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The Aegean Sea Dispute over the Continental Shelf and Joint Development Agreements as an Avenue towards Effective Cooperation

A Dissertation submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

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“Happy is the man, I thought,
who, before dying, has the good
fortune to sail the Aegean Sea.”

Nikos Kazantzakis, Zorba the Greek

Abbreviations

CSC	Geneva Convention on the Continental Shelf, 1958
EEZ	Exclusive Economic Zone
ICJ	International Court of Justice
JDA	Joint Development Agreements
MOU	Memorandum of Understanding
PCIJ	Permanent Court of International Justice
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea, 1982
UNCLOS I	The First United Nations Conference on the Law of the Sea
UNCLOS III	The Third United Nations Conference on the Law of the Sea
UNGA	United Nations General Assembly

Table of International Instruments

Convention on the Continental Shelf, Geneva, 29 April 1958; entry into force: 10 June 1964; 58 ratifications, 499 UNTS 311.

Convention on the High Seas, Geneva, 29 April 1958; entry into force: 30 September 1962; 63 ratifications, 450 UNTS 11.

United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982; entry into force: 16 November 1994; 166 ratifications, 1833 UNTS 3, 21 ILM 1261.

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Bahrain-Saudi Arabia Frontier Agreement, 1958.

Agreement between the Government of the United Kingdom and Northern Ireland and the Government of the Kingdom of Norway relating to the Delimitation of the Continental Shelf between the Two Countries, 1965.

Agreement between the Government of the Democratic Republic of the Sudan and the Government of the Kingdom of Saudi Arabia relating to the Joint Exploration of the Natural Resources of the Sea-bed and Subsoil of the Red Sea in the Common Zone, 1974.

Agreement between Japan and the Republic of Korea Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries, 1974.

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Norway relating to the exploitation of the Frigg Field Reservoir and the transmission of gas therefrom to the United Kingdom, 1976.

Agreement on Procedures for Negotiations of the Aegean Continental Shelf Issue, Greece-Turkey, 11 November 1976, (1977) Vol. 16, ILM, p.13.

Memorandum of Understanding between the Kingdom of Thailand and Malaysia in the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-bed in a defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, 1979.

Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the Delimitation of the Continental Shelf Boundary between the Two Countries in the Gulf of Thailand, 1979.

Agreement on the Continental Shelf between Iceland and Jan Mayen, 1981.

Agreement between Iceland and Norway on the Continental Shelf between Iceland and Jan Mayen, 1981.

Agreement between the Great Libyan Arab Socialist People's Jamahiriya and the Republic of Tunisia to Implement the Judgement of the International Court of Justice in the Tunisia/Libya Continental Shelf Case, 1988.

Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia, 1989.

Agreement between the Government of Malaysia and the Government of the Kingdom of Thailand on the Constitution and Other Matters relating to the Establishment of the Malaysia-Thailand Joint Authority, 1990.

Agreement between Brunei and Malaysia – Exchange of Letters constituting an agreement, 2009.

Treaty Concerning the Joint Management of the Continental Shelf in the Mascarene Plateau Region between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius, 2012.

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Introduction

The name of the Mediterranean Sea originates from the Latin words *medius* and *terra*, which respectively mean middle and territory.[1] It is a semi-enclosed sea surrounded by twenty-two States on the whole, spanning over three continents.[2] Historically, as the name suggests, its central location made it a vital area to control, both in terms of "navigation and commerce."[3]

The Aegean Sea, located in the eastern region of the Mediterranean, is a semi-enclosed sea separating the Greek from Anatolian peninsula. It is considered a very important geopolitical "crossroad" a meeting point connecting the east and the west. The Aegean Sea's strategic location has made it the apple of discord between Greece and Turkey leading to various tensions between them over the years. This is mainly due to the presence of more than 1,000 Greek islands and islets from Thasos in the north to Rhodes in the south of the Aegean that cover an area of 22,370 km^2 with a population of just over one million.[4] Some of these islands such as Samos are as close as 3 nm to the Turkish coast.

The so-called 'Aegean Sea dispute' is a series of interrelated boundary disputes, which have arisen since the 1970s focused primarily, but not exclusively, on the delimitation of the continental shelf. [5] Other issues relate to the outer limits of the territorial seas, the national airspace, flight information regions, military over-flights over islands and the territorial sovereignty of Greek islands within the basin.[6] The Permanent Court of International Justice (PCIJ) elucidated that the word 'dispute' meant "a matter of disagreement, on a point of law or fact, a conflict of legal views or of interests between

[1] Grbec, Mitja; Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas: A Mediterranean and Adriatic Perspective, Routledge, Oxon, UK, 2014, p.6.
[2] Papanicolopulu, Irini; "A Note on Maritime Delimitation in a Multizonal Context: The Case of the Mediterranean", Journal of Marine Affairs, Ocean Development & International Law, Vol. 38, No. 4, (2007), p.382.
[3] Blake, Gerald; Maritime Boundaries and Ocean Resources, Barnes & Noble, Totowa NJ, USA, 1987, p.208.
[4] Statistical Yearbook of Greece, Hellenic Statistical Authority, 2009-2010, p.28.
[5] Syrigos, Angelos; The Status of the Aegean Sea According to International Law, Sakkoulas Publications, Athens, Greece, 1998, p.6.
[6] Turkey and Greece: Time to Settle the Aegean Dispute; Crisis Group Europe Briefing; No. 64, Istanbul/Athens/Brussels, 2011, p.4.

the parties."[7] Disputes that are legal in nature are usually resolved through international courts and tribunals whereas political ones are settled by diplomacy through negotiation.[8] The main reason Greece and Turkey have failed to settle their disagreement over the Aegean Sea rests on the fact that it features elements of both types. All judicial and diplomatic efforts to resolve the key issues of the dispute have been unsuccessful in the past leading to a state of *moratorium* in relation to exploration and exploitation activities within the Aegean Sea on the part of both countries.

Nowadays, there has been a significant rise of jurisdictional claims by Mediterranean States due to economic factors such the presence of oil and gas deposits.[9] This reality, coupled with speculations as to the existence of hydrocarbons within the seabed of the Aegean Sea, as well as fears of mineral resources becoming obsolete in the future make their utilization a legal mandate for both countries.

A unilateral action by either State, to appropriate such aforementioned resources may have far reaching consequences in their relations as neighbours. Unfortunately, a settlement on a continental shelf boundary within the Aegean Sea does not seem a possibility in the near future. State practice though, has shown that in such complex situations the solution may be sought by means of a joint development agreement (JDA) whereby both States enter into an agreement to jointly explore and exploit deposits in a disputed area without prejudice to final delimitation taking place at a future time.[10] This concept will be examined in this paper in light of the Aegean Sea dispute over the continental shelf.

Chapter 1 will discuss the development of the continental shelf as an institution of international law as set out in international legal instruments together with the positions

[7] Dipla, Haritini; "The Greek-Turkish Dispute Over the Aegean Sea Continental Shelf: Attempts or Resolution", in Kariotis, Theodore C.; Greece and the Law of the Sea, Martinus Nijhoff Publishers, The Hague, The Netherlands, 1997, p.157.
[8] *Ibid.*
[9] Attard, David J.; "Mediterranean Maritime Jurisdictional Claims: A Review", in Basedow, Jürgen, Magnus, Ulrich, Wolfrum, Rüdiger; The Hamburg Lectures on Maritime Affairs 2009 & 2010, Springer, Heidelberg, Germany, 2012, p.112.
[10] Sawyerr, Kingsley, Udechukwu, Chisom; "Joint Development as an Appropriate Legal Response to Overlapping Maritime Claims", Aina Blankson LP Newsletter Series, (2012), p.6.

of Greece and Turkey on the matter during the Third United Nations Conference on the Law of the Sea (UNCLOS III).

Chapter 2 will study in depth the Aegean Sea dispute between Greece and Turkey from its starting point onwards. A consideration of the current state of affairs as it has crystalized will be of particular importance.

Chapter 3 will introduce the concept of JDAs as it has been analysed by academics together with the different types of JDAs that exist in light of current State practice.

Drawing from the above, Chapter 4 shall examine some of the salient aspects Greece and Turkey will have to agree on in relation to a future JDA taking place within the Aegean Sea so as to create an efficient regime that will allow them to reap the advantages such a promising venture entails.

The Conclusion will provide the best course of action to be sought by both countries as well as the importance of cooperation in the Aegean Sea context.

Chapter 1 – The Continental Shelf under International Law

The origins of the continental shelf as a maritime zone can be traced back to the Proclamation of President Truman in 1945, whereby the United States of America declared that "the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts [were] subject to its jurisdiction and control."[11] This unilateral act has been considered as 'the decisive event in State practice' in respect of the continental shelf.[12] Other States followed making similar claims, albeit in an inconsistent manner.[13]

[11] US Presidential Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil of the Sea Bed and the Continental Shelf, 28 September 1945.
[12] Shaw, Malcolm; International Law, 6th Edition, Cambridge University Press, Cambridge, UK, 2008, p.270.
[13] Roughton, Dominic, Trehearne, Colin; "The Continental Shelf", in Attard, David J., Fitzmaurice, Malgosia, Martínez Gutiérrez, Norman A.; The IMLI Manual on International Maritime Law: Volume I: The Law of the Sea, Oxford University Press, Oxford, UK, 2014, p.145.

1.1 The Geneva Convention on the Continental Shelf of 1958

The need for a uniform approach by the international community lead to the First UN Conference on the Law of the Sea (UNCLOS I) which adopted the Geneva Convention on the Continental Shelf[14] (CSC) in 1958 among other treaties on the progressive codification of the law of the sea. Article 1(a) defined the legal continental shelf as "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 metres or, beyond that limit…" depending on the ability of the State to exploit. According to Article 1(b) islands were to be accorded a continental shelf in the same way as mainland under the Convention.

The exploitability criterion introduced by this definition gave rise to legal uncertainty, as the progression of technology could result in the exploration and exploitation of resources at greater depths, not fathomed by the drafters.[15] The above ambivalence coupled with the low participation rate of States to the 1958 Geneva Conventions on the whole and the failure of the Second Conference to resolve the outstanding issues led to the convocation of UNCLOS III.

1.2 The United Nations Convention on the Law of the Sea of 1982

The drafters of the United Nations Convention on the Law of the Sea[16] (UNCLOS), which was adopted on 1982, dealt with the regime of the continental shelf under Part VI in a holistic manner. Under Article 76(1), legal title over the continental shelf is based on "a distance of 200 nm from the baselines from which the breadth of the territorial sea is measured." If the continental margin extends beyond this figure then the coastal State may be allowed to extend the outer limits of its 'geological' continental shelf up to 350 nm.[17] Article 121(2) provides that islands may generate any of the maritime zones set out

[14] Convention on the Continental Shelf, Geneva, 29 April 1958; entry into force: 10 June 1964; 58 ratifications, 499 UNTS 311.
[15] Tanaka, Yoshifumi; The International Law of the Sea, 1st Edition, Cambridge University Press, Cambridge, UK, 2012, p.133.
[16] United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982; entry into force: 16 November 1994; 166 ratifications, 1833 UNTS 3, 21 ILM 1261.
[17] Article 76(6) UNCLOS.

under the Convention except when they are "[r]ocks which cannot sustain human habitation or economic life of their own."[18]

The coastal State has sovereign rights over the natural resources of its continental shelf, which exist *ipso facto* and *ab initio*. This means that the coastal State enjoys exclusivity[19] over the rights referred to in Article 77(1) that are inherent to that particular State because they do not depend on 'express proclamation,' as articulated in Article 76(3). The International Court of Justice (ICJ) asserted in its judgment on the 2012 *Nicaragua/Columbia* case[20] that the definition of the continental shelf under UNCLOS reflected customary international law.[21]

1.3 Delimitation of the Continental Shelf under International Law

The CSC provided in Article 6 that delimitation of the continental shelf of two or more States with coasts opposite or adjacent to each other shall be effected by an agreement between them. In the absence of such an agreement and unless there are no special circumstances, the boundary shall be determined by the median line/equidistance respectively measured from the baselines the territorial sea is measured.

The term 'special circumstances' has not been particularly helpful to situations such as the dispute over the continental shelf in the Aegean Sea due to its delphic nature. Although its inclusion was aimed in the achievement of equitable results, commentators argue that it has not been clearly defined by the Convention.[22] Also, the jurisprudence did not add much so as to deter this inherent vagueness.[23]

Article 83(1) of UNCLOS states that "delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of

[18] Article 121(3) UNCLOS.
[19] Article 76(2) UNCLOS.
[20] Territorial and Maritime Dispute (Nicaragua v. Columbia), [2012] Judgement, ICJ Reports, p.624.
[21] *Ibid.* at 43, para. 118.
[22] Tanaka, Yoshifumi; *op. cit.*, pp.189-190.
[23] Tanaka, Yoshifumi; Predictability and Flexibility in the Law of Maritime Delimitation, Hart Publishing, Portland, USA, 2006, p.55.

international law … in order to achieve an equitable solution" or shall be remitted to dispute resolution under Part XV.[24]

More importantly, Article 83(3) requires States that are parties to UNCLOS, pending agreement, to "make every effort to enter into provisional arrangements of a practical nature" which should not prevent resolvement of the dispute at a later point in time. It is submitted that this provision could form the legal basis for the creation of a JDA on the exploration and exploitation of resources straddling a maritime boundary or in areas of overlapping claims. UNCLOS III formulated a more concrete test by "introducing invariable standards"[25] on the delimitation of the continental shelf in order to be acceptable by the international community.

1.4 The Positions of Greece and Turkey during UNCLOS III

Greece, which participated in UNCLOS I became party to the CSC on 1972.[26] Previously, Legislative Decree No. 142/1969 had already declared under Article 1(b) that Greece had the exclusive right to explore and exploit mineral resources up to a depth of 200 metres or at even greater depth.[27] Turkey did not ratify the CSC[28] but issued two laws on petroleum[29] and mining[30] claiming that they applied "the principles of the Continental Shelf Convention."[31]

Both Greece and Turkey, as traditional coastal States, participated in the deliberations of UNCLOS III. It is of fundamental importance to look at the negotiating line taken by both

[24] Article 83(2) UNCLOS.
[25] Siousouras, Petros, Chrysochou, Georgios; *op. cit.*, p.14.
[26] Law No. 1182/1972.
[27] Roucounas, Emmanuel; "Greece and the Law of the Sea", in Treves, Tullio, Pineschi, Laura; The Law of the Sea: The European Union and its Member States, Martinus Nijhoff Publishers, The Hague, The Netherlands, 1997, p.248.
[28] ST/LEG/SER.E/6, p.278.
[29] Petroleum Law 3626/68.
[30] Mining Law 6309/68.
[31] Syrigos, Angelos; *op. cit.*, p.29.

countries at UNCLOS III as it provides a very interesting insight into their disagreement, considering that the Conference took place during the birth and culmination of the dispute.

Turkey was concerned from the start with the issue of the Aegean Sea and the setting of maritime boundaries by stressing on the need "to improve upon the method of delimitation established in Article 6 of the Geneva Convention on the Continental Shelf."[32]

She persistently objected to Article 121(2), which allowed islands to have the same maritime zones as the mainland.[33] Turkey advocated firmly in favour of the natural prolongation of the coastal State as a factor to the generation of a continental shelf.[34] Additionally, she wanted to introduce specific conditions, based on size and population, subject to which islands would be allowed to generate their own maritime zones.[35] This issue will be considered in greater detail when dealing with the dispute, as it is a very vital argument of the Turkish view.

Furthermore, the Turkish delegation also focused considerably on the regime of enclosed and semi-enclosed seas. They supported the view that semi-enclosed spaces like the Aegean Sea warranted for the creation of a specific regime that would regulate matters such as the breadth of the territorial sea, the continental shelf and the exclusive economic zone (EEZ) of States with opposite and adjacent coasts.[36] Turkey wanted the Convention to require States in enclosed and semi-enclosed seas "to act in a manner consistent with the special circumstances prevailing in each such sea and the rights and interests of coastal States."[37] The line taken by the Turkish delegation is understandable considering the proximity of Greek islands to the coasts of Asia Minor.

On the other hand, Greece did not mention in its general statement the delimitation of the continental shelf. Nevertheless, in her draft article she required for the creation of a more

[32] Committee II, UNCLOS III, Official Reports, p.158.
[33] Oral, Nilufer; "Non-Ratification of the 1982 LOS Convention: An Aegean Dilemma of Environmental and Global Consequence", Berkley Journal of International Law Publicist, Vol. 1, (2009), p.53 available at http://bjil.typepad.com/publicist/2009/03/publicist01-oral.html.
[34] Syrigos, Angelos; *op. cit.*, p.80.
[35] *Ibid.* p.106.
[36] Oral, Nilufer; *op. cit.*, p.53.
[37] *Ibid.*

coherent and objective regime that would define the continental shelf.[38] Greece was an avid supporter of the view that islands generate continental shelves in the same way as the mainland does. She based this on the fact that Article 1 of the CSC had crystalized into customary international law and was therefore binding on non-parties to the CSC, meaning Turkey.

It is interesting to note, as Syrigos writes, [39] that Greece never referred to the ICJ's statement in the *North Sea* cases[40] that Article 1 was to be regarded as "as reflecting, or as crystallizing, received or at least emergent customary international law."[41] Finally, Greece supported that the median line principle, first introduced under Article 6 of the CSC, seemed to be the best option at the time for an equitable result. Turkey decided to vote against the adoption of UNCLOS whereas Greece voted in favour. The Greek Parliament ratified the Convention on the 21st of July 1995 by Law No. 2321/1995. The contrasting views of both countries during UNCLOS III illustrate the circumstances, which formed the setting for the continental shelf dispute that will be considered in Chapter 2.

Chapter 2 – The Aegean Dispute over the Continental Shelf

2.1 Starting Point of the *Conundrum*

The origins of the Greco-Turkish dispute can be traced back to 1973, shortly after the award of concessions by Turkey to its State-owned Petroleum Company, for the purpose of exploration and exploitation of twenty-seven areas within the Aegean Sea in close proximity to the territorial seas of Greek islands[42] located in the eastern part of the Aegean.[43] These areas where also claimed by Greece as pertaining to her continental shelf. A map procured by Turkey delimited the seabed between the two countries by use

[38] Article 1 Doc.A/CONF.62/C.2/L.25.
[39] Syrigos, Angelos; *op. cit.*, p.97.
[40] North Sea Continental Shelf cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] Judgement, ICJ Reports, p.3.
[41] *Ibid.* para.63.
[42] These islands are Aghios Efstratios, Lesbos, Chios, Skiros, Limnos, Samothrace, Psara and Antipsara.
[43] Syrigos, Angelos; *op. cit.*, p.95.

of the median line measured from the Greek and Turkish mainlands without taking into account the presence Greek islands.[44]

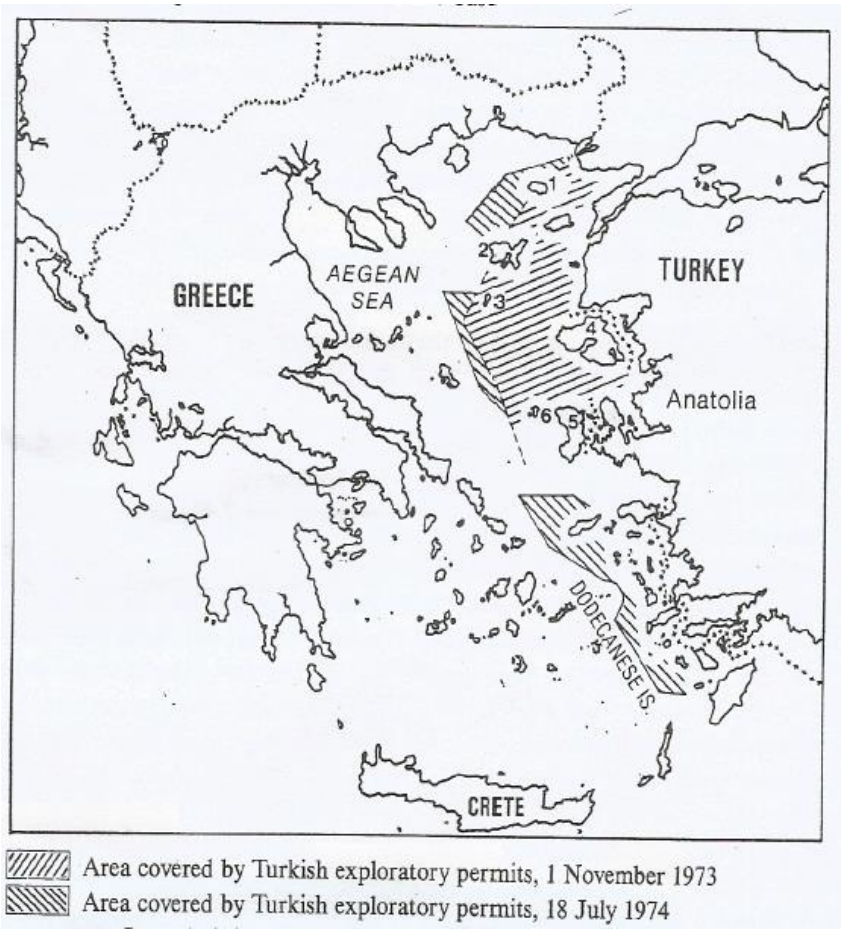

Figure 2. A Map illustrating the exploratory licences granted by Turkey during 1973-1974.[45]

Greece viewed the granting of concessions as a unilateral act to delimit the continental shelf and protested[46] by quoting that under Article 1(b) of CSC islands are entitled to their own continental shelves like the land territory.[47] Consequently, based on Article 6 and State practice, Greece contended that the median line/equidistance principle provided for an equitable solution and so the continental shelf should be measured from the baselines of the Greek islands and the Turkish coast.

[44] *Ibid.*
[45] Johnston, Douglas M.; The Theory and History of Ocean Boundary-Making, McGill-Queen's University Press, Kingston, 1988, p.155.
[46] Greek *Note Verbale*, 7 February 1973.
[47] Rozakis, Christos L.; "The Greek Continental Shelf", in Kariotis, Theodore C.; *op. cit.*, pp.93-94.

Turkey replied by *Note Verbale* that the proposed delimitation had taken place according to the rules of international law and the jurisprudence.[48] The main argument put forward was that the area she claimed together with the islands constitute part of the natural prolongation of the Anatolian Peninsula.[49] The Greek islands were to be considered, according to Turkey, a geological continuation of its mainland and so were prevented from generating continental shelves.[50] This argument was mainly based on the intervening high seas, which cut the islands from the Greek mainland.

In addition, Turkey criticized the provisions of the CSC as being too wide to provide an equitable solution for the continental shelf boundary. More importantly, in respect of delimitation Turkey pointed out that adoption of the median line was to be seen as an alternative to the primary obligation of effecting delineation by agreement.[51] Both the nature of the Aegean as a semi-enclosed Sea and the presence of numerous islands close to the Turkish coast, according to the Turkish Embassy, constituted the 'special circumstances' mentioned in Article 6 and so warranted for a different approach based on negotiation between the two countries.[52]

Greece replied that the best solution over the dispute would be to refer the matter to the ICJ. Turkey was of the view that negotiation was the best course of action "with the aim of solving the differences on the Aegean continental shelf peacefully, in a just and equitable manner"[53] but did not strike down the Greek proposal for referral to the World Court. Prime Ministers Karamanlis and Demirel of Greece and Turkey respectively, met in Brussels in 1975 and signed a joint communiqué that stressed on the need to resolve the dispute both by negotiations and submission to the ICJ.[54] Turkey proposed that negotiations should take

[48] Turkish *Note Verbale*, 27 February 1974.
[49] *Ibid.*
[50] Deniz Bölükbaşı; Turkey and Greece: The Aegean Disputes: A Unique Case in International Law, Cavendish Publishing, London, UK, 2004, p.242.
[51] Syrigos, Angelos; *op. cit.*, p.99.
[52] *Ibid.* p.100.
[53] Johnston, Douglas M.; *op. cit.*, p.156.
[54] Georgopoulos, Aurelia A.; "Delimitation of the Continental Shelf in the Aegean Sea", Fordham International Law Journal, Vol. 12, No. 1, (1988), p.92.

place before resorting to the ICJ so as not to prevent the reaching of a "just and fair agreement based on equitable principles."[55]

Turkey on its part stipulated that negotiations where to commence "on a date to be indicated by the Greek Government."[56] Unfortunately, negotiations never took place partly due to the Cyprus crisis of 1974 caused by the Military Junta governing Greece since 1967, which instigated a coup d'état to overthrow the government of Cyprus and resulted in the Turkish intervention on the island. [57]

2.2 The Aegean Sea Continental Shelf Case

In 1976, the dispute reached its climax after Turkey granted a further licence to the Turkish vessel *Sismik-I* to carry out seismic tests over continental shelf areas close to the Dodecanese and Cyclades islands clusters that where also claimed by Greece. Turkey made it clear that although the vessel would not have military protection any attack against it would result in her immediate response.[58] Whether or not Turkey was entitled to carry out research activities in the absence of a decided boundary is debatable as it could fall under scientific research, which may impliedly be considered as a freedom of the high seas under Article 2 of the Geneva Convention on the High Seas of 1958[59].[60] Greece viewed this act as a provocation and reacted by referring the matter simultaneously to the ICJ for a legal resolution and the Security Council for a political one.

2.2.1 The Security Council Resolution

Greece argued before the Security Council that the unilateral act of exploration on the part of Turkey constituted a violation of its sovereign rights and had threatened "peace and

[55] Johnston, Douglas M.; *loc. cit.*, p.156.
[56] Rozakis, Christos L.; *op. cit.*, p.94.
[57] *Ibid.*
[58] *Ibid.*
[59] Convention on the High Seas, Geneva, 29 April 1958; entry into force: 30 September 1962; 63 ratifications, 450 UNTS 11.
[60] Syrigos, Angelos; *op. cit.*, p.127.

security in the Eastern Mediterranean."[61] According to Turkey there had been no such violation, as no mutually agreed continental shelf boundary existed.[62] The Security

Council passed Resolution 395/1976[63] whereby it adopted a conciliation approach emphasizing on the continuation of negotiations between Greece and Turkey so as to "do everything in their power to reduce the present tensions in the area."[64] Additionally, the Resolution referred to the ICJ as the competent authority to settle such overlapping claims.[65]

2.2.2 The Bern Agreement

On the 11th of November 1976, during the *Aegean Sea* case, both countries signed an agreement to conduct negotiations for the resolution of the Aegean continental shelf issue in Switzerland commonly referred to as the "Bern Agreement."[66] Both countries agreed to continue negotiations in good faith so as to resolve the boundary dispute.[67] More importantly, they consented to abstain from any act on the continental shelf that might prejudice negotiations[68] or discredit the other party.[69] Finally, both States agreed to cooperate by studying "state practice and international rules" to decide which solution would be of practical use in the delimitation of the continental shelf in the Aegean Sea.[70]

Although, this agreement reduced tension for a short period of time, after the outbreak of the Cyprus crisis, it did not deal with the salient points of the dispute.[71] The Bern Agreement was mainly a framework agreement upon which bilateral negotiations would continue. It seems however, that by accepting to study State practice and international rules

[61] Georgopoulos, Aurelia A.; *op. cit.*, p.93.
[62] UN Doc. S12172, 11 August 1976, Annex I and Annex II, p.1.
[63] UN SC Resolution 395/1976, 25 August 1976.
[64] Klein, Natalie; "Provisional Measures and Provisional Arrangements in Maritime Boundary Disputes", International Journal of Marine and Coastal Law, Vol. 21, No. 4, (2006), p.429.
[65] Johnston, Douglas M.; *op. cit.*, p.156.
[66] Agreement on Procedures for Negotiations of the Aegean Continental Shelf Issue, Greece-Turkey, 11 November 1976, (1977) Vol. 16, ILM, p.13.
[67] *Ibid.* Article 1.
[68] *Ibid.* Article 6.
[69] *Ibid.* Article 7.
[70] *Ibid.* Article 8.
[71] Grenville, J.A.S, Wasserstein, Bernard; The Major International Treaties of the Twentieth Century: A History and Guide with Texts, Routledge, London, UK, 2001, p.752.

on delimitation both countries regarded the dispute as legal.[72] Under Article 38(1)(b) of the ICJ Statute "general practice" of States is a recognized source of law.[73]

2.2.3 The ICJ request for interim measures

In the initial stages of the *Aegean Sea* case[74] Greece's submission to the ICJ was twofold. First, she requested the adjudication of the continental shelf boundary appertaining to both States, together with a declaration that Greek islands are entitled to a continental shelf.[75] Second, Greece petitioned for the grant of interim measures of protection in accordance with Article 41 of its statute pending the Court's decision on the ground that any resource-related activity would act to the detriment of its rights on the continental shelf.[76] Additionally, she relied on Articles 2(4) and 33 of the UN Charter requiring Turkey to refrain from any similar act in the future that "may aggravate or extend the present dispute between Greece and Turkey."[77]

The ICJ rejected Greece's request for provisional measures because it considered that the research activity undertaken by the *Sismik-I* did not cause irreparable harm to the seabed or subsoil or even to the exploitation of the resources under it.[78] According to the Court there was no risk of "irreparable prejudice" to Greece[79] and that any economic harm suffered from the exploration activities could be rectified by reparations in the future.[80] Thus, the Court seemed prone to find exploration as acceptable in such situations as opposed to actual exploitation, a view that may be deemed questionable by current standards.

In relation to the resolvement of the dispute and the presence of islands in the Aegean Sea, Greece asked the Court to declare itself competent to entertain the dispute based on the

[72] Syrigos, Angelos; *op. cit.*, p.143.
[73] *Ibid.*
[74] *Aegean Sea Continental Shelf* (Greece v. Turkey) [1976], Interim Protection, ICJ Reports, p.3.
[75] Georgopoulos, Aurelia A.; *op. cit.*, p.93.
[76] Klein, Natalie; "Provisional Measures and Provisional Arrangements in Maritime Boundary Disputes", International Journal of Marine and Coastal Law, Vol. 21, No. 4, (2006), pp. 429-430.
[77] *Aegean Sea*, *op. cit.*, para.15.
[78] *Ibid.* para.30.
[79] *Ibid.* para.32.
[80] *Ibid.* para.33.

joint communiqué of 1975 between the two prime ministers.[81] The Court rejected this on the ground that such a document "does not amount to an agreement under international law."[82] The second argument put forth was that Article 17 of the General

Act on the Pacific Settlement of International Disputes of 1928 to which both countries had acceded, provided for the submission of all disputes over which the parties are in conflict to the PCIJ the predecessor of the ICJ.[83] However, Greece ratified the Convention with a reservation on the jurisdiction of the PCIJ to adjudicate "disputes relating to the territorial status of Greece."[84]

Consequently, the judges rejected Greece's claim that delimitation was "entirely extraneous to the notion of territorial status."[85] In December 1978 the Court decided, taking into account the fact that Turkey refused to participate in the legal proceedings that it lacked jurisdiction to entertain the case by twelve votes to two.[86]

2.3 The Current State of Affairs

The dispute over the continental shelf is a correlation of various issues that may preclude delimitation from taking place at this point in time, in accordance with the recognized rules of international law. This is predominantly because both Greece and Turkey have had very different positions on the matter.

According to the official statement of the Greek Ministry of Foreign Affairs, Greek islands are entitled to a continental shelf in accordance with Article 121(2) of UNCLOS, which is binding even to non-signatories of the Convention because this provision has allegedly become part of customary international law.[87] In terms of delimitation Greece has favoured

[81] *Aegean Sea Continental* Shelf (Greece v. Turkey) [1978], Judgement, ICJ Reports, p.3.
[82] *Ibid.* para.107.
[83] Under Article 37 of the ICJ Statute the ICJ inherited the function of the PCIJ.
[84] *Aegean Sea*, *loc. cit.,* para.48.
[85] Johnston, Douglas M.; *op. cit.*, p.157.
[86] *Aegean Sea*, *loc. cit.,* para.109.
[87] http://www.mfa.gr/en/issues-of-greek-turkish-relations/relevant-documents/delimitation-of-the-continental-shelf.html

a delimitation based on international law, governed by the principle of equidistance/median line."[88] Greece has adhered to this position before ratifying UNCLOS.

On the other hand, the Turkish Ministry of Foreign Affairs has recognized that both countries have legitimate interests and rights in the Aegean Sea.[89] They point out that it is a "common sea" for both States with reference to the freedoms of the high seas and the airspace above it.[90] More importantly, Turkey is in favour of engaging in negotiations with Greece so as to reach an equitable solution for both States.[91] Cornerstone of this position is the *Tunisia/Libya* case[92] where the ICJ stated, "delimitation is to be effected by agreement in accordance with equitable principles and taking into account all relevant circumstances."

[88] *Ibid.*
[89] http://www.mfa.gov.tr/background-note-on-aegean-disputes.en.mfa
[90] *Ibid.*
[91] Siousiouras, Petros, Chrysochou, Georgios; *op. cit.*, pp.15-16.
[92] Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) [1982], Judgement, ICJ Reports, p.18.

Figure 2. The Continental Shelf of Turkey According to the Greek view (in orange) and the Turkish view (intermittent line).[93]

The most difficult aspect of a delimitation attempt would be to define the 'relevant area' considering the proximity of islands to the Turkish coast. The argument that such islands are "protuberances" on the natural prolongation of the Anatolian Peninsula's coastline and so cannot generate a continental shelf of their own may be dismissed. The ICJ in the *Libya/Malta* case[94] concluded that landmass of a coastal State may generate a continental shelf or exclusive economic zone (EEZ) irrespective of the geological and geophysical characteristics of the seabed and subsoil.[95] However, this does not mean that Greek islands are to generate the full extent of their maritime zones under UNCLOS, as this would never be acceptable by Turkey considering that her respective rights over the maritime zones would be limited.

There have been cases and agreements where islands have been given "half-effect" so as to reach an equitable solution for both States.[96] In the relatively recent decision of the *Nicaragua/Columbia* case the ICJ decided to draw the boundary line by deviating from strict equidistance. The QuitaSueño and Serrana banks had been excluded from the coastal boundary and were constrained within the EEZ of Nicaragua due to factors of size and dependency.[97] Also, in the *Anglo-French Continental Shelf* case[98] the Court decided that in order to reach an equitable solution it would have to take into account the Scilly Isles as baselines of UK giving them however less than their full effect in the application of equidistance.[99] In all fairness such a solution may not easily be applicable to the Aegean

[93] Hellenic National Hydrographical Service as cited in Siousiouras, Petros, Chrysochou, Georgios; *loc. cit*, p.16.
[94] Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta) [1985], Judgement, ICJ Reports, p.10.
[95] *Ibid.* para.39, p.35.
[96] Symmons, Clive R.; The Maritime Zones of Islands in International Law, Martinus Nijhoff Publishers, The Hague, The Netherlands, 1979, p.201.
[97] Riesenberg, David P.; "Introductory Note to the ICJ Territorial and Maritime Dispute (Nicaragua v. Columbia)", International Legal Materials, Vol. 52, No. 1, (2013), p.3.
[98] *Anglo-French Continental Shelf Arbitration* (1979) 18 ILM 397.
[99] Symmons, Clive R.; *op. cit.*, p.202.

Sea due factors of territory, population and economic activity of large Greek islands such as Lesbos and Rhodes.

The Aegean basin is a semi-enclosed sea troubled for over four decades by jurisdictional claims. Article 123 of UNCLOS provides that States bordering enclosed or semi-enclosed seas should cooperate with each other "in the exercise of their rights and in the

performance of their duties" under UNCLOS. This provision could form the basis for any future talks even though Turkey is not yet party to UNCLOS.

Undeniably, the potential presence of oil and gas in areas subject to overlapping claims plays a very important role in boundary disputes.[100] It is an unfortunate occurrence that States such as Greece and Turkey, upon the finding of oil reserves, tend to become overly defensive of their national positions instead of agreeing to compromise so as to reach a settlement that will be overly beneficial. The potential presence of oil and gas is a very substantive point of the issue taking into account the financial benefits entailed for both countries.

Considering the current state of affairs, it would be most advantageous for Greece and Turkey to negotiate a joint development scheme on the exploration and exploitation of hydrocarbons in the seabed of the Aegean Sea provided that any deposits actually exist. An initiative to promote cooperation and goodwill among them would also indirectly encourage oil corporations to undertake ventures within the vicinity.

Chapter 3 – Joint Development Agreements

The concept of JDAs arose during the later half of the 20th century as State practice indicates. It became increasingly evident that there needed to be a "constructive approach" to deal with disputes where geography and politics precluded delimitation from taking place but economic factors warranted for an intermediary settlement on the exploration and

[100] Schofield, Clive; "The El Dorado Effect: Reappraising the 'Oil Factor' in Maritime Boundary Disputes" in Schofield, Clive, Lee, Seokwoo, Kwon, Moon-Sang; The Limits of Maritime Jurisdiction, Martinus Nijhoff Publishers, Leiden, The Netherlands, 2014, p.111.

exploitation of oil and gas within the area of overlap.[101] In contrast with maritime delimitation, there does not seem to be an international obligation upon States to undertake such initiatives between themselves.[102]

This is mainly because State practice is varied and lacks a norm creating character due to the fact that it largely depends on the geographical and topical factors of the area concerned. As Miyoshi notes, the term JDAs has not been "understood or used in a uniform way."[103] Indeed, the most prominent academics in the field do not adopt a consistent approach as to the definition and characteristics of JDAs because of their variety.[104]

3.1 Definition of Joint Development Agreements

An all-encompassing definition of JDAs is a very difficult task as their format depends on the merits of the issue. JDAs have loosely been defined as intergovernmental agreements between States to cooperate in the exploration and exploitation of transboundary oil and gas reservoirs or those found in areas of overlapping claims.[105] In the latter situation they have to set aside any prior differences and disputes over the area and start afresh so as to negotiate in good faith and reach a "temporary" settlement that is equitable and just to all affected littoral States.[106] Nevertheless, there are many JDAs that run for very long period up to even 50 years,[107] resembling thus actual settlements.

The above definition calls for two clarifications. Firstly, such JDAs are bilateral agreements between States excluding thus economic ventures between governments of

[101] Mensah, Thomas A.; "Joint Development Zones as an Alternative Dispute Settlement Approach in Maritime Boundary Delimitation", in Lagoni, Rainer, Daniel, Vignes; Maritime Delimitation, Martinus Nijhoff Publishers, Leiden, The Netherlands, 2006, p.146.
[102] Becker-Weinberg, Vasco; Joint Development of Hydrocarbon Deposits in the Law of the Sea, Springer, Heidelberg, Germany, 2014, p.7.
[103] Miyoshi, Masahiro; "The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf", International Journal of Estuarine and coastal Law, Vol. 3, No. 1, (1988), p.5.
[104] Ugwuanyi, Chijioke S.; "Does the Use of Joint Development Agreements Bar International Maritime Boundaries Delimitation?", Dublin Legal Review Quarterly, Vol. 1, (2011), p.30.
[105] Becker-Weinberg, Vasco; *op. cit.*, p.5.
[106] Mensah, Thomas A.; *op. cit.* , p.147.
[107] Article XXXI(2), Agreement between Japan and the Republic of Korea Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries, 30 January 1974.

States and oil corporations to grant concessions on deposits of oil and gas.[108] Such enterprises take place under the national law of the issuing State and so do not have an internationally legal character. It should be noted however, that private entities will be instrumental in the implementation of a JDA at a later stage as they will carry out the exploration and exploitation of hydrocarbon deposits.[109]

Secondly, JDAs needs to be distinguished from unitization, which treats identified reservoirs of mineral resources straddling over a defined boundary between two or more States as a single unit for exploitation purposes.[110] JDAs take place mainly in areas of overlapping claims whereby neighbouring coastal States agree to set aside their differences for a specified period of time in order to jointly explore and exploit any potential or discovered hydrocarbon resources found therein[111] without prejudice to delimitation being effected at a later stage.[112]

3.2 Provisional Arrangements of a Practical Nature

In light of Articles 74 and 83 that deal with the delimitation of the EEZ and the continental shelf respectively, paragraph (3) was inserted so as to encourage States to "make every effort to enter into provisional arrangements of a practical nature" in the absence of a decided boundary and exercise mutual restraint before final settlement.

The term "provisional arrangements"[113] is left undefined in UNCLOS save that they must "be without prejudice to the final delimitation." This provision has been criticized as being too vague to form the basis of interim measures.[114] Nevertheless, we can reasonably imply

[108] Miyoshi, Masahiro; *op. cit.*, p.5.
[109] Becker-Weinberg, Vasco; *op. cit.*, p.21.
[110] Bastida, Ana E., Ifesi-Okoye, Adaeze, Mahmud, Salim, Ross, James, Wälde, Thomas; "Cross-Border Unitization and Joint Development Agreements: An International Law Perspective", Houston Journal of International Law, Vol. 29, No.2, (2007), pp. 370-371.
[111] Mensah, Thomas A.; *op. cit.*, p.147.
[112] Bastida, Ana E. *et al*; *loc. cit.*, p.371.
[113] These should not be confused with the "provisional measures" referred to under Article 41 of the ICJ Statute or Article 40 of the UN Charter in respect of the Security Council
[114] Attard, David J.; The Exclusive Economic Zone in International Law, Clarendon Press, Oxford, UK, 1987, p.208.

that JDAs are such cooperative arrangements that the drafters of UNCLOS III where thinking off when they envisaged the provision.

In addition, the UN General Assembly (UNGA) Resolution 3129 stressed on the need to establish "adequate international standards for the conservation and harmonious exploitation of natural resources common to two or more States."[115] The Governing Council of the UN Environmental Programme also encouraged States to cooperate so as to exploit shared natural resources in an equitable manner and prevent environmental

pollution.[116] Although UNGA Resolutions are recommendatory in nature, they evidence a general trend towards cooperation among States in order to achieve optimal allocation of resources at an international level much like the general spirit of UNCLOS.

Furthermore, international courts and tribunals have supported through their jurisprudence JDAs as a practical alternative to delimitation in difficult circumstances. The ICJ in the *North Sea Continental Shelf* case of 1969 stated that in areas of considerable overlap the States may "decide on a regime of joint jurisdiction, use or exploitation for the zone of overlap or any part of them."[117] In the *Tunisia/Libya* case, the dissenting *ad hoc* Judge Evensen proposed for the creation of a joint exploitation regime for petroleum resources as an equitable alternative to delimitation, which was actually adopted by both countries[118].[119]

The above view has also been endorsed by arbitral tribunals. In the *Eritrea/Yemen Arbitration*, the Tribunal encouraged the parties to enter into a joint exploitation agreement due to the narrowness of the overlapping area.[120] More recently, the Arbitral Tribunal in the *Guyana/Suriname Arbitration*[121] stated that the Parties should have continued

[115] UNGA Res. 3129 (XXVIII), 13 December 1973, UN Doc. A/RES/28/3129.
[116] Ong, David M.; "Joint Development of Common offshore Oil and Gas Deposits: "Mere" State Practice or Customary International Law?", American Journal of International Law, Vol. 93, No. 4, (1999), p.781.
[117] *North Sea Continental Shelf* cases, *op. cit.,* para.99.
[118] Agreement between the Great Libyan Arab Socialist People's Jamahiriya and the Republic of Tunisia to Implement the Judgement of the International Court of Justice in the Tunisia/Libya Continental Shelf Case, 1988.
[119] Ong, David M.; *loc. cit.*, p.787.
[120] *Eritrea/Yemen Arbitration* (1999) Award of the Arbitral Tribunal in the Second Stage of the Proceedings (Maritime Delimitation).
[121] *Guyana/Suriname Arbitration* (2007) Award of the Arbitral Tribunal.

negotiations "…pursuant to which they would be prepared to make concessions in the pursuit of a provisional arrangement."[122] This jurisprudence spanning over four decades indicates the recognition of the concept by tribunals, and its establishment as a very useful tool in boundary disputes.

3.3 Types of Joint Development Agreements

Generally, all JDAs have an administrative framework within which they regulate operatorship, licensing of contractors, imposition of fiscal and tax laws, management of the deposit, apportionment of revenue among the parties as well as dispute resolution mechanisms in case of disagreement.[123] It seems safe to say that JDAs are a conceptualization of the increasing need to cooperate *bona fide* under international law in order to reach a peaceful settlement for States where delimitation does not provide an equitable solution. This does not mean however that there is a legally binding obligation under customary international law as there is no consistency in State practice.

As noted by the British Institute of International and Comparative Law, JDAs do not have general applicability because their format varies depending on the political, economic, social and national realities of the area they are applied to.[124] Ong observes that JDAs come into three main structural models with differing levels of administrative complexity.[125]

3.3.1 The Single-State Model

This is the most basic form of JDA because it requires the least amount of legal and administrative arrangements in order to achieve cooperation among the interested parties.[126] As the name itself suggests one State manages the development of reservoirs in

[122] *Ibid.* para.461.
[123] Sawyerr, Kingsley, Udechukwu, Chisom; "Joint Development as an Appropriate Legal Response to Overlapping Maritime Claims", Aina Blankson LP Newsletter Series, (2012), p.7l
[124] Ong, David M.; *op. cit.*, p.788.
[125] *Ibid.*
[126] *Ibid.*

the designated joint development zone on behalf of the other concerned States. After exploitation has taken place, the "inactive" States are paid an agreed quota of the revenue.[127] The law applicable in respect of the deposit is of the managing State's.

At first sight this model seems quite practical because the undertaking of activities and legal forum are set out in a clear manner. Although many of the earliest JDAs followed this format, current State practice evidences a trend away from this. Such a practice may be viewed by States as entailing a "loss" of sovereign rights because it confers

jurisdiction on the other State to exploit the disputed area.[128] Fear of creating a new *status quo* may result in States adopting a defensive position regarding their national interests considering that stakes are very high.

A striking example of this type of JDA is the *Bahrain-Saudi Arabia Agreement* of 1958,[129] where the Fasht Abu Safa oil field was placed within the Saudi Arabian boundary of the continental shelf on the condition that both parties would jointly cooperate in the area.[130] The second clause of the agreement provided that Bahrain was entitled to 50 per cent of the proceeds from the exploitation of the oil reserves by Saudi Arabia without impinging on its sovereignty.

A more recent example of this model is the *Brunei-Malaysia Agreement* created by exchange of letters in 2009 that places previously disputed blocks by Malaysia on the Brunei side of the agreed maritime boundary allowing though Malaysia to participate in the joint development of these areas for a period of 40 years.[131]

3.3.2 The Joint Venture Model

[127] Becker-Weinberg, Vasco; *op. cit.*, pp.44-45.
[128] Ong, David M.; *loc. cit.*, p.788.
[129] Mensah, Thomas A.; *op. cit.*, p.148.
[130] Miyoshi, Masahiro, Schofield, Clive; The joint development of offshore oil and gas in relation to maritime boundary delimitation**,** Vo. 2, No. 5, Maritime Briefing, International Boundaries Research Unit, University of Durham, 1999, p.28.
[131]https://www.dur.ac.uk/ibru/news/boundary_news/?itemno=10047&rehref=%2Fibru%2Fnews%2F&resubj=Boundary+news+Headlines.

This type of JDA seems to be the most preferable, "as State practice indicates," albeit not very straightforward. Under this agreement all interested States have to engage in "compulsory joint ventures" with State-owned or private companies to develop deposits within the nominated joint development zone.[132] In such situations, States have to cooperate between themselves by sharing information on exploration and exploitation activities within the zone, such as access to operations, equitable allocation of resources and protection of the marine environment.[133] This may also be done by the creation of joint authorities that have an advisory role.

This model of JDA may be illustrated by the *Japan-Republic of Korea Agreement* of 1974. Japan and South Korea signed two agreements, one on delimitation and another on joint development. The latter agreement regulated the region of the continental shelf that extended within the northern area of the East China Sea over which China and North Korea also have overlapping claims by subdividing the main zone into smaller subzones.[134] Both countries had to nominate a concessionaire for each subzone, the law applicable in each area being that of the concessionaire. The parties also created a joint commission that had merely a consultative role in matters pertaining to the JDA.[135] This agreement was to run for fifty years giving however, the right of prior termination if the "natural resources [were] no longer exploitable in the Joint Development Zone."[136]

3.3.3 The Joint Authority Model

The third and last model to discuss has been characterized as "the most complex and institutionalized option."[137] The affected coastal States have to reach an agreement in order to ultimately establish an enterprise in the form of an "international joint authority or commission" that would possess legal personality as well as "licensing and regulatory powers" in overseeing the exploration and exploitation in the designated joint development

[132] Ong, David M.; *op. cit.*, p.789.
[133] Becker-Weinberg, Vasco; *op. cit.*, p.45.
[134] Bastida, Ana E. *et al*; *op. cit.*, p.400.
[135] Valencia, Mark J.; "Taming Troubled Waters: Joint Development of Oil and Mineral Resources in Overlapping Claim Areas", San Diego Law Review, Vol. 23, No.3, (1986), p.668.
[136] Bastida, Ana E. *et al*; *loc. cit.*, p.401.
[137] Ong, David M.; *op. cit.*, p.791.

area.[138] These instructional structures have considerable supervisory functions with regard to the management of the deposits in contrast with the joint authorities referred to above in the joint venture model that have a more inferior, advisory role. Costs and benefits in such ventures burden the parties equally.[139]

One of the earliest examples of this joint authority model is the *Sudan-Saudi Arabia Agreement* of 1974, which designated a common zone in the central part of the Red Sea. Subject to Articles V-VI of the Agreement both States had equal and exclusive sovereign rights in all the natural resources.[140] Article VII established a Joint Commission

possessing corporate legal personality in both States that had functions relating to licensing as well as the grant of concessions regarding exploration and exploitation of resources in the area.[141] Basically, the whole management of the zone was delegated to this authority as a neutral third party.

Another example of such a JDA, which has been considered a success story, is the Malaysia-Thailand Joint Authority established under the *Malaysia-Thailand Joint Development Agreements* of 1979 and 1990. As we shall see in Chapter 4 this type of JDA is arguably the more favourable of the two in relation to the Aegean Sea because it may be formulated in such a way so as to limit State intervention thereby creating a neutral regime.

Chapter 4 – Joint Development in the Aegean Sea Context

4.1 Preliminary considerations

Having analysed the regime of JDAs in general terms it is time to look at its potential application within the Aegean Sea, in light of current State practice. Reference to joint development in respect of the Aegean Sea may be found in the talks of the Bern Agreement of 1976, a purely procedural text on the facilitation of negotiations for peaceful

[138] *Ibid.*
[139] Becker-Weinberg, Vasco; *op. cit.*, p.45.
[140] Bastida, Ana E. *et al*; *op. cit.*, p.401.
[141] Valencia, Mark J.; *op. cit.*, p.673.

resolvement of the dispute, where Turkey actually proposed cooperation in the form of a JDA over the continental shelf resources.[142]

A recording of the minutes of the third Greek-Turkish meeting is quite enlightening.[143] The Turkish Ambassador, Mr. Bilge advanced the idea of joint economic exploitation by means of a provisional or definitive agreement "to avoid the difficulties of delimitation."[144] This was to be done by designating areas within the continental shelf as well as establishing an appropriate administrative mechanism for joint exploration.[145]

Although Mr. Tzounis, the Greek Ambassador, remarked at the start that Greece does not reject the idea of joint development, in the second part of his statement he said that such a proposal would only be deemed acceptable by Greece after delimitation had taken place.[146] This, according to him, would have allowed the parties to know their respective rights in relation to the exploration of the area. Also, he expressed the fear of Greece that joint development without prior delimitation being effected would be viewed as a cessation of Greece's sovereign rights.[147]

Nevertheless, it may be submitted that the establishment of a future JDA would be very promising for both countries compared to the present status of *moratorium* as the geographical, legal and even political realities of the Aegean Sea seem to preclude delimitation at this point in time.[148] A JDA established under the auspices of both States will require a high level of political will and cooperation on their part so as to agree on certain salient aspects – discussed below – of exploration and subsequent exploitation of hydrocarbons within the basin.

4.2 Identification of the Joint Development Area

[142] Acer, Yücel; "A Proposal for a Joint Maritime Development Regime in the Aegean Sea", Journal of Maritime Law & Commerce, Vol. 37, No. 1, (2006), p.59.
[143] Deniz Bölükbaşı; *op. cit.*, pp.543-546.
[144] *Ibid.* p.543.
[145] *Ibid.*
[146] *Ibid.* p.544.
[147] *Ibid.*
[148] Van Dyke, Jon M.; "The Aegean Sea Dispute: Options and Avenues", Marine Policy, Vol. 20, No. 5, (1996), p.401.

Prior to the conclusion of a JDA, affected parties usually have to identify the extent of the overlapping area they will agree to commonly explore and exploit.[149] This is a fundamental aspect of a JDA because it provides certainty as to each country's entitlements in the area where no defined boundary exists. [150] The presence of identified oil and gas reservoirs will undeniably be a determining factor during negotiations. The usual position, as State practice indicates, is that the whole area of overlap becomes the joint development zone.[151]

In the *Sudan-Saudi Arabia Agreement* of 1974 both countries decided to create a "common zone" only in the central part of the Red Sea where their interests

overlapped.[152] Additionally, Article I of the Memorandum of Understanding (MOU) of the *Thailand-Malaysia Joint Development Agreement* of 1979 made it clear that the JDA is the "… result of overlapping claims made by the two countries regarding the boundary line of their continental shelves in the Gulf of Thailand…" providing also coordinates to that effect.[153] States may also try to establish a boundary line in part of the overlapping area so as to facilitate the creation of a joint zone by splitting the area into two subzones like in the *Japan-Republic of Korea Agreement* of 1974 mentioned above.

A similar situation to the Aegean Sea was encountered in respect of the Norwegian Jan Mayen island located very close to Iceland's EEZ. A Conciliation Commission was set up to advise both States. The Commission actually departed from the idea of traditional delimitation and proposed that both States undertake a system of cooperative arrangements in light of the fact that the resource potential of the area was uncertain much like the Aegean Sea.[154] Thus, it proposed the establishment of a quasi-dividing line in respect of Iceland's 200 nm EEZ. This proposal was adopted by both countries and the *Jan Majen Agreement* of 1981 was drafted whereby both nations agreed to jointly explore and exploit potential mineral resources that straddled within the continental shelf boundary.[155]

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[149] Becker-Weinberg, Vasco; *op. cit.*, p.104.
[150] Valencia, Mark J.; *op. cit.*, p.670.
[151] Acer, Yücel; *op. cit.*, p.62.
[152] Bastida, Ana E. *et al*; *op. cit.*, p.371.
[153] http://cil.nus.edu.sg/rp/il/pdf/1979%20MOU%20between%20Malaysia%20and%20Thailand-pdf.pdf.
[154] Johnston, Douglas M.; *op. cit.*, p.162.
[155] *Ibid.*

Identifying a joint zone in the Aegean Sea will not be an easy task because the presence of numerous islands and indentations very close to the Turkish coast raises issues of demarcation once more. Additionally, the lack of concrete information as to the existence of mineral resources or of their quality complicates matters even more.

Moreover, it may not be deemed practicable to open the whole area of the Aegean Sea for joint exploration. Designating the middle area of the Aegean Sea like the Sudan and Saudi Arabia approach will be very difficult due to the Cyclades and Dodecanese chains of islands that are close to the Turkish coast as well as due to issues of pollution from

seabed activities considering that tourism in these areas is a very high source of income for Greece.[156]

A better proposal would be to split the Aegean into two parts, north and south.[157] Considering that the northern part of the Aegean Sea has fewer islands, both nations could adopt a two-way approach whereby they could establish a joint development region in the south whilst also simultaneously negotiating a settlement for delimitation in the northern part.

4.3 Aspects of State Participation in Exploration and Exploitation Activities

Besides *consensus* in terms of geography both countries have to come to terms as to a particular administrative framework regulating the exploration and exploitation of mineral resources as well as other activities within the area.[158] This regime must be specifically tailored to the legal and political actualities of the Aegean Sea so as to lay down a stable foundation upon which effective managerial aspects of oil activities such as granting of licences and applicable law will be based upon.

[156] Under Article 208 of UNCLOS it is incumbent upon coastal States to prevent, reduce and control pollution to the marine environment arising from seabed activities.
[157] Acer, Yücel; *op. cit.*, p.64.
[158] Becker-Weinberg, Vasco; *op. cit.*, p.121.

Adopting a well-organized regime is particularly important for operators and oil companies who are not keen to undertake ventures for the development of oil deposits in areas of overlapping claims fearing that political instability in the region may affect their licensing agreements.[159] Oil ventures are a very risky business by their nature, so operators need to be guaranteed, through an efficient system, their mining rights within the joint development area.[160]

Choosing a single-state revenue sharing model in relation to the Aegean Sea like the one adopted by Bahrain and Saudi Arabia, whereby one State exploits the area on behalf of the other and then grants a share of the revenue to the other, does not seem to be the best

option suited to the Aegean Sea.[161] Only one State has control over the deposit creating uncertainty as to the entitlements of the other. Both exploration and exploitation activities have to take place as part of a common collaboration within the designated areas.

The second model requiring joint ventures to take place by both States seems to be more fitting to the case of the Aegean Sea. After the demarcation of the whole joint area, Greece and Turkey will each be assigned a subzone to be managed by application of their national petroleum laws in their respective parts.[162] This is to be done by the nomination of national concessionaires in each subzone that are usually State-owned companies.

Nevertheless, both nations are not precluded from designating concessionaires to operate within the whole joint area instead of splitting it. This creates a complex situation where States have different contractual systems.[163] The concessionaires will have to reach an "operating agreement" between them or even by more than one if necessary. [164] These agreements will regulate the net sharing of revenues and the coordination of tax policies.[165] For instance in the Malaysia-Vietnam MOU of 1992 both parties nominated their

[159] Dundas, Carl W.; "The Impact of Maritime Boundary Delimitation on the Development of Offshore Mineral Deposits", Resources Policy, Vol. 20, No. 4, (1994), pp. 273.
[160] *Ibid.*
[161] Acer, Yücel; *op. cit.*, p.66.
[162] Becker-Weinberg, Vasco; *op. cit.*, p.121.
[163] Valencia, Mark J.; *op. cit.*, p.671.
[164] Article VI, Agreement between Japan and the Republic of Korea Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries, 30 January 1974.
[165] Becker-Weinberg, Vasco; *op. cit.*, p.121.

respective national oil companies as concessionaires and required them to also reach a commercial agreement that would still require the consent of the parties.[166] Another illustration is the Thailand-Malaysia MOU of 1979 whereby they jointly agreed to use a production-sharing system even though Thailand was using a concession system.[167]

Additionally, in a spirit of reciprocity, both Greece and Turkey will have to exchange information on their respective activities within the area so that no one is put in a better bargaining position. The author however believes that the establishment of a neutral joint authority as discussed below will have a more positive impact on any joint activities to be undertaken.

4.4 Creation of a Joint Authority

This quasi-independent body shall possess legal personality and undertake the role of both Greece and Turkey for the exploration and exploitation within the joint development zone.[168] Depending on the autonomy it would be granted by the parties,[169] a joint authority may be given extensive powers and functions in order to grant exploratory licences to oil companies, enter into contracts on its own accord, collect revenue and taxes from activities and even settle disputes between different operators.[170]

However, a joint authority may also assume an advisory role. This body has supervisory powers to make recommendations to the parties in respect of offshore operations and technical specifications.[171] Their recommendations do not have binding force but are subject to the approval of the State parties.[172]

A strong joint authority with wide ranging powers was established under the Thailand-Malaysia MOU of 1979. Subject to Article 3(2) the joint authority acquired rights and

[166] Ong, David M.; *op. cit.*, p.790
[167] Valencia, Mark J.; *op. cit.*, p.671.
[168] Becker-Weinberg, Vasco; *op. cit.*, p.123.
[169] Valencia, Mark J.; *loc. cit.*, p.672.
[170] *Ibid.*
[171] Acer, Yücel; *op. cit.*, p.71.
[172] Becker-Weinberg, Vasco; *op. cit.*, pp.123-124.

responsibilities on behalf of both parties regarding the management and development of the joint zone without affecting the validity of licences that had been issued before the agreement.[173] The last part of the provision creates ambiguity, as there may be conflicting titles of operators granted before and after the creation of an authority.

There are also more intricate joint authorities comprised by two or even three tiers[174].[175] For instance the *Australia-Indonesia Timor Gap Zone of Cooperation Treaty* of 1989 was comprised by two entities the Ministerial Council and the Joint Authority both regulating exploration and exploitation in Area A.[176] Whilst the Council was responsible for the

effective management of resources by entering into contracts on behalf of the parties, the Authority was a representative body charged with settling issues and disputes that could arise from the operation of the former.[177]

Undeniably, the establishment of a Greek-Turkish joint authority seems to be the most favourable approach under a joint development scheme, at least in theory. It needs to be a strong entity having considerable autonomy from both countries so as to not be influenced by changes in the political landscape, which, are unfortunately a frequent occurrence. A decentralized approach would be most welcome whereby the authority will be split into two separate entities, one dealing with management of exploration and exploitation activities such as granting of licences to oil companies and the other a body charged with dispute resolution mechanisms so as to ensure that disagreements are dealt internally by the entity itself. These bodies shall be composed of administrative staff and technical experts from both countries so as to ensure equal participation and the director shall change by rotation.[178]

[173] Ong, David M.; "The 1979 and 1990 Malaysia-Thailand Joint Development Agreements: A Model for International Legal Co-operation in Common Offshore Petroleum Deposits?", International Journal of Marine and Coastal Law, Vol. 14, No. 2, (1999), pp.231-232.
[174] The *Mauritius-Seychelles Treaty* of 2012 created a "three-tier joint administrative structure" by forming the Ministerial Council, the Joint Commission and the Designated Authority.
[175] Becker-Weinberg, Vasco; *loc. cit.*, pp.123-124.
[176] Ong, David M.; op. cit., p.791-792.
[177] Acer, Yücel; *op. cit.*, p.70.
[178] Acer, Yücel; *op. cit.*, p.71.

4.5 Duration of the Joint Development Agreement

Another salient point both States will have to agree on is the duration of JDA. A short-term agreement of ten years for example may not easily attract the attention of investors who will reasonably fear for the security of their venture compared to a long-term agreement of fifty years that will provide a firm "platform" for the development of oil deposits.[179] In reaching an agreement, the parties may rely on the *Thailand-Malaysia Agreement* which was decided to last for fifty years or when the parties agree to negotiate a delimitation settlement.[180] *The Japan-Republic of Korea Agreement* is also for fifty years but may be terminated by both parties' mutual consent if they determine that natural resources cannot be exploited anymore.[181]

4.6 Applicable Law

Greece and Turkey will also have to clarify within the agreement the law governing various aspects of the agreement as well as dispute settlement mechanisms. The applicable law will need to be expressly stipulated in respect of employment contracts, health and safety measures, environmental standards, collection of taxes, granting of licences to operators and concessions to private entities.[182] This will also be of particular importance regarding the settlement of disputes among operators.

A model for both countries may be the *UK-Norway Agreement* of 1965 where each State had jurisdiction over its own licencees.[183] Under Article 9 the entitlements of each country from exploitation activities were to be taxed in accordance with their national laws.[184] Such an approach seems very straightforward and so should be seriously considered by Greece and Turkey. It should also be noted that in accordance with Article 13 the pipeline system was to be regulated by Norwegian law because it was owned by entities established in

[179] Valencia, Mark J.; *op. cit.*, p.672.
[180] Bastida, Ana E. *et al*; *loc. cit.*, p.402.
[181] Valencia, Mark J.; *loc. cit.*, p.672.
[182] Becker-Weinberg, Vasco; *op. cit.*, p.137.
[183] Acer, Yücel; *op. cit.*, p.73.
[184] *Ibid.*

Norway even though it continued within the continental shelf of UK. There does not seem any reason why Greece and Turkey should not adopt such a framework.

In the *Jan Majen Agreement* of 1981, Iceland and Norway had a right to enforce their national petroleum laws in each of the zones under their control. It is interesting to note that in case of a dispute on environmental protection measures Article 8 stipulated that the Conciliation Commission could act as an "instance of appeal" so as to stop any exploitation activities until agreement was reached.[185] Drawing from this approach Greece and Turkey could delegate powers on the aforementioned joint authority to handle such disputes.

Conclusion

The advent of UNCLOS in 1982 resulted in a tremendous increase of jurisdictional claims of States over the extended areas prescribed under the Convention. This has been particularly influenced by the willingness of States to drill for oil and gas in offshore areas of the continental shelf. The regime has evolved immensely since 1945, UNCLOS being the latest development on the area, so as to facilitate the greater need for resources of the international community as a whole. However, this has also created problems of delimitation within "a gulf, basin or sea surrounded by two or more States…" as set out in UNCLOS.[186] Although the Convention provided for the cooperation of littoral States within semi-enclosed seas this has not been of very much help in cases of significant overlap like in the Aegean Sea.[187]

The dispute over the Aegean Sea between Greece and Turkey is a long standing one relating to various issues, the most prominent being that of the continental shelf. Since the 1970s both countries have tried and failed to reach a final and unequivocal delimitation settlement. Undeniably, conflicts on resources have a very serious potential complicated by the fact that political positions of States tend to become very nationalistic.

[185] Becker-Weinberg, Vasco; *op. cit.*, p.138.
[186] Article 122 of UNCLOS provides the definition of "enclosed or semi-enclosed seas."
[187] Article 123 UNCLOS.

Historically, the Aegean Sea has been viewed as a strip of water separating Greece and Turkey both literally and figuratively but it should be also observed that it is a connecting link between two nations. Although the dispute has been discussed in length among academic circles, there have not really been any real solutions save for traditional delimitation. As discussed above a solution to the disagreement may come in the form of a JDA.

Both countries under such a JDA scheme would agree without prejudicing their right to settling for delimitation in the future to jointly explore parts of the Aegean Sea for oil reservoirs. If discovery of any deposits takes places then they will be exploited through an autonomous joint authority set up by both of them, which will decide various matters

such as splitting of net revenue, taxation and other administrative matters. However, even a more intermediary solution may be adopted like in the *Norway-UK Agreement* of 1976 where both States agreed to engage in consultation regarding the grant of licences to operators in areas of their jurisdiction without actually creating a JDA.[188] By laying down a framework for peaceful dialogue both States may actually attempt exploratory activities within the Aegean Sea without prejudicing each other's rights.

There seems to be "fertile" ground for such an agreement to take place as the relations of Greece and Turkey have strengthened considerably since the past. Good neighbourliness is evident by the signing of various confidence building measures which are cooperative agreements on issues of trade, tourism, culture, protection of the environment, crime immigration etc.[189]

More importantly, Greece's decision to support Turkey's endeavours to attain EU membership status during the Helsinki summit of 1999 shows the good relations both countries have developed and continue to progress to this date.[190] This is also evident by the Turkish Foreign Minister's statement that exploratory talks between the countries are

[188] Mensah, Thomas A.; *op. cit.*, p.148.
[189] Acer, Yücel; "The Aegean Disputes Towards a Comprehensive Settlement", Journal of Administrative Sciences, Vol. 1, No. 1, (2003) , p.255.
[190] *Ibid.* p.257.

underway when asked as to the prospect of joint exploration and exploitation between Greece and Turkey taking place in the near future.[191] Should a joint development initiative ever be undertaken, both governments have to start negotiations afresh, political will being a prerequisite if such a regime were to have a significant impact in the near future so as to make accessible more energy supplies within the region.

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