



HELLENIC REPUBLIC

**National and Kapodistrian
University of Athens**

— EST. 1837 —

SCHOOL OF ECONOMICS AND POLITICAL SCIENCE
FACULTY OF POLITICAL SCIENCE AND PUBLIC ADMINISTRATION
MASTER THESIS

MA IN SOUTHEAST EUROPEAN STUDIES
2019

*Peaceful settlement of
the Aegean Sea dispute
over the continental
shelf*

By Panagiota Psarra

Supervisor: Emmanouela Doussis

Table of Contents

Introduction.....	p. 3
Chapter I -<i>The Historical Background</i>	
i) The historical background before the emergence of the dispute.....	p. 6
ii) The facts of the dispute.....	p. 8
iii) The claims of each side.....	p. 13
Chapter II - <i>The evolution of the Law of the Sea</i>	
<i>-Legal parameters concerning the dispute</i>	
i) The three-stage method.....	p. 15
ii) The role of the islands and rocks and their respective legal effect.....	p. 20
iii) Special/Relevant circumstances.....	p. 21
Chapter III – <i>Efforts of Peaceful Settlement and</i>	
<i>The Role of the Greek Public Opinion</i>	
i) Attempts of peaceful settlement of the dispute....	p. 23
ii) Assessment of the Greek Foreign Policy and the role of the Greek Public Opinion.....	p. 27
Chapter IV – <i>Conclusions</i>	p. 30
Bibliography- Web Sources.....	p. 32

Introduction

The delimitation of the maritime zones (territorial sea, contiguous zone, continental shelf, EEZ) has been proven to be one of the most demanding tasks of the international community. The United Nations Conventions on the Law of the Sea (hereafter: UNCLOS), the legal pillar of the Law of the Sea, contains, among others, the principles and goals of the abovementioned procedure. Many researchers and professors¹ have characterized the articles of the UNCLOS, referring mainly to the delimitation of the continental shelf and the EEZ, as vague, since only limited reference was made to the method/methods that ought to be followed. However, this “gap” (which will be explained in the main body of the paper) has been filled by the jurisprudence of the ICJ and arbitral tribunals, and also from states’ practice.

The demanding and perplex character of the delimitation of the maritime zones is exhibited perfectly in the dispute between Greece and Turkey over the continental shelf of the Aegean Sea. Almost 50 years have passed since the emergence of the aforesaid dispute and the situation seems to be in a deadlock, something that produces adverse results for both parties. Nevertheless, recent events that took place, and especially the Libya-Turkey Maritime Boundary Delimitation Agreement, are calling once again for the attention of the academic community.

The reasons behind the fact that the dispute has not yet been resolved, has been a subject examined by various researchers. In the research conducted on the matter, especially in Greece, quite often the Greek foreign policy has been characterized as inconsistent, ineffective and circumstantial. These criticisms drew my attention as a political scientist and drove me to start a quest for a decisive factor that probably provokes this behavior of the Greek side. In this paper, the aim is to prove that a factor that I consider to be able to explain this “behavior” of the Greek foreign policy is the Greek public opinion, the vast majority of which has a negative predisposition vis a vis Turkey. This fact, in its turn, affects the decision-making of each Greek government, which is aware of the great political cost that a misjudged choice may entail, due to the great gravity that the Greek-Turkish relations have in the public eye. Thus, this vicious cycle explains why consecutive Greek governments, which are unwilling to undertake the political cost, make safer choices and keep a more defensive and reluctant position in the face of a possible resolution of the dispute.

It is an undeniable fact that the dispute is of legal nature and for this purpose it is considered mandatory to start with the facts of the dispute, the claims of each side and, most importantly, to move on to the evolution of the Law of the Sea through relevant cases that verify the crystallization of the three-stage method,

¹ i.e. Syrigos Aggelos., Vukas Budislav, Siousouras Petros, Valinakis Yannis

which is of pivotal importance for any delimitation case, including the one at hand. Furthermore, it is essential to examine the role of the islands, their differentiation from what constitutes a rock and their respective, if any, legal effect, a subject which could influence at a great degree a future adjudication of the dispute. Also, through the jurisprudence of the ICJ, the importance of the relevant circumstances is examined and also which of them tend to maintain the greatest gravity, evaluating in this way the special/relevant circumstances that each party has presented to this day as defining for the delimitation of the Aegean Sea's continental shelf. In the final chapter of the paper, the main research question, as explained in the previous paragraph, together with the efforts of settlement of the dispute, will be examined and will be attempted to be proved.

Methodologically, I have chosen mainly the private analysis of bibliographical sources. Also, in the case of the presentation of the claims of each side apart from the abovementioned sources I opted for consulting additionally the official websites of the respective states' foreign ministries in order for them to be up to date, since some of the claims have been modified over the years following the evolution of the International Law of the Sea and political developments on an international level. Furthermore, in the second chapter, which refers to the jurisprudence of the ICJ, it was considered necessary to examine the judgments of the ICJ on the relevant cases in order to deduce how the Law of the Sea (methods, principles, relevant/special circumstances) has developed. Last but not least, statistical data of research centers and of other researchers were applied in the last chapter as supplementary elements of proof to the bibliographical sources.

Page intentionally left blank

Chapter I

Historical background

i) The historical background before the emergence of the dispute

The Greco-Turkish relations have been turbulent and unstable almost ever since the establishment of the Greek State. Nevertheless, in the 1930's, two devastating events will stigmatize the bilateral relation, the World War I Greece was in the winning camp and Turkey in the defeated camp and the Asia Minor expedition, which ended with the devastation of the Greek side and the preservation of the Turkish prestige on the other side². After these very significant historical event the "Golden Age" will rise in the bilateral relations. The powerful political leadership of Eleutherios Venizelos and Kemal Ataturk, a very significant factor in the success of this rapprochement³, inaugurated the improvement in the relations between the two countries through the diplomacy of letters⁴. The good climate will be preserved till the death of Ataturk and will be interrupted by the World War II.

Another rapprochement will be attempted from the late 40's till the mid 50's. By then, both countries "had identified their national interests with the interests of the West"⁵ and their mutual goal to join NATO will bring them closer. The highlight of this rapprochement will be the joint accession to NATO in 1952 which will be followed by a series of frequent high-level visits and the signing of the Balkan Pact (1953)⁶, and, later on, of the Balkan Alliance (1954), which was an endeavor of both countries to establish themselves as representatives and protectors of the West in the region.⁷

Nevertheless, the spreading optimism proved to be short-term, since one of the most decisive differences in the bilateral relations will emerge: the Cyprus question. This subject will lead to the progressive deterioration of the Greek-Turkish relations⁸. A series of events which begin in 1954, will lead to the Turkish invasion and occupation of northern Cyprus in 1974. The latter had significant repercussions, one of which was the emergence of the continental shelf dispute. Thus, it could be argued that the dispute was above everything else

² Svolopoulos K., *Greek Foreign Policy 1830-1981*, 2nd ed., Estia, 2017, (in Greek), p.161.

³ Syrigos A.M., *The Greek-Turkish Relations*, 3d ed., Patakis, 2018, (in Greek), p.68.

⁴ Demirozu D. & Petsas A. "The repercussions of the 1930 Greek Turkish rapprochement in Turkey" *Balkan Studies Journal*, vol. 46, 2012, p.68.

⁵ Oran B. *Turkish Foreign Policy, 1919-2006 : Facts and Analyses with Documents*, The University of Utah Press, 2010, p. 347.

⁶ The Treaty of Friendship and Collaboration signed by the Kingdom of Greece, the Turkish Republic and the Federal People's Republic of Yugoslavia, 28 February 1953

⁷ *Ibid.* p. 352.

⁸ Coufoudakis V. "Greek-Turkish Relations 1973-1983: The view from Athens" *International Security Review*, vol.9, No. 4, 1985, p. 185.

a diplomatic maneuver, a diversion of the Turkish foreign policy from the main source of confrontation at the time, which was undoubtedly Cyprus.⁹ Ever since the two fronts will stay interconnected and the situation in Cyprus will always provoke a chain reaction on the matter of the continental shelf dispute (and vice versa) in the Aegean Sea and the Eastern Mediterranean in general.

Apart from this milestone, which comes to everyone's mind as the main reason behind the emergence of the dispute at hand, numerous researchers¹⁰ have linked the continental shelf dispute with various other secondary factors and circumstances which were prevailing around that time. One of them was the oil crisis (or oil shock) in 1973. The crisis provoked a frantic rise of the price per barrel (it actually quadrupled from 3 US dollars per barrel to 12 US dollars). This created a deep concern worldwide due to the oil based energy needs that were unable to be fulfilled with these prices¹¹. Turkey was no exception, thus was eager to explore every opportunity which could fulfill its energy needs.

Also crucial has been considered the fact that in December 1973 the United Nations Conference on the Law of the Sea was convened. The rapid technological evolution allowed the exploration and exploitation of the seabed at a level which was unimaginable twenty years ago¹². The previous Convention of 1958 was starting to be considered outdated and an increasing number of newly established states (after the 60's decolonization process) were hoping for another Convention which would correspond to the new data of that era. Undoubtedly, the two conflicting groups, the pro-equidistance/median line group of States (i.e. Greece, Canada, Italy, UK, Denmark, Norway etc.) and the pro-equity group (i.e Turkey, Ireland, France, Libyan Arab Jamahiriya, Romania etc.) complicated considerably the work of the Convention. The supporters of the equidistance¹³ believed that the equidistance/median line should be considered a standard of delimitation and a basic principle and also were diminishing the idea of equity characterizing it as vague and subjective¹⁴. The other group was not willing to accept the former and was promoting, based on the 1969 North Sea Continental Shelf Case, the equitable principle as customary International Law on delimitation¹⁵. Evidently, Turkey was trying to provoke a situation in

⁹ Syrigos A.M. *op. cit.*, p.237.

¹⁰ Such as Rizas Sotirios and Kosmadopoulos Dimitrios.

¹¹ Hammes D. - Willis D. "Black Gold: "The end of Bretton Woods and the Oil Price Shocks of the 1970's" , *The Independent Review*, vol 9 ,2005, p. 501.

¹² The United Nations Convention on the Law of the Sea (A Historical Perspective) un.org/Depts/los/convention_agreements/convention_historical_perspective.htm accessed in 23 December 2019

¹³ Equidistance principle: A legal concert that supports that the maritime delimitation should conform to a median line that is at an equal distance (equidistance) from the nearest points on the baselines of two or more States between which it lies.

¹⁴ Adele A.O "Toward the Formulation of the Rule of Delimitation of Sea Boundaries between States with Adjacent or Opposite Coasts" *Virginia Journal of International Law*, vol. 19, 1979, p.214.

¹⁵ *Ibid.* p. 213.

which Greece would have to settle the dispute bilaterally before an adverse outcome in the Convention would reduce its chances for a favorable result.

Last but not least, the dispute has also been connected with the political instability in both countries. On one hand, Greece was still under the military junta, something that made the country quite vulnerable and susceptible to mistakes. On the other hand, Turkey was in the middle of a big political crisis domestically, which lasted for 2 years (1971-1974)¹⁶, and which affected importantly the country's "behavior" in foreign affairs¹⁷, a phenomenon which has repeated itself many times, since Turkey very often "looks for diversions as an outlet for the accumulated domestic pressures"¹⁸. The instability in both countries, even if it was not the most decisive of reasons, nevertheless offered the perfect ground for the outbreak of the dispute.

ii) The Facts of the Dispute

Under the light of these events and circumstances, as presented above, the dispute over the continental shelf of the Aegean Sea between Turkey and Greece commenced in 1 November 1973. Until this point, laws for oil exploration had already been enacted and were being implemented in Greece since 1959 and until 1973 Turkey had never before protested¹⁹. As proved above, a series of exogenous factors pushed Turkey to change its "silent" position on the matter and to substitute it with a more drastic one.

What drew Turkey's attention was the discovery of the Prinos oil field in 1973 outside Thassos Island. The first impression (that was disproved later) was that the oil field was rich and that would be able to cover all the energy needs of Greece on its own. This fact demonstrated to Turkey the possibilities that the Aegean Sea had to offer in the energy sector. Following the discovery of the oil field, Turkey provoked fierce reactions in Greece by granting 27 exploration permits in the Aegean to the Turkey Petroleum Company (TPAO) (1 November 1973). The region of the Aegean that the permits were referring to was between the islands of Lesbos, Chios, Ag. Eustratios and Limnos, more specifically right outside the territorial waters of those islands.²⁰ Additionally, the dangerously hostile atmosphere escalated when Ankara published the same day a map in the

¹⁶ Hale W., *Turkish Foreign Policy since 1774*, 3d ed., Routledge, 2013, p.110

¹⁷ Oran B., *op.cit.*, p 452.

¹⁸ Tsilas L. "Greek-Turkish Relations in the Post-Cold War Era", *Fordham International Law Journal*, vol. 20, 1996, p. 1593.

¹⁹ Strati A., "Greek Maritime Zones and the Delimitation with bordering States", in: Pazartzis F. & Antonopoulos K. (eds.) *90 Years since the Lausanne Treaty*, Nomiki Vivliothiki, Athens, 2012, pp. 148-149.

²⁰ Syrigos A.M., *op.cit.*, p.245.

Turkish Official Gazette, which illustrated the division of the Aegean Sea based on the median line method, but the line was drawn between the Greek and the Turkish mainland coasts, without taking into consideration the Greek islands' presence²¹.

A round of diplomatic verbal notes exchange started, right after the publication of the permits and the map, between the Ministries of Foreign Affairs of Athens and Ankara. In general, in these verbal notes, Greece was demonstrating its discontent for the map's delimitation of the continental shelf in a way that it disregarded overall the existence of the islands of the Aegean. In response, the Turkish side claimed that in this way the delimitation was producing an equitable result since it was Turkey's right to disregard the islands east of the provisional line due to their proximity to the Turkish coasts and due to the fact that if the islands were taken into consideration than the vast majority of the Aegean seabed would be Greek²².

The situation seemed to lead in negotiations on the matter, after it was proposed by the Turkish side and accepted by the Greek side, when a new tactical move from Ankara shook, once again, the already unstable, ground of the bilateral relations. The Turkish side sent the Candarli (May 1974) , a hydrographic vessel, conspicuously accompanied by 32 Turkish warships in the overlying waters of the continental shelf of the North Aegean islands without asking permission from the Greek authorities. The Candarli conducted a six-day exploration²³ without, in reality, moving further than the Turkish territorial waters²⁴. In July of the same year, Turkey granted four additional concessions and another round of exchange of diplomatic verbal notes started in which Greece government expressed once more its discontent. Evidently, this move on behalf of Turkey turned the dispute back to point zero and the situation deteriorated even more by the Turkish invasion in Cyprus²⁵.

After the events in Cyprus, the democracy will be restored in Greece and Konstantinos Karamanlis will come to power. His government will take the initiative to send a verbal note to the Turkish side in order to propose to them to appeal to the ICJ for the settlement of the bilateral dispute over the delimitation of the Aegean continental shelf. Ankara will agree at first but the rise of Demirel to power later that year (1975) will refocus the Turkish efforts in bilateral negotiations rather than the adjudication of the case²⁶. Demirel's administration

²¹ Bahcheli T. *Greek Turkish Relations Since 1955*, Westview Press, 1990, pp. 130-131.

²² *Ibid.*, p.132.

²³ Schmidt M.N., "Aegean Angst: The Greek-Turkish Dispute" *Naval War College Review* , vol. 49, 1996 , no3, p. 54.

²⁴ Syrigos A.M., *op.cit.*, p.248

²⁵ *Supra* note 21

²⁶ Greek Verbal Note 27 January 1975 and Turkish Verbal Note 6 February 1975 "Aegean Sea Continental Shelf Pleadings" 10 August 1976, p. 33.

will be the one to add the political element on the dispute, a crucial differentiation in the perspective of the two countries towards the matter.

Despite the different perspective, both sides agreed in February 1975 to hold bilateral meetings on ministerial level, aiming at the preparation of a framework for bilateral negotiations. The Sadi Irmak's government²⁷ at first and the prominence of the political character of the dispute, as stated above. After that, Turkey decided to proceed to military exercises in the Aegean between March and April 1975 as a warning towards Greece in order not to extend its territorial sea limits up to 12 nm. , since the two countries belonged to the rival groups of the United Nations Conference on the Law of the Sea²⁸ (see above p. 5). The small crisis did not have larger implications because of the US intervention. The big power had great interests in the region during the Cold War and wanted the two NATO allies and neighbors to find a way to resolve their differences, something that had a great effect in both governments' stand on the issue ²⁹. When the dialogue was restored through the facilitation of dialogue offered by the US, the Ministers of Foreign Affairs, Dimitrios Bitsios and Ihsan Caglayangil, agreed to meet in Rome in order to discuss the conditions and details of the compromise needed in order for the dispute to be brought to the Court. The Turkish side remained unwilling till that point to bring the matter to the Court and since no final decision seemed possible to be taken, the matter was referred to the high-level meeting of Karamanlis and Demirel in NATO summit in Brussels in May³⁰.

After the prime-ministerial meeting both parties agreed to, based on the joint communiqué that was issued, that they would attempt to resolve the majority of the bilateral problems via negotiations and that they would employ the ICJ for settling the continental shelf dispute. Also it was announced that two working groups of experts from each side would meet soon having as a subject the continental shelf of the Aegean³¹. Nevertheless, in September of the same year, due to the political pressure put on Demirel by Ecevit's opposition party's accusations³², Turkey backtracked, as viewed by the Greek side, by undermining the possible appeal to the ICJ as the absolutely last possible solution and by raising again the option of "substantial negotiations" and of "package deal", thus of the political aspect of the dispute³³.

²⁷ A short-term and rather unpopular government which came to power after Ecevit's resignation and was substituted by Demirel's government.

²⁸ Syrigos A.M., *op.cit.*, p. 306.

²⁹ Oran B. *op.cit.*, p. 455.

³⁰ *Ibid.*

³¹ Intercommunal Talks – Brussels joint communiqué of May 1975 – Aegean problem (Greece – Turkey) retrieved from www.search.archives.un.org, accessed in 27 December 2019

³² Bahcheli T., *op.cit.*, p. 134.

³³ *Supra* note 27.

Both governments will treat each other with great suspiciousness once more, especially when Turkey established the Fourth Army in Izmir, or Fourth Army of the Aegean which was stationed opposite the Greek Aegean islands³⁴. Karamanlis tried to maintain the dialogue open and proposed to Demirel the signing of a nonaggression pact, but the latter, despite his initial openness to such an idea, succumbed once again to the pressure of the opposition, which urged Demirel to keep a more “hardcore” position vis a vis Greece³⁵. This translated into the National Security Council’s approval of the mission (March 1976) of the hydrographic vessel Hora (Sismik I) which would proceed to seismic research in the disputed continental shelf area between Lesvos, Ag. Eustratios and the Asia Minor coast, a decision which brought the two neighbors to the verge of war in August 1976. Despite the reactions, not only of Greece but also of the international community like the USA and the USSR, the vessel proceeded with the announced research, under the eye of the armed forces of both sides. The Turkish side was insisting that the aim of this mission was purely scientific and was warning Greece that any attack would be interpreted as an attack to an unarmed ship, something that would bear the equivalent repercussions³⁶.

In this, obviously, dangerous and critical point the response of the Greek side, in order to avoid any further escalation of the situation, was to handle the crisis via the diplomatic route. In 10 August 1976 Greece referred the matter to the United Nations Security Council and simultaneously applied unilaterally to the ICJ for its settlement³⁷. More specifically, in the first case, the two countries were called upon presenting their positions. Greece accused Turkey of opting for disrespecting its sovereignty rights and provoking an additional crisis while the bilateral relations were already vulnerable due to the Turkish invasion in Cyprus. This could endanger the security of the region and could also drive to the derailment of the situation due to the outbreak of a possible war³⁸. What the Greek side requested was only the intervention of the Security Council on the matter of security³⁹ and not the examination of the legal aspects of the dispute. On the other hand, Turkey insisted on the need for the continuation of the bilateral negotiations. Also, it supported the legality of the vessel’s presence since the continental shelf of the Aegean had not been delimited and focused mainly on the demilitarization responsibilities of the eastern Aegean islands that Greece had, based on the Lausanne Treaty and the Peace Treaty of Paris. The Resolution 395 of the Security Council⁴⁰ had just stated the obvious, that the

³⁴ Tsilas L., *op.cit.*, p. 1594.

³⁵ *Supra* note 27.

³⁶ *Ibid.*

³⁷ Syrigos A.M., *op.cit.*, p. 316.

³⁸ *Ibid.*

³⁹ Oran B., *op.cit.*, p. 456.

⁴⁰ The Security Council:

efforts of settlement should continue and its tone left space for free interpretation by each camp. Overall, undeniably, Greece did not obtain what was anticipating from this effort⁴¹.

The unfortunate outcome will be repeated for Greece in its appeal to the ICJ. The appeal consisted of two parts: a) request for provisional measures and b) examination of the substance of the dispute. The provisional/interim measures that were requested on behalf of Greece were an attempt to point out the possible irreparable damage of the country's sovereignty rights in case the activities of the neighbor over the continental shelf of the Aegean continued. In order to avoid such a possibility, the Greek side wanted from the Court to impose to the Turkish side interim measures which, on the one hand, would protect its sovereignty rights over the Aegean Sea continental shelf while the final judgment of the Court was pending and, on the other hand, would safeguard the security and the peaceful relations of the region⁴². The Court decided not to proceed with the imposition of interim measures to Turkey. In its Order of 11 September 1976 justified its decision by stating that there was insufficient evidence to support the irreparable prejudice of the Greek sovereignty rights over the continental shelf. Even if that was the case the damage was able to be reimbursed or repaired by other means⁴³. Furthermore, in the Order the Court decided that the priority was to address the issue of its jurisdiction on the case before proceeding to its adjudication⁴⁴.

On this subject it is worth mentioning that the basis of jurisdiction of the Greece's appeal to the Court was the Article 17 of the General Act for the Pacific Settlement of International Disputes (1928), in which both countries had acceded (Greece in 1931 and Turkey in 1934) and the joint communiqué of

1) Appeals to the government of Greece and Turkey to exercise the utmost restraint in the present situation; 2) Urges the Governments of Greece and Turkey to do everything in their power to reduce the present tensions in the area so that the negotiating process may be facilitated; 3) Calls upon the Governments of Greece and Turkey to resume direct negotiations over their differences and appeals to them to do everything within their power to ensure that these negotiations will result in mutually acceptable solutions; 4) Invites the Governments of Greece and Turkey in this respect to continue to take into account the contribution that appropriate judicial means, in particular the International Court of Justice, are qualified to make to the settlement of any remaining legal differences which they may identify in connection with their present dispute.

⁴¹ *Supra* note 37.

⁴² *Aegean Sea Continental Shelf (Greece v Turkey)*, International Court of Justice Pleadings, Oral Arguments, Documents, 1980 ed., p.66, retrieved from www.icj-cij.org/en/case/62.

⁴³ *Aegean Sea Continental Shelf (Greece v Turkey)*, Order of 11 September 1976 , p.11 par. 32 & 33, retrieved from www.icj-cij.org/en/case/62.

⁴⁴ *Aegean Sea Continental Shelf (Greece v Turkey)*, Order of 11 September 1976 , p.14, retrieved from www.icj-cij.org/en/case/62.

Brussels of 1975⁴⁵. On 19 December 1978, the Court dismissed the case based on the lack of jurisdiction. More specifically, in the General Act for the Pacific Settlement of International Disputes the ICJ found that, due to the reservation (b)⁴⁶ in Greece's instrument of accession and the principle of reciprocity that allowed Turkey to invoke it, the Act could not be the basis of jurisdiction for this case⁴⁷. Nor did the joint Communiqué of Brussels in which, according to the Court, the understanding between the countries seemed to be the appeal to the Court only through a compromis (special agreement) for the Aegean Sea continental shelf dispute and not the unilateral appeal to the Court, since the Turkish side insisted that, for the Turkish government, the two parties have not "jointly and severally accepted the jurisdiction of the Court in the present matter when they have never agreed on the scope of the matter to be submitted to the Court"⁴⁸.

The rapprochements that followed this fruitless effort of the Greek party along with the 1987 crisis will be examined and analyzed in the last Chapter of the paper. What is considered of high importance at this point is to present concisely the claims of each side and in Chapter II the legal parameters of the dispute which were epigrammatically mentioned in the introduction.

iii) The Claims of each side

For Greece the dispute is purely of legal nature, something that has been verified by the Judgment of the ICJ⁴⁹. For that reason the basis of the claims of the Greek party is the International Law and more specifically, the applicable provisions of the Law of the Sea, Conventional and Customary⁵⁰. The UNCLOS III, which was ratified by the Greek Law 2321/1995, rendered Greece the right to extent its continental shelf outer limit up to 200 nm. (where the distance criterion allows it) , which under the older legal framework of the Geneva Convention would be

⁴⁵ *Aegean Sea Continental Shelf (Greece v Turkey)*, International Court of Justice Pleadings, Oral Arguments, Documents, 1980 ed., p.10 par. 32, retrieved from www.icj-cij.org/en/case/62.

⁴⁶ "Disputes concerning questions which by international Law are solely within the domestic jurisdiction of States, and in particular disputes relating to the territorial status of Greece, including disputes relating to its right of sovereignty over its ports and lines of communication." In Greek Accession to the General Act on the Pacific Settlement of International Disputes of 1928, 14 September 1931, *League of Nations Treaty Series* retrieved from www.treaties.un.org/Pages/LONOnline.aspx?clang=_en.

⁴⁷ *Aegean Sea Continental Shelf (Greece v Turkey)*, Judgment of 19 December 1976 , p.37 par 90, retrieved from www.icj-cij.org/en/case/62.

⁴⁸ *Aegean Sea Continental Shelf (Greece v Turkey)*, Judgment of 19 December 1976 , p.41 par 99, retrieved from www.icj-cij.org/en/case/62.

⁴⁹ *Ibid* p. 13 par. 31.

⁵⁰ Sioussouras P. & Chrysochou G., "The Aegean Dispute in the Context of Contermporary Judicial Decisions on Maritime Delimitation", *Laws Journal*, vol. 3, 2014 , p. 14.

unapproachable⁵¹. Also, according to the Art. 121 par. 2 the islands are entitled to their own continental shelf (and additionally to territorial waters, contiguous zone and EEZ), thus they cannot be disregarded in the case of the continental shelf delimitation. This rule is equally binding for the non-signatories to the Convention, since it appertains to the Customary Law⁵². Taking into consideration the former, the Greek side accepts only the delimitation of the continental shelf between the eastern Greek islands of the Aegean and the Turkish coasts⁵³. Furthermore, the delimitation method that Greece promotes (ever since the Conference convened) is the median line/equidistance method, which is believed to be the appropriate for the just settlement of the dispute⁵⁴.

On the other side, for the Turkish party, the dispute is primarily of political and economic character⁵⁵. Thus, ever since Demirel's administration, the bilateral negotiations were always considered as the appropriate route to settle the dispute. Additionally, great importance is given to the geomorphology of the Aegean continental shelf, which according to Ankara, is the natural prolongation of the Anatolian coast and should be taken into consideration along with the proportionality of the Turkish coasts compared to the Eastern Greek islands of the Aegean⁵⁶. Furthermore, the Aegean islands ought to have only limited effect to the final delimitation outcome, similar to the one it had in cases such as the France-UK Channel Islands Case, Libya-Tunisia case or the Jan Mayen Case⁵⁷. Also, the limited effect of the islands is justified by the semi-enclosed character of the Aegean⁵⁸, otherwise the latter will be transformed into a "Greek lake". Last but not least, Ankara underlines the fact that in a maritime delimitation case, as this one, the sole goal should be to achieve an equitable result having taken into consideration all the relevant circumstances⁵⁹, as the ones presented above. Only in this way could ever the vital security interests of the Turkish nation to be protected⁶⁰.

⁵¹ Rozakis Ch. "The Greek Continental Shelf", in: Kariotis T.C., Kluwer A. (eds.) *Greece and the Law of the Sea*, Law International, Hague, 1997, p. 86.

⁵² Hellenic Ministry of Foreign Affairs www.mfa.gr/en/issues-of-greek-turkish-relations/relevant-documents/delimitation-of-the-continental-shelf.html, accessed in 02 January 2020

⁵³ Siousouras P. & Chrysochou G., *op.cit.*, p. 15.

⁵⁴ *Supra* note 50.

⁵⁵ *Supra* note 27.

⁵⁶ Van Dyke J.M "The Aegean Sea Dispute: Options and Avenues", *Marine Policy*, vol. 20, No 5, 1996, p. 398.

⁵⁷ *Ibid.*, p. 400.

⁵⁸ Syrigos A.M., *op.cit.*, p. 247.

⁵⁹ Turkish Ministry of Foreign Affairs www.mfa.gov.tr/background-note-on-aegean-disputes.en.mfa accessed in 02 January 2020

⁶⁰ *Supra* note 55

Chapter II

The evolution of the Law of the Sea – Legal Parameters concerning the Dispute

In this Chapter an attempt is made to track down the evolution of the Law of the Sea on the matter of the continental shelf delimitation, an attempt which derives from the fact that the International Law (including the Law of the Sea, since it constitutes part of it), similar to a living organism, evolves constantly under the influence of the international community⁶¹. Since the dispute is of legal nature, to follow the aforesaid evolution is obligatory, in order to be able to analyze it critically from a legal point of view, taking into consideration the changes that have occurred during these almost fifty years since its emergence. Given the fact that these changes are numerous and impossible to be enumerated and analyzed in a paper of this extent, I have chosen the ones that are the most determining for the specific dispute (especially in a probable adjudication of the case before the ICJ), which have simultaneously caused significant friction between the parties. Consequently, in this chapter I will refer to the three-stage method (or approach), the role of the islands, their differentiation from what constitutes a rock and their respective, if any, legal effect and finally to the special/relevant circumstances and which of them have (or don't have) significant effect on the judgments of the ICJ over the years.

i) The three-stage method⁶²

The term continental shelf has its roots in geology and is defined as “that part of the continental margin which is between the shoreline and the shelf break or, where there is no noticeable slope, between the shoreline and the point where the depth of the superjacent water is approximately between 100 and 200 meters”⁶³. Prior to the World War II the states, mainly due to the lack of the appropriate technological means at the time, had not expressed wide interest in the natural resources in the seabed⁶⁴. Nevertheless, as mentioned in Chapter I the progress that took place in the technological sector, along with the constantly increasing energy needs worldwide, changed the scenery. In 1945 the US

⁶¹ Roukounas E. *Public International Law*, 2nd ed., Nomiki Vivliothiki, 2011, (in Greek), p. 4.

⁶² First step: The drawing of a provisional equidistance line.

Second step: The adjustment of the line taking into consideration the relevant circumstances that might be, according to the Court, significant in order to achieve an equitable result.

Third step: The Court verifies that the result is in fact equitable mainly through comparing the ratio of the respective coastal lengths and the ratio of the relevant maritime area of each State by reference to the delimitation line.

⁶³ The definition of the Continental Shelf and criteria for the establishment of its outer limits, retrieved from www.un.org/Depts/los/clcs_new/continental_shelf_description.htm, accessed in 03 December 2019

⁶⁴ Tanaka Y. *The International Law of the Sea*, 3d ed., Cambridge University Press, 2019, pp. 161-162.

President Harry S. Truman took the initiative by declaring, among others, the following:

“Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control”⁶⁵.

This unilateral declaration of the US had a great effect and many States (about twenty) followed its lead and proclaimed sovereignty over their respective continental shelf⁶⁶. Undoubtedly, the State practice at this point could be characterized as inconsistent⁶⁷. Nevertheless, the ongoing interest of the countries all around the world brought out the necessity for the codification of this field of International Law, which would establish in this way a legal framework for the newly introduced (legally) maritime zone: the continental shelf⁶⁸.

The first definition was given in the Geneva Convention on the Continental Shelf of 1958 in Article 1:

“For the purpose of these articles, the term “continental shelf” is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.”

As it is understood the landward limit of the continental shelf was the outer limit of the territorial sea and the outer limit of the continental shelf was based on two criteria: the 200 meters isobath⁶⁹ and the exploitability test⁷⁰. Practically this meant that the outer limit of the continental shelf was defined at the point that the water depth reached the 200 meters, but if the exploitation was possible to take place further than the 200meters water depth(i.e. 1.000 m.) , then the outer limit was transferred to that point (i.e. the 1.000 m. point). Evidently, the

⁶⁵ US Presidential Proclamation No2667 28th September 1945 retrieved from www.trumanlibrary.gov/library/proclamations, accessed in 09 November 2019.

⁶⁶ *Supra* note 62

⁶⁷ Rozakis Ch. “Continental Shelf”, in: Bernhardt (ed.), *Encyclopedia of Public International Law*, vol.11, North Holland, 1989, p. 84.

⁶⁸ Roukounas E., *op. cit.*, p.298.

⁶⁹ A line connecting points of equal water depth.

⁷⁰ *Supra* note 66.

complexity and the various unanswered questions that arose from the verbiage of the article created numerous problems in its application⁷¹.

What is considered of high importance in the Geneva Convention for the case presented in this paper was the Article 6⁷², according to which the method of the equidistance /special circumstances was favored as principal for the delimitation of the continental shelf. Nevertheless, and despite its prominent position in the Geneva Convention, the equidistance principle's "value" was significantly challenged in the North Sea Continental Shelf Sea case in 1969. There the Court considered that the abovementioned article "did not embody or crystallize any pre-existing or emergent rule of customary law, according to which the delimitation of continental shelf areas between adjacent States must, unless the Parties otherwise agree, be carried out on an equidistance-special circumstances basis"⁷³. Also worth mentioning is the Court's reference to the principle of equity as a goal⁷⁴. This case became the basis for the Turkish claims, among others, since it proved, according to them, that the equidistance was only a method and not the only method for the delimitation of the continental shelf. At this point, the very important par. 57 of the Court's Judgment has to be underlined, according to which the median line remained the only method of delimitation of the continental shelf between opposite States⁷⁵, which of course is the case between Turkey and Greece. Thus this position of the Turkish side can be characterized as quite weak.

The case created the two conflicting groups described in Chapter I: the pro-equidistance/median line group of States (22 states, Greece was between them) and the pro-equity group (29 states, Turkey was between them). The two groups started an atypical war between them, which became more intense during the Third United Nations Conference on the Law of the Sea. Quite significant was also the France-UK Channel Islands Case (1977) since it took place simultaneously with the United Nation's Conference and it can be said that it was the birth place of the three-stage approach since in the award of the case in par. 70 it is clearly stated the following: '...the use of the equidistance method as the means of

⁷¹ *Ibid.*

⁷² "Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured" ..

⁷³ *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment of 20 February 1969, p. 41 par. 69, retrieved from www.icj-cij.org/en/case/51.

⁷⁴ *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment of 20 February 1969, p. 50 par. 92, retrieved from www.icj-cij.org/en/case/51.

⁷⁵ Roukounas E., *op. cit.*, p.356

achieving an equitable solution...”⁷⁶. So it is the first time that a combined approach was starting to shape, meaning that the equidistance could be considered as a starting point in order to achieve an equitable result (the goal), the rationale behind the three-stage approach.

Nevertheless, the award did not have a great effect in the final text of the UNCLOS, in which the equidistance (and the median line) term was excluded (apart from Art. 15 for the delimitation of the Territorial Sea) from Art. 74 and Art. 83 for the delimitation of the EEZ and the continental shelf respectively. This seemed like a “defeat” for the pro-equidistance group. But the defeat in a battle is widely known that it does not automatically mean defeat in the war. In the delimitation case of the continental shelf between Tunisia and the Libyan Arab Jamahiriya the equidistance was not considered by the Court a mandatory legal principle or a favored method in relation to other methods, but it was added that the equidistance line would be applied as a delimitation method, if that would produce an equitable result⁷⁷. A very significant point in the judgment of the Court was that the delimitation of the second sector, to the point where the coasts become opposite, was based on the application of the equidistance, taking into account the relevant circumstances presented, something that was considered to produce an equitable result⁷⁸.

The ICJ dealt with a very similar situation in the Gulf of Maine Case (Canada v USA) in 1984. Again, when the adjacent relation of the coasts (in which the equidistance was not favored, as in the Continental Shelf Case of 1982) became at a certain point opposite, the ICJ in its judgment⁷⁹ repeated its position that in such an occasion only the equidistance/median line can produce an equitable result⁸⁰. The median line corrected taking into consideration the existing relevant circumstances of the case (proportionality of the coasts and the existence of the tiny islands). Akin to the previous was the approach in the 1985 delimitation case between Malta and Libya (opposite coasts in the Mediterranean Sea) , in which the delimitation had as a starting point a provisional median line which was adjusted after taking into consideration the relevant circumstances that the Court considered significant. The Court once

⁷⁶ *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK,France)*, Reports of International Arbitral Awards, Vol. XVIII, p.46., retrieved from legal.un.org/riaa/cases/vol_XVIII/3-413.pdf.

⁷⁷ *Continental Shelf Case (Tunisia/Libyan Arab Jamahiriya)*, Judgment of 24 February 1982, pp. 64-65 par. 109-110, retrieved from www.icj-cij.org/en/case/63.

⁷⁸ *Continental Shelf Case (Tunisia/Libyan Arab Jamahiriya)*, Judgment of 24 February 1982, p. 88 par. 126, retrieved from www.icj-cij.org/en/case/63.

⁷⁹ *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment of 12 October 1984, pp. 333-334 par. 216-217, retrieved from www.icj-cij.org/en/case-related/67.

⁸⁰ Tanja G.J., *The legal determination of international maritime boundaries*, Springer, 1990, p. 6.

again repeated its position that this method was the appropriate in order to achieve the desired equitable result⁸¹.

Much clearer was the position of the Court in the Jan Mayen Case in which it stated that: “prima facie, a median line delimitation between opposite coasts results in general in equitable solution”⁸². Additionally, the same conclusion was drawn from the arbitral tribunal in the Eritrea Yemen case in 1999⁸³.

It is obvious that the three-stage method has found a prominent position in the cases of the delimitation of the continental shelf (or EEZ) between States with opposite coasts. Gradually, the method is being applied occasionally (more often than in the past) also in cases between States with adjacent States⁸⁴. Such cases are the Qatar v Bahrain case of 2001 and the Cameroon v Nigeria case of 2002. In the former a significant view is expressed by the Court in its final judgment that needs to be underlined here:

“The Court further notes that the equidistance/special circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated.”⁸⁵

In this way the Court recognized the close relation between the two methods and pointed out the common elements that characterize them, rather than their differences. Furthermore, the crystallization of the three-step method and the harmonization of the Court’s methodology is verified by very recent cases that were brought before the Court such as the Romania v Ukraine case of 2009 and the Nicaragua v Colombia case of 2012⁸⁶.

In conclusion, even if every case of delimitation is unique (*unicum*), in the recent cases, the ICJ mainly and, moreover, the arbitral tribunals have shown a consistency in the method, based on which the delimitation of the continental shelf (and the EEZ) is taking place. Hence, in the possibility of a future adjudication of the case, it can be argued with some certainty that the Court, for

⁸¹ *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment of 3 June 1985, pp. 55-56 par. 77-78 retrieved from www.icj-cij.org/en/case-related/68.

⁸² *Case Concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)*, Judgment of 14 June 1993, p.32 par. 64, retrieved from www.icj-cij.org/en/case/78

⁸³ *Sovereignty and Maritime Delimitation in the Red Sea (Eritrea/Yemen)*, Award of the Arbitral Tribunal in the Second Stage of the Proceedings, p.41 par. 131, retrieved from www.pca-cpa.org/en/cases/81

⁸⁴ Siousouras P. & Chrysochou G., *op.cit.*, p. 21.

⁸⁵ *Case Concerning Maritime Delimitation and the Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)*, Judgment of 16 March 2001, p.75 par. 231, retrieved from www.icj-cij.org/en/case-related/87

⁸⁶ *Supra* note 83, p. 23.

the delimitation of the Aegean continental shelf, will probably follow the three-stage method presented above.

ii) The role of the islands, and rock and their respective legal effect

The legal regime of the islands and rocks is governed by the Art 121 of UNCLOS⁸⁷, according to which the islands are entitled to territorial sea, contiguous zone, continental shelf and EEZ. The Convention distinguishes them from a rock based on the following criteria: a rock cannot sustain human habitation or economic life of their own. In this case the rock is not entitled to continental shelf or EEZ, but it is entitled to territorial sea.

Unlike the three-stage approach that tends to become, in recent years, a standard as a method of delimitation, the legal effect of the islands does not follow the same consistency in the ICJ jurisprudence. Despite the fact that the Article of the Convention governing their regime is much more perspicuous than the Articles referring to the delimitation of the continental shelf and the EEZ, the Court seems to follow a quite ambiguous approach when it comes to attribute them (the islands) continental shelf (and/or EEZ). In the Channel Islands' Case between the UK and France the islands situated in the Atlantic were given full or half effect and the islands west of the Anglo-Norman coasts were rendered only 12 nm. territorial sea due to special circumstances⁸⁸. The same variability (none effect, half effect or full effect) characterized almost all the following cases such as the ones between Eritrea and Yemen (1999) and between Bahrain and Qatar (2001) (also the Canada-France Maritime Boundary Case of 1992, arbitration)⁸⁹. Likewise, the same conclusion derives from recent cases. In the Romania v Ukraine case (2009) the Serpent Island was not included as a base point for the provisional equidistance line⁹⁰. One of the most peculiar approaches of the ICJ regarding the islands and rocks and their respective legal effect was noted in the Nicaragua v Colombia case (2012). More specifically, despite the fact that it

⁸⁷ 1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

⁸⁸ Roukounas E., op. cit., p.358.

⁸⁹ *Ibid.*, pp. 359-365

⁹⁰ *Maritime Delimitation in the Black Sea (Romania v Ukraine)*, Judgment of 3 February 2009, p.52 par.149, p. 63 par. 179 & p. 65 par. 187, retrieved from www.icj-cij/en/case/132

based its decision on the Qatar v Bahrain case, where it was underlined that “In accordance with Article 121, paragraph 2, of the 1982 Convention on the Law of the Sea, which reflects customary international Law, islands regardless of their size, in this respect enjoy the same status, and therefore generate the same maritime rights, as other land territory”⁹¹, the Court denied to, in the case of the Serrana island, render it EEZ, continental shelf or to include it in the base points for the delimitation due to its small size⁹². The ambiguity and the inconsistency continue since the Court did not even proceed to the crucial distinction of whether the Serrana island was in fact an island or a rock⁹³. Other islands in the case, such as the San Andres islands, which were used as base points, were treated in totally different way by the Court, making it almost impossible to follow its reasoning behind this differentiation in its approach.

In general, as it can be easily understood, the legal effect of the islands varies from case to case. This realization makes it rather difficult to extract a solid conclusion as to which the legal effect of the Aegean islands would be in an adjudication of the case. But in this point it worth making three comments. The first is that the Aegean has a very unique feature: the number of its islands, islets and rocks that reaches the 3.000, an element which is not met in other cases and which is probable to have a special gravity in the case. The second comment is referring to the fact that a considerable number of the islands in the Aegean Sea are more densely populated and bigger in size than many of the islands referred in the aforesaid cases. Their population surpasses in number the small number of inhabitants of the Serpent island for example (only 100) and their effect is possible to be greater based on that criteria⁹⁴. The last comment is about the fact that in the majority of the cases, the Court recognized even to the smallest of islands (like Serpent) a 12 nm. territorial sea. The latter vindicates the Greek claims that the islands are entitled up to 12 nm. territorial sea, while Turkey considers this possibility a *casus belli*.

iii) Special/Relevant circumstances

The relevant circumstances are divided into two big categories: the geographic and the non-geographic. Into the first category fall the configuration of the coasts, the coastal length and the presence of islands. Geology, geomorphology, security, political considerations, socio-economic conditions and the interests of third States belong to the second category. It is reminded that according to the three-stage method the provisional equidistance line is shifted in case the

⁹¹ *Case Concerning Maritime Delimitation and the Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)*, Judgment of 16 March 2001, p.61 par. 185, retrieved from www.icj-cij.org/en/case-related/87.

⁹² Sioussouras P. & Chrysochou G., *op.cit.*, p. 31.

⁹³ *Ibid.*

⁹⁴ *Ibid.*, p. 36.

relevant circumstances, according to the Court, justifies it. What has been noticed is that the former (geographic) tend to have a more dominant and decisive presence in case law⁹⁵.

This tendency is verified by the fact that the ICJ in older cases, as in the North Sea case (1969), attributed great significance in natural prolongation⁹⁶ for example (geomorphologic feature) as a relevant circumstance, but more than a decade after, the Court, in the case of Libya – Tunisia case (1982), denies to include the very same factor as decisive for the delimitation procedure⁹⁷. Equally dismissive is the Court in cases where the economic element is raised by the parties. This position is verified in two very recent cases, in Black Sea case (Ukraine v Romania, 2009) and the Nicaragua v Colombia case (2012) where it was clearly underlined that the resource-related criteria are not generally applied as relevant circumstances⁹⁸.

Consequently, it can be argued that the Court rarely takes into consideration relevant circumstances of a more subjective nature as the non-geographic claims often made by the States. The ICJ by making cautious approach to subjective criteria is trying to maintain its fair and impartial stature⁹⁹. Thus, in the Aegean Sea case the Court, it is more likely, to focus on the geographic relevant circumstances mentioned above rather than the non-geographic claims made by each side, especially by Turkey, claims of which include the natural prolongation and its vital economic interests in the Aegean . Regarding the geographic circumstances, as mentioned above in the case of the islands, it is quite difficult to make confident and safe predictions on how they will affect the delimitation due to the variability that the Court's approach presents and the uncommon geographic configuration of the Aegean.

⁹⁵ Evans M. E., "Maritime Boundary Delimitation", in : Rothwell D.R, Elferink A.G, & Scott K. (eds), *The Oxford Handbook of the Law of the Sea*, Oxford University Press, 2015, p. 269.

⁹⁶ Traditional position of Turkey is that a percentage of the Aegean continental shelf is the natural prolongation of the Anatolian coast.

⁹⁷ Roukounas E., op. cit., pp. 357-360.

⁹⁸ *Maritime Delimitation in the Black Sea (Romania v Ukraine)*, Judgment of 3 February 2009, p. 68 par. 198, retrieved from www.icj-cij/en/case/132 & *Territorial and Maritime Dispute (Nicaragua v Colombia)*, Judgment of 19 November 2012, p.86 par.223, retrieved from www.icj-cij/en/case/124

⁹⁹ *Supra* note 94, p. 275.

Chapter III

Efforts for peaceful settlement of the dispute and the role of the Greek public opinion

i) Attempts of peaceful settlement of the dispute

The first effort of peaceful settlement of the dispute takes place right after the failed attempt of Greece to resolve the dispute via judicial means. On November 1976 the two sides resumed the dialogue between them at the level of meeting of experts after the two Foreign Ministers, Bitsios and Caglayangil, initiated once again the bilateral dialogue¹⁰⁰. In one of these meetings of experts, the Bern Agreement was signed, which contained main principles that would create a *modus operandi* for the time period that the bilateral negotiations were in progress. Despite this positive step, that created a breeding ground for the negotiations that followed, the latter will not produce any result. The Ecevit's government that came to power in 1978 in the place of Demirel's could have changed the final outcome of the negotiations as it offered a chance for a fresh start. Ultimately, it did not affect positively the fruitless result mainly due to the domestic pressure in Greece that the opposition party of Papandreou was putting on Karamanlis in order not to continue the negotiations (he did not consider them the appropriate mean of settlement)¹⁰¹. The Ecevit's position also became more rigid and his National Defense concept was targeting Greece as a first-class threat to Turkey¹⁰².

What turned this Agreement into one of the most controversial aspects of this dispute was paragraph 6 which stated:

“The two parties undertake to refrain from any initiative or act concerning the Aegean continental shelf that might trouble the negotiations.”

The two sides perceived the specific paragraph differently. For the Greek side the time that this paragraph and the Bern agreement in general was valid for was the time period the specific negotiations which were taking place. For the Turkish side, this *modus operandi* was the basis for any future negotiations until the dispute reaches to a settlement. After the unsuccessful outcome of the negotiations Greece informed both Turkey and the United Nations Security Council that the Bern Agreement was only a temporary measure to facilitate the

¹⁰⁰ Syrigos A., *op.cit.*, p. 326.

¹⁰¹ Oran B., *op.cit.* pp. 456-457.

¹⁰² *Ibid.*

negotiations and after that Greece considers it obsolete¹⁰³. Turkey persists to its position till this day¹⁰⁴. The negotiations ended in 1981.

From 1981 till the 1987 crisis the bilateral relations were affected by the declaration of Northern Cyprus as an independent state in 1983. The communication had already been quite limited after the Papandreou's rise to power but this move of the Turkish side was a strong hit. From then on, the dialogue was practically non-existent, the number of "hot incidents" in the Aegean Sea increased and the two sides were holding to their rigid positions without being able to find common ground for negotiations¹⁰⁵.

In 1985 Greece announced plans to nationalize a Canadian-led consortium. The consortium was planning to drill for oil 8 nautical miles out of Thassos, beyond the territorial waters of Greece, in disputed continental shelf area. Officially, the reason behind this decision of the Greek Government to nationalize the consortium was to control any activity and to avoid the drilling beyond the 6 nautical miles, something that it was anticipated to provoke reactions from Turkey¹⁰⁶. The latter did not accept the explanation offered by the Greek side and the suspiciousness emerged once again.. Ankara stated, in an official complaint, that it would not accept any change on the territorial waters issue as a fait accompli¹⁰⁷.

Turkey, despite the insistence of Greece, that its government had no plans to proceed with the drilling beyond its territorial sea, decided to send in the beginning of March the research vessel "Piri Reis" near Thasos Island accompanied by Turkish warships. A few days later another official complaint of Ankara declared that the decision of the Greek government was a clear proof that Greece was violating the Article 6 of the Bern Agreement. The Greek side reminded to Turkey that the Bern Agreement was only the framework of the negotiations that came to an end in 1981¹⁰⁸. The crisis seemed inevitable. In 26 March 1987, after having granted new exploration permits to TPAO for exploration and research over disputed continental shelf in the Northern Aegean, Turkish government, with the instigation of the National Security Council, announced that the known from the 1976 crisis, research vessel Sismik-I was planned to proceed to research activities between Samothrace and Thasos

¹⁰³ Ioannou K. & Strati A., *Law of the Sea*, 4th ed., Nomiki Vivliothiki, 2013, (in Greek), pp. 436-437

¹⁰⁴ Turkish Ministry of Foreign Affairs www.mfa.gov.tr/background-note-on-aegean-disputes.en.mfa

¹⁰⁵ Valinakis Y., "From the Cold war to the New Era", in: Valinakis Y. (ed.), *Greek Foreign and European Policy 1990-2010*, Sideris, 2010, (in Greek), p. 40.

¹⁰⁶ Cowel A. "Greeks and Turks Ease Aegean Crisis" *The New York Times*, 29 March 1987 www.nytimes.com/1987/03/29/world/greeks-and-turks-ease-aegean-crisis.html.

¹⁰⁷ Oran B., *op.cit.* p. 586

¹⁰⁸ Syrigos A., *op. cit.*, p. 380

accompanied by Turkish warships.¹⁰⁹ . Any Greek intervention or attack to the vessel would be considered a *casus belli*.

The next day the Greek Prime Minister reacted fiercely stating that the Greek armed forces were ready to protect the sovereignty rights. Turkey reacted similarly to the warning. What probably caused the de-escalation of the crisis was that Papandreou attempted to do an opening to Bulgaria in case the situation ended up in war. Zhivkov, who was not on good terms with Turkey at the time, did not reassure Greece about Bulgaria's position in such a development, but the move of Athens worried the USA and NATO, which pressurized Turkey to end the crisis before it derailed¹¹⁰. In March 28 the Sismik-I left Dardanelia, avoiding entering the disputed area.

The bilateral relations commenced on a different basis after the crisis. The dialogue was the priority. The two Prime Ministers, Andreas Papandreou and Turgut Ozal, were leading this rapprochement. They decided, for a more substantial outcome, to meet in person in Davos where the World Economic Forum would take place on 7 January 1988. The climate of the meeting was euphoric. Both sides agreed on the necessity to avoid any similar crises in the future and to adopt a series of Confidence Building Measures (in the fields of tourism, trade, communications, cultural exchanges)¹¹¹. As for the continental shelf there was not a great change in the rhetoric of each side. The building of confidence and trust between the two parties was considered a priority and the discussion over important issues had to be postponed. The Davos "spirit" (as it was named by the media) did not survive for more than a few months and the rapprochement ended in September 1988.

The final rapprochement, after a quite turbulent decade in the bilateral relations will take place from 1999 till 2003. Two physical phenomena will bring a change in the relations between Athens and Ankara; two earthquakes that hit both countries within two months (August-September 1999). The humanitarian aid from Greece to Turkey and vice versa exhibited that there is still space for compassion and understanding despite the political obstacles. It was a good starting point for opening a new chapter in the Greek-Turkish relations. Within this warmed atmosphere created by the "earthquake diplomacy", a very critical turn of the Greek foreign policy was marked when it decided to accept and support the European prospect of Turkey¹¹². There was a belief that the rivalry would stop if Turkey was welcomed in the European family. Nevertheless,

¹⁰⁹ *Supra* note 106, pp. 587-588

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² Syrigos A., *op. cit.*, p. 546

Greece's support had a price; conditions that Turkey would have to accept in order to ensure this crucial support¹¹³.

In the Helsinki European Council (10-11 December 1999), after continuous pressure from the Greek government, the Turkish candidacy for accession in the EU was subjected to some criteria that had to be fulfilled. Among them the most important for the matter at hand was the following:

"...In this respect the European Council stresses out the principle of peaceful settlement of disputes in accordance with the United Nations Charter and urges candidate States to make every effort to resolve any outstanding border disputes and other related issues. Failing this they should within a reasonable time bring the dispute to the International Court of Justice"

Greece managed to connect the European accession of Turkey with the peaceful settlement of any disputes, including of course the one about the delimitation of the continental shelf, which at that time many believed that could give the necessary boost for the resolution of these bilateral problems. Apart from the European element, both sides made an effort to strengthen their cooperation on an economical level and continuing with further Confidence Building Measures, in few words in the "soft politics" sphere¹¹⁴.

In 2002, a personality which would change the face of Turkey, Rejep Tayip Erdogan, came to power. During his first period of governance the good climate was maintained. In fact, in 2003, the two sides came very close to a formula that could bring the desired results. What was proposed was first the extension of the territorial sea to : i) the mainland to 12 nautical miles ii) to some islands to 8, 9 or 10 nautical miles and iii) to the islands opposite the Turkish coast the limit would remain to 6 nautical miles. After the agreement between the two sides and the mutual acceptance of those limits then the two sides would proceed to the delimitation of the continental shelf. If the two sides could not agree on it, then they would proceed, through the signing of a compromis, to an appeal to the ICJ for settling definitively the dispute. Due to the upcoming elections in Greece in 2004 Simitis administration was reluctant to take the risk to proceed with the plan¹¹⁵. This was the last serious of a series of efforts for a peaceful settlement of the dispute till this day.

In 2010 Greece was struck by the economic crisis and the resolution of the dispute was far from a priority since the country was fighting for its survival. Erdogan, on the other hand (especially after the failed coup d' etat attmempt in

¹¹³ Fotiou E., "The Greek-Turkish Relations". In: Valinakis Y. (ed.), *Greek Foreign and European Policy 1990-2010*, Sideris, 2010, (in Greek), p. 55.

¹¹⁴ *Ibid.* p.56.

¹¹⁵ Syrigos A., *op. cit.*, pp. 577-580.

2016) focused mainly on building the international prestige of Turkey and making the country the regional power promised in the Davutoglu doctrine¹¹⁶.

ii) Assessment of the Greek Foreign Policy and the role of the Greek public opinion

This attempt to present the Greek public opinion as a decisive factor in the inconsistency that the Greek Foreign Policy has exhibited occasionally over the years does not derive from the denial of the other factors that numerous experts and analysts have already pointed out. Thus, I feel obligated at this point to underline that, in this paper, I am trying to highlight an additional factor which influences the Greek Foreign Policy on the matter, which according to my opinion has not been given enough credit, and not to downplay the significance of the other factors. Furthermore, I need to add that this critical view of the Greek Foreign policy does not imply that the Greek side is the one (or the only one) to be held responsible for the failure of the settlement of the dispute. The responsibilities of each side have been shared accordingly in the works of other analysts and experts of the field and do not constitute part of this paper.

The public opinion has been one of the most demanding terms when it comes to its definition, due to the lack of a consensus among the experts of the field¹¹⁷. Nevertheless, one of these definitions, which seem quite simple and understandable, supported by some of the researchers, is that the public opinion is the opinion of the majority, or more elaborately, a phenomenon in which the covey of the members of a society interact with each other after the emergence of a public issue, a procedure which ends up in a consensus over the issue¹¹⁸.

There is a group of experts that supports that in the democratic societies the public opinion is a decisive factor (among others such as the advocacy groups or the media) that influences the foreign policy. The influence concerns not so much the determination of specific political goals for the foreign policy, but the shaping of its limits¹¹⁹. It has been proved that the public opinion is very influential in cases of major political significance such as the big political crises, mainly on an international level, or in the cases of war¹²⁰. An example that verifies this is the fact that the vast majority of the American people (65%) supported the

¹¹⁶ Grigoriadis I.N., *The Davutoglu Doctrine and Turkish Foreign Policy*, Working Paper No 8, Hellenic Foundation for European & Foreign Policy, 2010, p. 4.

¹¹⁷ Dewey J., *The public and its problems*, Holt, Rinehart and Winston, 1967, p.177.

¹¹⁸ Goldhamer H., "Public Opinion and Personality", *The American Journal of Sociology*, vol. LV, 1949-1950, pp. 350-354.

¹¹⁹ Almond G., *The American People and Foreign Policy*, Preaeger, 1960, pp. 54-55

¹²⁰ *Ibid.*

possibility of a war against Iraq, something that fortified Bush's Senior decision to initiate the Gulf War (1990-1991)¹²¹.

Therefore, it is quite reasonable to assume that the Greek-Turkish relations are placed very high in the public opinion's attention due to the fact that their history includes plethora of crises and wars. It is equally logical to assume that given the historical background and even the very recent events, the Greek public opinion is predisposed negatively towards the neighboring country.

During the 1980's decade Papandreou's government was the one that had to face the 1987 crisis. During the first period 1981-1985, he was against any type of dialogue with Turkey and maintained a harsh profile, which he maintained until 1985, which was an election year, trying to win over the electorate¹²². It should be reminded that in 1983 the pseudo state of Northern Cyprus had unilaterally declared its independence, creating an additional element to the already negative predisposition of the Greek public opinion towards Turkey. Thus, at this point what was needed from him was to demonstrate a more decisive and strict position. But as will be proved below by a recently conducted survey, the Greek public opinion is also characterized by a tendency to suspicion and pessimism when it comes to foreign policy, preferring this way more secure options, away from "surprises" and breakthroughs. This is the limit that the public opinion of Greece usually sets. The Papandreou's policy was shaped accordingly. In the 1987 crisis he maintained his hard line but on the other hand in Davos he exhibited a milder approach to the Turkish side, trying to avoid another crisis or an unpleasant and uncalculated result. In a few words he was trying to balance all the moods of the public opinion.

In 1999 earthquakes the sentiment of the public opinion was reversed. The Greeks seeing their fellow human beings suffering from the same tragedy felt compassionate towards them¹²³. The oppressors of the former Ottoman Empire with the expansionist visions became the neighbors that were in need in the same way they were¹²⁴. The chance was unique for the attempt of a new rapprochement¹²⁵. In fact in this context the rapprochement that followed was the most promising for the settlement of the dispute since its emergence. The limit set by the public opinion was more flexible than in previous times and that was reflected immediately in the foreign policy that Greece followed. As mentioned above this rapprochement was focused mainly in "soft politics"

¹²¹ Mueller J., "American Public Opinion and the Gulf War", *Public Opinion Quarterly*, vol. 57, 1993, pp. 90-92.

¹²² *Supra* note 106.

¹²³ Theodossopoulos D., "Politics of Friendship, worldviews of mistrust: The Greek-Turkish rapprochement in local conversation", in: Theodossopoulos D. (ed.), *When Greeks Think About Turks*, Routledge, 2007, p. 197.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

issues. This was reasonable since the public opinion in Greece was on the one hand more flexible, but at the same time the distrust was still reigning, based on previous “traumas”. The Greek public opinion, even under the circumstances described above, maintained intact its position on certain matters of high importance in the bilateral relations (such as the continental shelf dispute). The cooperation and the friendly relations should continue only if the relations were satisfying certain requirements¹²⁶. The Simitis government did not undertake after all the political cost¹²⁷ to continue the dialogue on the settlement of the dispute, during which a very interesting proposal was generated, due to, among others, the high expectations of the public opinion together with the unpredictability and the high risk that this dispute entails.

More recently, a survey was conducted in 2016 by the Hellenic Foundation for European and Foreign Policy (ELIAMEP)¹²⁸. According to it, even in the midst of the “Name Dispute”, which was undoubtedly the centre of attention, Turkey scored higher (69,5%) than North Macedonia (61,1%) in negative opinions of the Greek public. Also with the outstanding 76,5% the public opinion considers Turkey as the highest threat to Greece. In the second position we find Germany with only 11%. So easily it can be argued that Turkey stands alone, and by far, as the only perceived foreign threat for Greeks. Furthermore, as mentioned before, in the Greek public opinion pessimism, distrust, suspicion and the lack of support towards policies which produce breakthroughs (“surprises) in international affairs are dominating.

Thus, taking into account all the above, it can be argued with certainty that the inconsistent, circumstantial and defensive characteristics that the foreign policy of Greece has presented over the years are indissolubly linked with the public opinion moods. As explained, it is not the only factor, but this adds an additional element that explains why consecutive governments in Greece, even when the circumstances allowed it up to a certain point, were reluctant to undertake the political cost to quest further the final settlement of the dispute. When someone considers the great political cost that the settlement of the Name Dispute had (a less significant matter for the public opinion), something that was proved by the big defeat in the 2019 elections, one can only imagine the weight of the political cost that the continental shelf dispute carries, a dispute against the country that till this very day the 76,5% of the Greek public opinion categorizes as a threat.

¹²⁶ *Ibid.*, p. 199

¹²⁷ The elections of 2004 were also coming up

¹²⁸ *Greek Public Opinion and Attitudes towards the “Name Dispute” and the Former Yugoslav Republic of Macedonia*, ELIAMEP, 2016

Chapter IV

Conclusions

Overall, the rather complicated dispute of the Aegean Sea continental shelf has been analyzed. The factors that were considered relevant and decisive in its emergence were the oil crisis of the 70's, the United Nations Conference on the Law of the Sea, in which Greece and Turkey were advocating in favor of rival groups that were created within the Conference (pro-equity group v pro-equidistance/median line group), the political instability that was prevailing in both countries at the time and, above everything else, the Turkish invasion in Cyprus.

Furthermore, the dispute, which is of legal character, was considered necessary to be examined based mainly on the jurisprudence of the ICJ and arbitral tribunals. The three-stage method or approach, as presented above, is the most possible to be applied by the ICJ in case the dispute is ever decided to be settled through judicial means. Less clear and consistent is the jurisprudence of the ICJ about the legal effect of the islands. In its jurisprudence the Court has rendered the islands from none to full legal effect. But as underlined above, the densely populated, significant in size islands of the Aegean (even Kastelorizo) compared to the islands of recent cases are difficult to be disregarded completely in a future adjudication, in contrast with what Turkey traditionally supports. This is quite evident in islands in the size of and densely populated like Crete, in case of which Turkey unilaterally and quite conveniently decided to deprive it from its legal affect in the Libya-Turkey Maritime Boundary Delimitation Agreement. Also, what was considered pivotal was that the Court has recognized, even to the smallest of islands (like Serpent) a 12 nm. territorial sea. This fact verifies the worldwide tendency of States to extent their territorial sea limit up to 12 nm., which is the outer limit recognized by the UNCLOS. Such a decision from the Greek side is still considered a *casus belli* from Ankara, since according to the Turkish side will turn the Aegean Sea into a "Greek lake". Also such a possibility will affect the continental shelf delimitation since it has to be reminder that the landward limit of the maritime zone of the continental shelf is the seawards limit of the territorial sea. Additionally, it is worth mentioning that the geographic relevant circumstances are more possible to be examined by the Court rather than the non-geographic, such as the natural prolongation or the economic factor.

After that the efforts of peaceful settlement between the two parties were mentioned. In the assessment of the Greek Foreign Policy, that was verified that in such occasions keeps a defensive, extremely cautious and circumstantial position it was proved that the public opinion is a decisive factor. The latter's tendencies are mirrored in the foreign policy of Greece, which follows the limits

that the Greek public opinion is willing to accept. Consequently, light has been shed on an additional reason behind the reluctance of consecutive Greek governments to undertake the political cost to quest further and systematically a resolution for this huge in its significance legal matter.

For the future, a very interesting idea would be to research the respective moods and tendencies of the Turkish public opinion and if or how they have played a role in the Turkish position on the matter and the Turkish Foreign Policy in general. Equally intriguing, due to the recent events, would be also to examine the possible repercussions of the Libya-Turkey Maritime Boundary Delimitation Agreement on the dispute.

Bibliography

- Adele A.O “Toward the Formulation of the Rule of Delimitation of Sea Boundaries between States with Adjacent or Opposite Coasts” *Virginia Journal of International Law*, vol. 19, 1979
- Almond G., *The American People and Foreign Policy*, Preaeger, 1960
- Bahcheli T. *Greek Turkish Relations Since 1955*, Westview Press, 1990
- Coufoudakis V. “Greek-Turkish Relations 1973-1983: The view from Athens” *International Security Review*, vol.9, No. 4, 1985
- Demirozu D. & Petsas A. “The repercussions of the 1930 Greek Turkish rapprochement in Turkey” *Balkan Studies Journal*, vol. 46, 2012
- Dewey J., *The public and its problems*, Holt, Rinehart and Winston, 1967
- Evans M. E., “Maritime Boundary Delimitation”, in : Rothwell D.R, Elferink A.G, & Scott K. (eds), *The Oxford Handbook of the Law of the Sea*, Oxford University Press, 2015
- Fotiou E., “The Greek-Turkish Relations”. In: Valinakis Y. (ed.), *Greek Foreign and European Policy 1990-2010*, Sideris, 2010, (in Greek)
- Goldhamer H., “Public Opinion and Personality”, *The American Journal of Sociology*, vol. LV, 1949-1950
- Grigoriadis I.N., *The Davutoglu Doctrine and Turkish Foreign Policy*, Working Paper No 8, Hellenic Foundation for European & Foreign Policy, 2010
- Hale W., *Turkish Foreign Policy since 1774*, 3d ed., Routledge, 2013
- Hammes D. - Willis D. “Black Gold: “The end of Bretton Woods and the Oil Price Shocks of the 1970’s” *The Independent Review*, vol 9 ,2005
- Ioannou K. & Strati A., *Law of the Sea*, 4th ed., Nomiki Vivliothiki, 2013, (in Greek)
- Mueller J., “American Public Opinion and the Gulf War”, *Public Opinion Quarterly*, vol. 57, 1993
- Oran B. *Turkish Foreign Policy, 1919-2006 : Facts and Analyses with Documents*, The University of Utah Press, 2010
- Roukounas E. *Public International Law*, 2nd ed., Nomiki Vivliothiki, 2011, (in Greek)
- Rozakis Ch. “The Greek Continental Shelf”, , in: Kariotis T.C., Kluwer A. (eds.) *Greece and the Law of the Sea*, Law International, Hague, 1997
- Rozakis Ch. “Continental Shelf”, in: Bernhardt (ed.), *Encyclopedia of Public International Law*, vol.11, North Holland, 1989
- Schmidt M.N., “Aegean Angst: The Greek-Turkish Dispute” *Naval War College Review* , vol. 49, 1996 , no3

- Siousouras P. & Chrysochou G., “The Aegean Dispute in the Context of Contermporary Judicial Decisions on Maritime Delimitation”, *Laws Journal*, vol. 3, 2014
- Strati A., “Greek Maritime Zones and the Delimitation with bordering States”, in: Pazartzis F. & Antonopoulos K. (eds.) *90 Years since the Lausanne Treaty*, Nomiki Vivliothiki, Athens, 2012
- Svolopoulos K., *Greek Foreign Policy 1830-1981*, 2nd ed., Estia, 2017, (in Greek)
- Syrigos A.M., *The Greek-Turkish Relations*, 3d ed., Patakis, 2018, (in Greek)
- Tanaka Y. *The International Law of the Sea*, 3d ed., Cambridge University Press, 2019
- Tanja G.J., *The legal determination of international maritime boundaries*, Springer, 1990
- Theodossopoulos D. “Politics of Friendship, worldviews of mistrust: The Greek-Turkish rapprochement in local conversation”, in: Theodossopoulos D. (ed.), *When Greeks Think About Turks*, Routledge, 2007
- Tsilas L. “Greek-Turkish Relations in the Post-Cold War Era”, *Fordham International Law Journal*, vol. 20, 1996
- Valinakis Y., “From the Cold war to the New Era”, in: Valinakis Y. (ed.), *Greek Foreign and European Policy 1990-2010*, Sideris, 2010, (in Greek)
- Van Dyke J.M “The Aegean Sea Dispute: Options and Avenues”, *Marine Policy*, vol. 20, No 5, 1996

Web Sources

- CIA: www.cia.gov
- Hellenic Foundation for European and Foreign Policy (ELIAMEP) www.ekiamep.gr
- Hurriyet (English version): www.hurriyetdailynews.com
- International Court of Justice: www.icj-cij.org
- Kathimerini: www.kathimerini.gr
- Ministry of Foreign Affairs – Hellenic Republic: www.mfa.gr
- Ministry of Foreign Affairs – Republic of Turkey www.mfa.gov.tr
- United Nations: www.un.org