

ORIGINAL ARTICLE

INTERNATIONAL LAW AND PRACTICE

Hardly predictable and yet an equitable solution: Delimitation by judicial process as an option for Greece and Turkey in the Eastern Mediterranean

Christian Schaller* 

Stiftung Wissenschaft und Politik (SWP), German Institute for International and Security Affairs, Ludwigkirchplatz 3–4,
10719 Berlin, Germany
Email: christian.schaller@swp-berlin.org

Abstract

This article addresses the dispute between Greece and Turkey concerning the reach of their sovereign rights and jurisdiction in the Eastern Mediterranean, which is essentially about delimitation of the continental shelf and exclusive economic zone (EEZ). Turkey has delineated its continental shelf in the region to extend directly to the outer limits of the territorial waters of the Greek islands, specifically Crete, Rhodes, and Kastellorizo. Greece sees this as an attempt to deprive the islands of their maritime zones. The present article discusses what the two states might expect if they would request the International Court of Justice (ICJ) to determine the course of their maritime boundaries. The outcome of such a process would be difficult to foresee because international case law regarding the effect of islands on the delimitation of the continental shelf and EEZ is rather diffuse. Nevertheless, this article will explore what an equitable solution could look like. In particular, the small island of Kastellorizo, Greece's most remote outpost in the Eastern Mediterranean, which lies just off the Turkish coast, requires special consideration. The present article discusses different options for dealing with this island in a future delimitation.

Keywords: continental shelf; Eastern Mediterranean; exclusive economic zone; islands; maritime delimitation

1. Introduction

For decades, the Hellenic Republic and the Republic of Turkey have been in dispute about maritime jurisdiction and other issues in the Aegean Sea. With the discovery of large hydrocarbon deposits in some parts of the Eastern Mediterranean, the relationship between the two states has become even more strained. As their continental shelf entitlements in the Eastern Mediterranean overlap to a significant extent, Greece and Turkey also clash over the reach of their sovereign rights and jurisdiction in this region. The disputed areas include the waters south and south-east of the islands of Rhodes, Karpathos, Kasos, and Crete.¹ Another hotspot of the conflict

*Dr. iur., Senior Fellow, SWP Global Issues Division. The author is grateful for the reviewers' helpful comments and also wishes to thank the editors of *Leiden Journal of International Law*.

¹Permanent Mission of Greece to the UN, Verbal Note, Ref. 389, 20 February 2013, in (2014) 81 *Law of the Sea Bulletin* 23; Permanent Representative of Greece to the UN, Letter dated 1 June 2020, UN Doc. A/74/872, 4 June 2020.

© The Author(s), 2022. Published by Cambridge University Press on behalf of The Foundation of the Leiden Journal of International Law in association with the Grotius Centre for International Law, Leiden University. This is an Open Access article, distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives licence (<http://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided that no alterations are made and the original article is properly cited. The written permission of Cambridge University Press must be obtained prior to any commercial use and/or adaptation of the article.

is the island of Kastellorizo (Megisti),² which is Greece's most eastern outpost,³ located about 330 nautical miles (nm) away from Piraeus and only 1.25 nm from the Turkish coast. Turkey asserts that its continental shelf extends directly to the outer limits of these islands' 6-nm territorial sea.⁴ In the view of the Greek government, Turkey tried 'to usurp Greece's *ipso facto* and *ab initio* sovereign rights over its continental shelf and to deprive the Greek islands of their maritime zones, in blatant violation of international law'.⁵

For Turkey, hydrocarbon exploration in these disputed areas has become an important instrument to demonstrate power and exert pressure on Greece. The seismic survey operations conducted in such areas by the state-owned Petroleum Corporation TPAO are routinely escorted by Turkish Naval Forces. In August 2020, a Greek and a Turkish frigate clashed during a standoff in waters between Crete and Cyprus.⁶ The collision happened when the Greek frigate approached the *Oruç Reis*, a research and survey vessel dispatched by Turkey to sectors where Greece and Turkey both claim continental shelf jurisdiction.⁷ In the following months, the *Oruç Reis* conducted further seismic survey in a relatively large area, which included sectors close to Rhodes and Kastellorizo. In a letter to the UN Security Council, the Greek government expressed concern about 'a major escalation of Turkish aggressive acts and rhetoric' constituting 'an open and unprecedented threat to Greece's sovereignty and sovereign rights, as well as to the peace and stability of the broader region'.⁸

Despite the resumption of bilateral exploratory talks in January 2021, relations between Greece and Turkey are still tense and a further escalation is possible. Such insecurity ties up enormous resources on both sides and hampers economic development of the entire region. Some analysts recently wrote that 'the region remains one of the most under-explored and [under]-exploited in the world' and that a key impediment to such exploration and exploitation was – in addition to the unresolved Cyprus issue – the lack of demarcated boundaries between the relevant countries.⁹ Maritime boundaries, like land boundaries, must be stable, definitive, and determined with precision to allow for development and investment and to ensure a peaceful relationship between the states concerned.¹⁰ This is all the more important where the resources of the continental shelf and EEZ are at stake. As the Eastern Mediterranean is a semi-enclosed and relatively narrow sea, it is impossible for the coastal states to exercise their continental shelf rights to a distance of 200 nm and establish an EEZ of equal breadth, as permitted by the international law of the sea, without coming into contact with the respective entitlements of other coastal states. Therefore, delimitation of overlapping continental shelves and EEZ areas is a pressing issue in the Eastern Mediterranean.

States in dispute over the boundary course between their continental shelves or EEZs may, on a consensual basis, request the ICJ, the International Tribunal for the Law of the Sea (ITLOS), or an arbitral tribunal to effect delimitation. In the 1970s, Turkey refused the differences with Greece

²The insular group of Kastellorizo consists of the island of Kastellorizo and several small islets. Within the organizational structure of the state, Kastellorizo qualifies as a municipality.

³With the exception of the nearby islet of Strongyli, which belongs to the island group of Kastellorizo.

⁴In the Aegean and Eastern Mediterranean, Greece claims a territorial sea of 6 nm (but reserving its right to extend it to 12 nm).

⁵Letter dated 1 June 2020, *supra* note 1.

⁶See M. Kambas and T. Gumrukcu, 'Greek, Turkish Warships in "Mini Collision" Ankara Calls Provocative', *Reuters*, 14 August 2020, available at www.reuters.com/article/us-greece-turkey-warships/greek-turkish-warships-in-mini-collision-ankara-calls-provocative-idUSKCN25A161.

⁷See D. Hamit, 'Turkey Shares Map of Oruc Reis's Offshore Activity', *Anadolu Agency*, 11 August 2020, available at www.aa.com.tr/en/europe/turkey-shares-map-of-oruc-reiss-offshore-activity/1937792.

⁸Permanent Representative of Greece to the UN, Letter dated 4 September 2020, Annex, UN Doc. S/2020/888, 8 September 2020.

⁹A. Stanič and S. Karbuz, 'The Challenges Facing Eastern Mediterranean Gas and How International Law Can Help Overcome Them', (2021) 39 *Journal of Energy & Natural Resources Law* 213, at 214, 227.

¹⁰See *Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India)*, Award of 7 July 2014, XXXII RIAA 1, paras. 216, 218.

concerning the delimitation of the continental shelf in the Aegean to be settled by the ICJ.¹¹ However, the situation seems different today. In reaction to a call by Greek Prime Minister Mitsotakis at the 75th Session of the UN General Assembly to ‘trust the wisdom’ of the ICJ, if necessary, to settle the dispute in the Eastern Mediterranean,¹² Turkey evinced that it ‘does not rule out any peaceful means of settlement, including the Court’.¹³

It would be an ambitious approach for Greece and Turkey to ask the ICJ to resolve all their maritime disputes in one process, which would include delimitation of the continental shelves in the Aegean and in the Eastern Mediterranean. The Court could then consider all relevant circumstances in a broader geographical context. However, as will be explained in more detail in the final section of this article, linking delimitation in the Eastern Mediterranean with the manifold unresolved Aegean issues would presumably overburden future talks and negotiations between the two parties and would make it difficult to achieve any progress. The present author therefore argues that Greece and Turkey should first concentrate on reaching an agreement to submit their current delimitation dispute in the Eastern Mediterranean to the ICJ. It would not be the first time that two states entrust the Court with delimiting their continental shelves and exclusive maritime zones only in a certain region.¹⁴ From a geographical perspective, it is not too far-fetched to consider the Aegean and the Eastern Mediterranean as two connected but different theatres with different characteristics and to search – as far as the delimitation of maritime zones is concerned – for an equitable solution for each theatre. The southern limits of the Aegean Sea have been defined by the International Hydrographic Organization (IHO) as a line running in the form of a semi-circular arc from Cape Aspro in Turkey (Aspro-mitas, longitude 28°16’ E),¹⁵ straight through the islands of Rhodes, Karpathos, and Crete, and through the islands of Antikithira and Kithira to the southeastern tip of the Peloponnese peninsula.¹⁶ In the Aegean, the Turkish coast is fringed with numerous islands belonging to Greece, and the projection of the Turkish coast runs directly into these islands. In the Eastern Mediterranean, Rhodes and Kastellorizo are the only Greek islands located right in front of Turkey’s coast. At the same time, the eastward projection of Rhodes, Karpathos, Kasos, and Crete into the Eastern Mediterranean meets with the projection generated by Turkey’s southern coast in a much more open space (compared to the Aegean).

Against this background, this article focuses exclusively on the delimitation of the Greek and Turkish continental shelves and EEZs in the Eastern Mediterranean. The following analysis is divided into six parts (Sections 2–7). Section 2 provides an overview of Greece and Turkey’s colliding maritime claims and overlapping entitlements. The section also looks at the delimitation agreements the two parties concluded with other coastal states in the region. Section 3 outlines the legal arguments presented by Greece and Turkey to bolster their claims, and Section 4 elaborates on the applicable law. It starts with the method employed by the ICJ and international tribunals to delimit the continental shelf and/or EEZ. After that, the possible effect of islands on the delimitation will be examined in light of relevant jurisprudence. Section 5 explores what an equitable solution could actually look like in the present case. In particular, this section will discuss how the

¹¹See *Aegean Sea Continental Shelf Case (Greece v. Turkey)*, Judgment of 19 December 1978, [1978] ICJ Rep. 3, para. 109 (where the Court followed the Turkish position and found that it had no jurisdiction).

¹²Prime Minister Kyriakos Mitsotakis’ Speech to the 75th Session of the UN General Assembly, 25 September 2020, available at www.primeminister.gr/en/2020/09/25/24880.

¹³Permanent Representative of Turkey to the UN, Letter dated 14 October 2020, UN Doc. A/75/521, 20 October 2020.

¹⁴See, e.g., *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment of 12 October 1984, [1984] ICJ Rep. 246; *Case Concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment of 14 June 1993, [1993] ICJ Rep. 38; *Case Concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment of 8 October 2007, [2007] ICJ Rep. 659.

¹⁵For the location of Cape Aspro-mitas see www.geographic.org/geographic_names/name.php?uni=-1050740&fid=6211&c=turkey.

¹⁶International Hydrographic Organization, *Limits of Oceans and Seas* (1953), 18. For a sketch map illustrating the limits of the Aegean see www.worldatlas.com/seas/aegean-sea.html.

small island of Kastellorizo may be treated in the process. Section 6 sheds light on the economic and political implications of the case, and Section 7 concludes with an outlook.

2. The parties' maritime claims and entitlements in the Eastern Mediterranean

Since the early 2000s, Turkey has shared co-ordinates with the UN to delineate the outer limits of its continental shelf in the Eastern Mediterranean:

In its objection to a delimitation agreement concluded by the Republic of Cyprus and Egypt in 2003,¹⁷ the Turkish government claimed that delimitation in areas west of longitude 32°16'18"E, which runs just outside of Cyprus's western territorial sea, concerned Turkey's *ipso facto* and *ab initio* legal and sovereign rights.¹⁸ According to Ankara, the outer limits of Turkey's continental shelf in these areas followed the median line between the Turkish and Egyptian coastlines.¹⁹

In 2011, Turkey signed its first continental shelf delimitation agreement in the Eastern Mediterranean, which was an agreement with the 'Turkish Republic of Northern Cyprus' (TRNC).²⁰ The TRNC was established in violation of international law.²¹ It is a *de facto* regime recognized only by Turkey and does not qualify as a state. As a consequence, the agreement is not valid under international law.

On 13 November 2019, Turkey submitted to the UN Secretary-General a consolidated list of geographical co-ordinates to determine the outer limits of its continental shelf in the Eastern Mediterranean.²²

On 27 November 2019, Turkey signed a Memorandum of Understanding (MoU) with Libya.²³ In the MoU, the boundaries of the continental shelves and EEZs between both countries are

¹⁷Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone 2003, 2488 UNTS 3.

¹⁸Permanent Mission of Turkey to the UN, Note No. 2004/Turkuno DT/4739 dated 2 March 2004, Annex, in (2004) 54 *Law of the Sea Bulletin* 127.

¹⁹Permanent Mission of Turkey to the UN, Note verbale No. 2013/14136816/22273 dated 12 March 2013, in (2014) 81 *Law of the Sea Bulletin* 27. See also Permanent Representative of Turkey to the UN, Letter dated 18 March 2019, UN Doc. A/73/804, 22 March 2019; Permanent Representative of Turkey to the UN, Letter dated 13 November 2019, UN Doc. A/74/550, 15 November 2019; Permanent Representative of Turkey to the UN, Letter dated 18 March 2020, Annex, UN Doc. A/74/757, 18 March 2020.

²⁰See Republic of Turkey Ministry of Foreign Affairs, Press statement on the Continental Shelf Delimitation Agreement signed between Turkey and the TRNC, 21 September 2011, available at www.mfa.gov.tr/no_-216_-21-september-2011_-press-statement-on-the-continental-shelf-delimitation-agreement-signed-between-turkey-and-the-trnc.en.mfa. See also Permanent Representative of Turkey to the UN, Letter dated 25 April 2014, UN Doc. A/68/857, 29 April 2014.

²¹See, e.g., SC Res. 541 (1983).

²²Letter dated 13 November 2019, Annex, *supra* note 19. The list consists of four subsets (from east to west):

- (i) subset A: the horizontal delimitation line between the Turkish coast and the northern coast of the island of Cyprus 'as established by' the 2011 Agreement between Turkey and the TRNC (co-ordinates between longitudes 34°48'51"E and 32°16'18"E);
- (ii) subset B: the horizontal median line between the Turkish and Egyptian coastlines (co-ordinates between longitudes 32°16'18"E and 28°00'00"E, 'subject to a bilateral agreement to be reached between Turkey and Egypt');
- (iii) subset C: the vertical connecting line (on longitude 32°16'18"E) between subsets A and B, west of Cyprus (co-ordinates between latitude 35°33'09"N and 33°47'04"N, 'except foreign territorial waters', i.e., the territorial waters at the west coast of Cyprus where the line makes a curve); and
- (iv) subset D: the area west of longitude 28°00'00"E with regard to which Turkey 'reserves its rights to further submit the geographical coordinates of the Turkish continental shelf. In Turkey's view, its continental shelf in this area extends 'to the outer limits of territorial waters of the islands facing the relevant area' (i.e., in particular the Greek islands of Crete, Kasos, Karpathos, and Rhodes), 'given that the insular features in that maritime area cannot encroach upon and/or cut off Turkey's coastal projection and continental shelf.'

²³Memorandum of Understanding between the Government of the Republic of Turkey and the Government of National Accord-State of Libya on Delimitation of the Maritime Jurisdiction Areas in the Mediterranean 2019, in (2021) 104 *Law of the Sea Bulletin* 15.

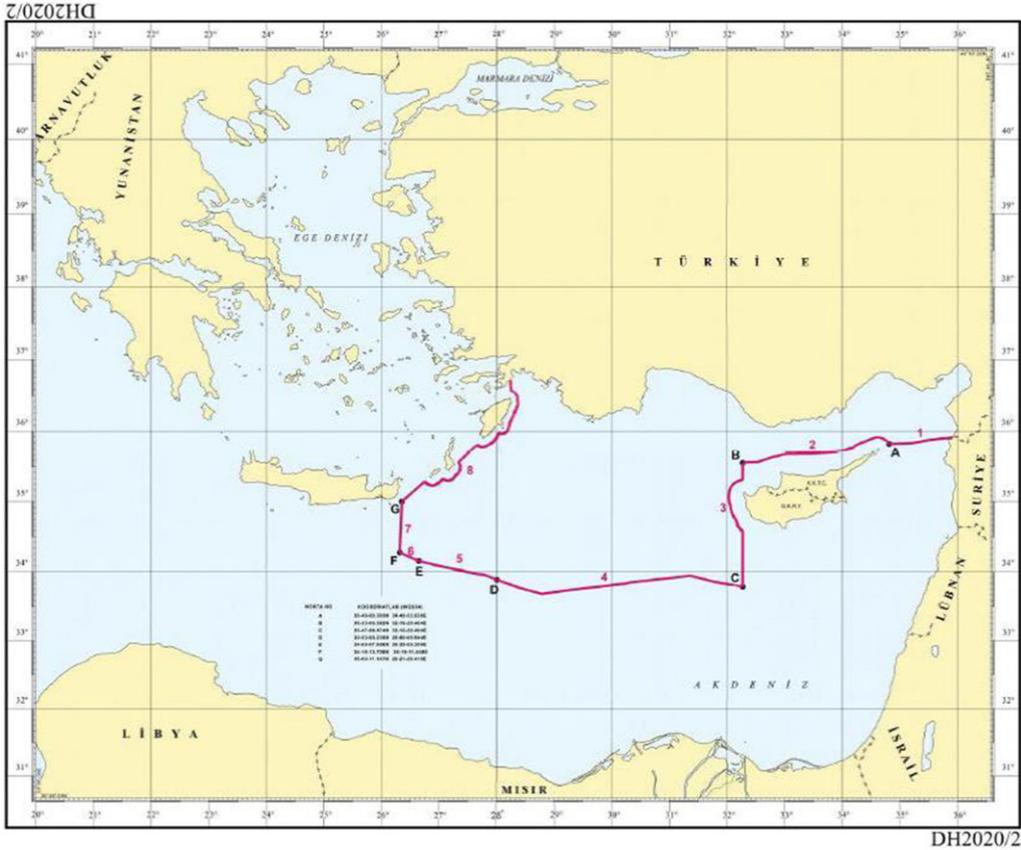


Figure 1. Outer limits of the Turkish continental shelf as delineated by Turkey. (Source: UN Doc. A/74/757, 18 March 2020).

defined by a single line.²⁴ In February 2020, Turkey conveyed to the UN Secretary-General the geographical co-ordinates listed in the MoU.²⁵

On 18 March 2020, Turkey submitted a chart to the UN depicting the outer limits of its continental shelf in the Eastern Mediterranean as delineated so far (see Figure 1).²⁶

Greece restated through national legislation that it has a continental shelf, *ipso facto* and *ab initio*, to a distance of 200 nm from the baselines from which the breadth of its territorial sea is measured.²⁷ This implies that Greece asserts a continental shelf also for its islands in the Eastern Mediterranean, which include Rhodes, Karpathos, Kasos, and Crete, as well as

²⁴*Ibid.*, Art. I(1). The line, which is described by the parties as an ‘equidistance line’, is determined by certain basepoints located along their respective coasts, Art. I(3) and Annex 2. For a chart see Annex 1. In the preamble of the MoU, it is emphasized that the boundary was the result of ‘a precise and equitable delimitation ... taking into account all relevant circumstances’.

²⁵Permanent Representative of Turkey to the UN, Letter dated 27 February 2020, Annex, UN Doc. A/74/727, 2 March 2020.

²⁶Letter dated 18 March 2020, Annex, *supra* note 19.

²⁷Art. 2(1) of Law No. 2289/1995 on Prospecting, Exploration and Exploitation of Hydrocarbons and Other Provisions, as amended by Law No. 4001/2011, transmitted through Note verbale No. 974 dated 8 May 2012, in (2013) 79 *Law of the Sea Bulletin* 14. See also Hellenic Republic Ministry of Foreign Affairs, Greek-Turkish Dispute over the Delimitation of the Continental Shelf, available at www.mfa.gr/en/issues-of-greek-turkish-relations/relevant-documents/delimitation-of-the-continental-shelf.html.

Kastellorizo.²⁸ Moreover, Greece has announced that it pursued a strategy of entering into delimitation agreements with all its neighbours.²⁹

Neither Greece nor Turkey have unilaterally declared an EEZ in the Eastern Mediterranean. However, the conclusion of an EEZ delimitation agreement by a coastal state which has not yet declared an EEZ might be equivalent to a unilateral proclamation of the EEZ to the extent that the co-ordinates of the delimitation line are given due publicity and are deposited with the UN Secretary-General.³⁰

Greece's first and so-far only EEZ agreement for the Eastern Mediterranean is the one with Egypt of 6 August 2020.³¹ The partial delimitation line established in the agreement is defined by five points³² and is more or less an equidistance line (measured on the Greek side from Rhodes and the other islands south of it, and on the Egyptian side from the mainland coast). According to international law experts familiar with the negotiations, the resulting maritime area allocated to each state was at a ratio of about 9:11 favouring Egypt.³³ The delimitation line established in the agreement is considered binding and final by the parties.³⁴ But the agreement provides that, in case of future delimitation of the EEZ with other neighbouring states, the geographical co-ordinates of the two end points of the line may be reviewed by a further agreement between Greece and Egypt.³⁵

Reportedly, Greece and Egypt began negotiating their boundary delimitation in the early 2000s.³⁶ However, the signing of the MoU between Turkey and Libya in 2019 prompted Greece to push for the agreement with Egypt to be finalized as quickly as possible. The boundary agreed between Turkey and Libya lies in an area south-east of Crete, which Greece deems to be part of its continental shelf. Greece therefore vehemently criticized and rejected the MoU, calling it 'null and void'.³⁷ Athens argues that the MoU disregarded the presence of the Greek islands in the area and violated their right to generate maritime zones.³⁸ In particular, Greece complains that the MoU was aimed at cutting off the islands west of longitude 28°00'00"E (which includes Rhodes, Karpathos, Kasos, and Crete) from the maritime areas into which their coasts projected.³⁹ Furthermore, Greece blames Turkey for disregarding the entitlements of its islands between longitudes 28°00'00"E and 32°16'18"E (which concerns the island group of Kastellorizo).⁴⁰ In general, Greece holds that Turkey and Libya

²⁸See., e.g., Verbal Note, Ref. 389, *supra* note 1.

²⁹Permanent Representative of Greece to the UN, Letter dated 29 September 2020, UN Doc. A/75/375-S/2020/958, 5 October 2020.

³⁰I. Papanicolopulu, 'The Mediterranean Sea', in D. R. Rothwell et al. (eds.), *The Oxford Handbook of the Law of the Sea* (2015), 604, at 608; N. A. Ioannides, *Maritime Claims and Boundary Delimitation: Tensions and Trends in the Eastern Mediterranean Sea* (2021), at 28, 85, 183.

³¹Agreement between the Government of the Arab Republic of Egypt and the Government of the Hellenic Republic on the Delimitation of the Exclusive Economic Zone between the two countries 2020, in (2022) 105 *Law of the Sea Bulletin* 30.

³²*Ibid.*, Art. 1(b) and Annex I. For a chart, see Annex II.

³³C. Yiallourides, 'Some Observations on the Agreement between Greece and Egypt on the Delimitation of the Exclusive Economic Zone, Part I', *EJIL:Talk!*, 25 August 2020, at 4, available at www.ejiltalk.org/18969-2/. Ioannides criticized that Crete and Karpathos had not been accorded full effect in the delimitation, N. Ioannides, 'Legal Analysis of the Exclusive Economic Zone Delimitation Agreement between Greece and Egypt', *Defence ReDefined*, 11 August 2020, available at www.defenceredefined.com.cy/legal-analysis-of-the-exclusive-economic-zone-delimitation-agreement-between-greece-and-egypt/.

³⁴Agreement between Egypt and Greece, *supra* note 31, Art. 1(b).

³⁵*Ibid.*, Art. 1(d).

³⁶Yiallourides, *supra* note 33, at 1.

³⁷Permanent Representative of Greece to the UN, Letter dated 14 February 2020, Annex, UN Doc. A/74/706, 19 February 2020; Permanent Representative of Greece to the UN, Letter dated 19 March 2020, UN Doc. A/74/758, 19 March 2020; Permanent Representative of Greece to the UN, Letter dated 20 April 2020, UN Doc. A/74/819, 21 April 2020; Permanent Mission of Greece to the UN, Note verbale dated 2 September 2020, UN Doc. A/74/1006, 8 September 2020.

³⁸Letter dated 14 February 2020, Annex, *supra* note 37.

³⁹Permanent Representative of Greece to the UN, Letter dated 19 February 2020, UN Doc. A/74/710-S/2020/129, 19 February 2020; Letter dated 20 April 2020, *supra* note 37.

⁴⁰Letter dated 19 February 2020, *supra* note 39.

had neither overlapping maritime zones nor common boundaries.⁴¹ Consequently, in Greece's view, there was no geographical and thus no legal basis for these states to conclude a maritime delimitation agreement.⁴²

Vice versa, Turkey immediately rejected the EEZ delimitation agreement of 6 August 2020 between Greece and Egypt. According to Ankara, this agreement was null and void with respect to Turkey because a maritime boundary between Greece and Egypt did not exist and the 'supposedly-delimited' area lay within the Turkish continental shelf.⁴³

3. The parties' legal positions concerning delimitation and the effect of islands

At the heart of the dispute between Greece and Turkey concerning the reach of their sovereign rights and jurisdiction in the Eastern Mediterranean are two issues related to the delimitation of the continental shelf and EEZ: (i) what role do the Greek islands play in the delimitation of these maritime zones, and (ii) which method would apply in the delimitation? The following subsections summarize the legal views of both parties on these matters.

3.1 On the effect of the Greek islands

Greece firmly holds the position that all its islands, regardless of their size, are entitled to a continental shelf and an EEZ, as any land territory, and are to be accorded full effect when it comes to the delimitation of these maritime zones.⁴⁴ To substantiate its position, Greece refers to Article 121(2) of the 1982 UN Convention on the Law of the Sea (LOSC)⁴⁵ and to corresponding customary international law.⁴⁶

Turkey does not generally deny that islands may be entitled to maritime zones.⁴⁷ It maintains, however, that 'there is no automaticity in claiming that islands generate full maritime jurisdiction areas'.⁴⁸ In Turkey's view, '[i]slands are ignored or given limited effect in maritime boundary delimitation if their location distorts equitable delimitation or if there are other special/relevant circumstances'.⁴⁹ Regarding the role of the Greek islands in the delimitation of the continental

⁴¹Letter dated 14 February 2020, Annex, *supra* note 37.

⁴²*Ibid.*; Letter dated 20 April 2020, *supra* note 37.

⁴³Republic of Turkey Ministry of Foreign Affairs, Press Release No. 165 Regarding the Signing of a So-Called Maritime Delimitation Agreement between Greece and Egypt, 6 August 2020, available at www.mfa.gov.tr/no_-165_-yunanistan-ile-misir-arasinda-sozde-deniz-yetki-alanlari-anlasmasi-imzalanmasi-hk.en.mfa.

⁴⁴See, e.g., Hellenic Republic Ministry of Foreign Affairs, Greek-Turkish Dispute, *supra* note 27; Verbal Note, Ref. 389, *supra* note 1; Permanent Representative of Greece to the UN, Letter dated 10 May 2017, UN Doc. A/71/901-S/2017/416, 17 May 2017; Chargé d'affaires a.i. of the Permanent Mission of Greece to the UN, Letter dated 25 April 2019, UN Doc. A/73/850-S/2019/344, 30 April 2019; Letter dated 19 February 2020, *supra* note 39; Letter dated 29 September 2020, *supra* note 29.

⁴⁵UN Convention on the Law of the Sea 1982, 1833 UNTS 3. Article 121(2) reads: 'Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory. Greece is a party to the Convention on the Law of the Sea, whereas Turkey is not. However, the key concepts of the Law of the Sea, such as the EEZ and continental shelf, as well as the rules on delimitation, and the regime of islands, are part of customary international law.

⁴⁶See, e.g., Letter dated 19 February 2020, *supra* note 39; Letter dated 19 March 2020, *supra* note 37; Letter dated 20 April 2020, *supra* note 37; Letter dated 1 June 2020, *supra* note 1; Permanent Representative of Greece to the UN, Letter dated 11 August 2020, UN Doc. A/74/988-S/2020/795, 12 August 2020; Permanent Representative of Greece to the UN, Letter dated 14 October 2020, UN Doc. A/75/513-S/2020/1015, 15 October 2020.

⁴⁷See UNCLOS III, Summary Records of Meetings of the Second Committee, 6th Meeting, A/CONF.62/C.2/SR.6, at 115, para. 13. See also E. Papastavridis, *The Greek-Turkish Maritime Disputes: An International Law Perspective* (2020), at 21. After all, Turkey signed a continental shelf delimitation agreement with the TRNC in 2011 (*supra* note 20), which is based on the assumption that the island of Cyprus is entitled to a continental shelf.

⁴⁸Republic of Turkey Ministry of Foreign Affairs, 'Outstanding Issues in the Eastern Mediterranean and the Aegean Sea: Turkey's Views and Policies', Presentation by Ambassador Çağatay Erçiyev, 13 February 2020, at 60, available at www.mfa.gov.tr/site_media/html/Outstanding-Issues-in-the-Eastern-Mediterranean-and-the-Aegean-Sea-Turkey-s-Views-and-Policies.pdf.

⁴⁹*Ibid.*

shelf and EEZ, the Turkish government argues that the islands could not have a cut-off effect on Turkey's coastal projection and that 'islands which lie on the wrong side of the median line between two mainlands cannot create maritime jurisdiction areas beyond their territorial waters'.⁵⁰ During the Third UN Conference on the Law of the Sea (UNCLOS III, 1973–1982), Turkey already stated that islands were not all of equal importance as some islands rested on the continental shelf of another state, thus producing a source of friction between the states concerned.⁵¹ Hence, Turkey's long-standing position is that islands should be treated as special or relevant circumstances in maritime delimitation.⁵² Apart from that, Turkey emphasizes that it has the longest continental coastline in the Eastern Mediterranean and that length and direction of the coasts should also be considered in the delimitation of maritime jurisdiction areas.⁵³

In August 2020, the Turkish government specified its position with regard to the Greek island of Kastellorizo:

Furthermore, Greece's objections to *Oruç Reis's* activity lack any legal basis and completely ignore the relevant court decisions regarding the entitlement of islands lying on the wrong side of the median line between the mainlands not to generate a continental shelf/exclusive economic zone . . . Greece bases its claims regarding the area where *Oruç Reis* conducts hydrocarbon activities on the island of Kastellorizo. According to the claim, a 10 km² island lying 2 km away from the Turkish mainland and 580 km away from the Greek mainland is supposed to create a 40,000 km² continental shelf/exclusive economic zone area. This is in fact absurd and irrational, and contrary to international law . . . Yet the persistent Greek claim foresees full effect for Kastellorizo, whereas it could only be given territorial sea, but no continental shelf and exclusive economic zone, according to the jurisprudence of relevant international courts.⁵⁴

A few months later, Ankara reiterated:

Considering the dominating geographical circumstances in the relevant area, namely the overwhelming length of the Turkish coastline and the seaward projection thereof, the island of Kastellorizo could not be accorded maritime jurisdiction areas beyond territorial waters in accordance with the jurisprudence of international courts as well as the State practice in that respect.⁵⁵

3.2 On the method of delimitation

Greece's long-standing position is that delimitation of the continental shelf and EEZ between states with opposite coasts – both continental and insular – 'should take place in accordance with the pertinent rules of international law on the basis of the equidistance/median line principle'.⁵⁶

⁵⁰Letter dated 18 March 2020, *supra* note 19; Permanent Mission of Turkey to the UN, Note verbale dated 14 August 2020, UN Doc. A/74/990, 14 August 2020.

⁵¹UNCLOS III, Summary Records of Plenary Meetings, 39th Plenary Meeting, A/CONF.62/SR.39, at 168, para. 29. On Turkey's position during UNCLOS III regarding the regime of islands and delimitation see Ioannides, *supra* note 30, at 32–4, 37–8.

⁵²UNCLOS III, Summary Records of Plenary Meetings, 39th Plenary Meeting, *ibid.*, at 169, para. 38. See also Turkey Ministry of Foreign Affairs, Outstanding Issues, *supra* note 48, at 49.

⁵³Letter dated 18 March 2020, *supra* note 19; Note verbale dated 14 August 2020, *supra* note 50.

⁵⁴Permanent Representative of Turkey to the UN, Letter dated 21 August 2020, UN Doc. A/74/997–S/2020/826, 24 August 2020.

⁵⁵Permanent Representative of Turkey to the UN, Letter dated 13 November 2020, UN Doc. A/75/598–S/2020/1116, 19 November 2020.

⁵⁶Letter dated 19 February 2020, *supra* note 39.

This position is reflected in Greece's national legislation⁵⁷ and has been registered with the UN by the Greek government.⁵⁸ Greece argues that international courts and tribunals affirmed the central importance of the equidistance line in maritime delimitation in the application of LOSC Articles 74 and 83 and relevant customary international law.⁵⁹ LOSC Article 74(1) provides that delimitation of the EEZ between states with opposite or adjacent coasts 'shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution'. Article 83(1), which concerns the delimitation of the continental shelf, is formulated in identical terms.

In the absence of a delimitation agreement with Turkey, Greece regards the median line to mark the outer limit of its continental shelf and EEZ in relation to Turkey.⁶⁰ A map designed by Suárez de Vivero illustrates what a delimitation between Greece and Turkey on the basis of equidistance would look like if the Greek islands were given full effect in the delimitation.⁶¹ The map, which is also known as the 'Seville map', has become a political issue and is heavily criticized by Turkey for being incompatible with the principle of equitable delimitation.⁶²

Turkey also refers to LOSC Articles 74 and 83. Contrary to its earlier position,⁶³ Turkey now considers these articles to reflect customary international law.⁶⁴ In Turkey's view, however, it is of utmost importance 'to produce an equitable result (principle of equity)' when delimiting the continental shelf and EEZ between states with opposite or adjacent coasts.⁶⁵ Turkey maintains that delimitation in the Eastern Mediterranean should 'be effected by agreement of all the related parties on the basis of the principle of equity so as not to prejudice the sovereign rights and jurisdiction of other interested States/entities'.⁶⁶ In such a process, all relevant or special circumstances had to be taken into account.⁶⁷ Whether a maritime delimitation line was equitable had to be assessed by a number of factors, including regional geography, configuration of the coasts, base-points, the presence of islands and rocks, historical rights, and the presence of third states.⁶⁸ The equidistance/median line method, Turkey argues, was applied in state practice and international jurisprudence only when this did not distort equitable delimitation.⁶⁹ Notably, the 2019 MoU between Turkey and Libya establishes an equidistance line as the result of 'a precise and equitable delimitation',⁷⁰ and in relation to Egypt, Turkey also favours delimitation of the continental shelf by a median line.⁷¹

⁵⁷Art. 2(1) of Law No. 2289/1995, as amended by Law No. 4001/2011, *supra* note 27.

⁵⁸See, e.g., Permanent Mission of Greece to the UN, Note verbale dated 24 February 2005, in (2005) 57 *Law of the Sea Bulletin* 129; Letter dated 25 April 2019, *supra* note 44; Letter dated 29 September 2020, *supra* note 29.

⁵⁹Letter dated 19 February 2020, *supra* note 39.

⁶⁰See Art. 2(1) of Law No. 2289/1995, as amended by Law No. 4001/2011, *supra* note 27.

⁶¹For a reproduction of the map see J. L. Suárez de Vivero, *Jurisdictional Waters in the Mediterranean and Black Seas*, European Parliament, Directorate-General for Internal Policies, IP/B/PECH/IC/2009-087, 2010, at 95. See also www.trtworld.com/turkey/us-embassy-in-turkey-seville-map-has-no-legal-basis-39940.

⁶²See, e.g., Letter dated 14 October 2020, *supra* note 13.

⁶³See, e.g., UNCLOS III, Summary Records of Plenary Meetings, 160th Plenary Meeting, A/CONF.62/SR.160, at 27, para. 11.

⁶⁴Letter dated 13 November 2019, *supra* note 19.

⁶⁵Chargé d'affaires a.i. of the Permanent Mission of Turkey to the UN, Letter dated 15 June 2016, UN Doc. A/70/945-S/2016/541, 17 June 2016.

⁶⁶*Ibid.* President Erdoğan therefore proposed to organize a Conference for the Eastern Mediterranean, in which all actors in the region could take part. See, e.g., Address by Mr. Recep Tayyip Erdoğan, President of the Republic of Turkey, UN General Assembly, Seventy-fifth Session, 4th Plenary Meeting, 22 September 2020, UN Doc. A/75/PV.4*, Annex III.

⁶⁷Permanent Representative of Turkey to the UN, Letter dated 5 September 2012, Annex, UN Doc. A/66/899, 7 September 2012. See also Letter dated 18 March 2020, *supra* note 19.

⁶⁸See, e.g., Turkey Ministry of Foreign Affairs, Outstanding Issues, *supra* note 48, at 51.

⁶⁹Letter dated 13 November 2019, *supra* note 19.

⁷⁰See *supra* note 24.

⁷¹See *supra* note 19.

4. Delimitation by judicial process: The applicable law

Given their fundamentally different positions, it is unlikely that Greece and Turkey will be able to effect delimitation of their continental shelves and EEZs in the Eastern Mediterranean by agreement. This is where the ICJ and international tribunals usually come into play. LOSC Articles 74(2) and 83(2) stipulate that the states concerned shall resort to the procedures provided for in LOSC Part XV on the settlement of disputes if no agreement can be reached in a reasonable timeframe. The ICJ in *Nicaragua v. Colombia* reaffirmed ‘that the principles of maritime delimitation enshrined in Articles 74 and 83 reflect customary international law’.⁷² Some experts consequently argue that Articles 74 and 83 – in their entirety – were relevant to any delimitation of the EEZ and continental shelf, regardless of whether the states concerned were parties to the LOSC.⁷³ This means that Greece and Turkey were under an obligation rooted in customary international law, corresponding to Articles 74(2) and 83(2), to resort after a reasonable period of time to further dispute settlement mechanisms. In any case, they are under an obligation, according to Article 2(3) of the UN Charter, to settle their dispute ‘by peaceful means in such a manner that international peace and security, and justice, are not endangered’. However, neither LOSC Articles 74(2) and 83(2), nor Articles 2(3) and 33(1) of the UN Charter require states to use a specific means for settling a dispute.⁷⁴

The following two subsections address (i) the method employed by the ICJ and international tribunals when delimiting the continental shelf and/or EEZ, and (ii) the legal concepts and criteria developed in international jurisprudence to determine the effect of an island on the course of the delimitation line.

4.1 The applicable method: The three-stage approach

The ICJ has recognized that LOSC Articles 74(1) and 83(1) are an expression of customary international law.⁷⁵ However, the wording of these provisions is deliberately vague because delimitation of the EEZ and continental shelf was a highly controversial issue at UNCLOS III. The outcome was a compromise formula that establishes the objective of achieving an equitable solution but does not provide any guidance on the applicable method and rules to accomplish this goal. In *Libya/Malta*, the ICJ noted that the LOSC restricted itself to setting a standard, and it was left to states or the courts ‘to endow this standard with specific content’.⁷⁶ Over time, a certain methodology and some substantive rules for the judicial delimitation of the EEZ and continental shelf developed in international jurisprudence. In the 2009 *Black Sea* judgment, the ICJ introduced a three-stage approach,⁷⁷ which is regarded as the current standard.⁷⁸ Here, the Court outlined the elements of the test as follows:

⁷²*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment of 19 November 2012, [2012] ICJ Rep. 624, para. 139.

⁷³British Institute of International and Comparative Law (BIICL), *Report on the Obligations of States under Articles 74(3) and 83(3) of UNCLOS in respect of Undelimited Maritime Areas* (2016), at 8 (para. 31).

⁷⁴Art. 33(1) of the UN Charter provides: ‘The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.’

⁷⁵*Case Concerning Maritime Dispute (Peru v. Chile)*, Judgment of 27 January 2014, [2014] ICJ Rep. 3, para. 179. See also *Nicaragua v. Colombia*, *supra* note 72, para. 139.

⁷⁶*Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment of 3 June 1985, [1985] ICJ Rep. 13, para. 28.

⁷⁷*Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment of 3 February 2009, [2009] ICJ Rep. 61, paras. 115–22.

⁷⁸See, e.g., *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment of 12 October 2021, paras. 122, 128 (not yet published in ICJ Rep.).

First, the Court will establish a provisional delimitation line, using methods that are geometrically objective and also appropriate for the geography of the area in which the delimitation is to take place. So far as delimitation between adjacent coasts is concerned, an equidistance line will be drawn unless there are compelling reasons that make this unfeasible in the particular case . . . So far as opposite coasts are concerned, the provisional delimitation line will consist of a median line between the two coasts. No legal consequences flow from the use of the terms “median line” and “equidistance line” since the method of delimitation is the same for both.⁷⁹

The course of the final line should result in an equitable solution (Articles 74 and 83 of UNCLOS). Therefore, the Court will at the next, second stage consider whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result⁸⁰ . . . Such factors have usually been referred to in the jurisprudence of the Court . . . as the relevant circumstances.⁸¹

Finally, and at a third stage, the Court will verify that the line (a provisional equidistance line which may or may not have been adjusted by taking into account the relevant circumstances) does not, as it stands, lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line.⁸²

In addition, two preliminary issues are regularly addressed before establishing the provisional delimitation line. First, the relevant coasts need to be identified. To be relevant for delimitation, a coast must generate projections in the seaward direction that overlap with projections from the coast of the other party.⁸³ Second, the relevant maritime area must be determined, which ‘comprises that part of the maritime space in which the potential entitlements of the parties overlap’.⁸⁴

On one hand, the rationale behind the three-stage approach is to ensure objectivity and predictability.⁸⁵ On the other hand, the approach is supposed to guarantee sufficient flexibility for achieving an equitable solution. However, as an evaluation of the case law suggests, it is questionable whether the approach and its application actually meet the expectation of providing predictability.⁸⁶ A considerable degree of uncertainty exists, especially on the treatment of islands in the delimitation process. The ICJ and international tribunals have not yet developed a clear and coherent set of rules and standards for determining the effect of an island on the delimitation of the continental shelf and EEZ.

4.2 Islands and delimitation: Why the outcome of the process would be difficult to predict

In the logic of the three-stage approach, islands may find consideration at two stages of the delimitation process: first, as locations for basepoints in the construction of the provisional equidistance/median line; and second, as relevant circumstances calling for the adjustment or shifting

⁷⁹*Romania v. Ukraine*, *supra* note 77, para. 116.

⁸⁰*Ibid.*, para. 120.

⁸¹*Ibid.*, para. 155.

⁸²*Ibid.*, para. 122.

⁸³*Ibid.*, para. 99.

⁸⁴*Nicaragua v. Colombia*, *supra* note 72, para. 159.

⁸⁵See, e.g., *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment of 14 March 2012, [2012] ITLOS Rep. 4, para. 228.

⁸⁶See generally A. G. Oude Elferink, T. Henriksen and S. V. Busch (eds.), *Maritime Boundary Delimitation: The Case Law – Is It Consistent and Predictable?* (2018); Y. Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation* (2021).

of that line. At both stages, the treatment of islands has produced uncertainty. Driven by considerations of equity, the ICJ and international tribunals sometimes discard certain basepoints located on islands at the first stage of the delimitation process.⁸⁷ This makes the construction of the provisional equidistance/median line a subjective and unpredictable undertaking.

Even greater uncertainty exists with regard to determining an island's relevance at the second stage of the delimitation process. In some cases, islands are given full or partial effect in controlling the course of the final delimitation line, but in other cases they are deemed irrelevant for the purpose of delimitation, and in still other cases more differentiated solutions have been found.⁸⁸ Often, several relevant circumstances are considered in conjunction, which makes it difficult to reproduce the effect of each circumstance on the adjustment or shifting of the boundary. Moreover, the legal effect of a particular island may vary from case to case.⁸⁹ As the ITLOS observed in *Bangladesh/Myanmar*:

[T]he effect to be given to an island . . . depends on the geographic realities and the circumstances of the specific case. There is no general rule in this respect. Each case is unique and requires specific treatment, the ultimate goal being to reach a solution that is equitable.⁹⁰

The ICJ and international tribunals tend to make a difference between mainland coasts and islands when delimiting the continental shelf and/or EEZ. In *Libya/Malta*, for instance, the ICJ decided to shift the provisional median line between Malta and the Libyan mainland significantly towards Malta to produce an equitable result. Here, the Court accounted for several relevant circumstances, including the general geographical context (in which the island of Malta appeared to the Court as a relatively small feature in a semi-enclosed sea) and the great disparity in the lengths of the relevant coasts.⁹¹ *Nicaragua v. Colombia* is another example, as the ICJ decided not to treat the Colombian islands 'as though they were a continuous mainland coast'.⁹² Such judgments suggest that it is appropriate to differentiate, in terms of delimitation, between mainland coasts and islands irrespective of LOSC Article 121(2) and customary international law,⁹³ which provide that islands enjoy the same status and generate the same maritime rights as any land territory. Evans notes that, 'despite their equal generative capacity, islands are rarely treated equally with mainland coasts within the delimitation process'.⁹⁴ The problem is that the ICJ and international tribunals have not clearly explained why and under which conditions they consider this differentiation to be appropriate. It is therefore difficult to understand the rationale behind individual decisions in which islands are treated differently. Such discretion leads to uncertainty.⁹⁵ To

⁸⁷See, e.g., *Romania v. Ukraine*, *supra* note 77, para. 149 (Serpent's Island); *Bangladesh/Myanmar*, *supra* note 85, para. 265 (St. Martin's Island).

⁸⁸For an overview see M. Lando, *Maritime Delimitation as a Judicial Process* (2019), at 178–92.

⁸⁹See, e.g., the different effect given to Little Corn Island in the two *Nicaragua* cases (*Nicaragua v. Colombia*, *supra* note 72, paras. 233–4; *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment of 2 February 2018, [2018] ICJ Rep. 139, para. 154.

⁹⁰*Bangladesh/Myanmar*, *supra* note 85, para. 317.

⁹¹*Libyan Arab Jamahiriya/Malta*, *supra* note 76, paras. 73, 78.

⁹²*Nicaragua v. Colombia*, *supra* note 72, para. 215.

⁹³In *Qatar v. Bahrain*, the ICJ confirmed that Art. 121(2) reflects customary international law and that 'islands, regardless of their size . . . enjoy the same status, and therefore generate the same maritime rights, as other land territory'. *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Judgment of 16 March 2001, [2001] ICJ Rep. 40, para. 185. Later, the Court clarified that the entire regime of islands as embodied in Art. 121 has the status of customary international law. *Nicaragua v. Colombia*, *supra* note 72, para. 139.

⁹⁴M. D. Evans, 'Maritime Boundary Delimitation', in Rothwell et al., *supra* note 30, 254, at 274. See also M. Evans, 'Relevant Circumstances', in Oude Elferink, Henriksen and Busch, *supra* note 86, 222, at 250–1.

⁹⁵N. Marques Antunes and V. Becker-Weinberg, 'Entitlement to Maritime Zones and Their Delimitation: In the Doldrums of Uncertainty and Unpredictability', in Oude Elferink, Henriksen and Busch, *ibid.*, 62, at 85.

determine the effect of an island at the second stage of the delimitation, the ICJ and international tribunals usually refer to the following concepts and criteria, which all relate to geography.

4.2.1 Length of the coasts

According to the ICJ's long-standing jurisprudence, a substantial difference in the lengths of the parties' coastlines may be a factor to be taken into account. A significant disparity generally calls for shifting the provisional equidistance or median line towards the state with the shorter coastline.⁹⁶

4.2.2 Size of an island

The ICJ expressed in various cases that the size of an island matters in terms of delimitation.⁹⁷ From these rulings, the ICJ does not take account of very small islands or give them their full potential entitlement to maritime zones if this would have a disproportionate effect on the course of the delimitation line under consideration.⁹⁸

4.2.3 Cut-off

Moreover, the ICJ and international tribunals have ruled that cut-off effects caused by an island (in different geographical constellations, including situations of both adjacent and opposite coasts) can be a relevant circumstance.⁹⁹ In *Nicaragua v. Colombia*, the ICJ expounded that an equitable solution required the delimitation line to allow the coasts of both parties, as far as possible, 'to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way'.¹⁰⁰ The Court also stressed that an adjustment made to remedy an inequitable cut-off to the detriment of one state must not create an inequitable cut-off to the detriment of the other state.¹⁰¹ In other words, cutting the parties off from the maritime spaces into which their coasts projected had to be avoided as far as possible.¹⁰² To eliminate undue cut-off effects, the ICJ and international tribunals sometimes combine different techniques, such as corridors and enclaving.¹⁰³

4.2.4 Islands 'on the wrong side' of the median line

Where the island of one state is located 'on the wrong side' of an equidistance or median line, close to the coast of the other state, it is common among states to draw an arc of a determinate distance around the island.¹⁰⁴ By enclosing an island in an enclave, it can be avoided that the island will have a distorting effect on the equidistance or median line. At the same time, such a solution may be used to accord the island a limited continental shelf and EEZ belt of a few nautical miles. The

⁹⁶See, e.g., *Canada/United States of America*, *supra* note 14, paras. 221–2; *Denmark v. Norway*, *supra* note 14, paras. 68–9; *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment of 10 October 2002, [2002] ICJ Rep. 303, para. 301 (referring to earlier judgments); *Romania v. Ukraine*, *supra* note 77, para. 164; *Nicaragua v. Colombia*, *supra* note 72, para. 209.

⁹⁷See, e.g., *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment of 20 February 1969, [1969] ICJ Rep. 3, para. 57; *Libyan Arab Jamahiriya/Malta*, *supra* note 76, para. 64; *Qatar v. Bahrain*, *supra* note 93, para. 219.

⁹⁸*Romania v. Ukraine*, *supra* note 77, para. 185.

⁹⁹For an overview see Lando, *supra* note 88, at 169–73.

¹⁰⁰*Nicaragua v. Colombia*, *supra* note 72, para. 215. See also *Romania v. Ukraine*, *supra* note 77, para. 201; *Somalia v. Kenya*, *supra* note 78, para. 124.

¹⁰¹*Nicaragua v. Colombia*, *supra* note 72, para. 216; *Costa Rica v. Nicaragua*, *supra* note 89, para. 194.

¹⁰²*Nicaragua v. Colombia*, *ibid.*, para. 236.

¹⁰³See, e.g., *ibid.*, paras. 215–16, 229–38. See also *Case Concerning the Delimitation of Maritime Areas between Canada and France (Canada/France)*, Decision of 10 June 1992, XXI RIAA 265, paras. 66–74.

¹⁰⁴Tanaka, *supra* note 86, at 270–1.

classic example in international jurisprudence is the 1977 decision of the Court of Arbitration regarding the Channel Islands in the *Anglo-French Continental Shelf* case.¹⁰⁵

All in all, the ICJ and international tribunals exercise considerable discretion in deciding whether an island in a particular setting qualifies as a relevant circumstance calling for the adjustment or shifting of a provisional delimitation line. Relevant circumstances are ‘case specific’¹⁰⁶ and there are various techniques that allow for relevant circumstances to be considered for an equitable result.¹⁰⁷ Practice has shown that complex cases have prompted the ICJ and international tribunals to adopt a more results-oriented approach and search for creative solutions. A high degree of flexibility may be necessary to cope with all kinds of geographical settings and find an equitable solution for each case. However, the more flexibility exercised in the treatment of islands at the second stage of the delimitation process, the more difficult it becomes to identify consistent patterns concerning these matters in case law. While the ICJ and international tribunals occasionally spend some time to explain their decisions, it would take a more concerted and systematic effort for them to conceptualize their reasoning. To conclude, the ICJ and international tribunals have developed a methodological framework for the delimitation of the continental shelf and EEZ, but there is much room and flexibility within this framework for tailoring equitable solutions. This makes it hard to anticipate the outcome of a particular process.

5. Searching for an equitable solution in the present case

This section provides ideas on how to achieve an equitable solution in a judicial process between Greece and Turkey concerning the delimitation of their continental shelves and EEZs in the Eastern Mediterranean. To this end, two dominating geographical characteristics are addressed: (i) the presence of several large Greek islands – Rhodes, Karpathos, and Crete (plus Kasos) – whose projection into the Eastern Mediterranean overlaps with the projection of Turkey’s southern coast for the most part in a relatively open space (compared to the area of overlapping entitlements in the Aegean), and (ii) the solitary location of the small Greek island of Kastellorizo, which is wholly detached geographically from the Greek mainland and situated directly in front of the Turkish coast.

5.1 Rhodes, Karpathos, Kasos, and Crete

Rhodes, Karpathos, Kasos, and Crete form an arcuate chain that virtually marks the boundary or bridge between the Aegean and the Eastern Mediterranean. One might say that these islands are Greece’s window into the Eastern Mediterranean. In this sense, the four islands present themselves as a geographical unit. The two dominating islands of the chain, Rhodes and Crete, have a considerable size of approximately 1.400 km² and 8.300 km² respectively, and are home to large populations. The distances between the neighbouring islands of the chain range from about 3 to 30 nm.

For the purpose of delimitation, it is appropriate to start with drawing a provisional equidistance line between this chain of islands and the relevant Turkish coast. Before construing this line, the parties’ relevant coasts must be determined. On the Greek side, the relevant coast would consist of those segments of the four islands’ coasts that project into the Eastern Mediterranean.¹⁰⁸ On the Turkish side, the starting point of the relevant coast in the west could

¹⁰⁵*Case Concerning the Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK/France)*, Decision of 30 June 1977, XVIII RIAA 3.

¹⁰⁶*Arbitration between Barbados and the Republic of Trinidad and Tobago, Relating to the Delimitation of the Exclusive Economic Zone and the Continental Shelf between Them (Barbados/Trinidad and Tobago)*, Award of 11 April 2006, XXVII RIAA 147, para. 242.

¹⁰⁷*Nicaragua v. Colombia*, *supra* note 72, para. 233.

¹⁰⁸See *ibid.*, para. 151. In this case, the ICJ decided that since the area of overlapping potential entitlements extended well to the east of the Colombian islands, it was the entire coastline of these islands, not merely the west-facing coasts, which had to be taken into account.

be Cape Aspro-mitas, which has been identified by the IHO as one of the two terminal points of the line defining the southern limit of the Aegean.¹⁰⁹ Towards the east, the entire Turkish coast appears to be relevant. As the ICJ explained, maritime entitlements are generated through ‘coastal projections in the seaward direction’.¹¹⁰ In order to be relevant for the purpose of delimitation, a coast ‘must generate projections which overlap with projections from the coast of the other Party’.¹¹¹ Accordingly, each part of a coast that generates an overlapping entitlement by its seaward extension should be relevant.¹¹² The terminus of the relevant coast would be the point ‘beyond which the coast in question no longer has a relationship with the coast of the other Party relevant for . . . delimitation’.¹¹³ It may be argued that coastal projection in the ‘seaward’ direction does not necessarily mean ‘frontal’ projection.¹¹⁴ Rather, the term ‘seaward’ can also be understood as an omni-directional, radial projection.¹¹⁵ Technically, this entails that a series of arcs with a radius of 200 nm (for the EEZ and distance-based continental shelf) will be drawn from established basepoints along the coast of each party to determine the reach of the parties’ entitlements (envelope-of-arcs method). The ICJ and international tribunals usually apply this method without making explicit reference to it.¹¹⁶ In *Somalia v. Kenya*, however, the ICJ clearly stated that it identified the relevant coasts by using radial projections that overlap within 200 nm.¹¹⁷ Applying the envelope-of-arcs method in the present case suggests that even the easternmost point of Turkey’s coast contributes to generating an entitlement that overlaps with the entitlement generated by the Greek islands (more precisely with that part of the entitlement which is generated by the coast of Rhodes). That the Republic of Cyprus or other states may also have entitlements in the area where Greece’s and Turkey’s entitlements overlap does not preclude the inclusion of those parts when determining the relevant area for the purpose of effecting delimitation between Greece and Turkey.¹¹⁸

After identifying the relevant coasts and relevant area, the provisional equidistance line between the four Greek islands and the Turkish coast could be construed by using the parties’ lawfully established baselines as a reference (which would include normal baselines as well as straight baselines with their basepoints, where applicable). This would be an objective way of implementing the first stage of the three-stage approach. Alternatively, one could also select along the relevant coasts certain basepoints that appear ‘appropriate’ in light of the specific coastal geography. This would already require a subjective assessment at the first stage of the process. The ICJ and international tribunals often prefer the latter option.¹¹⁹

At the second stage of the three-stage process, it is necessary to take account of certain relevant circumstances. The presence of Rhodes in front of the Turkish coast will produce a cut-off effect

¹⁰⁹See *supra* notes 15 and 16.

¹¹⁰*Romania v. Ukraine*, *supra* note 77, para. 99; reaffirmed by the Arbitral Tribunal in *Bangladesh/India*, *supra* note 10, para. 279.

¹¹¹*Ibid.*

¹¹²See, e.g., *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment of 24 February 1982, [1982] ICJ Rep. 18, para. 74.

¹¹³*Ibid.*, para. 75.

¹¹⁴The theory of frontal projection assumes that ‘coasts project solely in the direction perpendicular to the general direction of the coastal front, and that projection takes place for a breadth corresponding to that of the coastal front’ (Tanaka, *supra* note 86, at 85).

¹¹⁵See Marques Antunes and Becker-Weinberg, *supra* note 95, at 66, 68; Lando, *supra* note 88, at 73–81. See also *Canada/France*, *supra* note 103, at 304–6 (Dissenting Opinion of Judge Weil, paras. 9–13).

¹¹⁶See Lando, *supra* note 88, at 74–81. But see also *Bangladesh/India*, *supra* note 10, para. 302, where the Arbitral Tribunal made clear that ‘a point at which a line drawn at an acute angle to the general direction of the coast can no longer be fairly said to represent the seaward projection of that coast’.

¹¹⁷*Somalia v. Kenya*, *supra* note 78, para. 137.

¹¹⁸See *Romania v. Ukraine*, *supra* note 77, para. 114; *Bangladesh/Myanmar*, *supra* note 85, para. 494.

¹¹⁹See C. G. Lathrop, ‘The Provisional Equidistance Line: Charting a Course between Objectivity and Subjectivity?’, in Oude Elferink, Henriksen and Busch, *supra* note 86, 200, at 209–19.

hindering the Turkish coast to unfold its full continental shelf entitlement, but such cut-off effects, which are to some degree inherent in every delimitation,¹²⁰ warrant a shifting of the provisional equidistance or median line only if the effect is serious enough.¹²¹

More importantly, Turkey's relevant coast in the Eastern Mediterranean is significantly longer than that of the four Greek islands. In general, the boundary should be drawn so that the portion of the relevant area accorded to each state gives consideration to the disparity between the lengths of their relevant coasts.¹²² In *Nicaragua v. Colombia*, for example, the ICJ considered a ratio of approximately 1:8.2 as requiring an adjustment of the provisional median line.¹²³ While a more precise calculation would be necessary in the present case, it is fair to assume that the length disparity between Greece's and Turkey's relevant coasts in the Eastern Mediterranean is so substantial that the provisional equidistance line would have to shift towards the four Greek islands to arrive at an equitable solution. Yet, the more difficult question is how Kastellorizo can be included in such a solution.

5.2 Kastellorizo

Kastellorizo is entitled to a continental shelf and may generate an EEZ as any other island or land territory, but when it comes to delimitation, Kastellorizo's effect should be limited compared to the effect produced by the four larger Greek islands in the Eastern Mediterranean (comprising Rhodes, Karpathos, Kasos, and Crete). Unlike these islands, Kastellorizo – from a geographical perspective – appears to be part of the configuration of the Turkish coast. It is situated entirely within Turkey's territorial sea and may even rest on the same geological shelf as the Turkish mainland. However, geological and geomorphological considerations are not considered by the ICJ and international tribunals in the delimitation of overlapping entitlements within 200 nm of the parties' coasts.¹²⁴

Turkey considers it a relevant circumstance that Kastellorizo is located several hundred kilometres away from the Greek mainland. According to Turkey, the 'maritime jurisdiction areas' generated by the island should therefore be constricted to its territorial waters. In the *Jan Mayen* case, Denmark emphasized that the Norwegian island of Jan Mayen was totally detached from Norway and close to Greenland.¹²⁵ In Denmark's perception, Jan Mayen fell:

... into the category of islands which may be depicted as detached islands in the sense of islands lying so far from their parent mainland that they are situated on the "wrong side" of an equidistance line measured between the respective mainlands.¹²⁶

Even so, the ICJ ruled that '[t]he coast of Jan Mayen, no less than that of eastern Greenland, generates potential title to the maritime areas recognized by customary law, i.e., in principle up to a limit of 200 miles from its baselines'.¹²⁷

Kastellorizo is also of very small size. In *Costa Rica v. Nicaragua*, the ICJ found that Nicaragua's Corn Islands, given their limited size of 12.6 km² and significant distance from the mainland coast, could be accorded only half effect, which produced an adjustment of the equidistance line in

¹²⁰Lando, *supra* note 88, at 170–1.

¹²¹See *Bangladesh/India*, *supra* note 10, para. 417 (with regard to cut-off produced by concavity of the coast).

¹²²*Nicaragua v. Colombia*, *supra* note 72, para. 229.

¹²³*Ibid.*, para. 211.

¹²⁴*Ibid.*, para. 214. See also *Libyan Arab Jamahiriya/Malta*, *supra* note 76, para. 39.

¹²⁵*Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Reply submitted by the Government of the Kingdom of Denmark, 31 January 1991, para. 299.

¹²⁶*Ibid.*

¹²⁷*Denmark v. Norway*, *supra* note 14, para. 70.

favour of Costa Rica.¹²⁸ In terms of size, the insular group of Kastellorizo, which, as a municipality, has a size of about 12 km², is comparable to the Corn Islands.

If an adjusted equidistance line is drawn between the chain of the four Greek islands and the Turkish coast, as described in the previous subsection, the island of Kastellorizo would indeed be positioned on the wrong side of that line. Moreover, Kastellorizo, despite its small size, could produce a significant cut-off effect on Turkey's coastal projection if given full weight in the delimitation. On the one hand, Turkey must be protected from serious disadvantages that could lead to an inequitable solution. On the other hand, Kastellorizo must not be excessively affected by a reverse cut-off effect. As a matter of principle, the mutual encroachment and cut-off effects must be distributed in a balanced and reasonable manner.¹²⁹ Simply denying the island any portion of a continental shelf and EEZ, which reflects Turkey's position, would not lead to an equitable solution.

First of all, it would be necessary to delimit Kastellorizo's territorial sea from the territorial sea generated by Turkey's opposite coast. This would require drawing a median line in accordance with customary international law corresponding to LOSC Article 15. South of the median line, Kastellorizo's territorial sea would form an arc-shaped envelope extending to 6 nm in each direction. This envelope would surround the entire island group of Kastellorizo, including smaller islets, which qualify as rocks under LOSC Article 121(3).

As far as the delimitation of the continental shelf and EEZ is concerned, different options are conceivable. One option is enclaving Kastellorizo based on radial projection. It would grant Kastellorizo a small continental shelf and EEZ belt of a few nautical miles, perhaps an additional 3 to 6 nm. This belt would also take shape of an envelope of arcs surrounding the island to the east, west, and south, but not encroaching upon Turkey's territorial sea in the north where the median line is drawn. The smaller islets of the island group of Kastellorizo, to the extent that they are rocks within the meaning of LOSC Article 121(3), are not entitled to a continental shelf and to an EEZ. Accordingly, they are not to be factored into the calculation when drawing the enclave delimitation line for the continental shelf and EEZ.

A second option is to use the maritime space available to the south of Kastellorizo and aim for a corridor solution instead of an enlarged enclave around the island. Such a solution would be based on the concept of frontal projection, which implies that coasts project only in the direction they face, i.e., perpendicular to the general direction of the coastal front.¹³⁰ As the general direction of Kastellorizo's southward coastal front runs diagonally from northeast to southwest, applying the concept of frontal projection in a strict manner would mean the corridor extends diagonally to the southeast. However, a corridor running due south with parallel straight lines perpendicular to the latitude that crosses the island (as if the general direction of the coastal front would exactly follow an east-west axis) would be preferable to avoid any further encroachment upon Turkey's continental shelf and EEZ projection to the south. Compared to the first option (which is enclaving the island), such a corridor solution also significantly reduces cut-off for Turkey while giving Kastellorizo a greater share of the area for its continental shelf and EEZ. The east-west extension of the corridor would correspond to the island's east-west extension, but its breadth could theoretically extend up to 200 nm. Where the corridor would overlap with the entitlements of third states, further delimitation with these states would be necessary.

5.3 The relevance of existing boundary agreements with third states

Another issue that could arise in a future delimitation process between Greece and Turkey concerns the relevance of boundary agreements which each party individually concluded with

¹²⁸*Costa Rica v. Nicaragua*, *supra* note 89, paras. 153–4.

¹²⁹Dissenting Opinion of Judge Weil, *supra* note 115, at 307 (para. 17); Tanaka, *supra* note 86, at 85.

¹³⁰See *supra* note 114.

other coastal states in the region. In a judicial process, the Turkish government might argue that the 2019 MoU with Libya amounted to Libya's recognition that the area on the Turkish side of the agreed delimitation line appertained to Turkey. Such an argument would aim at excluding this particular space from the relevant area to be delimited by the Court.¹³¹ In *Nicaragua v. Colombia*, however, the ICJ made clear it was not required to account for an agreement concluded by one of the parties with a third state.¹³² The Court referenced the fundamental principle of international law that a treaty between two states cannot, by itself, affect the rights of another state.¹³³ This principle is codified in Article 34 of the 1969 Vienna Convention on the Law of Treaties.¹³⁴ Accordingly, the 2019 MoU with Libya does not confer upon Turkey any rights against Greece. In particular, the MoU cannot give Turkey, vis-à-vis Greece, a greater share of the area in which its entitlements overlap with those of Greece.

Moreover, the 2019 MoU would not limit the ICJ in a sense that it must respect the entitlements of Libya when drawing the boundary between the Greek and Turkish continental shelf and EEZ. Pursuant to Article 59 of the ICJ Statute, the Court's decision has no binding force except between the parties and in respect of that particular case. Accordingly, a judgment on delimitation is without prejudice to any claims of third states in the region¹³⁵ even if their entitlements overlap with those of the parties to the case. Nevertheless, the ICJ usually takes care not to draw a boundary line into areas where the rights of third states might be affected.¹³⁶ In a future delimitation process between Greece and Turkey, the Court would probably not fix the endpoints of the delimitation line between both parties where third states such as Cyprus, Egypt, or Libya may also have maritime entitlements.¹³⁷

6. Economic and political implications

Until now, no large natural gas deposits were discovered in the disputed area between Greece and Turkey in the Eastern Mediterranean. A study by the US Geological Survey estimates that the Mediterranean Ridge Reservoirs (which include the disputed area east of the four Greek islands and south of Kastellorizo) are likely to hold less gas fields, which are significantly smaller than the reservoirs of the Herodotus Basin, the Eratosthenes Platform, the Nile Delta Basin, and the Levantine Basin (all located east of the Mediterranean Ridge Reservoirs).¹³⁸ Hence, in terms of a possible 'gas bonanza', the setting is entirely different from the competitive situation in the waters south of Cyprus or off the coasts of Israel and Egypt, where enormous reserves have been unlocked.

It would be too simplistic to describe the recent confrontation between Greece and Turkey in the Eastern Mediterranean as an aggressive race for potential gas resources. Obviously, the conflict is more fundamental in nature. It is rooted in an old rivalry, which deeply affects the national security interests of both states, and it is fuelled by increasing mutual mistrust. Greece thinks it must protect its sovereign rights and jurisdiction, and even its sovereignty, against Turkey's expansive maritime claims. As far as Turkey is concerned, some experts observed a significant shift from its soft-power policy of the early 2010s to an 'overtly confrontational foreign policy

¹³¹Papastavridis, *supra* note 47, at 31. On this issue in general see Lando, *supra* note 88, at 84–90.

¹³²*Nicaragua v. Colombia*, *supra* note 72, para. 227. See also *Costa Rica v. Nicaragua*, *supra* note 89, para. 123.

¹³³*Nicaragua v. Colombia*, *ibid.*, para. 227.

¹³⁴Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331. Art. 34 of the Vienna Convention reads: 'A treaty does not create either obligations or rights for a third State without its consent.'

¹³⁵*Nicaragua v. Colombia*, *supra* note 72, para. 228. See also *Costa Rica v. Nicaragua*, *supra* note 89, para. 123.

¹³⁶*Ibid.*, (both cases).

¹³⁷Papastavridis, *supra* note 47, at 33. See also N. Burke O'Sullivan, 'The Case Law's Handling of Issues Concerning Third States', in Oude Elferink, Henriksen and Busch, *supra* note 86, 262, at 279–80.

¹³⁸US Geological Survey, *Assessment of Undiscovered Conventional Oil and Gas Resources in the Eastern Mediterranean Area*, 2020 (July 2021).

... on numerous fronts'.¹³⁹ The 'Blue Homeland' doctrine (*Mavi Vatan*), which reflects this confrontational position within the Turkish security community, has gained considerable support in Ankara. Although the doctrine appears to be a somewhat nebulous concept,¹⁴⁰ it conveys the impression that Turkey is under considerable outside pressure and must fend off interference with its national interests. At the same time, the doctrine envisages Turkey to expand its influence in the region. In particular, the doctrine rests on the presumption, as suggested by some experts, that naval supremacy was necessary 'to thwart attempts by Greece and Cyprus to control the seas surrounding Turkey with the backing of the transatlantic alliance'.¹⁴¹ It would be a far-reaching step for Turkey to entrust an international court with drawing boundaries in an area it considers to be part of its 'Blue Homeland'.

Apart from that, the maritime dispute between Greece and Turkey is likely to gain additional momentum as the Eastern Mediterranean is about to become an important transit space for electricity. One of the EU's flagship projects in the region is the EuroAsia Interconnector, a 2,000MW electricity highway connecting the national electricity grids of Israel, Cyprus, and Greece through a 1,208 km subsea cable. The other key project is the EuroAfrica Interconnector, which will connect the electricity grids of Egypt, Cyprus, and Greece through a 1,396 km subsea cable. The two interconnectors are to supply the EU with electricity produced by the gas reserves of Cyprus, Egypt, and Israel, as well as from renewable energy sources. The project's visual documentation indicates that the envisaged cable route from Cyprus to Crete runs through the area regarded by Turkey as part of its continental shelf.¹⁴² The lowest subsea point of the cable will be 3,000 metres below sea-level. As reported by several newspapers, Ankara already sent diplomatic notes to the Greek and Israeli embassies and the EU delegation demanding they must seek Turkey's permission before conducting any work on its continental shelf.¹⁴³

7. Outlook

It is uncertain whether Greece and Turkey will find their way to the ICJ. Between 2002 and 2016, the two states held 60 rounds of informal exploratory talks to create a basis for full negotiations, especially concerning issues related to the situation in the Aegean. In January 2021, almost five years after Greece had suspended the meetings, Ankara and Athens revived the format in light of recent confrontations in the Eastern Mediterranean. On this occasion, the Greek government stated that restarting the exploratory talks process 'will provide both sides the opportunity to explore the ground in order to proceed later on to meaningful and good-faith negotiations' regarding the delimitation of their continental shelves and EEZs, 'failing which, the two countries should agree to the judicial settlement of their dispute'.¹⁴⁴ Referring the dispute to the ICJ requires the parties to conclude a special agreement specifying, among other things, questions to be

¹³⁹S. Adar and I. Toygür, *Turkey, the EU and the Eastern Mediterranean Crisis: Militarization of Foreign Policy and Power Rivalry* (SWP Comment 62/2020), 2. See also, e.g., E. İşeri and A. Çağrı Bartan, 'Turkey's Geostrategic Vision and Energy Concerns in the Eastern Mediterranean Security Architecture: A View from Ankara', in Z. Tziarras (ed.), *The New Geopolitics of the Eastern Mediterranean: Trilateral Partnerships and Regional Security* (2019), 111, at 112.

¹⁴⁰G. Dalay, *Turkey, Europe, and the Eastern Mediterranean: Charting a Way Out of the Current Deadlock* (2021), 6.

¹⁴¹Adar and Toygür, *supra* note 139, at 2.

¹⁴²EuroAsia Interconnector Route, available at www.euroasia-interconnector.com/at-glance/the-route/; EuroAfrica Interconnector Route, available at www.euroafrica-interconnector.com/at-glance/the-route/.

¹⁴³B. Cetinkaya, 'Turkey Demands Its Approval in EU's East Med Project', *Anadolu Agency*, 15 March 2021, available at www.aa.com.tr/en/turkey/turkey-demands-its-approval-in-eus-east-med-project/2176925; 'Turkey Tells Israel, Greece, EU to Seek Permission for Work in East Med Waters', *Greek City Times*, 16 March 2021, available at www.greekcitytimes.com/2021/03/16/turkey-israel-greece-eu-permission/.

¹⁴⁴Permanent Representative of Greece to the UN, Letter dated 15 February 2021, UN Doc. A/75/753, 16 February 2021; see also Permanent Representative of Greece to the UN, Letter dated 22 July 2021, UN Doc. A/75/972, 26 July 2021.

addressed by the Court. The Greek government made clear that the only outstanding difference with Turkey, which it would pursue, was the delimitation of the continental shelf and EEZ.¹⁴⁵

The Turkish government, while stating it did not rule out any means of peaceful settlement, including the ICJ, left no doubt that referral to the Court required mutual consent and that there first had to be an agreement on the issues taken to the Court.¹⁴⁶ Ankara also stressed that the outstanding issues to be addressed in the exploratory talks encompassed more than the continental shelf dispute.¹⁴⁷ In Turkey's view, the issues constituted a comprehensive package,¹⁴⁸ and Turkey underlined its 'readiness and full support for ensuring a just, equitable and peaceful solution to all pending issues'.¹⁴⁹ However, linking talks on the delimitation of maritime zones in the Eastern Mediterranean with unresolved problems on the Aegean will probably overburden future negotiations.

Ankara and Athens should use further rounds of discussion to show willingness to compromise and build mutual trust, but signals are pointing in the opposite direction. In July 2021, Turkey accused Greece of being 'in material breach of its demilitarization obligations' as far as several islands in the Eastern Aegean were concerned.¹⁵⁰ In particular, Turkey asserted that Greece was violating the treaties under which it had acquired sovereignty over these islands, which, from a legal point of view, meant that Greece could not, vis-à-vis Turkey, rely on its title under the same treaties for the purposes of maritime boundary delimitation.¹⁵¹ The question of the islands' demilitarization and other Aegean issues have continuously strained the relationship between Greece and Turkey. It is not to be expected that both states will move forward on these issues in the foreseeable future. At the same time, any further escalation of the Greek-Turkish battle over maritime zones in the Eastern Mediterranean would pose a serious threat to regional stability and security. This is why Ankara and Athens should now concentrate on reaching an agreement to submit their delimitation dispute to the ICJ.

¹⁴⁵Hellenic Republic Ministry of Foreign Affairs, Issues of Greek-Turkish Relations, available at www.mfa.gr/en/issues-of-greek-turkish-relations/. See also Letter dated 15 February 2021, *supra* note 144; Letter dated 22 July 2021, *supra* note 144.

¹⁴⁶Letter dated 14 October 2020, *supra* note 13; Permanent Representative of Turkey to the UN, Letter dated 15 June 2021, UN Doc. A/75/929, 21 June 2021.

¹⁴⁷Letter dated 21 August 2020, *supra* note 54.

¹⁴⁸Turkey insists that the package 'also includes the delimitation of the continental shelf, the breadth of territorial waters and national airspace, the sovereignty of islands, islets and rocks that were not ceded to Greece through valid international instruments, the violation of the demilitarized status of the Eastern Aegean Islands by Greece and the issue of service areas (FIR, SAR and NAVTEX)' (Permanent Representative of Turkey to the UN, Letter dated 19 November 2021, UN Doc. A/76/559, 19 November 2021). See also Turkey Ministry of Foreign Affairs, Outstanding Issues, *supra* note 48, at 8–26.

¹⁴⁹Letter dated 19 November 2021, *supra* note 148.

¹⁵⁰Permanent Representative of Turkey to the UN, Letter dated 13 July 2021, UN Doc. A/75/961–S/2021/651, 14 July 2021.

¹⁵¹*Ibid.* On this point, the dispute seems to have escalated. See Permanent Representative of Greece to the UN, Letter dated 27 July 2021, UN Doc. A/75/976–S/2021/684, 28 July 2021; Permanent Representative of Turkey to the UN, Letter dated 30 September 2021, UN Doc. A/76/379–S/2021/841, 5. October 2021.