МІЖНАРОДНЕ ПРАВО

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E. R. Akhmedova, Candidate of Juridical Sciences, Senior Lecturer
Odesa State University of Internal Affairs
the Department of Constitutional and International law
Uspenska Str., 1, Odesa, 65012, Ukraine
e.r.akhmedova@gmail.com
ORCID: https://orcid.org/0000-0003-0916-3677

THE ROLE OF INTERNATIONAL LAW AND UN INTERNATIONAL COURT OF JUSTICE IN RESOLVING AEGEAN DISPUTE

The articles states that the delimitation of the continental shelf in the Aegean has been the main contentious issue between Greece and Turkey for the past 50 years. It has been unsuccessfully brought before the International Court of Justice, has been repeatedly discussed in the Security Council and has given rise to at least one delimitation agreement. The key problem is Greece would like to resolve the Aegean Sea dispute by the International Court of Justice but if Turkey accepts Greek offer, which is to refer the Aegean Sea dispute before the International Court of Justice, it may not only impair the Turkish sovereignty over her territorial sea and continental shelf but also endanger the Turkish mainland security because of the Greek re-militarized operations. The purpose of this article is to study the practice of resolving maritime disputes by the international judicial bodies.

Turkey is one of the 16 countries which have not signed or ratified the Convention on the Law of the Sea. International law offers various means which Greece and Turkey can employ in order to deal with the Aegean Sea dispute. The parties can establish an international boundary via delimitation, agree on a moratorium of petroleum operations or enter into a Joint Development Agreement. However, reality often imposes obstacles which law cannot surmount. All options require good faith and a mutual spirit of compromise between the concerned parties. Without an agreement, unilateral acts or claims have no legal value.

The International Court of Justice has settled a number of maritime disputes in the course of its work. Despite its decisions on some cases were made not in favor of the disputing parties the role of the UN International Court of Justice in resolving interstate disputes and maintaining international law and order is quite significant. The procedure in the UN International Court of Justice is quite effective and allows it to perform the tasks set by the world community based on international legal instruments governing interstate relations in the field of international maritime law.

Keywords: Aegean Sea disputes, Turkey, the International Court of Justice, the Law of the Sea Convention, delimitation.

Problem statement. The discovery of fossil fuels in the waters of the Mediterranean has brought the sensitive issue of drawing maritime borders back to the table, as Turkey has sent research ships within disputed waters. Bilateral diplomatic negotiations have a chance of succeeding when the two sides have a tradition of peaceful relations but this is not the case between Greece and Turkey. In this case the choice lies between arbitration and the International Court of Justice (ICJ). But if Turkey agrees to bring the Aegean issue to the ICJ in accordance with the conclusions of December 1999 Helsinki Summit, it may lose the case against Greece. It is said that Turkey should persist on the instrument of the bilateral re-negotiation so as to resolve the Aegean Sea disputes; otherwise Turkey will lose the case before the ICJ wholly or partly. International law offers various means which Greece and Turkey can employ in order to deal with the Aegean Sea dispute. All options require good faith and a mutual spirit of compromise between the concerned parties.

Analysis of recent research and publications. To date, the issue of the mechanism for settling and resolving maritime disputes in general and international courts in particular has been studied by the Turkish and foreign international lawyers, leading legal scholars as Riza Türmen, Thodoros Tsikas, Marianthi Pappa, Konstantinos Papadakis, Yusuf Avar etc. Riza Türmen speculates on a Turkish international law perspective on the greek-turkish disputes. Thodoros Tsikas studies a subject that Greece could take the initiative and submit proposals which, if implemented, would resolve several outstanding issues and help improve the climate between the two countries. Marianthi Pappa is writing about mapping the legal options between Greece and Turkey. Yusuf Avar sheds light on Agean disputes, the ongoing crisis which occurred many contradictions between Turkey and Greece and offers a comprehensive image of the Agean dispute not just with the legal perspectives but also with the political objectives as well. Konstantinos Papadakis *reseaches* the Greece – Turkey dispute in the Aegean and the ICJ Sea Border Delimitation Case of Ukraine – Romania in the light similarities and differences in a comparative perspective.

Objectives of the article. Analyze all possible options under international law with the aim soothe the tension in the Aegean Sea.

The following tasks are expected to be solved in achieving this goal:

- To research if Turkey bound by the norms of the Law of the Sea Convention being among the countries which haven't signed it;
- To reseach the means offered by the International law that Greece and Turkey can employ in order to deal with the Aegean Sea dispute;
- To analyze the arrangements for de-escalation the Aegean dispute as well as optimal ways to address a maritime dispute;
- To reseach the role of International Court of Justice in settling maritime disputes and analyze the decisions made by the court in different maritime demarcation disputes including the dispute Romania v. Ukraine over the Snake Island sea space.

Presentation of the basic material. There are numerous issues between Greece and Turkey yet the Cyprus and Aegean issues are the most important cases between the two countries. Aegean Sea, a semi-enclosed sea with about 1800 islands, is the longest border between Turkey and Greece. Primary issues of the Aegean disputes are continental shelf, territorial water, the air space, demilitarized status of the eastern Aegean islands, and islets and rocks. The Aegean Sea disputes are extremely complicated and solutions are difficult to reach by both countries because of the sui generis nature of the Aegean Sea structure, and Turkish and Greece different legal perspectives on the same issues in terms of treaty interpretation or international maritime law.

The Law of the Sea Convention was the result of the third United Nations Conference on the Law of the Sea (UNCLOS) which took place between 1973 and 1982. The Convention represents not only the codification of customary norms, but also the progressive development of international law [1]. Turkey is one of the 16 countries which have not signed or ratified the Convention. In this case the question then arises: if some of the provisions of the Convention have attained the quality of customary law norms, will Turkey be bound by these norms? According to the former judge of European Court of human rights, Riza Türmen, under generally accepted rules of international law, a persistent objector state, that is, a state which has consistently and clearly objected to a norm of customary international law since the norm's emergence, is not bound by this norm. This point of view was adopted by the International Court of Justice (ICJ) in the Fisheries case between the UK and Norway (1951) or in the Asylum case between Columbia and Peru (1950). Accordingly, the 12 mile rule, even if it is considered to be a norm of customary international law, will not be binding on Turkey. The fact that Turkey has proclaimed 12 nautical miles of territorial sea in the Black Sea and the Mediterranean does not change this conclusion. As the Turkish proposals submitted to the Conference indicate, Turkey's objection is not against 12 miles as a general rule, but rather against the implementation of this rule in the Aegean which has particular circumstances [2].

Some scientists say that if Turkey agrees to bring the Aegean issue to the International Court of Justice (ICJ) in accordance with the conclusions of December 1999 Helsinki Summit, it may lose the case against Greece [3]. The researches Yusuf Avar and Yu Chou Lin also believe that Turkey should persist on the instrument of the bilateral re-negotiation so as to resolve the Aegean Sea disputes; otherwise Turkey will lose the case before the ICJ wholly or partly. As for Greece it would like to resolve the Aegean Sea dispute by the International Court of Justice, instead of the proposition provided by Turkey that to settle it based on bilateral re-negotiations in accordance with the Bern Agreement under which the parties decided to hold negotiations with a view to reaching an agreement on the delimitation of the continental shelf. If Turkey accepts Greek offer, which is to refer the Aegean Sea dispute before the ICJ, it may not only impair the Turkish sovereignty over her territorial sea and continental shelf but also endanger the Turkish mainland security because of the Greek re-militarized operations [4, p.67-68].

Some researches such as Thodoros Tsikas indicates that among the arrangements for de-escalation the dispute is that Greece could take the initiative and submit proposals which, if implemented, would resolve several outstanding issues and help improve the climate between the two countries:

– establish dialogue to draw the baseline, which currently does not exist, along the maritime borders of Greece and Turkey, north of the Dodecanese complex and up to the Evros border region;

– impose, throughout the year, a moratorium prohibiting both countries from carrying out expensive, large-scale military exercises;

– concluding a Greek-Turkish agreement on arming de-escalation under international guarantees;

– proceed to the reciprocal demilitarization of the Greek islands in the Eastern Aegean and the coastal areas of Turkey directly opposite [5].

The scientists who study the possible methods of resolving the dispute say that the rules of international law that need to be applied to the dispute are more or less clear. Articles 74 and 83 of the Law of the Sea Convention on the delimitation of the Exclusive Economic Zone (EEZ) and the Continental Shelf encourage the parties "to achieve an equitable solution", but are silent as to the method with which to reach that goal. However, the existing jurisprudence on the matter sheds light on this question. The ICJ also expressed the view in its Gulf of Maine judgment (1984) that delimitation is not a unilateral act. It requires the agreement of all interested parties. Without an agreement, unilateral acts or claims have no legal value [6].

So, the silence of the Convention on the methods of delimiting maritime spaces has been progressively covered by the jurisprudence of the ICJ, which has established applicable principles; the Court has thus defined the notions of special circumstances for the delimitation of the territorial sea, and of equitable principles for the continental shelf and the EEZ. Until recently Turkey ruled out the possibility to start a court case but now its position has changed. A conformation to this is a statement of a former Turkish ambassador to Greece Hasan Gogus suggested that ICJ can help resolve a dispute between Turkey and Greece on the Aegean Sea. The ambassador added if all other diplomatic routes are exhausted the ICJ could be helpful in persuading the Greek public to accept a solution on maritime boundaries with Turkey [7].

The Court is one of the component bodies of the United Nations based in the Hague, the Netherlands. It is the major international judicial organ, with its fifteen members, commonly called judges, elected separately by the U.N. General Assembly and the Security Council for a term of nine years. Only states can bring contentious cases before it, either by special agreement between the parties to a dispute or by a unilateral application by either party. The Court has actually settled a number of maritime cases, the first being the North Sea Continental Shelf Case of 1969 between former West Germany and Denmark, the Netherlands and Federal Republic of Germany [8. p. 4].

Among the cases the International Court of Justice has settled in the course of its work are the case of the islands of Menkyu and Ekrihos between Great Britain and France (1953);

delimitation of the continental shelf between Tunisia and Libya (1982); delimitation of the continental shelf between Libya and Malta (1985); drawing a maritime border in the Gulf of Maine between Canada and the United States (1984); the dispute over the land and sea border between El Salvador and Honduras (1986); dispute over the delimitation of maritime spaces between Ukraine and Romania in the Black Sea (2009), etc [9]. But in some cases neither the ICC nor the arbitral tribunals have provided the islands with any economic zone or continental shelf. Sometimes, decisions were not in favor of the disputing parties, for example, in the case of the demarcation between France and the United Kingdom, the Arbitration Court granted only 12 miles of sea space to the British Isles near France [10].

The fact is the International Court has an unfortunately uneven history in delimitation. The Court has not consistently applied any uniform set of criteria to the above major cases. The proportionality principle seems to have been the only consistently relevant factor referred to by the Court. The coastal configuration which had been important in the North Sea Cases was not considered in Libya-Malta. Equitable division of natural resources was dismissed as relevant in both Tunisia-Libya and Libya-Malta, yet the de facto lines were based, in Tunisia/ Libya, on a division which was directly related to a division of natural resources. As noted above, all boundary decisions have a political nature and in any negotiation, it is difficult to isolate the political from the other elements [11].

In a demarcation dispute Romania v. Ukraine, the International Court of Justice did not grant Snake Island sea space. The ICJ has delimited the sea borders of the two countries, mainly by using the middle line method. The middle line method is strongly supported by Greece but has been declined by Turkey. The ICJ didn't gave to the island of Ukraine (Serpent) full rights to a continental shelf or EEZ and didn't decide if this island is a rocky island or not, despite it was treated in a degree, as if it was a rocky island. The ICJ justified this decision on the grounds that the island had already a 12 mile coastline, which Romania however never put under question. Also, the ICJ didn't take into account at all the Black Sea as a closed or semi-enclosed sea. This is a positive aspect for Greece, as long as Turkey's position is to insist that the Aegean Sea is a closed or semi-enclosed sea. The result was that Romania won 79.3% of the disputed sea area [12].

Anyway, the role of the UN International Court of Justice in resolving interstate disputes and maintaining international law and order is quite significant. Among the main achievements of the International Court of Justice is that it has directly influenced the formation of the basic provisions of international maritime law in their modern sense, which is reflected in the Convention. It is credited with shaping the foundations of international law for the delimitation of the continental shelf and the delimitation of maritime spaces.

Conclusions and proposals. It can be concluded that the Aegean issues between Turkey and Greece are multifaceted. Therefore, there is every reason to believe that the resolution of these disputes is necessary with the participation of the International Court of Justice, because given the particular delicacy and complexity of the issues under consideration, the principles of fairness and proportionality in international law can often influence court decisions. The letter of the law, however, is obviously on the side of Greece; although Turkey considers that, as it is not a party to the UN Convention on the Law of the Sea, the provisions of the convention are not applicable to the Turkish side;

The International Court of Justice, applying the rules of international law to specific circumstances in the consideration of disputes between states, maximally develops, deepens and concretizes their content. The procedure in the UN International Court of Justice is quite effective and allows it to perform the tasks set by the world community based on international legal instruments governing interstate relations in the field of international maritime law. Under Article 38 of the Statute of the International Court of Justice (Statute), when deciding cases "in accordance with international law", the court applies such sources of law as international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; subject to the provisions of Article

59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

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Е. Р. Ахмедова, канд. юрид. наук, ст. викладач
Одеський державний університет внутрішніх справ
Кафедра конституційного та міжнародного права
вул. Успенська, 1, Одеса, 65012, Україна
e-mail: e.r.akhmedova@gmail.com
ORCID: https://orcid.org/0000-0003-0916-3677

РОЛЬ МІЖНАРОДНОГО ПРАВА ТА МІЖНАРОДНОГО СУДУ ООН У ВИРІШЕННІ ЕГЕЙСЬКОГО СПОРУ

Резюме

У статті зазначається, що розмежування континентального шельфу в Егейському морі залишається основним спірним питанням між Грецією та Туреччиною протягом останніх 50 років. Дане питання було безуспішно подано на розгляд Міжнародного Суду, неодноразово обговорювалося в Раді Безпеки ООН та спричинило укладення угоди про делімітацію. Метою даної статті є дослідження практики вирішення морських спорів міжнародними судовими органами, зокрема, Міжнародним судом ООН. Ключова проблема полягає в тому, що Греція хотіла б вирішити суперечку за допомогою Міжнародного суду, але це може не лише зашкодити суверенітету Туреччини над її територіальним морем та континентальним шельфом, але також загрожуватиме безпеці материкової частини Туреччини.

Туреччина є однією з 16 країн, яка не підписала та не ратифікувала Конвенцію з морського права. Міжнародне право пропонує різні засоби, які можуть бути використані Грецією та Туреччиною для вирішення спору, зокрема, встановлення міжнародних кордонів шляхом делімітації, підписання Угоди щодо проведення нафтових операцій тощо. Однак дійсність часто накладає перешкоди, які закон не може подолати. Усі варіанти рішення проблеми вимагають добросовісності та взаємного духу компромісу між зацікавленими сторонами та без угоди односторонні дії чи претензії не мають юридичного значення.

Міжнародний суд ООН за усю історію свого існування вирішив ряд морських спорів, проте, в деяких випадках, рішення суду не завжди приймалися на користь сторін, що сперечаються. Так чи інакше, роль у вирішенні міждержавних суперечок та підтримці міжнародного правопорядку є досить значною, а процедура розгляду справи досить ефективною, що дозволяє йому виконувати поставлені світовою спільнотою завдання на основі міжнародно-правових документів, що регулюють міждержавні відносини у сфері міжнародного морського права.

Ключові слова: Егейський спор, Туреччина, Міжнародний суд, Конвенція про морське право, делімітація.

Э. Р. Ахмедова, канд. юрид. наук, ст. преподаватель
Одесский государственный университет внутренних дел
Кафедра конституционного и международного права
ул. Успенская, 1, Одесса, 65012, Украина
e-mail: e.r.akhmedova@gmail.com
ORCID: https://orcid.org/0000-0003-0916-3677

РОЛЬ МЕЖДУНАРОДНОГО ПРАВА И МЕЖДУНАРОДНОГО СУДА ООН В РАЗРЕШЕНИИ ЭГЕЙСКОГО СПОРА

Резюме

Турция является одной из 16 стран, не подписавших и не ратифицировавших Конвенцию по морскому праву. Международное право предлагает различные средства, которые могут использовать Греция и Турция для разрешения спора, в частности, установление международных границ путем делимитации, подписания Соглашения о проведении нефтяных операций и т. д. Однако действительность часто накладывает препятствия, которые закон не может преодолеть. Все варианты решения проблемы требуют добросовестности и взаимного духа компромисса между заинтересованными сторонами и без соглашения односторонние действия или претензии не имеют юридического значения. Ключевая проблема состоит в том, что Греция хотела бы разрешить спор с помощью Международного суда, но это может не только ограничит суверенитет Турции над ее территориальным морем и континентальным шельфом, но и может стать угрозой безопасности материковой части Турции.

Ключевые слова: Эгейский спор, Турция, Международный суд, Конвенция о морском праве, делимитация.