



Geopolitical and Geoeconomic Value of Access to Sea Resources The Case of the Land-locked States in Africa

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Abstract

The issue of the African Landlocked States (ALS) is of critical importance both for their own developmental course but also for the future of the whole African continent as well. During the period of decolonisation the ALS took several initiatives culminating in the Third UN Convention for the Law of the Sea, which legally resolved a large number of their problems concerning access to the sea. Despite that fact economic development is still questionable. What seems to be needed is a wider development-planning programme that would involve several regional development programs with the participation of the business world and the private sector.



Résumé

La question des Etats africains sans littoral (ASL) revêt une importance critique à la fois pour leur propre développement mais également pour le futur de tout le continent africain. Pendant la période de décolonisation, l'ASL a pris plusieurs initiatives qui ont abouti à la troisième Convention du droit de la mer des NU, laquelle a juridiquement résolu un grand nombre de leurs problèmes concernant l'accès à la mer. En dépit de cela le développement économique est toujours discutable. Il semble qu'un programme de planification et de développement plus large soit nécessaire qui pourrait impliquer plusieurs programmes de développement régionaux avec la participation du monde des affaires et du secteur privé.



Resumen

El tema de los Estados Africanos Sin Litoral, (ALS) es de crítica importancia tanto para su propio desarrollo así como también para el futuro de todo el continente Africano. Durante el periodo de descolonización, la ALS adoptó varias iniciativas que culminaron en la Tercera Convención del Derecho del Mar de las Naciones Unidas, la cual legalmente resolvió un gran número de sus problemas relacionados al acceso al mar. A pesar de tal hecho, el desarrollo económico es aun cuestionable. Lo que pareciera se necesita es un amplio programa de planificación y desarrollo que podría involucrar varios programas de desarrollo regional con la participación del mundo del negocio y el sector privado.

Introduction

According to the United Nations Convention for the Law of the Seas (hereafter LS Convention), land-locked states are the states that do not have sea-coasts (article 125). Their inability to be geographically connected with the sea poses a serious problem for their sea access, for the conduct of their trade and also for their participation in the exploitation of sea resources.

This is an issue of great importance for the African land-locked states, given the fact that these states are the ones facing the greatest economic problems. It is indeed, interesting to point out that their lack of seacoasts, maybe the only thing land-locked states have in common, as they may present small differences at a territorial or population level, but their differences at the economic, industrial, technological and 'geographical' level are immense. Indeed, there is no comparison between the European land-locked states, such as Austria and Switzerland, with the Asian or African land-locked states. That is the reason why the Asian and African land-locked states played a leading role in the resolution of the problems of all land-locked states. This happened for two main reasons: the first was the fact that de-colonisation resulted in the creation of a large number of land-locked states in Africa, drastically altering the numerical balance of the international community in favour of the land-locked states. The second reason was that the African Land-locked States (hereafter ALS), but also the other newly independent states, were facing dire economic problems, the resolution of which was seen as an immediate and urgent need. Indeed, the lack of seacoast was not the only disadvantage of the land-locked states. In the list of the 39 world's poorest states in 1986, 15 states, almost half, were land-locked, despite the fact that the total number of states in this category does not exceed one fifth of the total number of states in the international community (See UNCTAD, 'The Least Developed Countries', 1986 Report, p. 292).

These are the reasons why during the period of de-colonisation the ALS took several initiatives, the results of which became visible initially in the First UN Convention for the Law of the Sea, in the First UN Convention for Trade and Development (hereafter UNCTAD) and finally in the Third UN Convention for the Law of the Sea. The end result of these

initiatives is deemed successful to the extent the land-locked states legally resolved a large number of their problems. On the other hand, however, the following event comes as no surprise: from 1994, the year when the LS Convention was put into force, until today the economic situation of those States has not changed. So, while the European land-locked states achieved varying degrees of economic improvement, the African ones did not show any signs of development. (The African Land-locked States are: Ethiopia, Zambia, Zimbabwe, Central African Republic, Lesotho, Malawi, Mali, Burundi, Burkina Faso, Botswana, Nigeria, Uganda, Rwanda, Swaziland, and Chad).

The Economic Situation in the African Land-locked States

Economically the ALS fall under the category of developing states. It has to be pointed out that very few of the ALS are in a state of development. (In 1999, the annual growth rate of the per capita GNP for the states that are included in the analysis were for Rwanda (4.8), Ethiopia (4.8), Malawi (4.4), Mali (2.7), Central African Republic (1.9), Eritrea (0.8), Chad (-4.1), Lesotho (-3.0), Zimbabwe (-1.8)). Given this fact, we could categorise the ALS as follows:

- High development (Rwanda, Ethiopia, Malawi)
- Medium development (Central African Republic, Mali)
- Stagnant or low development – *almost without 'antidote'* (Eritrea)
- Rapid deterioration – *without 'antidote'* (Chad, Lesotho, Zimbabwe)

It is necessary to emphasise the fact that the situation of the land-locked countries belonging to the last two categories is particularly crucial, since due to the great economic recession their condition is almost irreversible. Needless to say, the land-locked states of the last category are doomed to experience increasing levels of hunger and poverty.

In order to illustrate the dire economic conditions facing the ALS, we note that in 1965 Hungary, the poorest European land-locked state, exhibited four times the per capita GNP of Zambia which was the 'richest' African state. (See M. Glassner, *Access to the Sea for Developing Land-Locked States*, Ph. D., Claremont Graduate School and University Center,

Table 1: Showing which are the African Land-locked States, the Year of Independence and the Year of the Signing/ Ratification of the Convention (See The World Bank 2000, 2001 Report / Status of the United Nations Convention on the Law of the Sea, Table Recapitulating the Status of the Convention and of the Agreements, as at 30 August 2002).

African Land-locked States	Year of Independence	Signing/Ratification of the Convention**
1. Zambia	1964	YES/NO
2. C. Afr. Rep.	1960	YES/NO
3. Zimbabwe	1980	YES/NO
4. Swaziland	1968	YES/NO
5. Burundi	1962	YES/NO
6. Uganda	1962	YES/NO
7. Chad	1960	YES/NO
8. Mali	1960	YES/NO
9. Botswana	1966	YES/NO
10. Malawi	1963	YES/NO
11. Rwanda	1962	YES/NO
12. Burkina Faso	1960	YES/NO
13. Niger	1960	YES/NO
14. Lesotho	1966	YES/NO
15. Ethiopia	-	YES/NO

1968, p. 9, Table 1.) In 1999, 34 years later, Hungary's per capita GNP had become 10 times higher than that of Zambia, which was by then the second 'richest' ALS (The World Bank 2000, 2001 Report).

What is important is that this comparison, which illustrates Zambia's delay, is with Hungary, a developing country, which is at a lower level of development in relation to the other European land-locked states. It is evident that the results would be even worse if the comparison was not with Zambia, which is the second 'richest', but with some other poorer country. It is worth mentioning that the last states in the list of the African Land-locked States, Burundi and Ethiopia have per capita GDPs equal to the 30% of that of Zambia, in particular, \$ 120 and \$ 100 per capita GNP respectively.

The period of colonisation is one of the most important factors, if not the most important, responsible for the existing situation of the land-locked states. This is because during that period the colonies were obliged to cultivate only one product for export to their respective metropolis (one-product countries). The production of only one or two products made their economies vulnerable since they were dependent on natural or market laws, on which they have limited or no influence. The following example illustrates the high level of dependence of these states to trade because of the one-product culture: "in 1974 the five countries of the Third World that traditionally export bananas decided to raise their profit-margin, which up to then was 11 cents per dollar...This was met with fierce reaction by the firms involved in the trade. One of them threat-

ened to stop exports leaving in this way \$140,000 worth of the sensitive products to rot. Finally, using well-known methods, the initial negotiation for export led to an international rise in the price of the product, multiplying in that manner the end money profit". (See G. Tsaltas, *The Phenomenon of Development and the Third World*, Papazisis Publications, 191, pp. 85-7).

In light of this evidence, we reach the conclusion that the African Land-locked States are day-by-day becoming poorer, particularly when compared with the less developed European ones.

Furthermore, it is self-evident that the poorer the country the bigger the problems, when it comes to politics, stability, unemployment and the relations with other poor neighbouring coastal states which try to exploit to the maximum the facilities they provide. This unjust competition between land-locked and coastal states in Africa, poses the biggest obstacle to the development of the African Land-locked States. This is the so-called phenomenon of 'extremes', according to which all the poor countries are becoming poorer and all the rich countries are becoming richer. (See U.N. Doc. A/48/49, Specific Actions Related to the Particular Needs and Problems of Land-locked Developing Countries, G. A. Resolution 48/169, 48 U.N. GAOR Supp. (No. 49), at 148, 1993).

The Political and Legal Status of the African Land-locked States

The period of de-colonisation signalled the start of development for the political and legal status of

the ALS, which coalesced in order to begin a just international struggle for the acquisition of rights concerning their free transit and access to the sea. The first step towards the resolution of the problems of the ALS and also of the land-locked states in general, came with the signing of the Convention on the High Seas.

a. *The 1958 Geneva Convention on the High Seas*

A total of four conventions were concluded in the context of the First UN Convention for the Law of the Sea (hereafter UNCLOS), in 1958. In article 3 of the Convention on the High Seas it recognises 'the moral right' of the land-locked states to the free transit and free access to the sea through the territory of the neighbouring states. Despite the fact that article 3 paid, only token attention to the resolution of the problems of the land-locked states, it is, however, important since the land-locked states managed to agree on a framework of principles, known as the 'Magna Carta' of the land-locked states, comprising the vision and the aim of the struggle that had just started. According to article 3 (1): "In order to enjoy freedom of the seas on equal terms with coastal states, states having no coasts should have free access to the sea...".

The Principles, which are mentioned as the 'Magna Carta' of the land-locked states, have as follows:

Principle I

RIGHT OF FREE ACCESS TO THE SEA

The right of each land-locked State of free access to the sea derives from the fundamental principle of freedom of the high seas.

Principle II

RIGHT TO FLY A FLAG

Each land-locked State enjoys, while on a footing of complete equal treatment with the maritime States, the right to fly its flag on its vessels which are duly registered in a specific place on their territory.

Principle III

RIGHT OF NAVIGATION

Vessels flying the flag of a land-locked State enjoy, on the high seas, a regime which is identical to the one that is enjoyed by vessels of maritime countries; in territorial and on internal

waters, they enjoy a regime which is identical to the one that is enjoyed by the vessels flying the flag of maritime States, other than the territorial State.

Principle IV

REGIME TO BE APPLIED IN PORTS

Each land-locked State is entitled to the most favoured treatment and should under no circumstances receive a treatment less favourable than the one accorded to the vessels of the maritime State as regards access to the latter's ports, use of the seaports and facilities of any kind that are usually accorded.

Principle V

RIGHT OF FREE TRANSIT

The transit of persons and goods from a land-locked country towards the sea and vice versa by all means of transportation and communication must be freely accorded, subject to existing special agreements and conventions.

Transit shall not be subject to any customs duty or specific charges or taxes except for charges levied for specific services rendered.

Note: The Austrian delegation presumes that principle V does not have a further scope than the obligations resulting from the Statute of Barcelona of which Austria is a signatory.

Principle VI

RIGHTS OF STATES OF TRANSIT

The State of transit, while maintaining full jurisdiction over the means of communication and everything relating to the facilities accorded, shall have the right to take all indispensable measures to ensure that the exercise of the right of free access to the sea shall in no way infringe on its legitimate interests of any kind, especially with regard to security and public health.

Principle VII

EXISTING AND FUTURE AGREEMENTS

The provisions codifying the principles which govern the right of free access to the sea of the land-locked State shall in no way abrogate existing agreements between two or more Contracting Parties concerning the problems which will be the object of the codification envisaged, nor shall they raise an obstacle as regards the conclusion of such agreements in the future, provided that the

latter do not establish a regime which is less favourable than or opposed to the above-mentioned provisions.

b. The 1982 Montego Bay Convention on the Law of the Sea

The Third Convention on the Law of the Sea, constitutes the second important step, following the 1958 Convention, to the resolution of the problems of the land-locked states. The Third United Nations Conference on the Law of the Sea commenced in New York, on 3 December, 1973, with the participation of 138 states, 95 of which belonged to the alleged Third World. It is worth mentioning that only 86 states had participated in the First Conference, while 157 states participated in the Third Conference.

The land-locked states, in an attempt to increase their bargaining power, made an alliance with an equally 'particular' team of states, the team of the so-called geographically disadvantaged states. Although, the name of these states only connotes geographical disadvantages, as a rule, they also have economic problems despite them being officially regarded as coastal states. Effectively, these countries are faced with problems similar to those of the land-locked states because their coastline is too short with respect to the overall size of the mainland (like Iraq and Zaire). These states were: Algeria, Bahrain, Belgium, Bulgaria, Cameroon, Ethiopia, Finland, Gambia, West Germany, East Germany, Greece, Iraq, Jamaica, Jordan, Kuwait, The Netherlands, Poland, Qatar, Romania, Singapore, Sudan, Sweden, Syria, Turkey, United Arab Emirates, Zaire.

Apart from the common fate that characterises the states comprising the two groups, this alliance was in a way necessary, so that these states would form a united front of 55 states in total (29 land-locked and 26 geographically disadvantaged), that could effectively influence the course of the Conference.

Hence, during the Third United Nations Conference, on the Law of the Sea, the alliance between land-locked and geographically disadvantaged states tried to consolidate the following rights:

- (a) *The right of land-locked states to transit and access, to and from the sea; and,*
- (b) *The right of both land-locked and geographically disadvantaged states to access sea resources.*

Despite friction within the alliance, stemming from differences between the states within the two groups at a political, economic, or geographical level, land-locked states managed to achieve a significant part of their objectives through the provisions of the Convention on the Law of the Sea. Following almost nine years of difficult negotiations, due to the multitude of opposing, predominantly economic, interests, the Convention on the Law of the Sea was formally signed at Montego Bay, Jamaica, on 10 October, 1982. According to the standard procedure, the Conference should attempt to reach a *consensus* agreement, and not one by vote. When all possibilities to reach a consensus agreement were exhausted, the Draft Convention was put to the vote, receiving 130 votes in favour, 4 votes against and 17 abstentions. Israel, Turkey, the United States and Venezuela voted

Table 2: Showing the total area (in Km²) and the number of neighbouring states (Land-Locked) (See The World Bank 2000, 2001 Report).

African Land-locked States	Area (Km²)	Number of Neighbouring States (Land-locked)
1. Zambia	752,614	8 (3)
2. C. Afr. Rep.	623,000	5 (1)
3. Zimbabwe	393,000	4 (2)
4. Swaziland	17,600	2 (0)
5. Burundi	27,830	3 (1)
6. Uganda	241,000	5 (1)
7. Chad	1,284,000	6 (2)
8. Mali	1,240,000	7 (2)
9. Botswana	581,730	4 (2)
10. Malawi	94,445	3 (1)
11. Rwanda	26,250	4 (2)
12. Burkina Faso	274,000	6 (2)
13. Niger	1,267,000	7 (3)
14. Lesotho	30,720	1 (0)
15. Ethiopia	1,133,882	5 (0)

African Land-locked States	Population	GNP per capita (\$)
1. Zambia	9,000,000	330
2. C. Afr. Rep.	3,400,000	470
3. Zimbabwe	10,200,000	530
4. Swaziland	940,000	1200
5. Burundi	6,600,000	220
6. Uganda	21,000,000	320
7. Chad	6,700,000	210
8. Mali	11,000,000	240
9. Botswana	1,300,000	3240
10. Malawi	8,400,000	240
11. Rwanda	9,000,000	250
12. Burkina Faso	10,200,000	240
13. Niger	9,100,000	190
14. Lesotho	1,900,000	550
15. Ethiopia	57,000,000	100

Table 3: Showing the population of the African Land-locked States and their GNP per capita (\$) (See The World Bank 2000, 2001 Report).

against, while Germany, England, and the Soviet Union abstained (See UNCLOS III, Official Records, Vol. XVI, pp. 154 – 5).

The Montego Bay Convention satisfied to a large extent the demands of the land-locked states, a result of the nine-year-long negotiation process, thus promoting a significant improvement on both the legal and actual status of the land-locked states. At the same time, coastal states were also content as they managed to put under their jurisdiction large sea zones adjacent to their coasts. The idea of the 'common heritage of mankind', apart from all other advantages it signified, was a contributing factor to this development.

The international community 'constructed' the provisions of the convention based on two fundamental principles: *the freedom of the seas and the common heritage of mankind*.

The land-locked states, further to the rights they consolidated, which are basically related to the freedom of the seas principle (free passage and access to the sea), achieved the recognition of a participation right in the exploitation of the sea zones of the neighbouring coastal states (see Articles 55-75 of the Montego Bay Convention), as well as their participation, on an equal basis, in the sea wealth of the 'common heritage of mankind' area (See Articles 148, 150, 151, 160, 161 of the Montego Bay Convention).

After three centuries of full acceptance, the freedom of the seas principle was revisited. The Montego Bay Convention did not abolish this principle but it limited its implementation scope at sea and

air, 'conceding' the seabed and the subsoil of the high seas into the new principle of 'common heritage of mankind'.

The Montego Bay Convention dedicates nine articles (124 to 132) to the passage and access of the land-locked states to the sea at Part X. The regulations worth noting are: regulation 125 (3) which is of ensuring character, on the «legitimate interests» of transit states that should not be harmed during the transit; the exclusion of the land-locked states from the reciprocity required by the Geneva Convention [No. 1 (a)] but also the New York Convention (No. 15); the exclusion from the Most Favoured Nation clause (No. 126) that facilitates transit states in ceding more facilitations to the land-locked ones; the grant of equal treatment status to vessels of land-locked states as to those granted to vessels of third states (No. 131); the possibility of creating free zones on the territory of transit states (No. 128), and, finally, the traditional duties exemption, with an exception on fees for services rendered (No. 127).

Article 124 refers to the 'Use of Terms' related to the passage and access¹, while the first paragraph of Article 125 defines the above-mentioned provision in favour of the land-locked states in the following way:

Right of access to and from the sea and freedom of transit

1. Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall

enjoy freedom of transit through the territory of transit States by all means of transport.

2. The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, sub-regional or regional agreements.
3. Transit State, in their exercise of their sovereignty over their territory, shall have the right to take all the measures necessary to ensure that the rights and facilities provided for in this Part for land-locked States should in no way infringe their legitimate interests.

We have, however, to note that the land-locked states, apart from the fact that the right of free transit and access to the sea was recognised, the right for the access to sea resources was also conditionally recognised. In particular,

- (a) the right to participate in the research and exploitation of resources of the Exclusive Economic Zones of their neighbouring countries given the fact that these zones would deprive large parts of the open seas and
- (b) the right to participate in research and exploitation of the international Sea-bed resources, but also the right of representation in committees which would be responsible for it, on the basis of the common heritage of mankind.

Access to Sea Resources

The adoption of the Exclusive Economic Zone (EEZ, See Part V of the 1982 Montego Bay Convention, art. 55-75) satisfied one of the most important claims of the coastal states in the Third Convention. Those claims had to do with the establishment of zones, apart from the territorial waters, within which the coastal states would have rights primary of economic nature (exclusive fishing zone). It is worth-mentioning that according to UNCLOS I the right of fishing of the coastal states could be exercised only within their territorial waters, which under no circumstances could exceed the 12 n. m., despite the overall tendency for extension from the traditional limit of 3 to 6 n. m. The need for the creation of a sui generis zone within which the coast states would have the possibility to exploit its resources became evident, while the Third States would not be deprived of the exercise of the basic rights emanating from the institution of the freedom of the seas (See D.P.

O'Connell, *The International Law of the Sea*, Vol. I, 1982, p. 577).

What the land-locked states proposed was to be given access to both the living and non-living resources within the EEZ, as well as, to the continental shelf of the neighbouring states. The proposition concerning the non-living resources met the opposition of the coastal states, which did not want to lose the rights they had secured under UNCLOS I. Thus, the rights of the land-locked or geographically disadvantaged states were confined to the conditional exploitation of the living resources in the EEZ of their neighbouring states.

According to articles 69(1) and 70(1) of the LS Convention, the following right was recognised for the land-locked and geographically disadvantaged states: "...to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zone of the coastal States of the same sub-region or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, *inter alia*: (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State; (b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States; (c) the extent to which the land-locked State and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zones of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it; (d) the nutritional needs of the populations of the respective States." (See articles 72(1), 71, 70(5), 69(4), 62(2)).

It has become evident, according to the relevant preceding provisions concerning the EEZ that the coastal states were the ones to acquire the larger number of privileges according to that institution.

Among those, we underline the right to exploit fisheries, which could be granted to Third States only with the consent of the authorities of the coastal state, in exchange of economic compensation [article 62 (4)(a)], the right to construct and use constructions within the EEZ (article 60), as well as several other types of jurisdiction, having to do with scientific research and protection against pollution [article 56(1)]. Finally, the right of participation of the land-locked and geographically disadvantaged states was confined only to the surplus of the living resources within the EEZ of the neighbouring coastal states. The very determination of the surplus however, lies within the sphere of jurisdiction of the coastal states.

As far as the access of the land-locked and geographically disadvantaged states to the resources of the international sea-bed, through the LS Convention, is concerned, there seems to be a division in favour of the developed states within these two groups. This outcome was well expected, since the expectations of these countries in the Third Convention coincided with the overall aspirations of the developing countries of the 'Group of 77'. Thus, article 148, which has to do with the 'participation of developing States in the activities in the Area', "...shall be promoted as specifically provided for in this Part, having due regard to their special interests and needs, and in particular to the special need of the land-locked and geographically disadvantaged among them..." As far as the activities relating to the exploitation of the Area article 140(1) envisages that, "activities in the Area shall, ...be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States..."

To conclude, we consider that the failure of the aforementioned provisions of the LS Convention with regard to the access of land-locked States to sea resources to recognise any special right for the land-locked states, is counterbalanced by the recognition of the right of free transit and access to the sea. As the consolidation of this recognition was achieved as a result of the alliance with the geographically disadvantaged states, the land-locked ones 'sacrificed' their claims, an its eventual acceptance, for the granting of special rights of access to the sea resources.

Conclusion

Nowadays, it is becoming clearer that the African states in their entirety remain distant from any chance for development. Despite the fact that decolonisation belongs to the past and that the African states have gained their political independence, at the economic level they continue to be dependent upon the developed countries. Their negotiation skills for better prices, economic or other assistance have been drastically reduced and the African developing states are directly heading towards poverty. This situation is even worse for the land-locked states due to their additional geographic handicap. The question that should then be posed is what should be done.

We think that the international community should, first of all, help the poorest of those states to recover. This could be done with the provision of further facilitation, privileges, assistance, of the kind that are being offered to European land-locked states, so as to reach a point that would allow them to make use of the provisions of the LS Convention. The development of transit routes is, in this case, one of the most crucial factors for the positive outcome of any planning. This development, however, can only prove successful as long as it is considered to be a part of a wider development-planning program. A plan, that is, that would include, apart from the improvement of transit, the working out and implementation of regional programs, the creation of new businesses and the participation of the private sector whenever possible. Only through that composite action, the ALS would finally make their way to the sea and prosperity. In the opposite case, if the ALS remain unaided, the favourable provisions of the LS Convention, would remain favourable only for some land-locked states, mainly European states, whereas would make no contribution for the rest of the very poor states. These states would continue to be termed 'developing' while in practice they would continue with their journey towards poverty rather than prosperity.

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Biography

Petros Sioussiouras was born in Veria, Greece in 1966. In 1983 he was admitted to the Hellenic Navy Academy, from where he graduated in 1987. In December 1993 he was admitted to the Department of Law of the Panteion University of Political

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