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Zenonas Tziarras is a PhD Candidate in Politics and International Studies at the University of Warwick, UK, and a Junior Research Scholar at the think tank Strategy International in the program “Peripheral and Global Governance & Relations with Turkey”. He holds a BA in Mediterranean Studies and International Relations from the University of the Aegean, Greece, and an MA in International Relations and Strategic Studies from the University of Birmingham, UK. He has attended specialization courses in International Security at the University of Delhi, India and training courses in Leadership and Conflict Resolution at Koç University, Istanbul, Turkey. He has also been research assistant in programs on conflict analysis and resolution, while he has completed an internship at the Peace Research Institute of Oslo Cyprus Centre. He writes regularly on Turkish, Middle East, and Eastern Mediterranean political affairs.

Ο Ζήνωνας Τζιάρρας είναι Υποψήφιος Διδάκτωρ Πολιτικής και Διεθνών Σπουδών στο Πανεπιστήμιο του Warwick, στο Ηνωμένο Βασίλειο, και Junior Research Scholar στο Ινστιτούτο Strategy International, στο πρόγραμμα “Peripheral and Global Governance & Relations with Turkey”. Είναι κάτοχος Πτυχίου στις Μεσογειακές Σπουδές με κατεύθυνση τις Διεθνείς Σχέσεις από το Πανεπιστήμιο Αιγαίου, και Μεταπτυχιακού τίτλου στις Διεθνείς Σχέσεις και Στρατηγικές Σπουδές από το Πανεπιστήμιο του Birmingham, του Ηνωμένου Βασιλείου. Έχει παρακολουθήσει εντατικό κύκλο σεμιναρίων εξειδίκευσης στη Διεθνή Ασφάλεια, στο Πανεπιστήμιο του Δελχί στην Ινδία και εκπαιδευτικά σεμινάρια Ηγεσίας & Επίλυσης Συγκρούσεων στο Πανεπιστήμιο Κος της Κωνσταντινούπολης. Μεταξύ άλλων έχει υπάρξει βοηθός έρευνας σε προγράμματα για ανάλυση και επίλυση συγκρούσεων ενώ έχει υλοποιήσει πρακτική άσκηση και έρευνα στο Peace Research Institute of Oslo Cyprus Centre. Γράφει συχνά για πολιτικά ζητήματα που αφορούν την Τουρκία, τη Μέση Ανατολή, και την Ανατολική Μεσόγειο.
Abstract:

Since the U.S. is still the world’s sole superpower, its participation in international conventions is very important for both itself and the better function and implementation of the various International Legal Frameworks. As such, a possible future ratification of the [Law of the Sea] Convention by the U.S. would have broad politico-legal implications for other states and areas in the world, where the Treaty has not been signed or ratified and maritime disputes are in place. One such region is the Eastern Mediterranean. This paper firstly looks at the development of the Law of the Sea, the contested provisions of UNCLOS III in the Eastern Mediterranean disputes, and then focuses specifically on Greece, Turkey, Cyprus, and Israel, with regard not only to traditional maritime territorial disputes but also recent developments in the bilateral relations of these countries and in the region, more generally. The analysis concludes with the obstacles that the American politics pose to the ratification of UNICLOS III by the US.

Περίληψη:

Δεδομένου ότι οι ΗΠΑ είναι ακόμα η μοναδική παγκόσμια υπερδύναμη, η συμμετοχή της σε διεθνείς συμβάσεις είναι πολύ σημαντική τόσο για τις ίδιες όσο και για την καλύτερη λειτουργία και εφαρμογή των διάφορων Διεθνών Νομικών Πλαισίων. Έτσι, μια πιθανή μελλοντική επικύρωση της Σύμβασης [Δικαίου της Θάλασσας] από τις ΗΠΑ θα είχε ευρείες πολιτικο-νομικές επιπτώσεις για άλλα κράτη και περιοχές του κόσμου, όπου η Συνθήκη δεν έχει ακόμα υπογραφεί ή επικυρωθεί και υπάρχουν διαφορές θαλάσσιου χώρου. Μια θετική περιοχή είναι η Ανατολική Μεσόγειος. Το παρόν κείμενο ξεκινά εξετάζοντας την εξέλιξη του Δικαίου της Θάλασσας, τις υπό αμφισβήτηση διατάξεις της Σύμβασης [Δικαίου της Θάλασσας], τις υπό αμφισβήτηση διατάξεις της Ανατολικής Μεσογείου, και στη συνέχεια επικεντρώνεται στην Ελλάδα, την Τουρκία, την Κύπρο, και το Ισραήλ σε σχέση όχι μόνο με παραδοσιακές διαμάχες περί θαλάσσιου χώρου αλλά και σε σχέση με τις εξελίξεις των μεταξύ τους σχέσεων και στην περιοχή γενικότερα. Η ανάλυση καταλήγει στα εμπόδια που θέτει η αμερικανική πολιτική σκηνή στην επικύρωση της Συνθήκης UNICLOS III από τις ΗΠΑ.
The Law of the Sea Convention and the U.S. Interests

“We believe that it is imperative to act now”, the United States Secretary of State, Hilary Clinton, said while addressing the Senate Committee on Foreign Relations in May, 2012. She was referring to the urgent need of the U.S. to ratify the Law of the Sea Convention. Mrs. Clinton made the case that the U.S. would greatly benefit from such an action because of the favorable provisions of the convention on navigation, offshore natural resources, the delimitation of maritime boarders/zones, maritime trade, etc. She did not forget to mention that the U.S. would hold a permanent seat on the deep seabed mining decision group thus being in the unique position of promoting its interests. It is therefore clear, that the ratification of the convention would serve energy, economic, trade, and other national interests for the U.S.

More than anything, Hilary Clinton’s testimony signifies the eagerness of the Obama administration for a shift with regard to the U.S. policy toward the Law of the Sea Convention. And, of course, the timing of Mrs. Clinton’s testimony should come as no surprise given, among other things, the increasing international focus on the melting of the Arctic ice and the opening of new possibilities such as the exploitation of energy resources, navigation, and fishing. The U.S. anxiety is clearly depicted in Hilary Clinton’s words: “We are the only Arctic nation outside the convention. Russia and the other Arctic states are

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advancing their continental shelf claims in the Arctic while we are on the outside looking in.”

Since the U.S. is still the world’s sole superpower, its participation in international conventions is very important for both itself and the better function and implementation of the various International Legal Frameworks. As such, a possible future ratification of the convention by the U.S. would have broad politico-legal implications for other states and areas in the world, where the Treaty has not been signed or ratified and maritime disputes are in place. One such region is the Eastern Mediterranean. There, traditional U.S. allies, Israel and Turkey, have not ratified the Law of the Sea Convention; at the same time disputes over the Aegean territorial waters and maritime zones have been going on for many years between Greece and Turkey, while the Cypriot Exclusive Economic Zone and newfound offshore natural gas reserves constitute a new point of friction between Turkey and Cyprus. How would the U.S. ratification of the Law of the Sea Convention affect the geopolitical and legal complexity of the maritime disputes in the Eastern Mediterranean?

Within the aforementioned framework, this paper firstly looks at the development of the Law of the Sea, the contested provisions of UNCLOS III in the Eastern Mediterranean disputes, and then focuses specifically on Greece, Turkey, Cyprus, and Israel, with regard not only to traditional maritime territorial disputes but also recent developments in the bilateral relations of these countries and in the region, more generally. The analysis concludes with the obstacles that the American politics pose to the ratification of UNICLOS III by the US.

The Law of the Sea & the Eastern Mediterranean Problem

The maritime rights and responsibilities of the states are currently defined by the 1982 Law of the Sea Convention (UNCLOS III), which was the result of the third United Nations conference on the Law of the Sea. UNCLOS III succeeded UNCLOS I (1958) and II (1960);

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its Part IX was later revised while the 1994 Agreement was added - both actions concerned mainly issues of seabed exploitation such as seabed mining.\(^3\)

Four treaties occurred out of the 1958 UNCLOS I: 1) the Convention on the Territorial Sea and Contiguous Zone, 2) the Convention on the Continental Shell, 3) the Convention on the High Seas, and 4) the Convention on Fishing and Conservation of Living Resources of the High Seas. UNCLOS II came together in 1960, to resolve some issues that UNCLOS I was not able to resolve, but it ended without any results. UNCLOS III has been a landmark in the history both of the Law of the Sea and the International Law, more generally. UNCLOS III managed to establish breakthrough regulations on multiple issues regarding, for example, maritime boarders and zones, maritime security and research, as well as natural resources and underwater wealth exploitation. Among other things, UNCLOS III also introduced the Exclusive Economic Zone (EEZ) provision. The latter, although very often confused with the continental shelf provision, which was established in UNCLOS I with a different definition than in UNCLOS III, it differs. According to the Article 76 of the 1982 Law of the Sea Treaty,

“The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”\(^4\)

Among other things the same Article also states that “the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the


territorial sea is measured.” The rights that a coastal state could exercise over its continental shelf, consider exclusive sovereign rights “for the purpose of exploring it and exploiting its natural resources”, such as living and “non-living resources of the seabed and subsoil”.

On the other hand, Exclusive Economic Zone (EEZ) is defined as,

“an area beyond and adjacent to the territorial sea, [...] under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention [UNCLOS III]”. (Article 55)6

Moreover, Article 57 states that “The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.” Through the EEZ provision sovereign rights of the same value as the ones in the continental shelf are granted to the coastal state regarding the exploration and exploitation of natural resources, while they expand to cover rights “such as the production of energy from the water, currents and winds”. Furthermore, the coastal state is also given jurisdiction over other rights such as the “establishment and use of artificial islands, installations and structures; marine scientific research; [and] the protection and preservation of the marine environment.”

The delineation of the continental shelf and the Exclusive Economic Zone is one of the most important bilateral problems between states in the Eastern Mediterranean. Although the problem of maritime boarders is very broad and concerns many countries of the region, this study, as said earlier, focuses on the problems concerning Turkey, Cyprus, Greece, and Israel.

In terms of Turkey’s stance toward the 1982 Law of the Sea Treaty, Ankara was one of the four participants in the nine (9) years long negotiations that voted against the Treaty – along with the United States, Israel, and Venezuela. That was because there were Greek islands opposite its coasts which meant that Turkey would have limited EEZ. It is often said that the main problem between Turkey and Greece is the delimitation of the continental

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5 Ibid., Part VI, Article 77, p.429.
6 Ibid., Part V, Article 55, p.418.
7 Ibid, Part V, Article 56, p.418.
shelf. However, the past few years, a discussion has been initiated among politicians and academics alike, mainly in Greece, about the issue of EEZ.

Given that according to the Article 121 of UNCLOS III all Islands can have EEZ, which can be delimited in the same way as in the case of coastal states, Turkey prefers to focus on the issue of continental shelf because it allows it to make its case based on geological arguments, although the latest Treaty (1982) has negated the geological definition of the continental shelf. Moreover, because of the short distance between the two countries, Greece accepts the “median line” method for the delimitation of its maritime zones while Turkey opposes the Greek approach arguing that the Aegean is an “enclosed sea”, rather than a “semi-enclosed sea”, and therefore the Greek Islands do not have the same rights as the coastal state. The paradox in Turkey’s argument stems from the fact that it has already delimitated its EEZ in the enclosed Black Sea with Romania, Bulgaria, and the former Soviet Union, using the same method (“median line”) that opposes for its delimitations in the semi-enclosed Aegean Sea.

This politico-legal dispute has had direct implications on Greece’s efforts to establish its continental shelf and EEZ, especially with regard to their delimitation with Cyprus, since Turkey maintains a \textit{casus beli} (cause of war) over any possible efforts of Greece to proceed to delimitations or EEZ declaration that do not correspond to its own interests. Thus, given

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8 See Ibid., Part II, Article 15, p.403; and Part IX, Articles 122-123, p.442-443.
that Turkey does not accept that the Greek Island of Kastelorizo - at the southeastern part of the Aegean - can have an EEZ, the EEZs of Greece and Cyprus cannot be merged through a bilateral agreement without Turkey reacting – possibly with the use of diplomatic coercion or military force. Overall, as it occurs, whereas Greece sees the problem in legal terms, Turkey emphasizes its political aspect.

Like Turkey, Israel has not ratified the Law of the Sea Treaty. However it has signed and ratified a bilateral agreement for the delimitation of its EEZ with Cyprus. The latter has caused tensions in its relations with Lebanon regarding disputed maritime areas of oil and natural gas reserves. The reason of course for Israel’s interest in delimitating its EEZ with Cyprus steamed from the recently (2009, 2010, 2011) found natural gas reserves within its maritime borders. Cyprus had the same interests as it wanted to start drilling for natural gas in late 2011. Turkey’s reaction to Cyprus’s efforts was not calm as it started making threats by deploying warships. It argues that the drillings serve the interests only of the Greek-Cypriots, not the Turkish-Cypriots, while it maintains that – given that Turkey does not recognize the Republic of Cyprus (RoC) – the wider area where the drillings are taking place is of strategic importance to itself and it should thus have a say in its exploitation. Further, it has also agreed on the establishment of its continental shelf with the unrecognized “Turkish Republic of Northern Cyprus”, although the agreement has not yet been ratified from the Turkish parliament. With regard to Turkey’s role, there have also been claims suggesting that it was instrumental in influencing Lebanon’s, as well as Albania’s (2009) and Egypt’s (2007) decisions to back down on their EEZ negotiations with Cyprus and Greece, respectively.

The RoC, apart from its agreement with Israel, has also delimitated its EEZ with Egypt, and signed an agreement with Lebanon which has not been ratified yet by Beirut due to its dispute with Israel and the aforementioned alleged Turkish involvement. On the other hand Greece has not delimitated its EEZ or its continental shelf with none of the other coastal states of the Eastern Mediterranean or Southern Europe, apart from Italy with which it signed an agreement for the delimitation of its continental shelf in 1977.

**Geopolitical Context and Regional Implications of a Potential U.S. Ratification**

Under normal circumstances the US ratification of the Law of the Sea Convention would have implications for the Eastern Mediterranean inter-state maritime disputes, which would have to do merely with the better implementation of the legal provisions. Yet, the region in question is characterized by complex geopolitics, socio-political fluidity, and conflicting regional and international interests. Thus, as is often the case with international law, politics play a very important role in affecting the way states choose to implement or support the (international) law. From that perspective, traditional alliances (e.g. US-Turkey and US-Israel), regional disputes (e.g. Turkey-Greece, Turkey-Cyprus, Turkey-Israel), the new-found Cypriot and Israeli energy reserves, the “Arab Spring” in general, and the Syrian crisis in particular can influence the way in which the US would decide to stand by the Law of the Sea Convention after a possible ratification. Moreover, the American action would of course also influence policy decisions of other states that would either like to bandwagon with the US, or exploit the development for their own interest.

Generally speaking, an immediate consequence of an American ratification would be the further legitimization of the Convention as the US is a very important actor on the international political chessboard which could play a significant role in the implementation of the Law of the Sea and the resolution of various maritime disputes all over the world, through mediation. Further, were the US to ratify UNCLOS III, other countries could follow. That would lead to the better functionality of the Convention and perhaps the minimization of frictions over maritime borders internationally.
Turkey – Israel – Greece – Cyprus

As far as the Eastern Mediterranean is concerned and, to begin with, particularly Turkey, the US ratification would probably increase the pressure on Turkey for participation in the Convention, although such a development is deemed unlikely. Turkey’s ratification of UNCLOS III would make things much easier for the resolution of the Aegean dispute with Greece, while it would constitute a good starting point with regard to several bilateral disputes with Cyprus – considering that both Greece and the RoC have signed and ratified the Treaty, respectively. Of course Turkey’s policies so far have showed that the ratification is not in its best interest. Additionally, Turkey, more often than not, utilizes its significant geopolitical value and geostrategic position for politico-legal gains. Its importance, for example, both for the US and some countries of the European Union (EU) leads these actors to support its accession to the EU, often willing to bypass major legal problems. Yet this reality does not concern Turkey alone but rather is generally the case when it comes to the relationship between the international law and geopolitical or economic interests.

In this light, even though Turkey after the American ratification could be led to legal isolation if Greece and Cyprus decided to utilize the US decision, the US and other
international actors might choose political or economic interests over legal procedures and rights. After all, since the breakout of the Arab Uprisings, Turkey has emerged as a very significant player in the region, especially for the western interests. The Syrian crisis and Turkey’s role is a case in point. Given that the West, and particularly the US, do not want to be absent from the restructuring of the Middle East, and given that Turkey is the most suited anchor of their interests, as it is a Muslim majority country with good relations in the region, Greece and Cyprus would probably not accomplish much from the US’s participation in UNCLOS III.

However, the legal arguments of Greece and Cyprus would be significantly strengthened, not only because of the US participation in UNCLOS III but also because of the regional geoeconomics. The Cypriot natural gas reserves, as well as the possibility for great natural gas and oil reserves in the Greek maritime space, could be another incentive for the US to get involved and even try to more intensively and effectively mediate between Turkey and Greece and/or Turkey and the RoC for the resolution of their maritime disputes.
and beyond. A company of American interests is already involved in the extraction of the Cypriot natural gas. Greece could also involve American companies in the exploration and exploitation of its natural resources within its maritime zones, and ask for US security guarantees. Thereby, the politico-legal power that the US would acquire from the ratification of the Convention could be turned into a benefit for many actors: for Greece and Turkey, as they could have the opportunity to work out their differences and delimitate their maritime zones; for Cyprus, as it would have a problem less to worry about (i.e. the Greco-Turkish Aegean dispute); and 2) of course for the US, which would have economic and perhaps even energy gains.

In many ways Israel is in the same position as Turkey as it has not ratified the Law of the Sea Convention either. Considering Israel’s longstanding alliance with the US, a possible American ratification of the Convention could put pressure on and more easily convince Israel to undertake the same action as well. Perhaps a membership in UNCLOS III would not solve Israel’s problems but it would at least provide a legal basis which could help in facilitating solutions. Within this context Israel would probably be able to delimitate its maritime zones with Egypt and more importantly resolve its maritime disputes with Lebanon; yet, one should not forget that the Lebanese-Israeli problem, like the Cyprus Problem, has many more complicated dimensions such as the non-recognition of the state of Israel by Lebanon. Of course, if Israel were to ratify the Convention the US would also be able to support the Israeli claims from within the framework of the international law, thus going beyond mere political and economic support. Also, taking into account the relatively recent deterioration of the Turkish-Israeli relations and the close ties that have been developing between Israel, Cyprus, and Greece, the maritime disputes of the Eastern Mediterranean could put the US-Turkey and US-Israel relations to the test; namely, force the US to choose one of the two alliances, regarding certain interests that stem from it, over the other. That is because the interests of the Israel-Cyprus-Greece triangle and Turkey, specifically regarding the extraction and distribution of natural gas, are conflicting.
Obstacles and the American Reality

Obviously, the above analysis has been based on calculations and possible or plausible future scenarios. Admittedly though, it has to be acknowledged that the eventual US ratification of UNCLOS III is not a very likely scenario considering the history of the American government’s efforts on this matter. Clinton’s speech took place during the fourth such effort. Bill Clinton, George W. Bush and Obama (2009) also tried to ratify the Treaty previously without success, as the Senate would not agree. Despite the fact that Democrats control the American Senate this time (53 Democrats over 47 Republicans), not all of them seem to be favoring the ratification of the Treaty. Moreover, given that a majority of 67 votes out of 100 Senators is needed things look even more difficult as Republicans will need to be convinced as well – Republicans strongly oppose UNCLOS III. Yet, as it appears, most Republicans not only are not convinced but also, 34 of them, signed a letter declaring that they will not vote in favor of the ratification of the Treaty. On the other hand, the military as well as the US Chamber of Commerce support the Treaty while Republican Senator, Lisa Murkowski, has stated that she was hopeful that it will pass Congress and that it “will have better prospects in the Senate when the fall campaign is over”. However it is true that overall, apart from the Obama administration efforts “ratification has not been an issue in this [election] campaign nor is it likely to be. Ratification did appear briefly in the 2008 Obama campaign but was gone from the rhetoric by February of 2008.”

While the prospects for an American ratification of UNCLOS III look rather dim, the initiative of the Obama administration (for the second time) to pursue it, is important in

13 Theodoros Karyotis, “Η Αμερική Και Το Δίκαιο Της Θάλασσας [America and the Law of the Sea]”, Infognomon Politics, 26/05/2012, at http://infognomonpolitics.blogspot.co.uk/2012/05/blog-post_3646.html#.UGrC9k3Afs4 [Accessed, 02/10/2012].
17 Michael Corgan, “US Ratification of UNCLOS III?”. 
itself as it signifies the will for a policy shift on the one hand as well as the developing dynamics in international and the Arctic geopolitics – and beyond – on the other. Unquestionably the participation of the US in the Law of the Sea Treaty would be of great importance for the international law and the United Nations. In this light, the November elections, 2012, and a possible Obama victory could be a turning point for the Law of the Sea, the international law more generally, the maritime interests of the US, as well as other regions of the world that could possibly be affected, such as the Eastern Mediterranean.