

- Research Article -

⚡**EVALUATION OF THE DESIGNATION OF THE
MEDITERRANEAN SEA AS AN EMISSION CONTROL AREA
FOR SULPHUR OXIDES (MED SOX ECA) PURSUANT TO
MARPOL ANNEX VI IN TERMS OF LAW OF THE SEA***
*AKDENİZ'İN MARPOL EK VI KAPSAMINDA KÜKÜRT OKSİTLER
(MED SOX ECA) İÇİN EMİSYON KONTROL ALANI OLARAK
BELİRLENMESİNİN DENİZ HUKUKU AÇISINDAN
DEĞERLENDİRİLMESİ*

Asst. Prof. Dr. / Dr. Öğr. Üyesi Nasıh Sarp ERGÜVEN**
Eyyüp KARAHAN*** / Nazan ÖZYÜREK**** / Özlem ÖRME*****

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^{**} Assistant Professor, Ankara University, Faculty of Law, Department of International Law, Senior Researcher, DEHUKAM (erguven@dehukam.org) (ORCID ID: 0000-0003-4610-2515).

^{***} General Manager, Republic of Türkiye Ministry of Environment, Urbanisation and Climate Change, Directorate General of Environmental Management (eyyup.karahan@csb.gov.tr) (ORCID ID: 0000-0002-8833-4229).

^{****} Head of Department, Republic of Türkiye Ministry of Environment, Urbanisation and Climate Change, Department of Marine and Coastal Management (nazan.ozyurek@csb.gov.tr) (ORCID ID: 0000-0001-9008-8920).

^{*****} Manager of Branch, Republic of Türkiye Ministry of Environment, Urbanisation and Climate Change, Marine Environment Management Branch Office (ozlem.orme@csb.gov.tr) (ORCID ID: 0000-0001-7804-4642).

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ABSTRACT

The 22nd Meeting (COP 22) of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) and its Protocols, held in Antalya, Türkiye, on 7-10 December 2021, adopted a significant decision on the designation of the Mediterranean Sea as an Emission Control Area for Sulphur Oxides (Med SO_x ECA) pursuant to Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as further amended by the Protocol of 1997 (MARPOL).

The decision is the outcome of intense consultations among the Contracting Parties that have been facilitated by the UN Environment Programme's Mediterranean Action Plan (UNEP/MAP). It is expected to generate significant benefits for human health and for the integrity of ecosystems, which both suffer from harmful SO_x emissions from the maritime transport sector. The Decision paves the way for the submission in 2022 of a joint and coordinated proposal on the designation of the Med SO_x ECA to the 78th Marine Environment Protection Committee (MEPC 78) of the International Maritime Organization (IMO). The Med SO_x ECA could come into force in January 2025.

The main aim of this article is to evaluate the possible effects of the mentioned decision with regard to the law of the sea. By doing it so, MARPOL Annex VI and its relation to the Barcelona Convention system and other related international legal documents, will be discussed under the law of the sea.

Keywords: International Law of the Sea, Protection of the Marine Environment, Barcelona Convention, MARPOL Annex VI, Med SOx ECA, UNEP/MAP, IMO

ÖZ

Akdeniz'in Deniz Ortamı ve Kıyı Bölgesinin Korunması Sözleşmesi (Barselona Sözleşmesi) ve Protokollerine Taraf Devletlerin 22. Toplantısı (COP 22), 7-10 Aralık 2021 tarihlerinde Antalya'da gerçekleştirilmiştir. Toplantıda, 1978 Protokolü ile düzenlenen ve 1997 Protokolü ile daha da değiştirilen 1973 tarihli Denizlerin Gemilerden Kirilenmesini Önleme Uluslararası Sözleşmesi (MARPOL) Ek VI uyarınca Akdeniz'in Sülfür Oksitler için Emisyon Kontrol Alanı (Med SOx ECA) olarak belirlenmesine ilişkin önemli bir karar kabul edilmiştir.

Karar, Taraf Devletler arasında, Birleşmiş Milletler Çevre Programı Akdeniz Eylem Planı (UNEP/MAP) tarafından teşvik edilen yoğun istişarelerin bir sonucudur. Bu karar ile deniz taşımacılığı sektöründen kaynaklanan zararlı SOx salınımlarından zarar gören insan sağlığı ve ekosistemlerin bütünlüğü için önemli faydalar sağlanması beklenmektedir. Karar, Med SOx ECA'nın oluşturulmasına ilişkin ortak ve eşgüdümlü bir teklifin 2022 yılında Uluslararası Denizcilik Örgütü'nün (IMO) 78. Deniz Çevresini Koruma Komitesi'ne (MEPC 78) sunulmasının önünü açmaktadır. Med SOx ECA'nın Ocak 2025'te yürürlüğe girmesi beklenmektedir.

Bu makalenin temel hedefi, söz konusu kararın deniz hukuku açısından olası etkilerini değerlendirmektir. Bu amaçla, MARPOL Ek VI ve

Barcelona Sözleşmesi sistemi ve diğer ilgili uluslararası hukuki belgelerle olan ilişkisi deniz hukuku kapsamında ele alınacaktır.

Anahtar Kelimeler: Uluslararası Deniz Hukuku, Deniz Çevresinin Korunması, Barcelona Sözleşmesi, MARPOL Ek VI, Med SOx ECA, UNEP/MAP, IMO

I. INTRODUCTION

The negotiation process of the groundbreaking decision adopted in COP 22 has its roots in earlier COP Meetings. In this context, the Contracting Parties to the Barcelona Convention adopted Decision IG.24/8 on the Road Map for a Proposal for the Possible Designation of the Mediterranean Sea, as a whole, as an Emission Control Area for Sulphur Oxides Pursuant to MARPOL Annex VI¹, within the framework of the Barcelona Convention at the COP 21 (Naples, Italy, 2-5 December 2019)². The COP 22 Meeting also witnessed a detailed negotiation process especially related to the geographical description of the proposed area of application for the designation of the proposed Emission Control Area (ECA). During discussions on the matter, the representative of Egypt requested that the report of the meeting reflect the fact that the exclusion of the Suez Canal and its waiting area from the scope of the proposed ECA for

¹ Annex VI, Regulations for the Prevention of Air Pollution from Ships, to the MARPOL Convention (adopted 26 September 1997, entered into force 19 May 2005) For the official text of the Regulations see: MARPOL Annex VI and NTC 2008 (IMO 2017) (MARPOL Annex VI).

² Decision IG.24/8, <<https://www.unep.org/unepmap/meetings/cop-decisions/cop21-out-come-documents>> accessed 20 April 2022.

sulphur oxides would enable Egypt to sign and ratify Annex VI to MARPOL. In conclusion, a group of countries presented an amendment to the description of the proposed area of application, including the addition of a map in annex 2 to the proposal, with a footnote indicating that the coordinates reflecting the map would be submitted to the secretariat by Egypt no later than 24 December 2021 and would be subject to a technical review by IMO³.

II. POLLUTION OF THE MARINE ENVIRONMENT THROUGH THE ATMOSPHERE

A) GENERAL OVERVIEW

The United Nations Convention on the Law of the Sea (UNCLOS)⁴, which was signed on 10 December 1982, and entered into force on 16

³ UNEP(DEPI)/MED IG.25/27, Report of the 22nd Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, 12, <<https://www.unep.org/unepmap/meetings/cop-decisions/cop22-outcome-documents>> accessed 20 April 2022.

⁴ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 1 November 1994) 1833 UNTS 397 (UNCLOS); Türkiye did not sign, and has not yet ratified, the Convention because of the prohibition of making reservations to the Convention. Türkiye has not been a party to the UNCLOS, primarily because of the provisions related to the width of the territorial seas, the limitation of territorial seas, the limitation of the continental shelf, and the legal regime of the islands. Türkiye has been a persistent objector on these issues in order to avoid the possibility of these rules becoming part of the international customary law and gaining a binding status. For detailed information see: Nasıh Sarp Ergüven, '1982 tarihli Birleşmiş Milletler Deniz Hukuku Sözleşmesine Karşı Türkiye'nin Tutumu' in Ünüvar, N. (ed.): *Doğu Akdeniz Sempozyumu Doğu Akdeniz Sorunlarına Hukuki ve Siyasi Yaklaşım ile Türkiye Büyük Millet Meclisinin Çözümdeki Muhtemel Rolü*, (TBMM Basımevi 2021) 193-204; Apart from that, Türkiye agrees with most of UNCLOS, including the provisions related to the protection of marine environment and has reflected some of them in its state practice.

November 1994 following the Third United Nations Conference on the Law of the Sea (UNCLOS III) held between 1974 and 1982 by 150 states, including Türkiye, is the main international legal document that comprehensively defines pollution of the marine environment as follows:

“the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;”⁵.

UNCLOS classified the sources of marine pollution as: land-based sources, seabed activities subject to national jurisdiction, activities in the Area, dumping, vessels and the atmosphere. Despite the classification favoured in UNCLOS and the importance of the matter, pollution through the atmosphere is mainly discussed in academic literature under the same theme as land-based sources⁶.

The main responsibility to reduce and control pollution of the marine environment from or through the atmosphere regulated by UNCLOS for State Parties is to adopt laws and regulations regarding the issue⁷. Besides this, establishing global and regional rules, standards and recommended practices and procedures through competent international organ-

⁵ UNCLOS art. 1/4.

⁶ R. R. Churchill and A. V. Lowe, *The Law of the Sea*, (Manchester University Press 1999) 330-331.

⁷ UNCLOS art. 212/1 and 212/2.

izations is a vital issue for combat against current sources of pollution⁸. The competent international organizations depicted in UNCLOS are identified by the United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS) as the: International Atomic Energy Agency (IAEA), International Civil Aviation Organization (ICAO), IMO, Intergovernmental Oceanographic Commission of UNESCO (IOC), UNEP and the World Meteorological Organization (WMO)⁹. For the purposes of this research, IMO, UNEP and their regulations on this matter are essential and are, therefore, discussed in more detail.

The concept of pollution of the marine environment from or through the atmosphere is closely linked to the climate change regime regulated by the Paris Agreement¹⁰. Regulating the emissions caused by international shipping under solely the climate change regime is an insufficient way to tackle the existing phenomena¹¹. Taking into account the variety of actors like flag states, coastal states and port states in the shipping industry, not even UNCLOS is sufficient enough. At this point, the role of the IMO comes into the fore.

⁸ UNCLOS art. 212/3.

⁹ DOALOS, 'Competent or Relevant International Organizations' under the United Nations Convention on the Law of the Sea', (1996) 31 Law of the Sea Bulletin 88.

¹⁰ Paris Agreement (adopted on 12 December 2015, entered into force on 4 November 2016): 3156 UNTS 54113.

¹¹ Jae-Gon LEE, 'International Regulations of Greenhouse Gas Emissions from International Shipping' (2019) 4 Asia Pac J Ocean L & Pol'y 58.

B) THE IMO

1- Developments and Structure

The idea of an intergovernmental organization related to shipping dates way back to the end of the 19th Century. These efforts were mostly interrupted by both World War I (WWI) and World War II (WWII). This process was finalized by the convening of the UN Maritime Conference in 1948¹². The conference adopted the 1948 Convention on the Intergovernmental Maritime Consultative Organization (IMCO) which established IMCO to promote maritime safety and facilitate cooperation among governments in the field of international shipping¹³. The IMCO changed to International Maritime Organization (IMO) by an amendment to the IMCO Convention in 1982¹⁴.

The purposes of the Organization are:

"to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in mat-

¹² Constantine John COLOMBOS, *The International Law of the Sea* (6th edn Longmans Green 1967) 439-442.

¹³ International Maritime Organization (IMO), Brief History of IMO, <<https://www.imo.org/en/About/HistoryOfIMO/Pages/Default.aspx>> accessed 20 April 2022; Convention on the International Maritime Organization (as subsequently amended) (adopted 6 March 1948, entered into force 17 March 1958): 289 UNTS 3 (IMO Convention); Türkiye was represented at the Conference by a Delegation and signed the Convention.

¹⁴ By the Assembly Resolution A.371 (X) of 9 November 1977 which entered into force on 22 May 1982 for all Members of the Organization; For the official text of the Resolution see: <https://treaties.un.org/doc/source/docs/A_358_IX-E.pdf> accessed 20 April 2022.

ters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships"¹⁵.

The purpose of shipping and its impact on the marine environment was underlined following the *Torrey Canyon* incident in 1967. It was a major maritime casualty off the coast of the United Kingdom (UK) involving the loss of the vessel and its oil cargo that highlighted major gaps in the international law of the sea and led to major institutional changes at the IMO and enabled the emergence of international marine environmental conventions¹⁶.

The IMO consists of an Assembly, a Council and five main technical committees: the Maritime Safety Committee (MSC), the Marine Environment Protection Committee (MEPC), the Legal Committee (LEG), the Technical Cooperation Committee (TCC) and the Facilitation Committee (FAL), such subsidiary organs as the Organization may at any time consider necessary as Sub-Committees supporting the work of the main technical committees and a Secretariat¹⁷.

The Assembly consists of representatives from all Member States and is the supreme governing body of the IMO¹⁸. The most important functions of the Assembly related to the law of the sea are:

¹⁵ IMO Convention art 1(a).

¹⁶ Aldo Chircop, 'The International Maritime Organization', in Rothwell D. R., Elferink, A. G. O. and Scott K. N. (eds.), *The Oxford Handbook of the Law of the Sea* (Oxford 2015) 419.

¹⁷ IMO Convention art 11; International Maritime Organization (IMO), Structure of IMO, <<https://www.imo.org/en/About/Pages/Structure.aspx>> accessed 25 April 2022.

¹⁸ IMO Convention art 12.

“To recommend to Members for adoption regulations and guidelines concerning maritime safety, the prevention and control of marine pollution from ships and other matters concerning the effect of shipping on the marine environment assigned to the Organization by or under international instruments, or amendments to such regulations and guidelines which have been referred to it,”¹⁹ and

“To take decisions in regard to convening any international conference or following any other appropriate procedure for the adoption of international conventions or of amendments to any international conventions which have been developed by the Maritime Safety Committee, the Legal Committee, the Marine Environment Protection Committee, the Technical Co-operation Committee, or other organs of the Organization.”²⁰

The Council is the executive organ and performs all the functions of the Assembly between the regular sessions of the Assembly, with the exception of the power to make recommendations to Member States on maritime safety and pollution prevention matters²¹. The number of Council Members has been expanded from the original 16 as adopted in 1948, 24 in 1974, 32 in 1979, and to 40 in 1993²².

2- Functions

The main structural change in Council Members, in order to establish fair representation taking into account the decolonization process and emergence of new States, was implemented in 1993²³. The new structure

¹⁹ IMO Convention art 15/j.

²⁰ IMO Convention art 15/l.

²¹ IMO Convention art 21 and 26.

²² Robert Beckman & Zhen Sun, ‘The Relationship between UNCLOS and IMO Instruments’ (2017) 2 Asia Pac J Ocean L & Pol’y 205.

²³ Chircop (n 14) 422-423.

of the Council consists of consists of three categories: A-States with the largest interest in providing international shipping services, B-States with the largest interest in international seaborne trade, and C-States with special interests in maritime transport or navigation²⁴. Türkiye applied as a candidate to the Council under category C for the first time in 1999 and has been elected in all biennial Council elections since then including the 32nd Session of the IMO Assembly in London²⁵.

By the virtue of the amendments to the IMO Convention which were adopted by the IMO Assembly in December 2021, the expansion of the size of the Council to 52 Members from 40 and the extension of the term of its Members to four years is intended²⁶. The amendments require acceptance by two-thirds of the IMO Membership, or 117 Member States for entry into force. The goal is to enter these amendments into force by 2025²⁷.

The MEPC, the last issue related to the structure of IMO is highlighted due to its significance to this paper. The MEPC was established with a mandate to consider any matter within the scope of IMO concerned with the prevention and control of marine pollution from ships²⁸. It especially

²⁴ IMO Convention art 17.

²⁵ Republic of Türkiye Ministry of Foreign Affairs (MFA), No: 412, 10 December 2021, *Press Release Regarding IMO Council Elections*, <https://www.mfa.gov.tr/no_-412_-imo-konsej-secimleri-hk.en.mfa> accessed 25 April 2022.

²⁶ Amendments to the Convention on the International Maritime Organization, London, 8 December 2021, <<https://treaties.un.org/doc/Publication/CN/2022/CN.46.2022-Eng.pdf>> accessed 25 April 2022.

²⁷ IMO Council to Expand- Amendments Adopted, <<https://www.imo.org/en/MediaCentre/PressBriefings/pages/council-2021.aspx>> accessed 25 April 2022.

²⁸ IMO Convention art. 38.

performs such functions conferred by the IMO Convention and other international conventions, particularly with respect to the adoption and amendment of regulations or other provisions²⁹. It was first established as a subsidiary body of the Assembly in 1973 and raised to full constitutional status as one of the main organs in 1985³⁰.

IMO has fulfilled its main purposes by the adoption of several conventions, guidelines and resolutions on numerous maritime issues until to date³¹. This performance was underlined by the UN General Assembly as:

“...international shipping rules and standards adopted by the International Maritime Organization in respect of maritime safety, efficiency of navigation and the prevention and control of marine pollution, complemented by best practices of the shipping industry, have led to a significant reduction in maritime accidents and pollution incidents...”³².

As a result, it can be said that it is widely accepted through the law of the sea doctrine that IMO is not just not a technical consultative inter-governmental organization. It has successfully evolved into a fully operational international organization with global functions and has expanded beyond expectations with regard to relevant provisions of UNCLOS³³.

²⁹ IMO Convention art. 38/a-b.

³⁰ IMO (n 15).

³¹ List of IMO Conventions, <<https://www.imo.org/en/About/Conventions/Pages/ListOfConventions.aspx>> accessed 5 May 2022.

³² UNGA Res/68/70 (2013) 147, <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_68_70.pdf> accessed 5 May 2022.

³³ Beckman & Sun (n 20) 235-236.

C) MARPOL ANNEX VI

MARPOL is the main international instrument for the prevention of marine pollution by ships from operational or accidental causes. It has been ratified by over 160 States including Türkiye which have combined merchant fleets that constitute approximately 99.01% of the gross tonnage of the world's merchant fleet³⁴.

MARPOL includes six technical annexes, each of which contains detailed regulations on specific categories of vessel source pollution. For the purposes of this paper, air pollution from ships is dealt with in Annex VI of the Convention, which limits the main air pollutants contained in ships' exhaust gas, including Sulphur Oxides (SOx) and Nitrous Oxides (NOx)³⁵. Due to the development of scientific information on the adverse effects of emissions to air from multiple sources including ships in the late 1980s, IMO started to focus on this issue. The reason for this delay is that ship-sourced pollution like oil spills has more visible sources of pollution compared to ship emissions. The adverse and long-term effects of ship emissions on community health and the environment were not so easily visible³⁶.

³⁴ The International Convention for the Prevention of Pollution from Ships (adopted 2 November 1973, entered into force 2 October 1983) and its Protocol of 1978 (adopted 17 February 1978, entered into force 1 October 1983) 1340 UNTS 62 (MARPOL).

³⁵ The classification of air emissions from ships as pollution from or through the atmosphere under UNCLOS Article 212 do not hamper the enforcement of Annex VI to MARPOL regarding this issue according to the Regulation 11(6) of MARPOL Annex VI. David Testa, 'A Note on the Potential Designation of the Mediterranean Sea as a Sulphur Emission Control Area' (2020) 121 Marine Policy 3. In this study air emissions from ships considered as pollution from or through the atmosphere.

³⁶ Annex VI to MARPOL and NTC 2008 1.

Annex VI has been ratified by fifteen Mediterranean coastal States³⁷, except six³⁸. In order to enhance the jurisdictional extent of port and coastal states over air pollution from ships, the main intention is to make relevant UNCLOS regulations applicable between the Parties of Annex VI to MARPOL³⁹. Specific to the Mediterranean Sea, the Med SOx ECA Decision is at the central position due to possible amendments to Annex VI to MARPOL in the direction of it.

III. MED SOX ECA DECISION

The Mediterranean Sea has a substantial intensity of shipping as is navigated by more than 30.000 vessels annually. Most of the vessels call on Mediterranean ports and engage in regional commerce among the Mediterranean coastal States⁴⁰. The Mediterranean region has a combined population of 500 million, over half of which reside in coastal communities. Due to the reason that ship pollution travels great distances, much of the inland population is also affected by ship emissions⁴¹.

Even before the negotiation process of the Med SOx ECA Decision in COP 22, the possibility of designating the Mediterranean Sea as a Sulphur Emission Control Area (SECA) under Annex VI to MARPOL has been contemplated by the Parties to the Barcelona Convention since the

³⁷ Namely: Albania, Croatia, Cyprus, France, Greece, Italy, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, the Syrian Arab Republic, Tunisia, and Türkiye.

³⁸ Namely: Algeria, Bosnia and Herzegovina, Egypt, Israel, Lebanon and Libya; Decision IG.24/8 (n 2) Annex 1 577.

³⁹ Daniel Bodansky, 'Regulating Greenhouse Gas Emissions from Ships: The Role of the International Maritime Organization,' in H. Scheiber, N. Oral and M. Kwon (eds.), *The 50 Year Legacy and Emerging Issues for the Years Ahead* (Brill/Nijhoff 2018) 10.

⁴⁰ Decision IG.24/8 (n 2) 15.

⁴¹ Decision IG.24/8 (n 2) 7.

early 2000s⁴². The significant cornerstone of the negotiation process of the Med SOx ECA Decision is Decision IG.24/8 related to the roadmap which was adopted within the framework of the COP 21 in 2019⁴³.

Following this, a subsequent Med SOx ECA Decision was adopted during COP 22 by reaching a consensus among the Contracting Parties to the Barcelona Convention. The Decision also includes the joint proposal on the designation of the Med SOx ECA to MEPC 78⁴⁴. The MEPC 78 Session was convened on 6-10 June 2022 and approved the submission and the formal designation of the Med SOx ECA which will be put forward for the MEPC 79⁴⁵.

The Med SOx ECA Decision has its main legal justifications as follows:

“... the Barcelona Convention, in particular Article 6 thereof, whereby Contracting Parties shall take all measures in conformity with international law to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area caused by discharges from ships and to ensure the effective implementation in that Area of the rules which are generally recognised at the international level relating to the control of this type of pollution,”

“... the Protocol concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, indicates that the Parties shall take measures in conformity

⁴² Testa (n 33) 2.

⁴³ Supra (n 2).

⁴⁴ Decision IG.25/14, Designation of the Mediterranean Sea, as a whole, as an Emission Control Area for Sulphur Oxides (Med SOX ECA) pursuant to MARPOL Annex VI, <<https://www.unep.org/unepmap/meetings/cop-decisions/cop22-outcome-documents>> accessed 25 May 2022.

⁴⁵ UNEP/MAP, The Mediterranean is Making Strides in Tackling Air Pollution from Ships, <<https://www.unep.org/unepmap/news/news/mediterranean-making-strides-tackling-air-pollution-ships>> accessed 7 September 2022.

with international law to prevent the pollution of the Mediterranean Sea Area from ships in order to ensure the effective implementation in that Area of the relevant international conventions in their capacity as flag State, port State and coastal State, and their applicable legislation,”

“... the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as further amended by the Protocol of 1997 (MARPOL), in particular Annex VI thereof on regulations for the prevention of air pollution from ships, as amended, and regulation 14 thereof on sulphur oxides (SOX) and particulate matter, as well as Appendix III thereto on criteria and procedures for designation of emission control areas (ECAs),”⁴⁶.

IV. LEGAL CONSIDERATIONS

First, in order to reduce air pollution from ships in the Mediterranean, the effectiveness of flag state enforcement should be restored in the region by the Contracting Parties to the Barcelona Convention. The preliminary step for this aim is the encouragement of those Mediterranean States which have not yet ratified Annex VI to MARPOL to do so in the upcoming period. The Med SOx ECA Decision underlines the importance of this issue as follows:

“...Urge the Contracting Parties to ratify and effectively implement MARPOL Annex VI, as soon as possible, if they have not yet done so, at least by the date of entering into force of the Med SOx ECA, to the extent possible;”⁴⁷

An affirmative development regarding this issue that needs to be recognized relates to the proposal of the designation of the Med SOx ECA to

⁴⁶ Decision IG.25/14 (n 42) Preamble.

⁴⁷ Decision IG.25/14 par. 4.

the MEPC. Besides the submission of fifteen Mediterranean coastal States that are parties to Annex VI to MARPOL, the association to Annex VI to MARPOL by the six Mediterranean coastal States which are not yet Parties paves the way for the preliminary step highlighted in the above paragraph⁴⁸.

One of the main possible issues in the upcoming period related to the Med SO_x ECA Decision, following the approval of the MEPC 78 Session, is the enforcement of the requirements of Annex VI to MARPOL by mainly coastal and port States in the Mediterranean Sea⁴⁹.

In the case of coastal states, the right of innocent passage determines the legal regime of the passage of foreign-flagged ships through their territorial seas⁵⁰. With regard to marine pollution, only any act of wilful and serious pollution can render passage non-innocent⁵¹. At this point, it is hard to assume that the breach of regulations of Annex VI to MARPOL constitutes serious acts of pollution⁵².

Enforcement jurisdiction of coastal states against a foreign-flagged vessel navigating in their exclusive economic zone (EEZ) or the territorial sea which violates applicable international rules and standards related to the protection of the marine environment in their EEZ is regulated by a

⁴⁸ Decision IG.25/14, Annex of Joint and coordinated proposal on the designation of the Mediterranean Sea, as a whole, as an Emission Control Area for Sulphur Oxides (Med SO_x ECA) 560.

⁴⁹ Sophia Kopela, 'Making Ships Cleaner: Reducing Air Pollution from International Shipping' (2017) 26 RECIEL 231, 234.

⁵⁰ UNCLOS art 17.

⁵¹ UNCLOS art 19/2(h).

⁵² Testa (n 33) 3.

three-stage process⁵³. At the first stage, regarding the violation, the coastal state may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred⁵⁴. At the following stage, if there is a substantial discharge in the coastal states' EEZ causing or threatening significant pollution of the marine environment, the coastal state may undertake physical inspection of the vessel for matters relating to the violation⁵⁵. At the third and final stage, the occurrence of damage or threat of major damage to the coastline or related interests of the coastal state, or to any resources of its territorial sea or EEZ, that State may, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws⁵⁶. Considering the ongoing maritime delimitation disputes especially in the Eastern Mediterranean focusing on the limits of the EEZs of coastal states in the region, enforcement of the above-mentioned three-stage processes will probably be limited to the territorial seas of the coastal states.

The remaining issue related to the enforcement of the requirements of Annex VI to MARPOL in line with the Med SOx ECA Decision is the concept of Port State Control (PSC). PSC refers to:

“the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of inter-

⁵³ UNCLOS art 220.

⁵⁴ UNCLOS art 220/3.

⁵⁵ UNCLOS art 220/5.

⁵⁶ UNCLOS art 220/6.

national regulations and that the ship is manned and operated in compliance with these rules."⁵⁷

The reason for the practice of PSC is that the control systems used by the other partners in the shipping industry have proven ineffective in eradicating all substandard vessels from the seas. However, it is widely accepted that PSC is not, and can never be, an alternative for the proper exercise of flag state rule⁵⁸.

In the case of the Mediterranean, the preparation process of a regional agreement on PSC began by the virtue of two meetings in 1996. At the end of the third meeting the Memorandum of Understanding on Port State Control in the Mediterranean Region (Mediterranean MoU) was signed on 11 July 1997 by the representatives of eight States⁵⁹. Following this, the Mediterranean MoU was also signed by Lebanon and Jordan⁶⁰. In order to enhance the efficiency of the Med SOx ECA Decision, larger participation by the Mediterranean coastal states in the Mediterranean MoU should be encouraged throughout the region.

V. CONCLUSION

The approval of the Med SOx ECA Decision at COP 22 is among the remarkable achievements of the Barcelona Convention system. Especially reaching the consensus among the Contracting Parties during COP 22

⁵⁷ IMO, *Port State Control*, <<https://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx>> accessed 15 May 2022.

⁵⁸ Z. O. Özçayır, *Port State Control*, (2nd edn Routledge 2015) 1.

⁵⁹ Namely: Algeria, Cyprus, Egypt, Israel, Malta, Morocco, Tunisia and Türkiye.

⁶⁰ Mediterranean MoU, About, <<http://www.medmou.org/About.aspx>> accessed 15 May 2022.

which was held in Antalya, Türkiye, on 7-10 December 2021 highlights the Mediterranean solidarity, one of the main pillar concepts of the Barcelona Convention system. In addition, it also emphasizes the position of Türkiye about UNCLOS related issues in the Mediterranean particularly underlining the protection of the marine environment.

Besides these, the efficiency of the Decision in the upcoming period depends on some important aspects which are evaluated in this study. It is of utmost importance for Mediterranean States which have not yet ratified Annex VI to MARPOL to do so. In order to reduce the ship emissions in the Mediterranean as a whole, all the Contracting Parties to the Barcelona Convention should ratify Annex VI to MARPOL before January 2025, the potential ratification date of the Med SO_x ECA.

Following the entry into force of the Med SO_x ECA as an amendment to Annex VI to MARPOL, enforcement of related regulations to ships flying flags of non- Mediterranean coastal states will be crucial. In this instance, enforcement jurisdiction of the Contracting Parties to the Barcelona Convention should be effective. At this point, ongoing maritime disputes in the Mediterranean which prevent some states from declaring their EEZs in the region have the potential to undermine the practice of the Med SO_x ECA. However, reaching a consensus among the Contracting Parties to the Barcelona Convention for the Med SO_x ECA is an important indicator of the concept of Mediterranean solidarity which has

a vital potential to play a significant role in the settlement of the existing disputes.

Last but not least, enhancing the practice of the Mediterranean MoU in order to facilitate efficient PSC through the Mediterranean as a whole should be considered by the Contracting Parties to the Barcelona Convention. In this way, preventing the emergence of ports of convenience, which is a current concept, in the Mediterranean will be possible following the entry into force of the Med SO_x ECA as an amendment to the MARPOL Annex VI.

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