



# EUR OPS BULLETIN

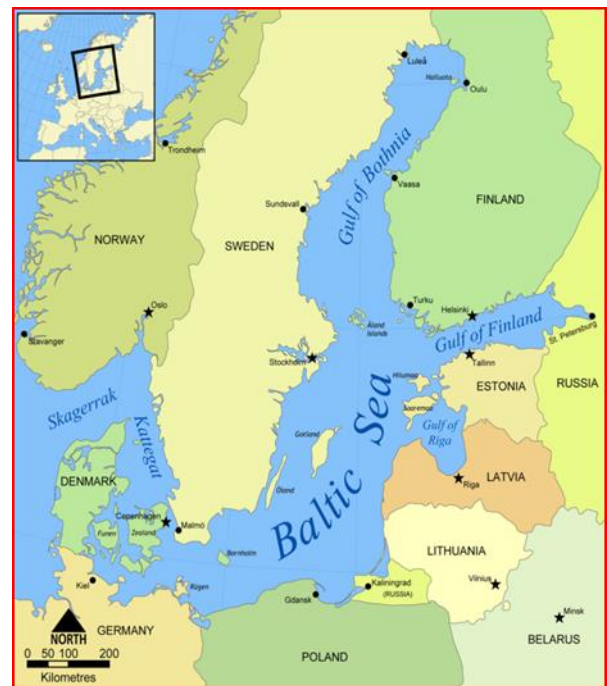
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Subject: Guidelines to airspace users in order to raise their awareness on **State aircraft operations especially in the High Seas airspace over the Baltic Sea**

## *The practical meaning for airspace users that are operating over the High Seas*

- Within a Flight Information Region (FIR), classes of airspace established for volumes of airspace extending over the High Seas and their associated rules apply only to civil aviation. However, the safety of air navigation is paramount for all airspace users.
- All airspace users must be aware that State aircraft have the possibility to operate under "due regard" over the High Seas as the access of State aircraft to High Seas airspace cannot be restricted.
- State aircraft will operate in compliance with ICAO SARPS to the maximum extent practicable, but can, due to mission requirements, also operate under "due regard" for the safety of navigation of civil aircraft. When operating under "due regard", the State aircraft is not subject to ATC, irrespective of the declared airspace-class over the High Seas.



- A State aircraft operating under "due regard" might not have filed a flightplan, might not necessarily establish radio communications or enable its identification through means of cooperative surveillance. State aircraft operating under "due regard" are required to maintain safe separation from civil aircraft flying in their proximity
- Civil Air Traffic Control (ATC) units have normally no responsibilities for the separation of State aircraft when they are operating under "due regard", and can only, when know to them, provide traffic information to all other aircraft which are in the vicinity of the particular State aircraft.
- All civil airspace users must adhere to ICAO SARPS, in particular to the Rules of the Air in ICAO Annex 2, when operating over the High Seas. They must be aware that State aircraft are authorised to operate under "due regard" at any time in the airspace over the High Seas.

Additional information can be found in:

- ICAO Circular 330, Civil/Military Cooperation in Air Traffic Management
- ICAO EUR Doc 032, Interim Guidance Material on Civil/Military Cooperation in ATM

## *The legal background*

### UN Convention on the Law of the Sea (UNCLOS) with Relevance for Aviation



#### Article 2, Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

1. The **sovereignty of a coastal State extends**, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as **the territorial sea**.
2. This **sovereignty extends to the air space over the territorial sea** as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

#### Article 3, Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea **up to a limit not exceeding 12 nautical miles**, measured from baselines determined in accordance with this Convention.

#### Article 58, Rights and duties of other States in the exclusive economic zone

In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, **the freedoms referred to in article 87 of navigation and over-flight** and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the **operation** of ships, **aircraft** and submarine cables and pipelines, and compatible with the other provisions of this Convention.

#### Article 86

The provisions apply to all **parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State**, or in the archipelagic waters of an archipelagic State. This article does **not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58**.

#### Article 87, Freedom of the high seas

The **high seas are open to all States**, whether coastal or land-locked.

1. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

- (a) Freedom of navigation
- (b) **Freedom of over-flight** .....

## ICAO Provisions

The ICAO Chicago Convention in **Article 3 (a) expressly excludes State aircraft from its scope of applicability**. Articles 3 (b), (c) and (d) further clarify the definition and scope of application of the Articles of the Convention. As a consequence of Article 3, in particular subparagraph 3 (d), **States are required to safeguard navigation of civil aircraft when setting rules for their State aircraft**. This leaves it up to the individual State to regulate these operations and services, generating a wide diversity of military regulations. However, especially in congested airspace, harmonized regulation is a precondition for a safe, efficient and ecologically sustainable aviation system.

At the same time, States are aware of the limitations of ICAO Standards and Recommended Practices (SARPs) and designated Annexes to the Convention, including PANS and regional supplementary procedures (SUPPs), as they relate to State/military aircraft and their services. Indeed, as seen above, Article 3 of the Convention specifically exempts State aircraft from compliance with articles of the Convention. More and more multinational military operations that cross international boundaries require complex coordination and planning processes to avoid unnecessary segregation or restrictions and to achieve the required level of safety.

In accordance with the Chicago Convention, **Article 3 (b), “Aircraft used in military, customs and police services shall be deemed to be State aircraft”**. In broad terms, the right to access all airspace, within the limits of the operational needs, is a crucial requirement to enable the military, customs and police to perform the security, defence and law enforcement missions mandated by their States and by international agreements. It is, therefore, a fundamental requirement that each State be able to train and operate its State aircraft effectively. In this manner, it is vital for State aircraft to be provided access to sufficient space, enabling adequate opportunities for the training and execution of security, defence and law enforcement elements.



In pursuit of their tasks, operators of State aircraft should, where practicable, respect international, regional and State civil aviation legislation and aim for compliance. However, it is recognized that the nature of the defence and security tasks can create unique situations that need special handling and considerations. In this regard, ICAO Circular 330 chapter 5 explains in detail what roles are performed by military and non-military flights under the title of “State aircraft”. It also highlights circumstances when State aircraft can be fully compliant or partially compliant with international civil aviation rules and procedures, as provided for in ICAO SARPs, and it lists the general expectations for handling such aircraft by an air navigation service provider (ANSP). A number of States and international organisations have regulated the operation of State aircraft and made this information publicly available.

ICAO Annex 11 specifies a number of provisions that address the aspects of air traffic services over the High Seas, including the division of airspace in Flight Information Regions (each under the responsibility of ICAO Member States). The State that has accepted the provision of ATS over the High Seas must provide air traffic services in accordance with Annex 11, but “may apply the SARPs in a manner consistent with that adopted for airspace under its jurisdiction” and the obligation on States that their ATS authorities closely coordinate with military authorities on activities that may affect flights of civil aircraft (e.g. provide flight plans and other relevant data)

## In Summary

- Over the High Sea only the relevant international law applies
- All States enjoy the freedom to overfly the high seas and so called “passages” (i.e. international straits)
- High seas start outside the territorial sea and the territorial sea extends up to a maximum of 12 NM from the national coastline
- High Seas airspace is not territorial airspace, hence national and/or other legislation DO NOT apply
- ICAO SARPs apply to civil aircraft over the High Seas, but not to State aircraft in military services (‘military aircraft’) or other State aircraft
- States must have due regard for the safety of civil aircraft and must have established respective regulations for national State aircraft



## ***Notice***

The purpose of European Operations Bulletin **2015\_002** is to promulgate guidelines to airspace users in order to raise their awareness on State aircraft operations under due regard, or when State aircraft operations are conducted only partially in accordance with ICAO provisions, especially in the High Seas airspace over the Baltic Sea.

This Bulletin was prepared in response to one of the recommendations from the ICAO Civil/Military Cooperation Symposium (ICAO EUR/NAT Office, April 2015) and is also reflecting the outcome of the Baltic Sea Project Team, which was established by the EANPG COG/62 Meeting (May 2015) to address several coordination issues and operational aspects identified in the Baltic Sea area. It was endorsed by the 57<sup>th</sup> Meeting of the European Air Navigation Planning Group in November 2015.

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