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The Palk Strait Project: A transit passage regime for a canal?

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Synopsis

An Indian government project to dig an 83 km long canal to deepen the Palk Strait between Sri Lanka and the Indian sub-continent, raises the prospect of the Strait being opened to international traffic when completed. Will the transit passage regime apply in the Palk Strait to international maritime navigation?

Commentary

The Palk Strait is a channel that separates Sri Lanka and the Indian sub-continent. The government of India in 2001 approved the Sethusamundram Shipping Canal Project (SSCP) to deepen the Strait. Once the project is completed this Strait may be opened to international traffic. Will the transit passage regime apply in the Palk Strait once it is opened for international maritime navigation?

The navigational regime of transit passage is covered by Part III of the United Nations Convention on the Law of the Sea (LOS). According to Article 37 of the LOS, the transit passage regime is applicable in straits used for international navigation connecting one part of the high seas or an Exclusive Economic Zone (EEZ) and another part of the high seas or an EEZ. Straits of this type have been completely amalgamated into the territorial seas of the bordering States with the result that there is no EEZ or high seas corridor through them.

As mentioned in Article 38(1) of the LOS, the transit passage regime applies to ensure the smooth navigation of all ships, vessels and aircraft. This regime does not in any way affect the legal status of the waters forming such straits and the coastal State's exercise of sovereignty over the straits. Unlike the regime of innocent passage which could be temporarily suspended, the transit passage regime guarantees unimpeded passage for all types of foreign ships or aircraft to navigate or to fly above straits used for international navigation, even though the straits may form part of the territorial sea of another State. Submarines and other underwater vehicles can transit in their normal submerged mode.

The regime of transit passage is now applicable in many straits around the world namely the Straits of Malacca and Singapore, the Strait of Dover, Torres Strait as well as the Strait of Gibraltar.

Digging a Canal through a Strait

The Palk Strait is narrow, shallow and dotted with many islets and sandy shoals that make it navigationally difficult. Although fishing boats and small craft carrying coastal trade have navigated the strait for centuries,

large ships would have to bypass Palk Strait by going around Sri Lanka to call at East Indian or West Indian ports. In 1860, the British colonial government in India had proposed the construction of a shipping canal through the strait. Various studies have been done since then.

The Indian Government recently began working on the SSCP, to deepen the Palk Strait. This project involves digging an 83km long deepwater channel connecting the Palk Strait with the Gulf of Mannar at the southeastern tip of India. Once completed, the Palk Strait would be viable for international navigation, providing a shorter route for vessels compared to the present one going around Sri Lanka. The travel distance would be reduced by over 650 km.

The Application of the Transit Passage Regime in the Palk Strait

As far as straits used for international navigation is concerned, the Palk Strait could not be considered as a strait categorised in Article 37 of the LOSC. However, this scenario would be different once the SSCP is completed, and large vessels may be able to navigate through the waters of the Palk Strait. Once the Palk Strait is opened to international shipping traffic, it would potentially become an important international maritime waterway, comparable to the Straits of Malacca and Singapore, Strait of Gibraltar and the Torres Strait.

When that happens the issue of transit passage in the Palk Strait may be somewhat controversial. Parties that champion freedom of navigation may assert that transit passage shall apply in the Palk Strait as it is now a strait that connects one part of the high seas or EEZ to another part of the high seas or EEZ. Therefore, the governments of India and Sri Lanka may not be allowed under the LOSC to impose temporary suspension upon ships transiting the Palk Strait.

But parties that are against the application of transit passage in the Palk Strait may contend otherwise. Articles 37 and 38(1) of the LOSC specifically state that transit passage may only apply in a strait that is used for international navigation. Without the SSCP, the Palk Strait may never be opened to international shipping traffic. Therefore, the Palk Strait could not be considered as a strait that is used for international navigation under the LOSC as the navigable channel within the strait is actually a man-made canal. As the provisions of the LOSC do not apply to canals, transit passage may not be the appropriate navigational regime to apply to vessels navigating the Palk Strait.

Conclusion

The SSCP is a project that will potentially transform the Palk Strait into one of the most important international chokepoints in the South Asian region once it is completed. The future application of transit passage regime in the Palk Strait will ensure unimpeded navigation of vessels plying the Strait. Nevertheless, the question of whether transit passage may or may not apply in the Palk Strait remains moot.

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