

International Law of the Sea and Hydrocarbon Discoveries in the East Mediterranean

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Background

With the discovery of significant hydrocarbon deposits in the Eastern Mediterranean at the turn of the 21st century, the geostrategic importance of the region has been transformed. In 2010, the U.S. Geological Survey (USGS) has reported that an estimate of 1.7 billion barrels (bb) of recoverable oil and 122 trillion cubic feet (tcf) of natural gas are found in the Levant Basin, while another 1.8bb of recoverable oil and 223tcf of natural gas are available under the Nile Delta Basin.¹ Despite the poor media coverage of those developments due to the breakout of the Arab Spring throughout the Middle East and North Africa, they have led to what could be termed *The Energy Rush of the Eastern Mediterranean* as Egypt, Israel, Palestine, Cyprus and

¹“Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean,” US Geological Survey Fact Sheet 2010 – 3014 (March, 2010) <https://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf>; “Assessment of Undiscovered Oil and Gas Resources of the Nile Delta Basin Province, Eastern Mediterranean,” US Geological Survey Fact Sheet 2010 – 3027 (May 2010) <https://pubs.usgs.gov/fs/2010/3027/pdf/FS10-3027.pdf>

Turkey have all begun issuing exploration and exploitation licences to the likes of Noble Energy and British Gas. More importantly, those developments have made the relevant regional players realize that in order to reap the benefits of the “immense underwater wealth” their maritime boundaries must be demarcated². The large majority of them have done so in accordance with the applicable rules of the international law of the sea, while others have not.

The United Nations Convention on the Law of the Sea (UNCLOS) is the central organ of international law of the sea. The treaty was signed in 1982 and it came into force in 1994.³ UNCLOS cannot be applied retrospectively, but depending on the circumstances, the unique landscape and the history of agreements between the different parties to each individual case, relevant provisions from the 1958 Conventions remain applicable. In addition, despite the fact that Turkey and Syria have not signed nor ratified any of the treaties that are applicable to the Eastern Mediterranean, as highlighted in Table 1 on the next page and even though Israel is not a party to UNCLOS, the International Court of Justice (ICJ) has often treated certain aspects of the 1958 Conventions and, most importantly, of UNCLOS as customary international law and as binding on all States.⁴

1. UNCLOS and the Mediterranean

Taking into account British Gibraltar and the British bases of Akrotiri and Dhekelia in Cyprus, 22 countries are considered coastal States to the Mediterranean, which connects to the Atlantic Ocean via the straits of Gibraltar. Thus, in accordance with Part IX, Articles 122 – 123 of UNCLOS, the Mediterranean is a semi-enclosed sea defined by Article 122 as “a gulf, basin or sea surrounded by two or more States and connected to another sea or to the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones [EEZ] of two or more coastal States.”⁵ Indeed, the Mediterranean is made up entirely of the territorial seas and EEZs of bordering States, and its seabed is to be eventually divided amongst the relevant coastal States. Article 123 of UNCLOS makes it obligatory for States bordering a semi-enclosed sea “to cooperate with each other in the exercise of their rights and in the performance of their duties under [the] Convention.” And to such an end, Article 123 continues, “they shall endeavor, directly or through an appropriate regional organization:

- a) to coordinate the management, conservation, exploration and exploitation of the living resources of the area;
- b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

²Nikolaos Ioannidis, “The Law of the Sea as a Tool for Stability and Progress in the Eastern Mediterranean Sea.” *Opinio Juris* (August 13, 2015) <http://opiniojuris.org/2015/08/13/emerging-voices-the-law-of-the-sea-as-a-tool-for-stability-and-progress-in-the-eastern-mediterranean-sea/>

³ By the date of this writing, 168 States have become parties to UNCLOS http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm

⁴ Turkey’s stance regarding the customary status of certain international norms is inconsistent. For example, while rejecting the view that certain provisions of UNCLOS are essentially a reflection of customary law (i.e. the median line), it has accepted and enforced maritime boundaries in the Black Sea that were drawn based on the exact same principles. See Andrew Filis and Rafael Leal-Arcas, “Legal Aspects of Inter-State Maritime Delimitation in the Eastern Mediterranean Basin,” *Queen Mary University of London, School of Law | Legal Studies Research Paper No. 142/2013 & Oil Gas & Energy Law Intelligence (OGEL)* Vol. 11 – issue 3 (April, 2013), p.5 <http://ssrn.com/abstract=2257731>

⁵The ICJ referred to the Mediterranean as a semi-enclosed sea in the case of *Libya v. Malta* (1985)

- d) to invite, as appropriate other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.”

Table 1: List of Applicable International Treaties to the Eastern Mediterranean⁶

State Parties	1958 Convention on the Territorial Sea and Contiguous Zone	1958 Convention on the Continental Shelf (CCS)	1982 Convention on the Law of the Sea(UNCLOS)
Cyprus	No	Yes	Yes
Egypt	No	No	Yes
Greece	No	Yes	Yes
Lebanon	No	Signed/Not Ratified	Yes
Israel	Yes	Yes	No
Syria	No	No	No
Turkey	No	No	No
Palestine	No	No	Signed/Not Ratified

A crucial factor behind the existence of this kind of cooperation amongst States bordering a semi-enclosed sea, or the lack of it thereof, is the demarcation of their maritime boundaries in accordance with international law of the sea, its various treaty components and the general provisions of customary international law. In turn, what makes maritime demarcations timely and essential is the particular discovery of hydrocarbon resources in the semi-enclosed sea of the Eastern Mediterranean.

1.1 The Territorial Sea and the Contiguous Zone

Prior to the entry into force of UNCLOS, the exact limits of a maritime area where a coastal State is able to exercise its full jurisdiction were not made explicit by any international treaties. For instance, Article 1 of the 1958 Convention on the Territorial Sea and the Contiguous Zone highlights “the sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.” In addition, Article 2 of the same Convention states the sovereignty of a coastal State “extends to the air space over the territorial sea as well as to its bed and subsoil.” However, there did not exist any pre-determined international standards on how far outward into the sea a State is able to exercise its sovereignty. Some States claimed a 3nm “territorial sea,” while others such as Panama, El Salvador and Chile claimed “a coastal belt” that extends as far into the sea as 200nm.⁷ At the same time, the situation has been rectified by UNCLOS as Articles 2-33 of this treaty outline the regime governing the territorial sea. The treaty defines the territorial sea as the area within 12nm of the baseline of coastal States (Article 3 - UNCLOS), where a State is entitled to the full exercise of its sovereignty, including the seabed.⁸ In cases where “the coasts of two States are opposite or adjacent to each other,” according to Article 15, “neither of the two States is

⁶United Nations Treaty Collection, <https://treaties.un.org/>

⁷ Filis and Leal-Arcas, supra note 4, p.7-8

⁸ Article 5 of UNCLOS defines a normal baseline as “the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.” This line is to be straight in accordance with Article 7 of UNCLOS that deals with deeply indented coastlines or of fringes of islands, Article 9 on mouths of rivers, Article 10 on bays and Articles 47 regarding archipelagic States. In the case of the East Mediterranean, each of Cyprus, Egypt and Turkey have enforced national legislations that provide for a 12nm breadth of their respective territorial seas as measured from straight baselines joining points located on the shores of their mainland or island territories.

entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.”

However, Article 15 underlines that the equidistance method (the median line method) may not be applicable “where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.” It is worth noting that the meaning of “historic title” and “special circumstances” has been left open to interpretation by Article 15, depending on the unique situation created by each individual case. Meanwhile, in its reflection of a widely followed State-practice, the content of Article 15 of UNCLOS has been essentially borrowed from Article 12(1) of the 1958 Convention on the Territorial Sea and Contiguous Zone, which is in turn a treaty that “generally codified” customary law.⁹

Adjacent to the territorial sea is a region designated by UNCLOS as the contiguous zone, and extending 12nm into the sea from the outer limits of the territorial sea or up to 24nm from the baseline of the coastal State, inclusive of the underlying seabed. In accordance with Article 33(1) of UNCLOS, the coastal State may exercise partial sovereignty in the contiguous zone, or “the control necessary to: a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; b) punish infringement of the above laws and regulations committed within its territory or territorial sea.” With those terms, Article 33(1) of UNCLOS reiterates the provisions of Article 24(1) of the 1958 Convention on the Territorial Sea and the Contiguous Zone, which is also a reflection of the latter’s customary international law status. Subsequently, Article 33(2) of UNCLOS extends the outer limit of the contiguous zone from 12nm under Article 24(2) of the 1958 Convention to 24nm. Coastal States are also permitted to “regulate the removal of archeological and historical objects” that are found in their proclaimed contiguous zones, which may particularly affect the extraction of hydrocarbon resources.¹⁰

While a coastal State is entitled to a territorial sea without the need to claim one – it is an *ipso iure* or a natural right – it must specify the outer limits of its territorial sea. For instance, to defuse a potential conflict with its neighboring Turkey, Greece has placed an outer limit of 6nm on its territorial sea in the Aegean Sea.¹¹ However, the contiguous zone must be claimed in conjunction with a specification placed on its outer limit, by any coastal State wishing to incrementally extend its jurisdictions beyond the outer limit of its territorial sea.¹²

1.2 The Continental Shelf

The industrial revolution, the era of decolonization and advancements in science and technology have all made coastal States eager and able to economically exploit the natural resources they find within their proclaimed maritime territories.¹³ The entitlement of a coastal State to such resources was particularly underlined by U.S. president Truman in 1945, when

⁹ Mazen Ali, “The Application of the Law of the Sea and the Convention on the Mediterranean Sea,” Division for Ocean Affairs and the Law of the Sea. *Office of Legal Affairs of the United Nations*, New York (2009), p.49 http://www.un.org/depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/adi_0809_syria.pdf

¹⁰ Rene Lefeber, “International Law and the Use of Maritime Hydrocarbon Resources,” Edited by Deborah Sherwood, *Clingendael International Energy Programme*, (2015) CIEP/IGU, p.7

¹¹ In fact, Turkey has often asserted it would consider a Greek extension of its territorial sea to 12nm a *casus belli*. Filis & Leal-Arcas, *supra* note 4, p.9

¹² Lefeber, *supra* note 10, p.5

¹³ Filis and Leal–Arcas, *supra* note 4, p.10

he famously asserted that “The United States regard the natural resources of the subsoil and sea-bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States, as appertaining to the United States, subject to its jurisdiction and control.”¹⁴ Indeed, President Truman’s proclamation was soon followed by an international convention that “enshrined a coastal State’s sovereign right to exploit its continental shelf to the exclusion of other States,”¹⁵ as a reflection of the widely accepted customary international law status of this right: The 1958 Convention on the Continental Shelf.

Article 2 of the 1958 Convention states the following:

- 1) The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
- 2) The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.¹⁶

In its interpretation of Article 2 in the *North Sea Continental Shelf Cases* (1969), the ICJ referred to such exclusivity as “*ipso facto* and *ab initio*,” or as a natural right stemming from a State’s territorial sovereignty, and from the sovereignty it is entitled to exercise over those maritime areas that are adjacent to its land territories.¹⁷ This was further endorsed by Article 77 of UNCLOS. In other words, the rights of coastal States in the continental shelf are recognized under customary international law as natural. They do not need to be proclaimed.

At the same time, the 1958 Convention on the Continental Shelf did not specify the exact outer limit of the continental shelf. In addition, the provisions of Article 1(a) of that convention make the exploitation and extraction of resources found in soils deeper than 200m subject to the scientific and technological capabilities of coastal States. In making amendments to this situation, Part VI of UNCLOS (Articles 76-85) captures the provisions of the 1958 Convention on the Continental Shelf and deals with the regime governing the delimitations of the continental shelf. For instance, according to Article 76, depending on the topography, i.e. whether or not the continental shelf continues as a natural prolongation of a State’s land territory, the outer limit of the continental shelf could extend from a provisional 200nm and up to 350nm from the baseline from which the breadth of the territorial sea is measured. If the topography of the coastal State permits it to extend the limits of its continental shelf beyond 200nm, this must be done in accordance with a recommendation said State is able to request from the Commission on the Limits of the Continental Shelf (CLCS) that has been established under UNCLOS. This is not applicable to any of the countries that are bordering the East Mediterranean.

With regards to the delimitation of the continental shelf between States with opposite or adjacent coasts, such as those between Turkey and its East Mediterranean neighbors, Article 6

¹⁴ Harry S. Truman, *A Proclamation*, (September 28, 1945). Available at the website of *The American Presidency Project* <http://www.presidency.ucsb.edu/ws/?pid=12332>

¹⁵ Filis and Leal-Arcas, *supra* note 4, p.10

¹⁶ In accordance with Article 1 of the 1958 Convention on the Continental Shelf, “the term ‘continental shelf’ is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said area; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.”

¹⁷ *North Sea Continental Shelf Cases*, ICJ Reports (1969), para 19, p.41

of the 1958 Convention underscores how this is to be carried out through an agreement between neighboring States.¹⁸ “In the absence of agreement,” continues Article 6, “and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.” Mirroring Article 6 of the 1958 Convention, Article 83 of UNCLOS stipulates the following:

- 1) The delimitation of the continental shelf 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*.¹⁹
- 2) If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV [On the settlement of disputes: Articles 279-299].
- 3) Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
- 4) Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

It is worth noting how the provisions of Article 6(1) of the 1958 Convention on the Continental Shelf were more “precise” yet “flexible” than those of Article 83 of UNCLOS “insofar as, in the absence of an agreement, the use of the equidistance line was indicated.”²⁰ At the same time, similarly to Article 12(1) of the 1958 Convention on the Territorial Sea and Contiguous Zone and Article 15 of UNCLOS on the territorial sea, the definition of what special circumstances allow for a measurement other than that of the median line, or what exactly must that measurement be, was left open to interpretation depending on the situation created by each individual case. For example, in the *North Sea Continental Shelf Cases* (1969) the ICJ found that “the concavity of the German coast can be seen as a special circumstance that calls for a delimitation effected under a method different from equidistance.”²¹ “It is not a question of applying equity simply as a matter of abstract justice,” states the ICJ, “but of applying a rule of law which itself requires the application of equitable principles.”²² Built primarily on the provisions of Article 38 of the ICJ Statute, the ICJ’s judgment in the North Sea cases also paved the way for the inclusion of the rule of “equitable solution” in UNCLOS itself.²³

1.3 The Exclusive Economic Zone

¹⁸ Interestingly, Turkey has often used “the continental shelf argument” to contest its neighbors’ maritime claims, while it is the only country amongst Cyprus, Greece, Turkey, Lebanon and Israel that is not a party to the 1958 Convention on the Continental Shelf. Ali, *supra* note 9, p.11

¹⁹ Emphasis added

²⁰ Tullio Scovazzi, “Maritime Boundaries in the Eastern Mediterranean Sea,” *The German Marshall Fund of the United States*, Policy Brief, Eastern Mediterranean Energy Project,” (June, 2012), p. 5
<http://www.gmfus.org/publications/maritime-boundaries-eastern-mediterranean-sea>

²¹ *Ibid*, p.5

²² *North Sea Continental Shelf Cases*, ICJ Reports (1969), para 85, p.89

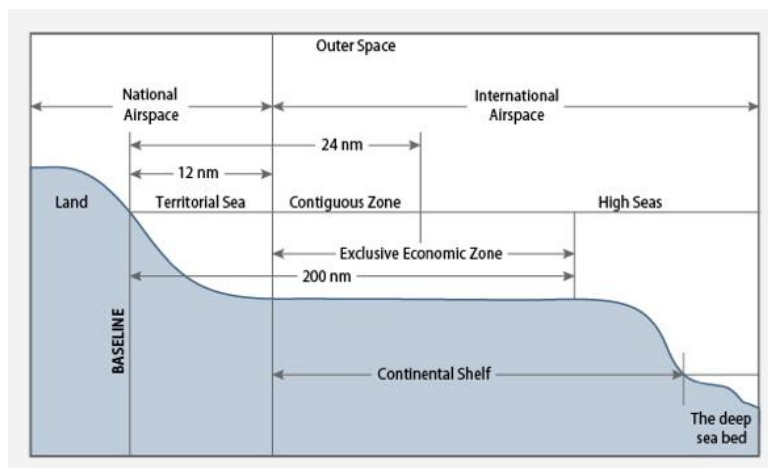
²³ The Court applied the method of proportionality, based on geography, geometry and the length and general direction of the German coast. Scovazzi, *supra* note 20, p.5

In addition to the extension of a coastal State’s jurisdiction to a territorial sea, a contiguous zone and the underlying continental shelf, in varying degrees, it was considered common practice for coastal States to claim an exclusive zone beyond their territorial sea, for the harvest of fishery and other natural resources. Here again, there were no existent or agreed upon international standards that specified the exact outer limits of such a zone. For instance, in 1958 Iceland claimed an exclusive fishery zone of 12nm, while most other States claimed 3nm of their adjacent maritime area for the exclusive exercise of economic activities.²⁴At the same time, in 1973 the ICJ confirmed the customary international law status of a coastal State’s right to an exclusive fishery zone, and up to 12nm off of its coast.²⁵UNCLOS refers to this zone as the Exclusive Economic Zone (EEZ) and it dedicates Part V (Articles 55-75) for outlining the regime governing it. In particular, Article 57 extends the outer limit of the EEZ to “200nm from the baselines from which the breadth of the territorial sea is measured.”

In addition, Article 74 contains identical provisions to Article 83 above, except for the clause “exclusive economic zone” in Article 74 being replaced by “continental shelf” in Article 83. With regards to the “rights, jurisdiction and duties of the coastal State in the exclusive economic zone,” Article 56 of UNCLOS, which is entitled accordingly, stipulates in paragraph (1) that the coastal State enjoys the following increments of jurisdiction in its EEZ:

- a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
- c) Other rights and duties provided for in this Convention.

Figure 1: Limits of Maritime Areas Off-Shore Coastal States under UNCLOS²⁶



²⁴Filis and Leal-Arcas, supra note 4, p.13

²⁵See *Fisheries Jurisdiction Case*, ICJ Reports (1973)

²⁶ US. Navy, “The Commander’s Handbook on the Law of Naval Operations,” *US Navy* (July, 2007), p. 27 http://www.jag.navy.mil/documents/NWP_1-14M_Commanders_Handbook.pdf; cited in Lefeber, supra note 10, p.6

The EEZ must be claimed by coastal States, which are obliged to also set its outer limit. Accordingly, five Eastern Mediterranean States have already established an EEZ: Egypt (1983), Syria (2003), Cyprus (2004), Lebanon (2011), and Israel (2011). The limits of those EEZ are still being bilaterally negotiated by each State and its neighbors. The rights of other States in the EEZ include navigational rights, similar to their right to innocent passage in the territorial sea, as well as the right to lay cables and pipelines (Article 58(1) – UNCLOS). The coastal State does enjoy a certain level of jurisdictions over foreign vessels navigating through its EEZ, but that is limited to “powers to investigate, inspect, arrest and undertake judicial proceedings...insofar as is necessary to ensure compliance with national regulations” that have been adopted in conformity with Part V (on the EEZ) and Part XII (on the preservation and protection of the marine environment) of UNCLOS, for example, to prevent trans-boundary oil and/or gas spills.²⁷With regards to the exploration and exploitation of the resources of the seabed and the subsoil, such as hydrocarbon resources, Article 56(3) states that this “shall be exercised in accordance with Part VI” on the continental shelf, which is discussed in the previous subsection.

1.4 UNCLOS and the Maritime Boundaries of Islands

In addition to the above, islands are accorded special treatment under UNCLOS (Part VIII – Article 121). In particular, Article 121(3) states that “Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive zone or continental shelf.” In other words, according to this Article, any island that is inhabited and sustaining a form of economic activity is entitled to the same maritime rights as those of a coastal State; for example, a 200nm EEZ. Further clarifications of those provisions could be found in the ICJ’s judgment in the case of *Colombia v. Nicaragua* (2012), when the ICJ confirmed Colombia’s jurisdiction over maritime features that are located closer to Nicaragua’s coast than to Colombia’s. At the same time, rather than reducing the breadth of Nicaragua’s EEZ to accommodate for such a Colombian presence, the ICJ drew a provisional median (equidistant) line between the baselines of the islands that are located off the coast of Nicaragua and those of Colombia, and it then adjusted it in order to allow for a more equitable solution.

One could argue that Turkey’s refusal to sign UNCLOS is due to the potential impact of the treaty’s regime on islands on the breadth of Turkey’s EEZ in the Eastern Mediterranean.²⁸At present, Greece claims that the location of its Kastellorizo Island off the coast of Turkey extends the limits of its EEZ in the Eastern Mediterranean and gives it entitlement to maritime borders with Cyprus as well as Egypt, which is rejected by Turkey. For its part, Turkey is in favour of focusing on the demarcation of its continental shelf, “because it allows it to make its case based on geological arguments.”²⁹It has also advocated the “equitable principles/relevant circumstance method, which provides that all relevant factors should be considered so as to reach an equitable result.”³⁰

²⁷ Claudiance Chevalier, “Governance in the Mediterranean Sea Legal Regime and Prospectives,” *IUCN Centre for Mediterranean Cooperation*, (2004) <http://www2.ecolex.org/server2.php/libcat/docs/LI/MON-086821.pdf>.7-8. Coastal States may issue legislations for the protection of the continental shelf and EEZ also in accordance with UNESCO’s Convention on the Protection of the Underwater Cultural Heritage, Lefeber p.7.

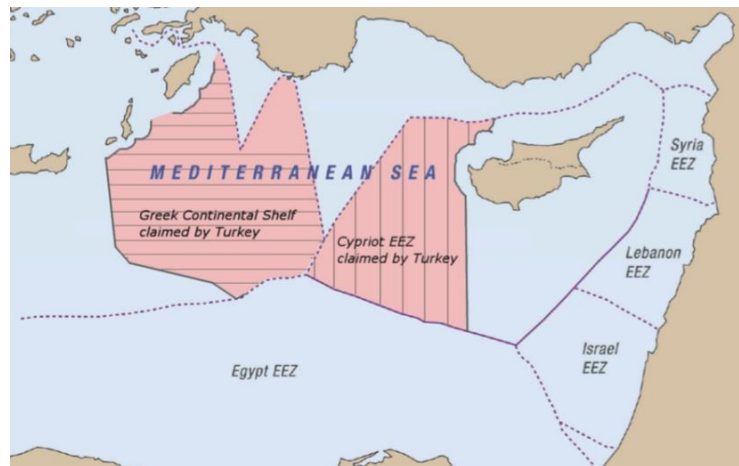
²⁸ Zenonas Tziarras, “The Law of the Sea Convention, the Eastern Mediterranean, and Clinton’s Testimony,” *Strategy International*, Research Paper No. 2/2012 (October, 2012). P.7-8

²⁹ *Ibid*, p.8

³⁰ Nikolaos Ioannidis, “The Law of the Sea as a Tool for Stability and Progress in the Eastern Mediterranean Sea,” *opiniojuris.org – Blog Archive* (August, 2015) <http://opiniojuris.org/2015/08/13/emerging-voices-the-law-of-the-sea-as-a-tool-for-stability-and-progress-in-the-eastern-mediterranean-sea/>

At the same time, the lack of a regional consensus on the status of Cyprus needs to also be taken into consideration. Turkey’s claim to Northern Cyprus, which remains short of international recognition, only adds to the complications related to the delimitation of maritime boundaries in the Eastern Mediterranean. For instance, Turkey has reportedly applied political pressure on Lebanon and Egypt to prevent the completion of their EEZ negotiations with Cyprus.³¹ For its part, Cyprus has signed a delimitation agreement with Israel, Egypt and Lebanon, with its last agreement with Lebanon falling short of ratification by the Lebanese parliament.

Figure 2: Turkey and Maritime Delimitations in the Eastern Mediterranean³²



2. International Adjudication and the Mediterranean Sea

2.1 International Law of the Sea and the Settlement of Maritime Disputes

State-parties to UNCLOS are under an obligation to engage in good faith negotiations in order to peacefully settle their maritime boundary disputes. As Article 83 of UNCLOS also stipulates, State-parties should at the minimum negotiate a provisional agreement until a final settlement is reached on maritime boundary disputes. In the Eastern Mediterranean, ample opportunities exist for “good offices, mediation and conciliation,” especially since the delimitation of the large majority of maritime boundaries in the region “do not pose instrumental technical difficulties, if the geographical situation of the coastlines concerned is taken into consideration.”³³ However, political will remains an important precondition to reaching a settlement in any situations of inter-State conflict, and in the East Mediterranean, “complex political questions still prevent the start of a process designed to resolve boundary disputes.”³⁴ Further, Turkey, Israel and Syria are not parties to UNCLOS.

Many maritime boundary disputes have in the past been successfully settled through international courts and ad-hoc tribunals. In addition, several other maritime disputes have been resolved through direct negotiations and bilateral agreements between the contestant parties. Generally speaking; however, in the event of an overlapping maritime claim between two States, “one State cannot submit the dispute to an international court or tribunal without the

³¹ Tziarras, supra note 28, p.9

³² Angelos M. Syrigos, “Exploration & Exploitation Activities in the Eastern Mediterranean from the International Law Point of View,” *Panteion University – Athens*. P.12. <http://www.iene.gr/workshop-for-hydrocarbon/articlefiles/session1/Syrigos.pdf>

³³ Scovazzi, supra note 20, p.10

³⁴ Ibid.

consent of another State, unless both States have accepted the same mechanism for the compulsory settlement of disputes in a multilateral or bilateral convention.”³⁵

In accordance with Part XV, Annex VII and Annex VIII of UNCLOS, State-parties to UNCLOS may choose the settlement of maritime boundary disputes through conciliation and direct negotiation, The International Tribunal of the Law of the Sea (ITLOS), which has been established by UNCLOS, the ICJ or an international arbitral tribunal. For instance, as stated in Article 36(2) of the ICJ Statute, State-parties³⁶ to the Statute may “at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court.” They may also limit, by means of a declaration, the scope of their acceptance of the ICJ’s compulsory jurisdiction by excluding certain disputes with other State-parties. Amongst others, Australia, New Zealand and the Philippines have all excluded maritime boundary disputes from the scope of their acceptance of the compulsory jurisdiction of the ICJ. Even more, in accordance with Article 298, a State-party to UNCLOS may declare in writing that it does not accept any pre-determined settlement of dispute procedures in cases of maritime boundary delimitations, which again makes the political will to cooperate and to respect international law an integral element in the process of reaching a peaceful settlement to inter-State conflicts.

Meanwhile, an arbitral tribunal is particularly competent to settle maritime boundary disputes between two State-parties to UNCLOS that have not jointly accepted the jurisdiction of one institution, or that have not specified a jurisdictional preference. In fact, the acceptance of the jurisdictions of an arbitrary tribunal is automatic for State-parties to UNCLOS, unless a State-party has exercised its right to opt-out of such a mechanism in relation to maritime boundary disputes when signing the treaty. An arbitral tribunal was the venue of choice in *Eritrea vs. Yemen* (1999) and *Guyana vs. Suriname* (2007).

The acceptance of a compulsory settlement of dispute mechanism may also originate from a State’s adherence to a regional convention such as the American Treaty on Pacific Settlement (Pact of Bogota), the Caribbean Conference on Maritime Delimitation (CCMD), and the European Convention for the Peaceful Settlement of Disputes.³⁷

2.2 The ICJ and the Mediterranean Sea

In the past, a number of judgments have been issued by the ICJ relevant to situations of maritime boundary disputes between States bordering the Mediterranean. The first of such cases reached the Court during the second half of the 1970s, as the Greek government instituted proceedings against Turkey in 1976 with respect to maritime delimitations in the Aegean Sea.³⁸ Turkey reportedly granted petroleum exploration licenses to the vessel *MTA Sismik I* in 1974 over parts of the Aegean Sea that were disputed with Greece, which made Greece resort

³⁵Lefeber, supra note 10, p.9

³⁶As of this writing, 72 States have become parties to the ICJ Statute: <http://www.icj-cij.org/jurisdiction/?p1=5&p2=1&p3=3>

³⁷Lefeber, supra note 10, p.9; For instance, Article 1 of the rules of CCMD calls for “facilitating, mainly through technical assistance, the voluntary negotiations for the maritime delimitation among the Caribbean coast nations, under the principle that this negotiation can be carried out when and in the form freely agreed upon by the parties, under the terms accepted by them and without any external intervention.”

³⁸ See *Aegean Sea Continental Shelf*, (Greece v. Turkey), ICJ Cases (1976) <http://www.icj-cij.org/docket/index.php?sum=324&code=gt&p1=3&p2=3&case=62&k=81&p3=5>; Paul Michael Blyschak, “Offshore Oil and Gas Projects amid Maritime Border Disputes: Applicable Law,” *The Journal of World Energy Law and Business*, (July 10, 2013), p.20

to the ICJ for an enforcement of what it perceived as an exclusive right to resources it is entitled in the area. However, in its judgment of December, 1978 the ICJ concluded that it lacks jurisdiction in the case, and thus the substance of Greece's request for "interim measures of protection" were simply left unexamined.³⁹

The second of ICJ's decisions in the Mediterranean was made in the case of *Libya v. Tunisia* (1982). Similar to the previous case, the Court's intervention was sought regarding the delimitation of the continental shelf between the two parties. As the ICJ's jurisdiction were not questioned, in its judgment the Court gave an explicit acknowledgement of the fact that the historic titles of one country, in this case Tunisia, could expand its entitlements in said country's EEZ and the continental shelf beneath it. Similar to the *North Sea* cases (1969), the Court also took into account the coastal direction, length and configuration of the coasts of the two States. This included the geomorphologic configurations of the seabed, the presence of the Kerkennah Island and other islets off the Tunisian coast and the proportionality of the length of coasts to the extent of continental shelves.⁴⁰ In *Libya v. Tunisia* the Court held the view that the equidistance line is neither a mandatory nor a privileged methodology of maritime delimitations. What carries more weight, in the Court's view, is the application of *equitable principles* and taking into account and prioritizing the relevant circumstances.⁴¹

Thirdly, following a Special Agreement for the Submission to the International Court of Justice between Libya and Malta in 1976, which came into force in 1982, the ICJ issued a judgment regarding the delimitation of the shared continental shelf between those two countries. While Malta requested the drawing of an equidistant line, Libya contended that a deep sea rift zone off the coast of Malta is a "natural" boundary that should be the basis for a maritime delimitation between the two countries.⁴² However, in *Malta v. Libya* (1985) the ICJ applied the principles of "equitable solution" as enshrined in the customary international law status of Article 38 of its Statute, and as by now stipulated through Article 83 of UNCLOS. In doing so, the Court first drew a provisional equidistant line between the baselines of the two countries, and it then proportionally adjusted it relevant to the length of the two coastlines. This made the line drawn by the Court in the end closer to the coast of Malta than a median line would have been.⁴³

The drawing of a provisional equidistance line and then adjusting it in accordance with the unique historical, geological, geometrical and/or geographical circumstances of each individual case seems to be a common practice by the ICJ. This is illustrated by the case of *Libya v. Malta* (1985) as well as the more recent *Nicaragua v. Colombia* case (2012), which is also in line with the provisions of both Article 6(1) of the 1958 Convention on the Continental Shelf and those of Article 38 of the ICJ Statute/Article 83 of UNCLOS. Meanwhile, the treatment of inhabited and economically-functional islands, which in principle are entitled to

³⁹*Aegean Sea Continental Shelf*, (Greece v. Turkey), ICJ Cases (1978) <http://www.icj-cij.org/docket/index.php?sum=327&p1=3&p2=3&case=62&p3=5>

⁴⁰Ali, supra note 9, p.61

⁴¹*Continental Shelf* (Tunisia/Libyan Arab Jamahiriya), ICJ Cases (1982) <http://www.icj-cij.org/docket/index.php?sum=330&p1=3&p2=3&case=63&p3=5>

⁴²Ali, supra note 9, p.67-78

⁴³ In *Malta v. Libya* (1985) the ICJ made the often quoted assertion: "Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf." In this case, the Court also made the controversial assertion: "whatever the geological characteristics of the corresponding seabed and subsoil, there is no reason to ascribe any role to geological or geophysical factors . . . either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims."

the same maritime rights as those of coastal States, have varied depending on their location, number and size. Accordingly, they have been granted various forms of remedies, from “full effect,” to “half effect,” and/or “no effect” and/or the solutions of “the enclave” and “the corridor.”⁴⁴

3. International Law and Trans-boundary Resources

Pending a final delimitation agreement between parties to a maritime boundary dispute, the outer limits of maritime zones are sometimes unilaterally established. To do so, a State could make a reference to historic titles, the median line methodology, equity, and/or special circumstances.⁴⁵ As Lefeber points out, even though States are obliged to negotiate in good faith, such obligation “does not mean that States have to accept any result or that a delimitation will be agreed upon.”⁴⁶ Generally speaking, unilateralism is one of the main obstacles to the implementation of international law, and one of the main causes of disputes between States.

Unilateralism is particularly problematic in the event of a trans-boundary hydrocarbon resource “for which two or more States have either recognized rights or asserted claims.”⁴⁷ What makes such a situation even more problematic is the fact that all issues related to trans-boundary resources are essentially political in their nature, e.g. they are dependent on existing relations between two neighboring States. Therefore, “the exploitation of trans-boundary hydrocarbon resources is currently not subject[ed] to [any] universally applicable rules of international law,” as all attempts to regulate the global use of those resources were met with staunch resistance at the United Nations, and were therefore abandoned.⁴⁸

At the same time, when dealing with cases of trans-boundary resources, international tribunals and courts have often recognized the existence of a “community of interest,” particularly in situations related to trans-boundary watercourses. While the unilateral use of watercourses is permissible under customary international law, a State is obliged “(1) to utilize the resource equitably and reasonably and (2) to prevent and abate significant trans-boundary harm.”⁴⁹ Further, relevant to the extraction of trans-boundary minerals, or solid resources that are located on both sides of a given borderline, it is generally held that “a State does not necessarily commit a wrongful act if it authorizes the use of the resource on its side of the border without the prior consent of the other State(s) where the resource is situated.”⁵⁰ This is known as the “rule of capture,” according to which the unilateral extraction of solid resources by one State does not necessarily infringe upon the rights of other States involved.⁵¹

⁴⁴Also see Scovazzi, *supra* note 20, p.6.

⁴⁵Lefeber, *supra* note 10, p.7-8

⁴⁶Ibid, p.8

⁴⁷Ibid, p.10

⁴⁸Lefeber, *supra* note 10, p.10

⁴⁹Ibid, p.10-11

⁵⁰Ibid, p.11

⁵¹ Building on the writings of D. Roughton, in “Rights (and Wrongs) of Capture: International Law and the implications of the Guyana/Suriname Arbitration” (2008) 26(3) *Journal of Energy & Natural Resources Law*; and PD Cameron, in “The Rules of Engagement: Developing Cross Border Petroleum Deposits in the North Sea and the Caribbean” (2006) 55 *International and Comparative Law Quarterly*; Bylschak argues “The ‘rule of capture’ essentially holds that when a person extracts a substance from underneath the surface of his or her land, the person is also entitled to extracted substances that, although originally located beneath the surface of an adjacent land-owner, have migrated to the subsurface of his or her land as a result of the extraction and exploitation process.” Michael Blyschak, “Offshore Oil and Gas Projects Amid Maritime Border Disputes: Applicable Law,” *The Journal of World Energy & Business*, Oxford University Press 2013, footnote No.165, p.23

In the case of hydrocarbon trans-boundary resources, a Joint Development Agreement (JDA) is most commonly reached amongst State-contestants. JDAs typically include a specific arrangement or framework for the use, apportionment, and management of the resources, as well as a dispute settlement mechanism.⁵² This accords with the provisions of UNCLOS Articles 74(3) and 83(3), which encourage States to negotiate provisional agreements of practical nature until a final delimitation agreement is reached with their neighboring States. In other words, JDAs promote cooperation and equitable solutions in situations that could otherwise quickly escalate into a full-scale conflict. More importantly, JDAs make it evident that the existence of a maritime boundary dispute does not necessarily prohibit the exploitation of energy resources that are located in a disputed area.⁵³

As Blyschak points out, multiple decisions by the ICJ and other international tribunals have called for the negotiation of JDAs “where a dispute exists in respect of maritime territory in which hydrocarbon deposits are presumed or known to exist.”⁵⁴ In fact, a recommendation for a JDA over the use of hydrocarbon resources was mentioned in the very first ICJ judgment relevant to maritime delimitations, or in the *North Sea Continental Shelf Cases* (1969), when the ICJ stated: with respect to “areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally, unless they decide on a *régime of joint jurisdiction, user, or exploitation* for the zones of overlap or any part of them.”⁵⁵ In practice; however, the first jointly developed hydrocarbon zone was located in the Yellow Sea, in accordance with Article 3 and Annex II of the 1974 Agreement between Japan and South Korea Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries (1974).

While JDAs are temporary agreements made for the sole purpose of developing a trans-boundary resource in a disputed maritime area, and until a final settlement is reached between the contestant parties; “unitization” or “unity-of-deposit” are terms used to refer to the management of trans-boundary resources in an already demarcated area.⁵⁶ A number of bilateral maritime delimitation agreements have indeed included provisions that “protect the unity of any trans-boundary resources identified under [a given] agreement, in order to prevent competitive exploration and exploitation...”⁵⁷ The first of those has been the continental shelf delimitation agreement between the UK and Norway in 1965, with a more recent example being the 2010 agreement on the delimitation of the EEZ between Israel and Cyprus. Article 2 of the Israel-Cyprus agreement states: “In case there are natural resources, including hydrocarbons reservoirs, extending from the Exclusive Economic Zone of one Party to the Exclusive Economic Zone of the other, the two Parties shall cooperate in order to reach a framework unitization agreement on the modalities of the joint development and exploitation of such resources.”⁵⁸

⁵²Scovazzi, *supra* note 20, p.11; also see Blyschak *supra* note 51, p.8

⁵³ Blyschak, *supra* note 51, p.8. For more information on JDA, see in particular Ana E. Bastida, Adaeze Ifesi-Okoye, Salim Mahmud, James Ross, and Thomas Walde, “Cross-Border Unitization and Joint Development Agreements: An International Law Perspective.” *Houston Journal of International Law*, Vol. 29:2 (2007).

⁵⁴Blyschak, *supra* note 51, p.8

⁵⁵*North Sea Continental Shelf Cases* (1969), ICJ Reports, para 101(c)(2), p.104

⁵⁶Blyschak, *supra* note 51, p.8

⁵⁷Lefeber, *supra* note 10, p.12

⁵⁸Similar provisions could be found in the 1974 Convention between France and Spain on the Delimitation of the Continental Shelf in the Bay of Biscay, the 1979 Malaysia – Thailand Memorandum of Understanding, the 2005 Framework Agreement Between the UK and Norway Concerning Cross-Boundary Petroleum Cooperation

3.1 Trans-boundary Resources and Energy Companies

Since the central function of JDAs is “to enact the means by which contested resources will be unitized by competing States,” their conclusion carries direct implications for oil and gas companies operating in areas of international maritime boundary disputes.⁵⁹ For example, in accordance with the Sudan – Saudi Arabia JDA of 1974, a Commission has been established for the purpose of administering and managing the regime governing the joint development area. Among its duties, the Commission is responsible for “considering and deciding applications for licenses and concessions, expediting the exploitation and exploration of natural resources, and making such regulations as may be necessary to discharge its functions.”⁶⁰ Thus, in addition to a licensing regime, the Commission is responsible for setting up health, safety, environmental protection, and security parameters for third parties licensed to operate in the jointly developed area.⁶¹

While a framework for the joint development of a trans-boundary resource could be considered one application of Articles 74 and 83 of UNCLOS, many of those disputes remain unsettled and hindered by a lack of communication channels between the contestant parties. In particular, in many of those situations one State unilaterally authorizes the exploration, and even exploitation, of a trans-boundary resource without the consent of other relevant parties. In fact, such a scenario has already begun developing in the Eastern Mediterranean, as Turkey authorized the exploration of resources in a maritime zone South of Cyprus, to which Israel, Greece and Cyprus have also made conflicting claims. Particularly alarming is the escort of Turkish Navy vessels to ships conducting seismic explorations the disputed area.⁶²

International law does not endorse unilateral actions in situations of international conflict, nor does it sanction the imposition of new facts on the ground as a way of bolstering the claims of one party against all others. While in *Tunisia v. Libya* (1982) the ICJ stated that, relevant “to the presence of oil-wells in an area to be delimited, it may, depending on the facts, be an element to be taken into account in the process of weighing all relevant factors to achieve an equitable result;”⁶³ the Court also underlined that such a scenario could only be relevant when the presence of those installations was made “based on express or tacit agreement” between all concerned parties.⁶⁴

Of particular relevance here is the situation between Guyana and Suriname, since in 1998 Guyana issued a concession to the Canadian exploration and development company *CGX Resources Inc.* in a maritime zone claimed by both countries. In mid-2000, Suriname demanded the cessation of all seismic activities by *C.E. Thornton* oil rig and drill ship, and it did not hesitate to deploy naval patrol boats to the area in order to enforce those demands. In turn, Guyana instituted arbitration proceedings against Suriname under UNCLOS.

and the 2010 Treaty between the Kingdom of Norway and the Russian Federation Concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean.

⁵⁹ Blyschak, supra note 51, p.11

⁶⁰ Agreement between Sudan and Saudi Arabia Relating to the Joint Exploitation of the Natural Resources of the Seabed and Subsoil of the Red Sea in the Common Zone, (May 16, 1974), Article VII to VIII. Cited in Blyschak, supra note 51, p.10

⁶¹ Blyschak, supra note 51, p.11

⁶² Blyschak, supra note 51, p.17

⁶³ *Case Concerning the Continental Shelf* (Tunisia/Libyan Arab Jamahiriya), ICJ Reports (1982), Para 107

⁶⁴ *ibid*, Para 118

In *Guyana v. Suriname* (2007), the Arbitral Tribunal of the Permanent Court of Arbitration unanimously ruled that Suriname's action "constituted a threat of the use of force in violation of UNCLOS, the UN Charter and general international law in that it was more akin to a threat of military action than mere law enforcement activity."⁶⁵ At the same time, the Tribunal ruled that both countries were in violation of their obligations under Articles 74(3) and 83(3) of UNCLOS to negotiate a temporary agreement until a final settlement to their conflict has been agreed. In the Tribunal's view, Guyana should have kept Suriname informed about its seismic research activities, while also seeking its cooperation in the development and management of the contested zone. Most importantly, the Tribunal held that Suriname should have resorted to diplomacy first.

Further, the Tribunal shed light on two types of hydrocarbon-related activities a State is permitted to conduct in a disputed maritime zone. Those are: "activities undertaken by the parties pursuant to provisional arrangements of a practical nature;" and secondly, "acts which, although unilateral, would not have the effect of jeopardizing or hampering the reaching of a final agreement on the delimitation of the maritime boundary."⁶⁶ In other words, even unilateral actions must be "transitory" in their nature, and they should not "risk irreparable prejudice to the position of the other party..., [including] activities of the kind that lead to a permanent physical change, such as exploitation of oil and gas reserves..., [but excluding] seismic exploration."⁶⁷

A second precedence in international arbitration regarding oil and gas companies can be found in the case of *RSM Production Corporation v. Grenada* (2011).⁶⁸ The facts of this case "are largely composed of unusually aggressive attempts by RSM...to interject...[itself] into the sovereign attempts by Grenada to negotiate maritime delimitation with Trinidad and Tobago and Venezuela."⁶⁹ Therefore, the Tribunal affirmed in this case that "oil companies should not interfere in boundary disputes, particularly where they are unlikely to be able to contribute to resolution in any meaningful fashion."⁷⁰ At the same time, neither in *Suriname v. Guyana* (2007), nor in *RSM Production Corporation v. Grenada* (2011) did the tribunals examine the liabilities an energy production company could face if the nature of its involvement in a disputed maritime area was not "transitory," and carried a rather transformational effect on the status-quo. Even more, precedence is yet to be established under international law regarding the liabilities arising whereby one State unilaterally exploits a trans-boundary resource without taking into account principles such as equitable principles and/or proportionality.⁷¹

Concluding Remarks

The East Mediterranean is a region of great energy potential, the exploitation of which seems to be hindered at present by the lack of a regional consensus on the status of the large majority of maritime delimitation issues between the various contestants to the region's resources. Those complications are accentuated by the lack of a formal diplomatic relationship between

⁶⁵*In the Matter of an Arbitration Between Guyana and Suriname*, Permanent Court of Arbitration, Award of the Arbitral Tribunal (The Hague, September 17, 2007), para 445; as interpreted by Blyschak, supra note 51, p.18

⁶⁶*Ibid*, para 466; cited in Blyschak, supra note 51, p.19

⁶⁷*Ibid*, para 467-468; cited in Blyschak, supra note 51, p.20

⁶⁸See *RSM Production Corporation v. Grenada*, International Centre for Settlement of Investment Disputes (ICSID), (April 28, 2011), Case No ARB/05/14 <http://www.italaw.com/sites/default/files/case-documents/ita0727.pdf>

⁶⁹Blyschak, supra note 51, p.21

⁷⁰*Ibid*.

⁷¹*Ibid*, p.23

Israel and Lebanon, on the one hand, and the situation between Turkey, northern and southern Cyprus and Greece, on the other.

In accordance with international law of the sea and UNCLOS, a number of diplomatic channels and legal instruments are available to settle outstanding maritime delimitation issues in the region, most prominent of which is mediation and direct negotiations between the relevant parties, reaching temporary agreements pending a final settlement, litigation at international tribunals such as ITLOS and the ICJ, and joint-development agreements of trans-boundary resources. Most importantly, one could argue that the economic impact of the recent energy discoveries in the Eastern Mediterranean has the potential of encouraging cooperation between old political rivals such as Lebanon and Palestine on the one hand and Israel on the other. In fact, attentive observers find in the recent Turkish-Israeli rapprochement the perfect example of economically-motivated regional cooperation, especially since their rapprochement has come after nearly a decade of a breakdown in diplomatic exchanges between the two countries.

At the same time, the continued absence of a regional consensus on the settlement of outstanding maritime delimitation issues could bring this politically unstable region to the verge of yet another all-out war. In other words, while having the potential of bringing about regional cooperation and prosperity, the exploitation of the recent energy discoveries in the East Mediterranean could certainly turn the region to yet another “Arab Gulf.”