THE CONTRIBUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS TO THE INTERPRETATION OF THE CONVENTION ON THE LAW OF THE SEA

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ABSTRACT

The Article focuses on the cases heard by the European Court of Human Rights (ECtHR) which encompass the interpretation of the 1982 United Nations Convention for the Law of the Sea (UNCLOS). After presenting the general overview of the Court's maritime-related jurisprudence the author aims at revealing the 'maritime issues' that are most often subject to the judicial scrutiny under the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The research implies that the most extensive analysis has been conducted by the ECtHR in the 'maritime cases' related with the exercise of state jurisdiction at sea (including the arrest of vessels and crews, treatment of sea migrants, *etc.*). The Court has been quite often called upon to establish whether there had been a violation of the right to inviolability of a person (Article 5 of the ECHR), in other cases it assessed the alleged violations of the prohibition of torture and inhuman or degrading treatment (Article 3 of the ECHR), the right to an effective remedy (Article 13 of the ECHR), on a more rare occasions dealt with other issues in maritime context, such as property rights (Article 1 of Protocol 1 of the ECHR) or forced labour (Article 4 of the ECHR). The interpretation of the UNCLOS provisions by the ECtHR in the light of the ECHR creates a relevant and specific contribution to the development of the law of the sea, enriches the interpretation of international treaties and human rights standards.

Keywords

United Nations Convention on the Law of the Sea (UNCLOS); Convention for the Protection of Human Rights and Fundamental Freedoms. (ECHR), interpretation of international treaties, maritime cases, maritime jurisprudence, jurisdiction at sea, *etc.*

1. INTRODUCTION

In the contemporary world of often overlapping jurisdiction, there are numerous situations where international courts and tribunals are called upon to interpret different international treaties. In this respect, the so-called MOX Plant case[1], which went through a great number of dispute settlement procedures, is perhaps a good illustrative example. The interaction among the international courts that encompass the interpretation of different international treaties has been the object of the analysis by scholars who refer to this cooperation as to a 'dialogue', 'fragmentation', 'reconciliation' or simply 'competing jurisdictions'[2]. The European Court of Human Rights (ECtHR or Court) in safeguarding the standards under the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is also called upon to decide cases that require the interpretation of many other international treaties, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS)[3]. The current analysis is devoted to this European dimension.

The rules for conduct on maritime space established under the UNCLOS form a rather complicated system entitling the coastal states, the flag states and other states to exercise jurisdiction in different situations, the rules of jurisdiction also depend on a particular maritime zone. The evolution of the law of the sea and the contemporary challenges such as military uses of the sea or sea migration reveal that despite the exhaustiveness of the UNCLOS

it has always retained a rather wide space for the interpretation of its provisions. And this could be said not only about the provisions that are vague or obscure but also the self-executing rules. In this respect, the examples may be the right of visit on the high seas that may be exercised by a warship in established cases (piracy, slave trade, *etc.*)[4] or the right to approach the ship and to arrest the ship and the crew for the violations of a particular State's requirements applicable in its maritime zones[5]. Arrest of vessels and crews is inevitably related with the status of these serving on board and the restrictions of liberty and security of a person, the right protected under the Article 5 of the ECHR. One may also assume that sea migration raises human rights issues that could fall under the ECHR.

The Article aims at identifying the cases where the ECtHR is called upon to interpret the UNCLOS. The author seeks to briefly present a general overview of such jurisprudence, to identify the human rights that are most usually interpreted in the 'maritime cases' and to evaluate how the interpretation correlates with the case law of the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS) or the Permanent Court of Arbitration (PCA). The research is conducted by applying the usual methods of analysis (systemic and comparative analysis, historical, *etc.*). The ECtHR jurisprudence forms the background of the sources used, the analysis is also based on the provisions of the ECHR and the UNCLOS, in addition, the scholars' views and insights are referred to.

2. 'MARITIME CASES' BEFORE THE ECTHR

2.1. A General Overview

ECtHR has in many cases been called upon to judge on possible human rights violations related with maritime matters, however, the search in the HUDOC database reveals that there have been some five cases before the Court so far concerned with the application and interpretation of the UNCLOS[6]. Noteworthy is that the majority of them have been decided by the Grand Chamber[7]; this confirms the complexity of the issues raised. In these 'maritime cases' the Court was called upon to decide on the right of liberty and security of a person (Article 5 of the ECHR), the judgments revealed the violation of the prohibition of torture and inhuman or degrading treatment or punishment (Article 3 of the ECHR), the right to an effective remedy (Article 13 of the ECHR), property rights (Article 1 Protocol 1 of the ECHR), prohibition of slavery and forced labour (Article 4 of the ECHR), prohibition of collective expulsion of aliens (Article 4 Protocol 4 of the ECHR). In the cases before the Grand Chamber, the applicants complained against France, Spain, Italy and Turkey[8]. The factual background of the applications has been mainly related with different aspects of the exercise of States' jurisdiction at sea, such as arrest of vessels and crews, treatment of seafarers or sea migration[9].

Although in many cases the ECtHR examined situations related with the events that occurred in maritime context, however, it did not necessarily refer to the provisions of the UNCLOS each time. The detailed reasons for the application and interpretation of the UNCLOS or disregarding it could be a separate issue for analysis that this article is not much focused on. Still, in this respect the author would like to provide an illustration of at least one case heard by the ECtHR recently[10].

In *Bakanova v. Lithuania*[11] the widow of the Lithuanian mechanic in ship who was found dead on the morning of 24 October 2007 in his cabin in cargo ship 'Vega' near Brazil (in the Atlantic Ocean near the Brazilian port of Imbituba) sought to prove that Lithuanian authorities failed to conduct an effective investigation of the death of her husband. The case raised the issue of the interpretation of the right to life, Article 2 of the ECHR[12], and, from the law of the sea perspective, the issue of jurisdiction. The Court's reasoning much focused on the procedural issues, namely, whether the investigation by the Lithuanian authorities was adequate, however, it did not elaborate on the exercise of jurisdiction by each of the countries involved. Under a general rule of jurisdiction in the territorial sea or internal waters[13], the coastal State authorities usually do not intervene if the event on board has no consequences to the coastal State or there is no request of the flag State or other grounds[14]; although there are differences as regards administrative and criminal jurisdiction and generally and particularly in this case the territorial principle allowed exercising Brazilian jurisdiction (Brazil authorities started

investigation, questioned the ship's captain and the engineer, concluded that no crime had taken place, Brazil doctor indicated acute heart attack as the cause for death, *etc*.). Lithuanian authorities also started investigation, however, much relied on the findings of the Brazilian authorities. The pre-trial investigation was discontinued and resumed several times; witnesses recalled that there had been fires and gas leaks on the board of the ship 'Vega' and the applicant pointed that her husband had never complained about the health and had no heart problems. The ECtHR referred to the Law on Maritime Shipping of the Republic of Lithuania in supporting or merely stating the flag State jurisdiction over the ship sailing its flag in administrative, labour and civil matters; however, this rule is also established in the UNCLOS[15]. Although both States had grounds for exercising jurisdiction in respect of different matters, there might have been certain gaps in cooperation: the applicant among other arguments drew attention to the facts of non-participation of Lithuanian diplomatic agents in the investigation and the delay of Lithuanian authorities in asking Brazilian authorities for legal assistance. The Court reiterated its jurisprudence that "instances of the extraterritorial exercise of jurisdiction by a state include cases involving the activities on board of ships registered in, or flying the flag of, that state."[16] Finally, the violation in the procedural aspect of Article 2 was found[17]. Thus, in this case the ECtHR did not directly refer to the UNCLOS, although certain provisions thereof, namely, these regarding the exercise of jurisdiction by a flag State or coastal (port) State could have been relied on. On the other hand, this has not prevented the Court from accomplishing its tasks in this case (the conduct of States that are not members of the Council of Europe is outside the Court's jurisdiction).

2.2 Jurisdiction-related Issues

Issues of jurisdiction in the law of the sea and International Law in general may imply rather complicated situations. Different reasons foster such developments: increasing number of international treaties and, respectively, dispute settlement mechanisms and bodies, which they establish, expanding competencies of International Organisations, specific categories of disputes, *etc*. Despite the fact that the majority of the world's seas and oceans are divided into maritime zones, responsibility areas for search and rescue operations and other zones of states' responsibility, the division of powers on maritime space is seldom a simple issue. Throughout the centuries, states' efforts to expand their powers in the ocean space have been quite vivid, either through the territorial claims or the exercise of jurisdiction on the high seas or otherwise. The UNCLOS formulates the grounds for the exercise of the states' jurisdiction as a rule or sometimes as a possibility. The issue of jurisdiction before the ECtHR is confined to establishing whether the applicant was within the jurisdiction of a Member State at the moment of the alleged violation[18]. If the situation is related with, e.g. the jurisdiction on the high seas, the Court may find it necessary to rely also on the UNCLOS.

In the maritime cases related with the jurisdiction on the high seas the ECtHR reaffirmed the flag State jurisdiction principle: "a vessel sailing on the high seas is subject to the exclusive jurisdiction of the State of the flag it is flying"[19]. The Court also reminded the possibility to apply nationality principle: "nationality <…> could be pleaded as an alternative to the principle of the flag state."[20] This reasoning corresponds to the UNCLOS rules[21] and the provisions of the 1952 Brussels Convention[22].

The case *Medvedyev and others v. France* revealed interesting questions as to the interpretation of jurisdiction at sea in terms of the ECHR and the UNCLOS (also other treaties regulating the right to board and inspect a foreign ship on the high seas). The Court stated that "extraterritorial exercise of jurisdiction by a State includes cases involving the activities of its diplomatic or consular agents abroad and on board aircraft and ships registered in, or flying the flag of, that State. In these specific situations, customary international law and treaty provisions have clearly recognised and defined the extraterritorial exercise of jurisdiction by the relevant State."[23] It is interesting to note that in its jurisprudence the Court emphasised the importance of the degree of control among other facts relevant for establishing jurisdiction, especially when it is extraterritorial. In the case *Hirsi Jamaa and others v. Italy* it stated that "the question whether exceptional circumstances exist which require and justify a finding by the Court that the state was exercising jurisdiction extraterritorially must be determined with reference to the particular facts, for example

full and exclusive control over a person or a ship"[24]. In this case the ECtHR recognised that "in the period between boarding the ships of the Italian armed forces and being handed over to the Libyan authorities, the applicants were under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities"[25]. For the Court such exercise of control was enough to establish its jurisdiction under the ECHR, it considered the "speculation as to the nature and purpose of the intervention of the Italian ships on the high seas" to be irrelevant[26].

Providing for the flag State jurisdiction as the main rule on the high seas, the UNCLOS also grants other than the flag States the right to exercise jurisdiction in defined situations, mostly these where there is a need for international cooperation as, e. g. the fight against the sea piracy. Some of these grounds, e.g. unauthorised broadcasting or slave trading, need already to be interpreted in the light of the development of the law of the sea[27]. States strive to exercise jurisdiction on the high seas also on the grounds other than these foreseen by the UNCLOS, e.g. justifying their interference by the prevention of the risk to their coast.

In *Medvedyev and others v. France* the ECtHR identified the lacuna in Article 108 and other provisions of the UNCLOS regulating jurisdiction on the high seas in comparison to the fight against illicit trafficking in drugs: "not only are the provisions concerning the fight against drug trafficking minimal – in comparison with those concerning piracy, for example, on which there are eight Articles, which lay down, *inter alia*, the principle of universal jurisdiction as an exception to the rule of the exclusive jurisdiction of the flag State – but fighting drug trafficking is not among the offences, listed in Article 110, suspicion of which gives rise to the right to board and inspect foreign vessels"[28], i.e. to exercise the right of visit. Among the grounds for the right of a warship to verify the ship's right to sail the flag (and possibly proceed with a further examination) drug trafficking is not listed, differently from other grounds allowing not only the flag State to intervene. Under the 1988 Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances[29] a State Party to the treaty may request permission from the flag state to board a vessel suspected of trafficking in illegal drugs[30], otherwise it is not allowed. This treaty also provides for measures of states' cooperation and obligations to criminalise such acts, to start proceedings, *etc*.

The UNCLOS rules for State interference on the high seas are based on certain rationale: each situation (crime) may require a different approach and implies a different balance between the rights of a flag State and other States. The grounds for interference on the high seas may be divided into these seeking justification in the need to maintain peace and security, these which aim to maintain a *bon usage* of the 'internal order' of the oceans and these which pertain to the general welfare and the *ordre public* of international community or 'external order' of the oceans[31]. The grounds for jurisdiction on the high seas have been also developed in practice. This was also noted by the ECtHR which in the case *Kebe and others v. Ukraine* "[took] note of various provisions of (customary) international maritime law which concern powers and duties of different States and other actors involved in maritime traffic", however, the Court stated it "[did] not have to decide whether and how those provisions applied in the present case, as its subject-matter [concerned] Ukraine's exercise of its sovereign powers to control the entry of aliens into its territory"[32]. Thus, the ECtHR usually confines to its primary task of establishing the jurisdiction of a respondent State, party to the ECHR, and subsequently, the Court's jurisdiction.

The legal implications of the sea migration in the context of the refugee crisis which the European States have faced during the recent years, including the issue of jurisdiction, has been analysed by the ECtHR in the case of *Hirsi Jamaa and others v. Italy*[33]. A group of Somali and Eritrean nationals who left Libya with the aim of reaching the Italian coast was intercepted by Italian authorities and handed over to the Libyan authorities. Although the Government argued that the obligation to save human lives on the high seas as provided for by the UNCLOS and exercised by Italian ships had not in itself created a link between the State and the persons concerned establishing the State's jurisdiction, the Court confirmed Italy's jurisdiction: "the events took place entirely on board ships of the Italian armed forces, the crews of which were composed exclusively of Italian military personnel and <…> the applicants were under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities".[34] The Court noted that

it was aware of the considerable difficulties related to the phenomenon of migration by sea, involving for States additional complications in controlling the borders in southern Europe; however, reminded the absolute nature of the *non-refoulement* principle and of the prohibition of torture and inhuman or degrading treatment under the Article 3 of the ECHR[35]. Therefore, the violation of this provision was established as the Italian authorities knew or should have known that, as irregular migrants, the applicants would have been exposed in Libya to treatment in breach of the Convention[36]. Examining whether the transfer of the applicants amounted to the violation of the prohibition of collective expulsion of aliens the ECtHR also answered in the affirmative: it saw no obstacle to accepting that the exercise of extraterritorial jurisdiction by Italy took the form of collective expulsion (Article 4 of Protocol 4 of the ECHR). The Court added that "the special nature of the maritime environment cannot justify an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention which the States have undertaken to secure to everyone within their jurisdiction"[37].

2.3 UNCLOS and other Sources of the Law of the Sea

With the decades from the adoption of the UNCLOS the titling it as a 'Constitution for the oceans' has been superseded by emphasizing the need of its effective implementation. On the occasion of the 30th anniversary, the Secretary General of the United Nations stated: "Like a constitution, it is a firm foundation, a permanent document providing order, stability, predictability and security – all based on the rule of law"[38]. UNCLOS partly codified the customary law of the sea, retained provisions of the 1958 Geneva Conventions on the Law of the Sea[39], although certain concepts and rules are the result of a progressive development of law. The consensus reached on the text, however, may not prevent different interpretation by States.

As other international courts and tribunals, scholars and judges,[40] the ECtHR emphasized that the UNCLOS is the consolidation of customary law: "the purpose of the Montego Bay Convention was, *inter alia*, to codify or consolidate the customary law of the sea…"[41]; although it recognised the lack of unity and agreement among States on certain issues: "its provisions concerning illicit traffic in narcotic drugs on the high seas <…> reflect a lack of consensus and of clear, agreed rules and practices in the matter at the international level."[42]

The ECtHR has given substantial insights into the sources of the law of the sea: "Diplomatic notes are a source of international law comparable to a treaty or an agreement when they formalise an agreement between the authorities concerned, a common stance on a given matter or even, for example, the expression of a unilateral wish or commitment."[43] In such way reference was made to a unilateral act or diplomatic assurance as a source of law and that it may amount to an international treaty if creates binding obligations on States. In this respect, one may recall several cases where assurances given by a Prime Minister or a Foreign Minister or other diplomatic notes created binding obligations on states[44].

Today such maritime powers as the USA are not parties to the UNCLOS. The expansion of the UNCLOS' applicability would contribute to a unanimous maritime order, although part of the UNCLOS' provisions in respect of non-parties are applicable as reflecting customary international law. For example, in territorial and maritime dispute *Nicaragua v. Columbia*[45] the ICJ reiterated the Parties' mutual understanding that many provisions of the UNCLOS, including the delimitation of the continental shelf and others reflected customary law and therefore were applicable to their dispute. The ECtHR suggested that "in any event, for States that are not parties to the Montego Bay and Vienna Conventions one solution might be to conclude bilateral or multilateral agreements, <…> with other States."[46]

Important to note is that according to the UNCLOS Article 311 and the principle *pacta tertiis nec nocent nec prosunt* (also established in Article 34 of the Vienna Convention on the Law of Treaties[47]) the relations between a State Party to the UNCLOS and a State that is not the so called Geneva Conventions on the Law of the sea should apply. However, this does not preclude the agreement of states, one of which is not yet a party to the UNCLOS, to apply particular UNCLOS provisions to their relations or dispute as customary law or the rules of progressive development of law (particularly if a specific rule of the 1958 Geneva Conventions

is recognised as 'outmoded' by International Court of Justice or other international tribunal or arbitration)[48].

2.4 Deprivation of Liberty

Arrest of vessels and crews is often applicable for the misconduct of foreign ships and vessels in maritime space. The application of criminal liability for violations at sea is a rather problematic and much discussed issue[49]. UNCLOS provides for certain rules, restricting the application of this most severe liability form[50]. The ECtHR noted a tendency to use criminal law as a means of enforcing the environmental obligations imposed by European and International Law[51]. Many stakeholders draw attention to the status of these on board ships, for example, the association of seafarers BIMCO[52] emphasizes the "unfair treatment of seafarers" and refers to it as a "worldwide phenomenon", International Maritime Organisation points the need of a thorough investigation and adequate approach[53].

The interaction between the courts (tribunals) in interpreting sea law sources in cases related with the arrest of vessels and crews is seen in the case *Mangouras v. Spain*, where the Court relied on the UNCLOS, EU law, the case law of ITLOS (Tribunal) and other sources. The case was related with an oil spill in the Exclusive Economic Zone of Spain caused by ship 'Prestige', flying the flag of the Bahamas, and the arrest of a seafarer and the ship's master. The Court summarized the Tribunal's jurisprudence in setting the amount of a bond and the difference in the cases heard[54]. Having admitted that the bail had been quite high in that case, the ECtHR upheld the domestic court's view that the divergence from the Court's jurisprudence has been satisfied "in view of the legal interest being protected, the seriousness of the offence in question and the disastrous environmental and economic consequences of the oil spill"[55] and the special consequences of the case. Therefore the deprivation of liberty was justified and no violation of the ECHR Article 5, Para 3, was found.

Assessing the deprivation of liberty through the threshold of the ECHR the Court contributed to the Tribunal's reasoning in the cases of the release of vessels and crews. The Court made the assessment subject to certain additional standards (e.g. the aim and the guarantee of Article 5 Para 3). Having reiterated that the guarantee provided for by Article 5, Para 3, of the ECHR is designed to ensure not the reparation of loss but, in particular, the appearance of the accused at the hearing, the Court examined the issue through the following aspects: the necessity, capacity of the accused to pay the bill, the professional environment and, in addition, "the growing and legitimate concern both in Europe and internationally in relation to environmental offences"[56].

2.5 Other Issues

The jurisprudence of the ECtHR where the reference was made to the UNCLOS also encompasses cases related with other rights, mainly, property rights and prohibition of forced labour, however, there have been only few such disputes brought before the Court so far.

In the case *Islamic Republic of Iran Shipping Lines v. Turkey* "[t]he applicant company alleged that the seizure by the Turkish authorities of the cargo aboard a Cypriot-owned vessel of which it was time charterer had constituted an unjustified control of the use of property within the meaning of Article 1 of Protocol No. 1."[57] The Court was called upon to analyse the alleged violation of property rights in the situation related with the vessel's passage through the Bosphorus. The case encompassed the issue of reliance on the UNCLOS only through the questions on the exact meaning and scope of applicable law: the 1936 Montreux Convention, rules of customary international law governing transit passage through straits and national law provisions prohibiting arms smuggling[58]. The judgement referred to the provisions of UNCLOS regulating the passage through straits[59], however, the Court considered the 1936 Montreux Convention to be a *lex specialis* as concerns the transit regime through the Bosphorus Strait[60]. The Court made the evaluation of the seizure subject to the test of proportionality and the legitimate aim and concluded that "the authorities' interference with the applicant company's rights is disproportionate and unable to strike a fair balance between the interests at stake"[61] and established the violation of Article 1, Protocol 1.

In the case *J. and others v. Austria*,[62] the applicants, three nationals of the Philippines, complained that the Austrian authorities had failed to undertake effective and exhaustive investigations into their allegations that they

had been the victims of human trafficking and subject to ill-treatment by the employers in Dubai who had taken them to Austria to look after their children. The applicants claimed to be the victims of the violation of Article 4 of the ECHR. The ECtHR provided a rather exhaustive analysis on human trafficking and listed UNCLOS among the treaties regulating the issue[63]. The Court provided relevant examples as to the behaviour amounting to the prohibition of forced or compulsory labour: under the European Social Charter, this guarantee "may be infringed, for example, by criminal punishment of seamen who abandon their post, even when the safety of a ship or the lives or health of the people on board are not at stake"[64]. The present dispute on the alleged violation of Article 4 was mainly related with the Austria's exercise of jurisdiction. It was established that the Austrian authorities complied with their duty to protect the applicants as (potential) victims of human trafficking, despite their decision to discontinue the investigation into the applicants' case concerning the events in Austria, as they had no jurisdiction over the alleged offences committed abroad.[65] The Court thus found no violation of Article 4 of the ECHR.

3. CONCLUSION

In commemoration of the 30 years of adoption of the UNCLOS Judge of the ICJ Christopher Greenwood referred to "remarkable harmony" between the pronouncements by the ICJ, the ITLOS and Annex VII arbitration tribunals; also noted a "consistent determination to achieve a clear and coherent jurisprudence across all relevant bodies"[66]. The ICJ has really developed a rich jurisprudence in maritime cases followed by other courts and tribunals; however, the UNCLOS is already being interpreted not only by the bodies which the States select for their maritime dispute resolution under the UNCLOS Part XV, Article 287, but also other international courts such as the ECtHR.

The contribution of the ECtHR to the interpretation of the UNCLOS is specific (determined by the Court's jurisdiction) but not unexpected. In the contemporary world of a rather considerable number of dispute settlement bodies, mechanisms and expanding case law, courts and tribunals are called upon to adjudicate cases applying many different legal sources. The ECtHR, safeguarding human rights standards under the ECHR, has been more often called upon to clarify human rights issues in maritime context recently. Not in all such cases, the ECtHR finds the reference to the UNCLOS necessary or the UNCLOS is sometimes only mentioned among the sources of relevant applicable law, however, it is not relied on in the further analysis. The cases encompassing the reference to the UNCLOS have been mainly related with different aspects of the exercise of States' jurisdiction at sea. Most often, such cases raised the issues of the deprivation of liberty, prohibition of torture and inhuman or degrading treatment, also the right to an effective remedy, prohibition of collective expulsion of aliens, on separate occasions – property rights and prohibition of forced labour. Having made the conduct at sea subject to the ECHR standards, the Court has enriched the perception of the UNCLOS and other sources of the law of the sea, applicable law, arrest of vessels and crews, jurisdiction exercised by state authorities at sea and other categories and in such way contributed to the development of the law of the sea, the interpretation of international treaties and human rights standards.

NOTES

1. *Ireland v. United Kingdom*. The case was related with the building and operation of the Mox Plant at Sellafield (the Irish Sea, United Kingdom) which was intended to reprocess the nuclear fuel and therefore threatened the status of sea environment. The dispute was brought before the International Tribunal for the Law of the Sea (provisional measures) and the Permanent Court of Arbitration (merits) under the United Nations Convention on the Law of the Sea, Case No 2002-01 <https://www.pcacases.com/web/view/100>, the OSPAR Commission under the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), Award of 2 July 2003 in the Dispute Concerning Access to Information Under Article 9 of the OSPAR Convention, and the European Court of Justice, *Commission of the European Communities v. Ireland*, Case No C-459/03. The case was suspended and finally withdrawn from the International Tribunal for the Law of the Sea and the Permanent Court of Arbitration, also the OSPAR Commission as the European Union law established certain duties for the Member States to use remedies under the European Union law, including the dispute settlement before the Court of Justice of the European Union. The Grand Chamber of the Court of Justice ruled that "by instituting dispute-settlement proceedings against the United Kingdom of Great Britain and Northern Ireland under the United Nations Convention on the Law of the Sea concerning the MOX plant located at Sellafield (United Kingdom), Ireland has failed to fulfil its obligations under Articles 10 EC and 292 EC and under Articles 192 EA and 193 EA". Article 292 of the then Treaty establishing the European Community (EC Treaty, now Article 344 of the Consolidated version of the Treaty on the Functioning of the European Union, C:2016:202:TOC) and Article 193 of the European Atomic Energy Community Treaty (EA Treaty, C:2016:203:TOC) establish the duty of the Member States not to submit a dispute concerning the interpretation or application of the Treaty to any method of settlement other than those provided for therein. For more information about the case see <http://www.haguejusticeportal.net/index.php?id=6164>
2. These works focus on issues of concurrent jurisdiction or, subsequently or separately, treaty interpretation. For example, Judge of the International Court of Justice Antônio Augusto Cançado Trindade refers to a jurisprudential cross-fertilization and expresses the need for a unity in law and equal justice: "It is thus to be expected that contemporary international tribunals remain increasingly aware of the case-law of each other, in their continuing performance of their common mission of imparting justice in distinct domains of international law, thus preserving its basic unity". Reflections on a century of International Justice: developments, current state and perspectives. *Teisė. Mokslo darbai*. Vilnius University, 2015, Issue 97. P. 218. Karin Oellers-Frahm deals with concurrent jurisdiction in the article "Multiplication of International Courts and Tribunals and Conflicting Jurisdiction – Problems and Possible Solutions", 2001 <www.mpil.de/files/pdf1/mpunyb_oellers_frahm_5.pdf>. Nikolaos Lavranos refers to "Regulating Competing Jurisdictions among International Courts and Tribunals", 2008 <http://www.zaoerv.de/68_2008/68_2008_3_a_575_622.pdf>.
3. Adopted on 10 December 1982 in Montego Bay at the Third United Nations Law of the Sea Conference, in force from 16 November 1994, also known as the 'Constitution for the Oceans', currently has 168 Member States. For more information see: UN Division for Ocean Affairs and the Law of the Sea: <http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm>.
4. UNCLOS Article 110.
5. E.g. UNCLOS Article 73, Para 1, stipulates that "[t]he coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention."
6. HUDOC is an official database of the ECtHR: <http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}>
7. Case of *Medvedyev and others v. France*, 29 March 2010, appl. Nº 3394/03; Case of

Mangouras v. Spain, 28 September 2010, appl. No 12050/04; Case of *Hirsi Jamaa and others v. Italy*, 23 February 2012, appl. Nº 27765/09; Case of *Islamic Republic of Iran Shipping Lines v. Turkey*, 13 December 2007, appl. Nº 40998/98.

8. *Ibid.*

9. E.g. the recent case *Kebe and others v. Ukraine* (12 April 2017, appl. Nº 12552/12) was related with the claims of three applicants who boarded a commercial vessel flying the flag of the Republic of Malta and sought asylum outside their countries of origin (Ethiopia, Eritrea). They alleged the violation of Article 3 (prohibition of torture) and Article 13 (effective remedy) of the ECHR following the ill-treatment of the Ukrainian authorities when carrying border control (they complained about the Ukrainian authorities' refusal to disembark and to accept asylum applications). The Ukraine's Government argued that the applicant had not been within the state's jurisdiction, but Malta had had *de facto* and *de jure* jurisdiction over the vessel and the first applicant. However, the Court established its jurisdiction in respect of the first applicant having noted that there was "no disagreement between the parties that Ukraine had jurisdiction to decide whether the first applicant should be granted leave to enter Ukraine from the moment the Ukrainian border guards embarked the vessel and met with the applicants" (Para 75). Although the factual background is partly contradictory (e.g. the alleged failure of the applicants to ask for asylum at the initial stages of meeting Ukrainian authorities as they perhaps might have intended to apply for asylum in another country, the problems with translation, *etc.*) the Court finally established the violation of Article 13 taken in conjunction with Article 3 of the ECHR. The Court considered that the Ukrainian authorities were or should have been aware that the applicant was an asylum-seeker who might have needed international protection, however, failed to adequately inform about asylum procedures in Ukraine and underestimated the applicant's need for international protection or assistance (Para 104, *etc.*). Only several provisions of the UNCLOS regarding the jurisdiction (Articles 92 and 94) were referred to in this case, however, there was not a big need for the Court to elaborate on them as they establish general principles: the duty for the ship to fly under the flag of one state only, the flag state's jurisdiction on the high seas and jurisdiction in administrative, technical and social matters.

10. The case is somewhat symbolic for this journal as the factual background implies Lithuanian and Brazil reflections.

11. Application Nº 11167/12, judgment of 31 May 2016.

12. The applicant alleged the violation of Article 6, Para 1, and Article 13, however, the Court did not upheld the complaint.

13. Article 27 of the UNCLOS formulates rules for criminal jurisdiction on board a foreign ship passing through the territorial sea; scholars used to suggest their application in respect of internal waters also. In any case, passing through the territorial sea or calling the seaport foreign ships find themselves within the sovereignty of a coastal state.

14. E.g., such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances. UNCLOS Article 27, Para 1 (d).

15. Article 94, Para 1, of the UNCLOS stipulate that "Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag".

16. Para 63.

17. The right to life implies a positive obligation of a state to ensure effective investigation in case a person died as a result of the use of force or in similar cases when circumstances surrounding his death are unclear or unknown.

18. ECHR, Article 1, establishes the obligation of the Contracting Parties to secure rights and freedoms under the ECHR to everyone within their jurisdiction; Article 34 regulates individual applications.

19. Case of *Hirsi Jamaa and others v. Italy*, appl. Nº 27765/09, 23 February 2012, para 77.

20. Case of *Medvedyev and others v. France*, appl. Nº 3394/03, 29 March 2010, para 90.

21. Article 94, Para 1: "Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag." Article 97 establishes the flag state or nationality principle in cases of collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship.

22. 1952 International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation <https://cil.nus.edu.sg/rp/il/pdf/1952%20IC%20for%20Penal%20Jurisdiction%20in%20Matters%20of%20Collision%20and%20Other%20Incidents%20of%20Navigation-pdf.pdf>. Article 1 establishes the flag state's jurisdiction for instituting proceedings in case described by Article 97 of the UNCLOS, under Article 2 the flag state principle applies for the arrest or detention of the vessel.
23. *Supra note* 20. Para 65.
24. *Supra note* 19. Para 73.
25. *Ibid*. Para 81.
26. *Ibid*.
27. In comparison to the time of their adoption, such cases have lost their relevance in nowadays context or have transformed as e.g. the provisions on slave trading may be interpreted as encompassing human trafficking. Article 109 of the UNCLOS 'Unauthorised broadcasting from the high seas' in addition to flag state and state of nationality allows other states to exercise jurisdiction, e.g. the state where the transmissions are received or where the installation registered, *etc.* Article 99 'Prohibition of the transport of slaves' obliges states to take effective measures, however, does not allow the exercise of jurisdiction freely be any state as in case of piracy under Article 105.
28. *Supra note* 20. Para 85.
29. In force from 11 November 1990 <https://www.unodc.org/pdf/convention_1988_en.pdf>; <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=_en>
30. Article 17, Para 3.
31. PAPASTAVRIDIS, Efthymios. The Interception of Vessels on the High Seas: Contemporary Challenges to the Legal Order of the Oceans. Hart Publishing, Oxford and Portland, Oregon, 2013. P. 29.
32. *Supra note* 9. Para 75.
33. Judgement of 23 February 2012, appl. No 27765/09.
34. *Ibid*. Paras 81, *etc*.
35. *Ibid*. Para 122.
36. *Ibid*. Para 131.
37. *Ibid*. Para 178.
38. Secretary-General Urges Universal Participation in Law of the Sea Convention as General Assembly Commemorates 30-year Anniversary of 'Essential Treaty' <http://www.un.org/press/en/2012/sgsm1 4710.doc.htm>
39. Audiovisual Library of International Law <http://legal.un.org/avl/ha/gclos/gclos.html>
40. For example, H. E. Judge Rüdiger Wolfrum, the former President of the International Tribunal for the Law of the Sea in the Statement to the International Law Commission, 31 July 2008, indicated that "the law of the sea should not be seen as an autonomous regime. It is part of general international law and numerous provisions of the Convention even constitute customary international law" <https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/wolfrum/ilc_geneva_31.07.08_eng.pdf>
41. *Supra note* 20. Para 92.
42. *Ibid.*
43. *Ibid*. Para 96.
44. E. g., in *Nuclear Test Case (Australia v. France)* the International Court of Justice in its judgement of 20 December 1974 concluded that France, by various public statements made in 1974 (the communiqué issued by the Office of the President of the French Republic, reply (statement) by the President, Note from the French Embassy in Wellington) announced its intention to cease the atmospheric tests at sea <http://www.icj-cij.org/docket/?p1=3&p2=3&k=6b&case=59&code=nzf&p3=4>. In the *Legal Status of Eastern Greenland Case (Denmark v. Norway)*, Judgment of 5th April 1933, PCIJ Series A/B No 53, the Permanent Court of International Justice recognised the statement made by the Norwegian Minister as binding on the country.
45. "The Parties further agree that the relevant provisions of UNCLOS concerning the baselines of a coastal State and its entitlement to maritime zones, the definition of the continental shelf and the provisions relating to the delimitation of the exclusive economic zone and the continental shelf reflect customary international law". *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. Judgement of 19 November 2012. Para 114. <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=124&code=nicol&p3=4>
46. *Supra note* 20. Para 101. By 'Vienna convention', the Court referred to the United Nations Convention against Illicit Traffic in

Narcotic Drugs and Psychotropic Substances, adopted in Vienna.

47. In force from 27 January 1980. United Nations, Treaty Series, vol. 1155, 1987. P. 331.

48. E. g. Such decision was reached in Lithuania's maritime delimitation negotiations where despite the fact that the State was still not a party to the UNCLOS and therefore the 1958 Conventions should have been applicable, the parties agreed that they were to be guided by the provisions of the UNCLOS. Certain delimitation rules under the Geneva Conventions (principle of equidistance) were already recognised as leading to an unfair delimitation result.

49. E. g. PEREIRA, M. Ricardo. Environmental Criminal Liability and Enforcement in European and International Law. Leiden/ Boston: Brill/Nijhoff, The Netherlands, 2015.

50. UNCLOS, Para 3, Article 73: "Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment."

51. *Case of Mangouras v. Spain*, 28 September 2010, appl. Nº 12050/04. Para 86.

52. *Ibid*. Paras 48-51.

53. Guidelines on fair treatment of seafarers in the event of a maritime accident were adopted by the IMO's Legal Committee at its 91st session from 24 to 28 April 2006. <http://www.imo.org/fr/OurWork/Legal/JointIMOILOWorkingGroupsOnSeafarerIssues/Pages/IMOILOWGOnFairTreatmentOfSeafarers.aspx>

54. "The Tribunal, unlike the Court, is tasked with striking a balance between the competing interests of two States rather than the interests of an individual and those of a State. Secondly, the issues brought before the Tribunal concern the detention and release of both crews and vessels. Thirdly, unlike the instant case, which is about an environmental disaster, the vast majority of cases before the Tribunal concern fisheries-related violations". *Supra note* 51. Para 46.

55. *Ibid.* Para 57.

56. *Ibid*. Para 86.

57. Case of *Islamic Republic of Iran Shipping Lines v. Turkey*, 13 December 2007, appl. No 40998/98. Para 3. The ship was arrested while navigating through the straits as Turkish authorities believed that the arms cargo on board the vessel was bound for Cyprus, from where it was to be smuggled into Turkey. The crew (namely, the master, the first officer and the radio operator) were detained for 'systematic weapon smuggling'.

58. *Ibid.* Para 92.

59. UNCLOS Articles 35, 37-39 (there are no specific provisions on arms smuggling by sea).

60. *Supra note* 57. Para 93.

61. *Ibid*. Paras 98, 94, 102. It was established that there had been no basis for suspecting an arms-smuggling offence or general power to seize the ship on account of a state of war between Turkey and Cyprus. The Court reminded that the interference must strike a "fair balance" between the demands of the general interest and the requirements of the protection of the individual's fundamental rights and there must be a reasonable relationship of proportionality between the means employed and the aim pursued.

62. Judgement of 17 January 2017, application No 58216/12.

63. The United Nations Convention against Transnational Organised Crime, 2000; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol); The Council of Europe Convention on Action against Trafficking in Human Beings, 2005; EU Law, *etc.*

64. *Supra note* 62. Para 33.

65. *Ibid*. Para 118.

66. General Assembly Plenary, General Assembly Commemorates Thirtieth Anniversary of Opening for Signature of United Nations Convention on Law of the Sea, Sixty-seventh General Assembly, Plenary, 49th & 50th Meetings (AM & PM) GA/11323, 10 December 2012 <https://www.un.org/press/en/2012/ga11323.doc.htm>