

**Are Island Allowed to Announce Continental Sea
Shelves or EEZ in the Eastern Mediterranean?
Turkey-Greece Dispute**

Kemal Dostel

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Approval of the Institute of Graduate Studies and Research

Prof. Dr. Ali Hakan Ulusoy
Director

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Science in Economics.

Prof. Dr. Mehmet Balcılar
Chair, Department of Economics

We certify that we have read this thesis and that in our opinion it is fully adequate in scope and quality as a thesis for the degree of Master of Science in Economics.

Prof. Dr. Vedat Yorucu
Supervisor

Examining Committee

1. Prof. Dr. Gülçay Tuna Payaslıoğlu

2. Prof. Dr. Vedat Yorucu

3. Assoc. Prof. Dr. Derviş Kırıkkaleli

ABSTRACT

The political and international disputes regarding recognition of EEZ and Continental Sea Shelves around islands have been a long discussion point throughout history. However, the importance of these islands and the EEZ are increasing which results in geopolitical disputes and maximalist claims of Greece in the Eastern Mediterranean Continental Sea Shelves leading to major friction between two neighbouring countries, namely Turkey and Greece.

After the discovery of hydrocarbon resources around the offshore North and South Cyprus, the problem of EEZ and Continental Sea Shelves around the Mediterranean Sea has led to an increasing geopolitical issue. In this study, the topic will be discussed thoroughly with respect to the rights of islands in the scope of EEZ and Continental Sea Shelves. Economic benefits and commercialization of gas in the future will be investigated with different scenario analysis.

Keywords: EEZ, aegean sea, maritime disputes, ICJ, international economic theory

ÖZ

Adalar çevresinde münhasır ekonomik bölge ve kıta deniz sahanlıklarının tanınmasına ilişkin siyasi ve uluslararası anlaşmazlıklar tarih boyunca uzun bir tartışma konusu olmuştur. Ancak adaların ve münhasır ekonomik bölgenin önemi artmakta ve bu da Yunanistan'ın Doğu Akdeniz Kıta Deniz Sahanlığı'ndaki jeopolitik anlaşmazlıkları ve maksimalist iddiaları ile sonuçlanarak iki komşu ülke, yani Türkiye ve Yunanistan arasında büyük sürtüşmelere yol açmaktadır. Kuzey ve Güney Kıbrıs açıklarında hidrokarbon kaynaklarının keşfinden sonra, Akdeniz çevresindeki münhasır ekonomik bölge ve kıta deniz sahanlıkları sorunu artan bir jeopolitik soruna yol açmıştır. Bu çalışmada, adaların münhasır ekonomik bölge ve kıta deniz sahanlıkları kapsamındaki hakları tartışılacaktır. Farklı senaryo analizleri ile ileriki yıllarda gazın ekonomik faydaları ve ticarileşmesi araştırılacaktır.

Anahtar Kelimeler: MEB, ege denizi, deniz uyusmazlıklari, UAD, uluslar arası ekonomik teori

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LIST OF ABBREVIATIONS

EEZ	Exclusive Economic Zone
ICC	International Court of Arbitration
ICJ	International Court of Justice
ITLOS	International Tribunal for the Law of the Sea
UNCLOS	United Nations Law of the Sea Convention

Chapter 1

INTRODUCTION

The focal point of this study is to investigate whether islands in different regions of the world are allowed to announce continental sea shelves or EEZ. Then, the readers will better understand if the Islands in the Aegean Sea or in the Eastern Mediterranean Sea are legally entitled to declare their own continental sea shelves irrespective of their mainland within the same geographical region. Furthermore, the dispute between Turkey and Greece in the Aegean Sea will be carefully analyzed in comparison with similar cases within the international community and judgments of the International Court of Justice (ICJ hereafter) or Court of International Arbitration which were subject to legal disputes in the past. Is the maritime authority granted to the islands in the decisions made for each case, as much as the island's territorial waters, if so, what principle of the law of the sea was taken as the basis? This research question will be the main focus as it will help us understand the situation in Eastern Mediterranean Sea and the Aegean geopolitical disputes.

Maritime boundaries are important divisions between countries when it comes to the rights of various minerals or resources and determination on the zones of a country (UNCLOS, 1982). They are important determinants when it comes to exclusive economic zones, territorial waters, and contiguous zones. This boundary is mainly drawn from a certain distance with respect to the jurisdiction of said country's coastline. There are various methods that are used when deciding on maritime

boundaries between countries. However, these methods do not always work out and are the cause of some regional problems that exist to this day.

1.1 Maritime Boundaries and Islands

Main determinants of the maritime boundaries described by the United Nations Convention on the Law of the Sea (1982) are Inland Waters, Territorial Sea, Contiguous Zone and EEZs (Exclusive Economic Zone). Firstly, to understand the maritime boundaries, we need to look at definitions of each one of them separately. Inland waters are defined as the area within the territory of a country while the territorial sea extends at a maximum of 12nm (nautical miles) from the coast and the contiguous zone extends to 24nm. Lastly, Exclusive Economic Zone is an area which extends to a maximum of 200 nm from the baseline and gives jurisdiction over the natural resources of the area to the sovereign state in question. However, there are certain circumstances where an EEZ cannot extend as much as 200 nm which constitutes what is known as “special circumstances” (Huseyin P., 2021). For instance, if two countries have less than 400 nm between each other’s shores, special geographic configuration of the shape of the coast or if an area is geographically too enclosed are several special circumstances that arise in the process of delimitation in the cases that will be further discussed.

The importance of this research study is to investigate whether the UNCLOS principles or the principles of 1958 International Customary Law has any impact on Island’s territorial waters. Besides that, what would be the criteria or principles the court chose to assign delimitation of the Island’s territorial waters.

According to Article 121 of the 1982 United Nations Law of the Sea Convention (UNCLOS):

“An island is a naturally formed area of land, surrounded by water, which is above water at high tide [and it enjoys its territorial sea, EEZ and continental shelf]. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”

When this idea was introduced in the discussions that led to the 1982 Law of the Sea Convention, Greece rejected the notion of “transit passage through international straits”. Before the Law of the Sea convention was established in December 1982, the following statement was put forward by Greece.:

“The present declaration concerns the provisions of Part III ‘on straits used for international navigation’ and more especially the application in practice of articles 36, 38, 41 and 42 of the Convention on the Law of the Sea. In areas where there are numerous spread out islands that form a great number of alternative straits which serve in fact on and the same route of international navigation, it is the understanding of Greece, that the coastal State concerned has the responsibility to designate the route or routes, in the said alternative straits, through which ships and aircrafts of third countries could pass under transit passage regime, in such a way as on the one hand the requirements of international navigation and overflight are satisfied, and on the other hand the minimum security requirements of both the ships and the aircrafts in transit as well as those of the coastal State are fulfilled”.

This very broad claim poses a range of concerns that would become especially problematic if Greece were ever to widen its sovereign Aegean Sea claim to 12 nautical miles. Greece claims the right to identify certain straits that may be used by commercial ships and planes, but other maritime entities and the US have claimed that all straits are protected by the right of maritime delimitation and that no rights of identification exist. It has been speculated by some analysts that Greece would like to “deter Turkish flights, especially the Kea Strait southeast of Athens, from flying through straits close to Greece”. These attempts by Greece hurt the relations between

the neighbouring nations. This study will reveal if these claims have any accountability by looking at similar cases and the different judgements given by the International Court of Justice. Needless to say, every case is different in its own right, either it be the delimitation process, the history between countries, previous agreements or the geographical locations, special circumstances etc. However, these cases are specifically chosen due to their direct relation with the research question. And by looking at these cases more closely we will be able to answer our research question.

Chapter 2

INTERNATIONAL COURT OF JUSTICE CASE

ANALYSIS

2.1 Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK, France)

The territorial waters are defined as extending up to 12 nautical miles from the base of a state including the rights of everything from the seabed to the surface as defined by the United Nations Convention on the Law of the Sea (1982). Between the closest points on Britain and the Channel Islands these territorial waters are around 48 nautical miles. Bailiwick of Guernsey territorial waters including Alderney, were recently raised from 3 to 12nm. Although, in 1997, Bailiwick of Jersey territorial waters including Isle of Man, were already extended to 12 nautical miles. Territorial waters are sometimes referred to as an exclusive economic zone by the Convention, and they are allowed to be extended until 200 nautical miles from the coast. Even though the UK is responsible for Jersey, the Isle of Man and the Bailiwick of Guernsey, they are, in their nature, Crown dependencies.

2.1.1 Delimitation Process and Problems

Regarding the delimitation method, the United Kingdom has offered to take advantage of the equidistance method. However, the equidistance method, suggested by the United Kingdom was opposed by The French Republic citing two critical problems

which would make the approach unjust for the French Republic. Initially, it would require a substantial cutback of the territorial waters of the French Republic in the Channel, causing a decrease of the territory belonging to France and a subsequent increase for the UK, entirely out of proportion to the size of UK's coasts and to the scale of the Channel Islands.

Second problem that was raised by France is the cutoff of continental shelf of France which would cause a split to two different zones in the Channel. Thus, the fundamental rights of France in safeguarding and protecting its territories could not be refused, even though the allocation of the disputed area of the UK's continental shelf does not technically impact the legal status of its surrounding airspace and waters. Another security concern was towards the submarines owned by France deployed at Cherbourg, in which, significant complications and vulnerabilities would arise along with the military's capabilities to observe approaching threats to the territories of France. This was due to "Hurd Deep's" territorial rights being considered to be granted solely to the UK, meaning there would be no right for the French maritime authorities to regulate operations in that region. This would jeopardize the French military's movement and safeguarding of the area and create unnecessary and unavoidable openings within the troops already stationed and affect the possible plans for the future.

According to the New Law of the Sea (1982), if any other state wants to consider any military or any sort of deployment to the EEZ of another state, they have to ask permission from the Coastal State which causes the French Government to be even more involved in the matter due to severe concerns to French security. The court regarded the location of the islands, their political/economic importance and also their scale as significant factors for the United Kingdom while making the determination.

The decision by the court granted France only 18% of the area they were claiming which resulted in France losing a huge proportion of their claimed area. The decision to apply the equidistance line between Newfoundland and the islands of France resulted in this major unjust result, which was criticized heavily since, if Canada were to apply Convention on the Law of the Sea in the future they could extend their EEZ even more. In 1996, Canada did exactly this and extended their EEZ even more which meant they completely acquired the French zone by using Sable Islands.

2.2 Guinea/Guinea-Bissau: Dispute

The case of Guinea/Guinea-Bissau is a special case in three aspects. Firstly, it is the first case submitted by two African states to the ICC. Secondly, the commitment given by the two states withhold against many governmental changes and even against a coup d'état in Guinea. Lastly, the arbitration took place only in two years. Likewise, many other disputes, this particular dispute was also caused by the speculations regarding petroleum in the disputed area which would later add up to considerable amounts. In fact, the application to the court by Guinea and Guinea-Bissau appeared only after the fact that the agreed oil companies were reluctant to start working on the area due to the conflicts between the countries. They realized that if a solution was not met, then both parties could not benefit from the petroleum and decided to submit a dispute to binding arbitration. However, these attempts were met with unsuccessful results and due to this both governments were not able to profit from the petroleum reserves. These unsuccessful attempts by both countries led to two presidents of the countries meeting and agreeing upon a mutual agreement in which they would cooperate with each other for their people to benefit from this finding.

This was an incredible achievement as in Africa to this day there are not a lot of settled maritime boundaries existing and is one of the very few cases of arbitration in Africa. The dispute was triggered by many existing islands off the coast of Guinea-Bissau and whether their existence could have any effect on the maritime boundary.

2.2.1 Delimitation Process and Decision

The delimitation process is an important indicator to answer if the authority was granted as much as the island's territorial waters or not. The Arbitration Tribunal described islands in three different classes in order to evaluate what effects these islands will have on the delimitation process. Firstly, coastal islands were claimed to be essential parts of a nation by the tribunal. Secondly, Bijagos Archipelago islands were identified to be farther west from the coastal islands in which their territorial waters are connected both to the continent's and their own territorial waters.

And lastly, in deciding the current state of Guinea-Bissau's coastline, the tribunal found out that inclusion of first and second groups of islands to be a necessary factor. Following this, while formulating the baselines, the tribunal decided to include some of the southern islands within the territorial waters.

In conclusion, the tribunal decided to raise Guinea Bissau's coast dimension by 20% after they considered the existence of these islands which meant they treated both coast lines to have equal dimensions. The Tribunal decided to apply 1982 UNCLOS principles and the International Customary Law proportionality principle, rather than using the equidistant method. Instead, the Tribunal took possible delimitations of the region into consideration and assessed the coasts of West Africa as one. This was due to the fact that both countries, including islands, having a concave shape and the

application of equidistance line would introduce a cut off effect on Guinea's maritime area.

2.3 The Tunisia and Libyan Arab Jamahiriya Continental Shelf Case

The case between Tunisia and Libya was mainly born from the uncreation of maritime areas claimed by both countries. Both countries did not manage to reach an agreement. Due to this and increasing exploration and drilling started by both countries looking for potential riches resulted in the countries application to the International Court of Justice in 1978.

2.3.1 Delimitation Process

In the process of delimitation, the court took an existing agreement between Libya and Tunisia into consideration while deciding to carry out the delimitation process on "the principles and rules of international law". Following this the court carried out extensive research to find out if these factors could be applied in this case: equitable principles, special circumstances on the area and other new decisions that at the time was recently announced on the Law of the Sea.

The court's judgement on the delimitation was that equidistance method could not be used for the case, the delimitation would only include a single disputed continental shelf area and that certain geographical circumstances be taken into consideration (Kerkennah Islands).

2.3.2 Judgement

To provide a just and equitable result the court decided not to utilize the equidistance method and rather a delimitation line between two sectors. These sectors have been defined by the court as near the shore and further seawards which determined the exact location of the line while taking previous agreements between two parties into account.

An important point is that during the drawing of the delimitation line from these 2 sectors Kerkennah Islands were given half effect.

In conclusion, the case has been resolved by the court with the application of a delimitation line determined taking various circumstances into question while giving Kerkennah Islands half effect. During this process Malta tried to enter the case as well but the court declined Malta's request citing the decision on this case did not have any effect on Malta.

2.4 Delimitation of Maritime Areas Between Canada and France

In August 1983, France sent two ships for oil exploration in the disputed area which was already claimed by France. The claimed EEZ for both Miquelon and Saint- Pierre, extended as much as 200 miles.

Major disputes between two sides included not only the oil reserves but also the cod fishing rights. These fishing rights are really important for both sides due to fishing stocks being on decline since the 1980s, the Grand Banks of Newfoundland has considerable fishing opportunities for both nations. The islands were given their own EEZ's in 1992 which amounted to 12350 square kms, to end the dispute once and for all. However, this meant that France only got $\frac{1}{4}$ of what they were asking for.

The maritime boundaries were adjusted in 1992 between the islands in dispute and Canada but the continental shelf was not yet decided upon. Due to this, in 1977 Franco British Arbitration, the Court established the following viewpoints on the importance of fairness and equality in the process of delimiting the disputed territorial waters. Firstly, in 1992 June, the arbitral tribunal released its ruling by a clear majority while France and Canada disagreed with the decision. The area awarded by the Tribunal

included a 23nm area from the west of the islands and the equidistant line was used to decide the boundary between Canadian Island (Newfoundland) and the French islands. However, the area that was granted to France was considered to be out of ordinary compared to other rulings. Finally, allegedly to allow France to reach its EEZ from foreign waters without having to navigate through the EEZ of Canada, France was granted a long north south corridor (south of the islands) extending as much as 348km.

While granting France with only 18% of their original claim, there were many principles that were considered in the process of this delimitation. Proportionality principles of the 1958 International Customary Law, median equidistant methods and the disputes of Continental Sea Shelves of Channel Islands were used as reference which took place in 1977 by ICJ.

However, there were many criticisms towards this decision from both the French and Canadian side. After the decision in 1992, many commentators quoted that the application of the Convention on the Law of the Sea will mean an increase on the Canadian EEZ that goes through the French corridor. Consequently, Canada arbitrarily enlarged its EEZ with the use of Sable Island as a reference line in 1996, which meant that the French EEZ was completely swallowed up within the EEZ of Canada.

2.5 The Proceedings between Eritrea and Yemen (Territorial Sovereignty and Scope of the Dispute)

The dispute between Eritrea and Yemen dates to 1995. In 1995, on the coastline of these two countries in the Red Sea, Yemen and Eritrea forces had battled due to the conflicts raised from the different interpretation of the maritime border between the two Countries, fishing rights around the region and the jurisdiction rights across the

several islands. This conflict, certainly, is strongly ingrained in the history of the two countries and their communities.

Following the battle between Yemen and Eritrea, in order to foster the conditions for potential collaboration both countries agreed to move towards a more peaceful resolution. They have signed an agreement between themselves with several observer countries, France, Ethiopia and Egypt in 1996. The case, then, was admitted to arbitration to reach a clear agreement between both parties.

In 1998 the first process of the Tribunal's judgement took place where it was shown that neither country made a noticeably more competing argument regarding the possession of the islands on the grounds of “ancient title” by Yemen or the succession of title by Eritrea. After evaluating the documentation, because of their closeness to the Eritrean coastline, the Tribunal concluded that Eritrea had jurisdiction over the Mohabbakhs, the Haycocks, and Southwest Rocks. Due to Yemen’s involvement in the construction and repair of lighthouses on some of these islands and the presence of the Zubayr community in two oil production deals negotiated with private companies by Yemen, the Zubayr areas sovereignty is given to Yemen, along with Zuqar-Hanish as it was found out that there was enough evidence to grant the area to Yemen on the basis of the facts relating to the execution of state authority functions.

The Tribunal has decided that the “international maritime boundary between the two sides should be a single boundary serving for all purposes between the opposite of continental coasts” (Figure 1). The boundary line based on the application of these standards was then assessed by the court and the maritime boundaries of both parties were geographically coordinated on the outcome of the ruling.

The decision of the Arbitration was not only consistent with the similar decisions taken by the Arbitration on different cases, but also was recognized by both countries as both Yemen and Eritrea benefitted from this by signing offshore petroleum agreements with each other and Ethiopia.

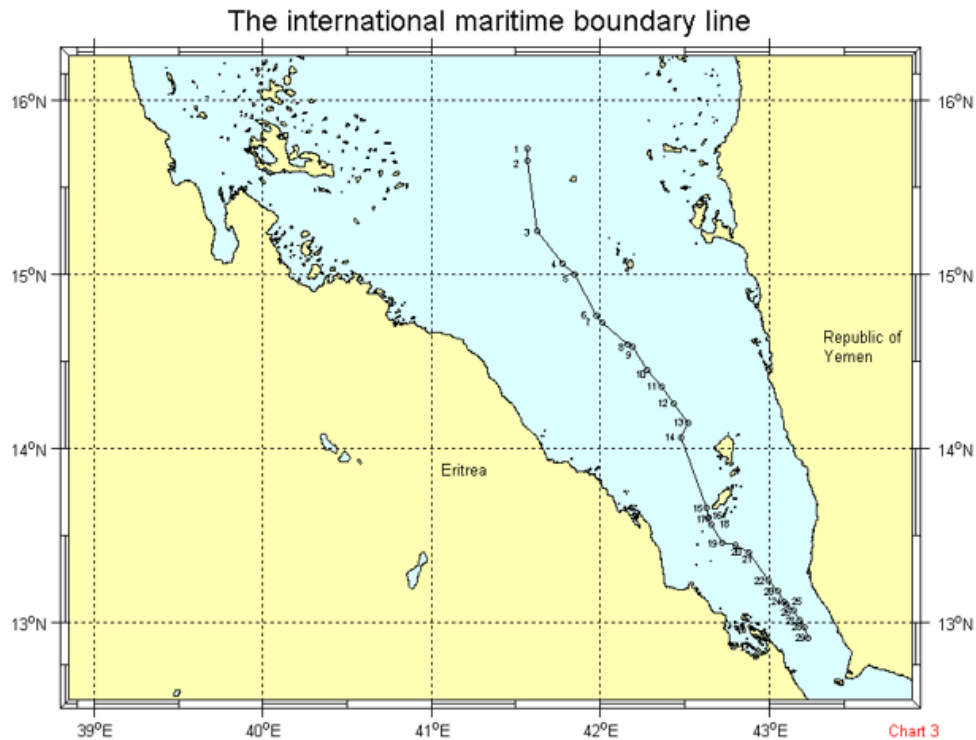


Figure 1: Single boundary between Yemen and Eritrea drawn by the Tribunal

2.6 Maritime Delimitation in the Black Sea (Romania v. Ukraine)

The conflicts of delimitation between Romania and Ukraine started with the application by Romania against Ukraine. Romania applied to the International Court of Justice with the request of a combined maritime boundary to solve the exclusive economic zone delimitation issues against Ukraine in 2004. Court gave both countries until 2017 to submit their cases and counter cases against each other. After the claims by both countries were taken to consideration by the Court in 2018 a public hearing was held and in 2019 the court announced its judgement.

The delimitation process followed the default process of three step approach that is stated in the maritime law. This approach follows this path: a provisional equidistance line is set by the court, the equidistance line is adjusted considering any special circumstances such as geographic shape of the coasts, and lastly after the adjustment of the line the courts decides if the delimitation was carried out in equal proportions or not. This is due to preventing delimiting a huge percentage of an area unjustly to another party.

In the first phase of this approach, the provisional equidistance line is set by the Court using the base points given by both parties, in this case Ukraine and Romania. In the second phase, the court considered the base points given by both parties and looked at their different characteristics. The court then investigated these characteristics and decided that on the Romanian coast Sacalin Peninsula and the inland portion of the Sulina dyke will be used as base points. And on the coast of Ukraine, Cape Tarkhankut, Tsyganka Island and Cape Khersones was chosen by the court as base points, in the determination of the provisional equidistance line.

Regarding the second phase of the three-step approach, one important point to mention is that the court decided not to utilize Serpents Island owned by the Ukraine in determination of these base points for the provisional equidistance line.

Lastly, on the last phase, to see if the delimitation was carried out justly, the court looked at the length of the coast of both parties and the area that is being planned to be delimited to see if they are proportionate. Many circumstances other than the length of the coasts were taken into consideration by the court such as the existence of

hydrocarbon reserves, already delimited areas, geographical condition of Black Sea(enclosed) and the existence of Serpents Island.

In conclusion, the court decided none of these would lead to an unjust delimitation, so they carried out the delimitation process. This delimitation resulted in Romania receiving nearly 80% of the disputed area. With this result Romania had access to huge amounts of petrol that resided in the Black Sea and the disputed areas that Romania received.

2.7 Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal

The conflict between Bangladesh and Myanmar in the Bay of Bengal consisted of the delimitation of exclusive economic zones, territorial waters, and continental shelves. The conflict was resolved in favor of Bangladesh and is of utter importance regarding future delimitation processes due to the introduction of a new method by Bangladesh which is the angle bisector method.

First of all, regarding the delimitation of the territorial sea, Bangladesh defended the fact that there was already a signed agreement (Agreed Minutes of 1974 and 2008) but Myanmar argued against this and argued that this agreement cannot be counted as a treaty. Following this, the UNCLOS decided to delimitate the territorial sea according to equidistance principle as long as there are no special circumstances or any historical reason not to do so (Figure 2). After the application of equidistance principle, it was discovered that Bangladesh has the right to a 12nm territorial sea around ST. Martin's Island, but Myanmar did not agree to this and asked for ST. Martin's Island to be

evaded in this process. However, ITLOS did not see any reason to treat the island as a special circumstance and did not approve Myanmar's request. (Figure 3)

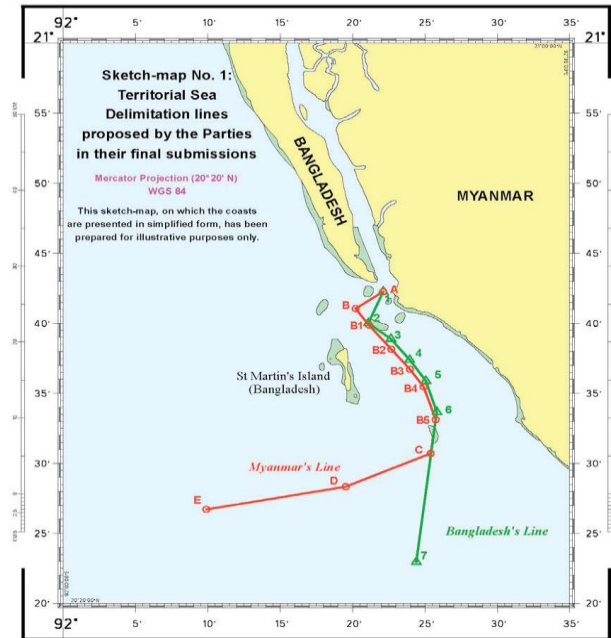


Figure 2: Territorial Sea delimitation lines proposed by the parties

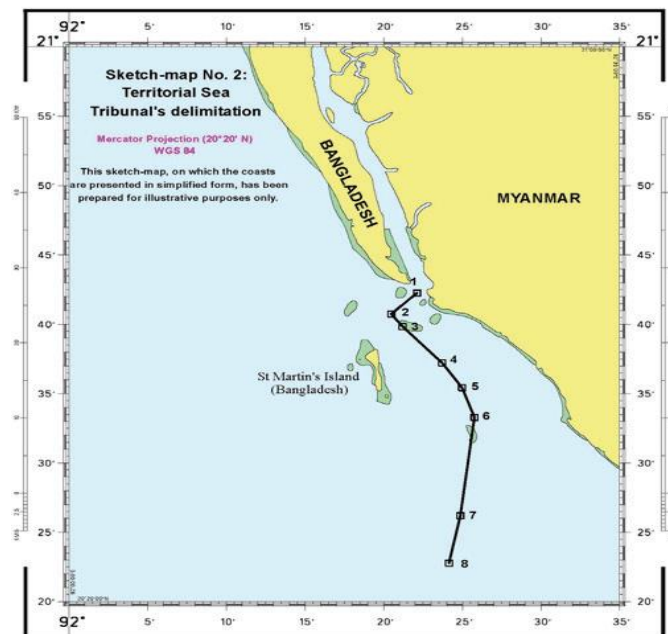


Figure 3: Equidistance line drawn by the Tribunal

Both countries proposed two different methods. Myanmar proposed that the equidistance principle¹ be applied for the delimitation process however Bangladesh argued that the equitable principle should be taken as a basis. The application of equidistance principle would mean that Myanmar would acquire the majority of the EEZ currently owned by Bangladesh. This would mean that Bangladesh would have only a tiny fraction left and even their access to high sea would be cut off. Due to this ITLOS decided to apply equitable principle to resolve the EEZ dispute.

This method was chosen based on special circumstances as every country that has their own geographical circumstances such as Bangladesh having a concave coast. Second reason for the use of this method is that cutting off a country's natural right to an area to be prevented which in this case Bangladesh's already owned EEZ. These are the reasons why Bangladesh does not agree with the equidistance principle. The main reason to be carried out forward is the cut off effect (non-encroachment approach of the International Customary Law) caused by the application of equidistance principle. Moreover, Bangladesh proposed the application of angle bisector method² mainly due to the coast of Bangladesh having a very special concave geographical shape to the ITLOS in the delimitation process of continental sea shelf and the EEZ.

ITLOS disagreed with Bangladesh on some points and completely disregarded Myanmar's position which supported the application of equidistance as it had no strong

¹ The equidistance method involves the use of a protractor that is placed at pairs of base points along the coastlines of each country, equally distanced from the coastal boundary and then used to draw an arc in the water. The intersections of these arc pairs result in a line that closely resembles the contours of the coastline.

² The angle-bisector method of delimitation "generalizes irregular coastal features" by creating a "linear approximation of coastlines." The bisector is "the line formed by bisecting the angle created by the linear approximations of coastlines."

basis for it to be applied. However, Bangladesh supported their angle bisector method with few distinct points and with the inclusion of ITLOS base points to provide a more equal equidistance line after the consideration of the concavity of the Bangladesh coast.

ITLOS decided to follow a three-stage approach to provide an equitable outcome. A temporary equidistance line was created at the first step, and this was based on various calculations and consideration of the geographical position of the coasts of the both sides (Figure 4). Secondly, after the application of the equidistance line some adjustments were made to achieve an equitable outcome for the line. Lastly, ITLOS took coastal lengths and maritime areas into consideration to make sure not to provide substantial disparity on the modified line between Bangladesh and Myanmar. (Figure 5)

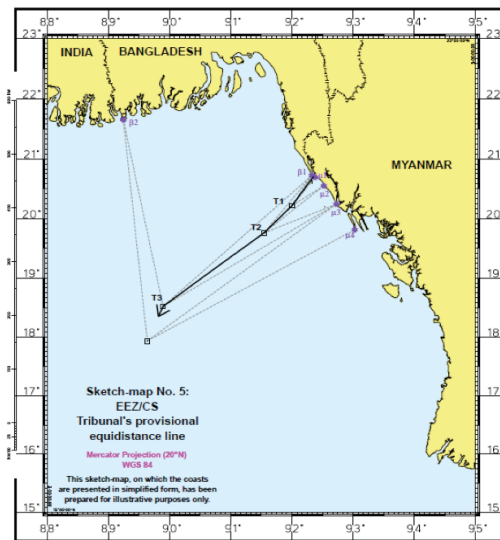


Figure 4: Provisional equidistance line

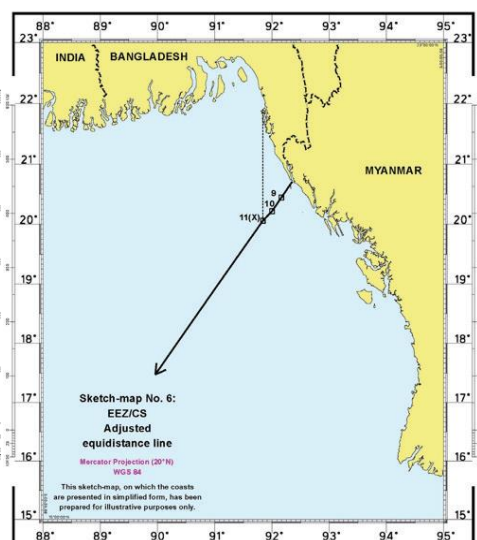


Figure 5: Adjusted equidistance line

2.8 Territorial and Maritime Dispute Nicaragua & Colombia

In 2001, Nicaragua applied to ICJ (International Court of Justice) regarding maritime delimitation of the disputed area between Nicaragua and Colombia as well as the San Andreas area which includes several islands (Figure 6). The disputes between Nicaragua, Colombia and the islands in the area date back to hundreds of years ago. The history and the ownership of the islands between two countries as well as the influences from the international scene (English, Spanish, American), various civil wars and independencies makes this case especially challenging.

A decision regarding the sovereignty of the contested maritime features and based on this the delimitation of maritime features with the jurisdiction findings were decided by the International Court of Justice. Regarding the sovereignty over disputed maritime features the court decided that Bajo Nuevo, Albuquerque, Quitasueno, Serranilla, East-Southeast Cays, Serrana and Roncador island's jurisdiction to Colombia.

However, the ICJ also ruled a considerable amount of area around the sea will belong to Nicaragua EEZ which caused Colombia to withdraw from the ICJ. This ruling was very significant as the area that was granted to Nicaragua includes significant amounts of oil and gas. Following this Colombia said that they have lost as much as 75,000 sq km of their territorial waters while Nicaragua's territorial waters increased as much as 89,000 sq km.

This was the result of the maritime delimitation by ICJ that caused a lot of criticism. Firstly, during the ruling process ICJ said they cannot consider Nicaragua's claim of the delimitation of continental shelf which goes outside of their 200 nautical miles.

This was due to Nicaragua not having a constituted continental margin that goes beyond Colombia's 200 nautical mile. The court observed, however, that a delimitation between conflicting maritime areas between two countries within 200 miles of the Nicaraguan coast was to be applied. This was followed by a three-stage delimitation process by ICJ. First stage included the application of the equidistant principal between the western shores of the islands and the Nicaraguan coast where the court ruled Colombia had jurisdiction and a provisional delimitation line was created. On the second stage, in order to provide an equitable outcome to both parties the court looked into special circumstances that could have potentially led to changes in the provisional equidistance line. Some relevant factors and security concerns that were discussed in this phase was the cut off effect that could be created due to the delimitation line which needed to be prevented as well as the significant difference between the Colombian and Nicaragua coasts. Lastly, to evaluate whether the consequence of the line, whether it be changed or moved, was such that relative shares of the parties were significantly unequal to their respective coasts, the court performed a disproportionality test.

And based on all these stages the ICJ delimited a border line which was in favor of Nicaragua and awarded them three times as much maritime territory as Colombia. This delimitation was criticized heavily, especially the application of equidistance method which was used by the court as being unsuitable. The use of the equidistance method in this case which included special geographic conditions was the main problem. Due to this issue, many ICJ judges individually raised their concern on the use of equidistance method and that in this case a better method could have been used to achieve a more equal outcome for both parties. It is worth noting that, ICJ indicated that they considered the principle of continental shelf referenced in Article 76 of the

Law of the Sea to be deemed as a customary international law, while addressing Nicaragua's request regarding the delimitation of continental shelf extending over 200 nm.

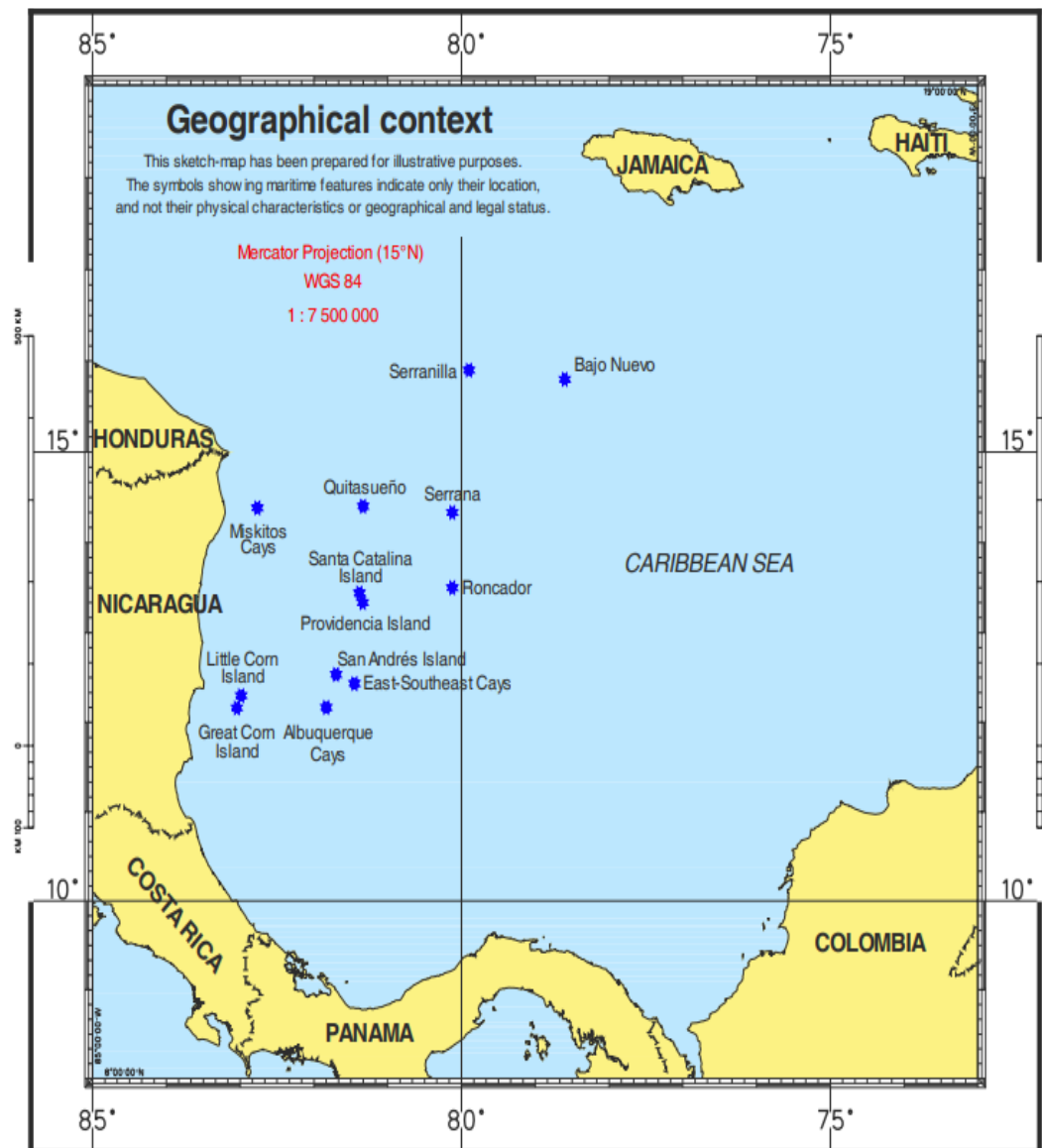


Figure 6: Maritime conflict area between Nicaragua and Colombia which includes the San Andreas area and several islands.

2.9 Territorial and Maritime Dispute Case of Costa Rica & Nicaragua

In 2001, the government of Nicaragua applied to the International Court of Justice to resolve the disputes between the Nicaragua government and Costa Rica. The dispute

between two parties born from the unresolved issues on their shared border on the San Juan River. Nicaragua is the sovereign country of said river, but Costa Rica also has the right to use the river for various activities such as trade. However, Costa Rica used this river without permission from the Nicaragua government to transport its police force which led to the dispute reaching the court.

2.9.1 Delimitation Process

The Court utilized the Article 15 of UNCLOS with two step reasoning while delimiting the territorial sea boundaries in the Pacific Ocean and Caribbean Sea. Firstly, a line was drawn according to the principle of equidistance and after the line was drawn, they investigated the presence of any specific condition which would result in a change on the line.

Due to the degree of risk and tightness of the area at the entrance of the San Juan River, the court decided not to take that area as a base point for the Caribbean Sea boundary. Instead, it was decided that the base point line will be located on a more solid ground at the nearest point to the entrance of the river in the coast of Costa Rica and 2nm (nautical miles) towards a fixed point at the sea from the coast of Costa Rica on a median line. However, Nicaragua pointed out the concavity of their coasts as a special circumstance and demanded maritime space around the area of the Harbor Head Lagoon but they were quickly disregarded by the court. With respect to the delimitation of the Pacific Ocean boundary, a simple equidistance line was drawn due to no special circumstances on the area.

2.9.2 Delimitation of Continental Shelves and the EEZ

The International Court of Justice used the three-stage approach on the delimitation of the continental shelves and the EEZ. The approach has been described by the court as: the first phase is the setting up of a “*provisional delimitation line, employing*

methods that are geometrically objective and also appropriate for the geography of the area”; the second is the review of the circumstances that cause the provisional line to be changed or moved in order to obtain an equal result, and the last stage is the confirmation of the outcome.

For the case of Costa Rica and Nicaragua, after the application of the equidistance lines, the lines were adjusted for two special delimitation circumstances. Corn Islands of Nicaragua and Santa Elena Peninsula have been given only half of the effect of the equidistance lines. This is due to Corn Island’s location being so far away from the mainland of Nicaragua and having a small size. And for the Santa Elena Peninsula, the reason for the half effect is the fact that full application of the equidistance line had an unjustified result and introduced an unreasonable cut-off effect to coastal estimates in Nicaragua.

On February 2, 2018, the decision by the International Court of Justice (ICJ) was taken to the benefit of Costa Rica and the territory that was in dispute between Costa Rica and Nicaragua was given to Costa Rica. The court ruled that:

“Sovereignty over the whole northern part of Isla Portillos, including its coast (with the exception of Harbor Head Lagoon and the sandbar separating it from the Caribbean Sea), and that Nicaragua must remove its military camp from Costa Rican territory.”

Chapter 3

NORTHERN SEA CASES

The Northern Sea Cases were born from the disputes between the countries Germany, Denmark, and the Netherlands. As with many similar cases the reason for the dispute sparked from the areas which contained a high amount of gas and oil. Due to this the countries in question applied to the International Court of Justice in 1969(submitted to court in 1967) to resolve the delimitation issue in the area.

3.1 Friction between Germany, the Netherlands and Denmark

The dispute between these three countries included the delimitation of the continental shelf that existed between Germany and the Netherlands, and Germany and Denmark. Firstly, Denmark and the Netherlands asked the court to go through with the delimitation process according to the rules and principles of international law. This meant that Denmark and the Netherlands were asking for the application of the equidistance principle to be used for the area in dispute as none of the parties were able to reach an agreement. This was based on the Article 6 of the Convention which states the following:

“In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.”

However, Germany did not agree that the equidistant principle could be applied in this situation and pointed out the size of its coastline in the North Sea to be taken into

consideration as a “special circumstance”. Germany suggested that the length of the coastline be used rather than the use of equidistance rule since its coastline was concave.

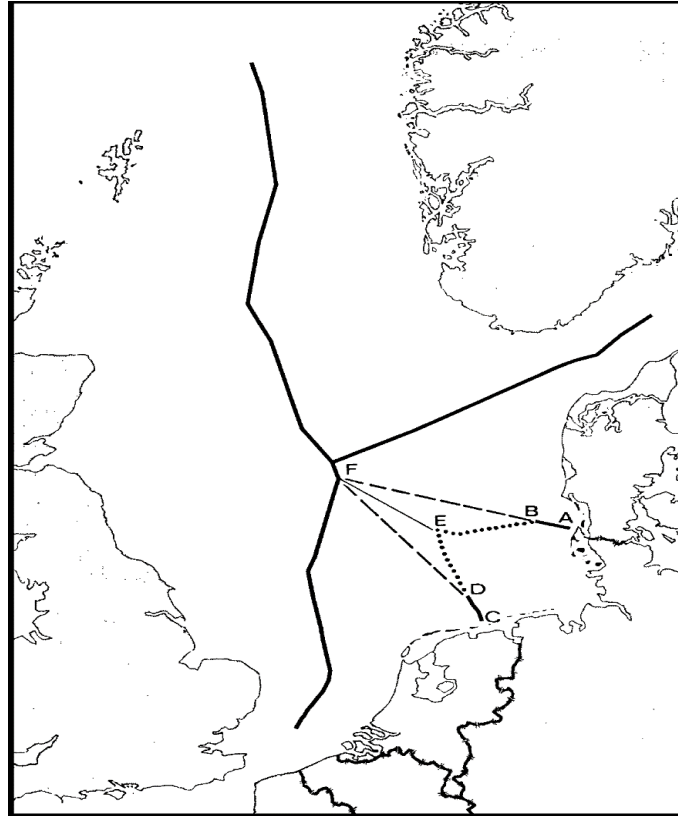


Figure 7: Official visual illustration created by the International Court of Justice with the documents submitted by all parties

Here on the map, we can see the suggestion by Germany which is shown with the dash lines (-) and the suggestion by Denmark and the Netherlands with dots(.). Denmark and the Netherlands draw the lines with Germany based on equidistance principle which can be seen respectively as A to B and C to D. However, the further increase on the boundary was the reason the dispute erupted where Denmark and the Netherlands wanted the continuation of the equidistance principle which is shown on B to E and D to E while Germany cited the “special circumstance” and demanded for a more equitable result from D to F and B to F. The use of equidistance would mean Germany

would receive only a small proportion of the continental shelf compared to Denmark and the Netherlands.

The Court rejected both requests for two reasons:

- 1) Geneva convention (1958 Continental Shelf Convention) was not binding to Germany.
- 2) The equidistance principle used mainly for maritime delimitation is not part of the customary international law but just a method used in the delimitation process.

The reason why the Geneva Convention on the Continental Shelf treaty did not apply to Germany is because even though Germany has signed the treaty it was never ratified by Germany. On the other hand, the treaty was signed and ratified by both Denmark and the Netherlands. However, following this both Denmark and the Netherlands stated that the Geneva treaty was reflective of customary international law. This was because customary international law was also applicable to Germany. The court agreed that a treaty in certain circumstances could be treated as a customary international law but in the case of Geneva treaty court (North Sea Continental Sea Shelf Cases, 1969) stated that:

“With respect to the other elements usually regarded as necessary before a conventional rule can be considered to have become a general rule of international law, it might be that, even without the passage of any considerable period of time, a very widespread and representative participation in the convention might suffice of itself, provided it included that of States whose interests were specially affected.”

This meant that for the Geneva treaty to be considered as customary international law it had to be very widespread but at the time the treaty did not have many participants and it was not ratified by many countries.

And the court (North Sea Continental Sea Shelf Cases, 1969) also points out that “*State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked*”. Which means that for a provision to be applicable all of the parties including parties that are not included in the convention should be in agreement. In this case Germany, Netherlands and Denmark needed to comply with the provision for it to realistically be part of the customary law but Germany did not want the application of the equidistant method.

In conclusion, the court ruled that Germany was not bound by both the Geneva Convention on Continental Shelf and also for customary international law at the time of this ruling given the reasons already discussed. Due to this the application of equidistant principle was ruled out and the parties involved solved the dispute among themselves with suggestion from the court for a justifiable result which then ended by Germany being granted most of the continental shelf it originally asked for.

Chapter 4

THEORY

In this paper, a thorough literature analysis and scenario analysis was conducted to analyse various arbitration cases and papers. In this section, there will be further discussion with respect to these theories as well as trade theory and securitization theory. It is important to include international trade and look at the cases and especially the dispute between Turkey and Greece. Trade theories with respect to international trade and the economies of these countries on the commercialisation of these hydrocarbon reserves and energy security will be helpful in explaining the importance of the correct delimitation of disputed areas in the Aegean. Furthermore, by looking at Turkey and Greece more closely regarding their current approach to energy and energy security, future plans and capability and more importantly geographic location, we will be able to tell which country is able to utilize such findings more efficiently.

4.1 Trade Theory

First of all, it is important to distinguish countries that all have differences in their geographical location and accessibility of natural resources. Along with these geographical and accessibility differences they also have different resources available to them. In traditional trade theory, it is explained that specialization and exportation of such goods and services (in this case natural resources) depends on differences in factor endowments between countries explained by neo-classical theory or differences in technology explained by classical theory. However, rather than focusing on absolute cost advantage by Adam Smith or Comparative Cost Advantage theory by David

Ricardo, Heckscher Ohlin theory is more useful in this case. Heckscher Ohlin theory explains how a country can maximize their profits by utilising goods or services that are abundant in said country. Basically, if a country has a certain good that is abundant, they will be able to export and sell those goods for cheaper prices and import goods that they do not have in abundance for cheaper prices.

Papers such as Trefler (1995) and Leamer (1984) comment on the availability of natural resources such as crude oil leading to an increase in export in oil and abundance of any other natural resource leading to an increase in the export of said resource. According to, World Trade Report (2010), natural resources are branded as such endowments that are scarce which can be used as a comparative advantage for a country in international trade. This has led to adjustments in the Heckscher and Ohlin theory for natural resources which affect comparative advantage. So, not only the abundance of endowments was considered but also other factors such as economies of scale, the policy of the country and also the costs of transportation will have to be accounted for. For instance, regarding economies of scale, countries which have skilled labour, previous experience in extraction processes, better technology etc. can take advantage of such reserves in a more efficient way that gives them a comparative advantage according to Heckscher Ohlin theory. Other factors include infrastructure of a country and distance as the distance is lower the transportation costs would be lower (Lederman & Xu, 2007).

Turkey has been increasing their efforts towards becoming an energy hub further. Even though there are some conflicts in the region, energy security and exploration of these reserves will provide a sense of security and peace in the region. Turkey has already succeeded in transforming the port of Ceyhan into a hub that connects many important

hydrocarbon pipelines (V. Yorucu and O. Mehmet, 2018). And further expansion and extensions are bound to increase Turkey's export further which will be in the benefit of both EU and Turkey. The EU will be able to safely acquire another important ally that provides a secure energy line, and it will help towards Turkey's account deficit. Since Turkey is already experienced and interested in becoming an energy hub they are already investing highly towards these sectors. Turkey already has many infrastructural facilities at their disposal such as the pipeline from west to Europe which is TANAP, in eastern Anatolia port of Erzurum, on the Black Sea port of Samsun (V. Yorucu and O. Mehmet, 2018). According to the Heckscher-Ohlin theory that was discussed we can safely say that Turkey has the capabilities and the comparative advantage which gives it its edge towards extraction and monetisation of further hydrocarbon reserves. Conflicts in Aegean, however, are delaying this process. These conflicts have to be resolved quickly and countries which show a future for energy security and investment potential need to be granted access to their rightful areas.

4.2 Securitization Theory

The discoveries of hydrocarbon reserves in the Black Sea added another very important element to the maritime rights of the countries. The possibilities that come with the new gas discoveries undoubtedly offer many benefits which makes it even more important for the rightful stance regarding the protection of maritime areas of Turkey.

New discoveries of hydrocarbon reserves offer energy security, decrease energy dependency and have a huge potential to help with the account deficit of Turkey (Mercan M., 2020). The economic value of the gas reserves is estimated to be up to 65

billion US dollars by the energy minister of Turkey. This means that Turkey can reduce its main source of budget deficit born from energy imports significantly (Figure 8).

According to Ozcan S. 2013, the securitization theory is developed by the Copenhagen School to prevent the issues of security with military approach but rather make actors to cooperate with each other and work towards the “threat” together. The “threat” here is the issue that arises which threatens securitization in this case energy security.

Due to this, securitization theory is very important with regards to gas reserves, conflicts and geopolitical issues that exist. In the context of energy politics, securitization theory represents the dependence and increasing demand on limited energy resources and the issue of energy security issues that born from this increasing dependence (Ozcan, S., 2013).

Turkey’s Main Sources of Current Account Deficit

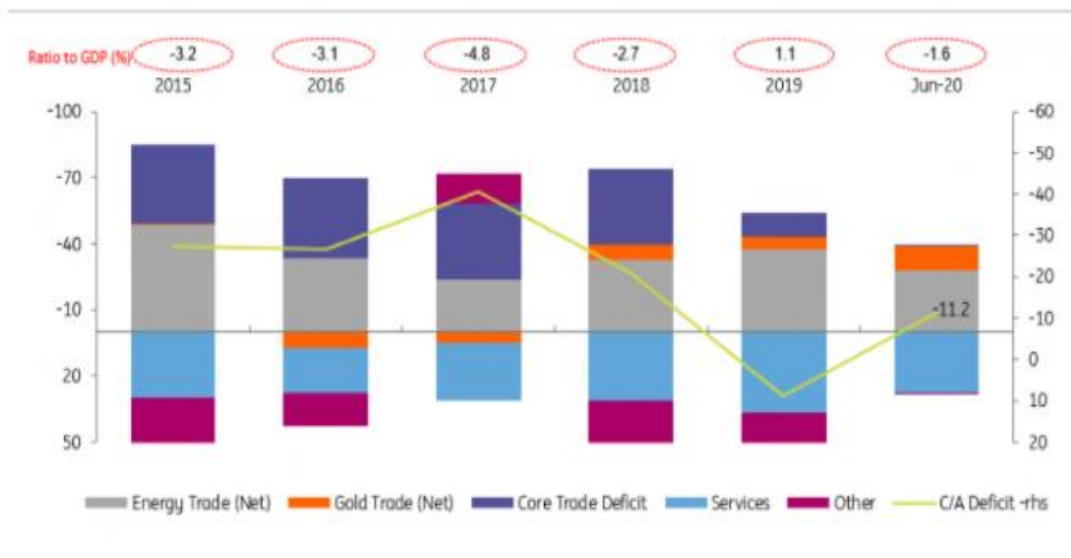


Figure 8: Turkey’s current account deficit (Mercan M., 2020)

The disputed areas in the Aegean Sea have the same potential as the Black Sea hydrocarbon reserves and need more exploration in the area. U.S. Energy Information Administration in their analysis in 2017 mentioned that Shell and TPAO conducted an exploratory drilling in the area in 2015 and are analysing the area but huge amounts of oil reserves are estimated to be found in the area which could be Turkey's future resource.

However, the dispute in the areas slows this exploration process. There is huge potential for Turkey to turn itself into an energy hub and decrease its dependency to imported energy.

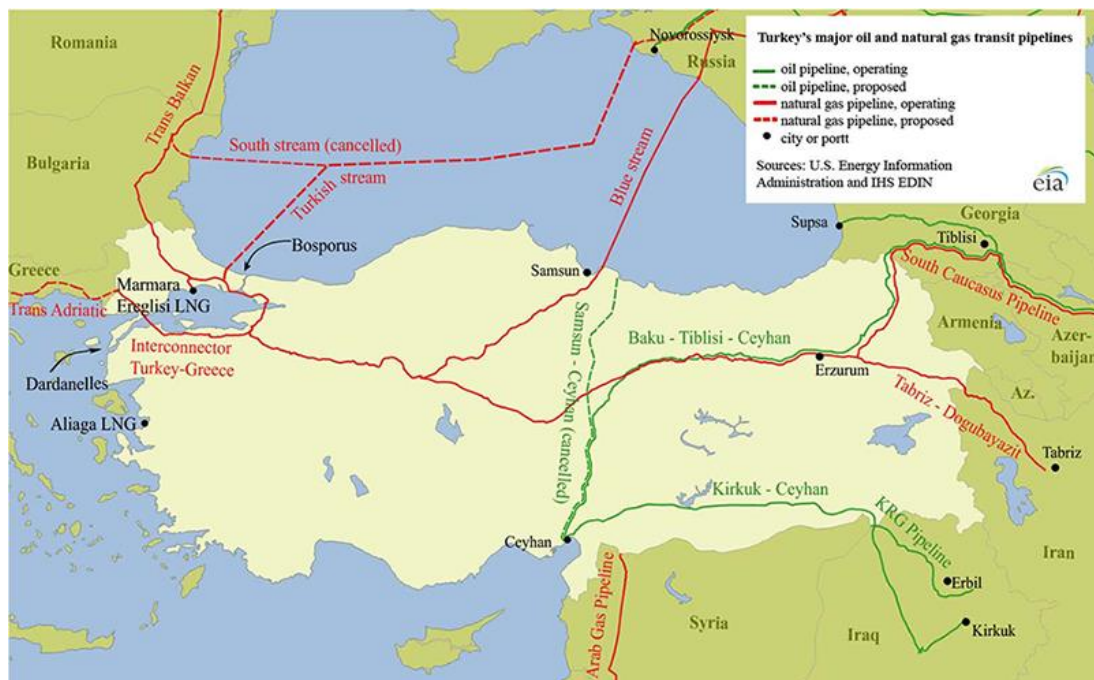


Figure 9: Turkey's major oil and transit pipelines Source: (U.S. Energy Information Administration, 2017)

The distribution in the Aegean area also disturbs the plans for a Mediterranean pipeline for Turkey. In 2007, an interconnector between Turkey and Greece extending to Italy was planned but the line has made no progress since then (U.S. Energy Information

Administration, 2017). To stop any unjust maritime claims from preventing Turkey from achieving these huge potentials in the area, the rightful claim of Turkey needs to be recognized by Greece and the international community. Turkey has the capability and the aim to provide Europe with the energy security needed and obstructions in power.

According to Eurostat, in 2017 EU's dependence on Russia for energy needs included 39% gas and 30% petrol and for countries such as Poland and Finland this number goes as high as 75%. However, this dependence has shown itself to be not sustainable. In 2009, the EU was hit with an energy cut by Russia when Russia stopped natural gas supplies. This desperate need by the EU can be sustained if geopolitical issues can be left aside and rather than disturbing Turkey's plan to be an energy hub, supporting such moves will provide the EU with another energy provider. Turkey has shown itself to be close with the EU many times and by being a bridge between Asia and Europe Turkey can also be an energy bridge that sustains and provides energy security.

Chapter 5

AEGEAN DISPUTES AND CONCLUDING REMARKS

Since 2002, tensions between Turkey and Greece have been festering in the Aegean Sea (Eissler & Arasıl, 2014). First of all, it should be stressed that the delimitation of the maritime areas (territorial sea) in the Aegean Sea is one of the most important disputes concerning the tensions between Turkey and Greece. The reason behind this is the importance of overflights and navigation that comes from these territories and the discoveries of hydrocarbon reserves (Eissler & Arasıl, 2014).

Greece has consistently claimed around their islands a 6nm (nautical mile) territorial sea and stated that according to the 1982 UNCLOS (United Nations Law of the Sea) Convention they have a right to claim 12nm. However, Turkey stated that such an expansion would be a reason for war (“casus belli”) since it would turn much of the Aegean Sea into Greek sovereign waters and restrict the freedom of navigation of Turkey’s and other nations freedom of overflights and ships (Dyke, 2005). As we have seen through similar cases, this claim by Turkey is within the reasonable points regarding the delimitation process. As in many other similar cases (Guinea and Guinea-Bissau Dispute, Bangladesh and Myanmar Case, Nicaragua and Colombia Dispute) that were discussed earlier, court ruling always took importance regarding cut off points (non-encroachment principle of the International Customary Law) as well as geographical disturbances to countries and to prevent these and worked towards a more equitable outcome for both parties.

In 1923, the Treaty of Lausanne was signed where the rights of 3 nautical miles distance were agreed upon (in 1936, Turkey has accepted extending it to 6 nautical miles), and, in 1982 Greece was awarded their current territorial waters which was increased to 6 nautical miles by the UNCLOS. Even though according to the Treaty of Lausanne, 3 nautical miles distance were agreed on, Turkey decided to agree to the 6 nautical miles distance to protect the positive relationships between the nations even though Turkey is not a signatory part of UNCLOS.

However, Greece has continuously attempted through the years to increase its territorial waters to 12 nautical miles. According to maritime safety experts, an increase to 12 nautical miles will mean Turkey will only have 10% control of the Aegean Sea where Greece's territorial waters will increase from 40% to 70% (Politakis, 1995). 12nm increase will mean the Mace Island would extend its area so much so that it would be inside the mass of Turkey. This type of maximalist demand to extend beyond the existing area of the sea where a significant portion of territorial waters was awarded to other side raised security concerns such as the cut off effect that could be created due to the delimitation line which needed to be prevented as well as the significant difference between the coasts. This extension is also seen as illegitimate and unfair by the international community. Following this we can easily say that the 6 nautical mile is the retained right and is non-negotiable.

5.1 Aegean Sea Islands Delimitation and Geographic Circumstances

Giving some background and discussing the disputes of the delimitation boundary especially with respect to islands in the Aegean Sea is necessary and adds important and valuable information. Turkey poses a geographical structure that is very unique and special within its coastline as well as being very close to Greek islands. There are

many islands within 1nm of the coast of Turkey such as Samos and Kos and some others. (Figure 7)

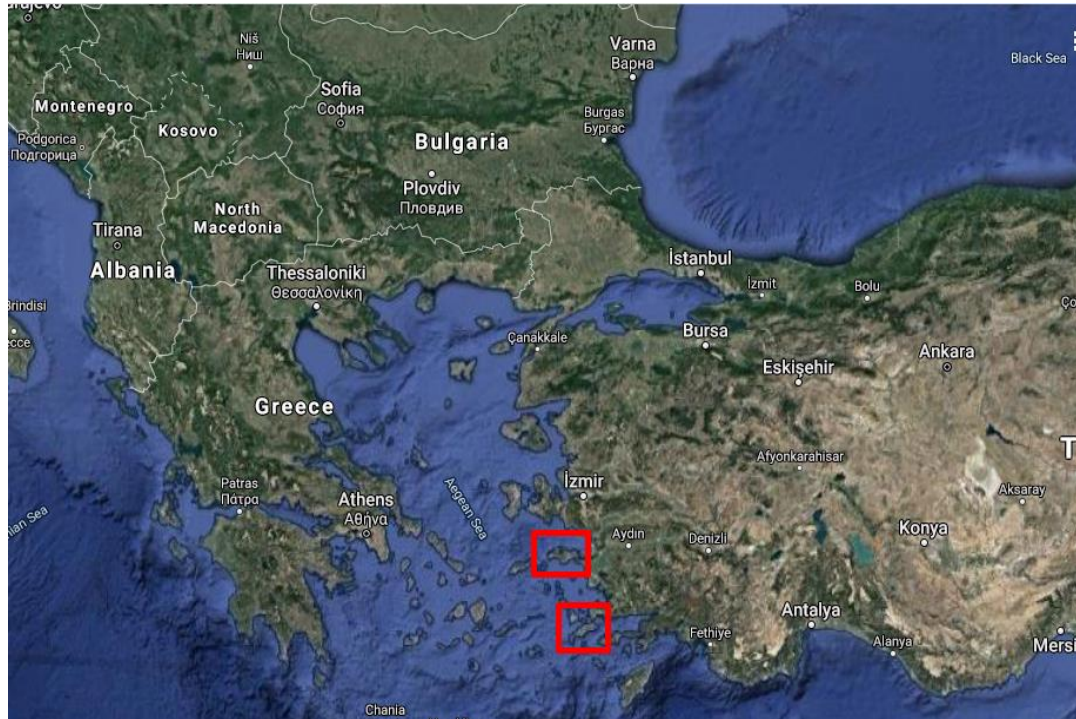


Figure 7: Samos and Kos islands located within 1nm of Turkey's main coast

This kind of geographical circumstance has not shown itself in any case discussed (some similar cases but considerably different) and needs special adjustments for the process of delimitation of the continental shelf and the territorial sea.

Within the literature of Greece, some claims have been made that Greece should be permitted to connect their islands by drawing a baseline between them giving the example of an “archipelagic state”. This would considerably increase the power of Greece's maritime space in Aegean Sea. An archipelagic state is defined by the United Nations Convention of the Law of the Sea by a nation which is an island country that forms a single country. However, similar cases have been dismissed by the International Court of Justice, such as the dispute between Qatar and Bahrain where

Bahrain asked to be considered an archipelagic nation to draw a baseline between its islands. As drawing a baseline between islands that are not a series of islands across the coast was deemed as unacceptable due to this right only being given to archipelagic states and Greece is not an archipelagic state.

What is more, it can be argued that Turkey has a solid and reasonable argument to demand an extension to its own territorial waters. The median line that lies between the coast and islands does not consider the special geography of the Aegean Sea and the fact that Greek islands are in very close proximity to the coast of Turkey which makes Turkey's potential claim a very realistic and powerful claim.

United Nation Conventions on the Law of the Sea defines "enclosed or semi-enclosed sea" on the Article 122:

"As a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States."

And Article 123 follows up and states the need for cooperation between these states "enclosed or semi-enclosed sea" similar to the Aegean Sea situation and a need for appropriate and specific regulations on the area.

Furthermore Article 300(Good faith and abuse of rights) states no party should "abuse the rights" of the other party regarding the freedoms and jurisdiction of another state. However, an expansion of 12nm by Greece would clearly violate this and this kind of expansion would restrict Turkey's territorial rights such as navigation, scientific research, overflights etc. significantly in the Aegean Sea. This would especially restrict

Turkey regarding the movement of their ships and planes in the Mediterranean and Aegean which have been there even before the Lausanne Treaty.

5.2 Final Remarks

With all the proof and explanations already pointed out, Turkey not only has the right to defend against the 12nm territorial water extension against Greece but also has a strong position and a claim of 3nm territorial water increase of its own, citing certain parts in the clogged Eastern Aegean Sea.

Turkey has agreed to a 6nm territorial sea for these islands and noted by the previous cases as well as the special circumstance of the Aegean, islands should always have limited or no effect during the delimitation process. Some examples to this limited or no effect can be seen in the following cases:

Romania and Ukraine Maritime Delimitation in the Black Sea: The court ignored the existence of Serpents Island which is owned by Ukraine in the process of delimitation while deciding where to take base points on the process of three step approach.

Costa Rica and Nicaragua Maritime Delimitation: Corn Islands of Nicaragua and Santa Elena Peninsula have been given only half of the effect of the equidistance lines. The reason for the half effects are, due to the small size of Corn Island's and geographically being located far away from the mainland and for Santa Elena Peninsula is due to a full effect introducing a cut off effect which causes an unjust and non-proportional delimitation. Another important decision in this case is that due to the narrowness of the area base points for the equidistance line was moved from the entrance of the San Juan River to a nearest and more just area.

The Tunisia and Libyan Arab Jamahiriya Continental Shelf Case: Kerkennah

Islands were given half effect by the court while drawing the delimitation line.

In conclusion, it has been found out that due to the cut-off effects, previous agreements between the parties (already determined EEZ and continental shelf agreements) and the coastal length (size of the countries with respects to the area being delimited) were taken as major reasons for "special circumstances" to prevent unjust delimitation of the disputed areas. It is a fact that a 12 nm claim of territorial sea in the Aegean Sea means more than 75% of the Aegean Sea being claimed as territorial sea and leaving small to nothing of the continental shelf to be delimited by the laws guiding delimitation. In order to advocate an equitable solution and prevent further disputes every direction and literature points out a 6nm territorial sea claim to be kept for a proportionate continental shelf delimitation. These judgements further support the current maritime areas in the Aegean Sea claimed by Turkey and proves that the limited/no effect of the islands EEZ and continental sea shelves in the Eastern Mediterranean is needed to prevent any unjust effects born from these islands.

Moreover, UNCLOS and the judgements by ICJ showed themselves to be inconsistent and there could even be political influence as some cases received huge criticism such as the Canada-France case. Granting Canada, a huge area and restricting France not only raised security concerns for France but caused them to lose a huge proportion of EEZ. With this respect, both Greece and Turkey need to consider negotiating with each other to solve this dispute and to not apply to ICJ could be one way to solve this dispute. For example, Turkey has made a bilateral agreement with Lebanon and reached a maritime deal in 2019. This kind of agreements can also be suggested

towards Greece and Turkey but also to Israel and Turkey as both Israel and Turkey are not a part of UNCLOS.

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