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DIRE STRAITS: THE INTERNATIONAL MARITIME ORGANIZATION IN THE BOSPORUS AND DARDANELLES

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I. INTRODUCTION

"The problem of the [Turkish] Straits¹ is as old as written history[,] . . . and war . . . has been the normal means to its

1. The geographical importance of the Turkish Straits cannot be overemphasized. Less than a half-mile wide at its narrowest point, the Straits consist of a 180-mile waterway that separates Europe from Asia. Steve Coll, *Turkey's Dire Strait*, WASH. POST, June 14, 1993, at A 14, available in Westlaw, 1993 WL 2186677; Hugh Pope, *New Shipping Rules Bring Turkey Into Conflict With Russia, Neighbors*, L.A. TIMES, July 2, 1994, at 17. Beginning at the Strait of Bosphorus, a narrow channel slices through the ancient city of Istanbul, Turkey's largest city, and connects the Black Sea to the Marmara Sea. The Bosphorus is one of the world's most difficult waterways to navigate, and it is also one of the world's busiest shipping lanes. See *EIA Cites Importance of Key World Shipping Routes*, OIL & GAS J., March 7, 1994, at 38. [hereinafter EIA] (EIA denotes U.S. Energy Information Administration); David Knott, *Turkey's Squeeze on Black Sea Traffic*, OIL & GAS J., Mar. 7, 1994, at 34. See also, *Tanker and Freighter Collide in Turkey's Bosphorus Waterway*, OIL & GAS J., Mar. 21, 1994, at 39. The Strait of Dardanelles links the Marmara Sea to the Aegean Sea, which in turn provides access to the Mediterranean Sea.

The Turkish Straits connect the Central Asian energy fields to world markets. A senior National Security Council official predicts that the Caspian Sea basins will be the major source of world energy in the 21st century. See Martin Walker, *Battle of the Black Stuff*, GUARDIAN, Oct. 3, 1995, at T6. Exploration surveys reveal large oil reserves in Azerbaijan and Kazakhstan and large gas fields in Kazakhstan and Turkmenistan. A "pipeline" for the export of this energy has evolved via the maritime route from the Black Sea to the Mediterranean Sea.

solution."² Today, warlike solutions are no longer the norm; the International Maritime Organization³ facilitates problem-solving in the Turkish Straits. In 1993, the IMO assumed responsibility for adapting maritime regulation to meet the challenges of modern shipping in the Turkish Straits. Since then, the IMO has also provided a forum for international debate of the Turkish Straits problem among sovereigns, business, and environmental organizations. These players have contributed analyses of maritime traffic in the Turkish Straits which inform the IMO's mission there. As a source of modern international maritime regulations, and as a forum for informed debate, the IMO has advanced a peaceful evolution of maritime regulation in the Turkish Straits.

Nevertheless, inefficiency and noncompliance plague the IMO's management of maritime regulation in the Turkish Straits. Section II of this Comment sets forth the history of navigational regulation from the Montreux Convention⁴ to the present day. Section III discusses recent efforts to regulate the Straits. While Section IV notes promising aspects of the IMO's role, Section V addresses the IMO's shortcomings in regulating Turkish Straits navigation, including inefficiency and non-compliance, and recommends possible solutions. Finally, Section VI concludes that a return to violence is avoidable by strengthening IMO regulation in the Straits.

2. D.A. Routh, *The Montreux Convention Regarding the Régime of the Black Sea Straits*, SURV. INT'L AFF. 584 (Arnold J. Toynbee ed., 1936).

3. "[T]he International Maritime Organization [hereinafter IMO], [is] a United Nations agency . . . headquartered in London. [The agency], formerly the Intergovernmental Maritime Consultative Organization [hereinafter IMCO], was organized by international convention in 1948." THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 16.1 at 823 (2d ed. 1994).

4. Convention Regarding the Régime of the Straits, July 20, 1936, 173 L.N.T.S. 213 [hereinafter Montreux Convention] (signatories of the Montreux Convention include Great Britain and Northern Ireland, Australia, Bulgaria, France, Greece, Japan, Romania, Turkey, Union of Soviet Socialist Republics, and Yugoslavia).

II. REGULATING MARITIME REGULATION IN THE TURKISH STRAITS: THE MONTREUX CONVENTION

The Convention Regarding the Régime of the Straits governs transit and navigation in the Turkish Straits.⁵ This convention is commonly known as the "Montreux Convention," as Australia, Bulgaria, France, Great Britain, Greece, Japan, Romania, Turkey, the Union of Soviet Socialist Republics, and Yugoslavia signed the Convention in Montreux, Switzerland, in 1936.⁶

The leading principle of the Montreux Convention is "freedom of transit and navigation by sea in the Straits"⁷ of the "Dardanelles, the Sea of [Marmara] and the [Bosporus]."⁸ The Convention regulates this freedom of transit and navigation.⁹ Section I of the Convention concerns merchant vessels.¹⁰ Article 2 provides that "[i]n 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."¹¹ Pilotage and towage under the Montreux Convention are optional.¹²

5. William L. Schachte, Jr. & J. Peter A. Bernhardt, *International Straits and Navigational Freedoms*, 33 VA. J. INT'L L. 527, 547 (1993).

6. Telephone Interview with Roger Kohn, Chief Information Officer, International Maritime Organization (Jan. 17, 1996); *see also* Montreux Convention, *supra* note 4.

7. Montreux Convention, *supra* note 4, art. 1, 173 L.N.T.S. at 219.

8. Montreux Convention, *supra* note 4, pmb., 173 L.N.T.S. at 215.

9. Montreux Convention, *supra* note 4, art. 1, 173 L.N.T.S. at 219.

10. Montreux Convention, *supra* note 4, § 1, 173 L.N.T.S. at 219, 221.

11. Montreux Convention, *supra* note 4, art. 2, 173 L.N.T.S. at 219.

12. Montreux Convention, *supra* note 4, art. 4, 173 L.N.T.S. at 219.

Although the principle of "freedom of transit and navigation by sea" remains enshrined in the Montreux Convention,¹³ maritime traffic through the Turkish Straits has increased dramatically since the signing of the Convention in 1936. At that time, "an average of 17 ships, with a maximum weight of 13 tons, sailed the straits" daily;¹⁴ today, forty thousand ships sail through the Bosphorus annually.¹⁵ Half of these ships are Russian vessels transporting an annual total of 20 billion gallons of oil and chemicals.¹⁶

The Bosphorus and Dardanelles are now one of six key oil tanker routes in the world.¹⁷ "Cutthroat market conditions, scant international regulation, and aging, poorly run ships . . . strain" the world-wide tanker system.¹⁸ The U.S. Energy Information Administration rated the possibility of accidental oil supply disruptions greatest among major oil shipping lanes for supplies moving through the Bosphorus.¹⁹

According to scientists and environmentalists, oil tankers passing through the Turkish Straits contribute to the suffocation of

13. Montreux Convention, *supra* note 4, art. 1, 173 L.N.T.S. at 219.

14. John Pomfret, *Political Shoals Imperil Role of Turkish Strait*, WASH. POST, Apr. 27, 1995, at A29.

15. Barry Newman, *Dire Strait: Oil, Water, and Politics Make a Volatile Mix in Crowded Bosphorus*, WALL ST. J., Aug. 24, 1994, at A1.

16. *Id.*

17. The six key oil tanker routes in the world are (1) the Strait of Hormuz from the Persian Gulf to the Gulf of Oman and the Arabian Sea; (2) the Strait of Malacca from the northern Indian Ocean into the South China Sea and Pacific Ocean; (3) the Bosphorus from the Black Sea to the Mediterranean Sea; (4) the Suez Canal from the Red Sea to the Mediterranean Sea; (5) the Rotterdam Harbor from the North Sea to the Rhine River; and (6) the Panama Canal from the Pacific Ocean to the Caribbean Sea. *EIA, supra* note 1, at 38.

18. Ken Wells, Daniel Machalaba, & Caleb Solomon, *Craft Warning: Unsafe Oil Tankers and Ill-Trained Crews Threaten Further Spills*, WALL ST. J. EUR., Feb. 15, 1993, at 1.

19. *EIA, supra* note 1, at 38.

the Black Sea.²⁰ Smothered by international oil spills, the Black Sea is gradually losing the oxygen layers near its surface that have supported bountiful marine life for centuries.²¹

III. THE INTERPLAY BETWEEN THE INTERNATIONAL MARITIME ORGANIZATION AND TURKEY

A. *Modern Efforts to Regulate the Straits Via the IMO*

In March 1993, Turkey invited the Maritime Safety Committee of the IMO "to take note of . . . maritime traffic and navigational risks and hazards in the Turkish Straits."²² A specialized agency, the IMO's primary functions are to

(1) consider and make recommendations regarding international maritime shipping; (2) provide for the drafting of conventions, agreements, or other suitable instruments; (3) provide machinery for consultation among IMO members; (4) perform functions assigned to the IMO by international instruments; and (5) facilitate technical cooperation within the scope of the IMO.²³

At the 62nd session of the Maritime Safety Committee, Turkey proposed a "traffic separation scheme and traffic routeing/lanes [sic]" for maritime traffic through the Bosphorus and

20. Coll, *supra* note 1, at A14.

21. *Id.*

22. Turkey, *Navigational and Environmental Safety in the Turkish Straits*, U.N. IMO Maritime Safety Comm., 62d Sess., Agenda Item 23, at 1, U.N. Doc. MSC 62/INF. 10 (1993).

23. See Convention on the Intergovernmental Maritime Consultative Organization, Mar. 6, 1948, art. 3, 9 U.S.T. 621, 624, 289 U.N.T.S. 3, 50, as amended, Nov. 17, 1977, T.I.A.S. No. 11094, at 6-7.

Dardanelles.²⁴ Turkey stated that it sought "to protect the public and environment as well as to ensure the safety of navigation and efficiency of traffic in the straits."²⁵

The Oil Companies International Marine Forum, in its report submitted to the IMO's Sub-Committee on Safety and Navigation, shared Turkey's concerns regarding maritime safety.²⁶ Drawing from a study of shipping and navigation in the Turkish Straits, the Forum made recommendations to improve navigational safety in the Bosphorus and Dardanelles.²⁷

On May 16, 1994, the IMO opened a ten day conference on maritime navigation through the Bosphorus and Dardanelles.²⁸ During this conference, the Maritime Safety Committee adopted traffic separation schemes for the Turkish Straits and made other recommendations.²⁹ The IMO provided that if a vessel cannot comply with the traffic separation schemes, then "the competent authority may temporarily suspend two-way traffic and regulate one-way traffic to maintain a safe distance between vessels."³⁰ Additionally, the IMO strongly advised "vessels intending to pass through the Straits . . . to give prior information on the size of the

24. See Turkey, *supra* note 22, at 4.

25. *Id.*

26. Oil Companies International Marine Forum, *Safety of Navigation Through the Bosphorus Straits, Sea of Marmara and Dardanelles*, U.N. IMO Sub. Comm. on Safety of Navigation, 39th Sess., Agenda Item 3, at 1, U.N. Doc. NAV 39/3/10 (1993) [hereinafter OCIMF Report].

27. *Id.*

28. Gareth Jenkins, *Ankara Says Changes Are Only Amendments to Port Regulations as Moscow Cites Montreux Convention*, LLOYD'S LIST INT'L, May 17, 1994, at 12.

29. *Rules and Recommendations on Navigation Through the Strait of Istanbul, the Strait of Çanakkale and Marmara Sea* (visited Oct. 6, 1996), <<http://inter.mfa.gov.tr:80/grupf/navigate.htm>> [hereinafter IMO Rules and Recommendations].

30. *Id.* at 1.3.

vessel . . . and whether [it was] carrying any hazardous and noxious cargo."³¹ Finally, the IMO advised "[v]essels having a maximum draught of 15 m [meters] or more and vessels over 200 m [meters] in overall length . . . to navigate the straits in daylight."³²

B. *Turkey's Response*

Turkey considered the IMO Rules and Recommendations insufficient, and unilaterally introduced new navigation rules in July 1994.³³ The most important of the Turkish Regulations applicable to large vessels include the following:

[Arts. 42, 52] During the transit of large vessels carrying dangerous cargo including oil and its derivatives the Straits will be closed to all other maritime traffic. A similar vessel [may] not enter the Straits until the previous one has cleared it.

. . . .

[Art. 29] Advance notification on such vessels and their cargo is required before the vessels enter through the Straits. This information will be reviewed to determine the most suitable timing and conditions for the transit of the vessel.

. . . .

[Arts. 40, 41, 50, 51] Vessel traffic through the Straits of Istanbul [Bosporus] and Çanakkale

31. *Id.* at 2.2.

32. *Id.* at 4.1.

33. *Maritime Traffic Regulations for the Turkish Straits and the Marmara Region* (visited Oct. 6, 1996) <<http://inter.mfa.gov.tr:80/GRUPF/marimenu.htm>> [hereinafter Turkish Regulations]. See also *Turkish Regulations Regarding Maritime Traffic in the Turkish Straits and Sea of Marmara* (visited Oct. 6, 1996) <<http://www.mfa.gov.tr./GRUPI/maritime.htm>>.

[Dardanelles] will be conducted subject to conditions such as good visibility and calm currents.³⁴

Importantly, there are significant differences between the IMO Rules and Recommendations and the Turkish Regulations. IMO Rule 1.3 regulates maritime traffic to maintain a safe distance between vessels only when vessels cannot comply with the traffic separation schemes.³⁵ Articles 42 and 52 of the Turkish Regulations, on the other hand, close the straits to other maritime traffic during the transit of large vessels carrying hazardous cargo.³⁶

Further, the Turkish Regulations convert several of the IMO Recommendations into rules. While the IMO strongly advises that vessels give prior information on vessel size and whether vessels carry hazardous or noxious cargo,³⁷ Article 29 of the Turkish Regulations requires advance notification of large vessels and the contents of their cargo.³⁸ Similarly, where the IMO advises large vessels to navigate the Straits by daylight,³⁹ the Turkish Regulations instead take the approach of restricting maritime traffic at any time, if there is poor visibility and/or unsatisfactory currents.⁴⁰ By converting these IMO Recommendations into rules, Turkey has accumulated more power over the Straits.

34. Turkish Regulations, *supra* note 33; see also Russian Federation, *Non-Conformity of the Turkish Regulations for Traffic Order in the Area of the Straits and the Sea of Marmara to the Rules and Recommendations Adopted by the Maritime Safety Committee*, U.N. IMO Maritime Safety Comm., 65th Sess., Agenda Item 19, at 3, U.N. Doc. MSC 65/19/2 (1995).

35. IMO Rules and Recommendations, *supra* note 29.

36. Turkish Regulations, *supra* note 33.

37. IMO Rules and Recommendations, *supra* note 29, at 2.2.

38. Turkish Regulations, *supra* note 33.

39. IMO Rules and Recommendations, *supra* note 29 at 4.1.

40. Turkish Regulations, *supra* note 33, arts. 40-41, 50-51.

Turkey's accretion of power over the Straits alarmed several Member States in the IMO.⁴¹ A substantial number of delegations believe that the Turkish Regulations do not comply with the IMO Rules and Recommendations, international law, and the Montreux Convention.⁴² In December 1994, the IMO's Maritime Safety Committee "agreed that any . . . difficulty regarding the conformity of the Turkish national rules and regulations with the IMO Rules and Recommendations should be dealt with within the Organization."⁴³ The Legal Committee of the IMO believed that the Maritime Safety Committee should resolve the issue, possibly through a working group.⁴⁴

The Maritime Safety Committee and the IMO Assembly continued to discuss the Straits question throughout 1995.⁴⁵ The Russian delegation complained that the Turkish Regulations resulted in delay and navigational risks in the Straits.⁴⁶ The Bulgarian delegation questioned the effectiveness of the IMO's Rules and Recommendations.⁴⁷ In response, the Chairman of the Maritime

41. Extract from *Report of the Maritime Safety Committee*, U.N. IMO Maritime Safety Comm. 64th Sess., at 11-14, U.N. Doc. MSC 64/22 (1994) [hereinafter *Report of the Maritime Safety Committee*].

42. *Id.*

43. Report of the Maritime Safety Committee, *supra* note 41, at 9.

44. *Id.* at 10.

45. *Rules and Recommendations on Navigation Through the Strait of Istanbul, Strait of Çanakkale and the Marmara Sea*, U.N. IMO Assembly, 19th Sess., at 10, U.N. Doc. A 19/10 (1995) [hereinafter *Rules and Recommendations*] (U.S. Coast Guard Lieutenant Commander Steve Poulin contributed this source and the sources in footnotes 63, 64, and 98 to the author's file).

46. Russian Federation, *Non-Conformity of the Turkish Regulations for Traffic Order in the Area of the Straits and the Sea of Marmara to the Rules and Recommendations Adopted by the Maritime Safety Committee*, U.N. IMO Maritime Safety Comm., 65th Sess., Agenda Item 19, at 4, U.N. Doc. MSC 65/19/2 (1995).

47. *Statement by the Delegation of Bulgaria*, U.N. IMO Maritime Safety Comm., 65th Sess., Annex 37, at 2, U.N. Doc. MSC 65/25/Add. 2 (1995).

Safety Committee referred technical issues to the Sub-Committee's Working Group on Ships' Routeing.⁴⁸

IV. PROMISING ASPECTS OF THE IMO'S ROLE

A. *The IMO: A Forum for International Problem-Solving*

In the Turkish Straits dispute, the IMO has provided a forum where sovereigns, businesses, and environmental organizations contribute to the IMO's decision-making process. Initially, Turkey petitioned the IMO to consider maritime traffic in the Bosphorus and Dardanelles.⁴⁹ Subsequently, the Oil Companies International Marine Forum submitted an independent report on navigational safety through the Bosphorus and Dardanelles.⁵⁰ In May 1994, the 147 sovereign members of the IMO met to discuss the issue at the Maritime Safety Committee meeting.⁵¹ Through observer status at the IMO, the environmental organization, Friends of the Earth International, and the shipping organizations, BIMCO and International Chambers of Shipping, were also able to contribute to the IMO debates.⁵²

The IMO's inclusion of such observer organizations along with sovereigns in the debates provided fuller consideration of the contours of the Turkish Straits question. The sovereigns, business organizations, and environmentalists had varying priorities in the Bosphorus and Dardanelles. Turkey's safety, environmental, and economic concerns clashed with Russia's freedom of passage and economic concerns. The shipping industry was primarily concerned with oil export, while the Friends of the Earth International's

48. Rules and Recommendations, *supra* note 45, at 10-11.

49. Turkey, *supra* note 22, at 1.

50. OCIMF Report, *supra* note 26.

51. Jonathan Bearman, *Bosphorus Wreck Gives Turkey Momentum to Tighten Controls*, OIL DAILY, Mar. 17, 1994, at 3.

52. John Spruyt, *IMO Finds Strident Friends in its Corner*, LLOYD'S LIST INT'L, Aug. 8, 1994, available in Westlaw, 1994 WL 8809711.

priority was the environment. These diverse perspectives provide a more complete picture of the issues in the Bosphorus and the Dardanelles.

Significantly, the observers independently and directly expressed their views, dispelling the myth that sovereigns are normally preoccupied with matters of state and are not able to adequately represent special interest groups such as shipping organizations or environmentalists. For example, while Russia is concerned with the protection of the marine environment,⁵³ Russia chose instead to elevate her economic and political concerns over her environmental interests in the Turkish Straits dispute.⁵⁴ Through direct and independent representation, however, the shipping organizations and the environmental organization advocated their views, undiluted by the policies of their sovereigns.

B. *Studied Analyses of Maritime Traffic in the Bosphorus and Dardanelles*

By 1997, the IMO should have the opportunity to evaluate at least six different authors' analyses of maritime traffic in the Bosphorus and Dardanelles including: (1) a Note by Turkey on *Navigational and Environmental Safety in the Turkish Straits*,⁵⁵ (2) *Safety of Navigation Through the Bosphorus Straits, Sea of Marmara and Dardanelles* by the Oil Companies International Marine Forum;⁵⁶ (3) findings on environmental and navigational safety in the Bosphorus by Lloyd's Register of Shipping;⁵⁷ (4) a study on

53. Report of the Maritime Safety Committee, *supra* note 41, at 11.

54. *Turkey Move on Straits Angers Russia*, PLATT'S OILGRAM NEWS, July 6, 1994, at 3.

55. Turkey, *supra* note 22.

56. OCIMF Report, *supra* note 26.

57. *IMO's Bosphorus Plans Gain Shippers' Support*, PLATT'S OILGRAM NEWS, May 31, 1994, at 3 [hereinafter IMO's Bosphorus Plans].

tanker traffic in the Bosphorus by Murray Fenton of London,⁵⁸ (5) a presentation on oil tanker traffic in the Bosphorus by Friends of the Earth International,⁵⁹ and (6) the IMO's examination of the application of its rules governing the Bosphorus.⁶⁰

The authors' diversity can only benefit the IMO's analysis of the Turkish Straits dispute. First, these diverse reports should help to eliminate bias from the IMO's evaluation of maritime traffic in the Bosphorus and Dardanelles. Second, these authors disseminate information to the IMO from the major interested parties of the Turkish Straits dispute: Turkey, the shipping industry, environmental activists, and the IMO itself.

The reports provide a reasoned analysis of maritime traffic in the Bosphorus and Dardanelles. The navigational characteristics and risks of the Turkish Straits are evaluated by Turkey's Note, *Navigational and Environmental Safety in the Turkish Straits*,⁶¹ and Safety of Navigation Through the Bosphorus Straits, Sea of Marmara and Dardanelles⁶² by the Oil Companies International Marine Forum. The Note by Turkey⁶³ and the reports by the Oil

58. John M. Brown, *Lloyd's to Study Bosphorus Safety*, FIN. TIMES, Nov. 2, 1993, at 3.

59. Spruyt, *supra* note 52.

60. Rules and Recommendations, *supra* note 45, at 10-11.

61. Turkey, *supra* note 22.

62. OCIMF Report, *supra* note 26.

63. Turkey, *supra* note 22. For example, Turkey recommends that "all vessels should use the pilotage services provided by the coastal authorities when navigating in the Turkish straits." *Id.* at 5.

Companies International Marine Forum,⁶⁴ Lloyd's Register,⁶⁵ and Murray Fenton⁶⁶ provide recommendations for the regulation of maritime traffic in the Bosphorus and Dardanelles. The Friends of the Earth International presentation evaluates the IMO's role,⁶⁷ while the IMO will evaluate itself in its report on the application of the IMO Rules and Recommendations in the Bosphorus and Dardanelles.⁶⁸

C. *Contribution to Peaceful Resolution of the Turkish Straits Question*

Most importantly, the IMO has averted the use of force in the Turkish Straits dispute. This accomplishment is significant considering that the first wars of the post-Cold War era, the Gulf War and Russia's battle for pipelines in Chechnya, revolved around oil.⁶⁹ Violent power struggles over oil have already begun to sweep through Central Asia. The attempted assassination of Georgian leader Eduard Shevardnadze is viewed as a Russian-inspired warning shot intended to deter Mr. Shevardnadze from supporting

64. OCIMF Report, *supra* note 26. For example, the OCIMF "strongly recommends that there should be a maximum vessel size limit for transit of [the Turkish Straits] based on dimensions such as length overall, beam and draft." *Id.* at 6.

65. IMO's Bosphorus Plans, *supra* note 57. For example, Lloyd's Register recommends that if the IMO implemented additional safety measures, large ships could navigate the Bosphorus safely. *Id.*

66. Brown, *supra* note 58. For example, Murray Fenton of London recommends that "limited increases in tanker traffic could be accommodated with a new radar system." *Id.*

67. Spruyt, *supra* note 52. For example, Friends of the Earth International recommends creating a stronger IMO. *Id.*

68. Rules and Recommendations, *supra* note 45, at 10-11.

69. Walker, *supra* note 1 at T6.

an oil pipeline through Georgia.⁷⁰ Russia put tremendous pressure on Azerbaijan for a stake in its oil consortium by supporting its enemy Armenia and arranging coups within Azerbaijan.⁷¹

The West has also suggested that the use of force is a viable means to protect energy reserves in Central Asia. For example, former Senator Robert Dole asserted that U.S. military presence and diplomacy need to be adjusted in order to protect U.S. oil and gas interests in the Caucasus, Siberia, and Kazakhstan.⁷² Many analysts regard the Black Sea region as a "crisis arch" that may become a theater of major conflicts where the West will inevitably confront the Muslim world in the 21st century.⁷³

Presently, the IMO has contributed to the containment of two historical enemies, Russia and Turkey, who have critical economic and political interests in the export of oil from Central Asia. The IMO has provided a forum where the sovereigns can reasonably discuss oil exportation through the Bosphorus and Dardanelles and where they can commonly seek resolution of the question. Consequently, the IMO has played a significant role in averting the use of force in the Turkish Straits.

V. DIFFICULTIES IN REGULATING TURKISH STRAITS NAVIGATION

A. *Inefficiency*

The IMO has discussed regulation of the Turkish Straits for three years and plans further consideration of the issue. This prolonged debate causes ongoing navigational risks to remain in the Bosphorus and Dardanelles. Member States have become frustrated

70. Phil Reeves, *Russia Fights for Pipeline Deal*, INDEPENDENT, Oct. 9, 1995, available in Westlaw, ALLNEWS, 1995 WL 1080584.

71. Simon S. Montefiore, *Flashpoint Looms in the Great Game*, TIMES (London), Oct. 8, 1995, at 25.

72. Walker, *supra* note 1.

73. Dmitry Sergeyev, *Great is Russia But There Is Nowhere To Retreat From Sevastopol*, RUSSIAN PRESS DIG., June 8, 1995, available in Westlaw, 1995 WL 7718292.

with the IMO rules, recommendations, and processes. To date, the IMO has made little progress in implementing safe navigation in the Turkish Straits.

While Turkey invited the IMO to consider navigational risks and hazards in the Straits in March 1993,⁷⁴ by March 1994, the IMO failed to implement any safety measures in the Bosphorus and Dardanelles. Only after a serious oil tanker collision on March 13, 1994, which killed 30 people and injured 26 others,⁷⁵ did the IMO take any action concerning maritime traffic in the Bosphorus and the Dardanelles. Finally, in May 1994, the IMO held a ten-day conference on maritime navigation through the Turkish Straits.⁷⁶ At this conference, the Maritime Safety Committee adopted traffic separation schemes and recommendations for the Bosphorus and Dardanelles.⁷⁷ The IMO Rules and Recommendations entered into force on November 24, 1994,⁷⁸ over a year and a half after Turkey's petition.

The Turkish Straits issue has come before the IMO at least eight different times in four different forums since 1993.⁷⁹ The

74. Turkey, *supra* note 22, at 1.

75. *Bosphorus Spill Spotlights Its Problems*, PLATT'S OILGRAM NEWS, Mar. 15, 1994, at 1.

76. Jenkins, *supra* note 28.

77. Sean Moloney, *Group Protests at Rigid Bosphorus Controls*, LLOYD'S LIST INT'L, May 25, 1994, at 1.

78. IMO Rules and Recommendations, *supra* note 29, at 1.

79. Following is a time line of the IMO's involvement in the Turkish Straits:

- March 1993—Turkey invited the Maritime Safety Committee of the IMO to take note of maritime traffic and navigational risks and hazards in the Turkish Straits. Turkey, *supra* note 22, at 1.
- June 1993—The OCIMF reported concerns of maritime safety in the Turkish Straits to the OCIMFO's Sub-Committee on Safety and Navigation. OCIMF Report, *supra* note 26.
- Sept. 1993—Turkey's proposal requiring all vessels to use coastal pilots when transiting the Turkish Straits was on the agenda of the IMO's Safety of Navigation Sub-Committee meeting. Sean Moloney, *Bosphorus Pilot*

IMO's lack of progress provoked Turkey to term the IMO debate an "exercise in futility."⁸⁰

Indeed, the IMO's Rules and Recommendations are minimal compared with regulation of similar straits. In fact, in the Panama and Suez canals,⁸¹ two other narrow, key oil tanker routes in the world, shipping is rigorously controlled.⁸² For example, where the Panama Canal Regulations generally require that "no vessel shall pass through . . . the Canal . . . without having a Panama Canal pilot on board,"⁸³ the IMO Rules and Recommendations simply "recommend[]"⁸⁴ that "[m]asters of vessels passing through the [Turkish] Straits . . . avail themselves of the services of a qualified

Plan Talks, LLOYD'S LIST INT'L, Sept. 6, 1993, at 3.

- May 1994—The IMO's Maritime Safety Committee held a ten-day conference on the Turkish Straits dispute. Jenkins, *supra* note 28.
- Dec. 1994—The IMO's Legal Committee discussed conformity of the Turkish national rules and regulations with the IMO Rules and Recommendations. *Report of the Maritime Safety Committee*, *supra* note 41, at 9-10.
- Dec. 1994—The Maritime Safety Committee considered conformity of the Turkish regulations with the IMO's Rules and Recommendations. *Id.*
- Feb. 1995—The Maritime Safety Committee continued to discuss conformity of the Turkish Regulations with the IMO's Rules and Recommendations. Russian Federation, *supra* note 46.
- Nov. 1995—The government of the Russian Federation proposed amendments to the IMO's Rules and Recommendations in the IMO's Assembly. Russian Federation, *Proposed Draft Assembly Resolution on Ships' Routeing*, U.N. IMO Assembly, 19th Sess., Agenda Item 10, U.N. Doc. A 19/10/6 (1995).

80. Statement by the Delegation of Turkey, U.N. IMO Maritime Safety Comm., 65th Sess., Annex 38, at 4, U.N. Doc. MSC 65/25/Add. 2 (1995).

81. *Istanbul Straits Face New Woes*, DALLAS MORNING NEWS, Oct. 22, 1994, at 44A [hereinafter *Istanbul Straits*].

82. EIA, *supra* note 1.

83. Panama Canal Regulations, 35 C.F.R. § 105.1 (1995).

84. IMO Rules and Recommendations, *supra* note 29, at 3.1.

pilot."⁸⁵ Further, while the Suez Canal regularly operates as a one-way waterway,⁸⁶ the "competent authority [of the Turkish Straits] may temporarily suspend two-way traffic and regulate one-way traffic to maintain a safe distance between vessels"⁸⁷ only "to ensure safe transit of vessels which cannot comply with the [traffic separation schemes]."⁸⁸ In contrast to the comprehensive regulation of the Panama and Suez canals, the IMO's Rules and Recommendations provide almost no controls for the Turkish Straits.⁸⁹

B. *Non-compliance with the IMO's Rules, Recommendations, and Processes: Turkey and Russia*

To protect their interests in the Bosphorus and Dardanelles, Russia and Turkey acted unilaterally, in contravention of IMO Rules and Recommendations. Although the IMO issued its Rules and Recommendations in May 1994,⁹⁰ Turkey unilaterally implemented its own regulations in July of that year.⁹¹ Turkey clearly acted out of justifiable concern for the physical and environmental security of Istanbul's ten million inhabitants living on the Bosphorus shores.⁹² Whether the Turkish Regulations comply with international law, the Montreux Convention, and the

85. *Id.*

86. *Extended Reporting Schedule Allows Room For Late Arrivals*, LLOYD'S LIST INT'L, Aug. 30, 1994, at 7.

87. IMO Rules and Recommendations, *supra* note 29, at 1.3.

88. *Id.*

89. *See* Istanbul Straits, *supra* note 81.

90. Moloney, *supra* note 79.

91. Turkish Regulations, *supra* note 33, at 1.

92. *Id.*

IMO Rules and Recommendations is questionable.⁹³ In fact, the Russian Federation believed that application of the Turkish Regulations to "all ships navigating in the Straits and the Sea of Marmara"⁹⁴ contravened⁹⁵ the U.N. Convention on the Law of the Sea,⁹⁶ specifically Article 44 (establishing that "[t]here shall be no suspension of transit passage") and Article 42(2) (providing that the application of law and regulations of states bordering straits shall not have the "practical effect of denying, hampering, or impairing the right of transit passage").

The Russian Federation further argued that Articles 40, 41, 50, and 51 of the Turkish Regulations (restricting maritime traffic during poor visibility and unsatisfactory currents)⁹⁷ violated⁹⁸ the principle of "freedom of transit" in the Montreux Convention.⁹⁹ Finally, the Russian Federation maintained that Article 25 of the Turkish Regulations (providing that "[v]essels must proceed within the designated traffic lanes. Vessels which cross the lanes may be fined")¹⁰⁰ contradicted¹⁰¹ IMO Rules 1.2 and 1.3 (accommodating circumstances where a vessel is unable to comply with the traffic separation schemes).¹⁰²

93. Report of the Maritime Safety Committee, *supra* note 41, at 10.

94. Turkish Regulations, *supra* note 33, art. I.

95. Russian Federation, *supra* note 46, at 2.

96. U.N. Convention on the Law of the Sea, Dec. 10, 1982, arts. 44, 42(2), U.N. CONF. 62/122, 21 I.L.M. 1261.

97. Turkish Regulations, *supra* note 33.

98. Russian Federation, *supra* note 46, at 3.

99. Montreux Convention, *supra* note 4, art. 2.

100. Turkish Regulations, *supra* note 33.

101. Russian Federation, *supra* note 46, at 3-4.

102. IMO's Rules and Recommendations, *supra* note 29, at 9.

Although the IMO's Maritime Safety Committee "agreed that any . . . difficulty regarding the conformity of the Turkish . . . Rules and Regulations with the IMO Rules and Recommendations should be dealt with within the Organization,"¹⁰³ "Russian First Deputy Premier Oleg Soskovets hinted that Moscow could turn off its natural gas supply to Turkey in retaliation for the [T]urkish regulations."¹⁰⁴ One month later, Russia threatened to seek relief from the United Nations.¹⁰⁵ In November 1994, Russia fulfilled its threat when the Russian Ambassador to the United Nations issued a letter as a U.N. General Assembly document.¹⁰⁶ The letter alleged that Turkey's arbitrary actions in the Straits resulted in substantial economic loss to Russia, and called on the U.N. to pay attention to Ankara's activities that contradict international law.¹⁰⁷ Although Russia agreed to address the Turkish Straits question within the IMO,¹⁰⁸ Russia's call for U.N. review indicates non-compliance with the IMO's processes.

C. *Recommendations for Improving IMO Effectiveness*

The IMO should have handled the Turkish Straits question more efficiently. First, the IMO should have promptly addressed Turkey's concerns in the Bosphorus and Dardanelles. Second, the IMO should have assigned the Turkish Straits question to just one committee. Finally, the IMO should refuse to allow Russia to

103. Report of the Maritime Safety Committee, *supra* note 41, at 9.

104. *Russia Hints of Gas Supply Cutoff to Turkey*, PLATT'S OILGRAM NEWS, July 25, 1994, at 2.

105. *Russia Warns Turkey on Bosphorus "Serious Consequences" Foreseen*, PLATT'S OILGRAM NEWS, Aug. 30, 1994, at 5.

106. *Russia and Turkey at Odds Over Shipping in Black Sea*, BRIT. BROADCASTING CORP. MONITORING SERV., Nov. 27, 1995, available in LEXIS, World Library, TXTEE File.

107. *Id.*

108. See Russian Federation, *supra* note 46, at 1.

repeatedly raise the Turkish Straits question in the IMO, to prevent Russia from undermining safety efforts in the Bosphorus and Dardanelles.

The IMO's Maritime Safety Committee should have an expedited interim procedure to handle imminent maritime issues. After the Maritime Safety Committee implements interim measures, the IMO can further evaluate and determine the best resolution of the issue. The expedited interim procedure would have assured prompt consideration of Turkey's concerns in the Bosphorus and Dardanelles, and would have provided a step towards the answer to the Turkish Straits question. Finally, the Maritime Safety Committee's interim measures would have prevented Russia from repeatedly raising the Turkish Straits problem during the interim period, drowning the IMO in bureaucracy, and would have forced a more efficient resolution.

In addition, by submitting the Turkish Straits question to a working group of the signatories of the Montreux Convention, the IMO could improve compliance with its Rules and Recommendations.¹⁰⁹ The working group would recognize the signatories' interests in governance of the Turkish Straits. Additionally, it would compel Turkey and Russia to work together within an international forum concerning maritime safety.

VI. CONCLUSION

[When regulation of maritime traffic through the Straits is raised], we will see Great Britain, Russia and Turkey at the three corners of the triangle which so many times in history has constituted a graphic representation of the struggle to solve satisfactorily what has proved to be as impossible a task for European diplomacy as was the squaring of the circle for the mathematicians.¹¹⁰

109. Montreux Convention, *supra* note 4, pmbl., 173 L.N.T.S. at 215.

110. JAMES T. SHOTWELL AND FRANCIS DEAK, *TURKEY AT THE STRAITS* 136 (1940).

Though mathematicians may be no closer to squaring a circle, the IMO has improved diplomacy concerning regulation of the Turkish Straits. The IMO removed the Straits question from its violent history to an international forum where sovereigns, businesses, and environmental organizations can contribute studied analyses to the answer. Improving efficiency in the IMO's processes and compliance with the IMO's Rules and Recommendations and processes would result in better governance of the Turkish Straits and would promote safe and economical navigation in the Bosphorus and Dardanelles. Finally, compliance with the IMO's processes would help resolve the Turkish Straits issue with a solution crafted from merit, rather than one fashioned from "oil, money, and politics."¹¹¹

111. Newman, *supra* note 15.