

International Airspace and Civil/Military Cooperation

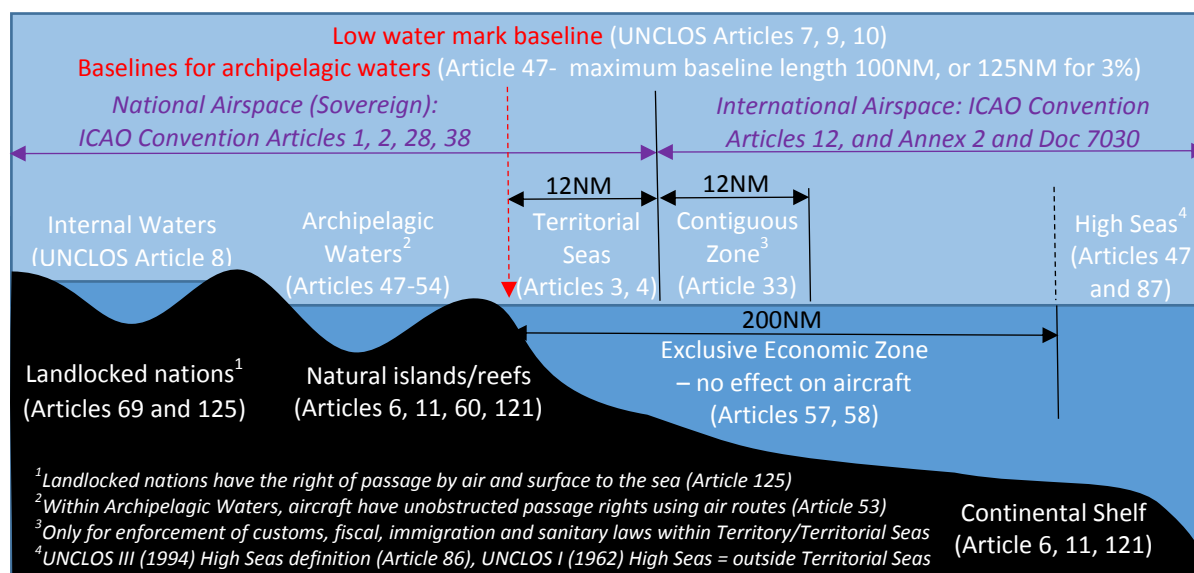


Figure 1: Maritime and Airspace Volumes as Defined by UNCLOS (white/red = UNCLOS, purple = CC)

Key aspects about the *United Nations Convention on the Law of the Sea* (UNCLOS) and the *Convention on International Civil Aviation* ('Chicago Convention' or 'CC') are as follows.

- Although UNCLOS is titled as a 'Law of the Sea', its provisions also affect airspace and the operation of aircraft!
- In particular, UNCLOS defines volumes of airspace that are sovereign and international (where States may make laws and where States may not make universal laws* respectively, **Figure 1**). It should be noted that the terms 'national airspace' and 'international airspace' are descriptive in nature, but do not appear in UNCLOS or the CC.

**Note: notwithstanding this, States may enact laws for their own citizens and aircraft registered in those States for operations within international airspace.*
- The volumes of airspace are dependent on the definition of 'baselines' in UNCLOS, which are generally based on the maritime shoreline, whether the shore is continental in nature or the outermost part of a chain of islands (an archipelago). However, not all island groups are archipelagos, as the islands must be no more than 100NM apart to meet the definition of being an archipelago (except for 3%, 125NM apart).
- Archipelagic Waters and the airspace above them are sovereign and part of the territory of the State concerned, which is relevant for Article 28 of the CC (provision of air navigation services). However, the sovereignty of archipelagic airspace is not the same as other territorial airspace, as aircraft have the right of 'continuous and expeditious' passage, so cannot be denied transit through this area (UNCLOS Article 53).
- Exclusive Economic Zones (EEZs) only have material effect on maritime resources, including the sea bed, and do not have any legal consequences for aviation (UNCLOS Articles 57 and 58).

- The CC and Annex 2 is not considered to use the same definition of ‘High Seas’ as the 1994 iteration of UNCLOS, deferring to the earlier version (1962)*. Article 2 of the CC is clear that ‘National Airspace’ only composes the land and territorial waters; therefore, the non-sovereign portion of airspace is beyond this, as far as aviation is concerned (i.e.: beyond 12NM). In addition, not all States have ratified the latest version of the UNCLOS.

Article 2: For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters thereto under the sovereignty, suzerainty, protection or mandate of such State.

- While the CC and its Annexes, including Annex 2, are not applicable to State aircraft (military, police or customs) in general, the Convention does place requirements upon States regarding the interaction between military and civil aircraft. For example, State aircraft may not overfly the territory of another State without permission, and regulations must be enacted to require State aircraft to have ‘due regard’ for the safety of navigation of civil aircraft (Article 3 of the Convention).
- In addition, Article 3 *bis* of the CC requires States to ensure that military aircraft do not endanger civil aircraft, but these are only for two specific situations – use of weapons and interception.
- There are no requirements for State aircraft to comply with civil requirements in international airspace (thus a State aircraft operating on a flight plan in such airspace is complying with civil requirements voluntarily, including an ATC clearance to enter controlled airspace, and may not legally be denied an ATC clearance to transit).
- It is possible that States may determine that, in the interests of safe interaction between military and civil aircraft, Article 3 *bis* of the CC needed to be amended to include reference to the specific requirement for an ATC clearance into controlled airspace (to ensure entry at a safe level, position and time, not for denial of transit), but ICAO had no current plans to amend the Convention in this regard, *or to further clarify what ‘international airspace’ is.

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