

**Comment: Transport of Radioactive Materials by Sea
in the Context of the Securing-the-Oceans Approach**

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Structure of the Comment

- 1. Introduction
- 2. Background to the Problem
- 3. Regulation of the Issue under UNCLOS
- 4. Need for a Recalibration of the Balance between Navigation and Environment
- 5. Concluding Remarks

Introduction

- The 2004 Tokyo Declaration on Securing the Oceans: “a comprehensive and integrated approach to ocean problems as a whole.”
- Sea Transport of Radioactive Materials – How does it figure under the securing-the-oceans approach?

Background to the Problem

- At the end of 2005, 445 nuclear reactors in operation in 31 states – Resurgence of Nuclear Power
- such a heated debate over the safety of sea transport of radioactive materials
- a sharp divergence between the coastal and shipping states over the regulation of sea transport of radioactive materials

Regulation of the Issue under the UNCLOS

- Article 23 of the Convention (“Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances”) – Final Say?
- No.
 - Contextual Reading of the Article
 - Other treaties or documents (eg, 1989 Basle Convention)
 - Diverging State Practice
- * Conclusion: UNCLOS as a rather porous and evolutionary regime (GA RES A/RES/61/222)

Need for a Recalibration of the Balance

- Post-1982 Developments
 - 1992 Rio Declaration
 - ITLOS Jurisprudence
 - Intra-IAEA Developments
 - EC Practice
- * Need for a Recalibration of the Balance between Navigation and Environment in Favour of the Former

Concluding Remarks

- A growing practice of requiring (at least) prior notification for passage of radioactive materials
- Need for Dialogue on consultation with coastal states, environmental impact assessment, an emergency response plan and a strict liability regime