

Protection of Commercial Cargo Ships in the Exercise of the Right of Passage Through International Straits

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Abstract

International straits constitute vital arteries of global trade, with nearly 90 percent of world commerce transported by sea. Recent missile and drone attacks on commercial cargo vessels in strategic chokepoints such as the Bab el-Mandeb Strait have exposed growing tensions between the principle of freedom of navigation and contemporary maritime security threats posed by non-state armed groups. Although the 1982 United Nations Convention on the Law of the Sea (UNCLOS) establishes the regime of transit passage and guarantees navigational rights through international straits, questions remain regarding the adequacy of its protective framework in addressing modern asymmetric attacks against merchant shipping. This study employs normative legal research methods, focusing on the analysis of international legal instruments, particularly UNCLOS 1982, SOLAS 1974, and related maritime security regulations. Legal materials are examined through statutory, conceptual, and doctrinal approaches to evaluate state responsibilities and the scope of existing protection mechanisms. The findings reveal that while UNCLOS provides a strong normative basis for transit passage, it lacks explicit enforcement mechanisms to respond to armed threats by non-state actors. Consequently, enhanced cooperative security frameworks, coordinated state responsibility, and the complementary application of international humanitarian law and the law on the use of force are urgently required to ensure effective legal protection of commercial cargo vessels in international straits.

Keywords: Cargo Ships; International Straits; Right of Passage.

1. Introduction

A ship is a means of transportation that was produced 10,000 years ago, this can be proven by the discovery of a carving on the wall in Ashyirian (Ancient Egyptian assyrian nation).¹ Ships are a globally needed means of transporting various types of cargo from and around the world. As written in ancient Egyptian culture, Egypt depends on ships or boats because it is located along the Nile River, which requires transportation from one surface to another. The creation of boats continued to evolve albeit slowly; it was only in the last 150

¹ Lionel Casson, *Illustrated History of Ships & Boats* (New York: Doubleday Company, 1964).

years that the evolution of the shipping industry began to increase as ships now sail around the world.²

There is no correct definition, and experts regarding ships agree upon it. However, there is a definition that has a slight contradiction, namely the definition contained in one of the most important regulations in maritime law, namely the International Regulations for Preventing Collisions at Sea of 1972, known as COLREGs. Article 3 (a) of the COLREGs states that "the word 'vessel' includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used a means of transportation on water." The use of the terms 'includes,' 'means of water transport,' and 'may be used' in this definition ensures that law enforcement will not be challenged because the definition of the vessel is generally and extensively mentioned.³ This is also defined similarly to the definition contained in the International Convention On Liability And Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances By Sea (HNS 1996), which uses the terminology "any type whatsoever" which means whatever the type is, the most important thing is that it is a means of sea transportation.⁴

In the current era, ships are divided into various types according to their functions. This can be seen starting from the provisions that the state has agreed upon. For example, Safety of Life at Sea (SOLAS) is an international agreement regulating minimum safety standards in construction, equipment, and ship operations. Even in SOLAS, there are exceptions to the criteria for the category of ships that SOLAS can reach; for example, warships and wooden ships are not included as ships that SOLAS can control. The same thing is also applied by the International Load Line Convention (ILLC), which also excludes several types of ships as the categorization of the ship in question.

Law Cornell defines the legal term for ships in his dictionary as follows:⁵

- a. The term "ship" or "ship" includes any water or other artificial device, except for aircraft, which are used or may be used as a means of transportation on water, whether floating or non-floating.

² Ernest Albert John Davies et al., "Ship," *Encyclopedia Britannica*2, 2025, <https://www.britannica.com/technology/ship>.

³ Gotthard Mark Gauci, "Is It a Vessel, a Ship or A Boat, Is It Just a Craft , Or Is It Merely a Contrivance ?," *Journal of Maritime Law & Commerce* 47, no. 4 (2016): 479–99.

⁴ Gauci.

⁵ Cornell Law Edu, "Ship," <https://www.law.cornell.edu/>, 2017, https://www.law.cornell.edu/definitions/uscode.php?def_id=47-USC-3529276-1952898722&height=800&iframe=true&term_occur=999&width=840.

- b. A ship is considered a passenger ship if it carries or has a license or certificate to carry more than twelve passengers.
- c. A cargo ship is any ship that is not a passenger ship.
- d. Passenger means any person carried on board a ship or boat except (1) officers and crew who are employed to operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board when they are carried, either under the obligation given to the captain to carry a shipwrecked person, in distress, or another person in a similar or similar situation, or for any other reason beyond the control of the captain, owner or tenant (if any).
- e. "Nuclear ship" means a ship equipped with a nuclear power plant.

The ship that will be discussed in this study is a type of cargo ship that is included in all international instruments or agreements related to ships. Modern commercial cargo ships sailing at sea come in all shapes and sizes and are designed to transport different types of cargo.⁶ Commercial cargo ships are divided into three categories, namely dry, liquid, and speciality cargo, which are subdivided into subcategories. The dry cargo includes general and bulk cargo, containers, reefers, and Ro-Ro. Liquid cargo is typically oil-based but can also include chemicals and condensed gases. Special cargo includes passengers, livestock, and heavy freight/projects.⁷

In defining and studying the history of ships, it is also necessary to understand their relationship with the straits that are vital routes for ship movements. The history of ships reflects how the evolution of sea transportation has evolved, and one of the important elements of ship travel is through the straits that are the main shipping lanes. Although the existence of the strait was very important, there was no clear definition. However, in the definition made by Merriam-Webster, the strait was a comparatively narrow passageway connecting two large bodies of water—often used in plural but singular in construction.⁸ In free translation, it can be interpreted that a strait is a relatively narrow waterway that connects two large bodies of water, such as the sea or ocean.

⁶ The Team LR One Ocean, "Vessel Type Explained," One Ocean, 2021.

⁷ Ocean.

⁸ Henrietta Newton Martin, *INTERNATIONAL LAW OF THE SEA-A PRIMER: Every Student's Easy-to-Read Handbook of the Sea* (Notion Press, 2024).

Churchill and Lowe define a strait as a narrow natural water passage connecting two larger parts.⁹ The strait has been regulated in the United Nations Convention on Law Of The Sea (UNCLOS 1982). However, in 1952, the strait that became a shipping transportation channel was regulated, especially regarding the international strait. The International Strait is the "Strait used for navigation". According to Prof. Hasjim Djalal, this terminology was later found and used in Part III of UNCLOS 1982.¹⁰ It can also be interpreted that an international strait is a strait that serves international shipping and connects part of the high seas or Exclusive Economic Zone to other parts of the high seas or Exclusive Economic Zone.

From an economic perspective, the importance of international straits is related to the sustainability of world trade. As much as 90% of global trade is carried out by sea, so economically, the strait has lucrative potential.¹¹ In addition, the strait is a transportation route and a source of great economic potential. High trade activity around the strait creates the region's investment opportunities and economic growth. Straits often serve as logistics hubs, allowing for the transfer and distribution of goods between countries and continents. Thus, the strait is a critical element in supporting the sustainability of the global economy and the growth of certain regions.

This is to be discussed because, on December 15, 2023, there was an attack on a cargo ship in the international strait area. In the latest attack on the Red Sea, an international cargo ship became a missile target from Yemen controlled by the Houthis.¹² According to a statement from the United States, one ship was attacked with drones and the other ship with missiles from parts of Yemen controlled by the Iranian-backed Houthi rebel group. The Houthis declared attacks on ships, expressed support for Hamas and targeted ships heading to Israel. This attack adds to a series of incidents in the Red Sea and could trigger regional security concerns.

⁹ R R Churchill, "Law of the Sea," *The International and Comparative Law Quarterly* 38, no. 2 (1989): 413–17.

¹⁰ Hasyim Djalal, "Regulation of International Straits," *Jurnal Hukum Internasional* 6, no. 3 (2009): 315.

¹¹ Elizabeth A Sibilia, "Oceanic Accumulation: Geographies of Speculation, Overproduction, and Crisis in the Global Shipping Economy," *Environment and Planning A: Economy and Space* 51, no. 2 (2019): 467–86, <https://doi.org/10.1177/0308518X1878108>.

¹² Talmiz Ahmad, "Houthi Attacks on Red Sea Shipping: Implications for Regional Security.," *Journal of Indian Ocean Studies* 32, no. 1 (2024), <https://doi.org/10.32381/JIOS.2024.32.01.1>.

The attack on a cargo ship in the Bab El Mandeb Strait, an important waterway for global trade, has raised tensions amid a war between Israel and Hamas.¹³ The United States confirmed that the attack originated in Houthi-controlled territory in Yemen, while the Houthis stated that it attacked several ships, including those mentioned. Although there has been no official confirmation of the drone attack, the event raises concerns regarding the safety of shipping in this strategic region, with the possibility of forming a multinational naval coalition to protect ships and respond to the threat of attack.¹⁴ In the latest attack on the Red Sea, an international cargo ship became a missile target from Yemen controlled by the Houthis. According to the United States, one ship was attacked with drones and the other with missiles from the part of Yemen controlled by the Iranian-backed Houthi rebel group. The Houthis declared attacks on ships, expressed support for Hamas and targeted ships heading to Israel. This attack adds to a series of incidents in the Red Sea and could trigger regional security concerns.¹⁵

The Bab El-Mandeb Strait does not belong to Yemen's territorial waters. The strait is an international strait that connects the Red Sea with the Gulf of Aden and the Arabian Sea.¹⁶ As an international strait, the El-Mandeb Strait follows the provisions contained in UNCLOS. UNCLOS states that international straits are shipping lanes between countries considered part of the high seas, and ships of all countries have the right to peaceful passage through those straits. Therefore, the Bab El-Mandeb Strait does not belong to the exclusive economic zone (EEZ) of Yemen or any country.

Although UNCLOS 1982 provides a comprehensive regime governing navigation through international straits, especially under Part III concerning transit passage, it was primarily designed to regulate inter-state relations and does not explicitly address contemporary maritime security threats posed by non-state actors, such as missile and drone attacks on merchant vessels. The recent attacks in the Bab El-Mandeb Strait illustrate a legal and practical tension

¹³ Theo Notteboom, Hercules Haralambides, and Kevin Cullinane, "The Red Sea Crisis: Ramifications for Vessel Operations, Shipping Networks, and Maritime Supply Chains," *Maritime Economics & Logistics* 26, no. 1 (2024): 1–20, <https://doi.org/10.1057/s41278-024-00287-z>.

¹⁴ Benjamin W Haight, "US Strikes against the Houthis: A "Splendid Little War" of Self-Defense," *Nat'l Sec. L. Brief* 15 (2024): 1.

¹⁵ PhD John T Kuehn, "The US Navy Is at War: The United States' Quasi-Naval War with Yemen's Houthis," *Expeditions with MCUP* 2024, no. 1 (2024): 1–15, <https://doi.org/10.36304/ExpwMCUP.2024.23>.

¹⁶ W. J. L. Wharton, "Undercurrents in the Strait of Bab-El-Mandeb," *Nature* 58 (1898): 544, <https://doi.org/10.1038/058544a0>.

between the freedom of transit passage and the obligation of coastal and user states to ensure maritime security.

Although numerous studies discuss the general concept of innocent passage and transit passage under UNCLOS 1982, limited scholarship specifically addresses the legal protection of commercial cargo vessels against non-state armed attacks occurring within international straits. Existing literature tends to focus either on navigational rights or maritime security separately, without integrating both perspectives into a comprehensive protection framework. This study fills that gap by linking the doctrine of transit passage with contemporary maritime security threats, particularly missile and drone attacks on merchant shipping, and proposes normative legal measures and cooperative enforcement mechanisms to strengthen the protection of commercial cargo ships in strategic chokepoints.

The central legal problem addressed in this article concerns the adequacy and effectiveness of the existing international legal framework particularly the 1982 United Nations Convention on the Law of the Sea (UNCLOS), in ensuring the protection of commercial cargo vessels exercising the right of transit passage in international straits against attacks conducted by non-state armed groups. This article argues that while UNCLOS guarantees navigational rights through transit passage, it does not sufficiently integrate maritime security enforcement mechanisms to address contemporary armed threats in international straits. Therefore, a reconceptualization of state obligations through cooperative security frameworks and complementary application of international humanitarian law and the law on the use of force is necessary to ensure effective legal protection of commercial cargo vessels.

2. Research Method

This study uses normative legal research methods proposed by Peter Mahmud Marzuki in *Legal Research*.¹⁷ This research aims to solve legal issues related to the protection of commercial cargo ships in peaceful passages in the international strait by identifying relevant legal rules, legal principles, and legal doctrines. The objectives of this research include analysis of international legal instruments, especially UNCLOS 1982 and SOLAS 1974, as well as other legal norms that regulate the safety and security of ships in international waters. In addition, this study also examines the role of coastal states in ensuring the smooth passage of peace as well as legal protection mechanisms for cargo ships

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, 17th ed. (Jakarta: prenada media, 2022).

that are the target of attacks in international waters. The technique of collecting legal materials in this study is carried out through library research by examining international agreements, conventions, jurisprudence, academic literature, and official documents from international maritime organizations. In addition, secondary data is obtained from reports of maritime organizations, coastal state policies, and legal documents related to cases of attacks on commercial cargo ships. The data analysis technique in this study uses a prescriptive approach, this study seeks to provide answers that are descriptive and contain clear normative values¹⁸, such as determining whether an action or policy in protecting cargo ships in the international strait is right, appropriate, inappropriate, or wrong. This analysis is expected to provide concrete recommendations for formulating international maritime policies that are more effective in ensuring the safety of cargo ships on strategic routes.

3. Research Results and Discussion

The protection of commercial cargo ships in international straits may be examined through three layers of legal responsibility: (1) flag State responsibility, (2) coastal/strait State responsibility, and (3) collective international responsibility. Flag States retain primary jurisdiction over vessel safety and compliance with international standards under SOLAS and UNCLOS. Coastal or strait States are obligated under Article 44 UNCLOS not to hamper transit passage and to provide navigational warnings. Meanwhile, the international community shares collective security obligations through cooperation mechanisms, joint patrols, and enforcement against unlawful violence at sea. This multi-layered framework clarifies that maritime protection is not the sole duty of coastal States but a shared legal commitment among stakeholders.

3.1. Legal Framework Governing the Protection of Commercial Cargo Ships in International Straits

3.1.1. Historical Foundations of Navigational Freedom and the Doctrine of the Sea

It is necessary first to understand the history of international maritime law, which begins with a discussion of the function of the sea for humanity. In its history, the sea has been proven to have various functions, including the following:

¹⁸ Taufik Firmanto et al., *Metodologi Penelitian Hukum: Panduan Komprehensif Penulisan Ilmiah Bidang Hukum* (Jambi: PT. Sonpedia Publishing Indonesia, 2024).

1. A source of food for humanity;
2. Trade highway;
3. Means for conquest;
4. Battle place;
5. A place to have fun, and
6. A tool to divide and unify the nation.

The birth of the concept of international maritime law cannot be separated from the history of the development of international maritime law regarding the debate between two concepts, namely:¹⁹

1. Res Communis states that the sea is the common property of the world community and, therefore, cannot be taken or owned by any individual country.
2. Res Nullius stated that no one owns the sea; therefore, each country can take and own it.

These two doctrines have their roots in the history of the Roman Empire's domination of the seas. Roman legal thought regarding the sea was based on the doctrine of res communis omnium, which stated that the sea was the common right of all humanity, allowing for the free use of the sea and the freedom of fishing.²⁰ On the other hand, the ownership of the sea by a kingdom or state is based on the concept of res nullius, where the sea can be owned through occupation or occupation. Although absolute control by the Roman Empire had ended, Roman legal concepts remained the basis for nations' ownership of the sea.²¹

However, to ensure the right of all countries worldwide to enjoy the seas as a common heritage of humankind, the right of peaceful passage for foreign vessels is recognized in territorial waters. This is under the formulation of the right of peaceful passage during the Conference of the Institut de Droit, which states that foreign vessels have the right of peaceful passage in the territorial waters of a country, including the right to stop and throw anchor in the event of

¹⁹ Alexandre Kiss, "The Common Heritage of Mankind: Utopia or Reality?," *International Law* 40, no. 3 (1999): 423–41.

²⁰ Kaius Tuori, "The Savage Sea and the Civilizing Law: The Roman Law Tradition and the Rule of the Sea," *Thalassokratographie: Rezeption Und Transformation Antiker Seeherrschaft*, Edited by Hans Kopp and Christian Wendt, 2018, 201–18, <https://doi.org/10.1515/9783110571820-009>.

²¹ Joseph Ooko Nyangaga, "The Doctrine of Occupation through " Terra Nullius" as a Right of Self-Determination of Peoples and the Legal Status of " Liberland" Territory under International Law," *Beijing L. Rev.* 13 (2022): 119.

a shipping incident or due to a state of force majeure or in a state of danger.²² This formulation was later adopted in Article 14, point 1 of the 1958 Geneva Convention on the Law of the Sea, which states: "Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea."

If the Strait is within the territorial sea territory of one or more coastal states, foreign vessels only have the right to cross without harm. Nonetheless, coastal states can temporarily suspend those rights of passage along the Strait to maintain national security, which could reduce freedom of navigation in two parts of the open sea, such as Gibraltar and Malacca. This principle was recognized in the case of Corfu in 1949, which was discussed in Article 4 of the 1958 UNCLOS on territorial seas.²³ In the context of the Strait of Corfu, warships and trade vessels can cross the waters of the international strait without endangering the security of the coastal state. In contrast, as the owner of the strait edge, the coastal state does not have the authority to suspend the crossing. Although there were differing views at the Third Law of the Sea Conference, with some arguing that the right of passage without limitation was broader, generally, common law tends to recognize the right of innocent passage that cannot be suspended through the strait.

In the rule of international law, the right to peaceful passage has been recognized by the Conventions of International Law, specifically the 1930 Hague Convention.²⁴ However, more comprehensive regulation was formulated in the 1958 Convention on the Law of the Sea, which was later integrated into the 1982 UNCLOS. The 1982 UNCLOS has made significant progress in regulating peaceful crossings in territorial seas, although it has adopted many provisions from previous conventions, such as the 1958 Geneva Convention on the Law of the Sea.²⁵ The 1982 UNCLOS includes several advances in the regulation of freedom of navigation and the rights of foreign ships, including peaceful passage in territorial seas, peaceful passage in the

²² Akbar Kurnia Putra, "Hak Lintas Damai (Right of Innocent Passage) Berdasarkan United Nation Convention on the Law of the Sea 1982," *Jurnal Ilmu Hukum* 7, no. 2 (2016): 25–42.

²³ Xinxiang Shi, "The Relationship between General Principles of International Law and Article 38 (1) of the ICJ Statute: A Law of the Sea Perspective," *Marine Policy* 148 (2023): 105427, <https://doi.org/10.1016/j.marpol.2022.105427>.

²⁴ Anh Duc Ton, "Innocent Passage of Warships: International Law and the Practice of East Asian Littoral States," *Asia-Pacific Journal of Ocean Law and Policy* 1, no. 2 (2016): 210–43, <https://doi.org/10.1163/24519391-00102006>.

²⁵ Benny Spanier, Orin Shefler, and Elai Rettig, "UNCLOS and the Protection of Innocent and Transit Passage in Maritime Chokepoints," *Maritime Policy & Strategy Research Center, University of Haifa*, 2021.

Straits for international navigation, and archipelagic sea lanes established by archipelagic sea lanes established by archipelagic states in consultation with the International Maritime Organization (IMO).²⁶

3.1.2. From Innocent Passage to Transit Passage: Evolution of Legal Protection Regimes

In its development, the right to peaceful passage through the territorial sea is based on freedom of navigation as an essential means to achieve freedom of trade. In his book published in 1758, the Vatican acknowledged this right's existence. In the case of *Twee Gebroeders* in 1801, Lord Stowell ruled that 'the act of passing unobtrusively over the part of the water, without resorting to force, is not considered an offence against the territory of a neutral state – normally no permission is required'. It can be considered that the right of peaceful crossing became established in the mid-19th century. In this regard, the Report Adopted by the Committee on April 10, 1930, at the Hague Conference on the International Code of Law clearly states that:

“This sovereignty [over the territorial sea] is, however, limited by conditions established by international law; indeed, it is precisely because the freedom of navigation is of such great importance to all States that the right of innocent passage through the territorial sea has been generally recognized.”

In this regard, there are several conditions that must be met before it can be said that a ship is enjoying the Right of Peaceful Passage, namely:

First, the crossing must be continuous and experiential. This means that the ship must continue travelling at a reasonable speed, considering safety factors and other relevant factors. According to Article 18(2) of UNCLOS, crossing includes stopping and anchoring only to the extent that it is incidental to ordinary navigation or necessary due to force majeure or emergency circumstances or to assist persons, ships or aircraft in danger or emergency.²⁷ Therefore, anchoring by a foreign ship is not usually considered an innocent crossing.

Second, in territorial seas, submarines and other underwater vehicles must sail on the surface and show their flag per Article 20 of UNCLOS. This provision follows Article 14 (6) of the Straits Convention (TSC). In this case, violating the requirements for sailing on the surface can constitute a denial of the innocent

²⁶ Maria Maya Lestari, “What Is the Right, Archipelagic Sea Lanes and Passage?(According To Unclos 1982 and Practice),” *Indonesian J. Int’l L.* 18 (2020): 209, <https://doi.org/10.17304/ijil.vol18.2.809>.

²⁷ Simon O Williams, “Maritime Security : The Concept of Innocent Passage,” maritime executive, 2014.

right of passage. Although it appears that a submarine sunk in the territorial sea is not considered an innocent passage, the sinking in the territorial sea does not directly justify the use of force against the submarine. Above all, every action must be taken other than armed forces to have submarines leave the area.²⁸

Thirdly, foreign ships crossing territorial seas with innocent right of passage must comply with all laws and regulations and all generally accepted international regulations relating to collision prevention at sea under Article 21(4). The most important regulation is probably the one contained in the 1972 Convention on the International Regulations for the Prevention of Collisions at Sea.²⁹

The safety of navigation for these ships must be protected, based on its definition. Navigation is the science of determining the position, direction, and distance of ships, planes, and spacecraft from one place to another. International navigation can be interpreted as the activity of navigating across national borders from domestic ports to abroad or vice versa, as well as other voyages through international waters that are subject to the rules of International Law.³⁰ In the international context, the principle of freedom of navigation has been accepted as a principle of international law, and the right to navigation is now governed in complex and detailed terms in the 1982 UNCLOS, although there are other relevant treaties adopted under the authority of the International Maritime Organization (IMO).³¹

The UNCLOS Convention regulates the right of navigation of foreign vessels based on the division of sea zones, including deep waters, territorial seas, additional zones, international straits, archipelagic waters, EEZs, continental shelves, high seas, and international seabeds.³² Although coastal states have full jurisdiction over their territorial seas, foreign vessels have the right of peaceful passage as an expression of the principle of freedom of navigation that is subject to and guaranteed by international law. The principle of freedom of navigation also includes the safety of navigation, as explained in UNCLOS

²⁸ Monica Carolina Ingke Tampi, "Pengaturan Hukum Hak Lintas Damai Menurut Konvensi Hukum Laut 1982 Dan Implementasinya Di Indonesia," *LEX ET SOCIETATIS* 5, no. 5 (2017), <https://doi.org/10.35796/les.v5i5.17696>.

²⁹ Dadang Suhendang, "Penegakan Hukum Hak Lintas Damai Bagi Kapal-Kapal Asing Di Perairan Indonesia," *Brawijaya Law Student Journal*, 2015, 1–21.

³⁰ Berg H.P, "Human Factors and Safety Culture in Maritime Safety (Revised)," *International Journal on Marine Navigation and Safety of Sea Transportation* 7, no. 3 (2013).

³¹ Zou Keyuan, "Navigation in the South China Sea: Why Still an Issue?," *The International Journal of Marine and Coastal Law* 32, no. 2 (2017): 243–67, <https://doi.org/10.1163/15718085-12322038>.

³² Keyuan.

Article 21, which regulates the right to peaceful passage. As the following provisions:

“The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

- (a) the safety of navigation and the regulation of maritime traffic;*
- (b) the protection of navigational aids and facilities and other facilities or installations;...*”

The article highlights the importance of coastal state support for navigation safety under the convention's provisions and other international rules.³³ SOLAS 1974, as an international legal regulation, specifically regulates safety at sea by setting minimum standards for the technical planning of shipping and ship transport within the Chapter. In this context, SOLAS 1974 requires all parties involved in the shipping industry to maintain navigation safety, including setting minimum standards, seafarer company management, ship operations, and operational and organizational safety policies.³⁴ The Convention also obliges a ship's captain to assist other vessels in need and receive and forward life-saving and distress signals.

In the technical implementation of navigation safety, each ship must carefully plan shipping and transportation, considering potential hazards, weather forecasts, tides, and crew competencies. The ship's captain is also required to assist other ships that need, receive, and forward life-saving signals and other distress signals.³⁵ In the context of the technical implementation of navigation safety, States can determine appropriate methods and means, whether recommended in the SOLAS Convention or other desired forms. The safety of navigating international straits is guaranteed by the provisions of SOLAS and UNCLOS, providing a solid foundation for the principles of freedom of navigation and safety on international shipping lanes.

3.2. Protection Against Commercial Cargo Ships That Have Been Attacked By A Country's Military Group In The International Strait

³³ Kristen Kuhn et al., “Protective Security at Sea: A Counter Terrorism Framework for Cruise and Passenger Ships,” *WMU Journal of Maritime Affairs* 22, no. 3 (2023): 345–63, <https://doi.org/10.1007/s13437-022-00296-w>.

³⁴ Aji Setiyo Kusummo, “URGENSI KESELAMATAN NAVIGASI PADA PENGANGKUTAN KOMODITAS,” *Bell Ac Pacis* 8 (2022): 1–11.

³⁵ Williams, “Maritime Security : The Concept of Innocent Passage.”

The international law of the sea begins with the principle of freedom of the sea, which gives control to every country. In the mid-20th century, as each country's ability to engage in long-distance fishing and commercial activities increased, concerns arose about pollution and damage to marine resources. This prompted the demand for rights to the resources of the continental shelf.³⁶ To address these complex issues, the development of an agreement-based regime for ocean governance is needed. The United Nations (UN) Conference on the Law of the Sea, which took place in 1958, 1960, and 1973-1982, resulted in several treaties, including adopting the 1982 UNCLOS as a convention governing the international law of the sea.³⁷

Article 44 of the 1982 UNCLOS establishes special obligations for countries bordering the strait to ensure the smooth passage of the right of passage in the region. First, the strait border states are not obligated to obstruct the right of passage used through the strait. This aims to ensure freedom of navigation for foreign ships crossing the strait and maintain the smooth flow of international sea transportation. Thus, the strait-rim state is expected not to impose restrictions or measures that could impede transit crossing that do not endanger national security.

Second, strait states must make appropriate announcements whenever there is a threat or danger to shipping or cross-passage flights within or over the strait that it is aware of. This action aims to provide the necessary information to parties involved in transit crossing so that they can take preventive measures or alternative plans according to the circumstances. Thus, transparency and information exchange are key to ensuring the security and safety of cross-transit on the strait.

As a third provision, Article 44 of UNCLOS 1982 stipulates that there shall be no suspension of transit crossing. This emphasizes the importance of smooth and sustainable transit crossing in the strait without any suspension measures that can disrupt the flow of international sea transportation. This provision secures the right of passage for foreign ships by eliminating the possibility of suspension, making it a fundamental principle in international maritime law governing straits.

³⁶ Grace Carolina et al., "UNCLOS 1982 Analysis Regarding Problems of State Jurisdiction and Law Enforcement on Foreign Flag Ships," *International Journal of Social Science Research and Review* 6, no. 3 (2023): 275–81, <https://doi.org/10.47814/ijssrr.v6i3.936>.

³⁷ Cosmas Emeziem, "The Law of the Sea Convention 1982 at Forty-Two: Milestones, Turbulent Waters, and Global Peace," *Geo. Wash. Int'l L. Rev.* 55 (2024): 393.

In addition, UNCLOS 1982, as explained in previous explanations, defines peaceful passage in Chapter II, Article 19 Paragraph (1) as a right for ships, both from coastal and non-coastal states, to pass through the territorial waters of other countries as long as such actions do not harm the peace, order, or security of coastal states. This article emphasizes that peaceful crossings must comply with the provisions of UNCLOS 1982 and other international legal regulations.³⁸ Nonetheless, Article 19 Paragraph (2) provides an exception where implementing a peaceful crossing can be considered dangerous. This includes situations where the ship commits acts that threaten or use violence that may affect the security and political independence of the coastal state, involves the practice or practice of weapons, conducts espionage, propaganda, aircraft launches or landings, and violates the customs, fiscal, immigration, or sanitary regulations of the coastal state.

In addition, the Convention prohibits activities such as loading and unloading commodities that violate customs regulations, intentional and severe acts of environmental pollution, fishery, research, or survey activities that are not directly related to crossings, and acts that interfere with communication systems or other facilities. For submarines and other underwater vehicles, Article 20 establishes the obligation to conduct navigation above the surface of the water and show the national flag of the submarine or underwater vehicle. All of these provisions are directed towards the safe arrangement of peaceful crossings under the principles of international maritime law.³⁹

So, the consequence is that if the ship exercises the right of peaceful passage following the provisions stipulated in UNCLOS and does not violate the listed regulations, then there will be no adverse legal consequences. Ships can cross international straits next to coastal states safely and unhindered, provided that the right of peaceful passage is exercised without prejudice to the peace, order, or security of coastal states, as described in Article 19 Paragraph (1) of UNCLOS.⁴⁰ Ships' compliance with UNCLOS regulations when exercising the right of peaceful passage will bring significant positive consequences. First, smooth shipping is the main thing, allowing ships to cross other countries' territorial seas without hindrance and efficiently supporting international trade and ship mobility. Second, it contributes to maintaining good relations between

³⁸ Dewa Gede Sudika Mangku, "Perlindungan Dan Pelestarian Lingkungan Laut Menurut Hukum Internasional," *Tanjungpura Law Journal* 4, no. 2 (2020), <https://doi.org/10.26418/tlj.v4i2.41910>.

³⁹ Khaidir Anwar, *Hukum Laut Internasional Dalam Perkembangan, Fakultas Hukum, Universtas Lampung*, vol. 3, 2015.

⁴⁰ Kurnia Putra, "Hak Lintas Damai (Right of Innocent Passage) Berdasarkan United Nation Convention on the Law of the Sea 1982."

countries, especially coastal states and ship-flag states, which are essential for maritime cooperation and regional security. Third, with UNCLOS, ships and countries have clear legal certainty, preventing misunderstandings and potential conflicts.⁴¹

Fourth, environmental protection is a priority, as UNCLOS requires ships to comply with marine environmental regulations, supporting the conservation of the ocean and its natural resources. Fifth, in the context of maritime safety, ships are required to comply with safety regulations, provide protection for human lives and prevent marine accidents. Some examples of concrete positive consequences include the absence of detention or diversion of the ship, being free from sanctions or fines, and enjoying the facilities and services provided by the coastal state, including docking in port and interacting with the local population.⁴²

Coastal states still have the right to take such actions to enhance the sovereignty possessed by the country if a ship enjoying the right of peaceful passage commits a violation. Some violations that a ship may commit include espionage activities, threats or use of force against coastal states, sea pollution, smuggling, or carrying out unauthorized activities. In case of violations, coastal states may take decisive measures, such as detaining the vessel, diverting the vessel to a nearby port, requiring the crew to leave, or imposing sanctions or fines following international law. Therefore, compliance with UNCLOS regulations is key to avoiding negative consequences. If a country takes action against a ship without violating UNCLOS, the negative consequences can include several critical aspects. First, such actions could create diplomatic tensions between coastal states and the flag states of the vessels concerned, resulting in disruptions to bilateral relations and maritime cooperation at the international level.

Furthermore, the detention of ships without a valid legal basis can result in significant economic losses for ship owners and crews. This includes lost revenue and additional costs that must be incurred to resolve the issue. In addition, unauthorized enforcement can damage trust between countries and the global maritime community, resulting in mistrust that can hinder international cooperation in addressing maritime issues.

⁴¹ Tampi, "Pengaturan Hukum Hak Lintas Damai Menurut Konvensi Hukum Laut 1982 Dan Implementasinya Di Indonesia."

⁴² Tampi.

Another consequence that may arise is the existence of international responsibility for coastal states for unlawful actions. Coastal states can be held accountable internationally and must compensate the affected ship owners and crew. Some examples of specific negative consequences include the risk of lawsuits in international courts, possible sanctions by international organizations, the deterioration of coastal states' reputations in the eyes of the international community, and a decline in trust from other countries.

4. Closing

4.1. Conclusions

Peaceful cross-border arrangements in the international strait have been regulated in UNCLOS 1982. Commercial cargo ships have the right to make peaceful passage through the straits, but this right is not absolute, and some restrictions must be followed. The main principles that must be applied are freedom of navigation and the right of peaceful passage. However, they must be carried out without disturbing the coastal state's peace, order, and security. Protecting commercial cargo ships during peaceful passages involves the responsibility of coastal states. Coastal states must ensure no obstacles to the transit crossing, provide notice of the dangers, and not suspend the transit crossing. In addition, UNCLOS also regulates the prohibition of ships carrying out dangerous activities, such as espionage, violence, marine pollution, and other activities that can endanger coastal states. SOLAS 1974 and other maritime safety regulations have an important role in the regulatory framework that also needs to be developed. The regulation establishes minimum safety standards that commercial cargo ships must adhere to in planning shipping and transportation techniques. The entire regulatory framework aims to ensure safe and trouble-free peaceful passage for commercial cargo ships, maintain safety, and uphold the interests of peace and security of coastal states. If a commercial cargo ship is attacked by a country's military group in international waters, this can have negative consequences. Unauthorized acts of aggression can create diplomatic tensions, cause economic losses, and damage relations between countries. International cooperation is an important key to protecting commercial cargo ships from attacks by military groups. States can cooperate in strict enforcement of UNCLOS violations, adopt mutual security measures, and provide mutual support to maintain security in high-risk waters. Increasing vigilance in these waters and taking preventive measures can minimize attacks on commercial cargo

ships. This joint effort involves coastal states and extensive international cooperation to create a safe and stable maritime environment.

The legal protection of commercial cargo ships transiting international straits cannot rely solely on the textual guarantees of UNCLOS 1982. Contemporary threats, including piracy, terrorism, and missile or drone attacks by non-state armed groups, demonstrate that freedom of navigation requires both legal certainty and operational safeguards. Therefore, the responsibility to ensure safe passage must be distributed among multiple stakeholders, including flag States, coastal or strait States, international organizations, security coalitions, and private ship operators. Each actor has distinct legal duties and practical capacities under international maritime law. The following recommendations outline concrete measures that may enhance preventive protection, rapid response capability, and coordinated enforcement in high-risk maritime chokepoints.

Table 1. Recommendation Action

Actor	Legal Basis	Recommended Action
Flag State	UNCLOS Art. 94	Ensure vessel compliance with SOLAS and security protocols
Coastal State	UNCLOS Art. 44	Provide warnings, avoid obstruction, conduct surveillance
IMO	SOLAS	Strengthen safety standards and reporting systems
International Coalition	UN Charter	Joint patrols & coordinated response
Ship Operators	ISPS Code	Risk assessment & route planning

This study demonstrates that the legal protection of commercial cargo ships in international straits extends beyond the traditional doctrine of innocent or transit passage. Contemporary asymmetric threats, including missile and drone attacks by non-state actors, require a reinterpretation of maritime law through a security-oriented lens. While UNCLOS provides the normative foundation for freedom of navigation, effective protection depends on coordinated enforcement, operational readiness, and international cooperation. Therefore, strengthening maritime governance must combine legal certainty with proactive security mechanisms to ensure that international straits remain safe arteries of global trade.

4.2. Suggestions

Based on the above conclusion, it is recommended that coastal States strengthen the effective implementation of their obligations under the 1982 United Nations Convention on the Law of the Sea (UNCLOS) by adopting clear and operational domestic regulations to ensure the protection of commercial cargo vessels exercising the right of transit passage through international straits, including the enhancement of maritime surveillance, the provision of timely navigational warnings, and the avoidance of any administrative or military measures that may unlawfully impede such passage, while consistently integrating the safety standards established under the 1974 SOLAS Convention and other relevant international maritime instruments into national maritime security policies. At the same time, international cooperation should be intensified through bilateral and multilateral frameworks, particularly in high-risk maritime areas, by means of joint patrols, coordinated law enforcement, intelligence and information sharing, and collective responses to violations of transit passage and unlawful acts of aggression. Furthermore, the international community must promote strict compliance with international law of the sea through diplomatic and institutional mechanisms, ensuring that any unauthorized use of force or attacks against commercial vessels in international waters are addressed through peaceful dispute settlement and legal processes, thereby preventing escalation and reinforcing the shared responsibility of States to safeguard freedom of navigation, maritime security, and global peace.

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