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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**LEGAL ANALYSIS OF NATIONAL LAW ON  
WRECKS AND ABANDONED SHIPS IN  
TURKISH WATERS WITHIN THE  
INTERNATIONAL LEGAL FRAMEWORK**

By

**SAFIYE TECEN**

**Turkey**

A dissertation submitted to the World Maritime University in partial  
fulfilment of the requirement for the award of the degree of

**MASTER OF SCIENCE**

**In**

**MARITIME AFFAIRS**

(MARITIME LAW AND POLICY)

2019

## **DECLARATION**

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

**Signature** : .....

**Date** : 24 September 2019

**Supervised by:** Associate Professor Henning JESSEN

**Supervisor's affiliation:** Maritime Law and Policy

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I am using this opportunity to extend my gratitude to Ministry of Transport and Infrastructure of the Republic of Turkey for giving me the chance of studying at World Maritime University (WMU).

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Finally, words can not express how grateful I am to my family for providing me with unfailing support and continuous encouragement throughout my months of study in Malmö. This accomplishment would not have been possible without them and their support.

## **ABSTRACT**

Title of Dissertation: **Legal Analysis of National Law on Wrecks and Abandoned Ships in Turkish Waters within the International Legal Framework**

Degree: **Master of Science**

Over the years, there has been an increasing number of ships which have been run aground, submerged, semi-submerged, abandoned or left idle in the area of Turkish territorial seas. In order to decrease this number of abandoned or inactive vessels including dangerous wrecks in Turkish waters, new Article 7 of Turkish Ports Act has recently been added and provides vast powers with drastic and deterring measures to Harbour Masters.

Bearing in mind these concerns, this paper includes the possible legal challenges for the implementation of recent national law regarding wrecks and abandoned ships and possible gaps between existing national law and the relevant international convention. In this context, considerations and recommendations are provided in order to address the major challenges regarding removal of wrecks in Turkish waters.

Having said that, as Turkey has only one comprehensive legal instrument in its national law addressing wrecks and abandoned ships (with the same measures and procedures) and there is no international legislation or regulation concerning abandoned vessels, only The Nairobi Convention is analyzed in this paper in terms of its wreck removal regime which is adopted by The International Maritime Organisation (IMO) in order to create a more uniform international legal framework by eliminating legal inconsistencies in the treatment of wrecks.

**KEYWORDS:** Wrecks, Abandoned Ships, the WRC, Liability, Compulsory Insurance, Gaps, Challenges

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## List of Abbreviations

<b>BUNKER</b>	International Convention on Civil Liability for Bunker Oil Pollution Damage
<b>CLC</b>	International Convention on Civil Liability for Oil Pollution Damage
<b>EEZ</b>	Exclusive Economic Zone
<b>GT</b>	Gross Tonnage
<b>HNS</b>	The International Convention on Liability and Compensation for Damage in connection with Carriage of Hazardous and Noxious Substances by Sea
<b>H&amp;M</b>	Hull and Machinery
<b>IMO</b>	International Maritime Organisation
<b>LLMC</b>	Convention on Limitation of Liability for Maritime Claims
<b>MARAD</b>	Maritime Administration
<b>NOAA</b>	The National Oceanic Atmospheric Administration of US
<b>PAL</b>	Athens Convention relating to the Carriage of Passangers and their Luggage by Sea
<b>P&amp;I</b>	Protection and Indemnity
<b>TCC</b>	Turkish Commercial Code
<b>UNCLOS</b>	United Nation Convention on Law of the Sea
<b>US</b>	United States
<b>WRC</b>	Nairobi International Convention on the Removal of the Wrecks, 2007

# **Chapter One**

## **INTRODUCTION**

### **1.1 Background**

Turkey has a long coastline of approximately 8,333 kilometers and borders four different seas: the Mediterranean Sea, the Black Sea, the Aegean Sea, and the Marmara Sea, the last of which is connected to the Black Sea by the Bosphorus Strait as well as to the Aegean Sea. In terms of strategical and commercial importance, Turkish waters and in particular Turkish Straits has been a vital waterway for all vessels (Oral & Öztürk, 2006).

Over the years, there has been an increasing number of ships which have been run aground, submerged, semi-submerged, abandoned or idle in the area of Turkish territorial seas. According to an initial inventory conducted by Turkey's National Maritime Administration (MARAD), it is assumed that the number of such kind of risk-bearing ships exceeds one-hundred.

It is no doubt that abandoned ships including dangerous wrecks and ownerless/derelict ships have many adverse effects on the marine environment. Besides the risk of pollution from oil and hazardous substances or marine litter, a dangerous wreck may obstruct. This may in turn lead to a navigational hazard such as a collision or to simply block the mooring spaces. Wrecks might also cause damage to the coastal environment as a result of movement from wave actions and storms and may disrupt fisheries and other marine economic activities.

In order to protect the marine environment and to provide safe and secure navigation to all ships, Turkey recently enacted legislation by amending the Turkish Ports Act No.618. This amendment entered into force on the fifth of December 2017 after being published in the Turkish Official Gazette. The new amendment takes serious measures to prevent loss of life, damage to property, marine casualties and sea pollution arising from stranded, submerged, semi-submerged and abandoned ships or shipwrecks, as well as to ensure safe and secure operation of ships.

Pursuant to Article 7 of the Turkish Ports Act No. 618 that entered into force since on fifth of December 2017, in sum, shipowners, masters and agents shall be obliged to remove a wrecked, semi-submerged or abandoned vessel and its properties within the time frame given by the related harbour master. According to the article, the harbour master's office where the wreck found is responsible for taking any preventative actions necessary including the sale of ships and shipwrecks.

In addition to that, within the same year, the Regulation of Ports released by the Ministry of Transport and Infrastructure in April 2017 had already included relevant provisions about abandoned or idle vessels under certain circumstances in which a Harbour Master may apply to the Enforcement Courts for the sale of such vessels.

To that end, however, Turkey has not ratified the Nairobi International Convention on the Removal of Wrecks, (hereafter abbreviated as either the Nairobi Convention or the WRC) 2007 yet. The WRC was adopted by The International Maritime Organisation (IMO) in order to create a more uniform international legal framework by eliminating legal inconsistencies in the treatment of wrecks and entered into force worldwide in 2015 with the following nineteen signatory states in alphabetical order: Bulgaria, Denmark, Germany, India, Iran, Malaysia, Morocco, Nigeria, Palau and The United Kingdom (Huang, 2015). At the time of writing, forty-six states have ratified The Convention representing more than 73% of the world's merchant shipping tonnage (IMO, 2019).

## 1.2 Historical background and overview of Article 7

The roots of Article 7 can be traced to 1935 which is the part of Turkish Ports Act dated 1925. In the former version of this article:

*“(1) The owners, captains and agencies of ships sunk in a manner hindering the safety of navigation and voyage in ports, are responsible for the removal of the ships and their property completely at the short time period to be determined by the harbour master. The mentioned period of time shall be notified to those responsible either by announcements to be made in newspapers or, via the notary to which they are registered.*

*(2) The above-mentioned period may be extended by the State Ministry in Charge of the Economy if it is deemed necessary or if there exists a legal conflict concerning the ownership of the ship and its property, by an objection to be made by those related to the conflict. The harbour masters are authorized to remove or destroy ships and their property which have not been removed by the owner, captain or agency within the period of time determined. For those ships and property which are not destroyed but removed by the harbour administrations, the ship owners shall be called to pay for the costs of removal and collect the wreck by means of a newspaper announcement. Ships and their property which are not collected and for which removal costs have not been paid within 15 days of the announcement shall be sold by financial officers upon the application of harbour administrations. Their value shall be confiscated by the treasury. If the market value exceeds the cost of removal, the exceeding amount shall be paid to the owners by the treasury, upon their application.*

*(3) For state owned wrecks and their property, no newspaper announcement is necessary. They shall be removed by harbour administrations and submitted to financial officers. Those which are not in a position to be removed are destroyed.”* (Source: [www.denizcilik.gov.tr](http://www.denizcilik.gov.tr))

The former version of Article 7 stated similar measures for wrecks however, despite its long-standing existence, that provision was never used by government bodies. Pertaining to the sale of the wreck, the competent authority which was the Revenue Departments of Finance Ministry or Enforcement Offices (newly renamed) was treating the sale of wrecks like any other public sale process. Due to the lack of coordination between the two ministries and to poor awareness of the issue, the former Article 7 had not been considered an efficient method of handling this issue. Furthermore, this Article only concerned wrecks and did not contain any measures regarding abandoned or unattended vessels.

The updated Article 7 is designed to address this and other gaps that occurred within the time as follows:

*“(1) For the ships aground, submerged, semi-submerged, abandoned or idle in an area of port authority’s administrative responsibility in a manner hindering the safety of navigation and voyage in ports or safety of life and property and brought environmental risks, the owners or captains are responsible for the removal of the ships and their property at the time period to be determined by the harbour master. The mentioned period of time shall not exceed 45 days. If ships are flying flags other than Turkish, the time period determined shall be notified to the flag states’ competent authorities, owners and captains if their addresses are known; otherwise it shall be declared in any international maritime bulletin. If ships are flying Turkish flag, the situation shall be notified to the shipowner or captain of the ship. If their addresses are not known the notification is published in a newspaper which is distributed in country scale and has circulation over the one hundred thousand. Also, if the ship or wreck is under the arrears or has an attachment order, competent Office shall be notified too. The Harbour Master may extend the determined period for a maximum term of 45 days upon the objections of the vessel interests due to technical or meteorological necessities.*

*(2) Within the determined period of the time, in case of the attempts of the Harbour Master to contact the vessel interests fail or the vessel interests refuse to fulfil the orders to remove or relocate the vessel/wreck, the Harbour Master is entitled to take steps such as the removal, relocation, destruction or sale of the vessel or the wreck. The sale procedure of the vessel or the wreck is carried out by Harbour Master’s Office. The spending expenses until the phase of the sale are met from Revolving Fund Management of The Ministry of Transport and Infrastructure. The sale value excluding the sale expenses, which are recorded as a revenue to the Revolving Fund Management of The Ministry of Transport and Infrastructure, will be distributed amongst the creditors pursuant to a schedule to be prepared by the competent Enforcement Office in the event that the sold vessel or the wreck is already seized property. The balance, if any, will be kept in the safekeeping account of the Revolving Fund Management of The Ministry of Transport and Infrastructure then will be paid to the vessel interests upon their request within the five years. In the process of the sale any application or objection to the judicial or administrative authorities may cease the sale. The vessel will be sold free of encumbrances.*

*(3) In other situations when a ship create a serious threat to the safety of navigation, life, property or environment in the area of port’s administrative zone, even though the ship has a court decision or administrative precautionary order on it, Harbour Master is entitled to take every necessary steps including transferring the ship to a safe place regardless of any time limit. In this case the, costs derived from taken measures are paid by the owner. If it*

*is not paid within the 30 days, the costs except sheltering expenses are met by Ministry of Transport and Infrastructure and abovementioned provisions and procedures are followed.*

*(4) Ministry of Transport and Infrastructure is entitled to put secondary legislation in order to implement this article.”*

The greatest contribution of this legislation is not only that it underlines the shipowners' responsibilities but also that it outlines the measures taken by government must be of a timely manner. Thus, with the amendment of the article, the relevant government body is replaced by the Ministry of Transport and Infrastructure which is the maritime administration of the country.

The obvious difference from the previous provision is that the law-maker intended to deal with not only sunken ships but also with abandoned, unattended and idle ships recently deserted in Turkish waters. Secondly, the sale procedure of the vessel hindering safe navigation or threatening the marine environment at ports will be carried out by the Harbour Master's Office. Before the change to Article 7, the former version of the same article stated that a sale of a wreck or its property will be conducted by the Revenue Departments of Finance Ministry or Enforcement Offices. It may be assumed, however, that for a Harbour Master, processing a vessel sale as is introduced by the amendment may be seen as a demanding new task.

With the amendment to the Turkish Ports Act, the same powers concerning the measures stipulated for wrecks have been given to the Harbour Master for inactive vessels including abandoned ones regardless of those vessels having an arrest order, attachment, detention or other basis. It is noteworthy to point out that while the former version had some waiting process when an objection was raised legally, the new version does not mention any exemptions in that sense.

As it is understood from the wording of that provision, not only is a Harbour Master bestowed with immense authority when it comes to safety of navigation, saving lives, property at sea and protection of the environment but also these conditions are considered “cumulative requirements” that must be satisfied before taking any steps regulated in the article.

At this point, it is worth mentioning that the Regulation of Ports (hereafter abbreviated as The Regulation) regarding the duties and responsibility of the port authorities published by the Ministry of Transport and Infrastructure after the consolidation of all the bylaws, regulations and instructions as a single “Regulation” has been in force since 2012. This regulation which is the secondary legal instrument outlines general duties, powers and the responsibilities of the Harbour Masters in relation to navigation, safety of life, property and marine environment within the scope of the national and international statutory provisions.

In 2017, an update was made to Article 46 of that Regulation and a significant development was introduced with this amendment. According to the amendment, a Harbour Master may apply to the Enforcement Courts for the sale of so-called “Inactive or Problematic Vessels”. This right of application provided by the Regulation is also compatible with Article 1386 of the Turkish Commercial Code.

This is the first time that the issue of problematic vessels in the vicinity of Turkish waters has been approached in a serious manner by the Maritime Administration. According to this provision, after the onboard inspection of the abandoned, unattended or idle vessel, the relevant Harbour Master makes an assessment in relation to whether the vessel causes a hazard to safety of navigation, life, property or environment and issues an official report. In the case of risk determination, the Harbour Masters have the power and duty to take all necessary measures to prevent or remove such risk.

Furthermore, Harbour Masters were entitled with the duty to start the sale of those vessels hindering the safety of navigation on condition that the vessel was detained pursuant to an arrest or attachment order. However it is worth noting that this sale is not conducted by the Harbour Master’s Offices but by the Enforcement Office which is officially entitled to carry out a judicial sale pursuant to relevant Turkish Bankruptcy and Enforcement Law. Also, this provision encompasses only unattended, abandoned or inactive vessels not wrecks, submerged or semi-submerged vessels.

Even though there have been rules and regulations on inactive vessels, because of the long judicial sale process for ships with an arrest or attachment order under Turkish

Bankruptcy and Enforcement Law, the maritime administration has taken this issue further and set out even stricter measures applicable to problematic vessels including wrecks by changing the Turkish Ports Act.

Because of the short period of time between the two legal instruments (the Regulation was published in April 2017 and Article 7 in December 2017) many Harbour Masters had already applied to the competent bodies to sell inactive vessels. For those vessels that were already under the forcing sale procedure, it would not be possible to commence a new sale procedure under Article 7 by the Harbour Master's Office itself.

It is important to highlight that a Harbour Master may still apply to Enforcement Offices requesting the sale of a vessel pursuant to the aforementioned Regulation provision. To this end, both provisions giving authority to the harbour masters pertaining to the sale of vessels are in force.

### **1.3 Objectives**

The main aim of this dissertation is to give a comprehensive legal analysis in relation to wrecks and abandoned ships in Turkish waters. After presenting a historical background regarding wrecks, semi-submerged and abandoned ships and shipwrecks, the legal position in Turkey regarding wrecks and abandoned vessels related to national law will be identified in comparison with the relative international conventions. In line with this discussion, the effectiveness of the implementation of existing national law will also be assessed.

In order to achieve this aim and meet the stated objectives, a descriptive and conceptual approach will be followed by initially gathering and reviewing relevant sources regarding wrecks and abandoned ships in Turkish waters as well as some statistical data provided by the Maritime Administration (MARAD) of Turkey will be used to some extent in this dissertation.

## **1.4 Scope of study**

With the intention of reducing the number of abandoned or inactive vessels (including dangerous wrecks) in Turkish waters, new Article 7 of the Turkish Ports Act has provided vast powers with drastic and deterring measures to Harbour Masters. However, it can not be underestimated that this issue should be considered from the perspective of shipowners. While a legal instrument addresses concerns regarding the long lasting issue of ensuring safety of navigation and protection of environment; it is important that it should not create new problems in terms of marine trade or other legal disputes. When viewed from this aspect, this thesis mainly takes a Turkish perspective on the legal discussions as to wrecks and abandoned or idle ships in Turkish waters, yet, still, it has a comparative approach to the subject within the international legal framework. In order to achieve its purpose, the following questions are discussed throughout the scope of this work:

- What are the possible legal challenges for the implementation of national law regarding wrecks and abandoned ships?
- Is it an appropriate approach to apply the same administrative procedure for all risk-bearing ships: from wrecks and semi-submerged to abandoned ships in the existing national law?
- What are the possible gaps between existing national law and relevant international conventions?
- What are the possible solutions to comply with relevant international conventions after its ratification by Turkey?

Divided into five sections, this thesis attempts to address these questions by providing a general overview on the subject matter of legal analysis of wrecks and abandoned ships in Turkish waters by comparing national law with the international legal framework in terms of wrecks. In Article 7 of the Turkish Ports Act text itself, through its preparatory works and legal writing, the current statutory scheme in force will be

examined in detail; additionally elements necessary for better implementation of the latest amendment of that Act will be presented.

In this manner, both public and private laws are analyzed as and when required. Having said that, it is mainly the Turkish Ports Act, the Regulation of Ports, the Turkish Commercial Code, and the Turkish Bankruptcy and Enforcement Laws that are covered. Unlike in other countries, since the Turkish Environment Authority has no direct duty or responsibility for wrecks and abandoned ships, Turkish environmental legal instruments will not be examined in this work. In terms of international regulations, Nairobi International Convention on the Removal of the Wrecks being in the first place, United Nation Convention on Law of the Sea (UNCLOS) and Convention on Limitation of Liability for Maritime Claims (LLMC) are covered.

### **1.5 Delimitations**

Geographically, this dissertation mentions the sea areas surrounding the Turkey including Turkish internal waters, territorial seas and exclusive economic zones. High seas or other maritime jurisdiction areas of neighbouring States are not discussed in this work.

This dissertation does not intend to cover salvage operations. Also, historical and cultural wrecks are not included in this work since they are subject to different legal regimes.

Being that Turkey has only one comprehensive legal instrument in its national law addressing wrecks and abandoned ships with the same measures and procedures, and since there is no international legislation or regulation concerning abandoned vessels, it will not be possible to make a legal comparison in terms of abandoned or idle vessels; therefore, wrecks and abandoned ships will be approached separately, in general, throughout the research.

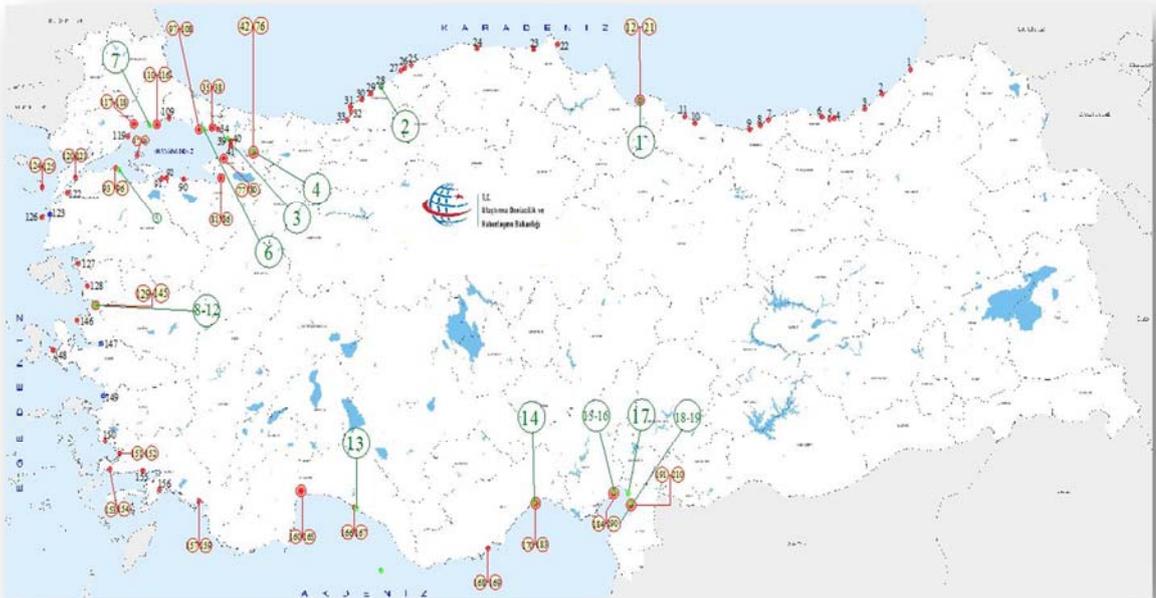
## **Chapter Two**

# **PUBLIC LAW ASPECTS OF NATIONAL AND INTERNATIONAL LAWS ON WRECKS AND ABANDONED SHIPS**

### **2.1 Competent authority**

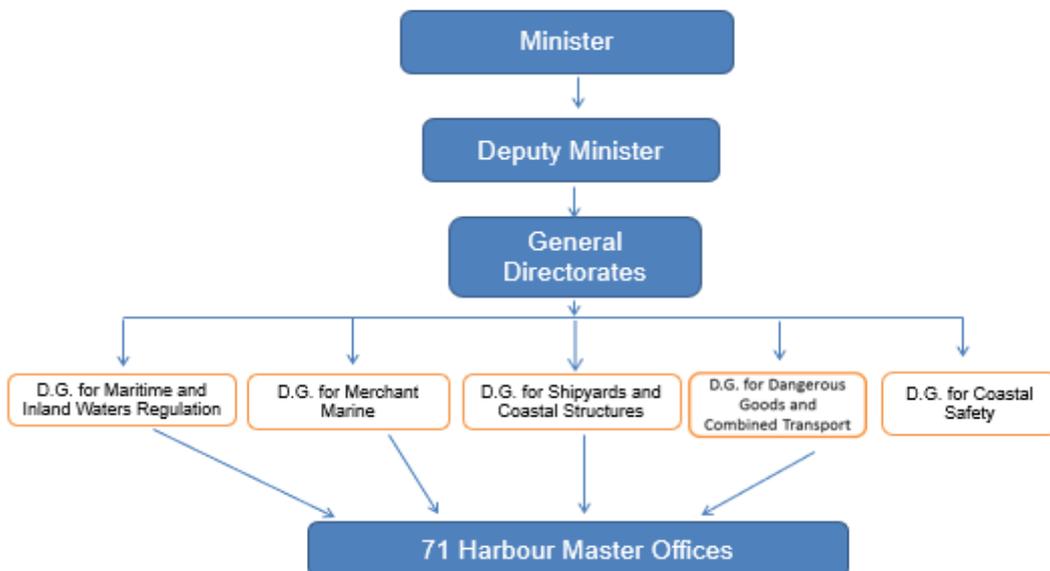
According to Article 7 of the Turkish Ports Act, the Harbour Master is the sole authorized body for dealing with wrecks and abandoned ships in Turkey. Turkey has 71 ports and consequently 71 Harbour Masters along the coastline of Turkey (Styles, 2019). The Regulation of Ports standardizes and declares the port's administrative zones and borders together with their anchorage berths. According to the Regulation and its annexes, each port in Turkey has an administrative zone where the Harbour Master can exercise jurisdiction pursuant mainly to the Turkish Ports Act and The Regulation, which provides legal basis to his/her actions or decisions.

As illustrated by Figure 1, Harbour Masters' Offices take part under the General Directorates of Ministry of Transport and Infrastructure, hierarchically. They have limited budget and personnel accordance with their operational capacity and density of marine traffic.



**Figure 1.** A map showing Turkish Ports. (Source: Ministry of Transport and Infrastructure of Turkey)

## Turkish Maritime Administration



**Figure 2.** Organizational Structure of Maritime Administration in Turkey. (Source: Ministry of Transport and Infrastructure of Turkey.)

Amongst general directorates related with the maritime field, the Directorate General of Coastal Safety has a different legal status in Turkey. This body is a state-owned organization and there is no hierarchical relationship with the Harbour Master Offices. It is worth noting that even though there is a duty regarding wreck removal in its foundation statute, the Directorate General of Coastal Safety oversees mainly salvage operations on contractual basis for both Turkish and foreign flagged vessels in its jurisdiction.

From the perspective of international law, according to UNCLOS, States may apply their national law on wrecks and abandoned vessels within territorial seas since they have full sovereignty of that area.

## **2.2 Scope of application**

The issue of scope of application should be discussed over these two questions:

(1) Which area is covered? And (2) what kind of vessels are encompassed under the national and international law regarding wrecks and abandoned ships in this area? Besides this, it is also important to be clear on which objects are considered ships and on when they become a wreck or an abandoned ship within a legal framework. In this chapter, these questions will be discussed in terms of wrecks and abandoned vessels separately.

### **2.2.1 When does a ship become a wreck?**

Despite the absence of a definition in the Turkish Ports Act itself, Article 7 shall be applied to all ships based on the fact that the “Practice Directive on the Implementation of Article 7 of the Turkish Ports Act” states that *every vessel that is purpose built to move on the water, having the ability of floating and not of small size, regardless of not having any self-propelling capability* have been considered “a ship” in the context

of Article 7 implementation. This definition reflects a general understanding of vessels in which a wider concept and comes from the Turkish Commercial Code itself.

Regarding abandoned vessels or inactive vessels in Turkish waters, in the same way as with wrecks, Article 7 of the Turkish Ports Act encompasses all kinds of ships which meet each criteria of the definition of *ship* under the Practice Directive. Those ships may become abandoned either without any identifiable owner or an inactive vessel with careless owners.

In this vein, it can be said that all kinds of vessels which become a wreck, abandoned or inactive are in one way covered by this provision. Only, based on the information found in The Regulation (Art. 2.2), military ships, State-owned and war ships or non-commercial vessels from other sovereigns are not included in the scope, likewise other legislations.

At this point, it is relevant to discuss the question of how a ship becomes a wreck. It can be inferred that if a ship permanently loses one of the qualities mentioned in the definition of *ship* in a casualty, in a maritime legal sense there is reason to name the object as a wreck (Tiberg, 2004). From a wider perspective, in most legal systems the combination of two elements is required to categorize a shipwreck: firstly, the structure must be non-navigable, in other words it must have lost its seaworthiness (objective element); secondly, as a subjective element, it must have been abandoned by the crew and left without surveillance or maneuvering (Gregori, 2016).

In Turkish Law, there is no specific, legal definition of wreck under code or any act. Nevertheless, a wreck is considered one of an actual total loss situation under the Turkish Commercial Code (Art. 1003). Pursuant thereto, if a ship is sunken, which is not recoverable or unsalvageable or being devastated, exploded or destroyed without leaving any utilisable commercial value, then it can be considered a wreck under the Turkish law, technically. In this light, however, it is not enough from the perspective of the implementation of Article 7 of the Turkish Ports Act. By defining the “ships” or “wrecks” in this study, it is only aimed to indicate objects that may pose danger to navigation, lives, property or marine environment, or both. This requirement should

be considered as an essential part of any definition of *wreck* intended. Consequently, it can be said that before the amendment of Article 7, while Turkey weighed objective elements (physical transformation of the ship), with the new circumstances and purposes under consideration of safety of navigation and protection of environment, the subjective element (intention of abandonment) came into prominence.

With regards to the international framework for wrecks, under the Nairobi Convention, a ship is defined in Article 1.2 of that Convention as following: “*ship means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of sea-bed mineral resources*”. This definition is criticized by some academics for the reason of not being clear on what a seagoing ship means under the Convention. In some countries, for example in English law, the definition of *ship* does not encompass ocean-going ships; while others interpret the term of “seagoing” as ship that can navigate on the water (Kern, 2016). To be exact, since both definitions provided by Turkish law and international convention are considered broad in scope, it would not be wrong to state that there is no distinct difference between them.

Furthermore, as with Turkish national law, the Convention shall not apply to any warship or other ship owned or operated by a State and used, at the time, only on Government non-commercial service, unless that State decides otherwise (Art. 4.2)

On the other hand, The WRC Art. (1).4 includes the following definition of *wreck*. Hereunder a wreck means “*following a marine casualty, a sunken or stranded ship, or part thereof, as well as any object that is sunken, stranded or adrift at sea from a ship, or a ship that is about, or may reasonably be expected, to sink or strand where effective measures to assist the ship or any property in danger are not already being taken.*” It should now be evident that the Convention provides a broad definition regarding wrecks; one that can suit most domestic law. Yet, still, in the Convention a wreck is defined as one of the result of a maritime casualty; while in Turkish law a wreck may

arise from some other reason as well as from maritime casualties. For example, a vessel which is intentionally left at sea might become a wreck in the passing of time.

### **2.2.2 Area of application**

In Turkish legislation, the area of application is determined as a “Port’s Administrative Zone” in Article 7 of the Turkish Ports Act, which regulates wrecks and abandoned ships. As stated before, each port in Turkey has an administrative zone where the relevant Harbour Master can exercise jurisdiction. In this delimitation, while some port’s administrative areas are behind territorial seas of the country some are extending beyond territorial seas. For this reason, Turkish law has introduced a different application zone when it comes to dealing with problems arising from wrecks and abandoned ships.

Meanwhile, the WRC (Art. 1.1) applies mainly to the Exclusive Economic Zone (EEZ) of a State Party. If a State Party has not established such a zone, in conformity with UNCLOS Art. 57, The WRC covers an area beyond and adjacent to territorial seas of a State as determined by that State in accordance with international law and extending not more than 200 nautical miles from the baseline from which the breadth of its territorial sea is measured. Additionally, Article 3.2 of the WRC includes a clause for States as an opt-in regarding an extension of application of the Convention to wrecks located within their territories, including territorial seas, which is generally twelve nautical miles from the coastline. Most of the States that ratified the Convention have chosen to extend the convention application area to their territorial seas. Actually, this opt-in clause makes much sense when taken into account most wrecks occur close to shore, but it is also criticized for it may be seen muddle the unified framework of the Convention (Kern, 2016; Herbert, 2013). Turkey should also consider whether or not to choose this extended coverage option when ratifying the Convention.

### **2.3 Definition of wrecks and other risk-bearing ships**

In Turkish Law, there is no specific definitions of “wreck” or “abandoned ship” under any code or act. In fact, only reference is that a *wreck* is considered a situation of actual total loss situations under Turkish Commercial Code.

However, *abandoned vessel* is defined in the “Practice Directive on Implementation of Article 7 of the Turkish Ports Act” although this definition is not published in the Official Gazette but circulated internally within the Harbour Masters’ Offices. Accordingly, the definition provided in the MARAD reads as follows: *if a vessel lacks from technical or machinery or crew capacity to sail from its current place to the safe sea area in the face of an emergency or danger situation, this kind of a vessel is considered an “abandoned vessel”*.

Moreover, the Regulation of Ports includes a definitive provision in relation to risk-level arising from these ships. Hereunder, it is acknowledged that a huge risk is constituted by those vessels which are waiting in the area of the port’s administrative zone with a provisional or definite attachment order for more than one year with crew members or for more than two years without crew.

Since there is no statutory definition regarding abandoned vessel in Article 7 of the Turkish Ports Act itself, a Harbour Master has to infer whether a ship is abandoned or not by checking requirements provided in relevant secondary legislation to apply strict measures to these ships when they create a safety risk in terms of navigation, environment, life or property.

To that end, it is important to have a uniform definition of wreck for shipowners to know what obligations they have and when their obligations will be invoked (Haugland, 2017). Moreover, it is significant that the wording embedded in the above-mentioned secondary regulations also brings to light new questions. The most important of these questions being how the courts will interpret whether or not a wreck or a vessel has been abandoned, since the term of abandonment is not defined in the Act.

### **2.3.1 Marine debris**

When defining “wreck” and “abandoned vessel,” the first question that comes to mind is whether the terms are considered “marine debris” or not. According to the definition stated by The National Oceanic Atmospheric Administration of the United States (NOAA), marine debris means “any persistent solid material that is manufactured or processed and directly or indirectly, intentionally or unintentionally, disposed of or abandoned into the marine environment” (Brailsford, 2011).

Even though abandoned vessels and wrecks cause environmental problems, they require a different approach in terms of removal process. In Turkey, it can be understood from Article 7 of the Turkish Ports Act that problematic vessels including wrecks are not considered as a marine debris, on the contrary they are treated on an individual basis.

For the purpose of this research, it should be highlighted that there is a difference between the words that define problematic vessels such as “sunk”, “submerged”, “semi-submerged”, “derelict”, “stranded”, “idle”, “abandoned” and “wreck”. On this basis, it is generally accepted that a wreck is an object that is not capable of being used in navigation.

### **2.3.2 Reasons for abandonment**

A number of terms are used to define abandoned vessel in various national, regional and local legal systems and many reasons can be listed why a vessel has become abandoned. If a vessel is adrift, idle or neglected for a long time period on land, at a mooring position, and no person is claiming any interest on the vessel, it can be determined or declared that this vessel is an abandoned vessel in the eye of the law. As is often the case, after a marine casualty, due to the repair costs or failure of maintenance, a damaged vessel, even if it is not sunk or is only partially sunk, may be abandoned by the owners. Or, as a result of illegal activities the abandoned vessel may be confiscated by the public authorities and may remain inactive for many years

without any selling, destroying or dismantling processes. Similarly, due to long lasting legal disputes regarding ownership of a vessel or any other circumstances that require an attachment order or arrest a ship may become classified abandoned vessel in time.

### **2.3.3 Abandonment and dereliction**

In order to decide whether a vessel is abandoned or not, one of the requirements is the original owner's reaction and state of mind. Does he/she actively disclaim title or ownership? In most cases, it is difficult to find positive intent to relinquish property by the owner. Therefore, it should be taken into account that the abandonment or relinquishment of ownership rights may imply such as never established any control over by an owner or may otherwise indicate his claim of possession of the ship (Iraola, 2003). In many legal systems, a vessel may become ownerless under the following circumstances: by being unsalvageable and lost at sea, by being reported in a declaration of dereliction meaning title abandonment, or by the passage of a long period of time without any action by the owner to preserve his property (Tiberg, 2004).

In the United States (US), The Wreck Act provides that if the owner does not remove a vessel which is considered an obstruction to safety of navigation in an immediate and diligent manner, this vessel is considered an abandoned vessel to the government and, in turn, the US has the right to remove the ship or wreck itself. Along this basis, according to the Act, abandonment is a precondition for taking private property for public purpose. This abandonment action could be an affirmative action by the owner's declaration or by his failure of an immediate removal within the determined time period by government (Gold, 2015). In New Zealand, inter alia, the domestic law makes a distinction between intentional abandonment and unintended shipwreck. In most cases, when the shipowner wants to avoid his responsibility relating to wreck removal where the vessel or wreck has no value for him, the removal of that wreck has to be carried out by the government. In this case, it seems to constitute a deliberate abandonment (Irving, 2010).

In Turkish law, this kind of distinction regarding the decision to abandon a vessel in advance or in the moment has not been explicitly mentioned in Article 7 of the Turkish Ports Act. In other words, there is no statutory reference about transferring property from the private owner to the government in the law. It can only be inferred from the language of the Act. So that, if the shipowner does not undertake removal operation or any measures for eliminating the risks, the abandonment of the vessel will be presumed. Or, if the Harbour Master's Office is unable to identify the shipowner through investigation, public notice, or gazette advertisement then it is assumed that this vessel is abandoned or unattended.

Along this discussion, there are presently some legal consequences based on abandonment in a number of legal systems. For instance, after abandonment, a shipowner has no right on its ship or cargo. Nevertheless, the shipowner is still liable for the actual removal costs under both national and international law. Actually, with regards to Article 7 of the Turkish Ports Act, it is crucial to state that if the law maker intends to stipulate legal consequences derived from an abandonment, it should have been explicitly mentioned in the text itself for the sake of legal clarity.

#### **2.4 Determination of hazard**

Even though there is no mention about a survey to be conducted by the Harbour Master's Office before taking any measures listed in the article, as a matter of course, a Harbour Master will need to observe the situation and prepare a report before ordering the removal, sell, transfer or destruction of the vessel and its property which pose a risk to the safety of navigation and marine environment. Indeed, such technical details are explained under secondary legislation in the "Practice Directive on Implementation of the Article 7 of the Turkish Ports Act".

In the Practice Directive *hazard* is defined as a situation or threat which might reasonably be expected to result in major hazardous consequences in terms of navigation, life, property and/or environment at sea. As it can be seen, hazard is

defined in a way to encompass not only marine perils but also threats to the marine environment.

In order to implement Article 7, a Harbour Master shall identify the ships or their goods or contents which are located in his/her port's administrative zone as to whether they carry a risk in terms of navigation, life, property and environment or whether or not they hinder safety of navigation.

While deciding whether there is an actual risk or not he/she shall take into account some facts as follows:

- a) Situation of being sunken, partially sunken, wrecked, abandoned or inactive/idle for a vessel,
- b) Degree of risk for such a kind of vessel in terms of life, property or environment,
- c) Type, size, and type of build of that vessel,
- d) Depth of the location where the vessel was found,
- e) Distance of that ship to the traffic separation scheme, or the density of the marine traffic of that area,
- f) Distance to the settlement or tourism area,
- g) Whether the vessel can move with its own capacity or not,
- h) Current meteorological and hydrographical conditions,
- i) Type, quality and quantity of the cargo,
- j) Distance from pipelines, communication cables, or suchlike structures,
- k) Proximity to the coastal facilities and structures,
- l) Manning level of the vessel,
- m) Any other conditions detected by the Harbour Master.

The dimension of potential environmental risks associated with wrecks or abandoned ships has many uncertainties such as the amount of oil present in a wreck, the possibility of leakage, or the impact area of a potential discharge (Landquist et al., 2017). Even if there is no risk or any physical impact resulting from a wreck or an abandoned ship, in some instances, due to being unpleasant visually or to media

interest on the topic, the existence of those ships at sea may not be acceptable for politicians or the community, in general (Herbert, 2013).

Regarding the determination of hazard, in the Article 6, The WRC stipulates most of the same criteria should be taken into account by the affected State. Such criteria include: the type, size and construction of the wreck, the proximity of shipping routes, whether or not the wreck is located in a particularly sensitive area, the nature and quantity of the wreck's cargo as well as the amount and types of oil, meteorological and hydrographical topographical conditions of the area should be considered when deciding whether risk occurs (Kepplerus, 2010). These criteria listed in the Convention are not exhaustive; so that, any other circumstances that might necessitate the removal of a wreck may also be taken into account by the affected State.

With respect to abandoned or other inactive vessels in Turkish waters, the Regulation of Ports also includes a definitive provision in relation to risk level. In this determination, the waiting period is taken as a basis. That being true, if a vessel is waiting in the area of a port's administrative zone with a provisional or definite attachment order for more than one year with crew members, or more than two years without crew, it is accepted that a huge environmental and navigational risk is constituted by this vessel.

Even though this provision is designed to start the removal procedure for ships which have been waiting for several years without any move because of legal disputes, before taking any step in the context of Article 7 of the Turkish Ports Act, safety of navigation and protection of life, property, and marine environment should be taken into account as an accumulation of constituent factors in every condition.

These considerations are likely to be subject to judicial review sought by vessel interests on the grounds that it would be unlawful and unreasonable at any time. Since the decision that a vessel posing a risk to maritime safety is always questionable in terms of lawful foundation, the process of the determination of hazard is crucial to the application of Article 7 of the Turkish Ports Act.

## **2.5 Measures to intervene wrecks and abandoned vessels**

Article 7 of the Turkish Ports Act places detailed procedural requirements on Harbour Masters in relation to intervention dealing with wrecks and abandoned ships in their port's administrative zones. Aspects such as notice, time periods, identification of owner, and notification of relevant bodies, as well as the sale, removal, destruction, transfer and recovery of expenses all being covered under the same provision.

On the other hand, in relation to wrecks the WRC mainly covers reporting, marking, and locating wrecks as well as the other measures that facilitate the wreck removal.

### **2.5.1 Primary responsibility**

The purpose of Article 7 of the Turkish Ports Act is the minimisation of problems that may arise from sunken, partially sunken or abandoned, ownerless, idle vessels in Turkish waters while outlining the obligations of shipowners and masters. When required to take a measure regarding these problematic issues, it is important to recall that primary responsibilities shall rest with owners and the other vessel interests such as captains, ship operators, and lessees. (Art. 7.1)

Therefore, for ships aground, submerged, semi-submerged, abandoned or idle in an area of a port authority's administrative responsibility and in the manner of hindering the safety of navigation and voyage in ports or safety of life and property and bringing environmental risks, the owners or captains are responsible for the removal of the ship and their property at the time period to be determined by the harbour master under the Turkish Ports Act.

This responsibility is also compliant with the WRC in respect to wrecks. Hence, the WRC (Article 9.2) mentioned that the registered owner shall remove a wreck determined to constitute a hazard. The registered owner may also make contracts with salvors or any other persons to intervene regarding wrecks (Art. 9.4) and affected states

may control the removal operations and may additionally provide guidelines on how to proceed.

### **2.5.2 Notification**

After determining a hazard is posed by a wreck or abandoned vessel by the Harbour Master's Office, a Harbour Master will notify the vessel interests to prompt their efforts in taking the necessary steps to extinguish the risk within forty-five days. These efforts include removal of wrecks or partially sunken ships or transferring of abandoned or idle vessels to the safe place and the more. In case of technical or meteorological necessities, the Harbour Master may extend the determined period for an additional term at a maximum forty-five days upon request.

In practice, the process of notification to vessel interests may be problematic. Particularly for abandoned or idle ships, it can be difficult to reach shipowners or captain because of the long passage of time since the abandonment, in most cases. Also, the Turkish Ports Act and its Practice Directive stipulate that only shipowners and master of the ships are the relevant person to be notified for these ships and their situations. However, in today's maritime industry, the term of "vessel interests" encompasses the operator of the ship or lessee as relevant bodies as well. In addition to that, the WRC has a broad definition regarding relevant persons. According to the Convention, "Operator of the ship" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.

Along this lines, two different notification processes are stated by Article 7 of the Turkish Ports Act: If ships are flying the Turkish flag, the situation shall be notified to the shipowner or captain of the ship. If their addresses are not known the notification

is published in a newspaper which is distributed on a country-wide scale and has a circulation of over one hundred thousand. However, for foreign flagged vessels, if their owners and captains' addresses are unknown or are not traceable, the notification shall be declared in an international maritime bulletin such as Llyod's List or Tradewinds. If ships are flying flags other than Turkish, the flag state's competent authorities shall be notified also. The Maritime Authority, Foreign Affairs or Ship Registry of that country is considered a competent authority in this context.

Also, if the ship or wreck is under arrest or has an attachment order, the relevant competent Enforcement Office shall be notified too.

This official notification should include: the name, position and location of the ship, the type of hazard posed by the ship, the measures and precautions that must be taken, the determined time period for the measures, as well as a warning that in the case that the shipowner or master of the ship refuse to comply with orders, the Harbour Master will be entitled to take all steps on behalf of the owner at the owner's expense including but not limited to: the removal, relocation, and destruction or sale of the vessel or wreck as well as any other issues as determined by the Harbour Master's Office.

Regarding international framework with respect to wrecks, Article 5 of the Nairobi Convention has an imperative provision on reporting a wreck by State parties where the marine casualty has occurred resulting in the wreck. In line with this article, the master and operator of the ship must report the casualty to the Affected State immediately. The affected state is under an obligation to inform other mariners and other relevant states by using all practical means regarding the nature and location of the wreck as a matter of urgency (WRC art. 7.1). Furthermore, the WRC in Article 9 provides that if the affected state determines that the wreck constitutes a hazard, it must immediately inform the country of the ship's registry and the registered owner and consult that country and other countries affected by the wreck regarding measures to be taken in relation to the wreck. Also, the Convention does not contain any specific time limit for the removal of wrecks, only, under Article 9, which requires the affected state to set a "reasonable deadline" for the wreck being removed by the registered

owner. While deciding what is reasonable the nature of the hazard and urgency or complexity of the situation will be taken into account as a matter of fact. But, Turkish law only mentions a forty-five day-limit which might not be reasonable for every case. For instance, in the case of the Costa Concordia, it took more than two years to remove the vessel from Italian waters (Gold, 2015).

The WRC also recognises that in some circumstances, immediate action is required. In such a case, according to Article 9.8., removal action may be commenced even though the State of registry and registered owner have yet to be informed.

### **2.5.3 Other measures**

Within the determined period of time, in case of the attempt by the Harbour Master to contact the vessel interests fail or the vessel interests refuse to comply with the orders regarding removal or relocating the vessel/wreck, the Harbour Master is entitled to take steps towards the removal, relocation, destruction, and sale of the vessel or wreck under national law.

According to a vessel's particular circumstances, methods for wreck removal may vary: refloating, partial removal, and pulling ashore may all be options. Small wrecks can be lifted entirely. Removing a wreck is a major task which has many risks including physical, financial and environmental. It can require skilled personnel, specialised equipment, and complex engineering (Herbert, 2013). On that basis, the WRC emphasizes that measures taken by the coastal state should be reasonable and proportional to the hazard faced.

In view of this, Article 7 of the Turkish Ports Act goes further by differentiating the levels of threat posed by a wreck or abandoned vessel. If a ship creates a serious threat to the safety of navigation, life, property, or environment in the area of a port's administrative zone, even if the ship has a court decision or administrative precautionary order on it, the Harbour Master is entitled to take every necessary step including transferring the ship to a safe place regardless of any time limit. In this case, the costs derived from such measures are passed on to the owner.

#### **2.5.4 Marking the wrecks**

Marking wrecks or abandoned ships has not been statutorily mentioned as in Article 7 of the Turkish Ports Act as an obligation for those who are responsible for taking relevant measures. It is obviously one of the necessary actions that should be taken by the vessel owner or the maritime authority accordingly. That being the case, a buoy should properly be located to warn other vessels and to ensure safety of navigation after knowledge of the wreck or abandoned ship and the hazard posed by them. Or, likewise as in the United Kingdom, by means of technological developments in onboard equipment such a warning can be made electronically by using the electronic chart (Ramsakkan, 2014). Nevertheless, according to the Regulation of Ports, harbour masters are obliged to detect and mark shallows, wrecks, semi-submerged vessels and reefs in their ports' administrative zones. (Art. 8.9) Even though some national laws determine the marking as a shipowner's duty, specifically, vessel owners are not included in this particular provision. They will be, nonetheless, liable for the costs of marking a wreck.

Indeed, The WRC has a particular provision on this issue. Article 8 provides that if an affected state determines that a wreck constitutes a hazard, it must ensure that all reasonable steps are taken to mark the wreck. The markings must comply with the internationally accepted system of buoying in use in that area where the wreck is found. Even more, Article 7 of the Nairobi Convention requires an affected state to use all practical means to warn mariners about the nature and location of a wreck and if the affected state believes that the wreck poses a hazard, it must ensure that all practicable steps are taken to determine the precise location of the wreck.

#### **2.6 The inventory by the maritime administration**

The amendment of Article 7 of the Turkish Ports Act came into force in December 2017. In the context of its preparatory work, an inventory was conducted by the MARAD regarding the number of ships that are stranded, sunken, partially sunken,

abandoned or idle in Turkish ports' administrative zones in order to present the extent of the problem. Even though, an accurate count of abandoned or idle vessels is difficult to obtain since the number is constantly changing as additional vessels become abandoned day by day, at the end of the 2017, 143 vessels had been located in 38 different ports in the context of Article 7 of that Act. The data presented by the Harbour Masters may be filtered through a number of aspects including: vessel name, IMO number, ship size, year of construction, time of occurrence and hazard condition.

The manner in which each ship is approached in terms of actions to be taken for safety of navigation, marine environment and legal status is done so individually. It was decided that the first step for the thirty-one ships which are sunken in deep sea for many years, for the reason that they did not pose any hazard to safety of navigation and/or marine environment shall be that no action would be taken for them under the new regulation Article 7 of the Turkish Ports Act.

A decision of liquidation was made regarding the twenty-six ships involved in smuggling and illegal migration, it has been decided that the Ministry of Customs and Trade, which is responsible for carrying out liquidation processes will continue to be in charge of the process in order to fulfil their legal processes immediately.

The remaining eighty-one vessels require measures to be taken such as removal, transfer, destruction or sale by the relevant Harbour Master. Accordingly, the survey identified seven of these ships are wreck, twenty are semi-submerged, and eleven of the ships are run aground.

In terms of safety of navigation and marine environment criterion, while thirty-eight of all surveyed ships were identified as harmful to the marine environment; sixteen ships are considered an impediment for safety of navigation in Turkish waters. (Source: Ministry of Transport and Infrastructure General Directorate of Merchant Marine Inventory, 2017)

## **Chapter Three**

# **PRIVATE LAW ASPECTS OF NATIONAL AND INTERNATIONAL LAW ON WRECKS AND ABANDONED SHIPS**

### **3.1 Liability of shipowners**

#### **3.1.1 In national law**

Under Article 7 of the Turkish Ports Act, which is the primary statute dealing with wrecks and abandoned ships in Turkey currently, owners of ships aground, submerged, semi-submerged, abandoned or idle in an area of a port authority's administrative responsibility in a manner hindering the safety of navigation and voyage in ports or safety of life and property and bringing environmental risks are responsible for the removal of the ship and their property within a time period to be determined by the harbour master.

For this purpose, the shipowner or the master of the vessel submits their plan regarding the measures that will be taken for the vessel for the Harbour Master's approval. This plan is prepared by considering the safety of navigation and protection of marine environment and should clearly outline the planned schedule with key activities and timelines from the preparation phase to the removal or disposal. A Harbour Master may apply to relevant government bodies for their consideration or support as to

whether this plan is adequate to remove the hazard created by the wreck or abandoned ship in question.

If the Harbour Master finds a shortcoming in this plan, he/she can order it to be fixed immediately. The shipowner or the captain makes the necessary arrangements with emergency response or salvage entities, as well as pilotage and towing agencies in order to implement the approved plan regardless of a port's administrative zone. In this case, a Harbour Master cannot be held responsible for the damages arising from the implementation of the plan. This plan has to be prepared, submitted, approved, and finalized within the determined time period which cannot be exceeded by ninety days.

If the shipowner or the captain fails to fulfill their obligations or the plan submitted is not approved, the Harbour Master undertakes the issue himself according to the condition of the vessel and measures that should be taken for the purpose of eliminating risk. In the case of abandonment of a wreck or other obstruction, a shipowner is not relieved from his liability for the cost of removal and disposal undertaken by the Harbour Master. Also, according to the stipulation found in Article 7 itself, if there is an emergency such as a major environmental hazard to the surrounding area or to the people a Harbour Master's Office can undertake immediate actions regarding wrecks or abandoned ships without allowing the owner the opportunity to remove the vessel. In both cases, the shipowner still remains responsible for the costs of removal or disposal. To meet any expenses, a Harbour Master is also entitled to sell the wreck or abandoned ship under Article 7.

It is evident that Article 7 of the Turkish Ports Act and its Practice Directive frame the removal liability of shipowners of wrecked/abandoned ships in detail. Notably, these obligations include those for objects and cargo as well. With this new regulation, it has also been emphasized that the residual vessel liability and the liability of the wreck are directed towards the owner (Tiberg, 2004) in Article 7 of the Turkish Ports Act. Indeed, private law considers wrecks as a maritime property and refers to possession and ownership of the wreck as well as the rights and responsibilities derived from these proprietary interests (Kepplerus, 2010).

When it is taken into account that the cost of removing a wreck is quite high, every shipowner may seek to avoid their responsibility or may prefer to take this action as a last remedy. It is important to point out that in Turkey, shipowners only have to bear all removal-related expenses if the vessel constitutes an obstruction and hazard to navigation or a threat to the marine environment in a port's administrative zone. Thus, shipowners may attempt to argue that a wreck or abandoned vessel is not posing threats to navigation or marine environment at all. Therefore, the Harbour Master has to demonstrate the actual risk with strong evidence.

### **3.1.2 In international law**

The Nairobi Convention 2007 is the main instrument to fill the gap in the existing international legal framework regarding prompt and effective removal of wrecks located beyond territorial seas by setting uniform international rules (Luttenberger et al., 2011).

Additionally, covering liability and compensation of shipowners, The WRC is only one convention in a list of others in the maritime field such as: the International Convention on Civil Liability for Oil Pollution Damage (CLC), the Athens Convention relating to the Carriage of Passangers and their Luggage by Sea (PAL), the International Convention on Liability and Compensation for Damage in Connction with the Carriage of Hazardous and Noxious Substances by Sea (HNS) and the International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER) Convention. For the reason that multiple conventions make reference to liability, the WRC includes a provision providing protection from double liability if any additional liability convention is applicable and in force (listed in Art. 11 of the WRC) a registered owner shall be responsible for these costs established under the relevant Convention only (Michel, 2007).

Article 10 of the WRC basically imposes strict liability on the shipowner for the costs emanating from locating, marking and removing a wreck if required to do so by the

coastal state. It is also clear that the responsibility to remove a wreck belongs to the registered owner under the Convention Article 9.2. This removal action does not always entail physical removal. Because the Convention defines “removal” as any action or any form of prevention, mitigation or elimination of hazard, it can be sufficient to take certain measures ensuring only the elimination of risk in most cases (Kern, 2016).

However, a few exceptions for the shipowner provided by Article 11 of the WRC exist: If the vessel became a wreck because of "an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character," by the act of a third party who intended to cause damage, or was the result of negligence by a government "responsible for the maintenance of lights or other navigational aids in the exercise of that function," then the shipowner is not responsible for the removal process. The burden of proof lies with the shipowner.

### **3.1.3 Limitation of liability**

Exceptional circumstances to the strict liability for the shipowner are defined above. Besides, in relation to limitation of liability, the WRC does not allow directly the shipowner to limit his liability itself. Instead, the Convention gives priority to applicable national or international law on this issue and it specifically refers to LLMC and its Protocol (Art. 10.2). Accordingly, the shipowner is entitled to limit his liability in terms of the higher limits of 1 million SDR per gross tonnage of the ship, contained under the LLMC and Protocol, which is almost unbreakable.

On the other hand, most States do not prefer to apply limitation provisions of the LLMC to wreck removal issues and, as a result, a shipowner has to bear full costs (Haugland, 2017). Furthermore, the LLMC contains an opt-out clause in relation to liability limitation regime for wreck removal. This means that while the WRC allows shipowners to limit their liabilities, in practice they are not able to do so (Herbert, 2013).

Pertaining to Turkey's approach, in the newly amended Turkish Commercial Code (TCC), Numbered 6102, in practice since 1 July 2012, the international conventions and regulations are taken into account as main resources especially relating to maritime commerce, the fifth book of the Code. The Convention on Limitation of Liability for Maritime Claims 1976 (LLMC) and its 1996 Protocol ratified by Turkey is expressly referred to under the Turkish Commercial Code Part V, Chapter 7, as well. Provisions 1328 and 1329 of the TCC also explicitly include the special provisions of LLMC 1976 and its amending Protocol of 1996. Under Article 1(2) of the LLMC the shipowner is entitled to limit their liability in accordance with Article 2 of the same Convention. In suit, TCC Article 1062 also entitles the claimant (charterer, shipper, operator or manager) to limit their liability against maritime claims.

Even though Turkey follows the 1976 Convention and its 1996 Protocol on the limitation of liability for maritime claims, Turkey has made reservations to Article 2 (1) (d) and (e) which concern removal of wrecks. Thus, even though Turkey ratified the WRC, the shipowner will not be able to limit his liability emanating from wrecks in Turkey in neither the national nor international legal systems.

## **3.2 Insurance and funding issues**

### **3.2.1 Funding**

With the amendment to the Turkish Ports Act, if a shipowner fails to uphold his responsibility, the sale procedure of the vessel or the wreck is carried out by the Harbour Master's Office. For this purpose, Article 7 determines that spending expenses until the phase of the sale is complete are covered by the Revolving Fund Management of The Ministry of Transport and Infrastructure. When it is considered how removal costs can be challenging, a separate budget to be indicated by government in the Article can be seen as a fair solution.

Article 7 also contains details pertaining to the sale of the wreck or abandoned vessel. Accordingly, the sale value, excluding the sale expenses, which are recorded as

revenue by the Revolving Fund Management of The Ministry of Transport and Infrastructure, will be distributed amongst the creditors pursuant to a schedule to be prepared by the competent Enforcement Office in the event that the sold vessel or the wreck is already seized property. In a wreck or abandoned ship removal case, the debate is centered not only on shipowners but also security right owners. By stating this, the need to protect security interests is underlined in the article. It can be inferred from the wording of this article, law maker wish to maintain a legal relationship between the vessel and owner. Having said that, the balance, if any, will be kept in a safekeeping account of the Revolving Fund Management of The Ministry of Transport and Infrastructure then will be paid to the vessel interests upon their request within five years.

### **3.2.2 Insurance**

Relevant to scope of this paper, there are mainly two types of marine insurance for ships: hull and machinery (H&M) insurance and protection and indemnity (P&I) insurance. Wreck removal coverage is a third party liability and, therefore, falls under P&I policies traditionally. It is generally accepted that a typical P&I policy covers wreck removal expenses when the removal is compulsory by law and the removing action is taken by the belief that removal was necessary to avoid legal consequences (Watson et al., 2007; Haugland, 2017). In fact, to meet these requirements the existence of Article 7 of the Turkish Ports Act may be seen to represent a clear legal obligation for the removal imposed by statute in many cases before the courts.

Article 7 of the Turkish Ports Act does not mention any insurance coverage for the ships that are aground, sunken, partially sunken or abandoned ones. Although this law amendment is designed for dealing with current wrecks and abandoned ships along the coast of Turkey, for future incidents, an insurance obligation could have to be taken into account as well.

From the perspective of international legal framework, one of the most significant aspects of the WRC is that it has compulsory insurance for a shipowner to cover wreck removal costs. Accordingly, every vessel that is three hundred gross tons and above must have insurance for wreck removal (Art. 12.1). Other financial securities are also provided under the same article. This can be understood from the wording of Article 12(1) which requires the shipowner to maintain insurance only up to the value of the limitation calculated under Article 6(1)(b) of the LLMC, including its 1996 Protocol. Each State Party must issue insurance certification to their registered ships showing the vessel has wreck removal coverage. Moreover, a country that has ratified the Convention will seek this insurance requirement from every ship entering its jurisdictional area for entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial seas (Art. 12.12). It can be easily inferred that the Convention has already impacted many ships, even though their flag states did not ratify the WRC. In this sense, the WRC has followed the same pattern as have other liability conventions.

To comprehend the importance of insurance introduced by the WRC, it is stated by many academics that in the absence of insurance coverage a coastal state's recovering expenses derived from a removing action would be irretrievable. Academics have also claimed that the insurance provisions of the WRC would encourage countries to allow ships in distress to access their places of refuge (Irving, 2010).

Additionally, the Convention allows for direct action against the insurer or the person who provides financial security. As a result of this, an insurance company can claim the same defence as the registered owner would have invoked. Moreover, the insurance company can also limit its liability and can use the defense that the causality was "caused by the willful misconduct of the registered owner" (Article 12.10 of WRC). The benefit of the direct action against insurer is that it helps to defeat the defence mechanism called "pay to be paid," a principle claimed by insurance companies (Ramsakkan, 2014).

The new Turkish Commercial Code has also introduced the direct action against insurer in Article of 1478.

### **3.3 Illustrative cases regarding dangerous wrecks and abandoned ships showing implementation of national law**

M/V TALLAS was a Cambodian flagged dry cargo vessel which is 745 GT abandoned in the Istanbul Harbour Master's Office's administrative zone since 2015. The vessel was seized property with many attachment orders and did not have any valid insurance coverage. The attempts made to reach its owner was failed. In February 2018, the vessel was aground as a result of adverse weather conditions in Zeytinburnu where the Istanbul Harbour Master has the jurisdiction. The relevant Harbour Master Office's notified the Coastal Safety Agency to take necessary steps aiming at extinguishing the environmental and navigational hazards. At the same time, the Harbour Master's Offices started to proceed stipulated measures of Article 7 of the Turkish Ports Act immediately. Because the shipowner was not traceable, the circumstance was declared in an international maritime bulletin. Five working days were given for taking required measures, otherwise the vessel would be sold was declared in that notification. Upon no response from the vessel interests, the sale commission was established under the relevant domestic law and M/V Tallas was sold for ship breaking.

A Turkish flagged dry cargo vessel which is 972 GT, M/V SINAN NAIBOGLU, was aground in the Aliaga Harbour Master Office's administrative zone in 2018 while its judicial sale was in progress began by the relevant Harbour Master since it had been a hazard for the marine environment due to its bunker and navigational risk from its position. The ship was salvaged and was towed to a scrapping area after grounding. After the judicial sale of the ship was conducted by Enforcement Offices, it was dismantled.

Moldavian flagged vessel MANAR M has been an inactive vessel with a few crew members at mooring position since 2016 in the jurisdictional area of the Gemlik

Harbour Master Office's. During this time, the vessel's certificates have expired and it has created an environmental risk because of its bunker. After enacting Article 7 of the Turkish Ports Act, the Harbour Master used his powers granted. A notification was made to the shipowner and a reasonable deadline was given to take necessary precautions to prevent the risk posed by his vessel, otherwise the issue of all measures including the sale of the vessel would be taken by the Harbour Master himself to secure and remove the risk. The shipowner requested additional time for taking actions regarding his vessel's condition. After the determined time period, the ship was transferred to a shipyard with the purpose of repair and maintenance by its owner. (Source: Ministry of Transport and Infrastructure General Directorate of Merchant Marine Inventory, 2018)

## **Chapter Four**

### **CONSIDERATIONS ON RATIFYING RELATED INTERNATIONAL CONVENTION**

#### **4.1 Legal position of Turkey on ratifying a Convention**

Under Article 90 of the Constitution of the Republic of Turkey, “*the ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey, shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification.*” Agreements resulting in amendments to Turkish laws must be brought to the knowledge of the Turkish Grand National Assembly. The preparatory works of those agreements or conventions are conducted by the relevant ministry and are brought to the attention of the Ministry of Foreign Affairs. After ratification of a convention by the Turkish Parliament, a presidential decree and publication of the Turkish translation of that convention in the official gazette are the next steps of the ratification process.

Regarding the WRC, the efforts of being a party of Nairobi Convention is still continuing by the MARAD of the country (Official Portal of Ministry of Transport, 2018; Davies, 2015).

#### **4.2 Legal comparison between national law and the Nairobi Convention**

The Nairobi Convention is the main international instrument which seeks a solution for these three questions: Who is responsible for a wreck? What measures can be taken based on that responsibility? How can the responsibility be enforced? (Kern, 2016). In

a similar vein, the Article 7 of the Turkish Ports Act aims to regulate the same issues in relation to wrecks. The main difference between the two regulations is that, while the WRC is dealing with wrecks only, the corresponding provision in Turkish domestic law encompasses not only wrecks but also abandoned, derelict, or idle vessels in the region. For this reason, these two legal instruments will be compared in terms of wrecks only henceforward.

In terms of definitions of “ship”, “wreck” and “hazard” found in the WRC as discussed in detail above, they are substantially similar to Turkish law with minor differences. Also, cargo is included in the concept of wreck in both regulations.

Under the WRC, the Affected State will decide whether or not there is a hazard posed by a wreck by considering the criteria prescribed in the Convention. Those criteria are also found in Turkish domestic law. In both situations, it can be said that a wreck shall only be compulsorily removed if it poses a hazard to navigation or the environment.

In relation to area of application, The WRC defines the convention area as the EEZ of a State Party normally if a signatory state did not extend the convention area beyond its EEZ into its territorial waters, as the WRC contained such an option. However, Turkish law introduces a different application area which is called “A Port’s Administrative Zone” when it comes to dealing with wrecks by Harbour Masters. When considered from this point of view, if Turkey ratifies the WRC having extended coverage to territorial seas, there will be an inconsistency between domestic law and the convention, so that a new amendment would be required to give effect to WRC 2007 provisions pertaining to the area of application.

Furthermore, the Convention allows States to take reasonable measures to remove a wreck which poses a hazard and underlines that the Convention’s provisions shall not prejudice the rights and obligations of that State to take measures in relation to wrecks located in its territory, including territorial seas, other than locating, marking and removing them in accordance with this Convention (Art. 3.2) In fact, whilst the Convention has specific provisions regarding reporting, locating, and marking of

wrecks as measures to be taken by the shipowners or affected states, in relevant Turkish law, there has been no mention of a particular reporting, locating, and marking responsibility for shipowners. Also, while the Convention underlines only necessary and proportional measures should be taken, from the wording of the text itself it can be inferred that the Turkish Ports Act gives vast powers to Harbour Masters in regard to wrecks.

On the other hand, while the WRC contains a few exemptions for shipowners become relieved of their liabilities as prescribed in Article 10 of the Convention, Article 7 of the Turkish Ports Act does not mention any exonerations for them.

It must be expressed that while the WRC makes insurance compulsory for a ship of 300 GT and above to cover wreck removal expenses of shipowners, the domestic law has not indicated any financial security regarding wrecks. It only states that the expenses derived from the measures taken by harbour masters are met from the ministry's fund. The most important consequence of ratifying the WRC is that every ship that is 300 GT or above is required to carry a proper insurance to sail to or from a country that ratified the Convention. Additionally, both Convention and Turkish national law allow for direct actions to the insurers.

Not only is it the Turkish Ports Act Article 7 that undelines the primary responsibility and obligations of shipowners regarding wrecks that constitute a hazard to navigation or a threat of harmful consequences to the marine environment, or property of lives; but, also the WRC in its Article 10 imposes strict liability on the shipowner for the costs emanating from locating, marking and removing a wreck. A shipowner can also limit its liability based on the LLMC since the WRC refers to that Convention on the issue of limitation of liability; but, as Turkey made a reservation when ratifying the LLMC the shiopwner will not be able to limit his liability emanating from wrecks in Turkey.

In respect to the removal of wrecks, The Convention does not contain any specific time limit, it only mentions "reasonable deadline" for the wreck being removed by the

registered owner. Turkish national law sets a forty-five-day-limit for the necessary measures including removal.

Also, regarding time bar, under Article 13 of the WRC sets three and six year time limits to recover the costs. Hereunder, three years starts from the date when the hazard occurred under the Convention and in no case shall an action be brought after six years from the date of the maritime casualty which resulted in the wreck. Under Turkish law, time bars and rights to lodge a claim with regards to maritime cases are regulated within the Turkish Commercial Code. According to the TCC, Art. 1319, wreck removal claims are subject to a two-year time limit from the date of the completion of wreck removal efforts.

Another difference is that while the WRC does not contain any provision regarding the sale of the wreck where the affected state undertook the wreck removal operation, the Turkish Ports Act allows a Harbour Master to take steps including but not limited to the removal, relocation, destruction or sale of the wreck under the national law, in case the shipowner is not traceable or he refuses to comply with the orders to remove or relocate the wreck which posed a hazard to navigation or the marine environment.

Finally, both the WRC and the Turkish Ports Act do not include direct penalty provisions such as criminal sanctions or administrative monetary fines aiming at deterrence from abandonment of a wreck.

#### **4.3 Considerations on ratifying the Nairobi Convention**

It goes without saying that one country cannot handle this problem with its own efforts alone since the issue has a global dimension in terms of foreign flagged vessels especially. Indeed, the main impetus behind the Nairobi Convention is the fact that global solutions are needed.

According to the information found on the official portal of the MARAD of the country, Turkey is currently considering whether or not to become a party to the

Convention. When ratifying the Wreck Removal Convention, states were given the choice as to its geographic scope of application. Turkey also should consider the consequences of this option. It is presented above in detail that Turkey already has a domestic legislation regarding wrecks and also abandoned ships with a differently defined application area. This area is called port's administrative zone and measured based on geographical features of a port. Despite this difference, there is no doubt that if Turkey ratifies the WRC, it would provide a legal basis and additional powers as to possible wreck removal operations in Turkey's EEZ. When ratified without an extension to the application area of the Nairobi Convention, if a wreck occurs in the territorial sea of Turkey, national law would become applicable in this situation; so that, the location of the wreck would be the determining factor in terms of the applicable legal regime.

On the other hand, extending the convention area to territorial seas could be an inviting option for the States to adopt the Convention because of the advantage of compulsory insurance provisions as contained in the Convention. Furthermore, it is widely accepted that applying the Nairobi Convention in territorial seas provides additional financial safeguards to the States (Irving, 2010). In a wider geographic scope of application, besides compulsory insurance coverage for ships in terms of measures taken to comply with the convention such as marking, locating, and removal of wrecks, it would provide certainty and uniformity of the law both nationally and internationally.

Since Turkey has adopted a new regulation regarding wrecks and abandoned ships to remove them and resolve the other issues they create, it can be seen as a certain option to choose disregarding the Nairobi Convention and maintaining the application of the Turkish Ports Act itself for the wrecks.

On the other hand, Turkey may ratify the Nairobi Convention and may extend the application area to its territorial seas to enjoy rights and obligations of the WRC in a wider geographical area for registered vessels and foreign vessels that visit Turkish ports. In such a case, in terms of wrecks a domestic law review would be needed as

there would be inconsistency between international law and the current national framework outlined above. For this purpose, an amendment could be made to the Turkish Ports Act to give effect to the WRC provisions in domestic law.

Even though the main reasons for signing the Nairobi Convention are the compulsory insurance coverage for shipowners and the well defined rights and obligations for affected states. These reasons make possible to join an international legal regime, nevertheless, the desire to maintain the current legal situation is understandable having Harbour Masters endowed with immense authority when it comes to dealing with wrecks and abandoned or other problematic ships in Turkish waters.

On that basis, in order to benefit from both regulations, the best option is that different solutions could be adopted for wrecks and abandoned or idle vessels separately. If this were the case, Turkey could sign the Nairobi Convention by extending the application area to its territorial seas in terms of wrecks and could also continue to apply Article 7 of the Turkish Ports Act to abandoned, derelict or idle vessels in Turkish waters.

## **Chapter Five**

### **5.1 CONCLUSIONS AND LEGISLATIVE PROPOSALS**

Various types of environmental and navigational problems in connection with abandoned ships including dangerous wrecks or ownerless/derelict ships and the legal nature of the issue itself helped to trigger the amendment of Article 7 of the Turkish Ports Act in Turkey recently. The most recent developments and the legal position regarding wrecks and abandoned vessels in Turkish waters have been explained in this research in a chronological order from the perspective of domestic law. In this sense, the extent of the problem, current legislation, responsible authority and its power, as well as shipowners' liabilities have been identified in previous sections.

When considering the fact that there was wreck removal legislation but in practice it was not exercised by the relevant authorities, the new amendment was welcomed as a serious and decisive legal attempt by granting immense powers to Harbour Masters including the sale of vessels under one jurisdiction. Even though it is questionable whether the harbour master's offices are the best place to carry out this role as some harbour master's offices lack of resources and technical and legal expertise to deal with a sale procedure, in terms of other measures that might be taken by a Harbour Master, it can be said that they are able to provide efficient solutions to the hazard posed by abandoned ships or wrecks.

Although remarkably wide discretion is granted to Harbour Masters under the new legislation, it is worthy to note that the Turkish Ports Act seeks only fulfilment of procedural requirements and the most important feature of these requirements is that a vessel should pose a hazard to navigation or a serious threat to life, property, and the environment. At this point, another issue arising under the existence of Article 7 of the Turkish Ports Act merits particular attention: when designing this law amendment it seems to have been understood (in the preamble) that all ships which are found to be abandoned, unattended, or inactive in the area including wrecks have also been assumed to pose a navigational hazard or environmental threat. Nevertheless, most crucially, in order to avoid being subject to litigation, Harbour Masters need a strong reason to remove a wreck beyond the fact that a wreck or abandoned vessel exists and is in the port's administrative zone. In other words, Article 7 gives the authority to Harbour Masters to remove, sell, and/or transfer a wreck or abandoned vessel which poses no hazard to navigation but does present an environmental danger, or both.

It should also be specified that the sale of a wreck or an abandoned ship is not the primary objective of Article 7 of the Turkish Ports Act. A Harbour Master's Office should ensure that adequate attempts to trace ownership of the vessel are made before an official sale procedure is commenced. Actually, after a sale of a wreck or abandoned ship under Article 7 of the Turkish Ports Act, it should be noted that the application of that article might be subject to litigation, in the sense of private law dimension. Since Article 7 of the Turkish Ports Act does not explicitly mention the transfer of ownership of the vessel to the public authority, therefore, in the case that any requirement presented in the Article is not satisfied it can be argued that the sale of the vessel is void, by vessel interests. Still, it remains that court decisions interpreting the Article 7 will provide a legal framework with time.

With the amendment to the Turkish Ports Act, an integrated approach has been followed and equal powers granted to the Harbour Master in relation to the measures applicable for wrecks and inactive vessels including abandoned ones regardless of those vessels having an arrest order, attachment or detention, or another basis. Even

though all of the said vessels create similar problems for the navigational safety and marine environment, every ship should be considered within its particular condition. As a matter of fact, there shall be considerable difference between the sale of a wreck and the sale of an abandoned ship in good condition. At this point, the inventory prepared by MARAD should be prioritised in terms of vessels which urgently require to be removed.

As Article 7 of the Turkish Ports Act has a broad application area and applies to Turkish flagged as well as foreign vessels, including small boats and commercial vessels located in Turkish waters, there are certain differences between wrecks and abandoned or derelict vessels in terms of measures that should be taken. Actually, wrecks are addressed internationally by the IMO; specifically, the issues raised from wrecks can be handled by ratifying the Nairobi Convention with a larger perspective of international rules that aim to protect the marine environment and navigational safety globally. Especially considering the increased costs and financial burdens on the government in marking and removing a wreck, the strict liability regime and compulsory insurance found in the Convention provides a guarantee despite abandonment of a ship. It is noteworthy to underline that the main criticism made about Article 7 of the Turkish Ports Act is the lack of an insurance mechanism which has significant importance in a liability regime. Since it would provide a better legislative scheme for wrecks, it could be a good opportunity to apply different and appropriate legal regimes to wrecks in Turkey, which is on the verge of ratifying the Nairobi Convention, 2007.

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