



# **Transportation of Radioactive Materials Through the Caribbean Sea**

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**Prof. Luis E. Rodríguez-Rivera**  
**University of Puerto Rico**  
**School of Law**



# I. Recent Response to the Passage of the Pacific Sandpiper through the Caribbean Sea

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- February 2007 events:
  - 6 environmental activists arrested in Panama.  
The protesters, two Puerto Rican environmentalists and four Panamanian students, hung a sign from the Bridge of Las Americas that read: **“No to Plutonium – the Dominican Republic, Puerto Rico and Panama”**.
  - Prior to that, Puerto Rican environmentalists climbed on an advertisement billboard located across from the San Juan International Airport, and demanded that the Puerto Rico and Dominican Republic governments adopt more aggressive steps against the transport of radioactive waste through the Mona Passage, a waterway that separates the two Caribbean small island nations.



# I. Recent Response to the Passage of the Pacific Sandpiper through the Caribbean Sea

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- February 2007 Events (cont.):
  - That same week, the President of the Dominican Republic's Academy of Sciences requested that the country's president prevent a ship carrying radioactive waste from using the above-mentioned Mona Passage as this would represent an environmental risk to the Dominican Republic, as well as a breach to its national sovereignty
  - A concurrent resolution bill was filed in the Puerto Rico Senate repudiating the announced passage of the Pacific Sandpiper through the Caribbean, and calling upon the United States President, George Bush, to prevent the transportation of radioactive wastes through the Panama Canal and the Caribbean Sea



# I. Recent Response to the Passage of the Pacific Sandpiper through the Caribbean Sea

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- Under the traditional sources doctrine, these statements and actions would not have non-binding force upon the shipping states, and would be discarded as mere “soft law” instruments.
- However, these statements and actions cannot be viewed in isolation. They are just the most recent expressions in a fifteen-year long history of persistent and strenuous opposition and rejection to the continued use of the Caribbean Sea for the transportation of radioactive materials.
- Expressions made jointly by national governments, regional organizations, non-governmental organizations, and grass-roots movements in the Caribbean region.

**I will take this opportunity  
to expand on some of these expressions.**



## II. Legal Controversy

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- The traditional or conventional analysis of this issue has produced unsatisfactory and conflicting results for coastal states, as it has relied on a narrow interpretation of the “freedom of navigation on the high seas” and the “innocent passage” doctrines codified in the United Nations Convention on the Law of the Sea (UNCLOS).



## II. Legal Controversy

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- Caribbean states have used the instruments available to them in the modern international legal order:
  - “soft law” instruments, such as declarations and resolutions from regional organizations
  - persistent and consistent national actions
  - collaborations with non-governmental organizations.
- Caribbean states, non-governmental organizations and national grassroots movements have used non-traditional forums in which their access and actions are more meaningful.



## II. Legal Controversy

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- The first fact we must acknowledge and internalize *a priori* is the economic and diplomatic power disadvantage that Caribbean states find themselves *vis a vis* rich and powerful Japan, France and the United Kingdom.
- The Caribbean states do not possess the influence necessary to broker an international “hard law” agreement nor the access to the diplomatic channels necessary to adequately address its concerns in the traditional international legal order.



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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### *Caribbean countries*

- Since *the Akatsuki Maru* (1992), many Caribbean countries have expressed their rejection to the continued use of the Caribbean Sea for the transport of radioactive materials.
  - Antigua and Barbuda, the Bahamas, Columbia, Dominican Republic, Jamaica, Puerto Rico and the U.S. Virgin Islands have issued official statements condemning particular shipments of radioactive materials.
  - Haiti and Venezuela have enacted national laws that prohibit the passage of ships carrying radioactive materials through their territorial waters



### III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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#### *Caribbean countries (cont)*

- Similar as in the Pacific region, regionalism has been very successful in the Caribbean
- It is precisely through regionalism that the Caribbean response to the transport of radioactive wastes has been mostly channeled



# III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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## Caribbean Community (CARICOM)

- *Since 1992, CARICOM was among the first international organizations to express their opposition to the transportation of radioactive materials through the Caribbean Sea.*
- CARICOM is composed of the following fifteen Member States: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. Associate Member States include: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, and Turks and Caicos Islands.



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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### CARICOM

- In October 1992, the Heads of Government of CARICOM issued the following declaration:
  1. That shipments of plutonium and other radioactive or hazardous materials should not traverse the Caribbean Sea;
  2. That the Caribbean should not be used for the testing of nuclear devices;
  3. That the Caribbean Sea should be declared a **nuclear free zone** for purposes of shipment, storing or dumping of any radioactive or hazardous substances or toxic waste



# III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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## CARICOM

- CARICOM has continued to emphatically oppose the transportation of radioactive materials through the Caribbean Sea:
- In 1995 and 1997, the CARICOM Heads of Government reiterated the above 1992 Declaration, while also expressing their “very grave concern,” condemnation and disturbance
- On January 30, 1998, CARICOM Chairman and Prime Minister of Grenada, Dr. Keith Mitchell, “expressed outrage over the planned shipment of nuclear waste through the Caribbean Sea.” He called for all states to respect CARICOM’s initiative to declare the Caribbean Sea as a ‘Special Area in the context of Sustainable Development (endorsed by the Association of Caribbean States in 1997)



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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### CARICOM

- On March 5, 1999 CARICOM Heads of Government issued the following statement:

“Heads of Government of the Caribbean Community reiterate their unwavering opposition and that of their peoples to the blatant and persistent use of the Caribbean Sea for the transshipment of highly toxic nuclear materials. They again call on the Governments of France, Japan and the United Kingdom to respect the economic importance and ecological fragility of the Caribbean Sea and the well-being of the millions of people who depend on this unique resource for their very existence. Fully conscious of the catastrophic consequences of any accident for their peoples and for the ecological systems of the Caribbean Sea, they totally reject its use as a transit for such nuclear materials. This is in keeping with the repeated, expressed desire of the Governments and peoples of the Caribbean. ”



# III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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## CARICOM

- CARICOM also made an appeal for the United States to use its authority to prohibit the shipments of radioactive materials through the Panama Canal.
- March 1999: Central American Ministers joined the CARICOM Ministers in rejecting the continued use of the Caribbean Sea for the transit of toxic and nuclear waste.
- July 1999, Heads of Government issued a statement indicating that they “were particularly outraged at the callous and contemptuous disregard of their appeals by the governments of France, the United Kingdom and Japan to desist from this dangerous misuse of the Caribbean Sea.” Moreover, the CARICOM Heads of Government “bitterly regretted” that its appeal to the United States had also fallen on “deaf ears



# III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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## CARICOM

- November 1999: the CARICOM delegation to the Seventh CARICOM-Japan Consultation expressed grave concern over the transshipments of radioactive materials through the Caribbean Sea, and reiterated CARICOM's March 5, 1999 Statement previously quoted.
- December 1999: the CARICOM Heads of Government issued another statement explaining that they were now "even more concerned" about shipments carrying radioactive materials through the Caribbean Sea in light of the recent accidents at the Tsuruga and Tokai nuclear facilities in Japan.
- Jamaican Prime Minister, P.J. Patterson informed French President Jacques Chirac during a meeting of the African, Caribbean and Pacific countries that recent revelations regarding the falsification of safety records by companies involved in the nuclear trade, together with the nuclear accidents in Japan, had heightened concerns in the Caribbean.



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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### CARICOM

- 2001 and 2002: CARICOM Ministers of Foreign and Community Relations expressed its “implacable and steadfast opposition” to the transport of radioactive materials through the Caribbean Sea.
- December 2001: the CARICOM Heads of Government yet again reiterated their implacable opposition



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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### CARICOM

- Ninth CARICOM-Japan Consultation (Nov. 2002): CARICOM delegation reiterated its prior position.
- 2003 -- the Ambassador of Antigua and Barbuda declared during the 58th Session of the United Nations General Assembly that the Caribbean small island nations were not satisfied that its appeals regarding the transshipment of nuclear wastes had received meaningful consideration.
- 2005 and 2006: CARICOM pledged to remain more vigilant regarding the use of the Caribbean Sea since “not only is the Caribbean Sea the natural home of the majority of countries of our Community of States, but it is also the basis of our livelihoods”.



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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### Association of Caribbean States (ACS)

- CARICOM's efforts were joined by other regional organizations.
- ACS created in 1994, has a membership of twenty-five Caribbean nations (including Antigua and Barbuda, Bahamas, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Venezuela), as well as four Associate Members (Aruba, France (on behalf of French Guyana, Guadeloupe and Martinique), the Netherlands Antilles, and Turks and Caicos).



# III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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ACS

- 1999 and 2001, ACS expressed its “strenuous and total rejection” to the continued use of the Caribbean Sea for the transport of nuclear and toxic wastes.
- In its Fourth Summit held in 2005, the ACS declared as follows:
  - We reaffirm the position adopted at the 3rd Summit in Margarita, where we reiterated our strenuous and forceful rejection of the continued use of the Caribbean Sea for the shipment and transshipment of nuclear material and toxic waste, given the threat that any accidental or deliberately induced spill of these materials would represent to the life and ecosystem of the region.
  - We call upon the countries that produce nuclear and toxic waste to implement urgently relevant measures to establish reprocessing facilities which would put an end to the need for transshipment of this nuclear and toxic waste.



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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### African, Caribbean and Pacific Group States (ACP)

- Created in 1974, has seventy-nine Member States: Angola, Antigua and Barbuda, Belize, Cape Verde, Comoros, Bahamas, Barbados, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Kinshasa), Cook Islands, Cte d'Ivoire, Cuba, Djibouti, Dominica, Dominican Republic, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Republic of Guinea, Guinea-Bissau, Equatorial Guinea, Guyana, Haiti, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia, Mozambique, Namibia, Nauru, Niger, Nigeria, Niue, Palau, Papua New Guinea, Rwanda, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Solomon Islands, Samoa, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Suriname, Swaziland, Tanzania, Timor Leste, Togo, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia, and Zimbabwe.



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#### ACP

- Forty-eight of these countries are from Sub-Saharan Africa, sixteen from the Caribbean and fifteen from the Pacific.
- Together these countries account for approximately one-third of all recognized nations, 12% of the world's population and 5% of the Earth's mass.
- Unfortunately, they only account for a minimal portion of the world's GDP, thus diminishing their potential international leverage and voice.



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ACP

- 2002 Nadi Declaration:
  - “We express our strong objection to the transport of nuclear and other hazardous materials through the waters around ACP States. We call for the immediate cessation of such practice in order to, inter alia, prevent any occurrence of accidents that could seriously threaten their sustainable development and the health of their peoples.”



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Commonwealth Caribbean High Commissioners (CCHC)

- Twelve Member States: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.
- In 1996 and 1998, the CCHC also supported CARICOM's declaration calling for a nuclear free zone in the Caribbean, and opposing the continued use of its waters for the transportation of radioactive materials



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CCHC

- More specifically, the CCHC explained:
  - “Caribbean countries have repeatedly condemned such shipments because of their highly dangerous nature and the unacceptable threat they pose to the lives of their people, the fragile ecosystems of the Caribbean Sea and the overall economy of the region. . . .”
  
  - “The countries of the Caribbean region are custodians of a significant network of coral reefs which, apart from being of high economic value to the people of the region, performs a similar global function to that of the rain forests.”



### III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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#### Organization of Eastern Caribbean States (OECS)

- OECS created in 1981 -- seven Members: Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. Associate Members of the OECS include Anguilla and the British Virgin Islands
- During the OECS's 29th meeting held in 1998, the "Prime Ministers were unanimous in their condemnation"



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#### OPANAL

- The Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL), created pursuant to the 1967 Treaty of Tlatelolco, of which the following thirty-three States are Members: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela



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#### OPANAL

- Caribbean Member States of OPANAL have reiterated their opposition to the continued use of the Caribbean Sea as a route for the transport of radioactive materials during OPANAL's sessions and works.
- During a 1998 International Atomic Energy Agency General Conference, the Secretary General of OPANAL requested more safeguards, assurances and liability measures for coastal states in light of the dangerous nuclear shipments taking place.



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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U.S. Members of Congress for Hawaii, Puerto Rico, Virgin Islands, Guam and American Samoa

- In 1995, 1996 and 1998, Congress members Neil Abercrombie (D. Hawaii), Patsy T. Mink (D. Hawaii), Carlos Romero-Barceló (D. Puerto Rico), Victor O. Frazer (Ind. Virgin Islands), Donna Christian-Green (D. Virgin Islands), Robert A. Underwood (D. Guam), and Eni F.H. Faleomavaega (D. American Samoa) wrote to the United States President, William J. Clinton, in order to express their “deep concerns” over the safety and security of upcoming shipments by sea of radioactive materials through the Caribbean Sea, Panama Canal and waters adjacent to Hawaii, Guam and other U.S. territories.



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### Governors of Puerto Rico and U.S. Virgin Islands

- In 1995 and 1996, Puerto Rico Governor Pedro Roselló reacted to reports that a shipment of radioactive materials would travel through the Mona Passage on its way to the Panama Canal by sending letters to the United States Secretary of State, Warren Christopher. In the 1995 letter, Governor Roselló stated that the people of Puerto Rico should not be exposed to the possibility of a nuclear accident within its territorial waters.
- In 1998, Governor Rosello also sent a letter to U.S. Secretary of State Madeleine K. Albright in which he expresses his alarm over the shipment of nuclear waste material on board the Pacific Swan.



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Governors of Puerto Rico and U.S. Virgin Islands

- Also in 1998, U.S. Virgin Islands' Governor Roy L. Schneider opposed the plan to transport radioactive materials through the Caribbean Sea and the Panama Canal because it represented serious environmental and security risks for the Caribbean



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#### NGOs and Grassroots Movements

- The role of non-governmental organizations (NGOs) and national grassroots movements has supplemented the Caribbean countries' regionalist response.
- Due to the economic and technological limitations of many Caribbean countries, as well as their limitations in access to diplomatic channels, NGOs and national grassroots movements have served as important sources of scientific, legal and logistical information.
- Greenpeace and the Nuclear Control Institute, to name just two international NGOs, have supported Caribbean governments and national grassroots movements in the formulation and implementation of their strategies



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### NGOs and Grassroots Movements

- In 1998, three Greenpeace activists boarded the Pacific Swan, which was carrying radioactive waste, as the ship entered the Panama Canal. The activists approached the ship by boat in the early hours of the morning on February 6, 1998, climbed on board, hung a banner reading "Stop Plutonium" on an onboard crane, and chained themselves to the ship.
- Of course, this incident strengthened the Caribbean countries' and regional organizations' position on this subject by providing them with valuable evidence regarding the lack of adequate safety measures taken by shippers of radioactive materials that travel through the Caribbean Sea and the Panama Canal.



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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### NGOs and Grassroots Movements

- Four days before these Greenpeace activists boarded the Pacific Swan, a group of Puerto Rico fishermen and environmental organizations sought an injunction in the United States Federal District Court for the District of Puerto Rico to stop the Pacific Swan from crossing the Mona Passage as it entered the Caribbean Sea.
- The final outcome was not in favor of the Puerto Rico fishermen and environmental organizations, but the suit opened another forum and venue in which to protest and seek injunctive relief regarding the transport of radioactive materials through the Caribbean Sea. Moreover, it illustrates another voice and player in the international legal order.



# III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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## NGOs and Grassroots Movements

- In 2004, a group of Panamanian environmental organizations (Instancia de la Sociedad Civil para el Ambiente) brought an action before the Central American Water Tribunal (CAWT) against the Government of Panama claiming that the transport of radioactive materials through the Panama Canal threatened the environment, health and quality of life of Panamanian citizens.
- Created in 1998, the CAWT is an international, autonomous and independent organization of environmental justice aimed at resolving conflicts related to the water ecosystems in Central America. Based upon principles of respect to human dignity and solidarity among peoples and organizations, the CAWT's mission is to provide an alternative justice setting for Central American citizens in their struggle in favor of preserving the environment and protecting water resources.



# III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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## NGOs and Grassroots Movements

- In its March 19, 2004 verdict, the CAWT resolved as follows:
  - To declare that the Government of the Republic of Panama is responsible for not prohibiting the transit through the Panama Canal of ships with highly radioactive materials.
  - To demand that the government of Panama take measures for the complete ceasing of transit of highly radioactive material through Panama, in order to prevent any catastrophe.
  - To exhort the judicial authorities of Panama to afford the due process and resolution of actions and complaints filed on this matter.
  - To urge the Panamanian civil society, particularly the social communications media, to exert active and determinant action to assure compliance with the provisions of this resolution.



## III. The Opposition to the Transport of Radioactive Materials through the Caribbean Sea

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### NGOs and Grassroots Movements

- The legitimacy of the CAWT's verdict is based on the moral nature of its resolutions, as well as, on its legal findings which are based on international human rights and environmental covenants, declarations and agreements.
- Two years later, in March 2006, Instancia de la Sociedad Civil para el Ambiente brought a similar action before the Latin American Water Tribunal (LAWT). Created in 2006, the LAWT is a similar forum to the CAWT, but chartered to evaluate cases on environmental damages inflicted upon the water resources in detriment to Latin American populations. The LAWT also resolved that the Government of Panama was responsible for not prohibiting the transit of radioactive materials through the Panama Canal.



## IV. Human Rights Claims by the Caribbean People

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- The transshipment of radioactive materials violates the Caribbean people's human rights. In particular, this practice infringes upon the Caribbean people's human right to life and human right to live in a healthy environment (right to environment).
- As Caribbean countries, regional organizations, non-governmental organizations and national grassroots movements have persistently and strenuously claimed, they are dependant on the Caribbean Sea for the very subsistence of its people.



## IV. Human Rights Claims by the Caribbean People

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- As has been documented about the Caribbean:
  - The wide coastal shelves and warm tropical waters create ideal conditions for the formation of an estimated 26,000 square kilometers of coral reefs. Separated from other coral reefs, these have evolved in isolation, and remarkably few of the many thousand of species in these waters are found anywhere else in the world.
  - More than 116 million people live within 100 km of the Caribbean coast, and many livelihoods depend strongly on the marine environment. Coral reefs contribute significantly to nutrition and employment, particularly in rural areas and among island communities, where there may be few employment alternatives. The reefs are also a major draw for tourists to the region. Coral reefs provide shoreline protection, notable during storms and hurricanes, and generate white sand for many beaches. The biodiversity of coral reef ecosystems has enormous value as a provider of potentially life-saving pharmaceuticals .



## IV. Human Rights Claims by the Caribbean People

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- A respected study exploring the economic value of Caribbean coral reefs, particularly with regards to the reefs' contributions to fisheries, tourism and recreation, and shoreline protection services, was published in 2004. The study revealed that, based exclusively on these categories, the value derived by Caribbean countries from healthy coral reefs amounted to US\$3.1 - 4.6 billion annually.
- However, there were many other sources of value that were not included in this study such as, bio-prospecting, harvesting of non-food resources (aquarium fish, curios), value of these ecosystems to research and education, value in supporting adjacent coastal and oceanic ecosystems, value of coral reefs to regional and global oceanographic and climatological processes, and non-economic values for natural resources (aesthetic, spiritual, cultural or intrinsic value).
- More importantly, the study did not account for the fact that healthy coral reefs make a significant contribution to subsistence livelihoods in many Caribbean countries.



## IV. Human Rights Claims by the Caribbean People

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- In the University of Puerto Rico, research is conducted to identify active elements in the coral reefs that may help treat or cure tuberculosis, leukemia, malaria, HIV, and other viral infections.
- Recent discoveries from said research are currently being tested at M.D. Anderson Medical Center in Houston, Texas, for potential applications in the treatment of several types of cancers, including for reducing the size of brain tumors.
- If the Caribbean coral reefs are destroyed by a radioactive accident or spill in the Caribbean Sea, potential treatments and cures for the deadly and crippling diseases also disappear.



## IV. Human Rights Claims by the Caribbean People

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- For Caribbean people, their human rights to life and to environment are dependant of a healthy and uncontaminated Caribbean Sea.
- On the other hand, a Caribbean Sea contaminated by a radioactive accident or spill would impair the Caribbean people's fulfillment of said human rights.



## V. Traditionalist's Response to the Human Rights Claims

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- Traditionalist legal scholars reject that human rights claims exist in the controversy at hand.
- Instead, the traditional approach has been to define the debate exclusively as a sovereignty issue under UNCLOS.
- By categorizing the transport by sea of radioactive wastes as a mere exercise of Japan, France and United Kingdom's right to innocent passage under UNCLOS, traditionalist's narrow the discussion to whether such innocent passage was "innocent" in fact.



## V. Traditionalist's Response to the Human Rights Claims

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- As the legal literature shows, evaluating whether the passage of a particular ship carrying radioactive materials through territorial or Exclusive Economic Zone waters is innocent or not – that is, whether it is “prejudicial to the peace, good order or security of the coastal State” – has proven a misleading and sterile slippery slope.
- A common approach has been to outline all the safety and security measures and regulations that apply to the testing, handling, packaging and shipment of radioactive materials in order to prove the improvable: that there is no or minimal risk of radioactive contamination of the seas associated with the transport of radioactive materials.



## V. Traditionalist's Response to the Human Rights Claims

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- An example of this approach is found in a 2003 study commissioned by the Organization of American States:
  - “. . . international experts widely recognize that, under normal circumstances, the transport of radioactive waste poses minimum hazards since the toughest regulations that reflect the most advanced scientific developments have been and are taken to make sure that the radioactive material is properly contained, shielded, protected against critical reactions should it contain fissile material, and that the possibility of contamination is negligible.”



## V. Traditionalist's Response to the Human Rights Claims

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- By fragmenting the evaluation to a particular shipment, traditionalists successfully avoid the issue that most concerns Caribbean countries.
- This issue can be framed as follows: the continued use of the Caribbean Sea for the transport of radioactive materials will inevitably lead in some moment to a catastrophic radioactive accident, which, in turn, will curtail Caribbean people's fulfillment of their human rights to life and to environment.
- To continue to put Caribbean people and the Caribbean Sea at risk of catastrophic radioactive contamination is well beyond any rights granted to nations under UNCLOS. On the contrary, this behavior by Japan, France and the United Kingdom constitutes a violation of the Caribbean people's right to life and to environment.



## V. Traditionalist's Response to the Human Rights Claims

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- The Organization of American States (OAS) in evaluating the safety of the transshipment of radioactive materials determined that the decision of whether a minimum level of risk of radioactive contamination from these activities is bearable or not is essentially a “political decision of a sovereign country.”
- However, what the OAS did not give proper credence to was CARICOM's position that “their concern was not about the degree of risk posed by the transporting of such waste, but rather the inherent threat associated with the shipments. . . any spillage whatsoever would have devastating effects on the marine and coastal environment”.



## VI. Legal Conclusion under Modern International Law

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- Under modern international law, the overwhelming and continuous (at least fifteen years) rejection by coastal states in the Caribbean, Latin America, the Pacific and Africa, as evidenced by numerous soft law instruments and actions, in effect have limited or modified the scope of the innocent passage doctrine contained in UNCLOS.
- It is apparent by the response of coastal states that they *do not consent* to the conservative or narrow interpretation of the innocent passage doctrine.



## VI. Legal Conclusion under Modern International Law

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- If Japan, France and the United Kingdom continue violating this new formulation of the innocent passage doctrine, coastal states will be justified in seeking relief.
- However, due to the catastrophic danger posed by these shipments, I will not be surprised if in the near future we witness more countries following Chile's example by responding to the shipping nation's provocation and threatening the use of military force in self-defense, in order to prevent these shipments of radioactive materials from entering their territorial and Exclusive Economic Zone waters.



## VI. Legal Conclusion under Modern International Law

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- The inherent balancing of risks and benefits made by Japan, France and the United Kingdom in choosing to transport radioactive materials by sea ignores the preemptive nature of recognized human rights, and evinces a complete violation of recognized human rights.
- This conduct imposes frequent, irreparable and catastrophic threats to present and future generations of people along the chosen sea routes, as well as the environment.



## VI. Legal Conclusion under Modern International Law

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- These shipping states have also ignored the “untold human suffering” they will impose upon present and future generations and the environment. Every time humans and the environment are exposed to significant radiation, “untold human suffering” will result.
- The threat of a radiation exposure incident triggered by human or technological mistakes in the transportation of radioactive materials is undeniable, predictable and catastrophic.



## VI. Legal Conclusion under Modern International Law

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- Given the unique characteristics of radioactive materials and the catastrophic dangers posed by its transportation by sea, I would venture to suggest that any incident that causes significant radiation exposure to humans and the environment should be considered an act against humanity that violates international criminal law principles.
- Of course the continuous threat of an imminent and catastrophic radioactive event is, in and of itself, a human rights violation.



## VI. Legal Conclusion under Modern International Law

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- Another conclusion is based in the UNCLOS mandate for all States to protect the marine environment. There is no scientific doubt that the Caribbean Sea encapsulates a special marine environment that merits special protection. Hence, Japan, France and the United Kingdom have a duty under UNCLOS to cease shipping nuclear materials through the Caribbean Sea.



## VI. Legal Conclusion under Modern International Law

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- Another conclusion is based on plain common sense.
- The more shipments of radioactive materials that cross the Caribbean, the greater the probability that an accident will occur.
- On the other hand, crossing the treacherous Mona Passage into the Caribbean Sea, encountering a disorganized sea-traffic grid congested with oil tankers, cargo ships, cruise ships and recreational boats, deciphering its dangerous reefs and sand banks, and crossing the Panama Canal with its assortment of mechanical functions, only increase the probability of shipping accidents when traversing the Caribbean Sea.
- Of course, human or mechanical errors, as well as the potential for terrorist attacks against a ship carrying radioactive materials, serve only to make the continued use of the Caribbean Sea for these purposes even more unreasonable.