INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

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Freedom of Navigation: New Challenges

I. Introduction

Freedom of navigation is one of the oldest and most recognized principles in the legal regime governing ocean space. It may safely be said that – since it was enshrined in the chapter '*De mare liberum*' ('On the freedom of the sea') in the treatise – actually it was a legal opinion – of Hugo Grotius '*De iure praedae*' of 1609 – this principle constitutes one of the pillars of the law of the sea and was at the origins of modern international law.[1] It is still worth re-emphasizing the arguments Grotius advanced in defence of this principle. Amongst other things, he stated that the sea was the fundamental avenue for communication and cooperation among States and therefore such avenue should be free and not controlled by one State – in his time, this would have been Spain or Portugal. He further argued that a resource or an area which could be used by all without deterioration or depletion should not be monopolized by one State but should be open to all. And finally he argued that a State could only claim an area which it was able to administer and control effectively, emphasizing that no State could control the sea permanently and effectively. This latter argument may not be as convincing today as it was at the beginning of the 17th century. Still, it is worth remembering. In particular, John Selden argued against the freedom of the sea as a principle in his treatise '*De mare clausum*' of 1635 but in fact he meant the freedom to fish, also proclaimed by Hugo Grotius, rather than the freedom of navigation.

The United Nations Convention on the Law of the Sea (hereinafter "the Convention")[2] makes ample reference to the freedom of navigation, for example in article 36 (freedom of navigation in straits used for international navigation), article 58 (freedom of navigation in the exclusive economic zone), article 78 and article 87 (high seas). In this context, the right of innocent passage in the territorial sea and through archipelagic waters as specified in articles 17 to 26 and 52 of the Convention should also be mentioned, as well as the freedom of transit passage in straits used for international navigation (article 38 of the Convention). The three freedoms mean the same – freedom of movement of ships. What distinguishes them is the different influence coastal States may exercise on the freedom of movement.

It is impossible to go through all the challenges faced by or limitations placed on the freedom of movement of ships. This presentation will concentrate on two, namely environmental considerations and attempts to strengthen security at sea, for example against the threat of terrorism and the proliferation of weapons of mass destruction. What makes the ensuing limitations or attempted restrictions on the freedom of movement so problematic is that they are undertaken multilaterally, by involving competent international organizations, as well as unilaterally or bilaterally. Such limitations are not easy to harmonize since they have different legal bases. Furthermore, it is their cumulative impact on the freedom of navigation/right of innocent

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[1] For the principle of freedom of navigation, see: M.A. Becker, The shifting public order of the oceans: freedom of navigation and the interdiction of ships at sea, *Harvard International Law Journal* 46/1 (2005), pp. 131-230; see also: C.-G. Hasselmann, *Die Freiheit der Handelsschiffahrt: Eine Analyse der UN-Seerechtskonvention*, 1987.

[2] United Nations Convention on the Law of the Sea, December 10, 1982; ILM 21 (1982), pp. 1261-1354.

passage/transit passage which should be cause for concern as regards the legal framework established by the United Nations Convention on the Law of the Sea.

II. The distribution of jurisdictional powers concerning movements of ships under the United Nations Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea establishes a legal regime which is based on maritime zones. Coastal States' competences decrease, generally speaking, as the distance from the coast increases and, additionally, they are less comprehensive as regards navigation than as regards the exploration or exploitation of the natural resources of the sea. In addition to this territorial or rather zone-based jurisdiction, coastal States may exercise jurisdiction over foreign merchant ships on the basis of international agreements and/or established international standards and practices. Article 218 of the Convention, for example, accords to port States jurisdictional power over vessels which is not rooted in the territorial principle.

Coastal States have jurisdiction to adopt laws and regulations relating to navigational safety and vessel-source pollution from foreign ships in their exclusive economic zone (legislative jurisdiction) – where vessels enjoy the freedom of navigation – and they have far-reaching enforcement jurisdiction. The jurisdictional competences – legislative as well as enforcement jurisdiction – of coastal States are broader as concerns their territorial sea and archipelagic waters, although ships under a foreign flag enjoy the right of innocent passage in these maritime areas.

As far as national legislation in the territorial sea is concerned, States can roughly be divided into four categories. The first category includes those States which have closely followed article 21, paragraph 1, of the Convention which allows coastal States to adopt regulations relating to innocent passage. In the second category are those States claiming prescriptive competences over a series of matters that deviate from article 21, paragraph 1, of the Convention. The third group addresses their claims only in a general way by stressing that foreign vessels shall observe promulgated laws and regulations. The last category consists of those States which either have made no mention of legislative jurisdiction in their legislation on the territorial sea or have not as yet enacted any special laws and regulations.

Special regimes apply, however, for major international shipping routes through straits used for international navigation even if such straits are within the territorial sea of the coastal State. The transit passage regime implies that navigation is not governed by the regime concerning innocent passage but by a particular regime which is more liberal as regards navigation. The transit passage regime has been described as ranging between the freedom of navigation and innocent passage.[3] Under the transit passage regime, freedom of navigation and the right of overflight exist for vessels and aircraft operating in their normal mode. While the coastal States' jurisdictional powers are limited by the Convention, they may still impose controls on navigation.

[3] E.J. Molenaar, *Coastal State Jurisdiction over Vessel-Source Pollution*, 1998, p. 287.

III. Measures taken to enhance the safety of navigation and to protect the marine environment

(a) *Measures taken by coastal States*

The ambiguity prevailing at the time concerning coastal States' legislative competences as regards innocent passage was meant to be clarified by article 21 of the Convention. This provision tries to establish a delicate balance between the interests of international navigation and the right of coastal States to regulate the passage of foreign ships in the territorial sea. Only a handful of actions are qualified as not being protected under the notion of innocent passage in article 19, paragraph 2, of the Convention, e.g., any act of wilful and serious pollution contrary to the Convention (article 19, paragraph 2(h)). The coastal State may regulate innocent passage in respect of a wide range of matters under article 21, paragraph 1, of the Convention, in conformity with the Convention and other rules of international law,. Paragraphs 1(a) and 1(b) of article 21 in particular refer to the safety of navigation, the regulation of maritime traffic, and the protection of navigational aids, while paragraph 1(f) relates to the preservation of the marine environment and the prevention, reduction and control of pollution thereof. Paragraph 1(g) refers to article 245 of the Convention, which accords to coastal States an exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea, and paragraph 1(h) refers to custom, fiscal, immigration and sanitary matters. In short, article 19 of the Convention excludes certain actions from the protection accorded by the notion of innocent passage, whereas article 21 of the Convention opens the possibility for coastal States to limit further the freedom of navigation.

However, this option is limited. According to article 21, paragraph 2, of the Convention, national laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they give effect to generally accepted international rules and standards. This is a significant restriction concerning the prescriptive power of coastal states. It reflects a basic concept incorporated throughout the Convention, namely to protect the integrity of global maritime navigation and to minimize interference from coastal State jurisdiction.

As already indicated, while the coastal States' jurisdictional powers concerning navigation through international straits are limited by the Convention, coastal States may still impose controls on such navigation. Article 42 of the Convention prescribes the limits for such coastal State jurisdiction. States bordering international straits may adopt laws and regulations relating to transit passage in respect of the safety of navigation, the regulation of maritime traffic and the prevention, reduction and control of pollution (article 42, paragraphs 1(a) and (b), of the Convention). According to article 41 of the Convention, States bordering straits may prescribe sea lanes and traffic separation schemes, provided they conform to international regulations and are submitted to the International Maritime Organization (IMO) for adoption (article 41, paragraphs 3 and 4, of the Convention).

The rules concerning passage through archipelagic sea lanes are similar but not completely identical. But here again the involvement of the IMO is required (article 53, paragraph 9, of the Convention).

(b) *Measures which may be taken on the basis of specific international instruments*

International agreements, in many cases established under the auspices of the IMO, mandate coastal States, including States bordering international straits, to adopt further measures for the management and control of international navigation. Such measures may be taken unilaterally or in conjunction with the IMO. This system is still in the stage of development and some uncertainty exists in this respect.

Among many international conventions having a bearing on coastal State jurisdiction over foreign shipping in the territorial sea, four contain provisions that allow for the adoption of rules and standards applicable to foreign merchant ships. These are the Convention on the International Regulations for Preventing Collisions at Sea. 1972 (COLREG)[4] which provides for the possibility of traffic separation schemes. The other international instruments are: the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78),[5] the International Convention for the Safety of Life at Sea, 1974 (SOLAS),[6] and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989.[7]

MARPOL obliges coastal States to enforce the ensuing obligations by prohibiting infractions and punishing offenders. However, sanctions against violations may not include hampering innocent passage unless otherwise permitted under international law.[8]

Ships' routing is governed by Regulation V/10 of the Annex to SOLAS, which was incorporated in 1994. It is clear from the text that, on the one hand, the regulation tries to emphasize the role of the IMO in the establishment of mandatory ships' routing and, on the other, it recognizes, albeit indirectly, that coastal States may also establish such routing systems alone. This is all the more relevant when the systems are located within the territorial sea. States are not under an obligation to submit the establishment of such systems in the territorial sea to the IMO for adoption but they may do so. This is in line with article 22 of the Convention. Although the involvement of the IMO is not mandatory, its harmonizing role should not be underestimated.

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[4] Convention on the International Regulations for Preventing Collisions at Sea (COLREG), October 20, 1972; BGBl. 1976 II, p. 1017.
[5] International Convention for the Prevention of Pollution from Ships (MARPOL), November 2, 1973, as amended by the Protocol June 1, 1978; ILM 12 (1973), pp. 1319-1444; ILM 17 (1978), p. 246 *et seqq*.
[6] International Convention for the Safety of Life at Sea (SOLAS), November 1, 1974; UNTS Vol. 1184 (1980), pp. 2-453.
[7] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, March 22, 1989; ILM 28 (1989), pp. 657 *et seqq*.
[8] See article 24, paragraph 1, of the Convention.

Regulation 11 of the Annex to SOLAS focuses on the subject of mandatory ship-reporting systems. However, coastal States are also entitled to establish such reporting systems unilaterally in the territorial sea provided this does not result in undue interference with innocent passage of foreign ships.

The Basel Convention, which entered into force in 1992, is a cornerstone at international level in the regulation of transboundary movements of hazardous wastes and their disposal. In addition, coastal States are entitled to introduce appropriate national legislation to prevent and punish illegal traffic of such waste. Coastal States have absolute power in defining hazardous wastes.

(c) *Other measures initiated by the IMO*

Apart from measures provided for in international conventions, certain restrictions upon the freedom of navigation may be based upon measures taken by the IMO.

Through Annex 2 to IMO Resolution A.927(22), the IMO may designate Particularly Sensitive Sea Areas (PSSAs). These are areas which need special protection through the IMO owing to their recognized ecological, socio-economic or scientific significance and because they may be vulnerable to damage as a result of international shipping activities. The legal basis of such power of the IMO may be sought in articles 192 and 194 of the Convention as well as in article 211, paragraph 1, thereof. It is to be noted that the designation of a Particularly Sensitive Sea Area as such has no binding effect. However, the PSSA Guidelines[9] require the adoption by the IMO of "associated protective measures". The type of measures that may be adopted is left to the IMO. To date the IMO has prescribed ships' routing measures and ships' reporting systems under SOLAS, under MARPOL and a range of other measures adopted through its own resolutions. Insofar as such measures are based upon existing international agreements, the resulting infringements upon freedom of navigation may be considered justified.[10] But the view is also held that whatever is decided by the IMO is to be considered as conforming to the Convention.[11]

In this context the introduction of a mandatory pilotage system has become a controversial issue. Denmark, for example, is seeking the introduction of mandatory pilotage in parts of the Baltic Sea. In its application Denmark has stated:

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[9] See: International Maritime Organization/Marine Environment Protection Committee, Particular Sensitive Sea Areas, Compilation of official guidance documents and PSSAs adopted since 1990, 2007 edition.
[10] Regarding PSSAs see: J. Roberts / M. Tsamenyi / T. Workman / L. Johnson, The Western European PSSA Proposal: a "politically sensitive sea area", *Marine Policy* 29 (2005), pp. 431-440; K.M. Gjerde, Protecting Particularly Sensitive Sea Areas from Shipping: A Review of IMO's New PSSA guidelines, in: H. Thiel / J.A. Koslow (eds.), *Managing Risks to Biodiversity and the Environment on the High Sea, Including Tools Such as Marine Protected Areas – Scientific Requirements and Legal Aspects, Proceedings of the Expert Workshop held at the International Academy for Nature Conservation*, BfN-Skripten 43, German Federal Agency for Nature Conservation, 2001, pp. 123-131.
[11] See DOALOS LEG 87/16/1WP.3.

> "Denmark is aware of the fact that introducing mandatory pilotage directly on ships transiting international waters is not possible. However, Denmark holds the view that it is possible and not in conflict with international law to ensure the use of pilots for certain types of vessels in certain areas if all the Baltic Sea States introduce the proper and similar provisions in their national legislation aimed at national shippers and recipients of special ships carrying certain cargoes." [12]

> Australia and Papua New Guinea attempted to have a mandatory pilotage system introduced in the Torres Strait in connection with the designation of that strait as a Particularly Sensitive Sea Area by the IMO. The issues seems to have been intensively debated within the IMO and it is safe to say that the majority of States seem to have been reluctant to concede to the IMO the right to introduce a mandatory pilotage system in an international strait. This issue is certainly open for further legal reasoning.[13]

These are not the only examples where States may be seen to attempt to limit the freedom of navigation, either through legislative or enforcement measures beyond that which is foreseen in articles 211 and 220 of the Convention.

IV. Measures for the protection of security at sea

(a) *Measures taken on the basis of multilateral agreements*

The 2005 Protocol[14] to the 1988 Rome Convention (SUA Convention)[15] is one of those recent legal instruments which may, in the future, provide a basis for limiting the freedom of navigation.

The Protocol introduces a new article, article 8*bis*, concerning the procedures to be followed if a State Party desires to board a ship flying the flag of another State Party, outside the territorial sea of any State, when the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be, involved in the commission of an offence under the Convention. The authorization

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[12] See page 3, Note by Denmark "Mandatory Pilotage in Certain Areas of the Baltic Sea" of 11 May 2001; Helsinki Commission – Baltic Marine Environment Commission, Expert Group to prepare for the Extraordinary HELCOM Ministerial Meeting, First Meeting Copenhagen, Denmark, 21 May 2001; HELCOM EXTRA PREP 1/2001, Document No. 7.

[13] For details see: R.C. Beekman, PSSAs and Transit Passage – Australia's Pilotage System in the Torres Strait Challenges the IMO and UNCLOS, *Ocean Development and International Law* 38 (2007), pp. 325-357.

[14] Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, October 14, 2005. This international agreement, which supplements the Rome Convention, was developed in direct response to the events of 11 September 2001. For its legislative history see: C. Tiribelli, The time to update the 1988 Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, *Sri Lanka Journal of International Law 18* (2006), pp. 149-166.

[15] IMO Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf, March 13, 1988, entered into force on March 1, 1992; IMO Doc SUA/CONF/15; ILM 27 (1988), pp. 672-684.

and cooperation of the flag State is required before such boarding can take place.[16] Such authorization may be made in general or on an *ad hoc* basis.

(b) *Measures taken on the basis of bilateral arrangements*

The multilaterally mandated measures against the maritime transport of weapons of mass destruction are being supplemented by measures having a bilateral basis, namely the Proliferation Security Initiative (PSI). It is the objective of the PSI to interdict the "transfer or transport of weapons of mass destruction, their delivery systems, and related materials to and from states and non-state actors of proliferation concern".[17]

Most problematic is subparagraph 4.d of the PSI Statement of Interdiction Principles,[18] which calls on PSI participants:

> "To take appropriate actions to (1) stop and/or search in their internal waters, territorial seas, or contiguous zones (when declared) vessels that are reasonably suspected or carrying such cargoes to or from states or non-state actors of proliferation concern and to seize such cargoes that are identified; and (2) to enforce conditions on vessels entering or leaving their ports, internal waters or territorial seas that are reasonably suspected of carrying such cargoes, such as requiring that such vessels be subject to boarding, search, and seizure of such cargoes prior to entry."

Intercepting ships suspected of carrying weapons of mass destruction without the consent of the flag State raises the question of the compatibility of such action with the law of the sea, at least as a matter of principle. Under the Convention, the competence to intercept a vessel depends on where such action is undertaken: in the internal waters or territorial sea of a State; in the exclusive economic zone; or on the high seas.

As long as the interception of a vessel under a flag different from the intercepting State takes place in the internal waters of and by the coastal State concerned, such act cannot be contested from the point of view of the law of the sea. The situation is more complicated in the territorial sea. According to article 25 of the Convention, coastal States may take action only against passage which is not innocent. The provisions of the Convention concerning innocent passage are to be considered customary international law.

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[16] Article 8*bis* paragraph 4(b) of the 2005 Protocol.

[17] See, regarding this initiative: M. Byers, Policing the High Seas: The Proliferation Security Initiative, AJIL 98 (2004), pp. 526 *et seqq*.; C. Schaller, Die Unterbindung des Seetransports von Massenvernichtungswaffen, SWP-Studie, 2004*;* W. Heintschel von Heinegg, The Proliferation Security Initiative – Security vs. Freedom of Navigation, *Israel Yearbook on Human Rights* vol. 35 (2005), pp. 181 *et seqq*.; M. Malirsch / F. Prill, The Proliferation Security Initiative and the 2005 Protocol to the SUA Convention, ZaöRV 67 (2007), pp. 229-240; J.I. Garvey, The International Institutional Imperative for Countering the Spread of Weapons of Mass Destruction: Assessing the Proliferation Security Initiative, Journal of Conflict & Security Law 10 (2005), pp. 125-147; S.E. Logan, The Proliferation Security Initiative: Navigating the Legal Challenges, *Journal of Transnational Law & Policy 14* (2004-2005), pp. 253-274.

[18] Available at http://www.whitehouse.gov/news/releases/2003/09/20030904-11.html (last visit in April 2008).

According to article 19, paragraph 1, of the Convention, passage is not innocent if it is "prejudicial to the peace, good order or security of the coastal State"; the activities which shall be considered to be prejudicial to the peace, good order or security are listed in article 19, paragraph 2, of the Convention. Taken literally, article 19 of the Convention excludes the coastal State's limiting the exercise of passage with the view to protect the interest of the community of States; it may act in its own interests only. Although article 21 of the Convention gives the coastal State the authority to adopt laws and regulations in accordance with international law, this competence is limited. None of the issues which may be regulated on that basis would cover the mere transit of weapons of mass destruction. It should be noted in this context that the transport of nuclear substances is, according to article 23 of the Convention, not counter to the principle of innocent passage.[19] Finally, article 27 of the Convention cannot, at least not in itself, serve as a basis for controlling ships in transit. Here again, either the coastal State's action has to be taken in defence of its own interests (article 27, paragraph 1(a) and (b)) or it has to be taken at the request of the master of the ship or of the flag State or for suppression of illicit traffic in narcotic drugs or psychotropic substances (article 27, paragraph 1(c) and (d)). It has been argued that coastal States may declare the transport of weapons of mass destruction and the relevant software a crime under their national criminal law and take enforcement action on the basis of article 27 of the Convention.[20] Those advocating this position would have to argue that the crime had been committed on board the ship passing through the territorial sea and that this crime is of a kind to disturb the peace of the country or the good order of the territorial sea,[21] or that the consequences of the crime extend to the coastal State.[22] This interpretation constitutes a problematic circumvention of the inherent limits of article 27 of the Convention. On the same basis, the transport of nuclear waste or the transport of dangerous goods could be prohibited in its entirety.

(c) *The involvement of the Security Council*

It has been argued that passage can be considered to be not innocent if the conditions of S/RES/1540 (2004) of 28 April 2004 are met.[23] It has further been argued that States may, on the basis of S/RES/1540, enact national legislation declaring the transport of weapons of mass destruction through their territorial sea a criminal offence which would allow the coastal State concerned to take action, as prescribed in article 27, paragraph 1, of the Convention. Certainly S/RES/1540 provides that the proliferation of weapons of mass destruction constitutes a threat to international peace. Even if it is accepted that the Security Council may exercise such quasi-legislative power, this does not render the transit of such material automatically non-innocent.[24]

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[19] It is astonishing that this article is rarely referred to and that it is rarely stated that this is an article insisted upon by the United States.
[20] W. Heintschel von Heinegg (see note 17) at p. 193; S.E. Logan (see note 17) at p. 263.
[21] Article 27 paragraph 1(b) of the Convention.
[22] Article 27 paragraph 1(a) of the Convention.
[23] W. Heintschel von Heinegg (see note 17), at p. 194.
[24] See the definition in article 19 of the Convention.

The legal situation in respect of international straits raises particular problems, given the enhanced status of international navigation.

Whether ships carrying weapons of mass destruction which are not targeted against a particular State may be interdicted on the high seas by warships of another State without the consent of the flag State concerned is a matter of controversy.[25] The exclusive jurisdictional relationship between a flag State and one of its vessels on the high seas is well-rooted in customary international law. In the Lotus case, the Permanent Court of International Justice held that "vessels on the high seas are subject to no authority except that of the State whose flag they fly".[26] Article 92 of the Convention codifies this principle. Several exceptions are provided for: a waiver by the flag State if the vessel is without nationality, or if the vessel is engaged in piracy, slavery or unauthorized broadcasting.[27] Accordingly, there is a strict limit against boarding and inspection of a vessel under a flag different from that of the investigating vessel.

As already stated, Security Council Resolution S/RES/1540 (2004) affirms that "proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security" and requires, *inter alia*, all States to "adopt and enforce appropriate effective laws which prohibit any non-State actor to […] transport, transfer or use nuclear, chemical or biological weapons and their means of delivery."[28] The central question which remains is whether every State may take relevant countermeasures.

Measures taken in the face of the threat of terrorism may result in a temporary limitation of the freedom of navigation. Several Security Council resolutions, in particular S/RES/1373 (2001), form the necessary international law basis for maritime interception operations undertaken by various naval units in the Indian Ocean and off the coast of Somalia. Flag States may not object to ships under their flags being investigated by warships of other States, as long as the measures taken are proportionate.

These measures mandated multilaterally, namely by the Security Council, are to a certain extent supplemented by precautionary measures taken by port authorities in an attempt to provide stricter control of ships' cargoes. The container security initiative set up by the United States of America attempts to extend the security zone outwards by shifting security and screening activities to the border of the exporting country.[29] On 19 September 2002, Singapore became the first country to sign an agreement with the United States allowing U.S. customs inspectors to ensure that cargo shipping containers bound for that country are not used for terrorist attacks. Several other port authorities have agreed to join the U.S. container safety programme and more have joined. Such initiative is to be considered in the context of freedom of navigation too,

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[25] See W. Heintschel von Heinegg (see note 17), at p. 194; *S. Kaye*, The Proliferation Security Initiative in the Maritime Domain, *Israel Yearbook on Human Rights* 35 (2005), pp. 205-229, at p. 223.
[26] PCIJ Series A 1927 No. 9 at p. 25.
[27] See article 110 of the Convention.
[28] Preamble and paragraph 2 of S/RES/1540.
[29] For the details, see M. Florestal, Terror on the High Seas, *Brooklyn Law Review* 72 (2007), pp. 385-447.

since container ships which have not undergone this procedure face repercussions in U.S. ports.

V. Tentative conclusions

As indicated in the introduction, measures having the effect of or even intending to limit the freedom of navigation, transit passage or innocent passage are being taken multilaterally, namely by the IMO and the Security Council, on the basis of bilateral arrangements as well as unilaterally. There is no doubt that the objectives pursued, namely the protection of the marine environment and protection against the proliferation of weapons of mass destruction and against terrorism are – at least in principle – valid ones. Nevertheless, there are some concerns. It is worth considering whether the IMO or the Security Council really has a sound legal basis for acting as legislators, a function they exercise *de facto* in the cases mentioned in the context of this presentation. I hope I have been able to demonstrate that multilateral actions are being supplemented by measures taken on the basis of bilateral arrangements (PSI, Container Security Initiative, agreements on the interception of vessels) or even unilaterally (unilaterally declared mandatory pilotage). The reasons for such supplementary measures are dissatisfaction with the results achieved multilaterally and the desire for unilaterally tailored solutions. For vessels, this mixture of restrictions which seem to lack coherence is difficult to cope with. At present, the limitations faced may still be tolerable but if this trend prevails – and there are clear indications that it will – a reassessment may be called for.