DEMILITARIZATION AND NEUTRALIZATION IN THE MEDITERRANEAN

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1 Introduction

Any Conference on Mediterranean security should take into account the legal characterization of that region. The existence of territories which have been demilitarized, and of a State which follows a policy of permanent neutrality, are among the factors that operate together to distinguish the Mediterranean area. In some cases, the demilitarization owes its existence to situations which arose before World War I or immediately after. In others, the demilitarization has been contracted in the framework of the Peace Treaties which terminated World War II. Permanent neutrality, however, is a relatively recent phenomenon as far as the Mediterranean is concerned, although instances of that institution can be found in Europe (Switzerland, Austria and the Vatican City) or can be traced back to the 19th and early 20th centuries (eg the neutralization of the Ionian Islands after 1863, or that of Albania in 1913). The existence of neutralized States and demilitarized territories limits the military activity of States. Legal restraint might also follow from the application of the new law of the sea, in particular if the littoral States apportioned the Mediterranean through the creation of exclusive economic zones.

The issue of both neutralization and demilitarization in the Mediterranean has been the object of competitive claims, as far as the content (or even the very existence) of duties stemming from such status is concerned. The purpose of this paper is to scrutinize all instances in which a situation of neutrality or demilitarization is deemed to be in existence in the Mediterranean. The impact of the new law of the sea on the Mediterranean will also be taken into account, since a number of

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of clauses of the United Nations Law of the Sea Convention have been held as limiting its military uses.

2. Morocco and the Southern Shore of the Strait of Gibraltar

At the beginning of this century, the Moroccan ceast of the Strait of Gibraltar between Melilla and the right bank of the Sebou River was the object of a stipulation under which that coastline should not become the object of any fortification or strategic installation. The demilitarization was deemed instrumental to the right of free bassage through the Strait of Gibraltar. The duty to keep the territory under consideration demilitarized stems from the agreement between France and the U.K. of April 8, 1904, which states :

> "in order to secure the free passage of the Strait of Gibraltar, the two Governments agree not to permit the erection of any fortification or strategic works on that portion of the coast of Morocco comprised between, but not including, Melilla and the heights which command the right bank of the River Sebou.
> This condition does not, however, apply to the places at present in the occupation of Spain on the Moorish coast of the Mediterranean"[1].

The content of the clause of the 1904 stipulation was reiterated in the Treaty of November 12, 1912, between France and Spain[2], a few months after Morocco had become a French protectorate. The Moroccan shore affected by the duty of demilitarization was in the Spanish sphere of influence.

According to Lapidoth, the duty not to fortify the southern shore of the Strait of Gibraltar is still in force and is now incumbent on Morocco. She states that the 1912 Treaty has been transmitted to Morocco under the Franco - Moroccan devolution agreement of May 20, 1956[3]. We disagree with this interpretation, however. The 1904 agreement cannot be deemed as capable of devolution to Morocco as it was stipulated before the establishment of the French Protectorate and it cannot be held that it was extended to Morocco after the institution of the French Protectorate: in effect the demilitarization affected a portion of territory which did not become part of the French Protectorate. On the other hand, the 1912 Treaty between France and Spain is not covered by the Franco-Moroccan devolution agreement of May 20, 1956, since this agreement applies to treaties stipulated by France and extended to Morocco (or stipulated in the name of Morocco) and not to those entered into by Spain and affecting the Spanish sphere of influence in Morocco[4].

Be the legal nature of the Spanish sphere of influence in Morocco that of a

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1. *British and Foreign State Papers*, vol. CI, p. 1053. On this point see: BRÜEL, *International Straits*, Coopenhagen-London, 1947, pp. 155-156; GONZALES CAMPOS, "Navegacion por el mar territorial, incluidos los estrechos", *La actual revision del derecho del mar. Una perspectiva espanola* (Poch ed.), Madrid, 1974, I, p. 394 ff. ; TRUVER, *The Strait of Gibraltar and the Mediterranean*, Alphen aan den Rijn, p. 175 ff.
2. De MARTENS, *Nouveau Recueil général Traités*, 3e série, Vol. 7, pp. 323-341, Article 6.
3. LAPIDOTH, *Les détroits en droit international*, Paris, 1972, pp. 93-94.
4. The Franco-Moroccan devolution agreement of May 20, 1956 is reprinted in 59 *Revue Générale de Droit International Public* (1956), p. 481 ff. and was denounced by Morocco in 1960 (64 *(Revue Générale de Droit International Public* (1960), pp. 380-381). On the Moroccan decolonization and its practice in the matter of succession of States, see, recently, OUAZZANI CHAHDI, *La pratique marocaine du droit des traités (Essai sur le droit conventionnel marocain)*, Paris, 1982, p. 306 ff.

protectorate or of a mere colonial territory, the conclusion is the same. Since the 1912 Treaty was not stipulated by Spain in the name of Morocco, it could be held as devolved to Morocco only under the general principles of State succession. However, by no means can the 1912 Treaty be regarded as a localized treaty imposing a servitude; it can rather be held as a part of a political settlement among the most closely concerned powers of that period (France, Spain and the United Kingdom). The lack of intention to set up a true neutralization of the southern shore of the Strait of Gibraltar is proven by the fact that the 1912 Treaty did not affect the right of Spain to maintain or erect new fortifications in Ceuta and Melilla.

Morocco does not feel bound by the above agreements. In his statement before the Committee for the peaceful use of the sea and ocean floor beyond the limits of national jurisdiction, the Moroccan delegate affirmed that:

> "his country was in no sense bound by agreements of which it had been an object - neither the agreement of 8 April 1904 nor that of 27 November 1912". "However", the Moroccan delegate went on, "Morocco did not intend to arrogate to itself the right to undertake the fortification of the Moroccan coast of the Strait of Gibraltar, a notion which, in the nuclear age, bore the sinister imprint of the practices of the nineteenth century"[5].

In other words, the demilitarization is maintained only *ex gratia*, but is not a consequence of a legal duty incumbent on Morocco.

3. *Islands Which Italy Was Duty - Bound to Keep Demilitarized Under the 1947 Peace Treaty.*

Article 49 of the Peace Treaty of February 10, 1947, required Italy to demilitarize the following islands: Pantelleria, the Pelagian islands (Lampedusa, Lampione and Linosa) and Pianosa (in the Adriatic). Furthermore, the Peace Treaty imposed strict limitations on military installations in the larger islands of Sicily and Sardinia (articles 50 and 51). Article 50 (4) is of particular importance here, prohibiting Italy from constructing naval, military or airforce installations or fortifications in Sicily or Sardinia.[6]

Italy no longer feels obliged to keep the above mentioned islands demilitarized, nor to keep its military structures within the limits set out in the Peace Treaty. In 1981 the Undersecretary for Foreign Affairs, Fioret, replying to a parliamentary question seeking the abrogation of the Peace Treaty, declared that the Treaty's military clauses, including those relative to "demilitarization of certain islands", no longer had effect. Fioret declared, in particular, that the clauses in question no longer had effect on account of "the alteration in the *de facto* and *de iure* conditions which had determined their framing". Hence there was no need for any procedure to revise the said military clauses of the 1947 Peace Treaty.[7]

Signor Fioret attributed the invalidation to the *rebus sic stantibus* clause, but Italy in fact proceeded differently. Procedure for revision of the military clauses in the 1947 Peace Treaty is governed by Article 46 of the Treaty itself. Two separate procedures are foreseen: one involving agreement between Italy and the Allied and Associated Powers, *or* one involving agreement between Italy and the Security Council of the United Nations, once Italy

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5. U.N. Doc. A/AC. 138/SC. II/SR. 72, August 15, 1973, p. 20. See, however, the statement by the Italian delegate (Malintoppi), agreeing with Mrs. Lapidoth's interpretation of the Franco - Moroccan devolution agreement: see 57 *Rivista di diritto internazionale* (1974), p. 159, note 3.
6. 49 UNTS, 31, Articles 49, 50 (3), 50, 51.
7. *Atti Parlamentari (Camera dei Deputati), VIII Legislatura, resoconto stenografico della seduta del 17 novembre 1981*, pp. 4968-4969.

had become a member of that Organization.[8]

On December 8, 1951, before being admitted to the United Nations, Italy sent a note to the 21 states which were party to the Peace Treaty, requesting that the military clauses be abrogated, 15 states agreed to the request.[9] The USSR did not agree. In practice, the USSR made agreement to Italy's request conditional on her abandoning the NATO alliance.[10] Other three Eastern bloc countries - Poland, Hungary and Albania - followed the Russian lead.[11] Of the remaining two, Yugoslavia made revision of the Peace Treaty conditional on the solution of the Trieste question, while Ethiopia made no response to the Italian note.[12] In 1952, after the Soviet Union had vetoed Italy's request for membership of the United Nations for the fifth time, Italy stated that the actions of the Soviet Union constituted a violation of the preamble to the Peace Treaty, and that, as a consequence, Italy would no longer respect the military clauses of that Treaty, as far as the Soviet Union was concerned.[13] Can the the military clauses of the Peace Treaty be considered as no longer having effect, with Italy consequently no longer constrained to observe the demilitarization agreements? The answer must be in the affirmative, given that, no agreement with the Security Council having been made since Italy became a member of the United Nations, the juridical basis in law for the abrogation of the military clauses is to be sought in the first of the two procedures set out in the Peace Treaty, i.e. in an agreement between Italy and the Allied and Associated Powers.

Only 15 of the participating States expressly agreed to the Italian request, however. As far as the other 6 are concerned, the requirement is to establish an inference

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8. See, generally, HOYT, *The Unanimity Rule in the Revision of Treaties. A Re-Examination*, The Hague 1950, p. 102 ff; GUARINO, *La revisione dei trattati. Spunti critico ricostruttivi*, Napoli, 1971, p. 84, note 204; DRAKIDES, "Le sort actuel des démilitarisations en Méditerranée (Italie, Grèce), 30 *Revue Hellénique de Droit International* (1977), p. 72 ff.; VEDOVATO, "'La revisione del Trattato di Pace con l'Italia', 41 *Rivista di studi politici internazionali* (1974), pp. 411-418.
9. 8 *Keesings's Contemporary Archives* (1950-1952), pp. 130-132. A number of Exchanges of Notes were concluded in order to release Italy from the duties stemming from articles 46-70 of the 1947 Peace Treaty. See Exchanges of Notes with: Australia (December 8-20, 1951); Belgium (December 8-21, 1951); France (December 8-21, 1951); U.K. (December 8-21, 1951); New Zealand (December 8-20, 1951); USA (December 8-21, 1951); South Africa (December (8-21, 1951). The relevant data can be traced in GIULIANO, LANFRENCHI, TREVES, *Corpo-Indice degli accordi bilaterali in vigore tra l'Italia e gli Stati esteri*, Milano, 1968.
10. 8 *Keesing's Contemporary Archives* (1950-1952), p. 12064; *Survey of International Affairs*, 1951, p. 44; 10 *Annali di diritto internazionale*, 1952, pp. 94-95.
11. 8 *Keesing's Contemporary Archives* (1950-1952), pp. 11928, 12064. As a matter of fact. Poland, Hungary and Albania claimed a revision of the military clauses embodied in the Peace Treaties with Romania, Hungary, Bulgaria and Finland.
12. See HOYT, op. cit., *supra*, note 8, p. 106. Cf., however, Vedovato, who States that Ethiopia made agreement to Italy's request conditional on her satisfying a number of Ethiopia's demands. These were complied with by Italy; therefore, the absence of protest by Ethiopia after the Italian rearmament can be held as *a de facto* acceptance of the Italian request (VEDOVATO, op. cit., *supra*, note 8, pp. 415-416).
13. 8 *Keesing's Contemporary Archives* (1950-1952), p. 12040.

that a tacit acceptance exists such as to allow the abrogation of the military clauses of the Peace Treaty. The cases of Ethiopia and Yugoslavia present no problems. The former has never protested. The latter tied its assent to the revision of the military clauses to the conclusion of the Trieste question, and this was in effect achieved with the London *Memorandum* of 1954. Problems are presented in the cases of the other four, Eastern bloc, States. This is especially so as far as the USSR is concerned, which not only made the revision of the Peace Treaty conditional on Italy's abondoning the Atlantic Alliance, but sent a note of protest to Italy, on January 25, 1952, in which Italy was accused of carrying out a programme of military preparations in contravention of the obligations set out in the Peace Treaty. There are however elements which lead one to conclude that the Eastern bloc States have in fact come to acquiesce in request. First, the USSR has never adopted the special procedure set out in Article 87, which allows disagreements over interpretation and implementation of the Peace Treaty to be resolved, including disagreements regarding the observance of the military obligations. Secondly, despite its initial protest note of 1952, the USSR has not repeated the statement of its position, and the other Eastern bloc States which are party to the Peace Treaty have not called on Italy to observe its obligations even when Italy was increasing its military potential well beyond the limits laid down.

The reasons for this lack of protest can easily be imagined. Those Eastern bloc countries which suffered defeat in World War II have required, since the Warsaw Pact came into being, to increase their own military potential. By 1951, Bulgaria, Hungary and Romania had started on a rearmament programme in breach of the clauses in the respective peace treaties.[14] Had the USRR insisted that Italy continue to observe the military clauses of the Peace Treaty, the other NATO States which were party to the 1947 Peace Treaties with Bulgaria, Hungary and Romania would have insisted on a rigorous observance of those treaties on the part of these States.

4. *Yugoslavia and the Demilitarization of the Island of Pelagosa.*

The Island of Pelagosa and the adjacent islets were ceded to Yugoslavia by Italy by virtue of Article 11 (2) of the 1947 Peace Treaty.[15] The same proviso stipulates that the Island of Pelagosa shall remain demilitarized. The demilitarization provides only for Pelagosa and not for the adjacent islets. Probably these are not mentioned since at the time of the stipulation of the 1947 Peace Treaty they were considered devoid of any military interest because of their small size. However, should the islets become capable of military installations, by no means can they be militarized. Any other interpretation would render the demilitarization provided for by Article 12 (2) void of any practical significance and would be contrary to the object of this proviso.

Fitzmaurice wonders whether the demilitarization of Pelagosa was part of the general settlement set up by the Peace Treaty. The consequences are important, since in the first case only Italy can claim a breach of Article 11 (2) or waive its right to claim that Pelagosa is to be kept demilitarized by Yugoslavia. In the second case, each of the contracting parties can claim the maintenance of the duty of demilitarization and complain whenever it is infringed. The learned author shares the second view, which seems to be the more in keeping with the reality of international relations at the time when the Peace Treaty was stilupated.[16] Because of its central location

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14. Cf. *Survey of International Affairs*, 1951, p. 45, note 8.
15. Peace Treaty with Italy, *supra*, note 6, Article 11 (2).
16. FITZMAURICE, "The Juridical Clauses of the Peace Treaties", 73 *Hague Recueil* (1948), pp. 261-262.

in the Adriatic, Pelagosa was regarded as having a considerable strategic value for controlling the Adriatic sea routes. It is to be presumed that countries such as the United States or the United Kingdom would not have agreed to Yugoslavia - a country that at the time of Peace Treaty negotiation was still within the Eastern bloc - acquiring sovereignty over the Island, unless it was demilitarized.

As far as is known, the duty to keep Pelagosa demilitarized has not been questioned by Yugoslavia, even to counteract the Italian claim that the military clauses of the 1947 Peace Treaty applicable to Italy - which, as we have seen, provide *inter alia* for the demilitarization of the Adriatic Island of Pianosa - are no longer in force. However, Yugoslav legal writers do not seem to have devoted any attention to the problem under consideration.[17]

5. Greece and the Aegean Demilitarizations

The duties of Greece as far as demilitarization is concerned apply to most of the Aegean islands adjacent to Turkey. The duties are not always the same in content or in means of implementation. Moreover Greece makes different claims relative to different islands, even though the final aim appears to be to achieve a total abolition of the constraints on militarization. It will be well therefore to consider the status of the Greek islands adjacent to the Turkish coast in separate groupings - a) Lemnos and adjacent islands; b) the islands of the central Aegean, Lesbos, Chios, Samos, Nikaria; c) the islands of the Dodecanese.

i. Lemnos and the Adjacent Islands

The terms of demilitarization of Lemnos and the adjacent islands were set out in a note, dated February 13, 1914, which the six States controlling the islands addressed to Greece. The States involved were, Austria - Hungary; France; Germany; Italy; Russia; U.K. The note declared that the islands: "...ne seront ni fortifiées ni utilisées pour aucune but naval ou militaire...."[18] Article 12 of the Lausanne Peace Treaty of July 24, 1923, reiterates the earlier note as far as Greek sovereignty over the island was concerned but gives no hint as to their status.[19] Lemnos is also mentioned in Article 4 of the July 24, 1923, Lausanne Convention on the Straits, wherein the demilitarization of the Straits, including the adjacent islands, is agreed. It is expressly stated that Lemnos and the other territories mentioned "seront démilitarisées".[20] This system of Straits control as set out in the Lausanne Convention of July 24, 1923, was abrogated by the Montreux Convention of July 20, 1936[21], which, as stated in the preamble, was enacted to reform the provisions of the Lausanne Convention. On the same day a protocol was signed allowing Turkey to remilitarize that area of the Straits which was under Turkish sovereignty, but making no mention of the status of Lemnos and the adjacent islands.[22]

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17. See, however, VUKAS, "L'utilisation pasifique de la mer, dénucléarisation et désarmement", *Traité du Nouveax Droit de la Mer* (Dupuy et Vignes eds), Paris - Bruxelles, 1985, pp. 1074-1075, who states that the termination of the 1947 Peace Treaty clauses setting up the Italian demilitarization. "... doit évidemment se refléter dans le statut de la démilitarisation des îles que la Grèce et la *Yugoslavie* ont acquises grâce à ce traité (the 1947 Peace Treaty with Italy) et qui ont aussi démilitarisées" (italics supplied).
18. ŞİMŞİR, *Aegean Question, Documents*, Vol. II (1913-1914), Ankara, 1982, pp. 392-393.
19. See 30 *Trattafi e Convenzioni tra il Regno d'Italia e gli altri Stati*, 3, Article 12.
20. 28 LNTS, 116, Article 4.
21. 173 LNTS, 213.
22. See 50 *Trattati e Convenzioni tra il Regno d'Italia gli altri Stati*, 227.

Turkey maintains that the demilitarization clause is still valid. NATO seems to hold to the same opinion. Recent NATO naval exercises in the Aegean have avoided involving the island of Lemnos. Greece, which does not consider the island demilitarized, did not take part in the exercises, as a matter of protest.[23]

Those who assert that the demilitarization of Lemnos and the adjacent islands is no longer valid base their arguments on the following :

a) Demilitarization of Lemnos was originally agreed with the London declaration of February 13, 1914. The part of this declaration relative to militarization of Lemnos was included not in Article 12 of the Lausanne Peace Treaty, but in Article 4 of the Lausanne Convention of July 24, 1923. The Montreux Convention of 1936 abrogated the Lausanne Convention -as is made unquestionably clear from the «travaux préparatoires» - and thus also annulled the demilitarization clauses relative to the Greek Islands. This interpretation would be backed by the statement by the Turkish Foreign Affairs Minister, Aras, to the Grand National Assembly of Turkey on July 31, 1936, when he made it plain that the Montreux Convention had established that the demilitarization of Lemnos was no longer in effect;[24]

b) Even, if the London Declaration were assumed to be incorporated in Article 12 of the Lausanne Treaty, this measure, insofar as it referred to the demilitarization of Lemnos, had been "tacitly" abrogated by the Montreux Convention;[25]

c) All demilitarization operations were intended to cease whenever an overall security system was constituted, as laid down in the Atlantic Charter. NATO represents one of the instruments contributing to overall security. At the time of Greece's membership (February 18, 1952) of NATO, the demilitarization requirement is anulled.[26]

The argument set out in c), above, is not acceptable insofar as it finds no support in any clause of the Atlantic Charter. The arguments contained in a) and b), above, are of a more important character. Pertinent objections have however been made. First, it has been pointed out that the February 13, 1913, declaration by the six Powers was not formally abrogated at the time of the Lausanne Peace Treaty, which - as far as Lemnos was concerned - went only so far as to reaffirm that the island belonged to Greece. The Lausanne Convention reaffirms demilitarization of Lemnos, and hence one might infer that on this point it abrogates the London Declaration of 1913. But if the Montreux Convention abrogates the situation established by the Lausanne Convention, the fact remains that this abrogation concerns only the regulations concerning the Straits, and not the regulation reaffirming the demilitarization of Lemnos itself[27].

This emerges clearly from the "travaux préparatoires". Both Turkey and other States taking part in the Montreux Conference made it clear that it would be opportune to remilitarize the Straits, demilitarized after the Lausanne Convention. No State, however, not even Greece, mentioned that it might be opportune to abrogate Lemnos's neutralization, nor stated that the abrogration of the Lausanne

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23. *Cf. The New York Times*, August 21, 1984, A 8; *ibidem*, August 22, 1984, A 11; ROUSSEAU, "Chronique des faits internationaux", 88, *Revue Générale de Droit International Public* (1984), p. 481.
24. See ECONOMIDES, "La prétendue obligation de démilitarisation de l'île de Lemnos", 34 *Revue Hellénique de Droit International* (1984), p. 7 ff.
25. See the letter written by ECONOMIDES to Professor ROUSSEAU, reprinted in 88 *Revue Générale de Droit International Public* (1984), pp. 1037-1038.
26. DRAKIDES, "Les statut de démilitarisation de certaines iles grecques", 39 *Défence Nationale*, 1983, pp. 81-82.
27. ROUSS)AU, op. cit., *supra*, note 23, p. 483.

Convention brought about also the abrogation of the particular status of the Island.[28]

There remains the statement by the Turkish Foreign Minister, who declared, when Parliament was discussing the Montreux Convention, that the Convention abrogated the clauses of the Lausanne Convention which concerned the demilitarization of Lemnos.[29] But to be able to assert that the Turkish Foreign Minister's declaration had the effect of annulling the demilitarization clause, it would be required not only that one demonstrated that the Lausanne Convention on the Straits abrogated the 1913 London Declaration, but also that the Turkish Minister's statament represented a valid renunciation as far as the Island's status was concerned. While it is possible to translate Aras's statement into a renunciation on Turkey's part vis-a-vis Greece's demilitarization obligation, it is unquestionable that such a renunciation is juridically unproductive as far as other parties to the Lausanne Convention are concerned. They could Well demand that Greece keep Lemnos demilitarized.

ii The Central Aegean Islands

The demilitarization of the islands of Lesbos, Chios, Samos and Nikaria was originally established by the London Declaration of February 13, 1914, by which instrument the demilitarization of Lemnos was also stipulated[30]. Article 13 of the Laussanne Peace Treaty of July 24, 1923, restated the demilitarization of the Central Aegean islands, spelling out, at the same time, the content of duties incumbent on Greece (paragraphs 1 and 3).[31] Article 13, paragraph 1, prohibits the installation of any "naval base" or "fortification". According to Article 13, paragraph 3, the military forces permitted are only those called up for military service. Gendarmerie and police forces are permitted, since they are entrusted with the maintenance of law and order. However, the contingent must be proportional to those existing in Greek territory overall.

Periodically Turkey has accused Greece of breach of the Lausanne Peace Treaty. In a letter of April 1975, addressed to the UN Secretary - General, Turkey complained, *inter alia*, of the militarization of Chios, Samos, Lesbos and Nikaria, which were demilitarized under Article 13 of the Lausanne Treaty of 1924"[32] On August 13, 1976, a new complaint was addressed to the UN Secretary-General by Turkey, stating that it was '....in "possession of detailed information regarding the militarization of the islands mentioned in the Lausanne...." Peace Treaty.[33]

To counteract the Turkish note of protest of April 1975, the Greek government limiter itself to stating that no Greek island had "any means of attacking Turkish territory", but did not challenge the obligation to keep the islands demilitarized.[34] Unlike the case of the island of Lemnos, the Greek Government does not so much question that the duty to keep the Central Aegean islands demilitarized is still in force, as the content and the scope of obligations stemming from it.

iii The Dodecanese Islands

Article 14 of the Treaty of Peace between the Allied and Associated Powers and Italy provided for the transfer of the Dodecanese Islands to Greece[35]. The same proviso

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28. Cf. "Actes de la Conférence de Montreux concernant le régime des Détrots, 22 juin - 20 juillet 1936". *Comptes Rendu des Séances Plénières et Procès-Verbal des Débats du Comité technique*, Octobre 1936, p. 22 and 58 (Turkey); p. 33 and 57 (U.K.) ; p. 34 (USSR).
29. See *Türkiye Büyük Millet Meclisi Zabıt Ceridesi*, Devre 5 Cilt 12 (1936), p. 310.
30. *Supra*, note 18.
31. *Supra*, note 19, Article 13.
32. U.N. Doc. S/11668, 9 April 1975.
33. U.N. Doc. S/12176, 13 August 1976.
34. U.N. Doc. S/11672, 14 April 1975.
35. Peace Treaty with Italy, *supra*, note 6, Article 14.

stipulated the demilitarization of the Archipelago and the duty to keep it demilitarized.

The rationale of the demilitarization is a moot point. On the Greek side it is claimed that the demilitarization of the Dodecanese was not made in favour of Turkey, since this State is neither a party to the Peace Treaty nor was a co-belligerent power during the Second World War. It is said that the demilitarization was stipulated on the initiative of the United States and with the support of France and the United Kingdom, lest the Soviet Union should acquire military facilities in a strategic position from which it would have had easy control over the Straits region.[36] On the Turkish side, however, it is contended that the demilitarization was made in order "to meet Turkey's security needs"[37]; in other words to protect Turkey from its traditional foe: Greece.

Whichever the rationale of the proviso under consideration, it is certain that the obligation to keep the Dodecanese demilitarized is deemed to be still in force, as can be inferred from subsequent State practice.

i) In 1948 the Soviet Union accused Greece of having violated the obligation to keep the Dodecanese demilitarized. The United States, stating that the obligation embodied in Article 14 of the 1947 Paris Treaty entitled Greece "to use the Dodecanese military installations to maintain internal order or defend frontiers", implicitly reaffirmed the general duty of demilitarization incumbent on her;[38]

ii) On September 5, 1970, the Soviet Union filed a note of protest against the United States, complaining that the visit of the US aircraft carrier *Franklin Roosevelt* in the waters of Rhodes wes breach of its status of demilitarization[39];

iii) After Turkey's 1974 intervention in Cyprus, the Dodecanese was the object of a programme of massive militarization.[40] On April 8, 1975, Turkey addressed a letter to the UN Secretary-General stating that Greece had militarized the Dodecanese Islands "by troop concentrations and by establishing permanent military installations". Consequently Greece was, according to Turkey, in breach of Article 14 of the 1947 Peace Treaty.[41] In its reply, Greece did not question the permanent validity of the obligation stemming from Article 14. It limited itself to stating that "no Greek Island has any means of attacking Turkish territory"[42]. Turkey restated its complaint in a letter to the UN Secretary-General dated August 13, 1976.[43]

6. *Malta's Neutrality After the Treaty of Friendship Co-Operation with Libya (November 19, 1984)*

Maltese neutrality was established after an Exchange of Notes between Malta and Italy entered into force in 1981. The two countries stipulated also a Protocol on financial, economic and technical assistance by which Italy undertook to channel substantial aid to Malta. Both instruments have

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36. See, for instance, DRAKIDES, "Le sort actuel des démilitarisations en Méditerranée (Italie, Grèce)", cit. *supra*, note 8, p. 61; Id., "La démilitarisation du Dodécanèse", 30 *Défense Nationale* (1983), p. 1124 ff.
37. See ÇAYCI, «The Anatolian Adventure of Greece (1918-1923)", 6 *Dış Politika-Foreign Policy* (1977), p. 99.
38. See VEREMIS, "Greek Security: Issues and Polities» *Adelphi Papers* No. 179, London, 1982, p. 39, note 4.
39. See ROUSSEAU, "Chronique des faits internationaux", 75 *Revue Générale de Droit International Public (1971)*, p. 1150.
40. Cf. WILSON, "The Aegean Dispute", *Adelphi Papers* No. 155, London 1979/1980, p. 16.
41. See U.N. Doc. S/11668, 9 April 1975.
42. See U.N. Doc. S/11672, 14 April 1975.
43. See U.N. Doc. S/12176, 13 August 1976.

been the object of detailed comment by us.[44] A number of States have recognized Malta's neutrality, and one may also assume that the 1983 Madrid Declaration - issued at the end of a meeting gathering States signatories of the Helsinki Final Act - can be held as an implicit recognition of Malta's neutrality by the participating States, since it is there stated that Malta's permanent neutrality is a contribution to security in the Mediterranean.[45] Under the Exchange of Notes with Italy, the neutrality of Malta is guaranteed by a mechanism which should have involved a number of Mediterranean States. In effect neighbouring Mediterranean States are invited to guarantee Malta's neutrality and the kind of guarantee mechanism which has been settled was negotiated with a view to other neighbouring Mediterranean States becoming guarantors of Maltese neutrality. However, only Italy has so far guaranteed Malta's neutrality.

On November 19, 1984, Malta concluded a Treaty of friendship and co-operation with Libya. On the same day, the two States attached to that stipulation a Protocol on co-operation in security.[46] In December 1984 Malta, claiming that Italy had not executed the obligations taken on with the 1980 Protocol on financial, economic and technical assistance, declared that the Protocol and the Italian guarantee of Maltese neutrality were terminated.[47] The Italian view, on the contrary, is that the guarantee is still in force.[48]

Whether the Italian guarantee be ended or not, it is certain that the status of Malta, as a State following a policy of permanent neutrality, has not terminated. The source of Maltese neutrality is the Declaration issued by Malta on May 15, 1981, after the entry into force of the 1980 Exchange of Notes with Italy. If the 1984 Treaty between Malta and Libya is contrary to the duty stemming from the Maltese declaration, Malta can perhaps claim that it has not committed any international wrongful act toward Italy; however it cannot claim any plea *vis-a-vis* the States which have recognized its neutrality. On the other hand, since the 1980 Exchange of Notes and the ensuing guarantee is still held in force by Italy, this State can complain against Malta should the Malta - Libya Treaty be contrary to the 1980 Exchange of Notes.

The main clauses of the 1984 Malta - Libya Treaty can be summarized as follows:

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44. RONZITTI, "Malta's Permanent Neutrality". 5 *Italian Yearbook of International Law* (1983), p, 171 ff. See also FLAUSS, "La neutralité de Malte", 29 *Annuaire Français de Droit International* (1983), p. 175 ff.; SCHINDLER, "Neue Fille dauender Neutralitat: Malta und Costa Rica", *Mélanges Perrin*, Lausanne, 1984, p. 277 ff.
45. See Concluding Document of the CSCE Follow up Meeting held in Madrid (1983) (Questions Relating to Security in Europe, Principles, para, 19), 83 *Department of State Bulletin* (1983), No. 2079, p. 54.
46. The text of both instruments are printed in the Maltese official journal: *Supplement tal-Gazetta tal-Gvern ta' Malta*, Nru. 14, 359, 29 ta' Novembru, 1954, Taqsima C. Nru 85, 29.11.84, C. 139 ff.
47. See Maltese Prime Minister Mintoff's speech before the House of Representatives, a resumé of which is printed by *The Times* (Malta) of December 6, 1984. See also *ibidem* December 22, 1984.
48. See to following Italian newspapers: *Repubblica*, December 7, 1984; *ibidem*, December 9/10, 1984; *ibidem*, December 12, 1984; *ibidem*, December 13, 1984; *Corriere della Sera*, December 7, 1984; *ibidem*, January 2, 1985; *Avanti!*, January 13/14, 1985 (where an interview with Maltese Prime Minister Bonnici is published). Rumors of a new agreement between the two Mediterranean countries were reported by Italian newspapers in September 1985 (*Corriere della Sera*, September 16, 1985 and *Repubblica*, September 20, 1985).

i) Article 1 obliges both States "not to participate in any military alliance which may affect the security interests of the other side". In effect Malta, as a State following a policy of permanent neutrality, is obliged not to be a member of any pact of military alliance in which each member undertakes obligations of a reciprocal nature. Consequently, as far as the Maltese side is concerned, this clause must be interpreted by taking into account that Malta cannot be party to a treaty guaranteeing her neutrality which is capable of affecting Libya's security interests. On the other hand Libya, although free in principle to be a member of a military alliance of any kind, is obliged not to adhere to a military alliance that might undermine Malta's security interests.

ii) The obligation not to effect Libya's security interests is strengthened by Article 2 of the same Treaty, since Maltese territory cannot be used militarily against the security or territorial integrity of Libya, Article 2 stipulates also that foreign military bases are not permitted in Malta. This last obligation, stemming from the duty incumbent on neutralized States, restates a similar clause embodied in the Exchange of Notes between and Italy.

iii) Article 3 of the Treaty is the core of the whole stipulation. According to this Article, Libya is obliged not only "to respect and support Malta's neutrality", but it is also obliged to "assist Malta whenever the Government of the Republic of Malta explicitly requests so in case of aggression against Malta's territorial integrity and sovereignty". Armed assistance is not ruled out and depends on the circumstances. Should Malta be the object of an armed attack, it can request Libya to give all the assistance necessary to repel the attack. In such a case, Libya is obliged to act.

iv) Article 3 does not stand alone, since the parties made clear the scope of their co-operation in security matters in a special Protocol stipulated the same day. The Protocol sets forth:

a) a reciprocal duty to exchange information on matters of special interest for the mutual security and defence of both parties;

b) Libya's commitment to train Maltese military personnel in Libya or in Malta as will be agreed upon;

c) the supply of military equipment and armaments by Libya, should Malta require it.

Are the 1984 Treaty between Malta and Libya and the attached Protocol consistent with i) Malta's status of permanent neutrality; and ii) the 1980 Exchange of Notes between Malta and Italy?

i) Military pacts of a reciprocal nature are inconsistent with the status of permanent neutrality.[49] The 1984 Treaty between Malta and Libya obliges the two countries to strengthen their mutual security, to have regular consultation with a view to harmonizing their viewpoints on security issues and to co-ordinate their efforts in the preservation of international peace and security. These clauses are not in themselves inconsistent with the duty of permanent neutrality, since thep do not impose any strict military commitment on Malta. However their cumulative effect might give the impression that Malta is conducting its relations with Libya in a way not completely keeping with the principle of permanent neutrality. More criticism can be raised as to the Protocol on co-operation in

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49. See VERDROSS, *The Permanent Neutrality of Austria*, Vienna, 1978, p. 18, However, the policy followed by Costa Rica is at variance with the above rule since that State proclaimed its permanent neutrality and at the same time kept its membership to the Inter-american Treaty of Reciprocal Assistance (Rio Treaty). See RONZITTI, "Nuovi sviluppi nel campo della neutralità permanente in tempo di pace: la neutralità 'disarmata' ed 'attiva' del Costa Rica", 67 *Rivista di diritto internazionale* (1984), p. 575 ff.; SCHINDLER, op. cit., *supra*, note 44, p. 286 ff.

security. The Protocol assigns military commitments only on the Libyan side. However, the obligation to exchange information on security issues is a matter for both countries. Should the implementation of this duty consist in granting surveillance facilities to Libya on the Island, the neutrality policy would be inequivocally infringed.

ii) It is obvious that an infringement of Maltese neutrality would amount to a breach of the 1980 Exchange of Notes between Malta and Italy, since the former is obliged to maintain its status as a neutralized State toward the latter. While the 1984 agreement could be executed in a way inconsistent with the 1980 stipulation in the Malta-Libya agreement there is not any particular clause which, in principle, is inconsistent *per se* with the Exchange of Notes between Malta and Italy. Even the possible employment of Libyan military personnel for training the Maltese army, in Malta, as envisaged by Article 2 is not in itself inconsistent with the obligation, embodied in the Exchange of Notes with Italy, not to admit foreign military personnel in the island. In effect paragraph 2d) of the Maltese declaration, issued after the entry into force of the Exchanges of Notes with Italy, sets forth an exception for military personnel "assisting in the defence of the Republic of Malta". Since this clause admits foreign military personnel in "resonable number", Malta has only to take care to keep the number of Libyan personnel consistent with the exception set forth in the Exchange of Notes with Italy.

7. *Military Uses of the Mediterranean*

From time to time proposals aimed at the demilitarization of the Mediterranean or, at least, the limitation of its military uses are put forward. On May 27, 1961, the Soviet Union proposed the denuclearization of the Mediterranean.[50] At the time of the Special Session of the General Assembly devoted to Disarmament (1978), the Non-Aligned countries proposed the establishment of a zone of peace in the Mediterranean. In effect the transformation of the Mediterranean into such a zone is listed among the aims of the Non-Aligned Movement ever since the Algiers summit (1973). However, all these proposals have been rejected. The idea of the Mediterranean as a zone of peace was again touched upon in General Assembly Resolution 36/102 (1981). In voting on this resolution - which is devoted to the more general problems of international security - there were 20 abstensions, four Mediterranean States among them (Israel, Italy, Spain and Turkey). A consensus resolution on co-operation and security in the Mediterranean adopted two years later (38/189) does not make any reference to the creation of a zone of peace in the Mediterranean.[51]

Though there is not a single notion of a zone of peace, and its distinction from the concept of a nuclear weapon free zone in sometimes blurred[52] the transformation of

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50. See WOLFRUM, "Restricting the Use of the Sea to Peaceful Purposes: Demilitarization in Being?", 24 *German Yearbook of International Law* (1981), p. 210, note 63. The denuclearization of the Mediterranean was again proposed at the end of a meeting held in Moscow on December 19, 1984 between Soviet Foreign Minister Andrei Gromiko and his Maltese colleague Alex Svebarras Trigona (see *Corriere della Sera*, December 20, 1984).
51. See, generaly, ABBADI, "Security and Co-operation in the Mediterranean Basin", 14 *Ocean Development and International Law. The Journal of Marine Affairs* (1984), p. 55 ff. The problem of security and co-operation in the Mediterranean is also touched upon in the recent document by the U.N. Secretary-General on the naval arms race: "Study on the Naval Arms Race. Report of the Secretary-General" U.N. Doc. A/40/535, 17 September 1985, Para, 252, p. 69.
52. On the "Maritime Zones of Peace" see, generally, BUZAN, "Naval Power, the Law of the Sea and the Indian Ocean as a Zone of Peace" 5 *Marine*

the Mediterranean into a zone of peace would entail, at least, the prohibition of giving military facilities and the exclusion of fleets not belonging to the littoral States or their limitation in number. In legal terms, this outcome would result in a curtailment of the freedom of the high seas and of the principle of collective self-defence.

In any case, the new law of the sea does not seem to impose any particular restriction on the military uses of the Mediterranean. The definition of enclosed and semi-enclosed sea, embodied in Articles 122 and 123 of the Montego Bay Convention, fits the Mediterranean.[53] However, this institution does not entail any limitation on the military activity of littoral States. The duty to co-operate which is incumbent on littoral States according to Article 123, is lacking in preseriptiveness, since, it is moulded in soft terms. Therefore the conduct of those who opposed the institution of semi-enclosed sea for fear that it could prejudice the activity of military fleets, has proved to be excessive. The Mediterranean, like other marine areas of the world, is subject to the principle of peaceful use set fort in Article 301 of the Montego Bay Convention. This principle, however, was not meant to imply the demilitarization of ocean areas but only that States are obliged to comply with the prohibition of use of force embodied in the UN Charter and are not to pursue aggressive policies.[54]

Might a *de facto* demilitarization of the Mediterranean ensue from the proclamation of EEZs by littoral States? (As a matter of fact, if all littoral States proclaimed their EEZ, the whole Mediterranean sea would be apportioned among the EEZs of the bordering States).[55] The answer

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Policy (1981), pp. 194-204; WOFLRUM, op. cit., *supra*, note 50, pp. 210-212; LABROUSSE, "L'Océan indien 'Zone de paix'," *Le droit international et les armes* (Société française pour le droit international, Colloque de Montpellier), Paris, 1983, p. 258 ff.; QUENEDUEC, "Le statut international des espaces et les armes", *ibidem*, pp. 256-257; SZUREK, "Zones exemptes d'armes nucléaires et zone de paix dans le Tiers-Monde," 88 *Revue Générale de Droit International Public* (1984), p. 114 ff.; de MURALT, "Te Military Aspects of the UN Law of the Sea Convention", 32 *Netherlands International Law Review* (1985), p. 79; VUKAS, op. cit., *supra*, note 17, pp. 1050-1052.

53. Cf. SYMONIDES, "The Legal Status of the Enclosed and Semi-Enclosed Sea", 27 *German Yearbook of International* Law (1984), p. 315 ff.

54. See, generally, on the UN Law of the Sea Convention peaceful use clause; NELSON, "The Emerging New Law at Sea", 42 *Modern Law Review* (1979), pp. 42-65; TREVES, "La notion d'utilisation des espaces marins à des fins pacifiques dans le nouveau droit de la mer" 27 *Annauaire Français de Droit International* (1980), p. 687 ff.; WOLFRUM, op. cit., *supra*, note 50, p. 200 *ff.;* QUENEUDEC, "The Peaceful Use of the International Maritime Areas", *The New Law of the Sea* (Rozakis and Stephanou eds), Amsterdam, 1983, p. 186 ff.; VUKAS, op. cit., *supra*, note 17, p. 1049 ff.

55. On military activities in foreign EEZs, see: JANIS, *Sea Power and the Law of the Sea*, Lexington, Mass., 1976, pp. 33-34; RICHARDSON, "Power Mobility, and the Law of the Sea", 58 *Foreign Affairs* (1980), p. 913; TREVES "Military Installations, Structures and Devices on the Seabed", 74 *American Journal of International Law* (1980), p. 831 ff.; WOLFRUM, op cit., *supra* note 50, pp. 237-241; LABROUSSE, "Les problèmes militaires du nouveau droit de la mer", *The Management of Humanity's Resources: The Law of the Sea*, Hague Academy of International Law, Workshop 1981, The Hague, 1982, pp. 313-314; RAUCH, *The Protocol Additional to the Geneva Conventions for the Protection of Victims of International Armed Conflicts and*

must be in the negative, even if the question is not without interest, as we shall see.

Let us scrutinize the main military uses of the sea:

i) Navigation and overflight.

These rights are guaranteed by Article 58 (1), where it is stated that 'in the exclusive economic zone, all States..... enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in Article 87 of navigation and overflight...". There is no distinction between warships or military aircraft and non-military vessels or aircraft.

ii) Military manoeuvres.

During the Third Conference on the Law of the Sea a number of States proposed that the carrying out of military manoeuvres in foreign EEZs should be authorized by the coastal State[36] This proposal was not accepted. Military manoeuvres in foreign territorial waters are explicitly prohibited by Article 19 (2). Had the States wished to rule out such manoeuvres in the EEZ, they would have certainly set up a flat prohibition. The right to conduct military exercises has been seen as a manifestation of the freedom of high seas retained by Article 58, insofar as it has been held as a conduct "associated with the operation of ships"[57] On the other hand the prohibition to carry out military manoeuvres within the EEZ cannot be derived from Article 301, since the peaceful purpose clause there embodied only means that States are obliged not to pursue aggressive policies inconsistent with the Charter of the United Nations. However a number of States, when signing the 1982 Convention, restated their understanding and made clear that military exercises should be considered as forbidden within foreign EEZs.[58] This was not the view of Italy, which, on the contrary, made a declaration according to which it was its understanding that the provisions of the Montego Bay Convention did not rule out the lawfulness of conducting military exercises in a foreign EEZ without the consent of the coastal State.[59]

iii) Military installations and structures.

According to a well pondered interpretation advanced before the adoption of the final draft of the Montego Bay Convention,[60] such devices can be emplaced in the EEZ of another State,provided that they:

a) do not amount to artificial islands;
b) are not capable of being used for economic purposes;
c) do not interfere with the exercise of rights of the coastal State;
d) can be considered as a manifestation of the fredoms which third States retain in another State's continental shelf.

Such an interpretation still holds, since the proposals tabled by a number of countries with a view to ruling out the possibility of emplacing military installations or structures on the seabed of another State's EEZ were not accepted[61].

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the United Nations Convention on the Law of the Sea: Repercussions on the Law of Naval Warfare, Berlin, 1984, pp. 33-38; BOOTH, *Law, Force and Diplomacy at Sea*, London, 1985, p. 137 ff. ; de MURALT, op. cit., *supra*, note 52, pp. 93-95; VUKAS, op cit., *supra*, note 17, pp. 1055-1057.

56. Cf. WOLFRUM, op. cit., *supra, note* 50, p. 239.
57. de MURALT, op. cit., *supra*, note 52, p. 95.
58. See the declarations by Brazil *(Index of Multilateral Treaties on the Law of the Sea*, De Cesari, Migliorino, Scovazzi Tavazzini Treves, Trombette-Panigaldi eds, Milano, 1985, p. 342) ; Cape Verde, *ibidem*, p. 344; Uruguay, *ibidem*, p. 365.
59. Op. ult. cit., p. 356.
60. TREVES, op. cit., *supra*, note 55, p. 840 ff.
61. See de MURALT, op. cit., *supra*, note 52. p, 94. However a number of countries restated their positions at the time of

If a particular installation or structure cannot be associated with the freedoms guaranteed by Article 58, Article 59 applies, and the conflict between coastal State and third States should be resolved having recourse to the set of rules there pointed out. It is difficult to enumerate the devices which are to be included in the first category (for instance; submarine listening posts) and those which are to be included in the second one, where the residuary rule of Article 59 applies. It is unquestionable, however, that the establishment of an EEZ will curtail the rights of third States, since the seabed will not be regulated by the presumption of the freedom of high seas, but by a system which tries to balance the rights of the coastal State and those of third States.

iv) Naval operations involving the use of force.

If the EEZ were to be equated with neutral waters, belligerents would be under the duty not to wage hostilities in the EEZ of a neutral State. On the other hand, the neutral State would be under the duty to prevent its EEZ from being used as a theatre of hostilities by belligerents. Supposing that all the Mediterranean States proclaimed their EEZs, the whole Mediterranean sea would be *de facto* demilitarized, being covered by the EEZs of coastal States. Even the mere passage through neutral EEZs would be curtailed as is the passage of belligerents through neutral territorial waters.

The relation between the traditional law of neutrality and the new law of the sea has been the concern of Sweden, which made the following declaration when it signed the Montego Bay Convention:

> «It is.... the understanding of the Government of Sweden that the Convention does not affect the right and duties of a neutral State provided for in the Convention concerning the Rights and Duties of Neutral Powers in case of Naval Warfare (XIII Convention), adopted at The Hague on 18 October 1907",[62]

However, the Swedish declaration like other statements made by it during the Third Conference on the Law of the Sea on the same subject[63] - does not throw much light on our problem, which consists of determining whether the concept of EEZ has any impact on the rights and duties of neutral powers in time of war. For our part we share the opinion according to which the introduction of this new institution has not determined any restriction of the zone of naval operations in time of armed conflict.[64] The following arguments can be submitted:

1) The law of war was not touched upon by the Third UN Conference on the Law of the Sea. Being a matter not regulated by the 1982 Convention, it "....continues to be governed by the rules and principles of general international law" (Preamble of the 1982 Convention). At the same time, Article 311 (2) states that the 1982 Convention in no way "...alter(s) the rights and

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signing the Montego Bay Convention, since they pointed out that the coastal State had the exclusive right to construct or to authorize "all types of installations and structures, without exception, whatever their nature or purpose": see, for instance, the declaration by Brazil (*Index of Multilateral Treaties on the Law of the Sea*, cit., *supra*, note 58, p 342). See also Uruguay, *ibidem*, p. 365.

62. *Index of Multilateral Treaties on the Law of the Sea, cit., supra*, note 58, p. 363.
63. U.N. Doc. A/CONF. 62/SR. 136 (6 April 1982), p. 3; *Third United Nations Conference on the Law of the Sea Official Records*. Vol. XIV, p. 35, para. 64; *ibidem*, p. 54, para. 224.
64. RAUCH, op. cit., *supra*, note 55, p. 38. See also HALKIOPOULOS, "L'interférence des règles du nouveau droit de la mer et du droit de la guerre", *Traité du Nouveau Droit de la Mer*, cit., *supra*, note 17, pp. 1097-1098.

obligations of States Parties which arise from other agreements compatbile...." with the Convention.

2) The law of neutrality is a manifestation of State sovereignty. It applies in areas such as the internal and territorial waters which are the object of State sovereignty as is the land domain. The EEZ is not the object of State sovereignty, but only of sovereign rights for the purpose of exploiting natural resources.

3) The rights and duties of neutrals and belligerents in the EEZ cannot be regulated by Articles 58 and 59 of the 1982 Convention, for the simple reason that the law of warfare is outside the scope of the new law of the sea. Supposing, however, that both articles apply, the right to wage hostilities in the EEZ can be considered a manifestation or, at least, a use of the sea related to the freedom of navigation.

4) The most that can be conceded is that belligerent operations within the EEZ must be conducted in such a way as not to interfere with the sovereign rigts of the coastal State, namely the exploitation of its natural resources and the right to place artificial islands, installations and structures.

CONCLUSION

The instances of Mediterranean neutralizations and demilitarizations treated so far have each their separate history. One case of demilitarization - the Moroccan shore of the Strait of Gibraltar - is a classic example of the colonial age: it can be traced back to the beginning of this century. Time-honoured demilitarizations include Lemnos and the adjacent islands, though this last case cannot be ascribed to colonial inheritance. The Aegean demilitarizations were confirmed or created after World War I, with, the single exception of the Dodecanese Islands, the demilitarization of which was a consequence of the World War II settlement. The common feature of the Aegean demilitarizations is that they were stipulated when the territory affected was the object of a transfer of sovereigny. The demilitarization of the Italian Islands, also, is a consequence of the World War II settlement: the 1947 Peace Treaty. By virtue of the same Treaty the Island of Pelagosa was transferred to Yugoslavia and demilitarized. Malta is the only example of neutralization that has been set up fairly recently, Its particular feature - i.e. permanent neutrality based on non-alignment - is a characteristic of present day international relations.

The status of the Mediterranean neutralizations and demilitarizations varies. Some of them are unquestionably still in force, such as the permanent neutrality of Malta. Others are terminated, as is the case of the southern shore of the Strait of Gibraltar, and are maintained only *ex gratia*. A third category includes the Aegean demilitarizations. They are the object of contention as far as their continuance in force or the duties stemming from them are concerned. A legal clarification of the status of the Mediterranean demilitarizations and neutralizations would be highly desirable. However, this is an aim which has to be performed by States directly involved and not by a prospective conference on Mediterranean security. On this point, such a conference might only sanction decisions taken elsewhere.

Permanent neutrality and demilitarization could still play a role in contemporary international relations. Malta's permanent neutrality was stipulated with a view to prevent that small State, with its strategic significance, from becoming the object of contention between the two blocs. This aim has been reached only in part. However, had the Island not been neutralized, the shaky conduct of Maltese foreign policy would have given rise to swings between east and west far more dangereus than what the government in power on the Island operates today. The Aegean demilitarizations are undoubtedly vital for the security of the Anatolian coast, even if

Greece and Turkey are members of the same military alliance. Other demilitarizations, such as that of Pelagosa, are worth maintaining, for they contribute to the security and freedom of navigation of the Adriatic. Are new Mediterranean areas suitable for neutralization or demilitarization? From time to time Cyprus is cited as an instance of potential neutralization. However, while the Island's neutralization could enhance eastern Mediterranean security, it cannot be seen as a powerful contribution to solving the intercommunal strife, since it does not depend on east-west rivalries, but has its own roots in ethnic causes. Lebanon might be an area of potential interest for neutralization, should the present conflict lead to its disintegration into small independent units. Neutralization, particularly if coupled with military guarantes by third States, could prove edequate to keep the country out of east-west rivalry (subregional conflicts included) and to oblige its would-be rulers to abide strictly by norms preventing it from hosting movements that conduct aggressive policies against the governments of neighbour countries.

AVRUPA KONSEYİ ÖLÜM CEZASININ KALDIRILMASINA İLİŞKİN 6 NO.LU PROTOKOLÜN DÜŞÜNDÜRDÜKLERİ

Araş. Gör. Mehmet Semih GEMALMAZ

GİRİŞ: 6 Nolu Protokolün Hazırlanışı :

Ölüm Cezası sorunu, bu cezadan yana olanlar ile karşı çıkanlar arasında uzun tartışmalara konu biçimlemiş ve çeşitli disiplinler açısından irdelenmiştir. Son yıllardaki genel egilim, bu cezanın tümden kaldırılması doğrultusunda kendini açığa koymuştur. Nitekim bu makale çerçevesinde tanıtılacak 6 No.lu Protokol kapsamında da izlenebileceği gibi, Avrupa'nın ekonomik, siyasal-hukuksal ve ideolojik boyutlarda birleştirilmesi deviniminin baş kurumsallaştırma organı Avrupa Konseyi'nde de, ölüm cezasının kaldırılmasına ilişkin somut adımlar atılmıştır.

Avrupa Konseyi'nin oluşturduğu sözügeçen protokolün tam adı, «Ölüm Cezasının Kaldırılmasına İlişkin 6 No.lu Protokoldür.»

Protokolün hazırlanış öyküsü kısaca şöyledir: 25/Eylül/1981 tarihindeki Bakan Yardımcıları düzeyinde yapılan 337. oturumda, Avrupa Konseyi Bakanlar Komitesi İnsan Haklarını Yönlendirme Komitesine (Steering Committee), ölüm cezasının barış zamanında kaldırılmasına ilişkin Avrupa İnsan Hakları Sözleşmesine ek bir taslak Protokol hazırlanması görevini vermişti. Esasen bu karar, Avrupa Konseyi içinde uzun yıllar süren tartışma ve oluşmaların bir sonucu idi. Nitekim, örneğin, Suç Sorunlarına İlişkin Avrupa Komitesi (European Committee on Crime Problems) 1957'den bu yana, "Avrupa Devletleri içinde en ağır ceza sorunu"nu çalışma programına almıştı. Parlamenterler Asamblesinde de bir çok oturumda sorun gündeme gelmişti. 1979 tarihinde, Hukuk İşleri Komitesi'nde İsveçli raportör Mr. Lidbom konuya ilişkin rapor hazırladı. Bu rapora dayanılarak (Doc. 4509) Asamble 22/Nisan/1980'de iki Karar (Resolution 727 ve Recommendation 891) kabul ediyordu. Öte yanda, Konsey üyesi devletlerin Adalet Bakanları düzeyinde yapılan konferanslarda da (11. Konferans, 21 - 22/Haziran/1978; 12. Konferans, 20 - 21

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* İstanbul Üniversitesi Siyasal Bilgiler Fakültesi Araştırma Görevlisi.

/Mayıs/1980; Gayrı-resmî Toplantı, 10/Eylül/1981) sorun ele alınmış «üye devletlerde bir yasama tasarrufu ile bu ağır cezanın kaldırılması doğrultusunda büyük bir eğilim bulunduğu ve aynı doğrultuda, Avrupa Konseyi içinde uluslararası düzlemde de çabalar harcandığı» vurgulanmaktaydı. Nihayet, Yönlendirme Komitesinin hazırladığı taslak Protokol, 6 - 10/Aralık/1982 tarihinde Bakan Yardımcıları düzeyinde yapılan 354. toplantıda Bakanlar Komitesince kabul edildi ve Avrupa Konseyi üyesi devletlerin imzasına 28/Nisan/1983 tarihinde açıldı.

Toplam 9 maddeden oluşturulan 6 No. lu Protokol, 1/Mart/1985 tarihinden bu yana yürürlüğe girmiş bulunmaktadır. Yürürlüğe girmesi için gerekli olan 5 devlet tarafından onaylanması koşulu (md. 8), Avusturya, Danimarka, İspanya, İsveç ve Lüksemburg (19/Şubat/1985'te onaylamış) tarafından yerine getirilmiştir. Protokolü imzalayan Konsey üyesi devlet sayısı, onaylayan devlet sayısına göre daha çoktur; örneğin 1985 Baharında 14 devlet protokolü imzalamıştı. Genel eğilim ve öngörüler, Protoklün hızla daha çok sayıda devlet tarafından onaylanacağıdır. Nitekim, Protokolün yürürlüğe girmesini sağlayan beş devlet onayı gerçekleştirmiştir saptaması, 1/Ocak/1986 tarihi itibariyledir. 6 No.lu Protokole, bir Açıklayıcı Rapor (Explanatory Report) eklenmiş ve Protokolün hükümlerinin Yorumlanmasının anahtarı olan bölüm bu Rapor içersinde yer almıştır.

Protokolün Hükümleri

(madde 1)

Ölüm Cezası kaldırılmıştır. Hiç kimse ölüm cezasına mahkûm edilemez ya da bu mahkûmiyeti infaz edilemez.

(madde 2)

Bir Devlet, savaş zamanında ya da yakın savaş tehdidi durumunda işlenen eylemler için yasalarında ölüm cezasına ilişkin hüküm bulundurabilir. Bu ceza ancak, yasayla belirlenmiş durumlarda ve ilgili hükümleri uyarınca uygulanabilir. Sözü geçen devlet, bu yasanın ilgili hükümlerini Avrupa Konseyi Genel Sekreterine bildirir.

(madde 3)

Sözleşmenin 15. maddesine dayanılarak, bu Protokolün hükümleri ihlal edilemez.

(madde 4)

Sözleşmenin 15. maddesine dayanılabu Protokolün hükümlerine hiç bir kayıt konamaz.

(madde 5)

1. Bir Devlet, imzalama sırasında ya da onay, kabul ya da onama belgesini verirken bu Protokolün uygulanacağı ülke ya da ülkeleri belirtir.

2. Bir Devlet, daha sonraki her hangi bir tarihte Avrupa Konseyi Genel Sekreterine bildirimde bulunarak, bu Protokolü bildirimde belirtilen herhangi bir başka ülkeye uygulamak üzere genişletebilir. Bu ülke bakımından bu Protokol, böyle bir bildirimin Genel Sekreterce alınış tarihini izleyen ayın ilk günü yürürlüğe girer.

3. İlk iki bente göre yapılan herhangi bir bildirim, bu bildirimde belirtilen herhangi bir ülke bakımından Genel Sekretere yapılacak tebliğ ile geri alınabilir. Geri alma, bu tebligatın Genel Sekreterce alınış tarihini izleyen ayın ilk günü geçerli olur.

(madde 6)

Taraf Devletler arasında Protokolün (madde 1 - 5) hükümleri, Sözleşmenin ek maddeleri olarak kabul edilir ve Sözleşmenin tüm hükümleri buna göre uygulanır.

(madde 7)

Bu Protokol, Sözleşmeyi imzalamış olan Avrupa Konseyi üyesi Devletlerin imzalarına açıktır. Protokol, onaylama, kabul ya da onamaya konudur. Avrupa Konseyi üyesi bir Devlet, Protokolü onaylama, kabul ya da onamayı, aynı zamanda ya da önceden Sözleşmeyi onaylamaya bağlayabilir. Protokolü onay, kabul ya da onama belgeleri Avrupa Konseyi Genel Sekreterince saklanır.

(madde 8)

1. Bu Protokol, Avrupa Konseyi üyesi beş Devletin 7. madde hükümleri uya-

rınca Protokolle bağlı olduklarını bildirdikleri tarihi izleyen ayın ilk günü yürürlüğe girer.

2. Protokolle bağlı olduğunu daha sonra bildiren bir üye Devlet için bu Protokol, kendi onay, kabul ya da onama belgesini veriş tarihini izleyen ayın ilk günü yürürlük kazanır.

(madde 9)

Avrupa Konseyi Genel Sekreteri, Konsey üyesi Devletlere;

a. Herhangi bir imzayı

b. Herhangi bir onay, kabul ya da onama belgesinin verilmesini

c. 5 ve 8. maddeler uyarınca bu Protokolün her yürürlüğe giriş tarihini

d. Bu Protokola ilişkin başka herhangi bir eylem, bildirim ya da duyuruyu, bildirir.

Hükümlerin Yorum Anahtarı

Yukarıda belirtilen Protokole ekli Açıklayıcı Rapor, hükümlerin yorumlanmasında ve anlaşılmasında Konseyin resmî yaklaşımı olarak ele alınabilir.

Ölüm cezasının kaldırılması ilkesini getiren (md. 1), (md. 2) ile birlikte düşünülmelidir. Koşullar uygun olduğunda, taraf Devlet bu Protokolle bağlı olmak amacıyla, hukuk sisteminden bu cezayı kaldıracaktır. (md. 1)'in ikinci cümlesiyle vurgulanan, Protokolle güvenceye alınan yaşama hakkının, birey bakımından sübjektif bir hak oluşturduğudur.

(md. 2), açıkça, Protokolün alanını belirlemektedir. Sınır şu biçimde konmuş: Ölüm cezası, barış zamanı içinde, ilga edilmektedir. Protokol bağlamında bakıldığında, Konsey üyesi her hangi bir devletin, içinde bulunulan zamanda ya da gelecekte hukuk sistemi, savaş zamanında ya da yakın savaş tehdidi durumunda işlenen eylemler için ölüm cezası verilebileceği hükmüne yer vermesi ihtimali, o devletin bu Protokolle bağlanmasına engel biçimlememektedir. Tabii bu halde bile, ölüm cezasına yasa ve ilgili hükümler uyarınca hükmolunabilecektir.

Daha önce ayrıca belirtilmemekle birlikte açık olduğu üzere, Protokolde geçen Sözleşme terimi ile Avrupa İnsan Hakları Sözleşmesi kastedilmektedir. Esasen bu husus, Protokolün başındaki kısa giriş paragrafında da belirtilmiştir. İşte protokolün yollama yaptığı — (md. 3)'de yer verilen — 15. madde, AİHS'nin sınırlama maddelerinden birisidir. Sözleşmeye göre, «savaş ya da ulusun varlığını tehdit eden diğer genel tehlike halinde her Akid Taraf... Sözleşmede düzenlenen yükümlülüklere aykırı önlemler alabilir» denmektedir. Protokolle getirilen çözüm ise, çok daha kesin bir sınırlamadır. Artık Protokolle bağlanan taraf, Sözleşmenin 15. maddesinin getirdiği istisna alan yaratma hükmünden yararlanamayacaktır. Öte yanda Protokolün 4. maddesi ise Sözleşmenin 64. maddesine yollama yapmaktadır. Bilindiği gibi (md. 64), çekince (ihtirazi kayıt) konmasını düzenlemektedir. Protokol bu hukuksal olanağı bertaraf etmektedir.

Protokolün 6. maddesi düzenlemesi, AİH Sözleşmesinin 1. Nolu Protokolünün 5. maddesi ile 4 Nolu Protokolün 6. maddesinin ilk paragrafı düzenlemelerine koşuttur. Bu madde ile vurgulanan, Sözleşme, Protokol ve taraf Devlet iliskileridir; bu bağlamda bütün taraf devletler Protokolün 1'den 5'e kadar olan maddelerini uygulamayı ve bunu Sözlesmenin bir bölümü olarak kabul etmeyi taahhüt ederler. Kuşku yok ki, 6 Nolu Protokolün adı geçen 6. maddesi, aynı zamanda, Sözleşmenin oluşturduğu «koruma» mekanizmasına da isaret etmektedir. Protokolün bu noktadaki suskunluğu ya da daha doğru deyisle üstü kapalı yaklasımı, tıpkı 1 Nolu Protokol için de geçerli olduğu gibi, taraf Devletlerin, Sözlesmenin bireysel başvuruya ilişkin 25. maddesi ya da Divanın zorunlu yargı yetkisini tanıyan 46. maddesi çerçevesinde yapmış oldukları yahut da yapacakları bildirimlerle Protokolün Sözleşme bağlamında ele alınacağı gerçeğini ortadan kaldırmamaktadır.

Protokolün 6. maddesi bağlamında üzerinde durulması gereken bir başka yön de, Sözleşmenin 2. maddesi ile hangi doğrul-

tuda ilişki kurulacağı sorunudur. Hemen eklenmelidir ki, Sözleşme madde 2, Protokole taraf olan devletler bakımından yürürlükte kalmaya devam edecektir. Başka deyişle, Sözleşmenin (md. 2, bent 1, ilk cümle ve bent 2) hükümleri, Protokolün «Sözleşmenin eki» olacağı hükmüne aykırı düşmemektedir. Ancak, burada dikkate değer bir değişiklik de oluşmaktadır. Sözleşme (md. 2, bent 1, ikinci cümle)'deki «... Yasanın ölüm cezası ile cezalandırdığı bir suçtan dolayı hakkında mahkemece hükmedilen bu cezanın infazı dışında, hiç kimse kasden öldürülemez» ifadesi, Protokolle bağlanan devletler bakımından artık, savaş zamanında ya da yakın savaş tehdidi durumunda işlenen eylemler için yasalarında ölüm cezasına ilişkin hüküm bulundurabilir anlamına gelmektedir. Tabii, bu halde de ancak, ölüm cezasına mahkeme hükmedebilecektir.

Avrupa Konseyi Üyesi Devletlerde Ölüm Cezası

1 —) Avusturya
1968'den bu yana kaldırılmıştır. (de jure)

2 —) İzlanda
1928'den bu yana kaldırılmıştır. (de jure)

3 —) Norveç
1978'den bu yana kaldırılmıştır. (de jure)

4 —) İsveç
1973'den bu yana kaldırılmıştır. (de jure)

(de jure), barış ve savaş zamanları içinde tümden bu cezanın kaldırılması anlamındadır. Bu durumdaki bazı diğer Konsey üyesi devletler ise, daha ayrıntılı bilgi vererek aşağıda sayılmaktadır.

5 —) Danimarka
Olağan Ceza Usulünden 1930'da bu ceza çıkarıldı 1978'de yapılan oylama sonucunda ise tümden kaldırıldı, (de jure), (Folketing oylaması, 100'e karşı 46 aleyhte oyla).

6 —) Federal Almanya Cumhuriyeti
1949'da (Basic Law)'un 102. maddesine dayanılarak kaldırıldı. (de jure)

7 —) Lüksemburg
1848 Anayasası bu cezayı siyasal suçlar bakımından kaldırmıştı. 1977 Mayısında Parlamentoda yapılan oylama sonucunda tümden kaldırıldı. (de jure) (Oylama, 32 evet, 14 karşı ve 10 katılmayan)

8 —) Hollanda
1870'den beri Askeri Ceza Yasası ve savaşzamanı işlenen suçlar dışında kaldırılmıştı. 17 Şubat 1983'den bu yana, Parlamentoda yapılan oylama sonucunda tümden kaldırıldı. (de jure)

9 —) Malta
1971'de kaldırıldı. (İstisnası: Askeri suçlar ile savaş zamanında işlenen suçlar.)

10 —) İsviçre
1942'de kaldırıldı. (İstisnası: Askeri suçlar ile savaş zamanında işlenen suçlar)

11 —) İtalya
1944'de Olağan Ceza Usulünden çıkarıldı. 1948 Anayasası (md. 27) ile diğer haller için de kaldırıldı. (İstisnası : Askeri usuller)

12 —) Lihtenstayn
Yasada var, ancak hiç kullanılmıyor. Son infaz 1795'de idi.

13 —) Kıbrıs
Taammüden adam öldürme, devlete karşı ihanet ve diğer benzeri suçlar için bu ceza var.

14 —) Belçika
2'si 1975'den bu yana olmak üzere yaklaşık 18 suç tipi, Civil Law içinde ölüm cezası ile karşılanmaktadır. Genel Ceza Hukuku (common law crime) kapsamında yapılmış son infaz 1918'dedir. 1962 - 1974 yılları arasında 37 ölüm cezası mahkûmiyeti verilmişse de, hiç birisi infaz edilmemiştir. Bununla birlikte, devlete karşı işlenen suçlar bakımından, 2. Dünya Savaşı sırasında, bazı ölüm cezası mahkûmiyetleri verilmiş ve infaz edilmiştir. (Yukarıda adı geçen civil law terimi, martial or military law karşıtı anlamındadır.)

15 —) İrlanda

1964 tarihli Ceza Yasası (Criminal Justice Law), ihanet ve 1. dereceden adam öldürme suçları dışında, bu cezayı kaldırmıştır. Son infaz 1954'de yapıldı. 1980'de ise, 3 ölüm cezası mahkûmiyeti verildi. 1. dereceden öldürme suçu için bu cezaya hükmedilmesi zorunludur. 1. dereceden öldürme kapsamına şu suçlar girmektedir.

— Gardai Siochana üyesinin ya da görevini yaparken bir hapishane görevlisinin öldürülmesi,

— Devlete karşı suçlara ilişkin 1939 tarihli Yasanın 6, 7, 8 ve 9. maddelerine giren suçlar ya da yasadışı bir örgütün faaliyetleri sırasında yapılan adam öldürmeler,

— Yabancı bir devlet başkanının, İrlanda'da, siyasal katli.

16 —) İngiltere

Cinayet suçu için verilen ölüm cezası kaldırılmıştı. Devlete karşı ihanet (Kraliçeye karşı ihanet) ve şiddet unsuru taşıyan korsanlık (piracy) suçları için bu ceza verilebilmektedir. Devlete karşı ihanet suçunda bu cezanın verilebilmesi için, suçun savaş zamanında işlenmesi gerekir. Buna dayanan son infaz 1946'da yapılmıştır. İkinci tür olan korsanlık suçu ise ,artık gerçekleşmemektedir.

Cinayet suçundan ölüm cezasının kaldırılması 1965 tarihli yasayla yapılmıştır. Yasa, çıkarılmasını izleyen 5 yıllık sürede her iki parlamentonun da onayına konu idi. Nitekim ilgili hükümler, 16 Aralık 1969' da, Parlamentonun her iki kanadında da onaylanarak, süreklilik kazanmıştır.

17 —) Fransa

Yaklaşık 23 suç tipi için civil law kapsamında ölüm cezası verilebilir. 1969 - 1978 (1978'de hiç yoktu) yılları arasında 22 ölüm cezası mahkûmiyeti verildi. Bunlardan 6 tanesi infaz edildi. 1980'de ise 3 ölüm cezası mahkûmiyeti verildi.

18 —) Yunanistan

Cinayet, devlet bütünlüğü aleyhine işlenen suçlar, şiddet unsuru taşıyan silahlı soygun ve terörist eylemler hakkında ölüm cezası verilebilmektedir. Son uygulama, Albaylar Cuntasının düşüşünden önce 1972 Ağustosunda infaz edilmişti. 1974 - 1978 (1978'de hiç yoktu) yılları arasında 13 ölüm cezası mahkûmiyeti verilmişse de, bunların hiç birisi infaz edilmemiştir. Mevzuata göre, ölüm cezasının kesinleşmesinden itibaren 3 yıl içinde infaz yapılmazsa ,bu ceza otomatik olarak, ömür boyu hapis cezasına dönüşmektedir.

19 —) Portekiz

Siyasal suçlar bakımından bu ceza 1852'de, Olağan Ceza Usulünden ise 1867'de kaldırılmıştı. 1911 tarihli Anayasayla tümden kaldırıldı. 1. Dünya Savaşı sırasında, savaş sırasında işlenen suçlar için yeniden yasaya konduysa da, 1976 Anayasasayıla, bir kez daha tümden, kaldırıldı. (de jure)

20 —) İspanya

1978 Anayasasıyla bu ceza kaldırıldı. Savaş zamanında işlenecek, askeri suçlar için verilebilir.

21 —) Türkiye

Gerek savaş zamanında gerekse de barış zamanında işlenecek çeşitli suçlar için bu ceza verilebilmektedir.

Sonuç Saptamaları

Avrupa Konseyi üyesi Devletlerin yasal düzenlemelerine bakıldığında şu görülüyor. Barış zamanı bakımından bu ceza, zaten ezici bir çoğunlukla devletlerin mevzuatından çıkarılmıştı. Üstelik bu cezaya karşı çıkılması doğruldusunda uzun bir geçmişe dayanan, genel bir eğilim bulunduğu da izleniyor. Bu nedenle, barış zamanında ölüm cezasının ilgasına ilişkin 6 Nolu Protokol, gelişim çizgisinin doğal bir sonucu olarak belirmektedir. Deyim yerindeyse, iç hukuk düzenlemelerinin, ulusalüstü (supranational) düzlemde saptanması boyutunu pek aşmamaktadır. Öte yandan kuşku yok ki, bu cezayı mevzuatında tutan devletler bakımından Protokol, toplulukla bütünleşme çabası içindeki devletleri bir dizi ulusal hukuk değişikliklerine de zorlamaktadır.

İlginç olan yön, bu doğrultudaki bir girişimin, salt ekonomik ölçütlerle Toplu-

luğa yaklaşılmasının yetersiz olacağına açık karine biçimlemesidir. Nitekim, Protokol öncesinin son adımlarından olan 18 Haziran 1981 tarihli Avrupa Parlamentosu kararında, açıkça, Avrupa Topluluğunun sadece basit bir Ortak Pazar değil ve fakat ortak bir uygarlık olduğu vurgulanmaktaydı. «İnsan yaşamının asla geri alınamıyacağı», «olası kurbanların korunması gerektiği», «Avrupa uygarlığının temeli olan İnsan Hakları kavramı içinde yaşama hakkının herkes bakımından güvence altında olduğu», «Avrupa inancına bel bağlamış halkların sesi olmak, onlara yol göstermek ve bu doğrultuda onları oluşturmakla moral ve siyasal açıdan yükümlü bulunan Avrupa Parlamentosunun sorumluluğunun gereğini yaptığı», «yargı yanlışlarını düzeltmenin ölüm cezasında tümden olanaksız bulunduğu», «toplum bakımından koruyucu ve iyileştirici önlem anlayışının tercih edilmesi gerektiği», «ceza hukuku alanındaki işbirliğinin sadece bastırıcı önlemleri değil ama insani önlemlerin güçlendirilmesini de kapsadığı» saptamaları, ortak inancın ürünü olarak 1981 tarihli Kararın temelini oluşturuyordu. İşte 6 Nolu Protokol de bu temeli olduğu gibi benimsemiştir.

Kaynakça ve Çeviriye İlişkin Açıklama

Bu makale hazırlanırken yararlanılan kaynaklar şunlardır:

1. Human Rights Law Journal (HRLJ) Vol. 6 (1985), Part. 1, sf: 77-80
   (6 Nolu Protokolün İngilizce orijinal metni buradan alınmıştır.)
2. Human Rights Law Journal (HRLJ) Vol. 2 (1981), Part. 3-4, sf: 426-428
   (18.6.1981 tarihli Avrupa Parlamentosu Kararı metni buradan alınmıştır.
3. Ölüm Cezasının Konsey üyesi devletlerde dağılışı hakkında bkz., Avrupa Konseyi, Legal Affairs Committes, (Doc. 1-65/81) ve HRLJ, vol. 2 (1981), Part. 3-4
4. 6 Nolu Protokolün Türkçe çeviri metinleri için bkz. ve yukarıdaki çeviri ile karşılaştırınız. - Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni MHB) Sayı 1, Yıl 3, 1983, sf: 35-36, çev: Turgut Tarhanlı - Muzaffer Sencer İnsan Hakları / Ana Kuruluşlar ve Belgeler, TODAIE yay: 214, Ankara, 1986, sf: 207-209.
5. Ölüm Cezası
   Derleyen: Osman Balcıgil
   Birikim Yayınları, Hukuk Dizisi: 1, 1982, İstanbul

   — Avusturya'da ölüm cezası, 1787 iie 1968 tarihleri arasında 4 kez kaldırılmış ve yeniden yürürlüğe konulmuş, ancak 1968' de nihai olarak kayıtsız şartsız kaldırılmıştır. Avusturya Federal Adalet Bakanı Dr. Christian Broda Af Örgütü'nün (10 - 11 Aralık 1977) Stockholm, Ölüm Cezasının Kaldırılması Konferansında yaptığı konuşmadan. sf: 23.

   — İtalya'da 10 Ağustos 1944 tarih ve 244 sayılı kanun hükmünde kararname ile ölüm cezası kaldırılmış ve Ceza Yasasının ölüm cezası öngördüğü suçlar için ömür boyu hapis cezası verileceği belirtilmiş. 1 Ocak 1948'de yürürlüğe giren Anayasa'nın 27. maddesinde, «ölüm cezasının kabul edilmediği, ancak savaşla ilgili askeri yasalarda yer alabileceği» yer almıştır. Nihayet 22 Ocak 1948 tarih ve 21 sayılı kanun hükmünde kararname, Anayasanın yukarıdaki hükmünü tamamlamış, 1944 tarihli kararnamenin ölüm cezasını kaldıran savaşla ilgili askeri yasalar dışında kalan özel yasalara da uygulanacağını belirtmiştir. sf: 88 (5-8 Nisan 1978, İstanbul Barosu, 100. yıldönümü, «Ölüm Cezalarının Kaldırılması» Sempozyumuna Av. Aldo Casalinova tarafından sunulan bildiriden.)
6. Human Rights Law Journal (HRLJ) Vol. 1 (1980), Parts. 1-4, sf: 416-429

   2 Nisan 1976 tarihli Portekiz Cumhuriyeti Anayasasının (md. 25/2 ve 30,/1) hükümleri uyarınca yaşam hakkı ve kişi güvenliği ve özgürlüğü güvenceye alınmıştır. Buna göre, (md. 25/2), «Ölüm cezası hiç bir halde uygulanamaz» demektedir. (md. 30/1) ise, daha ileri giderek, «ömürboyu hapis cezası ya da süresiz yahut belirsiz süreli mahkûmiyet ya da güvenlik önlemine» hiç kimsenin maruz kalamayacağını düzenlemiştir.