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Maritime Security in the Baltic and Japanese Straits From the Perspective of EEZ Corridors

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ABSTRACT

This study focuses on the practice of the Baltic Sea coastal states and Japan in voluntarily limiting the outer extent of their territorial sea in straits. The reasons for the establishment of narrow exclusive economic zone (EEZ) corridors in straits are mostly related to security considerations. This article examines the consequences of such state practice for navigational regimes and for the protection of critical offshore infrastructure. It is argued that the abolition of an EEZ corridor results in the nominal increase of a coastal state's sovereign territory, whereas it implies a decrease in the substantive scope of sovereignty over the relevant maritime area.

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Introduction

In the context of increased geopolitical tensions in the Asia-Pacific region and the ongoing armed conflict between the Russian Federation and Ukraine, the Taiwan Strait and the Turkish straits have underlined the significance of straits for international trade and security. States are inclined to extend their sovereign territory to the maximum extent permitted under international law. However, a few states have decided to voluntarily limit the outer extent of their territorial sea even though this has resulted in a significant decrease in the size of their sovereign territory. One common denominator between states that have made this decision is that they are bordering straits and need to consider the implications to their maritime security of the rights of passage of foreign ships through the strait. The establishment of voluntary limitations to a coastal state's territory may be intertwined with the fact that for a third state, unhindered passage and overflight through and over the relevant strait are of great importance to its own security and economic interests.

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Based on a systemic interpretation of the United Nations Convention on the Law of the Sea¹ (UNCLOS), including its Part III on straits used for international navigation, there are many methods that states may employ to change the legal regime applicable to a strait, including the abolition or creation of an exclusive economic zone (EEZ) corridor. This article carries out a mapping exercise to identify those coastal states that have voluntarily limited the outer extent of their territorial sea in straits and the reasons behind making such decisions. It then proceeds by asking whether the parties belonging to this group of strait states can learn anything from one another's experiences. In this context, this article seeks to determine the implications of decisions—either hypothetical or real—of strait states to extend their territorial sea or contiguous zone to the maximum extent possible in the relevant maritime area. Finally, this article assesses the significance of such decisions vis-à-vis the unlawful use of force and sabotage against the critical infrastructure located in straits.

The protection of critical offshore infrastructure is of vital importance for coastal states. Because of their geographical characteristics, straits contain a high concentration of submarine cables and pipelines, road and rail tunnels, and other installations that are vulnerable to attacks. Thus, a decision by the relevant strait states to alter the legal regime applicable to their adjacent strait should in most cases not be based solely on reasons related to the regime of navigation and overflight in the area.

This article focuses on EEZ corridors established in straits located in either the Baltic Sea or adjacent to Japan's coast. It does not focus on straits that are wider than 24 nautical miles (NM) as measured from the baselines, and that thus inherently include an EEZ corridor. Thus, this article makes only occasional reference to straits such as the Taiwan Strait, the Otranto Strait located between Italy and Albania, and the Malta Channel.

The navigational regimes of suspendable innocent passage, nonsuspendable innocent passage, transit passage, and freedom of navigation form important parts of the following analysis. Yet this study does not focus specifically on the legal framework applicable to these navigational regimes.² Instead, it explains the differences between these navigational regimes in the relevant sections to the extent necessary to establish the reasons behind the strait states' decisions to limit the outer extent of their territorial sea.

Also excluded from the scope of this article are the EEZ corridors that coastal states have established in straits that are not used or are used only seldom for international navigation, for example, the Nares Strait between Canada and Greenland in the context of Greenland's 3-NM-wide territorial sea.³ Similarly, Greece and Türkiye have limited the outer extent of their territorial sea inter alia in areas of the Aegean Sea that include numerous straits. Similar to the Danish delimitation of the territorial sea of Greenland, the decision of Greece and Türkiye not to use a 12-NM-wide territorial sea is not limited to a specific body of water (e.g., a gulf or a strait). Greece has decided to use

¹ United Nations Convention on the Law of the Sea, adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 397.

² For an explanation on the legal frameworks applicable to these navigational regimes, see Alexander Lott, *The Estonian Straits: Exceptions to the Strait Regime of Innocent or Transit Passage* (Brill Nijhoff, 2018), 14–16.

³ Article 1(2) of the Royal Ordinance No. 191 on the Delimitation of the Territorial Sea of Greenland, adopted 27 May 1963 at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DNK_1963_Order.pdf (accessed 27 February 2023).

a 6-NM-wide territorial sea in its maritime area,⁴ while Türkiye maintains a 6-NM-wide territorial sea in the Aegean Sea.⁵ Notably, this article does not address the recent reports about preparations by the Greek government to extend the breadth of the territorial sea to 12NM around the Island of Crete.⁶

A Short Guide to the Passage Regimes of the Baltic and Japanese Straits

Several Baltic Sea coastal states have voluntarily limited the outer extent of their territorial sea and consequently established an EEZ corridor in their bordering straits. These states include Denmark and Germany with respect to the Femern Strait (Fehmarnbelt), Sweden and Denmark with respect to Bornholmssundet and straits located in Kattegat, and Finland and Estonia with respect to the Viro Strait in the Gulf of Finland. An analogous approach has been adopted by Japan that has created many EEZ corridors in straits that would be otherwise included entirely within Japan's internal waters or territorial sea.

The Regime of Passage in the Viro Strait and the Irbe Strait

The capitals of Finland and Estonia and the second-largest Russian city (and previous capital) St. Petersburg are located on the coasts of the Gulf of Finland. The maritime boundary between Estonia and Finland in the Gulf of Finland and the Baltic Sea proper is based on a median line.⁷ In an approximately 100-NM-long section of the Estonian–Finnish maritime boundary, the Gulf of Finland is less than 24NM wide as measured from the Estonian and Finnish straight baselines and thus, potentially, exclusively subject to the regimes of internal waters and territorial sea. However, in its 1994 diplomatic note to Finland, Estonia proposed that

In order to maintain free passage through the Gulf of Finland, the Republic of Estonia is prepared to limit the width of its territorial waters in the Gulf of Finland, so that it extends no closer than 3 nautical miles from the centre line. This is presuming that Finland, for its part, is prepared to limit the width of its own territorial waters correspondingly. If the Republic of Estonia decides at a later stage to depart from the afore-mentioned and expand its territorial waters in the Gulf of Finland, it will inform Finland no less than 12 months in advance. This is presuming that Finland is also prepared correspondingly to inform Estonia of any possible expansion of territorial waters. Should the afore-mentioned be

⁴ Article 1 of Law No. 230/1936 concerning the extension of the territorial waters of the Kingdom of Greece, 17 September 1936 at: <https://faolex.fao.org/docs/pdf/gre21140.pdf> (accessed 27 February 2023); also at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/GRC_1936_Law.pdf (accessed 27 February 2023).

⁵ Article 1 of Act No. 2674 on the Territorial Sea of the Republic of Türkiye, 20 May 1982 at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TUR_1982_Act.pdf (accessed 27 February 2023); Decree by the Council of Ministers No. 8/4742 at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TUR_1992_Decree.pdf (accessed 27 February 2023).

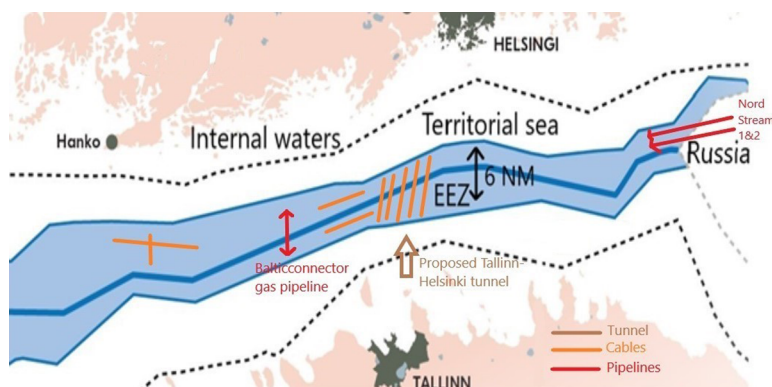
⁶ In 2021, a plan to extend the breadth of the Greek territorial sea to 12NM in the Ionian Sea was ultimately not implemented by the Greek Parliament, because of Türkiye's threat of the use of force against Greece should it extend the outer limit of its territorial sea over 6NM; Nektaria Stamouli, "Turkey Renews Threat of War Over Greek Territorial Sea Dispute," 29 December 2022, *Politico* at: <https://www.politico.eu/article/turkey-mevlut-cavusoglu-threat-war-greece-territorial-sea-dispute> (accessed 27 February 2023); United Nations Doc. A/50/216, S/1995/476, "Letter dated 9 June 1995 from the Permanent Representative of Greece to the United Nations addressed to the Secretary-General," 1–2 at: <https://digitallibrary.un.org/record/182239> (accessed 27 February 2023).

⁷ Agreement between the Republic of Finland and the Republic of Estonia on the Boundary of the Maritime Zones in the Gulf of Finland and the Northern Baltic Sea, adopted 18 October 1996, entered into force 7 January 1997.

found satisfactory to the Government of Finland, this note and its reply shall constitute an Agreement regarding this subject.⁸

Finland accepted Estonia's proposal.⁹ Consequently, Estonia and Finland decided, in 1994, by way of exchange of notes constituting an agreement, to limit the outer extent of their territorial sea in the Gulf of Finland so that it does not reach closer than 3NM to their maritime boundary from both sides (see Map 1). This has resulted in the creation of a 6-NM-wide EEZ corridor in the Gulf of Finland.

The EEZ corridor connects, on the one hand, the EEZs of Sweden, Estonia, and Finland in the Baltic Sea proper with, on the other hand, the Russian maritime area in the Gulf of Finland, including a tiny EEZ north of Russian Gogland Island. Initially, this small maritime zone was established as a high seas corridor pursuant to the maritime boundary treaties concluded between Finland and the Soviet Union in 1940, 1965, and 1985.¹⁰ The Russian EEZ is approximately 9NM long and mostly about 2NM wide (at its widest point it reaches close to 4NM).



Map 1. Offshore infrastructure and the EEZ corridor in the Gulf of Finland (Viro Strait). Source: Base map created by the newspaper Postimees and the author of this article. Meelis Oidsalu, "Alexander Lott: merepiiri muutmine tooks soovitud vastupidise tulemuse" 19 June 2022, *Postimees* at: <https://arvamus.postimees.ee/7548311/meelis-oidsalu-alexander-lott-merepiiri-muutmine-tooks-soovitud-vastupidise-tulemuse> (accessed 27 February 2023). This map is drawn on the basis of the map added to the 1996 Maritime Boundary Treaty between Finland and Estonia. The map is supplemented by the author with information about the maritime zones and the locations of critical offshore infrastructure based on public data.

⁸ Exchange of Notes Constituting an Agreement on the Procedure to be followed in the Modification of the Limits of the Territorial Waters in the Gulf of Finland, adopted 4 May 1994, entered into force 31 July 1995, UNTS 1887 at: <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/EST.htm> (accessed 27 February 2023).

⁹ *Ibid.*

¹⁰ Treaty of Peace between the Soviet Union and Finland, adopted 12 March 1940, entered into force 13 March 1940, at: https://www.finlex.fi/fi/sopimukset/sopsteksti/1940/19400003/19400003_2 (accessed 27 February 2023); Protocol to Article 2 of the Treaty of Peace between the Republic of Finland and the Union of Socialist Soviet Republics signed at Moscow on 12 March 1940, adopted 29 April 1940, entered into force 29 April 1940, section VI(a) at: https://www.finlex.fi/fi/sopimukset/sopsteksti/1941/19410012/19410012_3#idp3938192 (accessed 27 February 2023); Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics Concerning the Boundaries of Sea Areas and of the Continental Shelf in the Gulf of Finland, adopted 20 May 1965, entered into force 25 May 1966, UNTS 566, Art 1 at: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028012b6b9> (accessed 27 February 2023); Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics regarding the delimitation of the economic zone, the fishing zone and the continental shelf in the Gulf of Finland and in the North-Eastern part of the Baltic

Notably, during the establishment of the Estonian part of the EEZ corridor under its Maritime Boundaries Act in 1993,¹¹ as well as in the decades thereafter,¹² some Estonian politicians, lawyers, and public figures submitted counterproposals and competing draft legal acts (in 1993 and 2007) for extending the outer limits of Estonia's territorial sea in the Gulf of Finland to the maximum extent and abolishing the Estonian part of the EEZ corridor.¹³ These proposals were not successful, even though they are in line with popular sentiment in Estonian society, according to which the establishment of the EEZ corridor in the Viro Strait was not in accordance with Estonia's national interests.

Instead of abolishing its part of the EEZ corridor in the Viro Strait, this author argues that Estonia should, rather, consider establishing an additional EEZ corridor in the Irbe Strait, which is located between the Estonian Saaremaa Island and the Latvian Courland Peninsula and connects the Gulf of Riga to the Baltic Sea proper. The reason for the establishment of an EEZ corridor stems from the fact that the Irbe Strait connects, on the one hand, the EEZs in the Baltic Sea proper with, on the other hand, a Latvian EEZ in the Gulf of Riga. Consequently, foreign ships and aircraft are entitled under Article 37 of UNCLOS to the right of transit passage in an area that spans almost two-thirds of the Gulf of Riga and the airspace above it.

For reasons explained in detail in the following, in the context of the EEZ corridors established in other straits of the Baltic Sea and in the Japanese straits, the application of the right of transit passage in the Gulf of Riga is contrary to the security interests of Estonia and Latvia. In light of the recently heightened geopolitical tensions in the Baltic Sea area, the establishment of a narrow EEZ corridor from the Irbe Strait proper to the Latvian EEZ, which is located south and east of Estonia's Ruhnu Island, could potentially increase the strait states' legal resilience to provocative incidents involving ships and aircraft of third states.

The EEZ corridor in the Gulf of Riga would be approximately 100 km long. This would be almost half the length of the EEZ corridor in the Gulf of Finland and even shorter than the longest EEZ corridors established in the areas around the Danish islands (two of which are more than 200 km long).¹⁴ Analogously to the establishment

Sea, adopted 5 February 1985, entered into force 24 November 1986, UNTS 1457, Art 1 at: <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FIN-RUS1985EZ.PDF> (accessed 27 February 2023).

¹¹ Merealapiiride seadus (Maritime Boundaries Act), adopted 10 March 1993, entered into force 24 March 1993 (RT 1993, 14, 217).

¹² See, e.g. Hardo Aasmäe, Igor Gräzin, Heiki Lindpere, et al., "Eesti merepiiri tuleb nihutada" 28 December 2005, *Eesti Päevaleht* at: <https://epl.delfi.ee/artikkel/51026851/hardo-aasmae-igor-grazin-heiki-lindpere-juhan-parts-estii-merepiiri-tuleb-nihutada> (accessed 27 February 2023); Heiki Lindpere, "Maritime Zones and Shipping Laws of the Republic of Estonia: Some Selected Critique" in René Värk (ed), *Estonian Law Reform and Global Challenges: Essays Celebrating the Tenth Anniversary of the Institute of Law* (Tartu University Press, 2005), 10, 21; Tuuli Koch, "Õigusprofessor soosib Eesti merepiiri nihutamist" 29 December 2006, *Postimees* at: <https://www.postimees.ee/1517953/oigusprofessor-soosib-estii-merepiiri-nihutamist> (accessed 27 February 2023); Jaano M. Ots, "Nähtamatud Vene sõjalaevad soeluvad Tallinna ja Helsingi vahel" 4 April 2022, *Postimees* at: <https://majandus.postimees.ee/7492090/nahtamatud-vene-sojalaevad-soeluvad-tallinna-ja-helsingi-vahel> (accessed 27 February 2023).

¹³ Second reading of the draft Territorial Sea Act, Stenographic record of the Parliament, 10 March 1993 at: <http://stenogrammid.riigikogu.ee> (accessed 27 February 2023); The Parliament rejected the draft Act by a narrow margin, (36 for, 38 against, 2 neutral); Draft Maritime Boundaries Act (*Merealapiiride seaduse eelnõu*) 3 SE, Tallinn 2007 at: <http://www.riigikogu.ee/?op=ems&page=eelnou&id=61bf6a3e-fe48-9195-b305-944e25f26bf7&> (accessed 27 February 2023).

¹⁴ See *supra* Map 1 and *infra* Map 2. On the establishment of an EEZ corridor in the Gulf of Riga, see further Lott, note 2, 109–134.

of the EEZ corridor in the Gulf of Finland, the proposed EEZ corridor in the Gulf of Riga could be established in cooperation with Latvia, the other strait state, by way of both strait states limiting the outer extent of their territorial sea.

The Regime of Passage in the Danish Straits

When establishing the EEZ corridor in the Gulf of Finland, Estonia and Finland followed the example of Denmark, Germany, and Sweden, which had created EEZ corridors in their adjacent straits.¹⁵ Denmark, Sweden, and Germany have established EEZ corridors with respect to the Kadet and Femern straits, Bornholmssgat, and straits located in the Kattegat (see [Map 2](#)). In June 1979, Sweden announced to Denmark that it would extend its territorial sea to 12NM or to the median line as of 1 July 1979 and noted that

If Denmark should extend its territorial sea in the same manner, certain channels between Sweden and Denmark would be wholly comprised within Swedish and Danish territorial waters. In order to maintain the same freedom of passage in these waters, Sweden intends to limit Sweden's territorial sea in the channels between the Swedish coast and the Danish coast at Skagen, as well as at Laeso, Anholt and Bornholm, so that on the Swedish side of the median line between the Swedish and Danish baselines there is an area of high sea at least three nautical miles wide. In order to facilitate continued free access to the Sound (Oresund), Sweden intends to institute an arrangement in the areas immediately north and south of the Sound, which will make it possible for foreign vessels and foreign aircraft to pass through and over high seas. This presupposes that Denmark's territorial sea in the aforesaid waters will be limited in the same manner. If the Swedish Government should



Map 2. Source: Marineregions.org, “Denmark”, Flanders Marine Institute (VLIZ) 2020 at: <https://www.marineregions.org> (accessed 6 October 2023). The base map is modified by the author to include the names and locations of the Danish Straits. The base map serves only an illustrative purpose for depicting the outer limits of the strait States’ territorial sea in the area (depicted in grey lines).

¹⁵ Hallituksen esitys Eduskunnalle laiksi Suomen aluevesien rajoista annetun lain muuttamisesta sekä Suomen aluevesien, mannermaajalustan ja kalastusvyöhykkeen rajoja koskevien sopimusjärjestelyjen hyväksymisestä (Explanatory Note to the Proposal of the Finnish Government), Helsinki 1995, HE 114/1994 at: <http://www.finlex.fi/fi/esitykset/he/1994/19940114> (accessed 27 February 2023).

subsequently wish to extend Sweden's territorial sea in the aforesaid waters beyond the area specified above, the Swedish Government, provided that the Danish Government undertakes to do likewise, shall so notify the Danish Government at least 12 months before such extension takes effect.¹⁶

Denmark agreed to the Swedish proposal.¹⁷ Consequentially, in the straits located in Kattegat (adjacent to Skagen and the islands of Læsø and Anholt) and between the Swedish mainland coast and Danish Bornholm Island, a 6-NM-wide high seas corridor was established. After the entry into force of UNCLOS in 1994 and the establishment of the Swedish and Danish EEZs, the high seas regime in the aforementioned corridors was replaced with an EEZ.

In addition, Germany and Denmark have established a 4-NM-wide EEZ corridor in the Strait of Femern (Fehmarnbelt), as well as in the Strait of Kadet.¹⁸ The combined length of the EEZ corridors in Kadet, Femern, Bornholmsgat, and Kattegat straits is over 500 km.

The creation of the EEZ corridors in straits located between Denmark and Sweden in Kattegat and in Bornholmsgat as well as in the straits of Femern and Kadet that are adjacent to the coasts of Germany and Denmark precludes the application of the right of transit passage in these narrow maritime areas (Articles 37ff of UNCLOS). Instead, the creation of the EEZ corridors by Denmark, Germany, and Sweden grants the freedom of navigation and overflight for ships and aircraft heading to the Danish straits proper: Øresund, the Great Belt, and the Little Belt. Thus, the approaches to Øresund and to the Great Belt and Little Belt are subject to a liberal navigational regime (freedom of navigation and overflight) in the EEZ corridors, whereas the gates of the Baltic Sea are still subject to Danish control (and partly also to Swedish control, e.g., in relation to Øresund). In the Belts and Øresund, the overflight of foreign aircraft is subject to prior authorization and the passage of foreign ships subject to the terms of the 1857 Copenhagen Convention.¹⁹ According to Denmark and Sweden, the exception from the transit passage regime provided for in Article 35(c) of UNCLOS applies to the specific regime in the Great Belt, the Little Belt, and Øresund under the 1857 Copenhagen Convention.²⁰ Thus, the legal regime of the Danish straits proper

¹⁶ Exchange of Notes Constituting an Agreement between Denmark and Sweden concerning the Delimitation of the Territorial Waters between Denmark and Sweden, adopted 25 June 1979, entered into force 21 December 1979 at: <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-SWE1979TW.PDF> (accessed 27 February 2023).

¹⁷ Ibid.

¹⁸ See section 1 of the Proclamation by the Government of the Federal Republic of Germany concerning the extension of the breadth of the German territorial sea, adopted 11 November 1994, entered into force 1 January 1995 at: http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/deu_1994_territorial_proclamation.pdf (accessed 27 February 2023); See section 6(2) of the Danish Bekendtgørelse om Danmarks eksklusive økonomiske zone (Executive Order on Denmark's exclusive economic zone), adopted 24 June 1996, entered into force 1 July 1996 at: <https://www.retsinformation.dk/eli/Ita/1996/584> (accessed 17 May 2023). See also Navionics ChartViewer at: <https://webapp.navionics.com/maps> (accessed 27 February 2023); Rainer Lagoni, "Straits Used for International Navigation: Environmental Protection and Maritime Safety in the Danish Straits," in Bayram Öztürk and Reşat Özkan (eds), *The Proceedings of the Symposium on the Straits Used for International Navigation* (Turkish Marine Research Foundation, 2002), 159, 161.

¹⁹ Treaty between Great Britain, Austria, Belgium, France, Hanover, Mecklenburg-Schwerin, Oldenburg, Netherlands, Prussia, Russia, Sweden and Norway, and the Hanse Towns, on the one part, and Denmark, on the other part, for the Redemption of the Sound Dues, adopted 14 March 1857, entered into force 31 March 1857.

²⁰ United Nations Treaty Collection, United Nations Convention on the Law of the Sea: Declarations made upon signature, ratification, accession or succession or anytime thereafter, Denmark's declaration upon the ratification of the UNCLOS on 16 November 2004; Sweden's declaration upon signing the UNCLOS on 10 December 1982 and

(excluding the Kadet, Femern, Bornholmshgat and Kattegat straits) remained unchanged after the entry into force of UNCLOS.

In the event that Sweden's 2022 application to become a state party to the North Atlantic Treaty is ratified by the two remaining North Atlantic Treaty Organization (NATO) member states (Hungary and Türkiye), then the passage of foreign ships through the Danish straits will become entirely subject to the control of the NATO member states.²¹ This implies that if Sweden joins the collective defense organization, then the entry to and exit from the Baltic Sea would be cut off for Russian ships in the event that the Russian Federation attacks a NATO member state. Currently, Sweden's neutrality enables Russian ships to potentially use the Swedish maritime area in the Bornholmshgat, Øresund, and Kattegat to enter or leave the Baltic Sea in a hypothetical scenario in which an international armed conflict breaks out between the Russian Federation and NATO member states.²²

The Regime of Passage in the Japanese Straits

Japan has established EEZ corridors with respect to five straits that would be otherwise located within its 12-NM-wide territorial sea or internal waters (Map 3).²³ The Supplementary provision of the Law on the Territorial Sea and the Contiguous Zone of Japan stipulates that the 12-NM-wide outer limit of Japan's territorial sea does not apply to the following Japanese straits: the Soya Strait (*Sya Kaikyō*), the Tsugaru Strait (*Tugaru Kaikyō*), the Eastern Tsushima Channel (*Tusima Kaikyō Higasi Suid*), the Korea Strait/Western Tsushima Channel (*Tusima Kaikyō Nisi Suid*), and the Osumi Strait (*Osumi Kaikyō*).²⁴ This provision also stipulates that the territorial sea pertaining to these designated areas is 3 NM wide as measured from the baselines. In the Western Tsushima Channel (Korea Strait), South Korea also limited under its domestic laws the outer extent of its territorial sea to 3 NM as measured from its baselines.²⁵ In 2008, Japan deposited with the United Nations its official charts concerning straight baselines and outer limits of the territorial sea of, inter alia, the five EEZ corridors in these designated areas:

ratifying it on 25 June 1996. Both available at: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtmsg_no=XXI-6&chapter=21&Temp=mtmsg3&clang=en#EndDec (accessed 27 February 2023).

²¹ The North Atlantic Treaty, adopted 4 April 1949, entered into force 24 August 1949, 34 UNTS 243; NATO, "Press Statement Following the Meeting Between Türkiye, Sweden, and the NATO Secretary General" 10 July 2023, *NATO website* at: https://www.nato.int/cps/en/natohq/news_217147.htm (accessed 22 August 2023); Zoltan Simon, "Hungary, Turkey to Consult on Sweden's NATO Entry Bid This Fall" 20 August 2023, *Bloomberg* at: https://www.bloomberg.com/news/articles/2023-08-20/hungary-turkey-to-consult-on-sweden-s-nato-entry-bid-this-fall?in_source=embedded-checkout-banner (accessed 22 August 2023).

²² San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994, Rules 19–20, 34 at: <https://ihl-databases.icrc.org/ihl/INTRO/560> (accessed 27 February 2023).

²³ For a legislative history on the establishment of the five EEZ corridors, see Yurika Ishii, *Japanese Maritime Security and Law of the Sea* (Brill Nijhoff, 2022), 93–102.

²⁴ Law on the Territorial Sea and the Contiguous Zone (Law No. 30 of 1977, as amended by Law No. 73 of 1996), adopted 2 May 1977, entered into force 20 June 1996; For the coordinates of the five EEZ corridors in Japanese Straits, see Annexed Schedule 2 of the Law of the Sea Bulletin no. 66 (United Nations 2008), 78–81 at: https://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin66e.pdf (accessed 27 February 2023).

²⁵ See Article 3 and Table 2 of the Outer limits of the territorial sea in the Korea Strait of Enforcement Decree of the Territorial Sea and Contiguous Zone Act Law No. 3037 of the Republic of Korea, promulgated on 20 September 1978, amended by Presidential Decree No. 24424, 23 March 2013 at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/Enforcement_Decree_of_Territorial_Sea_and_Contiguous_Zone_Act_Presidential_Decree_No_24424_23_March_2013.pdf (accessed 27 February 2023).



Map 3. The Japanese straits. Source: Marineregions.org, “Japan,” Flanders Marine Institute (VLIZ) 2020 at: <https://www.marineregions.org/eezsearch.php> (accessed 27 February 2023). The base map is modified by the author to include the names and locations of the Japanese straits that include an EEZ corridor. The base map serves an illustrative purpose only.

- Map of the Soya Strait located between the Russian Sakhalin Island and Japan’s second largest island Hokaido.²⁶
- Map of the Tsugaru Strait located between Hokaido Island and Japan’s largest island of Honshu.²⁷
- Maps of the Osumi Strait located between, on the one hand, Japan’s third largest island Kyushu and, on the other hand, the Osumi Islands.²⁸
- Map of the Eastern Tsushima Channel located between Japan’s Tsushima and Kyushu islands.²⁹
- Map of the Western Tsushima Channel (Korea Strait) located between South Korea and Japan’s Tsushima Island.³⁰

By way of establishing the EEZ corridors, Japan precluded the applicability of the regime of transit passage to the Soya, Tsugaru, Osumi, and Tsushima straits. Thus, when foreign ships and aircraft cross or fly over these straits, they enjoy the freedom of navigation or overflight only within the limits of the narrow EEZ corridor. By contrast, the regime of transit passage would have granted essentially the same freedoms in and over these straits from coast to coast.

²⁶ Map published in Tokyo on 16 June 2005 by the Japan Coast Guard at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAPS/JPN_MZN61_2008_00174.jpg (accessed 27 February 2023).

²⁷ Map published in Tokyo on 1 November 2007 by the Japan Coast Guard at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAPS/JPN_MZN61_2008_00140.jpg (accessed 27 February 2023).

²⁸ Maps published in Tokyo on, respectively, 16 August 2001 and 6 September 2007 by the Japan Coast Guard at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAPS/JPN_MZN61_2008_00187.jpg (accessed 27 February 2023); https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAPS/JPN_MZN61_2008_00186.jpg (accessed 27 February 2023).

²⁹ Map published in Tokyo on 18 December 2003 by the Japan Coast Guard at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAPS/JPN_MZN61_2008_00184.jpg (accessed 27 February 2023).

³⁰ Ibid.

Recently, China and the Russian Federation have increasingly used these EEZ corridors during their naval exercises. In October 2021, China and the Russian Federation conducted a joint naval exercise that involved a flotilla of five Chinese warships and five Russian warships transiting through the Tsugaru Strait and the Osumi Strait, thereby encircling Japan's largest island Honshu.³¹ During China's naval exercises of December 2022, a Chinese flotilla of destroyers and an aircraft carrier reportedly navigated through the Osumi Strait.³² These exercises were complemented with joint Russian–Chinese naval exercises in the East China Sea in the same month.³³ Japan has not protested against the passage of foreign warships through the EEZ corridors in the Japanese Straits.³⁴

These examples show that the establishment of an EEZ corridor in a strait does not preclude potential threats to the coastal state's security. At the same time, it is questionable whether the abolition of an EEZ corridor in a strait increases the coastal state's security. This is examined in the following.

The Abolition of an EEZ Corridor in a Strait: Legal Consequences to the Coastal State

In a state that has established an EEZ corridor in an adjacent strait, local popular sentiment may expect that the extension of the outer limit of the strait state's territorial sea to the maximum extent would serve the strait state's interests by way of subjecting the overflight of foreign aircraft to the requirement of prior authorization and the passage of foreign warships to the criteria of innocent passage (Article 19(2) of UNCLOS). It may be assumed in the relevant strait state that after the abolition of an EEZ corridor foreign submarines would be forced to navigate through the strait on the surface and to show their flag (Article 20 of UNCLOS). However, the abolition of an EEZ corridor would bring about these legal consequences only if the relevant strait connects an EEZ or the high seas with the territorial sea of a foreign state or if the strait is formed by an island of a state bordering the strait and its mainland and there exists seaward of the island a route through the high seas or through an EEZ of similar convenience with respect to navigational and hydrographical characteristics (Article 45(1)(a)–(b) of UNCLOS).

Of the cases examined above, the Japanese Straits, the Danish Straits, the Viro Strait in the Gulf of Finland, and the Irbe Strait in the Gulf of Riga all connect one part of an EEZ and another part of an EEZ. This means that instead of nonsuspendable innocent passage (Article 45(2) of UNCLOS), the regime of transit passage would be applicable from coast to coast if the EEZ corridor in those straits is abolished (Article 37 of UNCLOS). The regime of transit passage is similar to the freedom of navigation and overflight that applies in EEZ corridors in straits (Article 36 of UNCLOS). The

³¹ Anonymous, "Russian, Chinese Warships Hold First Joint Patrols in the Pacific" 23 October 2021, *Reuters* at: <https://www.reuters.com/world/russian-chinese-warships-hold-first-joint-patrols-pacific-2021-10-23> (accessed 27 February 2023).

³² Helen Davidson, "Surge in China's Military Operations Reflects 'New Normal' Under Xi Jinping" 22 December 2022, *The Guardian* at: <https://www.theguardian.com/world/2022/dec/22/surge-china-military-operation-s-new-normal-xi-jinping> (accessed 27 February 2023).

³³ *Ibid.*

³⁴ See Ishii, note 23, 109.

main difference is that ships and aircraft are required to use their freedom of navigation and overflight granted to them under the right of transit passage solely for the purpose of continuous and expeditious transit of the strait (Article 37(2) of UNCLOS). By contrast, in and over an EEZ, foreign ships and aircraft can stop and anchor.

In contrast to the Viro Strait and the Danish and Japanese Straits, the Taiwan Strait is more than 24NM wide. Thus, it inherently includes an EEZ corridor. In that corridor, the freedoms of navigation and overflight are guaranteed, while outside of it foreign ships are entitled to the right of innocent passage. The existence of the EEZ corridor in the Taiwan Strait is important for the maritime security of Taiwan. If the Taiwan Strait was less than 24NM wide, as in the cases of the Baltic or Japanese Straits, then the regime of transit passage would apply to the Taiwan Strait from coast to coast. This would likely result in provocative incidents by states carrying out their military operations under the cover of transit passage in Taiwan's territorial sea and sovereign airspace.

In the current legal framework, overflying Chinese military aircraft enter Taiwan's air defense identification zone, but do not enter Taiwan's sovereign airspace above its territorial sea. By comparison, if the right of transit passage hypothetically applied to the Taiwan Strait, then the Chinese military aircraft could lawfully fly over the strait just a few hundred meters from Taiwan's mainland coast. Similarly, Chinese warships, including aircraft carriers and submarines, could cross the strait in the vicinity of the capital Taipei. This would likely result in the escalation of security tensions in cross-strait relations.

An important reason for the establishment of EEZ corridors in the Japanese Straits was the aim to exclude Soviet Union ships from the territory of Japan.³⁵ For similar reasons, the establishment of EEZ corridors in the less than 24-NM-wide Baltic straits is a reasonable one. It limits the spatial extent of the strait states' sovereign maritime area, but it increases the maritime space over which the strait states functionally exercise sovereignty. This practice enables the strait state to exercise control over its sovereign airspace and territorial sea to the extent that would not be permissible under the regime of transit passage. There cannot be any unconsented-to overflights by foreign aircraft, and a coastal state has significant room for maneuver in adopting measures in response to noninnocent passage of foreign ships. A coastal state may—where necessary—board, inspect, and arrest a ship unless it is entitled to sovereign immunity (warships and government-operated ships).

A coastal state is not entitled to board, inspect, and detain a ship entitled to sovereign immunity in response to noninnocent passage, but may only require her to leave the territorial sea immediately. In practice, however, on rare occasions (as discussed in the following), a coastal state's enforcement powers have been used against government-operated ships that enjoy sovereign immunity. It is doubtful whether such state practice is in conformity with UNCLOS. Article 30 of UNCLOS provides that if a warship does not comply with the laws and regulations of the coastal state concerning passage through the territorial sea and disregards any request for compliance therewith that is made to it, the coastal state may merely require it to leave the territorial sea immediately. As a follow-up measure, the flag state bears international

³⁵ *Ibid.*, 100.

responsibility for any loss or damage to the coastal state resulting from the noncompliance (by a warship or other government ship operated for noncommercial purposes) with the laws and regulations of the coastal state concerning passage through the territorial sea or with the provisions of UNCLOS or other rules of international law (Article 31 of UNCLOS). In addition, violation of the rules of innocent passage by a foreign warship or government-operated ship may merit a diplomatic protest from the coastal state.

Nonetheless, Natalie Klein notes that, at most, in response to a noninnocent passage of a foreign warship, a coastal state may “use minimal force to compel its departure.”³⁶ This is particularly relevant in cases where a foreign warship engages in activities that pose a threat to the coastal state’s security and stays in the coastal state’s territorial sea in defiance of requests to leave the territorial sea immediately. Similarly, Astley and Schmitt find that

If a warship engages in non-innocent passage, the coastal State may request that it take appropriate corrective actions. Failure to do so justifies a demand that the naval vessel depart the territorial seas. Should it not, the coastal State may use minimum force to compel its departure.³⁷

Furthermore, Dale Stephens argues that

The options open to a coastal State when faced with a deployment of naval vessels that is not “innocent” are somewhat ambiguous. The UNCLOS states, somewhat prosaically, in Article 25(1) that a coastal State “may take the necessary steps in its territorial sea to prevent passage which is not innocent,” but the question remains as to the nature and level of the “necessary steps” which are available to a coastal State. [...] Ultimately, however, it is submitted that the use of necessary and proportionate force to seize or finally even sink such vessels may be justified as both a “necessary step” and a “proportionate countermeasure.”³⁸

Yet it is questionable whether these views apply to the use of force against foreign surface warships that are in noninnocent passage. The use of defensive measures, for example, by using depth charges, is necessary for reacting to the violation of the rules of innocent passage by a foreign submarine if she does not respond to the signals of the coastal state.³⁹ There have been numerous illegal incursions of suspected foreign submarines into the territorial sea of Sweden and Finland in response to which both states have fired depth charges.⁴⁰ The use of potentially lethal force when a coastal

³⁶ Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford University Press, 2013), 35.

³⁷ John Astley and Michael N. Schmitt, “The Law of the Sea and Naval Operations” (1997) 42 *Air Force Law Review* 1, 131.

³⁸ Dale G. Stephens, “The Impact of the 1982 Law of the Sea Convention on the Conduct of Peacetime Naval/Military Operations” (1999) 29 *California Western International Law Journal* 283, 309.

³⁹ See Said Mahmoudi, “Use of Armed Force against Suspected Foreign Submarines in the Swedish Internal Waters and Territorial Sea” (2018) 33 *International Journal of Marine and Coastal Law* 587, 592.

⁴⁰ *Ibid.*, 587; Förordning (1982: 756) om Försvarsmaktens ingripanden vid kränkningar av Sveriges territorium under fred och neutralitet (Regulation on the Intervention of the Swedish Armed Forces in Case of the Violation of the Swedish Territory in Time of Peace and Neutrality), adopted 17 June 1982, as amended SFS 2019: 776 at: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-1982756-om-forsvarsmaktens_sfs-1982-756 (accessed 27 February 2023); Jussi Rosendahl, “Finnish Military Fires Depth Charges at Suspected Submarine” 28 April 2015, *Reuters* at: <https://www.reuters.com/article/us-finland-navy-idUSKBN0NJOY120150428> (accessed 27 February 2023); Anonymous, “Finland Drops Depth Charges in ‘Submarine’ Alert” 28 April 2015, *BBC News* at: <https://www.bbc.com/news/world-europe-32498790> (accessed 27 February 2023).

state employs depth charges and mines to counter illegal intrusions of foreign submarines and their military operations in the coastal state's sovereign territory should be considered a proportionate measure.⁴¹

By contrast, a military response and the use of firearms or explosives against foreign surface warships or foreign government ships carries an inherent risk that any confrontation between the coastal state's warship(s) and the foreign warships that have violated, from the coastal state's perspective, the rules of innocent passage may escalate into an armed conflict between the two states. While states generally agree that an incursion by a suspected foreign submarine constitutes a grave breach of the security and sovereignty of the coastal state, this does not necessarily apply to every kind of breach of the rules of innocent passage by foreign surface warships. The list of instances when the innocent passage of a foreign ship is considered to be prejudicial to the peace, good order, or security of the coastal state is open-ended, and the exemplary clauses included in the list can be manipulated with and interpreted in a way that undermines the very concept and effectiveness of the right of innocent passage.

For example, in 2021, the UK destroyer *HMS Defender* asserted her right of innocent passage as she was navigating through the Ukrainian territorial sea off the Russian-annexed Crimean Peninsula from the Port of Odessa to Batumi in Georgia. The Russian Federation considers the waters adjacent to Crimea as forming part of its territorial sea, a claim not recognized by the United Kingdom and the majority of states. The Russian Federation had issued a warning to the United Kingdom according to which the *HMS Defender* would be fired upon if she entered the Russian-claimed territorial sea off Crimea. It can be deduced from this statement that the Russian Federation regarded the *HMS Defender* as undertaking a noninnocent passage through the Russian territorial sea. The *HMS Defender* carried out its planned passage through the territorial sea of Crimea, in response to which a Russian warship fired warning shots at the *HMS Defender* and, according to the Russian military, its military aircraft dropped bombs ahead of the British warship to compel her to leave the Russian-claimed territorial sea.⁴²

The risk of allowing the coastal state to use force against foreign surface warships that are in noninnocent passage (Article 19(2) of UNCLOS) is also illustrated by the Kerch Strait incident of 2018. Both Ukraine and the Russian Federation agree that "enforcement of domestic law was the stated reason for the arrest [of the Ukrainian naval vessels near the Kerch Strait] on the evening of 25 November 2018."⁴³ The Kerch Strait incident demonstrates that the boarding, inspection, and seizure of sovereign immune ships that, according to the coastal state's position, violate the

⁴¹ Compare with, e.g., The International Committee of the Red Cross, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 2d ed., 2017, Art. 2, [259] at: <https://ihl-databases.icrc.org/en/ihl-treaties/gcii-1949/article-2/commentary/2017?activeTab=undefined> (accessed 27 February 2023).

⁴² Raul Pedrozo, "Déjà Vu—Russia's Illegal Restrictions on Innocent Passage in the Black Sea" 24 June 2021, *Lawfare* at: <https://www.lawfareblog.com/d%C3%A9j%C3%A0-vu-russias-illegal-restrictions-innocent-passage-black-sea> (accessed 27 February 2023).

⁴³ Annex VII Arbitral Tribunal, *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen*, Written Observations and Submissions of Ukraine on the Preliminary Objections of the Russian Federation, 27 January 2021, [24]; Annex VII Arbitral Tribunal, *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen*, Response of the Russian Federation to the Observations of Ukraine on the Question of Bifurcation, 21 September 2020, [19].

applicable navigational regime gives rise to a wide array of problems, which are not limited to legal ones but may reach the point of diplomatic and military confrontation.

These examples illustrate the reasons that serve as the basis for the establishment of an EEZ corridor in a strait. The EEZ corridor allows the strait state to direct international navigation to a clearly delimited narrow maritime area. In the rest of its maritime area in the relevant strait, the coastal state can use a wide range of measures to respond to noninnocent passage of commercial ships and, to a more limited extent, sovereign immune vessels, including foreign submarines. In addition, the coastal state can take measures in response to incursions into its sovereign airspace above its territorial sea.

For example, Russian fighter jets tend to exit the limits of the EEZ corridor of the Viro Strait and thus violate the sovereign airspace of Finland and Estonia. From 2014 to 2022, there were 39 unlawful suspected incursions of foreign warships or aircraft into the Finnish territorial sea, and of these, 17 incidents involved a Russian ship or aircraft. The incursions of Russian military aircraft into Estonian sovereign airspace occur even more frequently. Mostly these incursions happen over Vaindloo Island in the Viro Strait. The fighter jets of Finland or the NATO air policing mission in the Baltic states is deployed to respond to such intrusions of the Finnish or Estonian airspace.⁴⁴

As soon as the EEZ corridor is abolished, the strait state is no longer equipped with a meaningful “toolbox” under the law of the sea and international security law to respond to provocative uses of the right of transit passage. Under the right of transit passage, a foreign fighter jet would be entitled to fly over the strait and a foreign aircraft carrier could launch fighter jets in the proximity of the strait state’s coastline, submarines could navigate in their normal mode (submerged), and any use of depth charges against them by the strait state would likely meet the threshold of an armed attack under Article 51 of the United Nations Charter.⁴⁵

The Establishment of a Contiguous Zone in an EEZ Corridor: Legal Consequences to the Strait State and Flag States

As examined above, the extension of the strait state’s outer limits of the territorial sea to the maximum extent in a strait that hitherto included an EEZ corridor has

⁴⁴ Mika Jyrävä, “Tällaista on Venäjän häirintä Itämerellä: Puolustusvoimat ei usko vahinkoihin” 27 March 2023, *Helsingin Sanomat* at: <https://www.hs.fi/kotimaa/art-2000009475364.html> (accessed 17 May 2023); see also Maarja Salomaa and Paavo Teittinen, “Ulkoministeriö kutsui Venäjän suurlähettilään puhutteluun—‘Suomi ottaa alueloukkaukset aina vakavasti’” 7 October 2016, *Helsingin Sanomat* at: <https://www.hs.fi/kotimaa/art-2000002924354.html> (accessed 27 February 2023); Anonymous, “2 Russian Aircraft Suspected of Violating Finland’s Airspace” 28 July 2020, *Washington Post* at: https://www.washingtonpost.com/world/europe/2-russian-aircraft-suspected-of-violating-finlands-airspace/2020/07/28/5bb84334-d0ee-11ea-826b-cc394d824e35_story.html (accessed 27 February 2023); Anonymous, “Russian Fighter Jets Suspected of Violating Finnish Airspace” 28 July 2020, *Yle Uutiset* at: <https://yle.fi/a/3-11469409> (accessed 27 February 2023); Fred Püss, “Lennuamet: sagedased õhupiiri rikkumised on tingitud asjaolust, et Vaindloo saare kohal osutab lennuliiklusteenuseid Venemaa” 21 July 2018, *Delfi* at: <https://www.delfi.ee/artikkel/83102287/lennuamet-sagedased-ohupiiri-rikkumised-on-tingitud-asjaolust-et-vaindloo-saare-kohal-osutab-lennuliiklusteenuseid-venemaa> (accessed 27 February 2023); Aleksander Krjukov, “Lennuliiklusteeninduse AS: Vene õhuvägi teeb Eesti neutraalvete kohal umbes 400 lendu aastas” 12 February 2017, *ERR Uudised* at: <https://www.err.ee/582325/lennuliiklusteeninduse-as-vene-ohuvagi-teeb-eessti-neutraalvete-kohal-umbes-400-lendu-aastas> (accessed 27 February 2023).

⁴⁵ Charter of the United Nations, adopted 26 June 1945, entered into force 24 October 1945, 1 UNTS XVI.

significant implications for third states from the perspective of international navigation and overflight in the area. Furthermore, the abolition of an EEZ corridor has adverse effects on the coastal state's security if it results in the application of the regime of transit passage to navigation in and over the strait. This section focuses on the implications, both from the strait state's and from the flag state's perspective, of a decision of the strait state to establish a contiguous zone that overlaps with the EEZ corridor in a strait. It explores whether the establishment of a contiguous zone in an EEZ corridor of a strait changes the passage regime in the relevant maritime area.

Under Article 33(1) of UNCLOS, a coastal state may exercise, in its contiguous zone, the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea, as well as punish infringement of the above laws and regulations committed within its territory or territorial sea. In addition, the establishment of the contiguous zone significantly expands the relevant coastal state's right to undertake the hot pursuit of a foreign ship (Article 111 of UNCLOS). Most Baltic Sea coastal states have established a contiguous zone that extends up to 24NM as measured from their baselines. In the case of Finland, its contiguous zone is both functionally and spatially very limited. Finland established a 2-NM-wide extended customs area in 1994. According to section 2(5) of Finland's Customs Act, the Finnish customs territory extends 2NM further than the outer limit of the territorial sea, unless otherwise provided in an international agreement.⁴⁶

The Russian Federation established a contiguous zone in 1998.⁴⁷ Lithuania established the coordinates of the outer limit of a contiguous zone in 2004.⁴⁸ Denmark established a contiguous zone in 2005 and made it clear that, as far as narrow maritime areas (including straits) are concerned, where the opposite coasts of Denmark and a neighboring state are less than 48NM apart, the outer limit of the Danish contiguous zone is identical to the outer limit of the Danish EEZ.⁴⁹ Poland established a contiguous zone in 2015 by way of amending its Act on Maritime Areas.⁵⁰ Sweden established a contiguous zone and its archaeological zone⁵¹ under Article 303(2) of UNCLOS in 2017.⁵² In January 2023, the Estonian Ministry of Foreign Affairs proposed to the Estonian government that it establish a contiguous zone in the Estonian maritime

⁴⁶ Tullilaki (Customs Act), adopted 29 April 2016, entered into force 1 May 2016 at: <https://www.finlex.fi/fi/laki/ajantasa/2016/20160304> (accessed 27 February 2023).

⁴⁷ Articles 22–23 of the Federal Act on the internal maritime waters, territorial sea, and contiguous zone of the Russian Federation, adopted 16 July 1998, entered into force 31 July 1998 at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/RUS_1998_Act_TS.pdf (accessed 27 February 2023).

⁴⁸ See Sections 1.3 and 2 and Annex 1 of Resolution No 1597 of 6 December 2004 of the Government of the Republic of Lithuania on the approval of the limits of the territorial sea, contiguous zone, exclusive economic zone, and continental shelf of the Republic of Lithuania and the assignment to ministries and government institutions to prepare the required legal acts at: <https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.246677> (accessed 27 February 2023).

⁴⁹ See Section 2 of the Act on the Contiguous Zone, adopted 24 June 2005, entered into force 1 July 2005. Section 2 of the Executive Order on the Demarcation of the Danish Contiguous Zone, adopted 29 June 2005, entered into force 9 July 2005. Both acts are available at: https://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin58e.pdf (accessed 27 February 2023).

⁵⁰ See Arts. 13a–13b of Ustawa o obszarach morskich Rzeczypospolitej Polskiej i administracji morskiej (Act on Maritime Areas of the Republic of Poland and Maritime Administration as amended in November 2015), adopted 21 March 1991, entered into force 1 July 1991 at: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19910320131/U/D19910131l.pdf> (accessed 27 February 2023).

⁵¹ On the concept of a contiguous archaeological zone, see Mariano J. Aznar, "The Contiguous Zone as an Archaeological Maritime Zone" (2014) 29 *International Journal of Marine and Coastal Law* 1, 4–9, 38.

⁵² Sections 1 and of Lag (2017:1273) om Sveriges angränsande zon (Law on the contiguous zone of Sweden), adopted 7 December 2017, entered into force 1 March 2018 at: <https://lagen.nu/2017:1273> (accessed 27 February 2023).

area.⁵³ Similar to Sweden's approach, Estonia is planning to supplement its proposed contiguous zone with an archaeological zone under Article 303(2) of UNCLOS to protect, inter alia, archaeological and historical objects found at sea.⁵⁴

Japan has not limited the outer extent of its contiguous zone in the EEZ corridors of the Straits of Tsushima, Osumi Strait, Tsugaru Strait, and Soya Strait. In these five designated areas, the EEZ applies in parallel with the legal framework of the contiguous zone and that of the continental shelf.⁵⁵

In the case of the Baltic and Japanese straits, the establishment of a contiguous zone within the limits of the EEZ corridor has not altered the applicable passage regime in a strait. The coastal state's enforcement powers in the contiguous zone are limited to foreign ships and do not apply to foreign aircraft (see Articles 33 and 111 of UNCLOS). Thus, the establishment of a contiguous zone in an EEZ corridor does not impact the enjoyment of the freedom of overflight in the relevant area. Analogously, the freedom of third states to lay submarine cables and pipelines under Articles 58(1) and 87(1)(c) of UNCLOS within the limits of the EEZ corridor is not impaired by the establishment of a contiguous zone by the coastal state. In addition, the establishment of a contiguous zone in an EEZ corridor of a strait does not result in any limitations to the enjoyment of the freedom of navigation by foreign government-operated ships—including warships—that are entitled to sovereign immunity. Both foreign warships and ships used only on government noncommercial service have complete immunity from the jurisdiction of any state other than the flag state (Articles 95–96 of UNCLOS).

The passage of foreign ships in an EEZ corridor remains subject to the freedom of navigation (Articles 58(1) and 87(1)(a) of UNCLOS) after the establishment of the contiguous zone in the relevant area, even though the coastal state gains additional means to exercise its enforcement powers against foreign commercial ships under Article 33(1) of UNCLOS. Nevertheless, the proposal by the Ministry of Foreign Affairs of Estonia to establish a contiguous zone, the breadth of which would cover the Estonian part of the EEZ corridor in the Viro Strait of the Gulf of Finland, has gained much attention in the Russian media.⁵⁶ Many Russian newspapers and commentators have claimed that Estonia seeks to unlawfully block the navigation of Russian ships,

⁵³ Michael Cole, "Estonian foreign ministry wants to extend controlled maritime area" 17 January 2023, *ERR News* at: <https://news.err.ee/1608853667/estonian-foreign-ministry-wants-to-extend-controlled-maritime-area> (accessed 27 February 2023); The proposal to establish Estonia's contiguous zone was made in 2015; see Alexander Lott, "Külgvööndi kehtestamine ja välisriigi laeva jälitamisõiguse reguleerimine Eestis" in Indra Kaunis, Heiki Lindpere and Alexander Lott (eds), *Mereõiguse kodifitseerimise lähteülesanne (Project Charter for the Codification of the Estonian Maritime Law)* (Estonian Ministry of Justice, 2015), 189.

⁵⁴ Cole, note 53.

⁵⁵ Notably, according to Article 4(2) of Japan's Law on the Territorial Sea and the Contiguous Zone, where the 24-NM-wide outer limit of Japan's contiguous zone lies beyond the median line as measured from the baseline in relation to the foreign coast, which is opposite to the coast of Japan, the median line shall be substituted for the 24-NM-limit of the contiguous zone. However, under Article 4(3) of the same Act, Japan's contiguous zone may extend from the baseline to a line 24 NM seaward thereof (excluding therefrom the territorial sea of a foreign country) in a part of the areas of the sea in which the mutual application with a foreign country beyond the median line of the measures prescribed in Article 33(1) of UNCLOS is deemed appropriate.

⁵⁶ See, e.g., Anonymous, "Estonia Seeks to Impose Contiguous Zone Regime in Gulf of Finland" 23 January 2023 *Novaya Gazeta* at: <https://novayagazeta.eu/articles/2023/01/23/estonia-seeks-to-impose-contiguous-zone-regime-in-baltic-sea-to-potentially-close-gulf-of-finland-for-russias-navigation-en-news> (accessed 27 February 2023); Anonymous, "Estonia Has No Right to Impede Navigation in Gulf of Finland Contiguous Zone—Ambassador" 24 January 2023, *TASS* at: <https://tass.com/economy/1566287> (accessed 27 February 2023); Семен Нехорошкин, Наталия Анисимова, "Кремль напомнил о свободе судоходства в ответ на планы Эстонии" 24 January 2023, *rbc.ru* at: <https://www.rbc.ru/politics/24/01/2023/63cfab629a7947d81a260cf9> (accessed 27 February 2023).

including warships, through the Gulf of Finland.⁵⁷ Among such claims is the comment made by the Deputy Speaker of the Federation Council of the Russian Federation, Mr. Konstantin Kosachev, who argued that

If the plan of our ill-wishers is implemented, Russia will be able to appeal the establishment of the [Estonian] contiguous zone in accordance with the 1982 Convention of its choice to the International Tribunal for the Law of the Sea, the International Court of Justice, arbitration or special arbitration (Article 287). We will reasonably defend our right to pass to our own territory along the median line. In the meantime, we can think about working out countermeasures. For example, to establish contiguous zones along the waters of the Northern Sea Route and in the Kuril Straits, so that ships from unfriendly countries can also be subjected to strict control. Unilateral and manifestly unlawful restrictions of the nature of sanctions should not be tolerated under any circumstances.⁵⁸

At the same time, Mr. Dmitry Peskov, the press secretary of the Russian President, took a more balanced stance and emphasized the importance of maintaining freedom of navigation in the EEZ corridor of the Gulf of Finland in the wake of the establishment of Estonia's contiguous zone.⁵⁹ This was also emphasized by the Russian Ambassador to Estonia, Mr. Vladimir Lipaev, in his comments to the Russian media.⁶⁰

However, within the meaning of Article 36 of UNCLOS, it is clear that even if a contiguous zone is established within the limits of an EEZ corridor, the maritime area would still retain a convenient route (with respect to navigational and hydrographical characteristics) through an EEZ—and in that route, the freedoms of navigation and overflight would continue to apply. The contiguous zone allows the coastal state to exercise necessary preventive control over commercial ships that are about to enter the coastal state's territorial sea and are suspected of infringing the coastal state's customs, fiscal, immigration, or sanitary laws and regulations (Article 33(1)(a) of UNCLOS). If a commercial ship has no intention of entering the coastal state's territorial sea, then the coastal state is not allowed to exercise such preventive control and impede the freedom of navigation of foreign ships in its EEZ.

The establishment of a contiguous zone in an EEZ corridor does not trigger the application of the regime of transit passage in the relevant strait. For example, the width of both the Strait of Otranto (situated between Italy and Albania and connects the Adriatic Sea with the Ionian Sea) and the Malta Channel (located between Sicily and Malta) is more than 24 NM, but less than 48 NM. This means that these narrow

⁵⁷ Anonimous, "Правительство Эстонии задумалось о закрытии Финского залива для России" 23 January 2023, *Lenta.Ru* at: <https://lenta.ru/news/2023/01/23/3589> (accessed 27 February 2023); Anonimous, "Сенатор Джабаров: как ответ Эстонии Россия может расширить Финский залив" 24 January 2023, *Regnum* at: <https://regnum.ru/news/3773527.html> (accessed 27 February 2023); Константин Евстафьев, "Эстония попытается перекрыть российское судоходство в Финском заливе" 23 January 2023, *Regnum* at: <https://regnum.ru/news/polit/3772975.html> (accessed 27 February 2023); Anonimous, "Эстония задумала закрыть для России Финский залив" 23 January 2023, *Moscow Times* at: <https://www.moscowtimes.ru/2023/01/23/estoniya-zadumala-zakrit-dly-a-rossii-finskii-zaliv-a31557> (accessed 27 February 2023); Anonimous, "Эстония провоцирует Россию на военный ответ, закрывая Финский залив" 23 January 2023, *Pravda* at: https://www.pravda.ru/world/1792356-estii_finland (accessed 27 February 2023).

⁵⁸ Telegram channel (February 2, 2023), at: t.me/Kosachev62/573 (accessed 27 February 2023), translated by the author from Russian.

⁵⁹ Ксения Максимова, "В Кремле оценили готовность Эстонии ввести особую зону для контроля судов" 24 January 2023, *Газета.Ru* at: <https://www.gazeta.ru/politics/news/2023/01/24/19563421.shtml> (accessed 27 February 2023).

⁶⁰ Anonimous, "Эстония не может ограничивать судоходство в прилегающей зоне, заявил посол" 24 January 2023, *РИА Новосту* at: <https://ria.ru/20230124/estoniya-1847043201.html> (accessed 27 February 2023).

maritime areas are entirely subject to the territorial sea and contiguous zone of the coastal states (Albania, Italy, and Malta),⁶¹ but are not regulated under the legal framework applicable to straits used for international navigation under Part III of UNCLOS.

The applicable passage rights and freedoms are not the only factors that should be considered in weighing up the merits of establishing or abolishing of an EEZ corridor in a strait. Another aspect that merits attention from the perspective of maritime security law is the use of force and sabotage against critical offshore infrastructure located in EEZ corridors. In this context, the establishment or abolition of an EEZ corridor has great significance.

Considerations Related to the Protection of Critical Infrastructure in EEZ Corridors

In October 2023, a presumed act of sabotage resulted in a partial destruction of an Estonian-Finnish submarine gas pipeline Balticconnector in the Finnish part of the EEZ corridor in the Viro Strait. Furthermore, in the Estonian EEZ, two telecommunications cables linking Estonia with Sweden and Finland had been cut.

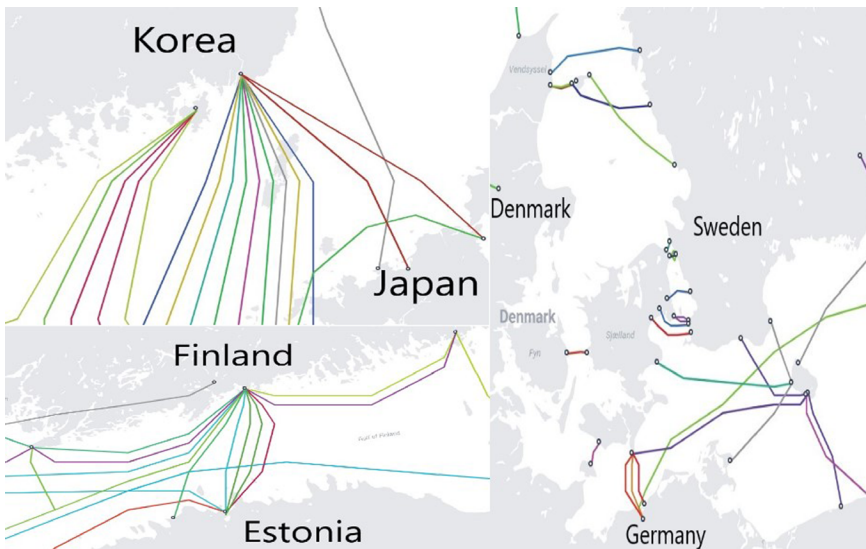
In February 2023, Taiwan announced that two of its cross-strait submarine cables had been cut. These cables are used for providing telephone and Internet services to the Taiwanese Matsu Islands located across the other side of the Taiwan Strait and in the vicinity of China's mainland coast. Reportedly, the cables that cross the EEZ in the Taiwan Strait have been broken more than 20 times in the past five years.⁶²

These incidents raise questions about the legal resilience of critical energy or telecommunications infrastructure located in an EEZ or on a continental shelf. For example, the EEZ corridor of the Femern Strait and its approaches include a German offshore wind farm, and studies have been conducted to consider possible construction of a Danish offshore wind farm in the same strait.⁶³ Both the Baltic straits and the Japanese

⁶¹ Source: Marineregions.org, Flanders Marine Institute (VLIZ) 2020 at: <https://www.marineregions.org/eezsearch.php> (accessed 27 February 2023). Notably, Italy has not formally declared the establishment of its contiguous zone. However, it has established a zone contiguous to the territorial sea for the protection of the underwater cultural heritage in what appears to correspond to a contiguous archaeological zone under Article 303(2) of LOSC. See Legge n. 61: Istituzione di zone di protezione ecologica oltre il limite esterno del mare territoriale (Law 61 on the Establishment of an ecological protection zone beyond the outer limit of the territorial sea), adopted 8 February 2006, entered into force 15 March 2006 at: <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC062365> (accessed 17 May 2023). Furthermore, the Italian Coast Guard is allowed to enforce immigration legislation outside its territorial sea that corresponds to the contiguous zone. At the same time, Albania's domestic law includes explicit references to its contiguous zone; see Sections 2l, 5(2), and 7(1) of Albania's Law on the Establishment of Coast Guard, adopted 4 April 2002, amended by Law 9788 of 19 July 2007 at: <https://faolex.fao.org/docs/pdf/alb60863E.pdf> (accessed 17 May 2023). On the legal regime of the Strait of Otranto, see also Igor Vio, "The Strait of Otranto: The Legal Regime, Navigational Aspects and Geopolitical Significance for the Adriatic States," in Öztürk and Özkan (ed), note 18, 62, 67–70; see also Section 4 of Malta's Territorial Waters and Contiguous Zone Act, adopted 10 December 1971, as amended by Acts XLVI of 1975, XXIV of 1978, XXVIII of 1981 and I of 2002 at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/MLT_1971_Act.pdf (accessed 17 May 2023).

⁶² Huang Tzu-ti, "Taiwan Undersea Cable Cuts Linked to Chinese Vessels" 17 February 2023, *Taiwan News* at: <https://www.taiwannews.com.tw/en/news/4812970> (accessed 27 February 2023).

⁶³ See Anonymous, "Windfarms in Germany," *Offshore-Windindustry.com* at: <https://www.offshore-windindustry.com/18-windparks/93-wind-farms-in-germany> (accessed 27 February 2023); Laura Andersen, "Energistyrelsen udgiver oversigt over områder for nye ansøgninger om havvindmølleprojekter via åben dør-ordningen" 8 June 2022, *Energistyrelsen* at: <https://ens.dk/presse/energistyrelsen-udgiver-oversigt-over-omraader-nye-ansoegninger-om-havvindmoelleprojekter> (accessed 27 February 2023).



Map 4. Submarine cables in (clockwise) the Tsushima and Danish straits and the Gulf of Finland. Source: Submarine Cable Map, TeleGeography, available at: <https://www.submarinecablemap.com> (accessed 27 February 2023).

straits have been heavily used for the laying of submarine cables (see Map 4). The Tsushima Straits between Japan and Korea, the Viro Strait between Estonia and Finland, and the straits located in the Danish archipelago (Kadet, Bornholmssund, and Øresund) are crisscrossed with submarine cables.

In addition, owing to the proximity of their opposite coasts, straits are often used for constructing underwater tunnels. Some of these tunnels are located partly in EEZ corridors of straits. The world's longest underwater tunnel (known as the Seikan Tunnel) connects the two largest Japanese islands by a rail line that runs across the Tsugaru Strait and the EEZ corridor established by Japan therein.⁶⁴ Japan is considering the construction of an additional tunnel in the Tsugaru Strait that would enable crossing the strait by car and freight trains.⁶⁵

The world's longest immersed road and rail tunnel between Germany and Denmark is currently being constructed in the Femern Strait and is partly located in the narrow EEZ corridor.⁶⁶ As examined above, that EEZ corridor was established through Denmark and Germany voluntarily limiting the extent of their territorial sea in that area.

Estonia and Finland have carried out feasibility studies for the construction of a cross-strait underwater rail tunnel that would connect their two capitals, Tallinn and Helsinki.⁶⁷ On the basis of these studies, the governments of Estonia and Finland

⁶⁴ See "Seikan Tunnel" *Britannica* at: <https://www.britannica.com/topic/Seikan-Tunnel> (accessed 27 February 2023).

⁶⁵ Toru Takahashi, "\$7bn Plan for New Japan Undersea Tunnel Warms Up After Years on Ice" 3 January 2021, *Nikkei Asia* at: <https://asia.nikkei.com/Business/Engineering-Construction/7bn-plan-for-new-Japan-undersea-tunnel-warms-up-after-years-on-ice> (accessed 27 February 2023).

⁶⁶ See Femern Belt Development, "Femern Belt Link—The World's Longest Immersed Tunnel," *Femern A/S* at: <https://www.femern.info/en/femern-belt-link-worlds-longest-immersed-tunnel> (accessed 27 February 2023).

⁶⁷ See Sweco Projekt AS, Vealeidja OÜ, Finantsakadeemia OÜ, "Pre-Feasibility Study of Helsinki–Tallinn Fixed Link: Final Report" (Harju County Government, City of Helsinki, City of Tallinn, 2015) at: <https://uudenmaanliitto.fi>

signed a memorandum of common objectives in 2022, according to which the development of the rail tunnel project is a priority for the two states.⁶⁸ Currently, the EEZ corridor in the Viro Strait is crossed by the natural gas pipeline, Balticconnector.⁶⁹ In addition, the underwater rail tunnel would have to share the EEZ corridor in the Gulf of Finland (the Viro Strait) with the four Nord Stream pipelines.⁷⁰ Both the Balticconnector (in October 2023) and the Nord Stream pipelines (in September 2022) have been allegedly damaged by foreign actors.

In this context, one may ask whether considerations related to the protection of critical offshore infrastructure under the law of the sea and maritime security law can outweigh the value of a particular passage regime when strait states contemplate the alteration of a strait's legal regime by way of abolishing or establishing an EEZ corridor in the area. Specifically, a strait state needs to be wary of the effects of abolishing an EEZ corridor on the legal resilience of offshore critical infrastructure (e.g., submarine pipelines and cables) in the context of an unlawful use of force. This is due to the fact that submarine cables and pipelines are afforded somewhat stronger protection under the rules of the right of self-defense (Article 51 of the UN Charter) and *jus in bello* (international humanitarian law) if they are located within the territorial sea of a coastal state.⁷¹ This distinction is illustrated by the comments of the Swedish and Danish prime ministers according to which the use of force against the Nord Stream pipelines located in their EEZ did not amount to an armed attack.⁷² If a coastal state deems that the protection of its critical offshore infrastructure located in its EEZ or continental shelf outweighs the value of the navigational regime of the EEZ corridor in the strait, then it may consider the option of abolishing the EEZ corridor. Nonetheless, it is unlikely that abolishing the EEZ corridor would significantly increase the legal resilience of a coastal state's offshore infrastructure in the relevant area against the unlawful use of force and sabotage.

[wp-content/uploads/2022/03/Tallsinkifix-julkaisu-2015.-Pre-feasibility-study-of-Helsinki-Tallinn-fixed-link.pdf](https://www.err.ee/1608782149/sikkut-long-term-plan-for-tallinn-helsinki-tunnel-has-not-changed) (accessed 27 February 2023). See also Gwyn Topham, "Helsinki-Tallinn Tunnel Proposals Look to Bring Cities Closer Than Ever" 6 January 2016, *The Guardian* at: <https://www.theguardian.com/world/2016/jan/06/helsinki-tallinn-tunnel-proposals-rail-link-finland-estonia> (accessed 27 February 2023).

⁶⁸ Marko Tooming, "Sikkut: Long-Term Plan for Tallinn-Helsinki Tunnel Has Not Changed" 8 November 2022, *ERR News* at: <https://news.err.ee/1608782149/sikkut-long-term-plan-for-tallinn-helsinki-tunnel-has-not-changed> (accessed 27 February 2023).

⁶⁹ See Gasum and Ramboll, "BALTICCONNECTOR: Natural Gas Pipeline Between Finland and Estonia. Environmental Impact Assessment Programme" (Gasum Ltd, 2014) at: https://elering.ee/sites/default/files/attachments/Balticconnector_EIA_Programme_ENG_0.pdf (accessed 27 February 2023).

⁷⁰ Kadri Masing, "Valitsus vastab Nord Streamile taas "ei"" 6 December 2012, *ERR Uudised* at: <https://www.err.ee/337327/valitsus-vastab-nord-streamile-taas-ei> (accessed 27 February 2023). The Nord Stream pipelines were constructed in the Finnish part of the EEZ corridor because of the Estonian government's rejection of the Nord Stream's application to carry out marine scientific research for the laying of the pipelines in the Estonian part of the EEZ corridor in 2007 and 2012. On the concepts of marine scientific research and surveys for the laying of submarine cables and pipelines, see, e.g., Tara M. Davenport, "Submarine Communications Cables and Science: A New Frontier in Ocean Governance?" in Harry N. Scheiber, James Kraska, and Moon-Sang Kwon (eds), *Science, Technology, and New Challenges to Ocean Law* (Brill, 2015), 209, 215, 219, 224–236, 249.

⁷¹ See, e.g., Wolff Heintschel von Heinegg, "The Law of Armed Conflict at Sea" in Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (2nd ed, Oxford University Press, 2009), 475, 515; Rules 34 and 37 of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994 at: <https://www.icrc.org/en/doc/resources/documents/article/other/57jmsu.htm> (accessed 27 February 2023).

⁷² Anonymous, "Denmark, Sweden view Nord Stream Leaks as 'Sabotage'" 27 September 2022, *Deutsche Welle* at: <https://www.dw.com/en/denmark-sweden-view-nord-stream-pipeline-leaks-as-deliberate-actions/a-63251217> (accessed 27 February 2023).

Conclusion

The interests of and threats emanating from third states are significant in the decision of where to establish the outer limits of the coastal states' territorial sea in international straits. For example, this article has established that the reasons for the establishment of the narrow EEZ corridors in the Baltic and Japanese straits were primarily related to the coastal states' security considerations in relation to third states (in particular, the Russian Federation/Soviet Union) in the face of the potential applicability of the right of transit or nonsuspendable innocent passage. It was argued that further use could be made of the establishment of EEZ corridors in international straits. For example, Estonia and Latvia should consider the establishment of an EEZ corridor in the Irbe Strait in order to exclude the application of the right of transit passage in the Gulf of Riga.

The establishment of an EEZ corridor allows a strait state to direct international maritime and air navigation to a clearly delimited narrow maritime area and airspace above it. In other parts of the relevant strait, the strait state can adopt a wide range of enforcement measures to respond to noninnocent passage of foreign ships and violations of its sovereign airspace by foreign aircraft. As soon as the EEZ corridor is abolished, the strait state is no longer equipped with a meaningful "toolbox" under the law of the sea and maritime security law to respond to provocative uses of the right of transit passage. Therefore, even though the abolition of an EEZ corridor would result in a nominal increase in the coastal state's sovereign territory, it would, in practice, mean a decrease in the functional scope of the strait state's sovereignty over its relevant maritime area and airspace.

This serves as example of how the zonal approach of UNCLOS provides a coastal state with a significant degree of discretion to make the best use of a large legal toolbox in order to ensure its security interests. The coastal state is free to abolish an EEZ corridor that it has previously voluntarily established in its adjacent strait, but this would likely not increase the coastal state's maritime and aviation security in the relevant area. Instead of extending the outer limits of the territorial sea to the maximum extent in a strait where the right of transit passage would consequently apply, the strait state can increase its control over the relevant maritime area by way of maintaining the EEZ corridor and establishing within the limits of the EEZ corridor its contiguous zone. The establishment of a contiguous zone in an EEZ corridor does not alter the regime of passage in the relevant strait.

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