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Israel is Turkey's Neighbor Across the Sea: Delimitation of the Maritime Jurisdiction Areas between Turkey and Israel

Ret. Rear Admiral Assoc. Prof. Cihat Yayci and Zeynep Ceyhan

The EastMed Pipeline Project

With the discovery of natural gas resources off the shores of the island of Cyprus, Israel and Egypt, the strategic importance of the eastern Mediterranean grew significantly. Then, on December 17, 2010, Israel signed a maritime delimitation agreement with the Greek Cypriot Administration of Southern Cyprus (GCA). Subsequently, on July 12, 2011, Israel declared the coordinates that represented their Exclusive Economic Zone (EEZ) to the UN without signing any further agreements with other regional countries. The EastMed Pipeline project was proposed in 2012, based on the maritime agreements made between Greece, Israel and the GCA. These developments were received by the Israeli public with much excitement. Yet, the feasibility of the pipeline faded over time. International scholars have claimed that the EastMed Pipeline may be an EU fantasy similar to the failed Nabucco Pipeline Project, which was also initially deemed promising and was estimated to cost even less.¹

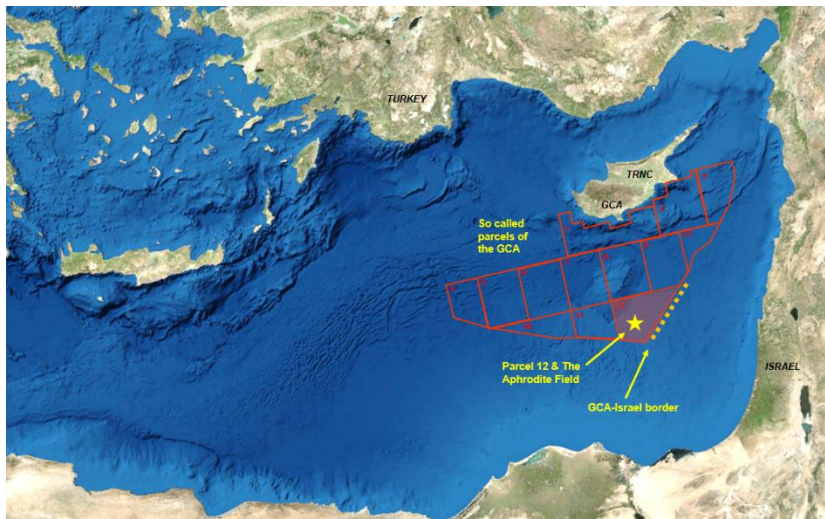
The feasibility and competitiveness of the EastMed project has been frequently questioned. The project plans to stretch through overland and underwater pipelines and cross the GCA and Greece to connect with terminals in Italy. Yet even the Italian Foreign Minister, Luigi Di Maio, stated that “when its cost and the construction process are taken into consideration it is obvious that the EastMed pipeline project proposed by Greece will not be an option in the medium- and long-term compared to other projects...”²

This statement serves to confirm that by excluding Turkey from the East Med project, the length and cost of constructing the pipeline increase dramatically. Turkey, with its already existing gas infrastructure, such as the Turkstream and the Trans-Anatolian gas pipeline (TANAP), provides a far cheaper and shorter route. In addition, independent of route-related issues, another potential problem for the project emerges: Israel's gas demand is foreseen to quadruple by 2040. This may

limit the export potential and undermine the project's competitiveness with other traditional suppliers, for instance Russia.³

The Problem with the Aphrodite Field

Discussions following the delimitation agreement's finalization have not been without conflict. The delimitation agreement made between Israel and the GCA gave rise to a critical dispute regarding rights over the Aphrodite gas field. According to the recent agreement, the Aphrodite field is near Israel's maritime border, located on the maritime area allocated to the GCA. For a period, this field was assumed to be adjacent to the Yishai field on the Israeli side. However, upon further assessment, both were found to be connected. The Aphrodite field is estimated to be worth over 9 billion dollars with an estimated 100 billion cubic meters (BCM) of gas. On the other hand, the Yishai field is estimated to have 7-10 BCM.⁴ The GCA and Israel disagree over how to proceed regarding the Aphrodite gas. Reports in 2018 mentioned talks about going to the UN Arbitration court, however, no concrete plans have turned into official binding measures following the contact between parties. In the same year, Israel's Minister of National Infrastructure, Energy, and Water Resources, Yuval Steinitz issued a statement. He remarked that Israel does not intend on waiving its share of either the gas or the revenue from the Aphrodite reservoir and it also will not be wavering in the name of the companies that hold it.⁵ However, the matter of arbitration was promptly refuted by the GCA.⁶



Despite the statement of the Israeli minister, the GCA chose to respond by signing a 25-year concession with Noble Energy, Shell and Delek Drilling regarding the exploitation of the Aphrodite gas field in 2019.⁷ Shortly after that, Udi Adiri, the director general of Israel's Energy Ministry, wrote a letter to the aforementioned companies, stating that the development of the Aphrodite field must not proceed until Israel and the GCA finalize an agreement. Yet the GCA Energy Minister, Yiorgos Lakkotrypis, did not hesitate to respond that "the development of Aphrodite and the procedure for a special agreement are not linked as far as the Cypriot side is concerned."⁸

The Unspoken Problem of Israel

For Israel, a seldom acknowledged problem, rooted deeper than either the feasibility of the EastMed, or the arrangement over the Aphrodite field, is the great loss of maritime areas to which Israel has substantial rights according to international law. This loss occurred when Israel

was deliberately misled by the GCA during delimitation agreements. Usually the delimitation process starts by drawing a provisional median line determined by equidistance, and then this provisional line gets adjusted according to the principles found in international law. However, during the process of delimitation, the GCA employed an erroneous theoretical framework which disregarded several of the principles found in international law and only used equidistance as a method to determine the median line. As a result, the GCA shifted the delimitation line, thereby granting Israel a lesser, and inequitable, share. In fact, Nicos A. Rolandis, a GCA minister, confessed that “using the median line was a great success.”⁹

The framework that was used disregarded the factors that typically determine the principal of proportionality, non-encroachment and land domination over sea. These factors include geography, continental mainlands, natural prolongation of mainlands, as well as coastal length and shape. Nicos Rolandis even stated his feeling of accomplishment in getting four times more area than the amount that their smaller coastline granted.¹⁰ Israel has rights stemming from maritime law, which is governed by principles, such as proportionality and land domination over the sea, among others, to claim the entire maritime area that the Aphrodite field is located on. Yet currently, even finding a measure to distribute the revenue from the Aphrodite field is something which has not been approached constructively by the GCA.

More specifically, by signing a delimitation agreement with the GCA, which delineated maritime areas using only equidistance as a measure without the guidance of other principles, such as proportionality, land domination over sea, non-encroachment and equitability, Israel has lost 4,600 km² of maritime area. If the agreement of the delimitation of maritime jurisdiction areas between Israel and GCA were to be done in conformity with these principles, then within the 4,600 km² of area that Israel would obtain, Israel would have obtained the entire so-called parcel number 12, known as the Aphrodite field, and portions of the parcels 7, 8 and 11.

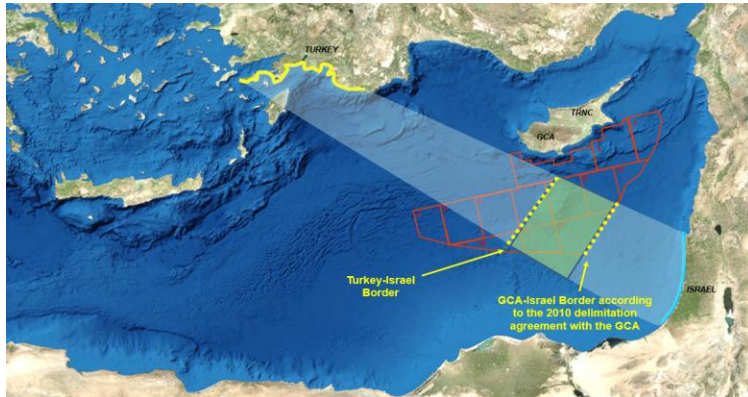


Map depicting Israel’s loss of maritime areas due to the GCA delineation agreement devoid of the principles such as proportionality

Furthermore, if we were to follow the logic of delimitation guided by the principles of proportionality, equitability, non-encroachment and other applications found in international law, Turkey and Israel may reasonably share a maritime border due to the fact they have coasts facing one another. Such a potential maritime delimitation agreement between Turkey and Israel would be beneficial to both sides. While this may sound far-fetched at first, if one

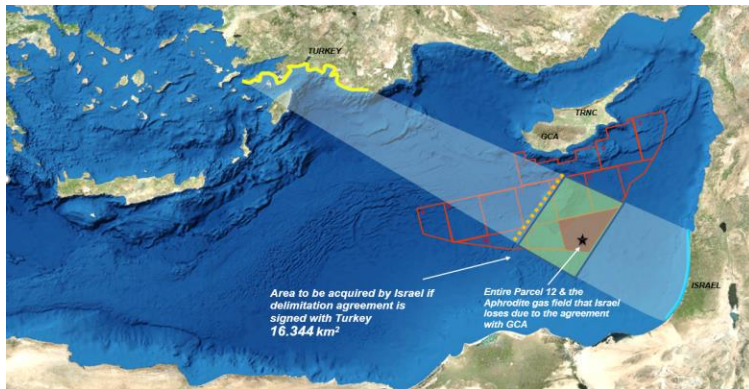
were to observe the principles that govern the delimitation process, one would see that the current erroneous agreement with the GCA costs Israel an inconceivable amount of maritime area approximately about 4,600 km². However, the amount of maritime area Israel loses

increases to be up to 16,000 km² with the addition of what Israel can gain, if Israel pursues a delimitation agreement with Turkey instead!¹¹



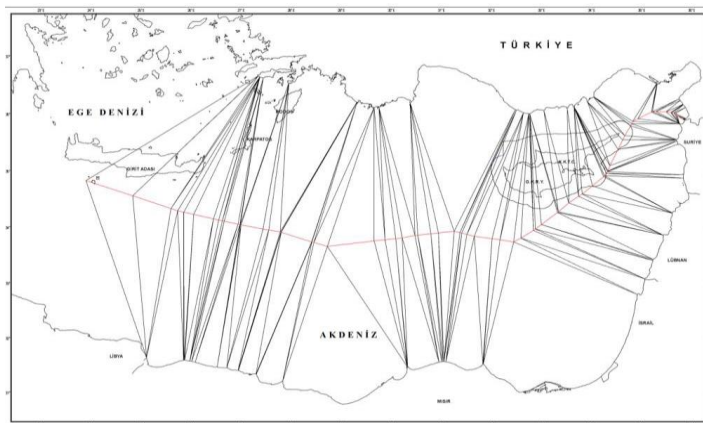
Principles of Delimitation

In order to discern the difference between a proper delimitation and an improper one, it is crucial to grasp the principles that are derived from international law and used in the delimitation of maritime jurisdiction areas. Not to mention that a gain-loss of 16,000 km² requires sound justification.



The process of delimitation is governed by a blend of principles derived from international conventions, court jurisprudences and a history of applications. International courts begin the delimitation process by implementing a provisional median line between two mainlands, taking the geographical realities of the corresponding coastlines into

consideration. If the coastal lengths and geographical attributes of the two mainlands are similar, then the method of the equidistance line is pursued¹². Although, far more often than not, mainlands differ on such criteria. If these differences are substantial, then in order to apply delimitation in a manner which promotes equitability, other principles such as land domination over sea, proportionality and non-encroachment, must be taken into account.



Calculations to draw a provisional median line

By this logic then, it is imperative to know the principles of land domination over sea, proportionality, non-encroachment, and the usage of diagonal lines in determining the oppositional coasts.

Regarding the principle of **land domination over sea**, the word ‘land’ refers to the geography of the mainland. Here, the most important aspect of the ‘mainland’ is the length of its coast related to the process of delimitation. The application of this principle can be seen in various verdicts of the ICJ. The principle of land domination is

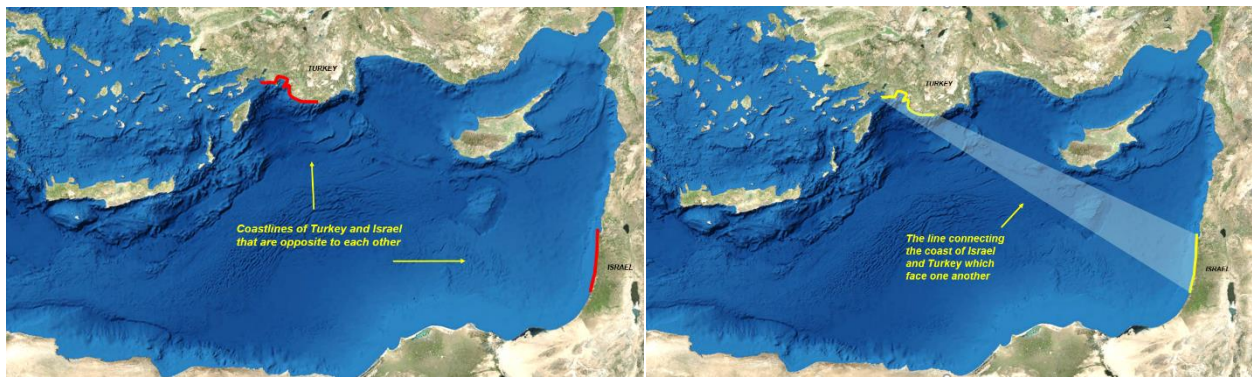
mentioned in the following four cases. First, in the North Sea Case of 1969 it was stated that it was not possible to reshape the geographical zone. Second, in the UK-France Channel Islands Case of 1977 it was stated that the appropriate methods of delimitation, be it equidistance or others, will be determined by the geographical conditions. Third, in the Libya-Malta Case of 1984 it was stated that the coasts of the parties will be used as baseline. Lastly, in the Tunisia-Libya Case of 1984 it was stated that the continent rules over the sea. Similar examples include the Denmark-Norway case of 1993, the Qatar-Bahrain case of 2001, the Sweden-Norway case of 1909, and the Canada-France case of 1992. Essentially, this principle indicates that, compared to other geographical realities (e.g. islands), continental mainlands take priority.

The principle of proportionality dictates that the ratio between the coastal lengths of two countries and the ratio between the maritime areas to be designated to said countries must be close in number and without disproportion. In doing so, the principle of proportionality serves as a control mechanism to assure that the delimitation is made in accordance with equitability. Hence, countries with longer coastlines are granted larger maritime areas. In line with this principle, if there is a factor that prevents the ratio between the coastal lengths to be reflected on the delimitation, such as say, population, etc., then such factors will be taken into consideration together with the principle of proportionality. Proportionality is observed as one of the principles used in the delimitation between Russia-Norway;¹³ the Indonesia-Malaysia case of 1969 where the median line was adjusted to favor Malaysia due to the length of its coast;¹⁴ the case of UK-France; the France-Spain case of 1974 and, the Netherlands (Antilles)-Venezuela case of 1978.¹⁵

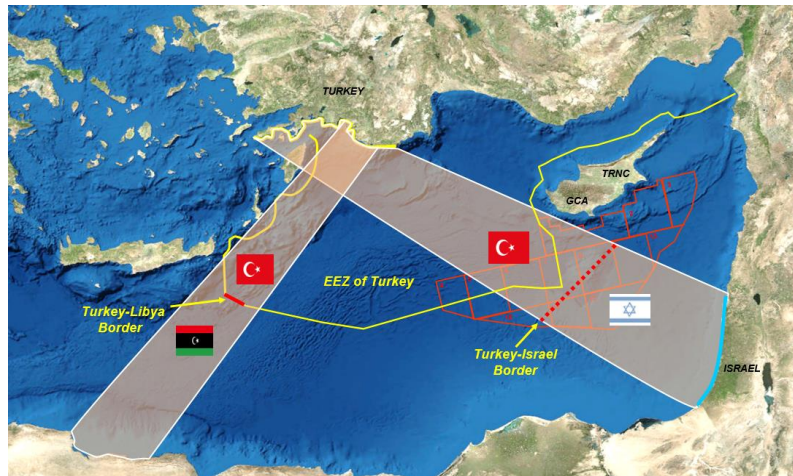
The principle of non-encroachment is seen as one of the most fundamental principles of equitability in that it encompasses coastal projections and the natural prolongation of the mainlands.¹⁶ According to this principle, the delimitation line should allocate the maritime area situated near a mainland's coastline to the mainland country in question. In the Libya-Malta case this principle demonstrated that "coastal countries enjoy sovereign rights over the continental shelf off their coasts to the full extent."¹⁷ In other words, the delimitation line cannot cut off the mainland country from the maritime area in front of its coastline. Thus, an island, such as Cyprus, situated in between two mainlands cannot cut off those mainlands from each other. This principle together with the principle of land domination over sea convey that a mainland and an island situated opposite of said mainland may not have equal effect in determining the delimitation of the maritime jurisdiction areas. For instance, the geographical reality that is the island of Cyprus cannot generate a maritime area that will cut-off the access of the continental mainland of Turkey from that of Israel. Another example may be that the islands that are on the wrong side of the median line, such as the Greek island of Rhodes, cannot not cut off the mainlands of Turkey and Libya, or say, Turkey and Israel from one another. Further examples include the UK-France case of 1977, Gulf of Maine case of 1984 (where equidistance as a method was rejected), Libya-Malta case of 1984, the Canada-France case of 1992, the Romania-Ukraine case of 2009, Nicaragua-Colombia case of 2012, and the Nicaragua-Costa Rica case of 2018. This is not to say, however, that islands cannot have an EEZ, but that they can often generate a maritime jurisdiction area only as far as their territorial waters extend. Another conclusion supported by the applications of this principle point out that when compared with mainlands, islands have less of an effect, and that they cannot claim an area which cuts off the area derived from the natural prolongation of the mainlands.

The usage of **diagonal lines** during the delimitation of maritime areas is a common procedure across the world. Diagonal lines are used due to the slope which arises from the shape of the earth as a globe. To undermine the degree constituted by the slope of the earth would be to undermine geographical reality. As such, many delimitation agreements can be seen to apply diagonal lines instead of straight lines during delimitation, including those between the USSR and Sweden in 1998, Oman and Pakistan in 2000, and France and Italy in 2015.

Delimitation of the Maritime Jurisdiction Areas between Turkey and Israel in Conformity with International Law: A pragmatic win-win



Turkey and Israel are two continental mainland coastal states of the eastern Mediterranean. Two countries can be seen to have coastlines which are positioned opposite to each other. In the light of their coasts that face one another, it becomes clear when diagonal lines are applied that, much like how Turkey and Libya share a maritime border, Turkey and Israel also share a maritime border.



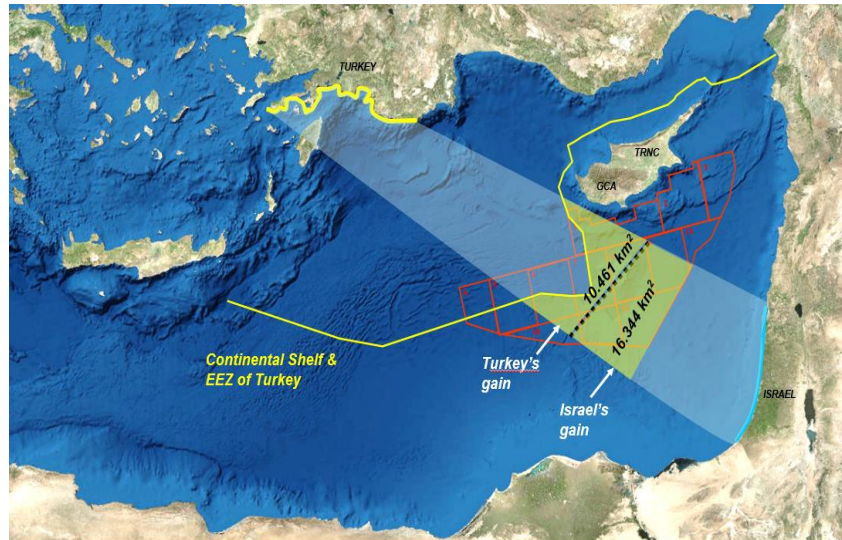
According to this border shared by Turkey and Israel, in agreement with the principles of proportionality, land domination over sea, non-encroachment and equitability, and by using diagonal lines to delimit the maritime jurisdiction areas, it is lawful and possible for Turkey and Israel to make a delimitation agreement with each other. If Israel signs a delimitation agreement with Turkey, instead of the GCA, then it will obtain up to 16,000 km² of maritime jurisdiction area. According to the Turkish-Israeli maritime border, Israel not only gains approximately 16,000 km² of maritime area, but this includes the entirety of parcel 12 known as the Aphrodite field, large amounts of the parcels numbered 8, 9 and 11, along with a portion of the parcels

numbered 7 and 10.¹⁸ At the same time, Turkey gains around 10,000 km² of maritime area along with portions of the parcels numbered 1,5,6,7,8 and 10.

While such a delimitation agreement will be greatly beneficial for both Turkey and Israel, it is imperative to note that the delimitation line to be drawn in this regard would not be touching the island of Cyprus. Furthermore, the delimitation agreement between Israel and Turkey would not affect the current maritime jurisdiction areas of Egypt.

Conclusion

The agreement GCA made with Israel demonstrated disregard for the principles of international maritime law, which has allowed the GCA to obtain a considerably larger amount of maritime area and to make it worse, an area which lawfully belongs to Israel. By signing such a delimitation agreement with the GCA, devoid of the guidance of the principles of international law, Israel has lost 4,600 km².



The maritime area within which the Aphrodite field is located also, is an area which Israel should legally claim. If we apply the above-mentioned principles in conformity with international law, and draw diagonal lines in accordance with geographic realities, the results also indicate that Turkey and Israel share a maritime border much like Turkey and Libya do. In this regard, were Israel to pursue a delimitation agreement with Turkey, based on the maritime border shared between them, Israel could gain up to 16,000 km² of maritime area.

In concordance with the appropriate maritime jurisdiction areas Israel has a right to claim, Israel must at the very least adjust the delimitation agreement it has signed with the GCA to reclaim its rights over the areas specified above. Still, for Israel, the most pragmatic and beneficial option would be to sign a delimitation agreement with Turkey, in the light of their coasts which face one another. While a potential delimitation agreement between Turkey and Israel would be mutually beneficial, it is still important to note that no agreement is necessary by law for either country to declare their respective EEZs accordingly. By determining the coasts positioned opposite to each other, Turkey can declare its own EEZ based upon the specifications mentioned above. Thus, in the absence of an agreement with Israel, Turkey will nevertheless claim the maritime area within its rights in accordance with international law. However, even if Turkey were to declare its EEZ without an agreement with Israel, such an EEZ would not affect the current maritime jurisdiction areas of Israel, since the current Israeli maritime border would lay south of the delimitation line

in question. Nevertheless, the desired outcome would still be to have a mutual agreement between these two major countries of the eastern Mediterranean.

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Notes

¹ Simone Tagliapietra, "[Is the EastMed Gas Pipeline Just Another EU Pipe Dream?](#)" *The Global Business Outlook*, May 11, 2017.

² "[Italy's Foreign Minister Expresses Doubts over Feasibility of EastMed Pipeline](#)," *Times of Israel*, January 18, 2020.

³ Simone Tagliapietra, "[Is the EastMed Gas Pipeline Just Another EU Pipe Dream?](#)" *Global Business Outlook*, May 11, 2017.

⁴ Andreas Nicolaidis, "[Cyprus and Israel Dispute over Aphrodite Gas Going to International Arbitration](#)," *Phile News*, May 3, 2018.

⁵ Andreas Nicolaidis, "[Cyprus and Israel Dispute over Aphrodite Gas Going to International Arbitration](#)," *Phile News*, May 3, 2018.

⁶ Ari Rabinovitch, Ron Bousso, and Michele Kambas, "[Israel Tells Energy Companies to Hold Fire on Cyprus Gas Project](#)," *Reuters*, December 9, 2019.

⁷ Ari Rabinovitch, Ron Bousso, and Michele Kambas, "[Israel Tells Energy Companies to Hold Fire on Cyprus Gas Project](#)," *Reuters*, December 9, 2019.

⁸ Globes correspondent, "[Cyprus Dismisses Israel's Opposition to Aphrodite Development](#)," *Globes*, December 10, 2019.

⁹ Cihat Yaycı, in *Doğu Akdeniz'in paylaşım mücadelesi Ve Türkiye* (Istanbul: Kırmızı Kedi Yayınevi, 2020) p. 167

¹⁰ *Ibid*, p. 167.

¹¹ *Ibid*, p. 96.

¹² *Ibid*, p. 58.

¹³ Tore Henriksen and Geir Ulfstein, "Maritime Delimitation in the Arctic: The Barents Sea Treaty," *Ocean Development & International Law*, 42, no. 1-2 (2011): pp. 1-21, <https://doi.org/10.1080/00908320.2011.542389>.

¹⁴ Faraj Abdullah Ahnish, *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea*, (Oxford: Clarendon Press, 1993) p. 116.

¹⁵ Cihat Yaycı, in *Doğu Akdeniz'in paylaşım mücadelesi Ve Türkiye* (Istanbul: Kırmızı Kedi Yayınevi, 2020) p. 60.

¹⁶ Roger Gillot, "The Principle of Non-Encroachment: Implications for the Beaufort Sea," *Canadian Yearbook of International Law*, Vol. 32, (1995) pp. 259-278, 270.

¹⁷ Carole St-Louis, “The Notion of Equity in the Determination of Maritime Boundaries and Its Application to the Canada-United States Boundary in the Beaufort Sea” (dissertation, n.d.) p. 85.

¹⁸ Cihat Yayı, in *Dođu Akdeniz'in paylaşım mücadelesi Ve Türkiye* (Istanbul: Kırmızı Kedi Yayınevi, 2020) p. 96.