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The Dispute Between Turkey and Cyprus about the Offshore Hydrocarbons around the Island of Cyprus

The law of the sea approach for the dispute between the Republic of Turkey and the Republic of Cyprus about the exploration and exploitation of the oil and gas resources on the continental shelf of the island of Cyprus

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1 Introduction

The island of Cyprus, the third largest one in the Mediterranean, has long made the home for two nations, namely Turkish and Greek. Both nations use the same coat of arms, a dove carrying an olive branch, which is known as a symbol of peace.¹ Nowadays, the energy wars around the island is a hot topic.² Besides, the discovery of the world's some of the largest gas reserves has raised the tension.³ Hopefully, the tension does not provoke a serious military conflict between the States in the region. The island will keep its peaceful situation for the future. However, two States seem to be covetously putting their national interests above the peace.

There are huge problems between Republic of Turkey (referred to as “RoT” hereafter) and Republic of Cyprus (referred to as “RoC” hereafter), most of which relates to the law of the sea. While the exploration and exploitation of the hydrocarbon resources around the island of Cyprus is only one of them, it constitutes the most current one. This conflict became a spotlight in the Eastern Mediterranean after the recent developments in the region. In particular unilaterally licensing by RoC the new companies for exploration in the area to which both Cyprus and Turkey have overlapping claims; as well as sending of new exploratory and military vessels by RoT to the region.⁴ There are some other serious problems between RoT and RoC, some of which date back to 1960s and arguably constitute the basis of the current problems.

The first historical and the most controversial issue in the island of Cyprus is the status of the non-recognised Turkish Republic of Northern Cyprus (referred to as “TRNC” hereafter) under international law. This ‘state’ was founded in 1983 by a unilateral independence declaration from RoC. Yet, no state except RoT has officially recognised it. The non-recognition of TRNC by the international community impairs its ‘state’ status under international law. The issue of territorial sovereignty for the northern part of the island is arisen from the arguable status of

¹ Wikipedia *Coat of Arms of Cyprus* available at https://en.wikipedia.org/wiki/Coat_of_arms_of_Cyprus (Date of access: 28.08.2019).

² Y Baboulias *Turkey Is Hungry for War With Cyprus* (21.05.2019) available at <https://foreignpolicy.com/2019/05/21/turkey-is-hungry-for-war-with-cyprus-erdogan/> (Date of access: 06.08.2019).

³ J Gorravett *Tensions ratchet up in Cyprus gas dispute* (01.07.2019) available at <https://www.asiatimes.com/2019/07/article/tensions-ratchet-up-in-cyprus-gas-dispute/> (Date of access: 06.08.2019).

⁴ C Emmanouilidis *Gas in Cyprus: blessing or curse?* (14.01.2019) available at <https://www.balcanicaucaso.org/eng/Areas/Cyprus/Gas-in-Cyprus-blessing-or-curse-191948> (Date of access: 06.08.2019); These aspects are discussed in further detail in chapter 5.

TRNC. This issue hinders the maritime delimitation and aggravates to ascertain which State's maritime zone are the waters surrounding Cyprus.

The delimitation of the maritime boundaries between RoT and RoC appears to be another protracted issue. It is mostly dependent to the issue of the status of the TRNC, since the disputes of territorial or maritime sovereignty are the preliminary problems which are pending to be settled in order to reach a final agreement for the maritime zones.⁵ However, the starting point of the issue of the maritime boundaries is the recently discovered offshore hydrocarbon resources around the island of Cyprus.

Finally, the issue of exploration and exploitation of the oil and gas resources off Cyprus constitutes another significant issue which aroused all the sovereignty and delimitation problems. Hence, there are 3 interrelated complex problems, all of which have some political and historical roots. There are two reasons why the problems get even more complex. First, there are many parties to the problems. Indeed, two separated nations of the island and their foster-lands in the mainland, namely Greece and RoT, reveals four- directly involved parties to the problems. In addition, the problems are getting intricate and unresolvable because of involvements of the non-regional big actors, such as the USA, France and the European Union (referred to as "EU" hereafter).⁶ Second, the recent developments and unilateral moves of the parties exacerbate the dispute.

These three main problems and some additional small ones has led to a stretched relationship between RoT and RoC. These problems between RoT and RoC have been subject to academic interrogation by legal scholars, political science experts and professional lawyers.⁷ This thesis, a legal research, is to investigate the most current, significant and controversial one of these problems: the hydrocarbons issue. While the other problems, in particular maritime delimitation and sovereignty issues, have strong influences on the hydrocarbons issue, they are

⁵ In the thesis, the term 'dispute' is used just to characterize the state of relations between RoT and RoC – they don't agree on the matters at hand. It is not referring to a dispute between the parties currently being assessed by any international tribunal or court as there is no such type of ongoing dispute.

⁶ H Smith *Turkey rejects claims it is drilling illegally for gas off Cyprus* (11.07.2019) available at <https://www.theguardian.com/world/2019/jul/11/turkey-rejects-claims-drilling-illegally-gas-off-cyprus> (Date of access: 06.08.2019).

⁷ Peace Research Institute Oslo; A Gurel, F Mullen, H Tzimitras; *The Cyprus Hydrocarbons Issue: Context, Positions and Future Scenarios* (2013), p 3, available at https://files.prio.org/publication_files/Cyprus/Report%202013-1%20Hydrocarbons.pdf (Date of access: 06.08.2019); TC Kariotis 'Hydrocarbons and the Law of the Sea in the Eastern Mediterranean: Implications for Cyprus, Greece, and Turkey' (2011) 22 *Mediterranean Quarterly* 45.

only touched upon as long as it seems necessary. Besides, there is another important problem : determination of the applicable legal framework. This is significantly important, since the establishment of the applicable law for this dispute is complicated.

The hydrocarbons issue could have normally been solved under the regime of the United Nations Convention on Law of the Sea (referred to as “UNCLOS” hereafter).⁸ However, RoT is not party to the UNCLOS which causes the inapplicability of its provisions, unless they reflect the customary international law. In addition, the dispute between RoT and RoC shows some distinguishing features. There are some serious territorial sovereignty conflicts which lead some issues of proclamation and delimitation of the maritime zones. Yet, the UNCLOS cannot deal with the sovereignty related issues *per se*.

1.1 Research Questions

The main research questions that this thesis aims to investigate are the following:

1. What are the rights and obligations of States - RoT and RoC - concerning the exploration and exploitation of hydrocarbons in areas of overlapping claims, when there is no final maritime delimitation agreement?
2. To what extent are RoT and RoC meeting or breaching the obligations identified in the context of the previous research question?

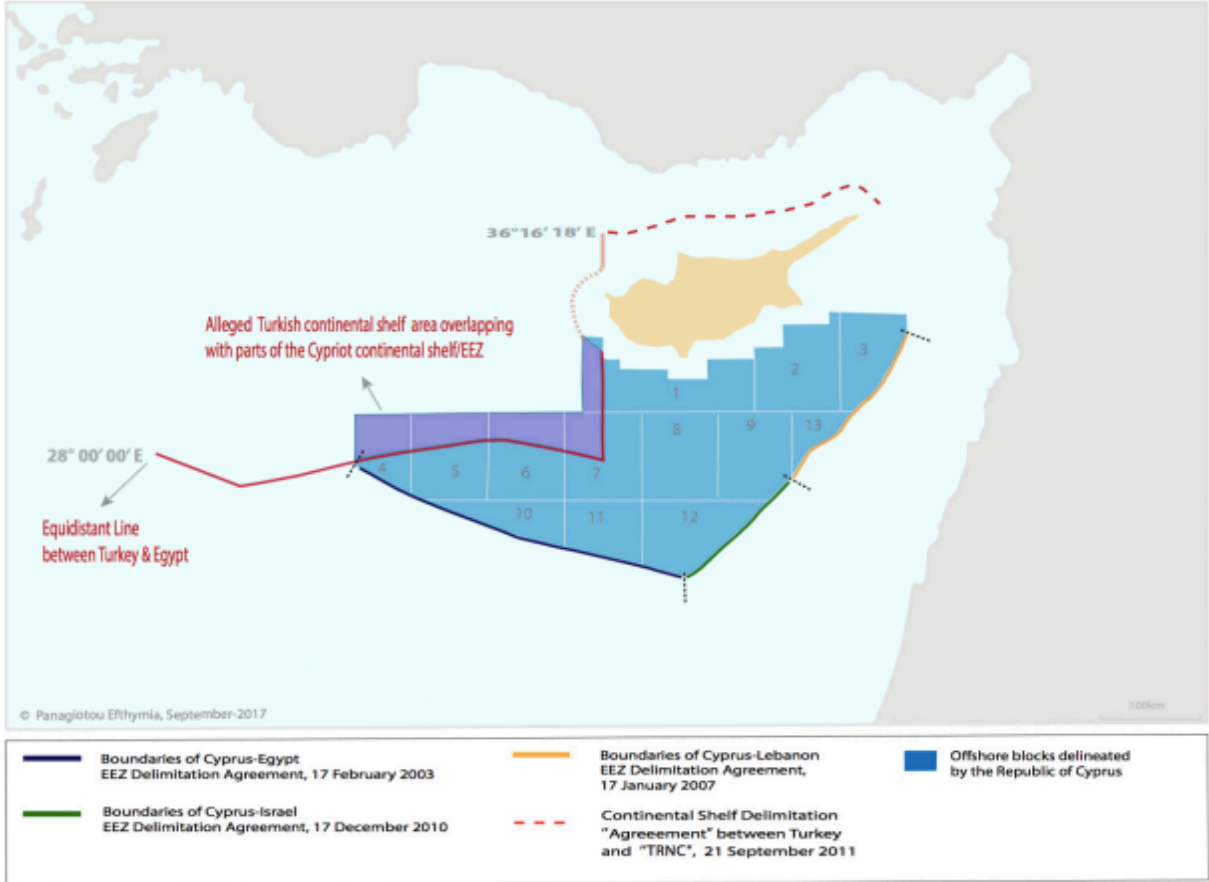
Answering the first question will entail analysing the UNCLOS, since it constitutes the main legal framework for the rights and obligations of the States in the areas of overlapping claims. However, as mentioned above RoT is not party to the *widely accepted convention of the seas and oceans*. Accordingly, the thesis discusses to what extent relevant provisions of UNCLOS reflect customary international law, and analyses customary international law that may apply to the subject matter of this thesis – rights and obligations of RoT and RoC related to hydrocarbons exploration and exploitation in their overlapping maritime boundaries.

Second question will require contrasting certain events or incidents caused by both RoT and RoC in pursue of hydrocarbons activities against the rights and obligations identified by research conducted under first question. In detail, RoC licensed Italian *Eni* and French *Total*, on a 50-50 partnership, in the block 6 and these foreign companies made a serious progress on

⁸ United Nations Convention on the Law of the Sea, adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 397.

the exploration phase.⁹ RoT sent *Fatih*, the exploratory vessel, to the Eastern Mediterranean and she conducts deep sea drilling operations in the claimed EEZ of RoC.¹⁰ As a response, RoC issued an arrest warrant for the crew of this ship. In addition, Turkish Navy prevented *Eni* from conducting drilling operations in February 2018.¹¹ This thesis analyses these activities and question whether they are in compliance with the law of the sea

As conclusions and reflections on the way forward, this thesis will also offer brief remarks on whether and how RoT and RoC could cooperate in order to allow the exploration and exploitation of hydrocarbons in the maritime zones surrounding Cyprus.



Map 1: The overlapping claim area between the alleged RoT's continental shelf and the RoC's claimed continental shelf and EEZ

⁹ S Orphanides *Eni made important gas discovery in block 6* (08.02.2018) available at <https://cyprus-mail.com/2018/02/08/eni-made-important-gas-discovery-block-6-minister-says/> (Date of access: 06.08.2019).

¹⁰ TPIC *Turkey Sends Out First Drilling Vessel "Fatih" to Eastern Mediterranean Sea* available at <http://www.tpic.com.tr/en/news/turkey-sends-out-first-drilling-vessel-fatih-to-eastern-mediterranean-sea> (Date of access: 06.08.2019).

¹¹ R Maltezou *Cyprus accuses Turkey of blocking ship again in gas exploration standoff* (23.02.2018) available at <https://www.reuters.com/article/us-cyprus-natgas-turkey/cyprus-accuses-turkey-of-blocking-ship-again-in-gas-exploration-standoff-idUSKCN1G71MF> (Date of access: 06.08.2019).

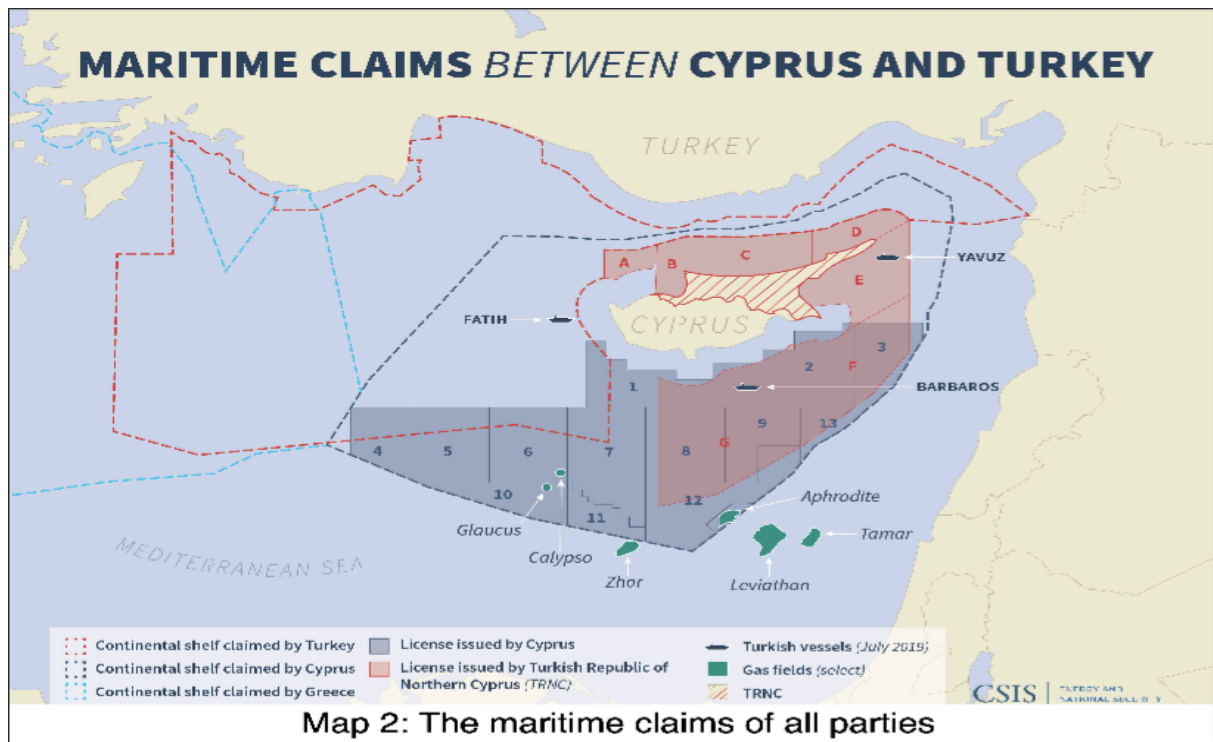
RoT and RoC have their own maritime boundary proposals based on their national legislations, which largely reflect their own national interests. Not surprisingly, there is an overlap between the claimed zones of the parties in the western waters of the island. As it can be seen from the Map 1 above, there is an overlap (the purple area) between the RoT's inherent continental shelf and RoC's concession blocks of 1, 4, 5, 6 and 7. This overlapping area continues towards north and west on the basis of the claims of RoC which can be seen in the Map 4 below. Besides, there is a clear picture of total overlapping area between RoC and RoT in the Map 2. This thesis focuses only on this maritime area.

1.2 Delimitation of Scope

In this thesis, the exploration and the exploitation of the oil and gas resources on the continental shelf adjacent to the island of Cyprus is the main topic. Consequently, the legal framework and the application of rules in such disputed areas are discussed.

As mentioned above, only the direct overlap between RoT and RoC is focused in this thesis. In fact, there are some other overlapping areas on the northern and eastern waters of the island. They can be seen in Map 2 and these overlaps arise from the claims of TRNC and RoC. However, they are not touched upon, since they are not direct overlaps between the RoC and RoT. The issues with TRNC contain serious territorial and maritime sovereignty problems, which are intentionally excluded from the scope of this thesis. This is because of three reasons; (1) the law of the sea does not directly deal with the territorial sovereignty issues, (2) the territorial sovereignty is the source of the maritime sovereignty, so the problems of the latter cannot be solved regardless from the former and (3) the length of the thesis does not allow to deal with the these long and complicated issues.¹²

¹² For the principle of 'the land dominates the sea', please see; *North Sea Continental Shelf Cases (Germany v Denmark and Netherlands) (Judgment)* [1969] ICJ Rep 3, [96] and PE Dupont 'Contested Sovereignty over Land Territory and Maritime Zones' in S Minas and J Diamond (eds) *Stress Testing the Law of the Sea Dispute Resolution, Disasters & Emerging Challenges* (Brill Nijhoff Leiden 2018) 31.



Therefore, *de facto* status of the northern part of the island under the sovereignty of the TRNC is irrelevant for the purpose of this thesis. Accordingly, the legal status of this ‘state’ under the international law is not discussed nor of the maritime boundaries overlaps that relate to it. Providing that TRNC was not founded in the first place, the current conflict between RoT and RoC would have still existed. This is because this conflict directly relates to the overlapping claims of RoT and RoC. Accordingly, the parties would claim the same maritime zones regardless from TRNC and its maritime claims.

Secondly, the delimitation of maritime boundaries is not included in thesis’ content, while it constitutes another important problem between the parties. This is because it involves the sovereignty related issues in relation to the northern land and waters of the island. As mentioned above, the maritime delimitation cannot be dealt with without settling on the sovereignty matters. Therefore, the delimitation of maritime boundaries issue cannot be investigated without interrogating sovereignty related issues such as the legal status of TRNC. As a result, all the issues related to TRNC is excluded from the scope of this thesis.

Finally, the research will be conducted with only focusing on the hydrocarbons in the undelimited area; e.g. the legal framework for such activities, the rights and duties of the parties the disputed/overlapping zones. Consequently, only the exploration and exploitation activities and their actual and potential results are examined. The legality of such activities and the legal

background for the assessment are demonstrated. Apart from that, any other military operations or exercises or any other aggressive manners of the parties which are not directly or indirectly related to the hydrocarbon's activities are excluded from the content of this thesis.

1.3 Research Objectives

In this thesis, the main objective is to approach the matter with a law of the sea perspective. Given the increasing pressure for exploration and exploitation of hydrocarbons in maritime zones surrounding Cyprus and disagreement between both States on overlapping maritime boundaries, the purpose of the thesis is to clarify what actions/activities RoT and RoC can or cannot do while they don't reach a final maritime boundary delimitation. This perspective includes the presentation of the positions of the parties and the determination of the legal framework.

The UNCLOS imposes certain rights and obligations in relation to hydrocarbon resources found in the disputed zones. As RoT is not party to the convention, the thesis demonstrates the relationship between the UNCLOS provisions and the customary international law. Besides, it explains clearly the activities conducted by the parties in the region. The thesis assesses the accordance of such activities with the legal applicable framework determined. At the end, the thesis sheds light to the future of the dispute. It searches the possible future scenarios and examines their probabilities.

1.4 Research Methodology

The study employs doctrinal research method to analyse the current dispute. It describes and discusses the existing rules for offshore hydrocarbon activities in the disputed area, the *lex lata*. After establishing the applicable legal framework, the thesis analyses the current dispute and applies the rules to the matter. Consequently, it made the proposals for the *lex ferenda*, the potential legal solutions to deal with the problem. The thesis analyses relevant sources of international law as identified in article 38 of the Statute of the International Court of Justice (referred to as "ICJ" hereafter), particularly the UNCLOS (treaty law), customary international law, general principles of law, case law and the publishings of the highly qualified scholars.¹³

¹³ Statute of the International Court of Justice, adopted 26 June 1945, entered into force 24 October 1945, 33 UNTS 993.

The UNCLOS is the primary source for dealing with the matters in the disputed area. However, since RoT is not party to it, only the customary international law reflected provisions of the UNCLOS are examined. The general principles of law are applied to the matter, since sometimes there is a lack of the applicable rules from the treaty law and customary international law. The thesis resorts to the rules of the Vienna Convention on the Law of the Treaties to interpret the relevant UNCLOS provisions.¹⁴ The references to awards of the international court and tribunals are used in order to subsidiarily assist in the interpretation of the UNCLOS provisions and to inform what provisions of the UNCLOS courts and tribunals have confirmed to reflect customary international law. Finally, the teachings of the most highly qualified publicists are utilised to assess the different approaches.

1.5 Structure of the Thesis

After a brief introduction which defines the context and hydrocarbons problem, the thesis starts with the historical background of the matter. This chapter explains the events and milestones in the history of island to get the hydrocarbon issues. Additionally, it clarifies the positions of the parties and their national regulations relating to the maritime zones.

The third chapter of the thesis focuses on the UNCLOS regime for disputed zones. After explaining the ‘continental shelf’ and ‘EEZ’ concepts in the beginning, it continues with the analysis of the provisions of the UNCLOS for undelimited zones. After clarification of the legal applicable framework for such areas, it presents the interpretations and the assessments of these provisions. It analyses the differences between the exploration and exploitation activities and provides the approach of international courts and tribunals. The chapter concludes the findings from the relevant UNCLOS provisions and their interpretation and application by the case law.

In chapter 4, the thesis examines other rules of international law applicable to the subject matter, principally customary international law and general principles of law. It explains the customary international law and the criteria for determining the international custom character of a specific norm. The general principles of law are discussed under this chapter, such as good faith, no harm, good neighbourliness. It concludes with whether the provisions of the UNCLOS in relation to the hydrocarbon activities in the disputed zones, reflect the customary international law.

¹⁴ Vienna Convention on the Law of the Treaties, adopted 23 May 1969, entered into force 27 January 1980, 1155 UNTS 331.

Afterwards, the fifth chapter applies the legal framework of law of the sea into the current matter. The allegations of the parties and their compatibility with the applicable regime is discussed. The chapter provides the unilateral specific activities of the parties. Followingly, it assesses each and every one of such activities, to their compliance with the applicable international law. For example, it finds that the seismic surveys activities of *Barbaros Hayrettin Pasa* are in accordance with international law. However, the exploratory drilling activities of *Fatih* can be seen as breach of the international law since they made a physical change to the seabed. On the other hand, parties' unilateral decisions of licencing new companies are not in compliance with the law, since they are hampering the principle of no harm under international law.

At the end, conclusion chapter covers all the findings. It gathers the final and brief results from the previous chapters. It clarifies the applicable legal framework for the exploration and exploitation of the hydrocarbons in the context of Cyprus. It ends with the conclusion of the assessment of the actions/activities of the parties.

2 The Historical and Political Background

This chapter briefly presents the historical background of the dispute. It starts with the establishment of RoC and continues with the division between Turks on north and Greeks on south. The reasons and results are shown in order to have a better understanding of the roots of current problems, especially the hydrocarbons issue. Afterwards, the chapter explains the allegations of the parties, their claimed maritime zones and their national legislations.

2.1 The Establishment of RoC

The problem for the sovereignty over the island of Cyprus has always been a serious matter between Turkish and Greek communities. However, it purported to resolve with the establishment of the RoC in 1960. *The London-Zurich Agreements*, signed by RoT, RoC, Greece and the UK in 1960 in Nicosia, constitute the legal basis for the RoC and its constitution.¹⁵ The Treaty of Guarantee which is a complementary part of the mentioned treaty was also signed in the same day.¹⁶ According to the article 4 (2) of the Treaty of Guarantee;

¹⁵ Treaty Concerning the Establishment of the Republic of Cyprus, adopted 16 August 1960, entered into force 16 August 1960, 382 UNTS 5476.

¹⁶ Treaty of Guarantee, adopted 16 August 1960, entered into force 16 August 1960, 382 UNTS 5475.

each one of the three guaranteeing state (RoT, Greece and the UK) has right to take action for re-establishing the state of affairs in Cyprus to the conditions stated by the Treaty.

The Republic of Cyprus was established on a multi-party agreement, but this did not bring peace to the island. The intercommunal violence between the Turkish and Greek parts of the island was risen and led to massive deaths, destruction of villages and displacement of the people.¹⁷ In 1974, a Greek Cypriot coup d'état was conducted by the followers of the idea of *Enosis*, unification of Cyprus with Greece.¹⁸ As a response, RoT's military forces intervened the island for ensuring the safety of life and goods for Turkish society.¹⁹

RoT claimed that it merely invoked its right under article 4 (2) of the Treaty of Guarantee for re-establishing the peaceful state in the island.²⁰ However, RoT captured the north and approximately 1/3 of the island. Since their first appearances in the island, Turkish troops have never left the island. The mainstream view of the international community is that RoT illegally occupied the north of the island.²¹ However, in the Turkish point of view the intervention was in accordance with the article 4 (2) of the Treaty of Guarantee taking into account the special circumstances of the time.

On the other hand, RoC has never accepted the idea of legal intervention and claimed that the north of the island was illegally invaded by RoT and no legal conclusions can be attributed to this unlawful unilateral move. Therefore, RoC claims sovereignty or sovereign rights over all the waters around the island including the northern ones as endorsed by the international community.

2.2 The Hydrocarbons Issue

There has not been any significant amelioration in relation to this problem since 1974. Moreover, the establishment of TRNC in 1983 deteriorated the whole case and erased almost all the anticipations for the re-unification of the island once again. The latest issue of hydrocarbons in 2010s did not help for the solution and made the relationships even more

¹⁷ For further reading on historical and political background of the problem, please see; P Oberling *The Road to Bellapais: The Turkish Cypriot Exodus to Northern Cyprus* (Columbia University Press New York 1982).

¹⁸ Wikipedia *Cyprus dispute* available at https://en.wikipedia.org/wiki/Cyprus_dispute (Date of access: 06.08.2019).

¹⁹ Ibid.

²⁰ Historical Background of the Cyprus Issue, the Official Website of the Deputy Prime Ministry and Ministry of Foreign Affairs of TRNC, available at <https://mfa.gov.ct.tr/cyprus-negotiation-process/historical-background/> (Date of access: 08.08.2019).

²¹ Peace Research Institute Oslo, n 7, p 33.

complicated. There had been already a number of issues which had been waiting to be settled and the discovery of hydrocarbons became a new significant one. Besides, the newly appeared issue affects the other long-standing problems and vice versa. This intricate situation aggravates the dispute severely.

The Cypriot hydrocarbons conflict commenced when RoC began prospecting activities in 2006.²² In 2011, the first exploratory drilling was conducted and a rich gas resource, *Aphrodite* gas field, was discovered on the very south of the adjacent waters of the island.²³ There are no exploitation activities so far; however, RoC's Minister of Energy has recently stated that they expect initial natural gas production from the *Aphrodite* gas field will begin between 2024 and 2025.²⁴ Another important incident in relation to the objectives of this thesis is that RoC granted the rights to explore and exploit oil and gas resources in disputed zones, for example issuing licences for *Eni* and *Total* in block 6.

On the other hand, RoT sent its first seismic ship, namely *Barbaros Hayrettin Pasa*, to the region in 2013.²⁵ Afterwards first drilling ship, namely *Fatih*, to the western waters of the island in October 2018.²⁶ RoC issued an arrest warrant for the crew of the vessel in June 2019, as this area had already been claimed as the Exclusive Economic Zone (referred to as "EEZ" hereafter) by RoC.²⁷ Nevertheless, RoT launched second drilling ship, *Yavuz*, to the eastern waters of the island despite the warnings of the EU and RoC about violating the sovereign rights in the EEZ of the latter.²⁸

²² Peace Research Institute Oslo, n 7, p 3.

²³ Ibid.

²⁴ DK Kumar *Cyprus expects first gas output from Aphrodite field by 2025* (04.05.2019) available at <https://cyprus-mail.com/2019/05/04/cyprus-expects-first-gas-output-from-aphrodite-field-by-2025/> (Date of access: 06.08.2019).

²⁵ Cyprus Mail *Barbaros 'harassed' two tankers in international waters south of Limassol – reports* (21.03.2019) available at <https://cyprus-mail.com/2019/03/21/barbaros-harassed-two-tankers-in-international-waters-south-of-limassol-reports/> (Date of access: 06.08.2019).

²⁶ A Mustafa *Turkey begins deep drilling offshore in Mediterranean* (30.10.2018) available at <https://www.trtworld.com/turkey/turkey-begins-deep-drilling-offshore-in-mediterranean-21244> (Date of access: 06.08.2019).

²⁷ D Sabah *Greek Cyprus issues arrest warrant for Turkish drillship Fatih's personnel, hiking tensions* (10.06.2019) available at <https://www.dailysabah.com/energy/2019/06/10/greek-cyprus-issues-arrest-warrant-for-turkish-drillship-fatih-s-personnel-hiking-tensions> (Date of access: 06.08.2019).

²⁸ Reuters *Turkey sends second ship to drill near Cyprus, EU warns of action* (20.06.2019) available at <https://www.reuters.com/article/us-cyprus-turkey-ship/turkey-sends-second-ship-to-drill-near-cyprus-eu-warns-of-action-idUSKCN1TL1R6> (Date of access: 06.08.2019).

2.3 The Positions of the Parties

The maritime zone allegations and the national legislations of the parties need to be enlightened in order to have a clear picture for the research question. The Cypriot part reads the situation and legal position as follow: RoC established its own 12 nm territorial seas in 1964.²⁹ Furthermore, it declared in 1974 its 200 nm continental shelf by stating that in relation to the delimitation with the opposite coastal states, the outer limit of the continental shelf does not extend beyond the median line unless there is a delimitation agreement between the parties.³⁰ In 1998, RoC ratified the UNCLOS and established its 200 nm EEZ in 2004.³¹

Afterwards, the RoC entered into delimitation agreements with other countries in the region. It concluded final delimitation with Egypt in 2003, with Lebanon in 2007 and with Israel in 2010.³² The only remaining maritime delimitation of RoC is with RoT; accordingly, there are undelimited areas on the northern, western and eastern waters of the island. The northern and eastern overlaps are between RoC and TRNC; whereas the one on the west part is between directly RoT and RoC.



Map 3: The proposal of RoC on the continental shelf and EEZ boundaries calculated as median lines

²⁹ The Territorial Sea Law of RoC, No. 45/1964, available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CYP_1964_Law.pdf (Date of access: 01.09.2019).

³⁰ The Continental Shelf Law of RoC, No. 8/1974, available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CYP_1974_Law.pdf (Date of access: 01.09.2019).

³¹ Exclusive Economic Zone Law of RoC in 2004, available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/cyp_2004_eez_proclamation.pdf (Date of access: 01.09.2019).

³² Peace Research Institution Oslo, n 7, p 16.

The legal position seems differently from the RoT's perspective. The Territorial Sea Law of RoT prescribes 6 nm of territorial waters; while it also allows the Council of Ministers to extent the 6 nm limit if there are some special circumstances or relevant situations.³³ Presently, RoT has 6 nm territorial waters in the Aegean Sea; whereas, it has 12 nm territorial seas in the Mediterranean Sea and Black Sea through a decree of Council of Ministers.³⁴ Besides, RoT does not have any legislation for continental shelf and EEZ regimes; however, it declared 200 nm EEZ in the Black Sea.³⁵

RoT does not have any official declaration of EEZ or continental shelf in the Mediterranean Sea or in the Aegean Sea. However, the continental shelf does not have to be declared unlike the EEZ regime. Therefore, the continental shelf rights are inherently conferred to the coastal state and RoT is enjoying these rights in Mediterranean Sea, up to 200 nm from its baseline in practice. The only exceptions that RoT applies in its Mediterranean continental shelf is the territorial waters of RoC and the so-called continental shelf of TRNC.



Map 4: The potential Turkish continental shelf according to the equitable principles proposed by RoT

³³ The Territorial Sea Law of RoT in 1982, Act No 2674, available at https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TUR_1982_Act.pdf (Date of access: 01.09.2019).

³⁴ Decree of Council of Ministers of RoT, No. 8/4742, available at <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/TUR.htm> (Date of access: 01.09.2019).

³⁵ Decree of Council of Ministers of RoT, No. 86/11264 of 17 December 1986, available at <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/TUR.htm> (Date of access: 01.09.2019).

3 The UNCLOS Regime

This chapter examines the UNCLOS provisions for the undelimited overlapping areas. It gives the main focus to those provisions that relate to the exploration and exploitation of the hydrocarbons in these maritime zones. This chapter starts with the presentation of the relevant maritime zones and the relevant provisions of the UNCLOS. This is followed by the explanation of the stipulations for the rights and duties of the States concerned pending final agreement on the maritime boundaries. It concludes with the findings for the UNCLOS regime.

In this point, it is worth to mention that the Mediterranean is a semi-enclosed sea as defined in article 122. The article 123 regulates a cooperation for the States bordering enclosed or semi-enclosed seas. The obligations of that provision refer to living resources and environmental protection. They are not directly related to non-living natural resources, such as hydrocarbons. Hence, the thesis does not further analyse the obligations for cooperation stated in Part IX of the UNCLOS.

3.1 The EEZ and The Continental Shelf Regimes

The UNCLOS is widely considered as a constitution for the oceans and seas.³⁶ It designates the maritime zones of the States, such as territorial sea, EEZ and continental shelf, and stipulates the rights and duties of coastal States and other States in these maritime areas. The UNCLOS prescribes for sovereignty, sovereign rights, and jurisdiction in these maritime areas. For the EEZ and continental shelf regimes, the coastal states do not have sovereignty but some certain sovereign rights and jurisdiction. Whereas, States have full sovereignty in their territorial seas. In this chapter the EEZ and continental shelf regimes of the UNCLOS is focused on, since there is not an overlapping claim in the territorial waters of the island of Cyprus.

The EEZ is a relatively recent innovation in the law of the sea, which confers upon coastal states sovereign rights for the purpose of exploring and exploiting, conserving and managing, the living and non-living resources of the waters superjacent to the seabed and of the seabed and its subsoil to a distance of 200 nm.³⁷ After giving the general definition of the EEZ, the sovereign rights for the exploration and exploitation of the non-living resources, such as hydrocarbons, is regulated in article 56 of the UNCLOS. The delimitation of the EEZs between

³⁶ TTB Koh 'A Constitution for the Oceans' (Statement by President Koh at the final session of the Conference at Montego Bay).

³⁷ DR Rothwell and T Stephens, *The International Law of the Sea* 2nd edition (Hart Publishing, Oxford and Portland, Oregon 2016) 85.

states with adjacent or opposite coasts is designated in article 74 which this thesis will investigate later on.

According to article 56, the sovereign rights of the coastal state for EEZ regime are exploration and exploitation for non-living resources, which naturally includes hydrocarbons and minerals. These rights are essentially unrestricted and there is no obligation for their conservation or judicious use.³⁸ The only restrictions for such rights, stated in the second paragraph, are the obligation of due regard to other states and the duty to act in a manner compatible with the UNCLOS. Apart from that, these sovereign rights in the EEZ are exclusive in the fullest sense. Consequently, the coastal states are legally able to take any measures to protect and preserve their exclusive oil and gas reserves from other states in terms of both exploration and exploitation.

On the other hand, the continental shelf regime deals with only the seabed and subsoil of the submarine areas of the continental margin of a coastal state. The definition and the breadth of the continental shelf is regulated in article 76 and the breadth may extend to 200 nm under the special circumstances stated in this article. In the article 77, the sovereign rights of the coastal state in the continental shelf regime are stipulated and they are the rights for the exploration and exploitation of the natural resources found therein. The exclusivity of these rights is emphasized in its second paragraph; furthermore, it is explicitly stated that no one may undertake any of these activities without the express consent of the coastal State. In third paragraph, it is designated that the sovereign rights of the continental shelf regime vests inherently in the coastal states without and obligation of proclamation.

Both regimes overlap up to 200 nm from the baselines. In relation to the exploration and exploitation of the hydrocarbons which are found in the landmass of the maritime zones, both regimes give coastal states essentially the same rights.³⁹ Yet, there are two significant differences between the concepts, which may be formulated as follow: (1) the EEZ cannot extend beyond 200 nm while the continental shelf can extend beyond the same limit only in special circumstances and (2) the EEZ must be established and declared in order for the coastal state to enjoy the sovereign rights and jurisdiction, whereas the continental shelf regime vests inherently in coastal states.

³⁸ Rothwell and Stephens, n 37, p 92.

³⁹ Ibid, p 125.

While investigating the UNCLOS provisions, one must always keep in mind that RoT is not party to the convention. Therefore, the stipulations of the UNCLOS can only be applicable to RoT on condition that they reflect the customary international law. The legal concepts of the EEZ and continental shelf and the sovereign rights of the coastal states in these maritime zones are accepted as international customs. This issue will be further investigated in the 4th chapter.

3.2 Hydrocarbons: The Natural Resources Under Both Regimes

The hydrocarbons are non-living natural resources found in the subsoil, such as oil and gas reserves. The offshore hydrocarbon resources are those which are found in the subsoil under sea or ocean. The hydrocarbon activities are conducted in order to explore and exploit the oil and gas resources. The offshore hydrocarbon activities are those which are conducted in the maritime areas of a State and they are regulated by the law of the sea.

The coastal states have sovereign rights for exploration and exploitation of the hydrocarbons found in their EEZ and continental shelf. The only difference between the regimes is that the EEZ regime stipulates the natural resources of the waters superjacent to the seabed and of the seabed and its subsoil. Whereas, the continental shelf regime focuses only seabed and subsoil and does not cover and regulate the water column which is absolutely indispensable for the hydrocarbon activities.

The offshore hydrocarbon activities are conducted on the seas and oceans, and more precisely these activities require the usage of the water surface and column. The exploratory vessels shall travel on the water surface for prospecting and the drilling facilities must be built in the water column in order to extract the hydrocarbons. Therefore, regardless from the presence of the oil and gas resources in the subsoil, the hydrocarbon activities cannot be carried out without involving in the waters above. Consequently, the hydrocarbon activities are subject to both regimes and cannot be considered as independent from any of them.

Article 56 (3) stipulates that the rights set out under EEZ regime in relation to the seabed and subsoil shall be exercised in accordance with the continental regime. Accordingly, the continental shelf regime prevails the EEZ regime for the exploration and exploitation of the hydrocarbon resources found in the subsoil. However, it does not lead any practical difference, since the regimes at stake are not in contradiction in relation to such activities. Nevertheless, the hydrocarbon activities shall be conducted in compliance with the EEZ regime since they involve the operations in and on the water column.

One thing that has to be kept in mind while dealing with the hydrocarbons as resources of both regimes, is that RoT does not have established its own EEZ in the Mediterranean Sea. Whereas, RoC is a party to UNCLOS and claimed its own EEZ in the waters around the island of Cyprus. As stated above, unlike the continental shelf regime, the EEZ needs to be proclaimed. From the Turkish point of view, RoT is merely enjoying the sovereign rights in the Turkish continental shelf in the Mediterranean Sea. Therefore, there is an overlapping claim area between the RoT's continental shelf and RoC's EEZ and continental shelf, being that RoT also does not recognize RoC's established EEZ. Giving the fact that the hydrocarbon activities require the involvement with the EEZ regime, the current Cypriot dispute is getting even more complicated. Nonetheless, this is not a topic under this chapter, but will be further investigated in fifth chapter.

3.3 The Regime of Disputed Area Under UNCLOS

When the maritime claims of two States with opposite or adjacent coasts overlap, a disputed maritime area comes into existence. The delimitation of the maritime boundaries between these States shall be conducted in accordance with the law of the sea. The UNCLOS has two specific articles so as to deal with these delimitation issues; article 74 for the EEZ regime and article 83 for the continental shelf regime.

However, there is not a detailed and comprehensive regime in the UNCLOS for hydrocarbon activities in such overlapping claim areas.⁴⁰ The UNCLOS does not have any specifically detailed provisions with regard to overlapping claims between EEZs or continental shelves. It has only one express provision relating to the rights and duties of States in overlapping EEZ and continental shelf claims; therefore, it does not address all the issues arising from overlapping claims.⁴¹

In relation to the delimitation of EEZs and continental shelves; there are two articles both of which are almost identically formulated. The only difference is that article 74 is written for the exclusive economic zone; whereas, in article 83 the term of the continental shelf is used. The text of the provisions is as follow:

⁴⁰ T Davenport 'The exploration and exploitation of hydrocarbon resources in areas of overlapping claims' in R Beckman et al. (eds) *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources* (Edward Elgar Cheltenham, UK & Northampton, MA 2013) 100.

⁴¹ *Ibid.*

Article 74 (or 83):

Delimitation of the exclusive economic zone (or the continental shelf) between States with opposite or adjacent coasts

1. The delimitation of the exclusive economic zone (or the continental shelf) between States with opposite or adjacent coasts shall be affected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone (or the continental shelf) shall be determined in accordance with the provisions of that agreement.

These two provisional obligations can play an important role to ensure the peaceful situation between conflicting parties. It is pretty clear that the delimitation negotiations could take a long time. During these time-consuming negotiations, the need for interim measures is recognised during the UNCLOS discussions.⁴² As a result, two provisional concepts were adopted and stated in the text of the convention so as to establish a peaceful transitional period and to ease the reaching of a final agreement.

In the third paragraphs of both articles 74 and 83, where the wordings are identical, the obligation to make every effort to enter into provisional arrangements of a practical nature is regulated. Besides, the States concerned are under a duty not to jeopardise or hamper the reaching of final agreement. As it can be seen from the text that the wording of the framework of the pending agreement is ambiguous and opens for different interpretations. This will be discussed below.

⁴² Davenport, n 40, p 100.

3.3.1 Duty to Make Every Effort to Enter into Provisional Arrangements

Under the pending agreement, the States concerned shall make every effort to enter into provisional arrangement. The term of *make every effort* should be interpreted broadly due to the usage of the word *every*. *Make every effort* means ‘to put forth the greatest possible effort to do, achieve, or accomplish something’.⁴³ *Every* means all the things that come into mind and therefore covers all the relevant possible scenarios. Accordingly, if a specific *effort* seems relevant and appropriate for the matter; it shall be shown in a respectful manner by the parties. This view was shared in *Heathrow Airport User Charges* case. The arbitral tribunal interpreted the obligation to “use its best effort” and stated that ‘under a continuous duty to do their best to ensure that the goals of [the provisions in question] are attained.’⁴⁴

In addition, the word *every* requires that the negotiations to enter into a provisional arrangement shall be conducted reasonably and there shall be a real desire to reach a provisional agreement. The difference between *make effort* and *make every effort* clarifies that States concerned shall endeavour to conclude a provisional arrangement as much as they can. This duty cannot be considered as a simple obligation of exchange of opinions for the parties, since the expression of every effort necessitates more than that.

Besides, this obligation insists on *to make every effort to enter into provisional arrangement* and not *to conclude an arrangement*. Conclusion of a provisional arrangement is the goal and the desire of the obligation; however, it is not the obligation *per se*. Giving the fact that the provision explicitly stated the expression of *to make effort*, the reaching of an agreement is not a compulsory part of it. Therefore, if every effort is shown in order to reach a provisional arrangement, the duty can be accomplished whether or not an arrangement is concluded. The arbitral tribunal emphasised also that this obligation does not necessitate the conclusion of agreement. It stated that ‘That is, however, not an absolute duty, since a Party may be able to point to good reasons to explain why [if the goals were not met], that was not due to any lack of required effort on its part.’⁴⁵

⁴³ Farlex Dictionary of Idioms available at <https://idioms.thefreedictionary.com/make+every+effort+to+do> (Date of access: 16.08.2019).

⁴⁴ *Arbitration concerning Heathrow Airport Use Charges (USA v United Kingdom)* (Award) (1992) 24 UNRIAA 1, 2.2.4.

⁴⁵ *Ibid.*

The obligation of making every effort to enter into provisional arrangements is a duty which is expressed by the ICJ before the signature of the UNCLOS. The Court stated in 1969 in the *North Sea Continental Shelf Cases* that;

the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it;⁴⁶

It is clear from the quotation above that; the obligation to enter into negotiations with a view to arriving at an agreement is not a procedural obligation to go through a formal process of negotiation or insisting upon the original position without any intention to make alteration on it. The negotiations should be the real reflections of the parties' desires of reaching a final agreement on condition that they have a real desire to do so. Otherwise, the negotiations cannot go beyond than a formal procedure to be accomplished which is exactly the opposite of the idea of the provisions of 74 (3) or 83 (3) of the UNCLOS.

In the case between *Guyana and Suriname*, the Tribunal emphasises the language of *every effort* and it stated that this is the source of the requirement of negotiating in *good faith*. The Tribunal stated that;

Although the language “every effort” leaves “some room for interpretation by the States concerned, or by any dispute settlement body”, it is the opinion of the Tribunal that the language in which the obligation is framed imposes on the Parties a duty to negotiate in good faith. Indeed, the inclusion of the phrase “in a spirit of understanding and cooperation” indicates the drafters' intent to require of the parties a conciliatory approach to negotiations, pursuant to which they would be prepared to make concessions in the pursuit of a provisional arrangement. Such an approach is particularly to be expected of the parties in view of the fact that any provisional arrangements arrived at are by definition temporary and will be without prejudice to the final delimitation.⁴⁷

The Tribunal's interpretation to the provisions is that the negotiations should be meaningful, conciliatory and cooperative. They shall mean that the parties have desire to reach an

⁴⁶ *North Sea Continental Shelf Cases*, n 12 [85].

⁴⁷ *Guyana v. Suriname (Award)* (2007) PCA-ACP 47 ILM 164 [461].

agreement. They approach to the negotiations in a cooperative, constructive and target-oriented manner. This is because, the duty of negotiation in good faith 'is not merely a nonbinding recommendation or encouragement, but a mandatory rule whose breach would represent a violation of international law.'⁴⁸

3.3.2 Obligation of Mutual Restraint

The second obligation of the States during the pending period, is not to jeopardise or hamper the reaching of the final agreement about the delimitation of the maritime boundaries. However, this obligation is by no means all the activities in the disputed maritime area is precluded.⁴⁹ The activities that do not have a prejudicing effect for the final agreement, can lawfully be conducted.

This is a transitional obligation that regulates the temporary activities of the States shall not have any permanent outcomes for the future. In other words, there must be a delicate distinction between the harmless temporal activities and the serious activities which have forward looking results. The second group of the activities are excluded from the scope of the lawfully conducted activities in the disputed zone.

The unilateral activities which do not cause a physical change to the marine environment would be considered as harmless for the reaching of the final agreement, e.g. the mere conduct of seismic surveys does not generate any irreversible harm to the seabed, subsoil and their natural resources. However, the acts that cause physical change cannot be considered as such. Consequently, there must be a distinction between the activities of the kind that lead to a permanent physical change, such as exploitation of oil and gas reserves, and those that do not, such as seismic exploration.⁵⁰

In the *Aegean Sea Continental Shelf Case* the tribunal illuminate the distinction between the legal and illegal activities by citing three factors; (1) the seismic exploration which does not involve any risk of physical damage to the seabed or subsoil, (2) the transitory activities which do not involve the establishment of installations, and (3) the lack of operations involving the actual appropriation or other use of the natural resources.⁵¹ Therefore, in the Court's eyes, the

⁴⁸ R Lagoni 'Interim Measures Pending Maritime Delimitation Agreements' (1984) 73 *The American Journal of International Law* 345, p 354.

⁴⁹ *Guyana v Suriname*, n 47, [465].

⁵⁰ *Guyana v Suriname*, n 47, [467].

⁵¹ *Aegean Sea Continental Shelf Case (Greece v Turkey) (Interim Protection)* [1976] ICJ Rep 3, [30].

‘litmus test’ for assessing the legality under the international law of a specific petroleum activity in the undelimited areas; whether it cause a irreparable damage to the geological structure of the seabed and subsoil.⁵²

In the *Guyana v Suriname case*, another distinction has been made between the seismic testing and exploratory drilling. Both activities can easily be considered as they are not exploitation activities in the disputed area, and they are not consuming the probable future natural resources of other party. However, the drilling activity causes permanent physical change; whereas the seismic survey is just an innocent discovery. The Tribunal emphasised the term *physical change* and stated that;

As set out above, unilateral acts that cause a physical change to the marine environment will generally be comprised in a class of activities that can be undertaken only jointly or by agreement between the parties. This is due to the fact that these activities may jeopardize or hamper the reaching of a final delimitation agreement as a result of the perceived change to the status quo that they would engender. Indeed, such activities could be perceived to, or may genuinely, prejudice the position of the other party in the delimitation dispute, thereby both hampering and jeopardising the reaching of a final agreement.⁵³

Furthermore, the Tribunal added that the threat of the use of force in order to remove the drilling vessels and rigs from the disputed area, also constitutes another breach of the obligation of mutual restraint. It emphasised that; ‘Suriname had a number of peaceful options to address Guyana’s authorisation of exploratory drilling.’⁵⁴ However, it failed to follow any of these lawful scenarios such as entering into negotiations with regard to the provisional arrangements of a practical nature or invoking the dispute settlement part of the UNCLOS. The Tribunal concluded that ‘... the threat of force in a disputed area, while also threatening international peace and security, jeopardised the reaching of a final delimitation agreement.’⁵⁵

As a result; the exploratory activities can be lawfully conducted in the disputed waters, whereas any exploitation activities are not in accordance with the law of the sea. Besides, the exploratory activities should be considered as twofold; the ones with no harm to the geological surface of

⁵² N Ioannides ‘Rights and Obligations of States in Undelimited Maritime Areas: The Case of the Eastern Mediterranean Sea’ in S Minas and J Diamond (eds) *Stress Testing the Law of the Sea Dispute Resolution, Disasters & Emerging Challenges* (Brill Nijhoff Leiden 2018) 316.

⁵³ *Guyana v Suriname*, n 47, [480].

⁵⁴ *Ibid*, [484].

⁵⁵ *Ibid*.

the sea i.e. the seismic convey and the other ones which can affect physically the seabed and subsoil i.e. the exploratory drilling. The former is allowed; while the latter is not in compliance with the international law either.

3.4 Critique of the Provisions of the UNCLOS

The provisions of the articles 74 (3) and 83 (3) of the UNCLOS designate two general obligations for the disputed areas. Both the wording and application by the international courts and tribunals of these provisions are explained above. While these provisions provide answer to the main problems, there still are some issues that are not addressed. This gap may lead to an excessive amount of margin of appreciation. Accordingly, there may be some uncertain outcomes for the disputes regarding the hydrocarbon activities in the undelimited areas.

The first critique may be in relation to the open textured language of the provisions. The term of *make every effort* does not provide sufficiently precise guidance to determine which endeavours are required and which are not.⁵⁶ For example, in the Guyana vs Suriname case, the Tribunal laid down a number of criteria for being considered as acting in accordance with the duty to make every effort to enter into provisional arrangement of a practical nature, such as informing about the planned activities, seeking the cooperation, offering the share of results.⁵⁷ However, it is still not clear whether the lack of any of them automatically means the state at stake is in breach of its' duty. Consequently, it is disputed that what is the minimum threshold to be considered as acting in compliance with this obligation.⁵⁸ Another question appears immediately at this moment. Does seeking for the minimum extent of the duty comply with the principle of *negotiating in good faith* or not? Looking for the minimum extent of a duty *to make every effort* would not be in accordance with the principle of good faith. This is because negotiating in good faith requires more than the minimum threshold.

The second question is what the scope of the provisional arrangements should be. The UNCLOS did not clarify any specific interim measures for the transitional period. Davenport claims that it leaves large margin of appreciation for the States to determine the content of the provisional arrangements.⁵⁹ The open textured nature of the UNCLOS has its own positive and negative sides. On the one hand, the large margin gives States the flexibility to decide on the

⁵⁶ Davenport, n 40, p 104.

⁵⁷ Guyana v Suriname, n 47, [477].

⁵⁸ Davenport, n 40, p 104.

⁵⁹ Ibid.

rules which they are going to be bound by. On the other hand, the lack of any listed arrangements may lead States to the endless discussions, because of disagreeing on any preliminary regulation.

Besides, if there is a State which is not politically willing to agree on any interim measures, it can procrastinate the negotiations by asserting the endless and pointless demands. As a result, it is the political intention of the States to obey properly to these obligations.⁶⁰ In the lack of that, the provisions of the UNCLOS, which give wide discretion to the States, do not help solving the matters; and they even undermine the objectives of the UNCLOS, such as ‘equitable and efficient utilisation of the resources of the seas and oceans.’⁶¹

Third, there is surely an uncertainty for the geographical scope of application of the provisional arrangements.⁶² The provisions of article 74 (3) and 83 (3) do not determine a specific maritime area geographically. However, from the wording of the provisions, one may understand that these provisional agreement only apply in the overlapping claim areas. The problem is what if a claim of one party is really extreme and does not have any basis with the international law. The maritime claims of the States shall be asserted in accordance with the *good faith* which shall have a basis of international law. In practice, we have seen that States do not tend to obey these abstract obligations. Another appearing question is should the excessive claims of the parties be respected anyway? The solution may be found in distinction between overlapping claims and overlapping entitlements (claims that are in compliance with the international law), but there is still discussion the way in which the legality of a claim ought to be determined.⁶³ Giving that the maritime delimitation was excluded from the scope of the thesis, the discussion of the legality of the parties within the context of current Cypriot matter is not addressed upon either.

3.5 Conclusions

The UNCLOS regime for disputed zones was explained below as well as the hydrocarbon activities in such areas. The EEZs and continental shelves are the relevant legal concepts for the current Cypriot case since the disputed areas fall under these two regimes. The EEZ regime is significantly important for conducting exploration and exploitation activities since these

⁶⁰ Davenport, n 40, p 105.

⁶¹ UNCLOS, n 8, preamble.

⁶² British Institute International and Comparative Law, Report on the Obligations of States under Articles 74(3) and 83(3) of UNCLOS in respect of Undelimited Maritime Areas (2016) [100].

⁶³ Davenport, n 40, p 106.

cannot be exercised without involving the water column and surface. Apart from that the oil and gas reserves are found in the subsoil of submarine areas, i.e. in the continental shelf.

The articles 74 (3) and 83 (3) of the UNCLOS was studied in the context of the hydrocarbon activities in the disputed zone. The obligations of showing every effort to enter into provisional arrangements and not to jeopardizing or hampering the reaching of the final agreement are stipulated in these provisions. The provisions designate the interim measures for a transitional period pending agreement. Their main objective is to ensure the peaceful situation between the parties during the time-consuming negotiations. However, the application of these provisions is also difficult since it is mostly dependent with the will of the States.

They are the only relevant applicable provisions of the UNCLOS for regulating such activities; yet they are criticised of being superficial and insufficient to deal with some complicated and intricate matters. Large interpretations of these provisions sometimes lead the unsolvableness for the problems between the States and this is the case for the current Cypriot issue. On the other hand, it is also claimed that the broad rules leave States the margin for regulate their own activities with cooperation and good faith. However, in the lack of these concepts the provisions cannot prevent the deadlock for the matters.

The distinction between exploitation and exploration activities can be made by examining whether there is an irreparable damage to the deep seabed. Additionally, the distinction between seismic survey and exploratory drilling is crucial too. Although both activities are grouped under the title of exploration activities; the drilling activities made physical change whereas the seismic activities are harmful. The case law is the most enlightening tool so as to make theoretical distinctions and practical differentiations between such activities.

Finally, there is a legal framework of the UNCLOS for regulating the hydrocarbon activities. However, the provisions are too general to have a tailored solution to a specific matter and parties cannot go further in the absence of political will and good faith. Besides, RoT is not party to the UNCLOS, and this may lead the inapplicability of the whole UNCLOS regime for the current matter. Indeed, the regime of the UNCLOS can be applied to the Cypriot problem, providing that they are reflecting the customary international law.

4 Other Applicable International Law: Customary International Law applicable to hydrocarbons in disputed overlapping areas

The UNCLOS establishes a legal regime for the disputed areas, which is explained in previous chapter. Yet, this legal regime is not directly binding for RoT, since it is not party to the UNCLOS. However, the UNCLOS provisions may be applied to RoT when and the extent to which they reflect the customary international law. The main question of this chapter is the extent to which the relevant UNCLOS provisions reflect the customary international law and, therefore, applicable to the dispute in hand. This chapter also reflects on other rules of international law, such as the general principles of law of good faith, no harm or good neighbourliness, that may be relevant to the dispute in hand.

This chapter starts with a brief explanation of customary international law. It, then, identifies what provisions of the UNCLOS relate to the current Cypriot matter. Afterwards, the main question – i.e. To what extent these provisions reflect the customary international law- will be investigated under the light of state practice and also based on analysis made on different awards of the international courts and tribunals. It continues with the examination of the general principles of law and their relationship with the provisions of the UNCLOS. The conclusion, finally, indicates what legal framework can be applied to the Cypriot case.

4.1 International Customs: A Source of Law of the Sea

The customary international law is a source of international law as stated in article 38 of the ICJ Statute. The article refers to ‘international custom as evidence of a general practice accepted as law’. There are essentially two elements of customary international law: State practice and *opinio iuris*. It is generally accepted that, the custom is applied and the State practice is used as an evidence.⁶⁴ *Opinio iuris* can be defined as ‘the belief that a certain conduct is required or permitted under international law, is in fact a conviction that such conduct is just, fair or reasonable and for that reason is required under law’.⁶⁵ Besides, State practice ought to be a practice that is carried on for a certain period of time; accordingly, the density and the

⁶⁴ R Wolfrum, ‘Sources of International Law’ (2011) in *Max Planck Encyclopedia of Public International Law* [24].

⁶⁵ *Ibid*, [25].

uniformity of the practice shall be provided.⁶⁶ Finally, it is worth mentioning that both elements are cumulatively required to establish customary international law.

International treaties and conventions may reflect the State practice and their conviction that such practice is accepted as international law. To that end they may become a part of customary international law. Actually, this is the case for a number of provisions of the UNCLOS.⁶⁷ Besides, the judgments of the international courts and tribunals are deployed to state the international customs. These judgments may refer to certain rules as being customary international law. However, they cannot create customary international law, but they can identify and formulate it and they can only be invoked as a reference.⁶⁸ This is also the case for a number of judgments of ICJ and other international courts and tribunals in relation to the law of the sea.

There is only one exception where a state is not bound by the customary international law: persistent objection. In international law, a persistent objector is a State which has consistently and clearly objected to a norm of customary international law since the norm's emergence, and it considers itself as not bound to by this very norm. The objection shall be expressed openly and repeated as often as circumstances require.⁶⁹ The ICJ applied the rule in its very early decision in 1951;

In these circumstances the Court deems it necessary to point out that although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law.

In any event the ten-mile rule would appear to be inapplicable as against Norway inasmuch as *she has always opposed any attempt to apply it to the Norwegian coast.*⁷⁰ (Emphasis added)

The provisions of the UNCLOS in relation to the Cypriot dispute are those which regulate the EEZ and continental shelf regimes. Articles 55, 56, 57 relate to the EEZ, while articles 76, 77 relate to the continental shelf. In this point, it must be stated some of these articles are very long

⁶⁶ Wolfrum, n 64, [27].

⁶⁷ TTB Koh, n 36.

⁶⁸ Wolfrum, n 64 [26].

⁶⁹ International Law Association, Committee on Formation of Customary (General) International Law, Final Report (2000), available at <http://www.ila-hq.org/index.php/committees> (Date of access: 06.08.2019).

⁷⁰ *Fisheries Case (United Kingdom v Norway) (Judgment)* [1951] ICJ Rep 116, p 131.

and contain some irrelevant provisions for the dispute in hand. For example, article 76 stipulates a very long procedure for the extended continental shelf, but this will not be touched upon because of irrelevancy. Therefore, only the relevant and applicable provisions of these articles will be analysed.

After establishing the concepts of maritime zones, the delimitation articles of 74 for the EEZ and 83 for the continental shelf are significant for the current dispute. The third paragraphs of these articles, which have exactly the same wording, are the most important ones to deal with the problem. The importance, relevance and the interpretations of these texts were explained in previous chapter. This chapter examines only their relationships with the customary international law. This is conducted by the application of the criteria of customary international law to the provisions. Case law is used to reflect the approach of the international courts and tribunals.

4.2 Customary International Law Character of the Relevant UNCLOS Provisions

4.2.1 The EEZ regime

This examination starts with the maritime zone of EEZ. It is established by the UNCLOS and reflects the *opinio iuris* of the rule. The States inevitably needed for a massive maritime zone to enjoy sovereign rights over the living and non-living resources. The concept is widely accepted by the international community. Even though the treaty did not enter into force, most of the states asserted the EEZ claims in a few years after the conclusion of the UNCLOS. This very fast acceptance of the EEZ shows very solid view of the State practice.

The ICJ recognised the customary international law status of the EEZ regime in 1984.⁷¹ The court explicitly stated that ‘the institution of the EEZ with its rule on entitlement by reason of distance is shown by the practice of States to have become a part of customary international law’.⁷² This statement, just three years after the conclusion of the UNCLOS, shows the rapid acceptance of the regime through state practice at that time.⁷³ As a result, the concept of the EEZ in article 55, the sovereign rights of the coastal States stated in article 56 and the 200 nm

⁷¹ *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada v USA) (Judgment) [1984] ICJ Rep 246, [94].

⁷² *Case Concerning the Continental Shelf (Libya v Malta)* (Judgment) [1985] ICJ Rep 33, [34].

⁷³ Rothwell and Stephens, n 37, p 86.

breadth of the EEZ in article 57 form part of the customary international law. In the legal doctrine, the EEZ regime is solidly accepted as a customary international law.

The last question is whether RoC and/or RoT, parties of the Cypriot problem, can be accepted as a persistent objector. First, RoC can clearly not have a persistent objector status, since it is party to the UNCLOS and established its own EEZ, as explained above in the second chapter.⁷⁴ Second, RoT cannot have a persistent objector status even if is not party to the UNCLOS. This is because, RoT's state practice is in accordance with the concept of the EEZ which is a norm of customary international law. Indeed, RoT established its EEZ in the Black Sea.⁷⁵ To put it another way, RoT cannot claim persistent objector position in this matter, since its relevant State practice - not to recognise EEZ regime - was broken by establishment of the EEZ in the Black Sea. All in all, the concept of EEZ is a part of legal applicable framework in the dispute in hand.

4.2.2 The Continental Shelf Regime

The continental shelf regime had been established before the UNCLOS, unlike the EEZ. The starting point of the concept was the Truman Proclamation in 1945.⁷⁶ The State practice element was well met in this concept, as this declaration was rapidly followed by other States.⁷⁷ In Geneva Convention on the Continental Shelf, the regime of continental shelf was regulated for the first time in an international treaty.⁷⁸ This treaty could have been a written document for the solution of the current Cypriot matter if both parties to the issue had been party to the treaty. However, RoT is not party to it. The basic points of the Geneva Convention were adopted in the UNCLOS and the regime continued.⁷⁹ The *opinio iuris* of the rule is the desire of the coastal States to possess the potential valuable resources of the seabed and subsoil, such as oil and gas. This was shown in these widely accepted treaties.

In the *North Sea Continental Shelf Cases*, the Court state that the continental shelf regime, its definition and the sovereign rights of the coastal states thereof are customary international

⁷⁴ See footnote 31.

⁷⁵ See footnote 35.

⁷⁶ Proclamation 2667, 'Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf' (28.09.1945) available at <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/1945-Truman-Proclamation-No.-2667.pdf> (Date of access: 06.08.2019)

⁷⁷ Rothwell and Stephens, n 37, p 102.

⁷⁸ The Convention on the Continental Shelf, adopted 29 April 1958, entered into force 10 June 1964, 499 UNTS 311.

⁷⁹ Rothwell and Stephens, n 37, p 114.

law.⁸⁰ Besides, it is emphasised that the article 76 forms part of customary international law in several other decisions of the court.⁸¹ Hence, '[t]oday there is no doubt that the rights of the coastal state over the continental shelf are well established in customary international law.'⁸² All in all, the provisions in articles 56 (1) and 77 (1), which state the sovereign rights of the coastal States for the purpose of exploring and exploiting the natural resources in the EEZ and on the continental shelf respectively are customary international law.⁸³

In the assessment of the behaviours of the parties, we have seen that RoC is a party to the UNCLOS and established its own continental shelf, as explained in the second chapter.⁸⁴ However, RoT is not party to the treaty and does not claim officially its continental shelf in the Mediterranean Sea. Nevertheless, in Turkish point of view, they have their own continental shelf for 200 nm in the Mediterranean, which is inherently conferred upon by the law of the sea. This can be seen from the non-official texts from RoT's Ministry of Foreign Affairs.⁸⁵ Besides, RoT intended in the submission to the United Nations concerning its objection to the agreement between RoC and Egypt on the delimitation of the EEZ; that on the western side of the longitude 32° 16' 18" lies Turkish continental shelf.

Following a thorough examination of the said agreement, the Republic of Turkey has reached the view that the delimitation of the EEZ or the continental shelf in the Eastern Mediterranean, especially in areas falling beyond the western part of the longitude 32° 16' 18", also concerns Turkey's existing ipso facto and ab initio legal and sovereign rights, emanating from the established principles of international law.⁸⁶

Overall, RoT has accepted the legal status of the continental shelf and applied it in the Eastern Mediterranean. Whether or not party to the relevant international conventions regarding the continental shelf, namely UNCLOS and Geneva Convention; RoT is bound by the legal regime of the continental shelf as a customary international law. This is because, customary

⁸⁰ *North Sea Continental Shelf Cases*, n 12, [26, 39].

⁸¹ *Case Concerning the Continental Shelf (Libya v Malta)*, n 72, [77]; *Territorial and Maritime Dispute (Nicaragua v Colombia) (Judgment)* [2012] ICJ Rep 624, [118].

⁸² Y Tanaka, *The International Law of the Sea* (Cambridge University Press Cambridge 2012) 133-134.

⁸³ *Ibid*, p 222.

⁸⁴ See footnote 30.

⁸⁵ C Erciyes *Turkey's Off-Shore Activities in the Eastern Mediterranean & Maritime Boundary Delimitation in International Law* (27.05.2019) available at http://www.mfa.gov.tr/site_media/html/maritime-delimitation-27-5-2019-presentation.pdf (Date of access: 06.08.2019) The author of the text, Mr Cagatay Erciyes, is a former Turkish ambassador who holds a decision maker position in RoT's policies on Eastern Mediterranean and the text is published at the official webpage of RoT's Ministry of Foreign Policy.

⁸⁶ The Official Letter of RoT, United Nations Division for Ocean Affairs and the Law of the Sea *The Law of the Sea Bulletins* Volume Number 54 (2004) p 127.

international law binds all states except persistent objectors. RoT is not a persistent objector, as its state practice is in accordance with the relevant rule. All in all, the concept of the continental shelf is a part of legal applicable framework in the dispute at stake.

4.2.3 The Delimitation of EEZ and Continental Shelf

Articles 74 and 83, in particular their third paragraphs, may have crucial importance for the Cypriot dispute. They stipulate two obligations: (i) making every effort to enter into provisional arrangements, and (ii) making every effort to not jeopardising or hampering the reaching of final agreement. As explained above, these two main obligations are applicable to the Cypriot matter as long as they form part of customary international law. The examination of these provisions is slightly different from the previous EEZ and continental shelf regimes; since this is more contentious and problematic.

The question is; do the provision of 74 (3) and 83 (3) of the UNCLOS reflect the customary international law? Prima facie answer is NO. This is because, this rule does not meet the two criteria of international customs, namely *opinio iuris* and State practice. One may argue that the regulation of such rule in the UNCLOS shall meet the *opinio iuris* condition. This might be correct, since the insertion of these provisions into the *widely accepted convention of the seas and oceans* means that the obligations imposed by the articles are required under the law and this opinion reflects the mainstream view of the international community. Accordingly, it is true that there is a belief that such obligations are just, fair or reasonable and for that reason they are required or permitted under international law. Besides, these obligations are related to some other obligations found in the general principles of the law, such as principles of good faith or the no harm. After establishing the *opinio iuris* behind the obligations, this part continues with examination of the State practice and concludes with the final assessment of customary international law character of the provisions.

4.2.3.1 State Practice

The State practice is significantly important; since in the lack of State practice as to the provisions of the article 74 (3) and 83 (3) of the UNCLOS, there is not an applicable rule from the convention for the Cypriot case with regard to the hydrocarbon activities in the disputed zone. The State practice varies from region to region and state to state. The examples from these various cases will be given below. Existence of different applications and approaches show that there is not a solid and coherent State practice. Accordingly, there is not a valid State practice in terms of customary international law.

In the Arctic Ocean, there is an evidence for the restraint in the exercise of sovereign rights in the disputed areas in relation to the hydrocarbons, for example in the drilling conflict between Norway and Soviet Union in 1983.⁸⁷ Another example is that the USA withdrew from consideration areas proposed for hydrocarbon activities; since they were also claimed as continental shelf by Canada.⁸⁸

... the United States restated its position that all the tracts being studied were on the United States continental shelf ; however, the disputed tracts were temporarily withdrawn in December 1976 from the proposed sale of leases, *in order to avoid making the negotiations more difficult*. The United States has explained that, under its policy of restraint, the leases granted were restricted to the undisputed portions of Georges Bank.⁸⁹ (Emphasis added)

Besides, both examples predated the entry into force of the UNCLOS and the USA is not even party to the convention; therefore, the legal motivation of the practices must have been customary international law. However, it is not clear that these practices stemmed from the idea of the obligation of restraint is customary international law.⁹⁰ Accordingly, the State practice with regard to the restraint from the hydrocarbon activities in the disputed area, in this region is not adequate to determine the customary international law character of the rule.

In Europe, there is a pertinent example from the dispute between Montenegro and Croatia about the latter's unilateral seismic exploration activities in the disputed area between the parties. After a series of negotiations, they agreed that no exploration or exploitation of hydrocarbons would take place in the disputed area pending the delimitation of the boundary. Nevertheless, Montenegro complained that it had 'refrained from unilateral measures in the [disputed] area ... , although it would be fully entitled to exercise jurisdiction'.⁹¹ Montenegro referred to the UNCLOS; therefore, there is not a prove that its State practice was arisen from the customary international law.

In the Mediterranean Sea, there are also some cases where States refrain from activities which hamper or jeopardise the final agreement. For example, the dispute between Libya and Malta, the parties agreed on the terms of not conducting any drilling activities until the final decision

⁸⁷ BIICL, n 62 [149].

⁸⁸ *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, n 71 [67].

⁸⁹ Ibid.

⁹⁰ BIICL, n 62 [149].

⁹¹ Communication from the Government of Montenegro, dated 18 May 2015 concerning exploration and exploitation of resources in the Adriatic Sea by the Republic of Croatia.

of the ICJ.⁹² The date of the agreement was in 1983 and before the entry into force of the UNCLOS; accordingly, the reason behind the practice must have been customary international law. However, the acceptance of the rule as an international custom was not clearly stated in this case either.

Another example from the Mediterranean is very relevant for the current Cypriot case, as it is between Greece and RoT. In the *Aegean Sea Continental Shelf Case*, parties signed an Agreement on the Procedure to be Followed by for the Delimitation of the Continental Shelf in 1976.⁹³ The paragraph 6 of the agreement states that ‘both parties undertake to abstain from any initiative or act relating to the continental shelf of the Aegean Sea which might prejudice’ their delimitation negotiations about the continental shelf.⁹⁴ This case is significantly important for the current case since one of the parties is RoT and it may show the RoT’s State practice regarding the hydrocarbon activities in the disputed zones. Churchill and Ulfstein use this case to show the relevant State practice for strengthening the customary international law status of the obligations stated in article 83 (3).⁹⁵

However, I do not agree with their opinion since the reason behind the restraint of RoT in Aegean Sea is merely economic and political. RoT did not want to engage in any military conflict just after the Cyprus intervention in 1974. Besides, the USA had applied an arms embargo on RoT for three years after the intervention.⁹⁶ Finally, the Aegean coasts of RoT are precious in Turkish point of view both in terms of tourism and international trade. Accordingly, any tension or military conflict in the Aegean Sea damages RoT more than another State. All in all, there is no such an acceptance from the Turkish part that the rule forms part of customary international law.

4.2.3.2 Final Assessment

There are a lot of examples in this subject; however, the legal background of the obligation of mutual restraint was not clear as an international custom in any of them. Accordingly, there is not a solid and coherent State practice with regard to the two obligations stated in articles 74 (3) and 83 (3) of the UNCLOS. Their acceptance as customary international law is not possible.

⁹² BCIL, n 62, [288].

⁹³ RR Churchill and G Ulfstein, *Marine Management in Disputed Areas, The Case of the Barents Sea* (Routledge London 1992) 87 and *Aegean Sea Continental Shelf Case* (Greece v Turkey) (Judgment) [1978] ICJ Rep 3.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ Wikipedia *Turkey–United States relations* available at https://en.wikipedia.org/wiki/Turkey%E2%80%93United_States_relations (Date of access: 29.08.2019)

However, the nature of the obligations is linked to a number of general principles of law. This may give the bindingness for such obligations and this will further be investigated below.

A counter-view was expressed by Churchill and Lowe who stated that the provision of article 83 (3) is customary international law.⁹⁷ The same approach was shared in another book written by Churchill and Ulfstein.⁹⁸ They presented, in the first place, the relationship between the general principles of law and the obligation of mutual restraint. It is stated that the existence of the principle of good faith requires States to not take any drilling activities in the disputed area.⁹⁹ Afterwards, a number of examples from the case law -especially the Aegean Sea dispute between Greece and RoT and the Gulf of Maine dispute between the USA and Canada- was explained. The examples were used in order to show that they are in the same direction with the obligation of mutual restraint. However, the rationale behind the State practice was not clearly investigated. As a result, it is concluded as follows,

From these quite extensive instances of the State practice, coupled with the general principles discussed earlier, it seems reasonable to conclude that there is probably a rule of customary international law requiring State no to engage unilaterally in offshore oil and gas activities in the disputed continental shelf areas.¹⁰⁰

As stated above, this approach presented above is not acceptable since there is no official declaration from the States about the customary international law character of the obligation of restraint. Besides, the rationale behind the State practice was not sufficiently examined or proved. Furthermore, State practice is not crystal or coherent in all the cases related to hydrocarbon activities in disputed areas. All in all, the general principles of law, such as good faith, no harm and good neighbourliness are always applicable to the cases. This relationship may be the reason for the State practice.

One final remark is that RoT may claim the persistent objector position against these rules. Indeed, RoT never accepted these specific obligations stated in the UNCLOS. Furthermore, it never showed a relevant example in its State practice in accordance with the obligation of mutual restraint or making every effort to enter into negotiations. Quite the contrary, RoT was always acting in a manner which seems in breach of these obligations. RoT conducted

⁹⁷ RR Churchill and AV Lowe, *The Law of the Sea* 3rd edition (Manchester University Press Manchester 1999) 192.

⁹⁸ RR Churchill and G Ulfstein, *Marine Management in Disputed Areas*, n 93.

⁹⁹ Ibid, p 86.

¹⁰⁰ Ibid, p 86-87.

exploratory drilling, or the Turkish Navy impeded the RoC-licenced vessels to conduct any activities by threatening with the use of force. As a result, if these obligations are accepted as customary international law; RoT seems to be in a position where it can claim persistent objector position. However, this will not be discussed, since it is no more than a hypothetical scenario and the provisions are not customary international law.

4.3 The General Principles of Law

While examining the State practice above, it is stated that States refer a number of different concepts. They are negotiating in good faith, principle of no harm, good neighbourliness, non-abuse of rights, peaceful settlement of disputes, the duty to avoid aggravating or extending disputes.¹⁰¹ These are the general principles of law, all of which are linked to the obligations of either making every effort to enter into provisional arrangements or mutual restraint. This relationships clarifies the strong legal nature of the obligations. In other words, the breach of these general principles of law entails a breach of international law.

4.3.1 The Principle of Good Faith

The principle of good faith has a significant importance in this Cypriot dispute. This is because, the principle of good faith requires the States concerned to refrain from any acts in the disputed area which show unwillingness to negotiate with an open mind about the maritime delimitation.¹⁰² Accordingly, any activities which may have permanent changes to the seabed of the disputed area cannot be in accordance with the principle of good faith. This approach was shared by the international tribunals and courts in many decisions.¹⁰³

In the context of Cyprus, the application of the principle of good faith shall be conducted in a manner explained by case-law. On the one hand, the seismic survey activities which are harmless to the seafloor are allowed under the international law. On the other hand, the activities that cause damage to the seabed are violations of the law of the sea. This approach is quite the same of the view of the court while describing the ‘litmus test’ for the activities in the undelimited zone in the *Aegean Sea Continental Shelf* or *Guyana v Suriname cases*.¹⁰⁴

¹⁰¹ BCIL, n 62, [402].

¹⁰² Ibid, [65].

¹⁰³ *North Sea Continental Shelf Cases*, n 12 [85]; *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, n 71 [87].

¹⁰⁴ Please see chapter 3.3.2 above.

One may claim that in the case-law the application of the principle of good faith is the same with the obligation of restraint. However, in these cases the general principle of law of good faith is the main rule as a source of international law. Apart from the very general and abstract nature of the principle of good faith, the application of the obligation of restraint, within the present context of hydrocarbon activities in the disputed zone, has never been precisely expressed by an international court.¹⁰⁵ Therefore, there are only some initiative interpretations or connections between the principle of good faith and the obligation of mutual restraint. The legal base of the rule of refraining any hampering or jeopardising activities in the disputed area is still only the provisions of the UNCLOS.

Therefore, in order to claim the obligation of restraint forms part of the customary international law; one needs more than this weak link between the principle of good faith and the obligation of restraint. The obligation of mutual restraint shall exist separately and clearly so as to be claimed as a part of the customary international law or general principles of law. This is because, it is interfering with the sovereignty of the States and the sovereignty of the States is one of the main principles of international law. Any obligation that puts a restriction on the sovereignty has to have a solid and clear formation.

On the other hand, Lagoni claims that the States in a dispute shall not conduct any activities that would aggravate or extend the dispute and this is a general rule of customary international law.¹⁰⁶ He advocated the idea by claiming the obligation of restraint is a special application of the principle of good faith as a general principle of international law.¹⁰⁷ It is evident that there is a connection between the obligation of restraint and principle of good faith. However, the obligation might be a small part of the principle; accordingly, it cannot match entirely the principle. The obligation of restraint is a concrete and specific obligation that regulates which activities are allowed or forbidden. The application of the principle is more abstract and general; therefore, every single application or appearance of the principle cannot have the same legal value as the principle has.

All in all, the principle of good faith is applicable to the current Cypriot case as a general principle of law. Unlike Lagoni, I think that the relationship between the principle of good faith

¹⁰⁵ BIICL, n 62 [65].

¹⁰⁶ R Lagoni 'Oil and Gas in Continental Shelf Areas which are disputed or where the delimitation has not been effected', paper given at BIICL's Conference on Joint Development of Offshore Oil and Gas, (1989).

¹⁰⁷ Ibid.

and the obligation of mutual restraint is not sufficient to claim the latter forms part of the customary international law. Regardless from the discussion about the customary international law character of the obligation of mutual restraint; the principle of good faith, with other general principles of law stated below, is sufficient to deal with the current matter. The application of the principle of good faith in the context of the hydrocarbon activities in the disputed areas by the international tribunals and courts shall be the guideline for the dispute between the RoT and RoC.

4.3.2 The Principles of No Harm and Good Neighbourliness

Under customary international law, States are obliged to “ensure that activities within their jurisdiction and control respect the environment of other States”.¹⁰⁸ This is no harm principle in short and it has a close relationship with another more general principle of international law, namely good neighbourliness, which is often stated as *sic utere tuo, ut alienum non laedas*.¹⁰⁹ These two principles lay down that States shall ensure that the activities under their jurisdiction or control do not cause any harm for the environment of other States. Accordingly, States shall not conduct any activities which may cause any physical modification to the seafloor of neighbouring state. However, the question is shall the same approach be shown in relation to a disputed area between two neighbouring states. It is argued that the States must exercise caution when conducting any activities in the undelimited maritime zone. The principle of good neighbourliness shall apply to the undelimited areas because of the possibility of the adhesion of the disputed area to the neighbouring State.

Affirmatively, it is possible that the area where a State carries out acts in a belief that it is its maritime zone, may turn out to be a part of another State’s maritime zone, following the maritime boundary delimitation. Accordingly, first State violated the sovereign rights of second State.¹¹⁰ Indeed, the ICJ decided that the dredging activities of Nicaragua were in breach of Costa Rica’s sovereignty, after it ruled in favour of Costa Rica’s sovereignty over the territory claimed by both parties in the first place.¹¹¹ The Court emphasised that, it is sufficient to declare the illegality of the activities because of the reason that they had been conducted in another

¹⁰⁸ *Advisory Opinion on the Legality on the Use by a State of Nuclear Weapons in Armed Conflict*, [1996] ICJ Rep 226, [29]; in the same direction *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ Rep 14, [101].

¹⁰⁹ BIICL, n 62 [67].

¹¹⁰ *Ibid*, [69].

¹¹¹ *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Judgment)* [2015] ICJ Rep 665, [93].

State's territory.¹¹² In order to avoid these kind of results and to not to face these kind of allegations; States shall act in a cautious manner while dealing within the undelimited maritime areas.

4.4 Conclusions

The EEZ and continental shelf regimes are the main legal concepts while dealing with the current Cypriot dispute. This is because the overlapping claim area between RoT and RoC falls under these maritime zones. They are regulated by the UNCLOS and they form part of the customary international law. This is well established in the case law. Both the *opinio iuris* and the State practice criteria of international customs are met in these regimes. Accordingly, these two legal regimes are applicable in the dispute whether or not RoT and RoC are party to the UNCLOS.

The delimitation of maritime boundaries is also designated in the UNCLOS, in article 74 for the EEZ and 83 for the continental shelf. The third paragraphs of these article may be important for the current Cypriot case, since two main obligations were stated. The obligations are (1) making every effort to enter into provisional arrangements and (2) not to hamper or jeopardise the reaching of the final agreement. There is a discussion as to the customary international law character of these rules. The *opinio iuris* of the obligations were clear since they are regulated in the widely accepted convention, the UNCLOS. Besides, the acceptance of the rules in the UNCLOS shows that the will of the international community is in the same direction. In addition, the obligations have very close relationships with some general principles of law, such as good faith or no harm.

The State practice about the delimitation provisions varies from region by region or State by State. Consequently, there is no such a solid and coherent State practice in terms of customary international law. As a result, the acceptance of the provisions as customary international law is not possible. One may claim that the State practice is more or less in the same direction with the legal framework of the UNCLOS and this would be mostly true. However, the rationale behind these behaviours of the States seems that some of the general principles of law, namely good faith, no harm or good neighbourliness. Consequently, the provisions of the articles 74 (3) and 83 (3) are not customary international law and are not applicable to the dispute in hand.

¹¹² *Certain Activities carried out by Nicaragua in the Border Area*, n 111 [93].

The principle of good faith is a general principle of law and accordingly accepted as a binding rule of international law. It contains the requirement for States to negotiate in good faith. This has an impact on the obligations of the UNCLOS. It is also claimed that the obligation of restraint is a specific application or appearance of the principle. However, the connection between the principle of good faith and the obligation of restraint is not sufficient to claim the obligation is now part of customary international law.

The principles of no harm and good neighbourliness have also great importance for the current case. This is because, the principles necessitate to not make any physical change or damage to the environment of another State. These rules are explicitly stated in the decisions of international tribunals and courts. Moreover, the principles apply to the cases when a specific area was not determined yet, but have a possibility to be given to another state after a delimitation. Apart from these rules there are also some other general principles of law which have links to the obligations, such as the duty to avoid aggravating or extending disputes.

All in all, the activities which cause irreparable change to the seafloor are not allowed, whereas, the ones without any physical change, e.g. seismic survey, are in accordance with the legal applicable law in the disputed zones. The application by the case-law of the general principles of law shall be the guideline for the current dispute between RoT and RoC. Next chapter deals with the activities of the parties in the dispute individually and exclusively.

5 Application of the Legal Applicable Framework to the Context of Cyprus

The legal framework of the UNCLOS is established in third chapter. Due to the non-party position of RoT to the convention, the customary international law character of the relevant UNCLOS provisions is shown in fourth chapter. This chapter is to apply the legal framework at stake to the specific activities of the parties. It starts with the presentation of the incidents in detail and continues with the application. Finally, it concludes the outcomes from the matters in relation to the exploration and exploitation of the hydrocarbon activities.

5.1 The “Negotiations” Between the Parties

One of the main obligations of the States in the disputed area is negotiating in good faith as stated in previous chapter. Besides, these negotiations shall be meaningful and conducted in a manner that the States are not merely pursuing their own interests. In the application of this

rule, the case law shows that it is not a formal obligation only. For instance, states cannot be accepted as in compliance with their relevant duty in case they go through a formal process of negotiation without any real intention to conclude an agreement.

In the context of current Cypriot case, there has unfortunately not been any single negotiation between the parties so far. The reasons are two folded: (i) the stretched relationships between the parties because of the sovereignty related issues and (ii) the significantly different maps of the proposals of the parties on the maritime delimitation in the Eastern Mediterranean.

First, RoC claims that RoT had illegally invaded 1/3 of the island and has to retreat from their lands and waters. In RoC's point of view, the negotiations can only be entered into if RoT's troops fully evacuated the island. Besides, it argues that RoT should accept that there is no such state called TRNC and the only sovereign state in the island is RoC. This means a return to the former situation before the interference of RoT to the island and before the establishment of TRNC. On the other hand, RoT's claim is that its intervention and the presence of Turkish troops in the island are totally lawful. In RoT's point of view, RoC has to recognise TRNC and accept that there are two independent states in the island and two different parties' maritime zones around the island.

Second, RoC alleges that its claimed maritime zones are ought to be respected by RoT. RoC alleges that its proposal for the maritime boundaries are totally in accordance with the law of the sea. In RoC's point of view RoT is violating its exclusive sovereign rights in its EEZ and continental shelf by searching for oil and gas and by threatening the RoC-licenced vessels with use of force. On the other hand, RoT is claiming that it enjoys its exclusive sovereign rights in the Turkish continental shelf. RoT alleges that RoC's proposal is not in compliance with the law of the sea, since it reduces excessive amount of the its continental shelf.

Nevertheless, as explained in the beginning of the thesis, the sovereignty and maritime delimitation issues are not examined in this thesis as well as with all the problems related to TRNC. Accordingly, this research only focuses on the fact that the parties did not enter into any negotiations either on final maritime delimitation or provisional arrangements regardless from the reasons behind it or the illegality of the reason.

Besides, RoT does not officially recognize RoC and does not have any intention to do so.¹¹³ Consequently, the parties do not have any diplomatic relationships between each other. The only open diplomatic channels between the parties is through Greece and -to some extent- the EU. RoT does not want to communicate directly with RoC since it may breach its position to not recognise the latter. The lack of communication causes the inception of the negotiations is almost impossible. This problem will further be investigated under the title of the Future of the Conflict below.

The findings show that, there is a clear incompliance with the principles of negotiating in good faith and good neighbourliness. Parties are in a dispute regarding the hydrocarbon resources in the undelimited area. However, they are not entering into negotiations to resolve their problems either regarding to delimitation/sovereignty or the hydrocarbons. All in all, both parties are violating the international law by not obeying the general principles of law.

5.2 The Activities of RoT's Vessels

5.2.1 Barbaros Hayreddin Pasa

Barbaros Hayreddin Pasa is a seismographic research vessel built in 2011 and purchased by TPAO (Turkish Petroleum Corporation) in 2013.¹¹⁴ She has been conducting seismic survey in the Eastern Mediterranean since 2014.¹¹⁵ These waters are the ones claimed by RoC and in their non-official document, there is a map of activities conducted by *Barbaros Hayreddin Pasa*.¹¹⁶ As it can be seen from the map *Barbaros Hayreddin Pasa* was searching for oil and gas in western waters of the island between 18 October 2018 and 1 February 2019. Just before the arrival of *Fatih* to the west of the island, she moved to the southern waters. The western area is the direct overlap between RoC's and RoT's claims which is also the subject of this thesis.

Barbaros Hayreddin Pasa is a merely a seismic research and survey vessel. Therefore, she can only conduct seismic scanning operations. She does not have any drilling facility onboard and

¹¹³ See footnote 135 and 137 below.

¹¹⁴ Wikipedia *RV Barbaros Hayrettin Pasa* available at https://en.wikipedia.org/wiki/RV_Barbaros_Hayreddin_Pa%C5%9Fa (Date of access: 06.08.2019)

¹¹⁵ AT Tzionis *Recent developments in the continental shelf/EEZ of the Republic of Cyprus* (07.06.2019) available at [http://www.mfa.gov.cy/mfa/mfa2016.nsf/5D23B385435B9E54C2258412003676D0/\\$file/%CE%A0%CE%B1%CF%81%CE%BF%CF%85%CF%83%CE%AF%CE%B1%CF%83%CE%B7%20%CF%80%CF%81%CE%BF%CF%82%20%CE%B5%CF%84%CE%B1%CE%B9%CF%81%CE%B5%CE%AF%CE%B5%CF%82%2007.06.2019%20\(wfinal\).pdf](http://www.mfa.gov.cy/mfa/mfa2016.nsf/5D23B385435B9E54C2258412003676D0/$file/%CE%A0%CE%B1%CF%81%CE%BF%CF%85%CF%83%CE%AF%CE%B1%CF%83%CE%B7%20%CF%80%CF%81%CE%BF%CF%82%20%CE%B5%CF%84%CE%B1%CE%B9%CF%81%CE%B5%CE%AF%CE%B5%CF%82%2007.06.2019%20(wfinal).pdf) (Date of access: 06.08.2019)

¹¹⁶ Ibid, the map may be found in the Annex of this thesis.

she cannot conduct any drilling activities. Accordingly, she cannot cause any physical change or irreparable damage to the seabed or subsoil. As explained above, there is a distinction among the exploration activities. The ones with no harm to the seafloor are accepted as not hampering or jeopardising the reaching of final agreement. These activities are not breaching the principles of no harm and good neighbouring. All in all, the activities of *Barbaros Hayreddin Pasa* in the western waters of the island of Cyprus are in accordance with the law of the sea.

5.2.2 Fatih

Fatih is an ultra-deepwater drillship built in 2011 and purchased by TPAO (Turkish Petroleum Corporation) in 2017.¹¹⁷ She is RoT's first drilling vessel. She has been conducting seismic survey in the Eastern Mediterranean since 2018.¹¹⁸ She is currently drilling 75 km off west coast of the island of Cyprus between 3 May 2019 and 3 September 2019.¹¹⁹ This area is the overlapping claim area between the RoT's continental shelf and RoC's EEZ and continental shelf. This area is the main researched zone for the purpose of this thesis.

Fatih is a modern drilling ship which is equipped with the latest technology. Unlike *Barbaros Hayreddin Pasa*, she can conduct deep-sea drilling activities. Actually, her main purpose is to conduct exploratory drilling for the assessment of the data on the potential resources collected by *Barbaros Hayreddin Pasa* or the other seismic research and survey vessels.¹²⁰ However, as explained above and stated in various cases, i.e. *Suriname v Guyana* or *Aegean Sea Continental Shelf Case*, the physical change to the seabed is not in accordance with the principle of no harm. Therefore, activities of *Fatih*, or of similar purpose vessel, in the disputed zone constitutes the breach of the law of the sea.

5.2.3 Comparison and the Other Turkish Vessels

The differences between *Barbaros Hayreddin Pasa* and *Fatih* can be understood from the pictures that found in the Annex. The capability of drilling is the main difference in terms of accordance with the legal applicable framework of law of the sea. The principles of no harm and good neighbourliness require parties refrain from any activities which may have possible future affect to the final agreement. In the application of the rule, the international courts and tribunals explicitly stated that the 'litmus test' of the legality of any activity is to whether it

¹¹⁷ Wikipedia *Fatih (Drillship)* available at [https://en.wikipedia.org/wiki/Fatih_\(drillship\)](https://en.wikipedia.org/wiki/Fatih_(drillship))
(Date of access: 06.08.2019)

¹¹⁸ Ibid.

¹¹⁹ Erciyes, n 85.

¹²⁰ TPIC, n 10.

changes physically the seafloor. This is because the physical interference is accepted as irreparable change to the marine areas. All in all, the activities of *Barbaros Hayreddin Pasa* are not in breach of the international law; whereas, the activities of *Fatih* violate the law of the sea.

Apart from these two ships, there is also one another drilling vessel, namely *Yavuz*, which was sent to the region recently. She has the same features with *Fatih*, in other words she can conduct deep-sea drilling operations. However, her drilling area is the eastern waters of the island on the grounds of the licence issued by TRNC to the TPAO. Therefore, she does not involve in the direct overlapping area between RoC and RoT. Accordingly, she and her activities are excluded from the content of this thesis, as explained in the introduction.

5.3 The Licence-Issuing by the Parties

5.3.1 RoC's Licencing

RoC announced the first offshore licensing round in 11 exploration blocks within its EEZ and the continental shelf in February 2007.¹²¹ In February 2016, the third offshore licencing round was conducted by RoC and the consortium of ENI and Total was granted the exploration rights for Block 6.¹²² The foreign petroleum companies started to conduct hydrocarbon activities and they discovered a lean gas after drilling an exploratory well at *Calypso* area in February 2018.¹²³ The Calypso gas field is on the very south of the concession block 6 as it can be seen from the map 7 in the Annex. Therefore, it is not in the overlapping claim area; however, it shows that the companies licenced by RoC conducts exploratory drilling in their granted zone.

As explained above, the exploratory drilling is not in accordance with the general principles of law, namely good faith, no harm and good neighbourliness. Accordingly, the drilling activities which are conducted by Eni&Total, or anyone else, under the authority or permission of RoC in the northern part of the block 6, where constitutes the overlap between parties' claims, are the violations of the law of the sea. The licencing of such companies to conduct such activities in the disputed area shows disrespectfulness of RoT's claims and sovereign rights arisen from international law. All in all, RoC breached the law of the sea by unilaterally licencing foreign petroleum companies in the disputed area.

¹²¹ E Hazou *Drilling for Cyprus gas, a timeline* (27.06.2016) available at <https://cyprus-mail.com/2016/06/27/special-report-drilling-cyprus-gas-timeline/> (Date of access: 22.08.2019)

¹²² Ibid.

¹²³ Ibid.

5.3.2 RoT's Licencing

RoT is conducting the exploration activities in the Eastern Mediterranean through the State-owned company *Turkiye Petrolleri Anonim Ortakligi*, TPAO in short, since 2011.¹²⁴ The licence area of the company can be seen in the map 7 below, the red part is granted. TPAO was conducting exploration activities since then in the granted area with four vessels: *Barbaros Hayreddin Pasa* and *Oruc Reis* which can carry out only seismic surveys, in addition to *Fatih* and *Yavuz* which can conduct exploratory drilling. Only *Barbaros Hayreddin Pasa* and *Fatih* served in the disputed area so far. Their activities were already examined above and resulted that *Barbaros Hayreddin Pasa's* activities are in compliance with the legal applicable framework, since they do not make any physical change to the seabed. However, the activities of *Fatih* are breaching the law of the sea since drilling causes irreparable damage and accordingly, is not permitted in the undelimited areas.

The issuing licences by RoT contains and allows illegal drilling in the disputed area. Drilling activities are not in compliance with the legal applicable law. Good faith, no harm and good neighbourliness are the general principles of law which are violated by these licencing activities too. Apart from the licence issued by RoT, there is another fact that TPAO is a RoT's State-owned company. Accordingly, these activities are not conducted under authority or control of RoT but conducted by RoT itself. This distinction is not important for the assessment of legality of this activity; however, it shows RoT's intense will in this matter. All in all, unilaterally issuing exploration licence by RoT to TPAO is breach of the law of the sea.

5.4 Other Activities Related to the Dispute

5.4.1 The Prevention of RoC-Licensed Vessel by RoT

RoT impeded the Italian petroleum company Eni's drillship *Saipem 12000* to approach its work site on the waters of the island of Cyprus on February 2018.¹²⁵ The vessel was blocked and threatened by Turkish navy and requested to turn back.¹²⁶ She was trying to reach the block 3, which is not a direct overlap between the parties. This eastern block was a part of overlap between the claims of RoC and TRNC. Accordingly, this violent act of RoT did not occur in

¹²⁴ Official webpage of The Directorate General of Petroleum and Mining Affairs (MAPEG) of RoT available at http://www.mapeg.gov.tr/petrol/petrol%20haritalar%C4%B1/Deniz_Bolge_Ruhsat_Haritasi.pdf (Date of access: 22.08.2019).

¹²⁵ Maritime Executive *Turkish Navy Chases Off Eni's Drillship* (23.02.2018) available at <https://www.maritime-executive.com/article/turkish-warships-chase-off-eni-s-drillship> (Date of access: 24.08.2019)

¹²⁶ Ibid.

the focusing area of this thesis. However, the outcomes of this activity are relevant for the purposes of the thesis.

This is the most violent activity conducted by any of the parties in the region. This activity has to be taken seriously, since it is a significant threat to the peace. The legal status of the use of force may be found in article 2 (4) in United Nations Charter:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.¹²⁷

The use of force and the threat of force is forbidden in international law unless some special circumstances. This thesis does not discuss the character of use or threat of force under international law. Nonetheless, RoT's violent behaviour is not in accordance with the legal applicable framework of the disputed areas in law of the sea. This is because, it is breaching the general principles of law such as good neighbourliness and not aggravating a conflict and dispute.

The final destination of the vessel may not be a direct overlapping area between the parties. However, regardless from her sea route, the threat or use of force is not in compliance with the legal applicable rules of the Cypriot dispute. RoT's illegal intervention to one of the Eni's drillships may lead the intervention to all vessels and activities conducted by this Italian company. Giving the fact it carries out hydrocarbon activities in block 6, any illegal interferences of RoT equally means threat to the company. Accordingly, the prevention of *Saipem 12000* by Turkish navy is a violation of law of the sea.

5.4.2 The Arrest Warrant for the Crew of *Fatih* by RoC

RoC issued an arrest warrant for the crew of the vessel *Fatih* on June 2019.¹²⁸ This was a unilateral act of RoC, as a result of the unilaterally decided activities of *Fatih* in its claimed EEZ. As explained above, the activities of *Fatih* are not in accordance with the law of the sea since they contain drilling which may cause an irreparable change to the seabed. However, RoC is not entitled to take enforcement measures against these illegal activities. This is because,

¹²⁷ Charter of the United Nations, Adopted 26 June 1945, entered into force 24 October 1945, 1 UNTS 16.

¹²⁸ Ekathimerini *Cyprus issues arrest warrants for Turkey drill ship crew* (13.06.2019) available at <http://www.ekathimerini.com/241559/article/ekathimerini/news/cyprus-issues-arrest-warrants-for-turkey-drill-ship-crew> (Date of access: 24.08.2019).

States are allowed to take such measures only in their area of jurisdiction, i.e. EEZ or continental shelf.

RoC claimed that the area is its maritime zone, however it is not settled yet. This is the reason why this thesis accepts that the area is undelimited and disputed. Therefore, until the final maritime delimitation between the parties, the area must be accepted as overlapping claim area, accordingly, the disputed area. All the activities conducted by the parties in that area must be accepted that they are occurring in the disputed zone. The legal applicable framework for such areas must be applicable in this western waters of the island of Cyprus. *Fatih* is conducting her illegal activities in the disputed area.

The issuing of arrest warrant for the crew of *Fatih* is not in compliance with the law of the sea, as it is breaching the obligation of mutual restraint. This is definitely rising the tension between the parties and aggravating the dispute. Besides, this is against the rule of good neighbourliness as a general principle of law. The probable arrest of the crew of *Fatih* by RoC, is more likely to lead the more violent acts of RoT. The history of Cyprus, especially the Turkish intervention in 1974, is a clear example for to understand this. It could be the irreversible point for the peace of the Eastern Mediterranean. RoT has already sent military ships to escort *Fatih*, the increasing appearance of the Turkish navy in the region is not helpful for the peaceful resolution of the problems related to Cyprus.¹²⁹ RoT's Foreign Ministry spokesman Hami Aksoy stated that 'Nobody should doubt that we will give the necessary response if it dares [to do so].'¹³⁰

5.5 The Future of the Conflict

For the future of the conflict, there are two scenarios ahead of us. First, parties may decide to cease unilateral activities in the region and willingly enter into negotiations for provisional arrangements. Second, they pursue their own political and economic interests without considering the opinion of other side or without taking into account any possible illegal outcomes of them. Actually, the second scenario is kind of the summary of the dispute so far. Unfortunately, it is more likely to happen in the future for a number of reasons. Yet, there are some anticipations for keeping the peaceful situation of the island as well.

¹²⁹ Anadolu Ajansi *Turkey slams Greek Cyprus over reported arrest warrant* (10.06.2019) available at <https://www.aa.com.tr/en/europe/turkey-slams-greek-cyprus-over-reported-arrest-warrant/1500483> (Date of access. 24.08.2019).

¹³⁰ Ibid.

Throughout the world there are some mutual solution examples for the hydrocarbon issues in an overlapping claim area between States.¹³¹ However, States have always entered into negotiations through their political will to negotiate. This is not the case for the context of Cyprus. As explained above, both parties have their own agenda regarding the issues of maritime delimitation and territorial sovereignty. These preliminary problems constitute the main obstacle to go through the meaningful and good faith negotiations. Accordingly, the future of the Eastern Mediterranean does not seem in the light. This is the number one reason for the probable unsolvableness of the dispute.

Second, some mutual solution examples contain the joint development agreements between the parties, e.g. in the Gulf of Guinea between Nigeria and São Tomé and Príncipe and in the Gulf of Thailand between Malaysia and Thailand.¹³² When we take a look at the history of the island of Cyprus, we have seen that there is a significant lack of compromise between the two nations of dispute. For example, the 1960 system of London-Zurich Treaties and the constitution of RoC were based on the fair division of the government between two nations. However, the system did not last too long and collapsed in 1964 by exclusion of the Turkish Cypriots out of the government.¹³³ This failure between the Turkish Cypriots and Greek Cypriots as to the management of the government shows that joint development agreement between the parties cannot last longer. Besides, Mustafa Akıncı, the leader of the TRNC, proposed a system for the joint use of hydrocarbon resources and cooperation between the two parties. However, this proposal was rejected by RoC on the grounds of ‘it contains provisions that do not serve the best interests of the RoC and the Cypriot people as a whole.’¹³⁴ Accordingly, the joint agreement system between the parties is not likely to happen in the future of the conflict.

As stated above, there is no open diplomatic channel between the parties to negotiate any of their matters like sovereignty, maritime delimitation or hydrocarbons. RoT intentionally does not recognise RoC and does not want to put its own position in jeopardy by entering into discussions with RoC. RoT states that it will not enter into negotiations with RoC until the latter

¹³¹ N Ermolina, ‘Unilateral Hydrocarbon Activities In Undelimited Maritime Areas’ (2018) 15(2) *Indonesian Journal of International Law* p 1.

¹³² Ibid.

¹³³ Wikipedia *13 amendments proposed by Makarios III* available at https://en.wikipedia.org/wiki/13_amendments_proposed_by_Makarios_III (Date of access: 27.08.2019).

¹³⁴ AhwalNews *Greek Cyprus rejects Turkish Cypriot proposal for joint hydrocarbon committee* (16.07.2019) available at <https://ahwalnews.com/east-mediterranean/greek-cyprus-rejects-turkish-cypriot-proposal-joint-hydrocarbon-committee> (Date of access: 01.09.2019).

recognises Turkish Cypriots and their legal rights.¹³⁵ The non-recognition of RoC by RoT constitutes another major problem for the relationships of the latter with the EU.¹³⁶ However, RoT clarifies that it will never hamper its position in the matter relating to the recognition of RoC, no matter what the EU thinks and declares.¹³⁷

Furthermore, there is another problem with regard to the relationships with the EU. The latter is a party to the UNCLOS regardless from its non-state status and the convention is adopted as *acquis communautaire* in the EU Law.¹³⁸ Therefore, providing that RoT desires to join the EU, it has to recognise RoC, adopt the UNCLOS and cease the illegal activities in the claimed EEZ of RoC. On the other hand, when it comes to the process of the RoT's accession to the EU, there are a lot of problems which are waiting to be settled. Accordingly, the Cypriot matter is not the most important one for RoT and the latter does not have to take any actions until the other major problems solved.

Greece is the most important state in terms of resolving the dispute between RoT and RoC. It is the most convenient State to conduct negotiations through, since it has close relationships with both parties. The relationship between Greece and RoC does not need to be explained considering the history and nationality of the States. Greece is arguably the *big brother* and the foster-land of RoC. The relationships between Greece and RoT is complicated since they have significant problems in relation to the Aegean Islands of the former with regard to the maritime delimitation and the resources of the continental shelf. The problems between Greece and RoT are similar to the ones between RoC and RoT. There is one significant difference that RoT officially recognises Greece and they have very developed diplomatic relations due to the long-time problems between them. All in all, unlike the EU, Greece has always and will always play a crucial role for the future of the dispute.

¹³⁵ CNN Turk *Turkiye'den Guney Kibrisa Tanima Sarti* (04.02.2005) available at <https://www.cnnturk.com/2005/dunya/02/04/turkiyeden.guney.kibrisa.tanima.sarti/70302.0/index.html> (Date of access: 27.08.2019) The news is available only in Turkish, however the translation of the title is *Turkey's Condition to Recognise South Cyprus* and it contains the statements of Turkish Minister of Foreign Affairs. Accordingly, the similar approach may be found in the official webpage of RoT's MFA in footnote 137 below.

¹³⁶ European Voice *Turkey must recognize Cyprus before talks begin* (15.12.2004) available at <https://www.politico.eu/article/turkey-must-recognize-cyprus-before-talks-begin/> (Date of access: 27.08.2019).

¹³⁷ Official Webpage of the MFA of RoT *Press Release Regarding the EU Enlargement* (01.05.2004) available at http://www.mfa.gov.tr/press-release-regarding-the-eu-enlargement_-1-may-2004.en.mfa (Date of access: 27.08.2019).

¹³⁸ European Parliament resolution of 13 November 2014 on Turkish actions creating tensions in the exclusive economic zone of Cyprus available at http://www.europarl.europa.eu/doceo/document/TA-8-2014-0052_EN.html (Date of access: 27.08.2019).

To conclude, the conflict between RoC and RoT about the hydrocarbon resources which are found around the island does not seem to be resolved in a close future. Both parties have strong barriers which impede joint agreement scenarios. Because they do not seem to have an intention to make a compromise, it is highly unlikely to reach a mutual understanding. Greece and the EU may help to solve the dispute; since they have critical relationships with both RoT and RoC. However, looking ahead from the summer of 2019 and considering the recent events mentioned in this thesis, the hydrocarbons dispute is not near to be settled.

5.6 Conclusions

This chapter examined the single activities conducted by RoT and RoC in relation to the hydrocarbon activities in the disputed area. The legal applicable framework was the general principles of law, namely good faith, no harm and good neighbourliness or to avoid aggravating or extending dispute. The provisions of the UNCLOS were not accepted as a part of applicable rules since they do not reflect customary international law.

The lack of negotiations between the parties is in breach of the international law. This is because the principle of good faith requires parties to enter into negotiations. In the current case, there has not been any ongoing or conducted negotiation between the parties. There are a number of reasons for this non-communication, such as the non-recognition of RoC by RoT, the irreconcilable positions of the parties. Besides, RoT does not want to sit in a same table with RoC, as the former does not want to hamper its position to not recognise the latter.

The activities of the Turkish vessels in the disputed zone is two folded. The seismic survey, the activities of *Barbaros Hayreddin Pasa*, are in accordance with the law of the sea. This is because the application of the international tribunals and courts clarify that the activities with no harm to the seabed or subsoil are allowed under the international law. The activities which contain the drilling, the operations of *Fatih*, are not in compliance with the legal applicable framework. The principles of no harm and good neighbourliness require that States cannot conduct any activities which cause physical change or damage to the seafloor.

The issue-licencing is carried out by both parties of the dispute. RoC unilaterally authorises the foreign petroleum companies, such as *Eni* or *Total* and RoT licences its state-owned company, namely *TPAO*. These companies conduct exploratory drilling in the disputed zone. The drilling activities in the undelimited area are always in breach of law of the sea on the grounds of the no harm and good neighbourliness principles. Accordingly, the activities conducted under

authority or control of the States concerned are not in accordance with the international law. Both RoT and RoC violated their duties arisen from the law of the sea by unilaterally licencing the petroleum companies.

The arrest warrant for the crew of the vessel *Fatih* is issued by RoC. This is not in accordance with the principles of good neighbourliness and not to aggravate the dispute. The threat or use of force by Turkish navy is also in incompliance with the same principles. Besides, these activities aggravate the dispute and make the future of the conflict more intrigue. Giving that the parties do not have open diplomatic channels, the third parties become more important. In the current matter the most important state is Greece because of the close relationships with the parties. Moreover, the EU plays a limited role since RoT desires to become a member. The adoption of the UNCLOS and the recognition of RoC are two important duties ahead of RoT to accomplish in order to adhere the EU.

To conclude, both parties have illegal acts and activities with regard to hydrocarbons in the disputed zone. Almost all the activities of the parties that are investigated in this chapter are not in compliance with the general principles of law of good faith, no harm, good neighbourliness, not aggravating the dispute. Only, the seismic survey activities are allowed considering the application of the rules by the international tribunals and courts. As long as RoT and RoC continue to engage in unilateral illegal activities in the region, the future of the conflict and Eastern Mediterranean seem more challenging and more problematic.

6 Conclusions

Cyprus has been known with the symbol of peace because of its coat of arms which is a dove carrying an olive branch. In the summer of 2019, the island became a hotspot for the energy wars. The rich hydrocarbon resources were found around the island. The inevitable desire of the States to reap these oil and gas reserves leads the serious problems in the Eastern Mediterranean. RoT and RoC unilaterally engaged in exploration and exploitation activities. They only pursue their national interests and the law of the sea is not respected duly by the parties.

As mentioned above, Cyprus is always linked to the peace. However, after the establishment of the Republic of Cyprus in 1960, the island was subjected to serious intercommunal violence between the two nations of the island, namely Turkish and Greek. The equitable system of the constitution of RoC did not last long and the Turkish representation in the government was

excluded by the Greek votes in 1964. The Greek-organised coup d'état to union with Greece, namely *Enosis*, in 1974 was the final act and RoT intervened to the island to bring peace. The island was divided to two parties; Turkish party on the north and Greek party on the south. Since then, there has not been any significant violent incident reported. In 1983, the TRNC was founded by a unilateral declaration, yet this 'state' has not been recognised by any state except for RoT.

In the island there is a really important matter regarding the territorial sovereignty of the northern part. Besides, the maritime sovereignty for the waters around the island is disputed too. The maritime delimitation has never been conducted between the parties. Apart from these problems, very rich oil and gas resources were founded around the island. The hydrocarbons became the most current matter now, since parties unilaterally engage in offshore petroleum activities. This is rising the tension in the island, which was already high because of the intrigue sovereignty and delimitation matter.

The legal framework for the exploration and the exploitation of the oil and gas resources found in the overlapping claim areas is regulated in the UNCLOS. Affirmatively, the article 74 and 83 of the convention, especially the third paragraphs, clarify the rights and obligations of the States concerned in the disputed areas. Two significant duties are (1) making every effort to enter into provisional arrangements of practical nature and (2) making every effort to not jeopardise or hamper the reaching of the final agreement. These provisions and their application by the international courts and tribunals could have been sufficient to deal with the current Cypriot matter. However, RoT is not party to the UNCLOS and the provisions of the latter are not applicable to the former, unless they reflect the customary international law.

The examination of the customary international law character of the relevant provisions of the UNCLOS is two folded. The regimes of the EEZ and continental shelf were accepted as customary international law. The customary international law character of the definitions and the sovereign rights of the coastal states in these maritime zones is not disputed in the doctrine. The provisions of the articles 74 (3) and 83 (3) are not customary international law; since the State practice regarding the obligations of the provisions is not solid and coherent. It is claimed that these obligations are ought to be customary international law because of their strong relations with the general principles law, such as good faith, no harm or good neighbourliness. However, the connection between the obligations and the principles are not sufficient to claim the formers have the same legal power as the latters. Regardless from the connections between

the obligations and principles, the general principles of law provide the required legal base to deal with the current problem.

The principle of good faith requires parties to negotiate in good faith to solve this hydrocarbons conflict. The principles of no harm and good neighbourliness necessitate parties to not conduct any drilling activities in the disputed zones. Accordingly, all the exploitation activities and one part of the exploration activities, which contain drilling operations, are not allowed under the law of the sea. On the other hand, the seismic surveys are in accordance with the legal applicable law with relation to the hydrocarbon activities in the disputed area. This is because, they are not causing any physical change to the seabed or subsoil. This approach is in compliance with the application of the case-law with regard to these principles. The litmus-test stated in the Aegean Sea Continental Shelf Case is that; the activities which change physically the seafloor are accepted as they cause irreparable damage to the environment of the disputed zone. Consequently, they are breaching the international law of the sea.

These are the main findings of this thesis with regard to the regime of the UNCLOS and the applicable rules of the customary international law and the general principles of law. In the light of this legal applicable framework, almost all the activities conducted by the parties are not in accordance with the law of the sea. This is because, they have drilling operations, e.g. drillship *Fatih*, which are against the no harm or good neighbourliness principles or the lack of negotiations breaches the principle of good faith. Only the seismographic activities of the parties are in compliance with the international law, e.g. the activities of *Barbaros Hayreddin Pasa*. The unilateral licences issued by the parties and the use or threat of force by the Turkish Navy are violations of the law of the sea as well.

In the future of the conflict, the joint agreement system does not seem possible. The serious problems of the parties impede them to come to an agreement, and even sit on the same table sometimes. The lack of diplomatic relationships and the unwillingness to negotiate result the future of the Eastern Mediterranean in bleak. Establishment of cooperation between the parties seems to be the most convenient and peaceful scenario; however, the problems most of which appeared in the last 50 years are apparently strong enough to impede it.

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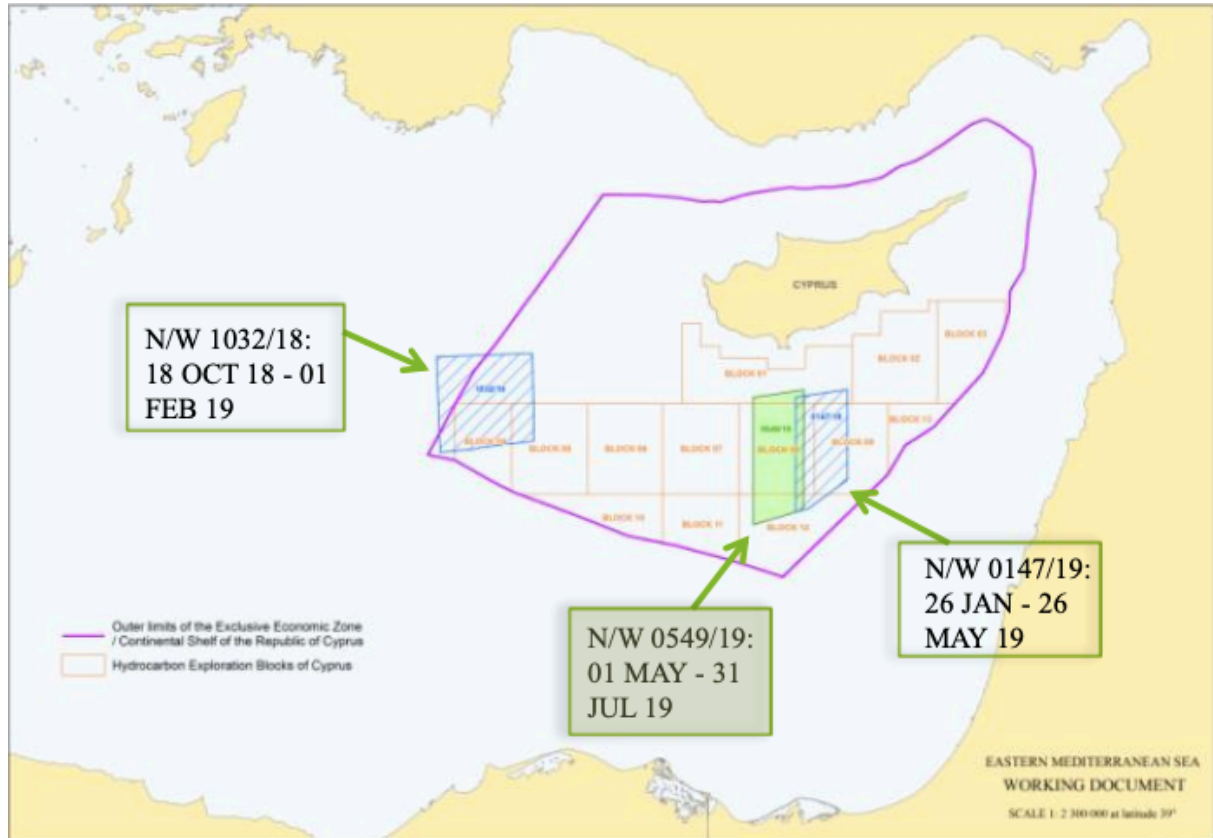
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Annex

- Map 5 depicts that the activities conducted by *Barbaros Hayrettin Pasa* is in the disputed area between RoT and RoC

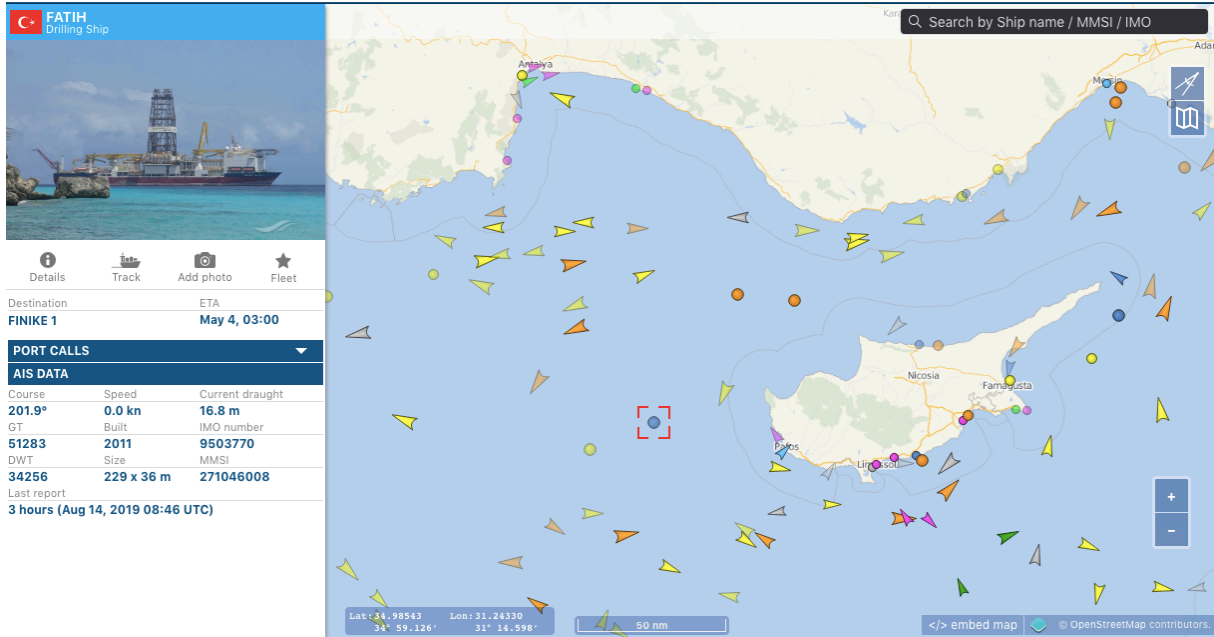


Map 5: The Activities of *Barbaros Hayreddin Pasa*

- Picture of *Barbaros Hayrettin Paşa*



- Map 6 depicts that *Fatih* is conducting her activities in the disputed area between RoT and RoC

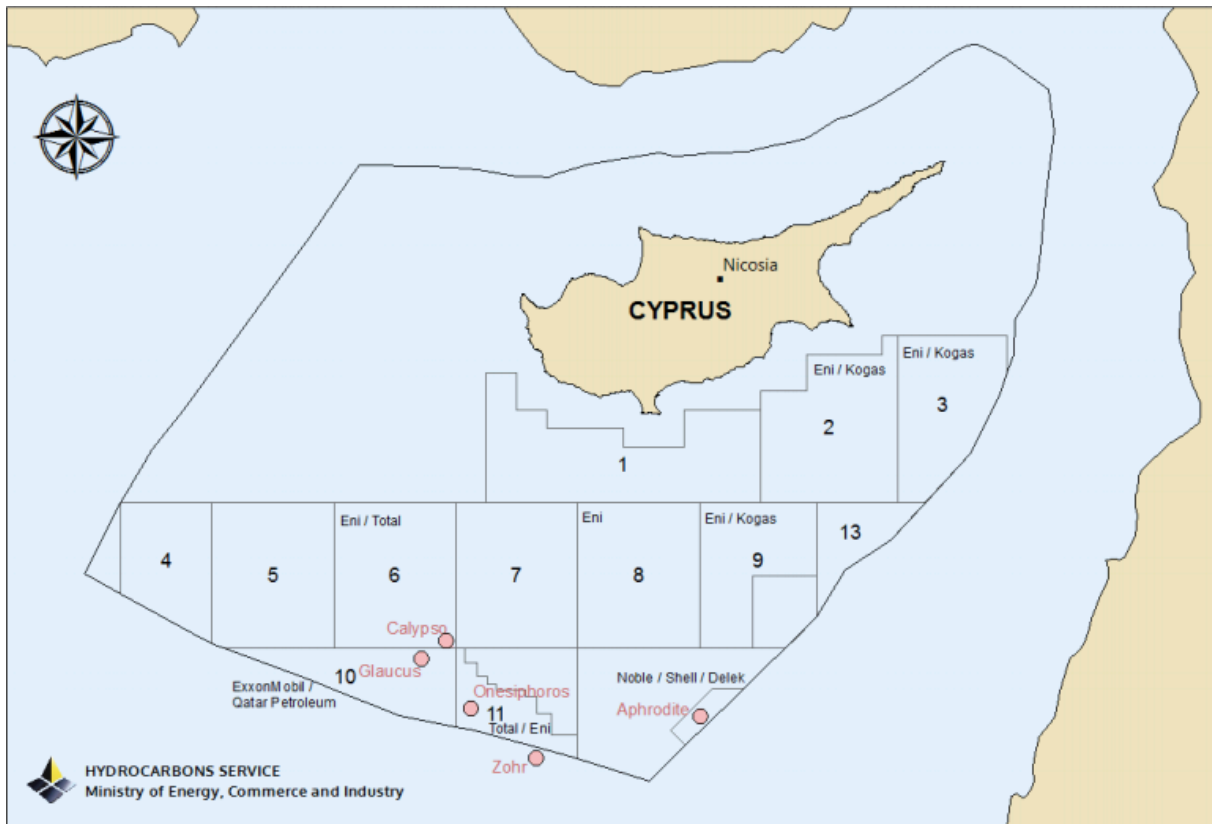


Map 6: The exact location of *Fatih*

- Picture of *Fatih*

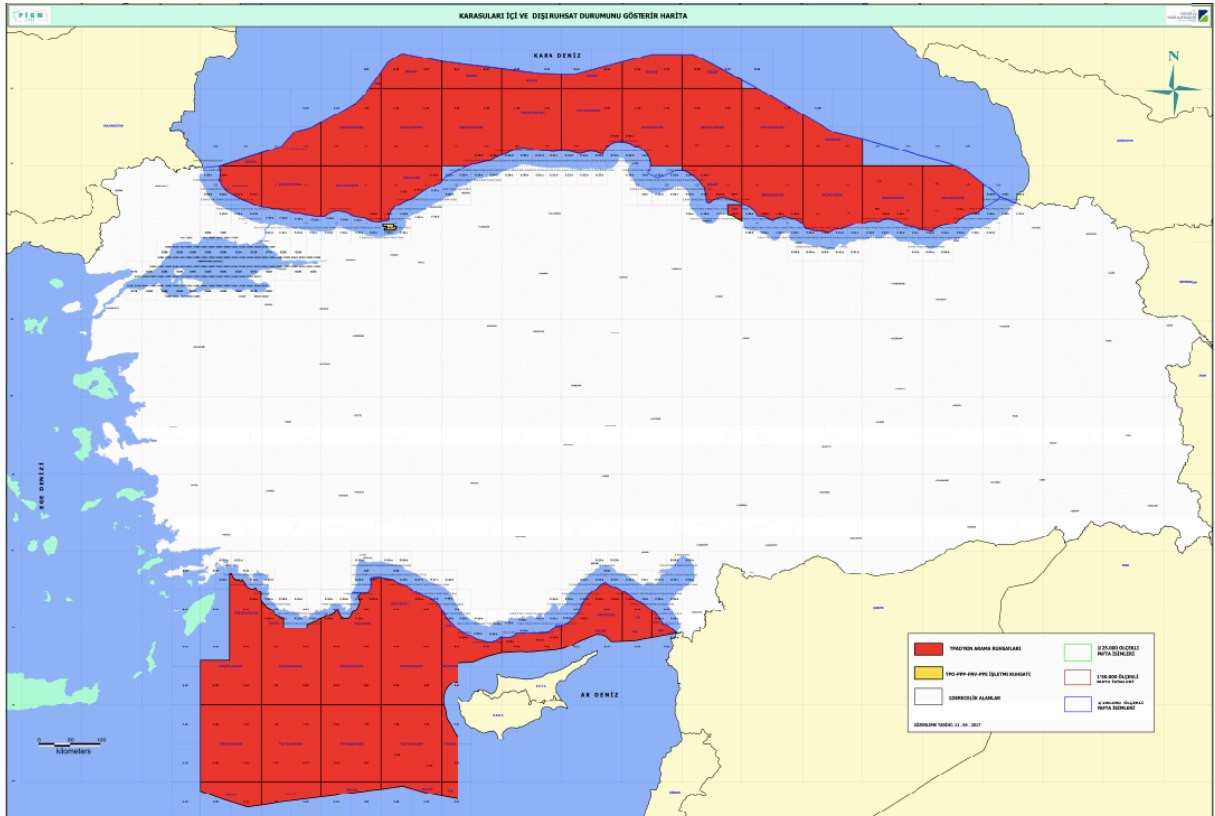


- Map 7 shows the concession blocks of RoC, the block 6 where the Consortium of Eni & Total are conducting their hydrocarbon activities and the exact locations of the gas fields *Calypso* and *Aphrodite*



Map 7: The Concession Blocks of RoC, The Block 6 which Eni&Total Consortium Operates and The Location of *Calypso* Gas Field

- Map 8 depicts the area granted by RoT to its state-owned petroleum company TPAO



Map 8: The Licence Area Granted by RoT to TPAO