

**AUTHORITY IN DISTRAINING ON SHIPS BY STATES IN TERMS OF THE
UNITED NATIONS CONVENTION ON LAW OF THE SEA: THE CASE OF
GEORGIA IN THE BLACK SEA**

***BİRLEŞMİŞ MİLLETLER DENİZ HUKUKU SÖZLEŞMESİ AÇISINDAN
DEVLETLERİN GEMİLERE EL KOYMA YETKİSİ: KARADENİZ'DE GÜRCİSTAN
ÖRNEĞİ***

***ПРАВА ГОСУДАРСТВ НА ЗАХВАТ СУДОВ С ТОЧКИ ЗРЕНИЯ КОНВЕНЦИИ ООН
ПО МОРСКОМУ ПРАВУ: ПРИМЕР ГРУЗИИ НА ЧЁРНОМ МОРЕ***

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ABSTRACT

Trade ships navigating towards Abkhazia which is a separatist region of Georgia through Black Sea, are seized by Georgia From time to time. Actually, Georgia's seizing trade ships to Abkhazia on Black Sea is stemmed from the political problem they have been facing. According to Georgia, these ships navigate through Black Sea illegally so they are seized by Georgia. However, these practices have a negative effect on maritime trade on the Black Sea and violate the international law of the sea. Although Georgia is one of the contractors of the United Nations Convention on the Law of the Sea since 1996, she prejudices the right of free pass specified with related articles. This study generally focuses on Georgia's detain trade ships navigating on the Black Sea, enabling Georgia immediately to set the ships and crew seized free, measures to be taken by flag state, limits of detain authorities of littoral states; particularly deals with Georgia's rights, liabilities and authorities on the Black Sea marine areas within the frame of the UNCLOS which is a universally accepted document dated 1982.

Keywords: UNCLOS, flag state, coastal state, right of navigation.

ÖZET

Karadeniz'de seyir halinde olan ve Gürcistan'ın ayrılıkçı bölgesi Abhazya'ya sefer yapan ticaret gemilerine Gürcistan tarafından zaman zaman el konulmaktadır. Gürcistan'ın Karadeniz'de Abhazya'ya sefer yapan gemilere el koyması, Abhazya ile arasındaki siyasi sorunlardan kaynaklanmaktadır. Gürcistan'a göre, bu gemiler Gürcistan sularını yasadışı yollardan geçmekte ve bu yüzden alıkonulmaktadır. Bu tür uygulamalar Karadeniz'de deniz ticaretini olumsuz yönde etkilemekte ve uluslararası deniz hukuku kurallarının ihlalini gerçekleştirmektedir. Gürcistan, 1982 tarihli Birleşmiş Milletler Deniz Hukuku

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Sözleşmesi'ne 1996 yılından itibaren taraf olduğu halde, Sözleşme'deki ilgili maddeler uyarınca serbest geçiş hakkını ihlal etmektedir. Bu çalışmada, Gürcistan'ın Karadeniz'de seyrüsefer yapan ticaret gemilerine el koyması, el konulan gemilerin ve mürettebatının derhal serbest bırakılmasının sağlanması, bayrak devletinin bu tür uygulamalara karşı alabileceği tedbirler, genel olarak kıyı devletinin gemilere el koyma yetkilerinin sınırları, özel olarak da Gürcistan'ın Karadeniz'deki deniz alanlarında hak, yükümlülük ve yetkilerinin sınırlarının neler olabileceği dikkate alınarak, evrensel nitelikte bir sözleşme olan BMDHS çerçevesinde değerlendirilmiştir.

Anahtar Kavramlar: BMDHS, bayrak devleti, kıyı devleti, seyrüsefer hakkı.

АННОТАЦИЯ

Время от времени Грузия захватывает торговые судна, плывущие в Чёрном море, рейсом, в её сепаратистский регион, Абхазию. Захват Грузией на Чёрном море судов, совершающих рейсы в Абхазию, основывается на политических проблемах между ею и Абхазией. По мнению Грузии, судна задерживаются потому, что они незаконными путями проходят через её воды. Действия такого рода отрицательно влияют на морскую торговлю в Чёрном море и нарушают нормы международного морского права. Несмотря на то, что с 1996 года Грузия является участником Конвенции ООН по морскому праву 1982 года, она нарушает соответствующие статьи Конвенции о праве мирного прохода иностранных судов. В данной работе оценены захват торговых судов, плывущих в Чёрном море; обеспечение немедленного освобождения экипажа, захваченных судов; меры, которые может предпринять государство флага против таких действий; рамки права прибрежных государств на захват судов, а в частности, что может являться границей прав, обязанностей и полномочий Грузии в водах Чёрного моря в рамках универсального договора КООНМП.

Ключевые слова: КООНМП, государство флага, прибрежное государство, право мирного прохода.

Introduction

The ships having a crucial role in international shipping trade sometimes exposes to expropriation, seizure and detain when navigating. According to international law of the sea, it is a rule for the ships to navigate freely and under certain conditions it is possible to seize them. More, when seized in accordance with the law, it is possible for the ships to be free immediately in return for certain financial assurance. These basic principles are present in many states' national regulations today. On the other hand, coastal states have the right of detain as an out grow of their jurisdiction. In accordance with the right, coastal states can seize the ships for both warranting the credits from private law via cautionary attachment and violating the national laws like environment and fishing (Ece, 2011: 10-12). In order to prevent illegal actions like detain of crew and ship or arresting the United Nations Convention on the Law of the Sea (UNCLOS) has brought regulations for the issue and specified the legal frames for both coastal and flag state.

It is also a serious problem regarding the law of the sea between Turkey and Georgia to detain of the Turkish trade ships navigating toward Abkhazia by Georgia. In the last 20

years, Georgia has seized almost 100 ships including the fishing boats showing the ground that they have crossed the Georgian waters illegally (Kanbolat, 2009).¹ The distraint grounded on border violation was actually done in international waters. Besides, when seized the Automatic Identification System (AIS) device was switched off and on again when they proceeded to Georgian territorial waters. Ransom was demanded in order to give the ship back and the crew were found guilty in border violation and they were arrested after the court sentenced. Georgia's distraint of the trade ships cruising towards Abkhazia stems from the political problems with Abkhazia formerly a part of Georgia, but independent since 1991. However, these implementations of Georgia have a negative effect on the Black Sea trade.² Also, Georgia is violating border law and this gives way to discussion whether these implementations go in accordance with the law. In addition to this, Turkey and Georgia relations have been badly affected.

1. The UNCLOS and Distraint on the Ships

The United Nations Convention on the Law of the Sea is the most detailed convention covering all the issues on the law of the sea made so far. Basically, when looked into the history of law of the sea, it is clearly seen that the issue was codified and formulated in the Geneva Conventions on the Law of the Sea dated 1958. After long years of work done by the UN International Law Commission, the conventions accepted in a conference assembled in Geneva bring regulations for four main issues: Convention on Territorial Sea and Contiguous Zone (CTSCZ), Convention of Continental Shelf (CCS), Convention on the High Seas (CHS) and Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLRHS). Not too long before the conventions, it was seen that the sea relations had changed enough to consider revising. In this sense, Second Conference on the Law of Sea was assembled resulting with a blanket convention which is referred as the UN Convention on the Law of Sea dated 1982 (Shaw, 1997: 391-392). Along with the regulations covered in 1958 Geneva Conventions, some articles were revised and some was covered for the first time in the UNCLOS (Anderson, 1983: 654).

As a universal convention, the UNCLOS tries to balance the coastal jurisdiction and freedom for international trade; on the other hand, it grants permission to both coastal states to halt the right of passage and seize the ship and flag states to demand prompt release of the vessel in return for a financial guarantee. According to the Article 73, Section 2 of the UNCLOS arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security. In case of coastal state's violation of the rule, flag state shall carry the case to the court in accordance with the Article 292 (Churchill and Lowe, 1988: 4-12).³

As the convention sets releasing of the crew and the vessel in return for a financial guarantee and the right of the flag state to take the case before the court in accordance with the Article 292 shall only be possible in the presence of the two conditions (Jianjun, 2008: 115-116). These can be explained as the distraint of the vessel requiring the releasing of the vessel and a proper offer made by flag state. These regulations regarding the prompt release are comparatively new in international law of the sea (Papanicolopunu, 2012: 868-869). Planting restricted economic zone and increasing the jurisdiction of the coastal states based for the regulations. In order to prevent misuse of the rights and have a righteous balance between the coastal and flag state, a provision was added requiring "*promptly releasing of the crew and the vessel*". To the convention, releasing the vessel and the crew in return for a financial guarantee shall be carried out in the conditions projected (Ece,

2011: 10-12).⁴ In other words, after the distraint of the vessel and the crew, even if the flag state offers financial guarantee it is not obligatory that the coastal state release the arrested. However, coastal states are to act in accordance with the Convention.

2. Distraint on Ships by Georgia and Legal Regime of Marine Areas

In order to talk about illegal implementations of Georgia like distraint of the vessel and the crew, we need to indicate the marine areas and evaluate these implementations under the light of law of the sea.

2.1. Internal Waters

Internal waters are the part of sea between the territorial waters and internal frontier of national territory. These contiguous waters are rigidly connected to littoral national territory. The marine area covers bays, inlets, ports, inland sea, territorial sea and the waters beyond the baseline. Internal waters constitute a part of the coastal state and have a different regime from territorial waters and sovereignty in favour of the coastal state. In this sense, coastal state has all the same rights in this marine space as it has in land. Coastal state has the right of halting foreign vessels in case of violation of national laws in inland waters or ports. It is thought that the coastal states can only seize the foreign vessels in the framework of rules international law, customs and international treaties internal waters (Murphy, 2006: 340-341).

In case of a distraint of a foreign vessel, coastal state is to release the vessel and the crew promptly if the flag state offers financial guarantee as set in the UNCLOS. Besides, the coastal state is to convey the information of distraint to the flag state immediately. When it comes to Georgia, it has absolute sovereignty in its internal waters. Therefore, Georgia has the right of halting vessels in its inland waters and ports in case of detecting a violation of national laws. However, according to the UNCLOS no state can legally put forward that it can have dominance over a part of high seas (Ece, 2011: 24-26). To seize a vessel trading to Abkhazia in internal waters is only possible in the framework of principles of international law of sea. Hence, Georgia has not the right of seize derived from customs and international treaties in internal waters.

2.2. Territorial Waters

Territorial waters is a piece of sea between the internal waters and high sea; its breadth is determined in domestic legislations of each state. Territorial waters and internal waters make a state's sea land. The UNCLOS and the CTCZ have similar descriptions for coastal state authority in territorial waters. The most important rule brought to international law by the UNCLOS is about the width of territorial waters and it states that "*territorial waters shall be 12 miles at most beyond the specified main borders*" (UNCLOS, art. 3). The UNCLOS has specified the width of territorial waters as 12 miles and gave right to coastal states to determine their width until 12 miles.

Different from internal waters, state authority in territorial waters have been subjected to some changes. First and the most recordable of them is the abbreviation known as "*innocent passage*". According to the UNCLOS, 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 the Convention and with other rules of international law. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal state (Evans, 2006: 632-633).

Innocent passage is defined as “*passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state*” as in the CTCZ; however, apart from CTCZ it includes the conditions resulting as. The passage may be threatening in case of i) any threat or use of force against the sovereignty; ii) any exercise or practice with weapons of any kind; iii) any act aimed at collecting information to the prejudice of the defence or security of the coastal state; iv) any act of propaganda aimed at affecting the defence or security of the coastal state; v) the launching, landing or taking on board of any aircraft; vi) the launching, landing or taking on board of any military device; vii) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal state; viii) any act of wilful and serious pollution contrary to the Convention; ix) any fishing activities; x) the carrying out of research or survey activities; xi) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal state; xii) any other activity not having a direct bearing on passage (UNCLOS, art. 19/1-2).

According to the Article 24 of the Convention the coastal state shall not hamper the innocent passage of foreign ships through the territorial sea except in accordance with the Convention. In particular, in the application of the Convention or of any laws or regulations adopted in conformity with this Convention impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage; or discriminate in form or in fact against the ships of any state or against ships carrying cargoes to, from or on behalf of any state. The coastal state shall give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea. The coastal state may take the necessary steps in its territorial sea to prevent passage which is not innocent. In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal state also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject (Özman, 2006: 326).

The UNCLOS states that the laws and regulations beside criminal jurisdiction of the coastal state in territorial waters clearly. According to the this, coastal state may have regulations regarding i) the safety of navigation and the regulation of maritime traffic; ii) the protection of facilities or installations, cables and pipelines; iii) the conservation of the living resources of the sea; iv) the prevention of infringement regulations of the coastal state; v) the preservation of the environment; vi) scientific research and hydrographical surveys; vii) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations (UNCLOS, art. 21-22). Besides, the UNCLOS gives right to the coastal state to take the necessary steps in its territorial sea to prevent passage which is not innocent (UNCLOS, art. 25). Also, it states the regulations for foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances (UNCLOS, art. 22/2 and 23).

The coastal state may seize the ship navigating in its territorial waters in accordance with the Articles 27 and 28 of the Convention, the articles estimate the necessary criminal jurisdiction and judgment. In case of the criminal issues, which are necessary to be brought before judge, are committed by the crew or the passenger and the coastal state has not been threatened by the issues the thought that the coastal state is not no use its right of jurisdiction is adopted. If the issues are about i) threatening effects for coastal state; ii) violation of the peace of the coastal state; iii) help called for by the captain or diplomacy

representative of the flag state from coastal state authorities; iv) illegal trafficking, the coastal state is to intervene. Nevertheless, according to Article 27/2 the provisions do not affect the right of the coastal state to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters (Pazarcı, 2007: 263-264). When it comes to jurisdiction the coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal state. Article 28/3 says without prejudice to the right of the coastal state, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters. However, stopping or anchoring of the ship because of requirement of normal navigation or danger is accepted as “*passage*”. Fog, storm or machinery malfunctions, ice invasion and the reasons like these are accepted as requirements of marine and under these conditions the ship is said to transit. These stops are assumed as transition and they are not subject to the jurisdiction authority of the coastal state (Ekşi, 2004: 156-157).

According to the law of the sea, the coastal state has less authority over territorial waters than it has over internal ones. Generally all states and in particular Georgia has no right to seize the ships using their right for innocent passage in accordance with both the UNCLOS, common and custom rules in the world. It is not wrong to say that to stop and seize the ships navigating through Georgia’s territorial waters and using the right of innocent passage is against the rules, it is illegal. Georgia has right to prevent the innocent passage in case of the conditions specified in Article 19/2; some of them are violation of custom, fiscal, sanitary or immigration and letting to take illegal goods, people in or out to the ship. As stated in the UNCLOS Article 19/1, passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state. Any act of propaganda aimed at affecting the defence or security of the coastal state, the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal state are stated as against the rules and subject to be treated as prejudicial (Ece, 2011: 24). Under these circumstances, coastal states have right to prevent the prejudicial passages. In other words, according to Article 25 of the UNCLOS which is about rights of protection of the coastal state, the coastal state may take the necessary steps in its territorial sea to prevent passage which is not innocent. Furthermore, coastal state may take all the precautions to prevent the passages which are not innocent and suspend the ships for security reasons.

2.3. The Exclusive Economic Zone

Article 57 of the UNCLOS makes a description for the Exclusive Economic Zone (EEZ) as exclusive economic rights shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Article 56 of the Convention focuses on sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. These rights shall be carried out in accordance with the rights of other states included in description of the EEZ.

Coastal state does not only have economic rights on the EEZ. Articles 56 and 60 of the Convention coastal states are equipped with some rights in the region. These are the establishment and use of artificial islands, installations and structures; marine scientific research; the protection and preservation of the marine environment. In installing, exploiting and using of these installations, the coastal state is the only authority. The security zone around these installations is measured as 500 meters at most. However, the coastal state shall not install any installation or structure in the zones specified as compulsory in international navigation.

Article 246 states that the coastal state has right to “*conduct marine scientific research*”, “*permit and conduct a survey*” in the EEZ. The other states shall carry out marine scientific surveys in the EEZ with the permission from the coastal state. Is it accepted that the coastal state shall grant permission for “*the surveys for humanity and science conducted for peaceful purposes*”.

The UNCLOS look after the others states’ rights in the EEZ. The reservation of the high seas is described as reservation for navigation, flight, exploiting submarine cables and pipelines. The high seas shall be reserved for peaceful purposes. These reservations are for the high seas’ being reserved for peaceful purposes (UNCLOS, art. 88) and indemnity for loss incurred in avoiding injury to a submarine cable or pipeline (UNCLOS, art.115). In exercising their rights and performing their duties under the Convention in the EEZ, states shall have due regard to the rights and duties of the coastal state and shall comply with the laws and regulations adopted by the coastal state in accordance with the provisions of the Convention and other rules of international law (UNCLOS, art. 58/3).

It is seen that every other state is given right for some exceptional cases and particular rights for exploiting living resources except the ones specified in the EEZ. These states are landlocked (UNCLOS, art. 69), geographically disadvantaged (UNCLOS, art. 70) and fishing in the region before the announcement of the EEZ (UNCLOS, art. 62/3). These states shall subject to the EEZ under these conditions: First, coastal states shall look after righteous principles in the utilization of the region. These landlocked states shall have bilateral agreements with the coastal states (UNCLOS, art. 69/1-2 and 70/3). Second, the coastal state shall determine the allowable catch of the living resources in its exclusive economic zone (UNCLOS, art. 61/1). The coastal state shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal state does not have the capacity to harvest the entire allowable catch, it shall give other states access to the surplus of the allowable catch (UNCLOS, art. 62/2). Third and last rights provided to exploit living resources shall not be directly or indirectly transferred to third states or their nationals (UNCLOS, art. 72).

Under the light of these findings, Georgia’s right is getting less in exclusive economic zone than internal or territorial waters. Georgia shall only have the right of distraint in case of marine life research, utilization and protection in accordance with the UNCLOS.

2.4. The High Seas

High seas are notion used to describe sea lands which are out of sovereignty of states and subject to right of all states. Customs constitute its base for legal status.

Article 87 of the UNCLOS states that “*the high seas are open to all states, whether coastal or land-locked*”. Reservations for high seas are carried out in accordance with the Convention and the conditions proposed by the other rules of international law. These

reservations include the followings for sea and landlocked states: navigation, flying, submarine cable and pipelines, artificial islands, other installations permitted by international law, fishing, and scientific research. These reservations are to be considered no different than the other interests in high seas and the rights regarding the “*area*” shall be utilized by all states.⁵ Except the reservations mentioned above, each state has right to have navigating ships in high seas. Likewise, the Convention makes it clear that all states have right for fishing in high seas; exceptional cases are also handled in regulations part.

In the article 88 stated that “*the high seas shall be exercised for peace purposes*”. This generalizes and restricts the exercises. Here, the statement that the sea shall be utilized for peace purposes does not mean that it restricts the use of high seas for military purposes. Even though the statement is not that clear about the issue, the term “*peace*” may possibly thought in its basic meaning and it is concluded as restriction on military acts. However, if one infers that “*peaceful*” means defensive military acts are not meant to be against the term peace, it would not be possible to ban the military exercises in high seas. Today, the latter possibility is highly accepted in international law exercises, and the practices are not intervened by protests (Scott, 2012: 851-852).

Even if the high seas are not covered in any sovereignty, some rights and duties are to be distributed in case of possible violation, illegal cases and the requirement for punishment. This is to prevent making a gap in administrative and judicial issues. In this context, each state is equipped with rights over the ships carrying their flags in specified sea land. This is called “*flag law*”. Ships shall sail under the flag of one state shall be subject to its exclusive jurisdiction on the high seas (1958 CHS, art. 6/1; UNCLOS, art. 92/1). It is a fact that some states have some rights in controlling the international crimes in this respect and some exceptional cases. The duties of the flag states such as the requirements of the nationality of ships, technical requirements are scrutinized in detail Article 94 of the UNCLOS. For example, the statement “*warships on the high seas have complete immunity from the jurisdiction of any state other than the flag state*” (UNCLOS art. 95) makes the warships independent from the judicial authority of other states. In addition to the judicial rights stated above, a coastal state has the authority to pursuit, arrest and exercises the legal requirements a ship violating rules in territorial waters of a coastal state and fled away. This is called “*hot pursuit*” (1958 CHS, art. 23; UNCLOS, art. 111).

According the Convention on the High Seas (CHS) dated 1958 states that the hot pursuit requires violating the laws and regulations of the territorial waters of that state, the pursuit shall begin in the contiguous zone (1958 CHS, art. 23/1) whereas the UNCLOS emphasizes semi-sovereignty and the judicial right of the coastal state adding the security zone around the installations to the zones where violation takes place. Nevertheless, coastal state shall meet some of the requirements in exercising its right of pursuit. First of all, the pursuit shall begin in the sea land where the violation takes place. A pursuit of a violation in internal or territorial waters shall begin here. Similarly, in order to begin a pursuit the violation of the rules which are set in accordance with the international law has to begin in the EEZ and security zone in the continental shelf. However, this does not mean that the ship to pursue has to be in the same area. In other words, it is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone (UNCLOS, art. 111/1).

The statements regulating the distraint of the ships navigating in the high seas; i) No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag state (UNCLOS, art. 97), ii) Every state shall take effective measures to prevent and punish the transport of slaves in ships (UNCLOS, art. 99), iii) Every state may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board (UNCLOS, art. 105), iv) All states shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions (UNCLOS, art. 108), v) All states shall cooperate in the suppression of unauthorized broadcasting from the high seas (UNCLOS, art. 109).

Titled as invalidity of claims of sovereignty over the high seas, Article 89 of the UNCLOS clearly states that no state may validly purport to subject any part of the high seas to its sovereignty. This kind of exercise applied to a tanker called *Buket*, which was navigating in 96 miles off Sinop, just beyond the exclusive economic zone of Turkey, was seized and anchored in Poti Marina afterwards on 17 August 2009. The distraint took place with the excuse of border violation in Black Sea means that Georgia apparently violates the international law of the sea.

Conclusions

The ships having a crucial role in sea trade expose to implementations such as distraint, arrest or levy while navigating in international waters without showing any ground. In accordance with international law of the sea the distraint of the ships is accepted in case of some specific conditions determined in United Nations Convention on the Law of the Sea (UNCLOS). Once a coastal state arrest a ship, it shall immediately inform the flag state with the reasons of the action.

Under the light of these it is compulsory in the UNCLOS and the other law rules that Georgia inform the flag state of the ship it has arrested. Under the conditions determined in the Convention Georgia shall release the ship with its crew as response to the financial guarantee it takes from the flag state. If Georgia does not accept the guarantee or find it little to release the ship, the flag state has right to carry the case before the court. However, only the parties of the Convention may carry such a case before the International Tribunal for the Law of the Sea (ITLOS) where the conflicts of the UNCLOS is solved (Churchill and Lowe, 2004; Gautier, 2005; Seymour, 2006). Another point to emphasize here, the applicant shall be not the owner the ship but the flag state of it. When it comes to the conflicts taking place between Georgia and Turkey, it is not possible for Turkey carry a case before the ITLOS, because of the reason stated above. If the shipper is Turkey but the flag state is any other state than Turkey and this state is a party for the UNCLOS, the latter one may apply to the court. Nevertheless, Turkey's bringing the case before a court because of a conflict stemming from an international treaty regarding the objectives of the UNCLOS is possible. On the other hand, Georgia signed and approved the UNCLOS in 1996. So, it is bound to implement all the articles in the Convention, recognize the judicial authority of the ITLOS officially.

In one corner of the conflict there is Turkey which cannot apply to the ITLOS as it has not signed the UNCLOS because of the regulations regarding the compulsory judicial authorities in law of the sea conflicts and width of the territorial waters, on the other corner there is Georgia which signed and approved the Convention. There has to be a political platform between these two neighbour and the Black Sea littorals in order to take measures

against the crisis taking place because of the Georgia's distraint of the ships for almost two decades and make a contribution to the stabilization of the Black Sea. For the purpose of managing this, Georgia and Turkey have founded a Marine Research Group in February 2010. Since this date, there have been ongoing negotiations in Tbilisi and Ankara. The most recent meeting of the Research Group was held on 25-27 July 2011 in Batumi, Georgia. However Georgia's insisting demands on the shippers and exploiters have stonewalled for further negotiations. Now, what expected from Georgia is to release the other ships arrested as a result of the negotiations between the two states. This is to result in ending the conflicts between the states and taking a big step in the peace of the region.

NOTES

¹ The seized ships called Selim 1 and Seker Baba were sold in Tbilisi in 2003. In April, 2009 "Denfa Demet" and "New Star" August "Buket" were seized. Buket was distrainted beyond Georgia's territorial waters and taken to Poti and Batumi marinas to be sold. The captain who was sentenced to prison for 24 years on 31 August 2009 was released as a result of the visit by Turkish Foreign Affairs Minister Ahmet Davutoglu on 4 September 2009.

² The most important feature of the Black Sea is its being enclosed. Enclosed and semi enclosed sea notions have been debated a long a time before being a part of the UNCLOS in 1982. Article 122 of the UNCLOS states that "*enclosed or semi-enclosed sea*" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States." (See more information Güneş, 1991:20).

³ The parties may carry the case, they agreed to pay financial guarantee for the release of the ship, before a judicial organ they agreed beforehand. Unless this agreement does not happen in 10 days, in accordance with article 287 the case shall be brought to the court by the state seized the ship. The judicial organs stated in 287 are International Tribunal for the Law on the Sea (ITLOS), International Court of Justice (ICJ), Ad Hoc Supreme Court specified in Annex VII and Arbitary Court constituted in accordance with Annex VIII.

⁴ For example, if the ships are seized because of piracy or transporting slaves, it is not possible to release the ship immediately.

⁵ The term area here is to define the sea bed and subsoil beyond any national authority as stated in the UNCLOS, Part XI. No state shall have sovereignty and right over the area and the resources. The area accepted as the shared wealth of all humanity shall only be exploited for peaceful purposes.

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