

Session of Amsterdam – 1957

**The Distinction Between the *Régime* of the Territorial Sea
and the *Régime* of Internal Waters**

(Tenth Commission, Rapporteur : Mr Frede Castberg)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Desiring to see States facilitate international communications through the régime of their maritime waters, notably by abstaining from denying access to their internal waters to foreign commercial vessels save where in exceptional cases this denial of access is imposed by imperative reasons ;

Declaring that it is consistent with the general practice of States to permit free access to ports and harbors by such vessels ;

Recalling the Resolution of Stockholm (1928) on the régime of maritime vessels and their crews in foreign ports in time of peace ;

Adopts the following Resolution, the purpose of which is to set forth certain principles of public international law and to state certain practices relating to differences between the régime of the territorial sea and the régime governing internal waters, without prejudging in any way the effects which might result from an eventual regulation by treaty of the methods of delimitation of the maritime domain and its legal régime :

I.

According to international law, the maritime spaces over which a State exercises its territorial competence include internal waters and the territorial sea.

The rules of international law concerning these two parts differ from each other in certain relations.

II.

Access and Passage. In the *territorial sea*, foreign vessels have a right of innocent passage, including the right of stopping or anchoring to the extent that they are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

Subject to the rights of passage sanctioned either by usage or by treaty, a coastal State may deny access to its *internal waters* to foreign vessels except where they are in distress.

III.

Power of Coercion. In its *internal waters* a State may exercise its power of coercion. In particular, it can make arrests or conduct investigations in accordance with its legislation. However, according to widely accepted practice, the exercise of the power of coercion is not generally applied to foreign vessels in internal waters except with regard to acts committed on the vessel which are likely to disturb public order.

A coastal State may not take any steps on board a foreign vessel passing through the *territorial sea* to arrest any person or to conduct any investigation except for a crime committed on board the vessel during its passage and only in the following cases :

- 1) if the consequences of the crime extend beyond the vessel ;
- 2) if the crime is of a kind to disturb the public peace of the country or the good order of the territorial sea ;
- 3) if the assistance of the authorities has been requested by the captain of the vessel or by the consul of the State whose flag the vessel flies.

A coastal State may not arrest or divert a foreign vessel passing through the territorial sea for the purpose of exercising civil jurisdiction. It may not levy execution against, or attach, such a vessel for the purpose of any civil proceedings except in respect of obligations assumed or liabilities incurred by the vessel for the purpose of, or during the course of, its passage through the waters of the coastal State.

A foreign vessel lying in the territorial sea after leaving internal waters is in the same juridical situation as if it were still in internal waters. The same shall apply to a vessel which lies in the territorial sea without being forced to do so for navigational reasons.

IV.

Judicial Competence. The coastal State may exercise its judicial competence over delictual acts committed on board a vessel during its sojourn in the internal waters of that State. In civil matters, if the seizure of the vessel has taken place in accordance with the laws of the coastal State and of international conventions civil proceedings may be instituted against the owner of the vessel even if the vessel and its conduct have given no occasion for the proceedings.

However, according to widely accepted practice, judicial competence is not exercised in penal matters with respect to acts committed on the vessel which are not of a kind to disturb public order. Nor, in general, is judicial competence exercised in matters of civil jurisdiction which relate to the internal order of the vessel.

Vessels in innocent passage through the *territorial sea* are not, because of such passage, subject to the judicial competence of the coastal State. Juridical acts performed on board a vessel in passage through the territorial sea are not, because of such passage, subject to -the judicial competence of the coastal State. Infractions committed on board the vessel do not, as such, fall within the judicial competence of the coastal State.

However, this competence can be exercised in cases of infraction of the police and navigation laws and regulations promulgated by a State. In every case, the infractions mentioned above under No. III, 1, 2 and 3, fall within the judicial competence of the State.

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(24 September 1957)