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**Law for the Implementation of the 1982 United Nations
Convention on the Law of the Sea Regime for the Territorial
Sea and Contiguous Zone**

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Submitted By: Filippo Cerboni (Italy)

Supervisor: Professor Norman A. Martinez Gutierrez

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ON INITIATIVE OF THE DEPUTEE

CERBONI

Law for the Implementation of the 1982 United Nations Convention on the
Law of the Sea Regime for the Territorial Sea and the Contiguous Zone

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HONOURABLE COLLEAGUES! – The need to exercise a more effective control on the Italian coasts, as well as the need to fill in the many voids created by the fragmentary regulation of our maritime zones, justify the drafting of a comprehensive, single law implementing the regimes for the territorial sea and the contiguous zone as outlined by the 1982 United Nations Convention on the Law of the Sea, to which Italy is a Party.

A. Introduction

1. This explanatory note refers to the Law for the Implementation of the 1982 United Nations Convention on the Law of the Sea regime for the Territorial Sea and the Contiguous Zone 2017 (hereafter referred to as “the Act”). It does not form part of the Law and has not been endorsed by Parliament.
2. This note is to be read in conjunction with the Law. The note is not, and is not meant to be, a comprehensive description of the Law.

B. Summary

1. The Law implements the regime of the territorial sea as outlined by the 1982 United Nations Convention on the Law of the Sea (hereafter referred to as “UNCLOS”).
2. In addition, the Law sets out in particular detail the implications of the right of innocent passage of foreign ships through the Italian territorial sea, in accordance with the provisions of UNCLOS.
3. The Law also serves to claim a contiguous zone on behalf of the Republic of Italy (hereafter referred to as “Italy”), in accordance with the regime outlined by UNCLOS. The Law will also regulate the Contiguous Zone as an archaeological protection area.
4. The objective of the Law is to provide a comprehensive legal framework for the above mentioned regimes.

C. Background

1. UNCLOS

UNCLOS was the product of the Third United Nations Conference on the Law of the Sea, which took place between 1973 and 1982.¹ UNCLOS finally entered into force on 16 November 1994.² It defines the rights and responsibilities of States with respect to their use of the world’s seas and oceans, establishing rules related to businesses, the protection of the marine environment and the management of marine natural resources.³ The significance of UNCLOS as an all-encompassing convention on the international law of the sea is underscored by its impact on customary law. Indeed, many of UNCLOS’s provisions have acquired the

¹ Martin Dixon, *Textbook on International Law* (Oxford University Press, 2013) 218.

² Ibid.

³ Ibid.

status of customary international law, as confirmed by international jurisprudence.⁴ Italy ratified UNCLOS in 1995.⁵ As of August 2016, UNCLOS has been ratified by 168 States.⁶

2. The Legal Regimes for the Territorial Sea and the Right of Innocent Passage outlined by UNCLOS

Part II of UNCLOS outlines the legal regimes for both the territorial sea and the contiguous zone. As far as the territorial sea is concerned, Article 2 establishes that the sovereignty of all coastal States extends beyond their land territory and internal waters (as well as archipelagic waters in the case of archipelagic States), in order to also cover “...an adjacent belt of sea, described as the territorial sea”.⁷ Therefore, every coastal State may, within the limits of its territorial sea, exercise all the powers it is entitled to exercise on its land territory. In this context, sovereignty also extends to the airspace over the territorial sea as well as to its seabed and subsoil.⁸ UNCLOS proceeds to establish a number of rules in accordance with which the territorial sea is to be delimited, also taking into account the rights of adjacent States.⁹ In any event, the breadth of the territorial sea may not extend beyond 12 nautical miles from the baselines.¹⁰

In addition, Part II, Section 3 of UNCLOS dedicates a series of specific provisions to the right of innocent passage of ships through the territorial sea of coastal States. In accordance with Article 17, the ships of all States have a right to carry out an innocent passage through waters falling within the limits of a territorial sea.¹¹ UNCLOS defines the concept of “passage”

⁴ *Case Concerning Maritime Delimitation and territorial questions between Qatar and Bahrain* (Qatar v Bahrain) [1994] ICJ Rep 112; *Case Concerning the Continental Shelf* (Tunisia v Libya) [1982] ICJ Rep 18; *Case Concerning the Continental Shelf* (Libya v Malta) [1985] ICJ Rep 13.

⁵ Silvia Borelli, Federico Lenzerini, *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law* (Martinus Nijhoff Publishers, 2012) 309.

⁶ Brian D. Lepard, *Reexamining Customary International Law* (Cambridge University Press, 2016) 65.

⁷ United Nations Convention on the Law of the Sea (UNCLOS) (adopted 10 December 1982, Montego Bay, Jamaica, entered into force 16 November 1994) 1833 UNTS 3, Art. 2.

⁸ Ibid.

⁹ Ibid, Artt. 3-16.

¹⁰ Ibid, Art. 3.

¹¹ Ibid, Art. 17.

and its qualification as “innocent” through two distinct provisions, namely Article 18 and Article 19.

Article 18 specifies that “passage” relates to navigation through the territorial sea for the purpose of “traversing the sea without entering internal waters or calling at a roadsted or port facilities outside internal waters”, or “proceeding to or from internal waters or a call at such roadsted or port facility”.¹² Moreover, in order for a passage to be qualified as “innocent”, it must be “continuous and expeditious”.¹³ Limitations to this principle include the possibility of stopping and anchoring, “but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress”.¹⁴ Furthermore, the right of passage is not suspendable through straits used for international navigation.¹⁵

Moreover, Article 19 specifies that in order for a passage to be qualified as “innocent”, it must not be “prejudicial to the peace, good order or security of the coastal State”.¹⁶ Article 19 provides a list of activities that shall be in this sense considered prejudicial to the coastal State:

- a) *“any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;*
- b) *any exercise or practice with weapons of any kind;*
- c) *any act aimed at collecting information to the prejudice of the defense or security of the coastal State;*
- d) *any act of propaganda aimed at affecting the defense or security of the coastal State;*
- e) *the launching, landing or taking on board of any aircraft;*
- f) *the launching, landing, or taking on board of any military device;*
- g) *the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;*

¹² Ibid, Art. 18.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid, Art. 45; *Corfu Channel Case* (United Kingdom v Albania) [1949] ICJ Rep 4.

¹⁶ Ibid, Art. 19.

- h) *any act of wilful and serious pollution contrary to this Convention;*
- i) *any fishing activities;*
- j) *the carrying out of research or survey activities;*
- k) *any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;*
- l) *any other activity not having a direct bearing on passage.*¹⁷

The remaining provisions of Part II, Section 3 of UNCLOS outline additional rules for the correct exercise of the right of innocent passage, as well as the rights and duties of coastal States in this regard. In particular, coastal States have the right to adopt additional laws and regulations concerning the right of innocent passage of ships through their territorial sea in relation to, *inter alia*, the safety of navigation and the regulation of maritime traffic, as well as the protection of navigational aids and facilities.¹⁸ Such additional laws and regulations must always be in conformity with the regime outlined by UNCLOS. At the same time, every coastal State is entitled to take all appropriate measures to prevent or suspend passage that is not innocent on the basis of the above elements.¹⁹ In return, every coastal State is bound not to hamper the innocent passage of ships through the territorial sea unless in accordance with UNCLOS; in this respect, no coastal State may “impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage”, or to “discriminate in form or in fact against ships carrying cargoes to, from or on behalf of any State”.²⁰ Moreover, charges may be applied to a foreign ship passing through a territorial sea only as a form of payment for specific services rendered to it, and must never be discriminatory.²¹

Particular rules are laid down by UNCLOS in relation to the passage of underwater vehicles, ships carrying potentially noxious substances and warships through the territorial sea. As far as submarines and other underwater vehicles are concerned, these are required to navigate on the surface and show their flag when passing through the territorial sea.²² Nuclear-

¹⁷ Ibid.

¹⁸ Ibid, Art. 21.

¹⁹ Ibid, Art. 25.

²⁰ Ibid, Art. 24.

²¹ Ibid, Art. 26.

²² Ibid, Art. 20.

powered ships and ships carrying nuclear or other inherently dangerous or noxious substances passing through a territorial sea shall carry appropriate documentation and observe all necessary precautionary measures established by international conventions.²³ Warships are also subject to a specific regime. In accordance with Article 30, should any foreign warship not comply with the laws and regulations of the coastal State concerning the innocent passage through the territorial sea, and disregard any respective request for compliance, the coastal State may request it to leave its territorial sea.²⁴ Furthermore, the flag State bears international responsibility for any loss or damage caused to the coastal State by its warships or other government ships operated from non-commercial purposes resulting from the latter's non-compliance with the rules contained in UNCLOS.²⁵ Outside the scope of these rules, however, UNCLOS ensures that the immunity of foreign warships and government ships operated for non-commercial purposes is always safeguarded.²⁶

In turn, the coastal State is generally prohibited from exercising its civil and criminal jurisdiction against a foreign ship passing through its territorial sea, save for some exceptions. As far as criminal jurisdiction is concerned, this can be exercised if the consequences of the crimes perpetrated by persons on board the foreign ship extend to the coastal State or disturb the peace and good order of the latter, as well as if the assistance of the local authorities has been requested by the master of the ship, a diplomatic agent or consular officer of the flag State.²⁷ Last but not least, criminal jurisdiction may also be exercised on board a foreign ship traversing the territorial sea if necessary for the suppression of illicit traffic of drugs.²⁸ Civil jurisdiction, on the other hand, may only be exercised in relation to a foreign ship only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.²⁹

²³ Ibid, Art. 23.

²⁴ Ibid, Art. 30.

²⁵ Ibid, Art. 31.

²⁶ Ibid, Art. 32.

²⁷ Ibid, Art. 27(1).

²⁸ Ibid.

²⁹ Ibid, Art. 28.

3. The Legal Regime for the Contiguous Zone as regulated by UNCLOS

The contiguous zone is first and foremost regulated by Article 33 of UNCLOS. As a maritime legal area in its own right, the contiguous zone is not inherent in statehood; it must be claimed by a coastal State in order for it to enjoy the respective rights as outlined by UNCLOS.³⁰ These include the right to exercise the control necessary for a State to “prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea”, as well as to “punish infringement of the above laws and regulations committed within its territory or territorial sea”.³¹ The contiguous zone, however, may not extend beyond 24 nautical miles from the baselines from which the territorial sea is measured.³² Nevertheless, the contiguous zone remains an extremely useful instrument to extend a coastal State’s control over the above issues beyond the limits of its territorial sea.

On this note, reference should also be made to Article 303(2) of UNCLOS, in accordance with which the contiguous zone may also act as an exclusive archaeological area of the coastal State. Indeed, Article 303(2) provides that in order to control the traffic of objects of an archaeological or historic nature, “...the coastal State may, in applying Article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article”.³³ This provision assumes a great importance for those States the waters of which are known or presumed to be still holding a significant number of archaeological items, promoting the latter’s protection as they are still waiting to be recovered.

Mention should also be made of Article 111 of UNCLOS, which regulates the coastal State’s right to commence the hot pursuit of foreign ships while they are located in its internal waters, archipelagic waters, territorial sea or contiguous zone.³⁴ More specifically, Article 111 specifies that the hot pursuit of a foreign ship “may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws

³⁰ Ian Brownlie, *Principles of Public International Law* (Oxford University Press, 2008) 193.

³¹ UNCLOS, Art. 33; *MV Saiga (No.2) Case* (St. Vincent and the Grenadines v Guinea), ITLOS Case No.2, 38 ILM 1323 (1999).

³² *Ibid.*

³³ UNCLOS, Art. 303(2).

³⁴ *Ibid.*, Art. 111(1).

and regulations of that State”.³⁵ The hot pursuit can only be undertaken by warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service.³⁶ The pursuit can be commenced only after a visual or auditory signal to stop detectable by the foreign ship has been given to the latter.³⁷ As far as the contiguous zone is concerned, the hot pursuit may only be commenced in it if the foreign ship in question has violated the laws and regulations for the protection of which the contiguous zone was established, namely those dealing with fiscal, customs, sanitary or immigration matters.³⁸ The pursuit may be continued outside the limits of the territorial sea or contiguous zone only if it has been uninterrupted.³⁹ The right of hot pursuit ceases in the moment the pursued ship enters the territorial sea of its flag State or of a third State.⁴⁰

4. The Absence of Specific Rules in the Current Italian Regime

Despite the fact that Italy has ratified UNCLOS in 1995, the regimes for the territorial sea and the contiguous zone outlined in it have not yet been properly implemented in Italian domestic law. Indeed, although Italy has adopted a number of laws concerning its maritime areas, none of them has succeeded in specifying all the relevant implications of these as outlined by UNCLOS. Furthermore, the currently existing provisions are not found in a single legislative instrument, but rather pertain to a number of separate legal instruments. This has led to a fragmentary and unclear regime of the Italian maritime legal areas, principally regulated at the present moment by the following sources.

The Italian Code of Navigation (*Codice della Navigazione*) is presently considered the principal source of Italy’s maritime law. It entered into force in 1942, and was subsequently amended by Law 359/1974 and then by Decree 133/2014. Although it makes reference to the territorial sea in Article 2, the *Codice della Navigazione* has failed to properly implement the regime of the territorial sea as outlined by UNCLOS, as it has omitted the incorporation of a number of significant elements contained in the latter. Article 2 specifies indeed that Italy

³⁵ Ibid.

³⁶ Ibid, Art. 111(5).

³⁷ Ibid, Art. 111(4).

³⁸ Ibid, Art. 111(1).

³⁹ Ibid.

⁴⁰ Ibid, Art. 111(3).

reserves a distance of 12 nautical miles measured from the baselines of its coasts as its territorial sea.⁴¹ The rest of the provision, however, simply specifies the way in which the many gulfs and bays present along the Italian coasts are calculated as part of the territorial sea.⁴² On the other hand, Article 3 establishes that Italy's sovereignty also extends over the airspace above its territorial sea.⁴³ However, no reference is made in its following provisions to the fact that Italy's sovereignty should also extend to the seabed and subsoil included within the limits of its territorial sea. Most importantly, the *Codice della Navigazione* does not include any reference to the right of innocent passage of ships through the Italian territorial sea, or to the regime which should be applied to warships, submarines or nuclear-powered ships.

Further, the Decree passed by the Minister of the Italian Merchant Navy in 1985 relating to the regulation of maritime traffic in the Strait of Messina in Sicily is also of noteworthy mention. It should be specified that Sicily is one of the Italian administrative regions to which a special statute has been granted in the national Constitution (alongside Valle d'Aosta, Trentino-Alto Adige, Friuli-Venezia Giulia and Sardinia), given its nature as an island region⁴⁴. As a consequence, Sicily enjoys a particular degree of autonomy and may create or be the object of specific laws and regulations which may at times differ from the ones applicable to the other administrative regions.⁴⁵ The Ministerial Decree at stake is one of the many examples of national Italian legislation specifically dealing with the peculiar characteristics and needs of a "special statute" Italian region. Under this Decree, Italy reserves the right to issue regulations for the "separation and organization of the maritime traffic" in the Strait of Messina.⁴⁶ Moreover, the Decree prohibits the passage through the Strait of Messina to ships weighing 50,000 tons or more carrying oil products or other substances hazardous to the marine environment.⁴⁷ Other ships passing through the Strait of Messina must, in accordance with the Decree, comply with a traffic separation scheme.⁴⁸ Furthermore, the Decree provides for the

⁴¹ *Codice della Navigazione*, R.D. 30 March 1942, n. 327 (agg. D.L. 133/2014), Art. 2.

⁴² *Ibid.*

⁴³ *Ibid.*, Art. 3.

⁴⁴ Gabriele Leonardi, *Diritto Costituzionale* (Key Editore, 2016) 73.

⁴⁵ *Ibid.*

⁴⁶ Decree of the Minister of the Merchant Navy of 8 May 1985 relating to the Strait of Messina, (*Gazzetta Ufficiale*, 11 May 1985), n. 110, Art. 1.

⁴⁷ *Ibid.*, Art. 6.

⁴⁸ *Ibid.*, Art. 3.

necessity of compulsory pilotage for certain ships depending on their size and the nature of their cargo.⁴⁹ Finally, the Decree provides that all ships passing through the Strait of Messina shall be subject to a mandatory ship reporting system.⁵⁰ However, the Decree is silent about any other implication of the right of passage of ships. Moreover, even if the right of innocent passage had been comprehensively codified by the Decree, its scope would have remained geographically limited to the Strait in question.⁵¹ The Decree is worthy of mention simply because it is currently the only instrument in the Italian legal system making reference to the right of innocent passage.

Law 612/1912, which provided for a more comprehensive framework for the exercise of the right of innocent passage by foreign ships through Italian waters, has in fact been repealed in 2010, leaving the matter without domestic regulation. Moreover, even Law 612/1912 was an incomplete attempt at implementing the regime for the right of innocent passage of ships as outlined by UNCLOS. Indeed, it merely established that the right of passage of foreign merchant ships through the Italian territorial sea could be excluded on the basis of reasons relating to national security.⁵² No reference was made in the Law to ships other than those of a merchant nature. Furthermore, the rest of the law merely dealt with the consequences of violations of its provisions on behalf of foreign merchant ships. No further reference was included as to the required nature and implications of the passage as outlined by UNCLOS.

Moreover, as of 2017 Italy has still not claimed a contiguous zone. As previously stated, the contiguous zone is not inherent in statehood, as it has to be claimed by a State in order for it to enjoy the respective rights. Through Law 1424/1940, Italy had established a “Zone of Customs Surveillance” having an extension of twelve nautical miles measured from the baselines of the territorial sea.⁵³ The limit of this area was confirmed by the *Testo unico delle disposizioni legislative in materia doganale*, a Customs Code approved by Presidential Decree

⁴⁹ Ibid, Art. 4.

⁵⁰ Ibid, Art. 5.

⁵¹ Donald R. Rothwell, Walter Samuel Grono Bateman, *Navigational Rights and Freedoms, and the New Law of the Sea* (Martinus Nijhoff Publishers, 2000) 37.

⁵² Law of 16 June 1912, n. 162: *Norme per il transito ed il soggiorno delle navi mercantili lungo le coste dello Stato* (*Gazzetta Ufficiale*, Serie Generale n. 162 of 18 July 1951), Art. 1.

⁵³ Law of 25 September 1940, n.1424 (*Gazzetta Ufficiale*, Serie Generale n. 296 of 26 June 1972).

43/1793, which in turn was substituted by Presidential Decree 960/77.⁵⁴ Nevertheless, the area of sea to which these laws refer simply serves to enforce certain national regulations concerning customs; it is not representative of the UNCLOS regime and does not grant Italy any rights in relation to the enforcement of its fiscal, sanitary or immigration laws and regulations. In the absence of a claim of a contiguous zone, Italy is preventing itself from exercising a number of very significant rights under international law.

On the basis of these elements, a comparison between the regime for the territorial sea and the contiguous zone contained in UNCLOS with the rules currently in force in Italy renders evident the deficiencies of the latter. Being a dualist State, Italy requires national legislative acts to incorporate the contents of the Treaties that it ratifies into its national law. Yet, despite the fact that it has ratified UNCLOS in 1995, Italy still lacks a single and comprehensive regulation of its maritime legal areas. This has led to uncertainty in Italian national law with regards to the regulation of the Italian maritime areas, and consequently to a limited enjoyment on Italy's behalf of the rights granted by UNCLOS.

5. The Need for a Unitary Legal Framework regulating Italy's Maritime Legal Areas

The need for a comprehensive framework regulating Italy's maritime legal areas has never been more compelling.

Italy's geographic location has allowed it to always play an essential role in shipping. Being a peninsula located at the centre of the Mediterranean sea, Italy has since ancient times developed a strong shipping tradition. As of 2016, Italy is the country with the ninth biggest navy and the twelfth largest merchant navy in the world (and the fifth largest in the Mediterranean).⁵⁵ Italy has been a constant point on the major Mediterranean ship routes, and its strong influence as an exporter has only reinforced its maritime power and significance.

⁵⁴ Testo unico delle disposizioni legislative in materia doganale, D.P.R. (Decree of the President of the Republic) 43/1973 (*Gazzetta Ufficiale*, Serie Generale n. 1 of 2 January 1962), Art. 29; D.P.R. 960/1977 (*Gazzetta Ufficiale*, Serie Generale n. 1 of 2 January 1978), Article 1.

⁵⁵ "Top Ten countries with the Biggest navy Force in 2017" (22 August 2016), available at: <http://www.themeshnews.com/top-10-countries-with-best-navy-force-in-the-world-2016/>, accessed 27 January 2017; Department for Transport of the United Kingdom Government, World fleet registered vessels (FLE05),

Given Italy's maritime significance, the absence of a unitary and specific regulation of its maritime zones is a lacuna which must absolutely be filled. Indeed, the absence of a proper regulation for its territorial sea, as well as the total absence of a contiguous zone, prevent Italy from enjoying many important rights under international law. In this respect, it should also be noted that Italy's strategic maritime position has not only granted it privileges, but also disadvantages. Many of these, however, could be counteracted through the adoption of a unitary law regulating Italy's territorial sea and contiguous zone.

The total absence of a regulation for the right of innocent passage of ships through Italian waters is, on the basis of the above considerations, an obstacle to Italy's security. Italy has over the recent years been the recipient of what Admiral Fabio Caffio, expert of international law, has defined a series of "asymmetrical threats to [its] national security".⁵⁶ These are threats of various nature, ranging from illegal trafficking, threats to the marine environment, to terroristic threats among others. On this note, the absence of a regulation for the right of innocent passage currently allows foreign ships of all types, including warships, to pass through Italian waters without any form of restriction.

Mention should also be made of the well-known problems related to organized crime in Italy. Indeed, organized crime is very much exercised in Italian waters as much as it is on land. More specifically, one of the main illegal activities carried out by organized crime in Italy is the trafficking of drugs and other illicit substances, the majority of times being imported from abroad. By enacting a regime enabling Italy to enforce its criminal jurisdiction on board foreign ships for the purpose of suppressing these activities, as well as organized crime in general, the problem could be more effectively counteracted.

Furthermore, over the past years Italy has been the constant object of media attention as a cause of the mass immigration issue. Certainly, having a contiguous zone would grant Italy

Statistical data set (1 June 2016), available at: <https://www.gov.uk/government/statistical-data-sets/fle05-world-fleet-registered-vessels>, accessed 27 January 2017.

⁵⁶Emanuela C. Del Re, "Bioterrorismo e Politiche di Prevenzione", *Il Forum – GNOSIS – Rivista Italiana di Intelligence* (3 March 2010), available at: <http://gnosis.aisi.gov.it/Gnosis/Rivista24.nsf/servnavig/57?Open&Highlight=2,caffio>, accessed 29 December 2016; Interview with Admiral Fabio Caffio, Former Italian Navy Admiral and current Legal Advisor for the legal Service of the Italian Ministry of foreign Affairs (Msida, Malta, 4 November 2016).

more space to enforce its immigration laws and regulations, possibly decreasing the pressure it is subjected to while dealing with the colossal number of immigrants crossing its waters while seeking refuge. A detailed regulation of the conditions for the innocent passage of ships through Italian waters in conformity with UNCLOS would overall contribute to heighten Italy's safety standards, as well as its capability to enforce its laws on the maritime areas under its control.

A noteworthy example of legislation enacted for these same purposes on behalf of other Parties to UNCLOS is the French Decree 85-185 regulating the Passage of Foreign Ships through French Territorial Waters, which thoroughly implements the UNCLOS regime for the right of innocent passage into French national law. The latter includes, *inter alia*, a detailed list of activities which shall be considered prejudicial and not having a direct bearing on passage which perfectly mirrors the one contained in UNCLOS.⁵⁷

While discussing the absence of a contiguous zone, it should also be noted that due to Italy's long and rich history, Italian waters are known to be still holding a significant number of archaeological items waiting to be discovered. Yet, without a contiguous zone, Italy is unable to establish an archaeological protection area and therefore prevent other States from claiming as theirs any archaeological or historic object that they find in waters which could potentially be placed under exclusive Italian control. Indeed, there have been many cases over the last years of appropriation on behalf of other States of archaeological items found within twenty-four nautical miles from the Italian coasts. On this note, the claim of a contiguous zone would also serve to strengthen the rights Italy has acquired by ratifying the UNESCO Convention on the Protection of the Underwater Cultural Heritage in 2001.⁵⁸ As far as the waters beyond the territorial sea are concerned, the latter Convention grants each State Party the right to prohibit or authorize any activity directed at the underwater cultural heritage located in its continental shelf or Exclusive Economic Zone, to prevent interference with its sovereign rights and

⁵⁷ Decret n. 85-185 du 6 Fevrier 1985 portant reglementation du Passage des Navires Etrangers dans les Eaux Territoriales Francaises, *Journal Officiel*, 9 Fevrier 1985, pg. 1734, Art. 3.

⁵⁸ Ratification by Italy of the Convention on the Protection of Underwater Cultural Heritage (Paris, 2 November 2001), UNESCO Office of International Standards and Legal Affairs, United Nations Educational, Scientific and Cultural Organization (UNESCO) Official Website, available at: http://portal.unesco.org/en/ev.php-URL_ID=47222&URL_DO=DO_TOPIC&URL_SECTION=201.html, accessed 5 February 2017.

jurisdiction.⁵⁹ However, the UNESCO Convention adds that its Parties must exercise this right in accordance with the rules concerning the maritime legal areas outlined by UNCLOS.⁶⁰ It appears clear, therefore, that by having a contiguous zone Italy would consolidate its archaeological rights and render the regime for the protection of its underwater cultural heritage stronger.

Additional considerations based on the examined regime for the exercise of the right of hot pursuit outlined by UNCLOS are in order. It appears clear that despite the fact that Italy is a Party to UNCLOS, its failure to claim a contiguous zone is a significant limitation to its right of hot pursuit of foreign ships violating its laws and regulations. By claiming a contiguous zone, Italy would be able to extend the power to enforce its fiscal, customs, sanitary and immigration laws to foreign ships beyond the limits of its territorial sea.

On these bases, the Act seeks to establish a comprehensive, unitary regime for the regulation of Italian territorial waters, with a particular emphasis on the right of innocent passage of ships, as well as for the establishment of a contiguous zone.

D. Structure of the Law

The Law shall be structured in three distinct Parts:

- Part 1 will implement the regime for the territorial sea as outlined by UNCLOS. The provisions contained in this Part will specify the extent of Italy's sovereignty within its territorial sea. A particular emphasis shall be placed on the regulation of the right of innocent passage of foreign ships.

- Under Part 2, Italy will claim a contiguous zone and implement the respective regime as outlined by UNCLOS. The provisions contained in this Part will outline Italy's rights and obligations within the limits of its contiguous zone. Moreover, this Part will also specify the

⁵⁹ United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection of the Underwater Cultural Heritage (adopted 2 November 2001 in Paris, France, entered into force 2 January 2009), UNESCO Doc 31C/Resolution 24, 41 ILM 37, Article 10 (2).

⁶⁰ Ibid.

nature of Italy's contiguous zone as an archaeological protection area in accordance with UNCLOS, consolidating the rights Italy acquired by ratifying the UNESCO Convention on the Protection of the Underwater Cultural Heritage. Last but definitely not least, this Part will also regulate Italy's right to engage in the hot pursuit of foreign ships.

- Part 3 contains Miscellaneous and General Provisions.

PROPOSAL OF LAW

PART 1. THE TERRITORIAL SEA AND THE RIGHT OF INNOCENT PASSAGE OF FOREIGN SHIPS.

Section 1. The Territorial Sea.

Art. 1.

(Legal status of the territorial sea, of the airspace over the territorial sea and of its bed and subsoil).

1. As specified in Article 2 of the *Codice della Navigazione*, the sovereignty of Italy extends to an area of sea of twelve nautical miles measured from the baselines, known as the territorial sea. Such extension is measured from the low-water line along the coasts.
2. This sovereignty extends to the airspace over the territorial sea as well as to its bed and subsoil.
3. The provisions in this article shall not prejudice the application of different rules established by laws, regulations or international conventions.

Section 2. The Passage of Foreign Ships through the Italian Territorial Sea.

Subsection A. Rules applicable to all Foreign Ships passing through the Italian Territorial Sea

Art. 2.

(Right of innocent passage).

1. Foreign ships shall enjoy the right of passage through the Italian territorial sea according to the rules of innocent passage as outlined by this Law.
2. Passage means navigation through the territorial sea for the purpose of:

- a) traversing it without entering internal waters or calling at a roadstead or port facility outside internal waters; or
- b) proceeding to or from internal waters or a call at such a roadstead or port facility.

Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Art. 3.

(Meaning of innocent passage).

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of Italy.
2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of Italy if in the territorial sea it engages in any of the following activities:
 - a) any threat or use of force against the sovereignty, territorial integrity or political independence of Italy, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 - b) any exercise or practice with weapons of any kind;
 - c) any act aimed at collecting information to the prejudice of the defence or security of Italy;
 - d) any act of propaganda aimed at affecting the defence or security of Italy;
 - e) the launching, landing or taking on board of any aircraft;
 - f) the launching, landing or taking on board of any military device;
 - g) the loading or unloading of any commodity, currency or person contrary to the Italian customs, fiscal, immigration or sanitary laws and regulations.
 - h) any act of wilful and serious pollution;
 - i) any fishing activities;
 - j) the carrying out of research or survey activities;
 - k) any act aimed at interfering with any system of communication or any other facilities or installations located in Italian territory or in the Italian territorial sea.
 - l) any other activity not having a direct bearing on passage.

Art. 4.

(Submarines and other underwater vehicles).

In the territorial sea, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Art. 5.

(Italian laws and regulations relating to innocent passage).

1. The Ministry of Justice and the Regional Councils may adopt additional laws and regulations in conformity with the provisions of the 1982 United Nations Convention on the Law of the Sea (hereafter referred to as “UNCLOS”), and of this law, relating to innocent passage through the territorial sea, in respect of all or any of the following:
 - a) the safety of navigation and the regulation of maritime traffic;
 - b) the protection of navigational aids and facilities and other facilities or installations;
 - c) the protection of cables and pipelines;
 - d) the conservation of the living resources of the sea;
 - e) the prevention of infringement of the Italian fisheries laws and regulations;
 - f) the preservation of the marine environment and the prevention, reduction and control of pollution thereof;
 - g) marine scientific research and hydrographic surveys;
 - h) the prevention of infringement of the Italian customs, fiscal, immigration or sanitary laws and regulations.
2. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.
3. Due publicity shall be given to all such laws and regulations via publication in the *Official Gazette*.
4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

Art. 6.

(Sea lanes and traffic separation schemes in the territorial sea).

1. The Coastguard may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through the Italian territorial sea to use such sea

lanes and traffic separation schemes as they may designate or prescribe for the regulation of the passage of ships.

2. In particular, tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes.
3. In the designation of sea lanes and the prescription of traffic separation schemes under this article, the Coastguard shall take into account:
 - a) the recommendations of the competent international organization;
 - b) any channels customarily used for international navigation;
 - c) the special characteristics of particular ships and channels; and
 - d) the density of traffic.
4. The sea lanes and traffic separation schemes shall be indicated on sea charts to which due publicity shall be given.

Art. 7.

(Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances).

Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage through the Italian territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements to which Italy is a Party.

Art. 8.

(Duties of the coastal State).

1. The Coastguard may take the necessary steps in the Italian territorial sea to prevent passage which is not innocent, in conformity with UNCLOS and with this Law.
2. In the case of ships proceeding to internal waters or a call at a port facility outside of internal waters, the Coastguard also has the right to take the necessary step to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.

3. The Coastguard may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of the Italian territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of Italy's peace, security or good order. Such suspension shall take effect only after having been given due publicity.

Art. 9.

(Charges which may be levied upon foreign ships).

1. No charge may be levied upon foreign ships by reason only of their passage through the Italian territorial sea.
2. Charges may be levied upon a foreign ship passing through the Italian territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Subsection B: Rules applicable to Foreign Merchant Ships and Government Ships operated for Commercial Purposes passing through the Italian Territorial Sea.

Art. 10.

(Criminal jurisdiction on board a foreign ship).

1. Italy shall not exercise its criminal jurisdiction on board a foreign ship passing through its territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:
 - a) if the consequences of the crime extend to Italy;
 - b) if the crime is of a kind to disturb Italy's peace or the good order of its territorial sea. This provision encompasses, *inter alia*, all crimes committed in the manner described by Article 416-bis of the Italian Criminal Code relating to organized crime;
 - c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
 - d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances; this provision encompasses, *inter alia*, every traffic of the above-mentioned substances conducted in the manner described by Article 416-bis of the Italian Criminal Code.

2. The above provisions do not affect the Coastguard's right to take any steps authorized by Italian laws for the purpose of an arrest or investigation on board a foreign ship passing through the Italian territorial sea after leaving Italian internal waters. The Coastguard shall also be entitled to exercise this right when it has good reason to believe that a foreign ship passing through the Italian territorial sea has engaged in crimes in the manner described by Article 416-bis of the Italian Criminal Code.
3. In the cases provided for in paragraphs 1 and 2, the Coastguard shall, if the master so requires, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.
4. In considering whether or in what manner an arrest should be made, the Coastguard shall have due regard to the interests of navigation.
5. Except as provided in Part XII of UNCLOS or with respect to violations of laws and regulations adopted in accordance with Part V of UNCLOS, the Italian Coastguard may not take any steps on board a foreign ship passing through its territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the Italian territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Art. 11.

(Civil jurisdiction in relation to foreign ships).

1. The Coastguard should not stop or divert a foreign ship passing through its territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.
2. The Coastguard may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through Italian waters.
3. Paragraph 2 is without prejudice to the rights of Italy, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in its territorial sea, or passing through the territorial sea after leaving internal waters.

**Subsection C. Rules applicable to Warships and other Government Ships operated
for Non-Commercial Purposes.**

Art. 12.

(Definition of warships).

For the purposes of this Law, “warship” means a ship belonging to the armed forces of a foreign 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.

Art. 13.

(Non-compliance by warships with Italian laws and regulations).

If any warship does not comply with the rules concerning passage through the Italian territorial sea as outlined by UNCLOS and by this Law, and disregards any request for compliance therewith which is made to it, the Coastguard may require it to leave the territorial sea immediately.

Art. 14.

(Responsibility of the flag State for damage caused by a warship or other government ship
operated for non-commercial purposes).

The flag State shall bear international responsibility for any loss or damage to Italy resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the rules concerning passage through the Italian territorial sea contained in this Law, or with the provisions of UNCLOS or other rules of international law.

Art. 15.

(Immunities of warships and other government ships operated for non-commercial purposes).

With such exceptions as are contained in subsection A and in articles 13 and 14, nothing in this Law affects the immunities of warships and other government ships operated for non-commercial purposes.

PART 2. THE CONTIGUOUS ZONE

Art. 16.

(Claim of a contiguous zone).

Italy has a contiguous zone of twenty-four nautical miles, measured from the baselines of its territorial sea.

Art. 17.

(Italy's rights within its Contiguous Zone).

Within the limits of its contiguous zone, Italy may exercise through its Coastguard the control necessary to:

- a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
- b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

Art. 18.

(The Contiguous Zone as an archaeological protection area).

1. In order to control the traffic of objects of an archaeological and historical nature found at sea, Italy may, in applying articles 16 and 17, presume that their removal from the seabed of the contiguous zone without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.

2. Nothing in this article affects the right of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices applicable in Italy with respect to cultural exchanges.
3. This article is without prejudice to other international agreements to which Italy is a Party, and of rules of international law regarding the protection of objects of an archaeological and historical nature.

PART 3. MISCELLANEOUS AND GENERAL PROVISIONS

Art. 19.

(Right of hot pursuit).

1. For the purpose of this Law, the hot pursuit of a foreign ship may be undertaken when the Coastguard or other competent police forces have good reason to believe that the ship has violated Italian laws and regulations. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the territorial sea or the contiguous zone of Italy, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted.
2. The pursuit may be commenced only after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within the contiguous zone, as defined in article 16, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established, as outlined in article 17.
3. The right of hot pursuit ceases as soon as the foreign ship pursued enters the territorial sea of its flag State or of a third State.
4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the foreign ship pursued one of its boats or other craft working as a team and using the foreign ship pursued as a mother ship is within the limits of the Italian territorial sea, the Italian contiguous zone or the Italian exclusive economic zone.

5. The right of hot pursuit may only be exercised by Italian warships or other Italian military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.
6. Where hot pursuit is effected by an aircraft:
 - a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*;
 - b) the aircraft giving the order to stop must itself actively pursue the foreign ship until an Italian ship or another Italian aircraft, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the foreign ship. It does not suffice to justify an arrest outside the territorial sea that the foreign ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other Italian aircraft or ships which continue the pursuit without interruption.
7. The release of the foreign ship arrested within the limits of Italian jurisdiction and led to an Italian port for the purposes of an inquiry before the competent Italian authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.
8. Where a foreign ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Art. 20.

(Entry into force).

The present Law shall enter into force three months after its publication in the *Official Gazette*.