles or of any laws or regulations made under the provisions of these articles, discriminate in form or in fact against the ships of any particular State or against ships carrying cargoes to, from or on behalf of any particular State.

5. The coastal State is required to give appropriate publicity to any obstacles or dangers to navigation, of which it has knowledge, within the territorial sea.

6. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

7. In the case of ships proceeding to any port in the coastal State, the coastal State shall also have the right to take the

necessary steps to prevent any breach of the conditions to which admission of those ships to such port is subject.

Article 4

1. Subject to the provisions of paragraph 2 of this article, the coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of the territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been given due publicity.

2. Except to the extent authorized under the provisions of these articles, there shall be no suspension of the innocent passage of foreign ships through straits used for international navigation or through sea lanes designated under the provisions of these articles.

B. REGULATION OF PASSAGE

Article 5

1. The coastal State may make laws and regulations, in conformity with the provisions of these articles and other rules of international law, relating to passage through the territorial sea, which laws and regulations may be in respect of all or any of the following:

(a) The safety of navigation and the regulation of marine traffic, including the designation of sea lanes and the establishment of traffic separation schemes;

(b) The installation, utilization and protection of navigational aids and facilities;

(c) The installation, utilization and protection of facilities or installations for the exploration and exploitation of the marine resources, including the resources of the sea-bed and subsoil, of the territorial sea;

(d) The protection of submarine or aerial cables and pipelines;

(e) The conservation of the living resources of the sea;

(f) The preservation of the environment of the coastal State, including the territorial sea, and the prevention of pollution thereof;

(g) Research of the marine environment, including hydrographic research;

(h) The prevention of infringement of the customs, fiscal, immigration, quarantine or sanitary regulations of the coastal State;

(i) The prevention of infringement of the fisheries regulations of the coastal State, including *inter alia* those relating to the storage of gear.

2. Such laws and regulations may not embody any requirements relating to ship design, construction, manning or equipment which are more restrictive than those provided by the International Convention for the Prevention of Pollution from Ships, of 1973, or of any subsequent international convention of general application.

3. The coastal State shall give due publicity to all laws and regulations made by it under the provisions of this article.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations of the coastal State.

5. During their passage through the territorial sea, foreign ships, including marine research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the coastal State.

6. A coastal State may require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes, including depth separation schemes, as may be designated or prescribed by the coastal State for the regulation of the passage of ships.

7. A coastal State may from time to time, after giving due publicity thereto, substitute other sea lanes for any sea lanes previously designated by it under the provisions of this article.

8. In the designation of sea lanes and the prescription of traffic separation schemes under the provisions of this article a coastal State shall take into account:

(a) The recommendations of competent international organizations;

(b) Any channels customarily used for international navigation;

(c) The special characteristics of particular channels; and

(d) The special characteristics of particular ships.

9. The coastal State shall clearly demarcate all sea lanes designated by it under the provisions of this article and indicate them on charts to which due publicity shall be given.

10. Foreign ships exercising the right of innocent passage through the territorial sea shall, when passing through sea lanes and traffic separation schemes designated or prescribed by the coastal State under the provisions of this article, comply with all international regulations relating to the prevention of collisions at sea.

11. If in the application of its laws and regulations, a coastal State acts in a manner contrary to the provisions of these articles and loss or damage results to any foreign ship exercising the right of innocent passage through the territorial sea, the coastal State shall compensate the owners of such ship for that loss or damage.

C. SHIPS HAVING SPECIAL CHARACTERISTICS

Article 6

1. Submarines and other underwater vehicles may be required to navigate on the surface and to show their flag except in cases where they:

(a) Have given prior notification of their passage to the coastal State; and

(b) If so required by the coastal State, confine their passage to such sea lanes as may be designated for that purpose by the coastal State.

2. Tankers and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to give prior notification of their passage to the coastal State and to confine their passage to such sea lanes as may be designated for that purpose by the coastal State.

3. For the purposes of this article, the term "tanker" includes any ship used for the carriage in bulk in a liquid state of petroleum, natural gas or any other highly inflammable, explosive or pollutive substance.

4. In order to expedite the passage of ships through the territorial sea the coastal State shall ensure that the procedures for notification under the provisions of this article shall be such as not to cause any undue delay.

II. RULES APPLICABLE TO MERCHANT SHIPS

Article 7

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article 8

1. The criminal jurisdiction of the coastal State shall not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in

connexion with any crime committed on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal State; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

2. The provisions of paragraph 1 of this article do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving any port in the coastal State.

3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering any port in the coastal State.

Article 9

1. The coastal State shall not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its passage through the waters of the coastal State.

3. The provisions of paragraph 2 of this article are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving any port in the coastal State.

III. RULES APPLICABLE TO GOVERNMENT SHIPS

A. GOVERNMENT SHIPS OTHER THAN WARSHIPS

Article 10

The rules contained in sections I and II shall apply to government ships operated for commercial purposes.

Article 11

1. The rules contained in section I and in article 7 shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in paragraph 1 of this article or in article 14 nothing in these articles affects the immunities which such ships enjoy under the provisions of these articles or other rules of international law.

B. WARSHIPS

Article 12

1. For the purposes of this article, the term "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ship of its nationality, under the command of an officer duly commissioned by the Government of that State and whose name appears in the appropriate service list or its equivalent, and manned by a crew who are under regular armed forces discipline.

2. The rules contained in section I shall apply to warships.

3. Foreign warships exercising the right of innocent passage shall not, in the territorial sea, carry out any manoeuvres other than those having direct bearing on passage.

4. If any warship does not comply with the laws and regulations of the coastal State relating to passage through the territorial sea or fails to comply with the requirements of paragraph 3 of this article, and disregards any request for compliance which is made to it, the coastal State may suspend the right of passage of such warship and may require it to leave the territorial sea by such route as may be directed by the coastal State.

Article 13

With such exceptions as are contained in articles 12 and 14 nothing in these articles affects the immunities which warships enjoy under the provisions of these articles or other rules of international law.

C. LIABILITY OF GOVERNMENT SHIPS

Article 14

If, as a result of any non-compliance by any warship or other government ship operated for non-commercial purposes with any of the laws or regulations of the coastal State relating to passage through the territorial sea or with any of the provisions of these articles or other rules of international law, any damage is caused to the coastal State, including its environment and any of its facilities, installations or other property, or to any of its flag vessels, international responsibility for such damage shall be borne by the flag State of the ship causing such damage.

DOCUMENT A/CONF.62/C.2/L.20

Algeria: draft articles on straits used for international navigation; semi-enclosed seas

[Original: French]
{23 July 1974}

Article 1

1. Merchant ships and government ships operated for commercial purposes which are proceeding to or from a coastal

State bordering a semi-enclosed sea whose access to ocean space lies exclusively through straits connecting two parts of the high seas and traditionally used for international navigation shall enjoy the right of free transit for this purpose.