

# PASSAGE THROUGH THE TERRITORIAL SEA

This chapter deals with the question as to what extent the sovereignty<sup>1</sup> of a coastal state in its territorial sea may be restricted or set aside to permit unhindered passage of foreign vessels through this zone.

In its attempt to find an acceptable solution to the conflict of interests inherent in this question, the Convention uses the concept of innocent passage<sup>2</sup>. The term "innocent passage" is vaguely described rather than precisely defined. Transitory navigation through the territorial sea -passage<sup>3</sup> - must not be prejudicial to the peace, good order or security of the coastal state<sup>4</sup>. A catalogue of activities<sup>5</sup> can be used as a guide in determining whether passage is innocent or not. With the exception of a general clause which reads, "any other activity not having a direct bearing on passage<sup>6</sup> the clauses cover activities which pose a serious and unacceptable threat to the coastal state (e.g., practice with weapons, wilful and serious pollution). The general clause must be read with this in mind and applied only in the case of a threat which, while not specifically listed, would be of a weight equal to that of the activities given. In addition, the general term "innocent passage" must be interpreted and applied in the light of national law which has been implemented by the coastal state. Every coastal state can adopt laws regarding the safety of navigation, laying of submarine cables, resources, fishing, environmental protection, scientific research, prevention of infringement of customs,<sup>9</sup> fiscal, immigration, or sanitary laws<sup>7</sup> and prevention of pollution<sup>8</sup> as well as implement sea lanes and traffic separation schemes<sup>9</sup> or suspend temporarily the right of innocent passage in specified areas of its territorial sea<sup>10</sup>, subject only to the restriction that any such measures must be in conformity with the Convention and international law relating to "innocent passage"<sup>11</sup>. The sovereignty of the coastal state in establishing law is also limited to the extent that the imposed requirements may not have the practical effect of hampering, denying, or impairing the right of innocent passage<sup>12</sup> or discriminate against the ships of any state or against ship's carrying cargoes to, from, or on behalf of any state<sup>13</sup>.

Furthermore, the concept of innocent passage does not apply to ships which are only present in the territorial sea, however innocent such presence might be. As the term itself states, the foreign vessel must be in passage, i.e., in transit through the territorial sea between any two points not in this zone<sup>14</sup> and the passage must be continuous and expeditious<sup>15</sup> a condition which does not, however, exclude stops for navigational purposes and other acceptable reasons<sup>16</sup>. Even if these conditions have been fulfilled, there remain exceptions to the right of innocent passage with respect to criminal and civil jurisdiction of the coastal state on foreign vessels, which can be summarized as follows: a coastal state may not exercise its jurisdiction on board a foreign vessel unless there is a serious threat to the coastal state<sup>17</sup>, measures for the suppression of drug traffic are necessary<sup>18</sup>, requests for aid have been made<sup>19</sup>, or there is a particular situation in which the vessel has left the internal waters of the coastal state<sup>20</sup> and is still in the territorial sea and action by the coastal state is warranted<sup>21</sup>. If the vessel cannot be stopped in the territorial sea, further action may be taken in accordance with the provisions for hot pursuit<sup>22</sup>.

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<sup>1</sup> Art. 2

<sup>2</sup> Art. 17; Part II, Sec. 3

<sup>3</sup> Art. 18

<sup>4</sup> Art. 19, Para. 1

<sup>5</sup> Art. 19, Subpara. 2 (a-1)

<sup>6</sup> Art. 19, Subpara. 2 (1)

<sup>7</sup> Art. 21

<sup>8</sup> Ibid; Art. 211, Para. 4

<sup>9</sup> Art. 22

<sup>10</sup> Art. 25, Para.3

<sup>11</sup> Art. 21, Para 1

<sup>12</sup> Art. 24, Subpara. 1 (a)

<sup>13</sup> Art. 24, Subpara. 1 (b)

<sup>14</sup> Art. 18, Para. 1

<sup>15</sup> Art. 18, Para. 2

<sup>16</sup> Art. 18, Para 2

<sup>17</sup> Art. 27 Subpara. 1(a-b) (Art. 27, Para. 5; Art. 73; Art. 220)

<sup>18</sup> Art. 27, Subpara. 1 (d) ,

<sup>19</sup> Art. 27, Subpara. 1 (c)

<sup>20</sup> Art. 27, Para.2; Art. 28, Para. 3;

<sup>21</sup> Ibid

<sup>22</sup> Art. 111

## IMPORTANCE OF THE CONCEPT "INNOCENT PASSAGE"

SOVEREIGNTY OF THE COASTAL STATE (Article 2)	RIGHT OF INNOCENT PASSAGE (Article 17)
<p><i>First Restriction</i> The coastal state may only adopt laws as given in Article 21</p> <p><i>Second Restriction</i> The coastal state may not regulate the design, construction, manning, or equipment of foreign vessels (Article 21, Paragraph 2), but may implement other pollution measures (Article 194, Subparagraph 3(b))</p> <p><i>Third Restriction</i> Coastal state is to make public all applicable laws (Article 21, Paragraph 3) and any dangers to navigation (Article 24, Paragraph 2)</p> <p><i>Fourth Restriction</i> Regulations may not be adopted for the purpose of or have the effect of hampering innocent passage (Article 24, Subparagraph 1(a)); 214 (4).</p> <p><i>Fifth Restriction</i> Coastal state is to abstain - in form or fact – from discriminatory measures against any ship (Article 24, Subparagraph 1(b))</p> <p><i>Sixth "Restriction"</i> Coastal state may exercise its jurisdiction in criminal and civil cases only as specified in Articles 27 and 28; see also 220(2).</p> <p><i>Seventh Restriction</i> Charges may not be levied by reason only of passage (Article 26, Paragraph 1)</p> <p><i>Eighth Restriction</i></p> <ul style="list-style-type: none"> <li>- Warships and other government non commercial vessels are immune (Article 32)</li> <li>- Coastal state required to allow these vessels passage if they comply with law and regulations of coastal state (Article 30)</li> <li>- If laws and regulations disregarded by these vessels, coastal state must request compliance before acting (Article 30)</li> </ul>	<p><i>First Restriction</i> Vessel must be in passage, continuous and expeditious (Article 18)</p> <p><i>Second Restriction</i> A certain number of activities and activities not having a direct bearing on passage are not regarded as innocent (Article 19)</p> <p><i>Third Restriction</i> Coastal state may adopt regulations in the areas enumerated in Article 21 (Article 211, Paragraph 4, Pollution; Article 260, Safety Zones)</p> <p><i>Fourth Restriction</i> Coastal state may establish sea lanes and traffic separation schemes (Article 22)</p> <p><i>Fifth Restriction</i> Nuclear-powered ships and ships carrying dangerous materials must carry documents and take established precautions (Article 23)</p> <p><i>Sixth Restriction</i> Temporary suspension of passage in specific areas must be accepted (Article 25, Paragraph 3)</p> <p><i>Seventh Restriction</i> Coastal state may prevent passage which is not innocent (Article 25, Paragraph 1); may prevent breach of conditions for admission to its internal waters (Article 25, Paragraph 2)</p> <p><i>Eighth Restriction</i> Arrest and investigation can take place as specified in Articles 27 and 28 (e.g., Art. 73: 220)</p> <p><i>Ninth Restriction</i> Charges may be levied for specific services rendered (Art 26, Paragraph 2)</p> <p><i>Tenth Restriction</i> Submarines must navigate on surface and show flag (Article 20)</p> <p><i>Eleventh Restriction</i> Warships, etc., must upon request of coastal state leave territorial sea immediately</p> <ul style="list-style-type: none"> <li>- if they do not comply with laws and Regulations</li> <li>- and have been requested to do so (Article 30)</li> </ul>