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AVRUPA BİRLİĞİ ENSTİTÜSÜ

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THE SEA POLITICS OF THE EU IN THE FRAMEWORK OF 1982 UN CONVENTION ON THE LAW OF THE SEA

Selman ÖĞÜT

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ONAY SAYFASI

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Abstract

It is obvious that International Law of the Sea has gained importance with the technological developments. Both coastal and non-coastal states want to utilize from the sources of sea and every kind of possibility of the sea, using with technological developments. Naturally, unless those kinds of demands are not regulated legally, possibility of an international dispute is inevitable. Thus, 1958 Geneva Conventions on the Law of the Sea and 1982 UN Convention on the Law of the Sea were concluded in order to avoid those kind of problems.

In that sense, European Union which has proved itself as an economically strong and a sui generis legal structure has participated 1982 Convention on the Law of the Sea. The European Union is a structure which its member states want to utilize form sea in terms of natural sources of the sea and opportunities which are coming from sea. Maritime and admiralty legislations of the European Union, which has been established on the economical basics, have an economical characteristic. I defend that the sea practices of the EU should be a good example, especially for the protection of the natural sources and the sea life. In that context, it should not be ignored that the protection of the natural sources affects the economical progress in a direct way.

Turkey is not a party of 1958 Geneva Conventions on the Law of the Sea and of 1982 UN Convention on the Law of the Sea. How should be the sea politics of the Turkey which is a candidate country and still going on the accession negations? I examined the Aegean Sea and Cyprus issue and also transportation and fisheries subjects in my thesis. I defend the general opinion which says that sea politics of the Turkey should be given more importance.

Özet

Uluslararası Deniz Hukuku'nun teknolojik gelişmelerle beraber giderek önemini arttırdığı aşikardır. Hem kıyı devletleri hem de kıyısı olmayan devletler, teknolojik gelişmelerle beraber deniz kaynaklarından ve denizin sunduğu her türlü imkandan daha fazla yararlanmak istemektedirler. Tabii ki bu istekler belirli hukuki düzenlemelere tabi tutulmadıkça uluslararası problemlerin çıkması ihtimali yüksektir. Nitekim 1958 Cenevre Deniz Hukuku Sözleşmeleri ve 1982 BM Deniz Hukuku Sözleşmesi, bu tür problemleri önlemek üzere aktedilmiş sözleşmelerdir.

Bu bağlamda ekonomik güç bakımından kendini kanıtlamış bir sui generis hukuk yapısı olan Avrupa Birliği de 1982 BM Deniz Hukuku Sözleşmesi'ne taraf olmuştur. Avrupa Birliği gerek ulaşım gerekse doğal kaynak kullanımı açısından denizden olabildiğince yararlanmaya çalışan ülkelerin üyesi olduğu bir yapıdır. Ekonomik işbirliği temelleri üzerine kurulmuş AB'nin deniz hukukuna ilişkin mevzuatı çoğunlukla ekonomik içeriklidir. AB'nin deniz uygulumalarının özellikle doğal kaynakların ve deniz yaşamının korunması için örnek teşkil etmesi gerektiğini savunmaktayım. Bu bağlamda gözden kaçırılmaması gerek husus ise doğal kaynakların korunmasının ekonomik ilerlemeyi doğrudan etkilemesidir.

Türkiye, 1958 Cenevre Deiz Hukuku Sözleşmeleri'ne ve 1982 BM Deniz Hukuku Sözleşmeleri'ne taraf değildir. Halen AB ile tam üyelik hedefli müzakereler yürüten bir aday ülke olan Türkiye'nin, 1982 Sözleşmesi'ni kabul eden AB ile ilişkileri deniz politikası bakımından nasıl olmalıdır? Tezimde Ege denizi ve Kıbrıs sorunları ile ulaşım ve balıkçılık meselelerini de inceledim. Ortak kanaat olan Türkiye'nin deniz politikalarına daha fazla önem verilmesi gerektiğini ben de savunmaktayım.

List of Abbreviations

Art.	**: Article**
COM.	**: European Commission**
COPE	**: Compensation Fund for Oil Pollution in European Waters**
EC	**: European Community**
ECR	**: European Court of Justice**
ECJ	**: European Court of Justice**
EEC	**: European Economic Community**
EEZ	**: Exclusive Economic Zone**
Etc.	**: et cetera**
EU	**: European Union**
EUROS	**: European Register of Shipping**
IASC	**: International Association of Classification Societies**
Ibid.	**: Ibidem**
i.e.	**: Id est**
GSASC	**: Greek Cypriot Administration of Southern Cyprus**
IMO	**: International Maritime Organization**
MOU	**: Memorandum of Understanding**
NCTR	**: North Cyprus Turkish Republic**
No.	**: Number**
O.J.	**: Official Journal of European Communities**
Op. cit.	**: Opus Citatum**
p.	**: page**
para.	**: Paragraph**
SOLAS	**: International Convention on Safety of Life at Sea**
TAC	**: Total Allowable Cathces**
TETN	**: Trans European Transport Networks**
TRACECA	**: Transport Corridor Europe Caucasus Asia**
UN	**: United Nations**
UNCLOS	**: United Nations Convention on the Law of the Sea**
v.	**: versus**

Introduction

The human being has almost completed his discoveries with regard to earth and directed to two new scopes. One is the seas which include the utilization of the natural sources and the other one is the utilization of the space.[1]

The United Nation Convention on the Law of the Sea was opened for signature between December 1982 and December 1984. It established a legal regime governing activities on, over and under the oceans of the world. With the third U.N. Conference on the Law of the Sea the Convention was resulted. (This process took 93 weeks between December 1973 and December 1982.)[2] According to Brown, UNCLOS is without doubt one of the most complicated treaties in the whole history of international relations which itself broke new ground both in terms of its duration and its employment of novel negotiation techniques. A proper interpretation of the new legal regime of the law of the sea can be obtained by a close analytical scrutiny of the UNCLOS for the newcomers of the law of the sea because of the length and complexity of the UNCLOS. The sources which are intended to clarify and interpret the UNCLOS are important for a full understanding of the law.[3] In that context it is clear to understand that the law of the sea, in any aspect, one of the most developing legal area. The seas have been focused as a main subject by most of the coastal or non-coastal states. For Turkey, we can not say that required focus on that area is realized and although Turkey is a peninsula, no one can easily say that required attention to the sea subject is well provided.

In that study, we examine the sea politics of the European Union within the effects of the Turkey's sea politics in three sections. For the first chapter, we examine the law of the sea with a general outlook. As a prelude, a short history of the law of the sea is examined and the main concepts of the law of the sea are determined. This section does not include a detailed study of those main concepts of the law of the sea. Internal waters, territorial waters, other terms (such as islands and low-tide elevations), contiguous zone, continental shelf, exclusive economic zone and high seas are main concepts which are generally studied.

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[1] Kuran Selami, 2009, Uluslararsı Deniz Hukuku, 3. Baskı, Türkmen Kitabevi, İstanbul, p. 1
[2] Paulsen B. Majoire, Law of the Sea, Nova Science Publisher, New York, 2007, p.1
[3] Brown, Edward Duncan, 1994, The International Law of the Sea: Volume 1: Introductory Manuel, Dartmouth Publishing, Aldershot, p. 5

The reason of the examination of the main concepts of the law of the sea is to give basic information for subsequent chapters. As our subject includes Turkey's situation in the EU law of the sea regime, we use main books and articles both in Turkey's and worlds doctrine which are helpful to obtain detailed information for the reader.

For the second chapter we study the sea politics of the EU, of course, in the light of UNCLOS regime. This section indicates that Marine Strategy and Maritime Policy are the basic terms of the E.U. sea politics and the legal regime. UNCLOS is considered as a global convention that provide further context for European efforts respecting ocean management. As the EU was firstly established on the basis of economic objectives, sea policy of the EU is more related to economical aspects. In that point, we have to state that The Marine Strategy has a clear environmental focus, while the Maritime Policy is more encompassing and stresses the need for economic development as well as sustainability. With the accession of 25 new member states, the EU extends from the North Sea and Baltic Sea in the north to the Irish Sea and the Atlantic Sea in the west, and to the Mediterranean sea to the South and east.[4] Twenty constituent states have coastlines, and the coastline of the EU is over 65.000 km in total. The offshore marine area of the EU, including territorial waters, coastline shelves of its member states and exclusive economic zones, is larger than the land territory of the EU. This area is going to increase further and additional states become EU members. Europe is the continent, which has the highest ration of coast-to-surface area.

However, the European Community, for many years, did not have a shipping policy. Some scholars, in carrying out a retrospective review of the EC shipping policy, criticize its development for being reactive. They also claim that it has been neglected, especially during the first 20 years of the European Community.[5]

Another important point is the EU's sea policy should not be assessed as a federal state's sea policy. As the EU is a sui generis legal structure, the sea policy and the regulations related to sea areas area also can be assessed as sui generis.

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[4] CIA, The World factbook, online at (http://www.cia.gov/cia/publications7factbook/goes//ee.html)
[5] Roger F. Greaves, 1997, EC' s Maritime Transport Policy: a retrospective view, EC shipping Policy, p. 6

The Prot Policy, Common Fisheries Policy and the Maritime Safety policy are main topics in the second chapter of our study. For the port policy of EU, we indicate that the main objective of the EU with regard to port policy is a sustainable port policy. In that context, we determine two main objective of port policy which are short sea shipping and concept of safety and three main governance challenges which are interrelated and contemporary port authorities can respond to them.

- Sustainable port development,
- Logistics integration,
- Strategies of market players.

With regard to Common Fisheries Policy of the EU, we indicate that fishing and aquaculture are significant economic activities in the European Union. In 2005, the EU is the world's second biggest fishing power after China, with a production of almost 7 million tones of fish from fisheries and aquaculture. Eventually, while more than 2 million tones of fish products were exported in 2006, over 6 million tones had to be imported to supply the needs of the EU. This imbalance between imports and exports gave some bad outcomes. For instance, the last result was a deficit of over €13 billion the same year. However, overfishing and overcapitalization are two main problems of the EU Common Fisheries Policy. Some points to cope with those problems are also touched upon in that section.

The fisheries policy based on the market and structural policies, which were subsidizing the fishing industry. It was aimed with the help of minimum prices on fish and by grants for vessel construction to catch more fish. The compromise of the comprehensive Common Fisheries Policy was founded in 1983 by the establishment of the conservation policy,[6] which was enhanced by the structural policy,[7] and the control policy.[8] These policies should be touched upon, because it is easy to see that these policies are the basics of the principles and objectives of the Common Fisheries Policy.

[6] Council Regulation (EEC) No. 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, O.J. L 24, 27.1.1983
[7] Council Regulation (EEC) No. 2908/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, O.J. L 290, 22.10.1983
[8] Council Regulation (EEC) No. 2057/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, O. J. L 220, 29/7/1982
of fishery resources, OJ L 24, 27.1.1983

As the last sub-section in the second chapter, the Maritime Safety Strategy is examined. Several significant EU policy documents have put increasing emphasis on maritime safety. It is important to address some decisive issues with regard to policy formulation in the maritime safety area. Because of the level of maritime safety can be critically shaped as a result of maritime safety policies. Therefore it is overt that a critical assessment on the nature of these policies and on the way that these are put forward is necessary. In that sense, outlining the main players in worldwide maritime safety policy-making along with some of the obstacles they meet in their task should be touched upon.

Chapter III is about Turkey's situation. In that chapter, the effects of the sea politics of the EU on the Turkey's sea politics are examined. However, this examination includes Turkey's general sea politics within a assessment of the current situation and problems. In that context two main problems of Turkey rise out of the ruck. First one is the conflict between Greece in the Aegean Sea which is mainly related to the concept of continental shelf, territorial borders and it is known as Aegean Issue. Second one is the conflict in the Mediterranean Sea area between Turkey and Greek Cypriot Administration of Southern Cyprus (GSASC) which is related to use of natural resources and of course the continental shelf and it is known as continental shelf issue in the Mediterranean Sea.

Our study, which takes place under the law department, should include not only the political and historical dimensions of the issues, but also the legal perspective of this above-mentioned problems. To reach this objective, legal dimension of those issues are examined in the light of concerned documents such as agreements and treaties. As it is well-known, law does not generate from only codes and rules, but the interpretations of them and also jurisprudence. Scholars have a responsibility to clarify the conflicting rules, codes or articles to help the protection of the justice. In this way, every idea is important to determine and touch upon under the condition that it should be traced back legal and logical claims. Therefore our work includes two conflicting perspectives and opinions of related issues.

With regard to Aegean Issue, as Greece and Turkey share common land and sea borders and they both have extensive coastlines along the Aegean Sea, the geographic imperatives of both countries can moderate actions. However these imperatives can also provoke them. These imperatives are long term and can cope with governments and ruling elites. They are also interrelated, so that if one imperative is changed it will probably affect others.

However it is overt that for more than thirty tears, the Aegean Issue has been the cause of a serious tension between Greece and Turkey over some vital matters of sovereignty and exclusive rights in the region. The Aegean issues were all hindered from triggering some type of physical confrontations between the two parties, although there is a reality that the wide range of dispute, issues occasionally resulted in sudden outbreaks in the region. The Aegean issue unfortunately has remained unsettled yet, however dispute management processes were devised and maintained in the late 1990s and the 2000s: a critical change between the Turkey and Greece in particular with the acceptance of the Turkish candidacy to the EU membership at Helsinki in 1999.

The Aegean Sea dispute between Turkey and Greece has been existed for more than three decades. There is also a disagreement related to subjects in dispute. Although Greek side states the delimitation of the continental shelf is only unresolved issue, Turkey determines more than one. In general the conflicting subjects in Aegean issue can be classified as :

- Breadth of territorial waters;
- The delimitation of continental shelf;
- The delimitation of Flight Information Regions;
- Disputes over the national airspace;
- Sovereignty;
- Some disputed islands ;
- Demilitarization of Greek islands of the Aegean Sea.[9]

It should be emphasized at the outset that the center of the disputes are focus on the width and delimitation of the territorial sea in the Aegean, and the rights of navigational freedom and over light affected by such claims. In that section we examine the over-stated conflicting situations in Aegean Sea. This section examines the over-stated matters in Aegean Sea. For this examination, to take a look from the history of the relationship between Turkey and the Greece is overtly significant. Of course, the international law aspect and the effect of the European Union on the issue are well examined.

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[9] The Cyprus controversy also festers relationships between Greece and Turkey, as do feelings on each side of the Aegean that the other nation has engaged in oppression and abuses in the past and harbors expansionist plans for the future.

With regard to Mediterranean Sea Issue, the continental shelf and EEZ dispute between GSASC and Turkey is examined. The concept of continental shelf and the EEZ are well determined in the first section. Therefore only some important and distinctive points related to these subjects are indicated in order to avoid from repeat of same information and comments. Besides, initiatives of the GSASC to make agreements between other coastal states in Mediterranean Sea, Turkey's reaction to this initiatives and related court decisions and EU reactions to the similar situations are examined. In our study, both GSASC's perspective and Turkey's perspective with regard to Cyprus Dispute are given to have an objective result.

Actually, as a consequence of this, two main objectives are tried to be achieved in this section. First of all, the continental shelf and the EEZ disputes between Turkey and GSASC will be described in order to clarify the substance of those problems. For the second step, the analyses of the decisions given by the ICJ and the arguments of legal scholars are examined under the light of the legal developments and state practice. For the continental shelf dispute both between Greece and Turkey and between GSASC and Turkey, we have to say that disputes related to this concept are particularly seen in enclosed and semi-closed seas.

For the Turkish approach (and it is also included contra-arguments to the Greek approach) principle of equality and the principle of supremacy of the geography are the basic arguments which are significant to determine. After the assessment of the Greek approach we handle the solution method of the Mediterranean dispute. Naturally, EU's perspective is also examined in that process.

In addition to Aegean and Mediterranean Issues, the effects of current transportation and fisheries policy of the EU on Turkey is also determined. Those two topics always take place in the General Reports of the EU with other topics. However we think that transportation and fisheries should be highlighted. Because Turkey is strategically has a suitable position for transportation. For fisheries, Turkey should have stable and sustainable fisheries policy to preserve her advantage.

Turkey's situation in the light of relationships with EU, which is now in a critical point in terms of to be a full member of EU, and also in the light of international law of the sea is well examined in this study. We recommend some innovations and initiatives in order to contribute

Turkey's situation and her current issues. We hope our study will be useful for Turkey's situation in the EU policy and also for the international problems of Turkey.

Chapter I: General Outlook of the Law of the Sea

A) Historical Aspect

In this section, only the historical development of law of the sea is examined. As subject of this work is effect of the United Nation's Law of the Sea Convention (after that it is UNCLOS) on the European Union (after that it is E.U.), maritime law's historical development is not considered as a necessary section to determine.

It is commonly accepted in the doctrine that custom regime was dominant in the law of the sea.[10] As there were no codified rules at the beginning, customs were applied to settle the conflicts. However, there are some reasons, which triggered to regulate the law of the sea regime. These are decisive for the historical development and regulation of the law of sea with a more certain manner.[11]

a) Development of the shipping and seafaring;
b) Developments at the marine transportation and marine trade level and the rules and codes which regulate those subjects
c) Claims of the states about sea areas and developments related to those claims.

Economical and technological improvement and improvement of the sea transportation caused to increase the searching and the running of the sea area. In this sense the regulation of the law of the sea regime became necessary both national and international sphere. Three main points are important in this sense.[12] Some writers indicate that it is easy to understand the history of international law of the sea by perceiving it as a continual conflict between two opposing and basic principles. The first one is freedom of the high seas and the second one is territorial sovereignty. Because the boundary between high seas and the other areas has never been a stable one.[13]

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[10] Kuran, op cit. p. 1
[11] Özman, Aydoğan, Deniz Hukuku: Kaynaklar, Kişiler, Nesneler, Turhan Kitabevi, Ankara, p. 15, 2006
[12] Churcill, Robin, Law of the Sea, Third Edition, Manchester publishing, Manchester, p., 1999
[13] Brown, op cit. p. 6

The first written customs were regulated in Indian Manu Constitution at 12. century. It was about the loans stemmed from marine trade.[14] However in the continental sources it is commonly accepted that the first written customs were of the Rhodes.[15]

Actually it is important to say that the law of the sea's development process is parallel to development of international law in general. For example, law of the sea's early treaties were constituted in the sense of particular disputes; that was just like the system which was exercised for international law treaties.[16]

''At the midlle age, the law of the sea regime was developed in the Mediterranean Area and north and south coastal region of Europe. Significant customs and the collection of court decisions until 17. century are:[17]

a) Rhodes Codes:

It was regulated at 8. century. There is no relationship between Rhodes Codes and Rhodes Custom's. It was dominant in Mediterranean Ports.

b) Status of Italian Cities:

Piza's custom law (Constitutum Usus) and Venedic's Status related to shipping (Statutra e ordinamenta super navibus), and Genova's, Ancome's and Amalfi's Status.

c) Customs of Hans:

It was created with an coherence of Custom's of Hamburg, Bremen and Lübek.

d) Other Status:

These are Merchant Adventurers in England (1296), London Status; in Spain Valance (1250) and Bilbao Status; in Norwegen Bergen Status.

e) Oleron's Decisions:

It was written in 12. century. It was a collection of decision of Marine Court of the Oleron Island.

f) Consulado del Mar:

It was the west Medeterian sea customs and the court decisions.

g) Guidon de la Mer:

It was a sea guidebook which was written at 1583 at France.''

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[14] Göknil, Mazhar Nedim; Deniz Ticaret Hukuku, 3. Bası, Alkım Yayınevi, İstanbul, p. 3, 1946
[15] Tekil, Fahiman; Deniz Hukuku, 6. Bası, Alkım Yayınevi, İstanbul, p. 12, 2001
[16] Churcill, op cit. p. 3-4
[17] Tekil, op cit. p. 13

Codification movements of the law of the sea were started at early 17. Century. The Dutch jurist Grotius (Hugo de Groot) published Mare Liberum. It was a pamphlet in which he attacked the closed sea notion and contemplated instead for the freedom of the seas as an adjunct of the res communis principle. Actually he stated that sea can in no way be the private property of anyone, because its nature allows to use of it as common.[18] In addition to it, in 1681 Ordonnance sur la marine was publised. It was first document, which was a initiative part of codification of the law of the sea. Ordonance sur la marine consisted of five books and it included both private law and public law provisions.[19]

Conclusion of a positive multilateral agreement related to oceans regime has been demanded for decades. But no such treaty was negotiated until it was understood that existing regime became inevitably clear with the significant advances in technology, which took place during the second half of the 20th century. It was the economic and technological limitations; exploitation of both living and nonliving marine resources had traditionally been focused in coastal areas, where most of these resources are concentrated.[20]

In this sense, the British Colonial Act of 1811 was a result of arguments about using of marine resources. In this sense, Brown mentioned about changes in the national fortune and the balance gradually swung.[21] Britain was the leading maritime power from the beginning of the 19th century. She pursued and consolidated a policy of freedom of the seas. He stated that in 1821 Britain helped the United States against Russia's attempt to prevent foreign shipping from all waters up to 100 miles from Alaska. However, in 1886, Britain objected United States attempt in order to extend its jurisdiction over the seal fishery in the Behring Sea.

In 1856 in the Treaty of Paris the freedom of the seas doctrine was codified. The Conference on the Progressive Codification of International Law, held at The Hague under the auspices of the League of Nations in 1930. 42 mostly European states attended and argued law of the sea issues but reached no decision related to the width of territorial waters or the extent of contiguous fisheries jurisdiction. United States and 20 another American States established a

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[18] Morell, James; The Law of the Sea: An Historical Analysis of the 1982 Treaty and its Rejection by the United States, Mc. Farland & company Inc Publishers, North Colifornia, p. 3, 1992
[19] Tekil, op cit. p. 14
[20] Morell, op cit. p. 3
[21] Brown, op cit. p. 8

temporary 300 to 1200 mile-wild security zone around the Western Hemisphere in the Declaration of Panama in 1939. It was asserted that an inherent right to protect vessels within their coastal waters against attacks. It was also a decisive movement in the historical development of the law of the sea. Because in 1944 sic states extended the width of the territorial sea to six miles, it was extended to nine miles by one state, and to twelve miles by two states.[22]

The above-mentioned development process is about the background of the United Nations Law of the Sea Conferences. As the historical aspect of the UNCLOS requires to determine those conferences, they will be indicated within the chapter III which is about UNCLOS and its historical aspect.

B) What is a Vessel? What is a Ship?

In many context of law of the sea and maritime law, it is important to define the notion of vessel. For instance; it is decisive in determining jurisdiction since acts that occur a vessel will be supposed to satisfy the maritime relationship requirement. In addition to it the existence of a vessel can be necessary for the assertion of a salvage award or a maritime lien under the general maritime law.[23] Congress set out a general definition of the term vessel: ‘’ Every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation by water.’’[24] However there is no common definition of a vessel in current law of the sea doctrine.

Although every state has its specific vessel definition,[25] there are some criterion used to clarify whether a structure is a vessel.

a) it should be designed to be mobile and capable of transportation across water
b) it should be subject to the common perils of the sea
c) it should be designed to be permanently fixed in position
d) the vessel status should be consistent with statutory or other policy consideration.[26]

[22] Morell, op cit, p. 3
[23] Schoenbaum Thomas J., Admiralty and Maritime Law, 4. Edition, Westlaw Publishing, Washington DC, p. 36, 2003
[24] Admiralty jurisdiction is conferred upon the District Courts of the United States by 28 U.S.C.
[25] Kuran, op cit, p. 13

However, once in a while, it is examined whether some marginal structure is properly called a vessel. (for example a floating drydock, a moored showboat, a pump boat, or something of the soart)[27] the above-mentioned criterion are helpful to answer such kind of questions. It is significant to indicate that the term vessel in law of the sea is not limited to ships engaged in commerce.[28] By looking into the above-mentioned criteria, we can say any kind of sea craft which is able to sail under or on the sea is a vessel. In that sense, a submersible is a vessel but not a ship.

There are some distinctive elements of a vessel.[29] These are name, home port, tonnage and nationality. The name of the vessel should be written at two sides of it and it should be easily readable. The home port is the port which the vessel is registered. The tonnage is the capacity of the vessel and every state determine quantification of the tonnage. Every vessel can only one nationality. According to UNCLOS article 94; ‘’every state shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flags.’’

A basic classification of the ship is trade ship and state ship. This classification is important to determine the law regime of the ship.[30] It is to say, law regime is changed according to kind of ship.

C) The Concept of Internal Waters and Baselines

Internal waters of the State were defined under Article 5/1 of the Geneva Convention on the Territorial Sea and the Contiguous Zone as ‘waters on the landward side of the baseline of the territorial sea.’ Same definition is adopted in U.N. Convention with article 8/1. According to article 8/1 U.N. Convention ‘’Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea from part of the internal waters of the State.’ Therefore, internal waters lie landward of the baseline from which the territorial sea and other maritime zones are measured. Therefore, internal waters generally comprise bays, ports and waters

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[26] Schoenbaum, op cit. p. 38
[27] Grant Gilmore & Charles Black, The Law of Admiralty, Foundation Press, New York, p. 28
[28] Schoenbaum, op cit. p. 37, 1975
[29] Çetingil, Ergon & Rayegan Kender, Deniz Ticareti Hukuku, Arıkan Yayınevi, İstanbul, p. 36; Kuran, p. 15, 2007
[30] Kuran, op cit. p. 24

enclosed by straight baselines.[31] As it is deduced from definition of the term internal waters, it is required to define some terms, which are basic elements of the internal waters. In that context, baseline, bay, harbor and high sea are required to define and explain in order to comprehend the term internal waters. Subsequently, law regime of internal waters is examined in a summarized context.

Baseline

For the extension of a coastal State's territorial sea and other maritime zones, it is required to establish from what points on the coast the outer limits such zones are to be measured. This is the basic function of the baselines.[32] According to law of the sea regime, baseline is the line which determines the sea sovereignty area of states. The outer limits of the territorial sea and other coastal state zone (the contiguous zone, the exclusive fishing zone and the exclusive economic zone) are determined by baseline regime.[33] However the determine the border between the territorial sea and internal waters. Because the waters on the landward side of the baseline, such as bays and estuaries, are accepted as internal waters of the coastal state and waters seaward of the baseline are the territorial sea.[34] On the other hand, the baseline is used in delimitation of exact types of maritime boundaries between state with opposite or adjacent coasts.

Two different methods are used to determine the internal boundary of the territorial sea. These are normal baseline and straight baseline.

According to article 5 of the UNCLOS the normal baseline is defined in that way. ''Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal states.'' Therefore, normal baseline is the line, which appears as low-water line. Actually, in practical international law regime sometimes allows the separation of the line from geographical coastal line.[35] Because the principal difficulty arises in the application of article 5 of UNCLOS is that of determining the ''low-water line

[31] Churchill, op cit. p. 60
[32] Churchill, op cit. p. 31
[33] Kuran, op cit. p. 30
[34] Hugo, Caminos, 2000, Law of the Sea, 1. Edition, Cromwell Press, Great Britain, p.4, 2000
[35] Kuran, op cit. p. 31

along the coast''. The problem emerges from the fact that there are many low-water lines to choose from; international law gives discretion to coastal state in order to determine it.[36]

''In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.''[37] This provision of the UNCLOS is almost the same provision of 1958 Convention on the Territorial Sea and the Contiguous Zone, as it is just like repeated.[38]

The method of straight baselines reflects Anglo-Norwegian Fisheries Case decision of the International Court of Justice (after that ICJ) in 1951.[39] In that case, ICJ was applied to rule on the Norway's straight baseline delimitation in 1935. This delimitation involved on or within the baselines all of the islets and drying rock of the northwestern coast of Norway.[40] ICJ's decision was in favor of Norway. Moreover, some parts of that decision were included in both 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and in the UNCLOS.

There are two basic problems related to current straight baseline regime.[41] First one is that straight baselines are from time to time drawn off coastlines which may not be excepted; or there is no a fringe of islands along the coast in their immediate vicinity like Mexico, Ecuador or Senegal. The second problem is related to the length of individual baselines. There is no suggested maximum limit neither in 1958 Conventions nor in the UNCLOS. An only example criterion is the Norway's method, which was approved by the ICJ. Norway uses maximum 44-mile line across Lopphavet. However there are some overtly bigger lengths. For instance, Philippines uses 140 miles, Ecuador uses 136-mile.

Before giving an end to this subject, it is significant top determine that both exercising of the normal baseline and straight baseline method are leaved the discretion of the coastal states.[42]

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[36] Brown, op cit. p. 23
[37] 1982 United Nations Law of the Sea Convention, article 7
[38] Özman, op cit. p. 215
[39] Anglo-Norwegian Fisheries Case, (United Kingdom v. Norway), ICJ Reports (1951)
[40] Caminos, op cit. p. 15
[41] Caminos, op cit. p. 18
[42] Özman, op cit. p. 220

Finally, competence of the coastal state for the internal waters is absolute and unlimitied and this competence is as same as the competence in land territory of the state. If international law envisages some limitations for the land territory, these limitations are also valid for internal waters.[43] Although the competence of the coastal state is absolute fot internal waters, this competence can be limited with international agreements or with domestic law.

D) Territorial Waters and its Delimitations

Territorial waters surrounds the land territory of a coastal state and legally extends to a limited breadth.[44] The outer limit of the territorial sea is decisive for the emergence of the concept of the exclusive economic zone; it marks the division between the more landward are or more seaward area. For the more landward area, the principle of sovereignty prevails and high seas predominates for the more seaward area. [45] In this section, the delimitation of the territorial sea, the breadth of the territorial waters, rights of the passages through the territorial waters and some important aspects of the law regime of the territorial waters are included.

Delimitation of the Territorial Waters

There are three types of limits in order to determine the line of the territorial waters. These are internal limit, external limit and lateral limit.[46] Internal limit of the territorial waters determines the starting coastal line of the territorial waters. The external limit is outer limit of the territorial water; also constitutes the high sea area and starting of the contiguous zone. Lateral limit of the territorial waters shows the boundary between two neighbor coastal states on the sea land. In other words, lateral limit is related to concept of breadth of the territorial waters.

Internal limit is required to look into the law legal status of bays and other situations, which are decisive in order to clarify the limits of the territorial waters.

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[43] Kuran, op cit. p. 36

[44] Pazarcı Hüseyin, Uluslararası Hukuk Dersleri II. Kitap, 2. Bası, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, Ankara, p. 276, 1989

[45] Brown, op cit. p. 43

[46] Kuran, op cit. p. 60

1) Internal Limits of the Territorial Waters

Bays

The doctrine of international law has always considered that the bays include a close connection with land. Therefore it is proper that we bays should be recognized as internal waters, not territorial waters. If we handle the bays concept in the customary international platform, the baseline could be drawn across the bays-mouth; so this converts them in internal water concept. However, in this perspective, two essential point are failed: [47] According to which yardstick an indentation of the coast as recognized as bay and what is the maximum length of the closing line across a bay. in addition to it, this provision should be emphasized. ''An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.''[48]

It is useful to determine the regime of the bays with regard to its coastal state of the bay. That is to say, there are two probability; the coasts of the bay can be belonged to one state or more than one. According to article 10/4 of the UNCLOS, 24-mile is the limit of the distance between the low-water marks of the natural entrance points of a bay. Article 10/4 envisages to draw a closing line between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters. If the coasts of a bay belong to more states, the law status of this situation is not clear, as there is no provision in international contract about it. This kind of bays can be considered as a normal coast. Because it is possible to assert that there is no close connection between the coastal states and waters of the bay, in order to provide the subordination of the coastal state.[49] However, in that context, the sates, which do not have coasts, are able to assert the infringement of the provision of the UNCLOS, as their right to sail will be hindered. However, it depends on the situation that related coastal or other states which do not have coast to waters of the bay can be decide to determine some areas on the water of the bay. Therefore each coastal state can have their own internal water.[50]

[47] Churchill, op cit. p. 41
[48] Unclos, article 10
[49] Kuran, op cit. p. 61
[50] Baykal, op cit. p. 12-14

When the concept of historic bays are examined, article 10/6 of the UNCLOS will be general provision. According to article, ‘’…the foregoing provisions do not apply to so-called "historic" bays, or in any case where the system of straight baselines provided for in article 7 is applied.’’ So the UNCLOS does not deal with historic bays. In this sense it will be enough to realize that the criteria for the establishment of title to a historic bay are similar to those for the establishment of any other historic title to territory. To claim sovereignty over the bay in question is required evidence of a long-standing intention of the claimant State. Furthermore, effective, peaceful and unopposed exercise of authority of the claimant State should exist over the waters of the bay.[51]

Other Terms

Island:1958 Geneva Conventions on the Law of the Sea define the island as a naturally area of land, surrounded by water, which is above water at high-tide.[52] The situation of being always higher than the water level differ the island from low-tide elevations. An island, which is out of the territorial waters, has its own territorial waters; if the island is in the territorial waters, it causes an extension of the territorial waters to seaward.[53] However some territorial waters in narrow sea has a special situation when the islands extend the territorial waters. In case of that extension of the territorial waters, because of a little island, a huge high sea area will be subordinated law regime of a State. This can be against the equality principle and is not fare as it hinders the usage of the high seas by other States.[54] Although, in the 3rd Las of the Sea Conference, it was offered to limit the extension of the territorial waters because of the islands, there was no concrete result of that effort. The UNCLOS does not differ the territorial waters regime of coastal state or island state according to article 121.

Low-tide elevations: Article 13 of the UNCLOS gives a definition of the low-tide elevation. ‘’A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.’’ Unfortunately this definition is done wrongly, as no specific high tide or low tide is specified.[55] These low-tide elevations extend the

[51] Brown, op cit. p. 31
[52] 1958 Geneva Conventions on the Law of the Sea, http://untreaty.un.org/cod/avl/ha/gclos/gclos.html
[53] Baykal, op cit. p. 16
[54] Kuran, op cit p. 65
[55] Brown, op cit. p. 35

territorial waters, if they are in territorial waters. Otherwise, the low-tide elevations do not extend the area of territorial waters and they do not have territorial waters.

Archipelago: Archipelago is defined as a group of islands and island studded sea or a studded with islands.[56] However these definitions do not give the real essence of the notion, for the geographical characteristics of archipelagos depending upon the number, shapes, size and position of the islands as well as rocks and reefs.[57] The issue of a special regime to archipelagos in the law of the sea is a subject, which came to international lawyers attention as early as 1899.[58] It has often been discussed thereafter and it is not enough because of the precedence given to other issues. The basic problem with regard to archipelagos relates to the method of drawing of baselines from which the various maritime zones are to be measured. The judgment of the International Court of Justice in the Anglo-Norwegian Fisheries Case was explanatory for coastal archipelagos and it was followed by the 1958 Geneva Convention on Territorial Sea and Contiguous Zone.[59] On the other hand mid-ocean archipelagos assert to draw their baselines by joining the outermost points of their outermost islands. This kind of claims encloses very huge expanses of water which would defined as high seas under the traditional law.[60]

Article 46 defines and deliminates the term archipelago and archipelagic states. This provision contained in the UNCLOS applies only states which are defined as States constituted wholly by one or more archipelagos and may include other islands. Definition of the archipelago is given as a group of islands, including parts of islands, interconnected waters and other natural features which are so closely interrelated that such islands, waters and other natural features, from an intrinsic geographical, economic and political entity, or which historically have been regarded as such. Straight baseline regime with regard to archipelagos is determined in article 47 of the UNCLOS. Hereunder an archipelagic State could draw straight baselines connecting outermost points of their outermost islands provided that the longest baseline did not exceed 100 nautical miles, except that up to 3 percent of the total number of baselines enclosing the archipelago may exceed that length up to a maximum

[56] Moore William, A Dictionary of Geography: Definitions and Explanations of Terms Used in Physical Geography, Third Edition, London, p. 10, 1967
[57] Caminos, op cit. p. 138
[58] At the Hamburg meeting of the Institute de Droit International in a Norwegian jurist Aubert presented a report on the special conditions of the Norwegian coasts for the delimitations of the territorial waters.
[59] International Court of Justice (I.C.J) Reports 1951, p. 116
[60] Caminos, op cit. p. 140

length of 125 nautical miles.[61] Furthermore, the drawing of such baselines should not depart to any appreciable extent from the general configuration of the archipelago.[62]

Ports and Roadsteads: **‘’**For the purpose of delimiting the territorial sea, the outermost permanent harbor works which form an integral part of the harbor system are regarded as forming part of the coast. Off-shore installations and artificial islands shall not be considered as permanent harbor works.’’ For the first sentence of the article 11 of the UNCLOS, we can say that it is just like a reproduction of article 8 of the Geneva Convention. The second sentence is added ex abudanti cautela (from excessive caution) to make clear the position of offshore installations and artificial installations.[63]

‘’Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea.’’ Theoretically, where the roadstead situated completely beyond the outer limit of the territorial sea, it is possible to deduce from article 12 that the area of the roadstead would constitute one are of territorial sea separated from the mainland’s belt of territorial sea by a belt of high seas or Exclusive Economic Zone. In practice, the UNCLOS would seem to justify the extension of the territorial sea outer limit to include the roadstead as part of the mainland belt of territorial sea.[64]

River Mouths: For the rivers, which flow directly into the sea, the baseline shall be a straight line across the mouth of the river between points of the low-water line of its banks.[65] It is important to realize that article 9 of the UNCLOS apply only to rivers that flow directly into the sea. Mostly, large rivers do not flow directly into the sea but enter into estuaries. In such cases the situation of the baseline should be governed by the provisions related the bays.[66] The original U.N: International Law Commission draft did contain a specific provision related to this situation, but it was not enacted at UNCLOS because of the difficulty of defining an estuary.

[61] Unclos, article 47
[62] Caminos, op cit. p. 145
[63] Brown, op cit. p. 32
[64] Brown, op cit. p. 32
[65] Unclos, article 9
[66] Churchill, op cit. p. 46

Inland Seas: Inland seas are the sea, which belong to (completely or partly) one or more State. If an inland sea is surrounded by one State's coast, it is accepted as sea-land of that coastal State. If more States surround the inland sea, the rules related to this inland sea is determined according to common decision of related coastal States.[67] (For instance, Soviet Union and Iran determined the law regime of the Caspian Sea with Moscow Agreement, which was signed at 16.02.1926. It is well known and accepted with stable stand of the Turkey that the Marmara Sea is inland sea of Turkey. Domestic law of the Turkey regulates the Marmara Sea as an inland sea.)

Reefs: ''In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State.''[68] Two points are significant to emphasize in this article. First point is, the application of that article is not limited with atolls or coral reefs. Secondly, it recommends that only reefs at low tide may be used as baseline. That is to say, submerged reefs are excluded.[69]

Arctic Regions: There is no article in the UNCLOS, which determines the legal regime of the arctic. Only article 234 indicates that iced-covered areas must be preserved from marine pollution. In that sense, coastal States have the right to adopt and enforce non-discriminatory laws and regulations. It is generally accepted that the baseline, which determines the breadth of the sea in the iced-covered areas, must be drawn between iced region and land territory.[70]

2) External Limit of the Territorial Waters

According to article 4 of the UNCLOS; the outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

First of all, it should be noted that determination of the external limit of the territorial waters is different depending upon two basic possibilities. First one is: High sea area starts after the external limit of the territorial waters. Second one is: There can be another State's territory or

[67] Kuran, op cit. p. 68
[68] Unclos, article 6
[69] Churchill, op cit. p. 51
[70] Özman, op cit. p.243

island which is near to outer point of the external limit of the territorial waters. That is to say, for the second situation, there are opposing coasts of two different States and the distance between their coasts is less than their total breadth of the territorial waters.[71]

There are two essential methods to determine the external limit of the territorial waters in case of existence of opposing coasts. First method is to draw a parallel line that every point of this parallel line is in the same distance to the coast. Other method is to draw circle bows. Especially for very zigzag coasts, this method is applied. Some points are fixed on the coast; bows, which are equal and proportional to breadth of the territorial water, are drawn and the outer points of the bows are united. Therefore a line is occurred.

In case of opposing coasts of two States, article 15 of the UNCLOS should be applied. ‘’Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.’’

3) Breadth of the Territorial Waters

For the purpose of ensuring their security and economic interest, States became eager to extend their sovereignty to the sea belt adjacent to their shores. As a result of this aspiration, the concept of the territorial waters arose and was consolidated in international law. Of course, breadth of the territorial waters was the main subject in order to determine a common law regime.

The extent of the territorial waters, for a long time, remained fixed at 3 nautical miles from the coast. This distance was occurred with a theory of Dutch writer Bynkers-hoek during the 17th century. (The theory was based on the range of a cannon-shot. Most States retained it until very recent times.) 3 nautical miles had become an arbitrary notion. It satisfied the

[71] Özman, op cit. p. 301-302

wishes of the major sea-going Powers and yet not seriously harming the interest of the coastal fishing. Some certain States (like Scandinavian countries with a limit of 4 miles) allocated to themselves somewhat wider limits. The Hague codification Conference of 1930 had no result to fix a certain limit, because of the States were not eager to let a uniform extent be fixed by international law.[72] A decisive role was performed by the 1958 Geneva Conference on the Law of the Sea in the process of originating the international-legal institution of the territorial waters. Norms regulating the legal regime of territorial waters and the use of those waters by foreign States were generally codified. The norms establishing the principles for the delimitation of those waters was also codified.[73] However the 1958 Geneva Convention was not enough to resolve all aspects of the problem of the territorial waters. A norm on the breadth of the territorial waters was not codified in that convention.

The Third United Nations Conference on the Law of the Sea, which adopted the comprehensive 1982 UNCLOS, was the final stage of the process of codifying the norms determining the legal regime of the territorial waters.

''Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.''[74] A significant innovation was the adoption of an international legal norm on the 12 nautical mile limit of the territorial waters, which did not take place in 1958 Geneva Convention. It was the first time by way of a convention an international norm on the maximum admissible breadth of the territorial waters was formulated. It was significant because the optimal combining of the interest of coastal States and the interest of the international community in using sea expanses were represented.[75]

The article 3 of the UNCLOS is not legally restricted with another provisions of the UNCLOS. However, it does not mean that we should not pay attention to sea areas, which have special characteristics (especially in terms of geography) and should apply 12-mile principle to all territorial waters.[76] Otherwise, it is contradictory to one of the principle of the

[72] Dupuy Rene-Jean, Vignes Daniel, A Handbook on the New Law of the Sea 1, 1. Edition, Martinus Nijhoff Publishers, Dordrecht/Boston/Lancaster, p. 262, 1991
[73] Alexandr Antonovich Kovalev, Contemporary Issues of the Law of the Sea: Modern Russian Approaches, Eleven International Publishing, Utrecht, p. 18, 2004
[74] Unclos, article 3
[75] Kovalev, op cit p. 18
[76] Kuran, op cit. p. 77

international law of the sea – the principle according to which the establishment of limits of national jurisdiction on the World Ocean must be resolved on the basis of international law by agreement with other States.[77] In the decision of the International Court of Justice in the Anglo-Norwegian Case of 18.12.1951, that principle found confirmation. The Court ruled that ''delimitation of the maritime spaces can not depend only on the will of the coastal State expressed in its national law.'' On the other hand, abusage of the 12-mile limit is against the letter of the law because of article 300 of the UNCLOS.[78] According to article 300 ''States Parties shall fulfill in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.'' The situation of the Aegean Sea should be considered in that way.

4) Law Regime and Innocent Passage

Without hesitation it is accepted that the territorial waters constitutes a part of the State. A State is sovereign on every part of its land without any restriction. However there are some restrictions with regard to territorial waters of the States.[79] In this section, we examine these restrictive situations, which can be determined as innocent passage and restrictions on the coastal State's jurisdiction. In that sense, right of transit passage is important to mention.

Innocent Passage

As the law of the sea developed, the principle of innocent passage came to the fore, as a reaction to the well-known claims of certain Powers to assert their sovereignty over very large areas of seas and oceans.[80] Actually, concept of innocent passage is as old as the concept of territorial waters. It is a custom of international law that the foreign ships have the right of innocent passage through the territorial waters.[81] In that sense, the doctrine of innocent passage is a working compromise between the right of a coastal State to jurisdiction over the marginal sea and the right of maritime powers to make use of the high seas as a universal

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[77] Kovalev, op cit. p. 20-23
[78] Kuran, op cit. p. 77
[79] Özman, op cit. p. 305-310
[80] Dupuy, op cit. p. 906
[81] Gönlübol, Mehmet; Barış Zamanında Sahil Sularının Hukuki Statüsü, Siyasal Bilgiler Fakültesi Yayınları, Ankara, p. 153, 1959

highway of commerce and navigation.[82] First of all, the term passage and the term innocence should be defined. After that, the law regime of the innocence passage will be explained.

Passage

According to article 18 of the UNCLOS ''passage means navigation through the territorial sea for the purpose of traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or proceeding to or from internal waters or a call at such roadstead or port facility.'' Article 18 continues with a provision which is can be described as restrictive. Subparagraph 2 says that passage shall be continuous and expeditious. The basis of this paragraph seems to avoid any tricky interpretation of the definition of innocent passage by States exercising this right.[83]

Innocence

Although the concept of innocent passage has existed as a rule of customary law, definition of the concept was firstly made at 1930 Hague Conference. In 1958 Convention on the Territorial Sea and the Contiguous Zone definition of the concept was remade. The basic discussion in 1958 Convention on the Territorial Sea and the Contiguous Zone was the International Law Commission draft. Article 15 of this draft of the Commission was a similar reproduction of draft article 3 of the 1930 Hague Conference with an exception. Article 15 was added instead of paragraph 5 of the draft. That is to say, there was not any material difference between the two drafts. If the concept of innocence is compared between two drafts, it is easy to notice that Article 15/3 of the International Law Commission draft became, with a small modification, Article 14/4 of the 1958 Convention. Article 14/4 envisages that the passage should not be against the peace, good order or security of the coastal State.

A new approach has been adopted by UNCLOS with regard to meaning of innocent passage. The new arrangement does not stop at including (as was done in 1958 Convention) that the passage shall be deemed to be innocent if it is not prejudicial to the coastal State's peace, good order or security. This provision was retained in paragraph 1 and a system of tests is

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[82] Reeves, Jerry; 1917, ''Submarines and innocent passage'', The American Journal of International Law, Vol. 11, No. 1, p. 147-153

[83] Dupuy, op cit. p. 911

provided for judging the foreign ships while exercising the rights of passage are innocent or not innocent. This is done by Article 19/2. However, subparagraph 2 of article 19 is not restricted the situations against the concept of innocence with the principle of numerus clauses. The aim of this subparagraph is to clarify the related provision.

In Terms of Ships, Submarines and Planes

Under article 20 of the UNCLOS, submarines and other underwater vehicles are required to navigate, while within the territorial waters, on the surface and to show their flag. The right of innocent passage is not provided to planes.

According to article 22/2 foreign nuclear powered ships carrying nuclear materials or other inherently dangerous goods are required, to confine their passage to sea-lanes prescribed by coastal authorities. In addition to it, Article 23 also envisages that such ships ''shall, when exercising the right of innocent passage through the territorial sea, carry documents and observe special precautionary measures established for such ships by international agreements.''

For the merchant ships, it is generally accepted that they have the right of innocent passage.[84] In UNCLOS there is no direct regulation related to innocent passage of warships. Likewise, in doctrine there is no consensus about warships, whether they have the right of innocent passage or not. But it is generally accepted that, in case of peace, warships have the right of innocent passage like merchant ships.[85]

5) Rights and Duties Of the Coastal State

A) Rights of the Coastal States

As the territorial waters are included in coastal State's sea area, it is necessary to give some rights and oblige with some duties to coastal State in order to regulate the law regime of the territorial waters.

[84] Pazarcı, op cit. p. 299
[85] Kuran, op cit. p. 87

Article 21 of the UNCLOS is about the coastal State's legislative competence. It allows the coastal State to make law ''in respect of all or any of the following'' – the following topics are, broadly, navigation, protection of the cables and pipelines, fisheries, pollution, scientific research, and customs, fiscal, immigration and sanitary regulations. Subparagraph 2 envisages that these laws may not affect the design, construction, manning or equipment of foreign vessels unless they conform to generally accepted international standards. The coastal State is oblige to publish to all such laws. This radical and important limitation with regard to legislative competence is intended to balance coastal and flag State interests.[86] With that regulation, coastal State is allowed to legislate but removes the risk of divergent design, construction, manning and equipment standards, to which ships can not adjust during a voyage.

Another significant right of the coastal State is regulated as right to deny and suspend passage in article 25. According to article 25/1 '' the coastal State may take the necessary steps outside the scope of passage which is not innocent''. That is to say, if the foreign ships leaves to be innocent or steps outside the scope of passage it may be excluded from the territorial waters. As a logical result of this right, coastal States have the right to suspend passage altogether in areas where the passage of any kind of ship would be against its peace, good order or security. In this subparagraph 3 of the article 25, it is stated that ''The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises.'' Two points should be emphasized in this provision. Firstly, coastal State mat not do any discrimination about ships with respect to their flags or types. Secondly, such suspension may be temporarily.

B) Duties of the Coastal States

Under article 24/1: '' The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention.'' This rule is for general application rather that in the context of limitations upon coastal State jurisdiction. However it would operate to prevent unreasonable interference with innocent passage by the establishment of installations in the territorial waters. The cases considered in the UNCLOS

[86] Churchill, op cit. p. 94

are in particular covered by the rules concerning the powers of the coastal State in matters of pollution in the territorial waters.[87]

Other limits on the competence of adopting laws and regulations on innocent passage are set out in following provisions of the article 24/1.

''In particular, in the application of this Convention or of any laws or regulations adopted in conformity with this Convention, the coastal State shall not:

(a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or
(b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State.''

With point (a), it is aimed to hinder the coastal State from taking advantage of the procedures for applying its laws and regulations on innocent passage in order to prevent or restrict such passage. The scope of the provision would seem to determine that these restrictions must be reasonable and must not reduce the scope of the innocent passage.[88] Point (b) is related to principle of non-discrimination. Importance of this principle is clear when one considers national laws such as that Somali which does not allow innocent passage by vessels of States, which are not recognized.[89]

It is regulated under article 24/1 that the coastal States must give notice of known navigational dangers. In addition to it, the coastal States must provide basic navigational services like lighthouses and rescue facilities.

Transit Passage

The term of transit passage was regulated with UNCLOS.

Section two of UNCLOS set out the regime of transit passage with nine articles. Article 37 defines the scope of Section 2. According to article 37 the regime of transit passage applies

[87] Dupuy, op cit. p. 918
[88] Robert Smith, 1982, ''Innocent Passage as a Rule of decision: Navigation vs. Environmental Protection'', Colombia Journal of Transnational Law, Vol. 21, p. 91-93
[89] Dupuy, op cit. p. 919

only in straits, which are used for international navigation and connect areas of sea, which have the status of exclusive economic zone or high seas. That is to say, if a strait leads only to internal waters or territorial waters, this Section does not apply. Section 3, which provides innocent passage, applies instead.

Article 38 is a decisive provision in the UNCLOS. As opposed to the acceptance of 12 mile as the maximum breadth of the territorial waters, article 38 provides for a regime of transit passage in certain straits used for international navigation.[90] First paragraph of this article clearly indicates that al ships and aircraft enjoy the right of transit passage. Therefore warships and military aircraft are also included. The main innovation of the regime of transit passage is to provide the right of passage for all the kind of ships and aircraft.[91] There is an exception in first paragraph which excludes from the ambit of straits which runs between an island of the coastal State and its mainland if there is a route seaward of the island through the high seas or exclusive economic zone.[92] It is stated as ''similar convenience with respect to navigational and hydrographical characteristics.''[93]

The definition of the transit passage is given in paragraph 2 of the article 38. What is understood from this definition is, firstly, the exercise of the freedom of navigation and over flight. As a second point, the right of transit passage must be exercised as transit from one part of the high seas or exclusive economic zone to another part of the high seas or exclusive economic zone. Besides, the aim of the vessel or aircraft must be continuous and expeditious transit passage. That is to say loitering and conducting manoeures are not allowed during their exercise ıf the right of the transit passage.[94]

Article 39, which is about the duties of ships and aircraft during transit passage applies to all ships and aircraft when they exercise the transit passage, irrespective of their status. It can be public or private, civil or military ship or vessel. Under the subparagraph 1, some duties on ships and aircraft are imposed. They must proceed ''without delay.'' What we understand from this expression is navigators have to proceed with a normal speed with regard to all related factors such as safety requirements, weather conditions etc. In (b), the ships and

[90] Caminos, op cit. p. 88
[91] Kuran, op cit p. 100
[92] Pemba Channel of Tanzania is an example of such a starit.
[93] Unclos, artcile 38
[94] Caminos, op cit. p. 89

aircraft, which exercise the transit passage, must avoid the threat or use of force against the coastal States of that strait. This wording of subparagraph 1 of article 39 is based on article 2/4 of the Charter of the United Nations.[95] Additionally, ships and aircraft in transit are to ‘’refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress.’’[96] Therefore, ships and aircraft must do what is usual to effect their passage and behave in their ordinary manner. What is intended with this provision is to refrain the need for a long list of prohibit activities like the list of non-innocent activities included in article 19/2.[97] Lastly, the ships and aircraft in transit are oblige to comply with the other relevant provisions of Part III. They are the obligations to respect sea lanes and traffic schemes in Article 41/7 and to pay attention to applicable laws and regulations in Article 42/4 and other obligations in the other provisions of Article 39.

Paragraph 2 determines certain duties for ships, stemming from ‘’generally accepted international regulations, procedures and practices.’’[98] Some similar specific duties are determined for aircraft under the provision of subparagraph 3.[99]

Duties of States bordering straits are regulated under Article 42-44. these duties are in most respects similar to the corresponding duties of the coastal State which are specified under the regime of innocent passage.[100]

‘’States bordering straits shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge. There shall be no suspension of transit passage.’’[101] This is an obligation of publicity to danger to navigation. This duty is restated by the requirement in Article 42/2 that the laws and regulations of the strait State. ‘’Such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of

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[95] United Nations Charter, article 2/4
[96] Unclos, article 38/1
[97] Caminos, op cit. p. 92
[98] Unclos, article 39/2
[99] Aircraft in transit passage shall: (a)observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation. (b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.
[100] Brown, op cit p. 92
[101] Unclos, article 44

denying, hampering or impairing the right of transit passage as defined in this section.'' Furthermore, all such laws and regulations must be given publicity with the provision of Article 42/3. Article 43 requires and cooperation between user states and States bordering a strait in order to enter into agreements. First one is ''in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation;'' and the second one is ''for the prevention, reduction and control of pollution from ships.''

No provision is included in the UNCLOS for the civil liability and the international responsibility of the strait State for loss or damage caused by the unlawful application of its laws or unlawful prevention of transit passage by a foreign ship. The result of such unlawful acts are left to the general rules of municipal and international law.[102]

E) Contiguous Zone

The contiguous zone is a zone of sea adjacent to and seaward of the territorial waters in which States have limited powers for four specific areas. They are customs, fiscal, sanitary and immigration laws.[103] Article 24 of the 1958 Geneva Convention on the Territorial Sea was reproduced in Article 33 of the UNCLOS. ''…the coastal State may exercise the control necessary to: a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; b) punish infringement of the above laws and regulations committed within its territory or territorial sea.'' In other words a coastal State may introduce control in this zone to prevent infringement of its customs, fiscal, immigration and sanitary laws and regulations by foreign ships; and also to punish violations of those laws and regulations committed within the limits of its territory and territorial waters.

The breath of the contiguous zone was determined as twelve nautical mile with Article 24 of 1958 Geneva Convention on the Territorial Sea. However it was changed and extended with the provision of Article 33 of the UNCLOS. With the UNCLOS, it is decided to move the contiguous seaward, setting the outer limit at twenty-four nautical miles from the baseline.

[102] Brown, op cit. p. 92
[103] Churchill, op cit. p. 132

The principle decisive peculiarity of a contiguous zone is to being an area of the high seas and not part of the territory of the coastal State. Another feature of contiguous zone is that only four types are involved in it. They are customs, fiscal, sanitary and immigration. The rights of a State in a contiguous zone are characterized by a strict designation. These types are established to protect the specific interest of the coastal State in contiguous zone. Customs zone are established for the purpose of struggle against smuggling. In order to prevent violations of financial laws of a State fiscal zone are established. (For instance India and Syria) An immigration zone is necessary for the purpose of providing control over suitability of laws, which are about entry and exit of foreigners into the country. For the prevention of the spreading of infectious disease, a sanitary zone is established.[104]

In order to have contiguous zone, coastal States must take decision with regard to use of its sovereignty in this area and proclaim it.[105]

The UNCLOS does not include any provision on the delimitation of the contiguous zone between opposite and adjacent States. This is admissible because delimitation like this would cause to a delimitation of a part of the exclusive economic zone for States claiming exclusive economic zone.[106]

For the straits used for international navigation whose breadth does not exceed twice the breadth of the territorial waters bordering the strait States, no contiguous zone may be established irrespective of whether the right of transit or innocent passage operates in them. Besides, in international straits, which have more than twenty-four miles in breadth (in which beyond the limits of the territorial waters of the strait States recognized international sea routes pass), contiguous zones also may not be established.[107]

If the violation of the four types (custom, fiscal, immigration and sanitary) would be happened in the contiguous zone, it is not clear whether the coastal State can intervene and do what is required or not. Because there is no violation in the territorial waters of the coastal State that she has the complete sovereignty in that sea area.[108] However some scholars assert

[104] Kovalev, op cit. p. 35
[105] Pazarcı, op cit. p. 533
[106] Churchill, op cit. p. 136
[107] Kovalev, op cit. p. 37
[108] Kuran, op cit. p. 194

that coastal State has the right to intervene like in territorial waters. ‘‘A coastal State thus has the right in a contiguous zone for the purpose of defending its interest to stop a foreign vessel supposed to be an offender, make and inspection up to and including a search, and also punish and offender against the laws and regulations of the coastal State.’’[109]

F) Continental Shelf

As a legal concept, continental shelf was embodied with the Truman Proclamation of 1945 which applied a legal regime to the area. U.S. President Truman connected legal considerations with economic necessities in his Proclamation on the Continental Shelf. He also emphasized the ‘’long range worldwide need for new resources of petroleum and other minerals.’’[110]

Actually the continental shelf is a geographical term, which means a direct prolongation of the continent under the sea. Besides, evolution of the continental shelf during geological time is moreover linked to the successive rises and falls of the coastline due to eustatic changes in sea level. The breadth of the continental shelf varies between an average of 67 and 75 kilometers and sometime it is non-existent.[111] The legal regime of continental shelf was regulated according to these situations. Of course the legal definition of the continental shelf is distinct and different from the geological definition. The definition is includes areas of the seabed, which lie beyond the physical continental margin, on condition that they are within two miles of the coast. A complex test, to know the outer limit of the continental shelf, is applied, so long as the continental margin extends beyond 200 miles.[112] However for each case a maximum seaward limit is referred. 350 miles is determined as a maximum limit from the baselines, which the breadth of the territorial waters are measured. Secondly, if the line connecting the depth of 2.500 meters, limit is 100 miles form the 2.500 meter isobaths.[113]

That legal regime of continental shelf is stemmed from the combination of an intention. This is a wish to guarantee a compensatory extension of the jurisdiction of coastal States with a

[109] Kovalev, op ict. p. 38
[110] Caminos, op ict. p. 193
[111] Dupuy, op ict. p. 319
[112] Unclos article 76/4: ‘’...a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; ora line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.’’
[113] Unclos, article 76/5

narrow continental shelf to the seabed, which is not part of the natural prolongation of their land territory. In addition to it, a harmonization between the concept of the continental shelf and the exclusive economic zone was aimed with these regulations.[114]

In both the 1958 Convention on the Territorial Sea and the Contiguous Zone and the UNCLOS, the rights of the coastal State described as sovereign. The continental shelf is not referred as part of a territory of the coastal State. That means, the rights of the coastal State over the continental shelf are limited to the exploration of the continental shelf and the exploitation of its natural resources.[115]

The area over the continental shelf is also significant to touch upon. Because of the rights of the coastal State over that area are limited. These rights shall not the legal status of the air space above continental shelf and the legal status of the superjacent waters. According to Article 78/2 the coastal State may avoid from any unlawful interference over ''navigation and other rights and freedoms of other States as provided for this Convention.'' Besides, all States have the right to lay submarine cables and the pipelines on the continental shelf.[116] However, the establishment of the artificial islands, drilling platforms and other installations for the exploitation of offshore resources are regulated according to Article 60.

The delimitation of the continental shelf between States, which have opposite or adjacent coasts, is an important subject. What we understand form Article 83 is: delimitation of the continental shelf may be achieved with an agreement between related States. There are two elements to determine the delimitation. Firstly, this delimitation may be done in the light of the Article 38 of the Statute of the International Court of Justice. Secondly, equitability may be the platform of the agreement between States. The statement of basis of international law can be considered as a third element. But the function of this element is as same as the principle of equability. If the parts cannot do any agreement in a reasonable time, the States shall resort to the procedures provided for in part XV.[117] The principle of equability is variable depending on each case. The concerning States should determine this principle with regard to characteristics of the related case.[118]

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[114] Dupuy, op cit. p. 341
[115] Unclos, article 77-1
[116] Unclos, article 79/1
[117] Unclos, article 83/2
[118] Kuran, op cit. p. 203

G) Exclusive Economic Zone

The exclusive economic zone, which is a young institution of the international law of the sea, was developed in during the late 1940's. It was with the proclamation of some Latin American States that they claim the rights with regard to waters beyond the territorial waters. The emergence of the concept of economic zone was in the early 1970s during the discussion in the Committee for Peaceful Use of the Seabed and the Oceans Beyond the Limits of National Jurisdiction. Especially with the representatives of Kenya, Canada and Norway claimed that it was necessary to grant certain rights of an economic character to coastal State. This claim, specifically, included the rights connected with the exploitation of living marine resources.[119]

Under part V of the UNCLOS, every coastal State is granted to claim an exclusive economic zone. According to Article 55, exclusive economic zone is an area of the sea beyond and adjacent to the territorial waters. The coastal States have some rights and duties in that area. 200 miles form the baseline is the maximum permissible breadth of the exclusive economic zone. It is of course 188 miles from the outer limit of twelve miles territorial waters.

The UNCLOS provides some rights to coastal States in the exclusive economic zone. There are two groups of these rights. First one is the coastal States sovereign right to the resources of the exclusive economic zone.[120] These rights are both living and non-living recourses in the seabed and its subsoil. Second one is exclusive right to undertake activities for the economic exploration and exploitation of the zone. The production of energy from the waters, currents and winds are examples for the second group. In addition to those two groups, Article 73 provides a competence to coastal State in order to ''ensure compliance with the laws and regulations adopted by it in conformity with this Convention.'' The coastal State can take measures such as boarding, inspection, arrest and judicial proceedings.[121]

When we take a look from the jurisdiction of the coastal States in the exclusive economic zone, apart from two groups of above-mentioned rights, we see that coastal State has

[119] Kovalec, op cit. p. 49
[120] Unclos, article 56/1
[121] Unclos, article 73

jurisdiction in its exclusive economic zone over three matters as well.[122] They are a) over the establishment and use of artificial islands, installations and structures b) over marine scientific research and c) over the protection and preservation of the marine environment. For the artificial islands, installations and structures, coastal State has the right to establish safety zones, which are normally, not exceed 500-metres breadth.[123] The jurisdiction of the coastal State with regard to marine scientific research is provided with the provision of Article 56. The statement of ''relevant provisions of this Convention'' are found in Article 246 which provides that the coastal State has ''the rights to regulate, authorize and conduct'' scientific research in the exclusive economic zone. For the pure research of the other State in the exclusive economic zone, coastal State must not hinder them. However for the resource-oriented research, coastal State may not give any permission to other States.[124] The jurisdiction of the coastal State related to ''protection and preservation of the marine environment'' is regulated under the Article 56. The statement of relevant provisions of the Convention is repeated for protection of the marine environment, just like in the provision of marine scientific research. These relevant provisions are in Part XII. To cope with the damping of waste[125], other forms of pollution from vessels[126] and pollution from seabed activities[127] the coastal State has legislative and enforcement competence in the exclusive economic zone.

What is the reason of the coastal State's obligation related to promote the ''optimum utilization'' of the living resources in its exclusive economic zone? It can be simply deducted that our world has a problem of hunger and fish is a very important source of animal protein.[128] Another reason for this legal obligation is to allocate to other States any surplus between the total allowable catch and its own harvesting capacity. However it is important to realize that the optimum utilization is not same as the maximum utilization.[129]

In case of a conflict between coastal State and other States or if the UNCLOS does not provide any rights or jurisdiction to the coastal States, the UNCLOS does not give a precise answer to us. There is a general formula for attributing rights in such conflicts. ''In cases

[122] Unclos, article 56/1-b
[123] Unclos, article 60/2/4/5
[124] Unclos, article 246/3/5
[125] Unclos, article 210/5
[126] Unclos, article 211/5-6, 220, 234
[127] Unclos, article 208, 214
[128] Caminos op cit. p. 164
[129] Caminos, op ict. p.165

where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.'' According to Article 59, there is no presumption in favor of either the coastal State or other States. For each case, it should decided on its own merits on the basis of the criteria determined in Article 59. Actually, basis of equity is the only overt criteria to resolve this kind of conflicts.

The UNCLOS provides rights to other States. A classification for other States can be determined as rights provided to all States (Article 58), and rights provided only the States in exclusive economic zone. For the second group, rights of land-locked States and geographically disadvantaged States are determined separately in Article 69 and 70. According to Article 58, all States have these three rights. Navigation, overflight and laying of submarine cables and pipelines. For land-locked States, they are allowed to participate in ''the exploitation of an appropriate part of the surplus of the living resources.[130]'' for the geographically disadvantaged States, same right is provided in Article 70.

Delimitation of the exclusive economic zone between States with opposite or adjacent coasts is took place in Article 74. The formula of the UNCLOS with regard to this situation, is same as the formula which envisaged in Article 83 for delimitation of the continental shelf between States with opposite or adjacent coasts. Two criteria which were determined for delimitation of continental shelf is applied: The principle of equity and Article 38 of Statute of the International Court of Justice. As the same delimitation criteria for continental shelf were accepted for the delimitation of exclusive economic zone between States with opposite or adjacent coasts, the elements which are effective over the delimitation of the continental shelf are also effective for the delimitation of the exclusive economic zone. Especially the jurisprudence related to continental shelf has an important role in order to determine the delimitation of the exclusive economic zone in such cases.[131]

H) High Seas

[130] Unclos, article 69
[131] Kuran, p. 231

High seas are the free areas of the ocean, which can not be appropriated and must not be controlled by anyone. First definition of the high seas was declared in the 1958 Convention on the High Seas as ''all parts of the sea that are not included in the territorial sea or in the internal waters of a State.'' The definition of high seas in the UNCLOS was made in Article 86. However, it is a vague[132] definition when it is compared with the definition of the 1958 Convention on the High Seas. It is hard to determine the exact area of exclusive economic zone. That is to say, the UNCLOS has no provision in order to indicate whether the exclusive economic zone is included in national jurisdiction of the coastal State or not.[133]

The principle of freedom is decisive for the legal regime of the high seas. This principle is overt in Article 2 of the 1958 Convention on the High Seas and Article 87 of the UNCLOS. Article 2 of the 1958 Convention on the High Seas declared freedom of unobstructed navigation, uncontrolled fishing, right to lay down and maintain submarine cables and pipelines, and freedom to fly over, and other undefined freedoms as they may like to exercise with regard to the similar rights and freedoms of others. According to Article 87 of the UNCLOS the high seas are deemed as open for land-locked and coastal States. New regulation of the Article 87 is very closed to the former regulation of the 1958 Convention on the High Seas related to principle of freedom. (Freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, freedom to fly over the high seas, freedom of establishing artificial islands, installations and structures and freedom of exploiting and exploring the natural resources.) Freedom of fishing is regulated under the provision of the Article 116 of the UNCLOS with a general duty to negotiate and agree upon measures for the preservation of the high-seas fisheries.[134] Another point for the principle of freedom in the high seas is marine research. All States have the right to conduct marine scientific research under the provision of Article 238 of the UNCLOS.

Reservation of the high seas for peaceful purposes is the title of the Article 88 which may well be the shortest article in the UNCLOS. However it is not simply clear. ''The high seas shall be reserved for peaceful purposes.'' Although, this principle is also took place in complementary provisions of marine scientific research and the deep seabed Area, there is no

[132] ''The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.''
[133] Kuran, op cit. p. 237
[134] Unclos, article 116-120 and 63-64

definition of peaceful purpose in these provisions or among the terms defined in Article 1 of the UNCLOS. There are some limitations such as for military activities and nuclear tests.[135]

Basically every ship should be linked a flag State. Under Article 92 of the UNCLOS, exclusive jurisdiction of the flag State over the ships, which are subject to it, is determined on the high seas. Exceptional cases, which are expressly provided for in international treaties or in the UNCLOS, are saved.[136] It is clear that flag State has to have in place municipal legislation implementing international conventional and customary law on shipping and a sufficient maritime administration. This is to ensure compliance with that legislation by ships on its register.[137] However Article 92/2 took a measure related to abuse of the principle of exclusive jurisdiction of the flag State. If a ship sails under the flags of two or more States and also uses them according to convenience, this ship may be assimilated and may not claim any of the nationalities.

Penal jurisdiction for collision or any other incident of navigation is regulated under Article 97. For these situations, the UNCLOS determines two different institutions in terms of nationality. The administrative authorities of the flag State or State of person in concern (''master or of any other person in the service of the ship'') may have jurisdiction. With this regulation of the UNCLOS, two fundamental principle of the criminal law are applied: Principle of territoriality and personality principle.[138] In addition to it, arrest and detention of the ship are not allowed other than flag State, even if it is a measure of investigation.[139]

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[135]Article 8 of the Declaration of Principles Governing the Seabed and the Ocean Floor and the Subsoil Thereof Beyond the Limits of National Jurisdiction. ''The area shall be reserved exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to a broader area. One or more international agreements shall be concluded as soon as possible in order to implement effectively this principle and to constitute a step towards the exclusion of the seabed, the ocean floor and the subsoil thereof from the arms race. '' Another example is Article 1 of 1963 the Nuclear Test Ban Treaty. ''Each of the Parties to this Treaty undertakes to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control:(a) in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high seas; or (b) in any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted. It is understood in this connection that the provisions of this subparagraph are without prejudice to the conclusion of a Treaty resulting in the permanent banning of all nuclear test explosions, including all such explosions underground, the conclusion of which, as the Parties have stated in the Preamble to this Treaty, they seek to achieve.

[136] Unclos, article 92

[137] Brown, op cit. p. 294

[138] Kuran, op. Cit. p. 242

[139] Unclos, article 97/3

There is an exception to the principle of the exclusivity of the flag State. The immunity of public ships is indicated under Article 95 and 96 of the UNCLOS. Public ships warships and ships used only on government non-commercial service. Public ships are assigned to government service use and no other sovereignty may interfere in their activities. This immunity of the public ships is not subject to any limitation as it is stated in the UNCLOS as complete.

There are exception of the principle of jurisdiction of the flag State. The aim those exceptions is to hinder the crime effectively and provide a punishment. This exceptions are only valid for the merchant ships. That is to say, public ships are not subject to those exceptions of the principle of jurisdiction of the flag State. These exceptions can be summarized as hot pursuit, right of visit, piracy, prohibition of the transport of slaves, suppression of illicit traffic in narcotic drugs and psychotropic substances, unauthorized broadcasting.

The hot pursuit has existed as a customary law in international law. In case of a sufficient reason to believe that a foreign ship has violated the law of a coastal State in its internal waters or territorial waters, hot pursuit will be embodied by the coastal State. In case of hot pursuit, coastal State has the right to arrest the ship on the high seas.[140] Before the UNCLOS, there was not any right to initiate hot pursuit from the continental shelf or the exclusive fisheries zone. For an effective protection of the sovereignty of the coastal State, it seemed attractive to extend initial point of the hot pursuit.[141] The UNCLOS extend the initial point of the hot pursuit in favor of the coastal State as extending it to exclusive economic zone.[142] In case of the violation of the coastal State's law in above-mentioned areas, coastal State has the right to engage hot pursuit.[143] The timing of the hot pursuit is determined under Article 111 /4. The hot pursuit shall be started after ''a visual or auditory signal to stop.'' The hot pursuit may be ended if the pursued ship enters another coastal State's territorial waters. [144] Under the Article 111/5, the exercising of this right is restricted with ''only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.''

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[140] Brown, op cit. p. 295

[141] Fidell, Edward, 1976, ''Hot Pursuit form a Fisheries Zone'', American Journal of International Law, New York, p. 95-101

[142] Unclos, article 111

[143] Unclos, article 111

[144] Unclos, article 111-3 ''The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.''

Right of visit is another limitation on the on the freedom of the navigation. The UNCLOS provides this right to a warship encountering on the high seas a foreign ship, which is not a public vessel, is entitled to visit. But there must be a reasonable ground for suspecting that. They are ordered as like his in Article 110. a) The ship is engaged in piracy, b) the ship is engaged in the slave trade c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under Article 109 d) the ship is without nationality and the last one is e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship. If the right of visit does not stand on a reasonable ground, State intervening must compensate the damage occurred from the visit.[145] The piracy is also an extraordinary jurisdiction and exception of the principle of flag State. Definition of the piracy is given under Article 101 of the UNCLOS. ''(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).'' According to Article 107, warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect have the jurisdiction to seizure the suspected ship. If the seizure is unlawful, there is an obligation to compensate this act of the intervening State.[146] Transport of slavery is forbidden with various international agreements.[147] The every State are obliged to ''take effective measures to prevent and punish the transport of slaves'' in its ships.[148] There is another obligation for all States in order to provide a cooperation ''in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.'' In case of a reasonable ground related to existence of that kind of traffic, suspicious State ''may request the cooperation of other States to suppress such traffic.[149]'' the last exception is the unauthorized broadcasting on the high

[145] Unclos, article 110/3
[146] Unclos, article 106
[147] 1958 Geneva Convention on the High Seas, article 22/1
[148] Unclos, article 99
[149] Unclos, article 108

seas which is regulated under Article 109. For suppression of this situation, article 109 envisages a cooperation between all States.

CHAPTER II

Sea Politics of the European Union

A) General Outlook and History

First of all, it is important to determine that, for the EU's aspect, Marine Strategy and Maritime Policy are basic terms. UNCLOS is considered as a global convention that provide further context for European efforts respecting ocean management. As the EU was firstly established on the basis of economic objectives, sea policy of the EU is more related to economical aspects. In that point, we have to state that The Marine Strategy has a clear environmental focus, while the Maritime Policy is more encompassing and stresses the need for economic development as well as sustainability. The 2006 EU Commission's Green Paper observes, "sustainable development is at the heart of the EU agenda," and stresses that economic growth, social welfare, and environmental protection are mutually dependent. As a result of this comprehension, economic growth and environmental protection through ecosystem-based management and spatial planning are identified as the "twin pillars" of EU policy.[150]

As it is stated by the Commission, what is meant by the term "Maritime Policy" is a holistic ocean management policy that takes into account the totality of non-military uses of the sea. Maritime Commissioner Joe Borg also makes this clear and explains the reason for this new maritime policy. He emphasizes the economic, social, and cultural importance of oceans and seas as well as the interplay of the many uses of the marine environment and the consequent need for a comprehensive and holistic management approach.[151]

With the accession of 25 new member states, the EU extends from the North Sea and Baltic Sea in the north to the Irish Sea and the Atlantic Sea in the west, and to the Mediterranean sea to the South and east.[152] Twenty constituent states have coastlines, and the coastline oof the EU is over 65.000 km in total. The offshore marine area of the EU, including territorial

[150] Commission of the European Communities, Green Paper ' ' A European Strategy for Sustainable, Competitive and Secure Energy, COM 2006, Brussels
[151] Communication to the Commission from the President and Mr. Borg, "Towards a Future Maritime Policy for the Union: A European Vision for the Ocean and Seas," online at europa.eu.int/comm/fisheries/doc, et publ/factsheets/legal texts/docscom/en/com-maritime-en.pdf
[152] CIA, The World factbook, online at (http://www.cia.gov/cia/publications7factbook/goes//ee.html)

waters, coastline shelves of its member states and exclusive economic zones, is larger than the land territory of the EU. This area is going to increase further should additional states become EU members. Europe is the continent, which has the highest ration od coast-to-surface area.[153]

The goals of the EU marine policies are essentially in that way: To achieve economic development in such a way that possibly conflicting uses of the ocean can prosper and maintaining of the overall health of the sea ecosystems in the long term. These encompassing goals are guided by similar principles (like decision making principles and management principles) in both policies. Furthermore, some specific goals, such as promoting economic prosperity, stimulating better marine science, building marine heritage and taking international leadership in the development of the law of the sea, are expressed similar terms.[154] The common goal of becoming an international leader in ocean governance is also visible in other coastal states but with some different approaches.[155]

In order to build on existing EU policies and efforts, the 2006 Green Paper strongly emphasizes the need for a coordinated, integrated, systems approach. This approach should be replaced the current, disconnected, sectoral approach to the management of ocean activities. The Commission calls for the improvement of a system of spatial planning by member states for the waters under their jurisdiction, emphasizing the ecosystem-based approach described in the Strategy for the Marine Environment. For this purpose, it recommends the application of appropriate principles, including:

- The use of best available technical and scientific advice;
- Consultation with all relevant stakeholders;
- Coordination across sectors, policy objectives, and geography; and
- The setting of targets to be used to assess performance and policy change based on these assessments.

Historically, marine areas and ocean uses have been and now continue to be of great significance to European's well being. Yet, economically and socially important industries

[153] Vivero, Juan and Mateos, Juan Carlos Rodr´ıguez, 2006, ''Maritime Europe and EU Enlargement: A Geopolitical Perspective'', Marine Policy 167–172
[154] Koivurova, Timo, 2009, ''A Note on the European Union's Integrrated Maritime Policy'', Ocean Development % International Law, 40: 2 , p. 171- 183
[155] Canada's 2002 Ocean Strategy

such as fishing, marine recreation, and tourism, as well as public health, are threatened by human activities in marine areas and on the land mass and the drainage basins that empty into European marine waters.[156]

As the European Commission stated that the environmental integrity of European waters, is seriously endangered, and a list of identified threats includes the same elements that have been realized in other areas of the world. Commission indicates some significant dangers:

- Overfishing,
- Alien spacies introductions,
- Port and other coastal developments
- Sand and gravel extraction,
- Oil and hazardous substance discharges and spills,
- Land-based pollution,
- Eutrophication
- The effect of climate change.

The European Community, for many years, did not have a shipping policy. Some scholars, in carrying out a retrospective review of the EC shipping policy, criticize its development for being reactive. They also claim that it has been neglected, especially during the first 20 years of the European Community.[157] Although the decisions taken by the European Court of Justice determined that the rules of the Treaty of Rome (Article 84 Paragraph 1) did apply to the shipping industry. The reality is that no provisions were made on the articles relating to transport matters.[158]

Some exact reasons may be stated to explain this reality.[159] Firstly, the six original Member-States were all continental countries, who pay attention to surface transport services and inland waterways. Secondly, as the shipping sector is an international business that calls for a worldwide regulation, European Community was prevented from acting unilaterally related to

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[156] Juda, Lawrence, 2007, ''The European Union and Ocean Use Management: The Marine Strategy and the Maritime Policy'', Ocean Development & International Law, 38, p. 259-282
[157] Greaves Robert, 1997, ''EC' s Maritime Transport Policy: a Retrospective View'', EC Shipping Policy
[158] Treaty of Rome 1957, Article 84/1.
[159] Paixao, Casaca and Marlow, Peter, 2001, ''A Review of the European Union Shipping Policy'', Maritime Policy & Management, 28:2, p. 187-198

its shipping policies. Lastly, international conventions ratified and implemented by national governments and had been created by international bodies such as the International Maritime Organization (IMO). Majority of the European States were signatories before the setting up of the European Community in 1957.

After the day Treaty of Rome in 1958 has been signed, the transportation policies of the EU have been intended at removing obstacles at the frontiers between member states as away of contributing to the free movement of the persons and goods. For a long period of time, European Community did not determine a maritime transport policy. After the year 1986, several common policies are objected. These common policies can be classified in four topics:[160]

- Freedom to provide services competition and hinder the unfair pricing practices and free access to ocean trade
- To take measures in order to develop the security of international shipping and stop marine pollution of ships
- To determine the conditions of transport of goods and passengers and navigation rules by inland waters
- Necessity for the seaports and maritime infrastructure, market access to port services, quality of services in seaports and regulations with regard to port reception facilities for ship generated waste and cargo residuals.

Paixao and Marlow examine the development of the EU maritime policy in three stages.[161] The starting move towards the development of a European shipping policy was made after the first enlargement of the EC. This was the accessions of the UK, Denmark and Ireland. This initial move was gone on by the fact that the UK and Denmark had big interests in this economic activity. It was also important that the UK and Ireland were islands and two countries were reached either by air or by sea. Later, the accession of Greece in 1981 added more speed to the movement.

In addition to those accessions, the first document produced by the Commission on shipping matters only with a presented Communication by Commission in 1976. This Communication

[160] Güler, Nil; 2003, Avrupa Birliği Deniz Ulaştırması Politikaları, İnşaat Mühendisleri Odası, "Ulaştırma Politikaları Kongresi", İstanbul / Türkiye, 24.10.2003 - 26.10.2003
[161] Paixao & Marlow, op cit, p. 190

showed up the general problems of Community relations with non-member countries. Those problems were mainly by the unfair pricing competition from Eastern Bloc countries' shipping fleets. In this sense, Commission suggested some measures in order to meet these problems. This document can be seen as the first attempt of the European Community to develop a maritime policy. 1973 and 1976 Communications were the basis for the future of the maritime policy. Subsequently, Council decisions, regulations and recommendations were about social, legal, competition, safety and environmental nature.

For the second stage, Paixao and Marlow determine several factors as the initiative of this stage. The accession of the Greece into the European Community, harsh threat which stemmed from price undercutting caused by fleets of third world countries and decline of the European Community merchant fleet. Therefore, in 1985 Communication was presented by Commission on those matters. The goal of this Communication was to embody a logical and consistent framework in order to develop the shipping policy. To achieve this objective, some measures should be taken in these areas: Maritime safety, development of port state control, pollution prevention, implementation of coastal navigation systems, bureaucratic aspects related to the transfer of ships' register within the Community, the use of Community's external relations to provide highly qualified trained seafarers, and port issues.[162]

Another Communication, in 1985, was occurred in order to complete the internal market and the development of the transport mode.[163] A maritime package was intended to combine with the measures adopted since 1977 by the European community Ministers of Transport. This package formed the basis of the European maritime common policy. It is determined that this package as a step towards the development of the shipping policy, without establishing that policy.[164] It was considered as the first step towards the development of the maritime policy. Four regulations consist of this package, which together intended to give both a legal force and a flexible approach. The first two regulations were very important in aspect of development of the maritime policy of EU. Especially Council Regulation (EEC) No. 4055/86

[162] Commission of the European Communities (CEC), 1985, Communication and Proposals by the Commission to the Council. Progress towards a common transport policy - maritime transport, COM (85) 90 (Luxembourg: Office for Official Publications of the European Communities).
[163] Commission of the European Communities (CEC), 1985, Commission of the European Communities. Completing the Internal Market. White Paper from the Commission to the European Council (Milan 28 and 29 June 1985), COM (85) 0310 Final (Luxembourg: Office for Official Publications of the European Communities).
[164]Ross, John, 1998, ''Linking Europe: Transport Policies and Politics in the European Union'', London, UK: Praeger Publishers

is considered one of the pillars of nowadays open market of maritime services. The principle of liberalization was entered the shipping community. [165]

Another decisive development was the proposal of the European Commission for the establishment of the EUROS, which is, planned a parallel Community register for ships flying the EU flags an addition to their respective flag. Trigging points for the occurrence of the EUROS were to reverse the decline in European fleets, improve their competitiveness, and create more jobs for EU seafarers. It was obviously designed as a second register for all national EU registers to balance the benefits occurring to ship-owners who registered their vessels in open registries.[166]

For the last stage, the 1996 Communication compassed proposals for several problems. Those proposals were also decisive for the future maritime policy of the EU:

- The necessity of application of the global standards to improve the competitiveness of the EU shipping;
- Removing of the substandard ships in order to promote a safe and fair competition;
- The elimination of dangerous shipping;
- The encouragement of a spirit of quality in shipping by developing a high quality transport product;
- The implementation of higher standards;
- The maintenance of open markets through the principle of a multilateral approach;
- The carrying out of a policy for competitiveness through training and development;
- The promotion of research and development;
- The application of measures to other related sectors.

Sea policy of the EU is different from federal states n many forms. The EU Integrated Maritime Policy is a unique exercise in the history of ocean governance. Even though the EU is acting like a federal state in many ways, in some political areas, its ocean powers differ widely from those of federal states. Mostly federal states have constitutionally delegated many of their powers in so many policy areas to their subunits. But this does not apply to

[165] Paixao and Marlow, op cit, p. 192- 195
[166] Kırıazidis Tzanidakis, 1995, ''Recent aspects of the EU maritime transport policy'', Maritime Policy and Management, 22, p. 179- 186

maritime areas Because in those areas the federal level generally exercises powers affecting areas beyond the immediate coastal zone or territorial sea. This is not same for the EU which, apart from having exclusive jurisdiction over fisheries, has only shared powers over numerous other maritime areas. The EU member states legislate the extent of their maritime areas, and enforce and exercise most powers in that areas. This is a important difference between the EU and federal states with regard to ocean governance and hinders a straightforward comparison. This is not to say that fruitful results cannot be found, but in such comparison to be careful is distinctive for the achievement.[167]

B) Port Policy of the EU

The beginning stage of port policy of the EU development was qualified the phases of exclusion and non-intervention.[168] It is not to say that this process was totally devoid of initiatives. Most importantly, the European Parliament asserted an ambitious ports policy agenda including governance-related issues such as port revenues and financing. In 2001, the European Commission published a communication on the improvement of quality services in the ports. The intention of the Directive proposal was to establish rules for market access to port services and the use of the transparent selection producers. The essence of the Directive was related to the way in which port authorities would use concession-type instruments to regulate market access for potential service providers. Therefore market contestability and intra-port competition would be ensured. The Directive proposal also determined some rules to refrain form discriminatory behavior from port authorities that were directly or indirectly engaged in the provision of port services.[169]

The European Parliament rejected the final compromise of the Directive proposal in November 2003. The European Sea Port Organization, which amended the first proposal, warned for an instant second attempt in order to save the Directive. However something was already proved impossible in the first phase of the political process and the Directive was felt down for a second time.

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[167] Koivurova, op cit, p. 175

[168] Chlomoudis, Constantinos and Pallis, Anthanasios; 2002, European Union Port Policy—The Movement Towards a Long-term Strategy, Edward Elgar Publishing, available at: http://books.google.com/books?id=D6eBa5n4ynYC&printsec=frontcover&hl=tr&cd=1&source=gbs_ViewAPI v=onepage&q&f=false, p. 231

[169] De Langen, Robert and Pallis, Anthanasios; 2006, ''Analysis of the benefits of intra-port Competition'', International Journal of Transport Economics, Volume 12, 69 - 85

Between June 2006 and June 2007, the Commission held an extensive stakeholder consultation process, which involves two conferences and six thematic workshops. As a result of this, the adoption on 18 October 2007 of a communication of the Commission on European ports policy was realized.[170] The communication depends on the Commission's integrated maritime policy and generates part of its freight transport agenda, which were both adopted around the same time. The communication's actual policy proposals are spread over some decisive areas, which will be touched upon in subsequent sections. However it is important to say that, the new ports policy remains faithful to the dual objective identified back in 1970. Besides, it tries to guarantee both a level playing field between ports and the sustainable development of the European port system as a whole.

The European Commission, on October 2007, published a new communication on European ports policy. As we stated above, this policy paper is the result of an intensive stakeholder consultation which the Commission started after two failed legislative attempts to open up port service markets in Europe. 50 years after the signing of the Treaty of Rome, the new policy occurred that formed the effective basis of the European integration process. Throughout this period, as we stated above, several initiatives were taken to generate a European policy for ports. Unfortunately, majority of them remained unsuccessful or only led to partial results. At the same time, ports in Europe and all around the world went through a fundamental process of change, which especially speeded up in the last two decades. Particular challenges were occurred for the governance of seaports and led many port authorities to redefine their role, seeking new strategies and tools. In parallel to those developments, diverse national, local and regional governments have pursued port governance reform programs, adapting the institutional framework in which port authorities function.[171]

The profound transformation caused by the process of globalization of the economy is getting a serious influence on the international freight transport sector. The new scenario is forcing the commercial seaports to design strategies, which allow present and future challenges to be faced. These challenges should be asserted in a sector in which deregulation and competition are increasingly present. The picture described above is not enough to qualify the true

[170] Commission of the European Communities, 2007, Communication on a European ports policy. COM(2007) 616 final

[171] Verhoen, Patrick, 2009; ''European Ports policy: Meeting Contemporary Governance Challenges'', Maritime Policy & Management, 36:1, p. 79 - 101

complexity of the problem facing the ports in establishing policies and designing strategies. With this problem as its background, various aspects of findings and experiences gathered on the competitive policies of ports over the last years should be examined. The distinctive commercial factors in the ports business will be the resolving elements to the strategic positioning and the struggle to be competitive of the seaports. However, like the commercial aspects, the ports should also be cautious about the technological evolution in the formulation of strategies for improving competitiveness. [172] Therefore, technological development and the requirements of the commercial aspect should be considered in an interrelated manner.

The altering environment in which ports operate has put strong pressure on the traditional role of port authorities. The question, whether public sector port authorities were necessary at all, was considered. Analyzing the objectives and tools of port authorities, some scholars recognized the shift in the balance of power between market players and the need for port authorities to refrain from being pushed out altogether.[173] Since then a wide array of literature occurred, recommending the repositioning of port authorities and the development of new strategies. The discussion hereby more about on the basic question of whether the role of port management should be restricted to correctly enforcing regulation or whether port management should more actively participate as a market player. Notteboom and Winkelmans are to assert a hybrid form, that port authorities look after both public and commercial interests. They reach this result with focusing on a mediating and coordinating role between stakeholders, acting as facilitators and catalysts in logistics networks, creating core competencies and activities of scope and pursuing strategic activities beyond traditional landlord functions.[174]

Subsequent paragraphs describe three main governance challenges which are interrelated and contemporary port authorities can respond to them. They are;

- Sustainable port development,
- Logistics integration,

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[172] Perez-Labajos, Carlos and Blanco, Beatriz; 2004, ‘‘Competitive Policies for Commercial Sea Ports in the Eu’’, Marine Policy 28, p. 553-556, available online at www.sciencedirect.com

[173] Suykens, E. And Van de Voorde, Eddy; 1998, ‘‘A quarter of a century of port management in Europe: Objectives and Tools’’, Maritime Policy and Management, 25, p. 251–261

[174] Notteboom, Theo and Winkelsman Willy, 2001, ‘‘Structural changes in logistics: How will Port Authorities Face the Challenge?’’, Maritime Policy and Management, 28, p. 71–89.

- Strategies of market players.[175]

For the sustainable port development, we can say that although the current economic crisis causes a temporary set-back, seen from a long-term perspective, ports function in a strong growth environment. This situation shows up two specific issues. Firstly, in addition to requirement of ongoing investment in terminal facilities within ports, also in adequate maritime fairways and hinterland connections should be observed. Scarce government resources indicate that ports increasingly have to rely on their own financial means and provide the safety of their long-term commitments from private investors. One can deduce from here that port authorities must have sufficient financial, commercial and managerial autonomy. Besides, a stable operational environment is necessary in order to follow an active and long-term investment and development policy. The ability to secure private investments also depends on the way port authorities can give an answer to the strategies of market actors.

Secondly, more than 35 years, European ports are faced with overlapping ecological and societal pressures combined with strict environmental legislation and most of these pressures have emerged from the European Union. These often cause in significant delays to vital port expansion projects and put port authorities under constant pressure to defend their 'license to operate'. Port authorities are nevertheless well-placed in order to provide a compromise between various conflicting interests that relate to port development.[176]

Logistic integration is under the effect of regionalization which has become a new phase in the development of the port system. Because ports have become merely places where ships and cargo are handled took key elements. This causes perspectives for seaports to increase the strength of their competitiveness by actively engaging in the development of some elements such as inland freight distribution, information systems, interrelated concepts and direct as well as indirect forms of networking with other parties in the chain and transport nodes such as inland terminals. The ability of port authorities to perform this role is subject to discussion. Mainly, it will be related to the governance model that is applied and the understanding port

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[175] Verhoen, op cit. P. 80

[176] Dee Langen, Peter; 2007, ''Stakeholders, Conflicting Interests and Governance in Port Clusters. In: Devolution, Port Governance and Port Performance'', edited by M. R. Brooks and K. Cullinane, Amsterdam: Elsevier, pp. 457–477.

management within the logistics chain.[177] In that sense, the role of the port authorities in hinterland transport chains could focus on the sorting out of coordination problems.

It is important to state for the strategies of the market players that in the business environment in which ports compete as part of supply chains, shippers' influence on port choice is decreasing. Processes of integration have originated powerful actors, including shipping lines, third-party logistics service providers and supply chain integrators, which are able to control freight from origin to the final destination.[178] As a result of this, binding such free operators to a port depends largely on the port authority's networking capabilities within the logistics chain. Another important phenomenon is the emergence of global groups which invest and operate terminal facilities in several ports worldwide. In addition to this, the emergence of global groups, which invest and operate terminal facilities in various worldwide ports, occurred as another significant subject.

For the current port policy of the EU, two main objectives have been prioritized as the result of the accumulation of some distinctive events. They are short sea shipping and concept of safety which includes security of ports and protection of environmental protection. As EC commissioner Loyola de Palacio stated that short sea shipping is still a significant priority of the EU. In that sense, plans are o the way to further streamline it so that it embodies the EU transport policy objectives.[179] Papers on EU ports policy generally focus on competition and pricing challenges from a literature aspect.[180]

The recent EC Communication on short sea shipping envisages more documentation with regard to where this sector stands and the plans of this area.[181] It is more important to state that the European Commission's White Paper "European Transport Policy for 2010: Time to

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[177] Paixao, Casaca and Marlow, Peter; 2003, ''Fourth Generation Ports—a Question of Agility?'', International Journal of Physical Distribution & Logistics, 4, p. 355–376.

[178] Magala, Mateus and Sammons, Adrian, 2007, A New Approach to Port Choice Modelling. 2007 IAME Conference Proceedings, Athens: IAME

[179] De Palacio, Loyola; 2004, European sea ports in a dynamic market- ports and the EU agenda, European Sea Ports Conference, Rotterdam, 17-18 June 2004 , available online at: http://www.publicservice.co.uk/article.asp?publication=Transport&id=198&content_name=Logistics%20and%0Distribution&article=5007

[180] Psaraftis, Harilaos; 2005, An Analysis of the European Union Ports Policy, available online at: http://www.martrans.org/documents/2005/ports/IMAM%202005%20Psaraftis.pdf, p. 2

[181] EC (2004d) COM (2004) 453 final, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and The Committee of the Regions, on Short sea Shipping

Decide,"[182] determined what is decisive for the transport policy of EU. Ports have a critical role within the Community's transport policy in the future. Shifting traffic (mainly cargo) from road to sea has been adopted as a main policy objective, and specific actions are proposed to move forward towards that objective. As growth in European road transport has been recognized to originate important issues, such as congestion; pollution; accidents; and others. Besides, these problems create important 'external' costs, which are not reflected in the price of services rendered.

There have been a series of developments that can be seen as provider to the goal of shifting cargo from land to sea. For instance, the Commission adopted the proposals related to the revision of the Trans-European Transport Network,[183] and the European Parliament approved the Council's Common Position on the Commission's Proposal. Proposed creation of a network of "Motorways of the Sea" has the particular interest and there are four maritime arteries identified across Europe.

- The 'Motorway of the Baltic Sea', as a linkage to the Baltic Sea Member States with Member States in central and Western Europe;
- The 'Motorway of the Sea of Western Europe', leading from Portugal and Spain via the Atlantic Arc to the Irish Sea and the North Sea
- The 'Motorway of the Sea of South-West Europe', linking Spain, France, and Italy and including Malta, and connecting with the motorway of the sea of southeast Europe;
- The 'Motorway of the Sea of South-East Europe', linking the Adriatic Sea to the Ionian Sea and the Eastern Mediterranean to include Cyprus.

The desired plan is to fully implement these ways by 2020. The intention of the motorways of the sea is to focus flows of freight on a few sea routes in order to generate new consistent, regular and intensive maritime connections. This is for the transport of goods between member states and thus reduces road congestion and develops access to peripheral and island

[182] EC (2001a), COM (2001) 0370 (final) White Paper 'European Transport Policy for 2010: Time to Decide'
[183] EC (2003c), COM (2003) 564 final, Amended proposal for a Decision of the European Parliament and of the Council amending the amended proposal for a Decision of the European Parliament and of the Council amending Decision No. 1692/96/EC on Community guidelines for the development of the trans-European network

countries. In this context, EU ports would perform a critical role in the developments of these intended motorways.[184]

For the security aspect, it is necessary to determine that Ports had to comply with IMO's International Ship and Port Security Code as of July 2004. Because, IMO has contributed to marine protection.[185] In addition to the International Ship and Port Security Code, Community also adopted a Regulation about ship and port security in order to transpose the International Ship and Port Security Code into EU law.[186] Above-mentioned Commission proposed Directive, as a result of Prestige accident, in 2003 is to introduce criminal sanctions for ship-source pollution offences. The refusal of this package was a setback and from this rejection some lessons should be produced which will be useful for the future. However, this will call for politicians and legislators to thoroughly reassess their current situation. A proactive policy is necessary in that area. Therefore, decision-makers should assess all of their implications before their adoption by listening to the industry stakeholders more than is done today.[187]

C) Common Fisheries Policy

Fisrt of all, fishing and aquaculture are significant economic activities in the European Union. Generally, the fishing sector's contribution to the gross national product of Member States is less than 1%. However, its effect is highly important as a source of employment in areas where there are often few alternatives. Besides, it helps to provide fish products to the EU market, one of the biggest in the world. For a definition of the concept, the Common Fisheries Policy (CFP) is the European Union's instrument for the management of fisheries and aquaculture. [188]

In 2005, the EU is the world's second biggest fishing power after China, with a production of almost 7 million tones of fish from fisheries and aquaculture. Eventually, while more than 2 million tones of fish products were exported in 2006, over 6 million tones had to be imported to supply the needs of the EU. This imbalance between imports and exports gave

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[184] Psaraftis, op cit. P. 3-4
[185] Aydın Okur, Derya; Deniz Hukukunda Liman Devleti Yetkisi ve Denetimi, On İki Levha Yayıncılık, İstanbul, p. 92, 2009
[186] IMO (2002), International Ship and Port Security code, an amendment to the SOLAS Convention, adopted in the IMO diplomatic conference on 12 December 2002 - EC (2004b), *Regulation (EC) No. 725/2004* of the European Parliament and of the Council on the enhancing ship and port security
[187] Psaraftis, op cit, p. 5
[188] For wide information; http://ec.europa.eu/fisheries/cfp/fisheries_sector_en.htm

some bad outcomes. For instance, the last result was a deficit of over €13 billion the same year. [189]

The EU fleet includes more than 88 000 vessels, which vary greatly in size and fishing capacity or potential catching power. However, capacity of the fleet has decreased over the past few years. It is because of two main reasons. Firstly, it was overlarge for the available fish and secondly it had become uneconomic. The EU has provided an easy transition system towards a better balance between vessels and fish, but further steps are needed to be done. Fleet modernization is very important. It will continue to provide that vessels can up-graded to improve safety, working conditions, product quality and selectivity of fishing.[190]

The overfishing and overcapitalization in the fishing fleet are usual distortions. It can be realized in the open access fishery that is characterized by free entry and absence of well-defined property rights. The fishery economic literature is full of examples that offer normative solutions to the wrongs in the open access fishery.[191] Besides, regulation of the fishery is accomplished, for instance, through the policies for conservation, structure and control at the EU level. The Member States perform a significant role in the management of the fishery policy. In addition to it, they have competence to impose national policy that is compatible with the intention of the EU. [192]

In the general point of view, the EU has implemented a range of institutional and legal arrangements in order to lessen the classical distortions of the open access fishery. Actually the EU de jure is a regulated state property and implies the use of possibilities to deal with the distortions. The present analysis shows that the fishing policy does not entirely hinder distortions in the fishery, according to some scholars.[193] The premise in the present analysis is that the Member States' incentives for individual economic maximization and the rivalry over the resources did not disappear when the Common Fishery Policy was established. The qualitative analysis presented in the subsequent paragraphs shows several examples of

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[189] Kızılocak, Özgür; 2007, Avrupa Birliği'nin Denizcilik Politikaları ve Türkiye'ye Etkileri, Yıldız Teknik University, Master Thesis, p. 48-50

[190] See for wide information online at: http://ec.europa.eu/fisheries/cfp/fisheries_sector_en.htm

[191] Mckelvey, Robert; 1985, ''Decentralized Regulation of a Common Property Renewable Resource Industry with Irreversible Investment'', Journal of Environmental Economics and Management Volume 12, p. 287-307

[192] Gordon, Scott; 1954, ''The Economic Theory of a Common-Property Resource: The Fishery'', Journal of Political Economy 62: 124-142

[193] Feeny, David and Hanna, Susan and McEvoy Arthur; 1996, ''Questioning the Assumptions of the "Tragedy of the Commons" Model of Fisheries'', Land Economics Volume72, p. 187-205

shortcomings in the applied policy of the conservation, structure and control policy, which leads to market failures in the EU fishery.[194]

As it is well known, fishing provides various jobs. The number of EU fishermen has been decreasing over the years. In the full-time and part-time jobs, some 190 000 fishermen are directly employed in catching fish. Their activities constitute more jobs in processing, packing, transportation and marketing on the production side and in shipyards, fishing gear manufacturing, chandlers and maintenance on the servicing side.[195]

A study[196] carried out in 2006 gives that the fisheries sector has a low share of the total jobs in all Member States. However, at regional level, fisheries perform a significant role as a source of employment. It is easy to realize it especially in Galicia (Spain), Algarve and the Azores (Portugal), North-East Scotland (UK) and Sterea Ellada, Voreio Aigaio and Notio Aigaio (Greece). Even in areas where employment in the fishing sector emerges low, these jobs are still very significant. In this point, geographic and economic factors such as distance from the main centers of activity, sparse population, poor agricultural land or industrial decline combine to reduce employment opportunities.

The exploitation of the fishing resources is one of the scopes that international co-operation is an advantage. The reason, which underlies that, is the fish resources in general are not limited within certain borders. That is to say, competition will be established between fishermen in different countries in order to harvest from the available fish stocks. Theoretically, the fishing resource is defined as a ''common pool resource''[197] that is defined by two conditions. First, nobody has the proprietary right to the fishing resource. That means no one is hindered from exploiting the resource and that is called as non-exclusiveness. The second condition rival consumption. That means one party's consumption of the good reduces the quantity left for the others.

After this general information about CFP and fishery sector, historical development of the CFP will be examined. The most striking result of the examination of the historical

[194] Jensen, Carsten Lynge; 1999, A Critical Review of the Common Fisheries Policy, University of Southern Denmark – Department of Environmental and Business Economics, Ime Working Paper, 6/99, p. 13-15
[195] Employment in the fisheries sector: current situation (FISH/2004/4)
[196] See for wide information at http://ec.europa.eu/fisheries/cfp/fisheries_sector_en.htm
[197] Ostrom, Elinor; 1986, Issues of definition and theory: some conclusions and hypotheses. In Proceedings of the Conference on Common Property Resource Management, National Academy Press, Washington, DC, pp-597-615

development of the CFP is to uncover the transformation of the fishery in the EU has taken from an open access fishery to a fishery of regulated state property. The general review of the historical development of the CFP in the following clarifies the inherent resource conflicts between Member States. As an example, that is overt in the negotiation of the relative stabile distribution of the fishing quotas between the Member States. Besides, problems are encountered from the Member States' reluctance to abandon their competence to the Community institutions seen in the control policy. Generally, the controversy over the resource and the incentives of the Member States should be emphasized as a driven force in the forming and implementation of the CFP.[198]

Until 1977 the fisheries policy in the Community had mostly a secondary position by applying aims that where formulated for the Common Agricultural Policy (CAP).[199] The main objective of the fisheries policy at this point was aimed to enhance the insufficient supply of fish to the Common market. It can be seen in Article 38/1 of the Rome Treaty[200] and the main objectives laid down in Article 39/1.

- To increase productivity by promoting technical progress and to ensure rational development and the optimum utilization of factors of production
- To ensure a fair standard of living for the agricultural community
- To stabilize markets
- To ensure the availability of supplies for consumers at reasonable prices.

The fisheries policy based on the market and structural policies, which were subsidizing the fishing industry. It was aimed with the help of minimum prices on fish and by grants for vessel construction to catch more fish. In this period, the fishery in Europe was one of regulated open access, where the Community shared harvest places with other countries in Europe. At the time there was not any reason why the Community should impose some harsh conservation restrictions on the Community vessels. Especially it was not understandable when the vessels from the non-member countries were not restricted in their fisheries.[201]

[198] Jensen, op cit. p. 24-26
[199] Frost, Hans and Andersen, Peder; 2006, ''The Common Fisheries Policy of the European Union and Fisheries Economics'', Marine Policy Volume 30, p. 737-746, available at: www.sciencedirect.com
[200] Treaty of Rome, avalaible at: http://www.hri.org/docs/Rome57/
[201] Jensen, op cit. p. 26

The second period occurred by the introduction of the 200-mile Exclusive Economic Zone (EEZ) fishery limit by 1977.[202] This fishery limit gradually turned the objectives in the Community's fishery policy. The implementation of the 200-mile zone based on the necessary condition of exclusiveness. Because of this could motivate the improvement of a comprehensive common conservation policy. To realize the adoption of the 200-mile fishing zone, the Member States in 1976[203] agreed on acting in unity in their negotiations of fishery policy with non-EC members. It would be a mutual profit of the Member States if they could achieve to prevent the third countries from getting access to the resources in the waters of the Member States. Although it was hard at that time to settle a longtime Community policy. Because some basis' were established that could be used in the future negotiations of a more comprehensive fishery policy.[204]

The compromise of the comprehensive CFP was founded in 1983 by the establishment of the conservation policy,[205] which was enhanced by the structural policy,[206] and the control policy.[207] These policies should be touched upon, because it is easy to see that these policies are the basics of the principles and objectives of the CFP.

With the agreement on the conservation policy, some formal competence to govern the conservation policy was given to the Community such as fixing the yearly annual Total Allowable Catches (TAC) of the Member States. In this sense there were found a settlement to the negotiations that were initiated by the Hague resolution in 1976. The agreement is laid down in 170/83 secures the sharing of resources based on the concept of relative stability. Therefore it gives each Member State a constant relative share of the quotas. This is explicitly

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[202] Churchill, op cit. p. 58

[203] The Commission presented the first proposal in February 1976 which among other things covered:
i. the fixing of the of twelve-mile exclusive coastal zones that the Member States could reserve to vessels traditionally fishing and operating in that geographical area.
ii. the establishment of the 200 nautical mile fishing zones within which the Community should manage the resource through the setting of Community based quotas.

[204] Jensen, op cit. p. 32-34

[205] Council Regulation (EEC) No. 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, O.J. L 24, 27.1.1983

[206] Council Regulation (EEC) No. 2908/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, O.J. L 290, 22.10.1983

[207] Council Regulation (EEC) No. 2057/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery recourses, O. J. L 220, 29/7/1982
of fishery resources, OJ L 24, 27.1.1983

addressed in Article 4/1.[208] Generally 170/83 has to be seen as a political settlement between the Member States that safeguard the local and social interests in the Member States. Furthermore, it is significant to recognize that the agreement of 170/83 lays down for the first time a formal way to handle the resources allocation between the Member States.[209]

For the structural policy, we can say that the objective, which was observed with that policy, was supplement the conservation policy. The structural policy was agreed to secure a coordination between the development in the recourses and the fishing capacity. According to Carsten, in general the aim of 2908/83 was not to secure the fisherman a stabile income as stated in the preamble.[210] The Community was eager to provide financial investment projects, purchase or construction of new fishing vessels, and modernization or conversation of fishing vessels already in the use. Therefore, to being agree on the structural policy did not urge much trouble, if we assess it in a general outlook.[211]

The control policy is an implementation of the Community in order to secure the compliance of the conservation policy. The control policy includes the means of inspection of the vessels at sea, and inspection of the vessels and their landings in the ports. The competence to do the control was given to the Member States, which within their zone of jurisdiction must inspect the vessels from the Member States. Furthermore, the Member States had to control that the landed quantities of the vessels in the Member State which was not exceeding the Total Allowable Catches of the Member State. Therefore, one can be deduce that the control regulation was giving the main competence to the Member States. In addition to it the Commission was merely having the position of controlling that the Member States carried out their obligation to control. In case a Member State did not fulfill this obligation, the Commission would follow the procedure stated in Article 12/2.[212]

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[208] Article 4/1 states that 'the volume of the catches available to the Community referred to in Article 3 shall be distributed between the Member States in a manner which assures each Member State relative stability of fishing activities for each of the stocks considered'.

[209] Jensen, op cit. p. 37

[210] It is stated in preamble with this utterance. 'Whereas, in order to set limits to the economic insecurity in which the Community fishermen work, the fleets concerned must be restructured, under a common measure, by renewal and, where necessary economically appropriate expansion in line with actual catch potential, which will ensure optimum productivity in the long term of these production facilities'.

[211] Holden, Mike; 1996, The Common Fisheries Policy: Origin, Evaluation and Future; Oxford: Fishing News Books Publishing, p. 278

[212] Article 12/2 states that: 'If the Commission considers that irregularities have occurred in the implementing of this Regulation, it shall inform the Member State or States concerned, which shall then conduct an administrative inquiry in which Commission officials may participate. The Member State or States concerned of the progress and results of the inquiry'.

The effects and the traces of above-mentioned policies were showed up in a Council Regulation[213] that was approved be the EU Council of Ministers for Fisheries. A Roadmap[214] was prepared in association with this regulation. The Roadmap specifies the aims of the CFP as a policy, which intends to realize a sustainable development in environmental, economic and social terms:

- Responsible and sustainable fisheries and aquaculture activities that make a contribution to healthy marine ecosystems.
- An economically longtime and competitive fisheries and aquaculture industry which will benefit the consumer.
- Provide a fair standard of living for those who depend on fishing activities.

The first objective is related to the health of the fish stocks, containing recovery. However, it also intends at an ecosystem approach rather than a pure fisheries approach. That is to say living resources of the sea that do not have any commercial value will have to be taken into consideration explicitly in the future CFP. The second objective is in a harmony with the objective of maximizing resource rent. It would eventually require there being realistic consumer prices for fish. This may or may not be in controversy with the first objective. It depends on the manner that the two objectives are interpreted and prioritized. But from an economic viewpoint, the first objective is something of an environmental restriction on the economic objective. The third objective contains distributional effects directly; these are neglected in many economic analyses. Nonetheless, cohesion is important in EU policies. It is realized that productivity development is different in the different regions of the Union. However this should lead to the reallocation of production factors, the EU follows a policy of controlled development, even though this may hinder the full success of the second objective on a global EU level.[215]

According to the Roadmap, the implementation of the future CFP therefore must have a view to:

[213] Council regulation (EC) no: 2371/02 O.J. L 358 of 31/12/2002
[214] European Commission Communication from the Commission on the Reform of the Common Fisheries Policy, Roadmap, Office for Official Publications of the European Communities, Luxembourg, 2002. http://europa.eu.int/comm/fisheries/reform/proposals_en.htm.
[215] Frost, op cit. p. 739-740

- Openness and transparency, in particular with regard to the scientific advice and data on which policy decisions are taken;
- Participation and broader stakeholder containment;
- Accountability, through a clearer definition of responsibilities at all grades;
- Effectiveness through decision-making processes and results that are properly evaluated, controlled and coherent;
- Compliance with other Community policies, in particular environment and development policies.

Market failure in the fishery sector is a general problem of CFP. In general the literature of the fisheries includes a number of different paradigms to solve the market failures in the common pool fisheries. It is significant to emphasize that the CFP of the EU is constructed of different elements that originate from these different paradigms.[216] The paradigms are classified in three classes as the conservation paradigm, the rationalization paradigm, and the social/community paradigm. Besides, they are different fundamentally in the their concepts of describing or measuring the optimum exploitation of the fishing resource. The conservation paradigm can be based on the biological management of fish. It is to obtain biomass, which gives the long run maximum sustainable yield of fish that could be extracted from the sea.[217] The paradigm can be based on the bio-economic models related to exploitation of the biomass. It is because of the objective in order to maximize the economic wealth. The rationalization paradigm rises on the premise that the objective of the society is to maximize the long run economic rent in terms of the economic benefit. The paradigm builds on the broader spectrum of new theoretical fisheries terms. The general point of view is that the conservation and rationalization paradigms for overfishing do not take in the consideration the arrangement of the fishing community including the social and cultural conditions.

Society's loss under the open access fishery is monitored by some elements. Most importantly they are declining catches, decreasing incomes for fishermen, and overcapitalization by the use of too many vessels and too much gear, and excessive labor input in the fishery. This is the result of the leaving the fishery "of nobody's property" to the

[216] Charles, Anthony; 1992,'' Fishery Conflicts: A Unified Framework'', Marine Policy, Volume 16: p. 379-393
[217] The author also states that ''in this sense distortions in the fisheries are measured in terms of deviation from the long run optimal development of the quantity of available fish in the sea.''

forces of the competitive markets without implementing any kind of regulation. It will not be optimal from society's point of view. This is visible in the fishery under the open access regime, where there is no property, no regulation on the number of fishing vessels participating, and there are no restrictions on the catches. As it is well known, under the open access fishery, the fisherman is supposed to act rationally at the individual level in order to maximize their income. Furthermore, they have no incentives to delay or decrease the utilization of the resources; because the other fishermen act individually to maximize their income. As reducing the utilization will have a less income than the average income of the fisherman, no one is eager to reduce his or her utilization.[218]

In that sense, the conservation of the fish stocks within the CFP jurisdiction is realized with two types of instruments.[219] First one is total allowable catches. It set upper limits for the total amount of fish which can be landed from particular areas. The second one is technical measures including gear regulations, closed seasons, closed areas, and minimum allowable sizes for individual species. Besides, the policy attempts to restrict fishing effort by controlling the capacity of fleets (structural measures) and limiting time spent at sea.

We find it important to touch upon the Commission's 2009 Green Paper on Reform of the Common Fisheries Policy.[220] It is a short discussion paper, unrestricted by detailed analysis. What this Green Paper intended is to provoke public debate on the future of the CFP and end up in a set of agreed proposals to be laid before the Council of Ministers in 2012. Set against a vision for sustainable and beneficial European fisheries by 2020, the reform agenda is developed around five 'structural failings' of the present CFP:

- Fleet overcapacity;
- Imprecise policy objectives;
- Prevalence of short-term decision making over long-term strategy;
- Insufficient responsibility given to the fishing industry;
- A lack of political will to ensure coherence with Community regulations.

[218] Jensen, op cit. p. 54
[219] Daw, Tim and Gray, Tim; 2005, ''Fisheries Science and Sustainability in International Policy: A Study of Failure in the European Union's Common Fisheries Policy'', Marine Policy, Volume 29, p. 189-197
[220] Commission of the European Communities, 2009. Green Paper: Reform of the Common Fisheries Policy. COM (2009) 163 final. The European Commission, Brussels

Each of these issues was briefly discussed, alternative means were outlined and a series of questions posed to help structure the debate.[221]

The Green Paper recognizes the symptoms if not the highlighting point causes of poor implementation. Two of the five 'structural failings' indicate directly to issues of implementation. The persistence of fleet overcapacity is evidence to the failure of past initiatives to bring fleet capacity into line with available fishing opportunities. It is stated as the persistent of fleet overcapacity 'lies at the root of all problems relating to low economic performance, weak enforcement and overexploited stocks'. It looks to market instruments to provide the necessary incentive for efficient capacity reduction. The Green Paper also determines the recent indictment of control and enforcement systems by the European Court of Auditors.[222] The Green Paper emphasizes the lack of political demand at member state level to ensure coherence with Community regulations.[223] The Commission has chosen to bring forward proposals for a more robust system, instead of awaiting the outcome of the reform debate.[224] Member states and the European Parliament are discussing these subjects.

In general, however, the Green Paper is likely to be seen as proposing a liberalizing agenda aimed to transfer detailed decision making away from the European institutions and relocate it in the 'regions'. It is searching to generate a clear hierarchy between fundamental principles and technical implementation. Therefore the Commission wants to redistribute the burden of micromanaging the EU's extensive and complex fisheries. First it looks to give some of its responsibilities to member states acting together in some form of regional framework. Secondly, it proposes including the fishing industry directly in providing technical and tactical solutions to fisheries management issues within a system of results based management. (It is preferably at regional and local levels). This would provide to the European institutions to concentrate their energies on working out the broader strategies for sustainable fisheries and integrated management.[225]

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[221] Symes, David; 2009, ''Reform of the European Union's Common Fisheries Policy: Making Fisheries Managmenent Work'', Fisheries Research, Volume 100, p. 99-102

[222] European Court of Auditors, 2007. Special Report No. 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources. European Court of Auditors, Brussels.

[223] Symes, op cit. p. 100

[224] Commission of the European Communities, 2008b. Communication from the Commission on the proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy. COM (2008) 718. The European Commission, Brussels.

[225] Symes, op cit. p. 102

With an overall aspect, the frame of the Common Fishery Policy is built on major conflicts between the Member States. This has had the result that it has been difficult to provide the comprehensive fisheries policy. Furthermore, the different interests of the Member States have had the consequence that the fishery policy is consisted of a mixture of the social, the rationalization and the conservation paradigms. This generates the risk of inconsistency between the applied instruments, and the implementation of policies, which have mutually controversial objectives. This is overtly seen, for instance, in the simultaneous funding of modernization and construction of vessels, and the funding of decommission schemes within the Member States.[226]

There is an inability of the CFP to incorporate scientific advice. It could be viewed as a mistake of the political system to make those who are under responsibility for policy. Of course it is also useful to let the fishing industry heed and act upon advice. Three decisive reasons of this mistake can be stated:[227]

- The psychology of individual fishermen,
- The Fisheries Minister's electoral policy,
- Not giving enough attention to fisheries science.

In addition to them, it is highlighted that although extensive regulation of fishery has been implemented, there are still some deficiencies that need to be dealt with in order to hinder the distortions emerging in the EU fishery. As firstly, it is significant to recognise that there is inconsistency between the implemented conservation policy and the general intention to prohibit discrimination on ground of nationality in the legislation of the EU. This conflict has to be settled once and for all, because there is the risk that the principle of equal access will eventually emphasize the consensus of the relative stability in the conservation policy. Secondly, a loosening of the conservation policy will inevitable enhance the distortion of overfishing in the EU. Besides, the quota hopping determines that there is an ongoing rivalry over the access to the resources between the Member States.

D) Maritime Safety Policy

[226] Jensen, op cit. p. 38
[227] Dawn and Gray, op cit. p. 191

Several significant EU policy documents have put increasing emphasis on maritime safety. Among these documents, White Paper[228] "European Transport Policy for 2010: Time to Decide" has a decisive place.[229] These documents make it clear that even though the maritime transport mode's safety record is considered acceptable, and although this mode is considered environment - friendly, there is something more to be done to increase maritime safety.

It is important to address some decisive issues with regard to policy formulation in the maritime safety area. Because of the level of maritime safety can be critically shaped as a result of maritime safety policies. Therefore it is overt that a critical assessment on the nature of these policies and on the way that these are put forward is necessary. In that sense, outlining the main players in worldwide maritime safety policy-making along with some of the obstacles they meet in their task should be touched upon.

When we take a look into at the policy-making process in order to get a clear picture of who develop maritime safety policy and how this policy is developed, it is easy to see that it is more complex than it may seem at first glance. Naturally, the term ''maritime safety policy'' has to be clarified at first. As a broad interpretation, laws, rules, regulations, directives, instructions, memoranda of understanding (MOUs), resolutions, protocols, guidelines, specifications standards, recommendations, codes, practices, or generally any other measure can determined as distinctive categories.[230] These documents generally specify, prescribe, encourage, mandate, recommend, or enforce on an on-going way specific actions that may impact maritime safety.[231]

As it is well known, The main player in the international maritime safety regulatory regime is the International Maritime Organization (IMO) and specifically the International Convention

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[228] The white paper [COM(2001)370, 12/09/2001].

[229] The aim of the White paper summirized in the European Commision's official website wwith this utterance. ''In this white paper and in keeping with the sustainable devlopment strategy adopted by the uropean Council in Gotenburg in June 2001, the Commsision proposes some 60 measures aimed at developing a european transport system capable of shifting the balance between modes of transport, revitalizing the railways, promoting transport by sea and inland waterways and contoroling the growth in air transport.'' Avalaible at: http://ec.europa.eu/transport/strategies/2001_white_paper_en.htm

[230] Psaraftis, Harilaos, 2005; Maritime Safety: To Be or Not to Be Proactive, avalaible at: http://www.martrans.org/documents/2005/safety/SNAME2005b.pdf

[231] For example, an IMO rule on the strength of transverse bulkheads in bulk carriers, a national regulation on vessel traffic separation, a regulation on the banning of alcohol use onboard, a P&I club rule on liability and compensation, an engine maintenance practice, and the US Oil Pollution Act of 1990, all may be classified under the realm of "maritime safety policy".

on Safety of Life at Sea (known as SOLAS). SOLAS is IMO's basic forum dealing with maritime safety. In addition to SOLAS, the IMO adopts also other measures that may affect maritime safety, either directly or indirectly. Examples for these measures are the Convention on Standards of Training, Certification and Watchkeeping of Seafarers (also known as the STCW Convention) and the High Speed Craft Code (HSC Code). The IMO does not prefer to implement or enforce regulations, that being the responsibility of member states. IMO's policy is also to fill the gap between new and present ship standards, emphasize the role of the human element, shift the emphasis from the development of new to the implementation of existing standards, and generally promote a safety culture in all maritime activities. To tempt a scientific approach to maritime safety, the Formal Safety Assessment (FSA) methodology has been proposed and the IMO's Maritime Safety Committee (MSC) is tasked to implement this methodology in the years ahead.[232]

The International Safety Management (ISM) Code is considered as one of the instruments that would enhance safety for ships that are certified to comply with it. Besides, Classification societies and IACS (the International Association of Classification Societies) are expected to play a critical role in that regard. Quality shipping campaigns related to the implementation of the ISM Code as their central pillar. In parallel to the IMO, IACS is influential in the improvement of standards that pertain to safety. In addition to the above, a number of other significant players have key roles in the development, implementation and enforcement of maritime safety regulations. These players contain flag states, port states, international bodies such as the European Union (EU), labor organizations such as the International Labor Organization (ILO), the shipping companies themselves, and other maritime-related industries (ports, shippers, shipyards, P&I clubs, environment groups, etc).[233]

With a widely encompassing perspective, it is clear that most of the past and recent regulatory activity on maritime safety has been driven by major maritime disasters. These contain the capsizing of the Herald of Free Enterprise in 1987, the grounding of the Exxon Valdez in 1989 (major pollution), the fire onboard the Scandinavian Star in 1990, the sinking of the Estonia in 1994 as well as several major bulk carrier losses. The Erika accident in 1999 has spurred three major regulatory packages by the EU, the so-called Erika I, Erika II and

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[232] http://www.imo.org: Uluslararası Denizcilik Örgütü WEB sitesi.
[233] T.C. Başbakanlık Denizcilik Müsteşarlığı, 2000. 2. Ulusal Denizcilik Şurası : Uluslararası İlişkiler ve Deniz Hukuku Çalışma Grubu Görüşler, Öneriler ve Değerlendirmeler, İstanbul.

Erika III packages.

On 12 December 1999 the oil tanker Erika broke in two 40 miles off the coast of Brittany in France. More than 10 000 tones of heavy fuel oil were spilt, thereby creating an ecological calamity. This awful situation applied a pressure of public opinion which prompted the Commission to propose action at Community level. The sinking of the oil tanker Erika off the French coast urged new developments in the establishment of Europe's maritime safety policy. Three months after the accident, on 21 March 2000, the Commission adopted a ''Communication on the safety of the seaborne oil trade.'' It also contains a number of proposals for specific measures to prevent such accidents happening again.

According to the Commission, this action is designed to generate a change in the prevailing mentality in the seaborne oil trade. More powerful incentives are required in order to persuade the carriers, chatterers, classification societies and other key bodies to give a higher profile to quality considerations. In addition to this, the net should be tightened on those who pursue short-term personal financial gain at the expense of safety and the marine environment.[234]

As it is clear, of all basic products in the world, oil occupies the leading position in the transportation stakes. Besides, the EU occupies the number one position in the petroleum products trade. With a simple comparison, its crude oil imports represent about 27% of total world trade, as against 25% for the United States. Close to 90% of the oil trade with the EU bases on sea transport and the rest being routed by pipeline, land transport or by inland waterway. Taking into consideration the forecast levels of demand for petroleum products, the deployment of oil tankers is expected to grow and grow over the years to come.[235]

Each year, 800 million tones are transported to Community ports or from Community ports. About 70% of oil tanker movements in the Union are along the Atlantic and North Sea coasts (the remaining 30% being via the Mediterranean), thereby making these zones the most undefended to oil spills, as demonstrated by the sinking of the Erika and, more recently, the Prestige. In addition to that, many oil tankers cross the waters of the Union without calling at EU ports, and this represents an additional volume of traffic, and hence an additional danger.

[234] Commission communication of 21 March 2000 to Parliament and the Council on the safety of the seaborne oil trade [COM(2000) 142 final - Not published in the Official Journal].

[235] http://europa.eu/legislation_summaries/transport/wate borne_transport/l24230_en.htm 27.02.2010

The Union's major oil ports are placed Rotterdam, Marseille, Le Havre, Trieste and Wilhelmshaven. The imported oil comes mostly from the Middle East and North Africa. European exports (from the North Sea oilfields) go mostly to destinations in North America.[236]

The causes of accidents at sea can be widely. In that sense some scholars emphasize that human element can not be ignored as a basic cause of these widely causes of accidents:[237]

- As we state above, accidents are often attributed to human error (navigation or pilotage error). Crew skills and crew training have been recognized as fundamental elements in improving safety at sea. In addition, working conditions generate an equally significant factor, particularly as fatigue is recognized as a growing cause of accidents at sea.

- Overtly, there is a general interaction between the age of vessels and the accidents that have occurred. As a clarifying example, 60 of the 77 oil tankers lost between 1992 and 1999 were more than 20 years old. Problems associated with the structure such as fire and explosions are among the other causes of accidents.

- The chartering practices peculiar to the oil trade also enhance to the complexity of the situation. Oil companies in reality control only a quarter of the world fleet. However, we are witnessing a process of "fragmentation" among the oil tanker owners. By dispersing their fleet among single-ship companies, often taking the form of dummy companies registered in offshore financial centers, owners are able to decrease their financial risks. Finally, it is generally arduous to identify the real decision-makers and hence to determine where responsibility really lies.

- The oil trade and the charter market perform in a highly competitive scope of space. An essential part of the operation is finding the cheapest oil tanker carrying capacity on the market. The temporary nature of the market has also results in a move-away from long-term contracts between chatterers and carriers towards short-term charters. This is also called as spot market. Prices on this market are harshly competitive. In reality, the age of the oil tanker

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[236] http://europa.eu/legislation_summaries/transport/wate borne_transport/l24230_en.htm 27.02.2010

[237] See for wide information online at: http://europa.eu/legislation_summaries/transport/wate borne_transport/l24230_en.htm

performs little part in the decision-making process; generally it is the cheapest available tonnage offered by the oldest ships that dictates prices. It is therefore difficult to generate a situation where quality pays. To the extend that small operators with low overheads are winning over parts of the market at the expense of companies with well established reputations. This phenomenon shows a risk to safety.

Subsequent several disasters (Torrey Canyon 1967, Exxon Valdez 1989), a series of conventions were drawn up under the auspices of the International Maritime Organization (IMO). Their aim was to combat accidental pollution which occurs with unforeseen events. The operational pollution is also intended with deliberate acts, such as the cleaning of tanks with seawater. For instance, the International Marpol Convention for the Prevention of Pollution from Ships was adopted in 1973.[238]

Apart from the environmental aspect, this convention also tries to generate the gradual phasing-out of single hull oil tankers and their replacement by double hull tankers or tankers of equivalent design. The Marpol Convention also supplies for more rigorous checks on the state of ageing oil tankers. Down the years the Imo directives have become more and more specific, and oil tanker hulls are now subjected to much more strict inspections as demanded in doctrine.[239] One of the results of Marpol, oil tankers built since 1966 have to have a double hull or be of equivalent design, while single hull oil tankers are gradually being phased out. Double hull vessels will decrease considerably the risk of pollution, particularly in incidents involving slight collisions or grounding. On 1 January 2000, double hull vessels controlled about 20% of the world's oil tanker fleet.[240]

Traffic separation schemes have been adopted in high-density shipping areas such as one-way sea-lanes, which sharply reduce the risk of head-on collisions in the Strait of Dover. In the future, navigation equipment will be more reliable and more exact. Satellite navigation technology supplies a greater degree of precision and reliability. In particular, Galileo system

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[238] International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto (MARPOL)

[239] Pietri, Diana and Soule, Arthur and Kershner, Jessi and Soles , Peter and Sullivan, Maile; 2008, ''The Arctic Shipping and Environmental Management Agreement: A Regime for Marine Pollution'', Coastal Management Publishing, Volume: 36, p. 508-523

[240] See at, http://europa.eu/legislation_summaries/transport/waterborne_transport/l24230_en.htm 27.02.2010

is an example.[241]

However, in the same process, it has to be acknowledged that action on maritime safety under the auspices of the IMO falls short in order to tackle the necessity of causes of such disasters effectively. Action by the IMO is severely hindered by the absence of adequate control mechanisms governing the way the rules are applied throughout the world. As a result, IMO regulations are not applied every related area with the same rigour. The evolution of maritime transport over the last few decades and, in particular, the emergence of "flags of convenience" such as registration of vessels in foreign countries. Some of which fail to live up to their obligations under the international conventions, is tending to distortes this phenomenon.[242]

Because of this reason the European Council called on the Commission, following the 1978 Amoco Cadiz disaster, to come forward with proposals to control and reduce pollution caused by oil spills. Before this disaster, the institutional framework for the protection of the seas and the oceans of the Europe has become highly developed containing milestones such as the 1972 and 1974 Oslo and Paris Conventions.[243] However, in the exercise, only something has been realized. Once the "momentum" occured by an accident has subsided, Member States have tended to get rid of binding measures at Community level. All the more so since unanimity used to be needed for decision-taking.

It was not until the mid-1990s and the advent of qualified majority voting that the Council was able to enact the first building blocks of a common maritime safety policy. It was containing the organisation at Community level of stricter application of international conventions. In addition to that, the adoption of measures of a specifically Community nature in cases where the IMO standards did not exist or were inadequate. Meanwhile, some necessary instruments have been enacted. These are about port state control,[244] ship

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[241] Person Autohor emphasizes the importance of the programme with these subsequent sentences. ‘’Galileo will provide the first satellite positioning and navigation system under civil control designed specially for civil and commercial purposes. It is crucial for Europe and the whole world to have a choice independent of the current US. Global Positioning System (GPS) monopoly.’’

[242] http://europa.eu/legislation_summaries/transport/waterborne_transport/l24230_en.htm

[243] Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo, 15 February 1972); and the Convention for the Prevention of Marine Pollution from Land-Based Sources (Paris, 4 June 1974).

[244] Directive 95/21/EC, amended by Directive 2001/106/EC

inspection,[245] prevention of the pollution from ships[246] and port reception facilities.[247]

The European Council called for the speedy adoption of the "first Erika package" and spurred the Commission to propose as soon as possible a second set of measures. The Council, therefore, aimed to supplement the three legislative proposals presented on 21 March 2000. The second set of measures was presented on 6 December 2000.[248] This one intends to bring about a lasting improvement in the protection of European waters against the risk of accidents at sea and marine pollution. It includes a proposal for a Directive and two proposals for Regulations.

What is eagerly demanded with this proposal is a monitoring, control and information system for maritime traffic. In that sense, the safety of shipping in European waters is of great importance since 90% of the European Union's trade with third countries is seaborne. The risk of accidents because of the concentration of traffic in the main European seaways is particularly high in areas where the traffic converges. (Such as the Strait of Dover or the Strait of Gibraltar.) In addition to it, the environmental consequences of an accident at sea, even outside areas of high traffic density, can be non-compensable for the economy and the environment of the Member States. Therefore, to provide the means to monitor and control more effectively the traffic off its coasts and to take more effective action in the event of critical situations arising at sea is the aim for the European Union.[249]

For this purpose, the Directive provides for these subsequent topics:[250]

- Developing the identification of ships in areas of high traffic density by requiring them to carry systems. Therefore that they can be automatically identified and monitored by the coastal authorities;
- Generating systematic use of electronic data interchange to simplify and harmonise the

[245] Council Directive 94/57/EC, amended by Directive 2001/105/EC
[246] Regulation (EC) No 2099/2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)
[247] Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residus.
[248] Communication from the Commission to the Council and the European Parliament of 6 December 2000 on a second set of Community measures on maritime safety following the sinking of the oil tanker Erika [COM (2000) 802 final
[249] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0802:FIN:EN:PDF 07.03.2010
[250] Communication from the Commission to the Council and the European Parliament of 6 December 2000 on a second set of Community measures on maritime safety following the sinking of the oil tanker Erika [COM (2000) 802 final

transmission and use of data on dangerous or polluting goods carried by ships;
- Requiring ships calling at Community ports to carry black boxes (voyage data recorders) in order to ease the investigation of accidents;
- Advancing the powers of intervention of Member States, as coastal States, where there is an accident risk or threat of pollution off their costs;
- Disallowing ships from leaving ports in weather conditions where there is a serious threat to safety or the environment.

It is also intend to setting up of a Compensation Fund for Oil Pollution in European Waters.[251] The Commission's proposal for a regulation complements the existing international two-tier regime on liability and compensation for oil pollution damage by tankers. It is the COPE Fund[252] which is created by a European supplementary fund and intends to compensate victims of oil spills in European waters. The COPE Fund will only compensate victims whose claims have been considered justified, but who have been unable to acquire full compensation under the international regime due to insufficient limits of compensation (200 million Euros). The maximum limit is at least set at 1 000 million Euro. European businesses will be finance the COPE Fund. Because, European Bossiness's receive more than 150 000 tones of crude oil and/or heavy fuel per year in proportion to the amounts received.[253]

Third main objective which is provided in the Directive is setting up of a European Maritime Safety Agency. The aim of setting up a European Maritime Safety Agency is to generate support for the Commission and the Member States in the application and monitoring of Community legislation in this field and in evaluating its effectiveness. The Maritime Safety Agency is generally modeled on the Air Safety Agency. Its tasks will contain providing technical assistance (amendment of Community legislation), assistance to candidate countries, organizing training activities, gathering data and exploiting databases on maritime safety, monitoring navigation, evaluating and auditing classification societies, on-the-spot inspections and participation in enquiries following accidents at sea.[254]

[251] Proposal for a regulation of the European Parliament and of the Council on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures [COM (2000) 802 final - Official Journal C 120 E, 24 April 2001].
[252] Michael, Faure and Hu, James; 2006 Prevention and Compensation of Marine Pollution Damage Recent Development in Europe, China and USA, Comparative and Environmental Law Series, Kluwer International Law, p. 6
[253] See at, http://europa.eu/legislation_summaries/environment/water_protection_management/l24238_en.htm
[254] See at, http://europa.eu/legislation_summaries/transport/waterborne_transport/l24242_en.htm

The enhanced human use of the world's marine ecosystems is unsustainable and new measures are required to re-establish basic environmental functions. With regard to this challenge, a proposal for a Marine Strategy Directive ('Marine Strategy Proposal') was adopted by the European Commission on 24 October 2005 on which a political agreement was reached by the Council (Environment) on 18 December 2006. It generates part of a larger scheme of initiatives within European environmental policy making called the seven 'thematic strategies' based on the Sixth Environmental Action Programme.[255] The Marine Strategy Proposal basically requires Member States to envisage regional marine strategies for maritime areas under their national jurisdiction in the period from the adoption of the directive until 2016. The strategies will be consist of characterization and assessment functions, as well as programmes of measures. The Member States have to achieve 'good environmental status' in their maritime areas by 2021 through an implementation of the programmes of measures.[256]

The main elements of the proposed marine strategy directive can be well enumerated with following order. These enumerated elements are;[257]

- The ecosystem approach;
- Spatial considerations, including identification of particularly valuable and sensitive sea areas;
- Aggregated impact assessments;
- Interactions in ecosystems as part of assessments;
- Establishment of environmental goals and ecological quality objectives;
- Transparency and involvement of stakeholders;
- Integration of environmental considerations in economic sectors; and
- The establishment of cross-sectoral management structures, in particular for monitoring and assessment.

[255] European Parliament and Council Decision 1600/2002/EC of 10 September 2002 laying down the Sixth Community Environment Action Programme, [2002] OJ L242/1.

[256] Kroepelien, Knut; 2007, The Norwegian Barents Sea Management Plan and the EC Marine Strategy Directive: Some Political and Legal Challenges with an Ecosystem-Based Approach to the Protection of the European Marine Environment, Review of European Community & International Environmental Law, Volume 16, Issue 1, p. 24-35

[257] Commission Communication to the Council and the European Parliament of 24 October 2005 on a Thematic Strategy on the Protection and Conservation of the Marine Environment, COM (2005) 504

It is important to determine that in 1993 a Common Policy on Safe Seas aimed at ensuring that all ships flying under the flag of an EU Member State or entering a European port comply with international safety standards. Since the adoption of the Commission's first communication on maritime safety, the European Community has mainly developed and intensified its maritime safety policy. Specifically, following the accidental oil spills of the "Erika" in 1999 and the "Prestige" in 2002, two single-hull oil tankers, the European Commission quickly gave start additional rules and standards, for the prevention of unintentional oil pollution at sea (above mentioned the Erika I and II packages). The Commission on 23 November 2005, with the Third Maritime Safety Package, adopted seven measures intended to supplement and develop the efficiency of the existing European legislation on maritime safety by means of a more proactive and preventive policy. This is called as Erika III Package.[258] This Erika III contains both the amendment of existing EU legislation and proposal for new measures.

With a general outlook, Psaraftis indicates that policies currently developed and pursued in the maritime safety area are often purported to be "proactive". In his comprehension, proactive means ''an early stage identification of factors that may adversely affect maritime safety and immediate development of regulatory action to prevent undesirable events, as opposed to just an after the fact ad-hoc reaction to a single accident.'' However, he also states that maritime safety policy-making has been very much reactive. And he states in that sense that something formulated with new adopted rules. A fundamental provision which is adopted correctly identifies and assess the most significant contributing factors of such accidents. Besides, it is formulated in such a way so as to hinder such factors to appear for the next time, or relieve their results in case they do.[259]

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[258] Third Maritime Safety Package (Erika III), 2007; avalaibe at: http://ec.europa.eu/transport/maritime/safety/third_maritime_safety_package_en.htm

[259] Psaraftis, Harilaos; 2005, EU Ports policy: Where do we Go from Here?, Maritime Economics & Logistics, Volume: 7, p. 73-82

CHAPTER III

EFFECTS OF THE SEA POLITICS OF THE EUROPEAN UNION TO THE TURKISH SEA POLITICS

A) Introduction

In that chapter, the effects of the sea politics of the EU on the Turkey's sea politics are examined. However, this examination includes Turkey's general sea politics within a assessment of the current situation and problems. In that context, two main problems of Turkey rise out of the ruck. First one is the conflict between Greece in the Aegean Sea which is mainly related to the concept of continental shelf, territorial borders and it is known as Aegean Issue. Second one is the conflict in the Mediterranean Sea area between Turkey and Greek Cypriot Administration of Southern Cyprus (GSASC) which is related to use of natural resources and of course the continental shelf and it is known as continental shelf issue in the Mediterranean Sea.

Our study, which takes place under the law department, should include not only the political and historical dimensions of the issues, but also the legal perspective of these above-mentioned problems. To reach this objective, legal dimension of those issues are examined in the light of concerned documents such as agreements and treaties. As it is well-known, law does not generate from only codes and rules, but the interpretations of them and also jurisprudence. Scholars have a responsibility to clarify the conflicting rules, codes or articles to help the preservation of the justice. In this way, every idea is important to determine and touch upon under the condition that it should be traced back legal and logical claims. Therefore our work includes two conflicting perspectives and opinions of related issues.

B) Aegean Issue

1) General Assessment

The Aegean Sea dispute between Turkey and Greece has been existed for more than three decades. There is also a disagreement related to subjects in dispute. Although Greek side

states the delimitation of the continental shelf is only unresolved issue, Turkey determines more than one. In general the conflicting subjects in Aegean issue can be classified as :

- Breadth of territorial waters;
- The delimitation of continental shelf;
- The delimitation of Flight Information Regions;
- Disputes over the national airspace;
- Sovereignty;
- Some disputed islands;
- Demilitarization of Greek islands of the Aegean Sea.[260]

It should be emphasized at the outset that the center of the disputes is focus on the width and delimitation of the territorial sea in the Aegean, and the rights of navigational freedom and overlight affected by such claims. This section examines the over-stated conflicting situations in Aegean Sea. For this examination, to take a look from the history of the relationship between Turkey and the Greece is overtly significant. Of course, the international law aspect and the effect of the European Union on the issue are well examined.

By the Greek academicians[261] it is asserted that Greece's international conduct is guided by existing international agreements and international law, and they expect Turkey to follow similar guidelines. They have repeatedly made clear that the only pending issue between Greece and Turkey is the delimitation of the continental shelf. Because it is claimed that this is a problem of a purely legal nature, the solution of which should be sought through recourse to the International Court of Justice. They back up this argument in that way. Since Greece has accepted the jurisdiction of the International Court, Turkey can offer to it any other of her claims provided it does the same. That is to say, if Turkey confirmed the Court's jurisdiction, it would certainly cause to the normalization of Greek-Turkish relations and to the resolution of basic issues of mutual interest.

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[260] The Cyprus controversy also festers relationships between Greece and Turkey, as do feelings on each side of the Aegean that the other nation has engaged in oppression and abuses in the past and harbors expansionist plans for the future.

[261] Stephanopoulos, Constantinos, 1999, ''International Law and the greek Turkish Conflict'', Harvard International Review, Vol. 21, Issue 1, p. 2

Turkey's European role is also shown as another tool, which is occasionally suitable to blackmail to Turkey. It is highlighted that Greece has more to gain from the full integration of a democratic Turkey into the structure of the European Union than any other member state. Accordingly, Greece is a supporter for Turkey's European orientation. Of course there must be a fee for this support. As a condition of this full integration and if Turkey truly demands to become a member of the European Union, it must demonstrate adherence to the principles and values of the EU. Besides, Turkey should comprehend that it is not simply an economic and free trade area but a real union founded on shared fundamental political values. In a clear utterance, the European Union has made the further development of its relations with Turkey dependent on some of subjects of Turkey. They are actual respect of human rights, the demonstration of genuine interest for the resolution of the Cyprus problem, and the improvement of its relations with Greece in accordance with International law. Within the last one, the Aegean dispute is well submitted to Turkey.

It is unusual when it is determined that the time has come for Turkey's political leadership to make up its mind and to give a clear answer concerning the European future of their country in the light of this issues. Which position Turkey will take with regard to the principles of democracy and the validity of human rights? Will Turkey accept to exercise foreign policy in a way that conforms to international norms and the prevailing spirit of peaceful relations? Does Turkey wish to see Greek-Turkish relations in the framework of international law and the procedures foreseen by it? Does Turkey demand to contribute to the resolution of the Cyprus problem?

First of all it must be stated that it is unusual related to the demanding criteria of European Union to ask for to resolve the international law problems of a candidate country. To combine these international problems of Turkey, as a candidate country, with the principle of democracy or the validity of the human rights is more unusual. It is the first time that EU demands such a criteria in order to achieve the full-membership. Lastly, with the last question, which is about the Cyprus issue, it is easy to see that there is a prejudice about Turkey's struggle to solve the Cyprus problem. The concluding remarks about those claims are determined in the last part of the section and also in the conclusion.

2) A Summarized Historical View

It is important to explain the historical development in the framework of the treaties related to Aegean issue. Because we should see that some of the central legal questions turn basically on an interpretation of the governing treaties.[262]

The Treaty of London of May 1913[263] is the initial one. In this agreement, the Ottoman Empire ceded Crete to Greece and agreed to allow the big powers of Europe to decide the fate of the islands of the Eastem Aegean, namely Lemnos, Samothrace, Lesvos (Mytilene), Chios, Samos and Ikaria (Nikaria).

The second one the Decision of the Six Powers Dated November 14, 1913. It was communicated to Greece on February 13, 1914 and is usually referred to as the 1914 Decision. This "Decision" was issued by the powerful states, namely the governments of Germany, Austria-Hungary, France, Great Britain, Italy, and Russia, to the Hellenic Royal Govemment (Greece). It referred to above-mentioned Article 5 of the 1913 Treaty of London, and to Article 15 of the Treaty of Athens between Turkey and Greece of November 1-14, 1913. Then it stated and reinforced the territorial provisions regarding the northeastern Aegean Islands. In other words, that all Aegean islands actually occupied by Greece except Gokceada (Imbros), Bozcaada (Tenedos), and Meis (Castellorizo, Megisti) should be ceded by Turkey to Greece. However it is on the condition that Greece would not fortify or use them for any military or naval intentions, and also on the condition that Greece would withdraw its troops from southern Albania and the small island of Saseno. The Turkish government was not included in this pronouncement and did not formally agree the division of islands until the 1923 Lausanne Treaty. This division is confirmed in Article 12 of Lausanne Treaty.[264]

Treaty of Peace which was signed in Lausanne (July 24, 1923) is a critical one. This treaty performed a central role in bringing a degree of closure to the disputes of the previous decades. In that sense, four provisions address sovereignty over islands. Article 6 which rules primarily with the land boundary states in its second paragraph that. "If in the present treaty, there are no provisions to the contrary; islands and islets lying within three miles of the coast are included within the frontier of the coastal State. Article 12 is also decisive in that context.

[262] Van Dyke, Jon; 2005, ''An Analysis of Aegean Dispute in International Law'', Ocean Development and International Law, Volume: 36, p. 63-117
[263] Treaty of London, 1913, http://www.mtholyoke.edu/acad/intrel/boshtml/bos145.htm (visited 18 march 2010)
[264] The Treaties of Peace 1919-1923 This treaty was signed between the British Empire, France, Italy. Japan, Greece, Romania and the Serb-Croat-Slovene State, on the one part, and Turkey, on the other part.

This treaty overtly confirms the territorial decisions made in the 1913 Treaty of London and the 1914 Decision. Therefore Turkey has sovereignty over the eastern Aegean Islands of Imbros, Tenedos and Rabbit Islands and that Greece has sovereignty over Lemnos, Samothrace, Mytilene, Chios. Samos and Nikaria.[265] The second paragraph of this article also repeats the overall statement found in Article 6 regarding coastal islands by saying that: The islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty, if there is not any provision to the contrary is included in the present treaty. Then, Article 16 addresses these issues once again, saying that:

‘’Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognized by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned.’’

This final phrase looks like to refer in part to the Boundary Commission established in Article 5 of the Lausanne Treaty, which had the responsibility to define the detailed land division. However it is also drafted in general terms because Ottoman territory in other regions was also covered by Turkey's renunciation in Article 16.[266] The 1923 Lausanne Treaty also covers the sovereignty over the Dodecanese Islands in the southeastern Aegean. Turkey ceded 14 islands "and the islets dependent thereon" to Italy.[267] Besides, with this treaty in some islands, the militarization was prohibited.[268]

The Convention Relating to the Regime of the Straits was signed at the same place and time and it is seen as an integral part of the Peace Treaty. Article 4 of this related agreement establishes a demilitarized status for Samothrace and Lemnos (as well as for Gokceada (Imbros) and Bozcaada {Tenedos) and Rabbit Islands). The nature of the demilitarization is spelled out in Article 6 and is contained in details of this regime.[269]

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[265] The Treaty of London, article 12

[266] Van Dyke, op cit. p. 65

[267] The Luasanne Treaty, article 15

[268] The Luasanne Treaty, article 13

[269] According to article 6: ‘’Subject to the provisions of Article 8 concerning Constantinople, there shall exist, in the demilitarized zones and islands, no fortifications, no pennanent artillery organizations, no submarine engines of war other than submarine vessels, no military aerial organization, and no naval base. No armed forces shall be stationed in the demilitarized zones and islands except the police and gendarmerie forces necessary for the maintenance of order; the armament of such forces will be composed only of revolvers, swords, rifles and four Lewis guns per hundred men, and will exclude any artillery.’’

The Ankara Agreement of 1932 is an agreement between Italy and Turkey, it is also known as Italian-Turkey Agreement, was signed on January 4 and came into force on May 10, 1933. With this agreement it is intended to resolve the dispute over the maritime boundary between the tiny Mediterranean islet of Castellorizo (then held by Italy) and the Turkish Coast, which had been submitted in 1929 to the Permanent Court of International Justice. The agreement withdrew the dispute from the Court and indicated in detail the sovereignty of the disputed islets and the maritime boundary in this area.

The Montreux Convention of 1936 is a significant treaty. It was designed primarily to restructure the regime that governs passage through the Turkish straits. A disagreement among scholars on the impact of this treaty was occurred on the demilitarized status of the eastern Aegean Islands.[270]

The Paris Treaty of Peace with Italy, February 10, Greece agreed to be a party to this treaty to resolve World War II disputes, but Turkey was not. In Article 14(1). With this treaty, Italy ceded full sovereignty over the Dodecanese Islands to Greece, listing 14 named islands[271] as well as the adjacent islets. As indicated above, this terminology is different from that utilized in Article 15 of the 1923 Lausanne Treaty, which stated the concept of "the islets dependent thereon." This word change may be important, but it is not clear whether the negotiators intended that different islands would be included in the category of adjacent islets from those that are dependent. Adjacent is a more exact term because it refers to geographic contiguity and permits the distinction to be made by cartographers rather than psychologists or philosophers. The term adjacent as applied to the Kardak-Imia Rocks, backs up the Turkish claim, because these rocks are closer to the Turkish coast (3.8 nautical miles) than to any of the named Greek islands {it is 5.5 nautical miles from Kalimnos).[272]

The UNCLOS, as global treaty, has been ratified by Greece. However, as it is stated above, it has not been signed or ratified by Turkey. This treaty will be also mentioned in the claims of the both parties.

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[270] Van Dyke, op cit. p. 70-75

[271] They are Stampalia (Astropalia), Rhodes {Rhodos), Calki (Kharki), Sciupano, Casos {Casso), Piscopis (Tilos), Misiros {Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi {Symi), Cos (Kos) and the Mediterranean islet of Castellorizo.

[272] Van Dyke, op cit. p. 77

3) Aegean Sea

As it is well known, the Aegean Sea lies at the core of most of the political relations between Greece and Turkey. These two neighbors have many issues regarding maritime delimitation in the Aegean Sea. All these problematic disputes stem from the fact that the Aegean Sea forms an exception to all common rules of international law. International agreements form an significant part of the sources of international law. In that sense, four Conventions were signed with regard to the law of the sea in 1958: Convention on the High Seas; Convention on the Territorial Sea and the Contiguous Zone; Convention on Fishing and Conservation of the Living Resource of the High Seas and Convention on the Continental Shelf. In 1982, UNCLOS was signed which largely took the place of the earlier Conventions. Despite all problems of the law of the sea are covered in the UN Conventions that were signed in 1958 and 1982 respectively, the issues related to the Aegean Sea needs to be examined under the area of "special circumstances" because of its exceptional geographical characteristics.[273]

Aegean Sea can not be deemed only as a sea that divides the two mainland's. It is overtly a main source of conflict dividing the two states in several political, economic and legal matters. The detailed geographical analyze of the Aegean Sea is important as much as detailed legally analyze in order to have a better understanding of the conflict between these two neighboring Aegean states. In that sense, the outstanding nature of the Aegean Sea and the way its natural characteristics are regarded by Greece and Turkey are of outmost importance.[274]

It is significant to have a look from Aegean Sea's geographical structure with regard to our examination of the Aegean Sea issue. Maritime boundary issues between Greece and Turkey are much problematic because of the special features of the Aegean Sea. Having a very unique political geography, the sea itself generates difficulties in delimitation due to its narrow width and the existence of many islands, islets and rocks.[275]

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[273] Toppare, Nevin Aslı; 2006, ''A Legal Approach to the Greek Turkish Continental Shelf Dispute at the Aegean Sea'', Department of International Relations Bilkent Unversity Ankara
[274] Toppare, op cit. p. 25
[275] Inan, Yüksel and Acer, Yücel; 2004, ''The Aegean Disputes, The Europeanization of Turkey's Security Policy: Prospects and Pitfalls'', edited by Ali Karaosmanoğlu and Seyfi Taşhan, Foreign Policy Institute, Ankara, p. 1

The Aegean Sea forms part of the Mediterranean Sea with a total surface of maritime areas of 101.321 nautical miles (187.647 kilometers). The sea is bordered in an adjacent and opposite way, by the coasts of Greece and Turkey. Greek coasts to the Aegean are, excluding the islands, 1500 nautical miles (2750 kilometers) long. On the other hand, the Turkish coasts to the Aegean are nearly of 1300 nautical miles (2400 kilometers). From east to west, the Aegean Sea has nearly 350 nautical miles length and 100-200 nautical miles width. It is bounded by Turkey in the east and by Greece in the West, and by both in the North, mostly by the Greek coasts. At the south, the limit of the Aegean Sea can be determined by a line joining the southwestern coast of Turkey and southwestern coast of Greece: These are the Akyar Cape, Northern Rhodes, the islands of Karpathos, Crete, Andikithira and Southeastern Peleponnesse in mainland Greece.[276] There does not exist an internationally defined limit of the Aegean Sea. However the Aegean Sea was defined as in the above stated way in a study carried out in 1986 by the International Hydrographic Organization (IHO). This semi-enclosed sea therefore provides no direct access to any other state.[277]

In round numbers, the Aegean Sea contains 3000 different islands, islets and rocks, generally under Greek sovereignty, of which around 100 are inhabited. Although many of those geographical structures are small, a number of Greek islands of various sizes are located of the eastern shores of Anatolia. They are distributed all over the Aegean. However the islands can be classified under five categories:[278] They are the North Sporades, the Cyclades, the Strait Region Islands, the Saruhan Islands and the Mentese (Dodacanese) Islands. The last three groups of islands can also be named as the "Eastern Aegean Islands", located in close proximity to the Turkish shores in the east side of the Aegean Sea. The number of the Eastern Aegean Islands is requiring to be observed; nowhere else do foreign-controlled islands and their territorial sea cover nearly 85% of a long mainland coastline. Some of the islands under Greek sovereignty are as adjacent as few nautical miles off the shoreline, resulting in Turkey's coast to the Aegean Sea to be encircled to an excessive extent by the Greek islands and their adjacent territorial seas.[279]

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[276] Toppare, op cit. p. 27
[277] Bölükbaşı, Deniz, Turkey and Greece: The Aegean Disputes, A Unique Case in International Law, Cavendish Publishing, London, p. 20, 2004
[278] Yüksel and Acer, op cit. p. 2
[279] Bölükbaşı, op. cit. p. 21

When examining the proximity of the Greek islands to mainland Turkey as well as the extraordinary configuration of the sea, the Aegean generates a special circumstance for purposes of maritime delimitation. Because of its complex geography and singular structure, it does not only generate a unique sea that poses difficulties in maritime delimitation. However, it also constitutes such an odd situation that virtually no such peculiar configuration exits in other parts of the world. This circumstance in turn directly impacts various maritime delimitation difficulties in the Aegean Sea.[280] Here is a map of Aegean Sea.[281]

4) Aegean Issue with Current International Perspective

As Greece and Turkey share common land and sea borders and they both have extensive coastlines along the Aegean Sea, the geographic imperatives of both countries can moderate actions. However these imperatives can also provoke them. These imperatives are long term

280 Toppare, op cit. p. 36-40
281 See for wide information at: http://upload.wikimedia.org/wikipedia/commons/f/fe/Aegean_Sea_map.png

and can cope with governments and ruling elites. They are also interrelated, so that if one imperative is changed it will probably affect others.[282]

However it is overt that for more than thirty tears, the Aegean Issue has been the cause of a serious tension between Greece and Turkey over some vital matters of sovereignty and exclusive rights in the region. The Aegean issues were all hindered from triggering some type of physical confrontations between the two parties, although there is a reality that the wide range of dispute issues occasionally resulted in sudden outbreaks in the region. The Aegean issue unfortunately has remained unsettled yet, however dispute management processes were devised and maintained in the late 1990s and the 2000s: a critical change between the Turkey and Greece in particular with the acceptance of the Turkish candidacy to the EU membership at Helsinki in 1999.[283]

On 3 October 2005, with the opening of accession negotiations, Turkey turned a corner in its process to join the European Union. Although Turkey's long-term prospects for EU membership remain rather unclear, the accession talks have already put Ankara's orientation, as well as the EU's role and identity in a new perspective. To become a member, Turkey is oblige to meet all the criteria and requirements laid out in the Negotiating Framework adopted in September 2005.[284] On the political level, as it is mentioned above, Turkey must create stable institutions that guarantee democracy, the rule of law, human rights and respect for minorities. And also most importantly for our examination, it should also unequivocally commit itself to good neighborly relations and to the peaceful answers of border disputes according to the UN Charter and international law. In the economic field, the EU expects Turkey to generate a functioning market economy and to adopt the acquis communautaire. All these will require Turkey to reform itself intensively to adopt, implement and enforce European principles and values.[285]

[282] Ifantis, Costas; 2008, ''Whither Turkey? Greece's Aegean Options'', In book. Turkey's Accession to the European Union, Springer Berlin Heidelberg Publishing, The Constantinos Karamanlis Institute for Democracy Series on European and International Affairs, p. 121-132
[283] Yavaş, Gökçen; 2007, ''The Europeanization of the Aegean Dispute Between turkey and Greece: A Constructive/Discursice Approach'', Marmara University European Union Institute, Paper to be presented to ISA Panel available at: http://www.allacademic.com/meta/p_mla_apa_research_citation/1/8/0/7/6/p180768_index.html
[284] Negotion Framework Document
[285] Infantis, op cit. p. 128

All of the above are reasons why Turkey negotiates its European future under, the most stringent and strict terms any candidate has ever had to bear in the history of European integration.[286] For Greek side, the challenge is enormous as well. Since the early 1960s, Turkey has deemed the main concern of Greece's security policy and the driving force behind most foreign policy decisions. In fact, according to Greek side, Turkey has dominated Greek security thinking and the identification of its strategic needs and priorities.[287]

In the light of above-mentioned current approaches, one can easily see that the Aegean issue is affected by the European Union. As we stated above, in the negotiation framework document Turkey is expected to resolve its international law disputes. The Aegean issue is well included in that context. Yavas examines the Aegean issue within the European Union affect on the Turkey and the Greece relations by using the term of Europeanization in order to analyze the new phase of the Aegean issue. She also defined the term of Europeanization as "national political and policy transformation as a result of EU integration and regarding its dynamics", and indicates the two dimensions of the Europeanization from Börzel related to Aegean issue.[288] We also think that it is important to determine these dimensions in order to clearify the EU impact one the national and international level. These dimensions are the top-down and bottom-up dimensions, which require a bi-directional process. What we understand from affect of these dimensions is that the states' foreign and security polices are transformed in relation to the dynamics of the EU integration. Besides, the streaming effects of the EU level processes, policies, and institutions, new ways of thinking, policies, practices, norms, institutions, ideas and identities on the national policies, without regarding to their status vis-a-vis the EU, are important. The transformation of the national policies to the EU level is the bottom up dimension. He adds that, usually, the two dimensions are considered together. According to Vink, the term of Europeanization enjoys increasing popularity within the study of European integration. Although there is considerable conceptual disagreement related to the question what it actually is, the majority of the literature speaks of Europeanization when something in the domestic political system is affected by something European. Therefore one

[286]Akcapar, Burak and Chaibi, Denis; 2006, ''Turkey's EU accession: The long road from Ankara to Brussels'', Yale Journal of International Affairs, Volume:1, p. 50–57. In that article, it is also emphasized that: ''That is why, to have any chance for success, Turkey will have to win the hearts and minds of EU citizens and this must be done by a country in a time of peril. Domestic developments in Turkey seem to be of a structural nature that threaten age-old certainties in the country.''
[287] Infantis, op. cit. p. 128
[288] Börzel, Tanja and Risse, Thomas; 2000, ''When Europe Hits Home: Europeanization and Domestic Change'', European Integration Online Papers, Volume:4. available at: www.eiop.at/eiop/texte/200-015a.htm

can define Europeanization for the moment and very briefly ''as domestic change caused by European integration.''[289]

Yavas focuses the top-down approach referring to the EU impact on the management of the dispute by the two parties. According to her, it does not need so much performance to see that; Greece is Europeanized at two levels. Firstly, she is uploading its issues onto the EU level. Secondly there is an overt EU effect regarding its "natural solidarity" towards its member states. On the other hand, Turkey has just been step in her Europeanization level with its candidacy status granted by the EU in 1999. Therefore, the uploading of the dispute has only been possible by the impact on two national foreign policies, in particular Turkey. She continues her arguments in that context. Europeanization also determines two different processes. First one is "de-securitization" process and the second one is a process of change on Greece and Turkey's foreign and security policies (the Member or non-Member States'), in particular, on the transformation of the Aegean dispute. In studying of the Aegean issue, extension of Europeanization of the Aegean Dispute will be measured by making references to the security and foreign policy discourses in Greece and Turkey and also made by the EU. Therefore, the exploration of the shift from the confrontational to cooperative discourses will be based on the speeches delivered by the political leaders, bureaucracies, governments from the both sides. By doing so, by uttering security, the politicians move a particular improvement into a specific area. Besides, it is provided towards contributing the notion of the construction of security community in which the members settle their dispute in peaceful ways.[290]

5) The Objective Rules for Settlement

a) The Principle of Equity

It has long been considered whether the principle of equity and fairness is a source of international law, as a part of the general principles of law. Often been applied by international tribunals, the principle seems to be within the ambit of Article 38/1(c) of the

[289] Vink, Maarten; 2002, ''What is Europeanization? And oher Questions on New Research Agenda, Paper for the Second YEN Research Meeting on Europeanization'', University of Bocconi, p. 12
[290] Yavaş, op cit.

Statute of the ICJ.[291] The most reputable use of equity has been in the law of the sea, in the context of the delimitation of maritime zones between opposite and adjacent states.[292] The basic point is that the principle of equity is a source of international law. In this point of view, it is clear that it may affect the manner in which more substantive rules are applied. According to ICJ reports in Frontier Dispute Case, it is a "form of equity which constitutes a method of interpretation of the law in force, and is one of its attributes."[293] The Court also has stressed that equity is not an abstract concept, but the application of rules of international law with due regard to fairness and reasonableness. In that sense we have to state that principle of equity does not mean ex aequo et bono. Ex aequo et bono requires to observe the specifications which are not legally regulated.[294]

In that sense, the settlement between Greece and Turkey needs to approach from the perspective of equitable principles, considering the special characteristics of the Aegean Sea. This unique character of the Aegean determines the uncontestable application of equitable principles for the fair and equitable delimitation of continental shelf, in favor of both states. Some factors are needed to be taken into account in delimitation:[295]

- The location, number and size of the islands;
- The coastal relationship of Greece and Turkey within them;
- The geological characteristics and length of the seabed underneath;
- A reasonable degree of proportionality.

The reason for international legal rules to be applied variously in different cases stems from the reality that every case has a unique character. Therefore this unique character dictates particular solutions, when relevant datas are taken into consideration. In practical terms, if Greek islands were to be bestowed the same weight as much as the mainland coast of Turkey what matters in the continental shelf delimitation is that whether the result of delimitation in

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[291] ''1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. 2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.''

[292] Martin Dixon, Martin; 1993, Text Book on International Law, Blackstone Pres, London, p. 38

[293] ICJ Reports, Frontier Dispute Case, 1986, p. 58

[294] Pazarcı, Huseyin; Uluslararsı Hukuk, Turhan Kitabevi, 8. Bası, p. 281, Ankara, 2009

[295] Toppare, op cit. p. 49

the context of the Aegean Sea would be equitable. Thus, the core of the matter relies on the equitable solution between states, not on the pure application of what international treaty law dictates.[296]

b) Equality of Titles

The "equality of title" does not necessarily mean equality of reach. This principle is not legally provided that the dependent Greek islands would have an equal reach or prolongation with that of the primary coast of the Turkish mainland in the Aegean. The status of these islands off the Turkish coast should be examined and considered meticulously.

Just as it was concluded in the 1985 judgment of the ICJ in Libya/Malta Case, islands are not equal with mainlands in their capacity to provide rights over maritime area; rather they are "anomalous dependent islands of a large mainland state.[297] Besides, one can easily deduce that Greece is not an archipelagic state formed exclusively by islands, with no continental landmass. That is to say Greece is rather a continental mainland state, where the islands are anomalous dependent islands of a larger mainland state. The judicial decisions and practice of States disclose that it is mostly accepted that an island state must necessarily be accorded more weight than such distant fragments of mainland states; and that independent States should be favored over dependent territories.[298]

6) Greek Approach to Island Dispute

In this section, the common and general arguments of the Greek side was collected and examined. To have a proper consideration of the Aegean issue, these arguments are important to touch upon.

According to Greek side, firstly, there is no longer any doubt that the standard aspect in maritime delimitations is to draw a provisional median line of equidistance using all the relevant coast. This situation is the dominant criterion for all zones especially the territorial sea, and adjusting such a line on the basis of any relevant special circumstances if and when

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[296] Kuran, op cit. p. 213-214
[297] ICJ Reports, 1985, Disenting opinion of Judge Schwebel p. 182
[298] Bölükbaşı, op cit. p. 500

needed in order to get an equitable outcome. In that sense, equity here functions not as a constitutive character. However it is as a corrective, legal process that takes into consideration specified identifiable factors, not just automatic guesses and intuitions, in order to reach an equitable outcome.[299]

As a central focus, it is claimed there is no room for doubting that in the delimitation process, and consistent with Article 121(2) of the UNCLOS, islands have full maritime rights in all directions, the same as any other territory.[300]

Furthermore non-encroachment and equidistance-median line are assessed in that way. It is usual and reasonable to draw the lines in ways that make the needed cuts closer to the remote islets on the Turkish side, when the diversion of the equidistance-median line and the resulting reduction of shares due to disproportional are to take place. (And in line with the auxiliary principles of non-encroachment and no cutoffs.) A significant practical consideration here is to preserve the unity of shares, meaning that the object is to delimit the zones together and as close to their main coasts as possible.[301]

It is indicated by the Greek side that sovereignty issues and the territorial sea regime and the location of baselines should be settled. After that the delimiting the continental shelf and potentially the EEZ regions of the parties on whatever part of the Aegean is beyond the territorial sea, can be easier. However the relevant coasts of Greece's islands are many times longer than those of Turkey. In addition to the islands, the Aegean is surrounded and embraced on the other three sides by the relevant coasts of Greece, including Halkidiki and Crete, which are many times longer than those of Turkey.[302] Therefore, it may be unfortunate for Turkey that equidistance, including the islands, subject to any adjustments, may produce a

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[299] Kozyris, John; 2008, ''Islands in the Recent Maritime Adjudications: Simplifying the Aegean Conundrum'', Ocean Development and International Law, Volume: 39, p. 329-342

[300] According to article 121: ''1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.''

[301] Kozyris, op cit. p. 334

[302] Baslar, Kemal, 2005 "Two Facets of the Aegean Sea Dispute: 'de lege lata' and 'de lege ferenda,' " Turkish Weekly, May 4

much larger Greek share. With this approach, it is considered that the no-gross dis-proportionality requirement is amply satisfied.

It is also accepted by the Greek side that the Aegean is not a Greek lake and the waters are tight. Besides, the closeness of the Greek islands to the Turkish coast may impact in what proximities or sectors the adjustments will be made. In other words, lesser effect is probably given to some coasts. However it is recommended that we should remember that the overwhelming practice in adjudications has been to recognize for islands a minimum of a 12-nautical-mile continental shelf/EEZ zone, which would be decisive here regardless of the 12- or 6-nautical-mile extension of the territorial sea. Therefore, even the location of resources may be given some minor weight. In that sense Koziyus says that[303] ''what is sauce for the gander is also sauce for the goose''. He indicates with this sentence that the offshore areas of both Greece and Turkey must be indicated according to the applicable principles of international law. He also determines[304] that it is agreed by all that "we should not refashion geography; and asks is there any doubt that the islands are part of geography? The answer is clear for him but in this way. Coasts are facts of nature on which legal entitlements to offshore areas are established and from which delimitation lines are drawn on the basis of distance. So there is no need any metaphysical rule that a country facing an area must get some defined percentage of it.

7) Assessment of the Greek Arguments

We can say that principle of equity of titles collapses, when the Greek argument is taken into consideration. Apart from the non-encroachment, if the natural prolongations are not prioritized, an enclave solution is not welcomed. So the Greek islands were given full effect on the boundary, then this would have several inequitable results ranging from political to geographical and legal.[305]

First of all, this would provide a privileged position to the dependent islands of a continental state in relation to their continental neighbor with a long coastline next to the area of delimitation. This will be contrary to the principle that independent states should be favored

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[303] Kozyris, op cit. p. 337-339
[304] Kozyris, op cit. p. 340
[305] Toppare, op cit. p. 57

over dependent territories. Second one, the geographical factors in the Eastern Aegean should be taken into consideration. It should not be overlooked how the coasts project into the sea, where the seaward extension of the Turkish coast is the dominant factor. The natural prolongation of the Turkish landmass would thus be ignored. Thirdly, it would give the impression that the continental landmass of the Turkish mainland is a projection of the submerged landmass of the Greek islands. In other words, the Turkish mainland would be assumed as sitting on the continental shelf of the Greek islands and that it is the product, rather than the producer of the continental shelf on which it lies. Fourthly, the Greek mainland would be non-existent and consequently the area of entitlement would be granted solely to the detached Eastern Aegean islands. As a result of it, This makes no sense as continental part of Greece is the main land territory whereas the islands are dependents.[306]

Greek approach is easily gives the impression that Greece is an independent insular state (island state) formed by islands without continental landmass and that it is entitled to archipelagic status under Article 46 of the 1982 UN Convention on the Law of the Sea. This article 46 is a result of the disputes with regard to archipelagic state concept which was argued in the Third Law of the Sea Conference. Turkey recommended that the archipelagic state concept should not include the type of states which are not consist of only the islands.[307] On the other hand, the aim of the Greece about to be accepted as a archipelagic state would be refusal her actual geographical and political status. In addition to it, with the approach of Greece one can deduce that no high seas exist on the west of the Eastern Aegean islands, between them and the Greek mainland and between the islands themselves. Therefore the Aegean Sea would be easily converted a Greek Lake.[308]

Van Dyke indicates some of the UNCLOS articles which is possible to assert by Turkey in the Aegean issue. They are article 3, 15, 122, 123, and 300. When we look at the article 15 we see that there is a special provision of delimitation which includes the Aegean dispute.[309] With

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[306] Toppare, op cit. p. 65

[307] Proposal at 12 August 1974, Official records, Vol.II, p. 272

[308] Bölükbaşı, op cit. p. 352

[309] According to article 15 ‘’Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.’’

regard to 300, as it is above-mentioned, bono fides is emphasized for the relations of the concluding parties.[310]

C) Disputes in Mediterranean Sea

The Mediterranean is a semi-enclosed sea, which is surrounded by 21 countries.[311] It is characterized by a number of decisive features with significant implications for the conservation and management of fisheries. One of these features is the general restraint shown by coastal States in implementing their rights to extend national jurisdiction over waters in the Mediterranean. Although most States have established territorial waters, few have claimed an EEZ, a fishing zone or a prevention of pollution zone extending beyond these waters. As a result of this situation, the high seas in the Mediterranean lie much closer. The existence of a large area of high seas needs a high level of cooperation between coastal States to ensure the sustainable utilization of fisheries resources, and conservation of marine biodiversity.

In this section of our study, the continental shelf and EEZ dispute between GSASC and Turkey is examined. The concept of continental shelf and the EEZ are well determined in the first section. Therefore only some important and distinctive points related to these subjects are indicated in order to avoid from repeat of same in formations and comments. Besides, initiatives of the GSASC to make agreements between other coastal states in Mediterranean Sea, Turkey's reaction to this initiatives and related court decisions and EU reactions to the similar situations are examined. In our study, both GSASC's perspective and Turkey's perspective with regard to Cyprus Dispute are given to have an objective result.

The concept of the continental shelf is one of the significant subjects of the law of the sea. This subject of the law of the sea is changing very rapidly. We can determine it with looking the practice of the states, the work of the International Law Commission in 1950's, the records of the 1958 Geneva Conference and the Third United Nation's Conference which are matched by the writings of several scholars and the decision of the ICJ. Therefore one can

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[310] Article 300 ''States Parties shall fulfils in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.''

[311] We have to note that there are actually 22 countries bordering the Mediterranean Sea as the United Kingdom possesses three territories in the region, namely Gibraltar and the two sovereign base areas of Akrotiri and Dhekelia in the island of Cyprus.

easily say that in order to analyze the Mediterranean Sea dispute; it is required to shed light not only on the state practice about the continental shelf and the EEZ but also on the related decisions of the ICJ. In other words, Mediterranean Sea dispute between Turkey and GSASC should be assessed by both the legal arguments and the decision of the ICJ, in order to grab a healthy result.

Actually, as a consequence of this, two main objectives are tried to be achieved in this section. First of all, the continental shelf and the EEZ disputes between Turkey and GSASC will be described in order to clarify the substance of those problems. For the second step, the analyses of the decisions given by the ICJ and the arguments of legal scholars are examined under the light of the legal developments and state practice. For the continental shelf dispute both between Greece and Turkey and between GSASC and Turkey, we have to say that disputes related to this concept are particularly seen in enclosed and semi-closed seas. That is to say, the physical disposition of coastal states and the geographical configuration of the enclosed and semi-enclosed seas is eligible to make any change in the continental shelf and it is especially difficult. The Mediterranean Sea overtly has the characteristics of the semi-enclosed seas. This general information is given because of the importance the emphasizing of that decisive characteristic which is sometimes not determined in legal arguments.

To be consisted of a long and narrow corridor with a length of slightly over 2,000 nautical miles, Mediterranean Sea has a width less than 600 nautical miles at its widest point.[312] Furthermore, this limited area is separated among eighteen sovereign state as well as three dependent territories. The cost of these littorals is very diverse from each other by configuration, length and direction.

Here is two current maps of Mediterranean Sea in order to show the characteristic coastal feature of the it. First one shows the every coastal state.[313] Second one[314] shows the NCTR's coasts. As we see in the map, the coasts of the Mediterranean Sea do not have the same geographical characteristic for every coastal states. Just like Turkey's situation in the Aegean Sea, for NCTR is in a special situation.

[312] Sovereignty of Sea, Geographic Bulletin 3. This widest point is between Strait of Otranto and the Libyan coast.
[313] http://tr.wikipedia.org/wiki/Dosya:Mediterranean_Sea_political_map-en.svg visited at 20 May 2010
[314] http://cennetturkiye.org/resimler/gallery/haritalar/akdenizsa8.jpg visited at 20 May 2010

Akdeniz
UŞAK
AFYON
KAYSERİ
AKSARAY
NEVŞEHİR
DENİZLİ
ISPARTA
BURDUR
KONYA
NİĞDE
KAHRAMANMARAŞ
KARAMAN
ANTALYA
OSMANİYE
GAZİANTEP
ADANA
MERSİN
KİLİS
HATAY
KUZEY KIBRIS
TÜRK CUMHURİYETİ
A K D E N İ Z
LEFKOŞA
S U R İ Y E
KIBRIS RUM KESİMİ

This table shows the coastlines and seabed allocation in Mediterranean Sea[315]

State	Coastal Length (n.m.)	Seabed area (sq. n.m)
Albania	153	6,114
Algeria	596	32,461
Cyprus	290	26,000
Egypt	537	51,387
France	491	25,787
Gaza Strip	21.6	-
Gibraltar (UK)	7	159
Greece	1,645	134,000
Israel	120	5,969
Italy	2,450	155,000
Lebanon	105	4,586
Libya	910	93,311
Malta	45	17,815
Monaco	3	82
Morocco	190	6,332
Sovereign Base Area (UK)	86	4,360
Spain	618	73,514
Syria	82	2,984
Tunusia	555	28,387
Turkey	973	17,323
Yugoslavia (former)	426	20,453

1) Important Points About Continental Shelf and EEZ

In that section, some decisive points with regard to development of continental shelf and EEZ are highlighted. The conceptualization of the continental shelf and the EEZ also includes their objectives in the 1958 Geneva Convention and 1982 UNCLOS approaches. It is not required to examine the whole historical development of continental shelf and EEZ. However, some points, which are not emphasized in the first section, which includes the concept of

[315] Sovereignty of Sea, Geographic Bulletin 3

continental shelf and the concept of the EEZ, should be determined in order to comprehend the contemporary problems.

As it is well-known, 1958 Geneva Convention provided a significant step for the legal definition of the continental shelf. However, some specific issues stemming from the interpretation of the Convention came also into the agenda.[316] For the first one, in case of taking measures for exploration and exploitation of the continental shelf by the coastal state, the traditional high seas freedom and the right of laying and preserving submarine cable or pipelines on the seabed of the high seas is likely be influced. For instance, the exploration of the continental shelf or exploitation of its resources may lead to interference with the fishing or navigation. Besides, there is no definition of the exploitation criterion criteria in the 1958 Geneva Convention and that unclear situation results also to some different issues.

The coastal states have the right to establish some installations. This is the second critic which is directed to 1958 Geneva Convention regime. The coastal state is allowed to construct, maintain or operate on the continental shelf installations and other devices which are required for the continental shelf exploration and exploitation. Other opportunities which are possible to be used by the coastal state are establishing safety zones and exercising jurisdiction. However, those installations do not have any territorial waters. They also do not have the status of island all of which could generate diverse issues.

For the last one, with the Geneva Convention, it is no longer free for the international community to do research related to the continental shelf like the situation before Geneva Convention was concluded. The reason of this is the necessity of the coastal state's consent. However, the state can not withhold its consent, if this research is purely a scientific research and handle with the physical or the biological characteristics of the continental shelf and if the request comes from a qualified institution. Furthermore, the coastal state is bestowed to participate or to be represented in the research. But there is a condition which is: at the end of the research, the result of it should be published. With the regime of UNCLOS, we can not say that above mentioned problems are solved entirely. Because, the UNCLOS regime intended on the delimitation of the continental shelf.

[316] Tokat, Ayşem Biriz; 1999, The Contribution of the International Court of Justice to the Continental Shelf Disputes in the Mediterranen Sea, Bilkent University Social Science Institute, Master Thesis, p. 10

From a legal standpoint, the marine realm falls into diverse areas, each having its own legal regime, as specified by the UNCLOS. The Convention, adopted on 10 December 1982 in Montego Bay in Jamaica supplies the general framework governing the establishment and delimitation of maritime zones. It specifies a condition that the sovereignty of any coastal State extends to an adjacent belt of sea, called the territorial sea, whose breadth can extend up to a limit not exceeding 12 nautical miles. Sovereignty conferred upon coastal States is not restricted to the water column, but also extends to the air space over the territorial sea, as well as to its bed and subsoil. Sovereignty must be implemented in accordance with the UNCLOS and other rules of international law[317]. Moreover it sets out the rules and methods to be applied to determine the baselines from which the breadth of the territorial sea should be measured according to normal and straight baselines. It determines the rules to be followed to draw up the boundaries of the territorial sea between States with opposite or adjacent coasts.[318] The median line rule is generally applied to determine the extent of the territorial sea between States with opposite or adjacent coasts. In that sense it is useful to determine that a median line is drawn between the two States every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.

In Montego Bay, the result of the efforts with regard to clarifying the uncertainties about the national jurisdiction and the international regime came as UNCLOS. Having a chapter about the continental shelf, UNCLOS introduced EEZ as a new notion into the field of international law. The UNCLOS recognizes the right of coastal States to claim an exclusive economic zone.[319] Unlike its authority in the territorial sea, however, a coastal State does not have full sovereignty over its EEZ, but rather demarcated sovereign rights.[320] If every coastal State proclaimed its full (up to 200 n.m.) EEZ, there would be no waters of the Mediterranean that were not included.[321]

Different from the EEZ, the continental shelf exists ipso jure and does not depend on occupation, effective or notional, or on any express declaration by coastal States. According to Article 76 of the UNCLOS, the legal continental shelf consists of the sea-bed and subsoil of

[317] Unclos, article 2,3
[318] Unclos, article 15
[319] Unclos, article 57
[320] See the wide explanation in the Eez section
[321] Chevalier, Claudiane; Governance of the Mediterranean Sea Outlook fort he Legal Regime, Iucn Center for the Mediterranean Cooperation Publishing, Spain, p. 41-94, 2005

the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory to the outer edge of the continental margin[322] (physical continental shelf, slope and rise), or to a distance of 200 n.m. from the baselines, where the outer edge of the continental margin does not extend up to 200 n.m..[323] In the context of the Mediterranean Sea basin where no point is located more than 200 n.m. from the nearest land or island, States do not have a legal continental shelf extending beyond 200 n.m.. As with the EEZ, the entire Mediterranean seabed becomes an area to be eventually allocated to coastal States, once the maritime boundaries with opposite and adjacent States are established under international law. In most cases it is possible that the outer edge of the coastal State's legal continental shelf would be the line of delimitation with opposite and adjacent States.[324]

During the drafting period of the UNCLOS, the final provisions for the delimitation of continental shelf and EEZ focused in clash of the two opinions. The first one can be named as median line or equidistance principle which was based on the proposal that the delimitation of both EEZ and continental shelf should be influenced by agreement using as a general principle, the median line or equidistance line in consideration with the special circumstances where this is justified. [325] Equitable principles were the second one. According to those principles, the delimitation should be influenced by agreement in the light of equitable principles with a strict consideration of all relevant circumstances.[326]

2) Current Continental Shelf and EEZ Dispute between GSASC and Turkey

First of all, Mediterranean States have so far been reluctant to proclaim EEZ's, or at least to give effect to such a claim in the Mediterranean. Among the reasons behind the choice of delaying the establishment of EEZ's may be the existence of difficult issues of delimitation still to be settled in this relatively narrow sea. However the desire of most States to protect

[322] With regard to the limits of the continental shelf beyond 200 nautical miles, States party to the UNCLOS are required to submit information to the Commission on the Limits of the Continental Shelf set up under Annex II of the Convention. Limits envisaged and established by the coastal state are based on the Commission's recommendations. Just two states have made submissions to date (Russian Federation, Brazil) and others are in the process of preparing them. Actually, the Russian Federation made the first submissions (See DOALOS (UN Division of Oceans Affairs and Law of the Sea) website where the UN Commission on the Limits of the Continental Shelf documentation can be found).
[323] Unclos, article 76
[324] Chevalier, op cit. p. 45
[325] Tokat, op cit. p. 44
[326] With the result of subsequent session, article 83(1) and article 74(1) came on the final stage during the tenth Session.

basin-wide access to fisheries. From a legal point of view, however, there is nothing to hinder Mediterranean States from establishing an EEZ if they are eager to do so.[327] Besides, three Mediterranean States have taken steps towards the establishment of such a zone.[328]

In 1981, Morocco proclaimed a 200 n.m. EEZ, which principally applies without distinction to both Atlantic and Mediterranean waters off the Moroccan coasts. However, Morocco has not yet enforced its EEZ legislation related to Mediterranean waters. Morocco has not yet entered into negotiations with neighboring countries to define the width of its EEZ in the Mediterranean.

Egypt ratified the UNCLOS on 26 August 1983 and declared that it “will exercise as from this day the rights attributed to it by the provisions of Parts V and VI of the UNCLOS in the EEZ situated beyond and adjacent to its territorial sea in the Mediterranean and the Red Sea”, and that it ’’undertakes to establish the outer limits of its EEZ in accordance with the rules, criteria and modalities laid down in the UNCLOS’’. As far as can be established, it seems like that the Egyptian declaration has not as yet been followed by implementing legislation.[329]

The Maritime Code of Croatia, adopted on 27 January 1994, includes several provisions on the EEZ.[330] However, application of these provisions is conditional upon the decision by the Croatian Parliament to declare such a zone. The Republic of Croatia has initiated steps towards establishing a zone of ecological protection and fisheries.[331]

Spain and France have proclaimed a 200 n.m. EEZ off their coasts, but have determined that it is not applicable to Mediterranean waters.[332]

By its EEZ Law of 2 April 2004, GSASC proclaimed an EEZ in which rights and jurisdictions foreseen in the UNCLOS shall be implemented. Besides the limit of this fresh-proclaimed EEZ shall not extend beyond the 200 n.m. from the baselines from which the breadth of the territorial sea is measured. The Law confirms that rights and duties shall be exerted in a manner compatible with the provisions of the UNCLOS, and further details, in

[327] Unclos, article 56, 58, 60 and 63
[328] Chevalier, op cit. p. 55
[329] This declaration can be consulted on the United Nations website at: www.un.org.
[330] See Articles 33 to 42 of the Maritime Code of 1994
[331] The Economist, 30 August 2003 Hey, that’s my bit of sea, p. 22
[332] Chevalier, op cit. p. 64

Articles 7 and 8, the existing obligations with regard to conservation of living and non living resources. These articles further include penal provisions in case of infringement.[333]

On 17 February 2003, GSASC and Egypt signed the Agreement on the Delimitation of the Exclusive Economic Zone. According to Article 1, paragraph 1, "the delimitation of the Exclusive Economic Zone between the two Parties is effected by the median line of which every point is equidistant from the nearest point on the baseline of the two Parties." This method of delimitation is similar and consistent with international case-law, customary law and the UNCLOS. A similar Agreement was concluded on 17 January 2007 between GSASC and Lebanon. As we stated above, in 2004, GSASC enacted legislation for the proclamation of the EEZ extending not beyond 200 miles from the baselines from which the width of the territorial sea is measured, and contiguous zone, the outer limit of which should not extend beyond the 24 nautical miles from the same baselines. In addition to those developments, on 15 February 2007, GSASC opened a bidding process to license offshore gas and oil exploration. It is significant to mention that the delimitation agreements and the oil exploration fields are situated in the South, Southeast and Southwest of the Island.[334] Turkey has harshly protested the move by GSASC with Greece and the United States also taking a standpoint on the ongoing dispute.

In its statement of 30 January 2007, Turkey determined as follows.[335] There is no dispute that the TRNC (Turkish Republic of Northern Cyprus) also has rights and authority over the maritime areas around the Island of Cyprus. Furthermore, Greek Cypriots do not represent the Island as a whole. Consequently, neither the legislation adopted nor the bilateral agreements concluded by the Greek Cypriot Authorities are effective for TRNC. In addition, it is also significant to be kept in mind that Turkey has legitimate and legal rights and interests in the Eastern Mediterranean. Parts of the maritime areas that are subject of bilateral agreements aimed to be concluded by the Greek Cypriot Authorities also concern Turkey's stated rights and interests. Turkey has determined to preserve its rights and interests in the Eastern

[333] It further adds, under Article 11, that subsequent regulations may be adopted to ''... serve all or some of the following purposes: (a) the preservation of the living resources of the EEZ; (b) the protection of the environment in this zone; (c) with reference to foreign vessels, the regulation of fishing areas, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used; (d) the regulation of matters pertaining to marine scientific research; (e) the authority to board foreign vessels to inspect, arrest and confiscate, as appropriate to ensure compliance with the laws and regulations adopted to safeguard the relevant sovereign rights of the Republic; and (f) licensing procedures for rights to be enjoyed in the Eez''.

[334] http://www.wilsoncenter.org/index.cfm?fuseaction=events.event_summary&event_id=225758

[335] mfa.gov.tr/MFA tr/BasinEnformasyon/Aciklamalar/2007/Ocak/No18 30Ocak2007.htm

Mediterranean. In addition to that, Turkey will not allow any attempt to undermine them. In that sense, Turkey would like to remind some necessary points to those countries and companies. Those related countries and companies might consider conducting research for oil and gas exploration, based on invalid licenses Greek Cypriot Authorities may contemplate to issue for maritime areas around the Island of Cyprus. This consideration should be realized in order to take into account the sensitivity of the situation as well as the will of the Turkish Cypriots, the other constituent people of the Island. Besides, Turkey expect them to avoid from any endeavor that might negatively affect the settlement process of the Cyprus issue and to act accordingly. TRNC also declared her opinion compatible to Turkey's declaration.[336]

In a further statement of 15 February 2007,[337] Turkey defined its position as follow. Accordingly, Turkey expect the Greek Cypriot Authorities to end their calls for international tender which are not based on common understanding among the Eastern Mediterranean states. Because this manner of Greek Cypriot Authorities are creating fait-accomplish and violating the joint rights of the two peoples on the Island on issues like oil and natural gas exploration.

3) GSASC Approach

Greek authors have the idea that the Cyprus question is one of the most complicated and intractable conflicts facing the international community today.[338] On Cyprus island, Greek and Turkish communities have been locked in a stalemate since 1974. While UN troops have been largely successful in dividing the two sides, the situation on the island has recently become ominous. This development and other contentious issues such as continental shelf and EEZ disputes have created a tangible threat of war between Greece and Turkey. In addition to it, the situation has worsened of late because of each country's intense popular mobilization against the other.

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[336] http://www.trncinfo.org/old/Turkce/Aciklamalar/300107.htm
[337] http://www2.tbmm.gov.tr/d23/7/7-1190c.pdf
[338] Couloumbis, Theodore and Lyberopoulos, Constantine; The Troubled Triangle: Cyprus Turkey Greece. Op. 9806 available at: http://docs.google.com/viewer?a=v&q=cache:VYLTYxREkJ8J:se2.isn.ch/serviceengine/Files/ESDP/23247/ipulicationdocument_singledocument/2ED9B5F00C7442EB8440A618346DDF3B/en/Troubled%2BTriangle%2B%2BCyprus,%2BGreece,%2BTurkey.pdf+OP98.06+THE+TROUBLED+TRIANGLE:+CYPRUS+GREECE+TURKEY+Theodore+Couloumbis++Constantine+Lyberopoulos*&hl=tr&gl=tr&pid=bl&srcid=ADGEESjlKr3q6IsaFRMRayjemA0QxYypCRVuTpveqj_oB9JVWLqpHHiwtQ_4xnsuTitlmPuDvnM7kTPETEpc9eqfBOsYZoESRwc_UBXWwxluA4sjeCmHVUzm8jXOSPR1_j4OcyVgx3&sig=AHIEtbQduUPcKJaSdv5xJQM hqIB4TObkw

For the geographical perspective, some authors have the idea that the continental shelf and EEZ dispute in Mediterranean Sea is undisputed and these issues are not of primary concern to GSASC. Because all we need to do is to have a look at a map of the Eastern Mediterranean to realize why. GSASC is of course, an island state as, for example, is Malta in the Mediterranean and Jamaica in the Caribbean (both are allocated in semi-enclosed seas).[339]

Despite efforts made by some states especially Turkey in the Preparatory Committee[340] (1970-73) and in the early stages of the Conference, to differentiate between island states or other islands, this effort faced coordinated opposition and did not succeed. According to Greek scholars, consequently, all islands, including the Greek islands in the Aegean, other than uninhabited rocks, are governed by the same basic rule, as was their objective. In that sense Cyprus is an island surrounded in three directions (north, east, south) by continental states and, to the west, by the Greek islands of Crete, Rhodes and Carpathos (and indeed, Castellorizo), in no direction reaching 400 miles (200 from each side). As a consequence of it, it is self evident that the application of the median or equidistant line as the basic rule for delimitation is of primary importance, especially when it comes to the EEZ (and indeed, to the continental shelf, which are co-extensive in the ordinary situations).[341]

In an interview with CNA, Jecovide stated[342] that if the matter is taken before an international court, GSASC has powerful legal points and arguments to put forward. He went as far as to determine that should this happen, perhaps it could set a precedent for the settlement of certain aspects of the Cyprus question. Because he believes that the existing legal framework within which GSASC makes its moves, with regard to the exploration and exploitation of possible oil and natural gas deposits in the sea south and west of the country, is a very strong and useful tool for the government of the GSASC. He also said that Turkey is not in a position to question the separate agreements. GSASC has signed with Egypt in 2003 and Lebanon in 2007, since it rejects the equal rights of island states on the continental shelf or the EEZ,

[339] Jecovides, Andreas; Current Issues of the Law of the Sea and Their Relevance to Cyprus, online at: http://www.erpic.eu/index.php?option=com_content&view=article&id=253:andreas-jacovides-current-issues-of-the-law-of-the-sea-and-their-relevance-to-cyprus&catid=1:latest 17 April 2010

[340] pereparatory committee document

[341] Jecovide, op cit.

[342] http://news.pseka.net/index.php?module=article&id=6546 Law of the Sea a powerful tool for Cyprus, says Andreas Jacovides 7 April 2007

which have been secured after lengthy discussions and lively debates in article 121 of the Convention.

Skordas approaches to Mediterranean dispute with regard to use of resources. According to him, the resources of the sea belong to a coastal state on the basis of its sovereignty and jurisdiction, which extends to the outer limits of the respective maritime zones, as provided for by the law of the sea. Since GSASC is an independent state, the resources of the EEZ belong to the whole of the state and not to one of its communities. That is to say, the fact that the delimitation of the EEZ of GSASC is compatible roughly with the area controlled by the Government of Nicosia does not affect the principle. Because the resources are indivisible and the South does not have exclusive rights.[343]

Mediterranean dispute is also used by Greece and GSASC as an argument to blackmail to Turkey in the full membership negotiations with EU. Panayotis touches upon this subject with this arguments. From the start Greece determined it clearly to its EU partners that it expected both the issues of special Greek interest (Greek-Turkish relations and the Cyprus issue) to be included in Turkey's Accession Partnership. In addition to the search for the appropriate wording, Greece assured the assenting opinion of the Heads of State and Government on this principle, the question to resolve was not "whether," but "where" to put the provisions in question in Turkey's Accession Partnership. In that sense, the Commission prepared a draft and took Turkey's interests into consideration. It is not enough for him to see a reference both to Greek-Turkish relations and to the Cyprus issue, based on the wording used in the Helsinki European Council Conclusions, was included only in the chapter regarding the "Principles" of the Accession Partnership. Because it, at least from a legal point of view, does not bear the same binding nature as the chapter including the "Priorities and Intermediate Objectives." This provides an advantage to Turkey to have a greater room for maneuvering. Greece demanded that the provisions on Greek-Turkish relations and the Cyprus issue be contained in the short- and medium-term priorities of the Accession Partnership. Greece's general wish was partly fulfilled at the meeting of the Commission's College adopting the draft proposal of Turkey's Accession Partnership on November 8, 2000. Besides the reference to Greek-

[343] Skordass Achilles, Event Summary, available at: http://www.wilsoncenter.org/index.cfm?fuseaction=events.event_summary&event_id=225758

Turkish relations and the Cyprus issue in the chapter on the "Principles," the Cyprus dispute was also contained in the "Short-term Priorities" which Turkey was called upon to meet.[344]

They also states the security concern related to Cyprus Island and they also state that Turkey will not be right in case of a use of force or if Turkey would threat GSASC with use of force. Jacovides says that GSASC has the possibility to address, and rightly addressed itself, to the Security Council and the European Union to raise the issue of Turkey's threats or the use of force. As far as the Council is concerned, Turkey as a UN member is responsible to be bound by the UN Charter. As it is well known, UN Charter considers illegal any threat or use of force through military means as a tool to enforce national policies. On the EU front, Ankara, as an aspiring member of the European family, is well aware of the commitment to behave as a democratic nation, with respect to EU rules and regulations that neither encourage nor permit such tactics.[345]

4) Turkish Approach and a General Assessment of Mediterranean Dispute

For the Turkish approach (and it is also included contra-arguments to the Greek approach) principle of equality and the principle of supremacy of the geography are the basic arguments which are significant to determine. After the assessment of the Greek approach we handle the solution method of the Mediterranean dispute. Naturally, Eu's perspective is also examined in that process.

First of all, it is important to see that there is no kind of principle which is obligatory in order to resolve the problems. Principle of equidistance is an appropriate example for this argument. In 1969 North Sea Continental Shelf Case, the application of equidistance method was denied by Germany. If this method would be applied, then Germany would get a small share of the shelf. This equidistance principle was asserted by Holland and Denmark. Germany was eager to have solution in the light of the principle of equity. However, Court did not ignore the related circumstances and took into account for achieving an equitable solution. According to the Court's decision, and equitable solution contained the configuration of the coastline and

[344] Tsakonas, Panayotis; 2010, ''Turkey's Port Helsinki Trubulance: Implications for Greece and Cyprus Issue'', Routledge Publisher, Volume: 2, p. 1-40
[345] Jecovides Andreas, Law of the Sea a powerful tool for Cyprus, event summary available at: http://news.pseka.net/index.php?module=article&id=6546 at 7 April 2010

the proportionality between the length of the coastline of a nation and the area of the continental shelf of the nation.[346]

Another example was occurred with 1977 Anglo-French Arbitration. The Court argued that equity achieved through a method which would pay attention to geography. Because it stated that the appropriateness of the equidistance method or any other method for the purpose of effecting and equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case.[347] However the Tunisia-Libya Case went beyond the definition of 1977 case. The Court stated that the principles are subordinate to the objective. The equitableness of a principle must be assessed in the light of its usefulness for the aim of arriving at an equitable result.[348]

As a result of above-stated arguments, equity became achieving a compromise between diverse claims. The Court should choose appropriate principles that would bring to an equitable result. In addition to this, the Chamber in the Gulf of the Maine judgment referred to equity as a fact-evaluation process.[349] In the Libya-Malta Case, equitable solution was emphasized.[350] However the concept of equitable principle was not clear enough. It indicated to the results to be realized as well as to the means to be applied to reach that result. The court then tried to make a definition of some of the principles in order to reach to a conclusion. The inequalities of the nature (we can name it as supremacy of geography) and non-encroachment by one party on the natural prolongation of the other were one of these expressed principles.[351]

As it would be easily deduced from the arguments of the back paragraphs, there were differences in the decision of the Court and the opinions of the scholars related to cases which were based on the disagreements about the delimitation of the continental shelf and EEZ in the respective areas of the participating states. As a result of this consideration, some points should be stated in order to analyze the current disputes.

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[346] Uğur, Mutlu; 2006, Türkiye'nin Akdeniz'de Kıta Sahanlığı ve Münhasır Ekonomik Bölge Sınırlarının Belirlenmesi, Master Thesis, Deniz İşletmeciliği Anabilim Dalı
[347] The Anglo- French Arbitration, (UK v. France), Decision of March 1978, paragraph 97
[348] The Tunusia-Libya Case, Judgment, International Court of Justice Reports, 1982, paragraph 70
[349] The Gulf of Maine Case, Judgment, International Court of Justice Reports, 1984, paragraph 112
[350] The Libya-Malta Case, Judgment, International Court of Justice Reports, 1985, paragraph 28
[351] Ibid. Paragraph 45

Firstly, the principles which had to be applied in the determination of the borders of maritime spaces did not own clarity in the legal regime of the law of the sea. The process of evolution is still going on. As a second point, it is hard to say that there was a consistency and continuity in the jurisprudence of the Court. That is to say, same judicial organ is able to give different decisions on similar cases. Because of the fact that it is hard to establish legal principles for the determination of the continental shelf and the EEZ in a sea like the Mediterranean, it would chase that the adoption of a judicial procedure in order to resolve the dispute would convert the issue as an isolated legal question. That is to say, it is not easy to solve this problem with an judicial procedure. The reason of this is complex geographical and political features of the Mediterranean Sea. Furthermore, the political and the security issues should be assessed as separated from each other and produce results which would endanger the vital interest in Mediterranean. Therefore, we should realize that the Mediterranean Dispute should be settled through bilateral negotiations intending at the reconciliation of the security, political, economic and the maritime interests of the states related to current disputes and also this negotiations should permit the countries to establish trade-off.[352] These explanations are enough to answer Greek demand of the scholars who behave as if there is a common understanding about delimitation of the borders in the light of the principle of equidistance.

As it is well known, the coastal State can limit itself, and choose to exercise only its rights relative to the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil. The multiplication of current unilateral initiatives, in which countries selectively adopt some of the rights available in EEZ's, may raise some interesting possibilities, but also many legal problems. Such an approach could generate a patchwork of different legal regimes, leaving gaps and causing other confusion. Furthermore, uncertainty regarding unresolved maritime boundaries between opposite and adjacent States will continue to complicate a coherent approach. The creation of a harmonized system could be accomplished through:[353]

1. Coordination and duplication of the various environmental protection areas and zones (functionally, partial declarations of EEZ rights); or

[352] Tokat, op cit. p. 85-87
[353] Chevalier, op cit. p. 65-66

2. The multilateral discussion of a collective designation or common framework for national designations.

Legal scholars consider that States bordering an enclosed or semi-enclosed sea are under an obligation to cooperate in good faith[354] in order to deal with common problems.[355] In general, an obligation to cooperate implies a duty to act in good faith in pursuing an objective, and take into consideration the requirements of other interested States. In that sense, the ICJ brought refinement in the definition of the obligation to co-operate.[356] A harmonized ecological regime could be realized through a process promoting:[357]

1. Cooperation and coordination of existing unilateral initiatives;
2. Direct strengthening of regional commitments and required arrangements for environmental protection.

Such harmonization could be supported by developing models of EEZ ecological - continental
Shelve laws. For instance, a model set of environmental rules for the different economic activities, subject to national jurisdiction under the EEZ regime, could be further developed within the framework of the Barcelona Convention. In addition to that, a unified approach to fisheries, biodiversity conservation and mineral resources development could be adopted, building on initiatives under several regional institutions.[358]

It would also be useful to contemplate having a multilateral negotiation of a collective designation, or a common framework for national designations. The Barcelona Convention may provide an appropriate multilateral framework for considering these options.[359] Regardless of the approach, the objective of improving a common set of environmental rules that could be applied throughout the Mediterranean is undeniable.

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[354] It is important to determine it again that according to Article 123, States bordering an enclosed or semi enclosed sea like the Mediterranean "should co-operate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate regional organization", to co-ordinate their activities with respect to fisheries, protection of the environment, and scientific research.

[355] Scovazzi, Tullio; 1999, ''Marine Specially Protected Areas, the General Aspects and the Mediterranean Regional System'', Kluwer Law International Publishing, Boston, p. 23-34

[356] North Sea Continental Shelf Case (federal Republic of Germany v. Denmark), 1968, paragraph 23

[357] Cevalier, op cit. p. 68

[358] Chevalier, op cit. p. 75

[359] UNEP Mediterranean Action Plan, available at: http://www.unepmap.org/

With regard to maritime boundary delimitation, such a multilateral process might facilitate the need to determine boundaries for the purposes of fisheries conservation and management beyond the territorial sea, and possibly other aspects of marine biodiversity conservation. Subsequent dialogue and analysis is needed to overcome conflicts and build confidence in common approaches in order to make progress towards such a multilateral initiative. This approach would also have the effect of empowering regional commitments and arrangements for biodiversity conservation in the Mediterranean, and developing governance in the Mediterranean for marine conservation by promoting a better integration of existing regional processes.[360]

To sum up, Turkey should be careful about some points with regard to EEZ and continental Shelf dispute in Mediterranean Sea.[361] North Cyprus Turkish Republic can not be ignored in a easy way. North Cyprus is a coastal state and South can not be ignored its rights. We do not state the details and history of the North and South dispute. However Turkey is not a occupier in Cyprus island, just she uses the rights which were included in London and Zurich Treaties.[362] First of all it is a rule of custom law that the delimitation of the sea boundaries should be realized with an agreement but not unilaterally. Secondly, as it is stated above for a few times, for the delimitation of the continental shelf, natural prolongation should be observed. Thirdly, principle of equity should be taken into account as it is indicated in UNCLOS. Fourthly, principle of equidistance is not an obligatory principle for the parties of the dispute. Mediterranean Sea is a semi-closed sea as it is stated by IJC in the decision of Malta-Libya case. This argument provides that turkey should assert that there is a special situation and the parties should take into account the specific geographical characteristic of the Mediterranean Sea.

Joint development is the most effective and logical solution for such dispute. Because it allows the parties to delay the final decision with regard to determination of the boundary. There is some concept examples that joint development zones such as Saudi Arabia and Kuwait, Japan and Korea or Malaysia and Thailand.[363]

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[360] Scovazzi, op cit. p. 66-68
[361] Uğur, op cit. p. 56
[362] Treaty of London and Treaty of Zurich, http://web.deu.edu.tr/kibris/articles/app.html
[363] Tokat, op cit. p. 89

D) With Regard to Transportation and Fishery

EU transport legislation aims at developing the functioning of the internal market by promoting efficient environment and user-friendly transport services. The transport acquis includes the sectors of road transport, railways, aviation, maritime transport and inland waterways. It also covers technical and safety standards, social standards, and market liberalization in the context of the European Single Transport Market. This section mainly includes the maritime transportation of the EU and its reflections on the Turkey. In addition to that current situation with regard to fishery sector and its reflections on Turkey is determined. Lastly, some recommendations about Turkey's maritime policy are offered.

Recently, with the increase in importance given to the Turkey's state of being a candidate country to European Union, in addition to the requirement of reaching world standards, maritime sector of Turkey also has to deal with harmonizing itself with EU maritime policies and acquis. Within the study of maritime policies of EU, most up-to date ones can be summarized under titles of promoting short sea shipping, conserving a fair and free competition in market, maritime safety and protection of marine environment, and state aid to the sector. According to these policies and EU acquis, Turkey is adjusting its legislation and enhancing its relevant institutions.

When we take a look from the back in order to see what has been done; one can say that Turkey is following a gradual reform policy in harmonizing with EU maritime sector. Especially, after year 2003 Turkey has achieved a good progress in both legislation and administrative work: developing port state controls, adopting most of the international maritime conventions and rehabilitation of port infrastructures in order to meet the requirements of TRACECA programme. These developments are also determined in the Regular Progress Reports of EU. On the other hand Turkey despite having the advantage of being settled on a favorable geographical position, is not taking the benefit of maritime transportation enough, which affects the importance given to the subject.

In that context it is useful to give general information about TRACECA which includes Turkey as a member.[364] TRACECA stands for Transport Corridor Europe Caucasus Asia and TRACECA's main objective is to develop economic relations, trade and transport communications along this Corridor. A similar look at the TRACECA map would suggest that, it is not just a corridor it is in fact a regional network of multimodal transport routes.

TRACECA was established in 1993 during a conference in Brussels by originally 8 Nations and nowadays 13 Nations aiming at improvements in trade and transport along the Europe - Caucasus - Asia Corridor through:[365]

- Encouraging the co-operation between the participating states for trade development in the region;
- Promoting efficient and optimal integration of the international transport corridor Europe-Caucasus-Asia "TRACECA" into Trans-European Networks (TENT);
- Identifying factors preventing the development of trade and transport systems;
- Promoting TRACECA projects as means to provide the attraction of loans from IFIs and private investors;

Today, TRACECA is also an Intergovernmental Commission with an UN-registered Basic Multilateral Agreement (MLA) on International Transport for Development of the Europe – Caucasus - Asia Corridor signed in 1998 at Baku Summit and presently accepted by 12 Nations aimed at: [366]

- Development of economic relations, trade and transport communications in the areas of Europe, Black Sea area, Caucasus, Caspian Sea region and Asia;
- Facilitation of entry to the international market of road, air and railway transport and also commercial maritime navigation;
- Promotion of international transport of goods and passengers and international transport of hydrocarbons; ensuring of traffic safety, security of goods and environment protection; creation of equal conditions of competition among different types of transport;

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[364] Kızılocak, op cit. p. 57
[365] For wide information, http://www.traceca-org.org/default.php?l=en
[366] For wide information, http://www.traceca-org.org/default.php?l=en

The Basic Multilateral Agreement (MLA) was signed at "TRACECA Summit - Restoration of the Historic Silk Route" in 1998 in Baku / Azerbaijan and the Intergovernmental Commission (IGC) was created in 2000 in Tbilisi / Georgia and the following 13 countries belong to the EU Tacis TRACECA Interstate-Programme and are Parties (member states) to the MLA: Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Turkey, Ukraine, Uzbekistan, Tajikistan.Turkmenistan is a participating country in the Tacis TRACECA programme, but not member of the MLA. [367]

As an overall assessment in the regular report of 2003 it is stated that with regard to Trans European Transport Networks, Turkey should start preparing a programme with a view to identifying the main transport infrastructure needs in Turkey and the related transport network projects, in coherence with the TEN-Transport guidelines. A complete programme has to be adopted by the Government for transposition and implementation of the transport acquis, containing all modes of transport, with particular emphasis on maritime safety and on aviation safety and security. Turkey has to also adopt a programme for adaptation of its maritime transport and domestic road transport fleets to EU standards.[368] Following points are emphasized in that report:

- Significantly diverse conditions are still applied to international and domestic transport operations.
- Legislative arrangements, which are effective for international transport operations, should be enhanced and extended to cover the domestic part of transport operations, in line with the acquis requirements.
- With regard to social legislation, the differences between Turkish and EC legislation in respect of driving times and rest periods still prevail. Despite vehicles engaged in international transport operations already fall under the above rules, the domestic transport sector is still not covered.
- On maritime safety, a comprehensive action plan should be drawn up for the transposition of substantial parts of the acquis and implementation must be improved. This should contain actions for more effective monitoring of classification societies.

[367] For wide information, http://www.traceca-org.org/default.php?l=en
[368] 2003 Regular Reports on Turkey's Progress towards Accession, available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf

- Given that Turkey is still on the Black List of the Secretariat of the Paris Memorandum of Understanding on Port State Control, developing the flag state performance of the Turkish fleet remains a priority issue.
- Considerable efforts are necessary to hinder the increase of detention rates for inspected ships. According to the Commission's indicative list of ships that has to be banned under the new European maritime safety rules, one third of the potentially banned ships would be Turkish flagged.
- The quality and quantity of Port State Control must also be developed.
- Since the last Regular Report, Turkey has realized limited progress in transposing the transport acquis. A road transport law that provides the framework for both international and national road market activities was adopted. Furthermore progress has been made with regard to the adoption of technical legislation in the road sector and for the maritime transportation sector.

In the regular report of 2004, EU determined that since the previous Report, there has been some progress concerning alignment with the acquis and the strengthening of administrative capacity.[369] The studies related to Trans-European Transport Networks (TENT) was touched upon in the report. The idea of Trans-European Networks (TEN in the EU jargon) embodied by the end of the 1980s in conjunction with the proposed Single Market. It made little sense to talk of a big market, with freedom of movement within it for goods, persons and services, unless the various regions and national networks making up that market were properly linked by modern and efficient infrastructure. The construction of Trans-European Networks is also an significant element for economic growth and the creation of employment. The Treaty establishing the European Union provides a sound legal basis for the TENs. Under the terms of Chapter XV of the Treaty (Articles 154, 155 and 156), the European Union must aim to promote the development of Trans -European Networks as a key element for the generation of the Internal Market and the reinforcement of Economic and Social Cohesion.[370] This development contains the interconnection and interoperability of national networks as well as access to such networks. According with these goals, the Community is developing guidelines covering the objectives, priorities, identification of projects of common interest and broad lines of measures for the three sectors concerned (Transports, Energy and Telecommunications). The European Parliament and the Council ratify these guidelines after

[369] 2004 Regular Reports on Turkey's Progress towards Accession, available at: http://www.ikv.org.tr/images/upload/data/files/2004_-duzenli_raporlarr_tr_2004_en.pdf

[370] Treaty of European Union, article 154, 155, 156

consultation of the Economic and Social Committee and the Committee of the Regions. TERRACECA is an extension Project of the TENT.

With regard to (TENT), preparations for a Transport Infrastructure Needs Assessment (TINA) study for Turkey are currently being undertaken. This study will work as the basis for the identification of the future network. As regards maritime transport, some progress can be reported. An ambitious five years Maritime Transport Action Plan for the enhancement of maritime safety was adopted in December 2003.[371] This Action Plan sets out a road map for legislative adjustment with the maritime safety acquis, measures aimed at strengthening administrative structures in the area of flag State and port State control and training and equipment needs. In that context, implementing legislation on classification societies and port reception facilities was adopted in October 2003 and March 2004 respectively. The Maritime Administration has employed some 80 new staff as Port State Control and Flag State Implementation officers.

Some recommendations are emphasized in the following sentences:[372]

- Turkey should follow the developments of the organizations of IMO more meticulously. Especially the new legislation developments are important in order to keep up with the hinder the inconsistency with other state's practices.
- As it is well known, EU Works hard to enhance the maritime transportation and decrease the road transportation. EU does it with a balance policy and cooperation with road transportation. Turkey also tries to enhance the maritime transportation and stimulate as she has done it with the regulation of 2004 which canceled the special consumption taxation (ÖTV) from maritime transportation.[373]
- Port state control should be upgraded. In order to realize this objective, the laws should be adopted to current IMO contracts such as SOLAS, MARPOL, IL and ILO.

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[371] For wide information: http://www.foreigntrade.gov.tr: T.C. Başbakanlık Dış Ticaret Müsteşarlığı WEB sitesi Deniz Taşımacılığı Hareket Planı
[372] Özen, Cihan; 2007, Avrupa Birliği'ne Giriş Sürecinde Avrupa Denizcilik Politikaları ve Türkiye'nin Uyumu, İstanbul Technical University, Master Thesis, p. 60
[373] Özen, op cit. p. 70

With regard to fisheries policy some main topics are emphasized in the regular reports.[374] They are;

- Recourse and fleet management
- Inspection and control
- Structural action
- Market policy
- State aids
- International agreements

In the last regular report it is determined that no significant progress has been made on alignment with the fisheries acquis. The revised and envisaged law on fisheries has not yet been adopted. The central administration structures can not be admitted as satisfactory. The spread of powers across diverse ministries and even different departments within the Ministry of Agriculture and Rural Affairs (MARA) persisted.

With regard to resource and fleet management some progress has been made. There has been development in the fisheries information system however it is not yet fully operational. Turkey's satellite-based system for monitoring some certain protected type fishing vessels is in place. This monitoring system is recently used by 196 vessels. In addition to them, two additional fishery port offices have been established and been brought into operation. However, no progress can be reported as regards stock assessment.

With regard to inspection and control limited progress has been achieved. It is now obligatory to keep fishing records in logbooks for fishing vessels longer than 12 meters, which will allow registration and reporting of catches. Turkey has initiated work on introducing sales notes in 10 wholesale markets on a pilot basis. However, no progress can be reported concerning structural action, market policy and state aid. With regard to international agreements, it is stressed in the report that Turkey signed a fisheries agreement with Yemen and a fisheries cooperation protocol with Georgia.

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[374] 2007, 2008 and 2009 Regular Reports on Turkey's Progress towards Accession, available at: http://www.ikv.org.tr/icerik.asp?konu=temelbelgeler&baslik=TEMEL%20BELGELER

As a conclusion we can say that the report it is stressed that limited progress has been made on resource and fleet management and on inspection and control. However, Turkey has made no progress on legislative alignment for the last year. The administrative structures significant to implement the Common Fisheries Policy have not been established.

Conclusion

Law of the sea is overtly a developing part of the international law and gains a great importance, especially with the effect of current technological developments. National claims, whether made unilaterally or at the regional or sub-regional level plat a basic role in the development of the law of the sea with respect to exploration, exploitation and conservation of natural resources of the sea.

In our study, we stressed the current principles and rules governing the international law of the sea. There are various topics which include the rights and responsibilities of states in various zones of the oceans, fisheries and non-living resources, vessel nationality and jurisdiction over vessels, maritime terrorism and security, maritime boundary delimitation and baselines, marine environment and dispute settlement mechanisms. However we discussed the widely accepted and indicated issues and principles of the UNCLOS and other relevant treaties, legislation, and jurisprudence, in terms of European and Turkish laws, cases and practice. Of course, UNCLOS should take its place at the heart of this study and we believe we realized it.

The law relating to the sea and its uses has been in a fluid state for many decades and has overtly evolved around the concept of the freedom of the high seas. However, that concept has overtime been modified by the discovery of resources in the sea and its seabed beyond a State's territorial sea, which – before the negotiation of the UNCLOS – was contemplated the limit of a State's jurisdictional reach.

Economical and technological improvement and improvement of the sea transportation caused to increase the searching and the running of the sea area. In this sense, the regulation of the law of the sea regime became necessary both national and international sphere. Actually one can easily say that the law of the sea's development process is parallel to development of international law in general. For example, law of the sea's early treaties was constituted in the sense of particular disputes; that was just like the system which was exercised for international law treaties.

UNCLOS is an international agreement dealing with all traditional aspects of ocean governance and uses. As we stated above, it is a result of a series of conferences were held in the 1950's that led to the four 1958 Conventions on the Law of the Sea (The 1958 Convention

on the Territorial Sea and the Contiguous Zone, the 1958 Convention on the High Seas, the 1958 Convention on Fishing and Conservation of Living Resources and the 1958 Convention on the Continental Shelf).

One can easily perceive that the UNCLOS is an answer to the needs which are expressed by many States to elaborate a new and comprehensive regime for the law of the sea as well as an effort to achieve a just and equitable international economic order. The 320 articles and 9 annexes that consist of the UNCLOS represent the codification of customary international law and its progressive development as well as the building blocks of three international bodies. They are the International Seabed Authority, the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf.

The UNCLOS is a result of a daunting task which intends to elaborate a new framework convention for the law of the sea. With the UNCLOS, the preservation of the seabed and ocean floor for peaceful purposes, the concept of common heritage of humankind was first discussed in an international context. The UNCLOS regime was embodied with a series of other economic, political and strategic factors. Several developing countries wished to obtain an exclusive economic zone that would allow States to have extensive rights over a 200-mile zone. Some countries were eager to establish international control over the seabed and its resources in order to prevent the more technologically advanced countries from extracting minerals. On the other hand, Western States wished to preserve the freedom of navigation as much as possible and thus opposed any weakening of the freedom of passage through international straits. They also demanded to protect their economic interests by suggesting that the resources of the high seas and the seabed should be exploited freely. The UNCLOS also provides the required regulations with regard to contemporary demands of the states.

The UNCLOS has often been referred to as a “package deal” because of the circumstances in which it was negotiated. It includes many different issues and also some conflicting interests which are touching upon traditional political and regional alignments that the Convention sought to balance in light of the big number of States that participated.

However, it is commonly accepted in the doctrine that custom rules was dominant in the law of the sea. As there were no codified rules at the beginning, customs were applied to settle the conflicts. However, there are some reasons, which triggered to regulate the law of the sea

regime. These are decisive for the historical development and regulation of the law of sea with a more certain manner.

- Development of the shipping and seafaring;
- Developments at the marine transportation and marine trade level and the rules and codes which regulate those subjects
- Claims of the states about sea areas and developments related to those claims.

Besides, it is not hard to see the influence of the custom rules on the law of the sea in contemporary law of the sea. Although UNCLOS and other regional or world-wide accepted fundamental treaties and agreements try to accept that custom rules in order to settle the conflicts or regulate some ambiguous situations, custom rules are very significant for the law of the sea.

As we stated in the introduction, for the EU's aspect, it has a great importance to indicate that Marine Strategy and Maritime Policy are basic terms. UNCLOS is considered as a global convention that provide further context for European efforts respecting ocean management. Sea policy of the EU is more related to economical aspects, because the EU was firstly established on the basis of economic objectives. In that context, it should be stated that the Marine Strategy has a clear environmental focus, while the Maritime Policy is more encompassing and stresses the need for economic development as well as sustainability. The 2006 EU Commission's Green Paper observes, "Sustainable development is at the heart of the EU agenda," and stresses that economic growth, social welfare, and environmental protection is mutually dependent. As a result of this comprehension, economic growth and environmental protection through ecosystem-based management and spatial planning are identified as the "twin pillars" of EU policy.

We believe that EU should pay more attention to Marine Strategy, as the marine pollution is one of the most important problems of the current international law of the sea. If EU approach this problem within a pragmatic way, it is easy to see that marine pollution also effects the Maritime Strategy. Because, marine pollution affects the natural living and non-living sources and also the trade with regard to those sources. EU's attitude about marine pollution is very important and is going to affect the general practice of the states. Because, with the accession of 25 new member states, the EU extends from the North Sea and Baltic Sea in the north to

the Irish Sea and the Atlantic Sea in the west, and to the Mediterranean sea to the South and east. Twenty constituent states have coastlines, and the coastline of the EU is over 65.000 km in total. The offshore marine area of the EU, including territorial waters, coastline shelves of its member states and exclusive economic zones, is larger than the land territory of the EU. This area is going to increase further should additional states become EU members. Europe is the continent, which has the highest ration of coast-to-surface area. In addition to it, EU is still growing and this sui generis construction is able to decide its own rules with its sui generis law making methods. EU has a responsibility to regulate its own environmental protection rules in order to generate a processor example for other states.

Actually, European Commission stated that the environmental integrity of European waters, is seriously endangered, and a list of identified threats includes the same elements that have been realized in other areas of the world. Commission indicates some significant dangers:

- Overfishing,
- Alien spacies introductions,
- Port and other coastal developments
- Sand and gravel extraction,
- Oil and hazardous substance discharges and spills,
- Land-based pollution,
- Eutrophication
- The effect of climate change.

As we see in the list, marine pollution directly endangers the marine integrity of the EU. If this situation is not wanted by the member states, they should pay more attention the above stated list in order to save EU's economic integrity.

When we take a look at the current objectives of the EU marine policies are essentially in that way: To achieve economic development in such a way that possibly conflicting uses of the ocean can prosper and maintaining of the overall health of the sea ecosystems in the long term. These encompassing goals are guided by similar principles (like decision making principles and management principles) in both policies. Furthermore, some specific goals, such as promoting economic prosperity, stimulating better marine science, building marine heritage and taking international leadership in the development of the law of the sea, are

expressed similar terms. The common objective of becoming an international leader in ocean governance is also visible in other coastal states but with some different approaches.

In the examination of effects of the EU's sea politics on the Turkey's sea politics, disputes in Aegean Sea and Mediterranean Sea are the basic subjects. Besides, fishery and transportation have also great importance in terms of EU's effects on the Turkey.

With the opening of accession negotiations, (3.10.2005) Turkey turned a corner in its process to join the European Union. Although Turkey's long-term prospects for EU membership remain rather unclear, the accession talks have already put Ankara's orientation, as well as the EU's role and identity in a new perspective. To become a member, Turkey is obliged to meet all the criteria and requirements laid out in the Negotiating Framework adopted in September 2005. On the political level, as it is mentioned above, Turkey must create stable institutions that guarantee democracy, the rule of law, human rights and respect for minorities. And also most importantly for our examination, it should also unequivocally commit itself to good neighborly relations and to the peaceful answers of border disputes according to the UN Charter and international law. In that sense, we have to determine that it is unusual related to the demanding criteria of European Union to ask for to resolve the international law problems of a candidate country. To combine these international problems of Turkey, as a candidate country, with the principle of democracy or the validity of the human rights is more unusual. It is the first time that EU demands such a criterian in order to achieve the full-membership.

As it is well known, the Aegean Sea lies at the core of most of the political relations between Greece and Turkey. These two neighbors have many issues regarding maritime delimitation in the Aegean Sea. All these disputes stem from the fact that the Aegean Sea forms an exception to all common rules of international law. Aegean Sea can not be deemed only as a sea that divides the two mainlands. It is overtly a main source of conflict dividing the two states in several political, economic and legal matters. The detailed geographical analyze of the Aegean Sea is important as much as detailed legally analyze in order to have a better understanding of the conflict between these two neighboring Aegean states. In that sense, the outstanding nature of the Aegean Sea and the way its natural characteristics are regarded by Greece and Turkey are of outmost importance. It is significant to have a look from Aegean Sea's geographical structure with regard to our examination of the Aegean Sea issue. Having

a very unique political geography, the sea itself generates difficulties in delimitation due to its narrow width and the existence of many islands, islets and rocks.

The Aegean Sea dispute between Turkey and Greece has been existed for more than three decades. There is also a disagreement related to legal definition of disputed subject. Although Greek side states the delimitation of the continental shelf is only unresolved issue, Turkey determines more than one. In general the conflicting subjects in Aegean issue can be classified as; breadth of territorial waters, delimitation of continental shelf, delimitation of Flight Information Regions, disputes over the national airspace, sovereignty, some disputed islands and demilitarization of Greek islands of the Aegean Sea. It should be emphasized at the outset that the center of the disputes is focus on the width and delimitation of the territorial sea in the Aegean.

As a solution, the settlement between Greece and Turkey needs to be approached from the perspective of equitable principles, considering the special characteristics of the Aegean Sea. This unique character of the Aegean determines the uncontestable application of equitable principles for the fair and equitable delimitation of continental shelf and all other related disputes, in favor of both states.

On the other hand, ratification of the UNCLOS by EU generates an ambiguous situation for the Turkey as a candidate country. Namely, member states are obliged to accept the international treaties and agreements which are ratified by EU. UNCLOS is such a convention for EU. In UNCLOS, delimitation of the territorial waters or other regulations can be problem for Turkey in case of Turkey's full membership. In that situation, we think that the dispute should be settle in light of principle of equity. Besides, Turkey is a persistent objector against the Greek objective in the Aegean Sea. In case of realization of Turkey's full-membership, we think the only way to resolve the Aegean issue, decision of the ECJ will be important. Because, in former cases ECJ gave different decision's with regard to problems of rights and obligations arising from agreements between non-member states.

With regard to Mediterranean issue, as we stated above, On 17 February 2003, GSASC and Egypt signed the Agreement on the Delimitation of the Exclusive Economic Zone. This was the trigging point of the problem in Mediterranean Sea. In her statement of 30 January 2007, Turkey determined as follows. There is no dispute that the TRNC (Turkish Republic of

Northern Cyprus) also has rights and authority over the maritime areas around the Island of Cyprus. Furthermore, Greek Cypriots do not represent the Island as a whole. Consequently, neither the legislation adopted nor the bilateral agreements concluded by the Greek Cypriot Authorities are effective for TRNC. In addition, it is also significant to be kept in mind that Turkey has legitimate and legal rights and interests in the Eastern Mediterranean. Parts of the maritime areas that are subject of bilateral agreements aimed to be concluded by the Greek Cypriot Authorities also concern Turkey's stated rights and interests. Turkey has determined to preserve its rights and interests in the Eastern Mediterranean. To preserve this rights and interests, Turkey should give more importance to marine problems. In that sense, an initiative like ministry of sea or a kind of mixed office which will be consisted of civil and military officers should be helpful. The governmental policy with regard to sea politics should be strengthened.

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