

EU v. Turkey in the Eastern Mediterranean: a good moment to sponsor dispute settlement

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Matter commented on: Maritime claims in the Aegean and Eastern Mediterranean;
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I. Introduction

The situation in the Eastern Mediterranean is on the agenda of the meeting of the EU Heads of State and Government (European Council) on 1 and 2 October 2020. This paper looks into the international law issues surrounding the maritime disputes in the Eastern Mediterranean and the Aegean Sea and draws on the way forward for the resolution of the disputes involving Greece, Turkey and Cyprus.

Greece and Turkey do not have any agreement on a maritime boundary. Historically, the territorial status of the Dodecanese Islands in the south-eastern Aegean is governed by the 1923 Lausanne Peace Treaty (where Turkey ceded the Dodecanese Islands to Italy) and the Paris Peace Treaty between Italy and the Allied Powers from 1947 (Italy had to hand over the Dodecanese Islands to Greece) fixing the modern boundaries of Greece, which had become independent from the Ottoman Empire in 1832 (see e.g. [Vassalotti 2011](#): 387-390, Van Dyke 2005: 64-67). Cyprus, which Great Britain had acquired from the Ottoman Empire in 1878, became independent in 1960. In 1974, Turkey invaded the north of the island following a coup d'état aiming at linking the island to Greece (Kalkan 2020: 169) leading to the establishment of the northern entity on the island only recognized by Turkey.

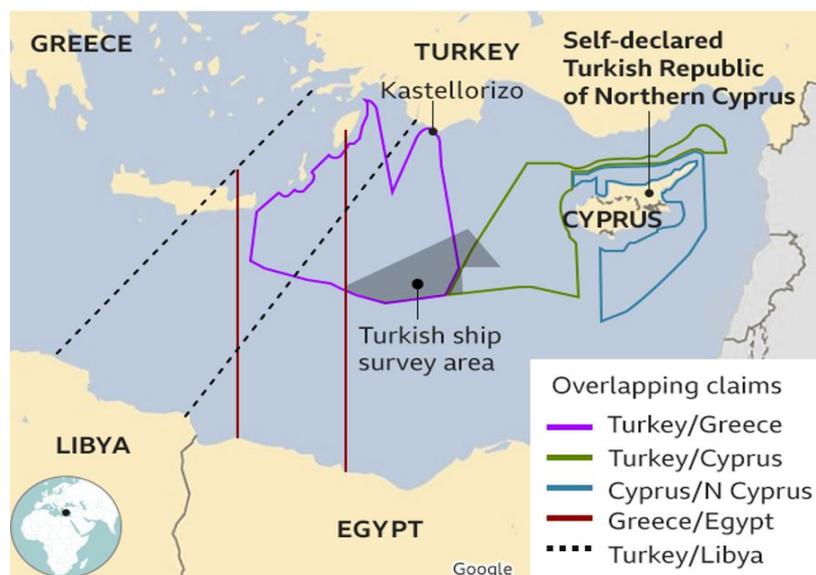


Fig. 1 Overlap of EEZ agreements and claims in the Eastern Mediterranean. Source: [Yiallourides 2020](#)

The landscape of maritime claims in the Eastern Mediterranean has become rather dense recently. It must be noted that some of the newly concluded delimitation agreements on the

Exclusive Economic Zone (EEZ) between Turkey and Libya (Memorandum of Understanding from November 2019), and between Greece and Egypt (from August 2020) show a considerable amount of overlap, as do the unilateral claims of Greece, Turkey and Cyprus (as [Yiallourides 2020](#) illustrates in fig. 1 above). Cyprus had declared an Exclusive Economic Zone (EEZ) in 2004, following an agreement with Egypt, and subsequently delimited its EEZ with Lebanon, Syria and Israel (e.g. Grbec 2015: 105-112). Turkey concluded an EEZ agreement with the (internationally not recognised) Turkish Republic of Northern Cyprus in 2011.

There is a long-standing unresolved maritime dispute between Greece and Turkey over (i) the continental shelf in the Aegean and (ii) the breadth of the territorial sea, to name but the two most prominent issues (see II.). It must be noted that Turkey is not a party to the United Nations Convention on the Law of the Sea (UNCLOS) entering into force in 1994.

Substantial offshore hydrocarbon fields have been discovered in the Eastern Mediterranean after 2009 in the EEZs of Cyprus, Israel, and Egypt. In November 2019, Cyprus awarded a 25-year contract for the exploitation of its block 10 gas field Aphrodite, which is expected to start in 2025. In September 2019, Cyprus had signed an agreement with Egypt for gas from the Cypriot field to be processed to LNG in a refinery on the coast of Egypt (Reuters news, [7 November 2019](#)). At the beginning of this year, Cyprus, Egypt, and Israel signed an agreement on a new pipeline transporting gas from the fields under the sovereign rights of Cyprus and Israel via Crete and Italy to Europe (EastMed; Reuters news, [2 January 2020](#)). There is no plan yet as to how future revenues could be shared between the two entities on Cyprus. Nevertheless, the government of the Republic of Cyprus' has indicated that it was ready to share the revenues equitably between both communities (The Guardian, [28 February 2019](#)).

In the second half of 2019, the Turkish drilling ship Yavuz operated in blocks 6 and 7 of Cyprus' EEZ, maintaining that the waters were on Turkey's continental shelf (Argus media news, [20 April 2020](#)). EU foreign ministers referred to the conduct of the Turkish vessels as "illegal drilling" and prepared a draft list of sanctions (Foreign Affairs Council, [14 October 2019](#)). In mid-August 2020, the Turkish research vessel Oruç Reis was escorted by two Turkish navy frigates as it embarked on a voyage into disputed waters west of Cyprus to map out possible drilling prospects. Tensions rose when one of the warships collided with a Greek navy vessel on 12 August 2020 (The Independent, [14 August 2020](#)). The situation de-escalated after the return of the Oruç Reis on 13 September (Reuters news, [15 September 2020](#)), and Turkey and Greece stated they were ready to resume bilateral talks to resolve their contested maritime claims following a phone-call between President Erdoğan, EU Council President Michel, and the German prime minister Merkel in her capacity as head of the rotating EU Presidency (Reuters news, [22 September 2020](#)). The situation in the Eastern Mediterranean is on the agenda of an extraordinary [meeting of the EU Heads of State and Government](#) (European Council) scheduled for 1/2 October 2020.

II. The current situation from an international law perspective

Starting out from the EU foreign ministers' assumption of the "illegal" drillings of Turkish vessels off Cyprus, it is worth briefly touching on the major issues of dispute from the perspective of the law of the sea.

II.1 General background

During the laborious negotiations on the United Nations Convention of the Law of the Sea (UNCLOS) III 1973-1982, the maximum breadth of the territorial sea (a maritime space over which the riparian State has territorial sovereignty regardless of all vessels enjoying innocent passage) proved a very sensitive issue for Turkey due to the situation of the Greek islands in the Aegean. Were the Greek islands to be entitled to considerably more than 6 nautical miles (Greece has claimed 6 nm since 1936), there would hardly be unhindered access from the Turkish Straits and Istanbul to the high seas and vice versa. Prior to UNCLOS III, State practice had not been uniform, and the issue could neither be solved at UNCLOS I (1958) nor at UNCLOS II (1960; see e.g. Tanaka 2015: 20-32). In the end, the previous informal standard, the so-called “canon-shot rule” of 3 nm, was replaced by 12 nm at the adoption of UNCLOS III. As this would have meant a sealing of the Aegean for Turkey (see II.2), the country was amongst the few participants at the Conference unable to sign UNCLOS III and has ever since objected to the norm of the territorial sea (see e.g. Van Dyke 2005: 83; Oxman 1982, Heritage and Lee 2020: 113-117). One may argue, therefore, that Turkey is not bound to the provisions of UNCLOS notwithstanding customary international law (of the sea), however, which has been developing since the adoption of the Convention, in particular with a view to EEZs.

II.2 Breadth of the territorial sea

The Aegean has two very peculiar features in that it is (i) a semi-enclosed sea (ii) with a very dense set of islands. For this reason, the breadth of the territorial sea may be said to be subject to special circumstances in order to avoid a cut-off effect and to uphold the unrestricted freedom of navigation to and from the high seas.

Greece departed from the old canon-shot rule increasing the breadth of its territorial sea (TS) in the Aegean from 3 nm to 6 nm in 1936. Turkey did not object at the time as Greek-Turkish relations were very friendly between the 1930s and the 1960s. Nevertheless, Turkey followed suit in 1964 and the 6 nm TS has been in operation by both sides since (see e.g. [Ministry of Foreign Affairs Turkey 2020](#): 6, Van Dyke 2005: 83). One can thus argue that the 6 nm TS in the Aegean amounts to regional State practice (whereas Turkey operates a 12 nm TS in the Black Sea). Nevertheless, Greece does retain the right under UNCLOS to increase the breadth of its TS to 12 nm which would indeed lead to the Aegean being cut off for Turkey. On the basis of the 6 nm TS, Greece controls 44 percent of the Aegean and Turkey 7.5 percent (Leanza 1993: 392). Ankara has repeatedly insisted that it would consider an extension of the TS to 12 nm on the part of Greece a *casus belli* (e.g. Heraclides 2010: 185); see fig. 2 below.

Whilst a State’s sovereignty in the territorial sea not only concerns the water column, but also extends to the seabed and the airspace (Art. 2 UNCLOS), Greece is the only country in the world to have a different breadth of airspace around its islands, namely 10 nm (introduced in 1931 when the TS was still at 3 nm). The Greek claim, however, has been constantly challenged by Turkish military aircraft flying in Greek airspace between 6 and 10 nm, and also US aircraft have done so during NATO exercises, arguing that the 10 nm was too strict a boundary in such a tight amount of airspace anyway (see Heraclides 2010: 196-198; Van Dyke 2005: 85).

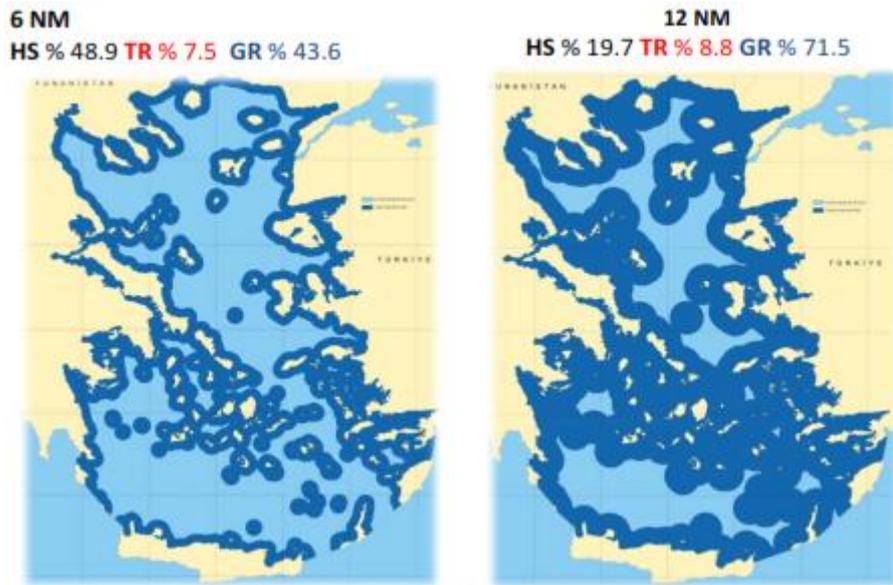


Fig. 2 Breadth of the territorial sea of 6 nm v. 12 nm in the Aegean. Source: Ministry of Foreign Affairs Turkey (2020: 5). HS = high seas, TR = territorial sea Turkey, GR = territorial sea Greece.

II.3 Continental shelf

The continental shelf (CS) - with sovereign rights to the exploitation of natural resources in the seabed - has been a point of contention between Greece and Turkey since 1973 when Turkey granted exploration permissions for petroleum and subsequently sent a research vessel into the disputed waters of the Eastern Aegean. The Greek position is that both its coast and islands create sovereign rights over its CS and that the delimitation should be carried out by means of the median line between the Greek islands and the Turkish coast. Turkey, however, contends that the Greek islands in proximity of the coast of Turkey do not possess a CS of their own as they are formations on Anatolia's natural prolongation and that a full effect of the Greek islands for the purposes of delimitation would lead to Turkey with its 3,000 miles of coastline virtually having no CS in the Aegean (ICJ 1978: paras 16-17; Heraclides 2010: 168-169; Acer 2003: 36-42, 152-155). The continental shelf is Turkey's claim also with regard to the recent research and drill ship operations in the Eastern Mediterranean where Ankara's claim clashes with Nikosia's established EEZ around the island - which notably lead to a collision of a Greek and a Turkish navy vessel back in August (see introduction).

With regard to the relationship between the continental shelf (regarding the seabed) and the EEZ (regarding the water column), the case law of international courts and tribunals as well as State practice appear to indicate that there is one single delimitation line for both the EEZ and the continental shelf (see e.g. [Yallourides 2020](#)).

III. **Dispute settlement efforts**

There are basically two options to settle a dispute: (i) a negotiated settlement, or (ii) adjudication.

It must be noted that, following the 1973 incident in the Aegean displaying the unresolved dispute over the continental shelf, Greece and Turkey were in a process of bilateral negotiations over a *joint* submission of the dispute to the International Court of Justice (ICJ) and that both parties were in fact negotiating a draft *compromis* in the course of 1975-76 ([ICJ 1978](#), paras 103-105). However, Greece submitted the dispute unilaterally in August 1976, and, somewhat ironically, the ICJ ruled it had no jurisdiction mainly on the grounds that the General Act of 1928 for the Pacific Settlement of International Disputes (Greece had relied on) includes a reservation clause with regard to disputes relating to the territorial status of Greece (para 90).

Nevertheless, both States continued their bilateral negotiations, entering into serious talks 1978-1981. Based on the personal archives of the two negotiators on the continental shelf, a number of tentative points of convergence emerged that are worth quoting (Heraclides 2010: 108):

- On the CS, the ICJ was considered the last resort, but first substantial negotiations should take place to settle the dispute as a whole or in part;
- The Turkish CS should not surround Greek islands;
- The Greek CS should not cover all of the Eastern Aegean, should not block access to the high seas for Turkey, and the freedom of navigation must not be impaired;
- There is a need to take into account special circumstances to arrive at an equitable solution on the CS;
- Greece will not unilaterally expand its TS to 12 nm, but cannot publicly renounce that right. However, it may do so in the context of an overall solution in the Aegean;
- There is no need to harmonise the airspace with the TS;
- Both States would refrain from declaring an EEZ.

There appeared to be some substantial degree of flexibility at a later stage 2002-2004 where talks intensified at expert and political level. The negotiations were conducted as a package deal with the aim of resolving as much as possible bilaterally and submitting the remainder to the ICJ (Heraclides 2010: 151-154). Exploratory talks continued into 2016 ([Ministry of Foreign Affairs Turkey 2020](#): 14), and both parties declared to resume talks following an EU initiative in September 2020 (see introduction).

IV. Conclusion and way forward

Building on the EU initiative of 22 September, the upcoming European Council of 1 /2 October would be an opportunity to step up efforts for a negotiated solution of the disputes. As can be seen from the brief discussion above, one of the root-causes (if not *the* root-cause) for the recent dispute in the Eastern Mediterranean is the long-standing dispute between Greece and Turkey in the Aegean. Taking into consideration the arguments of both sides in the context of international law, there are no clear-cut or easy solutions. However, there has been some solid stock-taking over a few decades and there is room for the view, therefore, that a bilateral agreement, at least in part, taking on board the legitimate interests of Athens and Ankara alike, is possible. An agreement on the territorial sea issue may well be feasible bilaterally, perhaps allowing for a flexible approach to the breadth of the TS, i.e. maintaining the 6 nm in the eastern and southern Aegean while allowing for 12 nm in the northern and western areas. The continental shelf delimitation issue, in contrast, is more likely to be processed successfully by a submission to the ICJ or an arbitral tribunal (the latter offering more flexibility for political considerations in the mandate; for the valuable experience from e.g. the Croatia-Slovenia case

see Cataldi 2013 and Bickl 2021). A judicial body could not least carefully consider the effect to be given to islands to reach an equitable solution.

The recent discoveries of large gas fields in the Eastern Mediterranean have added a new layer to the maritime disputes. The tentative gas pipeline projects between Cyprus, Egypt and Israel have led Turkey to believe that it is being “isolated and encircled” in the Eastern Mediterranean ([Ministry of Foreign Affairs Turkey 2020](#): 42), prompting Ankara to conclude an EEZ MoU with Libya disregarding the maritime zones of Greece and to conduct research and drilling operations which clearly infringe on the EEZ of Cyprus. Assuming that Europe is interested in increasing its independence from gas imports from Russia and elsewhere, it would appear that the EU should have an interest in securing the success of the EastMed pipeline project given that it is aware that gas is a transitional energy resource in the fight against global warming. At the same time, there are crucial repercussions on the Cyprus issue, too. An equitable solution to the distribution of the revenues from the exploitation of the Cypriot gas field to the two communities on the island could help re-energise the prospects of a sustainable long-term settlement for the divided island.

The EU should take an active role in sponsoring the search for a bilateral agreement between Greece and Turkey, for both a bilateral treaty or a submission to judicial proceedings for the Aegean issues, and for an agreement for Cyprus for the distribution of the tentative revenues from gas exports. Europe should stand ready to facilitate (bringing the parties together) and mediation (active third-party input including follow-up drafts) - not in official meetings with fixed agendas, but with ‘Track-2 Diplomacy’ in a flexible format, with no minutes and no public statements to secure maximum room for the search for solutions with mutual gains. An ideal starting point is the upcoming meeting of the EU Heads of State and Government on 1 and 2 October where there could be an informal understanding to that end on both missions and an overall package approach.

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