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The Greece - Turkey Dispute in the Aegean and the ICJ Sea Border Delimitation Case of Ukraine – Romania. Similarities and Differences in a Comparative Perspective

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Abstract

On 16 September 2004, Romania filed an Application instituting proceedings against Ukraine in respect of a dispute concerning “the establishment of a single maritime boundary between the two States in the Black Sea, thereby delimiting the continental shelf and the exclusive economic zones appertaining to them. Five years later, on 3 February 2009 the International Court of Justice (ICJ), issued a decisive decision on the simultaneous delimitation of the Continental Shelf and the Exclusive Economic Zone (EEZ) between Ukraine and Romania, ending a long going dispute. In the case concerning Maritime Delimitation in the Black Sea between Romania and Ukraine the ICJ has delimited the sea borders of the two countries, mainly by using the middle line method, a delimitation method which is supported by Greece. The judgment of the Court directly affects the dispute between Greece and Turkey concerning the delimitation of the continental shelf and EEZ between both States. The reason is that there are many similarities but still many differences between the two disputes. The Court concluded that only the presence of Serpents Island required a minor adjustment of the provisional equidistance line. The result was that Romania won 79.3% of the disputed sea area. Also, the ICJ didn't take into account at all the Black Sea as a closed or semi-enclosed sea. This is a positive aspect for Greece, as Turkey's position is to insist that the Aegean Sea is a closed or semi-enclosed sea. The aim of this paper is to analyze how the ICJ sea border delimitation case of Ukraine - Romania affects the Greece - Turkey dispute in the Aegean in terms of a potential political solution.¹

Keywords: International Court of Justice (ICJ), Exclusive Economic Zone (EEZ), Nautical Miles (NM)



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¹ Papadakis, K.(2017) :“Comparative analysis between the ICJ sea border delimitation case of Ukraine – Romania and the Greece - Turkey dispute in the Aegean”, presentation at the European Workshop on Political Culture, EWPC'2017, available in <https://sites.google.com/a/fspub.unibuc.ro/political-culture-analysis-modelling/home/ewpc-2017-agenda> . Last access 24/1/18.

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1. Introduction. The Ukraine – Romania Dispute in the Black Sea

The dispute between the two countries was for an island of Ukraine, known as the "Serpent Island" in the Black Sea. It is a rather small island that has not been inhabited, until recently, without of course, being considered as a rocky island. Indicatively, Serpent is to be found 35 kilometers from the Danube River Delta and its size is 0.17 square kilometers, 662 meters long and 440 meters wide. It has about 100 inhabitants, post office, bank, electric station and telecommunications.

The disputed sea area was 12,000 square kilometers with proven reserves of 100 billion cubic meters of gas and 73 million barrels of oil. The dispute for the continental shelf began in 1967 when Romania began negotiations with the Soviet Union (Ukraine belonged to Soviet Union at that time). The consultations lasted for 20 years and there were 10 rounds without a compromise. After the fall of the Soviet Union, the island became part of Ukraine, and in 1995 new negotiations began between Bucharest and Kiev. After 34 fruitless rounds of talks, Romania has decided to bring this dispute to the International Court of Justice in The Hague².

On 16 September 2004, Romania filed an Application instituting proceedings against Ukraine in respect of a dispute concerning "the establishment of a single maritime boundary between the two States in the Black Sea, thereby delimiting the continental shelf and the exclusive economic zones appertaining to them". The memorandum of Romania and the Counter-memorandum of Ukraine were filed within the time-limits fixed by an Order of 19 November 2004. By an Order of 30 June 2006, the Court authorized the filing of a Reply by Romania and a Rejoinder by Ukraine and set 22 December 2006 and 15 June 2007 as the respective time-limits for the filing of those pleadings. Romania filed its Reply within the time-limit. By an Order of 8 June 2007, the Court extended to 6 July 2007 the time-limit for the filing of the Rejoinder by Ukraine. The Rejoinder was filed within the extended time-limit. Following public hearings held in September 2008, the Court rendered its Judgment in the case on 3 February 2009³.

The Court examined relevant circumstances which might call for an adjustment of the provisional equidistance line, considering six potential factors : (1) the possible disproportion between coastal lengths ; (2) the enclosed nature of the Black Sea and the delimitations already effected in the region ; (3) the presence of Serpents Island in the area of delimitation ; (4) the conduct of the Parties (oil and gas concessions, fishing activities and naval patrols) ; (5) any potential curtailment of the continental shelf or exclusive economic zone entitlement of one of the Parties ; and (6) certain security considerations of the Parties. The Court did not see in these various factors any reason that would justify the adjustment of the provisional equidistance line. In particular, it considered that Serpent Island should have no effect on the delimitation other than the 12-nautical-mile arc of its territorial sea⁴.

² Karyotis Th. (8-2-2009) "Simultaneous delimitation of the continental shelf and the Exclusive Economic Zone (EEZ) between Ukraine and Romania" available in: www.enet.gr/?i=news.el.article&id=15146 (last access 24/1/18).

³ ICJ, Maritime Delimitation in the Black Sea (Romania v. Ukraine), Overview of the Case, available in: <http://www.icj-cij.org/en/case/132> (last access 24/1/18).

⁴ ICJ, Maritime Delimitation in the Black Sea (Romania v. Ukraine), Overview of the Case , available in : <http://www.icj-cij.org/en/case/132> (last access 24/1/18).



Source: BBC <http://news.bbc.co.uk/2/hi/europe/7867683.stm>

Figure 1.

Romania and Ukraine claims and the new maritime boundary.

Figure 1 indicates with red color Romania's claim, with blue color Ukraine claim and with Purple color is indicated the new maritime boundary as it was established by the ICJ⁵.

2. The Greece and Turkey and the National Positions in a Comparative Aspect

Greece currently has a Territorial Sea Width of 6 nautical mile, which was introduced by the in 1936 (Law 230 / 1936). It is the first legislative act of the Greek state, which regulates exclusively the width of territorial waters at 6 NM. Specifically, Article 1 predicts that:

"The territorial sea width zone shall be six nautical miles from the coast, not affected by the provisions in force, in the specific cases, as the territorial sea shall be defined as one or more of the six nautical miles"⁶

Greece ratified the 1982 Convention on the Law of the Sea in 1995 (Law 2321 /1995), the article 2 of which states:

"Greece has the inalienable right under Article 3 of the Convention to extend at any time the Range of the spatial sea to a distance of 12 NM. For the implementation of this provision and the implementation or enforcement of the other provisions relating to the Aegean Sea as well as the contiguous zone, international navigation, etc., Presidential Decrees will be issued upon a proposal by the Council of Ministers."⁷

⁵ BBC , available at <http://news.bbc.co.uk/2/hi/europe/7867683.stm> (last access 24/1/18)

⁶ Kentrotis D. Kyriakos : "Aeronautical Exercises in the Aegean". Athens, Procenius Publications, 1999, p. 38.

⁷ Dipla Haritini - Rozakis Christos L.: Law of the sea and its adjustment in Greece. Athens, Publishing Sideris I., 2004, pp. 18-19-20.

Turkey introduced in 1964 (Law 476/1964) a Territorial Sea Width of 12 nautical mile in the Black Sea and the Eastern Mediterranean but maintained a width of 6 NM in the Aegean. That law states as follow:

Article 1: Turkey's Territorial Sea Zone belongs to the territory of Turkey. The width of Turkey's Territorial Sea is 6 NM.. The Council of Ministers is competent to determine the extent of the Aegean Zone beyond 6 NM. for certain seas, provided that all the specificities and situations of these seas are taken into account, as well as the principle of leniency.

• Article 2: The Aegean Sea Area between Turkey and States with coasts adjacent to or adjacent to each other is bounded by agreements. These agreements are concluded taking into account the specificities and situations of the region in a manner consistent with the principle of leniency⁸

3. The Greece - Turkey Dispute in the Aegean

As defined by the 1982 United Nations Convention on the Law of the sea, article 3, every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles⁹.

When ratifying the UN Convention, for the Law of the Sea, Greece made a statement referring that the time and the manner of exercising the right to extend the Greek coastal zone is a matter that arises from its national strategy, without this meaning at the very least of its unwillingness to do that. Moreover, Article 2 of national Law 2321/1995, in which Greece ratified the International Convention on the Law of the Sea, states that:

"Greece has the inalienable right under Article 3 of the Convention to extend at any time the range of its territorial sea to a distance of 12 nm"

Turkey responding to this Greek action, with a unanimous resolution of the Turkish National Assembly (8/6/1995), threatens Greece with war in case of expansion of the Greek coastal zone beyond 6 NM (*Casus Belli*). It should be noted that Turkey has already expanded its coastal zone to 12 NM in the Black Sea and the Mediterranean but refuses to do the same in the Aegean. It is worth mentioning that only a few states in the world have not ratified the International Convention on the Law of the Sea, among them is Turkey, Venezuela, North Korea and Israel.

This reaction is justified in the point of view of the former Turkish Ministry of Foreign Affairs, Ahmet Davutoglu, that the Aegean islands, with a total area of approximately 23,000 sq. Km, cover 10% of the marine space. The fact that the overwhelming majority of the Aegean islands is under Greek sovereignty is the most important deadlock in Turkey's near-sea policy.

According to the current status of territorial waters formulated to the principle of 6 nm, which is also supported by Turkey, only 8.8% of the Aegean is under Turkish sovereignty, 35% is under Greek sovereignty, while 56.2% of the Aegean is open sea (international waters)¹⁰.

In case of a new regime with territorial waters of 12 NM instead of 6 NM, Turkey claims that there will not be access to the Aegean sea without the permission of Greece and the Aegean will become a closed sea¹¹. It is a fact that any expansion would have significant consequences for the range of international waters as well as for sea passages used by international shipping. Due to this reason, Greece particularly

⁸ Kentrotis D. Kyriakos: "Aeronautical Exercises in the Aegean". Athens, Procenius Publications, 1999, pp. 40-41.

⁹ UN, Convection on the law of the sea. Available at: www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (last access 24/1/18).

¹⁰ Ahmet Davutoglu: Strategic depth, Turkey's international position. Athens, Quality Publications, 2010, pp. 268-269.

¹¹ Ahmet Davutoglu: Strategic depth, Turkey's international position. Athens, Quality Publications, 2010, pp.268-269.

emphasizes the right of innocent passage of merchant and warships¹² Because of the Turkish threat of war, the non-extension of territorial waters to 12 nautical miles is an indication, if not a proof, that the enforcement of sovereign rights by Greece depends on the will of another power in the region, another state. From this perspective, Greek state sovereignty is to a certain degree limited, as the existing correlation of power isn't in its favor and due to that Greece cannot ignore the declared statement of Turkey, despite that the threat of war violates the UN law¹³.

4. How the ICJ Sea Border Delimitation Case of Ukraine - Romania Affects the Greece-Turkey Dispute in the Aegean

After 24 rounds of negotiations as well as 10 rounds at an expert level, Romania and Ukraine didn't managed to come to an agreement on delimitation of their sea borders. In view of those circumstances, Romania filed an application instituting proceedings against Ukraine on 16 September 2004¹⁴, but Ukraine refused. Finally, in 2007 Kiev also decided to sign a co-sponsorship agreement with Bucharest and called on the International Tribunal to demarcate those two maritime zones, while at the same time committing that the decision would be respected by both countries¹⁵. On 3 February 2009, the International Court of Justice (ICJ), issued a decisive decision on the simultaneous delimitation of the Continental Shelf and the Exclusive Economic Zone (EEZ) between Ukraine and Romania, ending a long going dispute.

The ICJ has delimited the sea borders of the two countries, mainly by using the middle line method. The middle line method is strongly supported by Greece but has been declined by Turkey.

The ICJ didn't gave to the island of Ukraine (Serpent) full rights to a continental shelf or EEZ and didn't decide if this island is a rocky island or not, despite it was treated in a degree, as if it was a rocky island. The ICJ justified this decision on the grounds that the island had already a 12 mile coastline, which Romania however never put under question. Also, the ICJ didn't take into account at all the Black Sea as a closed or semi-enclosed sea¹⁶ This is a positive aspect for Greece, as long as Turkey's position is to insist that the Aegean Sea is a closed or semi-enclosed sea. The result was that Romania won 79.3% of the disputed sea area.

The most (positive) important part for Greece concerning sea border delimitation case of Ukraine – Romania is that the Court recognized to the serpent island a 12-mile territorial sea boundary. At the time both Greek and Turkish islands in the Aegean have territorial waters of 6 nautical miles while at the same time Turkey has declared territorial waters of 12 nautical miles in both the Mediterranean and Black sea but refuses to do the same in the Aegean.

According to the current regime with territorial waters of 6 nautical miles, 8.8% of the Aegean is under Turkish sovereignty, 35% of the Aegean is under Greek sovereignty and 56.2% of the Aegean Sea is high sea (international waters)¹⁷.

¹² Athanasios Dokos: Greece – Turkey relations, 2010, available online at <http://www.eliamep.gr> (last access 24/1/18).

¹³ Christos G. Collias: Greece - Turkey, Defense, Economic and National Strategy. Athens, Pataki Publications, 2001, p. 185.

¹⁴ Alex Oude Elferink: Maritime Delimitation in the Black Sea (Romania v. Ukraine): A Commentary, available at <http://www.haguejusticeportal.net/index.php?id=10407> (last access 24/1/18).

¹⁵ Karyotis Th. (8-2-2009) "Simultaneous delimitation of the continental shelf and the Exclusive Economic Zone (EEZ) between Ukraine and Romania" available at www.enet.gr/?i=news.el.article&id=15146 (last access 24/1/18).

¹⁶ ICJ, Maritime Delimitation In The Black Sea (Romania V. Ukraine), available at <http://www.icj-cij.org/files/case-related/132/132-20090203-JUD-01-00-EN.pdf> (last access 24/1/18).

¹⁷ Ahmet Davutoglu: Strategic depth, Turkey's international position. Athens, Quality Publications, 2010, p. 269.

Extension of territorial waters to 12 nautical miles will disproportionately alter the balance of interests in the Aegean Sea in favor of Greece, due to its 4.000 islands¹⁸.

With a new regime with territorial waters of 12 nautical miles, 10,1% of the Aegean is under Turkish sovereignty, 63,9% of the Aegean is under Greek sovereignty and 26% of the Aegean Sea is high sea (international waters)¹⁹.

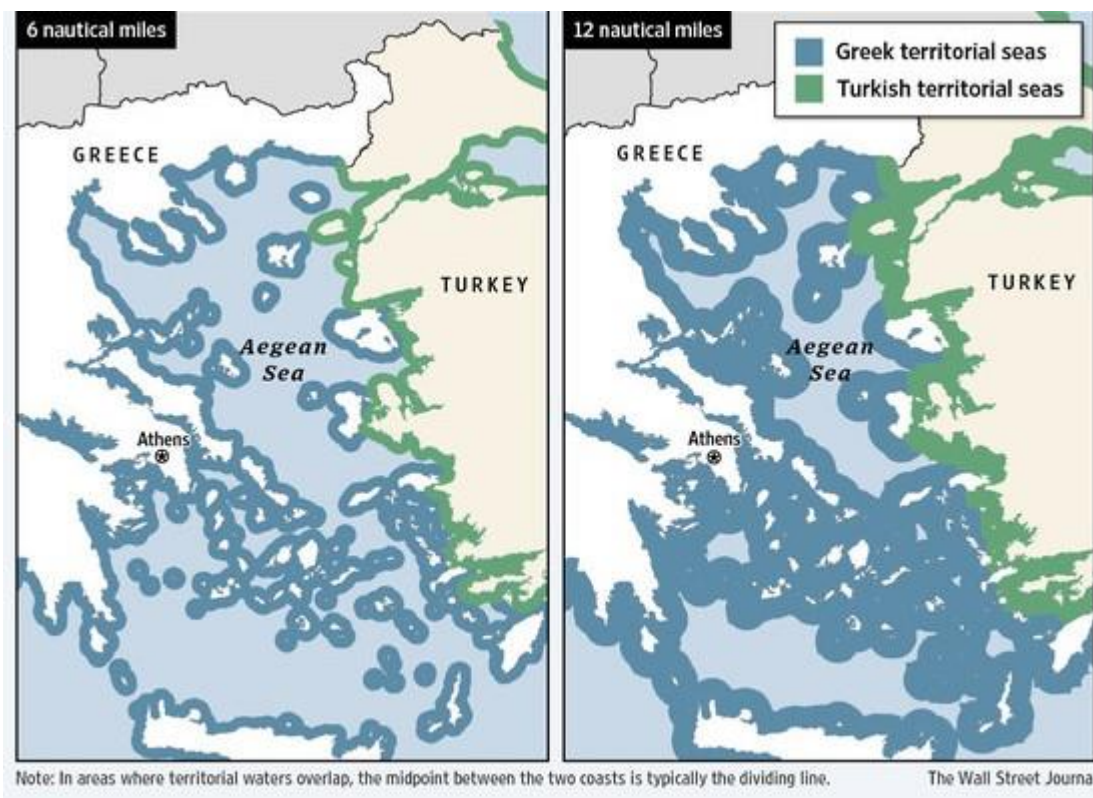


Figure 2.

Territorial waters with a regime of 6 NM on the left and 12 NM on the right

Another important part for Greece, negative this time, concerning the sea border delimitation case of Ukraine – Romania, is that the Court didn't give to the island of Ukraine (Serpent) full rights to a continental shelf or EEZ.

Greece due to its many islands, reduce a lot that negative aspect because the 12 nautical miles of the Greek islands overlap at most areas of the Aegean the EEZ²⁰.

¹⁸ Granitsas A., Bouras S, Greek Maritime Claims Rock Boat With Turkey, www.wsj.com, available at <https://www.wsj.com/articles/SB10001424127887323978104578332352776971978> (last access 24/1/18).

¹⁹ Ahmet Davutoglu: Strategic depth, Turkey's international position. Athens, Quality Publications, 2010, p. 270.

²⁰ Globalsecurity.org: Turkish-Greek Aegean Dispute, available at www.globalsecurity.org/military/world/war/aegean.htm (last access 24/1/18).



Source: www.lygeros.org/articles?n=7638&l=qr

Figure 3.
Greece Claim in the Aegean



Source: Turkish coastguard, available at www.sahilguvenlik.gov.tr

Figure 4.
Turkish Claim in the Aegean

The Turkish Coast Guard published, alleged official maps and documents claiming half of the Aegean Sea belong to Turkey. In this sense, Ankara claims to won dozens of Greek islands, the entire eastern Aegean from the island of Samothraki in the North to Kastellorizo island in the South. The maps and claims have been uploaded on the website of the Turkish Coast Guard Sahil Güvenlik Komutanlığı in the context of a 60-page report about the activities of the TCG in 2016. On page 7 and 13 of the report, the maps allegedly show Turkey's Search And Rescue responsibility area. The maps show half of the Aegean Sea and also a very big part of the Black Sea, where Turkey's SAR area coincides with the Turkish Exclusive Economic Zone (EEZ). It should be noted that Turkey has not signed the International Convention for the Law of the Sea from 1982 which determines the boundaries of the EEZs. However, Turkey claims an EEZ of more than 200 nautical miles²¹.

Athens has not proceeded to the proclamation of the Greek EEZ, presumably due to: a) the Turkish threat, b) the US attitude towards the settlement of the matter through a Greek-Turkish agreement, c) the failure of Petroleum Geo-Services (PGS) to complete the investigations which could provide a clear picture of the possible hydrocarbon deposits in the abovementioned areas, and d) the absence of strong European support. Today, there is a relative change in those circumstances, both due to the somewhat appreciated French support towards Greece and the expected results of the Nordic Explorer surveys²².

5. Concluding Remarks

Greece indicates that all the Aegean issues are legal matters that can best be arbitrated in international courts while Turkey on the other hand, insist on viewing them as political matters which shouldn't be brought in the ICJ²³. Turkey insists on viewing them as political matters requiring bilateral negotiations and the reason is that it is obvious that according to the previous decisions of the ICJ and especially the decision concerning the sea border delimitation case of Ukraine – Romania, Turkey will gain a small percent of the disputed area:

- I) About 25% east of the island complex (15 islands) of Kastellorizo
- II) 25% between Rhodes and the Kastellorizo island (15 islands) complex
- III) Zero profit at the Dodecanese area (complex of 165 islands) due to the great number
- IV) Approximately 4%-5% in the North Aegean
- V) Approximately 4%-5% in the Central Aegean.

In **Figure 5**, with red color are indicated Greece's possible loses as they were previously referred, from its initial EEZ claim in the Aegean, by a potential ICJ judgement on the simultaneous delimitation of the Continental Shelter and the Exclusive Economic Zone (EEZ) between Greece and Turkey²⁴.

²¹ Times News: "Turkish Coast Guard publishes maps claiming half of the Aegean Sea", available at www.timesnews.gr/turkish-coast-guard-publishes-maps-claiming-half-of-the-aegean-sea (last access 24/1/18)

²² GEOSTRATEGY, Vassilis Giannopoulos: "The government's options concerning the EEZ" www.geostrategy.gr/pdf/20120222%20Greek%20EEZ.pdf (last access 24/1/18)

²³ Globalsecurity.org, "Turkish-Greek Aegean Dispute", available at www.globalsecurity.org/military/world/war/aegean.htm (last access 24/1/18)

²⁴ Papadakis Konstantinos (2017 The Greece - Turkey dispute in the Aegean and the ICJ sea border delimitation case of Ukraine – Romania. Similarities and differences in a comparative perspective", presentation at the European Workshop on



Source: www.lygeros.org . Processed by: Papadakis Konstantinos.

Figure 5.

In any circumstances, and irrespective of the judgement of the International Court, a recourse to its judgement would possibly put an end to the Greek-Turkish dispute by allowing the two countries to exploit their natural wealth in the Aegean. The most important is that a ICJ decision will resolve the Greek-Turkish conflict on this issue and that Greece will no longer be in danger of Turkish expansionism because it will enjoy legal certainty. It will be free to drill for oil and gas and to use the EEZ airspace for wind energy²⁵.

Following the example of Romania and Ukraine, which has chosen to solve their dispute in a peaceful way as every modern and civilized countries should do, Greece and Turkey should do the same ending a long running dispute which has costed both countries hundreds of billion Euros, in military

Political Culture, EWPC'2017, available at <https://sites.google.com/a/fspub.unibuc.ro/political-culture-analysis-modelling/home/ewpc-2017-agenda> . Last access 24/1/18.

25 Karyotis Th. (27-11-2012) "A new ICJ judgement" available at: www.enet.gr/?i=news.el.article&id=15146 (last access 24/1/18).

equipment, the last 35 years, and even worse several human casualties. Thus, the only way is to bring this dispute to the ICJ²⁶.

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