

# Intelligence Collection in the Territorial Sea: Concepts and Complexities

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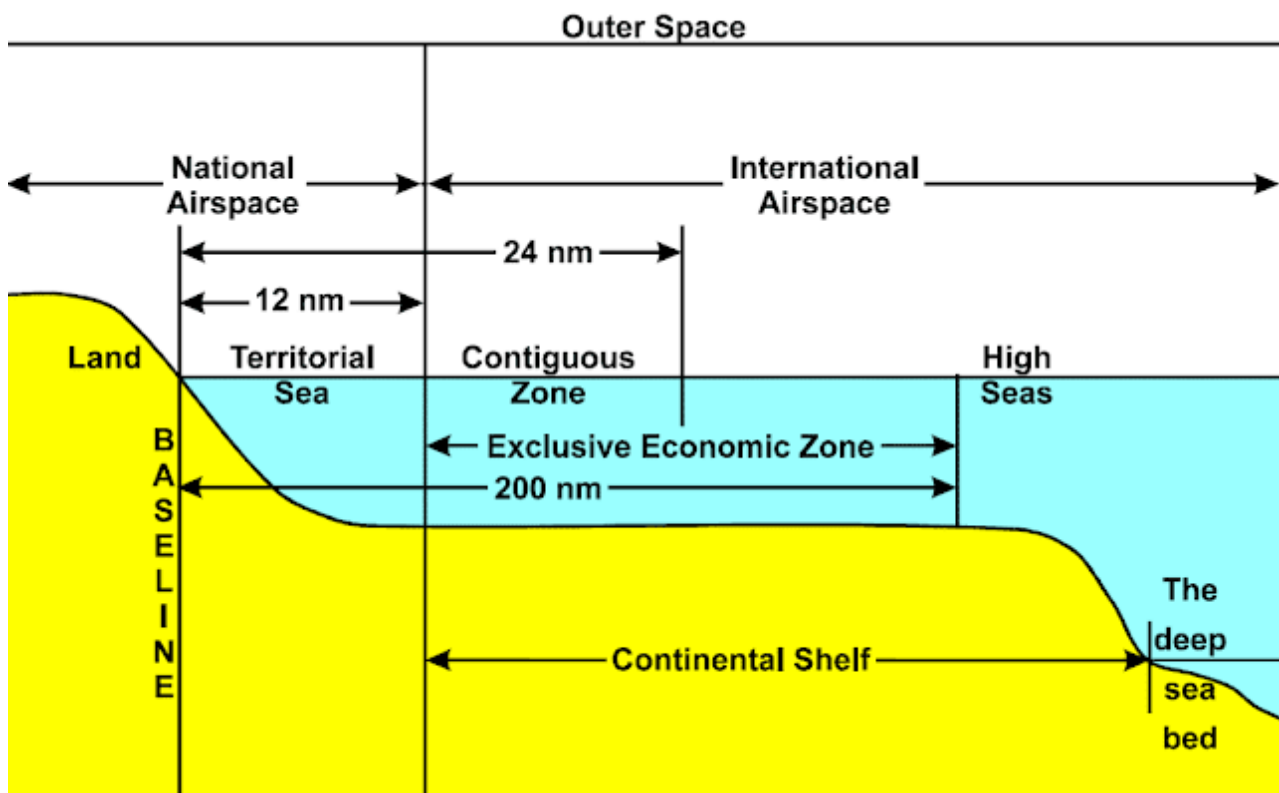
**Cover Image Attribute:** *A file photo of a crewman aboard the Japanese Coast Guard Cutter Mizuho, prepares an HH-65 Dolphin helicopter, from Air Station Barbers Point, Hawaii, to landing on the Mizuho. Source: Coast Guard photo by Petty Officer Jonathan R. Cilley, Nagoya, 16 October 2007, [Wikimedia Commons](#)*

States possess a well-established legal competence over their territorial domains, which encompass internal waters, archipelagic waters, and the territorial sea. This realm of control is often called "sovereignty," a term that encapsulates a coastal state's inherent rights and responsibilities within its territory. These rights grant considerable discretion and freedom in managing their land and waters' internal affairs and resources. This authority, known as "imperium," embodies the capacity for governance, administration, and jurisdiction, a prerogative typically regarded as exclusive.

The concept of sovereignty and its exercise within a state's territory have wide-ranging implications, especially when it comes to intelligence collection activities conducted in the territorial sea. This article delves into the intricacies of intelligence collection within this sensitive maritime zone, exploring the legal frameworks, challenges, and the balance between national security imperatives and international norms.

## The Territorial Sea and Sovereignty

The territorial sea is integral to a coastal state's sovereignty, extending up to 12 nautical miles (22.2 kilometers) from its baseline. Within this belt of water, the coastal state exercises a high degree of authority, including control over navigation, customs, immigration, and, notably, the regulation of intelligence collection activities.



**Illustration's Attributes: UNCLOS Maritime Zones / Source: Byju's**

The term "*intelligence collection*" encompasses a wide range of activities conducted by states to gather information crucial for their national security and strategic interests. These activities can encompass signals intelligence (SIGINT), human intelligence (HUMINT), imagery intelligence (IMINT), and various other methods. However, the question of how far a coastal state's sovereignty extends into the territorial sea concerning intelligence collection is a subject of debate and international legal interpretation.

## International Law and Intelligence Collection

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International law, primarily the *United Nations Convention on the Law of the Sea (UNCLOS)*, is the cornerstone for regulating activities in the territorial sea. UNCLOS outlines the rights and obligations of coastal states within their territorial sea while also recognizing the principle of innocent passage for foreign vessels.

Under UNCLOS, foreign vessels enjoy the right of innocent passage through the territorial sea, including navigation, overflight, and, by extension, activities not prejudicial to the coastal state's peace, good order, or security. This principle is vital for ensuring the freedom of navigation and maintaining peaceful relations between states.

However, the line between innocent passage and activities that may infringe upon a coastal state's national security interests can be blurred when it comes to intelligence collection. For instance, conducting espionage or military reconnaissance in the territorial sea may not fall within the scope of innocent passage, as these activities are inherently intrusive and may compromise a state's security.

### Balancing National Security and International Norms

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The balance between a coastal state's national security imperatives and its commitment to international norms is delicate. Coastal states have a legitimate interest in safeguarding their sovereignty, territorial integrity, and national security. Intelligence collection within the territorial sea is integral to protecting these interests.

At the same time, adherence to international law, including UNCLOS, is vital for maintaining peaceful relations among nations. Striking the right balance between intelligence collection and the principles of innocent passage is a complex endeavor that requires careful consideration of national security and international obligations.

## Concepts and Complexities

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### 1. The Concept of Innocent Passage

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*Innocent passage* is a concept in international law that allows foreign ships to pass through another state's territorial sea, subject to certain conditions.

According to the UNCLOS, the innocent passage is defined as *"the right of ships to navigate through the territorial sea for the purpose of continuous and expeditious transit, which is not prejudicial to the peace, good order or security of the coastal State"*.

However, UNCLOS also prohibits any act aimed at collecting information to prejudice the coastal state's defense or security. This means that while intelligence-gathering activities are not explicitly banned during innocent passage, they must not be aimed at collecting information that could harm the defense or security of the coastal state.

In practice, this can be a complex issue, as it may be difficult to distinguish between intelligence-gathering activities consistent with innocent passage and those not. For example, passive sensors such as radar and sonar emissions may be essential for safe transit through the territorial sea. Still, they may also be used to learn about the operational forces of the coastal state, which would be inconsistent with innocent passage.

## **2. The Concept of Maritime Domain Awareness (MDA)**

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Maritime Domain Awareness (MDA) refers to the practical understanding of anything associated with the global maritime domain that could impact a country's security, safety, economy, or environment. During innocent passage, vessels are entitled to collect certain operational information to facilitate their transit, which can contribute to MDA.

According to the **article** by American scholar and a distinguished professor of public international maritime law James Kraska, ships engaged in innocent passage are entitled to collect information about the maritime environment, including weather and oceanographic characteristics, such as currents and tides, land features, shoals and reefs, other ships in the area, shipping traffic patterns, and harbors and roadsteads, to facilitate their passage. This information can be used to ensure safe navigation and avoid hazards, which is essential for the success of the passage. Ships routinely collect weather and marine environmental data, including navigational hazards, such as territorial features and rocks, low-tide elevations, and submerged features. This information can be used to create nautical charts and other resources that can be used by other ships in the future, contributing to MDA.

### **Potential issues with MDA during Innocent Passage**

One potential issue with MDA during innocent passage is that the collection of information about the maritime environment could be perceived as a threat to the security of the coastal state. While ships engaged in the innocent passage are entitled to collect certain operational information to facilitate their transit, this information must not be used to gather intelligence that could harm the defense or security of the coastal state.

Another potential issue is that the collection of information about the maritime environment could be used for purposes other than innocent passage. For example, information about shipping traffic patterns and harbors could be used to plan military operations or to support illegal activities such as smuggling or piracy.

Additionally, collecting information about the maritime environment could be used to assert territorial claims or challenge the coastal state's sovereignty. For example, if a ship gathers information about the location of submerged features or low-tide elevations, this information could support a territorial claim or challenge the coastal state's sovereignty over the area.

### **3. Disguised Maritime Boundary Disputes**

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*Disguised maritime boundary disputes* refer to disputes over naval boundaries disguised as disagreements over intelligence collection in the territorial sea. In some cases, states may use intelligence collection activities as a pretext to assert territorial claims or to challenge the sovereignty of another state over a particular area of the sea. For example, a state may claim that a foreign ship engaged in intelligence collection activities in its territorial sea when the vessel was engaged in innocent passage and was not collecting intelligence that could harm the defense or security of the coastal state. This claim could be used to assert territorial claims or challenge the foreign state's sovereignty over the area in question.

Note these kinds of disputes can be challenging to resolve, as they often involve complex legal and political issues. In some cases, states may resort to diplomatic or military measures to assert their claims or defend their sovereignty over a particular sea area.

### **4. Non-Innocent Passage in the Territorial Sea**

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*Non-innocent passage in the territorial sea* refers to the passage of a foreign ship through the territorial sea of another state in a manner that is not consistent with the principles of innocent course. Non-innocent passage can include activities aimed at collecting information to the prejudice of the defense or security of the coastal state or actions that are otherwise inconsistent with the right of innocent passage.

Examples of non-innocent passage can include using force against the coastal state, carrying weapons of mass destruction, smuggling of goods or people, or violating environmental or other laws of the coastal state. It can also include activities not explicitly prohibited by UNCLOS but inconsistent with the principles of innocent course, such as using submarines or other underwater vehicles to navigate the territorial sea. Non-innocent passage is not protected by international law and can be subject to enforcement measures by the coastal state, including the use of force in certain circumstances.

However, the coastal state must ensure that its enforcement measures are proportional to the nature and severity of the non-innocent passage and that they do not harm the safety of navigation or the rights of innocent course of other ships.

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