I. The Rules of UNCLOS

Navigation of ships carrying radioactive materials is directly envisaged by the United Nations Convention on the Law of the Sea (UNCLOS)\(^1\) in only two provisions. Both are concerned with innocent passage through the territorial sea. The first is Article 22. This article, after stating, in paragraph 1, that the coastal State may require foreign ships exercising innocent passage to use sea lanes or traffic separation schemes, specifies, in paragraph 2, that: “[i]n particular tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes.” The second is Article 23. It states that: “foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.”

These provisions confirm that ships carrying radioactive materials enjoy the right of innocent passage,\(^2\) with a possible requirement of using sea lanes and the need to carry documents prescribed by


\(^2\) It has been argued that, at least in some cases, such passage is “prejudicial to the peace, good order or security of the coastal State.” This seems to be the view of Iran, see Note No. 64/206 of May 3, 1995, in 31 L. Sea Bull. 36 (1996). This interpretation runs counter to the view, that seems to correspond to the text of Article 19, § 2, that the list of activities prejudicial to the good order and security of the coastal State set out in that provision, is an exhaustive one: see, e.g., “The USSR-USA Uniform Interpretation of Rules of International Law Governing Innocent Passage (Jackson Hole, Wyoming, September 23, 1989),” 28 I.L.M. 1444, §§ 2–3 (1989).
international agreements. The right of innocent passage must, nonetheless, be exercised observing the laws and regulations adopted by the coastal State in relation to such passage under UNCLOS Article 21, in particular those relating to “the safety of navigation and the regulation of maritime traffic”\(^3\) and to “the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof.”\(^4\) Moreover, the ship carrying radioactive materials and exercising innocent passage must, as mentioned above, observe “precautionary measures established for such ships by international agreements.”\(^5\) The latter provision raises the question of the meaning of “international agreements.” Any agreement on the subject? An agreement applicable to the coastal State? Or is an agreement applicable to the flag State? Or to both? Or “generally accepted” agreements?\(^6\) Be it as it may, both the laws and regulations of the coastal State under Article 21 and the precautionary measures under Article 23 can be seen as relevant mechanisms to condition the right of innocent passage of ships carrying radioactive materials. These conditions have, however, a limit that confirms that innocent passage remains the principle. This limit is stated in Article 24:

The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention. In particular, in the application of this Convention or of any laws or regulations adopted in conformity with this Convention, the coastal State shall not impose requirements of foreign ships which have the practical effect of denying or impairing the right of innocent passage.

The rules on navigation in the exclusive economic zone (EEZ), as well as those concerning transit passage through straits (applicable also to archipelagic sea lanes passage) do not mention navigation of ships carrying radioactive materials.

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\(^3\) UNCLOS, supra note 1, at art. 21(1)(a).
\(^4\) Ibid., at art. 21(1)(f).
\(^5\) Ibid., at art. 23.
\(^6\) It seems to be the view of States who, in declarations made under Article 310 of UNCLOS, stated that the requirement of prior authorization they impose for transit of ships carrying inter alia radioactive materials will be applied until the international agreements mentioned in Article 23 are concluded and they become parties to them (declarations of Egypt, Malaysia and Saudi Arabia; see http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/ChapterXXI/treaty6.asp (last visited July 27, 2008).