

they interfere with the vessel's ability to conform to generally accepted rules or standards. This opens the door to deal with situations where a ship is thought not to be capable of safely transiting the waters.

Once these laws are made and disseminated, it is the duty of all foreign ships exercising the right of innocent passage to comply with them, in addition to complying with international regulations relating to prevention of collision at sea.

If the rules and laws are complied with, the coastal State must not hamper the innocent passage of foreign ships. In particular, it should not impose requirements on foreign ships that are designed to hamper them. An example of this would be where the State required something that ships could not conform to, such as displaying a large red balloon or painting the ship white!

In addition, they should not discriminate against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.

1.5 Passage through Straits

With the many changes in territorial waters and exclusive economic zones, many straits that previously were part of the high seas are now under the control of one State. The Law of the Sea that covers this circumstance is as follows:

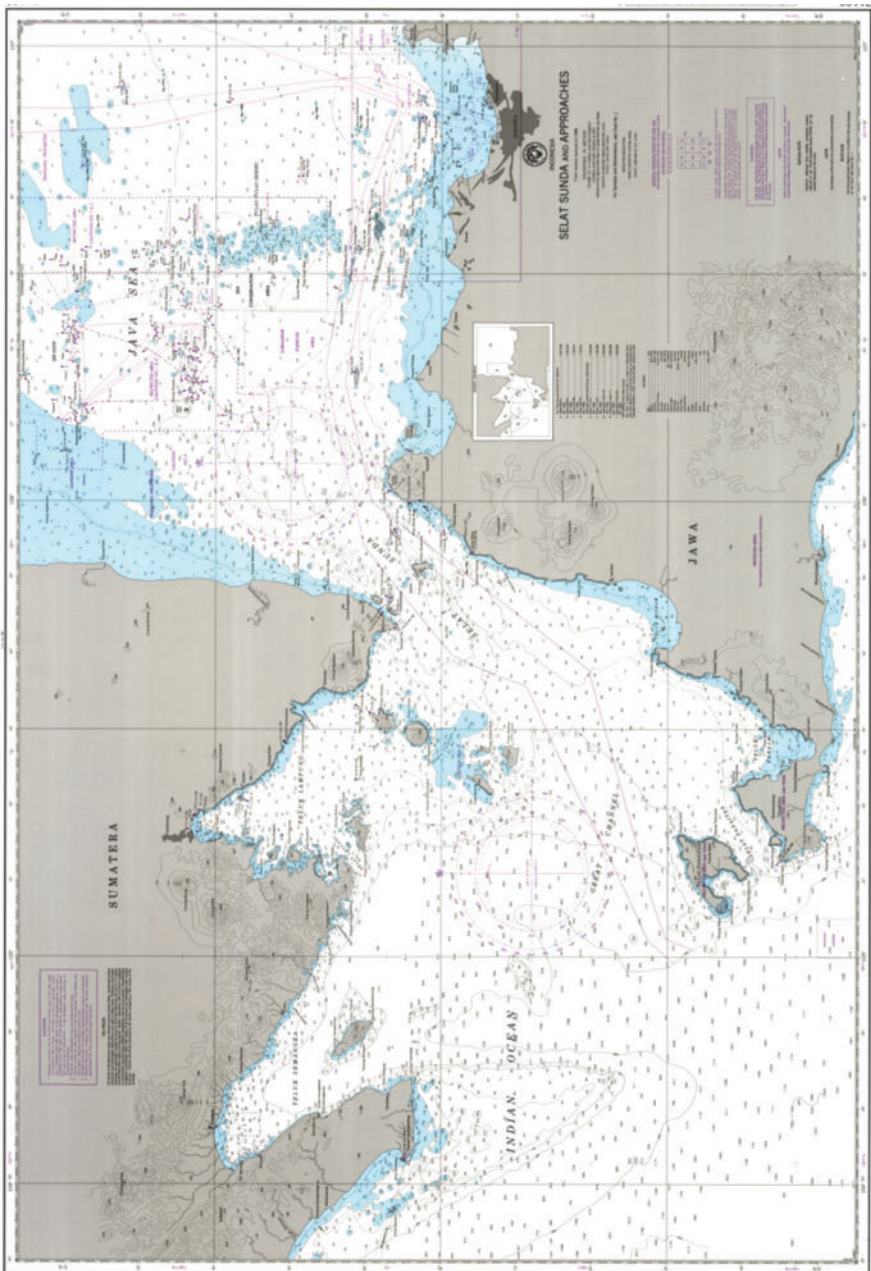
Taken from UNCLOS Article 38 Rights of Transit Passage

1. In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.



I must admit that, in the past, when transiting the Sunda Strait with time on my hands, I have done a little sightseeing around Krakatoa to the North. Under these rules, I did not have right of passage. It is interesting to speculate on how cruise vessels, which frequently make such diversions from the high seas or economic zones to take their passengers sightseeing, view compliance with this article.

2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.



Sunda Strait is One of the Many Straits Around the World that Offers Ships the Right of Transit Passage

3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

While ships are in transit of these passages, they shall:

Article 39

1. (a) proceed without delay through or over the strait;
- (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress;
2. (a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the *International Regulations for Preventing Collisions at Sea*;
- (b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.

The states bordering such straits may enact laws and regulations relating to the ships exercising their rights of passage through these waters concerning the following:

Article 42

1. (a) the safety of navigation and the regulation of maritime traffic;
- (b) 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;
- (c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;
- (d) 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.



In other words, the same responsibilities and restrictions apply to vessels transiting the coastal States within the straits as in territorial or exclusive economic zones.

1.6 Contiguous Zone

Taken from UNCLOS

Article 33

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:
 - (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

- (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.
2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.*

* Note. The Democratic People's Republic of Korea declared a 50 nautical mile military zone. Army Command Announcement of 1st August 1977.

This effectively creates a barrier of waters between the high seas and a State's territorial waters. Within, it can interdict a vessel that it has **reasonable** grounds to suspect of breaking its laws. Note that, if a vessel is proved to have broken the laws, it can be detained and punishments imposed.

Vessels, or vessels carrying cargoes, that are perceived as dangerous to a State could, under the sanitary laws and on the grounds of public health, be turned away if necessary. Therefore, ships looking for a port of refuge could be refused entry into waters up to 24 nautical miles away. The same laws can also be used for pollution, again under the sanitation provision.

Taken from UNCLOS

1.7 Exclusive Economic Zone

In the exclusive economic zone, the coastal State has:

Article 56

1. (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.

This can extend for up to 200 nautical miles away from a State's baseline and refers to the State's rights over natural resources within the zone.

All ships have the freedom of navigation enjoyed on the high seas in this zone, but with the proviso that the States have the right to restrict navigation near offshore installations.



In October 2008, Britain presented a formal claim to the United Nations for the seabed within a 350 mile radius of Ascension Island in the South Atlantic. As you will have seen with regard to EEZ limits, Britain can assert territorial rights to the area 200 nautical miles from the baseline. Under the terms of UNCLOS, this distance can be extended if the country in question can show that the continental shelf extends significantly into the ocean. If this claim is recognised, it will pave the way for exploration of a further 77,000 square miles of the Atlantic seabed around Ascension. While the waters around Ascension may not possess much in the way of oil and gas reserves, this claim could be a trial run for a British attempt to secure sovereignty over the contentious waters around the Falkland Islands, which are almost certainly rich in oil and gas deposits.

1.8 Continental Shelf

This is a resource zone and does not affect your right of passage. The waters in the zone are 'high seas'.

Article 76

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

This shelf should not extend more than 350 miles from the baseline.

The rights of a State over the continental shelf are for the purpose of exploration and exploitation of natural resources, not including fish.

1.9 Internal Waters

The waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

A State has complete jurisdiction over all internal waters. Innocent rights of passage are not allowed.

