



# UNCLOS and the Delimitation of Maritime Zones in the Eastern Mediterranean

TURKEY PROGRAMME

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*The authors wish to dedicate this piece to the memory of Prof. Dr. Ansgar H. Belke (28 March 1965 - †21 July 2020).*

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## Summary

- The dispute between Greece and Turkey concerning the delimitation of sea borders in the Eastern Mediterranean has become a security challenge for the whole region.
- International law, in particular the United Nations Convention on the Law of the Sea (UNCLOS), provides a flexible framework to solve this dispute.
- The recent agreements of Greece with Italy and Egypt have affirmed that it respects the international law of the sea and is ready to show the flexibility necessary to reach agreements.
- The judgments of the International Court of Justice (ICJ) on Mediterranean cases show that the Court has applied the international law of the sea with flexibility when necessary.
- Adjudication before the ICJ is the optimal choice for the resolution of the Greek-Turkish dispute.
- Both parties should engage in dialogue to reach an agreement of referring the case to the ICJ.

## Introduction

*“The discovery of natural gas reserves in the exclusive economic zones (EEZ) of Cyprus, Egypt and Israel has raised interest of global powers and energy companies in the region.”*

Since the Arab uprisings, the Levant and the Mashreq have become two of the world’s most volatile regions. This volatility has recently moved to the waters of the Eastern Mediterranean. The discovery of natural gas reserves in the exclusive economic zones (EEZ) of Cyprus, Egypt and Israel has raised interest of global powers and energy companies in the region. Despite the high monetization costs and the CoViD-19 pandemic effect on energy markets, Turkey’s recent exploration activities have caused a significant challenge for security in the region and rekindled disputes about the delimitation of maritime zones between the littoral states of the Eastern Mediterranean.

In light of the above, it is worth exploring how the dispute could be peacefully resolved by comparing the recent agreements which Greece signed with Egypt and Italy with some of the key decisions of the International Court of Justice regarding the delimitation of maritime zones in the Mediterranean. This paper first outlines Greece’s recent agreements with Egypt and Italy and then presents key relevant decisions of the International Court of Justice (ICJ), *Libya vs. Malta* and *Libya vs. Tunisia*. It then states the implications of Greece’s recent agreements with Egypt and Italy as well as the decisions of the ICJ for the dispute between Greece and Turkey. This paper concludes that the United Nations Convention on the Law of the Sea (UNCLOS)<sup>1</sup> provides the best framework for the resolution of the dispute on the delimitation of maritime borders between Greece and Turkey. It invites Turkey to adhere to the customary law reflected in UNCLOS, and Greece and Turkey to resume their exploratory talks to resolve their dispute by adjudication to the International Court of Justice (ICJ).

*“By agreeing to limit -but not cancel- the effect of Strofades & the Diapontioi Islands and to swap some plots, Italy and Greece showed diplomatic flexibility by applying the principle of equidistance in a “creative” way.”*

## Greece’s Recent Agreements

### a) The Greece-Italy Agreement of 9 June 2020

With a bilateral agreement signed in Athens on 9 June 2020, Greece and Italy delimited their maritime zones, including their future exclusive economic zones (EEZ) on the basis of the map which through a bilateral agreement on 24 May 1977 had delimited their continental shelves.<sup>2</sup> In 1977, the government of Konstantinos Karamanlis declared that the signing of an agreement on the continental shelf with Italy was proof that some neighbouring countries in the Mediterranean could approve to a peaceful and civilized delimitation.<sup>3</sup> The agreement of 2020 in principle reconfirmed the 1977 agreement, but additionally stated, that both countries recognize the relevant provisions of UNCLOS, which was signed five years later, on 10 December 1982.<sup>4</sup> By agreeing to limit -but not cancel- the effect of Strofades and the Diapontioi Islands and to swap some plots, Italy and Greece showed diplomatic flexibility by applying the principle of equidistance in a “creative” way.<sup>5</sup> The coordinates were acknowledged in a way that would not cause complications with the delimitation of exclusive economic zones with neighbouring

<sup>1</sup> United Nations, *United Nations Convention on the Law of the Sea (Unclos)* (Montego Bay, Jamaica: United Nations, 1982)

<sup>2</sup> United States Department of State, *Agreement between the Italian Republic and the Hellenic Republic on the Delimitation of Zones of the Continental Shelf Belonging to Each of the Two States (in English)* (Washington DC: United States Department of State, 1977)

<sup>3</sup> Evangelos Venizelos, "Delineating Maritime Zones", *Kathimerini (English Edition)*, 17/6/2020

<sup>4</sup> Hellenic Parliament, *Agreement between the Government of the Hellenic Republic and the Government of the Italian Republic on the Delimitation of Their Respective Maritime Zones (in Greek and English)* (Athens, 2020b)

<sup>5</sup> Venizelos, "Delineating Maritime Zones"

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states, i.e. Albania, Libya and Malta.

### b) The Greece-Egypt Agreement of 6 August 2020

*“In its preamble, both parties declared that they adhered to the UNCLOS and emphasized the importance for each of the two parties of delimiting their exclusive economic zone.”*

With a bilateral agreement signed in Cairo on 6 August 2020, Egypt and Greece partially delimited their exclusive economic zones (EEZ).<sup>6</sup> As the two countries had never signed a continental shelf agreement, this was their first maritime border delimitation agreement. In its preamble, both parties declared that they adhered to the UNCLOS and emphasized the importance for each of the two parties of delimiting their exclusive economic zone. Article 1§1 stated that the two parties agreed on a partial delimitation, while Article 1§5 added that if any of the parties begins negotiations with a third state sharing maritime borders with both parties, that party has to inform and consult with the other party before reaching an agreement with the third party. Article 2 stated that where natural resources extend to the exclusive economic zones of both parties, the two countries would cooperate to reach an agreement on the modalities of exploitation of these resources. In Article 3 it was stressed, that the parties aimed to solve any dispute arising from the interpretation or implementation of this agreement through the diplomatic channels in a spirit of understanding and cooperation.

## ICJ Judgments on Mediterranean Disputes

### a) Tunisia vs. Libya (1982)

*“Concerning its decision, the Court took into account the following factors: geographic characteristics of the territory, principle of equity and the new trends, which were crystallized in the Third United Nations Conference on the Law of the Sea.”*

On 24 February 1982 the ICJ issued a decision in the dispute over the delimitation of the continental shelf between Libya and Tunisia.<sup>7</sup> The structure of the decision and its content were determined by the agreement of the two states, which was submitted to the ICJ. The task of the Court was to determine the “principles and rules of Public International Law”, which could be relevant for the delimitation of the continental shelf between the two states.<sup>8</sup> Concerning its decision, the Court took into account the following factors: geographic characteristics of the territory, principle of equity and the new trends, which were crystallized in the Third United Nations Conference on the Law of the Sea.<sup>9</sup> Furthermore, it was the duty of the Court to work out the practical application of principles and rules, so that the experts of both states could carry out a delimitation of the continental shelf without difficulties. The Court abstained from deciding on the delimitation line of the continental shelf. First of all, the ICJ stated that there exists only one continental shelf for Libya and Tunisia and that under that aspect, the continental shelf is the natural continuation of the land mass under water,<sup>10</sup> and that there is no criterion of delimitation for this special case. In its following explanations, the Court focused on considerations of equity and on the special circumstances of this case. The Court considered the following as relevant circumstances in this case: the course of the coast, the position of the Kerkennah Islands (Tunisia), the course of the land border, the practice of allocation of drilling concessions before 1974, as well as the relation of

<sup>6</sup> Hellenic Parliament, *Agreement between the Government of the Hellenic Republic and the Government of the Arab Republic of Egypt of the Delimitation of the Exclusive Economic Zone of the Two States (in Greek and English)* (Athens, 2020a)

<sup>7</sup> International Court of Justice (ICJ), "Judgment of the International Court of Justice (ICJ) on the Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)" (The Hague: 1982)

<sup>8</sup> Rüdiger Wolfrum, "IGH: Festlandsockelabgrenzung zwischen Tunesien und Libyen", *Vereinte Nationen (Zeitschrift für die Vereinten Nationen und ihre Sonderorganisationen)*, no. 4 (1982), p. 143

<sup>9</sup> This Conference produced the UN Convention on the Law of the Sea (UNCLOS), signed in Montego Bay, Jamaica a few months after the ICJ decision, on 12 December 1982.

<sup>10</sup> This was the formulation of the Third Conference on the Law of the Sea.

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*“The Court considered the following as relevant circumstances in this case: the course of the coast, the position of the Kerkennah Islands (Tunisia), the course of the land border, the practice of allocation of drilling concessions before 1974, as well as the relation of the length of the coast to the extent of the shelf area.”*

the length of the coast to the extent of the shelf area.<sup>11</sup> Concerning the practical application of these principles, the Court endorsed a distribution of the border course in two sectors: one sector close to the coast and one sector distant from the coast. For the area close to the coast it was especially considered, how Tunisia and Libya assigned their oil concessions in the past. In contrast, the course of the border distant from the coast was determined by the position of the Kerkennah Islands.<sup>12</sup>

#### b) Libya vs. Malta (1985)

On 3 June 1985, the International Court of Justice (ICJ) published its judgement on the continental shelf dispute between Libya and Malta.<sup>13</sup> The Court formulated the principles, which were the fundamentals of its decision, as follows. The delimitation of the continental shelf should conform with equitable principles, as put forth by the ICJ in the North Sea Continental Shelf cases. The principle of equity is also enshrined in Articles 74 and 83 of the United Nations Convention on the Law of the Sea (UNCLOS).<sup>14</sup>

Thereupon, the Court abstained from getting guidelines from the principle, that the continental shelf is the natural prolongation of the land under water. In his decision, the Court referred to the general configuration of the coasts, their length in relation to each other and their distance to each other. In addition, the Court saw an additional criterion in the relation of the coast length and the respective extension of the areas of the continental shelf. The basis of the judgement was then customary law, because at that time only Malta ratified the Geneva Continental Shelf Convention and the UNCLOS had not come into force.<sup>15</sup> Both parties agreed that the UNCLOS established partly customary law. But it was uncertain, which parts of the UNCLOS were included. Concerning the question of delimitation (Article 83 UNCLOS), the Court made no reference. The two parties suggested different legal bases. Libya referred to the principle of prolongation of the land under water (Article 76 §3 UNCLOS), Malta on the criterion of equidistance. In this context, the Court pointed out, that the concept of the exclusive economic zone had to be considered and rejected the separation of the continental shelf and the borders of the economic zones. Therefore, the basic applicability of the distance criterion was agreed, and the position of Libya was rejected, insofar as it was based on solely geological arguments. It stated that the reference on the geological facts were incompatible with the right of the coast state to extend his continental shelf until 200 nautical miles. Also rejected was the argument of Malta, that in the case of opposite states an equidistance line should always be drawn.<sup>16</sup>

The Court concluded that an equitable result could be achieved by drawing a median line where every point is equidistant from the low-water mark of the respective coast of Malta and the low-water mark of the respective coast of Libya. This line became subject to adaptation in consideration of the aforementioned circumstances and factors, so a more equitable result for Libya could be achieved.<sup>17</sup>

<sup>11</sup> Wolfrum, "IGH: Festlandssockelabgrenzung zwischen Tunesien und Libyen", p. 143

<sup>12</sup> International Court of Justice (ICJ), "Judgment of the International Court of Justice (ICJ) on the Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) "

<sup>13</sup> International Court of Justice (ICJ), "Judgment of the International Court of Justice (ICJ) on the Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)," (The Hague: 1985)

<sup>14</sup> Rüdiger Wolfrum, "IGH: Urteil im Festlandssockelstreit Libyen-Malta-Modifiziertes Mittellinienprinzip", *Vereinte Nationen (Zeitschrift für die Vereinten Nationen und ihre Sonderorganisationen)*, no. 4 (1985), p. 130

<sup>15</sup> UNCLOS came into force on 16 November 1994, one year after its ratification by 60 signatory states.

<sup>16</sup> Wolfrum, "IGH: Urteil im Festlandssockelstreit Libyen-Malta-Modifiziertes Mittellinienprinzip", p. 130

<sup>17</sup> International Court of Justice (ICJ), "Judgment of the International Court of Justice (ICJ) on the Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta),"

## Conclusion

*“Greece’s recent agreements with Egypt and Italy have shown that states in the Mediterranean Area are willing to respect international law, especially UNCLOS, concerning the issue of delimitation of maritime borders.”*

Greece’s recent agreements with Egypt and Italy have shown that states in the Mediterranean Area are willing to respect international law, especially UNCLOS, concerning the issue of delimitation of maritime borders. By juxtaposing these agreements with important ICJ decisions concerning the delimitation of states’ continental shelf in the Mediterranean, this paper has pointed to the necessity of adhering to UNCLOS with flexibility and in the spirit of rule of law and equity. The international law provides a sound and flexible framework for addressing all legitimate interests of littoral states in the Eastern Mediterranean. It is high time that:

- a. Turkey signed and ratified the United Nations Convention on the Law of the Sea (UNCLOS).
- b. Greece and Turkey resumed their exploratory talks to reach an agreement or - failing that- to prepare the legal framework for the referral of their maritime boundary dispute to the ICJ.

These moves would prove the goodwill of both parties for the peaceful resolution of their dispute according to international law and would greatly contribute to regional peace and stability.

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———, "IGH: Urteil im Festlandsockelstreit Libyen-Malta-Modifiziertes Mittellinienprinzip", *Vereinte Nationen (Zeitschrift für die Vereinten Nationen und ihre Sonderorganisationen)*, no. 4 (1985), p. 130

## Annex

1. [Full Text](#) of the 10 December 1982 United Nations Convention on the Law of the Sea (UNCLOS) signed in Montego Bay, Jamaica (Source: United Nations).
2. [Full Text](#) of the 24 May 1977 Agreement between the Italian Republic and the Hellenic Republic on the Delimitation of Zones of the Continental Shelf Belonging to Each of the Two States (in English) (Source: United States Department of State).
3. [Full Text](#) of the 24 February 1982 Judgment of the International Court of Justice (ICJ) on the Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Source: International Court of Justice).
4. [Full Text](#) of the 3 June 1985 Judgment of the International Court of Justice (ICJ) on the Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta) (Source: International Court of Justice).
5. [Full Text](#) of the 9 June 2020 Agreement between the Government of the Hellenic Republic and the Government of the Italian Republic on the Delimitation of their Respective Maritime Zones (in Greek and English) (Source: Hellenic Parliament).
6. [Full Text](#) of the 6 August 2020 Agreement between the Government of the Hellenic Republic and the Government of the Arab Republic of Egypt of the Delimitation of the Exclusive Economic Zone of the Two States (in Greek and English) (Source: Hellenic Parliament).