

THE LEGAL ASPECTS OF THE EASTERN MEDITERRANEAN QUESTION

HALIL RAHMAN BASARAN

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CONTENTS

SUMMARY	7
INTRODUCTION	8
FOUR LEGAL PROBLEMS	8
CYPRUS	12
THE ABUSE OF INTERNATIONAL LAW	13
CONCLUSION	14

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SUMMARY

This analysis deals with the Turkish-Greek tensions with regard to natural resources in the Eastern Mediterranean and the Sea of Islands and contributes to the clarification of international law.

This analysis deals with the Turkish-Greek tensions with regard to natural resources in the Eastern Mediterranean and the Sea of Islands and contributes to the clarification of international law. It is argued that the first step towards dispute settlement is the recognition of the existence of all legal problems by Greece. Halting the abuse of international law is the second step. Only through taking those two steps can a constructive and peaceful settlement be achieved. The analysis concludes that the dispute might be tackled through bilateral negotiations between Turkey and Greece.

INTRODUCTION

The competition between Turkey, Greece, Libya, Egypt, Israel, Palestine, Northern Cyprus, Southern Cyprus and Lebanon in respect of natural resources in the Eastern Mediterranean brought forth the importance of international law. In particular, Turkish-Greek tensions have risen nowadays. These tensions present an interesting case study of international law. Both countries invoke national sovereignty and lay claim on the natural resources in the Eastern Mediterranean.

One of the principal issues of international law is the delimitation of maritime areas of countries. The delineation of maritime boundaries is a popular topic before the International Court of Justice and international arbitral tribunals. In that respect, this paper contributes to the clarification of international law.

FOUR LEGAL PROBLEMS

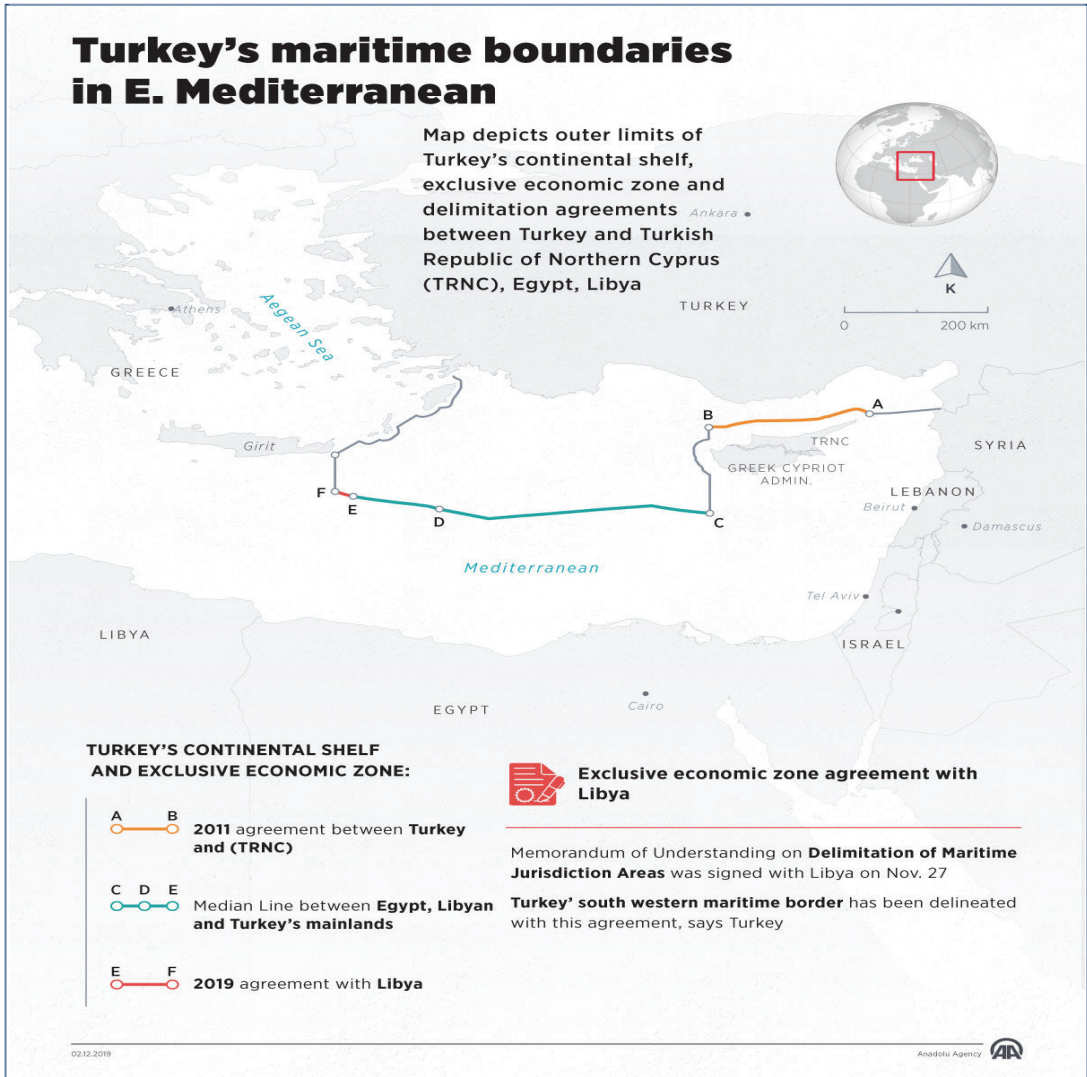
There are several legal problems between Turkey and Greece with regard to the Eastern Mediter-

anean and the Sea of Islands. Four problems particularly stand out:

One problem concerns the delimitation of the continental shelf between Turkey and Greece. Greece argues that international law is clear in that respect: islands have their own continental shelves thanks to the United Nations Convention on the Law of the Sea (UNCLOS). Turkey disagrees. That's because, first, the UNCLOS does not constitute international law as such; it is a mere agreement (treaty) between some countries. A treaty does not necessarily represent international law. A treaty can only be one of the sources of international law and binds only the signatory countries. Indeed, while Greece is a party to the UNCLOS, Turkey is not. Actually, Turkey had been a persistent objector to the insertion of the continental shelf rights of islands into this treaty for a long time. One cannot invoke a treaty against its non-signatory persistent objector. Otherwise, it would boil down to the abuse of international law and constitute a violation of the principle of good faith.

Moreover, Turkey maintains that the Greek islands in proximity of the Turkish mainland are situated on the Turkish continental shelf; those islands do not have their own continental shelves. That is, the Greek islands which are close to the Turkish mainland are "on the wrong side". They can at most have some limited territorial sea, not continental shelf beyond that. The continental shelf between the two countries should be delimited through taking into consideration of the Greek mainland and the Turkish mainland – not the islands.

The Turks bolster that opinion through invoking several international court and arbitral awards such as the arbitral award concerning the "wrongly situated British islands" between



Source: Turkey's maritime boundaries in E. Mediterranean. Anadolu Agency, 2019. cf. Zontur, E., C., 'Map delineates Turkey's maritime frontiers in E.Med', Anadolu Agency, available at: <https://www.aa.com.tr/en/infographics/map-delineates-turkeys-maritime-frontiers-in-emed/1661791>, (accessed on 17/12/2020)

the United Kingdom and France.¹ The arbitral tribunal held that one shall not draw a median line between those British islands close to the French coast and the French mainland. Otherwise, the maritime zone of France would be too much limited – that would be unacceptable and

unfair. This is an example of the application of the principle of equity. Hence, the arbitral tribunal took the British mainland and the French mainland as the criteria to measure the maritime areas and achieved equity in the delimitation of the continental shelf between the two countries. The British islands which are too close to the French shores were discarded apart from being given a very limited maritime area. The closeness of the British islands to the French main-

¹ *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK, France)*, 30 June 1977 - 14 March 1978, VOLUME XVIII. Accessible at https://legal.un.org/riaa/cases/vol_XVIII/3-413.pdf, (accessed on 11/12/2020).

land was interpreted as a “special circumstance” by the arbitral tribunal.

Actually, international law considers every continental shelf dispute as a special one. This is in line with the general structure of international law. International law aims at regulating complex world affairs. It may be difficult to follow a consistent line in the settlement of all disputes. There may exist different special circumstances even in the presence of seemingly similar disputes. Application of a binding jurisprudence – a binding precedent rule – may be difficult. Indeed, Article 59 of the Statute of the International Court of Justice states that the decision of the Court has no binding force except between the parties and in respect of that particular case.² There exists no binding precedent rule in international arbitration, either.

Greece, by trying to establish a median line between the Turkish mainland and the Greek islands is willing to change the *status quo* in the Eastern Mediterranean.

True, as a matter of principle, in the delimitation of the continental shelf, international law, first, recommends States to draw a median line between their territories. Yet, as a next step, international law also requires the changing of the place of the median line in the light of “special circumstances”. The consideration of “special circumstances” ensures equity. Equity among countries in the delimitation of the continental shelf changes the median line. Hence one of the issues of the current dispute between

Turkey and Greece in the Sea of Islands: Turkey rightfully invokes some “special circumstances” to achieve an equitable solution. Yet, Greece behaves as if international law does not allow for any special circumstances and as if international law is automatic and definitive in favor of the median line.

In that regard, the *Libya v. Malta* case is interesting.³ In this continental shelf delimitation case, the International Court of Justice, when granting Libya more maritime area than Malta, invoked the much longer coast of Libya. The Court held that even if it cannot rectify all the disadvantages of the geography and that it cannot reshape the geographic situation between the two countries, at least, some modification of the boundary for the sake of an equitable solution is feasible.

On top of that, in the dispute between Denmark and Norway – the *Jan Mayen* case⁴ – the International Court of Justice held that fish stocks, as an “economic factor”, shall be taken into consideration in the delineation of the maritime boundaries. Thus, the existence and the distribution of natural resources affect the delimitation of the continental shelf / exclusive economic zone. That is a “special circumstance”. If fish stocks are important, natural gas and oil reserves are all the more determinant in the delimitation of the maritime zones. Therefore, the place and the amount of natural gas and oil reserves in the Sea of Islands and the Eastern Mediterranean are to be taken into account.

Interestingly, the International Court of Justice has underlined the importance of *status*

² Accessible at https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf, (accessed on 11/12/2020).

³ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, para. 68 Judgment of 3 June 1985. Accessible at: <https://www.icj-cij.org/en/case/68/judgments> (accessed on 11/12/2020).

⁴ *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, paras. 72, 76 Judgment of 14 June 1993. Accessible at: <https://www.icj-cij.org/en/case/78/judgments> (accessed on 11/12/2020).

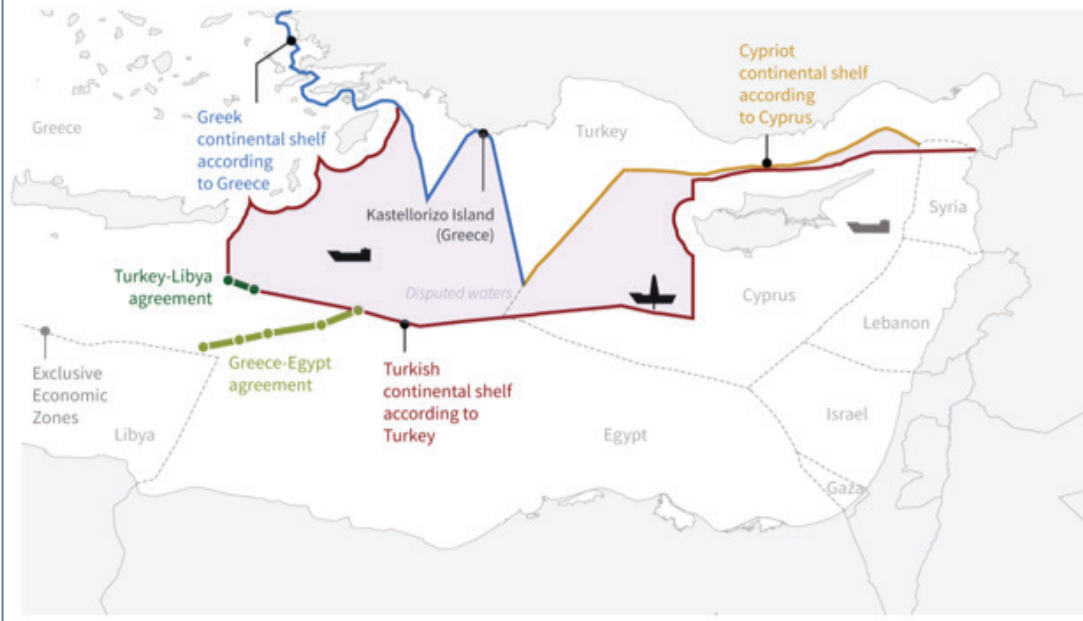
Overlapping claims in disputed east Med exploration area

NATO members Turkey and Greece have overlapping claims to continental shelves and potential energy resources in the eastern Mediterranean. They have also signed conflicting demarcation accords with southern neighbours Libya and Egypt, and tensions flared in August after Ankara sent a survey ship into waters claimed by Greece. Turkey also deployed vessels off Cyprus.

Drilling ship:  **Yavuz**

Seismic survey ships:  **Oruc Reis**  **Barbaros Hayreddin Pasa**

Position of the vessels on Sept. 11 at 19.00GMT (Oruc Reis returned to port in Antalya on Sunday Sept. 14).



Source: Natural Earth; Flanders Marine Institute via MarineRegions.org; Country agreements; Refinitiv; REUTERS.
S. Granados, 18.0.2020

quo in the *Tunisia vs. Libya* continental shelf case.⁵ If there exists an established practice in a region, those who wish to change that *status quo* shall advance strong legal claims. Greece, by trying to establish a median line between the Turkish mainland and the Greek islands is willing to change the *status quo* in the Eastern Mediterranean. Hence, Greece needs stronger legal arguments in order to legitimize its posi-

tion. The *status quo* argument is relevant for the below-mentioned territorial sea dispute between Turkey and Greece, too.

The second problem between the two neighboring countries concerns the scope of territorial sea. Greece wishes to increase its territorial waters off its islands from 6 nautical miles to 12 nautical miles. The Greek government wants to change the *status quo*. Turkey objects to that. Granted, the UNCLOS permits States who are parties to the UNCLOS to increase their territorial waters up to 12 nautical miles (still, they are

⁵ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, para. 100 Judgment of 24 February 1982, Accessible at: <https://www.icj-cij.org/en/case/63/judgments> (accessed on 11/12/2020).

not obliged to do so). Yet, the aforementioned objections to the application of the UNCLOS to the continental shelf question apply to the territorial sea question, too.

Importantly, recognizing 12 nautical miles for the Greek islands would block Turkey and the third countries from free navigation in the Sea of Islands. The current *status quo* which permits free navigation thanks to the scope of international waters would change. A great part of the international waters between the Turkish mainland and the Greek mainland would come under the jurisdiction of Greece. And, this would be in violation of the principles of equity and proportionality under international law.

The third problem concerns the militarization of the Greek islands which are in proximity of the Turkish shores. According to treaties to which Greece, Turkey and Italy are parties, those islands have a demilitarized status.⁶ Yet, Greece does continue with the placement of troops and military equipment on

those islands and does not want to discuss this issue with Turkey.

And, the **fourth problem** concerns those islands and islets which have not been handed over to Greece by an international agreement but on which Greece lays claim. Turkey argues that there are more than 150 islands and islets with such status in the Sea of Islands. Yet, Greece does not wish to discuss this problem with Turkey at all.

Greece claims that the only problem between Greece and Turkey is the delimitation of continental shelf between the two countries, and, that this unique problem should be settled under the UNCLOS. By contrast, Turkey argues that there exist the four aforementioned problems to be settled altogether under international law.

CYPRUS

The aforementioned problems are exacerbated by the Cyprus question. The Southern Cyprus Administration has made deals for the delimitation of exclusive economic zones with Israel⁷ and Egypt⁸. Turkey argues that these deals are illegal in that, *first*, there exist obvious “special circumstances”: Turkey invokes the length of its immense coast and hence its right to share in the exclusive economic zone of the Eastern Mediterranean. The Eastern Mediterranean is a semi-closed sea and the length of the coast should be primarily taken into consideration in the delimitation of the continental shelf / the

6 Article 13, Lausanne Peace Treaty, 24 July 1923: “With a view to ensuring the maintenance of peace, the Greek Government undertakes to observe the following restrictions in the islands of Mytilene, Chios, Samos and Nikaria: (1) No naval base and no fortification will be established in the said islands. (2) Greek military aircraft will be forbidden to fly over the territory of the Anatolian coast. Reciprocally, the Turkish Government will forbid their military aircraft to fly over the said islands. (3) The Greek military forces in the said islands will be limited to the normal contingent called up for military service, which can be trained on the spot, as well as to a force of gendarmerie and police in proportion to the force of gendarmerie and police existing in the whole of the Greek territory. cf. “Lausanne Peace Treaty”, Republic of Turkey Ministry of Foreign Affairs, available at: <http://www.mfa.gov.tr/lausanne-peace-treaty-part-i-political-clauses.en.mfa>, (accessed on 17/12/2020).

Article 14, Paris Peace Treaty, 10 February 1947: “1. Italy hereby cedes to Greece in full sovereignty the Dodecanese Islands indicated hereafter, namely Stampalia (Astropalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), Cos (Kos) and Castellorizo, as well as the adjacent islets. 2. These islands shall be and shall remain demilitarised. 3. The procedure and the technical conditions governing the transfer of these islands to Greece will be determined by agreement between the Governments of the United Kingdom and Greece and arrangements shall be made for the withdrawal of foreign troops not later than 90 days from the coming into force of the present Treaty.”, cf. “Major International Treaties Concerning Greece”, Hellenic Republic - Ministry of Foreign Affairs, available at: <https://www.mfa.gr/en/the-ministry/international-conventions/major-international-treaties-concerning-greece.html>, (accessed on 17/12/2020).

7 Signed on 17 December 2010 (entry into force: 25 February 2011; registration #: I-48387; registration date: 9 March 2011, accessible at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/ISR.htm> (accessed on 23/12/2020).

8 Signed on 17 February 2003 (entry into force: 7 March 2004; registration #: I-44649; registration date: 14 January 2008, accessible at <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CYP.htm> (accessed on 23/12/2020).

exclusive economic zone. The coast dominates the sea.

Second, more importantly, there exists the problem of the recognition of legal government in Cyprus. Turkey does not recognize the Greek administration in the south of the island as the legal government. While invoking her own continental shelf rights, Turkey also invokes the continental shelf rights of the Turkish Republic of Northern Cyprus (TRNC): Turkey has concluded oil and gas research and exploitation agreements with the TRNC.

The non-settlement of the Cyprus dispute can be designated as a “special circumstance” as well. As long as the Cyprus dispute is not resolved and the two communities of Cyprus do not make a deal, the Southern Cyprus Administration – consisting merely of the Cypriot Greek community – cannot conclude exclusive economic zone agreements with other countries in the name of the whole Cyprus. Those agreements are in violation of the 1959-60 Cyprus treaties. Under those treaties, the assent of the Cypriot Turkish community is needed for international agreements of Cyprus to be valid.

Under the 1959-1960 Cyprus treaties, Turkey is a guarantor country; Turkey has the right to take countermeasures against the Southern Cyprus Administration in the event of the violation of the 1959-1960 Cyprus treaties. Indeed, that is what Turkey has been doing. In order to prevent any *fait accompli* and the formation of an established practice in the Eastern Mediterranean which may eventually modify the written 1959-1960 treaties, Turkey has been engaging in research and drilling activities in the Eastern Mediterranean and thus challenging the policy of the South Cypriot Administration in the Eastern Mediterranean. The agreement and

the cooperation between Turkey and the TRNC have sent the message to the Southern Cyprus Administration and the international community that the Cypriot Greek claims in the Eastern Mediterranean are disputed by Turkey and the TRNC.

THE ABUSE OF INTERNATIONAL LAW

Two acts of the Greek government particularly stand out: first, the Greek government regularly refers to international law for the settlement of disputes between Turkey and Greece. That supposes the existence of a technical and definitive international law out there which can automatically resolve the maritime disputes between Turkey and Greece. In that respect, the public opinion is misled. This is an abuse of international law.

The EU should also generate some concrete incentives for the resolution of the problems between Turkey and Greece.

Second, while all the aforementioned legal problems exist, Greece argues that the only legal problem is the delimitation of the continental shelf between Turkey and Greece. However, Greece should invoke international law for the settlement of all problems between the two countries. Regarding only one dispute as suitable for the involvement of international law and denying the existence of other disputes is the abuse of international law. Hence the difficulty in negotiations between the two countries.

CONCLUSION

Delimitation of the maritime zones in the Eastern Mediterranean and, in particular, in the Sea of Islands presents a significant legal challenge. Recognition of the existence of all problems is the first step towards dealing with that challenge. Halting the abuse of international law is the second step. Only through taking those two steps can a constructive and peaceful settlement be achieved.

In that regard, bilateral negotiations between the Turkish government and the Greek government may be an effective method of dis-

pute settlement. Greece, by taking the aforementioned two steps can, at last, start negotiating genuinely with Turkey. Under international law, negotiations between the disputing governments should be conducted in a genuine way. This is a corollary of the principle of good faith in international law. The EU, by taking a neutral stance between Turkey and Greece in favor of a genuine dialogue can contribute to the mitigation of tensions between two neighbors. The EU should also generate some concrete incentives for the resolution of the problems between Turkey and Greece.

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