

*The Transit Passage System in light of the United Nations  
Convention on the Law of the Sea*

نظام حركة المرور العابر في ضوء اتفاقية الأمم المتحدة لقانون البحار

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ملخص:

من ضمن ما عالجته القانون الدولي للبحار موضوع السفن و الطائرات عبر البحار من خلال التعرض بالتفصيل لكل من المرور الحر، والمرور البريء، والمرور العابر، وذات القانون نظم عملية المرور هذه من خلال التأكيد على وجوب الخضوع لجملة من القواعد الإجرائية المحكمة القائمة على الحقوق والواجبات، والتي جانب منها يتعلق بنظام المرور العابر الذي ينفرد بكونه لصيق ومرتبطة بالمائق الدولية في مناطق محددة في البحار مقارنة بباقي حالات المرور البحرية الأخرى حيث تتراوح طبيعتها في الولوج من منطقة إلى أخرى بين الحرية الكاملة كما هو الحال في أعالي البحار، والحرية المقيدة في حالة المرور بالبحر الإقليمي للدولة الساحلية، والتي تفرض أن يكون المرور بريئا لا يمس بنظامها و أمنها وفق ما ورد في قواعد و أحكام القانون الدولي.

كلمات مفتاحية:

المرور العابر، المضيق، قانون البحار، المرور البريء.

**Abstract:**

*The subject of ships and airplanes traveling across the oceans is one of the matters covered by international law of the sea, by discussing in detail the concepts of innocent passage, freedom of passage, and transit passage. International law regulates these processes by emphasizing the need to adhere to a set of strict procedural rules based on rights and obligations. Part of this regulation concerns the transit passage system, which is closely linked to international straits in specific maritime areas, compared to other forms of maritime transit. The nature of*

*transit can range from full freedom, Similar to the high seas, passage via a coastal state's territorial sea is subject to limited freedom and must be innocent and not interfere with the state's system or security, as required by international law's norms and standards.*

**Keywords:**

*transit passage, strait, law of the sea, innocent passage.*

**Introduction:**

Since ancient times, the seas have been of great interest to nations, and on their shores, the greatest human civilizations have emerged. The importance of the seas has increased over time, evolving from being a means of transport linking countries for trade and travel to becoming a diverse source of livelihood for humans, thanks to the scientific advancements following the industrial revolution in Europe. In recent years, maritime passages have represented the route for 61% of the world's energy production, particularly petroleum and oil products. (Ben Issa 2014, 419)

Based on this, many international agreements have given great importance to maritime matters, especially regarding the movement of ships, with a focus on transit passage through international straits, allowing ships of all types and aircraft to pass without discrimination or preference for one state over another, provided the passage is quick, continuous, and does not affect the legal system governing the waters that form the international straits. (Blout 2014/2015, 143).

Thus, transit passage is considered a new concept compared to many other concepts and systems in international maritime law. Therefore, it is essential to study the concept and scope of this system, along with identifying the legal regulations governing it. For that reason we pose the following problematic : **What is the definition of the concept of transit passage, and what are the rights and obligations of various coastal and other states during the exercise of such passage ?**

In this regard, several scientific research methods have been employed, primarily the descriptive method to clarify the concept of the subject under study according to international law and jurisprudence, alongside the historical method to understand the evolution of this system, and the analytical method to precisely determine the rights and obligations of different countries.

According to what has been mentioned above, the main axes of the topic include a comprehensive overview of the definition of transit passage, how it is practiced, and what are the rights and obligations of the coastal states as established by international law of the sea. This study is manifested through its division into two main chapters: the first being the conceptual framework of transit passage, and the second addressing the legal controls governing such passage and comparing it with various maritime navigation systems, specifically innocent passage.

**Chapter One: The Concept of Transit Passage and Its Scope of Application:**

In comparison to various maritime transit systems, the system of transit passage in international waters falls within the category of modern classifications of maritime transit systems, in line with what has been established by international agreements related to the Law of the Sea.

In order to address this topic as outlined by international law in general, regarding the definition of transit passage and its scope of application in the seas, we will aim to study the definition of transit passage according to what has been established by international maritime law, which is the result of various efforts made in this field. Additionally, we will highlight the evolution of this system since its emergence in the 17th century and the stages it went through up to its codification about half a century ago.

#### **First Requirement: The Definition of Transit Passage and Its Origin:**

Transit passage was not at all a product of the navigation systems previously known in the doctrine or practice of international maritime law. The United Nations Convention on the Law of the Sea and the work of international law from the 16th century have established it as one of the systems. In an effort to balance the opposing stances of nations that defined the debates over passage through straits utilized for international navigation, the Third United Nations Conference on the Law of the Sea introduced the term "transit passage" in its suggestions.

To address the above and through a detailed examination of the legal and terminological meaning of transit passage, as well as the efforts made for its establishment to distinguish it from other maritime systems, particularly the system of innocent passage, we will address the topic as follows:

#### **Section One: Definition of Transit Passage:**

In an effort to bridge the divergent viewpoints that defined the debates over passage through straits used for international navigation, the term "transit passage" was chosen to be used during the presentation of the proposals discussed at the Third United Nations Conference on the Law of the Sea.

In accordance with Article 38, a single definition of transit passage was created as a result of the conference participants' efforts. It defines as follows in paragraph 2 of the 1982 Law of the Sea Convention: "The exercise of the freedom of navigation and over flight in accordance with this part for the sole purpose of continuous and expeditious passage through the strait between one area of the high seas or exclusive economic zone and another area of the high seas or an exclusive economic zone." (Aboul Wafa 2006, 317).

From the content of the above article, it may be deduced that transit passage gives ships and airplanes permission to utilize the international strait's waters, provided that the passage is swift and uninterrupted. Any activity that violates this condition or violates the convention's transit passage rules would be subject to the regulations set forth by the coastal state for the entry of its territorial sea. Consequently, transit passage is not fundamentally different from the general concept of freedom of navigation, except that what distinguishes it is that it is practiced within

a clear legal framework and specific, precise regulations outlining the rights and duties of each party. (Abdel Salam, Jaafar; 1981, 113).

In its 1946 decision on the Corfu Channel issue between Albania and the United Kingdom

the International Court of Justice evaluated this marine transit system in light of the aforementioned legal definition. The ruling established a principle forming the basis of the transit passage doctrine, which is that, under international customary

law, states are generally entitled, in times of peace, to pass their warships through straits connecting two parts of the high seas without requiring prior permission from the coastal states, provided that the passage is innocent, and unless there is an international treaty stating otherwise. As a result, a state cannot prevent passage through international straits during peacetime. (Summary of Judgments 1991, 2).

Furthermore, international scholars have made efforts to define transit passage. Some consider it "a recognized right for ships and submarines to traverse straits used for international navigation freely." Other definitions point out that it is "the right for all ships and aircraft to exercise freedom of navigation and over flight without obstacles, for the purpose of expeditious and continuous passage through straits connecting areas of high seas or exclusive economic zones." Another definition describes it as :

The right for all ships and aircraft to exercise

freedom of navigation and over flight without interference, for the single purpose of continuous and rapid passage through straits connecting one area of the high seas or an exclusive economic zone with another area of the high seas or an exclusive economic zone."

From this definition, it is clear that it distinguishes between the function of the strait as a passageway that must remain open for all ships and aircraft, and the surrounding waters, which are considered exclusive economic zones or high seas.

It is also defined as :

“ the exercise of freedom of navigation and over flight for the purpose of rapid and continuous passage through straits linking areas of high seas or exclusive economic zones, or for entering and exiting the territorial waters of the coastal state ” (PANCRACEE 1997, 105).

Some scholars believe that the 1982 Convention established rules for transit passage through certain types of straits used for international navigation, determining the conditions under which this freedom is exercised, with regulations similar to those for the freedom of the high seas, while considering certain restrictions that ships and aircraft must adhere to while exercising this freedom. ( bin Sulaiman al-Abri 1995, 86).

### **Section Two : The Emergence of the Transit Passage System:**

The various connections that brought people together through the use of seas in different forms of movement and commercial exchanges became numerous, and at times contradictory due to conflicting interests.

With the development of maritime navigation, the ambitions of states to control marine areas, even those far from their coasts and adjacent straits, increased. The scholar Hugo Grotius addressed the issue of straits in his book published in 1625 in Latin, entitled *De jure belli ac pacis*, in which he argued that coastal states have the right and authority to control parts of the high seas. (Mahmoud Al-Hajj 2011, 170).

This was followed by the efforts of Houttequy, a strong advocate for the freedom of navigation in straits during the 19th century, who considered the sea free, the strait free, and the sea common for all nations. He affirmed that a coastal state should not obstruct free navigation or impose any conditions or fees on ships, even if it controls both shores of a strait connecting two seas or if the strait is narrow enough to be covered by territorial waters.

Based on these efforts by international legal scholars to establish this maritime system, the Straits and Canals Committee at the Inter-Parliamentary Union received a report prepared by Garcia in 1913 during a meeting in Paris. After receiving the report, the committee concluded that the freedom of commercial navigation for all nations in straits and canals is firmly part of modern international law without dispute.

The focus on navigation through straits was not limited to the efforts of scholars but was also supported by numerous countries through various agreements, notably regional agreements. One such agreement was the agreement that Argentina and Chile made in 1881 about the Strait of Magellan, one of the world's most significant sea lanes that links the Atlantic and Pacific oceans. Likewise, agreements were reached over the Bosphorus and Dardanelles straits in Turkey, which link the Black Sea to the Sea of Marmara and the Sea of Marmara to the Mediterranean.

The most recent of these agreements was the Montreux Convention, signed on July 20, 1936, which ended the international committee established by the Treaty of Lausanne, enabling Turkey to reclaim and fortify the straits (Awad Khalifa 2013, 148), despite later Soviet demands for amendments to find a passage to the Mediterranean Sea (Mohamed Ali 2016, 4).

International efforts in the form of treaties to regulate the rules related to passage through maritime corridors began in the era of the League of Nations. The issue was clearly addressed in Article 23, which stipulated that member states must adopt measures to ensure and protect the freedom of transportation and passage, as well as fair trade treatment for each and every League member. According to paragraph three of Article 38 of the Statute of the Permanent Court of International Justice and the present court, the idea of the freedom of international corridors is regarded as one of the fundamental tenets of international law (Mahmoud Al-Hajj 2011, 181).

After World War II, the efforts to codify international rules governing the use of seas among various nations continued. In this context, The International Law Commission tackled the problem of navigation in international straits when the United Nations assigned Geneva to prepare a draft agreement on the Law of the Sea. "The innocent passage of foreign ships shall not be suspended in international straits used for international navigation between a part of the high seas and another

part of the high seas or the territorial sea of a foreign state," reads paragraph four of Article 6 of the first United Nations Convention on the Law of the Sea, which was held in Geneva in 1958 and addressed the territorial sea and the contiguous zone." Perhaps the most significant achievement in supporting the legal framework was the third Law of the Sea conference, where navigation through international straits was one of the main discussion topics. nations' opinions differed; some pushed for free passage via international straits, while others supported the adoption of the innocent passage principle to protect the sovereignty of coastal nations. The United Nations Convention on the Law of the Sea, which created a comprehensive system for maritime navigation through international straits and developed the regulations for the transit passage system in straits connecting parts of the high seas or other areas, was finally finalized in 1982 after lengthy discussions. (Mahmoud Al-Hajj 2011, 189).

An important development which ultimately led to the consolidation of the concept of transit passage as an accepted rule was the joint initiative of the United Kingdom and Fiji in UNCLOS III in 1975 to establish the Private Working Group on Straits used for International Navigation ("Private Group"). The Private Group consisted of some 17 delegates from moderate maritime powers and strait states. Although major maritime powers such as the USA and the USSR and radical strait States such as Spain and Indonesia were not invited or directly involved, the Private Group consulted most of them on all relevant issues. The efforts of the Private Group resulted in a "consensus" text which, with some modifications, was incorporated into the Informal Single Negotiating Text ([7 May 1975] Third UN Conference on the Law of the Sea Official Records vol 4, 152). Although the controversies over the regime of transit through straits continued until the conclusion of the work on UNCLOS III in 1982, the straits provisions of the Informal Single Negotiating Text were eventually incorporated, without significant modification, into Part III of the United Nations Convention on the Law of the Sea. A major development which ultimately led to the consolidation of the concept of transit through straits as an accepted rule was the joint initiative of the United Kingdom and Fiji in UNCLOS III in 1975 to establish the Private Working Group on Straits used for International Navigation ("Private Group"). The Private Group consisted of some 17 delegates from moderate maritime powers and strait states. Although major maritime powers such as the USA and the USSR and radical strait States such as Spain and Indonesia were not invited or directly involved, the Private Group consulted most of them on all relevant issues. The efforts of the Private Group resulted in a "consensus" text which was incorporated, with some modifications, into the Informal Single Negotiating Text ([7 May 1975] Third UN Conference on the Law of the Sea Official Records vol 4, 152).

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### **Second Requirement: Scope of the Transit Passage System:**

The United Nations Convention on the Law of the Sea states that the transit passage system only applies to international navigational straits that link one area of the high seas or an exclusive economic zone with another area of the high seas or an exclusive economic zone. (Awad Khalifa 2013, 114).

Given the foregoing, it is imperative that the idea of the strait as a crucial location for ship passage or airplane flying be thoroughly investigated. In addition to defining the geographical and functional criteria that make straits suitable for the transit passage system, in line with this internationally recognized maritime system for all non-coastal states.

### **Section One: Definition of International Straits:**

The definition of an international strait given at the Conference for the Codification of International Public Law was "the legal aspect that qualifies this maritime passage to be considered an international strait." The strait must have a restricted width, which means that it cannot be wider than twice the area of the territorial sea of the states that surround it. Consequently, a strait is not regarded as an international strait and is not subject to the specific system for international straits; rather, it is controlled by the Law of the Sea if its width is greater than twice the size of the state's territorial sea. (Al-Haddad Al-Hattawi 2020, 416).

The Geneva agreement on the Territorial Sea and the Contiguous Zone is the result of a general agreement on the Law of the Sea that was drafted by the International Law Commission in 1958 after being tasked by the UN. "The innocent passage of foreign ships shall not be suspended in straits used for international navigation between a part of the high seas and another part of the high seas or the territorial sea of a foreign state," read Article 16, paragraph 4, which addressed the problem of navigation through international straits.

The third conference on the Law of the sea followed, where the theme of navigation through the international strait is one of its important and essential questions. The discussions between countries have revealed many different views:

a group recommended to apply the principle of innocent passages through international straits in the context of coastal sovereignty, while another group asks for freedom through international straits used to navigate internationally. These discussions took a long time until the 1982 United Nations Convention on the Sea Law established a complete maritime navigation system in the international strait and developed rules of transit systems through international straits connecting areas of the sea or exclusive economic regions. "In transit is a continuous and fast walkway through the strait, which means the judgment for any reason is only authorized for the sentence to be imposed by miserable or inviolable situations." (Mahmoud Al-Hajj 2011, 189).

Among the scholars who determined the international strait, is the French scientist Gilbert Gidel, who reviewed that from the geographical point of view, a strait is a limited maritime walkway between the two land areas, regardless of the nature of the earth or the width of the aisle. Legally, he considered a strait to be any natural passage between two shores that does not exceed a certain width, allowing

connection between two maritime areas. It is not important whether these areas belong to one sea or two seas, nor is it significant whether the passage is between an island and a territory, between two islands, or a group of islands. (Luncchini and Voelckel 1990, 387).

From the above, it can be inferred that both international legal theory and practice consider an international strait to be a natural maritime passage that serves international navigation, separating two land areas and connecting parts of the high seas. (Mahmoud Al-Hajj 2011, 142).

One of these basic conditions is that the strait must be part of the sea, in addition to other essential conditions that will be the subject of study in the following.

### **Section Two: Determining the Criteria for International Straits Used for International Navigation:**

Through the examination of the regulations governing the use of straits as outlined in the 1958 Convention and the 1982 Convention, we can conclude that the legal status of straits varies depending on the maritime areas they connect. Based on the two aforementioned conventions, the criteria that must be met for straits used in international navigation can be determined as follows:

#### **First: The Geographical Criterion:**

According to this criterion, a strait is considered international if it lies between high seas or parts of them. A number of treaties, including the 1857 Copenhagen Convention concerning the Danish straits, the 1881 Buenos Aires Treaty concerning the Strait of Magellan, the 1846 Washington Treaty concerning the Juan de Fuca Strait, the Anglo-French Declaration of 1904 concerning the Strait of Gibraltar, and the 1929 Harvard Draft Convention on Territorial Waters, specifically mention this idea. It was first included in the first draft of the Convention on the Law of the Sea, which was prepared by the Institute of International Law in 1897. Professor Jaafar Abdel-Salam argues that defining a strait through the geographical criterion by specifying the width of the strait is not sufficient legally. He mentioned that "a narrow natural passage between two lands connecting two seas or large bodies of water"

is not a complete legal definition because it does not specify the width of the strait. Additionally, he pointed out that straits may raise legal issues if their width is narrow sufficient to be measured part of the national waters of a coastal state. If the canal lies within the territorial seas and does not cross any state's territorial sea, then it does not pose any issues, as the principle of freedom of navigation applies to the high seas.

For a strait to be considered an international strait, its width must be at least 24 nautical miles.

As a result, the 1958 Geneva Convention on the Territorial Sea further broadened the geographical criterion by stating in paragraph 4 of Article 16: "Maritime passages connecting parts of the high seas with other parts of the high seas or with the territorial sea of a foreign state" (this added a new

geographical element by taking into account straits that connect the high seas with a foreign state's territorial sea). The scope of transit passage was expanded by this legislation, which went against international conventions and the ruling of the International Court of Justice in the Corfu Channel case.

International straits were not specifically defined by the 1982 Law of the Sea Convention, however this is implied by Articles 37 and 45. Straits utilized for international traffic between areas of the high seas or an exclusive economic zone and other areas of the high seas or an exclusive economic zone are covered by this section, according to Article 37. According to the next article, it also applies to straits that are utilized for international navigation or that are situated between a foreign state's territorial sea and areas of the high seas or an exclusive economic zone.

When finding the international strait in the 1949 Corfu Channel dispute between Albania and the United Kingdom, which was brought before the International Court of Justice, the application of the geographical criterion was also evident in international jurisprudence. The court's ruling was clear: " It appears that the decisive criterion is derived from the geographical situation of the strait, considering that connects parts of the high seas, in addition to being used for international navigation."

The court favored the geographical factor over the functional factor in formulating the definition. It did not require the strait to be a necessary route between two parts of the high seas, but it was sufficient for it to be a useful, or even an alternative, route. The court rejected the notion that traffic volume or the strait's significance for international navigation was a deciding element, instead considering the geographical requirement to be the primary criterion for an international strait.

### **Second: The Legal Criterion:**

strait's width cannot be greater than twice the breadth of the territorial sea of the state or states that border it. According to Article 36 of the 1982 United Nations Convention on the Law of the Sea, any strait utilized for international navigation is deemed such if a way via an exclusive economic zone or a route for the high seas is appropriate in terms of hydrography and features.

Therefore, a strait that exceeds this width, with a stretch of high seas along its length, is not considered a strait and does not fall under the system governing international straits.

### **Third: The Functional Criterion:**

The functional element is a criterion that gives a strait an international character, specifically directing it towards international navigation. This means that its use is not limited to the state or states bordering it but should be a passage used by countries that cannot do without it, as established by international maritime law.

A strait's international use may be determined by a variety of variables, including the number of ships that sail through it, their tonnage, the material worth of their cargo, their approximate size, and whether or not they are from a significant number of nations. The Danish scholar "Erik Bruel" views this functional criterion by stating that the international status of a strait applies only to those straits that play a

significant role in international maritime trade. A strait is considered international if its associated interest has a broad international nature. He concludes that there are only a limited number of straits that possess this characteristic.

In the Corfu Channel decision, the International Court of Justice upheld this, ruling that even if a strait is not a vital and required route for passage between two regions of the high seas, its usage is enough to qualify it as international. The significance of this criteria was demonstrated by the court's attention on the strait's real usage for international navigation.

According to the court's ruling, ships from the following nations—Greece, Italy, Romania, Yugoslavia, France, Albania, and the United Kingdom—clearly used the strait for international navigation.

As a result the court's decision was based on two factors: the quantity of ships that were traversing the strait and the number of flags that represented the nations of these ships.

Regarding these criteria, the 1982 Law of the Sea Convention did not propose any novel ideas. In line with the International Court of Justice's decision in the Corfu Channel case, it upheld the same stance as the 1958 Geneva Convention. Countries like Algeria, Canada, and India were among those who pushed for the introduction of a description of this use as "traditional use," despite attempts by some states taking part in the Third United Nations Conference on the Law of the Sea to restrict the expansive interpretation of this element.

## **Chapter Two : Legal Controls Governing the Transit Passage System and Its Distinction from Other Passage Systems:**

The transit passage system is undoubtedly subject to a set of legal controls, whether related to ships and aircraft during their transit passage through a strait used for international navigation, or the rights and obligations of the coastal states bordering the strait. Additionally, there are a number of features that make it distinct from other maritime passage systems, particularly the concept of innocent passage.

### **First Requirement: Rights and Obligations of States Exercising Transit Passage:**

The transit passage through international straits gives rise to a series of obligations that non-coastal states must adhere to when using their ships and aircraft. In return, the coastal states bordering international straits enjoy several rights and are obligated to fulfill various duties. This is what we aim to clarify through the following:

#### **Section One: Obligations of Ships and Aircraft During Transit Passage:**

Upon reviewing Article 39, the obligations of ships, aircraft, and submarines during their transit passage through the straits of coastal states and the areas connected to them become clear. These obligations can be outlined as follows:

##### **1. Transit at Moderate Speed :**

Ships and aircraft must pass through the strait at a moderate speed without stopping. Stopping in the strait poses security risks to the coastal states and obstructs the movement of traffic in the strait due to its narrowness.

## **2 .Avoidance of Acts of Aggression :**

The General Assembly Resolution No. 1314, dated December 14, 1974, defines acts of aggression and allows the state that is subject to such acts to exercise its right to self-defense (Fatlawi 2009, 210). If a state bordering the strait faces an act of aggression by a ship or aircraft transiting the strait, it is entitled to use its armed forces to defend itself and counter the aggression.

## **3 . Refraining from Unusual Activities:**

Ships must refrain from carrying out any unusual activities during transit. This means that ships and aircraft must transit swiftly and continuously through the strait unless an exceptional situation arises due to force majeure or critical conditions. For instance, ships or aircraft should not engage in maneuvers or movements that could raise suspicion or obstruct navigation, nor should they dump nuclear waste or store weapons in the strait. (Fatlawi 2009, 211).

## **4 . Compliance with Navigation Systems :**

Ships and aircraft must adhere to the specific instructions provided by the coastal states concerning the proper conduct of navigation, especially regarding safety systems to avoid collisions within the strait.

## **5 . Compliance with Global Regulations :**

Ships and aircraft must follow internationally accepted systems to prevent pollution of the strait's waters by ships or air pollution caused by aircraft. They should avoid dumping waste into the strait and should have devices to filter the air and waste disposed of. Additionally, ships involved in the transportation of oil must take precautions to prevent oil spills in the strait. The prevention of pollution during the passage of ships is manifested by prohibiting the discharge of oils, waste oil, and other harmful substances in the strait.

## **6 . Observance of Aircraft Navigation Rules :**

Aircraft transiting over the strait must apply the air traffic rules established by the International Civil Aviation Organization (ICAO) and adhere to safety measures to avoid collisions. This is especially important because air traffic routes can be crowded. Aircraft must maintain constant communication with ground control and ensure coordination of flight movements over the strait. (Fatlawi 2009, 212).

It is worth noting that Article 40 of the same agreement notifies foreign ships transiting the strait to refrain from engaging in activities related to research or surveying without prior authorization from the coastal state. (Amer 2003, 543).

In summary, the countries that exercise the right of transit passage bear a set of obligations that must be adhered to. These obligations are outlined in Articles 39 and 40 of the United Nations Convention on the Law of the Sea. They include the commitment not to threaten or use force against the sovereignty, territorial integrity, and political independence of states bordering the straits .

**Section Tow : Rights and Obligations of Coastal States on the Strait:**

The same convention, in Article 39 and the following articles, grants coastal states that border international straits used for maritime navigation a set of rights in exchange for a set of obligations, which can be detailed as follows:

- Coastal states may designate maritime corridors within the straits for use in navigation and establish the necessary regulations to enhance the safety and orderly flow of traffic. In practice, this requires the cooperation of the International Maritime Organization (IMO). (Amer 2003, 599).
- These states also have the right to re-designate new maritime corridors to replace old ones and modify the navigation systems when necessary, provided that such changes are properly announced .
- When a strait is shared by two or more countries, they are required to cooperate with one another and consult with the relevant international organization to formulate navigation methods and regulations.
- Coastal states may establish regulations to prevent or reduce pollution and regulate or ban fishing activities in the strait.
- Coastal states have the right to prevent the loading or unloading of goods, cargo, or people in violation of the customs, tax, immigration, or health of the adjacent coastal states bordering the strait.

The coastal states must adhere to the principle of non-discrimination between ships of any particular nationality. This means that any regulations or systems they issue should apply universally to all ships, without exception, and without any preferential treatment. The coastal states must ensure that, when establishing regulations and laws, they do not deny the right to transit passage or obstruct or hinder it in any way. Instead, they should inform the states using the passage of these regulations and provide sufficient and reasonable notice. ( Mohamed Daoud 1999, 151).

Coastal states must notify other states of any hazards they are aware of that may threaten navigation or flight in or over the strait.

Lastly, coastal states bordering a strait subject to the transit passage regime must cooperate with one another to establish and maintain necessary means for facilitating navigation and safety. This includes making improvements to aid international navigation, prevent pollution from ships, and control it. This cooperation may also extend to the states using the strait.

Additionally, Article 44 of the aforementioned convention obliges coastal states to avoid obstructing transit passage through the strait. They must refrain from any actions that could hinder transit passage. Furthermore, they are required to announce any hazards they are aware of that could threaten navigation or flight inside or over the strait, without resorting to suspending the transit passage regime.

**Second Requirement : The Distinction of the Transit Passage Regime from the Innocent Passage Regime :**

Compared to various maritime passage regimes mainly the innocent passage, the transit passage system is formally defined as the exercise of the freedoms of navigation and overflight, exclusively for the purpose of continuous and expeditious transit through an international strait that connects one segment of the high seas or an Exclusive Economic Zone (EEZ) to another segment of the high seas or an EEZ. This right is to be exercised in accordance with the standard operational modes employed by vessels and aircraft for such passage.

Consequently, the transit passage associated with maritime straits is distinguished by several features and characteristics when compared to other traffic systems, which can be succinctly summarized as follows:

### **Scope of Navigation:**

The transit passage regime applies to both maritime and aerial navigation, whereas the innocent passage regime is limited to maritime navigation and does not include the passage of aircraft through straits more over this passage is related only to foreign vessels within the territorial sea of a coastal State is delineated as "navigation through the territorial sea for (a) traversing that sea without entering internal waters or making a call at a roadstead or port facility outside internal waters, or (b) proceeding to or from internal waters or making a call at such roadstead or port facility." Such passage must be characterized as "continuous and expeditious"; however, it may encompass stopping and anchoring when incidental to ordinary navigation or necessitated by extraordinary circumstances (Malhorta 2020) .

#### **- Submarines :**

There is no distinction made between submarines that pass across the strait underwater or on the surface under the transit passage regime. Submarines must, however, sail on the surface and fly their flag under the innocent passage rule.

#### **- Interference by Coastal States :**

The coastal state cannot stop or hinder transit passage, while it can do so under the innocent passage regime if it determines that the passage is not "innocent" or for security reasons, following specific procedures and conditions.

#### **-Navigation Routes:**

The coastal state can designate specific maritime routes or divide traffic, taking into account recommendations from relevant international organizations, in the case of innocent passage. In contrast, under the transit passage regime, the coastal state cannot adopt such measures unless approved by the relevant international organization.

#### **-Restrictions on Nuclear-powered Ships :**

There are specific restrictions on the passage of ships operating on nuclear power or carrying nuclear or dangerous materials under the innocent passage regime. In the case of transit passage, however, there are no such restrictions, as long as the coastal state is not threatened.

#### **-Regulatory Authority of Coastal States:**

Coastal states have broader authority to enact laws and regulations concerning the organization of innocent passage, while their powers are more limited in the case of transit passage. Coastal states can adopt laws and regulations concerning the passage of vessels through straits, with respect to all or any of the following matters such as navigation safety and the regulation of maritime traffic, as stipulated in Article 41, or to prevent, reduce, and control pollution by implementing applicable international regulations regarding the discharge of oil, oily waste, and other harmful substances in the strait, concerning fishing vessels, and to prohibit fishing, including the storage of fishing gear.

**-Fees :**

International agreements allow coastal states to impose fees on ships passing through their waters in exchange for services under the innocent passage regime. However, such fees are not mentioned in the context of transit passage.

Accordingly, littoral states bordering straits are also not entitled to impose fees of any nature whatsoever on ships and aircraft in transit, with the exception of fees imposed in the context of providing services and guidance during their passage to another maritime zone.

**-Judicial Decisions :**

Detailed judicial rulings exist concerning disputes related to ships during innocent passage cases. In contrast, there are no clarifications regarding transit passage in such legal contexts. (Mahmoud Al-Hajj 2011, 197).

It can be observed from the above that transit passage grants greater freedom to foreign ships in the territorial waters of a strait compared to what they may enjoy under the innocent passage rule, and less freedom than what can be exercised under the principle of freedom of the seas. The function of this concept is to achieve a balance between the interests of coastal states, particularly regarding environmental, security, and safety considerations on one hand, and the interests of other states in exercising freedom of navigation and overflight on the other hand (Said Mahmoud 2021).

It is worth noting that paragraph four of Article 35 of the 1982 Convention stated that the rules governing straits in this convention do not affect the legal regime of straits that are regulated entirely or partially by long-standing special international agreements. Most of these agreements pertain to straits located in strategic areas, such as the Strait of Gibraltar, the Strait of Magellan between Chile and Argentina, the Norwegian straits, and other straits that are regulated by international agreements.

**Conclusion:**

In summary, the evolution of this marine passage system has been emphasized by this research on transit passage under the United Nations Convention on the Law of the Sea and its distinction from other maritime passage regimes, especially innocent passage, in terms of the rights and obligations established by international law for all parties, whether coastal states bordering straits or others. This distinction

significantly contributes to the precise definition of the transit passage system, as it is related to straits that experience high-density ship traffic and air traffic.

Additionally, we came to the conclusion that the numerous agreements under the United Nations Convention on the Law of the Sea, as well as regional and international treaties, have to some extent, succeeded in regulating these international passages as outlined earlier. This has contributed to reducing tensions between countries due to conflicting interests in these sensitive maritime areas close to the territorial seas of certain states, which experience intensive and varied maritime activities. This regulation has ensured adherence to legal provisions aimed at maintaining international peace and security, making international straits a key link for stability across nations.

This study notes that, despite the apparent general acceptance of the right of innocent passage as an applicable rule for straits, it cannot be denied that there are some differences of opinion among states regarding its implications and application. These include varying interpretations of the right of overflight over straits, the assumption that the right of innocent passage applies even to approaches to straits, and the coastal state's ability to restrict international navigation to only one strait when several other straits are equally suitable for international navigation—such as Greece in the Aegean Sea and Russia in the Sea of Okhotsk—as well as the conditions and extent of the coastal state's enforcement powers in straits under Article 233 of the United Nations Convention on the Law of the Sea, among other examples. Therefore, even if the right of innocent passage appears to have been accepted as general international law, its precise content and scope of application have not yet been fully resolved.

However, we also believe that it would be prudent to reexamine and modify the 1982 Convention on the Law of the Sea's legal provisions, notably those pertaining to the transit passage system, especially within the territorial sea. Given that the Convention was created in 1982 and came into effect in 1992, it has been over four decades since its establishment, during which time there have been numerous developments and new international circumstances that require updating and revision of the agreement.

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