Navies and the Straits Regime

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NAVIES AND THE STRAITS
REGIME

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The winds of change that have always altered human concepts and attitudes in recent years, are now blowing strongly across the world's oceans. Nations have begun to look at the sea with new interest. Some have bent on the territorialization of the ocean space into expanded zones of their sovereignty and huge portions of the high seas are claimed by the coastal states. This has seemingly posed as a mounting threat to the existing system of global maritime transportation, the global networks of trade and commerce as well as naval mobility and access based on principles which were once considered sacrosanct, are now being challenged or ignored with increasing frequency, and the old ocean regime is in danger of disintegration. The aim of this paper is to study the potential conflicts surrounding access and mobility of the naval forces through the straits, and look at sea-power implications of eventual solution. All these would be difficult to appreciate if they were to be considered in isolation from the main currents of the Law of The Sea and naval history, and naval strategy.
HISTORICAL BACKGROUND

As a result of the great discoveries during the fifteenth and sixteenth centuries, and a rush to colonization of new territories that were being discovered, claims by various European powers as who owned what land, and who had title to certain parts of the ocean surfaced on the political scene. At one time Great Britain claimed title to that part of the Atlantic Ocean which surrounded the British Isles and extended from Norway to Spain. An early English King Edward the III, claimed himself as the 'King of the Seas'. Denmark to make countermove claimed all the northern seas between greenland, Iceland and Norway. For many centuries various Italian states staked out claims to the Mediterranean as their private lake. In 1949 Pope Alexander, most extravagantly and optimistically partitioned the Atlantic Ocean between Spain and Portugal through a papal bull, leaving Spain everything to the west of a line and Portugal everything to the east of it. On the basis of this same agreement and papal decree, the Pacific and the Gulf of Mexico were to be recognized as Spain's, while Portugal was compensated for by the addition of South Atlantic and the Indian Ocean.

The concept of freedom of the seas as formulated by Hugo Grotius Mare Librum (1609) was written in order to uphold the right of the Dutch to navigation and commerce, with the Indies in spite of Portuguese claim to monopoly.1 There can be little doubt that Grotius' arguments were tailored to suit the interest of the

1 - Richard Knott,'Who Owns The Oceans?', To Use The Seas, Naval Institute Press, Anapolis MD, 1978, p.359
Dutch East India Company in particular and it was not surprising therefore that this thesis drew fire from certain major maritime powers. It was about three decades later that John Selden (1635) a British lawyer came up with the doctrine of (Mare Clausum); he opposed the arguments in Mare Librum by contending that the sea in the law of nations could be subjected to private dominion and property just as was the land. He professed that the King of Great Britain was lord of the seas flowing about his dominion. An argument that Seldon rejected in his Mare Clausum was that since the sea was inexhaustible by nature, no one nation can be damaged by another's use of it. And further argued that the use of sea by others especially when it contained not only fish but pearls, corals, and precious metals reduces one's ability to profit from it. For a time the regime of closed seas prevailed. It was, however, in the second part of the seventeenth century that a naval stalemate emanated from Anglo-Dutch wars, that put an end to thesis of the sovereignty of the seas, since it was simply proved that no one naval power can practically dominate the world oceans.

Since fifteenth century and through the seventeenth, the domination of the world oceans was in pursuit of economic interests and at times to spread faith. However, in the eighteenth century

it changed shape, and was combined with strategic interests as well. It was in this period that the adroit shaping of law became a significant tool of effective sea-power.

The law became a weapon in the naval arsenals, and it played its role depending on the issue, that demanded resort to naval force.

The end of Napoleonic wars and the emergence of the Great Britain as the supreme naval power, the reminiscence of Mare Clausum era vanished and the nineteenth century was marked by the beginning of the Mare Liberum era. It was largely through the strength of her navy that Britain succeeded in acting as a balancer among the major powers of Europe and was able to maintain Pax Britannica for almost one hundred years. Although a remarkable example of a quasi-international order, that prevailed in Europe, other nations and other continents overseas were ablaze by the rivals who gallantly maintained peace in Europe. This era saw a great interest in colonization, priveteering, and subjugation of peoples of the other continents. Europe wealthy with the riches of Asia, Africa and the South Seas, was conveniently at peace, bending on a new era of profiteering and mercantilism under naval supremacy. The western trade routes and eastern trade routes came into being. These trade routes protected by the dominant naval power, were in fact the arteries of the other nations of other continents opening to the treasuries of Europe, and bleeding the people of these continents white. Nations who were cradles of
of ancient civilizations fell victim to this greed and brutality one after the other. Not only their wealth in forms of historical collections were transferred to the treasuries and museums, but their natural resources were plundered. On Western trade routes men were sold and slave trade constitutioned one side of the Golden Triangle. And the Eastern trade routes led to China and the East Indies. Eastern trade routes carried opium to China, and through the enticement of colonial powers masses of Chinese were addicted to opium and thereby they were able in reducing a fine culture and the gentle resourceful people of that land to degenerated opium striken people. The unholy opium trade was directly protected by the British Royal Navy.

When Chinese Navy under Admiral Lin Tésu tried to prevent the proliferation of opium by suppression of British opium carrying ship Arrow, Port of Canton and other Chinese ports became victims of a reprisal by a joint Anglo-French naval forces. Joint attack on China which is recorded as the Opium War of 1856-1860\(^4\), was an example of then international order prevailing in Europe while using the sea coerce, subjugate and embark on mass extermination of other peoples. Exchange of opium with gold under the muzzle of guns was to constitute the Opium War of which the Great British thinker and writer H.M. Hyndeman says: "There is no portion of

British history more shameful to our country, or more degrading to the character of its trades and statements than the plain unvarnished record of the opium trade with China. 5 British Royal Navy and French force under Admiral Sir Michael Seymour carried out naval bombardment of several ports and conducted several joint naval blockades against Chinese provinces.

The underlying fact is that in the past the international order and its glorified child, the law of the sea, only worked in Europe, it applied to its nations only. But elsewhere the edges of piracy privateering and belligerency was so blurred. The European Gentleman who belonged to the finest of intellectual societies and philanthropic institutions and absolute ethical behaviour was expected of him could engage in acts bordering on savagery out of home grounds. He might be a perfect law abiding citizen and even pay tributes to such societies established for prevention of cruelty to animals, yet was capable of outmost cruelty elsewhere, engaged in acts such as slave trade and enticement of mass addiction of people and destruction of civilization under the banner of international order through naval blockades and shore bombardments, seizure, capture of ports, islands which were ordinary everyday matter. Lord Gladstone the British Prime Minister later referred to the Opium War when speaking to the British House of Commons is quoted as saying: "I have never known

a war more shameful than this one. . . " And as Mahan says on the
wealth and power of Britain: " It was her effective use of the sea
for transport, for both commercial and military purposes that was
the source of Britain's wealth and political stature." 7

This is how the maritime activity of the nineteenth century
created a single world economy of which Europe and in particular
Great Britain was unchallenged center. And order at sea, or what
was known to Europe and the West as the peaceful regulation of
commerce and communications between states was meaningless when
it came to dealing with the countries of Asia, Africa and Latin
America. Though these rules at times were helpful in settling the
disputes between the Gentlemen of the West! There should be little
wonder that the third world or the majority of the countries who
have been the victims of major powers rivalries, and manipulation
of the international law to the advantage of the powerful, should
be suspicious of the World Interenational Order, and Look at the
basic tenets of the law of the sea which was formulated without
them being involved in the convention with distrust. Unfortunately
the biased literature on the law of the sea, in the West fails to
mention that really the law of the sea, this sacrosanct child
of the West was an instrument of brutality and atrocities against
other parts of the world. I hear often mentioned that the world
is watching the ex-colonies gaining freedom, and that to these

6 - Lord Gladstone, , William Edward, 1809-1898, British Liberal
Prime Minister, House of Common speech. ibid, p.48.
7 - Rear Admiral Alfred Thyer Mahan,'The Influence of Sea-power Upon
nations law of the sea means, surrendering part of their national sovereignty or may cause weakening of the state jurisdiction which is so precious to them. But it is never mentioned that this is not the underlying reason, countries such as China, Iran, Turkey, Egypt, Greece, who have been centers of ancient civilization and are not newly born countries, too, are especially suspicious of the traditional law of the sea and want to be instrumental in reshaping it. So far we can conclude that:

1) Law of the sea has always been the extension of the politics of major maritime power almost as another weapon in their naval armory.

2) The very character of law reflects the underlying norms, circumstances, and events that helped shaping it. The dominant force of maritime powers influenced the conduct of these bodies, persons, who have sought the resolution of such a law.

3) Law of the sea evolved from customs and treaties. It is a collection of rules which over the years has attempted to accommodate various dominant naval powers' interests and helped to create an order in the maritime environment which may facilitate the pursuit of such interests.

So in this era law of the sea became an extension of politics, an instrument which made Pax Britanica possible. British supremacy in this period was not necessarily equated with equity and justice as the nature of all laws should be. On the contrary it was a tool
of foreign policy. It can be deduced from the preceding discussion that until the breakdown of Pax Britanica, (treaty of Versailles, 1921) the law of the sea was extension of the politics on the subject of war and politics, General Carl Von Clausewitz, a leading military strategist depicts "War as politics by other means". Matching these two statements together it can easily be said that in the nineteenth century law of the sea was an instrument of war. At best we can say that the function of this law outside Europe was to channel aggression in an orderly way. The famous freedom of the seas associated with the Pax Britanica was a customary legal regime, it was not a maritime golden age, it was the unchallenged nature of British naval might that kept the selective order at sea, which was incorporated with injustice and inequity.

**LAW OF THE SEA IN PRESENT ERA**

The two world wars destroyed the European hegemony; with the 1922 Washington Conference, where Britain accepted the parity of U.S. Navy at the beginning of this century. Admiral Sergei Gorchkove Commander in Chief of Soviet Navy depicts this historical event by saying: "The role of the navies as an instrument of the policy of state is also seen when examining the events which led to a weakening of England, who for long time was the leader of capitalist world. We would note that her ally, the USA, has displaced England from throne of 'Mistress of the seas'. In this connection the

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Americans have succeeded without a war with her in achieving what Germany could not achieve in two world wars.9

The maritime activity of Europe in the nineteenth century which centered around Britain, shifted nodes. It was then Atlantic Economy and the system of activity by now diversified, loosely but by no means exclusively centered on the United States.10

There have been numerous attempts to codify a universally acceptable law of the sea, but nations have never found this easy. As we know today, it is over 50 years since 1930 that attempts are being made by nations to codify the law of the sea. The 1930 conference failed any significant achievement and shortly after the second world war started, there came the conferences at Geneva 1958 and 1960 and subsequent ratification of a limited number of conventions. Then it was 1975 Caracas and preparation of Composite Negotiating Text. The efforts continue to date and any significant achievement is not foreseen before 1981. Parallel with the problem of codification was a growing trend towards unilateralism in maritime claims. This was instigated in the post-war by the U.S. government, the future opponent of unilateralism. The Truman proclamation of 1945 started a wave of unilateristic movements. This claim was quickly followed by the 200 miles claims of some Latin American countries, and subsequently by a proliferation of claims resulting in a variety of resource claims, fish wars and disputes and conflicts over a wide range of interests in hydrosphere.

The awakening of the ancient coastal states, and the emergence of more and more newly independent states, that could expect to use the sea more to their profit, symbolized yet another major change in the maritime world. These states had not participated in the creation of traditional law of the sea, but the traditional rules ostensibly afforded all states a full freedom to use the seas beyond national territorial waters. Soon they discovered that such freedom was of no use what-so-ever unless one possessed the competitive capacity to operate on a profit yielding basis. These realities, coupled with the bitter experiences of the past freedom of major naval powers behavior, in coercion of the coastal states created a resentment fed by reaction to "colonialism" which in turn led to an instinctive rejection of almost everything advocated by the "colonialists" in the field of international relations. This is now the foremost consideration on their mind that the era of European imperialism was also the era of European dominance at sea, and the present era of Western 'neo-colonialism' and Soviets' social imperialism is an exercise aimed at hegemony and in it the superior power at sea is basic.

From the preceding discussions few points can be derived:

1) That the law of the sea, and the old ocean regime was characterized by Pax Britanica. It failed the basic character of being just and equitable, and was used by maritime powers selectively to achieve politico-economic gains.
2) Old order equates with the era of British imperialism. The law of the sea was shaped by deeds and beliefs of dominant sea-powers, and served the purpose of a few and, lacked consensus among the community of nations. Therefore, we are moving from a black era of injustice to the majority consent rule and attempt to formulate a law which is generally accepted, more equitable and better suited to deal with the needs of a changing world.

3) If there is to be an International Law and Law of The Sea which should merit the title, it ought to be based on equity, justice, and the system should be satisfactory to numerous actors of the human community. Practice of the past is not as important as the underlying norms, should the process of norm takings take its correct course. The norms should not give way to political expediences or to relegate the law into an instrument of self-interest which is often mistaken for moral rectitude. Emergence of such a legal system would lend itself to a better understanding among the nations of appreciation of the international order to a higher degree. A law that has consensus among the nations will be more respected and less violated. For there are no conceivable international problems that could not be handled on legal basis if the community wished to do so.

It is in this background that question of straits, and surrounding issues which poses as one of the crucial areas of the new ocean regime has to be carefully studied.
Much has been written on the rationals behind the development of the territorial sea and the breadth to which the territorial sea may extend. These writings demonstrate firmly that the coastal state may establish such zone of sovereignty which may extend to the sea, the airspace above it, as well as the seabed and subsoil below. Just how wide this territorial sea belt may be, has been the subject of debate for centuries. Contemporary international law has customarily observed a distance of 3 nautical miles for the maximum breadth of the territorial sea, although this issue is currently in state of flux. The 1958 Geneva Convention does state that nations may establish zones contiguous to the territorial sea out to a distance of twelve miles from the baseline in order to exercise control necessary to prevent infringement of their customs, fiscal, immigration or sanitary regulations. The convention failed to specify the maximum distance of the territorial sea. In the territorial sea the absolute sovereignty of the coastal state is subject only to right of innocent passage. The wave of unilateralism expanded such zones of coastal state claims to sovereignty and jurisdiction; various claims have been made on the extent of the territorial sea and the contiguous zones. However 12 miles territorial sea, and a further 12 miles contiguous zone is finding consensus among the world nations. The RICNT depicts the territorial sea as 12 nm., and a contiguous zone of 12 miles the inner limits

of which starts 12 n. miles from the base-line.\textsuperscript{12}

In the event of ratification of a comprehensive treaty, in all likelihood the territorial sea of coastal states will be expanded into 12 nm., this emphasizes the sovereign rights of coastal states on column of water 12 nm, from its base-line, soil and subsoil below and airspace above it.

On the other hand Article 14 of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone imposes a servitude on all states fronting on the sea, the right of ships of all nations to 'innocent passage' through the territorial waters as well as their right to make use of such waters as a refuge in the case of storm or in the event of distress. However, the littoral state is entitled to issue regulations for protection of navigation and for the enforcement of its domestic legislation in such areas for the purpose of quarantine, customs, pollution, and seaborne traffic schemes.\textsuperscript{13}

Strait connecting the bays, territorial seas, regional seas, should be subject to the same rule of law. Principally the regime should superimpose on the seafronts of coastal states universally, whether running through the straits or not.

However, the politico-military considerations of major maritime powers has generated conflicting views.

The polarized interest groups in the United Nations Conference on the Law of The Sea, UNCLOS III, are major maritime powers and

\textsuperscript{12} - RICNT (Revised Informal Negotiating Text), April 1979, part II, Article 3 and Article 33 paragraph 2.
\textsuperscript{13} - RICNT, Section 3.A, Articles 17 to 26.
coastal states, mostly nonaligned Third World countries.

The first group have declared the so-called 'International Straits' and freedom of navigation through the straits and its overflight, essential to the international trade and seaborne communication in general, and freedom of mobility and access by military forces in particular. They see their interests best served by narrowest possible territorial sea. However, reluctantly the United States has come to accept the proposition that 12 miles is probably the minimum which would be acceptable to a majority of nations. Even the Soviet Union, whose navigation interests are somewhat similar to that of the United States would be reluctant to agree to a territorial sea of less than 12 miles. Eventually the United States has unequivocally stated its willingness to accept 12 miles, contingent upon agreement on the right of free transit and overflight through and over international straits, as set forth in its second draft article.

The second group see the straits in their territorial sea as part of their territory, and maintain that the character of law should not in any way change with the shape of land, sea, isobath or the land contours and its geographical shape. They believe in their indisputable right to assert sovereignty over their territorial sea and their inherent right to deal with problems of pollution, traffic regulation and safety, as well as dangers to their national security. These countries most legitimately contend that the right of innocent passage is already accepted as a common practice and servitude on
behalof the coastal states, this same rule will apply to the transit through straits, and that there is no real cause for alarm, because users would be protected by their right of innocent passage.

The major maritime powers particularly the United States and the Soviet Union look at this issue with disfavor. The Soviet Union in the past two decades has become a viable maritime power. Her views on the straits was depicted by the country's delegate at Caracas:14 "The defence and security of the Soviet Union depends on communication through international straits." The Soviet Union's position is reiterated by Sergei Gorchkov: "The Soviet Union is anxious to see that in the straits used for international shipping freedom of passage for ships and the flight of aircrafts of all countries is ensured with observance of the guarantees of the security of coastal states."15 The Soviet Union under the cloak of the friend of the Third World is reluctant to exert pressure any more for the fear of creating tension between Third World and USSR and alienating them any further specially after the Afghanistan Crisis. Still United States disputes the strait states point of view, on August 3, 1971, the American delegation to United Nations Committee on the Seabed specified that its support of a twelve-mile territorial sea at a new law of the sea conference depended on the agreement to designate corridors in the international straits that would permit the free transit of ships and free

14 - Elizabeth Young, Military Implications Of The Law of The Sea, Survival, November 1974, London IISS.
overflights of planes. 16

The key concept for major maritime powers is ostensible 'threat to mobility' of the naval forces and 'accessibility' of the parts of the high seas, and marginal seas that these straits control. They are valued because of their locational perspective, they provide high seas access to semi-enclosed seas, interconnect ports and provide waterways that are shortest in distance, and reduce the cost in global transportation network. They interpret sovereign rights of coastal states on the straits as a 'threat to mobility' of the military/naval forces and accessibility of expanses of waters beyond such straits.

The above claims so far as US naval role is concerned lacks sufficient technical, military and strategic reasons, and at best can only be political. The mission of US Navy, closely examined, is defined into two categories: Projection of power ashore and sea control, 17 both of which missions embody a deterrent function and a combative function; leaving the combative or wartime mission aside, we will be left with the deterrent functions of sea control and projection of power ashore. As effective range of submarine launched ballistic millile (SLBMs) increases, the need for access to straits decreases. Of 121 straits identified by US Department of States, as being brought under coastal states jurisdiction by an extension of territorial sea to 12 miles, only few can qualify

as strategic.\textsuperscript{18} Out of these, Straits of Gibraltar and either of Lombok or Ombai-Water, may have possible significance, before Trident missiles are employed, and until the Polaris and Poseidon generation of missiles are replaced by the new missiles. Even before then significance of the Mediterranean in effective use of SSBNs weighed against Soviet ASW capability, depth of the Mediterranean, and presence of various bottlenecks and choke points is highly questionable. If Lombok or Ombai-Water could possibly bear any significance in the strategic deterrence context, it will be in reduction of transit time. The operating authority of such submarines is more concerned in getting involved in the risk of exposure and detection to such high value naval units when crossing these straits, than extending the time on the station or saving transit time, therefore alternative and safer routes are preferable to naval planners and naval commanders.

Thus use of the straits as a legitimate reason for seaborne strategic nuclear force is highly questionable. For countries wishing to deploy mobile strategic deterrent forces need to shield them from detection.

The other side of the coin embodies the interests of the naval general purpose forces for access to a semi-enclosed or a branch of the sea that these forces may wish to use. The use of such straits in a global nuclear war has little importance. For if the deterrent fails, such questions as the right of the coastal states or strait states would be meaningless, and in a total war

\textsuperscript{18} - Map of the world straits by US Department of Stat Geographer.
legal restrictions would be irrelevant. Any post holocaust reinforcement and movement will not meet opposition, by nonaligned or neutral states; since either they have dropped the impediments leading to the use of the strategic straits or in an environment as such, a challenge by a coastal strait state to prevent such movements is neither realistic nor viable and could easily be overwhelmed.

This narrows our scope, to the peacetime interest of power projection and sea control by general purpose forces only. In such eventuality, the need for use of such straits may be faced with either of the two following scenarios:

1) The coastal state is an ally or generally permits such force movements.
2) Or refuses to allow such movements because of being belligerent to the maritime power, or out of concern to another regional state.

This brings us back to the domains of international law in general and the law of the sea in particular.

USE OF FORCE

Here we are entirely in the area of employing naval and air forces for the political purposes. In this framework of thought we must realize that the single maritime power ascendancy such as the use of naval forces in the Cuban Missile Crisis is a thing of the past. Therefore coercion of a great power at sea could not recur.
The United States and the Soviet Union no longer can exercise such diplomatic uses of their naval forces. Not only that, but they are constantly inhibited by one another in exercises of this nature, when the force is employed against a third state. As Hedley Bull says: "The long era in which the United States was free to deploy her fleets in strategic positions to land ground forces, to bombard the coasts or command the air space within the range of her carrier task forces without fear of significant opposition at sea has come to an end." Furthermore the increasingly awakened and alert world public opinion and hence the United Nations will definately restrict the heads of superpower states to put forces into local or limited wars. The lessons of Vietnam is there and lessons of Afghanistan is yet to come. (The alleged and ostensible invitation of the Afghan government is nothing but an attempt to legitimize such an invasion and this is no more than political manipulation of international law and public opinion. Here the international law and the United Nations Charter are playing into hands of a conniving superpower). Undoubtedly peacetime use of force on strategically important straits will lead to military confrontation by the superpowers. More and more war is becoming the distinct privilege of smaller nations and so is the political uses of naval power.

In such an environment grave risks are involved when high value naval forces such as carrier task forces are involved in coercion

19 - Hedley Bull, 'Sea-power And Political Influence', Adelphi papers no. 122, 1976, London ISS.
of coastal strait states, since most of these states possess low
value fast guided missile boats with considerable punch. Owing to
the close proximity of straits to land, forced transit against
military resistance by the coastal state is quite costly, especially
when coupled with employment of physical barriers such as
mining complemented by point defense and, coastal artillery and
precision guided surface to air and surface to surface missiles.
Such channels may be obstructed by sunken ships, also cheap and
unsophisticated weapons such as controlable mines, that can be
commanded by remote control signal from a point on land are
capable of trapping and destroying unwarrented naval entries that
are all the more vulnerable in such bottlenecks, unless the
defenses of coastal state is neutralized first and beforehand.
This type of action by a major power generally bears grave
consequences on the international prestige of invading state and
by so doing the world public opinion will shift towards invaded
state no matter what initial wrong doing has led to such a reprisal.
This way the major power has already accepted the risk of invading
a small strategically located state, which at the moment borders
on starting a world war. Before falling on the slippery slope of
war and creating tensions of this sort the nature of war that the
major naval power embarks on must be deeply and carefully studied
in the light of Clausewitzian philosophy of war and politics who
teaches us among other things:

1) Statesmen and generals must rightly understand the war
upon which they embark.

2) Statement of political objectives should be clear and precise and that the statesmen and generals should be able to differentiate between the ideas of interest and the real life circumstances in which they have to be carried out.

3) Statesmen and generals must thoroughly understand and calculate the relationships between the means and ends.

With the Clauzewitzian doctrines in mind it must be remembered that embarking on a war with a small coastal state, by a major maritime power today must be rightly understood. Almost all strait states are strategically located in a way that military operations of conventional type, using general purpose forces will definitely lead to widening of the scope of operations, depending on the geographical situation of such an operation, it could not possibly be ignored by either United States or Soviet Union or Peoples Republic of China. Furthermore if nations statesmen and generals are able to differentiate between the ideas of national interest and genuine national interest, they scarcely would mount military operation against smaller states since in today's world, with rapidity of mass communication that takes such likely invasions to every one's home, coercive operations by more powerful states against smaller states are generally despised by the world public opinion. Not only a major power will suffer the consequences of such an act in the international forums but with the proliferation of
sophisticated weapons and the risk that is involved in projection of power over large distances, this type of operations are becoming increasingly costly, and justifyability of the means and ends impose some serious questions. These types of wars could be extremely dangerous in direct proportion to its duration, for it may eventually turn to be a war at the wrong time in the wrong place. If such questions are carefully answered, it becomes clear that more and more in todays world we are witnessing a shift from use of force towards the solution of problems through the art of diplomacy. Subtle and quiet diplomacy is the tool, which is finding more use.

So the balance between access to the straits and its denial does not revolve on the legal hinges, it is a political issue, and the answer to it is diplomacy. Internationally obtained consensus through diplomacy and an understanding of the total issue is essential when settling the priorities of the foreign policy rights.

When justifying the relationship between the means and ends, the question is what are the ends in the straits issue. Are 'accessibility' and 'naval mobility' an aim in themselves? Or they are means to an end? What is the threat? Is it real, or it is perceived. If the emphasis of the international law, and strategy is placed on the greater political aim, which could be creation and improvement of international order, then most coastal and strait states inclusive will have little interest in general disorder. The two tier systems in international law to the advantage of powerful and to the detriment of weak have had their days.
The weak no longer relinquish its legitimate rights to the powerful. In the rapidly changing world, having consensus in law making is of paramount importance. Laws should not be made by ethnocenterism or through the analysis of the strategists and lawyers only, since strategists are not usually curious of other nations and have poor record of seeing how their own behavior appeared to the others. They tend to be failing to appreciate hopes and fears of other nations. To build an international consensus naval strategy tail should not wag the legal dog. Lawyers, too, should take birds-eye view of the whole issue. "Analysis of the law of the sea, particularly by lawyers tend to focus on legal substance, while ignoring the importance of international consensus in maintaining the international environment needed to support optimum flexibility in global deployments. It is not enough merely to insist that freedom of navigation and overflight beyond a narrow territorial sea, and unimpeded transit through, under and over straits are essential. Nor is it enough to be prepared to assert our rights in the face of challenge. Our strategic objectives can not be achieved unless the legitimacy of these principles is sufficiently accepted by the world at large that their observance can be carried out on routine operational basis." 20

A MODEL FOR ACHIEVEMENT

For almost sixty years now, air transport has used international air corridors cutting through the national airspaces of the

world and in so doing very rarely international incidents of any magnitude has occurred. The reason is that principles of operation and routing of air transport services have been widely accepted, apart from preset routine and procedural clearances, the mass of commercial innocent traffic is crossing the controlled air spaces, with considerable smoothness and ease. Taking into account the speed of modern aircraft, number of controlled air spaces, Air Defense Identification Zones, that has to be crossed between points of departure and destination, and bearing in mind the number of aircrafts airborne in an international air corridor at any one time, this is a great record and a marvellous achievement of how an international consensus is built to enhance and perpetuate a system of law and order, a regime that is operating on the basis of collective goods and common understanding. Here the emphasis is placed on resource, commercial concerns and not strategic questions.

Surely if the commercial air transportation is alive and well, and operating, in an environment of massive and saturated air defense systems, and taking into account that more airborne time is spent over controlled air spaces than in the international air space, then illusory belief that coastal strait states will use their rights to the detriment of international shipping is nothing but twisting the facts. The claims that commercial transit under the notion of innocent passage would suffer possible harassment from coastal state, naively disregards the economic and political cost to the coastal states, and that their economies are heavily dependent
on international seaborne trade and commerce.

TRUE AND UNDERLYING REASONS

Hanging over this issue, of course, is the spectre of new mercantilism - the use of force not to defend national security, and protection of the resources legally owned, but to seize resources belonging to others - a spectre that has grown more menacing as a consequence of Dr. Kissinger's statement on January 2, 1975, alluding to the possibility of the United States seizing oil-production facilities in the Persian Gulf. Parallels can be drawn between this statement and another statement by Secretary Kissinger in August 1975 that: "We will not join in an agreement which leaves any uncertainty about the right to use world communication routes without interference." Another parallel statement is more theological says: "The real stake is not the strategic interests and national needs of any one nation, however important, rather it is no less than maintenance, indeed strengthening of common interest in navigational freedom in age of increasing complex ocean use and ocean politics. The regime of straits transit is most essential element in that freedom. And in the real world of ocean politics, it is nonsensence to believe that either the United States or, Soviet Union would accept a law of the sea treaty that did not fully protect freedom of navigation through straits."

22 - Address before American Bar Association Convention, Montreal, Canada, State Department Bull. 353.
While other views are being dismissed as illegitimate and their holders are viewed as evils, rather than simply different, it must be realized that in today's world specially between now and the turn of the century the major naval and military powers must not view the ideas of the smaller nations even though contrary to them, as illegitimate, and it is high time that traditional naval powers divested their thinking of theological overtones such as 'freedom of the seas'. This has been the practice in the past, 'channeling aggression under the cloak of law'. This is happening again; the fact that mighty regularly dress up their security and commercial interest in ideological garb as indeed do to meek. So long as it is invested with theological overtones the concept of freedom of the seas will continue to be what Sir Jullian Corbett described some seven decades ago, namely of those: "Ringing phrases which haunts the ear and continue to confuse the judgement."24

The answer lies neither in the use of theological phrases, nor in threatening phrases, and whether or not they are backed up by the use of force legal or illegal. There is a wide spectrum of other colours between white and black.

THE RIGHTS OF THE STRAIT STATES

The sovereign rights of the coastal state on the territorial sea of the straits is a geopolitical reality and their fundamental

right to regulate transit through their coastal waters is undeniable. The recent assessments of the straits debate in the United Nations Law of The Sea Conference, UNCLOS III, have formed an illusion that the disputes have either been resolved in the context of the Revised Informal Composite Negotiating Text (RICNT), or that convergence of interests between the parties has reduced the dispute to an issue of lower priority. This illusory picture does not represent the position of the most of the strait states.

Such a treaty could only be ratified, when the rights of the coastal states is not contingent upon, geographical characteristics of the area, the shape of the land or the physiognomy of the water flowing about it, in other words, universality of the law should be an essential factor. It would be quite presumptuous to regard possibility of abandoning part of this right or all of it, subject to the contour and the shape of the land and the adjacent seas i.e. straits, or to assume that coastal states may capitulate to freedom of overflight of their territory. Any other variance abrogates the fundamental right of the coastal state to regulate transit through its coastal waters and control of its airspace.

If the law of the sea is to pass as a viable ocean regime, it must bear the basic rights of the strait states, and should not be a tool in the hand of major maritime powers. Otherwise it is far from certain that strait states will be signatory to a 'law of the sea' treaty, in which their powers to regulate their territorial sea running through their straits are restricted by a right of
transit passage and there is nothing to prevent the more national-
istic states from withdrawing their support for such a treaty and
unilaterally regulate and vehemently pursue and preserve their rights.

The other possibility is that there will be no comprehensive
LOS treaty in the near future. As a result a number of scenarios
may evolve. A new rush to unilateralism—multilateral claims
mainly in the regions—conclusion of regional treaties or treaties
in small scale, or a combination of them all. Whatever the outcome,
it is definite that the right of unimpeded transit through the
straits and the right of overflight of such straits will vanish.
The foregoing discussion points at the necessity for a new perspect-
ive on the issue.

So far as the Soviet Union is concerned, due to the nature of
its ports, and their geographical location, she is handicapped by
having to gain transit rights, or rely on innocent passage to gain
access to the open ocean. Any restriction imposed by coastal
states unilaterally or through the instruments of international
law, would have far more severe consequences on the Navy of
Soviet Union than it would on the United States and her allies.
Under such circumstances and in the event, that United States sides
with the Third World nations or generally the second group, the
Soviet Union is singled out, and will have to face the world
public opinion, and confront it in isolation. The immediate
consequence of such a political move by United States and nations
of Western Alliance would be, that the Third World nations and

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specially the coastal and strait states will draw closer to the Western Alliance and the United States, to seek protection against Soviet Union's eventual breach of the treaty or her unilateral action in its defiance.

THE NEW PERSPECTIVE

Based on the foregoing discussion the following points evolve:

1) Each coastal state is entitled to a territorial sea over which complete sovereignty is exercised subject only to the right of innocent passage to ships of all states. This sovereignty extends to the airspace, seabed and subsoil of the territorial sea regardless of the geographical location and inclusive of straits.

2) Any possible legal restriction on the right of transit or on the naval vessels in straits would bear far more heavily on the Soviet Union and her navy, than it would on the Western Alliance and their navies.

3) Total breakdown of the treaty negotiation and lack of respect for legitimate rights of the strait states will play in the hands of the Soviet Union, where she would shrewdly stay in the background. This will lead to a chaos of unilateral moves and will give rise to various modes and systems of control, and ultimately will increase the international tension, which neither will ease the movement of US forces, nor will it meet her economic needs. Further it forces the
United States to resort to isolation and its unpredictable consequences.

4) As far as the United States should be concerned any limitation that is disadvantageous to her potential opponent could be an advantage to the United States. Western defence is not dependent on the transit rights and freedom of overflight over the straits. Since Western Strategic deterrence TRIAD, would itself be vulnerable if it relied on transit through straits. It is not! The claims that commercial transit under the notion of innocent passage would suffer possible harassment from coastal state, naively disregards the economic and political cost to the coastal states, and heavy dependence of such states on international trade and commerce.

5) The United States should be willing to accept or negotiate a regime of innocent passage to stabilize unilateral claims in the world oceans and has prime interest in a comprehensive LOS treaty.

The United States should be able to accommodate legitimate Third World interests in the New International Economic Order.

6) National policies should not be dominated by traditional strategic and military issues, rather they should be more concerned with economic and social issues that necessitate the understanding of the feelings and fears of other nations, which are born by their past experiences.

7) The balance between access to the straits and its denial is
not only a legal issue. Although it is nice to have the law on one's side, it can not provide an answer to the problem. This is a political issue and its success lies on creation of an international order, which is built on the international consensus, such whole-hearted support will not fail.
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