ΑΚΑΔΗΜΙΑ ΕΜΠΟΡΙΚΟΥ ΝΑΥΤΙΚΟΥ

Α.Ε.Ν ΜΑΚΕΔΟΝΙΑΣ

ΠΤΥΧΙΑΚΗ ΕΡΓΑΣΙΑ

ΕΠΙΒΛΕΠΩΝ ΚΑΘΗΓΗΤΗΣ: ……

ΘΕΜΑ

ΤΟΥ ΣΠΟΥΔΑΣΤΗ: ……

Α.Γ.Μ:

Ημερομηνία ανάληψης της εργασίας:

Ημερομηνία παράδοσης της εργασίας:

Α/Α	**Ονοματεπώνυμο**	**Ειδικότητα**	**Αξιολόγηση**	**Υπογραφή**
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Ο ΔΙΕΥΘΥΝΤΗΣ ΣΧΟΛΗΣ :

Abstract

Port State jurisdiction is first introduced in 1973 by the IMO to the Commission for the Protection of the Marine Environment. Since then, the jurisdiction of the Port State Control Authorities has been governed by a number of international conventions such as the International Convention for the Safety of Life at Sea, 1974, the International Convention on Standards of Training, Certification and Adhere for Prisons 1978 Seafarers as amended by the 1995 Protocol, as amended by Manila in 2010 and the United Nations International Convention for the Priority of Ship Registration of 1986. Below are those provisions on port State control as outlined in the 1982 International Convention on the Law of the Sea, the Paris Memorandum of Understanding on Port State Control and the European Council Directives. In this context, it should be noted that although the International Convention on the Law of the Sea is an international agreement containing international legal commitments and legal norms for all States which have ratified it, likewise many Memoranda of Understanding and regional legal rules of EU secondary legislation contain binding provisions which, however, in many respects contradict those of the International Convention. Finally, there is an extensive reference to the dual role of port State inspection, since, in cases such as pollution from ships, the Coastal State applies, in addition to international conventions and European ship- of the legislation or a corresponding European law in relation to the penalties to be imposed in corresponding cases of environmental pollution.

Key words : Legal aspects, Port state control, Legal framework.

Contents

Introduction

Below, an investigation and legal assessment is made of those provisions concerning: (a) port State control of ships, and (b) the jurisdiction of the State concerned as referred to in the Convention, the Paris Memorandum of Understanding of 1982 on the control of ships under a foreign flag, hereinafter referred to as the 'Paris Memorandum', in the resolutions of the General Assembly of the International Maritime Organization, hereinafter referred to as IMO, and in existing European law. This assessment of the above texts and legislation is based primarily on legal analysis on the issue of diversifying the jurisdiction of the port State with the flag state, the legal framework of criminal sanctions imposed for pollution of the marine environment caused by ships, and Petitions in Case C-308/06 of the Court of Justice of the European Union in the dispute settlement of ship-source pollution and the introduction of sanctions for infringements.

In this context, the following fundamental rules for the application and interpretation of the Convention are noted, namely:

(a) the principle of the balanced exercise of rights and obligations, which requires States, when exercising their rights, to take account of the rights and legitimate interests of the other States, so that the exercise of a right by a state does not cause a weakness to exercise a similar right of another state,

(b) the principle of good faith, according to which the Member States fulfill in good faith their obligations under the Convention and the generally recognized principles and rules of international law for the maintenance of peace and security,

(c) the prohibition of abuse of rights under which the States Parties to the Convention shall exercise the rights, jurisdiction and freedoms recognized by that Convention in a manner which is not an abuse of rights as expressly provided for in Article 300 of the Convention. As it is known, the International Law of the Sea initially binds all states. Nonetheless, it is necessary to distinguish between different categories of states

according to the rules which bind them. In this sense, a distinction should be made between : a) the States which are parties to the Convention and are governed by it by complementary application of general international law and international instruments in relation to the maritime zones subject to in their jurisdiction, b) States which are not Parties to the Convention, and c) Relations between Parties and non-Contracting States. It is noted that "States Parties" are those States which have given their consent to be bound by the "Convention". As regards relations between States which are not parties to the Convention, they are governed by customary law, by any multilateral agreements which bind them, and by international instruments between them. As regards the relations between a Contracting State to the Convention and a non-Contracting State, they are also governed by customary law, multilateral conventions and international instruments.

Chapter 1st : The International Legal Status of Port State Control

The Memoranda of Understanding have been set up with a major and ambitious aim to be a measure to protect the marine environment, which will lead to the reduction of "substandard" ships. The first Memorandum of Understanding, signed in March 1978, was signed by eight states and aimed at allowing control of seagoing ships that arrived at these ports to ensure that the requirements of the International Labor Organization ILO) on minimum security requirements for merchant ships, known as "ILO Convention No. 147 "as well as other conditions. However, following the wreck of Amoco Cadiz, which coincided with the signing of the Hague Memorandum, there has been strong political will and public demand in Europe for more vigorous measures to ensure maritime safety (Cariou & Wolff, 2015).

This led to a meeting in Paris in December 1981 of a number of European Maritime Safety Ministers, together with representatives of the European Commission, the IMO and the ILO. As a result of this meeting, the parties reached the joint conclusion that the reduction of ships that do not meet the safety standards would be achieved by the cooperation of the port states, based on the provisions of international shipping conventions. Finally, in January 1982, a ministerial meeting was held in Paris, which culminated in the signing of the Paris MoU (Graziano, et al. 2018).

The primary objective of the Paris MoU was to enhance the safety of human life at sea, to protect the marine environment and to improve living and working conditions on board ships through a harmonized port state control system for foreign merchant ships calling on its ports. The Paris MoU, which covers the waters of the European coastal states and the North Atlantic Basin from North America to Europe, was the first regional attempt by port States to develop a network to combat ships that do not meet the standards. Since then, eight have been signed, which today cover almost the whole of the globe, while some countries are members of more than one (Jessen & Zhu, 2016).

The Paris MoU, as well as the other memoranda of cooperation signed, are not international treaties, but administrative agreements, which are carried out in the framework of the cooperation of the maritime authorities of the Contracting States, mainly regulating technical issues. In this way, governments have established a regional regime for the control and exchange of degraded ships, without the delays and difficulties of implementation that might have led to formal negotiations with a view to concluding an international treaty. However, it is questionable whether these agreements are legally binding. In particular, it has been argued that the MoUs are legally binding to the same extent as an international treaty, and vice versa, namely that the legal consequences of a MoU can’t be compared to those of a treaty, given that it prevents the use of terms , such as "agree", "put into effect", "obligations", which traditionally demonstrate the intention of the parties to conclude an international treaty (Keselj, 2010).

Moreover, the Tokyo MoU itself states that the Memorandum is a non-binding text and does not aim to impose legal obligations on any of the Authorities. In these circumstances, it seems more appropriate that the Paris MoU is a non-binding international agreement, in the sense that in the event of its breach the liability of the violating State is not incurred. However, although the Memorandum of Cooperation has political or moral validity and is a non-binding international agreement, it is argued that it could produce legal effects and therefore its inconsistent application by a port State would be a breach of the estoppel principle (Rares, 2018).

1.1 Basic principles of the Paris MoU

Despite the existence of nine different Memoranda of Cooperation on Port State Control, their basic principles are, to a certain extent, common. According to them, each State should, on the one hand, ensure that the commercially foreign ships that have been impounded in their ports comply with the standards laid down by the relevant treaties and their protocols and, on the other hand, apply the relevant 'instruments' force conditions of the IMO and the ILO, to which each country is a member. The Memoranda therefore refer to international treaties binding on the

parties in that the purpose of port State control does not extend beyond what has been agreed with international treaties (Varotsi – Christodoulou & Pentsov, 2007).

Particularly with respect to Paris, the port states, on the basis of the basic principles as they arise from all its regulations, must (Varotsi – Christodoulou & Pentsov, 2007) :

- Implement the provisions of the Memorandum and its Annexes

- To maintain an effective port state control system for foreign merchant ships calling at the ports of each State without flag discrimination in order to ensure compliance with the relevant 'instruments'.

- Conduct inspections on any Priority I foreign ship calling at their ports and carrying out a total number of Inspections of Priority I and Priority II ships corresponding to the annual minimum number of inspections they are required to carry out in accordance with Annex 11 of Paris MoU.

- To exchange information between them in order to promote the objectives of the Memorandum.

- Perform "initial", "detailed" and "extensive" inspections, as set out in Annex 9 of the Memorandum.

- Make every effort to avoid unjustified detention or delay of a ship.

1.2 The relevant Instruments

The Paris MoU does not introduce new standards and standards but instead seeks to effectively monitor the implementation of already agreed international standards as they result from the International Conventions of the IMO and the ILO, which are used as 'relevant instruments' within the meaning of that they are the maximum levels of control that may be carried out by port States. Each port State must, in fact, only apply those contracts by the 'relevant organs', which are in force and to which it is a

contracting party. In particular, the following 'internationally recognized Maritime Conventions' are used as 'relevant organs' during Port State Inspections (Ziegler, 2013) :

1. The Load Lines Convention (LL)

This Convention, which was signed on 5.4.1966 and entered into force on 21.7.1968, sets limits on the maximum draft required for a ship to be loaded until its extinction. It contains three annexes, the first of which concerns regulations for loading lines, the second one for the establishment of Seasonal Zones and Areas, and the third refers to Certificates. The Convention was amended by the 1988 Protocol, which entered into force on 3.2.2000 in order inter alia to harmonize the certification and research requirements of the Convention with those contained in SOLAS and MARPOL 73/78. Article 21 of the Convention provides for the right of the port State to carry out an inspection in order to ascertain the compliance of the ship under supervision with the specifications laid down in the Convention itself. In particular, the competent port State officer shall verify that the ship has a valid certificate in force and shall carry out further checks to confirm, inter alia, that the ship has not been loaded beyond the limits permitted by the Convention and that its position loading line corresponds to this certificate.

2. The Convention for the Protection of Human Life at Sea (SOLAS)

SOLAS is considered the most important of the international conditions for the safety of merchant ships. The main objective of SOLAS is to set minimum standards for shipbuilding, equipment and operation compatible with its safety. In particular, the Convention refers inter alia to matters such as the distribution and stability of cargoes, machinery and electrical installations, the provision for the detection and elimination of fires, the provision of life-saving appliances, radio components and navigation. SOLAS has been amended several times to incorporate new predictions on how to enhance maritime safety. Including :

- In 1994, during the IMO conference, it was decided to add a new chapter to the SOLAS annexes, which provides for the mandatory implementation of the

International Safety Management Code. The Code establishes regulations for the safe management and operation of ships through the organization of the company on the protection of the marine environment. The basic objective of the Code is to ensure maritime safety, prevent personal injury or death and avoid causing damage to the marine environment and property. In this context, according to the Code, the shipowner and any other natural or legal person who has assumed responsibility for the operation of a ship are under an obligation to establish a system of safe management at all levels of organization that introduces strategies to enhance maritime safety and protection of the marine environment. At the same time, port States have the right to check the certificates that the company is required to dispose of in compliance with the Code, in particular the Document of Compliance (DOC) and the Safety Management Certificate (SMC).

- The International Ship and Port Facility Security Code (ISPS) was adopted by the International Maritime Organization (IMO) and implemented under the "Chapter XI-2 Special measures to enhance maritime safety" of the International Convention for the Safety of Life in the Sea (SOLAS). It includes two parts, the first is mandatory and the second advisory. The Code entered into force on 1 July 2004 and is a comprehensive package of measures to enhance the security of ships and port facilities, which was developed in response to the attacks of 11 September 2001 in America. In particular, the Code introduces arrangements to ensure the safety of ships and port facilities through a standardized and coherent risk assessment framework, indicating, where appropriate, the appropriate level of safety and the corresponding security measures to be taken.

3. The International Convention on Maritime Pollution from Ships (MARPOL)

MARPOL is the main contract for the prevention of pollution of the marine environment by ships. It includes regulations aimed at preventing and reducing pollution from ships, caused both by accidental discharge and the operation of the ship. With MARPOL, the port State has, inter alia, the right to verify the existence on

board of an international certificate issued in compliance with it and, if there are clear indications that the ship is in breach of the Treaty, to carry out further checks.

4. The International Convention on Standards of Training, Certification and Adhere for Seafarers (STCW)

The STCW, which was adopted on 7/7/1978 and entered into force on 28.4.1984, has as its main objective the promotion of the safety of life and property at sea and the protection of the marine environment by defining international standards for education, certification and keeping of seafarers. In 2007, the IMO carried out a comprehensive review of the STCW, which was completed by the adoption of a series of major amendments agreed by the Member States at the Manila Conference, which entered into force on 1 January 2012. From that date, training should meet the new requirements. Some of the most important amendments concerned the improvement of fraud prevention measures related to capacity certificates and the strengthening of the evaluation process, the revision of the requirements for working and resting conditions and the creation of new requirements for the prevention of drug use and alcohol consumption, as well as upgrading health standards from a medical perspective.

5. The Convention on Conflict Resolution at Sea (COLREGs)

COLREGs, signed on 20.10.1972 and entered into force on 15.7.1977, provides for regulations on the behavior and movements of a ship in relation to other ships, especially when the visibility is small, in order to avoid conflicts in combination with the introduction of sound and light signals. The Convention establishes the obligatory marches of ships, especially on seaways with frequent traffic and canals. Furthermore, it establishes additional measures for the Baltic straits, in particular: (a) speed limitations on ships, b) mandatory reporting of ships to their port authorities, c) pilot use, and d) Automatic Radar Plotting Aids. The Convention provides for verification of the compliance of its Member States with the IMO.

6. The Convention for the Measurement of Tonnage of Ships (ITC-69)

This Convention was signed on 23 June 1969 and entered into force on 18 July 1982, making it the first successful attempt to introduce a universal capacity measurement system. It applies to all ships engaged in international voyages other than martial and small ships of less than 24 meters in length. The counting is done in the manner described in Regulations 3 to 6 of the first annex to the Convention and distinguishes between total and net capacity, expressed in cubic meters. The Convention gives port States the right to check the existence of a valid certificate of measurement and whether the information referred to therein corresponds to the real size of the ship.

7. The Merchant Shipping Agreement (Minimum Standards) (ILO No. 147)

In October 1976, ILO No. 147, whose purpose was to improve working conditions on merchant ships and to extend the possibility for port States which are members of the Convention to take measures to protect the health and safety of seafarers employed on ships calling at ports them. The Convention describes a series of specifications relating to safety, social security and living and working conditions on ships flying the flag of a Contracting State. It incorporates older ILO conditions, such as minimum age, medical examinations, employment contracts, seafarers 'certificates of competence, shipboard nutrition, seafarers' accommodation, accident prevention, health care and repatriation. Under the 1996 Protocol, the conventions referred to by the ILO Convention and the standards, the observance of which should be controlled by both flag and port States, have been extended to include new arrangements for seafarers 'accommodation, seafarers' hours of rest and work, seafarers 'certificates, workers' representatives, health care and repatriation.

8. The Maritime Labor Convention (MLC).

MLC was adopted by the ILO in 2006 in Switzerland. Together with the three basic conditions of the IMO, SOLAS, STCW and MARPOL are the four institutional pillars aimed at quality shipping. Significant Changes in Maritime Rights and Welfare Provisions MLC's objective, beyond protecting seafarers' rights at global level, is to create a level of fair competition between countries and shipowners, respecting the rights of the seafarers and provide decent working and living conditions for all ships. The MLC consolidates and updates the earlier ILO Conventions, which were adopted

from 1920 to 1996. The flag State and port State obligations are clearly clarified and regulated. The scope of the MLC covers a wide range of issues, interdependent with the accommodation and working conditions of seafarers, such as the minimum age and physical condition of seafarers, employment services, repatriation and social security, as well as the procedure certification by flag services and port authority inspections. Given that at least 75% of maritime accidents are due to human error and that therefore human factor plays an important role in maritime safety for the safe operation of the ship, both within and outside the ship, it is obvious contribution of MCL and STCW to the achievement of this objective.

9. The International Convention on Civil Liability for Oil Pollution Damage (CLC)

The purpose of the CLC, signed on 29.11.1969 and amended by the 1992 Protocol, which entered into force on 30.5.1996, is to ensure that adequate compensation is paid to persons who have suffered from oil pollution caused by a marine casualty , as defined by the Convention. Under the CLC arrangements, the shipowner bears responsibility, objective, limited and limited. At the same time, the regulation introduces compulsory insurance for ships carrying more than 2,000 tonnes of oil, with the right to bring a direct claim to the injured party against the insurer. The right of port States to check that foreign ships that are flying to them have a certificate in compliance with the Convention and the right of inspection also extends to ships whose flag does not belong to a Contracting State.

10. The International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS)

Organotin compounds are chemical substances of protective antifouling used in hulls or nets. These surface coatings act as biocides in order to prevent deposition of algae, molluscs and other organisms that slow ship speeds. These compounds are extremely toxic to marine life (larvae, molluscs, oysters and fish). For this reason, with AFS, which was adopted on 5 October 2001 and entered into force on 17 September 2008, the use of organotin compounds acting as biocides in anti-fouling systems of ships in the Contracting States was prohibited and a mechanism was created to prevent possible future use other harmful substances in anti-fouling systems. Furthermore, the port State is granted the right to verify the existence on board of an international

certificate issued in compliance with AFS and, where there is clear evidence that the ship is in breach of the Treaty, to carry out further checks.

11. The International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER)

This Convention, which was adopted on 23.3.2001 and came into force on 21.11.2008, regulates the liability regime in the event of damage from pollution from the escape or dumping of diesel from a ship. Bunker moves to the standards of the CLC. This is also an objective and boundary responsibility, but extends the concept of the shipowner and "to the charterer bareboat, the operator and the operator of the ship". In order to limit liability, Bunker refers to the provisions of the LLMC. Similarly, compulsory insurance for ships of over 1000 GRT is introduced, with the possibility of claiming compensation for damage caused by pollution directly to the insurer. The power in the Member States to control the availability of a valid certificate from foreign ships which have been transferred to them, which also extends to non-contracting ships.

12. The International Convention on the Control and Management of Ships' Ballast Water and Sediments (BWM)

So-called invasive aquatic species pose a serious threat to the marine ecosystem and international shipping is considered the key passage for introducing such species into new environments. The problem has increased in view of the increase in ship traffic volumes in recent decades, especially with the appearance of steel hulls, which allow ships to use water instead of solid materials such as ballast. In view of these, the Convention on the Control of Ballast Water and Sediments, adopted on 13 February 2004 and implemented on 8 September 2017, aims to prevent the spread of harmful aquatic organisms from one region to another by defining specifications and specific procedures for the management and control of ship's ballast water and sediment, while introducing an obligation for ships engaged on international voyages to have a logbook for ballast water and an international certificate of water, which are controlled by port State inspectors.

1.3 THETIS System

An important contribution to the more effective implementation of the port State control system is the THETIS system. It is a data-processing information system, which records all the results of the inspections, which are at the disposal of the inspection authorities and as such acts as an inspector's tool. This is because it automatically calculates on a daily basis the risk profile of the ships, taking into account the control information added, indicates which ships have priority for inspection and allows the results of the inspections to be recorded (Vorbach, 2010).

These reports / reports are available to all Port Authorities of the Paris MOU region and the Community. In order to facilitate the planning of inspections, THETIS is linked to SafeSeaNet (SSN), which is a pan-European vessel traffic monitoring platform for ship tracking and accidents. THETIS is also interfacing with other maritime safety databases, including databases of other Memoranda, such as the Mediterranean, Indian Ocean and Tokyo MoUs, to exchange data and provide a full picture to the inspector (Tan, 2010).

The THETIS contribution is very important because, in addition to its practical relevance to more effective and expeditious implementation of the control regime, through updated information provided to inspectors, it further strengthens the transparency of the control system. At the same time, given that data on deficiencies and detention of ships is made public, the poor performance of classification societies and companies, this "negative publicity" mobilizes those shipping players who invest, among other things, in their commercial reputation , to keep their standards high and to deliver on their performance (Rodriquez & Piniella, 2012).

1.4 The Role of the Inspector

The shipping industry is one of the most multi-disciplined industries in the world. However, as has already been developed, the problem lies in the ineffective implementation of these laws, which has led to increased port state control. Similarly, the Paris MoU, as amended, has succeeded in introducing a harmonized control

system for ships that do not meet safety standards, following the modifications and in particular the adoption of the new Audit Scheme. However, when implementing the Paris MoU by the contracting authorities, there are discrepancies which lead to different results of the audit, depending on the port State, which carries out the inspection. These discrepancies in the inspection process directly affect the credibility of the Paris MoU system and ultimately allow for the development of port-shopping, a practice followed by those shipowners who choose specific ports to navigate , knowing that the control process is less effective and that the implementation of international standards is less stringent (Varotsi – Christodoulou & Pentsov, 2007).

It is obvious that the homogeneous and effective implementation of the envisaged procedure is directly dependent on the inspector who carries out the inspection and who is at the core of the whole process. Factors such as the bureaucratic practices of his country, the administrative and political support of his administration, can influence his work and lead to the uniform application of the process. Apart from these factors, however, the impartial attitude of the inspector plays a prominent role in the effective implementation of the Paris MoU. The actual text of the memorandum stipulates that the inspector should have no commercial interest in either the port of inspection or the inspected ships, nor should he be employed or take up work on behalf of non-governmental organizations issuing the ship's certificates . In contrast, the conflict of interests is obvious and, as in any system involving people, the port state system could be accused of misuse of power, which could sometimes come under bribery (Cariou & Wolff, 2015).

Furthermore, despite the existing guidelines clarifying the individual control procedures and defining vague concepts such as 'clear indications', it can not be forgotten that a significant part of the control process is left to the 'professional judgment' of the inspector who, although based on these guidelines and directives, is still to some extent subjective, which in many cases entails different implementation of the process. It is obvious that the 'professional judgment' of the individual inspector is shaped, inter alia, by his experience and training. The Paris MoU provides for the minimum standards that the inspector must meet. One of these states that inspectors are not only holders of a maritime diploma or holders of a shipbuilding, engineering or engineering degree in shipping but also holders of a university degree who are not

related to the nautical profession. This, coupled with inadequate education and training of inspectors in some member States, may either lead to the failure to identify deficiencies or to the unjustified flagging of deficiencies and consequent arbitrary detention (Ziegler, 2013).

In addition, the number of inspectors involved in the inspection is also important for the uniform application of the Memorandum. A study carried out showed that depending on the number of inspectors involved in the inspection, the number of observations and reservations is affected, and depending on the studies of each inspector, it is noted that specific groups of deficiencies are found on ships. In particular, from the results of the study it was found that between Member States there were discrepancies in the total number of inspectors operating per country, b) the number of inspectors used per inspection, and c) the studies of inspectors. The investigation concludes that the number of inspectors used per inspection may affect the results of the audit given that the simultaneous involvement of more than one inspector leads to more rigorous control and hence the probability of finding a shortage or holding a ship is greater, if the number of inspectors is greater than one. However, both the total number of inspectors per country and the number of inspectors per inspection are not defined by the Paris MoU but constitute a decision left to the discretion of each participating authority (Keselj, 2010).

Furthermore, it has been found that inspector studies may lead to discrepancies in the implementation of the Paris MOU. In particular, it was observed that inspectors holding a degree in legal or political science are more likely to impose bookings. This may be the result of a combination of factors, such as shipping-related studies and inadequate training, which deprives them of the experience and judgment of when a reservation is necessary or not. Another important finding of the study was that the type of study of each inspector influences the type of deficiencies found in each inspection. In particular, inspectors with previous experience as Deck or Engine Officers report more often shortcomings, related to safety or navigation. On the contrary, inspectors who are shipbuilders or engineers report shortcomings related to working conditions, while inspectors holding other university degrees report more often shortages related to certificates and documents (Cariou & Wolff, 2015).

The above shows that inspectors, although at the heart of the control process, can also be Achilles' heel of this system, which disrupts the homogeneous application of the Memorandum, making it difficult for the Member States to do so, because people are called different lengths and widths around the world to implement a system that, as well structured as it may be, is influenced by factors such as those highlighted earlier. The daily need to improve the port State control process calls for additional measures to achieve a more effective and uniform implementation of the Memorandum. A revision of the Paris MoU in order to adopt relevant solutions, such as the prior determination of the minimum number of inspectors that each Member State, depending on the movement of its ports, should employ, the minimum number of inspectors to be is involved in an inspection and the appointment of only those holding a degree in shipping is necessary (Varotsi – Christodoulou, 2008).

1.5 The assessment of the New Audit Scheme (NIR)

Despite the weaknesses of the system, highlighted by the reduced number of inspectors and their inadequate training in some Member States, it is true that the NIR has drastically improved the port State control process. Thanks to the ship's targeting system, based on the risk profile, the overall number of inspections has been greatly reduced, resulting in both savings in financial resources and better use of inspectors while at the same time ensuring that ships do not escape from the control system, which have a high risk profile. In addition, an indicator of the effectiveness of the new regime is the fact that after its introduction the percentage of deficiencies and detentions has dropped considerably because it provides an incentive for the shipping industry to invest in quality and thus to improve safety, pollution and working conditions on ships calling at ports. However, despite the positive results of the new control system, there is room for improvement. In particular, improving the classification system for ships on the basis of their risk profile, in order to anticipate other factors that will lead to a more effective targeting of dangerous ships, the use of individual, instead of general, factors for specific categories of ships and the a revision of the formula for calculating the performance of the flags, will contribute to even more effective implementation of the NIR (Vorbach, 2010).

1.6 The notion of 'no more favorable treatment'

The overriding position of the port State authority on the ships calling on it against the authority of the flag State leads to the application by the port State of an international convention to a ship even if the flag State it bears is not party to contract. In particular, the 'most unfavorable treatment' principle whereby ships flying the flag of a State not party to one of the relevant bodies will be subject to more detailed or, if necessary, extensive inspections by the Inspectors , which are to follow the same procedure as they would apply to ships whose flag is a Contracting State to the relevant body, was provided for in the Paris MoU text, reiterated in the Community Port State Control Directive and has included in relevant international conventions, such as MLC, SOLAS, MARPOL and STWC (Cariou & Wolff, 2015).

However, given that an international convention is usually applied and enforced between the Contracting States, this practice raises questions as to the legitimacy of such a power. Flag States object that port states should not impose international conventions on ships whose flag states are not contracting parties on the grounds that a merchant ship may face a conflict of law applicable in that port State with that of the State flag. Furthermore, they argue that since the ship is always subject to the law of the flag state and, if it is in the port State, is subject to its law, it should prevail over the law of the flag (Ziegler, 2013).

Indeed, although some international conventions, such as MLC, contain the principle of 'most unfavorable treatment', given the growing membership of the Member States in these conventions, any controversy over the application of this principle will gradually be weakened. In any case, however, the question concerns the relationship between the principle of 'most unfavorable treatment' and the principle of relativity of contracts, the so-called 'pacta tertiis nec nocent nec prosunt', stemming from Article 34 of the Vienna Convention of 1969 on the law of the Treaties, according to which the treaties do not create rights and obligations in third States without their consent (Graziano, et al. 2018).

It is argued, however, that any conflict between the two authorities exists only if the principle of 'most unfavorable treatment' extends the jurisdiction that a state would have in accordance with international law. For this reason, it has been argued that, in the context of the general principle of 'pacta tertiis nec nocent nec prosunt', the principle of 'no more favorable treatment' can’t be extended to cover vessels flying the non-contracting flag of MLC , until the rules of MLC become, at a later date, a customary international law regime (Vorbach, 2010).

However, the right of the port State to dictate specific conditions and specifications for the entry of a ship to it is provided for by international customary law and regulated by UNCLOS. In particular, in accordance with international customary law, States are entitled to impose the conditions they deem necessary for the access of foreign ships to their ports. These terms, moreover, are linked to safety, public health and the protection of the marine environment. UNCLOS recognizes and regulates the right of the coastal State to lay down conditions for the access of foreign ships to its ports. In view of the above, and given that the application of the principle of 'no more favorable treatment' permits the port State itself, as a precondition for the entry of a foreign foreign ship, to confer on it customary customary and contractual international law, this principle is without prejudice to the principle of relativity (Jessen & Zhu, 2016).

Moreover, the principle of 'no more favorable treatment' ensures that ships in countries which have ratified individual contracts are not in a competitive disadvantage compared to those who have not ratified them. It therefore provides a clear incentive for ships to carry the flags of the countries that have ratified a convention while contributing to the creation of a 'level playing field' between flags and reduces the risk of flag shopping, the practice of finding out of flag shipowners with the most lenient application of rules. Therefore, a harmonized approach to the effective application of these international standards by port States to foreign ships calling in the waters under their jurisdiction, irrespective of the Treaties which have ratified the flag states, will allow to avoid distortions competition (Tan, 2010).

1.7 Port State Impact on Flagging Out

The choice of the flag of a ship is a strategic decision that is influenced by the internationalized operating environment of the shipping shipowner or the management company, as well as its objectives and interests. There are many factors that lead to change and consequently to the choice of a flag. One of the most important ones is the reduction of crew costs (26%) and the cost of compliance with international standards (12%), avoidance of bureaucracy (17%) and availability of qualified staff (13%) (Keselj, 2010).

However, a recent study has shown that the factors leading to the change of flag include, in addition, the ship's nationality, the type of ship, its age, and the high level of port state inspections on flagged vessels. It has also been observed that the proportion of inspections carried out is particularly high on vessels flying flags of convenience. Therefore, it would be reasonable to conclude that a high level of port State control, in some flags of convenience, would reduce their preference, because an inspection may lead to delays or delays and consequent loss of productive time . However, a comparison of the registered registers of open registers and the reports drawn up under port State control shows that, although an increasing proportion of inspections are concentrated on open fleet vessels, an even greater proportion of ships are registered in them (Rodriquez & Piniella, 2012).

This is most probably justified by the fact that port State control is not as deterrent as to offset the advantages of open registers and because an open register ship, driven by the high inspection rate to change the flag, is most likely is that it will end up again in an open register, because it would, obviously, hardly meet the requirements of traditional registers. The above conclusion proves that port state control is not sufficient to eliminate flags of convenience that do not meet international standards but require parallel actions such as non-recognition of certificates issued, high fines or permanent exclusion ships from the ports of the Paris MoU (Rares, 2018).

Chapter 2nd : The European Legal Status of Port State Control

2.1 The transition from administrative to legislative

Maritime trade is of vital importance for Europe, since 30% of intra-Community trade and 90% of goods exported outside the European Union are made by sea. However, maritime safety is a concern that extends far beyond the European Union. A series of international conventions aimed at securing maritime safety and designed under the auspices of the IMO, following several major disasters, such as the 1967 Torrey Canyon shipwreck and the 1989 Exxon Valdez sinking, demonstrate this fact (Varotsi – Christodoulou, 2018).

However, it was now commonly accepted that the classic framework for international action on maritime safety was not sufficient to effectively combat the causes that led to such disasters, given the lack of adequate means of monitoring the application of international standards and regulations throughout the world. Ten years after the establishment of the Paris MoU, it was clear from its annual report that the number of degraded ships operating in Community ports had risen dramatically. Despite the efforts of the Port State Inspection Authorities, Memoranda of Understanding have failed to achieve their intended objectives (Varotsi – Christodoulou & Pentsov, 2007).

The European Council has therefore begun to develop a common maritime safety policy, including the adoption of directives on the control of foreign ships by port States and the functioning of the Quaestors. The primary objective of Community Directive 95/21 / EC on port State control of foreign merchant ships was to make legally binding and uniform the principles introduced by the Memorandum. It is a fact that the implementation of the Paris MoU depends on the political will of each state to ensure its compliance with the rules laid down by it (Cariou & Wolff, 2015).

On the contrary, the EU reserves the right to initiate legal proceedings against Member States insofar as they do not comply with the obligations of the EC Treaty. In addition, the effectiveness of port State control depends on the cooperation of the port authorities. Therefore, the European legislator has, through its decision to issue a port State control directive, among other things, to reduce the phenomenon of "port shopping", competition between ports, by imposing a legal binding and uniform control regime, based on the Paris MoU arrangements (Varotsi – Christodoulou, 2008).

2.2 The European Port State Control Directive

The purpose of Directive 95/21/EC, as amended and subsequently codified and replaced by Directive 2009/16 / EC, is to contribute to the drastic reduction of non-compliant marine standards in the waters under the jurisdiction of the Member States , with fuller compliance with international and relevant Community law on safe shipping, maritime safety, protection of the marine environment and shipboard living and working conditions, b / establishing common criteria the control of ships and the harmonization of ship inspection and detention procedures; and (c) the targeting of ships posing a higher risk, subjecting them to more detailed and frequent inspections (Tan, 2010).

The Community legislature, in considering that 'the experience gained in the Memorandum of Understanding on Port State Control (Paris MoU) signed in Paris on 26 January 1982 should be incorporated into the text of the Directive the Paris MoU, including the guidelines it adopts, while highlighting the need for close co-operation and coordination between the Community and the Paris MoU in order to facilitate as much convergence as possible in future developments (Keselj, 2010).

Particularly (Varotsi – Christodoulou, 2018) :

- Adopts the new control regime (NIR) introduced by the Paris MoU. Ships are classified, on the basis of their risk profile, on high, typical and low-risk ships. In order to determine their profile, the Community inspection system resorts to

a general and historical parameter identical to those of the Paris MoU (type and age of the ship, performance of flag state, recognized organization and companies, number of deficiencies and bookings) and uses the same system of sum of targeting points.

- Ships calling at ports or anchorages within the Community shall be subject either to periodic inspections at predetermined intervals identical to those of the Paris MoU (6 months for high risk ships, 12 months for typical ships and per 36 months for low risk ships) or additional inspections, if there are prominent or unexpected factors.

- The selection of ships to be inspected shall be based on the hazard class to which they are classified. Priority categories for ship inspection are equivalent to those of the Paris MoU and are distinguished, in particular, in Priority I and Priority II ships.

- Inspections are similarly distinguished in original, more detailed and extensive, and their scope is specified in Articles 13 and 14 and Annex VII of the Directive. The following categories of ships are eligible for extensive inspection a / ships in the high risk category, b / passenger ships, oil tankers, tankers carrying chemical products or gas or bulk carriers over 12 years, c / ships in the high-risk category or passenger ships, oil tankers, chemical tankers or gas carriers or bulk carriers over 12 years of age, in case of prominent or unexpected factors, d / ships subject to a new inspection following a refusal of access order.

- An indicative list of examples of "clear indications" for a more detailed inspection is contained in Annex V to the Directive and is consistent with that of the Paris MoU.

- Annex VI on ship inspection procedures refers to the guidelines or guidelines issued by the Paris MoU Committee in their most up-to-date format, while

Articles 19 and 21 set out procedures for the remediation of deficiencies and the imposition of detention, similar to those of the Memorandum.

- The relevant criteria for the detention of the ship in Annex X to the Directive are foreseen.

- It introduces the same strict system of banning access to Community ports under the conditions laid down in the Paris MOU.

- It also provides for the right of the shipowner or shipowner to appeal against the order to detain or refuse access.

- It sets the same minimum standards that inspectors must meet.

- Reiterates the principle of 'most unfavorable treatment' by stipulating that, when inspecting a ship flying the flag of a State not party to a Convention, Member States shall ensure that the handling of this ship and its crew is not more favorable than that to a ship flying the flag of a State which is a party to that Convention.

The contribution of the Community directive on the control of foreign ports by the port state is indisputable, as it has been pointed out that the Paris MoU expects its Member States to voluntarily implement international rules on ship safety, the prevention of pollution and working and living conditions developed by the United Nations (IMO and ILO). On the contrary, EU status goes further, requiring the application of these international standards. In addition, it should be noted that the above control system of Directive 2009/16 / EC is complemented by the following framework of directives (Rares, 2018) :

- Directive 99/35 / EC on the system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services.

- Directive 2009/20 / EC on the insurance of shipowners for maritime claims, Article 5 of which states that "Member States shall ensure that any inspection of a ship within a port under their jurisdiction pursuant to Directive 2009/16 / EC , includes the verification that the certificate referred to in Article 6 is kept on board.

- Directive 1999/32 / EC on the reduction of the sulfur content of certain liquid fuels, allowing port States to carry out a random check of the sulfur content of fuels used.

- Regulation (EU) 1257/2013 on ship recycling, which provides that, when controlling the foreign ship by the port State, the on-board presence of the certificates provided for in the Regulation is checked and that, in the absence of the a detailed inspection may be carried out in accordance with the specific requirements.

- Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, which provided for the obligation of the port State to check, in addition to the certificates provided for in Annex IV to the Directive 2009/16 / EC, the certificate of conformity issued in accordance with that Regulation.

2.3 The evolution of the European legislative framework in the field of maritime safety

Legislation at Community level regarding the protection of maritime safety has not stopped here. The famous shipwreck shipwreck, Erika, which broke in December 1999, just 40 miles off the coast of Brittany in France, pouring more than 10,000 tons of heavy oil into the sea, caused a huge ecological disaster. Under pressure from the public, the European Commission has decided to table proposals for tighter security measures in order to reduce the risk of future damage to the seas of the Member States. This action became even more necessary when the Prestige tanker sank in November 2002 off the coast of Spain, spraying 70,000 tons of oil, which was washed

off the coasts of Spain, France and Portugal (Varotsi – Christodoulou & Pentsov, 2007).

The result of the consultations that took place following these ecological disasters led to the establishment of a three-level plan of actions known as "Erika I", "Erika II" and "Erika III". The European Commission's aim was to bring these measures to a change in the attitude towards maritime safety by providing stronger incentives to convince carriers, charterers, classification societies and other key players in global shipping to place particular emphasis on quality issues , while at the same time seeking to make the safety net tighter for those seeking to gain short-term economic benefits to safety and the marine environment (Varotsi – Christodoulou, 2008).

Chapter 3rd : The impact of European legislation on International law

As evidenced by the progress made by both IMO and the EU in establishing international and European legislation, respectively, in the field of maritime safety, it is encouraging that these organizations seem willing to cooperate and, in fact, have worked at the same time in some areas. The EU's impact on international law, which governs maritime safety, is multi-level. Indeed, the EU contributes in different ways to strengthening the existing international legal regime either by inviting Member States to ratify an international maritime convention or by incorporating its arrangements in European law in part or in whole. Examples of such integration are, on the one hand, Directive 2005/35 / EC, which incorporated, in the European legal order, the MARPOL standards for ship-source pollutant discharges and Regulation (EU) 392/2009, has been incorporated in Community law into the 2002 Athens Protocol (Graziano, et al. 2018).

Moreover, a recent example of the incorporation of international treaty rules is Regulation (EU) 1257/2013 on Ship Recycling, which seeks to facilitate the early ratification of the Hong Kong Convention Clark for the safe and environmentally friendly ship recycling, applying proportionate controls to ships and ship recycling facilities under that contract. These EU interventions have as their primary objective either to accelerate the entry into force of an international convention or to strengthen the rules of internationally-accepted international law, while extending its scope of competence. In addition, by incorporating into secondary Community law, regulations of international conventions, either not yet in force or not ratified by all the Member States, force them to apply, given that the Community can initiate judicial actions, as specifically provided for in Article 260 of the TFEU, against those Member States which failed to transpose European rules in time into their national legal systems (Varotsi – Christodoulou, 2018).

Furthermore, the EU has, in many cases, been complementary to international law, by issuing directives or regulations supplementing the applicable international legal

order. Among other things, this Directive 2005/35 / EC did not only incorporate MARPOL standards for the discharge of polluting substances from ships but also supplemented the international liability regime by introducing sanctions for anyone causing marine pollution from discharges of polluting substances , by deception, negligence or gross negligence. Furthermore, Regulation (EC) 392/2009, incorporating the provisions of the Athens Convention, as amended by the 2002 Protocol, introduced new arrangements supplementing the passenger protection regime as set out earlier (Rares, 2018).

It follows from the above points that, first of all, seeks to strengthen and improve maritime law by fostering the hope that harmonized international law can be achieved in order to achieve the common maritime safety and liability objectives. A number of court rulings have shown that, at first glance, EU interventions that are supportive and complementary to international law sometimes conflict, eroding the uniform international maritime law (Jessen & Zhu, 2016).

3.1 The position of international law in the EU legal order. The Intertanko case

The problem has first arisen in the case of an accident involving international maritime law with EU rules, which in their arrest and devising were not intended to occupy sea trade, with the classic case of the conflict of the international uniform liability regime for maritime pollution with EU rules and, more specifically, with the management of solid waste (Cariou & Wolff, 2015).

However, beyond these cases, the interaction of which had not been anticipated in advance, because the EU regulations were in areas not related to international maritime law, the problem also arose in cases where the EU either progressed, has been partially or fully incorporated into international maritime conventions, but extending the relevant regulations and introducing qualitatively stricter criteria, either complemented the existing international maritime law, but sometimes ruling overlap settings (Ziegler, 2013).

An exemplary example is the Intertanko case, in which the CRL was asked, following a preliminary ruling from the High Court of Justice, to examine the compatibility of the abovementioned Directive 2005/35 / EC on ship-source pollution with certain predictions by international seafarers contracts, MARPOL and indirectly UNCLOS. This directive adopted a system of liability, which was more stringent than the above-mentioned international treaties (Rodriquez & Piniella, 2012).

In that context, major international maritime transport organizations, including Intertanko, claimed that the extension of the liability regime was illegal and that the contested Community directive should be annulled as contrary to the rules of international law. The dispute concerned the question whether Articles 4 and 5 of Directive 2005/35 are consistent with MARPOL and UNCLOS.

The relevant provisions govern criminal liability for illegal discharges. The uncertainty was mainly due to the fact that the Directive clearly provides for stricter liability criteria than MARPOL, given that, under the Directive, "negligence or gross negligence" is sufficient, while MARPOL at least requires negligence and awareness of any causing damage (Tan, 2010).

The European Court of Justice has held that both MARPOL and UNCLOS can not affect the validity of the Community directive. In particular, the WEU has accepted that, first of all, the international agreements entered into by the Community prevail over instruments of secondary Community law and, consequently, the validity of the latter may be affected if they are not in line with the rules of international law. The Court of Justice must review the incompatibility of a Community act with a provision of international law which may affect the validity of that act, provided that the EU is bound by that provision and that that provision also gives rise to the benefit of citizens the Community has the right to rely on it before the national courts and, to that end, investigates the spirit, economy and wording of the provision (Vorbach, 2010).

In this context, the Court ruled that, first of all, the EU is not bound by MARPOL because it is not a party to it and therefore the validity of the Directive can’t be judged in the light of its rules. The Court has held that the principle of substitution of the Member States for the rights and obligations which they have taken up pre-accession

in the context of their accession to MARPOL was not applicable in the present case on the ground that, although all the Member States are members of MARPOL, the complete transfer to the EU of the prerogatives previously exercised, however, ceased to be a prerequisite for the application of the substitution principle. Contrary to MARPOL, the EU is a member of UNCLOS, and the Court therefore considered that, first of all, the provisions of the latter are binding on the Union and form an integral part of the Community legal order (Keselj, 2010).

However, given that, in order to check the validity of the contested directive on the basis of the provisions of UNCLOS, they must produce, as it has been said, a direct effect within the legal order of the Union, the Court concluded that the rules which it introduces UNCLOS does not lay down rules intended to be directly and immediately applicable to individuals and to confer rights or freedoms on them and therefore the conditions for the primacy of international law over the secondary derivative Sciacca law (Varotsi – Christodoulou, 2008).

On that ground, the European Court set aside these international conventions, accepting that the validity of Directive 2005/35 / EC can't be assessed in the light of either of them and thereby avoiding the compatibility of those directives with the contested directive (Varotsi – Christodoulou & Pentsov, 2007).

3.2 Hierarchy of international and Union law within the Union and criteria for the resolution of the conflict

Intertanko's case highlights inter alia the concerns arising from the conflict between EU law and international treaties, to which members are Member States, without being the EU itself. In particular, the founding Treaties and the Protocols thereto are the highest level of the hierarchy of the Union's rules of law, whereas the international convention rule occupies a mid-position between primary and secondary Union law. Therefore, on the basis of the principle of primacy, primary Union law is superior to international law (Cariou & Wolff, 2015).

However, the principle of the primacy of EU law has a fundamental exception to

international law in the field of pre-accession legal relations, with the pacta sunt servanda principle. The EU, recognizing the need to resolve conflicts arising from any conflicting obligations assumed by the Member States prior to accession, provides in Article 351 TFEU Article 1 (1) of the TFEU that 'The rights and obligations arising from contracts concluded before of 1 January 1958 or, for the States acceding before the date of their accession, between one or more Member States on the one hand and one or more third countries on the other, are not affected by the Treaties' (Graziano, et al. 2018).

However, the rule in Article 351 (2) leads to a reduction in the protection of the pre-accession obligations of the Member States in so far as they oblige them to eliminate any incompatibility of these international conventions with the fundamental principles of the EU by resorting to all the appropriate instruments', based on the principle of loyal cooperation. In fact, the WEU has raised further hierarchy issues within the European legal order, considering that the obligations imposed by an international agreement, even if it is a member of the EU itself, can’t have the effect of violating the constitutional principles of the EU Treaty , such as those of freedom, democracy, and respect for human rights and fundamental freedoms, which are established as the foundation of the union (Jessen & Zhu, 2016).

Following their accession to the Union, Member States are still able to conclude international agreements with each other or with third States and international organizations, but these international agreements can’t be concluded in areas where the Union has exclusive competence and the possibility of incompatibility with Union law decreases for subsequent international conventions. In addition, the arrangements between them or with third States can’t affect the normal functioning of the Union's institutions, conflict with provisions of Union law or undermine existing Union policies and competences, as this would constitute a breach of duty cooperation, delimitation of responsibilities and the principle of the primacy of Union law (Keselj, 2010).

It is a fact that, in recent years, the WEU has often faced cases where there was a conflict due to simultaneous implementation of EU and international law. However, despite the fact that this conflict is resolved by the WEU, mainly on the basis of the

principle of the primacy of European law that dictates that the EU rule prevails over international conventions, there are finally issues of delimitation and, at the same time, cooperation between Union and international law (Rares, 2018).

In the above Intertanko case, the WEU chose not to adopt the opinion of Advocate General Kokott, who, with an interesting reasoning, accepted that both international treaties form an integral part of Community law and, on that basis, in the first place, conflicting provisions and concluded that there was no incompatibility between them, thus preserving the validity of the Community directive and ultimately resulting in the same result as the Court (Varotsi – Christodoulou & Pentsov, 2007).

In particular, while the Court held that the nature of UNCLOS prevented it from assessing the validity of the contested directive in its view, Kokott referred to previous ECJ case-law, which had in the past recognized that individuals could rely on UNCLOS provisions and argued that the extent to which the citizens of the Member States can rely on this Convention depends on the content of each separate provision, which must be unconditional and sufficiently precise (Rodriquez & Piniella, 2012).

With this reasoning, the Advocate General allowed MARPOL to "indirectly" enter the EU legal order as follows: the UNCLOS Framework Convention, which is generally not sufficiently unconditional and precise, requires "the adoption of corresponding international standards". According to Kokkot, MARPOL could be considered as such a model and, therefore, although it does not bind the Community itself, it is incorporated into it as a control model of UNCLOS. With this reasoning, Kokkot has in essence accepted that both contracts are part of European law. However, for Kokott, that finding did not affect the validity of the Directive (Varotsi – Christodoulou, 2008).

General Prosecutor, pointing out that acts of secondary Community law must be interpreted as far as possible in accordance with international agreements concluded by the Community and that such an obligation for interpretation consistent with international law is limited only by the general principles of law and in particular the principle of legal certainty, proceeded in that light to an interpretation of the contested provisions of the Directive and concluded that there was no evidence to suggest that

they were valid and that they are therefore compatible with the MARPOL arrangements (Tan, 2010).

Despite the arguments of the Advocate-General, which made an interpretation consistent with international law, while at the same time succeeding in resolving the validity of the contested directive, the Court not only did not adopt but did not even comment on those arguments, way, the impression that he is reluctant to review an EU act in favor of an international rule and losing the opportunity to clarify the relationship of international and EU law to the issue (Varotsi – Christodoulou, 2018).

From the point of view of uniform private law, the systematic application of the principle of the primacy of Community law calls into question the principle of autonomous interpretation of uniform private law treaties developed over the last decades and codified by the Vienna Convention on the Law of 1969, which avoids conflicts and maintains unity with other areas of international law. Especially in relation to international maritime conventions providing for a liability regime, the primacy of EU law jeopardizes their exclusivity and uniformity, for which international organizations have fought hard in recent decades (Vorbach, 2010).

The guidelines, the primacy of EU law, the compatibility with EU law of interpretation and time-priority are often inadequate to effectively resolve the international conflict with the EU rule. The broader interpretation of the principle of the Member States' substitution by the EU to be bound by a series of international conventions to which Member States have entered into would make them an integral part of the Community legal order (Ziegler, 2013).

In doing so, it would be possible to use the principle of direct effect of the international rule, which suggests the possibility of invoking it, in order to check on this basis the validity of EU acts. However, when the application of the principle of substitution is not possible, the Court must take into account the purpose of the international treaty and its scope and, on the basis of the principles of honesty and cooperation in EU and Member State relations, move forward to interpret the provisions to be enforced in order to avoid contradictions with international conventions and, at the same time, to achieve the result sought by the EU regulation.

The arguments of Advocate General Kokott could serve as a reference point in this effort (Graziano, et al. 2018).

The problem may not arise within the framework of European port State control, primarily because the Paris MoU arrangements are not binding, and therefore any different regulation from the EU would not raise issues of conflict of international and European law. But given that the EU and the IMO act and interact, many times, while legislating in the field of maritime safety, the creation of conflict areas is inevitable (Varotsi – Christodoulou, 2018).

Moreover, the Court's case law so far suggests that the conflict between EU and international maritime law is not ultimately coincidental and accidental, but that it should show a tendency to circumvent international regulation. It remains to be seen how the Community Court will now deal with other areas of conflict that will arise, possibly reviewing the current lifting criteria and adopting guidelines that will protect the uniform international regime on the one hand and attain the desired objective of the Union regulation effect on the other (Rares, 2018).

Conclusions

As regards the IMO, it is empowered to adopt international rules and criteria on the prevention of pollution by ships. Armed Forces International Instruments - Conventions of this Organization include provisions which also aim at the prevention and control of marine pollution usually caused by marine casualties, inadequate maintenance of essential parts of the ship or inadequate behavior of the crew. The IMO Conventions on Combating Marine Pollution should be applied in the light of the compatibility of the criteria set out in Article 237 of the Convention, which refers to obligations under other International Conventions protection of the marine environment. In particular, the application of the provisions contained in Part XII of the Maritime Law Convention is without prejudice to obligations contained in previous International Treaties or Conventions. Subsequently, these IMO Conventions should be applied in relation to the general principles and objectives of the "Convention".

As regards provisions related to the IMO's activities in relation to the different Parties to the Convention, similarly, several provisions of Part XII include references to general rules and standards such as the implementing provisions contained in the International Instruments- IMO Conventions. In some cases, the "Convention" contains provisions which in themselves contain a specific implementation framework and can be applied in the same way as the IMO International Convention rules and regulations. An example is the provisions of the application for the jurisdiction of the Port State and of the State of Flag. Such provisions are governed by both the Convention and IMO MARPOL. These port-jurisdictional provisions, which are dealt with in MARPOL and the Convention, are complemented and interpreted together to ensure that they are applied uniformly and correctly.

In the light of the above, and bearing in mind that MARPOL 73/78 is the basic IMO Marine International Convention for the Protection of the Marine Environment, it is noted that the term of jurisdiction will be interpreted in accordance with applicable International Law at the time of application or interpretation thereof. It should be

noted that this international law, as formulated and enshrined in the Convention, describes, inter alia, the cases, safeguards and geographical areas relating to the jurisdiction of the coastal State, the flag State and the port state. In this context, for States Parties to the IMO International Conventions, and in particular IMO MARPOL 73/78, the existing and in force International Law of the Sea, which has been formulated in accordance with the Convention on the Law of the Sea , affects their application.

Concerning marine pollution by ships, the Convention on the Law of the Sea sets out general obligations for States which, acting through the relevant International Organization (see IMO) or general diplomatic conference, establish international rules and standards on pollution, reduction and control of marine pollution by ships, which they shall review whenever appropriate. The main IMO Convention, which must be observed by vessels during their operations, both in the maritime areas defined by the International Convention on the Law of the Sea and in the ports in which they engage in commercial activity is MARPOL 73/78 . In this Convention, the definition of "harmful substances" in Article 2 par. 2 is fully compatible with the definition of "pollution of the marine environment" in Article 1 (4) of the Convention on the Law of the Sea. Both definitions refer to the introduction of substances into the marine environment which may cause or cause dangers to human health and the use of seas. Although the definition of the Convention on the Law of the Sea applies to all sources of marine pollution, MARPOL 73/78 focuses only on pollution originating from ships during their normal operation.

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