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Straits in Latin America: The Case of the Strait of Magellan

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The Strait of Magellan, an interoceanic route in the southern part of South America, derives its status from a long-standing international convention, the Boundary Treaty of 1881 concluded between Argentina and Chile. In 1984 a Treaty of Peace and Friendship, entered into by the two states, confirmed this special status and established the boundary line at the eastern mouth of the strait. Specifically, the regime of navigation of the strait comprises three fundamental interrelated elements: free navigation, neutralization, and the prohibition against building of fortifications or military defenses that might be contrary to this purpose. Additional issues related to the regulatory powers of the coastal state are also posed by this regime.

Keywords internal waters, navigation, neutralization, straight baselines, strait, territorial sea, treaty

The Strait of Magellan, an interoceanic route in the southern part of South America, presents various points of legal interest. Its legal status has its foundations in a "long-standing international convention"—to use the wording of Article 35(c) of the 1982 United Nations Convention on the Law of the Sea.[1] This "long-standing" convention is the Boundary Treaty of 1881, concluded between Chile and Argentina.[2] In 1984 a Treaty of Peace and Friendship was entered into by the two states, and this also contains key provisions applicable to the strait in Article 10.[3]

A comprehensive study of this waterway should take into account certain important aspects, which this article will address: (1) the characterization of the strait in accordance with the authoritative sources applicable to it; (2) the delimitation of its eastern mouth; (3) the regime of navigation, and (4) the access to the strait. Final remarks concerning some additional aspects that might be examined in the light of general principles of the international law of the sea will also be made.

A Legal Definition of the Strait of Magellan

Geography of the Strait

The Strait of Magellan is an interoceanic waterway with the shape of an inverted triangle ("accent circonflexe")[4] that extends over approximately 311 miles, from Cape

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Dungeness in the East to Cape Pilar in the West, from the Atlantic Ocean to the Pacific Ocean (Figure 1).

From the eastern mouth or entrance, a section of the strait extends for about 160 miles in a southwesterly direction before rounding the southernmost point of the Brunswick Peninsula, at Cape Froward. It then bends in a northwesterly direction toward Cape Pilar, north of Desolación Island, on the southern shore of the strait. In the western mouth of the strait there is a group of islands (the Evangelistas), where a lighthouse is operated to aid navigation.

The width of the strait ranges from 1.5 miles to 22 miles, with an average of about 4 miles. This shape and the existence of a series of geographical features (such as the First and Second Narrows in the eastern leg), tidal currents, winds, and the narrowness of the western leg make it difficult to navigate in Magellan waters. The depth of the water is greater in the western leg (80 to 100 meters) than in the eastern part (50 to 70 meters).[5]

South of the strait there is a group of islands (the largest of which is Tierra del Fuego) interlaced with channels. A waterway linking the strait with the Argentine ports on the Beagle Channel through Chilean internal waters in this area was created by the 1984 Treaty of Peace and Friendship.[6] This particular regime authorizes passage by Argentine ships along a predetermined route.

The Strait in the Boundary Treaty of 1881

The strait was part of the agreement embodied in the Boundary Treaty of 1881, whose conclusion settled a long territorial dispute between Argentina and Chile. In the period immediately before the adoption of this treaty, the diplomatic representatives of the United States in Buenos Aires and Santiago played an important role by means of their good offices.[7]

The essence of this agreement, which constitutes the quid pro quo of the 1881 compromise, was that Chile give up its claims to a large part of Patagonia in exchange for the recognition of Chilean sovereignty over the entire Strait of Magellan and over the lands lying to the south of the strait as far as Cape Horn (with the exception of certain territories specifically recognized as belonging to Argentina, located to the south of the strait).[8]

In the long negotiating process that preceded the conclusion of the 1881 treaty, the concepts of control of the strait as well as control of the Atlantic coast were important political elements underlying the positions of the parties.[9] This process was aimed mainly at reaching an agreement to submit to arbitration the existing territorial dispute, following the failure to achieve a direct arrangement under the terms of the Treaty of 1855[10] that preserved the rule of the *uti possidetis juris*. This principle was totally superseded by the treaty in respect to this area. Initiatives from third powers (mainly Great Britain, the United States, and others) were also present in this period,[11] in search first of free navigation and then of a collective guarantee of the 1881 regime.[12]

The 1881 treaty had a direct effect in legally defining the strait while also establishing the relevant points to determine its eastern entrance. Geographers, hydrographers, and diplomatic documents exchanged earlier by the parties had referred to Cape Vírgenes as the northern point of the mouth of the strait rather than Cape Dungeness, but the latter was selected as the northern point in the agreement. Cape Vírgenes is located about 10 kilometers north of Cape Dungeness on the Atlantic coast.

From a legal standpoint, the concept of the strait is determined by the course of the

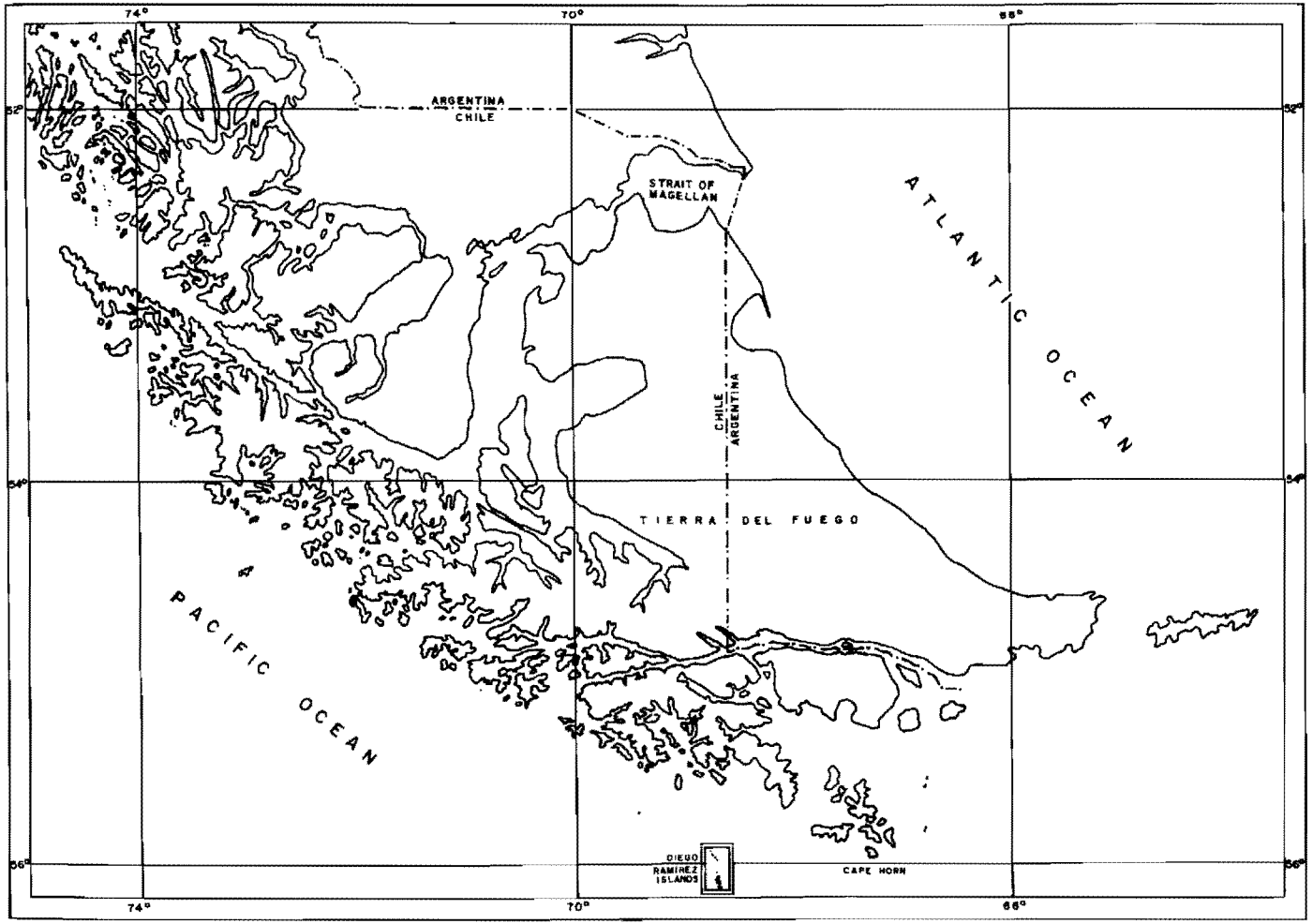
74°
70°
66°
52°
54°
56°
ARGENTINA
CHILE
STRAIT OF MAGELLAN
ATLANTIC OCEAN
CHILE
ARGENTINA
TIERRA DEL FUEGO
PACIFIC OCEAN
DIEGO RAMIREZ ISLANDS
CAPE HORN

Figure 1.

Andes-Dungeness line defined by the 1881 treaty, which sets out the frontier between Argentina and Chile in the southern part of Patagonia. According to Article II of the 1881 treaty:

> In the southern part of the Continent, and to the north of the Straits of Magellan, the boundary between the two countries shall be a line which, starting from Point Dungeness, shall be prolonged by land as far as Monte Dinero: from this point it shall continue to the west, following the greatest altitudes of the range of hillocks existing there, until it touches the hill-top of Mount Aymond. From this point the line shall be prolonged up to the intersection of the 70th meridian with the 52nd parallel of latitude, and thence it shall continue to the west coinciding with this latter parallel, as far as the divortia aquarum of the Andes. The territories to the north of such a line shall belong to the Argentine Republic, and to Chile those extending to the south of it, without prejudice to what is provided in Article III, respecting Tierra del Fuego and adjacent islands.

On the other shore of the strait, the borderline dividing Tierra del Fuego starts in Cape Espíritu Santo, then proceeds due south along the meridian 68°34' West until it touches the Beagle Channel.

This legal concept is reaffirmed by the Treaty of Peace and Friendship of 1984 in a clause that settled the question of the delimitation of the eastern mouth of the strait. Article 10 of this treaty provides:

> The Argentine Republic and the Republic of Chile agree that at the eastern extremity of the Strait of Magellan, determined by Point Dungeness in the North and the Cape of Espíritu Santo in the South, the boundary line between their respective jurisdictions shall be a straight line joining the "Boundary Mark Ex-Beacon Point Dungeness" situated at the tip of said geographic accident, and "Boundary Marker 1 Cape Espíritu Santo" in Tierra del Fuego.

Examined in conjunction, these provisions indicate that the shores of the strait are under Chilean sovereignty. At the same time, the term *strait* used by these treaties refers to the geographical unit that runs from the above-mentioned boundary line to the Pacific Ocean and does not comprise the channels that link the western part of the strait with the Pacific Ocean as well as those channels joining the Beagle Channel south of Tierra del Fuego with the strait, which are part of Chilean internal waters.[13] This question will be examined below.

An examination of the treaties in force clearly shows that Chile has been recognized as having dominion over the entire strait. This recognition was questioned by some authors, however, who argued that the geographical strait extends up to Cape Vírgenes.[14]

The legal concept of the strait was contested by the Argentine government, which claimed a co-riparian status theory expressed in two official communications addressed to Chile in 1975 and 1976.[15] These communications denied the legal foundations of measures adopted by Chile to control marine pollution and the safety of navigation within the strait after the oil spill by the supertanker *Metula* in 1974.[16] Argentina claimed the right to participate in the regulation of navigation through the strait. In the second communication, dated 1976, Argentina claimed the status of riparian of the two coasts of the strait.

According to diplomatic sources,[17] the Argentine notes, which had been rejected by Chile, were officially withdrawn with the exchange of the instruments of ratification of the Treaty of Peace and Friendship on May 2, 1985. The notes were withdrawn at the final stage of the negotiations, with the assistance of Pope John Paul II as mediator.

Nature of the Waters of the Strait

This is a point that has caused some doctrinal controversy in the past. The main focus of this controversy was the assumption that Article V of the Boundary Treaty of 1881, when declaring that the strait "shall be neutralized for ever, and free navigation assured to the flags of all nations," produced the effect that the waters of the strait did not form part of Chilean territory.[18] This thesis, which led to the conclusion that the strait constituted high seas, was not adopted as an official position by Argentina.

In accordance with a well-established practice since the conclusion of the treaty in 1881, the waters of the strait form part of the territorial sea, even where the breadth of the strait exceeds twice the width of the territorial sea, as it does in some of its sections.[19] As a general rule Chile claimed a 3-mile territorial sea until 1986, when the Civil Code was amended to extend this maritime space up to 12 miles.[20]

In 1914 at the outset of World War I, Chile adopted Decree 1896,[21] declaring that the internal waters of the strait and of the southern channels ought to be considered as territorial or neutral sea even in sections more than 3 miles from each shore. The decree established that the strait and those channels were located within the national limits of Chile and formed part of its territory. Argentina protested that this decree affected its rights protected by treaties in force.[22] Chile held in reply that it had not intended to modify the legal situation of the strait. The discussion did not continue.

Chilean domestic regulations concerning navigation through the strait give a territorial sea treatment to the strait waters, mainly the Rules of Pilotage of 1985[23] and the 1951 rules applicable to the admission of foreign warships.[24]

In the 1985 rules, obligatory sea lanes of navigation through the internal waters and the strait are identified. An exception to the use of a "pilot" ("práctico") in the strait, in the section between Félix and Punta Arenas, for ships crossing the waterway from ocean to ocean, and for those that have not navigated or are not going to navigate through internal waters, is generally accepted. A recent decree[25] provides that if circumstances justify the suspension of this exception, in general or in a specific case, the Coast Guard authorities will adopt the necessary measures to allow those ships to take on and relieve the pilot.

Domestic regulations[26] also have prescribed that foreign warships navigating through the channels or the strait are under the same provisions applicable to the admission of foreign warships in the territorial sea, ports, bays, and channels, as established in Decree 1385 of 1951. The regime is based on a notification system, under a permanent authorization rule.

These domestic regulations also are pertinent to the examination of the Chilean practice in relation to the regime of navigation in the strait and should be interpreted in a manner consistent with the free navigation principle embodied in Article V of the 1881 treaty.

By Decree 416 of 1977, Chile also has established a system of straight baselines,[27] part of which applies to both coastlines of the strait, linking Islotes Evangelistas with Islote Cape Parker; Cape Providencia with Punta San Jerónimo and Punta Arauz on the northern shore, and Punta Zegers, Punta Paulo, and Cape Monmouth with Cape Valentín; Punta Zig Zag, Islotes Dos Hermanos, Punta Casper, and Cape Monday with Cape Pilar

on the southern shore. These straight baselines within the strait clearly separate internal waters from territorial waters, leaving open the two mouths of the strait. In the Treaty of Peace and Friendship of 1984, Argentina and Chile "mutually recognize the straight base lines they have drawn in their respective territories" (Article 11). When Decree 416 was issued in 1977, Argentina had objected to its application in the Cape Horn area to enclose the waters up to the eastern mouth of the Beagle Channel. These objections were withdrawn in the 1984 treaty.

Delimitation of the Eastern Mouth of the Strait

This question regarding the boundary of the strait's eastern entrance had been pending since the conclusion of the 1881 treaty, and the issue became more important with the development of the law of the sea over the last decades. The delimitation affects the eastern mouth of the strait where the sovereignty and jurisdiction of Argentina and Chile extend to the east and to the west, respectively, of the boundary line.

The possible existence of Chilean maritime spaces beyond the line running from Punta Dungeness to Cape Espíritu Santo, as a projection of the coast along the strait, was part of the problem. This issue has been linked to geopolitical and legal concerns as to the control of the entrance to the strait. It also had been linked to the claim of a coriparian status by Argentina, which was completely settled by the 1984 treaty. As has previously been shown, this question relates to the definition of the legal concept of the Strait of Magellan.

According to Article 10 of the 1984 treaty,

> [t]he Argentine Republic and the Republic of Chile agree that at the eastern end of the Strait of Magellan, determined by Point Dungeness in the north and Cabo del Espíritu Santo in the south, the boundary line between their respective sovereignties shall be the straight line connecting the boundary marker formerly known as the Punta Dungeness Beacon, located at the end of the Strait of Magellan and boundary marker N° I on Cabo Espíritu Santo on Tierra del Fuego.
>
> The line of delimitation described above is shown on the annexed map N° II.
>
> The sovereignty of the Argentine Republic and the sovereignty of the Republic of Chile over the sea, soil and subsoil shall extend, respectively, to the east and to the west of the said boundary.
>
> The delimitation herein agreed in no way alters what is laid down in the Boundary Treaty of 1881, whereby the Strait of Magellan is neutralized in perpetuity and unrestricted navigation in it is assured for the flags of all nations in accordance with the terms of its article V.
>
> The Argentine Republic agrees to maintain, at any time and under any circumstances, the right of ships of all flags to sail freely and unimpeded through the waters under its jurisdiction to and from the Strait of Magellan.

Theories about the delimitation of the eastern entrance have previously ranged from the possible application of an extended jurisdiction over 200 miles measured from the line running between Cape Dungeness and Cape Espíritu Santo, described above, extended into the Atlantic Ocean,[28] to the application of a more restrictive approach to the appurtenance principle in order to claim a short extension of territorial sea in an area adjacent to that line.[29]

The question arose during the years prior to the 1984 treaty in relation to the Argentine initiative to explore and exploit the natural resources off the entrance to the strait, as well as the laying of a pipeline on the continental shelf linking Tierra del Fuego Island with the coast north of Punta Dungeness. An additional source of controversy was the "historical bay" theory regarding the eastern mouth of the strait up to the First Narrows between Bay Posesión and Bay Lomas, a theory put forward as the basis of a 200-mile extension beyond the present limit set up in the 1984 treaty.[30] In this case, the "historical bay" thesis implied that the waters of the strait constituted part of Chilean internal waters. The solution, based on an all-purpose maritime boundary, results from the 1984 treaty and puts an end to these speculations.[31]

The Regime of Navigation

Article V of the Boundary Treaty of 1881 states:

> The Straits of Magellan shall be neutralized for ever, and free navigation assured to the flags of all nations. In order to assure this freedom and neutrality, no fortifications or military defences shall be constructed on the coasts that might be contrary to this purpose.

Three elements appear in this provision that must be interpreted in an interrelated manner: (1) free navigation, (2) neutralization, and (3) the prohibition against building fortifications or military defenses that might be contrary to this purpose.

The history of this clause shows that different elements were taken into account during its negotiation, including the transactional character of the whole treaty. Also worth mentioning is the position of third powers, especially the United States, Great Britain, and other European countries. Great Britain sought to provide a collective basis to the strait's regime rather than a bilateral one.[32] It also proposed to extend the regime to the western channels.

The freedom of navigation clause, which is related to a concept of neutralization had been declared by the Chilean minister of foreign affairs, Adolfo Ibáñez in 1873.[33] His statement was addressed to foreign nations, and said that Chile retained as a permanent goal and purpose that navigation through the Strait of Magellan would remain free and open to ships of all nations, with no fees or taxes other than those necessary to maintain lighthouses and inspection necessary for the safety and security of the navigators. It also was declared that the neutralization of the strait in case of foreign wars implied the obligation to refrain from imposing any additional limits on transit through the strait other than those in force during peacetime.

The concept of freedom of navigation in the 1881 treaty has raised questions as to its meaning in light of the principles of the law of the sea. Abribat[34] asserts a limited meaning for the expression "free navigation," one that would merely prohibit imposition of taxes or dues on vessels passing through the strait. A wider view is proposed by Brüel,[35] who, while supporting the idea that the concept of "free navigation" provides for freedom of navigation in peacetime not merely for merchant vessels but also for warships, also supports the idea that the provision goes further and intends to ensure that the right of free passage also exists in time of war, with the exception of warships belonging to the states at war with the coastal state.

The history of the negotiation of this clause indicates that not only the territorial question embodied in Article II of the 1881 treaty was part of the compromise, but also

the principles established in the Article V clause. Chile has always refused to accept a solution that would not ensure full possession of the entire strait, while Argentina claims that the strait should be open to all flags and neutralized forever to compensate for that settlement.

It must be said that the neutralization principle is the most controversial of all the provisions examined here. The idea was mentioned in the Ibáñez declaration of 1873, but after the 1881 treaty it has been the subject of various interpretations. Issues raised by this provision also include the question as to who bears the responsibility for enforcing it.

The direct origin of the Article V provision ("the Strait . . . shall be neutralized for ever") is found in an 1881 Argentine proposal inspired by the 1856 Paris Treaty on the Black Sea, which declared that ships of war would at all times be prohibited entrance to the Straits of the Dardanelles and the Black Sea, with limited exceptions.[36] Argentina proposed that the Strait of Magellan be neutralized forever and free navigation assured to vessels of all nations, without allowing the construction of fortifications or military settlements along its coasts.[37] The Chilean reply[38] did not coincide with this approach but proposed a different concept in order to ensure that the neutralization principle favoured the free navigation of all nations, relating the clause that forbids the construction of fortifications as the guarantee of that purpose.

Regarding the legal meaning of the neutralization principle, Abribat[39] maintains that it does not create a neutralized territory, but only an obligation between Chile and Argentina. A perpetual neutralized territory requires the commitment of third powers, which is not the case of the 1881 treaty. This author states that the clause is only applicable to the two state parties to the 1881 treaty, in accordance with which they agree not to conduct hostilities in the strait.

Brüel interprets this clause as a prohibition of all sorts of hostile acts, binding Argentina and Chile in wars between the two states and with third states in which one of them is the belligerent.[40] This opinion leads to a peculiar result that cannot correspond to the correct meaning of the clause,[41] especially because, due to the bilateral nature of the 1881 treaty, which is not subject to any international guarantee, the clause is not intended to impose obligations on third states. Antokoletz[42] supported the idea that Argentina was guarantor of the neutrality against third powers.

The interpretation of the principle as creating a "local neutralization" applicable in case of war has also been supported. J. Escudero indicates[43] that the clause is intended to be applied in case Argentina and Chile are both belligerents against each other. In relation to third states, the clause is *res inter alios acta*. At the same time, the principle was not established to limit the right to self-defense in case of a third country attack.

In another perspective, Pascal[44] indicates that the concept of neutralization was set up to encourage international trade; that it ensures free passage of neutral parties and belligerents in time of war, except when Chile is at war; that it implies the right of Chile to prevent the commission of belligerent acts in the strait by third countries; and that it allows the exercise of control over the access and transit of vessels in case of war, regardless of whether Chile is a belligerent or not.

As can be observed from this debate, the neutralization principle could imply at least three notions: (1) the idea that it is a limitation on Chilean sovereignty, which restricts the use of the strait only for defensive purposes and with the consent of Argentina; (2) it is a restriction on the exercise by third states' warships of the right of free navigation in time of war; and (3) it is a guarantee to third countries ensuring free navigation except when Chile is a wartime belligerent.

It seems that the third alternative is closer to a correct interpretation of the Article V clause as well as more consistent with the practice of the parties. During World War I, Chile expressly declared that its neutrality extended over the Strait of Magellan, protesting[45] to Great Britain over its violation of that neutrality in the capture of the Norwegian ship *Bangor* in the waters of the strait. The Chilean protest was based more on the assumption that the state itself was neutral than on the concept of a neutralized strait.

During World War II, Chile did not enforce any special rule in relation to the strait. In 1939 Chile adopted several decrees to declare its neutrality in relation to the European conflict, in which it reiterated the binding force of the 1907 Hague conventions concerning land and naval wars as well as the 1909 London Declaration and the principles and practices of international law.[46] On that occasion it also was stated that belligerent warships could not stay for more than 24 hours in ports, bays, or territorial waters, except in certain qualified circumstances.[47] The entire Chilean territory, including its territorial waters, was covered by the Declaration of a Security Zone, adopted by the American states in Panama in 1939 and embodied in a convention of 1941.[48] After the declaration of war between Japan and the United States, Chile followed an inter-American agreement in accordance with which any American state that declared a state of war in the conflict would not be considered a belligerent by the others.[49]

The prohibition against building fortifications or military defenses in the strait has been interpreted as a limitation for construction that could encroach on the freedom of navigation.[50] In that sense, it constitutes a restriction established in favor of navigation by third states that must be understood in the light of the neutralization and free navigation principle.

On the other hand, the regime is not applicable to aircraft. Civilian flights over the strait are subject to specific air traffic management agreements between Chile and Argentina that cover the whole area of Patagonia/Magallanes.[51] Such agreements are periodically adopted by the aviation authorities and have a technical nature. Military overflights must request special prior authorization. In relation to submarines, there is no evidence that the free navigation principle has been understood to mean that they were to be allowed to navigate submerged.

Access to the Strait

From a legal perspective, two geographical accesses are of interest to the regime of the strait. They are the eastern mouth and the navigation route through the southern channels that link the Beagle Channel with the strait. Both cases have been related to the characterization of the legal concept of the strait, as well as to the appropriate regime of navigation.

With respect to the eastern mouth passage, Article 10 of the Treaty of Peace and Friendship of 1984 provides:

> The Argentine Republic agrees to maintain, at any time and under any circumstances, the right of ships of all flags to sail freely and unimpeded through the waters under its jurisdiction to and from the Strait of Magellan.

This provision is a corollary to the principles embodied in Article V of the 1881 treaty and a direct consequence of the delimitation clause adopted in the 1984 treaty. It operates as a guarantee to the free and neutral navigation clauses adopted in 1881, notwithstanding the legal nature of the spaces (sovereignty over the sea, land, and sub-

soil) beyond the border line (Boundary Mark Ex-Beacon Point Dungeness and Boundary Marker I Cape Espíritu Santo), and behind it. The regime of navigation that regulates access to the strait beyond the borderline is free navigation, as established for the strait itself.

On the other hand, another regulation of the maritime traffic between the Strait of Magellan and the Argentine ports on the Beagle Channel emerges from the 1984 treaty.[52] Annex No. 2 establishes a set of rules that depicts a special regime in favor of Argentine ships. This route goes through Chilean internal waters as specified in Article 1 of Annex No. 2: Magdalena Channel, Cockburn Channel, Brecknock Pass or Ocasión Channel, Ballenero Channel, O'Brien Channel, Timbales Pass, the northwest part of the Beagle Channel and the Beagle Channel proper until the meridian 68°36'38.5" West longitude and the reverse route.

Passage through this traffic route by merchant ships or ships of war is subject to the following rules: (1) navigation shall be continuous and uninterrupted, and in case of demurrage or anchoring due to force majeure along the route indicated, the commander or captain of an Argentine ship shall inform the nearest Chilean naval authority[53]; (2) passage shall take place with a Chilean pilot, who will exercise his functions between predetermined geographical coordinates (54°02.8' South latitude and 70°54.9' West longitude and the meridian 68°36'38.5" West longitude in the Beagle Channel); (3) the Argentine naval authority must, 48 hours in advance, communicate the date on which the ship is to initiate navigation; (4) during the passage, ships shall abstain from carrying out any activity not directly related with passage, such as the exercise or practice with weapons of any kind or the launching, landing, or taking on board of any aircraft or military device or the boarding or disembarking of persons, fishing activities, research, hydrographic surveys, or activities that may interfere with the security of Chilean communication systems; (5) submarines and other underwater vehicles are required to navigate on the surface[54]; (6) all ships shall navigate with lights turned on and showing their flag[55]; and (7) no more than three Argentine warships may navigate simultaneously along the described route, and they may not carry landing units on board.

The regime that arises from these provisions is a conventional right of passage through internal waters of a foreign state,[56] nonextendable to third powers. The expression used in Spanish to classify this regime, "facilidades de navegación," indicates that there is a distinction between the strait regime and the passage through this route. Chile may suspend temporarily the passage of ships in case of obstacles to navigation due to force majeure, and only for the duration of the obstacle. The suspension enters into force once communicated to Argentina.[57]

Conclusion

The entry into force of the 1982 United Nations Convention on the Law of the Sea may raise some additional questions that must be analyzed in the light of what has been said about the strait's regime. Although Argentina and Chile have not ratified the Convention, questions may arise as to what extent the principles set out in Part III of this instrument are applicable to the strait and under what circumstances.

Even though the Convention makes a distinction between those straits for which Part III is applicable and those straits that are not affected by its provisions, theoretical questions may arise in specific areas. The Strait of Magellan qualifies as one whose legal regime of passage "is regulated in whole or in part by long-standing international conventions in force."[58]

The question concerning a hypothetical application of the Convention's provisions regarding the strait's transit regime or the innocent passage regime is not at stake. As it has been analyzed, the 1881 treaty, reconfirmed by the 1984 treaty, created a special regime for navigation through the strait, which is characterized as free navigation.[59]

The suggestion that new developments in the international law of the sea, which go together with the transit passage regime, should have to be taken into account in regulating additional uses of straits that were not considered by the "long-standing international convention" is a highly controversial point and deserves at least two considerations: first, that those uses must have been accepted by the state(s) bordering the strait in question, and, second, that there is reiterated practice showing that the state(s) in question have adapted their conduct to the new developments. It has not been demonstrated that the parties to the 1881 treaty supported a transit passage approach in relation to the Strait of Magellan.

There is another area in which it might be important to analyze the relationship between the new law of the sea and the regime set out in the 1881 treaty: the regulatory powers of the state bordering the strait and the competences on environmental protection spelled out in Part III in relation to transit passage. Regulatory powers with respect to the safety of navigation and maritime traffic; the prevention, reduction, or control of pollution; and other competences referred to in Article 42 of Part III of the United Nations Convention on the Law of the Sea (as well as the question of enforcement measures that can be adopted in accordance with Article 233 of the Convention), although not directly applicable as conventional rules, constitute an important set of principles that might also be considered in a comprehensive study of navigation through the strait.

Notes

1. United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, *International Legal Materials* 21 (1982): 1261–1354. See T. Treves, "La Navigation, " in *Traité du Nouveau Droit de la Mer*, ed. R.-J. Dupuy and D. Vignes (Paris: Economica, 1985), 791; H. Caminos, "The Legal Régime of Straits in the 1982 United Nations Convention on the Law of the Sea," *Recueil des Cours* 205 (1987): 130–131; J. A. Yturriaga, *Straits Used for International Navigation: A Spanish Perspective* (Dordrecht: Martinus Nijhoff, 1991), 14–15.

2. English text of the Boundary Treaty of 1881 reprinted in Controversy Concerning the Beagle Channel Region, Award, Republic of Chile (Geneva: Imprimerie Atar, 1977), 64–70.

3. English text of the 1984 Treaty of Peace and Friendship reprinted in *Law of the Sea Bulletin*, no. 4 (1985): 50–72.

4. J. M. Abribat, *Le Détroit de Magellan au Point de Vue International* (Paris: A. Chevalier-Marescq & Cie, 1902), 13.

5. E. Brüel, *International Straits*, vol. 2 (London: Sweet & Maxwell, 1947), 201–202; Abribat, *Le Détroit de Magellan*, 17–21.

6. Annex No. 2.

7. Brüel, *International Straits*, 226–227; M. A. Pelliza, *La Cuestión del Estrecho de Magallanes* (Buenos Aires: C. Casavalle, 1881), 354.

8. Controversy Concerning the Beagle Channel Region Award, para. 31. The Court said that "Chile at different times claimed various boundaries considerably to the north of the Dungeness-Andes line, Argentina declining successively to accept them,—and the agreement eventually arrived at, which gave Chile nothing north of this line, was the price she had to pay for obtaining in return the exclusive control of the Straits and of the whole Magellanic region, which was her chief desideratum throughout,—just as Argentina, was the definitive recognition of her exclusive title to all of Patagonia except that small part of it that lay south of the Dungeness-Andes line as far as the Straits." P. 86.

9. R. D. Talbott, "The Chilean Boundary in the Strait of Magellan," *Hispanic American Historical Review* 60 (1967): 525–529; M. Morris, *The Strait of Magellan* (Dordrecht: Martinus Nijhoff, 1989), 59–65.

10. Abribat, *Le Détroit de Magellan*, 121–139.

11. Brüel, *International Straits*, 218–226. At an earlier stage, immediately after the Chilean settlement in 1843, see M. Valenzuela, "Los Estrechos Codiciados, " *El Mercurio* (Santiago), Oct. 18, 1993, D18–D19.

12. Brüel, *International Straits*, 231–235.

13. Chile made a declaration at the time of its signature of the United Nations Convention on the Law of the Sea, reiterating its statement of April 7, 1982 (U.N. Doc. A/CONF.62/WS/19), rebutting a previous Argentine note of April 2, 1982 (U.N. Doc. A/CONF.62/WS/17). *Law of the Sea Bulletin*, no. 1 (1983): 18. In the April 7 statement, it was said that "[i]n accordance with international law and the provisions of the draft convention itself, only the Strait of Magellan meets the qualifications, requirements and conditions to be considered a strait used for international navigation, the régime of which was established in the above-mentioned Treaty of 1881. The other water courses under the sovereignty of Chile form part of its internal waters and its navigation is subject to the régime pertaining to that maritime space. . . ." U.N. Doc. A/CONF.62/WS/19.

14. Abribat, *Le Détroit de Magellan*, 239; P. Fauchille, *Traité de Droit International Public*, T. 1, 2éme Partie, Paix (Paris: Rousseay & Cie, 1925), 280; among the Argentine authors, S. R. Storni, *Mar Territorial* (Buenos Aires: Imprenta Tixi y Schassner, 1924), 24; E. L. Bidau, *Derecho Internacional Público*, 4a. ed., T. 1 (Buenos Aires: Valerio Abeledo Editor, 1924), 168; D. Antokoletz, *Tratado de Derecho Internacional Público*, 5a. ed., T. 2 (Buenos Aires: Librería y Editorial "La Facultad," 1951), 192–193.

15. Communications dated October 23, 1975, and July 20, 1976. Spanish texts in *Memoria* (Ministerio de Relaciones Exteriores de Chile), 1976, 53–55.

16. A. Opazo, "Los Casos Napier y Metula: Los Antecedentes de Hecho, " in *Preservación del Medio Marino*, ed. F. Orrego Vicuña (Santiago: Instituto de Estudios Internacionales, 1976), 154–176; Ch. Gunnerson, "The Metula Oil Spill," in ibid., 212–221.

17. Unpublished official notes dated May 2, 1985, and deposited with the Holy See. Argentina also withdrew its note protesting Chilean straight baselines established in 1977.

18. E. Zeballos, "Neutralización del Estrecho de Magallanes," *La Prensa* (Buenos Aires), Dec. 26, 1914; D. Antokoletz, *La Neutralización del Estrecho de Magallanes* (Buenos Aires: Imprenta José E. Gutiérrez, 1916), 26–27.

19. Morris, *The Strait of Magellan*, 71.

20. Law No. 18.565, reprinted in *Law of the Sea Bulletin*, no. 9 (1987): 1.

21. *Memoria* (Ministerio de Relaciones Exteriores de Chile), 1914–1915, 89. A rebuttal of the theory of a renunciation of sovereignty by the neutralization clause can be found in M. Cruchaga Tocornal, *Nociones de Derecho Internacional*, T. 2, 3a ed. (Madrid: Editorial Reus, 1925), 157–158.

22. Text of the Argentine note reprinted in J. Escudero, *Situación Jurídica Internacional de las Aguas del Estrecho de Magallanes* (Santiago: Talleres de El Diario Ilustrado, 1927), 49. In general on this question, see Brüel, *International Straits*, 244–246; B. Mathieu, "The Neutrality of Chile During the World War," *American Journal of International Law* 14 (1920): 327.

23. Reglamento de Practicaje y Pilotaje, Ministry of National Defense, No. 397, May 8, 1985, *Diario Oficial*, July 22, 1985. An amendment was introduced by Decree No. 846, Sept. 4, 1985, *Diario Oficial*, Oct. 17, 1985. In accordance with their provisions, any ship that navigates through internal waters or the Strait of Magellan or that maneuvers in Chilean ports, must use the service of a Chilean "práctico."

24. Reglamento de Admisión y Permanencia de Naves de Guerra Extranjeras en las Aguas Territoriales, Puertos, Bahías y Canales de la República de Chile, No. 7-21/2, 1951 (Armada de Chile). Decree No. 1385, 10/18/1951. Unpublished. Amendments: D.S. No. 2623, *Diario Oficial*, September 19, 1955; D.S. No. 470, *Diario Oficial*, June 7, 1966.

25. *Diario Oficial*, June 18, 1994.

26. Decree No. 397, art. 32, *Diario Oficial,* July 22, 1985.

27. *Diario Oficial,* July 15, 1977; *Limits in the Seas,* no. 80 (Washington, DC: U.S. Department of State, Office of the Geographer, 1978).

28. E. Pascal, *Derecho International Marítimo,* vol. 2 (Valparaíso: Academia de Guerra Naval, 1986), 133–135.

29. M. Martinic, "Estrecho de Magallanes, Territorio Marítimo Chileno," *Anales del Instituto de la Patagonia,* Apartado 12 (1981): 26–28.

30. Pascal, *Derecho Internacional Marítimo,* 134; E. Pascal "Dominio Chileno del Estrecho de Magallanes," *El Mercurio* (Santiago), Dec. 2, 1979, D8–D9.

31. M. Martinic, "El Estrecho de Magallanes en el Tratado de Paz y Amistad de 1984," in *El Tratado de Paz y Amistad entre Chile y Argentina,* ed. R. Díaz Albónico (Santiago: Editorial Universitaria, 1988), 105–114. In relation to the difficulties in choosing the point of the appropriate low-water line from which to trace the borderline in the eastern mouth of the strait, see D. Bardonnet, "Frontières terrestres et frontières maritimes," *Annuaire Français de Droit International* 35 (1989): 19–20.

32. Brüel, *International Straits,* 231–235.

33. *Memoria* (Ministerio de Relaciones Exteriores de Chile), 1874, 284.

34. Abribat, *Le Détroit de Magellan,* 280.

35. Brüel, *International Straits,* 236–238.

36. J. Colombos, *International Law of the Sea,* 6th rev. ed. (New York: David McKay Company, 1967), 216–217.

37. *Memoria* (Ministerio de Relaciones Exteriores de Chile), 1881, 154.

38. Ibid., 157–158.

39. Abribat, *Le Détroit de Magellan,* 272.

40. Brüel, *International Straits,* 239–241.

41. Escudero, *Situación Jurídica Internacional,* 60–61.

42. Antokoletz, *Tratado de Derecho Internacional Público,* 281.

43. Escudero, *Situación Jurídica Internacional,* 62.

44. Pascal, *Derecho Internacional Marítimo,* 148.

45. *Memoria* (Ministerio de Relaciones Exteriores de Chile), 1916, 204.

46. Decrees No. 1547, 1548, 1587, 4566, 5788, 1455, *Memoria* (Ministerio de Relaciones Exteriores de Chile), 1939, 11–14; Decree C.J.A. Ord. No. 3482 (Navy), ibid., 15–18. See also Decree No. 859 (Air Force), *Memoria* (Ministerio de Relaciones Exteriores de Chile), 1939, 18–19.

47. Decree C.J.A. Ord. No. 3482, ibid., 15–18.

48. *Memoria* (Ministerio de Relaciones Exteriores de Chile), 1941, 49–53.

49. *Memoria* (Ministerio de Relaciones Exteriores de Chile), 1941, 14–17.

50. Brüel, *International Straits,* 242.

51. Information supplied to author by officials of the Civil Aeronautics Agency.

52. Other navigation regimes are adopted by the Peace and Friendship Treaty of 1984 for the communication between the Beagle Channel and Antarctica; Argentine ports on the Beagle Channel and the Argentine exclusive economic zone adjacent to the maritime border between the two states through Chilean internal waters (Annex No. 2, arts. 8 and 9); navigation through the Strait of Le Maire by Chilean ships (Annex No. 2, art. 10); and the regime of navigation and pilotage in the Beagle Channel (Annex No. 2, arts. 11–16).

53. Annex No. 2, art. 3.

54. Annex No. 2, art. 5.

55. Ibid.

56. P. Prieto, "El régimen de navegación por los canales australes," in *El Tratado de Paz y Amistad entre Chile y Argentina,* 115–118.

57. Annex No. 2, art. 6.

58. United Nations Convention on the Law of the Sea, art. 35(c).

59. W. Schachte, "International Straits and Navigational Freedoms," in *The Law of the Sea: New Worlds, New Discoveries,* ed. E. Miles and T. Treves (Honolulu: Law of the Sea Institute, William S. Richardson School of Law, University of Hawaii, 1993), 54.