

# NAVIGATIONAL AND HYDROGRAPHIC RESPONSIBILITIES

## The Coastal State and Its EEZ

The United Nations Convention on the Law of the Sea (UNCLOS) has designated rights and responsibilities to all States party to the convention in the various maritime zones that may be claimed by such a State. The outer limits of all maritime zones are determined from baselines drawn by the coastal State, with the exception of a continental shelf claim, and even one of the criteria for this is related to baselines. The determination of these is therefore the first priority of the coastal State.

Coastal and Flag States may enjoy some rights under previous conventions, but to be able to exercise any of the rights contained in UNCLOS they have first to establish maritime zones, reflect these in their national legislation and advise the Secretary General of the United Nations of their existence. If the claim is in accordance with UNCLOS and is not contested by other States it can be assumed that the rights and responsibilities related to the various zones are relevant. Although the main consideration of this article is the EEZ, a short comparison of the regime of this zone with others provided for in the convention will emphasise the differences in rights and responsibilities.

### Rights and Responsibilities

Internal waters - waters landwards of the baselines - are relatively simple to consider. With the exception of the retention of the 'right of innocent passage' in waters now designated as internal waters but previously territorial waters, possibly as the result of drawing 'straight baselines', internal waters are considered sovereign territory of the coastal State and subject to any and all of its laws.

Territorial waters are also sovereign territory, with the exception of the 'right of innocent passage'. For this to apply the passage must be innocent and continuous. As this does not apply within an EEZ it is not considered further, but a study of 'innocent passage' and the concept of 'force majeure' would prove interesting.

For the purposes of this article, the Contiguous Zone can be considered as a part of the EEZ, within which certain specific additional national legislation such as customs, fiscal, immigration and sanitary laws may be applied.

### Exclusive Economic Zone

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

The benefits to the coastal State of this zone are confined to the exploration, preservation and exploitation of all resources, whether mobile or sedentary, renewable or non-renewable. Most of the rights reserved for other States are concerned with either navigation or communications. It should be noted that while the resources and the responsibility to protect them is that of the coastal State, the sea within the EEZ is 'high seas'. A coastal State may only interfere in the freedom of navigation enjoyed by a vessel if it can be shown that its activities are prejudicial to the protection of resources. The major right of a Flag State to 'freedom of navigation' is defined in the 1958 Geneva Convention as: 'The high seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty', and has always been regarded as a right under international customary law.

### Coastal State and Safe Navigation

D.W. Newson in his address 'Data Dissemination and Display' to the Royal Institute of Navigation in London in 1987 stated that "A legal requirement to carry adequate nautical charts and books is found in both the International Maritime Organisation, the Safety of Life at Sea Convention and in national regulations, so mariners are entitled to rely on them and usually can."

There is little doubt that the responsibility for hydrographic surveying and charting in internal waters and territorial seas is that of the coastal State. Only oblique references are made in UNCLOS, however, to the responsibilities of the coastal State to provide appropriate charting in the contiguous zone and EEZs.

Although there is some dispute as to whether hydrographic surveying can be classified as 'marine scientific research', the jurisdiction over 'marine scientific research' is clearly stated as being that of the coastal State, which also has the responsibility for 'marine resource protection'. The coastal State usually surveys up to the shelf-break found at about the 200-metre bathymetric contour. A large portion of this traditionally charted area would fall within an EEZ. It is most unlikely that another State will seek or be granted permission to conduct hydrographic surveys within the EEZ of a coastal State, except in the case of a developing State. The question then arises: who will then undertake this task if not the coastal State?

All States party to UNCLOS are obliged to protect the marine environment and the resources in an EEZ and there is an obligation for the coastal State to provide vessels passing through its EEZ with adequate charting and maritime safety information.

### States have the obligation to protect the environment

Nothing in this Part shall prejudice the right of the States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may

reasonably be expected to result in major harmful consequences.

UNCLOS also requires a coastal State to give appropriate publicity to dangers in its territorial waters and there is also usually a 'Duty of Care' requirement in most national law which calls for the promulgation of all available maritime safety information. Maritime safety information includes publicity of dangers to navigation by coastal navigation warnings, NAVAREA warnings and numerous publications and information associated with navigation. A coastal State must therefore obtain the data directly or contract this out to a third party, the obligation and responsibility remaining with the coastal State. The IMO Safety of Life at Sea Convention (SOLAS) states that the "Contracting Government undertakes to arrange for the collection and compilation of hydrographic data and the publication, dissemination and keeping up to date of all nautical information necessary for safe navigation."

Freedom of navigation imposes no restriction on the vessel, except that it should not be engaged in either piracy or slave trading, and a vessel may not participate in research, exploration or exploitation within the EEZ of a coastal State without that State's permission. Ships engaged in piracy maybe apprehended by any State.

Foreign warships enjoy the same freedom of navigation as merchant vessels and may conduct naval manoeuvres within the EEZ providing that there is no threat to the interests of the coastal State and the international community.

States may lay pipelines, submarine cables and enjoy other uses of the sea within an EEZ, provided that they have due regard for the rights, laws and regulations of the coastal State and for freedom of navigation. The coastal State has the sole right to construct and authorise construction of installations and artificial islands within its EEZ, and has exclusive jurisdiction over all structures there, including customs, fiscal, health, safety and immigration matters. Due notice must be given of the construction of such installations, and there should be a permanent means of warning mariners of their presence. Safety zones may be declared around the structure. The breadth of the safety-zone may not exceed 500 metres from the outermost points of the structure in any direction. It is not clear whether anchors and kedges laid on the seabed as a part of a mooring system can be considered as its outermost points. This being the case, the positions of these ground tackles would have to be indicated by buoys. While shipping is expected to take the necessary steps to avoid such structures, the coastal State is also beholden to erect these where possible outside of recognised international sea-lanes.

When a structure is no longer required it should be removed, in accordance with acceptable international practice. Where the entire structure is not removed, it should be treated as a danger to navigation and the coastal State is obligated to give due notice of its position, depth, and dimensions.

Many coastal States fail to recognise the requirement in both customary and convention law to provide charting and maritime safety information in the waters that they have traditional thought of as theirs. Both developed and developing coastal States are required to provide this information and this may include large portions of their EEZ.

The main intention of UNCLOS was to ensure that the resources of the sea, the seabed and its subsoil are protected and that they benefit all States, including those that are landlocked. The opportunity was also taken to regularise the rights and responsibilities of all who have a need to use the sea. UNCLOS has forced coastal States to reconsider their role in the waters over which they have traditionally exerted some form of control. Other conventions ensuring safe navigation are not in conflict with UNCLOS and all States party to it should be aware of the implications of those articles that might impact on their role in providing maritime safety information and navigational data.