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The Law of Territorial Waters

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PART III
THE LAW OF TERRITORIAL WATERS



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TERRITORIAL WATERS**ARTICLE 1**

The territorial waters of a state consist of its marginal sea and its inland waters.

ARTICLE 2

The marginal sea of a state is that part of the sea within three miles (60 to the degree of longitude at the equator) of its shore measured outward from the mean low water mark or from the seaward limit of a bay or river-mouth.

ARTICLE 3

The inland waters of a state are the waters inside its marginal sea, as well as the waters within its land territory.

ARTICLE 4

The high sea is that part of the sea outside marginal seas.

ARTICLE 5

The seaward limit of a bay or river-mouth the entrance to which does not exceed ten miles in width is a line drawn across the entrance. The seaward limit of a bay or river-mouth the entrance to which exceeds ten miles in width is a line drawn across the bay or river-mouth where the width of the bay or river-mouth first narrows to ten miles.

ARTICLE 6

When the waters of a bay or river-mouth which lie within the seaward limit thereof are bordered by the territory of two or more states, the bordering states may agree upon a division of such waters as inland waters; in the absence of such agreement, the marginal sea of each state shall not be measured from the seaward limit but shall follow the sinuosities of the shore in the bay or river-mouth.

ARTICLE 7

The marginal sea around an island, or around land exposed only at some stage of the tide, is measured outward three miles therefrom in the same manner as from the mainland.

ARTICLE 8

In the absence of special agreement to the contrary, the waters of a strait are territorial waters in those parts where the width of the strait does not exceed six miles.

ARTICLE 9

In the absence of special agreement to the contrary, where two or more states border upon a strait, the territorial waters of each state extend to

the middle of the strait in those parts where the width does not exceed six miles.

ARTICLE 10

A strait connecting high seas shall remain open to navigation by the private and public vessels of all states, including vessels of war.

ARTICLE 11

Where the delimitation of marginal seas would result in leaving a small area of high sea totally surrounded by marginal seas of a single state, such area is assimilated to the marginal sea of that state.

ARTICLE 12

The provisions of this convention relating to the extent of territorial waters do not preclude the delimitation of territorial waters in particular areas in accordance with established usage.

ARTICLE 13

The sovereignty of a state extends to the outer limit of its marginal seas.

ARTICLE 14

A state must permit innocent passage through its marginal seas by the vessels of other states, but it may prescribe reasonable regulations for such passage.

ARTICLE 15

A state may not exercise jurisdiction in respect of an act committed in violation of its criminal law on board a vessel of another state in the course of innocent passage through its marginal seas, unless the act has consequences outside the vessel and tends to disturb the peace, order or tranquillity of the state.

ARTICLE 16

A state may not exercise civil jurisdiction over a vessel of another state while it is in course of innocent passage through the marginal sea, except in respect of an act committed by the vessel during the course of that innocent passage and not relating solely to the internal economy of the vessel.

ARTICLE 17

A state may exercise jurisdiction over a vessel of another state which is in its territorial waters for purposes other than innocent passage through its marginal sea to the same extent as over a vessel in port. However, a vessel engaged on a *bona fide* voyage which is not approaching, entering or leaving a port of the littoral state, and which enters territorial waters or breaks innocent passage because of distress or *force majeure*, shall, together

with the persons and property on board, be immune from all penalties, dues or exactions which might otherwise have been incurred by reason of its presence in territorial waters.

ARTICLE 18

In the absence of special agreement to the contrary, a state may exercise jurisdiction over a vessel of another state which is in one of its ports, but in the absence of a request by the master or officer in charge for the aid of local authorities a state will not ordinarily exercise jurisdiction in matters relating solely to the internal economy of the vessel.

ARTICLE 19

A state may not exercise jurisdiction over a vessel of war, or other public vessel not engaged in commerce, of another state; but while such a vessel is in territorial waters it must observe port, harbor and navigation laws and regulations, and it may at any time be requested or required to depart.

ARTICLE 20

The navigation of the high sea is free to all states. On the high sea adjacent to the marginal sea, however, a state may take such measures as may be necessary for the enforcement within its territory or territorial waters of its customs, navigation, sanitary or police laws or regulations, or for its immediate protection.

ARTICLE 21

A state may continue on the high sea the pursuit of a vessel of another state and may effect its arrest for a violation of its law, if such pursuit was begun while the vessel was in the territorial waters of that state.

ARTICLE 22

The term vessel, as used in this convention, unless otherwise indicated, means a privately owned and privately operated vessel or a vessel the legal status of which is assimilated to that of such a vessel.

ARTICLE 23

Any dispute between states parties to this convention, with respect to the interpretation or application of the provisions of this convention, which is not settled by negotiation and which is not referred to arbitration under a general or special arbitration treaty, shall be referred to the Permanent Court of International Justice, and may be brought before the Permanent Court of International Justice by either party to the dispute.

LES EAUX TERRITORIALES

*Traduction Française*¹

ARTICLE 1

Les eaux territoriales d'un Etat se composent de la mer marginale et des eaux intérieures.

ARTICLE 2

La mer marginale d'un Etat est l'étendue de mer de 3 milles (60 milles au degré du méridien à l'équateur), qui baigne ses côtes, comptée à partir de la laisse moyenne de basse-marée ou à partir de la limite vers le large d'une baie ou de l'embouchure d'un fleuve.

ARTICLE 3

Les eaux intérieures d'un Etat sont les eaux intérieures à la mer marginale et les eaux comprises à l'intérieur du territoire continental.

ARTICLE 4

La haute-mer est l'étendue de mer extérieure à la mer marginale.

ARTICLE 5

La limite vers le large d'une baie ou de l'embouchure d'un fleuve, quand l'écart entre les deux côtes à l'ouverture de la mer n'excède pas 10 milles, est la ligne droite tirée entre les deux côtes en travers de l'ouverture.

Quand l'écart à l'ouverture de la mer excède 10 milles, la limite vers le large est la ligne droite tirée en travers de la partie la plus rapprochée de l'ouverture, où l'écart entre les deux côtes n'excède pas 10 milles.

ARTICLE 6

Quand les eaux d'une baie ou de l'embouchure d'un fleuve, comprises en-deçà de la limite vers le large, baignent des territoires appartenant à deux ou plusieurs Etats, ceux-ci peuvent s'entendre au sujet de leur répartition en tant qu'eaux intérieures. A défaut d'accord, la mer marginale de chaque Etat ne sera pas mesurée depuis la limite vers le large, mais suivra les sinuosités de la côte dans la baie ou l'embouchure.

ARTICLE 7

La mer marginale, qui entoure la côte d'une île ou d'une terre émergeant seulement à une certaine période de reflux, se compte à partir de leurs côtes sur une étendue de trois milles, comme à partir de celles du continent.

ARTICLE 8

Sauf convention spéciale contraire, les eaux d'un détroit sont territoriales là où la largeur du détroit n'excède pas 6 milles.

¹ Traduit par John B. Whitton, *Princeton University*, et R. G. B. Schuman, *Harvard University*.

ARTICLE 9

Sauf convention spéciale contraire, quand un ou plusieurs Etats sont riverains d'un détroit les eaux territoriales de chacun d'eux s'étendent jusqu'à la ligne médiane du détroit, là où la largeur n'excède pas 6 milles.

ARTICLE 10

Un détroit, faisant communiquer deux zones de haute mer, reste ouvert à la navigation pour tous les navires, publics et privés, de tous les Etats, y compris les navires de guerre.

ARTICLE 11

Quand la délimitation des zones de mer marginale laisse une faible zone de haute-mer complètement entourée par la mer marginale d'un seul Etat, cette zone est assimilée à la mer marginale du-dit Etat.

ARTICLE 12

Les dispositions de la présente convention concernant l'étendue des eaux territoriales n'excluent pas leur délimitation dans certaines zones spéciales suivant les usages établis.

ARTICLE 13

La souveraineté d'un Etat s'étend sur toute la mer marginale.

ARTICLE 14

Un Etat est tenu de permettre le passage inoffensif des navires étrangers par la mer marginale, mais peut édicter des règlements, d'un caractère raisonnable, concernant ce passage.

ARTICLE 15

Un Etat ne peut pas exercer juridiction pour un acte commis, en violation de son droit criminel, à bord d'un navire étranger, au cours de son passage inoffensif par la mer marginale, à moins que cet acte n'ait des conséquences dépassant le bord du navire et tende à troubler la paix, la tranquillité et l'ordre public.

ARTICLE 16

Un Etat ne peut pas exercer juridiction civile sur un navire étranger au cours de son passage inoffensif par la mer marginale, sauf pour un acte commis par ce navire au cours du-dit passage inoffensif, et qui ne concerne pas exclusivement l'administration intérieure du navire.

ARTICLE 17

Un Etat peut exercer la même juridiction sur un navire étranger, qui se trouve dans les eaux territoriales pour d'autres motifs qu'un passage inoffensif, que si ce navire se trouvait dans un de ses ports.

Toutefois, un navire, naviguant de bonne foi, sans approcher d'un port de l'Etat riverain, y entrer ou le quitter, et qui pénètre dans les eaux territoriales ou interrompt le passage inoffensif par suite de détresse ou de force majeure, échappe ainsi que les personnes et biens à son bord, à toutes pénalités, redevances ou sanctions que sa présence dans les eaux territoriales aurait pu entraîner.

ARTICLE 18

Sauf convention spéciale contraire, un Etat peut exercer juridiction sur un navire étranger qui se trouve dans un de ses ports. Mais, sauf réquisition du capitaine ou de l'officier commandant auprès des autorités locales, un Etat n'exercera généralement pas juridiction, pour les questions concernant exclusivement l'administration intérieure du navire.

ARTICLE 19

Un Etat ne peut pas exercer juridiction sur un navire de guerre étranger ni sur aucun autre navire public étranger, non engagé dans le négoce. Mais ces navires, pendant leur séjour dans les eaux territoriales, sont tenus de se conformer aux lois et règlements relatifs aux ports, au mouillage et à la navigation, et peuvent à tout moment être invités ou requis de prendre le large.

ARTICLE 20

La navigation en haute-mer est libre pour tous les Etats. Toutefois, dans une zone de haute-mer contiguë à la mer marginale, un Etat peut prendre les mesures nécessaires à l'application dans son territoire ou ses eaux territoriales des lois ou règlements relatifs aux douanes, navigation, hygiène ou police, ou nécessaires à sa sécurité immédiate.

ARTICLE 21

Un Etat peut continuer en haute-mer la poursuite d'un navire étranger et l'arrêter pour infraction à ses lois, si cette poursuite a commencé pendant le séjour du navire dans les eaux territoriales.

ARTICLE 22

Le terme "navire" employé dans la présente convention, signifie, sauf indication différente, un navire possédé et exploité par un particulier ou d'un statut juridique assimilé.

ARTICLE 23

Tout différend entre Etats, parties à la présente convention, concernant l'interprétation ou l'application de ses dispositions, qui n'est pas réglé par voie diplomatique ou qui n'est pas soumis à l'arbitrage en vertu d'un traité d'arbitrage général ou spécial, sera déféré à la Cour Permanente de Justice Internationale, et la Cour pourra en être saisie par une seule des parties.

waters, each three miles broad, would be too narrow to allow of fishery without constant risk of fishermen penetrating into waters forbidden to foreigners. (See the statement by Mr. John Moore in the *Annuaire of the Institute of International Law*, XIII, p. 146.) In the case of the bays along the Swedish coast, it would be necessary, in view of the above, to allocate to Swedish internal waters all bays of a width not exceeding twelve nautical miles and to fix the extent of the external territorial waters from a line drawn across the bay at the part nearest to the opening towards the sea where the distance between the two shores of the bay would be twelve nautical miles.

"The Swedish Government considers that a basic line of ten nautical miles for the measurement of territorial waters in bays is not sufficient in the case of Sweden, and finds no corroboration in current international law." (*Ibid.*, p. 232.)

ARTICLE 6

When the waters of a bay or river-mouth which lie within the seaward limit thereof are bordered by the territory of two or more states, the bordering states may agree upon a division of such waters as inland waters; in the absence of such agreement, the marginal sea of each state shall not be measured from the seaward limit but shall follow the sinuosities of the shore in the bay or river-mouth.

COMMENT

This article deals with the delimitation of the waters within the seaward limit of bays when such waters are bordered by the territory of two or more states. If such waters are bordered by the territory of one state only, the provisions of Article 5 would apply, but when such waters are bordered by the territories of two states, the provisions of Article 5 may produce difficulties which have to be avoided. Therefore, a special article has been included. The situation does not frequently arise, and when it arises it will generally be dealt with by a convention between the states concerned. Yet, it seems necessary to complete the draft in this respect, and in view of the possibility that several states may come to possess territory bordering on a bay which is now the territory of one state, new situations may arise in the future which will raise the question.

Where the waters within the seaward limit are bordered by two or more states, it would seem that the bordering states should be permitted by international law to divide such waters between them as inland waters. If the same waters were bordered by the territory of one state only, that state would clearly be entitled, under Article 5, to treat all of the waters as inland waters. The power of two or more states should not be smaller than the power of one state in this respect if the states can reach an agreement. Where agreement cannot be reached, however, it seems necessary to have a rule which would meet the situation presented. The simplest rule would be that suggested in the text, namely, to make no apportionment of these

ARTICLE 7

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waters as inland waters, but following the sinuosities of the coast to continue the lines marking the limits of the marginal seas of the two states.

In such cases each of the bordering states will be interested in preserving its ingress from and egress to the high sea. If the entrance to the bay is six miles, so that all of the waters of the entrance are part of the marginal sea of one state, then another state with territory inside will have the necessary ingress and egress by the exercise of the right of innocent passage.

Some difficulty might be encountered in a case where the entrance to a bay is less than six miles in width, and where the headlands marking the entrance are in the territories of different states. Such a case would call for the measurement of marginal seas at the entrance in such a way as to cause no overlapping of the marginal seas of the two states. This situation would generally be taken care of by convention between the states concerned.

No attempt is made in this text to deal with the tracing of boundary lines in the waters of a bay by the extension of the land boundaries. Attention may, however, be called to the case concerning the maritime frontier between Norway and Sweden before a tribunal of arbitration in 1909, in which the tribunal was of the opinion that the treaties relating to the land boundaries automatically partitioned the territorial waters. The award states (translation):

“The partition of today ought to be made by drawing a line perpendicular to the general direction of the coast, taking careful account of the need of indicating the boundary in a clear and unequivocal manner, and of making easy, so far as possible, the respect for the interests of those concerned.”

The Award also stated that “in order to ascertain what this direction is, it is necessary, in like manner, to take account of the direction of the coast situated on both sides of the boundary.” It was found by survey that the coast line inclined “from the true north by 20 degrees toward the west” and that “consequently the perpendicular line ought to run toward the west, at about 20 degrees south.” (Sentence Arbitrale, 23 Octobre 1909, de la Cour Permanente d'Arbitrage, p. 8.) The principle of division of adjacent waters by lines perpendicular to the general trend of the coast in practice makes an equitable division of the territorial waters, though of course historical, vested, and other rights and conditions may be considered.

ARTICLE 7

The marginal sea around an island, or around land exposed only at some stage of the tide, is measured outward three miles therefrom in the same manner as from the mainland.

COMMENT

The practice is nearly uniform in beginning to measure the marginal sea from the mean low water mark along the coast of an island as from the mean