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COMMITTEE ON THE PEACEFUL USES OF THE
SEA-BED AND THE OCEAN FLOOR BEYOND THE
LIMITS OF NATIONAL JURISDICTION
SUB-COMMITTEE II

Cyprus, Greece, Indonesia, Malaysia, Morocco, Philippines, Spain and
Yemen: draft articles on navigation through the territorial sea
including straits used for international navigation

The question of navigation through the territorial sea including straits used for international navigation is one of the problems facing the Committee in its task to comply with the terms of General Assembly resolutions 2750 C (XXV) and 3029 A (XXVII).

The delegations co-sponsoring the present document wish to contribute to the progress of the Committee's work at this new and important stage of its proceedings and they consider that an appropriate means to achieve this aim is to submit draft articles on items 2.4 and 4.1 of the list of subjects and issues concerning navigation through the territorial sea and through straits used for international navigation, independently of the solutions that item 2.5 may receive in due course.

Although presented as separate articles, this draft is not intended to prejudge its eventual location within the convention or conventions which may be adopted by the future conference.

In drafting this document the following basic considerations have been taken into account:

(1) Navigation through the territorial sea and through straits used for international navigation should be dealt with as an entity since the straits in question are or form part of territorial seas.

(2) Regulation of navigation should establish a satisfactory balance between the particular interests of coastal States and the general interests of international maritime navigation. This is best achieved through the principle of innocent passage which is the basis of the traditional régime for navigation through the territorial sea.

(3) The regulation should contribute both to the security of coastal States and to the safety of international maritime navigation. This can be achieved by the reasonable and adequate exercise by the coastal State of its right to regulate navigation through its territorial sea. Since the purpose of the regulation is not to prevent or hamper passage but to facilitate it without causing any adverse effects to the coastal State.

(4) The regulation should take due account of the economic realities and scientific and technological developments which have occurred in recent years; this requires the adoption of appropriate rules to regulate navigation of certain ships with "special characteristics".

(5) The regulation should, finally, meet the deficiencies of the 1958 Geneva Convention, especially those concerning the passage of warships through the territorial sea, including straits.

Section I. Rules applicable to all ships

Subsection 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 internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

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.

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 shall be continuous and expeditious. Passing ships shall refrain from manoeuvring unnecessarily; hovering, or engaging in any activity other than mere passage.

3. Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law.

4. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

5. Submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Article 4

The coastal State must not hamper innocent passage through the territorial sea. In particular, it shall not impede the innocent passage of a foreign ship flying the flag of a particular State or carrying goods owned by a particular State, proceeding from the territory of or consigned to such a State.

Article 5

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

2. 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 those waters is subject.

3. Subject to the provisions of paragraph 4, the coastal State may, without discrimination amongst foreign ships, suspend temporarily and in specified areas of its 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 duly published.

4. Subject to the provisions of articles 8, 22, paragraph 3 and 23, there shall be no suspension of the innocent passage of foreign ships through straits used for international navigation which form part of the territorial sea.

Subsection B. Regulation of passage

Article 6

The coastal State may enact regulations relating to navigation in its territorial sea. Such regulations may relate, inter alia, to the following:

(a) Maritime safety and traffic and, in particular, the establishment of sea lanes and traffic separation schemes;

(b) Installation and utilization of facilities and systems of aids to navigation and the protection thereof;

(c) Installation and utilization of facilities to explore and exploit marine resources and the protection thereof;

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- (d) Maritime transport;
- (e) Passage of ships with special characteristics;
- (f) Preservation of marine and coastal environment and prevention of all forms of pollution;
- (g) Research of the marine environment.

Article 7

In exercising the right of innocent passage through the territorial sea, foreign ships will not be allowed to perform activities such as

- (a) Engaging in any act of espionage or collecting of information affecting the security of the coastal State;
- (b) Engaging in any act of propaganda against the coastal State or of interference with its systems of communications;
- (c) Embarking or disembarking troops, crew members, frogmen or any other person or device without the authorization of the coastal State;
- (d) Engaging in illicit trade;
- (e) Destroying or damaging submarine or aerial cables, tubes, pipe-lines or all forms of installations and constructions;
- (f) Exploring or exploiting marine and subsoil resources without the authorization of the coastal State.

Article 8

The coastal State may designate in its territorial sea sea lanes and traffic separation schemes, taking into account those recommended by competent international organizations, and prescribe the use of such sea lanes and traffic separation schemes as compulsory for passing ships.

Article 9

1. The coastal State is required to give appropriate publicity to any dangers of navigation, of which it has knowledge, within its territorial sea.

2. The coastal State is required to give appropriate publicity to the existence in its territorial sea of any facilities or systems of aid to navigation and of any facilities to explore and exploit marine resources which could be an obstacle to navigation, and to install in a permanent way the necessary marks to warn navigation of the existence of such facilities and systems.

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Article 10

The coastal State may require any foreign ship that does not comply with the provisions concerning regulation of passage to leave its territorial sea.

Section II. Rules applicable to certain types of ships

Subsection A. Merchant ships

Article 11

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. These charges shall be levied without discrimination.

3. The coastal State shall have the right to be compensated for works undertaken to facilitate passage.

Article 12

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 of 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 above provisions 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 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 country whose flag the ship flies, 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 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 13

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 voyage through the waters of the coastal State.

3. The provisions of the previous paragraph 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 proceeding, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

Subsection B. Ships with special characteristics

Article 14

The coastal State may regulate the passage through its territorial sea of the following:

- (a) Nuclear-powered ships or ships carrying nuclear weapons;
- (b) Ships carrying nuclear substances or any other material which may endanger the coastal State or pollute seriously the marine environment;
- (c) Ships engaged in research of the marine environment.

Article 15

1. The coastal State may require prior notification to or authorization by its competent authorities for the passage through its territorial sea of foreign nuclear-powered ships or ships carrying nuclear weapons, in conformity with regulations in force in such a State.

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2. The provisions of paragraph 1 shall not prejudice any agreement to which the coastal State may be a party.

Article 16

The coastal State may require that the passage through its territorial sea of foreign ships carrying nuclear substances or any other material which may endanger the coastal State or pollute seriously the marine environment be conditional upon any or all of the following:

- (a) Prior notification to its competent authorities;
- (b) Coverage by an international insurance or guarantee certificate for damages that might be caused by such carriage;
- (c) Use of designated sea lanes.

Article 17

1. The coastal State may require prior notification to its competent authorities for the passage through its territorial sea of foreign ships engaged in research of the marine environment, in conformity with regulations in force in such a State.

2. During their passage through the territorial sea, foreign ships engaged in research of the marine environment will not be entitled to carry out any scientific research or hydrographic survey without the explicit authorization of the coastal State.

Article 18

In order to expedite passage the coastal State shall ensure that the procedure of notification referred to in different articles of this section shall not cause undue delay.

Subsection C. Government ships other than warships

Article 19

The rules contained in subsections A and B of this section shall also apply to government ships operated for commercial purposes.

Article 20

1. The rules contained in articles 11, 15, 16 (a) and (c), 17 and 18 of this convention shall apply to government ships operated for non-commercial purposes.

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2. With such exceptions as are contained in any of the provisions referred to in the preceding paragraphs, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

Subsection D. Warships

Article 21

The coastal State may require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea, in conformity with regulations in force in such a State.

Article 22

1. Foreign warships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law.

2. Foreign warships exercising the right of innocent passage shall not perform any activity which does not have a direct bearing with the passage, such as:

- (a) Carrying out any exercise or practice with weapons of any kind;
- (b) Assuming combat position by the crew;
- (c) Flying their aircraft;
- (d) Intimidation or displaying of force;
- (e) Carrying out research operations of any kind.

3. Foreign warships exercising the right of innocent passage may be required to pass through certain sea lanes as may be designated for this purpose by the coastal State.

Article 23

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.
