NIMA RESEARCH REPORT
NRR-11-21-13
November 2021

Study on Right of Innocent Passage and Conditions of Entry in Pakistani Ports/Waters

National Institute of Maritime Affairs (NIMA)
Bahria University, Pakistan

Category: Research Study Report

Title: Study on Right of Innocent Passage and Conditions of Entry in Pakistani Ports/Waters

Lead Author:

Ali Abbas, Commodore (Retd), Director NIMA (Karachi)[1]

Co-Author:

Madiha Naim, Research Associate NIMA[2]

First Edition: November 2021

Property Rights: National Institute of Maritime Affairs, Karachi

Disclaimer:

The content of this publication does not necessarily reflect the views or policies of NIMA and neither do they imply any endorsement. The opinions expressed in the paper are solely those of the author and publishing them does not in any way constitute an endorsement of the opinion by the NIMA. Authors are responsible for their citing of sources and the accuracy of their references and bibliographies. The editors / reviewers cannot be held responsible for any lacks or possible violations of third parties' rights.

[1] Director at National Institute of Maritime Affairs (NIMA) reachable at director.ncmpr@bharia.edu.pk
[2] Research Associate at National Institute of Maritime Affairs (NIMA) reachable at madihanaim@gmail.com

All rights reserved. No part of this Research Study may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or information storage and retrieval system, without prior written permission of the publisher.

A publication of the National Institute of Maritime Affairs (NIMA) - an independent and non-profit think tank.

In the Research /Paper series, the NIMA publishes solicited / unsolicited research findings meant to stimulate discussion and create awareness on issues in the sphere of maritime affairs and sustainable development. The reports / papers are written by NIMA's regular or affiliated staff / consultants and are meant to provide clear-cut action oriented outlines which would promote peace, prosperity and sustainable development.

National Institute of Maritime Affairs (NIMA) is a constituent unit of Bahria University. The establishment of NIMA under the aegis of Bahria University was conceived in order to meet the objectives of National Maritime Policy. The NIMA is envisioned to serve as a focal point in Pakistan, as well as in the region for the promotion of maritime sector by defining and translating the debates of the region into peace, prosperity and sustainable development.

Contact Information:-

NIMA – National Institute of Maritime Affairs
Bahria University, Head Office
Islamabad - Pakistan
Tel: +92 51 9261968 Fax: +92 51 9261968
Email : director.ncmpr@bahria.edu.pk
madihanaim@gmail.com
URL : https://www.bahria.edu.pk/nima

Table of Contents

1. Introduction 1
2. Freedom of High Seas and the relevant Principles. 2
3. Freedom of Navigation 4
   - 3.1 Right of Innocent Passage 4
   - 3.2 The Lawful Limitations on Innocent Passage 5
   - 3.2.1 Innocent Passage Laws and Regulations in Coastal State 5
   - 3.2.2 Coastal State Rights of Protection 6
   - 3.3 Right of Transit Passage 6
   - 3.3.1 Ships and Aircraft Duties during Transit Passage 7
   - 3.3.2 Transit Passage Laws, Regulations, & Duties of States Bordering Straits 7
4. Definitions and Categories for Goods Containing Hazardous Materials 8
   - 4.1 When the hazardous material cargo regulation is put in place 9
   - 4.1.1 Innocent passage – Protection of the marine environment 9
   - 4.1.2 The Rights of Innocent passage – Flag States 10
   - 4.1.3 The Right and Duty of Innocent Passage - Coastal States 11
   - 4.1.4 Coastal States – Prior Notification Rights 11
5. Regulatory framework carriage of hazardous material by ships 12
6. Case Studies – 2021 incidents on blockage of innocent passage 13
   - 6.1 Case Study 1 – UK Navy warship committed border violated at northern coast off Crimea in the Black Sea and Russia's Disturbing Actions on Innocent Passage in the Black Sea 13
   - 6.2 Case Study 2 – US warship's 'illegal' sea passage into the South China Sea 15
   - 6.2.1 Chinese Stance 15
   - 6.2.2 The US Navy Stance 16
   - 6.2.3 A summary of sailing via the Paracel Islands 16
   - 6.3 Case Study 3 – US Navy violates Indian law by entering Indian waters without consent 16
   - 6.4 Case study of M.V. Heng Tong 77 drifted to Karachi Shore 18
7. Pakistan Law Defining Conditions of Entry of Ships in Pakistan Territory - Territorial Waters and Maritime Zones Act, 1976 19
8. Analysis 20
9. Conclusion 22
10. Recommendations 23

RIGHT OF INNOCENT PASSAGE AND CONDITIONS OF ENTRY IN PAKISTANI PORTS/WATERS

1. Introduction

The law of the sea is a branch of public international law that governs the geographical jurisdictions of coastal nations as well as states' rights and obligations in the use and conservation of the ocean environment and its natural resources. The UN Conventions on the Law of the Sea (UNCLOS), negotiated under the aegis of the United Nations, was signed in 1982 by 117 states and went into force in 1994. Currently, 133 countries have signed and ratified the UN Convention on the Law of the Sea; among those that have not ratified are Canada, Israel, Turkey, the United States, and Venezuela.

UNCLOS is best understood as a framework that provides a fundamental basis for international ocean law that will be developed and built upon via more specific international agreements. These expansions have already begun to develop, making the rules of the sea wider, more complicated, and more comprehensive than UNCLOS alone. The law of the sea differs from two closely related areas of law: maritime law and admiralty law. Maritime law is the private law that governs ships and commercial shipping enterprises. Admiralty law, which is sometimes used interchangeably with maritime law, governs the private law of navigation and shipping in inland waters.

Freedom of navigation and Innocent passage issues have always found to be important areas of discussions amongst the experts and intellectuals of the subject. There are several provisions in the UNLOSC addressing innocent passage that lead to various interpretations, which are done differently by the coastal states and the flag states whose ship intend to pass various zones of the coastal states. The points of conflict arise generally the extent of security concerns, gravity of pollution, and preservation of ecology and marine environment, etc. Ships carrying nuclear and other hazardous material are another are another issue of concern. Coastal states are of the point of view that any spillage will have grave ecological damage, such as permanent radioactive contamination, to its marine environment. Moreover, responsibilities have been clarified with respect to salvage measures in the event of a spill of these noxious substances, or with respect to ships whose mere presence in the territorial sea pose grave threats to the marine environment owing to their unseaworthiness, etc. It is doubtful whether the UNLOSC permits the characterization of a foreign ship's passage in the territorial sea as non-innocent if it fails to carry such equipment as required by the coastal state. Several incidents in the recent past were seen whereby the foreign ships caused oil spillage/pollution and other environmental hazards in Pakistani waters, which proved extremely dangerous acts with regards to environmental degradation.

The purpose of this study is to explore the origins, status, and recent development in international law regarding the innocent passage of ships passing through the territorial seas of foreign countries and the conditions of foreign ships entry into Pakistani ports/waters. Given the modern trend among many countries around the world to claim

increasingly wide territorial seas on one hand, and the maximum flexibility, in the name of freedom of navigation, sought by the transpassing foreign ships, the innocent passage has become increasingly important in international maritime interactions and the laws governing the subject.

2. Freedom of High Seas and the relevant Principles.

The term "high seas" means all parts of the sea that are not included in the territorial sea or the internal waters of a State[1]. Ships of all nations enjoy freedom of navigation on high seas, however, it is very difficult to provide or proclaim absolute freedom at sea. Whereas freedom is a relative term, it involves limitations as well as rights. Accordingly, there is a wide divergence of opinion as to what the term freedom of sea means.[2]

The concept of the freedom of the high seas has been a central issue in a variety of international conflicts. In the 16th and 17th centuries, various disagreements occurred between the Dutch, British, Portuguese and the Spaniards over the sea space jurisdictions and the interpretation of the freedom of the seas. However, in the 18th and 19th centuries, the principle of the freedom of the seas acquired widespread acceptance, along with the idea that each coastal state should be entitled to exercise its sovereignty over a limited belt of the sea adjacent to its coasts. [3] Before the Second World War century, this principle did not give rise to many contentious issues. However, after the Second World War again a new trend of limiting the freedom of the seas emerged, the main reasons for these limitations being the influence of modern technology on the uses of the sea.

To understand the legal aspects of the freedom of the seas, it is necessary to deal at least in general terms with the different present-day and potential uses of the seas. The other most important issue which deserves consideration is the nature and scope of the freedom of the high seas. Thereafter the following aspects of the principle of the freedom of the seas are considered important: the freedom to use the high seas as an area of communication; the freedom to exploit the natural resources of the high seas; the freedom to use the high seas for peaceful purposes other than as an area of communication or the exploitation of natural resources; and the freedom to use the high seas for military purposes.

The principle of freedom of the high seas in the modern law of the sea is covered in UNCLOS Part VII articles 87 and 89. Article 89 declares that any claims of sovereignty to any parts of the high seas by any state are invalid and Article 87 guarantees the freedom of high seas to all states whether coastal or land-locked including the freedoms of navigation, overflight, laying of submarine cables and pipelines, construction of artificial

---

[1] https://www.jus.uio.no/english/services/library/treaties/08/8-01/high-seas-convention.xml

[2] What is meant by freedom of Seas by Arthur Garfield Hays, The American Journal of International Law Vol. 12, No. 2 (Apr., 1918), pp. 283-290

[3] As regards the nature and scope of the coastal State's rights over adjacent waters in history, see J. K. Oudendijk, Status and Extent of Adjacent Waters. A Historical Orientation, Leyden 1970

islands, scientific research, and fishing. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention concerning activities in the Area.

The principle of freedom of the seas has two fundamental implications, namely, freedom from national jurisdiction and freedom of activities, with the latter ensuring the right of every state to utilize the high seas.[4] Freedom from national jurisdiction and freedom of activities also implies that no single state, nor the group of states, is empowered to lay claim to control over a specific area of the high seas, thus negating the possibility of adopting conservation measures in an area of the high seas that are binding on third states and that might interfere with the free use of the high seas by such third states. The principle, therefore, by its very nature directly undermines conservation on the high seas in circumstances where states might disagree on the nature and extent of conservation measures to be adopted.

Crucially, however, the freedom as expressed in the UNCLOS is not absolute. Rather, the specific freedoms detailed in the UNCLOS are to be practiced by the rules and regulations set out in various parts of the UNCLOS governing those specific freedoms. In particular, the freedom of fishing is to be exercised subject to Part VII, section 2, of the UNCLOS, which sets out (part of) the conservation duty. Furthermore, the freedoms must be exercised subject to other rules of international law and with due regard for the rights and jurisdictions of other states.[5]

In modern law of the sea, therefore, the principle continues to play a major role in the governance regime of the high seas, albeit freedom of use is no longer unlimited and is subject to specific limitations set out in the UNCLOS and general rules of international law. There is no unrestricted right to engage in activities on the high seas, and the conservation duty imposed on states by the UNCLOS represents one specific limitation on the principle of freedom. However, the coastal states jurisdictions and sovereignty and the fragmented manner in which the UNCLOS explains this along with their relationship with the traditional freedom and, specifically, the extent to which it limits this freedom, is generally unclear. However, the broad principles of freedom of the high seas and navigation rights, have been outlined in the UNCLOS, within specific situations that permit coastal States to impose some limitations on freedom of navigation including "innocent passage" and "transit passage.[6]

---

[4] Y. Tanaka, The International Law of the Sea (Cambridge: Cambridge University Press, 2012), at 150.

[5] UNCLOS, supra note 2, Articles 87(1) and (2) provide that several of the enumerated freedoms are subject to rules set out elsewhere in UNCLOS and that the freedoms must be exercised with due regard for the rights of other states and the rights with respect to the Area (defined in Article 1 as the seafloor area beyond national jurisdiction)

[6] United Nations Convention on the Law of the Sea, Articles 87, 90, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

3. Freedom of Navigation

Two separate terms have been highlighted in the UNCLOS 1982, i.e. the 'freedoms' of navigation and 'rights' of navigation. Freedom provides relatively superior liberty as compared to the rights. Innocent passage through the territorial sea is a 'right' of navigation subject to numerous restrictions. UNCLOS Part III Article 34 introduces the regime of transit passage through straits used for international navigation. This overcame a limitation created by the extension of the maximum width of the territorial sea to 12 nautical miles, which meant that many straits around the world, including the Straits of Hormuz, became enclosed within the territorial sea of the bordering states, and thus subject to the restrictive Innocent passage regime. Transit passage cannot be suspended and allows for access by all ships and aircraft in their normal mode of operation. In particular, ships and aircraft are restricted to routes normally used for international navigation. Unlike transit passage, archipelagic sea lane passage is also described in UNCLOS as a 'right', rather than a 'freedom'.

3.1 Right of Innocent Passage

"Navigation through the territorial sea for (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility" is the definition of the right of innocent passage for foreign vessels within a coastal state's territorial sea. Passage must be "continuous and speedy," but it may involve stops and anchoring when necessary due to unexpected conditions or as a result of typical navigation.[7] This would mean that ships taking passage with intension to enter a country's internal waters or any of the ports would not fall under the category of innocent passage, but it would have to abide by other similar laws and conditions specified by the coastal state being approached for entry.

Article 19 of the UNCLOS declares passage "innocent" as long as it does not jeopardise the coastal state's peace, good order, or security, and lists a list of 12 actions that are considered "prejudicial." This list effectively prohibits a variety of military operations, including training or exercising weaponry, gathering information to the detriment of the coastal state, launching, landing, or boarding any aircraft or military device, and jamming coastal state communications. Submarines and undersea vehicles that are passing through in good faith must navigate on the surface and display their flag. It's worth noting that the innocent passage privilege only applies to foreign vessels. The innocent passage does not apply to aeroplanes in flight, hence aircraft must remain on board vessels during the innocent passage.[8]

---

[7] UNCLOS, Articles 17-18

[8] Naval Warfare Publication 1-14M, The Commander's Handbook of the Law of Naval Operations, "General Maritime Regimes Under Customary International Law as Reflected in the 1982 UNCLOS," 2-4.

An exception mentioned in UNCLOS to deny innocent passage to aircraft exists within the limited context of the "right of assistance entry"[9] based on the long-recognized duty of mariners to render immediate rescue assistance to those in danger or distress at sea. The right of assistance entry permits entry into the territorial sea by ships or, under certain circumstances, aircraft without permission of the coastal State for the limited purposes of rescue or assistance. This principle of customary international law is also reflected in the "duty to render assistance" described in Article 98 of the UNCLOS.[10] Again the validity of this intension is very difficult to be determined by the coastal state and as such can exploited especially by the some military ships.

The right of innocent passage, as defined by the UNCLOS, extends to straits used for international navigation and cannot be interrupted, even in the event of armed conflict. The right of innocent passage applies to archipelagic waters as well, but it is subject to temporary stated suspensions for the sake of coastal state security.[11] Any such laws and regulations, as well as all commonly acknowledged international regulations relating to the presentation of a collision at sea, must be followed by foreign ships passing through the territorial sea in an innocent manner.[12]

3.2 The Lawful Limitations on Innocent Passage

3.2.1 Innocent Passage Laws and Regulations in Coastal State

UNCLOS Article 24 prohibits coastal States from obstructing the innocent passage of foreign ships through the territorial sea unless specifically authorized by other Articles of UNCLOS. The Coastal States are also prohibited from discriminating among States or cargoes from different nations.[13] However, UNCLOS permits coastal States to adopt laws and regulations related to passage through the territorial sea in the following stated list of circumstances:

3.2.1.1 The safety of navigation and the regulation of maritime traffic;

3.2.1.2 The protection of navigational aids and facilities and other facilities or installations;

3.2.1.3 The protection of cables and pipelines;

3.2.1.4 The conservation of the living resources of the sea;

3.2.1.5 The prevention of infringement of the fisheries laws and regulations of the coastal State;

3.2.1.6 The preservation of the environment of the coastal State and the prevention, reduction, and control of pollution thereof;

3.2.1.7 Marine scientific research and hydrographic surveys;

3.2.1.8 The prevention of infringement of the customs, fiscal, immigration, or sanitary laws and regulations of the coastal State;

---

[9] Chairman of the Joint Chiefs of Staff Instruction 2410.01D, "Guidance for the Exercise of Right-of-Assistance Entry", August 31, 2010.

[10] UNCLOS, Article 98.

[11] UNCLOS, Articles 52-53

[12] UNCLOS, Article 21

[13] UNCLOS, Article 24

3.2.1.9 Prevention of collisions at sea including the use of designated sea lanes and traffic separation schemes; and
3.2.1.10 Require foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances to carry documents and observe special precautionary measures established for such ships by international agreements.[14]

Despite the broad governing authority outlined above, Article 26 of UNCLOS prohibits the imposition of charges levied upon foreign ships for only their passage through the territorial sea unless a ship receives services rendered by the coastal State for which payment is due, such as refuelling or maintenance.

3.2.2 Coastal State Rights of Protection

A coastal State may take necessary steps in its territorial sea to prevent passage that is not innocent and may announce temporary suspensions of innocent passage through a required public notice if the suspension is essential for security reasons, which include weapons exercises.[15] While the relevant articles of the UNCLOS do not explicitly grant the right of innocent passage to warships, the overall language of the UNCLOS in the context of its negotiation history and customary international law all make it clear that warships enjoy the right of innocent passage on an unhindered and unannounced basis.[16]

However, if a warship entering a coastal state does not comply with the coastal State regulations and disregards a request for compliance that is made to it, the coastal State may require the warship to leave the territorial sea immediately.[17] Though, the extent to which a coastal State can force a warship to exit its territorial waters in this situation is not clear in UNCLOS. Additionally, coastal States may not prohibit transit or otherwise impair the rights of innocent passage of nuclear-powered sovereign vessels.[18]

3.3 Right of Transit Passage

The right of transit passage is defined as the exercise of the freedoms of navigation and overflight, solely for the purpose of continuous and expeditious transit through an international strait between one part of the high seas or an EEZ and another part of the high seas or an EEZ, in the normal modes of operation utilized by ships and aircraft for such passage. An exception to the right of transit passage declares that the right "shall not apply if the strait is formed by an island of a State bordering the strait and its mainland" and "there exists seaward of the island a route through the high seas or an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics."[19] Transit passage cannot be hampered or suspended by the coastal State for any purpose during peacetime. This also applies to transiting ships, including warships, of States at peace with the bordering coastal State but involved in

[14] UNCLOS, Articles 21-23.
[15] UNCLOS, Article 25.
[16] Naval Warfare Publication 1-14M, 2-5.
[17] UNCLOS, Article 30.
[18] Naval Warfare Publication 1-14M, 2-5.
[19] UNCLOS, Article 38.

armed conflict with another State. The right of transit passage applicable in peacetime, along with the laws and regulations of States bordering straits adopted in accordance with international law, continue to apply during armed conflict. However, during transit belligerents must not conduct offensive operations against enemy forces, nor use such neutral waters as a place of sanctuary or as a base of operations.[20]

It is important to note a few key differences between innocent passage and transit passage that are particularly relevant to military operations and to highlight the fact that fewer restrictions may be imposed on transit passage when compared to innocent passage. While there is no right to innocent passage for aircraft, and coastal States may deny entry to aircraft attempting to traverse airspace over their territorial waters, they may not deny transit passage to aircraft over an international strait.

In addition, while coastal States may require submarines to conduct innocent passage on the surface and show their flag, they may not prohibit submarines from conducting transit passage submerged.[21] Another difference is that transit passage may not be suspended by the coastal State[22], whereas innocent passage may be temporarily suspended.[23]

3.3.1 Ships and Aircraft Duties during Transit Passage

Ships and aircraft exercising the right of transit passage shall

3.3.1.1 Proceed without delay through or over the strait;

3.3.1.2 Refrain from any threat or use of force against the sovereignty, territorial integrity, or political independence of States bordering the strait; and

3.3.1.3 Refrain from any activities other than those incidents to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress.[24]

Surface warships may transit in a manner consistent with sound navigational practices and the security of the force, including the use of their electronic detection and navigational devices such as radar, sonar, and depth sounding devices, formation steaming, and the launching and recovery of aircraft.

3.3.2 Transit Passage Laws, Regulations, & Duties of States Bordering Straits

Foreign ships are required to obtain prior authorization of the coastal States that border straits before carrying out any research or survey activities while exercising the right of transit passage.[25] States bordering straits have the authority to establish sea

[20] San Remo Manual, Articles 27-30.
[21] Naval Warfare Publication 1-14M, 2-6
[22] UNCLOS, Article 44
[23] UNCLOS, Article 25
[24] UNCLOS, Article 39.
[25] UNCLOS, Article 40.

lanes and traffic separation schemes where necessary to promote the safe passage of ships in straits used for international navigation.[26]

Warships, auxiliaries, and government ships operated on exclusive government service, i.e., sovereign-immune vessels, are not legally required to comply with such sea lanes and traffic separation schemes while in transit passage, but they must exercise due regard for the safety of navigation. The Coastal States may not prohibit transit or otherwise impair the right of transit passage of nuclear-powered sovereign vessels.

The Coastal States have the authority to adopt laws and regulations relating to transit passage through straits, with respect to all or any of the following:

3.3.2.1 The safety of navigation and the regulation of maritime traffic, as provided in Article 41;

3.3.2.2 The prevention, reduction, and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes, and other noxious substances in the strait;

3.3.2.3 With respect to fishing vessels, the prevention of fishing, including the storage of fishing gear;

3.3.2.4 The loading or unloading of any commodity, currency, or person in contravention of the customs, fiscal, immigration, or sanitary laws and regulations of States bordering straits.[27]

States bordering straits have the duty not to hamper transit passage and to give appropriate publicity to any danger to navigation or overflight within or over the strait of which they know.[28]

4. Definitions and Categories for Goods Containing Hazardous Materials

In recent years, there has been a considerable growth in the manufacturing and distribution of hazardous material chemicals. With over 100,000 chemical compounds employed in the manufacturing business today, it is estimated that only the field of organic chemicals created nearly six times more than 20 years ago because it is a more cost-effective and efficient form of transportation, a considerable portion of these are delivered by water. The International Maritime Dangerous Goods Code, also known as the IMDG Code, became mandatory on January 1, 2004, and is found in Chapter VII of SOLAS 1974. In reality, the vast majority of cargoes transported by sea have characteristics that make them dangerous to the marine environment.[29]

Hazardous material (abbreviated as HM) is defined as "any item or agent (biological, chemical, and physical) which can cause harm to animals, humans, or the

---

[26] UNCLOS, Article 41.
[27] UNCLOS, Article 42.
[28] UNCLOS, Article 44.
[29] IMO, (International Maritime Organization), 2014. Available at: http://www.imo.org,

environment, either by itself or in combination with other factors".[30] The United States Department of Transportation defines a hazardous material as "any item or chemical which, when being transported or moved, is a risk to public safety or the environment, and is regulated as such under the Hazardous Materials Regulations in the International Maritime Dangerous Goods Code". In other words, HM is certain items which due to their substances; qualify conditional harm to the environment and means of their shipping.

HM transported by ships, in particular, may become dangerous goods, which are classified in the IMDG Code or any other IMO publication referred to in these Regulations as dangerous for carriage by sea, and any other substance or article that the shipper has reasonable cause to believe might meet the criteria for such classification according to The Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997.

Today, nonetheless, the utilization of the IMDG Code has been stretched out all through the supply chain network and from the producers to consumers of hazardous materials. The loading and unloading of dangerous goods from ships to designated port areas should comply with the applicable requirements for the class, packing, staking, and marking. Nevertheless, new materials will arrive in the market as a part of industry development that material could contain hazardous properties hence the IMDG Code will evolve to ensure safe and adequate shipping conditions on board.

4.1 When the hazardous material cargo regulation is put in place

4.1.1 Innocent passage – Protection of the marine environment

Due to the shipping of HM, the right of innocent passage has become a crucial and contentious issue between the flag and coastal states. The debate centres on how UNCLOS 1982 defines the idea of innocent passage and how it should be interpreted. We have analysed the codified principles of international law which relate to the right of innocent passage of ships and the obligations to protect the marine environment.

It is due to the extremely dangerous nature of cargoes carried by ships such several coastal states believe that ships carrying hazardous material pose a threat to the safety of the waters and the coastal ecosystem and that these ships should not be granted the right of innocent passage. Coastal States commit to safeguard the marine environment under Article 94 of UNCLOS 1982, which requires them to take all necessary steps to prevent, mitigate, and manage pollution in the ocean. As a result, coastal states will have the authority to ban HM traffic from passing through their territory if it is necessary to protect the marine environment.[31]

The coastal states should, nevertheless, provide a port of refuge for ships in distress who are exercising their right of innocent passage. Even though UNCLOS 1982 does not specifically address this problem, a ship has the right to stop and anchor in the territorial waters of coastal states in the event of force majeure as mentioned in Article

[30] IHMM, (Institute of Hazardous Materials Management), 2014. Available at: http://www.ihmm.org
[31] Churchill, R.R., and Lowe, A.V., 1999. The Law of the Sea, 3rded.ManchesterUniversity Press, Manchester

18.2 of UNCLOS 1982. At the same time, coastal states must safeguard their marine ecosystems mentioned in Article 194, 225 of UNCLOS 1982. This is about the disputes between states about whether coastal states must provide access to ships in distress in their ports to save human lives or prohibit access due to environmental concerns. As a result, when an HM ship exercising the right of innocent passage enters its territorial waters, the coastal state must be notified in advance.

The right of innocent passage is a rule of international law that is widely recognized by different states. There is no clear obligation for the right of prior notification in the transit of HM under UNCLOS 1982. States claim this prerogative and, in some situations, deny ships the ability to transport such cargoes through their jurisdictions. The debate highlights the fact that the United Nations Convention on the Law of the Sea (UNCLOS) of 1982 recognizes both the coastal state's sovereign sovereignty over its territorial sea and the right of innocent passage of foreign ships into the marine area. The problem appears to be with coastal states, as an increasing number of bilateral or regional agreements allow coastal states to intervene in the execution of the right of innocent passage.

4.1.2 The Rights of Innocent passage – Flag States

The coastal states may take measures in its territorial sea to prevent ships transporting HM from passing, although this action is inefficient in the current situation as Article 19 of UNCLOS 1982 states *"Passage is **not** innocent so long as it is prejudicial to the peace, good order, or security of the coastal State. Such passage shall **not** take place in conformity with this Convention and with other rules of international law"*. However, there is no clear framework because the passage is not necessarily innocent when the foreign ship follows the laws of the coastal state nor is not innocent if it threatens peace, good order, and security.

The right to innocent passage is unaffected by the flag, cargo, or type of ship. All ships are entitled to pass through the territorial seas of all countries without discrimination. According to UNCLOS 1982, the ships will be considered not innocent if engaged in one of the actions listed in Article 19.2. Article 19 of UNCLOS 1982 does not show HM transit by ships via a coastal state's territorial waters. As a result, this passage should be permitted. "Any act of wilful and significant pollution contrary to this Convention" can be used to ships transporting HM, according to Article 19.2(h), although this point is about deliberate pollution, not accidental contamination.[32] As a result, this law does not prevent ships carrying HM from passing without incident. The rules of UNCLOS 1982 Article 23 (Foreign nuclear-powered ships and ships carrying nuclear or other intrinsically harmful or noxious chemicals) are another justification used by coastal States to oppose ships carrying HM through their territorial sea.

To enhance their argument, flag States rescind Article 302 of UNCLOS 1982 which relates to Disclosure of information. They argue that because of the right to privacy, ships

[32] Tanaka, Y., 2012.International Law of the Sea. Cambridge University Press, Cambridge and Churchill, R.R., and Lowe, A.V., 1999. The Law of the Sea, 3rded.ManchesterUniversity Press, Manchester

transporting HM through the territorial sea of coastal states are unable to provide precise transit arrangements to local authorities. There will be fears of terrorist or pirate assaults if the route of a ship delivering such loads is known. This risk has been consistently demonstrated in modern times.

4.1.3 The Right and Duty of Innocent Passage - Coastal States

Some coastal states argue that they should be notified (in advance) of ships carrying HM passing through their territorial sea and given permission to do so. The unpredictability of the safety situation of certain shipments justifies this stance. There could also be occasions where activists boarded such ships with ease, demonstrating the magnitude of their risk of being occupied by pirates or terrorists. After an accident, the problem of civil liability arises because the insurance company or shipping company did not contribute as much as they should to restore the environment.[33] This tactic discourages coastal states from granting innocent passage rights

However, Article 17 of UNCLOS 1982 which relates to the Right of innocent passage covers broader prospect of the right of innocent passage through the territorial sea to ships of all States. Within its territorial sea, however, the coastal state has legislative and executive authority and may enact legislation in accordance with Article 21 of UNCLOS 1982 which relates to innocent passage laws and regulations of the coastal State. In theory, a coastal state has complete executive responsibility for its territorial sea, although this is not always the case. When a ship conspires against the peace in the territorial sea, the coastal state is required to take action to restore order.

Article 220.2 of UNCLOS 1982 which relates to enforcement by coastal states is a specific provision that allows coastal states to detain a ship that has polluted their territorial sea. The coastal state may take action under this provision if ships carry HM even if they are exercising their right of innocent passage. The terms of UNCLOS 1982 appear to limit the coastal state's absolute authority over its territorial seas, and the same appears to be true when ships transport HM.

4.1.4 Coastal States – Prior Notification Rights

In terms of the rights to advance notice, states are divided into five groups as mentioned in Table 1 below, each of which takes a different approach to the movement of HM and interprets the UNCLOS 1982 differently. [34] The majority of member groups (B, C, D, and E), which represent emerging economies without a large merchant fleet, call for a more stringent approach to the right of innocent passage, whereas others, particularly group A (mainly developed economies), are opposed. It is concluded that the international shipping community is not prepared to develop a worldwide solution that reconciles the disparities in state treatment of the issue. The need to establish a clear

[33] Mandaraka-Sheppard, A., 2013.Modern Maritime Law (Vol.2): Managing Risks and Liabilities. Routledge, London
[34] Hakapää, K., and Molenaar, E. J. 1999.Innocent Passage-past and present. Marine Policy, 23 (2), 131-145

uniform framework governing the right of prior notification among states will benefit international marine trade.

Table 1

Coastal State rights over ships carrying hazardous cargoes				
A: Oppose both	B: Ambiguous	C: Prior Notif	D: Prior author	E: Prohibition
Germany	Colombia	Canada	Egypt	Argentina
Italy	Ecuador	Djibouti	Guinea	Haiti
Japan	Mexico	Libya	Iran	Ivory Coast
Netherlands	Uruguay	Malta	Malaysia	Nigeria
Russian Fed		Pakistan	Oman	Philippines
Singapore		Portugal	Saudi Arabia	Venezuela
Thailand		United Arab	Turkey	
UK			Yemen	
US				

Source: (Hakapaa and Molenaar, 1999)

5. Regulatory framework carriage of hazardous material by ships

Transportation of hazardous materials by sea is dangerous due to the risks posed by the maritime environment, including unfavourable weather conditions, cargo damage, and leaking into the sea. The risks associated with the transportation of hazardous materials by sea have resulted in the establishment of several contractual texts, the most important of which are listed in the table below, to ensure the safe transportation of hazardous materials while also protecting the marine environment.

Contractual Texts Relevant to (HM) Hazardous Materials Transportation by Sea		
1.	UNCLOS 1982	Art.21,22,23
2.	SOLAS 1974	Chapter VII Part A-D
3.	IMDG Code	Class 1-9
4.	INF Code	Class INF1-2-3
5.	MARPOL 73/78	Annex III
6.	BASEL 1989	Annexes I-IX
7.	HNS, 1996	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996
8.	Paris Convention, 1960	Paris Convention on Third Party Liability in the Field of Nuclear Energy
9.	Intl Automatic Energy Agency Regulation	Code of Practice
10.	Nuclear, 1971	Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material
11.	Vienna, 1963	Vienna Convention on Civil Liability for Nuclear Damage

6. Case Studies – 2021 incidents on blockage of innocent passage

6.1 Case Study 1 – UK Navy warship committed border violated at northern coast off Crimea in the Black Sea and Russia's Disturbing Actions on Innocent Passage in the Black Sea

According to a statement released by Russia's Ministry of Defence on June 23, the British Royal Navy destroyer HMS Defender, which was navigating south of the Crimean Peninsula, had crossed the border, prompting a vessel from the Russian Coast Guard to fire warning shots and a warplane to drop munitions in an attempt to persuade the Defender to change course. The Ministry of Defence of the United Kingdom, for its part, confirmed that the Defender had made an innocent passage in "Ukrainian territorial waters" in conformity with international law, but denied that any warning shots or air weapons had been fired.

The two parties' accounts directly contradict one other, however, we can conjecture the following sequence of events based on public evidence.

6.1.1 *The Defender* was on its way from Odessa, Ukraine, to Batumi, Georgia. It entered the globally used traffic separation scheme (TSS) in southern Crimea and approached Crimea from a distance of 10 nautical miles. *The Defender* was followed by two Russian Coast Guard vessels, which issued a threat, "If you don't reverse direction, we will open fire," after which shooting was heard, according to a BBC reporter on board. Following that, roughly 20 Russian military planes flew overhead. Russia released footage showing shooting on the horizon within visible range of *the Defender*, but no munitions being dropped in the Defender's path. *The Defender* made a temporary course change to avoid incoming Russian Coast Guard ships, but it quickly returned to its planned track and proceeded away from Crimea.

6.1.2 According to UK point of view, Moscow's aim is to spread disinformation, giving a false impression that its warnings forced the Royal Navy to leave Crimea's territorial waters. In 2014, Russia claimed the Ukrainian territory of Crimea, although neither the United Kingdom nor the international community recognized it. This incident was exploited by Russia to reassert its authority and jurisdiction over Crimea. Another element that most likely played a role was the fact that it occurred near Sevastopol, Russia's Black Sea Fleet's main base.

6.1.3 The question of who owns Crimea is definitely important, but the crux of the matter is what kind of international legal basis Russia used to impede the Royal Navy destroyer. In 1988, a similar incident occurred in the same location between the US Navy and the former Soviet Navy. At the time, the Soviet Union threatened that if the Americans entered Soviet territorial waters, they would be attacked, and two Soviet Navy ships intercepted two US Navy ships in an innocent passage not far from Sevastopol.

6.1.4 Following the incident, the United States and the Soviet Union undertook talks and proclaimed the following year a united view of innocent passage. The two countries based this on Section 3 of the United Nations Convention on the Law of the Sea (UNCLOS), which had not yet entered into force and confirmed that all ships, including warships, have the right of innocent passage through territorial waters (Article 17), that no prior notification or permission is required, and that any TSS established by the coastal state should be followed. They also confirmed that ships should respond to the coastal state's inquiries about the purpose of navigation (Article 19), that the coastal state has the right to defend itself against non-innocent passage (Article 25), and that a warship may be asked to leave if its passage is not innocent (Article 30), but that if the warship refuses, the issue should be resolved through diplomatic means.

6.1.5 As per Moscow's point of view, the British did not respond to the Russian warning about the infringement of territorial seas. Russia claimed that the British acted provocatively, as in "HMS Defender turns HMS Provocateur." The British on the other hand said that the Russian coastguard warships had informed them that a live ammunition drill would be conducted near them, following which they had many formal interactions. As a result, the claims of the two countries are in conflict.

6.1.6 On April 14, 2021, Russian officials announced that innocent transit by foreign warships in the waters surrounding Crimea, including the area in question, would be suspended for six months. The legal justification for this has not been clarified by Russia, but one possible goal is to prevent NATO navies from passing through the TSS in the waters surrounding Sevastopol, which was established by Ukraine prior to the invasion of Crimea in compliance with International Maritime Organization (IMO) norms. According to BBC, the British Ministry of Defence attempted to claim that the TSS was Ukrainian territorial seas by allowing the Defender to sail through.

6.1.7 International law, in reality, does not recognize limits on innocent travel for long periods of time, such as six months. The coastal state may temporarily limit the innocent passage of foreign ships for the state's safety, however, this cannot be applied solely to select ships, according to UNCLOS Article 25 of Section 3. Half a year cannot be considered temporary, and the limitation on warship passage alone is in violation of UNCLOS. If we accept this, coastal states will effectively have the power to create zones where passage is prohibited.

6.1.8 Russia's allegation to have used the aggressive tactics of warning shots to evict a Royal Navy destroyer from their territorial seas is also a violation of internal law because warships are subject to the principle of sovereign immunity, the coastal state's only option, except in cases of self-defence, is to request that the warship leave and then submit a diplomatic protest. If the Defender had considered the warning shots to be illegal military action, it might have been able to claim the right to self-defence under UN Charter Article 51. The Russian Deputy Foreign Minister indicated that this was only a warning and that if the United Kingdom continues to refuse to acknowledge Russian territorial seas, Russia will launch a frontal strike. After this incident, the Russian military went on

to hamper the operations of the Dutch and US fleets in the Black Sea.

Similar actions have been taken by China in the South China Sea, obstructing US claimed freedom of navigation operations before declaring to have "driven away" US vessels. Foreign vessels passing through China without permission are prohibited under Chinese law. The China Coast Guard Law (CCG Law), (came into force on February 1, 2021), Article 17 advocates for the use of force against foreign warships suspected of engaging in the illegal passage, comparable to the Russian Coast Guard's response in the case of the Defender. Meanwhile, Article 25 of the CCG Law specifies that provisional marine warning areas may be established to restrict vessel passage, making it extremely probable that China will follow Russia's lead and suspend innocent travel off the coast of Crimea.

6.1.9 Russia and China both have their conceptions and interpretitions of the law of the sea today, which generally concern the international community under the circumstances that China and Russia become increasingly active in their surrounding waters. Maritime rules must be universal, whether in the Black Sea or the South China Sea. Seafaring nations in Asia, Europe, and elsewhere must continue to use diplomatic measures and freedom of navigation operations to ensure that universal maritime rules are upheld.[35]

6.1.10 The sail of the UK Navy warship from the northern coast off Crimea in the Black Sea has raised a discussion on the legal point of authorization for navigation. The 1982 United Nations Convention on the Law of the Sea does not explicitly specify that warship benefits from the right of innocent passage without prior notification. This lacuna was highlighted subsequent to this event and has become the point of discussion amongst the regional states.

6.2 Case Study 2 – US warship's 'illegal' sea passage into the South China Sea

The sailing of a US Navy warship through the disputed South China Sea earlier this year heightened tensions between the US and China.[36] In a statement made on May 27, 2021, China criticized the passage of a US Navy ship into contested seas in the South China Sea as "illegal." China reacted after USS Curtis Wilbur, a guided-missile destroyer, approached international waters near the disputed Paracel Islands on Tuesday.

6.2.1 Chinese Stance

The operation "violated its sovereignty and damaged regional peace and stability," according to the Chinese military's Southern Theatre Command. The US action "increases regional security risks artificially" and is "prone to misunderstandings, misjudgements, and maritime mishaps," according to the statement. The ship's manoeuvres were described as "unprofessional and irresponsible." According to the

[35] https://thediplomat.com/2021/07/russias-disturbing-actions-on-innocent-passage-in-the-black-sea/
[36] https://www.dw.com/en/china-slams-us-warships-illegal-sea-passage/a-57592342

report, Chinese ships and planes pursued the US vessel. China also issued a statement condemning the activities of the US warship for the second time in two days.

6.2.2 The US Navy Stance

Meanwhile, the USS Curtis Wilbur "asserted navigational rights and liberties" near the Paracel Islands, according to the US Navy. According to the statement, it operated in conformity with international law. The Navy stated in a statement that "the United States military will continue to fly, sail, and operate wherever international law allows." It went on to say that the passing "demonstrates the United States' commitment to a free and open Indo-Pacific." The United States refuses to acknowledge China's claim to nearly all of the world's oceans. It performs so-called freedom of navigation operations on a regular basis to assert its right to sail in international waters.

6.2.3 A Summary of Sailing via the Paracel Islands

The Paracel Islands are claimed by three countries: China, Taiwan, and Vietnam. Before a military vessel or warship engages in "innocent passage" in the territorial sea, the three require permission or notification, but under international law, all ships, including warships, can pass through the sea without obtaining permission or giving prior notice. Since China considers Taiwan to be its territory, the presence of the US Navy in the area is seen as a sign of support for the island's democratic administration. China's claim to the majority of the South China Sea basically a sour point for the US and the latter's most action in the region are aimed at denouncing the Chinese stance/claim.

The incident of sailing of a U.S. warship and a U.S. Coast Guard through the Taiwan Strait, near China, as part of their routine operations spiked in military tensions in the region. In addition, the incident raised the concerns regarding "transit of ships under international law especially in the disputed waters" The U.S. Navy claimed that they have been conducting such operations while China perceived the move as "unauthorized as per law" as it requires prior permission from the state. The incident raised queries and various levels of debate about the engagement of joint training/ patrols and law enforcement under maritime diplomacy in International Studies. The issue of maritime claims in the Indo-Pacific and future engagements and commitments of various states in the region will take a new shape in the studies.

6.3 Case Study 3 – US Navy violates Indian law by entering Indian waters without consent

In April 2021, a US guided-missile destroyer went across India's Exclusive Economic Zone (EEZ) without informing India, 130 nautical miles west of the Lakshadweep Islands, in violation of Indian law.[37]

[37] https://theprint.in/defence/us-navy-ship-violates-indian-law-as-it-sails-through-exclusive-zone-in-messaging-to-china/636880/; The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, Act No. 80 of 28 May 1976

6.3.1 "On April 7, 2021 (local time), USS John Paul Jones (DDG 53) asserted navigational rights and freedoms approximately 130 nautical miles west of the Lakshadweep Islands, inside India's exclusive economic zone, without requesting India's prior consent, consistent with international law," as per a statement from the US Navy's 7th Fleet.

6.3.2 In response to the foregoing US Navy public notice, New Delhi stated that it has communicated its worries over the passing through their (Indian) EEZ to the US Government through diplomatic channels.

6.3.3 The Indian government stated its position on the United Nations Convention on the Law of the Sea, stating that the Convention does not permit other countries to conduct military exercises or to manoeuvres in the Exclusive Economic Zone or on the continental shelf, particularly those involving the use of weapons or explosives, without the consent of the coastal state.

6.3.4 The 7th Fleet of the United States Navy stated that they perform routine and regular Freedom of Navigation Operations (FONOPs), which they have done in the past and will continue to do in the future. FONOPs are not limited to a single country.

6.3.5 However, Indian officials believe that by contesting India's excessive maritime claims, the Freedom of Navigation Operation (FONOP) defended the freedoms, rights and lawful uses of the sea recognized in international law. A country's sovereign waters extend up to 12 nautical miles from its shore, and its exclusive economic zone (EEZ) extends till 200 nautical miles, according to UNCLOS 1982, of which India is a member.

6.3.6 "All foreign ships (other than warships including submarines and other underwater vehicles) shall enjoy the right of innocent passage through the territorial waters," according to Indian law, which states that a passage is innocent "so long as it is not prejudicial to the peace, good order, or security of India." "Foreign warships, including submarines and other underwater vehicles, may enter or pass through territorial seas after giving prior notification to the Central Government," according to the law.

6.3.7 Despite the fact that they are both signatories to the international treaty, India has established its own standards in this domain. Foreign vessels traveling through India's EEZ are required to notify the government. While India allows foreign ships, including warships, to pass through the EEZ without incident, no commercial or scientific activities, including fishing, are permitted.

This incident initiated a new debate about the use of the right of innocent passage. As US Navy claims that they uphold "rights and freedoms" to Indian waters as recognized in international law, India reacted by expressing concerns over the move. Although India noted that the move was "consistent with international law" but they also mentioned that such activity requires prior consent for military exercises or manoeuvres in its EEZ or

continental shelf. The incident has not only initiated a debate on diplomatic and political aspects of the use of seas but also raised apprehension for the maritime security and future trends in the area and around the world.

6.4 Case Study of M.V. Heng Tong 77 drifted to Karachi Shore

M.V. Heng Tong 77 was en-route to Istanbul, Turkey from Shanghai and was awaiting crew change in Pakistani water though she had not completely entered Karachi harbour.[38] It was anchored at the outer anchorage of Karachi port. The ship's anchors were lost in the heavy seas, and it began drifting towards shallow water on July 21. By the time the KPT was notified of the problem, the ship was already in shallow water. By this time no assistance was possible for KPT or any other agency owing almost no reaction time coupled with very limited resources for such an eventuality. Subsequently, the cargo ship was detained by the Pakistani government on 11th August 2021 after experts declared her "unseaworthy" and a hazard to "human life on board and property" and to be released upon a satisfactory surveyor's report, advising the captain to arrange for "hull and equipment repair/maintenance."

On the contrary, Captain of M.V. Heng Tong 77 told Geo while narrating the incident said that he made the SOS call on 20th July 2021 when the chain of one of the ship's anchors cracked and sank into the sea. He further stated an emergency request was made by him to the authorities for allocation of a berth because he couldn't operate the vessel with only one anchor. Later, the ship's second anchor snapped around 1:15 a.m. on the night of July 20-21," adding that he made the SOS call at 1:20 am. As per the captain, the officials at Port Qasim and Manora also heard the emergency call, but the Manora Control Tower did not respond. According to one of media channels, the audiotape of the interaction between the captain and the control tower had been obtained by the authoritesi which gave some inconclusive details about the exact nature and timings of the incidents and the communication. There had been various claims and counter claims about what was asked and what was replied/provided.

Although this case study does not relate to innocent passage, however, it relates to the handling of local rules and regulations in Pakistan. If the circumstances narrated by Master are correct, then we need to monitor our regulating authorities to control the operations and coordination required. The vessel had a capacity of 36000 deadweight was carrying bunker oil when drifted and stranded in shallow waters at Karachi coast. If the vessel got damaged for any reason, it could have polluted Karachi sea and coast due to lack of coordination between relevant local authorities. This incident has raised eyebrows and question marks on the coordination amongst authorities.

[38] https://www.dawn.com/news/1645029

7. Pakistan Law Defining Conditions of Entry of Ships in Pakistan Territory - Territorial Waters and Maritime Zones Act, 1976

The following conditions that need to be fulfilled upon entry of foreign vessels in Pakistan waters/port discussed in the national legislation Territorial Waters and Maritime Zone Act, 1976 are as mentioned below.

7.1.1 Use of territorial waters by foreign ships

Article 3

(1) Without prejudice to the provisions of any other law for the time being in force and subject to the provisions of subsection (2) and subsection (3), all foreign ships shall enjoy the right of innocent passage through the territorial waters.
Explanation. For the purposes of this section, the passage is innocent so long as it is not prejudicial to the peace, good order, or security of Pakistan.

(2) Foreign warships, including submarines and other underwater vehicles and foreign military aircraft, may enter or pass through the territorial waters and the airspace over such waters with the prior permission of the Federal Government; Provided that submarines and other underwater vehicles shall navigate on the surface and show their flag while passing through such waters.

(3) Foreign supertankers, nuclear-powered ships, and ships carrying nuclear or other inherently dangerous or noxious substances or materials may enter or pass through the territorial waters after giving prior notice to the Federal Government.

(4) The Federal Government may if satisfied that it is necessary so to do in the interest of the peace, good order or security of Pakistan or any part thereof, suspend, by notification in the Official Gazette, subject to such exceptions and qualifications, if any, as may be specified in the notification, the entry of all or any class of foreign ships into such area of the territorial waters as may be specified in the notification.

7.2 Continental Shelf

Article 5

(3) No person, including a foreign Government, shall, except under, and in accordance with the terms of, any agreement with the Federal Government or a license or letter of authority granted by the Federal Government, explore the Continental Shelf or exploit is resources or carry out any search or excavation or conduct any research within the Continental Shelf or drill therein or construct, maintain or operate therein for any purpose whatsoever any artificial islands, offshore terminal, installation or other structure or device.

(4) The Federal Government may, by notification in the Official Gazette –

(b) Make such provisions as it may deem necessary with respect to all or any of the following matters, namely –

(v) the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sea lanes, traffic separation schemes, or any other mode of ensuring freedom of navigation that is not prejudicial to the interests of Pakistan.

7.3 **Exclusive Economic Zone**
Article 6

(3) No person, including a foreign Government, shall, except under, and in accordance with the terms of, any agreement with the Federal Government or a license or letter of authority granted by the Federal Government, explore or exploit any resources of the Exclusive Economic Zone or carry out any search or excavation or conduct any research within the Exclusive Economic Zone or drill therein or construct, maintain or operate therein for any purpose whatsoever any artificial island, offshore terminal, installation or other structure or device:

Provided that fishing in the Exclusive Economic Zone shall be regulated by the provisions of the Exclusive Fishery Zone (Regulation of Fishing) Act, 1975 (XXII of 1975).

(4) The Federal Government may, by notification in the Official Gazette –

(a) Declare any area of the Exclusive Economic Zone to be a designated area; and

(b) Make such provisions as it may deem necessary with respect to all or any of the following matters, namely

(c) the regulation of entry into and passage through the designated area of foreign ships by the establishment of fairways, sea lanes, traffic separation schemes, or any other mode of ensuring freedom of navigation that is not prejudicial to the interest of Pakistan.

(5) In the Exclusive Economic Zone and the air space over the Zone, ships and aircraft of all States shall, subject to the exercise by Pakistan of its rights within the Zone, enjoy the freedom of navigation and overflight.

As per Article 10 Offences, it states "Whoever contravenes any provision of this Act or of any rule or notification made or issued thereunder shall, without prejudice to any other action which may be taken against such person under any other provision of this or any other law, be punishable with imprisonment for a term which may extend to three years, or with fine, or with both."

8. Analysis

Innocent passage signifies **a right of free passage through territorial waters** which exists only as long as the foreign vessel respects coastal state regulations and does not interfere with or threaten the tranquillity of the coastal state. As UNCLOS permits coastal States to adopt laws and regulations related to passage through the territorial sea,

therefore it is essential for Pakistan to make or revise such laws which pertain to ship transiting, taking innocent passage or entering/leaving Pakistani ports or internal waters.

Both innocent passage and FONOPs challenge any limitations, that may be imposed by the coastal state, having implications on freedom of navigation in a maritime area, but innocent passage accepts that the area is within a state's waters, while a FONOP in generally used to challenge a state's territorial claim to an area. The term Innocent Passage is defined under international law **referring to a ship or aircraft's right to enter and pass through another's territory so long as it is not prejudicial to the** peace, good order or security of the other state. This means any ship will be free to pass through the territorial waters of any state if no rules or conditions have been set forth by the state in terms of peace, good order and security.

Likewise, Article 24 of UNCLOS discusses the limitations on innocent passage and prohibits coastal states from obstructing the innocent passage of foreign vessels and discusses a list of circumstances but not limited to safety or navigation, regulation of marine traffic, protection of navigational aids, conservation of living resources, prevention of infringement coastal state regulations, etc. Whereas Article 25 provides a provision for suspension of innocent passage through a public notice for security reasons including weapons exercise. It is quite understood that UNCLOS does not grant the explicit right of innocent passage to warships but under Article 30 a warship is required to leave the coastal state if it does not comply with state regulations or disregard a request for compliance. In case of Pakistan there is a need to make comprehensive revision and promulgation of such laws in line with other international laws and the UNCLOS.

Freedom of navigation is by no means a simple idea to define – other than in the most general sense. The term 'freedom of navigation' can mean something different according to the particular geographical, political, or legal situation in which it's applied. It is quite apparent that 'freedom' comes with certain restrictions and limitations; whereas navigation is just the liberty to safely manoeuvre the ship to ensure its timely arrival at its destination.

Another Article 44 of UNCLOS restricts coastal states for suspension of transit passage whereas permits temporary suspension of innocent passage. For vessels in transit passage Article 40 of UNCLOS implies that foreign vessels entering coastal states have to obtain prior authorization for carrying out any research or survey activities. A comprehensive mechanism duly supported by international needs to be devised under our local laws to ensure that every transiting vessel is a *bona fide* vessel to do so.

For vessels carrying hazardous material is covered in Article 19 and Article 23 of UNCLOS while Article 302 of UNCLOS relates to disclosure of information to flag state carrying hazmat. Again, there is no clear framework and the discussion made are ambiguous. While Article 220.2 relates to Enforcement by coastal states giving rights to them for detaining ships responsible for pollutions in its territorial sea. The carriage of hazmat is regulated by UNCLOS 1982, SOLAS 1974, IMDG Code, INF Code – International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium

and High-Level Radioactive Wastes on-board Ships, MARPOL, BASEL 1989 - The Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal, HNS 1996, Paris Convention 1960, etc.

Three case studies relating to violation of innocent passage were analysed. On the basis of these studies, it has been noted that all states forming part of the incidents related to prevailing local law where they have highlighted prior notification or prior approval from the coastal state but due to ambiguity found in the international law i.e. UNCLOS 1982, this lacuna has become the point of discussion amongst the regional states.

Eventhough Pakistan follows Terriotorial Waters & Maritime Zone Act 1976, however, it has been analysed the prevailing law does not covers all ascpest which require comprehension or reformulation undert the vision of UNCLOS 1982 and the incidents that have taken place over the years to avoid any ambuiguity. The case of the M.V. Heng Tong 77, it has raised concerns over monitoring and coordination of relevant departments involved. We need to install and implement elaborate rules and conditions along with requisite capacity to deal with such vessels violating the conditions of entry into Pakistani ports and waters.

9. Conclusion

Normally, the UN Convention on the Law of the Sea establishes and regulates the innocent transit regime in great detail. The relevant articles of the United Nations Convention on the Law of the Sea, in general, reflect the current customary law.

The innocent passage clauses of the UN Convention on the Law of the Sea propose a balance between 'coastal' and maritime concerns. As a result, they constitute an important part of the UN Convention on the Law of the Sea's 'package deal.' Many sections underline the importance of transit rights to maritime states, including characteristics not included in the text of the Convention on the Territorial Sea and the Contiguous Zone. This is especially true when it comes to categorizing a non-innocent journey as being limited to foreign ships' 'activities.' For this function, the state or cargo of ships does not appear to be significant. Control and enforcement rights along the coast, especially jurisdiction over ships, balance this out.

Some controversial practices have evolved from the passing of warships and ships carrying dangerous goods. While the United Nations Convention on the Law of the Sea refers to "all ships" having "innocent passage," some states require prior notification or authorization for particular types of ships or cargo to cross the passage. The United Nations Convention on the Law of the Sea prohibits coastal states from imposing "requirements on foreign nationals that have the practical effect of limiting or impairing the right of innocent passage." Prior notification, on the other hand, is distinct and was not included in the UN Convention on the Law of the Sea. One of the cornerstones of maritime law is the concept of "innocent passage." In practice, the fundamental principle of the right to such passage is widely recognized and respected. Although there are some

variances in state practice, the main message is clear: a passage that is not damaging to the coastal State's peace, good order, or security shall not be obstructed.

The right of innocent passage for foreign ships and planes to travel over territorial seas should be granted. The right of innocent passage, however, is not always exercised in accordance with the restrictions established in Article 19 paragraph (2) of the 1982 UNCLOS. This is linked to natural resource security as well as protecting a coastal state's sovereignty from any threats posed by the right of innocent passage across territorial waters. The use of navigation channels obtained under the right of innocent passage is commonly linked to the decreasing of the underwater potential. As a result, security measures must be in place to ensure that it is implemented without activities that jeopardize the long-term viability of existing natural resource potentials, such as illegal fishing, pollution-producing activities, nuclear radiation from nuclear-powered ships, or those carrying nuclear, surveys, and so on. Article 25 of the 1982 United Nations Convention on Coastal Zone Management (UNCLOS) grants coastal states complete authority to take pre-emptive measures to minimize undesirable outcomes. In Pakistan's territorial sea, all relevant law enforcing agencies should work in harmony and proper coordination in order to carry out law enforcement, about the right of innocent passage through the territorial sea and other conditions of entry into Pakistani ports and internal waters.

It is a difficult undertaking to execute the law on the right of innocent passage for foreign ships and aircraft traveling through the territorial waters. This is due to a lack of cooperation among institutions or government bodies. Duplication of power among government authorities in dealing with violations of the right of innocent passage committed by foreign ships and planes is sometimes hampered by legal ambiguity, insufficient patrol vessel and aircraft fleet forces, and political considerations. Therefore all the relevant authorities and stakeholders have to sit down together and ensure the rules and regulations are developed to disregard any ambiguity left out in the relevant articles of UNCLOS and to strengthen prevailing local rules and regulations discussed in Section 7 of this document.

Furthermore, coordination between nations is required to effectively deal with infringement of the right of innocent passage in the territorial waters by foreign ships and aircraft. Diplomatic connections are necessary for preventing long-term conflict.

10. Recommendations

Based on the study and analyses, following recommendations are proffered for consideration at appropriate levels:

10.1 Comprehensive local/national legislation governing innocent passage through the territorial sea and other conditions of vessels entry into Pakistani ports and internal waters should be formulated/revised as applicable.

10.2 A well-coordinated mechanism should be devised preferably under the auspices of a unified agency/authority e.g. JMICC to monitor and control vessels entering, leaving, transiting Pakistan ports and waters including innocent passage.

10.3 Capacity building of Pakistan Navy and Pakistan Maritime Security Agency should be given high priority in terms of maintenance of comprehensive maritime domain awareness with real time picture of all vessels operating in our EEZ. Suitable aerial assets including aircraft and UAVs along with coastal radars should also be added for this purpose.

10.4 Specific responsibilities and authorities should be revised in the light of certain recent cases and be spelled out for various agencies and stakeholders for this purpose including but not limited to:

a. Monitoring of innocent passage.
b. Violation of entry/exit rules.
c. Environmental control.
d. Monitoring of Vessels at outer anchorage.
e. Monitoring of Vessels proceeding to Gaddani shipbreaking yard.
f. Rendering of assistance in case of any vessel is in danger or likely to cause oil spillage or other environmental hazards/pollution.

10.5 Up-gradation of The Territorial Waters and Maritime Zones Act, 1976 to include the ambiguity found under UNCLOS 1982 and to add the penalties/fines if any vessel violates these rules and regulations.

10.6 Based on the recent case of grounding of Heng Tong 77, a strong coordination has to be ensured between the authorities. Various monitoring and response responsibilities amongst concerned authorities/agencies should be clearly defined and coordinated. In this regard, the relevant authorities/agencies should also capacitated accordingly.

10.7 Endeavours be made to strengthen diplomatic connections and sign treaties with foreign countries individually as well as at international organisations/associations level for bilateral following of mutually agreed upon laws and regulations for common benefit.

10.8 A more effective system of monitoring safety related issues and legality of all vessels anchored or operating in or in the vicinity of outer anchorages of all ports be set up under the authority and executive control of respective ports and in due coordination with other concerned authorities/agencies.

10.9 A national maritime disaster control authority be established to deal with all issues causing environmental pollution