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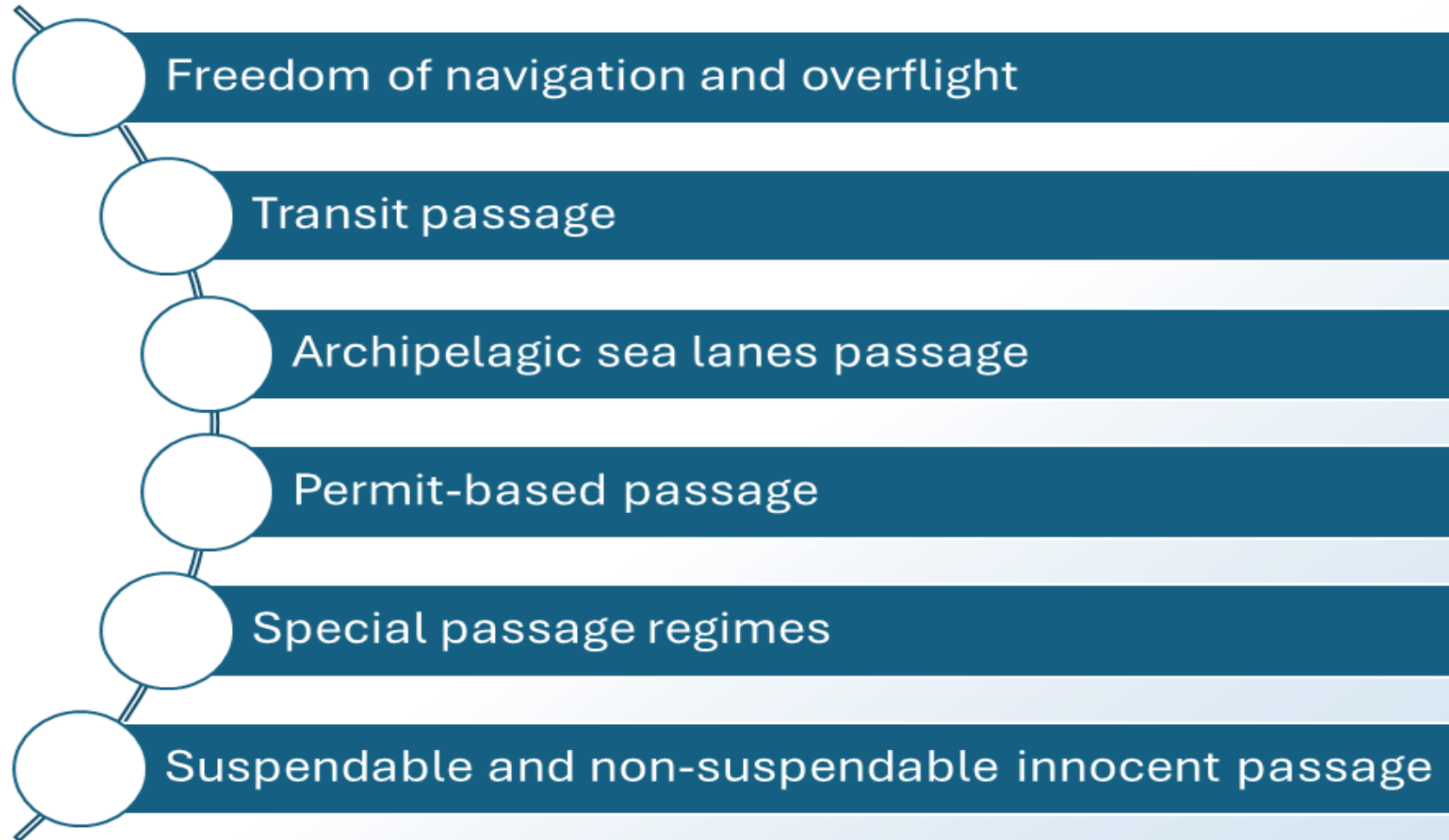
Navigation of Warships in Operational Contexts in Times of Peace

Alexander Lott

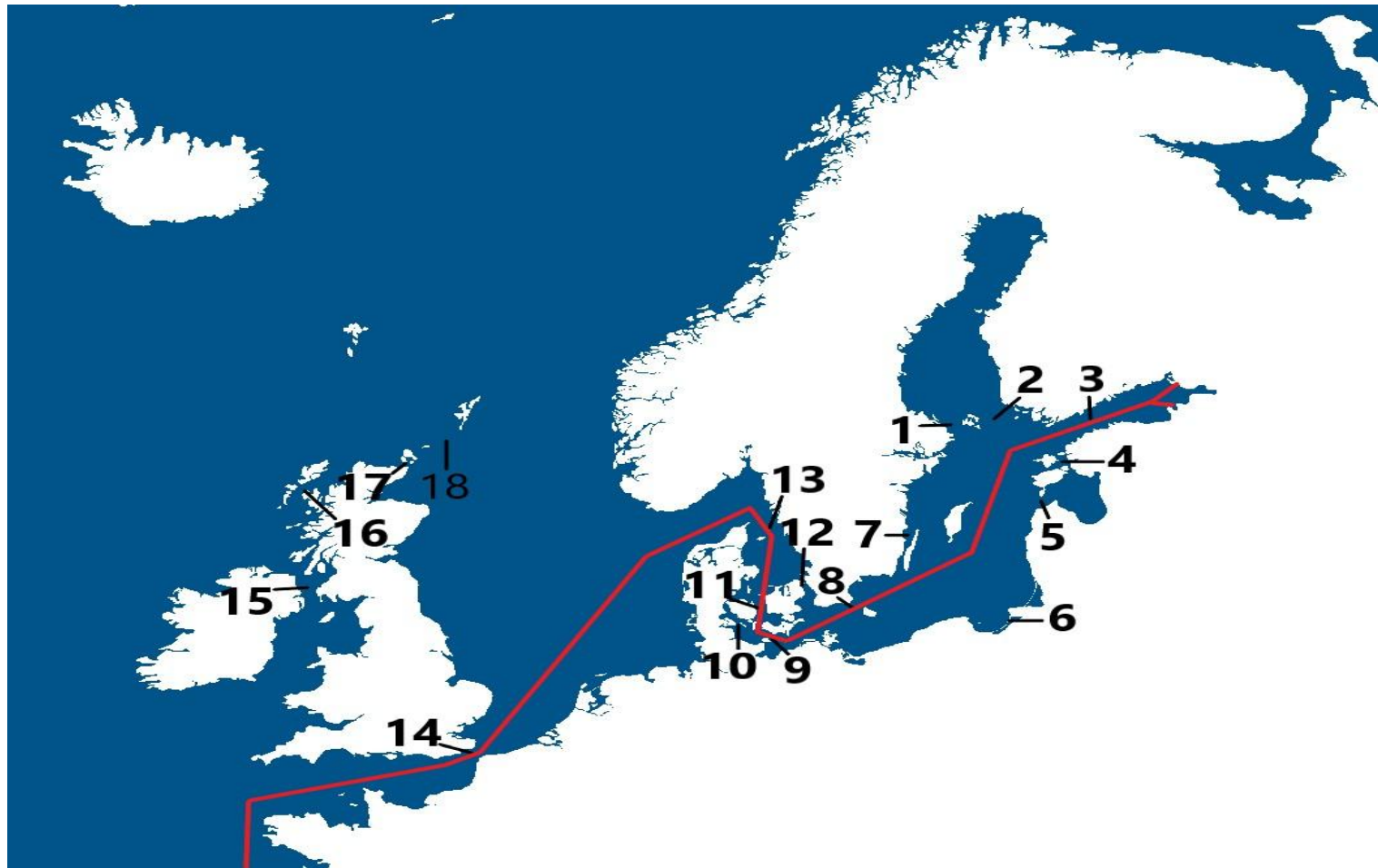
International Society for Military Law and the Law of War

Abu Dhabi, 12 December 2024

Navigational Regimes



The Russian Shadow Fleet's Route through the Straits of the North Sea & Baltic Sea



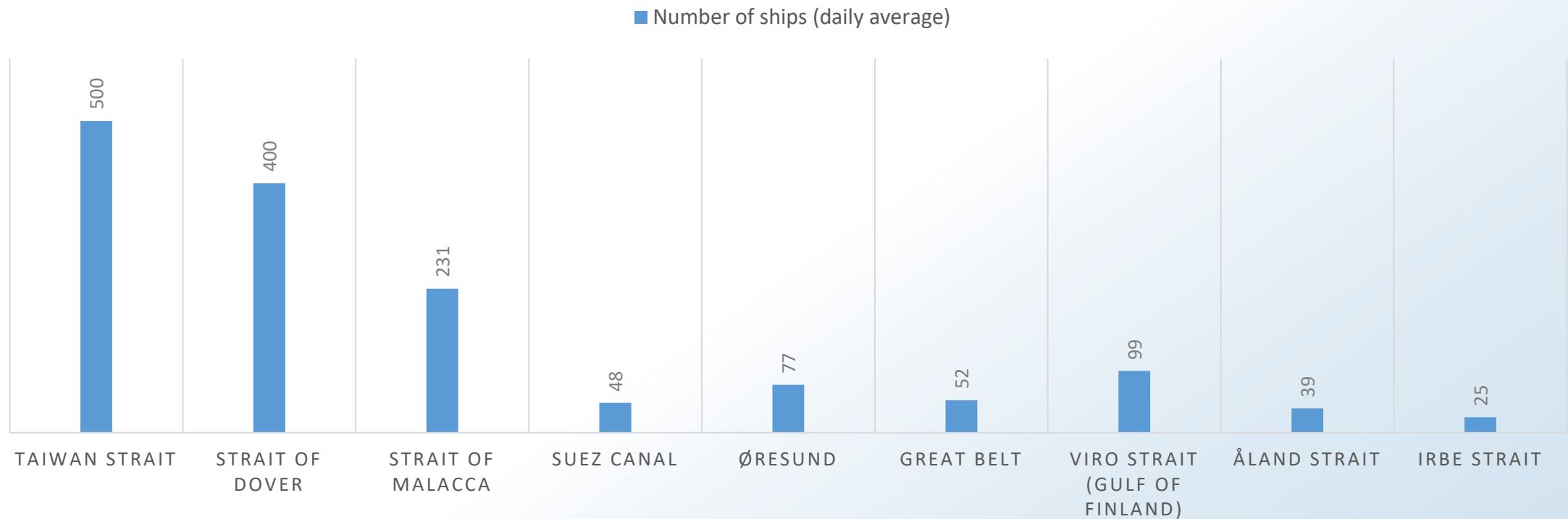
- 1 – Aaland Strait
- 2 – Archipelago Sea Straits
- 3 – Viro Strait (Gulf of Finland)
- 4 – Sea of Straits
- 5 – Irbe Strait
- 6 – Strait of Baltiysk
- 7 – Kalmarsund
- 8 – Bornholmsgat
- 9 – Fehmarn Belt
- 10 – Little Belt
- 11 – Great Belt
- 12 – Øresund
- 13 – Kattegat
- 14 – Strait of Dover
- 15 – North Channel
- 16 – The Minch
- 17 – Pentland Firth
- 18 – Fair Isle Channel

Base Map: Marineregions.org, 2010. The route, straits and their locations are identified by myself.

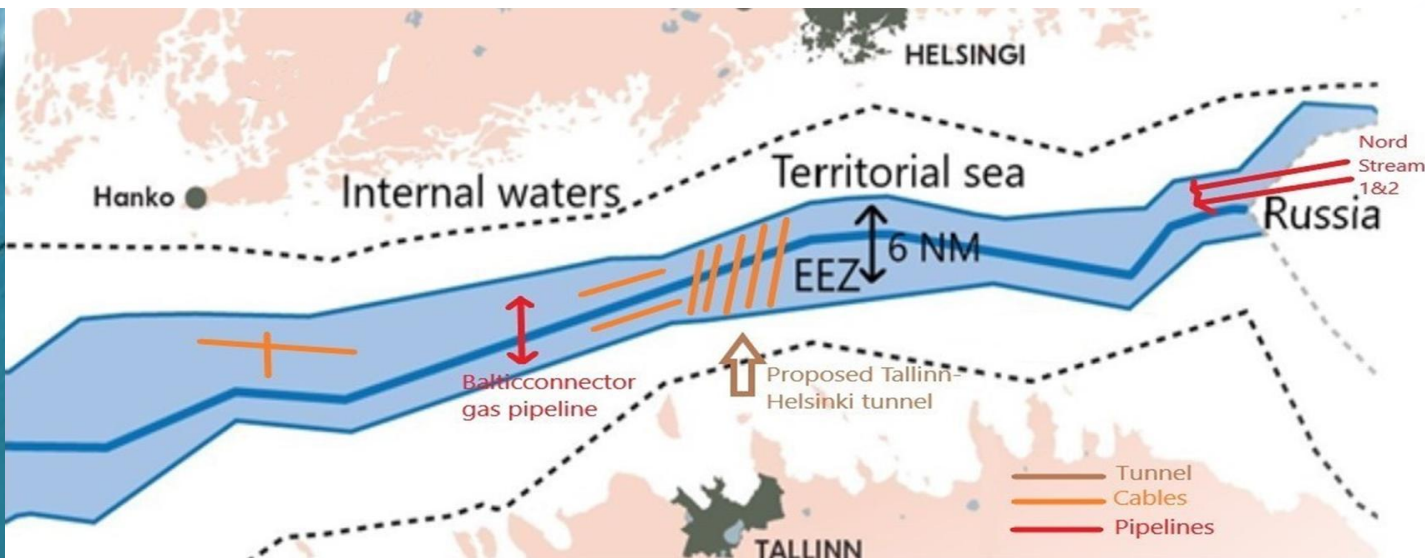
Legal basis	Category of straits	Passage regime	Examples
International straits			
Art 37 LOSC	Strait linking two parts of an EEZ or the high seas	Transit passage	The straits of Dover, Gibraltar, Malacca, Hormuz, Bab el-Mandeb
Art 38(1) LOSC	Strait formed by an island of a strait State and its mainland coast	Non-suspendable innocent passage	The Strait of Messina Kalmarsund, Corfu Channel
Art 45(1)(b) LOSC	Strait linking EEZ/high seas with a foreign State's territorial sea	Non-suspendable innocent passage	The Strait of Tiran (prior to the 1979 Treaty) Head Harbour Passage
Art 53 LOSC	Strait in the archipelagic waters	Archipelagic Sea Lanes Passage	Sunda Strait, Lombok Strait, Makassar Strait
Art 36 LOSC	Strait that includes an EEZ or the high seas corridor	Freedom of Navigation & Overflight	Femer Belt, Kadet, Viro Strait (Gulf of Finland), Tsugaru, Osumi, Soya, Bornholmsgat
Art 311(2) LOSC	<i>Sui generis</i> strait	Specific passage regime	The Strait of Tiran (1979 Treaty), The Kerch Strait (2003 Treaty)
Art 35(c) LOSC	Strait regulated by a long-standing international convention	Specific passage regime	The Danish and Turkish Straits, the Åland Strait, the Strait of Magellan
Art 234 LOSC	Potentially/contested: ice-covered strait	Specific passage regime	The Northwest Passage, the Northern Sea Route
Non-international straits			
Art 35(a) LOSC	Strait in long-standing internal waters	Permit-based passage	The Sea of Straits, The Archipelago Sea straits
Art 34 LOSC	Non-navigable strait	Presence of barriers, e.g., causeways	The Canso Strait, the Johor Strait, <i>Väike väin</i> (the Small Strait)

Traffic Density in Straits

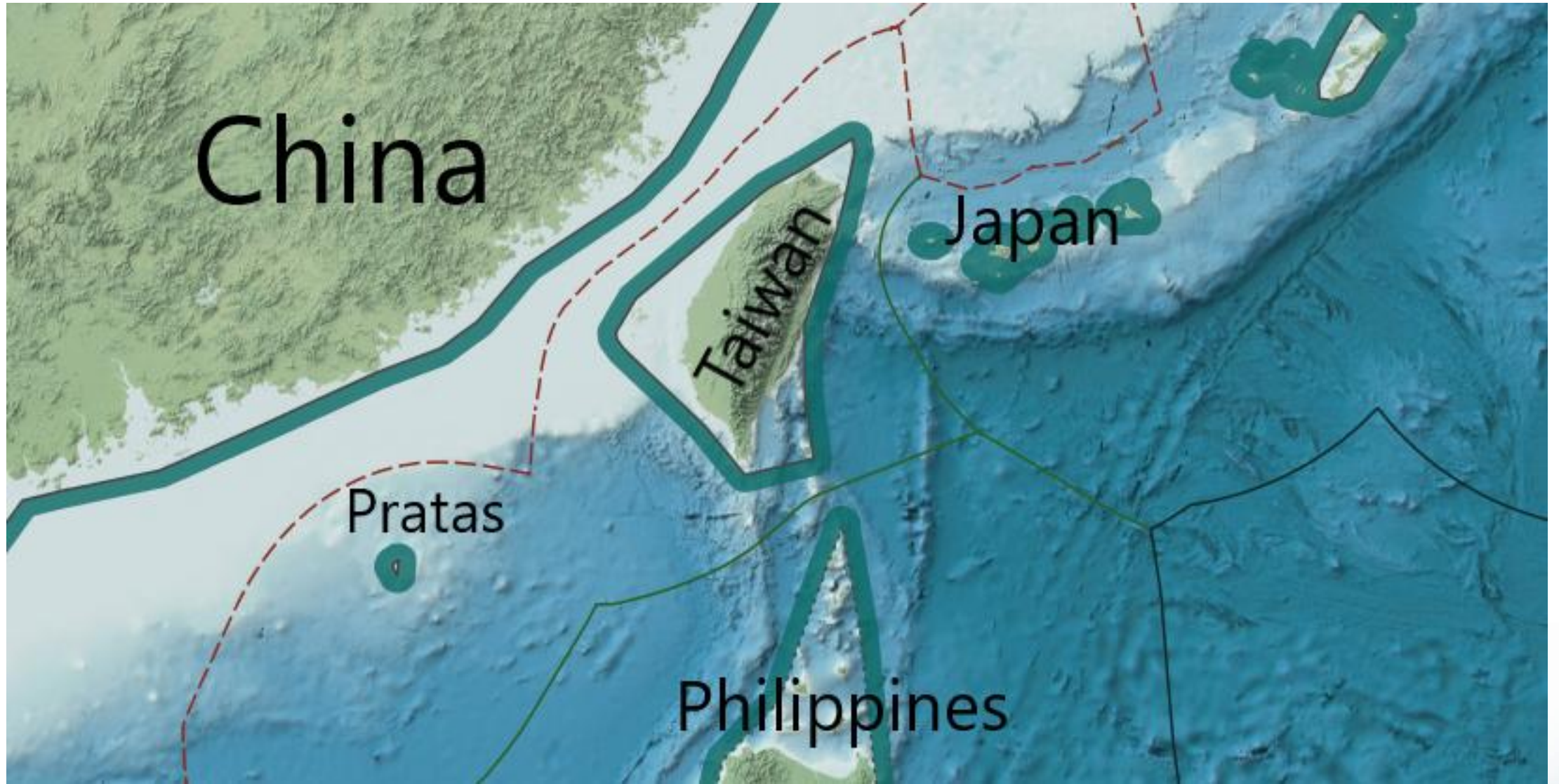
TRAFFIC DENSITY IN THE STRAITS OF TAIWAN AND MALACCA, DOVER, THE SUEZ CANAL, AND BALTIC STRAITS 2017



Source: The number for the Taiwan Strait is an educated guess based on the fact that according to the Chinese data, on average, 483 ships of over 300 GT passed through the Taiwan Strait each day in 2015–2017, and in total numbers, more than 1000 ships cross the Taiwan Strait each day. Chai, Xue, 2. 台湾海峡首艘千吨级海事巡航救助船开工建造. Calculations in respect of the Malacca Strait and the Suez Canal are based on the following sources: Suez Canal Traffic Statistics: Annual Report 2017². The data in relation to the Baltic Straits is collected from the [HELCOM Map and Data Service](http://maps.helcom.fi/website/mapservice/), available at <http://maps.helcom.fi/website/mapservice/>. For the approximate daily average crossings of the Dover Strait, see 'Guidance: Dover Strait crossings: Channel VTS' UK Maritime & Coastguard Agency.



Source of the base maps: Marine Regions (VLIZ); Energistyrelsen, “Figur 1. Kort over 33 områder med aktive ansøgte ÅD-projekter”; Newspaper Postimees and myself, the State Gazette of Estonia.



Source: MarineRegions.org

China's 2021 Coast Guard Law

Article 22 of the Coast Guard Law stipulates that:

- “When the sovereignty, sovereign rights and jurisdiction of a State are confronted with an imminent danger of unlawful infringement or unlawful violation by foreign organizations and individuals at sea, the CCG Organization shall, in accordance with this Law and other laws or regulations, take all necessary measures, including the use of weapons.”
- Article 21: the right to take measures such as forced eviction and forced towing.
 - Under China's domestic law, that measure can be applied against ships subject to sovereign immunity.
- Distinction in Articles 21 and 22 between foreign sovereign immune vessels and other foreign ships.

*„Under the Law, the CCG may take necessary warning and control measures to **stop foreign warships and government ships operated for non-commercial purposes** in China's jurisdictional waters from violating Chinese laws and regulations by ordering them to leave the relevant waters immediately. **Vessels that refuse to leave and which cause serious harm or threat may be subject to measures such as being driven or towed away by force.**“*

Chen-Hong Liu, Zhang Xu, Yen-Chiang Chang, 'Coast Guard Law of the People's Republic of China and Its Implications in International Law', The International Journal of Marine and Coastal Law 36 (2021), pp. 495-496.

The HMS Defender Incident (2021)



Source: Base map MarineRegions.org;
photo Wikimedia Commons



The Kerch Strait Incident (2018) and the Dispute Settlement



- **Case concerning the detention of three Ukrainian naval vessels (ITLOS)**
 - ‘the traditional distinction between naval vessels and law enforcement vessels in terms of their roles has become considerably blurred /.../ and it is not uncommon today for States to employ the two types of vessels collaboratively for diverse maritime tasks.’ (ITLOS Order of 25 May 2019, para. 64)
- **Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Annex VII Arbitral Tribunal)**
 - It was the general impression of the Tribunal that ‘the fact that some of the Ukrainian vessels whose navigation was impeded belonged to Ukraine’s navy does not cause the dispute to concern military activities.’ (Award Concerning the Preliminary Objections of the Russian Federation, 21 February 2020, para. 338)
- **Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Annex VII Arbitral Tribunal)**
 - Rejected “the rigid “either-or” proposition”: “activities that initially have a law enforcement character may become activities with a military character, and vice versa.” (para 121)
 - Most episodes in the Kerch Strait incident concerned military activities, at least until the point when Russia ordered the Ukrainian ships to stop.
 - “the Russian vessels were confronting the naval vessels of another State that had refused to obey an order relating to transit within its territorial sea.” (para. 118)
 - No decision yet on whether the order to stop and the boarding of Ukrainian naval ships and the arrest of the crew constituted military activities. (para. 123)
 - The determination of the precise point at which the events ceased to be “military activities” was postponed to the merits phase (para. 208).
 - Award Concerning the Preliminary Objections of Russia, 27/06/2022

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Thank you for your attention!

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