



PII: S0308-597X(98)00032-3

# Innocent passage – past and present

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## 1. The rule

**The regime of innocent passage was developed to accommodate conflicting State interests in the territorial sea. Security and, more recently, environmental interests of coastal States, are opposed to the interests of maritime States in minimizing interference with navigation. This article discusses the regime of innocent passage in international law through the analysis of relevant treaty rules, including recent developments at IMO, and state practice. Specific attention is given to passage by warships and to coastal state jurisdiction over pollution by vessels in general and over ships carrying hazardous cargoes in particular. © 1998 Elsevier Science Ltd. All rights reserved**

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An old and somewhat worn-out foreign tanker enters the territorial sea of a coastal State posing a potential environmental threat to coastal State interests. A foreign vessel carrying nuclear waste does the same under heavy protests by environmental interest groups. A foreign warship wants to transit the coastal State's territorial sea to pursue naval exercises in a nearby sea area.

May the coastal State interfere with the passage and divert the vessel from the territorial sea in the defence of its vital interests? In all three cases the response (subject to some modification depending on the circumstances) would seem to be no! No, because of the right of *innocent passage* recognized both in conventional and customary international law.

It is a well-established rule of international law that 'ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea'.<sup>1</sup> Provided that the passage is 'continuous and expeditious'<sup>2</sup> and 'not prejudicial to the peace, good order or security of the coastal State'<sup>3</sup>, it must not, as the general rule, be 'hampered'<sup>4</sup> by the coastal State.

The rule appears steady and stable. No one would seem to disclaim it. The maritime States cherish it as one of the cornerstones of the law of the sea, the coastal States admit it as an unavoidable limitation to coastal State competence. On the face of it, the rule would seem to provide one of the least controversial regimes in the regulation of maritime activities.

On closer scrutiny, however, the regime of innocent passage poses a number of questions not readily – or at least satisfactorily – answered by the relevant provisions in the main convention in the field, the 1982 UN Convention on the Law of the Sea (hereinafter the 1982 Convention).<sup>5</sup>

## 2. Content and interpretation

### 2.1. The 'innocence' of the passage

A foreign vessel (or 'ship'<sup>6</sup>) may find itself in a coastal State's territorial sea either in innocent passage or otherwise. Even if the vessel were not in

<sup>1</sup>Article 17 of the United Nations Convention on the Law of the Sea, see e.g. 21 *International Legal Materials* 1261 (1982).

<sup>2</sup>*Id.*, Article 18(2).

<sup>3</sup>*Id.*, Article 19(1).

<sup>4</sup>See *id.*, Article 24(1).

<sup>5</sup>See note 1 *supra*.

<sup>6</sup>Both terms are used in the 1982 Convention.

'innocent passage' (but engaging e.g. in fishing or the conduct of marine scientific research), its activities may, of course, be authorized by the coastal State. However, such authorization lacking, a vessel in 'non-innocent' passage may at any time be diverted from the territorial sea and the coastal State may also detain the vessel and institute legal proceedings against it for its 'non-innocent' behaviour. The territorial sea is part of the coastal State's territory and subject to its sovereignty which is modified only by the regime of innocent passage.

As regards vessels in innocent passage, the message appears clear enough. In particular, the coastal State shall not:

- (a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or
- (b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.<sup>7</sup>

Accordingly, the passage, if 'innocent', may not be prevented by the coastal State. But, when is the passage innocent? In general terms, it was already pointed out that it is innocent 'so long as it is not prejudicial to the peace, good order or security of the coastal State'. This postulate is further clarified in the 1982 Convention to mean that the ship should not engage in the territorial sea in any of the following activities:

- (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- (b) any exercise or practice with weapons of any kind;
- (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
- (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
- (e) the launching, landing or taking on board of any aircraft;
- (f) the launching, landing or taking on board of any military device;
- (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- (h) any act of wilful and serious pollution contrary to this Convention;
- (i) any fishing activities;
- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage.<sup>8</sup>

The list is long but, as indicated by subparagraph (l), not intended to be exhaustive. Also other activities besides those expressly mentioned, which have no 'direct bearing on passage', may be considered prejudicial to the peace, good order or security of the coastal State and thus may make the passage 'non-innocent'.

According to the 1982 Convention, however, only activities are here of relevance. Apparently, poor condition, lacking equipment, dangerous cargo, etc. are not factors to be taken into account in the context. This would seem to be in contrast with the 1958 Territorial Sea Convention,<sup>9</sup> which did not link the non-innocence of passage to 'activities' only. On the other hand, the 1958 Convention does not really address the question as it, in this regard, only includes the specification that '[p]assage of foreign fishing vessels shall not be considered innocent if they do not observe such

<sup>7</sup>Article 24(1).

<sup>8</sup>Article 19(2).

<sup>9</sup>Convention on the Territorial Sea and the Contiguous Zone, 516 *United Nations Treaty Series* 205 (1964).

laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea'.<sup>10</sup>

While the 1982 Convention includes a *list* of 'non-innocent' activities, the 1958 Convention did not produce a similar characterization of the applicable regime. Thus, the interpretation presents itself that under the 1958 Convention not only 'activities' but also matters such as the construction, equipment or cargo of the foreign vessel could be factors to be taken into account in the determination of the innocence of its passage.

While the coastal State may not 'hamper' innocent passage, it is, nevertheless, entitled to steer it to safe routes. According to the 1982 Convention:

[t]he coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships.<sup>11</sup>

In the designation and prescription of such arrangements various factors, including 'the recommendations of the competent international organization',<sup>12</sup> have to be taken into account but the competence to make the final decision lies with the coastal State.

In particular, this is furthermore emphasized to apply to 'tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials'.<sup>13</sup> On the other hand, even in the case of such ships the right of innocent passage prevails: it would seem, for instance, that a ship with a cargo of nuclear waste could not be denied entry into the territorial sea but may only be directed to take a safe route.

Recently, some new developments have taken place. In 1995 an amendment was adopted to the SOLAS (Safety of Life at Sea) Convention to the effect that the establishment of mandatory routing systems require the approval of the International Maritime Organization (IMO).<sup>14</sup> Whether the provision is to apply to any sea area, territorial sea included, remains subject to interpretation. It may be questioned, though, whether the intention of the amendment in fact was to modify the framework regime of the 1982 Convention [1].

In a few instances even 'innocent passage' may be interfered with. According to the 1982 Convention, this is the case where it is necessary to prevent any breach of the conditions set for the admission of the ship to the coastal State's internal waters or a port facility outside the internal waters<sup>15</sup> or where the question is of temporary suspension of innocent passage in specified areas of the territorial sea for the protection of the coastal State's 'security, including weapons exercises'.<sup>16</sup>

In other words, the coastal State may interfere with a foreign vessel in 'innocent passage' if it is suspected, for instance, of smuggling alcohol or drugs to the coastal State. Similarly, if the coastal State intends to exercise target shooting by its coast artillery in an area of its territorial sea the passage of foreign vessels may be temporarily suspended. The length of a 'temporary' suspension is not specified in the Convention. Apparently, it has to be short enough, arguably only a few days or weeks rather than months.

Also the concept of 'security' is subject to interpretation. The discussions of the Third UN Conference on the Law of the Sea (UNCLOS III) as well as the specific reference in the context to 'weapons exercises'

<sup>10</sup>Article 14(5).

<sup>11</sup>Article 22(1).

<sup>12</sup>Article 22(3)(a).

<sup>13</sup>Article 22(2). It remains somewhat unclear whether non-observance of the request to use a particular sea lane would result in the loss of the right of innocent passage. Be it as it may, the coastal State may prescribe the sea lane to be used; in case of non-compliance no other route for innocent passage may be available.

It may also be noted that according to Article 23 '[f]oreign 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'.

<sup>14</sup>Regulation V/8 SOLAS; see IMO Res. MSC.46(65), adopted on 16 May 1995.

<sup>15</sup>Article 25(2).

<sup>16</sup>Article 25(3).

would, however, seem to link it to military security. The provision may hardly allow suspension of innocent passage, for instance, for economic or environmental reasons [2].

A new development in the regulation of international shipping concerns the establishment of various types of 'Ship Reporting Systems' (SRSs) and 'Vessel Traffic Services' (VTSs). In essence, both systems concern a coastal State right to request a ship in coastal waters to supply information, for example the name of the ship, its location and destination.

The 1982 Convention acknowledges certain coastal State rights to request information from foreign ships intending to enter the coastal State's internal waters (or port facilities outside internal waters)<sup>17</sup> or, in reference to regional arrangements for the harmonizing of environmental policies in a specific area, the internal waters of other States participating in such arrangements.<sup>18</sup>

The extension of such a right to ships merely passing through the territorial sea turned out to be a far more contentious issue. For instance, proposals to require ships carrying hazardous cargoes to give prior notification of their passage through the territorial sea, never made it to the final text of the 1982 Convention [3].

In 1994 a new Regulation V/8-1 was adopted to the SOLAS Convention which authorizes IMO to adopt SRSs.<sup>19</sup> While unilateral coastal State action is no doubt excluded from beyond the territorial sea, some uncertainty prevails where SRSs would be established solely within the territorial sea. It might be argued that the coastal State's prescriptive powers under Article 21(1)(a) of the 1982 Convention (concerning 'the safety of navigation and the regulation of maritime traffic') may also include a unilateral right to establish SRSs wholly within the territorial sea.

In the context, it may also be noted that the text of Regulation V/8-1 is practically identical to that of Regulation V/8 on ship's routing systems.<sup>20</sup> Since coastal State jurisdiction on the regulation of maritime traffic is explicitly recognized in Articles 21(1)(a) and 22 of the 1982 Convention, this identity of texts might be argued to imply unilateral rights over SRSs as well.<sup>21</sup>

At the same time, however, the similarity of this question to the issue of prior notification of entry may simply suggest that the main maritime States would also have been opposed to coastal State rights over SRSs (or VTSs).

VTSs denote arrangements of a broader scope, meaning:

a service implemented by a Competent Authority, designed to improve the safety and efficiency of vessel traffic and to protect the environment. The service should have the capability to interact with the traffic and to respond to traffic situations developing in the VTS area.<sup>22</sup>

A VTS may be established, for instance, for the assistance of navigation, handling of data or action to be taken in case of accidents. It is noted that such arrangements 'are especially recommended in approaches to ports and areas where traffic is heavy, navigation is difficult, cargo is particularly dangerous or the environment exceptionally sensitive' [1, p. 67].

Recently, also a Regulation on VTSs was adopted to the SOLAS Convention. It is, however, notably different from the Regulation on SRSs. According to this Regulation V/8-2, VTSs may only be made mandatory within the territorial sea and they do not need IMO approval.<sup>23</sup>

In terms of jurisdiction, SRSs and VTSs test the limits of coastal State competence as provided for in the 1982 Convention. On the other hand,

<sup>17</sup>See Article 25(2).

<sup>18</sup>See Article 211(3).

<sup>19</sup>The Regulation was adopted by Res. MSC.31(63), (see IMO Doc. MSC 63/23/Add. 1, Annex 2). Various SRSs have been already adopted by IMO and more are currently under consideration.

<sup>20</sup>See *supra*.

<sup>21</sup>But *cf.* [1] who considers (at pp. 65–66) that under the SOLAS Regulation also SRSs within the territorial sea have to be adopted by IMO.

<sup>22</sup>Para. 1.1.1 of the draft to the amended version of the 'Guidelines for Vessel Traffic Services' (contained in IMO Res. A.578(14)) which has been prepared for adoption at the 20th IMO Assembly in November 1997 (see IMO Doc. MSC 67/22/Add. 2, Annex 20).

<sup>23</sup>The Regulation was adopted on 4 June 1997. It was adopted by IMO Res. MSC.65(68), see IMO Doc. MSC 68/23/Add. 1, Annex 2.

quite irrespective of any difficulties in the interpretation of the Convention, where these systems secure IMO approval this is also to remove possible inconsistency with the 1982 Convention. Moreover, even if States claim unilateral powers in this respect, seeking IMO approval has the advantage of providing explicit acceptance by the maritime community as well as a global awareness of the system. Both are indispensable for compliance with such arrangements.

## *2.2. Coastal State rights of prescription and enforcement*

Although the coastal State shall not hamper the 'innocent passage' of foreign ships it may extend both its prescriptive and enforcement powers thereto. In terms of prescription, the 1982 Convention is clear enough. Article 21(1) includes a list of the matters in respect of which the coastal State may adopt laws and regulations relating to innocent passage through the territorial sea:

- (a) the safety of navigation and the regulation of maritime traffic;
- (b) the protection of navigational aids and facilities and other facilities or installations;
- (c) the protection of cables and pipelines;
- (d) the conservation of the living resources of the sea;
- (e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
- (f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
- (g) marine scientific research and hydrographic surveys;
- (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

In all these matters the coastal States may adopt national regulations for the foreign ships to abide by. The obvious problem, however, is their enforcement. Full-scale enforcement would readily amount to interference with 'innocent passage.' Since the coastal State 'shall not hamper the innocent passage of foreign ships' not every violation of coastal State regulations may justify measures interfering with the 'continuous and expeditious' passage of the vessel.

Yet, in view of the relevant conventions as well as legal doctrine, in some cases at least, such interference is authorized. In Article 21(4), it is stipulated that

[f]oreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

The paragraph is similar to the corresponding provision in the 1958 Territorial Sea Convention.<sup>24</sup> Neither text includes explicit authorization of enforcement in the territorial sea but both imply that coastal States shall be able to secure the compliance of foreign vessels with coastal State regulation.

In fact, both the 1958 Convention and the 1982 Convention include certain provisions on the 'criminal jurisdiction on board a foreign ship'<sup>25</sup> and 'civil jurisdiction in relation to foreign ships'<sup>26</sup> which allow coastal State interference with foreign ships in innocent passage.

The article on criminal jurisdiction is partly focused on crimes on board not at all relating to the navigational activities of the ship concerned.

<sup>24</sup>Article 17.

<sup>25</sup>Article 19(1) of the 1958 Convention; Article 27 of the 1982 Convention.

<sup>26</sup>Article 20 of the 1958 Convention; Article 28 of the 1982 Convention.

At the same time, however, it may also apply, for instance, to crimes of pollution the consequences of which 'extend to the coastal State' [2, pp. 197–199].

In the 1982 Convention, however, this general provision is clearly not to exhaust the question of coastal State jurisdiction over foreign vessels in the territorial sea. As regards vessel-source pollution, in particular, the decisive provision is Article 220(2):

Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II [Territorial Sea and Contiguous Zone], section 3 [Innocent Passage in the Territorial Sea], may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel ...

In other words, coastal State enforcement over foreign vessels in innocent passage is authorized provided that the provisions of the Convention on innocent passage are complied with. As these provisions, again, prohibit any hampering of innocent passage, the argumentation tends to go in circles. In case the activities of the ship were not 'prejudicial to the peace, good order or security of the coastal State,' the ship would remain in innocent passage which, according to Part II, Section 3 of the 1982 Convention, could not be 'hampered' by the coastal State.

As an example, one may here recall that according to Article 19(2)(h) 'any act of wilful and serious pollution contrary to this Convention' is to render the passage 'non-innocent.' If, however, the pollution caused would only be wilful but not serious or serious but not wilful the passage would remain 'innocent.' Should one, under such circumstances, conclude that no coastal State enforcement measures whatsoever could be extended to the ship concerned, as they would be hampering its legitimate right to innocent passage?

In view of the very existence of Article 220(2) this can hardly be the case. On the contrary, it would seem that even if the vessel is in innocent passage, in some instances at least the coastal State might stop it, inspect it and even detain it for the institution of legal proceedings. The measures taken may, however, not amount to impairment of the vessel's right of innocent passage but it should be let to proceed in its passage after paying a fine or making other satisfactory arrangements.

In general terms, the same may also apply to coastal State enforcement relating to violations of other coastal State rules and regulations. Vessel-source pollution is, however, a particularly interesting case since the prescriptive rights of the coastal State over vessel-source pollution are defined in the Convention much more broadly than the polluting activities rendering passage 'non-innocent' (where the applicable phrase refers to 'any act of wilful and serious pollution contrary to [the 1982] Convention'<sup>27</sup>).

In other respects, the list identifying coastal State prescriptive rights in Article 21(1) has much in common with the instances of non-innocent passage in Article 19. This is the case regarding activities like fishing and marine scientific research as well as matters relating to customs, fiscal, immigration or sanitary control. Here, to a considerable extent, coastal

<sup>27</sup>Article 19(2)(h).

State regulations already form an inherent part of the concept of innocent passage as such. An infringement of such regulations would often be equivalent to an act prejudicial to the 'peace, good order or security' of the coastal State, thus rendering the passage 'non-innocent.' Consequently, what is provided for in Article 21 would seem, in essence, merely to affirm that the coastal State may also issue regulations aiming at the avoidance of such infringements.

Especially as to pollution regulation, however, this scheme also implies some contradiction. Even if not formally denying the passage rights, the enforcement measures may cause the vessel much hardship. In fact, they may cause the ship much more hardship than is inflicted by its mere diversion from the coastal State's territorial sea as a punishment of 'non-innocent' activities [2, pp. 195–197].

It was also pointed out above that the relevant Conventions contain certain provisions on *civil* jurisdiction in relation to foreign vessels in the territorial sea. Here, too, coastal State interference even with a vessel in innocent passage is recognized but in the main only 'in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State' or 'to levy execution against or to arrest ... a foreign ship ... passing through the territorial sea after leaving internal waters.'<sup>28</sup>

While the coastal State assumes rather broad powers under Article 21(1), its prescriptive jurisdiction is explicitly limited in one important aspect. According to Article 21(2):

Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

To avoid a 'mosaic' of coastal State laws and regulations on the design, construction, manning or equipment of passing ships the Convention has subjected these matters to 'generally accepted international rules and standards' only. Accordingly, also coastal State measures of enforcement are necessarily limited to the enforcement of the 'generally accepted international rules and standards' [2, pp. 191–195].<sup>29</sup>

At UNCLOS III, this issue caused much difficulty, and obviously some of the delegations, especially Canada and the United States, were not particularly happy with the outcome of the negotiations. Indeed, even where international standards on ship construction, design, equipment or manning are totally lacking the coastal State may not resort to national measures but has to wait for the emergence of relevant 'generally accepted international standards.'

If, on the other hand, the foreign vessel in innocent passage does not comply with such 'generally accepted' international requirements it would seem that, at least in serious cases of non-compliance, the coastal State may interfere with its passage, as discussed above.<sup>30</sup>

### *2.3. Passage of warships*

Both in the 1958 Territorial Sea Convention and in the 1982 Convention, the basic provisions on 'innocent passage' are titled to apply to 'all ships.' Also warships (and other government ships operated for non-commercial purposes) seem to be entitled to enjoy the right of innocent passage. When exercising this right, submarines, however, are required to navigate on the surface.<sup>31</sup>

<sup>28</sup>Article 28.

<sup>29</sup>For the expression 'generally accepted international rules and standards', see also Ref. [4].

<sup>30</sup>The restrictions on coastal State competence do not, however, apply to 'ice-covered areas' provided for in Article 234 of the 1982 Convention. In such areas covered by ice for most of the year, the coastal State may adopt and enforce national laws and regulations for the prevention, reduction and control of marine pollution from vessels stricter than international rules and standards. The Article applies to 'areas within the limits of the exclusive economic zone' with obvious application also to the territorial sea. In practice, the Article refers to the Arctic waters. As to more regular 'special areas' to be established within exclusive economic zones, see Article 211(6).

<sup>31</sup>Article 20 of the 1982 Convention.

In state practice, the matter has not remained uncontested. At the 1958 Conference, the socialist countries, in particular, claimed the right to demand coastal State consent for the entry of foreign warships. A number of States also made a reservation on this to the 1958 Convention [2, p. 183].

At UNCLOS III much time was spent in discussions on the passage rights of warships. This time, it was, in particular, some developing States that argued for a consent regime. They considered it mandatory for the protection of their vital interests that, as need be, passage could be denied. Some other States, including Finland and Sweden, advanced the view that while the passage of warships should not be submitted to coastal State consent, the coastal States should be authorized to request prior notification of their entry into the territorial sea.

The text adopted to the Convention (like that of the 1958 Convention) seems clear enough on the question of prior authorization of passage: there is no provision to that effect in the document. Quite the contrary, a requirement of coastal State consent would imply the possibility of denial of passage being in obvious conflict with the provisions forbidding coastal States 'to impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage.'<sup>32</sup>

Nevertheless, when signing the 1982 Convention, some of the proponents of the consent regime considered that a requirement on prior authorization was in line with the Convention. The declarations made may express the wish of those countries but are clearly not authorized by the text of the Convention, itself.

The question of prior notification appears more problematic. In their declarations made at the signature of the Convention e.g. Finland and Sweden considered that a request for prior notification of the entry of foreign warships (or other 'government ships') to the territorial sea was in compliance with the Convention.<sup>33</sup> Here the argument was that a mere request of information in no way denies passage nor may it be considered to 'impair' it.

However, these views, too, were not shared by all. Several maritime States contested a notification regime as well, and considered it an unacceptable limitation to the right of innocent passage.<sup>34</sup> Later on, both Finland and Sweden have abandoned their corresponding legislations, and did not renew their declarations on the point at the ratification of the 1982 Convention. At the same time, though, international recognition of the mandatory ship reporting procedures, discussed above, may offer new support for such regimes.

While foreign warships (and other 'government vessels') thus seem to enjoy the same right of 'innocent passage' as merchant vessels, they also enjoy the privilege of *sovereign immunity* under international law. A warship whose (peacetime) passage is prejudicial to the 'peace, good order or security' of the coastal State may be diverted from the territorial sea but may not, as a rule, be interfered with by the coastal State for the purpose of inspection, detention or the institution of other legal proceedings against it. The right to sovereign immunity may, however, be put in question where the vessel engages in hostile acts against the coastal State.

### 3. State practice

The present Section seeks to analyze state practice on the issues discussed above.<sup>35</sup> Here, too, the discussion is illustrated by questions relating to coastal State jurisdiction with respect to pollution from vessels.

<sup>32</sup>Article 24(1)(a).

<sup>33</sup>See the UN publication *Multilateral Treaties Deposited with the Secretary General*.

<sup>34</sup>See e.g. declaration by Italy in the UN publication *Multilateral Treaties Deposited with the Secretary General*, statements at UNCLOS III by United Kingdom, France, Federal Republic of Germany and the United States, 17 *Official Records*, pp. 240–244.

<sup>35</sup>The texts of national legislation used in this analysis of State practice can partly be found in the publications of the United Nations Division for Ocean Affairs and the Law of the Sea. Further legislation has been provided by the members of the International Law Association's Committee on Coastal State Jurisdiction Relating to Marine Pollution, of which K. Hakapää is the Chairman and E J Molenaar Assistant Rapporteur (and Professor Erik Franckx the Rapporteur).

Specific legislation may also be obtained on the Internet. For example, Australia, Canada, New Zealand, and the United States give on Internet full access to much of their laws and implementing regulations.

Due to the global scope of the research, it is not unfeasible that some of the enactments referred to have in the meantime been amended or even replaced. The authors regret such flaws and welcome any information which updates this analysis of State practice. Full citation of the national legislation is only occasionally given as such citation would excessively increase the length of the article.

By way of introduction, it should be recognized that coastal States may choose from a wide range of measures which directly or indirectly protect their territorial sea or coastline from vessel-source pollution. They may include establishment of discharge standards and ‘construction, design, equipment and manning’ (CDEM) standards, designation of sea lanes, traffic separation schemes and other ships’ routing measures, SRSs and VTSs as well as the exercise of the practices of prior notification or authorization of passage. In general terms, the legality of such measures was discussed in the previous Section.

### 3.1. The right of innocent passage in national legislation

It has already been observed that the right of innocent passage is widely recognized in conventional and customary law. Nevertheless, since the 1982 Convention contains a more specific definition of the right of innocent passage than the 1958 Convention, it is important to see if, and in which manner, coastal States have incorporated this right in their national legislation. States which have done this are categorized in Table 1.

It should be noted, however, that the table does not include States (like Finland) which have not introduced specific legislation on innocent passage but, on the other hand, have incorporated the relevant conventions (presently, in particular, the 1982 Convention) as a whole in their national legislation.

Group A reproduces the relevant articles of the 1982 Convention including (with some variation) the list of ‘activities’ in Article 19(2). Group B incorporates only the definition of the right of innocent passage but not the list of activities, and therefore seems to follow the 1958 Convention. Group C simply recognizes the right of innocent passage, although some States emphasize that this is to be interpreted in conformity with the 1982 Convention. Not reproduced are a further group of 13 States which in various ways implicitly recognize the right of innocent passage.

An obvious conclusion derived from Table 1 is that the specific application of the right of innocent passage is not uniformly incorporated in national legislation. Only four States (Bulgaria, France, Indonesia and Trinidad & Tobago) reproduce the list of activities in Article 19(2) *verbatim*. The other States in the first group do not consistently stick to the

Table 1. The right of innocent passage in national legislation

A: 1982 Convention		B: 1958 Convention	C: Simply recognize right of innocent passage		
Antigua & Barbuda	Korea (South)	Brazil	Angola <sup>c</sup>	Kiribati <sup>c</sup>	Senegal <sup>b</sup>
Bahamas	Poland	China	Argentina	Lithuania <sup>c</sup>	Seychelles
Barbados	Romania	Comoros	Bangladesh	Marshall	Solomon
Belize	St. Kitts & Nevis	Djibouti	Cape Verde	Islands <sup>c</sup>	Islands
Bulgaria <sup>a</sup>	St. Lucia	Dominica	Colombia	Mauritania	Thailand <sup>b</sup>
Equatorial Guinea	St. Vincent &	Guyana	Costa Rica	Mauritius	United Arab
France <sup>a</sup>	Grenadines	India	Egypt <sup>c</sup>	Mexico	Emirates
Grenada	Trinidad & Tobago <sup>a</sup>	Maldives	Estonia	Nicaragua	United Kingdom <sup>b</sup>
Indonesia <sup>a</sup>	Yemen	Myanmar	Fiji	Norway	United States <sup>b</sup>
Iran	Yugoslavia (FR)	Pakistan	Guatemala	Oman	Uruguay
Jamaica		Somalia	Honduras <sup>c</sup>	Qatar	Tuvalu <sup>c</sup>
		South Africa	Iraq	Russian	Vanuatu
		Sri Lanka	Ivory Coast <sup>c</sup>	Federation	
		Sudan			
		Syria			
		Ukraine			

<sup>a</sup>Reproduces Art. 19(2)(h) of the 1982 Convention *verbatim*.

<sup>b</sup>Formulations expressing conformity with the 1982 Convention.

<sup>c</sup>Instead of ‘right of innocent passage’ other words are used with probably the same meaning.

Table 2. Enforcement powers claimed over (non-)innocent vessels

A: Gen. pow.	Innocent passage		C: Gen. pow.	Non-innocent passage		
		B: Spec. div.		D: Spec. div.	E: Spec. but no div.	
Antigua & Barbuda	Malta <sup>a</sup>	Canada	Bangladesh	Chile	Antigua & Barbuda	Grenada
Bangladesh <sup>a</sup>	Nigeria <sup>a</sup>	Chile	France	United Kingdom	Barbuda	Jamaica
Belgium	St. Kitts & Nevis	Denmark	Romania		Bahamas	Korea (South)
Belize	Nevis	Malta	Syria		Barbados	South Africa
Greece	St. Lucia	Norway	Yemen		Belize	St. Kitts & Nevis
Iran	St. Vincent & Grenadines	Russian Federation	Grenada		Bulgaria	St. Lucia
Jamaica	Somalia	Spain				Sri Lanka
		Ukraine				
		United States				

<sup>a</sup>Does not reproduce Art. 27 of the 1982 Convention.

precise list of activities. With respect to vessel-source pollution, most of these States apply less onerous formulations than ‘an act of wilful and serious pollution.’ For example, the Bahamas and several other States<sup>36</sup> require ‘any wilful act of pollution calculated or likely to cause damage or harm to [State], its resources or its marine environment.’ South Korea even regards violations of MARPOL 73/78 discharge standards as amounting to non-innocent passage.<sup>37</sup>

### 3.2. Enforcement

Analysis of State practice on enforcement powers over vessels navigating in the territorial sea is a difficult undertaking. This is mainly due to the fact that many coastal States do not explicitly distinguish between enforcement powers over vessels that, despite violations, have remained in innocent passage, and enforcement powers over vessels in non-innocent passage.

Table 2 categorizes legislation in which enforcement powers are claimed. In the table, enforcement powers are limited to non-innocent vessels only, where provided for accordingly. In the absence of such provisions, enforcement powers are deemed also to apply to vessels in innocent passage. A further distinction is made as to the power of diverting a vessel from the territorial sea, which can only be used with respect to vessels in non-innocent passage.

The five subcategories in the table distinguish between general and more specific enforcement powers with or without the power of diversion. Group A contains three States (Bangladesh, Malta and Nigeria) which simply claim general enforcement powers over vessels in *innocent* passage, presumably not including the power of diversion. The other States claim enforcement powers in provisions modelled on Article 27 of the 1982 Convention, thus essentially limiting enforcement to certain situations, and presumably not including the power of diversion.

Quite interesting are the States in Group B that claim the power of diverting a ship from the territorial sea or also of denying the right of entry to the territorial sea even in cases where the ships are *not* explicitly alleged to be in *non-innocent* passage. It is not ruled out that at least some of these States may use this competence predominantly for non-innocent vessels or so-called ‘leper ships’, i.e., ships so unseaworthy that they pose substantial threat of pollution. However, some state practice leaves room for broader interpretations. For example, Section 1016(b)(2) of the United States Oil Pollution Act of 1990<sup>38</sup> provides that foreign tankers which are required to have certificates of financial responsibility may, in case of non-compliance, be denied entry to the territorial sea.

<sup>36</sup>See Section 5(2)(f) of the 1993 Act respecting the Territorial Sea, Archipelagic Waters, Internal Waters and the Exclusive Economic Zone of the Bahamas. The other States are: Antigua and Barbuda, Belize, St. Kitts & Nevis, and St. Lucia.

<sup>37</sup>See Article 5 of the Territorial Sea and Contiguous Zone Act (promulgated by Law No. 3037, of 31 December 1977, amended by Law No. 40986, promulgated on 6 December 1995, *Law of the Sea Bulletin* No. 33 (1977), p. 45) in relation to Article 6 of the Enforcement Decree of the Territorial Sea and Contiguous Zone Act (promulgated by Presidential Decree No. 9162, of 20 September 1978, amended by Presidential Decree No. 15133, of July 1996, *Law of the Sea Bulletin* No. 33 (1997), p. 48).

<sup>38</sup>33 U.S.C. § 2716(b)(2). Oil Pollution Act, of 18 August 1990, Pub. L. No. 101-380, Title I, § 1002, 104 Stat.489, 33 U.S.C. §§ 2701-2761, 46 U.S.C. §§ 3701-3718, as amended.

A general remark with respect to groups C–E is that in comparison with the number of States that recognize the right of innocent passage, far fewer States explicitly claim enforcement powers where this right is violated. It can be argued, however, that since such rights are widely recognized in customary international law there is no need for written confirmation of the same in national legislation. Alternatively, such powers could also fall under the broadly formulated provisions referred to in Section 3.1.

While the States in Group C claim general powers with respect to non-innocent vessels, presumably also including the power of diversion, only the States in Group D specifically refer to such a power. Interesting, as well, are the States in Group E which claim specific enforcement powers over non-innocent vessels but do not refer to the power of diversion.

The fact that several States claim the power of diversion even over vessels *not* specifically claimed to be *non*-innocent, combined with the fact that several other States claim specific enforcement powers over non-innocent vessels without at all referring to the power of diversion would seem to indicate that State practice on enforcement does not really distinguish between innocent and non-innocent vessels, as would be expected on the basis of the 1982 Convention. This absence of distinction is particularly clear for those States in Group A which set less onerous standards for meeting the level of non-innocent passage in Article 19(2), and at the same time claim specific enforcement competences over non-innocent vessels without, however, explicitly claiming the power of diversion (Group E).<sup>39</sup>

### 3.3. *Hazardous cargoes*

State practice on coastal State rights over ships carrying hazardous cargoes provides an excellent example of situations where the right of innocent passage is put to a test. Section 2 already indicated that the 1982 Convention provides no basis for a coastal State right of prior authorization, nor perhaps even of prior notification, over foreign ships passing through the territorial sea.

The issue surfaced once more during the negotiations leading to the adoption of the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Waste and Their Disposal.<sup>40</sup> Article 6 of the Convention *inter alia* stipulates that the State of export shall notify the State(s) of transit of any proposed transboundary movement of wastes, and that such movement needs the prior consent of the State(s) of transit. Linked to the definitions of ‘transboundary movements’ and ‘area under the national jurisdiction of a State,’<sup>41</sup> these rights of prior notification and authorization were broad enough to encompass not only the transit State’s territorial sea but also its exclusive economic zone. However, fierce protests by maritime States finally led to the incorporation in the Convention of Article 4(12) which states rather ambiguously that:

[n]othing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all states of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

Clearly, this text is of little assistance in resolving the issue as it provides ammunition to both sides. Subsequently, initiatives on the regional level

<sup>39</sup>An interesting provision is included in Finnish legislation authorizing the Finnish Maritime Administration to limit vessel traffic in the Finnish territorial waters when necessary due to weather or ice conditions or because of the poor condition of the vessel or the threat of immediate pollution resulting from the big size of the vessel in view of the water routes available. L aluksista aiheutuvan vesien pilaantumisen ehkäisemisestä 16.3.1979/300, 4 §. Obviously, the statute might be found in conflict with the 1982 Convention, if not, in practice, applied in compliance with its provisions.

<sup>40</sup>The Convention was adopted in Basel on 22 March 1989 and entered into force on 5 May 1992. For the text, see 28 *International Legal Materials* 657 (1989).

<sup>41</sup>Articles 2(3) and 2(9) of the Basel Convention.

**Table 3. Coastal State rights over ships carrying hazardous cargoes**

A: Oppose both	B: Ambiguous	C: Prior notif.	D: Prior author.	E: Prohibition
Germany	Colombia	Canada	Egypt	Argentina
Italy <sup>a</sup>	Ecuador	Djibouti	Guinea	Haiti
Japan	Mexico	Libya	Iran	Ivory Coast
Netherlands	Uruguay	Malta	Malaysia	Nigeria
Russian Federation		Pakistan	Oman	Philippines
Singapore		Portugal	Saudi Arabia	Venezuela <sup>b</sup>
Thailand		United Arab	Turkey	
United Kingdom			Yemen	
United States				

<sup>42</sup>A draft Protocol on the Transboundary Movement of Hazardous Wastes and Other Wastes is currently being prepared under the Kuwait regional seas programme.

<sup>43</sup>Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, Bamako, 30 January 1991; not in force. 30 *International Legal Materials* 775 (1991); Central American Regional Agreement on the Transboundary Movement of Hazardous Wastes, Panama, 11 December 1992; not in force. 3 *Yearbook of International Environmental Law* diskette doc. 10 (1992); Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, Waigani, 16 September 1995; not in force. 6 *Yearbook of International Environmental Law* diskette doc. 17 (1995).

<sup>44</sup>Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and Their Disposal, Izmir, 1 October 1996; not in force. UN Doc. UNEP(OCA)/MED/IG.9/4, of 11 October 1996.

<sup>45</sup>Convention for the Protection of the Mediterranean Sea against Pollution, Barcelona, February 1976; in force 12 February 1978. See 15 *International Legal Materials* 290 (1976).

<sup>46</sup>The voyages of for example the *Akatsuki Maru* and the *Pacific Pintail* led to widespread protests by States that feared that such shipments would pass close to their coasts.

<sup>47</sup>Article 54 of Presidential Decree No. 2/211 on Norms on the Control of the Generation and Management of Hazardous Wastes, of 23 April 1992.

<sup>48</sup>Section 13 of the Export and Import of Hazardous Wastes Regulations, P.C. 1992-2284, 12 November 1992, *Canada Gazette*, Part II, Vol. 126, No. 125, p. 4553.

<sup>49</sup>Section 662(a) of the Canada Shipping Act, of 1972, as amended, R.S.C. 1985, S-9; Eastern Canada Vessel Traffic Services Zone Regulations, P.C. 1989-147, 9 February 1989, *Canada Gazette*, Part II, Vol. 123, No. 5, p. 1470.

<sup>50</sup>Article 1 of the Decree No. 78-421 on Sea Pollution Caused by Shipping Incidents, of 24 March 1978, *Journal Officiel*, p. 1338, of 26 March 1978; Decree 326 Cherbourg/18/81 Brest of 13 May 1981 regulating Navigation in the Approaches to the French Coast in the Channel and the Atlantic to prevent Accidental Marine Pollution (noted in IMO Doc. MSC 66/24/Add. 1, Annex 10, p. 14).

<sup>a</sup>In light of Italy's active involvement in the 1996 Izmir Protocol, it seems likely that Italy will no longer object to prior notification.

<sup>b</sup>Venezuela made a similar declaration as the States in Group B.

led to the adoption of four instruments on the transboundary movement of hazardous wastes.<sup>42</sup> While the first three instruments<sup>43</sup> leave the *status quo* of the 1989 Basel Convention unaffected, the recently adopted 1996 Izmir Protocol<sup>44</sup> to the 1976 Barcelona Convention<sup>45</sup> embraces a right of prior notification while rejecting prior authorization in Article 6(4). Together with the growing sympathy for coastal States' concerns, for example on plutonium shipments [5, 6]<sup>46</sup> this most recent development suggests a trend towards recognition of a right of prior notification.

The present analysis of state practice takes account of both legislation and explicit declarations upon signature/ratification/accession of the 1982 Convention and the 1989 Basel Convention. 'Hazardous cargoes' are whatever coastal States regard them to be, ranging from nuclear waste to oil. Not covered are ships carrying nuclear weapons or the like, and nuclear powered ships, since usually they are not merchant ships but should be treated similar to warships.

Table 3 categorizes States in various groups. Group A opposes coastal State rights of prior notification/authorization or prohibitions of such shipments. The States in Group B have declared upon signature that the 1989 Basel Convention duly protects their rights as coastal States. Obviously, this is a rather ambiguous statement which can only be clarified by specific legislative activity. Of these States only Venezuela, which is listed in Group E together with 5 other States, explicitly prohibits ships carrying hazardous cargoes in lateral passage through the territorial sea.<sup>47</sup>

Group C contains coastal States claiming a right of prior notification. States that have become Parties to the 1996 Izmir Protocol would belong to this group, although as of 1 September 1997 no instruments of ratification have been deposited.

The States in Group D all require prior authorization, which implies more interference with navigation than prior notification. For example, passage could under certain circumstances be denied, or could be subjected to certain conditions. Worth noting is that Canada, although requiring 'mere' prior notification, allows transit only if 'the import or export of that hazardous waste is not prohibited under the laws of Canada' and imposes a number of other requirements, such as insurance.<sup>48</sup>

Finally, Section 2 already took notice of the close relationship between prior notification on the one hand and SRSs and VTSs on the other. Currently, only Canada<sup>49</sup> and France<sup>50</sup> maintain unilaterally established SRSs that also apply to their territorial seas and in which the nature of the cargo is to be reported.

**Table 4. Restrictions on warships in innocent passage**

<b>Oppose both</b>	<b>Prior notification</b>		<b>Prior authorization</b>		
France	Croatia	Libya	Albania <sup>a</sup>	Maldives	Somalia
Germany	Denmark	Malta	Algeria	Myanmar	Sri Lanka
Italy	Egypt	Mauritius	Antigua & Barbuda	Oman	Sudan
Netherlands	Guyana	Seychelles	Bangladesh	Pakistan	Syria
Russian Federation	India	Yugoslavia	Barbados	Philippines <sup>a</sup>	United Arab
Thailand	Indonesia	(FR)	Cambodia	Poland <sup>a</sup>	Emirates
United Kingdom	Korea (South)		China	St. Vincent &	Vietnam <sup>a</sup>
United States			Congo <sup>a</sup>	Grenadines	Yemen
			Iran		

<sup>a</sup>See Ref. [7].

### 3.4. Warships

Consistent with the discussion in Section 2.3, state practice on the right of innocent passage for warships focusses on coastal State claims to prior notification or authorization. The claims, which are based both on legislation and declarations relating to the 1982 Convention, are displayed in Table 4.

In addition to the States mentioned in Table 4, Cape Verde and Romania reserve in their declarations upon signature and confirmed upon ratification of the 1982 Convention, the right ‘to adopt laws and regulations relating to innocent passage of foreign warships’ through the territorial sea. This could imply claims to prior notification or authorization.

It is clear that the opponents of prior notification or authorization of warships are predominantly major naval powers. Moreover, although some States appear in both Table 3 and 4, it is difficult to perceive clear correlations between them, except perhaps for the States opposing the claimed rights.

### 3.5. Consistency with the 1982 Convention

As of 1 April 1998<sup>51</sup> the following States appearing in the analysis of state practice are not yet Party to the 1982 Convention:

Albania	Colombia	Iran	Nicaragua	Thailand	United Arab
Bangladesh	Congo	Kiribati	Poland	Turkey	Emirates
Belgium	Denmark	Lithuania	Qatar	Tuvalu	United States
Cambodia	Ecuador	Libya	Syria	Ukraine	Vanuatu
Canada	Estonia	Maldives		Venezuela	

Therefore, State practice not conforming to the 1982 Convention does not, for these States, immediately imply contravention thereof. Also, when analyzing the state practice in the previous Sections it becomes clear that non-conformity does not only appear among non-Parties to the 1982 Convention. It remains to be seen whether this might indicate some crystallization or development of norms of customary law which deviate from, or provide refinements to, the provisions of the 1982 Convention.

## 4. Conclusions: the regime today

On a general level, the state practice surveyed does not deviate from the basic purpose of the regime of innocent passage as recognized in the 1958 and 1982 Conventions. In the core of the national laws, too, there is the recognition of passage rights that can only be interfered with in situations where the interests of the coastal State override those of the flag State.

<sup>51</sup>United Nations Treaty Database on Internet at: <http://www.un.org/Depts/Treaty>.

However, in certain instances, state practice seems to reach beyond the conventional limits of coastal State jurisdiction. In particular, the application of the concept of innocent passage to vessel-source pollution as laid down in the 1982 Convention has not been uniformly adopted in national legislation.

On the prescriptive side, this is apparent in the absence of proper incorporation of the elements of 'wilful' and 'serious' in national practices. Passage is often considered non-innocent even if not causing 'wilful and serious' pollution as required by the 1982 Convention. On the enforcement side, deviation from conventional regimes is reflected in the absence of uniformity as to which enforcement powers may be applied in which situations. Diversion from the territorial sea, the special power reserved for the coastal State over non-innocent passage, is occasionally claimed also with respect to ships that are *not* in *non*-innocent passage. Conversely, exclusion is not consistently claimed with respect to ships *in* non-innocent passage; this, however, may be due to the self-evidence of coastal State powers rather than hesitation in their application.

The subject of coastal State rights with respect to ships carrying hazardous cargoes has recently attracted growing attention. Here, the 1982 Convention hardly leaves any room for interpretation: the sole reason that the ship is carrying something detrimental to the coastal environment (but not releasing it to sea), may not justify a coastal State ban of transit.

However, a number of coastal States have claimed a right to exclude from their territorial seas such shipments or, at least, to request a prior notification of such transits.

Taking, in particular, into account the recent developments in 'mandatory ship reporting,' it might be argued that a coastal State requirement for prior notification of the entry of hazardous cargoes to the territorial sea only reflects a growing awareness in the international community of the need to take precautionary measures for the protection of the human environment. In this regard, also the recent Izmir Protocol (even if only of a regional application) may suggest certain crystallization of a coastal State right to require such prior notification. On the other hand, widespread use of automatic transponders in ships may gradually dispose of the whole question, in recognition of a state's right to receive information of vessel traffic off its coastline.

To submit a foreign vessel with a 'hazardous' cargo to a system of coastal State *consent* represents, however, a claim hardly to be verified in applicable international law. It is not recognized in the relevant Conventions and has not emerged, at least as yet, in such 'constant and uniform usage, accepted as law' [8] as to form a novel rule of customary law.

Finally, disagreement prevails on the passage rights of warships. The relevant Conventions suggest treatment similar to that of merchant vessels. In consequence, even a mere requirement of prior notification has been criticized in the maritime community. As regards claims of prior authorization, they would seem to be in obvious conflict with generally accepted international law. However, this has not prevented certain States from disagreeing, and one may hardly expect a quick consensus on this issue.

The regime of innocent passage is well-established in international law. In many of its details, however, it still remains subject to interpretation. While the new Law of the Sea Convention brought about further clarification of the regime, it, too, left some questions unanswered or provided answers not quite satisfactory to all the interests involved. On the other

hand, the developments since the adoption of the Convention have hardly been of the kind to call for fundamental changes of the regime.

At least in one respect, however, it would seem that the trend of state practice points to solutions somewhat deviating from the rather narrow language of the Convention: many of the coastal States claim today broader powers to interfere with foreign vessels threatening the coastal State interests with potential environmental harm. In practical application, this suggests interpretations of the Convention more favorable to the coastal State cause than what was originally envisaged at its adoption.

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## References

1. H Ringbom, 'Environmental Protection and Shipping – Prescriptive Coastal State Jurisdiction in the 1990's,' Marius Nr. 224, Oslo, 1996, pp. 56–62.
2. K Hakapää, *Marine Pollution in International Law. Material Obligations and Jurisdiction with Special Reference to the Third United Nations Conference on the Law of the Sea*, Suomalainen Tiedeakatemia, Helsinki 1981, p. 188.
3. S N Nandan, S Rosenne (vol. eds.) and M H Nordquist (ed. in-chief), *United Nations Convention on the Law of the Sea 1982, A Commentary*, Volume II, Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1993, pp 206–209 and 218.
4. First Report of the International Law Association Committee on Coastal State Jurisdiction Relating to Marine Pollution (May 1996), in *Report of the Sixty-seventh Conference of the International Law Association*, Helsinki, 12 to 17 August 1996, pp. 148–178, at 158–178.
5. J M Van Dyke, 'Sea Shipment of Japanese Plutonium under International Law,' *Ocean Development and International Law*, Vol 24, 1993, pp 399–430.
6. J M Van Dyke, 'Applying the Precautionary Principle to Ocean Shipments of Radioactive Materials,' *Ocean Development and International Law*, Vol 27, 1996, pp 379–397.
7. J A Roach and R W Smith, *United States Responses to Excessive Maritime Claims*. Martinus Nijhoff Publishers, The Hague/Boston/London, 1996 (2nd ed.), pp 251–267.
8. Asylum Case, *International Court of Justice Reports* 1950, pp 266, 276–277.