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THE RIGHT OF TRANSIT PASSAGE THROUGH OR EVER INTERNATIONAL STRAITS

Abstract

One of the topics under discussion at the Convention on the Law of the Sea is the passage of the Straits used for international navigation. The law covering the international strait is important because the width of the territorial sea is expected to be up to 12 miles. If this extension is agreed upon, its effect will be to cut off the territorial waters, the Straits of 24 miles or less in width.

By extending the sovereignty of the states adjoining the international strait, the strait, which used to be a corridor for high-altitude navigation, would retain the properties of sovereign property. In anticipation of this expansion in the territorial waters, the United States has said it will vote in favor of the 12-mile limit, which is a key condition - that the right to free movement through the international strait be recognized. The concept is sufficient to protect the interests of both the international community and the coastal states.

The conflict between the two ideologies raises fundamental questions about the use of the sea in an area where the conflict of international and local interests is very real. The purpose of this article is to examine the interests involved in the Strait question and to suggest a solution to the conflict, emphasizing the interests of the coastal states.

Key words: *international straits, transit rights, transition rights, modern times, international System*

Səmral Saləddin qızı Kazımlı

BEYNƏLXALQ BOĞAZLARDAN VƏ YA ONLARIN ÜZƏRİNDƏN TRANZİT KEÇİD HÜQUQU

Xülasə

Dəniz Hüququ Konvensiyasında müzakirə olunan mövzulardan biri də beynəlxalq naviqasiya üçün istifadə edilən boğazların keçididir. Beynəlxalq boğazı əhatə edən qanun vacibdir, çünki ərazi dənizinin eninin 12 milədək olacağı gözlənilir.

Beynəlxalq boğaza bitişik dövlətlərin suverenliyini genişləndirməklə, əvvəllər yüksək hündürlükdə gəmiçilik üçün dəhliz olan boğaz suveren mülkiyyət xüsusiyyətlərini saxlayacaq. Ərazi sularında bu genişlənmə ərafəsində Birləşmiş Ştatlar əsas şərt olan 12 mil limitinin lehinə səs verəcəyini bildirib - beynəlxalq boğazdan sərbəst hərəkət hüququnun tanınması. Konsepsiya həm beynəlxalq ictimaiyyətin, həm də sahilyanı dövlətlərin maraqlarını qorumaq üçün kifayətdir.

İki ideologiya arasındakı ziddiyyət beynəlxalq və yerli maraqların toqquşmasının çox real olduğu bir ərazidə dənizdən istifadə ilə bağlı fundamental suallar doğurur. Bu məqalənin məqsədi boğaz məsələsində iştirak edən maraqları araşdırmaq və sahilyanı dövlətlərin maraqlarını vurğulayaraq, beynəlxalq boğazlardan keçid hüququ, habelə bu sahədə münaqişələrin həllini təklif etməkdir.

Açar sözlər: *beynəlxalq boğazlar, tranzit hüquqları, müasir hüquqlar, müasir dövr, beynəlxalq sistem*

Introduction. This article focuses on the broad principles of freedom of the high seas and the application of navigation rights, as stated in the LOSC, in certain circumstances which allow coastal states to impose certain restrictions on freedom of navigation.

These rights, including the “innocent route” and the “transit route”, are important to US trade and military operations, which are central to US national security interests. The United States is not a party

to the LOSC, but sees the provisions of the Convention as a reflection of customary international law on the rights of the seas and navigation, which is binding on all states.

This section analyzes the legal definition of safe passage of ships through territorial waters and discusses relevant LOSC articles on safe passage. It then outlines the legal definition of transit through the international strait and discusses relevant LOSC articles on transit. The right to navigate ships and airplanes from peninsular sea routes is also part of the freedom of navigation framework within the LOSC, but will not be discussed in depth here. Illegal restrictions imposed by coastal states on some of the world's hottest waters.

The right to pass innocent

The right of passage for foreign ships in the territorial waters of a coastal state is defined as “navigation through territorial waters for the purpose of (a) road without entering inland waters or out of inland waters. Crossing this ocean without calling the shore or port facility. Or (b) Calling inland waters or similar roadstead or port facility. Passage must be “continuous and fast”, but It can be paused and anchored when it is in normal navigation or when necessary due to unusual circumstances [Bing J., 2018, s.77].

Article 19 of the LOSC declares that the passage is “innocent” unless it is biased for the peace, good order, or security of the coastal state and outlines a list of 12 other activities that are considered “biased”. - This list effectively prevents multiple military operations, including weapons exercises or drills; Collection of information on coastal state bias; Launching, landing or boarding any aircraft or military device; And jamming coastal state communications. Submarines and underwater vehicles should walk on the innocent road and show their flag. It is important to note that the right of innocent passage only applies to foreign ships. Innocent planes are not entitled to pass in flight and thus the aircraft must remain on the plane during innocent passage.

Exceptions to the right to deny passage of an aircraft exist within the limited context of the “right to enter the aid”, on the basis of which mariners have a long-recognized duty to be at risk or distress at sea. Provide immediate rescue assistance to those affected. The right of auxiliary entry allows the entry into the territorial sea by ship or, in certain circumstances, by air without the permission of the coastal state for limited rescue or relief purposes. This principle of customary international law is also reflected in the “obligation to provide assistance” as defined in Article 98 of the LOSC [Bing J., 2018, s.135].

The right of passage applies to the strait used for international navigation, according to the LOSC, and cannot be suspended in the event of an armed conflict. The right of passage also applies to peninsular waters, but may be subject to a temporary suspension to protect the security of the coastal state.

Coastal state laws and regulations relating to innocent passage

Article 24 prohibits coastal states from blocking the passage of foreign ships through territorial waters unless specifically authorized by other articles of the LOSC. Coastal states are also prohibited from discriminating between states or cargoes of different nations. However, the LOSC allows coastal states to adopt laws.

And the following is a list of conditions relating to territorial sea crossing (Juntenen P.K., 2019: 56):

Navigation Safety and Maritime Traffic Regulation;

Protection of navigational aids and facilities and other facilities or installations;

Protection of cables and pipelines;

Protection of marine living resources;

Prevention of violations of coastal state fishing laws and regulations;

Protection of the coastal state's environment and prevention, reduction and control of its pollution;

Marine scientific research and hydrographic surveys;

Prevent violations of coastal state customs, financial, immigration or sanitary laws and regulations;

Sea collision prevention including the use of designated sea lanes and traffic separation schemes; And Foreign nuclear-powered ships and vessels required to carry documents to carry nuclear or other naturally hazardous or harmful substances, and special precautions established for such ships by international treaties.

Coastal state protection rights

A coastal state may take the necessary steps to prevent the passage of its territorial waters which is not innocent and if the suspension is necessary for security reasons, including weapons exercises, the passage of innocents through a necessary public notice. May announce a temporary suspension.

Although the text of the relevant articles of the LOSC does not explicitly authorize the passage of warships, the overall language of the LOSC makes it clear in the context of its negotiating history and traditional international law that warships Enjoy the right to sin. Passing on uninterrupted and unannounced grounds [Juntunen P.K., 2019, s.59].

However, if a warship does not comply with the rules of the coastal state in accordance with the established principles of international law and ignores the request for compliance, the coastal state will immediately release the warship from the territorial sea.

Due to the sovereign immunity of warships (which is further discussed in Chapter Six: Sovereign Immunity), it is not clear to what extent the coastal state can force a warship out of its territorial waters in this situation. Furthermore, the coastal states cannot impose transit restrictions or otherwise violate the right of passage for sovereign ships powered by nuclear power.

Different interpretations of the innocent passage

Numerous LOSC articles that address innocence have led to different interpretations by states. For example, some coastal states interpret Article 19 (1), which allows innocent passage, to prohibit many activities that are not explicitly listed under Article 19 (2). Another question of interpretation is whether the coastal state may need foreign ships to carry cargo that passes through an impassable route that enables the coastal state to monitor the movement of ships. Some observers have argued that the provision of LOSC does not prevent the coastal state from implementing such a measure.

These contentious issues arise from the negotiations that took place before the adoption of the LOSC, which kept the interests of the naval powers at odds with the coastal states. The naval powers insisted on more freedom of navigation, but the coastal states argued for the ability to restrict movement under certain conditions to protect the interests of the coastal states.

Right of way

The right of transit is defined as the exercise of freedom of navigation and overflight, for the purpose of continuous and rapid transit through the international strait between the high seas or part of the EEZ only. In the common modes of operation used by aircraft and aircraft for such passage.

A waiver of the right of transit declares that “if the Strait is formed by an island in a state adjacent to the Strait and its mainland, this right shall not apply” and There is a special economic zone of similar convenience in terms of navigational and hydrographic features.

The coastal state cannot obstruct or suspend transit for any purpose during peacekeeping. This applies to displacement ships, including warships of states engaged in armed conflict with another state in a state of peace with the border coastal state. The right of transit passage in peacetime, in accordance with the laws and regulations of the states bordering the Strait adopted under international law, continues to apply during armed conflict. However, during transit, fighters should not take offensive action against enemy forces, nor should they use such neutral waters as a shelter or base of operations [3].

It is important to note a few important differences between innocent transit and transit, especially in relation to military operations, and to highlight the fact that there may be fewer restrictions on transit than on innocent transit. Although there is no right of passage for an airplane, and coastal states may refuse entry to an airplane attempting to pass through airspace on its territorial waters, they do allow transit for an airplane over an international strait. Can't refuse to pass.

In addition, while coastal states may require submarines to cross the surface innocently and display their flag, they cannot prevent submarines from sinking and transiting. Another difference is that the transit passage cannot be suspended by the coastal state, while the innocent passage can be temporarily suspended.

Duties of aircraft and aircraft during transit

Ships and aircraft that exercise the right of transit (a) will pass through or above the Strait without delay, (b) to refrain from any threat or use of force against the sovereignty, territorial integrity, or political independence of the states bordering the Strait; And (c) refrain from any activity other than these in the normal manner of their continuous and rapid transport unless necessary by force or inconvenience [Juntunen P.K., 2019: 13].

Surface warships can operate in a manner that involves sound naval exercises and force protection, including their electronic reconnaissance and naval equipment such as radar, sonar, and deep sound devices, formation steaming, and Aircraft launching and recovery.

Laws, Regulations and Duties of Transit Border States

Foreign ships are required to obtain permission from the coastal states that cross the Strait before conducting any research or survey activities using the right of transit. States adjacent to the Strait have the power to establish seaborne and traffic separation schemes where necessary for the safe passage of ships in the Strait used for international navigation (4). Warships, auxiliaries, and government ships that operate on special government services, such as autonomous defense ships, are not legally required to comply with such maritime and traffic separation schemes during transit, but they do.

Coastal states have the power to adopt laws and regulations regarding the passage of the Strait, with reference to one of the following [8]:

- (a) Navigation Safety and Maritime Traffic Regulations, as provided in Article 41.
- (b) Pollution prevention, reduction and control by enforcing applicable international regulations regarding the discharge of oil, oil waste and other hazardous substances into the Strait;
- (c) with regard to fishing vessels, fishing prevention, including storage of fishing equipment;
- (d) Loading or unloading of any item, currency or person in violation of the customs, financial, immigration or sanitary laws and regulations of the states bordering the Strait.

It is the duty of the states bordering the Strait not to obstruct transit and to adequately publicize any threat that they are aware of passing through or above the Strait.

Conclusion. The FON program offers a balance of diplomatic costs and benefits that include physical challenges. In some cases, the costs, disadvantages, or risks that come with excessive claims that are physically challenging may outweigh the benefits. Of course, the coastal states understand this calculation and may try to use it to their advantage as they have the incentive to force the international community to recognize their excessive maritime claims.

Continued investment in the FON program, including diplomatic protests against illegal claims and continued FON actions to challenge these claims, is essential to the protection of key maritime rights under LOSC and customary international law. The United States has urged allies such as Japan, South Korea and Australia to join the FON program, but has so far refused to operate. The United States should continue to pursue this goal because the message conveyed through FON operations will be stronger when more states send it.

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