2000

International straits and transit passages : focus on Bosporus and Dardanelles

Cleanthis Orphanos

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WORLD MARITIME UNIVERSITY
Malmö, Sweden

International Straits and Transit Passage
Focus on Bosporous and Dardanelles

By
CLEANTHIS ORPHANOS
Cyprus

A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE

in

MARITIME SAFETY AND ENVIRONMENTAL PROTECTION
(Operational)

2000

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views and are not necessarily endorsed by the university.

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This dissertation is designed as a guide to the specialised study of the regime governing International Straits. It aims to be a starting book a taster for anyone interested in the subject.

It is directed to provide to those with an interest in the regime of International Straits, with the basic knowledge that is necessary to acquire, so as to be able to proceed further into the study of the regime governing a specific International Strait. They can be politicians, diplomats, or students of law, politics, or international affairs generally.

The historical background and the development of the freedom of the seas doctrines mare liberum-mare clausum-and domino maris, constitute the basis of the discussion about the law of the sea and they are related specifically and in a more complex manner to the International Straits regime.

Focusing on the Third United Nations Convention on the Law of the Sea (UNCLOS III-1982) Part III, it is the purpose of this work to analyse the present legal regime governing International Straits and to distinguish between those International Straits which are governed by the 1982 Convention and those which are not: that means that they are governed by “long standing international conventions”.

The 1982 Convention is the most fundamental reformation of the law of the sea. Nevertheless, it does not stand alone. It is an umbrella convention, covering many other international conventions. Amongst them are the International Maritime Organization’s
(IMO) Conventions, which are detailed and put down technical specifications for their implementation. An effort has been done in this dissertation to interlink the related IMO Conventions to those articles of the 1982 Convention that are related to the International Straits (Mainly Part III articles and some other articles of the 1982 Convention).

In the rapidly changing maritime environment of the last twenty years, many changes slip into the use of International Straits. Safety of navigation, Environmental protection and Financing are matters of concern. The IMO is devoted to the safety of navigation and the protection of the marine environment. The International Straits of the world are included in this environment, and are treated by IMO with particular care due to their increased importance for the world trade, as well as due to the dangers that are inherent in their use.

Brief description of the legal regime of the most important International Straits is given so that the reader can acquire a more spherical understanding about this subject. Those who are interested to acquire more knowledge and to study this subject in more depth for a particular International Strait, can use the very useful series of books edited by Gerard J. Mangone and published by Martinus Nijhoff. The series provide a comprehensive examination of the legal, political, military and economic issues of International Straits.

Keywords: Law of the Sea, International Straits, Transit Passage, Bosporous and Dardanelles, Montreux Convention
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List of Abbreviations

A.D. Anno Domini
ASEAN Association of South East Asian Nations
BIMCO Baltic International Maritime Conference
COLREGS Collision Regulations
COW Crude Oil Washing
DWT Deadweight
EEZ Exclusive Economic Zone
EU European Union
GT Gross Tonnage
ICAO International Civil Aviation Organisation
ICJ International Court of Justice
ILC International Law Commission
IMO International Maritime Organisation
INTERTANKO International Tanker Owners Association
LC Legal Committee
L.L. Load Line
LNG Liquefied Natural Gasses (Carrier)
LOS Law of the Sea
LOT Load on Top
LPG Liquefied Petroleum Gasses (Carrier)
MARPOL Marine Pollution
MEPC Marine Environment Protection Committee
MSC Maritime Safety Committee
NM Nautical Mile
OPRC Oil Pollution Response and Co-operation
<table>
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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>SAR</td>
<td>Search and Rescue</td>
</tr>
<tr>
<td>SBT</td>
<td>Segregated Ballast Tanks</td>
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<tr>
<td>SOLAS</td>
<td>Safety of Life at Sea</td>
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<tr>
<td>STCW</td>
<td>Standards of Training Certification and Watckeeping</td>
</tr>
<tr>
<td>TSS</td>
<td>Traffic Separation Scheme</td>
</tr>
<tr>
<td>UKC</td>
<td>Under Keel Clearance</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>USA</td>
<td>United States of America</td>
</tr>
<tr>
<td>USSR</td>
<td>Union of Soviet Socialistic Republics</td>
</tr>
<tr>
<td>VLCC</td>
<td>Very Large Crude Carrier</td>
</tr>
<tr>
<td>VTIS</td>
<td>Vessel Traffic Information Service</td>
</tr>
<tr>
<td>VTS</td>
<td>Vessel Traffic System</td>
</tr>
<tr>
<td>WW1</td>
<td>First World War</td>
</tr>
<tr>
<td>WW2</td>
<td>Second World War</td>
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CHAPTER I

1. INTRODUCTION / HISTORICAL BACKGROUND

Before we can usefully analyze the present regime of International Straits as determined in the Third United Nations Conference on the Law of the Sea (UNCLOS III 1982), it is necessary to refer to the past, since historical knowledge is necessary to understand the present and helps to forecast the future.

1.1 THE FREEDOM OF THE SEAS DOCTRINES

Despite the fact that the first who propounded the doctrine of the “Freedom of the Seas” for the first time was the Dutch lawyer Hugo-Grotius, the freedom of the seas existed long before. It was accepted in the form of freedom of navigation and commercial shipping by all countries in the Indian Ocean and other Asian countries for centuries before history was ever recorded. It was also accepted by the Rhodian maritime code and it was then adopted in the Roman law, and practiced for centuries before the Christian era. Several countries in the Indian Ocean had established with Rome from the first century A.D. regular maritime commercial relations, which continued for about three hundred years. (Anand, 1983, p.226)

Maritime connections were established during this period between India and China as well as with Japan. Along the coast of South Asia were created several ports and safe
havens, which were used by ships travelling between Indian ports, Ceylon, Sumatra and China. During the seventh century A.D. maritime trade through the Strait of Malacca increased considerably and commerce converged in this area from India, South Asia, China and Japan.

Although there were several strong powers in Asia struggling amongst themselves for supremacy, the freedom of the seas was never challenged. They were mainly land powers, not maritime. Pirates were considered enemies of all and were sought to be suppressed by local kings near their kingdoms.

During the period of Hindu supremacy, complete freedom of navigation and trade was practiced. Arabs who followed then did not attempt to dominate the seas. They were trading during the fourteenth and fifteenth centuries between Red Sea to Canton and to China.

Arabs maintained good relations with Indians and they never tried to exercise naval control in the Indian Ocean, because their navigation and trade developed by merchants, were not the result of any State policy. (Anand, 1983, p.15-16)

Recognition of the seas as open and free for everybody continued without challenge until the end of the fifteenth century when the Portuguese arrived in Asia. It was preceded in 1454, a bull issued by Pope Nicholas V, granting the Portuguese title to the territories they were discovering along the African coast toward India. (Anand, 1983, p.44) In this bull Pope declares amongst others that:

“It is conceded to King Alfonso the right, total and absolute, to invade, conquer and subject all the countries which are under the rule of the enemies of Christ, Saragen of Pagan, by our apostolic letter we wish the same King Alfonso, the Prince; and all their successors, occupy and possess in exclusive rights the said islands, ports and the seas undermentioned.” (Anand, 1983, p.43-44)

In 1456 a second bull was issued by Pope Galixtus II confirming the grant of Pope Nicholas V. The Spanish court (after Columbus returned from his voyage to America
with the conviction that he had reached Indies) feared Portuguese counterclaims, and pressed Pope Alexander VI, for recognition of Spanish sovereignty over the new continent.

Pope Alexander VI in 1493 divided the world between Spain and Portugal. A line of demarcation was defined running 100 leagues west of the Azores and Cape Verde islands. All lands west of the line were granted to Spain and to Portugal were granted all the lands to its east. It was given thus to Spain, the right and jurisdiction over the Pacific Ocean and the Gulf of Mexico and to Portugal over the Atlantic Ocean south of Morocco and the Indian Ocean. (Anand, 1983, p. 44) Spain thought at that time that it had got the better of the bargain believing that the route to Indies was westward, but in fact, the demarcation line left to Portugal the only feasible route to India in the fifteenth century. (Anand, 1983, p. 44) At the time when the Portuguese appeared in the Indian Ocean there was no armed shipping because as stated, neither Hindus nor Arabs who followed them attempted at any time to exercise naval control. Portuguese ships armored with heavy canons had a decisive advantage over their Indian opponents. (Anand, 1983, p.51-52)

The Portuguese were able to control the shipping trade in the Indian Ocean all through the sixteenth century, by occupying the straits of Hormuz, Bombay, the islands of Diu and Malacca. By the late sixteenth century the other European powers challenged the authority of the Portuguese in the Indian Ocean being jealous of their monopoly of spice trade and its huge profits. (Anand, 1983, p.64)

Hugo Grotius in 1609 taking his cue from the previous Asian maritime practices of free navigation and trade formed the doctrine of the freedom of the seas, in order to advocate the interests of the Dutch East India Company and his country. In his famous book “Mare Liberum” contested the right which Portugal argued to have, to prohibit all others from engaging in seaborne commerce with the East Indies. The Portuguese argued that they had proprietary rights as a result of a Papal bull, over both land and sea. Grotius argument was that the Portuguese had not legally occupied the Indies, and had no title to occupy the seas. In fact, he was the first who enunciated the principle that “navigation
was free to all and that no one country could lay claim to the sea on the basis that their
navigators were the first to sail on it”. (Farthing, 1997, p. 8)

Grotius supported his doctrine, by logical arguments, Christian theology and the
authority of Roman law. However, neither Grotius nor Holland was in favor of freedom
of the seas as a principle. As soon as the Dutch defeated the Portuguese and seized the
profitable trade of the Spice Islands, they created their own monopoly. They signed
treaties with local rulers to acquire exclusive trade, and tried to enforce these monopoly
rights against the British. In 1613, Grotius forgot his doctrine of the freedom of the seas
and went to England to argue in favor of the Dutch monopoly. (Anand, 1983, p.228)

Grotius’ motive was political, with moral overtones. He formed it to support the
right of the Dutch to navigation and commerce with the East Indies in spite of the
Portuguese claims to monopoly. From the outset, therefore, the doctrine of the freedom
of the seas was politically inspired. And so it has remained. (Booth, 1985, p.12) After
Hugo Grotius had propounded the doctrine of “Mare liberum” in 1609 the British
scholar and statesman John Seldom argued for “closed sea”. In 1635 John Seldom
published his book “Mare Clausum” where he argued that the seas just like the land,
could become the exclusive property of nations. Like Grotius, his doctrine had a political
motive. He developed it, in order to defend the restriction of foreign shipping off British
coasts.

In 1702 A.D. another Dutchman, Cornelius van Bynkershoek, published a book
under the title “De Domino Maris” where he suggested that a State’s dominion over the
sea should be restricted to the range over which its power extended from the adjacent
land. This was taken to be the maximum range of a canon. The distance agreed was three
nautical miles (NM), except in Scandinavia. With this development, the Grotius-
Seldom-Bynkershoek framework established the terms of the debate about the law of the
sea for the centuries following. (Booth, 1985, p.15)
These “law of the sea doctrines” have swung during the last four centuries, according to the contemporary military and political power and to beliefs about the exhaustibility of the ocean’s resources. For two centuries after Seldom published his “Mare Clausum” it has prevailed not by the validity of his arguments but by the powerful British navy. (Anand 1983, p. 229)

After the Napoleonic wars, Great Britain recalled again the freedom of the seas doctrine. The industrial revolution’s needs for raw materials, surplus capital and larger markets, led to huge colonial empires in Asia and Africa. It was more useful to have free and open seas for easier exploitation of Asia and Africa which no one nation could exploit alone. (Anand, 1983, p.230)

Nevertheless, the extend of the implementation of the doctrine of the freedom of the seas was too narrow. It was meant by the British as freedom of peaceful navigation with a few agreed “rules of the road”. There was no agreement on the breadth of territorial sea and contiguous zone or freedom of navigation through straits especially for warships.

Without entering into details it is worth to say that freedom of the seas meant essentially non-regulation and “laissez-faire” which was in the interests of the great maritime powers. Under the freedom of the seas doctrine this lack of law was used during the nineteenth century by European powers to threaten small African and Asian States, to get concessions from them or to subjugate them. Furthermore it was later used in the furtherance of their navigation interests, fisheries or military maneuvers irrespective of the rights of others. (Anand, 1983, p.231)

Throughout the modern period, fisheries disputes such as between England on the one hand and smaller European countries, (Holland, Denmark, Poland, Norway, Iceland) on the other as well as in the American continent and almost continuous protests by the neutral States against the violation of their freedom of navigation and trade by belligerent maritime powers, are continuous reminders of the dissatisfaction of the smaller coastal States.
Furthermore, after the Second World War (WW2) the great maritime powers expanded their liberty by enclosing even wider areas for self defense and security, for combating the enemy during the war and for preparing themselves against a powerful adversary in the post war era, for conducting nuclear and missile tests, thereby threatening the life and liberty of all peaceful users of the sea. (Anand, 1983,p.231)

It was only after 1945 that the unlimited freedom of the great maritime powers was challenged. The discoveries of important resources in the sea especially oil discovery under the sea, increased use of the oceans and coastal fishery resources, increasingly threatened by larger and better equipped ships of distant - water fishing states, provoked the reaction of the smaller coastal States and the unlimited freedom of the great maritime powers came to be found inadequate.

After the WW2 the international society was transformed, European colonialism collapsed, and a considerable number of States emerged as new members of the international society. Over ninety States have achieved independence since 1945, of which large proportion are coastal States. The new international law has to serve now the interests of all. Although some of the newly independent developing countries participated at the first (1958) and second (1960) United Nations Conferences on the Law of the Sea (UNCLOS I-1958) and (UNCLOS II-1960) they were not politically strong and organized as a group to influence their decisions. They were playing a minor role, with the East-West confrontation. At the third UNCLOS which carried out between 1973-1982 in order to regulate new uses of the sea, for the new extended international society, developing countries were prepared to play a more important role. They wanted a review of the whole international law of the sea. Therefore, the major confrontation of UNCLOS III 1982 was not that of East-West (Communism V.S. Capitalism) but between the great maritime powers - technologically advanced, and the developing countries. The former seeking to ensure their security and to maximize their benefits from the sea and new found seabed resources based on their advanced technology, and the latter seeking more security and to change the traditional law in order to develop new
equitable rules for the use and exploitation of the seas. (Anand, 1983, p.240)

1.2 REASONS FOR ASSIGNMENT OF SPECIAL REGIME

The regime of transit of Straits is generally regarded as concluded during the negotiations of the UNCLOS III despite the fact that a detailed study of the major International Straits reveals that there are still outstanding problems both local and general. (This is evident from the study of the books “International Straits of the World”, edited by Gerard J. Mangone and published by Martinus Nijhoff). During the negotiations the two superpowers United States of America (USA) & Union of Soviet Socialist Republics (USSR) found to be in the same camp whilst in the opposite side were the developing States bordering Straits. The naval powers opinion and position was that the straits issue is non-negotiable, because of the interrelationship between the straits issue and other aspects of the law of the sea, particularly that of the territorial sea extension. Without the right of transit passage, as defined in the UNCLOS III 1982 Convention, 116 hitherto International Straits, would have become overlapped by territorial seas, with commercial and military transit covered by innocent passage provisions. (Booth, 1985, p.100)

<table>
<thead>
<tr>
<th>STRAIT</th>
<th>STRAIT STATE</th>
<th>MINIMUM WIDTH (N.M)</th>
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<tbody>
<tr>
<td>Bosporus</td>
<td>Turkey</td>
<td>Less than 1</td>
</tr>
<tr>
<td>Dardanelles</td>
<td>Turkey</td>
<td>Less than 1</td>
</tr>
<tr>
<td>Skagerrak</td>
<td>Denmark/Norway</td>
<td>61</td>
</tr>
<tr>
<td>Oresund</td>
<td>Denmark/Sweden</td>
<td>2</td>
</tr>
<tr>
<td>Hormuz strait of</td>
<td>Iran/Oman</td>
<td>21</td>
</tr>
<tr>
<td>Gibraltar</td>
<td>Morocco/Spain</td>
<td>8</td>
</tr>
<tr>
<td>Dover strait</td>
<td>France/U.K.</td>
<td>18</td>
</tr>
</tbody>
</table>
Malacca strait of Indonesia/Malaysia  8
Magellan strait of Argentine/Chile  2
Messina strait of Italy  2
Otranto strait of Albania/Italy  41
Bering strait USA/Russia  19
Pescadores Channel China/Taiwan  17
Selat Bali Indonesia  2
Selat Lombok Indonesia  11
Selat Sunda Indonesia  12

Major International Straits (Reproduced from: Booth, K. (1985) p.118 “Law Force and Diplomacy” at Sea. (See Appendix 1)

Despite the fact that transit passage was a requirement for the maritime powers and particularly a requirement of a comprehensive treaty by the USA & USSR, the principal reason for such transit rights is that they are in the interest of all members of the international community. Straits such as Malacca & Singapore, Dover, Gibraltar, Hormuz, Bab-El-Mandeb, Constantinople and over a hundred others are used as routes for the bulk of the world’s shipping trade. If it was permitted to the coastal States to have extended jurisdiction, which would enable them to control unilaterally or to impose conditions on such an important community, freedom would be inefficient and inequitable and conducive to conflict. Transit through International Straits is fundamentally different from transit through the territorial sea and it was recognized as such, in the common interest.

If transit passage through International Straits was not recognized as such, then, the common interest would have eroded by unwarranted restrictions on transit,
discrimination amongst users, uncertainty of transit rights, inefficient and inconsistent regulations, efforts at political and economic gain in return of passage, increased political tensions, and perhaps even a military confrontation. (Moore, 1980, p.169)

On the other hand, a straits regime to be fair and lasting must meet the interests of strait States concerning safety of navigation through straits and protection of the marine environment.

The balance between the interests of strait States and that of the international community (users) and naval powers, will result in the promotion of common interest and security in the international system.

In addition to this fundamental basis for the assignment of transit passage regime through International Straits, there are other factors of concern, commercial and strategic to all nations. These include:

1) All States either maritime powers or flag States, land-locked States etc, benefit from the unimpeded movement of merchant vessels and cargoes throughout the world and through International Straits. The free transit of straits is in the interest of international trade as well as the national strategy of some countries. Industrialized countries such as USA, Japan, European Union (E U) countries and many developing countries are dependent on supplies of oil carried by tankers, which in many trades pass through International Straits.

2) Submarines are designed to run submerged. This is their “normal mode”. On the surface they are less maneuverable, their collision avoidance systems run less well, even in good visibility they are difficult to see, they present a small and maybe misleading radar target in the radar of other ships seeking to avoid them, and they must travel through a high traffic density even with consequent increased risk of collision.

For these reasons, submarines do not transit straits, unless the depth and other hydrographic characteristics permit safe submerged navigation. If it were required to
navigate on the surface when transiting straits, the collision risk would increase significantly. Through shallow straits, submarines do not transit in any mode.

3) If strait States were permitted to control navigation or overflight, it could result in “creeping jurisdiction” which means the extension of national or international rules and regulations, and rights and duties over and under the sea, in straits and coastal zones, on and under the seabed and in the rest stretches of the high seas”. (Ken Booth p.38) It applies to all modes referred above (commercial ships and aircrafts, military ships and aircrafts).

4) If strait States were given the discretion to control shipping or aviation this could lead to conflict, because their strategic significance would be greatly enhanced. Consequently, they would have the opportunity to exercise great political leverage either to influence regional international affairs, or against a hostile superpower. In the latter case, it does not mean that the superpower would not impose its will, but with costly delays and diplomatic effort. On the other hand, a more restrictive transit regime would create problems to the states bordering straits. They would have to take difficult political decisions. They would have more duties and rights and these would impose greater burdens on them. They would have either to take harder stands, or they would have to compromise. (Moore, 1980, p.170-174)

1.3 WHAT follows

Having established the evolution of the freedom of the seas doctrine and the reasons for the assignment of a special regime for passage through International Straits, we are now prepared to examine the governing legal regime.

In order to acquire clear understanding of the legal regime governing passage through International Straits, in chapter 2 we will concentrate on the analysis of the articles of UNCLOS III 1982 Part III (International Straits). In chapter 3 an attempt will be made to interlink the UNCLOS III articles with the requirements of the relative IMO
Conventions.

Supplementary to chapter 3 comes the fourth chapter where we will present the legal regime governing the most important International Straits: The Bosporus and Dardanelles, The Baltic straits, The strait of Hormuz, The strait of Bab-Al-Mandeb, The strait of Gibraltar, The strait of Dover, The straits of Malacca and Singapore, with particular reference to Bosphorous and Dardanelles which happens to be the motive of this dissertation.

We will distinguish between those straits, which are governed by long standing international conventions, (therefore not governed by the articles of the part III of the 1982 Convention), and those, which are governed by the 1982 convention.

There have been significant changes in the world since the UNCLOS III 1982 was signed, and the International Straits as a matter of common use and concern are unavoidably influenced by these changes. Technological advances, environmental concerns, economic growth, all slip into the use of International Straits and solve problems whilst simultaneously create others. Present situation and trends will occupy chapter 5, with particular reference to the safety of navigation and pollution prevention, responsibilities of user States and strait States, financing matters concerning International Straits as well as the attempt of the Turkish government to impose new regulations (The Maritime Regulations) for passage through the Bosphorus and Dardanelles straits.

Finally in chapter 6, we will make conclusions and recommendations.
CHAPTER 2

2. THE LEGAL REGIME GOVERNING INTERNATIONAL STRAITS

2.1 INTRODUCTION

The legal regime of International Straits is part of the Public Law of the Sea, which is part of the International Law. International Law regulates the relationship among the Sovereign States of the world.

The material sources of International Law as set out in Article 38(I) of the Statute (or Constitution) of the International Court of Justice (ICJ), the principal judicial organ of the United Nations (UN) are:

a) International Conventions whether general or particular, establishing rules expressly recognised by the contesting states.

b) International custom as evidence of a general practice accepted as law.

c) The general principles of law, recognised by civilised nations.

d) Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(Article 38(1), Statute of the ICJ)

The Law of the Sea (LOS) is one of the oldest and most dynamic branches of International Law. It includes the will of nations for co-operation, it deals with the economic competition amongst them and finally the continuation of naval warfare by other means to paraphrase Clausewits. (1780-1831) “Vom Kriego”

This chapter will concentrate on those sources of the Law of the Sea concerning International Straits. The three United Nations Conferences on the Law of the Sea will be briefly discussed, and it will follow a detailed analysis of the articles of the 1982 Convention Part III governing the legal regime of International Straits.
2.2 THE FIRST UN CONFERENCE ON THE LAW OF THE SEA

The First United Nations Conference on the Law of the Sea was held in Geneva from February to April of 1958. The 86 States in attendance adopted four conventions:

1) The Territorial Sea and Contiguous Zone.
2) The High Seas
3) The Continental Shelf
4) Fishing and Conservation of the Living Resources of the High Seas

These four Conventions entered into force, between the years 1962-1966.

The issue covering the navigation through International Straits was dealt with within the regime of navigation through the territorial sea. Article 16 paragraph 4 states: “There must be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas, or the territorial sea of a foreign State”. (Art. 16(4) of the Convention on the Territorial Sea and the Contiguous Zone, Geneva 29 April 1958, UNTS Vol. 516 at 205). Concerning submarine navigation through International Straits, Article 16 paragraph 6 states that “Submarines must navigate on the surface and show their flag while passing through the territorial sea including straits.

The First UN Convention on the Law of the Sea, contains no provisions about Air navigation apart from the general assertion that the sovereignty of the coastal State extends to air space over its territorial sea. (Gold, 1991, p.12)

2.3 THE SECOND UN CONFERENCE ON THE LAW OF THE SEA

The Second UN Conference on the Law of the Sea was held in Geneva in March and April 1960 to consider particular questions regarding territorial sea and fishing matters, which had not been resolved in 1958. Developing countries wanted extension of the territorial sea (for security and surveillance reasons) still being recognised as being 3 NM.

On the other hand, maritime powers and large shipping nations were concerned
about the effects that any changes might have on the principle of freedom of navigation. Twelve NM territorial sea was requested by many coastal States. The regulations of the convention concerning continental shelf were not acceptable to the States, which had narrow continental shelf. The convention defined continental shelf as the seabed from the outer limits of the territorial sea to the 200-meter isobath, and beyond this limit where the depth admitted exploration of natural resources. In addition, the problem of fishing rights beyond the territorial sea had not been solved for many coastal States. The negotiations of the 1960 conference ended without conclusion. About 49 States ratified three out of four conventions of the 1958 Conference. Only 35 States ratified the convention on “Fishing and Conservation of Living Resources of the High Seas”.

The issue covering navigation through International Straits was not discussed. What was mainly discussed was the breadth of the territorial sea, together with the delineation of fishing zones beyond the limits of territorial waters. (Gold, 1991, p.14)

2.4 THE THIRD UN CONFERENCE ON THE LAW OF THE SEA

2.4.1 INTRODUCTION

The Third United Nations Conference on the Law of the Sea took place between the years 1973 to 1982. It was carried out in New York, Geneva, Caracas and Montego Bay. In December 1982 the final version of the Convention was signed by 117 states. By the time it had closed for signature in 1984, 157 States had signed it. It entered into force on 16 November 1994 one year after the deposit of the sixteenth instrument of notification. Since that date, the Convention has received sixty additional instruments of notification, accession or succession bringing the total number of States parties to 120.

The 1982 United Nations Convention on the Law of the Sea (UNCLOS III-1982) is the most important convention governing all matters relating to the law of the sea

The most important interests which were discussed during the 9 years of difficult discussions are:

1) The security interests of the coastal States
2) The protection of resources (economic interests) of coastal states.
3) The necessity of preserving the freedom of navigation of ships and aircrafts.

(Information retrieved from LOS Database [http://srch.to.un.arg.:80/plweb](http://srch.to.un.arg.:80/plweb))

Ratifications and Accessions to the UNCLOS III by Geographical Region

1) ASIAN & PACIFIC REGION 33
2) AFRICA 34
3) LATIN AMERICA & CARRIBEAN 25
4) WESTERN EUROPE & OTHER STATES 18
5) RUSSIAN FEDERATION


UNCLOS-III 1982 PART III

Part III of the Convention establishes a special regime for straits used for international navigation. It is a carefully negotiated compromise that attempts to balance the interests of user States and the interests of States bordering straits.

Section 1: General Provisions - Articles: 34, 35, 36
Section 2: Transit Passage - Articles: 37, 38, 39, 40, 41, 42, 43, 44
Section 3: Innocent Passage - Articles: 45
An analysis of the above articles follows.

2.4.2 ANALYSIS OF THE ARTICLES OF UNCLOS III PART III

2.4.3 SECTION 1

GENERAL PROVISIONS

ARTICLE 34: Legal Status of waters forming straits used for international navigation

1. The regime of passage through straits used for international navigation established in this part shall not in other respects affect the legal status of the waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and air space, bed and subsoil.

2. The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this part and to other rules of international law.

Analysis:

Under article 3 of the 1982 Convention, coastal States are allowed to claim a territorial sea up to 12 NM from the base lines along their coasts, therefore, many International Straits such as the straits of Constantinople, Malacca and Singapore, are now situated within the territorial sea of the States bordering the straits.

However, the sovereignty and jurisdiction of States bordering the straits is not the same as in the rest of their territorial sea. According to article 34 the sovereignty and jurisdiction of the States bordering straits must be exercised subject to the provisions in Part III of the Convention and to other rules of international law. The major limitation on the sovereignty of States bordering straits is that of the regime of transit passage. (Beckman, p. 352-353)

ARTICLE 35: Scope of this Part

Nothing in this Part affects:

a) any areas of internal waters within a strait, except where the establishment of a strait baseline in accordance with the method set forth in article 7 has the effect of
enclosing as internal waters areas which had not previously been considered as such;
b) the legal status of the waters beyond the territorial seas of States bordering straits as exclusive economic zones or high seas; or
c) the legal regime in straits in which passage is regulated in whole or in part by longstanding international conventions in force specifically relating to such straits.

Analysis:

The right of transit passage and the obligations arising therefrom shall not be applied in internal waters within a strait. The legal regime beyond the territorial seas or Exclusive Economic Zone (EEZ) and high seas shall not be affected. Long-standing conventions regulating the passage regime through International Straits, shall not be affected by the 1982 Convention articles concerning transit passage and shall remain into force.

The term “long-standing” is used to leave unaffected such straits as the straits of Constantinople, the passage through which is regulated by the Montreux Convention of 1936. The Baltic straits and the straits of Magellan are also governed by long-standing international conventions.

ARTICLE 36: High seas route or routes through exclusive economic zones through straits used for international navigation

This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics; in such routes, the other relevant parts of this convention, including the provisions regarding the freedoms of navigation and overflight, apply.

Analysis:

If the breadth of an International Strait exceeds the breadth of the territorial sea of the coastal States, then a sea corridor exists through the high seas or through an EEZ. If the route through the corridor is convenient for navigation with respect to navigational and hydrographical characteristics, then the right for transit passage does not apply in
the strait. For passage through the sea corridor apply the provisions of the convention, regarding freedom of navigation and overflight.

As an example, transit through a 12 NM territorial sea in the Florida straits between USA and Cuba, would be merely innocent passage because free transit is available in the EEZ parts of the strait. (Brown, 1994)

2.4.4 SECTION 2

TRANSIT PASSAGE

ARTICLE 37: Scope of this section

This section applies to straits, which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

Analysis:

This article sets the criteria, which a strait shall comply with in order to be defined as an International Strait. It must comply with two criteria. First, it must either connect one part of the high seas with another part of the high seas, or one part of the high seas with an EEZ. An EEZ is an additional belt of the sea beyond the territorial sea up to 200 miles from the coastal State’s base line, in which the coastal states enjoy sovereign rights over the resources living and non-living, but not over the waters. (UNCLOS III, Art. 57) The status of the EEZ is that it is very different from the territorial sea.

To recapitulate, there are two criteria which an International Strait must satisfy: 1) it must connect one part of the high seas with another part of the high seas, or one part of the high seas with an EEZ, or one EEZ with another EEZ. Then, there is a second criterion: 2) It must be used for international navigation. That is a question of fact, whether it is used or not for international navigation. (Koh, 1993, p.47)
ARTICLE 38: Right of transit passage

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

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

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

Analysis:

1) In the case where a strait is formed by an island of the State bordering the strait and its mainland, and seaward of the island exists a route of similar convenience, then the right of transit passage does not apply. There exists a right of non-suspendable innocent passage between the island and the mainland. An example would be the Corfu channel.

2) The right of transit passage shall not be impeded, while the right of innocent passage in the territorial sea is subject to suspension under Article 25 of the 1982 Convention. There are two other major differences between transit passage and innocent passage: a) Transit passage includes the right of overflight while innocent passage does not. b) Submarines are permitted under Article 39, to remain submerged during transit passage, using their normal mode of transit. The normal mode of
operation of submarines is the submerged mode because they are designed to operate and travel in this mode. They are by definition submerged vehicles. When exercising innocent passage in the territorial sea submarines are required under Article 20 to navigate on the surface and show their flag.

3) Transit passage means the exercise of the freedom of navigation through the strait solely for the purpose of continuous and expeditious transit, and in accordance with the other provisions of the Convention on International Straits. So long as ships so exercise their right, their passage may not be hampered. Nor can their right to transit passage be suspended.

4) However, if a ship passing through an International Strait carries out any activity that is not an exercise of the right of transit passage, such activity remains subject to the other rules of the Convention and the rules on innocent passage in the territorial sea would be applicable. (The rules on innocent passage in the territorial sea are set out in Articles 17-32 of the 1982 Convention. The meaning of innocent passage is set out in Article 19 paragraph 2(h). Article 19 provides that any act of wilful and serious pollution shall be considered passage that is not innocent. Article 25 of the Convention gives coastal States the right to take the necessary steps to prevent passage that is not innocent or arrest the ship. (Beckman, p. 353-354)

ARTICLE 39: Duties of Ships and aircrafts during transit passage

1. Ships and aircrafts, while exercising the right of transit passages shall:
   a) proceed without delay through or over the strait;
   b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the charter of the United Nations;
   c) Refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress;
   d) Comply with other relevant provisions of this part.
2. Ships in transit passage shall:

a) comply with generally accepted international regulation procedures and practices for safety at sea, including the international regulations for preventing collisions at sea.

b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.

3. Aircraft in transit passage shall:

a) observe the rules of the Air established by the International Civil Aviation Organisation as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;

b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

Analysis:

Whilst article 38 defines transit passage and stipulates the rights of ships and aircrafts when exercising such a passage, article 39 settles their obligations. They must proceed without delay and they shall not interfere by whatever manner and means with the internal matters of the States bordering the straits. Additionally they must not violate the principles of international law embodied in the Charter of the United Nations.

Ships must comply with international rules concerning the safety of navigation, the avoidance of collisions and the protection of the marine environment. The effect of this requirement is to incorporate by reference all the generally accepted pollution conventions.

Civil Aircrafts must comply with the international rules established by the International Civil Aviation Organization (ICAO) and state aircrafts must comply with such safety measures. Both civil and state aircrafts must monitor the radio frequency assigned by the internationally designated air traffic control authority or the appropriate international distress radio frequency.

ARTICLE 40: Research and survey activities

During transit passage, foreign ships, including marine scientific and hydrographic
survey ships, may not carry out any research or survey activities without the prior authorisation of the States bordering straits.

Analysis:

In continuation of the obligations of ships exercising the right of transit passage, referred to in article 39, article 40 specifies that research or survey activities are prohibited.

All foreign ships, including specialised marine scientific and hydrographic survey ships, are not permitted to carry out any research or survey activities without prior authorisation of the coastal States bordering the straits.

ARTICLE 41: Sea lanes and traffic separation schemes in straits used for international navigation

1. In conformity with this Part, States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where it is necessary to promote the safe passage of ships.

2. Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them.

3. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

4. Before designating or substituting sea lanes or prescribing or substituting traffic separation schemes, States bordering straits shall refer proposals to the competent international organisation with a view to their adoption. The organisation may adopt only such sea lanes and traffic separation schemes as may be agreed with the States bordering the straits, after which the States may designate, prescribe or substitute them.

5. In respect of a strait where sea lanes or traffic separation schemes through the waters of two or more States bordering the strait are being proposed, the States concerned shall co-operate in formulating proposals in consultation with the competent international organisation.
6. States bordering straits shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by them on charts to which due publicity shall be given.

7. Ships in transit passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

Analysis:

The first limitation on the freedom of the high seas is the power of the States bordering the straits with respect to the safety of navigation. A strait State has the right to adopt laws and regulations in respect of the safety of navigation and the regulation of maritime traffic. Under this power a strait state may designate sea lanes and prescribe Traffic Separation Schemes (TSS) in the strait. This power of the strait State is, however, not unlimited, and there are two important conditions that the strait State must comply with. The two conditions are:

a) the sea lanes and TSS must conform to generally accepted international regulations, and

b) they must first be submitted to and be adopted by the IMO. So the IMO plays very critical role in helping to reconcile the community’s interests and the interests of the straits States.

Due publicity shall be given to sea lanes and TSS designated by straits States on navigational charts. Ships in transit passage shall respect the established sea lanes and TSS in accordance with the International Regulations for Preventing Collisions at Sea (COLREGS). (Koh, 1993, p.47)

ARTICLE 42: Laws and regulations of States bordering straits relating to transit passage

1. Subject to the provisions of this section, States bordering straits may adopt laws and regulations relating to transit passage through straits in respect at all or any of the following:

a) the safety of navigation and the regulation of maritime traffic, as provided in
article 41;
b) the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;
c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;
d) the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal immigration or sanitary laws and regulations of States bordering straits.

2. Such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section.

3. States bordering straits shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations.

5. The flag State of a ship or the State of registry of an aircraft entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to States bordering straits.

Analysis:

In Article 41 the Convention gives the right to the States bordering straits to adopt laws and regulations in respect to the safety of navigation and the regulation of maritime traffic by designating sea lanes and prescribing TSS in co-operation with the IMO. In Article 42 it gives additional rights to straits States in respect to the following:

1) the prevention, reduction and control of pollution. The strait State has the power to adopt laws and regulations to prevent to reduce, and to control pollution. The power of the strait State, is again subject to two conditions. The first condition is that the laws and regulations can only deal with the discharge of oil, oily waste and other noxious substances in a strait. Secondly, the laws and regulations of a strait State,
must give effect to applicable international regulations. In other words, the strait State
cannot adopt laws and regulations if there are no applicable international regulations.
The power of the strait State is to give effect to such applicable international rules.
(Koh,1993, p.48)

2) Strait States may adopt laws and regulations in respect to fishing vessels, the
prevention of fishing, the stowage of fishing gear and the loading or unloading of any
commodity, currency or person.

3) Such laws and regulations shall not discriminate between foreign ships.

4) All such laws, shall be given due publicity.

Ships in transit are obliged to comply with the laws and regulations adopted by the
strait State(s).

The flag State of a ship or the State of registry of an aircraft, entitled to sovereign
immunity which does not comply with the laws and regulations and the other provisions
of Part III shall bear international responsibility for any loss or damage which results to
States bordering straits.

ARTICLE 43: Navigational and safety aids and other improvements and the prevention,
reduction and control of pollution

User States and States bordering a strait should by agreement co-operate:

a) in the establishment and maintenance in a strait of necessary navigational and safety
   aids or other improvements in aid of international navigation; and

b) for the prevention, reduction and control of pollution from ships.

Analysis:

Article 43 is not obligatory but advisory. It encourages co-operation between user
States and strait States. It recognises that the international interest in passage through
straits used for international navigation imposes certain restrictions on the rights of strait
States and therefore fosters co-operation between user States and strait States in relation to the safety of navigation through the straits. Additionally, calls for co-operation for the prevention, reduction and control of pollution from ships in the straits.

Strait States are not obliged to establish and maintain in the straits a system of navigational and safety aids. If user States do not co-operate, strait States may refuse to provide navigational and safety aids.

Strait States cannot impose tolls to ships in transit passage. (Koh, 1993, p.48)

COMMENTS AND RECOMMENDATIONS ON ARTICLE 43

I would like to point out that the trouble with this article is that it is not mandatory and it does not contain any mechanism to compel co-operation between user States and strait States. The only solution I would propose is that an international conference be convened in IMO of the user States and strait States to implement this article.

In such a conference could be discussed, in view of the shipping traffic passing through International Straits, (special consideration has to be given on types of ships like Very Large Crude Carriers (VLCC), Liquefied Petroleum Gas Carriers (LPG), Liquefied Natural Gas Carriers (LNG) and other tankers), the potential of accidents resulting in major ecological damage, loss of life and disruption to navigation.

It is therefore essential that measures be taken to assist the safety of navigation and by so doing protect the marine environment against accidental pollution.

These measures shall:

1) Address the local conditions in order to:
   a) Provide for compulsory pilotage where is necessary
   b) Provide for TSS
   c) Provide for under keel clearance (UKC)
2) Take into account the practical problems facing navigators
3) Provide for proper training of shore based personnel (Vessel Traffic System (VTS) operators, staff manning radio stations and Search and Rescue (SAR) units).
ARTICLE 44: Duties of States bordering straits

States bordering straits shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge. There shall be no suspension of transit passage.

Analysis:

Strait States are not obliged to provide navigational aids or to make other improvements to the safety of navigation. However, article 44 obliges strait States to give appropriate publicity to any danger to navigation within an international strait of which they have knowledge. Article 38 states that the “right of transit passage shall not be impeded”. Again in article 44 it is stressed that: “States bordering straits shall not hamper transit passage” and “there shall be no suspension of transit passage”.

2.4.5 SECTION 3
INNOCENT PASSAGE
ARTICLE 45: Innocent passage

1. The regime of innocent passage, in accordance with Part II section 3, shall apply in straits used for international navigation:
   a) excluded from the application of the regime of transit passage under article 38 paragraph 1; or
   b) between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State.

2. There shall be no suspension of innocent passage through such straits.

Analysis:

The rules of innocent passage in the territorial sea are set out in articles 17-32 of the 1982 Convention. “All ships in accordance with the 1982 Convention enjoy the right of innocent passage through the territorial sea.

Submarines are required to navigate on the surface and show their flags. Passage is
innocent so long as it is “not prejudicial to the peace, good order or security of the coastal State”. Many of the activities enumerated in article 19 of the Convention, which can be considered not innocent, fall within the category of military or quasi-military activities.

A coastal State may require foreign ships exercising the right of innocent passage to use sea lanes and TSS as it may designate or prescribe for the regulation of passage of ships (Article 22). This requirement applies particularly to tankers, nuclear powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials. Moreover, such ships, when exercising the right of innocent passage, must carry documents and observe special precautionary measures established for them by international agreements.

A coastal State may adopt laws and regulations relating to innocent passage that deal with, for instance,

(a) safety of navigation and the regulation of maritime traffic;
(b) the protection of navigational aids and installations;
(c) the protection of cables and pipelines; and
(d) non-interference with marine scientific research and hydrographic surveys. In exercising the right of innocent passages foreign ships must comply with such laws and regulations”. (Un.org: 80/ Oceans and Law of the Sea ).

Excluded from the application of the right of transit passage as provided by Article 38 (1): “straits, which are formed by an island of a State bordering the strait and its main land if 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”.

Additionally, excluded from the application of the right of transit passage those straits, which connect a part of the high seas or an EEZ with the territorial sea of a foreign State.
INNOCENT PASSAGE V.S. TRANSIT PASSAGE

The differences between innocent passage and transit passage are:

1) There is no right of innocent passage for aircrafts, but only for ships. The right of transit passage is enjoyed by aircrafts as well as by ships.( transit passage for aircrafts means that they can overfly without filing flight plans or obtaining diplomatic clearance)

2) Submarines in innocent passage are required to navigate on the surface and hoist their flag whilst there is no such requirement in transit passage where they are permitted to remain submerged using their normal mode of transit.

3) Under the regime of innocent passage, the coastal State is required to take into account the recommendations of competent international organisations to designate traffic lanes and to prescribe TSS. Under the regime of transit passage, the coastal State may designate traffic lanes and prescribe TSS only after its proposals have been adopted by the competent international organisation.

4) There is no special provision under the regime of transit passage for the passage of nuclear powered ships and ships carrying nuclear or other inherently dangerous or noxious liquid substances. Under the regime of innocent passage Article 23 provides for the passage of these ships.

5) Under Article 43 user States and straits States shall by agreement co-operate in establishing and maintaining navigational and safety aids and in controlling pollution. There is no such a provision for the regime of innocent passage. This is because transit passage is a greater limitation on the sovereignty of the coastal State than innocent passage. ( Brown, 1994, p.93)
CHAPTER 3

3. IMO CONVENTIONS AND THEIR RELATION TO INTERNATIONAL STRAITS

The 1982 Convention sets out the rights and obligations of the flag States, port States, and coastal States in prescribing and enforcing laws and regulations governing the safety of navigation and the prevention of marine pollution in International Straits.

The 1982 Convention provides only a general framework: with respect to navigational safety and pollution prevention, the Convention leaves the detailed technical rules and regulations to the IMO Conventions, some of which are incorporated by reference.

3.1 INTERNATIONAL MARITIME ORGANIZATION

At the end of World War II and the establishment of the United Nations it was recognised that there was a need to create an intergovernmental organization to deal with international shipping within the UN system.

IMO came into existence in 1958. The purposes of IMO are:

1) To provide machinery for co-operation among governments in the field of governmental regulation.
2) To adopt standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships.

The governing body of IMO is the Assembly. It consists of all member states and
it meets once every two years. It is responsible among others for approving the work program, voting the budget and electing the Council. The executive organ of IMO is the Council. It consists of 32 member States elected by the Assembly every two years. It is responsible under the Assembly for supervising the work of the Organization.

The technical work of IMO is carried out by a number of committees and sub-committees. These are the Maritime Safety Committee (MSC), the Marine Environment Protection Committee (MEPC), the Legal Committee the Technical Co-operation Committee and the Facilitation Committee. The most important of them, are MSC and MEPC.

MSC is concerned with aids to navigation, construction and equipment of vessels, safe manning, rules for the prevention of collisions, hydrographic information, handling of dangerous cargoes, casualty investigations, salvage and rescue. According to IMO Assembly Resolution A. 826 (19), MSC will perform the function of adopting TSS, routing measures and ship reporting systems. (Basic Facts about IMO “FOCUS ON IMO, January 1998)

3.2 IMO CONVENTIONS GENERALLY

IMO is up to now responsible for 40 international conventions and agreements and has adopted numerous protocols and amendments. The preparation of conventions often takes several years. Work begins with a committee or sub-committee preparing a draft instrument, which is submitted, to the Assembly or the Council. If the Assembly or the Council, as the case may be, gives the authorisation to proceed with the work, the committee concerned considers the matter in greater detail and ultimately draws up a draft instrument. In some cases the subject may be referred to a specialised sub-committee for detailed consideration.

The draft convention, which is agreed upon, is reported to the Council and Assembly with a recommendation that a conference be convened to consider the draft
for formal adoption. For major conventions a global conference is then called and all States that are members of the UN are invited to attend. The attending States then, adopt the convention at the conference. A Convention enters into force after a minimum number of States have become parties to it, by depositing instruments of ratification or accession. Some IMO Conventions contain special requirements for entry into force, such as acceptance by States that together own a certain percentage of the world’s gross tonnage. Once a convention enters into force it is legally binding on States which are parties to it. Conventions are kept up to date by amendments. Amendments come into force, after a percentage of contracting States, (usually two thirds) had accepted them. Due to delays of this procedure, the “tacit acceptance procedure” has been introduced in order to amend quickly technical matters included in the annexes of the conventions. The tacit acceptance procedure provides that an amendment shall enter into force at a particular time unless, before that date, objections to the amendment are received from a specified number of parties.

For major changes to a convention, amendments are done by means of a protocol. Protocols, like conventions, are legally binding only on States that become parties to them by depositing instruments of ratification or accession. (A Summary of IMO Conventions, FOCUS ON IMO, February 1998).

3.3 IMO CONVENTIONS ON MARITIME SAFETY OF SPECIAL RELEVANCE TO INTERNATIONAL STRAITS

The most important IMO Conventions related to the safety of Navigation are:

3. International Regulations for Preventing Collisions at Sea (COLREGS1972).
ARTICLE 39(2)

In accordance with Article 39 (2) (a) ships in transit passage shall comply with generally accepted international regulations, procedures and practices, for safety of life at sea, including International Regulations for Preventing Collisions at Sea.

Paragraph (a) clearly refers to the International Regulations for Preventing Collision at Sea (COLREGS 1972). But it does not only refer to them despite the fact that it specifically refers to these regulations. It is wide enough to cover compliance with the other IMO Conventions concerning safety at sea - SOLAS 74, LOAD LINES 1966, STCW 78 all refer to safety at sea. It is even more generalised by the phrase “generally accepted international regulations” which means IMO Conventions, widely accepted by the world community as well as subsidiary or related instruments, and decisions. To the “international regulations” are added “generally accepted procedures and practices” which are those normally followed by seafarers.

The term “generally accepted” refers to SOLAS 74, Load Line 1966, and STCW 78, and emphasises their widespread acceptance and consequently requires ships in transit passage to comply to their provisions. (Beckman, 1998, p. 372)

ARTICLE 41

Under article 41 States bordering straits with respect to safety of navigation may only adopt sea lanes and prescribe TSS, which must conform to generally accepted international regulations, in consultation with the IMO. Under articles 21 and 22 coastal States have more powers: Article 21 provides that they may adopt laws and regulations in respect of the safety of navigation and the regulation of maritime traffic, and in respect of the protection of navigational aids and facilities.

Such laws shall not apply to the design, construction, manning or equipment of foreign ships, unless they are giving effect to generally accepted international rules and standards. Article 22 gives coastal States the power to designate sea lanes and TSS in
the territorial sea. (Beckman, 1998, p.374-375)

ARTICLE 41.7

Article 41.7 provides that ships in transit passage shall respect sea lanes and TSS established in accordance to article 41. Since COLREGS regulation 10 provides for T.S.S. and traffic lanes it is implied that ships shall comply to COLREGS.

3.4 IMO CONVENTIONS ON POLLUTION PREVENTION WITH SPECIAL RELEVANCE TO INTERNATIONAL STRAITS

The most important IMO pollution prevention Conventions, which are related to International Straits, are:


ARTICLE 39 (2) (b)

According to Art. 39 (2) (b) ships in transit passage shall comply with generally accepted international regulations procedures and practices for the prevention, reduction and control of pollution from ships. It is obviously a reference to the regulations, procedures and practices of MARPOL 73/78.

Article 217 deals with enforcement by Flag States, of laws and regulations to protect and preserve the marine environment, irrespective of where any alleged violation occurs.

This Article incorporates MARPOL 73/78 as well as the major IMO Conventions on navigational safety, SOLAS 74, Load Line 1966, COLREGS 1972, and STCW 78.
Under Article 217, flag States are obliged to investigate any violation alleged to have been committed by ships flying their flag, and to inform the requesting State and the IMO of the outcome of such investigation. (Beckman, 1998, p. 373-375)

ARTICLE 221

The right of coastal States (straits States are also coastal States) to take measures to avoid pollution arising from maritime casualties given by the 1969 Intervention Convention is confirmed by Article 221 of the UNCLOS III 1982 Convention. (Beckman, 1998, p. 371)

ARTICLE 199

The obligations of coastal States under OPRC 1990 to establish measures for dealing with pollution incidents either nationally or in co-operation with other States is consistent with the general obligation of States to co-operate against pollution incidents provided by Article 199 of UNCLOS III 1982 Convention. (Beckman, 1998, p.372)

ARTICLE 42

With respect to the prevention of pollution from ships exercising transit passage, States bordering straits are only permitted to give effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait (MARPOL). Under article 21 coastal States, have the right to adopt laws and regulations to preserve the environment and to prevent, reduce and control pollution. (Beckman, 1998, p. 375)

ARTICLES 44 & 233

Besides the fact that States bordering straits have limited rights to prescribe laws and regulations governing ships exercising transit passage, they also have limited right to enforce such laws. According to article 44: “States bordering straits shall not hamper
transit passage”. They do not have the right to take enforcement measures against a ship exercising transit passage, even if she violates the rules and regulations of the State bordering a strait with respect to safety of navigation and marine pollution.

Article 233 provides that States bordering straits “may take appropriate enforcement measures” against a ship exercising transit passage which violates international rules and regulations regarding safety of navigation and marine pollution only when such violation causes or threatens major damage to the marine environment of the straits. They may also under port State control request for investigations and proceedings in a port of the same or other State in respect of illegal discharges in a strait by a ship exercising transit passage. (Beckman, 1998, p.376)
CHAPTER 4

4. THE MOST IMPORTANT INTERNATIONAL STRAITS

Note: For the compilation of this chapter, the series of books “International Straits of the World” edited by Gerard J. Mangone and published by Martinus Nijhoff was used.

4.1 THE BOSPORUS AND DARDANELLES

The straits of Constantinople consist of the Dardanelles, which connects the Aegean sea to the sea of Marmara, and the Bosporus which then connects the sea of Marmara to the Black sea. (See Appendix 2) The total navigable length of the straits from the entrance to the Dardanelles from the Aegean sea to the exit of the Bosporus to the Black sea is about 160 NM. (Rozakis & Stagos, 1987, p.1)

The Dardanelles are roughly 38 NM long with a width ranging from a minimum of three-quarters of a mile to a maximum of four miles. The Dardanelles are deep, averaging 55 meters, dropping to 91 meters at its deepest point. Despite two major currents, a surface current and a more saline undercurrent, flowing in opposite direction, the Dardanelles are not difficult to navigate, because vessels can avoid the currents by staying in the middle. There are also numerous lights to aid navigation at night. (Rozakis & Stagos, 1987, p.1-2)

The Bosporus is narrow with abrupt and narrow windings and tends generally in a northern easterly direction from the sea of Marmara to the Black Sea. It is about 19 NM long, and its width runs from 750 meters to two and one-quarter miles at its southern entrance. The depths in the main channel run from 36 to 124 meters. Unlike the Dardanelles, its strong currents can make navigation difficult, if not dangerous. (Rozakis...
The most important treaties that have regulated the straits reflect in general the balance of power at any particular time. The most important of them are:

1) The Treaty of Kutchuk Kainardji (1774)
2) The Treaty of Unkiar Skellessi (1833)
3) The Treaty of Paris (1856)
4) The Convention of London (1871)

These treaties were part of the settlement of the “Eastern Question”. The most important issue of the “Eastern Question” was the control of the straits and the treaties deal particularly with the movement of warships. Also, bilateral and multilateral treaties were signed giving freedom of navigation to merchant vessels of the contracting States.

The above referred treaties, left the guardianship of the straits to Turkey but Turkey’s membership of the Central Powers during the WW1, (and her subsequent defeat) considered by the Allies as betrayal to the trust placed in her by international agreements and decided that the straits should be put under the control of an international commission. This consideration led to the Lausanne Peace Conference of 1923 where the Treaty of Lausanne was signed (which gave international recognition to what has become modern Turkey) and to a separate convention for the straits. (Thomas, 1994, p.298)

Article 23 of the Lausanne Convention on the Straits affirms the principle of freedom of passage and navigation on the sea and in the air through the straits. For merchant vessels the convention provided, that in time of peace, the straits were completely free for navigation and passage by day and night under any flag and with any type of cargo without formalities, taxes or other charges, except for services requested by shipping or in connection with Turkish sanitary controls.

More restrictive provisions were provided in time of war and there were complicated provisions regulating the passage of warships.
Turkey was required to demilitarize the straits and her compensation was in the form of an international guarantee given by the High Contracting Parties and, in any case, by an undertaking from France, Great Britain, Italy and Japan that in the event of any violation, attack or other act of war against the freedom of navigation in the straits or the security of the demilitarized zones, such violation or attack would be met by them by all means. Furthermore, there was a Straits Commission composed by the representatives of the interested States to implement the clauses of demilitarization and passage. The Straits Commission was to carry out its duties under the auspices of the League of Nations and amongst them, was to submit an annual report with all information that would be useful and in the interests of commerce and navigation.

By the mid 1930s, the Turkish government had established its authority internally and being unhappy with the provisions of the convention, especially with the demilitarization of the straits, requested the signatories of the convention to enter into a new agreement for the straits. This led to the Montreux Convention of 1936, (See Appendix 6) which still is governing navigation and passage through the straits. (Thomas, 1994, p.298)

The Straits of Constantinople are among those referred to in Article 35(c) of the Law of the Sea Convention as being governed by “long standing international conventions” that are unaffected by the law of the sea Convention. Turkey, which exercises sovereign power in the straits currently, controls transit through the straits, but the provisions of the Montreux Convention of 1936 govern Turkey’s actions.

The Montreux Convention signed at Montreux, on July 20 1936. The parties to the Convention are Bulgaria, France, Greece, Japan, (with reservations), Rumania, Turkey, USSR, U.K. and Yugoslavia. It comprises five sections:

1) Merchant vessels
2) Vessels of war
3) Aircraft
5) General provisions relating to Turkey’s administration of the straits
6) Final provisions relating to the coming into force of the convention and subsequent revision.

This convention recognized and affirmed in Article 1 the principle of freedom of transit and navigation by sea in the straits as a principle of international law. Despite this commitment and a provision in article 28 that it “shall continue without limit of time”, the articles of the convention in fact place significant limitations on free passage. The convention created different regimes for merchant vessels and warships. It further regulated transit based on when passage occurred during time of war or time of peace. Finally, “time of war” was distinguished based on the belligerent or non-belligerent status of Turkey. (Rozakis & Stagos, 1987, p.105)

Under the convention, both merchant vessels and warships enjoy freedom of transit and navigation in the straits during peacetime by day and by night under any flag, with any kind of cargo, and free of taxes except in certain cases where services rendered. (Rozakis & Stagos, 1987, p.108)

Furthermore, pilotage remains optional notwithstanding possible difficulties of transit. Sanitary control by Turkey’s authorities is limited to request ships in transit to stop at a sanitary station near the entrance to the straits, for such control, prescribed by Turkish law, within the framework of International Sanitary Regulations. Such control is to be carried out by day and by night with all possible speed. (Thomas, 1994, p.299)

Warships, however, must provide notice of their proposed transit, at least eight days in advance of the trip, and communicate to a Turkish signal station when the journey begins (Article 13). Even in peacetime, warships must also begin passage only during daylight (Article 10), and refrain from using any aircraft they may be carrying (Article 15).

Furthermore, the Convention limits the number of foreign naval vessels that can
pass through the straits at any one time to nine, weighing no more than 15000 tons (Article 14), although the Black Sea nations may exceed this limit, if their vessels pass through the straits “singly, escorted by not more than two destroyers” (Article 11). (Rozakis & Stagos, 1987, p.109)

Submarines can pass (but only on the surface) through the straits to rejoin their base in the Black Sea, if they were constructed outside the Black Sea, and can transit outside for repair, if proper advance notification is given to the Turkish government. The aggregate tonnage of non-Black Sea powers cannot exceed 45000 tons at any one time and the vessels of such powers cannot remain in the Black Sea more than 21 days (Article 18). (Rozakis & Stagos, 1987, p.110)

The convention thus, gives Black Sea States particular rights not given to others, but it is also unique in giving Turkey the paramount role in executing the Convention. Not only does Turkey supervise the passage of vessels of war through the straits, but it is also charged under Article 18 with monitoring the total number of warships in the Black Sea, and determining when it is “filled”. (Rozakis & Stagos, 1987, p.111)

In times of war, if Turkey is a non-belligerent, merchant vessels can continue to enjoy freedom of transit and navigation in the straits (Article 4). If Turkey is a belligerent, merchant ships not belonging to a country at war with Turkey, also enjoy freedom of transit and navigation provided that they enter the straits only during the daytime and do not assist the enemy in any way (Article 5). Under this provision, Turkey has an implied right to stop and search passing merchant vessels to assure that the vessels are not assisting the enemy. (Rozakis & Stagos, 1987, p.107)

Finally, Article 6 of the Convention, allows Turkey to regulate merchant vessel passage, if Turkey determines that it is “threatened with imminent danger of war”. (Rozakis & Stagos, 1987, p.108)

If Turkey is a non-belligerent, warships of non-belligerents continue to enjoy complete freedom of transit through the straits, subject to the same conditions for passage during peacetime (Article 19). When Turkey is a belligerent, however, passage
of all warships through the straits is “left entirely to the discretion of the Turkish government” (Article 20). (Rozakis & Stagos, 1987, p.111)

During the WW2 where Turkey was neutral, she violated the Montreux Convention (as did in the past with elder treaties) against the Allies in favor of the Axis.

Recently, (1994), she imposed unilaterally the so called “Maritime Regulations” which will be discussed in Chapter 5.

4.2 THE BALTIC STRAITS

The Baltic straits link the Baltic Sea to the Kattegatt which in turn leads into the Skagerrak and out to the North Atlantic Ocean. These straits which lie predominantly within Danish and Swedish territory, include the Little Belt, the Great Belt and the Sound. (Alexandersson, 1982, p.63)

Islands into channels divide the Little Belt, between Denmark’s Jutland - Als and Fynen. Because of the Little Belt Bridge, passage through the strait is limited to ships with a mast height of no more than 33 meters. The current in the Little Belt, is strong and unpredictable. (Alexandersson, 1982, p.65)

The Great Belt lies between Fyen - Langeland and Sjaelland - Lolland. This passageway, along with the Samsoe Belt, the Fehmarn Belt, and the Kadet Channel form one seaway for large vessels entering or leaving the Baltic. The Great Belt varies in width from 18.5 to 28.2 km. Depths vary from 20 to 25 meters in the northern part of the Belt, to 66 meters in the southern allowing the large vessels to pass through. (Alexandersson, 1982, p. 65)

The Sound is located between Sjaellandand Skane in Sweden. It is divided into an eastern and western channel by the island of Ven. Traditionally, the Sound was the shortest and busiest route between the Baltic Sea and the Kattegatt but the Great Belt has replaced it as the route most used by larger vessels because of insufficient depth levels
south of Copenhagen and Malmo. (Alexandersson, 1982, p. 67)

For more than four centuries (1429-1857), Denmark collected transit dues from ships, passing through the Sound, and these fees at their peak contributed about two-thirds of Denmark’s budget. Although Swedish ships were exempt from the dues, they still hurt Sweden, because foreign ships trading with Sweden had to pay the fees. (Alexandersson, 1982, p.70)

Finally in 1845, the United States announced that it would not pay these fees us a matter of principle, citing the “public law of nations”. These dues were discontinued in 1857 with the signing of the Copenhagen Convention on the Sound and the Belts by the European shipping Nations. The Copenhagen Convention agreed between Great Britain, Austria, Belgium, France, Hanover, Meklenburg, 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, and it was signed at Copenhagen on March 14, 1857. The contracting parties paid an indemnity to Denmark, corresponding to an annual income capitalized to the current value. (Alexandersson, 1982, p.73)

The same year (1857) a special straits convention was also signed between USA and Denmark in Washington D.C. In exchange for $393 million, Denmark granted U.S. vessels free passage “in perpetuity”. Since then, there have not been other multilateral treaties or conventions dealing with the Baltic straits, except the treaty of Versailles which reiterated the right of “free passage into the Baltic to all nations”. (Alexandersson, 1982, p.73)

The passage of warships through the Baltic straits has been regulated through Swedish and Danish laws on the admittance of foreign naval ships and military aircraft to their respective territories when each country is at peace. Sweden allows foreign naval ships to pass through the Swedish part of the Sound according to the rules of innocent passage - they cannot stop at anchor, and submarines must operate on the surface.
Denmark allows innocent passage through the straits as long as it does not involve claimed internal Danish waters. (Alexandersson, 1982, p. 82)

Passage of naval vessels through all three straits is subject to notification through diplomatic channels. Denmark requires authorization if more than three naval vessels flying the same flag are passing through the same part of the strait together, and also requires submarines to pass on the surface. (Alexandersson, 1982, p. 82)

Finally the Baltic straits are among those referred to in Article 35 (c) of the Law of the Sea Convention as being governed by long standing international conventions and are unaffected by the Law of the Sea Convention.

4.3 THE STRAIT OF HORMUZ

One of the most important waterways in the world, economically, politically and strategically, the Strait of Hormuz connects the Persian Gulf to the Gulf of Oman.

The Strait is about 104 NM long at its median point. Its width varies from about 52 to 21 NM, and the minimum depth is 9 fathoms. With the extension of the territorial sea to 12 NM, the strait falls within the overlapping Iranian and Omani territorial seas. (Ramazani, 1979, p.1) As of 1978, Iran and Oman were maintaining unimpeded transit through the strait by means of the Iranian - Omani Joint Patrol of the Strait of Hormuz. These countries have had disputes over islands and boundary delimitations and the area in general has been an area of international tension and conflict. (Ramazani, 1979, p.72-75)

No treaty governs this strait, and from the perspective of the maritime powers it is the classic international strait through which transit must be permitted without interruption.
4.4 THE STRAIT OF BAB-AL-MANDEB

The strait of Bab-Al-Mandeb (“The gate of tears” or “The gate of the waiting yard”) links the Gulf of Aden and the Red Sea. It is about 14.5 miles at its narrowest point and is bordered by Yemen, The Republic of Djibouti and Ethiopia. All these littoral States have claimed a 12 NM territorial sea that precludes any area within the strait as being high seas. In 1973, the People’s Democratic Republic of Yemen asserted its sovereignty over the strait. (Lapidoth, 1980, p.130)

The strait of Bab-Al-Mandeb is of great importance to international trade when the Suez Canal is open. If the Suez Canal is closed, then the dependence of the Red Seas’ littoral States on the strait, is increased.

Because no specific international agreement governs the strait of Bab-Al-Mandeb, the strait has been subject to the general regime of International Straits, which, until the entry into force of the 1982 Law of the Sea Convention was freedom of navigation and overflight in the high seas zone, and non suspendible, objectively innocent passage in the territorial sea for merchant and warships. (Lapidoth, 1980, p.138-146)

The right of transit passage through International Straits currently governs transit through the Strait of Bab-Al-Mandeb (UNCLOS 82. Art 38) because it links two parts of the high seas: the Red Sea and the Gulf of Aden.

4.5 THE STRAIT OF GIBRALTAR

The Strait of Gibraltar lies south of Spain and north of Morocco connecting the Atlantic Ocean to the Mediterranean Sea. It is 36 NM long and 8 NM wide at its narrowest point. It is without doubt one of the most important sea passages of the world. (Truver, 1980, p.4-5)

With the coming into force of the 12 NM territorial sea for coastal States, the strait falls almost entirely within Spanish or Moroccan territorial waters except for a portion of the northeastern section of the strait, which arguably will be under British control.
The right of passage through the strait of Gibraltar is not governed by any special regime provided for by treaty or convention. Historically, the earlier customary international law regarding passage through International Straits in peacetime (non-suspendible innocent passage) has been the rule that has been upheld by the Spanish government. (Truver, 1980, p.181-182)

Because it connects two parts of the high seas and is used for international navigation, and is not governed by any long standing international convention, it is governed by the regime of transit passage through International Straits.

4.6 THE STRAIT OF DOVER

Connecting the North Sea to the English Channel, the strait of Dover historically has been open to navigation to ships passing through it. It is only 21 NM wide at its narrowest point.

Prior to the international acceptance of the 12 NM territorial sea, the United Kingdom had never claimed any distance greater than three miles. Thus, even though France adopted a 12 NM territorial sea in 1971, the strait had a sufficient high seas route available for free navigation. (Cuyvers, 1986, p.53-54)

Now, with the 12 NM territorial sea having been generally accepted, the narrowest portion of the strait would fall entirely under French and British territorial jurisdiction. Both Great Britain and France have a great stake in free navigation. Great Britain in fact introduced the concept of transit passage. (Cuyvers, 1986, p. 54)

Because of the density of traffic in the strait of Dover, vessel traffic has been managed for the last 150 years. (Cuyvers, 1986, p.67-77) Carefully delineated TSS have been established by national, regional and international bodies. A high degree of cooperation has been established; which has sharply reduced the number of collisions in the strait. Efforts have also been undertaken to reduce pollution from vessels in the
A successful step was the adoption of the “Paris Memorandum of understanding on Port State Control”, which requires each country to inspect at least 25% of the foreign vessels that visit its ports. This approach has been effective in uncovering deficiencies and in obliging shipowners to maintain their ships in good condition. (Cuyvers, 1986, p.103-104)

4.7 THE STRAITS OF MALACCA AND SINGAPORE

The straits of Malacca and Singapore are critical to Japan and international shipping in general as they link the Pacific and Indian oceans and are a major artery for the transport of Japanese oil and other commodities. (Leifer, 1978, p.52)

The Straits of Malacca are dangerous to shipping because they are quite shallow, the water level changes with the tide and the sea bed shifts, creating a grave risk of grounding. Danger of collisions also exists because the waterway is often congested and the ships speed makes it difficult for them to stop quickly. (Leifer, 1978, p.53)

The waters of straits of Malacca are divided among the three straits States: Singapore, Malaysia and Indonesia. All three have a common interest in the safety of navigation but Singapore’s overriding interest has always been in freedom of navigation. (Leifer, 1978, p.34)

Japan, a major user of the straits, conducted and paid for a number of hydrographic studies to improve safety, and has been virtually concerned with keeping the straits open for its supertankers. (Leifer, 1978, p.63)

In 1971 the three straits States asserted exclusive rights to co-operate and coordinate efforts for the safety of navigation in the straits. (Leifer, 1978, p.63) By the end of 1975 a series of accidents had increased the safety and environmental concerns, and Malaysia and Indonesia asserted their right to control the straits at the Third UN Law of the Sea conference. (Leifer, 1978, p.69) A safety agreement was signed in Manila in February 1977 during a meeting of ASEAN, which included a TSS incorporating two deep-water channels. (Leifer, 1978, p.72) The same year (1977) Malaysia and Singapore
reached an agreement limiting fully loaded tankers to about 230000 DWT by requiring an UKC of at least 3.5 meters at all times. (Leifer, 1978, p.205)

The safety regime was not considered contrary to the interests of Japan. The United States and other maritime powers have significantly improved the safety record in the straits. (Leifer, 1978, p. 67) Both Malaysia and Indonesia have previously asserted that straits are part of their territorial seas and that the straits of Malacca and Singapore are not International Straits. (Leifer, 1978, p. 88) The major maritime powers objected to this position, and the 1982 Convention adopted transit passage regime through International Straits to ensure that straits would be open to navigation. Since then the straits of Malacca and Singapore have been generally open to all international transit.
CHAPTER 5

5. PRESENT SITUATION AND TRENDS

5.1 INTRODUCTION

There have been significant changes since 1982 when the third UN Convention on
the Law of the Sea was signed. One of the superpowers (USSR) has disappeared and the
other (USA) remains the one and only superpower as well as the greatest maritime
power whilst peripheral powers (mini-superpowers) are emerging (China-India-Japan-
Turkey-European Union/Germany). The cold war climate has been changed and we are
living in a more co-operative and interdependent world. (Gold, 1999 p. 1)

Shipping continues to be the cheapest mode of transport. The total annual world
seaborne trade increased by almost 37% between 1980 to 1998. (Peters, 2000, p.24)

<table>
<thead>
<tr>
<th>Type</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk trade</td>
<td>1.3%</td>
</tr>
<tr>
<td>Seaborne liquid bulk trade</td>
<td>0.8%</td>
</tr>
<tr>
<td>Dry Bulk trade</td>
<td>1.9%</td>
</tr>
<tr>
<td>Liner trade</td>
<td>3.2%</td>
</tr>
<tr>
<td>Containerized cargo</td>
<td>8.3%</td>
</tr>
<tr>
<td>Non-Containerized cargo</td>
<td>0.6%</td>
</tr>
</tbody>
</table>

Increase of the number and size of ships as well as development of new types of
ships carrying dangerous cargoes leads to the increase of ship transits through
International Straits and consequently to increased dangers of casualties and pollution
incidents. The average ship size in 1950 was 2740 Gross Tonnage (GT) and about 6000
in 1995. The total number of ships over 100 GT in 1970 was 5244 and in 1995 about
81080. (Shuo, 1999, p. 42)

According to IMO (1996): “more than 50% of bulk cargoes and packaged goods
transported by sea are regarded as dangerous, hazardous or harmful to the environment. The cargoes concerned include products that are transported in bulk and packaged form, such as solid or liquid chemicals, gases and products related to the petroleum industry and waste materials and substances. Based on those statistics, the potential incidence of dumping or accidental spillage of hazardous substances into the International Straits is cause for concern. (Natarajan & Ros, 1998, p. 338)

During the negotiations that led to the 1982 Law of the Sea Convention, the International Straits issue was one of the most difficult. The discussions carried out under the cold war climate, and their importance was realized in political, military and strategic terms. This geopolitical perception has been changed after the collapse of the iron curtain and their present importance is assumed to be commercial, which is equally strategic. (Gold, 1999, p. 2) For example, for Japan and the other East-Asian States, their dependence on the Middle East for oil means that Malacca and Singapore straits, to the extend that they constitute the shortest and cheapest route between these nations and the Middle East, are of high strategic importance.

The importance of the straits of Bosporus and Dardanelles for Russia in the Cold war era was related mainly for its naval mobility. After the break up of the USSR and the need of Russia and Ukraine for economic development the importance of the straits is mainly commercial for the exports of oil and raw materials and to serve their imports needs.

5.2 RESPONSIBILITIES OF SHIPS TRANSITING INTERNATIONAL STRAITS

5.2.1 Obligations of ships in transit under Article 39 (2) of the 1982 Law of the Sea Convention

Under art. 39(2) ships in transit shall:
a) comply with generally accepted international regulations, procedures and practices for safety at sea including the international regulations for preventing collisions at sea.

b) comply with generally accepted international regulations procedures and practices for the prevention, reduction and control of pollution from ships.

It is deduced according to Article 39(2) that the IMO Conventions apply to ships transiting International Straits, so SOLAS, MARPOL, STCW, COLREGS and other maritime safety and pollution prevention conventions are applicable to ships in International Straits, even if their flag states are not signatories to the Conventions. (Beckman, 1998, p.372)

5.2.2 Factors influencing the safety of navigation in International Straits concerning the ship

According to Professor Dr Hasjim Djalal, as far as the ship is concerned, the following factors influence the safety of navigation in International Straits:

5.2.2.1 The condition of the ship

In several cases it requires changes and improvements of the shipbuilding and equipment technology, as well as proper maintenance of the condition of the ship.

5.2.2.2 The quality of the ship master and crew

Education and training of the crew is important. Ship crews, must maintain sufficient knowledge of the developments of technology not only with regard to the condition of the ship, but also in maintaining communication with other ships, and knowledge regarding the condition of the ship’s surroundings.

5.2.2.3 The fuel used on ships

The nature of fuel used could also be a problem in maintaining the safety of
navigation and protecting the marine environment, particularly for ships using nuclear fuel. In case of accident in a nuclear powered ship, the efforts to deal with it would require specific knowledge and handling which is more complicated than an accident involving ships using conventional fuel.

5.2.2.4 The nature of the cargo

There could also be a problem in maintaining the safety of navigation and protecting the marine environment, particularly with regard to hazardous and noxious substances whose environmental impact may be different and more dangerous than other cargo. (Djalal, 1998, p. 437)

5.3 RESPONSIBILITIES OF STRAITS STATES

Straits States have responsibilities to provide services to ships in transit passage through International Straits. Some of them are set out under Article 41 of UNCLOS III 82 and some are traditional services.

These services according to Edgar Gold are:

1) Provision and maintenance of visual navigational aids, including lights buoys and marks.
2) Provision and maintenance of electronic navigational aids (LORAN, DECCA).
3) Provision and maintenance for the protection of cables and pipelines and other offshore facilities.
4) Provision and maintenance of hydrographic and other navigational information including charts, tidal and current data, sailing directions, notices to mariners, lists of lights and radio signals etc.

5) Provision and maintenance of ship-to-shore-to-ship communications systems, including coastal radio stations, satellite communication response systems etc.
6) Provision and maintenance of coastal and marine meteorological services, including weather reporting stations, weather facsimile services etc.
7) Provision and maintenance of coastal of longer-range search and rescue services including medical evaluation facilities etc.
8) Provision and maintenance of offshore security services for dealing with maritime terrorism, narcotic and other smuggling fishery patrols etc.
9) Provision and maintenance of vessel traffic services, providing active or passive vessel traffic management and information traffic management systems etc.
10) Provision and maintenance of basic vessel salvage and/or emergency repair facilities, including towage services, marine pollution contingency systems, pollutant reception facilities etc. (Gold, 1999, p.4)

5.4 SAFETY OF NAVIGATION

The safety of navigation in International Straits depends on:

1. The navigational aids available.
2. The routing measures in place including TSS and the rules for navigation.
3. Adequate and completed hydrographic surveys.

In an ideal situation casualties should have been reduced to a minimum. But this is not the case. In reality, weaknesses exist in each one of the above factors. On the other hand these four factors are inextricably linked, hence safety can only be as strong as the weakest link. For example, a well-maintained ship with a properly trained crew may easily run aground, if hydrographic surveys are not updated.

Amongst seafarers (Masters and Navigating Officers) there is a common perception that navigating through straits is a hazardous and difficult task. Survey conducted by the Maritime Academy Malaysia (ALAM) which involved 34 serving navigating officers
with experience in navigation through straits such as English channel, Gibraltar strait and Singapore), revealed that in their opinion the main hazards to navigation in the straits (Karma & Woon, 1998, p.488) were:

<table>
<thead>
<tr>
<th>Hazard</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fishing Boats</td>
<td>24%</td>
</tr>
<tr>
<td>Traffic Density</td>
<td>29%</td>
</tr>
<tr>
<td>Unavailability of TSS</td>
<td>12%</td>
</tr>
<tr>
<td>Shallow Water</td>
<td>26%</td>
</tr>
<tr>
<td>Lack of coverage of TSS</td>
<td>6%</td>
</tr>
<tr>
<td>Other</td>
<td>3%</td>
</tr>
</tbody>
</table>

5.5 OIL POLLUTION IN INTERNATIONAL STRAITS

5.5.1 Accidental Pollution from ships

It is estimated that during the last decade 10 million barrels entered the marine environment each year, on account of maritime operations (operational & accidental). Oil tankers carry 35 million barrels of oil at sea, at any one time. In recent years, oil pollution has fallen considerably. Already in 1995, oil pollution from tankers was only 4 million barrels of which 12% was due to tanker traffic. This improvement stems from MARPOL 73/78 and by further amendments applicable from 1993. (Meyer, 1998, p.518)

SOUTH EAST ASIAN REGION & MALACCA STRAIT

During the last 20 years there have been 26 spills of between 50 to 5000 barrels per spill, which are considered as minor spills, and 21 major spills where the amount per spill has been in excess of 5000 barrels. (Meyer, 1998, p. 518)
MEDITERRANEAN SEA

During the last 20 years there have been 58 minor and 20 major spills.

NORTH WEST PACIFIC

There have been during the last 20 years 65 minor and 17 major spills.

WIDER CARRIBEAN

There have been during the last 20 years 92 minor and 30 major spills. 99.8% of the total amount of oil transported arrives at its destination without incident, despite the adverse publicity given to each and every oil tanker incident. (Meyer, 1998, p.518)

5.5.2 Operational Pollution from Ships

Often categorized as continual pollution it stems from the ships’ operations such as:

a) tanker loading / discharging / tank cleaning / machinery operations
b) other ships’ machinery operations

According to MARPOL 73/78 permissible discharges are limited when ships are operating outside special areas at distances not less than 50 NM from the nearest coastline. The introduction of the Load on Top (LOT) system in combination with Crude Oil Washing (COW) has the potential of reducing the amount of slops and dirty ballast in non-Segregated Ballast Tank Tankers (SBT - Tankers).

Tankers on arrival at loading terminals are needed to dispose of dirty ballast and oily slops to a reception facility, which should have adequate capacity to avoid delays to ships using them. Reception facilities are not always provided and when are provided, have limitations or restrictions in capacities and are very expensive. (Meyer, 1998, p.519)

According to the Director of the International Tanker Owners Association (INTERTANKO) Mr. Trygve Meyer:
“Under these circumstances, combined with requirements in contracts of affreightment that tankers are to arrive in the load port, slop free and with clean ballast only, the marine environment will continue to be exposed to illegitimate oil discharges regardless of trading patterns”. (Meyer, 1998, p. 519)

About 14% of the total tanker fleet above 60.000 DWT is of the new Double Hull design and the proportion will increase with the new building program. Additionally, there will be a number of old vintage tankers operating with double bottom and partly double sides such as the combination carriers. (Meyer, 1998, p.522)

5.6 DECISIONS OF IMO BODIES RELEVANT TO SAFETY OF NAVIGATION

The Maritime Safety Committee at its sixty-third session (May 1994) adopted resolution MSC 31 (63) which contains an amendment to Chapter V of SOLAS 74/78, concerning safety of navigation. Under this resolution, regulation 8-1 on ships reporting systems has been added. The amendment entered into force on 1st January 1996 by the tacit acceptance procedure.

Ship reporting systems contribute to the safety of navigation and the protection of the marine environment. IMO is expected to develop guidelines and criteria for ship reporting systems. When such ship reporting systems are adopted and implemented in accordance with Reg. 8-1, they are required to be used by all ships, or certain categories of ships, or ships carrying certain cargoes.

The MSC at its 64th session (Dec. 1994) adopted resolution MSC.43 (64) - “Guidelines and criteria for ship reporting systems”. Under discussion by the Sub-Committee on Safety of Navigation are issues concerning the carriage by ships of automatic ship identification transponder systems for use in VTS. These transponder systems, include interactive shore to ship data exchange, mandatory reporting, monitoring of mandatory routing, and ship to ship communications. It is expected that they will improve the safety of navigation considerably. Additionally, long range
identification systems would support ship to shore requirements like the monitoring of compliance with mandatory ship routing and reporting measures. They will also provide assistance in (SAR) and pollution response operations. (Singhota, 1998, p.295)

5.7 FINANCING INTERNATIONAL STRAITS

5.7.1 Introduction

According to Article 127 (1) of the 1982 Convention, “traffic in transit shall not be subject to any customs duties, taxes or other changes except changes levied for specific services rendered in connection with such traffic”. Obviously its aim is to clarify that the strait States cannot acquire profit purely from their geographical position. The same applies to aircrafts in transit passage and to traffic in transit to or from landlocked States.

On the other hand article 43 of the Convention states that straits States and user States should by agreement cooperate:

a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and

b) for the prevention, reduction and control of pollution for ships. The scope of Article 43 is to promote safety of navigation and pollution prevention in International Straits by implementing practical measures through co-operation between user States and straits States.

5.7.2 Historical Background

Straits States in the 17th & 18th centuries collected tolls from ships passing through straits. Denmark had been collecting tolls from ships passing through the Belts and the Sound, for four centuries. Maritime powers protested against this practice in the 19th
According to the Treaty of Copenhagen (1857) Denmark exchanged the collection of tolls, for a payment of 3 million pounds, which was a large amount of money those days. A bilateral treaty followed it between Denmark and USA according to which Denmark abolished tolls for U.S.A. vessels.

It was agreed that Denmark should receive compensation through the lump sum for costs of dredging, buoying, maintaining lighthouses, and supervising pilotage in the straits for the safety of navigation. (Bruel, 1944, p 218)

In 1930 the matter was discussed in the League of Nations Conference on the Codification of International Law, which drew up the following draft Article 7:

“No charge may be levied upon foreign vessels by reason only of their passage through the territorial sea. Charges may only be levied upon a foreign vessel passing through the territorial sea as payment for specific services rendered to the vessel. These charges shall be levied without discrimination. (League of Nations Doc.C.230.M.1171930.V at 8)

According to D.H. Anderson formerly legal adviser Foreign and Commonwealth office and now Judge International Tribunal on the Law of the Sea:

“The object of this article is to exclude any charges in respect of general services to navigation (light or conservancy dues etc), and to allow payment to be demanded only for special services rendered to the vessel (pilotage, towage etc). These latter changes must be made on a basis of strict equality and with no discrimination between one vessel and another”. (Anderson 1998, p.401)

This draft article was the first attempt by an international conference to codify the applicable legal principles. However, no convention was adopted at that time. (Anderson, 1998, p. 401)

In 1950 the matter was discussed again by the International Law Commission (ILC) which drew up the following draft Article 19:

1) No charge may be levied upon foreign ships by reason only of their passage
through the territorial sea.

2) Charges may only be levied upon a foreign ship passing through the territorial sea as payment for specific services rendered to the ship.

The scope of this Article according to a commentary at the ILC was to bar charges for general services (Lights, buoys), but to allow them for specific services (pilotage, towage). Also, according to international conventions special rights may be recognized (e.g. the Montreux Convention concerning the Turkish Straits). Allowed charges (for specific services) must be levied in terms of equality, without discrimination. (Anderson, 1998, p. 402)

The ILC also noted, that in certain circumstances the coastal State may be entitled to ask for information about the nationality, destination etc of passing vessels in order to facilitate the levying of charges. (Anderson, 1998, p. 402)

In 1958, the General Conference on the Law of the Sea adopted in the Convention on the Territorial Sea the following Article 18:

1) a charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2) charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

This article is the same as Article 26 of the 1982 United Nations Convention on the Law of the Sea. (Anderson, p. 402)

In 1973, Malta submitted a detailed draft, which was not retained as a basis for the negotiations of the Third UN Conference on the Law of the Sea. The Maltese proposal devoted particular attention to the financial burdens incurred by the bordering States and their rights to collect charges: (Scovazi, 1995, p.33-34)

1) The coastal State or States may not levy charges or tolls on vessels, their cargo, crew or passengers exercising the right of passage through straits used for international navigation.
2) Nevertheless, when a strait used for international navigation the breadth of which is less than 24 NM:
   a) it requires dredging, installation and maintenance of aids to navigation or adoption of other measures to maintain or facilitating safe passage, or
   b) when passage of certain types of classes of vessels, in the event of accident, could cause considerable loss of human life or substantial injury to economic activities or to the marine environment in the area, the coastal State or States may request the international ocean space institutions to establish an equitable charge payable without discrimination by all vessels using the strait or by all vessels of the relevant class or type as the case may be.

3) The charge mentioned in the foregoing paragraph shall be collected by the coastal State or States and the International Ocean Space Institutions, the resources of which shall be employed to maintain and facilitate safe passage of the strait and to compensate the coastal State or States for any injury or damage which they might suffer from the exercise of the right of passage by foreign vessels.

4) The charge payable by vessels exercising the right of passage through straits less than 24 NM in breadth shall be determined in special conventions between the international ocean space institution and the State or States concerned (Art. 40).


   Whilst the Maltese proposal was rejected, the United Kingdom’s proposal was the basis for the adoption of Article 43 of the UNCLOS III 1982. (Scovazi, 1995, p.33-34)

5.7.3 Present Practice

In no one International Strait there is a practice for collection of tolls similar to that of Denmark in former times. It is accepted that tolls are payable for passage through canals such as Suez, and Panama Canal.

In Greece, U.K., Ireland and Australia, ships calling at their ports are charged by the so-called “light dues” for the use of lights, buoys, radio beacons etc. No international protest has been for the levying of these charges. (Anderson, 1998, p.406)

Vessel Traffic Information Systems (VTIS) have been introduced in some of the most congested International Straits such as Malacca & Singapore, Dover and Constantinople straits. This system, monitors vessel traffic movements and provides advice to ships.

A VTIS includes the following elements

1) shore based VTS organization
2) vessels within the VTS area
3) communication systems
4) data collection and information service
5) traffic organization and navigational assistance service

In the straits of Dover, the “Channel Navigation Information Service” is not included in assessing the “Light dues”. (Anderson, p. 404)

Concerning the straits of Bosporous and Dardanelles, new safety measures have been discussed recently in IMO but it must be noted that financial aspects did not play a role in these discussions. (Peet, 1994, p.14)

At present, the strait of Malacca & Singapore is the only area where such a desire has been explicit for several years already and where to some extend such funding mechanism has already been adopted. (Peet, 1994, p.14)
5.8 THE NEW TURKISH MARITIME REGULATIONS

5.8.1 Introduction

The Turkish government being once again unhappy with the regime governing the straits attempted to amend it on a unilateral basis by imposing its own rules for transit.

On 23/11/1993 the Turkish Council of Ministers approved a regulation entitled “Maritime Traffic Regulations for the Turkish Straits and the Marmara Region” (The Maritime Regulations) which was published in the official Gazette on 11/1/1994. The Maritime Regulations came into force on 1/7/1994. (Thomas,1994, p.301) The purpose and scope of the Maritime Regulations are specified to be the regulation of a “maritime traffic scheme in order to ensure the safety of navigation and to protect the environment in the straits”.

The principal provisions of the Maritime regulations provide for:

1) The establishment of a TSS in the straits.
2) Navigation rules.
3) Notification procedures for ships carrying dangerous cargo.
4) Traffic control centers and stations.
5) Compulsory pilotage in case of breakdown, where towage is necessary and the suitability of the tows.
6) Temporary suspension of passage in special cases.
7) The right to refuse passage to large vessels and those carrying dangerous cargo or goods. (Thomas,1994,p.301)

5.8.2 Legality of the Maritime Regulations

Apparently the Maritime regulations do conflict with the Montreux Convention with regard to:

1) The obligation to take compulsory pilotage in the circumstance of breakdown.
2) The exercise of the right to implement pilotage for non-transiting vessels in specified areas of the straits.
3) The obligation to take towage for slow moving vessels and to regulate the suitability of the tows for such vessels.
4) The exercise of the right to prohibit navigation for large vessels and for those carrying nuclear or dangerous goods.
5) The right to close the traffic in one direction according to weather conditions.
6) The right to close completely the traffic for certain activities such as sports events, scientific and research activities and drilling. (Thomas, 1994, p.301)

5.8.3 Environmental sensitivity of Turkey

Various Russian sources criticized Turkey, charging that the Turks were using environmental issues as pretext to seize control of oil traffic from Central Asia. Ambassador Yakov A. Ostrovsky, an official of the legal department of the Russian foreign ministry, alleged that the Turkish action was both an overreaction to environmental problems and that the measures were directly linked to Turkish pipeline initiatives.

Also, Russian shipping companies have criticized the measures. An official of the “Novorosiysk shipping Company” claimed that costly delays have occurred and that Russian ships have been delayed without explanation. He also emphasized that the requirement that ships carrying hazardous materials report to the Turkish environmental protection ministry, is a means of harassing Russian shipping.

The Russian government also pointed out that the Turkish had not previously shown any interest in protecting the environment and seemed little concerned with safety, as they had not installed a radar system along the straits.

The Turkish position expressed by Turkish officials is that Turkey has the right to ensure safety for the more than 10 million inhabitants of Istanbul and to protect the environment of the city. A Turkish official Aydogan Oymen said that the Maritime Regulations were not targeting Russian shipping and that the delays were due to bad weather and night passage regulations. (Trade and Environment Database (1998)
5.8.4 The Geopolitical Environment

In fact these measures are the first measures of Turkey to achieve greater control over the straits:

A) After the collapse of the USSR and the absence of the Soviet threat, the strategic interdependence between the Western allies and Turkey declined considerably and frictions in their relationship increased. The Turkish believe that the relationship with the West became intolerably one-sided and that Turkey should assert its interests more strongly. Islamist party’s pressures on the Turkish government obliged her to take more assertive measures in international relations matters and oriented her foreign policy to its Turkik relatives to the East.

B) Large quantities of oil, gas, and other natural resources exist in Central Asia and their transportation to the western markets is presently being done from the port of Novorosiysk and through the straits to the Mediterranean and onwards.

Therefore, if Turkey achieves greater control over the straits, it would obtain substantial influence over the economies of the Central Asian States. The decision of the Turkish government regarding the construction of the oil pipeline from Baku (Azerbaijan) to Ceyhan-a port on the Mediterranean shore of Turkey, demonstrates the influence that greater Turkish control over the straits could have on the economies of Central Asian States. As the oil pipeline will be overland through Turkish territory, Turkey will enjoy economic benefits from tariffs that it will charge on oil piped, so there will be a stimulus to national infrastructure, as well as political benefits by controlling the life-lines of the Central Asian States. In this connection, because the Baku-Ceyhan pipeline will go through the mountains of Eastern Turkey the area of the Kurdish rebel problem, Turkey struggles to annihilate the Kurdish population.

There are three possible routes (See Appendix 3) for the oil pipeline: The first two require the oil to be shipped through the straits.

The first goes from Baku (Azerbaijan) to the Black sea port of Novorosyisk. The second goes from Baku to another Black Sea port, that of Poli (Georgia).
The third, from Baku through Turkey to Ceyhan, a Mediterranean port of Turkey.

5.8.5 The IMO “Rules and Recommendations”

Shortly after Turkey had announced the Maritime Regulations, she approached the IMO in an attempt to gain approval for them. The Turkey has been partly successful in her efforts.

The MSC at its 63rd session in May 1994 adopted the “Rules and Recommendations on Navigation through the Strait of Istanbul, the Strait of Canakale and the Marmara sea” (The IMO Rules). The purpose of the IMO Rules is the promotion of navigation and environmental protection within the framework of the existing regime of freedom transit passage through the straits.

The circular letter (SN/Circ.166, 1 June 1994) which promulgated the IMO Rules, states that “they are not intended in any way to affect or prejudice the rights of any ship using the straits under international law, including the UNCLOS 1982 and the 1936 Montreux Convention. National regulations promulgated by the coastal State, should be in total conformity with the present IMO Rules and Recommendations”. (Agenda item 19 MSC 65th Session IMO) (See Appendix 5)

The IMO rules are flexible and some of them are not mandatory:

1) Vessels navigating in the straits are required to exercise full diligence and regard for the requirements of the TSS but if they cannot so comply, the competent authority may suspend temporarily the particular TSS (or part of it) and require vessels to comply with Rule 9 of COLREGS 1972. Vessels that cannot so comply, shall inform the traffic control station well in advance.

2) Vessels are only recommended to participate in the reporting system and only advised to give prior information on the vessel’s size, whether in ballast or loaded condition, and whether carrying any noxious or hazardous cargo.

3) Pilotage is only recommended.
4) Vessels over 200 meters and vessels having draft more than 15 meters are advised to navigate the straits in daylight.

5) Vessels under tow, are prohibited to navigate the straits without using a tug-boat suitably equipped. (this rule is mandatory)

(Thomas, p.302)

Turkey ignoring the IMO Rules and Recommendations, introduced on 1/7/94 her Maritime Regulations which are in conflict with the UNLOS 1982 Convention, the Montreux 1936 Convention and the IMO Rules and Recommendations.

The IMO Legal Committee (LC) confirmed that the Maritime Regulations do not comply with IMO’s Rules and Recommendations and that their application was not in accordance with Turkish obligations under the Montreux Convention and the UNCLOS III 1982 Convention. (LEG 71/13 ,paragraph 139)

The Turkish national legislation would have to be in compliance with International Law particularly the Rules and Recommendations of IMO and the Montreux Convention.

(LEG 71/13 , paragraph 143) See Appendix 2: MSC 65/19/2-Submission of the Russian Federation.

5.8.6 Conclusion

Due consideration has to be given towards the safety of navigation, the protection of the marine environment and to the more than 11 million inhabitants of Istanbul. Nobody denies this. Nevertheless, international law has to be respected and the freedom of transit passage through the straits evolving from the freedom of the seas doctrine, must be applied.

The Montreux Convention governs transit through the straits and it cannot be substituted by the internal legislation of any one country. The Turkish “Maritime Regulations” contravene the Montreux Convention, International Law, and the IMO’s Rules and Recommendations made in May 1994, which Turkey ignored (although she
had undertaken the obligation to harmonize her internal legislation with them). Turkey claims that the increase in maritime traffic through the straits has heightened the dangers to the environment in the area, allegedly forcing her to take measures for its protection.

If this is really the case, however, Turkey should bring the matter for discussion at the IMO and should request that the international community take the appropriate steps. In any case, Turkey is not entitled to attempt to overthrow the Montreux Convention unilaterally.
6. CONCLUSIONS AND RECOMMENDATIONS

The 1982 Convention on the Law of the Sea is the most fundamental reformation of the law of the sea since Pope’s Alexander VI bulls divided the world’s oceans and lands between Spain and Portugal in 1493. It has become, an established guide for political, technical and legal matters involving the use of the seas.

Amongst other arrangements, (Exclusive economic zone-Continental shelf regime-Regime of islands-Archipelagic regime-The 12 NM territorial regime) it produced the International Straits regime in its Part III Articles 34-45 which is extensively analyzed in chapter 2.

The regime of transit passage through International Straits keeps in check the possible desire of coastal States to extend their sovereignty over other offshore areas like the EEZ, through the type of increased regulation (creeping jurisdiction). It was given as compensation to the extension of territorial sea up to 12 miles.

The regime of transit passage through International Straits was firmly requested by the Maritime Powers during the negotiations of the UNCLOS III, because it enables their navies to achieve the necessary mobility and operational flexibility they require, by providing the assurance that key lines of communication will remain open as a matter of international legal right.

It was given as compensation for the acceptance of the extension of territorial sea up to 12 miles and EEZ up to 200 miles.

One of the fears of the Maritime Powers was that of “creeping jurisdiction” which
means the possible desire of coastal States to extend their jurisdiction over other offshore areas through the type of increased regulation if more rights were given to States bordering straits.

On the other hand, coastal States could argue that transit passage will create creeping jurisdiction on the part of the Maritime Powers. Consequently, Maritime Powers after they had achieved the favorable transit passage through International Straits, will request similar rights for coastal passage: their submarines to operate in their normal submerged mode, and their aircrafts to overfly without any submission of flight plan etc.

It is clearly a matter of balance of power and application of “real politik”. I would like to give an example: Greece threatened by Turkey, that if she declares 12 miles territorial sea, it will be “casus belli”. It is concluded that the right given for the exchange of the transit passage regime does not constitute legal right but it is depended as I said above, on the balance of power.

On the other hand, Turkey as coastal State of the Bosporus and Dardanelles straits, attempts to impose regulations in contradiction to the governing the straits Montreux Convention of 1936. Turkey’s intention is to obstruct tanker traffic through the straits in order to achieve the development of the Baku-Ceyhan oil pipeline.

In the light of the above it is concluded that transit passage in its present type is a creature of international politics and balance of power, and possible changes in the future are not precluded.

The 1982 Convention on the law of the sea has been characterized as a carefully negotiated instrument and as compromise. It had been the result as referred in chapter 2 of long and difficult negotiations, protagonists of which were the great maritime powers, technologically advanced in the one camp, and the developing countries in the opposite camp.

The whole International Law, the Law of the Sea and the International Straits regime included, have been created by humans so they cannot be perfect. They are
products of compromise, the terms of which depend on the balance of power between independent States since the “Peace of Westphalia” was signed in 1648. (The Peace of Westphalia created the present Nation-State system)

During the centuries not everything was perfect regarding sea passages, but ships traveled either under the open seas or under the closed sea doctrines. Consequently, the 1982 Law of the Sea Convention will work. The following general recommendations would be useful to those responsible for a State’s policy regarding Law of the Sea and International Straits regime matters:

UNCLOS III 1982 to be signed by as many countries as possible, so that universal participation can be achieved.

IMO Conventions to be signed and their regulations to be implemented by as many countries as possible so that the IMO’s worldwide regulatory mechanism can be enforced.

Strait States in particular must continue to allow unimpeded passage of ships through International Straits under UNCLOS III Part III regime.

Hydrographic surveys within International Straits must be carried out to improve and update navigational charts.

Vessel traffic information systems must be implemented to control traffic in the straits. Ship reporting must be limited to the provision only of necessary information for safe navigation.

Measures to control the movement of smaller vessels such as fishing boats, coastal traffic, cross strait traffic etc must be introduced.

A workable system for co-operation between user States and strait States must be formulated under article 43 of the UNCLOS III 1982 Convention. An international conference should be convened under the auspices of IMO to decide on the
implementation of article 43. The burden of financing should not be left entirely on the strait States. The provision and maintenance of aids to navigation, the operation of radars and VTIS as well as hydrographic surveys and dredging, constitute a considerable expenditure which should be shared between users using an agreed formula for estimation of the contribution that each user State will have to pay (it could be based on the total GT of the ships under the flag of a particular State which exercised transit passage through a particular strait). Currently, only for the straits of Malacca and Singapore exists a fund which is used to combat oil pollution. It is called the “Revolving Fund” made up from contributions by the Japanese Malacca Strait Council. Japan is the only user State of the straits of Malacca and Singapore that has voluntarily contributed to the maintenance of the straits. It could be used as a model for the financing of other International Straits.

Any changes proposed by strait States concerning safety of navigation, pollution prevention and financing must be UNCLOS III consistent and in some cases, like that of straits of Constantinople or Baltic Straits, it must be consistent to previously signed “long standing international conventions” that are unaffected by the 1982 Convention.

If strait States are no longer satisfied with “long standing” international conventions or if they believe that these conventions are no more enforceable due to changes in technology, increase in ships size (for example in 1936 when the Montreux convention signed, supertankers did not exist) new ships types and cargoes, then, they shall not act unilaterally but their actions must be consistent to the terms of change of a particular convention and to the international law. They can convene an international conference among the signatories of the convention to discuss and decide about the changes they propose, or they can request to switch to UNCLOS III.

Questions concerning technical issues related to the passage through International Straits should be submitted to the relative sub-committee of IMO.
In 1917 when submarine warfare challenged the freedom of the seas once again, U.S. President Woodrow Wilson expressed the ideal of the freedom of the seas in the following words: “That the seas should be equally free and safe for the use of all peoples, under rules set up by common agreement and consent, and that, so far as practicable they should be accessible to all upon equal terms”.
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