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HISTORICAL BACKGROUND OF A CONTINENTAL SHELF AND INTERNATIONAL LAW PRINCIPLES OF THE CONTINENTAL SHELF DELIMITATION

Abstract

States are interested in defining and recognizing shelf rights in order to acquire real and potential continental shelf resources. However, previously there was no agreed method on how to determine the outer boundaries of the shelf. Even after the Truman Proclamation of 1945, states did not use the term "continental shelf" in the same sense. The principles of international law on maritime delimitation at the crossroads of political, legal and technical knowledge play an important role in resolving many disputes in this area.

Key words: *shelf, legal regime, delimitation, principles*

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Kontinental şelfin tarixi və kontinental şelfin delimitasiyasının beynəlxalq hüquqi prinsipləri

Xülasə

Real və potensial kontinental şelf sərvətlərini əldə etmək məqsədilə dövlətlər şelf hüquqlarını müəyyən edilməsində və tanınmasında maraqlıdırlar. Lakin əvvəllər şelfin xarici sərhədlərinin necə müəyyən ediləcəyi ilə bağlı razılaşıdırılmış üsul yox idi. Hətta 1945-ci il Trumen bəyannaməsindən sonra dövlətlər "kontinental şelf" terminini eyni mənada istifadə etmirdilər. Siyasət, hüquq və texniki biliklərin kəsişməsində olan dəniz delimitasiyasına dair beynəlxalq hüququn prinsipləri bu sahədə bir çox mübahisələrin həllində mühüm rol oynayır.

Açar sözlər: *şelf, hüquqi rejim, delimitasiya, prinsiplər*

Introduction

In ancient times, the seas were used mainly for shipping and fishing. But over time, minerals, oil, gas, and other resources have been found on the ocean floor. Thus, the importance of defining a continental shelf for the use of these resources by coastal states has increased.

For this reason, the definition of maritime borders is one of the most discussed topics in international law. That maritime boundaries differ from land boundaries in some aspects is beyond doubt. Notwithstanding this, it is also doubtless that some disputes over maritime boundaries are highly charged with political concerns (2,p.13)

Although historical and political factors on the continental shelf have been extensively studied, little theoretical research has been done. However, research should be based on both theoretical research and practice.

Therefore, two conventions on the continental shelf and the principles of delimitation of the continental shelf will be analyzed in this article.

The Convention on the Continental Shelf, adopted at Geneva on April 26, 1958, by the United Nations Conference on the Law of the Sea, represents the first great effort to determine by an act of international legislation the scope of the continental shelf doctrine in international law (9)

The text of the Convention of the Continental shelf was adopted at the plenary meeting on 26 April 1958 by 57 votes to 3 (Belgium, Federal Republic of Germany, Japan) with 8 abstentions. (4,p.328)

In 1958, the first United Nations Conference on the Law of the Sea accepted a definition adopted by the International Law Commission, which defined the continental shelf to include "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth

of 200 metres, or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas" (10)

There have been numerous arguments relating to the "exploitability criterion" in article 1 of the Convention. Particularly in circumstances where overlapping claims have been made by adjacent or opposite neighboring states the arguments have been multifarious. Moreover, article 6 of the Convention also presents confusion, which is inherent in the basic criteria of "median line" and "special circumstances". Substantial legal problems can also be posed by the presence of islands in the vicinity of the continental shelf. The essential query is whether a state, which owns a little island off its mainland coast or the coast of its neighbor, may claim that the coast of its islet, rather than its mainland, is the starting point from which the seabed boundary should be delineated, as against the neighbor. Not only does the Convention fail to provide for precise definitions of "island" or "inlet", but also it fails to provide a response to the question related to the delineation of the boundary mentioned above (8)

Coastal states have an exclusive right to explore and exploit both living and non-living resources on their continental shelf. Coastal states have a duty to safeguard the environment on their continental shelf, and an obligation to let other states use the shelf for certain purposes, such as the laying of pipelines and cables.

The United Nations Convention on the Law of the Sea (UNCLOS) was adopted in 1982. This Convention was adopted in order to resolve all issues related to the law of the sea by mutual understanding, taking into account the sovereignty of all states. UNCLOS provides a comprehensive legal framework governing all activities and uses of the world's seas and oceans.

Article 76 of the convention defines continental shelf as follows:

The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Thus, the first part of this definition defines the continental shelf, and the second part refers to the continental shelf up to 200 nautical miles to those coastal states. As a result, UNCLOS put an end to the controversy over the definition of the continental shelf by giving the above definition.

The Commission on the Limits of the Continental Shelf was set up under Annex II. According to article 8 Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to this Commission. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding (6)

Article 77 further defines the rights of the coastal state over the shelf as exclusive, not dependent on occupation or an express proclamation. Despite this concept of single shelf, it is clear that the Article treats the exploitation of non-living resources differently whether within or beyond 200 M. This difference needs to be understood in the historical context of the decade of negotiations during the Third United Nations Conference on the Law of the Sea. When the Conference sessions began in 1973, the 1958 Geneva Convention was in force for more than fifty states and, therefore, the exclusive right of a coastal state over the resources of the continental shelf adjacent to its coast, up to 200 meters depth or up to where exploitation was feasible, was widely accepted. This reference to the possibility of exploitation to determine the limit made it indefinite and subject to technological advances. (5)

Article 38 (1) of the Statute of the ICJ defines normative in international law. Thus, in this article, the general principles of law occupy the 3rd place among the sources of law (1st place treaty law, 2nd place customary law). The importance of principles is that they set the starting point for relationships that are not regulated by rules.

Because it is international in nature relations regulated by private international law a number of initiatives developed by common international law of particular importance. First of all, this includes the principles of general international law. (1, p.20)

The 1958 Convention adopted equidistance as a principle. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of

the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured. (3,art.60

Notably, UNCLOS does not refer to equidistance as a principle; nor is it referred to as the proper approach. Rather, Articles 74 and 83 refer to equitable resolutions to boundary disputes. Equidistance is viewed as one of a variety of methodologies and/or principles that have been developed to achieve this goal (7,p.49)

In order to apply the principle of equity in relation to the continental shelf, the borders of the states and the relevant circumstances must be taken into account. Only then the principle of equity can be applied. Given the key role of equity in determining maritime boundaries, courts must investigate and decide on each case according to the facts of the case. Articles 74 and 83 of the 1982 Convention stipulate that the delimitation of the continental shelf is carried out by agreement on the principle of equity. This convention obliges States to prepare their maritime borders. However, there is no single standard for delimitation. Thus, the division depends on the geography of the states.

In the absence of such an agreement in advance, in accordance with the principle of equity, States Parties shall make every effort to conclude an interim agreement in accordance with Article 83.3 of the 1982 Convention and to reach a final agreement.

Here, equity is an important principle of international law. Thus, there is a possibility of delimitation of the continental shelf and obstruction of it for their own interests. For this reason, the above-mentioned article has been added to the Convention. In each disputed situation, the trial must be conducted on the basis of the principle of equity, taking into account both geographical and legal criteria.

Significant progress has been made in delimitation of the continental shelf over the past three decades, including the introduction of an initially two-stage and later a three-stage approach. As a matter of fact, there is no doubt that the latest decisions have made great contributions to the delimitation methodology. These developments are positive and provide more clarity and consistency in terms of the general approach to limitations. In addition, the positive contributions of state practices should not be forgotten. However, states generally try to support their claims of limitation by referring to past judicial decisions. Contemporary approaches in international maritime law have serious difficulties in terms of practical applications in delimitation of the continental shelf and determination of the final point of maritime borders.

In particular, it is not always easy to determine the relevant coasts and the relevant area. In addition, in some cases, restrictions arising from geographical factors may lead to an unequal distribution of the area. It is important to consider these restrictions in detail in order to better understand the principle of proportionality. A good definition of the relevant coasts will also provide healthy results in terms of limitation. It is possible to frequently encounter principles pointing to the relevant coasts in international judicial decisions. In this context, "the land dominates the sea", "the coastal projections towards the sea are the basis of the demands on the sea areas", "the coast should be formed to coincide with the coastal projections of the other side in order to be suitable for the purpose of delimitation", "due to the geographical situation of any part of the coasts of one side, the coasts of the other side It is seen that the relevant coasts are mentioned. The form of the coast and the relationship between these coasts affect the principles of equity and the methods used in delimitation. In addition, the length of the relevant coast forms the basis for the proportionality assessment used to test the equitableness of the delimitation. In this regard, in the delimitation of the continental shelf, the relevant coasts must be defined as "..., to determine how much of the overlapping areas constitute the claims, and in the third and final stage of the delimitation process, to check whether there is any disproportion in the ratio of the coastal length of each state and the sea areas falling upon it in sharing..." has been shown to have different roles.

In the North Sea Cases, the parties differed in determining the appropriate method of delimitation, suggesting the "front-of-shore principle" for the measurement of the general direction of the coastline. The Court, on the other hand, stated that for the purpose of proportionality, the relevant coastline of the parties should be "measured in terms of their general direction". It is "measured according to their general direction, in order to provide the necessary balance between States with flat coastlines and States with markedly concave or convex, or to reduce very uneven coastlines to their true proportions."

expressed in the form. However, there is no doubt that the coastal islands located close to the mainland will be taken into account in determining the general direction of the coastline. As in the Court's Tunisia/Libya case, there is generally an overlap between the concepts of the relevant area and the relevant coastline. A contrary position is seen in the Canada v. France case. In this case, although they agreed on the relevant area enclosed concavely by the Canadian coast, including the entire north east coast of Nova Scotia and the entire south coast of Newfoundland, they disagreed that the coast should be considered the front of the disputed area. On the same basis, in Canada v. France, the French Bay of Fortune and St. Opposite the north and east coasts of the Pierre and Miquelon Islands are not included in the respective coasts. The Court stated that all coasts that are not in the disputed area and do not coincide with the projection of the relevant opposite coasts will be excluded from the proportionality calculation.

The difficulties in determining the relevant coasts and the relevant area with sufficient precision and the existence of claims of third states in the delimitation zone sometimes complicate the understanding of the principle of proportionality. In this context, one of the most important factors preventing the more frequent use of proportionality calculations is the difficulty in determining the extent of both relevant coasts and overlapping areas in delimitation. For an "a posteriori" proportionality test based on ratios, the areas of interest and the coastline must be properly defined. In addition, in order to make comparisons, it is necessary to determine what will be compared with the relevant area to be defined and the relevant coasts. However, if the points to be compared are not defined accurately enough, this will cast doubt on the reliability of the comparison. Therefore, the proportionality test that confirms the equitableness of the result may become meaningless in the absence of a precise definition of the relevant coasts and areas of interest. It is seen that the difficulties in the process of determining the relevant coast and the relevant area are mainly due to two reasons. The first is that when there is a disagreement between states in delimiting maritime areas, not necessarily all coasts need to be considered. In the calculation of coastal lengths, difficulties may be experienced due to reasons such as islands close to the coast (offshore islands), coastal forms, territorial waters, and the presence of inland waters. Here, the question arises whether all or part of the coastal length in the relevant area is relevant in the calculation. Therefore, it should be decided which coasts are related to the conflict. The complex geographical structure causes this process to become arbitrary in most cases. In the Gulf of Maine case, which is a good example of the difficulties in determining the coasts involved, the Bay of Fundy was included in the calculation of the relevant coast even though it was not in the overlapping area. Judge Schwebel declared that this invalidated the proportionality calculation. In this context, similar to the Gulf of Maine Case, the decisions taken in the St Pierre v. Miquelon and Eritrea v. Yemen cases were criticized for the difficulty in determining the relevant coasts. Moreover, this difficulty is related to the issue that is more studied in the definition of the relevant field. If the area of disagreement is not clear, it is almost impossible to identify the unequivocally valid areas. In the Pierre/Miquelon Arbitration Decision, it is seen that the referees Gotlieb and Weil criticized the proportionality test because of the difficulties in determining the relevant areas and coasts. In fact, this decision reveals that there is no scientific criterion in the measurement of the relevant coasts and areas. In the Libya v Malta case, the Court found that the way of determining the coasts and areas concerned may vary, mainly in the context of geographical structure. This will lead to very different results.

In addition, although the developments in terms of the limitation of sea areas are generally positive, it is seen that there are still significant uncertainties in this area. In particular, there are also discussions about the selection of base points before creating the temporary demarcation line. Ignoring some key points that are critical will mean a reshaping of geography, undermining the clarity and coherence of the three-stage process. Alternatively, a more objective and systematic option would be to draw the solid equidistant line containing all the principal points, and then set the temporary delimitation line in the second step.

It has been observed that there have been some conflicts between states regarding the delimitation of the continental shelf for a long time. One of the main reasons for this situation is natural resources. Especially in the area to be limited, as in the Eastern Mediterranean, natural gas, oil, etc. The existence of natural resources leads to an increase in conflicts and it is necessary to limit the continental shelf in order to resolve these conflicts. The delimitation of the continental shelf comes to the fore when the area

to be delimited is not large enough, that is, when the coastal states have overlapping sea areas. In other words, in cases where maritime areas do not overlap, there will be no issue of delimitation. In this context, it is seen that many principles are discussed in international judicial decisions on the delimitation of the continental shelf. It is observed that the principle of proportionality, which is one of these principles, has started to be discussed in detail in the doctrine as well as in the international case law due to its widening application. According to this principle, in delimiting the continental shelf, the ratio between coastal states, coastlines and apportioned areas should be similar.

It should be noted that the more objective methods can be used to determine these two concepts, the more reliable the proportionality comparison will be. As a result of this comparison, if there are significant differences between the lengths of the coasts and the proportions of the shared areas, it cannot be said that the result of the restriction is in accordance with equity. However, it should be noted that a restriction to be made strictly by adhering to the principle of proportionality, without considering other situations and principles, does not always lead to an equitable result. For this reason, the result of the limitation may change according to the weight to be given to the principle of proportionality. In the evaluation of proportionality, the fact that this concept is geographical in nature enables calculations regarding this concept. This situation is important in terms of obtaining concrete data in limitation. However, the lack of objective method or methods in determining the concepts of the relevant area and related coasts used in the calculation in the evaluation to be made leads to the questioning of the reliability of this principle. In addition, the possibility of creating an infinite number of limitation lines with the same ratio, the inability to reach a concrete limitation line according to this principle, and the widening of the discretionary powers of the judges or arbitrators who are the decision makers as a result are stated as the missing aspects of the principle of proportionality. However, these shortcomings do not mean that it is not correct or reliable to apply this principle. The most concrete example of this is the fact that the third step of delimitation has been consistently treated as a test of proportionality in international judicial decisions from the Romania v Ukraine Case of 2009 to the present. Although the principle of proportionality has three different roles in delimitation of the continental shelf, it is not accepted in international judicial decisions that it is a guiding principle. Although the principle of proportionality is not accepted as a guiding principle in international judicial decisions, it is possible to come across the acceptance of the mentioned principle in some state practices. The reason why the international judiciary does not accept this role is actually quite clear. According to this role, delimitation should be made in direct proportion to the coastlines of the States concerned, without taking into account other relevant circumstances. This situation, on the other hand, will most likely cause the result of the restriction to be contrary to equity. We believe that this role can only be adopted by the international judiciary in the future if objective criteria are used in the calculation of proportionality. In terms of proportionality as a related situation, which is the second role, it is seen that there are two different application areas in limitation, namely in determining the limitation method or correcting the limitation line. In this context, while the decisive role of proportionality comes to the fore in cases where the principle of equidistance cannot be applied, the corrective role of proportionality comes to the fore in eliminating injustice. It is seen that the test of proportionality, or in short, proportionality or disproportion, in testing the suitability of the result of the limitation, which is the last role, has become a general practice in judicial decisions, in the third step of the limitation, to check whether the result of the limitation is in accordance with equity, as stated above. However, the distinction between these roles is not always as easy as mentioned here. When international judicial decisions are examined, it is seen that these roles are intertwined. However, a clear distinction of these two roles is not really necessary. As a result, setting the line of limitation according to the principle of proportionality, as a relevant situation, actually indirectly provides an equitable result. As stated above, the fact that the principle of proportionality has more than one role also shows that this principle has a very wide application area in the delimitation of the continental shelf. The fact that this principle has been consistently applied in international jurisprudence as a test of proportionality/disproportionation, especially in the third stage of limitation, signals that this principle may become an established customary rule in the future.

Conclusion

There are a number of particularly important norms in modern international law, without which the normal functioning of the international system is practically impossible. The basic principles of international law are organically interconnected and conditioned.

If two principles are applied to the issue, neither of them is considered superior. If the dispute between the states is resolved by applying the principle of equidistance put forward in the 1958 Convention on the delimitation of the continental shelf, there is no need to apply another principle. However, if the application of this principle does not allow to solve the problem of delimitation at the required level, the principle of equity mentioned in the 1982 Convention will also be applied.

Finally, it is of great importance for Turkey to include this principle in the delimitation of the continental shelf to be made in the Aegean Sea and the Mediterranean, especially in the Eastern Mediterranean, in order not to prejudice Turkey's rights. In particular, Turkey is the state with the longest coastline length of 533 miles in the Eastern Mediterranean. The significant difference between shore lengths is seen as a relevant situation to be taken into account in ICJ decisions. However, the fact that there are generally regular coastal forms in the Eastern Mediterranean and the absence of many islands or islets once again demonstrates the justification of the application of this principle. In this context, finally, we would like to state that we believe that the development of objective criteria for the calculation of proportionality in the application of this principle to the continental shelf delimitation for Turkey will contribute to the accurate determination of the relevant coasts and the relevant area, and this will increase the accuracy and reliability of the delimitation result. In this framework, lastly, especially in terms of islands, as discussed in international judicial decisions, the length of the coastline of the islands that are integral with the coastline should be taken into account in the calculation of the relevant coasts, the islands on the opposite side should be given a pocket area to form only the territorial sea and these should be ignored in the calculation, reverse Even if they are not on the other side, the islands that do not have integrity with the coastline will be evaluated within the framework of their own special conditions, and the half/partial effect will be given to them and the coastal lengths will be included in the calculation.

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