

## Airspace above the Territorial Sea

Under customary international law as reflected in Article 2(2) of the [1982 Law of the Sea Convention](#) (LOSC), and Article 2 of the [1958 Convention on the Territorial Sea and the Contiguous Zone](#), coastal states have complete sovereignty over the airspace over their territorial seas. Article 34 of the LOSC further provides that this sovereignty also applies to airspace above waters forming international straits. Under Part IV, Article 49, of the LOSC, archipelagic states also have full sovereignty over the airspace over their archipelagic waters.

The Convention on International Civil Aviation, or the Chicago Convention, similarly states that every State “has complete and exclusive sovereignty over the airspace above its territory,” which includes all land areas and territorial waters. [Convention on International Civil Aviation](#) (Chicago, 7 Dec. 1944) 15 U.N.T.S. 295, T.I.A.S. 1591, *entered into force* 4 Apr. 1947, Arts. 1-2. The Secretariat of the International Civil Aviation Organization has stated that Article 2 of LOSC is “fully co-extensive and compatible” with the relevant provisions of the Chicago Convention. *See* United Nations Convention on the Law of the Sea 1982: A Commentary, Volume II, 74 (1993) (citing Study of the ICAO Secretariat, Doc. C-WP/7777 (1984), sec. 7). The Chicago Convention replaced the 1919 Paris Convention for the Regulation of Aerial Navigation, which likewise recognized airspace as “part of the legal regime of the subjacent territory.” *Convention on International Civil Aviation* (Paris, 13 Oct. 1919), 11 L.N.T.S. 174 (no longer in force).

No foreign aircraft may fly over a coastal state’s territorial sea without the permission of that state, which may be granted by either *ad hoc* decisions by the state, or by general or bilateral international agreements. *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 512 (AM. LAW INST. 2018). Aviation agreements that regulate flight over land territory generally also apply to the territorial seas. *Id.*

In 1988, the United States extended its claim of sovereignty over the territorial sea out to twelve nautical miles from the coastline. [Presidential Proclamation No. 5928](#), Dec. 27, 1988. In accordance with that claim, the Federal Aviation Administration (FAA) amended its regulations to extend controlled airspace and the applicability of overflight rules to the airspace overlying the waters between three and twelve nautical miles from the U.S. coast. *See, e.g.* Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles from the United States Coast, [14 C.F.R. § 73](#) (1989); [49 U.S.C. § 40103\(a\)\(1\)](#) (2016) (“The United States Government has exclusive sovereignty of airspace of the United States”). The FAA defines “U.S.-controlled airspace” to include: “all airspace over the territory of the United States, extending 12 nautical miles from the coastline of U.S. territory; any airspace delegated to the United States for U.S. control by other countries or under a regional air navigation agreement; or any international airspace, or airspace of undetermined sovereignty, for which the United States has accepted responsibility for providing air traffic control services.” *See* Definitions, [14 C.F.R. § 187.3](#) (2017).

On November 27, 1959, President Eisenhower issued [Executive Order 10854](#), extending application of the Federal Aviation Act of 1958 to “those areas of land or water outside the United States and the overlying airspace thereof over or in which the Federal Government of the

United States, under international treaty, agreement or other lawful arrangement, has appropriate jurisdiction or control.” Exec. Order. No. 10,854 (Nov. 27, 1959). The Executive Order directs the Secretary of Transportation to consult with the Secretary of State on matters affecting foreign relations, and with the Secretary of Defense on matters affecting national defense interests.

Pursuant to the Executive Order, the United States has established and maintains four air defense identification zones (ADIZ) beyond its territorial sea: the contiguous U.S. ADIZ, Alaska ADIZ, Guam ADIZ, and Hawaii ADIZ. [14 C.F.R. §§ 99.41-99.49](#) (2017). The boundaries of the ADIZs were last modified in 2004. Security Control of Air Traffic, [69 Fed. Reg. 16754](#) (Mar. 30, 2004). There is no ADIZ between the United States and Canada.

The air defense identification zones are areas of airspace primarily over international waters established to facilitate the monitoring of aircraft operations in the vicinity of U.S. airspace boundaries for national security and other purposes. See U.S. Dep’t of Transportation, Federal Aviation Administration, [Aeronautical Information Manual](#), Sec. 6, 5-6-4 (2017); Security Control of Air Traffic; Modification of the U.S. Air Defense Identification Zones (ADIZ), [53 Fed. Reg. 18216](#) (May 20, 1988).

Federal regulations define ADIZs as airspace “in which the ready identification, location, and control of all aircraft (except for Department of Defense and law enforcement aircraft) is required in the interest of national security.” [14 C.F.R. § 99.3](#) (2017). All civil and public aircraft, U.S. or foreign, other than Department of Defense and law enforcement aircraft, are required to file, activate, and close a flight plan with the appropriate aeronautical facility if crossing an ADIZ. Security Control of Air Traffic, [69 Fed. Reg. 16754](#) (Mar. 30, 2004).

#### Additional reference information

- [Extension of the application of the Federal Aviation Act of 1958, Executive Order 10854 \(Nov. 27, 1959\)](#) (amended by [Amendment of Executive Orders Relating to Functions of the Department of Transportation, Executive Order 11382](#) (Nov. 28, 1967)).
- [Presidential Proclamation No. 5928 of December 27, 1988](#) (54 FR 777).
- Federal Aviation Administration, [Aeronautical Information Manual: Official Guide to Basic Flight Information and ATC Procedures](#) (2017).
- Department of the Navy, [The Commander’s Handbook on the Law of Naval Operations](#) (2017)(p. 1-10,1.9 AIRSPACE *Under international law, airspace is classified as either national airspace (that over the land, internal waters, archipelagic waters, and territorial seas of a State) or international airspace (that over contiguous zones, EEZs, the high seas, and territory not subject to the sovereignty of any State). Subject to a right of overflight of international straits (see paragraph 2.5.3) and archipelagic sea lanes (see paragraph 2.5.4.1), each State has complete and exclusive sovereignty over its national airspace. Except as States may have otherwise consented through treaties or other international agreements, the aircraft of all States are free to operate in international airspace without interference by other States.*)

(Last updated October 16, 2018)