Turkey and the International Law of the Sea

Ekrem Korkut
EZK137@dsl.psu.edu

Follow this and additional works at: https://elibrary.law.psu.edu/sjd
Part of the International Law Commons, and the Law of the Sea Commons

Recommended Citation
https://elibrary.law.psu.edu/sjd/5
The Pennsylvania State University

Penn State Law

TURKEY AND THE INTERNATIONAL LAW OF THE SEA

A Dissertation in

Law

by

Ekrem Korkut

© 2017 Ekrem Korkut

Submitted in Partial Fulfillment

of the Requirements

for the Degree of

Doctor of Juridical Science

April 2017
The 1982 United Nations Convention on the Law of the Sea [hereinafter: LOSC] is widely accepted as the constitution of the oceans. Only four countries in the Third United Nations Conference on the Law of the Sea voted against the LOSC: The United States, Venezuela, Israel, and Turkey. Turkey voted against the LOSC because of dissatisfaction with the provision concerning the breadth of the territorial sea (Article 3), the delimitation of the territorial sea (Article 15), and the regime of islands (Article 121). With regard to other provisions of the LOSC, Turkish delegates at the Conference made supportive explanations. This study examines Turkey’s perspective on the Law of the Sea and attempts to understand whether Turkey’s maritime practices differ from the LOSC, most of whose provisions have become customary international law.

The question of whether Turkey should accede to the LOSC, and under what conditions, is addressed. By considering all maritime spaces of Turkey, as well as its outstanding disputes regarding the Law of the Sea, this dissertation provides a comprehensive analysis of Turkey’s approach to the Law of the Sea and increase one’s understanding of how the rules developed in a branch of international law are interpreted and applied in a domestic legal order.
Table of Contents

ABSTRACT .................................................................................................................. i
List of Abbreviations ................................................................................................. V

CHAPTER 1: INTRODUCTION ......................................................................... 1
I. Geography ................................................................................................................ 1
II. Maritime Power ...................................................................................................... 2
   a. Ottoman Sea Power ........................................................................................... 2
   b. The Maritime Power of Turkey ......................................................................... 4
III. The 1982 United Nations Law of the Sea Convention and Turkey .............. 5
IV. Introduction to Other Chapters ......................................................................... 9
V. Scope, Literature Review and the Contribution of the Study to Legal
   Scholarship ........................................................................................................... 12
VI. Methodology ........................................................................................................ 14

CHAPTER 2: INTERNAL WATERS OF TURKEY ..................................... 16
I. Baselines and Internal Waters of Turkey ............................................................. 16
II. Access to Turkish Ports and Internal Waters ...................................................... 21
   a. Access of Foreign Merchant Ships to Turkish Ports and Internal Waters .... 21
   b. Access of Foreign Warships to Turkish Ports and Internal Waters .......... 24
III. Jurisdiction .......................................................................................................... 26
   a. Jurisdiction over Warships ............................................................................ 26
   b. Jurisdiction over Merchant Ships ................................................................. 28
IV. Historic Waters and Status of the Marmara Sea ............................................. 29
V. Cabotage ................................................................................................................ 30
   a. History of Cabotage in Turkish Waters ......................................................... 31
   b. The 1926 Cabotage Law .............................................................................. 32

CHAPTER 3: THE TERRITORIAL SEA OF TURKEY ............................ 34
I. Development of the Territorial Sea .................................................................... 34
   a. The Ottoman Era ............................................................................................ 34
   b. The New Republic Era .................................................................................. 38
   c. First and Second United Nations Conferences on the Law of the Sea and the
      1964 Law on Territorial Sea ........................................................................... 39
      of the Sea Convention .................................................................................. 41
   e. The 1982 Law on the Territorial Sea .............................................................. 46
II. The Delimitation of the Territorial Sea ............................................................... 48
   a. Turkey’s Legislation Concerning Delimitation of the Territorial Sea ......... 51
   b. Concluded Territorial Sea Agreements ......................................................... 52
   c. Delimitation of the Territorial Sea in the Aegean Sea ................................... 53
III. Innocent Passage ................................................................................................. 62
   a. Passage of Warships through the Territorial Sea ........................................ 65
   b. Entry of Warships into the Territorial Sea of Turkey ................................... 68
IV. Fishing in Coastal Waters ................................................................................ 70
V. Jurisdiction .......................................................................................................... 73
   a. Legislative Jurisdiction .................................................................................. 74
   b. Enforcement Jurisdiction ............................................................................. 74
VI. CONTIGUOUS ZONE ..................................................................................... 76
      77
b. Turkey’s Practice with Regard to the Contiguous Zone .............................. 78

CHAPTER 4: THE TURKISH STRAITS ................................................................. 80
I. The LOSC Regime ...................................................................................... 81
II. The Turkish Straits in General ................................................................... 86
III. History of the Turkish Straits ................................................................... 88
IV. The Treaty of Lausanne, 1923 .................................................................. 91
   a. The Passage Regime through the Straits under the Lausanne Treaty ....... 91
   b. Demilitarization of the Straits and the Straits Commission ................. 94
V. The Montreux Convention ......................................................................... 96
   a. The Passage Regime of Merchant Vessels ........................................... 98
   b. Passage Regime of Vessels of War ..................................................... 99
   c. Passage Regime of Aircraft over the Straits .................................... 106
   d. Termination of the International Commission and Demilitarization of the Straits .......................................................... 106
   e. Final Provisions ................................................................................... 108
VI. Turkey’s Power to Regulate Passage through the Straits ........................... 109
V. Kanal (Canal) Istanbul Project ................................................................... 113

CHAPTER 5: THE CONTINENTAL SHELF OF TURKEY ................................. 117
I. First United Nations Conference on the Law of the Sea and Turkey ........... 118
II. The LOSC Regime .................................................................................... 119
III. Rights and Obligations of the Coastal State over the Continental Shelf .... 120
IV. Geomorphology of the Continental Shelf of Turkey and Resources from Continental Shelf .................................................................................. 121
V. Delimitation of the Continental Shelf ......................................................... 123
   a. Concluded Delimitation Agreements .................................................. 126
   b. The Status of Islands ......................................................................... 127
   c. The Delimitation of the Continental Shelf in the Aegean Sea ............. 128
   d. The Delimitation of the Continental Shelf of Turkey in the Mediterranean Sea ...................................................... 133
VI. Turkey and the Deep Seabed .................................................................... 149
   a. Development doctrine of the Common Heritage of Humankind ......... 151
   b. The LOSC .......................................................................................... 153
   c. The 1994 Agreement ........................................................................ 154
   d. The ISBA ......................................................................................... 155
   e. Turkey’s Position and Practice with Regard to the Deep Seabed ....... 156

CHAPTER 6: THE EXCLUSIVE ECONOMIC ZONE OF TURKEY ................. 158
I. The Legal Regime of the EEZ ................................................................... 160
II. Rights and Duties of the Coastal State within its EEZ ................................. 162
   a. Enforcement Jurisdiction .................................................................... 165
III. Rights and Duties of Other States in the EEZ of a Coastal State ............... 168
   a. Military Activities within the EEZ ....................................................... 171
IV. The Delimitation of the EEZ ................................................................. 176
   a. Status of Islands .............................................................................. 178
   b. Turkey’s Practice .............................................................................. 180
V. Fishing Activities in the EEZ ................................................................. 183
   a. Marine Mammals ............................................................................ 195
   b. Shared Stocks ................................................................................. 196
   c. Straddling Stocks ............................................................................ 197
   d. Highly migratory species ............................................................... 198
   e. Anadromous Species ....................................................................... 199
   f. Catadromous Species ...................................................................... 200
CHAPTER 7: THE HIGH SEAS ................................................................. 202
 I. Freedom of the High Seas ..................................................................... 205
 II. Nationality of Ships and Exclusive Jurisdiction of the Flag State .......... 208
   a. Immunities ......................................................................................... 212
   b. Collisions on the High Seas and the LOTUS Case .......................... 213
   c. Duty to Render Assistance ................................................................. 215
 III. Certain Illegal Activities on the High Seas ....................................... 216
   a. Piracy .................................................................................................. 216
   b. Slavery ................................................................................................ 221
   c. Drug Trafficking ................................................................................. 222
   d. Unauthorized Broadcasting .................................................................. 224
 IV. Enforcement and Hot Pursuit .............................................................. 224
 V. The Gaza Flotilla Attack ...................................................................... 227
   a. The Israeli Attack is in Violation of Freedom of the High seas ........ 228
   b. The Use of Force By Israel is Illegitimate ......................................... 229
   c. The Naval Blockade ........................................................................... 232
 VI. Military Use of the High Seas .............................................................. 237
 VII. Fishing on the High Seas ................................................................. 240

CHAPTER 8: PROTECTION OF MARINE ENVIRONMENT OF TURKEY ...... 246
 I. Land-Based Marine Pollution .............................................................. 255
 II. Vessel-Source Marine Pollution ......................................................... 260
   a. MARPOL ............................................................................................ 262
   b. LOSC .................................................................................................. 266
   c. SOLAS ................................................................................................ 269
   d. The 1969 High Seas Intervention Convention ................................ 271
   e. Pollution Emergencies at Sea .............................................................. 273
   f. Liability for Vessel-Source Pollution .................................................. 276
 III. Dumping at Sea .................................................................................. 284
   a. Regional Treaties .............................................................................. 287
 IV. Pollution from Seabed Activities ...................................................... 288
   V. Enclosed or Semi-Enclosed seas ....................................................... 291

CONCLUSION ......................................................................................... 293

Bibliography ............................................................................................ 298
 Books and Articles .................................................................................... 298
 Conference Recordings ............................................................................ 308
 Conventions ............................................................................................. 308
 Laws and Regulations .............................................................................. 311
 Cases ......................................................................................................... 313
 Websites .................................................................................................... 314
List of Abbreviations

Art: Article

CCS: 1958 Convention on Continental Shelf

Ch: Chapter

CHS: 1958 Convention on the High Seas

COLREG: 1972 Convention on the International Regulations for Preventing Collisions at Sea

CTCZ: 1958 Convention on Territorial Sea and Contiguous Zone

EEZ: Exclusive Economic Zone

e.g.: for example

Fn.: footnote

GCA: Greek Cypriot Administration

ICJ: International Court of Justice

ILM: International Legal Materials

IMO: International Maritime Organization

ISBA: International Seabed Authority

ITLOS: International Tribunal for the Law of the Sea

LNTS: League of Nations Treaty Series


MARPOL: International Convention for the Prevention of Pollution from Ships, as Modified by the Protocol of 1978 Relating Thereto

MSR: Marine Scientific Research

NATO: North Atlantic Treaty Organization

OPRC Convention: 1990 Convention on Oil Pollution Preparedness, Response and Co-operation

OPRC-HNS Protocol: 2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances

V
OSRL: 2005 Law Pertaining to Principles of Emergency Response and Compensation for Damages in Pollution of Marine Environment by Oil and Other Harmful Substances

Reg: Regulation

SDR: Special Drawing Rights

SOLAS: 1974 International Convention for the Safety of Life at Sea


TRNC: Turkish Republic of Northern Cyprus

UKTS: United Kingdom Treaty Series

UN: United Nations


UNGA: United Nations General Assembly

UNSC: United Nations Security Council

UNTS: United Nations Treaty Series

WMD: Weapons of Mass Destruction