

AEGEAN SEA CONTINENTAL SHELF DISPUTE BETWEEN TURKEY AND GREECE



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ABSTRACT

Aegean Sea Continental Shelf Dispute constitute one of many issues waiting to be resolved between Greece and Turkey. Greece as an EU member disposed of these disputes with Turkey as a bargaining cause against Turkey in the EU process. Aegean Sea Continental Shelf dispute along with Cyprus issue are considered as big challenges for Turkey in its membership road. Turkey does not accept Aegean Sea issue as a legal one but rather a political dispute to be resolved with good will and diplomacy. On the contrary, Greece constantly insists on a Court based solution and refused to reach a political solution.

Keywords: territorial water, continental shelf, dispute resolution

ÖZ

Ege Denizi Kıta Sahanelığı Anlaşmazlıđı, Yunanistan ve Türkiye arasında çözülmeyi bekleyen birçok konudan birini oluşturmaktadır. Yunanistan, AB üyesi olarak bu anlaşmazlıkları Türkiye ile AB sürecinde Türkiye'ye karşı bir pazarlık konusu olarak bertaraf etmiştir. Ege Denizi Kıta Sahanelığı anlaşmazlıđı, Kıbrıs sorunu ile birlikte Türkiye'nin üyelik yolunda büyük zorluklardan olarak kabul edilmektedir. Türkiye, Ege Denizi sorununu yasal bir sorun olarak değil, iyi niyet ve diplomasi ile çözümlenmesi gereken siyasi bir anlaşmazlık olarak kabul etmektedir. Aksine, Yunanistan sürekli olarak Mahkeme temelli bir çözümden ısrar etmekte ve siyasi bir çözüme ulaşmayı reddetmektedir.

Anahtar Sözcükler: karasuları, kıta sahanlıđı, uyuşmazlık çözümü

INTRODUCTION

Aegean Sea Continental Shelf Dispute constitute one of many issues waiting to be resolved between Greece and Turkey. Greece as an EU member disposed of these disputes with Turkey as a bargaining cause against Turkey in the EU process. Aegean Sea Continental Shelf dispute along with Cyprus issue are considered as big challenges for Turkey in its membership road.

Turkey does not admit Aegean Sea issue as a legal one but rather a political dispute to be resolved with good will and diplomacy. On the contrary, Greece constantly insists on a court-based solution and refused to reach a political solution.

Continental shelf issue is rather special in Aegean Sea due to its special features. Islands are the most controversial issue in drawing the limits of continental shelves. The result differs according to the rules to be taken into account. Admitting islands as a part of the main land of Greece would lead to give Aegean Sea control to the Greece. If islands are accepted apart from main land, would they have continental shelves of their own? If they do, would it be just? Should we count on equity?

This article aims to analyse the dispute under the light of the judgments of International Court of Justice (ICJ) and awards of Arbitrations along with general principles of international law such as equity. Reaching an equitable solution is mandatory of international law or is it a suggestion?

Historically, the legal concept of continental shelf first derives from Truman Proclamation of 1945. Legally, two important Conventions are adopted on the issue namely Geneva Convention of 1958 and United Nations Convention on the Law of the Sea of 1982. Both agreements are applied by the ICJ and arbitral tribunals with interpretation of its articles under general principles of international law. Jurisprudence enriches the concept of continental shelf with many judgments clarifying and deeply examining the disputes. In this article, We will try to analyse them in order to bring a most probable answer that ICJ would give on the present dispute if it has the capacity on the issue.

A. Continental Shelf as Legal Concept

The United States issued the "**Truman Proclamation**" on 28 September 1945 which could be regarded as a starting point of the positive law on the subject. It proclaims that "*the coastal State had an original, natural and exclusive right to the continental shelf off its shores, had come to prevail over all others and then was reflected in the 1958 Geneva Convention*"¹.

Geneva Convention on Continental Shelf was adopted on 29 april 1958 for the purpose of legally regulate the continental shelf concept. It defines in its 1 st article:

*"..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 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.."*²

The content of the right is stated followingly:

*Article 2 "1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources"*³

What is meant by natural sources is that :

"4. The natural resources referred to in these articles consist of the mineral and other

*non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil."*⁴

The coastal State's rights existed *ipso facto* and *ab initio* meaning that this is a right inherent in being a coastal state.

¹ Uluslararası Adalet Divanı Karar Özetleri, *Kuzey Denizi Kıta Sahanelığı davası* <https://www.icj-cij.org/case/52> (son giriş: 12.02.2024)

² Kıta Sahanelığı hakkındaki Cenova Konvansiyonu, madde 1, 29 april 1958.

³ Ibid, madde 2

⁴ Ibid, madde 4

*“The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.”*⁵

Therefore, the issues with the continental shelves are not about giving right to have continental shelf but only to draw its limits. As it is mentioned clearly by the ICJ in *North Sea Continental Shelf Cases* that:

*“That the present cases are not concerned with the apportionment of the continental shelf but its delimitation, is derived from the fundamental concept of the continental shelf. Besides, the Special Agreements request from the Court a decision on the principles and rules of international law applicable to delimitation and not to apportionment.”*⁶

B. Turkey-Greece Continental Shelf Dispute

I. Historical Background

Lozan Treaty sets a proportionate allocation of the islands in Aegean Sea. This proportion does not amount to an absolute equality. Greece would like to extend its influence and control on the Aegean Sea by using the modern continental shelf concept. On the other side, Turkey is in absolute opposition of seeing the Aegean Sea dominated by Greece. The dispute concretized in the beginning of the years 1970. There had been mutual violation of so-called sea borders each part demands rights upon. Mutual alleged violations occurred at the time until the one with the Turkish Sheep named “*SISMIC I*” making earthquake preliminary reseaches on Aegean Sea that pushed Greece to file an official complaint both to the ICJ and to the UN Security Council respectively on 7 and 10 august 1976.⁷

II. Resolution of the Security Council

Greece made a complaint to the UN Seceurity Council on 10 august 1976. The latter declared a resolution suggesting peaceful settlement of disputes, direct negotiations, respect for each others international rights, not aggravating the situation. Furthermore, It urges

⁵ Cenova Konvansiyonu, 2. madde para 3 ,1958

⁶ *Kuzey Denizi Kıta Sahanelığı davası*, Almanya vs Danmarka, 20 Şubat 1969, UAD, para 92.

⁷ Sevin Toluner, Milletlerarası Hukuk Dersleri, Beta yay, 1989, sf.249.

them to reduce the tensions and invites them to take the case to the International Court of Justice.⁸

III. Greece's Application to the International Court of Justice

Greece made an unilateral application to the ICJ regarding the dispute. However, Turkey refused the competence of the ICJ to examine the case on following reasons. First, Turkey didn't renew its recognition of general competence of the ICJ since 1972. Second, Greece left the Court's competence outside on areas about border disputes. As for Greece, first they claim the above-mentioned pact for the disputes between Turkey and Greece to be dealt before the ICJ. Second, they put forward the declaration signed in 1975 between Turkey and Greece just after the dispute arises regarding Turkey to agree at final stage to bring the dispute to the ICJ.⁹ However, the misunderstanding is that Turkey signed this declaration counting firstly on the bilateral negotiations. If they had been genuinely concluded, then they may be apply to the ICJ. The problem is that Greece part never looked at the negotiations very seriously and wanted to directly bring the issue to the ICJ. There are reasons for them to do that and we will examine them.

The ICJ decided that it has no competence on examining the dispute in substance. The application was found inadmissible. Mainly because the competence of the ICJ is based on the principle of mutual consent which may be expressed in different ways such as express general declaration of recognition (what Turkey used to do before stopped to renew it), drafting a compromis clause, insertion of a competence clause into an agreement or to accept tacitly in the sens that a party started to defend in substance without questioning the Court's competence.¹⁰

⁸ Resolution 401/1976, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/395\(1976\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/395(1976))

⁹ Hakkı Hakan ERKİNER, Mehmet Emin BÜYÜK, "Türk-Yunan İlişkileri Kapsamında Kıta Sahaneliği Uyuşmazlığının Çözüm Yeri Birleşmiş Milletler Uluslararası Adalet Divanı Olabilir mi?", *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* • Cilt 27, Sayı 2, Aralık 2021, pp. 1013-1038, sf 1016.

¹⁰ Hüseyin PAZARCI, *Uluslararası Hukuk*, Turhan Kitabevi Yayınları, Basım Yeri: Ankara, 19. baskı, 2020, sf 524-525

IV. The reasons behind Greece and Turkey's attitudes

According to Greece, Aegean dispute is only limited to the continental shelf. For Turkey, the problem is more complex and includes many things such as legal status of some islands, demilitarisation of some of them, airspace. Therefore, Turkey insists firstly to take the issue on the table between parties via diplomacy and good office. It is a political dispute and therefore it must be settled politicaly. Mainly, these differences of approaches to the dispute make easier to understand the subject better.

V. Territorial Sea Dispute

Before analysing continental shelf dispute, we will look at the disagreement on territorial sea issue. Arguments of the parties are respectively;

As for Greece, the first argument, according to the international customary law as well as United Nations Convention on Law of the Sea (UNCLOS), territorial water may be up to 12 miles. Secondly, this 12 miles rule is no different at Aegea Sea because there is no reason to derogate from the general rule. Finally, islands form integral part of the country. Territorial integrity must be respected and protected.¹¹

As for Turkey, the first counter argument is that there is no uniforme applicable rule of 12 miles territorial sea. In the calculation, geographical features must be took into account. Aegea Sea carries these specificities.¹²

Turkey is not party to any international sea agreement and therefore its articles are binding Turkey according to the customary law however Turkey formed a *persistant objector* to the 12 miles rule of the territorial water “**for the aegean sea**” from the beginning. Therefore 12 mile rule does not bind Turkey in aegean sea.¹³

¹¹ Nurser Gökdemir IŞIK, “Kıta Sahanlığı, Hukuki Rejimi ve Ege Sorunu”, Dokuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü, doktora tezi ,2009,sf.176.

¹² Ibid, sf.177.

¹³ Yusuf AKSAR, Teoride ve Uygulamada Uluslararası Hukuk-II, Seçkin yay, 6. baskı, sf 76.

VI. Aegean Dispute in the context of EU-Turkey Relations

Turkey as a candidate country is faced with conditions to satisfy in order to obtain a full membership. Cyprus issue was and is still clearly mentioned in the presidency conclusions. However, aegean dispute is not directly referred but rather placed under peaceful settlement of border disputes as candidate countries' obligations. Greece as a member state tried hard to bring this issue in front of Turkey's accession negotiations as a leverage.

Article 4: “...In this respect the European Council stresses 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. The European Council will review the situation relating to any outstanding disputes, in particular concerning the repercussions on the accession process and in order to promote their settlement through the International Court of Justice, at the latest by the end of 2004”¹⁴

VII. Continental Shelf Dispute between Turkey and Greece under international law (case law)

In the light of the continental shelf concept, arguments of the parties will be presented and the issue will be analysed under the international law instruments such as related international agreements and judgments of the ICJ.

Greece demands first that an equal median line must be drew in Aegean Sea. Second, they demands the beginning of this line not from the Greece motherland but including all islands as a whole. They demands all islands to have continental shelves equal to a motherland. They support this claim on the Geneva Convention of 1958.¹⁵

“... the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence

¹⁴ Helsinki European Council, Conclusions of the Presidency, 10-11.12.1999, http://www.europarl.europa.eu/summits/hell_en.htm

¹⁵ Yücel ACER, “Ege Kıta Sahanelığı Sorununda Türkiye'nin Hukuki Durumu: Uluslararası Yargı Kararları Işığında Bir Değerlendirme” Euroasia File 8/4 pp. 189-209, sf.193

*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.(emphasis added) ”¹⁶*

We will examine the issue under some of the judgments of the ICJ. First of all, the famous *North Sea Continental Shelf Case* of 1969¹⁷ is a projector of customary law and decides whether the median line is a must-applicable rule in this kind of conflicts. The ICJ evaluates the above article 6 of the Geneva Convention and went on saying that as the article firstly mentions a mutual agreement to be made between the parties on the dispute. If they don't agree on a reasonable solution *after trying hard to come by* (which is particularly important due to the fact that Greece argues that Turkey don't come to the Court unlike its promise made between them.)

As Turkey is not party to any maritime convention, these rules do not bound Turkey. Also, this medium line is not a obligatory enforced by the law but only one of the applicable methods.¹⁸

Turkey responds to that by quoting the ICJ's evaluation on North Sea cases and in particular:

“...equidistance method of delimitation was not obligatory as between the Parties; that no other single method of delimitation was in all circumstances obligatory; that delimitation was to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constituted a natural prolongation of its land territory”¹⁹

The method to follow is therefore clarified by the Court. Parties of the disputes may agree on almost any solution within the limits of international law including beyond law solutions (*ex aequo et bono*).²⁰ They should take into account all relevant circumstances in reaching an

¹⁶ Kıta Sahanlığı Konvansiyonu 6. maddesi, *Cenova*, 29 Nisan- 31 Ekim 1958

¹⁷ *Kuzey Denizi Kıta Sahanlığı davası*

¹⁸ Selami KURAN, *Uluslararası Deniz Hukuku*, sf 263

¹⁹ *Kuzey Denizi Kıta Sahanlığı davası*, para 101.

²⁰ In Latin, with equity and good will

equitable solution. The Court underlines that median line is not an absolute rule to be applied however, it is mostly the best option to reach an equitable solution.

The judgment on the continental shelf delimitation between Romania and Ukraine, ICJ created and applied the *third level delimitation methode*.²¹ It is a methode which consist of three rules. First, a median line must be drawn. Second, this line may be modified according to equitable principles. Third, the proportionality of the continental sea lines must be checked. Therefore, the balance between the lenght of the shores and the maintenance of the continental shelf must be provided.²²

Turkey longtime based its arguments on the *North Sea cases* which is the natural prolongation of its land principle.²³ However, after the adoption of the United Nation Convention on Law of the Sea(UNCLOS) and a parallel change of the attitude of the ICJ, Turkey began to focus more on the equitable principles. What are these equitables principles?

C. Equitables principles

As Turkey does not have to follow the equal median line, the limitation have to be made on equitables principles.²⁴ One of the principle emerging from the jurisprudence is the geographical supeority in the sense that the more it is closer to the motherland, the more the latter overtakes the priority.²⁵

Another principle is the length of motherland shores and, as a rule, shoreline length is the most important geographical factor determining the sea area to be obtained.²⁶

²¹ Karadeniz’de Deniz Alanı Sınırlandırması (Romania v. Ukraine), Karar (UAD Raporları 2009)

²² Hakkı Hakan ERKİNER, Mehmet Emin BÜYÜK, op cit, “Türk-Yunan İlişkileri Kapsamında Kıta Sahaneliği Uyuşmazlığının Çözüm Yeri Birleşmiş Milletler Uluslararası Adalet Divanı Olabilir mi?”, sf 1030.

²³ Selami KURAN, Uluslararası Deniz Hukuku, Beta yay.7.baskı, Mart 2021, sf 266

²⁴ İbid , sf 267.

²⁵ Yücel ACER, “Ege Kıta Sahaneliği Sorununda Türkiye’nin Hukuki Durumu: Uluslararası Yargı Kararları Işığında Bir Değerlendirme” sf.200.

²⁶ Katar-Bahreyn davası, para. 185.

In fact, there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures.²⁷ Equity principles are not determined as *numerus clausus* but they are to guarantee an equitable result is reached.

D. Continental Shelf of the islands in the Aegean Sea

To begin with, islands can have continental shelves of their own. However, islets, rocks and minor coastal projections are ignored according to the ICJ.²⁸ Also, all this will be considered under the light of equitable principles. Therefore, we are in the presence of a problem with three aspects.

In Aegean Sea, what Turkey claims is that all islands can not have continental shelf and furthermore even islands which have continental shelf can not own full measure of 200 miles. The Arbitral Award of 1978 between UK and France²⁹ brought light to the issue by stating firstly that islands which are “*on the wrong side*” of the median line can not have full continental shelf as a mainland because it would lead to an inequitable solution. Therefore, they came to decide that these two british islands on the french side of the medium line are to given a limited continental shelf.³⁰ Consequently, islands which denote specificities such as being on the opposite side are either excluded from enjoying any continental shelf or they do have only limited distance given. It is called “*half-effect*” theory. The fact that an island is to be given a half effect or not be given any continental shelf depends on these factors; First, if island is inhospitable then it has no continental shelf at all.³¹ Second, if they are economically hospitable then as a rule they enjoy the same continental shelf as a land. However, then intervene equitable principles such as if islands are closer to the opposite mainland, then they can not dispose of full continental shelf in detriment of the opposite mainland.

As far as Aegean Sea is concerned, the islands which are closer to the Turkey can not have full continental shelves. Secondly, they can not

²⁷ Kuzet Denizi, op cit, para 93.

²⁸ Canada vs. USA, Maine kararı, 1984

²⁹ Birleşik Krallık- Fransa Kıta Sahaneliği Hakemlik kararı, 1978.

³⁰ Birleşik Krallık- Fransa, para 87.

³¹ Eritre-Yemen Hakemlik Kararı, 17 Aralık 1999, para 147

have continental shelf in detriment to the Turkey's shores' length according to the proportionality principle. Third, Turkey's Access to the international seas can not be cut off by any continental shelf. ICJ refused to give effect to the french islands in Canada due to the reason that it would create a cut off effect.³²

Romania and Ukraine case is an exemplary on the issue of islands. ICJ came to a conclusion that the islands which stands in contrary to the median line shall not be taken into consideration when drawing the continental shelf line.³³

Under all this judgments and related agreements, what would be the decision of the ICJ if Greece and Turkey agrees on take the dispute in front of the Court. First of all, a median line should be drawn in Aegea Sea right between the opposite shores of Turkey and Greece. Afterwards, we should look at the islands on the turkish side, they should not have any continental shelf. Mainly because, they already enjoy 6 miles of territorial sea area. Therefore, they can not be given any continental shelf that they normally can enjoy under international law. The reason is that conferring them even limited continental shelf would result in an inequitable solution.

Conclusion

The continental shelf dispute is not only a legal dispute. The balance set up by Lozan Agreement in Aegea Sea is quite sensitive. The existence of the islands makes it more complicated. Turkey insists on a political solution which includes not only continental shelf issue but also other disagreements related to islands etc... On the other hand, Greece denies all disputes other than continental shelf issue and they want absolutely take the issue in front of the ICJ.

The article focuses on the judgments of the ICJ on continental shelf disputes and endeavours to bring about a reasonable and equitable solution to the dispute. The classic method used in law an practise is the median line principle. However, being used most of the time does not make the rule as sole method. The main rule is to conclude a

³² Kanada vs Fransa Deniz Alanı Sınırlandırma, Hakemlik kararı, 1992.

³³ Karadeniz'de Deniz Alanı Sınırlandırması (Romania v. Ukraine), Karar (UAD Raporları 2009), para 149.

bilateral or multilateral agreement depending on the number of parties about the continental shelf. The parties can agree on almost any solution. If they fail to reach an agreement, then the median line is to be used but if there are no special circumstances that would prove otherwise. The Aegean Dispute contains special circumstances such as having islands. Greece denies this to constitute a special circumstance.

Why Turkey does not want the issue to be dealt by the ICJ? Firstly, Turkey wants a comprehensive solution package for not only continental shelf but other related issues. Secondly, the ICJ itself urges a diplomatic peaceful settlement of disputes by bilateral agreement before taking the issue to the Court. The unwillingness of Greece on a political solution and bilateral talks complicates the issue. Actually, Greece should be forced by the UN and EU about a diplomatic solution instead of asking why Turkey does not want a Court solution. Third and lastly, Turkey may be worried about a decision which damages the sensitive balance established in the Aegean Sea. Considering the jurisprudence, we can not predict the exact outcome. As it is said by Erkiner and Büyük, in the last 25 years, the judgments of the ICJ become more concrete however, the limitation on the islands are not clarified enough. Therefore, a strict prediction of an outcome is not possible.³⁴

³⁴ Hakkı Hakan ERKİNER, Mehmet Emin BÜYÜK, “Türk-Yunan İlişkileri Kapsamında Kıta Sahaneliği Uyuşmazlığının Çözüm Yeri Birleşmiş Milletler Uluslararası Adalet Divanı Olabilir mi?”, Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi • Cilt 27, Sayı 2, Aralık 2021, pp. 1013-1038, p1033.

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