

RETHINKING THE TERRITORIAL WATERS CONCEPT IN THE CONTEXT OF TÜRKİYE – GREECE RELATIONS IN THE AEGEAN SEA

Adem TAFRAN*

Abstract

Considering that two-thirds of the earth is made up of seas and oceans, the importance of the seas and oceans and the reasons for the controversial disputes can be easily understood. Oceans and seas are of great importance in transportation, fishing, underground sources, national security, and energy resources. Recent disputes between the Greek Cypriot Administration of the Southern Cyprus and the Republic of Turkey over gas and oil exploration make it clear that the issue of territorial waters remains important. As a matter of fact, this disagreement seems to be going on even longer. At least this is the widely held opinion. For historical reasons, the Aegean Islands, which border Anatolian lands/territory, which are so close that their lights can be seen at night from the Anatolian shore, are under the sovereignty of Greece. The basis of the territorial waters issue is the distance of the territorial waters indicating the sovereignty in the sea after having accepted that these islands belong to Greece.

In this study, I examine the territorial waters issue and try to develop ideas for the past, the present and the future. In my opinion, the disagreement on the territorial waters is an alarming issue that might cause serious problems in the future. Considering the sensitivity of the subject, I try to describe the historical development and the scope of the territorial waters concept and to discuss and exemplify the current situation in the Aegean Sea. Rather than focusing on the specific problems, this study aims to interpret the content of the territorial waters concept. However, a general assessment of the current issues is also included.

Keywords: Territorial Waters, Inland Waters, Aegean Sea, Turkey, Greece, UNCLOS.

* Dr. Kırklareli University Orcid id: 0000-0001-9651-7554
email:ademtafran@gmail.com

Doi: 10.51655/ejl.2022.8 Received: 08.04.2022

Accepted: 05.05.2022

The Concept of Territorial Waters from a Historical Perspective

The Scope of the Territorial Waters Concept

The territorial waters that form the sea country together with the inland waters of the states are the sea areas that surround the coastal state and have a certain width that is between the inland waters or the coasts and the high sea¹.

The concept of territorial waters has emerged with the intention of exercising the sovereign powers and rights of states over certain parts of the sea waters due to protection and security concerns. The sovereignty powers of the state over its territorial waters are now acknowledged and implemented in international law together with the rules of innocent passage permits² and, in some cases with rules of limitations on jurisdiction in order to carry out sea transportation freely and uninterruptedly³.

¹ Dixon, McCorquodale, 352-354, Evans, 629, 630.

² The concept of innocent passage permit, which is also named by some authors as the right to innocent passage is a concept accepted and implemented in the international law, meaning that all types of merchant ships, regardless of whether their states are coastal to the oceans or seas can pass through the territorial waters of the coastal states. It is acknowledged as an international principle. Although there is no clear provision for the innocent passage of the warships in the Geneva Convention on the Territorial Sea and the Contiguous Zone of 1958 and the United Nations Convention on the Law of the Sea of 1982, it is observed that despite the controversy in the doctrine, the passage of warships in 'peacetime' is not objected in practice. However, warships may be banned from crossing, or their passage may be conditioned on notification or permission if the coastal state deems it necessary. (Kutluk, Deniz, Deniz Hukukunda Zararsız Geçiş ve Transit Geçiş Hakları, s. 20-46), Selami Kuran, Uluslararası Deniz Hukuku 82, 87, 88, 148., Canca Hakan Selim, Denizde İşlenen Suçlar, s.70-75.

³ As a matter of fact, article 1/1 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and the article 2/1 of the United Nations Convention on the Law of the Sea of 1982 recognized that the sovereign powers of the states also apply in territorial waters. For provisions on limitations see: 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, articles 14-24, and 1982 United Nations Convention on the Law of the Sea, articles 17-32. Gündüz Aslan, Milletlerarası Hukuk Temel Belgeler Örnek Kararlar, s.111., Özman, M. Aydoğan, Birleşmiş Milletler Deniz Hukuku Sözleşmesi s.121.

Clarifying the inner limits of the territorial waters, which determine and define the line where the coast starts and the outer limits which determine where the coast ends and where the high sea starts (if there is, also of the adjacent zone) and the side limits that define the borders of the territorial waters of the neighboring states are of vital importance in terms of not causing a conflict or disagreement between sovereign powers of the states⁴.

“The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast”⁵. “The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea”⁶. “Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines”⁷.

Since “the sovereignty of a coastal State extends to the territorial sea”, it also “extends to the air space over the territorial sea as well as to its bed and subsoil”⁸.

Reviewing the Historical Development of the Concept

The idea of taking the cannon shot range to calculate the breadth of the territorial waters, which is the decisive factor in limiting the marine areas, was first put forward by England and the Netherlands in 1610. The implementation of the 3-mile territorial waters breadth was put

⁴ Malanczuk Peter, Akehurst’s Modern Introduction to International Law s.176., Kuran Selami, Uluslararası Deniz Hukuku, s.60.

⁵ The United Nations Convention on the Law of the Sea of 1982, article 5. For other methods used for coastal types with different geographical shapes, see: Selami Kuran, s.61.

⁶ The United Nations Convention on the Law of the Sea of 1982, article 4. (Özman, M. Aydoğan, Birleşmiş Milletler Deniz Hukuku Sözleşmesi s.119). For methods for determining the outer limit, see: Selami Kuran, 69, 70.

⁷ The United Nations Convention on the Law of the Sea of 1982, article 3. (Özman, M. Aydoğan, Birleşmiş Milletler Deniz Hukuku Sözleşmesi s.119). Since the Republic of Turkey is not a party to the convention, the 12-mile rule cannot be asserted against Turkey (Selami Kuran, s.80).

⁸ The United Nations Convention on the Law of the Sea of 1982, article 2. (Özman, M. Aydoğan, Birleşmiş Milletler Deniz Hukuku Sözleşmesi s.119).

forward in 1782 by the famous Italian diplomat Galiani, on the ground that the canon shot range was 3 miles, was the longest-lasting rule of the time⁹.

The Truman Proclamation of 1945 has formed the basis of today's continental shelf and territorial waters law¹⁰. The proclamation provided the United States with certain exclusive rights to areas of economic sovereignty outside its national jurisdictions and therefore on marine areas that were public thus far¹¹.

With the development of weapons technology, after the League of Nations Codification Conference of 1930, three major conferences on the Law of the Sea were held under the UN umbrella to legalize interests in the seas¹².

At the end of the first United Nations conference on the Law of the Sea, the text that manifests the law of the sea first time in the international arena was the Geneva Convention on the Territorial Sea and the Contiguous Zone of 1958. Due to the failure of the Geneva Convention of 1958 to adequately satisfy the relevant states, the Second Conference on the Law of the Sea was convened in Geneva two years later. However, the negotiations ended before any treaty could be signed¹³.

After the second Law of the Sea conference, the third United Nations Conference on the Law of the Sea convened in Caracas in 1974 and has continued working until 1982. After all, the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, the most comprehensive of the multilateral international regulations to date, has taken the most prominent and important place among the sources of law of the sea¹⁴.

Issues such as territorial waters, fishing, continental shelf, management of seabed resources, the regime of passage through straits and other

⁹ Hüseyin PAZARCI, s. 111

¹⁰ Malanczuk Peter, Akehurst's Modern Introduction to International Law, s. 122-126.

¹¹ Fatih Sezal, Dokuz Eylül Üniversitesi, Yüksek Lisans Tezi, s.75, Malanczuk Peter, Akehurst's Modern Introduction to International Law, s. 124,125.

¹² Gündüz Aslan, Milletlerarası Hukuk Temel Belgeler Örnek Kararlar, s.1-10

¹³ Selami Kuran, Uluslararası Deniz Hukuku, s. 5-12

¹⁴ Fatih Sezal, Dokuz Eylül Üniversitesi, Yüksek Lisans Tezi, s.66

waters, oceans, high seas, and prevention of pollution of the seas were discussed at these conferences¹⁵.

Legal Regulations on Territorial Waters in the Republic of Turkey

The first law on territorial waters in the Republic of Turkey is the Territorial Waters Law no. 476 dated May 15, 1964. The second law that is the new Territorial Waters Law no. 2674 dated May 20, 1982, repealed the provisions of the previous law¹⁶.

The Law on Territorial Waters, which determines the width of Turkish territorial waters as 6 nautical miles, has authorized the administration to increase the width of the territorial waters, which are determined by the Council of Ministers, to more than 12 nautical miles, provided that the authorities consider all the features and issues related to that sea and comply with the equitable principles¹⁷.

The Issue of Territorial Waters

The Reason of the Problem

The reason of the territorial waters problem between Greece and Turkey is that the Aegean Sea is an inland sea¹⁸. The Aegean Sea does not allow the coastal states to increase their territorial waters to 12 miles or more because it is narrow and long and it contains large and small islands and rocks. The main reason of the territorial waters dispute is the geographical structure and features of the Aegean Sea¹⁹.

¹⁵ Hüseyin PAZARCI, s.277-287

¹⁶ Gündüz Aslan, Milletlerarası Hukuk Temel Belgeler Örnek Kararlar, s. 167-169

¹⁷ Toluner, Sevin, Milletlerarası Hukuk Dersleri, Devletin Yetki s.69-71

¹⁸ Demir Ahmet, Türkiye İç sularından Faydalanma Meseleleri, s.54-61 Gönübol Mehmet, Barış Zamanında Sahil Sularının (Karasuları ve Bitişik Bölge) Hukuki Statüsü, s. 10-16

¹⁹ Gönübol Mehmet, Barış Zamanında Sahil Sularının(Karasuları ve Bitişik Bölge) Hukuki Statüsü, s. 30-34

**Reviewing the Historical Process of the Territorial Waters Problem
in the Aegean Sea**

The 3-mile rule was accepted as the basis for the determination of national borders in the Aegean Sea between Turkey and Greece in accordance with the principles of traditional law of the sea. Under the Treaty of Lausanne (1923), the balance and border between the two countries is determined and accepted according to this 3-mile rule²⁰.

Since 1964, after Greece and Turkey have declared their national territorial waters limits as 6 miles, the sharing in the Aegean Sea has been as follows: Greece, with an advantage due to having around 3,000 islands and rocks in the Aegean Sea, has a share of about 35% and Turkey has a share of 8.8%²¹.

There was no serious problem between the two countries until 1981 in terms of the territorial waters. The problem has basically arisen when the Papandreou government announced that they will extend the Greek territorial waters to 12 miles. Turkey reacted by announcing that they will consider Greece's decision a cause of war. However, as the situation became tense, the United States and the NATO intervened and Greece has been forced to retreat. However, Greece has, at times, continued to argue that it is their legal right to extend the territorial waters to 12 miles. The relations between the two countries are getting strained from time to time due to this problem. An example of this occurred when Greece approved and intended to enact the UN Convention on the Law of the Sea on 16 November 1994. Turkey's reaction was same as before and Turkey conveyed their decision to the Greek authorities at the highest level. The ratification of the 1982 Convention by the Greek parliament on 1 June 1995 added a new dimension to the problem. However, Greece has assured the UN and the NATO not to extend their territorial waters to 12 miles unless needed. Therefore, while ensuring that the Convention is ratified by the Greek parliament, the Greek government has pledged not to enforce the

²⁰ Gönlübol Mehmet, Barış Zamanında Sahil Sularının (Karasuları ve Bitişik Bölge) Hukuki Statüsü, s. 40-46

²¹ Gönlübol Mehmet, Barış Zamanında Sahil Sularının (Karasuları ve Bitişik Bölge) Hukuki Statüsü, s. 50,51., Demir Ahmet, Türkiye İç sularından Faydalanma Meseleleri, s.54-61 Gönlübol Mehmet, Barış Zamanında Sahil Sularının(. Karasuları ve Bitişik Bölge) Hukuki Statüsü, s. 64-66

convention unless needed. Nonetheless, on June 8, 1995, the Turkish parliament has fully authorized the government to take necessary measures, including military force, to ensure freedom of movement in case of possible developments in response to Greece's position²².

The most important innovation adopted in the Third Convention on The Law of the Sea concerns the issue of breadth, which until now has not been agreed upon. Article 3 of the Convention stipulates that the breadth of the territorial seas can be extended up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with the Convention. Thus, territorial waters limit in the convention, is not a fixed breadth applies to all states, but one that should not be exceeded²³.

The Greek state has declared that they want to extend their territorial waters to 12 nautical miles based on the convention. In response to this attempt, Turkey has stated that there is not a single general rule that applies to the breadth of the territorial waters, and that even in the case of such a rule, Turkey cannot be considered bound by this rule. Turkey asserts that the Aegean Sea is a 'semi-enclosed sea' and therefore special rules should be applied in accordance with the nature of the region²⁴.

The Case of Extension of Greek Territorial Waters to 12 Miles

In case that Greece's decision to extend their territorial waters limit to 12 miles is realized, national territorial waters in the Aegean Sea would form a very unstable distribution:

²² Tayyar Arı, Ege Sorunu ve Türk-Yunan İlişkileri: Son Gelişmeler Işığında Kara Suları ve Hava Sahası Sorunları.

<http://dergiler.ankara.edu.tr/dergiler/42/468/5378.pdf> (erişim tarihi:12.12.2021)

²³ Ege'de Deniz Sorunları Semineri, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, Sayı:552

²⁴ Fatih Sezal, Dokuz Eylül Üniversitesi, Yüksek Lisans Tezi, s. 44-55, Kuran Selami, Uluslararası Deniz Hukuku, s.113-116.

Distribution of Territorial Waters and International Waters When Different Territorial Waters Breadths Applied in the Aegean Sea (%)²⁵				
Breadth	Turkish Territorial Waters (%)	Greek Territorial Waters (%)	International Waters (%)	EDA
6 Nautical Miles	7.47	43.68	48.85	Approx. % 4.5
12 Nautical Miles	8.76	71.53	19.71	

In the case that the Greek territorial waters are 12 nautical miles in the Aegean Sea will cause several changes and transformations as follows:

The regions considered by Turkey as continental shelf will remain in Greek territorial waters and Turkey will not be able to claim them.

The transformation of most of the Aegean Sea into Greek territorial waters and the fact that the regions considered international waters will be surrounded by Greek territorial waters will change the rights of Turkey as well as other states that benefit from international waters to the rights to ‘innocent passage’.

²⁵ Kaynak: Deniz Bölükbaşı, Turkey and Greece: The Aegean Disputes, London: Cvendish Pub., 2004, s. 125.

Turkey's military flights and exercises (air and sea) over the Aegean will not be possible as the Greek national air space over the Aegean Sea will extend accordingly.

On the other hand, as a result of Greece's desire to extend their territorial waters to 12 miles, Greece will have at least 70 percent of the Aegean Sea, especially if this is applied to the islands. After all, the Aegean Sea will become a completely enclosed sea as the high sea areas (international waters) will be significantly reduced. In fact, "it will become impossible for the Turkish Navy to cross the Aegean to the Mediterranean through international waters, it will not be possible to conduct exercises by the Turkish Armed Forces in this sea and the airspace above it, and the Aegean will have ceded under Greek sovereignty". In addition, since all ships sailing in the Aegean will have to use Greek territorial waters, although foreign ships are granted "innocent passage" in territorial waters, it will be inconvenient for all states using this waterway, given that the coastal state can stop the passage by claiming that the passage is not innocent²⁶. On the other hand, with this policy of Greece, the narrowing of the Turkish continental shelf will be on the agenda²⁷.

Turkey's Approach and Arguments on the Issue

Although Greece sees the issue as a matter of their sovereign authority, Turkey suggests that such an issue concerning Turkey's sovereign rights cannot be seen as a matter of domestic law²⁸. The International Court of Justice also emphasizes this point in its decisions at different times. "There is always an international aspect to the limitation of marine areas; this cannot be solely dependent on the coastal state's will as described in its domestic law. Although the limitation process is a

²⁶ Kutluk, Deniz, Deniz Hukukunda Zararsız Geçiş ve Transit Geçiş Hakları, s. 30-40

²⁷ Tayyar Arı, Ege Sorunu ve Türk-Yunan İlişkileri: Son Gelişmeler Işığında Kara Suları ve Hava Sahası Sorunları.
<http://dergiler.ankara.edu.tr/dergiler/42/468/5378.pdf> (erişim tarihi:12.12.2021), Ege'de Deniz Sorunları Semineri, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, Sayı:552 s.134-155

²⁸ Ege'de Deniz Sorunları Semineri, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, Sayı:552 s.125-130

mandatory unilateral process due to the fact that the coastal state has the authority to do so, the validity of this limitation in terms of third states concerns international law”²⁹.

Furthermore, article 15 of the Convention stipulates that none of the states whose coasts are opposite or adjacent to each other can extend their territorial sea beyond the median line, even if no agreement can be reached between them or special circumstances require a different limitation³⁰.

In addition, Turkey demands that the geographical features of the Aegean should also be considered. In this respect, the Aegean Sea is a semi-enclosed sea and the provisions to be applied to semi-enclosed seas are the articles 122 and 123 of the Convention. After the semi-enclosed seas are defined in Article 122 of the Convention, the Article 123 states that: “states bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention”³¹.

Apart from these, Article 300 of the Convention must be considered in terms of limitation. The Article 300 of the convention states that “states parties shall fulfil in good faith the obligations assumed under the Convention and shall exercise the rights, jurisdiction and freedoms recognized in the Convention in a manner which would not constitute an abuse of right”³².

Turkey prefers a peaceful solution, for the method to be chosen in solving the problem. In this context, Turkey wants the limitations to be made by an agreement to be reached at the end of the negotiations between the two countries³³. Turkey has emphasized this point in the

²⁹ Tayyar Arı, Ege Sorunu ve Türk-Yunan İlişkileri: Son Gelişmeler Işığında Kara Suları ve Hava Sahası Sorunları.s.21,22,23 <http://dergiler.ankara.edu.tr/dergiler/42/468/5378.pdf> (erişim tarihi:12.12.2021), Ege’de Deniz Sorunları Semineri, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, Sayı:552

³⁰ Gündüz Aslan, Milletlerarası Hukuk Temel Belgeler Örnek Kararlar, s. 80-85

³¹ Gündüz Aslan, Milletlerarası Hukuk Temel Belgeler Örnek Kararlar, s.77.

³² Gündüz Aslan, Milletlerarası Hukuk Temel Belgeler Örnek Kararlar, s.78,79

³³ Tayyar Arı, Ege Sorunu ve Türk-Yunan İlişkileri: Son Gelişmeler Işığında Kara Suları ve Hava Sahası Sorunları.s.24,25

texts presented during the studies of the Third Law of the Sea Conference. In line with this purpose, Turkey has highlighted the necessity to determine the territorial waters breadth in semi-closed seas with special geographical features by a treaty between the coastal states in accordance with the equitable principles³⁴.

Conclusion

The process in which the power of the Turkish State in the Aegean Sea has decreased or “disappeared” has begun with the Greece’s independence from the Ottoman Empire, peaked with the Treaty of Lausanne and the ceding of the Aegean Islands adjacent to Anatolian lands to Greece and continued with the ceding of the Dodecanese Islands (12 Aegean Islands) from Italian rule to Greece after the World War II.

As long as the Aegean islands are under the rule of the Greek state, the problem shall continue and shall not be easily solved. Since the issue of territorial waters is against the interests of both states and just because both states strongly oppose each other's arguments and view them as causes of war, it prevents cooperation towards a common solution³⁵.

Today, this issue is still complicated and far from solution for both states, given that the competition for sharing of seabed resources has begun and even led to several mutual retaliations³⁶.

In case of finding rich seabed resources in the Aegean Sea in the future, there is a possibility that the disputes will reignite and cause a war. It seems unlikely for both Turkey and Greece to give up their arguments. It also seems unlikely that the United Nations will demonstrate a will to solve the problem and to force the parties.

³⁴ Tayyar Arı, Ege Sorunu ve Türk-Yunan İlişkileri: Son Gelişmeler Işığında Kara Suları ve Hava Sahası Sorunları.s.26, 27.

³⁵ Ege’de Deniz Sorunları Semineri, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, Sayı:552 s.140-145.

³⁶ Tayyar Arı, Ege Sorunu ve Türk-Yunan İlişkileri: Son Gelişmeler Işığında Kara Suları ve Hava Sahası Sorunları, s.29

In the face of this situation, it is necessary to explain this issue to the young people of today and tomorrow on behalf of all parties and to support efforts towards a solution.

Considering this issue in the context of globalization and law, it is a result and a need of positive globalization to ensure a peaceful solution of international problems. In the case of global law and objective principles of law, it is possible for an institution with the capacity of problem-solving to solve this problem.

However, the problem continues to exist today as there are no objective rules and institutions to solve this problem.

It is possible for a new institution such as the International Court of Justice and the International Criminal Court, whose decisions are accepted and implemented all over the world, to reach a fair solution to this problem.

Bibliography

- Canca Hakan Selim, Denizde İşlenen Suçlar, Seçkin Yayınları, Ankara: 2012
- Çelik Edip F., Milletlerarası Hukuk, İkinci Kitap, İstanbul, 1987
- Demir Ahmet, Türkiye İç sularından Faydalanma Meseleleri, Ankara, 1963
- Fatih Sezal, Dokuz Eylül Üniversitesi, Yüksek Lisans Tezi, İzmir, 2007
- Gönlübol Mehmet, Barış Zamanında Sahil Sularının(. Karasuları ve Bitişik Bölge) Hukuki Statüsü, Ankara, 1959
- Gündüz Aslan, Milletlerarası Hukuk Temel Belgeler Örnek Kararlar, İstanbul, 1998
- Hüseyin Pazarcı, Uluslararası Hukuk Dersleri II. Kitap, Ankara, 1989
- Kuran Selami, Uluslararası Deniz Hukuku, 3. Bası, Türkmen Kitabevi, İstanbul: 2009
- Kutluk, Deniz, Deniz Hukukunda Zararsız Geçiş ve Transit Geçiş Hakları, Ankara, 1987
- Malanczuk Peter, Akehurst's Modern Introduction to International Law, 7th Edt., 1997
- Özman, M. Aydoğan, Birleşmiş Milletler Deniz Hukuku Sözleşmesi, İstanbul, 1984
- Toluner, Sevin, Milletlerarası Hukuk Dersleri, Devletin Yetkisi, İstanbul, 1996
- Ege'de Deniz Sorunları Semineri, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, Sayı:552 Ankara, 1986

Yrd. Doç. Dr. Tayyar ARI, Ege Sorunu ve Türk-Yunan İlişkileri: Son

Gelişmeler Işığında Kara Suları ve Hava Sahası Sorunları,

<http://dergiler.ankara.edu.tr/dergiler/42/468/5378.pdf> Türkiye

Yunanistan Karasuları Genişletilmesi Sorunu

<http://www.denizcigunlugu.com>