

# The law of the sea

third edition

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*The territorial sea*

effect for States which have ratified the Law of the Sea Convention (see LOSC, arts 309, 311(1)).

Government ships operated for non-commercial purposes, such as warships, are not subject to the enforcement jurisdiction of the coastal State, because of the immunity that they enjoy under customary international law (TSC, art. 22(2); LOSC, art. 32). However, both warships and other government-operated non-commercial ships are subject to the legislative jurisdiction of the coastal State, it being only the enforcement of law against them which is precluded by reason of their immunity. Hence they are under an obligation to respect coastal State laws; and under customary law, and under article 31 of the Law of the Sea Convention, the flag State is responsible for loss to the coastal State arising from non-compliance by such ships with laws concerning passage through the territorial sea. Responsibility would also attach, under customary law, to the flag State for breach of any other laws that the ship was obliged to obey.

Warships which violate coastal State laws concerning passage through the territorial sea and which ignore requests for compliance may be required to leave the territorial sea (TSC, art. 23; LOSC, art. 30), and the coastal State may use any force necessary to compel them to do so. This will allow the upholding of laws on matters such as customs, navigation and pollution. Laws not 'concerning passage', such as the general criminal law of the coastal State, cannot be upheld in this way under the treaty provisions, the warship retaining its right to pursue its passage unmolested. Though the treaties are silent, and there is a dearth of State practice on the point, it seems reasonable to extend this right of exclusion to non-commercial government-operated ships, since their legal status can, for these purposes, be assimilated to that of warships.

It should also be recalled that some breaches of coastal State laws may involve a loss of innocence, depriving the ship of its right of innocent passage and entitling the coastal State to take any necessary steps to prevent what has become non-innocent passage through its territorial sea (TSC, art. 16(1); LOSC, art. 25(1)). In some cases this right to exclude the offending vessel from the territorial sea may be a convenient alternative to arresting it and instituting proceedings before municipal courts.<sup>61</sup> It also offers a remedy where the ship has not violated a coastal law, but has gone outside its right of innocent passage by threatening coastal interests in the manner described above. Finally, it may be noted in passing that States enjoy a general right of self-defence in international law: thus, if they are facing an imminent attack from foreign vessels in their territorial sea and have no other means of protection, they may use any necessary force against the vessels in order to defend themselves.

The regime concerning coastal State jurisdiction established by the 1958 and 1982 Conventions is, at least in broad terms, reflected in contemporary State practice. In recent years a number of States have adopted unusually detailed laws concerning their legislative and enforcement jurisdiction in the territorial

<sup>61</sup> See, e.g., the *Attican Unity* (Netherlands, 1986), 101 *ILR* 436.