

Center for Oceans Law and Policy
University of Virginia School of Law

**UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA
1982**

A COMMENTARY

Volume III

Articles 86 to 132
and Documentary Annexes

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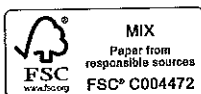
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to (f), coexist with obligations set out in other provisions of the Convention which govern the activities covered by those freedoms.

87.9(c). Under paragraph 1(a), all States enjoy freedom of navigation on the high seas. This freedom is subject to the general responsibility under international law imposed on the flag State to act in conformity with its international obligations. Those obligations include responsibilities relating to the prevention, reduction and control of pollution of the marine environment (set out in Part XII), including the general obligation to "protect and preserve" the marine environment (article 192). Other qualifications on the freedom of navigation include requirements for the safety of navigation and the regulation of maritime traffic, and for the protection of life at sea (cf. article 94, paragraphs 3 and 4).

Freedom of navigation, or the right of unimpeded passage, is a theme that runs through the Convention, taking different forms in different maritime zones. In the territorial sea, in which the coastal State has sovereignty, ships of all States enjoy the right of innocent passage (see articles 17 to 20).¹⁵

In straits used for international navigation, all ships (and aircraft) enjoy the right of transit passage or, in some circumstances, nonsuspendable innocent passage (see articles 38 and 45). In article 38, paragraph 2, transit passage is described in terms of the freedom of navigation and overflight in such straits (see further Volume II, at 329, para. 38.8(d)).

In archipelagic waters, in which archipelagic States have sovereignty, a right of innocent passage similar to that applicable in the territorial sea exists throughout those waters, as well as a right of archipelagic sea-lanes passage in sealanes which may be designated by an archipelagic State (see articles 52 and 53). Where sealanes are not designated by an archipelagic State, the right of archipelagic sea-lanes passage exists through routes normally used for international navigation (article 53, paragraph 12).

In the exclusive economic zone, all States enjoy the freedom of navigation, as set out in article 58, paragraph 1, subject to the relevant provisions of this Convention.

87.9(d). The freedom of overflight in the high seas, set out in paragraph 1(b), follows directly from the principle of the freedom of the sea.¹⁶ Under article 89, no State may "validly purport to subject any part of the high seas to its sovereignty." The same rule applies to the superjacent airspace beyond the outer limits of the territorial sea. The 1944 Convention on International

¹⁵ At the 1930 Hague Conference for the Codification of International Law, discussions in the Second Committee showed that "all States admit the principle of the freedom of maritime navigation. . . . [I]ndeed, it is precisely because the freedom of navigation is of such great importance to all States that the right of innocent passage through the territorial sea has been generally recognized." Report of the Second Committee, fourth and sixth paras. For the report of the Second Committee from that Conference see Annex I to this volume.

¹⁶ This was expounded by the ILC in its draft articles in 1956. *Supra* note 1, article 27 *Commentary*, para. (1).