

# **Third United Nations Conference on the Law of the Sea**

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**A/CONF.62/C.2/L.3**

## **United Kingdom: draft articles on the territorial sea and straits**

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*

## DOCUMENTS OF THE SECOND COMMITTEE

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

Organization of the work of the Second Committee: statement by the Chairman at the 1st meeting

[Original: Spanish]  
[3 July 1974]

I have held consultations with the officers of this Committee, the Chairmen of the regional groups and some individual delegations and, as a result of these consultations, it is my understanding that in general there appears to be agreement on the following points bearing on the organization of the Committee's work:

1. The Committee should start by dealing with substantive questions next week towards the end of the general debate in the plenary Conference;

2. The items allocated to the Committee should be taken up in official and non-official meetings, as considered convenient, with the Chairman of the Committee presiding. Working groups should not be established, at least at the initial stage, on the understanding that, if necessary, one or more informal *ad hoc* groups may be established;

3. The items allocated to the Committee should be considered one by one in the order in which they appear in the list contained in document A/CONF.62/29. The idea is to consider each of these items and questions and then to identify the main trends and to express these trends in generally acceptable formulae, in other words, to "put the item on ice", without

taking decisions, and to pass on to the following item. It is clearly understood that, during the discussion of each item, delegations may refer to related items. No decision will be taken until all the closely interconnected items have been fully considered;

4. At present it does not seem possible to draw up a time-table of work. At most, such a time-table could be prepared only tentatively and the officers are currently working on this. The officers of the Committee could be given the responsibility of periodically reviewing the progress of the work in the light of the time available. Depending on the progress of the work and having regard to the time factor, special measures could be taken to expedite the work when it is thought that the Committee is falling behind;

5. The Committee should not take a formal decision on the documentation which will serve as a basis for its work. All the available documents—the documents of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and any others that may have been submitted officially or informally, or which may be submitted during this session—may be used.

### DOCUMENT A/CONF.62/C.2/L.3

United Kingdom: draft articles on the territorial sea and straits

[Original: English]  
[3 July 1974]

#### CONVENTION ON THE LAW OF THE SEA

*The States parties to this Convention*

*Desiring* to develop the law of the sea in order to meet present and future needs of the entire world community;

*Have agreed* as follows:

(Chapter I: International régime for the sea-bed and ocean floor beyond national jurisdiction)

#### CHAPTER II. TERRITORIAL SEA

##### PART I. NATURE AND CHARACTERISTICS

###### *Article 1*

1. The sovereignty of a State extends beyond its land territory and its internal waters to a belt of sea adjacent to its coast described as the territorial sea.

2. The sovereignty of a coastal State extends also to the air space over the territorial sea as well as to the bed and subsoil thereof.

3. The coastal State exercises this sovereignty subject to the provisions of this Convention and to other rules of international law.

##### PART II. LIMITS OF THE TERRITORIAL SEA

###### *Article 2*

The territorial sea may not extend beyond 12 nautical miles from the baseline from which the breadth of the territorial sea is measured.

*Note:* Add here the text of articles 3 to 13 of the Convention on the Territorial Sea and the Contiguous Zone.<sup>1</sup>

<sup>1</sup> United Nations, *Treaty Series*, vol. 516, p. 206.

PART III. RIGHT OF INNOCENT PASSAGE THROUGH THE  
TERRITORIAL SEA

I. RULES APPLICABLE TO ALL SHIPS

Article 14

Subject to the provisions of this chapter, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea. Passage of straits used for international navigation is governed by the provisions of chapter III of this Convention.

Article 15

1. Innocent passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to or from internal waters.

2. Innocent 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 such passage shall be continuous and expeditious.

Article 16

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 not be considered prejudicial to the peace, good order or security of the coastal State unless, 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 without authorization from the coastal State or justification under international law in any of the following activities:

- (a) any exercise or practice with weapons of any kind;
- (b) the launching or taking on board of any aircraft;
- (c) the launching, landing or taking on board of any military device;
- (d) the embarking or disembarking of any person or cargo contrary to the customs, fiscal, immigration or sanitary laws or regulations of the coastal State;
- (e) any act aimed at interfering with any system of communication of the coastal State;
- (f) any act aimed at interfering with any other facilities or installations of the coastal State.

3. Passage shall not be considered prejudicial to the peace, good order or security of the coastal State if any such activity is:

- (a) prudent for safe and efficient navigation in accordance with the normal practice of seamen; or
- (b) carried out with the prior authorization of the coastal State; or
- (c) 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 shall not discriminate in form or in fact amongst foreign ships on any grounds.

5. The coastal State is required to give appropriate publicity to any 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 within the meaning of this article.

7. In the case of ships proceeding to internal waters, 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 waters is subject.

Article 17

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 appropriate publicity.

Article 18

1. The coastal State may make laws and regulations in conformity with the provisions of this Convention and other rules of international law relating to innocent passage through its territorial sea. Such laws and regulations may be only in respect of the following:

- (a) the safety of navigation and the regulation of marine traffic, including sea lanes and traffic separation schemes;
- (b) the prevention of destruction of, or damage to, facilities and systems of aids to navigation;
- (c) the prevention of destruction of, or damage to, facilities or installations, including those for the exploration and exploitation of resources of the sea-bed and subsoil;
- (d) the preservation of the marine environment in accordance with chapter . . . of this Convention;
- (e) research into the marine environment;
- (f) prevention of infringement of the customs, fiscal, immigration, or sanitary regulations of the coastal State; and
- (g) prevention of unauthorized fishing by foreign fishing vessels including *inter alia* the stowage of gear.

2. Such laws and regulations shall not:

- (a) apply to the design, construction, manning or equipment of foreign ships or matters regulated by generally accepted international rules unless specifically authorized by such rules;
- (b) impose requirements on foreign ships which have the practical effect of denying or prejudicing the right of innocent passage in accordance with this Convention; and
- (c) discriminate in form or in fact among foreign ships.

3. The coastal State shall give due publicity to all such laws and regulations.

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. The coastal State shall ensure that the application, in form and in fact, of its laws and regulations upon foreign ships exercising the right of innocent passage is in conformity with the provisions of this Convention. If a coastal State acts in a manner contrary to the provisions of this chapter and loss or damage to a foreign ship results, the coastal State shall compensate the owners of the ship for that loss or damage.

Article 19

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

Article 20

Submarines and other underwater vehicles in innocent passage may be required to navigate on the surface and to show their flag.

## II. RULES APPLICABLE TO MERCHANT SHIPS

*Article 21*

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.
2. Reasonable charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. The charges shall be levied without discrimination.

*Article 22*

1. The criminal jurisdiction of the coastal State should 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 any arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

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 internal waters.

*Article 23*

1. The coastal State should 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 internal waters.

## III. RULES APPLICABLE TO GOVERNMENT SHIPS

*A. Government ships other than warships**Article 24*

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

*Article 25*

1. The rules contained in section I and in article 21 shall apply to government ships operated for non-commercial purposes.

2. Subject to the provisions of paragraph 1 of this article, 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 26*

1. For the purpose of this article, the term "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the Government of the 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 these articles and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

*Article 27*

Subject to the provisions of articles 26 and 28, nothing in these articles affects the immunities which warships enjoy under the provisions of these articles or other rules of international law.

*C. State responsibility for government ships**Article 28*

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 ships flying its flag), international responsibility shall be borne by the flag State of the ship causing the damage.

## PART IV. DISPUTES

*Article 29*

Any dispute concerning the interpretation or application of this chapter shall be settled in accordance with chapter . . . of this Convention.

## CHAPTER III. PASSAGE OF STRAITS USED FOR INTERNATIONAL NAVIGATION

*Article 1*

1. In straits to which this article applies, all ships and aircraft enjoy the right of transit passage, which shall not be impeded.

2. Transit passage is the exercise in accordance with the provisions of this chapter of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas and another part of the high seas or a State bordering the strait.

3. This article applies to any strait or other stretch of water, whatever its geographical name, which:

- (a) is used for international navigation;
- (b) connects two parts of the high seas.

4. Transit passage shall apply in a strait only to the extent that:

- (a) an equally suitable high seas route does not exist through the strait; or
- (b) if the strait is formed by an island of the coastal State, an equally suitable high seas passage does not exist seaward of the island.

#### Article 2

1. Ships and aircraft, while exercising the right of transit passage shall:

- (a) proceed without delay through the strait and shall not engage in any activities other than those incident to their normal modes of transit;
- (b) refrain from any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of an adjacent straits State.

2. Ships in transit shall:

- (a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea, of 1972;

- (b) comply with generally accepted international regulations, procedures and practices for the prevention and control of pollution from ships.

3. Aircraft in transit shall:

- (a) observe rules of the air established by the International Civil Aviation Organization under the Convention on International Civil Aviation signed at Chicago in 1944<sup>2</sup> as they apply to civil aircraft; State aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;

- (b) at all times monitor the radio frequency assigned by the appropriate internationally designated air traffic control authority or the appropriate international distress radio frequency.

#### Article 3

1. In conformity with this chapter, a straits State may designate sea lanes and prescribe traffic separation schemes for navigation in the strait where necessary to promote the safe passage of ships.

2. A straits State may, when circumstances require and after giving due publicity to its decision, substitute other sea lanes or traffic separation schemes for any previously designated or prescribed by it.

3. Before designating sea lanes or prescribing traffic separation schemes, a straits State shall refer proposals to the competent international organization and shall designate such sea lanes or prescribe such separation schemes only as approved by that organization.

4. The straits State shall clearly indicate all sea lanes and separation schemes designated or prescribed by it on charts to which due publicity shall be given.

5. Ships in transit shall respect applicable sea lanes and separation schemes established in accordance with this article.

#### Article 4

1. Subject to the provisions of this article, a straits State may make laws and regulations:

- (a) in conformity with the provisions of article 3 above;

<sup>2</sup>United Nations, *Treaty Series*, vol. 15, p. 296.

(b) giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait.

2. Such laws and regulations shall not discriminate in form or in fact among foreign ships.

3. The straits State shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations of the straits State.

5. If a ship entitled to sovereign immunity does not comply with any such laws or regulations and damage to the straits State results, the flag State shall in accordance with article 7 be responsible for any such damage caused to the straits State.

#### Article 5

User States and straits States should by agreement co-operate in the establishment and maintenance in a strait of necessary navigation and safety aids or other improvements in aid of international navigation or for the prevention and control of pollution from ships.

#### Article 6

A straits State shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which it has knowledge. There shall be no suspension of transit passage.

#### Article 7

1. Responsibility for any damage caused to a straits State resulting from acts in contravention of this chapter by any ship or aircraft entitled to sovereign immunity shall be borne by the flag State.

2. If a straits State acts in a manner contrary to the provisions of this chapter and loss or damage to a foreign ship or aircraft results, the straits State shall compensate the owners of the vessel or aircraft for that loss or damage.

#### Article 8

1. In straits used for international navigation between one part of the high seas and another part of the high seas or between one part of the high seas and the territorial sea of a foreign State, other than those straits in which the régime of transit passage applies in accordance with article 1, the régime of innocent passage in accordance with the provisions of part III of chapter II shall apply, subject to the provisions of this article.

2. There shall be no suspension of the innocent passage of foreign ships through such straits.

3. The provision of article 3 of this chapter shall apply in such straits.

#### Article 9

Nothing in this chapter shall affect any areas of high seas within a strait.

#### Article 10

The provisions of this chapter shall not affect obligations under the Charter of the United Nations or under conventions or other international agreements already in force relating to a particular strait.

#### Article 11

In this chapter "straits State" means any State bordering a strait to which the chapter applies.

#### Article 12

Any dispute concerning the interpretation or application of this chapter shall be settled in accordance with chapter . . . of this Convention.