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Controversy in the Aegean: Some Legal Possibilities

by ***D.M. Sakellariou***

In human relations, justice is attained when there is a balance of power. When this is not the case the powerful will go as far as his power permits while the weak will accept what he is obliged to accept.

Thucydides

INTRODUCTION

To the ever present political differences between Greece and Turkey, the discovery of oil in the Northern Aegean Sea introduced a new dimension that added to the existing difficulties. Before the row over Cyprus could find a way toward a settlement, a claim was raised by Turkey regarding exploration and exploitation rights in the continental shelf of the Aegean Sea. Thus, to the standing dispute over Cyprus, a new one has been added that worsens the already precarious situation and threatens to throw out of balance all hope for a peaceful solution.

The conflict between the two countries has been traditionally cast in terms of historical animosity, but historical hypotheses are not enough to explain the present conflict. It should be noted that tradition did not prevent the two nations in the past from coming to important agreements when they had to. Hostile feelings certainly existed after the 1919-22 Greco-Turkish war, but such feelings did not stop the signing of the 1930 Treaty of Friendship, Neutrality and Conciliation, which provided among other things for the submission of disputes to the judgment of the International Court.[1] The fact is that the two countries are interdependent both strategically and economically and this interdependence was understood by their leaders Venizelos of Greece and Attatwik of Turkey who negotiated the agreement.

Professor E.N. Botsas [2] makes an interesting point when he argues that "there have to be economic benefits for an animosity to last as long as the present animosity between the Greeks and the Turks." Such benefits could be internal, transferred from society as a whole, to the ruling elites, or external, from an alliance to the individual member states. If an external transfer helps or causes an internal transfer to the military sector, it could be argued that NATO's aid to the two countries as funds has enhanced the role of the military elite and has, most likely, caused the two countries to put-off the search for peaceful solutions.

In spite of traditional belief, Greece and Turkey have experienced periods of cooperation. During such a period in the early 1950s (both Greece and Turkey joined NATO on February 1952), the aid from the alliance had benefited both countries. There was, as it were, a fairly even distribution of the aid between the economic and military sectors. With the Cyprus and Aegean conflicts, the cost of their economies increased. Under the assumption that they needed an increase in military spending for defence against each

other they increased the ratio.[3] This transfer of funds from the economic to military sector lowered their economic level. At the same time, by the transfer of resources toward the military a political shift of power favored the military who, as is usually the case, have a vested interest in perpetuating external pressures.

The first hostile events came in 6 September 1955 when the Turkish government, wanting to prevent an agreement on Cyprus between Britain and Greece, organized bloody riots against the Greek community in Turkey.[4] Such events did not stop Cyprus from pursuing a policy of self- determination.

The next Turkish step was the 1964 preparation for the invasion of Cyprus. This was stopped only after President Johnson's warning that they should not count on the United States to defend them in the case they were attacked. The invasion was stopped, but the relations of the two countries remained unsettled and their military expenditures continued to be a function of their relations.

The Greek military inspired coup to overthrow President Makarios in July 1974, gave Turkey the opportunity it was looking for, to invade. The invasion had a catalytic effect on a host of latent issues and particularly on the question of the Aegean. The term "Aegean" became now a shorthand for a set of contested interests that include territorial waters, continental shelf, air space over Aegean waters, the fortification of islands and so on. In this article only the continental shelf issue shall be discussed being one of the main reasons for the conflict and a problem most amenable to a legal solution.

TURKISH CHALLENGE AND THE FIRST REACTIONS

The first and major step that lead to the deterioration of relations between the two countries was the Turkish unilateral action of granting exploration and exploitation rights to the Turkish Petroleum Company on several sea areas of the Aegean, some of them located on the continental shelves of the eastern Greek islands of Samothrace, Limnos, Lesvos, Chios, Psara and Aghies Eustratios.

In doing so, Turkey ignored the presence of these islands and in effect divided the Aegean by a median line equidistant from the Greek and Turkish mainland coasts.[5] This implied, not only, that the Greek islands were not allowed any effect on the drawing of the median line, but also that their own continental shelf extended to no more than the seabed areas of the same length as their territorial waters which at present stand at six nautical miles.[6]

Before following the development of the dispute any further, let us consider the definition of a continental shelf as is now formulated in the international fora. This is especially useful, since the definition also postulates who has rights to what.

The idea of the continental shelf drew world attention after President Truman's 1945 declaration regarding the rights of the US to explore for, and exploit, any natural resources that could be located under the seabeds adjacent to her shores. The declared

principle, which has now been accepted by the majority of countries, legitimizes the possibility of exploitation of such resources beyond a country's territorial waters.

The definition of the continental shelf was first given, and adopted, during the First World Conference on the Law of the Sea (Geneva 1958).[7] Article 1 of the Convention states that:

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 metres or, beyond that limit, to where the depth of the super adjacent waters admits of the exploitations of the natural resources of the sea areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.[8]

It is clear in this definition that islands do possess a continental shelf of their own. This declaration is not reversed by subsequent conferences, as for example, in the 1982 UN Convention of the Law of the Sea, which specifies, in Article 121, that:

Except as provided for in Paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of the Conventions applicable to other land territory.[9]

The neglect by Turkey to abide by such convention brought about a breakdown in the communication between the two countries.

The situation took a turn for the worst around 1970 when the Greek Government gave permission to the Oceanic Exploration Company of Denver, Colorado to search for oil in the Northern Aegean.[10] In January 1974, Oceanic found a commercially exploitable deposit of oil west of the isle of Thassos and ten miles south of the mainland port of Kavala,[11] clearly safely away from any Turkish coast (mainland or island). Turkey considered the drilling a good reason to lay its own claims. This, however, as was pointed out disregarded any continental shelf rights that the islands might have.

When Greece invited Turkey to agree to put the matter before the International Court, Turkey refused to sign the compromise agreement that is necessary for such procedure. Greece, then, on 10 August 1976, applied to the Security Council of the UN for an urgent meeting on the grounds that "following . . . repeated flagrant violations by Turkey of the sovereign rights of Greece in the Continental Shelf of the Aegean, a dangerous situation has been created threatening international peace and security."[12] At the same time Greece asked the International Court at the Hague to rule on the rights to exploitation of the continental shelf of the Aegean and to assume the delimitation of the sea area between Greece and Turkey in the northern Aegean.[13]

Greece also asked for an injunction requesting the Court to advise inter alia that the two countries ". . . refrain from all exploration activity . . . with respect to the Continental Shelf areas . . . in dispute in the present case . . .."[14]

With regards to the Council, Greece obtained some relief in that the Security Council invited both governments to avoid any unilateral action that could endanger the peace.[15] At the same time the Security Council advised the two parties to resume direct negotiations and "to take into account the contribution that appropriate judicial means . . . are qualified to make to the settlement of any remaining legal differences . . . ."[16]

The Court, on the other hand, while denying the Greek request for an injunction, did not agree with Turkey that "the Greek application was 'premature', that the Court lacked jurisdiction" and that, therefore, the case should be dropped."[17] This suggests that the Court did not follow the same line of reasoning as that of the Security Council, which was in effect suggesting that the Greek application to the Court had to wait until after direct negotiations had taken place.

This difference of opinion between the Court and the Security Council begs the question as to whether or not it was advisable for Greece to seek a political solution by appealing to the Council which is clearly a political body.

To better understand the difference in the two countries' viewpoints regarding the dispute we shall review briefly some general definitions that distinguish between a "legal" and a "political" difference.

According to the Permanent Court of International Justice the term "difference" refers to:

a disagreement on a legal or real question, an opposition of legal aspects or interests between two persons.[18]

Differences could be either "political" or "legal." In a legal difference the parties have demands of a legal nature. That is their difference refers to a mutual dispute over a legal right that can be resolved by an appeal to the rules of international law.[19] This can be interpreted to suggest that such (legal) differences can and should be addressed to international courts, whether arbitration courts or permanent, such as the Court of the Hague. In fact, Article 36, par. 2, of the Constitution of the International Court, stipulates that the following legal cases fall within its jurisdiction:

i. the interpretation of a treaty;

ii. all cases of international law;

iii. the occurrence of an event the proof of which could constitute a breach of an international obligation.

In contrast to legal disputes, political differences require, not only the application of the rules of international law, but can, also, challenge the existing rule of law or any revision of it.[20] Consequently, the solution of this kind of difference cannot be submitted to the judgement of an international judge. Instead, such differences can be resolved on the

basis of other methods referred to as "political" or "diplomatic" such as negotiation, good services or conciliation.[21]

THE NATURE OF AND THE REASONS FOR THE DIFFERENCES IN THE GREEK-TURKISH VIEWPOINTS

Considering the above definitions and observations we can look at the way the two countries confronted the question of the nature (legal or political) of their dispute.

Turkey from the start followed a policy according to which the difference was viewed as political and ought, therefore, to be resolved by negotiations. Greece, on the other hand, preferred to appeal to international law both conventional, as well as, customary.

It is worth noting that originally Turkey also used legal arguments, but its stance changed and from 1974 on it adhered to the notion that the difference was political even though it appeared from time-to-time to accept a legal solution.[22]

Indeed, in a common announcement made in Brussels on 31 May 1975 by Karamanlis of Greece and Demirel of Turkey the two Prime Ministers agreed that their difference over the continental shelf should be submitted to the International Court of the Hague. For this it was necessary to sign a compromise instructing the Court of their difference and what they wished the Court to do. Turkey, however, back tracked and refused to sign it, proposing instead bilateral negotiations. Greece tried to use the Brussels pronouncement as a proof for the Court's competence to hear the case introduced now by unilateral application.[23]

This was the second attempt by Greece to establish the competence of the Court with regards to its request. The first was based on an international convention: the General Act of Geneva for the Peaceful Resolution of Differences.

The competence of the Court is established, in general, in either of two cases. The first is by a common declaration of consent by the two parties, or second, through the existence of a treaty for resolving international differences which the two countries had previously ratified.[24] The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.[25]

In the case of the Convention of Geneva, Greece had asked for an exception from the compulsory application of the Court's decision which was related to the internal sovereignty of a nation. Turkey then argued that Greece, had in fact, excluded from the jurisdiction of the Court, differences such as those concerning the continental shelf and so it was justified not to accept the decision of the Court in this case either. The Court accepted this argument.[26]

The second attempt by Greece, based on the common pronouncement in Brussels was also unsuccessful. In this case Turkey challenged the binding nature of that agreement

and the court determined that "the pronouncement could not be considered as a text where the consent of the two countries to appeal to the International Court, was given unequivocally and without conditions and could not, therefore, be used as a basis for establishing the competence of the Court."[27]

Thus, Greece had lost two chances to have the Court judge on the substance of the matter and resolve the dispute with Turkey. It had, however, gained an important point in that the Court accepted that the dispute was of a legal nature, something that Turkey had argued strongly against. The Court, furthermore, refused to accept Turkey's claim that since there were parallel negotiations going on, this should rule out a Court judgement on the dispute.

Having looked at the ways the two countries considered the nature of their dispute one may want to know the reason for the displayed preferences. The answer lies basically in the Greek and Turkish differences over national sovereignty. While Greece did not object to a dialogue with Turkey, it considered its present borders, its sovereign rights, and legal jurisdictions by international treaties as non-negotiable. Greece believed that Turkey was trying to alter the status quo by suggesting an open dialogue that included both the Aegean and Cyprus in the same bundle.

With the worsening of relations after the 1974 invasion of Cyprus by Turkey and the virtual absence of any attempt by NATO or the United States to prevent it, Greece felt that by entering into such a dialogue, not only would it have to negotiate issues considered closed, but that it would be subject to pressures against its interests by foes and partners alike. Greece therefore, preferred the safer ground of a judicial decision.

Turkey, on the other hand, realized that its geographical position presented it with an enhanced advantage. One of Turkey's claims of importance to NATO and the US was, among other things, the assertion that Turkish forces could block the Soviets from the Black Sea.[28] That claim was not shared by all military strategists. Admiral Gene LaRocque, for one, believes that if the Soviets wanted to go through the Dardanelles they could do so. They controlled the Black Sea. Most important, Soviet control of the Turkish straits alone without control of the Greek Islands would be of little effect.[29] Turkey realized that and tried to enhance its dominance given the opportunity.

At the present time, Turkey's importance to the West has changed from that of helping to check Soviet expansion to the Middle East to one of providing a preferable route for the oil and gas pipelines originating in Central Asia. (The alternative being a route through Russia or Russian controlled territory). This allows Turkey to exact an economic rent. One part of such rent, as Greece sees it, is an expansion of Turkey's influence in this area by a partial control of the Aegean Sea which can best be obtained by altering the status quo. This in turn is easier done through package negotiations that bypass past international treaties and agreements; something unacceptable to Greece which is now lead to believe that Turkish demands for a share of the continental shelf are not the real issues. The real matter in dispute is rather an annexation by Turkey of a number of islands and control of Aegean traffic.

Such suspicions by Greece may appear exaggerated to some, but as mentioned earlier, the invasion and de facto division of Cyprus does not make it any easier for the Greeks to see a rosy relationship with the opposite side and to have any hope for a meaningful dialogue.

ADDITIONAL JURISTIC AVENUES

As stated earlier, one way for establishing the competence of the Court to judge a case is the existence of a convention or treaty for resolving differences that was previously ratified by the two parties. In this case the consent of the two countries is considered to have been given in advance when the parties accepted to abide by the terms of the treaty. Consequently, one of the two countries can apply unilaterally for the Court's judgement.

This alternative exists in the case of the 1930 Greco-Turkish Treaty of Friendship, Neutrality and Conciliation, signed by Venizelos for Greece and Ismet Inönu for Turkey, which provides for the submission of certain cases to the International Court. The treaty is still very much in effect since neither of the two countries has abrogated it while both have accepted its validity during the negotiations before the Court of the Hague.[30]

Article 3 of the Treaty provides that the two parties agree to submit to a Conciliation Committee all matters that could divide them and whose solution was not forthcoming by the usual diplomatic means. In case of failure of the conciliation procedure, the article provides for the submission of the case to the Court of the Hague or to an arbitration court.[31] In the latter case, if the parties do not accept the report of the Committee, then any one of the parties could unilaterally submit the dispute to the Permanent Court of International Justice. Only if the Court declares that the case is not of a legal nature, can the parties agree to resolve the difference ex aequo et bono.

It is clear from the above that the 1930 Treaty covers solutions of cases of both a political and legal nature. In addition, the Treaty provides that, in cases of a conciliation failure, a solution is sought through the International Court or through arbitration. If the parties are unable to agree on the content of a compromise within three months, then each party can unilaterally submit to the Court by a simple application while the other party is obliged to execute in good faith the decision of the Court.[32]

The question now is, whether Greece has any advantage appealing to this Treaty and applying its provisions? It would have to, as a start, invite Turkey to participate in the appointment of an Ad-Hoc conciliation committee according to Article 7 of the Treaty.[33] In the case of a refusal, the committee can at the end make a ruling which, considering the legal nature of the dispute, will have to be based on international law and not ex aequo et bono.

In the case of one party not accepting the committee's proposals, the other country could unilaterally bring the case before the Court which, in this case, would be fully empowered to judge it.

A method which was always available within the framework of a judicial solution is, of course, arbitration. Compared to conciliation, the settlement of a dispute through arbitration is preferable in that it ends up in a binding and permanent solution. Compared to a settlement through the Court of the Hague, on the other hand, the arbitration method is more flexible and the procedure much shorter. A possible disadvantage could, however, be the lack of the Court's prestige which makes it difficult, in a case of an unfavorable decision, for the government of a country to sell such a decision to its public.

Lately, there appears to be a trend for a choice toward the International Court with the parties specifying the extent of the Court's jurisdiction. The two parties may, for example, agree to ask the Court to rule on the principles that must be applied for the resolution of the dispute and leave the final settlement to themselves.

Such was the case of the delimitation of the continental shelf in the North Sea where the parties asked the Court "what principles and what rules of international law must be applied for the delimitation of the parts of the Continental Shelf that belonged to each of them," and left the final arrangement to negotiation between them. The negotiations resulted indeed in the signing of two international agreements: one between Denmark and Germany and the other between Germany and the Netherlands.[34]

In another case, between Libya and Tunisia, the compromise for the delimitation of the continental shelf between the two countries asked the Court to decide "what principles and what rules could be applied in the delimitation of the parts of the Continental Shelf that belong to the Socialist Republic of Libya, and those that belong to Tunisia." Furthermore, the Court was asked "to clarify the practical methods for the application of these principles and rules."[35] The request by Libya and Malta concerning their continental shelf was similar.

In contrast, the compromise between Canada and the United States for their difference in the Gulf of Maine was to ask the Court to draw the delimiting line between the disputed parts of the continental shelf and the economic zone. The Court was also asked to draw the exact course of the sea limit. This is a case where the two parties asked for a very specific drawing of the dividing line.

In general then a compromise could vary from asking the Court to specify the rules and leave the actual solution to the parties to asking the Court for a complete involvement in dividing the disputed area.

The case of Canada-US in the Gulf of Maine dispute presents an interesting twist to the usual case of applying to the Court in that it was presented to a "Chamber" rather than to the entire Court. The possibility of forming Ad-Hoc "Chambers" of the Court had already been provided by the 1945 constitution of the Court, but the practice was not used until 1982.[36] Article 26, par. 2 of the Court's constitution provides that:

The Court can at any time form Chambers for the purpose of judging a given case. The number of judges in each such Chamber shall be appointed by the Court with the consent of the parties.

The formation of a Chamber can be requested by the disputants either by compromise or unilaterally. Any decision made by the sections will be considered as being made by the entire Court (Act 27).[37]

The solution to a dispute through the use of Chambers is similar to that of the Arbitration Courts. There is, however, a definite advantage in using the Chambers of the International Court. For one, an Arbitration Court would be expensive. For another, the Arbitration Court does not give the opposing parties the benefits of the Court's constitution that provides detailed descriptions of the procedures.

SOME DIFFICULTIES OF DELIMITATION

The positions of the two countries are by now well-known and can be summarized as follows.[38] Greece rests its case on customary rather than conventional international law, mainly because Turkey is not a signatory of the 1958 Geneva Convention that considers questions of continental shelf. It argues that according to that law, the islands have their own continental shelves and that the rules of customary law have been clarified in Article 6 of the Geneva Convention, as well as, in Article 121 of the 1982 Convention of the Law of the Sea.[39] The recognition of seabed rights to islands is manifested, as we have noted earlier, in Article 1 of the 1958 Convention on the Continental Shelf. In addition, the Convention recognizes that a state's jurisdiction covers the adjacent seabed areas, to a depth that exploitation of natural resources is possible.

Greece also argues that, since the depth of the Aegean permits such exploitations, the seabed rights generated by the Greek mainland eastwardly merge with the seabed rights generated westwardly by the east most Greek islands.[40] Consequently, any delimitation of the continental shelf must follow the median line between the coasts of the east most islands and the Turkish coast.

To the Greek arguments, Turkey replies that it is not bound either by the Geneva Convention nor by the 1982 Convention on the Law of the Sea. Furthermore, Turkey argues that the customary rule that regulates the delimitation of the continental shelf is that stated by the Court for the first time in 1969 in the case of the North Sea. The rule requires that the delimitation must be based on the equity principle. Interpreting that principle, Turkey appeals to various arguments that refer to the geological relation that exists between the islands and its mainland coast, to the fact that the islands constitute special cases that prevent the application of the median line, that the Aegean is a closed sea and that the delimitation of the seabed ought, therefore, to follow special rules.

It is a fact that Turkey is not a signatory of the 1958 Convention. It is, therefore, not bound by conventional international law and, thus, if the dispute was brought before an international tribunal, the court can only apply the rules of customary law. Such laws

have developed through the actual practice of drawing boundaries, and have eventually been clarified by jurisprudence of the International Court and by arbitration courts.

A first step toward this development is found in Article 6 of the 1958 Convention. The rule in this article gives priority to agreements between parties, but if this is not possible, or where special circumstances do not apply, the rule requires that the method of the median line should apply.

The international practice appeared to be in agreement with Article 6 so that this article could be considered to reflect customary law.[41] This development was interrupted, however, from the moment the Court's decision regarding the North Sea case was pronounced in 1969.

With this decision the Court, in effect, refused to accept that the rule of Article 6 concerning the median line has acquired a customary nature. It instead decreed that the delimitations of the continental shelf ought to be done by agreement based on equitable principles. Where the seabeds of the two countries overlap, the principle requires a division of the zones in equal parts.[42]

This decision started a series of similar pronouncements that the Court was bound to make for reasons of consistency. The change of course cost the Court a host of difficulties, especially in the cases of Tunisia-Libya (1982) and Canada-US in the Gulf of Maine (1984). In these cases the Court had difficulty streamlining its jurisprudence with the 1969 decision. The result was that decisions were made in the name of equity that ended-up in drawing dividing lines which were considered arbitrary.

Parallel to this judicial development, there progressed the negotiations that took place during the 1982 third UN Conference for the Law of the Sea. During these negotiations a new customary law was crystallized that emanated not only from the particular acts between states, but also from Opinio Juris as it appeared within the framework of the general negotiations in the Conference.[43] The Conference of 1982 produced, also, other novelties. One such novelty was the modification in the legal definition of the continental shelf that concerns its outer limits. It stipulates that:

I. A distance of 200 nautical miles. When the natural boundaries of the Continental Shelf fall short of that distance.

II. A maximum distance of 350 miles beyond which the external boundaries of a Continental Shelf cannot reach if its physical boundaries go beyond that distance.

Thus, in the new definition it is recognized that when the seabed does not extend to 200 miles from the coast, its continental shelf is defined in part by the distance from the coast, regardless of the geomorphology of the ocean bed and the geology of the subsoil. Distance, in other words, becomes a qualifying criterion for a delimitation.

While this was made clear in Article 74 of the 1982 Convention, Article 83 of the same convention states:

1. The delimitation of the Continental Shelf between states with opposing or adjacent coasts, is realized by an agreement based on international law, as is defined in Article 38 of the constitution of the International Court for the purpose of obtaining an equitable solution.

The Court is, thus, constrained to move between these two principles that it has to use as guidelines.

In its decision in the Libya-Malta case the Court tried to use the equatability principle, but ended up applying the equidistance method even at the initial stage. Only at a later stage did it balance this solution with other criteria in order to make sure that the solution is just. The Court, in other words recognized that in practice, the method of equal distance is the most suitable technique that can lead to a just solution.

The additional criterion that the Court used in this case was the consideration of the size of the coast of each country and the great distance between their coasts. Having considered these specifics, the court moved the temporary median line toward Malta whose continental shelf then decreased.[44]

The legal procedures described here are important in drawing inferences for the Aegean Sea case. But first it may be useful to cite certain facts regarding the present status in the area. It is worth considering, for example, that the limits of the territorial zone between the Eastern Aegean Islands and the Turkish coast, is today established by international custom and international treaties that bound the two countries.[45] Specifically, the limit south of Samos between the Dodecanese and the Turkish coast follows the median line established by the Italian-Turkish agreements of 1932. These agreements are valid today given that Greece has succeeded Italy in the rights and obligations that emanate from the agreements.[46] North of this area the limit of territorial waters also follows the median line which has been accepted without challenge and could, therefore, be considered established by custom.

With these observations in mind some comments can be offered regarding possible delimitations. As a start, one can consider the Turkish idea of drawing a line that takes into account only the influence of the mainland coasts of the two countries. In this case the line would ignore all claims of continental shelf by the islands. It would only recognize their territorial waters which presently stand at a distance of six miles from their coasts. Such a line, however, would separate and imprison all islands, that are located east of it inside a Turkish enclave.

In contrast to this approach, a second line can be considered that assumes equal jurisdictions and influence by the islands, both Greek and Turkish. In this case, the line will follow closely the existing boundaries which as noted earlier represent existing international custom.

Between these two extremes other lines can be drawn showing increasing island influence. All such lines, however, leave different numbers of islands within a Turkish territorial enclave.[47]

Until an international judicial body decides the case, one can only speculate on a possible solution. But if the solution is going to consider the method of the median line, a possible direction can be suggested based on the Libya-Malta case. That is to say, that after an initial median line is drawn and which gives full recognition to the continental shelf of the islands, a new line is positioned between it and the coasts of the east most Greek islands themselves. The new line is now in the ratio 1:3 with respect to the distance Greek islands/Turkish coast. This solution gives Turkey additional areas of continental shelf while it avoids a foreign enclave around the islands.

EXPECTATIONS

Bilateral diplomatic negotiations have a chance of succeeding when the two sides have a tradition of peaceful relations or otherwise are of equal or perceived equal military or political strength. This is not the case between Greece and Turkey. Greece must, therefore, by necessity opt for a way that involves the judgement of a neutral third party and where the outcome of such a judgement is binding.

In this case the choice lies between arbitration and the Court of the Hague. The arbitration option besides being expensive it has the additional disadvantage of being the least acceptable by the public in a case of an unfavorable verdict. This leaves the Court as the preferable alternative. There is still the question of whether the case should be put before the entire Court or to a Court's Chamber?

Recent cases have shown that "Chambers" have produced many satisfactory results. Court Chambers are speedier and have the additional advantage of letting the parties to a dispute chose some of the judges themselves. The Chamber option benefits from all the advantages of a Court solution while it maintains the flexibility of an arbitration court without being as expensive. The Chamber's judgement, on the other hand, has the same authority as that of the full Court while its execution is guaranteed by the Security Council of the United Nations.

To be successful in its application to the Court, Greece must avoid past mistakes and be clear in its part of the compromise regarding the questions put to the Court so that the Court's competence will not be in doubt. It must make clear, for example, whether it wishes to limit the Court's authority and ask it to simply rule on the principles of the delimitation or allow the Court to draw the boundary line itself.

To avoid possible further delays or disputes, it is in Greece's interest to opt for a wider jurisdiction and ask the Court to draw the boundaries itself. This, when the procedures of the 1930 Treaty of Friendship are followed, will guarantee the legal solution of the dispute.

This is not to say that peaceful existence between the two countries will prevail soon. It is possible, however, that with this dispute over, the two countries may be free to reflect on the much bigger advantages, economic as well as political, of a closer cooperation between them as compared to a continuous conflict.

Endnotes

1. C.I.J. Recueil 1978, par. 99, quoted in Ch. Dipla, The Greek-Turkish Controversy Over the Aegean Continental Shelf (Athens: Hellenic Foundation for Defense and Foreign Policy, 1992), p. 24.

2. E. N. Botsas, "The U.S.-Cyprus-Turkey-Greece Tetragon: The Economics of an Alliance," Journal of Political and Military Sociology, 16 (Fall 1988), p. 261.

3. is the ratio of Military Expenditures to National Income.

4. Sonder Frederic, "Istanbul's Night of Terror," Readers Digest, May 1956, pp. 185-92, quoted in Botsas, "U.S.-Cyprus-Turkey-Greece Tetragon," p. 255.

5. A median line is a line, every point of which is equidistant from the nearest points of the baselines from which the width of the territorial sea of each state is measured.

6. A. Philactopoulos, "Mediterranean Discord: conflicting Greek-Turkish Claims on the Aegean Seabed," The International Lawyer, 8, no. 3 (July 1974), p. 433.

7. N.A. Deloukas, "The Controversy Between Greece and Turkey in the Aegean Sea," Issues and Studies, 16, no. 1 (January 1980), p. 72.

8. Ibid., p. 72.

9. United Nations, 1982 Convention of the Law of the Sea, Part VIII, Regime of Islands, (Article 121).

10. Philactopoulos, "Mediterranean Discord," p. 432.

11. Ibid., p. 432.

12. Deloukas, "Controversy," p. 74.

13. Ibid., p. 74.

14. Leo Gross, "The Dispute Between Greece and Turkey Concerning the Continental Shelf in the Aegean," The American Journal of International Law, 71 (1977), p. 31.

15. Ibid., p. 31.

16. Ibid., p. 32.

17. Ibid., p. 32.

18. Permanent Court of International Justice, Series A, No. 2, p. 11.

19. L. Goodrich et E. Hambo, Commentaire de la Charte des Nations Unies, Neuchâtel, Ed. de la Baconnière, 1946, p. 234.

20. For a more detailed discussion on the legal, political differences, see H.B. Jacobini, International Law: A Text (Homewood, IL: Dorsey, 1962), pp. 196-204.

21. Permanent Court of International Justice, Series A, No. 2, p. 11.

22. C.H. Rozakis, The International Legal Regime of the Aegean and the Greek-Turkish crisis, the Greek-Turkish Relations, 1923-1987 (Athens: Hellenic Foundation for Defense and Foreign Policy, 1988), pp. 276 and following.

23. Ibid., p. 287.

24. Jacobini, International Law, 196-206.

25. UN, Statute of the International Court of Justice, Chapter II: Competence of the Court (Articles 34-38). pp. 8-10.

26. Ch. Dipla, The Greek-Turkish Controversy Over the Aegean Continental Shelf (Athens: Hellenic Foundation for Defense and Foreign Policy, 1992), p. 9.

27. C.I.J., Recueil 1978, par. 107, quoted in Ch. Dipla, p. 10.

28. See, Report to the Committee on Foreign Relations, 1983.

29. Gene LaRocque, quoted in Yorgos A. Kourvetaris, "The Southern Flank of NATO: Political Dimensions of the Greco-Turkish Conflict since 1974," East European Quarterly, XXI, no. 4 (January 1988), p. 439.

30. C.I.J. Receuil 1978, par. 99, quoted in Ch. Dipla, p. 24.

31. C.A. Coliard et A. Manin, Droit International et Histoire Diplomatique: documents Choisis, Vol. 1, Texts généraux, (Paris: Editions Montchretien, 1971), pp. 14-26.

32. Ch. Dipla, p. 27.

33. Ibid., p. 29.

34. Decision for the delimitation of the Continental Shelf of the North Sea, C.I.J., Recueil 1969, p. 3, quoted in Ch. Dipla.

35. Decision on the delimitation of the Continental Shelf Between Tunisia and Libya C.I.J., Recueil 1982, p. 21, par. 2, quoted in Ch. Dipla op. cit., p. 42.

36. H. Mosler, "The Ad-hoc Chambers of the International Court of Justice," in International Law at a Time of Perplexity. Essays in Honour of Shabtal Rosenne (Boston, MA and London: Nijhoff, 1989, p. 452.

37. For a more detailed discussion on the formation of "sections," see St. Schwebel, "Ad-Hoc Chambers of the International Court of Justice," American Journal of International Law, 81, (1987), pp. 840 and following.

38. Found in the press and in numerous communiques.

39. Rozakis, International Legal Regime, p. 311-13.

40. Philactopoulos, "Mediterranean Discord," p. 436.

41. C.H. Rozakis, In Search of Lost Time: The Law of Continental Shelf in the decision of the International Court for Libya-Malta (Athens: Foundation for Mediterranean Studies, 1989), p. 18.

42. C.I.J., Recueil 1969, par. 101, p. 53-4, quoted in Ch. Dipla, p. 55.

43. Ch. Dipla, p. 56.

44. For a more detailed analysis of the relevant circumstances, see M.D. Evans, Relevant Circumstances and Maritime Delimitation (Oxford: Clarendon Press, 1989).

45. Rozakis, International Legal Regime, p. 339.

46. T.H. Katsoufros, Le different Greco-Turk, Paris, editions L'Harmattan, p. 83, quoted in Rozakis, Ibid., p. 342.

47. For a more detailed discussion on possible boundary lines, see Ch. Dipla, The Greek-Turkish Controversy Over the Aegean Continental Shelf, pp. 63-70.