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Abstract
After Libya’s announcement of its Exclusive Economic Zone (EEZ) and declaration that it is open to international agreements in May 2009, it has become necessary that one should academically evaluate and analyze the subject from the point of view of Turkey. This paper touches upon the discussions centered on the EEZs in the Eastern Mediterranean and assesses the possibility of concluding such an agreement between Turkey and Libya.

Keywords: Libya, Eastern Mediterranean, Delimitation of the Maritime Jurisdictional Areas, Energy.

Introduction
In the past ten years, littoral states in the Eastern Mediterranean have become increasingly interested in the maritime jurisdictional areas. This resulted in the expansion of the studies related to the delimitation of such areas on the basis of sharing energy resources. Such studies then led to unwanted developments, where Turkey was envisaged to be confined to a narrow area of 41000 square kilometers off the Bay of Antalya, which would truly violate its inherent rights within international law.

Currently, as for the exploration and sharing of new energy resources in the Eastern Mediterranean, littoral states pursue an active diplomacy along with meticulous policies to greatly benefit from these rich resources.

As Eastern Mediterranean attracts the attention of the whole world owing to the implications of newly discovered natural gas and oil resources for the respective economies, it is critically important for Turkey, which has the potential power and will in striking the balance in the region, to, without no more delay, conclude such delimitation agreements, in order to guarantee its interests in the Eastern Mediterranean and ensure the economical welfare of its future generations.

1. Energy Reserves in the Eastern Mediterranean and Declarations of Exclusive Economic Zones (EEZ)

Importance of energy resources has gradually been magnified in world politics since the last century. Exploration, extraction and exploitation of oil and natural gas, which are by far the most important energy resources, forms the centerline of global politics. Thus, exploration and sharing of new energy resources, especially in the high seas and polar regions, attract the attention of all the countries.
Newly discovered oil and natural gas reserves in the Eastern Mediterranean, which constitute the most important arena of global power struggle recently, has caused not only the littoral states, but also the EU countries and the U.S. to shift their focus towards the region (http://www.usgs.gov/newsroom/article.asp?ID=2435).

US Geological Survey (USGS) declared, on its 8 April 2010 dated report (http://www.usgs.gov/newsroom/article.asp?ID=2435), that one of the biggest natural gas reserves of the world lies in the Levant Basin, located in the area surrounded by the island of Cyprus, Lebanon, Syria and Israel in the Eastern Mediterranean and it is estimated to house 122 trillion cubic feet (3.45 trillion cubic meters) of natural gas and 1.7 billion barrels of oil. In the meanwhile, it was also estimated that, in 2008, total quantity of both produced and consumed natural gas in the world was 110 trillion cubic feet. (http://www.usgs.gov/newsroom/article.asp?ID=2435, http://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf).

USGS also noted that Nile Delta Basin is estimated to have approximately 1.8 billion barrels of recoverable oil, 223 trillion cubic feet (6.3 trillion cubic meters) of recoverable natural gas and 6 billion barrels (0.715 billion cubic meters) of liquidified natural gas reserve. (USGS fact sheet 2010-3027, http://geology.com/usgs/nile-delta-oil-and-gas/).

Around the island of Cyprus, as it was declared when the exploration activities began, there exist oil reserves of 8 billion barrels, which are estimated to be worth of roughly 400 billion dollars. Considering also that hydrocarbon reserves of 15 billion barrels off the coasts of Egypt and 8-10 billion barrels in the Levant Basin, total amount of such reserves in the region are approximately 30 billion barrels, worth of around 1.5 trillion dollars, taking into account of the value of the reserves in the south of island of Cyprus (http://www.kibris1974.com/kibrisinoteki-vazgecilmelzikleri-105661.html?s=4d6f83fa7613e72568de17f79fc5c74f&amp).

Lastly, Noble Energy, a U.S. based firm, declared, on 29 December 2010, that significant amount of natural gas was discovered in the region of Leviathan, 80 miles north of the port of Haifa, Israel. It further stated that there were natural gas reserves of 16 trillion cubic feet in the region, making it the biggest discovery in the world in recent years. (Simon Henderson; “Seismic Shift: Israel's Natural Gas Discoveries”, 04 January 2011). In line with these data, it is assessed that hydrocarbon reserves, equaling to 30 billion barrels of oil, worth of approximately 1.5 trillion dollars, exist in the Eastern Mediterranean.

As for the exploration and sharing of new energy resources in the Eastern Mediterranean, political games and calculations were launched. In this context; Southern Greek Cypriot Administration (SGCA), declared its EEZ on 2 April 2004 (Sezer, 2008), being in effect as of 21 March 2003 and Libya declared its EEZ on 27 May 2009 (UN, 2010, Table of Claims). In the meanwhile, though its boundaries were not defined, on the UN website, it was realized that Syria submitted an EEZ declaration extending up to 200 miles. Lastly, Lebanon declared its EEZ, having presented the related documents detailing its maritime jurisdictional areas to the UN on 19 October 2010. (http://www.un.org/depts/los/legislationandtreaties/statesfiles/lbn.htm).

2. Maritime Jurisdictional Areas of Libya and Its Views Defended at the International Court of Justice (ICJ)

a. Maritime Jurisdictional Areas of Libya


Then, on 27 May 2009, Libya General People’s Assembly declared an EEZ in accordance with related international agreements and such declaration was proclaimed to the UN.
While declaring its EEZ, Libya also expressed its willingness to negotiate the EEZ delimitation with respective states, having opposite coasts. (http://www.un.org/Depts/los).

Perusing the United Nations table dated 31 July 2010, where declarations with respect to maritime jurisdictional areas are listed, one sees that Libya exploited straight baselines.

On the other hand, Libya reserve its rights to explore and recover oil; thus, Libya National Oil Corporation (NOC) proclaimed the maps(Figure-1, Figure-2, Figure-3) (http://en.noclibya.com.5) on its website, detailing Libya’s economical rights in the south of Crete including the island of Gavdos; it was understood that maps displayed Libya’s territorial seas and maritime areas, manifesting Libya’s rights to explore and recover oil; however, it was also seen that Libya would anticipate to exploit economical rights in the south of Crete including the island of Gavdos as shown in Figure-4; thus, such considerations detailed on the map should be clarified at the political level.

Figure-1: Map Detailing Libya’s Economical Rights (http://en.noclibya.com).
Figure-2: Map Detailing Libya's Economical Rights (http://en.noclibya.com).

Figure-3: Area Nu: 13 and Nu:14 are located between longitudes 24ºE and 26ºE; latitudes 34ºN and 35ºN; in the south of the island of Crete (http://en.noclibya.com).
b. Libya-Tunusia Case

Libya and Tunisia both granted research and exploitation licenses on the areas along the Libya-Tunusia maritime border, where each claimed as its own, in 1968 and 1972, respectively. This prompted both states to protest each other and, as a result of these protests, sign an agreement of arbitration, dated 10 June 1977, to take the case to the International Court of Justice (ICJ). Then, Tunisia and Libya both appealed to the ICJ on 25 November 1978 and 14 February 1979, respectively. (Aslan, 1998; Acer, 2004)

Tunisia and Libya requested the ICJ to detail the applicable international law principles and rules to be implemented in such a delimitation process and advise on the best practical solution in this case. Both sides also demanded the case to be evaluated in view of the new provisions, namely the equitable principles and special circumstances, which will be enshrined in the 1982 United Nations Convention on the Law of the Sea.

Both states claimed that, in determining the boundaries of continental shelves, the fundamental consideration was the prolongation of the land onto the sea. However, there is a significant difference in their outlook towards such a prolongation. Libya advocated the natural prolongation of the continental Africa, thus its land mass was towards north. However, this would have resulted in a loss for Tunisia, since its coastline was in the north-south direction. On the other hand, arguing just the opposite of Libya, Tunisia indicated that contour lines at sea were in the south-north direction, therefore, it was impossible to change the geography; and instead, geomorphologic data should have weighed in the arbitration process.

Both parties persistently put forward the geologic, geomorphologic, bathymetric and
geographic attributes of the disputed area in their statements from their own perspective. Disputed area constituted a part of geomorphologic section “Pelagian Block”, having included the eastern side of Tunisian land territory in the south of Gulf of Hammamet, southeast of Tunusia and Jeffara Sahara, located in the north of Libya.

Libya defended that the disputed area was the natural prolongation of the Northern Africa in the northern direction; such direction was determined by the continental land mass and there was a geological difference between the land territories of Libya and Tunusia, stemming from the history of these territories. Tunusia, on the other hand, advocated that geological zones of its land territory spanned out easterly to maritime areas; there was indeed a geological difference between the continental Africa and Palegian Block and there existed an easterly natural prolongation of Palegian Block, due to a geomorphologic zone passing through the south of Tunusia and the north of Libya.

ICJ initiated the arbitration mechanism by examining first whether or not the concept of natural prolongation would be a criterion in the delimitation process the way the parties put forward. Upon its investigation, ICJ concluded that the concept of natural prolongation could not be “compulsorily sufficient and appropriate”, by evaluating the differences in the views of the parties. According to ICJ, the concept of natural prolongation establishes a principle to detail and validate the rights and authority over the seabed; it does not determine the boundary of a continental shelf. In this respect, it was stated that the effect of natural prolongation should be assessed as an important factor in geographical delimitation, however, primarily, equitable principles should be considered. ICJ further noted that continental shelf delimitation could not be determined, not only and essentially taking into account of the geological data; the law, thus ICJ is to benefit from geology; but it should not dwell on the formations in distant past, instead it should focus on and determine its implications.

ICJ ruled that geologic, geomorphologic and geographical evidence filed by both states did not possess sufficient proof to overcome each other’s thesis and be effectively utilized in a tangible disagreement. It noted that, even in UK-France Case, a geologic formation like Hurd’s Deep was not taken into consideration; a similar formation applicable to this case would be Tripolitan Furrow, however, it was outside the area to be delimitated; thus, delimitation should be made in view of the international law principles, rather than physical data, bearing in mind that this assessment is particularly in response to the claims of natural prolongation, otherwise, it did not necessarily eliminate all the physical data. Indeed, coastline lengths of both countries, the fact that Tunisian coastal formation starts at Ras Ajdir, continues in the same direction like Libyan coasts up to a point, then extends from southwest to northeast and Tunisian islands of Djerba and Kerkenneah are situated on the continental shelf were all taken into account.

ICJ also evaluated the effect of the land border between the two countries on the delimitation of continental shelf, by expressing that historical rights should also be respected, since, in light of the equitable principles and indigenous circumstances, Tunusia claimed that it was granted historical rights in some areas on the continental shelf to be delimited. Last but not least, ICJ studied the effect of economical factors on the applicable principle and rules. In that respect, though Libya possessed oil wealth, an outcome to grant a wider area to Tunusia was not attained.

Having replied the question of principle and rules, in determining the boundary of tangible disagreement, by way of a geographical evaluation of the region, ICJ decided that, in sector close to the coasts, a perpendicular line to the coast should be utilized, which was also being used to determine the maritime borders of the countries adjacent to each other. In distant sector from the coasts, it further decided that a line making a more narrow angle towards Libyan coasts would form the boundary of the continental shelf. In this case, ICJ granted half-effect to Kerkenneah Islands and ensured that distant sector became parallel, by finding the middle of the line drawn from both Tunisian coasts and Kerkenneah islands.
Another important point in ICJ’s decision (I.C.J. Reports (1982) p.37-47) as a contribution to naval law is that the principle of equidistance line is a method to be applied, when it would serve to reach an equitable solution, otherwise, other methods must be utilized.

In 1982 Tunusia-Libya Case, as for the islands of Kerkennah and Djerba, situated close to the Tunusian coasts with respect to the median line, the Court (as seen in Figure-5) granted half effect to Kerkennah and no effect to Djerba, noting that other factors were more important. (htpp://www.icj-cij.org).

Figure-5: Tunusia-Libya Case Decision (I.C.J. Reports (1982)).

b. Libya-Malta Case

Libya and Malta submitted the agreement, dated 23 May 1976, to the ICJ on 26 July 1982 in order to settle their differences on the delimitation of the continental shelf between the two countries. In view of the 1st article on the agreement dated 23 May 1976, both sides requested the ICJ to detail the applicable international law principles and rules to be implemented in such a delimitation process and advise on how they could be implemented to practically delimit the continental shelf through an agreement. In accordance with the 3rd article, upon the ruling of ICJ, Libya and Malta would negotiate to mutually determine their continental shelves and sign an agreement (I.C.J. Reports 1985, p.16). Although there is not an explicit statement with respect to the delimitation methods in the agreement, from the statement “...advise on how they could be implemented to practically delimit the continental shelf through an agreement.”, it is understood that ICJ is authorized to detail such methods (I.C.J. Reports 1985, parag.19).

ICJ was able to decide on the disagreement on 3 June 1985 (I.C.J. Reports 1985). In
Libya-Malta Case, ICJ accepted that the lawful essence enabling a Party to be granted continental shelf was changed from “natural prolongation” to “distance”. In view of “distance” principle, a state has the right to own on the area, extending from its coasts up to 200 miles, not taking into account of any geologic and geomorphologic formation in between. (Gökalp, 2008, p.123-124). This decision by the ICJ is pretty important as well as disputable, as far as the development of the concept of continental shelf.

ICJ concluded that since the distance between states were less than 400 miles, basin in-between was not a discontinuity, which would block the southern prolongation of Malta’s continental shelf and hinder the natural prolongation of Libya. (I.C.J. Reports 1985, parag.36,39,40). It further stated that physical properties would play no role in determining the ownership and could not be considered as a relevant condition as far as delimitation purposes were concerned.

Both sides signed the 1982 United Nations Convention on the Law of the Sea (UNCLOS), however, at the time, the convention was not in effect. Therefore, the convention did not legally bind any of the Parties. In the special bilateral agreement, there was no provision, which could have been implemented as substantive law. There was also no bilateral or multilateral agreement, which would bind the Parties. Thus, the States agreed on the fact that the disagreement would be solved in view of the customary law (I.C.J. Reports 1985, parag.26). In this respect, it is a fact that especially the current applications and “opinion juris” of states should be examined as the source of customary law. Furthermore, it is also a fact that multilateral agreements play an important role in determining, recording and developing the rules of the customary law. In this regard, ICJ indicated that related provisions of 1982 UNCLOS would bind the Parties as rules of the customary law and thus should be taken into consideration.

Having first decided in the North Sea Case (I.C.J. Reports 1969, parag.101 (C)1,2) and then renewed its decision in the Tunisia-Libya (I.C.J. Reports 1982, parag.98) and Libya-Malta (I.C.J. Reports 1985, parag.61) Cases, ICJ decided that the method of equidistance line in delimitation was not binding. Besides, any other method of delimitation was not binding under all circumstances. According to ICJ, delimitation should be made with an agreement, in view of equitable principles and all related circumstances.

It should be made as such that all the Parties should be awarded, if possible, all the continental shelf, which would be seen as the natural prolongation of their land territory, while, at the same time, there would be no encroachment into the natural prolongation of the land territory of the other side. If such a delimitation results in intersecting areas, these areas should be shared at an agreed proportion, if not, equally, among the sides. On the other hand, states reserve the right to put in place a regime based on a joint decision. (Gökalp, 2008, p.125).

ICJ made its decision on the principle of justness and ruled that delimitation between a land state and an island state should result in favour of the land state Libya (As in Figure-6) on an equitable basis. (Prescott; Schofield, 2005, s.389-390).

Figure-6: Libya-Malta Case Decision (I.C.J. Reports 1985).
3. Turkey and Libya, In The Delimitation of Maritime Jurisdictional Areas In Eastern Mediterranean

Taking into account of international law, related court decisions and current geographical positions in Eastern Mediterranean, in a delimitation to be made in the Eastern Mediterranean, as shown in Figure-7; “median line” between Anatolia and the coasts of Africa (Libya-Egypt) should be accepted as the baseline; the principles of “supremacy of geography” and “non-encroachment” should be abided by, since the island of Cyprus is situated on the north of the median line and the Greek islands are situated on the opposite side and both are at a position to block the opening of Turkey out to seas, as they stand in the way of Anatolian coasts; and islands on the opposite side should be awarded maritime jurisdictional areas as much as its territorial waters.

Figure-7: Delimitation in the Eastern Mediterranean in view of median line on equitable basis.

The median line to be accepted as the baseline towards delimitation in the Eastern Mediterranean moves in the east-west axis between Anatolia and African coasts. On the north of this axis are located the Greek islands of Crete, Kassos, Karpathos, Rhodes and Meis, and the island of Cyprus. In view of the geography to be delimited, these islands are all situated on the north of this axis. Technically, the most important item to be considered in terms of the principle of “supremacy of geography” is the geographical position of the islands with respect to the median line. In fact, with respect to this principle, ICJ stated, on 1969 North Sea Case, that “refashioning the geography cannot be the case” and emphasized that “delimitation among two or more states should be made on an equitable basis by taking into account of all related circumstances in the region to reach a just solution” (Acer, 2004, p.3-1, 3-2). Similarly, in 2009, with respect to the disagreement between Romania and Ukraine on the delimitation of maritime jurisdictional areas in the Black Sea, the Court decided to accord Serpents’ Island, which belongs to Ukraine but is situated on the opposite side, a maritime jurisdictional area as much as its territorial waters. (http://www.icj-cij.org/docket/files/132/14989.pdf).

Article 74 and Article 83 of 1982 UNCLOS, which is the most comprehensive convention on the law of the sea, clearly reflect the understanding towards the decisions by International Court of Justice or Court of Arbitrations. These articles codify that “the delimitation of the continental shelf/EEZ between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the In-
ternational Court of Justice, in order to achieve an equitable solution”. (Lagoni ve Vignes, 2006).

According to Article 15 of 1982 UNCLOS, where the coasts of two States are opposite or adjacent to each other, unless there is an agreement between them to the contrary, the median line is drawn to ensure that every point of which 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. In that respect, taking this definition as the baseline, it is possible to determine a final median line, where each point on the line is equidistant from the base points decided on both mainlands.

In this respect, since the island of Cyprus is situated on the north of the median line and the Greek islands are located on the opposite side and both are at a position to block the opening of Turkey out to seas, as they stand in the way of Anatolian coasts, they should be awarded maritime jurisdictional areas as much as its territorial waters. Before everything else, the islands of Kassos, Rhodes and Meis are on the opposite side, taking into account of the median line drawn between the mainlands of Turkey and Greece; thus, they can neither be subject to the formation of a baseline in the delimitation of maritime jurisdictional areas in the Eastern Mediterranean, nor be accorded maritime jurisdictional areas beyond their territorial waters.

Article 121 of 1982 UNCLOS, which Turkey is not a signatory nation, states that islands shall have territorial waters, continental shelf and EEZ, but rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. In accordance with the convention, maritime delimitation of islands is made in line with the rules applicable to land territories. However, in view of the court decisions so far, provisions of 1982 UNCLOS have not allowed the islands to be granted maritime jurisdictional areas as much as mainlands. In contentious cases, delimitation has been undertaken by taking into consideration of the principles of justness, equidistance, proportionality, supremacy of geography and non-encroachment, as well as the evaluation of special, demographic and other circumstances (islands and other geographical formations).

Moreover, Greece itself was not resolute as to whether or not islands should be accorded continental shelf/EEZ, however, politically, admitted that it was important to advocate that islands shall have continental shelf/EEZ for its national interests. In this regard, it was also stated that if the island of Meis were not used as the beginning point in drawing the Greek median line, the EEZ of Turkey would be broadened to the west and even reach towards Egypt; Turkish continental shelf would border the Egyptian continental shelf; and in case the dispute were taken to ICJ, the result would definitely not be in favour of Greece (To Vima, 16 January 2011).

4. Conclusion

According to international law, having opposite coasts, it is in the interest of both Turkey and Libya, as being two littoral states and having opposite coasts in the Eastern Mediterranean, to soon conclude a maritime delimitation agreement on equitable basis. In this respect, considering also the related decisions by international courts, constituting significant precedents and the respective provisions of UNCLOS, it is necessary for Turkey and Libya to conclude such an agreement. Such an agreement is absolutely legitimate and in the absolute interests of both Turkey and Libya. If signed, Libya would be accorded a larger maritime jurisdictional area than it would own in view of an agreement it would sign with Greece.

BIBLIOGRAPHY


İbrahim Gökalp; _Principles International Court of Justice Consider In the Decisions of Maritime Delimitation Cases (Milletlerarası Adalet Divanı’nnun Deniz Alanlarının Sınırlandırılmasına Dair Kararlarında Dikkate Aldığı İlkeler)_.

Celalettin Yavuz, "Increasing Strategic Importance of Cyprus Due to Oil Fields (Petrol Sahaları Sebebiyle Kıbrıs’ın Artan Stratejik Önemi)", http://www.turksam.org.tr/yazdir1943.html, 11.03.2010.


Statue of International Court of Justice
International Court of Justice Decision, North Sea Case (I.C.J. Reports (1969))
International Court of Justice Decision, Libya-Tunisia Case (I.C.J. Reports (1982))
International Court of Justice Decision, Libya-Malta Case (I.C.J. Reports (1985))
Turkish Ministry of Foreign Affairs, www.mfa.tr
http://geology.com/usgs/nile-delta-oil-and-gas
http://www.kibris1974.com/kibrisin-oteki-vazgeclimizleri-i-t05661.html?i=4d6f83fa7613e72568de1779fc5c74f&amp
http://www.byegm.gov.tr/yayinlarimiz/disbasin/2007x/02/02x02x07.htm
http://www.byegm.gov.tr/yayinlarimiz/disbasin/2007x/02/02x02x07.HTM
http://www.jpost.com/International/Article.aspx?ID=199896&R=R1
http://www.financialmirror.com/News/Cyprus_and_World_News/22099

http://www.dunyabulteni.net/?aType=haber&ArticleID=135173, 7 November 2010.
http://www.ulkeler.net/libya.htm
http://www.icj-cij.org

To Vima, 2 February 2007.
Imerisia, 8 November 2010.
Eleftherotipia, 27 December 2010.

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