

THE LAW OF THE SEA DIMENSION OF THE CYPRUS PROBLEM

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Introduction

Indisputably, the prolonged occupation of northern Cyprus by the Turkish Armed Forces following the military invasion of the island from Turkey in 1974 and the subsequent establishment of the breakaway "Turkish Republic of Northern Cyprus" ("TRNC") have engendered serious ramifications on the island and its people. Nonetheless, the discovery of hydrocarbon deposits offshore Cyprus and the ensuing intense preoccupation of the Republic of Cyprus with the maritime domain dictates an appraisal of the repercussions of the Cyprus Problem on the Republic's maritime policy. In particular, this article discusses the Turkish assertions over the maritime space around Cyprus and the granting of exploration licences to TPAO (Turkish Petroleum Company) by Turkey in there as well as the approach of the Cypriot Turks to the law of the sea. Bearing these in mind, it will be examined to what extent the formulation of a comprehensive maritime policy by the Cypriot state in the aftermath of a settlement of the dispute could be a feasible task.

The Turkish positions on maritime affairs in the Eastern Mediterranean Sea

As a reaction to the maritime boundary delimitations and other pertinent agreements concluded by the Republic of Cyprus in the first decade of the 21st century, Turkey has been engaged in a range of activities purporting to hamper the Republic from exercising its sovereign rights and jurisdiction over the waters adjacent to its coasts by virtue of both the 1982 United Nations Convention on the Law of the Sea ('LOSC') and customary international law. First off, the Turkish navy has been consistently harassing survey vessels operating on behalf of the Republic of Cyprus mainly -but not only- in the sea waters lying off the western shores of the island. The underlying reason is the claims of Turkey, which deems the maritime space western of the longitude 32° 16' 18", namely just outside Cyprus' twelve nautical mile ('nm') territorial sea, part of its continental shelf disregarding the Republic's inherent right to a continental shelf and its capacity to declare an Exclusive Economic Zone ('EEZ'). Predicated on this line of reasoning, from 2008 until 2013 Turkey granted concession rights to the TPAO for virtually the entire maritime area around Cyprus. The blocks offshore the occupied part of Cyprus, namely in the north, east and south-east of the island were allocated to the TPAO, so the Turkish argument goes, by the "TRNC"; however, given that the northern part of Cyprus is under the "effective control" of Turkey (as set forth by the European Court of Human Rights in the *Loizidou* case), it is straightforward that the licences were actually given by Turkey. Moreover, in September 2011 Turkey signed a continental shelf delimitation agreement with the "TRNC", which, echoing the well-established

opposition of Turkey to the equidistance/median line method concerning the Aegean and the Mediterranean Seas,¹ was effected according to the equitable principles/relevant circumstances method;² accordingly, the delineation line was closer to the northern coast of Cyprus, hence Turkey was afforded a broader maritime space than the "TRNC". Reflecting the aforementioned Turkish stance, the "TRNC" "law" governing maritime affairs stipulates that delimitation agreements should be concluded in compliance with equitable principles.

Challenges concerning the negotiation process and a future settlement

Having examined the above matters, it necessitates elaborating on how these divergent positions between the Republic of Cyprus and Turkey-Cypriot Turks could be dealt with after a solution and the participation of the Cypriot Turks in the government of the state. It is well known that Cyprus has penned three EEZ boundary delimitation agreements with Egypt, Lebanon (not ratified by Lebanon)³ and Israel on the basis of the equidistance/median line,⁴ which is the preferable method for the Republic.⁵ In case the Cypriot state after a solution seeks to delineate its maritime boundaries with Turkey -unless the Cypriot Turks subscribe to the official position of the Republic favouring the equidistance/median line- it is unlikely that the equidistance/median line method will be used since the Cypriot Turks advocate equitable principles/relevant circumstances and/or might succumb to pressures on the part of Turkey in order to accept a delimitation departing from the median line (as seen in the case of the continental shelf delimitation between Turkey-"TRNC"). Furthermore, it is far from clear whether the Cypriot Turks will not challenge the extant EEZ delimitation agreements of the Republic of Cyprus and the ongoing exploration and future exploitation activities in the Cypriot EEZ if they perceive them as detrimental to their interests or upon Turkey's intervention, which has always been inimical towards these activities.

¹ Turkey has been rejecting the use of the equidistance/median line method in the Aegean and the Mediterranean Seas since the 1970s as it maintains that islands (i.e. the Aegean islands and Cyprus) should get less maritime space than the continental land of Asia Minor; on the contrary, Turkey has concluded maritime boundary delimitations in the Black Sea using the equidistance/median line. Further, Turkey had repeatedly stated this position during the length of the Third United Nations Conference on the Law of the Sea (1973-1982) and still upholds this view in its contemporary maritime legislation.

² This process entails consideration of all relevant factors in order to reach an equitable result, but it has been subjected to criticism due to its ambivalence.

³ International treaties after signature need to be ratified by the parliaments of the signing states so as to enter into force.

⁴ Every point of such line is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured. United Nations Convention on the Law of the Sea (signed on 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, art 15.

⁵ A state may choose one of the two delimitation methods or both for different segments of its maritime space; neither of these methods prevails over the other.

What is more, serious difficulties may occur for the post-solution state as to how the standpoints of Turkey on the law of the sea regarding the Eastern Mediterranean Sea will be addressed. It is interesting to see what policy a government comprised of both Cypriot Greeks and Cypriot Turks will follow *vis-à-vis* the Turkish assertions. Specifically, the Cypriot state will have to decide if it will endorse and give effect to the Turkey-“TRNC” continental shelf delimitation “agreement”, the search and rescue “agreement” between the two, the concessions granted to TPAO by Turkey for itself and, allegedly, on behalf of the “TRNC” in respect of the maritime space adjacent to the coasts of Cyprus as well as to the “TRNC” “law” on maritime zones providing for equitable principles when it comes to maritime delimitation and/or any other arrangement between Turkey-“TRNC” on marine issues. For even though the foregoing instruments have no validity whatsoever and the lawfulness of the TPAO concessions is questionable at the moment, if they are accepted in the future they will be legitimized and become binding upon the Cypriot government. Therefore, if the Cyprus Problem is settled and the Cypriot Turks participate in the government of the state, predicaments are expected to emerge owing to the chasm between the postures of the interested parties with respect to the handling of maritime affairs.

Conclusion

At any rate, the law of the sea dimension of the Cyprus Problem should not be taken lightly. As of the dawn of the new millennium and on, maritime affairs have been at the forefront of the Republic of Cyprus’ policy, owing to the oil and gas bonanza (although the maritime domain should have always been pivotal to an island); the latest finding of a huge hydrocarbons deposit in proximity to the Egypt-Cyprus EEZ boundary is another sign ascertaining the excellent prospective of the region with respect to offshore oil and gas. Hence, a solution to the Cyprus Problem, no matter how desirable it may be, must not impair or derail the Republic’s maritime policy in progress including, *inter alia*, the declaration and delineation of maritime zones as well as exploration and exploitation of hydrocarbons off the coasts of Cyprus in light of the aforementioned promising developments. The new state of affairs should not be established at the expense of international law for the sake of an arrangement devoid of justice. It will be to the benefit of the Cypriot people as a whole to perceive that its destiny lies in the sea, but its interests will not be served if the views of Turkey on the law of the sea permeate the solution; conversely, the Republic’s maritime strategy should be carried on unimpeded and be further enhanced with a view to achieving progress and attaining prosperity for the island and its people. These matters are of utmost significance and the negotiators should definitely take them into consideration (along with the other fundamental issues) if the post-settlement state is to be established on the rule of law, an indispensable precondition for peace and stability; if it is not, the entire edifice will be founded on precarious grounds and the consequences will be calamitous.