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## International Straits

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## International Straits

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There are seven types of international straits, each with its own unique characteristics and passage regime: (1) straits used for international navigation where transit passage applies; (2) geographic straits through which a high-seas corridor exists; (3) straits governed by long-standing conventions; (4) straits with routes through the high seas or exclusive economic zone (EEZ) that are of similar convenience; (5) straits formed by islands; (6) archipelagic straits, governed by archipelagic sea lanes passage (ASLP); and (7) dead end straits.

**Straits used for International Navigation/Transit Passage.** Straits used for international navigation, like the Straits of Malacca and Singapore, consist of overlapping territorial seas that connect one area of the high seas/EEZ to another area of the high seas/EEZ. With the expansion of the maximum breadth of the territorial sea from 3 to 12 nm, more than 100 international straits, which previously contained a high seas corridor that allowed for free and unimpeded passage for all ships and aircraft, are today overlapped by territorial seas. Without a right of transit passage, these straits would be governed by the regime of non-suspendable innocent passage, which does not include a right of overflight for aircraft or submerged transit for submarines. As a result, the United Nations Convention on the Law of the Sea (UNCLOS) balances coastal State interests in expanding the territorial sea with



the international community's interests in unimpeded navigation on, over, and under these international straits. The rules governing the right of transit passage through international straits are fundamental to naval and air forces of all nations, as well as merchant vessels and civil aviation. Military and commercial ships and aircraft enjoy the right to transit these straits freely in their normal mode of

operation as a matter of right and not based on the consent or at the whim of the bordering States.

The criterion for determining whether a strait is governed by the transit passage regime is a geographical, not functional, test. The historical use or volume of traffic traversing the strait is not determinative. If a strait can be used for international navigation between one area of the high seas or EEZ to another area of the high seas or EEZ, the transit passage regime applies.<sup>1</sup> All military and commercial ships and aircraft enjoy a right of unimpeded transit passage through such straits in the normal mode of operation without bordering States notice or consent.<sup>2</sup>

“Normal mode of operation” means that submarines may transit submerged, military aircraft may overfly in combat formation and with normal equipment operation, and surface ships may transit in a manner consistent with vessel security, to include formation steaming and launch and recovery of aircraft, if consistent with sound navigational practices.<sup>3</sup> The bordering States may not suspend transit passage for any purpose, including military exercises, and are prohibited from adopting laws or regulations that have the practical effect of denying, hampering or impairing the right of transit passage.<sup>4</sup> U.S. ships and aircraft routinely transit these international straits to exercise their navigational rights and reinforce the rules-based legal order codified in UNCLOS.

**Geographic Straits.** Waterways greater than 24 nm wide, like the Taiwan Strait, constitute a geographic strait. Here, high seas freedoms of navigation and overflight, and other lawful uses of the seas relating to such freedoms, apply in the high seas, EEZ corridor, or a route suitable for navigation through the strait. The right of innocent passage applies in the areas of the strait along the coasts of China and Taiwan constituting 12-nm territorial seas.<sup>5</sup>



China routinely objects to U.S. transits through the Strait, claiming that the United States is interfering with China's internal affairs, harming peace and stability in the Strait, and poisoning Sino-U.S. relations. The United States, on the other hand, views the Taiwan Strait as just another body of international waters where the U.S. ships and aircraft can operate legally. Routine U.S. transits through the Taiwan Strait demonstrate the U.S. commitment to a stable, free and open Indo-Pacific, and confirm that the U.S. Navy will continue to fly, sail and operate anywhere international law allows.

**Long-standing Conventions.** Some straits, like the Turkish Straits and the Strait of Magellan, are governed by long-standing international conventions. The navigational regime applicable to such straits is set out in the treaty specifically applicable to that strait.<sup>6</sup> There are no such straits in the Indo-Pacific region.

**Route of Similar Convenience.** Transit passage does not apply through a strait that contains a route through the high seas/EEZ that is of similar convenience with respect to navigational and hydrographical characteristics as the strait. This situation occurs where a coastal State chooses to maintain a high seas/EEZ corridor between two landmasses by not extending its territorial seas to 12 nm. Japan, for example, only claims a 3-nm territorial sea in four of its international straits—the Soya, Tsugaru, Osumi, and Tsushima Straits, thus retaining an EEZ corridor through each strait in which high seas freedoms apply.<sup>7</sup> The right of innocent passage applies in the 3-nm territorial sea.

**Island Forming a Strait.** The regime of non-suspendable innocent passage applies in straits that are formed by an island of the State bordering the strait and its mainland, where there exists seaward of the island a route through the high seas/EEZ of similar convenience with respect to navigational and hydrographical characteristics. The Strait of Messina, bordered by Sicily and mainland Italy, is an example of this type of strait. There is no right of overflight through such straits.<sup>8</sup>

**Archipelagic Straits.** International straits that are located within archipelagic waters are subject to the navigational regime of ASLP.<sup>9</sup> Examples of archipelagic straits in the Indo-Pacific include the Balabac Strait that connects the South China Sea with the Sulu Sea, and the Sunda and Lombok Straits that connect the Java Sea and the Indian Ocean. ASLP applies within

archipelagic waters and the adjacent territorial sea whether or not the archipelagic State has designated archipelagic sea lanes, and is virtually identical to transit passage. ASLP is the exercise of the rights of navigation and overflight in the normal mode of operation solely for the purpose of continuous, expeditious, and unobstructed transit through archipelagic waters. All military and commercial ships and aircraft enjoy the right of ASLP while transiting through, under, or over archipelagic waters and adjacent territorial seas via all normal passage routes used as routes for international navigation or overflight.<sup>10</sup> The archipelagic State may not impede or suspend the right of ASLP for any reason.<sup>11</sup>



**Dead-end Straits.** Straits, like the Strait of Tiran, connecting the high seas or EEZ with the territorial sea of a State or States are subject to the regime of non-suspendable innocent passage, which guarantees foreign-flagged vessels access to the State located at the cul-de-sac end of the strait.<sup>12</sup>

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1. United Nations Convention on the Law of the Sea art. 37, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].
  2. *Id.* art. 38.
  3. *Id.* art. 39.
  4. *Id.* art. 42.
  5. *Id.* arts. 17, 36.
  6. *Id.* art. 35(c); *see also* Convention Regarding the Regime of the Straits, with Annexes and Protocol (Montreux Convention), July 20, 1936, 173 L.N.T.S. 215 (English version).
  7. UNCLOS, *supra* note 1, art. 36.
  8. *Id.* arts. 38(1), 45.
  9. *Id.* arts. 46–54 (Part IV).
  10. *Id.* art. 53.
  11. *Id.* art. 54.
  12. *Id.* art. 45(1)(b).