

PASSAGE REGIMES UNDER UNCLOS AND MONTREUX CONVENTION

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OVERVIEW

- Innocent Passage in the Territorial Sea
- Transit Passage through Straits used for International Navigation
- Archipelagic Sea Lanes Passage
- Freedom of Navigation
- Passage under the Montreux Convention

INNOCENT PASSAGE

- Ships of all states enjoy the **right of innocent passage** through the territorial sea
- Passage is **innocent** so long as it is **not prejudicial to the peace, good order or security of the coastal state** (Article 19(1))
- Coastal state **shall not hamper the innocent passage** of foreign ships through the territorial sea except in accordance with UNCLOS (Article 24)

NON-INNOCENT PASSAGE (1)

- Any threat or use of force
- Any exercise or practice with weapons of any kind
- Any act aimed at collecting information to the prejudice of the defence or security of coastal state
- Any act of propaganda aimed at affecting the defence or security of the coastal state

NON-INNOCENT PASSAGE (2)

- The launching, landing or taking on board of any aircraft
- The launching, landing or taking on board of any military device
- 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

NON-INNOCENT PASSAGE (3)

- Willful and serious pollution fishing activities;
- Research or survey activities
- Any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal state
- Any other activity not having a direct bearing on passage

SPECIAL PASSAGE RULES IN TERRITORIAL SEA

- **Submarines** are required to navigate on the surface and to show their flag (Article 20)
- **Foreign nuclear-powered ships** and ships carrying nuclear or other inherently dangerous or noxious substances shall carry documents and observe special precautionary measures established for such ships by international agreements (Article 23)

COASTAL STATE RIGHTS IN TERRITORIAL SEA

- May **prevent passage** which is **not innocent** (Article 25(1))
- May **temporarily suspend** passage if:
 - Without discrimination among foreign ships;
 - In specified areas of its territorial sea;
 - Essential for the protection of its security, including weapons exercises (Article 25(3))

TRANSIT PASSAGE THROUGH STRAITS USED FOR INTERNATIONAL NAVIGATION

- All ships enjoy the right of transit passage
- Transit passage **cannot be suspended**
- Littoral states cannot impede transit passage
- Ships exercising transit passage must refrain from any activities other than those incident to their **normal modes** of continuous and expeditious transit
- All ships exercising transit passage must comply with **generally accepted international rules and standards** on safety and ship-source pollution

TRANSIT PASSAGE THROUGH STRAITS USED FOR INTERNATIONAL NAVIGATION

- Includes **overflight** for aircraft
- **Submarines** can transit in **normal mode** of transit – submerged
- **Cannot be suspended**
- Coastal state laws on safety and pollution may only “**give effect to**” international rules and standards

ARCHIPELAGIC SEA LANES PASSAGE

- Ships and aircraft enjoy the **right of archipelagic sea lanes passage** through the archipelago on (or over) routes normally used for international navigation
- Archipelagic sea lanes passage is almost identical to transit passage
- Outside designated sea lanes, ships enjoy **innocent passage** for the purpose of transiting the archipelagic waters

ARCHIPELAGIC SEA LANES

- Archipelagic states may designate **archipelagic sea lanes** through their archipelagic waters
- Once archipelagic sea lanes are designated, the right of archipelagic sea lanes passage may only be exercised through those designated lanes
- If no archipelagic sea lanes are designated, right of archipelagic sea lanes passage may be exercised through the **routes normally used for international navigation**

FREEDOM OF NAVIGATION

- **In the EEZ, all states enjoy the freedoms referred to in article 87 of navigation and overflight, and other internationally lawful uses of the sea related to these freedoms and compatible with the provisions of this Convention (Article 58)**
- **Articles 88 to 115 and other pertinent rules of international law apply to the EEZ in so far as they are not incompatible with this Part**

ARTICLE 35(C) EXCEPTION

- Article 35(c) of UNCLOS states that “straits regulated in whole or in part by **long-standing international conventions in force**” are exempt from Part III and the transit passage regime under UNCLOS

1936 MONTREUX CONVENTION

- Governs the navigation of warships, merchant vessels, and aircrafts through the **Straits of Dardanelles, Bosphorus** and the **Sea of Marmara** (collectively known as the **Turkish Straits**)
- Article 24 of the Montreux Convention allows Turkey to regulate the passage of warships through the Straits
- Privileges given to six **Black Sea Powers** (Turkey, Romania, Bulgaria, Georgia, Russia and Ukraine)

APPLICABILITY

- Peacetime (Articles 10-18)
- Wartime and when Turkey is not a party to the war (Article 19)
- Wartime but when Turkey is a party to the war (Article 20)
- When there is a threat of imminent danger of war to Turkey (Article 21)

PEACETIME (1)

- All foreign warships enjoy the right to transit the straits but Non-Black Sea Powers are subject to **certain general restrictions**, e.g., restrictions on the class, tonnage, and duration of stay

PEACETIME (2)

- It does not allow any access for the **submarines or aircraft carriers of non-littoral states**
- It does not allow for the passage of **aircraft carriers** of the **Black Sea states**, but it does permit the navigation of their **submarines** in **exceptional circumstances** and on the condition that they **navigate on the surface during daytime** and are **not escorted by another vessel**

WARTIME (1)

- When Turkey is neutral, warships of all countries shall have access to the Straits **except those belonging to the belligerent states.**
- Exception: passage of warships of belligerent states is allowed through the Straits if:
 - (i) A belligerent state is rendering assistance to a state victim of aggression, or
 - (ii) warships belonging to belligerent states are returning to their bases.

WARTIME (2)

- When Turkey is neutral, merchant vessels under any flag or with any kind of cargo, shall enjoy freedom of transit and navigation in the Straits (Article 4)

WARTIME (3)

- When Turkey is a belligerent, Turkey has **absolute discretion** to regulate the passage of warships, whether belonging to the Black Sea powers or not (Article 20)
- Merchant vessels not belonging to a country at war with Turkey shall enjoy freedom of transit and navigation in the Straits on condition that they do not in any way assist the enemy – enter the straits by day and may have to follow designated routes

WARTIME (4)

- Article 21: When Turkey **deems itself under a threat of imminent danger of war**, Turkey must allow vessels separated from their bases to return by transiting the Straits, unless such vessels belong to a State whose attitude led to the imposition of Article 21
- It must also notify the High Contracting Parties and the Secretary General of the League of Nations (Present Day UN) before exercising its powers under Article 21

Terima kasih!