

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

RELATIONSHIP OF STATES WITH RESPECT TO THE OCEANS AND SEA UNDER PUBLIC INTERNATIONAL LAW

AUTHORED BY - ADV. CLINT CLIMACO COLACO

Goa, India

Introduction

Over the three-fourth of the Globe is covered by waters. Maritime transport that is traditionally used as the main reasonable source of transport has attracted the attention of the entire maritime world. The efforts of the various nations have led to spectacular progress in various fields of marine science and ocean engineering. This has facilitated maritime transport and carry over 80% of the international trade. Every maritime country having a coastline of its own has recognized the importance of Sea bed resources and is taking majors for adequate naval fleet for economic and strategic well being of the nation and to safeguard coastal state security and territorial integrity.

Origins and Evolution

The Laws of the Sea were evolved during the time of Grotius and were observed by the States as customary rules of international law. The entire Sea was divided into three parts. i.e. territorial Sea formerly called as territorial waters, contiguous zone and the high seas, law related to the law of the sea were settled up to nineteenth century.

In 1909, Russian claimed territorial zone up to twelve miles and few other countries claimed four miles.

In 1930, the Hague codification conference made an attempt to codify some aspects of the law of the sea. Its attempt was not successful.

The General Assembly of the United Nations on February 21st, 1957 adopted a resolution for convening a conference on the law of the sea. Consequently in 1958, a conference was held in Geneva to consider a number of drafts prepared by the International Law Commission. The conference was attended by eighty- two states.

Geneva conference adopted four conventions.

(1) Convention on the territorial sea and contiguous zone.

- (2) Convention on high seas.
- (3) Convention on the fishing and conservation of living resource.
- (4) Convention on the continental shelf.

Territorial Sea

Territorial Sea or Maritime belt was formerly called as the territorial waters. The Hague codification conference of 1930 had used the term "Territorial Sea". Sovereignty of the State is confined not only to the waters and land lying within its boundaries, it also extends to the part of the sea that is adjacent to the coastal state. These waters are contained in a certain zone or belt which is called as "Marginal Zone" or "Marginal belt" and the rights that are possessed by the coastal states are called as the "Maritime Rights". Extension of the sovereignty of the coastal states over the territorial sea or marginal zone is based on the principle that can be summarized as "the land dominates the sea".

Territorial Sea is a part of the sea that is adjacent to the coast and over which international law allows the coastal states to exercise sovereignty subject only to a general right of innocent passage on the part of foreign shipping. The possession of this territory is neither optional nor dependant upon the will of the state but compulsory. It is different from the internal waters in the sense that internal waters lie within the boundaries of the state and they are used exclusively by the states itself. The 1958 Geneva Convention on Territorial Waters and Contiguous zone provided that the coastal state exercises Sovereignty over that part of the Sea that is called Maritime or Territorial waters. The coastal state exercises sovereignty not only over the territorial waters but also over air space above it. Article 2 of the UN Convention on law of the sea, 1982 contains a similar provision.

Important concept of territorial sea

(1) Breadth of territorial Sea

The State exercises sovereignty over territorial waters. Problem arises as to its breadth. Customary International law does not prescribe any definite rule. The extent of the territorial Jurisdiction was based on the cannon shot rule. Since the cannon ball could go three miles away from coast, this became the accepted territorial water limits. The concept of the territorial sea being three miles in breadth was until the middle of twentieth century. Later it was not acceptable to few states, many states were of the view that the territorial sea should extend up to six miles from the coast. In this uncertainty the second Geneva conference was convened by

the General Assembly in 1960, but again the breadth of the territorial sea, could not be prescribed. The result was the different states have made different claims. The convention in 1982 settled the controversy by providing under Article 3, that every state has the right to establish the breadth of its territorial sea up to a limit not exceeding twelve nautical miles measured from baselines. The breadth of the territorial sea as provided under the convention on the law of the sea. 1982, is accepted by most of the states, about 90 states including India have adopted legislation extending the maximum breadth of the territorial sea to twelve nautical miles.

(2) Rights of States over territorial Sea

Coastal state exercises sovereignty over the territorial sea certain rights are also exercised they are as follows.

a) Right of Coastal States

Sovereignty of the coastal states extends to the territorial sea consequently they have complete dominion over the Part of the Sea except that of the right of innocent passage and of transit by vessels of all nations. It follows from the regime of sovereignty that the coastal state has the exclusive right to appropriate the natural products of the territorial sea, including the right of fisheries and to resource of sea- bed and of its sub soil namely sedentary fisheries and non-living resources such as hydrocarbons gravel and minerals. The coastal state may enact laws and regulations regards to transport navigations and foreign ships exercising the right of innocent passage should comply such laws and regulations.

Laws are enacted

- (1) For the safety of navigation and regulation of maritime traffic.
- (2) For the protection of navigation aids and facilities and other facilities or installation.
- (3) For the protection of cables and pipelines.
- (4) For the conservation of the living resources of the sea.
- (5) For the preservation of an environment of the coastal state.
- (6) For the prevention, reduction and control of pollution.

The coastal state has a right to take the necessary steps to prevent passage that is not innocent. They may suspend temporarily in specified areas of its territorial sea, the innocent passage of foreign ships if suspension is essential for the protection and for security. If any warship does not comply with the laws and regulations of the coastal

state concerning passage through the territorial sea and disregards any request for compliance that is made the coastal state may require the warship to leave its territorial sea immediately. The flag state is to bear international responsibility for damage caused to the coastal state due to such non compliance by the warship or due to breach by such vessel of the convention or other rules of International Law.

b) Rights of other states

According to international law it is a customary rule that the territorial sea is open to merchant vessels of all the states for navigation such vessels have a right of innocent passage through the territorial sea of a state. So, every state has a right to demand that time of peace for its merchantmen may inoffensively pass through the territorial sea of every other state. This rule was incorporated in the Geneva Convention on the territorial sea and the contiguous zone of 1958 under Article 14 that states that ships of all states shall enjoy the right of innocent passage through the territorial sea. The same provision is laid down under Article 17 of the convention of 1982 that states that ships of all states whether coastal or land locked, enjoy the right of innocent passage through the territorial sea. The result of the right is that no state can levy tolls for mere passage of foreign vessels through its territorial sea.

Innocent Passage

Vessels of all states have a right of innocent passage in the territorial sea of a state. The term “Passage” may be defined as passing through the territorial sea from high seas to high seas and proceeding to or from a port. Entry upon the territorial sea of any other purposes is not “Passage” although it may not be illegal. The vessel must have the purpose of traversing the territorial sea and if it enters for any other purposes, even though its actions amount only to passing in the sense defined, it is not innocent passage. The convention of 1982 has similarly defined the term passage under para 1 of Article 18 that states passage as navigation through the territorial sea for the purpose of.

(1) Traversing that sea without entering – internal waters or calling at a roadstead or port facility outside internal waters, or

(2) Proceeding to or from internal waters or call at such roadstead or port facility.

Article 18, para 2 states that passage shall be continuous and expeditious. Passage includes stopping and anchoring but only in so far as the same are incidental to ordinary navigation.

Innocence of passage has been defined by the convention on the law of the sea of 1982

under Article 19, lays down “passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state.

Article 19(2) states, “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 of the following activities.

- (1) Any threat or use of force against the sovereignty territorial integrity or political independence of the coastal state or in any manner in violation of the principles of international law embodied in the charter of the United Nations.
- (2) Any exercise or practice with weapons of any kind.
- (3) Any act aimed at collecting information to the prejudice of the defence or security of the coastal state.
- (4) Any act of propaganda aimed at affecting the defence or security of the coastal state.
- (5) The launching, landing or taking on board of any aircraft.
- (6) 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.
- (7) Any Act of wilful and serious pollution contrary to this convention.
- (8) Any fishing activities.
- (9) The carrying out of research or survey activities.
- (10) Any act aimed at interfering with any systems of communication or any other facilities or instalments of the coastal state.
- (11) Any other activity not having a direct bearing on passage.

As to the jurisdiction on board a foreign ship passing through the territorial sea the convention of 1982 has stated under Article 27, that lays down that it shall not exercise criminal jurisdiction on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board of the ship during its passage, save only in the following cases.

- (1) If the consequences of the crime extend to the coastal state.
- (2) If the crime is of a kind to disturb the peace of the country or good order of the territorial sea.
- (3) If the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag state or
- (4) If such measures are necessary for the suppression of illicit traffic in narcotic drug or psychotropic substances. The coastal state may take the above steps for

the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea, even if the ship has left the internal waters.

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.

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. These prohibitions are without prejudice of the coastal states right to take measures of civil process against a foreign ship in the territorial sea after leaving internal waters.

Indian on Territorial Sea

India till 1956 had extended its territorial sea up to 3 miles. However, in 1956 it extended its territorial limit to six nautical miles pass through a presidential proclamation. In 1967, by another Presidential Proclamation, breadth of the territorial sea was extended to twelve miles. In 1976, by the fourth amendment of the constitution of Article 297, that stated under the amended Article 297(3) that the limit of the territorial waters, shall be such as may be specified from time to time, by or under any law made by the parliament, consequently in the same year Maritime Zones Act was enacted that stated under section 3, Para 2 that the limit of the territorial waters is the line every point of which is at a distance of 12 nautical miles from the nearest point of the appropriate baseline. Section 3, Para 1 of the Act provides that the sovereignty of India extends and has always extended to the territorial waters of India-, and to the sea bed and sub-soil underlying and the air space over such waters. Thus, India stands as to be breadth of territorial sea is consistent to that of convention on the law of the sea of 1982.

Conclusion

India under Section 4 of the Maritime Zones Act of 1976 ha clearly Stated as to the use of its territorial waters by foreign ships, all foreign ships other than warships including sub- marine and other underwater vehicles, shall enjoy the rights of innocent passage through the territorial waters.