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THE DEVELOPMENT OF THE LEGAL CONCEPT OF THE CONTINENTAL SHELF: TURKEY AND GREECE ENDLESS AEGEAN DISPUTE

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The Greek decision to extend its territorial waters to 12 miles in the Aegean Sea will be regarded as a cause of war (*casus belli*) as declared by the Turkish Parliament in 1995. A decision taken by the Turkish parliament years ago is valid today. Greece claims it has the right to extend its territorial waters to 12 miles in line with the 1982-dated U.N. Convention on the Law of the Sea. Turkey is not a party to the convention. Athens has repeatedly stated that such a move is in full accordance with international law. Tension between Turkey and Greece has ominously escalated in the eastern Mediterranean as both countries are accusing each other of violating its continental shelf.

The Aegean Sea itself needs to be analyzed in detail geographically as well as legally so as to have a better understanding of the conflict between these two neighboring Aegean states. In this respect, the outstanding nature of the Aegean Sea and the way its natural characteristics are regarded by Greece and Turkey are of outmost importance.

Neither a practical nor a legal definition existed for the concept of continental shelf at the beginning of the 20th century. The continental shelf started to be debated years after the question of the extension of the territorial sea was discussed in the international community and only after the exploitation of the resources on the seabed and subsoil were on the agenda.

By the year 1930, pressure from a considerable number of states to extend their jurisdiction seawards was mounting, reflected in the Hague Conference for the codification of International Law [1]. Many states were in favor of a wider zone of territorial sea; however this was not the case in continental shelf. Since resources on the seabed and subsoil were not drawing the attention of states and

there was no concept of continental shelf in the 1930's, the first pronouncement of a continental shelf happened only after the World War II. On 28 September 1945, then president of the United States Harry Truman issued a proclamation declaring that the US government "regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control". The continental shelf was further explained by a press release of the government stating that "generally submerged land which is contiguous to the continent and which is governed by no more than 100 fathoms (200 meters) of water is considered as the continental shelf" [2].

The Truman Proclamation was the initial point in the development of the legal concept of the continental shelf, as it provided a model for a succession of similar claims by other states. Numerous unilateral acts with a variety of scopes and content were declared by other states anxious to take advantage of the new practice initiated by the US government. Nevertheless, no provisions for delimitation with neighboring states were envisaged.

In early 1950's, for a definite delimitation of the continental shelf, the International Law Commission had only mentioned a zone of seabed "where the depth of the super adjacent waters admits of the exploitation of the natural resources of the seabed and subsoil". Having no reference to a fixed depth, the approach became unfeasible with regards to the rapid development in technology. In fact, it can be said that every delimitation dispute between states has arisen along with the availability of technology to exploit the seabed and the subsoil, as it is the case in the Aegean Sea continental shelf dispute [3].

The United Nations Conference on the Law of Sea that was held in 1958, along with other issues of the law of the sea, attempted to formulate an agreed legal definition of the continental shelf, since delegates were reluctant to accept uncertain criteria as "exploitability" for a description. A compromise was reached including both the International Law Commission's exploitability criteria and more precise depth criteria in the definition of the continental shelf. The text of 1958 Geneva Continental Shelf Convention Article 1 gives the definition as follows: For the purpose of these articles, the term «continental shelf» is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

This definition contained the criteria of adjacency to the coast and of exploitability, however was still regarded as imprecise and open-ended nature in terms of delimitation. Moreover, as for the debates on effective

control and exploitation, the coastal state rights over the shelf were not based on notions of occupation or expressed claims made by states.

Thus, Article 2 of the Geneva Convention proposed that states had this right *ipso jure*: 1. The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. 2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State. 3. The rights of the coastal state over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation [4].

In addition, in account of neighboring states, the Convention stated in Article 6 that: 1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by *agreement between them*. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

This article is important because of the fact that it gives reference to three elements in case of conflict in the delimitation of the continental shelf: firstly a boundary settled by agreement; secondly a boundary drawn using the median line or the principle of equidistance; and thirdly in cases of special circumstances, another boundary line justified by these special circumstances. As stated in Conference drafts, this meant that the equidistant rule was the general rule; however in special circumstances another justified boundary line will be the basis for delimitation as necessitated by any exceptional configuration of the coast, as well as the presence of islands or of navigable channels.

The problem in the Aegean is largely to do with the special configuration of the sea that does not give way to the direct application of the legal norms. It is a semi-enclosed sea whose east-west length is shorter than 400 nautical miles, and it almost gives no chance in all areas for delimitation of the shelf areas to be derived from the notion of natural prolongation. Thus, continental shelf has been an ongoing dispute. When the right to make exploitations for natural resources in this area is the case, the issue gains more importance considering the special geographic characteristics that are equally important to both Greece and Turkey in terms of strategic, economic and political interests.

With respect to the delimitation of the continental shelf, the Greek and the Turkish authorities diverge in several matters, leading the matter into a

deadlock. For about 18 years no progress is made on the dispute, since neither of them is even willing to compromise on the nature of the dispute. They disagree on the area of waters to be claimed as continental shelf; on the legal rules to be applied and on the approach for a legal settlement. The two states put forward conflicting arguments although both suggest the application of international law at the same time. The security considerations are also a predominant element in their approaches to the problem.

The principle of equity and fairness has long been considered as a source of international law, as a part of the general principles of law. Often been applied by international tribunals, the principle appears to be within the ambit of Article 38/1(c) of the Statute of the ICJ. The most prominent use of equity has been in the law of the sea, in the context of the delimitation of maritime zones between opposite and adjacent states [5].

In conclusion we can add that the European Union remains committed to good neighborly relations and respect of international agreements. Reportedly, “respect of international agreements” refers to the UN Convention on the Law of the Sea, under which such expansion is possible, while the reference to “good neighborly relations” is a rebuke to Turkish positions considering any extension a *casus belli*. The Aegean Sea lies at the core of most of the political relations between Greece and Turkey. It is not only a sea that divides the two mainlands, but it is also a main source of conflict dividing the two states in several political, economic and legal matters.

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