Chapter 7

Straits Used for International Navigation*

I Introduction

The UN Convention on the Law of the Sea was the product of a detailed re-examination of all issues relating to the law of the sea extending over a period of more than twelve years. In the words of its preamble, the Convention was seen as ‘an important contribution to the maintenance of peace, justice and progress for all peoples of the world’. The Convention contains numerous significant provisions, amongst which must be included Part III concerning straits used for international navigation. The formulation of the articles in Part III was an important element in the overall solution, reached at the conference, to the question of maritime limits, since establishing 12 nm as the maximum breadth of the territorial sea was acceptable to many delegations only on the basis of a satisfactory regime for passage through straits used for international navigation. At the same time, Part III represents a balance between the interests of States bordering busy straits in such matters as security, safety and protection of the environment, and the interests of other States in the freedom of communications. The purpose of this article is to provide insights into the terms of Part III as a whole, as well as a detailed commentary on the individual articles.

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Unlike several parts of the Convention (including Part II concerning the territorial sea and contiguous zone and Part VII concerning the high seas), the wording of Part III was not based on any of the Conventions on the Law of the Sea adopted by the First UN Conference on the Law of the Sea of 1958. This is not to say that Part III did not have antecedents: Part III is the latest of several attempts by international lawyers and governmental conferences to set down in the form of articles the rules of law applicable to straits. The first attempts were made by the Institut de Droit International and the International Law Association (ILA) between 1894 and 1906 in their ‘Rules relating to territorial Waters’. In the form adopted by the ILA in 1906 the Rules contained the following about straits:

ART. 10. – Les dispositions des articles précédents s’appliquent aux détroits dont l’écart n’excède pas douze milles, sauf les modifications et distinctions suivantes:

1° Les détroits dont les côtes appartiennent à des États différents font partie de la mer territoriale des États riverains, qui y exerceront leur souveraineté jusqu’à la ligne médiane.

2° Les détroits dont les côtes appartiennent au même État et qui sont indispensables aux communications maritimes entre deux ou plusieurs États autres que l’État riverain font toujours partie de la mer territoriale du riverain, quel que soit le rapprochement des côtes. Ils ne peuvent jamais être barrés.

3° Dans les détroits dont les côtes appartiennent au même État, la mer est territoriale bien que l’écartement des côtes dépasse douze milles, si à chaque entrée du détroit cette distance n’est pas dépassée.

4° Les détroits qui servent de passage d’une mer libre à une autre mer libre ne peuvent jamais être barrés.

ART. 11. – Le régime des détroits actuellement soumis à des conventions ou usages spéciaux demeure réservé.

(The words in italics were the modifications made by the ILA to the Rules adopted by the Institut in 1894.)

The League of Nations Conference of 1930 marked another attempt to formulate articles: the Hague Conference considered the question of the territorial sea in its Second Committee. The report of Sub-Committee No. II discussed the question of straits and included the following:

PASSAGE OF WARSHIPS THROUGH STRAITS

Under no pretext whatever may the passage even of warships through straits used for international navigation between two parts of the high sea be interfered with. According to the previous Article the waters of straits which do not form part of the high sea constitute territorial sea. It is essential to ensure in all circumstances the passage of

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