

## **1939 Ordinance on Territorial Waters and Maritime Zones**

18 August 1939

[S 39-442 (enforced 25 September 1939) (see Annexes of National Council Reports 1939 - 1940, subject 3)]

Consideration:

That with regard to a number of regulations, the necessity of which being felt later on, concerning the maintenance of order and security in the Indonesian waters it was deemed necessary to redefine appurtenant statutes; etc.

Article I.

By withdrawal of the "Ordinance on territorial waters and maritime zones", stipulated by article 1 sub c (read: article I) of the ordinance of 11 October 1935 (S No. 497), as it was altered by the ordinance of 3 May 1938 (S No. 200), to stipulate the following regulations, which may be referred to as the "1939 Ordinance on Territorial Waters and Maritime Zones".

Article II.

(1) All provisions, stipulated on the basis of the regulation withdrawn by art. 1, shall remain enforceable except for the explicit cancellation according to the provisions of this ordinance.

(2) All permits legally granted five years prior to the enforcement of this ordinance, shall be considered as having been granted on the basis of the provisions of this ordinance; other permits shall be cancelled by its enforcement.

Article III.

Everywhere when in legal rulings and administrative regulations, applicable on the moment of enforcement of this ordinance, reference is made to one of art. 1 and art. 8 up to and inclusive 14 of the "Ordinance on Territorial Waters and Maritime Zones" (S 1935 No. 497), must be read the corresponding articles of the "1939 Ordinance on TERRITORIAL WATERS & MARITIME ZONES".

Article IV. Final Article.

This ordinance shall be enforced as of the thirteenth day after its proclamation. (Proclaimed 26 August 1939)

Article 1.

(1) In this ordinance and in the provisions based thereon, the following words will have the meanings as hereunder explained:

1. "Indonesian territorial waters":

I. The sea area which extends itself into the sea to a distance of three miles from the low tide-line of the islands or parts of islands that belong to the Indonesian territory; the word island will include also the rocks, reefs and barriers which fall dry at low tide and are situated at

most three miles from the low tide-line of the islands or parts of islands; with the understanding that:

A. that distance of three miles, at places where Indonesia is the only state bordering on the bay, estuary or river or canal mouth, will be measured as from a straight line which is drawn transversely through the mouth of the bay, estuary or river or canal mouth; if the mouth exceeds the width of ten miles, that line will be drawn transversely through the bay, estuary or river or canal mouth as near as possible to the entrance where said mouth is no wider than ten nautical miles;

B. at a place where two or more islands exist in one group, that distance of three miles will be measured as from the straight lines connecting the outmost points of the low-tide lines of the islands at the outside of the group, where the distance between said points does not exceed six miles;

C. that in a strait which connects two open seas, Indonesia being the only maritime state on its shores, the maritime territory will include the part of the strait lying between two lines connecting the shores at both sides of the strait, as near as possible to the open sea, on the first point where the width of the strait does not exceed six miles, even if at other places the strait may have a greater width;

D. at a place of a strait connecting two open seas not wider than six nautical miles, of which Indonesia is not the only maritime state on its borders, the line separating the territorial waters of Indonesia from the other state's waters shall be drawn at the middle of the strait;

II. the maritime territory situated at the seaside of the maritime territory described under I, but within fixed roadstead borders;

2. "Indonesian maritime zone" (territorial waters): the Indonesian territorial sea, including that part, lying at the coast side of the territorial sea, of

a. the coastal sea;

b. the waters of bays, estuaries, river and canal mouths;

3. "Indonesian inland waters": all water bodies lying on the landside of the Indonesian territorial waters, i.e. also all rivers, canals, lakes and ponds within Indonesia;

4. "Indonesian waters": the Indonesian territorial seas and Indonesian inland water;

5. "Maritime zones": the parts of Indonesian waters so assigned or to be assigned by the Governor-General. (S 41-622)

(2) The nautical miles meant in the foregoing paragraph are those of sixty in a latitude.

## Article 2.

(1) In this ordinance and the provisions proclaimed thereby, "fishing" or "carrying out fishery" will mean:

a. generally, carrying out an act which is directly or indirectly meant to collect, obtain, or kill produce of the sea;

b. the act of within a maritime zone taking aboard fish or other produce of the sea by one ship from another, unless such sea produce will serve for private use of the passengers and crew of the first-mentioned ship, including any act carried out by a ship at that place intended to enable or facilitate fishery activities by means of another ship;

c. the causing to be executed any acts as meant in paragraph (1) sub a. and b. involving third parties, by natural or legal persons, business partnerships or by means of giving loans, by firms and shipping companies, on their behalf or on their account.

(2) Without prejudice to the provisions of paragraph (3) of this article, the areas meant in the foregoing paragraph sub b. will not be considered as fishery, if they are carried out:

a. insofar as it concerns ships and watercraft under the flag of a state which is friendly to the Kingdom of the Netherlands, within the roadstead boundaries of a seaport, also within the roadstead boundaries of a coastal place, which in line with the "1936 Dutch East Indies Shipping Act" will be open to such ship, or -- these roadstead boundaries not being fixed -- on the usual roadsteads of seaports and coastal places;

b. insofar as it concerns watercraft under Dutch flag on the sub a mentioned roadsteads, also within the roadstead boundaries or where these have not been fixed -- at the usual roadstead of a coastal place where a (branch)customs office exists or (outside the customs area) an officer of the Interior Affairs Department or a (deputy)harbour master has been assigned.

(3) By or on behalf of the Commander of the Navy may within the maritime zone be appointed any sea ports or coastal places where the activities meant in paragraph (1) sub b of this article may, in line with the foregoing paragraph, not be considered as fishery only in case they are carried out at a berth on the roadstead as indicated by the harbour master.

### Article 3.

Without prejudice to the provisions of articles 4 and 5, fishery is prohibited within maritime zones.

### Article 4.

(1) Fishing may be carried out within maritime zones by persons of Indonesian nationality.

(2) Insofar as in such fishing activities watercraft is being used only watercraft under Indonesian flag may be use of, whereas all passengers and crew shall be of Indonesian nationality.

(3) By or on behalf of the Commander of the Navy may in exceptional cases, if so desired under thereto relevant conditions, grant exemption in whole or in part of the requirements denoted in the foregoing paragraph.

### Article 5.

By or on behalf of the Commander of the Navy, a fishing license may be granted to Dutch subjects for operating in maritime zones, if not contravening maritime interests. To natural persons who are not European subjects, or to legal persons subject to the regulations for Europeans, to business partnerships or by giving loans, to firms or shipping companies may by or on behalf of the Commander of the Navy licenses be issued under similar reservation, for conducting fishery in maritime zones in the undermentioned cases only:

1. when those on whom the prohibition meant in art. 3 is applicable, at the enforcement of this ordinance are conducting fishery as a legal profession (business) in the maritime zones for which a license on conducting fishery is required;

2. when it is sufficiently certain that fishery is being carried out only on behalf of scientific purposes or as a pastime;

3. when the interests of the Indonesian population will be much better served by granting such license;

(2) The license meant in paragraph (1) will be granted to the person on whose behalf or on whose account fishery will be conducted; it will not be transferable and will be legally invalidated at the death of the person to whom it was granted, without prejudice to the provision of the following paragraph;

(3) At the death of the licensee, his heirs or assignees will be entitled to continue fishery on the basis of the license given to the deceased, during at most three months, counted as of the date of the decease.

(4) The license will be issued for a period of at most five years but may at any time within said period be cancelled by or on behalf of the Commander of the Navy without giving reasons.

(5) If fishery is carried out by means of a ship or ships or watercraft, it will be valid only for the ship, ships or watercraft indicated in the license.

(6) The license may be subject to certain conditions.

#### Article 6.

(1) As proof that a permit as meant in art. 5, paragraph (1), is given, a license of the model designed by the Commander of the Navy will be issued.

(2) The license will mention:

a. the name of the person to whom, and the duration of the period for which the permit is given;

b. if the permit has been issued under conditions: the conditions to which the permit is subjected;

c. if fishery is carried out by means of a ship or ships or watercraft: the ship or ships or watercraft, to which the license refers;

d. if fishery is not carried out by means of a ship or ships or watercraft, the manner of carrying out such fishery.

#### Article 7.

(1) The master of a ship or watercraft, or his deputy, will be required, without prejudice to the provision of paragraph (2) of this article:

a. to take care that a valid license as meant in art. 6, paragraph (1), referring to his ship or watercraft, shall at any time be carried on board;

b. to show such license when so requested by persons who, generally or by virtue of this ordinance, are charged with the investigation on punishable acts.

(2) The provisions of paragraph (1) of this article does not apply on the master of a ship or watercraft by which fishery is conducted on account or on behalf of a person or institution assigned by the Commander of the Navy, to whom a license as meant in art. 5 paragraph (1) has been granted.

#### Article 8.

(1) The Commander of the Navy is authorized to prohibit or limit the fishing by those who are thereto entitled by articles 4 and 5, in maritime zones or parts thereof, also to prohibit or limit shipping in maritime zones or parts thereof.

(2) Measures as meant in the foregoing article will be published in the newspaper "Javasche Courant".

#### Article 9.

(1) It is prohibited to, without the permit or an order from or on behalf of the Commander of the Navy, carry out the following actions:

a. conducting land surveys or hydrographic gauging in Indonesian waters;

b. to make drawings or photographs within maritime zones, or to make drawings and photographs in such a manner that a maritime zone or part thereof is made visible on the drawing or photograph;

c. to collect data or evidence which refer to a maritime zone and which might be vital for defense purposes;

d. to land or take off in maritime zones -- outside water surfaces which by virtue of art. 4 of the "1932 Aviation Decree" (S 1933 No. 118) are closed or will be closed for aviation purposes -- with an airplane that does not belong to the Royal Navy or to the State, nor is being used in the service of the Royal Navy or the State.

(2) Foreign military are prohibited to enter into or stop by in maritime zones without a permit by or on behalf of the Commander of the Navy.

(3) The permits mentioned in the foregoing articles may be subjected to certain conditions.

(4) Such permits may at any time be cancelled by or on behalf of the Commander of the Navy without stating any reasons.

(5) (Toeg S 49-113) A permit as meant in paragraph (1) sub a. will not be required for land surveys and hydrographical gauging which are carried out by the Shipping Affairs Department.

#### Article 10.

(1) Without prejudice to the provisions of art. 11, it will be prohibited to the master of a ship or watercraft or his deputy, to anchor or float his ship or watercraft within maritime zones, unless it be necessary with regard to safe navigation.

(2) To masters, or their deputies, of ships or watercraft destined for fishing which are not, however, entitled thereto at that place, it is moreover prohibited to anchor or float their ships or watercraft in Indonesian territorial waters outside maritime zones, unless it be necessary with regard to safe navigation.

(3) By or on behalf of the Commander of the Navy a dispensation may be granted of the prohibitions mentioned in both of the foregoing articles, in exceptional cases and, if so desired, on certain conditions.

(4) All dispensations granted on the basis of the foregoing paragraph of this article will be legally cancelled if and insofar as they might be contradictory to a measure as denoted in paragraph (1) of art. 8, unless another day will be fixed as of the day after the date that said measure was published in the newspaper "Javasche Courant".

(5) In that case, though, dispensation of the prohibitions meant in paragraphs (1) and (2) may be granted on the basis of paragraph (3) of this article.

#### Article 11.

(1) Without prejudice to the provisions of the following paragraphs of this article, the prohibitions denoted in the paragraphs (1) and (2) of art. 10 are not applicable on:

- a. ships and watercraft belonging to the Royal Navy or the State, or being used in the service of the Royal Navy or the State;
- b. ships and watercraft, sailing under the flag of a state which is on a friendly footing with the Kingdom of the Netherlands, which are within the boundaries of a seaport's roadstead, also within the roadstead boundaries of a coastal place, which in line with the "1936 Dutch East Indies Shipping Act" (S No. 700) will be open for the ship concerned, or -- when these roadstead boundaries are not fixed -- at the usual roadstead of said seaports and coastal places;
- c. ships and watercraft, sailing under the Dutch flag, in places where the ships and watercraft denoted under b of this article may anchor as well as within the roadstead boundaries and -- if these are not fixed -- on the usual roadstead of a coastal place where a (sub)customs office is located, or (outside the customs area) an officer of the Interior Affairs Department or an (acting) customs officer is stationed;
- d. ships and watercraft, which are specifically used for fishing, insofar as concerns the maritime zone with in which they are allowed to carry out fishing in line with the articles 4 and 5 of this ordinance;
- e. sailing vessels under Dutch flag, being the property of one or more persons of Indonesian nationality and of whom all passengers and crew are of the same nationality, which have been registered in a seaport or a coastal place situated within the maritime zone, insofar as regards that maritime zone.

(2) By or on behalf of the Commander of the Navy, seaports and coastal places may be appointed within maritime zones where, deviating from the provisions of the foregoing

paragraph of this article, anchoring or floating of ships or watercraft will be prohibited on roadsteads at other places than are indicated by the harbor master.

(3) The provisions in paragraph (1) sub b. up to and including e. of this article are not applicable if and insofar as they would contravene a measure as meant in art. 8, barring a new dispensation granted on the grounds of paragraph (5) of article 10.

## Article 12.

(1) A penalty of at most three months or a fine of at most five hundred guilders will be imposed on:

- a. he who, without being entitled by a valid license granted to him according to art. 4, or on the basis of art. 5, conducts fishery within a maritime zone;
- b. he who contravenes paragraph (2) of art. 4, being not entitled according to paragraph (3) of said article;
- c. he who steals a license as meant in art. 6 paragraph (1), or surrenders such license to someone else against payment or gratis, for his own use or otherwise;
- d. he who does not comply with the conditions attached to the license granted to him on the basis of art. 5;
- e. he who does not comply with the obligations he is subject to according to paragraph (1) of art. 7;
- f. he who without being entitled thereto by any dispensation, violates provisions laid down in art. 8 as published.
- g. he who violates any prohibition laid down in art. 9, or does not comply with any condition attached to the license granted to him on the basis of said article;
- h. he who without being entitled thereto according to articles 10 and 11, anchors or floats his ship or watercraft within a maritime zone, or in Indonesian territorial waters.

(2) If in committing the punishable acts as mentioned in the foregoing paragraphs sub a, b, d and f, fishery is conducted using a watercraft, a penalty of at most three months custody or a fine of at most three hundred guilders will be imposed on:

- a. the passenger of the watercraft, unless it is acceptable that he has not taken part in said fishery nor has rendered direct or indirect support thereto;
- b. the leader of the fishing enterprise on which the watercraft is being used, unless he was not on board of the watercraft when the punishable acts were committed, and it is also acceptable that he had taken reasonable precautions to prevent such fishery;
- c. he who is on board being the deputy of the leader of the fishing enterprise with regard to such fishery;

(3) If in the cases denoted in the foregoing paragraph the leader of the fishery enterprise or the person being his deputy, is on board of the watercraft, the other passengers and crew will

be punishable only if they have purposely taken part in the fishing or have rendered direct or indirect support thereto.

(4) The punishable acts denoted in this article will be considered as offenses.

(5) The objects -- including ships or watercraft -- by which or with the support of which the punishable act was committed, also the objects which have been obtained thereby, may be confiscated.

(6) The maximum penalties mentioned in this article will be doubled if at the time of the offense being committed, no two years had yet elapsed since a previous sentence on the delinquent because of any of the offenses denoted in this article, had become final.

(7) If the punishable acts denoted in this article were committed by or because of a legal person, proceedings will be initiated and the penalty pronounced on the managers and directors residing in Indonesia, and in the absence of, or lacking these persons, on the representative of the legal person.

(8) The provisions of the foregoing paragraph will be accordingly applied in Indonesia with regard to legal persons, who act as the administrator or representative of another legal person.

#### Article 13.

(1) In charge of enforcing and supervision on compliance with the provisions of this ordinance are the Commander of the Navy at Surabaya, the commanders of HM warships and Navy airfields, the shipmasters of the ships of the Government Navy and the skippers of the ships of the Beacon and Coastlight Service, the persons subject to orders of these commanders, shipmasters and skippers, thereto provided with instructions by them, the officers of the Government Navy in command of a regional watercraft, harbour masters and officers acting as such, the pilots and connors of regional ships and other persons assigned by the commander of the Navy.

(2) Insofar as such will be necessary to ensure State rights, the officers of customs and excises will also be charged with enforcement and supervision as denoted in the first paragraph.

#### Article 14.

Except the persons, who are generally charged with investigations on punishable acts, the persons mentioned in the foregoing article, authorized to investigate acts deemed punishable by or on the basis of this ordinance, including violations on prohibitions concerning importation, exportation and transportation overseas, and of the punishable acts described in articles 167 and 168, insofar as these articles refer to illegally entering pilot station ships, lightships and coastlight structures, articles 196 - 199, 324 - 326, 438 - 443, 447 - 451, 473, 474 and 564 - 566 of the Criminal Code.

#### Article 15.

(1) The persons charged with investigations on the punishable acts mentioned in the foregoing article will be authorized, while observing the provisions of art. 17, to stop and search ships and watercraft of which passengers and crew are suspected to carry out or prepare activities violating the provisions stipulated by or on the basis of this ordinance, or of



offenses and crimes meant in the foregoing article. Insofar as concerns the conners of regional watercraft, such authorization does not extend further than on fishing vessels and any watercraft of less than 100 m<sup>3</sup> gross content.

#### Article 16.

Similar powers as described in the foregoing article may be exercised if a ship or watercraft in Indonesian waters behaves in such a manner that she is infringing on the security, the public order, and or other State interests, including giving reason to suspect any intent to such movements. Insofar as it concerns a ship of foreign nationality sailing in territorial waters, that ship may be ordered to leave those waters by the shortest possible or incidentally appointed route, if necessary by the use of force.

#### Article 17.

(1) Ships and watercraft other than Dutch or Indonesian ones, may barring the provisions of the second paragraph, only be stopped and searched while in Indonesian waters.

(2) The pursuit on a watercraft of foreign nationality because of its committing a punishable act, may, once initiated while the ship was in Indonesian territorial waters, also be continued outside thereof as long as it is not interrupted. The pursuit shall at any rate be discontinued as soon as the pursued ship is in territorial waters of a foreign nation.

(3) Prior to undertaking a pursuit as meant in paragraph (2), the undermentioned conditions shall be complied with:

1. by goniometry or any other method, no matter the place where the investigating officer finds himself, it must be made sure that the violating ship or any of its lifeboats, by which or by means of which the punishable act was committed, finds itself within Indonesian territorial waters.
2. a visual or sounded sign ordering to halt must be given within such distance that the foreign ship must be able to perceive the sign.

#### Article 18.

The ship or watercraft, together with passengers and crew, may be taken to a nearby Indonesian port in the following cases:

- a. when caught in committing an offense or violation as meant in art. 14, and also when behavior as meant in art. 16 is observed;
- b. if it is reasonably suspected that a punishable act as meant in art. 14 was committed, or behavior as meant in art. 16 has occurred, and that there is a risk that the ship will try to escape investigations by leaving the Indonesian territorial waters, taking flight or otherwise;
- c. if the ship is found within Indonesian territorial waters without possessing a valid nationality certificate or similar document;
- d. if the ship is found within Indonesian territorial waters without having a sailing permit, and with cargo aboard which is subject to custom duties to Indonesia;

e. if the ship destined for fishing activities, but not being entitled thereto in Indonesian waters, except in case of force majeure or distress, is found without a sailing permit.

#### Article 19.

By or on the basis of a government decree, provisions may be set forth, which shall be observed when exercising the powers meant in articles 13 - 18.

By S 35-525 the following is stipulated for the execution of art. 14 of the former ordinance, now art. 19:

##### Art. 1.

(1) Investigations on ships and watercraft to discover offenses and transgressions at sea may, except for urgent necessity, not be conducted between sunset and sunrise.

(2) Urgent necessity is always existent in case of catching in the act.

##### Art. 2.

(1) Of each investigation as meant in art. 1, a process verbal will be made, under the oath taken before the State by the government officer concerned upon accession to his service, or, insofar as it has not been taken, to be sworn in.

(2) The process verbal shall mention the reasons for the investigation and the findings obtained thereby, and will as accurate as possible indicate the position of the ship investigated at the time of investigation.

(3) Furthermore, the process verbal shall mention the most important particulars denoted on the certificate of registry, passport or other proof of nationality, tonnage certificate, and other documents shown at the investigation, by which the marks painted on the ship shall be compared with the data on the certificate concerned.

(4) Each investigation and its results will be recorded in the investigated ship's logbook, if any such book exists on board.

#### Article 20.

By or on the basis of a government decree, provisions may be specified regarding the registration of seagoing fishing vessels of foreign nationality, which are entitled to undertake fishery in Indonesian territorial waters or maritime zones, and regarding the signs and identification marks that such watercraft should carry. (S 38-201: regulation on registration of foreign fishing ships)

#### Article 21.

By or on the basis of a government decree, provisions may be specified for the protection of submarine telephone, telegraph and other kinds of cables, thus to prevent pollution of the seawater by ships, and other provisions in the interest of proper order and safe traffic in the Indonesian waters.