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## ROUNDTABLE PRESENTATION

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23-06-2009

### Current Issues of the Law of the Sea and Their Relevance to Cyprus

Let me start by saying that I am very pleased to be speaking to a knowledgeable and concerned audience on a topic with which I have been dealing, in different capacities, for some four decades and which is currently of considerable significance in it many facets.

Time does not allow to go into the historical development of the rules of the Law of the Sea, going back to Hugo Grotius and his *De Mare Liberum* (1648), or, earlier still, the Rhodian Code of the 3<sup>rd</sup> century B.C. Nor is it possible to deal with the earlier attempts at codification by the United Nations, which were superseded by the much more ambitious undertaking of the Third United Nations Conference of the Law of the Sea (1973-1982). The resulting Convention, this veritable Constitution of the Oceans consisting of 320 Articles and nine Annexes, was signed in Montego Bay, Jamaica on 10 December 1982 and regulated a multitude of issues. Having been ratified by some 160 states (including the EU), its provisions are considered to have become part of customary international law.

These included old traditional concepts, such as the territorial sea and freedom of navigation and new concepts, such as the exclusive economic zone (EEZ), the regime of the deep seabed and archipelagic waters. Small delegations (such as ours) while not totally neglecting issues marginal to the country's interest, such as environmental protection and scientific research (indeed, I had to pay some attention to these as Vice Chairman of the Third Committee and member of the General Committee), archipelagic waters, passage through straits, etc, they of necessity had to concentrate on the issues which were of direct significance to them.

In the case of Cyprus, in addition to strongly supporting the adoption of a 12 mile territorial sea (Art. 3 of the Convention - Cyprus had already in 1964 proclaimed a 12 mile territorial sea zone) and that enclosed and semi enclosed seas, such as the Mediterranean, are regulated by the same basic rules as those applicable to open seas and oceans (e.g. the Pacific or the Atlantic) subject to the acceptable anodyne duty to cooperate with the riparian states (Articles 122 and 123) and for the protection of archaeological objects found in the seabed (Articles 149 and 303), we concentrated on certain key issues of primary importance to Cyprus.

These were, firstly, the regime of islands and their undiminished entitlement to the zones of maritime jurisdiction, i.e. territorial sea, EEZ, continental shelf and contiguous zone (Art. 121); secondly, the question of the delimitation of these zones of maritime jurisdiction between states, the coasts of which are opposite or adjacent to each other (Articles 15, 74, 83); and, thirdly, the question of settlement of disputes (Part XV, Articles 279-299 and Annexes VI, VII, VIII).

I do not think I need to elaborate on why these issues are of primary concern to Cyprus. All you need to do is to have a look at a map of the Eastern Mediterranean to realize why. Cyprus is of course, an island state as, for instance, is Malta in the Mediterranean and Jamaica in the Caribbean (both are allocated in semi-enclosed seas).

Despite efforts made by some states (notably Turkey) in the Preparatory Committee (1970-73) and in the early stages of the Conference, to differentiate between island states or other islands, this effort faced coordinated opposition and did not succeed. Consequently, all islands (including the Greek islands in the Aegean), other than uninhabited rocks, are governed by the same basic rule, as was our objective. Cyprus is an island surrounded in three directions (north, east, south ) by continental states and, to the west, by the Greek islands of Crete, Rhodes and Carpathos (and indeed, Castelorizo), in no direction reaching 400 miles (200 from each side). Therefore, it is self evident that the application of the median or equidistant line as the basic rule for delimitation is of primary importance, especially when it comes to the EEZ (and indeed, to the continental shelf, which are co-extensive in the ordinary situations).

Additionally, to establish that an island has no less entitlement to the zones of maritime jurisdiction than continental territories, and also that the median line is the starting point and basic rule for delimitation, it is essential, especially for small and militarily weak states such as Cyprus, that there be in place an effective system of compulsory settlement of disputes ensuring that the rights of all states are equally protected. Our position on this point was spelled out in a statement we made in the Plenary of the Conference in 1976, and was motivated both by reason of our attachment to the general principle of equal justice under the law and by national self interest as a small and military weak state, which needs the protection of the law, impartially and effectively administered, in order to safeguard its legitimate interests under the Convention. In other words, we were firmly for the rule of law and against the law of the jungle - a point to which I shall revert in light of the current situation regarding the EEZ.

Evidently, time does not allow to develop the arguments used and get into tactics and alliances utilized, or to describe in any detail as to how these basic positions fared in the course of the Conference – the Cyprus delegation was, at different stages, the champion and spokesman of the ‘islands’ and ‘median line’ groups. The UN publications on the ‘legislative history’ of the regime of islands, delimitation and dispute settlement provide ample material to anyone wishing to pursue it. May I also refer you to a 28 page lecture I gave at the Rhodes Academy for Maritime Law and Policy in July 2004 (and its published version in the 2006 Oslo University publication for Professor Carl August Fleischer) for additional material.

For the purposes of today’s presentation, suffice it to say that as far as the status of islands is concerned, our position is fully safeguarded through Art. 121, subject to the qualified exception of rocks; as far as the median line is concerned, it continues to be the general rule as far as the territorial sea and the contiguous zone are concerned, but less clear as far as the EEZ and the continental shelf are concerned under Articles 74 and 83. However, in subsequent years, the

situation was clarified in the right direction through judicial interpretation in such cases before the International Court of Justice and arbitral tribunals as Libya/Malta, Norway/Denmark (the *van Mayen* case); Qatar/Bahrain; Cameroon/Nigeria (the *Bankassi peninsula* case); Yemen/Eritrea; Barbados/Trinidad and Tobago, Guyana/Suriname and, most recently, Romania/Ukraine. As far as compulsory third party settlement is concerned the relevant part, XV, of the Convention, represents a significant advance from previous UN codification conferences, but the disputes relating to sea boundary delimitations were made subject to an optional exception as an unavoidable concession to political realities. In subsequent years, many states have by agreement referred their delimitation disputes to the ICJ or to Annex VII arbitral tribunals by mutual consent (some such cases I have already cited). Realistically speaking, because of Turkey's unwillingness to accept third party settlement, it is unlikely that the situation being faced by Cyprus with Turkey in the EEZ will be submitted to such a settlement (and, of course, Turkey is a non party to the 1982 Convention). I shall revert to this later.

Since the topic of today refers to 'current issues' of the Law of the Sea, it may be of interest to you if I cite two or three issues which currently receive much attention. One such 'hot' issue (if you excuse the pun!) is the Arctic, which is thawing as a result of global warming, and the extension of the continental shelf by the riparian states which are the Russian Federation, Canada, Norway, United States through Alaska and Denmark through Greenland. This is a matter where big stakes are involved since it is estimated that 20-25% of the world resources of oil and gas are situated on the Arctic seabed, and may be exploitable in the near future. The allocation of claims to the continental shelf beyond national jurisdiction (up to 350 miles) is the responsibility of one of the main bodies established by the UNCLOS III, the Committee on the Outer Limits of the Continental Shelf, and this applies globally, not just in the Arctic. For this, and the related issue of the revival of interest for commercially exploitable minerals in the deep seabed, much is currently written. Some of you may have seen, for instance, the 16<sup>th</sup> May 2009 issue of "The Economist" for interesting facts, maps and figures on these current issues.

Another such issue which is currently receiving much attention is that of piracy at sea, especially off the coast of Somalia. Many nations, including those of the EU, deployed warships in the area under enabling Security Council resolutions, and in cooperation with the International Maritime Organization (IMO), in order to combat this phenomenon. While pirates can be prosecuted under the long existing principle that pirates are *hostes humani generis* (enemies of the human race), the subject is not free of legal complications.

Returning now closer to home after this brief diversion, let me tell you that in my 2004 Rhodes lecture (to which I referred earlier), there was a postscript of four pages (pp.25-28) focusing on some developments relative to Cyprus. Those were grouped under four headings:

- a) The Cyprus-Egypt EEZ delimitation agreement, signed in February 2003, and ratified in March 2004. To this should be added the subsequent Cyprus-Lebanon EEZ delimitation agreement of 2007, in the same terms based on the median line and including a paragraph on the provision of arbitration regarding any disputes arising from it. I understand that a supplementary agreement was reached recently (2009) with Egypt for joint exploitation of resources which may be found straddling the line of delimitation.
- b) Recent Cyprus legislation proclaiming EEZ and Contiguous Zone (April 2004).

- c) The position regarding the Sovereign British Areas (SBA), as related to the law of the sea.
- d) Relevant provisions in the 2004 UN plan (Annan V) on a Cyprus settlement.

Since we have some way to go this afternoon, I will not tire you by going into these headings, but will be glad to make this material available, and perhaps some of you, more knowledgeable than I am on recent and current developments, can supplement it.

Let me now turn to the current issue of oil/natural gas exploitation by the Republic of Cyprus in its EEZ and Turkey's behaviour in this regard.

For the past few years, periodically reports appear in the Cyprus press, sometimes under sensational headlines, accompanied by maps and pictures of oil platforms, on the oil and natural gas wealth of the region. It is said that the Eastern Mediterranean basin contains some 400 billion dollars' worth of oil and natural gas, that much of it lies in the areas south of Cyprus (between Cyprus and Egypt or Cyprus and Israel, Ghaza and Lebanon) within the Cyprus EEZ. Some such press reports have mentioned that Cyprus will become the new Eldorado, that we shall assume the status of sheiks and emirs with more money than we would know what to do with, and anticipate that Cyprus will join OPEC! No doubt, such talk is exaggerated. There are indeed indications that some oil deposits, and most probably considerable quantities of natural gas, do lie in the seabed in areas to the south, east and west of Cyprus. Foreign companies, including Noble Energy and Shell, have discovered substantial natural gas deposits off the coast of Egypt and off Israel/Ghaza, and chances are that there are deposits in the adjacent Cyprus EEZ, as preliminary research has confirmed. But whether these deposits are in such a quantity and quality as to be commercially exploitable, and whether the depth at which they are found makes exploitation too difficult and expensive, remains to be seen. I say this in order to put the matter in perspective, but I do not claim any scientific expertise on such matters. In fact, this is one of the reasons I suggested that an expert, such as Mr. Solon Kassinis, might be willing to be here and enlighten us.

My own impression is that the Cyprus Government (particularly successive Ministers of Commerce, beginning with Mr. Nicos Rolandis with the valuable help of the Head of the Ministry's Energy section) have taken appropriate steps through the conclusion of delimitation agreements, notably with Egypt and Lebanon so far, and through dividing the EEZ area over which Cyprus has jurisdiction and sovereign rights, into blocks for allocation to oil exploration companies under appropriate procedures, for us to have cautiously optimistic expectations. Legally, but at present theoretically, the Republic of Cyprus has sovereign rights over the whole of Cyprus' EEZ but, under present circumstances where Turkey occupies 37% of the land and considerably more of the coasts of the island, it is prudent not to push this point, at least for now.

These prospects, however, are threatened by the fact that Turkey, and the Turkish Cypriots, are raising political and legal obstacles, which in turn may discourage major oil companies from undertaking commitments in areas the legal status of which is disputed. The Turkish Cypriot argument that "the Greek Cypriots are not to proceed on their own and the Turkish Cypriots are co-owners and they have to participate in the prospective profits", legally speaking, has no leg to stand on. The ownership of such deposits as may be found in the Republic's EEZ is of the Republic of Cyprus, which has a Government recognized by all States in the world as such, except for Turkey (under the Ankara Protocol, Turkey has a conventional obligation to recognize the

Republic of Cyprus, and to open its ports, airports and air space to it, an obligation which Turkey has so far failed to meet). So, it is not a matter of a national group within Cyprus (be it the Greek and Turkish Cypriots, or indeed, the Armenians, the Maronites and the Latins), but the state of Cyprus and its internationally recognized Government, which is entitled to the living and non living resources of the Cyprus EEZ (incidentally, under the Treaty of Establishment of 1960, Appendix O (3)(10), it was specified that should minerals be found in the soil of the SBA's, the benefit should accrue to the Republic of Cyprus). If and when, hopefully when, there is a solution to the Cyprus problem, the people of the reunited Cyprus will, through such governmental structure as will have been agreed upon, own such wealth of the Cyprus EEZ. I am aware that there has been a suggestion that a portion of the oil/gas wealth to be found (if it is found, and if it is commercially exploitable) be deposited in an account to the benefit of the Turkish Cypriots upon a political solution being achieved. However, this - if it is practicable - would be a political pragmatic accommodation, not a legal obligation, and here we are discussing the legal position.

A more substantial obstacle lies in Turkey's claim to a segment of the EEZ under the Cyprus/Egypt Delimitation Agreement, west of 32,16,18 parallel (if I understand it correctly). Turkey also claims not to recognize the Cyprus/Egypt Agreement.

Apparently, this claim is based on the theory, put forward by Turkey during the Law of the Sea Conference, originally to the continental shelf and EEZ of the Aegean purporting to divide it between the continental shores of Greece and of Turkey. This novel, unfounded and arbitrary theory, based on the false assumption that islands have no continental shelf, received no support. Since the Conference, as we have already seen, by adopting Article 121 asserted that all islands in the Aegean have their own continental shelf, no more was made of it. Turkey's subsequent attempt to argue that, in enclosed and semi enclosed seas, special rules should apply other than those already adopted (including Article 121) was also rejected after considerable argument and the result was Articles 122, 123 on enclosed and semi-enclosed seas, which were not satisfactory to Turkey.

As a result of losing on these, and other issues (such as the prohibition of reservations to particular Articles, as Turkey wanted), Turkey did not sign or ratify the Law of the Sea Convention. To this day Turkey is the only country in the world to vote against the annual Law of the Sea resolution in the UN General Assembly. Turkey did so, most recently, in December 2008 as it did in all previous years, a matter which, in my opinion, should have been appropriately raised and highlighted by Cyprus in the General Assembly, the more so since Turkey had proceeded with threats against Cyprus authorized vessels in the Cyprus EEZ two weeks earlier (13 November 2008), a fact which was duly protested to the Security Council, (the same Security Council to which Turkey had just been elected as a non permanent member by 151 votes without Cyprus or Greece lifting a finger to avert such election of a habitual violator of Security Council resolutions on Cyprus since 1974 – but this is another subject).

So Turkey, a non-party to the 1982 Convention, asserts that its EEZ extends half way between the south coast of Anatolia to Egypt's coast in the Mediterranean, encroaching on Cyprus's EEZ, as agreed with Egypt in a valid agreement on the basis of the 1982 Convention to which Cyprus and Egypt are state parties. Turkey has notified its position to the UN Secretariat (which, as is the practice, simply noted it). Cyprus protested repeatedly to the Security Council, as well as to the UN Secretariat, and to the EU. The EU recently included a reference in its report on Turkey's

Association Agreement that Turkey should respect the sovereign rights of the EU member states. The UN Security Council (of which, ironically, Turkey is this month's President!) took no action.

Turkey continues to harass and threaten Cyprus authorized vessels in the EEZ and Cyprus reiterates its intention to continue exercising its sovereign rights within its EEZ.

Under these circumstances, what are the appropriate steps to be taken by the Republic of Cyprus to safeguard its legitimate sovereign rights? One option would be to meet force with force but Cyprus is one hundred times smaller than Turkey, and has no effective way of meeting the Turkish naval threat, and no realistic prospect that anyone else will do it for her. Not Greece, which has its own situation vis-a-vis Turkey; not the United Kingdom which has shown the value of its 'guarantee' in 1974; not the EU towards one of its members, although she sent warships off Somalia against the pirates; not the US and its Sixth fleet, unless perhaps an American vessel was involved.

Another option would be for Cyprus to play more decisively and effectively its cards in the EU on Turkey's accession process (in this respect the case of Slovenia and Croatia is instructive).

The third option is provided by the indisputable fact that Cyprus has international law on its side. Islands have the same entitlement to the EEZ as continental territories, under the 1982 Convention and customary international law. Cyprus has a valid agreement with Egypt dividing the EEZ between the two countries on the basis of the median line. Cyprus has taken a firm position in the Law of the Sea Conference, and elsewhere, in favour of international disputes being solved peacefully, on the basis of the applicable international law rules through compulsory third party dispute settlement.

Taking all this into account, why not proceed to declare that, while it has no doubt as to its legal rights in the EEZ, Cyprus is willing to test this before the International Court of Justice (as happened in so many recent cases of the ICJ deciding delimitation disputes e.g. Qatar/Bahrain, Norway/Denmark, Cameroon/Nigeria, Romania/Ukraine)? It is of interest to recall that very recently, a senior EU official, Michael Leigh, raised the possibility of third party settlement if the parties are unable to solve the issue by other means.

If we had resorted to the ICJ for an Advisory Opinion on the alleged and unfounded right of forcible intervention by Turkey under the Treaty of Guarantee in March 1964, as suggested by U Thant (see relevant references on this point in the books by Mr. Clerides and Mr. Soulioti) our legal position would have been incomparably stronger on this point. If we had not resorted to the European Court of Human Rights, we would not have had the significant decision of *Loizidou v. Turkey*. If we had not resorted to the US Federal Court in Indianapolis, in 1988, we would not have had the Kanakaria mosaics back in Nicosia, to mention a few examples where resort to justice has proven most valuable to the Cyprus cause, the Orams case being the most recent one.

A few days ago, a Cyprus newspaper quoted a "Cypriot diplomatic source" that to go to third party settlement would mean that we would cede away our legal rights. It must have been a misquotation since to go to court to assert your rights is the proper way to safeguard your rights, not to cede them. This is how the rule of law works in the national as well as the international level.

The difficulty with what I just urged is that Turkey would not accept the jurisdiction. But, if we took this initiative, we would at least have the significant advantage of being perceived as relying on international law to assert our strong legitimate rights, and this in itself would be a major gain. If the case were to be adjudicated by an international tribunal, there can be little doubt that the result would be favourable, on the basis of the existing conventional and customary international law.

It is sometimes said that the Cyprus problem is a political one and will not be solved through resort to courts. I do not disagree. The Cyprus problem, if it is to be solved, will be solved politically. But it will strengthen our position enormously, as well as the viability of such agreement, if the political solution was based solidly on the relevant international law rules, and not be incompatible with such rules. Small states have to rely on the rule of law, and this should be obvious even to those who are not knowledgeable on international law.

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