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Freedom of Navigation of Merchant Vessels Through the Turkish Straits According the Montreux Convention versus Turkey's Right to Regulate the Traffic Therein for the Environmental Safety Thereof

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to my newborn niece, Miss Tolu...

i. Abstract:

The right of free navigation is vital for the merchantmen on carrying the goods subject to his specific trade from one port to another around the world. Obtaining this right takes its roots from the philosophy of Freedom of the Seas, in *Mare Liberum,* XIIth chapter of *De Iure Belli ac Pacis* of Dutch jurist Hugeanus de Groot, who defended the right to trade of Duch merchantmen in the Indian Ocean saying that the seas are free to all mankind and no State has a right to hold it in hand and stop the rest from doing it so. This school has found support from other scholars as well as the oppositions one of which came from British lawyer John Selden, in his book *Mare Clausum*, supporting that the States may have sovereign rights over the waters attached to their coasts for the use of themself and take appropriate measures in order to protect the safety thereof.

It is easy for one to support the former especially if he is mostly and only engaged with overseas transportation with not having any coast to any sea but the one who lives in a littoral land with busy maritime transportation on his seas will support the latter. It is, however, not that easy to decide which of them to support especially when one stands on a point which connects not only two continents but also two seas one of which has no other entrance and is, as it always was, vital for the international trade. Today, millions of people, myself being one of them, are having the dilemma of respecting the "free passage of merchant vessels through the international straits" and the anxiety for the "environmental safety thereof". In this paper, I will examine the past, today and the possible future of these narrow waterways, particularly the Turkish Straits, under the light of international law and will consider the might's and may's of the players of this game to play it fairer.

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iii. Introduction:

The law of the sea has been navigating for long as millennas, on the course of which it had altered its route, expanded its extent and draughted its depth as to meet the needs of the time it was in force, with being shaped by the percipience; political, security related and economic needs as well as the mutual relations of the international community. Custom of the states used to govern the principles of international maritime law which was ok until the understanding of this world is not an endless one. Therefore, unification of the different practices parallel to the understanding of globalizm was necessary for the ease of reach of that a state is in need of what it does not have to that of the other has.

Unilateral practices turned to be bilateral, then to multilateral, by the time and both the riparian and the land-locked states reached to the understanding that seas must be open for the navigation of merchantmen at all times and free from any interruption. This lasted only until the states became aware of a dimension of security other than the warfare which is the environmental safety. It was possible to built a new building in place of a destructed one, or give birth to new persons in place of the killed ones while it was not possible to recreate the nature, therefore it was the utmost importance of the securities for the future of the manking as a minor defect on it, as in the ozone layer at the present, has extreme effects on the whole world.

Myself; here, living in the middle of the meeting point of two continents and seas of highways to the oil transport, feeling the necessity of an increase in the preventive measures for damage to the environment as I see the fishers on the Golden Horn Bridge catching fish as small as an adults forefinger and complaining that they used to carry just a fish for their family and sell the rest but now all the fish they catch is not enough even for themselves; and as I see the sunny weather, by today, being the fourth of February, 2007, which used to be the coldest time of

winter less than a decade ago; and governments all around the world, even our own government with having a 112 billion cubic meter drinkable water source, declare that there soon will be scarcity of water and that they will exercise stoppage.

These are very simple visable effects of the changing circumstances on the daily life apart from the inconceivable effects resulting from the accidents therein. It is rational,therefore, to adapt the laws and regulations in accordance with these new circumstances.

In the course of this study; I, firstly, will discuss two philosophy of learned jurists and the alterations they have faced up till today; then, secondly, the understanding of the importance of the environment and realization of the need for regulation of the practice of this respected right; thirdly, will examine the Turkis Straits with regard to the right of freedom of navigation and transit through them under the 1936 Convention of Montreux and restrictions brought by other international conventions in order to protect the marine environment and discuss the conflicts, if there is any, between the former and the latter; and lastly, concluding these with recommending applicability of the current technological and intellectual developments on the current situation for balancing the right to navigate of the merchant vessels with the right to live of the people of the coastal States without infringing one of the others.

iv. PART I

Freedom of Navigation versus Sovereignty of Coastal States

These two pillar principles of international law have been perpetually discussed and neither of the prevail against the other as neither of them's defenders can totally deny the other. It is unimaginable of a world where each country is trading only within its own waters. Only those island states and those which are peninsula; such as the United Kingdom, Cuba, Japan, New Zealand, Australia and etc. and such as Italy, Greece, Turkish Republic, India and etc., could benefit the most from using their waters for such a trade which would, however, still be barren; don't come to think of those states which has either no or very limited coasts to the sea; such as Israel which has only one city on the coast of Red Sea. It is, onle other hand, again unimaginable of a world where any country is trading to anywhere with no control over them; a complete freedom, which, as Prof. Akguner[1] describes it, brings anarchy. That's why, these two opposing principles should be practiced in cooperation in order to prevent the occurance of such results.

1. Freedom of Navigation

Freedom of navigation has for centuries been considered as one of the basic and inalienable right and is one of the accepted rule of international law. This freedom has long been sourced from practice in order to meet the mutual needs of peoples of different countries with the understanding of carrying what another doesn't have to him and bringing what he does back to home. This recessitated the authorization and guarantee the safety of navigation of traders through the seas of the globe connecting the producers and the consumers of the goods subject to that specific trade.

Indeed, large scale international trade has always needed, in addition to other favorable conditions, a certain measure of security and predictability with respect to the enforcement of

obligations.[2] The need to print that right has also resulted from the need to define the extent and content of it with regard to navigation of merchant vessels, warships and fishing vessels in time of war as well as peace. It is generally accepted that under normal conditions in time of peace the high seas are, and have been for some years, entirely free to those who pass upon their lawful occasions. As is well known, this freedom is impaired on the outbreak of war.[3]

The diversity of commercial laws prevailing in various parts of the world, however, created an uncertainty as to the existence, size, and content of obligations. Interested parties could not readily ascertain the place where a potential dispute was to be settled, the governing substantive law, and whether a judgment obtained in one country could be enforced in another country.[4]

States, then, in order to meet the need of certainty, started meetings and reached mostly non-binding softlaws and some hard laws as well; namely: agreements, treaties and memorandum of understandings, by which they tried to harmonise their local laws on the global arena. Concerning the sea, states aimed primarily the navigational and fishing as a subsidiary aspect, however, with the expanded knowledge of the rich sources of the sea-bed as a result of technological expansion, begin to claim expanded rights over their shores and exclusive rights over, in and under them. However, this paper is aimed only to discuss the navigational and environmental as a contrary point of the matter so will not proceed to discuss the rest.

1. History of Freedom of Navigation

History of the law of the sea narrates the struggles for and against the doctrine of free seas. The oceans have been fished and navigated for millennia. Centuries before history was ever recorded, coastal states were engaged in free navigation and maritime trade in the Indian Ocean. According to some historians, the commerce between India and Babylon were carried out as early as 3000 B C. Even in Europe, it was also a recognized rule in Rhodian maritime code which was unequivocally adopted in Roman law and practiced for centuries before the Christian era. [5]

In ancient times, as sea-travel spread to many coastal regions, there was a practice in force the so-called, "Coastal Right." Under this practice, the inhabitants or rulers of a particular sea coast region could assume ownership of shipwrecked vessels, abandoned vessels, their cargoes, that is, *everything* the sea deposited on their shores. This resulted as the consideration of the "Coastal Right" as a source of revenue and income, and hoping to increase the numbers of these "gifts of the sea", the inhabitants of coastal regions quite often entered into criminal conspiracies with pilots, burned false warning lights and installed false signals and beacons.

These practices resulted in heavy losses to those engaged in international maritime trade and navigation. Therefore, a number of laws were enacted by various nations, stipulating severe punishment for those persons engaged in deliberately causing shipwrecks and groundings. The treaties between Kiev, Russia, and Byzantium (911, 944, 971), governed the maritime trade and recommended providing mutual assistance on the sea.[6]

The bulk essence of maritime law during the last more than one hundred and fifty years can be summed up in the doctrine, “freedom of the seas.” Although accepted as a binding principle under Roman law, it was lost and forgotten in Europe after the disintegration of the Roman Empire … “The freedom of the sea slumbered the Sleeping Beauty,” it is suggested, until this

gallant knight from the Netherlands appeared "whose kiss awakened her once more."[7]

In defending free seas and freedom of navigation, Grotius supports his argument by Justinian's *Institutes* which states: "By natural law the following things belong to all men: air, running water, the sea, and for this reason, the shores of the sea" and therefore no one can be prohibited from navigating on the seas and approaching to the seashores. However, to the Roman jurists *public* can only mean property that can be used by Roman citizens in the Roman empire, so any attempt to coalesce public ownership, as Grotius does, with commonness is mistaken.[8] Realizing that, Selden refuses Grotius's ideas and he describes *public*, as in the preface to the first section of the second book of the *Institutes*; as belonging to the Roman state and people[9] and he agrees with Pomponius that a man who is prevented from fishing in the sea, in front of another man's house, can sue for injury.

Selden, to show Rome's sovereignty, quotes the Code of Justinian that made the teaching of shipbuilding to barbarians a capital offense; he, however, re-affirmed that the granting of innocent passage to strangers does not diminish claims of ownership[10]. For the instances of people who were denied hospitality, the right to trade or innocent passage through a country; Selden states that it is ethically wrong and does not detract, in his mind, from a state's right to maritime dominion[11]. For the objection of Grotius, from Tacitus' *Histories*, that the Romans "had shut up the rivers and roads"; Selden supports that such an action is not a violation of natural law but a statement of political reality and a description of Rome exercising her sovereign rights – a clear example of how customs and usages effect changes in the *ius gentium*.

The Dutch jurist, shortly after Selden's publication, said of this *Mare Liberum* that for all its good intentions it had many of the faults of youthfulness. But by 1637, Grotius had come to believe a country could possess its coastal waters. The question remaining was –and still is—where do territorial waters end and high seas begin?[12]

On this discussion, recognizing a state's need to defend her shores and land, Cornelius van Bynkershoek[13], and considering upon the extension of sovereignty to wider zones resulting from the attempt to put down pirates and to police the seas and exaction of tolls and dues from foreign vessels in return for the security afforded to them, proposed[14] the distance from the shore measured by a cannon-shot as the outer limit which has been adopted not only in private legislation, but also in great international documents, such as the North Fisheries Convention of 1882[15]. This notion was formed at a time when the control over the maritime belt depended primarily upon the guns placed on the coast.[16] Variety of gun power would result as variety of belts and therefore this should be fixed which later has been done.

The unfortunate experience of the World Wars have resulted as a wind of change, as well as in many other things on the Globe, in the course of the law of the sea and the freedom has shown variances on the waters it is wished to be practiced. A complete freedom on the high seas has previously been mentioned. Apart from that, on the territorial waters, however, there is the requirement of the navigation, or transit passage; to be innocent or inoffensive, and the practice of that is without prejudice to the sovereignty right of the coastal state over its territorial waters adjacent to its coast. In addition to a state's sovereignty over territorial waters, coastal states enjoyed rights to enforce their immigration, customs, sanitation and other laws in a contiguous

zone of undefined breadth beyond the territorial sea[17] which later been crystallized in the momentous Truman Proclamation, by which it was asserted that the United States Government regarded the natural resources of the subsoil and sea-bed of the continental shelf beneath high seas but contiguous to the coasts of the United States as appertaining to the United states subject to its jurisdiction and control[18] and, as expressly recognized, subject to the same principle of freedom on the high seas with regard to the navigation on them.

However, different states did claim different widths and some did not recognize the rights of another. This, again, pushed the states to regulate these rights for certainty and for enforcement in case of nonsubmissiveness of a state. Meeting at Geneva, the First United Nations Conference on the Law of the Sea, 1958; embodied the enclosure movement of the states and the Third United Nations Conference on the Law of the Sea, 1982; mostly repeated the settled practice, however, brought a new regime to the straits used for international navigation, namely "transit passage," probably found by being inspired from the exercise of "transiting," which is a settled practice of a vessel without anchoring through or stopping at a port of at any stage of its this leg of voyage in the territorial waters of a foreign state, granting more freedom to the transiting vessel and on the contrary restricting the sovereignty rights of the coastal state.

Should we take a closer look on the types of this freedom on the different areas of the seas, I shall proceed with brief examination of it on the high seas, continental shelf and exclusive economic zone and then will come to the territorial waters and especially the straits used for international navigation with paying special attention to the Turkish Straits, being the main point of this research as their distinctive morphological structure, oceanographic characteristic and historical, commercial, cultural, environmental and strategic importance.

2. Types of the Freedom of Navigation:

Once being accepted that it is free to navigate on the seas, because of being regarded as *res nullis* or *res communis,* has changed this structure and showed different types on different waters. The supporters of the view that the seas are *res communis* believes that there is no need to enclose them under different names such as continental shelf and exclusive economic zone, apart from the territorial sea which is accepted to be so close to the riparian state that it has and should have sovereignty over it, however, because the rest belongs to the common and every one can navigate on and exploit the resources of it freely and equally. And there sure is the other side of the coin, which says that that the seas are *res nullis* and therefore by claiming and by being able to protect it, as Bynkershoek described its necessity, from the others, they may then have the exclusive right of exploiting the resources over the area where it is also been recognized by other states as well.

1.2.1. High Seas— Grotian principle of a complete freedom on the seas used to govern all parts of the seas, except from the territorial waters. At first, it was free to navigate on them and exploit the sources of it, which was mostly and almost only fishing until the technological and scientific revolution. According to the old principle, he, whoever caught the fish, had the right to have whatever it is. By the exploration of the sea-bed resources and being able to have them, states stretched the territorial sovereignty as much as possible in order to have whatever they may out

of the property of no one. According to that new trend, states regarded the natural resources of the subsoil and sea-bed of the continental shelf subject to their jurisdiction and control[19] which has been embodied at the First and affirmed at the Third Law of the Sea Conferences. The remaining parts, after these closures, proposed by Malta's ambassador to the United Nations, Arvid Pardo,[20] to be "common heritage of mankind" but there has been no agreement as to who is or represents mankind, or how mankind should enjoy that heritage.[21]

Regarding the navigation on these waters remained, as it always was, free to all. However, there were some restrictions as the environmental safety concerns did grow parallel to the growth in the risky character and density of the goods been carried and in the due course been discharged or dumped and flag State was the only to have jurisdiction over them on these waters.

1.2.2. Exclusive Economic Zone and Continental Shelf— It was the fact that modern technological progress made the utilization of the natural resources of the continental shelf practicable which enabled one of the most far-reaching unilateral declarations in international law to be made. This was the Truman Proclamation of 1945. This declaration which gave the United States jurisdiction and control over the natural resources of the subsoil and sea-bed of its continental shelf and which was followed by so many other coastal States formed the basis of the 1958 Geneva Convention on the Continental Shelf and even today is considered as constituting the heart of the legal regime of the continental shelf.[22]

Exclusive economic zone can be briefly defined as a zone of up to 200 miles in breadth, in which the coastal State has extensive jurisdiction related to economic resources,[23] and is in any sense a territorial sea or carries with it the substantial rights that a coastal State has in its territorial sea. Importantly, the "freedoms of navigation and overflight" are guaranteed and thus the right of navigation is not limited to the restrictive (and much criticized) rights of "innocent passage" through territorial waters.[24] Sometimes known as "fishery zone," the zone is under the jurisdiction of coastal state for the purpose of exploring and exploiting living and non-living marine resources and preserving marine environment in the zone.[25]

1.2.3. Internal Waters, Territorial Seas and Contiguous Zone— Being always considered, even by Grotius, as the property of the coastal state, firstly measured by a cannon-shot rule then fixed to a certain distance, *territorial waters* differ from the rest of the seas in many aspects as they are considered to be no different from the land of the coastal state with regard to the sovereignty over them.[26] This exclusive right has an exception of passage right granted to the vessels of foreign states to transit without giving and even without intending to give harm, in any way; special respect been paid to customs, fiscal and sanitary regulations, to that state. Known as the "innocent passage," this right is different from the "freedom of navigation" in many aspects; even today while the environmental safety concerns push the states to regulate the high seas navigation and commercial concerns push them to extend the size of the freedom through the territorial waters.

The coastal State is entitled to exercise its own jurisdiction over any person regardless of nationality within its own territorial limit[27] and it has the sovereignty thereover.[28] The coastal

state's basic rights include of those; fishing, exploring and exploiting the resources of sea-bed and subsoil. In means of the navigation, they are free to navigate to all under the abovementioned condition.

There is a conflict of interest in having of sovereign right over the territorial waters, that is the responsibility of coastal State alone, while the flag State is the only one responsible from its ships on the high seas, from the ships regardless of their flag and route therein. Some States, that's why, do not wish the extend their limit of territorial water in this regard, while some want it due to the political and strategic, economic and historical reasons.

The *inland waters* of a nation are waters landward of its marginal sea, as well as waters within its land territory. With contrast to the territorial waters, there are certain exclusive powers which a state may exercise in inland waters which not be conceded for the marginal seas; such as the power to exclude vessels of other states. "Innocent passage" does not apply to inland waters. The obstruction to navigation in a national bay would not be a just cause for international complaint. [29] Therefore, inlands waters are no different than the land of a State.

The *contiguous zone* is a high-sea toward zone adjacent to the territorial sea of a state. States which found the three miles territorial sea zone too narrow have found this principle. These early contiguous zone were acquiesced in when they appeared reasonable. On this basis, some modern writers have discussed contiguous zones in terms of "rule of reason" or a theory of "interests," both of which in essence consist of the proposition that if the littoral state has a legitimate interest in the protection of which requires action outside its territorial sea, and the contiguous zone asserted is reasonable, such action is not internationally illegal.[30] True contiguous zones, in which limited competence is asserted for control of customs, sanitation, security, fishing, and other purposes, extend beyond the area subject to littoral sovereignty.[31]

1.2.4. Straits— have always been regarded same as the territorial waters of riparian states and the jurisdiction and sovereignty of it cover thereover. Freedom of navigation applies without restriction to the high seas spaces that may be encompassed in the strait, and that in areas of territorial sea the regime of nonsuspendable innocent passage applies. However, in three respects the right of innocent passage in straits has apparently been greater than in the territorial sea: the test of "innocence" has depended upon objective criteria or ship behavior; the right of such passage has been applied to both merchant vessels and warships; and suspension of this right has been denied both in time of peace and in times of "cold war." During an actual war the right of innocent passage in international straits may be restricted.[32]

During the extension of 3-mile limit of territorial waters to 12-mile by riparian states, being majorly the user states, some opposed that as the regime of about 116 straits which under the regime of the freedom of the high seas at the time would fall under the innocent passage regime through the territorial waters.

This situation remained same until the Third United Nations Conference on the Law of the Sea, which accepted the extension of territorial waters up to a maximum of 12 miles and the "transit

passage" right through the international straits. Since that, straits up to 24 miles are subject to that regime which gives more freedom to the transiting vessels than under the innocent passage regime and less right, and therefore less security, to the riparian states.

3. Regulations Regarding the Navigation on the Seas:

The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law.[33]

As discussed above, states, in order to concretize the content and extent of the freedom of navigation, have met on several times in several places and reached several conclusions, some of which were stillborn or died when infant. There are, however, some of them which lived long enough to become adult; most importantly, the First United Nations Convention on the Law of the Sea, met in Geneva, 1958; and the Third United Nations Convention on the Law of the Sea, 1982. Mostly embodied the customary international law, these two conventions brought a quasi united character to the large diversity of the law of the sea in the globe.

The First and the Third United Nations Conferences on the Law of the Sea:

1.3.1. High Seas— Article 1 of the Geneva Convention, defines 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." Article 2 mentions "freedom of navigation" as one of the freedoms of the high seas,[34] which is a term comprehensive in intention including movement, observation, inspection, maneuvers, tests, and so forth, carried out above, on, and below the surface. The design of Article 2 is noteworty. The freedoms or protected uses of the high seas are to be exercised "with reasonable regard to the interests of other states," but cannot be subjected to state sovereignty: "no state may validly purport to subject any part of them to its sovereignty." The "freedoms" can be regulated only by the treaty or by international law: "Freedom of the high seas is exercised under the conditions laid down by these articles and by other rules of international law." Thus, these freedoms may be deemed to be absolute in the sense that, absent a treaty or other norm, improper use may give rise to protest or stronger action on another plane, but will not permit an aggrieved state to interfere with the allegedly abusive use on the same plane. [35]

While the general freedom of navigation is potentially subject to some regulations, expressed either in the convention itself or another treaty, no regulations may be applied to warship; they are immune from other than flag jurisdiction. Article 8 states that they "have complete immunity from jurisdiction of any State other than the flag State." Hence freedom of navigation for warships may be deemed to be the most comprehensive of the protected uses of the high seas. The "high seas" are defined in Article 1 of the 1958 Convention on the High Seas as "all parts of the seas that are not included in the territorial sea or in the internal wates of a state." Given the historic uses of the ocean, "all parts" has both a vertical and horizontal extension. [36]

1.3.2. Territorial Waters— whatever the vertical definition of the high seas, the term "freedom of navigation" appears only to be used with regard to the high seas. Navigation through territorial waters in the Convention on the Territorial Sea and the Contiguous Zone of 1958 is characterized in Article 14 as "innocent passage" or "navigation." The words "freedom of navigation" are not used in this connection. In article 16(4) of the Territorial Sea Convention relating to straits all of whose waters are territorial at some point, the reference is to "innocent passage" and not "freedom of navigation": "there shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and and another part of the high seas or the territorial sea of a foreign State." In this respect the key difference between freedom of navigation and innocent passage is competence. In freedom of navigation, competence about the character of the user is the flag state's; in innocent passage it is the coastal state's.[37]

As long as the major maritime powers insisted on a 3-mile territorial sea, a belt of internatinal waters between some of more strategically critical straits was maintained. Merchantmen as well as warships benefited from passage rights which became increasingly more protected in international law from the late 19th century on. UNCLOS has, however, produced a new regime. Article 3 of the Informal Composite Negotiating Text (ICNT) provides: "Every State has the right to establish the bredth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention." The rather alarming tendency, enunciated most authoritatively by the International Court in the Iceland Fisheries case,[38] to view select provision in international drafts as indicators of consensus and hence evidence of innovative customary law, despite their failure to win the formal support necessary for adoption in conformity with constitutive processes, virtually transforms Article 3 into custom. The prophecy becomes self-fulfilling when many states, acting on the purported authority of draft Article 3, proceed to exercise their putative right, thereby providing the evidence of state practice that confirms the consolidation of the custom. With a 12-mile territorial sea available to coastal states on demand, as many as 116 straits that currently include a high seas belt and hence are open to passage under the "freedom of navigation" may lawfully be territorialized and henceforth, in the absence of a special and clearly prescribed regime, available to ships only under the much more limited right of innocent passage.[39]

Articles 14 to 17 of the 1958 Convention on the Territorial Sea and the Contiguous Zone deal with "the right of innocent passage." The comparable provisions in the ICNT are Articles 17 to 26. Both references are to surface passage and not to overflight. In both texts, there is substantial congruence with regard to the referents of passage, but marked differences with regard to the meaning of "innocence." Article 14(4) of the 1958 text states: "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law."[40]

Obviously, "innocent passage," under its most generous interpretation, is a much narrower doctrine than "freedom of navigation." Freedom of navigation is navigation on the high seas. It requires no characterization, for it self-actualizes; it is what is done. Innocent passage, however, requires the coastal state to characterize the passage as appropriately innocent. Only when it has affirmatively done so is the passage insulated from lawful suspension by the coastal state.[41]

1.3.3. Straits— In the wake of their crystallization and application by the International Court of Justice in the Corfu Channel case (1949)[42], the general rules of international law on straits were codified by Article 16(4) of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone: "There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state."[43]

The definition of Straits, according to the Convention, is based upon two elements: their geographical situation, and their function. From the geographical point of view there are two groups of passages that are "legal" straits: (1) those that link two parts of the high seas, and (2) those that communicate between one part of the high seas and the territorial sea of a foreign state. Opinions have differed over whether the latter group is subject to the international straits regime only by virtue of Convention, or also under costumary law. The second element of the definition of straits under Article 16(4) of the 1958 Convention concerns their use: they have to be "used for international navigation." This condition would exclude from the straits regime those passages that have not been used for navigation, as well as those that have only served national coastal navigation.[44]

Transit Passage—The new Convention[45] deals with passage through straits independently of the regime of the territorial sea, and it distinguishes among several categories of straits, subject to different regimes. Among these categories, four are of relevance to our discussion. First, there is "right of transit passage, which shall not be impeded" or "suspended" for all ships and aircraft in straits that are used for international navigation between two areas of high seas or exclusive economic zones. Transit passage is defined as the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait. The Convention defines the rights and obligations of the transitting vehicle on the one hand, and of the coastal state on the other hand.[46]

"Transit passage" is a neologism; it lies somewhere between" freedom of navigation" on the one hand, and "innocent passage" on the other. It is a compromise, a concession or a second-best solution when contrasted with the earlier maritime power drafts. The key question is whether, on its face or as construed by international law's methods of interpretation, the new doctrine of transit passage gives rights, in a quantity and with certainty sufficient to make the regime acceptable from a security standpoint. Some commentators are convinced that it does. Pirtle, for example, writes that "[t]he ICNT provisions on transit passage and archipelagic sea-lanes passage constitute a treaty weighted in favour of the navigation and security interests of the United States."[47] U.S. negotiators apparently agree and believe that transit passage is very, very close to the freedom of navigation available on the high seas and, moreover, that the text provides a right of submerged passage by submarines which would unquestionably be deemed to be an exercise of the freedom of navigation.[48] In support of this interpretation one may note that the ICNT's definition of "transit passage" does, indeed, include a reference to the "freedom of navigation" and does not include a requirement of surface passage by submarines. Furthermore, insertion of "transit passage" seems to exclude "innocent passage." But the text is not explicit and an interpretation based ultimately on an intersection of *inclusion* and *exclusio* is not the sort

of case a lawyer happily sends to trial.[49]

Since the major differences between innocent passage and freedom of navigation are the conditions and right of qualification of the coastal state with regard to the former, “transit passage” seems more a species of innocent passage than a high seas freedom. Though ICNT Article 44 does conclude that “[t]here shall be no suspension of transit passage,” that is not the same as saying “[t]here shall be no suspension of passage.” In other words, a state bordering a strait might unilaterally determine that a particular transit, in given circumstances, violates ICNT Article 39(1)(b), hence is not a “transit passage” in the meaning of the convention and may either be prohibited *entirely* or permitted only upon the fulfillment of conditions imposed by the coastal state, for example, upon surfacing.[50]

The third regime mentioned in the 1982 Convention concerns the straits “in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits” (Article 35(c)). Apparently, the drafters had in mind primarily the Turkish Straits, the Danish Straits, and the Strait of Magellan.[51]

v. PART II

2. Safety Issues

In the previous part, I tried to explore the development of the freedom of navigation which mostly reflected the commercial and military purposes of the states. There is, as always, the other side of the coin which I will examine in this part: the safety issues. Here, I will try to carry the anxiousness’s and needs of majorly the riparian and also the sensitive states. I divided this part into three: firstly, the safety of navigation as being the primary concern after being granted the right to navigate; secondly, the safety of life of the people on board of the vessel and on the shore; and lastly –as in the chain of being effected but not in the importance—the environment which is, or should be, the concern of all.

In 1968 an extremely influential article, ‘The Tragedy of the Commons’, was published by Garrett Hardin in the journal *Science.*[52] Hardin postulated a commons on which tribesmen grazed livestock at no cost to themselves. For each tribesman there would always be an incentive to add animals as they could also graze on the common area. If only one tribesman did this, carrying capacity would not be exceeded. If all did, however, then the commons would collapse as a resource which was able to support all. As a metaphor for unsustainable use of the environment, the article has resonated in much future thinking.[53]

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind – for present and future generations – of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into

consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.[54]

1. Safety of Navigation

Being the main point of all the written and spoken arguements on the law of the sea, navigation is the vital act and safety of it is the main concern. In order to maintain that safety, states have accepted unilateral[55] and multilateral, through the International Maritime Organisation since 1959, a whole series of measures, in the form of conventions, recommendations and other instruments. The best known and most important of these measures are conventions, three of which are particularly relevant to navigation. These are the International Convention for the Safety of Life at Sea, 1974; the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978.

Besides Conventions, IMO has also issued a series of resolutions and codes, including guidelines on navigation issues and performance standards for ship-borne navigational and radio-communications equipment. Some are simply recommendations - though such is their wide acceptance that they effectively mark international policy - while others are referred to by relevant Regulations of specific Conventions, thereby giving them the same weight as the Convention Regulations themselves.[56]

Prevention of Collusion—Safety of Life at Sea—Rules to prevent collisions at sea have existed for several hundred years, but they had no statutory force until 1840, when the London Trinity House drew up regulations that were enacted by the British parliament in 1846. By then, the British merchant marine was so dominant in world shipping that action taken by the British government – especially in matters such as safety – was generally welcomed and frequently followed by other nations. A completely new set of rules drawn up by the British Board of Trade in consultation with the French government came into operation in 1863. By the end of 1864, these regulations, known as "Articles", had been adopted by more than 30 maritime countries including the United States and Germany. The first International Maritime Conference to consider regulations for preventing collisions at sea was held in Washington in 1889. The regulations were brought into force by several countries in 1897. At a Maritime Conference held in Brussels in 1910, international agreement was reached on a set of regulations similar to those drafted in Washington and these remained in force until 1954. The 1912 *Titanic* disaster resulted in a major international conference in London in 1914, which adopted the first International Convention for the Safety of Life at Sea (SOLAS). It introduced new international requirements dealing with safety of navigation for all merchant ships. In 1929, another conference was held which adopted a revised SOLAS Convention. By 1948, the regulations were again in need of revision and a revised treaty was adopted. At another conference held that year, a convention establishing the International Maritime Organization (then known as Inter-Governmental Maritime Consultative Organization) was adopted. It entered into force ten years later and for the first time, the shipping community has a permanent body to consider matters of mutual

interest. One of its first tasks was to convene a new conference in 1960 to adopt a new SOLAS convention and also to consider new collision regulations. An indication of what lay ahead came in 1972 when an international conference to amend the International Regulations for Preventing Collisions at Sea was held; the new Convention, known as the Convention on the International Regulations for Preventing Collisions at Sea, was adopted on 20 October 1972 and entered into force on 15 July 1977. One of the most important changes attributed to COLREGs was to make possible the introduction of "mandatory ships' routeing systems." The practice of following predetermined routes for shipping originated in 1898 and was adopted, for reasons of safety, by shipping companies operating passenger ships across the North Atlantic. Related provisions were subsequently incorporated into the original SOLAS Convention.[57]

2. Safety of Environment

As seen up till now, the right of freedom of navigation has been well recognized through international conventions, if not they already are well established customary rules of international law being practiced for centuries. Environmental law is, however, a considerably young branch of international law in need of speacial attention of the states for improvement up to a sufficient level in order to avoid the continuous killing of the resources of the globe.

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures assressing transbordary or global environmental problems should, as far as possible, be based on an international consensus.[58]

National and international efforts to protect the planet's environment and resources clash with the goal of free international trade. This conflict is exacerbated by misunderstanding; up to now, neither environmentalists nor those concerned with international trade knew or cared much about each other's goals and values. The conflict also pits two otherwise worthy objectives against each other. We should not be forced to choose between anvironmental protection and free international trade; both values are essential to our future survival and well-being.[59]

The wind of change has started to blow landward and the rush towards enclosure of the seas as much as possible has halted by the realisation of the importance of the resources of the environment; some of which renews itself in so long times, some of which are non-renewable and some of which may vanish upon the excessive usage. This has brought a limit to the sovereignty of a state over its waters once being considered as unlimited and responsibility of a state to another and/or to the nature has been shown respect and been accepted more and more.

A state, in spite of its territorial supremacy, is not allowed to alter the natural conditions of its own territory to the disadvantage of the natural conditions of the territory of a neighbouring State – for instance to stop or to divert the flow of a river which runs from its own into neighbouring territory.[60]

This thought of Oppenheim in 1912 has been embodied in the *Lac Lanoux case (Spain v. France)*, where France wanted to divert the course of the waters of Lake Lanoux for generating water met the opposition of Spain in that this would affect the interests of them. The States couldn't resolve the problem and went to arbitration in 1956. Tribunal concluded that the steps taken by France on the course of this work, did not infringe the spanish rights under the Treaty of Bayonne and its Additional Act of 1866, because France had taken adequate measures to prevent damage to Spain and Spanish users, and for other reasons and the tribunal was of the opinion that a prior consent of the Spain was not necessary however, France was under an obligation to provide information to and consult with Spain and to take Spanish interests into account in planning and carrying out the projected works which, according to tribunal, France had sufficiently done so.[61]

Responsibility of a state's not to give harm to other is also to the nature. A similar question, as in the representation of the 'common heritage' and using the resources of the 'area' on behalf of them, exists here as "who will ensure the compliance of a state's practice with the international environmental law and use force in case of non-compliance when there is no harm to any other state than the nature of the harming state itself?" similir to the provision of 'sustainable development' concept of Brundtland Commission adopted in 1987 obliging a State to manage its natural wealth and resources properly for the sake of its own people, including future generations. I believe that the representor of the common heritage would not complain to defend the harmee nature againts its harmors.

1. Marine Pollution:

The sources of marine pollution varies but major of them are from land-based sources, from sea-bed activities, from or through the atmosphere and vessel sourced pollution. In view of the relatively minor contribution of vessel-source pollution to overall marine pollution, this appears even more remarkable.[62] While 77 per cent of the overall marine pollution is from land-based and atmospheric sources with compare to 12 per cent of vessel-sourced pollution,[63] the former is more serious, however, I will discuss in this paper the latter as it is the concern of international marine commerce and transportation with regard to the environmental law.

1. Sources of Pollution from Ships :

Essential three forms of vessel-source pollution can be distinguished: accidental (unintentional) and operational (intentional) pollution and operational pollution by emissions (vessel-source air pollution).

Accidental—A minor form of accidental pollution are the so-called 'terminal spills', which occur during loading and unloading. More serious environmental damage usually occurs when ships are involved in accidents at sea, for example structural failures, groundings, collisions and to a lesser extent explosions, breakdowns, fires and rammings.[64]

Operational—pollutions have traditionally occured for a variety of reasons, such as taking in seawater for tankwashing in oreder to remove residues. This cargo-generated waste is subsequently discharged into the sea. Another widespread use is that of taking in ballast water

for the home voyage, and ‘deballasting’ this mixture before new cargo is loaded. This method has the additional, and potentially much more harmful, risk of introducing alien organisms into the marine environment upon deballasting.[65]

2. Prevention of Pollution

The main principles of international environmental law concerning nature conservation and environmental protection, emerging from treaty law, international case law and ‘soft law’ instruments[66] in the absence of a customary international law. In the existance of a custom, a treaty will serve as no more than declaration of the former. However, it is such an instrument can be used to create new obligations which did not exist under the customary law. This will though not be binding on a non-party state until it becomes a custom, the case law serves on this matter as a repeated and accepted practice will become a custom which will then be binding the non-party states to that treaty. Lastly, the soft law serves as a pilot doctrine or practice, which is not binding but helpful to see efficiency or defficiency of the proposed regulation of the specific practice it has aimed.

Such efforts of states and international organizations is not sufficient unless implemented on the global basis, complied with by practicors and enforced in case of non-compliance. There are three main state control over ships; the flag state, the port state and the coastal state which has different control level over a merchant ship on navigation on the seas.

Nationality of Ships—is a customary practice of international shipping which means that when a vessel flies a flag of a country, the nationality of that ship is of the flag it flies and that that ship is bound with the laws of and to the state thereof.

Flag States—have the primary responsibility to ensure that ships flying their flag comply with regulations on vessel-source pollution. Regulatory conventions require flag States to conduct periodical surveys and inspections, a task often left to classification societies acting on their behalf.[67] The implementing, jurisdictional, principles by which the general community of states seeks to make effective its overriding policies of shared use have long been built, in response to the omnipresent imperatives of harmonious and economic co-operation, about certain allocations of competence which require high certainty and easy precision in identification of the national character of ships. For interactions upon the high seas, each state has imposed upon it responsibility under both customary international law and by many explicit agreements for the lawful conduct of ships to which it has ascribed its national character; each state may apply its authority to the ships to which it has ascribed its national character and to events occuring upon such ships.[68] Hence, the mere fact of registration, although fraudulent, was considered sufficient to provide protection for the vessel in question[69], even against the state whose nationals owned it.

Flags of Convenience—phanomenon dates back to the end of the First World War when certain non-traditional maritime countries started to register foreign-owned vessels under their flags for economic reasons and excercised minimal control over the activities and operations of these vessels.[70] For the control of that practice, at the Geneva conference adopted that:

Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose

flag they are entitled to fly. There muct exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.[71]

3. Other Control Mechanisms:

The strong relations of a vessel, except from the case of a vessel carrying a state's flag just because it is convenient to it, is undoubtful. However, it is not sufficient as the flag state is, in most international transport cases, unaware of the location and the position of that vessel and even if it is, is unable to intervene immediately in case of a danger to human life or the environment. For these and various other reasons, besides the flag state control, port state and coastal state controls over vessels had been needed and recognized.

Port State—has a right and duty to ensure that any vessel flying any flag which calling or leaving its port shall meet the safety standards that they proceed to port and to sea without danger to passengers and crew on them and to the environment while the vessel is within the territorial waters of the state. The observations on the right of access to ports and the extent of prescriptive and enforcement jurisdiction under customary international law and Articles 25(2) and 211(3) LOSC, therefor apply *mutatis mutandis* to internal waters.[72]

Coastal State—can in principle not refuse foreign vessels admission to their internal waters as the right of innocent passage exists in such waters, which are thus functionally identical to the territorial sea. Consequently, the regime of jurisdiction over vessel-source pollution applies within such waters as well. [73]

The LOSC contains no explicit basis for coastal State enforcement action taking place within its internal waters. Arguably, in the light of coastal State's sovereigntyover its territory this is not necessary either. Implicit recognition of such powers is nevertheless contained in Article 27(2) under which coastal States are not constrained by the limitations in Article 27 with respect to 'outward bound' ships (from internal waters into the territorial sea) that have voilated national laws and regulations in internal waters. Enforcement action in intrnal waters itself can, in light of such an exception, not be more restrictive. While, in light of the interference with navigation, enforcement should preferably always take place within port, coastal States have no obligationsimilar to Article 24(1), not to unreasonably hamper passage.[74]

2. International Regulation of Marine Pollution:

International law is traditionally stated to comprise 'the body of rules which are legally binding on states in their intercourse with each other'.[75] These rules derive their authority, in accordance with Article 38(1) of the Statute of the International Court of Justice (ICJ), from four sources: treaties, international custom, general principles of law, and subsidiary sources (decisions of courts and tribunals and the writings of jurists and groups of jurists). It is to these sources that the ICJ would look in determining whethera particular legally binding principle or rule of international environmental law existed.[76]

2.2.2.1. *Treaties*—(also referred to as conventions, accords, agreements and protocols) are the primary source of international legal rights and obligations in relation to environmental

protection.[77]

In relation to environmental obligations, certain treaties of potentially global application might be considered to have 'law-making' characteristics, particularly where they have attracted a large number of ratifications. These include the 1946 International Whaling Convention, the 1963 Test Ban Treaty, the 1971 Ramsar Convention, the 1972 London Convention, the 1972 World Heritage Convention, MARPOL 73/78, the 1973 CITES, the 1982 UNCLOS, the 1985 Vienna Convention, the 1987 Montreal Protocol (as amended), the 1989 Basel Convention and the 1995 Straddling Stocks Agreement. The 1992 Climate Change Convention and the 1992 Bio-diversity Convention can also be considered 'law-making' treaties since their provisions lay down basic rules of general conduct, as may the 1998 Chemicals Convention and the 2001 POPs Convention after they have come into force.[78]

Environmental treaties share the same general characteristics as other treaties, and are subject to the general rules reflected in the 1969 Vienna Convention and customary law.[79]

Article 30(2) provides that, when a treaty specifies that it is subject to, or not incompatible with, an earlier or later treaty, then the provisions of the other treaty will prevail. Under Article 30(3), if all the parties to the earlier treaty are also parties to the later treaty, and the earlier treaty continues in force, then only those provisions of the earlier treaty which are compatible wşth the later treaty will apply. Finally, Article 30(4) governs the likely situations when the parties to the later treaty do not include all the parties to the earlier treaty. It provides that (a) as between states party to both treaties the same rule applies as in Article 30(3); and (b) as between a state party to both treaties and a state party to only one of the treaties, the treaty to which both states are parties governs their mutual rights and obligations.[80]

2.2.2.2. *Customary International Law*—rules play a secondary role in international environmental law, although they can establish binding obligations for states and other members of the international community and may be relied upon in the codification of obligations in treaties and other binding acts. The significance of custom lies in the fact that it creates obligations for all states except those which have persistently objected to a practice and its legal consequences. Moreover, a customary rule may exist alongside a conventional rule, can inform the content and effect of a conventional rule, and can give rise to a distinct cause of action for dispute settlement purposes. Article 38(1)(b) of the Statute of the International Court of Justice identifies the two elements of customary international law: state practice and *opinio juris.*[81]

State Practice—is notoriously difficult to prove, and little empirical research has been carried out on state practice relating to international environmental obligations.[82] State practice can be discerned from several sources, including: ratification of treaties; participation in treaty negotiations and other international meetings; national legislation; the decisions of national courts; votes and other acts in the UN General Assembly and other international organisations; statements by ministers and other governmental and diplomatic representatives; formal diplomatic notes; and legal opinions by government lawyers.[83]

It is important to bear in mind that the failure of a state to act can also provide evidence of state practice: mutual toleration of certain levels of pollution, or of activities which cause environmental degradation, can provide evidence that states accept such levels and activities as

being compatible with international law.[84]

Opinio Juris—requires evidence that a state has acted in a particular way because it believes that it is required to do so by law. The ICJ in the *North Sea Continental Shelf* cases identified the content and role of *opinio juris:*

> Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existance of a rule of law requiring it. The need for such a belief, i.e. existence of a subjective element, in implicit in the very notion of the *opinio juris sive necessitatis*. The states concerned must therefore feel that they are conforming to what amounts to a legal obligation. The frequency, or even habitual character of the acts is not in itself enough. There are many intentional acts, e.g. in the field of ceremonial and protocol, which are performed almost invariably, but which are motivated only by considerations of courtesy, convenience or tradition, and not by any sense of legal duty.[85]

2.2.2.3. *General Principles of International Law*—besides the ones related to the environmental law, are also relied upon when the gaps need to be filled. The general principles relating to good faith in exercise of rights and prohibitions on the abuse by a state of a right which it enjoys under international law have been invoked by ICJ and arbitral tribunals which have considered international environmental issues.[86]

ICJ has, in the Nuclear Tests case, stated that:

> One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential. Just as the very ryle of *pacta sund servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus interested states may take cognisance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected.

In the judgment of the dispute between Hungary and Slovakia, the ICJ emphasized that it would not determine in advance the final results of the negotiations, but rather the Parties themselves must find an agreed solution taking into account the objectives of the original treaty that foresaw the construction of a joint project. The Hungarian government prepared a proposal, none of the provisions of which can be taken in isolation, but together may be seen to represent a good faith effort to ensure environmental protection in the context of settling this long-standing dispute in conformity with the ICJ judgment.[87]

Other ‘general principles’ which have relevance for environmental matters include: the obligation to make reparation for the breach of an engagement; the principle that a person may not plead his or her own wrong;[88] the principle that no one may be a judge in hşs or her own suit;[89] and ‘elementary considerations of humanity’[90] and ‘fundamental general principles of humanitarian law’[91].[92]

2.2.2.4. Subsidiary Sources—are mainly the decisions of courts and tribunals and the writings of jurists. Besides the ICJ there are other international courts dealing with environmental issues as European Court of Justice, the European Court of Human Rights, the WTO Appellate Body and the International Tribunal for the Law of the Sea, as well as panels established under the Canada-US Free Trade Agreement. Awards of international arbitral tribunals have also contributed to the development of international environmental law.[93] The writings of jurists have played a less significant role in developing international environmental law. The *Trail Smelter* case relied on the writings of Professor Eagleton, and there is some evidence that international jurisprudence on environmental issues has been influenced by academic and other writings.[94]

vi. PART III

3. The Turkish Straits

Comprising the Strait of Istanbul, the Sea of Marmara and the Strait of Canakkale, the Turkish Straits are of fundamental importance for the international commercial shipping as they connect the Black Sea to the Aegean Sea and thus the Mediterranean Sea and beyond and *vice versa*. Besides that economic importance, the Turkish Straits are one of the most significant waterways of the world as their historical, strategic and environmental character.

1. The History of the Turkish Straits

After the devastating 1354 earthquake, the Greek city, Gallipoli, was almost abandoned, but swiftly reoccupied by Turks from Anatolia, the Asiatic side of the straits.[95]

By the time of 1453, the Strait of Istanbul, as Constantinople it was, was under the control of the Emperor of Byzantine. After the time of its conquest by the Ottoman Sultan Mehmet the IInd, had then been called the Conqueror, the passage from Black Sea to the Aegean Sea,or vice versa, became under the control of the Turkish Ottomans and the area had been named the Turkish Straits.

From then on, the right of passage through the Istanbul Strait was to be subject to the permission of the Ottoman Empire. Nonethless, as the colonies of Venice and Genoa still existed at the time, vessels flying their respective flags were allowed passage into the Blach Sea through the Istanbul Strait for a period of time; but once the Ottoman Empire succeeded in subjecting all of the Black Sea under its control following the capture of Kili and Akkirman (1484) during the reign of Bayezid II, the Ottoman Empire prohibited the passage of all foreign vessels into the Black Sea, Consequently, completely isolated from foreign trade during the XVIth Century, the Black Sea became an inland sea and preserved this status until the signing of Küçük Kaynarca Treaty in 1774.[96]

In 1774, through the intervention of Russia, the Crimea secured its independence of Turkey, and the Black Sea ceased to be a territorial sea. In the same year Russia obtained from Turkey, by treaty, the right to free navigation through the Dardanelles, and similar privileges were soon

secured by other Powers. Turkey, however, never recognized the right of foreign vessels of war to have passage through the straits. In 1841 the rule as to the exclusion of foreign vessels of war from the Dardanelles was accepted by the Powers, and again in 1856, by a separate convention of March 30, the traditional right asserted by Turkey was recognized by the Powers signatory of the Treaty of Paris. Again in 1871 the rule was confirmed by the Treaty of London.[97]

The Peace Treaty of Lausanne 24 July 1923, registering the victory of the Turkish nation in its war of liberation, recognized the complete independence of Turkey and provided a new convention for the Straits. The Lausanne Straits Convention laid down the principle of freedom of passage, thus totally changing the provisions of the Convention of 1841, which had given international sanction to the ancient rule of the Sublime Porte to keep the Straits closed to warships of foreign powers. It guaranteed the commercial freedom of the Straits with certain restrictions in time of war. The warships that any one Power in time of peace might send through the Straits were not to exceed the strength of the most powerful Black Sea fleet, i.e. the Russian's. The Powers reserved the right at all times and under all circumstances to send no more than three warships into the Black Sea, none to exceed 10,000 gross tons each.[98]

Not only was the “ancient rule of the Ottoman Empire” thus formally set aside, but Turkish control over the Straits was further weakened by the creation along both sides of the Dardanelles and the Bosphorus of “demilitarized zones” within which no fortifications or military establishments might be built. Turkey’s protection now depended solely upon the action of the Council of the League of Nations.[99]

The political changes in the later 13 years made it reasonable that Turkey should demand a revision of the restrictions put upon it in 1923 and be accorded an international status more commensurate with its internal reforms.[100]

2. The Current Legal Regime of the Turkish Straits

Because of their long-standing and fundamental strategic and political importance,[101] the Turkish Straits are an example[102] of ‘straits in which passage is regulated in whole or in part by long-standing international conventions’, within the meaning of Article 35(c) of the 1982 Law of the Sea Convention.[103]

1. Montreux Convention

Fundamental changes in political circumstances in the area of Black Sea, Straits, and the Mediterranean as well as changes in the international environment of the world politics contributed to a premature obsolescence of the Lausanne Convention provisions[104]. The Treaty of Lausanne[105], stating similar norms to the Treaty of Sevres, besides its victoriousity as recognizing the New Turkish State, however, was a shame on the actors of the Conference of 1922 as demilitarising the straits zone meaning the denial of Turkey’s customarily well-recognized sovereignty over its resources. The political situation under which the Treaty of Lousanne had been signed was changed which resulted as the increasing attempts of Turkey on modifying the regime brought by the Lousanne Convention. These resulted as the meeting of the signatory States of the Treaty of Lousanne, except from Italy, at the Montreux Convention

Regarding the Regime of the Straits, which concluded by the Montreux Convention, which, signed 20 July 1936, completely restored Turkish sovereignty over the straits.[106]

The Montreux Convention is predominantly an instrument for dealing with the passage of ships through the Straits, concluded between a sovereign State having full control of the relevant territorial and maritime zones and the States most interested in transiting the Straits with their ships. This remark clarifies the main difference: the Montreux Convention is an international agreement specifying the terms of passage of foreign ships (and aircraft)[107] in the Straits belonging to a state with no other ramifications involving questions of territorial sovereignty or political control of the Straits. The Convention of Lausanne was an agreement that not only internationalized the Straits area, depriving Turkey of sovereign capacities, but also contributed, or would have been able to contribute, to the building up of a regional political role of the powers participating in that Convention and in its organs. The Montreux Convention marked a new historical era for the fate of Turkey and the Black Sea.[108]

Sections—of the Convention, the first[109] of which deals with commercial vessels, repeats largely the provisions of the Treaty of Lausanne, except that more specific conditions are laid down with respect to the sanitary inspection by Turkey of shipping passing through the Straits. An appendix contains a scale of fees to be charged for sanitary, navigation and life-saving services.

The second section deals with the vessels of war which is not subject of this paper[110].

The third section deals with aircraft which is again not subject of this paper.

Sections Four and Five bring general provisions with regard to the exercise of the Convention by the Turkish Government, and final provisions with regard to the ratification, notification thereof and amendment procedures. Paragraph 2 of the Article 28 states that “the principle of freedom of transit and navigation affirmed in Article 1” thereof “shall however continue without limit of time.”[111]

Merchant Vessels—in time of peace—shall enjoy complete freedom of transit and navigation in the Straits, by day and by night, under any flag and with any kind of cargo, without and formalities[112] except that they shall stop at a sanitary station near the entrance to the Straits for the purposes of sanitary control prescribed by Turkish law within the framework of international sanitary regulations.[113] Turkey cannot levy any taxes or charges other than authorized by Annex I to the Convention on the vessels passing in transit without calling at a port in the Straits.

In time of war—Turkey not being belliegerent- all vessels shall enjoy freedom of transit and navigation in the Straits subject to the provisions of Articles 2 and 3.[114] Turkey being belligerent- merchant vessels not belonging to a country at war with Turkey shall enjoy freedom of transit and navigation in the Straits on condition that they do not in any way assist the enemy.[115]

According to the Paragraph 1 of the Article 6 of the Convention—should Turkey consider herself to be threatened with imminent danger of war—the provisions of Article 2 shall nevertheless continue to be applied except that vessels must enter the Straits by day and that their transit must be effected by the route which shall, in each case, be indicated by the Turkish authorities and according to the Paragraph 2 thereof that pilotage may, in this case, be made onligatory, but no

charge shall be levied.

2. Other Legislations

Besides the constitution-like regulation of the Montreux Convention on the Straits, there are further international regulations governing the safety issues which came to rise after those incidents such as Atlantic Empress,[116] Amoco Cadiz,[117] Exxon Valdez,[118] Torrey Canyon,[119] Independentza[120] and Sea Empress[121] to which Turkeyis also a party. States, under the roof of the IMO, have agreed on a set of measures in order to prevent the occurances of such casualties or abate, if not eliminate, the consequences thereof. I will discuss only the regulative and preventive conventions but not the curative ones as the latter, in my opinion, would never cure the such consequences of harm to the environment and the real success lays under the former ones.

1. International Conventions

As a result of understanding the importance of the environment and the responsibility of the States—the flag, port and coastal states—on the prevention thereof, it is accepted that the 'States have the obligation to protect and preserve the marine environment',[122] and in order to achieve this goal 'States shall take, individually or jointly as appropriate, all measures consistent with [the] Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection'.[123] It is beyond strong arguement that states are required by international lawto take adequate steps to control and regulate sources of serious global environmetal pollution or transbordery harm within their territory or subject to their jurisdiction.[124]

1. COLREG 72

The only provisions in COLREG 72 with a jurisdictional dimension is Rule 1(b) which provides:

> Nothing in these Rules shall interfere in the operation of special rules made by an appropriate authority for roadsteads, harbors, rivers, lakes or inland waterways connected with the high seas and navigable by seagoing vessels. Such special rules shall conform as closely as possible to these Rules.

This provision seems to aim at leaving a measure of coastal State competence in these matters unaffected. It is argued that 'despite the restrictive wording of Rule 1(b), the practice of adopting such special rules in territorial waters beyond these listed places is accepted'.[125] This view is in line with a coastal State's competence within its territorial sea under Articles 21 and 22 LOSC.[126] There is, however, no indication that the coastal State powers confirmed therein would also apply within straits used for international navigation, and approval would therefore have to be obtained by the Maritime Safety Committee.[127]

2. MARPOL 73/78

This is the main international convention regulating pollution from vessels, which was first adopted at the International Conference on Marine Pollution convened by the IMO in 1973 to

replace the 1954 Oil Pollution Convention. MARPOL 73, the original treaty, was modified by the 1978 Protocol.[128]

MARPOL 73/78 establishes specific international regulations to implement the objective of completely eliminating intentional pollution of the marine environment by oil and other harmful substances and minimising accidental discharges.[129]

The parties to the Convention must prohibit and sanction violations and accept certificates[130] required by the regulations which are prepared by other parties as having the same validity as their own certificates.[131] A ship which is in the port or offshore terminal of a party may be subject to an inspection to verify the existance of a valid certificate unless there are 'clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate'.[132] Where that is the case or where no certificate exists, the inspecting party must ensure that the ship does not sail 'until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.'[133]

3. SOLAS 74

The 1974 International Convention for the Safety of Life at Sea (SOLAS 74) is the principal convention dealing with maritime safety through construction, design, equipment, manning (CDEM) and navigation standards.[134] Paragraph (k) of regulation V/8 concerning ships' routeing systems observes that '[n]othing in this regulation nor its associated guidelines and criteria shall prejudice the rights and duties of Governments under international law or the legal regime of international straits. The provisions regarding Ship Reporting Systems and Vessel Traffic Services convey the intention that the jurisdictional balance in the LOSC should be left unchanged.[135]

Vessel Traffic Services were not specifically referred to in the International Convention for the Safety of Life at Sea (SOLAS) 1974, but in June 1997 IMO's Maritime Safety Committee adopted a new regulation to Chapter V (Safety of Navigation), which set out when VTS can be implemented. A revised SOLAS chapter V on Safety of Navigation was adopted in December 2000, and entered into force on 1 July 2002. Regulation 12 Vessel traffic services states:

1. Vessel traffic services (VTS) contribute to safety of life at sea, safety and efficiency of navigation and protection of the marine environment, adjacent shore areas, work sites and offshore installations from possible adverse effects of maritime traffic.
2. Contracting Governments undertake to arrange for the establishment of VTS where, in their opinion, the volume of traffic or the degree of risk justifies such services.
3. Contracting Governments planning and implementing VTS shall, wherever possible, follow the guidelines developed by the Organization. The use of VTS may only be made mandatory in sea areas within the territorial seas of a coastal State.
4. Contracting Governments shall endeavour to secure the participation in, and compliance with, the provisions of vessel traffic services by ships entitled to fly their flag.
5. Nothing in this regulation or the guidelines adopted by the Organization shall prejudice the rights and duties of Governments under international law or the legal regimes of straits used for international navigation and archipelagic sea lanes.[136]

2. Regional Regulations

All merchant vessels enjoy freedom of navigation. Under Article 2 and Annex I[137], however, they have to pay for services and maintenance of light houses. The levy of light dues is enough to distinguish the right of passage for merchant ships granted by the Convention and that of innocent passage. Further, the urgency to contain the increasing threat posed by the passage of tankers and collisions propted Turkey to enact new rules.[138]

1. 1994 Maritime Traffic Regulations for the Turkish Straits and Marmara Region

The Regulations of 1994 include rules, inter alia, the requirement of prior notice or permission for the passage of vessels of 500 gross registered tons and more, whether carrying dangerous cargo or not, nucleer-powered vessels,[139] and large vessels which are defined as being 150 metres or more in lenght,[140] the prohibition of simultaneous passage through the Bosphorus or the Dardanelles by more than one large vessel with hazardous cargo at a time,[141] temporary suspension of passage due to 'compulsory circumstances' in the straits, such as drilling, scientific and sports activities, prevention and eradication of marine pollution, and pursuit of criminals,[142] and compulsory use of designated sea lanes in the straits.[143] While the Maritime Traffic Regulations were effected by Turkey on 1 July 1994 only to a limited extent, the IMO Assembly eventually adopted Resolution A.827(19) in 1995 approving the regulations as they stood, recognizing that the regulations were not intended to prejudice 'the rights of any ship using the Straits under international law' including the CLOS and the Montreux Convention, and calling for compliance with the rules by subsequent national regulations. As a result, the Montreux Cnvention regime has been developed by specific rules in regard to the passage of merchantmen.[144]

2. 1998 Maritime Traffic Regulations for the Turkish Straits and Marmara Region

Amending the 1994 Regulations the 1998 Regulations include extensive provisions for facilitating safe navigation in the straits in order to avert pollution and accidents. Ships must meet specific technical specifications before navigating the straits, and veseel captains must report to the Turkish Port Authority any structural or safety deficiencies that might affect safety of navigation.[145] They establish detalied, new TSSs and procedures for passage in the straits to reduce the possibility of vessel collisions. Vessels must proceed in the straits within designated traffic lanes; those ships that are unable or willing to do so are made subject to fines.[146] The speed of ships is strictly limited to 10 knots[147] and reliance on an automatic pilot is prohibited.[148] It is also strongly recommended that foreign flagged vessels to take on a pilot.[149]

There are some restrictions to tanker traffic during certain current and weather conditions. When counter currents are caused by southwesterly winds (*orkoz*)[150], or when the surface current in the Bosphorus exceeds six knots, large vessels,[151] deep draughts vessels[152] and vessels carrying dangerous cargoes[153] are not permitted to enter Bosphorus[154]. Traffic must wait until current speeds drop below four knots or completely subside before attempting to navigate the straits. Turkey may also limit the passage of all vessels when visibility is considered poor.[155] Owners or

operators of nuclear-propelled vessels or vessels carrying neclear, dangerous or noxious cargo and/or waste, are required to notify and furnish to the Undersecretariat of Maritime Affairs all necessary vertificates at least 72 hours in advance in order to secure permission for transit.[156] When a large vessel with hazardous or toxic cargo enters the Bosphorus, a similarly laden vessel may not approach from the opposite direction until the first vessel has exited.[157] Likewise, a minimum distance of eight cables must be maintained by vessels that are proceeding in the same direction.[158] Discharge of pollutants such as refuse, bilge water or oil into the Turkish Straits is prohibited, as all vessels are required to comply "with the Annexes in MARPOL Convention and ships' masters are obliged to ensure that all necessary conditions are taken to prevent pollution".[159]

The Turkish Government maintains that the 1994 Regulations , as revised, will compensate for the lack of environmental and safety provisions in the Montreux Convention, a claim that can be supported by the dramatic reduction in tanker accidents since their adoption. Between 1990 and 1994, the average number of collisions in the Bosphorus was 39 per year.[160] Following enactment on 1 July 1994 of the Regulations, the average number of collisions through the end of the decade dropped to only three per year.[161]

If the number of accidents were strongly reduced, the number of ships waiting at the entries was clearly increased, causing complaints from Black Sea countries and some Mediterranean ones. These States voiced their complaints to IMO in 1997. However, in 1999, IMO came to the conclusion that the IMO Rules and Recommendations had resulted in an increase in safety of navigation through the Turkish straits, and recommended the installation of a modern VTS. The manufacturer of the VTS system was selected in October 1999, and on December 30th, 2003, the VTS began operations.[162]

3. Further Regulations

On 30th December 2003, the Turkish Government introduced in the Turkish Straits a Vessel Traffic Service (TSVTS)[163], thus completing the legal framework in force to improve the safety of navigation, protection of life and environment in these waters. The TSVTS is the last step in a series of measures adopted by the Government of Ankara aiming at this purpose, that is:

- a Traffic Separation Scheme (TSS) in the Straits, in accordance with the provisions of the International Regulation for the Prevention of Collision at Sea (COLREG) and approved by the IMO General Assembly in November 1995; and
- the Maritime Traffic Regulations for the Turkish Straits and the Marmara Region, adopted by the Turkish Government and entered into force on 6 November 1998[164].[165]

The regulation of the TSVTS extracts of the procedures for the transit through the Turkish Straits as:

Submission of Sailing Plan-1 (SP-1) and Sailing Plan-2 (SP-2) reports to the Vessel Traffic Service Centre (VTSC) in accordance with The Turkish Straits Reporting system (TUBRAP).

- Call Point Reports shall be given by ships during entry and exit of the TSVTS area and at the time of changing sectors.

- VHF R/T channel of the TSVTS Sector shall be listened to at all times during passage or anchorage when inside the TSVTS area.
- TSVTS should be informed at all times when vessels are leaving the TSVTS area.
- Vessels navigating within the Turkish Straits, for safety of navigation, protection of life and the environment, should continuously monitor all TSVTS broadcasts and take heed of information, advices, warnings and instructions given by the TSVTS.
- Masters of vessels navigating within the Turkish Straits should report to the TSVTS all perils to safety of navigation observed.
- Vessels navigating within the TSS through the Marmara Sea, whether in stopover or non stopover passage, in case of any deviation from the TSS, berthing or mooring to buoys, dropping anchor, turning back or emergencies and similar exceptional circumstances and any delays on their ETA's exceeding 2 hours should report to the concerned VTSC.
- Vessels engaging in non-stopover passage through the Turkish Straits should hoist the signal flag "T" during the daytime and at night time exhibit a green light that can be observed from all points in the horizon, both during passage or while at anchor.
- All communications concerned with pilotage service should be performed via VHF R/T Channel 71.[166]

It's worth noting that according to the VTS, vessels are explicitly required to indicate in SP 1 *inter alia* type and quantity of cargo or the description of dangerous, nuclear and pollutant goods. Hence, from the VTS it seems that all vessels carrying dangerous cargo or having 500 tons dead-weight should indicate the kind of cargo, not only vessels with a length over 300 m., as could be inferred from Reg. 25 of the 1998 Regulations.[167]

Moreover, Turkish authorities reserve the right to exclude vessels that fail to provide SP 1 in a timely manner from the daily traffic plan, as this delay could cause traffic congestion and waiting.

Also the TSVTS confirms the non-compulsory nature of pilotage envisaged both in the Montreux Convention and 1998 Regulations, as this service is only "strongly recommended to all vessels intending to engage in non-stopover passage through the Turkish Straits".[168]

3. Some Discussions on the Conflict on Turkey's Two-fold obligations

Turkey has the obligation to secure the freedom of navigation through the Montreux Convention on one hand and to secure the environmental safety thereof through the international conventions mainly the MARPOL, COLREG and SOLAS and the others. Questions of such arise that "may Turkey regulate the passage through its straits? if so, how far?" and that of "if it does so, how would they be interpreted with the Montreux Convention?"

The answer to the first question is "yes" that "Turkey may regulate the passage through its straits" as the purpose of the Montreux Convention, as stated in its preamble, is to safeguard the principle of freedom of navigation and transit "within the framework of Turkish security." Turkey, under its powers of police, "legitimate exercise of administrative control and jurisdictional police"[169], "policing right and jurisdictional competence"[170], "exercise of authority in the Straits area, concerning especially policing the navigation"[171] and the right to require that the passage of foreign ships be "innocent", "inoffensive" and "non-disturber"[172], can regulate

passage through the Straits, unquestionably in conformity with the relevant rules of the law of the sea.[173]

1. Turkey's Right to Regulate

Referring to the Straits as "international straits" does not mean that the control over them belongs to the international community but that they are "straits used for international navigation." In granting the "freedom of passage" Turkey did not forfeit its inherent sovereign authority, including its regulatory and policing powers, and did not 'internationalize' the Straits. As being internal territorial waters of Turkey, the power and authority to regulate maritime activities through the Turkish Straits belongs solely to Turkey which had been reflected in the Article 24 of the Montreux Convention.

The answer to the second part of the first question is vital, that how far Turkey may regulate, and leads back to the Convention itself. The limits on Turkey's regulatory power are only those which have been expressly provided for by the Montreux Convention and almost 71 years of practice. That is, so long as Turkey does not violate the spirit of the regime created by the Montreux Convention, Turkey may exercise its regulatory and policing powers over the Turkish Straits in accordance with international law and the international standards set out by the International Maritime Organization (IMO) which is the only competent international organization in the field of maritime law.[174]

UNCLOS—Turkey's right to regulate the safety and protection of its extensive and densely populated coast finds support under current international law. Many new international conventions have been drawn up reflecting the growing international concern over pollution and the protection of the marine environment. For example, UNCLOS specifically recognizes the right of coastal states to protect their environment against pollution and other similar hazards. Foreign ships must abide by the laws and regulations enacted by the coastal state. UNCLOS further reflects the heightened international awareness of the very serious safety and environmental hazards modern maritime activities create by imposing a duty on all states to protect the marine environment.

Turkey, without infringing upon the essence of the principle of freedom of passage and navigation[175], can enact and impose regulations to promote the safety of ships, passengers, cargo, its coast, cities, residents and environment. No maritime expert can reject this regulatory authority, although one could debate on the details. Freedom of passage without any regulation, allowing ships to travel at any speed, in any route, stopping whenever and wherever, disposing of waste into the sea however the master chooses, travelling in a manner that creates waves destructive to the coast, or travelling at night without lights is chaos. The principle of freedom of passage and navigation did not license chaos. Given the overwhelming attention UNCLOS and other conventions have accorded to the protection of the environment, any interpretation of Montreux Convention excluding Turkey's right to protect its coastal environment and waters would be discriminatory and unconscionable.[176]

2. Interpretation of Montreux Convention with the New International Conventions

Certain international conventions have established mandatory regulations for merchant vessels, main of them are MARPOL, COLREG and SOLAS. With the power to enforce the mandatory navigation requirements imposed by international conventions, the coastal state may inspect a foreign vessel to ensure that it has met international standards according to the "Paris Memorandum." The general purpose is to ensure the safety of the ships, their passengers, the crew and the safety of the environment.

MARPOL—Is it said that: 'It is also open to any party, including a coastal state, to request inspection by the port state if there is sufficient evidence that the ship has discharged harmful substances 'in any place'.'[177] In the case of Turkish Straits this would not be applicable, as in an instance of discharge, the passage of the discharging ship is giving harm which is not consistent with the passage of being innocent which is the applicable law thereon. Therefore, Turkey has a right to reject the passage and suspend it until the conditions of innocence being satisfied. No one can say that it should just wait and watch the discharge and ask the port state to inspect as this has no handiness and sense. Such a norm of MARPOL would have no efficacy to prevent the pollution in the Straits on the account of Turkey as the foreign vessels use that route only for transiting and they hardly, if not never, call at its ports.

A useful approach has been brought by Articles 4(2) and 9(2 and 3) of MARPOL 73/78, requiring coastal States to prohibit violations thereof and to establish sanctions therefore.[178] Article 9(2 and 3) reflects the intention of the negotiators to settle jurisdictional issues and the phrase 'international law in force at the time of' in paragraph (3) has a dynamic purpose, emphasizing that the technical issues dealt with in regulatory conventions should always be considered in the more general framework of international law. Due to article 9(2 and 3), the exercise of the coastal State jurisdiction is subject to the LOSC and general international law.[179]

When analyzed under the light of the Article 31(1) of the Vienna Convention on the Law of Treaties regarding the interpretation of a treaty in good faith, the flexibility brought by the MARPOL 73/78 with regard to its adaptation towards the laws of the future should be interpreted as filling the gap of the Montreux Convention; being the main general applicable law, not only between the parties but also to the third States as well,[180] for the regulation of passage through the Turkish Straits which has left the environmental safety issues untouched therein.

COLREG—Another example can be found in COLREG, according to which a ship must, simply, have a navigational light meeting certain specifications. If then, a ship wishes to pass through the Turkish Straits without meeting the navigational light requirements of COLREG, does the principle of "freedom of passage and navigation" set out in the Montreux Convention prevent Turkey from interfering with the ship's passage? The answer should be "no." Turkey can stop the ship by notifying it that it has not met COLREG's requirements without being in violation of the spirit of "freedom of passage and navigation." It is unacceptable to interpret the meaning of "freedom of passage and navigation" as ranting a "free-for-all" passage through the narrow and heavily populated Turkish Straits. The Montreux Convention was negotiated and adopted during a certain period in history. Since then many new international agreements regulating maritime activity have come into being. A reasonable interpretation of the Montreux Convention must be

taken into consideration both the changing nature of maritime traffic, including the serious dangers, and new international agreements.[181]

SOLAS—Another example under current international law recognizing a coastal state's right to intervene is the section of the International Conference on Safety of Life at Sea (1974) on nuclear ships. Regulation 19 of chapter I and regulation 11 of chapter VIII gives the coastal state the right to inspect a ship's certificate and the ships' potential danger to the environment. Turkey, as a party to this convention clearly is entitled to conduct an investigation of the ship, including its certificate. In light of the Montreux Convention, does this violate freedom of passage? Clearly the convention recognized the overriding safety interest of a state against a potential nuclear disaster and has imposed a limit on the principle for "freedom of passage and navigation."[182]

Accordingly, a merchant vessel passing transit through the Turkish Straits must be in compliance of SOLAS, since such passage means an international voyage; and if the ship violates SOLAS, its voyage cannot be considered as legitimate[183] therefore not innocent which Turkey should avoid its exercise.

vii. Conclusion

Handling this issue is like holding a sword sharp at both ends. If one wishes to hold it, it is wise for him not to squeeze it but find the balance point and stabilize it there, which is not an easy one.

I, hereby, tried to review the developments of the freedom of right to navigate of merchant vessels which later turned to be Frankenstein with the beginning of industrial age and as a reaction to that the environmental safety measures taken uni-bi-multi-laterally by the states.

Reflecting its unique character in every sense, the Turkish Straits deserves to be treated as tantamount to its importance not only because of the international merchant shipping but also the historical, biological and environmental value it carries over for many decades of centuries.

Turkey has shown its allegiance to the system brought by the Montreux Convention Regarding the Regime of the Turkish Straits by performing its duties with due care for over seven decades. The attempts of the Turkish State to adapt the rules and regulations for the environmental safety are to turn the scale, indeed, but not to infringe the legitimized rights of transiting vessels in any sense.

The test should be that: Would the States party to the Montreux Convention were to be signing it

today, could they deny the measures brought by these conventions granting the coastal states the right to regulate and control the navigation through its waters? Or: Had the technological and intellectual developments we have reached today been reached by 1936 as allowing them to consider the environmental aspects of the navigation, would they still leave it uncodified?

viii. Bibliography

Books:

John Selden, Mare Clausum

F. T. Christy (Ed.) Law of the Sea, Problems of Conflict and Management of Fisheries in Southeast Asia

Nico Schrijver, Sovereignty over natural resources, Balancing Rights and Duties

Eric Franckx, Vessel-source Pollution and Coastal State Jurisdiction

Oppenheim, International Law

Philippe Sands Q C, Principles of International Environmental Law

E Brunel, International Straits

R.R. Churchill and A. V. Lowe, The Law of the Sea

P. W. Birnie and A. E. Boyle, International Law and the Environment

B. B. Jia, The Regime of Straits in International Law

C. L. Rozakis, P. N. Stagos, International Straits of the World, the Turkish Straits

Eric Jaap Molenaar, Coastal State Jurisdiction over Vessel-Source Pollution

Z. Oya Özçayır, Liability for Oil Pollution and Collisions

Theses:

N. Ünlü, Binding Force of the Montreux Convention on the Third States, Ph.D. thesis entitled

"the Montreux Convention and the Development of the Legal Regime of the Turkish Straits".

Maritime and Oceans Law and Research Centre, *Turkish Straits* (Istanbul, Turkey, Bilgi University, 2001), p.25.

S. Pınarakar, Legal and Political Regime of the Turkish Straits and Turkey's right to Regulate the Passage, Postgraduate Study Thesis, Marmara University, Istanbul, 1998

S. Tarhan, An Overview on the Turkish Straits Vessel Traffic Service and Information System, Postgraduate Study Thesis, Marmara University, Istanbul, 2003

D. Aydın, The Regime for the International Straits and Turkey's Right to Regulate the Passage from the Environmental Dimension, Postgraduate Study Thesis, Marmara University, Istanbul, 2002

Articles:

A.N. Ince and E. Topuz, Modeling and Simulation for Safe and Efficient Navigation in Narrow Waterways

Reginald Custance, The Freedom of the Seas, Transactions of the Grotius Society

R. P. Anand, Maritime Practice in South-East Asia until 1600 A. D. and the Modern Law of the Sea; The International and Comparative Law Quarterly

Jonathan Ziskind, International Law and Ancient Sources: Grotius and Selden; The Review of Politics

Bernard G. Heinzen, The Three-Mile Limit: Preserving the Freedom of the Seas, Stanford Law Review

Coleman Phillipson, Cornelius van Bynkershoek; Journal of the Society of Comparative Legislation

C. J. Colombos, Territorial Waters, Transactions of the Grotius Society

Louis Henkin, Politics and the Changing Law of the Sea, Political Science Quarterly

Philip Marshall Brown, Protective Jurisdiction over Marginal Waters, the American Journal of International Law

Tomotaka Ishimine, the Law of the Sea and Ocean Resources, American Journal of Economics and Sociology

T. Brauninger, T. Konig; Making Rules for Governing Global Commons: The Case of Deep-Sea Mining, The Journal of Conflict Resolution

L. D. M. Nelson, The Emerging New Law of the Sea, The Modern Law Review

Law of the Sea, The International and Comparative Law Quarterly

J. C. Phillips, The Exclusive Economic Zone as a Concept in International Law, The International and Comparative Law Quarterly

Lloyd C. Fell, Maritime Contiguous Zones, Michigan Law Review

Bernard G. Heinzen, The Three-Mile Limit: Preserving the Freedom of the Seas, Stanford Law Review

Shigeru Oda, the Territorial Sea and Natural Resources, The International and Comparative Law Quarterly

The Law of Territorial Waters, The American Journal of International Law

W. Michael Reisman, The Regime of Straits and National Seacurity: An Appraisal of International Lawmaking, The American Journal of International Law

D. H. N. Johnson, Some Legal Problems of International Waterways, with Particular Reference to the Straits of Tiran and the Suez Canal, The Modern Law Review

Ruth Lapidoth, The Strait of Tiran, the Gulf of Aqaba, and the 1979 Treaty of Peace between Egypt and Israel, The American Journal of International Law

Patterson, Minin: A Naval Strategy, Naval War C. Rew.

Garret Hardin, 'The Tragedy of the Commons', Science

Ed Couzens, International Environmental Law and Law-making, Individuals and Disasters: The Past and the Future of International Environmental Law,

Duncan French, Treaty Interpretation and the Incorporation of Extraneous Legal Rules, International and Comparative Law Quarterly

A. N. Yiannopoulos, The Unification of Private Maritime Law by International Conventions, Law and Contemporary Problems

Thomas J. Schoenbaum, Free International Trade and Protection of the Environment: Irreconcilable Conflict? The American Journal of International Law

Myres S. McDougal; William T. Burke; Ivan A. Vlasic, The Maintenance of Public Order at Sea and the Nationality of Ships, The American Journal of International Law

Ebere Osieke, Flags of Convenience Vessels: Recent Developments, The American Journal of International Law

I. Bostan, The History of Regulations Regarding Passage Rights Through the Strait of Istanbul During the Ottoman Empire Era

D. Shelton, A Step Forward in the Gabcikovo-Nagymaros Case, Environmental Policy and Law

N. Oral and B. Öztürk, The Turkish Straits; Maritime Safety, Legal and Environmental Aspects; Turkish Marine Research Foundation

The Closing and Reopening of the Dardanelles, The American Journal of International Law

Y. Güçlü, Turkey's Authority to Regulate Passage of Vessels Through the Turkish Straits, Journal of International Affairs

C. G. Fenwick, The New Status of the Dardanelles, The American Journal of International Law

J N Moore, 'The Regime of Straits and the Third United Nations Conference on the Law of the Sea', The American Journal of International Law

S. Toluner, Rights and Duties of Turkey Regarding Merchant Vessels Passig Through the Straits, Turkish Straits; New Problems, New Solutions

C. C. Joyner and J. M. Mitchell, Regulating Navigation through the Turkish Straits: A Challenge for Modern International Environmental Law, The International Journal of Marine and Coastal Law

G. Aybay, The Regulation Relating to the Turkish Straits

Peacetime Passage by Warships through Territorial Straits, Columbia Law Review

The Kiev and the Turkish Straits, The American Journal of International Law

G Plant, Navigation Regime in the Turkish Straits for Merchant Ships in Peacetime: Safety, Environmental Protection and High Politics, Marine Policy

Matteo Fornari, Conflicting Interests in the Turkish Straits: Is the Free Passage of Merchant Vessels still Applicable? The International Journal of Marine and Coastal Law

S. N. Nandan, Legal Regime for Straits Used for International Navigation, The Proceedings of the Symposium on the Straits Used for International Navigation

Conventions:

Convention Regarding the Regime of the Straits, Montreux, 20 July 1936

United Nations Convention on the High Seas, Geneva, 1958

United Nations Convention on the Law of the Sea, 1982

International Convention for the Prevention of Pollution from Ships, 1973

International Convention for the Safety of Life at Sea, 1974

Convention on the International Regulations for Preventing Collisions at Sea, 1972

Regulations:

1994 Maritime Traffic Regulations for the Turkish Straits and the Marmara Region

1998 Maritime Traffic Regulations for the Turkish Straits and the Marmara Region

Cases:

Anglo-Norwegian Fisheries case

Fisheries Jurisdiction (Judgment)

The Virginius case

Military and Paramilitary Activities case

Mosul case

Jurisdiction of the Courts of Danzig case

North Sea Continental Shelf case

Gabcikovo-Nagymaros Case

Lac Lanoux case

Trail Smelter case

Web Pages:

http://www.afcan.org/dossiers_techniques/tsvts_gb.html

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TUR_1994_Regulations.pdf

http://www.kegki.gov.tr/updir/USERSGUIDE.PDF

http://www.afcan.org/dossiers_techniques/tsvts_gb.html

http://www.imo.org/Safety/mainframe.asp?topic_id=387

http://en.wikipedia.org/wiki/Gallipoli

http://www.oceansatlas.com/unatlas/uses/transportation_telecomm/maritime_trans/nav/navigation.htm

http://www.imo.org/Safety/mainframe.asp?topic_id=278

http://www.opsi.gov.uk/si/si2002/20021473.htm

http://www.denizcilik.gov.tr/mevzuat/legislation.asp

http://www.oceansatlas.org/unatlas/about/internationalcooperationdrs/seemore2.html

http://mod.nic.in/samachar/dec15-01/html/ch5.htm

Other:

Proclamation with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, Sept. 28, 1945.

Stockholm Declaration on the Human Environment, on 16 June 1972

Rio Declaration on Environment and Development, 3 to 14 June 1992

Yearbook of International Law Commission

1 Tayfun Akguner, former dean of the Istanbul Kultur University; constitution and administration law professor.
2 A. N. Yiannopoulos, The Unification of Private Maritime Law by International Conventions; Law and Contemporary Problems, Vol. 30, No. 2, Unification of Law. (Spring, 1965), p. 370.
3 Reginald Custance, The Freedom of the Seas, Transactions of the Grotius Society, Vol. 5, Problems of Peace and War, Papers Read before the Society in the Year 1919. (1919), pp. 65-70.
4 A. N. Yiannopoulos, p.370
5 Cdr Manoj Gupta at http://mod.nic.in/samachar/dec15-01/html/ch5.htm
6 http://www.oceansatlas.org/unatlas/about/internationalcooperationdrs/seemore2.html
7 R. P. Anand, Maritime Practice in South-East Asia until 1600 A. D. and the Modern Law of the Sea; The International and Comparative Law Quarterly, Vol. 30, No. 2. (Apr., 1981), p.440
8 Jonathan Ziskind, International Law and Ancient Sources: Grotius and Selden; The Review of Politics, Vol. 35, No. 4. (Oct., 1973), p.543
9 Mare Clausum, pp.1232-1233
10 C. Just., IX, 47, 25; C. Thoe., IX, 40, 24; Mare Clausum, p.1251.
11 Mare Clausum, p.1189,1188 and 1185.
12 Jonathan Ziskind, p.559
13 Author of De Dominio Maris
14 For the discussion of the sources of cannon-shot and three-mile rules, see: Bernard G. Heinzen, The Three-Mile Limit: Preserving the Freedom of the Seas, Stanford Law Review, Vol. 11, No. 4. (Jul., 1959), pp. 602, 603.
15 Coleman Phillipson, Cornelius van Bynkershoek; Journal of the Society of Comparative Legislation, New Ser., Vol. 9, No. 1. (1908), p.36
16 C. J. Colombos, Territorial Waters, Transactions of the Grotius Society, Vol. 9, Problems of Peace and War, Papers Read before the Society in the Year 1923. (1923), p. 96.
17 Louis Henkin, Politics and the Changing Law of the Sea, Political Science Quarterly, Vol. 89, No. 1. (Mar., 1974), p. 48.

18 Proclamation with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, Sept. 28, 1945. Proclamation No. 2667, 10 Fed. Reg. 12303, 59 Stat. 884.

19 Philip Marshall Brown, Protective Jurisdiction over Marginal Waters, The American Journal of International Law, Vol. 47, No. 3. (Jul., 1953), p. 452.

20 Tomotaka Ishimine, The Law of the Sea and Ocean Resources, American Journal of Economics and Sociology, Vol. 37, No. 2. (Apr., 1978), p. 131.

21 Making Rules for Governing Global Commons: The Case of Deep-Sea Mining, Thomas Brauninger; Thomas Konig, The Journal of Conflict Resolution, Vol. 44, No. 5. (Oct., 2000), p. 610.

22 L. D. M. Nelson, The Emerging New Law of the Sea, The Modern Law Review, Vol. 42, No. 1. (Jan., 1979), p. 42.

23 Law of the Sea, the International and Comparative Law Quarterly, Vol. 25, No. 3. (Jul., 1976), p. 685.

24 J. C. Phillips, The Exclusive Economic Zone as a Concept in International Law, The International and Comparative Law Quarterly, Vol. 26, No. 3. (Jul., 1977), p. 587.

25 Law of the Sea, Problems of Conflict and Management of Fisheries in Southeast Asia, Proceedings of the ICLARM/ISEAS Workshop on the Law of the Sea Manila, Philippines, November 26-29, 1978; Edited by F. T. CHRISTY, JR, p.31

26 Prof. Dr. Arslan Gündüz, International Law Lectures, Istanbul Kultur University, 2000-2001; also: Bernard G. Heinzen, at 614; Lloyd C. Fell, Maritime Contiguous Zones, Michigan Law Review, Vol. 62, No. 5. (Mar., 1964), p. 848; R.R. Churchill and A. V. Lowe, The Law of the Sea, Third Edition, Juris Publishing, 1988, p. 51; Z. Oya Özçayır, Liability for Oil Pollution and Collisions, LLP, 1998, p. 393-5; Eric Jaap Molenaar, Coastal State Jurisdiction over Vessel-Source Pollution, Kluwer Law International, p. 185.

27 Shigeru Oda, the Territorial Sea and Natural Resources, The International and Comparative Law Quarterly, Vol. 4, No. 3. (Jul., 1955), p. 418.

28 Ibid. P. 420.

29 The Law of Territorial Waters, The American Journal of International Law, Vol. 23, No. 2, Supplement: Codification of International Law, (Apr., 1929), p. 262.

30 Lloyd C. Fell, p. 849.

31 Ibid, p. 850.

32 Ruth Lapidoth, The strait of Tiran, the Gulf of Aqaba, and the 1979 Treaty of Peace between Egypt and Israel; The American Journal of International Law, Vol. 77, No. 1, (Jan., 1983), p.91.

33 Anglo-Norwegian Fisheries case, [1951] I.C.J. Rep. 116, 132.

34 D. H. N. Johnson, Some Legal Problems of International Waterways, with Particular Reference to the Straits of Tiran and the Suez Canal, The Modern Law Review, Vol. 31, No. 2. (Mar., 1968), p. 158.

35 W. Michael Reisman, The Regime of Straits and National Seacurity: An Appraisal of International Lawmaking, The American Journal of International Law, Vol. 74, No. 1. (Jan., 1980), p. 57.

36 W. Michael Reisman, pp. 57, 58.

37 W. Michael Reisman, p. 58.

38 Fisheries Jurisdiction (Judgment), [1974] ICJ Rep. 3, 26.

39 W. Michael Reisman, p. 59.

40 W. Michael Reisman, p. 60.

41 W. Michael Reisman, p. 65.

42 Corfu Channel case (United Kingdom v. Albania), 1949 ICJ Rep. 4 (Judgment of April. 9).

43 Ruth Lapidoth, p. 91.

44 Ruth Lapidoth, p. 92.

45 1982 UNCLOS

46 Ruth Lapidoth, p. 95.

47 Patterson, Minin: A Naval Strategy, 23 NAVAL WAR C. REW. 52 (1971), at 486.

48 Letter from Senator Barry Goldwater to the author, July 23, 1976

49 W. Michael Reisman, pp. 68-9.

50 W. Michael Reisman, p. 70.

51 Ruth Lapidoth, p. 96.

52 Garret Hardin, 'The Tragedy of the Commons', 162 Science (1968) 1243-1248, www.sciencemag.org/cgi/content/full/162/3859/1243.

53 Ed Couzens, International Environmental Law and Law-making, Individuals and Disasters: The Past and the Future of International Environmental Law, p.76

54 Duncan French, Treaty Interpretation and the Incorporation of Extraneous Legal Rules, International and Comparative Law Quarterly, 2006, 55(2):281-314.

55 The Merchant Shipping (Safety of Navigation) Regulations 2002, http://www.opsi.gov.uk/si/si2002/20021473.htm; and Turkish legislation: http://www.denizcilik.gov.tr/mevzuat/legislation.asp

56 http://www.imo.org/Safety/mainframe.asp?topic_id=278

57 James Paw, Safety of Navigation; http://www.oceansatlas.com/unatlas/uses/transportation_telecomm/maritime_trans/nav/navigation.htm

58 Principle 12; Rio Declaration on Environment and Development

59 Thomas J. Schoenbaum, Free International Trade and Protection of the Environment: Irreconcilable Conflict? The American Journal of International Law, Vol. 86, No. 4. (Oct., 1992), pp. 701, 702.

60 Nico Schrijver, Sovereignty over natural resources, Balancing Rights and Duties; p. 232; reference been made to: Oppenheim (1912: 243-4)

61 Ibid, p. 238.

62 Eric Franckx, Vessel-source Pollution and Coastal State Jurisdiction, Kluwer Law International, 2001; p. 18.

63 Ibid, p. 18, footnote 12.

64 Ibid, p. 19.

65 Ibid, p. 20.

66 Nico Schrijver, p. 241.

67 Eric Jaap Molenaar, Coastal p. 27.

68 Myres S. McDougal; William T. Burke; Ivan A. Vlasic, The Maintenance of Public Order at Sea and the Nationality of Ships, The American Journal of International Law, Vol. 54, No. 1. (Jan., 1960), pp. 26-7.

69 *The Virginius* case, 2 Moore, Digest of International Law 895 (1906).

70 Ebere Osieke, Flags of Convenience Vessels: Recent Developments, The American Journal of International Law, Vol. 73, No. 4. (Oct., 1979), pp. 604.

71 Convention on the High Seas, 450 UNTS 82, Art. 5. Similar provision was included in the ICNT of the UNCLOS 1982, Art. 91(1), 94(1),(2).

72 Eric Jaap Molenaar, p. 185.

73 Ibid.

74 Ibid, p. 188.

75 Oppenheim, vol.1, 4.

76 Philippe Sands Q C, Principles of International Environmental Law, Iınd ed., Cambridge University Press, p.123.

77 Ibid, p. 126

78 Ibid, p. 127.

79 Ibid, p. 128

80 Ibid, p. 137

81 Ibid, 143-4.

82 Reference been made by the author to the Part 2 of the *Yearbook of International Environmental Law* with regard to the source of evidence of state practice in relation to environmental matters.

83 *Yearbook of International Law Commission* (1950-II), 368-72.

84 Philippe Sands Q C, p. 145.

85 (1969) ICJ Reports 3 at 44.

86 Philippe Sands Q C, p. 149.

87 Dinah Shelton, A Step Forward in the Gabcikovo-Nagymaros Case, Environmental Policy and Law, 31/4-5 (2001)

88 *Jurisdiction of the Courts of Danzig*, PCIJ Ser. B, No. 15, 27.

89 *Mosul* case, PCIJ Ser. B, No. 12, 32.

90 *Corfu Channel* case (1949) ICJ Rep. 22.

91 *Military and Paramilitary Activities* case (1986) ICJ Rep. 113-15 and 129-30.

92 Philippe Sands Q C, p. 151-2.

93 Four stand out in particular: the 1893 decision in the *Pacific Fur Seals Arbitration*, the 1941 decision in the *Trail Smelter* case, the 1957 award of the *Lax Lanoux Arbitration*, and the 2003 award in the *OSPAR Information* case.

94 Philippe Sands Q C, p. 153.

95 http://en.wikipedia.org/wiki/Gallipoli with reference to Crowley, Roger. 1453: *The Holy War for Constantinople and the Clash of Islam and the West*. New York: Hyperion, 2005, p. 31.

96 I. Bostan, The History of Regulations Regarding Passage Rights Through the Strait of Istanbul During the Ottoman Empire Era; N. Oral and B. Öztürk, The Turkish Straits; Maritime Safety, Legal and environmental Aspects, 2006; Turkish Marine Research Foundation, Istanbul. Publication Number 25; at p. 6.

97 The Closing and Reopening of the Dardanelles, The American Journal of International Law, Vol. 6, No. 3. (Jul., 1912), p. 707.

98 Y. Güçlü, Turkey's Authority to Regulate Passage of Vessels Through the Turkish Straits, Journal of International Affairs; March - May 2001 Volume VI - Number 1

99 C. G. Fenwick, The New Status of the Dardanelles, The American Journal of International Law, Vol. 30, No. 4. (Oct., 1936), p. 704.

100 Ibid.

101 E Brunel, International Straits, Vol II, Copenhagen, 1947, Part IV, especially at pp 255-259; R.R. Churchill and A. V. Lowe, p.102.

102 lndeed, they are arguably the fullest and best example.

103 J N Moore, 'The Regime of Straits and the Third United Nations Conference on the Law of the Sea', The American Journal of International Law, Vol 74, 1980, pp 111 and 114; S. N. Nandan, Legal Regime for Straits Used for International Navigation, the Proceedings of the Symposium on the Straits Used for International Navigation, 16-17 Nov. 2002, Ataköy Marina, Istanbul – Turkey, p.5; Matteo Fornari, Conflicting Interests in the Turkish Straits: Is the Free Passage of Merchant Vessels still Applicable?, The International Journal of Marine and Coastal Law, Vol 20, No 2, p. 226, 238; C. L. Rozakis, P. N. Stagos, International Straits of the World, the Turkish Straits, Martinus Nijhoff Publishers, 1987, p. 75; Y. Güçlü, ibid at p. 7; G Plant, Navigation Regime in the Turkish Straits for Merchant Ships in Peacetime: Safety, Environmental Protection and High Politics, Marine Policy, Vol. 20, No. 1, 1996, p. 15-27; E. J. Molenaar, p. 285, footnote 10, p. 307 and 311-5, B. B. Jia, The Regime of Straits in International Law, Clarendon Press – Oxford, 1998, p. 109.

104 C. L. Rozakis, P. N. Stagos, p. 101.

105 Done at Louzanne, 24 July 1923.

106 C. L. Rozakis, P. N. Stagos, p. 42.

107 In this respect H. Gary Knight states: "A review of the history of the Turkish Straits, particularly the Treaty of Lausanne (1923) ans the Montreux Convention (1936), does not provide any indication of the intent of the negotiations with respect to aircraft carriers." and continues: "Thus, in spite of the general statement in Article 1 that the parties to the Convention 'recognize and affirm the principle of freedom of transit and navigation by sea in the Straits,' the history of the negotiations makes it clear that some restrictions were intended to be placed on navigation both by black Sea powers and by other nations. It is therefore not inconsistent with this intent to conclude that transit of aircraft carriers of the Black Sea powers is forbidden by the Convention."; The Kiev and the Turkish Straits, The American Journal of International Law, Vol. 71, No. 1. (Jan., 1977), p. 127; also R.R. Churchill and A. V. Lowe, p. 115: 'Aircraft carriers are expressly excluded from the right of passage under the Convention'.

108 C. L. Rozakis, P. N. Stagos, 104-5.

109 Articles 2-7.
110 Articles 8-22. For peacetime passage of warships through the territorial straits in general, see: Peacetime Passage by Warships through Territorial Straits, Columbia Law Review, Vol. 50, No. 2. (Feb., 1950), pp. 220-225.
111 Convention Regarding the Regime of the Straits, The American Journal of International Law, Vol. 31, No. 1, Supplement: Official Documents. (Jan., 1937), p. 10.
112 Article 2 of the Convention.
113 Article 3 of the Convention.
114 Article 4 of the Convention.
115 Article 5 of the Convention.
116 19 July 1979, Tirinidad and Tobago, Caribbean Sea.
117 16 March 1987, Atlantic Ocean, off Portsall, Britanny.
118 24 March 1989, United States, Prince William Sound, Valdez, Alaska.
119 18 March 1967, United Kingdom, Lands End.
120 15 November 1979, Turkey, Bosphorus Strait near Istanbul.
121 15 February 1996, United Kingdom, Mill Bay near entrance to Milford Haven Harbor port.
122 1982 CLOS, Part XII, Article 192.
123 Ibid, Art. 194(1).
124 P. W. Birnie and A. E. Boyle, International Law and the Environment, Oxford University Press, p. 109.
125 Plant 1996, p. 18, n. 20; also Plant 1985, p. 134 who submits that TSSs within territorial sea or internal waters 'are operative without any need for IMO approval'. In the Explanatory Note to the 1996 Decree of the Netherlands, which regulates navigation in the territorial sea, express reference is made to Rule 1(b) COLREG 72.
126 E. J. Molenaar, p. 209-10.
127 Ibid, p. 298.
128 Protocol Relating to the1973 International Convention for the Prevention of Pollution from Ships, London, 1978.
129 P. W. Birnie and A. E. Boyle, p. 440.
130 International Oil Pollution Prevention Certificate, Annex I, Regulations 4 and 5.
131 Art. 5(1) and (2).
132 Art. 5(2).
133 P. Sands Q C, p. 441.
134 E. J. Molenaar, p. 70.
135 Ibid, p. 298-9.
136 http://www.imo.org/Safety/mainframe.asp?topic_id=387
137 Both, of the Montreux Convention.
138 Maritime Traffic Regulations for the Turkish Straits and the Marmara Region, published in the Turkish Official Gazette, 11 Jan. 1994, and corrected in the Official Gazette, 21 June 1994: LOSB, No 27, 62 ff. (1995) 10 IJMCL 570 ff.
139 Articles 7-9, 29-30.
140 Articles 2, 29-30.
141 Articles 42 and 52.
142 Article 24.
143 Article 25.
144 B. B. Jia, 114.
145 C. C. Joyner and J. M. Mitchell, Regulating Navigation through the Turkish Straits: A Challenge for Modern International Environmental Law, The International Journal of Marine and

Coastal Law, p. 531.
146 1994 Regulations, Article 25; according to Article 11 of Port Law 618. This provision was omitted in the 1998 Regulations upon the strong objections, as vessels voilating a TSS should be subject only to the Flag State jurisdiction: Plant, cit. fn. 102, p. 21.
147 Regulation 13.
148 Regulation 11.
149 C. C. Joyner and J. M. Mitchell, p. 532.
150 During storms with strong southerly winds, the strenght of surface currents weaken, and even reverse in places, a phenomenon known in Turkish as "orkoz".
151 A "large vessel" is defined as one having a lenght overall of 200m or more, 1998 Regulations, Regulation 2(k).
152 "Deep draught" vessels are defined as vessels with a draught greater than or equal to 15m. Ibid, Regulation 2(j).
153 "Hazardous" cargo is defined as "cargo which is classified as dangerous (including petroleum and its derivates) by International Maritime Organisation or those substances in the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 and in its annexes as pollutants...", 1994 Regulations, Article 2(h)(2).
154 1998 Regulations, Regulation 35.
155 Ibid, Regulation 36: When visibility within the Istanbul Strait drops below two miles, vessels are required to maintain continuous use of their radar. When visibility drops to less than one mile, vessel traffic in the strait is permitted only in one direction. During this time, vessels carrying "dangerous/hazardous cargo, as well as large and deep draft vessel" are not permitted to enter the strait. Turkish Authorities will suspend vessel traffic if visibility drops below 0.5 mile in the Istanbul Strait.
156 1998 Regulations, Regulation 26.
157 Ibid, Regulation 25.
158 Ibid, Regulation 14. A cable is a unit of nautical lenght, equivalent to 720 feet (220m) in the United States, or 608 feet (185m) in the United Kingdom. Eight cables would aproximate 1,600m. Depending on the vessel type, distances between vessels may be increased by the Traffic Control Centre.
159 Ibid, Regulation 29.
160 Maritime and Oceans Law and Research Centre, *Turkish Straits* (Istanbul, Turkey, Bilgi University, 2001), p.25.
161 C. C. Joyner and J. M. Mitchell, pp. 532-3.
162 http://www.afcan.org/dossiers_techniques/tsvts_gb.html
163 For detailed research on TSVTS, see: A.N. Ince and E. Topuz, Modeling and Simulation for Safe and Efficient Navigation in Narrow Waterways, The Journal of Navigation, 2004, Vol. 57, pp.53-71; S. Tarhan, An Overview on the Turkish Straits Vessel Traffic Service and Information System, Postgraduate Study Thesis, Marmara University, Istanbul, 2003
164 Text available on http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TUR_1994_Regulations.pdf The 1998 Regulation replaced an earlier set of Regulations, adopted by Ankara and entered into force in 1994.
165 M. Fornari, p. 226.
166 Capt. F.X. Pizon at http://www.afcan.org/dossiers_techniques/tsvts_gb.html
167 M. Fornari, p. 235.
168 Ibid, p. 236.
169 "l'exercice légitime du droit de contrôle administratif et de police judiciaire", *Actes de la Conférence de Montreux (22 Juin-20 Juillet), Compte Rendu des Séances Plénières et Procès-Verbal des Débats du Comité Technique*, 1936, p. 123, 256.
170 "droit de police et de compétence judiciare", *Actes*, p. 214.
171 "l'exercice dans la zone des Détroits de son autorite, notamment en ce qui concerne la police de la navigation", *Actes,* p. 236.

172 "non-perturbateur", *Actes*, p. 32, 45, 214.

173 S. Toluner, Rights and Duties of Turkey Regarding Merchant Vessels Passig Through the Straits, in "Turkish Straits; New Problems, New Solutions" published by Foundation for Middle East and Balkan Studies, 1995, Istanbul, at p. 28-9.

174 Y. Güçlü, ibid.

175 S. Pınarakar, Legal and Political Regime of the Turkish Straits and Turkey's right to Regulate the Passage, Postgraduate Study Thesis, Marmara University, Istanbul, 1998, p. 89-90.

176 Y. Güçlü, Ibid.

177 P. W. Birnie, A. E. Boyle, p.365

178 E. J. Molenaar, p. 210.

179 Ibid, 211.

180 On the issue, see: N. Ünlü, Binding Force of the Montreux Convention on the Third States, Ph.D. thesis entitled "the Montreux Convention and the Development of the Legal Regime of the Turkish Straits".

181 Y. Güçlü.

182 Ibid.

183 G. Aybay, The Regulation Relating to the Turkish Straits; D. Aydın, The Regime for the International Straits and Turkey's Right to Regulate the Passage from the Environmental Dimension, Postgraduate Study Thesis, Marmara University, Istanbul, 2002, p. 124