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Conflicting Views on the Innocent Passage of Warships with Emphasis on the Practice of Iran

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Abstract

The conflict between sovereignty over parts of the sea and the necessity of "innocent passage" concept has been the most contentious field in the law of the sea." Two hypotheses in this field have collided in the history of international law of the sea. The first hypothesis is that every human possesses the seas together. "Navigation" and other operations are also allowed for all. Under the excuse of owning the sea, no state has the right to restrict other people's use. However, the second theory says that the sea is owned by someone who controls part of it, and its use can be limited. In international law, the "innocent passage" by foreign vessels from the territorial sea of a country is widely recognized. However, in some territories, the requirements for the "innocent passage" of military vessels include the need for prior notice or the coastal state's permission. Most forces, led by the US, believe in absolute freedom of the military vessel's "innocent passage." However, most Asian countries, including Iran, assume that they can prior notification or approval for a foreign military vessel passage. This activity was often resisted in operational as well as diplomatic phases by naval forces such as the United States.

Keywords: Innocent Passage, Military Vessels, Territorial Sea, Iran Official Practice.

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1. Introduction and History

The most contentious area in the laws of the sea was the controversy between jurisdiction over part of the sea and the need for the principle of "innocent passage." There have been two theories in disagreement throughout the history of international law regulating oceans and seas. The first theory states are that the seas belong to all humans jointly hence "Navigation" and other activities also appropriate to everyone. Under the excuse of owning the sea, no state has the right to curb other use (Limpitlaw, 2001:185, 205). On the other hand, the second theory notes that the sea can own and anyone regulating its use will minimize its use (Barbara, 2004).

History of law of sea dominated the competition between the practice of governmental power over the sea and the notion of freedom of the navigation. During the centuries, tensions between the two have increased and decreased, reflecting current economic, political and strategic conditions. When one or two key trading forces rule or achieve power equality, the focus is on freedom of "navigation" and immunity. Where major powers have weakened or failed, the focus has been on maintaining marine resources, claiming local control over the sea, or where the balance of power was achieved between many countries (Shackleton, 1978: 11-18).

There has always been a mutual disagreement in history over whether governments should capture the sea. Perhaps the first ones to take the position were the "Glossators," who promoted Roman law. They argued that they had to invest in the Roman Empire their sovereign rights (Fenn, 1926: 465).

But the principle of the sea for free access for humans was emphasized with the coming of international law. The judge summed up Mariana Flora: "Anyone possesses all property in the sea in peace. “This is a common road to be used by all, and there can be nobody exercises a superior or exclusive right."

But the consensus of nations was to have authority over a watershed next to the coast by the 13th century (Lapidoth, 1975). Governments have jurisdiction over some parts of the sea, at different points of history (Lapidoth, 1975: 261). For instance, the Liguria and Adriatic Seas claimed the glory of Genoa and of the Republic of Venice, respectively (Lapidoth, 1975: 14). The most well-known claim to sea land was probably in Spain and Portugal over nearly all oceans in the fifteenth century. Pope Alexander VI gave in 1493 the western and eastern hemisphere to Spain and Portugal, respectively, by drawing an imaginary line from the North Pole to the South Poles!

During the 17th century, the legal scheme used to engage the Dutchman, Hugo Grotius in the sphere of "navigation freedom", and the Englishman John Selden in the defense of the principle of limited access to the sea was considered a valuable intellectual debate on the matter. Grotius argued that prohibiting free "navigation" in his treatise on the innocence of the commercial interests of the Netherlands in eastern India was contrary to the law (Hugo). On the other side, Selden upheld the right of the British King to the sea on the British islands. Inspired by preceding statements from Great Britain and other governments, He believed "the law of God, or divine revelation in the Bible, permits private ownership of the sea" (Selden, 2004). In the end, freedom of navigation treatise of Grotius seems to have prevailed over the closed maritime agreement of Selden. Since the eighteenth century, coastal countries have accepted navigation rights and the principle of freedom of navigation (Lapidoth, 1975: 268).

This argument between supporters of freedom of navigation and limitation of seas has established two principles: the principle of the jurisdiction of the coastal state over the territorial sea and the right to innocent passage. Perhaps than anything else, the compromise between these strategies is that the right to 'innocent passage' is now strongly accepted in foreign legislation.

The first concept enables countries for innocence purposes to expand their authority over the margins of its coastal waters, as it is better to protect them on land to attack enemies at sea (Schachte, 1990: 143). Even Grotius, the freedom navigation hero, remembered that the marine belongs to everyone and nobody can take it. However, if part of the sea is by its very nature possessable, it can become the property of the occupier, but only to the degree that such ownership has little to do with the usual use of the sea (Hugo: 30).
The first concept, as already stated, is the coastal State's jurisdiction over the territorial sea. Other arguments to encourage the exercise of sovereignty over the territorial sea are recently proposed for proponents of territorial law. For health, protection, welfare, noise, customs control and national innocence purposes, this has been upheld (Schachte, 1990: 143,147). The littoral states reaffirmed the territorial sea definition as a fixed principle in law of the sea from The Hague Conference of 1930 to the 1958 Territorial Sea Convention and the Monte Gobi Convention of 1982. The Convention of 1982 requires the coastal State for up to 12 nautical miles of coastal baselines to solely exercise authority over the sea beds, air space, and the underwater (UNCLOS, Art3).
The second principle that originated from the tension of the freedom navigation with closed seas is the "innocent passage" right. The right to 'innocent passage' promotes commerce and communication among nations. Therefore, ships from foreign countries can cross those waters even though a coastal state may exercise territorial sea jurisdiction unless such "navigation" is provocative. Because of countries' interdependence, a country cannot refuse the right. No country may pretend to be so independent as not to require other country support.
The right to "innocent passage" is equilibrium between the rights of navigators and coastal states. The first is the protection of freedom of navigation, and the second is focused on the defense (Lapidoth, 1975:

259). The coastal country may be, depending on the conditions, and the coastal country may also be, and follow the needs of both classes (Ngantcha, 1990). One of the key reasons to define an "innocent passage" is this possible complication factor.

In the 11th and final session of the third conference convened for this reason at the United Nations Headquarters in New York, the key event in the history of the International Law on the Sea was adopting the Convention on the Law of the Sea on 30 April 1982 (UN Press, UN. Doc: 1982). The Convention affirms that all types of vessels with different and precise detail and regulations have the right to 'innocent passage' of territorial waters. Given the success of contemporary coastal States, however, the exact extent and legal existence of the right to an innocent passage is uncertain. This ambiguity is a reminder that only with regard to the success of States are the provisions of the Treaty sensible. In addition, even though a nation finds a treaty binding, it is no long way from breaching or disregarding the terms of the Treaty to protect its own interests.

Consequently, there is no static international law. Although government policy is continually evolving, progress is being made in resolving current challenges. The laws of international law often change as the changing situations arise. Likewise, law of the sea "remains an active and dynamic field, which changes and grows as countries' interests change" (Florsheim, 1970: 73, 75).

Navigation rights are evident due to trade, military, innocence and other issues at the coast (Mossop, 2019:867-870).

During the Cold War, a conflict of interest between the government and international law of the sea came to light. The United States has had competing positions on the "innocent passage" of military vessels until the fall of the Soviet Union, its main foreign competitor. The Soviet Union accepted "innocent passage" as a right of military vessels during The Hague Conference, for instance, in 1930 (Reply of the USSR). But the USA claimed that the 'innocent passage' was

reserved for navigation (Reply of US). A military vessel requires the coastal state to be allowed to enter territorial waters beforehand.
However, at the 7th round of the 1955 International Law Meeting, the two powers shared differing views. The Soviets said the right to passage is innocent for commercial vessels. Because of the danger they faced, military vessels should obtain prior approval by the coastal state. However, as long as the military vessel is allowed to comply with the conditions of "innocent passage" (Yearbook: 1955; UN DOC), the US envoy said it is enough to help the coastal state. There is no distinction between military and commercial vessels in this regard (US proposal, UN Doc: 1958).
In the late 1960s and the early 1970s, the Soviet Union became a naval force and thus rethought it. He took a similar stance with the United States during the 1975 talks on the Convention on the Law of the Sea (O'Connell, 1975:141). Finally, the Convention on the Law of the Sea acknowledged the right of "innocent passage" for military vessels. But the rather narrow interpretation in the Soviet Union of the "innocent passage" of the warships led in the 1986 and 1988 warship to two variations (Soviet press,١٩٨٦ ; International tiered Tribune,١٩٨٨). Finally, through diplomatic talks, the two countries resolved their differences in 1989. In a joint statement, they agreed to accept 'innocent passage' in accordance with the 1982 Convention's definitions and limitations.
The remainder of this article is structured as follows. The first chapter details the "innocent passage" rules. The second chapter explains the "innocent passage" of military vessels across a territorial sea to clarify the gaps and opinions surrounding their particular control and regulations. Finally, the views on this practice of the Islamic Republic of Iran (included in the Law of the Iranian Maritime Areas of the Persian Gulf and Sea of Oman) and the naval powers' objections to this practice are identified, led by the United States.

2. General Rules for "innocent passage" across Territorial Sea

In this chapter, the right to "innocent passage" through the territorial sea is illustrated. Military vessels shall comply with two sets of rules on passing foreign territorial sea, general regulations applicable to all vessels and military vessels unique rules. The first section will clarify and explain the general rules to convey the material better and more accurately. In the second section, the laws of military vessels will discuss.

2.1. The concept and content of the "innocent passage"

The right to an "innocent passage" allows a foreign ship entry to the coastal territorial sea if the navigation is non-criminal and peaceful. Whether coastal or landlocked, ships have the right to 'innocent passage' in the territorial sea (UNCLOS, art.17).

The description of the passage itself is not difficult. In this respect, the focus is on the navigation across the territorial sea of coastal state. Thereby, without entering inland waterways or contacting port facilities, a vessel can cross the territorial sea. Conversely, after the territorial sea, the vessel can enter inland waters or, by way of inland waters passage (navigation for exit), enter the territorial sea or reach the port from outside these waters (UNCLOS, art. 18 (1)).

However, vessels are not (almost never) permitted to stop or maneuver in territorial waters because, regardless of whether it is innocent or not, it is not considered a passage (Churchill, 1999). Thus, the passage must be done continuously and quickly (UNCLOS, art. 18 (2)). An exception exists, however. For one of the following reasons, vessels allowed to stop in the Territorial Sea; for accidental stop or anchorage which is normal for usual "navigation," or force major make it necessary, for assistance to help people, industries, or facilities that are at risk (UNCLOS, art. 18 (2)).

Innocence is defined as not "harmful to the peace, the order or innocence of the coastal state" (UNCLOS, art. 19 (2)). In other words as this is a broad and highly interpretable concept, Article 19(2) of

the Convention includes an exhaustive list of situations where a transfer does not come under the definition "innocent passage" (UNCLOS, art. 19 (1)):

1) Any threat or use of force that constitutes a breach of the values of international law enshrined in United Nations Charter against the dignity, territorial integrity or policy freedom of the coastal State, or any other act.
2) Any exercise or maneuver with any weapon
3) Any attempt to collect information at the expense of the coastal State for protection or innocence
4) Flight and landing and transportation of all aircraft types
5) Any military equipment being flown, landed or moved
6) Loading or unloading of goods, currencies or individuals in Contrary to customs, financial, immigration or health regulations of coastal country
7) Any act of intentional and serious contamination contrary to the provisions of this Convention
8) Any fishing activities
9) Research programs or surveys
10) Any attempt to disrupt any communication infrastructure or other coastal State facilities
11) Some other operation not connected directly to the passage.

Article 19 illustrates that an 'innocent passage' assumption is based on the fact that ships are not necessary until gaining permission to cross the territorial sea to prove that their passage is innocent. Consequently, the burden of proof is on the shoulder of the coastal state, to prove that a passage is not innocent. However, the Convention does not specify whether countries should prove that the passage is not innocent base on objective standards or they need to prove just the possibility of it. To be the norm, the coastal State must show that a ship has been engaged in at least one of the activities prohibited by Article 19 (2). But if we use the criterion of suspicion

as a criterion, the Coastal State must, however, only show the justification (suspicion) that any of the actions prohibited under Article 19 (2) could be committed by that vessel. In view of the fear of terror attacks, it would be reasonable to assume that countries would interpret Article 19 in a manner that allows them to prevent passages of vessels across their territorial sea by proving that it is likely to be harmful (Rothwell, 1992: 427-437).

2.2. The Legislative Power of the Coastal Country

Nowadays there's no "innocent passing" as an absolute right. The Convention limits the right of an innocent passage by giving coastal States regulatory authority and forcing vessels to comply (UNCLOS, art. 21 (4)). A coastal state can protect its interests at sea by passing legislation and regulation (UNCLOS, art. 21).

These benefits include navigation safety and maritime traffic regulations, the protection of cables, pipeline and navigation aids, the protection and livelihoods of the marine environment, pollution prevention, pollution reduction and control, marine scientific research at sea, hydrographic and customs surveys, financial, immigration or health issues (UNCLOS. art. 21 (1)). In design, building, operation and equipment of ships, the regulation measures shall not be applied except for compliance with international standards (UNCLOS. art. 21 (2)).

In addition, in all parts of the territory, a vessel cannot exercise innocent passage. In this context, it is obliged for Coastal state to direct the use of sea lines and navigation by foreign ships passing by its territorial sea in accordance with the relevant road schedule (UNCLOS. art. 22 (1)). However, the designation of such schemes should reflect the International Maritime Organization's recommendations (IMO). (UNCLOS. art. 22 (3)) In view of the definition of non-innocent passage linked to coastal state's interests, infringement of the Coastal state's laws and regulations makes the

passage non-innocent because such a violation is clearly provocative and insulting to the coastal government.
The Coastal State is undoubtedly given wide discretion under Articles 19(2) and 21 to deem the passage non-innocent. Despite the efforts of Convention draftsmen, terms like 'peace', 'order' and 'security' are very fluid and susceptible to different interpretations.

2.3. The rights and powers of the coastal country
If the coastal state has the authority to regulate the innocent passage, it requires the right to enforce the regulations, as a necessity. The Convention permits the coastal State to adopt fundamental measures to prevent non-innocent passage through the coastal sea (UNCLOS. art. 25 (2)).
Furthermore, Article 25 implies strongly that violation of law and regulation of coastal state by foreign vessel make the passage a non-innocent passage. However, neither Article 25 nor any other Article orders the coastal State what measures can take to prevent non-innocent passage. Accordingly, the coastal countries control preventative measures fully and arbitrarily. However, there's a limit to this executive power, because of its presence in the territorial sea, the coastal country cannot receive a charge from a foreign vessel (UNCLOS. art. 26). However, even such restrictions are theoretical and do not reduce the ability of the coastal state to do so because instead of "May" as required, the term "Shall" was used (UNCLOS. art. 26-2).
The coastal countries are also empowered to prevent innocent passage across certain territorial sea areas. Furthermore, this passing suspension may have a permanent exception, as the coastal state is not bound by a suspension period. The only restriction is that these suspensions are only possible for the coastal state to apply to maintain security and these suspensions should not be discriminatory in theory or practice (UNCLOS. art. 26-3).

Military training is one of the reasons why the right to innocent passage is temporarily suspended. These workouts are conducted mainly in a specific area of the country's governing waters. The coastal country should prevent entry into the exercise within the time and place specified by the simulation of war conditions and the possible risks to other passage vessels, so as to consider security problems. For this purpose, it can suspend the innocent passage of military vessels in certain areas of the territorial sea without discrimination (Khanzadi; Karimipour, 2021: 93, 94).

Nevertheless, littoral States have not very strong legislative and executive powers. The Convention maintains the traditional delicate balance of freedom of navigation with limiting access. In this way, the coastal state may not take measures that are "the practical result of denying or undermining the right of innocent passage" through the territorial sea, whatever the robust surveillance laws it might have (UNCLOS, art 24 (1) (a)). There is also a negative requirement for the Coastal state not to discriminate between vessels on the basis of its nationality or freight (UNCLOS. art. 24(1) (b)). The coastal State is also positively committed to providing adequate information on any navigational hazards it is aware of in its territorial sea (UNCLOS. art. 24 (2)). In this case, it should be noted that, as it would have been logical in this respect, the International Court of Justice ruled in the case of Corfu Channel that a coastal State was responsible for damages on its territorial waters.[5]

However, despite such an interpretation, it is unlikely that a coastal state will have to pay compensation for non-compliance. It should be noted that the International Court of Justice in the Corfu Canal case is responsible for a coastal state. State considered responsible for the danger in its territorial waters because it had to be aware of it logically. This is because the Convention has no enforcement mechanism.

[5] Corfu Channel (U.K. v. Alb.), 1949 I.CJ. 4 (Apr. 9).

3. Special Rules for the Innocent Passage of Military Vessels

3.1. Concept and Content

The Third Conference on the Law of the Seas has made it clearer on a number of issues related to the military uses of the sea than the 1958 conference, and under this convention the right to innocent passage of warships across the territorial sea has been approved. But it should be noted that the conventions on the law of the sea and the regulations governing it did not apply to the merits of military use of the seas and its various aspects, and raised the issue marginally (Seify, 183).

Article 32 of the Convention recognizes the traditional immunity of warships and other public vessels operated for non-commercial purposes. But first of all, a military vessel must be specified. In a general sense, a military vessel is a vessel capable of battling and armed conflict at sea.

Fortunately, official bodies and legal conventions offered thought-provoking definitions. For example, the United States Navy publication describes a warship as a ship that is used as a part of the navy of a country and may hoist the relevant flag indicating their nationality. A military member of the government shall also command such ships, and the internal affairs of the ship shall be handled through a military-disciplinary service.

However, the best and most detailed description of a warship is the one in the Convention on the Law of the Sea of 1958 and 1982. A warship is defined as the definition provided for in Article 7(1) of the High-sea Convention of 1958, and reiterated in Article 29 of the 1982 Law of the Sea Convention: a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

A ship must possess a range of characteristics, irrespective of appearance, measurement and type of use, as is evident from its description in Article 29 of the 1982 Convention on the Law of the Sea, to be listed as a warship:

1. The vessel must be included in the list of vessels belonging to the country's armed forces. All countries with marines and warships publish this list annually.[6]
2. A ship to be named a warship is secondarily required to have special signs and symbols indicating its nationality. These are the national flags (often a navy flag) hung on the ship's main rig, the chest and heel flag, the ship's international symbol, and the ship's hull number.
3. A third prerequisite is that a ship must have a naval officer whose name is included in the lists of naval officers or in a similar document to be known as a warship. This condition means that if there is a warship which satisfied the conditions of the previous war and did not flag under the command of a naval officer or armed forces of the country, it has no legal status and is not allowed to name a warship (Khanzadi; Karimipour, 2021:82, 83). However, the officer who can command a warship, mentioned in this article must have certain characteristics:

• Must be an official member of the armed forces of his or her home country and be authorized by the officials of the armed forces of the home country, on merit, to wear special uniforms and to install military logos and insignia, which is important due to study is carried out in military academies and during special courses, and the person is appointed as the commander of a warship by official order and notification from the commanders of the armed forces, and the responsibility of the ship and its personnel and mission is Notices to

[6] The list of floating units of all countries is published annually in a book called Jane's ships Fighting and is available to all countries of the world, in which the name, hull number, dimensions, tonnage, number of personnel, type of propulsion, type and number of radar, Weapons, missiles, sonar, and similar information are released and used by other countries.

the subordinate ship shall be assigned to him. Article 1 of the Regulations, annexed to the 1907 Hague Convention, also provides that members of the armed forces must be commanded by a person who is held accountable to staff and subordinates (Karsten, 2009).

• Another part of the definition of warship in the Law of the Sea Conventions states that the officer must be a Navy member serving the government, i.e. A former naval officer who has been discharged from service in the Navy under any title and for any reason cannot be the commander of a warship, and the commander had to serve the government. In this way, he is accountable for his actions and the conduct of his staff and accountable to the hierarchy of the command and the judiciary.

4. The crew of a warship is subject to Armed Forces rules and regulations. This means that the ship personnel must be part of the army personnel to be compelled to respect the special laws and systems of the military, to be in the army hierarchy and to follow command hierarchy orders. Because otherwise, they will not have a duty to execute the ship command hierarchy commands and navy orders. They will have the opportunity to sabotage and violate laws and their duty, to produce inside ship unrest or even coup in violation of customary international law rules and treaties. Thus, as stated in the Commander's definition, when a ship meets all of the provisions of Article 8 of the 1958 Law of the Sea Convention and Article 29 of the 1982 Warships Definition Convention, but the crew of that ship is not part of the Navy and the Armed Forces, as the fact that a warship has been given to the disrupting or pirated, cannot be regarded as a warship.

We discussed the traditional immunity of ships that fulfill the above definition. But the Convention states in Article 30 that: In case a warship violates the coastal State's rules and rules on the movement of its territorial waters, it may be required by the coastal country to immediately depart from the territorial sea (UNCLOS, art. 30).

But there is no civil or criminal responsibility for foreign warships in a coastal state. The coastal administration can only ask these ships to leave their territorial sea (UNCLOS, art. 30). However, what the coastal state can do if a warship is not complying with the command is not obvious. The only thing that goes without saying is that the flag-bearing country has to compensate for losses caused by the disobedience of the warship to coastal state's rules (UNCLOS, art. 31).

3.2. Prior notice for innocent passing of the territorial sea

Pursuant to both the 1958 and 1982 conventions, three interpretational opinions have been taken on the need for the innocent passage of military vessels through the territorial sea of a costal state:
1. It is understood that these two conventions have established an innocent passage of warships and cannot be subject to notification or authorization by the coastal State. For this interpretation, three fundamental arguments have been put forward:
• Since section A of the 1982 Convention for Innocent Passage includes provisions applicable to all vessels in the context of that heading, including rules governing the rights of innocent passage by the territorial sea of ships of all States (TSC, art 14 (1); UNCLOS, art 17). It works for all ships, warships and civil ships (Fitzmaurice, 1959: 90).
• failure of Article 24 of the draft ILC, which deals specifically with the passage of warship as defined by the Territorial Convention on the Sea, there was no specific legal arrangement for the passage of warships, which gave rise to the same rights as commercial ships (Fitzmaurice, 1970:638).
• The submarine regulations, which have to come onto the surface and raise their flag as they go across the territorial sea (TSC, art 14 (6) UNCLOS, art 20); and rules on non-compliance with the laws and rules of the coastal country generally refer to these vessels as "ships,"

which can legitimately benefit innocent passage (Fitzmaurice, 1959:98).

2. The government is entitled to take account of the requirements for "innocent passage" of foreign military vessels from their territorial sea, including the need for prior notice. This view is based on the following four arguments:

• The coastal State has the right to take any measures required to protect its security interests (TSC, art 14(4), 16; UNCLOS, art 19, 25), including the requirement of prior notice or of a conditional passage permit, subject to the provisions on the "innocent passage" definition and provisions concerning protection of coastal state rights (Bulletin, 1983).

• Coastal rule permits warships of coastal State in case of non-compliance with the laws and regulations relating to the land transit of the territorial sea by warships (TSC, art 23; UNCLOS, art 30) to require previous notification or authorization (Representative of the Philippines, 1985: 49).

• The principles of sovereignty, territorial integrity and security in the international law lay the basis on which a coastal State's right to establish the same requirements is derived, as the territorial sea forms part of the coastal territory (Representative of United Arab Emirates-Representative of Romania: 20, Representative of Iran: 117).

• In articles relating to the right of transit passage and passage from archipelago (Articles 2 and 38) of the United Nations Convention the term" all kind of the ships" have been used. While in article which recognizes the right of innocent passage, the word of "ships" has been used (Articles 17, 52). If a number of vessels have to be included in the previous term, only vessels other than warships may take part in the second term.

3. A third opinion says that the related conventions essentially do not contain agreement or regulations in this respect and the rules, the cornerstone and the agreed report indicate that there is no agreement

between members in this regard. As the treaties are silent, we therefore need to resolve the issue, to customary international law.
It is not without reason to provide a brief review of the above views before reviewing customary international law.
The first interpretation can be seen as the correct one based on the Convention's context. Official reports from the First law of the sea Conference indicate that when the first committee introduced the title of Sub-Section A along with the text of its articles, there was a harmony between the title and its provisions. Besides the rules regulating the innocent passage of vessels in all countries the coastal State could subject such passage to preliminary authorization or notification, while the passage was usually mandatory, there are some special rules applicable to warships (ILC draft, art 24).
However, the balance was disrupted at the end of the Geneva meeting, when only the question of the movement of warships at the plenary was refused, but the title remained. Titles have no independent juridical existence, however, and therefore no legal validity (Official Records 2:130).
In conformity with the Third Geneva Conventions of 1958, the Conference Committee draft proposed the removal of all titles by the First Committee. The Chair of the Committee of Drafting at the third conference on law of the sea indicated that the titles provided for Chapters, sections and materials of the Convention were for an improved understanding of the Draft Structure and easier to refer to, in a report on behalf of the chairmen and Chairman of the 1st, 2nd and 3rd Committee on the operation of titles (Official Records, XVII: 226). Of course, this is also true of the Geneva Convention.
As to the significance of rejecting Article 24 of the draft ILC, just a few important facts are sufficient to say that. This refusal was progressively achieved during conferences. First, the conditions of license have been removed, and the remainder of the previous announcement has then been rejected. Firstly, the countries for which military navigation is more freedom have been removed. However,

secondly, the coastal countries that were less satisfied with the previous license have been removed (Official Records, XVII: 226). These passages show that with the removal of the article, the warships are not confronted with the same "innocent passage" as commercial ships but are more divergent, and the issue is open.
As regards Submarine regulations and non-compliance of warships with Coastal State legislation and regulations, it is important to note that the underwater regulations are intended to comply with coastal State laws and regulations and international rules to comply with territorial sea-crossing warships. Furthermore, submarines, for example, may not be commercial or scientific, are necessarily military. These provisions, therefore, have nothing to do with the topic. Above all, this argument goes in stark contrast to the intention of the authors of the Convention, because they certainly were not trying to resolve a dispute over an old age based on dubious conclusions (Brownlie,1979:206-207). The second interpretation's arguments generally have a great deal of logical power. However, if the transit of warships were determined, it would most likely be better established and more persuasive. The second view is based on the lack of specific provisions on the issue and the draft Articles of the two Conventions. The second view is based on doctrine. As stated in the preamble of the United Nations Convention, matters not governed by it remain subject to international law laws and principles. There is now a tendency to rely on customs law.

3.3. The customary law approach

What is the customary law's approach to this issue? Here, too, there are different opinions. In the customary rule, it is said on the one hand that 'all ships, including warships, may take an 'innocent passage' across the territorial sea of a foreign country (Statement of France, 241). On the other hand, it is claimed that the draft Convention has established an innocent passage regime for warships which gives all

coastal States the right to make conditional passage to prior notification or authorization (Representative of Iran: 106). The claimants of latter did not explain the context of the results.

As we know that since the establishment of the 'innocent passage' regime in the late nineteenth century, the passage of warships has been one of the most controversial questions under international law. There was no agreement in the published texts on what is the law or should be. Also, the practice of governments has not been uniform. Over the last hundred years, government doctrines and practices appear to be dual rather unilateral.

3.4. The Hague Codification Conference

In the last 25 years of the 19th and the beginning of the 20th Century, government practice in this field was unclear (O'Connell, 1982: 277-279). The 1930 Hague Codification Conference offers documents and instruments to examine the legal perspective at that time.

Out of the 23 states that responded to a questionnaire from the Preliminary Committee on the "innocent passage" right of military ships, four states responded that a permit or a prior notice is required for a passage. One state said that the legal point of view on this subject was also considered controversial. Fifteen government governments also agreed to allow military vessels to pass unconditionally (LNC: 283-293). British, Germany, Italy and Japan, among the power states said that warships have the right to or should enjoy the "innocent passage" (LNC: 285-290). Interestingly, the United States at that time was of the opinion that the passage of warships was not a right but merely a matter of international goodwill and if it wanted it to, the coastal state clearly was authorized to make that passage conditional upon prior approval (LNC: 284). The United States proposal was supported by even Britain, who wanted to continue the practical and customary law. Because they believe that there is no practical difference between the view of US and UK (LNC v4, 1281). The Soviet Union was not interested in the debates.

However, it seemed that it would allow pass of foreign military ships without any particular formalities (Franckx, 1987:18). India and NZ reconciled their viewpoints with the United Kingdom (LNC, v2:292), but Egypt did not make any comment (LNC, v2:291).
As we know, The Hague Conference has not led to the Convention on the Law of the Sea being created. Article 12 of a draft article on the Condition of the Territorial Sea, which the Second Committee approves and annexes to the text, states that no previous permit or notice shall be required by coastal states. Instead of "shall", using the word "will" imply this rule does not create an obligation for coastal states. Thus this method gives the coastal state the power to prohibit the passage of foreign military ships into the territorial sea in exceptional case, without imposing any exact and absolute rules (LNC, v4:1418-1419).
The formulation tends to emphasize too much the practice and custom of granting foreign warships "innocent passage" right. However, it recognizes that the coastal state is entitled to decide its position, taking its security interests into account. In this way, this formulation reflected the customary position at the time.

3.5. Drafts of International Law Committee (ILC)
Professor François introduced the formula in the 1930 Hague Draft without a change in his 1952 Report to the Fourth Session of the United Nations Committee on International Law (Yearbook, 1952: 42). So the provisions of the 1994 draft Committee on International Law did not differ very much from its predecessor, The Hague Draft. Under the draft, warships have the right without prior permission or notice to "innocent passage" except under exceptional circumstances (Yearbook, 1954: ١٦١).
A new formula based on statements of several governments and re-examined of the draft, was adopted in 1955 by the Committee on International Law. The draft material was adopted during the 1956

meeting and then presented as the basis for debate at the First International Conference on the Law of the Sea (Yearbook, 1954: ١٦١). The formulation is as follows: the coastal State may require a permit or prior notice for the passage of military ships through the territorial sea. Normally, the coastal State shall grant permit when Articles 17 (rights which established to protect the coastal state) and 18 (i.e. the foreign ship duties to comply with coastal state laws and regulations) comply (Yearbook, 1954: ١٦١).

The formulation also has a compromise side and highlights considerably the right of the coastal state to require prior permit or notice. Detailed remarks on Article 24 of the Committee state that many countries do not consider the prior permit or notice necessary. However, it does not mean if a country considers these precautions to be necessary, they do not have right to receive such a notice or permit. Since pass of warships through another country's territorial sea can threaten the safety of coastal country and, we know that certain countries require prior notice or permit, the committee is not in a position to call into question the right of governments to take action (Yearbook, 1954: 277).

Although successive drafts by the Committee on the passage of warships diverge on the point of dependence, nobody rejects the right of the coast state to require permit or prior communication. None of them has not recognized the right of "innocent passage" without exception. These drafts generally offer valuable proof of existing parallel procedures in the field.

4. The approach of the Islamic Republic of Iran towards the "innocent passage" of military vessels from the territorial sea

4.1. Iran Maritime Areas Law in the Persian Gulf and Sea of Oman, approved in 1993

At the Third Law of the Sea Conference Iran defended this view. It was among the proponents for a previous permit for the 'innocent passage' of foreign military vessels from territorial waters and it was

of the bidders of correction (Churchill, 1999:128). Whilst, Iran is not a party to the 1982 Convention, the Government of the Islamic Republic of Iran, when the Convention was signed, declare that based of customary international law, provisions of the article 21 by taking to account the article 19 (on mean of innocent passage) and article 25 (the right of coastal states to protect their safety and interests), reserve the right of coastal states to pass laws and regulations which require innocent passage of warships to prior notice or permit (Declaration of Iran on UNCLOS).

This declaration also conforms to Iran's general policy on the passage of warships and Iran's actions legislation of navigation, which will be discussed further on.

The Islamic Republic of Iran does not party to the 1982 United Nations Convention on Law of the Sea. However, it was prepared in the format of this Convention the law of our country's maritime areas of the Persian Gulf and the Sea of Oman, adopted in 1993. The law is in many ways entirely or in part consistent with the Convention provisions. The National Assembly enacted the first maritime law in our country, on 15 July 1934, under the title 'Law on Limitation of Coastal Waters and State Overseas Region.' The second law in coastal waters approved in Iran in July 1934 by the National Assembly was approved by April 1959. 'The Law of amends of the Law of Coastal Waters and Surveillance Area of Iran passed on 1934.' The Law of the Islamic Republic of Iran's Maritime Areas in the Persian Gulf and the Sea of Oman finally replace those referred to above. They were endorsed by the Islamic Consultative Assembly on 20 April 1993. It is also the most important law where in those two water areas have determined the status of the country's maritime zones. 1993 Law of the Maritime Areas of the Islamic Republic of Iran, in the Persian Gulf and Sea of Oman, has its own feature which can as sub-source of international law as state practice, fill the gap,

although not perfect, that occurrence by non-joining to Convention on the law of the sea.
Article 1 of the Maritime Areas Law states the sovereignty of Iran over the Hormuz Strait. That means that it is part of Iran's territorial waters up to 12 miles from the shore of this strait. The 'innocent passage' principle will, therefore, prevail. The coastal State may not deem the 'innocent passage' principle to be 'innocence' under Article 19 of the Convention where the passage of an alien vessel violates the tranquility and safety of the coastal State and temporarily suspends the passage of vessels in part of the territorial sea. Although the Hormuz Strait is regulated by its own regime of law. The passage through Iranian territorial sea by foreign vessels, except for the cases referred to in Article 9, is governed by Article 5 of the Maritime Areas of the Islamic Republic of Iran, as long as there is no disruptive order, peace, and national security. Article 17 of the 1982 Law of the Sea Convention is therefore literally inspired, except not using the word 'right' (i.e. Articles 5 to 9 of the Convention on the Law of the Sea) before "innocent passage".
Article 2 of the 1982 Law of the Sea Convention specifies that a coastal state has sovereignty over territorial seas. Therefore, the legislative authority shall be exercised in the Territorial Sea under the coastal state's sovereign right of that region. Under Article 21 of the 1982 Law of the Sea Convention, legislative power shall be conferred in the territorial sea on the coastal State. Article 7 of the Islamic Republic of Iran Law on Maritime Areas specifies, instead, that the Government of Iran shall lay down more required regulations as appropriate to protect the country's interest and the proper execution. Therefore, in compliance with the 1982 Convention on the Law of the Sea of 1982, Article 7 of the Law of the Islamic Republic of Iran on Maritime Areas applies to legal competence.
Under Article 8 of the Islamic Republic of Iran Maritime Areas Act, the Government of Iran may, in defense of safety and the supreme interests, suspend the passage of all foreign vessels in parts of the

territorial sea. In this respect Article 8 of the law on suspension passage ("Innocent Passage") is literally inspired by Article 25 (3) of the 1982 Law of the Sea Convention. The only difference is eliminating the sentence of "between foreign ships, without discrimination of form or content", adding a clause in "Iran's supreme interest" and not requiring "prior notice" in this clause.
The drafters of Iran's law claim that the existential purpose of article 8 in the law as it is the protection of security and safety is the same as the purpose of article 25 (3) of the convention. For example, when in Iran's territory, a military maneuver was planned. In that maneuver, (usually) a variety of ammunition and weapons are to be shot, fired and used for hypothesizing purposes. This could be dangerous at this point for foreign ships. Therefore, the "innocent passage" in parts of the territorial sea will be suspended to preserve the safety of navigation and security of such ships and the country's interests (Momtaz, 2004).
Article 9 of Iran's Maritime Area Law is one of the few cases not conforming to the Law of the Sea Convention, in which the Islamic Republic of Iran expresses its views as to the passage of warships across the territorial sea. This Article requires the prior permit of competent authorities of the Islamic Republic of Iran to passage warships, nuclear-energized vessels, submersible vessels and ships carrying nuclear, hazardous, environmentally harmful substances and foreign search vessels from the Iran's territorial sea. The coastal State that regulates the passage of foreign warships is undoubtedly concerned about its own security. This approach tackles the problems of governments that do not have the requisite and enough equipment to supervise and look after the marine areas they administer, owing to their long coastlines (Momtaz, 1996: 89-114). One of the most important factors shaping the defense policy of any country is the correct knowledge of the type, nature and scope of the impact of potential and actual threats. In this regard, of course, controlling

threats and estimating their effects and consequences is an important factor to better understand the threats (Ebrahimi and Sorkhi, 211).
As far as submarines and underwater vessels are concerned, Article 20 of the Convention on the Law of the Sea 1982 allows them passage provided that navigation on the surface of the sea and raising the flag of the home country. The movement of these submarines, as well as the above, is subject to prior permit by the competent authorities of Iran, under Article 9 of the Act of the Maritime Areas of the Islamic Republic of Iran.

4.2. US protest against the approach of the Islamic Republic of Iran and Iran's response

Since the Third Law of the Sea Conference, the Iranian Government explicitly expressed its position by adhering to countries protesting against the no need for military vessels to obtain permission to passage the territorial seas by reading a declaration when the Convention was signed. Furthermore, this point of view has become a law, as set out in Article 9 of the Law on Maritime Areas. Military vessels entering territorial waters, deliberately or unintentionally in Oman, Algeria, the UAE, etc., are warned and asked to immediately leave the territorial sea. As reported from military ships at sea in the Persian Gulf, neighboring states and maritime boundaries have, so far, never entered the territorial sea of our country without receiving authorization. The British and American navies are the only violations of Iran's Maritime Areas Law here. It is obvious from US action that the unauthorized entry into Iranian territorial waters of US warships is intended to protest Iran's Maritime Area Law. Iranian patrol vessels, in any case, have notices US vessels of leaving Iranian territorial waters. The US Navy responded by saying the ship apply "innocent passage" which is one of the foreign countries' rightful liberties under the Law of the Sea Convention. US has protested Iran's position in three times on 8 March of 1983, 30 April 1987, and 11 January 1994 (Ranjbarian and Seyrafi, 2015: 143).

The United States as a major power has pursued freedom of navigation through an active and courageous policy implemented as the "Freedom of Navigation Program." Freedom of Navigation Program is a joint project known as the FON of the Ministry of Foreign Affairs and Ministry of Defense. The program aims to oppose what the US calls excessive maritime claims. Here, the first aim of US military vessels' entry into Iran's territorial waters is to express their position on their failure to recognize the claim of the Iranian government and is not bound by their legal and practical consequences. Secondly, the US Government is seeking to avoid disputed maritime claims to become a new customary rule or, at least, to be in the position of continues protestant (Ranjbarian, 2013:39). Two parts are part of the US FON Program: diplomatic and operational. The US Government has so far, in addition to naval and aviation operations, filed 110 formal protests against targeted governments according to statistics published in 1992. The FON Program also has been aimed at Iran. Following the adoption of the Islamic Republic of Iran Maritime Areas Law and the protest of the Government of the US, every year in the context of its FON Program, the US Navy carried out several actions against Iranian sea territories in the Persian Gulf and the Sea of Oman.
Responding to this US claim, Iran stated that Resolution No. 2/250 67 of 22 July 1973 was one of the Regulations enacted and put into effect 20 years before Iran's Maritime Areas Act was enacted. No objections have been raised since the implementation of the Iran Resolutions in 1973 despite its being published in the collections of the Secretariat of the UN (Bulletin 43, 2000). The Islamic Republic of Iran sees this silence as recognition of the resolution content.

5. Conclusion

In the customary international law, the "innocent passage" regime is well known. It is governed in detail, at the same time, by the Treaties,

particularly the United Nations Convention on the Law of the Sea. In general, the provisions of the UN Convention on the Law of the Sea reflect common customary rules. Articles of UNCLOS which is related to innocent passage contains a compromise between coastal States' and maritime states interests. On the one hand, it recognizes this right and on the other hand it grants the coast government the right to impose its laws in the territorial sea when deciding circumstances contrary to its innocent condition.

But the government's consistent practice still reflects the exact scope of "innocent passage". The international community tried to establish the legal nature of the "innocent passage" right. The complex nature of this right, however, makes a permanent solution difficult to devise. Many coastal states impose many restrictions on this right. they need preliminary information or permission on military vessels, in particular. In contrast, certain countries, mainly maritime powers like the US, oppose this practice. They argue that an accepted principle of international customary law is an 'innocent passage' right without conditions on naval vessels. Any restrictive action against this law is in breach of the international obligations of States. Governments such as Iran, by contrast, believe that the right is foremost contractual and not customary. To this end, there is no requirement that governments comply with their "innocent passage" provisions by not joining the 1982 convention. Secondly, the Iranian Government has consistently and continuously expressed itself against this right. However, its nature is customary, even though it was not contested; it is not required to comply with it.

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