Legal Framework on the Marine Environment Protection of Straits used for International Navigation: Has It Been Effective in the Straits of Malacca and Singapore?

Hazmi Rusli* & R. Dremliuga** & Wan I. Talaat***

There are approximately 116 straits used for international navigation around the world. Some of them are important international maritime chokepoints, namely the Dover Strait, Hormuz Strait, Straits of Malacca and Singapore and the Russian straits across the Northeast Arctic Passage. Due to the high number of navigational traffic going through these straits, vessel-source pollution is endemic in these waters. This article examines the applicable international legal framework on protection of the marine environment of straits used for international navigation such as Part XII of the United Nations Convention on the Law of the Sea and other related legal measures like International Maritime Organization conventions on protection of the marine environment. This article concludes by stating that the present framework is not sufficient in properly balancing two vital interests in the maritime world – protection of the marine environment vis-à-vis shipping.

* Senior Lecturer, Faculty of Syariah and Law, Universiti Sains Islam Malaysia. LL.B., LL.M.(IIUM), Ph.D.(U. Wollongong). ORCID: http://orcid.org/0000-0003-0099-6875. The author may be contacted at: hazmirusli@usim.edu.my / Address: Faculty of Syariah and Law, Universiti Sains Islam Malaysia, 71800 Bandar Baru Nilai, Nilai, Negeri Sembilan, Malaysia

** Associate Professor. School of Law, Far Eastern Federal University, Vladivostok, Russia. Ph.D. (Far Eastern State Univ.). The author may be contacted at: Dremliuga.ri@dvfu.ru / Address: School of Law, Campus Far Eastern Federal University, Ajax, Vladivostok, Russia

*** Professor, Institute of Environment and Oceanography, University Malaysia Terengganu, Malaysia. LL.B.(IIUM), M.Sc./Ph.D. (U. Putra Malaysia). The author may be contacted at: wia@umt.edu.my/Address: Institute of Oceanography and Environment, Universiti Malaysia Terengganu, 21030 Kuala Terengganu, Terengganu, Malaysia

DOI: http://dx.doi.org/10.14330/jeail.2016.9.1.04
I. Introduction

The United Nations Convention on the Law of the Sea 1982 ("UNCLOS"), especially Part XII, provides a framework for the protection and preservation of the marine environment. It emphasizes the prevention, reduction and control of marine pollution. Most of the provisions on the protection and preservation of the marine environment are also customary laws binding all States.

The primary purpose of this paper is to discuss the international legal framework on the protection of the marine environment of straits used for international navigation from vessel-source pollution. This paper elaborates Part XII of the UNCLOS specifically examining the legal effect of Article 233 of the UNCLOS and other related measures like the International Maritime Organization ("IMO") conventions on protection of the marine environment of the Straits of Malacca and Singapore. This paper is composed of four parts including a short Introduction and Conclusion. Part two will examine the key conventions relating to the protection and preservation of the marine environment of straits used for international navigation including Part XII of the UNCLOS. Part three will discuss the nexus between Part XII and Article 233 of the UNCLOS.

II. Part XII of the UNCLOS

Part XII of the UNCLOS relates to the protection and preservation of the marine environment. The first article of Part XII of the UNCLOS provides that all States have a general obligation to protect and preserve the marine environment. Article 192 of the UNCLOS reads: "States have the obligation to protect and preserve the marine environment." Article 192 is an important component of the comprehensive approach of Part XII of the UNCLOS on safeguards of the marine environment; this provision reiterates the preamble of the UNCLOS and Principle 7 of the Stockholm Conference that all States have the obligation to protect and preserve the marine environment. The term 'States' in Article 192 refers to all States and does not only refer to State-parties to the UNCLOS. See M. NORDQUIST, IV UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY 36-40 (M. Nordquist, et al. eds., 1991); HAZMI RUSLI, Protecting Vital