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**THE RIGHT TO INNOCENT PASSAGE IN OCEANS CHANGING
SCENARIO AND IMPLICATIONS**- Khushbu Katiyar¹**ABSTRACT**

The idea of innocent passage in seas being a core component of maritime law has long been universally understood. across the use of this privilege, ships can pass across the territorial seas of coastal states without impinging on their sovereignty. However, the concept of innocent passage is facing fresh issues and implications due to changing geopolitical dynamics, expanding environmental concerns, and technological advancements. This research paper examines the evolving conditions surrounding the right to innocent passage in the seas and the effects these developments have had on maritime law, international relations, and environmental sustainability.

INTRODUCTION**a. Background and the rights to the innocent passage**

The ancient maritime conventions that allowed ships to sail over or pass through the territorial waters of the coastal state for trade, exploration, scientific research, and other diplomatic objectives gave rise to the concept of the innocent passage through seas. However, prior to the 17th century, there was no such legal system for governing innocent passage in the oceans. It wasn't until then that the legal framework for innocent passage started to take shape. In the beginning, the term "ocean" referred to both the high seas and the interior waters, which were areas of complete sovereignty for the coastal state.

the concept of mare liberum coming into focus²Hugo Grotius, a Dutch jurist who lived in the 17th century, made a substantial contribution to the evolution of the modern understanding of

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innocent passage by publishing his works on the subject of freedom of the seas during that time. For trade, commerce, scientific research, and other diplomatic endeavors, Grotius argued that the seas should be open to all nations; however, this must be done in a peaceful manner that does not jeopardize the sovereignty or integrity of the coastal state and coastal states should have limited rights to obstruct the innocent passage of ships.

The right to innocent passage has a long history that extends back to ancient times since it can be demonstrated that humanity has been utilizing the sea route to travel and sell goods between countries since the beginning of time. This is so because humans have always crossed international borders by boat. As a result, there is a perception that a balance needs to be struck between the interests of the coastal state and those of foreign vessels that conduct business inside its maritime boundaries.

The strict regulation of their territorial waterways by coastal governments has a long history. Like their internal rivers, these governments frequently saw their territorial seas as an extension of their whole sovereignty rather than a partial sovereignty. At first, it was thought that the presence of foreign ships in the territorial waters of coastal governments might endanger their national security.

To encourage the peaceful passage across the waters of a foreign coastal state, norms, conventions, and a legal framework have to be developed throughout time due to growing trade and navigation over the seas. Due to the perceived need to balance the interests of the coastal state, the concept of "innocent passage" was developed. This was done to make sure that no one's interests were compromised.

The right to an unrestricted and unhindered trip was not previously codified. There was a right to innocent passage based on the numerous prevailing customs at the time. The right to innocent passage was codified in 1958 due to the United Nations Convention on the Law of the Sea (UNCLOS) coming into effect. This also made it possible to establish a comprehensive framework for regulating marine activities, including the right to innocent passage.

b. Definition and scope of innocent passage

² International Tribunal for the Law. "Reports of Judgments, Advisory Opinions and Orders / Recueil des arrêts, avisconsultatifs et ordonnances, Volume 3 (1999)", Brill, 2002

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The legal right of a foreign vessel to travel through the territorial waters of another coastal state in a tranquil, continuous, and timely way without engaging in any activity that may be judged damaging to the peace, good order, or security of the coastal state is referred to as "innocent passage," and it is protected by international law. Additionally, it denotes that the foreign vessel is obligated to comply with this convention in addition to any and all other principles of international law that may apply³. It is crucial to remember that only foreign vessels on the water's surface are permitted to exercise the right to innocent passage. The right does not cover submarines that are moving below the water's surface. Submarines technically have the right to unobstructed passage, but only while operating above the water's surface. Additionally, the right to an unimpeded journey does not cover airborne vehicles.

Article 19 of UNCLOS specifies the conditions that must be met to qualify for the right to innocent passage. The passage must be continuous and quick, so foreign ships are not allowed to stop and start in the territorial waters of the coastal state for an extended time unless it is incidental to the regular navigation the foreign ship is engaged in, if it is necessary due to a force majeure event, or if it is necessary to assist other ships or vessels in need who are en route. Foreign vessels should not linger here and there in the territorial waters of the coastal nation; therefore, the transit must be continuous and quick.⁴ Additionally, the process of passing must be conducted without using any form of coercion or threat, without engaging in any drill or practice involving weapons, and without engaging in any form of propaganda.

The coastal states have the flexibility and the authority to create the laws, standards, and ordinances necessary to protect their territorial waters and the state. The right to innocent travel must not, however, be restricted beyond what is actually required. This suggests that the coastal state can only set reasonable restrictions, and for them to be enforceable against the boats of other countries, they must be formally and sensibly disclosed.

c. Importance and relevance of the right to innocent passage in contemporary times

Due to a number of causes, the right to innocent passage is still crucial and relevant in modern society. First off, it stands to reason that the vast bulk of international trade between nations now occurs via the maritime route. The vast majority of goods are transported by sea, and the right to innocent passage permits ships to pass through territorial waters without

³ United Nations Convention on the Law of the Sea (UNCLOS), 1982, article 19

⁴ Vukas, B., & Trumbić, I. (2012). Innocent Passage in the Territorial Sea and Its Development in UNCLOS. *Nautical Research*, 59(2), 141-153.

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impediment, enhancing the effectiveness of supply chains and fostering economic prosperity. As a result, it is essential to promote freedom of navigation and ensure the smooth flow of global trade.⁵

Second, the right to innocent passage is a protection that protects coastal governments and foreign ships from undue hostility and conflicts. By providing a legal framework that can assist in the prevention of misunderstandings, it makes the administration of marine affairs easier to understand and more predictable. When there are established standards and responsibilities for innocent passage, it is feasible for coastal states' maritime interests and the interests of foreign ships operating in the territorial waters to coexist peacefully with one another.

On the other hand, it is essential to keep in mind that in the past there have been a number of instances when the right to unmolested travel has been the topic of contention on several occasions. There have been efforts made by several coastal governments to widen their definition of what constitutes obstructive action, which might potentially limit the freedom of passage. The challenges posed by these wars serve as a timely reminder of how important it is to continue defining and defending the right to innocent passage within the parameters of international law.

GEOPOLITICAL DYNAMICS AND SECURITY CONCERNS

a. National security considerations and restrictions on innocent passage

Coastal governments frequently have valid national security concerns, despite the fact that international law regards the right to innocent passage as one of its most fundamental principles. A coastal state may impose reasonable restrictions on the transit of foreign vessels in order to protect the security of the country. However, the restriction must be followed by a reasonable notification of the restriction to other foreign states, which is a requirement.⁶

Justification for such restrictions might be provided by coastal states by the requirement to preserve the natural resources in their territorial waters over which they have jurisdictional control, the need to prevent smuggling, the need to fight terrorism, or the need to safeguard their national security. Nevertheless, any restrictions placed on the movement of innocent

⁵ UN General Assembly Resolution A/RES/2667(XXV)

⁶ UNCLOS, 1982, Article 21.

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people should be rational, necessary, and not unduly obstructive. Furthermore, they should be in accordance with the laws that govern international relations.⁷

b. Implications of territorial disputes and conflicting claims on innocent passage

There may be severe repercussions for the exercise of innocent passage rights as a result of territorial disputes and competing claims over the limits of marine areas. When coastal states have overlapping claims, there may be conflicts over the extent to which each coastal state has its territorial seas and the scope over which each coastal state can restrict innocent passage owing to the uncertainty of the territorial sea of that coastal state. These disagreements may arise because of the lack of clarity around the boundaries of each coastal state's territorial sea.

When one coastal state disputes the claims of its neighbouring coastal state, it can lead to increasing tensions between the two coastal states as well as possible dangers for foreign boats that are traveling through seas that are in dispute. Coastal governments that are engaged in territorial disputes may exercise greater control over their claimed territories, which may result in an increase in the number of challenges and limits placed on innocent passage.⁸

c. Piracy and maritime terrorism: Impact on the exercise of innocent passage rights

The existence of piracy and maritime terrorism creates obstacles that must be overcome in order to make use of innocent passage rights. Coastal states and international coalitions of coastal states may implement measures to enhance security in areas plagued by piracy, such as the Gulf of Aden and the Strait of Malacca. These measures may include the establishment of protected transit corridors and the requirement that vessels follow specific routing measures within those territorial waters.⁹

Even if these security measures that had been adopted by the coastal governments or their coalitions were intended to combat piracy and terrorism, there is a possibility that they may harm the rights of innocent passage. It is possible that increased security checks, rerouting, or delays in transit will be required in order to protect the crew members and boats that are in

⁷Galdorisi, G. J., & LaGrone, S. (2016). Protecting innocent passage: International law and the maritime chokepoint challenge. *Journal of Defense Resources Management*, 7(1), 57-70.

⁸ Valencia, M. J. (2010). The International Tribunal for the Law of the Sea and the maritime disputes in East Asia. *Ocean Development & International Law*, 41(3), 331-342.

⁹ United Nations Security Council Resolution 2383 (2017) on countering piracy and armed robbery at sea in the Gulf of Guinea

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transit. Coastal nations and international organizations have the difficult challenge of striking a balance between the need to protect innocent passage rights and the need to address legitimate security concerns.

ENVIRONMENTAL CHALLENGES AND CONSERVATION EFFORTS

a. Climate change and its impact on maritime routes and navigation

The effects of climate change will likely have a considerable impact on marine transportation and navigation. Previously inaccessible or commercially unviable shipping routes, such as the Northern Sea Route and the Northwest Passage, are becoming accessible as a result of melting polar ice sheets and changing weather patterns. These new routes include the Northern Sea Route and the Northwest Passage.¹⁰ Because these new routes have the potential to give advantages in terms of shorter travel lengths and lower fuel consumption, they might make international trade and commerce more cost-effective in the future if foreign boats were to transit through newly created shipping routes.

However, climate change also offers obstacles, such as an increase in the severity of storms, a rise in sea level, and altering currents, all of which have the potential to undermine the dependability and safety of marine traffic. Coastal nations and international organizations both have a responsibility to monitor the shifting conditions and adjust their operations accordingly in order to maintain the marine transportation system's reliability and efficacy.¹¹

b. Pollution and marine environmental protection: Balancing innocent passage and ecological sustainability

Many other forms of pollution, such as oil spills, chemical releases, and waste dumping, are brought on by maritime activity. These many kinds of pollution pose serious threats to marine ecosystems. Striking a balance between the right of innocent passage and the necessity for the protection of the marine environment is vital in order to ensure the ongoing survival of the maritime ecosystem, which should never be threatened under any circumstances.

A coastal state's government is allowed to create whatever guidelines it sees fit and to enact any laws or regulations it sees fit in order to prevent and lessen the consequences of pollution

¹⁰ Arctic Council. (2017). Arctic Shipping: An Analysis of the Economic and Environmental Impacts. Retrieved from <https://oaarchive.arctic-council.org/handle/11374/1997>

¹¹ Intergovernmental Panel on Climate Change (IPCC). (2019). Special Report on the Ocean and Cryosphere in a Changing Climate. Retrieved from <https://www.ipcc.ch/srocc/>

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brought on by foreign boats operating inside its territorial waters. Global cooperation and adherence to international agreements, such the International Convention for the Prevention of Pollution from Ships (MARPOL), are important factors in minimizing the harm that marine operations due to the environment.¹².

Innocent passage rights can still be exercised while maritime habitats are protected thanks to initiatives to lower ship emissions, encourage environmentally friendly shipping methods, and create cleaner technology.

C. The impact of protected marine areas on the right to innocent passage

maritime reserves, national parks, and ecological sanctuaries are examples of protected maritime regions that have been established to protect biodiversity and the delicate marine ecosystems. The coastal governments frequently place restrictions on human activity and navigation in their territorial seas to ensure the preservation of the unique natural resources.

Whether the right to innocent passage and the coastal state's aforementioned conservation goals can coexist is a matter of debate. This may happen as a result of the establishment of protected maritime areas. Coastal states must find a compromise between their commitments to protect marine environments and foreign boats exercising their right of innocent passage. To lessen the impact on delicate environments, this typically means designing particular routes, putting in place speed limitations, or enacting temporary restrictions.

TECHNOLOGY ADVANCEMENT AND THE CHANGING LANDSCAPE

Maritime surveillance technologies and their effect on innocent passage

Marine surveillance capabilities have changed as a result of technological developments, making it possible for coastal nations to detect and monitor vessels more accurately and successfully. Unmanned aerial vehicles (UAVs), satellite surveillance, and automatic identification systems (AIS) all improve situational awareness and offer useful data for maritime security and safety.

Even though these technologies are crucial for recognizing potential threats and ensuring compliance with marine standards and laws, their usage should be in conformity with international law and respect the right to innocent passage. The gathering and processing of

¹² International Maritime Organization (IMO). (2021). Marine Environment. Retrieved from <https://www.imo.org/en/OurWork/Environment/Pages/Default.aspx>

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vessel data shouldn't violate individuals' right to privacy or unnecessarily obstruct harmless passage.

Autonomous vessels and their implications for the exercise of innocent passage rights

The use of innocent passage rights is complicated by the growing number of autonomous vessels in the marine environment. Without human assistance, autonomous ships have the ability to maneuver more effectively and with less chance of making mistakes. However, the legal structure governing innocent passage has to be reviewed in light of their appearance.

Coastal states may be worried about the reliability and predictability of autonomous vessels, especially in regards to regulatory compliance and the possibility of mishaps or accidents. Clarification may be necessary about who will be liable for the autonomous ship's activities, who is liable for the operators' actions, and how present laws and customs should be enforced in order to ensure navigation safety and security.¹³.

Cybersecurity threats in the maritime domain and their impact on innocent passage

The maritime industry's increasing dependence on connection and digital technology exposes ships to cybersecurity risks. Cyberattacks that target essential infrastructure, such as communication networks or navigation systems, can have a significant negative impact on a ship's ability to operate safely and securely as well as on innocent passage.

Coastal nations and marine stakeholders must create strong preventative measures, encourage information exchange, and improve global collaboration to handle cybersecurity problems. It is necessary to have a balanced strategy that incorporates cybersecurity practices into the legislative framework governing marine operations in order to safeguard ships and maritime infrastructure from cyber-attacks while upholding the right to innocent passage.¹⁴.

LEGAL FRAMEWORK AND INTERNATIONAL RELATIONS

The UNCLOS (United Nations Convention on the Law of the Sea) clauses on innocent passage The major body of maritime law, the United Nations Convention on the Law of the Sea (UNCLOS), governs innocent passage. The UNCLOS, which was approved in 1982,

¹³ International Maritime Organization (IMO). (2020). Maritime Autonomous Surface Ships (MASS). Retrieved from <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Maritime-Autonomous-Surface-Ships.aspx>

¹⁴ International Maritime Organization (IMO). (2020). Maritime Cyber Risk Management in Safety Management Systems. Retrieved from <https://www.imo.org>

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outlines specific principles for the rights and obligations of the coastal state and foreign boats in the coastal state's territorial waters.

UNCLOS establishes the right to innocent passage and lays out its conditions as well as any limitations. Article 17 of the UNCLOS defines innocent passage specifically, emphasising the peaceful and impartial nature of the transit.¹⁵ Article 19 also addresses the government's authority to restrict innocent movement in coastal areas in order to protect those states' security interests.¹⁶

International law as custom: Adapting views of the innocent passage

State practice and customary international rules have a substantial impact on how innocent passage rights are interpreted and used. Through state policy, legal rulings, and international jurisprudence, the concept of innocent passage has developed through time.

Based on their unique security concerns, geographic conditions, or cultural traditions, states may adopt varying definitions of innocent transit. However, any limits placed by coastal governments on innocent passage should respect the fundamental components of peaceful and uninterrupted transit and be in accordance with the broad guidelines set by UNCLOS and customary international law.

DISPUTES AND RESOLUTIONS: CASE STUDIES AND LEGAL IMPLICATIONS

There have been a number of famous instances involving disagreements over innocent passage rights. For instance, in regions with conflicting territorial claims, like the South China Sea, tensions have developed between coastal nations and foreign ships. International arbitration or adjudication has been used to resolve disagreements on the definition of innocent passage and the scope of coastal state regulations.

The interpretation and implementation of UNCLOS articles, as well as an analysis of historical customs, state practice, and principles of customary international law, are frequently used to resolve these conflicts. Such instances help to generate consistent and foreseeable legal results by offering insightful information about the developing legal environment surrounding innocent passage.

¹⁵ UNCLOS, 1982, Article 17.

¹⁶ UNCLOS, 1982, Article 19.

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Future Prospects and Recommendations

Taking on new challenges: International collaboration and proposed legal reforms

It is necessary to think about future legislative modifications and improve international collaboration in order to solve new obstacles in the exercise of innocent passage rights. A few suggestions for collaboration and legislative improvements are as follows:

Clarifying and updating current legal frameworks: It may be required to review and amend pertinent international treaties, like UNCLOS, to guarantee their compliance with cutting-edge technologies and practices, given the rapid improvements in technology and shifting marine environments.

Creating regulations for autonomous ships: The compliance of autonomous vessel operations with innocent passage principles can be ensured by developing standards or best practices for their interaction with current legal frameworks. These principles should cover matters like accountability, duty, and following rules.

Increasing collaboration and information exchange: In order to combat cybersecurity risks and guarantee the safety and security of vessels while upholding the rights of innocent travelers, information exchange methods can be strengthened and international collaboration encouraged. Coastal nations, international organizations, and marine stakeholders working together may exchange best practices and encourage coordinated responses to new issues.¹⁷.

promoting environmentally friendly marine methods while upholding the rights of innocent bystanders

The long-term wellbeing of the seas and marine ecosystems depends on the development of sustainable maritime practices. Striking a balance between ecological measures and the assertion of innocent passage rights is essential. Several suggestions are as follows:

Environmental education and awareness A culture of environmental responsibility may be fostered by raising maritime stakeholders' understanding of the value of marine conservation and sustainable practices.

¹⁷International Maritime Organization (IMO). (2020). Maritime Autonomous Surface Ships (MASS). Retrieved from <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Maritime-Autonomous-Surface-Ships.aspx>

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promoting green practices and technologies Supporting the development of ecologically friendly technology like waste disposal methods and low-emission propulsion systems can help to lessen the negative effects of marine operations on the environment while still upholding the rights of innocent bystanders to free passage.

the creation of maritime protected zones While ensuring that innocent passage rights are maintained, the establishment and good management of marine protected zones can aid in the preservation of marine biodiversity. In order to create and manage these protected zones, coastal governments and international organizations should work together, taking into account both conservation and navigational concerns.¹⁸.

The fate of innocent passage and the roles that international organizations, coastal governments, and marine parties will play in its development

The future development of innocent passage is subject to major impact from a variety of sources, including international organizations, coastal governments, and maritime interests. Some recommendations are:

Increasing cooperation across international borders International institutions such as the International Maritime Organization (IMO) should foster communication and collaboration among coastal states and stakeholders in order to address new concerns, promote best practices, and guarantee the harmonization of law and standards. These goals may be accomplished by addressing new issues, promoting best practices, and ensuring that legislation and norms are harmonized.

Increasing capabilities while also offering technical assistance It is possible for international organizations to assist coastal governments, particularly those of developing states, in increasing their level of expertise and receiving improved understanding and implementation of innocent passage rights while simultaneously addressing emergent issues.

¹⁸ International Union for Conservation of Nature (IUCN). (2016). Guidelines for Marine Protected Areas. Retrieved from <https://www.iucn.org/content/guidelines-marine-protected-areas>

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Getting maritime stakeholders involved: Involving actors in the marine sector, such as shipping companies, port authorities, and maritime groups, in dialogues and decision-making processes may help define the future of innocent passage.¹⁹.

CONCLUSION

In international marine law, "innocent passage" is a crucial concept. It grants foreign ships the legal ability to navigate within the territorial seas of countries with coastlines. Throughout the course of human history, the right to innocent passage has experienced tremendous evolution and alteration due to a range of geopolitical dynamics, environmental concerns, technological advancements, and legal frameworks.

The rights of innocent passage may be impacted by recent advancements in sea surveillance technologies. Coastal nations must use prudence and ensure that the rights of innocent passage are preserved and maintained while exploiting them.

The development of autonomous vessels has raised several issues about their legal standing and the execution of innocent passage rights. The creation of certain norms and laws is necessary to tackle this situation.

Cybersecurity concerns in the marine industry may compromise the integrity of innocent passage rights. Strong cybersecurity safeguards and international cooperation are required to protect against these threats.

The legal foundation for innocent passage is the United Nations Convention on the Law of the Sea (UNCLOS). The rights and obligations of coastal governments and vessels that are not registered there are also outlined in this treaty.

Legal changes may be required to address new issues, such as how autonomous vessels are handled and how advancing technology affects innocent passage. A more thorough legal framework may be created with the aid of clear rules and regulations.

The future of innocent passage will be greatly influenced by international collaboration. The creation of uniform standards, unified interpretations, and best practices can result from cooperation between coastal nations, international organizations, and marine stakeholders.

¹⁹ United Nations. (2017). Sustainable Development Goal 14: Life Below Water. Retrieved from <https://sdgs.un.org/goals/goal14>

While promoting sustainable maritime practices, it's important to safeguard innocent bystanders' rights to travel. For a marine environment that is sustainable and cooperative, it's crucial to strike a balance between environmental protection and the right of innocent passage.

A culture of cooperation and respect between coastal governments and foreign boats may be cultivated by ongoing communication, awareness-raising, and educational activities.

The future of innocent passage will continue to be significantly shaped by the involvement of international organizations, coastal nations, and marine stakeholders. Their active participation and collaboration may help create a stable and safe marine environment.

The resolve of coastal governments, international organizations, and maritime stakeholders to respect the fundamentals of international law, foster collaboration, and confront new issues in a balanced and sustainable way is ultimately what will determine the future of the right to innocent passage in seas.

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