THE REGULATION OF PASSAGE THROUGH THE TURKISH STRAITS AND THE MONTREUX CONVENTION (*)

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The collision in the Bosphorus on 15 November 1979, of the iron loaded Greek ship *Evryali* with the Roumanian tanker *Independenta* carrying 95.000 tons of crude oil, which caused loss of life and property and a great danger for Istanbul and its inhabitants, dramatically brought to light the urgent necessity of taking further measures for a more comprehensive and effective regulation of passage through the Turkish Straits and for the prevention, reduction and control of pollution from vessels. Most of the discussions concerning the legal measures that should be taken to remedy the present situation centered around the necessity of revising the relevant provisions of the *Convention Regarding the Regime of the Straits*, signed on 20 July 1936, at Montreux[1]. To initate the special amendment procedure

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1) **LNTS**, vol. 173, p. 213. The Montreux Convention is signed by Turkey; the three Black Sea Powers, Bulgaria, Roumania and the U.S.S.R.; two Balkan States, Greece and Yugoslavia; and the great powers of the time, France, Great Britian and Northern Ireland on behalf of all parts of the British Empire which were not separate members of the League of Nations, Australia and Japan. The Convention entered into force in accordance with its terms on 9 November 1936. Italy, signatory to the Lausanne Treaty of Peace of 24 July 1923, acceded to the Montreux Convention in accordance with article 27 of the Conven-

provided in article 29 of the Convention[2], without even first examining what can be done under the relevant provisions of the Con-

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tion, on May 1938. Japan, in article 8 of the Peace Treaty of 8 September 1951 renounced, "**all such rights and interests as it may derive from being a signatory power**" of the Montreux Convention (**UNTS**, vol. 136, p. 45. For Turkey's accession to this Peace Treaty see, **UNTS**, vol. 163, p. 385; **R.G.**, 17 Mayıs 1952, s. 8112).

2) Article 29 of the Montreux Convention is as follows.

> "At the expiry of each period of five years from the date of the entry into force of the present Convention each of the High Contracting Parties shall be entitled to initiate a proposal for amending one or more of the provisions of the present Convention.
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> To be valid, any request for revision formulated by one of the High Contracting Parties must be supported, in the case of modification to Articles 14 or 18 by one other High Contracting Party, and, in the case of modifications to any other Article, by two other Contracting Parties.
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> Any request for revisions thus supported must be notified to all the High Contracting Parties three months prior to the expiry of the current period of five years. This notification shall contain details of the proposed amendments and the reasons which have given rise to them.
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> Should it be found impossible to reach an agreement on these proposals through the diplomatic channel, the High Contracting Parties agree to be represented at a conference to be summoned for this purpose.
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> Such a conference may only take decisions by a unanimous vote, except as regards cases of revision involving Articles 14 and 18, for which a majority of three-quarters of the High Contracting Parties shall be sufficient.
>
> The said majority shall include three-quarters of the High Contracting Parties which are Black Sea Powers, including Turkey."

The Montreux Convention, in its article 28, provides for its termination. The Convention is said to remain in force for twenty years from the date of its entry into force. If, two years prior to the expiry of the said period, no contracting party shall give notice of denunciation, the Convention shall continue

vention and what can not properly be done by the revision of the Convention is, in our opinion, a bad policy and one which requires a very careful consideration before being adopted. It is submitted that to take the initative for the amendment of the Convention would not only be inopportune under the present circumstances but would also be unnecessary and inappropriate in bringing a solution to the problems under discussion.

I

The passage of foreign vessels through the Turkish Straits, which comprises the Strait of the Dardanelles, the Sea of Marmora and the Bosphorus, is today regulated by the Montreux Convention. As is stipulated in the preamble of the Convention, the purpose of the treaty is to regulate transit and navigation in such a manner as to safeguard the principle of freedom of transit and navigation through the Straits, "*within the framework of Turkish security and of the security, in the Black Sea, of the riparian States.*" The regime of passage provided in the Convention is particular especially in respect to the passage of foreign vessels of war in time of peace. It is this aspect of the Montreux Convention that has been so far extensively analyzed in the international law doctrine, Turkish and foreign. The key provision concerning the passage of merchant vessels, which comprises all the other vessels not covered by the term "*vessels of war*" as specifically defined in Annex II of the Convention, is article 2: "*In time of peace, merchant vessels shall enjoy complete freedom of transit and navigation in the Straits, by day and by night, under any flag and with any kind of cargo, without any formalities, except as provided in Article 3 below. No taxes or charges other than authorized by Annex I to the present Convention shall be levied by the Turkish authorities... Pilotage and towage remain optional.*"

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to be in force until two years after such a notice that shall be given. In the event of such denunciation, the contracting parties have agreed to be represented at a conference for the purpose of concluding a new convention. It is provided that, the principle of freedom of transit and navigation "**affirmed in Article 1 of the present Convention shall however continue without limit of time.**"

These provisions apply to ships which pass through the Straits without calling at a port in the Straits.

The freedom of innocent passage of foreign vessels through the territorial sea of the coastal states is also a well-established principle of the law of the sea. This principle however does not exclude the regulation of passage in accordance with the relevant rules of international law. This power of the coastal states, derived from their territorial sovereignty, is a recognized right which is itself regulated by law. The term, "*complete freedom of transit and navigation*" used in article 2 of the Convention, as interpreted in accordance with its ordinary meaning and in the light of the object and purpose of the treaty, does not have a meaning other than that provided in the law of the sea, valid at the time of the conclusion of the treaty, as well as at present. For, it is an established principle of treaty interpretation[3] that, unless a contrary intention is proved, words used in a treaty intended to be of a general kind and of continuous duration[4], do not have a fixed content and should be interpreted in the light of the subsequent evolution of international law. Neither the text of article 2 nor the preparatory work of the Conference and the circumstances in which it was concluded show that the contracting parties intended to give a special meaning to this term. On the contrary, the preparatory work of the Montreux Convention incontestably proves that it was not intended to deny to Turkey the legitimate rights of all the coastal states, such as the rights of police, criminal and civil jurisdiction and the right to require the innocence of passage as defined in the law of the sea.

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3) **Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978, p. 3, 33.**

4) Although the Montreux Convention provides in its article 29 a special procedure for its amendment and in its article 28 regulates the duration and termination of the treaty, which might be interpreted as a fact showing that the intention was not to design a permanent regime of passage through the Straits, such considerations do not apply to the principle of freedom of transit and navigation under discussion, since it is expressly stipulated in article 28 of the Convention that this principle will continue to be in force without limit of time.

The discussions on this point were mainly held in relation to article 12 of the Turkish draft, aimed at explicitly reserving the rights inherent in the territorial sovereignty over the Straits, which was as follows: "*Les dispositions de la présente Convention ne peuvent être étendues ni interprétées de manière à porter atteinte à la souveraineté de la Turquie sur les zones visées par cette Convention*"[5]. The preoccupation of Turkey in introducing this article was expressed by the Turkish Minister of Foreign Affairs, Mr. Aras, in the following words: "*C'est ainsi que le passage doit en tout cas être innocent et inoffensive. Nul ne peut penser que le libre passage doive entraîner des perturbations dans la zone des Détroits, dont les navires de passage seraient responsables, sans qu'une intervention quelconque de la Puissance riveraine puisse avoir lieu. On peut envisager les perturbations qui peuvent avoir lieu sur les navires eux-mêmes, ou les cas de crimes commis contre les riverains des navires eux-mêmes. Dans ces cas, la réglementation internationale devrait s'exercer à l'encontre des navires de passage.*"[6] "*De notre propre gré, nous acceptons une convention pour faciliter le trafic international, mais cette convention ne doit nullement, ni dans ses clauses ni dans sa portée, être interprétée ou appliquée de manière à toucher à la pleine souveraineté de la Turquie*"[7]. The opposition to the inclusion in the treaty of such an article was not based on the view that Turkey by becoming a party to the Convention would have renounced all the rights inherent in its sovereignty. It was rather directed to the use of the term "*sovereignty*", which according to some delegations would have led to a restrictive interpretation or evasion of the obligations expressly stipulated in the Convention. In the words of Lord Stanhope, the head of the United Kongdom delegation, "*Cet article, tel qu'il est rédigé, est cependant susceptible d'être interprété d'une autre façon. Il pourrait par exemple permettre à la Turquie de dire, une fois la Convention en vigueur: "La question touche à la souveraineté de la Turquie et, par conséquent, nous*

5) **Actes de la Conférence de Montreux (22 Juin - 20 Juillet). Comte Rendu des Séances Plénières et Procès - Verbal des Débats du Comité Technique**, imprimé par H. Vaillant - Carmanne S.A., Liege (Belgique), Octobre 1936, p. 287.
6) **ibid.**, p. 32.
7) **ibid.**, p. 57.

sommes en droit de modifier l'une quelconque des dispositions de la Convention afin de sauvegarder cette souveraineté"[8]. The nature of the problem facing the Conference is further illustrated by the new formulation of this article in the revised draft of 4 July, submitted by the United Kingdom delegation: "*Sous réserve des dispositions de la présente Convention qui ont été librement acceptée par la Turquie, la souveraineté de la Turquie demeure intacte sur son territoire et ses eaux territoriales.*"[9] In view of the fact that difficulties were encountered in finding a more suitable term which would on the one hand safeguard the legitimate rights of Turkey and on the other hand ensure respect for the obligations expressly undertaken[10], Mr. Aras proposed the repeal of this article, expressing however the following considerations: "*Des préoccupations tout à fait extérieures au sujet que nous étudions et qui ne touchent pas à l'intérêt de la Turquie ont donné lieu à des discussions concernant la rédaction de l'article 22. Comme la zone des Détroits est une partie intégrante et indivisible de la Turquie, comme nous sommes certains de notre souveraineté sur cette zone et que nous ne nous occupons ici que de le réglementation du régime du passage dans les Détroits, je propose la suppression pure et simple de cet article*"[11].

The above-mentioned discussions clearly show that the parties did not give a special meaning to the term, "*complete freedom of transit and navigation*" and did not thereby further restrict the powers of regulation traditionally recognized by international law. Turkey, under its powers of police, *(le droit de contrôle administratif et de police judiciaires, la police de la navigation)*, especially reserved and unchallenged, can regulate passage through the Straits in conformity with the express provisions of the Montreux Convention and in accordance with the applicable rules of the law of the sea.

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8) **ibid.**, p. 56.

9) Article 22, **ibid.**, p. 294.

10) For further discussions on this point see: **ibid.**, pp. 45-46, 123, 214, 236, 256-257.

11) **ibid.**, p. 157. For the corresponding above-cited pages in the translation to Turkish of the records of the Montreux Conference, see: Meray, S.L., Olcay, O., **Montreux Boğazlar Konferansı, Tutanaklar - Belgeler**, 1976, pp. 42, 64-65, 81-82, 188, 240, 326-327, 361-362, 394-395, 452.

II

In order to define the nature and extent of these regulatory powers, it will be more appropriate to proceed first by briefly examining the limitations imposed on coastal states by general rules of international law. Unless this is done, it will not be possible to evaluate properly the relevant provisions of the Montreux Convention namely article 2, 3, and Annex I, which are said to be more restrictive and therefore in need of revision.

The classical law of the sea, as formulated in the Geneva *Convention on the Territorial Sea and the Contiguous Zone* of 20 April 1958, does not differentiate between passage through the territorial sea and passage through the straits and, with one exception, namely that of non-suspension of innocent passage through straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state, subjects them to the same regime of innocent passage. The Third United Conference on the Law of the Sea however reveals a strong tendency to adopt different legal regimes in respect of passage through the territorial sea and passage through some straits used for international navigation. Consequently, we now have in the *ICNT*[12], an important document reflecting the radical changes that are taking place in the law of the sea, two sets of elaborate provisions, one concerning the rights and duties of the coastal states in respect to foreign vessels using the right of innocent passage in the territorial sea, the other concerning the rights and duties of the coastal states in respect to vessels using the right of transit passage in straits connecting two parts of the high seas and used in international navigation, the latter being a new concept introduced into the law of the sea in reaction to the new trend of extending coastal state jurisdiction in the seas. Before explaining the difference between these two legal regimes as regards the regulatory powers of the coastal

12) **Informal Composite Negotiating Text, Doc. A/CONF. 62/WP. 10,** 15 July 1977, **Third United Nations Conference on the Law of the Sea, Official Records**, vol. VIII. For a more comprehensive study in Turkish of the developments considered below see: Toluner, S., **Milletlerarası Hukuk Dersleri,** 1979, pp. 110-146, 285-305.

states on questions under discussion namely safety of navigation, regulation of marine traffic and, prevention, reduction and control of pollution, let us briefly state the general limitations imposed by internationa law on coastal state power of making laws and regulations.

The first general limitation is the principle of non-discrimination. This means, non-discrimination in respect to the nationality of the ship or in respect to whom, from whom or on behalf of whom the ship's cargo is carried. The principle its formulated in article 24 of the *ICNT* in the following terms: The coastal state shall not *"discriminate in form or in fact against the ship of ony State or agamst ships carrying cargoes to, from or on behalf of any State"*. We do not find the same formulation in article 42/2 of Part III which deals with straits used for international navigation. But the expression there used, *"shall not discriminate in form or in fact amongst foreign ships"*, can not have any other meaning, since the application of the principle of non-discrimination in respect to the ship itself will lead to absurd results, in view of the differential treatment of ships in some international agreements and regulations. The preparatory work of the Conference does not disclose any explanation on the meaning of the term, *"in form or in fact"*. According to the interpretation given to such terms in the international court decisions[13], this means the absence of discrimination in the words of the laws and regulations themselves (formal or legal equality), as well as in their effects.

The second general limitation is, what might be described as the obligation of not destroying the essence of the right of passage. This principle is expressed in the prohibition of imposing on foreign ships requirements which have the practical effect of denying or impairing the right of innocent passage (article 24/1(a)), a prohibition more emphatically repeated in the provisions concerning straits used for international navigation: *"Such laws and regulations shall not ... in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section."*

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13) See the Advisory Cpinion of April 6 th, 1935 of the Permanent Court of International Justice on the question of **Minority Schools in Albania, P.C.I.J., series A/B, No. 64,** p. 18-19.

(article 42/2) and, *"There shall be no suspension of transit passage."* (article, 44).

The third general limitation is the principle that charges may not be levied upon foreign ships by reason only of their passage through the territorial sea and that charges may be levied indiscriminately as payment only for specific services rendered to the ship (article 26).

The fourth general limitation arises from the nature of the activities conducted at sea and the necessity of subjecting them to uniform rules and regulations. The coastal states may not make laws and regulations applying to the design, construction, manning or equipment of foreign ships, except for giving effect to generally accepted rules and standards (article 21/2).

Viewed in the light of these well-established principles, it is difficult to see in what manner the Montreux Convention is more restrictive as regards the regulatory powers of Turkey over the Straits. The terms, *"by day and by night"*, *"under any flag and with any kind of cargo"*, *"without any formalities, except as provided in article 3"*, *"No taxes or charges other than those authorized by Annex I"* used in article 2 of the Convention are nothing but provisions affirming the above-mentioned principles. In fact, the elaborate provisions of article 2, 3 and Annex I would not have been necessary if some rights considered at that time exceptional such as sanitary control near the entrance of the Straits, taxes or charges levied for sanitary control, lighthouses, light and channel buoys and life saving activities, the amount of which is stipulated in Annex I of the Convention and which can only be changed unanimously by the contracting parties, were not recognized to Turkey.

The provision in article 2 of the Convention to the effect that *"pilotage and towage remain optional"*, under vigorous attack since the November incident, is correlated with article 5 which regulates the passage of neutral marchant vessels in time of war, Turkey being belligerent, and which provides that vessels shall enter the Straits by day and that their transit shall be effected by the route indicated in each case by the Turkish authorities. It may be inferred from article 6 of Annex I that in such cases pilotage and towage may

be made obligatory and be subject to taxes and charges the tariff of which will be published from time to time by the Turkish Government. The opposition to obligatory pilotage was mainly for financial reasons, for the extra burden it would impose on international commerce. To leave no doubt on this point, it was expressly stipulated in article 2 that in time of peace these services would be optional and would be rendered by the Turkish authorities at the request of the agent or master of any vessel.

It is clear, both from the text of article 2 and the preparatory work of the Convention that Turkey can not require obligatory pilotage, unless the Montreux Convention is amended in accordance with article 29. However, before proceeding to the revision of the Convention, an action certainly not in the interests of Turkey and in the interests of peace at this already very troubled region of the world, wouldn't it be more appropriate to think throughly over the reasons of the frequent accidents that are taking place in the Straits? If the sole reason for these accidents is the absence of pilots and if it is true that Turkey may not require the use of pilots without violating its international obligations, there is nothing which prevents Turkey, basing its action on its duty to give appropriate publicity to any dangers to navigation, to recommend its use to other states. Taking into account the fact that an accident at sea has become an expensive incident for the users of the Straits also, it will not be reasonable to base our action on the presupposition that the ships passing through the Straits would not in general affirmatively respond to such an appeal, if Turkey is able to render these services duly or adequately. The truth is that even for the more effective performance of these services, it is first necessary to improve the port installations and facilities and other navigation aids and facilities in the Straits, to the extent necessitated by the new requirements of international navigation, its increasing volume and its new characteristics.

It can not be denied that the establishment and maintenance of such installations and facilities requires great expenses, imposing a great financial burden on the already very squeezed budgets of the responsible administrations and is, therefore, at present impossible. Under these circumstances, it would only be just and equitable if the

user states will agree to contribute to such expenses, either through credits or directly by sharing them. That this problem is not particular to Turkey is proved by the inclusion in article 43 of the *ICNT* of an express provision to the effect that user states should by agreement cooperate with states bordering a strait used for international navigation in the establishment and maintenance of necessary navigation and safety aids or other improvements in aid of international navigation. Article 2 of the Montreux Convention deals with taxes and charges which are imposed on the ships themselves; it does not prohibit a demand for cooperation in this respect, made to the user states.

III

The last decade witnesses an intensified interest on the universal problem of prevention, reduction and control of marine pollution, the concrete evidence in the legal field being the elaborate provisions of the *ICNT*, which takes within its scope of regulation all the sources of marine pollution. The most progressive provisions of the *ICNT* on this subject are those related with pollution from vessels which includes important topics as the prevention of accidents, dealing with emergencies, ensuring the safety of operations at sea, prevention of intentional and unintentional discharges and, regulation of the design, construction, equipment, operation and manning of vessels (article 195/3 (b)).

One of the main causes of marine pollution is accidents at sea. Preventing collisions and minimizing their effects has been the subject of extensive international regulation, Turkey being a party to most of the treaties concluded in this field. The regulatory powers of the coastal states in this respect namely ensuring the safety of navigation and the regulation of marine traffic includes the right to designate or prescribe sea lanes and traffic separation schemes where necessary to promote the safe passage of ships (article 22, 41). This power of the coastal states is subjected to more stringent conditions as regards straits used for international navigation. Whereas in the territorial sea, the coastal state may designate such lanes and traffic separation schemes by taking into account the "*recommendations*" of competent international organizations, any channels customarily

used for international navigation, the special characteristics of particular ships and channels, the density of traffic, the sea lanes or traffic separation schemes designated or prescribed for the passage of ships in straits used for international navigation should conform to generally accepted regulations and any proposal of the coastal state to that effect should be referred to the competent organization for "*adoption*". The competent international organization in this field is the Inter - Governmental Maritime Consultative Organization *(IMCO)*, which has already adopted and recommended to governments for observance nearly 100 such schemes for areas of congested or converging traffic located all over the world[14].

There is nothing in the relevant provisions of the Montreux Convention which precludes Turkey from preparing a report that would indicate the special characteristics of the Turkish Straits and the proposals for measures that should be taken to improve the present chaotic situation in the Straits and, from referring it to *IMCO* for adoption. The conduct of vessels using a traffic separation scheme adopted by *IMCO* is already regulated in Rule 10 of the *International Regulations for Preventing Collisions at Sea* of 1972, an international convention prepared by *IMCO* to which Turkey is a party[15]. Specific regulation of marine traffic in the Straits can not be accomplished through the revision of the Montreux Convention, first because, such regulations have to be modified according to changing conditions and, secondly because, the subject by its very nature is not suitable for particular regulation in a diplomatic conference of the contracting parties. Any special regulation derogating from the generally accepted international rules or practices would not be opposable to the objecting non-contracting states, a point which would not be overlooked anyway in the formulation of new rules. If the revision of the Convention is sought merely to confirm a right which is not in need of confirmation namely the right to designate or prescribe sea lanes or traffic separation schemes, this will be a

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14) See **Doc. A/CONF. 62/27**, 10 June 1974, **Third United Nations Conference on the Law of the Sea, Official Records**, vol. III, p. 43, 46.

15) k.s. 7/14561, k.t. 12.12.1977, **R.G.**, 28 Nisan 1978, s. 16273.

futile endeavor entailing risks which might not be properly foreseen at present.

If one of the main causes of marine pollution is accidents at sea, the second one is discharges, intentional or unintentional, from vessels. This question is now the subject of a comprehensive treaty prepared within the framework of IMCO, namely, the *International Convention for the Prevention of Pollution from Ships* of 2 November 1973[16]. The Convention aims to achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharges of such substances. Regulations for the prevention of pollution by oil, pollution by noxious liquid substances carried in bulk, pollution by harmful substances other than those carried in bulk, pollution by sewage from ships and pollution by garbage from ships are included in five different annexes to the Convention, the last three of them being optional. An important feature of the Convention is the designation of special areas, amongst which is the Black Sea area comprising the Black Sea proper and the boundary between the Mediterranean and the Black Sea constituted by the parallel 41 °N, where oil discharges have been completely prohibited with minor and well-defined exceptions. The Convention excepts from its scope disposal of wastes into the sea by dumping, which is the subject of another treaty, namely, the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*, done at London on 13 November 1972[17].

The prevention, reduction and control of marine pollution from vessels has also been an extensively dicussed subject in the Third United Nations Conference on the Law of the Sea. Since it is impossible to make a detailed analysis of the very elaborate provisions now found in the *ICNT* (articles 193-238), we will confine ourself to the following brief statements about the general trends as regards the question of jurisdiction. The primary responsibility of making laws and regulations for the prevention, reduction and control of pollution from vessels, their enforcement and verification rests on the flag states or the state of registry. These states are under an

16) 1973 **ILM**, vol. XII, No. 6, p. 1319.
17) 1972 **ILM**, vol. XI, No. 6, p. 1291.

international obligation to make laws and regulations having at least the same effect as that of the generally accepted rules and standards established through the competent international organizations or general international conferences. Although coastal state jurisdiction is reserved over ships passing through the territorial sea, it is subjected to certain conditions. National laws and regulations on this subject may not hamper the innocent passage of foreign vessels. Where there are clear grounds for believing that a vessel navigating in the territorial sea of a state has during its passage therein violated such laws and regulations, the coastal state by its authorized officials may undertake the inspection of the vessel and may cause proceedings to be taken in accordance with its laws. The coastal state may not, however, delay a foreign vessel longer than is necessary for purposes of investigation and, without prejudice to any claim for loss or damage in a civil proceeding, shall release them on bond or other appropriate financial security. Coastal state jurisdiction in straits used for international navigation is more restricted. Ships passing through such straits are under the obligation of complying only with the generally accepted international regulations, procedures and practices for safety at sea and, the generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution by discharges of oil, oily wastes and other noxious substances (article 39/2, 42/1 (a),(b), 234). The enforcement power of the coastal state is reserved only in respect to violations of these regulations *"causing or threatening major damage to the marine environment of the straits"*.

It is clear from what has been said above that there is today an irreversable trend of defining the rights of the coastal states and the corresponding duties of the flag states in terms of the *generally acceptea international ruies, standards, procedures and practices*. This development, while circumscribing to a great extent the regulatory powers of the coastal states, is inevitable in view of the nature of the problem and the nature of the activity which is the source of the problem. No one can deny that combatting marine pollution is a many-sided complex problem, the solution of which requires an accumulation of scientific knowledge, as well as the accomodation of the different conflicting interests involved. It is not surprising, there-

fore, to find in the *ICNT* several provisions, - besides those stating the obligation of taking *"all necessary measures"* to prevent, reduce and control of marine pollution and using for this purpose *"the best practical means at their disposal and in accordance with their capabilities"*-, referring to the duty of states to cooperate on a global or regional basis, for the formulation and elaboration of international rules, standards, recommended practices, for establishing scientific criteria that will be used in their formulation and elaboration, for the promotion of studies, exchange of information and scientific data and, for undertaking programmes of scientific research.

Taking into account these new developments in the law of the sea, it is submitted that pollution from vessels in the Straits can only be properly prevented by becoming a party to the aforesaid international conventions, which have a strong candidacy for becoming the generally accepted rules, standards and practices referred to in the provisions of the *ICNT* dealing with straits or, by making national regulations conforming to the provisions of these conventions. It is not difficult to understand Turkey's lack of interest up to the present time to such agreements in general, an attitude shared by most of the less-developed countries who are unable to fulfiil, due to their financial difficulties, the obligations imposed as regards their own ships or the facilites provided for the effective implementation of these agreements. Though the difficulties confronting these states can not be under-estimated, one should not lose sight of the fact that persisting on such a negative attitude will reduce, with every passing day, the chances of improving their present financial situation and their future capabilities in this respect. Taking the November incident as an example, it is roughly estimated by the Turkish biologists that the spilling of crude oil in such quantities to the marine environment will cause a reduction of 50 % in the present stocks of living resources, reducing the present average total catch of 48.000 tons yer year to 24.000 tons in the coming five-year period. Leaving aside the other damages produced, the repercussions of such a loss on the national income and on the economic and social position of the Turkish fishermen can not be ignored and should serve as an incentive to take measures for the prevention or, at least, for the control of pollution in the Straits.

Whatever will be the future action of the responsible authorities, the point we would like to make here is that the Montreux Convention does not preclude Turkey from taking such measures in conformity with the relevant rules of international law. No state can consistently argue or has argued that because of the Montreux Convention, the Straits area has become a *"no man's land"* where foreign vessels are free to do what they are under the applicable rules of international law prohibited to do elsewhere. To seek the revision of the Convention to that effect is not only legally unnecessary but would also be inappropriate in view of the fact that a diplomatic conference of the ten or eleven contracting states is not a suitable forum for the solution of a problem which is technical in nature and which requires specialization on several fields, an ability hardly achieved within the few international organizations which have been working on this subject for many years.

In concluding, we have just a few words to add to the foregoing statements. In a period of rapid legal change and political conflict, to initiate the revision of a treaty such as the Montreux Convention is a step which should not be lightly taken. The Convention is in force since 1936, nearly half a century including periods of war and tension, without being amended or terminated, in spite of its provisions to that effect. This is a concrete proof of the fact that it has served well the interests of all the states concerned, so much so that, although there have been objections from time to time to some of its provisions, especially those regarding the passage of vessels of war which are in fact in the nature of special provisions as compared with the general rules of international law, no contracting state ventured the revision of the Convention up to the present time. To pave the way for the revision of the Convention is an attempt, the implications of which should be considered throughly by Turkey, more than any of the other contracting states. It is all the more difficult to appraise the merit of the proposals to that effect, frequently made after the November incident, when one does not lose sight of the fact that such proposals are related to the amendment of the provisions concerning the passage of merchant vessels which, apart from the one providing that pilotage and towage remain optional, are nothing but provisions affirming the general rules of international

law, leaving intact the regulatory powers of Turkey as defined by the applicable rules of international law. This is a point that schu!d be taken into consideration when proposing amendments to the Convention because any derogation from these general rules, even if unanimously adopted by the contracting states, would not be legally opposable to an objecting non-contracting state, a contingency which will not be overlooked by the contracting parties themselves in the revision of the Convention. To use the Montreux Convention as a pretext for not taking the necessary measures for the safety of navigation and for the prevention, reduction and control of pollution in the Straits and to think that the revision of the Convention will be the sole remedy to the solution of such problems, is not a sound policy and one, which in spite of the well-known difficulties, has to be changed, if we do not want to be confronted with other disasters in overcoming of which we might not be as lucky.