

UNCLOS 1982 The Mediterranean area and EU's Southern Rim

by Mikhail L. Myrianthis

Energy Expert, Member of the Advisory Committee, ELIAMEP

April 2019

WORKING PAPER No 105/2019

Copyright © 2019

HELLENIC FOUNDATION FOR EUROPEAN AND FOREIGN POLICY (ELIAMEP)¹

49, Vassilissis Sofias Ave., 106 76 Athens, Greece

Tel: (+30) 210 7257110-1, Fax: (+30) 210 7257114,

e-mail: eliamep@eliamep.gr,

url: www.eliamep.gr

All rights reserved

Working Paper Nr 105/2019

UNCLOS 1982, The Mediterranean area and EU's Southern Rim

M.L.Myrianthis², Ph.D.

Energy Expert, Member of the Advisory Committee, ELIAMEP

¹ ELIAMEP offers a forum for debate on international and European issues. Its non-partisan character supports the right to free and well documented discourse. ELIAMEP publications aim to contribute to scholarly knowledge and to provide policy relevant analyses. As such, they solely represent the views of the author(s) and not necessarily those of the Foundation.

² Part of the paper has been presented by the author on February 21, 2019 in the conference room of the representation of the European Commission in EU premises in Athens, GR in the framework of the project 'EU -Turkey Relations: Mapping Dynamics and Future Scenarios (FEUTURE). The one-day event entitled *EU- Turkey Relations: What Policy Challenges? Security and Energy* has been organised and directed by ELIAMEP

Author's Information:

Born in Alexandria Egypt (1946). Greek of the Diaspora.

B.Sc. in Physics, University of Athens (1971), Engineering-Geologist, PhD, University of Durham, UK. (1975) Further education: Oil Exploration School, Management, Project Management, Management of Change- Kellogg's Seminar (Athens, London, U.S.).

High Level Positions: *Hellenic Electric Railways SA* (1979-80), *DEP-EKY Oil Exploration & Production SA* (1992-93), *OKTA AD Rafinerija*, Skopje, Northern Macedonia as Chairman, (2004-2010). Executive Member of the Board: Hellenic Petroleum S.A. Group of Companies (2004–2006), *ELPET-Balkanike SA* as Chairman (2004-2010), and *VARDAX SA* (2004- 2010). *HELLENIC PETROLEUM CYPRUS, Ltd* as Chairman (2005-today), Member of the Advisory Board *HELLENIC PETROLEUM INTERNATIONAL AG*. Vienna, Austria, (2004- 2010).etc

Member of NGO's: *HELLENIC POSITIONS* (1994-2000). Special Advisor of *ELIAMEP*: (2003-today), *Secretary-General of the Hellenic Association of Energy Economists* (1995-2000).

National Delegate of the Ministry of Energy to the EEC (1991-1993). National Delegate in EU during the 4th Hellenic Presidency. (1Half, 2003). Secretary of a Ministerial Committee for the Privatisation of the Hellenic Refinery (ELDA) and the Industrial Complex in Thessaloniki (EKO) (1992-1993). Expert Advisor monitoring upstream oil activities in EEC, Brussels (1983- 1985). Expert Advisor (R & D in Oil Exploration and Production) in EEC, Brussels (1984). Executive Member of the Board, in the European Management Committee (EMCO) of the ODP project, Strasbourg, (1985-1991).

Since 2011, freelancer *Energy Consultant* and *analyst* with particular emphasis to Intl. Energy Strategy analysis, Oil & Gas geopolitics, assessment of risks associated to M&A, advisory in high level negotiations, etc. Several times appeared in the Hellenic media as a featured television and radio Energy commentator.

Summary:

The United Nations Convention on the Law of the Sea, December. 10, 1982, ("UNCLOS") lays down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources. It defends the notion that all problems of ocean space are closely interrelated and need to be addressed as a whole in a holistic For the entire Mediterranean, the overwhelming majority of nations that surround it, do -in principle- accept UNCLOS as a legal framework; as a road map to both delimitation of their respective Exclusive Economic Zones (EEZ), and as dispute settlement mechanism that UNCLOS provides. Ideally, the recent Oil & Gas exploration activities in eastern Mediterranean, in Greece, Adriatic and elsewhere, should have been governed by UNCLOS provisions as a global legal framework. On April 1998, EU ratified UNCLOS 1982, that became de jure **acquis communautaire**, affecting all future candidate member-states, Turkey of course not excluded. Greece might propose and further actively promote through its diplomatic channels an initiative as to declare a *unified European Exclusive Economic Zone in the Mediterranean area, embracing all EU member-states that surround the basin* and that incidentally had all individually ratify UNCLOS.

Table of Contents

Introduction to UNCLOS.....	4
The United States and UNCLOS	5
UNCLOS and The Mediterranean Basin vis-à-vis the EU member-states.....	6
The Greek stand and the creation of EU member-states unified EEZ belt in the Southern Rim.....	9

UNCLOS 1982, The Mediterranean area and EU's Southern Rim

Introduction to UNCLOS

The Convention was opened for signature on December 10, 1982 in Montego Bay, Jamaica. This marked the conclusion of more than 14 years of work involving participation by more than 150 countries representing all regions of the world, all legal and political systems and the variety of socio/economic development. At the time of its adoption, the Convention embodied in one instrument traditional rules for the uses of the oceans and at the same time introduced new legal concepts (say the EEZ: Exclusive Economic Zone, rights of Landlocked countries, liabilities in case of pollution, artificial islands as is the case in South China Seas, etc.) and regimes (defines the territorial limits of nation states with respect to the high seas, the exclusive economic zone and continental shelf of islands, yet rocks which could not sustain human habitation or economic life of their own would have no economic zone or continental shelf). UNCLOS III came into force in 1994, a year after Guyana became the 60th nation to ratify the treaty.

Furthermore, UNCLOS provides dispute resolution clauses that offer rather useful framework to its members. In fact, States Parties are obliged to settle by peaceful means their disputes concerning the interpretation or application of the Convention. Additionally, disputes can be submitted to the International Tribunal for the Law of the Sea (ITLOS) established under the Convention, to the International Court of Justice, or to arbitration. Conciliation is also available and, in certain circumstances, submission to it would be compulsory. The Tribunal has exclusive jurisdiction over deep seabed mining disputes.

A case study in question refers to the July 12, 2016, ³ruling by the International Tribunal on the Law of the Sea (ITLOS) in the case brought by the Philippines. The tribunal firmly rejected China's expansive claims in the South China Sea. The court declared that the nine-dash line, the foundation for China's historical claims in the region, had no legal basis. The tribunal also determined that none of the land features, a group of contested reefs and atolls, meet the global standard for island entitlements, and therefore neither individually nor collectively warrant 200 nautical mile exclusive economic zones (EEZ), as China asserted. The decision is a hugely important

³ Senator BEN CARDIN, The South China Sea Is the Reason the United States Must Ratify UNCLOS, The Tea Leaf nation, JULY 13, 2016, 2:30 PM

moment for the Asia-Pacific order. Yet Beijing has rejected this opportunity to play a more constructive role in the region, repeatedly stating that it will not abide by the ruling.

The United States and UNCLOS

The United States played an instrumental role in forming UNCLOS in the 1970s, and in subsequent negotiations worked to modify the treaty language to assure that U.S. national interests were safeguarded. Yet although both Democrat and Republican presidents have advocated its passing, the Senate has yet to ratify it.

Analysts from *The Heritage Foundation* argued⁴ that there are seven reasons U.S. should not ratify UNCLOS. Their key takeaways are that:

1. U.S. accession would provide no benefits not already available to the U.S., while creating unnecessary burdens and risks.
2. The U.S. does not need to join the convention in order to access oil and gas resources on its extended continental shelf, in the Arctic, or in the Gulf of Mexico.
3. Despite subsequent changes in 1994 that led the Clinton administration to support U.S. accession, the Trump administration should oppose accession to this treaty.

Essentially, they sustain the rather simplistic view that the U.S. can best protect its rights by maintaining a strong U.S. Navy, not by acceding to the convention. However, *gunboat diplomacy* is passé nowadays, although Turkey is using it in the Eastern Mediterranean. Perhaps the truth lies to the fact that if the U.S. accedes to the convention, it will be exposed to climate change lawsuits and other environmental actions brought against it by other members of the convention. The U.S. should not open the door to such politically motivated lawsuits, notably under Donald Trump administration.

There are of course voices in US favouring the accession of UNCLOS focusing:

- in the situation of the South China Sea, perhaps a potential flashpoint competing to eastern Mediterranean, and
- the U.S. interests in the vital arctic circle that would modify the global sea-born trade, especially when Canada and the Russian Federation had already ratified UNCLOS.

⁴ Theodore Bromund, James Carafano and Brett Schaefer, *7 Reasons U.S. Should Not Ratify UN Convention on the Law of the Sea*, The Heritage Foundation, on Global Politics, June 4, 2018

UNCLOS and The Mediterranean Basin vis-à-vis the EU member-states

On December 17, 2013, in Brussels an informal alliance Group was established at the initiative of the Foreign Ministers of Cyprus and Spain, in order to create coordination on issues of common interest within the EU members, that are in the southern rim of EU. The **EUMED Group** or **EuroMed 7** consisted of 6 + 1 (Portugal) member-states (Cyprus, France, Greece, Italy, Malta, Spain). All seven countries are part of the eurozone, and all but Cyprus are part of the Schengen Area. Altogether, they have signed and ratified the UNCLOS 1982, both individually and collectively as EU on April 1st, 1998. Slovenia and Croatia, a relatively newcomers to EU (2007) -in the southern rim of EU-, have also signed, while Croatia ratified the LOS.

International agreements and treaties concluded by EU constitute parts of **acquis communautaire**. On April 1998, EU ratified UNCLOS 1981, that became de jure **acquis communautaire**, affecting all future candidate member-states, Turkey of course not excluded.

In a parallel development, the EU Council created a special working party on the law of the sea (**COMAR**), which includes national experts from EU member states. It meets regularly in Brussels and drafts positions on all issues and national practices concerning the law of the sea. There are at least six meetings a year. The European Commission also participates in the work of COMAR, and external experts join, if necessary.

Now moving to a wider perspective, out of the 21 countries and two regions (i.e. the Gaza Strip, Gibraltar and the British sovereign bases in Cyprus -as part of the British Overseas Territories-) that surround Mediterranean:

- I. eight nations have either signed or acceded to UNCLOS;
- II. another nine Mediterranean countries have ratified the treaty;
- III. Only three nations are non-party to *UNCLOS 1982*, namely: *Israel, Syria and Turkey*, while Bosnia & Herzegovina has a pending status as a special case under the Dayton agreement.
- IV. Israel in fact unilaterally delineated its Exclusive Economic Zone based on default UNCLOS principles⁵;
- V. There is a maritime border dispute between Israel and Lebanon that it is rather difficult to be resolved with diplomatic means since Lebanon and Israel have no diplomatic relations, having remained in a legal state of war since 1948.

For the entire Mediterranean, the overwhelming majority of nations that surround it, do -in principle- accept UNCLOS

⁵ See: www.seaaroundus.org

1. as a legal framework;
2. as a road map to both delimitation of their respective Exclusive Economic Zones (EEZ), and
3. as dispute settlement mechanism that UNCLOS provides.

Ideally, the recent Oil & Gas exploration activities in eastern Mediterranean, in Greece, Adriatic and elsewhere, should have been governed by UNCLOS provisions as a global legal framework.

Cyprus is a celebrated example of a country that have acted by *the book* by proclaiming a 12-mile territorial sea-zone in 1964, proceeding in 2004 to proclaim its Exclusive Economic Zone (EEZ) on the basis of the median line of delimitation between opposite geographical states. Finally, concluded maritime delimitation treaties with three of its neighbouring states, Egypt (2003), Lebanon (2007-as yet non-ratified) and Israel (2009), on the basis of the median line including a provision for arbitration in case of a dispute. These are model agreements which should be preserved and also rivalled elsewhere.

Turkey is a non-party of UNCLOS being in a minority of states in voting every year in the General Assembly of the United Nations against the Omnibus Resolution of the Law of the Sea item, as it did most recently. Turkey has established a special relation with European Union (EU) since 1960's, by concluding an association agreement also called *Ankara Agreement*, with the (then) European Economic Community (EEC). The agreement is still in force today. Turkey while a candidate EU member, yet as a non-party to UNCLOS, in fact does clash with EU *acquis communautaire*. It is binding, before acceding to EU, all candidate states to acquire *acquis*. Turkey is not only a non-party to *UNCLOS*, is also a persistent objector to its certain provisions due to the Aegean Sea dispute with Greece.

However, the Turkish legal position according to Ulaş GÜNDÜZLER ⁶ is, that Law of the Sea is a **mixed treaty**, meaning a treaty concluded by EU jointly with its Member-States, then is only partially, a part of EU law (*acquis*). Turkey further maintain that the European Council decision to approve *UNCLOS*, proves that EU can become party to *UNCLOS* within its competence. The objections of Turkey rather stress to the provisions of *UNCLOS* regarding to the width of territorial waters and the delimitation of sea zones. Thus, it must be considered whether these issues fall within the competence of EU law (*acquis*). However, the Turkish stand is that only some provisions of *UNCLOS* create rights and obligations attached to the Union system. Therefore, EU law might require Turkey to implement only these provisions into her legal system, according to the Turkish view.

In conclusion, Turkey's view is that can avoid becoming a party to *UNCLOS* as she does not have to implement the provisions that are not part of EU law (*acquis*). Consequently, Turkey has no legal

⁶ Ulaş GÜNDÜZLER, 2013, UNITED NATIONS CONVENTION ON LAW OF SEA AS A MIXED TREATY OF EU: A HEADACHE FOR TUR KEY? *Ankara Avrupa Çalışmaları Dergisi* Cilt:12, No:2 (Yıl s.61-80,

obligation to ratify *UNCLOS* according to either its provisions or EU *acquis communautaire*. Turkey's angle It is more like a political obligation for Turkey rather than a legal one.

Turkey's prime minister, *Erdogan* stated that: "*EU membership is a strategic objective for us.*". This is a rather assertive statement indeed. However, unless something dramatic will alter today's state of affairs, the prevailing view is that Turkey is rather opting for a special, *a la carte*, yet privileged relation, with EU, instead of full accession, that requires by the EU adoption of key legislation, almost intolerable to be carried-out like:

- the rule of law;
- freedom of expression;
- freedom of assembly;
- progress in the settlement process of the Kurdish question;
- the independence of the judiciary and finally;
- the principle of separation of powers, inter alia.

The Greek stand and the creation of EU member-states unified EEZ belt in the Southern Rim

Finally, **Greece**, apparently, has a window of opportunity that normally should actively pursue by exploiting EU's infrastructure (*EuroMed 7*, COMAR, etc.) and its participation to it. Therefore, in the frame of the **EuroMed 7** group, Greece might propose and further actively promote through its diplomatic channels an initiative as to declare a unified European Exclusive Economic Zone in the Mediterranean area, embracing all EU member-states that surround the basin and that incidentally had all individually ratify UNCLOS. Said initiative should consequently be proposed to the EU's special working party COMAR on the law of the sea, for debate, discussion and eventual adoption that might finally take the form of a European Council legal form for instance, Decision.

The road map to implementing this initiative, is the successive proclamation of their respective EEZs by Portugal, Spain, France, Italy, Malta⁷ and Greece, up to Cyprus⁸. Result will be the creation of a continuous EU's Exclusive Economic Zone belt spanning from Spain, all the way to Cyprus. By monitoring its application, initially in the Mediterranean basin, as a testing ground, European Commission could further enhance the contain of said initiative, by eventually extending its capability in other areas of EU competence like Atlantic, the Baltic Sea, the arctic circle, etc.

Currently, in the Southern rim of EU, major and medium size companies from five- EU member states, namely:

- I. TOTAL, of France
- II. REPSOL of Spain
- III. ENI from Italy
- IV. HEP & ENERGEAN OIL & GAS from Greece
- V. and some smaller Cypriot companies

-with the additional presence of KOGAS of South Korea and Qatar Gas-

do actively participate in the oil and gas exploration, in the frame of:

- concession's rounds offshore the Republic of Cyprus within its EEZ or
- concession rounds and 'open door' processes -both onshore and offshore-, in Greece.

⁷ That already had declared its EEZ.

⁸ Cyprus also already had declared its EEZ.

This signifies that already: Companies from EU member-states in the southern Mediterranean rim, have serious vested interests in the area, directly related to EU security of energy supply. Apparently, all Mediterranean EU member-States -at large- have to benefit from such an initiative and notion. Debating the issue with an expert analyst, he posed the valid question '*what today creates an obstacle to the international Oil & Gas companies as to refrain from exploration under the current legal status of EEZ?*'.

On February 9, 2018 four or five ships of the Turkish Navy tried **manu militari** to prevent Saipem's 12000 drilling vessel from performing exploration **inside the** Exclusive Economic Zone (EEZ) of Cyprus. Turkey, which solely recognizes the northern Turkish Cypriot government and doesn't have diplomatic relations with the internationally recognized government of Cyprus, -another peculiarity of Turkey a candidate member-state of EU in refusing to recognise another member of EU- claims that part of the Cyprus offshore area is under the jurisdiction of Turkish Cypriots or even Turkey. After that incident the Saipem drilling vessel abandoned exploration in the area and set sail for Morocco.

Asked about the incident, Claudio Descalzi ENI's CEO, said in Milano during a conference call on the company's fourth quarter results: '*A Turkish blockade of a ship hired by Eni to drill for gas off the Cyprus coast is a diplomatic issue that is out of the Italian oil company's hands*'. He added that Italy, Europe, France, Cyprus and Turkey were discussing the issue, since the exploration well was in Cyprus's offshore maritime zone, known as the Exclusive Economic Zone. "*It's our third well in the area ... We've had no problem with the other two,*" Descalzi concluded. Cyprus protested against the Turkish aggression using the usual means, yet the single declaration of a tiny island, not even recognised by Turkey, would have a different impact from a collective EU response in case of a violation of the unified EEZ in the southern Mediterranean rim.