THE REGIME OF STRAITS: SAFETY, SECURITY AND PROTECTION OF THE MARINE ENVIRONMENT

Nilufer Oral

INTRODUCTION

The regime of passage for straits used in international navigation was one of the important issues debated and negotiated at the Third United Nations Law of the Sea Conference (UNCLOS III). The debate involved a handful of strait States who vigorously fought to preserve coastal State rights to regulate against the encroaching menace of tankers transporting dangerous and hazardous cargo and the two Super Powers at the time, the United States and the former USSR, who remained steadfast in their position for the preservation of the Grotian freedoms of navigation. The compromise resulted in the adoption of the new regime of transit passage, which offered greater prescriptive competence to the littoral State than would be available over the high seas but less than what had been until then the customary right of innocent passage in the territorial sea.

Since the adoption of the 1982 United Nations Law of the Sea Convention (UNCLOS) the challenges faced from global shipping for both coastal and shipping interests have not diminished but to the contrary have increased. Vulnerable marine ecosystems have been threatened by massive oil spills from tanker accidents and from the insidious but equally harmful operational vessel source discharges. Moreover, there has been an alarming increase in security risks from terror and piracy attacks in some of the major straits.

This paper will engage in a broad review of examining how the international community has responded to the challenges of safety, security and protection of the marine environment of straits under the regime created in Part III of the UNCLOS.

THE THIRD UNITED NATIONS CONFERENCE FOR THE LAW OF THE SEA

The nature of the legal regime of passage of straits used in international navigation was addressed in the landmark Corfu Channel case in which the ICJ confirmed the
customary international law rule of innocent passage rights of foreign warships in straits used in international navigation, which was subsequently codified in the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone as the right of non-suspendable innocent passage. The question of the nature of the legal rights of passage through straits used in international navigation was not raised again until the Third United Nations Conference on the Law of the Sea (“UNCLOS III”) held between 1973 and 1982. The legal regime of passage through “international” straits became a subject of international debate and contention with the proposed extension of the territorial sea to 12-nautical miles (nm) under the new Convention, which would transform the legal status of the waters of many straits from high seas, where the regime of freedom of passage applied, to part of the coastal State’s territorial sea, subject to the extensive coastal State rights of innocent passage. The United States, in particular, objected making it a sine qua non of accepting the extension of the breadth of the territorial sea up to 12 nm on the preservation of high seas freedoms in such straits. The United States’ demand included rights of overflight and submerged transit for submarines. The former Union of the Socialist Soviet Republic (USSR), having become a world naval power, joined the United States in seeking to maintain freedom of passage rights through straits used in international navigation.

However, an equally staunch group of eight strait States countered the United States-Soviet Union position with proposals to maintain the customary law of

1 Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania) (Merits) I.C.J. Rep. 1949, p. 244. The ICJ judgment confirmed the right of innocent passage for warships through straits used in international navigation which the coastal State could not prohibit in times of peace.

2 Article 16(4) provided that “There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation which the coastal State could in times of peace.

