

## CHAPTER 10

### SEA, AIR, AND SPACE LAW

#### REFERENCES

1. United Nations Convention on the Law of the Sea (UNCLOS III) (1982).
2. Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea Of 10 December 1982 (28 July 1994), A/RES/48/263 (33 I.L.M. 1309).
3. Convention on the Territorial Sea and the Contiguous Zone (1958).
4. Convention on the Continental Shelf (1958).
5. Convention on the High Seas (1958).
6. Convention on Fishing and Conservation of the Living Resources of the High Seas (1958).
7. Convention on International Civil Aviation (Chicago Convention) (1944).
8. The Antarctic Treaty (1959).
9. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies (Outer Space Treaty) (1967).
10. Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched Into Outer Space (Rescue Agreement) (1968).
11. Convention on the International Liability for Damage Caused By Space Objects (Liability Convention) (1972).
12. Convention on Registration of Objects Launched Into Outer Space (Registration Convention) (1974).
13. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Treaty) (1979).
14. Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) (1963).
15. Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970).
16. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention) (1971).
17. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988).
18. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988).
19. Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (2005).
20. Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (2005).
21. U.S. DEP'T OF DEFENSE, MANUAL 2005.1-M, MARITIME CLAIMS REFERENCE MANUAL (June 2008) (available at <http://www.dtic.mil/whs/directives/corres/html/20051m.htm>).
22. U.S. DEP'T OF DEFENSE FOREIGN CLEARANCE MANUAL (26 Feb. 2013) (regular updates available at <https://www.fcg.pentagon.mil/fcg.cfm>).
23. NWP 1-14M, The Commander's Handbook on the Law of Naval Operations (July 2007).
24. NWP 1-14M, Annotated Supplement to the Commander's Handbook on the Law of Naval Operations (1997).
25. CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 2410.01D, GUIDANCE FOR THE EXERCISE OF RIGHT-OF-ASSISTANCE ENTRY (31 Aug. 2010, *current as of 24 Aug. 2012*).
26. R. R. CHURCHILL & A. V. LOWE, THE LAW OF THE SEA (3d ed. 1999).

#### I. INTRODUCTION

A. Unlike many other topics of instruction in international and operational law, which focus on questions of “What” is permitted or prohibited, or “How” to legally obtain a certain result, this topic centers around the question

of “Where.” In other words, what an individual or State may do depends on where the action is to take place (i.e., land, sea, air, or space).

B. This chapter will first discuss the various legal divisions of the land, sea, air, and outer space. Next, it will turn to the navigational regimes within each of those divisions. Finally, it will present the competencies of coastal States over navigators within the divisions.

C. There are many sources of Sea, Air, and Space Law, but three are particularly noteworthy:

1. 1982 United Nations Convention on the Law of the Sea (UNCLOS III).

a. Opened for signature on December 10, 1982, UNCLOS III entered into force on November 16, 1994 (with 60 State ratifications).<sup>1</sup> Previous conventions on the law of the sea had been concluded, but none were as comprehensive as UNCLOS III. UNCLOS I (1958) was a series of four conventions (Territorial Sea/Contiguous Zone; High Seas; Continental Shelf; and Fisheries/Conservation). The 1958 Conventions’ major defect was their failure to define the breadth of the territorial sea.<sup>2</sup> UNCLOS II (1960) attempted to resolve this issue, but “failed, by only one vote, to adopt a compromise formula providing for a six-mile territorial sea plus a six-mile fishery zone.”<sup>3</sup> UNCLOS III, which was negotiated over a period of nine years from 1973 to 1982, created a structure for the governance and protection of the seas, including the airspace above and the seabed and subsoil below. In particular, it provided a framework for the allocation of *reciprocal rights and responsibilities* between States—including jurisdiction, as well as navigational rights and duties—that carefully balances the interests of coastal States in controlling coastal activities with the interests of all States in protecting the freedom to use ocean spaces without undue interference (a.k.a. “freedom of the seas”).<sup>4</sup> The resources of the deep sea bed beyond the limits of national jurisdiction are declared to be “the common heritage of mankind.”<sup>5</sup> The high seas are reserved for peaceful purposes.<sup>6</sup> This is generally interpreted to mean that such use is in compliance with the *jus ad bellum* principles of the UN Charter.

b. On July 9, 1982, the United States announced that it would not sign the Convention, objecting to provisions related to deep seabed mining<sup>7</sup> (Part XI of the Convention).<sup>8</sup> In a March 10, 1983, Presidential Policy Statement, the United States reaffirmed that it would not ratify UNCLOS III because of the deep seabed mining provisions, which it characterized as wealth redistribution and forced technology transfer.<sup>9</sup> Nevertheless, the United States considers the navigational articles to be generally reflective of customary international law, and therefore binding upon all nations.<sup>10</sup> In 1994, the UN General Assembly proposed amendments to the mining provisions.<sup>11</sup> On October 7, 1994, President Clinton submitted the Convention, as amended, to the Senate for its advice and

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<sup>1</sup> As of Jan. 2013, 165 States have ratified UNCLOS III ([http://www.un.org/Depts/los/reference\\_files/status2010.pdf](http://www.un.org/Depts/los/reference_files/status2010.pdf)). See also NWP 1-14M, Annotated Supplement to the Commander’s Handbook on the Law of Naval Operations 1-71 to 1-73 (1997) [hereinafter Annotated NWP 1-14M], available at [http://www.usnwc.edu/getattachment/a9b8e92d-2c8d-4779-9925-0defea93325c/1-14M\\_\(Jul\\_2007\)\\_NWP](http://www.usnwc.edu/getattachment/a9b8e92d-2c8d-4779-9925-0defea93325c/1-14M_(Jul_2007)_NWP). **Practitioner’s Note:** The Annotated Supplement to the Commander’s Handbook on the Law of Naval Operations has not been updated since 1997; however, in July 2007, the latest version of NWP 1-14M, The Commander’s Handbook on the Law of Naval Operations, was promulgated. The revision “expands the treatment of neutrality, targeting, and weapons; addresses land mines, maritime law enforcement, and land warfare. This revision also responds to the Navy Strategy set forth in ‘...From the Sea’ and its focus on littoral warfare.” NWP 1-14M. The Annotated Supplement is a valuable resource for judge advocates and will be cited in this Chapter of the Handbook; however, the updated NWP must also be consulted by practitioners to facilitate accurate advice.

<sup>2</sup> The four 1958 law of the sea conventions (UNCLOS I) are the only law of the sea treaties to which the United States is presently a State party. Annotated NWP 1-14M, *supra* note 1, at 1-74 to 1-76. The breadth of the territorial sea under customary international law was 3 nautical miles (one nautical mile is approximately 1.15 miles, 2025 yards, or 1852 meters). R.R. CHURCHILL & A. V. LOWE, THE LAW OF THE SEA, 78 (3d ed. 1999) [hereinafter Churchill & Lowe].

<sup>3</sup> Churchill & Lowe, *supra* note 2, at 15.

<sup>4</sup> UNCLOS III, art. 87. See also Churchill & Lowe, *supra* note 2, at 205-08.

<sup>5</sup> UNCLOS III, PmbI. para. 6 and art. 136.

<sup>6</sup> *Id.* at arts. 88 and 301. See also Churchill & Lowe, *supra* note 2, at 208, 421-30.

<sup>7</sup> Since it is not a party to UNCLOS III, the United States maintains that it may mine the deep sea-bed without being bound by any limitations contained in UNCLOS III. Annotated NWP 1-14M, *supra* note 1, at 1-25 to 1-26, 1-39.

<sup>8</sup> See generally *id.* at 1-30, 1-38.

<sup>9</sup> *Id.* at 1-1 to 1-2, 1-38 to 1-39, 1-65 to 1-67.

<sup>10</sup> *Id.* at 1-25, 2-59, 2-63.

<sup>11</sup> *Id.* at 1-2.

consent.<sup>12</sup> On February 25, 2004, and again on October 31, 2007, the Senate Foreign Relations Committee voted to send the treaty to the full Senate with a favorable recommendation for ratification. The most recent effort to send the treaty to the full Senate for advice and consent stalled in June 2012 after 34 Senators voiced opposition to the treaty. To date, no action has been taken by the full Senate on UNCLOS III.<sup>13</sup>

2. 1944 Convention on International Civil Aviation (Chicago Convention). This Convention was intended to encourage the safe and orderly development of the then-rapidly growing civil aviation industry. It does not apply to State (i.e., military, police, or customs) aircraft. While recognizing the absolute sovereignty of the State within its national airspace, the Convention provided some additional freedom of movement for aircraft flying over and refueling within the national territory of a foreign state. The Convention also attempted to regulate various aspects of aircraft operations and procedures. This regulation is a continuing responsibility of the International Civil Aviation Organization (ICAO), which was created by the Convention.

3. 1967 Outer Space Treaty. This treaty limited State sovereignty over outer space. Outer space was declared to be the common heritage of mankind. This treaty prohibited certain military operations in outer space and upon celestial bodies, including the placing in orbit of any nuclear weapons or other weapons of mass destruction, and the installation of such weapons on celestial bodies. Outer space was otherwise to be reserved for peaceful uses.<sup>14</sup> The United States and a majority of other nations have consistently interpreted that the phrase “peaceful purposes” does not exclude the use or emplacement of weapons in outer space (other than WMD) as long as such use is in compliance with the *jus ad bellum* principles of the UN Charter. Current U.S. space policy reflects this view that the U.S. will take an aggressive stance against nations, groups, or individuals who would threaten the numerous space assets the U.S. currently relies upon for military operations and national security.<sup>15</sup> Various other international conventions, such as the Registration and Liability Treaties, expand upon provisions found in the Outer Space Treaty.

## II. LEGAL DIVISIONS

A. The Earth’s surface, sub-surface, and atmosphere are broadly divided into National and International areas.<sup>16</sup> For operational purposes, international waters and airspace (waters outside the 12 NM territorial sea and the corresponding airspace) include all areas not subject to the territorial sovereignty of any nation. All waters and airspace seaward of the territorial sea are international areas in which the high seas freedoms of navigation and overflight are preserved to the international community. These international areas include the water and airspace over contiguous zones, exclusive economic zones, and high seas.<sup>17</sup>

### B. National Areas.

1. *Land Territory*. This includes all territory within recognized borders. Although most borders are internationally recognized, there are still some border areas in dispute.

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<sup>12</sup> *Id.* at 1-2, 1-29 to 1-30. In his submission, President Clinton noted that “[s]ince the late 1960s, the basic U.S. strategy has been to conclude a comprehensive treaty on the law of the sea that will be respected by all countries. Each succeeding U.S. Administration has recognized this as the cornerstone of U.S. oceans policy.” *Id.* at 1-29.

<sup>13</sup> There is strong bipartisan support in favor of U.S. accession to the Convention and ratification of the 1994 Agreement. As with former President Clinton, former President Bush expressed his support for the Convention during his administration. During the 2007 Foreign Relations Committee hearings, support for the Convention was offered by the National Security Adviser, the Joint Chiefs of Staff, the Secretaries of Homeland Security, Commerce and the Interior, four former Commandants of the U.S. Coast Guard, every living Chief of Naval Operations, former Secretaries of State Shultz, Haig, Baker and Albright, and every living Legal Adviser to the U.S. Department of State. The Committee also received letters in support of U.S. accession to the Convention and ratification of the 1994 Agreement from affected industry groups, environmental groups, other affected associations, and from the U.S. Commission on Oceans Policy (an official body established by Congress). *See, e.g.*, Brief History of U.S. Efforts Relating to the Law of the Sea, *available at* <http://www.state.gov/e/oes/lawofthesea/179798.htm>.

<sup>14</sup> *See* Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies, pmbl., art.III, art. IV, and art. XI (1967) [hereinafter Outer Space Treaty]. *See also* Annotated NWP 1-14M, *supra* note 1, at 2-38.

<sup>15</sup> Former President Bush authorized a new national space policy on August 31, 2006, that establishes overarching national policy that governs the conduct of U.S. space activities. This policy supersedes Presidential Decision Directive/NSC-49/NSTC-8, National Space Policy, dated September 14, 1996. *See* U.S. National Space Policy (2006), *available at* <http://www.ostp.gov/galleries/default-file/Unclassified%20National%20Space%20Policy%20--%20FINAL.pdf>.

<sup>16</sup> *See* schematic *infra* at para. II.B.6.; Annotated NWP 1-14M, *supra* note 1, at 1-69 to 1-70.

<sup>17</sup> NWP 1-14M (2007), *supra* note 1, at para. 1.6 and 1.9.

2. *Internal Waters.* These are all waters landward of the baseline,<sup>18</sup> over which the coastal State “exercise[s] the same jurisdiction and control . . . as they do over their land territory.”<sup>19</sup> The baseline is an artificial line generally corresponding to the low-water mark along the coast.<sup>20</sup> The coastal State has the responsibility for determining and publishing its baselines. The legitimacy of these baselines is determined by international acceptance or rejection of the claims through state practice and declarations.<sup>21</sup> UNCLOS III recognizes several exceptions to the general rule:

a. *Straight Baselines.* A coastal State may draw straight baselines when its coastline has fringing islands or is deeply indented (e.g., Norway with its fjords).<sup>22</sup> The lines drawn by the coastal State must follow the general direction of the coast. Straight baselines should not be employed to expand the coastal State’s national areas. Straight baselines are also drawn across the mouths of rivers<sup>23</sup> and across the furthest extent of river deltas or other unstable coastline features.<sup>24</sup> Straight baselines are overused,<sup>25</sup> and the United States strictly interprets the few instances when straight baselines may be properly drawn.<sup>26</sup>

b. *Bays.* Depending on the shape, size, and historical usage, the coastal State may draw a baseline across the mouth of a bay, making the bay internal waters. The bay must be a “well-marked indentation,” and “more than a mere curvature” in the coastline.<sup>27</sup> A *juridical bay* (i.e., one legally defined by UNCLOS III) must have a water area equal to or greater than that of a semi-circle whose diameter is the length of the line drawn across its mouth (headland to headland), and the closure lines may not exceed 24 nautical miles (NM).<sup>28</sup> *Historic bays* (i.e., bodies of water with closures of greater than 24 NM, but which historically have been treated as bays) may be claimed as internal waters when the following criteria are met: the claim of sovereignty is an “open, effective, continuous and long-term exercise of authority, coupled with acquiescence (as opposed to mere absence of opposition) by foreign States.”<sup>29</sup> The United States does not recognize many claims to historic bay status,<sup>30</sup> such as Libya’s claim to the Gulf of Sidra<sup>31</sup> (closure line in excess of 300 NM) or Canada’s claim to Hudson Bay (closure line in excess of 50 NM).<sup>32</sup>

c. *Archipelagic Baselines.* UNCLOS III allows archipelagic States (i.e., those consisting solely of groups of islands,<sup>33</sup> such as Indonesia<sup>34</sup>) to draw baselines around their outermost islands, subject to certain restrictions.<sup>35</sup> The waters within are given special status as archipelagic waters, which are more akin to territorial waters than to internal waters.

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<sup>18</sup> UNCLOS III, art. 8; Annotated NWP 1-14M, *supra* note 1, at 1-14.

<sup>19</sup> Annotated NWP 1-14M, *supra* note 1, at 2-6.

<sup>20</sup> UNCLOS III, art. 5; Annotated NWP 1-14M, *supra* note 1, at 1-4, 1-46. The “low-water line” is inherently ambiguous, and may correspond to “the mean low-water spring tide, the lowest astronomical tide or some other low-water line.” Churchill & Lowe, *supra* note 2, at 33 n.4.

<sup>21</sup> For a full list of U.S. declarations and state practices challenging excessive claims, see DoD 2005.1-M, Maritime Claims Reference Manual (June 2005) available at <http://www.dtic.mil/whs/directives/corres/html/20051m.htm>

<sup>22</sup> UNCLOS III, art. 7(1); Annotated NWP 1-14M, *supra* note 1, at 1-5.

<sup>23</sup> UNCLOS III, art. 9; Annotated NWP 1-14M, *supra* note 1, at 1-12.

<sup>24</sup> UNCLOS III, art. 7(2); Churchill & Lowe, *supra* note 2, at 37-38.

<sup>25</sup> Churchill & Lowe, *supra* note 2, at 38-40; Annotated NWP 1-14M, *supra* note 1, at 1-77 to 1-79.

<sup>26</sup> Annotated NWP 1-14M, *supra* note 1, at 1-6.

<sup>27</sup> *Id.* at 1-8, 1-47.

<sup>28</sup> UNCLOS III, art. 10; Annotated NWP 1-14M, *supra* note 1, at 1-8 to 1-11; Churchill & Lowe, *supra* note 2, at 41-43. See note 2 for the definition of a nautical mile.

<sup>29</sup> UNCLOS III, art. 10(6); Annotated NWP 1-14M, *supra* note 1, at 1-11; Churchill & Lowe, *supra* note 2, at 43-45.

<sup>30</sup> Annotated NWP 1-14M, *supra* note 1, at 1-80.

<sup>31</sup> *Id.* at 2-70, 2-82; Churchill & Lowe, *supra* note 2, at 45. Beginning in 1973, Libya began claiming the entire Gulf of Sidra (Sirte), marked by a line 32 degrees and 32 minutes north, as its territorial sea, based on the historic bays concept. This line was colloquially known as the “line of death.” Beginning in the early 1980’s the United States began challenging Libya’s claim with operational assertions by warships and aircraft, leading to clashes between United States and Libyan forces in 1981, 1986, and 1989.

<sup>32</sup> Annotated NWP 1-14M, *supra* note 1, at 1-11 to 1-12 n.23.

<sup>33</sup> *Id.* at 1-17 to 1-18, 1-85 to 1-88.

<sup>34</sup> Seventeen States have claimed archipelagic status, including the Bahamas, Indonesia, Jamaica, and the Philippines. Churchill & Lowe, *supra* note 2, at 121-22.

<sup>35</sup> UNCLOS III, art. 47; Annotated NWP 1-14M, *supra* note 1, at 1-17 to 1-18; Churchill & Lowe, *supra* note 2, at 123-25.

d. *Maritime Claims Reference Manual*. This DoD publication<sup>36</sup> sets out in detail the maritime claims (excessive and otherwise) of all States, including specific points of latitude and longitude, and the U.S. position with regard to those maritime claims.

3. *Territorial Sea*. This is the zone lying immediately seaward of the baseline.<sup>37</sup> States must actively claim a territorial sea, to include its breadth (i.e., it does not exist until claimed by the coastal State). The maximum breadth is 12 NM.<sup>38</sup> Most States, including the United States, have claimed the full 12 NM. Some States have claimed less than 12 NM, and some have made excessive claims of greater than 12 NM.<sup>39</sup>

4. *Off-Shore Elevations*.

a. *Low-tide Elevations*. These are “naturally formed area[s] of land which [are] surrounded by and above water at low tide, but submerged at high tide.”<sup>40</sup> Low-tide elevations do not generate any maritime zones. However, if they are located within the territorial sea, they may be used to extend the baseline,<sup>41</sup> which is used for measuring the territorial sea and other zones. Straight baselines may also be drawn out to the low-tide elevation if “a lighthouse or similar installation, which is permanently above sea level” is erected upon such areas of land.<sup>42</sup>

b. *Rocks*. These are naturally formed areas of land which are surrounded by and always above water (i.e., even at high-tide). A rock is similar to an island, except that the former is not capable of sustaining human habitation or economic life.<sup>43</sup> Rocks are entitled to a territorial sea and a contiguous zone (*see infra*), but not to an exclusive economic zone (EEZ—*see infra*) or a continental shelf,<sup>44</sup> which may have serious economic consequences. Consequently, various coastal States have sought to classify reefs or rocks as islands in order to assert jurisdiction over fishing and petroleum resources out to 200 NM and beyond.<sup>45</sup>

c. *Islands*. These are naturally formed areas of land which are surrounded by and always above water (i.e., even at high-tide), and are capable of sustaining human habitation and economic life. Islands are entitled to all types of maritime zones (i.e., territorial sea, contiguous zone, EEZ, **AND** a continental shelf).<sup>46</sup>

5. *National Airspace*. This area includes all airspace over the land territory, internal waters, and territorial sea.<sup>47</sup>

C. International Areas (International Waters/Airspace).

1. *Contiguous Zone*. This zone is immediately seaward of the territorial sea (12 NM) and extends no more than 24 NM from the baseline.<sup>48</sup>

<sup>36</sup> Maritime Claims Reference Manual, *supra* note 22. One noteworthy excessive claim is North Korea’s declaration of a “Security Zone” extending 50 NM off its east coast, and 200 NM off its west coast, matching its EEZ. Exact coordinates are detailed in page 347 of the above reference manual.

<sup>37</sup> UNCLOS III, art. 2; Annotated NWP 1-14M, *supra* note 1, at 1-14 to 1-15, 1-62.

<sup>38</sup> UNCLOS III, art. 3; Annotated NWP 1-14M, *supra* note 1, at 1-15.

<sup>39</sup> Annotated NWP 1-14M, *supra* note 1, at 1-81 to 1-84. *See* DoD Maritime Claims Reference Manual for claims of specific States, or the Annotated NWP 1-14M for a synopsis of State claims.

<sup>40</sup> *Id.* at 1-54.

<sup>41</sup> UNCLOS III, art. 13; Annotated NWP 1-14M, *supra* note 1, at 1-15 to 1-16.

<sup>42</sup> UNCLOS III, art. 7(4); Annotated NWP 1-14M, *supra* note 1, at 1-6 to 1-8.

<sup>43</sup> Annotated NWP 1-14M, *supra* note 1, at 1-15 to 1-16.

<sup>44</sup> The continental shelf is the seabed and subsoil, which may extend beyond the 200 NM EEZ, but generally not more than 350 NM from the baseline, over which the coastal State exercises sovereignty for exploration and exploitation of natural resources. UNCLOS III, arts. 76 and 77; Annotated NWP 1-14M, *supra* note 1, at 1-22 to 1-23, 1-27.

<sup>45</sup> *See, e.g.,* Martin Flacker, A Reef or a Rock? Question Puts Japan in a Hard Place, Wall Street Journal (Feb. 16, 2005) available at <http://online.wsj.com/article/0,,SB110849423897755487,00.html>. China and other Pacific nations have exploited the distinction between rock and island in the South China Sea., placing soldiers on numerous small parcels of land in an attempt to gain legal status as islands for these parcels, and consequently possess an EEZ, which would greatly expand their legal control over the hydrocarbon resources in the South China Sea. Trefor Moss, *Why China and the Philippines are Battling Over Rocks, Reefs*, THE WALL STREET JOURNAL, January 25, 2014, <http://blogs.wsj.com/searealtime/2014/01/25/why-china-and-the-philippines-are-battling-over-rocks-reefs>. **Also, note that as of 2015, China has begun creating artificial islands on a large scale in the South China Sea. Under Art. 60(8) of UNCLOS, man-made structures of any sort do NOT create any additional territorial rights. Thus an artificial island does not even possess a territorial sea. Under UNCLOS, for an off-shore rock/island to possess any territorial rights, it must naturally exist above the water at high tide (Art. 121).**

<sup>46</sup> Annotated NWP 1-14M, *supra* note 1, at 1-15 to 1-16.

<sup>47</sup> UNCLOS III, art. 2; Annotated NWP 1-14M, *supra* note 1, at 1-18, 1-24, 2-28 to 2-29.

2. *Exclusive Economic Zone (EEZ)*. This zone is immediately seaward of the territorial sea and extends no more than 200 NM from the baseline.<sup>49</sup>

3. *High Seas*. This zone includes all areas beyond the exclusive economic zone.<sup>50</sup>

4. *International Airspace*. This area includes airspace over all waters outside the territorial sea.<sup>51</sup> The airspace above certain international straits such as the Straits of Hormuz, Malacca, and Gibraltar are treated as international airspace under the regime of transit passage (Art. 38 UNCLOS).

5. *Outer Space*. The Outer Space Treaty and subsequent treaties do not define the point where national airspace ends and outer space begins, nor is there any international consensus on the line of delimitation.<sup>52</sup> NASA awards astronaut status to anyone who flies above 50 miles (264,000 feet) in altitude. Many space flight engineers, dealing with the effects of friction and heating of spacecraft due to atmospheric particles, define the boundary to be at 400,000 feet (75.76 miles). They call this the “re-entry interface,” the point at which heating on re-entry becomes observable. Many in the international community recognize the edge of space as 100 kilometers (62 miles) above mean sea level. Others argue that space begins where orbit can be maintained. The closest orbital perigee is approximately 93 NM (107 miles) for highly elliptical orbits (HEO). The United States has consistently opposed establishing such a boundary in the absence of a showing that one is needed. A primary rationale for not accepting a predetermined boundary is that once such a boundary is established, it might work to prevent the United States from taking advantage of evolving space technologies and capabilities.

#### 6. *Polar Regions*

a. *Antarctica*. The Antarctic Treaty of 1959 applies to the area south of 60 degrees South Latitude, reserving that area for peaceful purposes only. Specifically, “any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapon,” are prohibited.<sup>53</sup> However, the Treaty does not prejudice the exercise of rights on the high seas within that area.<sup>54</sup> “Antarctica has no territorial sea or territorial airspace.”<sup>55</sup>

b. *Arctic region*. The United States considers that the waters, ice pack, and airspace of the Arctic region beyond the lawfully claimed territorial seas of littoral nations have international status and are open to navigation. All ships and aircraft enjoy the freedoms of high seas navigation and overflight on, over, and under the waters and ice pack of the Arctic region beyond the lawfully claimed territorial seas of littoral states.<sup>56</sup>

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<sup>48</sup> UNCLOS III, art. 33; Annotated NWP 1-14M, *supra* note 1, at 1-89; Churchill & Lowe, *supra* note 2, at 132-39.

<sup>49</sup> UNCLOS III, arts. 55, 57; Churchill & Lowe, *supra* note 2, at 160-79.

<sup>50</sup> UNCLOS III, art. 86; Annotated NWP 1-14M, *supra* note 1, at 1-21.

<sup>51</sup> Annotated NWP 1-14M, *supra* note 1, at 1-24, 2-29 to 2-30.

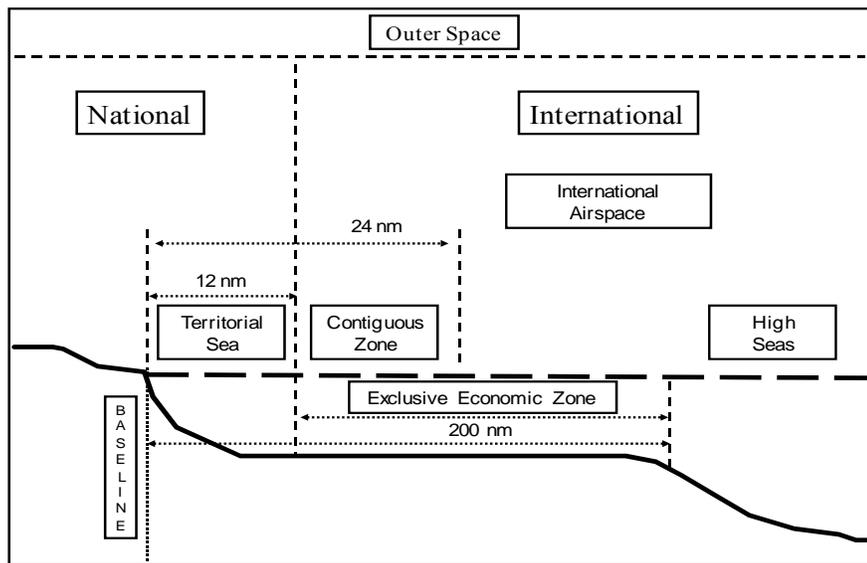
<sup>52</sup> *Id.* at 1-24, 2-38.

<sup>53</sup> The Antarctic Treaty (1959), art. I. *See also* Annotated NWP 1-14M, *supra* note 1, at 2-25. All stations and installations, and all ships and aircraft at points of discharging or embarking cargo or personnel in Antarctica, are subject to inspection by designated foreign observers. *See* The Antarctic Treaty (1959), art. VII.3. Therefore, classified activities are not conducted by the United States in Antarctica, and all classified material is removed from U.S. ships and aircraft prior to visits to the continent. *See* Annotated NWP 1-14M, *supra* note 1, at 2-25.

<sup>54</sup> *See* Annotated NWP 1-14M, *supra* note 1, at 2-25.

<sup>55</sup> *Id.*

<sup>56</sup> *See* NWP 1-14M (2007), *supra* note 1, at para. 2.6.5.1.



### III. NAVIGATIONAL REGIMES

A. Having presented the various legal divisions, it is now necessary to discuss the navigational regimes within those zones. The freedom of navigation within any zone is inversely proportional to the powers that may be exercised by the coastal State (see the following sections on State Competencies). Where a State's powers are at their greatest (i.e., land territory, internal waters), the navigational regime is most restrictive. Where a State's powers are at their lowest ebb (i.e., high seas, international airspace), the navigational regime is most permissive.

#### B. National Areas.

1. With limited exceptions that are discussed below, States exercise full sovereignty within their national areas, which include land, internal waters, territorial seas, and the airspace above these features.<sup>57</sup> Therefore, the navigational regime is "consent of the State."<sup>58</sup> Although the State's consent may be granted based on individual requests, it may also be manifested generally in international agreements such as:

a. *Status of Forces Agreements*. These agreements typically grant reciprocal rights, without the need for securing individual consent, to members of each State party. Such rights may include the right-of-entry and travel within the State.

b. *Friendship, Commerce and Navigation (FCN) Treaties*. These treaties typically grant reciprocal rights to the commercial shipping lines of each State party to call at ports of the other party.

c. *Chicago Convention*. State parties to the Chicago Convention have granted limited consent to civil aircraft of other State parties to enter and land within their territory.<sup>59</sup> The Chicago Convention "does not apply to military aircraft ... other than to require that they operate with 'due regard for the safety of navigation of civil aircraft.'"<sup>60</sup>

<sup>57</sup> *Id.* at 2-6 to 2-7.

<sup>58</sup> *Id.* at 1-14, 1-24, 2-6 to 2-7. The only exceptions are when entry into internal waters is "rendered necessary by *force majeure* or by distress."

<sup>59</sup> *Id.* at 2-30.

<sup>60</sup> *Id.* See also Chicago Convention, art. 3(d).

2. The DoD Foreign Clearance Manual<sup>61</sup> sets out the entry and clearance requirements for both aircraft and personnel, and overflight rights where applicable, for every State.

3. *Exceptions in the Territorial Sea.* Although the territorial sea is considered a national area, the need for greater freedom of navigation than consent of the coastal State has convinced the international community to recognize the four exceptions specified below. Note that these exceptions do not apply to *internal* waters, for which consent of the State remains the navigational regime. The only exception to the requirement of state consent in internal waters is distress as described in NWP 1-14 M Section 2-6.

a. *Innocent Passage.* Innocent passage refers to a vessel's right to *continuous* and *expeditious* transit through a coastal State's territorial sea for the purpose of traversing the seas (without entering a State's internal waters, such as a port).<sup>62</sup> Stopping and anchoring are permitted when incident to ordinary navigation or made necessary by *force majeure* (e.g., mechanical casualty, bad weather, or other distress).<sup>63</sup> "Passage is *innocent* so long as it is not prejudicial to the peace, good order, or security of the coastal nation."<sup>64</sup> There is no provision in international law that would permit a coastal State to require prior notification or authorization in order to exercise the right of innocent passage.<sup>65</sup> Moreover, UNCLOS III contains **no** requirement that passage through a State's territorial sea be *necessary* in order for it to be innocent; it does, however, enunciate a list of twelve activities deemed not to be innocent, including any threat or use of force, **any weapons exercise or practice, any intelligence collection** or act of propaganda, the launching or recovery of aircraft or any military device (e.g., landing craft or Unmanned Aerial Vehicles), any willful act of serious pollution, any fishing, research or survey activities, any intentional interference with communications systems, or "any other activity not having a direct bearing on passage."<sup>66</sup>

(1) The United States takes the position that UNCLOS III's list of prohibitions on innocent passage is exhaustive and intended to eliminate subjective determinations of innocent passage. If a vessel is not engaged in the above listed activities, its passage is deemed innocent according to the U.S. view.<sup>67</sup>

(2) The U.S. view is that innocent passage extends to all shipping, and is not limited by cargoes, armament, or type of propulsion (e.g., nuclear). Note that UNCLOS III prohibits coastal State laws from having the practical effect of denying innocent passage.<sup>68</sup>

(3) **Innocent Passage does not apply to aircraft** (i.e., the airspace above the territorial sea is considered "national airspace," which aircraft can generally only enter with the consent of the coastal State, e.g., in accordance with the Chicago Convention).<sup>69</sup>

(4) **A submarine in innocent passage must transit on the surface, showing its flag.**<sup>70</sup>

(5) *Challenges to Innocent Passage.*

(a) Merchant ships must be informed of the basis for the challenge and provided an opportunity to clarify intentions or to correct the conduct at issue. Where no corrective action is taken by the vessel, the coastal State may require it to leave or may, in limited circumstances, arrest the vessel.<sup>71</sup>

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<sup>61</sup> Department of Defense Foreign Clearance Manual (Feb. 26, 2013) (Regular updates available at <https://www.fcg.pentagon.mil/fcg.cfm>).

<sup>62</sup> UNCLOS III, art. 18; Annotated NWP 1-14M, *supra* note 1, at 2-7 to 2-9.

<sup>63</sup> UNCLOS III, art. 18(3); Annotated NWP 1-14M, *supra* note 1, at 2-7, 3-3.

<sup>64</sup> Annotated NWP 1-14M, *supra* note 1, at 2-7.

<sup>65</sup> *Id.* at 1-26. Nevertheless, many States seek to require either prior notification or authorization, particularly for warships, before innocent passage through their territorial sea. The United States consistently rejects such requirements. *See generally id.* at 2-83; Maritime Claims Reference Manual, *supra* at note 22.

<sup>66</sup> UNCLOS III, art. 19(2). *See also* Annotated NWP 1-14M, *supra* note 1, at 2-8; Churchill & Lowe, *supra* note 2, at 84-87.

<sup>67</sup> United States – U.S.S.R. Uniform Interpretation of the Rules of International Law Governing Innocent Passage through the Territorial Sea, para. 3 (Sept. 23, 1989). *See also* U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Limits in the Seas No. 112, U.S. Responses to Excessive National Maritime Claims, 52 (Mar. 9, 1992)

<sup>68</sup> *Id.* at para. 2.

<sup>69</sup> Annotated NWP 1-14M, *supra* note 1, at 2-7, 2-9, 2-28.

<sup>70</sup> UNCLOS III, art. 20; Annotated NWP 1-14M, *supra* note 1, at 2-11; Churchill & Lowe, *supra* note 2, at 88-92.

<sup>71</sup> Annotated NWP 1-14M, *supra* note 1 at 2-9.

(b) A warship/State vessel must be challenged and informed of the violation that is the basis for the challenge. Where no corrective action is taken, the coastal State may require the vessel to leave its territorial sea and may use necessary force to enforce the ejection.<sup>72</sup>

(6) *Suspension of Innocent Passage.* A coastal State may temporarily suspend innocent passage if such an act is essential for the protection of security. Such a suspension must be: (1) non-discriminatory; (2) temporary; (3) applied to a specified geographic area; and (4) imposed only after due publication/notification.<sup>73</sup>

b. *Right-of-Assistance Entry.* Based on the long-standing obligation of mariners to aid those in distress from perils of the sea, the right-of-assistance entry gives limited permission to enter into the territorial sea to render assistance to “those in danger of being lost at sea.”<sup>74</sup> The location of the persons in danger must be reasonably well-known—the right does not permit a search.<sup>75</sup> Aircraft may be used to render assistance, though this right is not as well-recognized as that for ships rendering assistance.<sup>76</sup>

c. *Transit Passage.* Transit passage applies to passage through *International Straits*,<sup>77</sup> which are defined as: (1) routes between the high seas or exclusive economic zone (EEZ) and another part of the high seas or exclusive economic zone;<sup>78</sup> (2) overlapped by the territorial sea of one or more coastal States;<sup>79</sup> (3) with no other high seas or exclusive economic zone route of similar convenience;<sup>80</sup> (4) natural, not constructed (e.g., not the Suez Canal);<sup>81</sup> and (5) must actually be used for international navigation.<sup>82</sup> The three most well known international straits used in transit passage are the Strait of Hormuz, the Strait of Malacca, and the Strait of Gibraltar. The U.S. position is that the strait must only be *susceptible* to use, and not necessarily *actually* be used for international navigation.<sup>83</sup> Transit passage is the exercise of the freedoms of navigation and overflight solely for the purpose of continuous and expeditious transit through the strait in the normal modes of operation utilized by ships and aircraft for such passage.<sup>84</sup> In the normal mode of transit, ships may steam in formation, launch and recover aircraft and unmanned aerial vehicles if that is normally done during their navigation (e.g., for force protection purposes), and submarines may transit submerged.<sup>85</sup> Unlike innocent passage, aircraft may also exercise transit passage (i.e.,

<sup>72</sup> UNCLOS III, art. 30. See also Annotated NWP 1-14M, *supra* note 1, at 2-9, 2-11; Churchill & Lowe, *supra* note 2, at 99.

<sup>73</sup> UNCLOS III, art. 25(3); Annotated NWP 1-14M, *supra* note 1, at 2-9 to 2-10; Churchill & Lowe, *supra* note 2, at 87-88. Note that the temporary suspension of innocent passage is different from the establishment of security zones, which are not recognized either by international law or by the United States. Annotated NWP 1-14M, *supra* note 1, at 1-21 to 1-22, 1-90, 2-22 to 2-23. See also NWP 1-14M (2007), *supra* note 1, at para. 1.6.4. However “[c]oastal nations may establish safety zones to protect artificial islands, installations, and structures located in their internal waters, archipelagic waters, territorial seas, and exclusive economic zones, and on their continental shelves.” *Id.* at 1-24. Safety zones were established in the immediate vicinity of the two Iraqi oil platforms in the northern Arabian Gulf to protect against terrorist attacks. States may also “declare a temporary warning area in international waters and airspace to advise other nations of the conduct of activities that, although lawful, are hazardous to navigation and/or overflight. The U.S. and other nations routinely declare such areas for missile testing, gunnery exercises, space vehicle recovery operations, and other purposes entailing some danger to other lawful uses of the high seas by others.” *Id.* at 2-22.

<sup>74</sup> See NWP 1-14M (2007), *supra* note 1, at paras. 2.5.2.6 and 3.2.1. See also Annotated NWP 1-14M, *supra* note 1, at 2-12, 2-48 to 2-58, and 3-1 to 3-2.

<sup>75</sup> See NWP 1-14M (2007), *supra* note 1, at para. 2.5.2.6. See also Annotated NWP 1-14M, *supra* note 1, at 2-12.

<sup>76</sup> See CJCSI 2410.01D (31 Aug. 2010) for further guidance on the exercise of the right-of-assistance entry.

<sup>77</sup> See generally Annotated NWP 1-14M, *supra* note 1, at 2-71 to 2-76 for large-scale charts of popular international straits.

<sup>78</sup> UNCLOS III, art. 37. Note that each side of the strait must involve either the high seas or EEZ for a strait to be considered an international strait. Other straits may connect the high seas/EEZ to the territorial sea of a coastal state. In this case of straits that are not international straits, the navigational regime is innocent passage. An example of this would be the Strait of Juan de Fuca, which connects the high seas to the territorial sea of the United States and Canada.

<sup>79</sup> For example, Japan only claims a territorial sea of 3 NM in some areas in order to leave a “high seas corridor,” rather than creating an international strait through which transit passage may theoretically occur “coastline to coastline.” Annotated NWP 1-14M, *supra* note 1, at 2-12 to 2-15, 2-17.

<sup>80</sup> UNCLOS III, art. 36; Churchill & Lowe, *supra* note 2, at 105.

<sup>81</sup> Annotated NWP 1-14M, *supra* note 1 at 2-12 & n. 36.

<sup>82</sup> UNCLOS III, art. 37.

<sup>83</sup> Annotated NWP 1-14M, *supra* note 1 at 2-12 & n. 36.

<sup>84</sup> UNCLOS III, arts. 38 and 39(1)(c). See Churchill & Lowe, *supra* note 2, at 109-13; NWP 1-14M (2007), *supra* note 1, at para. 2.5.3.1.

<sup>85</sup> See NWP 1-14M (2007), *supra* note 1, at para. 2.5.3.1; Annotated NWP 1-14M, *supra* note 1, at 2-15. Disputes over transit passage continue to occur with some frequency in the straits of Hormuz. The Iranian Government continues to intercept both warships and commercial shipping on the grounds that these ships are passing through Iranian territorial seas. While this is technically true, the legal regime of transit passage *trumps* innocent passage here because the Strait of Hormuz qualifies as an

aircraft may fly in the airspace above international straits without consent of the coastal States).<sup>86</sup> Transit passage may not be suspended by the coastal States during peacetime.<sup>87</sup> The U.S. view is that unlike Archipelagic Sea Lanes Passage (see below), the right of transit passage exists from coastline to coastline of the strait, and of the approaches to the strait.<sup>88</sup>

(1) Straits regulated by long-standing international conventions existing prior to UNCLOS III remain governed by the terms of their respective treaty (e.g., the Bosphorus and Dardanelles Straits are governed by the Montreux Convention of July 20, 1936, and the Straits of Magellan are governed by article V of the Boundary Treaty between Argentina and Chile) rather than by the regime of transit passage.<sup>89</sup>

d. Archipelagic Sea Lanes Passage (ASLP).

(1) Archipelagic Sea Lanes Passage (ASLP) is the exercise of the rights of navigation and overflight, in the normal mode of navigation, solely for the purpose of continuous, expeditious, and unobstructed transit between one part of the high seas/exclusive economic zone and another part of the high seas/exclusive economic zone *through archipelagic waters*.<sup>90</sup> ASLP “is substantially identical to the right of transit passage through international straits.”<sup>91</sup>

(2) Qualified archipelagic States may designate Archipelagic Sea Lanes (ASLs) for the purpose of establishing the ASLP regime within their Archipelagic Waters. States must designate *all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters*,<sup>92</sup> and the designation must be referred to the International Maritime Organization (IMO) for review and adoption. In the absence of designation by the archipelagic state, the right of ASLP may be exercised through all routes normally used for international navigation.<sup>93</sup> Once ASLs are designated, transiting ships and aircraft<sup>94</sup> may not deviate more than 25 NM from the ASL axis, and must stand off the coastline no less than 10% of the distance between the nearest points of land on the islands bordering the ASL (unlike transit passage, which arguably exists coastline to coastline—see above).<sup>95</sup> Upon ASL designation, the regime of innocent passage applies to Archipelagic Waters outside ASL.<sup>96</sup> ASLP may not be hampered or suspended,<sup>97</sup> however, if ASLs are designated, innocent passage outside the lanes—but within Archipelagic Waters—may be suspended in accordance with UNCLOS III (see discussion of Suspension of Innocent Passage above).

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international strait under UNCLOS. Before UNCLOS, each nation was entitled to a 3 NM territorial sea and the waters outside the territorial sea qualified as international waters (high seas). During the time of 3 NM territorial seas, a “high seas” corridor existed in all major international straits where ships and aircraft could transit freely, including the Strait of Hormuz. Once UNCLOS expanded the territorial sea from 3 NM to 12 NM, these international straits were completely covered by overlapping territorial seas. The major maritime powers, including the United States, rejected the idea that nations would be required to use innocent passage through these straits, as innocent passage can be suspended and submarines were required to surface. Thus, the doctrine of transit passage was created as a compromise and applies in international straits. Note: the Iranian Government sometimes argues that the United States is not entitled to use transit passage since it did not ratify UNCLOS. The United States rejoinder is that the navigational provisions of UNCLOS, to include transit passage, are now customary international law.

<sup>86</sup> Annotated NWP 1-14M, *supra* note 1, at 1-24, 2-29.

<sup>87</sup> UNCLOS III, art. 44; Annotated NWP 1-14M, *supra* note 1, at 2-15. *See also* The Corfu Channel Case, International Court of Justice 1947 available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=cd&case=1&code=cc&p3=4>; Churchill & Lowe, *supra* note 2, at 103-04.

<sup>88</sup> Annotated NWP 1-14M, *supra* note 1, at 2-12 to 2-15, 2-59 to 2-60, 2-62, 2-65, 2-66, 2-67; NWP 1-14M (2007), *supra* note 1, at para. 2.5.3.1. Note that some states, notably Iran regarding the Strait of Hormuz, have argued that a state must be a signatory of UNCLOS to enjoy the right of transit passage. The United States consistently rejects this view.

<sup>89</sup> UNCLOS III, art. 35(c); Annotated NWP 1-14M, *supra* note 1, at 2-13, 2-61, 2-63, 2-85; Churchill & Lowe, *supra* note 2, at 114-15.

<sup>90</sup> UNCLOS III, art. 53; Annotated NWP 1-14M, *supra* note 1, at 2-17 to 2-18; Churchill & Lowe, *supra* note 2, at 127.

<sup>91</sup> Annotated NWP 1-14M, *supra* note 1, at 2-17.

<sup>92</sup> *Id.* at 1-18. “If the archipelagic nation does not designate such [normal passage routes as] sea lanes, the right of archipelagic sea lanes passage may nonetheless be exercised by all nations through routes normally used for international navigation and overflight.” *Id.* *See also* UNCLOS III, art. 53(12); Churchill & Lowe, *supra* note 2, at 128.

<sup>93</sup> UNCLOS III, art. 53(12); Annotated NWP 1-14M, *supra* note 1, at 1-28; Churchill & Lowe, *supra* note 2, at 128. As an example, the United States is currently in dispute with Indonesia over the number of ASLs drawn through its archipelagic waters.

<sup>94</sup> Annotated NWP 1-14M, *supra* note 1, at 1-24, 2-29.

<sup>95</sup> *Id.* at 2-18 to 2-19.

<sup>96</sup> *Id.* at 2-18.

<sup>97</sup> *Id.*

C. International Areas Including International Waters. In all international areas/waters (areas outside the 12 NM territorial sea/airspace), the navigational regime is full navigational freedoms “due regard for the rights of other nations and the safe conduct and operation of other ships and aircraft.”<sup>98</sup> Although reserved for peaceful purposes,<sup>99</sup> under the United States and majority view military operations, such as surveillance and military exercises, are permissible in international areas, including the EEZs of coastal states. The U.S. position is that military operations consistent with the provisions of the United Nations Charter are “peaceful.” The United States has fought to maintain high seas freedoms in international waters through its Freedom of Navigation Program.<sup>100</sup>

#### IV. STATE COMPETENCIES

A. General. The general rule is that the Flag State exercises full and complete jurisdiction over ships and vessels that fly its flag. The United States has defined the “special maritime and territorial jurisdiction” of the United States as including registered vessels, U.S. aircraft and U.S. space craft.<sup>101</sup> Various Federal criminal statutes are specifically made applicable to acts within this special jurisdiction. The power of a State over non-Flag vessels and aircraft depends upon the zone in which the craft is navigating (discussed below), and whether the craft is considered State or civil.

1. *State Craft*. State ships include warships<sup>102</sup> and ships owned or operated by a State and used only for government non-commercial service. State aircraft are those used in military, customs, and police services.<sup>103</sup> By policy, the U.S. has incorporated unmanned vehicles (surface, underwater, and aerial – USVs, UUVs, and UAVs respectively) that are either autonomous or remotely navigated into the definition of State craft.<sup>104</sup> State craft enjoy complete sovereign immunity (see below).<sup>105</sup>

2. *Civil Craft*. These are any craft other than State craft. States must set conditions for the granting of nationality to ships and aircraft. Craft may be registered to only one State at a time.

#### B. National Areas.

1. *Land Territory and Internal Waters*. Within these areas, the State exercises complete sovereignty, subject to limited concessions based on international agreements (e.g., SOFAs).

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<sup>98</sup> *Id.* at 2-21. See also UNCLOS III, arts. 58 and 87.

<sup>99</sup> UNCLOS III, arts. 88 and 301. See also Churchill & Lowe, *supra* note 2, at 208, 421-30.

<sup>100</sup> See, e.g., Annotated NWP 1-14M, *supra* note 1, at 2-38 & n.114. Also see DoD Instruction S-2005.01, Freedom of Navigation Program (SECRET) (Oct. 20, 2014). The United States is currently involved with a dispute with China over the legal status of military operations in the EEZ. China argues that the text of UNCLOS does not explicitly state that nations can conduct military and intelligence gathering operations in a foreign EEZ, and thus such operations are not allowed. The United States position is that customary international law, as well as a contextual reading and the drafting history of UNCLOS III, support this right. Specifically, during the drafting of UNCLOS, China advanced a proposal to restrict these operations, which was rejected. In addition, specific restrictions on military activities do exist in other areas of UNCLOS, such as the territorial sea. UNCLOS is silent however, on restrictions in the EEZ. Finally, before UNCLOS the seas outside the baseline consisted of only the territorial sea and high seas. Customary international law has long supported the full range of military operations in the high seas before UNCLOS. This dispute has led to numerous incidents between United States and Chinese military units over the years, most famously the EP-3 incident near Hainan Island on April 1, 2001. Since 1979, the United States has continued a “Freedom of Navigation” Program, challenging excessive maritime claims by many nations, in order to prevent these claims from hardening into customary international law. This program includes both diplomatic protests and operational assertions by military forces. Some of these operational assertions have been directed against China, most recently the flight of two B-52H bombers over a new Air Defense Identification Zone claimed by China over the disputed Senkaku/Diaoyu islands on November 26, 2013. RONALD O’ROURKE, CONG. RESEARCH SERV., R42784, MARITIME TERRITORIAL AND EXCLUSIVE ECONOMIC ZONE (EEZ) DISPUTES INVOLVING CHINA 4 (2013). See also WHITE HOUSE, NATIONAL SECURITY DIRECTIVE 49, SUBJ: FREEDOM OF NAVIGATION OPERATIONS (October 12, 1990, declassified November 22, 1996). See also Thom Shanker, *U.S. Sends Two B-52 Bombers Into Air Zone Claimed by China*, THE NEW YORK TIMES, November 26, 2013 at A1.

<sup>101</sup> 18 U.S.C. § 7 (2007).

<sup>102</sup> “For the purposes of this Convention, “warship” means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.” UNCLOS III, art. 29; Annotated NWP 1-14M, *supra* note 1, at 2-1.

<sup>103</sup> Chicago Convention, art. 3.

<sup>104</sup> See NWP 1-14M (2007), *supra* note 1, at paras. 2.3.4 to 2.3.6, and 2.4.4.

<sup>105</sup> UNCLOS III, art. 30; Annotated NWP 1-14M, *supra* note 1, at 2-1. FOOTNOTE.

2. *Territorial Sea*. As noted above, the navigational regime in the territorial sea permits greater navigational freedom than that available within the land territory or inland waters of the coastal State. Therefore, the State competency within the territorial sea is somewhat less than full sovereignty.

a. Innocent Passage.

(1) *Civil Craft*. The State's power is limited to:

(a) Safety of navigation, conservation of resources, control of pollution, and prevention of infringements of the customs, fiscal, immigration, or sanitary laws;

(b) Criminal enforcement, but only when the alleged criminal act occurred within internal waters, or the act occurred while in innocent passage through the territorial sea and it affects the coastal State;<sup>106</sup>

(c) Civil process, but the coastal State may not stop ships in innocent passage to serve process, and may not arrest ships unless the ship is leaving internal waters, lying in the territorial sea (i.e., not in passage), or incurs a liability while in innocent passage (e.g., pollution).<sup>107</sup>

(2) *State Craft*. State vessels enjoy complete sovereign immunity.<sup>108</sup> However, the Flag State bears liability for any costs that arise from a State vessel's violation of any of the laws that would otherwise be applicable to civil vessels.<sup>109</sup> The coastal State's only power over State vessels not complying with its rules is to require them to leave the territorial sea immediately,<sup>110</sup> arguably by using "any force necessary to compel them to do so."<sup>111</sup>

b. Transit Passage and Archipelagic Sea Lane Passage.

(1) *Civil Craft*. The coastal State retains almost no State competencies over civil craft in transit passage or ASL passage, other than the competencies applicable within the contiguous zone and exclusive economic zone. These include customs, fiscal, immigration, and sanitary laws, and prohibitions on exploitation of resources (e.g., fishing). Additionally, the coastal State may propose a traffic separation scheme, but it must be approved by the International Maritime Organization (IMO).<sup>112</sup>

(2) *State Craft*. State vessels enjoy complete sovereign immunity. The Flag State bears liability for any costs that arise from a State vessel's violation of any of the laws that would otherwise be applicable to civil vessels.

C. International Areas/International Waters.

1. *Contiguous Zone*. The contiguous zone was created by UNCLOS III solely to allow the coastal State to prevent and punish infringement of its customs, fiscal, immigration, and sanitary laws "within its territory or territorial sea."<sup>113</sup> Thus, the contiguous zone serves as a buffer to prevent or punish violations of coastal State law that occurred on land, within internal waters, or within the territorial sea, and arguably not for purported violations within the contiguous zone itself (unless the deleterious effects extend to the territorial sea). Thus, a vessel polluting while engaged in innocent passage in the territorial sea could be stopped and arrested in the contiguous zone. However, all nations continue to enjoy the right to exercise the traditional high seas freedoms of navigation and overflight in the contiguous zone.

<sup>106</sup> UNCLOS III, art. 27; Churchill & Lowe, *supra* note 2, at 98, 268.

<sup>107</sup> UNCLOS III, art. 28; Churchill & Lowe, *supra* note 2, at 98, 461.

<sup>108</sup> UNCLOS III, art. 30; Annotated NWP 1-14M, *supra* note 1, at 2-1. For an interesting 1994 Naval message on the sovereign immunity policy, including examples of situations raising the issue of sovereign immunity, *see id.* at 2-43 to 2-46. *See also* NWP 1-14M (2007), *supra* note 1, at para. 2.1 (stating this immunity arises as a matter of customary international law.).

<sup>109</sup> UNCLOS III, art. 31; Churchill & Lowe, *supra* note 2, at 99.

<sup>110</sup> UNCLOS III, art. 30; Annotated NWP 1-14M, *supra* note 1, at 1-18 to 1-19, 2-2.

<sup>111</sup> Churchill & Lowe, *supra* note 2, at 99.

<sup>112</sup> *See generally* <http://www.imo.org/>.

<sup>113</sup> UNCLOS III, art. 33(1)(a) and (b); Annotated NWP 1-14M, *supra* note 1, at 1-18 to 1-19, 1-48; Churchill & Lowe, *supra* note 2, at 132-39. Note that the Annotated NWP 1-14M's assertion that "[t]he U.S. claims a contiguous zone extending 12 nautical miles from the baselines used to measure the territorial sea" is no longer correct. Presidential Proclamation No. 7219 of Aug 2, 1999 extended the U.S. contiguous zone out to 24 NM from the baseline. *See also* NWP 1-14M (2007), *supra* note 1, at para. 1.6.1.

2. *Exclusive Economic Zone.* Within this area, the coastal State's jurisdiction and control is limited to matters concerning the exploration, exploitation, management, and conservation of the resources of this international area.<sup>114</sup> Although coastal State consent is required to conduct marine scientific research in its EEZ,<sup>115</sup> the coastal State cannot regulate hydrographic surveys or military surveys conducted beyond its territorial sea, nor can it require notification of such activities.<sup>116</sup> "[I]n the EEZ all nations enjoy the right to exercise the traditional high seas freedoms of navigation and overflight . . . and of all other traditional high seas uses by ships and aircraft which are not resource related." The United States position is that nations can also conduct military activities, such as surveillance, in a coastal state's EEZ. This is based on customary international law, as well as the contextual reading and drafting history of UNCLOS III. Some coastal states, specifically China, oppose this view.<sup>117</sup>

3. *High Seas.*

a. *Civil Craft.* On the high seas, the general rule is Flag State jurisdiction only.<sup>118</sup> Non-Flag States have almost no competencies over civil craft on the high seas, with the following exceptions:

(1) *Ships engaged in the slave trade.*<sup>119</sup> Every State is required to take measures to suppress the slave trade by its flagged vessels. If any other State stops a slave vessel, the slaves are automatically freed.

(2) *Ships or aircraft engaged in piracy.*<sup>120</sup> Piracy is an international crime consisting of illegal acts of violence, detention, or depredation committed for private ends by the crew or passenger of a private ship or aircraft in or over international waters against another ship or aircraft or persons and property on board. This act must occur on the high seas or outside the territorial jurisdiction of a state.<sup>121</sup> Note that both sides must be located onboard an aircraft or vessel. As such, events such as the 1985 *Achille Lauro* incident do not meet the strict definition of piracy. Terrorist acts committed for purely political motives, vice private gain, have not generally been considered piracy.<sup>122</sup> International law has long recognized a general duty of all nations to cooperate in the repression of piracy. **Under the authority of both customary international law and the provisions of UNCLOS III (art. 101, 105), any State craft may seize and arrest pirates<sup>123</sup> and any State may prosecute pirates under a theory of universal jurisdiction, provided the State has domestic laws criminalizing such behavior.** Piracy remains a problem in many areas of the world, particularly in confined waters.<sup>124</sup>

<sup>114</sup> NWP 1-14M (2007), *supra* note 1, at para. 2.6.2. See also UNCLOS III, art. 56; Annotated NWP 1-14M, *supra* note 1, at 1-19 to 1-21; Churchill & Lowe, *supra* note 2, at 166-69.

<sup>115</sup> UNCLOS III, art. 246; Churchill & Lowe, *supra* note 2, at 405-12. Note there is no exception to this requirement for State vessels, but such consent should normally be given by the coastal state. UNCLOS III, art. 246(3).

<sup>116</sup> NWP 1-14M (2007), *supra* note 1, at para. 2.6.2.2.

<sup>117</sup> Annotated NWP 1-14M, *supra* note 1, at 1-20. See also UNCLOS III, art. 58(1); Annotated NWP 1-14M, *supra* note 1, at 1-26, 1-39; Churchill & Lowe, *supra* note 2, at 170-74. This EEZ dispute is one of 3 current maritime disputes that China is currently involved in. The other two disputes include: (1) specific island disputes with its neighbors, and (2) a claim that the entire South China Sea is Chinese territorial sea based on the so-called "Nine Dash Line," a 1947 map (from then Nationalist China) which outlines the South China sea as Chinese territory. See O'Rourke, *supra* note 100 at 13.

<sup>118</sup> UNCLOS III, art. 92; Churchill & Lowe, *supra* note 2, at 461. See also UNCLOS III, art. 217; Churchill & Lowe, *supra* note 2, at 348.

<sup>119</sup> UNCLOS III, art. 99.

<sup>120</sup> *Id.* at arts. 101-107.

<sup>121</sup> NWP 1-14M (2007), *supra* note 1, at para. 3.5.2; UNCLOS III, art. 101. Private ends includes, but is not limited to, monetary gain. Most nations have interpreted Art. 111 of UNCLOS to mean that piracy can be fought anywhere outside the territorial sea of a coastal state, even though UNCLOS uses the term "high seas." See Yoshifumi Tanaka, *THE INTERNATIONAL LAW OF THE SEA* 357 (2012). However, in the specific case of Somalia, ships are allowed to enter that coastal state's territorial sea under the authority of United Nations Security Council Resolutions 1816 and 1976.

<sup>122</sup> See Tanaka at 357. The actions by environmental groups such as Greenpeace against foreign vessels has sometimes been argued as piracy. Also see *Institute of Cetacean Research v. Sea Shepherd Conservation Society*, No. 12-35266 (9<sup>th</sup> Cir. Feb. 25, 2013) (holding that actions motivated by political motives may still constitute piracy for purposes of civil injunctive relief and Alien Tort Statute litigation). Many scholars believe this case was wrongly decided and subject to reversal following en banc review or certiorari to the U.S. Supreme Court.

<sup>123</sup> NWP 1-14M (2007), *supra* note 1, at para. 3.5.3.1; UNCLOS III, arts. 105 and 107. Note that current United States policy is to capture/arrest pirates and not use deadly force unless in self-defense or in defense of another vessel currently subject to attack. However, the language of U.N.S.C.R 1816, authorizing states to "use all necessary means" to stop piracy, has led some commentators to argue that deadly force is allowed. This is not the majority view however.

<sup>124</sup> In recent years, pirate attacks have remained a problem off the east and west coasts of Africa, particular off of Somalia. International naval forces have worked together and separately to combat this increase. In the case of Somalia, the United

(3) *Ship or installation (aircraft not mentioned), engaged in unauthorized broadcasting.*<sup>125</sup> Any State which receives such broadcasts, or is otherwise subject to radio interference, may seize and arrest the vessel and persons on board.

(4) *Right of approach and visit.*<sup>126</sup> The right of approach and visit, which is similar to an automobile traffic stop to check license and registration, may only be conducted by State ships and aircraft. Under international law, an authorized ship or aircraft may *approach* any vessel in international waters to verify its nationality. Unless the vessel encountered is itself a warship or government vessel of another nation, it may be stopped, boarded, and the ship's documents examined, **provided there is reasonable ground** for suspecting that: (1) the vessel visited is engaged in slave trade,<sup>127</sup> piracy,<sup>128</sup> or unauthorized broadcasting;<sup>129</sup> (2) the vessel is either stateless (i.e., without nationality, under the premise that a vessel that belongs to no State belongs to all States) or quasi-stateless (e.g., flying under more than one flag);<sup>130</sup> or (3) the vessel, although flying a foreign flag, actually is of the same nationality of the visiting State ship or aircraft.<sup>131</sup> The visiting State ship may ask to see the visited vessel's documents. If the documents raise the level of suspicion of illicit activity, this may serve as the basis for a further search of the vessel.

(5) *Hot Pursuit.*<sup>132</sup> Like the right of visit, hot pursuit may be conducted only by State ships and aircraft. **A craft suspected of committing a prohibited act inside the territorial sea or contiguous zone of a coastal state may be pursued and captured outside the territorial sea or contiguous zone.** The pursued ship must have violated a law or regulation of the coastal State in any area in which those laws or regulations are effective. For example, the ship must have violated a customs rule within the territorial sea, or a fishing regulation within the exclusive economic zone (EEZ). The pursuit must commence in the area where the violation was committed, and must be continuous. Pursuit must end once the ship enters the territorial sea of another State, regardless of where the violation was discovered – thus, some use the shorthand that hot pursuit only applies in “one direction.” Regarding piracy, the international nature of the crime of piracy may allow continuation of pursuit if contact cannot be established in a timely manner with the coastal State to obtain its consent. In such a case, pursuit must be broken off immediately upon request of the coastal State.<sup>133</sup>

(6) *Terrorism/Nonproliferation.* Over the past 30 years, nations have attempted to combat the problem of criminal interference with aircraft and vessels. To deter terrorists, these legal strategies are supported by strengthened security, commitment to prosecute terrorists, and sanctions against States that harbor terrorists. Nations have entered into multilateral agreements to define the terrorism offenses. These conventions include the Tokyo Convention, Hague Convention, Montreal Convention, and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Convention) and its related Protocols. Specifically, the 2005 Protocol to the SUA Convention provides legal authority for the interception of vessels suspected of transporting Weapons of Mass Destruction. United Nations Security Council Resolutions 1540, 1874 (North Korea) and 1929 (Iran) also provide additional legal authority.

b. *State Craft.* State vessels are absolutely immune on the high seas.<sup>134</sup>

c. *Maritime Interception Operations (MIO).*<sup>135</sup> Nations may desire to intercept vessels at sea in order to protect their national security interests. As discussed above, vessels in international waters are generally

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Nations Security Council has passed resolutions granting increased authorization for the international community to take an active part in the fight against piracy. *See, e.g.*, S.C. Res. 1846, U.N. Doc. S/RES/1846 (Dec. 2, 2008) (broadening the international political support and legal capabilities to combat piracy off the Somali coast). S.C. Res. 1851, U.N. Doc. S/RES/1851 (Dec. 16, 2008) (authorizing states to take action against piracy safe havens on the shore in Somalia). However, pirate attacks declined sharply in 2013, due somewhat to the increased use of armed private security contractors by shipping companies.

<sup>125</sup> UNCLOS III, art. 109.

<sup>126</sup> *Id.* at art. 110. *See also* NWP 1-14M (2007), *supra* note 1, at para. 3.4.

<sup>127</sup> Annotated NWP 1-14M, *supra* note 1, at 3-13.

<sup>128</sup> *Id.* at 3-9 to 3-13.

<sup>129</sup> *Id.* at 3-13 to 3-14.

<sup>130</sup> *Id.* at 3-25.

<sup>131</sup> *Id.* at 3-8.

<sup>132</sup> UNCLOS III, art. 111; Annotated NWP 1-14M, *supra* note 1, at 3-21 to 3-23.

<sup>133</sup> NWP 1-14M (2007), *supra* note 1, at para. 3.5.3.2.

<sup>134</sup> UNCLOS III, art. 95.

<sup>135</sup> *See* NWP 1-14M (2007), *supra* note 1, at para. 4.4.4.

subject to the exclusive jurisdiction of their flag state. However, there are several legal bases available to conduct MIO, none of which are exclusive. Judge Advocates should be aware of the legal bases underlying the authorization of a MIO when advising a commander about such operations. Depending on the circumstances, one or a combination of the following bases can be used to justify permissive and non-permissive interference with suspect vessels:

- (1) MIO pursuant to a United Nations Security Council Resolution;<sup>136</sup>
- (2) Flag state consent;<sup>137</sup>
- (3) Vessel Master's consent;<sup>138</sup>
- (4) Right of approach and visit;<sup>139</sup>
- (5) Stateless vessels;<sup>140</sup>
- (6) Condition of port entry;<sup>141</sup>
- (7) Bilateral/Multilateral agreements;<sup>142</sup>
- (8) Belligerent rights under the law of armed conflict;<sup>143</sup>
- (9) Inherent right of self-defense.<sup>144</sup>

Legal Division	Navigational Regime	State Competency
Land Territory	Consent of coastal State	Full sovereignty
Internal Waters	Consent of coastal State	Full sovereignty
Territorial Sea (maximum breadth = 12 NM from baseline)	Innocent Passage (ships and submarines only, <i>not</i> aircraft)	Limited navigational, criminal, and civil
International Straits	Transit Passage (normal mode of operation)	Fiscal, customs, immigration, and sanitary
Archipelagic Sea Lanes	Archipelagic Sea Lanes Passage (normal mode of operation)	Fiscal, customs, immigration, and sanitary
Contiguous Zone (maximum breadth = 24 NM from baseline)	Due Regard for the rights of others / High Seas Freedoms	Fiscal, customs, immigration, and sanitary
Exclusive Economic Zone (EEZ) (maximum breadth = 200 NM from baseline)	Due Regard for the rights of others / High Seas Freedoms	Limited resource-related jurisdiction
High Seas	Due Regard for the rights of others / High Seas Freedoms	Almost none, other than over vessels of Flag State

## V. THE LAW OF NAVAL WARFARE

The information above has focused on the law of peacetime operations. Given the complexity of the legal, political, and diplomatic considerations that may arise in connection with use of naval forces at sea, the standing rules of engagement (SROE) promulgated by the operational chain of command must be considered in any legal analysis.<sup>145</sup> Additionally, in the event of armed conflict at sea, any legal analysis must also include the law of armed conflict. It

<sup>136</sup> *Id.* at para. 4.4.4.1.1.

<sup>137</sup> *Id.* at para. 4.4.4.1.2.

<sup>138</sup> *Id.* at paras. 4.4.4.1.1 and 3.11.2.5.2 (noting some nations do not recognize a master's authority to assent to a consensual boarding).

<sup>139</sup> *Id.* at para. 4.4.4.1.4. See also *supra* Part IV.C.3.a.(4).

<sup>140</sup> NWP 1-14M (2007), *supra* note 1, at para. 4.4.4.1.5.

<sup>141</sup> *Id.* at para. 4.4.4.1.6.

<sup>142</sup> *Id.* at para. 4.4.4.1.7.

<sup>143</sup> *Id.* at paras. 4.4.4.1.8 and 7.6.

<sup>144</sup> *Id.* at para. 4.4.4.1.9.

<sup>145</sup> See generally chapter 5 of this Handbook.

is the policy of the United States to comply with the law of war during all armed conflicts, no matter how characterized, and in all other military operations.<sup>146</sup> Part II of NWP 1-14M, *The Commander's Handbook on the Law of Naval Operations* (July 2007), should be consulted for an overview of the rules of international law concerned with the conduct of naval warfare. Specific areas of discussion include such topics as: neutral water and territory, neutral commerce and vessels, acquiring enemy character, belligerent right to visit and search, blockade, exclusion zones and war zones, submarine warfare, naval mines and torpedoes, and deception (such as deceptive lighting) during armed conflict at sea.<sup>147</sup>

## VI. THE LAW OF AIR WARFARE

The focus of this chapter is primarily on the rules governing peacetime air operations, which can otherwise be labeled as the *law of air mobility*.<sup>148</sup> This should not be mistaken to exclude combat aircraft. The same rules apply to them whenever they perform a non-combat operation in a peacetime environment. However, in wartime, many of these rules may not necessarily apply, especially in areas of active hostilities. Judge Advocates should nonetheless be familiar with these rules if they are deploying to units supported by air assets. The ability to deliver supplies or to send combat aircraft to a target can be impacted by the law of air mobility.<sup>149</sup> In terms of the rules governing air warfare, there is no separate treaty specifically governing air combat. An attempt to create a separate treaty resulted in the 1923 *Hague Rules of Air Warfare*, but these rules were never ratified.<sup>150</sup> However, many of the principles may have become customary international law.<sup>151</sup> Certain rules particular to air warfare have been codified in both the Hague Law and Geneva Law, such as the rules governing bombardment of undefended places and the rules governing medical aircraft.<sup>152</sup> In 2009, the Program on Humanitarian Policy and Conflict Research at Harvard University published the *Manual on International Law Applicable to Air and Missile Warfare* (the AMW Manual), which consists of 175 “Black-letter Rules” agreed upon by a group of experts and associated commentary.<sup>153</sup> The manual has been described as a “tremendous accomplishment” that “can provide a baseline,” but ultimately “an effective practitioner in this area of the law requires much more knowledge than the AMW Manual can provide.”<sup>154</sup> Thus, Judge Advocates are encouraged to review the AMW Manual, but cautioned to not rely solely on its contents. In preparing to advise on air operations during an armed conflict, Judge Advocates should consult the most recent edition of the *Air Force Operations and the Law*, published by the Air Force Judge Advocate General's School and available online at <http://afjag.af.mil/library/index.asp>. This resource contains excellent discussions on the law of armed conflict applied to air operations as well as the specifics of air targeting and weaponing. As with any other military operation, a proactive approach to advising air operations planners is key. Judge Advocates must not only be aware of the applicable rules of engagement, but should also become familiar with the Joint Operations Planning Process for Air (JOPPA) and the Joint Air Tasking Cycle (JATC). Both of these concepts are discussed in detail in Joint Publication 3-30, *Command and Control of Joint Air Operations* available online at [http://www.dtic.mil/doctrine/new\\_pubs/jointpub.htm](http://www.dtic.mil/doctrine/new_pubs/jointpub.htm).

## VII. SPACE OPERATIONS

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<sup>146</sup> DoD Directive 2311.01E DoD Law of War Program, para. 4.1 (May 9, 2006, incorporating Change 1 Nov. 15, 2010)

<sup>147</sup> See generally NWP 1-14M (2007), *supra* note 1, at ch. 5 to 12.

<sup>148</sup> See generally, Lieutenant Colonel Christopher M. Petras, *The Law of Air Mobility—The International legal Principles Behind the U.S. Mobility Air Forces' Mission*, 16 A.F. L. REV. 1 (2010). This article provides an excellent overview of the issues discussed in this chapter as applied specifically to air operations.

<sup>149</sup> The best example of the impact of the law of air mobility on air combat operations was Operation ELDORADO CANYON in April 1986. Air Force F-111 fighter aircraft launched from bases in the United Kingdom to bomb Libyan targets in response to a terrorist activity blamed on Libya, were forced to fly around the European Continent when overflight clearances were denied. They flew around the Iberian peninsula and used transit passage to pass through the strait of Gibraltar on their way to targets in Libya. See U.S. DEP'T OF AIR FORCE, FACTSHEET, OPERATION EL DORADO CANYON, Sept. 18, 2012, available at <http://www.afhso.af.mil/topics/factsheets/factsheet.asp?id=18650>.

<sup>150</sup> U.S. AIR FORCE JUDGE ADVOCATE GEN.'S SCH., AIR FORCE OPERATIONS & THE LAW 20 (3rd. Ed, 2014).

<sup>151</sup> *Id.*

<sup>152</sup> See generally chapter 2 of this Handbook

<sup>153</sup> PROGRAM ON HUMANITARIAN POLICY AND CONFLICT RESEARCH, MANUAL ON INTERNATIONAL LAW APPLICABLE TO AIR AND MISSILE WARFARE (2009), available at <http://ihlresearch.org/amw/HPCR%20Manual.pdf> [hereinafter AMW MANUAL].

<sup>154</sup> See Maj. Gen. (Ret.) Charles J. Dunlap, Jr., *Law of War Manuals and Warfighting: A Perspective*, 47 TEX. INT'L L.J. 265, 275-276 (2012).

Joint Publication (JP) 3-14, *Space Operations*, notes that “Space capabilities have proven to be **significant force multipliers** when integrated into military operations. Space capabilities provide global communications; positioning, navigation, and timing (PNT); services; environmental monitoring; space-based intelligence, surveillance, and reconnaissance (ISR); and warning services to combatant commanders (CCDRs), Services, and agencies.”<sup>155</sup> JP 3-14 also states that, “There are relatively few legal restrictions on the use of space for military purposes... Consistent with this principle, ‘peaceful purposes’ allow US defense and intelligence-related activities in pursuit of national interests.”<sup>156</sup> As discussed above, the primary treaty governing US military operations in space is the 1967 *Outer Space Treaty*. That treaty made international law, including the UN Charter and the Law of Armed Conflict applicable to the space domain. Judge Advocates advising on space operations should consult the legal considerations section in Chapter V of JP 3-14. Additional information for space operations can be found in Section 2.11 of the *Commander’s Handbook on the Law of Naval Operations* (2007) and Chapter Five of the *Air Force Operations and the Law* (2014).

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<sup>155</sup> JOINT CHIEFS OF STAFF, JOINT PUB. 3-14, SPACE OPERATIONS I-1 (29 May 2013).

<sup>156</sup> *Id.*, at V-8.

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