

UNITED NATIONS

GENERAL  
ASSEMBLY



Distr.  
LIMITED

A/AC.138/SC.II/L.24  
3 July 1973

ENGLISH  
Original: SPANISH

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

SUB-COMMITTEE II

URUGUAY: Draft treaty articles on the Territorial Sea

In the course of evolution of the international law of the sea, the institution of the territorial sea is one of those which have undergone most revision, and it is undoubtedly one of the most important subjects that the Committee has taken up for study under General Assembly resolutions 2750 C (XXV) and 3029 A (XXVII).

These draft articles do not cover all questions relating to the territorial sea; they leave aside some important issues such as the definition and regulation of innocent passage, on which several delegations have submitted draft articles, and other topics dealt with in other draft texts.

In submitting this document the delegation of Uruguay hopes to bring what it considers some fundamental ideas to the task of restructuring the institution of the territorial sea and; by embodying them in draft articles, to contribute to the progress of the Committee's work.

The proposed provisions are based on the following considerations:

1. That the seas adjacent to the coasts of the different regions of the world vary in geographical, geological, biological and ecological characteristics. The recognition of this fact has the important legal consequence that the extent of the sovereignty of coastal States over the adjacent seas may vary according to those characteristics within a universal maximum limit;
2. That these situations, determined by nature and by political, economic, social and cultural factors arising out of the present structure of the international community, justify or require, in certain circumstances and with due respect for the rights of other neighbouring coastal States on the same sea, the extension of the sovereignty of the coastal States over their adjacent sea up to limits as broad as is reasonably necessary in order to maintain their security, to preserve the integrity of the marine environment, to explore, conserve and

exploit the natural resources of that sea and to ensure the rational utilization of those resources in order to promote the maximum development of their economy and to raise the level of living of their peoples;

3. That these broad extensions of the maritime sovereignty of coastal States bring into play new interests which need to be co-ordinated. In particular the draft articles seek to reconcile the exercise of State sovereignty over broad areas of the adjacent sea with the interests of international communication and to secure, by giving it the sanction of international law, the freedom of navigation, of overflight and of the laying of submarine pipelines and cables in any belt of territorial sea which extends beyond twelve miles as measured from the baseline;
4. That the co-ordination of these interests should be effected within the framework of the basic institutions of the international law of the sea which, inasmuch as they embody a logical alternative, continue to be valid in essentials without prejudice to their adaptation to the new conditions prevailing in the modern world and the requirements of the peoples.

Maritime areas are governed by two fundamental legal statutes: one based on the principle of sovereignty and the other on the principle of freedom, to which the two traditional institutions of the territorial sea and the high seas correspond.

Whatever the historical and legal limitations placed upon these two principles, which have never been accorded outright application, the essence of the legal régime applicable is always to give preference to one or the other, this preference being reflected, in the last analysis, in the residual application of the principle concerned.

The draft articles presented below reflect the process of revision or reformulation that the traditional institutions are undergoing through the shift in the balance of interests on which they are based; they propose a reorganization of the protection given to those interests and a new distribution of the consequent rights and obligations within the logical equation of sovereignty and freedom.

Through the concept of plurality or duality of régimes of the territorial sea, therefore, this institution is given a new structure which maintains as its essential feature the prevalence of the principle of sovereignty but adapts it to the realities it has to govern, and dynamically reconciles the rights of the coastal State with those of other States and of the international community. The draft articles also provide for three special situations, that of archipelagic States, that of land-locked

States and that of coastal States on seas which constitute a region or subregion with distinctive characteristics; solutions proposed in specific drafts submitted by other delegations have been adopted or taken as a guide.

TERRITORIAL SEA

SECTION I. GENERAL

Article 1

1. A coastal State exercises sovereignty over a belt of sea adjacent to its coast and to its internal waters, described as the territorial sea.
2. The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

SECTION II. LIMITS OF THE TERRITORIAL SEA

Article 2

1. Every State is entitled to determine the breadth of its territorial sea within limits not exceeding a distance of 200 nautical miles measured from the applicable baselines, subject to the provisions of the succeeding paragraphs.
2. In regions with special characteristics, such as semi-enclosed or inland seas, where it is impossible for coastal States to fix the maximum breadth of their territorial seas, the breadth of the said seas shall be determined by agreement between the coastal States of the same region.

Article 3

1. Where the coasts of two States are opposite or adjacent to each other, neither of them is entitled, failing agreement between them, to extend its territorial sea beyond a median line determined exclusively for that purpose, every point of which is equidistant from the nearest points on the continental or insular baselines from which the breadth of the territorial sea of each of the two States is measured.
2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Article 4

Identical with article 3 of the Geneva Convention (baseline).

Article 5

Identical with article 4 of the Geneva Convention (baseline).

Article 6

Identical with article 5 of the Geneva Convention (internal waters).

Article 7

Identical with article 6 of the Geneva Convention (outer limit).

Article 8

Identical with article 7 of the Geneva Convention (bays) (under study).

Article 9

Identical with article 8 of the Geneva Convention (permanent harbour works).

Article 10

Identical with article 9 of the Geneva Convention (roadsteads).

Article 11

Identical with article 10 of the Geneva Convention (islands).

Article 12

1. The territorial sea of an archipelagic State whose constituent islands and other natural characteristics form an intrinsic geographical, economic and political entity that has been or may have been historically regarded as such may be measured from the straight baselines joining the furthest points of the islands and the outermost low-tide reefs of the archipelago.
2. Waters enclosed by the baselines drawn in accordance with paragraph 1, irrespective of their depth or distance from the coast, shall be regarded as internal waters without prejudice to the innocent passage of ships flying any flag.

Article 13

Identical with article 11 of the Geneva Convention.

Article 14

Identical with article 13 of the Geneva Convention.

SECTION III. REGIMES APPLICABLE TO INTERNATIONAL COMMUNICATION

Article 15

On territorial seas whose breadth does not exceed 12 nautical miles measured from the applicable baselines, ships of all States, whether coastal or not, shall enjoy the right of innocent passage subject to the provisions of articles ....

Article 16

On territorial seas whose breadth exceeds 12 nautical miles measured from the applicable baselines, ships of all States, whether coastal or not, shall enjoy the right of innocent passage in the form prescribed in article 15, within the belt of the first 12 nautical miles.

Beyond the said 12 nautical miles, ships and aircraft of all States, whether coastal or not, shall enjoy the right of free navigation on and overflight over the territorial sea without restrictions other than those which may derive from the regulations

enacted by the coastal State with regard to its security, the preservation of the environment, the exploration, conservation and exploitation of resources, scientific research and the safety of navigation and aviation and from the corresponding measures adopted by it in conformity with international law.

Articles 17 et seq.

Definition of innocent passage. Rules applicable to the various types of ships.

SECTION IV. LAYING OF SUBMARINE PIPELINES AND CABLES

Article ...

Subject to the regulations and measures referred to in article 16, the coastal State may not impede the laying or maintenance of submarine pipelines and cables on the bed of the area of its territorial sea situated beyond 12 nautical miles measured from the applicable baselines.

In such cases the coastal State shall be given advance notice and due account shall be taken of cables and pipelines already in position and, in particular, of the possibility of repairing them.

Article ...

Any break in or damage to a submarine cable in the area referred to in the preceding article, caused deliberately or by culpable negligence, which interrupts or obstructs telegraphic or telephonic communications, and any break or damage caused, under the same conditions, in or to a high-voltage cable or submarine pipeline shall be punishable and shall give rise to the consequent liabilities under the laws of the coastal State and the jurisdiction of its courts.

Nothing in the laws enacted on the subject by the coastal State shall affect the lawful exercise of the right of other States to lay submarine pipelines and cables under the conditions laid down in these articles, or shall penalize the perpetrator of any break or damage if he acted solely for the legitimate purpose of protecting his life or the safety of his vessel after taking all necessary precautions to prevent such break or damage.

SECTION V. PROTECTION OF THE MARINE ENVIRONMENT

Article ...

A coastal State is under a duty to adopt on its territorial sea appropriate measures to shield the marine environment from the damage and risks of pollution and other affects harmful or dangerous to its ecosystem and to protect the quality and use of the waters, living resources, human health and other interests of its population, taking into consideration the recommendations and standards of international technical organizations and co-operation with other States.

SECTION VI. SCIENTIFIC RESEARCH

Article ...

In making regulations on scientific research in its territorial sea, a coastal State shall take special account of the general interest in promoting and facilitating such activities, provided that they do not affect its security and without prejudice to its right to participate in them and to receive the results obtained.

SECTION VII. REGIME FOR COUNTRIES HAVING NO SEA-COAST

Article ...

1. States having no sea-coast shall have free access to the territorial seas of coastal States which are their neighbours or which belong to the same subregion, in order to exercise the rights stipulated in such special regimes as may be instituted by bilateral or subregional agreements and to enjoy, on equal terms with coastal States, the freedoms of the high seas.
2. For the purposes specified in the preceding paragraph, States situated between the sea and a State having no sea-coast shall, in conformity with their municipal laws and such bilateral or subregional agreements as they may conclude on the subject, guarantee the latter State free transit through their territories, grant appropriate facilities in order to effect such transit, and accord to ships flying the flag of that State treatment equal to that accorded to their own ships as regards access to seaports and the use of such ports.

Article ...

Coastal States shall, through bilateral or subregional agreements, as the case may require, in which the interests of all parties are given fair consideration, accord to States having no sea-coast which are their neighbours or which belong to the same subregion preferential treatment over third States with regard to fishing rights in that area of their territorial sea which is not reserved exclusively for their nationals. Such preferential treatment shall be reserved for national enterprises of the States having no sea-coast which operate in the area exclusively with ships flying the flag of those States and whose catch is intended for domestic or industrial consumption in the said States, or for national enterprises of the States having no sea-coast which are associated with national enterprises of the coastal States.