PASSAGE THROUGH STRAITS

An Analysis of the Conflict Between the General Interest in Free Navigation and the Particular Interest of the Strait States in Controlling the Pollution Threat Posed by the Wreck of Oil Tankers as Illustrated by the Danish Straits Controversy.

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I. INTRODUCTION
A. The Purpose of the Article

This article will analyze the conflict between the principle of freedom of navigation on the high seas and the coastal interests as this conflict is manifested in the issue of passage through international straits.

As a representative example of international straits the article will focus on the Danish Straits, and as an actual example of the threat to the coastal interests caused by the freedom of navigation the article will focus on the pollution threat from the wreck of oil tankers.

B. The Conflicting Interests

1. Freedom of navigation on the high seas:

There is hardly any other rule of international law which is so universally recognized as the freedom of navigation on the high seas. Though the rule applies in the first instance to shipping on the high seas, the principle would be useless and ineffectual if a right of passage through straits and thus access to the high seas and between different parts of it was not recognized.¹

Especially in straits that are so narrow that they are entirely overlapped by the territorial sea has the freedom of navigation been open to doubt because of the strait states possible right to regulate navigation in this area. The most important of such straits are governed by treaties securing navigation. The treaties governing the Danish and Turkish straits are the principal examples.¹a

However, at the current Law of the Sea Conference is proposed an extension of the territorial sea to twelve nautical miles² which if adopted will cause many other straits to be overlapped by the territorial sea, including such important straits as the straits of Dover, Gibraltar, Hormuz and Malacca.²a A right of “transit passage” through international straits has been proposed simultaneously in order to protect maritime interests,²b but has been opposed by some strait states. There are thus extremely important interests at stake in international straits. The issue is no less than whether the freedom of the high seas enjoyed by all nations is to remain meaningful.¹a

2. The pollution threat to the coastal state from the wreck of oil tankers:

a. Oil pollution caused by vessels:

The oil pollution threat to the coastal state from vessels arises in three principal ways: Through collisions or other maritime casualties, through loading, unloading and bunk-
ering operations and through the intentional operational discharge of oil.

Oil pollution from casualties amounts to about 10 percent of the total vessel source oil pollution.\(^3\)

b. History of oil pollution:
The marine pollution issue is of relatively recent origin and is due to the development within the last 30 years as regards the growth of world trade, the increased demand for petroleum, the evolution of shipping technology and the heightened awareness of the need to protect the marine environment.\(^3a\)

c. Evaluation of the threat:
In 1973 petroleum and petroleum products accounted for more than one half of the total world oceanborne trade in tonnage.\(^4\) Because of the increasing demand for petroleum-based fuel this percentage probably has and will increase. From 1961–1971 the total world production of petroleum increased from 1,162 to 2,478 million tons and the world tanker tonnage increased from 67 to 175 million tons d. w. t. The total number of tankers increased from 2,270 in 1951 to 6,292 in 1971.\(^5\)

The average size of tankers has more than doubled since 1960 and the largest tanker in service has grown from 30,000 tons in 1950 to 477,000 tons in 1973.\(^5\) After a pause during the last years in the construction of supertankers a return is anticipated in the trend for larger tankers in the category of 300,000 to 500,000 tons.\(^6\)

The maneuverability of those huge tankers is very limited and they are completely incapable of stopping within a reasonably short distance. The straight-line stopping distance for a 200,000 ton vessel is approximately 2.5 miles and takes 21 minutes. During this period with engines on full speed astern the vessel is almost completely incapable of being steered or having its speed regulated. If engines were just stopped it would take over one hour for a 326,000 tonner to stop.\(^7\) This has a very important impact on the risk for grounding and collision – the two major types of marine accidents. Those factors together with the density of traffic in straits and their geographic features make the strait area especially vulnerable for collisions and groundings. This conclusion is also supported by the fact that most casualties occur in congested areas in international waters, at port entrances and in heavily travelled shipping lanes close to the coast.\(^7a\)

Further the huge size of the oil tankers will turn an accident into a catastrophe of large dimensions. If occurring in narrow straits it will cause almost unavoidable and incalculable damage to the beaches, harbors, water birds, fish and the marine ecology.

d. Examples of wreck of oil tankers:
During the night between March 16, and 17, 1978 the Liberian registered tanker Acomo Cadiz grounded off the coast of Brittany creating the biggest oilspill of all times with 220,000 tons of crude oil. The investigations as to the cause have not been concluded as yet.

In March 1967 the Liberian registered tanker Torrey Canyon\(^8\) grounded in the