DEHUKAMDER
DEHUKAM DENİZ HUKUKU DERGİSİ
DEHUKAM JOURNAL OF THE SEA AND MARITIME LAW

DEHUKAMDER - Volume: 5 / Issue: 2 / Year: 2022, pp. 1-24

LEGAL STATUS OF OFFSHORE ENERGY INSTALLATIONS*

KIYI ÖTESİ ENERJİ TESİSLERİNİN HUKUKİ STATÜSÜ

Prof. Dr. İsmail DEMİR**

ABSTRACT

Since the beginning of the 20th century, oil and natural gas have been used intensively as an energy sources. About one-third of the world's energy supply comes from the offshore sector. The legal status of offshore installations is important because it may have different legal and practical consequences depending on a particular situation. If an offshore installation would be considered to be a ship, it would be under the exclusive jurisdiction of the flag State. On the other hand as it will be evaluated to be an installation, it would be under the exclusive jurisdiction of the coastal State. Offshore installations are very complex structures and have different types, shapes, sizes and configurations. On the other hand, there is no uniform definition of ship or vessel in international law. For those reasons, it is difficult to determine their legal status. Their legal status is inevitably evaluated by the provisions of each applicable international convention or law.

* Research Article, Received: 20.04.2022 / Accepted: 01.10.2023.

Ethical Statement: The author(s) declare that the preparation of this article is in accordance with ethical rules.

Contribution Rate: The contribution rates of the authors to this article are as shown below:

Prof. İsmail DEMİR %100

Conflict of Interest Declaration: The author(s) have no conflict of interest to declare.

Declaration of Support and Acknowledgement: This study has been produced within the scope of the activities related to the TUBITAK 1001 project numbered "119K321".

** Professor of Law, Department of Maritime Law, Faculty of Law, Ankara University; Member of the Board of Directors and Leading Researcher at the Ankara University National Center for the Sea and the Maritime Law (DEHUKAM) (demir@dehukam.org) (ORCID: 0000-0002-5065-8850).

Damages caused by offshore installations are increasing and diversifying. Accordingly, the determination of their legal status has been even more important. The ideal solution is the adoption of a stand-alone international convention on offshore installations, but this seems unlikely to be in the short term.

Türkiye has recently accelerated offshore activities to meet its increasing energy needs. There are no specific regulations with regard to offshore installations under the Turkish law. There is an urgent need to regulate offshore installations specifically to fill this gap under Turkish law, and also enact a law on maritime jurisdictional zones without delay.

Keywords: •Offshore Installations •Oil and Natural Gas •Seabed •Legal Liability •Delimitation of Maritime Zones of Jurisdictions

ÖZ

20. Yüzyılın başlarından itibaren enerji kaynağı olarak petrol ve doğal gaz yoğun şekilde kullanılmaktadır. Dünya enerji tedarikinin yaklaşık üçte biri kıyı ötesi sektöründen karşılanmaktadır. Kıyı ötesi tesislerin hukuki mahiyetleri, belirli bir olayda farklı hukuki ve pratik sonuçları sebebiyle önem taşımaktadır. Bir kıyı ötesi tesisi, gemi kabul edildiği takdirde bayrak devletinin münhasır yetkisine tabi olacak iken, bir tesis olarak değerlendirildiği takdirde, kıyı devletinin münhasır yetkisi içinde kalacaktır. Kıyı ötesi tesisler, çok karmaşık yapılardır; bunların farklı türleri, şekilleri, hacimleri ve görünüşleri vardır. Diğer yandan milletlerarası hukukta yeknesak bir gemi tanımı mevcut değildir. Bu sebeple, onların hukuki statüsünü kesin olarak tayin etmek oldukça güçtür. Hukuki statünün tayini, uygulanacak her bir milletlerarası sözleşme veya kanun hükümlerindeki tercihe bağlıdır.

Kıyı tesislerin yol açtığı zararlar giderek artmakta ve farklılaşmaktadır. Dolayısıyla, kıyı ötesi tesislerin hukuki statüsünün belirlenmesi, daha da önem kazanmıştır. İdeal çözüm, kıyı ötesi tesislere dair müstakil bir milletlerarası sözleşmenin kabulü olmakla birlikte, kısa vadede bu mümkün gözükmemektedir.

Türkiye, son yıllarda artan enerji ihtiyacını karşılamak için kıyı ötesi tesislerin faaliyetlerini artırmıştır. Türk hukukunda kıyı ötesi tesislere ilişkin özel düzenlemeler bulunmamaktadır. Türkiye, bu eksikliği kapatmak için kıyı ötesi tesisleri müstakilen düzenlemeli, ayrıca deniz yetki alanlarını düzenleyen bir kanunu hızla yürürlüğe koymalıdır.

Anahtar Kelimeler: •Kıyı Ötesi Tesisler •Petrol ve Doğal Gaz •Deniz Yatağı •Hukuki Sorumluluk •Deniz Yetki Alanlarının Sınırlandırılması

INTRODUCTION

Since the beginning of the 20th century, oil and other dangerous and harmful substances have been used intensively as energy sources. The most important energy sources are oil and natural gas. Cruide oil and natural gas are basically

two different forms of petroleum[1]. Oil and natural gas today account for over 60 percent of the world's energy supply. One-third of it comes from the offshore sector. Accordingly, the offshore oil and gas indurstry is a significant component in the functioning of the global economy. To extract oil and natural gas from the seabed, the offshore industry uses a range of offshore installations of various shapes and size, designed to perform certain functions related to exploration and exploitation of offshore oil and gas resources. Offshore installations operate in diverse legal, economic and political environments. Offshore installations are regarded as elements of critical infrastructure in many countries[2].

Drilling for and production of petroleum resources offshore started in the 1890's off the shores of Summerland in California[3]. The offshore oil and gas industry has developed a range of offshore oil and gas installations of different sizes of configurations. Some of these installations can accommodate over 200 people on board, are capable of operating at water depths of more than 3.000 meters, and produce over 200.000 barresls per day[4]. There are now over 1.400 offshore drillings units, more than 270 floating production units (FPUs), some 100 floating storage and offloading units (FSOs) without production capability, and more than 7.000 fixed offshore production platforms in the world[5]. The number of offshore installations is constantly increasing.

Today offshore oil, gas and other mineral resources are extracted in almost every part of the World. Some of the main areas where offshore oil and gas activities take place include the Gulf of Mexico, the North Sea, the South Chine Sea, the Gulf of Guinea, the Persian Gulf and the Caspian Sea. The Arctic has a potential to become a major offshore petroleum producing region. But it is predicted that logistical and other challenges will prevent it from becoming a major producing

---

1 M. May, Investing in Oil and Gas: A Book for Investors in Oil and Gas Well Drilling Ventures (5th edn, Create Space 2013) 54-56.

2 Avustralian Government, Attorney-General's Department (AGD): Criticial Infrastructure Resilience Strategy 2010, 8, <Critical Infrastructure Resilience Strategy Plan (tisn.gov.au)> accessed 25 September 2021.

3 J. Schemph, Pioneering Offshore: The Early Years (PennWell 2007) 8; R. Grambling & W. Freudunberg, 'Attitudes Toward Offshore Oil Development: A Summary of Current evidence' (2006) 49(7) Ocean and Coastal Management 442.

4 M. Kashubsky, Offshore Oil and Gas Installations Security (Informa Law from Routledge, Oxon 2016) 25.

5 Rig Report: Offshore Rig Fleet by Rig Type, Rigzone, <www.rigzone.com/data/rig_report.asp?rpt=type> accessed 26 September 2021; <www.offshore-mag.com/artiles/2013/11/available-fpu-count-at-all-time-high.html> accessed 26 September 2021.

region in the near future[6]. The offshore oil and gas production are expected to grow in most regions of the World, but in Europe offshore production is expected decline[7]. The 1970s and 1980s saw an expansion in offshore oil activities requiring specialised carriage of oil rigs and production platforms[8]. Between 1991 and 2006, offshore oil production rose by more than one-third and offshore natural gas production more than doubled. The offshore industry and its importance and contribution to the global economy have become more widely accepted[9].

Increasing demand for energy, high oil prices and major technological advances have resulted into significant shift of oil and gas operations from land to offshore locations. More difficult to access mineral resources have become commercially viable[10]. Offshore oil and gas resources are of vital importance in meeting global energy needs. States and oil corporations are turning to the sea for oil and gas more than ever before[11]. Today, approximately one third of the total global oil and gas production comes from the offshore sector[12]. This figure is expected to increase due to depleting onshore fields and rapidly expanding offshore oil and gas developments[13].

This article examines the legal status of offshore installations from a global perspective and addresses some issues stemming from their complex legal status. The activities of offshore installations may raise few legal problems due to their

6 IEA, World Enegry Outlook 2011, 295, <World Energy Outlook 2011 – Analysis - IEA> (accessed 30 September 2021); Guide to Oil Spill Response in Snow and Ice Conditions in the Arctic 2015, 165-168, <Guide to Oil Spill Response in Snow and Ice Conditions (arctic-council.org)> accessed 30 September 2021.

7 J. Westwood, 'Global Offshore Prospect's' (Offshore Production Technology Summit, London, 26 January 2010) 23 <Global Offshore Prospects Global Offshore Prospects - Douglas ... (yumpu.com)> accessed 30 September 2021.

8 S. Baughen, 'Heavycon 2007 Liabilities, Exceptions, Indemnities', Bariş Soyer and Andrew Tettenborn (eds) Offshore Contracts and Liabilities, (Informa Law from Routledge, Oxon 2015) 29.

9 R. Herbert-Burns, 'Tankers, Specialized Production Vessels, and Offshore Terminals: Vulnerability and Security in the International Maritime Oil Sector', Rupert Herbmert-Burns, Sam Bateman and Peter Lehr (eds) Lloyd's MIU Handbook of Maritime Security (Taylar & Francis 2009) 133, 150.

10 Kashubsky, 27, 29.

11 M. Murphy, Contemporary Piracy and Maritime Terrorism (Routledge for the International Institute of Strategic Studies 2007) 1, 75.

12 IEA, World Energy Outlook 2008, 251, <World Energy Outlook 2008 – Analysis - IEA> accessed 30 September 2021.

13 2010 International Petroleum Encyclopedia, Joseph Hilyard (ed), (PennWell Corp.) 356.

proximity and effect on many issues such as marine pollution, maritime security, maritime safety, liability for deaths and injuries of people and jurisdiction. The legal status of offshore installations is important because their status may have different legal and practical consequences in a given situation[14]. This study examine their status under Turkish and international law.

I. DEFINITION AND TYPES OF OFFSHORE INSTALLATIONS

1. Definition of Offshore Installations

It is not possible or necessary to define offshore installations clearly and precisely. This is because they are very sophisticated and complex structures from a technological standpoint and used for different purposes such as drilling, production and accommodation.

The terminology used in the literature to refer to offshore oil and gas installations varies. Offshore oil and gas installations are usually referred to as "offshore facilities", "offshore platforms", "offshore structures", "offshore rigs" and "offshore units". In this study, the term "offshore installation" is preferred due to its generic meaning. It refers to any type of offshore installations permanently or temporarily attached to the subsoil offshore, erected for the purpose of exploration and exploitation of offshore oil and gas resources. It also includes fixed or mobile offshore installations for the purposes of drilling for, production, storage, and loading/offloading of oil and gas, but excludes pipelines, subsea equipment and mooring systems.

2. Types of Offshore Installations

Offshore installations with complex structures come in a variety of types, shapes, sizes and configurations. Different types of offshore installations are usually used for different functions in the offshore industry. Because the offshore installations have quite different technical features, it is impossible to precisely determine their general common features. They can be built to perform a particular function such as drilling, production and accommodation[15]. The offshore installations may be classified in different ways based on different criteria. For example, offshore installations can be classified based on their purpose, such as drilling, production, offloading, or storage of oil and gas. It is

[14] Kashubsky, 151.

[15] Kashubsky, 30.

also possible to classify them in general as floating or bottom - supported structures. However, the most common way to classify offshore installations is to include them either in the category of fixed offshore installations or mobile offshore installations[16]. This way is more practical and useful to determine the legal status of them.

Fixed offshore platforms are the most common types of offshore installations utilized in the offshore industry. They are usually fixed steel or concrete platforms that are used for long-term operations and designed to remain attached to the seabed at a single offshore location throughout a field's production life[17]. These installations can be manned or unmanned. Fixed offshore installations can be used for drilling, production, storage and offloading of oil and gas. The most common types of fixed offshore installations are jacket structures, gravity-based structures, compliant towers, and tension-leg platform[18].

Mobile offshore installations are also very common in the offshore industry. They may be used for drilling, production, offloading and storage of oil and gas. The types of mobile offshore installations include jack-ups, submersibles, drilling barges, semi submersibles, drill ships, spars, floating production storage and offloading unit ("FPSOs"), floating storage and offloading units ("FSOs"), flolating drilling production storage and offloading units ("FDPSOs"), and floating liquefield natural gas units ("FMRGs")[19].

II. OFFSHORE INSTALLATIONS IN MARITIME JURISDICTION ZONES

1. In General

The United Nations Convention on the Law of the Sea 1982 ("UNCLOS")[20] is the main international convention that lays down the legal framework for the uses of the sea including exploration and exploitation of offshore oil, gas and

16 Kashubsky, 31.

17 D. Sharp, Offshore Oil and Gas Insurance (Witherby 1994) 25; D. Pinder, 'Offshore Oil and Gas: Global Resource Knowledge and Technological Change' (2001) 44(9) Ocean & Coastal Management 579, 585.

18 H. Esmaeili, The Legal Regime of Offshore Oil Rigs in International Law (Ashgate Dartmouth 2001) 16.

19 Kashubsky, 34.

20 <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf> accessed 09 September 2022. Türkiye is non State Party.

other mineral resources. The respective rights, responsibilities, jurisdiction and enforcement powers relating to the operation and establishment of offshore installations are different in each maritime jurisdiction zone. The UNCLOS uses the terms "installations" and "structures", which are understood to include offshore installations.

Under the UNCLOS, a coastal State has exclusive rights to construct, regulate and control offshore installations on the seabed within its own sovereignty[21]. The coastal State can assert its jurisdiction over activities taking place aboard offshore installations and in their vicinity. The UNCLOS also contains a number of provisions pertaining to the protection of offshore installations constructed on the seabed over which a coastal State has authority[22].

2. Internal Waters

It is not uncommon for offshore installations to be located in the internal waters. Under Article 2(1) of the UNCLOS, the coastal State has full territorial sovereignty over its internal waters. The internal waters are assimilated to a coastal State's territory, so the coastal State is free to deal with its internal waters as it chooses, just as it is free to deal with its land territory[23]. Therefore, the coastal State can construct offshore installations in the internal waters and take measures necessary for their operation and protection. The coastal State can exercise jurisdiction over and apply its laws to foreign ships in its internal waters and ports.

3. Territorial Seas

Coastal States have sovereignty over the territorial sea, the air space above it, and its seabed and subsoil. This includes authority to construct offshore installations and engage in exploitation of oil, gas and other mineral resources on the seabed[24]. Coastal States also have the authority to exercise civil and criminal jurisdiction on board foreign ships in certain cases designated in the UNCLOS.

---

21 Article 56, 60, 80.

22 Article 60, 80, 87(1)(d), 147(2).

23 Churcil and Lowe, 60.

24 S. Honein, The International Law Relating to Offshore Installations and Artifical Island: An Industry Report (Lloyd's of London Press 1991) 4.

4. Contiguous Zone

The contiguous zone is an area where the coastal State has certain sovereign rights nothing relates to offshore installations following its proclaimation. It becomes a part of the exclusive economic zone ("EEZ") if declared and overlaps with the continental shelf, so offshore installations located in the contiguous zone are governed by the rules of the EEZ and the continental shelf. The coastal State has jurisdiction over offshore installations located in the contiguous zone[25].

5. Exclusive Economic Zone and Continental Shelves

Under Article 57 of the UNCLOS, coastal States is entitled to proclaim an EEZ up to 200 nautical miles from their territorial sea baseline. They enjoy the exclusive sovereign right to exploit and explore all natural resources[26]. Coastal States are also *ipso iure / ipso facto* granted sovereign rights over all natural non-living resources under the seabed and living resources on the seabed, which is called the continental shelf, up to 200 nautical miles (a maximum distance of 350 nautical miles) from the baseline or 100 nautical miles from the 2.500 metres water dept. The coastal State has exclusive right to authorise and regulate the construction, operation and use of offshore installations in its EEZ and on the continental shelf[27].

According to Article 60 of UNCLOS, the coastal State shall have exclusive jurisdiction over such installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations. Moreover, any installations which are abandoned or disused shall be removed to ensure safety of navigation.

6. High Seas and The Area

All States have rights to construct artificial islands and other installations permitted under international law, subject to Part VI of the UNCLOS[28]. The phrase "subject to Part VI" means that the freedom of all States to construct offshore installations on the part of the high seas above the continental shelf beyond 200 nautical miles excludes offshore installations. Seabed beyond national jurisdiction is referred to in the UNCLOS as "the Area". The Area is

25 Kashubsky, 199.

26 Article 56(1)(a), 57.

27 Article 60(1), 80.

28 Article 86(1)(d).

defined as the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction[29]. This area is often referred to as the deep seabed. The deep seabed has been withheld from the jurisdictional claims of States and declared the common heritage of mankind[30]. The International Seabed Authority ("ISA") is the internatonal organisation established under UNCLOS for the purpose of exercising overall responsibility for the exploration and exploitation of the resources on the seabed national jurisdiction[31].

Under Article 147(2)(a) of the UNCLOS, offshore operations beyond national jurisdiction to exploit resources of the deep seabed must be carried out in accordance with rules, regulations and procedures of the ISA. The ISA exercises overall responsibility with regard to the authorisation to construct or erect offshore installations for the purposes of exploitation of the deep seabed as well as the exercise of the functions of control and regulation.

III. LEGAL STATUS OF THE OFFSHORE INSTALLATIONS

The legal status of offshore installations is important because their status may have different legal and practical consequences in a given situation. The legal status of offshore installations may impact on the jurisdiction that States can exercise thereover. If an offshore installation would be considered to be a ship, it would be under the exclusive jurisdiction of the flag State. But should it be considered to be an installation, it would be under the exclusive jurisdiction of the coastal State. The legal status of offshore installations also helps to determine the rights of States with respect to offshore installations and responsibility for their activities[32]. The legal status of offshore installations may also affect the applicability of certain maritime law principles and rules to offshore installations, such as the law of piracy. Offshore installations can be regarded either as ships or ports depending on the regime applicable under international and national laws.

---

29 Article 1(1).

30 Article 136.

31 Article 156, 157(2).

32 C. Brown, 'International Environmental Law in the Regulation of Offshore Installations and Seabed Activities: The Case for a South Pacific Regional Protocol' (1998) 17(2) Australian Mining and Petroleum Law Journal 109, 113.

1. Under International Law

A. In General

There is no uniform definition of ship or vessel in international law. The term ship is used with different meanings in different contexts depending on the purpose and may be inclusive or exclusive of objects from one context to another[33]. The definitions of ship and vessel in international conventions have been made specifically for the purpose of each convention[34]. As a result, there is no single definition of ship in international law. However this is not a deficiency in international law. The definition of ship depends on the political will of States when drafting a particular international convention[35].

There are no uniform rules or common sets of standarts that are used to determine what structures may qualify as a ship, but there are several characteristics in both national and international law that pertain only to ships. They include moveability, seagoing ability, ability to transport passengers and/or goods, navigability, and navigation[36]. These examples can be increased depending on the applicable international law. Sometimes it is uncertain whether an offshore installation may be included in the definition of ship. However, several types of mobile offshore installations would be able to satisfy most of these characteristics. The most common characteristics used in the definitions of ship in international conventions are "operation in the marine environment" and "seagoing ability"[37]. Many types of offshore installations float, have seagoing ability either under their own power or tow, are capable of navigation, and in some cases resemble ships. Nevertheless, they are designed to engage in operations that are very different from normal ships[38].

---

33 D. O'Connel, The International Law of the Sea: Volume II (Clarendon Press 1983-84) 748.

34 M. Koskenniemi, 'Case Concerning Passage Through the Great Belt' (1996) 27(3) Ocean Development & International Law 255, 265.

35 R. Balkin, 'Is There a Place for the Regulation of Offshore Oil Platforms within International Maritime Law? If Not, Then Where?' (Comite Maritime International (CMI) Dublin Symposium, Dublin, 30 September 2013) 5, <http://www.cmi2013dublin.com/download/file/192> acessed 10 September 2021.

36 Esmaeili, 41.

37 Kashubsky, 152.

38 E. Gold and A. Chircop and H. Kindred, Essentials of Canadian Law Series: Maritime Law (Irwin Law 2003) 74.

B. The International Legal Regime

There are different approaches in different international conventions with respect to the legal status of offshore installations and legal treatment of offshore installations as ships. At least two international conventions treat all types of offshore installations as ships:

(a) some international conventions treat only mobile offshore installations as ships;
(b) some do not treat offshore installations asships at all;
(c) some international conventions treat offshore installations as distinct from ships and place them in a separate category of their own; and
(d) some only treat mobile offshore installations as ships in certain circumstances.

The International Convention for the Prevention of Marine Pollution from Ships 1973 ("MARPOL")[39] and the International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001 ("AFS Convention")[40] treat fixed and mobile offshore installations as ships. The MARPOL defines ship as a vessel of any type whatsoever operating in the marine environment, including hydrofoil, air-cushion vehicles, submersibles, floating craft, and fixed or floating platforms[41]. Similarly to the MARPOL, the AFS Convention treats fixed offshore installations as ships because the definition of a ship in de AFS Convention includes fixed platforms. AFS Convention defines a ship as a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats. Air-cushion vehicles, submersibles, floating craft, fixed or floating platforms, floating storage units (FSUs) and floating production storage and off-loading units (FPSOs)[42].

The Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft 1972 ("1972 Oslo Convention")[43] and the Convention on the Protection of the Marine Environment of the Baltic Sea Area 1974 ("1974

[39] MARPOL 73/78, Consolidated Edition 2002, IMO Publication, London 2002. Türkiye is a State Party.

[40] The Official Gazette, dated 15.10.2018 and No. 30333. Türkiye is a State Party.

[41] Article 2(4).

[42] Article 2(9).

[43] <https://treaties.un.org/doc/Publication/UNTS/Volume%20932/volume-932-I-13269-English.pdfArticle 19> accesed date 09 September 2022. Türkiye is non State Party.

Helsinki Convention")[44], which are regional conventions on marine pollution, also include fixed and mobile offshore installations in the definition of ship. In almost all other international conventions fixed offshore installations are explicitly or by implication excluded from the definition of ship[45].

C. Fixed Offshore Installations as Ships

Fixed offshore installations are not designed to be mobile. They are much less flexible than mobile offshore installations. Fixed offshore installations lack certain characteristics of ships such as moveability, self-propulsion, navigation and the ability to transport passengers and/or goods[46]. Mobile offshore installations may be treated as ships for some, but not all purposes. Mobile Offshore Drilling Units ("MODUs") and Mobile Offshore Production Units ("MOPUs") and other ship-shaped installations are designated to float and be navigated, either under their own propulsion or under tow. They can behave like ships when transported from one offshore site to another[47].

D. Drill Ships

Drill ships have many similarities with conventional ships. Drill ships are built with hulls of conventional ship shape that are slightly modified to allow a drilling tower (derrick) to be installed on the deck. A drill ship navigates under a master and crew and is used for the purpose of drilling exploratory oil and gas wells. Other ship-shaped installations employed by the offshore industry include FPSOs, FSOs and FDPSOs. Some FPSOs and FSOs are refitted former tankers and from a structural and technical standpoint FPSOs are a combination of ship and petroleum production, storage and transhipment functions. Some FPSOs, FSOs, Floating Starage Units ("FSUs") can be permanently moored with no means of propulsion and some are capable of disconnecting from their moored position and moving under their own power. FPSOs, FSOs and FDPSOs have seagoing ability and navigability, and normally operate in the marine environment[48].

---

44 <https://helcom.fi/wp-content/uploads/2019/10/1974_Convention.pdfArticle 2(4)> accessed 19 September 2022. Türkiye is non State Party.

45 Esmaeili, 36.

46 Kashubsky, 153.

47 N. Papadakis, The International Legal Regime of Artificial Islands (Sijthoff 1977) 175.

48 Kashubsky, 180.

E. Mobile Offshore Installation as Ships

Mobile offshore installations have most of the characteristics of a ship, such as movability, seagoing ability and navigability. A number of international conventions treat mobile offshore installations as ships, at least in certain circumstances. Some international convention are dealt with below:

The definition of a ship in the MARPOL covers all types of offshore installations. The same can be said for the AFS Convention;

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (2001 Bunker Convention)[49] defines ship as any seagoing vessel and seaborne craft, of any type whatsoever[50]. It emphasises term "seagoing ability". Mobile offshore installations have a seagoing ability and can therefore be described as seaborne craft.

The International Convention for the Safe and Environmentally Sound Recycling of Ships 2009 ("Ship Recycling Convention")[51] defines "ship" as a vessel of any type whatsoever operating or having operated in the marine environment and includes submersibles, floating craft, floating platforms, self elevating platforms, FSU and FPSO, including a vessel stripped of equipment or being towed[52]. Ship Recycling Convention explicitly treats virtually all types of mobile offshore installations as ships[53].

The International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 ("Ballast Water Convention")[54] defines a "ship" as a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSUs and FPSOs[55]. It is clear that Balast Water Convention treats most types of mobile offshore installations as ships.

---

49 The Offical Gazette, dated 27/07/2013 and No. 28720. Türkiye is a State Party.

50 Article 1(1).

51 The Official Gazette, dated 26.10.2018 and No. 30577. Türkiye is a State Party.

52 Article 2(7).

53 Kashubsky, 156.

54 The Official Gazette, dated 28.08.2014 and No. 29102. Türkiye is a State Party.

55 Article 1(12).

The Convention on the International Maritime Satellite Organization 1976 ("INMARSAT Convention")[56] defines "ship" as a vessel of any type operating in the marine environment. It includes *inter alia* hydrofoil boats, air-cushion vehicles, submersibles, floating craft and platforms not permanently moored[57]. Mobile offshore installations that are permanently moored are not regarded as ships.

Article 1(1) of the International Convention on Civil Liability for Oil Pollution Damage 1992 ("1992 CLC")[58] and Article 1(2) of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 ("1992 Fund Convention")[59] define "ship" as any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carriying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residus of such carriage of oil in bulk aboard. It is apparent that fixed offshore installations do not meet the criteria to be considered ships under the 1992 CLC and 1992 Fund Convention. However, some mobile offshore installations such as FPSOs are capable of transporting oil as cargo and therefore may be treated as "ships" under these conventions[60].

The Convention on the International Regulations for Preventing Collisions at Sea 1972 ("COLREG")[61] does not define the term "ship", but the "vessel" in Rule 3(a). Under Rule 3(a) "ship" includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water. Mobile offshore installations of any kind can be referred to as "water craft". Also mobile offshore installations can carry persons and equipment on board and are thus capable of being used as a means of transportation on water[62]. Therefore, it can be argued that mobile offshore installations could be regarded as ships for the purposes of COLREG too.

---

56 The Offical Gazette, dated 21.10.1989 and No. 20319. Türkiye is a State Party.

57 Article 1(f).

58 The Offical Gazette, dated 24.07.2001 and No. 24472. Türkiye is a State Party.

59 The Offical Gazette, dated 18.07.2001 and No. 24466. Türkiye is a State Party.

60 Balkin, 4.

61 The Offical Gazette, dated 23.05.2014 and No. 29008 (Repetitive). Türkiye is a State Party.

62 M. Summerskill, Oil Rigs: Law and Insurance (Stevens & Sons 1979) 26.

The United Nations Convention on Conditions for Registration of Ships 1986 ("Ship Registration Convention")[63] defines "ship" as any self – propelled sea-going vessel used in international seaborne trade for the transport of goods, passengers, or both with the exception of vessels of less than 500 gross registered tons[64]. Offshore installations may not be able to satisfy all of the criteria set out in Article 2 of Ship Registraiton Convention. Therefore, it can be argued that offshore installations are not regarded as ships under this Convention. However, the Convention is not yet in force.

F. The Dual Status Approach

The dual approach means to treat mobile offshore installations as ships when they are in transit and as installations when they are on location engaged in drilling or production operations. Under this approach, the legal status of a mobile offshore installation can change depending on the nature of activity being performed by the installation at a given point in time[65]. Some international conventions in which this approach is adopted are dealt with in the following:

The UNCLOS appears to have created a separate legal category for offshore installations, which are considered neither ships nor artificial island[66]. Despite the UNCLOS use of "ship" and "vessel" interchangeably, it does not define them. The UNCLOS also uses the terms "installation" and "structure", which are not defined therein, but seems to include offshore oil and gas installations. On the other hand, the UNCLOS appears to have adopted the dual status approach, at least to the legal treatment of mobile offshore installations that are considered to be ships when in transit and installations when they are engaged in offshore operations on location. Once MODUs are fixed to the continental shelf of a State and engaged in drilling operations, they are covered by Articles 56, 60 and 80 of the UNCLOS. They are treated not as ships, but as installations or structures.

Under Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 ("1988 SUA Convention")[67], ship

---

63 <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&clang=_en> accessed 10 September 2022. The Convention has not entered into force. It shall enter into force 12 months after the date on which not less than 40 States. To date, 15 States have simply approved it.

64 Article 2.

65 Kashubsky, 159.

66 Esmaeili, 53.

67 The Offical Gazette, dated 26.01.1988 and No. 23242. Türkiye is a State Part.

means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft. Therefore, mobile offshore installations are treated as ships for the purposes of the SUA Convention 1988. However, under Article 4(1), the SUA Convention 1988 will not apply to mobile offshore installations when they are on location engaged in offshore operations, because such offshore installations would probably be considered as neither navigating or scheduled to navigate[68].

The International Convention on Salvage 1989 ("1989 Salvage Convention")[69] does not define the ship, but the vessel. Vessel means any ship or craft, or any structure capable of navigation[70]. This definition seems to include mobile offshore installations because they are capable of navigation. However, Article 3 of Salvage Convention 1989 specifically provides that the Convention does not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources[71]. This means that the Salvage Convention 1989 would apply to mobile offshore installations that are in transit or navigating from one place to another.

The International Convention on the Removal of Wrecks 2007 ("Wreck Removal Convention" or "the Nairobi Convention")[72] defines ships as a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources[73]. As understood, the Wreck Removal Convention has also adopted the dual status approach.

G. Offshore Installations as a Separate Category

Some international conventions appear to have adopted this approach to the legal status of offshore installation. The Convention on Civil Liability for Oil Pollution Damge Resulting from Exploration and Exploitation of Seabed

68 Article 4(1).

69 The Offical Gazette, dated 24.05.2014 and No. 29009. Türkiye is a State Part.

70 Article 1(b).

71 Article 3.

72 <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2007-Nairobi-International-Convention-on-the-Removal-of-Wrecks.pdf> accessed 20 September 2022. Türkiye is non State Party.

73 Article 1(2).

Mineral Resources 1977 ("CLEE")[74] defines the term installation as any well or other facility, whether fixed or mobile, which is used for the purpose of exploring for, producing, treating, storing or transmitting or regaining control of the flow of crude oil from the seabed or its subsoil[75]. However CLEE does not define the term, it is clear that offshore installations are treated as a separate category.

Similarly to the 1989 Convention, offshore installations are treated as a separate category in the following international conventions:

The International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 ("Intervention Convention")[76];

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter 1972 ("1972 Dumping")[77];

The International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 ("OPRC")[78]; and

The International Convention on Limitation of Liability for Maritime Claims 1976 ("LLMC")[79].

2. Under National Laws

Like international treaty practice, the approach in national legislation varies from context to context. It is determined by the purpose to be obtained by the individual type of legislation. State practices in relation to treating offshore installations as ships appear to be mixed. Various types of national legislation have taken significantly different approaches with respect to the legal status of offshore installations in different contexts. It depends on the required intention. However, the fixed offshore installations are not generally considered as ships in

74 <https://www.ecolex.org/details/treaty/convention-on-civil-liability-for-oil-pollution-damage-resulting-from-exploration-for-and-exploitation-of-seabed-mineral-resources-tre-000434> accessed 10 September 2022. CLEE it is not yet in force.

75 Article 1.(2)(a).

76 <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/1969-International-Convention-relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties-1.pdf> accessed 10 September 2022. Türkiye is non State Party.

77 <https://treaties.un.org/doc/publication/unts/volume%201046/volume-1046-i-15749-english.pdf> accessed 10 September 2020. Türkiye is non State Party.

78 The Official Gazette, dated 18.09.2003 and No. 25233. Türkiye is a State Party.

79 The Official Gazette, dated 04.06.1980 tarihli ve 17007. Türkiye is a State Party.

domestic law[80]. On the other hand, not all types of mobile offshore installations may be defined as ships, although they have been treated as ships for several national law purposes.

The legal position is not much different under Turkish Law. Turkish law does not specifically regulated offshore installations and their legal status. If the offshore installation is regarded as ship, the provisions of the legislation pertaining to ships apply to the case. Otherwise, the provisions of other legislation shall apply.

3. Assessments

As explained above, there are different approaches to the legal status of offshore installations in both international law and national law. The term ship can have different meanings in the international conventions depending on the aims and purpose of the convention. Therefore, both fixed and mobile offshore installations may be treated as ships in international law in certain context.

Fixed offshore installations are generally not treated as ships in international law, but at least two international and two regional conventions treat fixed offshore installations as ships. On the other hand, a common approach in international law to the legal status of mobile offshore installations such as MODUs, FPSO and FSOs is to treat them as ships when they are in transit from one offshore location to another and to treat them as installations when they are on location engaged in offshore operations, which is referred to as the dual status approach. This approach seems to be the most practical approach. However, to determine the legal status of an offshore installation in any specific situation, it is necessary to look at relevant definitions and approaches of applicable international conventions as well las national legislation and judicial decisions. Offshore installations may be regarded as ships in certain circumstances depending on the nature and purpose of the convention or national law.

If offshore installations are regarded as ports, the costal State can designate any place under its jurisdiction, including an offshore installation as an offshore port. It is not uncommon for coastal States to designate offshore installations from which oil and gas is directly exported as offshore ports.

---

[80] Esmaeili, 27; T. Schoenbaum, Admiralty and Maritime Law (4th edn, Thomson West 2004) 41.

Offshore installations are very complex structures and have different types, shapes, sizes and configurations. Offshore activities are also highly complex, often requiring significant technological and financial resources, as well as technical expertise[81]. It is inevitable that different approaches to the legal status of offshore installations will arise since there is no uniform definition of ship or vessel in international law. This should not be seen as a deficiency in international law. However, it should be taken care of a certain harmonization between relevant international conventions. While the dual status approach seems to be the most practical approach, it may cause unfair practices that the offshore installations do not fall in the definition of ship in some international conventions.

For example, the Salvage Convention 1989 and Wreck Removal Convention do not apply to fixed or mobile offshore installations when such installations are on location engaged in the exploration, exploitation or production of sea-bed mineral resources. In fact, it does not matter whether an object that is in danger or poses a risk to the environment is fixed or mobile, for both purposes of salvage and wreck removal. Even if those installations are fixed, there is no reasonable ground to exclude them from the scope of application of those conventions even they are fixed[82].

Türkiye has recently accelerated offshore activities to meet its increasing energy needs. It operates many offshore installations, particularly in the Black Sea, and exploring for oil, gas and other mineral resources in its own maritime zones of jurisdiction. Türkiye should make regulations on the following two issues to strengthen its effectiveness in offshore operations:

- As stated above, offshore installations have not been specifically regulated in Turkish law. Two amentments are needed to fill this gap. Firstly, offshore installations should be clearly defined in the Act No. 4922 on the Protection of Life and Goods at Sea[83]. Secondly, secondary

[81] D. S. Kristel, Civil Liability and Financial Security for Offshore Oil and Gas Activities, Final Report (Maastricht, October 2013) 28, <Study evaluating the status quo and the legal implications of third party liability for the European security industry (europa.eu)> accessed 30 September 2021.

[82] İ. Demir, 1989 Londra Konvansiyonu Çerçevesinde Kurtarma (Ankara 2010) 94-95; İ. Demir, Nairobi Sözleşmesi Çerçevesinde Enkaz Kaldırma (Ankara 2013) 102 – 106.

[83] The Official Gazette, dated 14.06.1946, No. 6333.

legislation should be reviewed in line with this definition and necessary amendments should be made.

- The UNCLOS is the main international convention that lays down the legal framework for the uses of the sea. The provisions of the UNCLOS generally constitute international law and practice with respect to traditional uses of the oceans. Türkiye is not a party to the UNCLOS. It also does not have a law regulating maritime zones of jurisdictions except the Act No. 2674 on the Territorial Seas. Therefore, Türkiye has to apply to international customary law in the delimitation of maritime zones of jurisdictions. Türkiye should maintain its persistent objector position. However, this does not prevent the inclusion of concepts such as inlad waters, territorial seas, contiguous zone and EEZ defined in the UNCLOS into Turkish law by a special law. It would be benefical to adopt a law called "Law on Maritime Zones of Jurisdiction" as soon as possible.

CONCLUSION

The rapid increase in the operations of offshore installations all over the world causes many problems, particularly regarding marine pollution and security. The solution to those problems is directly and closely related to the legal nature of offshore installations. Unfortunately, the approaches to the legal status of offshore intallations are quite different. The ideal solution is the adoption of a stand-alone international convention on offshore installations, but this seems unlikely in the short term.

IMO appears to have adopted the dual status approach. While this approach seems to be the most practical, in many cases, it can lead to unfair consequences that are incompatible with the purposes of the relevant international conventions. For those reasons, it should be abandoned, and instead offshore installations should be included in the scope of application of the relevant conventions to the extent possible, regardless of whether they are fixed or mobile.

Türkiye should clearly define offshore installations by an amendment to the Act No. 4922 and review secondary legislation to ensure necessary harmonization. On the other hand, it should adopt an act on Maritime Jurisdiction Zones as soon as possible.

BIBLIOGRAPHY

A) CONVENTION BASED REGIMES

The United Nations Convention on the Law of the Sea, 1982

The International Convention for the Prevention of Marine Pollution from Ships, 1973

The International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001

The Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, 1972

The Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1974

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

The International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009

The International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004

The Convention on the International Maritime Satellite Organization, 1976

The International Convention on Civil Liability for Oil Pollution Damage, 1992

The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

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

The United Nations Convention on Conditions for Registration of Ships, 1986

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

The International Convention on Salvage, 1989

The International Convention on the Removal of Wrecks, 2007

The Convention on Civil Liability for Oil Pollution Damge Resulting from Exploration and Exploitation of Seabed Mineral Resources, 1977

The International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972

The International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990

The International Convention on Limitation of Liability for Maritime Claims, 1976

B) NATIONAL REGIMES

Act No. 4922 on the Protection of Life and Goods at Sea.

C) DOCTRINE

2010 International Petroleum Encyclopedia, Joseph Hilyard (ed), (PennWell Corp.)

Avustralian Government, Attorney-General's Department (AGD): Criticial Infrastructure Resilience Strategy 2010, <*Critical Infrastructure Resilience Strategy Plan (tisn.gov.au)*> accessed 25 September 2021

Balkin R, 'Is There a Place for the Regulation of Offshore Oil Platforms within International Maritime Law? If Not, Then Where?' (Comite Maritime International (CMI) Dublin Symposium, Dublin, 30 September 2013) http://www.cmi2013dublin.com/download/file/192 accessed 10 September 2021

Baughen S, 'Heavycon 2007 Liabilities, Exceptions, Indemnities', Bariş Soyer and Andrew Tettenborn (eds) *Offshore Contracts and Liabilities*, (Informa Law from Routledge, Oxon 2015)

Brown C, 'International Environmental Law in the Regulation of Offshore Installations and Seabed Activities: The Case for a South Pacific Regional Protocol' (1998) 17(2) Australian Mining and Petroleum Law Journal 109.

Churcill, R and Lowe, A, *The Law of the Sea* (3rd edn, Manchester University Press 1999)

Demir İ, 1989 Londra Konvansiyonu Çerçevesinde Kurtarma (Ankara 2010)

Demir İ, Nairobi Sözleşmesi Çerçevesinde Enkaz Kaldırma (Ankara 2013)

Esmaeili H, The Legal Regime of Offshore Oil Rigs in International Law (Ashgate Dartmouth 2001)

Gold E and Chircop A and Kindred H, *Essentials of Canadian Law Series: Maritime Law* (Irwin Law 2003)

Grambling R and Freudunberg W, 'Attitudes Toward Offshore Oil Development: A Summary of Current evidence' (2006) 49(7) Ocean and Coastal Management 442

Guide to Oil Spill Response in Snow and Ice Conditions in the Arctic 2015, <Guide to Oil Spill Response in Snow and Ice Conditions (arctic-council.org)> accessed 30 September 2021

Herbert-Burns R, 'Tankers, Specialized Production Vessels, and Offshore Terminals: Vulnerability and Security in the International Maritime Oil Sector', Herbmert-Burns R and Bateman S and Lehr P, *Lloyd's MIU Handbook of Maritime Security* (Taylar & Francis 2009)

Honein S, The International Law Relating to Offshore Installations and Artifical Island: An Industry Report (Lloyd's of London Press 1991)

IEA: World Energy Outlook 2008, <World Energy Outlook 2008 – Analysis - IEA> accessed 30 September 2021

IEA: World Enegry Outlook 2011, <World Energy Outlook 2011 – Analysis - IEA> accessed 30 September 2021

Kashubsky M, *Offshore Oil and Gas Installations Security* (informa law from Routledge, Oxon 2016)

Koskenniemi M, 'Case Concerning Passage Through the Great Belt', (1996) 27(3) Ocean Development & International Law 255

Kristel DS, *Civil Liability and Financial Security for Offshore Oil and Gas Activities, Final Report* (Maastricht, October 2013) <Study evaluating the status quo and the legal implications of third party liability for the European security industry (europa.eu)> accessed 30 September 2021

May M, Investing in Oil and Gas: A Book for Investors in Oil and Gas Well Drilling Ventures (5th edn, Create Space 2013)

Murphy M, *Contemporary Piracy and Maritime Terrorism* (Routledge for the International Institute of Strategic Studies, 2007)

O'Connel D, The International Law of the Sea: Volume II (Clarendon Press 1983-84)

Papadakis N, The International Legal Regime of Artificial Islands (Sijthoff 1977)

Pinder D, 'Offshore Oil and Gas: Global Resource Knowledge and Technological Change' (2001) 44(9) Ocean & Coastal Management 579

Rig Report: Offshore Rig Fleet by Rig Type, Rigzone, <www.rigzone.com/data/rig_report.asp?rpt=type> (accessed 26.09.2021); www.offshore-mag.com/artiles/2013/11/available-fpu-count-at-all-time-high.html accessed 26 September 2021

Schemph J, Pioneering Offshore: The Early Years (PennWell 2007)

Schoenbaum T, *Admiralty and Maritime Law* (4th edn, Thomson West 2004)

Sharp D, Offshore Oil and Gas Insurance (Witherby 1994)

Summerskill M, *Oil Rigs: Law and Insurance* (Stevens & Sons 1979)

Westwood J, 'Global Offshore Prospect's' (Offshore Production Technology Summit, London, 26 January 2010) <Global Offshore Prospects Global Offshore Prospects - Douglas ... (yumpu.com)> accessed 30 September 2021