

The conundrum of delimitation of maritime boundaries in the Eastern Mediterranean: The Greece-Egypt agreement in the face of Turkey-Libya agreement

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INTRODUCTION

There are various conflicts between coastal states in the Mediterranean Sea. Some of these conflicts are already old, while others have arisen as a result of the process of expanding sovereignty over maritime space, due to overlapping jurisdictions and the setting of new borders¹. In the eastern Mediterranean, it seems that the majority of States respect the following jurisprudence; the delimitation agreements between Egypt and Cyprus, between Cyprus and Lebanon and between Israel and Cyprus, they all use the equidistance method. These states have also submitted notifications to the United Nations regarding their marine areas, which also use this method. These notifications do not assume a possible delimitation, but allow for the measurement of overlapping claims. Lebanon and Israel filed their notifications in October 2010 and July 2011, respectively. Both countries use the equidistance method, but do not calculate it in the same way; the Lebanese government thus officially protested against one of the points in the route of the agreement reached by Cyprus and Israel in 2010, considering that it was encroaching on its EEZ. Beirut also disputes the coordinates chosen by Israel to calculate equidistance between the two countries from the land border at Ras Naqurah. The result is an overlapping area of 860 km², which remains relatively small. In addition, the gas deposits discovered in the area, including Tamar and Leviathan, are located south of this disputed area².

Therefore, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) is an extensive, detailed international convention that has formalized and defined many of the main norms that relate to legal disputes related to maritime borders, certain coastal states such as Israel, Turkey, Syria and Venezuela are not parties; the first three are regionally important coastal states in relation to the EMB. Turkey has consistently dismissed the argument that such UNCLOS principles have crystallized into normative international law, despite asserting in other areas maritime borders representing standards similar to those found in UNCLOS. This leaves us with the challenge of having to define the obligations in relation to situations where the UNCLOS standards are not applicable or where it is not concluded that the content of the UNCLOS standards is expressed in the customary international law³.

Turkey signed an agreement with Libya on 27 November 2019 delimiting their respective maritime borders. The text does not take into account international law or the demands of other countries. The two signatories share a gas-rich area and enclave Greek, Cypriot, Israeli,

¹ Juan Luis Suárez de Vivero, *Eaux territoriales en Méditerranée et en Mer noire*, direction générale des politiques internes de l'union, Parlement européen, 2009, p. 83.

² Didier Ortolland, *Droit de la mer et délimitations maritimes en Méditerranée orientale*, *La Revue de l'Énergie*, n° 610, novembre-décembre, 2012, p. 468.

³ A. Filis, R. Leal-Arcas, *Legal Aspects of Inter-State Maritime Delimitation in the Eastern Mediterranean Basin*, *Oil, Gas & Energy Law Intelligence*, vol. 11, no 3, 2013.

Lebanese and Egyptian gas fields. The agreement makes the EastMed pipeline project, which is supposed to supply gas from the eastern Mediterranean, extremely fragile. Once the agreement is ratified by its parliament, Turkey announces that it will communicate to the UN the limits of its new Exclusive Economic zone (EEZ), which would increase by 30%.

As a response, Egypt and Greece signed an agreement delimiting their maritime borders, at a time marked by high tensions with Turkey over the exploitation of natural resources in the eastern Mediterranean. This agreement has erected the pillars of regional stability and security in the Mediterranean, in accordance with international law that guarantees, to all states, the search for natural resources and the exercise of economic activities, but in agreement with countries whose coasts are adjacent or facing each other.

1. THE LEGAL STATUS OF MEDITERRANEAN SEA AS A SEMI CLOSED SEA

The concept of 'enclosed or semi-enclosed seas' in Article 122 of the United Nations Convention on the Law of the Sea is the product of lengthy, often informal negotiations and compromises negotiated at the Third United Nations Conference on the Law of the Sea (UNCLOS III)⁴.

An enclosed or semi-enclosed sea eventually leads to a situation in which the bordering States compete for marine space and resources. From a maritime point of view, neighboring States can find it difficult to assert a full 200-nautical-mile exclusive economic zone (EEZ) and continental shelf, or even a full 12-nautical-mile territorial sea, without overlapping claims with adjacent or opposite states. From a regulatory standpoint, the bordering States share the same water body for land-based wastewater discharges and the same marine resource base, both living and non-living, for their livelihoods and economic growth. Therefore, States bordering enclosed or semi-enclosed seas is seen as being geographically disadvantaged States. The geographical reality or restriction of enclosed or semi-enclosed seas requires the neighboring States to establish "intra-regional" mechanisms to minimize mitigate or eliminate conflicts. The process envisaged by the UNCLOS is set out in Article 123⁵.

Article 123 recognizes three fields of practice as candidates for cooperation: discovery and utilization of living resources, conservation of the aquatic environment and the promotion of aquatic scientific research⁶. Since the mid-1970s, more and more coastal States have decided that they have exclusive rights to monitor fishing within 200 m of their coastline. A number of countries have opposed this development in international law, but with reflection it is clear that this rearguard intervention could only postpone, not avoid, the emergence of this rule. UNCLOS III was at work during this decade of the 1982 Convention, and the changes in State practice have been codified and evolved into the EEZ regime as set out in Part V. This new emphasis on state obligations and, in particular, the introduction of a detailed framework for

⁴ Budislav Vukas, *Maritime Delimitation In A Semi-Enclosed Sea: The Case Of The Adriatic Sea*, In, Vaughan Lowe, Rainer Lagoni, Daniel Vignes, *Maritime Delimitation*, Martinus Nijhoff Publishers, 2006, p. 205.

⁵ Nien Tsu Alfred Hu, *Semi-enclosed Troubled Waters: A New Thinking on the Application of the 1982 UNCLOS Article 123 to the South China Sea*, *Ocean Development & International Law*, vol. 41, 2010, p. 282.

⁶ The three coordination topics are all linked to activities that are likely to have an effect on the interests of more than one State bordering the enclosed or semi-enclosed sea, if only fisheries migration, environmental water quality problems or the mobility of scientifically important structures or phenomena. To the degree that these provisions could be applied with regard to scientific study, for example, by means of a regional body, the potential to support coastal states and researching institutions, as provided for in Article 248, may be substantial. *See*, Bernard H. Oxman, *The Third United Nation's Conference on the Law of the Sea: The 1977 New York Session*, *American Journal of International Law*, vol. 72, no 1, 1978, p. 80.

the sustainable development of fisheries resources has resulted in a major increase in the role of marine resource managers. This has clear consequences for policy-making (i.e. to come up with one on topics that have so far been practically unchecked, at least for some states). But what if the fisheries policies pursued by a single state are incompatible with those pursued by a neighbor, in particular the co-littoral of an enclosed or semi-enclosed sea? The results could be catastrophic, hence the need for engagement and by no means strictly within the framework of Part X of the 1982 Convention⁷.

The Mediterranean is the most extensive of the seas that can be described in accordance with the challenge set out in Article 122 of the 1982 United Nations Convention on the Law of the Sea; the two parties are "semi-closed". One third of the world's maritime traffic flows through its waters; it also contains about 10% of marine biodiversity, 4% of protected areas and 1% of the world's waters; it is the most critical meeting and friction point between the north and the south of the world, while being a privileged route for migration. Fishing and tourism are a livelihood for many coastal communities. Finally, under the waters of the Mediterranean, the cradle of Western civilization lies an important cultural heritage, which must be valued⁸.

The exceptional nature of the Mediterranean is due not only to the particular vulnerability of the marine environment and its resources, but also to the fact that a large part of its basin remains subject to the legal regime of the high seas⁹.

The two access points of the Mediterranean from the ocean are historical, Inevitable and natural: the Strait of Gibraltar and artificial: the Suez Canal. The Strait of Gibraltar is governed by the law of transit, which means that any vessel, even warships, has an unobstructed right of transit, and submarines can transit through the submerged straits. There is also a right to over flight, as shown by the US air bombing of Libya on 15 April 1986. The U.S. planes, coming from British bases, overcame the Strait of Gibraltar while their continental partners refused them passage through their territories. As well, The Suez Canal, which connects the Mediterranean Sea with the Red Sea and the Indian Ocean, has become an important route for maritime transport, removing the circumnavigation of Africa. The importance of the Suez Canal could be enhanced with the opening of the North-West Passage, as ships coming from the Indian Ocean would cross the Mediterranean Sea and the Atlantic Ocean and then reach the Pacific Ocean without having to take a longer route through the Panama Canal. The Suez Canal regime is governed by the Constantinople Convention of 1888. The canal is open to all shipping firms, including merchant ships and warships. Egypt may charge a toll, but cannot close the canal, which must be held open during both peacetime and wartime - a stipulation that has often been broken for national security considerations¹⁰.

Furthermore, as mentioned earlier, the unique characteristics of the Mediterranean will then emphasize the importance of enhancing cooperation between coastal states. In the study of the Mediterranean, careful attention should be paid to Article 123 of the Law of the Sea as it relates to cooperation between States bordering the enclosed and semi-enclosed seas. Cooperation between Mediterranean coastal states was, in fact, undertaken well before the adoption of the UNCLOS III Law on the Sea. The Food and Agriculture Organization (FAO) created the

⁷ Clive Schofield, Ian Townsend-Gault, from sundering seas to arenas for cooperation: applying the regime of enclosed and semi-enclosed seas to the Adriatic, *Geoadria*, vol 17, no 1, 2012, p. 19.

⁸ GemmaAndreone, Giuseppe Cataldi, Regards sur les évolutions du droit de la mer en Méditerranée, *Annuaire français de droit international*, vol. 56, 2010, p. 2.

⁹ *Ibid.*

¹⁰ Apart from the two World Wars, during which enemy shipping was closed, the canal was closed to Israeli shipping, for example, until the peace settlement between the two countries of March 26, 1979.

See, Natalino Ronzitti, *The Law of the sea and Mediterranean Security*, Mediterranean paper, The German Marshall Fund of the United States, 2010, p.6.

Fisheries Council for the Mediterranean in 1949. Specific arrangements for the protection of the Mediterranean from pollution have been negotiated in general conventions¹¹, in regional treaties¹² and in sub-regional agreements¹³.

2. THE DILEMMA OF THE DELIMITATION OF MEDITERRANEAN MARINE AREAS

In the Mediterranean, the problems of delimitation of marine areas are particularly complex. This is due to different reasons, which complement each other; the main one, however, is the limited extension of the Mediterranean in relation to the number of states that are bordering it. These States, as demonstrated by the events of the first half of 2011, also show a political sensitivity that is sometimes very strong, which does not fail to provoke many incidents, sometimes degenerating into conflict. There is a consequence of the fact that in the Mediterranean the south and the north of the world meet and oppose each other. The prospect of difficult-to-resolve conflicts has, in the past, been a hindrance to the proclamation in this sea of areas of exclusive jurisdiction beyond territorial waters. The delimitation agreements have also shown that bilateral delimitation is difficult to escape challenges from third States, which are always inevitably very close to the delimited area. As a result, maritime borders are proving to be particularly fragile. In addition to these political difficulties, there are also those, more technical, which are due to the presence of islands and islets or the conformation of the coasts, which are almost always very serrated¹⁴.

Despite these difficulties, the recent proclamations concerning areas beyond the outer limit of the territorial sea have changed the legal status of Mediterranean waters. It is therefore necessary to examine the delimitation problems that have resulted from this. Areas of exclusive jurisdiction proclaimed by coastal States have in common been adopted without consultation with other States in the region. They may therefore overlap in some cases. In these areas, bilateral agreements on the delimitation of the territorial sea or continental shelf are also in force. In addition, agreements on maritime borders, including the delimitation of the respective EEZs, have recently been concluded; far from permanently stabilizing the claims in the area concerned, they have provoked numerous protests or challenges from third States that are close to the area so defined. The result was a series of difficult questions to be resolved, which should be briefly considered¹⁵.

In certain cases, the process of defining maritime zones is not perfect either because the legislative process is still ongoing in the case, for example, of the State adopting the relevant primary legislation but not the requisite subordinate legislation or because the maritime zone borders have yet to be consented or adjudicated.

2.1 Some discretion as to the breadth of Territorial Sea up to a maximum limit of 12 nm

¹¹ For example, the 1954 International Convention for the Protection of the Sea from Oil Pollution.

¹² The 1974 Barcelona Convention and the associated Protocol.

¹³ For example, the 1974 Italo-Yugoslav Agreement on Cooperation for the Protection of the Mediterranean; Mazen Ali, *The application of the law of the sea and the Convention on the Mediterranean Sea*, Division for ocean Affairs and the law of the Sea, Office of legal affairs, United Nations, New York, 2009, pp. 36-37.

¹⁴ Gemma Andreone, Giuseppe Cataldi, *op.cit.*, p. 13.

¹⁵ *Ibid.*

As the presence of a territorial sea occurs as a result of the operation of the law, it is not appropriate for a coastal State to officially claim a territorial sea per se, even though they have some control as to its width up to a maximum limit of 12 nm. More precisely, a coastal State must determine the width of its territorial sea. In this relation, the majority of States have asserted the full entitlement, i.e. 12 nm. For geographical purposes, Greece and Turkey declared a territorial sea of just 6 nm. As regards the United Kingdom Sovereign Military Base Areas in Cyprus, Akrotiri and Dhekelia, the Treaty of 19 August 1960 on the Creation of the Republic of Cyprus specifies in Annex A a marine area between 4 lines with distances ranging from 9.85 to 7.8 nm and 6.9 to 7.2 nm converging. Nevertheless, these are marine areas surrounding military bases and do not constitute sovereign territory. A territorial sea with a range of 3 nm has been claimed for Gibraltar. Spain challenges the entitlement of the United Kingdom/Gibraltar to a territorial sea or to some other maritime authority¹⁶.

Ultimately, notice can also be made of the Gaza Strip, which has a 40 km coastline. The actual legal status of the waters off the Gaza Strip poses complicated and contentious problems of international law. Subject to the provisions to the Cairo Agreement of 1994, which was eventually incorporated into the Interim Agreement¹⁷, it was decided that Israel would have complete control and sole security authority over the territorial waters nearby to the Gaza Strip, while at the same time the Gaza Strip would have a 20 nm fishing and activity zone. The Israeli Navy has been operating an exclusion zone within these waters since 3 January 2009 on the basis of customary international law particularly in relation to naval warfare instead of UNCLOS¹⁸.

2.2 The complicated process of analyzing the current situation with regard to the establishment of EEZs and Continental shelf

In the Montego Bay Convention, the delimitation of the Exclusive Economic Zone (EEZ) between States whose coasts are opposite or adjacent is covered by Article 74, the content of which is identical to that of Article 83, which concerns the delimitation of the continental shelf. Both provisions, incorporating the indications given by the International Court of Justice in its decision of 20 February 1969 in the North Sea Continental Shelf case, call for the "fair solution" criterion¹⁹. Therefore, the 1982 Convention does not contain any substantive standard on maritime delimitation between contiguous or facing States; it is merely formulating procedural

¹⁶ European Commission, DG MARE, Costs and benefits arising from the establishment of maritime zones in the Mediterranean Sea, Final Report, MARE/2010/05, June 2013, pp. 45-46.

¹⁷ In 1994, Israel and the Palestine Liberation Organization (PLO) signed the Agreement on the Gaza Strip and the Jericho Region, which established the conditions for the parties to exercise their authority and led to the actual withdrawal of Israel from the Gaza Strip and Jericho. The 1994 agreement was superseded by another in 1995, the Temporary Agreement on the West Bank and the Gaza Strip, which called for Israeli withdrawal from all major West Bank cities, with the exception of Hebron, where Israel would withdraw from most areas but would maintain troops to defend several hundred Israelis who had settled in the center of the Gaza Strip. See, John Quigley, *The Israel-PLO Interim Agreements: Are They Treaties*, Cornell International Law Journal, vol. 30, no 3, p.720. For more details, See, Peter Malanczu, *Some Basic Aspects of the Agreements Between Israel and the PLO from the Perspective of International Law*, European Journal of International Law, vol 7, no 4, 1996, pp. 286-288.

¹⁸ European Commission, DG MARE, op.cit, pp. 45-46.

¹⁹ In this regards the ICJ emphasis that : "the position is simply that in certain cases -not a great number- the States concerned agreed to draw or did draw the boundaries concerned according to the principle of equidistance. There is no evidence that they so acted because they felt legally compelled to draw them in this way by reason of a rule of customary law obliging them to do so-especially considering that they might have been motivated by other obvious factors". ICJ case concerning the North Sea Continental Shelf, Judgment of 20 February 1969, para 78, pp. 44-45.

obligations. A creative and decisive role has been played by international jurisprudence, which has treated areas other than the EEZ itself in the same way²⁰.

In fact, the mechanism of assessing the current situation with respect to the designation of EEZs in the Mediterranean is hindered by the processes under which maritime zones are asserted. The first stage is usually the approval by the coastal State of legislation which provides, inter alia, for the creation of an EEZ. A large proportion of coastal states in the Mediterranean have such legislation in effect. In the case of Albania, Algeria, Croatia, Cyprus, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Slovenia, Syria and Tunisia, it is stipulated that such legislation can only be a prerequisite to the creation of an EEZ in the Mediterranean, provided that these countries do not have access to any other sea. In the context that some countries have non-Mediterranean coastlines, France, Morocco and Spain have legislation in place which provides for the creation of EEZs; even though not all of these countries have sought to create complete EEZs in the Mediterranean. For example, France has set in place the necessary legislation to create a complete EEZ in the Mediterranean Sea and announced its intention to set up an EEZ in the Mediterranean Sea in August 2009 and officially to the UN in August 2010²¹.

Egypt can also be shown in the group of country, i.e. with both the Mediterranean and non-Mediterranean coasts. By ratification of the UNCLOS on 26 August 1983, Egypt confirmed that it "will pursue, from this date onwards, the rights attributed to it by the provisions of Sections V and VI of the UNCLOS in the EEZ situated beyond and adjacent to its territorial sea in the Mediterranean Sea and the Red Sea" and that it "will undertake to define the external limits of its EEZ in accordance with the rules, requirements and modalities laid down by the UNCLOS²².

In 1981, Morocco proclaimed a 200-mile EEZ that in principle applies indiscriminately to the Atlantic Ocean and the Mediterranean Sea off the coast of Morocco. This area replaced the 70-mile exclusive fishing area established by the Moroccan Government in 1973. Morocco has not yet asserted its rights to delimit EEZ over the waters of the Mediterranean. Morocco has not yet entered into negotiations with neighboring countries to delineate the extension of its EEZ in the Mediterranean. However, Morocco wields typical EEZ powers over Spain beyond 12 miles of territorial waters and in the Alboran Sea²³.

²⁰ The ICJ in the case concerning the Gulf of Maine asserted " the principle of international law - that delimitation must be effected by agreement - which, as the Chamber has noted , is expressed in Article 6 of the 1958 Convention, and additionally, it may be thought, the implicit rule it enshrines, are principles already clearly affirmed by customary international law, principles which, for that reason, are undoubtedly of general application, valid for all States and in relation to all kinds of maritime delimitation". ICJ case concerning the Gulf of Main, Judgment of 12 October 1984, para 90, pp.292-293.

²¹ Loi no. 76-665 relative à la zone économique au large des côtes du territoire de la République, JO du 16 juillet 1976. It is worth mentioning "France established in 2003 a 'ecological protection area' applicable in both the Atlantic and Mediterranean waters, as a declination of its already existing EEZ in the Atlantic waters. In that zone, France would exercise domestic laws and regulations and 'in addition, the competences recognized by international law relating to the protection and preservation of the marine environment', including over 'foreign ships even registered in a territory of a government not party to the MARPOL Convention'. Loi no. 2003-346 du 15 avril 2003 relative à la création d'une zone de protection écologique au large des côtes du territoire de la République, JO du 16 avril 2003, modifiant Loi no. 76-665. See, Maria Gavouneli, State Jurisdiction in Protection of the Marine Environment, in, David Josef Attard, Malgosia Fitzmaurice, Norman A Martinez Gutierrez, Riyaz Hamza, The IMLI Manual of International Law, Volume III: Marine Environmental Law and Maritime Security Law, Oxford University Press, 2016, p.23. See also, Maria Gavouneli, The International Journal of Marine and Coastal Law, vol 23, 2008, p. 490.

²² Claudiane Chevalier, Governance of the Mediterranean Sea: Outlook for the Legal Regime, Centre for Mediterranean Cooperation, IUCN - Global Marine Programme, 2005, p. 44.

²³ José Manuel Sobrino Heredi, L'approche nationale en matière des zones maritimes, AFDUDC, vol 13, 2009, p. 757.

The Croatian maritime code, adopted on 27 January 1994, contains several provisions relating to the EEZ. Nevertheless, the application of these provisions is subject to the decision of the Croatian Parliament to proclaim this type of zone. The Croatian Republic has taken steps to establish an ecological protection and fishing zone²⁴.

According to article 4 of law 2005-50 of June 27, 2005¹⁸, Tunisia has established an EEZ. However, the question of its width has not yet been decided. At most it will be 200 miles long, and the limits will also be determined by agreement with neighboring States. Tunisia reserves the right, within this EEZ, to create areas of more restricted jurisdiction by regulation (reserved fishing areas, fishing protection zones or ecological protection zones²⁵).

As seen with the territorial sea, the rights of the coastal State over its continental shelf derive from the application of the constitution. However, in order to control the activities taking place on its continental shelf, the coastal State would typically have to follow national legislation on the continental shelf²⁶.

We should point out that the delimitation line remains linked to the time when it was fixed. Because any delimitation is a unicum, a line is necessarily the result of the circumstances that led to its fixing, which may change over time. It is therefore not possible to separate the provisions governing these boundaries from the circumstances which gave rise to them. The attachment of a delimitation line must be contextual for all spaces to be delimited. The principle should be recalled because it had occurred more than once that, in the unilaterally declared areas of the Mediterranean, an attempt had been made to coincide the outer limit of an area with the line set by an earlier agreement on the delimitation of the continental shelf, without the prior agreement of the other State²⁷.

It is certainly not undeniable that it may in principle be appropriate to delimit different marine areas, such as the territorial sea, continental shelf, EEZ, etc., using a single line. However, this applies only in cases where the delimitation adopted by means of a single line is contextual for all the areas or interests to be delimited, or, if it is not, provided that the State which, in the past, it had been obligated about only one of the areas at stake, for example the delimitation of the continental shelf, had explicitly indicated its agreement. As with any other delimitation hypothesis, the choice of a single line remains subject to the general principle of a fair solution. There are various examples of the use in the Mediterranean of an all purpose limit adopted by common agreement and context, such as “the 1984 agreement between France and

²⁴ Ibid, p. 758.

²⁵ Ibid, p.759.

²⁶ Ibid.

²⁷This was the case when Croatia unilaterally crossed the provisional limit of its fishing and ecological protection zone by adopting the line agreed between Italy and Yugoslavia in 1968 for the delimitation of the continental shelf. On 8 January 1968, Italy and Yugoslavia signed an agreement to delimit their continental shelf in the Adriatic, which came into force on 21 January 1970. The agreement is also the first continental shelf boundary to be reached and enforced in the Mediterranean. The border extended for 353 nautical miles, consisting of 42 segments connecting to 43 turning points – 40 segments are straight and two curved. The extension of the maritime boundary to the Gulf of Trieste persisted at a later date, as there was still some dispute at the time of the negotiations on the final status of the land boundary between the parties in the region. Point 01 of the 1968 agreement is thus 12 nm from the nearest shore. Subsequently, an Italian Yugoslav agreement on territorial waters was reached in 1975. At the south-eastern extremity of the border line, the parties decided not to extend the boundary south of Point 43, thus falling short of the tripoint of Italy Yugoslavia-Albania. See, Gerald H. Blake and Duko Topalovi, *The Maritime Boundaries of the Adriatic Sea*, In, Clive Schofield, Mladen Klemenčić, *Maritime Briefing*, Volume 1, No 8, 1996, p. 15.

Monaco²⁸, The agreement between Albania and Greece on 27 April 2009, which was later annulled by the Albanian constitutional Court^{29 30}.

3. THE PROBLEMATIC OF MARITIME BOUNDARY IN THE EASTERN MEDITERRANEAN

Current tensions in the Eastern Mediterranean have brought several drivers, including a race to tap energy resources, long-standing maritime conflicts and wider geopolitical rivalry between regional powers. Although Turkey's recent assertiveness of its rights in the Eastern Mediterranean has drawn renewed attention to the region, this round of conflict has been going on for a long time. Greece's ambition to claim EEZ for its islands up to 12 nautical miles on the basis of the 1982 United Nations Convention on the Law of the Sea, which would effectively turn the Aegean Sea into a Greek bay, is a driving factor of current tensions. Turkey is not a signatory to this convention and has long called such a situation a cause of war. Moreover, the lack of resolution of the Cyprus issue aggravated by the entry of the European Union to the island complicates maritime conflicts between the two neighbors, who are both NATO allies. These underlying problems between Greece and Turkey are now becoming increasingly complicated by gas offshore drilling and wider geopolitical rivalry in the region. It is hoped that the threat of confrontation will subside as the two sides seek to alleviate tensions. However, it is far from clear whether a permanent solution can be accomplished without resolving the Cyprus problem in the face of the EU's incompetent assistance for the Greek side and its threat of sanctions against Turkey³¹.

²⁸ In 1984, France delimited its territorial sea and continental shelf with Monaco, where it was the boundary line for the shelf with Monaco, where it was also decided that the boundary line for the shelf would also apply in the case of a potential proclamation of the EZZ or equivalent region of jurisdiction. This was the first Mediterranean demarcation agreement concerning a common maritime border for all areas of authority, both future and current, and the Principality of Monaco is the only State in the Mediterranean to have fully settled all its maritime demarcation with its neighbouring States. See, Mitja Grbec, *The Extension of Coastal State Jurisdiction in Enclosed or Semi-Enclosed Seas: Mediterranean and Adriatic Perspective*, Routledge, 2014, p. 71. Norman A. Martínez Gutiérrez, *Serving the Rule of International Maritime Law: Essays in Honour of David Joseph Attard*, Routledge, 2010.

²⁹ On 19 March 2009, the talks in Tirana ended and the "Agreement between Greece and Albania on the delimitation of the continental shelf and other maritime areas belonging to the International Law" was initialled. This Agreement was signed in Tirana by the two respective Foreign Ministers on 27 April 2009. After its adoption, the Agreement specifies that "the maritime boundaries between Albania and Greece shall be defined on the basis of the equities expressed by the medium line." The merits of the case will include the review of the full file of the agreement, along with text of the agreement in three languages: English, Greek and English, as well as the maps of the agreement which have not yet been made public. Stress that Albania ratified the UNCLOS on 23 June 2003, while Greece ratified it on 21 July 1995. The agreement was approved by the Albanian Parliament, but the Albanian Constitutional Court did not accept it, claiming that it was in conflict with the Constitution of Albania and the United Nations Third Convention of the International Law of the Sea of 1982. The Court notes that "in the draught agreement in question, there is a procedural and substantive violation which is incompatible with the Constitution and the Convention of the Third United Nations International Convention on the Law of the Sea, 1982." From a legal point of view, it is important that the Court is not satisfied with the focus on procedural infringements, and that this power lacks omnipotence and bypasses the position of President of the Republic, a violation which in itself constitutes a violation of the Constitution. Instead, the Court based its decision on a breach of the public of international law". See, Kasëm Cena, *Albania - Greece Agreement on Setting Maritime Boundaries, According to International Law*, *Academic Journal of Interdisciplinary Studies*, Vol 4, no 3, 2015, pp. 143, 147.

³⁰ Gemma Andreone, Giuseppe Cataldi, *op.cit.*, pp. 16-17.

³¹ Kadir Ustun, *Turkey in the Eastern Mediterranean: Maritime Disputes and Geopolitical Competition*, Washington Dc, Foundation for political, Economic and Social Research, 18 September 2020: <https://setadc.org/turkey-in-the-eastern-mediterranean-maritime-disputes-and-geopolitical-competition/>

3.1 Claims over Gas Resources and the exploitation of energy as reason of disputes

The first Eastern Mediterranean gas champ, Abu Madi, has been discovered more than 50 years ago. The Nile Delta in Egypt was found on shore in 1967. The Abu Qir gas field was found in the Mediterranean Sea offshore Egypt in 1969. In 2003, Egypt became a gas exporter after numerous other discoveries since then. Due to country political stability, there have been no bidding rounds between 2011 and 2013 on hydrocarbon exploration, and in April 2015 Egypt became a net importer of gas. Following 2013, Egypt initiated several tender rounds and signed over 100 gas exploration and production concession agreements. There have been many discoveries about successful bidding rounds and pricing policy amendments. Of these, the most significant is the exploration of the Zohr field, estimated at 651,4 to 736,3bcm in August 2015. This, the largest gas exploration ever made in Egypt and in the Mediterranean Sea, is regarded as the major opportunity for gas exploration in Egypt and the region as a whole. Several negotiating rounds, encompassing onshore and offshore Egypt, are slated to launch in the coming years³².

The Egyptian government's desire to turn the country into the region's true energy hub is evident, despite its rivals for this position by other major actors, particularly Turkey. This vision is also focused on the existence in the country of impressive energy infrastructures. The possible ability to use Idku and Damietta 's existing liquefaction plants on the Egyptian coast, and two existing gas pipelines from Egypt to Israel, Jordan, Syria and Lebanon – none of which are actually used – is highly important. The potential is yet to be checked. This development could allow Egypt to break its Saudi Arabia dependence and the Gulf monarchies, which today are the Egyptian regime's most powerful political and financial backers, thus guaranteeing new space for manoeuvre within its international relations³³.

It is worth noting that Egypt, as the biggest and not only metaphorically most important Arab country, is a further regional power with an evidently decade of experience in energy security. Over the last few years, Egypt has progressed from an energy exporter to an energy importer. At present, Egypt has a clear interest in the import of Cypriot gas and has already concluded agreements to that extent with the island republic. In the light of the ongoing political "cold war" with Turkey, Egypt, Cyprus and Greece concluded multiple partnership agreements at the Cairo summit at the end of 2014, marking the start of a close relationship³⁴.

In 2007, 2012, and 2016 the Republic of Cyprus organized offshore rallies for discovery of hydrocarbons and awarded 9 blocks to the foreign companies for oil. The five blocks that Turkey claims to fall partially within its continental shelf, although bids have been obtained for some of the blocs, are noticeably not on the list of active bidders during the first two rounds. Block 7 was awarded to the consortium in September 2019, also challenged by Turkey. The discovery of the Aphrodite offshore gas field by Noble Energy in December 2011 was celebrated as the solid investment for gas exploration in Cyprus. But, due mainly to the lack of on-site gas facilities, the lack of a unification deal with Israel and the delays to gain official approval of the field construction plans, it hasn't yet been built. Total and Eni find the Calypso

³² Ana Stanič, Sohbet Karbuz, The challenges facing Eastern Mediterranean gas and how international law can help overcome them, *Journal of Energy & Natural Resources Law*, 2020, p. 2.

³³ Janiki Cingoli, *The New Energy Resources in the Centre-East Mediterranean: Potential Current and Future Geo-Strategic Consequences*, Istituto Affari Internazionali, 2016, p. 5.

³⁴ Angelos Giannakopoulos, Introduction, in, Angelos Giannakopoulos (edits), *Energy Cooperation and Security in the Eastern Mediterranean: A Seismic Shift towards Peace or Conflict?* The S. Daniel Abraham Center for International and Regional Studies, Research Paper, no 8, 2016, p. 14.

gas field in 2018. On-site natural gas deposits of approximately 142–227bcm were discovered by ExxonMobil in Glaucus in February 2019³⁵.

Furthermore, the problem of Cyprus has always been an important international issue which affects and is also affected by political developments in the eastern Mediterranean. The discovery, in the East and Exclusive Economic Zone of the Republic of Cyprus, of hydrocarbon reserves and efforts in hydrocarbon exploration have altered the geopolitics of the region, which have placed at risk the equilibrium of power along with any future developments in the Cyprus crisis. In addition, the talks between the Greek Cypriots and the Turkish Cypriots for a feasible solution continue underway considering the lengthy times during which they are disrupted. In addition, the talks are deeply influenced by the interventionist position and special interests of the other states in the area³⁶.

Greece is another country that has historically been interested in rivalry in the Eastern Mediterranean and in the process of addressing the Cyprus issue due to its historical and ethnic relations with Cyprus. However, due to its financial difficulties over the last decade, the impact of Greece has been somewhat reduced. It is clear that Greece's economic difficulties, along with its long-established strategic place of absence from the Cyprus issue negotiations'; do not enable Greece to play an active role in the resolution of the Cyprus problem. This deprives Greece of future strategic advantages in Cyprus, especially in the sense of Greek-Turkish rivalry and the extraction of hydrocarbons. At the same time, Greece has no clear good technical strategy for the extraction of hydrocarbons that may potentially be contained in the Greek EEZ. However, Greece is trying to improve its relations with Cyprus and Israel in an effort to establish a new political structure for stability and defense and energy problems with neighboring countries. Greek strategy includes joint military drills with both Cyprus and Israel, and most likely with Egypt in the future, in order to strengthen its diplomatic and geopolitical position in the region amid its economic problems. In addition, Greece is continuing to conclude agreements with other countries in the region, such as Israel, Egypt and RoC, for the transport of energy from the Eastern Mediterranean to Europe through pipelines, such as the EastMed event. The goal of Greece is to encourage energy-related issues in order to improve potential hydrocarbon extraction efforts in the Greek EEZ³⁷.

As well, Greece imports its natural resources by pipeline by Turkey or LNG tankers from African countries. The country's reliance on Turkish pipelines further limits its reaction to the continuing dispute with Turkey. However, recent geological studies have shown a high potential for gas discovery in the Greek EEZ. The current economic crisis in Greece has further underscored the value of energy self-sufficiency and as a source of income. Thus, in recent years, the Greek Government has tendered and received tenders for offshore drilling in its Mediterranean EEZ³⁸.

The energy situation in Turkey is radically different. Although acting as a transition point for pipelines flowing from the Caspian Sea to Western Europe, the country lacks significant energy supplies of its own, save for the small off-shore gas field in the Black Sea, and has historically been a major importer of energy resources. In an attempt to benefit from offshore gas discoveries in the area, Turkey has recently launched new exploration operations in the

³⁵ Ana Stanič, *Sohbet Karbuz, The challenges facing Eastern Mediterranean gas*, op.cit, pp. 3-4.

³⁶ Evaghoras L. Evaghorou, *Energy developments in the eastern Mediterranean region and geostrategic implications on the Cyprus Issue*, *International Journal of Euro-Mediterranean Studies*, vol 13, no 1, 2020, pp. 109-110.

³⁷ *Ibid*, p. 114.

³⁸ Aviad Rubin & Ehud Eiran, *The Eastern Mediterranean: Towards a Coordinated Maritime Security Environment (just not right now)*, A paper presented at the 2019 ISA Meeting, Toronto, Canada, March 2019, p. 5.

Mediterranean and the Black Sea. In a strategically controversial decision, Turkey has recently launched discoveries on behalf of Northern Cyprus in the Cypriot EEZ³⁹.

Ankara has been occupying Northern Cyprus since 1974 and is the only member of the international community to have recognized the "Turkish Republic of Northern Cyprus." Turkey also refuses the Cyprus Government, recognized by the international community, the ability to exercise sovereignty or authority over the maritime areas of the island as a whole before the Cyprus dispute has been settled. Ankara has thus denounced all the agreements of delimitation signed by Cyprus with other countries to determine its Exclusive Economic Zone (EEZ) which, however, concern only the southern part of the island controlled by the Government of Nicosia⁴⁰.

In the Eastern Mediterranean battles pace, the promise of development through the commercialization of hydrocarbon exploration has conflicting consequences for competing territorial claims. Overall, the economic prospects for extraction of natural resources have adversely affected main U.S. strategic, regional, political and military allies: Israel, the Republic of Cyprus (RoC) and Turkey. The RoC and Israel have arisen as sources of coal. Their recently discovered gas offers tremendous sovereign wealth, providing both a cost-effective energy supply for their import-dependent energy economies and a future high-value source of revenues from gas exports to and outside the country. Turkey rejects the rights of the Greek Cypriots of the RoC to use these natural resources without the consent of the Turk-Cypriots and sees it as their duty to defend the rights and interests of the Turk-Cypriots by assisting the self-declared TRNC in both economic and military terms. Escorting the language of defending people's rights and national interests is alleged coercive military extension of intimidation by the use of naval powers in the area. Turkey's assertiveness, seen as a power politics in the Eastern Mediterranean, stands out as obvious hegemonic aspirations rife with increasing conflict. Unless diplomatic solutions are sought to address the different perceptions of the demarcation of the maritime region, tensions in the Eastern Mediterranean Sea can broaden and expand. The ramifications of the EEZ claims need to be worked out in line with international maritime law. If a 'mutual Maritime Development Framework,' modeled after the Arctic Council, is not formed to settle disputes maritime border disputes, all tensions now have the capacity to intensify into another Persian Gulf Crisis⁴¹.

3.2. The Greece-Egypt Maritime agreement

On 7 August 2020, Greece and Egypt reached an agreement on the delimitation of the maritime borders of the two countries of the Eastern Mediterranean Sea. The two States have concluded an outstanding agreement which reconfirms and enshrines the effect and right of islands to a continental shelf and an EZE in compliance with international law and the United Nations Convention on the Law of the Sea (UNCLOS). This agreement helps both countries to make progress in optimizing the use of resources available in the exclusive economic zone , especially promising oil and gas reserves.

3.2.1. The context

³⁹ Ibid, p. 6.

⁴⁰ Didier Ortolland, Droit de la mer et délimitations maritimes en Méditerranée orientale, *La Revue de l'Énergie*, n° 610, novembre-décembre 2012, p. 468.

⁴¹ Sami Dogru, Herbert Reginbogin, Rethinking East Mediterranean Security: Powers, Allies & International Law, *Touro Law Review*, vol 33, no. 3, 2017, pp. 836-837.

The roots of the Delimitation Agreement between Greece and Egypt date back to the onset of looking up energy resources in the Eastern Mediterranean in the early 2000s. Proceeding with the discovery and ultimate extraction of offshore energy resources, it was important to decide the maritime borders of coastal states: Cyprus, Egypt, Greece, Israel, Lebanon, Libya, Syria and Turkey. Cyprus and Egypt were among the first to sign an agreement on the delimitation of the Exclusive Economic Zone in 2003. The arrangement is founded on 'a median line each of which is equidistant from the closest point on the basis of the two Parties.' Cyprus then signed two new deals on the basis of median / equivalent lines with Lebanon in 2007 (not currently in effect here) and with Israel in 2010. All three documents are succinct and each contains five articles⁴².

Greece and Egypt began discussing the delimitation of their borders in 2005. There were two ways for delimitation: resolved and peacefully-agreed on a border basis and, if agreements failed, recourse to third party dispute resolution or arbitration. Negotiations were lengthy and undertaken in good faith, but the geographical features of Greece and the involvement of third parties, such as Turkey, posed legal and political difficulties in the delimitation region. Egypt was seeking not to participate with the Greek-Turkish dispute⁴³.

On 8 November 2014, Greece, Cyprus and Egypt interacted for the first time in Cairo. At the conclusion of the trilateral meeting, the three States signed the Cairo Declaration, inaugurating a new period of partnership and cooperation. Starting with the problem that enhanced the position of each State that of hydrocarbons, it was understood that the discovery of significant hydrocarbon reserves would serve as a mechanism for regional cooperation by obedience to well-established principles of international law. In this respect, the uniform existence of the UNCLOS has been supported, with all three parties promising to discuss the delimitation of their maritime zones,' where this has not yet been achieved. In addition, the declaration emphasized the importance of upholding the territorial rights and sovereignty of Cyprus over its EEZ, calling on Turkey to avoid once and for all from seismic survey operations and related practices within Cyprus's maritime zones. Care has also been paid to the Cyprus crisis, where the need for a fair, inclusive and permanent settlement to reunify the island in line with international law, as well as the applicable Security Council resolutions, has been emphasized. In this regard, the President of the Cyprus referred to a solution leading to a bi-zonal, bi-communal union with a single and special legal personality and nationality, while clarifying that the rapprochement between the three states 'is not directed towards any government. As a result, it has enabled all regional players who share the values of international law with a view to fostering stability, development and peace in the Eastern Mediterranean to become members of strengthening cooperation⁴⁴.

Just around a year after the first trilateral meeting, the three parties convened again in Nicosia on 29 April 2015. The "hydrocarbon problem" remained at the heart of the cooperation with UNCLOS to be established as the required means by which such cooperation could grow. The imperative for a just, comprehensive and permanent solution to the Cyprus crisis" under

⁴² Art.1 defines the precise position of the median boundary; Art.2 deals with transboundary seabed resources; Art.3 governs the mechanism of potential demarcation with third States; Art.4 deals with conflict settlement; and Art.5 addresses the adoption and entering into force of the agreement.

See, Constantinos Yiallourides, *Some Observations on the Agreement between Greece and Egypt on the Delimitation of the Exclusive Economic Zone*, Blog of the European Journal of International Law available: <https://www.ejiltalk.org/18969-2/>

⁴³ Ibid.

⁴⁴ Stylianos A. Sotiriou, *Creating norms around the Eastern Mediterranean energy resources as a necessary means of security*, *European Security*, vol. 29, no 2, 2020, p. 241.

international law and the Related Resolutions of the United Nations Security Council" was also echoed. Likewise, trilateral convergence did not take long to take on a wider dimension; understanding that tourism and the maritime industry have a crucial role to play in the economies of all three nations, and following in the footsteps of the former Tripartite Memorandum on Tourism Cooperation between Cyprus, Greece and Egypt, all the actors agreed to intensify their maritime cooperation⁴⁵.

The 3rd Trilateral Summit, which took place in Athens on 10 December 2015, acquired an even more geopolitical aspect. Greece, Cyprus and Egypt accepted the possibility of deeper collaboration generated by the discovery of the large "Zohr" natural gas field and affirmed their contribution to the delineation of contiguous maritime zones according to the UNCLOS. They also welcomed the continuing diplomatic process under the UN Good Office Mission for a just, permanent and substantive resolution of the Cyprus crisis. In addition, in addition to the political aspect of the partnership, the formation of a Joint Cooperation Committee was decided to develop, develop and encourage practical projects of trilateral importance. Relation was also made to the 20th anniversary of the Barcelona Declaration; the EU proposal introduced at the Euro-Mediterranean Conference on 27 November 1995 and laid the groundwork for the Euro-Mediterranean Relationship⁴⁶.

Focusing on Euromed and United for Mediterranean, the three States held the 4th Trilateral Summit in Cairo on 11 October 2016. The key axis of cooperation that of oil encountered an improvement to the EU components, which called for sustainability of energy supplies and paths, protection of energy supply and creation of new energy infrastructures. The regional energy capacity was crucial to the EU's ambitions, whilst the three countries, acknowledging their relevance to the EU, decided to strengthen energy cooperation. In addition, it was repeated that all new explorations and transport solutions that will act as a channel for regional peace and development would be focused on well-established concepts of international law, such as the UNCLOS. Similarly, any remaining problems pertaining to the demarcation of contiguous maritime areas should be governed respectively⁴⁷.

It is worth noting that, Egypt has practiced mutual energy diplomacy with a view to make full use of the total East Med energy capital. These efforts have been successful and have contributed to strong relations with Cyprus and Greece, as expressed in the various tripartite summits, official high-level visits and multiple partnership agreements. Cooperation was encouraged by the fact that Shell is both the director of the Idku facility and co-owner of the Aphrodite field. In November 2017, Cyprus President Nicos Anastasiades, Egyptian President Abdel-Fattah el-Sissi and Greek Prime Minister Alexis Tsipras formally endorsed the proposal, and in September 2018, the press reported that Cairo and Nicosia had signed an agreement on the development of an underwater pipeline to export natural gas to Egypt under the terms of a trade agreement to be negotiated at a later date. The deal would necessarily have to be accepted by the European Union⁴⁸. A range of Memoranda of Understanding in the domains of education, industry and small and medium-sized companies, customs and border technology and investment promotion have also been signed. Once again, the Trilateral Summit reiterated Cyprus's territorial rights over its EEZ under the UNCLOS and called on Turkey to halt all

⁴⁵ Ibid, p. 242.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Andreas Stergiou, Geopolitics and Energy Security in the Eastern Mediterranean: The Formation of new 'Energy Alliances', in, Zenonas Tziarras, The New Geopolitics of The Eastern Mediterranean trilateral partnerships and regional security, Peace Research Institute Oslo & Friedrich-Ebert-Stiftung, 2019, p. 22.

illicit activity in the Cyprus maritime region and to refrain from such acts in the future. At the end of the day, these changes were by no means targeted at or excluded any third country⁴⁹.

3.2.2. The main aspects of the agreement

This agreement helps both countries to make progress in optimizing the use of appropriate resources in the exclusive economic zone, particularly potential oil and gas reserves⁵⁰.

The Preamble to the Agreement between Greece and Egypt acknowledges the importance and potential applications of the UN Charter and the UNCLOS. It applies explicitly to the ideals of good neighborliness, harmony and good faith. The Preamble stresses that each party shall assert its sovereign rights and authority in compliance with the UNCLOS of which both Greece and Egypt are parties. UNCLOS specifies that an arrangement on the basis of international law between the States involved is the main mechanism for the delimitation of maritime borders, along with the EEZ and the continental shelf. UNCLOS does not define a procedure for evaluating the limit, but rather that the boundary comes to an equitable solution. An openly agreed and approved demarcation convention based on consensus, as specified in Articles 74(1) and 83(1) of the UNCLOS, complies with international law. Moreover, the agreement does not apply to the Continental Shelf system. This is presumably how the parties recognized that the EEZ encompassed territorial privileges and sovereignty in the continental shelf. Although two different areas exist, the EEZ and the continental shelf within 200 nautical miles have common boundaries and substantive privileges. Thus, international jurisprudence suggests a trend towards a single border for both the EEZ and the continental shelf within 200 nm⁵¹.

As well, the accepted boundary is a fairly straight-line delimitation of opposite EEZs based on the median line. The design is reduced to just 5 points between the 26th and 28th meridians. It is necessary to specify the geographical coverage of implementation of the UNCLOS duty not to endanger or hamper the reaching of the final agreement and relevant obligations of control under customary international law⁵².

The agreement confirms that the Greek islands have been considered within the boundaries of the sea. The border on the Greek side was focused entirely on the coast of the islands. This is seen by the points at which the border was drawn along Crete and partly from Rhodes. According to the long-standing position of Greece: since the islands create maritime areas of their own, even though they are closely interconnected and form communities that reflect spatial unity, it follows that the islands can be taken as the basis for the maritime border, which is the median line between the Greek islands and the opposite mainland shore. Greece presumes only that certain low-rise elevations and other uninhabitable insular features can be overlooked in the demarcation process. However in the Greek-Egypt agreement, the boundary is not a strict median line, which is the core situation of Greece, but a modified median⁵³.

3.2.3. The Egyptian vision: An agreement in accordance with international law

The exploration of natural resources within Egypt's territorial waters of the Mediterranean Sea, such as the greatest field in the region, has motivated Egypt to aim to ever become a central gas hub. This has included, for example, opening up the economy of the country to foreign

⁴⁹ Stylianos A. Sotiriou, *op.cit.*, p. 243.

⁵⁰ Ildir Lika, *The Greece-Egypt Maritime agreement and its implications for the Greek-Turkish dispute in the Eastern Mediterranean*, *Seta Analysis*, no 67, August 2020, p. 11.

⁵¹ Constantinos Yiallourides, *op.cit.*

⁵² *Ibid.*

⁵³ *Ibid.*

investment in this area. Regional uncertainty, compounded by tensions over territorial waters between Eastern Mediterranean countries, is a major obstacle to Egypt's gains from the expansion of gas trade. Turkey, which is not a member of the Eastern Mediterranean Gas Group, concluded a Delimitation Agreement with the Libyan Government in 2019 to guarantee accessibility to resources found in the Mediterranean Sea. This Agreement was deemed illegitimate under international law of the sea and denounced not only by Egypt, but also by Greece, Cyprus and the European Union. Otherwise, the agreement was a legal response to the Turkish-Libyan agreement, given the scope of recent Turkish exploratory drilling in the area of the Greek island of Kastelorizo⁵⁴.

The Greek-Egyptian delimitation of maritime areas determines the extent of the arguments of those two States which are in dispute with the Turkish allegations. At the same time, following the agreement signed with Cyprus in 2003, the agreement between Egypt and a member of the European Union is intended to improve the authority of Egyptian policy in the Mediterranean. The purpose of the agreement was to increase profits from the resource extraction. The agreement was also followed by stronger collaboration between Egypt and Greece in other sectors expected to further promote relations between them⁵⁵.

Liquefying and transferring gas supplied from Israel and Cyprus to European lands by Greece. Egypt reached an agreement with Israel early last year—between the private Egyptian corporation Dolphinus Holdings on the one side and the two companies: Delek Exploration and its U.S. partner Noble Energy on the other hand—to sell an estimated \$15 billion of natural gas from both fields: Tamar and Leviathan. Then in October 2019, the gas agreement was amended to raise the volume exported to Egypt from 32 billion cubic meters as set out in the initial agreement to 60 billion cubic meters of gas over 15 years. Egypt also signed an agreement with Cyprus on 19 September last year in Nicosia to construct a gas pipeline between the two countries to deliver Cypriot gas to Egyptian liquefied natural gas stations. In particular, the development of its energy exchange schemes would be of no particular benefit if it were not integrated with Europe by Greece. Egypt has signed an approximate €2-billion power interconnection agreement with Cyprus - from which to Greece - through cable with a capacity of 3000 megawatts per hour. These capacities are rising as the number of cables, as well as Egypt's growing power generation capacity, rises. In addition, Egypt is moving on an electrical link with Saudi Arabia via cable with a capacity of up to 3000 megawatts; although it has already begun an electrical connection with Sudan with a capacity of 70 megawatts per hour, and with Jordan via an electrical cable with a capacity of up to 550 megawatts per hour. In 2018, Egypt sold a total of 188 gigawatts to Jordan via this cable⁵⁶.

For Greece, the Turkish Maritime Boundary Demarcation Agreement with the Government of the National Agreement (GNA) primarily accrues from the Greek EEZ. In other words, the first benefit of Greece's demarcation of its maritime boundaries with Egypt is the provision of a legal system governing its unspecified land zones in the Eastern Mediterranean region over the coming decades, thus restricting the outcomes of the agreements. And so on having provided Greece with legal reasoning, along with the International Law of the Sea, in the context of an international agreement that opposes the Turkish-Libyan agreement, enhances

⁵⁴ Sara Nowacka, Egyptian-Greek Agreement on Sea Delimitation: Meaning for Egypt's Regional Policy, The Polish Institute of International Affairs, available at https://pism.pl/publications/EgyptianGreek_Agreement_on_Sea_Delimitation__Meaning_for_Egypt's_Regional_Policy

⁵⁵ Ibid.

⁵⁶ Mohamed Shady, Mutual Benefits: The Egyptian-Greek Maritime Boundary Delimitation Deal, The Egyptian Center for Strategic Studies. Available: <https://www.ecsstudies.com/en/mutual-benefits-the-egyptian-greek-maritime-boundary-delimitation-deal/>

Greece's status by retaining its EEZ before international organizations and the international society generally. Otherwise, the Greece-Egypt Maritime agreement causes Turkey to lose the chance to delimit its coastal borders with Egypt. Over the last time, Turkey has continuously followed this delimitation by giving a greater EEZ than the potential outcome of the delimitation of borders with Greece. However in accordance with the laws of international law in general and the Law of the Sea in particular, Egypt rejected this bid⁵⁷.

3.3. Bilateral Agreement: Turkey and Libya

On November 27, 2019, Turkish President Recep Tayyip Erdogan and the head of the Libyan National Unity Government Fayez al-Sarraj concluded an agreement to delimit their maritime areas, which allows Turkey to assert rights over large areas in the eastern Mediterranean, as well as an agreement on "military and security cooperation". This latter allows Turkey to strengthen his armed support to the GNA. But it is above all the agreement on the delimitation of the maritime borders that arouses a backlash.

3.3.1. Background

Turkey has not signed or ratified the UNCLOS. Act No 2674 of 20 May 1982 lays down the expansion of its territorial sea at a maximum of 6 nautical miles⁵⁸ and instructs the Council of Ministers to set a cap of more than 6 nautical miles for the territorial sea, according to the reservation that it takes into account all the unique conditions and related cases therein, in a manner consistent with the theory of justice. At present, Turkey is enforcing the 6-mile rule in the Aegean Sea and Mediterranean Sea maximum is 12 nautical miles. Turkey does not have any regulations relating to its continental shelf or EEZ. Decree No 86/11264 of 17 December 1986 of the Council of Ministers created the Turkish Exclusive Economic Zone in the Black Sea at 200 nautical miles, but "no proclamation of the EEZ has been made for the Mediterranean"⁵⁹. However as regards its continental shelf, in 2011 Turkey signed a demarcation agreement with the Turkish Republic of Northern Cyprus surrounding part of its continental shelf in the Eastern Mediterranean⁶⁰.

The maritime sovereignty conflicts that have been going on in the Eastern Mediterranean for about 10 years have intensified significantly with the latest actions of Greek Cypriot State (GCA) and Greece. These efforts are funded by multinational players such as the European Union, the United States, Russia, France and regional States such as Israel and Egypt. EastMed pipeline project and Eastern Mediterranean Gas Forum; Exclusive Economic Zone agreements signed by GCA with Egypt, Lebanon and Israel; GCA's unilaterally in its announced EEZ authorizing and discovery efforts have forced Turkey to make a tactical decision⁶¹.

⁵⁷ Ibid.

⁵⁸ Art. 1 of Act No 2674 of 20 May 1982 states: "The sovereignty of the Republic of Turkey extends beyond its land territory to its territorial sea. The breadth of the territorial sea shall be of six nautical miles. The Council of Ministers has the right to establish the breadth of the territorial sea, in certain seas, up to a limit exceeding six nautical miles, under reservation to take into account all special circumstances and relevant situations therein, and in conformity with the equity principle".

⁵⁹ Angela Del Vecchio Capotosti, In *Maiore Stat Minus: A Note on the EEZ and the Zones of Ecological Protection in the Mediterranean Sea*, *Ocean Development & International Law*, vol. 39, no3, 2008, p. 290.

⁶⁰ Berk Hasan Ozdem, *Examination of the Overlapping Claims of Turkey and the Greek Cypriot Administration of Southern Cyprus on the Maritime Areas to the West of the Island of Cyprus*, *İstanbul Hukuk Mecmuası*, Istanbul University Press, vol 77, no 2, 2019, p. 955.

⁶¹ Zekiye Nazlı Kansu, *an assessment of eastern Mediterranean maritime boundary delimitation agreement between Turkey and Libya*, *Science Journal of Turkish Military Academy*, vol 30, no 1, 2020, p. 52.

Turkey has negotiated this Agreement with the Government of the National Agreement. Forty-two years of Qaddafi's reign in Libya have been overthrown by Arab Spring protests and NATO interference with the support of the UN. A dual-governed Libya appeared as a result of the country's elections, and Libya has not been able to resolve the civil war since 2011. Briefly, Libya has been living in turmoil with a civil war climate with little political order since 2011. This is a very critical situation for the stability of the agreement between Turkey and Libya⁶².

The principle purpose for the Turkey-Libya Agreement is the conflict between Turkey, Northern Cyprus and Greek Cypriot State on maritime sovereignty in the Eastern Mediterranean. There are 122 tones of natural gas and 1,7 billion bbls in the Levant Basin. As a result of this situation, the offshore drilling operations in the region have created tension. The reason for this disagreement is the Cyprus issue and the controversy in the Aegean. The major dispute that Turkey is facing with Greece in the Eastern Mediterranean is the delimitation of territorial waters and the continental shelf, and even the Cyprus dispute⁶³.

As part of the exchange of hydrocarbons in the Eastern Mediterranean, the question of identifying maritime sovereignty areas has been an important agenda topic in recent years. The value of energy supplies is growing in line with the rise in global energy production and use. Oil and gas are both economically and politically relevant. Eastern Mediterranean hydrocarbon resources are of considerable importance for the economies and political influence of the regional countries. In this background, Turkey has signed a significant agreement with Libya to make use of energy resources in the region, to secure the borders of Mavi Vatan, the rights and privileges of itself and of the TRNC, and to engage in national and regional energy policies⁶⁴.

3.3.2. The content of the agreement and its analysis

According to this agreement, the boundaries of the Continental Shelf and the Exclusive Economic Zone in the Mediterranean between the Republic of Turkey and the Government of National Accord-State of Libya begins at "Point A" (34° 16' 13.720"N -026° 19' 11.640"E) and ends at the Point B (34° 09' 07.9"N -026° 39' 06.3"E). The boundaries of the Continental Shelf and the Exclusive Economic Zone determined in Article I, paragraph 1 of this Memorandum of Understanding are shown on the Maritime Chart INT 308 (Data Source: BA Chart Edition 1992), scale 1: 1 102 000 (Annex 1). The coordinates are shown in the chart at Annex 1 in its coordinate system. The geographical coordinates referred to in ARTICLE I of this Memorandum of Understanding are expressed in terms of the World Geodetic System 1984 (WGS'84). Base points coordinates that are used to determine the equidistance line, are shown in Annex.

Turkey-Libya Agreement with the EEZ, Turkey has exceeded the "Seville Map" plans set out by the University of Seville. As Turkey alleges, Greece and the GCA are aiming to exclude Turkey into the Gulf of Antalya by limiting the Turkish EEZ. This Agreement is defined by the Turkish side as the 2nd Treaty of Sevres. Turkey seeks to protect the TRNC and its own interests as a result of the GCA EEZ agreements with Egypt in 2003, Israel in 2010 and Lebanon in 2007, the search and extraction operations in the EEZ fields, the EastMed pipeline project, the EMGF projects⁶⁵.

⁶² Ibid, p. 53.

⁶³ Ibid, p. 56.

⁶⁴ Ibid.

⁶⁵ Ibid, p. 66.

In the context of the framework of the Turkey-Libya Agreement, Cihat Yaycı and Cem Gürdeniz's "Mavi Vatan Doctrine;" Turkey signed the memorandum of understanding and therefore the Maritime Jurisdiction Agreement. This agreement has a historic significance for the consent of the Mavi Vatan borders. The notion of "Mavi Vatan"⁶⁶ is an expression of the value of the need for Turkey to defend its strategic interests at sea else. In this perspective, Turkey must take place and continue to be present in the Eastern Mediterranean. To this end, Turkey has signed a Memorandum of Understanding "Security and Military Cooperation Agreement" to restrict maritime control in the Eastern Mediterranean with the Government of National Accord. Eventually, the EEZ was named and announced in the official newspaper. The continental shelf and the boundaries of the EEZ have been adopted with a frontier of 29.9 km in length. The agreement would fully alter the condition of the Mediterranean⁶⁷.

3.3.3. Some dissents

Tensions are building up in the eastern Mediterranean, where the discovery of gas fields is fueling disputes between several states, including Greece and Turkey, in conflict for decades over the sharing of resources, water, and the Continental Shelf, airspace.

Egypt opposes two agreements between Turkey and the U.N.-backed Libyan government on maritime rights in the Mediterranean and military cooperation. The maritime arrangement will grant Turkey entry to an economic zone around the Mediterranean, subject to the protests of Greece, Cyprus and Egypt, which lay strategically between Turkey and Libya. Through signing the agreement, Libya breached the 2015 agreement negotiated by the transitional government of the country, which was approved by the Security Council. The arrangement includes the Presidency of the Council as a whole - not only the Representative of the Council working alone - to conclude international agreements. And they must be approved by the House of Representatives. The two Memorandums of Understanding with Turkey have not been approved by the House of Representatives⁶⁸.

Since its signing, Greece has strongly condemned the agreement, calling it a "violation of international maritime law and the sovereign rights of Greece and other countries. It describes it as "disruptive" for peace and stability in the region. As much as the Turkish statements irritate Greece, Cyprus, Israel and Egypt, which oppose the Turkish aims. Linked by major energy projects, these states denounce Ankara's hold on a promising area, fearing that the agreement will complicate the construction of the EastMed pipeline (Israel, Cyprus, Greece, Italy), intended to bring Mediterranean gas to Europe⁶⁹.

⁶⁶ Turkey's Mavi Vatan naval doctrine has appeared recently as one of the foundations of Turkish security and defense policy aimed at creating Turkey as a spectacular naval force in and outside the Mediterranean. Although the Mavi Vatan Doctrine has elevated the questions in Athens and Nicosia, where both confront it as an expression of what they see as a forceful expansionist Turkish foreign policy that interrupts Greek and Cypriot sovereignty, Mavi Vatan reflects the extent of thought-provoking strategic, ideological, but above all circumstantial, interbreeding between different undertones in Turkey. Moreover, its emergence as a cornerstone of Turkey's defence strategy, having existed in the margins for several years after its birth in 2006, is closely connected to the tenacity of Turkey's profound apparently never-ending rebalancing of power in Ankara. See, Evangelos Areteos, *Mavi Vatan and Forward Defense The Sinuous Journey of a Republican and Imperial Hybridization*, Analysis, Diplomatic Academy, University of Nicosia, 2020, p. 2.

⁶⁷ Zekiye Nazlı Kansu, op.cit, p. 66.

⁶⁸ Edith M. Lederrer, *Egypt rejects Turkey-Libya deal on sea rights, security*, 20 December 2019. Available: <https://apnews.com/article/77df1a4d5d17b5bd3b5fdc379db2718f>

⁶⁹ Marie Jégo, *Un accord turco-libyen de délimitation maritime provoque la colère de la Grèce. Athènes redoute la mainmise d'Ankara sur les gisements gaziers dans l'est de la Méditerranée*, *Le Monde*, 10.12.2019: https://www.lemonde.fr/international/article/2019/12/10/un-accord-turco-libyen-de-delimitation-maritime-provoque-la-colere-de-la-grece_6022314_3210.html

With regard to Greece, international law and in particular, the Convention of the Law of the Sea grants the islands the ability to exercise sovereignty over their continental shelf and states that the continental shelf between the two countries shall be established on a median line basis⁷⁰. Greece's legal position about settlement of the EEZ dispute is essentially based on the claim that maritime delimitation between mainland Turkey and Greek islands must be done exclusively by adoption of the "equidistance principle" irrespective of any "special circumstances" that may exist. According to this view, islands have full right to exercise jurisdiction over their CS and coextensive EEZs as per Article 121 of UNCLOS⁷¹.

This agreement essentially violates the territorial integrity of European Union Member States and at the behest of the Libyan Government, allows for military assistance from Turkey. This may have damaging consequences for the entire Mediterranean region and should be seen against the risky backdrop of Turkey's authoritarian expansion⁷².

Does the Agreement conform to International law?

- **At odds with State sovereignty**

The concept of state sovereignty is fundamentally based on J. Jelinek's concept that the concept of the state consists of three essential constituent elements: its population, territory and political power. In other words, the State is commonly defined as a community that consists of a territory and a population subject to organized political power." This traditional definition has the merit of emphasizing the factual nature of the existence of the State, but the three elements set out in it are not sufficient: all local authorities other than the state, departments, regions, Member States of the Federal States, also combine these "constituent elements", but they lack what characterizes the state under international law⁷³.

This definition is also broadened by a fourth element, the state's ability to initiate and maintain international relations. An interesting question is whether the concept of sovereignty is prescriptive under international law. The doctrine remains in this unequal field. It is true that sovereignty is explicitly stated, as already mentioned above, in Article 1 of the Montevideo Convention, and then, in the Charter of the United Nations, as a concept "independence." It then appears that, in these conventions, the meaning of these terms is intended to protect, by the standards contained in these documents, a number of specific facts⁷⁴.

Sovereign States are the principal objects of contractual laws of international law. Notably, one of the key threats to the authority of international law is that it supposedly fails to recognize the autonomy of nations, intruding on the territories in which they should be able to make their own decisions. Through contrast with human autonomy, state sovereignty is also interpreted in

⁷⁰ Petros Siousiouras, Georgios Chrysochou, delimiting maritime economic zones in Greece in the context of International Jurisprudence, *Middle East Forum*, Issue 12, 2013, p. 4.

⁷¹ Serhat S. Çubukçuoğlu, Turkey's Exclusive Economic Zone in the Mediterranean Sea: The Case of Kastellorizo, Master thesis, The Fletcher School of Law and Diplomacy, 2014, p. 21.

⁷² Pierfrancesco Majorino, Pietro Bartolo, Andrea Cozzolino, Giuliano Pisapia, Massimiliano Smeriglio, Question for written answer E-004522/2019 to the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy Rule 138.

⁷³ Alain Pellet, *Le droit international à l'aube du XXIème siècle (La société internationale contemporaine - Permanences et tendances nouvelles)*, Cours euro-méditerranéens Bancaja de droit international, vol. I, 1997, pp. 49-50.

⁷⁴ Remigiusz Chęciński, Alexandre Departout, Tymoteusz Mađry, *La souveraineté ou les souverainetés? Réflexions sur les relations entre souveraineté de l'État et souveraineté de la nation*, *Adam Mickiewicz University Law Review*, vol 2; no2, 2013, pp. 236-236.

international law as a skill, security or control, and in addition as the power to make independent choices⁷⁵.

Likewise, the principle of non-interference, one of the corollaries of state sovereignty, has been the legal basis for the inertia and indifference of the international community. Above all, it has served to legitimize a minimal interpretation of other internationally enshrined rights such as the right of peoples to self-determination. The combination of the principle of non-interference and the right of peoples to self-determination had given rise to a right, namely the "inalienable right" of every State to choose its political, economic, social and cultural system without any form of interference on the part of another State⁷⁶.

Thus, the State needs to have residents. Citizens are a group that exists in the state and is governed under state authority. The State, as a legitimate authority, has a responsibility to protect the society. The State must therefore have a jurisdiction, and the territory is a position for the government to apply the legislation to the people. Even within the region, the government may exercise authority, such as jurisdiction over the region with the help of red tape; have a competent army and the power to levy taxes. Since the conditions are recognized by international law, States should uphold the sovereignty of the territories owned by others. In addition, the State needs to have a government. The government has a responsibility to protect and flourish population. Otherwise, the government has the right to set down laws and administer the state in the interests of the people. Consequently, without the legislature, the state cannot be assumed to be a legal state. Last but not least the state has the potential to enter into ties with other nations. It means, as a foreign subject, only a sovereign state capable of entering into an arrangement with other States⁷⁷.

Although the line drawn as a maritime boundary upsets the territory of Crete, which is held by Greece, the agreement on the maritime borders between Turkey and Libya does not take into consideration the sovereignty of Greece. Turkey and Libya have both realized that the territory of Greece exists in that area; yet neither country has invited Greece to join the agreement as a country that also has the effect of the agreement. Thus an agreement may be considered to be an agreement which does not obey one of the basic and essential principles of international law, such as the sovereignty of the State⁷⁸.

- **Versus the Good Faith principle**

As a general principle of law perched at a considerable level of abstraction, good faith, in the same way any other principle or general notion is used by standards to apply to concrete cases. When we talk about 'legitimate trust protection' or 'abuse', these concepts are not legally predetermined. They refer to the rationalities of a relationship as well as to the history of social com carriers and expectations. But in all these cases, the standard is used to help implement the pre-existing principle. However, there are also cases - and they are of interest to us here - where the term good faith is used in a synonymous non-technical sense of reasonableness. Good faith here has no body of its own; the term is interchangeable. It's a pure standard. Examples can be

⁷⁵ Samantha Besson, Sovereignty, International Law and Democracy, *European Journal of International Law*, vol. 22 no. 2, 2011, p. 376.

⁷⁶ Dodzi Kokoroko, *Souveraineté étatique et principe de légitimité démocratique*, *Revue québécoise de droit international*, vol. 16, no 1, 2003, p. 40.

⁷⁷ Yordan Gunawan, Verocha Jayustin Sastra, Lathifah Yuli Kurniasih, Adyatma Tsany Prakosa, Mutia Ovitasaki, The validity of agreement between Turkey and Libya on the maritime boundaries in international law, *Jurnal Hukum dan Peradilan* vol. 9, no 2, 2020, pp. 177-178.

⁷⁸ *Ibid*, p. 178.

found in terms of interpretation or when we talk about a bona fide link for the exercise of extraterritorial competence, etc.⁷⁹.

Unlike certain general principles of international law, the principle of good faith does not in itself; imply the benefit of any specific state of affairs. It helps to maintain the acknowledgement of communicative actions on behalf of international law-makers (i.e. States and international organizations) independent of the normative or political policy that they themselves are following. Thus the concept of good faith can be reconciled in a value-pluralistic legal order⁸⁰.

Good faith, in an empirical context, is a strong general rule, a general concept of law. This is by far the most critical form of good faith in international law. The content of good faith as a general concept decomposes itself in a variety of more specific ways. There are three major elements, which are presented here in order of declining significance. Second, the concept of good faith requires the defense of reasonable expectations that a certain course of action has provoked in another person, irrespective of the particular intent of the actor. Second, on the opposite side of the issue, good faith as a general concept defends those aims embedded in the popular interest against unnecessary individualistic pretensions. Third, the concept of good faith has coagulated in it many prohibitions of non-loyal behavior, particularly by the old maxim, advocated by middle-aged civilists and canonists, that no one should take full advantage of his own wrongs⁸¹.

Probably the most controversial element of good faith in international law is the avoidance of the violation of rights. The aspect of the deprivation of rights and the unreasonable exercising of rights are closely linked and not easily differentiated. It is said that an infringement of rights happens when a State exercises its rights in such a manner as to infringe the rights of another State, and that the exercising of that right is "irrational and unreasonable, without proper respect for the reasonable standards of the other State⁸².

Pacta sunt servanda is the most crucial principle of international relations established by treaties. Even referred to as the fundamental rule of international law by Hans Kelsen, the concept is promulgated in Article 26 of the Vienna Convention on the Law of Treaties (VCLT), but also stretches beyond the commitments of the Treaty and speaks of the binding essence of international law in general. The value of this concept has been widely reaffirmed in theory and jurisprudence; it has been accepted both as customary international law and as a general principle of law, aside from the presumption that international conventions have a common legal impact on their contracting parties as they have on national legal structures. Closely related to the principle of good faith, *pacta sunt servanda* stems from the agreement granted by the respective parties to the Convention, giving the obligations a legitimizing effect. At the same time, although the *pacta sunt servanda* principle has an impartial standing. The principle ditto confronts States as an objective principle, regardless of their will. States must also comply with the commitments entered into as they stand, that the material must be executed in good faith and in the context of the equilibrium of international relations⁸³.

⁷⁹ Robert Kolb, *La Bonne foi n droit international public*, Revue Belge de droit international, no 2, 1998, p. 673.

⁸⁰ Ulf Linderfalk, *What Are the Functions of the General Principles? Good Faith and International Legal Pragmatics*, Heidelberg Journal of International Law, vol. 78, 2018, p. 4.

⁸¹ Robert Kolb, *Principles as Sources of International Law (With Special Reference to Good Faith)*, Netherland International Law Review, vol 53, no1, 2006, pp.17, 18.

⁸² Steven Reinhold, *Good Faith in International law*, Bonn Research papers on Public International Law, Paper No 2/2013, 23 Mai 2013, pp. 8-9.

⁸³ Christina Binder, *Jane A. Hofbauer, The Pacta Sunt Servanda Principle or the Limits of Interpretation The Gabčíkovo-Nagymaros case revisited*, in, S Forlati, M Mbengue & B McGarry, (eds.), *The Gabčíkovo-Nagymaros Judgment and its Contribution to the Development of International Law*, Brill, Nijhoff, 2020, pp. 59-60.

There are variations in the understanding of the principle that determines how States apply the principle of good faith in the agreement. In order to minimize the number of various meanings of good faith, the theory of good faith is demonstrated in the Vienna Convention of 1969⁸⁴.

Accordingly, in compliance with the Vienna Convention of 1969, good faith has become a basic standard that must prevail in the negotiation. If the principle of good faith is not applied by the State in the course of forming an international agreement, it may become void. In the case of the Turkey-Libya deal on maritime borders, it is clarified that the two parties do not have strong faith in the mechanism of achieving an agreement⁸⁵.

Article 31(1) demands that any treaty be understood "in good faith" and that the basic idea expressed in that well-known term be defined as some sort of shield encompassing the whole mechanism of interpretation. This notion, expressed in the opening words of the general rule of interpretation, paves the way and guides the obligation as a whole. As of the most basic rule of law of the Treaties, a treaty must be carried out in good faith." Because the interpretation of a treaty is a necessary aspect of its success, rationality demands that good faith be committed to the interpretation of treaties. Good faith must be used throughout the interpretation process, i.e. when analyzing the normal sense of the text, the context, intent and intention, the relevant practices of the parties, etc. In addition, the outcome of the interpretative process must therefore be respected in good faith⁸⁶.

Article 69, on the effects of the invalidity of the Treaties, states that Actions done in good faith before inapplicability has been invoked shall not be illegal purely on the basis of invalidity of the Treaty.' This implies that if a State enters into a treaty of good faith before the deal has been found invalid, the parties cannot be accountable. Additionally, paragraph 2(b) explicitly states that the rules on invalidity in the Treaty are without prejudice to issues of liability for illegal act which may occur as a result of the basis of invalidity. Issues of State liability should not come under the framework of Article 69, which already stems from the general law of Article 73. Therefore, as the International Law Commission argues, "if the act in question were unlawful for any other reason independent of the nullity of the Treaty, that paragraph would not be sufficient to make it lawful." This is especially relevant for certain reasons of invalidity which may be focused on behavior which is in violation of international law, such as corruption, abuse, repression and coercion⁸⁷.

Turkey and Libya do not allow Greece to enter into an arrangement even if both parties recognize that the agreement will affect the territories of Greece. Turkey and Libya are concerned only about the gain of the groups, nor are they concerned with the effect on another state. In addition, all parties realize that there is an island around the line owned by Greece. It means that Turkey and Libya recognize that if they disregard the presence of Crete, there would be a dispute. Therefore, the maritime boundary deal between Turkey and Libya is not legitimate because they do not conform to the principle of good faith⁸⁸.

- **Conflict with the Law of the Seas Convention**

⁸⁴ Yordan Gunawan, Verocha Jayustin Sastra, Lathifah Yuli Kurniasih, Adyatma Tsany Prakosa, Mutia Ovitasaki, op.cit, p. 178.

⁸⁵ Ibid, p. 179.

⁸⁶ Olivier Dörr, Article 31: General rule of interpretation, in, Olivier Dörr, Kristen Schmalenbach (eds.), Vienna Convention on the Law of Treaties: A commentary, Springer-Verlag GmbH Germany 2018, p. 587.

⁸⁷ Stephan Wittich, Article 69: General rule of interpretation, in, Olivier Dörr, Kristen Schmalenbach (eds.), Vienna Convention on the Law of Treaties: A commentary, Springer-Verlag GmbH Germany 2018, p. 1275.

⁸⁸ Ibid.

Considering the geographical and economic interest of the Eastern Mediterranean as well as its context, the demarcation of EEZs is a very controversial process that is motivated by competing political and legal arguments. The United Nations Convention on the Law of the Sea postulates that a state's territorial waters expand just 12 nautical miles out to sea, although an exclusive economic zone – in which a country may claim fishing, mining and exploration rights – can extend another 200 NM. If the maritime gap between the two states is less than 424 NM, an accepted dividing line between their EEZs must be formed. However, Turkey did not sign up to UNCLOS, presumably because the treaty gives substantial privileges to island territories, including Cyprus and Greece⁸⁹.

Turkey rather demands rights dependent on its continental shelf, a practice that significantly restricts the rights of its neighbors. Under customary international law, as expressed in Article 76 of the UNCLOS, this maritime zone made up of the seabed and ground water which stretch to the outer edge of the continental rim. Although as mentioned above the upper limit of the EEZ itself is 200 NM, the continental shelf may stretch throughout 200 NM from the shore, based on the depth, form and geophysical conditions of the seabed and sub-sea ground. Article 76 UNCLOS specifies that the continental shelf 'does not outweigh 350 nautical miles from the baseline from which the width of the territorial sea is determined or does not exceed 100 NM from the 2500 m isobath, which is a line going the depth of 2500 m'⁹⁰.

- **Taking into account the treaty of amity and cooperation principles**

As the Treaty of amity and cooperation in South-East Asia (TAC) was signed in 1976 at the first Association of South-East Asian Nations (ASEAN) meeting, the obsolescence of a nearly 10-year-old organization was already unorthodox. In the 1960s, countries in Southeast Asia had already associated with the Alliance of Southeast Asia (ASA) and Maphilindo as post-colonial initiatives, but ultimately failing. The creation of ASEAN in 1967 was another effort by non-communist states in South East Asia to create an intergovernmental body to strengthen regional cooperation. In this respect, the TAC was an autochthonous reaction by the Southeast Asian States to the uncertainties of foreign policy in the region⁹¹. At first, the Treaty applies exclusively to ASEAN member States. Subsequently, a modification was made in the form of a protocol on 15 December 1987 and the Treaty was accessible for entry by States outside ASEAN. The Treaty has now been ratified by 28 States, including Turkey and Greece as a member of the European Union⁹².

The treaty is an ethical code regulating inter-state ties. Article 1 provides “The purpose of this TAC is to promote perpetual peace, everlasting amity and cooperation among their peoples which would contribute to their strength, solidarity and closer relationship”. Article 2 states “In their relations with each other, the High Contracting Parties shall be guided by the following fundamental principles:

- a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;
- b. The right of every State to lead its national existence free from external interference, subversion or coercion;

⁸⁹ Branislav Stanicek, Turkey: Remodelling the eastern Mediterranean Conflicting exploration of natural gas reserves, Briefing, European Parliament, September 2020, p. 4.

⁹⁰ Ibid.

⁹¹ Daniel Seah, The Treaty of Amity and Cooperation in Southeast Asia: The Issue of Non-Intervention and its Accession by Australia and the USA, Chinese Journal of International Law, vol 11, no 4, 2012, pp. 785-786.

⁹² Yordan Gunawan, Verocha Jayustin Sastra, Lathifah Yuli Kurniasih, Adyatma Tsany Prakosa, Mutia Ovitarsari, op.cit, p. 182.

- c. Non-interference in the internal affairs of one another;
- d. Settlement of differences or disputes by peaceful means;
- e. Renunciation of the threat or use of force;
- f. Effective cooperation among themselves”.

In compliance with the purpose and values set out in the TAC, the agreement should be complied with by the participant States with a view to developing and improving the diplomatic ties, tradition and history of good neighbors, based on the principles of good faith. Through participating in the Treaty, States are obligated to promote and facilitate relations between the citizens of the State who participate in the Treaty. However in its progress from 1976 to the present, there are so many issues facing the agreement, particularly as regards national borders⁹³.

In the case of the Maritime Borders Agreement between Turkey and Libya, it is counter to the first TAC principle, namely 'mutual respect for the freedom, autonomy, dignity, territorial integrity and national identity of all nations.' Because Greece and Turkey are TAC States, all States must apply the principle of the Agreement. Even though Libya does not participate in TAC, Turkey must take into account the TAC's principles in its Maritime Boundaries Agreement with Libya, since all parties recognize that the agreement would influence Greece, which is also a State party in TAC⁹⁴.

- **Skhirat Agreements invalidates Turkish-Libyan Memorandum of Understanding**

The Skhirat agreements are peace agreements on Libya. These agreements were signed on 17 December 2015 between representatives of the General National Congress and those of the House of Representatives in the Moroccan city of Skhirat.

Skhirat Agreement tried to settle the quarrel between the House of Representatives (HoR) and its related administration, and the Government of the General National Congress (GNC) in Tripoli. It formed the Presidential Council of the Government of the National Accord, a nine-member executive which took office in Tripoli in March 2016 and was named to form the Government of the National Accord and the High State Advisory Council of former members of the GNC. The HoR was to serve as the supreme constitutional body in the country and to authorise the government of reconciliation⁹⁵.

The signing by Turkey and Libya of the Memorandum of Understanding on the sovereignty of sea areas, which Egypt, Greece, and Cyprus have announced, is a violation of the Skhirat Agreement because it is not the prerogative of the head of the Libyan National Accord government to sign international agreements on its own, but international agreements must be signed with the approval of the Libyan Council of ministers.

4. SETTLEMENT OF DISPUTE BY PEACEFUL COMPULSORY MEANS

Whatever form of dispute occurs in a particular situation, any dispute between or between United Nations Member States is regulated by the Charter of the United Nations²⁶, including the principles of sovereign independence of states, the prohibition of the use of force, the negotiated resolution of conflicts and the free choice of means.

⁹³ Ibid, p. 183.

⁹⁴ Ibid.

⁹⁵ Mohamed Eljarh, *The Libyan Crisis: Internal Barriers to Conflict Resolution and the Role of Multilateral Cooperation*, in, Andrea Dessì and Ettore Greco, *The search for stability in Lybia: OSCE's Role between Internal Obstacles and External Challenges*, Edizioni Nuova Cultura For Istituto Affari Internazionali (IAI), Rome, 2018, pp.55-56.

The seven States in the Eastern Mediterranean are member States in the United Nations. All Members shall resolve their international conflicts through diplomatic means in such a way that international peace and security and justice are not violated.' However, In addition, all parties to any conflict whose continued presence is likely to jeopardize the preservation of international peace and security shall seek, first and foremost, the protection of international peace and security⁹⁶.

Many maritime border disputes entail conflicting claims to the EEZ and the continental shelf, while often overlapping claims to the territorial sea can also be included in a conflict. As far as delimitation is concerned, the UNCLOS provides as follows for the territorial waters, the EEZ and the continental shelf. Thus, UNCLOS deals with the EEZ and the continental shelf in the same direction with respect to the settlement of conflicts resulting from conflicting claims: for States with opposite or neighboring coasts, the delimitation of the EEZ and the continental shelf shall take place by consensus on the basis of international law in order to find an equitable and satisfactory solution⁹⁷.

If the parties to a maritime border dispute are states who are parties to UNCLOS and unable to find a solution through peaceful means of their own choosing, they are obliged to return to the obligatory dispute resolution procedures set out in Section Two of Part XV of the UNCLOS⁹⁸.

4.1. The difficulty of asylum for the International Tribunal for the Law of the Sea

It was clear from the foregoing that the UN Convention on the Law of the Sea is an inescapable instrument, not only because of the rules it contains, but also because of the framework treaty function it assumes. Described as a true "constitution of the seas and oceans," the Convention aims, according to its preamble, to resolve all "problems concerning the law of the sea" by establishing "a legal order for the seas and oceans". The provisions relating to this subject are indeed dotted throughout the Convention, whether it is the rights of the coastal state to take measures to prevent pollution (parts II to IX), or rules relating to the exploration or exploitation of mineral resources of the International Seabed Zone (Part XI and 1994 Agreement amending this part of the Convention) , or rules on marine scientific research (part XIII). In order to resolve any disputes that may arise from the interpretation and application of these provisions, the Convention also provides for a complex and innovative mechanism. The general idea is to ensure that the resolution of a dispute is mandatory and, at the same time, that the litigants have the choice of how to settle it peacefully. Part XV of the Convention thus details the rules on dispute resolution, and Article 287 lists the judicial proceedings to which the parties can or must resort, including the International Tribunal for the Law of the Sea (ITLOS)⁹⁹.

In certain situations, however, ITLOS retains special compulsory authority not in conflict with the ICJ or with arbitration. Apart from all kinds of disputes, which seem not yet to have taken place, involving the discovery and extraction of the natural resources of the seabed

⁹⁶ Roudi Baroudi, *Unlocking peace and prosperity: How to resolve Maritime border disputes in the eastern Mediterranean sea?* Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut, 2020, p. 16.

⁹⁷ *Ibid.*, p. 17.

⁹⁸ *Ibid.*

⁹⁹ Christophe Nouzha, *Le rôle du Tribunal international du droit de la mer dans la protection du milieu marin*, *Revue Québécoise de droit international*, vol 18, n0 2, 2005, p. 66.

outside national jurisdiction, which fall under the binding and exclusive jurisdiction of the 11-member Seabed Dispute Chamber, the exclusive mandatory authority of the Tribunal is practiced in two separate imperative processes¹⁰⁰.

The parties who resort to ITLOS to resolve disputes have the potential advantage of a "standing" judicial system that can be required in time to acquire specialist knowledge in the topic of the respective agreements and to create consistent and instantly recognizable jurisprudence in the areas protected by the agreements. This will provide practical advice and support to the parties in establishing future negotiations and thereby allow them to prevent or mitigate conflicts¹⁰¹.

Unfortunately, international law on this subject is difficult to make compatible with the claims of any individual group and can cause a great deal of distortion on either side. However the law is resolved, which could offer a permanent solution for keeping stewing rivalries at bay and for finding a way out of the present stalemate.

It is important to remember here that Turkey is not a party to the UNCLOS, and thus the UNCLOS is not actually the relevant law. At the Third United Nations Conference on the Law of the Sea, Turkey voted against the UNCLOS in its effort to claim that islands should not have a continental shelf or an exclusive economic zone and that the latter can be decided only by reference to two mainland territories, a position that was officially opposed¹⁰².

Nevertheless, it is well known that most of the terms of the Convention are merely a solidified version of customary international maritime law, which is extremely pertinent to the situation with Turkey.

4.2. May the International Court of justice be a solution?

Dispute is a well-known concept in international law. The International Court of Justice (ICJ) has been repeatedly brought to define it, following the Permanent Court of International Justice. In her view, a dispute is a disagreement on a point of law or fact, a conflict, an opposition of legal theses or interests between parties. The International Court of Justice has not validated this doctrine. In her point, the fact that a dispute has a political dimension does not prohibit it from being treated in law. When the Court was faced with legal issues adhesion in the broader context of an eminently political dispute, it never refused to rule on that ground, not even in the case of the use of armed force¹⁰³.

It could well be that the most important contribution rendered by the International Court of Justice to this issue is the disputes relating to the delimitation of maritime areas between opposite or neighbouring Nations. The particular instance of the Court on maritime delimitation has had a significant effect on the clarity of the definitions and rules of delimitation, as well as on the convergence of the regulations on the delimitation of all maritime areas¹⁰⁴.

Maritime borders occur in the form of coastal waters, adjacent zones and EEZ; they do not include the lake or river borders that are assumed to be surrounded by land borders. Any maritime borders remained indefinite amid attempts to explain them. This is explained by a

¹⁰⁰ Tullio Treves, *The International Tribunal for the Law of the Sea and the Oil and Gas Industry*, Second International Oil and Gas Conference – Managing Risk – Dispute Avoidance and Resolution London 20-21 September 2007, p. 3.

¹⁰¹ Thomas A. Mensah, *The Significance of the International Tribunal for the Law of the Sea for the Shipping Industry*, *WMU Journal of Maritime Affairs*, vol. 3, no.2, 2004, p. 121.

¹⁰² Manolis Kefalogiannis, *Question for written answer E-004174/2019*, to the Commission, Rule 138.

¹⁰³ Jean Marvc, *Le rôle du juge international dans règlement pacifique des différends*, *Curso de Derecho Internacional*, Org. por el Comité Jurídico Interamericano y la Secretaría general de la OEA, 2004, pp. 62-63.

¹⁰⁴ Bernardo Sepúlveda Amor, *The International Court of Justice and the Law of the Sea*, *Anuario Mexicano de Derecho Internacional*, Décimo Aniversario, 2012, p. 8.

variety of reasons, some of which include geographical issues. Demarcation of maritime borders has strategic, economic and environmental consequences¹⁰⁵.

In the Anglo-Norwegian fisheries case the Court issued its famous quote on the essence of maritime boundary delimitation, stressing that the delimitation of sea zones is often regulated by international law. The Court declared: “The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law”¹⁰⁶.

Nevertheless, international law on the delimitation of maritime boundaries refers only to the demarcation of overlapping maritime areas between states¹⁰⁷.

With a view to reach a case decision, the ICJ must, as a preliminary step, decide both the matters of jurisdiction and the issues of admissibility. Jurisdiction matters 'are those which essentially arise from whether the Court has the authority and the ability to handle the case brought by the State,' while eligibility issues specify whether the case itself is a matter which is suitable to be determined by the Court of Justice. Consequently, jurisdictional issues must invoke the admissibility issues, as the admissibility issues will only be identified after the jurisdiction of the Court has been resolved¹⁰⁸.

The contentious jurisdiction of the International Court of Justice should only be invoked if there is a legitimate conflict of a legal sort. Such a international legal dispute can be defined as the gap on a matter of law or fact, a conflict, a difference of legal opinions or interests. The legal framework may be formed in compliance with Article 34(1) of the Statute of the ICJ, which specifies that only States can be party to cases before the Court. Essentially, the consent of the parties can take a range of types, ranging from voluntary consent to agree on the grounds of reciprocity or time-limited consent. Whatever form the acceptance can take, it must also qualify as a condition for the practice of the jurisdiction of the Court of Justice. The acceptance of the States Parties may be explicit or implicit and may be obtained from a variety of fields: (i) by special agreement; (ii) in treaties or conventions; (iii) by compulsory jurisdiction; (iv) via forum prorogatum; (v) by the Court's own determination of its jurisdiction; (vi) from interpretation of a judgment; and (vii) from the revision of a judgment¹⁰⁹.

Under Article 36 para. 2, of the Statute of the Court "States parties may, at any time, declare that they recognize as compulsory by right and without a special agreement, with respect to any other state accepting the same obligation, the jurisdiction of the Court over all legal disputes". Each State that has accepted the court's compulsory jurisdiction has the right to summon before the Court, by submitting a petition, one or more States that have accepted the same obligation and, conversely, undertakes to appear before the Court in case it is cited by one or more of those states. Statements of acceptance of the Court's jurisdiction take the form of a unilateral act of the State and are filed with the Secretary-General of the United Nations.

¹⁰⁵ Md. Monjur Hasan, He Jian, Md. Wahidul Alam, K M Azam Chowdhury, Protracted maritime boundary disputes and maritime laws, *Journal of International Maritime Safety, Environmental Affairs, and Shipping*, vol. 2, no. 2, 2018, p. 89.

¹⁰⁶ Fisheries case, ICJ report, 18 December, 1951, p.132.

¹⁰⁷ Øystein Jensen, Fridtjof Nansen Institute, Lysaker, Norway, *Defining Seaward Boundaries in a Domestic Context: Norway and the Svalbard Archipelago*, *Ocean development & International law*, vol 50, nos. 2–3, 2019, p. 250.

¹⁰⁸ S. Gozie Ogbodo, *An Overview of the Challenges Facing the International Court of Justice in the 21st Century*, *Annual Survey of International & Comparative Law*, vol 18, no 1, 2012, p. 97.

¹⁰⁹ *Ibid*, pp. 101, 102.

However, only Egypt, Greece and Cyprus declared that they recognize as compulsory *ipso facto* the jurisdiction of the Court¹¹⁰. Turkey is a member of the United Nations originating but has not yet made the declaration recognizing as compulsory the jurisdiction of the Court.

Certain treaties or conventions conducting compromise clauses stating that disputes over the interpretation or application of the treaty will have to be submitted to the ICJ. In instance, the Court -in Aegean Sea case- is considering its jurisdiction over this dispute. In paragraph 32 of its application, Greece specified two bases on which it states that it bases the jurisdiction of the Court in this case. Although paragraph 3 of Greece's brief on the question of the jurisdiction that these two bases was stated, they are quite distinct and will therefore be examined one after the other. The first basis of jurisdiction is presented in paragraph 32, sub paragraph 1, of the request: "Article 17 of the General Act for the Peaceful Settlement of International Disputes of 1928, closer to Articles 36, paragraph 1, and 37 of the Statute of the Court. On 14 September 1931 and 26 June 1934 respectively, Greece and Turkey joined this instrument, which remains in force with regard to them". According 17 of the General Act of 1928 which is part of Chapter II of this Act, entitled "From Judicial Settlement", "All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal. It understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice". The article therefore provides that, under certain conditions, disputes over which the parties challenge each other's rights will be brought before the now-defunct Permanent Court of International Justice. Article 37 of the current Statute, however, states that: "Whenever a treaty or convention in force provides for reference of a matter to . . . the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice¹¹¹.

Of course, Article 17 of the General Act of 1928, invoked in this case by Greece, contains a jurisdictional clause referring to the Permanent Court certain specially foreseen cases, namely any disputes over which the parties would challenge each other's right. It follows that, if the 1928 Act is considered to be an existing agreement between Greece and Turkey and applicable, the Act, in conjunction with Articles 37 and 36, paragraph 1, of the Statute, may provide a sufficient basis for the jurisdiction of the Court in this case. In 1948, the United Nations General Assembly undertook a review of the text of the General Act of 1928 with a view to restoring its original effectiveness, diminished in some respects by the dissolution of the League of Nations and the disappearance of its organs. On 28 April 1949 the General Assembly adopted Resolution 268 A-III, under which it instructed the Secretary-General to establish the text of a revised General Act for the Peaceful Settlement of International Disputes, taking into account the amendments it had adopted, and to keep it open to state membership¹¹².

The problem in this case was that the Court was not convinced by the various reasons given for the difference between the reservations of territorial status of Greece contained respectively in its declaration under the optional provision and in its instrument of accession to the General Act, if the latter instrument is given the meaning attributed to it by Greece. It also seems significant that nothing in the documents of the time communicated to the Court concerning the

¹¹⁰ Egypt : 22 July 1957, Cyprus: 3 September 2002, Greece: 14 January 2015.

¹¹¹ Aegean Sea case, ICJ report, 19 December, 1978, paras .33-34.

¹¹² Ibid, paras. 34, 37.

preparation of the declaration of acceptance of the optional provision made by Greece in 1929 and the deposit of its instrument of accession in 1931 corroborates these explanations¹¹³.

One of the last solutions available may be, although it is difficult at the moment to sign a special agreement. Where even the parties sign a special agreement to bring a legal issue before the Judge, the agreement can be treated as an explicit and unambiguous admission to the jurisdiction of the Court. Usually, the parties should give such notice of a special resolution or written request to the Registry of the Court, stating the subject-matter of the dispute as well as the parties to the dispute¹¹⁴. This solution, as I mentioned, seems difficult in light of the strained relations between Egypt, Greece and Cyprus on the one hand and Turkey on the other.

CONCLUSION

Between countries bordering the Mediterranean, the sea remains the essential factor of unity as their diversity in the political, economic and cultural fields is great. Faced with a narrow, fragile and increasingly strategically important maritime environment, the countries concerned are practically condemned to cooperate and to maintain the so-called “common heritage”. Many voices have been raised among the northern and southern residents to draw attention to the dangers inherent in the transformation of the Mediterranean into a field of confrontation between great powers, and to urge that it be considered an area of peace, security and cooperation. It is in this spirit that the United Nations General Assembly has adopted an annual resolution every year since 1981 on "strengthening security and cooperation in the Mediterranean region.

The Greek-Egyptian agreement is seen as a response to the illegal Turkish-Libyan agreement signed at the end of 2019 allowing Turkey access to a large maritime area in the eastern Mediterranean where large hydrocarbon deposits have been discovered in recent years. Its ratification comes at the height of the Greek-Turkish relations crisis in the eastern Mediterranean. Under the treaty, Egypt and Greece are now allowed to derive the maximum benefits from the resources available in the exclusive economic zone (EEZ), including oil and gas reserves. This agreement, aimed at demarcating maritime areas, but always in the context of international law and international law of the sea.

Implementation of the principles of the United Nations Convention on the Law of the Sea seems uncertain, in particular, that Turkey is not a state party. It is not easy to submit the dispute to the ILTOS or the ICJ, and rather to have a political review to consider whether they have contributed to a calming of relations between the countries under consideration.

The issue of the power struggle in the eastern Mediterranean has become a vital issue for Turkey today, as it had never been before. If Turkey justifies its military intervention in Libya by the need to help the growing number of civilian casualties on the ground; Turkey's increased political clout in the region serves other strategic, political and economic interests.

Turkey's freedom of action despite the permanent arms embargo in Libya and the international community's condemnation of its actions only confirm the failure of peace negotiations undertaken by international organizations since 2011.

The EU is currently content with reprimands for Turkey's actions in the Mediterranean Sea, but the Turkish government will continue to pursue its national and regional interests in the region if no sanctions from a supranational authority including the UN are imposed on it.

¹¹³ Ibid, para. 62.

¹¹⁴ S. Gozie Ogbodo, op.cit, p. 102.